Hygiene and administration of this chapter by Children's Bureau.

Section 162, act Nov. 23, 1921, ch. 135, §1, 42 Stat. 224, related to authorization of appropriations.

Section 163, acts Nov. 23, 1921, ch. 135, §2, 42 Stat. 224; Jan. 22, 1927, ch. 53, §1, 44 Stat. 1024, related to amount and apportionment of appropriations.

Section 164, act Nov. 23, 1921, ch. 135, §4, 42 Stat. 225, related to acceptance of provisions of this chapter by the States.

Section 165, act Nov. 23, 1921, ch. 135, §5, 42 Stat. 225, related to deduction of administrative expenses from appropriation.

Section 166, act Nov. 23, 1921, ch. 135, §6, 42 Stat. 225, related to clerical assistants for Children's Bureau.

Section 167, act Nov. 23, 1921, ch. 135, §7, 42 Stat. 225, related to apportionment of appropriation to States.

Section 168, act Nov. 23, 1921, ch. 135, §8, 42 Stat. 225, related to submission and approval of plans by States.

Section 169, act Nov. 23, 1921, ch. 135, §9, 42 Stat. 225, related to power of representatives of Children's Bureau to enter homes and to take charge of children.

Section 170, act Nov. 23, 1921, ch. 135, §10, 42 Stat. 225, related to certification of amounts apportioned to States.

Section 171, act Nov. 23, 1921, ch. 135, §11, 42 Stat. 226, related to reports by States.

Section 172, act Nov. 23, 1921, ch. 135, §12, 42 Stat. 226, related to limitation on expenditure of amounts apportioned to States.

Section 173, act Nov. 23, 1921, ch. 135, §13, 42 Stat. 226, related to requirement that Children's Bureau perform duties assigned to it by this chapter.

Section 174, act Nov. 23, 1921, ch. 135, §14, 42 Stat. 226, related to construction of this chapter.

Section 175, act Mar. 10, 1924, ch. 46, §3, 43 Stat. 17, related to extension of this chapter to Hawaii.

CHAPTER 6—THE CHILDREN'S BUREAU

Sec.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 22 section 2102.

§ 191. Bureau established

There shall be established in the Department of Health and Human Services a bureau to be known as the Children's Bureau.

(Apr. 9, 1912, ch. 73, §1, 37 Stat. 79; Mar. 4, 1913, ch. 141, §3, 37 Stat. 737; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695.)

CODIFICATION

Section was formerly classified to section 18 of Title 29, Labor.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Federal Security Agency'' substituted for ''Department of Labor'' pursuant to Reorg. Plan No. 2 of 1946, set out in the Appendix to Title 5, Government Organization and Employees, which transferred Children's Bureau, exclusive of its Industrial Division, from Department of Labor to Federal Security Agency. Functions of Bureau, its Chief, and of Secretary of Labor relating to such functions transferred to Federal Security Administrator.

Functions authorized by section 192 of this title and such other functions of Federal Security Agency as Administrator might designate were to be administered through Children's Bureau under his direction and control.

Functions of Children's Bureau under sections 201 to 216, 217 to 219 of Title 29, Labor, transferred to Secretary of Labor.

For transfer of personnel, property, records and funds, see section 12 of Reorg. Plan No. 2 of 1946.

Act Apr. 9, 1912, established Children's Bureau in Department of Commerce and Labor. Act Mar. 4, 1913, transferred Children's Bureau to Department of Labor, which was created by that act, and was authority for substitution of ''Department of Labor'' for ''Department of Commerce and Labor''.

CROSS REFERENCES

Health research and research training resources in participating foreign countries, use by Secretary in exercise of functions under this chapter, see section 2102 of Title 22, Foreign Relations and Intercourse.

§ 192. Chief of bureau; investigations and reports

The Children's Bureau shall be under the direction of a chief, to be appointed by the President, by and with the advice and consent of the Senate. The said bureau shall investigate and report to the Secretary of Health and Human Services, upon all matters pertaining to the welfare of children and child life among all classes of our people, and shall especially investigate the questions of infant mortality, the birth rate, orphanage, juvenile courts, desertion, dangerous occupations, accidents and diseases of children, employment, legislation affecting children in the several States and Territories. But no official, or agent, or representative of said bureau shall, over the objection of the head of the family, enter any house used exclusively as a family residence. The chief of said bureau may from time to time publish the results of these investigations in such manner and to such extent as may be prescribed by the Secretary.

(Apr. 9, 1912, ch. 73, §2, 37 Stat. 79; Mar. 4, 1913, ch. 141, §§3, 6, 37 Stat. 737, 738; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695.)

CODIFICATION

In the first sentence of this section, provisions which specified an annual compensation of $5,000 for the chief of the Childrens Bureau have been omitted superseded. Following enactment of the Classification Act of 1923, the compensation was fixed in accordance with that Act. See act Feb. 27, 1925, title IV, 43 Stat. 1050. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, §8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees. Section 5102 of Title 5 now contains the applicability provi-

sions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

Section was formerly classified to section 18a of Title 29, Labor.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Federal Security Administrator'' substituted for ''said department'' and for ''Secretary of Labor'' pursuant to Reorg. Plan No. 2 of 1946. See note set out under section 191 of this title.

''Secretary of Labor'' substituted for ''Secretary of Commerce and Labor'' pursuant to act Mar. 4, 1913. See note set out under section 191 of this title.

§ 193. Assistant chief

There shall be in the Children's Bureau, until otherwise provided for by law, an assistant chief, to be appointed by the Secretary of Health and Human Services.

(Apr. 9, 1912, ch. 73, §3, 37 Stat. 80; Mar. 4, 1913, ch. 141, §§3, 6, 37 Stat. 737, 738; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695.)

CODIFICATION

Section 3 of act Apr. 9, 1912, also provided for compensation of assistant chief and for appointment and compensation of other employees of the bureau.

Section was formerly classified to section 18b of Title 29, Labor.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out in as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Federal Security Administrator'' substituted for ''Secretary of Labor'' pursuant to Reorg. Plan No. 2 of 1946. See note set out under section 191 of this title.

''Secretary of Labor'' substituted for ''Secretary of Commerce and Labor'' pursuant to act Mar. 4, 1913. See note set out under section 191 of this title.

§ 194. Quarters for bureau

The Secretary of Health and Human Services is directed to furnish sufficient quarters for the work of this bureau at an annual rental not to exceed $2,000.

(Apr. 9, 1912, ch. 73, §4, 37 Stat. 80; Mar. 4, 1913, ch. 141, §3, 37 Stat. 737; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695.)

CODIFICATION

Section was formerly classified to section 18c of Title 29, Labor.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Federal Security Administrator'' substituted for ''Secretary of Labor'' pursuant to Reorg. Plan No. 2 of 1946. See note set out under section 191 of this title.

''Secretary of Labor'' substituted for ''Secretary of Commerce and Labor'' pursuant to act Mar. 4, 1913. See note set out under section 191 of this title.

CHAPTER 6A—PUBLIC HEALTH SERVICE

SUBCHAPTER I—ADMINISTRATION AND MISCELLANEOUS PROVISIONS

Sec.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 217a–1, 300a–7, 300a–29, 701, 1320a–1, 1320a–7b, 1396r–4, 3013, 3509 of this title; title 8 section 1255a; title 18 section 42; title 20 section 1092a; title 35 section 156; title 38 section 8126.

SUBCHAPTER I—ADMINISTRATION AND MISCELLANEOUS PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 5 section 5948.

§ 201. Definitions

When used in this chapter—

(a) The term ''Service'' means the Public Health Service;

(b) The term ''Surgeon General'' means the Surgeon General of the Public Health Service;

(c) Unless the context otherwise requires, the term ''Secretary'' means the Secretary of Health and Human Services.

(d) The term ''regulations'', except when otherwise specified, means rules and regulations made by the Surgeon General with the approval of the Secretary;

(e) The term ''executive department'' means any executive department, agency, or independent establishment of the United States or any corporation wholly owned by the United States;

(f) Except as provided in sections 246(g)(4)(B),[1] 247c(c)(1),[1] 254d(h)(3),[1] 263(5), 264(d), 292a(9),[1] 300a(c), 300f(13), and 300n(1)[1] of this title, the term ''State'' includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(g) The term ''possession'' includes, among other possessions, Puerto Rico and the Virgin Islands;

(h) Repealed. Pub. L. 97–35, title IX, § 986(a), Aug. 13, 1981, 95 Stat. 603.

(i) The term ''vessel'' includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, exclusive of aircraft and amphibious contrivances;

(j) The term ''habit-forming narcotic drug'' or ''narcotic'' means opium and coca leaves and the several alkaloids derived therefrom, the best known of these alkaloids being morphia, heroin, and codeine, obtained from opium, and cocaine derived from the coca plant; all compounds, salts, preparations, or other derivatives obtained either from the raw material or from the various alkaloids; Indian hemp and its various derivatives, compounds, and preparations, and peyote in its various forms; isonipecaine and its derivatives, compounds, salts, and preparations; opiates (as defined in section 4731(g)[1] of title 26);

(k) The term ''addict'' means any person who habitually uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who is or has been so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction;

(*l*) The term ''psychiatric disorders'' includes diseases of the nervous system which affect mental health;

(m) The term ''State mental health authority'' means the State health authority, except that, in the case of any State in which there is a single State agency, other than the State health authority, charged with responsibility for administering the mental health program of the State, it means such other State agency;

(n) The term ''heart diseases'' means diseases of the heart and circulation;

(*o*) The term ''dental diseases and conditions'' means diseases and conditions affecting teeth and their supporting structures, and other related diseases of the mouth; and

(p) The term ''uniformed service'' means the Army, Navy, Air Force, Marine Corps, Coast Guard, Public Health Service, or National Oceanic and Atmospheric Administration.

(q) The term ''drug dependent person'' means a person who is using a controlled substance (as defined in section 802 of title 21) and who is in a state of psychic or physical dependence, or both, arising from the use of that substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects or to avoid the discomfort caused by its absence.

(July 1, 1944, ch. 373, title I, § 2, 58 Stat. 682; July 3, 1946, ch. 538, § 3, 60 Stat. 421; Feb. 28, 1948, ch. 83, § 1, 62 Stat. 38; June 16, 1948, ch. 481, § 6(a), 62 Stat. 469; June 24, 1948, ch. 621, § 6(a), 62 Stat. 601; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; June 25, 1959, Pub. L. 86–70, § 31(a), 73 Stat. 148; Apr. 8, 1960, Pub. L. 86–415, § 5(a), 74 Stat. 34; July 12, 1960, Pub. L. 86–624, § 29(a), 74 Stat. 419; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; Mar. 13, 1970, Pub. L. 91–212, § 11, 84 Stat. 67; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; Oct. 27, 1970, Pub. L. 91–513, title I, § 2(b), 84 Stat. 1240; Dec. 16, 1974, Pub. L. 93–523, § 2(b), 88 Stat. 1693; June 23, 1976, Pub. L. 94–317, title III, § 301(a), 90 Stat. 707; Oct. 12, 1976, Pub. L. 94–484, title IX, § 905(a), 90 Stat. 2325; Aug. 1, 1977, Pub. L. 95–83, title I, § 107, 91 Stat. 386; Oct. 4, 1979, Pub. L. 96–79, title II, § 203(e)(2), 93 Stat. 635; Aug. 13, 1981, Pub. L. 97–35, title IX, §§ 902(d)(5), 986(a), 95 Stat. 560, 603; June 10, 1993, Pub. L. 103–43, title XX, § 2008(e), 107 Stat. 212.)

REFERENCES IN TEXT

Section 246(g) of this title, referred to in subsec. (f), was repealed by Pub. L. 96–398, title I, § 107(d), Oct. 7, 1980, 94 Stat. 1571.

Section 247c(c)(1) of this title, referred to in subsec. (f), was repealed by Pub. L. 94–317, title II, § 203(f)(1), June 23, 1976, 90 Stat. 704.

Section 254d(h)(3) of this title, referred to in subsec. (f), was redesignated section 254d(i)(4) of this title by Pub. L. 100–177, title II, § 202(b)(5), title III, § 301(1), Dec. 1, 1987, 101 Stat. 996, 1003.

Section 292a of this title, referred to in subsec. (f), contained definitions for purposes of subchapter V of this chapter prior to the general revision of subchapter V by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. See sections 292*o* and 295p of this title.

Section 300n of this title, referred to in subsec. (f), was repealed by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 4731(g) of title 26, referred to in subsec. (j), was repealed by Pub. L. 91–513, title III, § 1101(b)(3)(A), Oct. 27, 1970, 84 Stat. 1292. A definition of ''opiate'' is contained in section 102 of Pub. L. 91–513, which is classified to section 802 of Title 21, Food and Drugs. Reference to section 4731(g) of title 26 was substituted for ''section 3228(f) of title 26'' on authority of section 7852(b) of Title 26, Internal Revenue Code, which provides that a reference in other laws to the Internal Revenue Code of 1939 is deemed a reference to the corresponding provision of the Internal Revenue Code of 1986.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1981—Subsec. (f). Pub. L. 97–35, § 902(d)(5), struck out reference to section 300d(2) of this title.

[1] See References in Text note below.

Subsec. (h). Pub. L. 97–35, §986(a), struck out subsec. (h) which defined ''seamen''.

1979—Subsec. (f). Pub. L. 96–79 struck out from enumeration of excepted sections reference to section 300s–3(1) of this title.

1977—Subsec. (f). Pub. L. 95–83 expanded definition of ''State'' to include American Samoa and the Trust Territory of the Pacific Islands.

1976—Subsec. (f). Pub. L. 94–484 inserted in list of excepted sections reference to sections 247c(c)(1), 254d(h)(3), 263(5), and 292a(9) of this title, struck out from enumeration reference to section 263c(5) of this title, and defined ''State'' to include the Northern Mariana Islands.

Pub. L. 94–317 substituted provisions defining, with certain specific exceptions, ''State'' to include the several States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands for provisions defining ''State'' to include a State or the District of Columbia, Puerto Rico, or the Virgin Islands, except in section 264(d) of this title such term means a State or the District of Columbia, and in subchapter XII of this chapter such term includes Guam, American Samoa, and the Trust Territory of the Pacific Islands.

1974—Subsec. (f). Pub. L. 93–523 designated existing provisions as cl. (1) and added cl. (2).

1970—Subsec. (c). Pub. L. 91–212 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The term 'Administrator' means the Federal Security Administrator;''.

Subsec. (q). Pub. L. 91–513 added subsec. (q).

1960—Subsec. (f). Pub. L. 86–624 struck out ''Hawaii,'' before ''Puerto Rico''.

Subsec. (p). Pub. L. 86–415 added subsec. (p).

1959—Subsec. (f). Pub. L. 86–70 struck out ''Alaska,'' after ''Hawaii,'' and substituted ''or the District of Columbia'' for '', the District of Columbia, or Alaska''.

1948—Subsec. (j). Act Feb. 28, 1948, inserted ''isonipecaine and its derivatives, compounds, salts, and preparations; opiates (as defined in section 4731(g) of title 26)''.

Subsec. (n). Act June 16, 1948, added subsec. (n).

Subsec. (*o*). Act June 24, 1948, added subsec. (*o*).

1946—Subsecs. (*l*), (m). Act July 3, 1946, added subsecs. (*l*) and (m).

CHANGE OF NAME

Coast and Geodetic Survey consolidated with Weather Bureau to form a new agency in Department of Commerce to be known as Environmental Science Services Administration, and commissioned officers of Survey transferred to ESSA, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, abolished Environmental Science Services Administration, established National Oceanic and Atmospheric Administration, and redesignated Commissioned Officer Corps of ESSA as Commissioned Officer Corps of NOAA. For further details, see Transfer of Functions note set out under section 851 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 2101 of Pub. L. 103–43 provided that: ''Subject to section 203(c) [enacting provisions set out as a note under section 283c of this title], this Act [see Short Title of 1993 Amendment note below] and the amendments made by this Act take effect upon the date of the enactment of this Act [June 10, 1993].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 902(d)(5) of Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

Amendment by section 986(a) of Pub. L. 97–35 effective Oct. 1, 1981, see section 986(c) of Pub. L. 97–35, set out as a note under section 249 of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 12(b) of Pub. L. 91–212 provided that: ''The amendments made by sections 10(d) and 11 [amending this section and sections 276, 277, 278, 280, 280a–1, 280b–2 to 280b–9, and 280b–11 of this title] shall take effect on the date of enactment of this Act [Mar. 13, 1970].''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 47(f) of Pub. L. 86–624 provided that: ''The amendments made by subsection (c), paragraphs (3) and (4) of subsection (b), and paragraph (4) of subsection (d) of section 14 [amending sections 15i, 15jj, 15ggg, 244, and 645 of Title 20, Education], by section 20(a) [amending section 41 of Title 29, Labor], by section 23(b) [amending section 466j of Title 33, Navigation and Navigable Waters], by subsections (a), (b), and (c), and paragraph (4) of subsection (d), of section 29 [amending this section and sections 255, 264, and 291i of this title], and by subsection (d), and paragraph (2) of subsection (c), of section 30 [amending sections 410 and 1301 of this title] shall become effective on August 21, 1959.''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 47(d) of Pub. L. 86–70.

SHORT TITLE OF 1993 AMENDMENTS

Pub. L. 103–183, §1(a), Dec. 14, 1993, 107 Stat. 2226, provided that: ''This Act [enacting sections 247b–6, 247b–7, 256d, 280b–1a, 285f–2, 300n–4a, and 300u–8 of this title, amending sections 233, 238j, 242b, 242k, 242*l*, 242m, 247b, 247b–1, 247b–5, 247c, 247c–1, 254j, 280b, 280b–1, 280b–2, 280b–3, 280e–4, 300d, 300d–2, 300d–3, 300d–12, 300d–13, 300d–16, 300d–22, 300d–31, 300d–32, 300k, 300m, 300n, 300n–1, 300n–4, 300n–5, 300u–5, 300w, and 300aa–26 of this title, repealing sections 300d–1 and 300d–33 of this title, and enacting provisions set out as notes under sections 238j, 263b, 285f–2, and 300m of this title] may be cited as the 'Preventive Health Amendments of 1993'.''

Section 1(a) of Pub. L. 103–43 provided that: ''This Act [see Tables for classification] may be cited as the 'National Institutes of Health Revitalization Act of 1993'.''

SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102–539, §1, Oct. 27, 1992, 106 Stat. 3547, provided that: ''This Act [enacting section 263b of this title and provisions set out as a note under section 263b of this title] may be cited as the 'Mammography Quality Standards Act of 1992'.''

Pub. L. 102–531, §1(a), Oct. 27, 1992, 106 Stat. 3469, provided that: ''This Act [enacting sections 247b–3 to 247b–5, 247c–1, 256c, 280d–11, 300*l*–1, and 300u–7 of this title, amending sections 236, 242*l*, 247b–1, 247d, 254b, 254c, 256, 256a, 280b to 280b–2, 285c–4, 285d–7, 285m–4, 289c, 290aa–9, 290bb–1, 292y, 293j, 293*l*, 294n, 295j, 295*l*, 295n, 295*o*, 296k, 298b–7, 300u, 300u–1, 300u–5, 300w, 300w–3 to 300w–5, 300aa–2, 300aa–15, 300aa–19, 300aa–26, 300cc, 300cc–2, 300cc–15, 300cc–17, 300cc–20, 300cc–31, 300ee–1, 300ee–2, 300ee–31, 300ee–32, 300ee–34, 300ff–11 to 300ff–13, 300ff–17, 300ff–27, 300ff–28, 300ff–41, 300ff–43, 300ff–49, 300ff–75, 4841, and 9604 of this title, section 1341 of Title 15, Trade and Commerce, and section 2001 of Title 25, Indians, repealing section 297j of this title, enacting provisions set out as notes under sections 236, 292y, 300e, and 300w–4 of this title, amending provisions set out as notes under sections 241, 281, and 295k of this title and section 303 of Title 38, Veterans' Benefits, and repealing provisions set out as notes under section 246 and 300e of this title] may be cited as the 'Preventive Health Amendments of 1992'.''

Pub. L. 102–515, §1, Oct. 24, 1992, 106 Stat. 3372, provided that: ''This Act [enacting sections 280e to 280e–4 of this title and provisions set out as a note under sec-

tion 280e of this title] may be cited as the 'Cancer Registries Amendment Act'.''

Pub. L. 102–501, §1, Oct. 24, 1992, 106 Stat. 3268, provided that: ''This Act [amending section 233 of this title and enacting provisions set out as notes under section 233 of this title] may be cited as the 'Federally Supported Health Centers Assistance Act of 1992'.''

Pub. L. 102–493, §1, Oct. 24, 1992, 106 Stat. 3146, provided that: ''This Act [enacting sections 263a–1 to 263a–7 of this title and provisions set out as a note under section 263a–1 of this title] may be cited as the 'Fertility Clinic Success Rate and Certification Act of 1992'.''

Pub. L. 102–410, §1(a), Oct. 13, 1992, 106 Stat. 2094, provided that: ''This Act [amending sections 299 to 299a–2, 299b to 299b–3, 299c to 299c–3, 299c–5, and 300w–9 of this title and enacting provisions set out as notes under sections 299a–2, 299b–1, and 299b–2 of this title] may be cited as the 'Agency for Health Care Policy and Research Reauthorization Act of 1992'.''

Pub. L. 102–409, §1, Oct. 13, 1992, 106 Stat. 2092, provided that: ''This Act [enacting section 283a of this title] may be cited as the 'DES Education and Research Amendments of 1992'.''

Pub. L. 102–408, §1(a), Oct. 13, 1992, 106 Stat. 1992, provided that: ''This Act [enacting subchapter V of this chapter and sections 297n, 298b–7, and 300d–51 of this title, amending sections 242a, 296k to 296m, 296r, 297, 297–1, 297b, 297d, 297e, 298, 298b, and 298b–6 of this title and section 1078–3 of Title 20, Education, repealing sections 295g–10a, 297c–1, and 297n of this title, enacting provisions set out as notes under this section, sections 292, 295j, 295k, 296k, and 297b of this title, section 1078–3 of Title 20, and section 343–1 of Title 21, Food and Drugs, and amending provisions set out as a note under section 300x of this title] may be cited as the 'Health Professions Education Extension Amendments of 1992'.''

Pub. L. 102–408, title II, §201, Oct. 13, 1992, 106 Stat. 2069, provided that: ''This title [enacting sections 297n and 298b–7 of this title, amending sections 296k to 296m, 296r, 297, 297–1, 297b, 297d, 297e, 298, 298b, and 298b–6 of this title, repealing sections 297c–1 and 297n of this title, and enacting provisions set out as notes under sections 296k and 297b of this title] may be referred to as the Nurse Education and Practice Improvement Amendments of 1992.''

Pub. L. 102–352, §1, Aug. 26, 1992, 106 Stat. 938, provided that: ''This Act [amending sections 285n, 285n–2, 285*o*, 285*o*–2, 285p, 290aa–1, 290aa–3, 290cc–21, 290cc–28, 290cc–30, 300x–7, 300x–27, 300x–33, 300x–53, and 300y of this title, enacting provisions set out as a note under section 285n of this title, and amending provisions set out as notes under sections 290aa and 300x of this title] may be cited as the 'Public Health Service Act Technical Amendments Act'.''

Pub. L. 102–321, §1(a), July 10, 1992, 106 Stat. 323, provided that: ''This Act [see Tables for classification] may be cited as the 'ADAMHA Reorganization Act'.''

SHORT TITLE OF 1991 AMENDMENTS

Pub. L. 102–168, §1, Nov. 26, 1991, 105 Stat. 1102, provided that: ''This Act [amending sections 300u, 300u–5, 300aa–11, 300aa–12, 300aa–15, 300aa–16, 300aa–19, and 300aa–21 of this title, enacting provisions set out as a note under section 300aa–11 of this title, and amending provisions set out as a note under section 300aa–1 of this title] may be cited as the 'Health Information, Health Promotion, and Vaccine Injury Compensation Amendments of 1991'.''

Pub. L. 102–96, §1, Aug. 14, 1991, 105 Stat. 481, provided that: ''This Act [amending section 300cc–13 of this title and enacting provisions set out as a note under section 300cc–13 of this title] may be cited as the 'Terry Beirn Community Based AIDS Research Initiative Act of 1991'.''

SHORT TITLE OF 1990 AMENDMENTS

Pub. L. 101–639, §1, Nov. 28, 1990, 104 Stat. 4600, provided that: ''This Act [amending sections 290cc–13, 299a, 300x–3, and 300x–10 to 300x–12 of this title] may be cited as the 'Mental Health Amendments of 1990'.''

Pub. L. 101–616, §1, Nov. 16, 1990, 104 Stat. 3279, provided that: ''This Act [enacting sections 274f, 274g, 274k, and 274*l* of this title, amending sections 273 to 274d of this title, enacting provisions set out as notes under sections 273, 274, and 274k of this title, and repealing provisions set out as a note under section 273 of this title] may be cited as the 'Transplant Amendments Act of 1990'.''

Pub. L. 101–613, §1, Nov. 16, 1990, 104 Stat. 3224, provided that: ''This Act [enacting sections 285g–4 and 290b of this title and provisions set out as a note under section 285g–4 of this title] may be cited as the 'National Institutes of Health Amendments of 1990'.''

Pub. L. 101–597, §1, Nov. 16, 1990, 104 Stat. 3013, provided that: ''This Act [enacting sections 254f–1, 254*o*–1, and 254r of this title, amending sections 242a, 254d to 254i, 254k, 254*l* to 254q–1, 254s, 294h, 294n, 294aa, 295g–1, 296m, 1320c–5, 1395*l*, 1395u, 1395x, 3505d, and 9840 of this title and section 2123 of Title 10, Armed Forces, and enacting provisions set out as notes under sections 242a, 254*l*–1, and 254*o* of this title] may be cited as the 'National Health Service Corps Revitalization Amendments of 1990'.''

Pub. L. 101–590, §1, Nov. 16, 1990, 104 Stat. 2915, provided that: ''This Act [enacting subchapter X of this chapter, amending sections 300w–4 and 300w–9 of this title, and enacting provisions set out as a note under section 300d of this title] may be cited as the 'Trauma Care Systems Planning and Development Act of 1990'.''

Pub. L. 101–558, §1, Nov. 15, 1990, 104 Stat. 2772, provided that: ''This Act [amending sections 280b to 280b–3 of this title] may be cited as the 'Injury Control Act of 1990'.''

Pub. L. 101–557, §1, Nov. 15, 1990, 104 Stat. 2766, provided that: ''This Act [enacting sections 242q to 242q–5 of this title, amending sections 280c, 280c–2, 280c–3, 280c–5, 285e–2, 285e–3, 300u–6, 300ff–17, 300ff–51, and 300ff–52 of this title and section 4512 of Title 20, Education, and enacting provisions set out as a note under section 300u–6 of this title] may be cited as the 'Home Health Care and Alzheimer's Disease Amendments of 1990'.''

Pub. L. 101–527, §1(a), Nov. 6, 1990, 104 Stat. 2311, provided that: ''This Act [enacting sections 254c–1, 254t, 256a, 294bb, 294cc, and 300u–6 of this title, amending sections 242k, 242m, 254b, 254c, 294m, 294*o*, and 295g–2 of this title, enacting provisions set out as notes under sections 242k and 300u–6 of this title, and repealing provisions set out as a note under section 292h of this title] may be cited as the 'Disadvantaged Minority Health Improvement Act of 1990'.''

Pub. L. 101–502, §1, Nov. 3, 1990, 104 Stat. 1285, provided that: ''This Act [amending sections 207, 247b, 300aa–6, 300aa–11 to 300aa–13, 300aa–15, 300aa–16, 300aa–21, 300ff–13, 300ff–47, and 300ff–49 of this title, section 331 of Title 21, Food and Drugs, and section 201 of Title 37, Pay and Allowances of the Uniformed Services, enacting provisions set out as notes under sections 300aa–2, 300aa–11, and 300aa–12 of this title and section 201 of Title 37, and amending provisions set out as a note under section 300aa–1 of this title] may be cited as the 'Vaccine and Immunization Amendments of 1990'.''

Pub. L. 101–381, §1, Aug. 18, 1990, 104 Stat. 576, provided that: ''This Act [enacting subchapter XXIV of this chapter, transferring section 300ee–6 of this title to section 300ff–48 of this title, amending sections 284a, 286, 287a, 287c–2, 289f, 290aa–3a, 299c–5, 300ff–48, and 300aaa to 300aaa–13 of this title, and enacting provisions set out as notes under sections 300x–4, 300ff–11, 300ff–46, and 300ff–80 of this title] may be cited as the 'Ryan White Comprehensive AIDS Resources Emergency Act of 1990'.''

Pub. L. 101–374, §1, Aug. 15, 1990, 104 Stat. 456, provided that: ''This Act [amending sections 290aa–12, 290cc–2, and 300x–4 of this title, enacting provisions set out as notes under sections 289e, 290aa–12, 290cc–2, and 300x–4 of this title, and amending provisions set out as

a note under section 289e of this title] may be cited as the 'Drug Abuse Treatment Waiting Period Reduction Amendments of 1990'.''

Pub. L. 101–368, §1, Aug. 15, 1990, 104 Stat. 446, provided that: ''This Act [amending section 247b of this title] may be cited as the 'Tuberculosis Prevention Amendments of 1990'.''

Pub. L. 101–354, §1, Aug. 10, 1990, 104 Stat. 409, provided that: ''This Act [enacting subchapter XIII of this chapter] may be cited as the 'Breast and Cervical Cancer Mortality Prevention Act of 1990'.''

SHORT TITLE OF 1989 AMENDMENT

Pub. L. 101–93, §1, Aug. 16, 1989, 103 Stat. 603, provided that: ''This Act [see Tables for classification] may be cited as the 'Drug Abuse Treatment Technical Corrections Act of 1989'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–690, §2011, Nov. 18, 1988, 102 Stat. 4193, provided that: ''This subtitle [subtitle A (§§2011–2081) of title II of Pub. L. 100–690, enacting sections 290aa–11 to 290aa–14, 290cc–11 to 290cc–13, 290ff, 300x–1a, 300x–4a, 300x–9a, and 300x–9b of this title, amending sections 242a, 290aa, 290aa–3, 290aa–6, 290aa–8, 290bb–2, 290cc to 290cc–2, 300x, 300x–1a to 300x–4, 300x–5, 300x–9, and 300x–10 to 300x–12 of this title and section 484 of Title 40, Public Buildings, Property, and Works, repealing sections 300y to 300y–2 of this title, enacting provisions set out as notes under this section and sections 290aa, 290cc–11, 300x–9a, and 300x–11 of this title, and amending provisions set out as a note under section 801 of Title 21, Food and Drugs] may be cited as the 'Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988'.''

Pub. L. 100–607, §1(a), Nov. 4, 1988, 102 Stat. 3048, provided that: ''This Act [see Tables for classification] may be cited as the 'Health Omnibus Programs Extension of 1988'.''

Pub. L. 100–607, title I, §100(a), Nov. 4, 1988, 102 Stat. 3048, provided that: ''This title [see Tables for classification] may be cited as the 'National Institute on Deafness and Other Communication Disorders and Health Research Extension Act of 1988'.''

Pub. L. 100–607, title II, §200, Nov. 4, 1988, 102 Stat. 3062, provided that: ''This title [see Tables for classification] may be cited as the 'AIDS Amendments of 1988'.''

Pub. L. 100–607, title IV, §401(a), Nov. 4, 1988, 102 Stat. 3114, provided that: ''This title [enacting sections 300y–21 to 300y–27 of this title, amending sections 273 to 274e of this title, and enacting provisions set out as notes under sections 273 and 300y–21 of this title] may be cited as the 'Organ Transplant Amendments Act of 1988'.''

Pub. L. 100–607, title VI, §601(a), Nov. 4, 1988, 102 Stat. 3122, as amended by Pub. L. 100–690, title II, §2603(a)(1), Nov. 18, 1988, 102 Stat. 4234, provided that: ''This title [see Tables for classification] may be cited as the 'Health Professions Reauthorization Act of 1988'.''

Pub. L. 100–607, title VII, §700(a), Nov. 4, 1988, 102 Stat. 3153, provided that: ''This title [enacting sections 296r, 297c–1, 297j, 297n, and 298b–6 of this title, amending sections 210, 294a, 296k, 296*l*, 296m, 297, 297–1, 297a, 297b, 297d, 297e, 298, and 298b–3 of this title, and enacting provisions set out as a note under section 297d of this title] may be cited as the 'Nursing Shortage Reduction and Education Extension Act of 1988'.''

Pub. L. 100–578, §1, Oct. 31, 1988, 102 Stat. 2903, provided that: ''This Act [amending section 263a of this title and enacting provisions set out as notes under section 263a of this title] may be cited as the 'Clinical Laboratory Improvement Amendments of 1988'.''

Pub. L. 100–572, §1, Oct. 31, 1988, 102 Stat. 2884, provided that: ''This Act [enacting sections 247b–1 and 300j–21 to 300j–26 of this title, and amending section 300j–4 of this title] may be cited as the 'Lead Contamination Control Act of 1988'.''

Pub. L. 100–553, §1, Oct. 28, 1988, 102 Stat. 2769, provided that: ''This Act [enacting sections 285m to 285m–6 of this title, amending sections 281 and 285j of this title, and enacting provisions set out as a note under section 285m of this title] shall be cited as the 'National Deafness and Other Communication Disorders Act of 1988'.''

Pub. L. 100–517, §1(a), Oct. 24, 1988, 102 Stat. 2578, provided that: ''This Act [amending sections 300e, 300e–1, 300e–9, and 300e–10 of this title, enacting provisions set out as notes under sections 300e, 300e–9, and 1302 of this title, and repealing provisions set out as notes under section 300e–1 of this title] may be cited as the 'Health Maintenance Organization Amendments of 1988'.''

Pub. L. 100–386, §1(a), Aug. 10, 1988, 102 Stat. 919, provided that: ''This Act [amending sections 254b and 254c of this title and enacting provisions set out as a note under section 254b of this title] may be cited as the 'Community and Migrant Health Centers Amendments of 1988'.''

SHORT TITLE OF 1987 AMENDMENTS

Pub. L. 100–203, title IV, §4301(a), Dec. 22, 1987, 101 Stat. 1330–221, provided that: ''This subtitle [subtitle D (§§4301–4307) of title IV of Pub. L. 100–203, enacting section 300aa–34 of this title, amending sections 300aa–11 to 300aa–13, 300aa–15 to 300aa–17, 300aa–19, 300aa–21 to 300aa–23, 300aa–25 to 300aa–28, and 300aa–31 of this title, repealing section 300aa–18 of this title, and amending provisions set out as a note under section 300aa–1 of this title] may be cited as the 'Vaccine Compensation Amendments of 1987'.''

Pub. L. 100–177, §1(a), Dec. 1, 1987, 101 Stat. 986, provided that: ''This Act [enacting sections 254*l*–1, 254q, and 254q–1 of this title, amending sections 242a, 242c, 242k, 242m, 242n, 242p, 247b, 254d to 254g, 254h–1, 254k, 254m to 254q, 254r, 295g–8, and 11137 of this title, repealing former section 254q of this title, and enacting provisions set out as notes under sections 242c, 242k, 242m, 254*l*–1, 254*o*, 300aa–2, and 11137 of this title] may be cited as the 'Public Health Service Amendments of 1987'.''

Pub. L. 100–175, title VI, §601, Nov. 29, 1987, 101 Stat. 979, provided that: ''This title [enacting part K (§280c et seq.) of subchapter II of this chapter] may be cited as the 'Health Care Services in the Home Act of 1987'.''

Pub. L. 100–97, §1, Aug. 18, 1987, 101 Stat. 713, provided: ''That this Act [enacting section 295g–8a of this title and provisions set out as a note under section 295g–8a of this title] may be cited as the 'Excellence in Minority Health Education and Care Act'.''

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99–660, title III, §301, Nov. 14, 1986, 100 Stat. 3755, provided that: ''This title [enacting sections 300aa–1 to 300aa–33 of this title, amending sections 218, 242c, 262, 286, and 289f of this title, redesignating former sections 300aa to 300aa–15 of this title as sections 300cc to 300cc–15 of this title, and enacting provisions set out as notes under sections 300aa–1 and 300aa–4 of this title] may be cited as the 'National Childhood Vaccine Injury Act of 1986'.''

Pub. L. 99–660, title V, §501, Nov. 14, 1986, 100 Stat. 3794, provided that: ''This title [enacting sections 300x–10 to 300x–13 of this title and amending sections 290aa–3 and 300x–4 of this title] may be cited as the 'State Comprehensive Mental Health Services Plan Act of 1986'.''

Pub. L. 99–660, title VIII, §801, Nov. 14, 1986, 100 Stat. 3799, provided that: ''This title [amending sections 300e–1, 300e–4, 300e–5 to 300e–10, 300e–16, and 300e–17 of this title, repealing sections 300e–2, 300e–3, and 300e–4a of this title, and enacting provisions set out as notes under sections 300e, 300e–1, 300e–4, and 300e–5 of this title] may be cited as the 'Health Maintenance Organization Amendments of 1986'.''

Pub. L. 99–649, §1, Nov. 10, 1986, 100 Stat. 3633, provided: ''That this Act [enacting sections 280b to 280b–3 of this title and provisions set out as a note under section 280b of this title] may be cited as the 'Injury Prevention Act of 1986'.''

Pub. L. 99–570, title IV, §4001(a), Oct. 27, 1986, 100 Stat. 3207–103, provided that: ''This subtitle [subtitle A

(§§ 4001–4022) of title IV of Pub. L. 99–570, enacting sections 290aa–3a, 290aa–6 to 290aa–10, and 300y to 300y–2 of this title, amending sections 218, 241, 290aa to 290aa–3, 290aa–4, 290aa–5, 290bb–1, 290bb–2, 290cc, and 290cc–2 of this title and sections 331 and 350a of Title 21, Food and Drugs, and enacting provisions set out as notes under sections 290aa–3, 290aa–3a, and 290bb of this title] may be cited as the 'Alcohol and Drug Abuse Amendments of 1986'.''

Pub. L. 99–339, § 1, June 19, 1986, 100 Stat. 642, provided that: ''This Act [enacting sections 300g–6, 300h–5 to 300h–7, 300i–1, and 300j–11 of this title, amending sections 300f, 300g–1 to 300g–5, 300h to 300h–2, 300h–4, 300h–6, 300h–7, 300i, 300j to 300j–4, 300j–7, and 6979a of this title and sections 1261 and 1263 of Title 15, Commerce and Trade, transferring section 6939b to 6979a of this title, and enacting provisions set out as notes under sections 300g–6 and 300j–1 of this title and section 1261 of Title 15] may be cited as the 'Safe Drinking Water Act Amendments of 1986'.''

Pub. L. 99–280, § 1(a), Apr. 24, 1986, 100 Stat. 399, provided that: ''This Act [amending sections 254b and 254c of this title and repealing sections 300y to 300y–11 of this title] may be cited as the 'Health Services Amendments Act of 1986'.''

SHORT TITLE OF 1985 AMENDMENTS

Pub. L. 99–158, § 1(a), Nov. 20, 1985, 99 Stat. 820, provided that: ''This Act [enacting sections 275, 281 to 283, 284 to 284c, 285 to 285a–5, 285b to 285b–6, 285c to 285c–7, 285d to 285d–7, 285ed to 285e–2, 285f, 285g to 285g–3, 285h, 285i, 285j to 285j–2, 285k, 285*l*, 286 to 286a–1, 286b to 286b–8, 287 to 287a–1, 287b, 287c to 287c–3, 288 to 288b, and 289 to 289h of this title, amending sections 217a, 218, 241, 290aa–5, and 300c–12 of this title, repealing sections 275 to 280a–1, 280b to 280b–2, 280b–4, 280b–5, and 280b–7 to 280b–11 of this title, omitting sections 286c to 286e, 287d to 287i, 288c, 289, 289c–1 to 289c–3, 289c–4 to 289c–7, 289i to 289k, 289k–2 to 289k–5, and 289*l* to 289*l*–8 of this title, enacting provisions set out as notes under sections 218, 281, 285c, 285e, 285e–2, 285j–1 and 289d of this title, and repealing provisions set out as a note under section 287i of this title] may be cited as the 'Health Research Extension Act of 1985'.''

Pub. L. 99–129, § 1, Oct. 22, 1985, 99 Stat. 523, provided: ''That this Act [enacting sections 294q–1 to 294q–3 of this title, amending sections 254*l*, 292a, 292b, 292h, 292j, 293c, 294a, 294b, 294d, 294e, 294g, 294j, 294m to 294p, 294z, 295f to 295f–2, 295g, 295g–1, 295g–3, 295g–4, 295g–6 to 295g–8, 295g–8b, 295h, 295h–1a to 295h–1c, 296k, 296*l*, 296m, 297a, 298b–5, and 300aa–14 of this title, repealing sections 292c, 295 to 295e–5, 295g–2, 295g–5, 295g–8a, and 295g–9 of this title, enacting provisions set out as notes under sections 254*l*, 292h, 293c, 294d, 294n, and 300aa–14 of this title and section 462 of the Appendix to Title 50, War and National Defense, and amending provisions set out as a note under section 298b–5 of this title] may be cited as the 'Health Professions Training Assistance Act of 1985'.''

Pub. L. 99–117, § 1(a), Oct. 7, 1985, 99 Stat. 491, provided that: ''this Act [amending sections 207, 210, 213a, 242c, 242n, 243, 246, 247b, 247e, 253, 290aa–3, 300x–4, 300x–5, and 300x–9 of this title and section 1333 of Title 15, Commerce and Trade, repealing sections 247, 254a–1, 299 to 299j, 300d–4, 300d–6, and 300aa–4 of this title, and enacting provisions set out as notes under sections 210, 241, and 242n of this title] may be cited as the 'Health Services Amendments of 1985'.''

Pub. L. 99–92, § 1, Aug. 16, 1985, 99 Stat. 393, provided: ''That this Act [enacting section 297i of this title, transferring section 296c to section 298b–5 of this title, amending sections 296k to 296m, 297, 297–1, 297a, 297b, 297d, 297e, 298, 298b, and 298b–5 of this title, sections 1332, 1333, 1336, and 1341 of Title 15, Commerce and Trade, and section 6103 of Title 26, Internal Revenue Code, repealing sections 296 to 296b, 296d to 296f, 296j, 297h, and 297j of this title, and enacting provisions set out as notes under sections 296k and 298b–5 of this title and section 1333 of Title 15] may be cited as the 'Nurse Education Amendments of 1985'.''

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98–555, § 1(a), Oct. 30, 1984, 98 Stat. 2854, provided that: ''this Act [enacting sections 300w–9 and 300w–10 of this title and amending sections 247b, 247c, 255, 300, 300w, 300w–4, and 300w–5 of this title] may be cited as the 'Preventive Health Amendments of 1984'.''

Pub. L. 98–551, § 1, Oct. 30, 1984, 98 Stat. 2815, provided: ''That this Act [enacting section 300u–5 of this title, amending sections 242b, 242c, 242m, 242n, 254r, 300u, and 300u–3 of this title and sections 360bb and 360ee of Title 21, Food and Drugs, and repealing sections 300u–5 to 300u–9 of this title] may be cited as the 'Health Promotion and Disease Prevention Amendments of 1984'.''

Pub. L. 98–509, § 1(a), Oct. 19, 1984, 98 Stat. 2353, provided that: ''this Act [enacting sections 290bb–1a, 290cc–1, 290cc–2, and 300x–1a of this title, amending sections 218, 290aa, 290aa–1 to 290aa–3, 290bb, 290bb–2, 290cc, 290dd, 290dd–1, 300x, 300x–1, and 300x–2 to 300x–9 of this title and section 802 of Title 21, Food and Drugs, repealing sections 1161 to 1165 of Title 21, and enacting provisions set out as notes under sections 300x and 300x–1a of this title and section 802 of Title 21] may be cited as the 'Alcohol Abuse, Drug Abuse, and Mental Health Amendments of 1984'.''

Pub. L. 98–507, § 1, Oct. 19, 1984, 98 Stat. 2339, provided: ''That this Act [enacting sections 273 to 274e of this title and provisions set out as notes under section 273 of this title] may be cited as the 'National Organ Transplant Act'.''

SHORT TITLE OF 1983 AMENDMENTS

Pub. L. 98–194, § 1, Dec. 1, 1983, 97 Stat. 1345, provided: ''That this Act [amending section 254g of this title and enacting provisions set out as notes under section 254g of this title] may be cited as the 'Rural Health Clinics Act of 1983'.''

Pub. L. 98–24, § 1(a), Apr. 26, 1983, 97 Stat. 175, provided that: ''This Act [enacting sections 290aa–4 and 290aa–5 of this title, transferring sections 219 to 224, 225a to 227, 228 to 229d, 289k–1, 3511, 4551, 4585, 4587, 4588, 4571, 4561, 4581, and 4582 of this title to sections 300aa to 300aa–5, 300aa–6 to 300aa–8, 300aa–9 to 300aa–14, 290aa–3, 290aa, 290aa–1, 290bb, 290bb–1, 290bb–2, 290dd, 290dd–1, 290dd–2, and 290dd–3 of this title, respectively, and sections 1173(a), 1174, 1175, 1180, 1191, 1192, and 1193 of Title 21, Food and Drugs, to sections 290aa–2(e), 290ee–2, 290ee–3, 290ee–1, 290aa–2, 290ee, and 290cc of this title, respectively, amending sections 218, 278, 289*l*–4, 290aa to 290aa–2, 290bb to 290bb–2, 290cc, 290dd to 290dd–2, 290ee to 290ee–3, and 4577 of this title and sections 1165, 1173, and 1177 of Title 21, repealing sections 4552, 4553, and 4586 of this title and sections 1117, 1172, and 1194 of Title 21, enacting provisions set out as a note under section 290aa of this title, amending provisions set out as a note under section 4541 of this title, and repealing provisions set out as a note under section 242 of this title] may be cited as the 'Alcohol and Drug Abuse Amendments of 1983'.''

SHORT TITLE OF 1981 AMENDMENT

Section 940(a) of Pub. L. 97–35 provided that: ''This subtitle [subtitle F (§§ 940–949) of title IX of Pub. L. 97–35, amending sections 300e to 300e–4a, 300e–6 to 300e–9, 300e–11, 300e–17, and 300m–6 of this title, repealing sections 300e–13 and 300e–15 of this title, and enacting provisions set out as notes under sections 300e–9 and 300m–6 of this title] may be cited as the 'Health Maintenance Organization Amendments of 1981'.''

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–538, § 1(a), Dec. 17, 1980, 94 Stat. 3183, provided that: ''this Act [enacting sections 289c–3, 289c–4, 289c–7 of this title, amending sections 286e, 287c, 287i, 289a, 289c–1, 289c–2, 289c–5, 289c–6, 294a, 294d, 294v, 300k–1, 300*l*–5, 300m, 300m–3, 300m–6, 300n, and 300n–1 of this title and section 1182 of Title 8, Aliens and Nationality, repealing sections 289c–3a and 289c–8 and former sections 289c–3, 289c–4, and 289c–7 of this title, and enacting provisions set out as notes under sections 289,

300*l*–5, and 300m–6 of this title] may be cited as the 'Health Programs Extension Act of 1980'.''

SHORT TITLE OF 1979 AMENDMENTS

Pub. L. 96–142, title I, §101, Dec. 12, 1979, 93 Stat. 1067, provided that: ''This title [amending sections 295g–9, 300d–1, 300d–3, 300d–5, 300d–6, 300d–8, and 300d–21 of this title and enacting provisions set out as a note under section 295g–9 of this title] may be cited as the 'Emergency Medical Services Systems Amendments of 1979'.''

Pub. L. 96–142, title II, §201, Dec. 12, 1979, 93 Stat. 1070, provided that: ''This title [enacting section 300c–12 and amending section 300c–11 of this title] may be cited as the 'Sudden Infant Death Syndrome Amendments of 1979'.''

Section 1(a) of Pub. L. 96–79 provided that: ''This Act [enacting sections 300m–6, 300s, 300s–1, 300s–6, and 300t–11 to 300t–14 of this title, amending this section and sections 246, 300k–1 to 300k–3, 300*l* to 300*l*–5, 300m to 300m–5, 300n, 300n–1, 300n–3, 300n–5, 300q, 300q–2, 300r, 300s–3, 300s–5, 300t, 1396b, 2689t, and 4573 of this title and section 1176 of Title 21, Food and Drugs, repealing sections 300*o* to 300*o*–3, 300p to 300p–3, 300q–1, and former section 300s of this title, redesignating former section 300s–1 as 300s–1a of this title, and enacting provisions set out as notes under sections 300k–1, 300*l*, 300*l*–1, 300*l*–4, 300*l*–5, 300m, 300m–6, 300n, 300q, and 300t–11 of this title] may be cited as the 'Health Planning and Resources Development Amendments of 1979'.''

Pub. L. 96–76, title I, §101(a), Sept. 29, 1979, 93 Stat. 579, provided that: ''This title [enacting section 297–1 of this title, amending sections 296, 296d, 296e, 296k to 296m, 297 to 297c, 297e, and 297j of this title, and enacting provisions set out as notes under sections 296 and 297j of this title] may be cited as the 'Nurse Training Amendments of 1979'.''

Pub. L. 96–76, title III, §301, Sept. 29, 1979, 93 Stat. 584, provided that: ''This title [amending sections 204, 206, 207, 209, 210–1, 210b, 211, 212, 213a, 215, and 218a of this title and sections 201, 415, and 1006 of Title 37, Pay and Allowances of the Uniformed Services, and enacting provisions set out as a note under section 206 of this title] may be cited as the 'Public Health Service Administrative Amendments of 1979'.''

SHORT TITLE OF 1978 AMENDMENTS

Pub. L. 95–626, §1(a), Nov. 10, 1978, 92 Stat. 3551, provided that: ''This Act [enacting sections 242p, 247, 247a, 247b–1, 254a–1, 255, 256, 256a, 300a–21 to 300a–29, 300a–41, 300b–6, and 300u–6 to 300u–9 of this title, amending sections 218, 246, 247b, 247c, 247e, 254a, 254b, 254c, 254k, 294t, 294u, 295h–1, 300b, 300b–3, 300c–21, 300c–22, 300d–2, 300d–3, 300d–5, 300d–6, 300e–12, 300e–14a, 300u–5, 1396b, and 4846 of this title, repealing sections 256, 4801, 4811, 4844, and 4845 of this title, enacting provisions set out as notes under this section and sections 246, 247a, 247c, 254a–1, 254b to 254d, 256, 256a, 289b, 289d, 300a–21, 300d–2, and 300d–3 of this title, and amending provisions set out as notes under sections 300b and 1395x of this title] may be cited as the 'Health Services and Centers Amendments of 1978'.''

Pub. L. 95–626, title I, §101, Nov. 10, 1978, 92 Stat. 3551, provided that: ''This part [part A (§§101–107) of title I of Pub. L. 95–626, enacting section 256a of this title, amending sections 218, 247e, 254b, 254c, 255, 300e–12, 300e–14a, and 1396b of this title, repealing section 256 of this title, and enacting provisions set out as notes under sections 254b, 254c, and 256a of this title] may be cited as the 'Migrant and Community Health Centers Amendments of 1978'.''

Pub. L. 95–626, title I, §111, Nov. 10, 1978, 92 Stat. 3562, provided that: ''This part [part B (§§111–116) of title I of Pub. L. 95–626, enacting sections 254a–1 and 256 of this title, amending sections 294t and 294u of this title, and enacting provisions set out as notes under sections 254a–1, 254d, and 256 of this title] may be cited as the 'Primary Health Care Act of 1978'.''

Pub. L. 95–626, title II, §200, Nov. 10, 1978, 92 Stat. 3570, provided that: ''This title [enacting sections 247, 247a, 255, and 300b–6 of this title, amending sections 246, 247b, 247c, 300b, 300b–3, 300c–21, 300c–22, 300d–2, 300d–3, 300d–5, 300d–6, and 4846 of this title, repealing sections 4801, 4811, 4844, and 4845 of this title, enacting provisions set out as notes under sections 246, 247a, 247c, 289d, 300d–2, and 300d–3 of this title, and amending provisions set out as notes under sections 300b and 1395x of this title] may be cited as the 'Health Services Extension Act of 1978'.''

Pub. L. 95–623, §1(a), Nov. 9, 1978, 92 Stat. 3443, provided that: ''This Act [enacting sections 229c, 242n, and 4362a of this title, amending sections 210, 242b, 242c, 242k, 242m, 242*o*, 289k, 289*l*–1, 292e, 292h, 292i, 294t, 295f–1, 295f–2, 295g–2, 295g–8, 295h–2, 7411, 7412, 7417, and 7617 of this title, repealing section 280c of this title, enacting provisions set out as a note under section 242m of this title, and amending provisions set out as notes under sections 292h, 295h–4, and 296 of this title] may be cited as the 'Health Services Research, Health Statistics, and Health Care Technology Act of 1978'.''

Pub. L. 95–622, title II, §201(a), Nov. 9, 1978, 92 Stat. 3420, provided that: ''This title [enacting sections 289*l*–6 to 289*l*–8 of this title, amending sections, 241, 248, 277, 280b, 281 to 286g, 287a to 287d, 287g, 287i, 289c–6, 289*l* to 289*l*–2, 289*l*–4, 4541, 4573, and 4585 of this title, and enacting provisions set out as notes under sections 241, 286b, 286f, 289a, and 289*l*–1 of this title] may be cited as the 'Biomedical Research and Research Training Amendments of 1978'.''

Pub. L. 95–559, §1(a), Nov. 1, 1978, 92 Stat. 2131, provided that: ''This Act [enacting sections 300e–4a, 300e–16, and 300e–17 of this title, amending sections 300e, 300e–1, 300e–3, 300e–4, 300e–5, 300e–7, 300e–8, 300e–9, 300e–11 to 300e–13, 1320a–1, 1396a, and 1396b of this title, and enacting provisions set out as notes under sections 300e–3, 300e–4, 300e–16, and 1396a of this title] may be cited as the ''Health Maintenance Organization Amendments of 1978'.''

SHORT TITLE OF 1977 AMENDMENTS

Pub. L. 95–190, §1, Nov. 16, 1977, 91 Stat. 1393, provided that: ''This Act [enacting sections 300j–10 and 7625a of this title, amending sections 300f, 300g–1, 300g–3, 300g–5, 300h, 300h–1, 300j to 300j–2, 300j–4, 300j–6, 300j–8, 7410, 7411, 7413, 7414, 7416, 7419, 7420, 7426, 7472 to 7475, 7478, 7479, 7502, 7503, 7506, 7521, 7522, 7525, 7541, 7545, 7549, 7602, 7604, 7607, 7623, and 7626 of this title, enacting provisions set out as notes under section 300f of this title, and section 5108 of Title 5, Government Organization and Employees, and amending provisions set out as notes under sections 300f, 7401, and 7502 of this title] may be cited as the 'Safe Drinking Water Amendments of 1977'.''

Section 101 of title I of Pub. L. 95–83 provided that: ''This title [amending this section and sections 242m, 300e–8, 300k–3, 300*l* to 300*l*–5, 300m, 300m–2, 300m–4, 300m–5, 300n–3, 300n–5, 300*o*–1 to 300*o*–3, 300p, 300p–3, 300q, 300q–2, 300r, 300s–3, 300t, and 1396b of this title, and enacting provisions set out as a note under section 1396b of this title] may be cited as the 'Health Planning and Health Services Research and Statistics Extension Act of 1977'.''

Section 201 of title II of Pub. L. 95–83 provided that: ''This title [amending sections 280b, 286b, 286c, 286d, 286f, 286g, 287c, 287d, 287f, 287h, 287i, and 289*l*–1 of this title] may be cited as the 'Biomedical Research Extension Act of 1977'.''

Section 301 of title III of Pub. L. 95–83 provided that: ''This title [enacting section 294y–1 of this title, amending sections 210, 246, 247d, 254c, 292g, 292h, 293a, 294d, 294e, 294h, 294i, 294j, 294n, 294r, 294s, 294w, 294z, 295f–1, 295g–1, 295g–9, 295h–5, 295h–5c, 296e, 296m, 297, 300, 300a–1, 300a–2, 300a–3, 300c–11, 300c–21, 300c–22, 701, 2689a to 2689e, 2689h, 2689p, 2689q, 4572, 4573, and 4577 of this title, sections 1101 and 1182 of Title 8, Aliens and Nationality, sections 1112 and 1176 of Title 21, Food and Drugs, and section 1614 of Title 25, Indians, enacting provisions set out as notes under sections 242b, 242*l*, 294d, 294i, 294n, 294r, 294t, 294y–1, 294z, 295f–1, 295g–1, 295h–5, and 296m of this title and sections 1101 and 1182 of Title 8, and amending provisions set out as notes under sections 289k–2, 1395x, and 1396b of this title] may be cited as the 'Health Services Extension Act of 1977'.''

SHORT TITLE OF 1976 AMENDMENTS

Pub. L. 94–573, §1(a), Oct. 21, 1976, 90 Stat. 2710, provided that: ''This Act [enacting section 300d–21 of this title, amending sections 295f–6 and 300d to 300d–9 of this title, enacting provisions set out as notes under sections 242b, 300d, 300d–7, and 300d–9 of this title, and amending provisions set out as notes under sections 218, 289c–1, and 289*l*–1 of this title] may be cited as the 'Emergency Medical Services Amendments of 1976'.''

Pub. L. 94–562, §1(a), Oct. 19, 1976, 90 Stat. 2645, provided that: ''This Act [enacting sections 289c–3a, 289c–7, and 289c–8 of this title, amending sections 289c–2, 289c–5, and 289c–6 of this title, and enacting provisions set out as notes under sections 289a, 289c–3a, and 289c–7 of this title] may be cited as the 'Arthritis, Diabetes, and Digestive Disease Amendments of 1976'.''

Section 1(a) of Pub. L. 94–484 provided that: ''This Act [enacting sections 254 to 254k, 292, 292e to 292k, 294 to 294*l*, 294r to 294z, 294aa, 295f–1, 295g to 295g–8, 295g–10, 295h to 295h–2, and 295h–4 to 295h–7 of this title; renumbering sections 293d as 292a, 293e as 292b, 295h–8 as 292c, 295h–9 as 292d, 293g to 293i as 293d to 293f, 294 to 294c as 294m to 294p, 294e as 294q, 295f–5 as 295f–2, and 295f–6 as 295g–9 of this title; amending this section and sections 234, 244–1, 245a, 246, 247c, 254b, 263c, 292a to 292c, 293 to 293d, 293f, 294g, 294m to 294p, 295e–1 to 295e–4, 295f to 295f–4, 295g, 295g–11, 295g–23, 295h–1 to 295h–3, 297, 300a, 300d, 300d–7, 300f, 300*l*–1, 300n, and 300s–3 of this title and sections 1101 and 1182 of Title 8, Aliens and Nationality; repealing sections 234, 244–1, 245a, 254b, 292 to 292j, 293f, 294d, 294f, 294g, 295f–1, to 295f–4, 295g, 295g–1, 295g–11, and 295g–21 to 295g–23 of this title; omitting sections 295h to 295h–2, 295h–3a to 295h–3d, 295h–4, 295h–5, and 295h–7 of this title; and enacting provisions set out as notes under sections 254d, 292, 292b, 292h, 293, 293f, 294, 294n, 294*o*, 294q, 294r, 294t, 294z, 295g, 295g–1, 295g–9, 295g–10, 295h, 295h–4, and 300*l*–1 of this title and section 1182 of Title 8] may be cited as the 'Health Professions Educational Assistance Act of 1976'.''

Pub. L. 94–460, §1(a), Oct. 8, 1976, 90 Stat. 1945, provided that: ''This Act [enacting section 300e–15 of this title, amending sections 242c, 289k–2, 300e, 300e–1 to 300e–11, 300e–13, 300n–1, 1395x note, 1395mm, and 1396b of this title, section 8902 of Title 5, Government Organization and Employees, and section 360d of Title 21, Food and Drugs, and enacting provisions set out as notes under sections 300e and 1396b of this title] may be cited as the 'Health Maintenance Organization Amendments of 1976'.''

Pub. L. 94–380, §1, Aug. 12, 1976, 90 Stat. 1113, provided: ''That this Act [amending section 247b of this title and enacting provisions set out as a note under section 247b of this title] may be cited as the 'National Swine Flu Immunization Program of 1976'.''

Section 101 of title I of Pub. L. 94–317 provided that: ''This title [enacting subchapter XV of this chapter] may be cited as the 'National Consumer Health Information and Health Promotion Act of 1976'.''

Section 201 of title II of Pub. L. 94–317 provided that: ''This title [amending sections 243, 247b, 247c, 4801, 4831, and 4841 to 4843 of this title and enacting provisions set out as notes under sections 247b and 247c of this title] may be cited as the 'Disease Control Amendments of 1976'.''

Pub. L. 94–278, §1(a), Apr. 22, 1976, 90 Stat. 401, provided that: ''This Act [enacting sections 217a–1, 289*l*–5, 300b, 300b–1 to 300b–5 of this title and sections 350 and 378 of Title 21, Food and Drugs, and amending sections 213e, 225a, 234, 241, 247d, 254c, 287, 287a to 287d, 287f to 287i, 289a, 289c–1, 289c–5, 289c–6, 289*l*–1, 289*l*–2, 294b, 295g–23, 300c–11, 300*l*, 300p–3, 300s–1, 6062 and 6064 of this title and sections 321, 333, 334 and 343 of Title 21, and enacting provisions set out as notes under sections 218, 287, 289c–1, 289c–2, 289*l*–1, 300b and 6001 of this title and sections 334 and 350 of Title 21] may be cited as the 'Health Research and Health Services Amendment of 1976'.''

Pub. L. 94–278, title IV, §401, Apr. 22, 1976, 90 Stat. 407, provided that: ''This title [enacting part A of subchapter IX of this chapter, omitting former Part B of of subchapter IX of this chapter relating to Cooley's Anemia Programs, redesignating former Parts C and D of subchapter IX of this chapter as Parts B and C of subchapter IX of this chapter, respectively, and amending section 300c–11 of this title] may be cited as the 'National Sickle Cell Anemia, Cooley's Anemia, Tay-Sachs, and Genetic Diseases Act'.''

Pub. L. 94–278, title VI, §601, Apr. 22, 1976, 90 Stat. 413, provided that: ''This title [amending sections 289a, 289c–1, 289c–5, and 289c–6 of this title and amending provisions set out as notes under section 289c–1 of this title] may be cited as the 'National Arthritis Act Technical Amendments of 1976'.''

SHORT TITLE OF 1975 AMENDMENTS

Pub. L. 94–63, title I, §101, July 29, 1975, 89 Stat. 304, provided that: ''This title [amending section 246 of this title and enacting provisions set out as a note under section 246 of this title] may be cited as the 'Special Health Revenue Sharing Act of 1975'.''

Pub. L. 94–63, title II, §201, July 29, 1975, 89 Stat. 306, provided that: ''This title [enacting sections 300a–6a and 300a–8 of this title, amending sections 300, 300a–1 to 300a–4 of this title, and repealing section 3505c of this title] may be cited as the 'Family Planning and Population Research Act of 1975'.''

Pub. L. 94–63, title IX, §901(a), July 29, 1975, 89 Stat. 354, provided that: ''This title [enacting sections 296j to 296m and 298b–3 of this title, amending sections 296 to 296i, 297 to 297e, 297g to 297h, 298 to 298b–2, 298c, 298c–1 and 298c–7 of this title, repealing sections 296g, 296i, 297f, 298c–7, and 298c–8 of this title, and enacting provisions set out as notes under sections 296, 296a, 296d, 296e, 296m, 297, and 297b of this title and former section 297f of this title] may be cited as the 'Nurse Training Act of 1975'.''

Pub. L. 93–641, §1, Jan. 4, 1975, 88 Stat. 2225, provided that: ''This Act [enacting subchapter XIII of this chapter amending section 300e–4 of this title, repealing section 247a of this title, and enacting provisions set out as notes under sections 217a, 229, 291b, 300*l*–4, and 300m of this title] may be cited as the 'National Health Planning and Resources Development Act of 1974'.''

SHORT TITLE OF 1974 AMENDMENTS

Pub. L. 93–640, §1, Jan. 4, 1975, 88 Stat. 2217, provided that: ''This Act [enacting sections 289c–4, 289c–5, and 289c–6 of this title, amending sections 289a and 289c–1 of this title, and enacting provisions set out as notes under section 289c–1 of this title] may be cited as the 'National Arthritis Act of 1974'.''

Pub. L. 93–523, §1, Dec. 16, 1974, 88 Stat. 1660, provided that: ''This Act [enacting subchapter XII of this chapter and section 349 of Title 21, Food and Drugs, amending this section, and enacting provisions set out as a note under section 300f of this title] may be cited as the 'Safe Drinking Water Act'.''

Pub. L. 93–354, §1, July 23, 1974, 88 Stat. 373, provided that: ''This Act [enacting sections 289c–1a, 289c–2, and 289c–3 of this title, amending sections 247b and 289c–1 of this title, and enacting provisions set out as notes under section 289c–2 of this title] may be cited as the 'National Diabetes Mellitus Research and Education Act'.''

Pub. L. 93–353, §1(a), July 23, 1974, 88 Stat. 362, provided that: ''This Act [enacting sections 242k, 242m to 242*o*, and 253b of this title, renumbering former sections 242i, 242j, 242f, 242d, 242g, and 242h as sections 235, 236, 242*l*, 244–1, 245a, and 247d of this title, amending sections 236, 242b, 242c, 242*l*, 244–1, 245a, 280b, 280b–1, 280b–2, 280b–4, 280b–5, and 280b–7 to 280b–9, and repealing sections 242e, 244, 244a, 245, 247, 280b–3, and 280b–12 of this title, and enacting provisions set out as notes under sections 242m, 253b, and 280b of this title] may be cited as the 'Health Services Research, Health Statistics, and Medical Libraries Act of 1974'.''

Pub. L. 93–353, title I, §101, July 23, 1974, 88 Stat. 362, provided that: ''This title [enacting sections 242k, 242m

to 242*o*, and 253b, renumbering former sections 242i, 242j, 242f, 242d, 242g, and 242h as sections 235, 236, 242*l*, 244–1, 245a, and 247d of this title, amending sections 236, 242b, 242c, 242*l*, 244–1, and 245a, repealing sections 242e, 244, 244a, 245, and 247 of this title, and enacting provisions set out as notes under sections 242m and 253b of this title] may be cited as the 'Health Services Research and Evaluation and Health Statistics Act of 1974'.''

Pub. L. 93–352, title I, §101, July 23, 1974, 88 Stat. 358, provided that: ''This title [enacting section 289*l*–4 of this title, amending sections 241, 282, 286a, 286b, 286c, 286d, 286g, and 289*l* of this title, enacting provisions set out as notes under sections 289*l* and 289*l*–1 of this title, and amending provisions set out as a note under this section] may be cited as the 'National Cancer Act Amendments of 1974'.''

Pub. L. 93–348, title I, §1, July 12, 1974, 88 Stat. 342, provided that: ''This Act [enacting sections 289*l*–1 to 289*l*–3 of this title, amending sections 218, 241, 242a, 282, 286a, 286b, 287a, 287b, 287d, 288a, 289c, 289c–1, 289g, 289k, and 300a–7 of this title, and enacting provisions set out as notes under sections 218, 241, 289*l*–1, and 289*l*–3 of this title] may be cited as the 'National Research Act'.''

Pub. L. 93–348, title I, §101, July 12, 1974, 88 Stat. 342, provided that: ''This title [enacting sections 289*l*–1 and 289*l*–2 and amending sections 241, 242a, 282, 286a, 286b, 287a, 287b, 287d, 288a, 289c, 289c–1, 289g, 289k, 295f–3, and 295h–9 of this title] may be cited as the 'National Research Service Award Act of 1974'.''

Pub. L. 93–296, §1, May 31, 1974, 88 Stat. 184, provided that: ''This Act [enacting Part H of subchapter III of this chapter and provisions set out as notes under section 289k–2 of this title] may be cited as the 'Research on Aging Act of 1974'.''

Pub. L. 93–270, §1, Apr. 22, 1974, 88 Stat. 90, provided that: ''This Act [enacting part B of subchapter IX of this chapter, amending sections 289d and 289g of this title, and enacting provisions set out as a note under section 289g of this title] may be cited as the 'Sudden Infant Death Syndrome Act of 1974'.''

SHORT TITLE OF 1973 AMENDMENTS

Pub. L. 93–222, §1, Dec. 29, 1973, 87 Stat. 914, provided in part that Pub. L. 93–222 [enacting subchapter XI of this chapter and section 280c of this title, amending section 2001 of this title and section 172 of Title 12, Bank and Banking, repealing section 763c of Title 33, Navigation and Navigable Waters, enacting provisions set out as notes under sections 300e and 300e–1 of this title, amending provisions set out as notes under this section, and repealing provisions set out as notes under this section and sections 211a, 212a, and 222 of this title] shall be cited as the ''Health Maintenance Organization Act of 1973.''

Pub. L. 93–154, §1, Nov. 16, 1973, 87 Stat. 594, provided that: ''This Act [enacting subchapter X of this chapter and section 295f–6 of this title, amending sections 295f–2 and 295f–4 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Emergency Medical Services Systems Act of 1973'.''

Pub. L. 93–45, §1, June 18, 1973, 87 Stat. 91, provided that: ''This Act [enacting section 300a–7 of this title, amending sections 242b, 242c, 244–1, 245a, 246, 280b–4, 280b–5 280b–7, 280b–8, 280b–9, 291a, 291j–1, 291j–5, 295h–1, 295h–2, 295h–3a, 299a, 300, 300a–1, 300a–2, 300a–3, 2661, 2671, 2677, 2681, 2687, 2688a, 2688d, 2688j–1, 2688j–2, 2688*l*, 2688*l*–1, 2688n–1, 2688*o*, and 2688u of this title, and enacting provisions set out as amendment to note provisions under this section] may be cited as the 'Health Programs Extension Act of 1973'.''

SHORT TITLE OF 1972 AMENDMENTS

Pub. L. 92–585, §1, Oct. 27, 1972, 86 Stat. 1290, provided that: ''This Act [enacting section 234 of this title, amending sections 254b and 294a of this title, and enacting provisions set out as a note under section 246 of this title] may be cited as the 'Emergency Health Personnel Act Amendments of 1972'.''

Pub. L. 92–449, §1, Sept. 30, 1972, 86 Stat. 748, provided that: ''This Act [enacting section 247c of this title, amending sections 247b and 300 of this title, and enacting provisions set out as notes under section 247c of this title] may be cited as the 'Communicable Disease Control Amendments Act of 1972'.''

Pub. L. 92–449, title II, §201, Sept. 30, 1972, 86 Stat. 750, provided that: ''This title [enacting section 247c of this title and provisions set out as notes under section 247c of this title] may be cited as the 'National Venereal Disease Prevention and Control Act'.''

Pub. L. 92–423, §1, Sept. 19, 1972, 86 Stat. 679, provided that: ''This Act [enacting sections 287b to 287f and 287i of this title, amending sections 218, 241, 287, 287a, 287g, and 287h of this title, and enacting provisions set out as notes under section 287 of this title] may be cited as the 'National Heart, Blood Vessel, Lung, and Blood Act of 1972'.''

SHORT TITLE OF 1971 AMENDMENTS

Pub. L. 92–218, §1, Dec. 23, 1971, 85 Stat. 778, provided that: ''This Act [enacting sections 286a to 286g and 289*l* of this title, amending sections 218, 241, 282, 283, and 284 of this title, and enacting provisions set out as notes under sections 281, 286, and 289*l* of this title] may be cited as 'The National Cancer Act of 1971'.''

Pub. L. 92–158, §1(a), Nov. 18, 1971, 85 Stat. 465, provided that: ''This Act [enacting sections 296h, 296i, 297i, 298b–1, and 298b–2 of this title, amending sections 296, 296a, 296b, 296c, 296d, 296e, 296f, 296g, 297, 297a, 297b, 297c, 297e, 297f, 298, 298b, 298c, and 298c–7 of this title and enacting provisions set out as notes under sections 296, 296a, 296d, 296e, 297b, and 298c of this title] may be cited as the 'Nurse Training Act of 1971'.''

Pub. L. 92–157, title I, §101(a), Nov. 18, 1971, 85 Stat. 431, provided that: ''This title [enacting sections 293i, 294g, 295e–1 to 295e–5, 295f–5, 295g–11, 295g–21 to 295g–23, and 3505d of this title, amending sections 210 to 218, 242i, 254, 276, 277, 280, 280a–1, 292b, 292d to 292f, 292h to 292j, 293 to 293e, 293g, 293h, 294 to 294f, 295f to 295f–4, 295g, 295g–1, 295h–3d, 295h–4, 295h–8, 295h–9, 1857c–6, 1857c–8, 1857f–6c, 1857h–5, and 2676 of this title and section 346a of Title 21, Food and Drugs, and enacting provisions set out as notes under section 295h–8 of this title] may be cited as the 'Comprehensive Health Manpower Training Act of 1971'.''

SHORT TITLE OF 1970 AMENDMENTS

Pub. L. 91–623, §1, Dec. 31, 1970, 84 Stat. 1868, provided: ''That this Act [enacting sections 233 and 254b of this title] may be cited as the 'Emergency Health Personnel Act of 1970'.''

Pub. L. 91–572, §1, Dec. 24. 1970, 84 Stat. 1504, provided that: ''This Act [enacting sections 300 to 300a–6 and 3505a to 3505c of this title, amending sections 211a, 212a of this title and section 763c of Title 33, Navigation and Navigable Waters, and enacting provisions set out as notes under sections 201, 222, and 300 of this title] may be cited as the 'Family Planning Services and Population Research Act of 1970'.''

Pub. L. 91–519, §1, Nov. 2, 1970, 84 Stat. 1342, provided that: ''This Act [enacting sections 295h–3a to 295h–3d, 295h–8, and 296h–9 of this title, amending sections 295f–1, 295f–2, 295h to 295h–2, 295h–4, and 295h–7 of this title, repealing section 295h–3 of this title, and enacting provisions set out as notes under sections 295f–1, 295–f2, and 295h–4 of this title] may be cited as the 'Health Training Improvement Act of 1970'.''

Pub. L. 91–515, title I, §101, Oct. 30, 1970, 84 Stat. 1297, provided that: ''This title [amending sections 299 to 299g, 299i, and 299j of this title] may be cited as the 'Heart Disease, Cancer, Stroke, and Kidney Disease Amendments of 1970'.''

Pub. L. 91–464, §1, Oct. 16, 1970, 91 Stat. 988, provided: ''That this Act [amending section 247b of this title] may be cited as the 'Communicable Disease Control Amendments of 1970'.''

Pub. L. 91–296, §1(a), June 30, 1970, 84 Stat. 336, provided that: ''This Act [enacting sections 229b, 291j–1 to

291j–10, and 291*o*–1 of this title, amending sections 291a, 242b, 245a, 246, 291 note, 291b, 291c, 291d, 291e, 291f, 291i, 291k to 291m–1, 291*o*, and 299a of this title and section 1717 of Title 12, Banks and Banking, enacting provisions set out as notes under this section and sections 242, 245a, 246, 291a, 291b, 291c, 291e, 291f, 291*o*, 295h–6, and 2688p of this title, and repealing sections 295h–6 and 2688p of this title] may be cited as the 'Medical Facilities Construction and Modernization Amendments of 1970'.''

Section 1 of Pub. L. 91–212 provided that: ''This Act [enacting section 280b–12 of this title and amending this section and sections 276 to 278, 280, 280a–1, 280b, 280b–2 to 280b–9, and 280b–11 of this title] may be cited as the 'Medical Library Assistance Extension Act of 1970'.''

SHORT TITLE OF 1968 AMENDMENTS

Pub. L. 90–574, title IV, § 401, Oct. 15, 1968, 82 Stat. 1011, provided that: ''This title [amending sections 291a and 291b of this title] may be cited as the 'Hospital and Medical Facilities Construction and Modernization Assistance Amendments of 1968'.''

Pub. L. 90–490, § 1, Aug. 16, 1968, 82 Stat. 773, provided: ''That this Act [enacting sections 294f, 295g–1, 295h–6, 295h–7, 296f, 296g, and 297h of this title, amending sections 242d, 242g, 292b to 292e, 293 to 293d, 294 to 294d, 295f to 295f–4, 295g, 295h to 295h–3, 296 to 296b, 296d, 296e, 297 to 297f, 298b, 298c, and 298c–1 of this title, omitting sections 298c–2 to 298c–6 of this title, and enacting provisions set out as notes under sections 292b, 292e, 293 to 293c, 294f, 295f, 295f–2, 295g, 296, 296d, 296f, and 297a of this title] may be cited as the 'Health Manpower Act of 1968'.''

SHORT TITLE OF 1967 AMENDMENTS

Pub. L. 90–174, § 1, Dec. 5, 1967, 81 Stat. 533, provided: ''That this Act [enacting sections 217b, 254a, 263a, and 291m–1 of this title, amending sections 241, 242, 242b, 243, 244, 246, 249, 251, 293e, 295h–4, and 296e of this title, repealing section 291n of this title, and enacting provisions set out as notes under this section and sections 242b, 242c, 246, 263a, and 296e of this title] may be cited as the 'Partnership for Health Amendments of 1967'.''

Pub. L. 90–174, § 5(c), Dec. 5, 1967, 81 Stat. 539, provided that: ''This section [enacting section 263a of this title and provisions set out as notes under section 263a of this title] may be cited as the 'Clinical Laboratories Improvement Act of 1967'.''

Pub. L. 90–31, § 1, June 24, 1967, 81 Stat. 79, provided: ''That this Act [enacting section 225a of this title and amending sections 2681, 2684, 2687, 2688a, 2688d, and 2691 of this title] may be cited as the 'Mental Health Amendments of 1967'.''

SHORT TITLE OF 1966 AMENDMENTS

Pub. L. 89–751, § 1, Nov. 3, 1966, 80 Stat. 1222, provided: ''That this Act [enacting sections 295h to 295h–5 and 298c to 298c–8 of this title, amending sections 292b, 294d, 294n to 294p, 296, 297c to 297f, and 298 of this title and section 1717 of Title 12, Banks and Banking, and enacting provisions set out as notes under sections 294, 294d, 297c, and 297f of this title] may be cited as the 'Allied Health Professions Personnel Training Act of 1966'.''

Pub. L. 89–749, § 1, Nov. 3, 1966, 80 Stat. 1180, provided: ''That this Act [amending 243, 245a, and 246 of this title, repealing sections 247a and 247c of this title, and enacting provisions set out as notes under this section and sections 243 and 245a of this title] may be cited as the 'Comprehensive Health Planning and Public Health Services Amendments of 1966'.''

Pub. L. 89–709, § 1, Nov. 2, 1966, 80 Stat. 1103, provided: ''That this Act [amending sections 293, 293a, 293d, 293e, 294, 294a, and 294b of this title] may be cited as the 'Veterinary Medical Education Act of 1966'.''

SHORT TITLE OF 1965 AMENDMENTS

Section 1 of Pub. L. 89–291, Oct. 22, 1965, 79 Stat. 1059, provided that: ''This Act [enacting section 280a–1 of this title and Part J of subchapter II of this chapter and amending section 277 of this title] may be cited as the 'Medical Library Assistance Act of 1965'.''

Pub. L. 89–290, § 1, Oct. 22, 1965, 79 Stat. 1052, provided that: ''This Act [enacting sections 295f to 295f–4 and 295g of this title and amending sections 293, 293a, 293d, 294 to 294d, 297b, and 298b of this title] may be cited as the 'Health Professions Educational Assistance Amendments of 1965'.''

Pub. L. 89–239, § 1, Oct. 6, 1965, 79 Stat. 926, provided: ''That this Act [enacting sections 299 to 299i of this title, amending sections 211a and 212a of this title, sections 757, 790, 800 of former Title 5, Executive Departments and Government Officers and Employees, and section 763c of Title 33, Navigation and Navigable Waters, and enacting provisions set out as notes under sections 201, 214, 222, and 249 of this title] may be cited as the 'Heart Disease, Cancer, and Stroke Amendments of 1965'.''

Pub. L. 89–115, § 1, Aug. 9, 1965, 79 Stat. 448, provided: ''That this Act [amending sections 241, 292c, and 292d of this title and section 2211 of former Title 5, Executive Departments and Government Officers and Employees, and enacting section 623h of former Title 5 and provisions set out as a note thereunder] may be cited as the 'Health Research Facilities Amendments of 1965'.''

Pub. L. 89–109, § 1, Aug. 5, 1965, 79 Stat. 435, provided: ''That this Act [amending sections 246, 247a, 247b, and 247d of this title] may be cited as the 'Community Health Services Extension Amendments of 1965'.''

SHORT TITLE OF 1964 AMENDMENTS

Pub. L. 88–581, § 1, Sept. 4, 1964, 78 Stat. 908, provided: ''That this Act [enacting subchapter VI of this chapter, amending sections 291c, 291*o*, 293, 293a, 293e, and 293h of this title, and enacting provisions set out as notes under sections 201, 211a, 212a, 222, 291c, 293, 293e, and 293h of this title, sections 757, 790, and 800 of former Title 5, Executive Departments and Government Officers and Employees, and section 763c of Title 33, Navigation and Navigable Waters] may be cited as the 'Nurse Training Act of 1964'.''

Pub. L. 88–497, § 1, Aug. 27, 1964, 78 Stat. 613, provided that: ''This Act [amending sections 244–1 and 245a of this title] may be cited as the 'Graduate Public Health Training Amendments of 1964'.''

Pub. L. 88–443, § 1, Aug. 18, 1964, 78 Stat. 447, provided that: ''This Act [enacting sections 247c, 291 to 291j, 291k to 291m, 291n, and 291*o* of this title and enacting provisions set out as notes under section 291 of this title] may be cited as the 'Hospital and Medical Facilities Amendments of 1964'.''

SHORT TITLE OF 1963 AMENDMENT

Pub. L. 88–129, § 1, Sept. 24, 1963, 77 Stat. 164, provided: ''That this Act [enacting sections 292j, 293 to 293h, and 294 to 294e and amending sections 292 to 292b and 292d to 292i of this title] may be cited as the 'Health Professions Educational Assistance Act of 1963'.''

SHORT TITLE OF 1962 AMENDMENTS

Pub. L. 87–868, § 1, Oct. 23, 1962, 76 Stat. 1155, provided that this Act [enacting section 247b of this title] may be cited as the ''Vaccination Assistance Act of 1962.''

Section 319 of act July 1, 1944, formerly § 310, as added by Pub. L. 87–692, Sept. 25, 1962, 76 Stat. 592, amended and renumbered, is popularly known as the ''Migrant Health Act''.

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87–395, § 1, Oct. 5, 1961, 75 Stat. 824, provided: ''That this Act [enacting section 247a of this title, amending sections 246, 289c, 291i, 291n, 291s, 291t, 291w, and 292c to 292g of this title, and enacting provisions set out as a note under section 291s of this title] may be cited as the 'Community Health Services and Facilities Act of 1961'.''

SHORT TITLE OF 1960 AMENDMENT

Section 1 of Pub. L. 86–415, Apr. 8, 1960, 74 Stat. 32, provided: ''That this Act [amending this section and

sections 209, 210, 211, 212, 253, and 415 of this title and section 2251 of former Title 5, Executive Departments and Government Officers and Employees, and enacting provisions set out as notes under sections 209 and 212 of this title and section 2253 of former Title 5] may be cited as the 'Public Health Service Commissioned Corps Personnel Act of 1960'.''

SHORT TITLE OF 1956 AMENDMENTS

Section 2 of act Aug. 3, 1956, ch. 907, 70 Stat. 962, provided that: ''This Act [enacting part I of subchapter II of this chapter] may be cited as the 'National Library of Medicine Act'.''

Act July 3, 1956, ch. 510, §1, 70 Stat. 490, provided that: ''This Act [enacting section 246 of this title, amended section 241 of this title, and enacting provisions set out as a note under section 246 of this title] may be cited as the 'National Health Survey Act'.''

SHORT TITLE OF 1955 AMENDMENT

Joint Res. July 28, 1955, ch. 417, §1, 69 Stat. 382, provided that: ''This joint resolution [enacting section 242b of this title and provisions set out as a note under section 242b of this title] may be cited as the 'Mental Health Study Act of 1955'.''

SHORT TITLE OF 1948 AMENDMENTS

Section 1 of act June 24, 1948, provided that: ''This Act [enacting part C of subchapter III of this chapter and amending this section and sections 210, 218, and 241 of this title] may be cited as the 'National Dental Research Act'.''

Section 1 of act June 16, 1948, provided that: ''This Act [enacting sections 287 to 287c of this title and amending this section and sections 203, 206, 210, 218, 219, 241, 246, 281, 283, and 286 of this title] may be cited as the 'National Heart Act'.''

SHORT TITLE OF 1946 AMENDMENT

Section 1 of act July 3, 1946, provided: ''That this Act [enacting sections 232 and 242a of this title, amending this section and sections 209, 210, 215, 218, 219, 241, 244, and 246 of this title, and enacting provisions set out as a note under this section] may be cited as the 'National Mental Health Act'.''

SHORT TITLE

Section 1 of act July 1, 1944, as amended by acts Aug. 13, 1946, ch. 958, §4, 60 Stat. 1049; July 30, 1956, ch. 779, §3(a), 70 Stat. 720; Sept. 4, 1964, Pub. L. 88–581, §4(a), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, §3(a), 79 Stat. 930; Dec. 24, 1970, Pub. L. 91–572, §6(a), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, §3(a), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, §2(b)(1), 87 Stat. 604; Dec. 29, 1973, Pub. L. 93–222, §7(a), 87 Stat. 936, provided that: ''This Act [enacting this chapter] may be cited as the 'Public Health Service Act'.''

RENUMBERING AND REPEAL OF REPEALING ACT

Section 1313, formerly §611, of act July 1, 1944, renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; §813 by act July 30, 1956, ch. 779, §3(b), 70 Stat. 720; §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919; §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931; §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506, §1213 by Pub. L. 92–294, §3(b), May 16, 1972, 86 Stat. 137; §1313 by Pub. L. 93–154, §2(b)(2), Nov. 16, 1973, 87 Stat. 604, repealed and amended sections in this title and in Title 8, Aliens and Nationality, Title 14, Coast Guard, Title 21, Food and Drugs, Title 24, Hospitals and Asylums, former Title 31, Money and Finance, Title 33, Navigation and Navigable Waters, former Title 34, Navy, Title 44, Public Printing and Documents, former Title 46, Shipping, Title 48, Territories and Insular Possessions, and former Title 49, Transportation, and was itself repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936.

SAVINGS PROVISION

Section 1314, formerly §612, of act July 1, 1944, as renumbered by acts Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049; Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47; July 30, 1956, ch. 779, §3(b), 70 Stat. 720; Sept. 4, 1964, Pub. L. 88–581, §4(b), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, §3(b), 79 Stat. 931; Dec. 24, 1970, Pub. L. 91–572, §6(b), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, §3(b), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, §2(b)(2), 87 Stat. 604, provided that the repeal of statutes and parts of statutes by sections 1313, formerly §611, of act July 1, 1944, not affect any act done, right accruing or accrued, or suit or proceeding had or commenced in any civil cause before such repeal, and was repealed by Pub. L. 93–222, §7(b), Dec. 29, 1973, 87 Stat. 936.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3, of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

CONGRESSIONAL DECLARATION OF PURPOSE FOR COMPREHENSIVE ALCOHOL ABUSE, DRUG ABUSE, AND MENTAL HEALTH AMENDMENTS ACT OF 1988

Pub. L. 100–690, title II, §2012, Nov. 18, 1988, 102 Stat. 4193, provided that: ''The purposes of this subtitle [subtitle A (§§2011–2081) of title II of Pub. L. 100–690, see Tables for classification] with respect to substance abuse are—

''(1) to prevent the transmission of the etiologic agent for acquired immune deficiency syndrome by ensuring that treatment services for intravenous drug abuse are available to intravenous drug abusers;

''(2) to continue the Federal Government's partnership with the States in the development, maintenance, and improvement of community-based alcohol and drug abuse programs;

''(3) to provide financial and technical assistance to the States and communities in their efforts to develop and maintain a core of prevention services for the purpose of reducing the incidence of substance abuse and the demand for alcohol and drug abuse treatment;

''(4) to assist and encourage States in the initiation and expansion of prevention and treatment services to underserved populations;

''(5) to increase, to the greatest extent possible, the availability and quality of treatment services so that treatment on request may be provided to all individuals desiring to rid themselves of their substance abuse problem; and

''(6) to increase understanding about the extent of alcohol abuse and other forms of drug abuse by expanding data collection activities and supporting research on the comparative cost and efficacy of substance abuse prevention and treatment services.''

PURPOSE OF ACT JULY 3, 1946

Section 2 of act July 3, 1946, provided: ''The purpose of this Act [see Short Title of 1946 Amendment note above] is the improvement of the mental health of the people of the United States through the conducting of

researches, investigations, experiments, and demonstrations relating to the cause, diagnosis, and treatment of psychiatric disorders; assisting and fostering such research activities by public and private agencies, and promoting the coordination of all such researches and activities and the useful application of their results; training personnel in matters relating to mental health; and developing, and assisting States in the use of, the most effective methods of prevention, diagnosis, and treatment of psychiatric disorders.''

EXISTING POSITIONS, PROCEDURES, REGULATIONS, FUNDS, APPROPRIATIONS, AND PROPERTY

Sections 1301 to 1303, formerly §§ 601 to 603, of act July 1, 1944, as renumbered by acts Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; Sept. 3, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, § 3(b), 79 Stat. 931; Dec. 24, 1970, Pub. L. 91–572, § 6(b), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, § 3(b), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, § 2(b)(2), 87 Stat. 604, related to the effect of this chapter on existing positions, procedures, regulations, funds, appropriations, and property, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936.

APPROPRIATIONS FOR EMERGENCY HEALTH AND SANITATION ACTIVITIES

Section 1304, formerly § 604, of act July 1, 1944, as renumbered by acts Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; July 30, 1956, ch. 779, § 3(b), 70 Stat. 720; Sept. 4, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919; Oct. 6, 1965, Pub. L. 89–239, § 3(b), 79 Stat. 931; Dec. 24, 1970, Pub. L. 91–572, § 6(b), 84 Stat. 1506; May 16, 1972, Pub. L. 92–294, § 3(b), 86 Stat. 137; Nov. 16, 1973, Pub. L. 93–154, § 2(b)(2), 87 Stat. 604, authorized annual appropriations during World War II and during period of demobilization to conduct health and sanitation activities in military, naval, or industrial areas, and was repealed by Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936. Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of section 1004 of act July 1, 1944, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on September 8, 1939, and May 27, 1941.

AVAILABILITY OF APPROPRIATIONS

Pub. L. 91–296, title VI, § 601, June 30, 1970, 84 Stat. 353, as amended Pub. L. 93–45, title IV, § 401(a), June 18, 1973, 87 Stat. 95; Pub. L. 93–352, title I, § 113, July 23, 1974, 88 Stat. 360, provided that: ''Notwithstanding any other provision of law, unless enacted after the enactment of this Act [June 30, 1970] expressly in limitation of the provisions of this section, funds appropriated for any fiscal year to carry out any program for which appropriations are authorized by the Public Health Service Act (Public Law 410, Seventy-eighth Congress, as amended) [this chapter] or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (Public Law 88–164, as amended) [sections 2689 et seq. and 6001 et seq. of this title] shall remain available for obligation and expenditure until the end of such fiscal year.''

FEDERAL ACCOUNTABILITY

Pub. L. 102–321, title II, § 203(b), July 10, 1992, 106 Stat. 410, provided that: ''Any rule or regulation of the Department of Health and Human Services that is inconsistent with the amendments made by this Act [see Tables for classification] shall not have any legal effect, including section 50(e) of part 96 of title 45, Code of Federal Regulations (45 CFR 96.50(e)).''

HAZARDOUS SUBSTANCES

Federal Hazardous Substances Act as not modifying this chapter, see Pub. L. 86–613, § 18, July 12, 1960, 74 Stat. 380, set out as a note under section 1261 of Title 15, Commerce and Trade.

DEFINITION OF ''SECRETARY''

Pub. L. 90–574, title V, § 507, Oct. 15, 1968, 82 Stat. 1013, as amended by Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided that: ''As used in the amendments made by this Act [enacting sections 229a, 299j, 2688e to 2688q, and 2697a of this title, amending sections 210g, 242h, 291a, 291b, 299a to 299e, 2693, and 3259 of this title, repealing section 3442 of this title, and enacting provisions set out as notes under sections 291a, 2688e, 3442 of this title, section 278 of Title 22, Foreign Relations and Intercourse, and section 3681 of Title 38, Veterans' Benefits], the term 'Secretary' means the Secretary of Health and Human Services.''

Pub. L. 90–174, § 15, Dec. 5, 1967, 81 Stat. 542, as amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the amendments made by this Act [enacting sections 217b, 243(c), 251(b), 254a, 263a, and 291m–1 and amending sections 242b, 242g(c), 246(d)(1), (e), and 296e(c)(1) of this title] the term 'Secretary' means the Secretary of Health and Human Services.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3672.

PART A—ADMINISTRATION

§ 202. Administration and supervision of Service

The Public Health Service in the Department of Health and Human Services shall be administered by the Assistant Secretary for Health under the supervision and direction of the Secretary.

(July 1, 1944, ch. 373, title II, § 201, 58 Stat. 683; 1953 Reorg. Plan No. 1, §§ 5, 8 eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; June 10, 1993, Pub. L. 103–43, title XX, § 2008(f), 107 Stat. 212.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' and ''Assistant Secretary for Health'' for ''Surgeon General''.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

INTERNATIONAL HEALTH ADMINISTRATION

Ex. Ord. No. 10399, Sept. 27, 1952, 17 F.R. 8648, designated Surgeon General to perform certain duties under International Sanitary Regulations of World Health Organization.

REORGANIZATION PLAN NO. 3 OF 1966

Eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, April 25, 1966, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

PUBLIC HEALTH SERVICE

SECTION 1. TRANSFER OF FUNCTIONS

(a) Except as otherwise provided in subsection (b) of this section, there are hereby transferred to the Sec-

retary of Health, Education, and Welfare (hereinafter referred to as the Secretary) all functions of the Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service.

(b) This section shall not apply to the functions vested by law in any advisory council, board, or committee of or in the Public Health Service which is established by law or is required by law to be established.

SEC. 2. PERFORMANCE OF TRANSFERRED FUNCTIONS

The Secretary may from time to time make such provisions as he shall deem appropriate authorizing the performance of any of the functions transferred to him by the provisions of this reorganization plan by any officer, employee, or agency of the Public Health Service or of the Department of Health, Education, and Welfare.

SEC. 3. ABOLITIONS

(a) The following agencies of the Public Health Service are hereby abolished:

(1) The Bureau of Medical Services, including the office of Chief of the Bureau of Medical Services.

(2) The Bureau of State Services, including the office of Chief of the Bureau of State Services.

(3) The agency designated as the National Institutes of Health (42 U.S.C. 203), including the office of Director of the National Institutes of Health (42 U.S.C. 206(b)) but excluding the several research Institutes in the agency designated as the National Institutes of Health.

(4) The agency designated as the Office of the Surgeon General (42 U.S.C. 203(1)), together with the office held by the Deputy Surgeon General (42 U.S.C. 206(a)).

(b) The Secretary shall make such provisions as he shall deem necessary respecting the winding up of any outstanding affairs of the agencies abolished by the provisions of this section.

SEC. 4. INCIDENTAL TRANSFERS

As he may deem necessary in order to carry out the provisions of this reorganization plan, the Secretary may from time to time effect transfers within the Department of Health, Education, and Welfare of any of the records, property, personnel and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of the Department which relate to functions affected by this reorganization plan.

[The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services, respectively, by 20 U.S.C. 3508.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 3 of 1966, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization of health functions of the Department of Health, Education, and Welfare.

I

Today we face new challenges and unparalleled opportunities in the field of health. Building on the progress of the past several years, we have truly begun to match the achievements of our medicine to the needs of our people.

The task ahead is immense. As a nation, we will unceasingly pursue our research and learning, our training and building, our testing and treatment. But now our concern must also turn to the organization of our Federal health programs.

As citizens we are entitled to the very best health services our resources can provide.

As taxpayers, we demand the most efficient and economic health organizations that can be devised.

I ask the Congress to approve a reorganization plan to bring new strength to the administration of Federal health programs.

I propose a series of changes in the organization of the Public Health Service that will bring to all Americans a structure modern in design, more efficient in operation and better prepared to meet the great and growing needs of the future. Through such improvements we can achieve the full promise of the landmark health legislation enacted by the 89th Congress.

I do not propose these changes lightly. They follow a period of careful deliberation. For many months the Secretary of Health, Education, and Welfare, and the Surgeon General have consulted leading experts in the Nation—physicians, administrators, scientists, and public health specialists. They have confirmed my belief that modernization and reorganization of the Public Health Service are urgently required and long overdue.

II

The Public Health Service is an operating agency of the Department of Health, Education, and Welfare. It is the principal arm of the Federal Government in the field of health. Its programs are among those most vital to our well-being.

Since 1953 more than 50 new programs have been placed in the Public Health Service. Its budget over the past 12 years has increased tenfold—from $250 million to $2.4 billion.

Today the organization of the Public Health Service is clearly obsolete. The requirement that new and expanding programs be administered through an organizational structure established by law more than two decades ago stands as a major obstacle to the fulfillment of our Nation's health goals.

As presently constituted, the Public Health Service is composed of four major components:

National Institutes of Health.
Bureau of State Services.
Bureau of Medical Services.
Office of the Surgeon General.

Under present law, Public Health Service functions must be assigned only to these four components.

This structure was designed to provide separate administrative arrangements for health research, programs of State and local aid, health services, and executive staff resources. At a time when these functions could be neatly compartmentalized, the structure was adequate. But today the situation is different.

Under recent legislation many new programs provide for an integrated attack on specific disease problems or health hazards in the environment by combining health services, State and local aid, and research. Each new program of this type necessarily is assigned to one of the three operating components of the Public Health Service. Yet none of these components is intended to administer programs involving such a variety of approaches.

Our health problems are difficult enough without having them complicated by outmoded organizational arrangements.

But if we merely take the step of integrating the four agencies within the Public Health Service we will not go far enough. More is required.

III

The Department of Health, Education, and Welfare performs major health or health-related functions which are not carried out through the Public Health Service, although they are closely related to its functions. Among these are:

Health insurance for the aged, administered through the Social Security Administration;

Medical assistance for the needy, administered through the Welfare Administration;

Regulation of the manufacture, labeling, and distribution of drugs, carried out through the Food and Drug Administration; and

Grants-in-aid to States for vocational rehabilitation of the handicapped, administered by the Vocational Rehabilitation Administration.

Expenditures for health and health-related programs of the Department administered outside the Public Health Service have increased from $44 million in 1953 to an estimated $5.4 billion in 1967.

As the head of the Department, the Secretary of Health, Education, and Welfare is responsible for the Administration and coordination of all the Department's health functions. He has clear authority over the programs I have just mentioned.

But today he lacks this essential authority over the Public Health Service. The functions of that agency are vested in the Surgeon General and not in the Secretary.

This diffusion of responsibility is unsound and unwise.

To secure the highest possible level of health services for the American people the Secretary of Health, Education, and Welfare must be given the authority to establish—and modify as necessary—the organizational structure for Public Health Service programs.

He must also have the authority to coordinate health functions throughout the Department. The reorganization plan I propose will accomplish these purposes. It will provide the Secretary with the flexibility to create new and responsive organizational arrangements to keep pace with the changing and dynamic nature of our health programs.

My views in this respect follow a basic principle of good government set by the Hoover Commission in 1949 when it recommended that ''the Department head should be given authority to determine the organization within his Department.''

IV

In summary, the reorganization plan would:

Transfer to the Secretary of Health, Education, and Welfare the functions now vested in the Surgeon General of the Public Health Service and in its various subordinate units (this transfer will not affect certain statutory advisory bodies such as the National Advisory Cancer and Heart Councils);

Abolish the four principal statutory components of the Public Health Service, including the offices held by their heads (the Bureau of Medical Services, the Bureau of State Services, the National Institutes of Health exclusive of its several research institutes such as the National Cancer and Heart Institutes, and the Office of the Surgeon General); and

Authorize the Secretary to assign the functions transferred to him by the plan to officials and entities of the Public Health Service and to other agencies of the Department as he deems appropriate.

Thus, the Secretary would be—

Enabled to assure that all health functions of the Department are carried out as effectively and economically as possible;

Given authority commensurate with his responsibility; and

Made responsible in fact for matters for which he is now, in any case, held accountable by the President, the Congress, and the people.

V

I have found, after investigation, that each reorganization included in the accompanying reorganization plan is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

Should the reorganizations in the accompanying reorganization plan take effect, they will make possible more effective and efficient administration of the affected health programs. It is, however, not practicable at this time to itemize the reductions in expenditures which may result.

I strongly recommend that the Congress allow the reorganization plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE, April 25, 1966.

EXECUTIVE ORDER NO. 10506

Ex. Ord. No. 10506, Dec. 10, 1953, 18 F.R. 8219, which delegated certain functions of the President relating to the Public Health Service, was superseded by Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, set out below.

EX. ORD. NO. 11140. DELEGATION OF FUNCTIONS

Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By virtue of the authority vested in me by Section 301 of Title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The Secretary of Health and Human Services is hereby authorized and empowered, without the approval, ratification, or other action of the President, to perform the following-described functions vested in the President under the Public Health Service Act (58 Stat. 682), as amended [this chapter]:

(a) The authority under Section 203 (42 U.S.C. 204): to appoint commissioned officers of the Reserve Corps.

(b) The authority under Section 206(b) (42 U.S.C. 207(b)) to prescribe titles, appropriate to the several grades, for commissioned officers of the Public Health Service other than medical officers.

(c) The authority under Section 207(a)(2) (42 U.S.C. 209(a)(2)) to terminate commissions of officers of the Reserve Corps without the consent of the officers concerned.

(d) The authority under Section 210(a), (k), and (*l*) (42 U.S.C. 211(a), (k), and (*l*)) to make or terminate temporary promotions of commissioned officers of the Regular Corps and Reserve Corps.

(e) The authority under Section 211(a)(5) (42 U.S.C. 212(a)(5)) to approve voluntary retirements under that section.

(f) The authority to prescribe regulations under the following-designated Sections: 207(a), 207(b), 208(e), 210(a), 210(b), 210(d)(1), 210(h), 210(i), 210(j)(1), 210(k), 215(a), 218(a), 219(a), and 510 (42 U.S.C. 209(a), 209(b), 210(e), 211(a), 211(b), 211(d)(1), 211(h), 211(i), 211(j)(1), 211(k), 216(a), 218a(a), 210–1(a), and 228).

(g) The authority under Sections 321(a) and 364(a) (42 U.S.C. 248(a) and 267(a)) to approve the selection of suitable sites for and the establishment of additional institutions, hospitals, stations, grounds, and anchorages; subject, however, to the approval of the Director of the Office of Management and Budget, except as he may otherwise provide.

SEC. 2. The Surgeon General is hereby authorized and empowered, without the approval, ratification, or other action of the President, to perform the function vested in the President by Sections 203 and 207(a)(2) of the Public Health Service Act (58 Stat. 683, 685), as amended (42 U.S.C. 204 and 209(a)(2)), or otherwise, of accepting voluntary resignations of commissioned officers of the Regular Corps or the Reserve Corps.

SEC. 3. The Secretary of Health and Human Services is hereby authorized and empowered, without the approval, ratification, or other action of the President, to exercise the authority vested in the President by Section 704 of Title 37 of the United States Code to prescribe regulations.

SEC. 4. The Secretary of Health and Human Services is hereby authorized to redelegate all or any part of the functions set forth under (a), (b), (c), and (d) of Section 1 hereof to the Surgeon General of the Public Health Service or other official of that Service who is required to be appointed by and with the advice and consent of the Senate.

SEC. 5. All actions heretofore taken by appropriate authority with respect to the matters affected by this order and in force at the time of the issuance of this order, including any regulations prescribed or approved with respect to such matters, shall, except as they may be inconsistent with the provisions of this order, remain in effect until amended, modified, or revoked pursuant to the authority conferred by this order.

SEC. 6. As used in this order, the term ''functions'' embraces duties, powers, responsibilities, authority, or

discretion, and the term ''perform'' may be construed to mean ''exercise''.

SEC. 7. (a) Executive Order No. 10506 of December 10, 1953, entitled ''Delegating Certain Functions of the President under the Public Health Service Act,'' is hereby superseded.

(b) Executive Orders Nos. 9993 of August 31, 1948, 10031 of January 26, 1949, 10280 of August 16, 1951, 10354 of May 26, 1952, and 10497 of October 27, 1953, which prescribed regulations relating to commissioned officers and employees of the Public Health Service, are hereby revoked. Nothing in this subsection shall be deemed to alter or otherwise affect the regulations prescribed by the Surgeon General (42 CFR Parts 21 and 22) to replace the regulations prescribed by the orders described in the preceding sentence.

§ 203. Organization of Service

The Service shall consist of (1) the Office of the Surgeon General, (2) the National Institutes of Health, (3) the Bureau of Medical Services, and[1] (4) the Bureau of State Services, and[2] the Agency for Health Care Policy and Research. The Secretary is authorized and directed to assign to the Office of the Surgeon General,[3] to the National Institutes of Health, to the Bureau of Medical Services, and to the Bureau of State Services, respectively, the several functions of the Service, and to establish within them such divisions, sections, and other units as he may find necessary; and from time to time abolish, transfer, and consolidate divisions, sections, and other units and assign their functions and personnel in such manner as he may find necessary for efficient operation of the Service. No division shall be established, abolished, or transferred, and no divisions shall be consolidated, except with the approval of the Secretary. The National Institutes of Health shall be administered as a part of the field service. The Secretary may delegate to any officer or employee of the Service such of his powers and duties under this chapter, except the making of regulations, as he may deem necessary or expedient.

(July 1, 1944, ch. 373, title II, § 202, 58 Stat. 683; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; June 10, 1993, Pub. L. 103–43, title XX, § 2008(g), 107 Stat. 212.)

AMENDMENTS

1993—Pub. L. 103–43, § 2008(g)(2), inserted '', and the Agency for Health Care Policy and Research'' in first sentence.

Pub. L. 103–43, § 2008(g)(1), which directed the amendment of this section by striking ''Surgeon General'' the second and subsequent times that such term appears and inserting ''Secretary'', was executed by making the substitution before ''is authorized and directed'' and before ''may delegate to any officer'' and by leaving unchanged ''Surgeon General'' in the phrase ''assign to the Office of the Surgeon General'' in second sentence, to reflect the probable intent of Congress.

1948—Act June 16, 1948, substituted ''National Institutes of Health'' for ''National Institute of Health'' in cl. (2).

TRANSFER OF FUNCTIONS

Bureau of Medical Services, Bureau of State Services, National Institutes of Health, excluding several research Institutes in agency, and Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and all functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare, and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 238e of this title.

§ 204. Commissioned corps; composition; appointment of Regular and Reserve officers; appointment and status of warrant officers

There shall be in the Service a commissioned Regular Corps and, for the purpose of securing a reserve for duty in the Service in time of national emergency, a Reserve Corps. All commissioned officers shall be citizens and shall be appointed without regard to the civil-service laws and compensated without regard to chapter 51 and subchapter III of chapter 53 of title 5. Commissioned officers of the Reserve Corps shall be appointed by the President and commissioned officers of the Regular Corps shall be appointed by him by and with the advice and consent of the Senate. Commissioned officers of the Reserve Corps shall at all times be subject to call to active duty by the Surgeon General, including active duty for the purpose of training and active duty for the purpose of determining their fitness for appointment in the Regular Corps. Warrant officers may be appointed to the Service for the purpose of providing support to the health and delivery systems maintained by the Service and any warrant officer appointed to the Service shall be considered for purposes of this chapter and title 37 to be a commissioned officer within the commissioned corps of the Service.

(July 1, 1944, ch. 373, title II, § 203, 58 Stat. 683; Feb. 28, 1948, ch. 83, § 2, 62 Stat. 39; Oct. 28, 1949, ch. 782, title XI, § 1106(a), 63 Stat. 972; Sept. 29, 1979, Pub. L. 96–76, title III, § 302(a), 93 Stat. 584.)

REFERENCES IN TEXT

The civil-service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

''Chapter 51 and subchapter III of chapter 53 of title 5'' substituted in text for ''the Classification Act of 1949, as amended'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1979—Pub. L. 96–76 inserted provisions relating to appointment and status of warrant officers.

[1] So in original. The ''and'' probably should not appear.

[2] So in original. Probably should be followed by ''(5)''.

[3] See 1993 Amendment note below.

1949—Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923''.

1948—Act Feb. 28, 1948, struck out provision that all active service in Reserve Corps, as well as service in Regular Corps, shall be credited for purpose of promotion in Regular Corps.

REPEALS

Act Oct. 28, 1949, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, § 8, 80 Stat. 632, 655.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services and Surgeon General, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

OSTEOPATHS AS RESERVE OFFICERS

Section 709 of act July 1, 1944, formerly § 609, renumbered § 709 by act Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049, which provided for appointment of osteopaths as reserve officers until six months after World War II, was repealed by Joint Res. July 25, 1947, ch. 327, § 1, 61 Stat. 449.

CROSS REFERENCES

Pay and allowances of commissioned officers, see section 210 of this title.

§ 205. Appointment and tenure of office of Surgeon General; reversion in rank

The Surgeon General shall be appointed from the Regular Corps for a four-year term by the President by and with the advice and consent of the Senate. The Surgeon General shall be appointed from individuals who (1) are members of the Regular Corps, and (2) have specialized training or significant experience in public health programs. Upon the expiration of such term the Surgeon General, unless reappointed, shall revert to the grade and number in the Regular or Reserve Corps that he would have occupied had he not served as Surgeon General.

(July 1, 1944, ch. 373, title II, § 204, 58 Stat. 684; July 27, 1981, Pub. L. 97–25, title III, § 303(a), 95 Stat. 145; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2765(b), 95 Stat. 932.)

AMENDMENTS

1981—Pub. L. 97–35 inserted reference to Reserve Corps and substituted provisions relating to appointment of an individual from the Regular Corps and with specialized training and significant experience, for provisions relating to appointment of an individual sixty-four years of age or older.

Pub. L. 97–25 inserted provision that the President may appoint to office of Surgeon General an individual who is sixty-four years of age or older.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 209 of this title.

§ 206. Assignment of officers

(a) Deputy Surgeon General

The Surgeon General shall assign one commissioned officer from the Regular Corps to administer the Office of the Surgeon General, to act as Surgeon General during the absence or disability of the Surgeon General or in the event of a vacancy in that office, and to perform such other duties as the Surgeon General may prescribe, and while so assigned he shall have the title of Deputy Surgeon General.

(b) Assistant Surgeons General

The Surgeon General shall assign eight commissioned officers from the Regular Corps to be, respectively, the Director of the National Institutes of Health, the Chief of the Bureau of State Services, the Chief of the Bureau of Medical Services, the Chief Medical Officer of the United States Coast Guard, the Chief Dental Officer of the Service, the Chief Nurse Officer of the Service, the Chief Pharmacist Officer of the Service, and the Chief Sanitary Engineering Officer of the Service, and while so serving they shall each have the title of Assistant Surgeon General.

(c) Creation of temporary positions as Assistant Surgeons General

(1) The Surgeon General, with the approval of the Secretary, is authorized to create special temporary positions in the grade of Assistant Surgeons General when necessary for the proper staffing of the Service. The Surgeon General may assign officers of either the Regular Corps or the Reserve Corps to any such temporary position, and while so serving they shall each have the title of Assistant Surgeon General.

(2) Except as provided in this paragraph, the number of special temporary positions created by the Surgeon General under paragraph (1) shall not on any day exceed 1 per centum of the highest number, during the ninety days preceding such day, of officers of the Regular Corps on active duty and officers of the Reserve Corps on active duty for more than thirty days. If on any day the number of such special temporary positions exceeds such 1 per centum limitation, for a period of not more than one year after such day, the number of such special temporary positions shall be reduced for purposes of complying with such 1 per centum limitation only by the resignation, retirement, death, or transfer to a position of a lower grade, of any officer holding any such temporary position.

(d) Designation of Assistant Surgeon General with respect to absence, disability, or vacancy in offices of Surgeon General and Deputy Surgeon General

The Surgeon General shall designate the Assistant Surgeon General who shall serve as Sur-

geon General in case of absence or disability, or vacancy in the offices, of both the Surgeon General and the Deputy Surgeon General.

(July 1, 1944, ch. 373, title II, § 205, 58 Stat. 684; Feb. 28, 1948, ch. 83, § 3, 62 Stat. 39; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 29, 1979, Pub. L. 96–76, title III, §§ 302(b), 303, 93 Stat. 584.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–76, § 302(b), inserted provisions relating to assignment of Chief Nurse Officer and Chief Pharmacist Officer, and substituted ''eight'' for ''six''.

Subsec. (c). Pub. L. 96–76, § 303, designated existing provisions as par. (1), struck out provisions relating to maximum number of special temporary positions, and added par. (2).

1948—Subsec. (b). Act June 16, 1948, substituted ''National Institutes of Health'' for ''National Institute of Health''.

Subsecs. (c), (d). Act Feb. 28, 1948, added subsec. (c) and redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1979 AMENDMENT

Section 314 of Pub. L. 96–76 provided that: ''The amendments made by sections 303, 304, 305, 306, 307, and 313 [amending this section, sections 207, 209, 210b, and 211 of this title, and sections 201, 415, and 1006 of Title 37, Pay and Allowances of the Uniformed Services] shall take effect on October 1, 1979.''

TRANSFER OF FUNCTIONS

Office of Surgeon General, together with office held by Deputy Surgeon General, Bureau of Medical Services, including office of Chief of Bureau of Medical Services, Bureau of State Services, including office of Chief of Bureau of State Services, and National Institutes of Health, including office of Director of National Institutes of Health, abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare, by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 207, 210b of this title.

§ 207. Grades, ranks, and titles of commissioned corps

(a) Grades of commissioned officers

The Surgeon General, during the period of his appointment as such, shall be of the same grade as the Surgeon General of the Army; the Deputy Surgeon General and the Chief Medical Officer of the United States Coast Guard, while assigned as such, shall have the grade corresponding with the grade of major general; and the Chief Dental Officer, while assigned as such, shall have the grade as is prescribed by law for the officer of the Dental Corps selected and appointed as Assistant Surgeon General of the Army. During the period of appointment to the position of Assistant Secretary for Health, a commissioned officer of the Public Health Service shall have the grade corresponding to the grade of General of the Army. Assistant Surgeons General, while assigned as such, shall have the grade corresponding with either the grade of brigadier general or the grade of major general, as may be determined by the Secretary after considering the importance of the duties to be performed: *Provided*, That the number of Assistant Surgeons General having a grade higher than that corresponding to the grade of brigadier general shall at no time exceed one-half of the number of positions created by subsection (b) of section 206 of this title or pursuant to subsection (c) of section 206 of this title. The grades of commissioned officers of the Service shall correspond with grades of officers of the Army as follows:

(1) Officers of the director grade—colonel;

(2) Officers of the senior grade—lieutenant colonel;

(3) Officers of the full grade—major;

(4) Officers of the senior assistant grade—captain;

(5) Officers of the assistant grade—first lieutenant;

(6) Officers of the junior assistant grade—second lieutenant;

(7) Chief warrant officers of (W–4) grade—chief warrant officer (W–4);

(8) Chief warrant officers of (W–3) grade—chief warrant officer (W–3);

(9) Chief warrant officers of (W–2) grade—chief warrant officer (W–2); and

(10) Warrant officers of (W–1) grade—warrant officer (W–1).

(b) Titles of medical officers

The titles of medical officers of the foregoing grades shall be respectively (1) medical director, (2) senior surgeon, (3) surgeon, (4) senior assistant surgeon, (5) assistant surgeon, and (6) junior assistant surgeon. The President is authorized to prescribe titles, appropriate to the several grades, for commissioned officers of the Service other than medical officers. All titles of the officers of the Reserve Corps shall have the suffix ''Reserve.''

(c) Repealed. Pub. L. 96–76, title III, § 304(b), Sept. 29, 1979, 93 Stat. 584

(d) Maximum number in grade for each fiscal year

Within the total number of officers of the Regular Corps authorized by the appropriation Act or Acts for each fiscal year to be on active duty, the Secretary shall by regulation prescribe the maximum number of officers authorized to be in each of the grades from the warrant officer (W–1) grade to the director grade, inclusive. Such numbers shall be determined after considering the anticipated needs of the Service during the fiscal year, the funds available, the number of officers in each grade at the beginning of the fiscal year, and the anticipated appointments,

the anticipated promotions based on years of service, and the anticipated retirements during the fiscal year. The number so determined for any grade for a fiscal year may not exceed the number limitation (if any) contained in the appropriation Act or Acts for such year. Such regulations for each fiscal year shall be prescribed as promptly as possible after the appropriation Act fixing the authorized strength of the corps for that year, and shall be subject to amendment only if such authorized strength or such number limitation is thereafter changed. The maxima established by such regulations shall not require (apart from action pursuant to other provisions of this chapter) any officer to be separated from the Service or reduced in grade.

(e) Exception to grade limitations for officers assigned to Department of Defense

In computing the maximum number of commissioned officers of the Public Health Service authorized by law to hold a grade which corresponds to the grade of brigadier general or major general, there may be excluded from such computation not more than three officers who hold such a grade so long as such officers are assigned to duty and are serving in a policy-making position in the Department of Defense.

(July 1, 1944, ch. 373, title II, § 206, 58 Stat. 684; Feb. 28, 1948, ch. 83, § 4, 62 Stat. 39; Oct. 31, 1951, ch. 653, 65 Stat. 700; July 17, 1952, ch. 931, 66 Stat. 758; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 7, 1962, Pub. L. 87–649, § 11(1), 76 Stat. 497; Dec. 19, 1977, Pub. L. 95–215, § 8(b), 91 Stat. 1507; Sept. 29, 1979, Pub. L. 96–76, title III, § 304, 93 Stat. 584; Oct. 7, 1985, Pub. L. 99–117, § 9, 99 Stat. 494; Aug. 16, 1989, Pub. L. 101–93, § 5(p), 103 Stat. 614; Nov. 3, 1990, Pub. L. 101–502, § 5(k)(1), 104 Stat. 1289.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–502 inserted after first sentence ''During the period of appointment to the position of Assistant Secretary for Health, a commissioned officer of the Public Health Service shall have the grade corresponding to the grade of General of the Army.''

1989—Subsec. (e). Pub. L. 101–93, which directed the substitution of ''the Department of Defense'' for ''the office of Assistant Secretary of Defense for Health Affairs'', was executed by making the substitution for ''the office of the Assistant Secretary of Defense for Health Affairs'' as the probable intent of Congress.

1985—Subsec. (e). Pub. L. 99–117 added subsec. (e).

1979—Subsec. (a). Pub. L. 96–76, § 304(a), added pars. (7) to (10).

Subsec. (c). Pub. L. 96–76, § 304(b), struck out subsec. (c) setting forth the grade and pay and allowances as director for a commissioned officer below the grade of director assigned to serve as chief of a division.

Subsec. (d). Pub. L. 96–76, § 304(c), substituted ''warrant officer (W–1)'' for ''junior assistant''.

1977—Subsec. (b)(6). Pub. L. 95–215 substituted ''junior assistant'' for ''senior assistant''.

1962—Subsec. (a). Pub. L. 87–649 struck out provisions which related to pay and allowances.

1952—Subsec. (a). Act July 17, 1952, provided that the Chief Medical Officer of the Coast Guard should have the grade, pay, and allowances of a major general.

1951—Subsec. (a). Act Oct. 31, 1951, provided equality of grade, pay, and allowances between the Chief Dental Officer and the comparable officer in the Army.

1948—Subsec. (a). Act Feb. 28, 1948, increased grade of Deputy Surgeon General from brigadier general to major general and increased grade of certain Assistant Surgeons General from brigadier general to major general as the Federal Security Administrator might determine.

Subsecs. (c), (d). Act Feb. 28, 1948, added subsecs. (c) and (d).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Dec. 1, 1990, see section 5(k)(3) of Pub. L. 101–502, set out as a note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–76 effective Oct. 1, 1979, see section 314 of Pub. L. 96–76, set out as a note under section 206 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

TRANSFER OF FUNCTIONS

Office of Surgeon General, together with office held by Deputy Surgeon General, abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 210b of this title.

§ 208. Repealed. Feb. 28, 1948, ch. 83, § 5(a), 62 Stat. 40

Section, act July 1, 1944, ch. 373, title II, § 207, 58 Stat. 685, related to establishment of special temporary provisions. See sections 206(c) and 207(c) of this title.

§ 209. Appointment of personnel

(a) Original appointments to Regular and Reserve Corps; limitation on appointment and call to active duty

(1) Except as provided in subsections (b) and (e) of this section, original appointments to the Regular Corps may be made only in the warrant officer (W–1), chief warrant officer (W–2), chief warrant officer (W–3), chief warrant officer (W–4), junior assistant, assistant, and senior assistant grades and original appointments to a grade above junior assistant shall be made only after passage of an examination, given in ac-

cordance with regulations of the President, in one or more of the several branches of medicine, dentistry, hygiene, sanitary engineering, pharmacy, psychology, nursing, or related scientific specialties in the field of public health.

(2) Original appointments to the Reserve Corps may be made to any grade up to and including the director grade but only after passage of an examination given in accordance with regulations of the President. Reserve commissions shall be for an indefinite period and may be terminated at any time, as the President may direct.

(3) No individual who has attained the age of forty-four shall be appointed to the Regular Corps, or called to active duty in the Reserve Corps for a period in excess of one year, unless (A) he has had a number of years of active service (as defined in section 212(d) of this title) equal to the number of years by which his age exceeds forty-four, or (B) the Surgeon General determines that he possesses exceptional qualifications, not readily available elsewhere in the Commissioned Corps of the Public Health Service, for the performance of special duties with the Service, or (C) in the case of an officer of the Reserve Corps, the Commissioned Corps of the Service has been declared by the President to be a military service.

(b) Grade and number of original appointments

(1) Not more than 10 per centum of the original appointments to the Regular Corps authorized to be made during any fiscal year may be made to grades above that of senior assistant, but no such appointment (other than an appointment under section 205 of this title) may be made to a grade above that of director. For the purpose of this subsection the number of original appointments authorized to be made during a fiscal year shall be (1) the excess of the number of officers of the Regular Corps authorized by the appropriation Act or Acts for such year over the number of officers on active duty in the Regular Corps on the first day of such year, plus (2) the number of such officers of the Regular Corps who, during such fiscal year, have been or will be retired upon attainment of age sixty-four or have for any other reason ceased to be on active duty. In determining the number of appointments authorized by this subsection an appointment shall be deemed to be made in the fiscal year in which the nomination is transmitted by the President to the Senate.

(2) In addition to the number of original appointments to the Regular Corps authorized by paragraph (1) to be made to grades above that of senior assistant, original appointments authorized to be made to the Regular Corps in any year may be made to grades above that of senior assistant, but not above that of director, in the case of any individual who—

(A)(i) was on active duty in the Reserve Corps on July 1, 1960, (ii) was on such active duty continuously for not less than one year immediately prior to such date, and (iii) applies for appointment to the Regular Corps prior to July 1, 1962; or

(B) does not come within clause (A)(i) and (ii) but was on active duty in the Reserve Corps continuously for not less than one year immediately prior to his appointment to the Regular Corps and has not served on active duty continuously for a period, occurring after June 30, 1960, of more than three and one-half years prior to applying for such appointment.

(3) No person shall be appointed pursuant to this subsection unless he meets standards established in accordance with regulations of the President.

(c) Issuance of commissions

Commissions evidencing the appointment by the President of officers of the Regular or Reserve Corps shall be issued by the Secretary under the seal of the Department of Health and Human Services.

(d) Date of appointment; credit for service

(1) For purposes of basic pay and for purposes of promotion, any person appointed under subsection (a) of this section to the grade of senior assistant in the Regular Corps, and any person appointed under subsection (b) of this section, shall, except as provided in paragraphs (2) and (3) of this subsection, be considered as having had on the date of appointment the following length of service: Three years if appointed to the senior assistant grade, ten years if appointed to the full grade, seventeen years if appointed to the senior grade, and eighteen years if appointed to the director grade.

(2) For purposes of basic pay, any person appointed under subsection (a) of this section to the grade of senior assistant in the Regular Corps, and any person appointed under subsection (b) of this section, shall, in lieu of the credit provided in paragraph (1) of this subsection, be credited with the service for which he is entitled to credit under any other provision of law if such service exceeds that to which he would be entitled under such paragraph.

(3) For purposes of promotion, any person originally appointed in the Regular Corps to the senior assistant grade or above who has had active service in the Reserve Corps shall be considered as having had on the date of appointment the length of service provided for in paragraph (1) of this subsection, plus whichever of the following is greater: (A) The excess of his total active service in the Reserve Corps (above the grade of junior assistant) over the length of service provided in such paragraph, to the extent that such excess is on account of service in the Reserve Corps in or above the grade to which he is appointed in the Regular Corps or (B) his active service in the same or any higher grade in the Reserve Corps after the first day on which, under regulations in effect on the date of his appointment to the Regular Corps, he would have had the training and experience necessary for such appointment.

(4) For purposes of promotion, any person whose original appointment is to the assistant grade in the Regular Corps shall be considered as having had on the date of appointment service equal to his total active service in the Reserve Corps in and above the assistant grade.

(e) Reappointment; credit for service

(1) A former officer of the Regular Corps may, if application for appointment is made within two years after the date of the termination of

his prior commission in the Regular Corps, be reappointed to the Regular Corps without examination, except as the Surgeon General may otherwise prescribe, and without regard to the numerical limitations of subsection (b) of this section.

(2) Reappointments pursuant to this subsection may be made to the permanent grade held by the former officer at the time of the termination of his prior commission, or to the next higher grade if such officer meets the eligibility requirements prescribed by regulation for original appointment to such higher grade. For purposes of pay, promotion, and seniority in grade, such reappointed officer shall receive the credits for service to which he would be entitled if such appointment were an original appointment, but in no event less than the credits he held at the time his prior commission was terminated, except that if such officer is reappointed to the next higher grade he shall receive no credit for seniority in grade.

(3) No former officer shall be reappointed pursuant to this subsection unless he shall meet such standards as the Secretary may prescribe.

(f) Special consultants

In accordance with regulations, special consultants may be employed to assist and advise in the operations of the Service. Such consultants may be appointed without regard to the civil-service laws.

(g) Designation for fellowships; duties; pay

In accordance with regulations, individual scientists, other than commissioned officers of the Service, may be designated by the Surgeon General to receive fellowships, appointed for duty with the Service without regard to the civil-service laws, may hold their fellowships under conditions prescribed therein, and may be assigned for studies or investigations either in this country or abroad during the terms of their fellowships.

(h) Aliens

Persons who are not citizens may be employed as consultants pursuant to subsection (f) of this section and may be appointed to fellowships pursuant to subsection (g) of this section. Unless otherwise specifically provided, any prohibition in any other Act against the employment of aliens, or against the payment of compensation to them, shall not be applicable in the case of persons employed or appointed pursuant to such subsections.

(i) Civil service appointments by Secretary

The appointment of any officer or employee of the Service made in accordance with the civil-service laws shall be made by the Secretary, and may be made effective as of the date on which such officer or employee enters upon duty.

(July 1, 1944, ch. 373, title II, § 207, formerly § 208, 58 Stat. 685; July 3, 1946, ch. 538, § 4, 60 Stat. 421; Aug. 13, 1946, ch. 958, § 3, 60 Stat. 1049; renumbered § 207 and amended Feb. 28, 1948, ch. 83, § 5(a)–(d), 62 Stat. 40; Oct. 12, 1949, ch. 681, title V, § 521(a), 63 Stat. 834; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Apr. 27, 1956, ch. 211, § 3(a)–(c)(1), 70 Stat. 116; Apr. 8, 1960, Pub. L. 86–415, §§ 2, 3, 74 Stat. 32; Sept. 29, 1979, Pub. L. 96–76, title III, § 305, 93 Stat. 585; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2765(c), 95 Stat. 933; Jan. 4, 1983, Pub. L. 97–414, § 8(a), 96 Stat. 2060.)

REFERENCES IN TEXT

The civil-service laws, referred to in subsecs. (f), (g), and (i), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

In subsec. (f), the words ''and their compensation may be fixed without regard to the Classification Act of 1923, as amended'', and in subsec. (g), the words ''and compensated without regard to the Classification Act of 1923, as amended'' were omitted as obsolete. Sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the 1923 Act and all laws or parts of laws inconsistent with the 1949 Act. While section 1106(a) of the 1949 Act provided that references in other laws to the 1923 Act should be held and considered to mean the 1949 Act, it did not have the effect of continuing the exceptions contained in subsecs. (f) and (g) because of section 1106(b) which provided that the application of the 1949 Act to any position, officer, or employee shall not be affected by section 1106(a). The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, § 8(a), 80 Stat. 632 (of which section 1 revised and enacted Title 5, Government Organization and Employees, into law). Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

In subsec. (h), the references to subsections (f) and (g) of this section were, in the original, references to subsections (e) and (f) and were changed to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 207 of act July 1, 1944, was classified to section 208 of this title, prior to repeal by act Feb. 28, 1948, ch. 83, § 5(a), 62 Stat. 40.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 97–414 inserted ''psychology,'' after ''pharmacy,''.

1981—Subsec. (b)(1). Pub. L. 97–35 inserted provisions relating to exception for an appointment under section 205 of this title.

1979—Subsec. (a)(1). Pub. L. 96–76 inserted applicability to warrant officers and chief warrant officers.

1960—Subsec. (a)(3). Pub. L. 86–415, § 2, added par. (3).

Subsec. (b). Pub. L. 86–415, § 3, designated first, second and third sentences as par. (1), fourth sentence as par. (3), and added par. (2).

1956—Subsec. (a)(1). Act Apr. 27, 1956, § 3(a), inserted reference to subsection (e) of this section.

Subsec. (a)(2). Act Apr. 27, 1956, § 3(c)(1), substituted ''an indefinite period'' for ''a period of not more than five years''.

Subsecs. (e) to (i). Act Apr. 27, 1956, § 3(b), added subsec. (e) and redesignated former subsecs. (e) to (h) as (f) to (i), respectively.

1949—Subsec. (d). Act Oct. 12, 1949, substituted ''base pay'' for ''pay and pay period'' wherever appearing.

1948—Subsec. (a)(1). Act Feb. 28, 1948, struck out ''surgery'' after ''several branches of medicine''.

Subsec. (a)(2). Act Feb. 28, 1948, struck out ''any such commission'' before ''may be terminated'', and ''in his discretion'' after ''at any time''.

Subsec. (b). Act Feb. 28, 1948, provided for grade and number of original appointments.

Subsecs. (c) to (f). Act Feb. 28, 1948, added subsecs. (c) and (d) and redesignated former subsecs. (c) and (d) as (e) and (f), respectively. Former subsecs. (e) and (f) redesignated (g) and (h).

Subsec. (g). Act Feb. 28, 1948, redesignated former subsec. (e) as (g) and changed reference in text from ''subsection (c) of this section'' to ''subsection (e) of this section'', and ''subsection (d) of this section'' to ''subsection (g) of this section''.

Subsec. (h). Act Feb. 28, 1948, redesignated former subsec. (f) as (h).

1946—Subsec. (b). Act July 3, 1946, authorized appointment of additional officers to grades above that of senior assistant but not above that of director, and limits the number so appointed to 20.

Subsec. (b)(2). Act Aug. 13, 1946, inserted ''(A)'' before ''to assist'', substituted ''clause'' for ''paragraphs'', and inserted cl. (B).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–76 effective Oct. 1, 1979, see section 314 of Pub. L. 96–76, set out as a note under section 206 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 8(a) of Pub. L. 86–415 provided that: ''The amendments made by sections 2 and 5(b) [amending this section and section 210 of this title] shall become effective July 1, 1960.''

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services and Surgeon General, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

TERM OF RESERVE COMMISSIONS IN EFFECT ON APRIL 27, 1956

Section 3(c)(2) of act Apr. 27, 1956, provided that: ''The enactment of paragraph (1) of this subsection [amending subsec. (a)(2) of this section] shall not affect the term of the commission of any officer in the Reserve Corps in effect on the date of such enactment [Apr. 27, 1956] unless such officer consents in writing to the extension of his commission for an indefinite period, in which event his commission shall be so extended without the necessity of a new appointment.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 210, 210b of this title; title 10 section 2130a.

§§ 209a, 209b. Omitted

CODIFICATION

Section 209a, act Dec. 22, 1944, ch. 660, title I, 58 Stat. 856, which related to number of regular commissioned nurses to be appointed, their grades, and their length of service for purposes of pay and pay periods, was not repeated in subsequent appropriation acts.

Section 209b, act Dec. 22, 1944, ch. 660, title I, 58 Stat. 857, which authorized appointment of fifty additional regular commissioned officers of which twenty-four were to be in grades above that of senior assistant, was not repeated in subsequent appropriation acts.

§ 209c. Repealed. Pub. L. 87–649, § 14b, Sept. 7, 1962, 76 Stat. 499

Section, act July 3, 1945, ch. 263, title II, 59 Stat. 370, provided that for purposes of pay and pay period officers appointed to grades above that of senior assistant pursuant to section 209b of this title shall be considered as having had on date of appointment service equal to that of junior officer of grade to which appointed.

§ 209d. Appointment of osteopaths as commissioned officers

Graduates of colleges of osteopathy whose graduates are eligible for licensure to practice medicine or osteopathy in a majority of the States of the United States, or approved by a body or bodies acceptable to the Secretary, shall be eligible, subject to the other provisions of this Act, for appointment as commissioned medical officers in the Public Health Service.

(Feb. 28, 1948, ch. 83, § 5(b), 62 Stat. 40; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

REFERENCES IN TEXT

This Act, referred to in text, is act Feb. 28, 1948, ch. 83, 62 Stat. 38. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as a part of the Public Health Service Act which comprises this chapter.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 210. Pay and allowances

(a) Commissioned officers of Regular and Reserve Corps; special pay for active duty; incentive special pay for Public Health Service nurses

(1) Commissioned officers of the Regular and Reserve Corps shall be entitled to receive such pay and allowances as are now or may hereafter be authorized by law.

(2)(A) Except as provided in subparagraph (B), commissioned medical and dental officers in the Regular and Reserve Corps shall while on active duty be paid special pay in the same amounts as, and under the same terms and conditions which apply to, the special pay now or hereafter paid to commissioned medical and dental officers of the Armed Forces under chapter 5 of title 37.

(B) A commissioned medical officer in the Regular or Reserve Corps (other than an officer serving in the Indian Health Service) may not receive additional special pay under section 302(a)(4) of title 37 for any period during which the officer is providing obligated service under (i) section 254m of this title, (ii) section 234(e)[1] of this title (as such section was in effect prior to October 1, 1977), or (iii) section 294u[1] of this title (as such section was in effect between October 1, 1977, and August 13, 1981).

(3) Commissioned nurse officers in the Regular and Reserve Corps shall, while in active duty, be paid incentive special pay in the same amounts as, and under the same terms and conditions which apply to, the incentive special pay now or hereafter paid to commissioned nurse officers of the Armed Forces under chapter 5 of title 37.

(b) Purchase of supplies

Commissioned officers on active duty and retired officers entitled to retired pay pursuant to section 211(g)(3), 212, or 213a(a) of this title, shall be permitted to purchase supplies from the Army, Navy, Air Force, and Marine Corps at the same price as is charged officers thereof.

(c) Members of national advisory or review councils or committees

Members of the National Advisory Health Council and members of other national advisory or review councils or committees established under this chapter, including members of the Technical Electronic Product Radiation Safety Standards Committee and the Board of Regents of the National Library of Medicine, but excluding ex officio members, while attending conferences or meetings of their respective councils or committees or while otherwise serving at the request of the Secretary, shall be entitled to receive compensation at rates to be fixed by the Secretary, but at rates not exceeding the daily equivalent of the rate specified at the time of such service for grade GS–18 of the General Schedule, including traveltime; and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

[1] See References in Text note below.

(d) Field employees

Field employees of the Service, except those employed on a per diem or fee basis, who render part-time duty and are also subject to call at any time for services not contemplated in their regular part-time employment, may be paid annual compensation for such part-time duty and, in addition, such fees for such other services as the Surgeon General may determine; but in no case shall the total paid to any such employee for any fiscal year exceed the amount of the minimum annual salary rate of the classification grade of the employee.

(e) Additional pay for service at Gillis W. Long Hansen's Disease Center

Any civilian employee of the Service who is employed at the Gillis W. Long Hansen's Disease Center on April 7, 1986, shall be entitled to receive, in addition to any compensation to which the employee may otherwise be entitled and for so long as the employee remains employed at the Center, an amount equal to one-fourth of such compensation.

(f) Allowances included in fellowships

Individuals appointed under section 209(g) of this title shall have included in their fellowships such stipends or allowances, including travel and subsistence expenses, as the Surgeon General may deem necessary to procure qualified fellows.

(g) Positions in professional, scientific and executive service; compensation; appointment

The Secretary is authorized to establish and fix the compensation for, within the Public Health Service, not more than one hundred and seventy-nine positions, of which not less than one hundred and fifteen shall be for the National Institutes of Health, not less than five shall be for the National Institute on Alcohol Abuse and Alcoholism for individuals engaged in research on alcohol abuse and alcoholism, not less than ten shall be for the National Center for Health Services Research, not less than twelve shall be for the National Center for Health Statistics, and not less than seven shall be for the National Center for Health Care Technology, in the professional, scientific, and executive service, each position being established to effectuate those research and development activities of the Public Health Service which require the services of specially qualified scientific, professional and administrative personnel: *Provided*, That the rates of compensation for positions established pursuant to the provisions of this subsection shall not be less than the minimum rate of grade 16 of the General Schedule nor more than (1) the highest rate of grade 18 of the General Schedule, or (2) in the case of two such positions, the rate specified, at the time the service in the position is performed, for level II of the Executive Schedule (5 U.S.C. 5313); and such rates of compensation for all positions included in this proviso shall be subject to the approval of the Director of the Office of Personnel Management. Positions created pursuant to this subsection shall be included in the classified civil service of the United States, but appointments to such positions shall be made without competitive examination upon approval of the proposed appointee's qualifications

by the Director of the Office of Personnel Management or such officers or agents as it may designate for this purpose.

(July 1, 1944, ch. 373, title II, § 208, formerly § 209, 58 Stat. 686; July 3, 1946, ch. 538, § 5(a), 60 Stat. 422; renumbered § 208 and amended Feb. 28, 1948, ch. 83, § 5(a), (g), (h), 62 Stat. 40; June 16, 1948, ch. 481, § 4(d), 62 Stat. 467; June 24, 1948, ch. 621, § 4(d), 62 Stat. 601; Oct. 12, 1949, ch. 681, title V, § 521(b), 63 Stat. 834; Aug. 9, 1950, ch. 654, § 1, 64 Stat. 426; Aug. 15, 1950, ch. 714, §§ 3(e), 4(b), 64 Stat. 447; 1953 Reorg. Plan No. 1, §§ 5, 8 eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1955, ch. 437, title II, § 201, 69 Stat. 407; June 29, 1956, ch. 477, title II, § 201, 70 Stat. 430; July 31, 1956, ch. 804, title I, § 117(b), 70 Stat. 741; June 20, 1958, Pub. L. 85–462, § 12(e), 72 Stat. 214; Sept. 6, 1958, Pub. L. 85–929, § 9, 72 Stat. 1789; Apr. 8, 1960, Pub. L. 86–415, § 5(b), 74 Stat. 34; Sept. 2, 1960, Pub. L. 86–703, title II, § 201, 74 Stat. 764; Sept. 7, 1962, Pub. L. 87–649, §§ 11(3), 14b, 76 Stat. 497, 499; Oct. 11, 1962, Pub. L. 87–793, § 1001(d), 76 Stat. 864; Aug. 14, 1964, Pub. L. 88–426, title III, § 305(1), 78 Stat. 422; Oct. 15, 1968, Pub. L. 90–574, title V, § 501, 82 Stat. 1012; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(1), 84 Stat. 1310; Nov. 18, 1971, Pub. L. 92–157, title III, § 301(a), 85 Stat. 463; Aug. 1, 1977, Pub. L. 95–83, title III, § 312, 91 Stat. 398; Nov. 9, 1978, Pub. L. 95–623, § 11(a), 92 Stat. 3455; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; July 10, 1979, Pub. L. 96–32, § 7(g), 93 Stat. 84; Oct. 7, 1980, Pub. L. 96–398, title VIII, § 805, 94 Stat. 1608; Oct. 7, 1985, Pub. L. 99–117, § 3(a), 99 Stat. 491; Apr. 7, 1986, Pub. L. 99–272, title XVII, § 17002(a)(1), (b), 100 Stat. 359; Nov. 4, 1988, Pub. L. 100–607, title VII, § 706, 102 Stat. 3159.)

References in Text

Section 234 of this title, referred to in subsec. (a)(2)(B), was repealed by Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2281, effective Oct. 1, 1977.

Section 294u of this title, referred to in subsec. (a)(2)(B), was in the original a reference to section 752 of act July 1, 1944, which was renumbered section 338B by Pub. L. 97–35, title XXVII, § 2709(a), Aug. 13, 1981, 95 Stat. 908, and transferred to section 254m of this title. Section 338B of act July 1, 1944, was renumbered section 338C by Pub. L. 100–177, title II, § 201(2), Dec. 1, 1987, 101 Stat. 992.

Classified civil service, referred to in subsec. (g), as meaning ''competitive service'', see section 2102(c) of Title 5, Government Organization and Employees.

Prior Provisions

A prior section 208 of act July 1, 1944, was renumbered section 207 and is classified to section 209 of this title.

Amendments

1988—Subsec. (a)(3). Pub. L. 100–607 added par. (3).

1986—Subsec. (a)(2)(B). Pub. L. 99–272, § 17002(a)(1), inserted ''(other than an officer serving in the Indian Health Service)''.

Subsec. (e). Pub. L. 99–272, § 17002(b), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Whenever any noncommissioned officer or other employee of the Service is assigned for duty which the Surgeon General finds requires intimate contact with persons afflicted with leprosy, he may be entitled to receive, as provided by regulations of the President, in addition to any pay or compensation to which he may otherwise be entitled, not more than one-half of such pay or compensation.''

1985—Subsec. (a)(2). Pub. L. 99–117 substituted ''(A) Except as provided in subparagraph (B), commissioned'' for ''Commissioned'', and added subpar. (B).

1980—Subsec. (a). Pub. L. 96–398 redesignated existing provisions as par. (1) and added par. (2).

1979—Subsec. (c). Pub. L. 96–32 substituted ''section 5703 of title 5'' for ''section 5703(b) of title 5''.

1978—Subsec. (g). Pub. L. 95–623 increased limitation on establishment of positions to one hundred and seventy-nine from one hundred and fifty-five and required minimum number of positions for certain National Centers: ten, National Center for Health Services Research; twelve, National Center for Health Statistics; and seven, National Center for Health Care Technology.

1977—Subsec. (g). Pub. L. 95–83 increased limitation on establishment of positions to one hundred and fifty-five from one hundred and fifty and required not less than five for the National Institute on Alcohol Abuse and Alcoholism for individuals engaged in research on alcohol abuse and alcoholism.

1971—Subsec. (f). Pub. L. 92–157, which directed that ''subsection (g)'' be substituted for ''section 209(f)'', was executed by substituting ''section 209(g) of this title'' for ''section 209(f) of this title'', to reflect the probable intent of Congress.

1970—Subsec. (c). Pub. L. 91–515 extended coverage to encompass members of other national review councils or national advisory or review committees established under this chapter, including members of the Technical Electronic Product Radiation Safety Standards Committee and the Board of Regents of the National Library of Medicine, authorized service to be at the request of the Secretary in place of the Surgeon General, and revised rates of compensation and travel allowances.

1968—Subsec. (g). Pub. L. 90–574 inserted ''(1)'' after ''nor more than'' and added cl. (2).

1962—Subsec. (b). Pub. L. 87–649 struck out sentence which permitted commissioned officers on active duty to make allotments from their pay, and substituted ''Commissioned officers on active duty and retired officers'' for ''Such officers, and retired officers.'' See section 704 of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (g). Pub. L. 87–793 substituted provisions requiring the rates of compensation to be not less than the minimum rate of grade 16 nor more than the highest rate of grade 18 of the General Schedule, for provisions which prescribed annual rates of compensation of not less than $12,500 nor more than $19,000.

1960—Subsec. (b). Pub. L. 86–415 authorized retired officers entitled to retired pay pursuant to section 211(g)(3), 212, or 213a(a) of this title, to purchase supplies, and included the purchase of supplies from the Air Force.

Subsec. (g). Pub. L. 86–703 substituted ''one hundred and fifty'' for ''eighty-five'' and ''one hundred and fifteen'' for ''seventy-three''.

1958—Subsec. (g). Pub. L. 85–929 substituted ''in the professional, scientific, and executive service'' for ''in the professional and scientific service'', and substituted ''of specially qualified scientific, professional, and administrative personnel'' for ''of specially qualified scientific or professional personnel''.

Pub. L. 85–462, substituted ''eighty-five positions, of which not less than seventy-three shall be for the National Institutes of Health'' for ''sixty positions''.

1956—Subsec. (g). Act June 29, 1956, substituted ''$20,000'' for ''$15,000''.

1955—Subsec. (g). Act Aug. 1, 1955, increased from thirty to sixty the number of positions which the Administrator may establish in the professional and scientific service.

1950—Subsec. (b). Act Aug. 9, 1950, struck out ''and may be granted leaves of absence without any deduction from their pay'' after ''allotments from their pay'' in first sentence.

Subsec. (c). Act Aug. 15, 1950, § 3(e), made provisions applicable to members of all national advisory councils.

Subsec. (g). Act Aug. 15, 1950, § 4(b), added subsec. (g).

1949—Subsec. (a). Act Oct. 12, 1949, made section applicable to Reserve officers.

Subsec. (b). Act Oct. 12, 1949, redesignated subsec. (c) as (b) and repealed former subsec. (b) relating to Reserve officers.

Subsec. (c). Act Oct. 12, 1949, redesignated subsec. (e) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Act Oct. 12, 1949, redesignated subsec. (f) as (d) and repealed former subsec. (d) relating to female commissioned officers and defining ''dependent''.

Subsec. (e). Act Oct. 12, 1949, redesignated subsec. (g) as (e) and struck out references to allowances. Former subsec. (e) redesignated (c).

Subsec. (f). Act Oct. 12, 1949, redesignated subsec. (h) as (f). Former subsec. (f) redesignated (d).

Subsecs. (g), (h). Act Oct. 12, 1949, redesignated subsecs. (g) and (h) as (e) and (f), respectively.

1948—Subsec. (b). Act Feb. 28, 1948, inserted ''except as otherwise provided by law''.

Subsec. (e). Acts June 16, 1948, § 4(d), and June 24, 1948, § 4(d), made section applicable to the National Advisory Heart Council and increased the per diem of all members from $25 to $50, and made section applicable to the National Advisory Dental Research Council, respectively.

Subsec. (h). Act Feb. 28, 1948, substituted ''section 209(f) of this title'' for ''section 209(d) of this title''.

1946—Subsec. (e). Act July 3, 1946, inserted ''members of the National Advisory Mental Health Council''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 17002(a)(2) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as of October 7, 1985.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 3(b) of Pub. L. 99–117 provided that: ''The amendment made by subsection (a) [amending this section] shall not diminish any benefits under an agreement entered into before the date of enactment of this Act [Oct. 7, 1985] by a commissioned medical officer in the Regular Corps or the Reserve Corps of the Public Health Service.''

EFFECTIVE DATE OF 1962 AMENDMENTS

Amendment by Pub. L. 87–793 effective first day of first pay period which begins on or after Oct. 11, 1962, see section 1008 of Pub. L. 87–793.

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–415 effective July 1, 1960, see section 8(a) of Pub. L. 86–415, set out as a note under section 209 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment by Pub. L. 85–929 effective Sept. 6, 1958, see section 6(a) of Pub. L. 85–929, set out as a note under section 342 of Title 21, Food and Drugs.

Amendment by Pub. L. 85–462 effective June 20, 1958, see section 17(b) of Pub. L. 85–462.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act July 31, 1956, effective at beginning of first pay period commencing after June 30, 1956, see section 120 of act July 31, 1956.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 3(a) of act Aug. 9, 1950, provided that: ''Sections 1 and 2 of this Act [amending this section and enacting section 210–1 of this title] shall become effective on July 1, 1950.''

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949.

REPEALS

Act July 31, 1956, ch. 804, title I, § 117(b), 70 Stat. 741, cited as a credit to this section, which amended subsec. (g) of this section to increase the salary rates, was repealed by Pub. L. 88–426, title III, § 305(1), Aug. 14, 1964, 78 Stat. 422.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''Civil Service Commission'' in subsec. (g) pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, eff. Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

MAXIMUM PAY AND ALLOWANCES FOR SPECIFIC FISCAL YEARS

Pub. L. 100–436, title II, § 208, Sept. 20, 1988, 102 Stat. 1699, provided in part that: ''No funds appropriated for the fiscal year ending September 30, 1989, by this or any other Act, may be used to pay basic pay, special pays, basic allowances for subsistence and basic allowances for quarters of the commissioned corps of the Public Health Service described in section 204 of title 42, United States Code, at a level that exceeds 110 percent of the Executive Level I [5 U.S.C. 5312] annual rate of basic pay''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 100–202, § 101(h) [title II, § 208], Dec. 22, 1987, 101 Stat. 1329–256, 1329–274.

Pub. L. 99–500, § 101(i) [H.R. 5233, title II, § 208], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, § 101(i) [H.R. 5233, title II, § 208], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title II, § 208, Dec. 12, 1985, 99 Stat. 1119.

Pub. L. 98–619, title II, § 208, Nov. 8, 1984, 98 Stat. 3321.

Pub. L. 98–139, title II, § 208, Oct. 31, 1983, 97 Stat. 888.

NURSES AND ALLIED HEALTH PROFESSIONALS

Pub. L. 100–436, title II, § 214, Sept. 20, 1988, 102 Stat. 1700, provided that: ''Funds made available for fiscal year 1989 and hereafter to the National Institutes of Health shall be available for payment of nurses and allied health professionals using pay, schedule options, benefits, and other authorities as provided for the nurses of the Veterans' Administration under 38 U.S.C. chapter 73.''

CROSS REFERENCES

Allotments by commissioned officers of the Public Health Service, see section 704 of Title 37, Pay and Allowances of the Uniformed Services.

National advisory councils, see section 218 of this title.

Pay and allowances of officers of Public Health Service, see Title 37, Pay and Allowances of the Uniformed Services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 217a, 242k, 286b–2, 289 of this title; title 21 section 360kk.

§ 210–1. Annual and sick leave

(a) Regulations

In accordance with regulations of the President, commissioned officers of the Regular Corps and officers of the Reserve Corps on active duty may be granted annual leave and sick leave without any deductions from their pay and allowances: *Provided*, That such regulations shall not authorize annual leave to be accumulated in excess of sixty days.

(b) Repealed. Pub. L. 87–649, § 14b, Sept. 7, 1962, 76 Stat. 499

(c) Repealed. Pub. L. 96–76, title III, § 311, Sept. 29, 1979, 93 Stat. 586

(d) Definitions

For purposes of this section the term ''accumulated annual leave'' means unused accrued annual leave carried forward from one leave year into a succeeding leave year, and the term ''accrued annual leave'' means the annual leave accruing to an officer during one leave year.

(July 1, 1944, ch. 373, title II, § 219, as added Aug. 9, 1950, ch. 654, § 2, 64 Stat. 426; amended Sept. 7, 1962, Pub. L. 87–649, § 14b, 76 Stat. 499; Sept. 29, 1979, Pub. L. 96–76, title III, § 311, 93 Stat. 586.)

PARTIAL REPEAL OF SUBSECTION (d)

Subsection (d) of this section was repealed by Pub. L. 87–649, § 14b, Sept. 7, 1962, 76 Stat. 499, insofar as it was applicable to the last sentence of subsection (c) of this section which authorized a lump-sum payment to an officer credited with unused accumulated and accrued annual leave. See section 501 of Title 37, Pay and Allowances of the Uniformed Services.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96–76, repealed subsec. (c) which set forth limitations on granting of annual leave under subsec. (a) of this section.

1962—Subsec. (b). Pub. L. 87–649 repealed subsec. (b) which required forfeiture of all pay and allowances of an officer absent without leave. See section 503 of Title 37, Pay and Allowances of the Uniformed Services.

Subsec. (c). Pub. L. 87–649 repealed last sentence which authorized a lump-sum payment for unused accumulated and accrued annual leave on date of separation, retirement, or release from active duty. See section 501 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE

Section effective July 1, 1950, see section 3(a) of act Aug. 9, 1950, set out as an Effective Date of 1950 Amendment note under section 210 of this title.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, of Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

COMPENSATION FOR PRIOR ACCUMULATED AND ACCRUED LEAVE; LIMITATION; INAPPLICABLE TO OFFICERS ON TERMINAL LEAVE PRIOR TO JULY 1, 1950

Section 3(b), (c) of act Aug. 9, 1950, provided that any officer credited with more than sixty days of accumulated and accrued leave on June 30, 1949, be compensated for so much of such leave as exceeds sixty days, that such compensation be due and payable on July 1, 1950, and that the provisions of this Act not apply to any officer on terminal leave preceding separation, retirement, or release from active duty.

AVAILABILITY OF FUNDS

Section 4 of act Aug. 9, 1950, provided for the availability of funds for payment of compensation for prior accumulated and accrued leave for any officer under section 3 of this Act.

LEAVE REGULATIONS

Section 5 of act Aug. 9, 1950, provided that: ''Except insofar as the provisions of this Act [enacting this section, amending section 210 of this title, and enacting provisions set out as notes under this section and section 210 of this title] are inconsistent therewith, leave regulations adopted prior to the enactment of this Act [Aug. 9, 1950], pursuant to the Public Health Service Act [this chapter], shall remain in effect until repealed, amended, or superseded.''

§ 210a. Repealed. Pub. L. 87–649, § 14b, Sept. 7, 1962, 76 Stat. 499

Section, act Feb. 28, 1948, ch. 83, § 5(e), (f), 62 Stat. 41, related to service credit for commissioned officers on

active duty Feb. 28, 1948, and to service credit for pay and promotion purposes of certain appointees during period Feb. 28, 1948, to July 1, 1948.

§ 210b. Professional categories

(a) Division of corps; basis of categories

For the purpose of establishing eligibility of officers of the Regular Corps for promotions, the Surgeon General shall by regulation divide the corps into professional categories. Each category shall, as far as practicable, be based upon one of the subjects of examination set forth in section 209(a)(1) of this title or upon a subdivision of such subject, and the categories shall be designed to group officers by fields of training in such manner that officers in any one grade in any one category will be available for similar duty in the discharge of the several functions of the Service.

(b) Assignment of officers

Each officer of the Regular Corps on active duty shall, on the basis of his training and experience, be assigned by the Surgeon General to one of the categories established by regulations under subsection (a) of this section. Except upon amendment of such regulations, no assignment so made shall be changed unless the Surgeon General finds (1) that the original assignment was erroneous, or (2) that the officer is equally well qualified to serve in another category to which he has requested to be transferred, and that such transfer is in the interests of the Service.

(c) Maximum number of officers in each category

Within the limits fixed by the Secretary in regulations under section 207(d) of this title for any fiscal year, the Surgeon General shall determine for each category in the Regular Corps the maximum number of officers authorized to be in each of the grades from the warrant officer (W–1) grade to the director grade, inclusive.

(d) Vacancies in grade for purposes of promotion

The excess of the number so fixed for any grade in any category over the number of officers of the Regular Corps on active duty in such grade in such category (including in the case of the director grade, officers holding such grade in accordance with section 207(c) of this title) shall for the purpose of promotions constitute vacancies in such grade in such category. For purposes of this subsection, an officer who has been temporarily promoted or who is temporarily holding the grade of director in accordance with section 207(c) of this title shall be deemed to hold the grade to which so promoted or which he is temporarily holding; but while he holds such promotion or grade, and while any officer is temporarily assigned to a position pursuant to section 206(c) of this title, the number fixed under subsection (c) of this section for the grade of his permanent rank shall be reduced by one.

(e) Absence of vacancy in grade as affecting promotion

The absence of a vacancy in a grade in a category shall not prevent an appointment to such grade pursuant to section 209 of this title, a permanent length of service promotion, or the recall of a retired officer to active duty; but the making of such an appointment, promotion, or recall shall be deemed to fill a vacancy if one exists.

(f) Vacancy in grade as affecting maximum number for each category

Whenever a vacancy exists in any grade in a category the Surgeon General may increase by one the number fixed by him under subsection (c) of this section for the next lower grade in the same category, without regard to the numbers fixed in regulations under section 207(d) of this title; and in that event the vacancy in the higher grade shall not be filled except by a permanent promotion, and upon the making of such promotion the number for the next lower grade shall be reduced by one.

(July 1, 1944, ch. 373, title II, § 209, as added Feb. 28, 1948, ch. 83, § 5(i), 62 Stat. 41; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 29, 1979, Pub. L. 96–76, title III, § 306, 93 Stat. 585.)

PRIOR PROVISIONS

A prior section 209 of act July 1, 1944, was renumbered section 208 and is classified to section 210 of this title.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96–76 substituted ''warrant officer (W–1)'' for ''assistant''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–76 effective Oct. 1, 1979, see section 314 of Pub. L. 96–76, set out as a note under section 206 of this title.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 211 of this title.

§ 211. Promotion of commissioned officers

(a) Permanent or temporary promotions; examination

Promotions of officers of the Regular Corps to any grade up to and including the director grade shall be either permanent promotions based on length of service, other permanent promotions to fill vacancies, or temporary promotions. Permanent promotions shall be made by the President, by and with the advice and consent of the Senate, and temporary promotions shall be

made by the President. Each permanent promotion shall be to the next higher grade, and shall be made only after examination given in accordance with regulations of the President.

(b) Promotion to certain grades only to fill vacancies; regulations; "restricted grade" defined

The President may by regulation provide that in a specified professional category permanent promotions to the senior grade, or to both the full grade and the senior grade, shall be made only if there are vacancies in such grade. A grade in any category with respect to which such regulations have been issued is referred to in this section as a ''restricted grade''.

(c) Examinations

Examinations to determine qualification for permanent promotions may be either noncompetitive or competitive, as the Surgeon General shall in each case determine; except that examinations for promotions to the assistant or senior assistant grade shall in all cases be noncompetitive. The officers to be examined shall be selected by the Surgeon General from the professional category, and in the order of seniority in the grade, from which promotion is to be recommended. In the case of a competitive examination the Surgeon General shall determine in advance of the examination the number (which may be one or more) of officers who, after passing the examination, will be recommended to the President for promotion; but if the examination is one for promotions based on length of service, or is one for promotions to fill vacancies other than vacancies in the director grade or in a restricted grade, such number shall not be less than 80 per centum of the number of officers to be examined.

(d) Permanent promotions to qualified officers on length of service

Officers of the Regular Corps, found pursuant to subsection (c) of this section to be qualified, shall be given permanent promotions based on length of service, as follows:

(1) Officers in the warrant officer (W–1) grade, chief warrant officer (W–2) grade, chief warrant officer (W–3) grade, chief warrant officer (W–4) grade, and junior assistant grade shall be promoted at such times as may be prescribed in regulations of the President.

(2) Officers with permanent rank in the assistant grade, the senior assistant grade, and the full grade shall (except as provided in regulations under subsection (b) of this section) be promoted after completion of three, ten, and seventeen years, respectively, of service in grades above the junior assistant grade; and such promotions, when made, shall be effective, for purposes of pay and seniority in grade, as of the day following the completion of such years of service. An officer with permanent rank in the assistant, senior assistant, or full grade who has not completed such years of service shall be promoted at the same time, and his promotion shall be effective as of the same day, as any officer junior to him in the same grade in the same professional category who is promoted under this paragraph.

(e) Promotion of professional category officers to fill certain vacancies

Officers in a professional category of the Regular Corps, found pursuant to subsection (c) of this section to be qualified, may be given permanent promotions to fill any or all vacancies in such category in the senior assistant grade, the full grade, the senior grade, or the director grade; but no officer who has not had one year of service with permanent or temporary rank in the next lower grade shall be promoted to any restricted grade or to the director grade.

(f) Reexamination upon failure of promotion; effective date of promotion

If an officer who has completed the years of service required for promotion to a grade under paragraph (2) of subsection (d) of this section fails to receive such promotion, he shall (unless he has already been twice examined for promotion to such grade) be once reexamined for promotion to such grade. If he is thereupon promoted (otherwise than under subsection (e) of this section), the effective date of such promotion shall be one year later than it would have been but for such failure. Upon the effective date of any permanent promotion of such officer to such grade, he shall be considered as having had only the length of service required for such promotion which he previously failed to receive.

(g) Separation from service upon failure of promotion

If, for reasons other than physical disability, an officer of the Regular Corps in the warrant officer (W–1) grade or junior assistant grade is found pursuant to subsection (c) of this section not to be qualified for promotion he shall be separated from the Service. If, for reasons other than physical disability, an officer of the Regular Corps in the chief warrant officer (W–2), chief warrant officer (W–3), assistant, senior assistant, or full grade, after having been twice examined for promotion (other than promotion to a restricted grade), fails to be promoted—

(1) if in the chief warrant officer (W–2) or assistant grade he shall be separated from the Service and paid six months' basic pay and allowances;

(2) if in the chief warrant officer (W–3) or senior assistant grade he shall be separated from the Service and paid one year's basic pay and allowances;

(3) if in the full grade he shall be considered as not in line for promotion and shall, at such time thereafter as the Surgeon General may determine, be retired from the Service with retired pay (unless he is entitled to a greater amount by reason of another provision of law)—

(A) in the case of an officer who first became a member of a uniformed service before September 8, 1980, at the rate of 2½ percent of the retired pay base determined under section 1406(h) of title 10 for each year, not in excess of 30, of his active commissioned service in the Service; or

(B) in the case of an officer who first became a member of a uniformed service on or after September 8, 1980, at the rate determined by multiplying—

(i) the retired pay base determined under section 1407 of title 10; by

(ii) the retired pay multiplier determined under section 1409 of such title for the number of years of his active commissioned service in the Service.

(h) Separation from service upon refusal to stand examination

If an officer of the Regular Corps, eligible to take an examination for promotion, refuses to take such examination, he may be separated from the Service in accordance with regulations of the President.

(i) Review of record; separation from service

At the end of his first three years of service, the record of each officer of the Regular Corps originally appointed to the senior assistant grade or above, shall be reviewed in accordance with regulations of the President and, if found not qualified for further service, he shall be separated from the Service and paid six months' pay and allowances.

(j) Determination of order of seniority

(1) The order of seniority of officers in a grade in the Regular Corps shall be determined, subject to the provisions of paragraph (2) of this subsection, by the relative length of time spent in active service after the effective date of each such officer's original appointment or permanent promotion to that grade. When permanent promotions of two or more officers to the same grade are effective on the same day, their relative seniority shall be the same as it was in the grade from which promoted. In all other cases of original appointments or permanent promotions (or both) to the same grade effective on the same day, relative seniority shall be determined in accordance with regulations of the President.

(2) In the case of an officer originally appointed in the Regular Corps to the grade of assistant or above, his seniority in the grade to which appointed shall be determined after inclusion, as service in such grade, of any active service in such grade or in any higher grade in the Reserve Corps, but (if the appointment is to the grade of senior assistant or above) only to the extent of whichever of the following is greater: (A) His active service in such grade or any higher grade in the Reserve Corps after the first day on which, under regulations in effect on the date of his appointment to the Regular Corps, he had the training and experience necessary for such appointment, or (B) the excess of his total active service in the Reserve Corps (above the grade of junior assistant) over three years if his appointment in the Regular Corps is to the senior assistant grade, over ten years if the appointment is to the full grade, or over seventeen years if the appointment is to the senior grade.

(k) Temporary promotions; fill vacancy in higher grade; war or national emergency; selection of officers; termination of appointment

Any commissioned officer of the Regular Corps in any grade in any professional category may be recommended to the President for temporary promotion to fill a vacancy in any higher grade in such category, up to and including the director grade. In time of war, or of national emergency proclaimed by the President, any commissioned officer of the Regular Corps in any grade in any professional category may be recommended to the President for promotion to any higher grade in such category, up to and including the director grade, whether or not a vacancy exists in such grade. The selection of officers to be recommended for temporary promotions shall be made in accordance with regulations of the President. Promotion of an officer recommended pursuant to this subsection may be made without regard to length of service, without examination, and without vacating his permanent appointment, and shall carry with it the pay and allowances of the grade to which promoted. Such promotions may be terminated at any time, as may be directed by the President.

(*l*) Determination of requirements of Service by Secretary; assignment of Reserve Officers to professional categories; temporary promotions; termination of temporary promotions

Whenever the number of officers of the Regular Corps on active duty, plus the number of officers of the Reserve Corps who have been on active duty for thirty days or more, exceeds the authorized strength of the Regular Corps, the Secretary shall determine the requirements of the Service in each grade in each category, based upon the total number of officers so serving on active duty and the tasks being performed by the Service; and the Surgeon General shall thereupon assign each officer of the Reserve Corps on active duty to a professional category. If the Secretary finds that the number of officers fixed under section 210b(c) of this title for any grade and category (or the number of officers, including officers of the Reserve Corps, on active duty in such grade in such category, if such number is greater than the number fixed under section 210b(c) of this title) is insufficient to meet such requirements of the Service, officers of either the Regular Corps or the Reserve Corps may be recommended for temporary promotion to such grade in such category. Any such promotion may be terminated at any time, as may be directed by the President.

(m) Acceptance of promotion; oath and affidavit

Any officer of the Regular Corps, or any officer of the Reserve Corps on active duty, who is promoted to a higher grade shall, unless he expressly declines such promotion, be deemed for all purposes to have accepted such promotion; and shall not be required to renew his oath of office, or to execute a new affidavit as required by section 3332 of title 5.

(July 1, 1944, ch. 373, title II, § 210, 58 Stat. 687; Feb. 28, 1948, ch. 83, § 6(a), 62 Stat. 42; Oct. 12, 1949, ch. 681, title V, § 521(c), 63 Stat. 835; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Apr. 27, 1956, ch. 211, § 4(a), 70 Stat. 117; Apr. 8, 1960, Pub. L. 86–415, § 5(c), 74 Stat. 34; Sept. 7, 1962, Pub. L. 87–649, § 11(2), 76 Stat. 497; Sept. 29, 1979, Pub. L. 96–76, title III, § 307, 93 Stat. 585; Sept. 8, 1980, Pub. L. 96–342, title VIII, § 813(h)(1), 94 Stat. 1110; July 1, 1986, Pub. L. 99–348, title II, § 207(a), 100 Stat. 701.)

CODIFICATION

In subsec. (m), ''section 3332 of title 5'' substituted for ''the Act of December 11, 1926, as amended (5 U.S.C. 21a)'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1986—Subsec. (g)(3). Pub. L. 99–348 added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

''(A) in the case of an officer who first became a member of a uniformed service before September 8, 1980, at the rate of 2½ per centum of basic pay of the permanent grade held by him at the time of retirement for each year, not in excess of thirty, of his active commissioned service in the Service; or

''(B) in the case of an officer who first became a member of a uniformed service on or after September 8, 1980, 2½ per centum of the monthly retired pay base computed under section 1407(h) of title 10, for each year, not in excess of thirty, of his active commissioned service in the Service.''

1980—Subsec. (g)(3). Pub. L. 96–342 revised provisions into subpars. (A) and (B) and substituted provisions respecting computation of retired pay for officers who became members of the uniformed service before Sept. 8, 1980, and for officers who became members of the uniformed service on or after Sept. 8, 1980, for provisions respecting computation of retired pay for officers.

1979—Subsec. (d)(1). Pub. L. 96–76, § 307(a), inserted applicability to warrant officers and chief warrant officers.

Subsec. (g). Pub. L. 96–76, § 307(b), in provision before par. (1), inserted applicability to separation from Service of warrant officers and chief warrant officers subsequent to one examination or two examinations, respectively, in par. (1), inserted applicability to a chief warrant officer (W–2), and in par. (2), inserted applicability to a chief warrant officer (W–3).

1962—Subsec. (g). Pub. L. 87–649 substituted ''basic pay'' for ''pay'' in cls. (1) and (2).

1960—Subsec. (g). Pub. L. 86–415 substituted ''of the basic pay of the permanent grade held by him at the time of retirement for each year'' for ''of his active duty pay at the time of retirement for each complete year'' in cl. (3).

1956—Subsec. (d)(2). Act Apr. 27, 1956, struck out ''pay period and for purposes of'' before ''seniority in grade''.

1949—Subsec. (g). Act Oct. 12, 1949, struck out ''incurred in line of duty'' wherever appearing.

1948—Act Feb. 28, 1948, amended subsecs. (a) to (c) generally and added subsecs. (d) to (m).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–76 effective Oct. 1, 1979, see section 314 of Pub. L. 96–76, set out as a note under section 206 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–649 effective Nov. 1, 1962, see section 15 of Pub. L. 87–649, set out as an Effective Date note preceding section 101 of Title 37, Pay and Allowances of the Uniformed Services.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 210, 212 of this title; title 10 section 1406.

§ 211a. Repealed. Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936

Section, act July 1, 1944, ch. 373, title XIII, § 1311, formerly title VII, § 711, as added Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; renumbered title VIII, § 811, July 30, 1956, ch. 779, § 3(b), 70 Stat. 721; renumbered title IX, § 911, Sept. 4, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919; renumbered title X, § 1011, Oct. 6, 1965, Pub. L. 89–239, § 3(b), 79 Stat. 931; renumbered title XI, § 1111, Dec. 24, 1970, Pub. L. 91–572, § 6(b), 84 Stat. 1506; renumbered title XII, § 1211, May 16, 1972, Pub. L. 92–294, § 3(b), 86 Stat. 137; renumbered title XIII, § 1311, Nov. 16, 1973, Pub. L. 93–154, § 2(b)(2), 87 Stat. 604, provided for appointment to higher grades of Public Health Service officers for mental health and hospital construction activities.

§ 211b. Repealed. Pub. L. 94–412, title V, § 501(f), Sept. 14, 1976, 90 Stat. 1258

Section, act Feb. 28, 1948, ch. 83, § 6(b)–(f), 62 Stat. 45, dealt with promotion of Public Health Service officers.

SAVINGS PROVISION

Repeal not to affect any action taken or proceeding pending at the time of repeal, see section 501(h) of Pub. L. 94–412, set out as a note under section 1601 of Title 50, War and National Defense.

§ 211c. Promotion credit for medical officers in assistant grade

Any medical officer of the Regular Corps of the Public Health Service who—

(1)(A) was appointed to the assistant grade in the Regular Corps and whose service in such Corps has been continuous from the date of appointment or (B) may hereafter be appointed to the assistant grade in the Regular Corps, and

(2) had or will have completed a medical internship on the date of such appointment,

shall be credited with one year for purposes of promotion and seniority in grade, except that no such credit shall be authorized if the officer has received or will receive similar credit for his internship under other provisions of law. In the case of an officer on active duty on the effective date of this section who is entitled to the credit authorized herein, the one year shall be added to the promotion and seniority-in-grade credits with which he is credited on such date.

(July 1, 1944, ch. 373, title II, § 220, as added Apr. 30, 1956, ch. 223, § 3, 70 Stat. 121.)

REFERENCES IN TEXT

For ''the effective date of this section'', referred to in text, see section 7 of act Apr. 30, 1956, which provided in part that this section shall become effective the first day of the month following the day of enactment, Apr. 30, 1956.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 212. Retirement of commissioned officers

(a) Age; voluntariness; length of service; computation of retired pay

(1) A commissioned officer of the Service shall, if he applies for retirement, be retired on or after the first day of the month following the month in which he attains the age of sixty-four years. This paragraph does not permit or require the involuntary retirement of any individual because of the age of the individual.

(2) A commissioned officer of the Service may be retired by the Secretary, and shall be retired if he applies for retirement, on the first day of any month after completion of thirty years of active service.

(3) Any commissioned officer of the Service who has had less than thirty years of active service may be retired by the Secretary, with or without application by the officer, on the first day of any month after completion of twenty or more years of active service of which not less than ten are years of active commissioned service in any of the uniformed services.

(4) Except as provided in paragraph (6), a commissioned officer retired pursuant to paragraph (1), (2), or (3) who was (in the case of an officer in the Reserve Corps) on active duty with the Service on the day preceding such retirement shall be entitled to receive retired pay at the rate of 2½ per centum of the basic pay of the highest grade held by him as such officer and in which, in the case of a temporary promotion to such grade, he has performed active duty for not less than six months, (A) for each year of active service, or (B) if it results in higher retired pay, for each of the following years:

(i) his years of active service (determined without regard to subsection (d) of this section) as a member of a uniformed service; plus

(ii) in the case of a medical or dental officer, four years and, in the case of a medical officer, who has completed one year of medical internship or the equivalent thereof, one additional year, the four years and the one year to be reduced by the period of active service performed during such officer's attendance at medical school or dental school or during his medical internship; plus

(iii) the number of years of service with which he was entitled to be credited for purposes of basic pay on May 31, 1958, or (if higher) on any date prior thereto, reduced by any such year included under clause (i) and further reduced by any such year with which he was entitled to be credited under paragraphs (7) and (8) of section 205(a) of title 37 on any date before June 1, 1958;

except that (C) in the case of any officer whose retired pay, so computed, is less than 50 per centum of such basic pay, who retires pursuant to paragraph (1) of this subsection, who has not less than twelve whole years of active service (computed without the application of subsection (e) of this section), and who does not use, for purposes of a retirement annuity under subchapter III of chapter 83 of title 5, any service which is also creditable in computing his retired pay from the Service, it shall, instead, be 50 per centum of such pay, and (D) the retired pay of an officer shall in no case be more than 75 per centum of such basic pay.

(5) With the approval of the President, a commissioned officer whose service as Surgeon General, Deputy Surgeon General, or Assistant Surgeon General has totaled four years or more and who has had not less than twenty-five years of active service in the Service may retire voluntarily at any time; and except as provided in paragraph (6), his retired pay shall be at the rate of 75 per centum of the basic pay of the highest grade held by him as such officer.

(6) The retired pay of a commissioned officer retired under this subsection who first became a member of a uniformed service after September 7, 1980, is determined by multiplying—

(A) the retired pay base determined under section 1407 of title 10; by

(B) the retired pay multiplier determined under section 1409 of such title for the number of years of service credited to the officer under paragraph (4).

(7) Retired pay computed under section 211(g)(3) of this title or under paragraph (4) or (5) of this subsection, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

(b) Basic pay of highest temporary grade

For purposes of subsection (a) of this section, the basic pay of the highest grade to which a commissioned officer has received a temporary promotion means the basic pay to which he would be entitled if serving on active duty in such grade on the date of his retirement.

(c) Recall to active duty

A commissioned officer, retired for reasons other than for failure of promotion to the senior grade, may (1) if an officer of the Regular Corps or an officer of the Reserve Corps entitled to retired pay under subsection (a) of this section, be involuntarily recalled to active duty during such times as the Commissioned Corps constitutes a branch of the land or naval forces of the United States, and (2) if an officer of either the Regular or Reserve Corps, be recalled to active duty at any time with his consent.

(d) "Active service" defined

The term ''active service'', as used in subsection (a) of this section, includes:

(1) all active service in any of the uniformed services;

(2) active service with the Public Health Service, other than as a commissioned officer, which the Surgeon General determines is comparable to service performed by commissioned officers of the Service, except that, if there are more than five years of such service only the last five years thereof may be included;

(3) all active service (other than service included under the preceding provisions of this subsection) which is creditable for retirement purposes under laws governing the retirement of members of any of the uniformed services; and

(4) service performed as a member of the Senior Biomedical Research Service established by section 237 of this title, except that, if there are more than 5 years of such service, only the last 5 years thereof may be included.

(e) Crediting of part of year

For the purpose of determining the number of years by which a percentage of the basic pay of an officer is to be multiplied in computing the amount of his retired pay pursuant to section 211(g)(3) of this title or paragraph (4) of subsection (a) of this section, each full month of service that is in addition to the number of full years of service credited to an officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded.

(f) Retirement or separation for physical disability

For purposes of retirement or separation for physical disability under chapter 61 of title 10, a commissioned officer of the Service shall be credited, in addition to the service described in section 1208(a)(2) of that title, with active service with the Public Health Service, other than as a commissioned officer, which the Surgeon General determines is comparable to service performed by commissioned officers of the Service, except that, if there are more than five years of such service, only the last five years thereof may be so credited. For such purposes, such section 1208(a)(2) shall be applicable to officers of the Regular or Reserve Corps of the Service.

(July 1, 1944, ch. 373, title II, §211, 58 Stat. 688; Feb. 28, 1948, ch. 83, §7, 62 Stat. 46; Oct. 12, 1949, ch. 681, title V, §521(d), 63 Stat. 835; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Apr. 27, 1956, ch. 211, §5(a)–(c), 70 Stat. 117; Aug. 10, 1956, ch. 1041, §5, 70A Stat. 620; Apr. 8, 1960, Pub. L. 86–415, §4, 74 Stat. 33; May 14, 1970, Pub. L. 91–253, §1, 84 Stat. 216; Sept. 29, 1979, Pub. L. 96–76, title III, §308, 93 Stat. 585; Sept. 8, 1980, Pub. L. 96–342, title VIII, §813(h)(2), 94 Stat. 1110; July 27, 1981, Pub. L. 97–25, title III, §303(b), 95 Stat. 145; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2765(a), 95 Stat. 932; Sept. 24, 1983, Pub. L. 98–94, title IX, §§922(d), 923(f), 97 Stat. 642, 643; July 1, 1986, Pub. L. 99–348, title II, §207(b), 100 Stat. 702; Nov. 5, 1990, Pub. L. 101–509, title V, §529 [title III, §304(b)], 104 Stat. 1427, 1464.)

CODIFICATION

In subsec. (a)(4), ''subchapter III of chapter 83 of title 5'' substituted for ''the Civil Service Retirement Act'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1990—Subsec. (d)(4). Pub. L. 101–509 added par. (4).

1986—Subsec. (a)(6). Pub. L. 99–348 amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''In computing retired pay under paragraph (4) or (5) in the case of any commissioned officer who first became a member of a uniformed service on or after September 8, 1980, the monthly retired pay base computed under section 1407(h) of title 10 shall be used in lieu of using the basic pay of the highest grade held by him as such officer.''

1983—Subsec. (a)(7). Pub. L. 98–94, §922(d), added par. (7).

Subsec. (e). Pub. L. 98–94, §923(f), substituted ''each full month of service that is in addition to the number of full years of service credited to an officer is counted as one-twelfth of a year and any remaining fractional part of a month is disregarded'' for ''a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded''.

1981—Subsec. (a)(1). Pub. L. 97–35 substituted ''shall, if he applies for retirement, be retired on or after'' for ''shall be retired on'', and substituted provisions relating to involuntary retirement as a result of age, for provisions relating to inapplicability to the Surgeon General.

Pub. L. 97–25 inserted provision that this paragraph does not apply to Surgeon General.

1980—Subsec. (a)(4). Pub. L. 96–342, §813(h)(2)(A), substituted ''Except as provided in paragraph (6), a'' for ''A''.

Subsec. (a)(5). Pub. L. 96–342, §813(h)(2)(B), substituted ''except as provided in paragraph (6), his'' for ''his''.

Subsec. (a)(6). Pub. L. 96–342, §813(h)(2)(C), added par. (6).

1979—Subsec. (e). Pub. L. 96–76 struck out requirement respecting active service for purposes of credit.

1970—Subsec. (a)(4). Pub. L. 91–253 inserted ''plus'' after the semicolon at end of cl. (ii) and added cl. (iii).

1960—Pub. L. 86–415 amended section generally, and among other changes, authorized retirement of commissioned officers who have had less than 30 years of active service any time after the completion of 20 years of active service, permitted persons who have served as Deputy Surgeons General or Assistant Surgeons General for four or more years and who have had at least 25 years of active service to retire voluntarily at any time, provided for the recall to active duty of officers of the Reserve Corps entitled to retired pay under subsection (a) of this section during such times as the Corps constitutes a branch of the land or naval forces of the United States, authorized credit, for retirement purposes, of active service in the uniformed services and limited to five years the crediting of active service with the Public Health Service other than as a commissioned officer, and established the methods for computation of retired pay for active duty officers retiring for age or length of service.

1956—Subsec. (a). Act Apr. 27, 1956, §5(a), authorized crediting of noncommissioned service for purposes of retirement.

Subsec. (b)(1). Act Apr. 27, 1956, §5(b), authorized crediting of noncommissioned service in the Service for purposes of retirement.

Subsec. (c). Act Apr. 27, 1956, §5(c), permitted recall of retired officers of the Regular Corps without their consent whenever the Regular Corps has military status, and authorized recall of retired officers of the Regular or Reserve Corps with their consent at any time.

Subsec. (g). Act Aug. 10, 1956, provided for crediting of service for purposes of retirement or separation for physical disability under chapter 61 of title 10.

1949—Subsec. (a). Act Oct. 12, 1949, redesignated subsec. (b) as (a), substituted ''subsection (b)'' for ''subsection (c)'' and repealed former subsec. (a) relating to retirement for disability or disease.

Subsec. (b). Act Oct. 12, 1949, redesignated subsec. (c) as (b) and struck out reference to retirement for disability or disease. Former subsec. (b) redesignated (a).

Subsec. (c). Act Oct. 12, 1949, redesignated subsec. (d) as (c) and struck out reference to recovery from a disability. Former subsec. (c) redesignated (b).

Subsecs. (d) to (f). Act Oct. 12, 1949, redesignated subsecs. (e) to (g) as (d) to (f), respectively. Former subsec. (d) redesignated (c).

Subsecs. (g), (h). Act Oct. 12, 1949, redesignated subsec. (h) as (g) and amended subsection generally to relate to retirement or separation for physical disability. Former subsec. (g) redesignated (f).

1948—Subsec. (b). Act Feb. 28, 1948, inserted length of service for retirement purposes.

Subsec. (c)(2). Act Feb. 28, 1948, made subdivision applicable to grade of Assistant Surgeon General.

Subsec. (d). Act Feb. 28, 1948, substituted ''under the provisions of subsection (b) of this section'' for ''for age''.

Subsecs. (g), (h). Act Feb. 28, 1948, added subsecs. (g) and (h).

CHANGE OF NAME

Senior Biomedical Research Service changed to Silvio O. Conte Senior Biomedical Research Service by Pub. L. 103–43, title XX, § 2001, June 10, 1993, 107 Stat. 208. See section 237 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 529 [title III, § 304(c)] of Pub. L. 101–509 provided that: ''Except as otherwise provided, the provisions of this section [enacting section 237 of this title and amending this section] shall be effective on the 90th day following the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 922(d) of Pub. L. 98–94 effective Oct. 1, 1983, see section 922(e) of Pub. L. 98–94, set out as a note under section 1401 of Title 10, Armed Forces.

Amendment by section 923(f) of Pub. L. 98–94 applicable with respect to the computation of retired or retainer pay of any individual who becomes entitled to that pay after Sept. 30, 1983, see section 923(g) of Pub. L. 98–94, set out as a note under section 1174 of Title 10.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 2 of Pub. L. 91–253 provided that: ''The amendments made by this Act [amending this section] shall apply in the case of retired pay for any period after the month in which this Act is enacted [May 1970].''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 8(b) of Pub. L. 86–415 provided that: ''The amendment made by section 4 [amending this section] shall become effective on the date of enactment of this Act [Apr. 8, 1960] in the case of commissioned officers of the Regular Corps of the Public Health Service, and on July 1, 1960, in the case of commissioned officers of the Reserve Corps of the Public Health Service.''

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949.

SAVINGS PROVISION

Section 8(c), (d) of Pub. L. 86–415 provided that:

''(c) An officer in the Regular Corps on active duty on the date of enactment of this Act [Apr. 8, 1960] may be retired and have his retired pay computed under section 211 of the Public Health Service Act, as amended by this Act [this section], or, if he so elects, under such section as in effect prior to the date of enactment of this Act [Apr. 8, 1960].

''(d) The limitation under subsection (f) of section 211 of the Public Health Service Act, as amended by this Act [subsec. (f) of this section], on the amount of active service with the Public Health Service, other than as a commissioned officer, which may be counted for purposes of retirement or separation for physical disability, shall not apply in the case of any officer of the Reserve Corps of the Public Health Service on active duty on June 30, 1960.''

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, eff. Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

COVERAGE UNDER CIVIL SERVICE RETIREMENT ACT

Creditable service for purposes of the Civil Service Retirement Act for certain commissioned officers of the Regular or Reserve Corps of the Public Health Service, see section 6(a), (b) of Pub. L. 86–415, set out as a note under section 8332 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 209, 210 of this title; title 10 section 1406.

§ 212a. Repealed. Pub. L. 93–222, § 7(b), Dec. 29, 1973, 87 Stat. 936

Section, act July 1, 1944, ch. 373, title XIII, § 1312, formerly title VII, § 712, as added Feb. 28, 1948, ch. 83, § 9(b), 62 Stat. 47; renumbered title VIII, § 812, July 30, 1956, ch. 779, § 3(b), 70 Stat. 721; renumbered title IX, § 912, Sept. 4, 1964, Pub. L. 88–581, § 4(b), 78 Stat. 919; renumbered title X, § 1012, Oct. 6, 1965, Pub. L. 89–239, § 3(b), 79 Stat. 931; renumbered title XI, § 1112, Dec. 24, 1970, Pub. L. 91–572, § 6(b), 84 Stat. 1506; renumbered title XII, § 1212, May 16, 1972, Pub. L. 92–294, § 3(b), 86 Stat. 137; renumbered title XIII, § 1312, Nov. 16, 1973, Pub. L. 93–154, § 2(b)(2), 87 Stat. 604, provided for retirement of certain officers of Reserve Corps of the Public Health Service for disability.

§ 212b. Repealed. Apr. 27, 1956, ch. 211, § 5(d), 70 Stat. 117

Section, act July 31, 1953, ch. 296, title II, § 201, 67 Stat. 254, authorized recall of retired officers of the Service. See section 212(c) of this title.

§ 213. Military benefits

(a) Rights, privileges, immunities, and benefits accorded to commissioned officers or their survivors

Except as provided in subsection (b) of this section, commissioned officers of the Service

and their surviving beneficiaries shall, with respect to active service performed by such officers—

(1) in time of war;

(2) on detail for duty with the Army, Navy, Air Force, Marine Corps, or Coast Guard; or

(3) while the Service is part of the military forces of the United States pursuant to Executive order of the President;

be entitled to all rights, privileges, immunities, and benefits now or hereafter provided under any law of the United States in the case of commissioned officers of the Army or their surviving beneficiaries on account of active military service, except retired pay and uniform allowances.

(b) Award of decorations

The President may prescribe the conditions under which commissioned officers of the Service may be awarded military ribbons, medals, and decorations.

(c) Authority of Surgeon General

The authority vested by law in the Department of the Army, the Secretary of the Army, or other officers of the Department of the Army with respect to rights, privileges, immunities, and benefits referred to in subsection (a) of this section shall be exercised, with respect to commissioned officers of the Service, by the Surgeon General.

(d) Active service deemed active military service with respect to laws administered by Secretary of Veterans Affairs

Active service of commissioned officers of the Service shall be deemed to be active military service in the Armed Forces of the United States for the purposes of all laws administered by the Secretary of Veterans Affairs (except the Servicemen's Indemnity Act of 1951) and section 417 of this title.

(e) Active service deemed active military service with respect to Soldiers' and Sailors' Civil Relief Act of 1940

Active service of commissioned officers of the Service shall be deemed to be active military service in the Armed Forces of the United States for the purposes of all rights, privileges, immunities, and benefits now or hereafter provided under the Soldiers' and Sailors' Civil Relief Act of 1940 (50 App. U.S.C. 501 et seq.).

(July 1, 1944, ch. 373, title II, §212, 58 Stat. 689; July 15, 1954, ch. 507, §14(a), 68 Stat. 481; Aug. 1, 1956, ch. 837, title V, §501(b)(1), 70 Stat. 881; Apr. 22, 1976, Pub. L. 94–278, title XI, §1101, 90 Stat. 415; June 13, 1991, Pub. L. 102–54, §13(q)(1)(C), 105 Stat. 278.)

REFERENCES IN TEXT

The Servicemen's Indemnity Act of 1951, referred to in subsec. (d), is act Apr. 25, 1951, ch. 39, pt. I, 65 Stat. 33, which was classified generally to subchapter II (§851 et seq.) of chapter 13 of former Title 38, Pensions, Bonuses, and Veterans' Relief, and was repealed by act Aug. 1, 1956, ch. 873, title V, §502(9), 70 Stat. 886.

The Soldiers' and Sailors' Civil Relief Act of 1940, referred to in subsec. (e), is act Oct. 17, 1940, ch. 888, 54 Stat. 1178, as amended, which is classified to section 501 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see section 501 of Title 50, Appendix, and Tables.

AMENDMENTS

1991—Subsec. (d). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

1976—Subsec. (e). Pub. L. 94–278 added subsec. (e).

1956—Act Aug. 1, 1956, amended section generally to extend all rights, privileges, immunities, and benefits provided for commissioned officers of the Army or their surviving beneficiaries to commissioned officers of the Service, with the exception of retired pay and uniform allowances, when performing duty under certain circumstances, and to provide that active service of commissioned officers shall be deemed to be active military service in the Armed Forces for the purposes of all laws administered by the Veterans' Administration (except the Servicemen's Indemnity Act of 1951) and section 417 of this title.

1954—Subsec. (a)(1). Act July 15, 1954, struck out ''burial payments in the event of death,'' after ''limited to,''.

EFFECTIVE DATE OF 1956 AMENDMENT; APPLICABILITY

Section 501(b)(2) of act Aug. 1, 1956, provided that: ''The amendment made by this subsection [amending this section] (A) shall apply only with respect to service performed on or after July 4, 1952, (B) shall not be construed to affect the entitlement of any person to benefits under the Veterans' Readjustment Assistance Act of 1952 [act July 16, 1952, ch. 875, 66 Stat. 633], (C) shall not be construed to authorize any payment under section 202(i) of the Social Security Act [section 402(i) of this title], or under Veterans Regulation Numbered 9(a), for any death occurring prior to January 1, 1957, and (D) shall not be construed to authorize payment of any benefits for any period prior to January 1, 1957.''

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

RECOMPUTATION OF SOCIAL SECURITY BENEFITS FOR OFFICERS ENTITLED TO OLD-AGE INSURANCE BENEFITS PRIOR TO JANUARY 1, 1957, OR FOR SURVIVORS OF OFFICERS WHO DIED PRIOR TO JANUARY 1, 1957

Section 501(b)(3) of act Aug. 1, 1956, provided that: ''In the case of any individual—

''(A) who performed active service (i) as a commissioned officer of the Public Health Service at any time during the period beginning July 4, 1952, and ending December 31, 1956, or (ii) as a commissioned officer of the Coast and Geodetic Survey at any time during the period beginning July 29, 1945, and ending December 31, 1956; and

''(B)(i) who became entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] prior to January 1, 1957, or

''(ii) who died prior to January 1, 1957, and whose widow, child, or parent is entitled for the month of January 1957, on the basis of his wages and self-employment income, to a monthly survivor's benefit under section 202 of such act [section 402 of this title]; and

''(C) any part of whose service described in subparagraph (A) was not included in the computation of his primary insurance amount under section 215 of such act [section 415 of this title] but would have been included in such computation if the amendment made by paragraph (1) of this subsection or paragraph (1) of subsection (d) had been effective prior to the date of such computation,

the Secretary of Health, Education, and Welfare [now Health and Human Services] shall, notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title], recompute the primary insurance amount of such individual upon the filing of an application, after December 1956, by him or (if he dies without filing such an application) by any person entitled to monthly survivor's benefits under section 202 of such act [section 402 of this title] on the basis of his wages and self-employment income. Such recomputation shall be made only in the manner, provided in title II of the Social Security Act [sections 401 to 425 of this title] as in effect at the time of the last previous computation or recomputation of such individual's primary insurance amount, and as though application therefor was filed in the month in which application for such last previous computation or recomputation was filed. No recomputation made under this paragraph shall be regarded as a recomputation under section 215(f) of the Social Security Act [section 415(f) of this title]. Any such recomputation shall be effective for and after the twelfth month before the month in which the application was filed, but in no case for any month before January 1957.''

DISPOSITION OF REMAINS OF DECEASED PERSONNEL

Recovery, care, and disposition of the remains of deceased members of the uniformed services and other deceased personnel, see section 1481 et seq. of Title 10, Armed Forces.

BURIAL OF CERTAIN COMMISSIONED OFFICERS

Act Apr. 30, 1956, ch. 227, 70 Stat. 124, provided: ''That burial in national cemeteries of the remains of commissioned officers of the United States Public Health Service who were detailed for duty with the Army or Navy during World War I pursuant to the act of July 1, 1902 (32 Stat. 712, 713), as amended, and Executive Order Numbered 2571 dated April 3, 1917, and of the wife, widow, minor child and, in the discretion of the Secretary of the Army, unmarried adult child of these officers is authorized: *Provided*, That the remains of the wife, widow, and children may, in the discretion of the Secretary of the Army, be removed from a national cemetery proper and interred in the post section of a national cemetery if, upon death, the related officer is not buried in the same or an adjoining gravesite.''

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Dec. 30, 1992, 58 F.R. 3485, provided:

Memorandum for the Secretary of Defense, the Secretary of Health and Human Services

The authority of the President under section 212(b) of the Public Health Service Act (42 U.S.C. 213(b)) is hereby delegated to the Secretary of Defense. In the exercise of that authority, the Secretary of Defense shall ensure that no military ribbon, medal, or decoration is awarded to an officer of the Public Health Service without the approval of the Secretary of Health and Human Services.

The Secretary of Defense shall ensure the publication of this memorandum in the Federal Register.

GEORGE BUSH.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 213a, 215 of this title; title 26 section 137.

§ 213a. Rights, benefits, privileges, and immunities for commissioned officers or beneficiaries; exercise of authority by Secretary or designee

(a) Commissioned officers of the Service or their surviving beneficiaries are entitled to all the rights, benefits, privileges, and immunities now or hereafter provided for commissioned officers of the Army or their surviving beneficiaries under the following provisions of title 10:

(1) Section 1036, Escorts for dependents of members: transportation and travel allowances.

(2) Chapter 61, Retirement or Separation for Physical Disability, except that sections 1201, 1202, and 1203 do not apply to commissioned officers of the Public Health Service who have been ordered to active duty for training for a period of more than 30 days.

(3) Chapter 69, Retired Grade, except sections 1370, 1374,[1] 1375 and 1376(a).

(4) Chapter 71, Computation of Retired Pay, except formula No. 3 of section 1401.

(5) Chapter 73, Retired Serviceman's Family Protection Plan; Survivor Benefit Plan.

(6) Chapter 75, Death Benefits.

(7) Section 2771, Final settlement of accounts: deceased members.

(8) Chapter 163, Military Claims, but only when commissioned officers of the Service are entitled to military benefits under section 213 of this title.

(9) Section 2603, Acceptance of fellowships, scholarships, or grants.

(10) Section 2634, Motor vehicles: for members on permanent change of station.

(11) Section 1035, Deposits of Savings.

(12) Section 1552, Correction of military records: claims incident thereto.

(13) Section 1553, Review of discharge or dismissal.

(14) Section 1554, Review of retirement or separation without pay for physical disability.

(15) Section 1124, Cash awards for suggestions, inventions, or scientific achievements.

(b) The authority vested by title 10 in the ''military departments'', ''the Secretary concerned'', or ''the Secretary of Defense'' with respect to the rights, privileges, immunities, and benefits referred to in subsection (a) of this section shall be exercised, with respect to commissioned officers of the Service, by the Secretary of Health and Human Services or his designee.

(July 1, 1944, ch. 373, title II, § 221, as added Aug. 10, 1956, ch. 1041, § 4, 70A Stat. 619; amended Sept. 2, 1958, Pub. L. 85–861, § 4, 72 Stat. 1547; Aug. 14, 1959, Pub. L. 86–160, § 3, 73 Stat. 359; July 27, 1962, Pub. L. 87–555, § 2, 76 Stat. 244; Oct. 2, 1963, Pub. L. 88–132, § 5(k), 77 Stat. 214; Aug. 14, 1964, Pub. L. 88–431, § 1(d), 78 Stat. 440; Aug. 14, 1966, Pub. L. 89–538, § 3(b), 80 Stat. 348; Sept. 21, 1972, Pub. L. 92–425, § 5, 86 Stat. 713; Sept. 29, 1979, Pub. L. 96–76, title III, § 312, 93 Stat. 586; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Dec. 12, 1980, Pub. L. 96–513, title V, § 507(f)(2), 94 Stat. 2920; Oct. 7, 1985, Pub. L. 99–117, § 4, 99 Stat. 492.)

REFERENCES IN TEXT

Section 1374 of title 10, referred to in subsec. (a)(3), was repealed by Pub. L. 103–337, div. A, title XVI, § 1662(k)(2), Oct. 5, 1994, 108 Stat. 3006. See sections 12771 to 12773 of Title 10, Armed Forces.

CODIFICATION

Section was formerly classified to section 316 of title 37 prior to the general revision and enactment of Title 37, Pay and Allowances of the Uniformed Services, by Pub. L. 87–649, § 1, Sept. 7, 1962, 76 Stat. 451.

[1] See References in Text note below.

AMENDMENTS

1985—Subsec. (a)(15). Pub. L. 99–117 added cl. (15).

1980—Subsec. (a)(3). Pub. L. 96–513 inserted reference to section 1370 of title 10.

1979—Subsec. (a)(12) to (14). Pub. L. 96–76 added cls. (12) to (14).

1972—Subsec. (a)(5). Pub. L. 92–425 substituted ''Retired Serviceman's Family Protection Plan; Survivor Benefit Plan'' for ''Annuities Based on Retired or Retainer Pay''.

1966—Subsec. (a)(11). Pub. L. 89–538 added cl. (11).

1964—Subsec. (a)(10). Pub. L. 88–431 added cl. (10).

1963—Subsec. (b). Pub. L. 88–132 inserted reference to Secretary of Defense.

1962—Subsec. (a). Pub. L. 87–555 added cl. (9). Notwithstanding directory language that section be amended by ''adding the following new clause at the end thereof'', the amendment was executed to subsec. (a) to reflect the probable intent of Congress since the ''new'' clause was numbered ''(9)'' and subsec. (a) contained cls. (1) to (8).

1959—Subsec. (a). Pub. L. 86–160 added cl. (1) and renumbered former cls. (1) to (7) as (2) to (8).

1958—Subsec. (a). Pub. L. 85–861 substituted ''provisions'' for ''chapters'' in opening clause, struck out former cl. (1) which related to chapter 55 of title 10, renumbered former cls. (2) to (6) as (1) to (5), amended cl. (1), as renumbered, to make sections 1201 to 1203 of title 10, inapplicable to commissioned officers of the Public Health Service who have been ordered to active duty for training for a period of more than 30 days, inserted a reference to section 1374 of title 10 in cl. (2), as renumbered, struck out ''Care of the Dead'' after ''Benefits'' in cl. (5), as renumbered, and added cl. (6).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–513 effective Sept. 15, 1981, see section 701 of Pub. L. 96–513, set out as a note under section 101 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment by Pub. L. 88–132 effective Oct. 1, 1963, see section 14 of Pub. L. 88–132, set out as an Effective Date note under section 201 of Title 37, Pay and Allowances of the Uniformed Services.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

RULES AND REGULATIONS; SAVINGS DEPOSIT BENEFITS

Regulations prescribed by the Secretary of Health, Education, and Welfare [now Health and Human Services] concerning savings deposit benefits for Public Health Service personnel to be prescribed jointly with regulations prescribed by the Secretaries concerned under section 1035 of Title 10, Armed Forces, see section 3(c) of Pub. L. 89–538, set out as a note under section 1035 of Title 10.

BACK PAYMENTS: VALIDATION; APPLICATION; LIMITATIONS; ACCOUNTABILITY OF DISBURSING OFFICERS; REGULATIONS

Transportation and travel allowances to escorts for dependents of members, see sections 4 to 7 of Pub. L. 86–160, set out as a note under section 1036 of Title 10, Armed Forces.

DESIGNATION OF BENEFICIARY MADE BEFORE JANUARY 1, 1956

Designation of beneficiary made before Jan. 1, 1956, considered as the designation of a beneficiary for the purposes of section 4 of Pub. L. 85–861, which amended this section, see section 31 of Pub. L. 85–861, set out as a note under section 2771 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 210 of this title.

§ 214. Repealed. Pub. L. 87–649, § 14b, Sept. 7, 1962, 76 Stat. 499

Section, acts July 1, 1944, ch. 373, title II, § 213, 58 Stat. 689; Apr. 27, 1956, ch. 211, § 2(a), 70 Stat. 116, authorized allowances for uniforms. See section 415 of Title 37, Pay and Allowances of the Uniformed Services.

§ 214a. Repealed. Sept. 1, 1954, ch. 1211, § 5, 68 Stat. 1130

Section, act July 31, 1953, ch. 296, title II, § 204, 67 Stat. 257, related to allowances for use of taxicabs, etc., around duty posts. See section 408 of Title 37, Pay and Allowances of the Uniformed Services.

§ 215. Detail of Service personnel

(a) Other Government departments

The Secretary is authorized, upon the request of the head of an executive department, to detail officers or employees of the Service to such department for duty as agreed upon by the Secretary and the head of such department in order to cooperate in, or conduct work related to, the functions of such department or of the Service. When officers or employees are so detailed their salaries and allowances may be paid from working funds established as provided by law or may be paid by the Service from applicable appropriations and reimbursement may be made as agreed upon by the Secretary and the head of the executive department concerned. Officers detailed for duty with the Army, Air Force, Navy, or Coast Guard shall be subject to the laws for the government of the service to which detailed.

(b) State health or mental health authorities

Upon the request of any State health authority or, in the case of work relating to mental health, any State mental health authority, personnel of the Service may be detailed by the Surgeon General for the purpose of assisting such State or a political subdivision thereof in work related to the functions of the Service.

(c) Congressional committees and nonprofit educational, research, or other institutions engaged in health activities for special studies and dissemination of information

The Surgeon General may detail personnel of the Service to any appropriate committee of the Congress or to nonprofit educational, research[1] or other institutions engaged in health activities for special studies of scientific problems and for the dissemination of information relating to public health.

(d) Availability of funds; reimbursement by State; detailed services deemed service for computation of pay, promotion, etc.

Personnel detailed under subsections (b) and (c) of this section shall be paid from applicable appropriations of the Service, except that, in ac-

[1] So in original. Probably should be followed by a comma.

cordance with regulations such personnel may be placed on leave without pay and paid by the State, subdivision, or institution to which they are detailed. In the case of detail of personnel under subsections (b) or (c) of this section to be paid from applicable Service appropriations, the Secretary may condition such detail on an agreement by the State, subdivision, or institution concerned that such State, subdivision, or institution concerned shall reimburse the United States for the amount of such payments made by the Service. The services of personnel while detailed pursuant to this section shall be considered as having been performed in the Service for purposes of the computation of basic pay, promotion, retirement, compensation for injury or death, and the benefits provided by section 213 of this title.

(July 1, 1944, ch. 373, title II, § 214, 58 Stat. 690; July 3, 1946, ch. 538, § 6, 60 Stat. 423; Oct. 12, 1949, ch. 681, title V, § 521(e), 63 Stat. 835; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 29, 1979, Pub. L. 96–76, title III, § 309, 93 Stat. 585.)

CODIFICATION

In subsec. (a), Air Force was inserted on the authority of section 207(a), (f) of act July 26, 1947, ch. 343, title II, 61 Stat. 502, which established a separate Department of the Air Force, and Secretary of Defense Transfer Order No. 40 [App. A(74)], July 22, 1949, which transferred certain functions, insofar as they pertain to the Air Force, which were not previously transferred to the Department of the Air Force and Secretary of the Air Force. Section 207(a), (f) of act July 26, 1947, was repealed by section 53 of act Aug. 10, 1956, ch. 1041, 70A Stat. 641. Section 1 of act Aug. 10, 1956, enacted ''Title 10, Armed Forces'', which in sections 8010 to 8013 continued the Department of the Air Force under the administrative supervision of a Secretary of the Air Force.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96–76, § 309(a), inserted provisions authorizing detail of personnel to appropriate committees of Congress.

Subsec. (d). Pub. L. 96–76, § 309(b), inserted provisions relating to agreements by States, etc., for reimbursement upon detail of personnel.

1949—Subsec. (d). Act Oct. 12, 1949, substituted ''the computation of basic pay'' for ''longevity pay''.

1946—Subsec. (b). Act July 3, 1946, provided for detail of personnel on request from a State mental health authority.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

TRANSFERS OF PERSONNEL OCCASIONED BY CREATION OF THE ENVIRONMENTAL PROTECTION AGENCY

Pub. L. 91–604, § 15(b)(1)–(8)(A), Dec. 31, 1970, 84 Stat. 1710–1712, provided that:

''(1) Subject to such requirements as the Civil Service Commission may prescribe, any commissioned officer of the Public Health Service (other than an officer who retires under section 211 of the Public Health Service Act [section 212 of this title] after his election but prior to his transfer pursuant to this paragraph and paragraph (2)) who, upon the day before the effective date of Reorganization Plan Numbered 3 of 1970 (hereinafter in this subsection referred to as the 'plan'), is serving as such officer (A) primarily in the performance of functions transferred by such plan to the Environmental Protection Agency or its Administrator (hereinafter in this subsection referred to as the 'Agency' and the 'Administrator,' respectively), may, if such officer so elects, acquire competitive status and be transferred to a competitive position in the Agency; or (B) primarily in the performance of functions determined by the Secretary of Health, Education, and Welfare (hereinafter in this subsection referred to as the 'Secretary') to be materially related to the functions so transferred, may, if authorized by agreement between the Secretary and the Administrator, and if such officer so elects, acquire such status and be so transferred.

''(2) An election pursuant to paragraph (1) shall be effective only if made in accordance with such procedures as may be prescribed by the Civil Service Commission (A) before the close of the 24th month after the effective date of the plan [Dec. 2, 1970], or (B) in the case of a commissioned officer who would be liable for training and service under the Military Selective Service Act of 1967 [section 451 et seq. of Title 50, App., War and National Defense] but for the operation of section 6(b)(3) thereof (50 U.S.C. App. 456(b)(3)), before (if it occurs later than the close of such 24th month) the close of the 90th day after the day upon which he has completed his 24th month of service as such officer.

''(3)(A) Except as provided in subparagraph (B), any commissioned officer of the Public Health Service who, pursuant to paragraphs (1) and (2), elects to transfer to a position in the Agency which is subject to chapter 51 and subchapter III of chapter 53 of title 5, United States Code (hereinafter in this subsection referred to as the 'transferring officer'), shall receive a pay rate of the General Schedule grade of such position which is not less than the sum of the following amounts computed as of the day preceding the date of such election:

''(i) the basic pay, the special pay, the continuation pay, and the subsistence and quarters allowances, to which he is annually entitled as a commissioned officer of the Public Health Service pursuant to title 37, United States Code;

''(ii) the amount of Federal income tax, as determined by estimate of the Secretary, which the transferring officer, had he remained a commissioned officer, would have been required to pay on his subsistence and quarters allowances for the taxable year then current if they had not been tax free;

''(iii) an amount equal to the biweekly average cost of the coverages designated 'high option, self and family' under the Government-wide Federal employee health benefits programs plans, multiplied by twenty-six; and

''(iv) an amount equal to 7 per centum of the sum of the amounts determined under clauses (i) through (iii), inclusive.

''(B) A transferring officer shall in no event receive, pursuant to subparagraph (A), a pay rate in excess of

the maximum rate applicable under the General Schedule to the class of position, as established under chapter 51 of title 5, United States Code, to which such officer is transferred pursuant to paragraphs (1) and (2).

''(4)(A) A transferring officer shall be credited, on the day of his transfer pursuant to his election under paragraphs (1) and (2), with one hour of sick leave for each week of active service, as defined by section 211(d) of the Public Health Service Act [section 212(d) of this title].

''(B) The annual leave to the credit of a transferring officer on the day before the day of his transfer, shall, on such day of transfer, be transferred to his credit in the Agency on an adjusted basis under regulations prescribed by the Civil Service Commission. The portion of such leave, if any, that is in excess of the sum of (i) 240 hours, and (ii) the number of hours that have accrued to the credit of the transferring officer during the calendar year then current and which remain unused, shall thereafter remain to his credit until used, and shall be reduced in the manner described by subsection (c) of section 6304 of title 5, United States Code.

''(5) A transferring officer who is required to change his official station as a result of his transfer under this subsection shall be paid such travel, transportation, and related expenses and allowances, as would be provided pursuant to subchapter II of chapter 57 of title 5, United States Code, in the case of a civilian employee so transferred in the interest of the Government. Such officer shall not (either at the time of such transfer or upon a subsequent separation from the competitive service) be deemed to have separated from, or changed permanent station within, a uniformed service for purposes of section 404 of title 37, United States Code.

''(6) Each transferring officer who prior to January 1, 1958, was insured pursuant to the Federal Employees' Group Life Insurance Act of 1954, and who subsequently waived such insurance, shall be entitled to become insured under chapter 87 of title 5, United States Code, upon his transfer to the Agency regardless of age and insurability.

''(7)(A) Effective as of the date a transferring officer acquires competitive status as an employee of the Agency, there shall be considered as the civilian service of such officer for all purposes of chapter 83, title 5, United States Code, (i) his active service as defined by section 211(d) of the Public Health Service Act [section 212(d) of this title], or (ii) any period for which he would have been entitled, upon his retirement as a commissioned officer of the Public Health Service, to receive retired pay pursuant to section 211(a)(4)(B) of such Act [section 212(a)(4)(B) of this title]; however, no transferring officer may become entitled to benefits under both subchapter III of such chapter and title II of the Social Security Act [section 401 et seq. of this title] based on service as such a commissioned officer performed after 1956, but the individual (or his survivors) may irrevocably elect to waive benefit credit for the service under one such law to secure credit under the other.

''(B) A transferring officer on whose behalf a deposit is required to be made by subparagraph (C) and who, after transfer to a competitive position in the Agency under paragraphs (1) and (2), is separated from Federal service or transfers to a position not covered by subchapter III of chapter 83 of title 5, United States Code, shall not be entitled, nor shall his survivors be entitled, to a refund of any amount deposited on his behalf in accordance with this section. In the event he transfers, after transfer under paragraphs (1) and (2), to a position covered by another Government staff requirement system under which credit is allowable for service with respect to which a deposit is required under subparagraph (C), no credit shall be allowed under such subchapter III with respect to such service.

''(C) The Secretary shall deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund, on behalf of and to the credit of such transferring officer, an amount equal to that which such individual would be required to deposit in such fund to cover the years of service credited to him for purposes of his retirement under subparagraph (A), had such service been service as an employee as defined in section 8331(1) of title 5, United States Code. The amount so required to be deposited with respect to any transferring officer shall be computed on the basis of the sum of each of the amounts described in paragraph (3)(A) which were received by, or accrued to the benefit of, such officer during the years so credited. The deposits which the Secretary is required to make under this subparagraph with respect to any transferring officer shall be made within two years after the date of his transfer as provided in paragraphs (1) and (2), and the amounts due under this subparagraph shall include interest computed from the period of service credited to the date of payment in accordance with section 8334(e) of title 5, United States Code.

''(8)(A) A commissioned officer of the Public Health Service, who, upon the day before the effective date of the plan, is on active service therewith primarily assigned to the performance of functions described in paragraph (1)(A), shall, while he remains in active service, as defined by section 211(d) of the Public Health Service Act [section 212(d) of this title], be assigned to the performance of duties with the Agency, except as the Secretary and the Administrator may jointly otherwise provide.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254d, 2004b of this title; title 25 section 1616a.

§ 216. Regulations

(a) Prescription by President: appointments, retirement, etc.

The President shall from time to time prescribe regulations with respect to the appointment, promotion, retirement, termination of commission, titles, pay, uniforms, allowances (including increased allowances for foreign service), and discipline of the commissioned corps of the Service.

(b) Promulgation by Surgeon General; administration of Service

The Surgeon General, with the approval of the Secretary, unless specifically otherwise provided, shall promulgate all other regulations necessary to the administration of the Service, including regulations with respect to uniforms for employees, and regulations with respect to the custody, use, and preservation of the records, papers, and property of the Service.

(c) Preference to school of medicine

No regulation relating to qualifications for appointment of medical officers or employees shall give preference to any school of medicine.

(July 1, 1944, ch. 373, title II, § 215, 58 Stat. 690; Oct. 12, 1949, ch. 681, title V, § 521(f), 63 Stat. 835; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

AMENDMENTS

1949—Subsec. (b). Act Oct. 12, 1949, struck out references to travel and transportation of household goods and effects.

EFFECTIVE DATE OF 1949 AMENDMENT

Amendment by act Oct. 12, 1949, effective Oct. 1, 1949, see section 533(a) of act Oct. 12, 1949.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and em-

ployees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, January 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§ 217. Use of Service in time of war or emergency

In time of war, or of emergency proclaimed by the President, he may utilize the Service to such extent and in such manner as shall in his judgment promote the public interest. In time of war, or of emergency involving the national defense proclaimed by the President, he may by Executive order declare the commissioned corps of the Service to be a military service. Upon such declaration, and during the period of such war or such emergency or such part thereof as the President shall prescribe, the commissioned corps (a) shall constitute a branch of the land and naval forces of the United States, (b) shall, to the extent prescribed by regulations of the President, be subject to the Uniform Code of Military Justice [10 U.S.C. 801 et seq.], and (c) shall continue to operate as part of the Service except to the extent that the President may direct as Commander in Chief.

(July 1, 1944, ch. 373, title II, § 216, 58 Stat. 690; Apr. 27, 1956, ch. 211, § 1, 70 Stat. 116.)

REFERENCES IN TEXT

The Uniform Code of Military Justice, referred to in text, is classified to chapter 47 (§ 801 et seq.) of Title 10, Armed Forces.

AMENDMENTS

1956—Act Apr. 27, 1956, empowered President to declare commissioned corps of the Service to be a military service in time of emergency involving national defense, and substituted ''the Uniform Code of Military Justice'' for ''the Articles of War and to the Articles for the Government of the Navy''.

REPEAL OF PRIOR ACTS CONTINUING SECTION

Section 6 of Joint Res. July 3, 1952, ch. 570, 66 Stat. 334, repealed Joint Res. Apr. 14, 1952, ch. 204, 66 Stat. 54 as amended by Joint Res. May 28, 1952, ch. 339, 66 Stat. 96; Joint Res. June 14, 1952, ch. 437, 66 Stat. 137; Joint Res. June 30, 1952, ch. 526, 66 Stat. 296, which continued provisions until July 3, 1952. This repeal shall take effect as of June 16, 1952, by section 7 of said Joint Res. July 3, 1952.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EXECUTIVE ORDER NO. 9575

Ex. Ord. No. 9575, eff. June 28, 1945, 10 F.R. 7895, which declared the Commissioned Corps of the Public Health Service to be a military service subject to the Articles for the Government of the Navy as therein prescribed, was superseded by Ex. Ord. No. 10349, eff. Apr. 28, 1952, 17 F.R. 3769.

EXECUTIVE ORDER NO. 10349

Ex. Ord. No. 10349, eff. Apr. 28, 1952, 17 F.R. 3769, superseded Ex. Ord. No. 9575, and subjected the Commissioned Corps of the Public Health Service to the provisions of the Uniform Code of Military Justice until June 1, 1952.

EXECUTIVE ORDER NO. 10356

Ex. Ord. No. 10356, eff. June 2, 1952, 17 F.R. 4967, amended Ex. Ord. No. 10349, and extended from June 1, 1952, to June 15, 1952 the period during which the Commissioned Corps of the Public Health Service was subject to the provisions of the Uniform Code of Military justice.

EXECUTIVE ORDER NO. 10362

Ex. Ord. No. 10362, eff. June 14, 1952, 17 F.R. 5413, amended Ex. Ord. No. 10356, and extended from June 15, 1952 to June 30, 1952 the period during which the Commissioned Corps of the Public Health Service was subject to the Uniform Code of Military Justice.

EXECUTIVE ORDER NO. 10367

Ex. Ord. No. 10367, eff. June 30, 1952, 17 F.R. 5929, amended Ex. Ord. No. 10362, and extended from June 30, 1952 to July 3, 1952, the period during which the Commissioned Corps of the Public Health Service was subject to the Uniform Code of Military Justice.

CROSS REFERENCES

Personnel of Public Health Service serving with armed forces as subject to Uniform Code of Military Justice, see section 802 of Title 10, Armed Forces.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254d of this title.

§ 217a. Advisory councils or committees

(a) Appointment; purpose

The Secretary may, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, from time to time, appoint such advisory councils or committees (in addition to those authorized to be established under other provisions of law), for such periods of time, as he deems desirable with such period commencing on a date specified by the Secretary for the purpose of advising him in connection with any of his functions.

(b) Compensation and allowances of members not full-time employees of United States

Members of any advisory council or committee appointed under this section who are not

regular full-time employees of the United States shall, while attending meetings or conferences of such council or committee or otherwise engaged on business of such council or committee receive compensation and allowances as provided in section 210(c) of this title for members of national advisory councils established under this chapter.

(c) Delegation of functions

Upon appointment of any such council or committee, the Secretary may delegate to such council or committee such advisory functions relating to grants-in-aid for research or training projects or programs, in the areas or fields with which such council or committee is concerned, as the Secretary determines to be appropriate.

(July 1, 1944, ch. 373, title II, § 222, as added Oct. 17, 1962, Pub. L. 87–838, § 3, 76 Stat. 1073; amended Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(a)(3), (c), 84 Stat. 1310, 1311; Nov. 20, 1985, Pub. L. 99–158, § 3(a)(4), 99 Stat. 879.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (a), is set out under section 5332 of Title 5.

AMENDMENTS

1985—Subsec. (c). Pub. L. 99–158 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Upon appointment of any such council or committee, the Surgeon General, with the approval of the Secretary, may transfer such of the functions of the National Advisory Health Council relating to grants-in-aid for research or training projects or programs in the areas or fields with which such council or committee is concerned as he determines to be appropriate.''

1970—Subsec. (a). Pub. L. 91–515, § 601(c)(1), substituted provisions authorizing the Secretary to appoint advisory councils or committees without regard to specified provisions governing appointments in the competitive service and relating to classification and General Schedule pay rates, for provisions authorizing the Surgeon General to appoint advisory committees without regard to the civil service laws and subject to the Secretary's approval in such cases as he prescribed.

Subsec. (b). Pub. L. 91–515, § 601(a)(3), inserted ''council or'' before ''committee'' wherever appearing.

Subsec. (c). Pub. L. 91–515, § 601(a)(3), (c)(2), inserted ''council or'' before ''committee'' wherever appearing, and ''or programs'' after ''projects''.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF ADVISORY COMMITTEES; REPORT BY SECRETARY TO CONGRESSIONAL COMMITTEES RELATING TO TERMINATION

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, provided that:

''(a) An advisory committee established by or pursuant to the Public Health Service Act [section 201 et seq. of this title], the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 [sections 2689 et seq. and 6001 et seq. of this title], or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [section 4541 et seq. of this title] shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after the date of the enactment of this Act [Jan. 4, 1975].

''(b) The Secretary of Health, Education, and Welfare shall report, within one year after the date of the enactment of the Act [Jan. 4, 1975], to the Committee on Labor and Public Welfare of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives (1) the purpose and use of each advisory committee established by or pursuant to the Public Health Service Act, the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 and (2) his recommendations respecting the termination of each such advisory committee.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 283g of this title.

§ 217a–1. Advisory committees; prohibition of consideration of political affiliations

All appointments to advisory committees established to assist in implementing the Public Health Service Act [42 U.S.C. 201 et seq.], the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 [42 U.S.C. 2689 et seq., 6000 et seq.], and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [42 U.S.C. 4541 et seq.], shall be made without regard to political affiliation.

(Pub. L. 94–278, title X, § 1001, Apr. 22, 1976, 90 Stat. 415.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to this chapter (§ 201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, referred to in text, is Pub. L. 88–164, Oct. 31, 1963, 77 Stat. 284, as amended, which is classified principally to chapter 75 (§ 6000 et seq.) of this title. Title II of that Act, which was also known as the Community Mental Health Centers Act and was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title, was repealed by Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, referred to in text, is Pub. L. 91–616, Dec. 31, 1970, 84 Stat. 1848, as amended, which is classified principally to chapter 60 (§ 4541 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4541 of this title and Tables.

CODIFICATION

Section was not enacted as a part of the Public Health Service Act which comprises this chapter.

§ 217b. Volunteer services

Subject to regulations, volunteer and uncompensated services may be accepted by the Secretary, or by any other officer or employee of

the Department of Health and Human Services designated by him, for use in the operation of any health care facility or in the provision of health care.

(July 1, 1944, ch. 373, title II, § 223, as added Dec. 5, 1967, Pub. L. 90–174, § 6, 81 Stat. 539; amended June 10, 1993, Pub. L. 103–43, title XX, § 2008(h), 107 Stat. 212.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

§ 218. National Advisory Councils on Migrant Health

(a) Appointment; duties

Within 120 days of July 29, 1975, the Secretary shall appoint and organize a National Advisory Council on Migrant Health (hereinafter in this subsection referred to as the ''Council'') which shall advise, consult with, and make recommendations to, the Secretary on matters concerning the organization, operation, selection, and funding of migrant health centers and other entities under grants and contracts under section 254b of this title.

(b) Membership

The Council shall consist of fifteen members, at least twelve of whom shall be members of the governing boards of migrant health centers or other entities assisted under section 254b of this title. Of such twelve members who are members of such governing boards, at least nine shall be chosen from among those members of such governing boards who are being served by such centers or grantees and who are familiar with the delivery of health care to migratory agricultural workers and seasonal agricultural workers. The remaining three Council members shall be individuals qualified by training and experience in the medical sciences or in the administration of health programs.

(c) Terms of office

Each member of the Council shall hold office for a term of four years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of the members first taking office after July 29, 1975, shall expire as follows: four shall expire four years after such date, four shall expire three years after such date, four shall expire two years after such date, and three shall expire one year after such date, as designated by the Secretary at the time of appointment.

(d) Applicability of section 14(a) of Federal Advisory Committee Act

Section 14(a) of the Federal Advisory Committee Act shall not apply to the Council.

(July 1, 1944, ch. 373, title II, § 217, 58 Stat. 691; July 3, 1946, ch. 538, § 5(b)–(d), 60 Stat. 422; June 16, 1948, ch. 481, §§ 4(a)–(c), 6(b), 62 Stat. 467, 469; June 24, 1948, ch. 621, § 4(a)–(c), 62 Stat. 600; Aug. 15, 1950, ch. 714, § 3(a)–(d), 64 Stat. 446; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(a)(1), 84 Stat. 1310; Dec. 31, 1970, Pub. L. 91–616, title IV, § 401, 84 Stat. 1853; Nov. 18, 1971, Pub. L. 92–157, title III, § 301(b), 85 Stat. 463; Dec. 23, 1971, Pub. L. 92–218, § 6(a)(1), 85 Stat. 785; Mar. 21, 1972, Pub. L. 92–255, title V, § 502(a), 86 Stat. 85; Sept. 19, 1972, Pub. L. 92–423, § 7(a), 86 Stat. 687; July 12, 1974, Pub. L. 93–348, title II, § 211(a), 88 Stat. 351; July 29, 1975, Pub. L. 94–63, title IV, § 401(b), 89 Stat. 341; July 26, 1976, Pub. L. 94–371, § 9, 90 Stat. 1040; Nov. 9, 1978, Pub. L. 95–622, title III, § 302(b), 92 Stat. 3442; Nov. 10, 1978, Pub. L. 95–626, title I, § 102(b)(1), 92 Stat. 3551; Jan. 2, 1980, Pub. L. 96–180, § 13, 93 Stat. 1304; Jan. 2, 1980, Pub. L. 96–181, § 14, 93 Stat. 1315; Apr. 26, 1983, Pub. L. 98–24, § 2(a)(2), 97 Stat. 176; Oct. 19, 1984, Pub. L. 98–509, title III, § 302, 98 Stat. 2364; Nov. 20, 1985, Pub. L. 99–158, § 3(a)(2), (3), 99 Stat. 878, 879; Oct. 27, 1986, Pub. L. 99–570, title IV, § 4004(c), 100 Stat. 3207–111; Nov. 14, 1986, Pub. L. 99–660, title III, § 311(b)(1), 100 Stat. 3779.)

REFERENCES IN TEXT

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (d), is section 14(a) of Pub. L. 92–463, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1986—Pub. L. 99–570 redesignated former subsec. (e)(1) to (4) as subsecs. (a) to (d), respectively, in subsec. (c), further redesignated former cls. (A) and (B) as (1) and (2), respectively, and struck out former subsecs. (a) to (d), which related, respectively, to composition, qualifications, appointment and tenure of the National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism; duties of the National Advisory Mental Health Council; duties of the National Advisory Council on Alcohol Abuse and Alcoholism; and the composition, qualifications, and duties of the National Advisory Council on Drug Abuse.

Subsec. (c). Pub. L. 99–660 which directed that ''section 300cc of this title'' be substituted for ''section 300aa of this title'' could not be executed because the reference in question appeared in former subsec. (c) which was repealed by Pub. L. 99–570.

1985—Subsec. (a). Pub. L. 99–158, § 3(a)(2)(A), in first sentence substituted ''National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism'' for ''National Advisory Health Council, the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Dental Research Council'', and substituted ''by the Secretary'' for ''by the Surgeon General with the approval of the Secretary of Health, Education, and Welfare''.

Pub. L. 99–158, § 3(a)(2)(B)(i), in second sentence struck out ''in the case of the National Advisory Health Council, are skilled in the sciences related to health, and'' after ''scientific authorities who,''.

Pub. L. 99–158, § 3(a)(2)(B)(ii), which directed the substitution in second sentence of ''the National Advisory Mental Health Council and the National Advisory Council on Alcohol Abuse and Alcoholism'' for ''the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, the National Advisory Heart Council, and the National Advisory Dental Research Council'' was executed by making the substitution for ''the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Dental Research Council'' as the probable intent of Congress in view of the prior deletion of ''the National Advisory Heart Council,'' by Pub. L. 92–423. See 1972 Amendment note below.

Pub. L. 99–158, § 3(a)(2)(B)(iii), in second sentence substituted ''and alcohol abuse and alcoholism'' for '', alcohol abuse and alcoholism, and dental diseases and conditions''.

Pub. L. 99–158, §3(a)(2)(C), struck out third sentence which provided that in the case of the National Advisory Dental Research Council, four of the six members selected from among the leading medical or scientific authorities be dentists.

Subsec. (b). Pub. L. 99–158, §3(a)(3), redesignated subsec. (c) as (b) and struck out former subsec. (b) which related to the duties of the National Advisory Health Council.

Subsecs. (c) to (e), (g). Pub. L. 99–158, §3(a)(3), redesignated subsecs. (d), (e), and (g) as (c), (d), and (e), respectively.

1984—Subsec. (a). Pub. L. 98–509 inserted provision requiring the Secretary to assure that the membership of the National Advisory Council on Alcohol Abuse and Alcoholism is broadly representative of experts in the fields of prevention, research, and treatment of alcohol abuse, alcoholism, and rehabilitation of alcohol abusers.

1983—Subsecs. (c), (d). Pub. L. 98–24 substituted ''section 300aa of this title'' for ''section 219 of this title''.

1980—Subsec. (a). Pub. L. 96–180 authorized appointees to serve after the expiration of their terms until their successors have taken office.

Subsec. (e)(1). Pub. L. 96–181, in provisions relating to the eligibility for selection of members, inserted officers or employees of State and local drug abuse agencies, and inserted provision that appointed members may serve after the expiration of their terms until their successors have taken office.

1978—Subsec. (f). Pub. L. 95–622 struck out subsec. (f) which related to the establishment of a National Advisory Council for the Protection of Subjects of Biomedical and Behavioral Research.

Subsec. (g)(1), (2). Pub. L. 95–626 substituted ''section 254b'' for ''section 247d''.

1976—Subsec. (d). Pub. L. 94–371 inserted provision that the Council advise the Secretary regarding policies and priorities with respect to grants and contracts in the field of alcohol abuse and alcoholism.

1975—Subsec. (g). Pub. L. 94–63 added subsec. (g).

1974—Subsec. (f). Pub. L. 93–348 added subsec. (f).

1972—Subsec. (a). Pub. L. 92–423, §7(a)(1), (2), struck out ''the National Advisory Heart Council,'' after ''the National Advisory Council on Alcohol Abuse and Alcoholism'' in two places and ''heart diseases,'' after ''alcohol abuse and alcoholism,'', respectively.

Subsec. (b). Pub. L. 92–423, §7(a)(2), struck out ''heart,'' after ''alcohol abuse and alcoholism,''.

Subsec. (e). Pub. L. 92–255 added subsec. (e).

1971—Subsec. (a). Pub. L. 92–218, §6(a)(1)(A), (B), struck out reference to National Advisory Cancer Council before National Advisory Mental Health Council in two places and struck out ''cancer,'' before ''psychiatric disorders''.

Pub. L. 92–157 substituted ''National Advisory Council on Alcohol Abuse and Alcoholism'' for ''National Advisory Council on Alcoholic Abuse and Alcoholism'' in second sentence.

Subsec. (b). Pub. L. 92–218, §6(a)(1)(B), struck out ''cancer,'' before ''mental health'' in listing of various diseases.

1970—Subsec. (a). Pub. L. 91–616, §401(a), made subsection applicable to National Advisory Council on Alcohol Abuse and Alcoholism, and inserted alcohol abuse and alcoholism to enumeration of diseases concerning which members of such Council must be skilled, and prescribed manner in which terms of members of Council would expire.

Subsec. (b). Pub. L. 91–616, §401(b), inserted reference to National Advisory Council on Alcohol Abuse and Alcoholism authorizing the Surgeon General to utilize the services of members of such Council for additional periods.

Pub. L. 91–515 inserted ''or committees'' after ''councils''.

Subsec. (d). Pub. L. 91–616, §401(c), added subsec. (d).

1950—Act Aug. 15, 1950, §3(d), amended section catchline to reflect addition of new advisory councils.

Subsec. (a). Act Aug. 15, 1950, §3(a), applied provisions to all of the advisory councils with regard to composition, qualifications, and appointment and tenure of members.

Subsec. (b). Act Aug. 15, 1950, §3(b), made subsection also applicable to new advisory councils.

Subsec. (c). Act Aug. 15, 1950, §3(c), redesignated subsec. (e) as (c) and repealed former subsec. (c).

Subsecs. (d), (f), (g). Act. Aug. 15, 1950, §3(c), repealed subsecs. (d), (f), and (g).

1948—Acts June 16, 1948, §4(c), and June 24, 1948, §4(c), included in section catchline the National Advisory Heart and Dental Research Councils, respectively.

Subsec. (a). Act June 16, 1948, §6(b), substituted ''National Institutes of Health'' for ''National Institute of Health'' in second sentence.

Subsec. (b). Acts June 16, 1948, §4(b), and June 24, 1948, §4(b), made subsection applicable to the National Advisory Heart Council and the National Advisory Dental Research Council, respectively.

Subsec. (f). Act June 16, 1948, §4(a), added subsec. (f) which established the National Advisory Heart Council.

Subsec. (g). Act June 24, 1948, §4(a), added subsec. (g) which established the National Advisory Dental Research Council.

1946—Act July 3, 1946, inserted ''Mental Health'' in section catchline.

Subsec. (b). Act July 3, 1946, inserted ''or of the National Advisory Mental Health Council''.

Subsecs. (d), (e). Act July 3, 1946, added subsecs. (d) and (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 302(b) of Pub. L. 95–622 provided that the amendment made by that section is effective Nov. 1, 1978.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 211(b) of Pub. L. 93–348, as amended by Pub. L. 94–278, title III, §301(b), Apr. 22, 1976, 90 Stat. 407; Pub. L. 94–573, §18(b), Oct. 21, 1976, 90 Stat. 2720; Pub. L. 95–203, §5(b), Nov. 23, 1977, 91 Stat. 1454, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect November 1, 1978.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 9 of Pub. L. 92–423 provided that: ''This Act and the amendments made by this Act [see Short Title of 1972 Amendment note under section 201 of this title] shall take effect sixty days after the date of enactment of this Act [Sept. 19, 1972] or on such prior date after the date of enactment of this Act as the President shall prescribe and publish in the Federal Register.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 7 of Pub. L. 92–218 provided that:

''(a) This Act and the amendments made by this Act [enacting sections 286a to 286*g* and 289*l* of this title, amending this section and sections 241, 282, 283, and 284 of this title, and enacting provisions set out as notes under sections 281 and 286 of this title] shall take effect sixty days after the date of enactment of this Act [Dec. 23, 1971] or on such prior date after the date of enactment of this Act as the President shall prescribe and publish in the Federal Register.

''(b) The first sentence of section 454 of the Public Health Service Act [section 289*l* of this title] (added by section 5 of this Act) shall apply only with respect to appointments made after the effective date of this Act (as prescribed by subsection (a)).

''(c) Notwithstanding the provisions of subsection (a), members of the National Cancer Advisory Board (authorized under section 410B of the Public Health Service Act, as added by this Act) [section 286f of this title] may be appointed, in the manner provided for in such section, at any time after the date of enactment of this

Act [Dec. 23, 1971]. Such officers shall be compensated from the date they first take office, at the rates provided for in such section 410B [section 286f of this title].''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 3(a), (c) of act Aug. 15, 1950, provided that the amendments and repeals made by that section are effective Oct. 1, 1950.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

For transfer of certain membership functions, insofar as they pertain to the Air Force, which functions were not previously transferred from Secretary of the Army to Secretary of the Air Force and from Department of the Army to Department of the Air Force, see Secretary of Defense Transfer Order No. 40 [App. C(7)], July 22, 1949.

EXPIRATION OF TERMS OF OFFICE ON SEPTEMBER 30, 1950

Section 3(c) of act Aug. 15, 1950, provided in part that terms of office as members of national advisory councils pursuant to this section subsisting on Sept. 30, 1950, shall expire at the close of business on such day.

TERMINATION OF NATIONAL ADVISORY HEALTH COUNCIL

Section 3(a)(1) of Pub. L. 99–158 provided that: ''The National Advisory Health Council established under section 217 [this section] is terminated.''

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 218a. Training of officers; availability of appropriations for pay and allowances, tuition, fees, and expenses; payment by officer upon voluntary separation

(a) Appropriations available for the pay and allowances of commissioned officers of the Service shall also be available for the pay and allowances of any such officer on active duty while attending any Federal or non-Federal educational institution or training program and, subject to regulations of the President and to the limitation prescribed in such appropriations, for payment of his tuition, fees, and other necessary expenses incident to such attendance.

(b) Any officer whose tuition, fees, and other necessary expenses are paid pursuant to subsection (a) of this section while attending an educational institution or training program for a period in excess of thirty days shall be obligated to pay to the Service an amount equal to two times the total amount of such tuition, fees, and other necessary expenses received by such officer during such period, and two times the total amount of any compensation received by, and any allowance paid to, such officer during such period, if after return to active service such officer voluntarily leaves the Service within (1) six months, or (2) twice the period of such attendance, whichever is greater. Such subsequent period of service shall commence upon the cessation of such attendance and of any further continuous period of training duty for which no tuition and fees are paid by the Service and which is part of the officer's prescribed formal training program, whether such further training is at a Service facility or otherwise. The Surgeon General may waive, in whole or in part, any payment which may be required by this subsection upon a determination that such payment would be inequitable or would not be in the public interest.

(July 1, 1944, ch. 373, title II, § 218, as added Feb. 28, 1948, ch. 83, § 8, 62 Stat. 47; amended Apr. 27, 1956, ch. 211, § 6, 70 Stat. 117; Sept. 29, 1979, Pub. L. 96–76, title III, § 310, 93 Stat. 585.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96–76 substituted provisions relating to payment by an officer to the Service upon voluntary separation of two times the total amount of tuition, fees, and other necessary expenses received by such officer and two times the total amount of any compensation received by, and any allowance paid to, such officer, for provisions relating to reimbursement by the officer to the Service upon voluntary separation of tuition and fees and in last sentence substituted ''payment'' for ''reimbursement'' wherever appearing.

1956—Subsec. (a). Act Apr. 27, 1956, § 6(a), authorized training of all officers of the Service, and substituted ''any Federal or non-Federal educational institution or training program'' for ''any educational institution''.

Subsec. (b). Act Apr. 27, 1956, § 6(b), required reimbursement of tuition and fees by officers who receive training in excess of 30 days and who voluntarily leave the Service within a period of time which is equal to twice the period of such training, with a minimum period of six months of service, and a maximum period of two years, and permitted the Surgeon General to waive any reimbursement.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§§ 219 to 224. Transferred

CODIFICATION

Section 219, acts July 1, 1944, ch. 373, title V, § 501, 58 Stat. 709; July 3, 1946, ch. 538, § 10, 60 Stat. 425; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 15, 1968, Pub. L. 90–574, title V, § 503(b), 82 Stat. 1012; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, which related to gifts for the benefit of the Service, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

Section 220, act July 1, 1944, ch. 373, title V, § 502, 58 Stat. 710, which related to use of immigration station hospitals, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

Section 221, act July 1, 1944, ch. 373, title V, § 503, 58 Stat. 710, which related to disposition of money collected for care of patients, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

Section 222, acts July 1, 1944, ch. 373, title V, § 504, 58 Stat. 710, June 25, 1948, ch. 654, § 6, 62 Stat. 1018; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to care of Service patients at Saint Elizabeths Hospital, was renumbered section 2104 of act July 1, 1944, by Pub. L. 98–24 and transferred to section 300aa–3 of this title, renumbered section 2304 of act July 1, 1944, by Pub. L. 99–660 and transferred to section 300cc–3 of this title, and was repealed by Pub. L. 98–621, § 10(s), Nov. 8, 1984, 98 Stat. 3381.

Section 223, act July 1, 1944, ch. 373, title V, § 505, 58 Stat. 710; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to settlement of claims, was renumbered section 2105 of act July 1, 1944, by Pub. L. 98–24 and transferred to section 300aa–4 of this title, and was repealed by Pub. L. 99–117, § 12(f), Oct. 7, 1985, 99 Stat. 495. See section 300cc–4 of this title.

Section 224, acts July 1, 1944, ch. 373, title V, § 506, 58 Stat. 710; July 15, 1954, ch. 507, § 14(b), 68 Stat. 481, which related to transportation of remains of officers, was successively renumbered by subsequent acts and transferred, see section 238c of this title.

A new title V (§ 501 et seq.) of the Public Health Service Act was added by Pub. L. 98–24, § 2(b), Apr. 26, 1983, 97 Stat. 177, and is classified to subchapter III–A (§ 290aa et seq. of this title).

§ 225. Repealed. July 12, 1955, ch. 328, § 5(4), 69 Stat. 296

Section, acts July 1, 1944, ch. 373, title V, § 507, 58 Stat. 711; Feb. 25, 1946, ch. 35, § 2, 60 Stat. 30, provided for settlement of accounts of deceased officers. See section 2771 of Title 10, Armed Forces, and section 714 of Title 32, National Guard.

EFFECTIVE DATE OF REPEAL

Repeal effective as of effective date of payment provisions of sections 361 to 365 of former Title 37, Pay and Allowances, except with respect to the deaths of members, see section 5 of act July 12, 1955.

§§ 225a to 227. Transferred

CODIFICATION

Section 225a, act July 1, 1944, ch. 373, title V, § 507, as added June 24, 1967, Pub. L. 90–31, § 5, 81 Stat. 79; amended Oct. 27, 1970, Pub. L. 91–513, title I, § 3(c), 84 Stat. 1241; Apr. 22, 1976, Pub. L. 94–278, title XI, § 1102(b), 90 Stat. 415; Oct. 7, 1980, Pub. L. 96–398, title VIII, § 804(b), 94 Stat. 1603; Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(g)(2), 95 Stat. 560, which related to availability of appropriations for grants to Federal institutions, was successively renumbered by subsequent acts and transferred, see section 238d of this title.

A prior section 507 of act July 1, 1944, ch. 373, title V, providing for settlement of accounts of deceased officers, was classified to section 225 of this title and subsequently repealed.

Section 226, act July 1, 1944, ch. 373, title V, § 508, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, which related to transfer of funds between appropriations, was successively renumbered by subsequent acts and transferred, see section 238e of this title.

Section 227, acts July 1, 1944, ch. 373, title V, § 509 58 Stat. 711; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; June 25, 1948, ch. 654, § 7, 62 Stat. 1018; Reorg. Plan No. 1 of 1953 §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to availability of appropriations for carrying out purposes of this chapter, was successively renumbered by subsequent acts and transferred, see section 238f of this title.

§ 227a. Omitted

CODIFICATION

Section, Pub. L. 90–132, title II, § 204, Nov. 8, 1967, 81 Stat. 407, which provided that appropriations to the Public Health Service be available for research grants to hospitals of the Service, the Bureau of Prisons, Department of Justice, and to Saint Elizabeths Hospital, on the same terms and conditions as grants to non-Federal institutions, was enacted as part of the Department of Health, Education, and Welfare Appropriation Act, 1968, and not as part of the Public Health Service Act which comprises this chapter, and was not repeated in subsequent appropriation acts. See section 300cc–6 of this title.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 89–787, title II, § 204, Nov. 7, 1966, 80 Stat. 1400.
Pub. L. 89–156, title II, § 204, Aug. 31, 1965, 79 Stat. 609.
Pub. L. 88–605, title II, § 204, Sept. 19, 1964, 78 Stat. 979.
Pub. L. 88–136, title II, § 204, Oct. 11, 1963, 77 Stat. 244.
Pub. L. 87–582, title II, § 204, Aug. 14, 1962, 76 Stat. 379.
Pub. L. 87–290, title II, § 206, Sept. 22, 1961, 75 Stat. 608.
Pub. L. 86–703, title II, § 207, Sept. 2, 1960, 74 Stat. 773.
Pub. L. 86–158, title II, § 210, Aug. 14, 1959, 73 Stat. 355.

§§ 228 to 229d. Transferred

CODIFICATION

Section 228, acts July 1, 1944, ch. 373, title V, § 510, 58 Stat. 711; June 25, 1948, ch. 645, § 5, 62 Stat. 859, which related to wearing of uniforms, was successively renumbered by subsequent acts and transferred, see section 238g of this title.

Section 229, act July 1, 1944, ch. 373, title V, § 511, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, which related to an annual report by Surgeon General, was successively renumbered by subsequent acts and transferred, see section 238h of this title.

Section 229a, act July 1, 1944, ch. 373, title V, § 512, as added Oct. 15, 1968, Pub. L. 90–574, title V, § 503(a), 82 Stat. 1012, which related to memorials and other acknowledgments for contributions to health of the Nation, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

Section 229b, act July 1, 1944, ch. 373, title V, § 513, as added June 30, 1970, Pub. L. 91–296, title IV, § 401(a), 84 Stat. 351; amended Oct. 7, 1980, Pub. L. 96–398, title VIII, § 804(c), 94 Stat. 1608; Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(g)(3), 95 Stat. 560, which related to evaluation of programs, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

Section 229c, act July 1, 1944, ch. 373, title V, § 514, as added Nov. 9, 1978, Pub. L. 95–623, § 11(e), 92 Stat. 3456, which related to contract authority of Secretary, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

Section 229d, act July 1, 1944, ch. 373, title V, § 515, formerly Pub. L. 88–164, title II, § 225, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 326; amended Pub. L. 95–622, title I, § 110(c), Nov. 9, 1978, 92 Stat. 3420; renumbered and amended Pub. L. 97–35, title IX,

§ 902(e)(2)(A), Aug. 13, 1981, 95 Stat. 560, which related to recovery of payments, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

§ 230. Repealed. Apr. 27, 1956, ch. 211, § 5(e), 70 Stat. 117

Section, act July 1, 1944, ch. 373, title VII, § 706, formerly title VI, § 606, 58 Stat. 713; renumbered title VII, § 706, Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; amended Feb. 28, 1948, ch. 83, § 9(a), 62 Stat. 47; Oct. 12, 1949, ch. 681, title V, § 521(g), 63 Stat. 835, provided for computation of retired pay. See section 212 of this title.

§ 231. Service and supply fund; uses; reimbursement

A service and supply fund of $250,000 is established, without fiscal year limitation, for the payment of salaries, travel, and other expenses necessary to the maintenance and operation of (1) a supply service for the purchase, storage, handling, issuance, packing, or shipping of stationery, supplies, materials, equipment, and blank forms, for which stocks may be maintained to meet, in whole or in part, requirements of the Public Health Service and requisitions of other Government Offices, and (2) such other services as the Surgeon General, with the approval of the Secretary of Health and Human Services, determines may be performed more advantageously as central services; said fund to be reimbursed from applicable appropriations or funds available when services are performed or stock furnished, or in advance, on a basis of rates which shall include estimated or actual charges for personal services, materials, equipment (including maintenance, repairs, and depreciation), and other expenses.

(July 3, 1945, ch. 263, title II, 59 Stat. 370; 1953 Reorg. Plan No. 1, §§ 5, 8 eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Jan. 4, 1983, Pub. L. 97–414, § 9(i), 96 Stat. 2064.)

CODIFICATION

Section is from the Federal Security Appropriation Act, 1946, act July 3, 1945, and was not enacted as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1983—Pub. L. 97–414 inserted ", or in advance," after "stock furnished".

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 232. National Institute of Mental Health; authorization of appropriation; construction; location

There is authorized to be appropriated a sum not to exceed $7,500,000 for the erection and equipment, for the use of the Public Health Service in carrying out the provisions of this Act, of suitable and adequate hospital buildings and facilities, including necessary living quarters for personnel, and of suitable and adequate laboratory buildings and facilities, and such buildings and facilities shall be known as the National Institute of Mental Health. The Administrator of General Services is authorized to acquire, by purchase, condemnation, donation, or otherwise, a suitable and adequate site or sites, selected on the advice of the Surgeon General of the Public Health Service, in or near the District of Columbia for such buildings and facilities, and to erect thereon, furnish, and equip such buildings and facilities. The amount authorized to be appropriated in this section shall include the cost of preparation of drawings and specifications, supervision of construction, and other administrative expenses incident to the work: *Provided*, That the Administrator of General Services shall prepare the plans and specifications, make all necessary contracts, and supervise construction.

(July 3, 1946, ch. 538, § 11, 60 Stat. 425; June 30, 1949, ch. 288, title I, § 103(a), 63 Stat. 380.)

REFERENCES IN TEXT

This Act, referred to in text, is act July 3, 1946, ch. 538, 60 Stat. 421, as amended, known as the National Mental Health Act, which enacted sections 232 and 242a of this title, amended sections 201, 209, 210, 215, 218, 219, 241, 244, and 246 of this title, and enacted provisions set out as notes under section 201 of this title. For complete classification of this Act to the Code, see Short Title of 1946 Amendment note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as a part of the National Mental Health Act, and not as a part of the Public Health Service Act which comprises this chapter.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Works Agency and of all agencies thereof, together with functions of Federal Works Administrator transferred to Administrator of General Services by section 103(a) of act June 30, 1949, which is classified to section 753(a) of Title 40, Public Buildings, Property, and Works. Both Federal Works Agency and office of Federal Works Administrator abolished by section 103(b) of that act.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS

Transfer of functions by act June 30, 1949, effective July 1, 1949, see section 605 of act June 30, 1949, set out as an Effective Date note under section 471 of Title 40, Public Buildings, Property, and Works.

§ 233. Civil actions or proceedings against commissioned officers or employees

(a) Exclusiveness of remedy

The remedy against the United States provided by sections 1346(b) and 2672 of title 28, or by alternative benefits provided by the United States where the availability of such benefits precludes a remedy under section 1346(b) of title 28, for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigation, by any commissioned officer or employee of the Public Health Service while acting within the scope of his office or employment, shall be exclusive of any other civil action or proceeding by reason of the same subject-matter against the officer or employee (or his estate) whose act or omission gave rise to the claim.

(b) Attorney General to defend action or proceeding; delivery of process to designated official; furnishing of copies of pleading and process to United States attorney, Attorney General, and Secretary

The Attorney General shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the Secretary to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.

(c) Removal to United States district court; procedure; proceeding upon removal deemed a tort action against United States; hearing on motion to remand to determine availability of remedy against United States; remand to State court or dismissal

Upon a certification by the Attorney General that the defendant was acting in the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merit that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State Court: *Provided*, That where such a remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in the event the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

(d) Compromise or settlement of claim by Attorney General

The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28 and with the same effect.

(e) Assault or battery

For purposes of this section, the provisions of section 2680(h) of title 28 shall not apply to assault or battery arising out of negligence in the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations.

(f) Authority of Secretary or designee to hold harmless or provide liability insurance for assigned or detailed employees

The Secretary or his designee may, to the extent that he deems appropriate, hold harmless or provide liability insurance for any officer or employee of the Public Health Service for damage for personal injury, including death, negligently caused by such officer or employee while acting within the scope of his office or employment and as a result of the performance of medical, surgical, dental, or related functions, including the conduct of clinical studies or investigations, if such employee is assigned to a foreign country or detailed to a State or political subdivision thereof or to a non-profit institution, and if the circumstances are such as are likely to preclude the remedies of third persons against the United States described in section 2679(b) of title 28, for such damage or injury.

(g) Exclusivity of remedy against United States for entities deemed Public Health Service employees; subrogation of medical malpractice claims; applicable period; entity and contractor defined

(1) For purposes of this section, an entity described in paragraph (4) and any officer, employee, or contractor (subject to paragraph (5)) of such an entity who is a physician or other licensed or certified health care practitioner shall be deemed to be an employee of the Public Health Service for a calendar year that begins during a fiscal year for which a transfer of the full amount estimated under subsection (k)(1)(A) of this section was made under subsection (k)(3) of this section (subject to paragraph (3)). The remedy against the United States for an entity described in paragraph (4) and any officer, employee, or contractor (subject to paragraph (5)) of such an entity who is deemed to be an employee of the Public Health Service pursuant to

this paragraph shall be exclusive of any other civil action or proceeding to the same extent as the remedy against the United States is exclusive pursuant to subsection (a) of this section.

(2) If, with respect to an entity or person deemed to be an employee for purposes of paragraph (1), a cause of action is instituted against the United States pursuant to this section, any claim of the entity or person for benefits under an insurance policy with respect to medical malpractice relating to such cause of action shall be subrogated to the United States.

(3) This subsection shall apply with respect to a cause of action arising from an act or omission which occurs on or after January 1, 1993. This subsection shall not apply with respect to a cause of action arising from an act or omission which occurs on or after January 1, 1996.

(4) An entity described in this paragraph is a public or non-profit private entity receiving Federal funds under any of the following grant programs:

(A) Section 254b of this title (relating to grants for migrant health centers).

(B) Section 254c of this title (relating to grants for community health centers).

(C) Section 256 of this title (relating to grants for health services for the homeless).

(D) Section 256a of this title (relating to grants for health services for residents of public housing).

(5) For purposes of paragraph (1), an individual may be considered a contractor of an entity described in paragraph (4) only if—

(A) the individual normally performs on average at least 32½ hours of service per week for the entity for the period of the contract; or

(B) in the case of an individual who normally performs on average less than 32½ hours of services per week for the entity for the period of the contract and is a licensed or certified provider of obstetrical services—

(i) the individual's medical malpractice liability insurance coverage does not extend to services performed by the individual for the entity under the contract, or

(ii) the Secretary finds that patients to whom the entity furnishes services will be deprived of obstetrical services if such individual is not considered a contractor of the entity for purposes of paragraph (1).

(h) Qualifications for designation as Public Health Service employee

Notwithstanding subsection (g)(1) of this section, the Secretary, in consultation with the Attorney General, may not deem an entity described in subsection (g)(4) of this section to be an employee of the Public Health Service Act[1] for purposes of this section unless the entity—

(1) has implemented appropriate policies and procedures to reduce the risk of malpractice and the risk of lawsuits arising out of any health or health-related functions performed by the entity;

(2) has reviewed and verified the professional credentials, references, claims history, fitness, professional review organization findings, and license status of its physicians and other licensed or certified health care practitioners, and, where necessary, has obtained the permission from these individuals to gain access to this information;

(3) has no history of claims having been filed against the United States as a result of the application of this section to the entity or its officers, employees, or contractors as provided for under this section, or, if such a history exists, has fully cooperated with the Attorney General in defending against any such claims and either has taken, or will take, any necessary corrective steps to assure against such claims in the future; and

(4) has fully cooperated with the Attorney General in providing information relating to an estimate described under subsection (k) of this section.

(i) Authority of Attorney General to exclude health care professionals from coverage

(1) Notwithstanding subsection (g)(1) of this section, the Attorney General, in consultation with the Secretary, may determine, after notice and opportunity for a hearing, that an individual physician or other licensed or certified health care practitioner who is an officer, employee, or contractor of an entity described in subsection (g)(4) of this section shall not be deemed to be an employee of the Public Health Service for purposes of this section, if treating such individual as such an employee would expose the Government to an unreasonably high degree of risk of loss because such individual—

(A) does not comply with the policies and procedures that the entity has implemented pursuant to subsection (h)(1) of this section;

(B) has a history of claims filed against him or her as provided for under this section that is outside the norm for licensed or certified health care practitioners within the same specialty;

(C) refused to reasonably cooperate with the Attorney General in defending against any such claim;

(D) provided false information relevant to the individual's performance of his or her duties to the Secretary, the Attorney General, or an applicant for or recipient of funds under this chapter; or

(E) was the subject of disciplinary action taken by a State medical licensing authority or a State or national professional society.

(2) A final determination by the Attorney General under this subsection that an individual physician or other licensed or certified health care professional shall not be deemed to be an employee of the Public Health Service shall be effective upon receipt by the entity employing such individual of notice of such determination, and shall apply only to acts or omissions occurring after the date such notice is received.

(j) Remedy for denial of hospital admitting privileges to certain health care providers

In the case of a health care provider who is an officer, employee, or contractor of an entity described in subsection (g)(4) of this section, section 254h(e) of this title shall apply with respect to the provider to the same extent and in the same manner as such section applies to any member of the National Health Service Corps.

[1] So in original. The word ''Act'' probably should not appear.

(k) Estimate of annual claims by Attorney General; criteria; establishment of fund; transfer of funds to Treasury accounts

(1)(A) For each of the fiscal years 1993, 1994, and 1995, the Attorney General, in consultation with the Secretary, shall estimate by the beginning of the year (except that an estimate shall be made for fiscal year 1993 by December 31, 1992, subject to an adjustment within 90 days thereafter) the amount of all claims which are expected to arise under this section (together with related fees and expenses of witnesses) for which payment is expected to be made in accordance with section 1346 and chapter 171 of title 28 from the acts or omissions, during the calendar year that begins during that fiscal year, of entities described in subsection (g)(4) of this section and of officers, employees, or contractors (subject to subsection (g)(5) of this section) of such entities.

(B) The estimate under subparagraph (A) shall take into account—

(i) the value and frequency of all claims for damage for personal injury, including death, resulting from the performance of medical, surgical, dental, or related functions by entities described in subsection (g)(4) of this section or by officers, employees, or contractors (subject to subsection (g)(5) of this section) of such entities who are deemed to be employees of the Public Health Service under subsection (g)(1) of this section that, during the preceding 5-year period, are filed under this section or, with respect to years occurring before this subsection takes effect, are filed against persons other than the United States,

(ii) the amounts paid during that 5-year period on all claims described in clause (i), regardless of when such claims were filed, adjusted to reflect payments which would not be permitted under section 1346 and chapter 171 of title 28, and

(iii) amounts in the fund established under paragraph (2) but unspent from prior fiscal years.

(2) Subject to appropriations, for each of the fiscal years 1993, 1994, and 1995, the Secretary shall establish a fund of an amount equal to the amount estimated under paragraph (1) that is attributable to entities receiving funds under each of the grant programs described in paragraph (4) of subsection (g) of this section, but not to exceed a total of $30,000,000 for each such fiscal year. Appropriations for purposes of this paragraph shall be made separate from appropriations made for purposes of sections 254b, 254c, 256, and 256a of this title.

(3) In order for payments to be made for judgments against the United States (together with related fees and expenses of witnesses) pursuant to this section arising from the acts or omissions of entities described in subsection (g)(4) of this section and of officers, employees, or contractors (subject to subsection (g)(5) of this section) of such entities, the total amount contained within the fund established by the Secretary under paragraph (2) for a fiscal year shall be transferred not later than the December 31 that occurs during the fiscal year to the appropriate accounts in the Treasury.

(July 1, 1944, ch. 373, title II, §224, formerly §223, as added Dec. 31, 1970, Pub. L. 91–623, §4, 84 Stat. 1870; renumbered §224, Nov. 18, 1971, Pub. L. 92–157, title III, §301(c), 85 Stat. 463; amended Oct. 24, 1992, Pub. L. 102–501, §§2–4, 106 Stat. 3268–3270; Dec. 14, 1993, Pub. L. 103–183, title VII, §706(a), 107 Stat. 2241.)

AMENDMENTS

1993—Subsec. (k)(2). Pub. L. 103–183 inserted at end ''Appropriations for purposes of this paragraph shall be made separate from appropriations made for purposes of sections 254b, 254c, 256, and 256a of this title.''

1992—Subsecs. (g) to (k). Pub. L. 102–501 added subsecs. (g) to (k).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 6 of Pub. L. 102–501 provided that: ''The amendments made by this Act [amending this section] shall take effect on the date of the enactment of this Act [Oct. 24, 1992].''

REPORT ON RISK EXPOSURE OF COVERED ENTITIES

Section 5 of Pub. L. 102–501 provided that:

''(a) IN GENERAL.—Not later than April 1, 1995, the Attorney General, in consultation with the Secretary of Health and Human Services (hereafter referred to as the 'Secretary'), shall submit a report to Congress on the medical malpractice liability claims experience of entities subject to section 224(g) of the Public Health Service Act [42 U.S.C. 233(g)] (as added by section 2(a)) and the risk exposure associated with such entities.

''(b) EFFECT OF LIABILITY PROTECTIONS ON COSTS INCURRED BY COVERED ENTITIES.—The Attorney General's report under subsection (a) shall include an analysis by the Secretary comparing—

''(1) the Secretary's estimate of the aggregate amounts that such entities (together with the officers, employees, and contractors of such entities who are subject to section 224(g) of such Act) would have directly or indirectly paid to obtain medical malpractice liability insurance coverage had section 224(g) of the Public Health Service Act not been enacted into law, with

''(2) the aggregate amounts by which the grants received by such entities under the Public Health Service Act [this chapter] were reduced as a result of the enactment of section 224(k)(2) of such Act [42 U.S.C. 233(k)(2)].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254h–1 of this title; title 25 section 450f.

§ 234. Repealed. Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2281, eff. Oct. 1, 1977

Section, act July 1, 1944, ch. 373, title II, §225, as added Oct. 27, 1972, Pub. L. 92–585, §5, 86 Stat. 1293; amended Aug. 23, 1974, Pub. L. 93–385, §1, 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title IX, §901, 90 Stat. 415; Sept. 30, 1976, Pub. L. 94–437, title I, §104, 90 Stat. 1403; Oct. 12, 1976, Pub. L. 94–484, title I, §101(t), 90 Stat. 2246, related to Public Health and National Health Service Corps Scholarship Training program.

§ 235. Administration of grants in multigrant projects; promulgation of regulations

For the purpose of facilitating the administration of, and expediting the carrying out of the purposes of, the programs established by subchapters V, VI, and VII[1] of this chapter, and sections 242b, 246(a), 246(b), 246(c), 246(d),[1] and 246(e)[1] of this title in situations in which grants are sought or made under two or more of such

[1] See References in Text note below.

programs with respect to a single project, the Secretary is authorized to promulgate regulations—

(1) under which the administrative functions under such programs with respect to such project will be performed by a single administrative unit which is the administrative unit charged with the administration of any of such programs or is the administrative unit charged with the supervision of two or more of such programs;

(2) designed to reduce the number of applications, reports, and other materials required under such programs to be submitted with respect to such project, and otherwise to simplify, consolidate, and make uniform (to the extent feasible), the data and information required to be contained in such applications, reports, and other materials; and

(3) under which inconsistent or duplicative requirements imposed by such programs will be revised and made uniform with respect to such project;

except that nothing in this section shall be construed to authorize the Secretary to waive or suspend, with respect to any such project, any requirement with respect to any of such programs if such requirement is imposed by law or by any regulation required by law.

(July 1, 1944, ch. 373, title II, § 226, formerly title III, § 310A, as added Oct. 30, 1970, Pub. L. 91–515, title II, § 270, 84 Stat. 1306; amended Nov. 18, 1971, Pub. L. 92–157, title II, § 201, 85 Stat. 461; renumbered § 226, July 23, 1974, Pub. L. 93–353, title I, § 102(e), 88 Stat. 362.)

REFERENCES IN TEXT

Subchapters V and VI of this chapter, referred to in text, are classified to sections 292 et seq. and 296 et seq., respectively, of this title.

Subchapter VII of this chapter, referred to in text, which was classified to section 299 et seq. of this title, was repealed by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

Section 246(d) of this title, referred to in text, was repealed by Pub. L. 97–35, title IX, § 902(b), Aug. 13, 1981, 95 Stat. 559.

Section 246(e) of this title, referred to in text, was repealed by Pub. L. 94–63, title V, § 501(b), July 29, 1975, 89 Stat. 346.

CODIFICATION

Section was formerly classified to section 242i of this title.

AMENDMENTS

1971—Pub. L. 92–157 provided for administration of programs established under subchapters V and VI of this chapter.

§ 236. Orphan Products Board

(a) Establishment; composition; chairman

There is established in the Department of Health and Human Services a board for the development of drugs (including biologics) and devices (including diagnostic products) for rare diseases or conditions to be known as the Orphan Products Board. The Board shall be comprised of the Assistant Secretary for Health of the Department of Health and Human Services and representatives, selected by the Secretary, of the Food and Drug Administration, the National Institutes of Health, the Centers for Disease Control and Prevention, and any other Federal department or agency which the Secretary determines has activities relating to drugs and devices for rare diseases or conditions. The Assistant Secretary for Health shall chair the Board.

(b) Function

The function of the Board shall be to promote the development of drugs and devices for rare diseases or conditions and the coordination among Federal, other public, and private agencies in carrying out their respective functions relating to the development of such articles for such diseases or conditions.

(c) Duties with respect to drugs for rare diseases or conditions

In the case of drugs for rare diseases or conditions the Board shall—

(1) evaluate—

(A) the effect of subchapter B of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360aa et seq.] on the development of such drugs, and

(B) the implementation of such subchapter;[1]

(2) evaluate the activities of the National Institutes of Health for the development of drugs for such diseases or conditions,

(3) assure appropriate coordination among the Food and Drug Administration, the National Institutes of Health and the Centers for Disease Control and Prevention in the carrying out of their respective functions relating to the development of drugs for such diseases or conditions to assure that the activities of each agency are complementary,

(4) assure appropriate coordination among all interested Federal agencies, manufacturers, and organizations representing patients, in their activities relating to such drugs,

(5) with the consent of the sponsor of a drug for a rare disease or condition exempt under section 505(i) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(i)] or regulations issued under such section, inform physicians and the public respecting the availability of such drug for such disease or condition and inform physicians and the public respecting the availability of drugs approved under section 505(c) of such Act [21 U.S.C. 355(c)] or licensed under section 262 of this title for rare diseases or conditions,

(6) seek business entities and others to undertake the sponsorship of drugs for rare diseases or conditions, seek investigators to facilitate the development of such drugs, and seek business entities to participate in the distribution of such drugs, and

(7) recognize the efforts of public and private entities and individuals in seeking the development of drugs for rare diseases or conditions and in developing such drugs.

(d) Consultation

The Board shall consult with interested persons respecting the activities of the Board under

[1] So in original. The semicolon probably should be a comma.

this section and as part of such consultation shall provide the opportunity for the submission of oral views.

(e) Annual report; contents

The Board shall submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives an annual report—

(1) identifying the drugs which have been designated under section 526 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 360bb] for a rare disease or condition,

(2) describing the activities of the Board, and

(3) containing the results of the evaluations carried out by the Board.

The Director of the National Institutes of Health shall submit to the Board for inclusion in the annual report a report on the rare disease and condition research activities of the Institutes of the National Institutes of Health; the Secretary of the Treasury shall submit to the Board for inclusion in the annual report a report on the use of the credit against tax provided by section 44H[2] of title 26; and the Secretary of Health and Human Services shall submit to the Board for inclusion in the annual report a report on the program of assistance under section 360ee of title 21 for the development of drugs for rare diseases and conditions. Each annual report shall be submitted by June 1 of each year for the preceding calendar year.

(July 1, 1944, ch. 373, title II, § 227, as added Jan. 4, 1983, Pub. L. 97–414, § 3, 96 Stat. 2051; amended Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095; July 10, 1992, Pub. L. 102–321, title I, § 163(b)(1), 106 Stat. 375; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(1), 106 Stat. 3504.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (c)(1)(A), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended. Subchapter B of the Federal Food, Drug, and Cosmetic Act probably means subchapter B of chapter V of the Federal Food, Drug, and Cosmetic Act which is classified generally to part B (section 360aa et seq.) of subchapter V of chapter 9 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

Section 44H of title 26, referred to in subsec. (e), was renumbered section 28 of title 26, by Pub. L. 98–369, div. A, title IV, § 471(c)(1), July 18, 1984, 98 Stat. 826.

PRIOR PROVISIONS

A prior section 236, act July 1, 1944, ch. 373, title II, § 227, formerly title III, § 310B, as added Oct. 30, 1970, Pub. L. 91–515, title II, § 280, 84 Stat. 1307; renumbered § 227 and amended July 23, 1974, Pub. L. 93–353, title I, § 102(f), 88 Stat. 362, related to an annual report by Secretary on activities related to health facilities and services and expenditure of funds, prior to repeal by Pub. L. 97–35, title XXI, § 2193(b)(4), Aug. 13, 1981, 95 Stat. 827.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Subsec. (c)(2). Pub. L. 102–321, § 163(b)(1)(A), which directed the striking out of '', and the Alcohol, Drug Abuse, and Mental Health Administration'', was executed by striking ''and the Alcohol, Drug Abuse, and Mental Health Administration'' after ''National Institutes of Health'' to reflect the probable intent of Congress.

Subsec. (c)(3). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–321, § 163(b)(1)(B), struck out '', the Alcohol, Drug Abuse, and Mental Health Administration,'' after ''National Institutes of Health''.

Subsec. (e). Pub. L. 102–321, § 163(b)(1)(C), (D), in concluding provisions, struck out ''and the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration'' after ''National Institutes of Health'' the first place appearing and ''and the Alcohol, Drug Abuse, and Mental Health Administration'' after ''National Institutes of Health'' the second place appearing.

1986—Subsec. (e). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 801 of Pub. L. 102–321 provided that:

''(a) IN GENERAL.—This Act [See Tables for classification] takes effect on the date of the enactment of this Act [July 10, 1992], subject to subsections (b) through (d).

''(b) AMENDMENTS.—The amendments described in this Act are made on the date of the enactment of this Act and take effect on such date, except as provided in subsections (c) and (d).

''(c) REORGANIZATION UNDER TITLE I.—Title I [§§ 101–171] takes effect on October 1, 1992. The amendments described in such title are made on such date and take effect on such date.

''(d) PROGRAMS PROVIDING FINANCIAL ASSISTANCE.—

''(1) FISCAL YEAR 1993 AND SUBSEQUENT YEARS.—In the case of any program making awards of grants, cooperative agreements, or contracts, the amendments made by this Act are effective for awards made on or after October 1, 1992.

''(2) PRIOR FISCAL YEARS.—

''(A) Except as provided in subparagraph (B), in the case of any program making awards of grants, cooperative agreements, or contracts, if the program began operation prior to the date of the enactment of this Act [July 10, 1992] and the program is amended by this Act, awards made prior to October 1, 1992, shall continue to be subject to the terms and conditions upon which such awards were made, notwithstanding the amendments made by this Act.

''(B) Subparagraph (A) does not apply with respect to the amendments made by this Act to part B of title XIX of the Public Health Service Act [section 300x et seq. of this title]. Section 205(a) [set out as a note under section 300x of this title] applies with respect to the program established in such part.''

USE OF ''CDC'' AS ACRONYM FOR CENTERS FOR DISEASE CONTROL AND PREVENTION

Section 312(i) of Pub. L. 102–531 provided that: ''The amendments made by this section [amending this section, sections 247d, 280b to 280b–2, 285c–4, 285d–7, 285m–4, 289c, 290aa–9, 290bb–1, 300u–5, 300aa–2, 300aa–19, 300aa–26, 300cc, 300cc–2, 300cc–15, 300cc–17, 300cc–20, 300cc–31, 300ee–1, 300ee–2, 300ee–31, 300ee–32, 300ee–34, 300ff–11 to 300ff–13, 300ff–17, 300ff–27, 300ff–28, 300ff–41, 300ff–43, 300ff–49, 300ff–75, 4841, and 9604 of this title, section 1341 of Title 15, Commerce and Trade, section 2001 of Title 25, Indians, and provisions set out as notes under sec-

[2] See References in Text note below.

tions 241 and 281 of this title and section 303 of Title 38, Veterans' Benefits] may not be construed as prohibiting the Director of the Centers for Disease Control and Prevention from utilizing for official purposes the term 'CDC' as an acronym for such Centers.''

NATIONAL COMMISSION ON ORPHAN DISEASES

Pub. L. 99–91, § 4, Aug. 15, 1985, 99 Stat. 388, as amended by Pub. L. 100–290, § 4, Apr. 18, 1988, 102 Stat. 92; Pub. L. 102–321, title I, § 163(c)(1), July 10, 1992, 106 Stat. 376, provided that:

''(a) ESTABLISHMENT.—There is established the National Commission on Orphan Diseases (hereinafter referred to as the 'Commission').

''(b) DUTY.—The Commission shall assess the activities of the National Institutes of Health, the Food and Drug Administration, other public agencies, and private entities in connection with—

''(1) basic research conducted on rare diseases;

''(2) the use in research on rare diseases of knowledge developed in other research;

''(3) applied and clinical research on the prevention, diagnosis, and treatment of rare diseases; and

''(4) the dissemination to the public, health care professionals, researchers, and drug and medical device manufacturers of knowledge developed in research on rare diseases and other diseases which can be used in the prevention, diagnosis, and treatment of rare diseases.

''(c) REVIEW REQUIREMENTS.—In assessing the activities of the National Institutes of Health, and the Food and Drug Administration in connection with research on rare diseases, the Commission shall review—

''(1) the appropriateness of the priorities currently placed on research on rare diseases;

''(2) the relative effectiveness of grants and contracts when used to fund research on rare diseases;

''(3) the appropriateness of specific requirements applicable to applications for funds for research on rare diseases taking into consideration the reasonable capacity of applicants to meet such requirements;

''(4) the adequacy of the scientific basis for such research, including the adequacy of the research facilities and research resources used in such research and the appropriateness of the scientific training of the personnel engaged in such research;

''(5) the effectiveness of activities undertaken to encourage such research;

''(6) the organization of the peer review process applicable to applications for funds for such research to determine if the organization of the peer review process could be revised to improve the effectiveness of the review provided to proposals for research on rare diseases;

''(7) the effectiveness of the coordination between the national research institutes of the National Institutes of Health, the Food and Drug Administration, and private entities in supporting such research; and

''(8) the effectiveness of activities undertaken to assure that knowledge developed in research on nonrare diseases is, when appropriate, used in research on rare diseases.

''(d) COMPOSITION.—The Commission shall be composed of twenty members appointed by the Secretary of Health and Human Services as follows:

''(1) Ten members shall be appointed from individuals who are not officers or employees of the Government and who by virtue of their training or experience in research on rare diseases or in the treatment of rare diseases are qualified to serve on the Commission.

''(2) Five members shall be appointed from individuals who are not officers or employees of the Government and who have a rare disease or are employed to represent or are members of an organization concerned about rare disease.

''(3) Four nonvoting members shall be appointed for the directors of the national research institutes of the National Institutes of Health which the Secretary determines are involved with rare diseases.

''(4) One nonvoting member shall be appointed from officers or employees of the Food and Drug Administration who the Secretary determines are involved with rare diseases.

A vacancy in the Commission shall be filled in the manner in which the original appointment was made. If any member of the Commission who was appointed to the Commission as a director of a national research institute or as an officer or employee of the Food and Drug Administration leaves that office or position, or if any member of the Commission who was appointed from persons who are not officers or employees of the Government becomes an officer or employee of the Government, such member may continue as a member of the Commission for not longer than the ninety-day period beginning on the date such member leaves that office or position or becomes such an officer or employee, as the case may be.

''(e) TERM.—Members shall be appointed for the life of the Commission.

''(f) COMPENSATION.—

''(1) Except as provided in paragraph (2), members of the Commission shall each be entitled to receive compensation at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties as members of the Commission.

''(2) Members of the Commission who are full-time officers or employees of the Government shall receive no additional pay by reason of their service on the Commission.

''(g) CHAIRMAN.—The Chairman of the Commission shall be designated by the members of the Commission.

''(h) STAFF.—Subject to such rules as may be prescribed by the Commission, the Commission may appoint and fix the pay of such personnel as it determines are necessary to enable the Commission to carry out its functions. Personnel shall be appointed subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

''(i) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Commission may procure temporary and intermittent services under section 3109(b) of title 5 of the United States Code, but at rates for individuals not to exceed the daily equivalent of the basic pay payable for grade GS–15 of the General Schedule.

''(j) DETAIL OF PERSONNEL.—Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist the Commission in carrying out its functions.

''(k) ADMINISTRATIVE SUPPORT SERVICES.—The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

''(*l*) GENERAL AUTHORITY.—The Commission may, for the purpose of carrying out this section, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission considers appropriate.

''(m) INFORMATION.—The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out this section. Upon request of the Chairman, the head of such department or agency shall furnish such information to the Commission.

''(n) REPORT.—The Commission shall transmit to the Secretary and to each House of the Congress a report not later than February 1, 1989, on the activities of the Commission. The report shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for—

''(1) a long range plan for the use of public and private resources to improve research into rare diseases

and to assist in the prevention, diagnosis, and treatment of rare diseases; and

''(2) such legislation or administrative actions as it considers appropriate.

''*(o)* TERMINATION.—The Commission shall terminate 90 days after the date of the submittal of its report under subsection (n).

''(p) FUNDS.—The Director of the National Institutes of Health shall make available $1,000,000 to the Commission from appropriations for fiscal year 1986 for the National Institutes of Health.''

§ 237. Silvio O. Conte Senior Biomedical Research Service

(a) Creation; number of members

(1) There shall be in the Public Health Service a Silvio O. Conte Senior Biomedical Research Service, not to exceed 500 members.

(2) The authority established in paragraph (1) regarding the number of members in the Silvio O. Conte Senior Biomedical Research Service is in addition to any authority established regarding the number of members in the commissioned Regular Corps, in the Reserve Corps, and in the Senior Executive Service. Such paragraph may not be construed to require that the number of members in the commissioned Regular Corps, in the Reserve Corps, or in the Senior Executive Service be reduced to offset the number of members serving in the Silvio O. Conte Senior Biomedical Research Service (in this section referred to as the ''Service'').

(b) Appointments; qualifications; provisions inapplicable to members

The Service shall be appointed by the Secretary without regard to the provisions of title 5 regarding appointment, and shall consist of individuals outstanding in the field of biomedical research or clinical research evaluation. No individual may be appointed to the Service unless such individual (1) has earned a doctoral level degree in biomedicine or a related field, and (2) meets the qualification standards prescribed by the Office of Personnel Management for appointment to a position at GS–15 of the General Schedule. Notwithstanding any previous applicability to an individual who is a member of the Service, the provisions of subchapter I of chapter 35 (relating to retention preference), chapter 43 (relating to performance appraisal and performance actions), chapter 51 (relating to classification), subchapter III of chapter 53 (relating to General Schedule pay rates), and chapter 75 (relating to adverse actions) of title 5 shall not apply to any member of the Service.

(c) Performance appraisal system

The Secretary shall develop a performance appraisal system designed to—

(1) provide for the systematic appraisal of the performance of members, and

(2) encourage excellence in performance by members.

(d) Pay of members

(1) The Secretary shall determine, subject to the provisions of this subsection, the pay of members of the Service.

(2) The pay of a member of the Service shall not be less than the minimum rate payable for GS–15 of the General Schedule and shall not exceed the rate payable for level I of the Executive Schedule unless approved by the President under section 5377(d)(2) of title 5.

(e) Contribution to retirement system of institutions of higher education

The Secretary may, upon the request of a member who—

(1) performed service in the employ of an institution of higher education immediately prior to his appointment as a member of the Service, and

(2) retains the right to continue to make contributions to the retirement system of such institution,

contribute an amount not to exceed 10 percent per annum of the member's basic pay to such institution's retirement system on behalf of such member. A member who requests that such contribution be made shall not be covered by, or earn service credit under, any retirement system established for employees of the United States under title 5, but such service shall be creditable for determining years of service under section 6303(a) of such title.

(f) Career and noncareer appointment of certain individuals

Subject to the following sentence, the Secretary may, notwithstanding the provisions of title 5 regarding appointment, appoint an individual who is separated from the Service involuntarily and without cause to a position in the competitive civil service at GS–15 of the General Schedule, and such appointment shall be a career appointment. In the case of such an individual who immediately prior to his appointment to the Service was not a career appointee in the civil service or the Senior Executive Service, such appointment shall be in the excepted civil service and may not exceed a period of 2 years.

(g) Rules and regulations

The Secretary shall promulgate such rules and regulations, not inconsistent with this section, as may be necessary for the efficient administration of the Service.

(July 1, 1944, ch. 373, title II, § 228, as added Nov. 5, 1990, Pub. L. 101–509, title V, § 529 [title III, § 304(a)], 104 Stat. 1427, 1463; amended June 10, 1993, Pub. L. 103–43, title XX, § 2001, 107 Stat. 208.)

REFERENCES IN TEXT

The General Schedule, referred to in subsecs. (b), (d)(2), and (f), is set out under section 5332 of Title 5, Government Organization and Employees.

The provisions of title 5 regarding appointments, referred to in subsecs. (b) and (f), are classified to section 3301 et seq. of Title 5.

Level I of the Executive Schedule, referred to in subsec. (d)(2), is set out in section 5312 of Title 5.

AMENDMENTS

1993—Pub. L. 103–43, § 2001(b), substituted ''Silvio O. Conte Senior Biomedical Research Service'' for ''Senior Biomedical Research Service'' in section catchline.

Subsec. (a). Pub. L. 103–43, § 2001(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''There shall be in the Public Health Service a Senior Biomedical Research Service (hereinafter in this section referred to as the 'Service'), not to exceed 350 members at any time.''

EFFECTIVE DATE

Section effective on the 90th day following Nov. 5, 1990, see section 529 [title III, § 304(c)] of Pub. L. 101–509,

set out as an Effective Date of 1990 Amendment note under section 212 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 212 of this title.

PART B—MISCELLANEOUS PROVISIONS

CODIFICATION

This part was classified to subchapter XXV (§ 300aaa et seq.) of this chapter prior to its renumbering by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213.

§ 238. Gifts for benefit of Service

(a) Acceptance by Secretary

The Secretary of Health and Human Services is authorized to accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Service or for the carrying out of any of its functions. Conditional gifts may be so accepted if recommended by the Surgeon General, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by Act of Congress.

(b) Depository of funds; availability for expenditure

Any unconditional gift of money accepted pursuant to the authority granted in subsection (a) of this section, the net proceeds from the liquidation (pursuant to subsection (c) or subsection (d) of this section) of any other property so accepted, and the proceeds of insurance on any such gift property not used for its restoration, shall be deposited in the Treasury of the United States and are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Service, and he may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such gifts and the income from such investments shall be available for expenditure in the operation of the Service and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Service by Congress.

(c) Evidences of unconditional gifts of intangible property

The evidences of any unconditional gift of intangible personal property, other than money, accepted pursuant to the authority granted in subsection (a) of this section shall be deposited with the Secretary of the Treasury and he, in his discretion, may hold them, or liquidate them except that they shall be liquidated upon the request of the Secretary of Health and Human Services whenever necessary to meet payments required in the operation of the Service or the performance of its functions. The proceeds and income from any such property held by the Secretary of the Treasury shall be available for expenditure as is provided in subsection (b) of this section.

(d) Real property or tangible personal property

The Secretary of Health and Human Services, shall hold any real property or any tangible personal property accepted unconditionally pursuant to the authority granted in subsection (a) of this section and he shall permit such property to be used for the operation of the Service and the performance of its functions or he may lease or hire such property, and may insure such property, and deposit the income thereof with the Secretary of the Treasury to be available for expenditure as provided in subsection (b) of this section: *Provided*, That the income from any such real property or tangible personal property shall be available for expenditure in the discretion of the Secretary of Health and Human Services, for the maintenance, preservation, or repair and insurance of such property and that any proceeds from insurance may be used to restore the property insured. Any such property when not required for the operation of the Service or the performance of its functions may be liquidated by the Secretary of Health and Human Services, and the proceeds thereof deposited with the Secretary of the Treasury, whenever in his judgment the purposes of the gifts will be served thereby.

(July 1, 1944, ch. 373, title II, § 231, formerly title V, § 501, 58 Stat. 709; July 3, 1946, ch. 538, § 10, 60 Stat. 425; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 15, 1968, Pub. L. 90–574, title V, § 503(b), 82 Stat. 1012; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; renumbered title XXI, § 2101, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176; renumbered title XXIII, § 2301, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755; renumbered title XXV, § 2501, Nov. 4, 1988, Pub. L. 100–607, title II, § 201(1), (2), 102 Stat. 3062; renumbered title XXVI, § 2601, Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(a), 102 Stat. 4244; renumbered title XXVII, § 2701, Aug. 18, 1990, Pub. L. 101–381, title I, § 101(1), (2), 104 Stat. 576; renumbered title II, § 231, June 10, 1993, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa of this title prior to renumbering by Pub. L. 103–43, to section 300cc of this title prior to renumbering by Pub. L. 100–607, to section 300aa of this title prior to renumbering by Pub. L. 99–660, and to section 219 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1968—Subsec. (e). Pub. L. 90–574 struck out subsec. (e) which provided for acknowledgment of donations of $50,000 or more in aid of research by the establishment of suitable memorials within the National Institutes of Health and the National Institute of Mental Health.

1948—Subsec. (e). Act June 16, 1948, substituted ''National Institutes of Health'' for ''National Institute of Health''.

1946—Subsec. (e). Act July 3, 1946, inserted reference to National Institute of Mental Health.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to

Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

CROSS REFERENCES

National Institutes of Health gift fund and conditional gift fund to be classified on books of Treasury as trust funds, see section 1321 of Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 284a, 285q–2, 286, 287a, 289f of this title.

§ 238a. Use of immigration station hospitals

The Immigration and Naturalization Service may, by agreement of the heads of the departments concerned, permit the Public Health Service to use hospitals at immigration stations for the care of Public Health Service patients. The Surgeon General shall reimburse the Immigration and Naturalization Service for the actual cost of furnishing fuel, light, water, telephone, and similar supplies and services, which reimbursement shall be covered into the proper Immigration and Naturalization Service appropriation, or such costs may be paid from working funds established as provided by law, but no charge shall be made for the expense of physical upkeep of the hospitals. The Immigration and Naturalization Service shall reimburse the Surgeon General for the care and treatment of persons detained in hospitals of the Public Health Service at the request of the Immigration and Naturalization Service unless such persons are entitled to care and treatment under section 249(a)[1] of this title.

(July 1, 1944, ch. 373, title II, § 232, formerly title V, § 502, 58 Stat. 710, renumbered title XXI, § 2102, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176; renumbered title XXIII, § 2302, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755; renumbered title XXV, § 2502, Nov. 4, 1988, Pub. L. 100–607, title II, § 201(1), (2), 102 Stat. 3062; renumbered title XXVI, § 2602, Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(a), 102 Stat. 4244; renumbered title XXVII, § 2702, Aug. 18, 1990, Pub. L. 101–381, title I, § 101(1), (2), 104 Stat. 576; renumbered title II, § 232, June 10, 1993, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), 107 Stat. 213.)

REFERENCES IN TEXT

Subsec. (a) of section 249 of this title, referred to in text, which related to persons entitled to care and treatment without charge, was repealed, and subsec. (c) of section 249 of this title was redesignated as subsec. (a), by Pub. L. 97–35, title IX, § 986(a), (b)(2), Aug. 13, 1981, 95 Stat. 603.

CODIFICATION

Section was formerly classified to section 300aaa–1 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–1 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–1 of this title prior to renumbering by Pub. L. 99–660, and to section 220 of this title prior to renumbering by Pub. L. 98–24.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by sections 1 and 2 of Reorg. Plan No. 2 of 1950, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, which were repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 662. Immigration and Naturalization Service, referred to in this section, is a bureau in Department of Justice.

§ 238b. Disposition of money collected for care of patients

Money collected as provided by law for expenses incurred in the care and treatment of foreign seamen, and money received for the care and treatment of pay patients, including any amounts received from any executive department on account of care and treatment of pay patients, shall be covered into the appropriation from which the expenses of such care and treatment were paid.

(July 1, 1944, ch. 373, title II, § 233, formerly title V, § 503, 58 Stat. 710, renumbered title XXI, § 2103, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176; renumbered title XXIII, § 2303, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755; renumbered title XXV, § 2503, Nov. 4, 1988, Pub. L. 100–607, title II, § 201(1), (2), 102 Stat. 3062; renumbered title XXVI, § 2603, Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(a), 102 Stat. 4244; renumbered title XXVII, § 2703, Aug. 18, 1990, Pub. L. 101–381, title I, § 101(1), (2), 104 Stat. 576; renumbered title II, § 233, June 10, 1993, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–2 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–2 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–2 of this title prior to renumbering by Pub. L. 99–660, and to section 221 of this title prior to renumbering by Pub. L. 98–24.

§ 238c. Transportation of remains of officers

Appropriations available for traveling expenses of the Service shall be available for meeting the cost of preparation for burial and of transportation to the place of burial of remains

[1] See References in Text note below.

of commissioned officers, and of personnel specified in regulations, who die in line of duty. Appropriations available for carrying out the provisions of this chapter shall also be available for the payment of such expenses relating to the recovery, care and disposition of the remains of personnel or their dependents as may be authorized under other provisions of law.

(July 1, 1944, ch. 373, title II, § 234, formerly title V, § 506, 58 Stat. 710; July 15, 1954, ch. 507, § 14(b), 68 Stat. 481; renumbered title XXI, § 2106, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176; renumbered title XXIII, § 2306, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755; renumbered title XXV, § 2504, Nov. 4, 1988, Pub. L. 100–607, title II, § 201(1), (3), 102 Stat. 3062, 3063; renumbered title XXVI, § 2604, Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(a), 102 Stat. 4244; renumbered title XXVII, § 2704, Aug. 18, 1990, Pub. L. 101–381, title I, § 101(1), (2), 104 Stat. 576; renumbered title II, § 234, June 10, 1993, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–3 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–5 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–5 of this title prior to renumbering by Pub. L. 99–660, and to section 224 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1954—Act July 15, 1954, inserted sentence at end relating to availability of appropriations for paying expenses relating to recovery, care, and disposition of the remains of personnel or their dependents.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DISPOSITION OF REMAINS OF DECEASED PERSONNEL

Recovery, care and disposition of the remains of deceased members of the uniformed services and other deceased personnel, see section 1481 et seq. of Title 10, Armed Forces.

§ 238d. Availability of appropriations for grants to Federal institutions

Appropriations to the Public Health Service available under this chapter for research, training, or demonstration project grants or for grants to expand existing treatment and research programs and facilities for alcoholism, narcotic addiction, drug abuse, and drug dependence and appropriations under title VI of the Mental Health Systems Act [42 U.S.C. 9511 et seq.] shall also be available on the same terms and conditions as apply to non-Federal institutions, for grants for the same purpose to Federal institutions, except that grants to Federal institutions may be funded at 100 per centum of the costs.

(July 1, 1944, ch. 373, title II, § 235, formerly title V, § 507, as added June 24, 1967, Pub. L. 90–31, § 5, 81 Stat. 79; amended Oct. 27, 1970, Pub. L. 91–513, title I, § 3(c), 84 Stat. 1241; Apr. 22, 1976, Pub. L. 94–278, title XI, § 1102(b), 90 Stat. 415; Oct. 7, 1980, Pub. L. 96–398, title VIII, § 804(b), 94 Stat. 1608; Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(g)(2), 95 Stat. 560; renumbered title XXI, § 2107, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176; renumbered title XXIII, § 2307, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755; renumbered title XXV, § 2505, Nov. 4, 1988, Pub. L. 100–607, title II, § 201(1), (3), 102 Stat. 3062, 3063; renumbered title XXVI, § 2605, Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(a), 102 Stat. 4244; renumbered title XXVII, § 2705, Aug. 18, 1990, Pub. L. 101–381, title I, § 101(1), (2), 104 Stat. 576; renumbered title II, § 235, June 10, 1993, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), 107 Stat. 213.)

REFERENCES IN TEXT

The Mental Health Systems Act, referred to in text, is Pub. L. 96–398, Oct. 7, 1980, 94 Stat. 1564, as amended. Title VI of the Mental Health Systems Act is classified generally to subchapter V (§ 9511 et seq.) of chapter 102 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

CODIFICATION

Section was formerly classified to section 300aaa–4 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–6 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–6 of this title prior to renumbering by Pub. L. 99–660, and to section 225a of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1981—Pub. L. 97–35 struck out provisions relating to appropriations available under Community Mental Health Centers Act for construction, etc.

1980—Pub. L. 96–398 struck out ''and'' after ''drug dependence,'' and inserted reference to title VI of the Mental Health Systems Act.

1976—Pub. L. 94–278 substituted ''Federal institutions, except that grants to'' for ''hospitals of the Service, of the Veterans' Administration, or of the Bureau of Prisons of the Department of Justice, and to Saint Elizabeths Hospital, except grants to such''.

1970—Pub. L. 91–513 inserted references to appropriations available for grants to expand existing treatment and research programs and facilities for alcoholism, narcotic addiction, drug abuse, and drug dependence, and appropriations available under Community Mental Health Centers Act for construction and staffing of community mental health centers and alcoholism and narcotic addiction, drug abuse, and drug dependence facilities, and inserted provision that grants to specified Federal institutions may be funded at 100 per centum of the costs.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

EFFECTIVE DATE

Section 5 of Pub. L. 90–31 provided that this section is effective July 1, 1968.

§ 238e. Transfer of funds

For the purpose of any reorganization under section 203 of this title, the Secretary, with the approval of the Director of the Office of Management and Budget, is authorized to make such transfers of funds between appropriations as may be necessary for the continuance of transferred functions.

(July 1, 1944, ch. 373, title II, § 236, formerly title V, § 508, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; 1970 Reorg. Plan No. 2, § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; renumbered title XXI, § 2108, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176; renumbered title XXIII, § 2308, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755; renumbered title XXV, § 2506, Nov. 4, 1988, Pub. L. 100–607, title II, § 201(1), (3), 102 Stat. 3062, 3063; renumbered title XXVI, § 2606, Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(a), 102 Stat. 4244; renumbered title XXVII, § 2706, Aug. 18, 1990, Pub. L. 101–381, title I, § 101(1), (2), 104 Stat. 576; renumbered title II, § 236, June 10, 1993, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–5 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–7 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–7 of this title prior to renumbering by Pub. L. 99–660, and to section 226 of this title prior to renumbering by Pub. L. 98–24.

TRANSFER OF FUNCTIONS

Functions vested by law (including reorganization plan) in Bureau of the Budget or Director of Bureau of the Budget transferred to President of the United States by section 101 of Reorg. Plan No. 2 of 1970, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085, set out in the Appendix to Title 5, Government Organization and Employees. Section 102 of Reorg. Plan No. 2 of 1970 redesignated Bureau of the Budget as Office of Management and Budget.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 238f. Availability of appropriations

Appropriations for carrying out the purposes of this chapter shall be available for expenditure for personal services and rent at the seat of Government; books of reference, periodicals, and exhibits; printing and binding; transporting in Government-owned automotive equipment, to and from school, children of personnel who have quarters for themselves and their families at stations determined by the Surgeon General to be isolated stations; expenses incurred in pursuing, identifying, and returning prisoners who escape from any hospital, institution, or station of the Service or from the custody of any officer or employee of the Service, including rewards for the capture of such prisoners; furnishing, repairing, and cleaning such wearing apparel as may be prescribed by the Surgeon General for use by employees in the performance of their official duties; reimbursing officers and employees, subject to regulations of the Secretary, for the cost of repairing or replacing their personal belongings damaged or destroyed by patients while such officers or employees are engaged in the performance of their official duties; and maintenance of buildings of the National Institutes of Health.

(July 1, 1944, ch. 373, title II, § 237, formerly title V, § 509, 58 Stat. 711; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469; June 25, 1948, ch. 654, § 7, 62 Stat. 1018; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered title XXI, § 2109, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176; renumbered title XXIII, § 2309, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755; renumbered title XXV, § 2507, Nov. 4, 1988, Pub. L. 100–607, title II, § 201(1), (3), 102 Stat. 3062, 3063; renumbered title XXVI, § 2607, Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(a), 102 Stat. 4244; renumbered title XXVII, § 2707, Aug. 18, 1990, Pub. L. 101–381, title I, § 101(1), (2), 104 Stat. 576; renumbered title II, § 237, June 10, 1993, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–6 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–8 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–8 of this title prior to renumbering by Pub. L. 99–660, and to section 227 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1948—Act June 25, 1948, amended section generally to make it apply to all appropriations to carry out the purposes of the Service instead of merely to appropriations to carry out the research functions of the Service.

Act June 16, 1948, substituted ''National Institutes of Health'' for ''National Institute of Health''.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

BUY AMERICAN PROVISIONS

Section 2004 of Pub. L. 103–43 provided that:

''(a) COMPLIANCE WITH BUY AMERICAN ACT.—No funds appropriated pursuant to this Act [see Short Title of 1993 Amendment note set out under section 201 of this title] for any of the fiscal years 1994 through 1996 may be expended by an entity unless the entity agrees that in expending the assistance the entity will comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a–10c, popularly known as the 'Buy American Act').

''(b) SENSE OF CONGRESS; REQUIREMENT REGARDING NOTICE.—

''(1) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—In the case of any equipment or product that may be authorized to be purchased with financial assistance provided pursuant to this Act for any of the fiscal years 1994 through 1996, it is the sense of the Congress that entities receiving such assistance

should, in expending the assistance, purchase only American-made equipment and products.

''(2) NOTICE TO RECIPIENTS OF ASSISTANCE.—In providing financial assistance pursuant to this Act, the Secretary of Health and Human Services shall provide to each recipient of the assistance a notice describing the statement made in paragraph (1) by the Congress.''

AVAILABILITY OF APPROPRIATIONS FOR ACTIVE COMMISSIONED OFFICERS AND OTHER EXPENSES

Pub. L. 102–394, title II, § 202, Oct. 6, 1992, 106 Stat. 1810, provided that: ''Appropriations in this or any other Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be available for expenses for active commissioned officers in the Public Health Service Reserve Corps and for not to exceed 2,800 commissioned officers in the Regular Corps; expenses incident to the dissemination of health information in foreign countries through exhibits and other appropriate means; advances of funds for compensation, travel, and subsistence expenses (or per diem in lieu thereof) for persons coming from abroad to participate in health or scientific activities of the Department pursuant to law; expenses of primary and secondary schooling of dependents in foreign countries, of Public Health Service commissioned officers stationed in foreign countries, at costs for any given area not in excess of those of the Department of Defense for the same area, when it is determined by the Secretary that the schools available in the locality are unable to provide adequately for the education of such dependents, and for the transportation of such dependents, between such schools and their places of residence when the schools are not accessible to such dependents by regular means of transportation; expenses for medical care for civilian and commissioned employees of the Public Health Service and their dependents assigned abroad on a permanent basis in accordance with such regulations as the Secretary may provide; rental or lease of living quarters (for periods not exceeding five years), and provision of heat, fuel, and light and maintenance, improvement, and repair of such quarters, and advance payments therefor, for civilian officers and employees of the Public Health Service who are United States citizens and who have a permanent station in a foreign country; purchase, erection, and maintenance of temporary or portable structures; and for the payment of compensation to consultants or individual scientists appointed for limited periods of time pursuant to section 207(f) or section 207(g) of the Public Health Service Act [42 U.S.C. 209(f), (g)], at rates established by the Assistant Secretary for Health, or the Secretary where such action is required by statute, not to exceed the per diem rate equivalent to the maximum rate payable for senior-level positions under 5 U.S.C. 5376.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, § 202, Nov. 26, 1991, 105 Stat. 1126.

Pub. L. 101–517, title II, § 202, Nov. 5, 1990, 104 Stat. 2208.

Pub. L. 101–166, title II, § 203, Nov. 21, 1989, 103 Stat. 1176.

Pub. L. 100–202, § 101(h) [title II, § 203], Dec. 22, 1987, 101 Stat. 1329–256, 1329–273.

Pub. L. 99–500, § 101(i) [H.R. 5233, title II, § 203], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, § 101(i) [H.R. 5233, title II, § 203], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title II, § 203, Dec. 12, 1985, 99 Stat. 1118.

Pub. L. 98–619, title II, § 203, Nov. 8, 1984, 98 Stat. 3320.

Pub. L. 98–139, title II, § 203, Oct. 31, 1983, 97 Stat. 887.

Pub. L. 97–377, title I, § 101(e)(1) [title II, § 203], Dec. 21, 1982, 96 Stat. 1878, 1893.

CREDITING OF PAYMENTS FOR ROOM AND BOARD TO APPROPRIATION ACCOUNTS

Pub. L. 102–394, title II, § 206, Oct. 6, 1992, 106 Stat. 1811, provided that: ''Hereafter amounts received from employees of the Department in payment for room and board may be credited to the appropriation accounts which finance the activities of the Public Health Service.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, § 206, Nov. 26, 1991, 105 Stat. 1126.

Pub. L. 101–517, title II, § 206, Nov. 5, 1990, 104 Stat. 2209.

Pub. L. 101–166, title II, § 207, Nov. 21, 1989, 103 Stat. 1177.

§ 238g. Wearing of uniforms

Except as may be authorized by regulations of the President, the insignia and uniform of commissioned officers of the Service, or any distinctive part of such insignia or uniform, or any insignia or uniform any part of which is similar to a distinctive part thereof, shall not be worn, after the promulgation of such regulations, by any person other than a commissioned officer of the Service.

(July 1, 1944, ch. 373, title II, § 238, formerly title V, § 510, 58 Stat. 711; June 25, 1948, ch. 645, § 5, 62 Stat. 859; renumbered title XXI, § 2110, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176; renumbered title XXIII, § 2310, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755; renumbered title XXV, § 2508, Nov. 4, 1988, Pub. L. 100–607, title II, § 201(1), (3), 102 Stat. 3062, 3063; renumbered title XXVI, § 2608, Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(a), 102 Stat. 4244; renumbered title XXVII, § 2708, Aug. 18, 1990, Pub. L. 101–381, title I, § 101(1), (2), 104 Stat. 576; renumbered title II, § 238, June 10, 1993, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–7 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–9 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–9 of this title prior to renumbering by Pub. L. 99–660, and to section 228 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1948—Act June 25, 1948, struck out penal provisions. See section 702 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1948 AMENDMENT

Amendment effective Sept. 1, 1948, see section 20 of act June 25, 1948.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

§ 238h. Annual report of Surgeon General

The Surgeon General shall transmit to the Secretary, for submission to the Congress at the

beginning of each regular session, a full report of the administration of the functions of the Service under this chapter, including a detailed statement of receipts and disbursements.

(July 1, 1944, ch. 373, title II, § 239, formerly title V, § 511, 58 Stat. 711; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered title XXI, § 2111, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176; renumbered title XXIII, § 2311, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755; renumbered title XXV, § 2509, Nov. 4, 1988, Pub. L. 100–607, title II, § 201(1), (3), 102 Stat. 3062, 3063; renumbered title XXVI, § 2609, Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(a), 102 Stat. 4244; renumbered title XXVII, § 2709, Aug. 18, 1990, Pub. L. 101–381, title I, § 101(1), (2), 104 Stat. 576; renumbered title II, § 239, June 10, 1993, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–8 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–10 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–10 of this title prior to renumbering by Pub. L. 99–660, and to section 229 of this title prior to renumbering by Pub. L. 98–24.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 202 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

AGENCY REPORTING REQUIREMENTS; REPORT BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE TO CONGRESSIONAL COMMITTEES RELATING TO REQUIREMENTS, TERMINATION, ETC.

Pub. L. 93–641, § 7, Jan. 4, 1975, 88 Stat. 2275, provided that by Jan. 4, 1976, the Secretary of Health, Education, and Welfare report to specific committees of the Senate and the House of Representatives on the identity, due date, etc., of certain reports required under the Public Health Service Act, the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970.

§ 238i. Memorials and other acknowledgments for contributions to health of Nation

The Secretary may provide for suitably acknowledging, within the Department (whether by memorials, designations, or other suitable acknowledgments), (1) efforts of persons who have contributed substantially to the health of the Nation and (2) gifts for use in activities of the Department related to health.

(July 1, 1944, ch. 373, title II, § 240, formerly title V, § 512, as added Oct. 15, 1968, Pub. L. 90–574, title V, § 503(a), 82 Stat. 1012; renumbered title XXI, § 2112, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176; renumbered title XXIII, § 2312, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755; renumbered title XXV, § 2510, Nov. 4, 1988, Pub. L. 100–607, title II, § 201(1), (3), 102 Stat. 3062, 3063; renumbered title XXVI, § 2610, Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(a), 102 Stat. 4244; renumbered title XXVII, § 2710, Aug. 18, 1990, Pub. L. 101–381, title I, § 101(1), (2), 104 Stat. 576; renumbered title II, § 240, June 10, 1993, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–9 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–11 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–11 of this title prior to renumbering by Pub. L. 99–660, and to section 229a of this title prior to renumbering by Pub. L. 98–24.

§ 238j. Evaluation of programs

(a) In general

Such portion as the Secretary shall determine, but not less than 0.2 percent nor more than 1 percent, of any amounts appropriated for programs authorized under this chapter shall be made available for the evaluation (directly, or by grants of contracts) of the implementation and effectiveness of such programs.

(b) Report on evaluations

Not later than February 1 of each year, the Secretary shall prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report summarizing the findings of the evaluations conducted under subsection (a) of this section.

(July 1, 1944, ch. 373, title II, § 241, formerly title V, § 513, as added June 30, 1970, Pub. L. 91–296, title IV, § 401(a), 84 Stat. 351; amended Oct. 7, 1980, Pub. L. 96–398, title VIII, § 804(c), 94 Stat. 1608; Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(g)(3), 95 Stat. 560; renumbered title XXI, § 2113, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176; renumbered title XXIII, § 2313, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755; renumbered title XXV, § 2511, Nov. 4, 1988, Pub. L. 100–607, title II, § 201(1), (3), 102 Stat. 3062, 3063; renumbered title XXVI, § 2611, Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(a), 102 Stat. 4244; renumbered title XXVII, § 2711, Aug. 18, 1990, Pub. L. 101–381, title I, § 101(1), (2), 104 Stat. 576; renumbered title II, § 241, June 10, 1993, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), 107 Stat. 213; Dec. 14, 1993, Pub. L. 103–183, title VII, § 701, 107 Stat. 2239.)

CODIFICATION

Section was formerly classified to section 300aaa–10 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–12 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–12 of this title prior to renumbering by Pub. L. 99–660, and to section 229b of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1993—Pub. L. 103–183 amended section generally. Prior to amendment, section read as follows: ''Such portion

as the Secretary may determine, but not more than 1 per centum, of any appropriation for grants, contracts, or other payments under any provision of this chapter, the Mental Health Systems Act, the Act of August 5, 1954 (Public Law 568, Eighty–third Congress), or the Act of August 16, 1957 (Public Law 85–151), for any fiscal year beginning after June 30, 1970, shall be available for evaluation (directly, or by grants or contracts) of any program authorized by this chapter or any of such other Acts, and, in the case of allotments from any such appropriation, the amount available for allotment shall be reduced accordingly.''

1981—Pub. L. 97–35 struck out references to Mental Retardation Facilities Construction Act and Community Mental Health Centers Act.

1980—Pub. L. 96–398 inserted reference to Mental Health Systems Act.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 701 of Pub. L. 103–183 provided that the amendment made by that section is effective Oct. 1, 1994.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 299c–5 of this title.

§ 238k. Contract authority

The authority of the Secretary to enter into contracts under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(July 1, 1944, ch. 373, title II, § 242, formerly title V, § 514, as added Nov. 9, 1978, Pub. L. 95–623, § 11(e), 92 Stat. 3456; renumbered title XXI, § 2114, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176; renumbered title XXIII, § 2314, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755; renumbered title XXV, § 2512, Nov. 4, 1988, Pub. L. 100–607, title II, § 201(1), (3), 102 Stat. 3062, 3063; renumbered title XXVI, § 2612, Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(a), 102 Stat. 4244; renumbered title XXVII, § 2712, Aug. 18, 1990, Pub. L. 101–381, title I, § 101(1), (2), 104 Stat. 576; renumbered title II, § 242, June 10, 1993, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), 107 Stat. 213.)

CODIFICATION

Section was formerly classified to section 300aaa–11 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–13 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–13 of this title prior to renumbering by Pub. L. 99–660, and to section 229c of this title prior to renumbering by Pub. L. 98–24.

§ 238*l*. Recovery

(a) Right of United States to recover base amount plus interest

If any facility with respect to which funds have been paid under the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.] (as such Act was in effect prior to October 1, 1981) is, at any time within twenty years after the completion of remodeling, construction, or expansion or after the date of its acquisition—

(1) sold or transferred to any entity (A) which would not have been qualified to file an application under section 222 of such Act [42 U.S.C. 2689j] (as such section was in effect prior to October 1, 1981) or (B) which is disapproved as a transferee by the State mental health agency or by another entity designated by the chief executive officer of the State, or

(2) ceases to be used by a community mental health center in the provision of comprehensive mental health services,

the United States shall be entitled to recover from the transferor, transferee, or owner of the facility, the base amount prescribed by subsection (c)(1) of this section plus the interest (if any) prescribed by subsection (c)(2) of this section.

(b) Notice of sale, transfer, or change

The transferor and transferee of a facility that is sold or transferred as described in subsection (a)(1) of this section, or the owner of a facility the use of which changes as described in subsection (a)(2) of this section, shall provide the Secretary written notice of such sale, transfer, or change within 10 days after the date on which such sale, transfer, or cessation of use occurs or within 30 days after October 22, 1985, whichever is later.

(c) Base amount; interest

(1) The base amount that the United States is entitled to recover under subsection (a) of this section is the amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district in which the facility is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the remodeling, construction, expansion, or acquisition of the project or projects.

(2)(A) The interest that the United States is entitled to recover under subsection (a) of this section is the interest for the period (if any) described in subparagraph (B) at a rate (determined by the Secretary) based on the average of the bond equivalent rates of ninety-one-day Treasury bills auctioned during that period.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) if notice is provided as prescribed by subsection (b) of this section, 191 days after the date on which such sale, transfer, or cessation of use occurs, or

(ii) if notice is not provided as prescribed by subsection (b) of this section, 11 days after such sale, transfer, or cessation of use occurs,

and ending on the date the amount the United States is entitled to recover is collected.

(d) Waiver of recovery rights

The Secretary may waive the recovery rights of the United States under subsection (a) of this section with respect to a facility (under such conditions as the Secretary may establish by

regulation) if the Secretary determines that there is good cause for waiving such rights.

(e) Pre-judgment lien

The right of recovery of the United States under subsection (a) of this section shall not, prior to judgment, constitute a lien on any facility.

(July 1, 1944, ch. 373, title II, § 243, formerly title V, § 515, formerly Pub. L. 88–164, title II, § 225, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 326; amended Pub. L. 95–622, title I, § 110(c), Nov. 9, 1978, 92 Stat. 3420; renumbered title V, § 515, and amended Pub. L. 97–35, title IX, § 902(e)(2)(A), Aug. 13, 1981, 95 Stat. 560; renumbered title XXI, § 2115, Pub. L. 98–24, § 2(a)(1), Apr. 26, 1983, 97 Stat. 176; Oct. 22, 1985, Pub. L. 99–129, title II, § 226(a), 99 Stat. 546; renumbered title XXIII, § 2315, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755; renumbered title XXV, § 2513, Nov. 4, 1988, Pub. L. 100–607, title II, § 201(1), (3), 102 Stat. 3062, 3063; renumbered title XXVI, § 2613, Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(a), 102 Stat. 4244; renumbered title XXVII, § 2713, Aug. 18, 1990, Pub. L. 101–381, title I, § 101(1), (2), 104 Stat. 576; Dec. 12, 1991, Pub. L. 102–229, title II, § 208, 105 Stat. 1716; Dec. 17, 1991, Pub. L. 102–239, § 1, 105 Stat. 1912; renumbered title II, § 243, June 10, 1993, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), 107 Stat. 213.)

REFERENCES IN TEXT

The Community Mental Health Centers Act, referred to in subsec. (a), is title II of Pub. L. 88–164, as added by Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 309, and amended, which was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title prior to its repeal by Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560. Section 222 of the Community Mental Health Centers Act was classified to section 2689j of this title prior to its repeal.

CODIFICATION

Section was classified to section 300aaa–12 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–14 of this title prior to renumbering by Pub. L. 100–607, to section 300aa–14 of this title prior to renumbering by Pub. L. 99–660, to section 229d of this title prior to renumbering by Pub. L. 98–24, and to section 2689m of this title prior to renumbering by Pub. L. 97–35.

AMENDMENTS

1991—Subsec. (d). Pub. L. 102–229 and Pub. L. 102–239 amended subsec. (d) identically, substituting ''subsection (a)'' for ''subsection (a)(2)''.

1985—Pub. L. 99–129 amended section generally. Prior to amendment, section read as follows: ''If any facility of a community mental health center acquired, remodeled, constructed, or expanded with funds provided under the Community Mental Health Centers Act is, at any time within twenty years after the completion of such remodeling, construction, or expansion or after the date of its acquisition with such funds—

''(1) sold or transferred to any person or entity (A) which is not qualified to file an application under section 222 of the Community Mental Health Centers Act, or (B) which is not approved as a transferee by the State agency of the State in which such facility is located, or its successor; or

''(2) not used by a community mental health center in the provision of comprehensive mental health services, and the Secretary has not determined that there is good cause for termination of such use,

the United States shall be entitled to recover from either the transferor or the transferee in the case of a sale or transfer or from the owner in the case of termination of use an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the United States district court for the district in which the center is situated) of so much of such facility or center as constituted an approved project or projects, as the amount of the Federal participation bore to the acquisition, remodeling, construction, or expansion cost of such project or projects. Such right of recovery shall not constitute a lien upon such facility or center prior to judgment.''

1981—Pub. L. 97–35 substituted ''the Community Mental Health Centers Act'' for ''this subchapter'' and ''section 222 of the Community Mental Health Centers Act'' for ''section 2689j of this title''.

1978—Pub. L. 95–622 substituted ''this subchapter'' for ''this part''.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 226(b) of Pub. L. 99–129 provided that: ''In the case of any facility that was or is constructed, remodeled, expanded, or acquired on or before the date of enactment of this Act [Oct. 22, 1985] or within 180 days after the date of enactment of this Act, the period described in clause (i) or (ii), as the case may be, of section 2115(c)(2)(B) [now 243(c)(2)(B)] of the Public Health Service Act [subsec. (c)(2)(B)(i), (ii) of this section] (as amended by subsection (a) of this section) shall begin no earlier than 181 days after the date of enactment of this Act.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 902(h) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 201, 225a [now 238d], 229b [now 238j], 243, 246, 289k–1, 300d–4, 300d–6, 300*l*–2, 300m, 300m–3, 9412, and 9511 of this title, repealing sections 247b–1, 247b–2, 255, 300d to 300d–3, 300d–5, 300d–7 to 300d–9, 300d–21, 2689 to 2689*l*, 2689n to 2689p, 2689r to 2689aa, 9411, 9421 to 9423, 9431 to 9438, 9451, 9452, 9461 to 9465, 9471 to 9473, 9481, 9491 to 9493, 9502, 9512, 9521, and 9523 of this title, repealing provisions set out as notes under sections 246 and 2689 of this title, and transferring section 2689m to section 229d [now 238*l*] of this title] shall take effect October 1, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 110(c) of Pub. L. 95–622 provided that the amendment made by that section is effective July 29, 1975.

EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

OTHER LEGAL RIGHTS OF UNITED STATES NOT ADVERSELY AFFECTED BY 1985 AMENDMENT

Section 226(c) of Pub. L. 99–129 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall not adversely affect other legal rights of the United States.''

§ 238m. Use of fiscal agents

(a) Contracting authority

The Secretary may enter into contracts with fiscal agents—

(1)(A) to determine the amounts payable to persons who, on behalf of the Indian Health Service, furnish health services to eligible Indians,

(B) to determine the amounts payable to persons who, on behalf of the Public Health Service, furnish health services to individuals pursuant to section 247d or 249 of this title,

(2) to receive, disburse, and account for funds in making payments described in paragraph (1),

(3) to make such audits of records as may be necessary to assure that these payments are proper, and

(4) to perform such additional functions as may be necessary to carry out the functions described in paragraphs (1) through (3).

(b) Contracting prerequisites

(1) Contracts under subsection (a) of this section may be entered into without regard to section 5 of title 41 or any other provision of law requiring competition.

(2) No such contract shall be entered into with an entity unless the Secretary finds that the entity will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(c) Advances under contracts

A contract under subsection (a) of this section may provide for advances of funds to enable entities to make payments under the contract.

(d) Applicable statutory provisions

Subsections (d) and (e) of section 1395u of this title shall apply to contracts with entities under subsection (a) of this section in the same manner as they apply to contracts with carriers under that section.

(e) "Fiscal agent" defined

In this section, the term ''fiscal agent'' means a carrier described in section 1395u(f)(1) of this title and includes, with respect to contracts under subsection (a)(1)(A) of this section, an Indian tribe or tribal organization acting under contract with the Secretary under the Indian Self-Determination Act (Public Law 93–638) [25 U.S.C. 450f et seq.].

(July 1, 1944, ch. 373, title II, § 244, formerly title XXI, § 2116, as added Apr. 7, 1986, Pub. L. 99–272, title XVII, § 17003, 100 Stat. 359; renumbered title XXIII, § 2316, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755; renumbered title XXV, § 2514, Nov. 4, 1988, Pub. L. 100–607, title II, § 201(1), (3), 102 Stat. 3062, 3063; renumbered title XXVI, § 2614, Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(a), 102 Stat. 4244; renumbered title XXVII, § 2714, Aug. 18, 1990, Pub. L. 101–381, title I, § 101(1), (2), 104 Stat. 576; renumbered title II, § 244, June 10, 1993, Pub. L. 103–43, title XX, § 2010(a)(1)–(3), 107 Stat. 213.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (e), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

CODIFICATION

Section was classified to section 300aaa–13 of this title prior to renumbering by Pub. L. 103–43, to section 300cc–15 of this title prior to renumbering by Pub. L. 100–607, and to section 300aa–15 of this title prior to renumbering by Pub. L. 99–660.

SUBCHAPTER II—GENERAL POWERS AND DUTIES

PART A—RESEARCH AND INVESTIGATIONS

§ 241. Research and investigations generally

(a) Authority of Secretary

The Secretary shall conduct in the Service, and encourage, cooperate with, and render assistance to other appropriate public authorities, scientific institutions, and scientists in the conduct of, and promote the coordination of, research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man, including water purification, sewage treatment, and pollution of lakes and streams. In carrying out the foregoing the Secretary is authorized to—

(1) collect and make available through publications and other appropriate means, information as to, and the practical application of, such research and other activities;

(2) make available research facilities of the Service to appropriate public authorities, and to health officials and scientists engaged in special study;

(3) make grants-in-aid to universities, hospitals, laboratories, and other public or private institutions, and to individuals for such research projects as are recommended by the advisory council to the entity of the Department supporting such projects and make, upon recommendation of the advisory council to the appropriate entity of the Department, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research;

(4) secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

(5) for purposes of study, admit and treat at institutions, hospitals, and stations of the Service, persons not otherwise eligible for such treatment;

(6) make available, to health officials, scientists, and appropriate public and other nonprofit institutions and organizations, technical advice and assistance on the application of statistical methods to experiments, studies, and surveys in health and medical fields;

(7) enter into contracts, including contracts for research in accordance with and subject to the provisions of law applicable to contracts entered into by the military departments under sections 2353 and 2354 of title 10, except that determination, approval, and certification required thereby shall be by the Secretary of Health and Human Services; and

(8) adopt, upon recommendations of the advisory councils to the appropriate entities of the Department or, with respect to mental health, the National Advisory Mental Health Council, such additional means as the Secretary considers necessary or appropriate to carry out the purposes of this section.

The Secretary may make available to individuals and entities, for biomedical and behavioral

research, substances and living organisms. Such substances and organisms shall be made available under such terms and conditions (including payment for them) as the Secretary determines appropriate.

(b) Testing for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects; consultation

(1) The Secretary shall conduct and may support through grants and contracts studies and testing of substances for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects. In carrying out this paragraph, the Secretary shall consult with entities of the Federal Government, outside of the Department of Health and Human Services, engaged in comparable activities. The Secretary, upon request of such an entity and under appropriate arrangements for the payment of expenses, may conduct for such entity studies and testing of substances for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects.

(2)(A) The Secretary shall establish a comprehensive program of research into the biological effects of low-level ionizing radiation under which program the Secretary shall conduct such research and may support such research by others through grants and contracts.

(B) The Secretary shall conduct a comprehensive review of Federal programs of research on the biological effects of ionizing radiation.

(3) The Secretary shall conduct and may support through grants and contracts research and studies on human nutrition, with particular emphasis on the role of nutrition in the prevention and treatment of disease and on the maintenance and promotion of health, and programs for the dissemination of information respecting human nutrition to health professionals and the public. In carrying out activities under this paragraph, the Secretary shall provide for the coordination of such of these activities as are performed by the different divisions within the Department of Health and Human Services and shall consult with entities of the Federal Government, outside of the Department of Health and Human Services, engaged in comparable activities. The Secretary, upon request of such an entity and under appropriate arrangements for the payment of expenses, may conduct and support such activities for such entity.

(4) The Secretary shall publish a biennial report which contains—

(A) a list of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed;

(B) information concerning the nature of such exposure and the estimated number of persons exposed to such substances;

(C) a statement identifying (i) each substance contained in the list under subparagraph (A) for which no effluent, ambient, or exposure standard has been established by a Federal agency, and (ii) for each effluent, ambient, or exposure standard established by a Federal agency with respect to a substance contained in the list under subparagraph (A), the extent to which, on the basis of available medical, scientific, or other data, such standard, and the implementation of such standard by the agency, decreases the risk to public health from exposure to the substance; and

(D) a description of (i) each request received during the year involved—

(I) from a Federal agency outside the Department of Health and Human Services for the Secretary, or

(II) from an entity within the Department of Health and Human Services to any other entity within the Department,

to conduct research into, or testing for, the carcinogenicity of substances or to provide information described in clause (ii) of subparagraph (C), and (ii) how the Secretary and each such other entity, respectively, have responded to each such request.

(5) The authority of the Secretary to enter into any contract for the conduct of any study, testing, program, research, or review, or assessment under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Diseases not significantly occurring in United States

The Secretary may conduct biomedical research, directly or through grants or contracts, for the identification, control, treatment, and prevention of diseases (including tropical diseases) which do not occur to a significant extent in the United States.

(d) Protection of privacy of individuals who are research subjects

The Secretary may authorize persons engaged in biomedical, behavioral, clinical, or other research (including research on mental health, including research on the use and effect of alcohol and other psychoactive drugs) to protect the privacy of individuals who are the subject of such research by withholding from all persons not connected with the conduct of such research the names or other identifying characteristics of such individuals. Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals.

(July 1, 1944, ch. 373, title III, §301, 58 Stat. 691; July 3, 1946, ch. 538, §7(a), (b), 60 Stat. 423; June 16, 1948, ch. 481, §4(e), (f), 62 Stat. 467; June 24, 1948, ch. 621, §4(e), (f), 62 Stat. 601; June 25, 1948, ch. 654, §1, 62 Stat. 1017; July 3, 1956, ch. 510, §4, 70 Stat. 490; Sept. 15, 1960, Pub. L. 86–798, 74 Stat. 1053; Oct. 17, 1962, Pub. L. 87–838, §2, 76 Stat. 1073; Aug. 9, 1965, Pub. L. 89–115, §3, 79 Stat. 448; Dec. 5, 1967, Pub. L. 90–174, §9, 81 Stat. 540; Oct. 27, 1970, Pub. L. 91–513, title I, §3(a), 84 Stat. 1241; Oct. 30, 1970, Pub. L. 91–515, title II, §292, 84 Stat. 1308; Dec. 23, 1971, Pub. L. 92–218, §6(a)(2), 85 Stat. 785; Sept. 19, 1972, Pub. L. 92–423, §7(b), 86 Stat. 687; May 14, 1974, Pub. L. 93–282, title I, §122(b), 88 Stat. 132; July 12, 1974, Pub. L. 93–348, title I, §104(a)(1), 88 Stat. 346; July 23, 1974, Pub. L. 93–352, title I, §111, 88 Stat. 360; Apr. 22, 1976, Pub. L. 94–278, title I, §111, 90 Stat. 405; Nov. 9, 1978, Pub. L. 95–622, title II, §§261, 262, 92 Stat.

3434; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Nov. 20, 1985, Pub. L. 99–158, § 3(a)(5), 99 Stat. 879; Oct. 27, 1986, Pub. L. 99–570, title IV, § 4021(b)(2), 100 Stat. 3207–124; Nov. 14, 1986, Pub. L. 99–660, title I, § 104, 100 Stat. 3751; Nov. 4, 1988, Pub. L. 100–607, title I, § 163(1), (2), 102 Stat. 3062; June 10, 1993, Pub. L. 103–43, title XX, § 2009, 107 Stat. 213.)

AMENDMENTS

1993—Subsec. (b)(4). Pub. L. 103–43 substituted ''a biennial report'' for ''an annual report'' in introductory provisions.

1988—Subsec. (d). Pub. L. 100–607 redesignated concluding provisions of subsec. (a) of section 242a of this title as subsec. (d) of this section, substituted ''biomedical, behavioral, clinical, or other research (including research on mental health, including'' for ''research on mental health, including'', and substituted ''drugs)'' for ''drugs,''.

1986—Subsec. (a)(3). Pub. L. 99–570 struck out ''or, in the case of mental health projects, by the National Advisory Mental Health Council;'' after ''Department supporting such projects'' and struck out ''or the National Advisory Mental Health Council'' after ''appropriate entity of the Department''.

Subsec. (c). Pub. L. 99–660 added subsec. (c).

1985—Subsec. (a)(3). Pub. L. 99–158, § 3(a)(5)(A), substituted ''as are recommended by the advisory council to the entity of the Department supporting such projects or, in the case of mental health projects, by the National Advisory Mental Health Council; and make, upon recommendation of the advisory council to the appropriate entity of the Department or the National Advisory Mental Health Council, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research'' for ''as are recommended by the National Advisory Health Council, or, with respect to cancer, recommended by the National Cancer Advisory Board, or, with respect to mental health, recommended by the National Advisory Mental Health Council, or with respect to heart, blood vessel, lung, and blood diseases and blood resources, recommended by the National Heart, Lung, and Blood Advisory Council, or, with respect to dental diseases and conditions, recommended by the National Advisory Dental Research Council; and include in the grants for any such project grants of penicillin and other antibiotic compounds for use in such project; and make, upon recommendation of the National Advisory Health Council, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research: *Provided*, That such uniform percentage, not to exceed 15 per centum, as the Secretary may determine, of the amounts provided for grants for research projects for any fiscal year through the appropriations for the National Institutes of Health may be transferred from such appropriations to a separate account to be available for such research grants-in-aid for such fiscal year''.

Subsec. (a)(8). Pub. L. 99–158, § 3(a)(5)(B), substituted ''recommendations of the advisory councils to the appropriate entities of the Department or, with respect to mental health, the National Advisory Mental Health Council, such additional means as the Secretary considers'' for ''recommendation of the National Advisory Health Council, or, with respect to cancer, upon recommendation of the National Cancer Advisory Board, or, with respect to mental health, upon recommendation of the National Advisory Mental Health Council, or, with respect to heart, blood vessel, lung, and blood diseases and blood resources, upon recommendation of the National Heart, Lung and Blood Advisory Council, or, with respect to dental diseases and conditions, upon recommendations of the National Advisory Dental Research Council, such additional means as he deems''.

1978—Pub. L. 95–622 designated existing provisions as subsec. (a), redesignated former pars. (a) to (h) as (1) to (8), respectively, substituted ''Secretary'' for ''Surgeon General'' wherever appearing, and inserted following par. (8) provisions relating to authority of Secretary to make available to individuals and entities substances and living organisms, and added subsec. (b).

1976—Subsecs. (c), (h). Pub. L. 94–278 substituted ''heart, blood vessel, lung, and blood diseases and blood resources'' for ''heart diseases'' and ''National Heart, Lung and Blood Advisory Council'' for ''National Heart and Lung Advisory Council''.

1974—Subsec. (c). Pub. L. 93–348, § 104(a)(1), redesignated subsec. (d) as (c) and substituted ''research projects'' for ''research or research training projects'' in two places, ''general support of their research'' for ''general support of their research and research training programs'' and ''research grants-in-aid'' for ''research and research training program grants-in-aid''. Former subsec. (c), authorizing Surgeon General to establish and maintain research fellowships in the Public Health Service with such stipends and allowances, including traveling and subsistence expenses, as he may deem necessary to procure the assistance of the most brilliant and promising research fellows from the United States and abroad, was struck out.

Subsec. (d). Pub. L. 93–348, § 104(a)(1)(C), redesignated subsec. (e) as (d).

Pub. L. 93–282 substituted ''mental health, including research on the use and effect of alcohol and other psychoactive drugs'' for ''the use and effect of drugs'' in former concluding provisions of section 242a(a) of this title. See 1988 Amendment note above.

Subsecs. (e), (f). Pub. L. 93–348, § 104(a)(1)(C), redesignated subsecs. (f) and (g) as (e) and (f), respectively. Former subsec. (e) redesignated (d).

Subsec. (g). Pub. L. 93–352 struck out ''during the fiscal year ending June 30, 1966, and each of the eight succeeding fiscal years'' after ''Enter into contracts''. Notwithstanding directory language that amendment be made to subsec. (h), the amendment was executed to subsec. (g) to reflect the probable intent of Congress and the intervening redesignation of subsec. (h) as (g) by Pub. L. 93–348.

Pub. L. 93–348, § 104(a)(1)(C), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

Subsecs. (h), (i). Pub. L. 93–348, § 104(a)(1)(C), redesignated subsecs. (h) and (i) as (g) and (h), respectively.

1972—Subsecs. (d), (i). Pub. L. 92–423 substituted ''National Heart and Lung Advisory Council'' for ''National Advisory Heart Council''.

1971—Subsecs. (d), (i). Pub. L. 92–218 substituted ''National Cancer Advisory Board'' for ''National Advisory Cancer Council''.

1970—Subsec. (d). Pub. L. 91–513 added subsec. (d). See 1988 Amendment note above.

Subsec. (h). Pub. L. 91–515 substituted ''eight'' for ''five'' succeeding fiscal years.

1967—Subsec. (h). Pub. L. 90–174 substituted ''five'' for ''two'' succeeding fiscal years.

1965—Subsecs. (h), (i). Pub. L. 89–115 added subsec. (h) and redesignated former subsec. (h) as (i).

1962—Subsec. (d). Pub. L. 87–838 inserted ''or research training'' in two places.

1960—Subsec. (d). Pub. L. 86–798 authorized the Surgeon General, upon recommendation of the National Advisory Health Council, to make grants to public or non-profit universities, hospitals, laboratories, and other institutions to support research and research training programs, and to make available for such research and research training programs, up to 15 per centum of amounts provided for research grants through the appropriations for the National Institutes of Health.

1956—Subsecs. (g), (h). Act July 3, 1956, added subsec. (g) and redesignated former subsec. (g) as (h).

1948—Subsec. (d). Acts June 16, 1948, § 4(e), and June 24, 1948, § 4(e), made provisions applicable to the National Advisory Heart Council and the National Advisory Dental Research Council, respectively.

Subsec. (d). Act June 25, 1948, continued in basic legislation the authority to purchase penicillin and other antibiotic compounds for use in research projects.

Subsec. (g). Acts June 16, 1948, § 4(f), and June 24, 1948, § 4(f), made provisions applicable to the National Advisory Heart Council and the National Advisory Dental Research Council, respectively.

1946—Subsec. (d). Act July 3, 1946, made the National Advisory Mental Health Council the body to make recommendations to the Surgeon General on awarding of grants-in-aid for research projects with respect to mental health.

Subsec. (g). Act July 3, 1946, gave National Advisory Health Council the right to make recommendations to carry out purposes of this section.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(7), and ''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (b)(1), (3), and (4)(D)(I), (II), pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Sections 261 and 262 of Pub. L. 95–622 provided that the amendments made by those sections are effective Oct. 1, 1978.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 104(b) of Pub. L. 93–348 provided that: ''The amendments made by subsection (a) [amending this section and sections 242a, 282, 286a, 286b, 287a, 287b, 287d, 288a, 289c, 289c–1, 289g, 289k, and heading preceding section 289*l* of this title] shall not apply with respect to commitments made before the date of the enactment of this Act [July 12, 1974] by the Secretary of Health, Education, and Welfare for research training under the provisions of the Public Health Service Act amended or repealed by subsection (a).''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–423 effective 60 days after Sept. 19, 1972, or on such prior date after Sept. 19, 1972, as the President shall prescribe and publish in the Federal Register, see section 9 of Pub. L. 92–423, set out as a note under section 218 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–218 effective 60 days after Dec. 23, 1971, or on such prior date after Dec. 23, 1971, as the President shall prescribe and publish in the Federal Register, see section 7 of Pub. L. 92–218, set out as a note under section 218 of this title.

SENTINEL DISEASE CONCEPT STUDY

Section 1910 of Pub. L. 103–43 provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services, in cooperation with the Agency for Toxic Substances and Disease Registry and the Centers for Disease Control and Prevention, shall design and implement a pilot sentinel disease surveillance system, and as appropriate, a follow-up system.

''(b) PURPOSE.—The purpose of the study conducted under subsection (a) shall be to determine the applicability of and the difficulties associated with the implementation of the sentinel disease concept for identifying the relationship between the occupation of household members and the incidence of subsequent conditions or diseases in other members of the household.

''(c) REPORT.—Not later than 4 years after the date of enactment of this Act [June 10, 1993], the Director of the National Institutes of Health shall prepare and submit to the appropriate committees of Congress, a report concerning the results of the study conducted under subsection (a).''

STUDY OF THYROID MORBIDITY FOR HANFORD, WASHINGTON

Section 161 of Pub. L. 100–607, as amended by Pub. L. 102–531, title III, § 312(e)(1), Oct. 27, 1992, 106 Stat. 3506, provided that:

''(a) IN GENERAL.—In carrying out the purposes of section 301 of the Public Health Service Act (42 U.S.C. 241), the Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention (hereafter referred to in this section as the 'Director'), shall conduct a study of thyroid morbidity of the population (including Indian tribes and tribal organizations) in the vicinity of Hanford, in the State of Washington, during the years 1944 through 1957.

''(b) PEER REVIEW.—As soon as is practicable after the date of the enactment of this Act [Nov. 4, 1988], the Director shall establish a peer review committee that shall, along with the Centers for Disease Control and Prevention, make any determinations as to the conduct of the study required under this section.

''(c) CONTRACTS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the Director may contract out any portion of the study required under this section if the Director considers such appropriate, except that such contractor shall not have any direct or indirect interest in the outcome of such study including, contracts with the Department of Energy.

''(2) RELATIONSHIPS.—Contractors that currently are parties to contracts with the Department of Energy (or who have previously been parties to such) shall be given consideration pursuant to paragraph (1), except that the Director shall make a determination in each such circumstance that the relationship of the contractor with the Department of Energy does not represent a conflict of interest or the appearance of such a conflict regarding the conduct of the study required under this section.

''(d) REPORT.—Not later than 42 months after the date of enactment of this section [Nov. 4, 1988], the Director shall transmit a report including such study to the Congress, the chief executive officers of the States of Oregon and Washington, and the governing officials of the Indian tribes in the vicinity of Hanford, Washington.''

NATIONAL COMMISSION ON SLEEP DISORDERS RESEARCH

Section 162 of Pub. L. 100–607 directed Secretary of Health and Human Services, after consultation with Director of National Institutes of Health, to establish a National Commission on Sleep Disorders Research to conduct a comprehensive study of present state of knowledge of incidence, prevalence, morbidity, and mortality resulting from sleep disorders, and of social and economic impact of such disorders, evaluate public and private facilities and resources (including trained personnel and research activities) available for diagnosis, prevention, and treatment of, and research into, such disorders, and identify programs (including biological, physiological, behavioral, environmental, and social programs) by which improvement in management and research into sleep disorders could be accomplished and, not later than 18 months after initial meeting of Commission, to submit to appropriate Committees of Congress a final report, and provided for termination of the Commission 30 days after submission of final report.

RESEARCH WITH RESPECT TO HEALTH RESOURCES AND SERVICES ADMINISTRATION

Section 632 of Pub. L. 100–607 provided that with respect to any program of research pursuant to this chapter, any such program carried out in fiscal year 1987 by an agency other than Health Resources and Services Administration (or appropriate to be carried out by such an agency) could not, for each of fiscal years 1989 through 1991, be carried out by such Administration.

CONTINUING CARE FOR PSYCHIATRIC PATIENTS IN FORMER CLINICAL RESEARCH CENTER AT NATIONAL INSTITUTE ON DRUG ABUSE

Pub. L. 99–117, § 10, Oct. 7, 1985, 99 Stat. 494, provided that: ''In any fiscal year beginning after September 30,

1981, from funds appropriated for carrying out section 301 of the Public Health Service Act [this section] with respect to mental health, the Secretary of Health and Human Services may provide, by contract or otherwise, for the continuing care of psychiatric patients who were under active and continuous treatment at the National Institute on Drug Abuse Clinical Research Center on the date such Clinical Research Center ceased operations.''

ANALYSIS OF THYROID CANCER; CREATION AND PUBLICATION OF RADIOEPIDEMIOLOGICAL TABLES

Pub. L. 97–414, § 7, Jan. 4, 1983, 96 Stat. 2059, provided that:

''(a) In carrying out section 301 of the Public Health Service Act [this section], the Secretary of Health and Human Services shall—

''(1) conduct scientific research and prepare analyses necessary to develop valid and credible assessments of the risks of thyroid cancer that are associated with thyroid doses of Iodine 131;

''(2) conduct scientific research and prepare analyses necessary to develop valid and credible methods to estimate the thyroid doses of Iodine 131 that are received by individuals from nuclear bomb fallout;

''(3) conduct scientific research and prepare analyses necessary to develop valid and credible assessments of the exposure to Iodine 131 that the American people received from the Nevada atmospheric nuclear bomb tests; and

''(4) prepare and transmit to the Congress within one year after the date of enactment of this Act [Jan. 4, 1983] a report with respect to the activities conducted in carrying out paragraphs (1), (2), and (3).

''(b)(1) Within one year after the date of enactment of this Act [Jan. 4, 1983], the Secretary of Health and Human Services shall devise and publish radioepidemiological tables that estimate the likelihood that persons who have or have had any of the radiation related cancers and who have received specific doses prior to the onset of such disease developed cancer as a result of these doses. These tables shall show a probability of causation of developing each radiation related cancer associated with receipt of doses ranging from 1 millirad to 1,000 rads in terms of sex, age at time of exposure, time from exposure to the onset of the cancer in question, and such other categories as the Secretary, after consulting with appropriate scientific experts, determines to be relevant. Each probability of causation shall be calculated and displayed as a single percentage figure.

''(2) At the time the Secretary of Health and Human Services publishes the tables pursuant to paragraph (1), such Secretary shall also publish—

''(A) for the tables of each radiation related cancer, an evaluation which will assess the credibility, validity, and degree of certainty associated with such tables; and

''(B) a compilation of the formulas that yielded the probabilities of causation listed in such tables. Such formulas shall be published in such a manner and together with information necessary to determine the probability of causation of any individual who has or has had a radiation related cancer and has received any given dose.

''(3) The tables specified in paragraph (1) and the formulas specified in paragraph (2) shall be devised from the best available data that are most applicable to the United States, and shall be devised in accordance with the best available scientific procedures and expertise. The Secretary of Health and Human Services shall update these tables and formulas every four years, or whenever he deems it necessary to insure that they continue to represent the best available scientific data and expertise.''

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242, 242a, 263, 282, 284, 7610 of this title.

§ 242. Studies and investigations on use and misuse of narcotic drugs and other drugs; annual report to Attorney General; cooperation with States

(a) In carrying out the purposes of section 241 of this title with respect to drugs the use or misuse of which might result in drug abuse or dependency, the studies and investigations authorized therein shall include the use and misuse of narcotic drugs and other drugs. Such studies and investigations shall further include the quantities of crude opium, coca leaves, and their salts, derivatives, and preparations, and other drugs subject to control under the Controlled Substances Act [21 U.S.C. 801 et seq.] and Controlled Substances Import and Export Act [21 U.S.C. 951 et seq.], together with reserves thereof, necessary to supply the normal and emergency medicinal and scientific requirements of the United States. The results of studies and investigations of the quantities of narcotic drugs or other drugs subject to control under such Acts, together with reserves of such drugs, that are necessary to supply the normal and emergency medicinal and scientific requirements of the United States, shall be reported not later than the first day of April of each year to the Attorney General, to be used at his discretion in determining manufacturing quotas or importation requirements under such Acts.

(b) The Surgeon General shall cooperate with States for the purpose of aiding them to solve their narcotic drug problems and shall give authorized representatives of the States the benefit of his experience in the care, treatment, and rehabilitation of narcotic addicts to the end that each State may be encouraged to provide adequate facilities and methods for the care and treatment of its narcotic addicts.

(July 1, 1944, ch. 373, title III, § 302, 58 Stat. 692; Oct. 27, 1970, Pub. L. 91–513, title II, § 701(j), 84 Stat. 1282.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (a), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsec. (a), is title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–513 inserted references to drug dependency, drugs other than narcotic drugs, and substances subject to control under the Controlled Substances Act and the Controlled Substances Import and

Export Act, substituted the first day of April of each year for the first day of September of each year as the date by which the study results must be submitted, substituted the Attorney General for the Secretary of the Treasury as the officer to whom the report is to be submitted, and struck out references to the Narcotic Drugs Import and Export Act.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–513 effective on first day of seventh calendar month that begins after Oct. 26, 1970, see section 704 of Pub. L. 91–513, set out as an Effective Date note under section 801 of Title 21, Food and Drugs.

SAVINGS PROVISION

Amendment by Pub. L. 91–513 not to affect or abate any prosecutions for violation of law or any civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of such amendment, and all administrative proceedings pending before the Bureau of Narcotics and Dangerous Drugs on Oct. 27, 1970, to be continued and brought to final determination in accord with laws and regulations in effect prior to Oct. 27, 1970, see section 702 of Pub. L. 91–513, set out as a note under section 321 of Title 21, Food and Drugs.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

MARIHUANA AND HEALTH REPORTING

Pub. L. 91–296, title V, June 30, 1970, 84 Stat. 352, as amended by Pub. L. 95–461, §3(a), Oct. 14, 1978, 92 Stat. 1268; Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, known as the Marihuana and Health Reporting Act, which required the Secretary of Health and Human Services, after consultation with the Surgeon General and other appropriate individuals, to transmit a report to the Congress on or before January 31, 1971, and biennially thereafter (1) containing current information on the health consequences of using marihuana, and (2) containing such recommendations for legislative and administrative action as he may deem appropriate, was repealed by Pub. L. 98–24, §2(d), Apr. 26, 1983, 97 Stat. 182.

§ 242a. Mental health

(a) Clinical training and instruction and clinical traineeships; stipends and allowances; research projects

In carrying out the purposes of section 241 of this title with respect to mental health—

(1) the Secretary, acting through the Director of the Center for Mental Health Services, is authorized to provide clinical training and instruction and to establish and maintain clinical traineeships (with such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the trainees as the Secretary may deem necessary);

(2) the Surgeon General is authorized to make grants to State or local agencies, laboratories, and other public or nonprofit agencies and institutions, and to individuals for investigations, experiments, demonstrations, studies, and research projects with respect to the development of improved methods of diagnosing mental illness, and of care, treatment, and rehabilitation of the mentally ill, including grants to State agencies responsible for administration of State institutions for care, or care and treatment, of mentally ill persons for developing and establishing improved methods of operation and administration of such institutions.

(b) Effect of treaties and other international agreements on confidentiality

Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State, or local law or regulation.

(c) Grants to public and other nonprofit institutions

The Secretary may provide for training, instruction, and traineeships under subsection (a)(1) of this section through grants to public and other nonprofit institutions. Grants under paragraph (2) of subsection (a) of this section may be made only upon recommendation of the National Advisory Mental Health Council. Such grants may be paid in advance or by way of reimbursement, as may be determined by the Surgeon General; and shall be made on such conditions as the Surgeon General finds necessary.

(d) Obligatory service for traineeships

(1) Any individual who has received a clinical traineeship, in psychology, psychiatry, nursing, marital and family therapy, or social work, under subsection (a)(1) of this section that was not of a limited duration or experimental nature (as determined by the Secretary) is obligated to serve, in service determined by the Secretary to be appropriate in the light of the individual's training and experience, at the rate of one year for each year (or academic year, whichever the Secretary determines to be appropriate) of the traineeship.

(2) The service required under paragraph (1) shall be performed—

(A) for a public inpatient mental institution providing inpatient care or any entity receiving a grant under the Mental Health Systems Act [42 U.S.C. 9401 et seq.],

(B) in a health professional shortage area (as determined under subpart II of part D of this subchapter),

(C) in any other area or for any other entity designated by the Secretary, or

(D) in a Federal or State correctional facility,

and shall begin within such period after the termination of the traineeship as the Secretary may determine. In developing criteria for determining for which institutions or entities or in which areas, referred to in the preceding sentence, individuals must perform service under paragraph (1), the Secretary shall give preference to institutions, entities, or areas which in his judgment have the greatest need for personnel to perform that service. The Secretary may permit service for or in other institutions,

entities, or areas if the Secretary determines that the request for such service is supported by good cause.

(3) Any individual who fails to perform the service required under this subsection within the period prescribed by the Secretary is obligated to repay to the United States an amount equal to three times the cost of the traineeship (including stipends and allowances) plus interest at the maximum legal rate at the time of payment of the traineeship, multiplied, in any case in which the service so required has been performed in part, by the percentage which the length of the service not so performed is of the length of the service so required to be performed.

(4)(A) In the case of any individual any part of whose obligation to perform service under this subsection exists at the same time as any part of the individual's obligation to perform service under section 254m or 254n of this title (because of receipt of a scholarship under subpart II of part D of this subchapter) or the individual's obligation to perform service under section 288[1] of this title (because of receipt of a National Research Service Award), or both, the same service may not be used to any extent to meet more than one of those obligations.

(B) In any case to which subparagraph (A) is applicable and in which one of the obligations is to perform service under section 254m or 254n of this title, the obligation to perform service under that section must be met (by performance of the required service or payment of damages) before the obligation to perform service under this subsection or under section 288[1] of this title.

(C) In any case to which subparagraph (A) is applicable, if any part of the obligation to perform service under section 288[1] of this title exists at the same time as any part of the obligation to perform service under this subsection, the manner and time of meeting each obligation shall be prescribed by the Secretary.

(5) In disseminating application forms to individuals desiring traineeships, the Secretary shall include with such forms a fair summary of the liabilities under this subsection of an individual who receives a traineeship.

(July 1, 1944, ch. 373, title III, § 303, as added July 3, 1946, ch. 538, § 7(c), 60 Stat. 423; amended Aug. 2, 1956, ch. 871, title V, § 501, 70 Stat. 929; Oct. 27, 1970, Pub. L. 91–513, title I, § 3(a), 84 Stat. 1241; May 14, 1974, Pub. L. 93–282, title I, § 122(b), 88 Stat. 132; July 12, 1974, Pub. L. 93–348, title I, § 104(a)(2), 88 Stat. 346; Nov. 10, 1978, Pub. L. 95–633, title I, § 108(b), 92 Stat. 3773; Oct. 7, 1980, Pub. L. 96–398, title VIII, § 803(a), 94 Stat. 1607; Dec. 1, 1987, Pub. L. 100–177, title II, § 202(a), 101 Stat. 996; Nov. 4, 1988, Pub. L. 100–607, title I, § 163(1)(A), 102 Stat. 3062; Nov. 18, 1988, Pub. L. 100–690, title II, § 2058(b), 102 Stat. 4214; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(b)[(a)], 104 Stat. 3035; July 10, 1992, Pub. L. 102–321, title I, § 115(b), 106 Stat. 348; Oct. 13, 1992, Pub. L. 102–408, title III, § 305, 106 Stat. 2084.)

REFERENCES IN TEXT

The Mental Health Systems Act, referred to in subsec. (d)(2)(A), is Pub. L. 96–398, Oct. 7, 1980, 96 Stat. 1564, as amended, which is classified principally to chapter 102 (§ 9401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9401 of this title and Tables.

CODIFICATION

Section 288 of this title, referred to in subsec. (d)(4), in the original referred to section 472, meaning section 472 of the Public Health Service Act, which was classified to section 289*l*–1 of this title. Title IV of the Public Health Service Act was amended generally by section 2 of Pub. L. 99–158, Nov. 20, 1985, 99 Stat. 822, and provisions formerly contained in section 472 were restated in section 487 of the Public Health Service Act, which is classified to section 288 of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–321, § 115(b)(1), struck out ", the Surgeon General is authorized" after "health" in introductory provisions.

Subsec. (a)(1). Pub. L. 102–321, § 115(b)(2), inserted "the Secretary, acting through the Director of the Center for Mental Health Services, is authorized" after "(1)".

Subsec. (a)(2). Pub. L. 102–321, § 115(b)(3), inserted "the Surgeon General is authorized" after "(2)".

Subsec. (d)(2)(D). Pub. L. 102–408 added subpar. (D).

1990—Subsec. (d)(2)(B). Pub. L. 101–597 substituted "health professional shortage area" for "health manpower shortage area".

1988—Subsec. (a). Pub. L. 100–607 redesignated concluding provisions which permitted Secretary to authorize persons engaged in research on mental health to protect privacy of individuals who are subject of such research by withholding names of such individuals, and which prohibited compulsion of persons so authorized to identify such individuals in any court or other proceedings, as subsec. (d) of section 241 of this title.

Subsec. (d)(1). Pub. L. 100–690 inserted "marital and family therapy," after "nursing,".

1987—Subsec. (d)(4). Pub. L. 100–177 made technical amendment to references to "section 254m or 254n of this title" in two places and substituted "subpart II of Part D of this subchapter" for "subpart IV of Part C of subchapter V of this chapter" to reflect renumbering of corresponding provisions of original act.

1980—Subsec. (d). Pub. L. 96–398 added subsec. (d).

1978—Subsecs. (b), (c). Pub. L. 95–633 added subsec. (b) and redesignated former subsec. (b) as (c).

1974—Subsec. (a). Pub. L. 93–282 substituted "mental health, including research on the use and effect of alcohol and other psychoactive drugs" for "the use and effect of drugs".

Subsec. (a)(1). Pub. L. 93–348, § 104(a)(2)(A), inserted "clinical" before "training and instruction" and "traineeships" and substituted "(with such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the trainees as the Secretary may deem necessary)" for ", in accordance with the provisions of section 289c(a) of this title".

Subsec. (b). Pub. L. 93–348, § 104(a)(2)(B), authorized Secretary to provide for training, instruction, and traineeships under subsection (a)(1) of this section through grants to public and other nonprofit institutions.

1970—Subsec. (a). Pub. L. 91–513 inserted provisions authorizing withholding of information concerning identity of persons who are subjects of research on use and effect of drugs.

1956—Subsec. (a). Act Aug. 2, 1956, substituted provisions of par. (1) relating to traineeships in accordance with section 289c(a) of this title and par. (2) relating to grants for research and improved operation of mental institutions for provisions relating to admission of study patients, including patients from St. Elizabeths Hospital, to the National Institute of Mental Health.

Subsec. (b). Act Aug. 2, 1956, substituted provisions relating to recommendation of grants by Council and

[1] See Codification note below.

payment by Surgeon General for provisions relating to mental health training.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 501 of Pub. L. 101–597 provided that: ''This Act and the amendments made by this Act [enacting sections 254f–1, 254*o*–1, and 254r of this title, amending sections 242a, 254d to 254i, 254k, 254*l* to 254q–1, 254s, 294h, 294n, 294aa, 295g–1, 296m, 1320c–5, 1395*l*, 1395u, 1395x, 3505d, and 9840 of this title and section 2123 of Title 10, Armed Forces, and enacting provisions set out as notes under sections 201, 254*l*–1, and 254*o* of this title] shall take effect October 1, 1990, or upon the date of the enactment of this Act [Nov. 16, 1990], whichever occurs later.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 803(b) of Pub. L. 96–398 provided that: ''The amendment made by subsection (a) [amending this section] applies in the case of any academic year (of any traineeship awarded under section 303(a)(1) of the Public Health Service Act [subsec. (a)(1) of this section]) beginning after the date of the enactment of this Act [Oct. 7, 1980] if the award for such academic year is made after such date.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–633 effective on date Convention on Psychotropic Substances enters into force in the United States, see section 112 of Pub. L. 95–633, set out as an Effective Date note under section 801a of Title 21, Food and Drugs. Convention on Psychotropic Substances entered into force for the United States on July 15, 1980.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–348 not applicable with respect to commitments made before July 12, 1974, by the Secretary of Health, Education, and Welfare for research training, see section 104(b) of Pub. L. 93–348, set out as a note under section 241 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 2, 1956, effective July 1, 1956, see section 503 of act Aug. 2, 1956.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290bb–31 of this title; title 21 section 850.

§ 242b. General authority respecting research, evaluations, and demonstrations in health statistics, health services, and health care technology

(a) Scope of activities

The Secretary may, through the Agency for Health Care Policy and Research or the National Center for Health Statistics, or using National Research Service Awards or other appropriate authorities, undertake and support training programs to provide for an expanded and continuing supply of individuals qualified to perform the research, evaluation, and demonstration projects set forth in section 242k of this title and in subchapter VII of this chapter.

(b) Additional authority; scope of activities

To implement subsection (a) of this section and section 242k of this title, the Secretary may, in addition to any other authority which under other provisions of this chapter or any other law may be used by him to implement such subsection, do the following:

(1) Utilize personnel and equipment, facilities, and other physical resources of the Department of Health and Human Services, permit appropriate (as determined by the Secretary) entities and individuals to utilize the physical resources of such Department, provide technical assistance and advice, make grants to public and nonprofit private entities and individuals, and, when appropriate, enter into contracts with public and private entities and individuals.

(2) Admit and treat at hospitals and other facilities of the Service persons not otherwise eligible for admission and treatment at such facilities.

(3) Secure, from time to time and for such periods as the Secretary deems advisable but in accordance with section 3109 of title 5, the assistance and advice of consultants from the United States or abroad. The Secretary may for the purpose of carrying out the functions set forth in sections 242c,[1] 242k, and 242n[1] of this title, obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the number of days or the period of service) for each of the centers the services of not more than fifteen experts who have appropriate scientific or professional qualifications.

(4) Acquire, construct, improve, repair, operate, and maintain laboratory, research, and other necessary facilities and equipment, and such other real or personal property (including patents) as the Secretary deems necessary; and acquire, without regard to section 34 of title 40, by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia.

(c) Coordination of activities through units of Department

(1) The Secretary shall coordinate all health services research, evaluations, and demonstrations, all health statistical and epidemiological

[1] See References in Text note below.

activities, and all research, evaluations, and demonstrations respecting the assessment of health care technology undertaken and supported through units of the Department of Health and Human Services. To the maximum extent feasible such coordination shall be carried out through the Agency for Health Care Policy and Research and the National Center for Health Statistics.

(2) The Secretary shall coordinate the health services research, evaluations, and demonstrations, the health statistical and (where appropriate) epidemiological activities, and the research, evaluations, and demonstrations respecting the assessment of health care technology authorized by this chapter through the Agency for Health Care Policy and Research and the National Center for Health Statistics.

(July 1, 1944, ch. 373, title III, § 304, as added July 28, 1955, ch. 417, § 3, 69 Stat. 382; amended Aug. 2, 1956, ch. 871, title V, § 502, 70 Stat. 930; Dec. 5, 1967, Pub. L. 90–174, § 3(a), 81 Stat. 534; June 30, 1970, Pub. L. 91–296, title IV, § 401(b)(1)(A), 84 Stat. 352; Oct. 30, 1970, Pub. L. 91–515, title II, §§ 201(a)–(c), 202, 203, 84 Stat. 1301–1303; June 18, 1973, Pub. L. 93–45, title I, § 102, 87 Stat. 91; July 23, 1974, Pub. L. 93–353, title I, § 103, 88 Stat. 362; Nov. 9, 1978, Pub. L. 95–623, §§ 3, 7, 92 Stat. 3443, 3451; July 10, 1979, Pub. L. 96–32, § 5(a)–(c), 93 Stat. 82; Aug. 13, 1981, Pub. L. 97–35, title IX, § 918, 95 Stat. 565; Oct. 30, 1984, Pub. L. 98–551, § 5(c), 98 Stat. 2819; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(e)(1), 103 Stat. 2205; Dec. 14, 1993, Pub. L. 103–183, title V, § 501(b), 107 Stat. 2237.)

REFERENCES IN TEXT

Sections 242c and 242n of this title, referred to in subsec. (b)(3), were repealed by Pub. L. 101–239, title VI, § 6103(d)(1), Dec. 19, 1989, 103 Stat. 2205.

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–183 struck out subsec. (d) which directed Secretary to conduct an ongoing study of present and projected future health costs of pollution and other environmental conditions resulting from human activity and to submit to Congress reports on the study.

1989—Subsec. (a). Pub. L. 101–239, § 6103(e)(1)(B), substituted ''the Agency for Health Care Policy and Research'' for ''the National Center for Health Services Research and Health Care Technology Assessment'' and ''in section 242k of this title and in subchapter VII of this chapter'' for ''in sections 242c, 242k, and 242n of this title''.

Pub. L. 101–239, § 6103(e)(1)(A), redesignated par. (3) as entire subsec. (a) and struck out pars. (1) and (2) which required Secretary to conduct and support research, demonstrations, evaluations, and statistical and epidemiological activities for purpose of improving health services in the United States, and which specified types of activities Secretary was to emphasize in carrying out par. (1).

Subsec. (b). Pub. L. 101–239, § 6103(e)(1)(C), substituted ''subsection (a) of this section and section 242k of this title'' for ''subsection (a) of this section''.

Subsec. (c)(1), (2). Pub. L. 101–239, § 6103(e)(1)(D), substituted ''the Agency for Health Care Policy and Research'' for ''the National Center for Health Services Research and Health Care Technology Assessment''.

1984—Subsec. (a)(1). Pub. L. 98–551, § 5(c)(1), (2), substituted ''the National Center for Health Services Research and Health Care Technology Assessment and the National Center for Health Statistics'' for ''the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology''.

Subsec. (a)(3). Pub. L. 98–551, § 5(c)(1), (3), substituted ''the National Center for Health Services Research and Health Care Technology Assessment or the National Center for Health Statistics'' for ''the National Center for Health Services Research, the National Center for Health Statistics, or the National Center for Health Care Technology''.

Subsec. (c)(1), (2). Pub. L. 98–551, § 5(c)(1), (2), substituted ''the National Center for Health Services Research and Health Care Technology Assessment and the National Center for Health Statistics'' for ''the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology''.

1981—Subsec. (a)(3). Pub. L. 97–35, § 918(a), substituted ''may'' for ''shall'', ''or the'' for ''and the'', ''or using'' for ''and using'', and ''or other'' for ''and other''.

Subsecs. (b)(1), (c)(1). Pub. L. 97–35, § 918(d)(1), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d)(1). Pub. L. 97–35, § 918(b)(1), (2), substituted provisions relating to advice and assistance of the National Academy of Sciences, for provisions relating to joint authority of the National Academy of Sciences, and struck out definition of ''Academy'' as meaning the National Academy of Sciences.

Subsec. (d)(3). Pub. L. 97–35, § 918(b)(3), (c), (d)(2), substituted ''every three years'' for ''every two years'', and ''Energy and'' for ''Interstate and Foreign'', and struck out references to the Academy.

1979—Subsec. (b)(1), (3). Pub. L. 96–32, § 5(a), (b), amended directory language of Pub. L. 95–623, § 3(b), (d), and required no change in text. See 1978 Amendment note below.

Subsec. (d). Pub. L. 96–32, § 5(c), substituted ''(d)'' for ''(e)'' as designation of subsection added by Pub. L. 95–623, § 7, thereby correcting the subsection designation.

1978—Subsec. (a)(1). Pub. L. 95–623, § 3(a), substituted provision for the Secretary acting through the National Center for Health Care Technology for such action through other units of the Department of Health, Education, and Welfare and ''conduct'' for ''undertake'', included epidemiological activities, and declared as an objective the improvement of the effectiveness, efficiency, and quality of Federal health services.

Subsec. (a)(2). Pub. L. 95–623, § 3(a), provided for emphasis to demonstrations, evaluations, and epidemiological activities; redesignated as subpar. (A) former subpar. (C); struck out ''technology'' and ''quality'' after ''organization,'' and ''utilization,'', respectively, and end clause ''including systems for the delivery of preventive, personal, and mental health care'' and former subpar. (A) activities respecting ''the determination of an individual's health''; added subpars. (B) through (D); struck out former subpar. (D) activities respecting ''individual and community knowledge of individual health and the systems for the delivery of health care''; added subpars. (E) through (I); and redesignated as subpar. (J) former subpar. (B).

Subsec. (a)(3). Pub. L. 95–623, § 3(a), added par. (3).

Subsec. (b)(1). Pub. L. 95–623, § 3(b), as amended by Pub. L. 96–32, § 5(a), substituted '', when appropriate, enter into contracts with public and private entities and individuals'' for ''enter into contracts with public and private entities and individuals, for (A) health services research, evaluation, and demonstrations, and (B) health services research and health statistics training, and (C) health statistical activities''.

Subsec. (b)(3). Pub. L. 95–623, § 3(d), as amended by Pub. L. 96–32, § 5(b), substituted ''advisable but in accordance with section 3109 of title 5'' for ''advisable'', struck out ''experts and'' before ''consultants'', and authorized the Secretary to obtain for the centers the services of experts with appropriate scientific or professional qualifications.

Subsec. (c). Pub. L. 95–623, § 3(c), designated existing text as par. (1), substituted ''evaluations, and demonstrations, all health statistical and epidemiological activities, and all research, evaluations, and dem-

onstrations respecting the assessment of health care technology'' for ''evaluation, demonstration, and health statistical activities'' before ''undertaken and supported'', required coordination of activities to also be carried out through the National Center for Health Care Technology, and added par. (2).

Subsec. (d). Pub. L. 95–623, § 7, as amended by Pub. L. 96–32, § 5(c), added subsec. (d).

1974—Pub. L. 93–353, in revising generally provisions of subsecs. (a) to (c), provided for general authority respecting health statistics and health services research, evaluation, and demonstrations, subsec. (a) relating to scope of activities, subsec. (b) relating to additional authority and scope of activities, and subsec. (c) relating to coordination of activities through units of the Department. Former provisions related to research and demonstrations relating to health facilities and services, subsec. (a) relating to grants and contracts for projects for research, experiments, or demonstrations and related training, cost limitation, wage rates, labor standards, and other conditions, and payments (former subsec. (a)(2) and (3) now being covered by section 242m(h) and (e), respectively), subsec. (b) relating to systems analysis of national health care plans, and cost and coverage report on existing legislative proposals, and subsec. (c) relating to authorization of appropriations.

1973—Subsec. (c)(1). Pub. L. 93–45 authorized appropriations of $42,617,000 for fiscal year ending June 30, 1974.

1970—Subsec. (a)(1). Pub. L. 91–515, §§ 201(a)(1), 203, redesignated subsec. (a) as (a)(1), substituted ''(A)'' and ''(B)'' for ''(1)'' and ''(2)'', and ''(i) to (iii)'' for ''(A) to (C)'', and added cls. (iv) and (v).

Subsec. (a)(2). Pub. L. 91–515, § 201(a)(2), redesignated subsec. (b) as (a)(2), and substituted ''subsection'' for ''section'' wherever appearing.

Subsec. (a)(3). Pub. L. 91–515, §§ 201(a)(3), 202, redesignated subsec. (c) as (a)(3)(A), substituted ''subsection'' for ''section'' wherever appearing, and added subsec. (a)(3)(B).

Subsec. (b). Pub. L. 91–515, § 201(a)(2)(A), (b), added subsec. (b). Former subsec. (b) redesignated (a)(2).

Subsecs. (c), (d). Pub. L. 91–515, §§ 201(a)(3)(A), (c), 202(1), redesignated subsec. (d) as (c), and substituted provisions authorizing appropriations for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973, and authorizing to be appropriated such additional sums for each fiscal year as may be necessary to carry out the provisions of subsec. (b), for provisions authorizing appropriations of $20,000,000 for the fiscal year ending June 30, 1968, $40,000,000 for the fiscal year ending June 30, 1969, and $60,000,000 for the fiscal year ending June 30, 1970. Former subsec. (c) redesignated (a)(3)(A).

Pub. L. 91–296 struck out provisions authorizing use of appropriated funds for evaluation of program authorized by this section. See section 229b of this title.

1967—Pub. L. 90–174 substituted provisions of subsecs. (a) to (d) for research and demonstrations relating to health facilities (incorporated from former section 291n of this title) for provisions of former subsecs. (a) to (d) for mental health study including grants for special projects, conditions thereof, and definition of ''organization'', authorization of appropriations, terms of grant, availability of amounts otherwise appropriated and noninterference with research and study programs of the National Institute of Mental Health, and acceptance of additional financial support.

1956—Act Aug. 2, 1956, changed heading of section 304 of act July 1, 1944 from ''Grants for special projects in mental health'' to ''Mental health study grants''. Section heading has been changed for purposes of codification.

EFFECTIVE DATE OF 1970 AMENDMENTS

Section 201(d) of Pub. L. 91–515 provided that: ''The amendments made by subsection (c) of this section [amending this section] shall be effective only with respect to fiscal years ending after June 30, 1970.''

Section 401(b)(1) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to appropriations for fiscal years beginning after June 30, 1970.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment of section by act Aug. 2, 1956, effective July 1, 1956, see section 503 of act Aug. 2, 1956.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

MODEL STANDARDS WITH RESPECT TO PREVENTIVE HEALTH SERVICES IN COMMUNITIES

Pub. L. 95–83, title III, § 314, Aug. 1, 1977, 91 Stat. 398, required the Secretary of Health, Education, and Welfare, within two years of Aug. 1, 1977, to establish model standards with respect to preventive health services in communities and report such standards to Congress.

TRANSFER OF EQUIPMENT

Pub. L. 94–573, § 15, Oct. 21, 1976, 90 Stat. 2719, provided that notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare could vest title to equipment purchased with funds under the seven contracts for emergency medical services demonstration projects entered into in 1972 and 1973 under this section (as in effect at the time the contracts were entered into), and by contractors with the United States under such contracts or subcontractors under such contracts, in such contractors or subcontractors without further obligation to the Government or on such terms as the Secretary considered appropriate.

CONGRESSIONAL DECLARATION OF PURPOSE

Section 2 of Joint Res. July 28, 1955, provides a Congressional statement of the critical need for an analysis and reevaluation of the human and economic problems of mental illness and of the resources, methods, and practices utilized in diagnosing, treating, caring for, and rehabilitating the mentally ill, both within and outside of institutions, as might lead to the development of recommendations for such better utilization of those resources or such improvements on and new developments in methods of diagnosis, treatment, care, and rehabilitation as give promise of resulting in a marked reduction in the incidence or duration of mental illness and, in consequence, a lessening of the appalling emotional and financial drain on the families of those afflicted or on the economic resources of the States and of the Nation and a declaration of the policy to promote mental health and to help solve the complex and the interrelated problems posed by mental illness by encouraging the undertaking of nongovernmental, multidisciplinary research into and reevaluation of all aspects of our resources, methods, and practices for diagnosing, treating, caring for, and rehabilitating the mentally ill, including research aimed at the prevention of mental illness.

CHILDREN'S EMOTIONAL ILLNESS STUDY; PROGRAM GRANTS; CONDITIONS; DEFINITIONS; APPROPRIATIONS; TERMS OF GRANT

Pub. L. 89–97, title II, § 231, July 30, 1965, 79 Stat. 360, as amended by Pub. L. 90–248, title III, § 305, Jan. 2, 1968, 81 Stat. 929, authorized the Secretary of Health, Education, and Welfare upon the recommendation of the National Advisory Mental Health Council and after securing the advice of experts in pediatrics and child wel-

fare, to make grants to organizations on certain conditions for carrying out a program of research into and study of resources, methods, and practices for diagnosing or preventing emotional illness in children and of treating, caring for, and rehabilitating children with emotional illnesses, defined ''organization'', and authorized appropriations for the making of such grants for fiscal years ending June 30, 1966, and June 30, 1967, with such research and study to be completed not later than three years from the date it was inaugurated.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 235, 242k, 242m, 288 of this title.

§ 242c. Repealed. Pub. L. 101–239, title VI, § 6103(d)(1)(A), Dec. 19, 1989, 103 Stat. 2205

Section, act July 1, 1944, ch. 373, title III, § 305, as added July 3, 1956, ch. 510, § 3, 70 Stat. 490; amended Oct. 30, 1970, Pub. L. 91–515, title II, § 210, 84 Stat. 1303; June 18, 1973, Pub. L. 93–45, title I, § 103, 87 Stat. 91; July 23, 1974, Pub. L. 93–353, title I, § 104, 88 Stat. 363; Oct. 8, 1976, Pub. L. 94–460, title III, § 301, 90 Stat. 1960; Nov. 9, 1978, Pub. L. 95–623, § 4, 92 Stat. 3445; Aug. 13, 1981, Pub. L. 97–35, title IX, § 919(a)(1), (2)(A), (3), (b)(1), (c), (d), 95 Stat. 565, 566; Oct. 30, 1984, Pub. L. 98–551, §§ 5(a), (b), 6, 98 Stat. 2817, 2819, 2820; Oct. 7, 1985, Pub. L. 99–117, § 6, 99 Stat. 492; Nov. 14, 1986, Pub. L. 99–660, title III, § 311(b)(2), 100 Stat. 3779; Dec. 1, 1987, Pub. L. 100–177, title I, §§ 101, 102, 101 Stat. 987; Nov. 4, 1988, Pub. L. 100–607, title II, § 204(1), 102 Stat. 3079; Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(b)(3), 102 Stat. 4244; Aug. 16, 1989, Pub. L. 101–93, § 5(e)(3), 103 Stat. 612, related to National Center for Health Services Research and Health Care Technology Assessment.

TERMINATION OF NATIONAL CENTER FOR HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY ASSESSMENT

Section 6103(d)(1)(A) of Pub. L. 101–239 provided in part that the National Center for Health Services Research and Health Care Technology Assessment is terminated.

TRANSITIONAL AND SAVINGS PROVISIONS FOR PUB. L. 101–239

For provision transferring personnel of Department of Health and Human Services employed on Dec. 19, 1989, in connection with functions vested in Administrator for Health Care Policy and Research pursuant to amendments made by section 6103 of Pub. L. 101–239, and assets, liabilities, etc., of Department arising from or employed, held, used, or available on that date, or to be made available after that date, in connection with those functions, to Administrator for appropriate allocation, and for provisions for continued effectiveness of actions, orders, rules, official documents, etc., of Department that have been issued, made, granted, or allowed to become effective in performance of those functions, and that were effective on Dec. 19, 1989, see section 6103(f) of Pub. L. 101–239, set out as a note under section 299 of this title.

§ 242d. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title III, § 306, as added Aug. 2, 1956, ch. 871, title I, § 101, 70 Stat. 923; amended July 23, 1959, Pub. L. 86–105, § 1, 73 Stat. 239; Sept. 8, 1960, Pub. L. 88–497, § 2, 78 Stat. 613; Aug. 16, 1968, Pub. L. 90–490, title III, § 302(b), 82 Stat. 789; Mar. 12, 1970, Pub. L. 91–208, § 3, 84 Stat. 52; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; June 18, 1973, Pub. L. 93–45, title I, § 104(a), 87 Stat. 91, which related to graduate or specialized training for physicians, engineers, nurses, and other professional personnel, was renumbered section 312 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 244–1 of this title, and was subsequently repealed.

§ 242e. Repealed. Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362

Section, act July 1, 1944, ch. 373, title III, § 307, as added Aug. 2, 1956, ch. 871, title II, § 201, 70 Stat. 924; amended July 23, 1959, Pub. L. 86–105, § 2, 73 Stat. 239; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311, provided for a professional nurse traineeship program for which authorization of appropriations were made through fiscal year ending June 30, 1964. Provision for the continuation of the program was made by the Nurse Training Act of 1964, which enacted section 297 et seq. of this title.

§§ 242f to 242j. Transferred

CODIFICATION

Section 242f, act July 1, 1944, ch. 373, title III, § 308, as added July 12, 1960, Pub. L. 86–610, § 3, 74 Stat. 364, which related to international cooperation with respect to biomedical research and health services research and statistical activities, was renumbered section 307 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 242*l* of this title.

Section 242g, act July 1, 1944, ch. 373, title III, § 309, as added Sept. 8, 1960, Pub. L. 86–720, § 1(a), 74 Stat. 819; amended Aug. 27, 1964, Pub. L. 88–497, § 3, 78 Stat. 613; Nov. 3, 1966, Pub. L. 89–749, § 4, 80 Stat. 1190; Dec. 5, 1967, Pub. L. 90–147, §§ 2(g), 8(c), 81 Stat. 534, 540; Aug. 16, 1968, Pub. L. 90–490, title III, § 302(a), 82 Stat. 788; Mar. 12, 1970, Pub. L. 91–208, §§ 1, 2, 84 Stat. 52; June 30, 1970, Pub. L. 91–296, title IV, § 401(b)(1)(B), 84 Stat. 352; June 18, 1973, Pub. L. 93–45, title I, § 104(b), (c), 87 Stat. 91, which related to graduate public health training grants, was renumbered section 313 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 245a of this title, and was subsequently repealed.

Section 242h, act July 1, 1944, ch. 373, title III, § 310, as added Sept. 25, 1962, Pub. L. 87–692, 76 Stat. 592; amended Aug. 5, 1965, Pub. L. 89–109, § 3, 79 Stat. 436; Oct. 15, 1968, Pub. L. 90–574, title II, § 201, 82 Stat. 1006; Mar. 12, 1970, Pub. L. 91–209, 84 Stat. 52; June 18, 1973, Pub. L. 93–45, title I, § 105, 87 Stat. 91, which related to health services for domestic agricultural migrants, was renumbered section 319 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 247d of this title, and subsequently transferred to section 254b of this title.

Section 242i, act July 1, 1944, ch. 373, title III, § 310A, as added Oct. 30, 1970, Pub. L. 91–515, title II, § 270, 84 Stat. 1306; amended Nov. 18, 1971, Pub. L. 92–157, title II, § 201, 85 Stat. 461, which related to administration of grants in multigrant projects, was renumbered section 226 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 235 of this title.

Section 242j, act July 1, 1944, ch. 373, title III, § 310B, as added Oct. 30, 1970, Pub. L. 91–515, title II, § 280, 84 Stat. 1307, which provided for and annual report by Secretary on activities related to health facilities and services and expenditure of funds, was renumbered section 227 of act July 1, 1944, by Pub. L. 93–353 and transferred to section 236 of this title, and was subsequently repealed.

§ 242k. National Center for Health Statistics

(a) Establishment; appointment of Director; statistical and epidemiological activities

There is established in the Department of Health and Human Services the National Center for Health Statistics (hereinafter in this section referred to as the ''Center'') which shall be under the direction of a Director who shall be appointed by the Secretary. The Secretary, acting through the Center, shall conduct and support statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.

(b) Duties

In carrying out subsection (a) of this section, the Secretary, acting through the Center,

(1) shall collect statistics on—

(A) the extent and nature of illness and disability of the population of the United States (or of any groupings of the people included in the population), including life expectancy, the incidence of various acute and chronic illnesses, and infant and maternal morbidity and mortality,

(B) the impact of illness and disability of the population on the economy of the United States and on other aspects of the well-being of its population (or of such groupings),

(C) environmental, social, and other health hazards,

(D) determinants of health,

(E) health resources, including physicians, dentists, nurses, and other health professionals by specialty and type of practice and the supply of services by hospitals, extended care facilities, home health agencies, and other health institutions,

(F) utilization of health care, including utilization of (i) ambulatory health services by specialties and types of practice of the health professionals providing such services, and (ii) services of hospitals, extended care facilities, home health agencies, and other institutions,

(G) health care costs and financing, including the trends in health care prices and cost, the sources of payments for health care services, and Federal, State, and local governmental expenditures for health care services, and

(H) family formation, growth, and dissolution;

(2) shall undertake and support (by grant or contract) research, demonstrations, and evaluations respecting new or improved methods for obtaining current data on the matters referred to in paragraph (1);

(3) may undertake and support (by grant or contract) epidemiological research, demonstrations, and evaluations on the matters referred to in paragraph (1); and

(4) may collect, furnish, tabulate, and analyze statistics, and prepare studies, on matters referred to in paragraph (1) upon request of public and nonprofit private entities under arrangements under which the entities will pay the cost of the service provided.

Amounts appropriated to the Secretary from payments made under arrangements made under paragraph (4) shall be available to the Secretary for obligation until expended.

(c) Statistical and epidemiological compilations and surveys

The Center shall furnish such special statistical and epidemiological compilations and surveys as the Committee on Labor and Human Resources and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives may request. Such statistical and epidemiological compilations and surveys shall not be made subject to the payment of the actual or estimated cost of the preparation of such compilations and surveys.

(d) Technical aid to States and localities

To insure comparability and reliability of health statistics, the Secretary shall, through the Center, provide adequate technical assistance to assist State and local jurisdictions in the development of model laws dealing with issues of confidentiality and comparability of data.

(e) Cooperative Health Statistics System

For the purpose of producing comparable and uniform health information and statistics, there is established the Cooperative Health Statistics System. The Secretary, acting through the Center, shall—

(1) coordinate the activities of Federal agencies involved in the design and implementation of the System;

(2) undertake and support (by grant or contract) research, development, demonstrations, and evaluations respecting the System;

(3) make grants to and enter into contracts with State and local health agencies to assist them in meeting the costs of data collection and other activities carried out under the System; and

(4) review the statistical activities of the Department of Health and Human Services to assure that they are consistent with the System.

States participating in the System shall designate a State agency to administer or be responsible for the administration of the statistical activities within the State under the System. The Secretary, acting through the Center, shall prescribe guidelines to assure that statistical activities within States participating in the system[1] produce uniform and timely data and assure appropriate access to such data.

(f) Federal-State cooperation

To assist in carrying out this section, the Secretary, acting through the Center, shall cooperate and consult with the Departments of Commerce and Labor and any other interested Federal departments or agencies and with State and local health departments and agencies. For such purpose he shall utilize insofar as possible the services or facilities of any agency of the Federal Government and, without regard to section 5 of title 41, of any appropriate State or other public agency, and may, without regard to such section, utilize the services or facilities of any private agency, organization, group, or individual, in accordance with written agreements between the head of such agency, organization, or group and the Secretary or between such individual and the Secretary. Payment, if any, for such services or facilities shall be made in such amounts as may be provided in such agreement.

(g) Collection of health data; data collection forms

To secure uniformity in the registration and collection of mortality, morbidity, and other health data, the Secretary shall prepare and distribute suitable and necessary forms for the collection and compilation of such data.

---

[1] So in original. Probably should be capitalized.

(h) Registration area records

(1) There shall be an annual collection of data from the records of births, deaths, marriages, and divorces in registration areas. The data shall be obtained only from and restricted to such records of the States and municipalities which the Secretary, in his discretion, determines possess records affording satisfactory data in necessary detail and form. The Secretary shall encourage States and registration areas to obtain detailed data on ethnic and racial populations, including subpopulations of Hispanics, Asian Americans, and Pacific Islanders with significant representation in the State or registration area. Each State or registration area shall be paid by the Secretary the Federal share of its reasonable costs (as determined by the Secretary) for collecting and transcribing (at the request of the Secretary and by whatever method authorized by him) its records for such data.

(2) There shall be an annual collection of data from a statistically valid sample concerning the general health, illness, and disability status of the civilian noninstitutionalized population. Specific topics to be addressed under this paragraph, on an annual or periodic basis, shall include the incidence of illness and accidental injuries, prevalence of chronic diseases and impairments, disability, physician visits, hospitalizations, and the relationship between demographic and socioeconomic characteristics and health characteristics.

(i) Technical assistance in effective use of statistics

The Center may provide to public and nonprofit private entities technical assistance in the effective use in such activities of statistics collected or compiled by the Center.

(j) Coordination of health statistical and epidemiological activities

In carrying out the requirements of section 242b(c) of this title and paragraph (1) of subsection (e) of this section, the Secretary shall coordinate health statistical and epidemiological activities of the Department of Health and Human Services by—

(1) establishing standardized means for the collection of health information and statistics under laws administered by the Secretary;

(2) developing, in consultation with the National Committee on Vital and Health Statistics, and maintaining the minimum sets of data needed on a continuing basis to fulfill the collection requirements of subsection (b)(1) of this section;

(3) after consultation with the National Committee on Vital and Health Statistics, establishing standards to assure the quality of health statistical and epidemiological data collection, processing, and analysis;

(4) in the case of proposed health data collections of the Department which are required to be reviewed by the Director of the Office of Management and Budget under section 3509[2] of title 44, reviewing such proposed collections to determine whether they conform with the minimum sets of data and the standards promulgated pursuant to paragraphs (2) and (3), and if any such proposed collection is found not to be in conformance, by taking such action as may be necessary to assure that it will conform to such sets of data and standards, and

(5) periodically reviewing ongoing health data collections of the Department, subject to review under such section 3509, to determine if the collections are being conducted in accordance with the minimum sets of data and the standards promulgated pursuant to paragraphs (2) and (3) and, if any such collection is found not to be in conformance, by taking such action as may be necessary to assure that the collection will conform to such sets of data and standards not later than the ninetieth day after the date of the completion of the review of the collection.

(k) National Committee on Vital and Health Statistics; establishment; membership; term of office; compensation; functions; consultations of Secretary with Committee and professional advisory groups

(1) There is established in the Office of the Secretary a committee to be known as the National Committee on Vital and Health Statistics (hereinafter in this subsection referred to as the ''Committee'') which shall consist of 16 members.

(2) The members of the Committee shall be appointed by the Secretary from among persons who have distinguished themselves in the fields of health statistics, health planning, epidemiology, and the provision of health services. Members of the Committee shall be appointed for terms of 4 years.

(3) Members of the Committee shall be compensated in accordance with section 210(c) of this title.

(4) It shall be the function of the Committee to assist and advise the Secretary—

(A) to delineate statistical problems bearing on health and health services which are of national or international interest;

(B) to stimulate studies of such problems by other organizations and agencies whenever possible or to make investigations of such problems through subcommittees;

(C) to determine, approve, and revise the terms, definitions, classifications, and guidelines for assessing health status and health services, their distribution and costs, for use (i) within the Department of Health and Human Services, (ii) by all programs administered or funded by the Secretary, including the Federal-State-local cooperative health statistics system referred to in subsection (e) of this section, and (iii) to the extent possible as determined by the head of the agency involved, by the Department of Veterans Affairs, the Department of Defense, and other Federal agencies concerned with health and health services;

(D) with respect to the design of and approval of health statistical and health information systems concerned with the collection, processing, and tabulation of health statistics within the Department of Health and Human

[2] See References in Text note below.

Services, with respect to the Cooperative Health Statistics System established under subsection (e) of this section, and with respect to the standardized means for the collection of health information and statistics to be established by the Secretary under subsection (j)(1) of this section;

(E) to review and comment on findings and proposals developed by other organizations and agencies and to make recommendations for their adoption or implementation by local, State, national, or international agencies;

(F) to cooperate with national committees of other countries and with the World Health Organization and other national agencies in the studies of problems of mutual interest; and

(G) to issue an annual report on the state of the Nation's health, its health services, their costs and distributions, and to make proposals for improvement of the Nation's health statistics and health information systems.

(5) In carrying out health statistical activities under this part, the Secretary shall consult with, and seek the advice of, the Committee and other appropriate professional advisory groups.

(*l*) Data specific to particular ethnic and racial populations

In carrying out this section, the Secretary, acting through the Center, shall collect and analyze adequate health data that is specific to particular ethnic and racial populations, including data collected under national health surveys. Activities carried out under this subsection shall be in addition to any activities carried out under subsection (m) of this section.

(m) Grants for assembly and analysis of data on ethnic and racial populations

(1) The Secretary, acting through the Center, may make grants to public and nonprofit private entities for—

(A) the conduct of special surveys or studies on the health of ethnic and racial populations or subpopulations;

(B) analysis of data on ethnic and racial populations and subpopulations; and

(C) research on improving methods for developing statistics on ethnic and racial populations and subpopulations.

(2) The Secretary, acting through the Center, may provide technical assistance, standards, and methodologies to grantees supported by this subsection in order to maximize the data quality and comparability with other studies.

(3) Provisions of section 242m(d) of this title do not apply to surveys or studies conducted by grantees under this subsection unless the Secretary, in accordance with regulations the Secretary may issue, determines that such provisions are necessary for the conduct of the survey or study and receives adequate assurance that the grantee will enforce such provisions.

(n) Authorization of appropriations

(1) For health statistical and epidemiological activities undertaken or supported under subsections (a) through (*l*) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 1998.

(2) For activities authorized in subsection (m) of this section, there are authorized to be appropriated $5,000,000 for fiscal year 1991, $7,500,000 for fiscal year 1992, $10,000,000 for fiscal year 1993, and $10,000,000 for each of the fiscal years 1994 through 1998. Of such amounts, the Secretary shall use not more than 10 percent for administration and for activities described in subsection (m)(2) of this section.

(July 1, 1944, ch. 373, title III, § 306, as added July 23, 1974, Pub. L. 93–353, title I, § 105, 88 Stat. 365; amended Nov. 9, 1978, Pub. L. 95–623, §§ 5, 8(a), 92 Stat. 3445, 3453; Aug. 13, 1981, Pub. L. 97–35, title IX, § 920, 95 Stat. 566; Jan. 4, 1983, Pub. L. 97–414, § 8(b), 96 Stat. 2060; Dec. 1, 1987, Pub. L. 100–177, title I, §§ 104, 105(a), 101 Stat. 988; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(e)(2), 103 Stat. 2206; Nov. 6, 1990, Pub. L. 101–527, § 7(a), (b)(1), (c), 104 Stat. 2327, 2328; June 13, 1991, Pub. L. 102–54, § 13(q)(1)(A)(i), 105 Stat. 278; Dec. 14, 1993, Pub. L. 103–183, title V, § 501(a), (d), 107 Stat. 2237, 2238.)

REFERENCES IN TEXT

Section 3509 of title 44, referred to in subsec. (j)(4), (5), was a part of chapter 35 of title 44 which was revised and amended generally by Pub. L. 96–511, § 2(a), Dec. 11, 1980, 94 Stat. 2412. Provisions formerly contained in section 3509 are covered by section 3507 of Title 44, Public Printing and Documents.

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (g) of this section were contained in section 313 of act July 1, 1944, ch. 373, title III, 58 Stat. 693; Oct. 30, 1970, Pub. L. 91–516, title II, § 282, 84 Stat. 1308 (formerly classified to section 245 of this title), prior to repeal by Pub. L. 93–353, § 102(a).

Provisions similar to those comprising subsec. (h) of this section were contained in section 312a of act July 1, 1944, ch. 373, title III, as added Aug. 31, 1954, ch. 1158, § 2, 68 Stat. 1025 (formerly classified to section 244a of this title), prior to repeal by Pub. L. 93–353, § 102(a).

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–183, § 501(a)(1), substituted ''Committee on Labor and Human Resources'' for ''Committee on Human Resources''.

Subsec. (g). Pub. L. 103–183, § 501(a)(2), substituted ''data'' for ''data which shall be published as a part of the health reports published by the Secretary''.

Subsec. (i). Pub. L. 103–183, § 501(a)(3), struck out ''engaged in health planning activities'' after ''entities''.

Subsec. (k)(2). Pub. L. 103–183, § 501(a)(4), struck out subpar. (A) designation, substituted ''Members'' for ''Except as provided in subparagraph (B), members'', and struck out subpar. (B) which related to extensions of membership terms of members of National Committee on Vital and Health Statistics whose terms were to expire in calendar years 1988, 1989, and 1990.

Subsec. (*l*). Pub. L. 103–183, § 501(a)(5)(A)–(C), redesignated subsec. (m) as (*l*), substituted ''subsection (m)'' for ''subsection (n)'', and struck out former subsec. (*l*) which related to development of plan for collection and coordination of statistical and epidemiological data on effects of environment on health and establishment of guidelines for compilation, analysis, and distribution of statistics and information necessary for coordinated determination of effects of conditions of employment and indoor and outdoor environmental conditions on public health.

Subsec. (m). Pub. L. 103–183, § 501(a)(5)(B), redesignated subsec. (n) as (m). Former subsec. (m) redesignated (*l*).

Subsecs. (n), (*o*). Pub. L. 103–183, § 501(a)(5)(B), (D), (d), redesignated subsec. (*o*) as (n), in par. (1) substituted ''(*l*)'' for ''(m)'' and ''1998'' for ''1993'', and in par. (2)

substituted ''(m)'' for ''(n)'', struck out ''and'' after ''1992,'', inserted '', and $10,000,000 for each of the fiscal years 1994 through 1998'', and substituted ''(m)(2)'' for ''(n)(2)''. Former subsec. (n) redesignated (m).

1991—Subsec. (k)(4)(C). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (h). Pub. L. 101–527, § 7(a), designated existing text as par. (1), inserted after second sentence ''The Secretary shall encourage States and registration areas to obtain detailed data on ethnic and racial populations, including subpopulations of Hispanics, Asian Americans, and Pacific Islanders with significant representation in the State or registration area.'', and added par. (2).

Subsecs. (m) to (*o*). Pub. L. 101–527, § 7(b)(1), (c), added subsecs. (m) and (n) and redesignated former subsec. (m) as (*o*) and amended it generally. Prior to amendment, subsec. (*o*) read as follows: ''For health statistical and epidemiological activities undertaken or supported under this section, there are authorized to be appropriated $55,000,000 for fiscal year 1988 and such sums as may be necessary for each of the fiscal years 1989 and 1990.''

1989—Subsec. (a). Pub. L. 101–239, § 6103(e)(2)(A), inserted at end ''The Secretary, acting through the Center, shall conduct and support statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.''

Subsec. (b). Pub. L. 101–239, § 6103(e)(2)(B), substituted ''subsection (a) of this section'' for ''section 242b(a) of this title''.

Subsec. (m). Pub. L. 101–239, § 6103(e)(2)(C), added subsec. (m).

1987—Subsec. (a). Pub. L. 100–177, § 104, struck out ''and supervised by the Assistant Secretary for Health (or such other officer of the Department as may be designated by the Secretary as the principal adviser to him for health programs)''.

Subsec. (k)(1). Pub. L. 100–177, § 105(a)(1), substituted ''16 members'' for ''fifteen members''.

Subsec. (k)(2)(A). Pub. L. 100–177, § 105(a)(2), substituted ''terms of 4 years'' for ''terms of three years''.

Subsec. (k)(2)(B). Pub. L. 100–177, § 105(a)(3), added subpar. (B) and struck out former subpar. (B) which read as follows: ''Of the members first appointed—

''(i) five shall be appointed for terms of one year,

''(ii) five shall be appointed for terms of two years, and

''(iii) five shall be appointed for terms of three years,

as designated by the Secretary at the time of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.''

1983—Subsec. (*l*)(2)(D). Pub. L. 97–414 redesignated subpar. (E) as (D) and struck out former subpar. (D) which provided that the Center would serve as a clearinghouse for statistics and information with respect to which guidelines had been established under subpar. (A).

Subsec. (*l*)(2)(E) to (G). Pub. L. 97–414 redesignated subpars. (F) and (G) as (E) and (F), respectively. Former subpar. (E) redesignated (D).

1981—Subsec. (a). Pub. L. 97–35, § 920(d)(1), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (c). Pub. L. 97–35, § 920(d)(2), substituted ''Energy and'' for ''Interstate and Foreign''.

Subsec. (e). Pub. L. 97–35, § 920(a), (d)(1), in par. (3) inserted applicability to other activities, and in par. (4) substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsecs. (j), (k)(4)(C), (D). Pub. L. 97–35, § 920(d)(1), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (*l*)(2). Pub. L. 97–35, § 920(b), (c), (d)(1), in subpar. (A) inserted reference to Office of Federal Statistical Policy and Standards, in subpar. (B)(v) substituted ''Health and Human Services'' for ''Health, Education, and Welfare'', and in subpar. (D) struck out provisions relating to assistance to executive departments.

1978—Subsec. (b). Pub. L. 95–623, § 5(a), struck out ''may'' after ''through the Center,'', substituted in pars. (1) and (2) ''shall collect'' and ''shall undertake'' for ''collect'' and ''undertake'', respectively, and added pars. (3) and (4) and provision for availability of certain appropriated funds from par. (4) payments until expended.

Subsec. (c). Pub. L. 95–623, § 5(b), substituted ''statistical and epidemiological compilations'' for ''statistical compilations'' in two places and ''Committee on Human Resources'' for ''Committee on Labor and Public Welfare'' of the Senate.

Subsec. (e). Pub. L. 95–623, § 5(c)(1), incorporated in introductory text prior cl. (1) provision requiring the Secretary to assist State and local health agencies and Federal agencies involved in health matters in the design and implementation of a cooperative system for producing comparable and uniform health information and statistics at the Federal, State, and local levels; enacted in pars. (1) and (2) provisions almost identical to prior cls. (2) and (3); enacted par. (3); struck out former cl. (4) provision for the Federal share of the data collection costs under the system; enacted in par. (4) provisions almost identical to former cl. (5); and required State designation of a State administrative agency to be responsible for the statistical activities within the State under the System and Federal guidelines for production of uniform and timely data and appropriate access to the data.

Subsec. (f). Pub. L. 95–623, § 5(d), substituted ''the Secretary, acting through the Center, shall cooperate and consult'' for ''the Secretary shall cooperate and consult''.

Subsecs. (i), (j). Pub. L. 95–623, § 5(f), added subsecs. (i) and (j). Former subsec. (i) redesignated (k).

Subsec. (k). Pub. L. 95–623, § 5(c)(2), (e), (f), struck from par. (1) ''United States'' before ''National Committee on Vital and Health Statistics''; authorized in par. (2)(A) the appointment of Committee members from distinguished persons in field of health planning; required the Committee to assist and advise the Secretary with respect to the Cooperative Health Statistics System and the standardized means for the collection of health information and statistics to be established by the Secretary; and redesignated such amended subsec. (i) as (k).

Subsec. (*l*). Pub. L. 95–623, § 8(a), added subsec. (*l*).

Change of Name

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Effective Date of 1990 Amendment

Section 12 of Pub. L. 101–527 provided that: ''This Act and the amendments made by this Act [enacting sections 254c–1, 254t, 256a, 294bb, 294cc, and 300u–6 of this title, amending this section and sections 242m, 254b, 254c, 294m, 294*o*, and 295g–2 of this title, enacting provisions set out as notes under sections 201 and 300u–6 of this title, and repealing provisions set out as a note under section 292h of this title] shall take effect October 1, 1990, or upon the date of the enactment of this Act [Nov. 6, 1990], whichever occurs later.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 105(b) of Pub. L. 100–177 provided that: ''The amendments made by this section [amending this section] shall become effective on January 1, 1988.''

MONEY RECEIVED BY CENTER FROM REIMBURSEMENTS, INTERAGENCY AGREEMENTS, AND SALE OF DATA TAPES TO REMAIN AVAILABLE UNTIL EXPENDED

Pub. L. 103–333, title II, Sept. 30, 1994, 108 Stat. 2550, provided in part: ''That for fiscal year 1995 and subsequent fiscal years amounts received by the National Center for Health Statistics from reimbursements and interagency agreements and the sale of data tapes may be credited to this appropriation and shall remain available until expended''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242b, 242*l*, 242m, 242p, 295*l*, 1320a of this title.

§ 242*l*. International cooperation

(a) Cooperative endeavors; statement of purpose

For the purpose of advancing the status of the health sciences in the United States (and thereby the health of the American people), the Secretary may participate with other countries in cooperative endeavors in biomedical research, health care technology, and the health services research and statistical activities authorized by section 242k of this title and by subchapter VII of this chapter.

(b) Authority of Secretary; building construction prohibition

In connection with the cooperative endeavors authorized by subsection (a) of this section, the Secretary may—

(1) make such use of resources offered by participating foreign countries as he may find necessary and appropriate;

(2) establish and maintain fellowships in the United States and in participating foreign countries;

(3) make grants to public institutions or agencies and to nonprofit private institutions or agencies in the United States and in participating foreign countries for the purpose of establishing and maintaining the fellowships authorized by paragraph (2);

(4) make grants or loans of equipment and materials, for use by public or nonprofit institutions or agencies, or by individuals, in participating foreign countries;

(5) participate and otherwise cooperate in any international meetings, conferences, or other activities concerned with biomedical research, health services research, health statistics, or health care technology;

(6) facilitate the interchange between the United States and participating foreign countries, and among participating foreign countries, of research scientists and experts who are engaged in experiments or programs of biomedical research, health services research, health statistical activities, or health care technology activities, and in carrying out such purpose may pay per diem compensation, subsistence, and travel for such scientists and experts when away from their places of residence at rates not to exceed those provided in section 5703(b)[1] of title 5 for persons in the Government service employed intermittently;

(7) procure, in accordance with section 3109 of title 5, the temporary or intermittent services of experts or consultants; and

(8) enter into contracts with individuals for the provision of services (as defined in section 104 of part 37 of title 48, Code of Federal Regulations (48 CFR 37.104)) in participating foreign countries, which individuals may not be deemed employees of the United States for any purpose.

The Secretary may not, in the exercise of his authority under this section, provide financial assistance for the construction of any facility in any foreign country.

(c) Benefits for overseas assignees

The Secretary may provide to personnel appointed or assigned by the Secretary to serve abroad, allowances and benefits similar to those provided under chapter 9 of title I of the Foreign Service Act of 1990 (22 U.S.C. 4081 et seq.). Leaves of absence for personnel under this subsection shall be on the same basis as that provided under subchapter I of chapter 63 of title 5 to individuals serving in the Foreign Service.

(July 1, 1944, ch. 373, title III, § 307, formerly § 308, as added July 12, 1960, Pub. L. 86–610, § 3, 74 Stat. 364; renumbered § 307 and amended July 23, 1974, Pub. L. 93–353, title I, § 106, 88 Stat. 367; Aug. 13, 1981, Pub. L. 97–35, title IX, § 921, 95 Stat. 566; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(e)(3), 103 Stat. 2206; Oct. 27, 1992, Pub. L. 102–531, title III, § 310, 106 Stat. 3503; Dec. 14, 1993, Pub. L. 103–183, title VII, § 702, 107 Stat. 2239.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (b)(6), was amended generally by Pub. L. 94–22, § 4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

The Foreign Service Act of 1990, referred to in subsec. (c), probably means the Foreign Service Act of 1980, which is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071. Chapter 9 of title I of the Act is classified generally to subchapter IX (§ 4081 et seq.) of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

CODIFICATION

Section was formerly classified to section 242f of this title.

PRIOR PROVISIONS

A prior section 307 of act July 1, 1944, was classified to section 242e of this title, prior to repeal by Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–183 added subsec. (c).

1992—Subsec. (b)(8). Pub. L. 102–531, which directed amendment of subsec. (b) by adding par. (8) at the end thereof, was executed by adding par. (8) after par. (7) to reflect the probable intent of Congress.

1989—Subsec. (a). Pub. L. 101–239 substituted ''section 242k of this title and by subchapter VII of this chapter'' for ''sections 242b, 242c, 242k, and 242n of this title''.

1981—Subsec. (a). Pub. L. 97–35, § 921(a), inserted reference to health care technology and section 242n of this title.

Subsec. (b). Pub. L. 97–35, § 921(b), in par. (5) inserted reference to health care technology, and in par. (6) inserted reference to health care technology activities.

1974—Pub. L. 93–353 amended section generally.

[1] See References in Text note below.

INTERNATIONAL HEALTH STUDY

Pub. L. 95–83, title III, § 315, Aug. 1, 1977, 91 Stat. 398, provided that the Secretary of Health, Education, and Welfare arrange through the National Academy of Sciences or other nonprofit private groups or associations, for a study to determine opportunities for broadened Federal program activities in areas of international health, which study was to consider biomedical and behavioral research, health services research, health professions education, immunization and public health activities, and other areas that might improve our and other nations' capacities to prevent, diagnose, control, or cure disease, and to organize and deliver effective and efficient health services, with an interim report on such study completed no later than Oct. 1, 1977 and a final report completed no later than Jan. 1, 1978 and both reports submitted to the Secretary, the Committee on Human Resources of the Senate, and the Committee on Interstate and Foreign Commerce of the House of Representatives.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242m, 300cc–15 of this title; title 22 section 2101.

§ 242m. General provisions respecting effectiveness, efficiency, and quality of health services

(a) Reports to Congress and President; preparation; review by Office of Management and Budget

(1) Not later than March 15 of each year, the Secretary shall submit to the President and Congress the following reports:

(A) A report on health care costs and financing. Such report shall include a description and analysis of the statistics collected under section 242k(b)(1)(G) of this title.

(B) A report on health resources. Such report shall include a description and analysis, by geographical area, of the statistics collected under section 242k(b)(1)(E) of this title.

(C) A report on the utilization of health resources. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 242k(b)(1)(F) of this title.

(D) A report on the health of the Nation's people. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 242k(b)(1)(A) of this title.

(2) The reports required in paragraph (1) shall be prepared through the National Center for Health Statistics.

(3) The Office of Management and Budget may review any report required by paragraph (1) of this subsection before its submission to Congress, but the Office may not revise any such report or delay its submission beyond the date prescribed for its submission, and may submit to Congress its comments respecting any such report.

(b) Grants or contracts; applications, submittal; application peer review group, findings and recommendations; necessity of favorable recommendation; appointments

(1) No grant or contract may be made under section 242b, 242k, or 242*l* of this title unless an application therefor has been submitted to the Secretary in such form and manner, and containing such information, as the Secretary may by regulation prescribe and unless a peer review group referred to in paragraph (2) has recommended the application for approval.

(2)(A) Each application submitted for a grant or contract under section 242k of this title in an amount exceeding $50,000 of direct costs and for a health services research, evaluation, or demonstration project, or for a grant under section 242k(n)[1] of this title, shall be submitted to a peer review group for an evaluation of the technical and scientific merits of the proposals made in each such application. The Director of the National Center for Health Statistics shall establish such peer review groups as may be necessary to provide for such an evaluation of each such application.

(B) A peer review group to which an application is submitted pursuant to subparagraph (A) shall report its finding and recommendations respecting the application to the Secretary, acting through the Director of the National Center for Health Statistics, in such form and manner as the Secretary shall by regulation prescribe. The Secretary may not approve an application described in such subparagraph unless a peer review group has recommended the application for approval.

(C) The Secretary, acting through the Director of the National Center for Health Statistics, shall make appointments to the peer review groups required in subparagraph (A) from among persons who are not officers or employees of the United States and who possess appropriate technical and scientific qualifications, except that peer review groups regarding grants under section 242k(n)[1] of this title may include appropriately qualified such officers and employees.

(c) Development and dissemination of statistics

The Secretary shall take such action as may be necessary to assure that statistics developed under sections 242b and 242k of this title are of high quality, timely, comprehensive as well as specific, standardized, and adequately analyzed and indexed, and shall publish, make available, and disseminate such statistics on as wide a basis as is practicable.

(d) Information; publication restrictions

No information, if an establishment or person supplying the information or described in it is identifiable, obtained in the course of activities undertaken or supported under section 242b, 242k, or 242*l* of this title may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose; and in the case of information obtained in the course of health statistical or epidemiological activities under section 242b or 242k of this title, such information may not be published or released in other form if the particular establishment or person supplying the information or described in it is identifiable unless such establishment or person has consented (as determined under regulations of the Secretary) to its publication or release in other form.

---

[1] See References in Text note below.

(e) Payment procedures; advances or reimbursement; installments; conditions; reductions

(1) Payments of any grant or under any contract under section 242b, 242k, or 242*l* of this title may be made in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary deems necessary to carry out the purposes of such section.

(2) The amounts otherwise payable to any person under a grant or contract made under section 242b, 242k, or 242*l* of this title shall be reduced by—

(A) amounts equal to the fair market value of any equipment or supplies furnished to such person by the Secretary for the purpose of carrying out the project with respect to which such grant or contract is made, and

(B) amounts equal to the pay, allowances, traveling expenses, and related personnel expenses attributable to the performance of services by an officer or employee of the Government in connection with such project, if such officer or employee was assigned or detailed by the Secretary to perform such services,

but only if such person requested the Secretary to furnish such equipment or supplies, or such services, as the case may be.

(f) Contracts without regard to section 3324 of title 31 and section 5 of title 41

Contracts may be entered into under section 242b or 242k of this title without regard to section 3324 of title 31 and section 5 of title 41.

(July 1, 1944, ch. 373, title III, § 308, as added July 23, 1974, Pub. L. 93–353, title I, § 107(a), 88 Stat. 368; amended Apr. 21, 1976, Pub. L. 94–273, § 7(2), 90 Stat. 378; Aug. 1, 1977, Pub. L. 95–83, title I, § 104, 91 Stat. 384; Nov. 9, 1978, Pub. L. 95–623, §§ 2, 6(d), 8(b), 92 Stat. 3443, 3451, 3455; Aug. 13, 1981, Pub. L. 97–35, title IX, §§ 917(a), (b), 919(a)(2)(B), 922, 95 Stat. 564, 565, 567; Jan. 4, 1983, Pub. L. 97–414, § 8(c), 96 Stat. 2060; Oct. 30, 1984, Pub. L. 98–551, § 7, 98 Stat. 2820; Dec. 1, 1987, Pub. L. 100–177, title I, §§ 106(a), 107, 108, 101 Stat. 988–990; Nov. 18, 1988, Pub. L. 100–690, title II, § 2612, 102 Stat. 4235; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(e)(4), 103 Stat. 2206; Nov. 6, 1990, Pub. L. 101–527, § 7(b)(2), (d), 104 Stat. 2328; Dec. 14, 1993, Pub. L. 103–183, title V, § 501(c), 107 Stat. 2237.)

REFERENCES IN TEXT

Section 242k(n) of this title, referred to in subsec. (b)(2)(A), (C), was redesignated section 242k(m) of this title by Pub. L. 103–183, title V, § 501(a)(5)(B), Dec. 14, 1993, 107 Stat. 2237.

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (e) of this section were contained in subsec. (a)(3) of section 304 of act July 1, 1944, ch. 373, title III, as added July 28, 1955, ch. 417, § 3, 69 Stat. 382, and amended (formerly classified to section 242b(a)(3) of this title), prior to general amendment of section 304 by Pub. L. 93–353, § 103.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–183, § 501(c)(1)(A), redesignated subpars. (B) to (E) as (A) to (D), respectively, and struck out former subpar. (A) which read as follows: ''A report on—

''(i) the administration of sections 242b, 242k, and 242*l* of this title and subchapter VII of this chapter during the preceding fiscal year; and

''(ii) the current state and progress of health services research, health statistics, and health care technology.''

Subsec. (a)(2). Pub. L. 103–183, § 501(c)(1)(B), substituted ''reports required in paragraph (1) shall be prepared through the National Center'' for ''reports required by subparagraphs (B) through (E) of paragraph (2) shall be prepared through the Agency for Health Care Policy and Research and the National Center''.

Subsec. (c). Pub. L. 103–183, § 501(c)(2)(A)–(D), (3), redesignated subsec. (g)(2) as subsec. (c), substituted ''shall take'' for ''shall (A) take'' and ''and shall publish'' for ''and (B) publish'', and struck out former subsec. (c) which read as follows: ''The aggregate number of grants and contracts made or entered into under sections 242b and 242c of this title for any fiscal year respecting a particular means of delivery of health services or another particular aspect of health services may not exceed twenty; and the aggregate amount of funds obligated under grants and contracts under such sections for any fiscal year respecting a particular means of delivery of health services or another particular aspect of health services may not exceed $5,000,000.''

Subsec. (f). Pub. L. 103–183, § 501(c)(4), substituted ''section 3324 of title 31 and section 5 of title 41'' for ''sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5)''.

Subsec. (g). Pub. L. 103–183, § 501(c)(2)(B), (C), (E), redesignated par. (2) as subsec. (c) and struck out par. (1) which read as follows: ''The Secretary shall—

''(A) publish, make available and disseminate, promptly in understandable form and on as broad a basis as practicable, the results of health services research, demonstrations, and evaluations undertaken and supported under sections 242b and 242c of this title;

''(B) make available to the public data developed in such research, demonstrations, and evaluations; and

''(C) provide indexing, abstracting, translating, publishing, and other services leading to a more effective and timely dissemination of information on health services research, demonstrations, and evaluations in health care delivery to public and private entities and individuals engaged in the improvement of health care delivery and the general public; and undertake programs to develop new or improved methods for making such information available.''

Subsec. (h). Pub. L. 103–183, § 501(c)(5), struck out subsec. (h) which read as follows:

''(1) Except where the Secretary determines that unusual circumstances make a larger percentage necessary in order to effectuate the purposes of section 242k of this title, a grant or contract under any of such sections of this title with respect to any project for construction of a facility or for acquisition of equipment may not provide for payment of more than 50 per centum of so much of the cost of the facility or equipment as the Secretary determines is reasonably attributable to research, evaluation, or demonstration purposes.

''(2) Laborers and mechanics employed by contractors and subcontractors in the construction of such a facility shall be paid wages at rates not less than those prevailing on similar work in the locality, as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 267a—267a–5, known as the Davis-Bacon Act); and the Secretary of Labor shall have with respect to any labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (5 U.S.C. Appendix) and section 276c of title 40.

''(3) Such grants and contracts shall be subject to such additional requirements as the Secretary may by regulation prescribe.''

1990—Subsec. (b)(2)(A). Pub. L. 101–527, § 7(b)(2)(A), inserted ''or for a grant under section 242k(n) of this title,'' after ''demonstration project,''.

Subsec. (b)(2)(C). Pub. L. 101–527, § 7(b)(2)(B), inserted before period at end '', except that peer review groups regarding grants under section 242k(n) of this title may

include appropriately qualified such officers and employees''.

Subsec. (b)(3). Pub. L. 101–527, §7(d), struck out par. (3) which related to applications submitted under section 242k of this title for which a grant or contract may be made under another provision of this chapter.

1989—Pub. L. 101–239, §6103(e)(4)(A), amended section catchline.

Subsec. (a)(1)(A)(i). Pub. L. 101–239, §6103(e)(4)(B)(i), substituted ''sections 242b, 242k, and 242*l* of this title and subchapter VII of this chapter'' for ''sections 242b, 242c, 242k, and 242*l* of this title and section 242n of this title''.

Subsec. (a)(2). Pub. L. 101–239, §6103(e)(4)(B)(ii), substituted ''the Agency for Health Care Policy and Research'' for ''the National Center for Health Services Research and Health Care Technology Assessment''.

Subsec. (b)(1). Pub. L. 101–239, §6103(e)(4)(C)(i), which directed amendment of par. (1) by substituting ''section 242b, 242k, or 242*l* of this title'' for ''sections 242b, 242c, 242k, 242*l*, and 242n of this title'', was executed by making the substitution for ''section 242b, 242c, 242k, 242*l*, or 242n of this title'' as the probable intent of Congress.

Subsec. (b)(2)(A). Pub. L. 101–239, §6103(e)(4)(C)(ii), substituted ''under section 242k of this title'' for ''under section 242b or 242c of this title,'' in first sentence, struck out second sentence which read as follows: ''Each application for a grant, contract, or cooperative agreement in an amount exceeding $50,000 of direct costs for the dissemination of research findings or the development of research agendas (including conferences, workshops, and meetings) shall be submitted to a standing peer review group with persons with appropriate expertise and shall not be submitted to any peer review group established to review applications for research, evaluation, or demonstration projects.'', and amended last sentence generally. Prior to amendment, last sentence read as follows: ''The Secretary, acting through the Director of the National Center for Health Services Research and Health Care Technology Assessment (or, as appropriate, through the Director of the National Center for Health Statistics), shall establish such peer review groups as may be necessary to provide for such an evaluation of an application described in the first two sentences of this subparagraph.''

Subsec. (b)(2)(B). Pub. L. 101–239, §6103(e)(4)(C)(iii), substituted ''the Director of the National Center for Health Statistics'' for ''the Director involved''.

Subsec. (b)(2)(C). Pub. L. 101–239, §6103(e)(4)(C)(iv), substituted ''the Director of the National Center for Health Statistics'' for ''the Directors''.

Subsec. (b)(3). Pub. L. 101–239, §6103(e)(4)(C)(v), substituted ''submitted under section 242k of this title'' for ''submitted under section 242b, 242c, or 242k of this title'' and ''approved under any of such sections'' for ''approved under section 242b, 242c, or 242k of this title''.

Subsec. (d). Pub. L. 101–239, §6103(e)(4)(D), substituted ''section 242b, 242k, or 242*l* of this title'' for ''section 242b, 242c, 242k, 242*l*, or 242n of this title'', struck out ''(1)'' after ''for such other purpose; and'', and substituted ''publication or release in other form.'' for ''publication or release in other form, and (2) in the case of information obtained in the course of health services research, evaluations, or demonstrations under section 242b or 242c of this title or in the course of health care technology activities under section 242n of this title, such information may not be published or released in other form if the person who supplied the information or who is described in it is identifiable unless such person has consented (as determined under regulations of the Secretary) to its publication or release in other form.''

Subsec. (e)(1), (2). Pub. L. 101–239, §6103(e)(4)(E), substituted ''section 242b, 242k, or 242*l* of this title'' for ''section 242b, 242c, 242k, 242*l*, or 242n of this title''.

Subsec. (f). Pub. L. 101–239, §6103(e)(4)(F), substituted ''section 242b or 242k of this title'' for ''section 242b, 242c, 242k, or 242n of this title''.

Subsec. (g)(1). Pub. L. 101–239, §6103(e)(4)(G)(i), struck out at end ''Except as provided in subsection (d) of this section, the Secretary may not restrict the publication and dissemination of data from, and results of projects undertaken by, centers supported under section 242c(d) of this title.''

Subsec. (g)(2). Pub. L. 101–239, §6103(e)(4)(G)(ii), substituted ''sections 242b and 242k of this title'' for ''sections 242b, 242c, 242k, and 242n of this title''.

Subsec. (h)(1). Pub. L. 101–239, §6103(e)(4)(H), substituted ''effectuate the purposes of section 242k of this title'' for ''effectuate the purposes of section 242b, 242c, 242k, or 242n of this title'' and ''contract under any of such sections'' for ''contract under section 242b, 242c, 242k, or 242n of this title''.

Subsec. (i). Pub. L. 101–239, §6103(e)(4)(I), struck out subsec. (i) which authorized appropriations for carrying out certain programs under sections 242b, 242c, 242k, and 242n of this title during fiscal years 1988 to 1990.

1988—Subsec. (b)(2)(A). Pub. L. 100–690 inserted after first sentence ''Each application for a grant, contract, or cooperative agreement in an amount exceeding $50,000 of direct costs for the dissemination of research findings or the development of research agendas (including conferences, workshops, and meetings) shall be submitted to a standing peer review group with persons with appropriate expertise and shall not be submitted to any peer review group established to review applications for research, evaluation, or demonstration projects.'' and substituted ''an application described in the first two sentences of this subparagraph'' for ''each such application'' in last sentence.

1987—Subsec. (a)(1), (2). Pub. L. 100–177, §106(a)(1), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) Not later than December 1 of each year, the Secretary shall make a report to Congress respecting (A) the administration of sections 242b, 242c, 242k, and 242*l* and section 242n of this title during the preceding fiscal year, and (B) the current state and progress of health services research and, health statistics, and health care technology.

''(2) The Secretary, acting through the National Center for Health Services Research and the National Center for Health Statistics, shall assemble and submit to the President and the Congress not later than December 1 of each year the following reports:

''(A) A report on health care costs and financing. Such report shall include a description and analysis of the statistics collected under section 242k(b)(1)(G) of this title.

''(B) A report on health resources. Such report shall include a description and analysis, by geographic area, of the statistics collected under section 242k(b)(1)(E) of this title.

''(C) A report on the utilization of health resources. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 242k(b)(1)(F) of this title.

''(D) A report on the health of the Nation's people. Such report shall include a description and analysis, by age, sex, income, and geographic area, of the statistics collected under section 242k(b)(1)(A) of this title.''

Subsec. (a)(3). Pub. L. 100–177, §106(a)(2), struck out ''or (2)'' after ''paragraph (1)''.

Subsec. (b)(1). Pub. L. 100–177, §107(1), inserted ''and unless a peer review group referred to in paragraph (2) has recommended the application for approval'' before period at end.

Subsec. (b)(2). Pub. L. 100–177, §107(2), added par. (2) and struck out former par. (2) which read as follows: ''Each application submitted for a grant or contract under section 242b or 242c of this title, in an amount exceeding $50,000 of direct costs and for a health services research, evaluation, or demonstration project, shall be submitted by the Secretary for review for scientific merit to a panel of experts appointed by him from persons who are not officers or employees of the United States and who possess qualifications relevant to the project for which the application was made. A panel to

which an application is submitted under this paragraph shall report its findings and recommendations respecting the application to the Secretary in such form and manner as the Secretary shall by regulation prescribe.''

Subsec. (i). Pub. L. 100–177, §108, amended subsec. (i) generally, substituting provisions authorizing appropriations for fiscal years 1988 to 1990 for carrying out activities under sections 242b, 242c, 242k, and 242n of this title for former provisions authorizing appropriations for fiscal years 1975 to 1987 for carrying out activities under those sections.

1984—Subsec. (i)(1). Pub. L. 98–551, §7(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987, inserted ''and Health Care Technology Assessment'' after ''Research'', substituted ''and at least 10 per centum of such amount or $1,500,000, whichever is less, shall be available only for the user liaison program and the technical assistance program referred to in section 242c(c)(2) of this title and for dissemination activities directly undertaken through such Center'' for ''and at least 5 per centum of such amount or $1,000,000, whichever is less, shall be available only for dissemination activities directly undertaken through such Center'', inserted ''For health care technology assessment activities undertaken under subsections (b)(5), (e), (f), and (g) of section 242c of this title the Secretary shall obligate from funds appropriated under this paragraph not less than $3,000,000 for the fiscal year ending September 30, 1985, $3,500,000 for the fiscal year ending September 30, 1986, and $4,000,000 for the fiscal year ending September 30, 1987. For grants under section 242n of this title the Secretary shall obligate from funds appropriated under this paragraph not less than $500,000 for the fiscal year ending September 30, 1985, $750,000 for the fiscal year ending September 30, 1986, and $750,000 for the fiscal year ending September 30, 1987.'', and in last sentence substituted ''for any fiscal year'' for ''for each of the fiscal years ending September 30, 1982, September 30, 1983, and September 30, 1984,''.

Subsec. (i)(2). Pub. L. 98–551, §7(b), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

1983—Subsec. (d). Pub. L. 97–414 inserted '', if an establishment or person supplying the information or described in it is identifiable,'' after ''No information'', and substituted ''such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose'' for ''authorized by guidelines in effect under section 242k(*l*)(2) of this title or under regulations of the Secretary''.

1981—Subsec. (a)(2). Pub. L. 97–35, §922(a), substituted ''December'' for ''September'', which change had already been made by Pub. L. 94–273.

Subsec. (b)(2). Pub. L. 97–35, §922(b), substituted ''$50,000'' for ''$35,000''.

Subsec. (d)(2). Pub. L. 97–35, §922(c), inserted applicability to health care technology activities under section 242n of this title.

Subsec. (i)(1). Pub. L. 97–35, §§917(a), 919(a)(2)(B), inserted provisions respecting amounts of and limitations on uses for appropriations for the fiscal years ending Sept. 30, 1982, 1983, and 1984.

Subsec. (i)(2). Pub. L. 97–35, §917(b), inserted provisions respecting appropriations for the fiscal years ending Sept. 30, 1982, 1983, and 1984.

1978—Subsec. (a)(1). Pub. L. 95–623, §6(d)(1), required the report to cover the administration of section 242n of this title and the current state and progress of health care technology.

Subsec. (b)(1). Pub. L. 95–623, §6(d)(2), inserted reference to grant or contract under section 242n of this title.

Subsec. (d). Pub. L. 95–623, §§6(d)(3), 8(b), inserted reference to section 242n of this title and substituted in cl. (1) ''statistical or epidemiological activities'' for ''statistical activities''; and authorized use of information for purposes other than for which supplied when authorized by guidelines in effect under section 242k(*l*)(2) of this title.

Subsecs. (e), (f), (g)(2), (h)(1). Pub. L. 95–623, §6(d)(4)–(7), inserted references to section 242n of this title.

Subsec. (i)(1). Pub. L. 95–623, §2(a), authorized appropriation of $35,000,000; $40,000,000; and $45,000,000 for fiscal years ending Sept. 30, 1979, through 1981, and substituted minimum amounts of the lesser of 20 per centum of appropriated funds or $6,000,000 for health services research, evaluation and demonstration activities of the National Center for Health Services Research and 5 per centum of such funds or $1,000,000 for dissemination activities of such Center for prior similar requirement of 25 per centum of appropriated funds for the applicable fiscal years for health services research, evaluation, and demonstration activities of the Secretary.

Subsec. (i)(2). Pub. L. 95–623, §2(b), authorized appropriation of $50,000,000; $65,000,000; and $70,000,000 for fiscal years ending Sept. 30, 1979, through 1981.

1977—Subsec. (i)(1). Pub. L. 95–83, §104(a), authorized appropriation of $28,600,000 for fiscal year ending Sept. 30, 1978.

Subsec. (i)(2). Pub. L. 95–83, §104(b), authorized appropriation of $33,600,000 for fiscal year ending Sept. 30, 1978.

1976—Subsec. (a). Pub. L. 94–273 substituted ''December'' for ''September'' wherever appearing.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 2600 of Pub. L. 100–690 provided that: ''Except as provided in section 2613(b)(1) [42 U.S.C. 285m note], the amendments made by this subtitle [subtitle G (§§2600–2641) of title II of Pub. L. 100–690, enacting sections 285m–4 to 285m–6 of this title, amending this section, sections 242c, 281, 284, 284c, 285j, 285m, 285m–1 to 285m–6, 286, 289f, 290cc–28, 290cc–36, 292h, 294a, 295g–4, 295g–7, 295g–8b, 295h, 295h–5, 295j, 297j, 297n, 300cc–3, 300cc–13, 300cc–17, 300cc–20, 300cc–31, 300dd–1, 300dd–3, 300dd–8, 300dd–10, 300dd–12 to 300dd–14, 300dd–21, 300dd–32, 300ee, 300ee–2, 300ee–5, 300ee–12, 300ee–13, 300ee–15 to 300ee–18, 300ee–20, 300ee–22, 300ee–34, 300ff–48, and 300aaa to 300aaa–13 of this title, and section 393 of Title 21, Food and Drugs, enacting provisions set out as notes under section 285m of this title, amending provisions set out as notes under sections 201, 292h, 300cc, 300ee–1, and 300ff–48 of this title, and repealing provisions set out as a note under section 285m of this title] shall take effect immediately after the enactment of the Health Omnibus Programs Extension of 1988 [Nov. 4, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 106(c) of Pub. L. 100–177 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 242p of this title] shall apply to reports and profiles required to be submitted after November 1, 1987.''

MINE WORKERS STUDY; REPORT COMPLETED AND SUBMITTED NO LATER THAN 30 MONTHS AFTER NOVEMBER 9, 1978

Section 10 of Pub. L. 95–623, as amended by S. Res. 30, Mar. 7, 1979; H. Res. 549, Mar. 25, 1980, required the Secretary, acting through the National Center for Health Services Research, to arrange for the conduct of a study to evaluate the impact upon the utilization of health services by and the health status of members of the United Mine Workers and their dependents as a result of changes in the United Mine Workers' collective-bargaining agreements of Mar. 1978 with a report to be submitted to the Secretary and specific committees of the Senate and House of Representatives within 30 months after Nov. 9, 1978.

AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR ENDING JUNE 30, 1977

Section 107(b) of Pub. L. 93–353 provided that: ''The authorizations of appropriations provided by section 308(i) of the Public Health Service Act [subsec. (i) of

this section] is extended for the fiscal year ending June 30, 1977, in the amounts authorized for the preceding fiscal year unless before June 30, 1976, Congress has passed legislation repealing this subsection.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242k, 242p of this title.

§ 242n. Repealed. Pub. L. 101–239, title VI, § 6103(d)(1)(B), Dec. 19, 1989, 103 Stat. 2205

Section, act July 1, 1944, ch. 373, title III, § 309, as added Nov. 9, 1978, Pub. L. 95–623, § 6(c), 92 Stat. 3447; amended July 10, 1979, Pub. L. 96–32, § 5(d), 93 Stat. 83; Aug. 13, 1981, Pub. L. 97–35, title IX, §§ 917(c), 923, 95 Stat. 565, 567; Oct. 30, 1984, Pub. L. 98–551, § 8, 98 Stat. 2820; Oct. 7, 1985, Pub. L. 99–117, § 8(a), 99 Stat. 493; Dec. 1, 1987, Pub. L. 100–177, title I, § 109, 101 Stat. 990, related to grants for a council on health care technology.

TERMINATION OF COUNCIL ON HEALTH CARE TECHNOLOGY

Section 6103(d)(1)(B) of Pub. L. 101–239 provided in part that the council on health care technology established under this section is terminated.

TRANSITIONAL AND SAVINGS PROVISIONS FOR PUB. L. 101–239

For provision transferring personnel of Department of Health and Human Services employed on Dec. 19, 1989, in connection with functions vested in Administrator for Health Care Policy and Research pursuant to amendments made by section 6103 of Pub. L. 101–239, and assets, liabilities, etc., of Department arising from or employed, held, used, or available on that date, or to be made available after that date, in connection with those functions, to Administrator for appropriate allocation, and for provisions for continued effectiveness of actions, orders, rules, official documents, etc., of Department that have been issued, made, granted, or allowed to become effective in performance of those functions, and that were effective on Dec. 19, 1989, see section 6103(f) of Pub. L. 101–239, set out as a note under section 299 of this title.

§ 242*o*. Health conferences; publication of health educational information

(a) A conference of the health authorities in and among the several States shall be called annually by the Secretary. Whenever in his opinion the interests of the public health would be promoted by a conference, the Secretary may invite as many of such health authorities and officials of other State or local public or private agencies, institutions, or organizations to confer as he deems necessary or proper. Upon the application of health authorities of five or more States it shall be the duty of the Secretary to call a conference of all State health authorities joining in the request. Each State represented at any conference shall be entitled to a single vote. Whenever at any such conference matters relating to mental health are to be discussed, the mental health authorities of the respective States shall be invited to attend.

(b) From time to time the Secretary shall issue information related to public health, in the form of publications or otherwise, for the use of the public, and shall publish weekly reports of health conditions in the United States and other countries and other pertinent health information for the use of persons and institutions concerned with health services.

(July 1, 1944, ch. 373, title III, § 310, formerly §§ 309, 310, as added July 23, 1974, Pub. L. 93–353, title I, § 107(a), 88 Stat. 371; renumbered § 310, Nov. 9, 1978, Pub. L. 95–623, § 6(a), (b), 92 Stat. 3447.)

CODIFICATION

Subsec. (a) of this section consists of former section 309 of act July 1, 1944, prior to the renumbering of that section as section 310(a) by Pub. L. 95–623. Subsec. (b) of this section consists of former section 310 of act July 1, 1944, prior to the renumbering of that section as section 310(b) by Pub. L. 95–623.

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (a) of this section were contained in section 312 of act July 1, 1944, ch. 373, title III, 58 Stat. 693, as amended (formerly classified to section 244 of this title), prior to repeal by Pub. L. 93–353, § 102(a).

Provisions similar to those comprising subsec. (b) of this section were contained in section 315 of act July 1, 1944, ch. 373, title III, 58 Stat. 695; Oct. 30, 1970, Pub. L. 91–515, title II, § 282, 84 Stat. 1308 (formerly classified to section 247 of this title), prior to repeal by Pub. L. 93–353, § 102(a).

§ 242p. National disease prevention data profile

(a) The Secretary, acting through the National Center for Health Statistics, shall submit to Congress on March 15, 1990, and on March 15 of every third year thereafter, a national disease prevention data profile in order to provide a data base for the effective implementation of this Act and to increase public awareness of the prevalence, incidence, and any trends in the preventable causes of death and disability in the United States. Such profile shall include at a minimum—

(1) mortality rates for preventable diseases;

(2) morbidity rates associated with preventable diseases;

(3) the physical determinants of health of the population of the United States and the relationship between these determinants of health and the incidence and prevalence of preventable causes of death and disability; and

(4) the behavioral determinants of health of the population of the United States including, but not limited to, smoking, nutritional and dietary habits, exercise, and alcohol consumption, and the relationship between these determinants of health and the incidence and prevalence of preventable causes of death and disability.

(b) In preparing the profile required by subsection (a) of this section, the Secretary, acting through the National Center for Health Statistics, shall comply with all relevant provisions of sections 242k and 242m of this title.

(Pub. L. 95–626, title IV, § 404, Nov. 10, 1978, 92 Stat. 3591; Pub. L. 100–177, title I, § 106(b), Dec. 1, 1987, 101 Stat. 989.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 95–626, Nov. 10, 1978, 92 Stat. 3551, known as the Health Services and Centers Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendments note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the

Public Health Service Act which comprises this chapter.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–177 substituted ''on March 15, 1990, and on March 15 of every third year thereafter'' for ''on December 1, 1980, and on December 1 of every third year thereafter'' in first sentence.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–177 applicable to reports and profiles required to be submitted after Nov. 1, 1987, see section 106(c) of Pub. L. 100–177, set out as a note under section 242m of this title.

§ 242q. Task Force on Aging Research; establishment and duties

(a) Establishment

The Secretary of Health and Human Services shall establish a Task Force on Aging Research.

(b) Duties

With respect to aging research (as defined in section 242q–4 of this title), the Task Force each fiscal year shall—

(1) make recommendations to the Secretary specifying the particular projects of research, or the particular categories of research, that should be conducted or supported by the Secretary;

(2) of the projects specified under paragraph (1), make recommendations to the Secretary of the projects that should be given priority in the provision of funds; and

(3) make recommendations to the Secretary of the amount of funds that should be appropriated for such research.

(c) Provision of information to public

The Task Force may make available to health professionals, and to other members of the public, information regarding the research described in subsection (b) of this section.

(Pub. L. 101–557, title III, § 301, Nov. 15, 1990, 104 Stat. 2768.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242q–2, 242q–3, 242q–4, 242q–5 of this title.

§ 242q–1. Membership

(a) Composition

The Task Force shall be composed of—

(1) the Assistant Secretary for Health;

(2) the Surgeon General of the Public Health Service;

(3) the Assistant Secretary for Planning and Evaluation;

(4) the Director of the National Institute on Aging, and the Directors of such other agencies of the National Institutes of Health as the Secretary determines to be appropriate;

(5) the Commissioner of the Administration on Aging;

(6) the Commissioner of Food and Drugs;

(7) the Under Secretary for Health of the Department of Veterans Affairs;

(8) the Administrator of the the[1] Substance Abuse and Mental Health Services Administration;

(9) the Administrator of the Health Care Financing Administration;

(10) the Commissioner of Social Security;

(11) the Administrator for Health Care Policy and Research;

(12) two Members of the House of Representatives appointed by the Speaker of the House in consultation with the Minority Leader, and two members of the Senate appointed by the Majority Leader in consultation with the Minority Leader, not more than one of whom from each body shall be members of the same political party; and

(13) three members of the general public, to be appointed by the Secretary, that shall include one representative each from—

(A) a nonprofit group representing older Americans;

(B) a private voluntary health organization concerned with the health problems affecting older Americans; and

(C) a nonprofit organization concerned with research related to the health and independence of older Americans.

(b) Chair

The Secretary, acting through either the Assistant Secretary for Health or the Director of the National Institute on Aging, shall serve as the Chair of the Task Force.

(c) Quorum

A majority of the members of the Task Force shall constitute a quorum, and a lesser number may hold hearings.

(d) Meetings

The Task Force shall meet periodically at the call of the Chair, but in no event less than twice each year.

(e) Compensation and expenses

(1) Compensation

Members of the Task Force who are not regular full-time employees of the United States Government shall, while attending meetings and conferences of the Task Force or otherwise engaged in the business of the Task Force (including traveltime), be entitled to receive compensation at a rate fixed by the Secretary, but not exceeding the rate specified at the time of such service under GS–18 of the General Schedules established under section 5332 of title 5.

(2) Expenses

While away from their homes or regular places of business on the business of the Task Force, members of such Task Force may be allowed travel expenses, including per diem in lieu of subsistence, as is authorized under section 5703 of title 5 for persons employed intermittently in the Government service.

(Pub. L. 101–557, title III, § 302, Nov. 15, 1990, 104 Stat. 2769; Pub. L. 102–321, title I, § 161, July 10, 1992, 106 Stat. 375; Pub. L. 102–405, title III, § 302(e)(1), Oct. 9, 1992, 106 Stat. 1985.)

[1] So in original.

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1992—Subsec. (a)(7). Pub. L. 102–405 substituted ''Under Secretary for Health of the Department of Veterans Affairs'' for ''Chief Medical Director of the Department of Veterans Affairs''.

Subsec. (a)(8). Pub. L. 102–321 substituted ''Substance Abuse and Mental Health Services Administration'' for ''Alcohol, Drug Abuse and Mental Health Administration''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242q–4, 242q–5 of this title.

§ 242q–2. Administrative staff and support

The Secretary, acting through either the Assistant Secretary for Health or the Director of the National Institute on Aging, shall appoint an Executive Secretary for the Task Force and shall provide the Task Force with such administrative staff and support as may be necessary to enable the Task Force to carry out subsections (b) and (c) of section 242q of this title.

(Pub. L. 101–557, title III, § 303, Nov. 15, 1990, 104 Stat. 2770.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242q–4, 242q–5 of this title.

§ 242q–3. Reports

(a) In general

Not later than 1 year after November 15, 1990, and annually thereafter, the Task Force shall prepare and submit to the Secretary, and to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report providing the recommendations required in section 242q(b) of this title.

(b) Availability to public

The Task Force may make available to the public copies of the reports required in subsection (a) of this section.

(Pub. L. 101–557, title III, § 304, Nov. 15, 1990, 104 Stat. 2770.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242q–4, 242q–5 of this title.

§ 242q–4. Definitions

For purposes of sections 242q to 242q–5 of this title:

(1) Aging research

(A) The term ''aging research'' means research on the aging process and on the diagnosis and treatment of diseases, disorders, and complications related to aging, including menopause. Such research includes research on such treatments, and on medical devices and other medical interventions regarding such diseases, disorders, and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the independence of the individuals.

(B) For purposes of subparagraph (A), the term ''independence'', with respect to diseases, disorders, and complications of aging, means the functional ability of individuals to perform activities of daily living or instrumental activities of daily living without assistance or supervision.

(2) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(3) Task Force

The term ''Task Force'' means the Task Force on Aging Research established under section 242q(a) of this title.

(Pub. L. 101–557, title III, § 305, Nov. 15, 1990, 104 Stat. 2770.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242q, 242q–5 of this title.

§ 242q–5. Authorization of appropriations

For the purpose of carrying out sections 242q to 242q–5 of this title, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 1993.

(Pub. L. 101–557, title III, § 306, Nov. 15, 1990, 104 Stat. 2770.)

CODIFICATION

Section was enacted as part of the Home Health Care and Alzheimer's Disease Amendments of 1990, and not as part of the Public Health Service Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 242q–4 of this title.

PART B—FEDERAL-STATE COOPERATION

§ 243. General grant of authority for cooperation

(a) Enforcement of quarantine regulations; prevention of communicable diseases

The Secretary is authorized to accept from State and local authorities any assistance in the enforcement of quarantine regulations made pursuant to this chapter which such authorities may be able and willing to provide. The Secretary shall also assist States and their political subdivisions in the prevention and suppression of communicable diseases and with respect to other public health matters, shall cooperate with and aid State and local authorities in the enforcement of their quarantine and other health regulations, and shall advise the several States on matters relating to the preservation and improvement of the public health.

(b) Comprehensive and continuing planning; training of personnel for State and local health work; fees

The Secretary shall encourage cooperative activities between the States with respect to comprehensive and continuing planning as to their current and future health needs, the establishment and maintenance of adequate public health services, and otherwise carrying out public health activities. The Secretary is also authorized to train personnel for State and local health work. The Secretary may charge only private entities reasonable fees for the training of their personnel under the preceding sentence.

(c) Development of plan to control epidemics and meet emergencies or problems resulting from disasters; cooperative planning; temporary assistance; reimbursement of United States

(1) The Secretary is authorized to develop (and may take such action as may be necessary to implement) a plan under which personnel, equipment, medical supplies, and other resources of the Service and other agencies under the jurisdiction of the Secretary may be effectively used to control epidemics of any disease or condition and to meet other health emergencies or problems. The Secretary may enter into agreements providing for the cooperative planning between the Service and public and private community health programs and agencies to cope with health problems (including epidemics and health emergencies).

(2) The Secretary may, at the request of the appropriate State or local authority, extend temporary (not in excess of six months) assistance to States or localities in meeting health emergencies of such a nature as to warrant Federal assistance. The Secretary may require such reimbursement of the United States for assistance provided under this paragraph as he may determine to be reasonable under the circumstances. Any reimbursement so paid shall be credited to the applicable appropriation for the Service for the year in which such reimbursement is received.

(July 1, 1944, ch. 373, title III, § 311, 58 Stat. 693; Nov. 3, 1966, Pub. L. 89–749, § 5, 80 Stat. 1190; Dec. 5, 1967, Pub. L. 90–174, § 4, 81 Stat. 536; Oct. 30, 1970, Pub. L. 91–515, title II, § 282, 84 Stat. 1308; June 23, 1976, Pub. L. 94–317, title II, § 202(b), (c), 90 Stat. 703; Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(c), 95 Stat. 559; Jan. 4, 1983, Pub. L. 97–414, § 8(d), 96 Stat. 2060; Oct. 7, 1985, Pub. L. 99–117, § 11(a), 99 Stat. 494.)

AMENDMENTS

1985—Subsec. (c)(1). Pub. L. 99–117 struck out ''referred to in section 247b(f) of this title'' after ''epidemics of any disease or condition'', ''involving or resulting from disasters or any such disease'' after ''health emergencies or problems'' in first sentence, and struck out ''resulting from disasters or any disease or condition referred to in section 247b(f) of this title'' after ''(including epidemics and health emergencies)'' in second sentence.

1983—Subsec. (c)(2). Pub. L. 97–414 substituted ''six months'' for ''forty-five days'' after ''not in excess of''.

1981—Subsec. (a). Pub. L. 97–35, § 902(c)(1), inserted applicability to other public health matters, and struck out reference to section 246 of this title.

Subsec. (b). Pub. L. 97–35, § 902(c)(2), substituted ''public health activities'' for ''the purposes of section 246 of this title''.

1976—Subsec. (b). Pub. L. 94–317, § 202(c), inserted provision authorizing Secretary to charge only private entities reasonable fees for training of their personnel.

Subsec. (c). Pub. L. 94–317, § 202(b), made changes in phraseology and restructured provisions into pars. (1) and (2) and, in par. (1), as so restructured, inserted provisions authorizing Secretary to develop a plan utilizing Public Health Service personnel, equipment, medical supplies and other resources to control epidemics of any disease referred to in section 247b of this title.

1970—Subsecs. (a), (b). Pub. L. 91–515 substituted ''Secretary'' for ''Surgeon General'' wherever appearing.

1967—Subsec. (c). Pub. L. 90–174 added subsec. (c).

1966—Pub. L. 89–749 designated existing provisions as subsec. (a), added subsec. (b), and amended subsec. (b) to permit Surgeon General to train personnel for State and local health work.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 5(a) of Pub. L. 89–749 provided that subsec. (b) of this section is effective July 1, 1966.

Section 5(b) of Pub. L. 89–749 provided that the amendment of subsec. (b) of this section, permitting the Surgeon General to train personnel for State and local health work, is effective July 1, 1967.

TRAINING OF PRIVATE PERSONS SUBJECT TO REIMBURSEMENT OR ADVANCES TO APPROPRIATIONS

Pub. L. 103–333, title II, Sept. 30, 1994, 108 Stat. 2550, provided in part: ''That for fiscal year 1995 and subsequent fiscal years training of private persons shall be made subject to reimbursement or advances to this appropriation for not in excess of the full cost of such training''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7610 of this title.

§ 244. Repealed. Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362

Section, acts July 1, 1944, ch. 373, title III, § 312, 58 Stat. 693; July 3, 1946, ch. 538, § 8, 60 Stat. 424; Dec. 5, 1967, Pub. L. 90–174, § 12(b), 81 Stat. 541; Oct. 30, 1970, Pub. L. 91–515, title II, § 282, 84 Stat. 1308, provided for health conferences. See section 242*o*(a) of this title.

§ 244–1. Repealed. Pub. L. 94–484, title V, § 503(b), Oct. 12, 1976, 90 Stat. 2300

Section, act July 1, 1944, ch. 373, title III, § 312, formerly § 306, as added Aug. 2, 1956, ch. 871, title I, § 101, 70 Stat. 923; amended July 23, 1959, Pub. L. 86–105, § 1, 73 Stat. 239; Sept 8, 1960, Pub. L. 86–720, § 1(b), 74 Stat. 820; Aug. 27, 1964, Pub. L. 88–497, § 2, 78 Stat. 613; Aug. 16, 1968, Pub. L. 90–490, title III, § 302(b), 82 Stat. 789; Mar. 12, 1970, Pub. L. 91–208, § 3, 84 Stat. 52; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; June 18, 1973, Pub. L. 93–45, title I, § 104(a), 87 Stat. 91; renumbered § 312 and amended July 23, 1974, Pub. L. 93–353, title I, § 102(b), 88 Stat. 362; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(a)(1), 90 Stat. 2244, related to graduate or specialized training for physicians, engineers, nurses, and other professional personnel.

EFFECTIVE DATE OF REPEAL

Section 503(c) of Pub. L. 94–484 provided that: ''The amendments made by this section [amending former section 295f–2 of this title and repealing this section and section 245a of this title] shall take effect October 1, 1977.''

§§ 244a, 245. Repealed. Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362

Section 244a, act July 1, 1944, ch. 373, title III, § 312a, as added Aug. 31, 1954, ch. 1158, § 2, 68 Stat. 1025, related to birth and death statistics, annual collection, and compensation for transcription. See section 242k(h) of this title.

Section 245, acts July 1, 1944, ch. 373, title III, § 313, 58 Stat. 693; Oct. 30, 1970, Pub. L. 91–515, title II, § 282, 84 Stat. 1308, provided for collection of vital statistics. See section 242k(g) of this title.

§ 245a. Repealed. Pub. L. 94–484, title V, § 503(b), Oct. 12, 1976, 90 Stat. 2300

Section, act July 1, 1944, ch. 373, title III, § 313, formerly § 309, as added Sept. 8, 1960, Pub. L. 86–720, § 1(a), 74 Stat. 819; amended Aug. 27, 1964, Pub. L. 88–497, § 3, 78 Stat. 613; Nov. 3, 1966, Pub. L. 89–749, § 4, 80 Stat. 1190; Dec. 5, 1967, Pub. L. 90–174, §§ 2(g), 8(c), 81 Stat. 534, 540; Aug. 16, 1968, Pub. L. 90–490, title III, § 302(a), 82 Stat. 788; Mar. 12, 1970, Pub. L. 91–208, §§ 1, 2, 84 Stat. 52; June 30, 1970, Pub. L. 91–296, title IV, § 401(b)(1)(B), 84 Stat. 352; June 18, 1973, Pub. L. 93–45, title I, § 104(b), (c), 87 Stat. 91; renumbered § 313 and amended July 23, 1974, Pub. L. 93–353, title I, § 102(c), 88 Stat. 362; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(a)(2), (3), 90 Stat. 2244, related to graduate public health training grants.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1977, see section 503(c) of Pub. L. 94–484, set out as a note under section 244–1 of this title.

§ 246. Grants and services to States

(a) Comprehensive health planning and services

(1) In order to assist the States in comprehensive and continuing planning for their current and future health needs, the Secretary is authorized during the period beginning July 1, 1966, and ending June 30, 1973, to make grants to States which have submitted, and had approved by the Secretary, State plans for comprehensive State health planning. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $2,500,000 for the fiscal year ending June 30, 1967, $7,000,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, $15,000,000 for the fiscal year ending June 30, 1970, $15,000,000 for the fiscal year ending June 30, 1971, $17,000,000 for the fiscal year ending June 30, 1972, $20,000,000 for the fiscal year ending June 30, 1973, and $10,000,000 for the fiscal year ending June 30, 1974.

(2) In order to be approved for purposes of this subsection, a State plan for comprehensive State health planning must—

(A) designate, or provide for the establishment of, a single State agency, which may be an interdepartmental agency, as the sole agency for administering or supervising the administration of the State's health planning functions under the plan;

(B) provide for the establishment of a State health planning council, which shall include representatives of Federal, State, and local agencies (including as an ex officio member, if there is located in such State one or more hospitals or other health care facilities of the Department of Veterans Affairs, the individual whom the Secretary of Veterans Affairs shall have designated to serve on such council as the representative of the hospitals or other health care facilities of such Department which are located in such State) and nongovernmental organizations and groups concerned with health (including representation of the regional medical program or programs included in whole or in part within the State), and of consumers of health services, to advise such State agency in carrying out its functions under the plan, and a majority of the membership of such council shall consist of representatives of consumers of health services;

(C) set forth policies and procedures for the expenditure of funds under the plan, which, in the judgment of the Secretary, are designed to provide for comprehensive State planning for health services (both public and private and including home health care), including the facilities and persons required for the provision of such services, to meet the health needs of the people of the State and including environmental considerations as they relate to public health;

(D) provide for encouraging cooperative efforts among governmental or nongovernmental agencies, organizations and groups concerned with health services, facilities, or manpower, and for cooperative efforts between such agencies, organizations, and groups and similar agencies, organizations, and groups in the fields of education, welfare, and rehabilitation;

(E) contain or be supported by assurances satisfactory to the Secretary that the funds paid under this subsection will be used to supplement and, to the extent practicable, to increase the level of funds that would otherwise be made available by the State for the purpose of comprehensive health planning and not to supplant such non-Federal funds;

(F) provide such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

(G) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

(H) provide that the State agency will from time to time, but not less often than annually, review its State plan approved under this subsection and submit to the Secretary appropriate modifications thereof;

(I) effective July 1, 1968, (i) provide for assisting each health care facility in the State to develop a program for capital expenditures for replacement, modernization, and expansion which is consistent with an overall State plan developed in accordance with criteria established by the Secretary after consultation with the State which will meet the needs of the State for health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner, and (ii) provide that the State agency furnishing such assistance will periodically review the program (developed pursuant to clause (i)) of each health care facility in the State and recommend appropriate modification thereof;

(J) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the State under this subsection; and

(K) contain such additional information and assurances as the Secretary may find necessary to carry out the purposes of this subsection.

(3)(A) From the sums appropriated for such purpose for each fiscal year, the several States shall be entitled to allotments determined, in accordance with regulations, on the basis of the population and the per capita income of the respective States; except that no such allotment to any State for any fiscal year shall be less than 1 per centum of the sum appropriated for such fiscal year pursuant to paragraph (1). Any such allotment to a State for a fiscal year shall remain available for obligation by the State, in accordance with the provisions of this subsection and the State's plan approved thereunder, until the close of the succeeding fiscal year.

(B) The amount of any allotment to a State under subparagraph (A) for any fiscal year which the Secretary determines will not be required by the State, during the period for which it is available, for the purposes for which allotted shall be available for reallotment by the Secretary from time to time, on such date or dates as he may fix, to other States with respect to which such a determination has not been made, in proportion to the original allotments to such States under subparagraph (A) for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount so reallotted to a State from funds appropriated pursuant to this subsection for a fiscal year shall be deemed part of its allotment under subparagraph (A) for such fiscal year.

(4) From each State's allotment for a fiscal year under this subsection, the State shall from time to time be paid the Federal share of the expenditures incurred during that year or the succeeding year pursuant to its State plan approved under this subsection. Such payments shall be made on the basis of estimates by the Secretary of the sums the State will need in order to perform the planning under its approved State plan under this subsection, but with such adjustments as may be necessary to take account of previously made underpayments or overpayments. The ''Federal share'' for any State for purposes of this subsection shall be all, or such part as the Secretary may determine, of the cost of such planning, except that in the case of the allotments for the fiscal year ending June 30, 1970, it shall not exceed 75 per centum of such cost.

(b) Project grants for areawide health planning; authorization of appropriations; prerequisites for grants; application; contents

(1)(A) The Secretary is authorized, during the period beginning July 1, 1966, and ending June 30, 1974, to make, with the approval of the State agency administering or supervising the administration of the State plan approved under subsection (a) of this section, project grants to any other public or nonprofit private agency or organization (but with appropriate representation of the interests of local government where the recipient of the grant is not a local government or combination thereof or an agency of such government or combination) to cover not to exceed 75 per centum of the costs of projects for developing (and from time to time revising) comprehensive regional, metropolitan area, or other local area plans for coordination of existing and planned health services, including the facilities and persons required for provision of such services; and including the provision of such services through home health care; except that in the case of project grants made in any State prior to July 1, 1968, approval of such State agency shall be required only if such State has such a State plan in effect at the time of such grants. No grant may be made under this subsection after June 30, 1970, to any agency or organization to develop or revise health plans for an area unless the Secretary determines that such agency or organization provides means for appropriate representation of the interests of the hospitals, other health care facilities, and practicing physicians serving such area, and the general public. For the purposes of carrying out this sub-

section, there are hereby authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1967, $7,500,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, $15,000,000 for the fiscal year ending June 30, 1970, $20,000,000 for the fiscal year ending June 30, 1971, $30,000,000 for the fiscal year ending June 30, 1972, $40,000,000 for the fiscal year ending June 30, 1973, and $25,100,000 for the fiscal year ending June 30, 1974.

(B) Project grants may be made by the Secretary under subparagraph (A) to the State agency administering or supervising the administration of the State plan approved under subsection (a) of this section with respect to a particular region or area, but only if (i) no application for such a grant with respect to such region or area has been filed by any other agency or organization qualified to receive such a grant, and (ii) such State agency certifies, and the Secretary finds, that ample opportunity has been afforded to qualified agencies and organizations to file application for such a grant with respect to such region or area and that it is improbable that, in the foreseeable future, any agency or organization which is qualified for such a grant will file application therefor.

(2)(A) In order to be approved under this subsection, an application for a grant under this subsection must contain or be supported by reasonable assurances that there has been or will be established, in or for the area with respect to which such grant is sought, an areawide health planning council. The membership of such council shall include representatives of public, voluntary, and nonprofit private agencies, institutions, and organizations concerned with health (including representatives of the interests of local government of the regional medical program for such area, and of consumers of health services). A majority of the members of such council shall consist of representatives of consumers of health services.

(B) In addition, an application for a grant under this subsection must contain or be supported by reasonable assurances that the areawide health planning agency has made provision for assisting health care facilities in its area to develop a program for capital expenditures for replacement, modernization, and expansion which is consistent with an overall State plan which will meet the needs of the State and the area for health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner.

(c) Project grants for training, studies, and demonstrations; authorization of appropriations

The Secretary is also authorized, during the period beginning July 1, 1966, and ending June 30, 1974, to make grants to any public or nonprofit private agency, institution, or other organization to cover all or any part of the cost of projects for training, studies, or demonstrations looking toward the development of improved or more effective comprehensive health planning throughout the Nation. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $1,500,000 for the fiscal year ending June 30, 1967, $2,500,000 for the fiscal year ending June 30, 1968, $5,000,000 for the fiscal year ending June 30, 1969, $7,500,000 for the fiscal year ending June 30, 1970, $8,000,000 for the fiscal year ending June 30, 1971, $10,000,000 for the fiscal year ending June 30, 1972, $12,000,000 for the fiscal year ending June 30, 1973, and $4,700,000 for the fiscal year ending June 30, 1974.

(July 1, 1944, ch. 373, title III, § 314, 58 Stat. 693; July 3, 1946, ch. 538, § 9, 60 Stat. 424; June 16, 1948, ch. 481, § 5, 62 Stat. 468; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 852, § 18, 70 Stat. 910; July 22, 1958, Pub. L. 85–544, § 1, 72 Stat. 400; Oct. 5, 1961, Pub. L. 87–395, § 2(a)–(d), 75 Stat. 824; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(1), 76 Stat. 587; Aug. 5, 1965, Pub. L. 89–109, § 4, 79 Stat. 436; Nov. 3, 1966, Pub. L. 89–749, § 3, 80 Stat. 1181; Dec. 5, 1967, Pub. L. 90–174, §§ 2(a)–(f), 3(b)(2), 8(a), (b), 12(d), 81 Stat. 533–535, 540, 541; June 30, 1970, Pub. L. 91–296, title I, § 111(b), title IV, § 401(b)(1)(C), (D), 84 Stat. 340, 352; Oct. 27, 1970, Pub. L. 91–513, title I, § 3(b), 84 Stat. 1241; Oct. 30, 1970, Pub. L. 91–515, title II, §§ 220, 230, 240, 250, 260(a)–(c)(1), 282, 84 Stat. 1304–1306, 1308; Dec. 31, 1970, Pub. L. 91–616, title III, § 331, 84 Stat. 1853; Jan. 5, 1971, Pub. L. 91–648, title IV, § 403, 84 Stat. 1925, as amended Oct. 13, 1978, Pub. L. 95–454, title VI, § 602(c), 92 Stat. 1189; Mar. 21, 1972, Pub. L. 92–255, title IV, § 403(a), 86 Stat. 77; June 18, 1973, Pub. L. 93–45, title I, § 106, 87 Stat. 92; Nov. 9, 1973, Pub. L. 93–151, § 8, 87 Stat. 568; July 29, 1975, Pub. L. 94–63, title I, § 102, title V, § 501(b), title VII, § 701(a), (b), 89 Stat. 304, 346, 352; Oct. 12, 1976, Pub. L. 94–484, title IX, § 905(b)(1), 90 Stat. 2325; Aug. 1, 1977, Pub. L. 95–83, title III, § 302, 91 Stat. 387; Oct. 13, 1978, Pub. L. 95–454, title VI, § 602(c), 92 Stat. 1189; Nov. 9, 1978, Pub. L. 95–622, title I, § 109, 92 Stat. 3417; Nov. 10, 1978, Pub. L. 95–626, title II, § 201(a), (b)(2), 92 Stat. 3570; July 10, 1979, Pub. L. 96–32, § 6(e), (f), 93 Stat. 83; Oct. 4, 1979, Pub. L. 96–79, title I, § 115(k)(2), 93 Stat. 610; Oct. 7, 1980, Pub. L. 96–398, title I, § 107(d), 94 Stat. 1571; Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(b), 95 Stat. 559; Oct. 7, 1985, Pub. L. 99–117, § 12(a), 99 Stat. 495; June 13, 1991, Pub. L. 102–54, § 13(q)(1)(D), 105 Stat. 279.)

AMENDMENTS

1991—Subsec. (a)(2)(B). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'', ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' and ''such Department'' for ''such Administration''.

1985—Subsec. (g). Pub. L. 99–117 directed that subsec. (g) be repealed. Previously, subsec. (g) was repealed by Pub. L. 96–398. See 1980 Amendment note below.

1981—Subsec. (d). Pub. L. 97–35 struck out subsec. (d) which related to grants for services, form, manner, etc., of application, review of activities undertaken, allotments, and authorization of appropriations.

1980—Subsec. (g). Pub. L. 96–398 struck out subsec. (g) which related to application, procedures applicable, amount, etc., for State mental health program grants.

1979—Subsec. (d)(2)(C)(ii). Pub. L. 96–32, § 6(e), substituted ''uniform national health program reporting system'' for ''uniform national reporting system''.

Subsec. (d)(4)(A). Pub. L. 96–32, § 6(f), in provision following subd. (II) of cl. (ii), substituted ''the preceding provisions of this subparagraph'' for ''clauses (i) and (ii)'' and ''amount'' for ''amounts'' and inserted provision that if the amount appropriated for a fiscal year is equal to or less than the amount appropriated for fiscal year ending Sept. 30, 1979, the total amount of grants for a State health authority shall be an amount

which bears the same ratio to the amount appropriated as the total amount of grants received by such authority from appropriations for fiscal year ending Sept. 30, 1979, bears to the amount appropriated for that fiscal year.

Subsec. (g)(2)(D)(iv). Pub. L. 96–79 substituted ''a plan which is consistent with the State health plan in effect for the State under section 300m–3(c) of this title and'' for ''a plan''.

1978—Subsec. (d). Pub. L. 95–626, § 201(b)(2), completely revised subsec. (d) under which the Secretary is authorized to make grants to State health authorities to assist in meeting the costs of providing comprehensive public health services by including requirements that the States submit an application outlining how funds will be used to supplement non-Federal support for the provision of public health services in the State, by setting out formulae under which funds will be made available to States including definitions of ''applicable grant computation percentage'' and ''State and local expenditures for comprehensive public health services'', by requiring implementation of a national health program reporting system to assure accountability for expenditure of funds, and by authorizing appropriations of $150,000,000 for fiscal year ending Sept. 30, 1980, and $170,000,000 for fiscal year ending Sept. 30, 1981.

Subsec. (d)(7)(A). Pub. L. 95–626, § 201(a)(1), inserted provision authorizing an appropriation of $103,000,000 for fiscal year ending Sept. 30, 1979.

Subsec. (d)(7)(B). Pub. L. 95–626, § 201(a)(2), inserted provision authorizing an appropriation of $20,000,000 for fiscal year ending Sept. 30, 1979.

Subsec. (f). Pub. L. 95–454 designated existing provisions of section 403 of Pub. L. 91–648 (see 1971 Amendment note below) as subsec. (a) thereof and added subsec. (b) thereto repealing subsec. (f) of this section as subsec. (f) of this section had applied to commissioned officers of the Public Health Service.

Subsec. (g). Pub. L. 95–622 substituted provisions relating to grants for State mental health programs for provisions relating to regulations and amendments with respect to grants to States under subsecs. (a) and (d) and reduction and suspension of subsec. (a) and (d) grant payments.

1977—Subsec. (d)(7)(A). Pub. L. 95–83, § 302(a), substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $106,750,000 for fiscal year ending Sept. 30, 1978.

Subsec. (d)(7)(B). Pub. L. 95–83, § 302(b), substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $12,680,000 for fiscal year ending Sept. 30, 1978.

1976—Subsec. (g)(4)(B). Pub. L. 94–484 defined ''State'' to include the Northern Mariana Islands.

1975—Subsec. (d). Pub. L. 94–63, §§ 102, 701(a), substituted provisions relating to grants made pursuant to allotments to State health and mental health authorities for meeting the costs of providing comprehensive public health services, for provisions relating to grants made pursuant to appropriations for fiscal year ending June 30, 1968 to fiscal year ending June 30, 1975, to State health or mental health authorities to aid in the establishment and maintenance of adequate public health services, including the training of personnel for State and local health work.

Subsec. (e). Pub. L. 94–63, §§ 501(b), 701(b), struck out subsec. (e) which authorized appropriations from fiscal year ending June 30, 1968 through fiscal year ending June 30, 1975 for project grants for health services and related training, set forth procedures for making such grants, and prohibited grants after the fiscal year ending June 30, 1975, for provisions of this chapter amended by title VII of the Health Revenue Sharing and Health Services Act of 1975.

1973—Subsec. (a)(1). Pub. L. 93–45, § 106(a)(1), authorized appropriations of $10,000,000 for fiscal year ending June 30, 1974.

Subsec. (b)(1)(A). Pub. L. 93–45, § 106(a)(2), (b), authorized appropriations of $25,100,000 for fiscal year ending June 30, 1974, and extended period for making project grants from June 30, 1973, to June 30, 1974.

Subsec. (c). Pub. L. 93–45, § 106(a)(3), (b), authorized appropriations of $4,700,000 for fiscal year ending June 30, 1974, and extended period for grants from June 30, 1973, to June 30, 1974.

Subsec. (d)(1). Pub. L. 93–45, § 106(a)(4), authorized appropriations of $90,000,000 for fiscal year ending June 30, 1974.

Subsec. (e). Pub. L. 93–151 prohibited use of appropriated funds for lead based paint poisoning control.

Pub. L. 93–45, § 106(a)(5), authorized appropriations of $230,700,000 for fiscal year ending June 30, 1974, and prohibited any grant for such fiscal year to cover cost of services described in cl. (1) or (2) of the first sentence if a grant or contract to cover cost of such services may be made or entered into from funds authorized to be appropriated for such fiscal year under an appropriations authorization in any provision of this chapter (other than this subsection) amended by title I of the Health Programs Extension Act of 1973.

1972—Subsec. (d)(2)(K). Pub. L. 92–255 required State plans to provide for licensing of facilities for treatment and rehabilitation of persons with drug abuse and other drug dependence problems and for expansion of State mental health programs and other prevention and treatment programs in the field of drug abuse and drug dependence.

1971—Subsec. (f). Pub. L. 91–648, § 403(a), as amended by Pub. L. 94–454, § 602(c), repealed subsec. (f) which authorized the Secretary to arrange the interchange of personnel with States to aid in discharge of responsibilities in field of health care, except as subsec. (b) applied to commissioned officers of the Public Health Service. See 1978 Amendment note above.

1970—Pub. L. 91–515, § 282, substituted ''Secretary'' for ''Surgeon General'' in subsecs. (a)(1), (a)(2)(C), (E) to (H), (K), (a)(3)(B), (a)(4), (b)(1)(A), (c), (d)(1), (d)(2)(C), (F) to (H), (J), (d)(4)(A), (d)(6), and (g)(1) to (3).

Subsec. (a)(1). Pub. L. 91–515, § 220(a), extended period for making grants to States from June 30, 1970 to June 30, 1973, and authorized appropriations for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973.

Subsec. (a)(2)(B). Pub. L. 91–515, § 220(b), (c), inserted provisions authorizing appointment of an exofficio member from representatives of Federal, State, and local agencies involved, and requiring representation of the regional medical program or programs included in whole or in part within the State.

Subsec. (a)(2)(C). Pub. L. 91–515, § 220(d), inserted ''and including home health care'' after ''private'' and ''and including environmental considerations as they relate to public health'' after ''people of the State''.

Subsec. (b). Pub. L. 91–515, § 230, redesignated existing provisions as subsec. (b)(1)(A), and, as so redesignated, extended period for making project grants from June 30, 1970 to June 30, 1973, inserted ''and including the provision of such services through home health care'' after ''such services'', and authorized appropriations for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973, and added subsec. (b)(1)(B) and (b)(2).

Pub. L. 91–296, § 111(b), inserted provisions requiring that before grants be made to agencies or organizations to develop or revise health plans for an area the Secretary determine that the agency or organization provides means for appropriate representation of the interests of the hospitals, practicing physicians, and the general public.

Subsec. (c). Pub. L. 91–515, § 240, extended period for making grants from June 30, 1970, to June 30, 1973, and authorized appropriations for the fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973.

Subsec. (d)(1). Pub. L. 91–515, § 250(a), authorized appropriations for fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973.

Pub. L. 91–296, § 401(b)(1)(C), struck out except which provided for use of up to 1 per centum by Secretary for evaluation.

Subsec. (d)(2)(C). Pub. L. 91–515, § 250(b), inserted provisions requiring State plan to contain assurances that the plan is compatible with total health program of the State.

Subsec. (d)(2)(K). Pub. L. 91–513 added subpar. (K).

Subsec. (d)(2)(L). Pub. L. 91–616 added subpar. (L).

Subsec. (e). Pub. L. 91–515, § 260(a), (b), (c)(1), inserted provisions authorizing appropriations for fiscal years ending June 30, 1971, June 30, 1972, and June 30, 1973, provisions authorizing grants to cover part of cost of equity requirements and amortization of loans on facilities acquired from the Office of Economic Opportunity or construction in connection with any program or project transferred from the Office of Economic Opportunity, and provisions requiring the application for any grant made under this subsection to be referred for review and comment to the appropriate areawide health planning agency, or, if no such agency is in the area, then to such other public or nonprofit private agency or organization (if any) which performs similar functions.

Pub. L. 91–296, § 401(b)(1)(D), struck out provision for use of up to 1 per centum of appropriation for grants under subsec. (e) by the Secretary for evaluation.

1967—Subsec. (a)(1). Pub. L. 90–174, § 2(a)(1), extended period for making grants to States from June 30, 1968, to June 30, 1970, increased appropriations authorization for fiscal year ending June 30, 1968, from $5,000,000 to $7,000,000, and authorized appropriations of $10,000,000 and $15,000,000 for fiscal years ending June 30, 1969, and 1970, respectively.

Subsec. (a)(2)(I) to (K). Pub. L. 90–174, § 2(a)(2), added subpar. (I) and redesignated former subpars. (I) and (J) as (J) and (K), respectively.

Subsec. (a)(4). Pub. L. 90–174, § 2(a)(3), limited Federal share of expenditures, in case of allotments for fiscal year ending June 30, 1968, to 75 per centum of cost of planning.

Subsec. (b). Pub. L. 90–174, § 2(b)(1), (2), extended period for making grants to public or nonprofit private organizations from June 30, 1968, to June 30, 1970, and authorized appropriations of $10,000,000 and $15,000,000 for fiscal years ending June 30, 1969, and 1970, respectively, and provided for appropriate representation of interests of local government where recipient of grant is not a local government or combination thereof or an agency of such government or combination, respectively.

Subsec. (c). Pub. L. 90–174, § 2(c), extended period for making grants to public or nonprofit private organizations from June 30, 1968, to June 30, 1970, and authorized appropriations of $5,000,000 and $7,500,000 for fiscal years ending June 30, 1969, and 1970, respectively.

Subsec. (d)(1). Pub. L. 90–174, §§ 2(d)(1), 8(a), increased appropriations authorization for fiscal year ending June 30, 1968, from $62,500,000 to $70,000,000, and authorized appropriations of $90,000,000 and $100,000,000 for fiscal years ending June 30, 1969, and 1970, respectively, and made program evaluation funds available for any fiscal year ending after June 30, 1968, respectively.

Subsec. (d)(5). Pub. L. 90–174, § 2(d)(2), made Federal share of 66⅔ per centum applicable to the Trust Territory of the Pacific Islands.

Subsec. (d)(7). Pub. L. 90–174, § 2(d)(3), provided for an allocation of 70 per centum of funds for provision under the State plan of services in communities of the State.

Subsec. (e). Pub. L. 90–174, §§ 2(e), 3(b)(2), 8(b), increased appropriations authorization for fiscal year ending June 30, 1968, from $62,500,000 to $90,000,000, authorized appropriations of $95,000,000 and $80,000,000 for fiscal years ending June 30, 1969, and 1970, respectively, inserted ''(including related training)'' after ''providing services'' in cl. (1), substituted ''developing'' for ''stimulating'' and inserted ''(including related training)'' after ''health services'' in cl. (2), struck out cl. (3) which authorized grants to cover part of cost of undertaking studies, demonstrations, or training designed to develop new methods or improve existing methods of providing health services, and made program evaluation funds available for any fiscal year ending after June 30, 1968.

Subsec. (f)(5). Pub. L. 90–174, § 12(d)(1), inserted ''for'' before ''the expenses of travel''.

Subsec. (f)(6), (8). Pub. L. 90–174, § 12(d)(2), substituted ''Department'' for ''Service''.

Subsec. (g)(4)(B). Pub. L. 90–174, § 2(f), defined ''State'' to include the Trust Territory of the Pacific Islands.

1966—Subsec. (a). Pub. L. 89–749 substituted provisions authorizing the Surgeon General to make grants to States to assist in comprehensive and continuing planning for their current and future health needs, authorizing appropriations therefor, setting out the requirements for an acceptable State plan for comprehensive State health planning, covering the allotting of the appropriated sums to the States, and the payment of the allotted funds, for provisions authorizing the Surgeon General, through the use of grants and other assistance, to help local programs of prevention, treatment, and control of venereal diseases, covering the payment of the costs of assistance by personnel of the Public Health Service to assist in carrying out the purposes of the section with respect to venereal disease, and authorizing the appropriation of funds.

Subsec. (b). Pub. L. 89–749 substituted provisions for project grants by the Surgeon General covering the development of comprehensive regional, metropolitan, or local coordination of existing and planned health facilities and persons required for providing services and the authorization of appropriations of $5,000,000 for fiscal 1967 and $7,500,000 for fiscal 1968 for provisions authorizing the appropriation of funds to enable the Surgeon General to aid in the development of measures for the local prevention, treatment, and control of tuberculosis.

Subsec. (c). Pub. L. 89–749 substituted provisions for project grants for the development of improved or more effective comprehensive health planning throughout the United States and the authorization of appropriations of $1,500,000 for fiscal 1967 and $2,500,000 for fiscal 1968 for provisions authorizing the Surgeon General to assist, through grants and otherwise, in the establishment and maintenance of adequate public health services by States, counties, health districts, and other political subdivisions, authorizing appropriations therefor, and covering the allotment, payment, and allocation of appropriated funds.

Subsec. (d). Pub. L. 89–749 substituted provisions authorizing grants by the Surgeon General to State health or mental health authorities to assist in establishing and maintaining adequate public health services, setting out the requirements for an acceptable State plan for the supplying of public health services, authorizing an appropriation of $62,500,000 for fiscal 1968, the allotment of appropriated funds, payments to States, and the determination of the Federal share for provisions covering the allotment of appropriated funds among the several States on the basis of population, incidence of venereal disease, tuberculosis, mental health problems, and the financial needs of the various States.

Subsec. (e). Pub. L. 89–749 substituted provisions for project grants for health services development to public or private nonprofit agencies and for the authorization of an appropriation of $62,500,000 for fiscal 1968 for provisions covering the establishment and maintenance of community programs of heart disease control and the allotments and appropriations therefor.

Subsec. (f). Pub. L. 89–749 substituted provisions covering the interchange of personnel with States, the application of statutes covering Federal employees to interchanged personnel, and the coverage of State officers and employees, for provisions for the determination and certification of amounts paid to each State from allotments thereto.

Subsec. (g). Pub. L. 89–749 substituted provisions for consultation with State health planning agencies concerning regulations and amendments with respect to grants to States, the reduction of payments, cessation of payments for non-compliance, and definitions, for provisions limiting the expending of grant funds for purposes specified by statute and by the agency, organization, or institution to which payment was made.

Subsecs. (h) to (m). Pub. L. 89–749 struck out subsecs. (h) to (m) which dealt, respectively, with requirement that State funds be provided for same purpose as that for which allotted funds are spent, cessation of Federal aid and procedures in connection therewith, promulgation of rules and regulations and consultation with State health authorities precedent thereto, availability of appropriated funds for administrative expenses including printing and travel expenses, applicability of section to Guam and Samoa, and reduction of payments commensurate to expense of detailing of Public Health Service personnel to States.

1965—Subsec. (c). Pub. L. 89–109 substituted ''first six fiscal years ending after June 30, 1961'' for ''first five fiscal years ending after June 30, 1961'' and ''$5,000,000'' for ''$2,500,000''.

1962—Subsec. (*l*). Pub. L. 87–688 inserted ''and American Samoa'', ''or American Samoa'', and ''or American Samoa, respectively'' after ''Guam''.

1961—Subsec. (c). Pub. L. 87–395, § 2(a)–(c), substituted ''of the first five fiscal years ending after June 30, 1961, the sum of $50,000,000'' for ''fiscal year a sum not to exceed $30,000,000'', ''such amount as may be necessary'' for ''an amount, not to exceed $3,000,000'', ''$2,500,000'' for ''$1,000,000'', and provided that when an appropriating act provides that the amounts it specifies are available only for allotments and payments for such services and activities under this subsection as specified in such act, the requirements of subsec. (h) shall apply to such allotments and payments.

Subsec. (m). Pub. L. 87–395, § 2(d), added subsec. (m).

1958—Subsec. (c). Pub. L. 85–544 designated existing provisions of second sentence as cl. (1) and added cl. (2).

1956—Subsec. (*l*). Act Aug. 1, 1956, added subsec. (*l*).

1948—Subsec. (e). Act June 16, 1948, § 5(a), added subsec. (e) to provide for community programs of heart disease control. Former subsec. (e) redesignated (f).

Subsec. (f). Act June 16, 1948, § 5(a), (b), redesignated former subsec. (e) as (f) and inserted proviso relating to determination and certification of amounts to be paid under subsec. (e). Former subsec. (f) redesignated (g).

Subsec. (g). Act June 16, 1948, § 5(a), (c), redesignated former subsec. (f) as (g) and brought subsecs. (e) and (f)(1) within the provisions of this subsection. Former subsec. (g) redesignated (h).

Subsec. (h). Act June 16, 1948, § 5(a), (d), redesignated former subsec. (g) as (h) and made subsection applicable to agencies, institutions or other organizations specified in subsec. (f)(1). Former subsec. (h) redesignated (i).

Subsec. (i). Act June 16, 1948, § 5(a), (e), redesignated former subsec. (h) as (i), made subsection applicable to subsec. (e), and made technical changes as a result of the renumbering of subsections. Former subsec. (i) redesignated (j).

Subsecs. (j), (k). Act June 16, 1948, § 5(a), redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

1946—Subsec. (c). Act July 3, 1946, increased annual appropriation from $20,000,000 to $30,000,000, and increased annual amount available to provide demonstrations and to train personnel for State and local health work from $2,000,000 to $3,000,000.

Subsec. (d). Act July 3, 1946, provided that Surgeon General shall give special consideration to the extent of the mental health problem as well as other special problems.

Subsecs. (f), (h), (i). Act July 3, 1946, provided that in matters relating to work in field of mental health Surgeon General shall deal with State mental health authorities where they differ from general health authorities.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as a note under section 238*l* of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 107(d) of Pub. L. 96–398 provided that the amendment made by that section is effective Sept. 30, 1981. See Repeals note below.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective one year after Oct. 4, 1979, see section 129(a) of Pub. L. 96–79.

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 201(b)(2) of Pub. L. 95–626 provided that the amendment made by section is effective Oct. 1, 1979.

Section 403(b) of Pub. L. 91–648, as added by section 602(c) of Pub. L. 95–454, provided that the repeal of subsec. (f) of this section (as applicable to commissioned officers of the Public Health Service) is effective beginning on the effective date of the Civil Service Reform Act of 1978, i.e., 90 days after Oct. 13, 1978.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 102 of Pub. L. 94–63 provided that the amendment made by that section is effective with respect to grants made under subsec. (d) of this section from appropriations under such subsection for fiscal years beginning after June 30, 1975.

Amendment by section 501(b) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Repeal of subsec. (f) of this section (less applicability to commissioned officers of the Public Health Service) by section 403(a) of Pub. L. 91–648, as amended by Pub. L. 94–454, § 602(c), effective sixty days after Jan. 5, 1971, see section 404 of Pub. L. 91–648, set out as an Effective Date note under section 3371 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1970 AMENDMENTS

Section 260(c)(2) of Pub. L. 91–515 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to grants under section 314(c) of the Public Health Service Act [subsec. (e) of this section] which are made after the date of enactment of this Act [Oct. 30, 1970.]''

Section 401(b)(1) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to appropriations for fiscal years beginning after June 30, 1970.

EFFECTIVE DATE OF 1967 AMENDMENT

Section 2(d)(2), (f) of Pub. L. 90–174 provided that the amendments made by that section are effective July 1, 1968.

Section 3(b) of Pub. L. 90–174 provided that the amendment of this section, the repeal of section 291n of this title, and the enactment of provisions set out as a note under section 242b of this title by such section 3(b) is effective with respect to appropriations for fiscal years ending after June 30, 1967.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 6 of Pub. L. 89–749 provided in part that: ''The amendments made by section 3 [amending this section] shall become effective as of July 1, 1966, except that the provisions of section 314 of the Public Health Service Act [this section] as in effect prior to the enactment of this Act shall be effective until July 1, 1967, in lieu of the provisions of subsections (d) and (e), and the provisions of subsections (g) insofar as they relate to such subsections (d) and (e), of section 314 of the Public Health Service Act [this section] as amended by this Act.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 4(b) of Pub. L. 87–688 provided that: ''The amendments made by this section [amending this section and sections 291g, 291i, and 291t of this title] shall become effective July 1, 1962.''

EFFECTIVE AND TERMINATION DATE OF 1958 AMENDMENT

Section 2 of Pub. L. 85–544 provided that: ''The amendment made by the first section of this Act

[amending this section] shall be applicable only to the fiscal years beginning July 1, 1958, and July 1, 1959.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 18 of act Aug. 1, 1956, provided that the amendment made by that section is effective July 1, 1956.

REPEALS

The directory language of, but not the amendment made by, Pub. L. 96–398, title I, § 107(d), cited as a credit to this section and set out as an Effective Date of 1980 Amendment note above, which provided for repeal of subsec. (g) of this section, effective Sept. 30, 1981, was repealed by section 902(e)(1) of Pub. L. 97–35, title IX, Aug. 13, 1981, 95 Stat. 560, effective Oct. 1, 1981.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Health and Human Services under subsecs. (a)(2)(F) and (d)(2)(F) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(C) of this title.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

YEAR 2000 HEALTH OBJECTIVES PLANNING

Pub. L. 101–582, Nov. 15, 1990, 104 Stat. 2867, provided for grants for State plans regarding health objectives for year 2000, prior to repeal by Pub. L. 102–531, title I, § 105, Oct. 27, 1992, 106 Stat. 3474.

CONGRESSIONAL FINDINGS AND DECLARATION

Section 201(b)(1) of Pub. L. 95–626 provided that: ''The Congress finds and declares that—

''(A) individual health status can be effectively and economically improved through an adequate investment in community public health programs and services;

''(B) the Federal Government and the States and their communities share in the financial responsibility for funding public health programs;

''(C) the Federal contribution to funds for public health programs should serve as an incentive to an additional investment by State and local governments;

''(D) existing categorical programs of Federal financial assistance to combat specific public health problems should be supplemented by a national program of stable generic support for such public health activities as the prevention and control of environmental health hazards, prevention and control of diseases, prevention and control of health problems of particularly vulnerable population groups, and development and regulation of health care facilities and health services delivery systems; and

''(E) the States and their communities, not the Federal Government, should have primary responsibility for identifying and measuring the impact of public health problems and the allocation of resources for their amelioration.''

Section 2 of Pub. L. 89–749 provided that:

''(a) The Congress declares that fulfillment of our national purpose depends on promoting and assuring the highest level of health attainable for every person, in an environment which contributes positively to healthful individual and family living; that attainment of this goal depends on an effective partnership, involving close intergovernmental collaboration, official and voluntary efforts, and participation of individuals and organizations; that Federal financial assistance must be directed to support the marshaling of all health resources—national, State, and local—to assure comprehensive health services of high quality for every person, but without interference with existing patterns of private professional practice of medicine, dentistry, and related healing arts.

''(b) To carry out such purpose, and recognizing the changing character of health problems, the Congress finds that comprehensive planning for health services, health manpower, and health facilities is essential at every level of government; that desirable administration requires strengthening the leadership and capacities of State health agencies; and that support of health services provided people in their communities should be broadened and made more flexible.''

Section 2 of act July 3, 1956, provided that:

''(a) The Congress hereby finds and declares—

''(1) that the latest information on the number and relevant characteristics of persons in the country suffering from heart disease, cancer, diabetes, arthritis and rheumatism, and other diseases, injuries, and handicapping conditions is now seriously out of date; and

''(2) that periodic inventories providing reasonably current information on these matters are urgently needed for purposes such as (A) appraisal of the true state of health of our population (including both adults and children), (B) adequate planning of any programs to improve their health, (C) research in the field of chronic diseases, and (D) measurement of the numbers of persons in the working ages so disabled as to be unable to perform gainful work.

''(b) It is, therefore, the purpose of this Act [see Short Title of 1956 Amendment note set out under section 201 of this title] to provide (1) for a continuing survey and special studies to secure on a non-compulsory basis accurate and current statistical information on the amount, distribution, and effects of illness and disability in the United States and the services received for or because of such conditions; and (2) for studying methods and survey techniques for securing such statistical information, with a view toward their continuing improvement.''

LIMITATION ON GRANTS-IN-AID TO SCHOOLS OF PUBLIC HEALTH

Section 2 of Pub. L. 85–544, which had limited the authority of the Surgeon General to make grants-in-aid totaling not to exceed $1,000,000 annually to schools of public health for fiscal year beginning July 1, 1958, and July 1, 1959, was repealed by section 2 of Pub. L. 86–720, Sept. 8, 1960, 74 Stat. 820.

GRANTS TO STATES TO PROVIDE FOR VACCINATION AGAINST POLIOMYELITIS

The Poliomyelitis Vaccination Assistance Act of 1955, act Aug. 12, 1955, ch. 863, 69 Stat. 704, as amended Feb. 15, 1956, ch. 39, 70 Stat. 18, authorized appropriations to remain available until close of June 30, 1957 and provided for allotments to States, State application for funds, payments to States, use of funds paid to States, furnishing of vaccine by Surgeon General, diversion of Federal funds, supervision over exercise of functions, and definitions.

APPLICABILITY OF REORGANIZATION PLAN NO. 3 OF 1966

Section 7 of Pub. L. 89–749 provided that: ''The provisions enacted by this Act [amending this section and sections 242g and 243 of this title] shall be subject to the provisions of Reorganization Plan No. 3 of 1966 [set out as a note under section 202 of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 235, 248a, 291e, 1320a–1, 4728, 7610 of this title; title 48 section 1666.

§ 246a. Bureau of State Services management fund; establishment; advancements; availability

For the purpose of facilitating the economical and efficient conduct of operations in the Bureau of State Services which are financed by two or more appropriations where the costs of operation are not readily susceptible of distribution as charges to such appropriations, there is established the Bureau of State Services management fund. Such amounts as the Secretary may determine to represent a reasonable distribution of estimated costs among the various appropriations involved may be advanced each year to this fund and shall be available for expenditure for such costs under such regulations as may be prescribed by the Secretary: *Provided*, That funds advanced to this fund shall be available only in the fiscal year in which they are advanced: *Provided further*, That final adjustments of advances in accordance with actual costs shall be effected wherever practicable with the appropriations from which such funds are advanced.

(Pub. L. 86–703, title II, § 201, Sept. 2, 1960, 74 Stat. 765; Pub. L. 91–515, title II, § 282, Oct. 30, 1970, 84 Stat. 1308.)

CODIFICATION

Section was not enacted as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1970—Pub. L. 91–515 substituted ''Secretary'' for ''Surgeon General'' wherever appearing.

§ 247. Omitted

Section, act July 1, 1944, ch. 373, title III, § 315, as added Oct. 4, 1988, Pub. L. 100–471, § 1, 102 Stat. 2284, which related to grants for treatment drugs for acquired immune deficiency syndrome, ceased to exist Mar. 31, 1989, pursuant to subsec. (d) thereof.

PRIOR PROVISIONS

A prior section 247, act July 1, 1944, ch. 373, title III, § 315, as added Nov. 10, 1978, Pub. L. 95–626, title II, § 203, 92 Stat. 3578; amended July 10, 1979, Pub. L. 96–32, § 6(h), 93 Stat. 83, related to formula grants to States for preventive health service programs, prior to repeal by Pub. L. 99–117, § 12(b), Oct. 7, 1985, 99 Stat. 495.

Another prior section 247, acts July 1, 1944, ch. 373, title III, § 315, 58 Stat. 695; Oct. 30, 1970, Pub. L. 91–515, title II, § 282, 84 Stat. 1308, provided for publication of health educational information, prior to repeal by Pub. L. 93–353, title I, § 102(a), July 23, 1974, 88 Stat. 362. See section 242*o*(b) of this title.

§ 247a. Family support groups for Alzheimer's disease patients

(a) Establishment; priorities

Subject to available appropriations, the Secretary, acting through the National Institute of Mental Health, the National Institutes of Health, and the Administration on Aging, shall promote the establishment of family support groups to provide, without charge, educational, emotional, and practical support to assist individuals with Alzheimer's disease or a related memory disorder and members of the families of such individuals. In promoting the establishment of such groups, the Secretary shall give priority to—

(1) university medical centers and other appropriate health care facilities which receive Federal funds from the Secretary and which conduct research on Alzheimer's disease or provide services to individuals with such disease; and

(2) community-based programs which receive funds from the Secretary, acting through the Administration on Aging.

(b) National network to coordinate groups

The Secretary shall promote the establishment of a national network to coordinate the family support groups described in subsection (a) of this section.

(July 1, 1944, ch. 373, title III, § 316, as added May 23, 1986, Pub. L. 99–319, title IV, § 401, 100 Stat. 489; amended June 10, 1993, Pub. L. 103–43, title XX, § 2008(a), 107 Stat. 210.)

PRIOR PROVISIONS

A prior section 247a, act July 1, 1944, ch. 373, title III, § 316, as added Nov. 10, 1978, Pub. L. 95–626, title II, § 208(a), 92 Stat. 3586; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(1)(A), 95 Stat. 826, related to lead-based paint poisoning prevention programs, prior to repeal by Pub. L. 97–35, title XXI, § 2193(b)(1), Aug. 13, 1981, 95 Stat. 827.

Another prior section 247a, act July 1, 1944, ch. 373, title III, § 316, as added Oct. 30, 1970, Pub. L. 91–515, title II, § 281, 84 Stat. 1307, provided for establishment, composition, qualifications of members, terms of office, vacancies, reappointment, compensation, travel expenses, and functions of National Advisory Council on Comprehensive Health Planning Programs, prior to repeal by Pub. L. 93–641, § 5(d), Jan. 4, 1975, 88 Stat. 2275.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 struck out subsec. (c) which read as follows: ''The Secretary shall report to Congress, not later than one year after May 23, 1986, on family support groups and the network of such groups established pursuant to this section.''

§ 247b. Project grants for preventive health services

(a) Grant authority

The Secretary may make grants to States, and in consultation with State health authorities, to political subdivisions of States and to other public entities to assist them in meeting the costs of establishing and maintaining preventive health service programs.

(b) Application

No grant may be made under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and be submitted in such manner as the Secretary shall by regulation prescribe and shall provide—

(1) a complete description of the type and extent of the program for which the applicant is seeking a grant under subsection (a) of this section;

(2) with respect to each such program (A) the amount of Federal, State, and other funds obligated by the applicant in its latest annual accounting period for the provision of such program, (B) a description of the services provided by the applicant in such program in such period, (C) the amount of Federal funds needed

by the applicant to continue providing such services in such program, and (D) if the applicant proposes changes in the provision of the services in such program, the priorities of such proposed changes, reasons for such changes, and the amount of Federal funds needed by the applicant to make such changes;

(3) assurances satisfactory to the Secretary that the program which will be provided with funds under a grant under subsection (a) of this section will be provided in a manner consistent with the State health plan in effect under section 300m–3(c)[1] of this title and in those cases where the applicant is a State, that such program will be provided, where appropriate, in a manner consistent with any plans in effect under an application approved under section 247[1] of this title;

(4) assurances satisfactory to the Secretary that the applicant will provide for such fiscal control and fund accounting procedures as the Secretary by regulation prescribes to assure the proper disbursement of and accounting for funds received under grants under subsection (a) of this section;

(5) assurances satisfactory to the Secretary that the applicant will provide for periodic evaluation of its program or programs;

(6) assurances satisfactory to the Secretary that the applicant will make such reports (in such form and containing such information as the Secretary may by regulation prescribe) as the Secretary may reasonably require and keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness of, and to verify, such reports;

(7) assurances satisfactory to the Secretary that the applicant will comply with any other conditions imposed by this section with respect to grants; and

(8) such other information as the Secretary may by regulation prescribe.

(c) Approval; annual project review

(1) The Secretary shall not approve an application submitted under subsection (b) of this section for a grant for a program for which a grant was previously made under subsection (a) of this section unless the Secretary determines—

(A) the program for which the application was submitted is operating effectively to achieve its stated purpose,

(B) the applicant complied with the assurances provided the Secretary when applying for such previous grant, and

(C) the applicant will comply with the assurances provided with the application.

(2) The Secretary shall review annually the activities undertaken by each recipient of a grant under subsection (a) of this section to determine if the program assisted by such grant is operating effectively to achieve its stated purposes and if the recipient is in compliance with the assurances provided the Secretary when applying for such grant.

(d) Amount of grant; payment

The amount of a grant under subsection (a) of this section shall be determined by the Secretary. Payments under such grants may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

(e) Reduction

The Secretary, at the request of a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by—

(1) the fair market value of any supplies (including vaccines and other preventive agents) or equipment furnished the grant recipient, and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) of this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(f) Recordkeeping; audit authority

(1) Each recipient of a grant under subsection (a) of this section shall keep such records as the Secretary shall by regulation prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of grants under subsection (a) of this section that are pertinent to such grants.

(g) Use of grant funds; mandatory treatment prohibited

(1) Nothing in this section shall limit or otherwise restrict the use of funds which are granted to a State or to an agency or a political subdivision of a State under provisions of Federal law (other than this section) and which are available for the conduct of preventive health service programs from being used in connection with programs assisted through grants under subsection (a) of this section.

(2) Nothing in this section shall be construed to require any State or any agency or political subdivision of a State to have a preventive health service program which would require any

[1] See References in Text note below.

person, who objects to any treatment provided under such a program, to be treated or to have any child or ward treated under such program.

(h) Reports

The Secretary shall include, as part of the report required by section 300u–4 of this title, a report on the extent of the problems presented by the diseases and conditions referred to in subsection (j) of this section; on the amount of funds obligated under grants under subsection (a) of this section in the preceding fiscal year for each of the programs listed in subsection (j) of this section; and on the effectiveness of the activities assisted under grants under subsection (a) of this section in controlling such diseases and conditions.

(i) Technical assistance

The Secretary may provide technical assistance to States, State health authorities, and other public entities in connection with the operation of their preventive health service programs.

(j) Authorization of appropriations

(1) Except for grants for immunization programs the authorization of appropriations for which are established in paragraph (2), for grants under subsections (a) and (k)(1) of this section for preventive health service programs to immunize without charge individuals against vaccine-preventable diseases, there are authorized to be appropriated $205,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995. Not more than 10 percent of the total amount appropriated under the preceding sentence for any fiscal year shall be available for grants under subsection (k)(1) of this section for such fiscal year.

(2) For grants under subsection (a) of this section for preventive health service programs for the provision without charge of immunizations with vaccines approved for use, and recommended for routine use, after October 1, 1990, there are authorized to be appropriated such sums as may be necessary.

(k) Additional grants to States, political subdivisions, and other public and nonprofit private entities

(1) The Secretary may make grants to States, political subdivisions of States, and other public and nonprofit private entities for—

(A) research into the prevention and control of diseases that may be prevented through vaccination;

(B) demonstration projects for the prevention and control of such diseases;

(C) public information and education programs for the prevention and control of such diseases; and

(D) education, training, and clinical skills improvement activities in the prevention and control of such diseases for health professionals (including allied health personnel).

(2) The Secretary may make grants to States, political subdivisions of States, and other public and nonprofit private entities for—

(A) research into the prevention and control of diseases and conditions;

(B) demonstration projects for the prevention and control of such diseases and conditions;

(C) public information and education programs for the prevention and control of such diseases and conditions; and

(D) education, training, and clinical skills improvement activities in the prevention and control of such diseases and conditions for health professionals (including allied health personnel).

(3) No grant may be made under this subsection unless an application therefor is submitted to the Secretary in such form, at such time, and containing such information as the Secretary may by regulation prescribe.

(4) Subsections (d), (e), and (f) of this section shall apply to grants under this subsection in the same manner as such subsections apply to grants under subsection (a) of this section.

(July 1, 1944, ch. 373, title III, § 317, as added Oct. 23, 1962, Pub. L. 87–868, § 2, 76 Stat. 1155; amended Aug. 5, 1965, Pub. L. 89–109, § 2, 79 Stat. 435; Oct. 16, 1970, Pub. L. 91–464, § 2, 84 Stat. 988; Sept. 30, 1972, Pub. L. 92–449, title I, § 101, 86 Stat. 748; July 23, 1974, Pub. L. 93–354, § 4, 88 Stat. 376; July 29, 1975, Pub. L. 94–63, title VI, § 601, 89 Stat. 346; June 23, 1976, Pub. L. 94–317, title II, § 202(a), 90 Stat. 700; Aug. 12, 1976, Pub. L. 94–380, § 2, 90 Stat. 1113; Nov. 10, 1978, Pub. L. 95–626, title II, §§ 202, 204(b)(2), 92 Stat. 3574, 3583; July 10, 1979, Pub. L. 96–32, § 6(i), 93 Stat. 83; Aug. 13, 1981, Pub. L. 97–35, title IX, § 928, 95 Stat. 569; Oct. 30, 1984, Pub. L. 98–555, § 2, 98 Stat. 2854; Oct. 7, 1985, Pub. L. 99–117, § 11(c), 99 Stat. 495; Dec. 1, 1987, Pub. L. 100–177, title I, §§ 110(a), 111, 101 Stat. 990, 991; Aug. 15, 1990, Pub. L. 101–368, § 2, 104 Stat. 446; Nov. 3, 1990, Pub. L. 101–502, § 2(a), 104 Stat. 1285; Dec. 14, 1993, Pub. L. 103–183, title III, § 301(b), 107 Stat. 2235.)

REFERENCES IN TEXT

Section 300m–3 of this title, referred to in subsec. (b)(3), was repealed by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 247 of this title, referred to in subsec. (b)(3), was repealed by Pub. L. 99–117, § 12(b), Oct. 7, 1985, 99 Stat. 495.

AMENDMENTS

1993—Subsec. (j). Pub. L. 103–183, § 301(b)(1), redesignated subpars. (A) and (B) of par. (1) as pars. (1) and (2), respectively, substituted ''established in paragraph (2)'' for ''established in subparagraph (B)'' in par. (1), and struck out former par. (2), which read as follows: ''For grants under subsection (a) of this section for preventive health service programs for the prevention, control, and elimination of tuberculosis, and for grants under subsection (k)(2) of this section, there are authorized to be appropriated $24,000,000 for fiscal year 1988, $31,000,000 for fiscal year 1989, $36,000,000 for fiscal year 1990, $36,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995. Not more than 10 percent of the total amount appropriated under the preceding sentence for any fiscal year shall be available for grants under subsection (k)(2) of this section for such fiscal year.''

Subsec. (k)(2). Pub. L. 103–183, § 301(b)(2)(A), (B), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''The Secretary may make grants to States, political subdivisions of States, and other public and nonprofit private entities for—

''(A) research into the prevention, control, and elimination of tuberculosis, especially research con-

cerning strains of tuberculosis resistant to drugs and research concerning cases of tuberculosis that affect certain populations;

''(B) demonstration projects for the prevention, control, and elimination of tuberculosis;

''(C) public information and education programs for prevention, control, and elimination of tuberculosis; and

''(D) education, training, and clinical skills improvement activities in the prevention, control, and elimination of tuberculosis for health professionals, including allied health personnel.''

Subsec. (k)(3). Pub. L. 103–183, § 301(b)(2)(B), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (k)(4), (5). Pub. L. 103–183, § 301(b)(2)(B), (C), redesignated par. (5) as (4) and made technical amendments to references to subsections (d), (e), and (f) of this section and subsection (a) of this section, to reflect change in references to corresponding provisions of original act. Former par. (4) redesignated (3).

Subsec. (*l*). Pub. L. 103–183, § 301(b)(3), struck out subsec. (*l*) which related to establishment and function of Advisory Council for the Elimination of Tuberculosis.

1990—Subsec. (j)(1)(A). Pub. L. 101–502, § 2(a)(1), substituted provisions authorizing appropriations for fiscal years 1991 through 1995 for provisions authorizing appropriations for fiscal years 1988 through 1990.

Subsec. (j)(1)(B). Pub. L. 101–502, § 2(a)(2), substituted Oct. 1, 1990, for Dec. 1, 1987, and provisions authorizing appropriations as may be necessary for provisions authorizing appropriations for fiscal years 1988 to 1990.

Subsec. (j)(1)(C). Pub. L. 101–502, § 2(a)(3), struck out subpar. (C) which, on the implementation of part 2 of subchapter XIX of this chapter, authorized appropriations for grants under subsec. (a) of this section for fiscal years 1988 to 1990.

Subsec. (j)(2). Pub. L. 101–368, § 2(c), inserted provisions authorizing appropriations of $36,000,000 for fiscal year 1991, and such sums as may be necessary for fiscal years 1992 through 1995.

Pub. L. 101–368, § 2(a)(1), substituted ''preventive health service programs for the prevention, control, and elimination of tuberculosis'' for ''preventive health service programs for tuberculosis''.

Subsec. (k)(2)(A) to (D). Pub. L. 101–368, § 2(a)(2), substituted ''prevention, control, and elimination'' for ''prevention and control''.

Subsec. (*l*). Pub. L. 101–368, § 2(b), added subsec. (*l*).

1987—Subsec. (j). Pub. L. 100–177, §§ 110(a), 111(a), amended subsec. (j) generally, substituting provisions authorizing appropriations for fiscal years 1988 to 1990 for grants under subsecs. (a) and (k) of this section for former provisions authorizing appropriations for fiscal years 1982 to 1987 for grants under subsec. (a) of this section.

Subsec. (k). Pub. L. 100–177, § 111(b), added subsec. (k).

1985—Subsec. (j). Pub. L. 99–117 amended directory language of Pub. L. 97–35, § 928(b), to correct a technical error. See 1981 Amendment note below.

1984—Subsec. (j)(1). Pub. L. 98–555, § 2(a), substituted ''immunize individuals against vaccine-preventable diseases'' for ''immunize children against immunizable diseases'' and inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

Subsec. (j)(2). Pub. L. 98–555, § 2(b), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

1981—Subsec. (a). Pub. L. 97–35, § 928(a), struck out par. (1) which related to grants to State health authorities, and redesignated par. (2) as entire section and, as so redesignated, struck out reference to former par. (1).

Subsec. (j). Pub. L. 97–35, § 928(b), as amended by Pub. L. 99–117, substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984, for provisions setting forth appropriations through fiscal year ending Sept. 30, 1981, and provisions setting forth limitations, conditions, etc., for appropriations.

1979—Subsec. (j)(4), (5). Pub. L. 96–32 added par. (4), redesignated former par. (4) as (5) and, in par. (5) as so redesignated, substituted ''paragraph (1), (2), (3), or (4)'' for ''paragraph (1), (2), or (3)''.

1978—Pub. L. 95–626, § 202, amended section generally, substituting provisions relating to project grants for preventive health services for provisions relating to grants for disease control programs.

Subsec. (g)(2). Pub. L. 95–626, § 204(b)(2), struck out ''Except as provided in section 247c of this title,'' before ''No funds appropriated under any provision of this chapter''.

1976—Pub. L. 94–317 amended section generally to include many non-communicable diseases as well as expanding coverage of communicable diseases, increased appropriations for grants, widened scope of Secretary's authority to make grants and enter into contracts to include nonprofit private entities, and required a report from the Secretary on the effectiveness of all Federal and other public and private activities in controlling the diseases covered under this section.

Subsecs. (j) to (*l*). Pub. L. 94–380 added subsecs. (j) to (*l*).

1975—Subsec. (d)(3). Pub. L. 94–63, § 601(b), inserted authorization of appropriation for fiscal year 1976.

Subsec. (h)(1). Pub. L. 94–63, § 601(a), inserted reference to diseases borne by rodents.

1974—Subsec. (a). Pub. L. 93–354, § 4(1)–(3), substituted ''communicable and other disease control'' for ''communicable disease control'', ''communicable and other diseases'' for ''communicable diseases'', and ''communicable and other disease control program'' for ''communicable disease program''.

Subsec. (b)(2)(C). Pub. L. 93–354, § 4(1), (4), substituted ''communicable or other disease'' for ''communicable disease'' in cl. (i) and ''communicable and other disease control'' for ''communicable disease control'' in cl. (ii).

Subsecs. (b)(3), (d)(1), (2), (3), (f)(1). Pub. L. 93–354, § 4(1), substituted ''communicable and other disease control'' for ''communicable disease control''.

Subsec. (h)(1). Pub. L. 93–354, § 4(1), (5), substituted ''communicable and other disease control'' for ''communicable disease control'' in two places and inserted reference to diabetes mellitus.

Subsec. (i). Pub. L. 93–354, § 4(1), substituted ''communicable and other disease control'' for ''communicable disease control''.

1972—Subsec. (a). Pub. L. 92–449 substituted provision for grants by the Secretary in consultation with the State health authority to agencies and political subdivisions of States, for former provision for grants by the Secretary with the approval of the State health authority to political subdivisions or instrumentalities of States, incorporated existing provisions in provision designated as cl. (1), inserting '', in the area served by the applicant for the grant,'', substituted a cl. (2) reading ''design of the applicant's communicable disease program to determine its effectiveness'', for former provision reading ''levels of performance in preventing and controlling such diseases'', struck out appropriations authorization of $75,000,000 and $90,000,000 for fiscal years ending June 30, 1971, and 1972, now covered for subsequent years in subsec. (d), and struck out provision for use of grants to meet cost of studies to determine the control needs of communities and the means of best meeting such needs, now covered in subsec. (h)(1) of this section.

Subsec. (b). Pub. L. 92–449 substituted provisions of par. (1) respecting applications for grants, submission, approval, form, and content of applications; par. (2) respecting application requirements; and par. (3) incorporating former subsec. (g) provisions respecting consent of individuals for former definitions provision now incorporated in subsec. (h) of this section.

Subsec. (c). Pub. L. 92–449 designated existing provisions as par. (1) and among minor punctuation changes inserted ''under grants'' after ''Payments''; and redesignated former subsec. (d) as par. (2), inserted ''of the Government'' after ''officer or employee'', substituted ''in detailing the personnel'' for ''personal services'', and struck out provision that reduced amount shall, for purposes of subsec. (c), be deemed to have been paid to the agency.

Subsec. (d). Pub. L. 92–449 substituted provisions respecting authorization of appropriations and limitation on use of funds for provisions respecting grant reduction.

Subsec. (e). Pub. L. 92–449 substituted provisions for emergency plan development and authorization of appropriations for provisions relating to use of funds.

Subsec. (f). Pub. L. 92–449 substituted provisions respecting conditional limitation on use of funds for provisions for an annual report.

Subsec. (g). Pub. L. 92–449 incorporated former subsec. (f) provisions in introductory text and cl. (3), prescribed a January 1 submission date, and inserted provisions of cls. (1), (2), and (4). Former subsec. (g) consent of individuals provision respecting communicable disease control and vaccination assistance were covered in subsec. (b)(3) of this section and section 247c(h) of this title.

Subsec. (h). Pub. L. 92–449 redesignated former subsec. (b) as (h), substituted in introductory text ''this section'' for ''this subsection'', and in par. (1) struck out ''venereal disease'' after ''tuberculosis,'', inserted ''(other than venereal disease)'' after ''other communicable diseases'', and included in definition of ''communicable disease control program'' vaccination programs, laboratory services, and control studies.

Subsec. (i). Pub. L. 92–449 redesignated former subsec. (e) as (i), inserted reference to agency of a State, and substituted ''under provisions of Federal law (other than this chapter)'' for ''under other provisions of this chapter or other Federal law''.

1970—Subsec. (a). Pub. L. 91–464 authorized appropriation of $75,000,000 for fiscal year ending June 30, 1971, and $90,000,000 for fiscal year ending June 30, 1972, and made award of grants dependent upon extent of communicable disease and success of programs and permitted use of grants for meeting cost of programs and studies to control communicable diseases and struck out reference to purchase of vaccines and use of grants for salaries and expenses of personnel and to authority of the Surgeon General.

Subsec. (b). Pub. L. 91–464 substituted definitions of ''communicable disease control program'' and ''State'' for definition of ''immunization program''.

Subsec. (c). Pub. L. 91–464 substituted reference to Secretary for reference to Surgeon General and struck out provisions relating to purchasing and furnishing of vaccines and requirement of obtaining assurances from recipients of grants.

Subsec. (d). Pub. L. 91–464 substituted reference to Secretary for reference to Surgeon General and struck out reference to Public Health Service.

Subsec. (e). Pub. L. 91–464 struck out reference to title V of the Social Security Act and substituted provisions for the use of funds for the conduct of communicable disease control programs for provisions for the purchase of vaccine or for organizing, promoting, conducting, or participating in immunization programs.

Subsecs. (f), (g). Pub. L. 91–464 added subsecs. (f) and (g).

1965—Subsec. (a). Pub. L. 89–109, § 2(a), (b), (d)(1), inserted ''and each of the next three fiscal years'', substituted ''any fiscal year ending prior to July 1, 1968'' for ''the fiscal years ending June 30, 1963, and June 30, 1964'', ''tetanus, and measles'' for ''and tetanus'', ''of preschool age'' for ''under the age of five years'', and ''immunization'' for ''intensive community vaccination'', and permitted grants to be used to pay costs in connection with immunization of other infectious diseases.

Subsec. (b). Pub. L. 89–109, § 2(c), (d)(1), substituted ''against the diseases referred to in subsection (a) of this section'' for ''against poliomyelitis, diphtheria, whooping cough, and tetanus'', ''of preschool age'' for ''who are under the age of five years'' and ''immunization'' for ''intensive community vaccination'' in two places.

Subsec. (c). Pub. L. 89–109, § 2(d)(1), (e), inserted ''on the basis of estimates'' and ''(with necessary adjustments on account of underpayments or overpayments)'' in par. (1), and substituted ''immunization'' for ''intensive community vaccination'' in pars. (2) and (3).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 202 of Pub. L. 95–626, as amended by Pub. L. 96–32, § 6(g), July 10, 1979, 93 Stat. 83, provided that the amendment made by that section is effective Oct. 1, 1978.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 202(a) of Pub. L. 94–317 provided that the amendment made by that section is effective with respect to grants under this section for fiscal years beginning after June 30, 1975.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 608 of title VI of Pub. L. 94–63 provided that: ''Except as may otherwise be specifically provided, the amendments made by this title [enacting sections 300c–21 and 300c–22 of this title, amending this section, and enacting provisions set out as notes under sections 289, 289k–2, and 1395x of this title] and by titles I [amending section 246 of this title and enacting provisions set out as notes under section 246 of this title], II [enacting sections 300a–6a and 300a–8 of this title, amending sections 300 and 300a–1 to 300a–4 of this title, repealing section 3505c of this title, and enacting provision set out as a note under section 300 of this title], III [enacting sections 2689 to 2689aa of this title, amending sections 2691 and 2693 to 2696 of this title, and enacting provisions set out as notes under section 2689 of this title], IV [amending sections 218 and 254b of this title and enacting provision set out as a note under section 254b of this title], and V [enacting section 254c of this title and amending section 246 of this title] of this Act shall take effect July 1, 1975. The amendments made by this title and by such titles to the provisions of law amended by this title and by such titles are made to such provisions as amended by title VII of this Act [amending sections 246, 254b, 300, 300a–1 to 300a–3 of this title and sections 2681, 2687, 2688a, 2688d, 2688j–1, 2688j–2, 2688*l*, 2688*l*–1, 2688n–1, 2688*o*, and 2688u of this title].''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 102 of Pub. L. 92–449 provided that: ''The amendment made by section 101 of this title [amending this section] shall apply to grants made under section 317 of the Public Health Service Act [this section] after June 30, 1972, except that subsection (d) of such section as amended by section 101 [subsec. (d) of this section] shall take effect on the date of enactment of this Act [Sept. 30, 1972].''

ASSISTANCE OF ADMINISTRATOR OF VETERANS' AFFAIRS IN ADMINISTRATION OF NATIONAL SWINE FLU IMMUNIZATION PROGRAM OF 1976; CLAIMS FOR DAMAGES

Pub. L. 94–420, § 3, Sept. 23, 1976, 90 Stat. 1301, provided that, in order to assist Secretary of Health, Education, and Welfare in carrying out National Swine Flu Immunization Program of 1976 pursuant to 42 U.S.C. 247b(j), as added by Pub. L. 94–380, Administrator of Veterans' Affairs, in accordance with 42 U.S.C. 2476(j), could authorize administration of vaccine, procured under such program and provided by Secretary at no cost to Veterans' Administration, to eligible veterans (voluntarily requesting such vaccine) in connection with provision of care for a disability under chapter 17 of title 38, in any health care facility under jurisdiction of Administrator, and provided for consideration and processing of claims and suits for damages for personal injury or death, in connection with administration of vaccine.

STUDY BY SECRETARY OF SCOPE AND EXTENT OF LIABILITY ARISING OUT OF IMMUNIZATION PROGRAM; ALTERNATIVE PROTECTIVE APPROACHES; REPORT TO CONGRESS

Section 3 of Pub. L. 94–380 directed Secretary to conduct a study of liability for personal injuries or death

arising out of immunization programs and of alternative approaches to provide protection against such liability and report to Congress on findings of such study by Aug. 12, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 256b, 256c, 300w–1, 1396s of this title.

§ 247b–1. Screenings, referrals, and education regarding lead poisoning

(a) Authority for grants

(1) In general

Subject to paragraph (2), the Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States and political subdivisions of States for the initiation and expansion of community programs designed—

(A) to provide, for infants and children—

(i) screening for elevated blood lead levels;

(ii) referral for treatment of such levels; and

(iii) referral for environmental intervention associated with such levels; and

(B) to provide education about childhood lead poisoning.

(2) Authority regarding certain entities

With respect to a geographic area with a need for activities authorized in paragraph (1), in any case in which neither the State nor the political subdivision in which such area is located has applied for a grant under paragraph (1), the Secretary may make a grant under such paragraph to any grantee under section 254b, 254c, 256, or 256a of this title for carrying out such activities in the area.

(3) Provision of all services and activities through each grantee

In making grants under paragraph (1), the Secretary shall ensure that each of the activities described in such paragraph is provided through each grantee under such paragraph. The Secretary may authorize such a grantee to provide the services and activities directly, or through arrangements with other providers.

(b) Status as medicaid provider

(1) In general

Subject to paragraph (2), the Secretary may not make a grant under subsection (a) of this section unless, in the case of any service described in such subsection that is made available pursuant to the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(A) the applicant for the grant will provide the service directly, and the applicant has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(B) the applicant will enter into an agreement with a provider under which the provider will provide the service, and the provider has entered into such a participation agreement and is qualified to receive such payments.

(2) Waiver regarding certain secondary agreements

(A) In the case of a provider making an agreement pursuant to paragraph (1)(B) regarding the provision of services, the requirement established in such paragraph regarding a participation agreement shall be waived by the Secretary if the provider does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits plan.

(B) A determination by the Secretary of whether a provider referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the provider accepts voluntary donations regarding the provision of services to the public.

(c) Priority in making grants

In making grants under subsection (a) of this section, the Secretary shall give priority to applications for programs that will serve areas with a high incidence of elevated blood lead levels in infants and children.

(d) Grant application

No grant may be made under subsection (a) of this section, unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and shall be submitted in such manner as the Secretary shall prescribe and shall include each of the following:

(1) A complete description of the program which is to be provided by or through the applicant.

(2) Assurances satisfactory to the Secretary that the program to be provided under the grant applied for will include educational programs designed to—

(A) communicate to parents, educators, and local health officials the significance and prevalence of lead poisoning in infants and children (including the sources of lead exposure, the importance of screening young children for lead, and the preventive steps that parents can take in reducing the risk of lead poisoning) which the program is designed to detect and prevent; and

(B) communicate to health professionals and paraprofessionals updated knowledge concerning lead poisoning and research (including the health consequences, if any, of low-level lead burden; the prevalence of lead poisoning among all socioeconomic groupings; the benefits of expanded lead screening; and the therapeutic and other interventions available to prevent and combat lead poisoning in affected children and families).

(3) Assurances satisfactory to the Secretary that the applicant will report on a quarterly basis the number of infants and children screened for elevated blood lead levels, the number of infants and children who were found to have elevated blood lead levels, the number and type of medical referrals made for such infants and children, the outcome of such referrals, and other information to measure program effectiveness.

(4) Assurances satisfactory to the Secretary that the applicant will make such reports respecting the program involved as the Secretary may require.

(5) Assurances satisfactory to the Secretary that the applicant will coordinate the activities carried out pursuant to subsection (a) of this section with related activities and services carried out in the State by grantees under title V or XIX of the Social Security Act [42 U.S.C. 701 et seq., 1396 et seq.].

(6) Assurances satisfactory to the Secretary that Federal funds made available under such a grant for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds that would, in the absence of such Federal funds, be made available for the program for which the grant is to be made and will in no event supplant such State, local, and other non-Federal funds.

(7) Such other information as the Secretary may prescribe.

(e) Relationship to services and activities under other programs

(1) In general

A recipient of a grant under subsection (a) of this section may not make payments from the grant for any service or activity to the extent that payment has been made, or can reasonably be expected to be made, with respect to such service or activity—

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(B) by an entity that provides health services on a prepaid basis.

(2) Applicability to certain secondary agreements for provision of services

Paragraph (1) shall not apply in the case of a provider through which a grantee under subsection (a) of this section provides services under such subsection if the Secretary has provided a waiver under subsection (b)(2) of this section regarding the provider.

(f) Method and amount of payment

The Secretary shall determine the amount of a grant made under subsection (a) of this section. Payments under such grants may be made in advance on the basis of estimates or by way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants. Not more than 10 percent of any grant may be obligated for administrative costs.

(g) Supplies, equipment, and employee detail

The Secretary, at the request of a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by—

(1) the fair market value of any supplies or equipment furnished the grant recipient; and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee;

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) of this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(h) Records

Each recipient of a grant under subsection (a) of this section shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(i) Audit and examination of records

The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant under subsection (a) of this section, that are pertinent to such grant.

(j) Annual report

(1) In general

Not later than May 1 of each year, the Secretary shall submit to the Congress a report on the effectiveness during the preceding fiscal year of programs carried out with grants under subsection (a) of this section and of any programs that are carried out by the Secretary pursuant to subsection (*l*)(2) of this section.

(2) Certain requirements

Each report under paragraph (1) shall include, in addition to any other information that the Secretary may require, the following information:

(A) The number of infants and children screened.

(B) Demographic information on the population of infants and children screened, including the age and racial or ethnic status of such population.

(C) The number of screening sites.

(D) A description of the severity of the extent of the blood lead levels of the infants and children screened, expressed in categories of severity.

(E) The sources of payment for the screenings.

(F) A comparison of the data provided pursuant to subparagraphs (A) through (E) with the equivalent data, if any, provided in the report under paragraph (1) preceding the report involved.

(k) Indian tribes

For purposes of this section, the term ''political subdivision'' includes Indian tribes.

(*l*) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1998.

(2) Allocation for other programs

Of the amounts appropriated under paragraph (1) for any fiscal year, the Secretary may reserve not more than 20 percent for carrying out programs regarding the activities described in subsection (a) of this section in addition to the program of grants established in such subsection.

(July 1, 1944, ch. 373, title III, § 317A, as added Oct. 31, 1988, Pub. L. 100–572, § 3, 102 Stat. 2887; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 303(a), 106 Stat. 3484; Dec. 14, 1993, Pub. L. 103–183, title VII, § 705(a), 107 Stat. 2241.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(1) and (d)(5), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V and XIX of the Act are classified generally to subchapters V (§ 701 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 247b–1, Pub. L. 95–626, title IV, § 401, Nov. 10, 1978, 92 Stat. 3590; S. Res. 30, Mar. 7, 1979; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; H. Res. 549, Mar. 25, 1980, related to demonstration and evaluation of optimal methods for organizing and delivering comprehensive preventive health services to defined populations, prior to repeal by Pub. L. 97–35, title IX, § 902(a), (h), Aug. 13, 1981, 95 Stat. 559, 561, eff. Oct. 1, 1981.

AMENDMENTS

1993—Subsec. (*l*)(1). Pub. L. 103–183 substituted ''through 1998'' for ''through 1997''.

1992—Pub. L. 102–531 amended section generally, substituting present provisions for provisions relating to grants to States for lead poisoning prevention, grant applications, conditions for approval, method and amount of payment, reduction of amount, record-keeping and audits, inclusion of Indian tribes as grant recipients, and authorization of appropriations.

§ 247b–2. Repealed. Pub. L. 97–35, title IX, § 902(a), Aug. 13, 1981, 95 Stat. 559

Section, Pub. L. 95–626, title IV, § 402, Nov. 10, 1978, 92 Stat. 3591; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to deterrence of smoking and alcoholic beverage use among children and adolescents.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1981, see section 902(h) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 300aaa–12 of this title.

§ 247b–3. Education, technology assessment, and epidemiology regarding lead poisoning

(a) Prevention

(1) Public education

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall carry out a program to educate health professionals and paraprofessionals and the general public on the prevention of lead poisoning in infants and children. In carrying out the program, the Secretary shall make available information concerning the health effects of low-level lead toxicity, the causes of lead poisoning, and the primary and secondary preventive measures that may be taken to prevent such poisoning.

(2) Interagency Task Force

(A) Not later than 6 months after October 27, 1992, the Secretary shall establish a council to be known as the Interagency Task Force on the Prevention of Lead Poisoning (in this paragraph referred to as the ''Task Force''). The Task Force shall coordinate the efforts of Federal agencies to prevent lead poisoning.

(B) The Task Force shall be composed of—

(i) the Secretary, who shall serve as the chair of the Task Force;

(ii) the Secretary of Housing and Urban Development;

(iii) the Administrator of the Environmental Protection Agency; and

(iv) senior staff of each of the officials specified in clauses (i) through (iii), as selected by the officials respectively.

(C) The Task Force shall—

(i) review, evaluate, and coordinate current strategies and plans formulated by the officials serving as members of the Task Force, including—

(I) the plan of the Secretary of Health and Human Services entitled ''Strategic Plan for the Elimination of Lead Poisoning'', dated February 21, 1991;

(II) the plan of the Secretary of Housing and Urban Development entitled ''Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing'', dated December 7, 1990; and

(III) the strategy of the Administrator of the Environmental Protection Agency entitled ''Strategy for Reducing Lead Exposures'', dated February 21, 1991;

(ii) develop a unified implementation plan for programs that receive Federal financial assistance for activities related to the prevention of lead poisoning;

(iii) establish a mechanism for sharing and disseminating information among the agencies represented on the Task Force;

(iv) identify the most promising areas of research and education concerning lead poisoning;

(v) identify the practical and technological constraints to expanding lead poisoning prevention;

(vi) annually carry out a comprehensive review of Federal programs providing assistance to prevent lead poisoning, and not later than May 1 of each year, submit to the Committee on Labor and Human Resources of the Senate and the Committee on the Environment and Public Works of the Senate, and to the Committee on Energy and Commerce of the House of Representatives, a re-

port that summarizes the findings made as a result of such review and that contains the recommendations of the Task Force on the programs and policies with respect to which the Task Force is established, including related budgetary recommendations; and

(vii) annually review and coordinate departmental and agency budgetary requests with respect to all lead poisoning prevention activities of the Federal Government.

(b) Technology assessment and epidemiology

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall, directly or through grants or contracts—

(1) provide for the development of improved, more cost-effective testing measures for detecting lead toxicity in children;

(2) provide for the development of improved methods of assessing the prevalence of lead poisoning, including such methods as may be necessary to conduct individual assessments for each State;

(3) provide for the collection of data on the incidence and prevalence of lead poisoning of infants and children, on the demographic characteristics of infants and children with such poisoning (including racial and ethnic status), and on the source of payment for treatment for such poisoning (including the extent to which insurance has paid for such treatment); and

(4) provide for any applied research necessary to improve the effectiveness of programs for the prevention of lead poisoning in infants and children.

(July 1, 1944, ch. 373, title III, § 317B, as added Oct. 27, 1992, Pub. L. 102–531, title III, § 303(b), 106 Stat. 3488; amended June 10, 1993, Pub. L. 103–43, title XX, § 2008(i)(1)(B)(i), 107 Stat. 212.)

AMENDMENTS

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 103–531, § 303(b), which enacted this section.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 247b–4. Collection of data on birth defects

(a) State programs

(1) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall encourage States to establish or improve programs for the collection and analysis of epidemiological data on birth defects.

(2) Provision of assistance

The Secretary may, directly or through grants, cooperative agreements, or contracts, provide assistance to States regarding the purpose specified in subsection (a).[1]

(b) National Clearinghouse

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish and maintain a National Information Clearinghouse on Birth Defects to collect and disseminate to health professionals and the general public information on birth defects, including the prevention of such defects.

(c) Report

Not later than July 1, 1993, and biennially thereafter, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate, a report describing activities carried out under this section and containing any recommendations of the Secretary regarding this section.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $5,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 and 1995.

(July 1, 1944, ch. 373, title III, § 317C, as added Oct. 27, 1992, Pub. L. 102–531, title III, § 306(a), 106 Stat. 3494; amended June 10, 1993, Pub. L. 103–43, title XX, § 2008(i)(1)(B)(iii), 107 Stat. 213.)

AMENDMENTS

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 102–531, § 306(a), which enacted this section.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 247b–5. Preventive health measures with respect to prostate cancer

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States and local health departments for the purpose of enabling such States and departments to carry out programs—

(1) to screen men for prostate cancer as a preventive health measure;

(2) to provide appropriate referrals for medical treatment of men screened pursuant to paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services;

(3) to develop and disseminate public information and education programs for the detection and control of prostate cancer;

(4) to improve the education, training, and skills of health professionals (including appropriate allied health professionals) in the detection and control of prostate cancer;

(5) to establish mechanisms through which the States and such departments can monitor the quality of screening procedures for prostate cancer, including the interpretation of such procedures; and

(6) to evaluate activities conducted under paragraphs (1) through (5) through appropriate surveillance or program monitoring activities.

(b) Requirement of matching funds

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the appli-

[1] So in original. Probably should be ''paragraph (1).''

cant involved agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such section, to make available non-Federal contributions (in cash or in kind under paragraph (2)) toward such costs in an amount equal to not less than $1 for each $3 of Federal funds provided in the grant. Such contributions may be made directly or through donations from public or private entities.

(2) Determination of amount of non-Federal contribution

(A) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including equipment or services (and excluding indirect or overhead costs). Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) In making a determination of the amount of non-Federal contributions for purposes of paragraph (1), the Secretary may include only non-Federal contributions in excess of the average amount of non-Federal contributions made by the applicant involved toward the purpose described in subsection (a) of this section for the 2-year period preceding the fiscal year for which the applicant involved is applying to receive a grant under such subsection.

(C) In making a determination of the amount of non-Federal contributions for purposes of paragraph (1), the Secretary shall, subject to subparagraphs (A) and (B) of this paragraph, include any non-Federal amounts expended pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] by the applicant involved toward the purpose described in paragraphs (1) and (2) of subsection (a) of this section.

(c) Education on significance of early detection

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that, in carrying out subsection (a)(3) of this section, the applicant will carry out education programs to communicate to men, and to local health officials, the significance of the early detection of prostate cancer.

(d) Requirement of provision of all services by date certain

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees—

(1) to ensure that, initially and throughout the period during which amounts are received pursuant to the grant, not less than 60 percent of the grant is expended to provide each of the services or activities described in paragraphs (1) and (2) of such subsection;

(2) to ensure that, by the end of any second fiscal year of payments pursuant to the grant, each of the services or activities described in such subsection is provided; and

(3) to ensure that not more than 40 percent of the grant is expended to provide the services or activities described in paragraphs (3) through (6) of such section.[1]

[1] So in original. Probably should be ''subsection.''

(e) Additional required agreements

(1) Priority for low-income men

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that low-income men, and men at risk of prostate cancer, will be given priority in the provision of services and activities pursuant to paragraphs (1) and (2) of such subsection.

(2) Limitation on imposition of fees for services

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that, if a charge is imposed for the provision of services or activities under the grant, such charge—

(A) will be made according to a schedule of charges that is made available to the public;

(B) will be adjusted to reflect the income of the man involved; and

(C) will not be imposed on any man with an income of less than 100 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(3) Relationship to items and services under other programs

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that the grant will not be expended to make payment for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service—

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(B) by an entity that provides health services on a prepaid basis.

(4) Coordination with other prostate cancer programs

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that the services and activities funded through the grant will be coordinated with other Federal, State, and local prostate cancer programs.

(5) Limitation on administrative expenses

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that not more than 10 percent of the grant will be expended for administrative expenses with respect to the grant.

(6) Restrictions on use of grant

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that the grant will not be expended to provide inpatient hospital services for any individual.

(7) Records and audits

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees that—

(A) the applicant will establish such fiscal control and fund accounting procedures as

may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the applicant under such section;[2] and

(B) upon request, the applicant will provide records maintained pursuant to paragraph (1) to the Secretary or the Comptroller of the United States for purposes of auditing the expenditures by the applicant of the grant.

(f) Reports to Secretary

The Secretary may not make a grant under subsection (a) of this section unless the applicant involved agrees to submit to the Secretary such reports as the Secretary may require with respect to the grant.

(g) Description of intended uses of grant

The Secretary may not make a grant under subsection (a) of this section unless—

(1) the applicant involved submits to the Secretary a description of the purposes for which the applicant intends to expend the grant;

(2) the description identifies the populations, areas, and localities in the applicant[3] with a need for the services or activities described in subsection (a) of this section;

(3) the description provides information relating to the services and activities to be provided, including a description of the manner in which the services and activities will be coordinated with any similar services or activities of public or nonprivate entities; and

(4) the description provides assurances that the grant funds will be used in the most cost-effective manner.

(h) Requirement of submission of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary, the application contains the description of intended uses required in subsection (g) of this section, and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(i) Method and amount of payment

The Secretary shall determine the amount of a grant made under subsection (a) of this section. Payments under such grants may be made in advance on the basis of estimates or by way of reimbursement, with necessary adjustments on account of the underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

(j) Technical assistance and provision of supplies and services in lieu of grant funds

(1) Technical assistance

The Secretary may provide training and technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to subsection (a) of this section. The Secretary may provide such technical assistance directly or through grants to, or contracts with, public and private entities.

(2) Provision of supplies and services in lieu of grant funds

(A) Upon the request of an applicant receiving a grant under subsection (a) of this section, the Secretary may, subject to subparagraph (B), provide supplies, equipment, and services for the purpose of aiding the applicant in carrying out such section and, for such purpose, may detail to the applicant any officer or employee of the Department of Health and Human Services.

(B) With respect to a request described in subparagraph (A), the Secretary shall reduce the amount of payments under the grant under subsection (a) of this section to the applicant involved by an amount equal to the costs of detailing personnel (including pay, allowances, and travel expenses) and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(k) "Units of local government" defined

For purposes of this section, the term ''units of local government'' includes Indian tribes.

(*l*) Authorization of appropriations

(1) In general

For the purpose of carrying out this section, there are authorized to be appropriated $20,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1998.

(2) Allocation for technical assistance

Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall reserve not more than 20 percent for carrying out subsection (j)(1) of this section.

(July 1, 1944, ch. 373, title III, § 317D, as added Oct. 27, 1992, Pub. L. 102–531, title III, § 308, 106 Stat. 3495; amended June 10, 1993, Pub. L. 103–43, title XX, § 2010(i)(1)(B)(iv), 107 Stat. 213; Dec. 14, 1993, Pub. L. 103–183, title VII, § 705(b), 107 Stat. 2241.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 102–531, § 308, which enacted this section.

Subsec. (*l*)(1). Pub. L. 103–183 substituted ''through 1998'' for ''through 1996''.

§ 247b–6. Preventive health services regarding tuberculosis

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention,

[2] So in original. Probably should be ''subsection;''.

[3] So in original. Probably should be ''application''.

may make grants to States, political subdivisions, and other public entities for preventive health service programs for the prevention, control, and elimination of tuberculosis.

(b) Research, demonstration projects, education, and training

With respect to the prevention, control, and elimination of tuberculosis, the Secretary may, directly or through grants to public or nonprofit private entities, carry out the following:

(1) Research, with priority given to research concerning strains of tuberculosis resistant to drugs and research concerning cases of tuberculosis that affect certain populations.

(2) Demonstration projects.

(3) Public information and education programs.

(4) Education, training, and clinical skills improvement activities for health professionals, including allied health personnel and emergency response employees.

(5) Support of centers to carry out activities under paragraphs (1) through (4).

(6) Collaboration with international organizations and foreign countries in carrying out such activities.

(c) Cooperation with providers of primary health services

The Secretary may make a grant under subsection (a) or (b) of this section only if the applicant for the grant agrees that, in carrying out activities under the grant, the applicant will cooperate with public and nonprofit private providers of primary health services or substance abuse services, including entities receiving assistance under section 254b, 254c, 256, or 256a of this title or under subchapter III–A or XVII of this chapter.

(d) Application for grant

(1) In general

The Secretary may make a grant under subsection (a) or (b) of this section only if an application for the grant is submitted to the Secretary and the application, subject to paragraph (2), is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out the subsection involved.

(2) Plan for prevention, control, and elimination

The Secretary may make a grant under subsection (a) of this section only if the application under paragraph (1) contains a plan regarding the prevention, control, and elimination of tuberculosis in the geographic area with respect to which the grant is sought.

(e) Supplies and services in lieu of grant funds

(1) In general

Upon the request of a grantee under subsection (a) or (b) of this section, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the grantee in carrying out the subsection involved and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) Corresponding reduction in payments

With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under the grant involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(f) Advisory Council

(1) In general

The Secretary shall establish an advisory council to be known as the Advisory Council for the Elimination of Tuberculosis (in this subsection referred to as the ''Council'').

(2) General duties

The Council shall provide advice and recommendations regarding the elimination of tuberculosis to the Secretary, the Assistant Secretary for Health, and the Director of the Centers for Disease Control and Prevention.

(3) Certain activities

With respect to the elimination of tuberculosis, the Council shall—

(A) in making recommendations under paragraph (2), make recommendations regarding policies, strategies, objectives, and priorities;

(B) address the development and application of new technologies; and

(C) review the extent to which progress has been made toward eliminating tuberculosis.

(4) Composition

The Secretary shall determine the size and composition of the Council, and the frequency and scope of official meetings of the Council.

(5) Staff, information, and other assistance

The Secretary shall provide to the Council such staff, information, and other assistance as may be necessary to carry out the duties of the Council.

(g) Funding

(1) In general; allocation for emergency grants

(A) For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated $200,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998.

(B) Of the amounts appropriated under subparagraph (A) for a fiscal year, the Secretary may reserve not more than $50,000,000 for emergency grants under subsection (a) of this section for any geographic area in which there is, relative to other areas, a substantial number of cases of tuberculosis or a substantial rate of increase in such cases.

(2) Research, demonstration projects, education, and training

For the purpose of making grants under subsection (b) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1994 through 1998.

(July 1, 1944, ch. 373, title III, § 317E, as added Dec. 14, 1993, Pub. L. 103–183, title III, § 301(a), 107 Stat. 2233.)

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 256d of this title.

§ 247b–7. Loan repayment program

(a) In general

(1) Authority

Subject to paragraph (2), the Secretary may carry out a program of entering into contracts with appropriately qualified health professionals under which such health professionals agree to conduct prevention activities, as employees of the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry, in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $20,000 of the principal and interest of the educational loans of such health professionals.

(2) Limitation

The Secretary may not enter into an agreement with a health professional pursuant to paragraph (1) unless such professional—

(A) has a substantial amount of educational loans relative to income; and

(B) agrees to serve as an employee of the Centers for Disease Control and Prevention or the Agency for Toxic Substances and Disease Registry for purposes of paragraph (1) for a period of not less than 3 years.

(b) Applicability of certain provisions

With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part D of this subchapter, the provisions of such subpart shall, except as inconsistent with subsection (a) of this section, apply to the program established in this section in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $500,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998.

(July 1, 1944, ch. 373, title III, § 317F, as added Dec. 14, 1993, Pub. L. 103–183, title VII, § 703, 107 Stat. 2240.)

§ 247c. Sexually transmitted diseases; prevention and control projects and programs

(a) Technical assistance to public and nonprofit private entities and scientific institutions

The Secretary may provide technical assistance to appropriate public and nonprofit private entities and to scientific institutions for their research in, and training and public health programs for, the prevention and control of sexually transmitted diseases.

(b) Research, demonstration, and public information and education projects

The Secretary may make grants to States, political subdivisions of States, and any other public and nonprofit private entity for—

(1) research into the prevention and control of sexually transmitted diseases;

(2) demonstration projects for the prevention and control of sexually transmitted diseases;

(3) public information and education programs for the prevention and control of such diseases; and

(4) education, training, and clinical skills improvement activities in the prevention and control of such diseases for health professionals (including allied health personnel).

(c) Project grants to States

The Secretary is also authorized to make project grants to States and, in consultation with the State health authority, to political subdivisions of States, for—

(1) sexually transmitted diseases surveillance activities, including the reporting, screening, and followup of diagnostic tests for, and diagnosed cases of, sexually transmitted diseases;

(2) casefinding and case followup activities respecting sexually transmitted diseases, including contact tracing of infectious cases of sexually transmitted diseases and routine testing, including laboratory tests and followup systems;

(3) interstate epidemiologic referral and followup activities respecting sexually transmitted diseases; and

(4) such special studies or demonstrations to evaluate or test sexually transmitted diseases prevention and control strategies and activities as may be prescribed by the Secretary.

(d) Grants for innovative, interdisciplinary approaches

The Secretary may make grants to States and political subdivisions of States for the development, implementation, and evaluation of innovative, interdisciplinary approaches to the prevention and control of sexually transmitted diseases.

(e) Authorization of appropriations; terms and conditions; payments; recordkeeping; audit; grant reduction; information disclosure

(1) For the purpose of making grants under subsections (b) through (d) of this section, there are authorized to be appropriated $85,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998.

(2) Each recipient of a grant under this section shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant was given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(3) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of grants under this section that are pertinent to such grants.

(4) The Secretary, at the request of a recipient of a grant under this section, may reduce such grant by the fair market value of any supplies or equipment furnished to such recipient and by the amount of pay, allowances, travel expenses, and any other costs in connection with the detail of an officer or employee of the United States to the recipient when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such recipient and for the purpose of carrying out the program with respect to which the grant under this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies, equipment, or personal services on which the reduction of such grant is based.

(5) All information obtained in connection with the examination, care, or treatment of any individual under any program which is being carried out with a grant made under this section shall not, without such individual's consent, be disclosed except as may be necessary to provide service to him or as may be required by a law of a state or political subdivision of a State. Information derived from any such program may be disclosed—

(A) in summary, statistical, or other form; or

(B) for clinical or research purposes;

but only if the identity of the individuals diagnosed or provided care or treatment under such program is not disclosed.

(e)[1] Consent of individuals

Nothing in this section shall be construed to require any State or any political subdivision of a State to have a sexually transmitted diseases program which would require any person, who objects to any treatment provided under such a program, to be treated under such a program.

(July 1, 1944, ch. 373, title III, § 318, as added Sept. 30, 1972, Pub. L. 92–449, title II, § 203, 86 Stat. 751; amended June 23, 1976, Pub. L. 94–317, title II, § 203(b)–(i), 90 Stat. 704, 705; Oct. 12, 1976, Pub. L. 94–484, title IX, § 905(b)(2), 90 Stat. 2325; Nov. 10, 1978, Pub. L. 95–626, title II, § 204(b)(1), (c), (d), 92 Stat. 3583; July 10, 1979, Pub. L. 96–32, § 6(j), 93 Stat. 84; Aug. 13, 1981, Pub. L. 97–35, title IX, § 929, 95 Stat. 569; Oct. 30, 1984, Pub. L. 98–555, § 3, 98 Stat. 2854; Nov. 4, 1988, Pub. L. 100–607, title III, § 311, 102 Stat. 3112; Dec. 14, 1993, Pub. L. 103–183, title IV, § 401, 107 Stat. 2236.)

[1] So in original. Probably should be "(f)".

PRIOR PROVISIONS

A prior section 247c, act July 1, 1944, ch. 373 title III, § 318, as added Aug. 18, 1964, Pub. L. 88–443, § 2, 78 Stat. 447, related to grants for assisting in the areawide planning of health and related facilities, prior to repeal by Pub. L. 89–749, § 6, Nov. 3, 1966, 80 Stat. 1190 eff. July 1, 1967.

AMENDMENTS

1993—Subsec. (b)(3). Pub. L. 103–183, § 401(c)(1), substituted "; and" for ", and".

Subsec. (c)(3). Pub. L. 103–183, § 401(c)(2), which directed the substitution of "; and" for ", and", could not be executed because ", and" did not appear.

Subsec. (d). Pub. L. 103–183, § 401(a)(2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 103–183, § 401(a)(1), redesignated subsec. (d), relating to authorization of appropriations, etc., as (e).

Subsec. (e)(1). Pub. L. 103–183, § 401(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "For the purpose of making grants under subsections (b) and (c) of this section there are authorized to be appropriated $45,000,000 for the fiscal year ending September 30, 1979, $51,500,000 for the fiscal year ending September 30, 1980, $59,000,000 for the fiscal year ending September 30, 1981, $40,000,000 for the fiscal year ending September 30, 1982, $46,500,000 for the fiscal year ending September 30, 1983, $50,000,000 for the fiscal year ending September 30, 1984, $57,000,000 for the fiscal year ending September 30, 1985, $62,500,000 for the fiscal year ending September 30, 1986, $68,000,000 for the fiscal year ending September 30, 1987, $78,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991. For grants under subsection (b) of this section in any fiscal year, the Secretary shall obligate not less than 10 per centum of the amount appropriated for such fiscal year under the preceding sentence. Grants made under subsection (b) or (c) of this section shall be made on such terms and conditions as the Secretary finds necessary to carry out the purposes of such subsection, and payments under any such grants shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary."

Subsec. (e)(5). Pub. L. 103–183, § 401(c)(3), which directed the amendment of subsec. (d)(5) by substituting "form; or" for "form, or" in subpar. (A) and "purposes;" for "purposes," in subpar. (B), was executed to subsec. (e)(5) to reflect the probable intent of Congress and the redesignation of subsec. (d) as (e) by Pub. L. 103–183, § 401(a)(1). See above.

1988—Pub. L. 100–607, § 311(1), amended section catchline.

Subsec. (d). Pub. L. 100–607, § 311(2), (3), redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to acquired immune deficiency syndrome.

Subsec. (d)(1). Pub. L. 100–607, § 311(4), substituted "(b) and (c)" for "(b), (c), and (d)", struck out "and" after "1986,", and inserted ", $78,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991" before period at end of first sentence; substituted "(b) or (c)" for "(b), (c), or (d)" in third sentence; and struck out at end "If the appropriations under the first sentence for fiscal year 1985 exceed $50,000,000, one-half of the amount in excess of $50,000,000 shall be made available for grants under subsection (d) of this section; if the appropriations under the first sentence for fiscal year 1986 exceed $52,500,000, one-half of the amount in excess of $52,500,000 shall be made available for such grants; and if the appropriations under the first sentence for fiscal year 1987 exceed $55,000,000, one-half of the amount in excess of $55,000,000 shall be made available for such grants."

Subsecs. (e) to (g). Pub. L. 100–607, § 311(2), (3), struck out subsec. (f) which related to conditional limitation on use of funds and redesignated subsecs. (e) and (g) as (d) and (e), respectively.

1984—Subsec. (a). Pub. L. 98–555, § 3(b)(1), substituted ''research in, and training and public health programs for, the prevention and control of sexually transmitted diseases'' for ''research, training, and public health programs for the prevention and control of venereal disease''.

Subsec. (b). Pub. L. 98–555, § 3(b)(2), in amending subsec. (b) generally, designated existing provisions as pars. (1) to (3), added par. (4), and substituted references to sexually transmitted diseases for reference to venereal disease.

Subsec. (c). Pub. L. 98–555, § 3(b)(3), (6)(A), substituted ''sexually transmitted diseases'' for ''venereal disease'' wherever appearing, struck out par. (4) relating to professional venereal disease education, training and clinical skills improvement activities, and redesignated par. (5) as (4).

Subsec. (d). Pub. L. 98–555, § 3(b)(5)(A), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98–555, § 3(a), (b)(4), (5), redesignated subsec. (d) as (e), and in par. (1) of subsec. (e) as so redesignated, substituted ''(b), (c), and (d)'' for ''(b) and (c)'', inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987, substituted ''10 per centum'' for ''5 per centum'', and inserted provisions directing that one-half the excess of appropriations in fiscal years 1985, 1986, and 1987 over certain amounts be made available for grants under subsec. (d). Notwithstanding language of section 3(b)(5)(B)(ii) directing the substitution of ''(b), (c), or (d)'' for ''(b) or (c)'' in second sentence of subsec. (e)(1), the amendment was executed by making the substitution in third sentence of subsec. (e)(1) to reflect the probable intent of Congress because ''(b) or (c)'' did not appear in second sentence. Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 98–555, § 3(b)(5)(A), (6)(A), (C), redesignated subsecs. (e) and (f) as (f) and (g), respectively, in subsecs. (f) and (g) as so redesignated, substituted ''sexually transmitted diseases'' for ''venereal disease'', and struck out former subsec. (g) which defined venereal disease.

1981—Subsec. (d)(1). Pub. L. 97–35 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1979—Subsec. (b). Pub. L. 96–32 amended directory language of Pub. L. 95–626, § 204(c)(2), and required no change in text. See 1978 Amendment note below.

1978—Subsec. (b). Pub. L. 95–626, § 204(c)(2), as amended by Pub. L. 96–32, substituted ''research, demonstrations, and public information and education for the prevention and control of venereal disease'' for ''research, demonstrations, education, and training for the prevention and control of venereal disease'', struck out ''(1)'' preceding provisions thus amended, and struck out par. (2) which authorized appropriation of $5,000,000 for fiscal year 1976, $6,600,000 for fiscal year 1977, and $7,600,000 for fiscal year 1978 for purpose of carrying out this subsection.

Subsec. (c). Pub. L. 95–626, § 204(d), struck out ''(1)'' after ''(c)'' at beginning of existing provisions, changed designations at beginning of each of the five clauses from ''(A)'', ''(B)'', ''(C)'', ''(D)'', and ''(E)'' to ''(1)'', ''(2)'', ''(3)'', ''(4)'', and ''(5)'', respectively, substituted ''The Secretary is also authorized'' for ''The Secretary is authorized'' in provisions preceding cl. (1) as redesignated, substituted ''professional (including appropriate allied health personnel) venereal disease education, training and clinical skills improvement activities'' for ''professional and public venereal disease education activities'' in cl. (4) as redesignated, and struck out former par. (2) which had authorized appropriations of $32,000,000 for fiscal year 1976, $41,500,000 for fiscal year 1977, and $43,500,000 for fiscal year 1978.

Subsec. (d)(1). Pub. L. 95–626, § 204(c)(1), inserted provisions authorizing appropriations of $45,000,000 for fiscal year ending Sept. 30, 1979, $51,500,000 for fiscal year ending Sept. 30, 1980, and $59,000,000 for fiscal year ending Sept. 30, 1981, for purpose of making grants under subsecs. (b) and (c) of this section, and inserted provisions directing Secretary to obligate not less than 5 per centum of amount appropriated for any fiscal year.

Subsec. (f). Pub. L. 95–626, § 204(b)(1), redesignated subsec. (g) as (f). Former subsec. (f), requiring that not to exceed 50 per centum of amounts appropriated for any fiscal year under subsecs. (b) and (c) of this section could be used by Secretary for grants for such fiscal year under section 247b of this title, was struck out.

Subsec. (g). Pub. L. 95–626, § 204(b)(1), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f).

1976—Subsec. (a). Pub. L. 94–317, § 203(c), substituted ''public and nonprofit private entities and to'' for ''public authorities and''.

Subsec. (b)(1). Pub. L. 94–317, § 203(i), inserted ''education,'' before ''and training''.

Subsec. (b)(2). Pub. L. 94–317, § 203(b)(1), substituted provisions authorizing appropriations of $5,000,000 for fiscal year 1976, $6,600,000 for fiscal year 1977, and $7,600,000 for fiscal year 1978, for provisions authorizing appropriations of $7,500,000 for fiscal year ending June 30, 1973, and for each of the next two fiscal years.

Subsec. (c). Pub. L. 94–484, purported to amend former subsec. (c)(1) by defining ''State'' to include the Northern Mariana Islands. Former subsec. (c) of this section had been previously repealed by section 203(f)(1) of Pub. L. 94–317. See par. below.

Pub. L. 94–317, § 203(b)(2), (d), (e), (f)(1), (3), (8), redesignated subsec. (d) as (c), inserted, in par. (1)(B), reference to routine testing, including laboratory tests and followup systems and substituted in par. (1)(E). ''prevention and control strategies and activities'' for ''control'' and, in par. (2), provisions authorizing appropriations of $32,000,000 for fiscal year 1976, $41,500,000 for fiscal year 1977, and $43,500,000 for fiscal year 1978, for provisions authorizing appropriations of $30,000,000 for the fiscal year ending June 30, 1973, and for each of the next two succeeding fiscal years. Former subsec. (c), which provided for authorization of appropriations to enable the Secretary to make grants to state health authorities to establish and maintain programs for diagnosis and treatment of venereal disease was amended by striking out reference to dark-field microscope techniques for diagnosis of both gonorrhea an syphilis, and as so amended, was repealed.

Subsec. (d). Pub. L. 94–317, § 203(f)(2), (4), (5), (8), redesignated subsec. (e) as (d), substituted in par. (1) ''or (c)'' for ''or (d)'', struck out in par. (4) provisions relating to the amount of reduction of a grant under former subsec. (c) whereby such amount shall be deemed a part of the grant to the recipient of the grant and shall be deemed to have been paid to such recipient, and inserted in par. (5) reference to requirement by law of a State or political subdivision of a state. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 94–317, § 203(f)(8), (g), redesignated subsec. (f) as (e) and substituted ''247b(g)(2) of this title'' for ''247b(d)(4) of this title''. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 94–317, § 203(f)(6), (8), redesignated subsec. (g) as (f) and substituted ''and (c)'' for '', (c), and (d)''. Former subsec. (f) redesignated (e).

Subsec. (g). Pub. L. 94–317, § 203(f)(7), (8), redesignated subsec. (h) as (g) and struck out ''treated or to have any child or ward of his'' after ''a program, to be''. Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 94–317, § 203(h), added subsec. (h). Former subsec. (h) redesignated (g).

DISTRIBUTION OF INFORMATION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME BY DIRECTOR OF CENTERS FOR DISEASE CONTROL TO EVERY AMERICAN HOUSEHOLD

Pub. L. 100–202, § 101(h) [title II], Dec. 22, 1987, 101 Stat. 1329–256, 1329–365, provided: ''That the Director shall cause to be distributed without necessary clearance of the content by any official, organization or office, an AIDS mailer to every American household by

June 30, 1988, as approved and funded by the Congress in Public Law 100–71 [July 11, 1987, 101 Stat. 391].''

CONGRESSIONAL FINDINGS AND DECLARATIONS

Section 204(a) of Pub. L. 95–626 provided that: ''The Congress finds and declares that—

''(1) the number of reported cases of venereal disease persists in epidemic proportions in the United States;

''(2) the number of persons affected by venereal disease and reported to public health authorities is only a fraction of those actually affected;

''(3) the incidence of venereal disease continues to be particularly high among American youth, ages fifteen to twenty-nine, and among populations in metropolitan areas;

''(4) venereal disease accounts for severe permanent disabilities and sometimes death in newborns and causes reproductive dysfunction in women of childbearing age;

''(5) it is conservatively estimated that the public cost of health care for persons suffering from complications of venereal disease exceeds one-half billion dollars annually;

''(6) the number of trained Federal venereal disease prevention and control personnel has fallen to a dangerously inadequate level;

''(7) no vaccine for syphilis, gonorrhea, or any other venereal disease has yet been developed, nor does a blood test for the detection of asymptomatic gonorrhea in women exist, nor are safe and effective therapeutic agents available for some other venereal diseases;

''(8) school health education programs, public information and awareness campaigns, mass diagnostic screening and case followup have all been found to be effective venereal disease prevention and control methodologies;

''(9) skilled and knowledgeable health care providers, informed and concerned individuals and active, well-coordinated voluntary groups are fundamental to venereal disease prevention and control;

''(10) biomedical research toward improved diagnostic and therapeutic tools is of singular importance to the elimination of venereal disease; and

''(11) an increasing number of sexually transmissible diseases besides syphilis and gonorrhea have become a public health hazard.''

Section 203(a) of Pub. L. 94–317 provided that: ''The Congress finds and declares that—

''(1) the number of reported cases of venereal disease continues in epidemic proportions in the United States;

''(2) the number of patients with venereal disease reported to public health authorities is only a fraction of those actually infected;

''(3) the incidence of venereal disease is particularly high in the 15–29-year age group, and in metropolitan areas;

''(4) venereal disease accounts for needless deaths and leads to such severe disabilities as sterility, insanity, blindness, and crippling conditions;

''(5) the number of cases of congenital syphilis, a preventable disease, tends to parallel the incidence of syphilis in adults;

''(6) it is conservatively estimated that the public cost of care for persons suffering the complications of venereal disease exceed $80,000,000 annually;

''(7) medical researchers have no successful vaccine for syphilis or gonorrhea, and have no blood test for the detection of gonorrhea among the large reservoir of asymptomatic females;

''(8) school health education programs, public information and awareness campaigns, mass diagnostic screening and case followup activities have all been found to be effective disease intervention methodologies;

''(9) knowledgeable health providers and concerned individuals and groups are fundamental to venereal disease prevention and control;

''(10) biomedical research leading to the development of vaccines for syphilis and gonorrhea is of singular importance for the eventual eradication of these dreaded diseases; and

''(11) a variety of other sexually transmitted diseases, in addition to syphilis and gonorrhea, have become of public health significance.''

Section 202 of Pub. L. 92–449 provided that:

''(a) The Congress finds and declares that—

''(1) the number or reported cases of venereal disease has reached epidemic proportions in the United States;

''(2) the number of patients with venereal disease reported to public health authorities is only a fraction of those treated by physicians;

''(3) the incidence of venereal disease is particularly high among individuals in the 20–24 age group, and in metropolitan areas;

''(4) venereal disease accounts for needless deaths and leads to such severe disabilities as sterility, insanity, blindness, and crippling conditions;

''(5) the number of cases of congenital syphilis, a preventable disease, in infants under one year of age increased by 33⅓ per centum between 1970 and 1971;

''(6) health education programs in schools and through the mass media may prevent a substantial portion of the venereal disease problem; and

''(7) medical authorities have no successful vaccine for syphilis or gonorrhea and no blood test for the detection of gonorrhea among the large reservoir of asymptomatic females.

''(b) In order to preserve and protect the health and welfare of all citizens, it is the purpose of this Act [this chapter] to establish a national program for the prevention and control of venereal disease.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 256b, 256d of this title.

§ 247c–1. Infertility and sexually transmitted diseases

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States, political subdivisions of States, and other public or nonprofit private entities for the purpose of carrying out the activities described in subsection (c) of this section regarding any treatable sexually transmitted disease that can cause infertility in women if treatment is not received for the disease.

(b) Authority regarding individual diseases

With respect to diseases described in subsection (a) of this section, the Secretary shall, in making a grant under such subsection, specify the particular disease or diseases with respect to which the grant is to be made. The Secretary may not make the grant unless the applicant involved agrees to carry out this section only with respect to the disease or diseases so specified.

(c) Authorized activities

With respect to any sexually transmitted disease described in subsection (a) of this section, the activities referred to in such subsection are—

(1) screening women for the disease and for secondary conditions resulting from the disease, subject to compliance with criteria issued under subsection (f) of this section;

(2) providing treatment to women for the disease;

(3) providing counseling to women on the prevention and control of the disease (including, in the case of a woman with the disease, counseling on the benefits of locating and providing such counseling to any individual from whom the woman may have contracted the disease and any individual whom the woman may have exposed to the disease);

(4) providing follow-up services;

(5) referrals for necessary medical services for women screened pursuant to paragraph (1), including referrals for evaluation and treatment with respect to acquired immune deficiency syndrome and other sexually transmitted diseases;

(6) in the case of any woman receiving services pursuant to any of paragraphs (1) through (5), providing to the partner of the woman the services described in such paragraphs, as appropriate;

(7) providing outreach services to inform women of the availability of the services described in paragraphs (1) through (6);

(8) providing to the public information and education on the prevention and control of the disease, including disseminating such information; and

(9) providing training to health care providers in carrying out the screenings and counseling described in paragraphs (1) and (3).

(d) Requirement of availability of all services through each grantee

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that each activity authorized in subsection (c) of this section will be available through the applicant. With respect to compliance with such agreement, the applicant may expend the grant to carry out any of the activities directly, and may expend the grant to enter into agreements with other public or nonprofit private entities under which the entities carry out the activities.

(e) Required providers regarding certain services

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that, in expending the grant to carry out activities authorized in subsection (c) of this section, the services described in paragraphs (1) through (7) of such subsection will be provided only through entities that are State or local health departments, grantees under section 254b, 254c, 256, 256a, or 300 of this title, or are other public or nonprofit private entities that provide health services to a significant number of low-income women.

(f) Quality assurance regarding screening for diseases

For purposes of this section, the Secretary shall establish criteria for ensuring the quality of screening procedures for diseases described in subsection (a) of this section.

(g) Confidentiality

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees, subject to applicable law, to maintain the confidentiality of information on individuals with respect to activities carried out under subsection (c) of this section.

(h) Limitation on imposition of fees for services

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that, if a charge is imposed for the provision of services or activities under the grant, such charge—

(1) will be made according to a schedule of charges that is made available to the public;

(2) will be adjusted to reflect the income of the individual involved; and

(3) will not be imposed on any individual with an income of less than 150 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(i) Limitations on certain expenditures

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that not less than 80 percent of the grant will be expended for the purpose of carrying out paragraphs (1) through (7) of subsection (c) of this section.

(j) Reports to Secretary

(1) Collection of data

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees, with respect to any disease selected under subsection (b) of this section for the applicant, to submit to the Secretary, for each fiscal year for which the applicant receives such a grant, a report providing—

(A) the incidence of the disease among the population of individuals served by the applicant;

(B) the number and demographic characteristics of individuals in such population;

(C) the types of interventions and treatments provided by the applicant, and the health conditions with respect to which referrals have been made pursuant to subsection (c)(5) of this section;

(D) an assessment of the extent to which the activities carried pursuant to subsection (a) of this section have reduced the incidence of infertility in the geographic area involved; and

(E) such other information as the Secretary may require with respect to the project carried out with the grant.

(2) Utility and comparability of data

The Secretary shall carry out activities for the purpose of ensuring the utility and comparability of data collected pursuant to paragraph (1).

(k) Maintenance of effort

With respect to activities for which a grant under subsection (a) of this section is authorized to be expended, the Secretary may make such a grant only if the applicant involved agrees to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the average level of such expenditures maintained by the applicant for the 2-year period preceding the fiscal year for which the applicant is applying to receive such a grant.

(*l*) Requirement of application

(1) In general

The Secretary may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Secretary, the application contains the plan required in paragraph (2), and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(2) Submission of plan for program of grantee

(A) In general

The Secretary may make a grant under subsection (a) of this section only if the applicant involved submits to the Secretary a plan describing the manner in which the applicant will comply with the agreements required as a condition of receiving such a grant, including a specification of the entities through which activities authorized in subsection (c) of this section will be provided.

(B) Participation of certain entities

The Secretary may make a grant under subsection (a) of this section only if the applicant provides assurances satisfactory to the Secretary that the plan submitted under subparagraph (A) has been prepared in consultation with an appropriate number and variety of—

(i) representatives of entities in the geographic area involved that provide services for the prevention and control of sexually transmitted diseases, including programs to provide to the public information and education regarding such diseases; and

(ii) representatives of entities in such area that provide family planning services.

(m) Duration of grant

The period during which payments are made to an entity from a grant under subsection (a) of this section may not exceed 3 years. The provision of such payments shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments in such year. The preceding sentence may not be construed to establish a limitation on the number of grants under such subsection that may be made to an entity.

(n) Technical assistance, and supplies and services in lieu of grant funds

(1) Technical assistance

The Secretary may provide training and technical assistance to grantees under subsection (a) of this section with respect to the planning, development, and operation of any program or service carried out under such subsection. The Secretary may provide such technical assistance directly or through grants or contracts.

(2) Supplies, equipment, and employee detail

The Secretary, at the request of a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by—

(A) the fair market value of any supplies or equipment furnished the grant recipient; and

(B) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee;

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) of this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(*o*) Evaluations and reports by Secretary

(1) Evaluations

The Secretary shall, directly or through contracts with public or private entities, provide for annual evaluations of programs carried out pursuant to subsection (a) of this section in order to determine the quality and effectiveness of the programs.

(2) Report to Congress

Not later than 1 year after the date on which amounts are first appropriated pursuant to subsection (q) of this section, and biennially thereafter, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report—

(A) summarizing the information provided to the Secretary in reports made pursuant to subsection (j)(1) of this section, including information on the incidence of sexually transmitted diseases described in subsection (a) of this section; and

(B) summarizing evaluations carried out pursuant to paragraph (1) during the preceding fiscal year.

(p) Coordination of Federal programs

The Secretary shall coordinate the program carried out under this section with any similar programs administered by the Secretary (including coordination between the Director of the Centers for Disease Control and Prevention and the Director of the National Institutes of Health).

(q) Authorization of appropriations

For the purpose of carrying out this section, other than subsections (*o*) and (r) of this section, there are authorized to be appropriated $25,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1998.

(r) Separate grants for research on delivery of services

(1) In general

The Secretary may make grants for the purpose of conducting research on the manner in which the delivery of services under subsection (a) of this section may be improved. The Secretary may make such grants only to grantees under such subsection and to public and nonprofit private entities that are carrying out programs substantially similar to programs carried out under such subsection.

(2) Authorization of appropriations

For the purpose of carrying out paragraph (1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 through 1998.

(July 1, 1944, ch. 373, title III, § 318A, as added Oct. 27, 1992, Pub. L. 102–531, title III, § 304, 106 Stat. 3490; amended June 10, 1993, Pub. L. 103–43, title XX, § 2008(i)(1)(B)(ii), 107 Stat. 212; Dec. 14, 1993, Pub. L. 103–183, title IV, § 402, 107 Stat. 2236.)

AMENDMENTS

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 102–531, § 304, which enacted this section.

Subsec. (*o*)(2). Pub. L. 103–183, § 402(a), substituted ''subsection (q)'' for ''subsection (s)''.

Subsec. (q). Pub. L. 103–183, § 402(b)(1), substituted ''through 1998'' for ''and 1995''.

Subsec. (r)(2). Pub. L. 103–183, § 402(b)(2), substituted ''1998'' for ''1995''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 247d. Public health emergencies

(a) Determination of existence of emergency; authorization to act

If the Secretary determines, after consultation with the Director of the National Institutes of Health, the Administrator of the Substance Abuse and Mental Health Services Administration, the Commissioner of the Food and Drug Administration, the Administrator of Health Resources and Services, or the Director of the Centers for Disease Control and Prevention, that—

(1) a disease or disorder presents a public health emergency, or

(2) a public health emergency otherwise exists and the Secretary has the authority to take action with respect to such emergency,

the Secretary, acting through such Directors, Administrator, or Commissioner, may take such action as may be appropriate to respond to the public health emergency, including making grants and entering into contracts and conducting and supporting investigations into the cause, treatment, or prevention of a disease or disorder described in paragraph (1).

(b) Public Health Emergency Fund; authorization of appropriations; annual report to Congress

(1) There is established in the Treasury a fund designated the ''Public Health Emergency Fund'' to be available to the Secretary without fiscal year limitation to carry out subsection (a) of this section. There is authorized to be appropriated to the fund $30,000,000 for fiscal year 1984. For fiscal year 1985 and each fiscal year thereafter there is authorized to be appropriated to the fund such sums as may be necessary to have $45,000,000 in the fund at the beginning of such fiscal year.

(2) The Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate not later than ninety days after the end of a fiscal year—

(A) on the expenditures made from the Public Health Emergency Fund in such fiscal year; and

(B) describing each public health emergency for which the expenditures were made and the activities undertaken with respect to each emergency which were conducted or supported by expenditures from the Fund.

(July 1, 1944, ch. 373, title III, § 319, as added July 13, 1983, Pub. L. 98–49, 97 Stat. 245; amended Nov. 4, 1988, Pub. L. 100–607, title II, § 256(a), 102 Stat. 3110; July 10, 1992, Pub. L. 102–321, title I, § 163(b)(2), 106 Stat. 376; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(2), 106 Stat. 3504.)

PRIOR PROVISIONS

A prior section 247d, act July 1, 1944, ch. 373, title III, § 319, formerly § 310, as added Sept. 25, 1962, Pub. L. 87–692, 76 Stat. 592; amended Aug. 5, 1965, Pub. L. 89–109, § 3, 79 Stat. 436; Oct. 15, 1968, Pub. L. 90–574, title II, § 201, 82 Stat. 1006; Mar. 12, 1970, Pub. L. 91–209, 84 Stat. 52; June 18, 1973, Pub. L. 93–45, title I, § 105, 87 Stat. 91; renumbered § 319, July 23, 1974, Pub. L. 93–353, title I, § 102(d), 88 Stat. 362; amended July 29, 1975, Pub. L. 94–63, title IV, § 401(a), title VII, § 701(c), 89 Stat. 334, 352; Apr. 22, 1976, Pub. L. 94–278, title VIII, § 801(a), 90 Stat. 414, relating to migrant health centers, was renumbered section 329 of act July 1, 1944, by Pub. L. 95–626 and transferred to section 254b of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'' in introductory provisions.

Pub. L. 102–321 substituted ''the Administrator of the Substance Abuse and Mental Health Services Administration'' for ''the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration'' in introductory provisions and ''Directors, Administrator'' for ''Director, Administrator'' in closing provisions.

1988—Subsec. (a). Pub. L. 100–607, § 256(a)(1), inserted ''the Administrator of Health Resources and Services,'' after ''and Drug Administration,''.

Subsec. (b)(1). Pub. L. 100–607, § 256(a)(2), substituted ''$45,000,000'' for second reference to ''$30,000,000''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 238m of this title.

PART C—HOSPITALS, MEDICAL EXAMINATIONS, AND MEDICAL CARE

AMENDMENTS

1978—Pub. L. 95–626, title I, § 113(a)(1), Nov. 10, 1978, 92 Stat. 3562, struck out heading ''Subpart I—General Provisions''.

1976—Pub. L. 94–484, title IV, § 407(a), Oct. 12, 1976, 90 Stat. 2268, added heading ''Subpart I—General Provisions''.

§ 247e. Hansen's disease program

(a) Care and treatment

The Secretary—

(1) shall provide care and treatment (including outpatient care) without charge at the Gillis W. Long Hansen's Disease Center in Carville, Louisiana, to any person suffering from Hansen's disease who needs and requests care and treatment for that disease; and

(2) may provide for the care and treatment (including outpatient care) of Hansen's disease without charge for any person who requests such care and treatment.

(b) Payments to Board of Health of Hawaii

The Secretary shall make payments to the Board of Health of Hawaii for the care and treatment (including outpatient care) in its facilities of persons suffering from Hansen's disease at a rate, determined from time to time by the Secretary, which shall, subject to the availability of appropriations, be approximately equal to the operating cost per patient of those facilities, except that the rate determined by the Secretary shall not be greater than the comparable operating cost per Hansen's disease patient at the Gillis W. Long Hansen's Disease Center in Carville, Louisiana.

(July 1, 1944, ch. 373, title III, § 320, formerly § 331, 58 Stat. 698; June 25, 1948, ch. 654, § 4, 62 Stat. 1018; June 25, 1952, ch. 460, 66 Stat. 157; July 12, 1960, Pub. L. 86–624, § 29(b), 74 Stat. 419; renumbered § 339, Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(2), 90 Stat. 2268; renumbered § 320, and amended Nov. 10, 1978, Pub. L. 95–626, title I, § 105(a), 92 Stat. 3560; July 10, 1979, Pub. L. 96–32, § 7(b), 93 Stat. 84; Oct. 7, 1985, Pub. L. 99–117, § 2(a), 99 Stat. 491.)

CODIFICATION

Section was classified to section 255 of this title prior to its renumbering by Pub. L. 95–626.

AMENDMENTS

1985—Pub. L. 99–117 substituted ''Hansen's disease program'' for ''Receipt, apprehension, detention, treatment, and release of lepers'' in section catchline.

Subsec. (a). Pub. L. 99–117 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Service shall, in accordance with regulations, receive into any hospital of the Service suitable for his accommodation any person afflicted with leprosy who presents himself for care, detention, or treatment, or who may be apprehended under subsection (b) of this section or section 264 of this title, and any person afflicted with leprosy duly consigned to the care of the Service by the proper health authority of any State. The Surgeon General is authorized, upon the request of any health authority, to send for any person within the jurisdiction of such authority who is afflicted with leprosy and to convey such person to the appropriate hospital for detention and treatment. When the transportation of any such person is undertaken for the protection of the public health the expense of such removal shall be met from funds available for the maintenance of hospitals of the Service. Such funds shall also be available, subject to regulations, for transportation of recovered indigent leper patients to their homes, including subsistence allowance while traveling. When so provided in appropriations available for any fiscal year for the maintenance of hospitals of the Service, the Surgeon General is authorized and directed to make payments to the Board of Health of Hawaii for the care and treatment in its facilities of persons afflicted with leprosy at a per diem rate, determined from time to time by the Surgeon General, which shall, subject to the availability of appropriations, be approximately equal to the per diem operating cost per patient of such facilities, except that such per diem rate shall not be greater than the comparable per diem operating cost per patient at the National Leprosarium, Carville, Louisiana.''

Subsec. (b). Pub. L. 99–117 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Surgeon General may provide by regulation for the apprehension, detention, treatment, and release of persons being treated by the Service for leprosy.''

1979—Subsec. (a). Pub. L. 96–32 substituted ''apprehended under subsection (b) of this section or section 264 of this title'' for ''apprehended under section 256 or 264 of this title''.

1978—Pub. L. 95–626 designated existing provisions as subsec. (a) and added subsec. (b).

1960—Pub. L. 86–624 struck out '', Territory, or the District of Columbia'' after ''proper health authority of any State'', and substituted ''Board of Health of Hawaii'' for ''Board of Health of the Territory of Hawaii''.

1952—Act June 25, 1952, provided for payments to Hawaiian Board of Health for expenditures made by them in care and treatment of patients.

1948—Act June 25, 1948, authorized payment of travel expenses of indigent leper patients.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86–624, set out as a note under section 201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254e of this title.

§ 248. Control and management of hospitals; furnishing prosthetic and orthopedic devices; transfer of patients; disposal of articles produced by patients; disposal of money and effects of deceased patients; payment of burial expenses

The Surgeon General, pursuant to regulations, shall—

(a) Control, manage, and operate all institutions, hospitals, and stations of the Service, including minor repairs and maintenance, and provide for the care, treatment, and hospitalization of patients, including the furnishing of prosthetic and orthopedic devices; and from time to time, with the approval of the President, select suitable sites for and establish such additional institutions, hospitals, and stations in the States and possessions of the United States as in his judgment are necessary to enable the Service to discharge its functions and duties;

(b) Provide for the transfer of Public Health Service patients, in the care of attendants where necessary, between hospitals and stations operated by the Service or between such hospitals and stations and other hospitals and stations in which Public Health Service patients may be received, and the payment of expenses of such transfer;

(c) Provide for the disposal of articles produced by patients in the course of their curative treatment, either by allowing the patient to retain such articles or by selling them and depositing the money received therefor to the credit of the appropriation from which the materials for making the articles were purchased;

(d) Provide for the disposal of money and effects, in the custody of the hospitals or stations, of deceased patients; and

(e) Provide, to the extent the Surgeon General determines that other public or private funds are not available therefor, for the payment of expenses of preparing and transporting the remains of, or the payment of reasonable burial expenses for, any patient dying in a hospital or station.

(July 1, 1944, ch. 373, title III, § 321, 58 Stat. 695; June 25, 1948, ch. 654, § 2, 62 Stat. 1017; Nov. 9, 1978, Pub. L. 95–622, title II, § 266, 92 Stat. 3437.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–622 struck out '', and tobacco'' after ''orthopedic devices''.

1948—Subsec. (a). Act June 25, 1948, § 2(a), amended subsec. (a) generally, continuing authority of Service to furnish tobacco to patients being treated by it.

Subsec. (e). Act June 25, 1948, § 2(b), added subsec. (e).

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254e, 260a of this title.

§ 248a. Closing or transfer of hospitals; reduction of services; Congressional authorization required

(a) Except as provided in subsection (b) of this section, the Secretary of Health and Human Services shall take such action as may be necessary to assure that the hospitals of the Public Health Service, located in Seattle, Washington, Boston, Massachusetts, San Francisco, California, Galveston, Texas, New Orleans, Louisiana, Baltimore, Maryland, Staten Island, New York, and Norfolk, Virginia, shall continue—

(1) in operation as hospitals of the Public Health Service,

(2) to provide for all categories of individuals entitled or authorized to receive care and treatment at hospitals or other stations of the Public Health Service inpatient, outpatient, and other health care services in like manner as such services were provided on January 1, 1973, to such categories of individuals at the hospitals of the Public Health Service referred to in the matter preceding paragraph (1) and at a level and range at least as great as the level and range of such services which were provided (or authorized to be provided) by such hospitals on such date, and

(3) to conduct at such hospitals a level and range of other health-related activities (including training and research activities) which is not less than the level and range of such activities which were being conducted on January 1, 1973, at such hospitals.

(b)(1) The Secretary may—

(A) close or transfer control of a hospital of the Public Health Service to which subsection (a) of this section applies,

(B) reduce the level and range of health care services provided at such a hospital from the level and range required by subsection (a)(2) of this section or change the manner in which such services are provided at such a hospital from the manner required by such subsection, or

(C) reduce the level and range of the other health-related activities conducted at such hospital from the level and range required by subsection (a)(3) of this section,

if Congress by law (enacted after November 16, 1973) specifically authorizes such action.

(2) Any recommendation submitted to the Congress for legislation to authorize an action described in paragraph (1) with respect to a hospital of the Public Health Service shall be accompanied by a copy of the written, unqualified approval of the proposed action submitted to the Secretary by each (A) section 314(a) State health planning agency whose section 314(a) plan covers (in whole or in part) the area in which such hospital is located or which is served by such hospital, and (B) section 314(b) areawide health planning agency whose section 314(b) plan covers (in whole or in part) such area.

(3) For purposes of this subsection, the term ''section 314(a) State health planning agency'' means the agency of a State which administers or supervises the administration of a State's health planning functions under a State plan approved under section 314(a) of the Public Health Service Act (referred to in paragraph (2) as a ''section 314(a) plan''); and the term ''section 314(b) areawide health planning agency'' means a public or nonprofit private agency or organization which has developed a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b) of that Act (referred to in paragraph (2) as a ''section 314(b) plan'').

(Pub. L. 93–155, title VIII, § 818(a), (b), Nov. 16, 1973, 87 Stat. 622; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Section 314 of the Public Health Service Act, referred to in subsec. (b)(2), (3), is classified to section 246 of this title.

CODIFICATION

Section was enacted as part of the Department of Defense Appropriation Authorization Act, 1974, and not as part of the Public Health Service Act which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in Pub. L. 92–585, § 3, Oct. 27, 1972, 86 Stat. 1292, setting out procedure to be followed in closing or transferring control of hospitals or other health care delivery facilities of Public Health Service, prior to repeal by Pub. L. 93–155, § 818(c).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 248b of this title.

§ 248b. Transfer or financial self-sufficiency of public health service hospitals and clinics

(a) Deadline for closure, transfer, or financial self-sufficiency

The Secretary of Health and Human Services (hereinafter in this subtitle referred to as the ''Secretary'') shall, in accordance with this section and notwithstanding section 248a of this title, provide for the closure, transfer, or financial self-sufficiency of all hospitals and other stations of the Public Health Service (hereinafter in this subtitle referred to as the ''Service'') not later than September 30, 1982.

(b) Proposals for transfer or financial self-sufficiency

Not later than July 1, 1981, the Secretary shall notify each Service hospital and other station, and the chief executive officer of each State and of each locality in which such a hospital or other station is located, that the Secretary will accept proposals for the transfer of each such hospital and station from the Service to a public (including Federal) or nonprofit private entity or for the achievement of financial self-sufficiency of each such hospital and station not later than September 30, 1982. No such proposal shall be considered by the Secretary if it is submitted later than September 1, 1981.

(c) Evaluation of proposals

The Secretary shall evaluate promptly each proposal submitted under subsection (b) of this section with respect to a hospital or other station and determine, not later than September 30, 1981, whether or not under such proposal the hospital or station—

(1) will be maintained as a general health care facility providing a range of services to the population within its service area,

(2) will continue to make services available to existing patient populations, and

(3) has a reasonable expectation of financial viability and, in the case of a hospital or station that is not proposed to be transferred, of financial self-sufficiency.

Paragraph (1) shall not apply in the case of a proposal for the transfer of a discrete, minor, freestanding part of a hospital or station to a local public entity for the purpose of continuing the provision of services to refugees.

(d) Rejection or approval of proposal

(1) If the Secretary determines that a proposal for a hospital or other station does not meet the standards of subsection (c) of this section or if there is no proposal submitted under subsection (b) of this section with respect to a hospital or other station, the Secretary shall provide for the closure of the hospital or station by not later than October 31, 1981.

(2) If the Secretary determines that a proposal for a hospital or other station meets the standards of subsection (c) of this section, the Secretary shall take such steps, within the amounts available through appropriations, as may be necessary and proper—

(A) to operate (or participate or assist in the operation of) the hospital or station by the Service until the transfer is accomplished or financial self-sufficiency is achieved,

(B) to bring the hospital or station into compliance with applicable licensure, accreditation, and local medical practice standards, and

(C) to provide for such other legal, administrative, personnel, and financial arrangements (including allowing payments made with respect to services provided by the hospital or station to be made directly to that hospital or station) as may be necessary to effect a timely and orderly transfer of such hospital or station (including the land, building, and equipment thereof) from the Service, or for the financial self-sufficiency of the hospital or station, not later than September 30, 1982.

(e) Establishment of identifiable administrative unit

There is established, within the Office of the Assistant Secretary for Health of the Department of Health and Human Services, an identifiable administrative unit which shall have direct responsibility and authority for overseeing the activities under this section.

(f) Finding of financial self-sufficiency

For purposes of this section, a hospital or station cannot be found to be financially self-sufficient if the hospital or station is relying, in whole or in part, on direct appropriated funds for its continued operations.

(Pub. L. 97–35, title IX, § 987, Aug. 13, 1981, 95 Stat. 603.)

REFERENCES IN TEXT

This subtitle, referred to in subsec. (a), is subtitle J of title IX of Pub. L. 97–35, §§ 985 to 988, Aug. 13, 1981, 95 Stat. 602, which enacted this section, amended sections 201, 249, and 254e of this title, and enacted provisions set out as notes under this section and section 249 of this title. For complete classification of this subtitle to the Code, see Tables.

Section 248a of this title, referred to in subsec. (a), was in the original ''section 818 of Public Law 93–155'', meaning section 818 of Pub. L. 93–155, title VIII, Nov. 16, 1973, 87 Stat. 622, which enacted section 248a of this title and repealed section 3 of Pub. L. 92–585, Oct. 27, 1972, 86 Stat. 1292.

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1981, and not as part of the Public Health Service Act which comprises this chapter.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 985 of Pub. L. 97–35 provided that:
''(a) Congress finds that—

''(1) because of national budgetary considerations, it has become necessary to terminate Federal appropriations for Public Health Service hospitals and clinics,

''(2) with proper planning and coordination, some of these hospitals and clinics could be transferred to State, local, or private control or become financially self-sufficient and continue to provide effective and efficient health care to individuals in the areas in which they are located,

''(3) a precipitous closure of these hospitals and clinics will preclude the possibility of such orderly transfer to entities which are willing and able to take over operations at such facilities and will cause unnecessary and costly hardships on the patients and staffs at such facilities and on the communities in which the facilities are located, and

''(4) it is in the national interest, consistent with sound budgetary considerations, to assist in the orderly and prompt transfer of such operations to State, local, or private operation or in the achievement of financial self-sufficiency where feasible.

''(b) The purposes of this subtitle [enacting this section, amending sections 201, 249, and 254e of this title, and enacting provisions set out as notes under section 249 of this title] are—

''(1) to provide for the prompt and orderly closure by October 31, 1981, of Public Health Service hospitals and clinics which cannot reasonably be transferred to State, local, or private operation or become financially self-sufficient and for the transfer or achievement of financial self-sufficiency by September 30, 1982, of those hospitals and clinics which can be so transferred or which can achieve such financial self-sufficiency, and

''(2) to provide for transitional assistance for merchant seamen whose entitlement to receive free care through Public Health Service hospitals and clinics is repealed and who are hospitalized at the end of fiscal year 1981 and require continuing hospitalization.''

§ 248c. Continued use of former Public Health Service facilities

(a) Facilities providing medical or dental care to members and former members of uniformed services and dependents

Any Public Health Service hospital or other station which was transferred to a public or nonprofit private entity pursuant to the provisions of section 248b of this title shall be deemed to be a facility of the uniformed services for the purposes of chapter 55 of title 10, if such hospital or other station was, on the day before the date of the transfer, a facility approved under such chapter to provide medical and dental care to members and former members of the uniformed services and their dependents.

(b) Termination of approved status

The Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy may terminate, for purposes of chapter 55 of title 10, the approved status, of any facility described in subsection (a) of this section to furnish medical or dental care to members and former members of the uniformed services and their dependents as provided for in section 248d(e) of this title.

(c) Reimbursement of approved facilities for medical and dental care provided to members and former members of uniformed services and dependents

The Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy shall reimburse any facility described in subsection (a) of this section for medical and dental care provided by such facility to members and former members of the uniformed services and their dependents who receive such care under chapter 55 of title 10. The rates of reimbursement shall be negotiated and agreed upon by the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy, and the appropriate officials representing the facility concerned. The rates of reimbursement shall be based upon medical and dental care costs in the area in which the facility concerned is located.

(Pub. L. 97–99, title IX, § 911, Dec. 23, 1981, 95 Stat. 1386; Pub. L. 98–94, title XII, § 1252(g), formerly § 1252(f), Sept. 24, 1983, 97 Stat. 699, renumbered § 1252(g), Pub. L. 101–510, div. A, title VII, § 718(b)(1), Nov. 5, 1990, 104 Stat. 1586; Pub. L. 98–557, § 17(f)(1), Oct. 30, 1984, 98 Stat. 2868.)

CODIFICATION

Section was enacted as part of the Military Construction Authorization Act, 1982, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98–557 inserted references to the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy.

1983—Subsec. (b). Pub. L. 98–94 substituted reference to section 248d(e) of this title for a description of the procedure for terminating the approved status of facilities described in subsec. (a) for the former provision which had referred to the termination of the approved status of such facilities at any time after the expiration of three years after the date of the transfer of such facility under section 248b of this title, with the termination of such status in the case of any such facility to be effected only by an order jointly issued by the Secretary of Defense and the Secretary of Health and Human Services which identified the facility whose approved status was being terminated and specified the date on which such status was being terminated.

ADMINISTRATION OF MANAGED-CARE MODEL OF UNIFORMED SERVICES TREATMENT FACILITIES

Pub. L. 102–190, div. A, title VII, § 721, Dec. 5, 1991, 105 Stat. 1405, provided that:

''(a) DESIGNATION OF SATELLITE FACILITIES AS UNIFORMED SERVICES TREATMENT FACILITIES.—(1) Subject to paragraph (3), the Secretary of Defense may designate a satellite facility described in paragraph (2) as a facility of the uniformed services for the purposes of chapter 55 of title 10, United States Code.

''(2) A satellite facility referred to in paragraph (1) means a facility that—

''(A) is owned, operated, or staffed by a facility described in section 911(c) of the Military Construction Authorization Act, 1982 (42 U.S.C. 248c(c)); and

''(B) pursuant to an agreement entered into with the Secretary of Defense, is authorized for a designated service area to provide medical and dental care for persons eligible to receive such care in facilities of the uniformed services under chapter 55 of title 10, United States Code.

''(3) The authority of the Secretary of Defense under paragraph (1) shall take effect on the date on which the Secretary certifies to Congress that the managed-care delivery and reimbursement model required under section 718(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1587) has been fully implemented.

''(b) TERMINATION OF DESIGNATION.—The designation of a satellite facility under subsection (a) may be terminated in accordance with the procedure provided under section 1252(e) of the Department of Defense Authorization Act, 1984 (42 U.S.C. 248d(e)).

''(c) REIMBURSEMENT FOR CARE.—A facility described in section 911(c) of the Military Construction Authorization Act, 1982 (42 U.S.C. 248c(c)), may be reimbursed for medical and dental care provided by that facility or a satellite facility of that facility designated under subsection (a) to persons eligible to receive such care in facilities of the uniformed services under chapter 55 of title 10, United States Code. The reimbursement shall be made pursuant to an agreement with the Secretary of Defense as part of the managed-care delivery and reimbursement model required under section 718(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1587).

''(d) PREEMPTION OF STATE AND LOCAL LAWS.—A law or regulation of a State or local government relating to health insurance or health maintenance organizations shall not apply to a Uniformed Services Treatment Facility that enters into an agreement with the Secretary of Defense under section 718(c) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 104 Stat. 1587) to the extent that—

''(1) the law or regulation is inconsistent with a specific provision of the agreement or a regulation prescribed by the Secretary relating to the managed-care delivery and reimbursement model; or

''(2) the Secretary determines that preemption of the law or regulation is necessary to implement or operate the managed-care delivery and reimbursement model referred to in that section or to achieve some other Federal interest.''

MANAGED-CARE DELIVERY AND REIMBURSEMENT MODEL FOR THE UNIFORMED SERVICES TREATMENT FACILITIES

Section 718(c) of Pub. L. 101–510, as amended by Pub. L. 102–484, div. A, title VII, §716, Oct. 23, 1992, 106 Stat. 2438; Pub. L. 103–160, div. A, title VII, §718, Nov. 30, 1993, 107 Stat. 1694, provided that:

''(1) TIME FOR OPERATION.—Not later than the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Defense shall begin operation of a managed-care delivery and reimbursement model that will continue to utilize the Uniformed Services Treatment Facilities in the military health services system. A participation agreement negotiated between a Uniformed Services Treatment Facility and the Secretary of Defense under this subsection shall not be subject to the Federal Acquisition Regulation issued pursuant to section 25(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)).

''(2) COPAYMENTS.—A Uniformed Services Treatment Facility for which there exists a managed-care plan developed as part of the model required by this subsection may impose reasonable charges for inpatient and outpatient care provided to all categories of beneficiaries enrolled in the plan. The schedule and application of such charges shall be in accordance with the terms and conditions specified in the plan.

''(3) EVALUATION OF PERFORMANCE UNDER THE MODEL.—(A) The Secretary of Defense shall utilize a federally funded research and development center to conduct an independent evaluation of the performance of each Uniformed Services Treatment Facility operating under a managed-care plan developed as part of the model required by this subsection. The evaluation shall include an assessment of the efficiency of the Uniformed Services Treatment Facility in providing health care under the plan. The assessment shall be made in the same manner as provided in section 712(a) of the National Defense Authorization Act for Fiscal Year 1993 [Pub. L. 102–484] (10 U.S.C. 1073 note) for expansion of the CHAMPUS reform initiative.

''(B) Not later than December 31, 1995, the center conducting the evaluation and assessment shall submit to the Secretary of Defense and to Congress a report on the results of the evaluation and assessment. The report shall include such recommendations regarding the managed-care delivery and reimbursement model under this subsection as the entity considers to be appropriate.

''(4) DEFINITION.—For purposes of this subsection, the term 'Uniformed Services Treatment Facility' means a facility described in section 911(a) of the Military Construction Authorization Act, 1982 (42 U.S.C. 248c(a)).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 248d of this title.

§ 248d. Public Health Service facilities providing medical care for dependents, members, and former members of uniformed services

(a) Demonstration projects; comparisons with care furnished by contract providers

The Secretary of Defense, in consultation with the Secretary of Health and Human Services and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy, shall conduct demonstration projects for the purpose of comparing and evaluating the cost-effectiveness, accessibility, patient acceptance, and the quality of medical care contracted for by the Secretary of Defense under sections 1079 and 1086 of title 10, with the medical care provided in those facilities deemed to be facilities of the uniformed services by virtue of section 248c of this title. The Secretary of Defense shall begin conducting such projects within one year after September 24, 1983, and continue conducting such projects for not less than three years.

(b) Alternative payment mechanisms

The projects carried out by the Secretary of Defense under this subsection shall utilize various alternative mechanisms for the payment of medical services provided eligible persons, including capitation, prospective payment, all-inclusive fee-for-service charges, and other concepts and programs consistent with the purpose of this section.

(c) Designation of additional civilian medical facilities

If the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy determine such action is necessary in order to permit a meaningful evaluation of alternative methods of providing medical care to persons eligible for such care under sections 1079 and 1086 of title 10, they may jointly designate additional civilian medical facilities to be facilities of the uniformed services for the purposes of section 1079 of such title. The Secretary may designate a facility under the authority of this subsection for such purposes only if such action is agreed to by the governing body of the facility.

(d) Reports to Congress on study and project results

The Secretary of Defense, in consultation with the Secretary of Health and Human Services and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy, shall submit annually to the Committees on Appropriations and on Armed Services of the Senate and the House of Representatives a written report on the results of the studies and projects

carried out under this section. The first such report shall be submitted not later than one year after September 24, 1983. The last such report shall be submitted not later than one year after the completion of all such studies and projects.

(e) Termination of status

The Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy may terminate, for purposes of chapter 55 of title 10, the status of any facility referred to in subsection (a) or (c) of this section to furnish medical or dental care to members and former members of the uniformed services or their dependents, and such termination may become effective at any time after December 31, 1996. The termination of such status in the case of any such facility may be effected only by an order jointly issued by the Secretary of Defense, the Secretary of Health and Human Services, and the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy which (1) identifies the facility whose status is being terminated, (2) specifies the date on which such status is being terminated, and (3) certifies that more cost-effective medical and dental care for members and former members of the uniformed services or their dependents is available elsewhere in the same geographic area. A copy of each such order shall be furnished to the affected facility and the Committees on Appropriations and on Armed Services of the Senate and the House of Representatives and shall become effective in accordance with the terms of the notice, but not earlier than six months following the date on which a copy of the notice has been furnished to the facility and the committees. Each such copy of the order shall include a copy of the certification required in clause (3) of the second sentence of this subsection and shall contain cost data substantiating the termination decision and identifying how more cost-effective care could be provided to the affected individuals. Any facility described in subsection (a) of this section or designated under subsection (c) of this section may terminate its status or designation made under that subsection at any time after the expiration of six months following the date on which a copy of the order terminating the status or designation has been furnished the facility.

(f) Limitation on expenditures

The total amount of expenditures by the Secretary of Defense to carry out this section and section 248c of this title may not exceed $154,000,000 for fiscal year 1991.

(Pub. L. 98–94, title XII, §1252(a)–(e), Sept. 24, 1983, 97 Stat. 698; Pub. L. 98–557, §17(f)(2), Oct. 30, 1984, 98 Stat. 2868; Pub. L. 99–661, div. A, title VII, §706, Nov. 14, 1986, 100 Stat. 3905; Pub. L. 100–456, div. A, title VI, §645, Sept. 29, 1988, 102 Stat. 1988; Pub. L. 101–510, div. A, title VII, §718(a), (b)(2), Nov. 5, 1990, 104 Stat. 1586, 1587; Pub. L. 102–25, title VII, §705(h), Apr. 6, 1991, 105 Stat. 121; Pub. L. 103–160, div. A, title VII, §717(a), Nov. 30, 1993, 107 Stat. 1693.)

CODIFICATION

Section was enacted as part of the Department of Defense Authorization Act, 1984, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1993—Subsec. (e). Pub. L. 103–160 substituted ''1996'' for ''1993''.

1991—Subsec. (f). Pub. L. 102–25 inserted ''by the Secretary of Defense'' after ''expenditures''.

1990—Subsec. (e). Pub. L. 101–510, §718(a), substituted ''1993'' for ''1990''.

Subsec. (f). Pub. L. 101–510, §718(b)(2), added subsec. (f).

1988—Subsec. (e). Pub. L. 100–456 substituted ''1990'' for ''1988'' in first sentence, substituted ''which (1) identifies the facility whose status is being terminated, (2) specifies the date on which such status is being terminated, and (3) certifies that more cost-effective medical and dental care for members and former members of the uniformed services or their dependents is available elsewhere in the same geographic area'' for ''which identifies the facility whose status is being terminated and specifies the date on which such status is being terminated'' in second sentence, and inserted after third sentence ''Each such copy of the order shall include a copy of the certification required in clause (3) of the second sentence of this subsection and shall contain cost data substantiating the termination decision and identifying how more cost-effective care could be provided to the affected individuals.''

1986—Subsec. (e). Pub. L. 99–661 substituted ''1988'' for ''1987''.

1984—Subsecs. (a), (c) to (e). Pub. L. 98–557 inserted references to the Secretary of Transportation when the Coast Guard is not operating as a service in the Navy.

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 248c of this title.

§ 249. Medical care and treatment of quarantined and detained persons

(a) Persons entitled to treatment

Any person when detained in accordance with quarantine laws, or, at the request of the Immigration and Naturalization Service, any person detained by that Service, may be treated and cared for by the Public Health Service.

(b) Temporary treatment in emergency cases

Persons not entitled to treatment and care at institutions, hospitals, and stations of the Service may, in accordance with regulations of the Surgeon General, be admitted thereto for temporary treatment and care in case of emergency.

(c) Authorization for outside treatment

Persons whose care and treatment is authorized by subsection (a) of this section may, in accordance with regulations, receive such care and treatment at the expense of the Service from public or private medical or hospital facilities other than those of the Service, when authorized by the officer in charge of the station at which the application is made.

(July 1, 1944, ch. 373, title III, §322, 58 Stat. 696; June 25, 1948, ch. 654, §3, 62 Stat. 1018; Aug. 8, 1956, ch. 1036, §3, 70 Stat. 1120; Aug. 13, 1964, Pub. L. 88–424, 78 Stat. 398; Dec. 5, 1967, Pub. L. 90–174, §10(c), 81 Stat. 541; Aug. 13, 1981, Pub. L. 97–35, title IX, §986(a), (b)(1), (2), 95 Stat. 603.)

AMENDMENTS

1981—Subsec. (a). Pub. L. 97–35, § 986(a), (b)(2), redesignated subsec. (c) as (a). Former subsec. (a), which related to persons entitled to medical, etc., treatment and hospitalization, was struck out.

Subsec. (b). Pub. L. 97–35, § 986(a), (b)(2), redesignated subsec. (d) as (b). Former subsec. (b), which related to treatment for seamen on foreign-flag vessels, was struck out.

Subsec. (c). Pub. L. 97–35, § 986(b)(1), (2), redesignated subsec. (e) as (c), substituted ''subsection (a)'' for ''subsection (c)'', and struck out ''entitled to care and treatment under subsection (a) of this section and persons'' after ''Persons''. Former subsec. (c) redesignated (a).

Subsecs. (d), (e). Pub. L. 97–35, § 986(b)(2), redesignated subsecs. (d) and (e) as (b) and (c), respectively.

1967—Subsec. (a)(7). Pub. L. 90–174 substituted provision for entitlement to treatment and hospitalization of seamen-trainees, while participating in maritime training programs to develop or enhance their employability in maritime industry, for provision for such entitlement of employees and noncommissioned officers in field service of Public Health Service when injured or taken sick in line of duty.

1964—Subsec. (a)(8). Pub. L. 88–424 added par. (8).

1948—Subsec. (e). Act June 25, 1948, permitted Service to provide for care and treatment of individuals detained in accordance with our quarantine laws.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 986(c) of Pub. L. 97–35 provided that: ''The amendments and repeals made by this section [amending this section and sections 201 and 254e of this title] shall take effect on October 1, 1981.''

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department transferred, with a few exceptions, to Attorney General, with power vested in him to authorize their performance or the performance of any of his functions by any of such officers, agencies, and employees, by sections 1 and 2 of Reorg. Plan No. 2 of 1950, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, which were repealed by Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 662. Immigration and Naturalization Service, referred to in this section, is a bureau in Department of Justice.

CONTINUED CARE FOR MERCHANT SEAMEN HOSPITALIZED IN PUBLIC HEALTH SERVICE HOSPITALS

Section 988 of Pub. L. 97–35 provided that:

''(a) The Secretary shall provide, by contract or other arrangement with a Federal entity and without charge but subject to subsection (b), for the continuation of inpatient hospital services (and outpatient services related to the condition of hospitalization) to any individual who—

''(1) on September 30, 1981, is receiving inpatient hospital services at a Public Health Service hospital on the basis of the entitlement contained in section 322(a) of the Public Health Service Act (42 U.S.C. 249(a)), as such section was in effect on such date, for treatment of a condition,

''(2) requires continued hospitalization after such date for treatment of that condition (or requires outpatient services related to such condition), and

''(3) the Secretary determines has no other source of inpatient hospital services available for continued treatment of that condition.

''(b) Services may not be provided under subsection (a) to an individual after the earlier of—

''(1) September 30, 1982,

''(2) the end of the first 60-day consecutive period (beginning after September 30, 1981) during the entire period of which the individual is not an inpatient of a hospital.

''(c) Notwithstanding any other provision of law, the head of any Federal department or agency which provides, under other authority of law and through federal facilities, inpatient hospital services or outpatient services, or both, is authorized to provide inpatient hospital services (and related outpatient services) to individuals under contract or other arrangement with the Secretary pursuant to this section.''

FOREIGN SEAMEN

Section 810(c), formerly § 710(c), of act July 1, 1944, as renumbered by acts Aug. 13, 1946, ch. 958, § 5, 60 Stat. 1049; July 30, 1956, ch. 779, § 3(b), 70 Stat. 720, which gave foreign seamen the same benefits as accorded seamen employed on United States vessels under subsec. (a)(1) of this section, was repealed effective Jan. 25, 1948, by Joint Res. July 25, 1947, ch. 327, § 2(b), 61 Stat. 451.

CROSS REFERENCES

Third party tort liability to United States for hospital and medical care, except for treatment of seamen, see section 2651 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 238a, 238m, 254e, 2651 of this title; title 24 section 168b.

§ 250. Medical care and treatment of Federal prisoners

The Service shall supervise and furnish medical treatment and other necessary medical, psychiatric, and related technical and scientific services, authorized by section 4005 of title 18, in penal and correctional institutions of the United States.

(July 1, 1944, ch. 373, title III, § 323, 58 Stat. 697.)

CODIFICATION

''Section 4005 of title 18'' substituted in text for ''the Act of May 13, 1930, as amended (U.S.C., 1940 edition, title 18, secs. 751, 752)'' on authority of act June 25, 1948, ch. 645, 62 Stat. 684, the first section of which enacted Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

CROSS REFERENCES

Third party tort liability to United States for hospital and medical care, see section 2651 et seq. of this title.

Transfer of appropriations for Federal Prison System to Public Health Service for expenditure for medical relief for inmates, see section 250a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254e of this title.

§ 250a. Transfer of appropriations

There may be transferred to the Health Resources and Services Administration such

amounts as may be necessary, in the discretion of the Attorney General, for direct expenditures by that Administration for medical relief for inmates of Federal penal and correctional institutions.

(Aug. 26, 1994, Pub. L. 103–317, title I, 108 Stat. 1732.)

CODIFICATION

Section was enacted as part of the appropriation act cited as the credit to this section, and not as part of the Public Health Service Act which comprises this chapter.

Section was formerly classified to section 341h of title 5 prior to the general revision and enactment of Title 5, Government Organization and Employees, by Pub. L. 89–554, §1, Sept. 6, 1966, 80 Stat. 378.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior appropriation acts:

Oct. 27, 1993, Pub. L. 103–121, title I, 107 Stat. 1161.
Oct. 6, 1992, Pub. L. 102–395, title I, 106 Stat. 1836.
Oct. 28, 1991, Pub. L. 102–140, title I, 105 Stat. 790.
Nov. 5, 1990, Pub. L. 101–515, title II, 104 Stat. 2114.
Nov. 21, 1989, Pub. L. 101–162, title II, 103 Stat. 1000.
Oct. 1, 1988, Pub. L. 100–459, title II, 102 Stat. 2196.
Dec. 22, 1987, Pub. L. 100–202, §101(a) [title II], 101 Stat. 1329, 1329–13.
Oct. 18, 1986, Pub. L. 99–500, §101(b) [title II], 100 Stat. 1783–39, 1783–49, and Oct. 30, 1986, Pub. L. 99–591, §101(b) [title II], 100 Stat. 3341–39, 3341–49.
Dec. 13, 1985, Pub. L. 99–180, title II, 99 Stat. 1144.
Aug. 30, 1984, Pub. L. 98–411, title II, 98 Stat. 1556.
Nov. 28, 1983, Pub. L. 98–166, title II, 97 Stat. 1084.
Dec. 21, 1982, Pub. L. 97–377, §101(d) [S. 2956, title II], 96 Stat. 1866.
Dec. 15, 1981, Pub. L. 97–92, §101(h) [incorporating Pub. L. 96–536, §101*o*; H.R. 7584, title II], 95 Stat. 1190.
Dec. 16, 1980, Pub. L. 96–536, §101*o* [H.R. 7584, title II], 94 Stat. 3169.
Sept. 24, 1979, Pub. L. 96–68, title II, 93 Stat. 421.
Oct. 10, 1978, Pub. L. 95–431, title II, 92 Stat. 1028.
Aug. 2, 1977, Pub. L. 95–86, title II, 91 Stat. 427.
July 14, 1976, Pub. L. 94–362, title II, 90 Stat. 945.
Oct. 21, 1975, Pub. L. 94–121, title II, 89 Stat. 620.
Oct. 5, 1974, Pub. L. 93–433, title II, 88 Stat. 1194.
Nov. 27, 1973, Pub. L. 93–162, title II, 87 Stat. 643.
Oct. 25, 1972, Pub. L. 92–544, title II, 86 Stat. 1116.
Aug. 10, 1971, Pub. L. 92–77, title II, 85 Stat. 253.
Oct. 21, 1970, Pub. L. 91–472, title II, 84 Stat. 1047.
Dec. 24, 1969, Pub. L. 91–153, title II, 83 Stat. 410.
Aug. 9, 1968, Pub. L. 90–470, title II, 82 Stat. 675.
Nov. 8, 1967, Pub. L. 90–133, title II, 81 Stat. 418.
Nov. 8, 1966, Pub. L. 89–797, title II, 80 Stat. 1487.
Sept. 2, 1965, Pub. L. 89–164, title II, 79 Stat. 628.
Aug. 31, 1964, Pub. L. 88–527, title II, 78 Stat. 719.
Dec. 30, 1963, Pub. L. 88–245, title II, 77 Stat. 783.
Oct. 18, 1962, Pub. L. 87–843, title II, 76 Stat. 1088.
Sept. 21, 1961, Pub. L. 87–264, title II, 75 Stat. 553.
Aug. 31, 1960, Pub. L. 86–678, title II, 74 Stat. 563.
July 13, 1959, Pub. L. 86–84, title II, 73 Stat. 189.
June 30, 1958, Pub. L. 85–474, title II, 72 Stat. 252.
June 11, 1957, Pub. L. 85–49, title II, 71 Stat. 62.
June 20, 1956, ch. 414, title II, 70 Stat. 307.
July 7, 1955, ch. 279, title II, 69 Stat. 273.

§ 251. Medical examination and treatment of Federal employees; medical care at remote stations

(a) The Surgeon General is authorized to provide at institutions, hospitals, and station of the Service medical, surgical, and hospital services and supplies for persons entitled to treatment under subchapter I of Chapter 81 of title 5 and extensions thereof. The Surgeon General may also provide for making medical examinations of—

(1) employees of the Federal Government for retirement purposes;

(2) employees in the Federal classified service, and applicants for appointment, as requested by the Director of the Office of Personnel Management for the purpose of promoting health and efficiency;

(3) seamen for purposes of qualifying for certificates of service; and

(4) employees eligible for benefits under the Longshore and Harbor Workers' Compensation Act, as amended [33 U.S.C. 901 et seq.], as requested by any deputy commissioner thereunder.

(b) The Secretary is authorized to provide medical, surgical, and dental treatment and hospitalization and optometric care for Federal employees (as defined in section 8901(1) of title 5) and their dependents at remote medical facilities of the Public Health Service where such care and treatment are not otherwise available. Such employees and their dependents who are not entitled to this care and treatment under any other provision of law shall be charged for it at rates established by the Secretary to reflect the reasonable cost of providing the care and treatment. Any payments pursuant to the preceding sentence shall be credited to the applicable appropriation to the Public Health Service for the year in which such payments are received.

(July 1, 1944, ch. 373, title III, §324, 58 Stat. 697; Dec. 5, 1967, Pub. L. 90–174, §10(a), (b), 81 Stat. 540; 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Jan. 14, 1983, Pub. L. 97–468, title VI, §615(b)(4), 96 Stat. 2578; Sept. 28, 1984, Pub. L. 98–426, §27(d)(2), 98 Stat. 1654.)

REFERENCES IN TEXT

The Longshore and Harbor Workers' Compensation Act, as amended, referred to in subsec. (a)(4), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

CODIFICATION

In subsec. (a), ''subchapter I of chapter 81 of title 5'' substituted for ''United States Employees' Compensation Act'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (a)(4). Pub. L. 98–426 substituted ''Longshore and Harbor Workers' Compensation Act'' for ''Longshoremen's and Harbor Workers' Compensation Act''.

1983—Subsec. (a)(1). Pub. L. 97–468 struck out ''employees of the Alaska Railroad and'' before ''employees of the Federal Government''.

1967—Subsec. (a). Pub. L. 90–174, §10(a), designated existing provisions as subsec. (a) and redesignated cls. (a) to (d) as cls. (1) to (4), respectively.

Subsec. (b). Pub. L. 90–174, §10(b), added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–426 effective Sept. 28, 1984, see section 28(e)(1) of Pub. L. 98–426, set out as a note under section 901 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–468 effective on date of transfer of Alaska Railroad to the State [Jan. 5, 1985], pursuant to section 1203 of Title 45, Railroads, see section 615(b) of Pub. L. 97–468.

TRANSFER OF FUNCTIONS

''Director of the Office of Personnel Management'' substituted for ''Civil Service Commission'' in subsec. (a)(2), pursuant to Reorg. Plan No. 2 of 1978, §102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in United States Civil Service Commission to Director of Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

CROSS REFERENCES

Third party tort liability to United States for hospital and medical care, see section 2651 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254e of this title; title 24 section 168b.

§ 252. Medical examination of aliens

The Surgeon General shall provide for making, at places within the United States or in other countries, such physical and mental examinations of aliens as are required by the immigration laws, subject to administrative regulations prescribed by the Attorney General and medical regulations prescribed by the Surgeon General with the approval of the Secretary.

(July 1, 1944, ch. 373, title III, §325, 58 Stat. 697; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

REFERENCES IN TEXT

The immigration laws, referred to in text, mean chapter 12 (§1101 et seq.) of Title 8, Aliens and Nationality, and all laws, conventions, and treaties of the United States relating to the immigration, exclusion, deportation, or expulsion of aliens. See section 1101(a)(17) of Title 8.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254e of this title.

§ 253. Medical services to Coast Guard, National Oceanic and Atmospheric Administration, and Public Health Service

(a) Persons entitled to medical services

Subject to regulations of the President—

(1) commissioned officers, chief warrant officers, warrant officers, cadets, and enlisted personnel of the Regular Coast Guard on active duty, including those on shore duty and those on detached duty; and Regular, and temporary members of the United States Coast Guard Reserve when on active duty;

(2) commissioned officers, ships' officers, and members of the crews of vessels of the National Oceanic and Atmospheric Administration on active duty, including those on shore duty and those on detached duty; and

(3) commissioned officers of the Regular or Reserve Corps of the Public Health Service on active duty;

shall be entitled to medical, surgical, and dental treatment and hospitalization by the Service. The Surgeon General may detail commissioned officers for duty aboard vessels of the Coast Guard or the National Oceanic and Atmospheric Administration.

(b) Health care for involuntarily separated officers and dependents

(1) The Secretary may provide health care for an officer of the Regular or Reserve Corps involuntarily separated from the Service, and for any dependent of such officer, if—

(A) the officer or dependent was receiving health care at the expense of the Service at the time of separation; and

(B) the Secretary finds that the officer or dependent is unable to obtain appropriate insurance for the conditions for which the officer or dependent was receiving health care.

(2) Health care may be provided under paragraph (1) for a period of not more than one year from the date of separation of the officer from the Service.

(c) Examination of personnel of Service assigned to Coast Guard or National Oceanic and Atmospheric Administration

The Service shall provide all services referred to in subsection (a) of this section required by the Coast Guard or National Oceanic and Atmospheric Administration and shall perform all duties prescribed by statute in connection with the examinations to determine physical or mental condition for purposes of appointment, enlistment, and reenlistment, promotion and retirement, and officers of the Service assigned to duty on Coast Guard or National Oceanic and Atmospheric Administration vessels may extend aid to the crews of American vessels engaged in deep-sea fishing.

(July 1, 1944, ch. 373, title III, § 326, 58 Stat. 697; June 7, 1956, ch. 374, § 306(3), 70 Stat. 254; Apr. 8, 1960, Pub. L. 86–415, § 5(d), 74 Stat. 34; July 19, 1963, Pub. L. 88–71, § 2, 77 Stat. 83; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; Oct. 7, 1985, Pub. L. 99–117, § 5, 99 Stat. 492.)

AMENDMENTS

1985—Subsec. (b). Pub. L. 99–117 added subsec. (b).

1963—Subsec. (b). Pub. L. 88–71, § 2(a), repealed subsec. (b) which provided for treatment of dependents of personnel. See section 253a(b) of this title.

Subsec. (c). Pub. L. 88–71, § 2(b), inserted ''or Coast and Geodetic Survey'' after ''Coast Guard'' in two places.

1960—Subsec. (a). Pub. L. 86–415 struck out provisions which authorized medical, surgical, and dental care and hospitalization for retired personnel of Coast Guard, Coast and Geodetic Survey, and Public Health Service.

1956—Subsec. (b). Act June 7, 1956, repealed subsec. (b) except insofar as it related to dependent members of families of ships' officers and members of crews of vessels of Coast and Geodetic Survey.

CHANGE OF NAME

Coast and Geodetic Survey consolidated with Weather Bureau to form a new agency in Department of Commerce to be known as Environmental Science Services Administration, and commissioned officers of Survey transferred to ESSA, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, abolished Environmental Science Services Administration, established National Oceanic and Atmospheric Administration, and redesignated Commissioned Officer Corps of ESSA as Commissioned Officer Corps of NOAA. For further details, see Transfer of Functions note set out under section 851 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act June 7, 1956, effective six months after June 7, 1956, see section 307 of act June 7, 1956.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

CROSS REFERENCES

Members of Coast Guard Reserve entitled to benefits of subsecs. (a) and (b) of this section, see section 705 of Title 14, Coast Guard.

Third party tort liability to United States for hospital and medical care, see section 2651 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254e of this title; title 14 section 705.

§ 253a. Medical services to retired personnel of National Oceanic and Atmospheric Administration

(a) Eligibility

Subject to regulations of the President, retired ships' officers and retired members of the crews of vessels of the National Oceanic and Atmospheric Administration shall be entitled to medical, surgical, and dental treatment and hospitalization by the Public Health Service if the ships' officer or crew member, (1) was on active duty as a vessel employee of the National Oceanic and Atmospheric Administration on July 1, 1963, or on July 19, 1963, whichever is later, and his employment as a vessel employee was continuous from that date until retirement, or (2) was retired as a vessel employee of the National Oceanic and Atmospheric Administration on or before July 1, 1963, or on July 19, 1963, whichever is later.

(b) Treatment of dependents of personnel

Subject to regulations of the President, dependent members of families (as defined in such regulations) of ships' officers and members of crews of vessels of the National Oceanic and Atmospheric Administration, whether such, ships' officers and members of crew are on active duty or retired, shall be furnished medical advice and outpatient treatment by the Public Health Service and, if suitable accommodations are available, they shall also be furnished hospitalization by the Public Health Service if the ships' officer or crew member (1) was on active duty as a vessel employee of the National Oceanic and Atmospheric Administration on July 1, 1963, or on July 19, 1963, whichever is later, and his employment as a vessel employee has been continuous from that time, or (2) was on active duty as a vessel employee of the National Oceanic and Atmospheric Administration on July 1, 1963, or on July 19, 1963, whichever is later, and his employment as a vessel employee was continuous from that time until retirement, or (3) was retired as a vessel employee of the National Oceanic and Atmospheric Administration on or before July 1, 1963, or on July 19, 1963, whichever is later. When dependent members of families are hospitalized, a per diem charge, at such uniform rate as may be prescribed from time to time for the hospitalization of dependents of members of the uniformed services at hospitals of the uniformed services pursuant to section 1078(a) of title 10 shall be made.

(c) Identification

The National Oceanic and Atmospheric Administration shall furnish proper identification to those persons entitled to medical treatment under the provisions of this section.

(Pub. L. 88–71, § 1, July 19, 1963, 77 Stat. 83; 1965 Reorg. Plan No. 2, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318; 1970 Reorg. Plan No. 4, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090; Pub. L. 98–498, title III, § 310(b), (c), Oct. 19, 1984, 98 Stat. 2306, 2307.)

CODIFICATION

Section was not enacted as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–498, § 310(b), substituted ''by the Public Health Service if'' for ''at facilities of the Public Health Service: *Provided*, That''.

Subsec. (b). Pub. L. 98–498, § 310(c), struck out ''at its hospitals and relief stations'' before ''and, if suitable accommodations'' and substituted ''by the Public

Health Service if'' for ''at hospitals of the Public Health Service: *Provided,* That''.

CHANGE OF NAME

Coast and Geodetic Survey consolidated with Weather Bureau to form a new agency in Department of Commerce to be known as Environmental Science Services Administration, and commissioned officers of Survey transferred to ESSA, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, abolished Environmental Science Services Administration, established National Oceanic and Atmospheric Administration, and redesignated Commissioned Officer Corps of ESSA as Commissioned Officer Corps of NOAA. For further details, see Transfer of Functions note set out under section 851 of Title 33, Navigation and Navigable Waters.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EX. ORD. NO. 11160. REGULATIONS RELATING TO MEDICAL CARE FOR RETIRED PERSONNEL OF COAST AND GEODETIC SURVEY [NOW NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION] AND THEIR DEPENDENTS

Ex. Ord. No. 11160, July 6, 1964, 29 F.R. 9315, provided:

By virtue of the authority vested in me by the first section of the Act of July 19, 1963 (Public Law 88–71, 77 Stat. 83, 42 U.S.C. 253a) [this section], and as President of the United States, I hereby prescribe the following regulations relating to the medical care of certain retired personnel of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration] and dependents of Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration] ships' officers and crew members, both active and retired.

SECTION 1. *Definitions.* As used in these regulations, the term:

(1) ''Retired ships' officer and retired crew member'' means a noncommissioned ships' officer or crew member of a vessel of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration] who either was on active duty as a vessel employee on July 19, 1963, and whose employment as such vessel employee was continuous from that date until the date of his retirement, or who had retired as a vessel employee on or before July 19, 1963.

(2) ''Active duty ships' officer and active duty crew member'' means a noncommissioned ships' officer or crew member on active duty as a vessel employee of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration] on July 19, 1963, and whose employment as such vessel employee has been continuous from that time.

(3) ''Dependent members of families'', with respect to active duty or retired ships' officers or crew members, means:

(A) the lawful wife;

(B) the unmarried legitimate child, including an adopted child or stepchild, who has not passed his twenty-first birthday; and

(C) the father or mother, if in fact dependent upon such active duty or retired ships' officer or crew member for over one-half of his or her support.

(4) ''Relief stations'' means Public Health Service outpatient clinics and outpatient offices.

(5) ''Outpatient clinic'' means a full-time outpatient medical facility, operated in Federally owned or leased space under the supervision of a commissioned medical officer or a full-time civil service medical officer (formerly known as a Second-Class Relief Station).

(6) ''Outpatient office'' means a part-time outpatient facility serving all classes of legal beneficiaries, located in other than Federal space, and in the charge of a local private physician under contract to the Service to provide medical care on an annual or fee basis (formerly known as a Third-Class Relief Station).

SEC. 2. *Persons entitled to treatment.* The following persons shall be entitled to medical care under these regulations:

(1) Retired ships' officers and retired crew members of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration];

(2) Dependent members of families of persons described in paragraph (1) of this section;

(3) Dependent members of families of active duty ships' officers and crew members of the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration].

SEC. 3. *Application for treatment; evidence of eligibility.* Persons entitled to medical care under Section 2 of these regulations, when applying to Public Health Service medical care facilities for medical care, shall produce proper identification, as issued to them by the Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration], and such identification shall be accepted as evidence of eligibility for such medical care by the Service.

SEC. 4. *Extent of treatment; retired ships' officers and crew members.* Subject to the limitation imposed by paragraph (2) of this section, retired ships' officers and crew members entitled to medical care under these regulations shall be furnished:

(1) Medical, surgical, and dental treatment at hospitals, outpatient clinics, and outpatient offices of the Service, and hospitalization at hospitals of the Service. The Service will not be responsible for defraying the cost of hospitalization, medical services, and supplies procured elsewhere.

(2) Dental treatment shall be furnished to the extent that facilities and services at hospitals and outpatient clinics of the Service having full-time dental officers on duty are available to provide such treatment. At other Service facilities, dental treatment shall be limited to emergency measures necessary to relieve pain.

SEC. 5. *Extent of treatment; dependent members of families; charges.* (a) Dependent members of families shall be furnished medical advice and outpatient treatment at hospitals, outpatient clinics, and outpatient offices of the Service and, if suitable accommodations are available, shall be furnished hospitalization at hospitals of the Service. The Service will not be responsible for defraying the cost of hospitalization, medical services, and supplies procured elsewhere.

(b) For the purpose of this section—

(1) Medical advice and outpatient treatment may include such services and supplies as the Medical Officer in Charge may deem to be necessary for reasonable and adequate treatment.

(2) Hospitalization shall be furnished when, in the opinion of the Medical Officer in Charge, suitable accommodations are available and the condition of the patient is such as to require hospitalization. When hospitalization is authorized, it may include such services and supplies as the Medical Officer in Charge may deem to be necessary for reasonable and adequate treatment.

(c) Charges shall be made for hospitalization of dependent members of families at the same per diem rate as is prescribed for dependents of members of the uniformed services pursuant to section 1078(a) of Title 10 of the United States Code.

(d) Dental treatment may be furnished to the extent that facilities and services at hospitals and outpatient clinics of the Service having full-time dental officers are available to provide such treatment. Dental care will not be furnished under any circumstances in private facilities at the expense of the Service.

SEC. 6. *Prior orders.* Executive Order No. 9703 of March 12, 1946, prescribing regulations relating to medical

care of certain personnel of the Coast Guard, Coast and Geodetic Survey [now National Oceanic and Atmospheric Administration], Public Health Service, and former Lighthouse Service, is hereby amended to the extent necessary to conform it to the provisions of this order.

LYNDON B. JOHNSON.

§ 253b. Former Lighthouse Service employees; medical service eligibility

Subject to regulations of the President, lightkeepers, assistant lightkeepers, and officers and crews of vessels of the former Lighthouse Service, including any such persons who subsequent to June 30, 1939, were involuntarily assigned to other civilian duty in the Coast Guard, who were entitled to medical relief at hospitals and other stations of the Public Health Service prior to July 1, 1944, and who retired under the provisions of section 763 of title 33, shall be entitled to medical, surgical, and dental treatment and hospitalization at hospitals and other stations of the Public Health Service.

(Pub. L. 93–353, title I, § 108(a), July 23, 1974, 88 Stat. 371.)

CODIFICATION

Section was enacted as a part of Health Services Research, Health Statistics, and Medical Libraries Act of 1974, and also as a part of Health Services Research and Evaluation and Health Statistics Act of 1974, and not as a part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section 108(b) of Pub. L. 93–353 provided that: ''Subsection (a) [enacting this section] shall be effective from December 28, 1973.''

§ 254. Interdepartmental work

Nothing contained in this part shall affect the authority of the Service to furnish any materials, supplies, or equipment, or perform any work of services, requested in accordance with sections 1535 and 1536 of title 31, or the authority of any other executive department to furnish any materials, supplies, or equipment, or perform any work or services, requested by the Department of Health and Human Services for the Service in accordance with that section.

(July 1, 1944, ch. 373, title III, § 327, 58 Stat. 697; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695.)

CODIFICATION

''Sections 1535 and 1536 of title 31'' substituted in text for ''section 7 of the Act of May 21, 1920, as amended (U.S.C., 1940 edition, title 31, sec. 686)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 254a. Sharing of medical care facilities and resources

(a) Definitions

For purposes of this section—

(1) the term ''specialized health resources'' means health care resources (whether equipment, space, or personnel) which, because of cost, limited availability, or unusual nature, are either unique in the health care community or are subject to maximum utilization only through mutual use;

(2) the term ''hospital'', unless otherwise specified, includes (in addition to other hospitals) any Federal hospital.

(b) Statement of purpose; agreements or arrangements; reciprocity; reimbursement; credits

For the purpose of maintaining or improving the quality of care in Public Health Service facilities and to provide a professional environment therein which will help to attract and retain highly qualified and talented health personnel, to encourage mutually beneficial relationships between Public Health Service facilities and hospitals and other health facilities in the health care community, and to promote the full utilization of hospitals and other health facilities and resources, the Secretary may—

(1) enter into agreements or arrangements with schools of medicine, schools of osteopathic medicine, and with other health professions schools, agencies, or institutions, for such interchange or cooperative use of facilities and services on a reciprocal or reimbursable basis, as will be of benefit to the training or research programs of the participating agencies; and

(2) enter into agreements or arrangements with hospitals and other health care facilities for the mutual use or the exchange of use of specialized health resources, and providing for reciprocal reimbursement.

Any reimbursement pursuant to any such agreement or arrangement shall be based on charges covering the reasonable cost of such utilization, including normal depreciation and amortization costs of equipment. Any proceeds to the Government under this subsection shall be credited to the applicable appropriation of the Public Health Service for the year in which such proceeds are received.

(July 1, 1944, ch. 373, title III, § 327A, formerly § 328, as added Dec. 5, 1967, Pub. L. 90–174, § 7, 81 Stat. 539; renumbered § 327A, Nov. 10, 1978, Pub. L. 95–626, title I, § 113(a)(2), 92 Stat. 3562; amend-

ed Nov. 4, 1988, Pub. L. 100–607, title VI, § 629(a)(1), 102 Stat. 3146.)

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100–607 inserted ''schools of osteopathic medicine,'' after ''schools of medicine,'' and ''professions'' after ''health''.

AVAILABILITY OF APPROPRIATIONS FOR EXPENSES OF SHARING MEDICAL CARE FACILITIES AND RESOURCES

Pub. L. 102–394, title II, § 204, Oct. 6, 1992, 106 Stat. 1811, provided that: ''Funds advanced to the National Institutes of Health Management Fund from appropriations in this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be available for the expenses of sharing medical care facilities and resources pursuant to section 327A of the Public Health Service Act [42 U.S.C. 254a].''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, § 204, Nov. 26, 1991, 105 Stat. 1126.

Pub. L. 101–517, title II, § 204, Nov. 5, 1990, 104 Stat. 2208.

Pub. L. 101–166, title II, § 205, Nov. 21, 1989, 103 Stat. 1177.

Pub. L. 100–202, § 101(h) [title II, § 205], Dec. 22, 1987, 101 Stat. 1329–256, 1329–274.

Pub. L. 99–500, § 101(i) [H.R. 5233, title II, § 205], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, § 101(i) [H.R. 5233, title II, § 205], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title II, § 205, Dec. 12, 1985, 99 Stat. 1119.

Pub. L. 98–619, title II, § 205, Nov. 8, 1984, 98 Stat. 3321.

Pub. L. 98–139, title II, § 205, Oct. 31, 1983, 97 Stat. 887.

Pub. L. 97–377, title I, § 101(e)(1) [title II, § 205], Dec. 21, 1982, 96 Stat. 1878, 1894.

PART D—PRIMARY HEALTH CARE

SUBPART I—PRIMARY HEALTH CENTERS

AMENDMENTS

1978—Pub. L. 95–626, title I, § 113(a)(3), Nov. 10, 1978, 92 Stat. 3562, added heading ''Part D—Primary Health Care'' and, immediately under it, heading ''Subpart I—Primary Health Centers''.

§ 254a–1. Repealed. Pub. L. 99–117, § 12(c), Oct. 7, 1985, 99 Stat. 495

Section, act July 1, 1944, ch. 373, title III, § 328, as added Nov. 10, 1978, Pub. L. 95–626, title I, § 114, 92 Stat. 3563, and amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to hospital-affiliated primary care centers.

A prior section 328 of act July 1, 1944, ch. 373, title III, as added Dec. 5, 1967, Pub. L. 90–174, § 7, 81 Stat. 539, which was classified to section 254a of this title, was renumbered as section 327A of act July 1, 1944, by Pub. L. 95–626, title I, § 113(a)(2), Nov. 20, 1978, 92 Stat. 3562.

§ 254b. Migrant health centers

(a) Definitions

For purposes of this section:

(1) The term ''migrant health center'' means an entity which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides—

(A) primary health services,

(B) as may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health services,

(C) referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services,

(D) environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health,

(E) as may be appropriate for particular centers (as determined by the centers), infectious and parasitic disease screening and control,

(F) as may be appropriate for particular centers, accident prevention programs, including prevention of excessive pesticide exposure,

(G) information on the availability and proper use of health services and services which promote and facilitate optimal use of health services, including, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals, and

(H) patient case management services (including outreach, counseling, referral, and follow-up services),

for migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, within the area it serves (referred to in this section as a ''catchment area'') and individuals who have previously been migratory agricultural workers but can no longer meet the requirements of paragraph (2) of this subsection because of age or disability and members of their families within the area it serves.

(2) The term ''migratory agricultural worker'' means an individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last twentyfour months, and who establishes for the purposes of such employment a temporary abode.

(3) The term ''seasonal agricultural workers''[1] means an individual whose principal employment is in agriculture on a seasonal basis and who is not a migratory agricultural worker.

(4) The term ''agriculture'' means farming in all its branches, including—

(A) cultivation and tillage of the soil,

(B) the production, cultivation, growing, and harvesting of any commodity grown on, in, or as an adjunct to or part of a commodity grown in or on, the land, and

(C) any practice (including preparation and processing for market and delivery to storage or to market or to carriers for transportation to market) performed by a farmer or on a farm incident to or in conjunction with an activity described in subparagraph (B).

(5) The term ''high impact area'' means a health service area or other area which has not less than four thousand migratory agricultural workers and seasonal agricultural workers residing within its boundaries for more than two months in any calendar year. In computing the number of workers residing in an area, there

[1] So in original. Probably should be ''worker''.

shall be included as workers the members of the families of such workers.

(6) The term ''primary health services'' means—

(A) services of physicians and, where feasible, services of physicians' assistants and nurse clinicians;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, immunizations against vaccine-preventable diseases, screenings for elevated blood lead levels, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular centers.

(7) The term ''supplemental health services'' means services which are not included as primary health services and which are—

(A) hospital services;

(B) home health services;

(C) extended care facility services;

(D) rehabilitative services (including physical therapy) and long-term physical medicine;

(E) mental health services;

(F) dental services;

(G) vision services;

(H) allied health services;

(I) therapeutic radiologic services;

(J) public health services (including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services);

(K) ambulatory surgical services;

(L) health education services (including nutrition education); and

(M) other services appropriate to meet the health needs of the population served by the migrant health center involved.

(b) Priority areas for project and program assistance; assignment and determination of priorities; approval of application for grant to area without migratory agricultural workers

(1) The Secretary shall assign to high impact areas and any other areas (where appropriate) priorities for the provision of assistance under this section to projects and programs in such areas. The highest priorities for such assistance shall be assigned to areas where the Secretary determines the greatest need exists.

(2) No application for a grant under subsection (c) or (d) of this section for a project in an area which has no migratory agricultural workers may be approved unless grants have been provided for all approved applications under such subsections for projects in areas with migratory agricultural workers.

(c) Grants pursuant to assigned priorities to public and nonprofit private entities for projects to plan and develop centers; costs includable and criteria for grants; grants or contracts with public and nonprofit private entities for projects to plan and develop programs in areas without centers and specified migratory population; scope of programs for grants or contracts; number of grants or contracts; determination of amount of grants

(1)(A) The Secretary may, in accordance with the priorities assigned under subsection (b)(1) of this section, make grants to public and nonprofit private entities for projects to plan and develop migrant health centers which will serve migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, in high impact areas. A project for which a grant may be made under this subparagraph may include the cost of the acquisition, expansion, and modernization of existing buildings and construction of new buildings (including the costs of amortizing the principal of, and paying the interest on, loans) and the costs of providing training related to the management of migrant health center programs, and shall include—

(i) an assessment of the need that the workers (and the members of the families of such workers) proposed to be served by the migrant health center for which the project is undertaken have for primary health services, supplemental health services, and environmental health services;

(ii) the design of a migrant health center program for such workers and the members of their families, based on such assessment;

(iii) efforts to secure, within the proposed catchment area of such center, financial and professional assistance and support for the project; and

(iv) initiation and encouragement of continuing community involvement in the development and operation of the project.

(B) The Secretary may make grants to or enter into contracts with public and nonprofit private entities for projects to plan and develop programs in areas in which no migrant health center exists and in which not more than four thousand migratory agricultural workers and their families reside for more than two months—

(i) for the provision of emergency care to migratory agricultural workers, seasonal agricultural workers, and the members of families of such migratory and seasonal workers;

(ii) for the provision of primary care (as defined in regulations of the Secretary) for such workers and the members of their families;

(iii) for the development of arrangements with existing facilities to provide primary health services (not included as primary care as defined under regulations under clause (ii)) to such workers and the members of their families; or

(iv) which otherwise improve the health of such workers and their families.

Any such program may include the acquisition, expansion, and modernization of existing buildings, construction of new buildings, and provid-

ing training related to the management of programs assisted under this subparagraph.

(2) Not more than two grants may be made under paragraph (1)(A) for the same project, and if a grant or contract is made or entered into under paragraph (1)(B) for a project, no other grant or contract under that paragraph may be made or entered into for the project.

(3) The amount of any grant made under paragraph (1) for any project shall be determined by the Secretary.

(d) Grants for centers in high impact areas; programs in areas in which no migrant health center exists; health services provided on a prepaid basis; two-grant maximum; maximum amount of grant; payments

(1)(A)(i) The Secretary may, in accordance with priorities assigned under subsection (b)(1) of this section, make grants for the costs of operation of public and nonprofit private migrant health centers in high impact areas.

(ii) If the Secretary makes a determination that an area is a high impact area, the Secretary may alter the determination only after providing to the grantee under subclause (i) for the area, and to other interested entities in the area, reasonable notice with respect to such determination and a reasonable opportunity to offer information with respect to such determination.

(B) The Secretary may make grants to and enter into contracts with public and nonprofit private entities for projects for the operation of programs in areas in which no migrant health center exists and in which not more than four thousand migratory agricultural workers and their families reside for more than two months—

(i) for the provision of emergency care to migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers;

(ii) for the provision of primary care (as defined in regulations of the Secretary) for such workers and the members of their families;

(iii) for the development of arrangements with existing facilities to provide primary health services (not included as primary care as defined under regulations under clause (ii)) to such workers and the members of their families; or

(iv) which otherwise improve the health of such workers and the members of their families.

Any such program may include the acquisition, expansion, and modernization of existing buildings, construction of new buildings, and providing training related to the management of programs assisted under this subparagraph.

(C) The Secretary may make grants to migrant health centers to enable the centers to plan and develop the provision of health services on a prepaid basis to some or to all of the individuals which the centers serve. Such a grant may only be made for such a center if—

(i) the center has received grants under subparagraph (A) of this paragraph for at least two consecutive years preceding the year of the grant under this subparagraph;

(ii) the governing board of the center (described in subsection (f)(3)(G) of this section) requests, in a manner prescribed by the Secretary, that the center provide health services on a prepaid basis to some or to all of the population which the center serves; and

(iii) the center provides assurances satisfactory to the Secretary that the provision of such services on a prepaid basis will not result in the diminution of health services provided by the center to the population the center served prior to the grant under this subparagraph.

Any such grant may include the acquisition, expansion, and modernization of existing buildings, construction of new buildings, and providing training related to the management of the provision of health services on a prepaid basis.

(2) The costs for which a grant may be made under paragraph (1)(A) may include the costs of acquiring, expanding, and modernizing existing buildings and constructing new buildings (including the costs of amortizing the principal of, and paying the interest on, loans) and the costs of repaying loans made by the Farmers Home Administration for buildings; and the costs for which a grant or contract may be made under paragraph (1) may include the costs of providing training related to the provision of primary health services, supplemental health services, and environmental health services, and to the management of migrant health center programs.

(3) Not more than two grants may be made under paragraph (1)(C) for the same entity.

(4)(A) The amount of any grant made in any fiscal year under subparagraph (A) of paragraph (1) to a health center shall be determined by the Secretary, but may not exceed the amount by which the costs of operation of the center in such fiscal year exceed the total of—

(i) State, local, and other operational funding, and

(ii) the fees, premiums, and third-party reimbursements,

which the center may reasonably be expected to receive for its operations in such fiscal year. In determining the amount of such a grant for a center, if the application for the grant requests funds for a service described in subparagraph (D) or (E) of subsection (a)(1) of this section (other than to the extent the funds would be used for the improvement of private property) or a supplemental health service described in subparagraph (B), (F), (J), or (L) of subsection (a)(7) of this section, the Secretary shall include, in an amount determined by the Secretary and to the extent funds are available under appropriation Acts, funds for such service unless the Secretary makes a written finding that such service is not needed and provides the applicant with a copy of such finding.

(B) Payments under grants under subparagraph (A) of paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments, except that if in any fiscal year the sum of—

(i) the total of the amounts described in clauses (i) and (ii) of subparagraph (A) of this paragraph received by a center in such fiscal year, and

(ii) the amount of the grant to the center in such fiscal year,

exceeded the costs of the center's operation in such fiscal year because the amount received by the center from fees, premiums, and third-party reimbursements was greater than expected, an adjustment in the amount of the grant to the center in the succeeding fiscal year shall be made in such a manner that the center shall be entitled to retain the additional amount of fees, premiums, and other third party reimbursements as the center will use (I) to expand and improve its services, (II) to increase the number of persons (eligible under subsection (a) of this section to receive services from such a center) it is able to serve, (III) to construct, expand, and modernize its facilities, (IV) to improve the administration of its service programs, and (V) to establish the financial reserve required for the furnishing of services on a prepaid basis. Without the approval of the Secretary, not more than one-half of such retained sum may be used for construction and modernization of its facilities.

(C) With respect to amounts described in clauses (i) and (ii) of subparagraph (A), the Secretary may not restrict expenditures of such amounts by any grantee under paragraph (1)(A) for—

(i) repair or minor renovation of the physical plant;

(ii) establishment of a financial reserve as required for the furnishing of services on a prepaid basis or as needed to cover unanticipated expenses;

(iii) interest payments on short-term loans to cover cash shortfalls; or

(iv) necessary salary requirements to remain competitive in hiring health care practitioners.

(e) Contracts with public and private entities for implementation and enforcement of environmental health standards and projects and studies related to environmental health hazard problems

The Secretary may enter into contracts with public and private entities to—

(1) assist the States in the implementation and enforcement of acceptable environmental health standards, including enforcement of standards for sanitation in migrant labor camps and applicable Federal and State pesticide control standards; and

(2) conduct projects and studies to assist the several States and entities which have received grants or contracts under this section in the assessment of problems related to camp and field sanitation, pesticide hazards, and other environmental health hazards to which migratory agricultural workers, seasonal agricultural workers, and members of their families are exposed.

(f) Approval of application as prerequisite for grant or contract; form and manner of submission and contents of application; determination of entity as center as prerequisite for approval of application; criteria for determination; priorities for applications; improvements of private property; nonapplicability of statutory provisions to contracts; new building grant conditions

(1) No grant may be made under subsection (c) or (d) of this section and no contract may be entered into under subsection (c)(1)(B), (d)(1)(B), or (e) of this section unless an application therefore[2] is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe. An application for a grant or contract which will cover the costs of modernizing a building shall include, in addition to other information required by the Secretary—

(A) a description of the site of the building,

(B) plans and specifications for its modernization, and

(C) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on the modernization of the building will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act).

The Secretary of Labor shall have with respect to the labor standards referred to in subparagraph (C) the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 276c of title 40.

(2) An application for a grant under subparagraph (A) of subsection (d)(1) of this section for a migrant health center shall include—

(A) a description of the need in the center's catchment area for each of the health services described in subparagraphs (D) and (E) of subsection (a)(1) of this section and in subparagraphs (B), (F), (J), and (L) of subsection (a)(7) of this section,

(B) if the applicant determines that any such service is not needed, the basis for such determination, and

(C) if the applicant does not request funds for any such service which the applicant determines is needed, the reason for not making such a request.

In considering an application for a grant under subparagraph (A) of subsection (d)(1) of this section, the Secretary may require as a condition to the approval of such application assurance that the applicant will provide any specified health service described in subsection (a) of this section which the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided the applicant.

(3) The Secretary may not approve an application for a grant under subsection (d)(1)(A) of this

[2] So in original. Probably should be ''therefor''.

section unless the Secretary determines that the entity for which the application is submitted is a migrant health center (within the meaning of subsection (a)(1) of this section) and that—

(A) the primary health services of the center will be available and accessible in the center's catchment area promptly, as appropriate, and in a manner which assures continuity;

(B) the center will have organizational arrangements, established in accordance with regulations of the Secretary, for (i) an ongoing quality assurance program (including utilization and peer review systems) respecting the center's services, and (ii) maintaining the confidentiality of patient records;

(C) the center will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(D) the center (i) has or will have a contractual or other arrangement with the agency of the State, in which it provides services, which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (ii) has made or will make every reasonable effort to enter into such an arrangement;

(E) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], to medical assistance under a State plan approved under title XIX of such Act [42 U.S.C. 1396 et seq.], or to assistance for medical expenses under any other public assistance program or private health insurance program;

(F) the center (i) has prepared a schedule of fees or payments for the provision of its services consistent with locally prevailing rates or charges and designed to cover its reasonable costs of operation and has prepared a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay, (ii) has made and will continue to make every reasonable effort (I) to secure from patients payment for services in accordance with such schedules, and (II) to collect reimbursement for health services to persons described in subparagraph (E) on the basis of the full amount of fees and payments for such services without application of any discount, and (iii) has submitted to the Secretary such reports as he may require to determine compliance with this subparagraph;

(G) the center has established a governing board which (i) is composed of individuals a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center, and (ii) selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body of the center has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;

(H) the center has developed, in accordance with regulations of the Secretary, (i) an overall plan and budget that meets the requirements of section 1861(z) of the Social Security Act [42 U.S.C. 1395x(z)], and (ii) an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to (I) the costs of its operations, (II) the patterns of use of its services, (III) the availability, accessibility, and acceptability of its services, (IV) such other matters relating to operations of the applicant as the Secretary may, by regulation, require, and (V) expenditures made from any amount the center was permitted to retain under subsection (d)(4)(B) of this section;

(I) the center will review periodically its catchment area to (i) insure that the size of such area is such that the services to be provided through the center (including any satellite) are available and accessible to the migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, in the area promptly and as appropriate, (ii) insure that the boundaries of such area conform, to the extent practicable, to relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs, and (iii) insure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the center, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation; and

(J) in the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, the center has (i) developed a plan and made arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and (ii) identified an individual on its staff who is fluent in both that language and English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences.

For purposes of subparagraph (G) and subsection (h)(4) of this section, the term ''public center'' means a migrant health center funded (or to be funded) through a grant under this section to a public agency.

(4) In considering applications for grants and contracts under subsection (c) or (d)(1)(B) of this section, the Secretary shall give priority to ap-

plications submitted by community-based organizations which are representative of the populations to be served through the projects, programs, or centers to be assisted by such grants or contracts.

(5) The Secretary, in making a grant under this section to a migrant health center for the provision of environmental health services described in subsection (a)(1)(D) of this section, may designate a portion of the grant to be expended for improvements to private property for which the written consent of the owner has been obtained and which are necessary to alleviate a hazard to the health of those residing on, or otherwise using, the property and of other persons in the center's catchment area. A center may make such an expenditure for an improvement under a grant only after the Secretary has specifically approved such expenditure and has determined that funds for the improvement are not available from any other source.

(6) Contracts may be entered into under this section without regard to section 3324(a) and (b) of title 31 and section 5 of title 41.

(7) The Secretary may make a grant under subsection (c) or (d) of this section for the construction of new buildings for a migrant health center or a migrant health program only if the Secretary determines that appropriate facilities are not available through acquiring, modernizing, or expanding existing buildings and that the entity to which the grant will be made has made reasonable efforts to secure from other sources funds, in lieu of the grant, to construct such facilities.

(g) Technical and other nonfinancial assistance for centers or public or private nonprofit entities operating as centers without determination of status; resources list

(1) The Secretary may provide (either through the Department of Health and Human Services or by grant or contract) all necessary technical and other nonfinancial assistance (including fiscal and program management assistance and training in such management) to any migrant health center or to any public or private nonprofit entity to assist it in developing plans for, and in operating as, a migrant health center, and in meeting the requirements of subsection (f)(2) of this section.

(2) The Secretary shall make available to each grant recipient under this section a list of available Federal and non-Federal resources to improve the environmental and nutritional status of individuals in the recipient's catchment area.

(h) Authorization of appropriations; reduction in infant mortality and health management for infants and pregnant women; obligation for grants and contracts

(1)(A) For the purposes of subsections (c) through (e) of this section, there are authorized to be appropriated $48,500,000 for fiscal year 1989, such sums as may be necessary for fiscal years 1990 and 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994.

(B) Of the amounts appropriated pursuant to subparagraph (A) for a fiscal year, the Secretary may obligate for grants and contracts under subsection (c)(1) of this section not more than 2 percent, for grants under subsection (d)(1)(C) of this section not more than 5 percent, and for contracts under subsection (e) of this section not more than 10 percent.

(2)(A) For the purpose of carrying out subparagraph (B), there are authorized to be appropriated $1,500,000 for fiscal year 1989, $2,000,000 for fiscal year 1990, $2,500,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994.

(B) The Secretary may make grants to migrant health centers for the purpose of assisting such centers in—

(i) providing comprehensive health care and support services for the reduction of (I) the incidence of infant mortality, and (II) morbidity among children who are less than 3 years of age; and

(ii) developing and coordinating service and referral arrangements between migrant health centers and other entities for the health management of pregnant women and children described in clause (i).

(C) In making grants under subparagraph (B), the Secretary shall give priority to migrant health centers providing services in any catchment area in which there is a substantial incidence of infant mortality or in which there is a significant increase in the incidence of infant mortality.

(D) The Secretary may make a grant under subparagraph (B) only if the migrant health center involved agrees to expend the grant for the following activities with respect to the purpose described in such subparagraph:

(i) Primary health services, including prenatal care.

(ii) Community education, outreach, and case finding.

(iii) Case management services.

(iv) Client education, including parenting and child development education.

(E) The purposes for which a migrant health center may expend a grant under subparagraph (B) include, with respect to the purpose described in such subparagraph, substance abuse screening, counseling and referral services, and other necessary nonmedical support services, including child care, translation services, and housing assistance.

(F) The Secretary may make a grant under subparagraph (B) only if the migrant health center involved agrees that—

(i) the center will coordinate the provision of services under the grant to each of the recipients of the services;

(ii) such services will be continuous for each such recipient;

(iii) the center will provide follow-up services for individuals who are referred by the center for services described in subparagraph (E); and

(iv) the grant will be expended to supplement, and not supplant, the expenditures of the center for primary health services (including prenatal care) with respect to the purpose described in such subparagraph.

(3) The Secretary may not expend in any fiscal year, for grants under this section to public centers (as defined in the second sentence of sub-

section (f)(3) of this section) the governing boards of which (as described in subsection (f)(3)(G)(ii) of this section) do not establish general policies for such centers, an amount which exceeds 5 per centum of the funds appropriated under this section for that fiscal year.

(i) Delegation of authority to administer programs; exception

The Secretary may delegate the authority to administer the programs authorized by this section to any office within the Service, except that the authority to enter into, modify, or issue approvals with respect to grants or contracts may be delegated only within the central office of the Health Resources and Services Administration.

(July 1, 1944, ch. 373, title III, § 329, formerly § 310, as added Sept. 25, 1962, Pub. L. 87–692, 76 Stat. 592; amended Aug. 5, 1965, Pub. L. 89–109, § 3, 79 Stat. 436; Oct. 15, 1968, Pub. L. 90–574, title II, § 201, 82 Stat. 1006; Mar. 12, 1970, Pub. L. 91–209, 84 Stat. 52; June 18, 1973, Pub. L. 93–45, title I, § 105, 87 Stat. 91; renumbered § 319, July 23, 1974, Pub. L. 93–353, title I, § 102(d), 88 Stat. 362; amended July 29, 1975, Pub. L. 94–63, title IV, § 401(a), title VII, § 701(c), 89 Stat. 334, 352; Apr. 22, 1976, Pub. L. 94–278, title VIII, § 801(a), 90 Stat. 414; Aug. 1, 1977, Pub. L. 95–83, title III, § 303, 91 Stat. 388; renumbered § 329 and amended Nov. 10, 1978, Pub. L. 95–626, title I, §§ 102(a), 103(a)–(g)(1)(B), (2), (h), (i), 92 Stat. 3551–3555; July 10, 1979, Pub. L. 96–32, § 6(a), 93 Stat. 83; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title IX, § 930, 95 Stat. 569; Dec. 21, 1982, Pub. L. 97–375, title I, § 107(b), 96 Stat. 1820; Apr. 24, 1986, Pub. L. 99–280, §§ 6, 7, 100 Stat. 400, 401; Aug. 10, 1988, Pub. L. 100–386, § 2, 102 Stat. 919; Nov. 6, 1990, Pub. L. 101–527, § 9(b), 104 Stat. 2333; Oct. 27, 1992, Pub. L. 102–531, title III, § 309(a), 106 Stat. 3499.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (f)(3)(D), (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

In subsec. (f)(6), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Prior to its renumbering as section 329 of act July 1, 1944 by section 102(a) of Pub. L. 95–626, this section was designated as section 310 of act July 1, 1944, and set out as section 242h of this title, and was subsequently renumbered as section 319 of act July 1, 1944 and set out as section 247d of this title.

PRIOR PROVISIONS

A prior section 254b, act July 1, 1944, ch. 373, title III, § 329, as added Dec. 31, 1970, Pub. L. 91–623, § 2, 84 Stat. 1868; amended Nov. 18, 1971, Pub. L. 92–157, title II, § 203, 85 Stat. 462; Oct. 27, 1972, Pub. L. 92–585, § 2, 86 Stat. 1290; July 29, 1975, Pub. L. 94–63, title VIII, §§ 801–803, 89 Stat. 353, 354; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(b), 90 Stat. 2244, related to establishment of National Health Service Corps, assignment of personnel and statement of purpose, prior to repeal by Pub. L. 94–484, title IV, § 407(b)(1), Oct. 12, 1976, 90 Stat. 2268. See section 254d et seq. of this title.

AMENDMENTS

1992—Subsec. (a)(6)(C). Pub. L. 102–531, § 309(a)(2), inserted ''immunizations against vaccine-preventable diseases, screenings for elevated blood lead levels,'' after ''well child services,''.

Subsec. (d)(4)(C). Pub. L. 102–531, § 309(a)(3), added subpar. (C).

Subsec. (h)(2)(B). Pub. L. 102–531, § 309(a)(1)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The Secretary may make grants to migrant health centers to assist such centers in—

''(i) providing services for the reduction of the incidence of infant mortality; and

''(ii) developing and coordinating referral arrangements between migrant health centers and other entities for the health management of infants and pregnant women.''

Subsec. (h)(2)(D) to (F). Pub. L. 102–531, § 309(a)(1)(B), added subpars. (D) to (F).

1990—Subsec. (h)(1)(A), (2)(A). Pub. L. 101–527 inserted provisions authorizing such sums as necessary for fiscal years 1992 through 1994.

1988—Subsec. (a)(1)(H). Pub. L. 100–386, § 2(a), added subpar. (H).

Subsec. (a)(7)(M). Pub. L. 100–386, § 2(b), added subpar. (M).

Subsec. (c)(1)(A). Pub. L. 100–386, § 2(e)(1)(A), substituted ''acquisition, expansion, and modernization of existing buildings and construction of new buildings'' for ''acquisition and modernization of existing buildings'' in introductory provisions.

Subsec. (c)(1)(B). Pub. L. 100–386, § 2(e)(1)(B), substituted ''acquisition, expansion, and modernization of existing buildings, construction of new buildings,'' for ''acquisition and modernization of existing buildings'' in concluding provisions.

Subsec. (d)(1)(A). Pub. L. 100–386, § 2(c), designated existing provision as cl. (i) and added cl. (ii).

Subsec. (d)(1)(B). Pub. L. 100–386, § 2(e)(1)(C), substituted ''acquisition, expansion, and modernization of existing buildings, construction of new buildings,'' for ''acquisition and modernization of existing buildings'' in concluding provisions.

Subsec. (d)(1)(C). Pub. L. 100–386, § 2(e)(1)(D), substituted ''acquisition, expansion, and modernization of existing buildings, construction of new buildings,'' for ''acquisition and modernization of existing buildings'' in concluding provisions.

Subsec. (d)(2). Pub. L. 100–386, § 2(e)(1)(E), substituted ''acquiring, expanding, and modernizing existing buildings and constructing new buildings'' for ''acquiring and modernizing existing buildings''.

Subsec. (d)(4)(A)(i). Pub. L. 100–386, § 2(f)(1), amended cl. (i) generally, substituting ''State, local, and operational funding'' for ''the State, local, and other funds''.

Subsec. (d)(4)(B). Pub. L. 100–386, § 2(f)(2), substituted ''shall be entitled to retain the additional amount of fees, premiums, and other third party reimbursements as the center will use'' for ''may retain such an amount (equal to not less than one-half of the amount by which such sum exceeded such costs) as the center can demonstrate to the satisfaction of the Secretary will be used to enable the center'' in concluding provisions.

Subsec. (d)(4)(B)(III). Pub. L. 100–386, § 2(e)(1)(F), substituted ''construct, expand, and modernize'' for ''construct and modernize''.

Subsec. (f)(3)(F)(i). Pub. L. 100–386, § 2(d), inserted ''consistent with locally prevailing rates or charges and'' and substituted ''operation and has prepared'' for ''operation and''.

Subsec. (f)(7). Pub. L. 100–386, § 2(e)(2), added par. (7).

Subsec. (h)(1). Pub. L. 100–386, § 2(h)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purposes of subsections (c), (d), and (e) of this section, there are authorized to be appropriated $43,000,000 for the fiscal year ending September 30, 1982,

$47,500,000 for the fiscal year ending September 30, 1983, $51,000,000 for the fiscal year ending September 30, 1984, $45,400,000 for fiscal year 1987 and $45,400,000 for fiscal year 1988. The Secretary may not obligate for grants and contracts under subsection (c)(1) of this section in any fiscal year an amount which exceeds 2 per centum of the funds appropriated under this paragraph for that fiscal year, the Secretary may not obligate for grants under subsection (d)(1)(C) of this section in any fiscal year an amount which exceeds 5 per centum of such funds, and the Secretary may not obligate for contracts under subsection (e) of this section in any fiscal year an amount which exceeds 10 per centum of such funds.''

Subsec. (h)(2), (3). Pub. L. 100–386, §2(h)(2), added par. (2) and redesignated former par. (2) as (3).

Subsec. (i). Pub. L. 100–386, §2(g), added subsec. (i).

1986—Subsec. (d)(2). Pub. L. 99–280, §7, inserted ''and the costs of repaying loans made by the Farmers Home Administration for buildings'' before the semicolon.

Subsec. (h)(1). Pub. L. 99–280, §6, struck out ''and'' after ''1983,'' and inserted '', $45,400,000 for fiscal year 1987 and $45,400,000 for fiscal year 1988''.

1982—Subsec. (f)(5). Pub. L. 97–375 struck out direction to the Secretary to annually notify the appropriate committees of Congress of the amounts expended and the improvements for which they were spent.

1981—Subsec. (h). Pub. L. 97–35 in par. (1) substituted provisions respecting appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984, for provisions respecting appropriations for fiscal year 1976, and fiscal years ending Sept. 30, 1977, 1978, 1979, 1980, and 1981, struck out par. (2) which related to appropriations for grants and contracts under subsec. (d)(1) of this section, struck out par. (3) which related to minimum obligations under subsec. (d)(1) of this section, and redesignated par. (4) as (2).

1979—Subsec. (a)(7)(L). Pub. L. 96–32 substituted a period for ''; and'' at end.

1978—Subsec. (a)(1)(D), (E). Pub. L. 95–626, §103(a)(1)(A), inserted ''(as determined by the centers)'' after ''as may be appropriate for particular centers''.

Subsec. (a)(1)(G). Pub. L. 95–626, §103(a)(1)(B), inserted ''and services which promote and facilitate optimal use of health services, including, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals''.

Pub. L. 95–626, §103(a)(1)(C), in provision following subpar. (G), inserted ''and individuals who have previously been migratory agricultural workers but can no longer meet the requirements of paragraph (2) of this subsection because of age or disability and members of their families within the area it serves''.

Subsec. (a)(5). Pub. L. 95–626, §103(c), substituted ''four thousand'' for ''six thousand''.

Subsec. (a)(6)(G). Pub. L. 95–626, §103(a)(2), added subpar. (G).

Subsec. (a)(7). Pub. L. 95–626, §103(a)(3), struck out subpar. (I) relating to pharmaceutical services and subpar. (N) relating to services which promote and facilitate optimal use of primary health services, redesignated subpars. (J), (K), (L), and (M) as (I), (J), (K), and (L), respectively, in subpar. (J) as so redesignated, substituted ''(including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services)'' for ''(including nutrition education and social services)'' and in subpar. (L) as so redesignated, inserted ''(including nutrition education)'' after ''health education services''.

Subsec. (b)(1). Pub. L. 95–626, §103(b), substituted ''areas where the Secretary determines the greatest need exists'' for ''areas in which reside the greatest number of migratory agricultural workers and the members of their families for the longest period of time''.

Subsec. (c)(1)(B). Pub. L. 95–626, §103(c), substituted ''four thousand'' for ''six thousand''.

Subsec. (d)(1). Pub. L. 95–626, §103(c), (d)(1), (3)(A), struck out subpar. (B) relating to the power of the Secretary to make grants for the costs of the operation of public and nonprofit entities which intend to become migrant health centers, redesignated subpar. (C) as (B), and in subpar. (B) as so redesignated, substituted ''four thousand'' for ''six thousand'' and added subpar. (C).

Subsec. (d)(2). Pub. L. 95–626, §103(d)(2)(A), substituted ''made under paragraph (1)(A) may include'' for ''made under paragraph (1)(A) or (1)(B) may include''.

Subsec. (d)(3). Pub. L. 95–626, §103(e), substituted ''Not more than two grants may be made under paragraph (1)(C) for the same entity'' for ''The amount of any grant made under paragraph (1) shall be determined by the Secretary''.

Subsec. (d)(4). Pub. L. 95–626, §103(e), added par. (4).

Subsec. (f). Pub. L. 95–626, §103(d)(2)(B), (f), (g)(1)(A), (B), (2), redesignated pars. (2), (3), and (4) as (3), (4), and (6), respectively, added pars. (2) and (5), substituted ''(d)(1)(B)'' for ''(d)(1)(C)'' in par. (1), in par. (3)(G) as so redesignated, substituted ''(ii) selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body of the center has approved the application or if the governing has not approved the application, the failure of the governing body to approve the application was unreasonable'' for ''(ii) establishes general policies for the center (including the selection of services to be provided by the center and a schedule of hours during which services will be provided), approves the center's annual budget, and approves the selection of a director for the center'', added cl. (V) in par. (3)(H), and inserted definition of ''public center'' following par. (3)(J), and, in par. (4) as so redesignated, substituted ''(d)(1)(B)'' for ''(d)(1)(C)''.

Subsec. (g). Pub. L. 95–626, §103(h), designated existing provisions as par. (1) and added par. (2).

Subsec. (h)(1). Pub. L. 95–626, §103(i)(1), inserted provisions authorizing appropriations of $2,200,000 for fiscal year ending Sept. 30, 1979, $2,500,000 for fiscal year ending Sept. 30, 1980, and $2,900,000 for fiscal year ending Sept. 30, 1981, and substituted ''the next five fiscal years'' for ''the next two fiscal years''.

Subsec. (h)(2). Pub. L. 95–626, §103(d)(2)(C), (3)(B), (i)(2), inserted provisions authorizing appropriations of $40,800,000 for fiscal year ending Sept. 30, 1979, $46,000,000 for fiscal year ending Sept. 30, 1980, and $52,100,000 for fiscal year ending Sept. 30, 1981, substituted ''any fiscal year'' for ''fiscal years ending September 30, 1977, and September 30, 1978'' after ''Of the funds appropriated under the first sentence for'', substituted ''(d)(1)(B)'' for ''(d)(1)(C)'' wherever appearing in existing provisions, and inserted provision that not more than 5 per centum of appropriated funds be made available for grants under subsection (d)(1)(C) of this section.

Subsec. (h)(3). Pub. L. 95–626, §103(i)(3), substituted ''In any fiscal year, the Secretary shall obligate for payments under grants and contracts in such fiscal year under subsection (d)(1) of this section for the provision of inpatient and outpatient hospital services not less than 10 per centum of the amount appropriated in such fiscal year under paragraph (2)'' for ''There are authorized to be appropriated for payments under grants and contracts under subsection (d)(1) of this section for the provision of inpatient and outpatient hospital services $5,000,000 for fiscal year 1976, $5,000,000 for the fiscal year ending September 30, 1977, and $4,230,000 for the fiscal year ending September 30, 1978''.

Subsec. (h)(4). Pub. L. 95–626, §103(i)(4), added par. (4).

1977—Subsec. (h)(1). Pub. L. 95–83, §303(a), substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, authorized appropriation of $2,950,000 for fiscal year ending Sept. 30, 1978, and substituted in second sentence ''each of the next two fiscal years'' for ''the next fiscal year''.

Subsec. (h)(2). Pub. L. 95–83, § 303(b), substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, authorized appropriation of $32,080,000 for fiscal year ending Sept. 30, 1978, and substituted in third sentence ''fiscal years ending September 30, 1977, and September 30, 1978'' for ''fiscal year 1977''.

Subsec. (h)(3). Pub. L. 95–83, § 303(c), substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $4,230,000 for fiscal year ending Sept. 30, 1978.

1976—Subsec. (a)(7). Pub. L. 94–278 added subpar. (L) and redesignated former subpars. (L) and (M) as (M) and (N), respectively.

1975—Subsec. (a). Pub. L. 94–63, §§ 401(a), 701(c), designated existing provision as subsec. (a) and, as so designated, substituted provisions defining specified terms, for provisions setting forth health services for domestic agricultural migrants and authorizing appropriations from fiscal year ending June 30, 1966 through fiscal year ending June 30, 1975 for implementation of programs and projects.

Subsecs. (b) to (h). Pub. L. 94–63, § 401(a), added subsecs. (b) to (h).

1973—Pub. L. 93–45 authorized appropriations of $26,750,000 for fiscal year ending June 30, 1974.

1970—Pub. L. 91–209 substituted ''Secretary'' for ''Surgeon General'', authorized appropriations of $20,000,000, $25,000,000, and $30,000,000 for fiscal years ending June 3, 1971, June 30, 1972, and June 30, 1973, respectively, made bringing about of continuity in health services one of the objects of the Secretary's grants for special projects, inserted parenthetical reference to allied health professions personnel, authorized the Secretary to provide funds towards health services for those performing seasonal agricultural services, and provided for the representation of all elements of the migratory worker population, whose health needs are to be met, in the development of health programs and that such persons be given an opportunity to participate in the implementation of such programs.

1968—Pub. L. 90–574 inserted provisions authorizing appropriations of $9,000,000 for fiscal year ending June 30, 1969, and $15,000,000 for fiscal year ending June 30, 1970.

1965—Pub. L. 89–109 substituted ''not to exceed $7,000,000 for the first year ending June 30, 1966, $8,000,000 for the fiscal year ending June 30, 1967, and $9,000,000 for the fiscal year ending June 30, 1968'' for ''for the fiscal year ending June 30, 1963, the fiscal year ending June 30, 1964, and the fiscal year ending June 30, 1965, such sums, not to exceed $3,000,000 for any year, as may be necessary'', and inserted ''including necessary hospital care, and'' in cl. (1)(ii).

CHANGE OF NAME

''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (g)(1) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 5 of Pub. L. 100–386 provided that: ''The amendments made by this Act [amending this section and section 254c of this title] shall take effect October 1, 1988, or upon the date of the enactment of this Act [Aug. 10, 1988], whichever occurs later.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 103(g)(1)(C) of Pub. L. 95–626 provided that: ''The change in the governing board requirements for migrant health centers made by the amendment by subparagraph (A) to section 329(f)(3)(G)(ii) of the Public Health Service Act [subsec. (f)(3)(G)(ii) of this section] shall not apply with respect to any public migrant health center which met the governing board requirements in effect under section 319(f)(2)(G)(ii) of such Act [subsec. (f)(2)(G)(ii) of this section] before October 1, 1978.''

Section 103(j) of Pub. L. 95–626 provided that: ''The amendments made by this section [amending this section] shall apply with respect to grants and contracts made under section 329 of the Public Health Service Act [this section] from appropriations for the fiscal years ending after September 30, 1978.''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 401(a) of Pub. L. 94–63, generally revising and redesignating provisions relating to migrant health centers, effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

SHORT TITLE

This section is popularly known as the ''Migrant Health Act''.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

STUDY OF HOSPITAL STAFF PRIVILEGES FOR PHYSICIANS PRACTICING IN COMMUNITY HEALTH CENTERS

Pub. L. 101–508, title IV, § 4161(a)(7), Nov. 5, 1990, 104 Stat. 1388–94, as amended by Pub. L. 103–432, title I, § 147(f)(4)(B), Oct. 31, 1994, 108 Stat. 4431, directed Comptroller General to conduct a study of whether physicians practicing in community and migrant health centers are able to obtain admitting privileges at local hospitals and, by not later than 18 months after Nov. 5, 1990, to submit a report on the study to Committees on Ways and Means and Energy and Commerce of the House of Representatives and to Committee on Finance of the Senate, with the report to include such recommendations as Comptroller General deems appropriate.

STUDY OF HOUSING CONDITIONS OF AGRICULTURAL MIGRATORY WORKERS; CONSULTATIONS; SUBMISSION OF REPORT TO CONGRESSIONAL COMMITTEES

Section 401(c) of Pub. L. 94–63, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, directed Secretary of Health and Human Services, in consultation with Secretary of Housing and Urban Development, to conduct a study of housing conditions of agricultural migratory workers and submit a report to specific Committees of House of Representatives and Senate within 18 months of the first Act making appropriations for the study.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 218, 233, 247b–1, 247b–6, 247c–1, 254g, 256, 256c, 256d, 290bb–3, 293j, 295p, 297n, 300e–12, 300e–14a, 300ee–16, 300ee–33, 300ff–52, 1395x, 1396b, 1396d, 1396r–1, 1786, 11709 of this title; title 29 section 777b; title 40 section 276d–3.

§ 254c. Community health centers

(a) Definitions

For purposes of this section, the term ''community health center'' means an entity which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides—

(1) primarily health services,

(2) as may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health services,

(3) referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services,

(4) environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health,

(5) information on the availability and proper use of health services and services which promote and facilitate optimal use of health services, including, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals, and

(6) patient case management services (including outreach, counseling, referral, and follow-up services),

for all residents of the area it serves (referred to in this section as a ''catchment area'').

(b) Additional definitions; criteria to determine specific shortages of personal health services; designation of medically underserved population or termination of such designation

For purposes of this section:

(1) The term ''primary health services'' means—

(A) services of physicians and, where feasible, services of physicians' assistants and nurse clinicians;

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, immunizations against vaccine-preventable diseases, screenings for elevated blood lead levels, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular centers.

(2) The term ''supplemental health services'' means services which are not included as primary health services and which are—

(A) hospital services;

(B) home health services;

(C) extended care facility services;

(D) rehabilitative services (including physical therapy) and long-term physical medicine;

(E) mental health services;

(F) dental services;

(G) vision services;

(H) allied health services;

(I) therapeutic radiologic services;

(J) public health services (including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services);

(K) ambulatory surgical services;

(L) health education services (including nutrition education); and

(M) other services appropriate to meet the health needs of the medically underserved population served by the community health center involved.

(3) The term ''medically underserved population'' means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services.

(4) In carrying out paragraph (3), the Secretary shall by regulation prescribe criteria for determining the specific shortages of personal health services of an area or population group. Such criteria shall—

(A) take into account comments received by the Secretary from the chief executive officer of a State and local officials in a State; and

(B) include infant mortality in an area or population group, other factors indicative of the health status of a population group or residents of an area, the ability of the residents of an area or of a population group to pay for health services and their accessibility to them, and the availability of health professionals to residents of an area or to a population group.

The Secretary may modify the criteria established in regulations issued under this paragraph only after affording public notice and an opportunity for comment on any such proposed modifications.

(5) The Secretary may not designate a medically underserved population in a State or terminate the designation of such a population unless, prior to such designation or termination, the Secretary provides reasonable notice and opportunity for comment and consults with—

(A) the chief executive officer of such State;

(B) local officials in such State; and

(C) the State organization, if any, which represents a majority of community health centers in such State.

(6) The Secretary may designate a medically underserved population that does not meet the criteria established under paragraph (4) if the chief executive officer of the State in which such population is located and local officials of such State recommend the designation of such population based on unusual local conditions which are a barrier to access to or the availability of personal health services.

(c) Grants to public and nonprofit private entities for projects to plan and develop centers; costs includable and criteria for grants; number of grants; determination of amount of grants

(1) The Secretary may make grants to public and nonprofit private entities for projects to plan and develop community health centers which will serve medically underserved popu-

lations. A project for which a grant may be made under this subsection may include the cost of the acquisition, expansion, and modernization of existing buildings and construction of new buildings (including the costs of amortizing the principal of, and paying the interest on, loans) and shall include—

(A) an assessment of the need that the population proposed to be served by the community health center for which the project is undertaken has for primary health services, supplemental health services, and environmental health services;

(B) the design of a community health center program for such population based on such assessment;

(C) efforts to secure, within the proposed catchment area of such center, financial and professional assistance and support for the project; and

(D) initiation and encouragement of continuing community involvement in the development and operation of the project.

(2) Not more than two grants may be made under this subsection for the same project.

(3) The amount of any grant made under this subsection for any project shall be determined by the Secretary.

(d) Grants to public and nonprofit private centers and related entities functioning without center determination for costs of operation; prepayment; costs includable for grants; number of grants; determination of amount of grants; payments

(1)(A) The Secretary may make grants for the costs of operation of public and nonprofit private community health centers which serve medically underserved populations.

(B) The Secretary may make grants for the costs of the operation of public and nonprofit private entities which provide health services to medically underserved populations but with respect to which he is unable to make each of the determinations required by subsection (e)(3) of this section.

(C) The Secretary may make grants to community health centers to enable the centers to plan and develop the provision of health services on a prepaid basis to some or to all of the individuals which the centers serve. Such a grant may only be made for such a center if—

(i) the center has received grants under subparagraph (A) of this paragraph for at least two consecutive years preceding the year of the grant under this subparagraph;

(ii) the governing board of the center (described in subsection (e)(3)(G) of this section) requests, in a manner prescribed by the Secretary, that the center provide health services on a prepaid basis to some or to all of the population which the center serves; and

(iii) the center provides assurances satisfactory to the Secretary that the provision of such services on a prepaid basis will not result in the diminution of health services provided by the center to the population the center served prior to the grant under this subparagraph.

Any such grant may include the acquisition, expansion, and modernization of existing buildings, construction of new buildings, and providing training related to management of the provision of health services on a prepaid basis.

(2) The costs for which a grant may be made under paragraph (1)(A) or (1)(B) may include the costs of acquiring, expanding, and modernizing existing buildings and constructing new buildings (including the costs of amortizing the principal of, and paying interest on, loans), the costs of repaying loans made by the Farmers Home Administration for buildings, and the costs of providing training related to the provision of primary health services, supplemental health services and environmental health services, and to the management of community health center programs.

(3) Not more than two grants may be made under paragraph (1)(B) or (1)(C) for the same entity.

(4)(A) The amount of any grant made in any fiscal year under paragraph (1) (other than subparagraph (C)) to a community health center shall be determined by the Secretary, but may not exceed the amount by which the costs of operation of the center in such fiscal year exceed the total of—

(i) State, local, and other operational funding, and

(ii) the fees, premiums, and third-party reimbursements,

which the center may reasonably be expected to receive for its operations in such fiscal year. In determining the amount of such a grant for a center, if the application for the grant requests funds for a service described in subsection (a)(4) of this section (other than to the extent the funds would be used for the improvement of private property) or a supplemental health service described in subparagraph (B), (F), (L), or (M) of subsection (b)(2) of this section, the Secretary shall include, in an amount determined by the Secretary and to the extent funds are available under appropriation Acts, funds for such service unless the Secretary makes a written finding that such service is not needed and provides the applicant with a copy of such finding.

(B) Payments under grants under subparagraph (A) or (B) of paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments, except that if in any fiscal year the sum of—

(i) the total of the amounts described in clauses (i) and (ii) of subparagraph (A) received by a center in such fiscal year, and

(ii) the amount of the grant to the center in such fiscal year,

exceeded the costs of the center's operation in such fiscal year because the amount received by the center from fees, premiums, and third-party reimbursements was greater than expected, an adjustment in the amount of the grant to the center in the succeeding fiscal year shall be made in such a manner that the center shall be entitled to retain the additional amount of fees, premiums, and other third party reimbursements as the center will use (I) to expand and improve its services, (II) to increase the number of persons (eligible to receive services from such

a center) it is able to serve, (III) to construct, expand, and modernize its facilities, (IV) to improve the administration of its service programs, and (V) to establish the financial reserve required for the furnishing of services on a prepaid basis. Without the approval of the Secretary, not more than one-half of such retained sum may be used for construction and modernization of its facilities.

(C) With respect to amounts described in clauses (i) and (ii) of subparagraph (A), the Secretary may not restrict expenditures of such amounts by any grantee under paragraph (1) for—

(i) repair or minor renovation of the physical plant;

(ii) establishment of a financial reserve as required for the furnishing of services on a prepaid basis or as needed to cover unanticipated expenses;

(iii) interest payments on short-term loans to cover cash shortfalls; or

(iv) necessary salary requirements to remain competitive in hiring health care practitioners.

(e) Approval of application as prerequisite for grant; form and manner of submission and contents of application; determination of entity as center as prerequisite for approval of application; "public center" defined; improvement of private property; new building grant conditions

(1) No grant may be made under subsection (c) or (d) of this section unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe. An application for a grant which will cover the costs of modernizing a building shall include, in addition to other information required by the Secretary—

(A) a description of the site of the building,

(B) plans and specifications for its modernization, and

(C) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on the modernization of the building will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act).

The Secretary of Labor shall have with respect to the labor standards referred to in subparagraph (C) the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176, 5 U.S.C. Appendix) and section 276c of title 40.

(2) An application for a grant under subparagraph (A) or (B) of subsection (d)(1) of this section for a community health center shall include—

(A) a description of the need in the center's catchment area for each of the health services described in subsection (a)(4) of this section and in subparagraphs (B), (F), (L), and (M) of subsection (b)(2) of this section,

(B) if the applicant determines that any such service is not needed, the basis for such determination, and

(C) if the applicant does not request funds for any such service which the applicant determines is needed, the reason for not making such a request.

Such an application shall also include a demonstration by the applicant that the area or a population group to be served by the applicant has a shortage of personal health services and that the center will be located so that it will provide services to the greatest number of persons residing in such area or included in such population group. Such a demonstration shall be made on the basis of the criteria prescribed by the Secretary under subsection (b)(3) of this section or on any other criteria which the Secretary may prescribe to determine if the area or population group to be served by the applicant has a shortage of personal health services. In considering an application for a grant under subparagraph (A) or (B) of subsection (d)(1) of this section, the Secretary may require as a condition to the approval of such application assurance that the applicant will provide any specified health services described in subsection (a) or (b) of this section which the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided the applicant.

(3) Except as provided in subsection (d)(1)(B) of this section, the Secretary may not approve an application for a grant under paragraph (1)(A) or (1)(B) of subsection (d) of this section unless the Secretary determines that the entity for which the application is submitted is a community health center (within the meaning of subsection (a) of this section) and that—

(A) the primary health services of the center will be available and accessible in the center's catchment area promptly, as appropriate, and in a manner which assures continuity;

(B) the center will have organizational arrangements, established in accordance with regulations prescribed by the Secretary, or (i) an ongoing quality assurance program (including utilization and peer review systems) respecting the center's services, and (ii) maintaining the confidentiality of patient records;

(C) the center will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(D) the center (i) has or will have a contractual or other arrangement with the agency of the State, in which it provides services, which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (ii) has made or will make every reasonable effort to enter into such an arrangement;

(E) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], to medical assistance

under a State plan approved under title XIX of such Act [42 U.S.C. 1396 et seq.], or to assistance for medical expenses under any other public assistance program or private health insurance program;

(F) the center (i) has prepared a schedule of fees or payments for the provision of its services consistent with locally prevailing rates or charges and designed to cover its reasonable costs of operation and has prepared a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay, (ii) has made and will continue to make every reasonable effort (I) to secure from patients payment for services in accordance with such schedules, and (II) to collect reimbursement for health services to persons described in subparagraph (E) on the basis of the full amount of fees and payments for such services without application of any discount, and (iii) has submitted to the Secretary such reports as he may require to determine compliance with this subparagraph;

(G) the center has established a governing board which (i) except in the case of an entity operated by an Indian tribe or tribal or Indian organization under the Indian Self-Determination Act [25 U.S.C. 450f et seq.], is composed of individuals a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center, and (ii) meets at least once a month, selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a governing board of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;

(H) the center has developed, in accordance with regulations of the Secretary, (i) an overall plan and budget that meets the requirements of section 1861(z) of the Social Security Act [42 U.S.C. 1395x(z)], and (ii) an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to (I) the costs of its operations, (II) the patterns of use of its services, (III) the availability, accessibility, and acceptability of its services, (IV) such other matters relating to operations of the applicant as the Secretary may, by regulation, require, and (V) expenditures made from any amount the center was permitted to retain under subsection (d)(4)(B) of this section;

(I) the center will review periodically its catchment area to (i) insure that the size of such area is such that the services to be provided through the center (including any satellite) are available and accessible to the residents of the area promptly and as appropriate, (ii) insure that the boundaries of such area conform, to the extent practicable, to relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs, and (iii) insure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the center, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation;

(J) in the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, the center has (i) developed a plan and made arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and (ii) identified an individual on its staff who is fluent in both that language and in English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences; and

(K) the center, in accordance with regulations prescribed by the Secretary, has developed an on-going referral relationship with one or more hospitals.

For purposes of subparagraph (G) and subsection (g)(4) of this section, the term ''public center'' means a community health center funded (or to be funded) through a grant under this section to a public agency.

(4) The Secretary shall approve applications for grants under paragraph (1)(A) or (1)(B) of subsection (d) of this section for community health centers which—

(A) have not received a previous grant under such paragraph, or

(B) have applied for such a grant to expand their services,

in such a manner that the ratio of the medical underserved populations in rural areas which may be expected to use the services provided by such centers to the medical underserved populations in urban areas which may be expected to use the services provided by such centers is not less than two to three or greater than three to two.

(5) The Secretary, in making a grant under this section to a community health center for the provision of environmental health services described in subsection (a)(4) of this section, may designate a portion of the grant to be expended for improvements to private property for which the written consent of the owner has been obtained and which are necessary to alleviate a hazard to the health of those residing on, or otherwise using, the property and of other persons in the center's catchment area. A center may make such an expenditure for an improvement under a grant only after the Secretary has specifically approved such expenditure and has determined that funds for the improvement are not available from any other source.

(6) The Secretary may make a grant under subsection (c) or (d) of this section for the construction of new buildings for a community health center only if the Secretary determines

that appropriate facilities are not available through acquiring, modernizing, or expanding existing buildings and that the entity to which the grant will be made has made reasonable efforts to secure from other sources funds, in lieu of the grant, to construct such facilities.

(f) Technical and other nonfinancial assistance; resources list

(1) The Secretary may provide (either through the Department of Health and Human Services or by grant or contract) all necessary technical and other nonfinancial assistance (including fiscal and program management assistance and training in such management) to any public or private nonprofit entity to assist it in developing plans for, and in operating as, a community health center, and in meeting requirements of subsection (e)(2) of this section.

(2) The Secretary shall make available to each grant recipient under this section a list of available Federal and non-Federal resources to improve the environmental and nutritional status of individuals in the recipient's catchment area.

(g) Authorization of appropriations; establishment of general policies by governing boards; reduction in infant mortality and health management for infants and pregnant women

(1)(A) For the purpose of payments under grants under this section, there are authorized to be appropriated $440,000,000 for fiscal year 1989, such sums as may be necessary for fiscal years 1990 and 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994.

(B) The Secretary may not in any fiscal year—

(i) expend for grants to serve medically underserved populations designated under subsection (b)(6) of this section an amount which exceeds 5 percent of the funds appropriated under paragraph (1) for that fiscal year; and

(ii) expend for grants under subsection (d)(1)(C) of this section an amount which exceeds 5 percent of the funds appropriated under paragraph (1) for that fiscal year.

(2)(A) For the purpose of carrying out subparagraph (B), there are authorized to be appropriated $25,000,000 for fiscal year 1989, $30,000,000 for fiscal year 1990, $35,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1994.

(B) The Secretary may make grants to community health centers for the purpose of assisting such centers in—

(i) providing comprehensive health care and support services for the reduction of (I) the incidence of infant mortality, and (II) morbidity among children who are less than 3 years of age; and

(ii) developing and coordinating service and referral arrangements between community health centers and other entities for the health management of pregnant women and children described in clause (i).

(C) In making grants under subparagraph (B), the Secretary shall give priority to community health centers providing services to any medically underserved population among which there is a substantial incidence of infant mortality or among which there is a significant increase in the incidence of infant mortality.

(D) The Secretary may make a grant under subparagraph (B) only if the community health center involved agrees to expend the grant for the following activities with respect to the purpose described in such subparagraph:

(i) Primary health services, including prenatal care.

(ii) Community education, outreach, and case finding.

(iii) Case management services.

(iv) Client education, including parenting and child development education.

(E) The purposes for which a community health center may expend a grant under subparagraph (B) include, with respect to the purpose described in such subparagraph, substance abuse screening, counseling and referral services, and other necessary nonmedical support services, including child care, translation services, and housing assistance.

(F) The Secretary may make a grant under subparagraph (B) only if the community health center involved agrees that—

(i) the center will coordinate the provision of services under the grant to each of the recipients of the services;

(ii) such services will be continuous for each such recipient;

(iii) the center will provide follow-up services for individuals who are referred by the center for services described in subparagraph (E); and

(iv) the grant will be expended to supplement, and not supplant, the expenditures of the center for primary health services (including prenatal care) with respect to the purpose described in such subparagraph.

(3) The Secretary may not expend in any fiscal year, for grants under this section to public centers (as defined in the second sentence of subsection (e)(3) of this section) the governing boards of which (as described in subsection (e)(3)(G)(ii) of this section) do not establish general policies for such centers, an amount which exceeds 5 per centum of the funds appropriated under this section for that fiscal year.

(h) Memorandum of agreement

In carrying out this section, the Secretary may enter into a memorandum of agreement with a State. Such memorandum may include, where appropriate, provisions permitting such State to—

(1) analyze the need for primary health services for medically underserved populations within such State;

(2) assist in the planning and development of new community health centers;

(3) review and comment upon annual program plans and budgets of community health centers, including comments upon allocations of health care resources in the State;

(4) assist community health centers in the development of clinical practices and fiscal and administrative systems through a technical assistance plan which is responsive to the requests of community health centers; and

(5) share information and data relevant to the operation of new and existing community health centers.

(i) Audit of grants; reports; records; waiver of audit

(1) Each entity which receives a grant under subsection (d) of this section shall provide for an independent annual financial audit of any books, accounts, financial records, files, and other papers and property which relate to the disposition or use of the funds received under such grant and such other funds received by or allocated to the project for which such grant was made. For purposes of assuring accurate, current, and complete disclosure of the disposition or use of the funds received, each such audit shall be conducted in accordance with generally accepted accounting principles. Each audit shall evaluate—

(A) the entity's implementation of the guidelines established by the Secretary respecting cost accounting,

(B) the processes used by the entity to meet the financial and program reporting requirements of the Secretary, and

(C) the billing and collection procedures of the entity and the relation of the procedures to its fee schedule and schedule of discounts and to the availability of health insurance and public programs to pay for the health services it provides.

A report of each such audit shall be filed with the Secretary at such time and in such manner as the Secretary may require.

(2) Each entity which receives a grant under subsection (d) of this section shall establish and maintain such records as the Secretary shall by regulation require to facilitate the audit required by paragraph (1). The Secretary may specify by regulation the form and manner in which such records shall be established and maintained.

(3) Each entity which is required to establish and maintain records or to provide for an audit under this subsection shall make such books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of such entity upon a reasonable request therefor. The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the authority to conduct such examination, copying, and reproduction.

(4) The Secretary may, under appropriate circumstances, waive the application of all or part of the requirements of this subsection to a community health center.

(j) Delegation of authority to administer programs; exception

The Secretary may delegate the authority to administer the programs authorized by this section to any office within the Service, except that the authority to enter into, modify, or issue approvals with respect to grants or contracts may be delegated only within the central office of the Health Resources and Services Administration.

(k) Special consideration of needs of frontier areas

In making grants under this section, the Secretary shall give special consideration to the unique needs of frontier areas.

(July 1, 1944, ch. 373, title III, § 330, as added July 29, 1975, Pub. L. 94–63, title V, § 501(a), 89 Stat. 342; amended Apr. 22, 1976, Pub. L. 94–278, title VIII, § 801(b), 90 Stat. 415; Aug. 1, 1977, Pub. L. 95–83, title III, § 304, 91 Stat. 388; Nov. 10, 1978, Pub. L. 95–626, title I, § 104(a)–(d)(3)(B), (4), (5), (e), (f), 92 Stat. 3556–3559; July 10, 1979, Pub. L. 96–32, §§ 6(b)–(d), 7(c), 93 Stat. 83, 84; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Oct. 19, 1980, Pub. L. 96–470, title I, § 106(e), 94 Stat. 2238; Aug. 13, 1981, Pub. L. 97–35, title IX, §§ 903(a), 905, 906, 95 Stat. 561, 562; Jan. 4, 1983, Pub. L. 97–414, § 8(e), 96 Stat. 2060; Apr. 24, 1986, Pub. L. 99–280, §§ 2–4, 100 Stat. 399, 400; Aug. 10, 1988, Pub. L. 100–386, §§ 3, 4, 102 Stat. 921, 923; Nov. 4, 1988, Pub. L. 100–607, title I, § 163(3), 102 Stat. 3062; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(e)(5), 103 Stat. 2207; Nov. 6, 1990, Pub. L. 101–527, § 9(a), 104 Stat. 2332; Oct. 27, 1992, Pub. L. 102–531, title III, § 309(b), 106 Stat. 3500.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(3)(D), (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act), referred to in subsec. (e)(1)(C), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a–5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

The Indian Self-Determination Act, referred to in subsec. (e)(3)(G)(i), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

AMENDMENTS

1992—Subsec. (b)(1)(C). Pub. L. 102–531, § 309(b)(2), inserted ''immunizations against vaccine-preventable diseases, screenings for elevated blood lead levels,'' after ''well child services,''.

Subsec. (d)(4)(C). Pub. L. 102–531, § 309(b)(3), added subpar. (C).

Subsec. (g)(2)(B). Pub. L. 102–531, § 309(b)(1)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The Secretary may make grants to community health centers to assist such centers in—

''(i) providing services for the reduction of the incidence of infant mortality; and

''(ii) developing and coordinating referral arrangements between community health centers and other entities for the health management of infants and pregnant women.''

Subsec. (g)(2)(D) to (F). Pub. L. 102–531, § 309(b)(1)(B), added subpars. (D) to (F).

1990—Subsec. (a)(5). Pub. L. 101–527, § 9(a)(1)(A), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''information on the availability and proper use of health services, and''.

Subsec. (b)(2)(M), (N). Pub. L. 101–527, § 9(a)(1)(B), redesignated subpar. (N) as (M) and struck out former

subpar. (M) which related to services which promoted optimal use of health services.

Subsec. (g)(1)(A), (2)(A). Pub. L. 101–527, §9(a)(2), inserted provisions authorizing such sums as necessary for fiscal years 1992 through 1994.

1989—Subsec. (e)(3)(G). Pub. L. 101–239 inserted ''except in the case of an entity operated by an Indian tribe or tribal or Indian organization under the Indian Self-Determination Act,'' after ''(i)''.

1988—Subsec. (a)(6). Pub. L. 100–386, §3(a), which directed amendment of subsec. ''(a)(1)'' by adding a new par. (6) after par. (5), was executed by adding par. (6) after par. (5) of subsec. (a).

Subsec. (b)(2)(N). Pub. L. 100–386, §3(b), added subpar. (N).

Subsec. (b)(4). Pub. L. 100–386, §3(c), inserted concluding provision permitting Secretary to modify criteria established in regulations only after public notice and opportunity for comment on any such modification.

Subsec. (c)(1). Pub. L. 100–386, §3(e)(1)(A), substituted ''acquisition, expansion, and modernization of existing buildings and construction of new buildings'' for ''acquisition and modernization of existing buildings''.

Subsec. (d)(1)(C). Pub. L. 100–386, §3(e)(1)(B), substituted ''acquisition, expansion, and modernization of existing buildings, construction of new buildings,'' for ''acquisition and modernization of existing buildings'' in concluding provisions.

Subsec. (d)(2). Pub. L. 100–386, §3(e)(1)(C), substituted ''acquiring, expanding, and modernizing existing buildings and constructing new buildings'' for ''acquiring and modernizing existing buildings''.

Subsec. (d)(4)(A)(i). Pub. L. 100–386, §3(f)(1), amended cl. (i) generally, substituting ''State, local, and other operational funding'' for ''the State, local, and other funds''.

Subsec. (d)(4)(B). Pub. L. 100–386, §3(f)(2), substituted ''shall be entitled to retain the additional amount of fees, premiums, and other third party reimbursements as the center will use'' for ''may retain such an amount (equal to not less than one-half of the amount by which such sum exceeded such costs) as the center can demonstrate to the satisfaction of the Secretary will be used to enable the center'' in concluding provisions.

Subsec. (d)(4)(B)(III). Pub. L. 100–386, §3(e)(1)(D), substituted ''construct, expand, and modernize'' for ''construct and modernize''.

Subsec. (e)(3)(F)(i). Pub. L. 100–386, §3(d), inserted ''consistent with locally prevailing rates or charges and'' after ''provision of its services'' and substituted ''operation and has prepared'' for ''operation and''.

Subsec. (e)(6). Pub. L. 100–386, §3(e)(2), added par. (6).

Subsec. (g)(1)(A). Pub. L. 100–386, §3(h)(1), redesignated former par. (1) as subpar. (A) and amended text generally. Prior to amendment, text read as follows: ''There are authorized to be appropriated for payments pursuant to grants under this section $400,000,000 for fiscal year 1987 and $400,000,000 for fiscal year 1988.''

Subsec. (g)(1)(B). Pub. L. 100–386, §3(h)(2), redesignated former par. (2) as par. (1)(B) and former subpars. (A) and (B) thereof as cls. (i) and (ii), respectively, and in cls. (i) and (ii) substituted ''under paragraph (1)'' for ''under this section''.

Subsec. (g)(2). Pub. L. 100–386, §3(h)(2)(B), (3), added par. (2) and redesignated former par. (2) as par. (1)(B).

Subsec. (j). Pub. L. 100–607 redesignated subsec. (j) relating to special consideration of needs of frontier areas, as (k).

Pub. L. 100–386, §4, added subsec. (j) relating to special consideration of needs of frontier areas.

Pub. L. 100–386, §3(g), added subsec. (j) relating to delegation of authority to administer programs.

Subsec. (k). Pub. L. 100–607 redesignated subsec. (j) relating to special consideration of needs of frontier areas, as (k).

1986—Subsec. (b)(3) to (6). Pub. L. 99–280, §2, struck out provisions in par. (3) requiring the Secretary to take into account unusual local conditions that act as a barrier to accessibility to personal health services, directing that, after Aug. 13, 1981, the Secretary not designate a medically underserved population or remove such designation without reasonable opportunity for comment and consultation, and authorizing the Secretary to prescribe criteria for determining specific shortages of personal health services, which criteria was to include infant mortality, other factors indicative of health status, ability of residents to pay for health services and their accessibility to them, and availability of health professionals to residents, and added pars. (4) to (6).

Subsec. (g)(1), (2). Pub. L. 99–280, §4, amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) There are authorized to be appropriated for payments pursuant to grants under subsection (c) of this section $5,000,000 for fiscal year 1976, $5,000,000 for the fiscal year ending September 30, 1977, $5,880,000 for the fiscal year ending September 30, 1978, $6,300,000 for the fiscal year ending September 30, 1979, $7,500,000 for the fiscal year ending September 30, 1980, and $9,000,000 for the fiscal year ending September 30, 1981.

''(2) There are authorized to be appropriated for payments pursuant to grants under subsection (d) of this section $215,000,000 for fiscal year 1976, $235,000,000 for the fiscal year ending September 30, 1977, $256,840,000 for the fiscal year ending September 30, 1978, $341,700,000 for the fiscal year ending September 30, 1979, $397,500,000 for the fiscal year ending September 30, 1980, $463,000,000 for the fiscal year ending September 30, 1981 and $280,000,000 for the fiscal year ending September 30, 1982. For authorizations for appropriations for fiscal years 1983 and 1984, see section 300y–1 of this title. The Secretary may not expend for grants under subsection (d)(1)(C) of this section in any fiscal year an amount which exceeds 5 per centum of the funds appropriated under this paragraph for that fiscal year.''

Subsecs. (h), (i). Pub. L. 99–280, §3, added subsec. (h) and redesignated former subsec. (h) as (i).

1983—Subsec. (d)(2). Pub. L. 97–414 inserted '', the costs of repaying loans made by the Farmers Home Administration for buildings,'' before ''and the costs''.

1981—Subsec. (b)(3). Pub. L. 97–35, §905(a), inserted provisions relating to designations or their removals after Aug. 13, 1981.

Subsec. (e)(2). Pub. L. 97–35, §905(b), inserted provisions relating to demonstrations by applicant.

Subsec. (g)(2). Pub. L. 97–35, §903(a), inserted provisions respecting appropriations for fiscal year ending Sept. 30, 1982, and for fiscal years 1983 and 1984.

Subsec. (h). Pub. L. 97–35, §906, added subsec. (h).

1980—Subsec. (e)(5). Pub. L. 96–470 struck out provision requiring Secretary to notify annually appropriate committees of Congress of amounts expended and improvements for which they were spent.

1979—Subsec. (d)(1)(B). Pub. L. 96–32, §7(c), substituted ''subsection (e)(3) of this section'' for ''subsection (e)(2) of this section''.

Subsec. (e)(3). Pub. L. 96–32, §6(b), amended directory language of Pub. L. 95–623, §(d)(5)(A), and required no change in text. See 1978 Amendment note below.

Subsec. (g)(2). Pub. L. 96–32, §6(c), substituted ''funds appropriated under this paragraph'' for ''funds appropriated under this subsection''.

Subsec. (g)(3). Pub. L. 96–32, §6(d), substituted ''(3)'' for ''(4)'' as number designation of paragraph added by Pub. L. 95–626, 104(f)(4), thereby correcting paragraph designation.

1978—Subsec. (a)(4). Pub. L. 95–626, §104(a), substituted ''environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health'' for ''as may be appropriate for particular centers, environmental health services''.

Subsec. (b)(1)(G). Pub. L. 95–626, §104(b)(1), added subpar. (G).

Subsec. (b)(2). Pub. L. 95–626, §104(b)(2), struck out subpar. (I) relating to pharmaceutical services, redesignated subpars. (J) to (N) as (I) to (M), respectively, in subpar. (J) as so redesignated, substituted ''(including for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services)'' for ''(including nutrition education and social services)'', in subpar. (L) as so redesignated, inserted ''(including nutrition education)'' after ''health education services'' and, in subpar. (M) as so redesignated, substituted ''appropriate personnel'' for ''outreach workers''.

Subsec. (d)(1)(C). Pub. L. 95–626, §104(c)(1)(A), added subpar. (C).

Subsec. (d)(2). Pub. L. 95–626, §104(c)(1)(B), substituted ''paragraph (1)(A) or (1)(B)'' for ''paragraph (1)''.

Subsec. (d)(3). Pub. L. 95–626, §104(c)(1)(C), substituted ''paragraph (1)(B) or (1)(C)'' for ''paragraph (1)(B)''.

Subsec. (d)(4). Pub. L. 95–626, §104(c)(2), added par. (4). A prior par. (4), providing that the amount of any grant made under paragraph (1) be determined by the Secretary, was struck out.

Subsec. (e)(2). Pub. L. 95–626, §104(d)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (e)(3). Pub. L. 95–626, §104(d)(1), (2), (3)(A), (B), (4), (5)(A), as amended by Pub. L. 96–32, §6(b), redesignated former par. (2) as (3) and in par. (3) as so redesignated, substituted ''paragraph (1)(A) or (1)(B) of subsection (d) of this section unless'' for ''subsection (d) of this section unless'' in the provisions preceding subpar. (A), substituted ''(ii) meets at least once a month, selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a governing board of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable'' for ''(ii) meets at least once a month, establishes general policies for the center (including the selection of services to be provided by the center and a schedule of hours during which services will be provided), approves the center's annual budget, and approves the selection of a director for the center'' in subpar. (G), added cl. (V) in subpar. (H), added subpar. (K), and inserted definition of public center following subpar. (K).

Subsec. (e)(4), (5). Pub. L. 95–626, §104(d)(5)(B), added pars. (4) and (5).

Subsec. (f). Pub. L. 95–626, §104(e), designated existing provisions as par. (1) and added par. (2).

Subsec. (g)(1). Pub. L. 95–626, §104(f)(1), inserted provisions authorizing appropriations of $6,300,000 for fiscal year ending Sept. 30, 1979, $7,500,000 for fiscal year ending Sept. 30, 1980, and $9,000,000 for fiscal year ending Sept. 30, 1981.

Subsec. (g)(2). Pub. L. 95–626, §104(f)(2), (3), inserted provisions authorizing appropriations of $341,700,000 for fiscal year ending Sept. 30, 1979, $397,500,000 for fiscal year ending Sept. 30, 1980, and $463,000,000 for fiscal year ending Sept. 30, 1981, and provided that Secretary may not expend for grants under subsection (d)(1)(C) of this section in any fiscal year an amount which exceeds 5 per centum of the funds appropriated under subsec. (g)(2) of this section for that fiscal year.

Subsec. (g)(3). Pub. L. 95–626, §104(f)(4), as amended by Pub. L. 96–32, §6(d), added par. (3).

1977—Subsec. (b)(3). Pub. L. 95–83, §304(b)(1), required Secretary to take into account unusual local conditions which are a barrier to access to or availability of personal health services.

Subsec. (e)(1). Pub. L. 95–83, §304(b)(2), corrected introductory text, substituting subsection ''(c)'' for ''(e)''.

Subsec. (g). Pub. L. 95–83, §304(a), substituted in pars. (1) and (2) provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation for fiscal year ending Sept. 30, 1978, of $5,880,000 in par. (1) and $256,840,000 in par. (2).

1976—Subsec. (b)(2). Pub. L. 94–278 added subpar. (L) and redesignated former subpars. (L) and (M) as (M) and (N), respectively.

CHANGE OF NAME

''Department of Health and Human Services'' substituted for ''Department of Health, Education, and Welfare'' in subsec. (f)(1) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–386 effective Oct. 1, 1988, see section 5 of Pub. L. 100–386, set out as a note under section 254b of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 104(d)(3)(C) of Pub. L. 95–626 provided that: ''The change in the governing board requirements for public community health centers made by the amendment by subparagraph (A) to section 330(e)(3)(G)(ii) of the Public Health Service Act [subsec. (e)(3)(G)(ii) of this section] shall not apply with respect to any public community health center which met the governing board requirements in effect under section 330(e)(2)(G)(ii) of such Act [subsec. (e)(2)(G)(ii) of this section] before October 1, 1978.''

Section 104(g) of Pub. L. 95–626 provided that: ''The amendments made by this section [amending this section] shall apply with respect to grants made under section 330 of the Public Health Service Act [this section] from appropriations for fiscal years ending after September 30, 1978.''

EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 233, 247b–1, 247b–6, 247c–1, 254g, 254q–1, 254r, 256, 256a, 256c, 256d, 290bb–3, 293j, 295p, 297n, 300e–12, 300ee–16, 300ee–33, 300ff–52, 300ff–71, 1395x, 1395ww, 1396b, 1396d, 1396r–1, 1786, 9840 of this title; title 7 section 3178; title 40 section 276d–3.

§ 254c–1. Grants for health services for Pacific Islanders

(a) Grants

The Secretary of Health and Human Services (hereafter in this section referred to as the ''Secretary'') shall provide grants to, or enter into contracts with, public or private nonprofit agencies that have demonstrated experience in serving the health needs of Pacific Islanders living in the Territory of American Samoa, the Commonwealth of Northern Mariana Islands, the Territory of Guam, the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.

(b) Use of grants or contracts

Grants or contracts made or entered into under subsection (a) of this section shall be used, among other items—

(1) to continue, as a priority, the medical officer training program in Pohnpei, Federated States of Micronesia;

(2) to improve the quality and availability of health and mental health services and systems, with an emphasis therein on preventive

health services and health promotion programs and projects, including improved health data systems;

(3) to improve the quality and availability of health manpower, including programs and projects to train new and upgrade the skills of existing health professionals by—

(A) establishing dental officer, dental assistant, nurse practitioner, or nurse clinical specialist training programs;

(B) providing technical training of new auxiliary health workers;

(C) upgrading the training of currently employed health personnel in special areas of need;

(D) developing long-term plans for meeting health profession needs;

(E) developing or improving programs for faculty enhancement or post-doctoral training; and

(F) providing innovative health professions training initiatives (including scholarships) targeted toward ensuring that residents of the Pacific Basin attend and graduate from recognized health professional programs;

(4) to improve the quality of health services, including laboratory, x-ray, and pharmacy, provided in ambulatory and inpatient settings through quality assurance, standard setting, and other culturally appropriate means;

(5) to improve facility and equipment repair and maintenance systems;

(6) to improve alcohol, drug abuse, and mental health prevention and treatment services and systems;

(7) to improve local and regional health planning systems; and

(8) to improve basic local public health systems, with particular attention to primary care and services to those most in need.

No funds under subsection (b) of this section shall be used for capital construction.

(c) Advisory Council

The Secretary of Health and Human Services shall establish a ''Pacific Health Advisory Council'' which shall consist of 12 members and shall include—

(1) the Directors of the Health Departments for the entities identified in subsection (a) of this section; and

(2) 6 members, including a representative of the Rehabilitation Hospital of the Pacific, representing organizations in the State of Hawaii actively involved in the provision of health services or technical assistance to the entities identified in subsection (a) of this section. The Secretary shall solicit the advice of the Governor of the State of Hawaii in appointing the 5 Council members in addition to the representative of the Rehabilitation Hospital of the Pacific from the State of Hawaii.

The Secretary shall be responsible for providing sufficient staff support to the Council.

(d) Advisory Council functions

The Council shall meet at least annually to—

(1) recommend priority areas of need for funding by the Public Health Service under this section; and

(2) review progress in addressing priority areas and make recommendations to the Secretary for needed program modifications.

(e) Report

The Secretary, in consultation with the Council, shall annually prepare and submit to the appropriate committees of Congress a report describing the expenditure of the funds authorized to be appropriated under this section and any recommendations that the Secretary may have.

(f) Authorization of appropriation

There is authorized to be appropriated to carry out this section $10,000,000 for each of the fiscal years 1991 through 1993.

(Pub. L. 101–527, § 10, Nov. 6, 1990, 104 Stat. 2333.)

CODIFICATION

Section was enacted as part of the Disadvantaged Minority Health Improvement Act of 1990, and not as part of the Public Health Service Act which comprises this chapter.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SUBPART II—NATIONAL HEALTH SERVICE CORPS PROGRAM

AMENDMENTS

1976—Pub. L. 94–484, title IV, § 407(b)(3), Oct. 12, 1976, 90 Stat. 2268, added heading ''Subpart II—National Health Service Corps Program''.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 242a, 295j, 1395ccc of this title.

§ 254d. National Health Service Corps

(a) Establishment; composition; purpose; definitions

(1) For the purpose of eliminating health manpower shortages in health professional shortage areas, there is established, within the Service, the National Health Service Corps, which shall consist of—

(A) such officers of the Regular and Reserve Corps of the Service as the Secretary may designate,

(B) such civilian employees of the United States as the Secretary may appoint, and

(C) such other individuals who are not employees of the United States.

(2) The Corps shall be utilized by the Secretary to provide primary health services in health professional shortage areas.

(3) For purposes of this subpart and subpart III:

(A) The term ''Corps'' means the National Health Service Corps.

(B) The term ''Corps member'' means each of the officers, employees, and individuals of

which the Corps consists pursuant to paragraph (1).

(C) The term ''health professional shortage area'' has the meaning given such term in section 254e(a) of this title.

(D) The term ''primary health services'' means health services regarding family medicine, internal medicine, pediatrics, obstetrics and gynecology, dentistry, or mental health, that are provided by physicians or other health professionals.

(b) Recruitment and fellowship programs

(1) The Secretary may conduct at schools of medicine, osteopathic medicine, dentistry, and, as appropriate, nursing and other schools of the health professions and at entities which train allied health personnel, recruiting programs for the Corps, the Scholarship Program, and the Loan Repayment Program. Such recruiting programs shall include efforts to recruit individuals who will serve in the Corps other than pursuant to obligated service under the Scholarship or Loan Repayment Program.

(2) In the case of physicians, dentists, certified nurse midwives, certified nurse practitioners, and physician assistants who have an interest and a commitment to providing primary health care, the Secretary may establish fellowship programs to enable such health professionals to gain exposure to and expertise in the delivery of primary health services in health professional shortage areas. To the maximum extent practicable, the Secretary shall ensure that any such programs are established in conjunction with accredited residency programs, and other training programs, regarding such health professions.

(c) Travel expenses; persons entitled; reimbursement; limitation

The Secretary may reimburse applicants for positions in the Corps (including individuals considering entering into a written agreement pursuant to section 254n of this title) for actual and reasonable expenses incurred in traveling to and from their places of residence to a health professional shortage area (designated under section 254e of this title) in which they may be assigned for the purpose of evaluating such area with regard to being assigned in such area. The Secretary shall not reimburse an applicant for more than one such trip.

(d) Monthly pay adjustments of members directly engaged in delivery of health services in health professional shortage area; "monthly pay" defined; monthly pay adjustment of member with service obligation incurred under Scholarship Program or Loan Repayment Program; personnel system applicable

(1) The Secretary may, under regulations promulgated by the Secretary, adjust the monthly pay of each member of the Corps (other than a member described in subsection (a)(1)(C) of this section) who is directly engaged in the delivery of health services in a health professional shortage area as follows:

(A) During the first 36 months in which such a member is so engaged in the delivery of health services, his monthly pay may be increased by an amount which when added to the member's monthly pay and allowances will provide a monthly income competitive with the average monthly income from a practice of an individual who is a member of the profession of the Corps member, who has equivalent training, and who has been in practice for a period equivalent to the period during which the Corps member has been in practice.

(B) During the period beginning upon the expiration of the 36 months referred to in subparagraph (A) and ending with the month in which the member's monthly pay and allowances are equal to or exceed the monthly income he received for the last of such 36 months, the member may receive in addition to his monthly pay and allowances an amount which when added to such monthly pay and allowances equals the monthly income he received for such last month.

(C) For each month in which a member is directly engaged in the delivery of health services in a health professional shortage area in accordance with an agreement with the Secretary entered into under section 294n(f)(1)(C)[1] of this title, under which the Secretary is obligated to make payments in accordance with section 294n(f)(2)[1] of this title, the amount of any monthly increase under subparagraph (A) or (B) with respect to such member shall be decreased by an amount equal to one-twelfth of the amount which the Secretary is obligated to pay upon the completion of the year of practice in which such month occurs.

For purposes of subparagraphs (A) and (B), the term ''monthly pay'' includes special pay received under chapter 5 of title 37.

(2) In the case of a member of the Corps who is directly engaged in the delivery of health services in a health professional shortage area in accordance with a service obligation incurred under the Scholarship Program or the Loan Repayment Program, the adjustment in pay authorized by paragraph (1) may be made for such a member only upon satisfactory completion of such service obligation, and the first 36 months of such member's being so engaged in the delivery of health services shall, for purposes of paragraph (1)(A), be deemed to begin upon such satisfactory completion.

(3) A member of the Corps described in subparagraph (C) of subsection (a)(1) of this section shall when assigned to an entity under section 254f of this title be subject to the personnel system of such entity, except that such member shall receive during the period of assignment the income that the member would receive if the member was a member of the Corps described in subparagraph (B) of such subsection.

(e) Employment ceiling of Department not affected by Corps members

Corps members assigned under section 254f of this title to provide health services in health professional shortage areas shall not be counted against any employment ceiling affecting the Department.

---

[1] See References in Text note below.

(f) Assignment of personnel provisions inapplicable to members whose service obligation incurred under Scholarship Program or Loan Repayment Program

Sections 215 and 217 of this title shall not apply to members of the National Health Service Corps during their period of obligated service under the Scholarship Program or the Loan Repayment Program.

(g) Conversion from Corps member to commissioned officer; retirement credits

(1) The Secretary shall, by rule, prescribe conversion provisions applicable to any individual who, within a year after completion of service as a member of the Corps described in subsection (a)(1)(C) of this section, becomes a commissioned officer in the Regular or Reserve Corps of the Service.

(2) The rules prescribed under paragraph (1) shall provide that in applying the appropriate provisions of this chapter which relate to retirement, any individual who becomes such an officer shall be entitled to have credit for any period of service as a member of the Corps described in subsection (a)(1)(C) of this section.

(h) Effective administration of program

The Secretary shall ensure that adequate staff is provided to the Service with respect to effectively administering the program for the Corps.

(i) Definitions

For the purposes of this subpart and subpart III:

(1) The term ''Department'' means the Department of Health and Human Services.

(2) The term ''Loan Repayment Program'' means the National Health Service Corps Loan Repayment Program established under section 254*l*–1 of this title.

(3) The term ''Scholarship Program'' means the National Health Service Corps Scholarship Program established under section 254*l* of this title.

(4) The term ''State'' includes, in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(July 1, 1944, ch. 373, title III, § 331, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(3), 90 Stat. 2268; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2701, 95 Stat. 902; Dec. 1, 1987, Pub. L. 100–177, title II, § 202(b), title III, § 301, 101 Stat. 996, 1003; Nov. 4, 1988, Pub. L. 100–607, title VI, § 629(a)(2), 102 Stat. 3146; Nov. 16, 1990, Pub. L. 101–597, title I, § 101, title IV, § 401(b)[(a)], 104 Stat. 3013, 3035.)

REFERENCES IN TEXT

Section 294n of this title, referred to in subsec. (d)(1)(C), was in the original a reference to section 741 of act July 1, 1944. Section 741 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 776 of act July 1, 1944, relating to acquired immune deficiency syndrome, which is classified to section 294n of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in pars. (1), (2), and (3)(C).

Pub. L. 101–597, § 101(a), designated existing provisions as par. (1), substituted ''For the purpose of eliminating health manpower shortages in health manpower shortage areas, there is established, within the Service, the National Health Service Corps, which shall consist of—'' for ''There is established, within the Service, the National Health Service Corps (hereinafter in this subpart referred to as the 'Corps') which (1) shall consist of—'', substituted ''States.'' for ''States,'' at end of subpar. (C), struck out closing provisions which read ''(such officers, employees, and individuals hereinafter in this subpart referred to as 'Corps members'), and (2) shall be utilized by the Secretary to improve the delivery of health services in health manpower shortage areas as defined in section 254e(a) of this title.'', and added pars. (2) and (3).

Subsec. (b). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (2).

Pub. L. 101–597, § 101(b), designated existing provision as par. (1), inserted at end ''Such recruiting programs shall include efforts to recruit individuals who will serve in the Corps other than pursuant to obligated service under the Scholarship or Loan Repayment Program.'', and added par. (2).

Subsec. (c). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Subsec. (d)(1). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in introductory provisions and in subpar. (C).

Subsec. (d)(1)(A). Pub. L. 101–597, § 101(c), struck out ''(not to exceed $1,000)'' after ''by an amount''.

Subsecs. (d)(2), (e). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Subsec. (h). Pub. L. 101–597, § 101(d), added subsec. (h) and struck out former subsec. (h) which read as follows: ''In assigning members of the Corps to health manpower shortage areas, to the extent practicable, the Secretary shall—

''(1) give priority to meeting the needs of the Indian Health Service and the needs of health programs or facilities operated by tribes or tribal organizations under the Indian Self-Determination Act (25 U.S.C. 450f et seq.); and

''(2) provide special consideration to the homeless populations who do not have access to primary health care services.''

Subsec. (i). Pub. L. 101–597, § 101(e), substituted ''of this subpart and subpart III'' for ''of this subpart''.

1988—Subsec. (b). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy''.

1987—Subsec. (b). Pub. L. 100–177, § 202(b)(1), inserted reference to Loan Repayment Program.

Subsec. (c). Pub. L. 100–177, § 202(b)(2), made technical amendment to reference to section 254n of this title to reflect renumbering of corresponding section of original act.

Subsecs. (d)(2), (f). Pub. L. 100–177, § 202(b)(3), (4), inserted reference to Loan Repayment Program.

Subsec. (h). Pub. L. 100–177, § 301(2), added subsec. (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 100–177, §§ 202(b)(5), 301(1), redesignated subsec. (h) as (i), added par. (2), and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2701(a), revised provisions and, as so revised, set out existing provisions in cls. (A) and (B), and added cl. (C).

Subsec. (b). Pub. L. 97–35, § 2701(b), substituted ''may'' for ''shall''.

Subsec. (c). Pub. L. 97–35, § 2701(c), inserted provisions respecting a written agreement under section 254n of this title.

Subsec. (d). Pub. L. 97–35, § 2701(d), in par. (1) inserted reference to member described in subsec. (a)(1)(C) of this section, in subpars. (1)(A) and (B) substituted ''may'' for ''shall'', and added par. (3).

Subsec. (g). Pub. L. 97–35, § 2701(e), substituted provisions relating to conversion from Corps member to commissioned officer and retirement credits, for provisions relating to school participation in development of administrative guidelines.

Subsec. (h). Pub. L. 97–35, § 2701(f), in par. (1) substituted ''Health and Human Services'' for ''Health, Education, and Welfare'', in par. (2) substituted ''254*l*'' for ''294t'', and in par. (3) inserted reference to Commonwealth with respect to the Northern Mariana Islands.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SPECIAL REPORT ON PRESENT AND FUTURE DIRECTION OF NATIONAL HEALTH SERVICE CORPS; SUBMISSION TO CONGRESS NOT LATER THAN FEBRUARY 1, 1979

Pub. L. 95–626, title I, § 116(c), Nov. 10, 1978, 92 Stat. 3569, directed Secretary, not later than Feb. 1, 1979, in consultation with National Advisory Council of National Health Service Corps and National Advisory Council on Health Professions Education, to submit to Congress a report on the direction of the National Health Service Corps, particularly its role as a health manpower program and as a health services delivery program, the use of members of the Corps in health manpower shortage areas to meet urban and rural health needs, the types of health professions needed to meet urban and rural health needs, and the projected size, composition, and use of the Corps through 1985.

EFFECTIVE DATE; OTHER PROVISIONS: HEALTH MANPOWER SHORTAGE AREA; APPROVAL OF APPLICATIONS FOR ASSIGNMENT OF CORPS PERSONNEL; ASSIGNMENT PERIOD, COMMENCEMENT; CREDIT FOR MONTHS OF PRIOR HEALTH CARE AND SERVICES FOR ADDITIONAL PAY BENEFIT; NATIONAL ADVISORY COUNCIL ON THE NATIONAL HEALTH SERVICE CORPS, CONTINUATION OF COUNCIL AND APPOINTMENT OF MEMBERS

Section 407(c) of Pub. L. 94–484 provided that:

''(1) The amendment made by subsections (a) and (b) [enacting this subpart and repealing section 254b of this title] shall apply only with respect to fiscal years beginning after September 30, 1977, except that the Secretary of Health, Education, and Welfare [now Health and Human Services] shall carry out the activities described in section 332 of the Public Health Service Act (as added by such amendment) [section 254e of this title] after the date of enactment of this Act [Oct. 12, 1976].

''(2)(A) Any area for which a designation under section 329(b) of the Public Health Service Act (as in effect on September 30, 1977) [section 254b(b) of this title] was in effect on such date and in which National Health Service Corps personnel were, on such date, providing, under an assignment made under such section (as so in effect), health care and services for persons residing in such area shall, effective October 1, 1977, be considered under subpart II of part C of title III of such Act (as added by subsection (b) of this section) [this subpart] to (i) be designated a health manpower shortage area (as defined by section 332 of such Act (as so added)) [section 254e of this title], and (ii) have had an application approved under section 333 of such Act (as so added)) [section 254f of this title] for the assignment of Corps personnel unless, as determined under subparagraph (B) of this paragraph, the assignment period applicable to such area (within the meaning of section 334 (as so added)) [section 254g of this title] has expired.

''(B) The assignment period (within the meaning of such section 334) [section 254g of this title] applicable to an area described in subparagraph (A) of this paragraph shall be considered to have begun on the date Corps personnel were first assigned to such area under section 329 of such Act (as in effect on September 30, 1977) [section 254b of this title].

''(C) In the case of any physician or dentist member of the Corps who was providing health care and services on September 30, 1977, under an assignment made under section 329(b) of such Act (as in effect on September 30, 1977) [section 254b(b) of this title], the number of the months during which such member provided such care and services before October 1, 1977, shall be counted in determining the application of the additional pay provisions of section 331(d) of such Act (as added by subsection (b) of this section) [subsec. (d) of this section] to such number.

''(3) The amendment made by subsection (b) which established an Advisory Council previously established under section 329 of the Public Health Service Act [section 254b of this title] shall not be construed as requiring the establishment of a new Advisory Council under such section 337 [section 254j of this title], and the amendment made by such subsection with respect to the composition of such Advisory Council shall apply with respect to appointments made to the Advisory Council after October 1, 1977, and the Secretary of Health, Education, and Welfare [now Health and Human Services] shall make appointments to the Advisory Council after such date in a manner which will bring about, at the earliest feasible time, the Advisory Council composition prescribed by the amendment.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 254f, 254g, 254h, 254k, 254*l*, 254*l*–1, 254m of this title; title 25 section 1616a.

§ 254e. Health professional shortage areas

(a) Designation by Secretary; removal from areas designated; "medical facility" defined

(1) For purposes of this subpart the term ''health professional shortage area'' means (A) an area in an urban or rural area (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the Secretary determines has a health manpower shortage and which is not reasonably accessible to an adequately served area, (B) a population group which the Secretary determines has such a shortage, or (C) a public or nonprofit private medical facility or other public facility which the Secretary determines has such a shortage. The Secretary shall not remove an area from the areas determined to be health professional shortage areas under subparagraph (A) of the preceding sentence until the Secretary has afforded interested persons and groups in such area an opportunity to provide data and information in support of the designation as a health professional shortage area or a population group described in subparagraph (B) of such sentence or a facility described in subparagraph (C) of such sentence, and has made a determination on the basis of the data and information submitted by such persons and groups and other data and information available to the Secretary.

(2) For purposes of this subsection, the term ''medical facility'' means a facility for the delivery of health services and includes—

(A) a hospital, State mental hospital, public health center, outpatient medical facility, rehabilitation facility, facility for long-term

care, community mental health center, migrant health center, facility operated by a city or county health department, and community health center;

(B) such a facility of a State correctional institution or of the Indian Health Service, and a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act [25 U.S.C. 450f et seq.];

(C) such a facility used in connection with the delivery of health services under section 248 of this title (relating to hospitals), 249 of this title (relating to care and treatment of persons under quarantine and others), 250 of this title (relating to care and treatment of Federal prisoners), 251 of this title (relating to examination and treatment of certain Federal employees), 252 of this title (relating to examination of aliens), 253 of this title (relating to services to certain Federal employees), 247e of this title (relating to services for persons with Hansen's disease), or 256 of this title (relating to the provision of health services to homeless individuals); and

(D) a Federal medical facility.

(3) Homeless individuals (as defined in section 256(r) of this title) may be a population group under paragraph (1).

(b) Criteria for designation of health professional shortage areas; promulgation of regulations

The Secretary shall establish by regulation criteria for the designation of areas, population groups, medical facilities, and other public facilities, in the States, as health professional shortage areas. In establishing such criteria, the Secretary shall take into consideration the following:

(1) The ratio of available health manpower to the number of individuals in an area or population group, or served by a medical facility or other public facility under consideration for designation.

(2) Indicators of a need, notwithstanding the supply of health manpower, for health services for the individuals in an area or population group or served by a medical facility or other public facility under consideration for designation, with special consideration to indicators of—

(A) infant mortality,

(B) access to health services,

(C) health status, and

(D) ability to pay for health services.

(3) The percentage of physicians serving an area, population group, medical facility, or other public facility under consideration for designation who are employed by hospitals and who are graduates of foreign medical schools.

(c) Considerations in determination of designation

In determining whether to make a designation, the Secretary shall take into consideration the following:

(1) The recommendations of the Governor of each State in which the area, population group, medical facility, or other public facility under consideration for designation is in whole or part located.

(2) The extent to which individuals who are (A) residents of the area, members of the population group, or patients in the medical facility or other public facility under consideration for designation, and (B) entitled to have payment made for medical services under title XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.], cannot obtain such services because of suspension of physicians from the programs under such titles.

(d) Designation; publication of descriptive lists

(1) In accordance with the criteria established under subsection (b) of this section and the considerations listed in subsection (c) of this section the Secretary shall designate health professional shortage areas in the States, publish a descriptive list of the areas, population groups, medical facilities, and other public facilities so designated, and at least annually review and, as necessary, revise such designations.

(2) For purposes of paragraph (1), a complete descriptive list shall be published in the Federal Register not later than July 1 of 1991 and each subsequent year.

(e) Notice of proposed designation of areas and facilities; time for comment

(1) Prior to the designation of a public facility, including a Federal medical facility, as a health professional shortage area, the Secretary shall give written notice of such proposed designation to the chief administrative officer of such facility and request comments within 30 days with respect to such designation.

(2) Prior to the designation of a health professional shortage area under this section, the Secretary shall, to the extent practicable, give written notice of the proposed designation of such area to appropriate public or private nonprofit entities which are located or have a demonstrated interest in such area and request comments from such entities with respect to the proposed designation of such area.

(f) Notice of designation

The Secretary shall give written notice of the designation of a health professional shortage area, not later than 60 days from the date of such designation, to—

(1) the Governor of each State in which the area, population group, medical facility, or other public facility so designated is in whole or part located; and

(2) appropriate public or nonprofit private entities which are located or which have a demonstrated interest in the area so designated.

(g) Recommendations to Secretary

Any person may recommend to the Secretary the designation of an area, population group, medical facility, or other public facility as a health professional shortage area.

(h) Public information programs in designated areas

The Secretary may conduct such information programs in areas, among population groups, and in medical facilities and other public facilities designated under this section as health professional shortage areas as may be necessary to inform public and nonprofit private entities

which are located or have a demonstrated interest in such areas of the assistance available under this subchapter by virtue of the designation of such areas.

(July 1, 1944, ch. 373, title III, § 332, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(3), 90 Stat. 2270; amended Oct. 25, 1977, Pub. L. 95–142, § 7(d), 91 Stat. 1193; July 10, 1979, Pub. L. 96–32, § 7(d), 93 Stat. 84; Aug. 13, 1981, Pub. L. 97–35, title IX, § 986(b)(4), title XXVII, § 2702(a), (b), (c), 95 Stat. 603, 903, 904; July 22, 1987, Pub. L. 100–77, title VI, § 602, 101 Stat. 515; Dec. 1, 1987, Pub. L. 100–177, title III, § 302, 101 Stat. 1003; Nov. 4, 1988, Pub. L. 100–607, title VIII, § 802(b)(2), 102 Stat. 3169; Nov. 7, 1988, Pub. L. 100–628, title VI, § 602(b)(2), 102 Stat. 3242; Nov. 16, 1990, Pub. L. 101–597, title I, § 102, title IV, § 401(b)[(a)], 104 Stat. 3014, 3035.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (a)(2)(B), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Social Security Act, referred to in subsec. (c)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

Subsec. (a)(2)(A). Pub. L. 101–597, § 102(b)(1), inserted ''facility operated by a city or county health department,'' before ''and community health center''.

Subsec. (a)(2)(B). Pub. L. 101–597, § 102(b)(2), inserted before semicolon '', and a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act''.

Subsec. (a)(2)(C). Pub. L. 101–597, § 102(b)(3), substituted ''section'' for ''sections'' before ''248'', struck out ''or'' before ''253'' and ''or section'' before ''247e'', and inserted before semicolon '', or 256 of this title (relating to the provision of health services to homeless individuals)''.

Subsec. (b). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, § 102(c)(1), struck out '', promulgated not later than May 1, 1977,'' after ''establish by regulation''.

Subsec. (c). Pub. L. 101–597, § 102(c)(2), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows:

''(A) The recommendations of each health systems agency (designated under section 300*l*–4 of this title) for a health service area which includes all or any part of the area, population group, medical facility, or other public facility under consideration for designation.

''(B) The recommendations of the State health planning and development agency (designated under section 300m of this title) if such area, population group, medical facility, or other public facility is within a health service area for which no health systems agency has been designated.''

Subsec. (d). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (1).

Pub. L. 101–597, § 102(a), (c)(3), designated existing provision as par. (1), struck out '', not later than November 1, 1977,'' after ''Secretary shall designate'', and added par. (2).

Subsec. (e). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

Subsec. (f). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, § 102(c)(4), redesignated par. (3) as (2) and struck out former par. (2) which read as follows:

''(A) each health systems agency (designated under section 300*l*–4 of this title) for a health service area which includes all or any part of the area, population group, medical facility, or other public facility so designated; or

''(B) the State health planning and development agency of the State (designated under section 300m of this title) if there is a part of such area, population group, medical facility, or other public facility within a health service area for which no health systems agency has been designated; and''.

Subsecs. (g), (h). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

1988—Subsec. (a)(3). Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, substituting ''section 256(r)'' for ''section 256(q)(2)''.

1987—Subsec. (a)(1). Pub. L. 100–177, § 302(1), inserted sentence at end relating to removal of an area from areas determined to be health manpower shortage areas.

Subsec. (a)(3). Pub. L. 100–77 added par. (3).

Subsec. (b)(2)(D). Pub. L. 100–177, § 302(2), added subpar. (D).

1981—Subsec. (a)(1)(A). Pub. L. 97–35, § 2702(a), inserted provisions respecting reasonable accessibility to adequately served area.

Subsec. (a)(2)(C). Pub. L. 97–35, § 986(b)(4), substituted ''persons under quarantine'' for ''seamen''.

Subsec. (e). Pub. L. 97–35, § 2702(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 97–35, § 2702(b), substituted ''may'' for ''shall''.

1979—Subsec. (a)(2)(C). Pub. L. 96–32 substituted ''section 247e of this title'' for ''part D of subchapter II of this chapter''.

1977—Subsec. (c)(3). Pub. L. 95–142 added par. (3).

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 256 of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 256 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 986(b)(4) of Pub. L. 97–35 effective Oct. 1, 1981, see section 986(c) of Pub. L. 97–35, set out as a note under section 249 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 7(e)(1) of Pub. L. 95–142 provided that: ''The amendment made by subsection (d) [amending this section] shall apply with respect to determinations and designations made on and after the date of the enactment of this Act [Oct. 25, 1977].''

EVALUATION OF CRITERIA USED TO DESIGNATE HEALTH MANPOWER SHORTAGE AREAS; REPORT TO CONGRESS

Section 2702(c) of Pub. L. 97–35 directed the Secretary of Health and Human Services, effective Oct. 1, 1981, to evaluate the criteria used under section 254e(b) of this title to determine if the use of the criteria resulted in areas which did not have a shortage of health professions personnel being designated as health manpower shortage areas, and to consider different criteria (including the actual use of health professions personnel

in an area by the residents, taking into account their health status and indicators of unmet demand and likelihood that such demand would not be met in two years) which might be used to designate health manpower shortage areas. The Secretary was to report the results of his activities to Congress not later than Nov. 30, 1982.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254d, 254f, 254g, 254k, 254*l*, 254*l*–1, 254m, 254n, 254p, 295p, 296m, 297, 297–1, 1395*l*, 1395x, 9840 of this title; title 5 section 8902.

§ 254f. Corps personnel

(a) Conditions necessary for assignment of Corps personnel to area; contents of application for assignment; assignment to particular facility; approval of applications

(1) The Secretary may assign members of the Corps to provide, under regulations promulgated by the Secretary, health services in or to a health professional shortage area during the assignment period (specified in the agreement described in section 254g of this title) only if—

(A) a public or nonprofit private entity, which is located or has a demonstrated interest in such area makes application to the Secretary for such assignment;

(B) such application has been approved by the Secretary;

(C) an agreement has been entered into between the entity which has applied and the Secretary, in accordance with section 254g of this title; and

(D) the Secretary has (i) conducted an evaluation of the need and demand for health manpower for the area, the intended use of Corps members to be assigned to the area, community support for the assignment of Corps members to the area, the area's efforts to secure health manpower for the area, and the fiscal management capability of the entity to which Corps members would be assigned and (ii) on the basis of such evaluation has determined that—

(I) there is a need and demand for health manpower for the area;

(II) there has been appropriate and efficient use of any Corps members assigned to the entity for the area;

(III) there is general community support for the assignment of Corps members to the entity;

(IV) the area has made unsuccessful efforts to secure health manpower for the area; and

(V) there is a reasonable prospect of sound fiscal management, including efficient collection of fee-for-service, third-party, and other appropriate funds, by the entity with respect to Corps members assigned to such entity.

An application for assignment of a Corps member to a health professional shortage area shall include a demonstration by the applicant that the area or population group to be served by the applicant has a shortage of personal health services and that the Corps member will be located so that the member will provide services to the greatest number of persons residing in such area or included in such population group. Such a demonstration shall be made on the basis of the criteria prescribed by the Secretary under section 254e(b) of this title and on additional criteria which the Secretary shall prescribe to determine if the area or population group to be served by the applicant has a shortage of personal health services.

(2) Corps members may be assigned to a Federal health care facility, but only upon the request of the head of the department or agency of which such facility is a part.

(3) In approving applications for assignment of members of the Corps the Secretary shall not discriminate against applications from entities which are not receiving Federal financial assistance under this chapter.

(b) Corps member income assurances; grants respecting sufficiency of financial resources

(1) The Secretary may not approve an application for the assignment of a member of the Corps described in subparagraph (C) of section 254d(a)(1) of this title to an entity unless the application of the entity contains assurances satisfactory to the Secretary that the entity (A) has sufficient financial resources to provide the member of the Corps with an income of not less than the income to which the member would be entitled if the member was a member described in subparagraph (B) of section 254d(a)(1) of this title, or (B) would have such financial resources if a grant was made to the entity under paragraph (2).

(2)(A) If in approving an application of an entity for the assignment of a member of the Corps described in subparagraph (C) of section 254d(a)(1) of this title the Secretary determines that the entity does not have sufficient financial resources to provide the member of the Corps with an income of not less than the income to which the member would be entitled if the member was a member described in subparagraph (B) of section 254d(a)(1) of this title, the Secretary may make a grant to the entity to assure that the member of the Corps assigned to it will receive during the period of assignment to the entity such an income.

(B) The amount of any grant under subparagraph (A) shall be determined by the Secretary. Payments under such a grant may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary. No grant may be made unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

(c) Assignment of members without regard to ability of area to pay for services

The Secretary shall assign Corps members to entities in health professional shortage areas without regard to the ability of the individuals in such areas, population groups, medical facilities, or other public facilities to pay for such services.

(d) Entities entitled to aid; forms of assistance; coordination of efforts; agreements for assignment of Corps members; qualified entity

(1) The Secretary may provide technical assistance to a public or nonprofit private entity

which is located in a health professional shortage area and which desires to make an application under this section for assignment of a Corps member to such area. Assistance provided under this paragraph may include assistance to an entity in (A) analyzing the potential use of health professions personnel in defined health services delivery areas by the residents of such areas, (B) determining the need for such personnel in such areas, (C) determining the extent to which such areas will have a financial base to support the practice of such personnel and the extent to which additional financial resources are needed to adequately support the practice, and (D) determining the types of inpatient and other health services that should be provided by such personnel in such areas.

(2) The Secretary may provide, to public and nonprofit private entities which are located in a health professional shortage area to which area a Corps member has been assigned, technical assistance to assist in the retention of such member in such area after the completion of such member's assignment to the area.

(3) The Secretary may provide, to health professional shortage areas to which no Corps member has been assigned, (A) technical assistance to assist in the recruitment of health manpower for such areas, and (B) current information on public and private programs which provide assistance in the securing of health manpower.

(4)(A) The Secretary shall undertake to demonstrate the improvements that can be made in the assignment of members of the Corps to health professional shortage areas and in the delivery of health care by Corps members in such areas through coordination with States, political subdivisions of States, agencies of States and political subdivisions, and other public and nonprofit private entities which have expertise in the planning, development, and operation of centers for the delivery of primary health care. In carrying out this subparagraph, the Secretary shall enter into agreements with qualified entities which provide that if—

(i) the entity places in effect a program for the planning, development, and operation of centers for the delivery of primary health care in health professional shortage areas which reasonably addresses the need for such care in such areas, and

(ii) under the program the entity will perform the functions described in subparagraph (B),

the Secretary will assign under this section members of the Corps in accordance with the program.

(B) For purposes of subparagraph (A), the term ''qualified entity'' means a State, political subdivision of a State, an agency of a State or political subdivision, or other public or nonprofit private entity operating solely within one State, which the Secretary determines is able—

(i) to analyze the potential use of health professions personnel in defined health services delivery areas by the residents of such areas;

(ii) to determine the need for such personnel in such areas and to recruit, select, and retain health professions personnel (including members of the National Health Service Corps) to meet such need;

(iii) to determine the extent to which such areas will have a financial base to support the practice of such personnel and the extent to which additional financial resources are needed to adequately support the practice;

(iv) to determine the types of inpatient and other health services that should be provided by such personnel in such areas;

(v) to assist such personnel in the development of their clinical practice and fee schedules and in the management of their practice;

(vi) to assist in the planning and development of facilities for the delivery of primary health care; and

(vii) to assist in establishing the governing bodies of centers for the delivery of such care and to assist such bodies in defining and carrying out their responsibilities.

(e) Practice within State by Corps member

Notwithstanding any other law, any member of the Corps licensed to practice medicine, osteopathic medicine, dentistry, or any other health profession in any State shall, while serving in the Corps, be allowed to practice such profession in any State.

(July 1, 1944, ch. 373, title III, § 333, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(3), 90 Stat. 2272; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2703, 95 Stat. 904; Dec. 1, 1987, Pub. L. 100–177, title III, §§ 303, 304, 101 Stat. 1004; Nov. 4, 1988, Pub. L. 100–607, title VI, § 629(a)(2), 102 Stat. 3146; Nov. 16, 1990, Pub. L. 101–597, title I, § 103, title IV, § 401(b)[(a)], 104 Stat. 3015, 3035.)

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in introductory and closing provisions.

Subsec. (a)(1)(D)(ii)(II). Pub. L. 101–597, § 103(a), substituted ''has been'' and ''any Corps'' for ''will be'' and ''Corps'', respectively.

Subsec. (b). Pub. L. 101–597, § 103(b), redesignated subsec. (d) as (b) and struck out former subsec. (b) which related to approval of application for assignment of Corps personnel subject to review and comment on application by health service agencies in designated area.

Subsec. (c). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, § 103(b), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to applications, consideration and approval by Secretary, priorities, cooperation with Corps members, and comments by health professionals and societies in designated areas.

Subsec. (d). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing in pars. (1) to (4)(A)(i).

Pub. L. 101–597, § 103(b)(2), redesignated subsec. (g) as (d). Former subsec. (d) redesignated (b).

Subsec. (e). Pub. L. 101–597, § 103(b)(2), redesignated subsec. (i) as (e). Former subsec. (e) redesignated (c).

Subsec. (f). Pub. L. 101–597, § 103(b)(1), struck out subsec. (f) which provided for selection of Corps members for assignment upon basis of characteristics.

Subsec. (g). Pub. L. 101–597, § 103(b)(2), redesignated subsec. (g) as (d).

Subsec. (h). Pub. L. 101–597, § 103(b)(1), struck out subsec. (h) which related to study and contracts for study of methods of assignments of Corps members.

Subsec. (i). Pub. L. 101–597, § 103(b)(2), redesignated subsec. (i) as (e).

Subsecs. (j), (k). Pub. L. 101–597, § 103(b)(1), struck out subsecs. (j) and (k) which provided for placement of physicians in medically underserved areas and assignment of family physicians, respectively.

1988—Subsec. (i). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy''.

1987—Subsec. (j). Pub. L. 100–177, § 303, added subsec. (j).

Subsec. (k). Pub. L. 100–177, § 304, added subsec. (k).

1981—Subsec. (a). Pub. L. 97–35, § 2703(a), (b), amended par. (1)(D) generally and, among changes, made numerous changes in nomenclature, inserted at end of par. (1) provisions respecting application, and added par. (3).

Subsec. (c). Pub. L. 97–35, § 2703(c), struck out par. (2) which related to special considerations, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsecs. (d) to (f). Pub. L. 97–35, § 2703(d), added subsec. (d) and redesignated former subsecs. (d), (e), and (f) as (e), (f), and (g), respectively.

Subsec. (g). Pub. L. 97–35, § 2703(d), (e), redesignated former subsec. (f) as (g) and substituted ''may'' for ''shall'' in pars. (1) to (3), inserted provisions respecting health professions personnel in par. (1), added par. (4), and struck out requirement respecting demonstrated interest in pars. (1) and (2). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 97–35, § 2703(d), (f), redesignated former subsec. (g) as (h) and directed that ''may'' be substituted for ''shall'' which was executed by substituting ''may'' for ''shall'' in two places preceding par. (1). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 97–35, § 2703(d), (g), redesignated former subsec. (h) as (i) and inserted reference to other health profession.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2703(d) of Pub. L. 97–35 provided that the amendment made by that section is effective Oct. 1, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254d, 254f–1, 254g, 254h, 254h–1, 254i, 254k, 254*l*, 254*l*–1, 254m, 256*o*–1, 254q–1, 1396s of this title.

§ 254f–1. Priorities in assignment of Corps personnel

(a) In general

In approving applications made under section 254f of this title for the assignment of Corps members, the Secretary shall—

(1) give priority to any such application that—

(A) is made regarding the provision of primary health services to a health professional shortage area with the greatest such shortage, as determined in accordance with subsection (b) of this section; and

(B) is made by an entity that—

(i) serves a health professional shortage area described in subparagraph (A);

(ii) coordinates the delivery of primary health services with related health and social services;

(iii) has a documented record of sound fiscal management; and

(iv) will experience a negative impact on its capacity to provide primary health services if a Corps member is not assigned to the entity;

(2) with respect to the geographic area in which the health professional shortage area is located, take into consideration the willingness of individuals in the geographic area, and of the appropriate governmental agencies or health entities in the area, to assist and cooperate with the Corps in providing effective primary health services; and

(3) take into consideration comments of medical, osteopathic, dental, or other health professional societies whose members deliver services to the health professional shortage area, or if no such societies exist, comments of physicians, dentists, or other health professionals delivering services to the area.

(b) Exclusive factors for determining greatest shortages

In making a determination under subsection (a)(1)(A) of this section of the health professional shortage areas with the greatest such shortages, the Secretary may consider only the following factors:

(1) The ratio of available health manpower to the number of individuals in the area or population group involved, or served by the medical facility or other public facility involved.

(2) Indicators of need as follows:

(A) The rate of low birthweight births.

(B) The rate of infant mortality.

(C) The rate of poverty.

(D) Access to primary health services, taking into account the distance to such services.

(c) Establishment of criteria for determining priorities

(1) In general

The Secretary shall establish criteria specifying the manner in which the Secretary makes a determination under subsection (a)(1)(A) of this section of the health professional shortage areas with the greatest such shortages. Such criteria shall specify the manner in which the factors described in subsection (b) of this section are implemented regarding such a determination.

(2) Publication of criteria

The criteria required in paragraph (1) shall be published in the Federal Register not later than July 1, 1991. Any revisions made in the criteria by the Secretary shall be effective upon publication in the Federal Register.

(d) Notifications regarding priorities

(1) Preparation of list for applicable period

For the purpose of carrying out paragraph (2), the Secretary shall prepare a list of health professional shortage areas that are receiving priority under subsection (a)(1) of this section in the assignment of Corps members for the period applicable under subsection (f) of this section. Such list—

(A) shall include a specification, for each such health professional shortage area, of the entities for which the Secretary has provided an authorization to receive assignments of Corps members in the event that Corps members are available for the assignments; and

(B) shall, of the entities for which an authorization described in subparagraph (A) has been provided, specify—

(i) the entities provided such an authorization for the assignment of Corps mem-

bers who are participating in the Scholarship Program;

(ii) the entities provided such an authorization for the assignment of Corps members who are participating in the Loan Repayment Program; and

(iii) the entities provided such an authorization for the assignment of Corps members who have become Corps members other than pursuant to contractual obligations under the Scholarship or Loan Repayment Programs.

The Secretary may set forth such specifications by medical specialty.

(2) Notification of affected parties

(A) Not later than 30 days after the preparation of each list under paragraph (1), the Secretary shall notify entities specified for purposes of subparagraph (A) of such paragraph of the fact that the entities have been provided an authorization to receive assignments of Corps members in the event that Corps members are available for the assignments.

(B) In the case of individuals with respect to whom a period of obligated service under the Scholarship Program will begin during the period under subsection (f) of this section for which a list under paragraph (1) is prepared, the Secretary shall, not later than 30 days after the preparation of each such list, provide to such individuals the names of each of the entities specified for purposes of paragraph (1)(B)(i) that is appropriate to the medical specialty of the individuals.

(3) Revisions in list

If the Secretary makes a revision in a list under paragraph (1) during the period under subsection (f) of this section to which the list is applicable, and the revision alters the status of an entity with respect to the list, the Secretary shall notify the entity of the effect on the entity of the revision. Such notification shall be provided not later than 30 days after the date on which the revision is made.

(e) Limitation on number of entities offered as assignment choices in Scholarship Program

(1) Determination of available Corps members

The Secretary shall determine the number of participants in the Scholarship Program who are available for assignments under section 254f of this title for the period applicable under subsection (f) of this section.

(2) Availability of 500 or fewer members

If the number of participants for purposes of paragraph (1) is less than 500, the Secretary shall limit the number of entities specified under subsection (d)(1)(B)(i) of this section to the lesser of—

(A) 500 such entities; and

(B) a number of such entities constituting 300 percent of the number of such participants available for assignment under section 254f of this title.

(3) Availability of more than 500 members

If the number of participants for purposes of paragraph (1) is equal to or greater than 500, the Secretary shall determine the number of entities to be specified under subsection (d)(1)(B)(i) of this section, subject to ensuring that assignments of such participants are made to 500 entities that serve health professional shortage areas that have chronic difficulty in recruiting and retaining health professionals to provide primary health services.

(4) Adjustment in base number

The number 500, as used for purposes of paragraphs (2) and (3), may by regulation be adjusted by the Secretary to a greater or a lesser number.

(f) Applicable period regarding priorities

(1) In general

With respect to determinations under subsection (a)(1) of this section of the applications that are to be given priority regarding the assignment of Corps members, the Secretary shall make such a determination not less than once each fiscal year. The first determination shall be made not later than July 1 of the year preceding the year in which the period of obligated service begins. If the Secretary revises the determination before July 1 of the following year, the revised determination shall be applicable with respect to assignments of Corps members made during the period beginning on the date of the issuance of the revised determination and ending on July 1 of such year.

(2) Date certain for preparation of notification list

A list under subsection (d)(1) of this section shall be prepared for each of the periods decribed[1] in paragraph (1). Each such list shall be prepared not later than the date on which a determination of priorities under such paragraph is required to be made for the period involved.

(July 1, 1944, ch. 373, title III, § 333A, as added and amended Nov. 16, 1990, Pub. L. 101–597, title I, § 104, title IV, § 401(b)[(a)], 104 Stat. 3015, 3035.)

AMENDMENTS

1990—Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing in subsecs. (a) to (c)(1), (d)(1), and (e)(3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254h–1, 254*l*, 254*l*–1, 254q–1 of this title.

§ 254g. Cost sharing

(a) Charges for services; collection of payments; payment to United States; calculation of payments; annual report

The Secretary shall require, as a condition to the approval of an application under section 254f of this title for the assignment of a member of the Corps, that the entity which submitted the application enter into an agreement for a specific assignment period (not to exceed 4 years) with the Secretary under which—

(1) the entity shall be responsible for charging, in accordance with subsection (d) of this

[1] So in original. Probably should be ''described''.

section, for health services provided by Corps members assigned to the entity;

(2) the entity shall take such action as may be reasonable for the collection of payments for such health services, including, if a Federal agency, an agency of a State or local government, or other third party would be responsible for all or part of the cost of such health services if it had not been provided by Corps members under this subpart, the collection, on a fee-for-service or other basis, from such agency or third party, the portion of such cost for which it would be so responsible (and in determining the amount of such cost which such agency or third party would be responsible, the health services provided by Corps members shall be considered as being provided by private practitioners);

(3) the entity, if not a small health center, shall pay to the United States, as prescribed by the Secretary in each calendar quarter (or other period as may be specified in the agreement) during which any Corps member is assigned to such entity, the sum of—

(A) an amount calculated by the Secretary to reflect the average salary (including amounts paid in accordance with section 254d(d) of this title) and allowances of comparable Corps members for a calendar quarter (or other period);

(B) that portion of an amount calculated by the Secretary to reflect the average amount paid under the Scholarship Program or the Loan Repayment Program to or on behalf of comparable Corps members that bears the same ratio to the calculated amount as the number of days of service provided by the member during that quarter (or other period) bears to the number of days in his period of obligated service under the Scholarship Program or the Loan Repayment Program; and

(C) if such entity received a loan under section 254h(c) of this title or a grant under section 254f(d)(2)[1] of this title, an amount which bears the same ratio to the amount of such loan or grant as the number of days in such quarter (or other period) during which any Corps members were assigned to the entity bears to the number of days in the assignment period after such entity received such loan or grant;

(4) the entity, if a small health center, shall pay to the United States, in each calendar quarter (or other period as may be specified in the agreement) during which any Corps member is assigned to such entity, an amount determined by the Secretary in accordance with subsection (f) of this section; and

(5) the entity shall prepare and submit to the Secretary an annual report, in such form and manner, as the Secretary may require.

(b) Waiver of payment; use of funds

(1) The Secretary may waive in whole or in part, on a prospective or retrospective basis, the application of the requirement of subsection (a)(3) of this section for an entity which is not a small health center if he determines that the entity is financially unable to meet such requirement or if he determines that compliance with such requirement would unreasonably limit the ability of the entity to provide for the adequate support of the provision of health services by Corps members.

(2) The Secretary may waive in whole or in part, on a prospective or retrospective basis, the application of the requirement of subsection (a)(3) of this section for any entity which is not a small health center and which is located in a health professional shortage area in which a significant percentage of the individuals are elderly, living in poverty, or have other characteristics which indicate an inability to repay, in whole or in part, the amounts required in subsection (a)(3) of this section.

(3) In the event that the Secretary grants a waiver under paragraph (1) or (2), and does not, pursuant to paragraph (5), require payment by the entity in the amount described in subsection (f)(1) of this section, the entity shall be required to use the total amount of funds collected by such entity in accordance with subsection (a)(2) of this section for the improvement of the capability of such entity to deliver health services to the individuals in, or served by, the health professional shortage area.

(4) In determining whether to grant a waiver under paragraph (1) or (2), the Secretary shall not discriminate against a public entity.

(5)(A) If the Secretary determines that an entity which is not a small health center is eligible for a waiver under paragraph (1) or (2), the Secretary may waive the application of subsection (a)(3) of this section for such entity and require such entity to make payment in an amount equal to the amount described in subsection (f)(1) of this section that would be payable by such entity if such entity were a small health center.

(B) The Secretary may waive in whole or in part, on a prospective or retrospective basis, the application of the requirement of subparagraph (A) for any entity if the Secretary determines that the entity is financially unable to meet such requirement or that compliance with such requirement would unreasonably limit the ability of the entity to provide for the adequate support of the provision of health services by Corps members. Funds which would be paid to the United States but for a waiver under this subparagraph shall be used by an entity to—

(i) expand or improve its provision of health services;

(ii) increase the number of individuals served;

(iii) renovate or modernize facilities for its provision of health services;

(iv) improve the administration of its health service programs; or

(v) to establish a financial reserve to assure its ability to continue providing health services.

(c) Excess funds

The excess (if any) of the amount of funds collected by an entity which is not a small health center in accordance with subsection (a)(2) of this section over the amount paid to the United States in accordance with subsection (a)(3) of

[1] See References in Text note below.

this section or subsection (b)(5)(A) of this section shall be used by the entity to expand and improve the provision of health services to the individuals in the health professional shortage area for which the entity submitted an application or to recruit and retain health manpower to provide health services for such individuals.

(d) Charge for services; reduced rate; no charge

Any person who receives health services provided by a Corps member under this subpart shall be charged for such services on a fee-for-service or other basis, at a rate approved by the Secretary, pursuant to regulations. Such rate shall be computed in such a way as to permit the recovery of the value of such services, except that if such person is determined under regulations of the Secretary to be unable to pay such charge, the Secretary shall provide for the furnishing of such services at a reduced rate or without charge.

(e) Deposit of funds in Treasury as miscellaneous receipts; appropriations unaffected

Funds received by the Secretary under an agreement entered into under this section shall be deposited in the Treasury as miscellaneous receipts and shall be disregarded in determining the amounts of appropriations to be requested and the amounts to be made available from appropriations made under section 254k of this title to carry out sections 254d through 254h and section 254j of this title.

(f) Small health centers

(1) An entity which is a small health center shall pay to the United States, as prescribed by the Secretary in each calendar quarter (or other period as may be specified in the agreement) during which any Corps member is assigned to such entity, an amount equal to the amount (prorated for a calendar quarter or other period) by which the revenues that the center may reasonably expect to receive during an annual period for the provision of health services exceeds the costs that the center may reasonably expect to incur in the provision of such services, except that the amount that an entity shall pay to the United States under this paragraph shall not exceed the amount such entity would pay to the United States under paragraph (3) of subsection (a) of this section if such paragraph applied to such entity.

(2)(A) To determine for purposes of paragraph (1) the revenues and costs which an entity that is a small health center may reasonably be expected to receive and incur in an annual period for the provision of health services, the entity shall submit to the Secretary before the beginning of such period a proposed budget which—

(i) describes the primary and supplemental health services (as defined in section 254c of this title) which are needed by the area the entity serves in such period; and

(ii) states the revenues and costs which the entity expects to receive and incur in providing such health services in such period.

(B) From the submission under subparagraph (A) and other information available to the Secretary, the Secretary shall determine—

(i) the primary and supplemental health services (as defined in section 254c of this title) needed in the area the entity serves;

(ii) the fees, premiums, third party reimbursements, and other revenues the entity making the submission may reasonably expect to receive from the provision of such services; and

(iii) the costs which the entity may reasonably expect to incur in providing such services.

The revenues and costs determined by the Secretary shall be the revenues and costs used in making the determination under paragraph (1).

(C)(i) A determination under subparagraph (B) regarding the revenues and costs of an entity in an annual period shall be made by the Secretary utilizing criteria specific to the entity and shall be made without regard to whether the entity is making progress toward collecting sufficient revenues to provide an adequate level of primary health services without the assignment of Corps members.

(ii) In making a determination referred to in clause (i)—

(I) the Secretary may consider whether the proposed budget submitted under subparagraph (A) provides a reasonable estimate regarding the revenues and costs of the entity; and

(II) may not consider the reasonableness of the amount of revenues collected, or the amount of costs incurred by the entity, except to the extent necessary to ensure that the entity is operating in good faith and is operating efficiently with respect to fiscal matters within the control of the entity.

(iii) A determination of whether an entity is eligible for a waiver under paragraph (3) shall be made by the Secretary without regard to the revenues and costs determined by the Secretary under subparagraph (B).

(iv) A determination of whether an entity is a small health center shall be made by the Secretary without regard to the revenues and costs determined by the Secretary under subparagraph (B).

(3) The Secretary may waive in whole or in part, on a prospective or retrospective basis, the application of paragraph (1) for an entity which is a small health center if the Secretary determines that the entity needs all or part of the amounts otherwise payable under such paragraph to—

(A) expand or improve its provision of health services;

(B) increase the number of individuals served;

(C) renovate or modernize facilities for its provision of health services;

(D) improve the administration of its health service programs; or

(E) establish a financial reserve to assure its ability to continue providing health services.

(4) The excess (if any) of the amount of funds collected by an entity which is a small health center in accordance with subsection (a)(2) of this section over the amount paid to the United States in accordance with paragraph (1) of this subsection shall be used by the center for the purposes set out in subparagraphs (A) through (E) of paragraph (3) of this subsection or to recruit and retain health manpower to provide

health services to the individuals in the health professional shortage area for which the entity submitted an application.

(5) For purposes of this section, the term ''small health center'' means an entity other than—

(A) a hospital (or part of a hospital);

(B) a public entity; or

(C) an entity that is receiving a grant under section 254b of this title or section 254c of this title, except that such term includes an entity whose grant is less than the total of the amounts, calculated on an annual basis, specified in subparagraphs (A) and (B) of subsection (a)(3) of this section.

(July 1, 1944, ch. 373, title III, § 334, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(3), 90 Stat. 2274; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2704, 95 Stat. 906; Dec. 1, 1983, Pub. L. 98–194, § 3, 97 Stat. 1345; Dec. 1, 1987, Pub. L. 100–177, title II, § 202(c), 101 Stat. 996; Nov. 16, 1990, Pub. L. 101–597, title I, § 105, title IV, § 401(b)[(a)], 104 Stat. 3018, 3035.)

REFERENCES IN TEXT

Section 254f(d) of this title, referred to in subsec. (a)(3)(C), was redesignated section 254f(b) of this title by Pub. L. 101–597, title I, § 103(b)(2), Nov. 16, 1990, 104 Stat. 3015.

AMENDMENTS

1990—Subsecs. (b)(2), (3), (c). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Subsec. (f)(2)(C). Pub. L. 101–597, § 105, added subpar. (C).

Subsec. (f)(4). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

1987—Subsec. (a)(3)(B). Pub. L. 100–177 inserted ''or the Loan Repayment Program'' after ''amount paid under the Scholarship Program'' and substituted ''service under the Scholarship Program or the Loan Repayment Program'' for ''service under the Program''.

1983—Subsec. (a)(3). Pub. L. 98–194, § 3(a)(1)(A), inserted '', if not a small health center,'' after ''the entity'' in provisions preceding subpar. (A).

Subsec. (a)(4), (5). Pub. L. 98–194, § 3(a)(1), (C), (D), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(1). Pub. L. 98–194, § 3(b)(1), (2), inserted '', on a prospective or retrospective basis,'' after ''in whole or in part'', and ''which is not a small health center'' after ''for an entity''.

Subsec. (b)(2). Pub. L. 98–194, § 3(b)(3), (4), inserted '', on a prospective or retrospective basis,'' after ''in whole or in part'', and ''is not a small health center and which'' after ''for any entity which''.

Subsec. (b)(3). Pub. L. 98–194, § 3(b)(5), inserted ''and does not, pursuant to paragraph (5), require payment by the entity in the amount described in subsection (f)(1) of this section,'' after ''paragraph (1) or (2),''.

Subsec. (b)(5). Pub. L. 98–194, § 3(b)(6), added par. (5).

Subsec. (c). Pub. L. 98–194, § 3(c), inserted ''which is not a small health center'' after ''an entity'', and ''or subsection (b)(5)(A) of this section'' before ''shall be used by the entity''.

Subsec. (f). Pub. L. 98–194, § 3(d), added subsec. (f).

1981—Subsec. (a). Pub. L. 97–35, § 2704(a)(1)–(3), in introductory provisions inserted reference to assignment of member of Corps, and in par. (3) revised method and criteria for calculation of sums.

Subsec. (b)(4). Pub. L. 97–35, § 2704(a)(4), added par. (4).

Subsec. (e). Pub. L. 97–35, § 2704(b), substituted reference to sections 254d to 254h, and 254j of this title, for reference to this subpart.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 4 of Pub. L. 98–194 provided that: ''The amendments made by section 3 [amending this section] shall apply with respect to agreements entered into under section 334 of the Public Health Service Act [this section] after the date of the enactment of this Act [Dec. 1, 1983], but, to the extent feasible, the Secretary of Health and Human Services shall revise agreements entered into under such section 334 before such date to reflect the amendments made by section 3.''

CONGRESSIONAL FINDINGS

Section 2 of Pub. L. 98–194 provided that: ''Congress finds and declares that—

''(1) rural health clinics are an important part of America's health care delivery system;

''(2) National Health Service Corps personnel assigned to rural health clinics located in health manpower shortage areas have provided valuable and needed staffing help for such clinics;

''(3) rural health clinics receiving assistance from National Health Service Corps personnel should be expected to reimburse the Federal Government for a reasonable share of the costs of such personnel; and

''(4) the criteria which should be applied to reimbursement by such clinics for use of such personnel should be a fair and equitable one which reflects the needs of such clinics and the populations served by such clinics, as well as the value of the services rendered by such personnel.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254f, 254i, 254k, 254*l*, 254*l*–1, 254m of this title.

§ 254h. Provision of health services by Corps members

(a) Means of delivery of services; cooperation with other health care providers

In providing health services in a health professional shortage area, Corps members shall utilize the techniques, facilities, and organizational forms most appropriate for the area, population group, medical facility, or other public facility, and shall, to the maximum extent feasible, provide such services (1) to all individuals in, or served by, such health professional shortage area regardless of their ability to pay for the services, and (2) in a manner which is cooperative with other health care providers serving such health professional shortage area.

(b) Utilization of existing health facilities; lease, acquisition, and use of equipment and supplies; permanent and temporary professional services

(1) Notwithstanding any other provision of law, the Secretary may (A) to the maximum extent feasible make such arrangements as he determines necessary to enable Corps members to utilize the health facilities in or serving the health professional shortage area in providing health services; (B) make such arrangements as he determines are necessary for the use of equipment and supplies of the Service and for the lease or acquisition of other equipment and supplies; and (C) secure the permanent or temporary services of physicians, dentists, nurses, administrators, and other health personnel. If there are no health facilities in or serving such area, the Secretary may arrange to have Corps members provide health services in the nearest health facilities of the Service or may lease or otherwise provide facilities in or serving such area for the provision of health services.

(2) If the individuals in or served by a health professional shortage area are being served (as determined under regulations of the Secretary) by a hospital or other health care delivery facility of the Service, the Secretary may, in addition to such other arrangements as he may make under paragraph (1), arrange for the utilization of such hospital or facility by Corps members in providing health services, but only to the extent that such utilization will not impair the delivery of health services and treatment through such hospital or facility to individuals who are entitled to health services and treatment through such hospital or facility.

(c) Loan; purposes; limitations

The Secretary may make one loan to any entity with an approved application under section 254f of this title to assist such entity in meeting the costs of (1) establishing medical, dental, or other health profession practices, including the development of medical practice management systems; (2) acquiring equipment for use in providing health services; and (3) renovating buildings to establish health facilities. No loan may be made under this subsection unless an application therefor is submitted to, and approved by, the Secretary. The amount of any such loan shall be determined by the Secretary, except that no such loan may exceed $50,000.

(d) Property and equipment disposal; fair market value; sale at less than full market value

Upon the expiration of the assignment of all Corps members to a health professional shortage area, the Secretary may (notwithstanding any other provision of law) sell, to any appropriate local entity, equipment and other property of the United States utilized by such members in providing health services. Sales made under this subsection shall be made at the fair market value (as determined by the Secretary) of the equipment or such other property; except that the Secretary may make such sales for a lesser value to an appropriate local entity, if he determines that the entity is financially unable to pay the full market value.

(e) Admitting privileges denied to Corps member by hospital; notice and hearing; denial of Federal funds for violation; "hospital" defined

(1)(A) It shall be unlawful for any hospital to deny an authorized Corps member admitting privileges when such Corps member otherwise meets the professional qualifications established by the hospital for granting such privileges and agrees to abide by the published bylaws of the hospital and the published bylaws, rules, and regulations of its medical staff.

(B) Any hospital which is found by the Secretary, after notice and an opportunity for a hearing on the record, to have violated this subsection shall upon such finding cease, for a period to be determined by the Secretary, to receive and to be eligible to receive any Federal funds under this chapter or under titles XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.].

(2) For purposes of this subsection, the term ''hospital'' includes a State or local public hospital, a private profit hospital, a private nonprofit hospital, a general or special hospital, and any other type of hospital (excluding a hospital owned or operated by an agency of the Federal Government), and any related facilities.

(July 1, 1944, ch. 373, title III, § 335, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(3), 90 Stat. 2275; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2705, 95 Stat. 907; Nov. 16, 1990, Pub. L. 101–597, title I, § 106, title IV, § 401(b)[(a)], 104 Stat. 3018, 3035.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(1)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1990—Subsecs. (a), (b)(1)(A), (2), (d). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

Subsec. (e)(1)(A). Pub. L. 101–597, § 106, substituted ''authorized Corps member admitting privileges'' for ''authorized physician or dentist member of the Corps admitting privileges''.

1981—Subsec. (a)(2). Pub. L. 97–35, § 2705(a), substituted provisions respecting cooperation with other health care providers, for provisions respecting direct health services programs.

Subsec. (c)(4). Pub. L. 97–35, § 2705(b), struck out cl. (4) relating to appropriate continuing education programs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 233, 254g, 254h–1, 254k, 254*l*, 254*l*–1, 254m of this title.

§ 254h–1. Facilitation of effective provision of Corps services

(a) Consideration of individual characteristics of members in making assignments

In making an assignment of a Corps member to an entity that has had an application approved under section 254f of this title, the Secretary shall, subject to making the assignment in accordance with section 254f–1 of this title, seek to assign to the entity a Corps member who has (and whose spouse, if any, has) characteristics that increase the probability that the member will remain in the health professional shortage area involved after the completion of the period of service in the Corps.

(b) Counseling on service in Corps

(1) In general

The Secretary shall, subject to paragraph (3), offer appropriate counseling on service in the Corps to individuals during the period of membership in the Corps, particularly during the initial period of each assignment.

(2) Career advisor regarding obligated service

(A) In the case of individuals who have entered into contracts for obligated service under the Scholarship or Loan Repayment Program, counseling under paragraph (1) shall include appropriate counseling on matters particular to such obligated service. The Secretary shall ensure that career advisors for providing such counseling are available to

such individuals throughout the period of participation in the Scholarship or Loan Repayment Program.

(B) With respect to the Scholarship Program, counseling under paragraph (1) shall include counseling individuals during the period in which the individuals are pursuing an educational degree in the health profession involved, including counseling to prepare the individual for service in the Corps.

(3) Extent of counseling services

With respect to individuals who have entered into contracts for obligated service under the Scholarship or Loan Repayment Program, this subsection shall be carried out regarding such individuals throughout the period of obligated service (and, additionally, throughout the period specified in paragraph (2)(B), in the case of the Scholarship Program). With respect to Corps members generally, this subsection shall be carried out to the extent practicable.

(c) Grants regarding preparation of students for practice

With respect to individuals who have entered into contracts for obligated service under the Scholarship or Loan Repayment Program, the Secretary may make grants to, and enter into contracts with, public and nonprofit private entities (including health professions schools) for the conduct of programs designed to prepare such individuals for the effective provision of primary health services in the health manpower shortage areas to which the individuals are assigned.

(d) Assistance in establishing local professional relationships

The Secretary shall assist Corps members in establishing appropriate professional relationships between the Corps member involved and the health professions community of the geographic area with respect to which the member is assigned, including such relationships with hospitals, with health professions schools, with area health education centers under section 295g–1[1] of this title, with health education and training centers under such section, and with border health education and training centers under such section. Such assistance shall include assistance in obtaining faculty appointments at health professions schools.

(e) Temporary relief from Corps duties

(1) In general

The Secretary shall, subject to paragraph (4), provide assistance to Corps members in establishing arrangements through which Corps members may, as appropriate, be provided temporary relief from duties in the Corps in order to pursue continuing education in the health professions, to participate in exchange programs with teaching centers, to attend professional conferences, or to pursue other interests, including vacations.

(2) Assumption of duties of member

(A) Temporary relief under paragraph (1) may be provided only if the duties of the Corps member involved are assumed by another health professional. With respect to such temporary relief, the duties may be assumed by Corps members or by health professionals who are not Corps members, if the Secretary approves the professionals for such purpose. Any health professional so approved by the Secretary shall, during the period of providing such temporary relief, be deemed to be a Corps member for purposes of section 233 of this title (including for purposes of the remedy described in such section), section 254f(f) of this title, and section 254h(e) of this title.

(B) In carrying out paragraph (1), the Secretary shall provide for the formation and continued existence of a group of health professionals to provide temporary relief under such paragraph.

(3) Recruitment from general health professions community

In carrying out paragraph (1), the Secretary shall—

(A) encourage health professionals who are not Corps members to enter into arrangements under which the health professionals temporarily assume the duties of Corps members for purposes of paragraph (1); and

(B) with respect to the entities to which Corps members have been assigned under section 254f of this title, encourage the entities to facilitate the development of arrangements described in subparagraph (A).

(4) Limitation

In carrying out paragraph (1), the Secretary may not, except as provided in paragraph (5), obligate any amounts (other than for incidental expenses) for the purpose of—

(A) compensating a health professional who is not a Corps member for assuming the duties of a Corps member; or

(B) paying the costs of a vacation, or other interests that a Corps member may pursue during the period of temporary relief under such paragraph.

(5) Sole providers of health services

In the case of any Corps member who is the sole provider of health services in the geographic area involved, the Secretary may, from amounts appropriated under section 254k of this title, obligate on behalf of the member such sums as the Secretary determines to be necessary for purposes of providing temporary relief under paragraph (1).

(f) Determinations regarding effective service

In carrying out subsection (a) of this section and sections 254*l*(d) and 254*l*–1(d) of this title, the Secretary shall carry out activities to determine—

(1) the characteristics of physicians, dentists, and other health professionals who are more likely to remain in practice in health manpower shortage areas after the completion of the period of service in the Corps;

(2) the characteristics of health manpower shortage areas, and of entities seeking assignments of Corps members, that are more likely to retain Corps members after the members have completed the period of service in the Corps; and

[1] See References in Text note below.

(3) the appropriate conditions for the assignment and utilization in health manpower shortage areas of certified nurse practitioners, certified nurse midwives, and physician assistants.

(July 1, 1944, ch. 373, title III, § 336, as added Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2706(b), 95 Stat. 907; amended Dec. 1, 1987, Pub. L. 100–177, title II, § 202(d), 101 Stat. 997; Nov. 16, 1990, Pub. L. 101–597, title I, § 107, title IV, § 401(b)[(a)], 104 Stat. 3018, 3035.)

REFERENCES IN TEXT

Section 295g–1 of this title, referred to in subsec. (d), was in the original a reference to section 781 of act July 1, 1944. Section 781 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 781 of act July 1, 1944, relating to research on certain health professions issues, which is classified to section 295 of this title. For provisions relating to area health education centers, see section 293j of this title.

PRIOR PROVISIONS

A prior section 336 of act July 1, 1944, was renumbered section 336A by Pub. L. 97–35, § 2706(a), and is classified to section 254i of this title.

AMENDMENTS

1990—Pub. L. 101–597, § 107, amended section generally. Prior to amendment, section read as follows:

''(a) The Secretary may make grants to and enter into contracts with public and private nonprofit entities for the conduct of programs which are designed to prepare individuals subject to a service obligation under the National Health Service Corps Scholarship Program or Loan Repayment Program to effectively provide health services in the health manpower shortage area to which they are assigned.

''(b) No grant may be made or contract entered into under subsection (a) of this section unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.''

Subsec. (a). Pub. L. 101–597, § 401(b)[(a)], substituted ''health professional shortage area'' for ''health manpower shortage area''.

1987—Subsec. (a). Pub. L. 100–177 substituted ''Scholarship Program or Loan Repayment Program'' for ''scholarship program''.

§ 254i. Annual report to Congress; contents

The Secretary shall submit an annual report to Congress, and shall include in such report with respect to the previous calendar year—

(1) the number, identity, and priority of all health professional shortage areas designated in such year and the number of health professional shortage areas which the Secretary estimates will be designated in the subsequent year;

(2) the number of applications filed under section 254f of this title in such year for assignment of Corps members and the action taken on each such application;

(3) the number and types of Corps members assigned in such year to health professional shortage areas, the number and types of additional Corps members which the Secretary estimates will be assigned to such areas in the subsequent year, and the need for additional members for the Corps;

(4) the recruitment efforts engaged in for the Corps in such year and the number of qualified individuals who applied for service in the Corps in such year;

(5) the number of patients seen and the number of patient visits recorded during such year with respect to each health professional shortage area to which a Corps member was assigned during such year;

(6) the number of Corps members who elected, and the number of Corps members who did not elect, to continue to provide health services in health professional shortage areas after termination of their service in the Corps and the reasons (as reported to the Secretary) of members who did not elect for not making such election;

(7) the results of evaluations and determinations made under section 254f(a)(1)(D) of this title during such year; and

(8) the amount charged during such year for health services provided by Corps members, the amount which was collected in such year by entities in accordance with agreements under section 254g of this title, and the amount which was paid to the Secretary in such year under such agreements.

(July 1, 1944, ch. 373, title III, § 336A, formerly § 336, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(3), 90 Stat. 2277, renumbered § 336A, Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2706(a), 95 Stat. 907; amended Dec. 21, 1982, Pub. L. 97–375, title II, § 206(a), 96 Stat. 1823; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(b)[(a)], 104 Stat. 3035.)

AMENDMENTS

1990—Pars. (1), (3), (5), (6). Pub. L. 101–597 substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

1982—Pub. L. 97–375 struck out ''on May 1 of each year'' after ''report to Congress''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254k of this title.

§ 254j. National Advisory Council on National Health Service Corps

(a) Establishment; appointment of members

There is established a council to be known as the National Advisory Council on the National Health Service Corps (hereinafter in this section referred to as the ''Council''). The Council shall be composed of not more than 15 members appointed by the Secretary. The Council shall consult with, advise, and make recommendations to, the Secretary with respect to his responsibilities in carrying out this subpart (other than section 254r[1] of this title), and shall review and comment upon regulations promulgated by the Secretary under this subpart.

(b) Term of members; compensation; expenses

(1) Members of the Council shall be appointed for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be ap-

[1] See References in Text note below.

pointed for the remainder of such term. No member shall be removed, except for cause. Members may not be reappointed to the Council.

(2) Members of the Council (other than members who are officers or employees of the United States), while attending meetings or conferences thereof or otherwise serving on the business of the Council, shall be entitled to receive for each day (including traveltime) in which they are so serving compensation at a rate fixed by the Secretary (but not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule); and while so serving away from their homes or regular places of business all members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government Service employed intermittently.

(c) Termination

Section 14 of the Federal Advisory Committee Act shall not apply with respect to the Council.

(July 1, 1944, ch. 373, title III, § 337, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(3), 90 Stat. 2277; amended July 10, 1979, Pub. L. 96–32, § 7(g), 93 Stat. 84; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2707, 95 Stat. 907; Jan. 4, 1983, Pub. L. 97–414, § 8(f), 96 Stat. 2061; Dec. 14, 1993, Pub. L. 103–183, title VII, § 706(b), 107 Stat. 2241.)

REFERENCES IN TEXT

Section 254r of this title, referred to in subsec. (a), was in the original a reference to section 338G of act July 1, 1944, which was renumbered section 338I by Pub. L. 100–177, title II, § 201(1), Dec. 1, 1987, 101 Stat. 992, and repealed by Pub. L. 100–713, title I, § 104(b)(1), Nov. 23, 1988, 102 Stat. 4787.

Section 14 of the Federal Advisory Committee Act, referred to in subsec. (c), is section 14 of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1993—Subsec. (b)(2). Pub. L. 103–183 inserted ''compensation at a rate fixed by the Secretary (but not to exceed'' before ''the daily equivalent'' and substituted ''Schedule);'' for ''Schedule;''.

1983—Subsec. (a). Pub. L. 97–414 inserted ''(other than section 254r of this title)'' after ''carrying out this subpart''.

1981—Subsec. (a). Pub. L. 97–35, § 2707(a), amended subsec. (a) generally, striking out pars. (1) to (5) respecting required status and background of members appointed by the Secretary.

Subsec. (b)(1). Pub. L. 97–35, § 2707(b), inserted ''not'' before ''be reappointed''.

1979—Subsec. (b)(2). Pub. L. 96–32 substituted ''section 5703 of title 5'' for ''section 5703(b) of title 5''.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254g, 254k, 254*l*, 254*l*–1, 254m of this title.

§ 254k. Authorization of appropriations

(a)(1) For the purpose of carrying out this subpart, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 2000.

(2) In the case of individuals who serve in the Corps other than pursuant to obligated service under the Scholarship or Loan Repayment Program, the Secretary each fiscal year shall, to the extent practicable, make assignments under section 254f of this title of such individuals who are certified nurse midwives, certified nurse practitioners, or physician assistants.

(b) An appropriation under an authorization under subsection (a) of this section for any fiscal year may be made at any time before that fiscal year and may be included in an Act making an appropriation under an authorization under subsection (a) of this section for another fiscal year; but no funds may be made available from any appropriation under such authorization for obligation under sections 254d through 254h, section 254i, and section 254j of this title before the fiscal year for which such appropriation is authorized.

(July 1, 1944, ch. 373, title III, § 338, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(3), 90 Stat. 2278; amended Nov. 10, 1978, Pub. L. 95–626, title I, § 122, 92 Stat. 3570; Sept. 29, 1979, Pub. L. 96–76, title II, § 202(c), 93 Stat. 582; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2708, 95 Stat. 908; Dec. 1, 1987, Pub. L. 100–177, title III, § 305, 101 Stat. 1004; Nov. 16, 1990, Pub. L. 101–597, title I, § 108, 104 Stat. 3021.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–597 added subsec. (a) and struck out former subsec. (a) which read as follows: ''To carry out this subpart, there are authorized to be appropriated $65,000,000 for fiscal year 1988, $65,000,000 for fiscal year 1989, and $65,000,000 for fiscal year 1990.''

1987—Subsec. (a). Pub. L. 100–177 amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''To carry out the purposes of this subpart, there are authorized to be appropriated $47,000,000 for the fiscal year ending September 30, 1978; $64,000,000 for the fiscal year ending September 30, 1979; $82,000,000 for the fiscal year ending September 30, 1980; $110,000,000 for the fiscal year ending September 30, 1982; $120,000,000 for the fiscal year ending September 30, 1983; and $130,000,000 for the fiscal year ending September 30, 1984.''

1981—Subsec. (a). Pub. L. 97–35, § 2708(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

Subsec. (b). Pub. L. 97–35, § 2708(b), substituted reference to sections 254d to 254h, 254i, and 254j of this title for reference to this subpart.

1979—Subsec. (a). Pub. L. 96–76 substituted ''$82,000,000'' for ''$70,000,000''.

1978—Subsec. (a). Pub. L. 95–626 substituted ''$64,000,000'' for ''$57,000,000'' as amount authorized to be appropriated for fiscal year ending Sept. 30, 1979.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254g, 254h–1, 254*l*, 254*l*–1, 254m, 254n, 254p of this title.

SUBPART III—SCHOLARSHIP PROGRAM AND LOAN REPAYMENT PROGRAM

AMENDMENTS

1987—Pub. L. 100–177, title II, § 202(f), Dec. 1, 1987, 101 Stat. 999, inserted subpart III heading and redesignated former subpart III as IV.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 247b–7, 254d, 288–1, 288–2, 288–3, 293b of this title; title 21 section 395.

§ 254*l*. National Health Service Corps Scholarship Program

(a) Establishment

The Secretary shall establish the National Health Service Corps Scholarship Program to assure, with respect to the provision of primary health services pursuant to section 254d(a)(2) of this title—

(1) an adequate supply of physicians, dentists, certified nurse midwives, certified nurse practitioners, and physician assistants; and

(2) if needed by the Corps, an adequate supply of other health professionals.

(b) Eligibility; application; written contract

To be eligible to participate in the Scholarship Program, an individual must—

(1) be accepted for enrollment, or be enrolled, as a full-time student (A) in an accredited (as determined by the Secretary) educational institution in a State and (B) in a course of study or program, offered by such institution and approved by the Secretary, leading to a degree in medicine, osteopathic medicine, dentistry, or other health profession;

(2) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Service or be eligible for selection for civilian service in the Corps;

(3) submit an application to participate in the Scholarship Program; and

(4) sign and submit to the Secretary, at the time of submittal of such application, a written contract (described in subsection (f) of this section) to accept payment of a scholarship and to serve (in accordance with this subpart) for the applicable period of obligated service in a health professional shortage area.

(c) Review and evaluation of information and forms by prospective applicant

(1) In disseminating application forms and contract forms to individuals desiring to participate in the Scholarship Program, the Secretary shall include with such forms—

(A) a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under section 254*o* [1] of this title in the case of the individual's breach of the contract; and

(B) information respecting meeting a service obligation through private practice under an agreement under section 254n [1] of this title and such other information as may be necessary for the individual to understand the individual's prospective participation in the Scholarship Program and service in the Corps, including a statement of all factors considered in approving applications for participation in the Program and in making assignments for participants in the Program.

(2) The application form, contract form, and all other information furnished by the Secretary under this subpart shall be written in a manner calculated to be understood by the average individual applying to participate in the Scholarship Program. The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Scholarship Program on a date sufficiently early to insure that such individuals have adequate time to carefully review and evaluate such forms and information.

(3)(A) The Secretary shall distribute to health professions schools materials providing information on the Scholarship Program and shall encourage the schools to disseminate the materials to the students of the schools.

(B)(i) In the case of any health professional whose period of obligated service under the Scholarship Program is nearing completion, the Secretary shall encourage the individual to remain in a health professional shortage area and to continue providing primary health services.

(ii) During the period in which a health professional is planning and making the transition to private practice from obligated service under the Scholarship Program, the Secretary may provide assistance to the professional regarding such transition if the professional is remaining in a health professional shortage area and is continuing to provide primary health services.

(C) In the case of entities to which participants in the Scholarship Program are assigned under section 254f of this title, the Secretary shall encourage the entities to provide options with respect to assisting the participants in remaining in the health professional shortage areas involved, and in continuing to provide primary health services, after the period of obligated service under the Scholarship Program is completed. The options with respect to which the Secretary provides such encouragement may include options regarding the sharing of a single employment position in the health professions by 2 or more health professionals, and options regarding the recruitment of couples where both of the individuals are health professionals.

(d) Factors considered in providing contracts; priorities

(1) Subject to section 254f–1 of this title, in providing contracts under the Scholarship Program—

(A) the Secretary shall consider the extent of the demonstrated interest of the applicants for the contracts in providing primary health services; and

(B) may consider such other factors regarding the applicants as the Secretary determines to be relevant to selecting qualified individuals to participate in such Program.

(2) In providing contracts under the Scholarship Program, the Secretary shall give priority—

[1] See References in Text note below.

(A) first, to any application for such a contract submitted by an individual who has previously received a scholarship under this section or under section 294z[1] of this title;

(B) second, to any application for such a contract submitted by an individual who has characteristics that increase the probability that the individual will continue to serve in a health professional shortage area after the period of obligated service pursuant to subsection (f) of this section is completed; and

(C) third, subject to subparagraph (B), to any application for such a contract submitted by an individual who is from a disadvantaged background.

(e) Commencement of participation in Scholarship Program; notice

(1) An individual becomes a participant in the Scholarship Program only upon the Secretary's approval of the individual's application submitted under subsection (b)(3) of this section and the Secretary's acceptance of the contract submitted by the individual under subsection (b)(4) of this section.

(2) The Secretary shall provide written notice to an individual promptly upon the Secretary's approving, under paragraph (1), of the individual's participation in the Scholarship Program.

(f) Written contract; contents

The written contract (referred to in this subpart) between the Secretary and an individual shall contain—

(1) an agreement that—

(A) subject to paragraph (2), the Secretary agrees (i) to provide the individual with a scholarship (described in subsection (g) of this section) in each such school year or years for a period of years (not to exceed four school years) determined by the individual, during which period the individual is pursuing a course of study described in subsection (b)(1)(B) of this section, and (ii) to accept (subject to the availability of appropriated funds for carrying out sections 254d through 254h and section 254j of this title) the individual into the Corps (or for equivalent service as otherwise provided in this subpart); and

(B) subject to paragraph (2), the individual agrees—

(i) to accept provision of such a scholarship to the individual;

(ii) to maintain enrollment in a course of study described in subsection (b)(1)(B) of this section until the individual completes the course of study;

(iii) while enrolled in such course of study, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study); and

(iv) to serve for a time period (hereinafter in the subpart referred to as the ''period of obligated service'') equal to—

(I) one year for each school year for which the individual was provided a scholarship under the Scholarship Program, or

(II) two years,

whichever is greater, as a provider of primary health services in a health professional shortage area (designated under section 254e of this title) to which he is assigned by the Secretary as a member of the Corps, or as otherwise provided in this subpart;

(2) a provision that any financial obligation of the United States arising out of a contract entered into under this subpart and any obligation of the individual which is conditioned thereon, is contingent upon funds being appropriated for scholarships under this subpart and to carry out the purposes of sections 254d through 254h and sections 254j and 254k of this title;

(3) a statement of the damages to which the United States is entitled, under section 254*o*[2] of this title, for the individual's breach of the contract; and

(4) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with the provisions of this subpart.

(g) Scholarship provisions; contract with educational institution; increase in monthly stipend

(1) A scholarship provided to a student for a school year under a written contract under the Scholarship Program shall consist of—

(A) payment to, or (in accordance with paragraph (2)) on behalf of, the student of the amount (except as provided in section 292k[2] of this title) of—

(i) the tuition of the student in such school year; and

(ii) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the student in such school year; and

(B) payment to the student of a stipend of $400 per month (adjusted in accordance with paragraph (3)) for each of the 12 consecutive months beginning with the first month of such school year.

(2) The Secretary may contract with an educational institution, in which a participant in the Scholarship Program is enrolled, for the payment to the educational institution of the amounts of tuition and other reasonable educational expenses described in paragraph (1)(A). Payment to such an educational institution may be made without regard to section 3324(a) and (b) of title 31.

(3) The amount of the monthly stipend, specified in paragraph (1)(B) and as previously adjusted (if at all) in accordance with this paragraph, shall be increased by the Secretary for each school year ending in a fiscal year beginning after September 30, 1978, by an amount (rounded to the next highest multiple of $1) equal to the amount of such stipend multiplied by the overall percentage (under section 5303 of title 5) of the adjustment (if such adjustment is an increase) in the rates of pay under the General Schedule made effective in the fiscal year in which such school year ends.

---

[2] See References in Text note below.

(h) Employment ceiling of Department unaffected

Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic training, shall not be counted against any employment ceiling affecting the Department.

(i) Annual report to Congress; contents

Not later than March 1 of each year, the Secretary shall submit to the Congress a report providing, with respect to the preceding fiscal year—

(1) the number, and type of health profession training, of students receiving scholarships under the Scholarship Program;

(2) the educational institutions at which such students are receiving their training;

(3) the number of applications filed under this section in the school year beginning in such year and in prior school years;

(4) the amount of scholarship payments made for each of tuition, stipends, and other expenses, in the aggregate and at each educational institution for the school year beginning in such year and for prior school years;

(5)(A) the number, and type of health professions training, of individuals who have breached the contract under subsection (f) of this section through any of the actions specified in subsection (a) or (b) of section 254*o* of this title; and

(B) with respect to such individuals—

(i) the educational institutions with respect to which payments have been made or were to be made under the contract;

(ii) the amounts for which the individuals are liable to the United States under section 254*o* of this title;

(iii) the extent of payment by the individuals of such amounts; and

(iv) if known, the basis for the decision of the individuals to breach the contract under subsection (f) of this section; and

(6) the effectiveness of the Secretary in recruiting health professionals to participate in the Scholarship Program, and in encouraging and assisting such professionals with respect to providing primary health services to health professional shortage areas after the completion of the period of obligated service under such Program.

(July 1, 1944, ch. 373, title III, § 338A, formerly title VII, § 751, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2281; amended Dec. 19, 1977, Pub. L. 95–215, § 5, 91 Stat. 1506; Nov. 9, 1978, Pub. L. 95–623, § 12(c), 92 Stat. 3457; Nov. 10, 1978, Pub. L. 95–626, title I, § 113(b), 92 Stat. 3563; July 10, 1979, Pub. L. 96–32, § 7(i), 93 Stat. 84; renumbered § 338A and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2709(a), (b), 95 Stat. 908; Oct. 22, 1985, Pub. L. 99–129, title II, § 210(b), 99 Stat. 537; Nov. 4, 1988, Pub. L. 100–607, title VI, § 629(a)(2), 102 Stat. 3146; Nov. 5, 1990, Pub. L. 101–509, title V, § 529 [title I, § 101(b)(4)(K)], 104 Stat. 1427, 1440; Nov. 16, 1990, Pub. L. 101–597, title II, § 201, title IV, § 401(b)[(a)], 104 Stat. 3021, 3035.)

REFERENCES IN TEXT

Sections 254n and 254*o* of this title, referred to in subsecs. (c)(1) and (f)(3), were in the original references to sections 338C and 338D, respectively, of act July 1, 1944, which were renumbered sections 338D and 338E, respectively, by Pub. L. 100–177, title II, § 201(2), Dec. 1, 1987, 101 Stat. 992.

Section 294z of this title, referred to in subsec. (d)(2)(A), was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. See section 293 of this title.

Section 292k of this title, referred to in subsec. (g)(1)(A), was in the original a reference to section 711 of act July 1, 1944. Section 711 of that Act was renumbered as section 710 by Pub. L. 97–35, title XXVII, § 2720(b), Aug. 13, 1981, 95 Stat. 915, and subsequently omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 710 of act July 1, 1944, relating to insurance accounts, a new section 711, relating to powers and responsibilities of the Secretary, and a new section 712, relating to participation by Federal credit unions, which are classified to sections 292i, 292j, and 292k, respectively, of this title. Provisions relating to differential tuition and fees are now contained in section 295*o*(c) of this title.

CODIFICATION

In subsec. (g)(2), ''section 3324(a) and (b) of title 31'' substituted for ''section 3648 of the Revised Statutes (31 U.S.C. 529)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 294t of this title prior to its renumbering by Pub. L. 97–35.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–597, § 201(a)(1), substituted ''Corps Scholarship Program to assure, with respect to the provision of primary health services pursuant to section 254d(a)(2) of this title—'' and pars. (1) and (2) for ''Corps Scholarship Program (hereinafter in this subpart referred to as the 'Scholarship Program') to assure an adequate supply of trained physicians, dentists, and nurses for the National Health Service Corps (hereinafter in this subpart referred to as the 'Corps') and, if needed by the Corps, podiatrists, optometrists, pharmacists, clinical psychologists, graduates of schools of veterinary medicine, graduates of schools of public health, graduates of programs in health administration, graduates of programs for the training of physician assistants, expanded function dental auxiliaries, and nurse practitioners (as defined in section 296m of this title), and other health professionals.''

Subsec. (b)(4). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Subsec. (c). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (3)(B), (C).

Pub. L. 101–597, § 201(b), inserted par. (1) designation, redesignated former pars. (1) and (2) as subpars. (A) and (B), inserted before period at end of subpar. (B) '', including a statement of all factors considered in approving applications for participation in the Program and in making assignments for participants in the Program'', inserted par. (2) designation, and added par. (3).

Subsec. (d). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (2)(B).

Pub. L. 101–597, § 201(c), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In determining which applications under the Scholarship Program to approve (and which contracts to accept), the Secretary shall give priority—

''(1) first, to applications made (and contracts submitted) by individuals who have previously received

scholarships under the Scholarship Program or under section 294z of this title; and

''(2) second, to applications made (and contracts submitted)—

''(A) for the school year beginning in calendar year 1978, by individuals who are entering their first, second, or third year of study in a course of study or program described in subsection (b)(1)(B) of this section in such school year;

''(B) for the school year beginning in calendar year 1979, by individuals who are entering their first or second year of study in a course of study or program described in subsection (b)(1)(B) of this section in such school year; and

''(C) for each school year thereafter, by individuals who are entering their first year of study in a course of study or program described in subsection (b)(1)(B) of this section in such school year.''

Subsec. (f)(1)(B)(iv). Pub. L. 101–597, §401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in closing provisions.

Pub. L. 101–597, §201(a)(2), substituted ''as a provider of primary health services'' after ''whichever is greater,''.

Subsec. (g)(3). Pub. L. 101–509 substituted ''(under section 5303 of title 5)'' for ''(as set forth in the report transmitted to the Congress under section 5305 of title 5)''.

Subsec. (i). Pub. L. 101–597, §201(d)(1), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''The Secretary shall report to Congress on March 1 of each year—''.

Subsec. (i)(4), (5). Pub. L. 101–597, §201(d)(2), added pars. (4) and (5) and struck out former par. (4) which read as follows: ''the amount of tuition paid in the aggregate and at each educational institution for the school year beginning in such year and for prior school years.''

Subsec. (i)(6). Pub. L. 101–597, §401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, §201(d)(2)(C), added par. (6).

1988—Subsec. (b)(1). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy''.

1985—Subsec. (g)(1). Pub. L. 99–129 struck out ''or under section 294z of this title (relating to scholarships for first-year students of exceptional financial need),'' after ''Scholarship Program''.

1981—Subsec. (a). Pub. L. 97–35, §2709(b)(1), inserted reference to clinical psychologists.

Subsec. (c). Pub. L. 97–35, §2709(b)(2), (3), substituted ''254*o*'' for ''294w'' in par. (1), and inserted provisions relating to information concerning meeting the service obligation in par. (2).

Subsec. (f). Pub. L. 97–35, §2709(b)(4)–(6), in par. (1) substituted reference to sections 254d to 254h and 254j of this title, for reference to subpart II of part D of subchapter II of this chapter, in par. (2) substituted reference to sections 254d to 254h, 254j and 254k of this title, for reference to subpart II of part D of subchapter II of this chapter, and in par. (3) substituted ''254*o*'' for ''294w''.

Subsec. (j). Pub. L. 97–35, §2709(b)(7), struck out subsec. (j) which related to consultation and participation of schools.

1979—Subsec. (g)(3). Pub. L. 96–32 substituted ''section 5305 of title 5'' for ''section 5303 of title 5''.

1978—Subsec. (f). Pub. L. 95–626 substituted ''subpart II of part D'' for ''subpart II of part C'' in pars. (1)(A) and (2).

Subsec. (i). Pub. L. 95–623 substituted March 1 for December 1 as the date for Secretary's annual report to Congress.

1977—Subsec. (d)(2). Pub. L. 95–215 substituted provisions relating to the school years beginning in calendar years 1978 and 1979 for provisions relating to the school year ending in the fiscal year beginning Oct. 1, 1977.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–509 effective on such date as the President shall determine, but not earlier than 90 days, and not later than 180 days, after Nov. 5, 1990, see section 529 [title III, §305] of Pub. L. 101–509, set out as a note under section 5301 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 228 of Pub. L. 99–129 provided that:

''(a) Except as provided in subsection (b), this Act and the amendments and repeals made by this Act [enacting sections 294q–1 to 294q–3 of this title, amending this section and sections 292a, 292b, 292h, 292j, 293c, 294a, 294b, 294d, 294e, 294g, 294j, 294m to 294p, 294z, 295f to 295f–2, 295g, 295g–1, 295g–3, 295g–4, 295g–6 to 295g–8, 295g–8b, 295h, 295h–1a to 295h–1c, 296k, 296*l*, 296m, 297a, 298b–5, and 300aa–14 of this title, repealing sections 292c, 295 to 295e–5, 295g–2, 295g–5, 295g–8a, and 295g–9 of this title, enacting provisions set out as notes under sections 201, 292h, 293c, 294d, 294n, and 300aa–14 of this title and section 462 of the Appendix to Title 50, War and National Defense, and amending provisions set out as a note under section 298b–5 of this title] shall take effect on the date of enactment of this Act [Oct. 22, 1985].

''(b)(1) The amendments made by section 101(a) of this Act [amending section 294a of this title] shall take effect as of October 1, 1985.

''(2) The amendments made by section 208(e) of this Act [amending section 294e of this title] shall take effect nine months after the date of enactment of this Act [Oct. 22, 1985].

''(3) The amendment made by section 208(h) of this Act [amending section 294a of this title] shall take effect as of October 1, 1983.

''(4) The provisions of section 746 of the Public Health Service Act (as added by the amendment made by section 209(h)(2) of this Act) [section 294g–2 of this title] shall take effect as of June 30, 1984.

''(5) The amendments made by section 209(j) of this Act [amending sections 294m and 297a of this title] shall take effect as of June 30, 1984.

''(6) The amendments made by section 213(a) of this Act [amending section 295g–1 of this title] shall take effect as of October 1, 1985.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 5 of Pub. L. 95–215 provided that the amendment made by that section is effective Oct. 1, 1977.

EFFECTIVE DATE

Section 408(b)(1) of Pub. L. 94–484 provided that the enactment of sections 254*l* to 254r of this title and repeal of section 234 of this title by Pub. L. 94–484 is effective Oct. 1, 1977.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

Section 408(b)(2) of Pub. L. 94–484, as amended, eff. Oct. 12, 1976, by Pub. L. 95–83, title III, §307(p), Aug. 1, 1977, 91 Stat. 394, provided that:

''(A) Except as provided in subparagraphs (B) and (C), the amendment made by paragraph (1) of this subsection [enacting this section and sections 254*l*–1 to 254r of this title and repealing section 234 of this title] shall apply with respect to scholarships awarded under the National Health Service Corps Scholarship Program from appropriations for such Program for fiscal years beginning after September 30, 1977.

''(B) The provisions of section 225(f)(1) of the Public Health Service Act (as in effect on September 30, 1977) [former section 234(f)(1) of this title] prescribing the financial obligation of a participant in the Public Health and National Health Service Corps Scholarship Program who fails to complete an active duty service obligation incurred under that Program shall apply to any individual who received a scholarship under such Program from appropriations for such Program for any fiscal year ending before October 1, 1977.

''(C) If an individual received a scholarship under the Public Health and National Health Service Corps

Scholarship Program for any school year beginning before the date of the enactment of this Act [Oct. 12, 1976], periods of internship or residency served by such individual in a facility of the National Health Service Corps or other facility of the Public Health Service shall be creditable in satisfying such individual's service obligation incurred under that Program for such scholarship or for any scholarship received under the National Health Service Corps Scholarship Program for any subsequent school year. If an individual received a scholarship under the Public Health and National Health Service Corps Program for the first time from appropriations for such Program for the fiscal year ending September 30, 1977, periods of internship or residency served by such individual in such a facility shall be creditable in satisfying such individual's service obligation incurred under that Program for such scholarship.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254d, 254h–1, 254m, 254n, 254*o*, 254*o*–1, 254q, 254q–1, 254s, 254t, 11709 of this title; title 25 sections 1613a, 1616m.

§ 254*l*–1. National Health Service Corps Loan Repayment Program

(a) Establishment

The Secretary shall establish a program to be known as the National Health Service Corps Loan Repayment Program to assure, with respect to the provision of primary health services pursuant to section 254d(a)(2) of this title—

(1) an adequate supply of physicians, dentists, certified nurse midwives, certified nurse practitioners, and physician assistants; and

(2) if needed by the Corps, an adequate supply of other health professionals (including mental health professionals).

(b) Eligibility

To be eligible to participate in the Loan Repayment Program, an individual must—

(1)(A) must[1] have a degree in medicine, osteopathic medicine, dentistry, or other health profession, or be certified as a nurse midwife, nurse practioner,[2] or physician assistant;

(B) be enrolled in an approved graduate training program in medicine, osteopathic medicine, dentistry, or other health profession; or

(C) be enrolled as a full-time student—

(i) in an accredited (as determined by the Secretary) educational institution in a State; and

(ii) in the final year of a course of a study or program, offered by such institution and approved by the Secretary, leading to a degree in medicine, osteopathic medicine, dentistry, or other health profession;

(2) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Service or be eligible for selection for civilian service in the Corps; and

(3) submit to the Secretary an application for a contract described in subsection (f) of this section (relating to the payment by the Secretary of the educational loans of the individual in consideration of the individual serving for a period of obligated service).

[1] So in original. The word ''must'' probably should not appear.

[2] So in original. Probably should be ''practitioner,''.

(c) Information to be included with application and contract forms; understandability; availability

(1) Summary and information

In disseminating application forms and contract forms to individuals desiring to participate in the Loan Repayment Program, the Secretary shall include with such forms—

(A) a fair summary of the rights and liabilities of an individual whose application is approved (and whose contract is accepted) by the Secretary, including in the summary a clear explanation of the damages to which the United States is entitled under section 254*o* of this title in the case of the individual's breach of the contract; and

(B) information respecting meeting a service obligation through private practice under an agreement under section 254n of this title and such other information as may be necessary for the individual to understand the individual's prospective participation in the Loan Repayment Program and service in the Corps.

(2) Understandability

The application form, contract form, and all other information furnished by the Secretary under this subpart shall be written in a manner calculated to be understood by the average individual applying to participate in the Loan Repayment Program.

(3) Availability

The Secretary shall make such application forms, contract forms, and other information available to individuals desiring to participate in the Loan Repayment Program on a date sufficiently early to ensure that such individuals have adequate time to carefully review and evaluate such forms and information.

(4) Recruitment and retention

(A) The Secretary shall distribute to health professions schools materials providing information on the Loan Repayment Program and shall encourage the schools to disseminate the materials to the students of the schools.

(B)(i) In the case of any health professional whose period of obligated service under the Loan Repayment Program is nearing completion, the Secretary shall encourage the individual to remain in a health professional shortage area and to continue providing primary health services.

(ii) During the period in which a health professional is planning and making the transition to private practice from obligated service under the Loan Repayment Program, the Secretary may provide assistance to the professional regarding such transition if the professional is remaining in a health professional shortage area and is continuing to provide primary health services.

(C) In the case of entities to which participants in the Loan Repayment Program are assigned under section 254f of this title, the Secretary shall encourage the entities to provide options with respect to assisting the participants in remaining in the health professional shortage areas involved, and in continuing to

provide primary health services, after the period of obligated service under the Loan Repayment Program is completed. The options with respect to which the Secretary provides such encouragement may include options regarding the sharing of a single employment position in the health professions by 2 or more health professionals, and options regarding the recruitment of couples where both of the individuals are health professionals.

(d) Factors considered in providing contracts; priorities

(1) Subject to section 254f–1 of this title, in providing contracts under the Loan Repayment Program—

(A) the Secretary shall consider the extent of the demonstrated interest of the applicants for the contracts in providing primary health services; and

(B) may consider such other factors regarding the applicants as the Secretary determines to be relevant to selecting qualified individuals to participate in such Program.

(2) In providing contracts under the Loan Repayment Program, the Secretary shall give priority—

(A) to any application for such a contract submitted by an individual whose training is in a health profession or specialty determined by the Secretary to be needed by the Corps;

(B) to any application for such a contract submitted by an individual who has (and whose spouse, if any, has) characteristics that increase the probability that the individual will continue to serve in a health professional shortage area after the period of obligated service pursuant to subsection (f) of this section is completed; and

(C) subject to subparagraph (B), to any application for such a contract submitted by an individual who is from a disadvantaged background.

(e) Approval required for participation

(1) In general

An individual becomes a participant in the Loan Repayment Program only upon the Secretary and the individual entering into a written contract described in subsection (f) of this section.

(2) Repealed. Pub. L. 101–597, title II, § 202(b)(2)(B), Nov. 16, 1990, 104 Stat. 3024

(f) Contents of contracts

The written contract (referred to in this subpart) between the Secretary and an individual shall contain—

(1) an agreement that—

(A) subject to paragraph (3), the Secretary agrees—

(i) to pay on behalf of the individual loans in accordance with subsection (g) of this section; and

(ii) to accept (subject to the availability of appropriated funds for carrying out sections 254d through 254h of this title and section 254j of this title) the individual into the Corps (or for equivalent service as otherwise provided in this subpart); and

(B) subject to paragraph (3), the individual agrees—

(i) to accept loan payments on behalf of the individual;

(ii) in the case of an individual described in subsection (b)(1)(C) of this section, to maintain enrollment in a course of study or training described in such subsection until the individual completes the course of study or training;

(iii) in the case of an individual described in subsection (b)(1)(C) of this section, while enrolled in such course of study or training, to maintain an acceptable level of academic standing (as determined under regulations of the Secretary by the educational institution offering such course of study or training); and

(iv) to serve for a time period (hereinafter in this subpart referred to as the ''period of obligated service'') equal to 2 years or such longer period as the individual may agree to, as a provider of primary health services in a health professional shortage area (designated under section 254e of this title) to which such individual is assigned by the Secretary as a member of the Corps or released under section 254n of this title;

(2) a provision permitting the Secretary to extend for such longer additional periods, as the individual may agree to, the period of obligated service agreed to by the individual under paragraph (1)(B)(iv), including extensions resulting in an aggregate period of obligated service in excess of 4 years;

(3) a provision that any financial obligation of the United States arising out of a contract entered into under this subpart and any obligation of the individual that is conditioned thereon, is contingent on funds being appropriated for loan repayments under this subpart and to carry out the purposes of sections 254d through 254h of this title and sections 254j and 254k of this title;

(4) a statement of the damages to which the United States is entitled, under section 254*o* of this title for the individual's breach of the contract; and

(5) such other statements of the rights and liabilities of the Secretary and of the individual, not inconsistent with this subpart.

(g) Payments

(1) In general

A loan repayment provided for an individual under a written contract under the Loan Repayment Program shall consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related expenses on government and commercial loans received by the individual regarding the undergraduate or graduate education of the individual (or both), which loans were made for—

(A) tuition expenses;

(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; or

(C) reasonable living expenses as determined by the Secretary.

(2) Payments for years served

(A) In general

For each year of obligated service that an individual contracts to serve under subsection (f) of this section the Secretary may pay up to $35,000 on behalf of the individual for loans described in paragraph (1). In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—

(i) affects the ability of the Secretary to maximize the number of contracts that can be provided under the Loan Repayment Program from the amounts appropriated for such contracts;

(ii) provides an incentive to serve in health professional shortage areas with the greatest such shortages; and

(iii) provides an incentive with respect to the health professional involved remaining in a health professional shortage area, and continuing to provide primary health services, after the completion of the period of obligated service under the Loan Repayment Program.

(B) Repayment schedule

Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made no later than the end of the fiscal year in which the individual completes such year of service.

(3) Tax liability

For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual—

(A) the Secretary shall, in addition to such payments, make payments to the individual in an amount equal to 39 percent of the total amount of loan repayments made for the taxable year involved; and

(B) may make such additional payments as the Secretary determines to be appropriate with respect to such purpose.

(4) Payment schedule

The Secretary may enter into an agreement with the holder of any loan for which payments are made under the Loan Repayment Program to establish a schedule for the making of such payments.

(h) Employment ceiling

Notwithstanding any other provision of law, individuals who have entered into written contracts with the Secretary under this section, while undergoing academic or other training, shall not be counted against any employment ceiling affecting the Department.

(i) Reports

Not later than March 1 of each year, the Secretary shall submit to the Congress a report providing, with respect to the preceding fiscal year—

(1) the total amount of loan payments made under the Loan Repayment Program;

(2) the number of applications filed under this section;

(3) the number, and type of health profession training, of individuals receiving loan repayments under such Program;

(4) the educational institution at which such individuals received their training;

(5) the total amount of the indebtedness of such individuals for educational loans as of the date on which the individuals become participants in such Program;

(6) the number of years of obligated service specified for such individuals in the initial contracts under subsection (f) of this section, and, in the case of individuals whose period of such service has been completed, the total number of years for which the individuals served in the Corps (including any extensions made for purposes of paragraph (2) of such subsection);

(7)(A) the number, and type of health professions training, of such individuals who have breached the contract under subsection (f) of this section through any of the actions specified in subsection (a) or (b) of section 254*o* of this title; and

(B) with respect to such individuals—

(i) the educational institutions with respect to which payments have been made or were to be made under the contract;

(ii) the amounts for which the individuals are liable to the United States under section 254*o* of this title;

(iii) the extent of payment by the individuals of such amounts; and

(iv) if known, the basis for the decision of the individuals to breach the contract under subsection (f) of this section; and

(8) the effectiveness of the Secretary in recruiting health professionals to participate in the Loan Repayment Program, and in encouraging and assisting such professionals with respect to providing primary health services to health professional shortage areas after the completion of the period of obligated service under such Program.

(July 1, 1944, ch. 373, title III, § 338B, as added Dec. 1, 1987, Pub. L. 100–177, title II, § 201(3), 101 Stat. 992; amended Nov. 4, 1988, Pub. L. 100–607, title VI, § 629(a)(2), 102 Stat. 3146; Nov. 16, 1990, Pub. L. 101–597, title II, § 202(a)–(g)(1), (h), title IV, § 401(b)[(a)], 104 Stat. 3023–3026, 3035.)

PRIOR PROVISIONS

A prior section 338B of act July 1, 1944, was renumbered section 338C by section 201(2) of Pub. L. 100–177 and is classified to section 254m of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–597, § 202(a)(1), substituted ''Corps Loan Repayment Program to assure, with respect to the provision of primary health services pursuant to section 254d(a)(2) of this title—'' and pars. (1) and (2) for ''Corps Loan Repayment Program (hereinafter in this subpart referred to as the 'Loan Repayment Program') in order to assure—

''(1) an adequate supply of trained physicians, dentists, and nurses for the Corps; and

''(2) if needed by the Corps, an adequate supply of podiatrists, optometrists, pharmacists, clinical psychologists, graduates of schools of veterinary medicine, graduates of schools of public health, graduates

of programs in health administration, graduates of programs for the training of physician assistants, expanded function dental auxiliaries, and nurse practitioners (as defined in section 296m of this title), and other health professionals.''

Subsec. (b)(1). Pub. L. 101–597, § 202(b)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(A) be enrolled—

''(i) as a full-time student—

''(I) in an accredited (as determined by the Secretary) educational institution in a State; and

''(II) in the final year of a course of study or program, offered by such institution and approved by the Secretary, leading to a degree in medicine, osteopathic medicine, dentistry, or other health profession; or

''(ii) in an approved graduate training program in medicine, osteopathic medicine, dentistry, or other health profession; or

''(B) have—

''(i) a degree in medicine, osteopathic medicine, dentistry, or other health profession;

''(ii) completed an approved graduate training program in medicine, osteopathic medicine, dentistry, or other health profession in a State, except that the Secretary may waive the completion requirement of this clause for good cause; and

''(iii) a license to practice medicine, osteopathic medicine, dentistry, or other health profession in a State;''.

Subsec. (b)(2) to (4). Pub. L. 101–597, § 202(b)(2)(A), inserted ''and'' at end of par. (2), added par. (3), and struck out former pars. (3) and (4) which read as follows:

''(3) submit an application to participate in the Loan Repayment Program; and

''(4) sign and submit to the Secretary, at the time of the submission of such application, a written contract (described in subsection (f) of this section) to accept repayment of educational loans and to serve (in accordance with this subpart) for the applicable period of obligated service in a health manpower shortage area.''

Subsec. (c)(4). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in subpars. (B) and (C).

Pub. L. 101–597, § 202(c), added par. (4).

Subsec. (d). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (2)(B).

Pub. L. 101–597, § 202(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''In determining which applications under the Loan Repayment Program to approve (and which contracts to accept), the Secretary shall give priority to applications made by—

''(1) individuals whose training is in a health profession or specialty determined by the Secretary to be needed by the Corps; and

''(2) individuals who are committed to service in medically underserved areas.''

Subsec. (e). Pub. L. 101–597, § 202(b)(2)(B), substituted ''only upon the Secretary and the individual entering into a written contract described in subsection (f) of this section.'' for ''only on the Secretary's approval of the individual's application submitted under subsection (b)(3) of this section and the Secretary's acceptance of the contract submitted by the individual under subsection (b)(4) of this section.'' in par. (1) and struck out par. (2) which read as follows: ''The Secretary shall provide written notice to an individual promptly on—

''(A) the Secretary's approving, under paragraph (1), of the individual's participation in the Loan Repayment Program; or

''(B) the Secretary's disapproving an individual's participation in such Program.''

Subsec. (f)(1)(B)(ii), (iii). Pub. L. 101–597, § 202(b)(1)(B), substituted ''subsection (b)(1)(C)'' for ''subsection (b)(1)(A)''.

Subsec. (f)(1)(B)(iv). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

Pub. L. 101–597, § 202(a)(2), inserted ''as a provider of primary health services'' before ''in a health''.

Subsec. (f)(2). Pub. L. 101–597, § 202(e), inserted before semicolon at end '', including extensions resulting in an aggregate period of obligated service in excess of 4 years''.

Subsec. (g)(1). Pub. L. 101–597, § 202(f)(1), inserted ''regarding the undergraduate or graduate education of the individual (or both), which loans were made'' after ''loans received by the individual''.

Subsec. (g)(2)(A). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in cls. (ii) and (iii).

Pub. L. 101–597, § 202(f)(2)(A), substituted ''For each year'' for ''Except as provided in subparagraph (B) and paragraph (3), for each year'' and ''$35,000'' for ''$20,000'', inserted at end ''In making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—'', and added immediately thereafter cls. (i) to (iii).

Subsec. (g)(2)(B), (C). Pub. L. 101–597, § 202(f)(2)(B), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''For each year of obligated service that an individual contracts under subsection (f) of this section to serve in the Indian Health Service, or to serve in a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (25 U.S.C. 450f et seq.), the Secretary may pay up to $25,000 on behalf of the individual for loans described in paragraph (1).''

Subsec. (g)(3). Pub. L. 101–597, § 202(g)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In addition to payments made under paragraph (2), in any case in which payments on behalf of an individual under the Loan Repayment Program result in an increase in Federal, State, or local income tax liability for such individual, the Secretary may, on the request of such individual, make payments to such individual in a reasonable amount, as determined by the Secretary, to reimburse such individual for all or part of the increased tax liability of the individual.''

Subsec. (i). Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area in par. (8).

Pub. L. 101–597, § 202(h), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''The Secretary shall, not later than March 1 of each year, submit to the Congress a report specifying—

''(1) the number, and type of health profession training, of individuals receiving loan payments under the Loan Repayment Program;

''(2) the educational institution at which such individuals are receiving their training;

''(3) the number of applications filed under this section in the school year beginning in such year and in prior school years; and

''(4) the amount of loan payments made in the year reported on.''

1988—Subsec. (b)(1). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy'' wherever appearing.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 202(g)(2) of Pub. L. 101–597 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to contracts under section 338B of the Public Health Service Act [this section] (relating to service in the National Health Service Corps) that are entered into on or after the effective date of this Act [Nov. 16, 1990].''

REGULATIONS

Section 205 of title II of Pub. L. 100–177 provided that: ''Not later than 180 days after the effective date of the

amendments made by this title [Dec. 21, 1987], the Secretary of Health and Human Services shall issue regulations for the loan repayment programs established by the amendments [enacting this section and sections 254q and 254q–1 of this title, amending sections 242a, 254d, 254g, 254h–1, and 254*o* of this title, and repealing former section 254q of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254d, 254h–1, 254m, 254n, 254*o*, 254*o*–1, 254q–1, 288–2, 288–4, 288–5, 293b of this title; title 25 section 1616a.

§ 254m. Obligated service under contract

(a) Service in full-time clinical practice

Except as provided in section 254n of this title, each individual who has entered into a written contract with the Secretary under section 254*l* or 254*l*–1 of this title shall provide service in the full-time clinical practice of such individual's profession as a member of the Corps for the period of obligated service provided in such contract.

(b) Notice to individual; information for informed decision; eligibility; notice to Secretary; qualification and appointment as commissioned officer; appointment as civilian member; designation of non-United States employee as member; deferment of obligated service

(1) If an individual is required under subsection (a) of this section to provide service as specified in section 254*l*(f)(1)(B)(iv) or 254*l*–1(f)(1)(B)(iv) of this title (hereinafter in this subsection referred to as ''obligated service''), the Secretary shall, not later than ninety days before the date described in paragraph (5), determine if the individual shall provide such service—

(A) as a member of the Corps who is a commissioned officer in the Regular or Reserve Corps of the Service or who is a civilian employee of the United States, or

(B) as a member of the Corps who is not such an officer or employee,

and shall notify such individual of such determination.

(2) If the Secretary determines that an individual shall provide obligated service as a member of the Corps who is a commissioned officer in the Service or a civilian employee of the United States, the Secretary shall, not later than sixty days before the date described in paragraph (5), provide such individual with sufficient information regarding the advantages and disadvantages of service as such a commissioned officer or civilian employee to enable the individual to make a decision on an informed basis. To be eligible to provide obligated service as a commissioned officer in the Service, an individual shall notify the Secretary, not later than thirty days before the date described in paragraph (5), of the individual's desire to provide such service as such an officer. If an individual qualifies for an appointment as such an officer, the Secretary shall, as soon as possible after the date described in paragraph (5), appoint the individual as a commissioned officer of the Regular or Reserve Corps of the Service and shall designate the individual as a member of the Corps.

(3) If an individual provided notice by the Secretary under paragraph (2) does not qualify for appointment as a commissioned officer in the Service, the Secretary shall, as soon as possible after the date described in paragraph (5), appoint such individual as a civilian employee of the United States and designate the individual as a member of the Corps.

(4) If the Secretary determines that an individual shall provide obligated service as a member of the Corps who is not an employee of the United States, the Secretary shall, as soon as possible after the date described in paragraph (5), designate such individual as a member of the Corps to provide such service.

(5)(A) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, or pharmacy, the date referred to in paragraphs (1) through (4) shall be the date on which the individual completes the training required for such degree, except that—

(i) at the request of such an individual with whom the Secretary has entered into a contract under section 254*l* of this title prior to October 1, 1985, the Secretary shall defer such date until the end of the period of time (not to exceed the number of years specified in subparagraph (B) or such greater period as the Secretary, consistent with the needs of the Corps, may authorize) required for the individual to complete an internship, residency, or other advanced clinical training; and

(ii) at the request of such an individual with whom the Secretary has entered into a contract under section 254*l* of this title on or after October 1, 1985, the Secretary may defer such date in accordance with clause (i).

(B)(i) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of medicine, osteopathic medicine, or dentistry, the number of years referred to in subparagraph (A)(i) shall be 3 years.

(ii) In the case of the Scholarship Program, with respect to an individual receiving a degree from a school of veterinary medicine, optometry, podiatry, or pharmacy, the number of years referred to in subparagraph (A)(i) shall be 1 year.

(C) No period of internship, residency, or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subpart.

(D) In the case of the Scholarship Program, with respect to an individual receiving a degree from an institution other than a school referred to in subparagraph (A), the date referred to in paragraphs (1) through (4) shall be the date on which the individual completes the academic training of the individual leading to such degree.

(E) In the case of the Loan Repayment Program, if an individual is required to provide obligated service under such Program, the date referred to in paragraphs (1) through (4)—

(i) shall be the date determined under subparagraph (A), (B), or (D) in the case of an individual who is enrolled in the final year of a course of study;

(ii) shall, in the case of an individual who is enrolled in an approved graduate training pro-

gram in medicine, osteopathic medicine, dentistry, or other health profession, be the date the individual completes such training program; and

(iii) shall, in the case of an individual who has a degree in medicine, osteopathic medicine, dentistry, or other health profession and who has completed graduate training, be the date the individual enters into an agreement with the Secretary under section 254*l*–1 of this title.

(c) Obligated service period; commencement

An individual shall be considered to have begun serving a period of obligated service—

(1) on the date such individual is appointed as an officer in a Regular or Reserve Corps of the Service or is designated as a member of the Corps under subsection (b)(3) or (b)(4) of this section, or

(2) in the case of an individual who has entered into an agreement with the Secretary under section 254n of this title, on the date specified in such agreement,

whichever is earlier.

(d) Assignment of personnel

The Secretary shall assign individuals performing obligated service in accordance with a written contract under the Scholarship Program to health professional shortage areas in accordance with sections 254d through 254h and sections 254j and 254k of this title. If the Secretary determines that there is no need in a health professional shortage area (designated under section 254e of this title) for a member of the profession in which an individual is obligated to provide service under a written contract and if such individual is an officer in the Service or a civilian employee of the United States, the Secretary may detail such individual to serve his period of obligated service as a full-time member of such profession in such unit of the Department as the Secretary may determine.

(e) Service under National Research Service Award program; credits against obligated service time

Notwithstanding any other provision of this subchapter, service of an individual under a National Research Service Award awarded under subparagraph (A) or (B) of section 288(a)(1)[1] of this title shall be counted against the period of obligated service which the individual is required to perform under the Scholarship Program or under section 234[2] of this title as in effect on September 30, 1977.

(July 1, 1944, ch. 373, title III, §338C, formerly title VII, §752, as added Oct. 12, 1976, Pub. L. 94–484, title IV, §408(b)(1), 90 Stat. 2284; amended Nov. 10, 1978, Pub. L. 95–626, title I, §113(b), 92 Stat. 3563; Sept. 29, 1979, Pub. L. 96–76, title II, §202(a), (b), 93 Stat. 582; renumbered §338B and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2709(a), (c), 95 Stat. 908, 909; Jan. 4, 1983, Pub. L. 97–414, §8(g)(1), 96 Stat. 2061; renumbered §338C and amended Dec. 1, 1987, Pub. L. 100–177, title II, §201(2), title III, §306, 101 Stat. 992, 1004; Nov. 4, 1988, Pub. L. 100–607, title VI, §629(a)(2), 102 Stat. 3146; Nov. 16, 1990, Pub. L. 101–597, title IV, §401(b)[(a)], 104 Stat. 3035.)

[1] See Codification note below.

[2] See References in Text note below.

REFERENCES IN TEXT

Section 234 of this title, referred to in subsec. (e), was repealed by Pub. L. 94–484, title IV, §408(b)(1), Oct. 12, 1976, 90 Stat. 2281, effective Oct. 1, 1977.

CODIFICATION

Section was formerly classified to section 294u of this title prior to its renumbering by Pub. L. 97–35.

Section 288(a)(1) of this title, referred to in subsec. (e), in the original referred to section 472(a)(1), meaning section 472(a)(1) of the Public Health Service Act, which was classified to section 289*l*–1(a)(1) of this title. Title IV of the Public Health Service Act was amended generally by section 2 of Pub. L. 99–158, Nov. 20, 1985, 99 Stat. 822, and provisions formerly contained in section 472(a)(1) were restated in section 487(a)(1) of the Public Health Service Act, which is classified to section 288(a)(1) of this title.

PRIOR PROVISIONS

A prior section 338C of act July 1, 1944, was renumbered section 338D by section 201(2) of Pub. L. 100–177 and is classified to section 254n of this title.

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–597 substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

1988—Subsec. (b)(5). Pub. L. 100–607 substituted ''osteopathic medicine'' for ''osteopathy'' wherever appearing.

1987—Subsec. (a). Pub. L. 100–177, §306(1), inserted ''or 254*l*–1'', and made technical amendment to reference to section 254n of this title to reflect renumbering of corresponding section of original act.

Subsec. (b)(1). Pub. L. 100–177, §306(2), inserted reference to section 254*l*–l(f)(1)(B)(iv).

Subsec. (b)(5). Pub. L. 100–177, §306(3), substituted par. (5) consisting of subpars. (A) to (E) for former par. (5) consisting of subpars. (A) and (B).

Subsec. (c)(2). Pub. L. 100–177, §306(4), made technical amendment to reference to section 254n of this title to reflect renumbering of corresponding section of original act.

1983—Subsec. (e). Pub. L. 97–414 inserted ''or under section 234 of this title as in effect on September 30, 1977'' after ''Scholarship Program''.

1981—Subsec. (a). Pub. L. 97–35, §2709(c)(1), substituted ''254n'' for ''294v'' and ''254*l*'' for ''294t''.

Subsec. (b). Pub. L. 97–35, §2709(c)(2), substituted provisions relating to notice, information, etc., for individuals required to give obligated service, for provisions relating to notice, information, etc., for individuals required to provide service under the Scholarship Program.

Subsec. (c). Pub. L. 97–35, §2709(c)(3), (4), in par. (1) inserted reference to designation under subsec. (b)(3) or (4) of this section, and in par. (2) substituted ''254n'' for ''294v''.

Subsec. (d). Pub. L. 97–35, §2709(c)(5), inserted provision relating to individuals who are officers in the Service or civilian employees of the United States, and substituted reference to sections 254d to 254h, 254j, and 254k of this title, for reference to subpart II of part D of subchapter II of this chapter.

Subsec. (e). Pub. L. 97–35, §2709(c)(6), substituted provisions respecting mandatory determination of service requirement, for provisions respecting discretionary determination of service requirement.

1979—Subsec. (b)(5)(A). Pub. L. 96–76, §202(a), (b)(1), (2), inserted provisions authorizing a greater period than three years for individuals receiving degrees from schools of medicine, osteopathy, and dentistry, and

provisions respecting individuals receiving degrees from schools of veterinary medicine, optometry, podiatry, and pharmacy, and substituted ''No period'' for ''No such period''.

Subsec. (b)(5)(B). Pub. L. 96–76, § 202(b)(3), substituted ''referred to in subparagraph (A)'' for ''of medicine, osteopathy, or dentistry''.

1978—Subsec. (d). Pub. L. 95–626 substituted ''subpart II of part D'' for ''subpart II of part C''.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2709(h) of Pub. L. 97–35 provided that: ''The amendments made by paragraphs (2), (3), and (5)(B) of subsection (c) [amending this section] shall apply with respect to contracts entered into under the National Health Service Corps scholarship program under subpart III of part C of title VII of the Public Health Service Act [section 294r et seq. of this title] after the date of the enactment of this Act [Aug. 13, 1981]. An individual who before such date has entered into such a contract and who has not begun the period of obligated service required under such contract shall be given the opportunity to revise such contract to permit the individual to serve such period as a member of the National Health Service Corps who is not an employee of the United States.''

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 408(b)(1) of Pub. L. 94–484, set out in part as a note under section 254*l* of this title.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

See section 408(b)(2) of Pub. L. 94–484, set out as a note under section 254*l* of this title.

SPECIAL RETENTION PAY FOR REGULAR OR RESERVE OFFICERS FOR PERIOD OFFICER IS OBLIGATED UNDER THIS SECTION

Pub. L. 100–446, title II, Sept. 27, 1988, 102 Stat. 1816, provided that: ''the Secretary of Health and Human Services may authorize special retention pay under paragraph (4) of 37 U.S.C. 302(a) to any regular or reserve officer for the period during which the officer is obligated under section 338B [now 338C] of the Public Health Service Act [this section] and assigned and providing direct health services or serving the officer's obligation as a specialist''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 100–202, § 101(g) [title II], Dec. 22, 1987, 101 Stat. 1329–213, 1329–246.

Pub. L. 99–500, § 101(h) [title II], Oct. 18, 1986, 100 Stat. 1783–242, 1783–277, and Pub. L. 99–591, § 101(h) [title II], Oct. 30, 1986, 100 Stat. 3341–242, 3341–277.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 210, 242a, 254n, 254*o*, 254q, 288–2, 288–5, 293b of this title; title 25 sections 1613a, 1616e, 1621p.

§ 254n. Private practice

(a) Application for release of obligations; conditions

The Secretary shall, to the extent permitted by, and consistent with, the requirements of applicable State law, release an individual from all or part of his service obligation under section 254m(a) of this title or under section 234[1] of this title (as in effect on September 30, 1977) if the individual applies for such a release under this section and enters into a written agreement with the Secretary under which the individual agrees to engage for a period equal to the remaining period of his service obligation in the full-time private clinical practice (including service as a salaried employee in an entity directly providing health services) of his health profession—

(1) in the case of an individual who received a scholarship under the Scholarship Program or a loan repayment under the Loan Repayment Program and who is performing obligated service as a member of the Corps in a health professional shortage area on the date of his application for such a release, in the health professional shortage area in which such individual is serving on such date or in the case of an individual for whom a loan payment was made under the Loan Repayment Program and who is performing obligated service as a member of the Corps in a health professional shortage area on the date of the application of the individual for such a release, in the health professional shortage area selected by the Secretary; or

(2) in the case of any other individual, in a health professional shortage area (designated under section 254e of this title) selected by the Secretary.

(b) Written agreement; fee rates; ability to pay; health insurance; regulations; actions to ensure compliance

The written agreement described in subsection (a) of this section shall—

(1) provide that during the period of private practice by an individual pursuant to the agreement—

(A) any person who receives health services provided by the individual in connection with such practice will be charged for such services at the usual and customary rate prevailing in the area in which such services are provided, except that if such person is unable to pay such charge, such person shall be charged at a reduced rate or not charged any fee; and

(B) the individual in providing health services in connection with such practice (i) shall not discriminate against any person on the basis of such person's ability to pay for such services or because payment for the health services provided to such person will be made under the insurance program established under part A or B of title XVIII of the Social Security Act [42 U.S.C. 1395c et seq. and 1395j et seq.] or under a State plan for medical assistance approved under title XIX of such Act [42 U.S.C. 1396 et seq.], and (ii) shall agree to accept an assignment under section 1842(b)(3)(B)(ii) of such Act [42 U.S.C. 1395u(b)(3)(B)(ii)] for all services for which payment may be made under part B of title XVIII of such Act and enter into an appropriate agreement with the State agency which administers the State plan for medical assistance under title XIX of such Act to provide services to individuals entitled to medical assistance under the plan; and

(2) contain such additional provisions as the Secretary may require to carry out the purposes of this section.

[1] See References in Text note below.

For purposes of paragraph (1)(A), the Secretary shall by regulation prescribe the method for determining a person's ability to pay a charge for health services and the method of determining the amount (if any) to be charged such person based on such ability. The Secretary shall take such action as may be appropriate to ensure that the conditions of the written agreement prescribed by this subsection are adhered to.

(c) Breach of service contract

If an individual breaches the contract entered into under section 254*l* or 254*l*–1 of this title by failing (for any reason) to begin his service obligation in accordance with an agreement entered into under subsection (a) of this section or to complete such service obligation, the Secretary may permit such individual to perform such service obligation as a member of the Corps.

(d) Travel expenses

The Secretary may pay an individual who has entered into an agreement with the Secretary under subsection (a) of this section an amount to cover all or part of the individual's expenses reasonably incurred in transporting himself, his family, and his possessions to the location of his private clinical practice.

(e) Sale of equipment and supplies

Upon the expiration of the written agreement under subsection (a) of this section, the Secretary may (notwithstanding any other provision of law) sell to the individual who has entered into an agreement with the Secretary under subsection (a) of this section, equipment and other property of the United States utilized by such individual in providing health services. Sales made under this subsection shall be made at the fair market value (as determined by the Secretary) of the equipment or such other property, except that the Secretary may make such sales for a lesser value to the individual if he determines that the individual is financially unable to pay the full market value.

(f) Malpractice insurance

The Secretary may, out of appropriations authorized under section 254k of this title, pay to individuals participating in private practice under this section the cost of such individual's malpractice insurance and the lesser of—

(1)(A) $10,000 in the first year of obligated service;

(B) $7,500 in the second year of obligated service;

(C) $5,000 in the third year of obligated service; and

(D) $2,500 in the fourth year of obligated service; or

(2) an amount determined by subtracting such individual's net income before taxes from the income the individual would have received as a member of the Corps for each such year of obligated service.

(g) Technical assistance

The Secretary shall, upon request, provide to each individual released from service obligation under this section technical assistance to assist such individual in fulfilling his or her agreement under this section.

(July 1, 1944, ch. 373, title III, §338D, formerly title VII, §753, as added Oct. 12, 1976, Pub. L. 94–484, title IV, §408(b)(1), 90 Stat. 2285; amended Dec. 17, 1980, Pub. L. 96–538, title IV, §403, 94 Stat. 3192; renumbered §338C and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2709(a), (d), 95 Stat. 908, 910; renumbered §338D and amended Dec. 1, 1987, Pub. L. 100–177, title II, §201(2), title III, §307, 101 Stat. 992, 1005; Nov. 16, 1990, Pub. L. 101–597, title IV, §401(b)[(a)], 104 Stat. 3035.)

REFERENCES IN TEXT

Section 234 of this title, referred to in subsec. (a), was repealed by Pub. L. 94–484, title IV, §408(b)(1), Oct. 12, 1976, 90 Stat. 2281, effective Oct. 1, 1977.

The Social Security Act, referred to in subsec. (b)(1)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts A and B of title XVIII of the Social Security Act are classified generally to parts A (§1395c et seq.) and B (§1395j et seq.) of subchapter XVIII of chapter 7 of this title. Title XIX of such Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

Section was formerly classified to section 294v of this title prior to its renumbering by Pub. L. 97–35.

PRIOR PROVISIONS

A prior section 338D of act July 1, 1944, was renumbered section 338E by section 201(2) of Pub. L. 100–177 and is classified to section 254*o* of this title.

AMENDMENTS

1990—Subsec. (a)(1), (2). Pub. L. 101–597 substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing.

1987—Subsec. (a). Pub. L. 100–177, §307(1)–(3), made technical amendment to reference to section 254m of this title to reflect renumbering of corresponding section of original act, in introductory provisions, in par. (1) inserted ''who received a scholarship under the Scholarship Program or a loan repayment under the Loan Repayment Program and'' after ''individual'' the first time it appeared as the probable intent of Congress, and inserted ''or in the case of an individual for whom a loan payment was made under the Loan Repayment Program and who is performing obligated service as a member of the Corps in a health manpower shortage area on the date of the application of the individual for such a release, in the health manpower shortage area selected by the Secretary'', and in par. (2) inserted ''selected by the Secretary''.

Subsec. (b). Pub. L. 100–177, §307(4), inserted at end ''The Secretary shall take such action as may be appropriate to ensure that the conditions of the written agreement prescribed by this subsection are adhered to.''

Subsec. (c). Pub. L. 100–177, §307(5), inserted reference to section 254*l*–1.

Subsec. (e). Pub. L. 100–177, §307(b), designated par. (2) as entire subsection and struck out par. (1) which read as follows: ''The Secretary may make such arrangements as he determines are necessary for the individual for the use of equipment and supplies and for the lease or acquisition of other equipment and supplies.''

1981—Subsec. (a). Pub. L. 97–35, §2709(d)(1), inserted provision respecting requirements of applicable State law, substituted references to sections 254m(a) and 234 of this title, for reference to section 294u(a) of this title, and in cl. (2) struck out priority requirement under section 254f(c) of this title.

Subsec. (b)(1)(B). Pub. L. 97–35, §2709(d)(2), inserted ''(i)'' before ''shall not'' and added cl. (ii).

Subsecs. (c) to (g). Pub. L. 97–35, §2709(d)(3), added subsecs. (c) to (g).

1980—Subsec. (a). Pub. L. 96–538 substituted in par. (2) ''which has'' for ''which (A) has'' and struck out subpar.

(B) which referred to a health manpower shortage area which has a sufficient financial base to substain private practice and provide the individual with income of not less than the income of members of the Corps, and struck out provision following par. (2) which provided that in the case of an individual described in par. (1), the Secretary release the individual from his service obligation under this subsection only if the Secretary determines that the area in which the individual is serving met the requirements of cl. (B) of par. (2).

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 408(b)(1) of Pub. L. 94–484, set out in part as a note under section 254*l* of this title.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

See section 408(b)(2) of Pub. L. 94–484, set out as a note under section 254*l* of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242a, 254d, 254*l*, 254*l*–1, 254m, 254*o*, 254p, 294cc of this title.

§ 254*o*. Breach of scholarship contract or loan repayment contract

(a) Failure to maintain academic standing; dismissal from institution; voluntary termination; liability; failure to accept payment

(1) An individual who has entered into a written contract with the Secretary under section 254*l* of this title and who—

(A) fails to maintain an acceptable level of academic standing in the educational institution in which he is enrolled (such level determined by the educational institution under regulations of the Secretary),

(B) is dismissed from such educational institution for disciplinary reasons,

(C) voluntarily terminates the training in such an educational institution for which he is provided a scholarship under such contract, before the completion of such training, or

(D) fails to accept payment, or instructs the educational institution in which he is enrolled not to accept payment, in whole or in part, of a scholarship under such contract,

in lieu of any service obligation arising under such contract, shall be liable to the United States for the amount which has been paid to him, or on his behalf, under the contract.

(2) An individual who has entered into a written contract with the Secretary under section 254*l*–1 of this title and who—

(A) in the case of an individual who is enrolled in the final year of a course of study, fails to maintain an acceptable level of academic standing in the educational institution in which such individual is enrolled (such level determined by the educational institution under regulations of the Secretary) or voluntarily terminates such enrollment or is dismissed from such educational institution before completion of such course of study; or

(B) in the case of an individual who is enrolled in a graduate training program, fails to complete such training program and does not receive a waiver from the Secretary under section 254*l*–1(b)(1)(B)(ii) of this title,

in lieu of any service obligation arising under such contract shall be liable to the United States for the amount that has been paid on behalf of the individual under the contract.

(b) Failure to commence or complete service obligations; formula to determine liability; payment to United States; recovery of delinquent damages; disclosure to credit reporting agencies

(1)(A) Except as provided in paragraph (2), if an individual breaches his written contract by failing (for any reason not specified in subsection (a) of this section or section 254p(d)[1] of this title) either to begin such individual's service obligation under section 254*l* of this title in accordance with section 254m or 254n of this title or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula

$$A=3\phi\left(\frac{t-s}{t}\right)$$

in which ''A'' is the amount the United States is entitled to recover, ''ϕ'' is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; ''t'' is the total number of months in the individual's period of obligated service; and ''s'' is the number of months of such period served by him in accordance with section 254m of this title or a written agreement under section 254n of this title.

(B)(i) Any amount of damages that the United States is entitled to recover under this subsection or under subsection (c) of this section shall, within the 1-year period beginning on the date of the breach of the written contract (or such longer period beginning on such date as specified by the Secretary), be paid to the United States. Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1395ccc of this title.

(ii) If damages described in clause (i) are delinquent for 3 months, the Secretary shall, for the purpose of recovering such damages—

(I) utilize collection agencies contracted with by the Administrator of the General Services Administration; or

(II) enter into contracts for the recovery of such damages with collection agencies selected by the Secretary.

(iii) Each contract for recovering damages pursuant to this subsection shall provide that the contractor will, not less than once each 6 months, submit to the Secretary a status report on the success of the contractor in collecting such damages. Section 3718 of title 31 shall apply to any such contract to the extent not inconsistent with this subsection.

(iv) To the extent not otherwise prohibited by law, the Secretary shall disclose to all appropriate credit reporting agencies information relating to damages of more than $100 that are en-

[1] See References in Text note below.

titled to be recovered by the United States under this subsection and that are delinquent by more than 60 days or such longer period as is determined by the Secretary.

(2) If an individual is released under section 254n[1] of this title from a service obligation under section 234[1] of this title (as in effect on September 30, 1977) and if the individual does not meet the service obligation incurred under section 254n[1] of this title, subsection (f) of such section 234[1] of this title shall apply to such individual in lieu of paragraph (1) of this subsection.

(c) Failure to commence or complete service obligations for other reasons; determination of liability; payment to United States; waiver of recovery for extreme hardship or good cause shown

(1) If (for any reason not specified in subsection (a) of this section or section 254p(d)[1] of this title) an individual breaches the written contract of the individual under section 254*l*–1 of this title by failing either to begin such individual's service obligation in accordance with section 254m or 254n of this title or to complete such service obligation, the United States shall be entitled to recover from the individual an amount equal to the sum of—

(A) in the case of a contract for a 2-year period of obligated service—

(i) the total of the amounts paid by the United States under section 254*l*–1(g)(2) of this title on behalf of the individual for any period of obligated service; and

(ii) an amount equal to the unserved obligation penalty;

(B) in the case of a contract for a period of obligated service of greater than 2 years, and the breach occurs before the end of the first 2 years of such period—

(i) the total of the amounts paid by the United States under section 254*l*–1(g)(2) of this title on behalf of the individual for any period of obligated service; and

(ii) an amount equal to the unserved obligation penalty; and

(C) in the case of a contract for a period of obligated service of greater than 2 years, and the breach occurs after the first 2 years of such period—

(i) the total of the amounts paid by the United States under section 254*l*–1(g)(2) of this title on behalf of the individual for any period of obligated service not served; and

(ii) if the individual breaching the contract failed to give the Secretary notice, that the individual intends to take action which constitutes a breach of the contract, at least 1 year (or such shorter period of time as the Secretary determines is adequate for finding a replacement) prior to the breach, $10,000.

(2) For purposes of paragraph (1), the term ''unserved obligation penalty'' means the amount equal to the product of the number of months of obligated service that were not completed by an individual, multiplied by $1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000.

(3) The Secretary may waive, in whole or in part, the rights of the United States to recover amounts under this section in any case of extreme hardship or other good cause shown, as determined by the Secretary.

(4) Damages that the United States is entitled to recover shall be paid in accordance with subsection (b)(1)(B) of this section.

(d) Cancellation of obligation upon death of individual; waiver or suspension of obligation for impossibility, hardship, or unconscionability; release of debt by discharge in bankruptcy, time limitations

(1) Any obligation of an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) for service or payment of damages shall be canceled upon the death of the individual.

(2) The Secretary shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment by an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual and if enforcement of such obligation with respect to any individual would be unconscionable.

(3)(A) Any obligation of an individual under the Scholarship Program (or a contract thereunder) or the Loan Repayment Program (or a contract thereunder) for payment of damages may be released by a discharge in bankruptcy under title 11 only if such discharge is granted after the expiration of the five-year period beginning on the first date that payment of such damages is required, and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable.

(B)(i) Subparagraph (A) shall apply to any financial obligation of an individual under the provision of law specified in clause (ii) to the same extent and in the same manner as such subparagraph applies to any obligation of an individual under the Scholarship or Loan Repayment Program (or contract thereunder) for payment of damages.

(ii) The provision of law referred to in clause (i) is subsection (f) of section 234[2] of this title, as in effect prior to the repeal of such section by section 408(b)(1) of Public Law 94–484.

(July 1, 1944, ch. 373, title III, § 338E, formerly title VII, § 754, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2286; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(g), 91 Stat. 391; renumbered § 338D and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2709(a), (e)(1)–(4)(A), 95 Stat. 908, 911; Jan. 4, 1983, Pub. L. 97–414, § 8(g)(2), 96 Stat. 2061; renumbered § 338E and amended Dec. 1, 1987, Pub. L. 100–177, title II, §§ 201(2), 202(e), title III, § 308(a), 101 Stat. 992, 997, 1006; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4052(b), 101 Stat. 1330–97; July 1, 1988, Pub. L. 100–360, title IV, § 411(f)(10)(B), 102 Stat. 780; Nov. 16, 1990, Pub. L. 101–597, title II, § 203(a), 104 Stat. 3027.)

[2] See References in Text note below.

REFERENCES IN TEXT

Section 254p of this title, referred to in subsecs. (b)(1)(A) and (c)(1), was in the original a reference to section 338F of act July 1, 1944, which was renumbered section 338G by Pub. L. 101–597, title II, § 204, Nov. 16, 1990, 104 Stat. 3027.

Section 234 of this title, referred to in subsecs. (b)(2) and (d)(3)(B)(ii), was repealed by Pub. L. 94–484, title IV, § 408(b)(1), Oct. 12, 1976, 90 Stat. 2281, effective Oct. 1, 1977.

Section 254n of this title, referred to in subsec. (b)(2), in the original referred to section 753, meaning section 753 of the Public Health Service Act, which was classified to section 294v of this title. Section 753 was redesignated section 338C of the Public Health Service Act by Pub. L. 97–35, title XXVII, § 2709(a), Aug. 13, 1981, 95 Stat. 908, and was transferred to section 254n of this title. Section 338C of the Public Health Service Act was renumbered section 338D by Pub. L. 100–177, title II, § 201(2), Dec. 1, 1987, 101 Stat. 992.

CODIFICATION

Section was formerly classified to section 294w of this title prior to its renumbering by Pub. L. 97–35.

PRIOR PROVISIONS

A prior section 338E of act July 1, 1944, was renumbered section 338F by Pub. L. 100–177 and classified to section 254p of this title, and subsequently renumbered 338G by Pub. L. 101–597.

AMENDMENTS

1990—Subsec. (d)(3). Pub. L. 101–597 designated existing provision as subpar. (A) and added subpar. (B).

1988—Subsec. (b)(1)(B)(i). Pub. L. 100–360 made technical amendment to directory language of Pub. L. 100–203, see 1987 Amendment note below.

1987—Pub. L. 100–177, § 202(e)(6), inserted ''or loan repayment contract'' in section catchline.

Subsec. (a). Pub. L. 100–177, § 202(e)(1), designated existing provisions as par. (1), and former pars. (1) to (4) as subpars. (A) to (D), respectively, and added par. (2).

Subsec. (b)(1). Pub. L. 100–177, § 202(e)(2), designated existing provisions as subpar. (A), made technical amendments to references to sections 254m, 254n, and 254p of this title wherever appearing to reflect renumbering of corresponding sections of original act, inserted ''under section 254*l* of this title'' after first reference to ''service obligation'' as the probable intent of Congress, struck out at end ''Any amount of damages which the United States is entitled to recover under this subsection shall, within the one year period beginning on the date of the breach of the written contract (or such longer period beginning on such date as specified by the Secretary for good cause shown), be paid to the United States.'', and added subpar. (B).

Subsec. (b)(1)(B)(i). Pub. L. 100–203, as amended by Pub. L. 100–360, inserted at end ''Amounts not paid within such period shall be subject to collection through deductions in Medicare payments pursuant to section 1395ccc of this title.''

Subsec. (c). Pub. L. 100–177, § 202(e)(4), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–177, §§ 202(e)(3), (5), 308(a), redesignated subsec. (c) as (d), in pars. (1), (2), and (3), inserted ''or the Loan Repayment Program (or a contract thereunder'', and in par. (3) inserted '', and only if the bankruptcy court finds that nondischarge of the obligation would be unconscionable''.

1983—Subsec. (b)(1). Pub. L. 97–414 substituted ''section 254p(d)'' for ''section 254q(b)''.

1981—Subsec. (a). Pub. L. 97–35, § 2709(e)(1), (2), redesignated subsec. (b) as (a) and, as so redesignated, in introductory text substituted ''254*l*'' for ''294t'' and added par. (4). Former subsec. (a), which related to liability of individual upon failure to accept payment, was struck out.

Subsec. (b). Pub. L. 97–35, § 2709(e)(1), (3), redesignated subsec. (c) as (b) and, as so redesignated, designated existing provisions as par. (1) and made numerous changes to reflect renumbering of subpart sections, and added par. (2). Former subsec. (b) redesignated (a).

Subsecs. (c), (d). Pub. L. 97–35, § 2709(e)(1), (4)(A), redesignated subsec. (d) as (c) and, as so redesignated, in par. (2) inserted reference to partial or total waiver. Former subsec. (c) redesignated (b).

1977—Subsec. (c). Pub. L. 95–83 substituted '' 'ϕ' is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans'' for '' 'ϕ' is the sum of the amount paid under this subpart to or on behalf of the individual and the interest on such amount which would be payable if at the time it was paid it was a loan''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 203(b) of Pub. L. 101–597 provided that: ''With respect to any financial obligation of an individual under subsection (f) of section 225 of the Public Health Service Act [former section 234 of this title], as in effect prior to the repeal of such section by section 408(b)(1) of Public Law 94–484, the amendment made by subsection (a) of this section [amending this section] applies to any backruptcy [sic] proceeding in which discharge of such an obligation has not been granted before the date that is 31 days after the date of the enactment of this Act [Nov. 16, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 408(b)(1) of Pub. L. 94–484, set out in part as a note under section 254*l* of this title.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

See section 408(b)(2) of Pub. L. 94–484, set out as a note under section 254*l* of this title.

SPECIAL REPAYMENT PROVISIONS

Section 204 of Pub. L. 100–177 provided that:

''(a) ELIGIBLE INDIVIDUALS.—

''(1) IN GENERAL.—An individual who—

''(A)(i) breached a written contract entered into under section 338A of the Public Health Service Act (42 U.S.C. 254*l*) by failing either to begin such individual's service obligation in accordance with section 338C of such Act [section 254m of this title] (as redesignated by section 201(2) of this Act) or to complete such service obligation; or

''(ii) otherwise breached such a contract; and

''(B) as of November 1, 1987, is liable to the United States under section 338E(b) of such Act (as redesignated by section 201(2) of this Act) [subsec. (b) of this section],

shall be relieved of liability to the United States under such section if the individual provides notice to the Secretary in accordance with paragraph (2) and provides service in accordance with a written contract with the Secretary that obligates the individual to provide service in accordance with subsection (b) or (c). The Secretary may exclude an individual from relief from liability under this section for reasons related to the individual's professional competence or conduct.

''(2) NOTICE BY SECRETARY.—Not later than 90 days after the date of the enactment of this Act [Dec. 1,

1987], the Secretary of Health and Human Services shall notify in writing individuals who are described in subsection (a) of the opportunity provided by such subsection to be relieved of liability to the United States under section 338E(b) of the Public Health Service Act [subsec. (b) of this section] (as redesignated by section 201(2) of this Act). Notice sent to the last known address of such individual shall constitute sufficient notice for the purposes of this section. The Secretary may require that an individual responding to such notice make an election between service under subsection (b) or subsection (c) and provide that such election shall be binding.

''(3) NOTICE BY INDIVIDUAL.—Not later than 180 days after the date of the enactment of this Act [Dec. 1, 1987], an individual who receives a notice from the Secretary may notify the Secretary that the individual intends to enter into a written contract with the Secretary to provide service in accordance with subsection (b) or (c). The Secretary may extend the 180-day period for an individual for good cause shown.

''(4) STATUTE OF LIMITATIONS.—If an individual provides notice under paragraph (3), the statute of limitations established by section 2415 of title 28, United States Code, shall be tolled from the time the Secretary receives such notice until such time as it is determined by the Secretary that such individual will not be relieved of liability to the United States under the Public Health Service Act [section 201 et seq. of this title] as provided under this section.

''(5) PLACEMENTS.—Any individual who enters into a contract under this subsection shall be afforded an opportunity to locate and negotiate a placement in accordance with this section, except that the Secretary shall not be required to identify a placement for any individual in a medical specialty for which the National Health Service Corps has no need.

''(6) PARTIAL SERVICE.—The Secretary shall promulgate regulations that provide for the reduction of the liability under section 338F of the Public Health Service Act [section 254p of this title] (as redesignated by section 201(2) of this Act) of an individual who breaches a contract entered into under this section to reflect any partial service or partial payment of liability of the individual under this section.

''(b) SERVICE AT HEALTH MANPOWER SHORTAGE AREA PLACEMENT OPPORTUNITY LIST SITES.—

''(1) IN GENERAL.—An individual notified under subsection (a)(2) may enter into a written contract with the Secretary to serve, in accordance with subpart II of part D of title III of the Public Health Service Act (42 U.S.C. 254d et seq.), for the period of such individual's service obligation remaining under section 338C of the Public Health Service Act [section 254m of this title] (as redesignated by section 201(2) of this Act) at a site that—

''(A)(i) is on the Health Manpower Shortage Area Placement Opportunity List created by the Secretary of Health and Human Services for obligated service under section 338C of the Public Health Service Act (as so redesignated) to begin in fiscal year 1988 and to which no individual who is not described in subsection (a)(1) has been assigned by a date determined by the Secretary; or

''(ii) is on the Health Manpower Shortage Area Placement Opportunity List created by the Secretary of Health and Human Services for obligated service under section 338C of the Public Health Service Act (as so redesignated) to begin in fiscal year 1989; and

''(B) has agreed to permit the individual to serve at such site.

''(2) NUMBER OF SITES.—The Secretary shall to the extent practicable, include a total number of sites on the list referred to in paragraph (1) sufficient to provide placement to all obligors under the Scholarship Program scheduled to begin service in fiscal year 1988 or 1989 and all individuals responding to the notice provided under subsection (a) and electing service under paragraph (1).

''(c) SERVICE AT SUPPLEMENTAL HEALTH MANPOWER SHORTAGE AREA PLACEMENT OPPORTUNITY LIST SITES.—An individual notified under subsection (a)(2) may enter into a written contract with the Secretary—

''(1) to—

''(A) serve in accordance with subpart II of part D of title III of the Public Health Service Act (42 U.S.C. 254d et seq.) for the period of such individual's service obligation remaining under section 338C of the Public Health Service Act [section 254m of this title] (as redesignated by section 201(2) of this Act) at a site that is on a supplemental Health Manpower Shortage Area Placement Opportunity List created by the Secretary of Health and Human Services for obligated service under section 338C of the Public Health Service Act (as so redesignated) and that has agreed to permit the individual to serve at such site; and

''(B) pay, in accordance with guidelines established by the Secretary of Health and Human Services, to the United States the sum of the amounts paid under subpart II of part D of title III of such Act to or on behalf of the individual reduced by any amount paid, before entering into the contract, by such individual to the Secretary with respect to the individual's indebtedness under such part D [section 254a–1 et seq. of this title]; or

''(2) to serve in accordance with such subpart II [section 254d et seq. of this title] at a site described in paragraph (1) for 150 percent of such individual's remaining service obligation under section 338C of such Act [section 254m of this title] (as so redesignated).

''(d) CREATION OF SUPPLEMENTAL HEALTH MANPOWER SHORTAGE AREA PLACEMENT OPPORTUNITY LIST SITES.—In creating the supplemental Health Manpower Shortage Area Placement Opportunity List for purposes of subsection (c), the Secretary—

''(1) shall include any site to which a National Health Service Corps member was previously assigned but which in fiscal year 1988 or 1989 will not have such member or a member of the National Health Service Corps to replace such member unless the Secretary of Health and Human Services determines that such site may reasonably be expected to recruit a health care professional from other than the Corps;

''(2) shall include any migrant health center receiving funds under section 329 of the Public Health Service Act (42 U.S.C. 247d) [section 254b of this title] or community health center receiving funds under section 330 of such Act (42 U.S.C. 254c) unless the Secretary of Health and Human Services determines that such center has been able to recruit health care professionals from other than the Corps to serve at the center and may reasonably be expected to recruit such health care professionals in the future;

''(3) may include any other site selected by the Secretary; and

''(4) shall designate the type of health care professional or medical specialist who is eligible to serve at the sites included on the list.

A site may be included on the supplemental list only if, at the time the list is created, the Secretary determines that the site meets the criteria prescribed by section 332 of such Act (42 U.S.C. 254e).

''(e) ADDITIONAL ELIGIBLE INDIVIDUALS.—

''(1) IN GENERAL.—The Secretary of Health and Human Services may authorize an individual who is not described in subsection (a) and who is to begin to serve the individual's service obligation under section 338C of the Public Health Service Act [section 254m of this title] (as redesignated by section 201(2) of this Act) in fiscal year 1988 or 1989 to serve such obligation in accordance with subsection (c) if the Secretary determines that—

''(A) service by the individual in accordance with subsection (c) would be in the best interests of the National Health Service Corps; and

''(B) allowing such service would alleviate a substantial hardship for such individual.

''(2) SCHOLARSHIP TRAINING PROGRAM.—Individuals who have breached a written contract entered into under section 225 of the Public Health Service Act (42 U.S.C. 234) (as such section existed before the amendment made by section 408(b) of the Health Professions Educational Assistance Act of 1976 (Public Law 94–484; 90 Stat. 2281)) by failing to complete their service obligations and who are, as of November 1, 1987, liable to the United States under section 225(f)(1) of the Public Health Service Act (as such section so existed) may be relieved of their liability to the United States under the terms and conditions set forth in this section.''

EXISTING PROCEEDINGS

Section 308(b) of Pub. L. 100–177 provided that: ''The amendment made by subsection (a) [amending this section] applies to any bankruptcy proceeding in which discharge of an obligation under section 338E(d)(3) of the Public Health Service Act [subsec. (d)(3) of this section] (as redesignated by sections 201(2) and 202(e)(3) of this Act) has not been granted before the date that is 31 days after the date of enactment of this Act [Dec. 1, 1987].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254*l*, 254*l*–1, 254*o*–1, 254p, 288–2, 288–4, 288–5, 293b, 1395ccc of this title.

§ 254*o*–1. Fund regarding use of amounts recovered for contract breach to replace services lost as result of breach

(a) Establishment of Fund

There is established in the Treasury of the United States a fund to be known as the National Health Service Corps Member Replacement Fund (hereafter in this section referred to as the ''Fund''). The Fund shall consist of such amounts as may be appropriated under subsection (b) of this section to the Fund. Amounts appropriated for the Fund shall remain available until expended.

(b) Authorization of appropriations to Fund

For each fiscal year, there is authorized to be appropriated to the Fund an amount equal to the sum of—

(1) the amount collected during the preceding fiscal year by the Federal Government pursuant to the liability of individuals under section 254*o* of this title for the breach of contracts entered into under section 254*l* or 254*l*–1 of this title;

(2) the amount by which grants under section 254q–1 of this title have, for such preceding fiscal year, been reduced under subsection (g)(2)(B) of such section; and

(3) the aggregate of the amount of interest accruing during the preceding fiscal year on obligations held in the Fund pursuant to subsection (d) of this section and the amount of proceeds from the sale or redemption of such obligations during such fiscal year.

(c) Use of Fund

(1) Payments to certain health facilities

Amounts in the Fund and available pursuant to appropriations Act may, subject to paragraph (2), be expended by the Secretary to make payments to any entity—

(A) to which a Corps member has been assigned under section 254f of this title; and

(B) that has a need for a health professional to provide primary health services as a result of the Corps member having breached the contract entered into under section 254*l* or 254*l*–1 of this title by the individual.

(2) Purpose of payments

An entity receiving payments pursuant to paragraph (1) may expend the payments to recruit and employ a health professional to provide primary health services to patients of the entity, or to enter into a contract with such a professional to provide the services to the patients.

(d) Investment

(1) In general

The Secretary of the Treasury shall invest such amounts of the Fund as such Secretary determines are not required to meet current withdrawals from the Fund. Such investments may be made only in interest-bearing obligations of the United States. For such purpose, such obligations may be acquired on original issue at the issue price, or by purchase of outstanding obligations at the market price.

(2) Sale of obligations

Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

(July 1, 1944, ch. 373, title III, § 338F, as added Nov. 16, 1990, Pub. L. 101–597, title II, § 204, 104 Stat. 3027.)

PRIOR PROVISIONS

A prior section 338F of act July 1, 1944, was renumbered section 338G by Pub. L. 101–597 and is classified to section 254p of this title.

Another prior section 338F of act July 1, 1944, was renumbered section 338G by section 201(2) of Pub. L. 100–177 and classified to section 254q of this title, prior to repeal by Pub. L. 100–177, title II, § 203, Dec. 1, 1987, 101 Stat. 999.

§ 254p. Special loans for former Corps members to enter private practice

(a) Persons entitled; conditions

The Secretary may, out of appropriations authorized under section 254k of this title, make one loan to a Corps member who has agreed in writing—

(1) to engage in the private full-time clinical practice of the profession of the member in a health professional shortage area (designated under section 254e of this title) for a period of not less than 2 years which—

(A) in the case of a Corps member who is required to complete a period of obligated service under this subpart, begins not later than 1 year after the date on which such individual completes such period of obligated service; and

(B) in the case of an individual who is not required to complete a period of obligated service under this subpart, begins at such time as the Secretary considers appropriate;

(2) to conduct such practice in accordance with section 254n(b)(1) of this title; and

(3) to such additional conditions as the Secretary may require to carry out this section.

Such a loan shall be used to assist such individual in meeting the costs of beginning the prac-

tice of such individual's profession in accordance with such agreement, including the costs of acquiring equipment and renovating facilities for use in providing health services, and of hiring nurses and other personnel to assist in providing health services. Such loan may not be used for the purchase or construction of any building.

(b) Amount of loan; maximum interest rate

(1) The amount of a loan under subsection (a) of this section to an individual shall not exceed $25,000.

(2) The interest rate for any such loan shall not exceed an annual rate of 5 percent.

(c) Application for loan; submission and approval; interest rates and repayment terms

The Secretary may not make a loan under this section unless an application therefor has been submitted to, and approved by, the Secretary. The Secretary shall, by regulation, set interest rates and repayment terms for loans under this section.

(d) Breach of agreement; notice; determination of liability

If the Secretary determines that an individual has breached a written agreement entered into under subsection (a) of this section, he shall, as soon as practicable after making such determination, notify the individual of such determination. If within 60 days after the date of giving such notice, such individual is not practicing his profession in accordance with the agreement under such subsection and has not provided assurances satisfactory to the Secretary that he will not knowingly violate such agreement again, the United States shall be entitled to recover from such individual—

(1) in the case of an individual who has received a grant under this section (as in effect prior to October 1, 1984), an amount determined under section 254*o*(b) of this title, except that in applying the formula contained in such section ''ϕ'' shall be the sum of the amount of the grant made under subsection (a) of this section to such individual and the interest on such amount which would be payable if at the time it was paid it was a loan bearing interest at the maximum legal prevailing rate, ''t'' shall be the number of months that such individual agreed to practice his profession under such agreement, and ''s'' shall be the number of months that such individual practices his profession in accordance with such agreement; and

(2) in the case of an individual who has received a loan under this section, the full amount of the principal and interest owed by such individual under this section.

(July 1, 1944, ch. 373, title III, §338G, formerly title VII, §755, as added Oct. 12, 1976, Pub. L. 94–484, title IV, §408(b)(1), 90 Stat. 2287; renumbered §338E and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2709(a), (f), 95 Stat. 908, 911; Jan. 4, 1983, Pub. L. 97–414, §8(g)(3), 96 Stat. 2061; renumbered §338F and amended Dec. 1, 1987, Pub. L. 100–177, title II, §201(2), title III, §309, 101 Stat. 992, 1006; renumbered §338G and amended Nov. 16, 1990, Pub. L. 101–597, title II, §204, title IV, §401(b)[(a)], 104 Stat. 3027, 3035.)

CODIFICATION

Section was formerly classified to section 294x of this title prior to renumbering by Pub. L. 97–35.

PRIOR PROVISIONS

A prior section 338G of act July 1, 1944, was renumbered section 338H by Pub. L. 101–597 and is classified to section 254q of this title.

Another prior section 338G of act July 1, 1944, was renumbered section 338I by section 201(1) of Pub. L. 100–177 and classified to section 254r of this title, prior to repeal by Pub. L. 100–713, title I, §104(b)(1), Nov. 23, 1988, 102 Stat. 4787.

Another prior section 338G of act July 1, 1944, was classified to section 254q of this title prior to repeal by Pub. L. 100–177, title II, §203, Dec. 1, 1987, 101 Stat. 999.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–597, §401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area.

1987—Subsec. (a). Pub. L. 100–177, §309(1), substituted subsec. (a) consisting of pars. (1) to (3) for former subsec. (a) consisting of pars. (1) and (2).

Subsec. (b). Pub. L. 100–177, §309(1), added subsec. (b) and struck out former subsec. (b) which read as follows: ''The amount of the grant or loan under subsection (a) of this section to an individual shall be—

''(1) $12,500 if the individual agrees to practice his profession in accordance with the agreement for a period of at least one year, but less than two years; or

''(2) $25,000 if the individual agrees to practice his profession in accordance with the agreement for a period of at least two years.''

Subsec. (c). Pub. L. 100–177, §309(2), struck out ''grant or'' before ''loan'' in first sentence.

Subsec. (d)(1). Pub. L. 100–177, §309(3), substituted ''under this section (as in effect prior to October 1, 1984)'' for ''under this section'', and made technical amendment to reference to section 254*o*(b) of this title to reflect renumbering of corresponding section of original act.

1983—Subsec. (d)(1). Pub. L. 97–414 substituted ''section 254*o*(b)'' for ''section 254*o*(c)''.

1981—Subsec. (a). Pub. L. 97–35, §2709(f)(2)–(4), made numerous changes to reflect renumbering of subpart sections, among them inserting references to section 254k of this title and striking out references to section 294v of this title, and added applicability to loans.

Subsec. (b). Pub. L. 97–35, §2709(f)(5), inserted applicability to loans.

Subsec. (c). Pub. L. 97–35, §2709(f)(6), inserted provisions relating to loans and interest rates, etc.

Subsec. (d). Pub. L. 97–35, §2709(f)(7), restructured and revised criteria determining amount of liability of individual within 60 days after the date of notice instead of within 120 days after the date of notice.

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 408(b)(1) of Pub. L. 94–484, set out in part as a note under section 254*l* of this title.

EFFECTIVE DATE; SAVINGS PROVISION; CREDIT FOR PERIOD OF INTERNSHIP OR RESIDENCY BEFORE SEPTEMBER 30, 1977, TOWARDS SERVICE OBLIGATION

See section 408(b)(2) of Pub. L. 94–484, set out as a note under section 254*l* of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254*o* of this title.

§254q. Report and authorization of appropriations

(a) Report

The Secretary shall report on March 1 of each year to the Committee on Labor and Human Re-

sources of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Appropriations of the Senate and the House of Representatives on—

(1) the number of providers of health care who will be needed for the Corps during the 5 fiscal years beginning after the date the report is filed; and

(2) the number—

(A) of scholarships the Secretary proposes to provide under the Scholarship Program during such 5 fiscal years;

(B) of individuals for whom the Secretary proposes to make loan repayments under the Loan Repayment Program during such 5 fiscal years; and

(C) of individuals who have no obligation under section 254m of this title and who the Secretary proposes to have as members of the Corps during such 5 fiscal years,

in order to provide such number of health care providers.

(b) Funding

(1) Authorization of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $63,900,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 2000.

(2) Reservation of amounts

(A) Scholarships for new participants

Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall obligate not less than 30 percent for the purpose of providing contracts for scholarships under this subpart to individuals who have not previously received such scholarships.

(B) Scholarships for first-year study in certain fields

With respect to certification as a nurse practitioner, nurse midwife, or physician assistant, the Secretary shall, of the amounts appropriated under paragraph (1) for a fiscal year, obligate not less than 10 percent for the purpose of providing contracts for scholarships under this subpart to individuals who are entering the first year of study in a course of study or program described in subsection[1] 254*l*(b)(1)(B) of this title that leads to such a certification. Amounts obligated under this subparagraph shall be in addition to amounts obligated under subparagraph (A).

(July 1, 1944, ch. 373, title III, § 338H, formerly § 338G, as added Dec. 1, 1987, Pub. L. 100–177, title II, § 203, 101 Stat. 999; renumbered § 338H and amended Nov. 16, 1990, Pub. L. 101–597, title II, §§ 204, 205, 104 Stat. 3027, 3028.)

PRIOR PROVISIONS

A prior section 254q, act July 1, 1944, ch. 373, title III, § 338G, formerly title VII, § 756, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2288; renumbered § 338F and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2709(a), (g), 95 Stat. 908, 912; renumbered § 338G, Dec. 1, 1987, Pub. L. 100–177, title II, § 201(2), 101 Stat. 992, authorized appropriations for fiscal years 1978 to 1987, prior to repeal by Pub. L. 100–177, § 203.

A prior section 338H of act July 1, 1944, was renumbered section 338I by Pub. L. 101–597 and is classified to section 254q–1 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–597, § 205(a), substituted ''March 1'' for ''January 20'' and ''5 fiscal years'' for ''3 fiscal years'' wherever appearing.

Subsec. (b). Pub. L. 101–597, § 205(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''There are authorized to be appropriated such sums as may be necessary for scholarships and loan repayments under this subpart.''

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 254q–1. Grants to States for loan repayment programs

(a) In general

(1) Authority for grants

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to States for the purpose of assisting the States in operating programs described in paragraph (2) in order to provide for the increased availability of primary health services in health professional shortage areas.

(2) Loan repayment programs

The programs referred to in paragraph (1) are, subject to subsection (c) of this section, programs of entering into contracts under which the State involved agrees to pay all or part of the principal, interest, and related expenses of the educational loans of health professionals in consideration of the professionals agreeing to provide primary health services in health professional shortage areas.

(3) Direct administration by State agency

The Secretary may not make a grant under paragraph (1) unless the State involved agrees that the program operated with the grant will be administered directly by a State agency.

(b) Requirement of matching funds

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the State agrees that, with respect to the costs of making payments on behalf of individuals under contracts made pursuant to paragraph (2) of such subsection, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash toward such costs in an amount equal to not less than $1 for each $1 of Federal funds provided in the grant.

(2) Determination of amount of non-Federal contribution

In determining the amount of non-Federal contributions in cash that a State has provided pursuant to paragraph (1), the Secretary may not include any amounts provided to the State by the Federal Government.

[1] So in original. Probably should be ''section''.

(c) Coordination with Federal program

(1) Assignments for health professional shortage areas under Federal program

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that, in carrying out the program operated with the grant, the State will assign health professionals participating in the program only to public and nonprofit private entities located in and providing health services in health professional shortage areas.

(2) Remedies for breach of contracts

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that the contracts provided by the State pursuant to paragraph (2) of such subsection will provide remedies for any breach of the contracts by the health professionals involved.

(3) Limitation regarding contract inducements

(A) Except as provided in subparagraph (B), the Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that the contracts provided by the State pursuant to paragraph (2) of such subsection will not be provided on terms that are more favorable to health professionals than the most favorable terms that the Secretary is authorized to provide for contracts under the Loan Repayment Program under section 254*l*–1 of this title, including terms regarding—

(i) the annual amount of payments provided on behalf of the professionals regarding educational loans; and

(ii) the availability of remedies for any breach of the contracts by the health professionals involved.

(B) With respect to the limitation established in subparagraph (A) regarding the annual amount of payments that may be provided to a health professional under a contract provided by a State pursuant to subsection (a)(2) of this section, such limitation shall not apply with respect to a contract if—

(i) the excess of such annual payments above the maximum amount authorized in section 254*l*–1(g)(2)(A) of this title for annual payments regarding contracts is paid solely from non-Federal contributions under subsection (b) of this section; and

(ii) the contract provides that the health professional involved will satisfy the requirement of obligated service under the contract solely through the provision of primary health services in a health professional shortage area that is receiving priority for purposes of section 254f–1(a)(1) of this title and that is authorized to receive assignments under section 254f of this title of individuals who are participating in the Scholarship Program under section 254*l* of this title.

(d) Restrictions on use of funds

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that the grant will not be expended—

(1) to conduct activities for which Federal funds are expended—

(A) within the State to provide technical or other nonfinancial assistance under subsection (f) of section 254c of this title;

(B) under a memorandum of agreement entered into with the State under subsection (h) of such section; or

(C) under a grant under section 254r of this title; or

(2) for any purpose other than making payments on behalf of health professionals under contracts entered into pursuant to subsection (a)(2) of this section.

(e) Reports

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees—

(1) to submit to the Secretary reports providing the same types of information regarding the program operated pursuant to such subsection as reports submitted pursuant to subsection (i) of section 254*l*–1 of this title provide regarding the Loan Repayment Program under such section; and

(2) to submit such a report not later than January 10 of each fiscal year immediately following any fiscal year for which the State has received such a grant.

(f) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out such subsection.

(g) Noncompliance

(1) In general

The Secretary may not make payments under subsection (a) of this section to a State for any fiscal year subsequent to the first fiscal year of such payments unless the Secretary determines that, for the immediately preceding fiscal year, the State has complied with each of the agreements made by the State under this section.

(2) Reduction in grant relative to number of breached contracts

(A) Before making a grant under subsection (a) of this section to a State for a fiscal year, the Secretary shall determine the number of contracts provided by the State under paragraph (2) of such subsection with respect to which there has been an initial breach by the health professionals involved during the fiscal year preceding the fiscal year for which the State is applying to receive the grant.

(B) Subject to paragraph (3), in the case of a State with 1 or more initial breaches for purposes of subparagraph (A), the Secretary shall reduce the amount of a grant under subsection (a) of this section to the State for the fiscal year involved by an amount equal to the sum of the expenditures of Federal funds made regarding the contracts involved and an amount representing interest on the amount of such expenditures, determined with respect to each contract on the basis of the maximum legal

rate prevailing for loans made during the time amounts were paid under the contract, as determined by the Treasurer of the United States.

(3) Waiver regarding reduction in grant

The Secretary may waive the requirement established in paragraph (2)(B) with respect to the initial breach of a contract if the Secretary determines that such breach by the health professional involved was attributable solely to the professional having a serious illness.

(h) "State" defined

For purposes of this section, the term ''State'' means each of the several States.

(i) Authorization of appropriations

(1) In general

For the purpose of making grants under subsection (a) of this section, there is authorized to be appropriated $10,000,000 for each of the fiscal years 1991 through 1995.

(2) Availability

Amounts appropriated under paragraph (1) shall remain available until expended.

(July 1, 1944, ch. 373, title III, § 338I, formerly § 338H, as added Dec. 1, 1987, Pub. L. 100–177, title II, § 203, 101 Stat. 999; renumbered § 338I and amended Nov. 16, 1990, Pub. L. 101–597, title II, § 204, title III, § 301, title IV, § 401(b)[(a)], 104 Stat. 3027, 3029, 3035.)

PRIOR PROVISIONS

A prior section 338I of act July 1, 1944, was classified to section 254r of this title prior to repeal by Pub. L. 100–713, title I, § 104(b)(1), Nov. 23, 1988, 102 Stat. 4787.

AMENDMENTS

1990—Pub. L. 101–597, § 401(b)[(a)], substituted reference to health professional shortage area for reference to health manpower shortage area wherever appearing in subsecs. (a)(1), (2) and (c)(1), (3)(B)(ii).

Pub. L. 101–597, § 301, amended section generally, substituting present provisions for provisions which related to: in subsec. (a), grants; in subsec. (b), applications; in subsec. (c), Federal share; and in subsec. (d), authorization of appropriations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254*o*–1, 254r of this title.

§ 254r. Grants to States for operation of offices of rural health

(a) In general

The Secretary, acting through the Director of the Office of Rural Health Policy (established in section 912 of this title), may make grants to States for the purpose of improving health care in rural areas through the operation of State offices of rural health.

(b) Requirement of matching funds

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees, with respect to the costs to be incurred by the State in carrying out the purpose described in such subsection, to provide non-Federal contributions in cash toward such costs in an amount equal to—

(A) for the first fiscal year of payments under the grant, not less than $1 for each $3 of Federal funds provided in the grant;

(B) for any second fiscal year of such payments, not less than $1 for each $1 of Federal funds provided in the grant; and

(C) for any third fiscal year of such payments, not less than $3 for each $1 of Federal funds provided in the grant.

(2) Determination of amount of non-Federal contribution

(A) Subject to subparagraph (B), non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that—

(i) for the first fiscal year of payments under the grant, 100 percent or less of the non-Federal contributions required in paragraph (1) will be provided in the form of in-kind contributions;

(ii) for any second fiscal year of such payments, not more than 50 percent of such non-Federal contributions will be provided in the form of in-kind contributions; and

(iii) for any third fiscal year of such payments, such non-Federal contributions will be provided solely in the form of cash.

(c) Certain required activities

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that activities carried out by an office operated pursuant to such subsection will include—

(1) establishing and maintaining within the State a clearinghouse for collecting and disseminating information on—

(A) rural health care issues;

(B) research findings relating to rural health care; and

(C) innovative approaches to the delivery of health care in rural areas;

(2) coordinating the activities carried out in the State that relate to rural health care, including providing coordination for the purpose of avoiding redundancy in such activities; and

(3) identifying Federal and State programs regarding rural health, and providing technical assistance to public and nonprofit private entities regarding participation in such programs.

(d) Requirement regarding annual budget for office

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that, for any fiscal year for which the State receives such a grant, the office operated pursuant to subsection (a) of this section will be provided with an annual budget of not less than $50,000.

(e) Certain uses of funds

(1) Restrictions

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that—

(A) if research with respect to rural health is conducted pursuant to the grant, not more than 10 percent of the grant will be expended for such research; and

(B) the grant will not be expended—

(i) to provide health care (including providing cash payments regarding such care);

(ii) to conduct activities for which Federal funds are expended—

(I) within the State to provide technical and other nonfinancial assistance under subsection (f) of section 254c of this title;

(II) under a memorandum of agreement entered into with the State under subsection (h) of such section; or

(III) under a grant under section 254q–1 of this title;

(iii) to purchase medical equipment, to purchase ambulances, aircraft, or other vehicles, or to purchase major communications equipment;

(iv) to purchase or improve real property; or

(v) to carry out any activity regarding a certificate of need.

(2) Authorities

Activities for which a State may expend a grant under subsection (a) of this section include—

(A) paying the costs of establishing an office of rural health for purposes of subsection (a) of this section;

(B) subject to paragraph (1)(B)(ii)(III), paying the costs of any activity carried out with respect to recruiting and retaining health professionals to serve in rural areas of the State; and

(C) providing grants and contracts to public and nonprofit private entities to carry out activities authorized in this section.

(f) Reports

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees—

(1) to submit to the Secretary reports containing such information as the Secretary may require regarding activities carried out under this section by the State; and

(2) to submit such a report not later than January 10 of each fiscal year immediately following any fiscal year for which the State has received such a grant.

(g) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out such subsection.

(h) Noncompliance

The Secretary may not make payments under subsection (a) of this section to a State for any fiscal year subsequent to the first fiscal year of such payments unless the Secretary determines that, for the immediately preceding fiscal year, the State has complied with each of the agreements made by the State under this section.

(i) "State" defined

For purposes of this section, the term ''State'' means each of the several States.

(j) Authorization of appropriations

(1) In general

For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated $3,000,000 for fiscal year 1991, $4,000,000 for fiscal year 1992, and $3,000,000 for fiscal year 1993.

(2) Availability

Amounts appropriated under paragraph (1) shall remain available until expended.

(k) Termination of program

No grant may be made under this section after the aggregate amounts appropriated under subsection (j)(1) of this section are equal to $10,000,000.

(July 1, 1944, ch. 373, title III, § 338J, as added Nov. 16, 1990, Pub. L. 101–597, title III, § 302, 104 Stat. 3032.)

PRIOR PROVISIONS

A prior section 254r, act July 1, 1944, ch. 373, title III, § 338I, formerly title VII, § 757, as added Aug. 1, 1977, Pub. L. 95–83, title III, § 307(n)(1), 91 Stat. 392; amended Dec. 17, 1980, Pub. L. 96–537, § 3(d), 94 Stat. 3174; renumbered § 338G, Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2709(a), 95 Stat. 908; Oct. 30, 1984, Pub. L. 98–551, § 3, 98 Stat. 2817; renumbered § 338I, Dec. 1, 1987, Pub. L. 100–177, title II, § 201(1), 101 Stat. 992; Nov. 4, 1988, Pub. L. 100–607, title VI, § 629(a)(3), 102 Stat. 3146, which related to Indian Health Scholarships and was classified to section 294y–1 of this title prior to renumbering by Pub. L. 97–35, was repealed by Pub. L. 100–713, title I, § 104(b)(1), Nov. 23, 1988, 102 Stat. 4787. For provisions continuing scholarships provided on or before Nov. 23, 1988, see section 104(b)(2) of Pub. L. 100–713.

A prior section 338J of act July 1, 1944, was renumbered section 338K by Pub. L. 101–597 and is classified to section 254s of this title.

COMMUNICATIONS FOR RURAL HEALTH PROVIDERS

Pub. L. 102–538, title I, § 154, formerly § 134, Oct. 27, 1992, 106 Stat. 3541, renumbered § 154 by Pub. L. 103–66, title VI, § 6001(a)(2), Aug. 10, 1993, 107 Stat. 379, directed Secretary of Commerce, in conjunction with Secretary of Health and Human Services, to establish an advisory panel to develop recommendations for the improvement of rural health care through the collection of information needed by providers and the improvement in the use of communications to disseminate such information and, not later than 1 year after establishment of Panel to prepare and submit to Congress a report summarizing the recommendations made by the Panel.

Similar provisions were contained in Pub. L. 101–555, § 3, Nov. 15, 1990, 104 Stat. 2760.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254q–1 of this title.

§ 254s. Native Hawaiian Health Scholarships

(a) Eligibility

Subject to the availability of funds appropriated under the authority of subsection (d) of this section, the Secretary shall provide funds to Kamehameha Schools/Bishop Estate for the purpose of providing scholarship assistance to students who—

(1) meet the requirements of section 254*l*(b) of this title, and

(2) are Native Hawaiians.

(b) Terms and conditions

(1) The scholarship assistance provided under subsection (a) of this section shall be provided under the same terms and subject to the same conditions, regulations, and rules that apply to scholarship assistance provided under section 254*l* of this title.

(2) The Native Hawaiian Health Scholarship program shall not be administered by or through the Indian Health Service.

(c) "Native Hawaiian" defined

For purposes of this section, the term ''Native Hawaiian'' means any individual who is—

(1) a citizen of the United States,

(2) a resident of the State of Hawaii, and

(3) a descendant of the aboriginal people, who prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii, as evidenced by—

(A) genealogical records,

(B) Kupuna (elders) or Kama'aina (long-term community residents) verification, or

(C) birth records of the State of Hawaii.

(d) Authorization of appropriations

There are authorized to be appropriated $1,800,000 for each of the fiscal years 1990, 1991, and 1992 for the purpose of funding the scholarship assistance provided under subsection (a) of this section.

(July 1, 1944, ch. 373, title III, § 338k, formerly § 338J, as added Nov. 23, 1988, Pub. L. 100–713, title I, § 106, 102 Stat. 4787; renumbered § 338K, Nov. 16, 1990, Pub. L. 101–597, title III, § 302, 104 Stat. 3032; amended Nov. 29, 1990, Pub. L. 101–644, title IV, § 401, 104 Stat. 4668.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–644, which directed the general amendment of subsec. (a) of section 338J of the Public Health Service Act, was executed to subsec. (a) of this section, to reflect the probable intent of Congress and the intervening renumbering of section 338J as 338K by Pub. L. 101–597. Prior to amendment, subsec. (a) read as follows: ''Subject to the availability of funds appropriated under the authority of subsection (d) of this section, the Secretary shall provide scholarship assistance, pursuant to a contract with the Kamehameha Schools/Bishop Estate, to students who—

''(1) meet the requirements of section 254*l*(b) of this title, and

''(2) are Native Hawaiians.''

§ 254t. Demonstration grants to States for community scholarship programs

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to States for the purpose of carrying out demonstration programs to increase the availability of primary health care in urban and rural health manpower shortage areas through assisting community organizations of such areas in educating individuals to serve as health professionals in such areas.

(b) Certain requirements for States

(1) Minimum qualifications

The Secretary may not make a grant under subsection (a) of this section unless the State involved will, under any provision of this chapter other than subsection (a) of this section, receive 1 or more grants, cooperative agreements, or contracts for the fiscal year for which the State is applying pursuant to subsection (h) of this section to receive a grant under subsection (a) of this section.

(2) Administration of program

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that the program carried out by the State with the grant will be administered directly by a single State agency.

(c) Grants by States to community organizations for provision of scholarship contracts

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees, subject to subsections (d) and (e) of this section, to carry out the purpose described in subsection (a) of this section only through operating a program in which the State makes grants to community organizations located in health manpower[1] shortage areas in order to assist the organizations with the costs of entering into contracts under which—

(1) the community organizations agree to provide scholarships to individuals for attendance at health professions schools; and

(2) the individuals agree to provide, in the health manpower shortage areas in which the community organizations are located, primary health care for—

(A) a number of years equal to the number of years for which the scholarships are provided, or for a period of 2 years, whichever period is greater; or

(B) such greater period of time as the individuals and the community organizations may agree.

(d) Requirement of State and local matching funds

(1) In general

With respect to the costs of providing any scholarship pursuant to subsection (c) of this section, the Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that—

(A) 40 percent of the costs of the scholarship will be paid from the grant made under subsection (a) of this section to the State; and

(B) 60 percent of such costs will be paid from non-Federal contributions made in cash by both the State and the community organization through which the scholarship is provided, subject to—

[1] So in original. Probably should be ''professional''.

(i) the State making available through such contributions not less than 15 percent, nor more than 25 percent, of such costs; and

(ii) the community organization making available through such contributions not less than 35 percent, nor more than 45 percent, of such costs.

(2) Determination of amount of non-Federal contributions

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that, in determining the amount of non-Federal contributions that have been provided in cash for purposes of paragraph (1), the State will not include any amounts provided by the Federal Government to the State or community organization involved, or to any other entity.

(3) Use of donations

Non-Federal contributions required in paragraph (1) may be provided directly by the State and community organization involved, and may be provided through donations from public and private entities.

(e) Specifications regarding scholarship contract

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that the State will make a grant to a community organization for a contract described in subsection (c) of this section only if—

(1) the individual who is to receive the scholarship under the contract is a resident of the health manpower shortage area in which the community organization is located;

(2) the individual is enrolled or accepted for enrollment as a full-time student in a health professions school that is approved by the Secretary for purposes of this section;

(3) the individual agrees to maintain an acceptable level of academic standing at the school (as determined by the school in accordance with regulations issued by the Secretary for purposes of section 254*l*(f)(1)(B)(iii) of this title);

(4) the individual and the community organization agree that the scholarship provided pursuant to the contract—

(A) will be expended only for—

(i) tuition expenses, other reasonable educational expenses, and reasonable living expenses incurred in attendance at the school; and

(ii) payment to the individual of a monthly stipend of not more than the amount authorized for purposes of section 254*l*(g)(1)(B) of this title; and

(B) will not, for any year of such attendance for which the scholarship is provided, be in an amount exceeding the total amount required for the year for the purposes authorized in subparagraph (A);

(5) the individual agrees to meet the educational and licensure requirements necessary to be a physician, certified nurse practitioner, certified nurse midwife, or physician assistant; and

(6) the individual agrees that, in providing primary health care pursuant to the scholarship, the individual—

(A) will not, in the case of an individual seeking such care, discriminate against the individual on the basis of the ability of the individual to pay for such care or on the basis that payment for such care will be made pursuant to the program established in title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] or pursuant to the program established in title XIX of such Act [42 U.S.C. 1396 et seq.]; and

(B) will accept assignment under section 1842(b)(3)(B)(ii) of the Social Security Act [42 U.S.C. 1395u(b)(3)(B)(ii)] for all services for which payment may be made under part B of title XVIII of such Act [42 U.S.C. 1395j et seq.], and will enter into an appropriate agreement with the State agency that administers the State plan for medical assistance under title XIX of such Act to provide service to individuals entitled to medical assistance under the plan.

(f) Reports to Secretary

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees—

(1) for each fiscal year for which such a grant is received by the State, to submit to the Secretary a report—

(A) identifying the community organizations providing scholarships pursuant to subsection (c) of this section and the health manpower shortage areas in which the organizations are located;

(B) providing the names of individuals receiving the scholarships, the health professions in which the individuals will engage pursuant to the scholarships, the number of years of service the individuals are obligated to provide pursuant to the scholarships, and the extent of compliance with the contracts under subsection (c) of this section on the part of the individuals and the community organizations; and

(C) providing such information as the Secretary may determine to be necessary for carrying out this section; and

(2) to submit each such report not later than January 10 of the fiscal year immediately following the fiscal year for which the report is prepared.

(g) Estimates regarding allocations between urban and rural areas

The Secretary may not make a grant under subsection (a) of this section unless the State involved submits to the Secretary, as part of the application required in subsection (h) of this section, an estimate of the amount of the grant that will be expended regarding the provision of primary health care in urban health manpower shortage areas of the State, and an estimate of the amount of the grant that will be expended regarding the provision of such care in rural health manpower shortage areas of the State.

(h) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, as-

surances, and information as the Secretary determines to be necessary to carry out this section.

(i) Noncompliance

(1) In general

The Secretary may not make payments under subsection (a) of this section to a State for any fiscal year subsequent to the first fiscal year of such payments unless the Secretary determines that, for the immediately preceding fiscal year, the State has complied with each of the agreements made by the State under this section.

(2) Reduction in grant relative to number of breached contracts

(A) Before making a grant under subsection (a) of this section to a State for a fiscal year, the Secretary shall determine the number of contracts provided under subsection (c) of this section with respect to which there has been an initial breach by the community organizations or individuals involved during the fiscal year preceding the fiscal year for which the State is applying to receive the grant.

(B) In the case of a State with 1 or more initial breaches for purposes of subparagraph (A), the Secretary shall reduce the amount of a grant under subsection (a) of this section to the State for the fiscal year involved by an amount equal to the sum of—

(i) an amount equal to the expenditures of Federal funds made regarding the contracts involved; and

(ii) an amount representing interest on the amount of such expenditures, determined with respect to each contract on the basis of the maximum legal rate prevailing for loans made during the time amounts were paid under the contract, as determined by the Treasurer of the United States.

(C) If a State is not receiving a grant under subsection (a) of this section for a fiscal year for which a reduction under subparagraph (B) would have been made in the event that the State had received such a grant, the Secretary shall reduce the amount of payments due to the State under other grants, cooperative agreements, or contracts under this chapter by the amount specified in such subparagraph.

(D) With respect to contracts provided under subsection (c) of this section, the Secretary may carry out this paragraph on the basis of information submitted by the States involved, or on the basis of information collected through such other means as the Secretary determines to be appropriate.

(j) Reports to Congress

(1) In general

Each fiscal year the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report summarizing information received by the Secretary under subsection (f) of this section for the preceding fiscal year.

(2) Date for submission

With respect to a fiscal year, the report required in paragraph (1) shall be submitted for purposes of such paragraph by not later than the date on which the report required in section 254*l*(i) of this title is required to be submitted for purposes of such section.

(k) Definitions

For purposes of this section:

(1) Community organization

The term ''community organization'' means a public or nonprofit private entity.

(2) Primary health care

The term ''primary health care'' means health services regarding family medicine, internal medicine, pediatrics, or obstetrics and gynecology, that are provided by physicians, certified nurse practitioners, certified nurse midwives, or physician assistants.

(3) State

The term ''State'' means each of the several States and the District of Columbia.

(*l*) Funding

(1) Authorization of appropriations

For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated $5,000,000 for fiscal year 1991, $10,000,000 for fiscal year 1992, and such sums as may be necessary for fiscal year 1993.

(2) Availability

Amounts appropriated under paragraph (1) shall remain available until expended.

(3) Allocations for rural areas

(A) In carrying out subsection (a) of this section, the Secretary shall, to the extent practicable, ensure that not less than 50 percent of the amounts appropriated under paragraph (1) are, in the aggregate, expended for making grants pursuant to subsection (c) of this section to community organizations that are located in rural health manpower shortage areas.

(B) Subparagraph (A) may not be construed to prohibit the Secretary from making grants under subsection (a) of this section to States in which no rural health manpower shortage areas are located.

(C) With respect to any fiscal year for which the Secretary is unable to comply with subparagraph (A), the Secretary shall, not later than April 1 of the subsequent fiscal year, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report stating the fact of such noncompliance and an explanation of the reasons underlying such noncompliance.

(July 1, 1944, ch. 373, title III, § 338L, as added Nov. 6, 1990, Pub. L. 101–527, § 8, 104 Stat. 2328.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(6), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. Part B of title XVIII of the Act is classified generally to part B (§ 1395j et seq.) of subchapter XVIII of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SUBPART IV—HOME HEALTH SERVICES

AMENDMENTS

1987—Pub. L. 100–177, title II, §202(f)(1), Dec. 1, 1987, 101 Stat. 999, substituted ''IV'' for ''III'' as subpart designation.

1983—Pub. L. 97–414, §6(a), Jan. 4, 1983, 96 Stat. 2057, added heading ''Subpart III—Home Health Services''.

1978—Pub. L. 95–626, title I, §105(b), title II, §207(a), Nov. 10, 1978, 92 Stat. 3560, 3585, struck out heading ''Part D—Lepers'' and added heading ''Subpart III—Home Health Services''.

§ 255. Home health services

(a) Purpose; authorization of grants and loans; considerations; conditions on loans; appropriations

(1) For the purpose of encouraging the establishment and initial operation of home health programs to provide home health services in areas in which such services are inadequate or not readily accessible, the Secretary may, in accordance with the provisions of this section, make grants to public and nonprofit private entities and loans to proprietary entities to meet the initial costs of establishing and operating such home health programs. Such grants and loans may include funds to provide training for paraprofessionals (including homemaker home health aides) to provide home health services.

(2) In making grants and loans under this subsection, the Secretary shall—

(A) consider the relative needs of the several States for home health services;

(B) give preference to areas in which a high percentage of the population proposed to be served is composed of individuals who are elderly, medically indigent, or disabled; and

(C) give special consideration to areas with inadequate means of transportation to obtain necessary health services.

(3)(A) No loan may be made to a proprietary entity under this section unless the application of such entity for such loan contains assurances satisfactory to the Secretary that—

(i) at the time the application is made the entity is fiscally sound;

(ii) the entity is unable to secure a loan for the project for which the application is submitted from non-Federal lenders at the rate of interest prevailing in the area in which the entity is located; and

(iii) during the period of the loan, such entity will remain fiscally sound.

(B) Loans under this section shall be made at an interest rate comparable to the rate of interest prevailing on the date the loan is made with respect to the marketable obligations of the United States of comparable maturities, adjusted to provide for administrative costs.

(4) Applications for grants and loans under this subsection shall be in such form and contain such information as the Secretary shall prescribe.

(5) There are authorized to be appropriated for grants and loans under this subsection $5,000,000 for each of the fiscal years ending on September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987.

(b) Grants and contracts for training programs for paraprofessionals; considerations; applications; appropriations

(1) The Secretary may make grants to and enter into contracts with public and private entities to assist them in developing appropriate training programs for paraprofessionals (including homemaker home health aides) to provide home health services.

(2) Any program established with a grant or contract under this subsection to train homemaker home health aides shall—

(A) extend for at least forty hours, and consist of classroom instruction and at least twenty hours (in the aggregate) of supervised clinical instruction directed toward preparing students to deliver home health services;

(B) be carried out under appropriate professional supervision and be designed to train students to maintain or enhance the personal care of an individual in his home in a manner which promotes the functional independence of the individual; and

(C) include training in—

(i) personal care services designed to assist an individual in the activities of daily living such as bathing, exercising, personal grooming, and getting in and out of bed; and

(ii) household care services such as maintaining a safe living environment, light housekeeping, and assisting in providing good nutrition (by the purchasing and preparation of food).

(3) In making grants and entering into contracts under this subsection, special consideration shall be given to entities which establish or will establish programs to provide training for persons fifty years of age and older who wish to become paraprofessionals (including homemaker home health aides) to provide home health services.

(4) Applications for grants and contracts under this subsection shall be in such form and contain such information as the Secretary shall prescribe.

(5) There are authorized to be appropriated for grants and contracts under this subsection $2,000,000 for each of the fiscal years ending September 30, 1983, September 30, 1984, September 30, 1985, September 30, 1986, and September 30, 1987.

(c) Report to Congress with respect to grants and loans and training of personnel

The Secretary shall report to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives on or before January 1, 1984, with respect to—

(1) the impact of grants made and contracts entered into under subsections (a) and (b) of this section (as such subsections were in effect prior to October 1, 1981);

(2) the need to continue grants and loans under subsections (a) and (b) of this section (as such subsections are in effect on the day after January 4, 1983); and

(3) the extent to which standards have been applied to the training of personnel who provide home health services.

(d) "Home health services" defined

For purposes of this section, the term ''home health services'' has the meaning prescribed for the term by section 1395x(m) of this title.

(July 1, 1944, ch. 373, title III, § 339, as added Jan. 4, 1983, Pub. L. 97–414, § 6(a), 96 Stat. 2057; amended Oct. 30, 1984, Pub. L. 98–555, § 6, 98 Stat. 2856.)

REFERENCES IN TEXT

Subsections (a) and (b) of this section (as such subsections were in effect prior to October 1, 1981), referred to in subsec. (c)(1), mean subsections (a) and (b) of section 255 of this title prior to repeal of section 255 by Pub. L. 97–35, title IX, § 902(b), Aug. 13, 1981, 95 Stat. 559, effective Oct. 1, 1981.

PRIOR PROVISIONS

A prior section 255, act July 1, 1944, ch. 373, title III, § 339, as added Nov. 10, 1978, Pub. L. 95–626, title II, § 207(a), 92 Stat. 3585, related to grant authority, etc., for home health services, prior to repeal by Pub. L. 97–35, title IX, § 902(b), (h), Aug. 13, 1981, 95 Stat. 559, 561, eff. Oct. 1, 1981.

Another prior section 339 of act July 1, 1944, ch. 373, title III, formerly § 331, 58 Stat. 698; June 25, 1948, ch. 654, § 4, 62 Stat. 1018; June 25, 1952, ch. 460, 66 Stat. 157; July 12, 1960, Pub. L. 86–624, § 29(b), 74 Stat. 419; renumbered § 339, Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(2), 90 Stat. 2268, which related to reception of persons suffering from leprosy in any hospital, was renumbered section 320 of act July 1, 1944, and transferred to section 247e of this title.

AMENDMENTS

1984—Subsecs. (a)(5), (b)(5). Pub. L. 98–555 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

REPORT TO CONGRESS CONCERNING RESULTS OF STUDIES EVALUATING HOME AND COMMUNITY BASED HEALTH SERVICES; STUDIES OF REIMBURSEMENT METHODOLOGIES; INVESTIGATION OF FRAUD; DEMONSTRATION PROJECTS; HOME HEALTH SERVICES, DEFINED

Section 6(b)–(f) of Pub. L. 97–414 directed Secretary of Health and Human Services to report the results of studies evaluating home and community based health services, and any recommendations for legislative action which might improve the provision of such services, to Congress prior to Jan. 1, 1985, to compile and analyze the results of significant public or private studies relating to reimbursement methodologies for home health services and to report recommendations to Congress within 180 days after Jan. 4, 1983, to investigate methods available to stem medicare and medicaid fraud and abuse and the extent to which such methods are applied and to report the results to Congress within 18 months of Jan. 4, 1983, and to develop and carry out demonstration projects commencing no later than Jan. 1, 1984, to test methods for identifying patients at risk of institutionalization who could be treated more cost-effectively with home health services, and to test alternative reimbursement methodologies for home health agencies in order to determine the most cost-effective way of providing home health services, and to report to Congress with regard to the demonstrations no later than Jan. 1, 1985; and defined ''home health services'' for purposes of this section.

SUBPART V—HEALTH SERVICES FOR THE HOMELESS

AMENDMENTS

1987—Pub. L. 100–177, title II, § 202(f)(1), Dec. 1, 1987, 101 Stat. 999, substituted ''V'' for ''IV'' as subpart designation.

Pub. L. 100–77, title VI, § 601, 101 Stat. 511, substituted ''Health Services for the Homeless'' for ''Research and Demonstration Projects in Primary Care'' as subpart heading.

1978—Pub. L. 95–626, title I, § 115(l), Nov. 10, 1978, 92 Stat. 3567, added heading ''Subpart IV—Research and Demonstration Projects in Primary Care''.

§ 256. Grant program for certain health services for the homeless

(a) Establishment

(1) The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make grants for the purpose of enabling grantees, directly or through contracts, to provide for the delivery of health services to homeless individuals.

(2) In carrying out the program established in paragraph (1), the Administrator shall consult with the Director of the National Institute on Alcohol Abuse and Alcoholism and with the Director of the National Institute of Mental Health.

(b) Minimum qualifications of grantees

(1) Subject to paragraph (2), the Secretary may not make a grant under subsection (a) of this section to an applicant unless—

(A) the applicant is a public or nonprofit private entity;

(B) the applicant has the capacity to effectively administer a grant under subsection (a) of this section; and

(C) in the case of any health service that is covered in the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(i) the applicant for the grant will provide the health service directly, and the applicant has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(ii) the applicant for the grant will enter into an agreement with an organization under which the organization will provide the health service, and the organization has entered into such a participation agreement and is qualified to receive such payments.

(2)(A) In the case of an organization making an agreement under paragraph (1)(C)(ii) regarding the provision of health services under subsection (a) of this section, the requirement established in such paragraph regarding a participation agreement shall be waived by the Secretary if the organization does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(B) A determination by the Secretary of whether an organization referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard

to whether the organization accepts voluntary donations regarding the provision of services to the public.

(c) Preferences in making grants

The Secretary shall, in making grants under subsection (a) of this section, give preference to qualified applicants that—

(1)(A) are experienced in the direct delivery of primary health services to homeless individuals or medically underserved populations; or

(B) are experienced in the treatment of substance abuse in homeless individuals or medically underserved populations; and

(2) agree to provide for health services to homeless individuals through both public entities and private organizations.

(d) Requirement of submission of application containing certain agreements

(1) The Secretary may not make a grant under subsection (a) of this section to an applicant unless the applicant has submitted to the Secretary an application for the grant containing agreements in accordance with—

(A) subsection (e)(1)(A)(ii) of this section, relating to the provision of matching funds;

(B) subsection (f) of this section, relating to the provision of certain health services;

(C) subsection (i) of this section, relating to restrictions on the use of funds;

(D) subsection (j) of this section, relating to a limitation on charges for services;

(E) subsection (k) of this section, relating to the administration of grants; and

(F) subsection (*l*) of this section, relating to a limitation on administrative expenses.

(2) An application required in paragraph (1) shall, with respect to agreements required to be contained in the application, provide assurances of compliance satisfactory to the Secretary and shall otherwise be in such form, be made in such manner, and contain such information in addition to information required in paragraph (1) as the Secretary determines to be necessary to carry out this section.

(e) Requirement of provision of matching funds

(1)(A) The Secretary may not make a grant under subsection (a) of this section to an applicant—

(i) in an amount exceeding 75 percent of the costs of providing health services for the first fiscal year of payments under the grant and 66⅔ percent of the costs of providing such services for any subsequent fiscal year of payments under the grant; and

(ii) unless the applicant agrees that the applicant will make available, directly or through donations to the applicant, non-Federal contributions toward such costs in an amount equal to not less than $1 (in cash or in kind under subparagraph (B)) for each $3 of Federal funds provided for the first fiscal year of payments under the grant and not less than $1 (in cash or in kind under such subparagraph) for each $2 of Federal funds provided for any subsequent fiscal year of payments under the grant.

(B)(i) Non-Federal contributions required in subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(ii) Such determination may not include any cash or in-kind contributions that, prior to February 26, 1987, were made available by any public or private entity for the purpose of assisting homeless individuals (including assistance other than the provision of health services).

(2) The Secretary may waive the requirement established in paragraph (1)(A) if the applicant involved is a nonprofit private entity and the Secretary determines that it is not feasible for the applicant to comply with such requirement.

(f) Requirement of provision of certain health services

The Secretary may not make a grant under subsection (a) of this section to an applicant unless the applicant agrees that the applicant will, directly or through contract—

(1) provide health services at locations accessible to homeless individuals;

(2) provide to homeless individuals, at all hours, emergency health services;

(3) refer homeless individuals as appropriate to medical facilities for necessary hospital services;

(4) refer for mental health services homeless individuals who are mentally ill to entities that provide such services, unless the applicant will provide such services pursuant to subsection (g) of this section;

(5) provide outreach services to inform homeless individuals of the availability of health services; and

(6) aid homeless individuals in establishing eligibility for assistance, and in obtaining services, under entitlement programs.

(g) Optional provision of certain services

A grantee under subsection (a) of this section may expend amounts received pursuant to such subsection for the purpose of providing to homeless individuals mental health services, dental services (including dentures), services with respect to vision, and podiatry services.

(h) Temporary continued provision of services to certain former homeless individuals

If any grantee under subsection (a) of this section has provided services described in subsection (f) or (g) of this section to a homeless individual, any such grantee may, notwithstanding that the individual is no longer homeless as a result of becoming a resident in permanent housing, expend the grant to continue to provide such services to the individual for not more than 12 months.

(i) Restrictions on use of grant funds

(1) The Secretary may not, except as provided in paragraph (2), make a grant under subsection (a) of this section to an applicant unless the applicant agrees that amounts received pursuant to such subsection will not, directly or through contract, be expended—

(A) for any purpose other than the purposes described in subsections (a) and (g) of this section;

(B) to provide inpatient services, except with respect to residential treatment for substance abuse provided in settings other than hospitals;

(C) to make cash payments to intended recipients of health services or mental health services; or

(D) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment.

(2) If the Secretary finds that the purpose described in subsection (a) of this section cannot otherwise be carried out, the Secretary may, with respect to an otherwise qualified applicant, waive the restriction established in paragraph (1)(D).

(j) Limitation on charges for services

The Secretary may not make a grant under subsection (a) of this section to an applicant unless the applicant agrees that, whether health services are provided directly or through contract—

(1) health services under the grant will be provided without regard to ability to pay for the health services; and

(2) if a charge is imposed for the delivery of health services, such charge—

(A) will be made according to a schedule of charges that is made available to the public;

(B) will not be imposed on any homeless individual with an income less than the official poverty level; and

(C) will be adjusted to reflect the income and resources of the homeless individual involved.

(k) Requirements with respect to administration

The Secretary may not make a grant under subsection (a) of this section to an applicant unless the applicant—

(1) agrees to establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant;

(2) agrees to establish an ongoing program of quality assurance with respect to the health services provided under the grant;

(3) agrees to ensure the confidentiality of records maintained on homeless individuals receiving health services under the grant;

(4) with respect to providing health services to any population of homeless individuals a substantial portion of which has a limited ability to speak the English language—

(A) has developed and has the ability to carry out a reasonable plan to provide health services under the grant through individuals who are able to communicate with the population involved in the language and cultural context that is most appropriate; and

(B) has designated at least one individual, fluent in both English and the appropriate language, to assist in carrying out the plan; and

(5) agrees to submit to the Secretary an annual report that describes the utilization and costs of health services provided under the grant and that provides such other information as the Secretary determines to be appropriate.

(*l*) Limitation on administrative expenses of grantee

The Secretary may not make a grant under subsection (a) of this section to an applicant unless the applicant agrees that the applicant will not expend more than 10 percent of amounts received pursuant to such subsection for the purpose of administering the grant.

(m) Use of grant funds for referrals to certain advocacy systems

A grantee under subsection (a) of this section may, with respect to title I of the Protection and Advocacy for Mentally Ill Individuals Act of 1986 [42 U.S.C. 10801 et seq.], expend amounts received under subsection (a) of this section for the purpose of referring homeless individuals who are chronically mentally ill, and who are eligible under such Act [42 U.S.C. 10801 et seq.], to systems that provide advocacy services under such Act.

(n) Use of self-help organizations

Any grantee under subsection (a) of this section may provide health services through contracts with nonprofit self-help organizations that—

(1) are established and managed by current and former recipients of mental health services, or substance abuse services, who have been homeless individuals; and

(2) with respect to the provision of health services described in subsection (b)(3) of this section, are organizations qualified under subparagraph (B) of such subsection.

(*o*) Technical assistance

(1) The Secretary may, without charge to any grantee under subsection (a) of this section, provide technical assistance to any such grantee with respect to the planning, development, and operation of programs to carry out the purpose described in such subsection. The Secretary may provide such technical assistance directly, through contract, or through grants.

(2) Of the amounts appropriated pursuant to subsection (q)(1) of this section for a fiscal year, the Secretary may expend not more than $2,000,000 for the purpose of carrying out paragraph (1).

(p) Annual reports by Secretary

Not later than January 10 of each year, the Secretary shall submit to the Congress a report describing the utilization and costs of health services provided under subsection (a) of this section during the immediately preceding fiscal year.

(q) Funding

(1) There are authorized to be appropriated to carry out this section $70,000,000 for fiscal year 1991, $80,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 and 1994.

(2) Amounts received by a grantee pursuant to subsection (a) of this section remaining unobligated at the end of the fiscal year in which the amounts were received shall remain available to the grantee during the succeeding fiscal year for the purpose described in such subsection.

(r) Definitions

For purposes of this section:

(1) The term ''health services'' means primary health services and substance abuse services.

(2) The term ''homeless individual'' means an individual who lacks housing (without regard to whether the individual is a member of a family), including an individual whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations and an individual who is a resident in transitional housing.

(3) The term ''medically underserved population'' has the meaning given such term in section 254c(b)(3) of this title.

(4) The term ''official poverty level'' means the nonfarm income official poverty line defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title.

(5) The term ''organization'' includes individuals, corporations, partnerships, companies, and associations.

(6) The term ''primary health services'' has the meaning given such term in section 254c(b)(1) of this title.

(7) The term ''substance abuse'' has the meaning given such term in section 290cc–36(4)[1] of this title.

(8) The term ''substance abuse services'' includes detoxification and residential treatment for substance abuse provided in settings other than hospitals.

(s) Grants regarding outreach and primary health services for homeless children

(1) The Secretary may make grants to entities specified in paragraph (2) for the purpose of enabling the entities, directly or through contracts, to carry out demonstration programs—

(A) to provide comprehensive primary health services to homeless children and to children at imminent risk of homelessness, including such services provided through mobile medical units;

(B) to provide referrals for the provision of appropriate health services, social services, and education services to children receiving services under subparagraph (A) (including referrals regarding hospitals, the programs of sections 254b and 254c of this title, the program of the Head Start Act [42 U.S.C. 9831 et seq.] (and other programs providing education services), and programs regarding the prevention and treatment of child abuse); and

(C) to provide outreach services to identify children who are homeless and to inform the parents (or other guardians) of the children of the availability of services from the grantees and from the entities or programs specified in subparagraph (B).

(2) The entities referred to in paragraph (1) are—

(A) grantees under subsection (a) of this section, and other public and nonprofit private entities (other than children's hospitals) that provide primary health services, and substance abuse services, to a substantial number of homeless individuals; and

(B) public and nonprofit private children's hospitals that provide primary health services to a substantial number of such individuals.

(3)(A) The Secretary may not make a grant under paragraph (1) to a hospital unless the hospital agrees, with respect to the costs of providing services under such paragraph, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than $1 for each $1 of Federal funds provided in the grant.

(B) Non-Federal contributions required in subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(4) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees that subsections (b)(3), (h), (i), and (j) of this section will apply to the grant to the same extent and in the same manner as such subsections apply to any grant under subsection (a) of this section. For purposes of subsection (i)(1)(D) of this section (including as applied to this subsection by the preceding sentence), mobile medical units shall be considered to be major medical equipment.

(5) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees to collect such data as the Secretary determines to be necessary for assessing the efficacy of services provided under paragraph (1) to homeless children.

(6) The Secretary may not make a grant under paragraph (1) unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subsection.

(7) In making grants under paragraph (1), the Secretary shall take into account the needs of homeless children in rural areas.

(8) For the purpose of carrying out this subsection, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1991 through 1993.

(t) Infant mortality and morbidity

(1) In general

The Secretary may make grants to grantees under subsection (a) of this section for the purpose of assisting such grantees in—

(A) providing comprehensive health care and support services for the reduction of (i) the incidence of infant mortality, and (ii) morbidity among children who are less than 3 years of age; and

(B) developing and coordinating service and referral arrangements between such grantees and other entities for the health management of pregnant women and children described in subparagraph (A).

[1] See References in Text note below.

(2) Required activities

The Secretary may make a grant under paragraph (1) only if the applicant involved agrees to expend the grant for the following activities with respect to the purpose described in such paragraph:

(A) Primary health services, including prenatal care.

(B) Community education, outreach, and case finding.

(C) Case management services.

(D) Client education, including parenting and child development education.

(3) Certain authorized activities

The purposes for which a grant under paragraph (1) may be expended include, with respect to the purpose described in such paragraph, substance abuse screening, counseling and referral services, and other necessary nonmedical support services, including child care, translation services, and housing assistance.

(4) Certain requirements regarding provision of services

The Secretary may make a grant under paragraph (1) only if the applicant involved agrees that—

(A) the applicant will coordinate the provision of services under the grant to each of the recipients of the services;

(B) such services will be continuous for each such recipient;

(C) the applicant will provide follow-up services for individuals who are referred by the applicant for services described in paragraph (3); and

(D) the grant will be expended to supplement, and not supplant, the expenditures of the applicant for primary health services (including prenatal care) with respect to the purpose described in paragraph (1).

(5) Application for grant

The Secretary may make a grant under paragraph (1) only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subsection.

(6) Authorization of appropriations

For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 and 1994.

(July 1, 1944, ch. 373, title III, § 340, as added July 22, 1987, Pub. L. 100–77, title VI, § 601, 101 Stat. 511; amended Nov. 4, 1988, Pub. L. 100–607, title VIII, §§ 801(a), (c), 802(a), (b)(1), 803, 804, 102 Stat. 3168, 3169; Nov. 7, 1988, Pub. L. 100–628, title VI, §§ 601(a), (c), 602(a), (b)(1), 603, 604, 102 Stat. 3241, 3242; Aug. 16, 1989, Pub. L. 101–93, § 5(t)(1), (3), 103 Stat. 615; Nov. 29, 1990, Pub. L. 101–645, title V, §§ 501–503, 104 Stat. 4724; Oct. 27, 1992, Pub. L. 102–531, title III, § 309(c), 106 Stat. 3501.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act of 1986, referred to in subsec. (m), is Pub. L. 99–319, May 23, 1986, 100 Stat. 478, which is classified generally to chapter 114 (§ 10801 et seq.) of this title. Title I of the Protection and Advocacy for Mentally Ill Individuals Act of 1986 is classified generally to subchapter I (§ 10801 et seq.) of chapter 114 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

Section 290cc–36 of this title, referred to in subsec. (r)(7), was omitted in the general revision of part C of subchapter III–A of this chapter by Pub. L. 101–645, title V, § 511, Nov. 29, 1990, 104 Stat. 4726. See section 290cc–34(4) of this title.

The Head Start Act, referred to in subsec. (s)(1)(B), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

PRIOR PROVISIONS

A prior section 256, act July 1, 1944, ch. 373, title III, § 340, as added Nov. 10, 1978, Pub. L. 95–626, title I, § 115(2), 92 Stat. 3567; amended Dec. 12, 1979, Pub. L. 96–142, title III, § 301(a), 93 Stat. 1073; Aug. 13, 1981, Pub. L. 97–35, title IX, § 903(b)(1), 95 Stat. 561; Jan. 4, 1983, Pub. L. 97–414, § 8(h), 96 Stat. 2061, related to primary care research and demonstration projects to serve medically underserved population, prior to repeal by Pub. L. 97–35, title IX, § 903(c), Aug. 13, 1981, 95 Stat. 561, eff. Oct. 1, 1982.

Another prior section 256, act July 1, 1944, ch. 373, title III, § 340, formerly § 332, 58 Stat. 698; renumbered § 340, Oct. 12, 1976, Pub. L. 94–484, title IV, § 407(b)(2), 90 Stat. 2268, related to apprehension, detention, treatment, and release of persons being treated for leprosy, prior to repeal by Pub. L. 95–626, title I, § 105(b), Nov. 10, 1978, 92 Stat. 3560. See section 247e(b) of this title.

AMENDMENTS

1992—Subsec. (t). Pub. L. 102–531 added subsec. (t).

1990—Subsec. (b). Pub. L. 101–645, § 501, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''The Secretary may not make a grant under subsection (a) of this section to an applicant unless—

''(1) the applicant is a public or nonprofit private entity;

''(2) the applicant has the capacity to effectively administer a grant under subsection (a) of this section; and

''(3) with respect to health services that are covered in the appropriate State plan approved under title XIX of the Social Security Act—

''(A) if the applicant will provide under the grant any such health services directly—

''(i) the applicant has entered into a participation agreement under the appropriate State plan; and

''(ii) the applicant is qualified to receive payments under the appropriate State plan; and

''(B) if the applicant will provide under the grant any such health services through a contract with an organization—

''(i) the organization has entered into a participation agreement under the appropriate State plan; and

''(ii) the organization is qualified to receive payments under the appropriate State plan.''

Subsec. (q)(1). Pub. L. 101–645, § 502, substituted ''$70,000,000 for fiscal year 1991, $80,000,000 for fiscal year 1992, and such sums as may be necessary for each of the

fiscal years 1993 and 1994'' for ''$61,200,000 for fiscal year 1989, $63,600,000 for fiscal year 1990, and $66,200,000 for fiscal year 1991''.

Subsec. (s). Pub. L. 101–645, § 503, added subsec. (s).

1989—Subsecs. (d)(1), (e)(1)(A), (2). Pub. L. 101–93, § 5(t)(1), directed that subsecs. (d)(1), (e)(1)(A), (2) of this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment notes below.

Subsec. (g). Pub. L. 101–93, § 5(t)(3), substituted ''certain'' for ''mental health'' in heading, and in text substituted ''providing to homeless individuals mental health services, dental services (including dentures), services with respect to vision, and podiatry services'' for ''providing mental health services to homeless individuals''.

Subsecs. (h) to (r). Pub. L. 101–93, § 5(t)(1), directed that subsecs. (h) to (r) of this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment notes below.

1988—Subsec. (d)(1). Pub. L. 100–607, § 802(b)(1), and Pub. L. 100–628, § 602(b)(1), made identical amendments, substituting ''subsection (i)'' for ''subsection (h)'' in subpar. (C), ''subsection (j)'' for ''subsection (i)'' in subpar. (D), ''subsection (k)'' for ''subsection (j)'' in subpar. (E), and ''subsection (*l*)'' for ''subsection (k)'' in subpar. (F).

Subsec. (e)(1)(A)(i). Pub. L. 100–607, § 801(a)(1), and Pub. L. 100–628, § 601(a)(1), made identical amendments, substituting ''for the first fiscal year of payments under the grant and 66⅔ percent of the costs of providing such services for any subsequent fiscal year of payments under the grant; and'' for ''under the grant; and''.

Subsec. (e)(1)(A)(ii). Pub. L. 100–607, § 801(a)(2), and Pub. L. 100–628, § 601(a)(2), made identical amendments, substituting ''Federal funds provided for the first fiscal year of payments under the grant and not less than $1 (in cash or in kind under such subparagraph) for each $2 of Federal funds provided for any subsequent fiscal year of payments under the grant'' for ''Federal funds provided in such grant''.

Subsec. (e)(2). Pub. L. 100–607, § 801(c), and Pub. L. 100–628, § 601(c), made identical amendments, amending par. (2) generally. Prior to amendment, par. (2) read as follows: ''The Secretary may waive the requirement established in paragraph (1)(A) if—

''(A) the applicant involved is a nonprofit private grantee under section 254c of this title; and

''(B) the Secretary determines that it is not feasible for the applicant to comply with such requirement.''

Subsec. (h). Pub. L. 100–607, § 802(a)(2), and Pub. L. 100–628, § 602(a)(2), made identical amendments, adding subsec. (h). Former subsec. (h) redesignated (i).

Subsecs. (i) to (n). Pub. L. 100–607, § 802(a)(1), and Pub. L. 100–628, § 602(a)(1), made identical amendments, redesignating subsecs. (h) to (m) as (i) to (n), respectively. Former subsec. (n) redesignated (*o*).

Subsec. (*o*). Pub. L. 100–607, § 802(a)(1), and Pub. L. 100–628, § 602(a)(1), made identical amendments, redesignating subsec. (n) as (*o*). Former subsec. (*o*) redesignated (p).

Subsec. (*o*)(2). Pub. L. 100–607, § 803(b), and Pub. L. 100–628, § 603(b), made identical amendments, substituting ''subsection (q)(1) of this section for a fiscal year,'' for ''subsection (p)(1) of this section,''.

Subsec. (p). Pub. L. 100–607, § 802(a)(1), and Pub. L. 100–628, § 602(a)(1), made identical amendments, redesignating subsec. (*o*) as (p). Former subsec. (p) redesignated (q).

Subsec. (q). Pub. L. 100–607, § 802(a)(1), and Pub. L. 100–628, § 602(a)(1), made identical amendments, redesignating subsec. (p) as (q). Former subsec. (q) redesignated (r).

Subsec. (q)(1). Pub. L. 100–607, § 804, and Pub. L. 100–628, § 604, made identical amendments, substituting ''There are authorized to be appropriated to carry out this section $61,200,000 for fiscal year 1989, $63,600,000 for fiscal year 1990, and $66,200,000 for fiscal year 1991'' for ''There are authorized to be appropriated to carry out this section $50,000,000 for fiscal year 1987 and $30,000,000 for fiscal year 1988''.

Subsec. (r). Pub. L. 100–607, § 802(a)(1), and Pub. L. 100–628, § 602(a)(1), made identical amendments, redesignating subsec. (q) as (r).

Subsec. (r)(2). Pub. L. 100–607, § 803, and Pub. L. 100–628, § 603, made identical amendments, inserting ''and an individual who is a resident in transitional housing''.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 601(b) of Pub. L. 100–628 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1989.''

Section 631 of title VI of Pub. L. 100–628 provided that: ''The amendments made by subsection (a) of section 601 [amending this section] shall take effect in accordance with subsection (b) of such section [set out above]. The amendments otherwise made by this title [amending this section and sections 254e, 290bb–2, 290cc–21, 290cc–28, 290cc–29, 290cc–35, 290cc–36, 290dd, 290ee, and 290ee–1 of this title and amending provisions set out as a note under section 290aa–3 of this title] shall take effect October 1, 1988, or upon the date of the enactment of this Act [Nov. 7, 1988], whichever occurs later.''

Section 801(b) of Pub. L. 100–607 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect October 1, 1989.''

Section 831 of title VIII of Pub. L. 100–607 provided that: ''The amendments made by subsection (a) of section 801 [amending this section] shall take effect in accordance with subsection (b) of such section [set out above]. The amendments otherwise made by this title [amending this section and sections 254e, 290bb–2, 290cc–21, 290cc–28, 290cc–29, 290cc–35, 290cc–36, 290dd, 290ee, and 290ee–1 of this title and amending provisions set out as a note under section 290aa–3 of this title] shall take effect October 1, 1988, or upon the date of the enactment of this Act [Nov. 4, 1988], whichever occurs later.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 233, 247b–1, 247b–6, 247c–1, 254e, 256a, 256c, 256d, 290bb–3, 290cc–34, 295p, 300ff–52, 1395x, 1396d, 1396r–1, 11465 of this title.

SUBPART VI—HEALTH SERVICES FOR RESIDENTS OF PUBLIC HOUSING

§ 256a. Health services for residents of public housing

(a) Establishment

(1) The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make grants for the purpose of enabling grantees, directly or through contracts, to provide to residents of public housing, subject to subsections (e) and (f) of this section—

(A) primary health services, including health screenings; and

(B) health counseling and education services.

(2) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees to expend the grant to carry out each of subparagraphs (A) and (B) of such paragraph.

(3) In carrying out the program established in paragraph (1), the Administrator shall consult with the Director of the Centers for Disease Control.

(b) Minimum qualifications of grantees

(1) Subject to paragraph (2), the Secretary may not make a grant under subsection (a) of this section to an applicant unless—

(A) the applicant is a public or nonprofit private entity;

(B) the applicant has the capacity to effectively administer a grant under subsection (a) of this section; and

(C) in the case of any service under this section that is available pursuant to the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State in which the service will be provided—

(i) the applicant for the grant will provide the service directly, and the applicant has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(ii) the applicant for the grant will enter into an agreement with a public or nonprofit private organization under which the organization will provide the service, and the organization has entered into such a participation agreement and is qualified to receive such payments.

(2)(A) In the case of an organization making an agreement pursuant to paragraph (1)(C)(ii) regarding the provision of services under subsection (a) of this section, the requirement established in such paragraph regarding a participation agreement shall be waived by the Secretary if the organization does not, in providing services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(B) A determination by the Secretary of whether an organization referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the organization accepts voluntary donations regarding the provision of services to the public.

(c) Preferences in making grants

The Secretary shall, in making grants under subsection (a) of this section, give preference to qualified applicants that—

(1) are resident management corporations under section 1437r of this title; or

(2) are receiving funds under section 254c or 256 of this title.

(d) Requirement of matching funds from public grantees

(1) In the case of a public entity applying for a grant under subsection (a) of this section, the Secretary may not make such a grant unless the public entity agrees that, with respect to the costs to be incurred by such entity in carrying out the purpose described in such subsection, the entity will make available non-Federal contributions in cash toward such costs in an amount equal to not less than $1 for each $1 of Federal funds provided in the grant.

(2) In determining the amount of non-Federal contributions in cash that a public entity has provided pursuant to paragraph (1), the Secretary may not include any amounts provided to the public entity by the Federal Government.

(e) Requirements regarding services

The Secretary may not make a grant under subsection (a) of this section to an applicant unless the applicant agrees that the applicant will, directly or through contract—

(1) provide services under this section on the premises of public housing projects or at other locations immediately accessible to residents of public housing;

(2) refer such residents, as appropriate, to qualified facilities and practitioners for necessary follow-up services;

(3) provide outreach services to inform such residents of the availability of such services; and

(4) aid such residents in establishing eligibility for assistance, and in obtaining services, under Federal, State, and local programs providing health services, mental health services, or social services.

(f) Optional provision of certain services

(1) A grantee under subsection (a) of this section may expend the grant—

(A) to train residents of public housing to provide health screenings and to provide educational services; and

(B) to provide health services to individuals who are not residents of public housing.

(2) The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees that if, pursuant to paragraph (1)(B), the applicant provides health services to individuals who are not residents of public housing, the health services will be provided to such individuals under the same terms and conditions as such services are provided to residents of public housing (including all terms and conditions in effect pursuant to this section).

(g) Consultation with residents

The Secretary may not make a grant under subsection (a) of this section unless, with respect to the residents of the public housing involved, the applicant for the grant—

(1) has consulted with the residents in the preparation of the application for the grant; and

(2) agrees to provide for ongoing consultation with the residents regarding the planning and administration of the program carried out with the grant.

(h) Restrictions on use of grant funds

(1) The Secretary may not, except as provided in paragraph (2), make a grant under subsection (a) of this section to an applicant unless the applicant agrees that amounts received pursuant to such subsection will not, directly or through contract, be expended—

(A) for any purpose other than the purposes authorized in this section;

(B) to provide inpatient services;

(C) to make cash payments to intended recipients of services under this section; or

(D) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment or motor vehicles.

(2) If the Secretary finds that the purpose described in subsection (a) of this section cannot

otherwise be carried out, the Secretary may, with respect to an otherwise qualified applicant, waive the restriction established in paragraph (1)(D).

(i) Limitation on charges for services

The Secretary may not make a grant under subsection (a) of this section to an applicant unless the applicant agrees that, whether the services are provided directly or through contract—

(1) services under the grant will be provided without regard to ability to pay for the services; and

(2) if a charge is imposed for the delivery of the services, such charge—

(A) will be made according to a schedule of charges that is made available to the public;

(B) will not be imposed on any resident of public housing with an income less than the official poverty level; and

(C) will be adjusted to reflect the income and resources of the resident of public housing involved.

(j) Requirements regarding administration

The Secretary may not make a grant under subsection (a) of this section to an applicant unless the applicant—

(1) agrees to establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant;

(2) agrees to establish an ongoing program of quality assurance with respect to the services provided under the grant;

(3) agrees to ensure the confidentiality of records maintained on residents of public housing that are receiving such services;

(4) with respect to providing services to any population of such residents a substantial portion of which has a limited ability to speak the English language—

(A) has developed and has the ability to carry out a reasonable plan to provide services under the grant through individuals who are able to communicate with the population involved in the language and cultural context that is most appropriate; and

(B) has designated at least one individual, fluent in both English and the appropriate language, to assist in carrying out the plan; and

(5) agrees to submit to the Secretary an annual report that describes the utilization and costs of services provided under the grant and that provides such other information as the Secretary determines to be appropriate.

(k) Limitation on administrative expenses of grantee

The Secretary may not make a grant under subsection (a) of this section to an applicant unless the applicant agrees that the applicant will not expend more than 10 percent of amounts received pursuant to such subsection for the purpose of administering the grant.

(*l*) Requirement of application

The Secretary may not provide financial assistance under subsection (a) of this section unless—

(1) an application for the assistance is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the assistance is to be provided, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(m) Technical assistance

(1) The Secretary may provide technical assistance to applicants and grantees under subsection (a) of this section regarding the planning, development, and operation of programs to carry out the purpose described in such subsection. The Secretary may provide such technical assistance directly, through contracts, or through grants.

(2) Any technical assistance provided by the Secretary under paragraph (1) shall be provided without charge to applicants and grantees under subsection (a) of this section.

(3) Of the amounts appropriated pursuant to subsection (p)(1) of this section for a fiscal year, the Secretary may expend not more than $2,000,000 for the purpose of carrying out paragraph (1).

(n) Annual reports by Secretary

Not later than January 10 of each year, the Secretary shall submit to the Congress a report describing the utilization and costs of services provided under this section during the immediately preceding fiscal year.

(*o*) Definitions

For purposes of this section:

(1) The term ''official poverty level'' means the nonfarm income official poverty line defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title.

(2) The term ''organization'' includes individuals, corporations, partnerships, companies, and associations.

(3) The term ''primary health services'' has the meaning given such term in section 254c(b)(1) of this title.

(4) The term ''public housing'' has the meaning given such term in section 1437a(b)(1) of this title.

(p) Funding

(1) For the purpose of carrying out this section, there are authorized to be appropriated $35,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.

(2) Amounts received by a grantee pursuant to subsection (a) of this section remaining unobligated at the end of the fiscal year in which the amounts were received shall remain available to the grantee during the succeeding fiscal year for the purpose described in such subsection.

(q) Infant mortality and morbidity

(1) In general

The Secretary may make grants to grantees under subsection (a) of this section for the purpose of assisting such grantees in—

(A) providing comprehensive health care and support services for the reduction of (i)

the incidence of infant mortality, and (ii) morbidity among children who are less than 3 years of age; and

(B) developing and coordinating service and referral arrangements between such grantees and other entities for the health management of pregnant women and children described in subparagraph (A).

(2) Required activities

The Secretary may make a grant under paragraph (1) only if the applicant involved agrees to expend the grant for the following activities with respect to the purpose described in such paragraph:

(A) Primary health services, including prenatal care.

(B) Community education, outreach, and case finding.

(C) Case management services.

(D) Client education, including parenting and child development education.

(3) Certain authorized activities

The purposes for which a grant under paragraph (1) may be expended include, with respect to the purpose described in such paragraph, substance abuse screening, counseling and referral services, and other necessary nonmedical support services, including child care, translation services, and housing assistance.

(4) Certain requirements regarding provision of services

The Secretary may make a grant under paragraph (1) only if the applicant involved agrees that—

(A) the applicant will coordinate the provision of services under the grant to each of the recipients of the services;

(B) such services will be continuous for each such recipient;

(C) the applicant will provide follow-up services for individuals who are referred by the applicant for services described in paragraph (3); and

(D) the grant will be expended to supplement, and not supplant, the expenditures of the applicant for primary health services (including prenatal care) with respect to the purpose described in paragraph (1).

(5) Application for grant

The Secretary may make a grant under paragraph (1) only if an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subsection.

(6) Authorization of appropriations

For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1993 and 1994.

(July 1, 1944, ch. 373, title III, § 340A, as added Nov. 6, 1990, Pub. L. 101–527, § 3, 104 Stat. 2314; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 309(d), 106 Stat. 3502.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 256a, act July 1, 1944, ch. 373, title III, § 340A, as added Nov. 10, 1978, Pub. L. 95–626, title I, § 106(a), 92 Stat. 3560, related to technical assistance demonstration grants and contracts, prior to repeal by Pub. L. 100–77, title VI, § 601, July 22, 1987, 101 Stat. 511.

AMENDMENTS

1992—Subsec. (q). Pub. L. 102–531 added subsec. (q).

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 233, 247b–1, 247b–6, 247c–1, 256b, 256c, 256d, 290bb–3, 295p, 1396d of this title.

SUBPART VII—DRUG PRICING AGREEMENTS

§ 256b. Limitation on prices of drugs purchased by covered entities

(a) Requirements for agreement with Secretary

(1) In general

The Secretary shall enter into an agreement with each manufacturer of covered drugs under which the amount required to be paid (taking into account any rebate or discount, as provided by the Secretary) to the manufacturer for covered drugs (other than drugs described in paragraph (3)) purchased by a covered entity on or after the first day of the first month that begins after November 4, 1992, does not exceed an amount equal to the average manufacturer price for the drug under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] in the preceding calendar quarter, reduced by the rebate percentage described in paragraph (2).

(2) "Rebate percentage" defined

(A) In general

For a covered outpatient drug purchased in a calendar quarter, the ''rebate percentage'' is the amount (expressed as a percentage) equal to—

(i) the average total rebate required under section 1927(c) of the Social Security Act [42 U.S.C. 1396r–8(c)] with respect to the drug (for a unit of the dosage form and strength involved) during the preceding calendar quarter; divided by

(ii) the average manufacturer price for such a unit of the drug during such quarter.

(B) Over the counter drugs

(i) In general

For purposes of subparagraph (A), in the case of over the counter drugs, the ''rebate percentage'' shall be determined as if the rebate required under section 1927(c) of the Social Security Act [42 U.S.C. 1396r–8(c)] is based on the applicable percentage provided under section 1927(c)(4) of such Act.

(ii) "Over the counter drug" defined

The term ''over the counter drug'' means a drug that may be sold without a prescription and which is prescribed by a physician (or other persons authorized to prescribe such drug under State law).

(3) Drugs provided under State medicaid plans

Drugs described in this paragraph are drugs purchased by the entity for which payment is made by the State under the State plan for medical assistance under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(4) "Covered entity" defined

In this section, the term ''covered entity'' means an entity that meets the requirements described in paragraph (5) and is one of the following:

(A) A Federally-qualified health center (as defined in section 1905(*l*)(2)(B) of the Social Security Act [42 U.S.C. 1396d(*l*)(2)(B)]).

(B) An entity receiving a grant under section 256a of this title.

(C) A family planning project receiving a grant or contract under section 300 of this title.

(D) An entity receiving a grant under subpart II of part C of subchapter XXIV of this chapter (relating to categorical grants for outpatient early intervention services for HIV disease).

(E) A State-operated AIDS drug purchasing assistance program receiving financial assistance under subchapter XXIV of this chapter.

(F) A black lung clinic receiving funds under section 937(a) of title 30.

(G) A comprehensive hemophilia diagnostic treatment center receiving a grant under section 501(a)(2) of the Social Security Act [42 U.S.C. 701(a)(2)].

(H) A Native Hawaiian Health Center receiving funds under the Native Hawaiian Health Care Act of 1988.

(I) An urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

(J) Any entity receiving assistance under subchapter XXIV of this chapter (other than a State or unit of local government or an entity described in subparagraph (D)), but only if the entity is certified by the Secretary pursuant to paragraph (7).

(K) An entity receiving funds under section 247c of this title (relating to treatment of sexually transmitted diseases) or section 247b(j)(2)[1] of this title (relating to treatment of tuberculosis) through a State or unit of local government, but only if the entity is certified by the Secretary pursuant to paragraph (7).

(L) A subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act [42 U.S.C. 1395ww(d)(1)(B)]) that—

(i) is owned or operated by a unit of State or local government, is a public or private non-profit corporation which is formally granted governmental powers by a unit of State or local government, or is a private non-profit hospital which has a contract with a State or local government to provide health care services to low income individuals who are not entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] or eligible for assistance under the State plan under this subchapter;

(ii) for the most recent cost reporting period that ended before the calendar quarter involved, had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act [42 U.S.C. 1395ww(d)(5)(F)]) greater than 11.75 percent or was described in section 1886(d)(5)(F)(i)(II) of such Act [42 U.S.C. 1395ww(d)(5)(F)(i)(II)]; and

(iii) does not obtain covered outpatient drugs through a group purchasing organization or other group purchasing arrangement.

(5) Requirements for covered entities

(A) Prohibiting duplicate discounts or rebates

(i) In general

A covered entity shall not request payment under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for medical assistance described in section 1905(a)(12) of such Act [42 U.S.C. 1396d(a)(12)] with respect to a drug that is subject to an agreement under this section if the drug is subject to the payment of a rebate to the State under section 1927 of such Act [42 U.S.C. 1396r–8].

(ii) Establishment of mechanism

The Secretary shall establish a mechanism to ensure that covered entities comply with clause (i). If the Secretary does not establish a mechanism within 12 months under the previous sentence, the requirements of section 1927(a)(5)(C) of the Social Security Act [42 U.S.C. 1396r–8(a)(5)(C)] shall apply.

(B) Prohibiting resale of drugs

With respect to any covered outpatient drug that is subject to an agreement under this subsection, a covered entity shall not resell or otherwise transfer the drug to a person who is not a patient of the entity.

(C) Auditing

A covered entity shall permit the Secretary and the manufacturer of a covered outpatient drug that is subject to an agreement under this subsection with the entity (acting in accordance with procedures established by the Secretary relating to the number, duration, and scope of audits) to audit at the Secretary's or the manufacturer's expense the records of the entity that directly pertain to the entity's compliance with the requirements described in subparagraphs[2] (A) or (B) with respect to drugs of the manufacturer.

[1] See References in Text note below.

[2] So in original. Probably should be ''subparagraph''.

(D) Additional sanction for noncompliance

If the Secretary finds, after notice and hearing, that a covered entity is in violation of a requirement described in subparagraphs[2] (A) or (B), the covered entity shall be liable to the manufacturer of the covered outpatient drug that is the subject of the violation in an amount equal to the reduction in the price of the drug (as described in subparagraph (A)) provided under the agreement between the entity and the manufacturer under this paragraph.

(6) Treatment of distinct units of hospitals

In the case of a covered entity that is a distinct part of a hospital, the hospital shall not be considered a covered entity under this paragraph unless the hospital is otherwise a covered entity under this subsection.

(7) Certification of certain covered entities

(A) Development of process

Not later than 60 days after November 4, 1992, the Secretary shall develop and implement a process for the certification of entities described in subparagraphs (J) and (K) of paragraph (4).

(B) Inclusion of purchase information

The process developed under subparagraph (A) shall include a requirement that an entity applying for certification under this paragraph submit information to the Secretary concerning the amount such entity expended for covered outpatient drugs in the preceding year so as to assist the Secretary in evaluating the validity of the entity's subsequent purchases of covered outpatient drugs at discounted prices.

(C) Criteria

The Secretary shall make available to all manufacturers of covered outpatient drugs a description of the criteria for certification under this paragraph.

(D) List of purchasers and dispensers

The certification process developed by the Secretary under subparagraph (A) shall include procedures under which each State shall, not later than 30 days after the submission of the descriptions under subparagraph (C), prepare and submit a report to the Secretary that contains a list of entities described in subparagraphs (J) and (K) of paragraph (4) that are located in the State.

(E) Recertification

The Secretary shall require the recertification of entities certified pursuant to this paragraph on a not more frequent than annual basis, and shall require that such entities submit information to the Secretary to permit the Secretary to evaluate the validity of subsequent purchases by such entities in the same manner as that required under subparagraph (B).

(8) Development of prime vendor program

The Secretary shall establish a prime vendor program under which covered entities may enter into contracts with prime vendors for the distribution of covered outpatient drugs. If a covered entity obtains drugs directly from a manufacturer, the manufacturer shall be responsible for the costs of distribution.

(9) Notice to manufacturers

The Secretary shall notify manufacturers of covered outpatient drugs and single State agencies under section 1902(a)(5) of the Social Security Act [42 U.S.C. 1396a(a)(5)] of the identities of covered entities under this paragraph, and of entities that no longer meet the requirements of paragraph (5) or that are no longer certified pursuant to paragraph (7).

(10) No prohibition on larger discount

Nothing in this subsection shall prohibit a manufacturer from charging a price for a drug that is lower than the maximum price that may be charged under paragraph (1).

(b) Other definitions

In this section, the terms ''average manufacturer price'', ''covered outpatient drug'', and ''manufacturer'' have the meaning given such terms in section 1927(k) of the Social Security Act [42 U.S.C. 1396r–8(k)].

(c) References to Social Security Act

Any reference in this section to a provision of the Social Security Act [42 U.S.C. 301 et seq.] shall be deemed to be a reference to the provision as in effect on November 4, 1992.

(d) Compliance with requirements

A manufacturer is deemed to meet the requirements of subsection (a) of this section if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of this section (as in effect immediately after November 4, 1992), as applied by the Secretary, and would have entered into an agreement under this section (as such section was in effect at such time), but for a legislative change in this section (or the application of this section) after November 4, 1992.

(July 1, 1944, ch. 373, title III, § 340B, as added Nov. 4, 1992, Pub. L. 102–585, title VI, § 602(a), 106 Stat. 4967; amended June 10, 1993, Pub. L. 103–43, title XX, § 2008(i)(1)(A), 107 Stat. 212.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(1), (3), (4)(L)(i), (5)(A)(i), and (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Native Hawaiian Health Care Act of 1988, referred to in subsec. (a)(4)(H), was Pub. L. 100–579, Oct. 31, 1988, 102 Stat. 2916, and subtitle D of title II of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4222, which were classified generally to chapter 122 (§ 11701 et seq.) of this title prior to being amended generally and renamed the Native Hawaiian Health Care Improvement Act by Pub. L. 102–396. For complete classification of this Act to the Code, see Tables.

The Indian Health Care Improvement Act, referred to in subsec. (a)(4)(I), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this

Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

Section 247b(j)(2) of this title, referred to in subsec. (a)(4)(K), was repealed and section 247b(j)(1)(B) was redesignated section 247b(j)(2) by Pub. L. 103–183, title III, § 301(b)(1)(A), (C), Dec. 14, 1993, 107 Stat. 2235.

CODIFICATION

Another section 340B of act July 1, 1944, was renumbered section 340C and is classified to section 256c of this title.

AMENDMENTS

1993—Pub. L. 103–43 made technical amendment to directory language of Pub. L. 102–585, § 602(a), which enacted this section.

STUDY OF TREATMENT OF CERTAIN CLINICS AS COVERED ENTITIES ELIGIBLE FOR PRESCRIPTION DRUG DISCOUNTS

Section 602(b) of Pub. L. 102–585 directed Secretary of Health and Human Services to conduct a study of feasibility and desirability of including specified entities receiving funds from a State as covered entities eligible for limitations on prices of covered outpatient drugs under 42 U.S.C. 256b(a) and, not later than 1 year after Nov. 4, 1992, to submit a report to Congress on the study, including in the report a description of the entities that were the subject of the study, an analysis of the extent to which such entities procured prescription drugs, and an analysis of the impact of the inclusion of such entities as covered entities on the quality of care provided to and the health status of the patients of such entities.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396r–8 of this title.

SUBPART VIII—BULK PURCHASES OF VACCINES FOR CERTAIN PROGRAMS

AMENDMENTS

1993—Pub. L. 103–43, title XX, § 2008(i)(2)(A)(i), June 10, 1993, 107 Stat. 213, made technical amendment relating to placement of subpart VIII within part D of this subchapter.

§ 256c. Bulk purchases of vaccines for certain programs

(a) Agreements for purchases

(1) In general

Not later than 180 days after October 27, 1992, the Secretary, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the Administrator of the Health Resources and Services Administration, shall enter into negotiations with manufacturers of vaccines for the purpose of establishing and maintaining agreements under which entities described in paragraph (2) may purchase vaccines from the manufacturers at the prices specified in the agreements.

(2) Relevant entities

The entities referred to in paragraph (1) are entities that provide immunizations against vaccine-preventable diseases under the programs established in sections 254b, 254c, 256, and 256a of this title.

(b) Negotiation of prices

In carrying out subsection (a) of this section, the Secretary shall, to the extent practicable, ensure that the prices provided for in agreements under such subsection are comparable to the prices provided for in agreements negotiated by the Secretary on behalf of grantees under section 247b(j)(1) of this title.

(c) Authority of Secretary

In carrying out subsection (a) of this section, the Secretary, in the discretion of the Secretary, may enter into the agreements described in such subsection (and may decline to enter into such agreements), may modify such agreements, may extend such agreements, and may terminate such agreements.

(d) Rule of construction

This section may not be construed as requiring any State to reduce or terminate the supply of vaccines provided by the State to any of the entities described in subsection (a)(2) of this section.

(July 1, 1944, ch. 373, title III, § 340C, formerly § 340B, as added Oct. 27, 1992, Pub. L. 102–531, title III, § 305, 106 Stat. 3494; renumbered § 340C, June 10, 1993, Pub. L. 103–43, title XX, § 2008(i)(2)(A)(ii), 107 Stat. 213.)

§ 256d. Breast and cervical cancer information

(a) In general

As a condition of receiving grants, cooperative agreements, or contracts under this chapter, each of the entities specified in subsection (c) of this section shall, to the extent determined to be appropriate by the Secretary, make available information concerning breast and cervical cancer.

(b) Certain authorities

In carrying out subsection (a) of this section, an entity specified in subsection (c) of this section—

(1) may make the information involved available to such individuals as the entity determines appropriate;

(2) may, as appropriate, provide information under subsection (a) of this section on the need for self-examination of the breasts and on the skills for such self-examinations;

(3) shall provide information under subsection (a) of this section in the language and cultural context most appropriate to the individuals to whom the information is provided; and

(4) shall refer such clients as the entities determine appropriate for breast and cervical cancer screening, treatment, or other appropriate services.

(c) Relevant entities

The entities specified in this subsection are the following:

(1) Entities receiving assistance under section 247b–6 of this title (relating to tuberculosis).

(2) Entities receiving assistance under section 247c of this title (relating to sexually transmitted diseases).

(3) Migrant health centers receiving assistance under section 254b of this title.

(4) Community health centers receiving assistance under section 254c of this title.

(5) Entities receiving assistance under section 256 of this title (relating to homeless individuals).

(6) Entities receiving assistance under section 256a of this title (relating to health services for residents of public housing).

(7) Entities providing services with assistance under subchapter III–A of this chapter or subchapter XVII of this chapter.

(8) Entities receiving assistance under section 300 of this title (relating to family planning).

(9) Entities receiving assistance under subchapter XXIV of this chapter (relating to services with respect to acquired immune deficiency syndrome).

(10) Non-Federal entities authorized under the Indian Self-Determination Act [25 U.S.C. 450f et seq.].

(July 1, 1944, ch. 373, title III, § 340D, as added Dec. 14, 1993, Pub. L. 103–183, title I, § 104, 107 Stat. 2230.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (c)(10), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

PART E—NARCOTIC ADDICTS AND OTHER DRUG ABUSERS

AMENDMENTS

1970—Pub. L. 91–513, title I, § 2(a)(6), Oct. 27, 1970, 84 Stat. 1240, inserted reference to Other Drug Abusers in part heading.

§ 257. Care and treatment of narcotic addicts

(a) Surgeon General authorized to provide programs

The Surgeon General is authorized to provide for the confinement, care, protection, treatment, and discipline of persons addicted to the use of habit-forming narcotic drugs who are civilly committed to treatment under the Narcotic Addict Rehabilitation Act of 1966, addicts and other persons with drug abuse and drug dependence problems who voluntarily submit themselves for treatment, and addicts convicted of offenses against the United States, including persons convicted by general courts-martial and consular courts. Such care and treatment shall be provided at hospitals of the Service especially equipped for the accommodation of such patients or elsewhere where authorized under other provisions of law, and shall be designed to rehabilitate such persons, to restore them to health, and, where necessary, to train them to be self-supporting and self-reliant; but nothing in this section or in this part shall be construed to limit the authority of the Surgeon General under other provisions of law to provide for the conditional release of patients and for aftercare under supervision. In carrying out this subsection, the Secretary shall establish in each hospital and other appropriate medical facility of the Service a treatment and rehabilitation program for drug addicts and other persons with drug abuse and drug dependence problems who are in the area served by such hospital or other facility; except that the requirement of this sentence shall not apply in the case of any such hospital or other facility with respect to which the Secretary determines that there is not sufficient need for such a program in such hospital or other facility.

(b) Furnishing of information relating to persons voluntarily undergoing care to Mayor of District of Columbia

Upon the admittance to, and departure from, a hospital of the Service of a person who voluntarily submitted himself for treatment pursuant to the provisions of this section, and who at the time of his admittance to such hospital was a resident of the District of Columbia, the Surgeon General shall furnish to the Mayor of the District of Columbia or his designated agent, the name, address, and such other pertinent information as may be useful in the rehabilitation to society of such person.

(c) Agreements with other departments and agencies

The Secretary may enter into agreements with the Secretary of Veterans Affairs, the Secretary of Defense, and the head of any other department or agency of the Government under which agreements hospitals and other appropriate medical facilities of the Service may be used in treatment and rehabilitation programs provided by such department or agency for drug addicts and other persons with drug abuse and other drug dependence problems who are in areas served by such hospitals or other facilities.

(July 1, 1944, ch. 373, title III, § 341, 58 Stat. 698; May 8, 1954, ch. 195, § 3, 68 Stat. 80; July 24, 1956, ch. 676, title III, § 302(a), 70 Stat. 622; Nov. 8, 1966, Pub. L. 89–793, title VI, § 601, 80 Stat. 1449; 1967 Reorg. Plan No. 3, § 401, eff. Nov. 3, 1967 (in part), 32 F.R. 11669, 81 Stat. 951; Oct. 27, 1970, Pub. L. 91–513, title I, § 2(a)(1), 84 Stat. 1240; Mar. 21, 1972, Pub. L. 92–255, title IV, § 402, 86 Stat. 77; Dec. 24, 1973, Pub. L. 93–198, title IV, § 421, 87 Stat. 789; Oct. 12, 1984, Pub. L. 98–473, title II, § 232(a), 98 Stat. 2031; Nov. 10, 1986, Pub. L. 99–646, § 22(a), 100 Stat. 3597; June 13, 1991, Pub. L. 102–54, § 13(q)(1)(B)(i), 105 Stat. 278.)

REFERENCES IN TEXT

The Narcotic Addict Rehabilitation Act of 1966, referred to in subsec. (a), is Pub. L. 89–793, titles I to IV, Nov. 8, 1966, 80 Stat. 1438, as amended. Title I of the Act is classified generally to chapter 175 (§ 2901 et seq.) of Title 28, Judiciary and Judicial Procedure. Title II of the Act is classified generally to chapter 314 (§ 4251 et seq.) of Title 18, Crimes and Criminal Procedure. Title III of the Act is classified generally to subchapter II (§ 3411 et seq.) of chapter 42 of this title. Title IV of the Act is classified generally to subchapter III (§ 3441 et seq.) of chapter 42 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of this title and Tables.

CODIFICATION

Section is also set out in D.C. Code, § 24–613.

AMENDMENTS

1991—Subsec. (c). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1986—Subsec. (a). Pub. L. 99–646 struck out ''and who are not sentenced to treatment under the Narcotic Ad-

dict Rehabilitation Act of 1966'' before '', including persons convicted''.

1984—Subsec. (a). Pub. L. 98–473 struck out ''or convicted of offenses against the United States and sentenced to treatment'' after ''committed to treatment'' and directed striking out of ''addicts who are committed to the custody of the Attorney General pursuant to provisions of the Federal Youth Corrections Act [18 U.S.C. 5005 et seq.],'', which amendment was executed by striking out ''addicts who are committed to the custody of the Attorney General pursuant to the provisions of the Federal Youth Corrections Act [18 U.S.C. 5005 et seq.],'' after ''Narcotic Addict Rehabilitation Act of 1966,''.

1972—Subsec. (a). Pub. L. 92–255, § 402(a), required establishment in hospitals and other appropriate medical facilities of treatment and rehabilitation programs for drug addicts and other persons with drug abuse and drug dependence problems where sufficient need for such programs exists.

Subsec. (c). Pub. L. 92–255, § 402(b), added subsec. (c).

1970—Subsec. (a). Pub. L. 91–513 inserted provision for voluntary submission for treatment of persons with drug abuse and drug dependence problems.

1966—Subsec. (a). Pub. L. 89–793 designated existing first and second sentences as subsec. (a), substituted care and treatment provisions for persons who are civilly committed to treatment or convicted of Federal offenses and sentenced to treatment under the Narcotic Addict Rehabilitation Act of 1966, addicts who are committed to custody of Attorney General pursuant to provisions of Federal Youth Corrections Act, and addicts convicted of Federal offenses and who are not sentenced to treatment under such Act of 1966 for prior care and treatment provisions for addicts who have been or are hereafter convicted of Federal offenses, deleted language for care and treatment for addicts who are committed to the Service or to a hospital thereof pursuant to section 260a of this title, and provided for care and treatment at places other than hospitals of the Service where authorized by other provisions of law and for conditional release of patients and aftercare under supervision.

Subsec. (b). Pub. L. 89–793 designated existing third sentence as subsec. (b).

1956—Act July 24, 1956, required the Surgeon General to furnish to the Commissioners or their designated agent, the name, address, and any other useful information relating to persons who voluntarily submit themselves for treatment and who, at the time of submission, are residents of the District of Columbia.

1954—Act May 8, 1954, inserted in first sentence reference to addicts who are committed to the Service or to a hospital thereof pursuant to section 260a of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 22(b) of Pub. L. 99–646 provided that: ''The amendment made by this section [amending this section] shall take effect on the date the amendments made by section 232(a) of the Comprehensive Crime Control Act of 1984 [Pub. L. 98–473] take effect [Nov. 1, 1987, see Effective Date note set out under section 3551 of Title 18, Crimes and Criminal Procedure].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

Except as otherwise provided in Reorg. Plan No. 3 of 1967, functions of Board of Commissioners of District of Columbia transferred to Commissioner of District of Columbia by section 401 of Reorg. Plan No. 3 of 1967. Office of Commissioner of District of Columbia, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by office of Mayor of District of Columbia by section 421 of Pub. L. 93–198, classified to section 1–241 of District of Columbia Code. Accordingly, ''Mayor'' substituted in subsec. (b) for ''Commissioners''.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

CROSS REFERENCES

Third party tort liability to United States for hospital and medical care, see section 2651 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3441 of this title.

§ 257a. Medical treatment of narcotics addiction; report to Congress

The Secretary of Health and Human Services, after consultation with the Attorney General and with national organizations representative of persons with knowledge and experience in the treatment of narcotic addicts, shall determine the appropriate methods of professional practice in the medical treatment of the narcotic addiction of various classes of narcotic addicts, and shall report thereon from time to time to the Congress.

(Pub. L. 91–513, title I, § 4, Oct. 27, 1970, 84 Stat. 1241; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

Section was not enacted as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 258. Employment; establishment of industries, plants, etc.; sale of commodities; disposition of proceeds

Narcotic addicts or other persons with drug abuse and drug dependence problems in hospitals of the Service designated for their care shall be employed in such manner and under such conditions as the Surgeon General may direct. In such hospitals the Surgeon General may, in his discretion, establish industries, plants, factories, or shops for the production and manufacture of articles, commodities, and supplies for the United States Government. The Secretary of the Treasury may require any Government department, establishment, or other institution, for whom appropriations are made directly or indirectly by the Congress of the United States, to purchase at current market prices, as determined by him or his authorized

representative, such of the articles, commodities, or supplies so produced or manufactured as meet their specifications; and the Surgeon General shall provide for payment to the inmates or their dependents of such pecuniary earnings as he may deem proper. The Secretary of Health and Human Services shall establish a working-capital fund for such industries, plants, factories, and shops out of any funds appropriated for Public Health Service hospitals at which addicts or other persons with drug abuse and drug dependence problems are treated and cared for; and such fund shall be available for the purchase, repair, or replacement of machinery or equipment, for the purchase of raw materials and supplies, for the purchase of uniforms and other distinctive wearing apparel of employees in the performance of their official duties, and for the employment of necessary civilian officers and employees. The Surgeon General may provide for the disposal of products of the industrial activities conducted pursuant to this section, and the proceeds of any sales thereof shall be covered into the Treasury of the United States to the credit of the working-capital fund.

(July 1, 1944, ch. 373, title III, § 342, 58 Stat. 699; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Oct. 27, 1970, Pub. L. 91–513, title I, § 2(a)(2)(A), 84 Stat. 1240; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695.)

AMENDMENTS

1970—Pub. L. 91–513 inserted reference to persons with drug abuse and drug dependence problems.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 258a. Transfer of balances in working capital fund, narcotic hospitals, to surplus fund

As of June 30, 1947, and the end of each fiscal year thereafter any balances in the ''Working capital fund, narcotic hospitals,'' in excess of $150,000 shall be transferred to the surplus fund of the Treasury.

(July 8, 1947, ch. 210, title II, § 201, 61 Stat. 269.)

CODIFICATION

Section was enacted as part of the Federal Security Agency Appropriation Act, 1948, and not as part of the Public Health Service Act which comprises this chapter.

§ 259. Convict addicts or other persons with drug abuse or drug dependence problems

(a) Transfers to and from hospitals; duty of prosecuting officers to report convicted persons believed to be addicts

The authority vested with the power to designate the place of confinement of a prisoner shall transfer to hospitals of the Service especially equipped for the accommodation of addicts or other persons with drug abuse and drug dependence problems, if accommodations are available, all addicts or other persons with drug abuse and drug dependence problems who have been or are hereafter sentenced to confinement, or who are now or shall hereafter be confined, in any penal, correctional, disciplinary, or reformatory institution of the United States, including those addicts or other persons with drug abuse and drug dependence problems convicted of offenses against the United States who are confined in State and Territorial prisons, penitentiaries, and reformatories, except that no addict or other person with a drug abuse or other drug dependence problem shall be transferred to a hospital of the Service who, in the opinion of the officer authorized to direct the transfer, is not a proper subject for confinement in such an institution either because of the nature of the crime he has committed or because of his apparent incorrigibility. The authority vested with the power to designate the place of confinement of a prisoner shall transfer from a hospital of the Service to the institution from which he was received, or to such other institution as may be designated by the proper authority, any addict or other person with a drug abuse or other drug dependence problem whose presence at a hospital of the Service is detrimental to the well-being of the hospital or who does not continue to be a narcotic addict or other person with a drug abuse or other drug dependence problem. All transfers of such prisoners to or from a hospital of the Service shall be accompanied by necessary attendants as directed by the officer in charge of such hospital and the actual and necessary expenses incident to such transfers shall be paid from the appropriation for the maintenance of such Service hospital except to the extent that other Federal agencies are authorized or required by law to pay expenses incident to such transfers. When sentence is pronounced against any person whom the prosecuting officer believes to be an addict or other person with a drug abuse or other drug dependence problem, such officer shall report to the authority vested with the power to designate the place of confinement, the name of such person, the reasons for his belief, all pertinent facts bearing on such addiction, drug abuse, or drug dependence, and the nature of the offense committed. Whenever an alien addict or other person with a drug abuse or other drug dependence problem transferred to a Service hospital pursuant to this subsection is entitled to his discharge but is subject to deportation, in lieu of being returned to the penal institution from which he came he shall be deported by the authority vested by law with power over deportation.

(b) Repealed. Pub. L. 92–293, § 3, May 11, 1972, 86 Stat. 136

(c) Discharge; further treatment

Not later than one month prior to the expiration of the sentence of any addict or other person with a drug abuse or other drug dependence problem confined in a Service hospital, he shall be examined by the Surgeon General or his authorized representative. If the Surgeon General believes the person to be discharged is still an addict or other person with a drug abuse or other drug dependence problem and that he may by further treatment in a Service hospital be cured of his addiction, drug abuse, or drug dependence, the addict or other person with a drug abuse or other drug dependence problem shall be informed, in accordance with regulations, of the advisability of his submitting himself to further treatment. The addict or other person with a drug abuse or other drug dependence problem may then apply in writing to the Surgeon General for further treatment in a Service hospital for a period not exceeding the maximum length of time considered necessary by the Surgeon General. Upon approval of the application by the Surgeon General or his authorized agent, the addict or other person with a drug abuse or other drug dependence problem may be given such further treatment as is necessary to cure him of his addiction, drug abuse, or drug dependence.

(d) Gratuities and transportation furnished upon discharge or release on parole or supervised release

Every person convicted of an offense against the United States, upon discharge, or upon release on parole or supervised release, from a hospital of the Service, shall be furnished with the gratuities and transportation authorized by law to be furnished to prisoners upon release from a penal, correctional, disciplinary, or reformatory institution.

(e) Admission of probationers to hospitals for treatment

Any court of the United States having the power to suspend the imposition or execution of sentence and to place a defendant on probation under any existing laws may impose as one of the conditions of such probation that the defendant, if an addict or other person with a drug abuse or other drug dependence problem, shall submit himself for treatment at a hospital of the Service especially equipped for the accommodation of addicts or other persons with drug abuse and drug dependence problems until discharged therefrom as cured and that he shall be admitted thereto for such purpose. Upon the discharge of any such probationer from a hospital of the Service, he shall be furnished with the gratuities and transportation authorized by law to be furnished to prisoners upon release from a penal, correctional, disciplinary, or reformatory institution. The actual and necessary expense incident to transporting such probationer to such hospital and to furnishing such transportation and gratuities shall be paid from the appropriation for the maintenance of such hospital except to the extent that other Federal agencies are authorized or required by law to pay the cost of such transportation: *Provided*, That where existing law vests a discretion in any officer as to the place to which transportation shall be furnished or as to the amount of clothing and gratuities to be furnished, such discretion shall be exercised by the Surgeon General with respect to addicts or other persons with drug abuse and drug dependence problems discharged from hospitals of the Service.

(July 1, 1944, ch. 373, title III, § 343, 58 Stat. 699; Oct. 27, 1970, Pub. L. 91–513, title I, § 2(a)(2)(A), (3), (4), 84 Stat. 1240; May 11, 1972, Pub. L. 92–293, § 3, 86 Stat. 136; Oct. 12, 1984, Pub. L. 98–473, title II, § 232(b), 98 Stat. 2031.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98–473 inserted ''or supervised release'' after ''parole''.

1972—Subsec. (b). Pub. L. 92–293 struck out subsec. (b) which provided for application of sections 710 to 712a, 714 to 723c and 744h of title 18 to narcotic addicts and persons with drug abuse and drug dependence problems.

1970—Pub. L. 91–513 extended section to cover drug abuse or drug dependence and to cover persons with drug abuse or drug dependence problems.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Nov. 1, 1987, and applicable only to offenses committed after the taking effect of such amendment, see section 235(a)(1) of Pub. L. 98–473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

CROSS REFERENCES

Discharge from prison, transportation, clothing and money issued, see section 4281 of Title 18, Crimes and Criminal Procedure.

§ 260. Addicts and persons with drug abuse or drug dependence problems

(a) Application for admission

Any addict or other person with a drug abuse or other drug dependence problem, whether or not he shall have been convicted of an offense against the United States, may apply to the Surgeon General for admission to a hospital of the Service especially equipped for the accommodation of addicts or other persons with drug abuse and drug dependence problems.

(b) Determination of addiction; conditions of admission; payment of subsistence, care, and treatment

Any applicant shall be examined by the Surgeon General who shall determine whether the applicant is an addict or other person with a drug abuse or other drug dependence problem, whether by treatment in a hospital of the Service he may probably be cured of his addiction, drug abuse, or drug dependence, and the esti-

mated length of time necessary to effect his cure. The Surgeon General may, in his discretion, admit the applicant to a Service hospital. No such addict or other person with a drug abuse or other drug dependence problem shall be admitted unless he agrees to submit to treatment for the maximum amount of time estimated by the Surgeon General to be necessary to effect a cure, and unless suitable accommodations are available after all eligible addicts or other persons with drug abuse and drug dependence problems convicted of offenses against the United States have been admitted. Any such addict or other person with a drug abuse or other drug dependence problem may be required to pay for his subsistence, care, and treatment at rates fixed by the Surgeon General and amounts so paid shall be covered into the Treasury of the United States to the credit of the appropriation from which the expenditure for his subsistence, care, and treatment was made. Appropriations available for the care and treatment of addicts or other persons with drug abuse and drug dependence problems admitted to a hospital of the Service under this section shall be available, subject to regulations, for paying the cost of transportation to any place within the continental United States, including subsistence allowance while traveling, for any indigent addict or other person with a drug abuse or other drug dependence problem who is discharged as cured.

(c) Period of confinement

Any addict or other person with a drug abuse or other drug dependence problem admitted for treatment under this section, including any addict or other person with a drug abuse or other drug dependence problem, not convicted of an offense, who voluntarily submits himself for treatment, may be confined in a hospital of the Service for a period not exceeding the maximum amount of time estimated by the Surgeon General as necessary to effect a cure of the addiction, drug abuse, or drug dependence or until such time as he ceases to be an addict or other person with a drug abuse or other drug dependence problem.

(d) Other rights unaffected

Any addict or other person with a drug abuse or other drug dependence problem admitted for treatment under this section shall not thereby forfeit or abridge any of his rights as a citizen of the United States; nor shall such admission or treatment be used against him in any proceeding in any court; and the record of his voluntary commitment shall, except as otherwise provided by this chapter, be confidential and shall not be divulged.

(July 1, 1944, ch. 373, title III, § 344, 58 Stat. 701; June 25, 1948, ch. 654, § 5, 62 Stat. 1018; July 24, 1956, ch. 676, title III, § 302(b), 70 Stat. 622; Oct. 27, 1970, Pub. L. 91–513, title I, § 2(a)(2)(A), (3), (4), 84 Stat. 1240.)

AMENDMENTS

1970—Pub. L. 91–513 extended coverage of section to cover drug abuse or drug dependence and to cover persons with drug abuse or drug dependence problems.

1956—Subsec. (d). Act July 24, 1956, substituted ''shall, except as otherwise provided by this chapter, be confidential'' for ''shall be confidential''.

1948—Subsec. (b). Act June 25, 1948, inserted sentence at end to continue authority to provide transportation for indigent narcotics who are discharged as cured.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 260a. Admission of addicts committed from District of Columbia

(a) Conditions

The Surgeon General is authorized to admit for care and treatment in any hospital of the Service suitably equipped therefor, and thereafter to transfer between hospitals of the Service in accordance with section 248(b) of this title, any addict, who is committed, under the provisions of the Act of June 24, 1953 (Public Law 76, Eighty-third Congress) [D.C. Code, § 24–601 et seq.], to the Service or to a hospital thereof for care and treatment and who the Surgeon General determines is a proper subject for such care and treatment. No such addict shall be admitted unless (1) committed prior to July 1, 1958; (2) at the time of commitment, the number of persons in hospitals of the Service who have been admitted pursuant to this subsection is less than one hundred; and (3) suitable accommodations are available after all eligible addicts convicted of offenses against the United States have been admitted.

(b) Discharge from hospitals; notice; delivery to court

Any person admitted to a hospital of the Service pursuant to subsection (a) of this section shall be discharged therefrom (1) upon order of the Superior Court of the District of Columbia, or (2) when he is found by the Surgeon General to be cured and rehabilitated. When any such person is so discharged, the Surgeon General shall give notice thereof to the Superior Court of the District of Columbia and shall deliver such person to such court for such further action as such court may deem necessary and proper under the provisions of the Act of June 24, 1953 (Public Law 76, Eighty-third Congress) [D.C. Code, § 24–601 et seq.].

(c) Authority of Surgeon General and other officers

With respect to the detention, transfer, parole, or discharge of any person committed to a hospital of the Service in accordance with subsection (a) of this section, the Surgeon General and the officer in charge of the hospital, in addition to authority otherwise vested in them, shall have such authority as may be conferred upon them, respectively, by the order of the committing court.

(d) Payment of costs; determination; disposition of moneys; availability of appropriations

The cost of providing care and treatment for persons admitted to a hospital of the Service

pursuant to subsection (a) of this section shall be a charge upon the District of Columbia and shall be paid by the District of Columbia to the Public Health Service, either in advance or otherwise, as may be determined by the Surgeon General. Such cost may be determined for each addict or on the basis of rates established for all or particular classes of patients, and shall include the cost of transportation to and from facilities of the Public Health Service. Moneys so paid to the Public Health Service shall be covered into the Treasury of the United States as miscellaneous receipts. Appropriations available for the care and treatment of addicts admitted to a hospital of the Service under this section shall be available, subject to regulations, for paying the cost of transportation to the District of Columbia, including subsistence allowance while traveling, for any such addict who is discharged.

(July 1, 1944, ch. 373, title III, §345, as added May 8, 1954, ch. 195, §2, 68 Stat. 79; amended July 24, 1956, ch. 676, title III, §302(c), 70 Stat. 622; July 29, 1970, Pub. L. 91–358, title I, §155(c)(32), 84 Stat. 572.)

REFERENCES IN TEXT

Act of June 24, 1953 (Public Law 76, Eighty-third Congress), referred to in subsecs. (a) and (b), is act June 24, 1953, ch. 149, 67 Stat. 77, as amended, which appears in chapter 6 (§24–601 et seq.) of Title 24, Prisoners and Their Treatment, of the District of Columbia Code.

CODIFICATION

Section is also set out in D.C. Code, §24–614.

AMENDMENTS

1970—Subsec. (b). Pub. L. 91–358 substituted ''Superior Court of the District of Columbia'' for ''United States District Court for the District of Columbia'' in two places.

1956—Subsec. (a). Act July 24, 1956, substituted ''July 1, 1958'' for ''July 1, 1956'', and ''one hundred'' for ''fifty''.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–358 effective first day of seventh calendar month which begins after July 29, 1970, see section 199(a) of Pub. L. 91–358, set out as a note under section 1257 of Title 28, Judiciary and Judicial Procedure.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

DECLARATION OF PURPOSE

With respect to enactment of this section and section 261a of this title, and amendment of section 257 of this title, section 1 of act May 8, 1954, as amended by act July 24, 1956, §303, provided: ''In order to afford the District of Columbia the facilities required to carry out the Act of June 24, 1953 (Public Law 76, Eighty-third Congress), as amended [D.C. code, §§24–601 et seq.], and to help it meet its responsibility for the detention, care, and treatment of noncriminal narcotic addicts, it is hereby declared to be the purpose of this Act to authorize the limited use of suitable Public Health Service facilities at the expense of the District of Columbia for such detention, care, and treatment.''

§ 261. Penalties for introducing prohibited articles and substances into hospitals; escaping from, or aiding and abetting escape from hospitals

(a) Any person not authorized by law or by the Surgeon General who introduces or attempts to introduce into or upon the grounds of any hospital of the Service at which addicts or other persons with drug abuse and drug dependence problems are treated and cared for, any habit-forming narcotic drug or substance controlled under the Controlled Substances Act [21 U.S.C. 801 et seq.], weapon, or any other contraband article or thing, or any contraband letter or message intended to be received by an inmate thereof, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not more than ten years.

(b) It shall be unlawful for any person properly committed thereto to escape or attempt to escape from a hospital of the Service at which addicts or other persons with drug abuse and drug dependence problems are treated and cared for, and any such person upon apprehension and conviction in a United States court shall be punished by imprisonment for not more than five years, such sentence to begin upon the expiration of the sentence for which such person was originally confined.

(c) Any person who procures the escape of any person admitted to a hospital of the Service at which addicts or other persons with drug abuse and drug dependence problems are treated and cared for, or who advises, connives at, aids, or assists in such escape, or who conceals any such inmate after such escape, shall be punished upon conviction in a United States court by imprisonment in the penitentiary for not more than three years.

(July 1, 1944, ch. 373, title III, §346, formerly §345, 58 Stat. 701; renumbered §346, May 8, 1954, ch. 195, §2, 68 Stat. 79; amended Oct. 27, 1970, Pub. L. 91–513, title I, §2(a)(2)(A), (5), 84 Stat. 1240.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsec. (a), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Foods and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–513, §2(a)(2), (5), extended section to cover hospitals in which persons with drug abuse and drug dependence problems are cared for and added substances controlled under the Controlled Substances Act to the enumeration of prohibited articles.

Subsecs. (b), (c). Pub. L. 91–513, §2(a)(2), extended provisions to cover hospitals in which persons with drug abuse or drug dependence problems are treated and cared for.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and em-

ployees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 261a. Release of patients; determination by Surgeon General

For purposes of this chapter, an individual shall be deemed cured of his addiction, drug abuse, or drug dependence and rehabilitated if the Surgeon General determines that he has received the maximum benefits of treatment and care by the Service for his addiction, drug abuse, or drug dependence or if the Surgeon General determines that his further treatment and care for such purpose would be detrimental to the interests of the Service.

(July 1, 1944, ch. 373, title III, § 347, as added May 8, 1954, ch. 195, § 4, 68 Stat. 80; amended Oct. 27, 1970, Pub. L. 91–513, title I, § 2(a)(4), 84 Stat. 1240.)

CODIFICATION

Section is also set out in D.C. Code, § 24–615.

AMENDMENTS

1970—Pub. L. 91–513 inserted ‘‘, drug abuse, or drug dependence’’ after ‘‘addiction’’ in two places.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

PART F—LICENSING OF BIOLOGICAL PRODUCTS AND CLINICAL LABORATORIES

SUBPART 1—BIOLOGICAL PRODUCTS

§ 262. Regulation of biological products

(a) Intrastate and interstate traffic; suspension or revocation of license as affecting prior sales

No person shall sell, barter, or exchange, or offer for sale, barter, or exchange in the District of Columbia, or send, carry, or bring for sale, barter, or exchange from any State or possession into any other State or possession or into any foreign country, or from any foreign country into any State or possession, any virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product, or arsphenamine or its derivatives (or any other trivalent organic arsenic compound), applicable to the prevention, treatment, or cure of diseases or injuries of man, unless (1) such virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product has been propagated or manufactured and prepared at an establishment holding an unsuspended and unrevoked license, issued by the Secretary as hereinafter authorized, to propagate or manufacture, and prepare such virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product for sale in the District of Columbia, or for sending, bringing, or carrying from place to place aforesaid; and (2) each package of such virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product is plainly marked with the proper name of the article contained therein, the name, address, and license number of the manufacturer, and the date beyond which the contents cannot be expected beyond reasonable doubt to yield their specific results. The suspension or revocation of any license shall not prevent the sale, barter, or exchange of any virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid which has been sold and delivered by the licensee prior to such suspension or revocation, unless the owner or custodian of such virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid has been notified by the Secretary not to sell, barter, or exchange the same.

(b) Falsely labeling or marking package or container; altering label or mark

No person shall falsely label or mark any package or container of any virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid; nor alter any label or mark on any package or container of any virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid so as to falsify such label or mark.

(c) Inspection of establishment for propagation and preparation

Any officer, agent, or employee of the Department of Health and Human Services, authorized by the Secretary for the purpose, may during all reasonable hours enter and inspect any establishment for the propagation or manufacture and preparation of any virus, serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or other product aforesaid for sale, barter, or exchange in the District of Columbia, or to be sent, carried, or brought from any State or possession into any other State or possession or into any foreign country, or from any foreign country into any State or possession.

(d) Regulations governing licenses; recall of product presenting imminent hazard; violations

(1) Licenses for the maintenance of establishments for the propagation or manufacture and preparation of products described in subsection (a) of this section may be issued only upon a showing that the establishment and the products for which a license is desired meet standards, designed to insure the continued safety, purity, and potency of such products, prescribed in regulations, and licenses for new products may be issued only upon a showing that they meet such standards. All such licenses shall be

issued, suspended, and revoked as prescribed by regulations and all licenses issued for the maintenance of establishments for the propagation or manufacture and preparation, in any foreign country, of any such products for sale, barter, or exchange in any State or possession shall be issued upon condition that the licensees will permit the inspection of their establishments in accordance with subsection (c) of this section.

(2)(A) Upon a determination that a batch, lot, or other quantity of a product licensed under this section presents an imminent or substantial hazard to the public health, the Secretary shall issue an order immediately ordering the recall of such batch, lot, or other quantity of such product. An order under this paragraph shall be issued in accordance with section 554 of title 5.

(B) Any violation of subparagraph (A) shall subject the violator to a civil penalty of up to $100,000 per day of violation. The amount of a civil penalty under this subparagraph shall, effective December 1 of each year beginning 1 year after the effective date of this subparagraph, be increased by the percent change in the Consumer Price Index for the base quarter of such year over the Consumer Price Index for the base quarter of the preceding year, adjusted to the nearest ⅒ of 1 percent. For purposes of this subparagraph, the term ''base quarter'', as used with respect to a year, means the calendar quarter ending on September 30 of such year and the price index for a base quarter is the arithmetical mean of such index for the 3 months comprising such quarter.

(e) Interference with officers

No person shall interfere with any officer, agent, or employee of the Service in the performance of any duty imposed upon him by this section or by regulations made by authority thereof.

(f) Penalties for offenses

Any person who shall violate, or aid or abet in violating, any of the provisions of this section shall be punished upon conviction by a fine not exceeding $500 or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court.

(g) Construction with other laws

Nothing contained in this chapter shall be construed as in any way affecting, modifying, repealing, or superseding the provisions of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.].

(h) Exportation of partially processed biological products

(1)(A) A partially processed biological product which is not in a form applicable to the prevention, treatment, or cure of diseases or injuries of man, which is not intended for sale in the United States, and which is intended for further manufacture into final dosage form outside the United States in a country listed under section 802(b)(A)[1] of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 382(b)(4)(A)] may, upon approval of an application meeting the requirements of subparagraph (B), be exported to a country listed under section 802(b)(4) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 382(b)(4)]. The Secretary may not approve an application to export such a product unless the Secretary determines that the product is manufactured, processed, packaged, and held in conformity with current good manufacturing practice and the outside of the shipping package is labeled with the following statement: ''This product may be sold or offered for sale only in the following countries: '', the blank space being filled with a list of the countries to which export of the drug is authorized.

(B) An application for the export of a partially processed biological product shall—

(i) describe the partially processed biological product to be exported,

(ii) list each country to which the product is to be exported,

(iii) contain a certification by the applicant that the product will not be exported to a country not listed under clause (ii),

(iv) identify the establishments in which the product is manufactured, and

(v) contain a certification by the applicant that the final product to be developed from the partially processed product is approved in the country to which it is to be exported or approval of the final product is being sought in such country.

(2) A product described in paragraph (1) is not subject to licensure under this section.

(3) If the Secretary determines that prohibiting the export of a product described in paragraph (1) is necessary for protection of the public health in the United States or the country to which it is to be exported, the Secretary may not approve an application under paragraph (1) for the export of such product.

(July 1, 1944, ch. 373, title III, §351, 58 Stat. 702; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 2, 1958, Pub. L. 85–881, §2, 72 Stat. 1704; Oct. 30, 1970, Pub. L. 91–515, title II, §291, 84 Stat. 1308; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695; Nov. 14, 1986, Pub. L. 99–660, title I, §105(a), title III, §315, 100 Stat. 3751, 3783; June 16, 1992, Pub. L. 102–300, §6(b)(1), 106 Stat. 240.)

REFERENCES IN TEXT

The effective date of this subparagraph, referred to in subsec. (d)(2)(B), is the effective date of section 315 of Pub. L. 99–660 which added subsec. (d)(2). See Effective Date of 1986 Amendment note set out below.

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (g), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–300, which directed substitution of ''Health and Human Services'' for ''Health, Education, and Welfare'', could not be executed because the words ''Health, Education, and Welfare'' did not appear in original statutory text. Previously, references to Department and Secretary of Health and Human Services were substituted for references to Federal Security Agency and its Administrator pursuant to provisions cited in Transfer of Functions note below.

1986—Subsec. (d). Pub. L. 99–660, §315, designated existing provisions as par. (1) and added par. (2).

[1] So in original. Probably should be section ''802(b)(4)(A)''.

Subsec. (h). Pub. L. 99–660, § 105(a), added subsec. (h).

1970—Subsecs. (a) to (c). Pub. L. 91–515 inserted ''vaccine, blood, blood component or derivative, allergenic product,'' after ''antitoxin'' wherever appearing.

1958—Subsec. (d). Pub. L. 85–881 struck out ''made jointly by the Surgeon General, the Surgeon General of the Army, and the Surgeon General of the Navy, and approved by the Secretary'' after ''regulations'' in first sentence.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 105(b) of Pub. L. 99–660 provided that: ''Paragraph (1) of section 351(h) of the Public Health Service Act [subsec. (h)(1) of this section] as added by subsection (a) shall take effect upon the expiration of 90 days after the date of the enactment of this Act [Nov. 14, 1986].''

Amendment by section 315 of Pub. L. 99–660 effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

References to Secretary and Department of Health, Education, and Welfare substituted for references to Federal Security Administrator and Federal Security Agency, respectively, pursuant to Reorg. Plan No. 1 of 1953, § 5, set out as a note under section 3501 of this title, which transferred all functions of Federal Security Administrator to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency to Department of Health, Education, and Welfare. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

CROSS REFERENCES

Regulation of biological products for use in treatment of domestic animals, see sections 151 to 159 of Title 21, Food and Drugs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 236, 263, 300aa–22, 300aa–23, 1396r–8 of this title; title 21 sections 321, 353, 360aa, 360bb, 360cc, 360ee, 379g, 382, 392; title 26 section 28; title 35 section 156.

§ 263. Preparation of biological products by Service

(a) The Service may prepare for its own use any product described in section 262 of this title and any product necessary to carrying out any of the purposes of section 241 of this title.

(b) The Service may prepare any product described in section 262 of this title for the use of other Federal departments or agencies, and public or private agencies and individuals engaged in work in the field of medicine when such product is not available from establishments licensed under such section.

(July 1, 1944, ch. 373, title III, § 352, 58 Stat. 703.)

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 201 of this title.

SUBPART 2—CLINICAL LABORATORIES

§ 263a. Certification of laboratories

(a) "Laboratory" or "clinical laboratory" defined

As used in this section, the term ''laboratory'' or ''clinical laboratory'' means a facility for the biological, microbiological, serological, chemical, immuno-hematological, hematological, biophysical, cytological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(b) Certificate requirement

No person may solicit or accept materials derived from the human body for laboratory examination or other procedure unless there is in effect for the laboratory a certificate issued by the Secretary under this section applicable to the category of examinations or procedures which includes such examination or procedure.

(c) Issuance and renewal of certificates

(1) In general

The Secretary may issue or renew a certificate for a laboratory only if the laboratory meets the requirements of subsection (d) of this section.

(2) Term

A certificate issued under this section shall be valid for a period of 2 years or such shorter period as the Secretary may establish.

(d) Requirements for certificates

(1) In general

A laboratory may be issued a certificate or have its certificate renewed if—

(A) the laboratory submits (or if the laboratory is accredited under subsection (e) of this section, the accreditation body which accredited the laboratory submits), an application—

(i) in such form and manner as the Secretary shall prescribe,

(ii) that describes the characteristics of the laboratory examinations and other procedures performed by the laboratory including—

(I) the number and types of laboratory examinations and other procedures performed,

(II) the methodologies for laboratory examinations and other procedures employed, and

(III) the qualifications (educational background, training, and experience) of

the personnel directing and supervising the laboratory and performing the laboratory examinations and other procedures, and

(iii) that contains such other information as the Secretary may require to determine compliance with this section, and

the laboratory agrees to provide to the Secretary (or if the laboratory is accredited, to the accreditation body which accredited it) a description of any change in the information submitted under clause (ii) not later than 6 months after the change was put into effect,

(B) the laboratory provides the Secretary—

(i) with satisfactory assurances that the laboratory will be operated in accordance with standards issued by the Secretary under subsection (f) of this section, or

(ii) with proof of accreditation under subsection (e) of this section,

(C) the laboratory agrees to permit inspections by the Secretary under subsection (g) of this section,

(D) the laboratory agrees to make records available and submit reports to the Secretary as the Secretary may reasonably require, and

(E) the laboratory agrees to treat proficiency testing samples in the same manner as it treats materials derived from the human body referred to it for laboratory examinations or other procedures in the ordinary course of business.

(2) Requirements for certificates of waiver

(A) In general

A laboratory which only performs laboratory examinations and procedures described in paragraph (3) shall be issued a certificate of waiver or have its certificate of waiver renewed if—

(i) the laboratory submits an application—

(I) in such form and manner as the Secretary shall prescribe,

(II) that describes the characteristics of the laboratory examinations and other procedures performed by the laboratory, including the number and types of laboratory examinations and other procedures performed, the methodologies for laboratory examinations and other procedures employed, and the qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory examinations and other procedures, and

(III) that contains such other information as the Secretary may reasonably require to determine compliance with this section, and

(ii) the laboratory agrees to make records available and submit reports to the Secretary as the Secretary may require.

(B) Changes

If a laboratory makes changes in the examinations and other procedures performed by it only with respect to examinations and procedures which are described in paragraph (3), the laboratory shall report such changes to the Secretary not later than 6 months after the change has been put into effect. If a laboratory proposes to make changes in the examinations and procedures performed by it such that the laboratory will perform an examination or procedure not described in paragraph (3), the laboratory shall report such change to the Secretary before the change takes effect.

(C) Effect

Subsections (f) and (g) of this section shall not apply to a laboratory to which has been issued a certificate of waiver.

(3) Examinations and procedures

The examinations and procedures identified in paragraph (2) are simple laboratory examinations and procedures which, as determined by the Secretary, have an insignificant risk of an erroneous result, including those which—

(A) have been approved by the Food and Drug Administration for home use,

(B) employ methodologies that are so simple and accurate as to render the likelihood of erroneous results negligible, or

(C) the Secretary has determined pose no reasonable risk of harm to the patient if performed incorrectly.

(4) "Certificate" defined

As used in this section, the term ''certificate'' includes a certificate of waiver issued under paragraph (2).

(e) Accreditation

(1) In general

A laboratory may be accredited for purposes of obtaining a certificate if the laboratory—

(A) meets the standards of an approved accreditation body, and

(B) authorizes the accreditation body to submit to the Secretary (or such State agency as the Secretary may designate) such records or other information as the Secretary may require.

(2) Approval of accreditation bodies

(A) In general

The Secretary may approve a private nonprofit organization to be an accreditation body for the accreditation of laboratories if—

(i) using inspectors qualified to evaluate the methodologies used by the laboratories in performing laboratory examinations and other procedures, the accreditation body agrees to inspect a laboratory for purposes of accreditation with such frequency as determined by[1] Secretary,

(ii) the standards applied by the body in determining whether or not to accredit a laboratory are equal to or more stringent than the standards issued by the Secretary under subsection (f) of this section,

(iii) there is adequate provision for assuring that the standards of the accredita-

[1] So in original. Probably should be ''by the''.

tion body continue to be met by the laboratory,

(iv) in the case of any laboratory accredited by the body which has had its accreditation denied, suspended, withdrawn, or revoked or which has had any other action taken against it by the accrediting body, the accrediting body agrees to submit to the Secretary the name of such laboratory within 30 days of the action taken,

(v) the accreditation body agrees to notify the Secretary at least 30 days before it changes its standards, and

(vi) if the accreditation body has its approval withdrawn by the Secretary, the body agrees to notify each laboratory accredited by the body of the withdrawal within 10 days of the withdrawal.

(B) Criteria and procedures

The Secretary shall promulgate criteria and procedures for approving an accreditation body and for withdrawing such approval if the Secretary determines that the accreditation body does not meet the requirements of subparagraph (A).

(C) Effect of withdrawal of approval

If the Secretary withdraws the approval of an accreditation body under subparagraph (B), the certificate of any laboratory accredited by the body shall continue in effect for 60 days after the laboratory receives notification of the withdrawal of the approval, except that the Secretary may extend such period for a laboratory if it determines that the laboratory submitted an application for accreditation or a certificate in a timely manner after receipt of the notification of the withdrawal of approval. If an accreditation body withdraws or revokes the accreditation of a laboratory, the certificate of the laboratory shall continue in effect—

(i) for 45 days after the laboratory receives notice of the withdrawal or revocation of the accreditation, or

(ii) until the effective date of any action taken by the Secretary under subsection (i) of this section.

(D) Evaluations

The Secretary shall evaluate annually the performance of each approved accreditation body by—

(i) inspecting under subsection (g) of this section a sufficient number of the laboratories accredited by such body to allow a reasonable estimate of the performance of such body, and

(ii) such other means as the Secretary determines appropriate.

(3) Report

The Secretary shall annually prepare and submit, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report that describes the results of the evaluation conducted under paragraph (2)(D).

(f) Standards

(1) In general

The Secretary shall issue standards to assure consistent performance by laboratories issued a certificate under this section of valid and reliable laboratory examinations and other procedures. Such standards shall require each laboratory issued a certificate under this section—

(A) to maintain a quality assurance and quality control program adequate and appropriate for the validity and reliability of the laboratory examinations and other procedures of the laboratory and to meet requirements relating to the proper collection, transportation, and storage of specimens and the reporting of results,

(B) to maintain records, equipment, and facilities necessary for the proper and effective operation of the laboratory,

(C) in performing and carrying out its laboratory examinations and other procedures, to use only personnel meeting such qualifications as the Secretary may establish for the direction, supervision, and performance of examinations and procedures within the laboratory, which qualifications shall take into consideration competency, training, experience, job performance, and education and which qualifications shall, as appropriate, be different on the basis of the type of examinations and procedures being performed by the laboratory and the risks and consequences of erroneous results associated with such examinations and procedures,

(D) to qualify under a proficiency testing program meeting the standards established by the Secretary under paragraph (3), and

(E) to meet such other requirements as the Secretary determines necessary to assure consistent performance by such laboratories of accurate and reliable laboratory examinations and procedures.

(2) Considerations

In developing the standards to be issued under paragraph (1), the Secretary shall, within the flexibility provided under subparagraphs (A) through (E) of paragraph (1), take into consideration—

(A) the examinations and procedures performed and the methodologies employed,

(B) the degree of independent judgment involved,

(C) the amount of interpretation involved,

(D) the difficulty of the calculations involved,

(E) the calibration and quality control requirements of the instruments used,

(F) the type of training required to operate the instruments used in the methodology, and

(G) such other factors as the Secretary considers relevant.

(3) Proficiency testing program

(A) In general

The Secretary shall establish standards for the proficiency testing programs for laboratories issued a certificate under this section which are conducted by the Secretary, conducted by an organization approved under subparagraph (C), or conducted by an approved accrediting body. The standards shall require that a laboratory issued a certificate

under this section be tested for each examination and procedure conducted within a category of examinations or procedures for which it has received a certificate, except for examinations and procedures for which the Secretary has determined that a proficiency test cannot reasonably be developed. The testing shall be conducted on a quarterly basis, except where the Secretary determines for technical and scientific reasons that a particular examination or procedure may be tested less frequently (but not less often than twice per year).

(B) Criteria

The standards established under subparagraph (A) shall include uniform criteria for acceptable performance under a proficiency testing program, based on the available technology and the clinical relevance of the laboratory examination or other procedure subject to such program. The criteria shall be established for all examinations and procedures and shall be uniform for each examination and procedure. The standards shall also include a system for grading proficiency testing performance to determine whether a laboratory has performed acceptably for a particular quarter and acceptably for a particular examination or procedure or category of examination or procedure over a period of successive quarters.

(C) Approved proficiency testing programs

For the purpose of administering proficiency testing programs which meet the standards established under subparagraph (A), the Secretary shall approve a proficiency testing program offered by a private nonprofit organization or a State if the program meets the standards established under subparagraph (A) and the organization or State provides technical assistance to laboratories seeking to qualify under the program. The Secretary shall evaluate each program approved under this subparagraph annually to determine if the program continues to meet the standards established under subparagraph (A) and shall withdraw the approval of any program that no longer meets such standards.

(D) Onsite testing

The Secretary shall perform, or shall direct a program approved under subparagraph (C) to perform, onsite proficiency testing to assure compliance with the requirements of subsection (d)(5) of this section. The Secretary shall perform, on an onsite or other basis, proficiency testing to evaluate the performance of a proficiency testing program approved under subparagraph (C) and to assure quality performance by a laboratory.

(E) Training, technical assistance, and enhanced proficiency testing

The Secretary may, in lieu of or in addition to actions authorized under subsection (h), (i), or (j) of this section, require any laboratory which fails to perform acceptably on an individual examination and procedure or a category of examination and procedures—

(i) to undertake training and to obtain the necessary technical assistance to meet the requirements of the proficency[2] testing program,

(ii) to enroll in a program of enhanced proficiency testing, or

(iii) to undertake any combination of the training, technical assistance, or testing described in clauses (i) and (ii).

(F) Testing results

The Secretary shall establish a system to make the results of the proficiency testing programs subject to the standards established by the Secretary under subparagraph (A) available, on a reasonable basis, upon request of any person. The Secretary shall include with results made available under this subparagraph such explanatory information as may be appropriate to assist in the interpretation of such results.

(4) National standards for quality assurance in cytology services

(A) Establishment

The Secretary shall establish national standards for quality assurance in cytology services designed to assure consistent performance by laboratories of valid and reliable cytological services.

(B) Standards

The standards established under subparagraph (A) shall include—

(i) the maximum number of cytology slides that any individual may screen in a 24-hour period,

(ii) requirements that a clinical laboratory maintain a record of (I) the number of cytology slides screened during each 24-hour period by each individual who examines cytology slides for the laboratory, and (II) the number of hours devoted during each 24-hour period to screening cytology slides by such individual,

(iii) criteria for requiring rescreening of cytological preparations, such as (I) random rescreening of cytology specimens determined to be in the benign category, (II) focused rescreening of such preparations in high risk groups, and (III) for each abnormal cytological result, rescreening of all prior cytological specimens for the patient, if available,

(iv) periodic confirmation and evaluation of the proficiency of individuals involved in screening or interpreting cytological preparations, including announced and unannounced on-site proficiency testing of such individuals, with such testing to take place, to the extent practicable, under normal working conditions,

(v) procedures for detecting inadequately prepared slides, for assuring that no cytological diagnosis is rendered on such slides, and for notifying referring physicians of such slides,

(vi) requirements that all cytological screening be done on the premises of a laboratory that is certified under this section,

[2] So in original. Probably should be ''proficiency''.

(vii) requirements for the retention of cytology slides by laboratories for such periods of time as the Secretary considers appropriate, and

(viii) standards requiring periodic inspection of cytology services by persons capable of evaluating the quality of cytology services.

(g) Inspections

(1) In general

The Secretary may, on an announced or unannounced basis, enter and inspect, during regular hours of operation, laboratories which have been issued a certificate under this section. In conducting such inspections the Secretary shall have access to all facilities, equipment, materials, records, and information that the Secretary determines have a bearing on whether the laboratory is being operated in accordance with this section. As part of such an inspection the Secretary may copy any such material or require to it[3] be submitted to the Secretary. An inspection under this paragraph may be made only upon presenting identification to the owner, operator, or agent in charge of the laboratory being inspected.

(2) Compliance with requirements and standards

The Secretary shall conduct inspections of laboratories under paragraph (1) to determine their compliance with the requirements of subsection (d) of this section and the standards issued under subsection (f) of this section. Inspections of laboratories not accredited under subsection (e) of this section shall be conducted on a biennial basis or with such other frequency as the Secretary determines to be necessary to assure compliance with such requirements and standards. Inspections of laboratories accredited under subsection (e) of this section shall be conducted on such basis as the Secretary determines is necessary to assure compliance with such requirements and standards.

(h) Intermediate sanctions

(1) In general

If the Secretary determines that a laboratory which has been issued a certificate under this section no longer substantially meets the requirements for the issuance of a certificate, the Secretary may impose intermediate sanctions in lieu of the actions authorized by subsection (i) of this section.

(2) Types of sanctions

The intermediate sanctions which may be imposed under paragraph (1) shall consist of—

(A) directed plans of correction,

(B) civil money penalties in an amount not to exceed $10,000 for each violation listed in subsection (i)(1) of this section or for each day of substantial noncompliance with the requirements of this section,

(C) payment for the costs of onsite monitoring, or

(D) any combination of the actions described in subparagraphs (A), (B), and (C).

(3) Procedures

The Secretary shall develop and implement procedures with respect to when and how each of the intermediate sanctions is to be imposed under paragraph (1). Such procedures shall provide for notice to the laboratory and a reasonable opportunity to respond to the proposed sanction and appropriate procedures for appealing determinations relating to the imposition of intermediate sanctions[4]

(i) Suspension, revocation, and limitation

(1) In general

Except as provided in paragraph (2), the certificate of a laboratory issued under this section may be suspended, revoked, or limited if the Secretary finds, after reasonable notice and opportunity for hearing to the owner or operator of the laboratory, that such owner or operator or any employee of the laboratory—

(A) has been guilty of misrepresentation in obtaining the certificate,

(B) has performed or represented the laboratory as entitled to perform a laboratory examination or other procedure which is not within a category of laboratory examinations or other procedures authorized in the certificate,

(C) has failed to comply with the requirements of subsection (d) of this section or the standards prescribed by the Secretary under subsection (f) of this section,

(D) has failed to comply with reasonable requests of the Secretary for—

(i) any information or materials, or

(ii) work on materials,

that the Secretary concludes is necessary to determine the laboratory's continued eligibility for its certificate or continued compliance with the Secretary's standards under subsection (f) of this section,

(E) has refused a reasonable request of the Secretary, or any Federal officer or employee duly designated by the Secretary, for permission to inspect the laboratory and its operations and pertinent records during the hours the laboratory is in operation,

(F) has violated or aided and abetted in the violation of any provisions of this section or of any regulation promulgated thereunder, or

(G) has not complied with an intermediate sanction imposed under subsection (h) of this section.

(2) Action before a hearing

If the Secretary determines that—

(A) the failure of a laboratory to comply with the standards of the Secretary under subsection (f) of this section presents an imminent and serious risk to human health, or

(B) a laboratory has engaged in an action described in subparagraph (D) or (E) of paragraph (1),

the Secretary may suspend or limit the certificate of the laboratory before holding a hearing under paragraph (1) regarding such failure or refusal. The opportunity for a hear-

[3] So in original. Probably should be ''require it to''.

[4] So in original. Probably should be followed by a period.

ing shall be provided no later than 60 days from the effective date of the suspension or limitation. A suspension or limitation under this paragraph shall stay in effect until the decision of the Secretary made after the hearing under paragraph (1).

(3) Ineligibility to own or operate laboratories after revocation

No person who has owned or operated a laboratory which has had its certificate revoked may, within 2 years of the revocation of the certificate, own or operate a laboratory for which a certificate has been issued under this section. The certificate of a laboratory which has been excluded from participation under the medicare program under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] because of actions relating to the quality of the laboratory shall be suspended for the period the laboratory is so excluded.

(4) Improper referrals

Any laboratory that the Secretary determines intentionally refers its proficiency testing samples to another laboratory for analysis shall have its certificate revoked for at least one year and shall be subject to appropriate fines and penalties as provided for in subsection (h) of this section.

(j) Injunctions

Whenever the Secretary has reason to believe that continuation of any activity by a laboratory would constitute a significant hazard to the public health the Secretary may bring suit in the district court of the United States for the district in which such laboratory is situated to enjoin continuation of such activity. Upon proper showing, a temporary injunction or restraining order against continuation of such activity pending issuance of a final order under this subsection shall be granted without bond by such court.

(k) Judicial review

(1) Petition

Any laboratory which has had an intermediate sanction imposed under subsection (h) of this section or has had its certificate suspended, revoked, or limited under subsection (i) of this section may, at any time within 60 days after the date the action of the Secretary under subsection (i) or (h) of this section becomes final, file a petition with the United States court of appeals for the circuit wherein the laboratory has its principal place of business for judicial review of such action. As soon as practicable after receipt of the petition, the clerk of the court shall transmit a copy of the petition to the Secretary or other officer designated by the Secretary for that purpose. As soon as practicable after receipt of the copy, the Secretary shall file in the court the record on which the action of the Secretary is based, as provided in section 2112 of title 28.

(2) Additional evidence

If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order such additional evidence (and evidence in rebuttal of such additional evidence) to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify the findings of the Secretary as to the facts, or make new findings, by reason of the additional evidence so taken, and the Secretary shall file such modified or new findings, and the recommendations of the Secretary, if any, for the modification or setting aside of his original action, with the return of such additional evidence.

(3) Judgment of court

Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to affirm the action, or to set it aside in whole or in part, temporarily or permanently. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) Finality of judgment

The judgment of the court affirming or setting aside, in whole or in part, any such action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(*l*) Sanctions

Any person who intentionally violates any requirement of this section or any regulation promulgated thereunder shall be imprisoned for not more than one year or fined under title 18, or both, except that if the conviction is for a second or subsequent violation of such a requirement such person shall be imprisoned for not more than 3 years or fined in accordance with title 18, or both.

(m) Fees

(1) Certificate fees

The Secretary shall require payment of fees for the issuance and renewal of certificates, except that the Secretary shall only require a nominal fee for the issuance and renewal of certificates of waiver.

(2) Additional fees

The Secretary shall require the payment of fees for inspections of laboratories which are not accredited and for the cost of performing proficiency testing on laboratories which do not participate in proficiency testing programs approved under subsection (f)(3)(C) of this section.

(3) Criteria

(A) Fees under paragraph (1)

Fees imposed under paragraph (1) shall be sufficient to cover the general costs of administering this section, including evaluating and monitoring proficiency testing programs approved under subsection (f) of this section and accrediting bodies and implementing and monitoring compliance with the requirements of this section.

(B) Fees under paragraph (2)

Fees imposed under paragraph (2) shall be sufficient to cover the cost of the Secretary in carrying out the inspections and proficiency testing described in paragraph (2).

(C) Fees imposed under paragraphs (1) and (2)

Fees imposed under paragraphs (1) and (2) shall vary by group or classification of laboratory, based on such considerations as the Secretary determines are relevant, which may include the dollar volume and scope of the testing being performed by the laboratories.

(n) Information

On April 1, 1990 and annually thereafter, the Secretary shall compile and make available to physicians and the general public information, based on the previous calendar year, which the Secretary determines is useful in evaluating the performance of a laboratory, including—

(1) a list of laboratories which have been convicted under Federal or State laws relating to fraud and abuse, false billings, or kickbacks,

(2) a list of laboratories—

(A) which have had their certificates revoked, suspended, or limited under subsection (i) of this section, or

(B) which have been the subject of a sanction under subsection (*l*) of this section,

together with a statement of the reasons for the revocation, suspension, limitation, or sanction,

(3) a list of laboratories subject to intermediate sanctions under subsection (h) of this section together with a statement of the reasons for the sanctions,

(4) a list of laboratories whose accreditation has been withdrawn or revoked together with a statement of the reasons for the withdrawal or revocation,

(5) a list of laboratories against which the Secretary has taken action under subsection (j) of this section together with a statement of the reasons for such action, and

(6) a list of laboratories which have been excluded from participation under title XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.].

The information to be compiled under paragraphs (1) through (6) shall be information for the calendar year preceding the date the information is to be made available to the public and shall be accompanied by such explanatory information as may be appropriate to assist in the interpretation of the information compiled under such paragraphs.

(*o*) Delegation

In carrying out this section, the Secretary may, pursuant to agreement, use the services or facilities of any Federal or State or local public agency or nonprofit private organization, and may pay therefor in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

(p) State laws

(1) Except as provided in paragraph (2), nothing in this section shall be construed as affecting the power of any State to enact and enforce laws relating to the matters covered by this section to the extent that such laws are not inconsistent with this section or with the regulations issued under this section.

(2) If a State enacts laws relating to matters covered by this section which provide for requirements equal to or more stringent than the requirements of this section or than the regulations issued under this section, the Secretary may exempt clinical laboratories in that State from compliance with this section.

(q) Consultations

In carrying out this section, the Secretary shall consult with appropriate private organizations and public agencies.

(July 1, 1944, ch. 373, title III, § 353, as added Dec. 5, 1967, Pub. L. 90–174, § 5(a), 81 Stat. 536; amended Oct. 31, 1988, Pub. L. 100–578, § 2, 102 Stat. 2903.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (i)(3) and (n)(6), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1988—Pub. L. 100–578 substituted ''Certification of laboratories'' for ''Licensing of laboratories'' in section catchline, and amended text generally, revising and restating as subsecs. (a) to (q) provisions of former subsecs. (a) to (*l*).

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1988 AMENDMENT; EXCEPTIONS; CONTINUING APPLICABILITY

Section 3 of Pub. L. 100–578 provided that: ''Subsections (g)(1), (h), (i), (j), (k), (*l*), and (m) of section 353 of the Public Health Service Act [this section], as amended by section 101 [probably means section 2 of Pub. L. 100–578], shall take effect January 1, 1989, except that any reference in such subsections to the standards established under subsection (f) shall be considered a reference to the standards established under subsection (d) of such section 353, as in effect on December 31, 1988. During the period beginning January 1, 1989, and ending December 31, 1989, subsections (a) through (d) and subsection (i) through (*l*) of such section 353 as in effect on December 31, 1988, shall continue to apply to clinical laboratories. The remaining subsections of such section 353, as so amended, shall take effect January 1, 1990, except that subsections (f)(1)(C) and (g)(2) shall take effect July 1, 1991, with respect to laboratories which were not subject to the requirements of such section 353 as in effect on December 31, 1988.''

EFFECTIVE DATE

Section 5(b) of Pub. L. 90–174 provided that: ''The amendment made by subsection (a) [enacting this section] shall become effective on the first day of the thirteenth month after the month [December 1967] in which it is enacted, except that the Secretary of Health, Education, and Welfare may postpone such effective date for such additional period as he finds necessary, but not beyond the first day of the 19th month after such

month [December 1967] in which the amendment is enacted.''

SHORT TITLE

Section 5(c) of Pub. L. 90–174 provided that: ''This section [enacting this section and provisions set out as a note under this section] may be cited as the 'Clinical Laboratories Improvement Act of 1967.' ''

STUDIES

Section 4 of Pub. L. 100–578 directed Secretary to conduct studies and submit report to Congress, not later than May 1, 1990, relating to the reliability and quality control procedures of clinical laboratory testing programs and the effect of errors in the testing procedures and results on the diagnosis and treatment of patients.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263a–2, 300aa–2, 1395x, 1395aa of this title.

§ 263a–1. Assisted reproductive technology programs

(a) In general

Effective 2 years after October 24, 1992, each assisted reproductive technology (as defined in section 263a–7[1] of this title) program shall annually report to the Secretary through the Centers for Disease Control—

(1) pregnancy success rates achieved by such program through each assisted reproductive technology, and

(2) the identity of each embryo laboratory (as defined in section 263a–7[1] of this title) used by such program and whether the laboratory is certified under section 263a–2 of this title or has applied for such certification.

(b) Pregnancy success rates

(1) In general

For purposes of subsection (a)(1) of this section, the Secretary shall, in consultation with the organizations referenced in subsection (c) of this section, define pregnancy success rates and shall make public any proposed definition in such manner as to facilitate comment from any person (including any Federal or other public agency) during its development.

(2) Definition

In developing the definition of pregnancy success rates, the Secretary shall take into account the effect on success rates of age, diagnosis, and other significant factors and shall include in such rates—

(A) the basic live birth rate calculated for each assisted reproductive technology performed by an assisted reproductive technology program by dividing the number of pregnancies which result in live births by the number of ovarian stimulation procedures attempted by such program, and

(B) the live birth rate per successful oocyte retrieval procedure calculated for each assisted reproductive technology performed by an assisted reproductive technology program by dividing the number of pregnancies which result in live births by the number of successful oocyte retrieval procedures performed by such program.

[1] See References in Text note below.

(c) Consultation

In developing the definition under subsection (b) of this section, the Secretary shall consult with appropriate consumer and professional organizations with expertise in using, providing, and evaluating professional services and embryo laboratories associated with assisted reproductive technologies.

(Pub. L. 102–493, § 2, Oct. 24, 1992, 106 Stat. 3146.)

REFERENCES IN TEXT

Section 263a–7 of this title, referred to in subsec. (a), was in the original ''section 7'' meaning section 7 of Pub. L. 102–493, which was translated as reading section 8 to reflect the probable intent of Congress, because definitions are contained in section 8 instead of section 7.

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE

Section 9 of Pub. L. 102–493 provided that: ''This Act [enacting this section, sections 263a–2 to 263a–7 of this title, and provisions set out as a note under section 201 of this title] shall take effect upon the expiration of 2 years after the date of the enactment of this Act [Oct. 24, 1992].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 263a–5, 263a–6, 263a–7 of this title.

§ 263a–2. Certification of embryo laboratories

(a) In general

(1) Development

Not later than 2 years after October 24, 1992, the Secretary, through the Centers for Disease Control, shall develop a model program for the certification of embryo laboratories (referred to in this section as a ''certification program'') to be carried out by the States.

(2) Consultation

In developing the certification program under paragraph (1), the Secretary shall consult with appropriate consumer and professional organizations with expertise in using, providing, and evaluating professional services and embryo laboratories associated with the assisted reproductive technology programs.

(b) Distribution

The Secretary shall distribute a description of the certification program to—

(1) the Governor of each State,

(2) the presiding officers of each State legislature,

(3) the public health official of each State, and

(4) the official responsible in each State for the operation of the State's contract with the Secretary under section 1395aa of this title,

and shall encourage such officials to assist in the State adopting such program.

(c) Requirements

The certification program shall include the following requirements:

(1) Administration

The certification program shall be administered by the State and shall provide for the inspection and certification of embryo laboratories in the State by the State or by approved accreditation organizations.

(2) Application requirements

The certification program shall provide for the submission of an application to a State by an embryo laboratory for certification, in such form as may be specified by the State. Such an application shall include—

(A) assurances satisfactory to the State that the embryo laboratory will be operated in accordance with the standards under subsection (d) of this section,

(B) a report to the State identifying the assisted reproductive technology programs with which the laboratory is associated, and

(C) such other information as the State finds necessary.

An embryo laboratory which meets the requirements of section 263a of this title shall, for the purposes of subparagraph (A) be considered in compliance with the standards referred to in such subparagraph which are the same as the standards in effect under section 263a of this title.

(d) Standards

The certification program shall include the following standards developed by the Secretary:

(1) A standard to assure consistent performance of procedures by each embryo laboratory certified under the certification program or by an approved accreditation organization in a State which has not adopted the certification program.

(2) A standard for a quality assurance and a quality control program to assure valid, reliable, and reproduceable[1] procedures in the laboratory.

(3) A standard for the maintenance of records (on a program by program basis) on laboratory tests and procedures performed, including the scientific basis of, and the methodology used for, the tests, procedures, and preparation of any standards or controls, criteria for acceptable and unacceptable outcomes, criteria for sample rejection, and procedures for safe sample disposal.

(4) A standard for the maintenance of written records on personnel and facilities necessary for proper and effective operation of the laboratory, schedules of preventive maintenance, function verification for equipment, and the release of such records to the State upon demand.

(5) A standard for the use of such personnel who meet such qualifications as the Secretary may develop.

(e) Certification under State programs

A State may qualify to adopt the certification program if the State has submitted an application to the Secretary to adopt such program and the Secretary has approved the application. Such an application shall include—

(1) assurances by the State satisfactory to the Secretary that the certification program within the State meets the requirements of this section,

(2) an agreement to make such reports as the Secretary may require, and

(3) information about any proposed use of accreditation organizations under subsection (g)[2] of this section.

(f) Use of accreditation organizations

A State which has adopted the certification program may use accreditation organizations approved under section 263a–3 of this title to inspect and certify embryo laboratories.

(g) Inspections

(1) In general

A State which qualifies to adopt the certification program within the State shall conduct inspections in accordance with paragraph (2) to determine if laboratories in the State meet the requirements of such program. Such inspections shall be carried out by the State or by accreditation organizations used by the State under subsection (g)[2] of this section.

(2) Requirements

Inspections carried out under paragraph (1) shall—

(A) be periodic and unannounced, or

(B) be announced in such circumstances as the Secretary determines will not diminish the likelihood of discovering deficiencies in the operations of a laboratory.

Before making a determination under subparagraph (B), the Secretary shall make public, in such manner as to facilitate comment from any person (including any Federal or other public agency), a proposal indicating the circumstances under which announced inspections would be permitted.

(3) Results

The specific findings, including deficiencies, identified in an inspection carried out under paragraph (1) and any subsequent corrections to those deficiencies shall be announced and made available to the public upon request beginning no later than 60 days after the date of the inspection.

(h) Validation inspections

(1) In general

The Secretary may enter and inspect, during regular hours of operation, embryo laboratories—

(A) which have been certified by a State under the certification program, or

(B) which have been certified by an accreditation organization approved by the Secretary under section 263a–3 of this title,

for the purpose of determining whether the laboratory is being operated in accordance with the standards in subsection (d) of this section.

---

[1] So in original. Probably should be ''reproducible''.

[2] So in original. Probably should be subsection ''(f)''.

(2) Access to facilities and records

In conducting an inspection of an embryo laboratory under paragraph (1), the Secretary shall have access to all facilities, equipment, materials, records, and information which the Secretary determines is necessary to determine if such laboratory is being operated in accordance with the standards in subsection (d) of this section. As part of such an inspection, the Secretary may copy any material, record, or information inspected or require it to be submitted to the Secretary. Such an inspection may be made only upon the presentation of identification to the owner, operator, or agent in charge of the laboratory being inspected.

(3) Failure to comply

If the Secretary determines as a result of an inspection under paragraph (1) that the embryo laboratory is not in compliance with the standards in subsection (d) of this section, the Secretary shall—

(A) notify the State in which the laboratory is located and, if appropriate, the accreditation organization which certified the laboratory,

(B) make available to the public the results of the inspection,

(C) conduct additional inspections of other embryo laboratories under paragraph (1) to determine if—

(i) such State in carrying out the certification program is reliably identifying the deficiencies of such laboratory, or

(ii) the accreditation organization which certified such laboratories is reliably identifying such deficencies,[3] and

(D) if the Secretary determines—

(i) that such State in carrying out the certification program has not met the requirements applicable to such program, or

(ii) the accreditation organization which certified such laboratory has not met the requirements of section 263a–3 of this title,

the Secretary may revoke the approval of the State certification program or revoke the approval of such accreditation organization.

(i) Limitation

(1) Secretary

In developing the certification program, the Secretary may not establish any regulation, standard, or requirement which has the effect of exercising supervision or control over the practice of medicine in assisted reproductive technology programs.

(2) State

In adopting the certification program, a State may not establish any regulation, standard, or requirement which has the effect of exercising supervision or control over the practice of medicine in assisted reproductive technology programs.

(j) Term

The term of a certification issued by a State or an accreditation organization in a State shall be prescribed by the Secretary in the certification program and shall be valid for a period of time to be defined by the Secretary through the public comment process described in subsection (h)(2)[4] of this section. The Secretary shall provide an application for recertification to be submitted at the time of changes in the ownership of a certified laboratory or changes in the administration of such a laboratory.

(Pub. L. 102–493, §3, Oct. 24, 1992, 106 Stat. 3146.)

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, §312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263a–1, 263a–3, 263a–4, 263a–5, 263a–6, 263a–7 of this title.

§ 263a–3. Accreditation organizations

(a) Approval of accreditation organizations

Not later than 2 years after October 24, 1992, the Secretary, through the Centers for Disease Control, shall promulgate criteria and procedures for the approval of accreditation organizations to inspect and certify embryo laboratories. The procedures shall require an application to the Secretary by an accreditation organization for approval. An accreditation organization which has received such an approval—

(1) may be used by States in the certification program under section 263a–2 of this title to inspect and certify embryo laboratories, or

(2) may certify embryo laboratories in States which have not adopted such a certification program.

(b) Criteria and procedures

The criteria and procedures promulgated under subsection (a) of this section shall include—

(1) requirements for submission of such reports and the maintenance of such records as the Secretary or a State may require, and

(2) requirements for the conduct of inspections under section 263a–2(h)[1] of this title.

(c) Evaluations

The Secretary shall evaluate annually the performance of each accreditation organization approved by the Secretary by—

(1) inspecting under section 263a–2(i)[2] of this title a sufficient number of embryo laboratories accredited by such an organization to allow a reasonable estimate of the performance of such organization, and

(2) such other means as the Secretary determines to be appropriate.

[3] So in original. Probably should be ''deficiencies,''.

[4] So in original. Probably should be subsection ''(g)(2)''.

[1] So in original. Probably should be section ''263a–2(g)''.

[2] So in original. Probably should be section ''263a–2(h)''.

(d) Transition

If the Secretary revokes approval under section 263a–2(i)(3)(D)[3] of this title of an accreditation organization after an evaluation under subsection (c) of this section, the certification of any embryo laboratory accredited by the organization shall continue in effect for 60 days after the laboratory is notified by the Secretary of the withdrawal of approval, except that the Secretary may extend the period during which the certification shall remain in effect if the Secretary determines that the laboratory submitted an application to another approved accreditation organization for certification after receipt of such notice in a timely manner.

(Pub. L. 102–493, § 4, Oct. 24, 1992, 106 Stat. 3150.)

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263a–2, 263a–5, 263a–6, 263a–7 of this title.

§ 263a–4. Certification revocation and suspension

(a) In general

A certification issued by a State or an accreditation organization for an embryo laboratory shall be revoked or suspended if the State or organization finds, on the basis of inspections and after reasonable notice and opportunity for hearing to the owner or operator of the laboratory, that the owner or operator or any employee of the laboratory—

(1) has been guilty of misrepresentation in obtaining the certification,

(2) has failed to comply with any standards under section 263a–2 of this title applicable to the certification, or

(3) has refused a request of the State or accreditation organization for permission to inspect the laboratory, its operations, and records.

(b) Effect

If the certification of an embryo laboratory is revoked or suspended, the certification of the laboratory shall continue in effect for 60 days after the laboratory receives notice of the revocation or suspension. If the certification of an embryo laboratory is revoked or suspended, the laboratory may apply for recertification after one year after the date of the revocation or suspension.

(Pub. L. 102–493, § 5, Oct. 24, 1992, 106 Stat. 3150.)

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263a–6, 263a–7 of this title.

§ 263a–5. Publication

The Secretary, through the Centers for Disease Control, shall not later than 3 years after October 24, 1992, and annually thereafter publish and distribute to the States and the public—

(1)(A)[1] pregnancy success rates reported to the Secretary under section 263a–1(a)(1) of this title and, in the case of an assisted reproductive technology program which failed to report one or more success rates as required under such section, the name of each such program and each pregnancy success rate which the program failed to report, and

(B) from information reported under section 263a–1(a)(2) of this title—

(i) the identity of each embryo laboratory in a State which has adopted the certification program under such program and whether such laboratory is certified under section 263a–2 of this title,

(ii) the identity of each embryo laboratory in a State which has not adopted such certification program and which has been certified by an accreditation organization approved by the Secretary under section 263a–3 of this title, and

(iii) in the case of an embryo laboratory which is not certified under section 263a–2 of this title or certified by an accreditation organization approved by the Secretary under section 263a–3 of this title, whether the laboratory applied for certification.

(Pub. L. 102–493, § 6, Oct. 24, 1992, 106 Stat. 3151.)

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263a–6, 263a–7 of this title.

§ 263a–6. Fees

The Secretary may require the payment of fees for the purpose of, and in an amount sufficient to cover the cost of, administering sec-

[3] So in original. Probably should be section ''263a–2(h)(3)(D)''.

[1] So in original. No par. (2) has been enacted.

tions 263a–1 to 263a–7 of this title. A State operating a program under section 263a–2 of this title may require the payment of fees for the purpose of, and in an amount sufficient to cover the costs of, administering its program.

(Pub. L. 102–493, § 7, Oct. 24, 1992, 106 Stat. 3151.)

REFERENCES IN TEXT

Sections 263a–1 to 263a–7 of this title, referred to in text, was in the original ''this Act'', meaning Pub. L. 102–493, Oct. 24, 1992, 106 Stat. 3146, known as the Fertility Clinic Success Rate and Certification Act of 1992, which enacted sections 263a–1 to 263a–7 of this title and provisions set out as notes under sections 201 and 263a–1 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 263a–7 of this title.

§ 263a–7. Definitions

For purposes of sections 263a–1 to 263a–7 of this title:

(1) Assisted reproductive technology

The term ''assisted reproductive technology'' means all treatments or procedures which include the handling of human oocytes or embryos, including in vitro fertilization, gamete intrafallopian transfer, zygote intrafallopian transfer, and such other specific technologies as the Secretary may include in this definition, after making public any proposed definition in such manner as to facilitate comment from any person (including any Federal or other public agency).

(2) Embryo laboratory

The term ''embryo laboratory'' means a facility in which human oocytes are subject to assisted reproductive technology treatment or procedures based on manipulation of oocytes or embryos which are subject to implantation.

(3) Secretary

The term ''Secretary'' means the Secretary of Health and Human Services.

(Pub. L. 102–493, § 8, Oct. 24, 1992, 106 Stat. 3151.)

REFERENCES IN TEXT

Sections 263a–1 to 263a–7 of this title, referred to in text, was in the original ''this Act'', meaning Pub. L. 102–493, Oct. 24, 1992, 106 Stat. 3146, known as the Fertility Clinic Success Rate and Certification Act of 1992, which enacted sections 263a–1 to 263a–7 of this title and provisions set out as notes under sections 201 and 263a–1 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Fertility Clinic Success Rate and Certification Act of 1992, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section effective upon expiration of 2 years after Oct. 24, 1992, see section 9 of Pub. L. 102–493, set out as a note under section 263a–1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263a–1, 263a–6 of this title.

SUBPART 3—MAMMOGRAPHY FACILITIES

PRIOR PROVISIONS

A prior subpart 3 of part F of title III of the Public Health Service Act, comprising this subpart, was renumbered subchapter C of chapter V of the Federal Food, Drug, and Cosmetic Act, by Pub. L. 101–629, § 19(a)(4), Nov. 28, 1990, 104 Stat. 4530, as amended by Pub. L. 103–80, § 4(a)(2), Aug. 13, 1993, 107 Stat. 779, and is classified to part C (§ 360hh et seq.) of subchapter V of chapter 9 of Title 21, Food and Drugs.

§ 263b. Certification of mammography facilities

(a) Definitions

As used in this section:

(1) Accreditation body

The term ''accreditation body'' means a body that has been approved by the Secretary under subsection (e)(1)(A) of this section to accredit mammography facilities.

(2) Certificate

The term ''certificate'' means the certificate described in subsection (b)(1) of this section.

(3) Facility

(A) In general

The term ''facility'' means a hospital, outpatient department, clinic, radiology practice, or mobile unit, an office of a physician, or other facility as determined by the Secretary, that conducts breast cancer screening or diagnosis through mammography activities. Such term does not include a facility of the Department of Veterans Affairs.

(B) Activities

For the purposes of this section, the activities of a facility include the operation of equipment to produce the mammogram, the processing of the film, the initial interpretation of the mammogram and the viewing conditions for that interpretation. Where procedures such as the film processing, or the interpretation of the mammogram are performed in a location different from where the mammogram is performed, the facility performing the mammogram shall be responsible for meeting the quality standards described in subsection (f) of this section.

(4) Inspection

The term ''inspection'' means an onsite evaluation of the facility by the Secretary, or State agency on behalf of the Secretary.

(5) Mammogram

The term ''mammogram'' means a radiographic image produced through mammography.

(6) Mammography

The term ''mammography'' means radiography of the breast.

(7) Survey

The term ''survey'' means an onsite physics consultation and evaluation performed by a medical physicist as described in subsection (f)(1)(E) of this section.

(b) Certificate requirement

(1) Certificate

No facility may conduct an examination or procedure described in paragraph (2) involving mammography after October 1, 1994, unless the facility obtains—

(A) a certificate—

(i) that is issued, and, if applicable, renewed, by the Secretary in accordance with subsection (c)(1) of this section;

(ii) that is applicable to the examination or procedure to be conducted; and

(iii) that is displayed prominently in such facility; or

(B) a provisional certificate—

(i) that is issued by the Secretary in accordance with subsection (c)(2) of this section;

(ii) that is applicable to the examination or procedure to be conducted; and

(iii) that is displayed prominently in such facility.

The reference to a certificate in this section includes a provisional certificate.

(2) Examination or procedure

A facility shall obtain a certificate in order to—

(A) operate radiological equipment that is used to image the breast;

(B) provide for the interpretation of a mammogram produced by such equipment at the facility or under arrangements with a qualified individual at a facility different from where the mammography examination is performed; and

(C) provide for the processing of film produced by such equipment at the facility or under arrangements with a qualified individual at a facility different from where the mammography examination is performed.

(c) Issuance and renewal of certificates

(1) In general

The Secretary may issue or renew a certificate for a facility if the person or agent described in subsection (d)(1)(A) of this section meets the applicable requirements of subsection (d)(1) of this section with respect to the facility. The Secretary may issue or renew a certificate under this paragraph for not more than 3 years.

(2) Provisional certificate

The Secretary may issue a provisional certificate for an entity to enable the entity to qualify as a facility. The applicant for a provisional certificate shall meet the requirements of subsection (d)(1) of this section, except providing information required by clauses (iii) and (iv) of subsection (d)(1)(A) of this section. A provisional certificate may be in effect no longer than 6 months from the date it is issued, except that it may be extended once for a period of not more than 90 days if the owner, lessor, or agent of the facility demonstrates to the Secretary that without such extension access to mammography in the geographic area served by the facility would be significantly reduced and if the owner, lessor, or agent of the facility will describe in a report to the Secretary steps that will be taken to qualify the facility for certification under subsection (b)(1) of this section.

(d) Application for certificate

(1) Submission

The Secretary may issue or renew a certificate for a facility if—

(A) the person who owns or leases the facility or an authorized agent of the person, submits to the Secretary, in such form and manner as the Secretary shall prescribe, an application that contains at a minimum—

(i) a description of the manufacturer, model, and type of each x-ray machine, image receptor, and processor operated in the performance of mammography by the facility;

(ii) a description of the procedures currently used to provide mammography at the facility, including—

(I) the types of procedures performed and the number of such procedures performed in the prior 12 months;

(II) the methodologies for mammography; and

(III) the names and qualifications (educational background, training, and experience) of the personnel performing mammography and the physicians reading and interpreting the results from the procedures;

(iii) proof of on-site survey by a qualified medical physicist as described in subsection (f)(1)(E) of this section; and

(iv) proof of accreditation in such manner as the Secretary shall prescribe; and

(B) the person or agent submits to the Secretary—

(i) a satisfactory assurance that the facility will be operated in accordance with standards established by the Secretary under subsection (f) of this section to assure the safety and accuracy of mammography;

(ii) a satisfactory assurance that the facility will—

(I) permit inspections under subsection (g) of this section;

(II) make such records and information available, and submit such reports, to the Secretary as the Secretary may require; and

(III) update the information submitted under subparagraph (A) or assurances submitted under this subparagraph on a timely basis as required by the Secretary; and

(iii) such other information as the Secretary may require.

An applicant shall not be required to provide in an application under subparagraph (A) any

information which the applicant has supplied to the accreditation body which accredited the applicant, except as required by the Secretary.

(2) Appeal

If the Secretary denies an application for the certification of a facility submitted under paragraph (1)(A), the Secretary shall provide the owner or lessor of the facility or the agent of the owner or lessor who submitted such application—

(A) a statement of the grounds on which the denial is based, and

(B) an opportunity for an appeal in accordance with the procedures set forth in regulations of the Secretary published at 42 C.F.R. 498 and in effect on October 27, 1992.

(3) Effect of denial

If the application for the certification of a facility is denied, the facility may not operate unless the denial of the application is overturned at the conclusion of the administrative appeals process provided in the regulations referred to in paragraph (2)(B).

(e) Accreditation

(1) Approval of accreditation bodies

(A) In general

The Secretary may approve a private nonprofit organization or State agency to accredit facilities for purposes of subsection (d)(1)(A)(iv) of this section if the accreditation body meets the standards for accreditation established by the Secretary as described in subparagraph (B) and provides the assurances required by subparagraph (C).

(B) Standards

The Secretary shall establish standards for accreditation bodies, including—

(i) standards that require an accreditation body to perform—

(I) a review of clinical images from each facility accredited by such body not less often than every 3 years which review will be made by qualified practicing physicians; and

(II) a review of a random sample of clinical images from such facilities in each 3-year period beginning October 1, 1994, which review will be made by qualified practicing physicians;

(ii) standards that prohibit individuals conducting the reviews described in clause (i) from maintaining any financial relationship to the facility undergoing review which would constitute a conflict of interest;

(iii) standards that limit the imposition of fees for accreditation to reasonable amounts;

(iv) standards that require as a condition of accreditation that each facility undergo a survey at least annually by a medical physicist as described in subsection (f)(1)(E) of this section to ensure that the facility meets the standards described in subparagraphs (A) and (B) of subsection (f)(1) of this section;

(v) standards that require monitoring and evaluation of such survey, as prescribed by the Secretary;

(vi) standards that are equal to standards established under subsection (f) of this section which are relevant to accreditation as determined by the Secretary; and

(vii) such additional standards as the Secretary may require.

(C) Assurances

The accrediting body shall provide the Secretary satisfactory assurances that the body will—

(i) comply with the standards as described in subparagraph (B);

(ii) comply with the requirements described in paragraph (4);

(iii) submit to the Secretary the name of any facility for which the accreditation body denies, suspends, or revokes accreditation;

(iv) notify the Secretary in a timely manner before the accreditation body changes the standards of the body;

(v) notify each facility accredited by the accreditation body if the Secretary withdraws approval of the accreditation body under paragraph (2) in a timely manner; and

(vi) provide such other additional information as the Secretary may require.

(D) Regulations

Not later than 9 months after October 27, 1992, the Secretary shall promulgate regulations under which the Secretary may approve an accreditation body.

(2) Withdrawal of approval

(A) In general

The Secretary shall promulgate regulations under which the Secretary may withdraw the approval of an accreditation body if the Secretary determines that the accreditation body does not meet the standards under subparagraph (B) of paragraph (1), the requirements of clauses (i) through (vi) of subparagraph (C) of paragraph (1), or the requirements of paragraph (4).

(B) Effect of withdrawal

If the Secretary withdraws the approval of an accreditation body under subparagraph (A), the certificate of any facility accredited by the body shall continue in effect until the expiration of a reasonable period, as determined by the Secretary, for such facility to obtain another accreditation.

(3) Accreditation

To be accredited by an approved accreditation body a facility shall meet—

(A) the standards described in paragraph (1)(B) which the Secretary determines are applicable to the facility, and

(B) such other standards which the accreditation body may require.

(4) Compliance

To ensure that facilities accredited by an accreditation body will continue to meet the standards of the accreditation body, the accreditation body shall—

(A) make onsite visits on an annual basis of a sufficient number of the facilities ac-

credited by the body to allow a reasonable estimate of the performance of the body; and

(B) take such additional measures as the Secretary determines to be appropriate.

Visits made under subparagraph (A) shall be made after providing such notice as the Secretary may require.

(5) Revocation of accreditation

If an accreditation body revokes the accreditation of a facility, the certificate of the facility shall continue in effect until such time as may be determined by the Secretary.

(6) Evaluation and report

(A) Evaluation

The Secretary shall evaluate annually the performance of each approved accreditation body by—

(i) inspecting under subsection (g)(2) of this section a sufficient number of the facilities accredited by the body to allow a reasonable estimate of the performance of the body; and

(ii) such additional means as the Secretary determines to be appropriate.

(B) Report

The Secretary shall annually prepare and submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives a report that describes the results of the evaluation conducted in accordance with subparagraph (A).

(f) Quality standards

(1) In general

The standards referred to in subsection (d)(1)(B)(i) of this section are standards established by the Secretary which include—

(A) standards that require establishment and maintenance of a quality assurance and quality control program at each facility that is adequate and appropriate to ensure the reliability, clarity, and accuracy of interpretation of mammograms and standards for appropriate radiation dose;

(B) standards that require use of radiological equipment specifically designed for mammography, including radiologic standards and standards for other equipment and materials used in conjunction with such equipment;

(C) a requirement that personnel who perform mammography—

(i)(I) be licensed by a State to perform radiological procedures; or

(II) be certified as qualified to perform radiological procedures by an organization described in paragraph (2)(A); and

(ii) during the 2-year period beginning October 1, 1994, meet training standards for personnel who perform mammography or meet experience requirements which shall at a minimum include 1 year of experience in the performance of mammography; and

(iii) upon the expiration of such 2-year period meet minimum training standards for personnel who perform mammograms;

(D) a requirement that mammograms be interpreted by a physician who is certified as qualified to interpret radiological procedures, including mammography—

(i)(I) by a board described in paragraph (2)(B); or

(II) by a program that complies with the standards described in paragraph (2)(C); and

(ii) who meets training and continuing medical education requirements as established by the Secretary;

(E) a requirement that individuals who survey mammography facilities be medical physicists—

(i) licensed or approved by a State to perform such surveys, reviews, or inspections for mammography facilities;

(ii) certified in diagnostic radiological physics or certified as qualified to perform such surveys by a board as described in paragraph (2)(D); or

(iii) in the first 5 years after October 27, 1992, who meet other criteria established by the Secretary which are comparable to the criteria described in clause (i) or (ii);

(F) a requirement that a medical physicist who is qualified in mammography as described in subparagraph (E) survey mammography equipment and oversee quality assurance practices at each facility;

(G) a requirement that—

(i) a facility that performs any mammogram maintain the mammogram in the permanent medical records of the patient—

(I) for a period of not less than 5 years, or not less than 10 years if no additional mammograms of such patient are performed at the facility, or longer if mandated by State law; or

(II) until such time as the patient should request that the patient's medical records be forwarded to a medical institution or a physician of the patient;

whichever is longer; and

(ii)(I) a facility must assure the preparation of a written report of the results of any mammography examination signed by the interpreting physician;

(II) such written report shall be provided to the patient's physicians (if any);

(III) if such a physician is not available or if there is no such physician, the written report shall be sent directly to the patient; and

(IV) if such report is sent to the patient, the report shall include a summary written in terms easily understood by a lay person; and

(H) standards relating to special techniques for mammography of patients with breast implants.

Subparagraph (G) shall not be construed to limit a patient's access to the patient's medical records.

(2) Certification of personnel

The Secretary shall by regulation—

(A) specify organizations eligible to certify individuals to perform radiological procedures as required by paragraph (1)(C);

(B) specify boards eligible to certify physicians to interpret radiological procedures, including mammography, as required by paragraph (1)(D);

(C) establish standards for a program to certify physicians described in paragraph (1)(D); and

(D) specify boards eligible to certify medical physicists who are qualified to survey mammography equipment and to oversee quality assurance practices at mammography facilities.

(g) Inspections

(1) Annual inspections

(A) In general

The Secretary may enter and inspect certified facilities to determine compliance with the standards established under subsection (f) of this section. The Secretary shall, if feasible, delegate to a State agency the authority to make such inspections.

(B) Identification

The Secretary, or State agency acting on behalf of the Secretary, may conduct inspections only on presenting identification to the owner, operator, or agent in charge of the facility to be inspected.

(C) Scope of inspection

In conducting inspections, the Secretary or State agency acting on behalf of the Secretary—

(i) shall have access to all equipment, materials, records, and information that the Secretary or State agency considers necessary to determine whether the facility is being operated in accordance with this section; and

(ii) may copy, or require the facility to submit to the Secretary or the State agency, any of the materials, records, or information.

(D) Qualifications of inspectors

Qualified individuals, as determined by the Secretary, shall conduct all inspections. The Secretary may request that a State agency acting on behalf of the Secretary designate a qualified officer or employee to conduct the inspections, or designate a qualified Federal officer or employee to conduct inspections. The Secretary shall establish minimum qualifications and appropriate training for inspectors and criteria for certification of inspectors in order to inspect facilities for compliance with subsection (f) of this section.

(E) Frequency

The Secretary or State agency acting on behalf of the Secretary shall conduct inspections under this paragraph of each facility not less often than annually.

(F) Records and annual reports

The Secretary or a State agency acting on behalf of the Secretary which is responsible for inspecting mammography facilities shall maintain records of annual inspections required under this paragraph for a period as prescribed by the Secretary. Such a State agency shall annually prepare and submit to the Secretary a report concerning the inspections carried out under this paragraph. Such reports shall include a description of the facilities inspected and the results of such inspections.

(2) Inspection of accredited facilities

The Secretary shall inspect annually a sufficient number of the facilities accredited by an accreditation body to provide the Secretary with a reasonable estimate of the performance of such body.

(3) Inspection of facilities inspected by State agencies

The Secretary shall inspect annually facilities inspected by State agencies acting on behalf of the Secretary to assure a reasonable performance by such State agencies.

(4) Timing

The Secretary, or State agency, may conduct inspections under paragraphs (1), (2), and (3), during regular business hours or at a mutually agreeable time and after providing such notice as the Secretary may prescribe, except that the Secretary may waive such requirements if the continued performance of mammography at such facility threatens the public health.

(5) Limited reinspection

Nothing in this section limits the authority of the Secretary to conduct limited reinspections of facilities found not to be in compliance with this section.

(h) Sanctions

(1) In general

In order to promote voluntary compliance with this section, the Secretary may, in lieu of taking the actions authorized by subsection (i) of this section, impose one or more of the following sanctions:

(A) Directed plans of correction which afford a facility an opportunity to correct violations in a timely manner.

(B) Payment for the cost of onsite monitoring.

(2) Civil money penalties

The Secretary may assess civil money penalties in an amount not to exceed $10,000 for—

(A) failure to obtain a certificate as required by subsection (b) of this section,

(B) each failure by a facility to substantially comply with, or each day on which a facility fails to substantially comply with, the standards established under subsection (f) of this section or the requirements described in subclauses (I) through (III) of subsection (d)(1)(B)(ii) of this section, and

(C) each violation, or for each aiding and abetting in a violation of, any provision of, or regulation promulgated under, this section by an owner, operator, or any employee of a facility required to have a certificate.

(3) Procedures

The Secretary shall develop and implement procedures with respect to when and how each

of the sanctions is to be imposed under paragraphs (1) and (2). Such procedures shall provide for notice to the owner or operator of the facility and a reasonable opportunity for the owner or operator to respond to the proposed sanctions and appropriate procedures for appealing determinations relating to the imposition of sanctions.

(i) Suspension and revocation

(1) In general

The certificate of a facility issued under subsection (c) of this section may be suspended or revoked if the Secretary finds, after providing, except as provided in paragraph (2), reasonable notice and an opportunity for a hearing to the owner or operator of the facility, that the owner, operator, or any employee of the facility—

(A) has been guilty of misrepresentation in obtaining the certificate;

(B) has failed to comply with the requirements of subsection (d)(1)(B)(ii)(III) of this section or the standards established by the Secretary under subsection (f) of this section;

(C) has failed to comply with reasonable requests of the Secretary for any record, information, report, or material that the Secretary concludes is necessary to determine the continued eligibility of the facility for a certificate or continued compliance with the standards established under subsection (f) of this section;

(D) has refused a reasonable request of the Secretary, any Federal officer or employee duly designated by the Secretary, or any State officer or employee duly designated by the State, for permission to inspect the facility or the operations and pertinent records of the facility in accordance with subsection (g) of this section;

(E) has violated or aided and abetted in the violation of any provision of, or regulation promulgated under, this section; or

(F) has failed to comply with a sanction imposed under subsection (h) of this section.

(2) Action before a hearing

(A) In general

The Secretary may suspend the certificate of the facility before holding a hearing required by paragraph (1) if the Secretary makes the finding described in paragraph (1) and determines that—

(i) the failure of a facility to comply with the standards established by the Secretary under subsection (f) of this section presents a serious risk to human health; or

(ii) a facility has engaged in an action described in subparagraph (D) or (E) of paragraph (1).

(B) Hearing

If the Secretary suspends a certificate under subparagraph (A), the Secretary shall provide an opportunity for a hearing to the owner or operator of the facility not later than 60 days from the effective date of the suspension. The suspension shall remain in effect until the decision of the Secretary made after the hearing.

(3) Ineligibility to own or operate facilities after revocation

If the Secretary revokes the certificate of a facility on the basis of an act described in paragraph (1), no person who owned or operated the facility at the time of the act may, within 2 years of the revocation of the certificate, own or operate a facility that requires a certificate under this section.

(j) Injunctions

If the Secretary determines that—

(1) continuation of any activity related to the provision of mammography by a facility would constitute a serious risk to human health, the Secretary may bring suit in the district court of the United States for the district in which the facility is situated to enjoin continuation of the activity; and

(2) a facility is operating without a certificate as required by subsection (b) of this section, the Secretary may bring suit in the district court of the United States for the district in which the facility is situated to enjoin the operation of the facility.

Upon a proper showing, the district court shall grant a temporary injunction or restraining order against continuation of the activity or against operation of a facility, as the case may be, without requiring the Secretary to post a bond, pending issuance of a final order under this subsection.

(k) Judicial review

(1) Petition

If the Secretary imposes a sanction on a facility under subsection (h) of this section or suspends or revokes the certificate of a facility under subsection (i) of this section, the owner or operator of the facility may, not later than 60 days after the date the action of the Secretary becomes final, file a petition with the United States court of appeals for the circuit in which the facility is situated for judicial review of the action. As soon as practicable after receipt of the petition, the clerk of the court shall transmit a copy of the petition to the Secretary or other officer designated by the Secretary. As soon as practicable after receipt of the copy, the Secretary shall file in the court the record on which the action of the Secretary is based, as provided in section 2112 of title 28.

(2) Additional evidence

If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Secretary, the court may order the additional evidence (and evidence in rebuttal of the additional evidence) to be taken before the Secretary, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may determine to be proper. The Secretary may modify the findings of the Secretary as to the facts, or make new findings, by reason of the additional evidence so taken, and the Secretary shall file the

modified or new findings, and the recommendations of the Secretary, if any, for the modification or setting aside of the original action of the Secretary with the return of the additional evidence.

(3) Judgment of court

Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to affirm the action, or to set the action aside in whole or in part, temporarily or permanently. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) Finality of judgment

The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28.

(*l*) Information

(1) In general

Not later than October 1, 1996, and annually thereafter, the Secretary shall compile and make available to physicians and the general public information that the Secretary determines is useful in evaluating the performance of facilities, including a list of facilities—

(A) that have been convicted under Federal or State laws relating to fraud and abuse, false billings, or kickbacks;

(B) that have been subject to sanctions under subsection (h) of this section, together with a statement of the reasons for the sanctions;

(C) that have had certificates revoked or suspended under subsection (i) of this section, together with a statement of the reasons for the revocation or suspension;

(D) against which the Secretary has taken action under subsection (j) of this section, together with a statement of the reasons for the action;

(E) whose accreditation has been revoked, together with a statement of the reasons of the revocation;

(F) against which a State has taken adverse action; and

(G) that meets such other measures of performance as the Secretary may develop.

(2) Date

The information to be compiled under paragraph (1) shall be information for the calendar year preceding the date the information is to be made available to the public.

(3) Explanatory information

The information to be compiled under paragraph (1) shall be accompanied by such explanatory information as may be appropriate to assist in the interpretation of the information compiled under such paragraph.

(m) State laws

Nothing in this section shall be construed to limit the authority of any State to enact and enforce laws relating to the matters covered by this section that are at least as stringent as this section or the regulations issued under this section.

(n) National Advisory Committee

(1) Establishment

In carrying out this section, the Secretary shall establish an advisory committee to be known as the National Mammography Quality Assurance Advisory Committee (hereafter in this subsection referred to as the ''Advisory Committee'').

(2) Composition

The Advisory Committee shall be composed of not fewer than 13, nor more than 19 individuals, who are not officers or employees of the Federal Government. The Secretary shall make appointments to the Advisory Committee from among—

(A) physicians,

(B) practitioners, and

(C) other health professionals,

whose clinical practice, research specialization, or professional expertise include a significant focus on mammography. The Secretary shall appoint at least 4 individuals from among national breast cancer or consumer health organizations with expertise in mammography and at least 2 practicing physicians who provide mammography services.

(3) Functions and duties

The Advisory Committee shall—

(A) advise the Secretary on appropriate quality standards and regulations for mammography facilities;

(B) advise the Secretary on appropriate standards and regulations for accreditation bodies;

(C) advise the Secretary in the development of regulations with respect to sanctions;

(D) assist in developing procedures for monitoring compliance with standards under subsection (f) of this section;

(E) make recommendations and assist in the establishment of a mechanism to investigate consumer complaints;

(F) report on new developments concerning breast imaging that should be considered in the oversight of mammography facilities;

(G) determine whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determine the effects of personnel or other requirements of subsection (f) of this section on access to the services of such facilities in such areas;

(H) determine whether there will exist a sufficient number of medical physicists after October 1, 1999, to assure compliance with the requirements of subsection (f)(1)(E) of this section;

(I) determine the costs and benefits of compliance with the requirements of this section (including the requirements of regulations promulgated under this section); and

(J) perform other activities that the Secretary may require.

The Advisory Committee shall report the findings made under subparagraphs (G) and (I) to the Secretary and the Congress no later than October 1, 1993.

(4) Meetings

The Advisory Committee shall meet not less than quarterly for the first 3 years of the program and thereafter, at least biannually.

(5) Chairperson

The Secretary shall appoint a chairperson of the Advisory Committee.

(*o*) Consultations

In carrying out this section, the Secretary shall consult with appropriate Federal agencies within the Department of Health and Human Services for the purposes of developing standards, regulations, evaluations, and procedures for compliance and oversight.

(p) Breast cancer screening surveillance research grants

(1) Research

(A) Grants

The Secretary shall award grants to such entities as the Secretary may determine to be appropriate to establish surveillance systems in selected geographic areas to provide data to evaluate the functioning and effectiveness of breast cancer screening programs in the United States, including assessments of participation rates in screening mammography, diagnostic procedures, incidence of breast cancer, mode of detection (mammography screening or other methods), outcome and follow up information, and such related epidemiologic analyses that may improve early cancer detection and contribute to reduction in breast cancer mortality. Grants may be awarded for further research on breast cancer surveillance systems upon the Secretary's review of the evaluation of the program.

(B) Use of funds

Grants awarded under subparagraph (A) may be used—

(i) to study—

(I) methods to link mammography and clinical breast examination records with population-based cancer registry data;

(II) methods to provide diagnostic outcome data, or facilitate the communication of diagnostic outcome data, to radiology facilities for purposes of evaluating patterns of mammography interpretation; and

(III) mechanisms for limiting access and maintaining confidentiality of all stored data; and

(ii) to conduct pilot testing of the methods and mechanisms described in subclauses (I), (II), and (III) of clause (i) on a limited basis.

(C) Grant application

To be eligible to receive funds under this paragraph, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(D) Report

A recipient of a grant under this paragraph shall submit a report to the Secretary containing the results of the study and testing conducted under clauses (i) and (ii) of subparagraph (B), along with recommendations for methods of establishing a breast cancer screening surveillance system.

(2) Establishment

The Secretary shall establish a breast cancer screening surveillance system based on the recommendations contained in the report described in paragraph (1)(D).

(3) Standards and procedures

The Secretary shall establish standards and procedures for the operation of the breast cancer screening surveillance system, including procedures to maintain confidentiality of patient records.

(4) Information

The Secretary shall recruit facilities to provide to the breast cancer screening surveillance system relevant data that could help in the research of the causes, characteristics, and prevalence of, and potential treatments for, breast cancer and benign breast conditions, if the information may be disclosed under section 552 of title 5.

(q) State program

(1) In general

The Secretary may, upon application, authorize a State—

(A) to carry out, subject to paragraph (2), the certification program requirements under subsections (b), (c), (d), (g)(1), (h), (i), and (j) of this section (including the requirements under regulations promulgated pursuant to such subsections), and

(B) to implement the standards established by the Secretary under subsection (f) of this section,

with respect to mammography facilities operating within the State.

(2) Approval

The Secretary may approve an application under paragraph (1) if the Secretary determines that—

(A) the State has enacted laws and issued regulations relating to mammography facilities which are the requirements of this section (including the requirements under regulations promulgated pursuant to such subsections), and

(B) the State has provided satisfactory assurances that the State—

(i) has the legal authority and qualified personnel necessary to enforce the requirements of and the regulations promulgated pursuant to this section (including the requirements under regulations promulgated pursuant to such subsections),

(ii) will devote adequate funds to the administration and enforcement of such requirements, and

(iii) will provide the Secretary with such information and reports as the Secretary may require.

(3) Authority of Secretary

In a State with an approved application—

(A) the Secretary shall carry out the Secretary's functions under subsections (e) and (f) of this section;

(B) the Secretary may take action under subsections (h), (i), and (j) of this section; and

(C) the Secretary shall conduct oversight functions under subsections (g)(2) and (g)(3) of this section.

(4) Withdrawal of approval

(A) In general

The Secretary may, after providing notice and opportunity for corrective action, withdraw the approval of a State's authority under paragraph (1) if the Secretary determines that the State does not meet the requirements of such paragraph. The Secretary shall promulgate regulations for the implementation of this subparagraph.

(B) Effect of withdrawal

If the Secretary withdraws the approval of a State under subparagraph (A), the certificate of any facility accredited by the State shall continue in effect until the expiration of a reasonable period, as determined by the Secretary, for such facility to obtain certification by the Secretary.

(r) Funding

(1) Fees

(A) In general

The Secretary shall, in accordance with this paragraph assess and collect fees from persons described in subsection (d)(1)(A) of this section (other than persons who are governmental entities, as determined by the Secretary) to cover the costs of inspections conducted under subsection (g)(1) of this section by the Secretary or a State acting under a delegation under subparagraph (A) of such subsection. Fees may be assessed and collected under this paragraph only in such manner as would result in an aggregate amount of fees collected during any fiscal year which equals the aggregate amount of costs for such fiscal year for inspections of facilities of such persons under subsection (g)(1) of this section. A person's liability for fees shall be reasonably based on the proportion of the inspection costs which relate to such person.

(B) Deposit and appropriations

(i) Deposit and availability

Fees collected under subparagraph (A) shall be deposited as an offsetting collection to the appropriations for the Department of Health and Human Services as provided in appropriation Acts and shall remain available without fiscal year limitation.

(ii) Appropriations

Fees collected under subparagraph (A) shall be collected and available only to the extent provided in advance in appropriation Acts.

(2) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(A) to award research grants under subsection (q) of this section, such sums as may be necessary for each of the fiscal years 1993 through 1997; and

(B) for the Secretary to carry out other activities which are not supported by fees authorized and collected under paragraph (1), such sums as may be necessary for fiscal year[1] 1993 through 1997.

(July 1, 1944, ch. 373, title III, § 354, as added Oct. 27, 1992, Pub. L. 102–539, § 2, 106 Stat. 3547.)

PRIOR PROVISIONS

A prior section 263b, act July 1, 1944, ch. 373, title III, § 354, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1173; amended Nov. 28, 1990, Pub. L. 101–629, § 19(a)(1)(B), 104 Stat. 4529; Aug. 13, 1993, Pub. L. 103–80, § 4(a)(2), 107 Stat. 779, set forth Congressional declaration of purpose, prior to repeal by Pub. L. 101–629, § 19(a)(3), Nov. 28, 1990, 104 Stat. 4530.

Sections 263c to 263n, act July 1, 1944, ch. 373, title III, §§ 355–360F, as added Oct. 18, 1968, Pub. L. 90–602, § 2(3), 82 Stat. 1174, and amended, which related to electronic product radiation control, were renumbered sections 531 to 542, respectively, of the Federal Food, Drug, and Cosmetic Act by Pub. L. 101–629, § 19(a)(4), Nov. 28, 1990, 104 Stat. 4530, and are classified to sections 360hh to 360ss, respectively, of Title 21, Food and Drugs.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REGULATIONS

Pub. L. 103–183, title VII, § 707, Dec. 14, 1993, 107 Stat. 2241, provided that: ''The Secretary of Health and Human Services is authorized to issue interim final regulations—

''(1) under which the Secretary may approve accreditation bodies under section 354(e) of the Public Health Service Act (42 U.S.C. 263b(e)); and

''(2) establishing quality standards under section 354(f) of the Public Health Service Act (42 U.S.C. 263b(f)).''

STUDY

Section 3 of Pub. L. 102–539 provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study of the certification program authorized by the amendment made by section 2 [enacting this section] to determine—

''(1) if the program has resulted in the improvement of the quality and accessibility of mammography services, and

[1] So in original. Probably should be ''years''.

''(2) if the program has reduced the frequency of poor quality mammography and improved the early detection of breast cancer.

''(b) REPORTS.—Not later than 3 years from the date of the enactment of this Act [Oct. 27, 1992], the Comptroller General shall submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives an interim report of the results of the study under subsection (a). Not later than 5 years from such date the Comptroller General shall submit a final report on such study to such Committees.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395m, 1395x of this title.

PART G—QUARANTINE AND INSPECTION

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 300j–9 of this title.

§ 264. Regulations to control communicable diseases

(a) Promulgation and enforcement by Surgeon General

The Surgeon General, with the approval of the Secretary, is authorized to make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the Surgeon General may provide for such inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be so infected or contaminated as to be sources of dangerous infection to human beings, and other measures, as in his judgment may be necessary.

(b) Apprehension, detention, or conditional release of individuals

Regulations prescribed under this section shall not provide for the apprehension, detention, or conditional release of individuals except for the purpose of preventing the introduction, transmission, or spread of such communicable diseases as may be specified from time to time in Executive orders of the President upon the recommendation of the National Advisory Health Council and the Surgeon General.

(c) Application of regulations to persons entering from foreign countries

Except as provided in subsection (d) of this section, regulations prescribed under this section, insofar as they provide for the apprehension, detention, examination, or conditional release of individuals, shall be applicable only to individuals coming into a State or possession from a foreign country or a possession.

(d) Apprehension and examination of persons reasonably believed to be infected

On recommendation of the National Advisory Health Council, regulations prescribed under this section may provide for the apprehension and examination of any individual reasonably believed to be infected with a communicable disease in a communicable stage and (1) to be moving or about to move from a State to another State; or (2) to be a probable source of infection to individuals who, while infected with such disease in a communicable stage, will be moving from a State to another State. Such regulations may provide that if upon examination any such individual is found to be infected, he may be detained for such time and in such manner as may be reasonably necessary. For purposes of this subsection, the term ''State'' includes, in addition to the several States, only the District of Columbia.

(July 1, 1944, ch. 373, title III, § 361, 58 Stat. 703; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; July 12, 1960, Pub. L. 86–624, § 29(c), 74 Stat. 419; June 23, 1976, Pub. L. 94–317, title III, § 301(b)(1), 90 Stat. 707.)

AMENDMENTS

1976—Subsec. (d). Pub. L. 94–317 inserted provision defining ''State'' to include, in addition to the several States, only the District of Columbia.

1960—Subsec. (c). Pub. L. 86–624 struck out reference to Territory of Hawaii.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86–624, set out as a note under section 201 of this title.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

EX. ORD. NO. 12452. REVISED LIST OF QUARANTINABLE COMMUNICABLE DISEASES

Ex. Ord. No. 12452, Dec. 22, 1983, 48 F.R. 56927, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 264(b) of Title 42 of the United States Code, it is hereby ordered as follows:

SECTION 1. Based upon the recommendation of the National Advisory Health Council and the Assistant Secretary for Health of the Department of Health and Human Services, and for the purposes of specifying certain communicable diseases for regulations providing for the apprehension, detention, or conditional release of individuals to prevent the introduction, transmission, or spread of communicable diseases, the following named communicable diseases are hereby specified pursuant to Section 264(b) of Title 42 of the United States Code: Cholera or suspected Cholera, Diphtheria, infectious Tuberculosis, Plague, suspected Smallpox, Yellow Fever, and suspected Viral Hemorrhagic Fevers (Lassa, Marburg, Ebola, Congo-Crimean, and others not yet isolated or named).

SEC. 2. Executive Order No. 9708 of March 26, 1946, Executive Order No. 10532 of May 28, 1954, and Executive Order No. 11070 of December 12, 1962, are hereby revoked.

RONALD REAGAN.

CROSS REFERENCES

Compliance with State laws, see section 97 of this title.

Removal of revenue officers, during epidemics, see section 112 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 266, 271 of this title; title 49 section 24301.

§ 265. Suspension of entries and imports from designated places to prevent spread of communicable diseases

Whenever the Surgeon General determines that by reason of the existence of any communicable disease in a foreign country there is serious danger of the introduction of such disease into the United States, and that this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce such persons and property is required in the interest of the public health, the Surgeon General, in accordance with regulations approved by the President, shall have the power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate in order to avert such danger, and for such period of time as he may deem necessary for such purpose.

(July 1, 1944, ch. 373, title III, § 362, 58 Stat. 704.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 271 of this title.

§ 266. Special quarantine powers in time of war

To protect the military and naval forces and war workers of the United States, in time of war, against any communicable disease specified in Executive orders as provided in subsection (b) of section 264 of this title, the Surgeon General, on recommendation of the National Advisory Health Council, is authorized to provide by regulations for the apprehension and examination, in time of war, of any individual reasonably believed (1) to be infected with such disease in a communicable stage and (2) to be a probable source of infection to members of the armed forces of the United States or to individuals engaged in the production or transportation of arms, munitions, ships, food, clothing, or other supplies for the armed forces. Such regulations may provide that if upon examination any such individual is found to be so infected, he may be detained for such time and in such manner as may be reasonably necessary.

(July 1, 1944, ch. 373, title III, § 363, 58 Stat. 704.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 271 of this title.

§ 267. Quarantine stations, grounds, and anchorages

(a) Control and management

Except as provided in title II of the Act of June 15, 1917, as amended [50 U.S.C. 191 et seq.], the Surgeon General shall control, direct, and manage all United States quarantine stations, grounds, and anchorages, designate their boundaries, and designate the quarantine officers to be in charge thereof. With the approval of the President he shall from time to time select suitable sites for and establish such additional stations, grounds, and anchorages in the States and possessions of the United States as in his judgment are necessary to prevent the introduction of communicable diseases into the States and possessions of the United States.

(b) Hours of inspection

The Surgeon General shall establish the hours during which quarantine service shall be performed at each quarantine station, and, upon application by any interested party, may establish quarantine inspection during the twenty-four hours of the day, or any fraction thereof, at such quarantine stations as, in his opinion, require such extended service. He may restrict the performance of quarantine inspection to hours of daylight for such arriving vessels as cannot, in his opinion, be satisfactorily inspected during hours of darkness. No vessel shall be required to undergo quarantine inspection during the hours of darkness, unless the quarantine officer at such quarantine station shall deem an immediate inspection necessary to protect the public health. Uniformity shall not be required in the hours during which quarantine inspection may be obtained at the various ports of the United States.

(c) Overtime pay for employees of Service

The Surgeon General shall fix a reasonable rate of extra compensation for overtime services of employees of the United States Public Health Service, Foreign Quarantine Division, performing overtime duties including the operation of vessels, in connection with the inspection or quarantine treatment of persons (passengers and crews), conveyances, or goods arriving by land,

water, or air in the United States or any place subject to the jurisdiction thereof, hereinafter referred to as ''employees of the Public Health Service'', when required to be on duty between the hours of 6 o'clock postmeridian and 6 o'clock antemeridian (or between the hours of 7 o'clock postmeridian and 7 o'clock antemeridian at stations which have a declared workday of from 7 o'clock antemeridian to 7 o'clock postmeridian), or on Sundays or holidays, such rate, in lieu of compensation under any other provision of law, to be fixed at two times the basic hourly rate for each hour that the overtime extends beyond 6 o'clock (or 7 o'clock as the case may be) postmeridian, and two times the basic hourly rate for each overtime hour worked on Sundays or holidays. As used in this subsection, the term ''basic hourly rate'' shall mean the regular basic rate of pay which is applicable to such employees for work performed within their regular scheduled tour of duty.

(d) Payment of extra compensation to United States; bond or deposit to assure payment; deposit of moneys to credit of appropriation

(1) The said extra compensation shall be paid to the United States by the owner, agent, consignee, operator, or master or other person in charge of any conveyance, for whom, at his request, services as described in this subsection (hereinafter referred to as overtime service) are performed. If such employees have been ordered to report for duty and have so reported, and the requested services are not performed by reason of circumstances beyond the control of the employees concerned, such extra compensation shall be paid on the same basis as though the overtime services had actually been performed during the period between the time the employees were ordered to report for duty and did so report, and the time they were notified that their services would not be required, and in any case as though their services had continued for not less than one hour. The Surgeon General with the approval of the Secretary of Health and Human Services may prescribe regulations requiring the owner, agent, consignee, operator, or master or other person for whom the overtime services are performed to file a bond in such amounts and containing such conditions and with such sureties, or in lieu of a bond, to deposit money or obligations of the United States in such amount, as will assure the payment of charges under this subsection, which bond or deposit may cover one or more transactions or all transactions during a specified period: *Provided*, That no charges shall be made for services performed in connection with the inspection of (1) persons arriving by international highways, ferries, bridges, or tunnels, or the conveyances in which they arrive, or (2) persons arriving by aircraft or railroad trains, the operations of which are covered by published schedules, or the aircraft or trains in which they arrive, or (3) persons arriving by vessels operated between Canadian ports and ports on Puget Sound or operated on the Great Lakes and connecting waterways, the operations of which are covered by published schedules, or the vessels in which they arrive.

(2) Moneys collected under this subsection shall be deposited in the Treasury of the United States to the credit of the appropriation charged with the expense of the services, and the appropriations so credited shall be available for the payment of such compensation to the said employees for services so rendered.

(July 1, 1944, ch. 373, title III, § 364, 58 Stat. 704; June 21, 1957, Pub. L. 85–58, ch. VII, § 701, 71 Stat. 181; Aug. 1, 1958, Pub. L. 85–580, title II, § 201, 72 Stat. 467; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695.)

AMENDMENTS

1958—Subsec. (c). Pub. L. 85–580 increased rate of pay for each hour that overtime extends beyond 6 o'clock (or 7 o'clock as the case may be) postmeridian from one and one-half times the basic hourly rate to two times the basic hourly rate.

1957—Subsecs. (c), (d). Pub. L. 85–58 added subsecs. (c) and (d).

TRANSFER OF FUNCTIONS

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (d) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

DELEGATION OF FUNCTIONS

Functions of President delegated to Secretary of Health Health and Human Services, see Ex. Ord. No. 11140, Jan. 30, 1964, 29 F.R. 1637, as amended, set out as a note under section 202 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 270, 271 of this title.

§ 268. Quarantine duties of consular and other officers

(a) Any consular or medical officer of the United States, designated for such purpose by the Secretary, shall make reports to the Surgeon General, on such forms and at such intervals as the Surgeon General may prescribe, of the health conditions at the port or place at which such officer is stationed.

(b) It shall be the duty of the customs officers and of Coast Guard officers to aid in the enforcement of quarantine rules and regulations; but no additional compensation, except actual and necessary traveling expenses, shall be allowed any such officer by reason of such services.

(July 1, 1944, ch. 373, title III, § 365, 58 Stat. 705; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education,

and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Reference to Secretary of Health, Education, and Welfare substituted for reference to Federal Security Administrator pursuant to section 5 of Reorg. Plan No. 1, of 1953, set out as a note under section 3501 of this title, which transferred functions of Federal Security Administrator to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency to Department of Health, Education, and Welfare. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 270 of this title.

§ 269. Bills of health

(a) Detail of medical officer; conditions precedent to issuance; consular officer to receive fees

Except as otherwise prescribed in regulations, any vessel at any foreign port or place clearing or departing for any port or place in a State or possession shall be required to obtain from the consular officer of the United States or from the Public Health Service officer, or other medical officer of the United States designated by the Surgeon General, at the port or place of departure, a bill of health in duplicate, in the form prescribed by the Surgeon General. The President, from time to time, shall specify the ports at which a medical officer shall be stationed for this purpose. Such bill of health shall set forth the sanitary history and condition of said vessel, and shall state that it has in all respects complied with the regulations prescribed pursuant to subsection (c) of this section. Before granting such duplicate bill of health, such consular or medical officer shall be satisfied that the matters and things therein stated are true. The consular officer shall be entitled to demand and receive the fees for bills of health and such fees shall be established by regulation.

(b) Collectors of customs to receive originals; duplicate copies as part of ship's papers

Original bills of health shall be delivered to the collectors of customs at the port of entry. Duplicate copies of such bills of health shall be delivered at the time of inspection to quarantine officers at such port. The bills of health herein prescribed shall be considered as part of the ship's papers, and when duly certified to by the proper consular or other officer of the United States, over his official signature and seal, shall be accepted as evidence of the statements therein contained in any court of the United States.

(c) Regulations to secure sanitary conditions of vessels

The Surgeon General shall from time to time prescribe regulations, applicable to vessels referred to in subsection (a) of this section for the purpose of preventing the introduction into the States or possessions of the United States of any communicable disease by securing the best sanitary condition of such vessels, their cargoes, passengers, and crews. Such regulations shall be observed by such vessels prior to departure, during the course of the voyage, and also during inspection, disinfection, or other quarantine procedure upon arrival at any United States quarantine station.

(d) Vessels from ports near frontier

The provisions of subsections (a) and (b) of this section shall not apply to vessels plying between such foreign ports on or near the frontiers of the United States and ports of the United States as are designated by treaty.

(e) Compliance with regulations

It shall be unlawful for any vessel to enter any port in any State or possession of the United States to discharge its cargo, or land its passengers, except upon a certificate of the quarantine officer that regulations prescribed under subsection (c) of this section have in all respects been complied with by such officer, the vessel, and its master. The master of every such vessel shall deliver such certificate to the collector of customs at the port of entry, together with the original bill of health and other papers of the vessel. The certificate required by this subsection shall be procurable from the quarantine officer, upon arrival of the vessel at the quarantine station and satisfactory inspection thereof, at any time within which quarantine services are performed at such station.

(July 1, 1944, ch. 373, title III, § 366, 58 Stat. 705.)

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

All offices of collector of customs, comptroller of customs, surveyor of customs, and appraiser of merchandise of Bureau of Customs of Department of the Treasury to which appointments were required to be made by the President with the advice and consent of the Senate ordered abolished, with such offices to be terminated not later than December 31, 1966, by Reorg. Plan No. 1, of 1965, eff. May 25, 1965, 30 F.R. 7035, 79 Stat. 1317, set out in the Appendix to Title 5, Government Organization and Employees. All functions of offices eliminated were already vested in Secretary of the Treasury by Reorg. Plan No. 26 of 1950, eff. July 31, 1950, 15 F.R. 4935, 64 Stat. 1280, set out in the Appendix to Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 270, 271 of this title.

§ 270. Quarantine regulations governing civil air navigation and civil aircraft

The Surgeon General is authorized to provide by regulations for the application to air navigation and aircraft of any of the provisions of sections 267 to 269 of this title and regulations prescribed thereunder (including penalties and forfeitures for violations of such sections and regulations), to such extent and upon such conditions as he deems necessary for the safeguarding of the public health.

(July 1, 1944, ch. 373, title III, § 367, 58 Stat. 706.)

ABOLITION OF OFFICE OF SURGEON GENERAL

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 271. Penalties for violation of quarantine laws

(a) Penalties for persons violating quarantine laws

Any person who violates any regulation prescribed under sections 264 to 266 of this title, or any provision of section 269 of this title or any regulation prescribed thereunder, or who enters or departs from the limits of any quarantine station, ground, or anchorage in disregard of quarantine rules and regulations or without permission of the quarantine officer in charge, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than one year, or both.

(b) Penalties for vessels violating quarantine laws

Any vessel which violates section 269 of this title, or any regulations thereunder or under section 267 of this title, or which enters within or departs from the limits of any quarantine station, ground, or anchorage in disregard of the quarantine rules and regulations or without permission of the officer in charge, shall forfeit to the United States not more than $5,000, the amount to be determined by the court, which shall be a lien on such vessel, to be recovered by proceedings in the proper district court of the United States. In all such proceedings the United States attorney shall appear on behalf of the United States; and all such proceedings shall be conducted in accordance with the rules and laws governing cases of seizure of vessels for violation of the revenue laws of the United States.

(c) Remittance or mitigation of forfeitures

With the approval of the Secretary, the Surgeon General may, upon application therefor, remit or mitigate any forfeiture provided for under subsection (b) of this section, and he shall have authority to ascertain the facts upon all such applications.

(July 1, 1944, ch. 373, title III, § 368, 58 Stat. 706; June 25, 1948, ch. 646, § 1, 62 Stat. 909; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.)

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, substituted ''United States attorney'' for ''United States district attorney''. See section 541 of Title 28, Judiciary and Judicial Procedure, and Historical and Revision note thereunder.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

§ 272. Administration of oaths by quarantine officers

Medical officers of the United States, when performing duties as quarantine officers at any port or place within the United States, are authorized to take declarations and administer oaths in matters pertaining to the administration of the quarantine laws and regulations of the United States.

(July 1, 1944, ch. 373, title III, § 369, 58 Stat. 706.)

PART H—ORGAN TRANSPLANTS

PRIOR PROVISIONS

A prior part H related to grants to Alaska for mental health, prior to the general revision of part H by Pub. L. 98–507, title II, § 201, Oct. 19, 1984, 98 Stat. 2342.

Another prior part H, entitled ''National Library of Medicine'', as added by act Aug. 3, 1956, ch. 907, 70 Stat. 960, was redesignated part I and classified to section 275 et seq. of this title, prior to repeal by Pub. L. 99–158.

§ 273. Organ procurement organizations

(a) Grant authority of Secretary

(1) The Secretary may make grants for the planning of qualified organ procurement organizations described in subsection (b) of this section.

(2) The Secretary may make grants for the establishment, initial operation, consolidation, and expansion of qualified organ procurement organizations described in subsection (b) of this section.

(3) The Secretary may make grants to, and enter into contracts with, qualified organ procurement organizations described in subsection (b) of this section and other nonprofit private entities for the purpose of carrying out special projects designed to increase the number of organ donors.

(b) Qualified organizations

(1) A qualified organ procurement organization for which grants may be made under subsection (a) of this section is an organization which, as determined by the Secretary, will carry out the functions described in paragraph (2)[1] and—

(A) is a nonprofit entity,

(B) has accounting and other fiscal procedures (as specified by the Secretary) necessary to assure the fiscal stability of the organization,

[1] See References in Text note below.

(C) has an agreement with the Secretary to be reimbursed under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] for the procurement of kidneys,

(D) has procedures to obtain payment for non-renal organs provided to transplant centers,

(E) has a defined service area that is of sufficient size to assure maximum effectiveness in the procurement and equitable distribution of organs, and that either includes an entire metropolitan statistical area (as specified by the Director of the Office of Management and Budget) or does not include any part of the area,

(F) has a director and such other staff, including the organ donation coordinators and organ procurement specialists necessary to effectively obtain organs from donors in its service area, and

(G) has a board of directors or an advisory board which—

(i) is composed of—

(I) members who represent hospital administrators, intensive care or emergency room personnel, tissue banks, and voluntary health associations in its service area,

(II) members who represent the public residing in such area,

(III) a physician with knowledge, experience, or skill in the field of histocompatability[2] or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility,

(IV) a physician with knowledge or skill in the field of neurology, and

(V) from each transplant center in its service area which has arrangements described in paragraph (2)(G)[1] with the organization, a member who is a surgeon who has practicing privileges in such center and who performs organ transplant surgery,

(ii) has the authority to recommend policies for the procurement of organs and the other functions described in paragraph (2),[1] and

(iii) has no authority over any other activity of the organization.

(2)(A) Not later than 90 days after November 16, 1990, the Secretary shall publish in the Federal Register a notice of proposed rulemaking to establish criteria for determining whether an entity meets the requirement established in paragraph (1)(E).

(B) Not later than 1 year after November 16, 1990, the Secretary shall publish in the Federal Register a final rule to establish the criteria described in subparagraph (A).

(3) An organ procurement organization shall—

(A) have effective agreements, to identify potential organ donors, with a substantial majority of the hospitals and other health care entities in its service area which have facilities for organ donations,

(B) conduct and participate in systematic efforts, including professional education, to acquire all useable organs from potential donors,

(C) arrange for the acquisition and preservation of donated organs and provide quality standards for the acquisition of organs which are consistent with the standards adopted by the Organ Procurement and Transplantation Network under section 274(b)(2)(E) of this title, including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,

(D) arrange for the appropriate tissue typing of donated organs,

(E) have a system to allocate donated organs equitably among transplant patients according to established medical criteria,

(F) provide or arrange for the transportation of donated organs to transplant centers,

(G) have arrangements to coordinate its activities with transplant centers in its service area,

(H) participate in the Organ Procurement Transplantation Network established under section 274 of this title,

(I) have arrangements to cooperate with tissue banks for the retrieval, processing, preservation, storage, and distribution of tissues as may be appropriate to assure that all useable tissues are obtained from potential donors,

(J) evaluate annually the effectiveness of the organization in acquiring potentially available organs, and

(K) assist hospitals in establishing and implementing protocols for making routine inquiries about organ donations by potential donors.

(July 1, 1944, ch. 373, title III, § 371, as added Oct. 19, 1984, Pub. L. 98–507, title II, § 201, 98 Stat. 2342; amended Nov. 4, 1988, Pub. L. 100–607, title IV, § 402(a), (c)(1), (2), (d), 102 Stat. 3114, 3115; Nov. 16, 1990, Pub. L. 101–616, title II, §§ 201(a)–(c)(1), (d), (e), 206(b), 104 Stat. 3283, 3285.)

REFERENCES IN TEXT

Paragraph (2), referred to in subsec. (b)(1), meaning paragraph (2) of subsec. (b) of this section, was redesignated paragraph (3) by section 201(d)(1) of Pub. L. 101–616. See 1990 Amendment note below.

The Social Security Act, referred to in subsec. (b)(1)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 273, act July 1, 1944, ch. 373, title III, § 371, as added July 28, 1956, ch. 772, title II, § 201, 70 Stat. 709, authorized grants to the Territory of Alaska for an integrated mental health program, prior to repeal by Pub. L. 86–70, § 31(b)(1), June 25, 1959, 73 Stat. 148, effective July 1, 1959.

A prior section 371 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960, was renumbered section 381 and classified to section 275 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Pub. L. 101–616, § 201(a), substituted ''Organ procurement organizations'' for ''Assistance for organ procurement organizations'' in section catchline.

Subsec. (a)(3). Pub. L. 101–616, § 201(b)(1), substituted ''may make grants to, and enter into contracts with,

[2] So in original. Probably should be ''histocompatibility''.

qualified organ procurement organizations described in subsection (b) of this section and other nonprofit private entities for the purpose of carrying out special projects'' for ''may make grants for special projects''.

Subsec. (a)(4). Pub. L. 101–616, § 201(b)(2), struck out par. (4) which set forth factors to consider in making grants.

Subsec. (b)(1)(E). Pub. L. 101–616, § 201(c)(1), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''has a defined service area which is a geographical area of sufficient size such that (unless the service area comprises an entire State) the organization can reasonably expect to procure organs from not less than 50 donors each year and which either includes an entire standard metropolitan statistical area (as specified by the Office of Management and Budget) or does not include any part of such an area,''.

Subsec. (b)(1)(G)(i)(III). Pub. L. 101–616, § 201(e), made technical correction to Pub. L. 100–607, § 402(c)(2). See 1988 Amendment note below.

Subsec. (b)(2), (3). Pub. L. 101–616, § 201(d), added par. (2) and redesignated former par. (2) as (3).

Subsec. (c). Pub. L. 101–616, § 206(b), struck out subsec. (c) which authorized appropriations for subsec. (a) grants for fiscal years 1988 through 1990.

1988—Subsec. (a)(2). Pub. L. 100–607, § 402(a)(1), inserted ''consolidation,'' after ''initial operation,''.

Subsec. (a)(3). Pub. L. 100–607, § 402(a)(2), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 100–607, § 402(a)(2), redesignated former par. (3) as (4).

Subsec. (a)(4)(C). Pub. L. 100–607, § 402(a)(3), added subpar. (C).

Subsec. (b)(1)(E). Pub. L. 100–607, § 402(c)(1)(A), substituted ''size such that'' for ''size which'', and ''the organization can reasonably expect to procure organs from not less than 50 donors each year'' for ''will include at least fifty potential organ donors each year''.

Subsec. (b)(1)(G)(i)(III). Pub. L. 100–607, § 402(c)(2), as amended by Pub. L. 101–616, § 201(e), inserted ''or an individual with a doctorate degree in a biological science with knowledge, experience, or skill in the field of histocompatibility'' before comma at end.

Subsec. (b)(2)(C). Pub. L. 100–607, § 402(c)(1)(B), substituted ''274(b)(2)(E) of this title, including arranging for testing with respect to preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,'' for ''274(b)(2)(D) of this title,''.

Subsec. (b)(2)(E). Pub. L. 100–607, § 402(c)(1)(C), substituted ''organs equitably among transplant patients'' for ''organs among transplant centers and patients''.

Subsec. (b)(2)(K). Pub. L. 100–607, § 402(c)(1)(D), added subpar. (K).

Subsec. (c). Pub. L. 100–607, § 402(d), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For grants under subsection (a) of this section there are authorized to be appropriated $5,000,000 for fiscal year 1985, $8,000,000 for fiscal year 1986, and $12,000,000 for fiscal year 1987.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 207 of title II of Pub. L. 101–616 provided that: ''Except as otherwise provided in this title, the amendments made by this title [enacting sections 274f and 274g of this title, amending this section and sections 274 and 274b to 274d of this title, and repealing provisions set out as a note below] shall become effective on October 1, 1990, or on the date of the enactment of this Act [Nov. 16, 1990], whichever occurs later.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 402(c)(3) of Pub. L. 100–607, as amended by Pub. L. 101–274, Apr. 23, 1990, 104 Stat. 139, which provided that the amendment made by section 402(c)(1)(A) of Pub. L. 100–607, amending this section, was not to apply to an organ procurement organization designated under section 1320b–8(b) of this title until Jan. 1, 1992, was repealed by Pub. L. 101–616, title II, § 201(c)(2), Nov. 16, 1990, 104 Stat. 3283.

SHORT TITLE

For short title of Pub. L. 98–507, which enacted this part as the ''National Organ Transplant Act'', see section 1 of Pub. L. 98–507, set out as a Short Title of 1984 Amendments note under section 201 of this title.

SEVERABILITY

Section 301 of Pub. L. 101–616 provided that: ''If any provision of this Act [enacting sections 274f, 274g, 274k, and 274*l* of this title, amending this section and sections 274 to 274d of this title, enacting provisions set out as notes under this section and sections 274 and 274k of this title, and repealing provisions set out as a note above], amendment made by this Act, or application of the provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions or amendments to any person or circumstance shall not be affected.''

STUDY ON HOSPITAL AGREEMENTS WITH ORGAN PROCUREMENT AGENCIES

Pub. L. 103–432, title I, § 155(b), Oct. 31, 1994, 108 Stat. 4439, provided that:

''(1) IN GENERAL.—The Office of Technology Assessment (referred to in this section as the 'OTA') shall, pursuant to the approval of the Technology Assessment Board of the OTA, conduct a study to determine the efficacy and fairness of requiring a hospital to enter into an agreement under section 371(b)(3)(A) of the Public Health Service Act [subsec. (b)(3)(A) of this section] with the organ procurement agency designated pursuant to section 1138(b) of the Social Security Act [section 1320b–8(b) of this title] for the service area in which such hospital is located and the impact of such requirement on the efficacy and fairness of organ procurement and distribution.

''(2) REPORT.—Not later than 2 years after the date of the enactment of this Act [Oct. 31, 1994], the OTA shall complete the study required under paragraph (1) and prepare and submit to the Committee on Finance and the Committee on Labor and Human Resources of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives a report containing the findings of such study and the implications of such findings with respect to policies affecting organ procurement and distribution.''

TASK FORCE ON ORGAN PROCUREMENT AND TRANSPLANTATION

Pub. L. 98–507, title I, §§ 101–105, Oct. 19, 1984, 98 Stat. 2339–2342, directed Secretary of Health and Human Services, not later than 90 days after Oct. 19, 1984, to establish a Task Force on Organ Transplantation to conduct comprehensive examinations, prepare an assessment and report, and submit advice as to regulation of the medical, legal, ethical, economic, and social issues presented by human organ procurement and transplantation, with the final report due not later than 12 months after the Task Force is established and the Task Force to terminate 3 months thereafter.

BONE MARROW REGISTRY DEMONSTRATION AND STUDY

Section 401 of Pub. L. 98–507 directed Secretary of Health and Human Services to hold a conference on the feasibility of establishing and the effectiveness of a national registry of voluntary bone marrow donors not later than 9 months after Oct. 19, 1984, and if the conference found that it was feasible to establish a national registry of voluntary donors of bone marrow and that such a registry was likely to be effective in matching donors with recipients, the Secretary was to establish a registry of voluntary donors of bone marrow not later than six months after the completion of the conference, and further directed the Secretary, acting through the Assistant Secretary for Health, to study the establishment and implementation of the registry

to identify the issues presented by the establishment of such a registry, to evaluate participation of bone marrow donors, to assess the implementation of the informed consent and confidentiality requirements, and to determine if the establishment of a permanent bone marrow registry was needed and appropriate, and to report the results of the study to Congress not later than two years after the date the registry was established.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 274, 274b, 1320b–8 of this title.

§ 274. Organ procurement and transplantation network

(a) Contract authority of Secretary; limitation; available appropriations

The Secretary shall by contract provide for the establishment and operation of an Organ Procurement and Transplantation Network which meets the requirements of subsection (b) of this section. The amount provided under such contract in any fiscal year may not exceed $2,000,000. Funds for such contracts shall be made available from funds available to the Public Health Service from appropriations for fiscal years beginning after fiscal year 1984.

(b) Functions

(1) The Organ Procurement and Transplantation Network shall carry out the functions described in paragraph (2) and shall—

(A) be a private nonprofit entity that has an expertise in organ procurement and transplantation, and

(B) have a board of directors—

(i) that includes representatives of organ procurement organizations (including organizations that have received grants under section 273 of this title), transplant centers, voluntary health associations, and the general public; and

(ii) that shall establish an executive committee and other committees, whose chairpersons shall be selected to ensure continuity of leadership for the board.

(2) The Organ Procurement and Transplantation Network shall—

(A) establish in one location or through regional centers—

(i) a national list of individuals who need organs, and

(ii) a national system, through the use of computers and in accordance with established medical criteria, to match organs and individuals included in the list, especially individuals whose immune system makes it difficult for them to receive organs,

(B) establish membership criteria and medical criteria for allocating organs and provide to members of the public an opportunity to comment with respect to such criteria,

(C) maintain a twenty-four-hour telephone service to facilitate matching organs with individuals included in the list,

(D) assist organ procurement organizations in the nationwide distribution of organs equitably among transplant patients,

(E) adopt and use standards of quality for the acquisition and transportation of donated organs, including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,

(F) prepare and distribute, on a regionalized basis (and, to the extent practicable, among regions or on a national basis), samples of blood sera from individuals who are included on the list and whose immune system makes it difficult for them to receive organs, in order to facilitate matching the compatibility of such individuals with organ donors,

(G) coordinate, as appropriate, the transportation of organs from organ procurement organizations to transplant centers,

(H) provide information to physicians and other health professionals regarding organ donation,

(I) collect, analyze, and publish data concerning organ donation and transplants,

(J) carry out studies and demonstration projects for the purpose of improving procedures for organ procurement and allocation, and[1]

(K) work actively to increase the supply of donated organs.[2]

(L) submit to the Secretary an annual report containing information on the comparative costs and patient outcomes at each transplant center affiliated with the organ procurement and transplantation network.

(c) Consideration of critical comments

The Secretary shall establish procedures for—

(1) receiving from interested persons critical comments relating to the manner in which the Organ Procurement and Transplantation Network is carrying out the duties of the Network under subsection (b) of this section; and

(2) the consideration by the Secretary of such critical comments.

(July 1, 1944, ch. 373, title III, § 372, as added Oct. 19, 1984, Pub. L. 98–507, title II, § 201, 98 Stat. 2344; amended Nov. 4, 1988, Pub. L. 100–607, title IV, § 403, 102 Stat. 3115; Nov. 16, 1990, Pub. L. 101–616, title II, § 202(a)–(c), 104 Stat. 3283, 3284.)

PRIOR PROVISIONS

A prior section 274, act July 1, 1944, ch. 373, title III, § 372, as added July 28, 1956, ch. 772, title II, § 201, 70 Stat. 710; amended June 25, 1959, Pub. L. 86–70, § 31(b)(2)–(4), 73 Stat. 148, related to grants to Alaska for a mental health program and payment for construction of hospital facilities, prior to the general revision of this part by section 201 of Pub. L. 98–507.

Another section 372 of act July 1, 1944, added by act Aug. 3, 1956, ch. 941, § 1, 70 Stat. 960, which related to functions of National Library of Medicine, was renumbered section 382 and classified to section 276 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Subsec. (b)(1)(A). Pub. L. 101–616, § 202(a)(1), substituted ''that has an expertise in organ procurement and transplantation'' for ''which is not engaged in any activity unrelated to organ procurement''.

Subsec. (b)(1)(B). Pub. L. 101–616, § 202(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''have a board of directors which includes representatives of organ procurement organiza-

[1] So in original. The word ''and'' probably should not appear.

[2] So in original. The period probably should be '', and''.

tions (including organizations which have received grants under section 273 of this title), transplant centers, voluntary health associations, and the general public.''

Subsec. (b)(2)(D). Pub. L. 101–616, § 202(b)(1), inserted ''nationwide'' after ''organizations in the'' and ''equitably among transplant patients'' after ''organs''.

Subsec. (b)(2)(F). Pub. L. 101–616, § 202(c), substituted ''compatibility'' for ''compatability''.

Subsec. (b)(2)(K), (L). Pub. L. 101–616, § 202(b)(2)–(4), added subpars. (K) and (L).

1988—Subsec. (b)(2)(B), (C). Pub. L. 100–607, § 403(a)(1), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (b)(2)(D). Pub. L. 100–607, § 403(a)(1), (2), redesignated former subpar. (C) as (D) and substituted ''organs'' for ''organs which cannot be placed within the service areas of the organizations''. Former subpar. (D) redesignated (E).

Subsec. (b)(2)(E). Pub. L. 100–607, § 403(a)(1), (3), redesignated former subpar. (D) as (E) and inserted ''including standards for preventing the acquisition of organs that are infected with the etiologic agent for acquired immune deficiency syndrome,'' after ''organs,''. Former subpar. (E) redesignated (F).

Subsec. (b)(2)(F). Pub. L. 100–607, § 403(a)(1), (4), redesignated former subpar. (E) as (F) and inserted ''(and, to the extent practicable, among regions or on a national basis)'' after ''basis''. Former subpar. (F) redesignated (G).

Subsec. (b)(2)(G) to (I). Pub. L. 100–607, § 403(a)(1), redesignated former subpars. (F) to (H) as (G) to (I), respectively.

Subsec. (b)(2)(J). Pub. L. 100–607, § 403(a)(5), added subpar. (J).

Subsec. (c). Pub. L. 100–607, § 403(b), added subsec. (c).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 202(d) of Pub. L. 101–616 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on December 31, 1990.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 273, 274b, 274c, 1320b–8 of this title.

§ 274a. Scientific registry

The Secretary shall, by grant or contract, develop and maintain a scientific registry of the recipients of organ transplants. The registry shall include such information respecting patients and transplant procedures as the Secretary deems necessary to an ongoing evaluation of the scientific and clinical status of organ transplantation. The Secretary shall prepare for inclusion in the report under section 274d of this title an analysis of information derived from the registry.

(July 1, 1944, ch. 373, title III, § 373, as added Oct. 19, 1984, Pub. L. 98–507, title II, § 201, 98 Stat. 2345; amended Nov. 4, 1988, Pub. L. 100–607, title IV, § 404, 102 Stat. 3116; Nov. 16, 1990, Pub. L. 101–616, title I, § 101(b), 104 Stat. 3282.)

PRIOR PROVISIONS

A prior section 373 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960, which related to a Board of Regents of National Library of Medicine, was renumbered section 383 and classified to section 277 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Pub. L. 101–616 struck out ''and bone marrow registry'' after ''Scientific registry'' in section catchline and struck out subsec. (a) designation and subsec. (b) which directed establishment of bone marrow registry and authorized appropriations for fiscal years 1989 and 1990 for such purpose.

1988—Pub. L. 100–607 inserted ''and bone marrow registry'' in section catchline, designated existing text as subsec. (a), and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 274b of this title.

§ 274b. General provisions respecting grants and contracts

(a) Application requirement

No grant may be made under this part or contract entered into under section 274 or 274a of this title unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and shall be submitted in such manner as the Secretary shall by regulation prescribe.

(b) Special considerations and priority; planning and establishment grants

(1) A grant for planning under section 273(a)(1) of this title may be made for one year with respect to any organ procurement organization and may not exceed $100,000.

(2) Grants under section 273(a)(2) of this title may be made for two years. No such grant may exceed $500,000 for any year and no organ procurement organization may receive more than $800,000 for initial operation or expansion.

(3) Grants or contracts under section 273(a)(3) of this title may be made for not more than 3 years.

(c) Determination of grant amount; terms of payment; recordkeeping; access for purposes of audits and examination of records

(1) The Secretary shall determine the amount of a grant or contract made under section 273 or 274a of this title. Payments under such grants and contracts may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants and contracts.

(2)(A) Each recipient of a grant or contract under section 273 or 274a of this title shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant or contract, the total cost of the undertaking in connection with which such grant or contract was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(B) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of a grant or contract under section 273 or 274a of this title that are pertinent to such grant or contract.

(d) "Transplant center" and "organ" defined

For purposes of this part:

(1) The term ''transplant center'' means a health care facility in which transplants of organs are performed.

(2) The term ''organ'' means the human kidney, liver, heart, lung, pancreas, and any other human organ (other than corneas and eyes) specified by the Secretary by regulation and for purposes of section 274a of this title, such term includes bone marrow.

(July 1, 1944, ch. 373, title III, § 374, as added Oct. 19, 1984, Pub. L. 98–507, title II, § 201, 98 Stat. 2345; amended Nov. 4, 1988, Pub. L. 100–607, title IV, § 402(b), 102 Stat. 3114; Nov. 16, 1990, Pub. L. 101–616, title II, § 203, 104 Stat. 3284.)

PRIOR PROVISIONS

A prior section 374 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 961, which related to acceptance and administration of gifts to National Library of Medicine and to establishment of memorials to donors, was renumbered section 384 and classified to section 278 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–616, § 203(1), substituted ''No grant may be made under this part'' for ''No grant may be made under section 273 or 274a of this title''.

Subsec. (b). Pub. L. 101–616, § 203(2), redesignated par. (2) as (1) and substituted ''section 273(a)(1)'' for ''section 273'', struck out former par. (1) which set forth factors in considering applications for section 273 grants, redesignated par. (3) as (2) and substituted ''section 273(a)(2)'' for ''paragraphs (2) and (3) of section 273(a)'', and added par. (3).

Subsec. (c). Pub. L. 101–616, § 203(3), inserted ''or contract'' after ''grant'' wherever appearing and ''and contracts'' after ''grants'' wherever appearing.

1988—Subsec. (b)(3). Pub. L. 100–607 substituted ''paragraphs (2) and (3) of section 273(a) of this title'' for ''section 273 of this title for the establishment, initial operation, or expansion of organ procurement organizations''.

§ 274c. Administration

The Secretary shall designate and maintain an identifiable administrative unit in the Public Health Service to—

(1) administer this part and coordinate with the organ procurement activities under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.],

(2) conduct a program of public information to inform the public of the need for organ donations,

(3) provide technical assistance to organ procurement organizations, the Organ Procurement and Transplantation Network established under section 274 of this title, and other entities in the health care system involved in organ donations, procurement, and transplants, and

(4) provide information—

(i) to patients, their families, and their physicians about transplantation; and

(ii) to patients and their families about the resources available nationally and in each State, and the comparative costs and patient outcomes at each transplant center affiliated with the organ procurement and transplantation network, in order to assist the patients and families with the costs associated with transplantation.

(July 1, 1944, ch. 373, title III, § 375, as added Oct. 19, 1984, Pub. L. 98–507, title II, § 201, 98 Stat. 2346; amended Nov. 4, 1988, Pub. L. 100–607, title IV, § 405, 102 Stat. 3116; Nov. 16, 1990, Pub. L. 101–616, title II, § 204, 104 Stat. 3285.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 375 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 962, which related to definitions, was renumbered section 385 and classified to section 279 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Pub. L. 101–616, § 204(a), struck out '', during fiscal years 1985 through 1990,'' after ''The Secretary shall''.

Par. (3). Pub. L. 101–616, § 204(b)(1), struck out ''receiving funds under section 273 of this title'' after ''organ procurement organizations''.

Par. (4). Pub. L. 101–616, § 204(b)(2), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''not later than April 1 of each of the years 1989 and 1990, submit to the Congress a report on the status of organ donation and coordination services and include in the report an analysis of the efficiency and effectiveness of the procurement and allocation of organs and a description of problems encountered in the procurement and allocation of organs.''

1988—Pub. L. 100–607, in introductory provisions, substituted ''1985 through 1990'' for ''1985, 1986, 1987, and 1988'' and, in par. (4), substituted ''not later than April 1 of each of the years 1989 and 1990, submit to the Congress a report'' for ''one year after the date on which the Task Force on Organ Transplantation transmits its final report under section 104(c) of the National Organ Transplant Act, and annually thereafter through fiscal year 1988, submit to Congress an annual report''.

§ 274d. Report

Not later than February 10 of 1991 and of each second year thereafter, the Secretary shall publish, and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.[1] a report on the scientific and clinical status of organ transplantation. The Secretary shall consult with the Director of the National Institutes of Health and the Commissioner of the Food and Drug Administration in the preparation of the report.

(July 1, 1944, ch. 373, title III, § 376, as added Oct. 19, 1984, Pub. L. 98–507, title II, § 201, 98 Stat. 2346; amended Nov. 4, 1988, Pub. L. 100–607, title IV, § 406, 102 Stat. 3116; Nov. 16, 1990, Pub. L. 101–616, title II, § 205, 104 Stat. 3285.)

PRIOR PROVISIONS

A prior section 376 of act July 1, 1944, added by act Aug. 3, 1956, ch. 907, § 1, 70 Stat. 962, which related to Library facilities, was renumbered section 386 and classified to section 280 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Pub. L. 101–616 substituted ''Not later than February 10 of 1991 and of each second year thereafter, the Secretary shall publish, and submit to the Committee

[1] So in original. The period probably should be a comma.

on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.'' for ''The Secretary shall, not later than October 1 of each year, publish''.

1988—Pub. L. 100–607 substituted ''shall, not later than October 1 of each year,'' for ''shall annually''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 274a of this title.

§ 274e. Prohibition of organ purchases

(a) Prohibition

It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.

(b) Penalties

Any person who violates subsection (a) of this section shall be fined not more than $50,000 or imprisoned not more than five years, or both.

(c) Definitions

For purposes of subsection (a) of this section:

(1) The term ''human organ'' means the human (including fetal) kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin or any subpart thereof and any other human organ (or any subpart thereof, including that derived from a fetus) specified by the Secretary of Health and Human Services by regulation.

(2) The term ''valuable consideration'' does not include the reasonable payments associated with the removal, transportation, implantation, processing, preservation, quality control, and storage of a human organ or the expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(3) The term ''interstate commerce'' has the meaning prescribed for it by section 321(b) of title 21.

(Pub. L. 98–507, title III, § 301, Oct. 19, 1984, 98 Stat. 2346; Pub. L. 100–607, title IV, § 407, Nov. 4, 1988, 102 Stat. 3116.)

CODIFICATION

Section was enacted as part of the National Organ Transplant Act, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1988—Subsec. (c)(1). Pub. L. 100–607 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The term 'human organ' means the human kidney, liver, heart, lung, pancreas, bone marrow, cornea, eye, bone, and skin, and any other human organ specified by the Secretary of Health and Human Services by regulation.''

§ 274f. Study by General Accounting Office

(a) In general

The Comptroller General of the United States shall conduct a study for the purpose of determining—

(1) the extent to which the procurement and allocation of organs have been equitable, efficient, and effective;

(2) the problems encountered in the procurement and allocation; and

(3) the effect of State required-request laws.

(b) Report

Not later than January 7, 1992, the Comptroller General of the United States shall complete the study required in subsection (a) of this section and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made as a result of the study.

(July 1, 1944, ch. 373, title III, § 377, as added Nov. 16, 1990, Pub. L. 101–616, title II, § 206(a), 104 Stat. 3285.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 274g. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $8,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.

(July 1, 1944, ch. 373, title III, § 378, as added Nov. 16, 1990, Pub. L. 101–616, title II, § 206(a), 104 Stat. 3285.)

PART I—NATIONAL BONE MARROW DONOR REGISTRY

AMENDMENTS

1990—Pub. L. 101–616, title I, § 101(a)(2), Nov. 16, 1990, 104 Stat. 3279, which directed amendment of this subchapter by adding part I ''National Bone Marrow Donor Registry'' after section 274f of this title, was executed by adding the new part I after section 274g of this title (the last section in part H) to reflect the probable intent of Congress. Former part I ''Biomedical Ethics'' redesignated part J.

1985—Pub. L. 99–158, §§ 3(b), 11, Nov. 20, 1985, 99 Stat. 879, 883, added part I ''Biomedical Ethics'', and repealed former part I ''National Library of Medicine''.

1970—Pub. L. 91–212, § 10(a)(2), Mar. 13, 1970, 84 Stat. 66, redesignated part H ''National Library of Medicine'', as part I ''National Library of Medicine''.

§ 274k. National Registry

(a) Establishment

The Secretary shall by contract establish and maintain a National Bone Marrow Donor Registry (referred to in this part as the ''Registry'') that meets the requirements of this section. The Registry shall be under the general supervision of the Secretary, and under the direction of a board of directors that shall include representatives of marrow donor centers, marrow transplant centers, persons with expertise in the social science, and the general public.

(b) Functions

The Registry shall—

(1) establish a system for finding marrow donors suitably matched to unrelated recipients for bone marrow transplantation;

(2) establish a system for patient advocacy, separate from mechanisms for donor advocacy, that directly assists patients, their families, and their physicians in the search for an unrelated marrow donor;

(3) increase the representation of individuals from racial and ethnic minority groups in the pool of potential donors for the Registry in order to enable an individual in a minority group, to the extent practicable, to have a comparable chance of finding a suitable unrelated donor as would an individual not in a minority group;

(4) provide information to physicians, other health care professionals, and the public regarding bone marrow transplantation;

(5) recruit potential bone marrow donors;

(6) collect, analyze, and publish data concerning bone marrow donation and transplantation; and

(7) support studies and demonstration projects for the purpose of increasing the number of individuals, especially minorities, who are willing to be marrow donors.

(c) Criteria, standards, and procedures

Not later than 180 days after November 16, 1990, the Secretary shall establish and enforce, for entities participating in the program, including the Registry, individual marrow donor centers, marrow donor registries, marrow collection centers, and marrow transplant centers—

(1) quality standards and standards for tissue typing, obtaining the informed consent of donors, and providing patient advocacy;

(2) donor selection criteria, based on established medical criteria, to protect both the donor and the recipient and to prevent the transmission of potentially harmful infectious diseases such as the viruses that cause hepatitis and the etiologic agent for Acquired Immune Deficiency Syndrome;

(3) procedures to ensure the proper collection and transportation of the marrow;

(4) standards that require the provision of information to patients, their families, and their physicians at the start of the search process concerning—

(A) the resources available through the Registry;

(B) all other marrow donor registries meeting the standards described in this paragraph; and

(C) in the case of the Registry—

(i) the comparative costs of all charges by marrow transplant centers incurred by patients prior to transplantation; and

(ii) the success rates of individual marrow transplant centers;

(5) standards that—

(A) require the establishment of a system of strict confidentiality of records relating to the identity, address, HLA type, and managing marrow donor center for marrow donors and potential marrow donors; and

(B) prescribe the purposes for which the records described in subparagraph (A) may be disclosed, and the circumstances and extent of the disclosure; and

(6) in the case of a marrow donor center or marrow donor registry participating in the program, procedures to ensure the establishment of a method for integrating donor files, searches, and general procedures of the center or registry with the Registry.

(d) Comment procedures

The Secretary shall establish and provide information to the public on procedures, which may include establishment of a policy advisory committee, under which the Secretary shall receive and consider comments from interested persons relating to the manner in which the Registry is carrying out the duties of the Registry under subsection (b) of this section and complying with the criteria, standards, and procedures described in subsection (c) of this section.

(e) Consultation

The Secretary shall consult with the board of directors of the Registry and the bone marrow donor program of the Department of the Navy in developing policies affecting the Registry.

(f) Application

To be eligible to enter into a contract under this section, an entity shall submit to the Secretary and obtain approval of an application at such time, in such manner, and containing such information as the Secretary shall by regulation prescribe.

(g) Eligibility

Entities eligible to receive a contract under this section shall include private nonprofit entities.

(h) Records

(1) Recordkeeping

Each recipient of a contract or subcontract under subsection (a) of this section shall keep such records as the Secretary shall prescribe, including records that fully disclose the amount and disposition by the recipient of the proceeds of the contract, the total cost of the undertaking in connection with which the contract was made, and the amount of the portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) Examination of records

The Secretary and the Comptroller General of the United States shall have access to any books, documents, papers, and records of the recipient of a contract or subcontract entered into under this section that are pertinent to the contract, for the purpose of conducting audits and examinations.

(i) Penalties for disclosure

Any person who discloses the content of any record referred to in subsection (c)(5)(A) of this section without the prior written consent of the donor or potential donor with respect to whom the record is maintained, or in violation of the standards described in subsection (c)(5)(B) of this section, shall be imprisoned for not more than 2 years or fined in accordance with title 18, or both.

(j) Authorization of appropriations

There are authorized to be appropriated to carry out this section $15,000,000 for fiscal year

1991 and such sums as may be necessary for each of fiscal years 1992 and 1993.

(July 1, 1944, ch. 373, title III, § 379, as added Nov. 16, 1990, Pub. L. 101–616, title I, § 101(a)(2), 104 Stat. 3279.)

SAVINGS PROVISION

Section 102 of title I of Pub. L. 101–616 provided that:

''(a) IN GENERAL.—This title [enacting this section and section 274*l* of this title and amending section 274a of this title], and the amendments made by this title, shall not affect any legal document, including any order, regulation, grant, or contract, in effect on the date of enactment of this Act [Nov. 16, 1990], or any administrative proceeding or lawsuit pending on the date, that relates to the bone marrow registry established under section 373(b) of the Public Health Service Act [section 274a(b) of this title] (as it existed before the amendment made by section 101(b) of this Act).

''(b) CONTINUED EFFECT.—A legal document described in subsection (a) or an order issued in a lawsuit described in subsection (a) shall continue in effect until modified, terminated, or revoked.

''(c) PROCEEDINGS.—In any administrative proceeding or lawsuit described in subsection (a), parties shall take appeals, and officials shall hold proceedings and render judgments, in the same manner and with the same effect as if this title had not been enacted.''

§ 274*l*. Study by General Accounting Office

(a) In general

The Comptroller General of the United States shall conduct a study that evaluates—

(1) the costs and benefits of the search process for an unrelated bone marrow donor among different marrow donor registries;

(2) the extent to which marrow donor registries protect donor confidentiality;

(3) the relationship between the Registry, individual marow[1] donor centers, and other marrow donor registries;

(4) the effectiveness and appropriateness of policies and procedures of marrow donor centers, marrow transplant centers, and marrow donor registries, including—

(A) the process of donor recruitment, including the policy of asking each donor whether the donor would want to donate more than one time;

(B) the maintenance and updating of donor files; and

(C) the policy of initially typing donors for A/B antigens only instead of initially typing for both A/B and D/R antigens;

(5) the ability of the marrow donor registries to incorporate changes in medical research and clinical practice; and

(6) the costs associated with tissue typing.

(b) Report

Not later than 1 year after November 16, 1990, the Comptroller General shall complete the study required under subsection (a) of this section and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report describing the findings made by the study and recommendations for legislative reform.

(July 1, 1944, ch. 373, title III, § 379A, as added Nov. 16, 1990, Pub. L. 101–616, title I, § 101(a)(2), 104 Stat. 3282.)

[1] So in original. Probably should be ''marrow''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 275. Repealed. Pub. L. 103–43, title I, § 121(a), June 10, 1993, 107 Stat. 133

Section, act July 1, 1944, ch. 373, title III, § 381, as added Nov. 20, 1985, Pub. L. 99–158, § 11, 99 Stat. 883; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 157(a), 102 Stat. 3059, established the Biomedical Ethics Board and provided for its membership, functions, reports to Congress, etc., and provided for appointment of a Biomedical Ethics Advisory Committee to assist the Biomedical Ethics Board.

A prior section 275, act July 1, 1944, ch. 373, title III, § 381, formerly § 371, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960; renumbered § 381, Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), 84 Stat. 66, established a National Library of Medicine in the Public Health Service and stated the congressional purposes for such establishment, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

§§ 276 to 280a–1. Repealed. Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879

Section 276, act July 1, 1944, ch. 373, title III, § 382, formerly § 372, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960; renumbered § 382 and amended Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), (b)(1), (d)(1), 84 Stat. 66, 67; Nov. 18, 1971, Pub. L. 92–157, title III, § 301(d)(1), 85 Stat. 463, related to functions of Secretary with regard to acquisition, etc., of materials and rules for public access to materials.

Section 277, act July 1, 1944, ch. 373, title III, § 383, formerly § 373, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 960; amended Oct. 22, 1965, Pub. L. 89–291, § 4, 79 Stat. 1067; renumbered § 383 and amended Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), (d)(1), 84 Stat. 66, 67; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; Nov. 18, 1971, Pub. L. 92–157, title III, § 301(d)(2), 85 Stat. 464; Nov. 9, 1978, Pub. L. 95–622, title II, § 212, 92 Stat. 3421, related to establishment, etc., of Board of Regents.

Section 278, act July 1, 1944, ch. 373, title III, § 384, formerly § 374, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 961; renumbered § 384 and amended Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), (d)(1), 84 Stat. 66, 67; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Apr. 26, 1983, Pub. L. 98–24, § 2(a)(2), 97 Stat. 176, related to acceptance and administration of gifts and establishment of memorials to donors.

Section 279, act July 1, 1944, ch. 373, title III, § 385, formerly § 375, as added Aug. 3, 1956, ch. 907 § 1, 70 Stat. 962; renumbered § 385 and amended Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), (b)(2), 84 Stat. 66, defined ''medicine'' and ''medical''.

Section 280, act July 1, 1944, ch. 373, title III, § 386, formerly § 376, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 962; renumbered § 386 and amended Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), (d)(1), 84 Stat. 66, 67; Nov. 18, 1971, Pub. L. 92–157, title III, § 301(d)(3), 85 Stat. 464, authorized appropriations for erection and equipment of Library.

Section 280a, act July 1, 1944, ch. 373, title III, § 387, formerly § 377, as added Aug. 3, 1956, ch. 907, § 1, 70 Stat. 962; amended 1970 Reorg. Plan No. 2 § 102, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; renumbered § 387, Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), 84 Stat. 66, related to transfer of Armed Forces Medical Library to Public Health Service for use in administration of part I.

Section 280a–1, act July 1, 1944, ch. 373, title III, § 388, formerly § 378, as added Oct. 22, 1965, Pub. L. 89–291, § 3, 79 Stat. 1067; renumbered § 388 and amended Mar. 13, 1970, Pub. L. 91–212, § 10(a)(3), (d)(1), 84 Stat. 66, 67; Nov. 18, 1971, Pub. L. 92–157, title III, § 301(d)(4), 85 Stat. 464, related to establishment of regional branches.

PART J—PREVENTION AND CONTROL OF INJURIES

AMENDMENTS

1993—Pub. L. 103–183, title II, § 203(a)(1), Dec. 14, 1993, 107 Stat. 2232, substituted ''Prevention and Control of Injuries'' for ''Injury Control'' in part heading.

Pub. L. 103–43, title XX, § 2008(i)(2)(B)(i), June 10, 1993, 107 Stat. 213, redesignated part K ''Injury Control'' as J. Former part J ''Biomedical Ethics'', consisting of section 275, was repealed by Pub. L. 103–43, title I, § 121(a), June 10, 1993, 107 Stat. 133.

1990—Pub. L. 101–616, title I, § 101(a)(1), Nov. 16, 1990, 104 Stat. 3279, redesignated part I ''Biomedical Ethics'' as J. Former part J ''Injury Control'' redesignated K.

§ 280b. Research

(a) The Secretary, through the Director of the Centers for Disease Control and Prevention, shall—

(1) conduct, and give assistance to public and nonprofit private entities, scientific institutions, and individuals engaged in the conduct of, research relating to the causes, mechanisms, prevention, diagnosis, treatment of injuries, and rehabilitation from injuries;

(2) make grants to, or enter into cooperative agreements or contracts with, public and nonprofit private entities (including academic institutions, hospitals, and laboratories) and individuals for the conduct of such research; and

(3) make grants to, or enter into cooperative agreements or contracts with, academic institutions for the purpose of providing training on the causes, mechanisms, prevention, diagnosis, treatment of injuries, and rehabilitation from injuries.

(b) The Secretary, through the Director of the Centers for Disease Control and Prevention, shall collect and disseminate, through publications and other appropriate means, information concerning the practical applications of research conducted or assisted under subsection (a) of this section. In carrying out the preceding sentence, the Secretary shall disseminate such information to the public, including through elementary and secondary schools.

(July 1, 1944, ch. 373, title III, § 391, as added Nov. 10, 1986, Pub. L. 99–649, § 3, 100 Stat. 3633; amended Nov. 15, 1990, Pub. L. 101–558, § 2(a), 104 Stat. 2772; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(3), 106 Stat. 3504; Dec. 14, 1993, Pub. L. 103–183, title II, § 203(b)(2), 107 Stat. 2232.)

PRIOR PROVISIONS

A prior section 280b, act July 1, 1944, ch. 373, title III, § 390, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1059; amended Mar. 13, 1970, Pub. L. 91–212, §§ 4(b), 5(b), 6(b), 84 Stat. 64, 65; July 23, 1974, Pub. L. 93–353, title II, §§ 201(a), (b), 202(a), 88 Stat. 371, 372; Aug. 1, 1977, Pub. L. 95–83, title II, § 202, 91 Stat. 386; Nov. 9, 1978, Pub. L. 95–622, title II, § 211, 92 Stat. 3420; Aug. 13, 1981, Pub. L. 97–35, title IX, § 925(a), 95 Stat. 569, set forth findings and declaration of policy and authorized appropriations with regard to assistance to medical libraries, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

A prior section 391 of act July 1, 1944, ch. 373, title III, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1059; amended Mar. 13, 1970, Pub. L. 91–212, § 10(b)(3), 84 Stat. 66; July 23, 1974, Pub. L. 93–353, title II, § 202(b), 88 Stat. 372, which defined ''sciences related to health'', ''National Medical Libraries Assistance Advisory Board'', ''Board'', and ''medical library'', was classified to section 280b–1 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–183 inserted at end ''In carrying out the preceding sentence, the Secretary shall disseminate such information to the public, including through elementary and secondary schools.''

1992—Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'' in subsecs. (a) and (b).

1990—Subsec. (a)(2). Pub. L. 101–558, § 2(a)(1), inserted '', or enter into cooperative agreements or contracts with,'' after ''grants to''.

Subsec. (a)(3). Pub. L. 101–558, § 2(a)(2), added par. (3).

FINDINGS AND PURPOSES

Section 2 of Pub. L. 99–649 provided that:

''(a) The Congress finds and declares that:

''(1) Injury is one of the principal public health problems in America, and causes over 140,000 deaths per year.

''(2) Injury rates are particularly high for children and the elderly.

''(3) Injury causes 50 percent of all deaths for children over the age of one year and two-thirds of all deaths for children over the age of 15 years, and is the leading cause of death for individuals under the age of 44 years. Individuals over the age of 65 years have the highest fatality rates for many injuries.

''(4) Injury control has not been given high priority in the United States, and the research being conducted on injury control and the number of personnel involved in injury control activities are not adequate.

''(b) The purposes of this Act [enacting this part] are—

''(1) to promote research into the causes, diagnosis, treatment, prevention, and control of injuries and rehabilitation from injuries;

''(2) to promote cooperation between specialists in fields involved in injury research; and

''(3) to promote coordination between Federal, State, and local governments and public and private entities in order to achieve a reduction in deaths from injuries.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280b–1a of this title.

§ 280b–1. Prevention and control activities

(a) The Secretary, through the Director of the Centers for Disease Control and Prevention, shall—

(1) assist States and political subdivisions of States in activities for the prevention and control of injuries; and

(2) encourage regional activities between States designed to reduce injury rates.

(b) The Secretary, through the Director of the Centers for Disease Control and Prevention, may—

(1) enter into agreements between the Service and public and private community health agencies which provide for cooperative planning of activities to deal with problems relating to the prevention and control of injuries;

(2) work in cooperation with other Federal agencies, and with public and nonprofit private entities, to promote activities regarding the prevention and control of injuries; and

(3) make grants to States and, after consultation with State health agencies, to other public or nonprofit private entities for the purpose of carrying out demonstration projects for the prevention and control of injuries at sites that are not subject to the Occu-

pational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.], including homes, elementary and secondary schools, and public buildings.

(July 1, 1944, ch. 373, title III, § 392, as added Nov. 10, 1986, Pub. L. 99–649, § 3, 100 Stat. 3634; amended Nov. 15, 1990, Pub. L. 101–558, § 2(b), 104 Stat. 2772; Oct. 27, 1992, Pub. L. 102–531, title III, §§ 301, 312(d)(4), 106 Stat. 3482, 3504; Dec. 14, 1993, Pub. L. 103–183, title II, § 203(a)(2), (b)(1), 107 Stat. 2232.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (b)(3), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 280b–1, act July 1, 1944, ch. 373, title III, § 391, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1059; amended Mar. 13, 1970, Pub. L. 91–212, § 10(b)(3), 84 Stat. 66; July 23, 1974, Pub. L. 93–353, title II, § 202(b), 88 Stat. 372, defined ''sciences related to health'', ''National Medical Libraries Assistance Advisory Board'', ''Board'', and ''medical library'', prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

A prior section 392 of act July 1, 1944, ch. 373, title III, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1060; amended Mar. 13, 1970, Pub. L. 91–212, § 10(b)(4), (d)(2)(A), 84 Stat. 66, 67; July 23, 1974, Pub. L. 93–353, title II, § 202(c), 88 Stat. 372, which related to composition, functions, etc., of the National Medical Libraries Assistance Advisory Board, was classified to section 280b–2 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1993—Pub. L. 103–183, § 203(a)(2)(A), substituted ''Prevention and control activities'' for ''Control activities'' in section catchline.

Subsec. (a)(1). Pub. L. 103–183, § 203(a)(2)(B), inserted ''and control'' after ''prevention''.

Subsec. (b)(1). Pub. L. 103–183, § 203(a)(2)(C), substituted ''the prevention and control of injuries'' for ''injuries and injury control''.

Subsec. (b)(2). Pub. L. 103–183, § 203(b)(1), substituted ''to promote activities regarding the prevention and control of injuries; and'' for ''to promote injury control. In carrying out the preceding sentence, the Secretary shall disseminate such information to the public, including through elementary and secondary schools; and''.

1992—Pub. L. 102–531, § 312(d)(4), substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'' in introductory provisions of subsecs. (a) and (b).

Subsec. (b)(1). Pub. L. 102–531, § 301(1), struck out ''and'' after semicolon at end.

Subsec. (b)(2). Pub. L. 102–531, § 301(2), inserted sentence requiring Secretary to disseminate information on injury control to the public, including through elementary and secondary schools and substituted ''; and'' for period at end.

Subsec. (b)(3). Pub. L. 102–531, § 301(3), added par. (3).

1990—Subsec. (b)(2). Pub. L. 101–558 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''work in cooperation with Federal, State, and local agencies to promote injury control.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280b–1a of this title.

§ 280b–1a. Interpersonal violence within families and among acquaintances

(a) With respect to activities that are authorized in sections 280b and 280b–1 of this title, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall carry out such activities with respect to interpersonal violence within families and among acquaintances. Activities authorized in the preceding sentence include the following:

(1) Collecting data relating to the incidence of such violence.

(2) Making grants to public and nonprofit private entities for the evaluation of programs whose purpose is to prevent such violence, including the evaluation of demonstration projects under paragraph (6).

(3) Making grants to public and nonprofit private entities for the conduct of research on identifying effective strategies for preventing such violence.

(4) Providing to the public information and education on such violence, including information and education to increase awareness of the public health consequences of such violence.

(5) Training health care providers as follows:

(A) To identify individuals whose medical conditions or statements indicate that the individuals are victims of such violence.

(B) To routinely determine, in examining patients, whether the medical conditions or statements of the patients so indicate.

(C) To refer individuals so identified to entities that provide services regarding such violence, including referrals for counseling, housing, legal services, and services of community organizations.

(6) Making grants to public and nonprofit private entities for demonstration projects with respect to such violence, including with respect to prevention.

(b) For purposes of this part, the term ''interpersonal violence within families and among acquaintances'' includes behavior commonly referred to as domestic violence, sexual assault, spousal abuse, woman battering, partner abuse, elder abuse, and acquaintance rape.

(July 1, 1944, ch. 373, title III, § 393, as added Dec. 14, 1993, Pub. L. 103–183, title II, § 201(2), 107 Stat. 2231.)

PRIOR PROVISIONS

A prior section 393 of act July 1, 1944, was renumbered section 394 and is classified to section 280b–2 of this title.

Another prior section 393 of act July 1, 1944, was renumbered section 394 and was classified to section 280b–4 of this title.

§ 280b–2. General provisions

(a) Advisory committee

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish an advisory committee to advise the Secretary and such Director with respect to the prevention and control of injuries.

(b) Technical assistance

The Secretary, acting through the Director of the Centers for Disease Control and Prevention,

may provide technical assistance to public and nonprofit private entities with respect to the planning, development, and operation of any program or service carried out pursuant to this part. The Secretary may provide such technical assistance directly or through grants or contracts.

(c) Biennial report

Not later than February 1 of 1995 and of every second year thereafter, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities carried out under this part during the preceding 2 fiscal years. Such report shall include a description of such activities that were carried out with respect to interpersonal violence within families and among acquaintances and with respect to rural areas.

(July 1, 1944, ch. 373, title III, §394, formerly §393, as added Nov. 10, 1986, Pub. L. 99–649, §3, 100 Stat. 3634; amended Nov. 15, 1990, Pub. L. 101–558, §2(c), 104 Stat. 2772; Oct. 27, 1992, Pub. L. 102–531, title III, §312(d)(5), 106 Stat. 3504; renumbered §394 and amended Dec. 14, 1993, Pub. L. 103–183, title II, §§201(1), 202, 107 Stat. 2231, 2232.)

PRIOR PROVISIONS

A prior section 280b–2, act July 1, 1944, ch. 373, title III, §392, as added Oct. 22, 1965, Pub. L. 89–291, §2, 79 Stat. 1060; amended Mar. 13, 1970, Pub. L. 91–212, §10(b)(4), (d)(2)(A), 84 Stat. 66, 67; July 23, 1974, Pub. L. 93–353, title II, §202(c), 88 Stat. 372, related to composition, functions, etc., of National Medical Libraries Assistance Advisory Board, prior to repeal by Pub. L. 99–158, §3(b), Nov. 20, 1985, 99 Stat. 879.

A prior section 394 of act July 1, 1944, was renumbered section 394A and is classified to section 280b–3 of this title.

AMENDMENTS

1993—Pub. L. 103–183, §202, amended section generally. Prior to amendment, section read as follows: ''By not later than September 30, 1992, the Secretary, through the Director of the Centers for Disease Control and Prevention, shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities conducted or supported under this part. The report shall include—

''(1) information regarding the practical applications of research conducted pursuant to subsection (a) of section 280b of this title, including information that has not been disseminated under subsection (b) of such section; and

''(2) information on such activities regarding the prevention and control of injuries in rural areas, including information regarding injuries that are particular to rural areas.''

1992—Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'' in introductory provisions.

1990—Pub. L. 101–558 amended section generally. Prior to amendment, section read as follows: ''By January 1, 1989, the Secretary, through the Director of the Centers for Disease Control, shall prepare and transmit to the Congress a report analyzing the incidence and causes of childhood injuries in the United States and containing recommendations for such legislation with respect to injury control as the Secretary considers appropriate.''

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§280b–3. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $50,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998.

(July 1, 1944, ch. 373, title III, §394A, formerly §394, as added Nov. 10, 1986, Pub. L. 99–649, §3, 100 Stat. 3634; amended Nov. 15, 1990, Pub. L. 101–558, §2(d), 104 Stat. 2773; renumbered §394A and amended Dec. 14, 1993, Pub. L. 103–183, title II, §§201(1), 204, 107 Stat. 2231, 2233.)

PRIOR PROVISIONS

A prior section 280b–3, act July 1, 1944, ch. 373, title III, §393, as added Oct. 22, 1965, Pub. L. 89–291, §2, 79 Stat. 1060; amended Mar. 13, 1970, Pub. L. 91–212, §§2(a), 3, 10(d)(2), 84 Stat. 63, 64, 67, related to grants for construction of medical library facilities, prior to repeal by Pub. L. 93–353, title II, §202(d), July 23, 1974, 88 Stat. 372.

Prior sections 280b–4 to 280b–11 were repealed by Pub. L. 99–158, §3(b), Nov. 20, 1985, 99 Stat. 879.

Section 280b–4, act July 1, 1944, ch. 373, title III, §393, formerly §394, as added Oct. 22, 1965, Pub. L. 89–291, §2, 79 Stat. 1062; amended Mar. 13, 1970, Pub. L. 91–212, §§2(b), 10(d)(2)(A), 84 Stat. 63, 67; June 18, 1973, Pub. L. 93–45, title I, §107(a), 87 Stat. 92; renumbered §393 and amended July 23, 1974, Pub. L. 93–353, title II, §§203(a), 204, 88 Stat. 372, 373, related to grants for training in medical library sciences.

Section 280b–5, act July 1, 1944, ch. 373, title III, §394, formerly §395, as added Oct. 22, 1965, Pub. L. 89–291, §2, 79 Stat. 1062; amended Mar. 13, 1970, Pub. L. 91–212, §§2(c), (d), 4(a), 5(a), 10(c)(1)(A), (B), (2)(A)–(C), (d)(2)(A), 84 Stat. 63, 64, 66, 67; June 18, 1973, Pub. L. 93–45, title I, §107(b), (c), 87 Stat. 92; renumbered §394 and amended July 23, 1974, Pub. L. 93–353, title II, §§203(b), 204, 88 Stat. 372, 373, related to assistance for special scientific projects; research and development in medical library science and related fields.

Section 280b–6, act July 1, 1944, ch. 373, title III, §396, as added Oct. 22, 1965, Pub. L. 89–291, §2, 79 Stat. 1063, was redesignated as subsecs. (b) and (c) of section 280b–5 of this title by Pub. L. 91–212, §10(c)(2), Mar. 13, 1970, 84 Stat. 66.

Section 280b–7, act July 1, 1944, ch. 373, title III, §395, formerly §397, as added Oct. 22, 1965, Pub. L. 89–291, §2, 79 Stat. 1063; renumbered §396 and amended Mar. 13, 1970, Pub. L. 91–212, §§2(e), 6(a)(1), (2), 10(c)(3), (d)(2)(A), 84 Stat. 63, 64, 67; June 18, 1973, Pub. L. 93–45, title I,

§ 107(d), 87 Stat. 92; renumbered § 395 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(c), 204, 88 Stat. 372, 373, related to grants for establishing, expanding, and improving basic medical library or related resources.

Section 280b–8, act July 1, 1944, ch. 373, title III, § 396, formerly § 398, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1065; renumbered § 397 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(f), 7, 10(c)(3), (d)(2)(A), 84 Stat. 63, 65, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(e), 87 Stat. 92; renumbered § 396 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 202(e), (f), 203(d), 204, 88 Stat. 372, 373, related to grants for establishment of regional medical libraries.

Section 280b–9, act July 1, 1944, ch. 373, title III, § 397, formerly § 399, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 398 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(g), 8, 10(c)(3), (d)(2)(A), 84 Stat. 63, 65, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(f), 87 Stat. 92; renumbered § 397 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(e), 204, 88 Stat. 372, 373, related to grants to provide support for biomedical scientific publications.

Section 280b–10, act July 1, 1944, ch. 373, title III, § 398, formerly § 399a, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 399, Mar. 13, 1970, Pub. L. 91–212, § 10(c)(3), 84 Stat. 67; renumbered § 398, July 23, 1974, Pub. L. 93–353, title II, § 204, 88 Stat. 373, related to the continuing availability of appropriated funds.

Section 280b–11, act July 1, 1944, ch. 373, title III, § 399, formerly § 399b, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 399a and amended Mar. 13, 1970, Pub. L. 91–212, § 10(c)(3), (d)(2)(A), 84 Stat. 67; renumbered § 399, July 23, 1974, Pub. L. 93–353, title II, § 204, 88 Stat. 373; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, related to the maintenance of records by recipients of grants and audits thereof by the Secretary of Health and Human Services and the Comptroller General of the United States.

A prior section 280b–12, act July 1, 1944, ch. 373, title III, § 399b, as added Mar. 13, 1970, Pub. L. 91–212, § 9, 84 Stat. 65, related to transfer of funds, prior to repeal by Pub. L. 93–353, title II, § 204, July 23, 1974, 88 Stat. 373, applicable with respect to fiscal years beginning after June 30, 1974.

AMENDMENTS

1993—Pub. L. 103–183, § 204, amended section generally. Prior to amendment, section read as follows: ''To carry out sections 280b and 280b–1 of this title, there are authorized to be appropriated $10,000,000 for each of the fiscal years 1988, 1989, and 1990, $30,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.''

1990—Pub. L. 101–558 struck out subsec. (a) designation, inserted before period at end of first sentence '', $30,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993'', and struck out at end ''Of the amounts appropriated under this section for any fiscal year, not more than 20 percent may be used for Federal administrative expenses to carry out such section for such fiscal year.''

PART K—HEALTH CARE SERVICES IN THE HOME

AMENDMENTS

1993—Pub. L. 103–43, title XX, § 2008(i)(2)(B)(i), June 10, 1993, 107 Stat. 213, redesignated part L ''Health Care Services in the Home'' as K. Former part K ''Injury Control'' redesignated J.

1990—Pub. L. 101–616, title I, § 101(a)(1), Nov. 16, 1990, 104 Stat. 3279, redesignated part J ''Injury Control'' as K. Former part K ''Health Care Services in the Home'' redesignated L.

PRIOR PROVISIONS

A prior part K, added Pub. L. 93–222, § 3, Dec. 29, 1973, 87 Stat. 934, related to quality assurance, prior to repeal by Pub. L. 95–623, § 11(b), Nov. 9, 1978, 92 Stat. 3455.

SUBPART I—GRANTS FOR DEMONSTRATION PROJECTS

§ 280c. Establishment of program

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make not less than 5, and not more than 20, grants to States for the purpose of assisting grantees in carrying out demonstration projects—

(1) to identify low-income individuals who can avoid institutionalization or prolonged hospitalization if skilled medical services, skilled nursing care services, homemaker or home health aide services, or personal care services are provided in the homes of the individuals;

(2) to pay the costs of the provision of such services in the homes of such individuals; and

(3) to coordinate the provision by public and private entities of such services, and other long-term care services, in the homes of such individuals.

(b) Requirement with respect to age of recipients of services

The Secretary may not make a grant under subsection (a) of this section to a State unless the State agrees to ensure that—

(1) not less than 25 percent of the grant is expended to provide services under such subsection to individuals who are not less than 65 years of age; and

(2) of the portion of the grant reserved by the State for purposes of complying with paragraph (1), not less than 10 percent is expended to provide such services to individuals who are not less than 85 years of age.

(c) Relationship to items and services under other programs

A State may not make payments from a grant under subsection (a) of this section for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(2) by an entity that provides health services on a prepaid basis.

(July 1, 1944, ch. 373, title III, § 395, as added Nov. 29, 1987, Pub. L. 100–175, title VI, § 602, 101 Stat. 979; amended Nov. 15, 1990, Pub. L. 101–557, title I, § 101(a)–(c), 104 Stat. 2766; Aug. 17, 1991, Pub. L. 102–108, § 2(f), 105 Stat. 550.)

PRIOR PROVISIONS

A prior section 280C, act July 1, 1944, ch. 373, title III, § 399A, formerly § 399c, as added Dec. 29, 1973, Pub. L. 93–222, § 3, 87 Stat. 934; renumbered § 399A, July 29, 1975, Pub. L. 94–63, title VI, § 607(a), (c), 89 Stat. 351, provided for programs designed to assure the quality of health care, prior to repeal by Pub. L. 95–623, § 11(b), Nov. 9, 1978, 92 Stat. 3455.

A prior section 395 of act July 1, 1944, ch. 373, title III, formerly § 397, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1063; renumbered § 396 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(e), 6(a)(1), (2), 10(c)(3), (d)(2)(A), 84 Stat. 63, 64, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(d), 87 Stat. 92; renumbered § 395 and amended July

23, 1974, Pub. L. 93–353, title II, §§ 203(c), 204, 88 Stat. 372, 373, which related to grants for establishing, expanding, and improving basic medical library or related resources, was classified to section 280b–7 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102–108 inserted ''skilled medical services,'' after ''if''.

1990—Subsec. (a). Pub. L. 101–557, § 101(a), substituted ''shall make not less than 5, and not more than 20, grants'' for ''shall make not less than 3, and not more than 5, grants''.

Subsec. (a)(1). Pub. L. 101–557, § 101(b), substituted ''skilled nursing care services, homemaker or home health aide services, or personal care services are provided in the homes of the individuals'' for ''skilled medical services or related health services (or both) are provided in the homes of the individuals''.

Subsec. (b). Pub. L. 101–557, § 101(c), substituted ''to ensure that—'' and pars. (1) and (2) for ''to ensure that not less than 25 percent of individuals receiving services pursuant to subsection (a) of this section are individuals who are not less than 65 years of age''.

EFFECTIVE DATE

Part effective Oct. 1, 1987, see section 701(a) of Pub. L. 100–175, set out as an Effective Date of 1987 Amendment note under section 3001 of this title.

SHORT TITLE

For short title of title VI of Pub. L. 100–175, which enacted this part as the ''Health Care Services in the Home Act of 1987'', see section 601 of Pub. L. 100–175, set out as a Short Title of 1987 Amendments note under section 201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280c–1, 280c–2 of this title.

§ 280c–1. Limitation on duration of grant and requirement of matching funds

(a) Limitation on duration of grant

The period during which payments are made to a State from a grant under section 280c(a) of this title may not exceed 3 years. Such payments shall be subject to annual evaluation by the Secretary.

(b) Requirement of matching funds

(1)(A) For the first year of payments to a State from a grant under section 280c(a) of this title, the Secretary may not make such payments in an amount exceeding 75 percent of the costs of services to be provided by the State pursuant to such section.

(B) For the second year of such payments to a State, the Secretary may not make such payments in an amount exceeding 65 percent of the costs of such services.

(C) For the third year of such payments to a State, the Secretary may not make such payments in an amount exceeding 55 percent of the costs of such services.

(2) The Secretary may not make a grant under section 280c(a) of this title to a State unless the State agrees to make available, directly or through donations from public or private entities, non-Federal contributions toward the costs of services to be provided pursuant to such section in an amount equal to—

(A) for the first year of payments to the State from the grant, not less than $25 (in cash or in kind under subsection (c) of this section) for each $75 of Federal funds provided in the grant;

(B) for the second year of such payments to the State, not less than $35 (in cash or in kind under subsection (c) of this section) for each $65 of such Federal funds; and

(C) for the third year of such payments to the State, not less than $45 (in cash or in kind under subsection (c) of this section) for each $55 of such Federal funds.

(c) Determination of amount of non-Federal contribution

Non-Federal contributions required in subsection (b) of this section may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(July 1, 1944, ch. 373, title III, § 396, as added Nov. 29, 1987, Pub. L. 100–175, title VI, § 602, 101 Stat. 979.)

PRIOR PROVISIONS

A prior section 396 of act July 1, 1944, ch. 373, title III, formerly § 398, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1065; renumbered § 397 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(f), 7, 10(c)(3), (d)(2)(A), 84 Stat. 63, 65, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(e), 87 Stat. 92; renumbered § 396 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 202(e), (f), 203(d), 204, 88 Stat. 372, 373, which related to grants for establishment of regional medical libraries, was classified to section 280b–8 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

§ 280c–2. General provisions

(a) Limitation on administrative expenses

The Secretary may not make a grant under section 280c(a) of this title to a State unless the State agrees that not more than 10 percent of the grant will be expended for administrative expenses with respect to the grant.

(b) Description of intended use of grant

The Secretary may not make a grant under section 280c(a) of this title to a State unless—

(1) the State submits to the Secretary a description of the purposes for which the State intends to expend the grant; and

(2) such description provides information relating to the programs and activities to be supported and services to be provided, including—

(A) the number of individuals who will receive services pursuant to section 280c(a) of this title and the average costs of providing such services to each such individual; and

(B) a description of the manner in which such programs and activities will be coordinated with any similar programs and activities of public and private entities.

(c) Requirement of application

The Secretary may not make a grant under section 280c(a) of this title to a State unless the State has submitted to the Secretary an application for the grant. The application shall—

(1) contain the description of intended expenditures required in subsection (b) of this section;

(2) with respect to carrying out the purpose for which the grant is to be made, provide assurances of compliance satisfactory to the Secretary; and

(3) otherwise be in such form, be made in such manner, and contain such information and agreements as the Secretary determines to be necessary to carry out this subpart.

(d) Evaluations and report by Secretary

The Secretary shall—

(1) provide for an evaluation of each demonstration project for which a grant is made under section 280c(a) of this title; and

(2) not later than 6 months after the completion of such evaluations, submit to the Congress a report describing the findings made as a result of the evaluations.

(e) Authorizations of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1990, $7,500,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.

(July 1, 1944, ch. 373, title III, § 397, as added Nov. 29, 1987, Pub. L. 100–175, title VI, § 602, 101 Stat. 980; amended Nov. 15, 1990, Pub. L. 101–557, title I, § 101(d), 104 Stat. 2766.)

PRIOR PROVISIONS

A prior section 397 of act July 1, 1944, ch. 373, title III, formerly § 399, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 398 and amended Mar. 13, 1970, Pub. L. 91–212, §§ 2(g), 8, 10(c)(3), (d)(2)(A), 84 Stat. 63, 65, 67; June 18, 1973, Pub. L. 93–45, title I, § 107(f), 87 Stat. 92; renumbered § 397 and amended July 23, 1974, Pub. L. 93–353, title II, §§ 203(e), 204, 88 Stat. 372, 373, which related to grants to provide support for biomedical scientific publications, was classified to section 280b–9 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Subsec. (e). Pub. L. 101–557 substituted ''there are'' for ''there is'' and inserted before period at end '', $7,500,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993''.

SUBPART II—GRANTS FOR DEMONSTRATION PROJECTS WITH RESPECT TO ALZHEIMER'S DISEASE

§ 280c–3. Establishment of program

(a) In general

The Secretary shall make not less than 5, and not more than 15, grants to States for the purpose of assisting grantees in carrying out demonstration projects for planning, establishing, and operating programs—

(1) to coordinate the development and operation with public and private organizations of diagnostic, treatment, care management, respite care, legal counseling, and education services provided within the State to individuals with Alzheimer's disease or related disorders and to the families and care providers of such individuals;

(2) to provide home health care, personal care, day care, companion services, short-term care in health facilities, and other respite care to individuals with Alzheimer's disease or related disorders; and

(3) to provide to health care providers, to individuals with Alzheimer's disease or related disorders, to the families of such individuals, to organizations established for such individuals and such families, and to the general public, information with respect to—

(A) diagnostic services, treatment services, and related services available to such individuals and to the families of such individuals;

(B) sources of assistance in obtaining such services, including assistance under entitlement programs; and

(C) the legal rights of such individuals and such families.

(b) Requirement with respect to certain expenditures

The Secretary may not make a grant under subsection (a) of this section to a State unless the State agrees to expend not less than 50 percent of the grant for the provision of services described in subsection (a)(2) of this section.

(c) Relationship to items and services under other programs

A State may not make payments from a grant under subsection (a) of this section for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(2) by an entity that provides health services on a prepaid basis.

(July 1, 1944, ch. 373, title III, § 398, as added Nov. 29, 1987, Pub. L. 100–175, title VI, § 602, 101 Stat. 981; amended Nov. 15, 1990, Pub. L. 101–557, title I, § 102(a), (b), 104 Stat. 2767.)

PRIOR PROVISIONS

A prior section 398 of act July 1, 1944, ch. 373, title III, formerly § 399a, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 399, Mar. 13, 1970, Pub. L. 91–212, § 10(c)(3), 84 Stat. 67; renumbered § 398, July 23, 1974, Pub. L. 93–353, title II, § 204, 88 Stat. 373, which related to the continuing availability of appropriated funds, was classified to section 280b–10 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–557, § 102(a), substituted ''shall make not less than 5, and not more than 15, grants'' for ''shall make not less than 3, and not more than 5, grants''.

Subsec. (a)(1). Pub. L. 101–557, § 102(b), substituted ''with public and private organizations'' for ''by public and private organizations''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280c–4, 280c–5 of this title.

§ 280c–4. Limitation on duration of grant and requirement of matching funds

(a) Limitation on duration of grant

The period during which payments are made to a State from a grant under section 280c–3(a)

of this title may not exceed 3 years. Such payments shall be subject to annual evaluation by the Secretary.

(b) Requirement of matching funds

(1)(A) For the first year of payments to a State from a grant under section 280c–3(a) of this title, the Secretary may not make such payments in an amount exceeding 75 percent of the costs of services to be provided by the State pursuant to such section.

(B) For the second year of such payments to a State, the Secretary may not make such payments in an amount exceeding 65 percent of the costs of such services.

(C) For the third year of such payments to a State, the Secretary may not make such payments in an amount exceeding 55 percent of the costs of such services.

(2) The Secretary may not make a grant under section 280c–3(a) of this title to a State unless the State agrees to make available, directly or through donations from public or private entities, non-Federal contributions toward the costs of services to be provided pursuant to such section in an amount equal to—

(A) for the first year of payments to the State from the grant, not less than $25 (in cash or in kind under subsection (c) of this section) for each $75 of Federal funds provided in the grant;

(B) for the second year of such payments to the State, not less than $35 (in cash or in kind under subsection (c) of this section) for each $65 of such Federal funds; and

(C) for the third year of such payments to the State, not less than $45 (in cash or in kind under subsection (c) of this section) for each $55 of such Federal funds.

(c) Determination of amount of non-Federal contribution

Non-Federal contributions required in subsection (b) of this section may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(July 1, 1944, ch. 373, title III, § 398A, formerly § 399, as added Nov. 29, 1987, Pub. L. 100–175, title VI, § 602, 101 Stat. 982; renumbered § 398A, July 10, 1992, Pub. L. 102–321, title V, § 502(1), 106 Stat. 427.)

§ 280c–5. General provisions

(a) Limitation on administrative expenses

The Secretary may not make a grant under section 280c–3(a) of this title to a State unless the State agrees that not more than 10 percent of the grant will be expended for administrative expenses with respect to the grant.

(b) Description of intended use of grant

The Secretary may not make a grant under section 280c–3(a) of this title to a State unless—

(1) the State submits to the Secretary a description of the purposes for which the State intends to expend the grant; and

(2) such description provides information relating to the programs and activities to be supported and services to be provided, including—

(A) the number of individuals who will receive services pursuant to section 280c–3(a) of this title and the average costs of providing such services to each such individual; and

(B) a description of the manner in which such programs and activities will be coordinated with any similar programs and activities of public and private entities.

(c) Requirement of application

The Secretary may not make a grant under section 280c–3(a) of this title to a State unless the State has submitted to the Secretary an application for the grant. The application shall—

(1) contain the description of intended expenditures required in subsection (b) of this section;

(2) with respect to carrying out the purpose for which the grant is to be made, provide assurances of compliance satisfactory to the Secretary; and

(3) otherwise be in such form, be made in such manner, and contain such information and agreements as the Secretary determines to be necessary to carry out this subpart.

(d) Evaluations and report by Secretary

The Secretary shall—

(1) provide for an evaluation of each demonstration project for which a grant is made under section 280c–3(a) of this title; and

(2) not later than 6 months after the completion of such evaluations, submit to the Congress a report describing the findings made as a result of the evaluations.

(e) Authorizations of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $5,000,000 for each of the fiscal years 1988 through 1990, $7,500,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.

(July 1, 1944, ch. 373, title III, § 398B, formerly § 399A, as added Nov. 29, 1987, Pub. L. 100–175, title VI, § 602, 101 Stat. 982; amended Nov. 15, 1990, Pub. L. 101–557, title I, § 102(c), 104 Stat. 2767; renumbered § 398B, July 10, 1992, Pub. L. 102–321, title V, § 502(1), 106 Stat. 427.)

AMENDMENTS

1990—Subsec. (e). Pub. L. 101–557 substituted ''there are'' for ''there is'' and inserted before period at end '', $7,500,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993''.

SUBPART III—GRANTS FOR HOME VISITING SERVICES FOR AT-RISK FAMILIES

§ 280c–6. Projects to improve maternal, infant, and child health

(a) In general

(1) Establishment of program

The Secretary, acting through the Administrator of the Health Resources and Services

Administration, shall make grants to eligible entities to pay the Federal share of the cost of providing the services specified in subsection (b) of this section to families in which a member is—

(A) a pregnant woman at risk of delivering an infant with a health or developmental complication; or

(B) a child less than 3 years of age—

(i) who is experiencing or is at risk of a health or developmental complication, or of child abuse or neglect; or

(ii) who has been prenatally exposed to maternal substance abuse.

(2) Minimum period of awards; administrative consultations

(A) The Secretary shall award grants under paragraph (1) for periods of at least three years.

(B) The Administrator of the Administration for Children, Youth, and Families and the Director of the National Commission to Prevent Infant Mortality shall be consulted regarding the promulgation of program guidelines and funding priorities under this section.

(3) Requirement of status as medicaid provider

(A) Subject to subparagraph (B), the Secretary may make a grant under paragraph (1) only if, in the case of any service under such paragraph that is covered in the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(i) the entity involved will provide the service directly, and the entity has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(ii) the entity will enter into an agreement with an organization under which the organization will provide the service, and the organization has entered into such a participation agreement and is qualified to receive such payments.

(B)(i) In the case of an organization making an agreement under subparagraph (A)(ii) regarding the provision of services under paragraph (1), the requirement established in such subparagraph regarding a participation agreement shall be waived by the Secretary if the organization does not, in providing health or mental health services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(ii) A determination by the Secretary of whether an organization referred to in clause (i) meets the criteria for a waiver under such clause shall be made without regard to whether the organization accepts voluntary donations regarding the provision of services to the public.

(b) Home visiting services for eligible families

With respect to an eligible family, each of the following services shall, directly or through arrangement with other public or nonprofit private entities, be available (as applicable to the family member involved) in each project operated with a grant under subsection (a) of this section:

(1) Prenatal and postnatal health care.

(2) Primary health care for the children, including developmental assessments.

(3) Education for the parents concerning infant care and child development, including the development and utilization of parent and teacher resource networks and other family resource and support networks where such networks are available.

(4) Upon the request of a parent, providing the education described in paragraph (3) to other individuals who have responsibility for caring for the children.

(5) Education for the parents concerning behaviors that adversely affect health.

(6) Assistance in obtaining necessary health, mental health, developmental, social, housing, and nutrition services and other assistance, including services and other assistance under maternal and child health programs; the special supplemental nutrition program for women, infants, and children; section 1786 of this title; title V of the Social Security Act [42 U.S.C. 701 et seq.]; title XIX of such Act [42 U.S.C. 1396 et seq.] (including the program for early and periodic screening, diagnostic, and treatment services described in section 1905(r) of such Act [42 U.S.C. 1396d(r)]); titles IV and XIX of the Social Security Act [42 U.S.C. 601 et seq., 1396 et seq.]; housing programs; other food assistance programs; and appropriate alcohol and drug dependency treatment programs, according to need.

(c) Considerations in making grants

In awarding grants under subsection (a) of this section, the Secretary shall take into consideration—

(1) the ability of the entity involved to provide, either directly or through linkages, a broad range of preventive and primary health care services and related social, family support, and developmental services;

(2) different combinations of professional and lay home visitors utilized within programs that are reflective of the identified service needs and characteristics of target populations;

(3) the extent to which the population to be targeted has limited access to health care, and related social, family support, and developmental services; and

(4) whether such grants are equitably distributed among urban and rural settings and whether entities serving Native American communities are represented among the grantees.

(d) Federal share

With respect to the costs of carrying out a project under subsection (a) of this section, a grant under such subsection for the project may not exceed 90 percent of such costs. To be eligible to receive such a grant, an applicant must provide assurances that the applicant will obtain at least 10 percent of such costs from non-Federal funds (and such contributions to such costs may be in cash or in-kind, including facilities and personnel).

(e) Rule of construction regarding at-risk births

For purposes of subsection (a)(1) of this section, a pregnant woman shall be considered to be at risk of delivering an infant with a health or developmental complication if during the pregnancy the woman—

(1) lacks appropriate access to, or information concerning, early and routine prenatal care;

(2) lacks the transportation necessary to gain access to the services described in subsection (b) of this section;

(3) lacks appropriate child care assistance, which results in impeding the ability of such woman to utilize health and related social services;

(4) is fearful of accessing substance abuse services or child and family support services; or

(5) is a minor with a low income.

(f) Delivery of services and case management

(1) Case management model

Home visiting services provided under this section shall be delivered according to a case management model, and a registered nurse, licensed social worker, or other licensed health care professional with experience and expertise in providing health and related social services in home and community settings shall be assigned as the case manager for individual cases under such model.

(2) Case manager

A case manager assigned under paragraph (1) shall have primary responsibility for coordinating and overseeing the development of a plan for each family that is to receive home visiting services under this section, and for coordinating the delivery of such services provided through appropriate personnel.

(3) Appropriate personnel

In determining which personnel shall be utilized in the delivery of services, the case manager shall consider—

(A) the stated objective of the project to be operated with the grant, as determined after considering identified gaps in the current service delivery system; and

(B) the nature of the needs of the family to be served, as determined at the initial assessment of the family that is conducted by the case manager, and through follow-up contacts by other providers of home visiting services.

(4) Family service plan

A case manager, in consultation with a team established in accordance with paragraph (5) for the family involved, shall develop a plan for the family following the initial visit to the home of the family. Such plan shall reflect—

(A) an assessment of the health and related social service needs of the family;

(B) a structured plan for the delivery of home visiting services to meet the identified needs of the family;

(C) the frequency with which such services are to be provided to the family;

(D) ongoing revisions made as the needs of family members change; and

(E) the continuing voluntary participation of the family in the plan.

(5) Home visiting services team

The team to be consulted under paragraph (4) on behalf of a family shall include, as appropriate, other nursing professionals, physician assistants, social workers, child welfare professionals, infant and early childhood specialists, nutritionists, and laypersons trained as home visitors. The case manager shall ensure that the plan is coordinated with those physician services that may be required by the mother or child.

(g) Outreach

Each grantee under subsection (a) of this section shall provide outreach and casefinding services to inform eligible families of the availability of home visiting services from the project.

(h) Confidentiality

In accordance with applicable State law, an entity receiving a grant under subsection (a) of this section shall maintain confidentiality with respect to services provided to families under this section.

(i) Certain assurances

The Secretary may award a grant under subsection (a) of this section only if the entity involved provides assurances satisfactory to the Secretary that—

(1) the entity will provide home visiting services with reasonable frequency—

(A) to families with pregnant women, as early in the pregnancy as is practicable, and until the infant reaches at least 2 years of age; and

(B) to other eligible families, for at least 2 years; and

(2) the entity will coordinate with public health and related social service agencies to prevent duplication of effort and improve the delivery of comprehensive health and related social services.

(j) Submission to Secretary of certain information

The Secretary may award a grant under subsection (a) of this section only if the entity involved submits to the Secretary—

(1) a description of the population to be targeted for home visiting services and methods of outreach and casefinding for identifying eligible families, including the use of lay home visitors where appropriate;

(2) a description of the types and qualifications of home visitors used by the entity and the process by which the entity will provide continuing training and sufficient support to the home visitors; and

(3) such other information as the Secretary determines to be appropriate.

(k) Limitation regarding administrative expenses

Not more than 10 percent of a grant under subsection (a) of this section may be expended for administrative expenses with respect to the grant. The costs of training individuals to serve in the project involved are not subject to the preceding sentence.

(*l*) Restrictions on use of grant

To be eligible to receive a grant under this section, an entity must agree that the grant will not be expended—

(1) to provide inpatient hospital services;

(2) to make cash payments to intended recipients of services;

(3) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) to provide financial assistance to any entity other than a public or nonprofit private entity.

(m) Reports to Secretary

To be eligible to receive a grant under this section, an entity must agree to submit an annual report on the services provided under this section to the Secretary in such manner and containing such information as the Secretary by regulation requires. At a minimum, the entity shall report information concerning eligible families, including—

(1) the characteristics of the families and children receiving services under this section;

(2) the usage, nature, and location of the provider, of preventive health services, including prenatal, primary infant, and child health care;

(3) the incidence of low birthweight and premature infants;

(4) the length of hospital stays for pre- and post-partum women and their children;

(5) the incidence of substantiated child abuse and neglect for all children within participating families;

(6) the number of emergency room visits for routine health care;

(7) the source of payment for health care services and the extent to which the utilization of health care services, other than routine screening and medical care, available to the individuals under the program established under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], and under other Federal, State, and local programs, is reduced;

(8) the number and type of referrals made for health and related social services, including alcohol and drug treatment services, and the utilization of such services provided by the grantee; and

(9) the incidence of developmental disabilities.

(n) Requirement of application

The Secretary may make a grant under subsection (a) of this section only if—

(1) an application for the grant is submitted to the Secretary;

(2) the application contains the agreements and assurances required in this section, and the information required in subsection (j) of this section;

(3) the application contains evidence that the preparation of the application has been coordinated with the State agencies responsible for maternal and child health and child welfare, and coordinated with services provided under part H of the Individuals with Disabilities Education Act [20 U.S.C. 1471 et seq.]; and

(4) the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(*o*) Peer review

(1) Requirement

In making determinations for awarding grants under subsection (a) of this section, the Secretary shall rely on the recommendations of the peer review panel established under paragraph (2).

(2) Composition

The Secretary shall establish a review panel to make recommendations under paragraph (1) that shall be composed of—

(A) national experts in the fields of maternal and child health, child abuse and neglect, and the provision of community-based primary health services; and

(B) representatives of relevant Federal agencies, including the Health Resources and Services Administration, the Substance Abuse and Mental Health Services Administration, the Administration for Children, Youth, and Families, the U.S. Advisory Board on Child Abuse and Neglect, and the National Commission to Prevent Infant Mortality.

(p) Evaluations

(1) In general

The Secretary shall, directly or through contracts with public or private entities—

(A) conduct evaluations to determine the effectiveness of projects under subsection (a) of this section in reducing the incidence of children born with health or developmental complications, the incidence among children less than 3 years of age of such complications, and the incidence of child abuse and neglect; and

(B) not less than once during each 3-year period, prepare and submit to the appropriate committees of Congress a report concerning the results of such evaluations.

(2) Contents

The evaluations conducted under paragraph (1) shall—

(A) include a summary of the data contained in the annual reports submitted under subsection (m) of this section;

(B) assess the relative effectiveness of projects under subsection (a) of this section in urban and rural areas, and among programs utilizing differing combinations of professionals and trained home visitors recruited from the community to meet the needs of defined target service populations; and

(C) make further recommendations necessary or desirable to increase the effectiveness of such projects.

(q) Definitions

For purposes of this section:

(1) The term ''eligible entity'' includes public and nonprofit private entities that provide health or related social services, including community-based organizations, visiting nurse organizations, hospitals, local health departments, community health centers, Native Hawaiian health centers, nurse managed clinics, family service agencies, child welfare agencies, developmental service providers, family resource and support programs, and resource mothers projects.

(2) The term ''eligible family'' means a family described in subsection (a) of this section.

(3) The term ''health or developmental complication'', with respect to a child, means—

(A) being born in an unhealthy or potentially unhealthy condition, including premature birth, low birthweight, and prenatal exposure to maternal substance abuse;

(B) a condition arising from a condition described in subparagraph (A);

(C) a physical disability or delay; and

(D) a developmental disability or delay.

(4) The term ''home visiting services'' means the services specified in subsection (b) of this section, provided at the residence of the eligible family involved or provided pursuant to arrangements made for the family (including arrangements for services in community settings).

(5) The term ''home visitors'' means providers of home visiting services.

(r) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $30,000,000 for each of the fiscal years 1993 and 1994.

(July 1, 1944, ch. 373, title III, § 399, as added July 10, 1992, Pub. L. 102–321, title V, § 502(2), 106 Stat. 427; amended Nov. 2, 1994, Pub. L. 103–448, title II, § 204(w)(2)(D), 108 Stat. 4746.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(3)(A), (b)(6), and (m)(7), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles IV, V, and XIX of the Act are classified generally to subchapters IV (§ 601 et seq.), V (§ 701 et seq.), and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (n)(3), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part H of the Act is classified generally to subchapter VIII (§ 1471 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 399 of act July 1, 1944, was renumbered section 398A by section 502(1) of Pub. L. 102–321 and is classified to section 280c–4 of this title.

Another prior section 399 of act July 1, 1944, ch. 373, title III, formerly § 399b, as added Oct. 22, 1965, Pub. L. 89–291, § 2, 79 Stat. 1066; renumbered § 399a and amended Mar. 13, 1970, Pub. L. 91–212, § 10(c)(3), (d)(2)(A), 84 Stat. 67; renumbered § 399, July 23, 1974, Pub. L. 93–353, title II, § 204, 88 Stat. 373; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, which related to the maintenance of records by recipients of grants and audits thereof by the Secretary of Health and Human Services and the Comptroller General of the United States, was classified to section 280b–11 of this title, prior to repeal by Pub. L. 99–158, § 3(b), Nov. 20, 1985, 99 Stat. 879.

AMENDMENTS

1994—Subsec. (b)(6). Pub. L. 103–448 substituted ''special supplemental nutrition program'' for ''special supplemental food program''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

EFFECTIVE DATE

Section effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, see section 801(b), (d)(1) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

PURPOSE

Section 501 of title V of Pub. L. 102–321 provided that: ''The purpose of this title [enacting this section] is—

''(1) to increase the use of, and to provide information on the availability of early, continuous and comprehensive prenatal care;

''(2) to reduce the incidence of infant mortality and of infants born prematurely, with low birthweight, or with other impairments including those associated with maternal substance abuse;

''(3) for pregnant women and mothers of children below the age of 3 whose children have experienced or are at risk of experiencing a health or developmental complication, to provide assistance in obtaining health and related social services necessary to meet the special needs of the women and their children;

''(4) to assist, when requested, women who are pregnant and at-risk for poor birth outcomes, or who have young children and are abusing alcohol or other drugs, in obtaining appropriate treatment; and

''(5) to reduce the incidence of child abuse and neglect.''

PART L—SERVICES FOR CHILDREN OF SUBSTANCE ABUSERS

AMENDMENTS

1993—Pub. L. 103–43, title XX, § 2008(i)(2)(B)(ii), June 10, 1993, 107 Stat. 213, redesignated part M ''Services for Children of Substance Abusers'' as L. Former part L ''Health Care Services in the Home'' redesignated K.

1990—Pub. L. 101–616, title I, § 101(a)(1), Nov. 16, 1990, 104 Stat. 3279, redesignated part K ''Health Care Services in the Home'' as L.

§ 280d. Grants for services for children of substance abusers

(a) Establishment

(1) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall make grants to public and nonprofit private entities for the purpose of carrying out programs—

(A) to provide the services described in subsection (b) of this section to children of substance abusers;

(B) to provide the applicable services described in subsection (c) of this section to families in which a member is a substance abuser; and

(C) to identify such children and such families.

(2) Administrative consultations

The Administrator of the Administration for Children, Youth, and Families and the Admin-

istrator of the Substance Abuse and Mental Health Services Administration shall be consulted regarding the promulgation of program guidelines and funding priorities under this section.

(3) Requirement of status as medicaid provider

(A) Subject to subparagraph (B), the Secretary may make a grant under paragraph (1) only if, in the case of any service under such paragraph that is covered in the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(i) the entity involved will provide the service directly, and the entity has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(ii) the entity will enter into an agreement with an organization under which the organization will provide the service, and the organization has entered into such a participation agreement and is qualified to receive such payments.

(B)(i) In the case of an organization making an agreement under subparagraph (A)(ii) regarding the provision of services under paragraph (1), the requirement established in such subparagraph regarding a participation agreement shall be waived by the Secretary if the organization does not, in providing health or mental health services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(ii) A determination by the Secretary of whether an organization referred to in clause (i) meets the criteria for a waiver under such clause shall be made without regard to whether the organization accepts voluntary donations regarding the provision of services to the public.

(b) Services for children of substance abusers

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees to make available (directly or through agreements with other entities) to children of substance abusers each of the following services:

(1) Periodic evaluation of children for developmental, psychological, and medical problems.

(2) Primary pediatric care.

(3) Other necessary health and mental health services.

(4) Therapeutic intervention services for children, including provision of therapeutic child care.

(5) Preventive counseling services.

(6) Counseling related to the witnessing of chronic violence.

(7) Referrals for, and assistance in establishing eligibility for, services provided under—

(A) education and special education programs;

(B) Head Start programs established under the Head Start Act [42 U.S.C. 9831 et seq.];

(C) other early childhood programs;

(D) employment and training programs;

(E) public assistance programs provided by Federal, State, or local governments; and

(F) programs offered by vocational rehabilitation agencies, recreation departments, and housing agencies.

(8) Additional developmental services that are consistent with the provision of early intervention services, as such term is defined in part H of the Individuals with Disabilities Education Act [20 U.S.C. 1471 et seq.].

(c) Services for affected families

The Secretary may make a grant under subsection (a) of this section only if, in the case of families in which a member is a substance abuser, the applicant involved agrees to make available (directly or through agreements with other entities) each of the following services, as applicable to the family member involved:

(1) Services as follows, to be provided by a public health nurse, social worker, or similar professional, or by a trained worker from the community who is supervised by a professional:

(A) Counseling to substance abusers on the benefits and availability of substance abuse treatment services and services for children of substance abusers.

(B) Assistance to substance abusers in obtaining and using substance abuse treatment services and in obtaining the services described in subsection (b) of this section for their children.

(C) Visiting and providing support to substance abusers, especially pregnant women, who are receiving substance abuse treatment services or whose children are receiving services under subsection (b) of this section.

(2) In the case of substance abusers:

(A) Encouragement and, where necessary, referrals to participate in appropriate substance abuse treatment.

(B) Primary health care and mental health services, including prenatal and post partum care for pregnant women.

(C) Consultation and referral regarding subsequent pregnancies and life options, including education and career planning.

(D) Where appropriate, counseling regarding family conflict and violence.

(E) Remedial education services.

(F) Referrals for, and assistance in establishing eligibility for, services described in subsection (b)(7) of this section.

(3) In the case of substance abusers, spouses of substance abusers, extended family members of substance abusers, caretakers of children of substance abusers, and other people significantly involved in the lives of substance abusers or the children of substance abusers:

(A) An assessment of the strengths and service needs of the family and the assignment of a case manager who will coordinate services for the family.

(B) Therapeutic intervention services, such as parental counseling, joint counseling sessions for families and children, and family therapy.

(C) Child care or other care for the child to enable the parent to attend treatment or other activities and respite care services.

(D) Parenting education services and parent support groups.

(E) Support services, including, where appropriate, transportation services.

(F) Where appropriate, referral of other family members to related services such as job training.

(G) Aftercare services, including continued support through parent groups and home visits.

(d) Considerations in making grants

In making grants under subsection (a) of this section, the Secretary shall ensure that the grants are reasonably distributed among the following types of entities:

(1) Alcohol and drug treatment programs, especially those providing treatment to pregnant women and mothers and their children.

(2) Public or nonprofit private entities that provide health or social services to disadvantaged populations, and that have—

(A) expertise in applying the services to the particular problems of substance abusers and the children of substance abusers; and

(B) an affiliation or contractual relationship with one or more substance abuse treatment programs.

(3) Consortia of public or nonprofit private entities that include at least one substance abuse treatment program.

(4) Indian tribes.

(e) Federal share

The Federal share of a program carried out under subsection (a) of this section shall be 90 percent. The Secretary shall accept the value of in-kind contributions, including facilities and personnel, made by the grant recipient as a part or all of the non-Federal share of grants.

(f) Coordination with other providers

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees to coordinate its activities with those of the State lead agency, and the State Interagency Coordinating Council, under part H of the Individuals with Disabilities Education Act [20 U.S.C. 1471 et seq.].

(g) Restrictions on use of grant

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that the grant will not be expended—

(1) to provide inpatient hospital services;

(2) to make cash payments to intended recipients of services;

(3) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) to provide financial assistance to any entity other than a public or nonprofit private entity.

(h) Submission to Secretary of certain information

The Secretary may make a grant under subsection (a) of this section only if the applicant involved submits to the Secretary—

(1) a description of the population that is to receive services under this section and a description of such services that are to be provided and measurable goals and objectives;

(2) a description of the mechanism that will be used to involve the local public agencies responsible for health, mental health, child welfare, education, juvenile justice, developmental disabilities, and substance abuse treatment programs in planning and providing services under this section, as well as evidence that the proposal has been coordinated with the State agencies responsible for administering those programs and the State agency responsible for administering public maternal and child health services;

(3) information demonstrating that the applicant has established a collaborative relationship with child welfare agencies and child protective services that will enable the applicant, where appropriate, to—

(A) provide advocacy on behalf of substance abusers and the children of substance abusers in child protective services cases;

(B) provide services to help prevent the unnecessary placement of children in substitute care; and

(C) promote reunification of families or permanent plans for the placement of the child; and

(4) such other information as the Secretary determines to be appropriate.

(i) Reports to Secretary

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that for each fiscal year for which the applicant receives such a grant the applicant, in accordance with uniform standards developed by the Secretary, will submit to the Secretary a report containing—

(1) a description of specific services and activities provided under the grant;

(2) information regarding progress toward meeting the program's stated goals and objectives;

(3) information concerning the extent of use of services provided under the grant, including the number of referrals to related services and information on other programs or services accessed by children, parents, and other caretakers;

(4) information concerning the extent to which parents were able to access and receive treatment for alcohol and drug abuse and sustain participation in treatment over time until the provider and the individual receiving treatment agree to end such treatment, and the extent to which parents re-enter treatment after the successful or unsuccessful termination of treatment;

(5) information concerning the costs of the services provided and the source of financing for health care services;

(6) information concerning—

(A) the number and characteristics of families, parents, and children served, including

a description of the type and severity of childhood disabilities, and an analysis of the number of children served by age;

(B) the number of children served who remained with their parents during the period in which entities provided services under this section;

(C) the number of children served who were placed in out-of-home care during the period in which entities provided services under this section;

(D) the number of children described in subparagraph (C) who were reunited with their families; and

(E) the number of children described in subparagraph (C) for whom a permanent plan has not been made or for whom the permanent plan is other than family reunification;

(7) information on hospitalization or emergency room use by the family members participating in the program; and

(8) such other information as the Secretary determines to be appropriate.

(j) Requirement of application

The Secretary may make any grant under subsection (a) of this section only if—

(1) an application for the grant is submitted to the Secretary;

(2) the application contains the agreements required in this section and the information required in subsection (h) of this section; and

(3) the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(k) Peer review

(1) Requirement

In making determinations for awarding grants under subsection (a) of this section, the Secretary shall rely on the recommendations of the peer review panel established under paragraph (2).

(2) Composition

The Secretary shall establish a review panel to make recommendations under paragraph (1) that shall be composed of—

(A) national experts in the fields of maternal and child health, substance abuse treatment, and child welfare; and

(B) representatives of relevant Federal agencies, including the Health Resources and Services Administration, the Substance Abuse and Mental Health Services Administration, and the Administration for Children, Youth, and Families.

(*l*) Evaluations

The Secretary shall periodically conduct evaluations to determine the effectiveness of programs supported under subsection (a) of this section—

(1) in reducing the incidence of alcohol and drug abuse among substance abusers participating in the programs;

(2) in preventing adverse health conditions in children of substance abusers;

(3) in promoting better utilization of health and developmental services and improving the health, developmental, and psychological status of children receiving services under the program;

(4) in improving parental and family functioning;

(5) in reducing the incidence of out-of-home placement for children whose parents receive services under the program; and

(6) in facilitating the reunification of families after children have been placed in out-of-home care.

(m) Report to Congress

Not later than 2 years after the date on which amounts are first appropriated under subjection[1] (*o*) of this section, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report that contains a description of programs carried out under this section. At a minimum, the report shall contain—

(1) information concerning the number and type of programs receiving grants;

(2) information concerning the type and use of services offered;

(3) information concerning—

(A) the number and characteristics of families, parents, and children served;

(B) the number of children served who remained with their parents during or after the period in which entities provided services under this section;

(C) the number of children served who were placed in out-of-home care during the period in which entities provided services under this section;

(D) the number of children described in subparagraph (C) who were reunited with their families; and

(E) the number of children described in subparagraph (C) who were permanently placed in out-of-home care;

analyzed by the type of entity described in subsection (d) of this section that provided services;

(4) an analysis of the access provided to, and use of, related services and alcohol and drug treatment through programs carried out under this section; and

(5) a comparison of the costs of providing services through each of the types of entities described in subsection (d) of this section.

(n) Data collection

The Secretary shall periodically collect and report on information concerning the numbers of children in substance abusing families, including information on the age, gender and ethnicity of the children, the composition and income of the family, and the source of health care finances.

(*o*) Definitions

For purposes of this section:

(1) The term ''caretaker'', with respect to a child of a substance abuser, means any individual acting in a parental role regarding the

[1] So in original. Probably should be ''subsection''.

child (including any birth parent, foster parent, adoptive parent, relative of such a child, or other individual acting in such a role).

(2) The term ''children of substance abusers'' means—

(A) children who have lived or are living in a household with a substance abuser who is acting in a parental role regarding the children; and

(B) children who have been prenatally exposed to alcohol or other dangerous drugs.

(3) The term ''Indian tribe'' means any tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(4) The term ''public or nonprofit private entities that provide health or social services to disadvantaged populations'' includes community-based organizations, local public health departments, community action agencies, hospitals, community health centers, child welfare agencies, developmental disabilities service providers, and family resource and support programs.

(5) The term ''substance abuse'' means the abuse of alcohol or other drugs.

(p) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $50,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(2) Contingent authority regarding training of certain individuals

Of the amounts appropriated under paragraph (1) for a fiscal year in excess of $25,000,000, the Secretary may make available not more than 15 percent for the training of health care professionals and other personnel (including child welfare providers) who provide services to children and families of substance abusers.

(July 1, 1944, ch. 373, title III, § 399D, as added July 10, 1992, Pub. L. 102–321, title IV, § 401(a), 106 Stat. 419.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(3)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Head Start Act, referred to in subsec. (b)(7)(B), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsecs. (b)(8) and (f), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Part H of the Act is classified generally to subchapter VIII (§ 1471 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (*o*)(3), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE

Section effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, see section 801(b), (d)(1) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

CONSTRUCTION

Section 401(b) of Pub. L. 102–321 provided that: ''With respect to the program established in section 399D of the Public Health Service Act [this section] (as added by subsection (a) of this section), nothing in such section 399D may be construed as establishing for any other Federal program any requirement, authority, or prohibition, including with respect to recipients of funds under such other Federal programs.''

PART [1] N—NATIONAL FOUNDATION FOR THE CENTERS FOR DISEASE CONTROL AND PREVENTION

§ 280d–11. Establishment and duties of Foundation

(a) In general

There shall be established in accordance with this section a nonprofit private corporation to be known as the National Foundation for the Centers for Disease Control and Prevention (in this part referred to as the ''Foundation''). The Foundation shall not be an agency or instrumentality of the Federal Government, and officers, employees, and members of the board of the Foundation shall not be officers or employees of the Federal Government.

(b) Purpose of Foundation

The purpose of the Foundation shall be to support and carry out activities for the prevention and control of diseases, disorders, injuries, and disabilities, and for promotion of public health.

(c) Endowment fund

(1) In general

In carrying out subsection (b) of this section, the Foundation shall establish a fund for providing endowments for positions that are associated with the Centers for Disease Control and Prevention and dedicated to the purpose described in such subsection. Subject to subsection (f)(1)(B) of this section, the fund shall consist of such donations as may be provided by non-Federal entities and such non-Federal assets of the Foundation (including earnings of the Foundation and the fund) as the Foundation may elect to transfer to the fund.

[1] So in original. Probably should be part ''M''.

(2) Authorized expenditures of fund

The provision of endowments under paragraph (1) shall be the exclusive function of the fund established under such paragraph. Such endowments may be expended only for the compensation of individuals holding the positions, for staff, equipment, quarters, travel, and other expenditures that are appropriate in supporting the positions, and for recruiting individuals to hold the positions endowed by the fund.

(d) Certain activities of Foundation

In carrying out subsection (b) of this section, the Foundation may provide for the following with respect to the purpose described in such subsection:

(1) Programs of fellowships for State and local public health officials to work and study in association with the Centers for Disease Control and Prevention.

(2) Programs of international arrangements to provide opportunities for public health officials of other countries to serve in public health capacities in the United States in association with the Centers for Disease Control and Prevention or elsewhere, or opportunities for employees of such Centers (or other public health officials in the United States) to serve in such capacities in other countries, or both.

(3) Studies, projects, and research (which may include applied research on the effectiveness of prevention activities, demonstration projects, and programs and projects involving international, Federal, State, and local governments).

(4) Forums for government officials and appropriate private entities to exchange information. Participants in such forums may include institutions of higher education and appropriate international organizations.

(5) Meetings, conferences, courses, and training workshops.

(6) Programs to improve the collection and analysis of data on the health status of various populations.

(7) Programs for writing, editing, printing, and publishing of books and other materials.

(8) Other activities to carry out the purpose described in subsection (b) of this section.

(e) General structure of Foundation; nonprofit status

(1) Board of directors

The Foundation shall have a board of directors (in this part referred to as the ''Board''), which shall be established and conducted in accordance with subsection (f) of this section. The Board shall establish the general policies of the Foundation for carrying out subsection (b) of this section, including the establishment of the bylaws of the Foundation.

(2) Executive director

The Foundation shall have an executive director (in this part referred to as the ''Director''), who shall be appointed by the Board, who shall serve at the pleasure of the Board, and for whom the Board shall establish the rate of compensation. Subject to compliance with the policies and bylaws established by the Board pursuant to paragraph (1), the Director shall be responsible for the daily operations of the Foundation in carrying out subsection (b) of this section.

(3) Nonprofit status

In carrying out subsection (b) of this section, the Board shall establish such policies and bylaws under paragraph (1), and the Director shall carry out such activities under paragraph (2), as may be necessary to ensure that the Foundation maintains status as an organization that—

(A) is described in subsection (c)(3) of section 501 of title 26; and

(B) is, under subsection (a) of such section, exempt from taxation.

(f) Board of directors

(1) Certain bylaws

(A) In establishing bylaws under subsection (e)(1) of this section, the Board shall ensure that the bylaws of the Foundation include bylaws for the following:

(i) Policies for the selection of the officers, employees, agents, and contractors of the Foundation.

(ii) Policies, including ethical standards, for the acceptance and disposition of donations to the Foundation and for the disposition of the assets of the Foundation.

(iii) Policies for the conduct of the general operations of the Foundation.

(iv) Policies for writing, editing, printing, and publishing of books and other materials, and the acquisition of patents and licenses for devices and procedures developed by the Foundation.

(B) In establishing bylaws under subsection (e)(1) of this section, the Board shall ensure that the bylaws of the Foundation (and activities carried out under the bylaws) do not—

(i) reflect unfavorably upon the ability of the Foundation, or the Centers for Disease Control and Prevention, to carry out its responsibilities or official duties in a fair and objective manner; or

(ii) compromise, or appear to compromise, the integrity of any governmental program or any officer or employee involved in such program.

(2) Composition

(A) Subject to subparagraph (B), the Board shall be composed of 7 individuals, appointed in accordance with paragraph (4), who collectively possess education or experience appropriate for representing the general field of public health, the general field of international health, and the general public. Each such individual shall be a voting member of the Board.

(B) The Board may, through amendments to the bylaws of the Foundation, provide that the number of members of the Board shall be a greater number than the number specified in subparagraph (A).

(3) Chair

The Board shall, from among the members of the Board, designate an individual to serve as the chair of the Board (in this subsection referred to as the ''Chair'').

(4) Appointments, vacancies, and terms

Subject to subsection (j) of this section (regarding the initial membership of the Board), the following shall apply to the Board:

(A) Any vacancy in the membership of the Board shall be filled by appointment by the Board, after consideration of suggestions made by the Chair and the Director regarding the appointments. Any such vacancy shall be filled not later than the expiration of the 180-day period beginning on the date on which the vacancy occurs.

(B) The term of office of each member of the Board appointed under subparagraph (A) shall be 5 years. A member of the Board may continue to serve after the expiration of the term of the member until the expiration of the 180-day period beginning on the date on which the term of the member expires.

(C) A vacancy in the membership of the Board shall not affect the power of the Board to carry out the duties of the Board. If a member of the Board does not serve the full term applicable under subparagraph (B), the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(5) Compensation

Members of the Board may not receive compensation for service on the Board. The members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Board.

(g) Certain responsibilities of executive director

In carrying out subsection (e)(2) of this section, the Director shall carry out the following functions:

(1) Hire, promote, compensate, and discharge officers and employees of the Foundation, and define the duties of the officers and employees.

(2) Accept and administer donations to the Foundation, and administer the assets of the Foundation.

(3) Establish a process for the selection of candidates for holding endowed positions under subsection (c) of this section.

(4) Enter into such financial agreements as are appropriate in carrying out the activities of the Foundation.

(5) Take such action as may be necessary to acquire patents and licenses for devices and procedures developed by the Foundation and the employees of the Foundation.

(6) Adopt, alter, and use a corporate seal, which shall be judicially noticed.

(7) Commence and respond to judicial proceedings in the name of the Foundation.

(8) Other functions that are appropriate in the determination of the Director.

(h) General provisions

(1) Authority for accepting funds

The Director of the Centers for Disease Control and Prevention may accept and utilize, on behalf of the Federal Government, any gift, donation, bequest, or devise of real or personal property from the Foundation for the purpose of aiding or facilitating the work of such Centers. Funds may be accepted and utilized by such Director under the preceding sentence without regard to whether the funds are designated as general-purpose funds or special-purpose funds.

(2) Authority for acceptance of voluntary services

(A) The Director of the Centers for Disease Control and Prevention may accept, on behalf of the Federal Government, any voluntary services provided to such Centers by the Foundation for the purpose of aiding or facilitating the work of such Centers. In the case of an individual, such Director may accept the services provided under the preceding sentence by the individual for not more than 2 years.

(B) The limitation established in subparagraph (A) regarding the period of time in which services may be accepted applies to each individual who is not an employee of the Federal Government and who serves in association with the Centers for Disease Control and Prevention pursuant to financial support from the Foundation.

(3) Administrative control

No officer, employee, or member of the Board of the Foundation may exercise any administrative or managerial control over any Federal employee.

(4) Applicability of certain standards to non-Federal employees

In the case of any individual who is not an employee of the Federal Government and who serves in association with the Centers for Disease Control and Prevention pursuant to financial support from the Foundation, the Foundation shall negotiate a memorandum of understanding with the individual and the Director of the Centers for Disease Control and Prevention specifying that the individual—

(A) shall be subject to the ethical and procedural standards regulating Federal employment, scientific investigation, and research findings (including publications and patents) that are required of individuals employed by the Centers for Disease Control and Prevention, including standards under this chapter, the Ethics in Government Act, and the Technology Transfer Act;[1] and

(B) shall be subject to such ethical and procedural standards under chapter 11 of title 18 (relating to conflicts of interest), as the Director of such Centers determines is appropriate, except such memorandum may not provide that the individual shall be subject to the standards of section 209 of title 18.

(5) Financial conflicts of interest

Any individual who is an officer, employee, or member of the Board of the Foundation may not directly or indirectly participate in the consideration or determination by the Foundation of any question affecting—

(A) any direct or indirect financial interest of the individual; or

(B) any direct or indirect financial interest of any business organization or other entity

[1] See References in Text note below.

of which the individual is an officer or employee or in which the individual has a direct or indirect financial interest.

(6) Audits; availability of records

The Foundation shall—

(A) provide for biennial audits of the financial condition of the Foundation; and

(B) make such audits, and all other records, documents, and other papers of the Foundation, available to the Secretary and the Comptroller General of the United States for examination or audit.

(7) Reports

(A) Not later than February 1 of each fiscal year, the Foundation shall publish a report describing the activities of the Foundation during the preceding fiscal year. Each such report shall include for the fiscal year involved a comprehensive statement of the operations, activities, financial condition, and accomplishments of the Foundation.

(B) With respect to the financial condition of the Foundation, each report under subparagraph (A) shall include the source, and a description of, all gifts to the Foundation of real or personal property, and the source and amount of all gifts to the Foundation of money. Each such report shall include a specification of any restrictions on the purposes for which gifts to the Foundation may be used.

(C) The Foundation shall make copies of each report submitted under subparagraph (A) available for public inspection, and shall upon request provide a copy of the report to any individual for a charge not exceeding the cost of providing the copy.

(8) Liaison from Centers for Disease Control and Prevention

The Director of the Centers for Disease Control and Prevention shall serve as the liaison representative of such Centers to the Board and the Foundation.

(i) Federal funding

(1) Authority for annual grants

(A) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall—

(i) for fiscal year 1993, make a grant to an entity described in subsection (j)(9) of this section (relating to the establishment of a committee to establish the Foundation);

(ii) for fiscal year 1994, make a grant to the committee established under such subsection, or if the Foundation has been established, to the Foundation; and

(iii) for fiscal year 1995 and each subsequent fiscal year, make a grant to the Foundation.

(B) A grant under subparagraph (A) may be expended—

(i) in the case of an entity receiving the grant under subparagraph (A)(i), only for the purpose of carrying out the duties established in subsection (j)(9) of this section for the entity;

(ii) in the case of the committee established under such subsection, only for the purpose of carrying out the duties established in subsection (j) of this section for the committee; and

(iii) in the case of the Foundation, only for the purpose of the administrative expenses of the Foundation.

(C) A grant under subparagraph (A) may not be expended to provide amounts for the fund established under subsection (c) of this section.

(D) For the purposes described in subparagraph (B)—

(i) any portion of the grant made under subparagraph (A)(i) for fiscal year 1993 that remains unobligated after the entity receiving the grant completes the duties established in subsection (j)(9) of this section for the entity shall be available to the committee established under such subsection; and

(ii) any portion of a grant under subparagraph (A) made for fiscal year 1993 or 1994 that remains unobligated after such committee completes the duties established in such subsection for the committee shall be available to the Foundation.

(2) Funding for grants

(A) For the purpose of grants under paragraph (1), there is authorized to be appropriated $500,000 for each fiscal year.

(B) For the purpose of grants under paragraph (1), the Secretary may for each fiscal year make available not more than $500,000 from the amounts appropriated for the fiscal year for the programs of the Department of Health and Human Services. Such amounts may be made available without regard to whether amounts have been appropriated under subparagraph (A).

(3) Certain restriction

If the Foundation receives Federal funds for the purpose of serving as a fiscal intermediary between Federal agencies, the Foundation may not receive such funds for the indirect costs of carrying out such purpose in an amount exceeding 10 percent of the direct costs of carrying out such purpose. The preceding sentence may not be construed as authorizing the expenditure of any grant under paragraph (1) for such purpose.

(j) Committee for establishment of Foundation

(1) In general

There shall be established in accordance with this subsection a committee to carry out the functions described in paragraph (2) (which committee is referred to in this subsection as the ''Committee'').

(2) Functions

The functions referred to in paragraph (1) for the Committee are as follows:

(A) To carry out such activities as may be necessary to incorporate the Foundation under the laws of the State involved, including serving as incorporators for the Foundation. Such activities shall include ensuring that the articles of incorporation for the Foundation require that the Foundation be established and operated in accordance with the applicable provisions of this part (or any successor to this part), including such provi-

sions as may be in effect pursuant to amendments enacted after October 27, 1992.

(B) To ensure that the Foundation qualifies for and maintains the status described in subsection (e)(3) of this section (regarding taxation).

(C) To establish the general policies and initial bylaws of the Foundation, which bylaws shall include the bylaws described in subsections (e)(3) and (f)(1) of this section.

(D) To provide for the initial operation of the Foundation, including providing for quarters, equipment, and staff.

(E) To appoint the initial members of the Board in accordance with the requirements established in subsection (f)(2)(A) of this section for the composition of the Board, and in accordance with such other qualifications as the Committee may determine to be appropriate regarding such composition. Of the members so appointed—

(i) 2 shall be appointed to serve for a term of 3 years;

(ii) 2 shall be appointed to serve for a term of 4 years; and

(iii) 3 shall be appointed to serve for a term of 5 years.

(3) Completion of functions of Committee; initial meeting of Board

(A) The Committee shall complete the functions required in paragraph (1) not later than September 30, 1994. The Committee shall terminate upon the expiration of the 30-day period beginning on the date on which the Secretary determines that the functions have been completed.

(B) The initial meeting of the Board shall be held not later than November 1, 1994.

(4) Composition

The Committee shall be composed of 5 members, each of whom shall be a voting member. Of the members of the Committee—

(A) no fewer than 2 shall have broad, general experience in public health; and

(B) no fewer than 2 shall have broad, general experience in nonprofit private organizations (without regard to whether the individuals have experience in public health).

(5) Chair

The Committee shall, from among the members of the Committee, designate an individual to serve as the chair of the Committee.

(6) Terms; vacancies

The term of members of the Committee shall be for the duration of the Committee. A vacancy in the membership of the Committee shall not affect the power of the Committee to carry out the duties of the Committee. If a member of the Committee does not serve the full term, the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(7) Compensation

Members of the Committee may not receive compensation for service on the Committee. Members of the Committee may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Committee.

(8) Committee support

The Director of the Centers for Disease Control and Prevention may, from amounts available to the Director for the general administration of such Centers, provide staff and financial support to assist the Committee with carrying out the functions described in paragraph (2). In providing such staff and support, the Director may both detail employees and contract for assistance.

(9) Grant for establishment of Committee

(A) With respect to a grant under paragraph (1)(A)(i) of subsection (i) of this section for fiscal year 1993, an entity described in this paragraph is a private nonprofit entity with significant experience in domestic and international issues of public health. Not later than 180 days after October 27, 1992, the Secretary shall make the grant to such an entity (subject to the availability of funds under paragraph (2) of such subsection).

(B) The grant referred to in subparagraph (A) may be made to an entity only if the entity agrees that—

(i) the entity will establish a committee that is composed in accordance with paragraph (4); and

(ii) the entity will not select an individual for membership on the Committee unless the individual agrees that the Committee will operate in accordance with each of the provisions of this subsection that relate to the operation of the Committee.

(C) The Secretary may make a grant referred to in subparagraph (A) only if the applicant for the grant makes an agreement that the grant will not be expended for any purpose other than carrying out subparagraph (B). Such a grant may be made only if an application for the grant is submitted to the Secretary containing such agreement, and the application is in such form, is made in such manner, and contains such other agreements and such assurances and information as the Secretary determines to be necessary to carry out this paragraph.

(July 1, 1944, ch. 373, title III, § 399F, as added Oct. 27, 1992, Pub. L. 102–531, title II, § 201, 106 Stat. 3474.)

REFERENCES IN TEXT

The Ethics in Government Act, referred to in subsec. (h)(4)(A), probably means the Ethics in Government Act of 1978, Pub. L. 95–521, Oct. 26, 1978, 92 Stat. 1824, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 101 of Pub. L. 95–521 in the Appendix to Title 5, Government Organization and Employees, and Tables.

The Technology Transfer Act, referred to in subsec. (h)(4)(A), may mean the Federal Technology Transfer Act of 1986, Pub. L. 99–502, Oct. 20, 1986, 100 Stat. 1785, as amended, or the National Competitiveness Technology Transfer Act of 1989, part C (§§ 3131–3133) of title XXXI of div. C of Pub. L. 101–189, Nov. 29, 1989, 103 Stat. 1674. For complete classification of these Acts to the Code, see Short Title of 1986 Amendment note and Short Title of 1989 Amendment note both set out under section 3701 of Title 15, Commerce and Trade, and Tables.

PART [1] M—NATIONAL PROGRAM OF CANCER REGISTRIES

§ 280e. National program of cancer registries

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control, may make grants to States, or may make grants or enter into contracts with academic or nonprofit organizations designated by the State to operate the State's cancer registry in lieu of making a grant directly to the State, to support the operation of population-based, statewide cancer registries in order to collect, for each form of in-situ and invasive cancer (with the exception of basal cell and squamous cell carcinoma of the skin), data concerning—

(1) demographic information about each case of cancer;

(2) information on the industrial or occupational history of the individuals with the cancers, to the extent such information is available from the same record;

(3) administrative information, including date of diagnosis and source of information;

(4) pathological data characterizing the cancer, including the cancer site, stage of disease (pursuant to Staging Guide), incidence, and type of treatment; and

(5) other elements determined appropriate by the Secretary.

(b) Matching funds

(1) In general

The Secretary may make a grant under subsection (a) of this section only if the State, or the academic or nonprofit private organization designated by the State to operate the cancer registry of the State, involved agrees, with respect to the costs of the program, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is not less than 25 percent of such costs or $1 for every $3 of Federal funds provided in the grant.

(2) Determination of amount of non-Federal contribution; maintenance of effort

(A) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) With respect to a State in which the purpose described in subsection (a) of this section is to be carried out, the Secretary, in making a determination of the amount of non-Federal contributions provided under paragraph (1), may include only such contributions as are in excess of the amount of such contributions made by the State toward the collection of data on cancer for the fiscal year preceding the first year for which a grant under subsection (a) of this section is made with respect to the State. The Secretary may decrease the amount of non-Federal contributions that otherwise would have been required by this subsection in those cases in which the State can demonstrate that decreasing such amount is appropriate because of financial hardship.

(c) Eligibility for grants

(1) In general

No grant shall be made by the Secretary under subsection (a) of this section unless an application has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such a manner, and be accompanied by such information, as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and in accordance with the requirements of this section, that the application will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under subsection (a) of this section, and that the applicant will comply with the peer review requirements under sections 289 and 289a of this title.

(2) Assurances

Each applicant, prior to receiving Federal funds under subsection (a) of this section, shall provide assurances satisfactory to the Secretary that the applicant will—

(A) provide for the establishment of a registry in accordance with subsection (a) of this section;

(B) comply with appropriate standards of completeness, timeliness, and quality of population-based cancer registry data;

(C) provide for the annual publication of reports of cancer data under subsection (a) of this section; and

(D) provide for the authorization under State law of the statewide cancer registry, including promulgation of regulations providing—

(i) a means to assure complete reporting of cancer cases (as described in subsection (a) of this section) to the statewide cancer registry by hospitals or other facilities providing screening, diagnostic or therapeutic services to patients with respect to cancer;

(ii) a means to assure the complete reporting of cancer cases (as defined in subsection (a) of this section) to the statewide cancer registry by physicians, surgeons, and all other health care practitioners diagnosing or providing treatment for cancer patients, except for cases directly referred to or previously admitted to a hospital or other facility providing screening, diagnostic or therapeutic services to patients in that State and reported by those facilities;

(iii) a means for the statewide cancer registry to access all records of physicians and surgeons, hospitals, outpatient clinics, nursing homes, and all other facilities, individuals, or agencies providing such serv-

[1] So in original. Probably should be part ''N''.

ices to patients which would identify cases of cancer or would establish characteristics of the cancer, treatment of the cancer, or medical status of any identified patient;

(iv) for the reporting of cancer case data to the statewide cancer registry in such a format, with such data elements, and in accordance with such standards of quality timeliness and completeness, as may be established by the Secretary;

(v) for the protection of the confidentiality of all cancer case data reported to the statewide cancer registry, including a prohibition on disclosure to any person of information reported to the statewide cancer registry that identifies, or could lead to the identification of, an individual cancer patient, except for disclosure to other State cancer registries and local and State health officers;

(vi) for a means by which confidential case data may in accordance with State law be disclosed to cancer researchers for the purposes of cancer prevention, control and research;

(vii) for the authorization or the conduct, by the statewide cancer registry or other persons and organizations, of studies utilizing statewide cancer registry data, including studies of the sources and causes of cancer, evaluations of the cost, quality, efficacy, and appropriateness of diagnostic, therapeutic, rehabilitative, and preventative services and programs relating to cancer, and any other clinical, epidemiological, or other cancer research; and

(viii) for protection for individuals complying with the law, including provisions specifying that no person shall be held liable in any civil action with respect to a cancer case report provided to the statewide cancer registry, or with respect to access to cancer case information provided to the statewide cancer registry.

(d) Relationship to certain programs

(1) In general

This section may not be construed to act as a replacement for or diminishment of the program carried out by the Director of the National Cancer Institute and designated by such Director as the Surveillance, Epidemiology, and End Results Program (SEER).

(2) Supplanting of activities

In areas where both such programs exist, the Secretary shall ensure that SEER support is not supplanted and that any additional activities are consistent with the guidelines provided for in subsection (c)(2)(C) and (D) of this section and are appropriately coordinated with the existing SEER program.

(3) Transfer of responsibility

The Secretary may not transfer administration responsibility for such SEER program from such Director.

(4) Coordination

To encourage the greatest possible efficiency and effectiveness of Federally supported efforts with respect to the activities described in this subsection, the Secretary shall take steps to assure the appropriate coordination of programs supported under this part with existing Federally supported cancer registry programs.

(e) Requirement regarding certain study on breast cancer

In the case of a grant under subsection (a) of this section to any State specified in section 280e–3(b) of this title, the Secretary may establish such conditions regarding the receipt of the grant as the Secretary determines are necessary to facilitate the collection of data for the study carried out under section 399C.[1]

(July 1, 1944, ch. 373, title III, § 399H, as added Oct. 24, 1992, Pub. L. 102–515, § 3, 106 Stat. 3372.)

REFERENCES IN TEXT

Section 399C, included within the phrase ''study carried out under section 399C'', referred to in subsec. (e), was not translated because title III of act July 1, 1944, which is classified to this subchapter, does not contain a section 399C. Provisions in this subchapter relating to a study are contained in section 399K which is classified to section 280e–3 of this title.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

CONGRESSIONAL FINDINGS AND PURPOSE

Section 2 of Pub. L. 102–515 provided that:

''(a) FINDINGS.—Congress finds that—

''(1) cancer control efforts, including prevention and early detection, are best addressed locally by State health departments that can identify unique needs;

''(2) cancer control programs and existing statewide population-based cancer registries have identified cancer incidence and cancer mortality rates that indicate the burden of cancer for Americans is substantial and varies widely by geographic location and by ethnicity;

''(3) statewide cancer incidence and cancer mortality data, can be used to identify cancer trends, patterns, and variation for directing cancer control intervention;

''(4) the American Association of Central Cancer Registries (AACCR) cites that of the 50 States, approximately 38 have established cancer registries, many are not statewide and 10 have no cancer registry; and

''(5) AACCR also cites that of the 50 States, 39 collect data on less than 100 percent of their population, and less than half have adequate resources for insuring minimum standards for quality and for completeness of case information.

''(b) PURPOSE.—It is the purpose of this Act [enacting this part and provisions set out as a note under section 201 of this title] to establish a national program of cancer registries.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280e–1, 280e–3 of this title.

§ 280e–1. Planning grants regarding registries

(a) In general

(1) States

The Secretary, acting through the Director of the Centers for Disease Control, may make

[1] See References in Text note below.

grants to States for the purpose of developing plans that meet the assurances required by the Secretary under section 399B(c)(2).[1]

(2) Other entities

For the purpose described in paragraph (1), the Secretary may make grants to public entities other than States and to nonprofit private entities. Such a grant may be made to an entity only if the State in which the purpose is to be carried out has certified that the State approves the entity as qualified to carry out the purpose.

(b) Application

The Secretary may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Secretary, the application contains the certification required in subsection (a)(2) of this section (if the application is for a grant under such subsection), and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(July 1, 1944, ch. 373, title III, § 399I, as added Oct. 24, 1992, Pub. L. 102–515, § 3, 106 Stat. 3375.)

REFERENCES IN TEXT

Section 399B(c)(2), included within the phrase ''assurances required by the Secretary under section 399B(c)(2)'', referred to in subsec. (a)(1), was not translated because title III of act July 1, 1944, which is classified to this subchapter, does not contain a section 399B. Provisions relating to assurances required by the Secretary are contained in section 399H(c)(2), which is classified to section 280e(c)(2) of this title.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280e–4 of this title.

§ 280e–2. Technical assistance in operations of statewide cancer registries

The Secretary, acting through the Director of the Centers for Disease Control, may, directly or through grants and contracts, or both, provide technical assistance to the States in the establishment and operation of statewide registries, including assistance in the development of model legislation for statewide cancer registries and assistance in establishing a computerized reporting and data processing system.

(July 1, 1944, ch. 373, title III, § 399J, as added Oct. 24, 1992, Pub. L. 102–515, § 3, 106 Stat. 3376.)

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280e–4 of this title.

[1] See References in Text note below.

§ 280e–3. Study in certain States to determine factors contributing to elevated breast cancer mortality rates

(a) In general

Subject to subsections (c) and (d) of this section, the Secretary, acting through the Director of the National Cancer Institute, shall conduct a study for the purpose of determining the factors contributing to the fact that breast cancer mortality rates in the States specified in subsection (b) of this section are elevated compared to rates in other States.

(b) Relevant States

The States referred to in subsection (a) of this section are Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, Vermont, and the District of Columbia.

(c) Cooperation of State

The Secretary may conduct the study required in subsection (a) of this section in a State only if the State agrees to cooperate with the Secretary in the conduct of the study, including providing information from any registry operated by the State pursuant to section 280e(a) of this title.

(d) Planning, commencement, and duration

The Secretary shall, during each of the fiscal years 1993 and 1994, develop a plan for conducting the study required in subsection (a) of this section. The study shall be initiated by the Secretary not later than fiscal year 1994, and the collection of data under the study may continue through fiscal year 1998.

(e) Report

Not later than September 30, 1999, the Secretary shall complete the study required in subsection (a) of this section and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings and recommendations made as a result of the study.

(July 1, 1944, ch. 373, title III, § 399K, as added Oct. 24, 1992, Pub. L. 102–515, § 3, 106 Stat. 3376.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

POTENTIAL ENVIRONMENTAL AND OTHER RISKS CONTRIBUTING TO INCIDENCE OF BREAST CANCER

Pub. L. 103–43, title XIX, § 1911, June 10, 1993, 107 Stat. 205, provided that:

''(a) REQUIREMENT OF STUDY.—

''(1) IN GENERAL.—The Director of the National Cancer Institute (in this section referred to as the 'Director'), in collaboration with the Director of the National Institute of Environmental Health Sciences, shall conduct a case-control study to assess biological markers of environmental and other potential risk factors contributing to the incidence of breast cancer in—

''(A) the Counties of Nassau and Suffolk, in the State of New York; and

''(B) the 2 counties in the northeastern United States that, as identified in the report specified in

paragraph (2), had the highest age-adjusted mortality rate of such cancer that reflected not less than 30 deaths during the 5-year period for which findings are made in the report.

''(2) RELEVANT REPORT.—The report referred to in paragraph (1)(B) is the report of the findings made in the study entitled 'Survival, Epidemiology, and End Results', relating to cases of cancer during the years 1983 through 1987.

''(b) CERTAIN ELEMENTS OF STUDY.—Activities of the Director in carrying out the study under subsection (a) shall include the use of a geographic system to evaluate the current and past exposure of individuals, including direct monitoring and cumulative estimates of exposure, to—

''(1) contaminated drinking water;

''(2) sources of indoor and ambient air pollution, including emissions from aircraft;

''(3) electromagnetic fields;

''(4) pesticides and other toxic chemicals;

''(5) hazardous and municipal waste; and

''(6) such other factors as the Director determines to be appropriate.

''(c) REPORT.—Not later than 30 months after the date of the enactment of this Act [June 10, 1993], the Director shall complete the study required in subsection (a) and submit to the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made as a result of the study.

''(d) FUNDING.—Of the amounts appropriated for fiscal years 1994 and 1995 for the National Institute of Environmental Health Sciences and the National Cancer Institute, the Director of the National Institutes of Health shall make available amounts for carrying out the study required in subsection (a).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280e, 280e–4 of this title.

§ 280e–4. Authorization of appropriations

(a) Registries

For the purpose of carrying out this part, there are authorized to be appropriated $30,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998. Of the amounts appropriated under the preceding sentence for any such fiscal year, the Secretary may obligate not more than 25 percent for carrying out section 280e–1 of this title, and not more than 10 percent may be expended for assessing the accuracy, completeness and quality of data collected, and not more than 10 percent of which is to be expended under subsection [1] 280e–2 of this title.

(b) Breast cancer study

Of the amounts appropriated for the National Cancer Institute under subpart 1 of part C of subchapter III of this chapter for any fiscal year in which the study required in section 280e–3 of this title is being carried out, the Secretary shall expend not less than $1,000,000 for the study.

(July 1, 1944, ch. 373, title III, § 399L, as added Oct. 24, 1992, Pub. L. 102–515, § 3, 106 Stat. 3376; amended June 10, 1993, Pub. L. 103–43, title XX, § 2003, 107 Stat. 208; Dec. 14, 1993, Pub. L. 103–183, title VII, § 705(c), 107 Stat. 2241.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–183 substituted ''through 1998'' for ''through 1996''.

Pub. L. 103–43 substituted ''there are authorized to be appropriated $30,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1996'' for ''the Secretary may use $30,000,000 for each of the fiscal years 1993 through 1997'' in first sentence and ''Of the amounts appropriated under the preceding sentence'' for ''Out of any amounts used'' in second sentence.

[1] So in original. Probably should be ''section''.

SUBCHAPTER III—NATIONAL RESEARCH INSTITUTES

CODIFICATION

Title IV of the Public Health Service Act, comprising this subchapter, was originally enacted by act July 1, 1944, ch. 373, 58 Stat. 707, at which time title IV related solely to the National Cancer Institute. Because of the extensive amendments, reorganization of the subject matter, and expansion of title IV by the acts listed below, title IV is shown herein as having been added by Pub. L. 99–158, without reference to intervening amendments.

The provisions of title IV as originally enacted were subsequently redesignated as part A of title IV and amended, and parts B to I of title IV were added and amended by the following acts: June 16, 1948, ch. 481, 62 Stat. 464; June 24, 1948, ch. 621, 62 Stat. 598; Aug. 15, 1950, ch. 714, 64 Stat. 443; Oct. 5, 1961, Pub. L. 87–395, 75 Stat. 824; Oct. 17, 1962, Pub. L. 87–838, 76 Stat. 1072; Aug. 16, 1968, Pub. L. 90–489, 82 Stat. 771; Oct. 30, 1970, Pub. L. 91–515, 84 Stat. 1297; Dec. 23, 1971, Pub. L. 92–218, 85 Stat. 778; May 19, 1972, Pub. L. 92–305, 86 Stat. 162; Sept. 19, 1972, Pub. L. 92–423, 86 Stat. 679; Apr. 22, 1974, Pub. L. 93–270, 88 Stat. 90; May 14, 1974, Pub. L. 93–282, 88 Stat. 126; May 31, 1974, Pub. L. 93–296, 88 Stat. 184; July 12, 1974, Pub. L. 93–348, 88 Stat. 342; July 23, 1974, Pub. L. 93–352, 88 Stat. 358; July 23, 1974, Pub. L. 93–354, 88 Stat. 373; Jan. 4, 1975, Pub. L. 93–640, 88 Stat. 2217; July 29, 1975, Pub. L. 94–63, 89 Stat. 304; Nov. 28, 1975, Pub. L. 94–135, 89 Stat. 713; Apr. 21, 1976, Pub. L. 94–273, 90 Stat. 375; Apr. 22, 1976, Pub. L. 94–278, 90 Stat. 401; Oct. 19, 1976, Pub. L. 94–562, 90 Stat. 2645; Aug. 1, 1977, Pub. L. 95–83, 91 Stat. 383; Nov. 9, 1978, Pub. L. 95–622, 92 Stat. 3412; Nov. 9, 1978, Pub. L. 95–623, 92 Stat. 3443; July 10, 1979, Pub. L. 96–32, 93 Stat. 82; Oct. 7, 1980, Pub. L. 96–398, 94 Stat. 1564; Dec. 17, 1980, Pub. L. 96–538, 94 Stat. 3183; Aug. 13, 1981, Pub. L. 97–35, 95 Stat. 358; Apr. 26, 1984, Pub. L. 98–24, 97 Stat. 175.

Title IV was subsequently amended generally and completely reorganized by Pub. L. 99–158, § 2, Nov. 20, 1985, 99 Stat. 822.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 9660 of this title.

PART A—NATIONAL INSTITUTES OF HEALTH

§ 281. Organization of National Institutes of Health

(a) Agency of Public Health Service

The National Institutes of Health is an agency of the Service.

(b) Agencies within

(1) The following national research institutes are agencies of the National Institutes of Health:

(A) The National Cancer Institute.

(B) The National Heart, Lung, and Blood Institute.

(C) The National Institute of Diabetes and Digestive and Kidney Diseases.

(D) The National Institute of Arthritis and Musculoskeletal and Skin Diseases.

(E) The National Institute on Aging.

(F) The National Institute of Allergy and Infectious Diseases.

(G) The National Institute of Child Health and Human Development.

(H) The National Institute of Dental Research.

(I) The National Eye Institute.

(J) The National Institute of Neurological Disorders and Stroke.

(K) The National Institute of General Medical Sciences.

(L) The National Institute of Environmental Health Sciences.

(M) The National Institute on Deafness and Other Communication Disorders.

(N) The National Institute on Alcohol Abuse and Alcoholism.

(O) The National Institute on Drug Abuse.

(P) The National Institute of Mental Health.

(Q) The National Institute of Nursing Research.

(2) The following entities are agencies of the National Institutes of Health:

(A) The National Library of Medicine.

(B) The National Center for Research Resources.

(C) The John E. Fogarty International Center for Advanced Study in the Health Sciences.

(D) The National Center for Human Genome Research.

(E) The Office of Dietary Supplements.

(c) Establishment of additional national research institutes; reorganization or abolition of institutes

(1) The Secretary may establish in the National Institutes of Health one or more additional national research institutes to conduct and support research, training, health information, and other programs with respect to any particular disease or groups of diseases or any other aspect of human health if—

(A) the Secretary determines that an additional institute is necessary to carry out such activities; and

(B) the additional institute is not established before the expiration of 180 days after the Secretary has provided the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate written notice of the determination made under subparagraph (A) with respect to the institute.

(2) The Secretary may reorganize the functions of any national research institute and may abolish any national research institute if the Secretary determines that the institute is no longer required. A reorganization or abolition may not take effect under this paragraph before the expiration of 180 days after the Secretary has provided the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate written notice of the reorganization or abolition.

(d) "National research institute" defined

For purposes of this subchapter, the term ''national research institute'' means a national research institute listed in subsection (b) of this section or established under subsection (c) of this section. A reference to the National Institutes of Health includes its agencies.

(July 1, 1944, ch. 373, title IV, § 401, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 822; amended Oct. 28, 1988, Pub. L. 100–553, § 2(1), 102 Stat. 2769; Nov. 4, 1988, Pub. L. 100–607, title I, § 101(1), 102 Stat. 3048; Nov. 18, 1988, Pub. L. 100–690, title II, § 2613(b)(2), 102 Stat. 4238; July 10, 1992, Pub. L. 102–321, title I, § 121(a), 106 Stat. 358; June 10, 1993, Pub. L. 103–43, title XV, §§ 1501(1), 1511(b)(1), 1521(1), 107 Stat. 172, 179, 180; Oct. 25, 1994, Pub. L. 103–417, § 13(b), 108 Stat. 4335.)

AMENDMENTS

1994—Subsec. (b)(2)(E). Pub. L. 103–417 added subpar. (E).

1993—Subsec. (b)(1)(Q). Pub. L. 103–43, § 1511(b)(1)(A), added subpar. (Q).

Subsec. (b)(2)(B). Pub. L. 103–43, § 1501(1), amended subpar. (B) generally, substituting ''National Center for Research Resources'' for ''Division of Research Resources''.

Subsec. (b)(2)(D). Pub. L. 103–43, §§ 1511(b)(1)(B), 1521(1), added subpar. (D) and struck out former subpar. (D) which read as follows: ''The National Center for Nursing Research.''

1992—Subsec. (b)(1)(N) to (P). Pub. L. 102–321 added subpars. (N) to (P).

1988—Subsec. (b)(1)(J), (M). Pub. L. 100–553 and Pub. L. 100–607 made identical amendments, striking out ''and Communicative'' after ''Neurological'' in subpar. (J), and adding subpar. (M). Pub. L. 100–690 amended subsec. (b)(1) to read as if the amendments by Pub. L. 100–607 had not been enacted.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

REPORT ON MEDICAL USES OF BIOLOGICAL AGENTS IN DEVELOPMENT OF DEFENSES AGAINST BIOLOGICAL WARFARE

Section 1904 of Pub. L. 103–43 directed Secretary of Health and Human Services, in consultation with Secretary of Defense and with heads of other appropriate executive agencies, to report to Congress, not later than 12 months after June 10, 1993, on the appropriateness and impact of the National Institutes of Health assuming responsibility for the conduct of all Federal research, development, testing, and evaluation functions relating to medical countermeasures against biowarfare threat agents.

RESEARCH ON LUPUS ERYTHEMATOSUS

Section 5 of Pub. L. 99–158, as amended by Pub. L. 102–531, title III, § 312(f), Oct. 27, 1992, 106 Stat. 3506, provided that:

''(a) ESTABLISHMENT OF COMMITTEE.—The Secretary shall establish a Lupus Erythematosus Coordinating Committee to plan, develop, coordinate, and implement comprehensive Federal initiatives in research on Lupus Erythematosus.

''(b) COMMITTEE COMPOSITION AND MEETINGS.—(1) The Committee shall be composed of—

''(A) the Director of the National Institute of Neurological and Communicative Disorders and Stroke (or the designee of such Director);

''(B) the Director of the National Institute of Allergy and Infectious Diseases (or the designee of such Director);

''(C) the Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases (or the designee of such Director);

''(D) the Director of the National Institute of General Medical Sciences (or the designee of such Director);

''(E) the Director of the National Heart, Lung, and Blood Institute (or the designee of such Director);

''(F) the Director of the National Institute of Diabetes and Digestive and Kidney Diseases (or the designee of such Director); and

''(G) the Director of the Centers for Disease Control and Prevention (or the designee of such Director).

''(2) The Committee shall meet at least four times a year. The Secretary shall designate as chairman of the Committee the Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases.

''(c) REPORT.—The Committee shall prepare a report for Congress on its activities. The report shall include a description of research projects on Lupus Erythematosus conducted or supported by Federal agencies in the fiscal year for which the report is made, the nature and purpose of each such project, the amounts expended for each such project, and an identification of the entity which conducted the research under each such project. Such report shall be submitted not later than 18 months after the date of the date of enactment of this Act [Nov. 20, 1985]. The Committee shall terminate one month after the report is submitted.''

INTERAGENCY COMMITTEE ON LEARNING DISABILITIES

Section 9 of Pub. L. 99–158 directed Director of the National Institutes of Health, not later than 90 days after Nov. 20, 1985, to establish an Interagency Committee on Learning Disabilities to review and assess Federal research priorities, activities, and findings regarding learning disabilities (including central nervous system dysfunction in children), provided for composition of the Committee, directed Committee to report to Congress on its activities not later than 18 months after Nov. 20, 1985, and provided that the Committee terminate 90 days after submission of the report.

§ 282. Director of National Institutes of Health

(a) Appointment

The National Institutes of Health shall be headed by the Director of the National Institutes of Health (hereafter in this subchapter referred to as the ''Director of NIH'') who shall be appointed by the President by and with the advice and consent of the Senate. The Director of NIH shall perform functions as provided under subsection (b) of this section and as the Secretary may otherwise prescribe.

(b) Duties and authority

In carrying out the purposes of section 241 of this title, the Secretary, acting through the Director of NIH—

(1) shall be responsible for the overall direction of the National Institutes of Health and for the establishment and implementation of general policies respecting the management and operation of programs and activities within the National Institutes of Health;

(2) shall coordinate and oversee the operation of the national research institutes and administrative entities within the National Institutes of Health;

(3) shall assure that research at or supported by the National Institutes of Health is subject to review in accordance with section 289a of this title;

(4) for the national research institutes and administrative entities within the National Institutes of Health—

(A) may acquire, construct, improve, repair, operate, and maintain, at the site of such institutes and entities, laboratories, and other research facilities, other facilities, equipment, and other real or personal property, and

(B) may acquire, without regard to section 34 of title 40, by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for use for a period not to exceed ten years;

(5) may secure resources for research conducted by or through the National Institutes of Health;

(6) may, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, establish such technical and scientific peer review groups and scientific program advisory committees as are needed to carry out the requirements of this subchapter and appoint and pay the members of such groups, except that officers and employees of the United States shall not receive additional compensation for service as members of such groups;

(7) may secure for the National Institutes of Health consultation services and advice of persons from the United States or abroad;

(8) may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, with or without reimbursement therefor;

(9) may, for purposes of study, admit and treat at facilities of the National Institutes of Health individuals not otherwise eligible for such treatment;

(10) may accept voluntary and uncompensated services;

(11) may perform such other administrative functions as the Secretary determines are needed to effectively carry out this subchapter; and

(12) after consultation with the Director of the Office of Research on Women's Health, shall ensure that resources of the National Institutes of Health are sufficiently allocated for projects of research on women's health that are identified under section 287d(b) of this title.

The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under paragraph (6). The members of such a group shall be individuals who by virtue of their training or experience are eminently qualified to perform the review functions of such group. Not more than one-fourth of the members of any such group shall be officers or employees of the United States.

(c) Availability of substances and organisms for research

The Director of NIH may make available to individuals and entities, for biomedical and behavioral research, substances and living organisms. Such substances and organisms shall be made available under such terms and conditions (including payment for them) as the Secretary determines appropriate.

(d) Services of experts or consultants; number; payment of expenses, conditions, recovery

(1) The Director of NIH may obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the period of service) the services of not more than 220 experts or consultants, with scientific or other professional qualifications, for the National Institutes of Health.

(2)(A) Except as provided in subparagraph (B), experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed, in accordance with title 5, for their travel to and from their place of service and for other expenses associated with their assignment.

(B) Expenses specified in subparagraph (A) shall not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless the expert or consultant has agreed in writing to complete the entire period of the assignment or one year of the assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for such expenses is recoverable from the expert or consultant as a debt due the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

(e) Dissemination of research information

The Director of NIH shall—

(1) advise the agencies of the National Institutes of Health on medical applications of research;

(2) coordinate, review, and facilitate the systematic identification and evaluation of, clinically relevant information from research conducted by or through the national research institutes;

(3) promote the effective transfer of the information described in paragraph (2) to the health care community and to entities that require such information;

(4) monitor the effectiveness of the activities described in paragraph (3); and

(5) ensure that, after January 1, 1994, all new or revised health education and promotion materials developed or funded by the National Institutes of Health and intended for the general public are in a form that does not exceed a level of functional literacy, as defined in the National Literacy Act of 1991 (Public Law 102–73).

(f) Associate Director for Prevention; functions; report to Director

There shall be in the National Institutes of Health an Associate Director for Prevention. The Director of NIH shall delegate to the Associate Director for Prevention the functions of the Director relating to the promotion of the disease prevention research programs of the national research institutes and the coordination of such programs among the national research institutes and between the national research institutes and other public and private entities, including elementary, secondary, and post-secondary schools. The Associate Director shall—

(1) annually review the efficacy of existing policies and techniques used by the national research institutes to disseminate the results of disease prevention and behavioral research programs;

(2) recommend, coordinate, and oversee the modification or reconstruction of such policies and techniques to ensure maximum dissemination, using advanced technologies to the maximum extent practicable, of research results to such entities; and

(3) annually prepare and submit to the Director of NIH a report concerning the prevention and dissemination activities undertaken by the Associate Director, including—

(A) a summary of the Associate Director's review of existing dissemination policies and techniques together with a detailed statement concerning any modification or restructuring, or recommendations for modification or restructuring, of such policies and techniques; and

(B) a detailed statement of the expenditures made for the prevention and dissemination activities reported on and the personnel used in connection with such activities.

(g) Enhancing competitiveness of certain entities in obtaining research funds

(1)(A) In the case of entities described in subparagraph (B), the Director of NIH, acting through the Director of the National Center for Research Resources, shall establish a program to enhance the competitiveness of such entities in obtaining funds from the national research institutes for conducting biomedical and behavioral research.

(B) The entities referred to in subparagraph (A) are entities that conduct biomedical and behavioral research and are located in a State in which the aggregate success rate for applications to the national research institutes for assistance for such research by the entities in the State has historically constituted a low success rate of obtaining such funds, relative to such aggregate rate for such entities in other States.

(C) With respect to enhancing competitiveness for purposes of subparagraph (A), the Director of NIH, in carrying out the program established under such subparagraph, may—

(i) provide technical assistance to the entities involved, including technical assistance in the preparation of applications for obtaining funds from the national research institutes;

(ii) assist the entities in developing a plan for biomedical or behavioral research proposals; and

(iii) assist the entities in implementing such plan.

(2) The Director of NIH shall establish a program of supporting projects of biomedical or be-

havioral research whose principal researchers are individuals who have not previously served as the principal researchers of such projects supported by the Director.

(h) Increased participation of women and disadvantaged individuals in biomedical and behavioral research

The Secretary, acting through the Director of NIH and the Directors of the agencies of the National Institutes of Health, shall, in conducting and supporting programs for research, research training, recruitment, and other activities, provide for an increase in the number of women and individuals from disadvantaged backgrounds (including racial and ethnic minorities) in the fields of biomedical and behavioral research.

(i) Discretionary fund; uses; report to Congressional committees; authorization of appropriations

(1) There is established a fund, consisting of amounts appropriated under paragraph (3) and made available for the fund, for use by the Director of NIH to carry out the activities authorized in this chapter for the National Institutes of Health. The purposes for which such fund may be expended include—

(A) providing for research on matters that have not received significant funding relative to other matters, responding to new issues and scientific emergencies, and acting on research opportunities of high priority;

(B) supporting research that is not exclusively within the authority of any single agency of such Institutes; and

(C) purchasing or renting equipment and quarters for activities of such Institutes.

(2) Not later than February 10 of each fiscal year, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities undertaken and expenditures made under this section during the preceding fiscal year. The report may contain such comments of the Secretary regarding this section as the Secretary determines to be appropriate.

(3) For the purpose of carrying out this subsection, there are authorized to be appropriated $25,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(j) Day care for children of employees

(1) The Director of NIH may establish a program to provide day care services for the employees of the National Institutes of Health similar to those services provided by other Federal agencies (including the availability of day care service on a 24-hour-a-day basis).

(2) Any day care provider at the National Institutes of Health shall establish a sliding scale of fees that takes into consideration the income and needs of the employee.

(3) For purposes regarding the provision of day care services, the Director of NIH may enter into rental or lease purchase agreements.

(k) Interagency research on trauma

The Director of NIH shall carry out the program established in part F of subchapter X of this chapter (relating to interagency research on trauma).

(July 1, 1944, ch. 373, title IV, § 402, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 823; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 111, 102 Stat. 3052; July 10, 1992, Pub. L. 102–321, title I, § 163(b)(3), 106 Stat. 376; June 10, 1993, Pub. L. 103–43, title I, § 141(b), title II, §§ 201, 202, 206, 208, 210(b), (c), title III, § 303(b), 107 Stat. 139, 144, 148–150, 153.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b)(6), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (b)(6), is set out under section 5332 of Title 5.

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (d)(2)(A), are classified generally to section 5701 et seq. of Title 5.

The National Literacy Act of 1991, referred to in subsec. (e)(5), is Pub. L. 102–73, July 25, 1991, 105 Stat. 333, as amended. For complete classification of this Act to the Code, see Short Title of 1991 Amendment note set out under section 1201 of Title 20, Education, and Tables.

AMENDMENTS

1993—Subsec. (b)(12). Pub. L. 103–43, § 141(b), added par. (12).

Subsec. (e)(5). Pub. L. 103–43, § 210(b), added par. (5).

Subsec. (f). Pub. L. 103–43, § 201, substituted ''other public and private entities, including elementary, secondary, and post-secondary schools. The Associate Director shall—'' and pars. (1) to (3) for ''other public and private entities. The Associate Director shall annually report to the Director of NIH on the prevention activities undertaken by the Associate Director. The report shall include a detailed statement of the expenditures made for the activities reported on and the personnel used in connection with such activities''.

Subsec. (g). Pub. L. 103–43, § 202, added subsec. (g).

Subsec. (h). Pub. L. 103–43, § 206, added subsec. (h).

Subsec. (i). Pub. L. 103–43, § 208, added subsec. (i).

Subsec. (j). Pub. L. 103–43, § 210(c), added subsec. (j).

Subsec. (k). Pub. L. 103–43, § 303(b), added subsec. (k).

1992—Subsec. (d)(1). Pub. L. 102–321 substituted ''220'' for ''two hundred''.

1988—Subsec. (b)(6). Pub. L. 100–607 inserted ''and scientific program advisory committees'' after ''peer review groups''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

CHRONIC FATIGUE SYNDROME; EXPERTS AND RESEARCH REPRESENTATIVES ON ADVISORY COMMITTEES AND BOARDS

Section 902(c) of Pub. L. 103–43 provided that: ''The Secretary of Health and Human Services, acting through the Director of the National Institutes of Health, shall ensure that appropriate individuals with expertise in chronic fatigue syndrome or neuromuscular diseases and representative of a variety of

disciplines and fields within the research community are appointed to appropriate National Institutes of Health advisory committees and boards.''

THIRD-PARTY PAYMENTS REGARDING CERTAIN CLINICAL TRIALS AND CERTAIN LIFE-THREATENING ILLNESSES

Section 1901(a) of Pub. L. 103–43 provided that: ''The Secretary of Health and Human Services, acting through the Director of the National Institutes of Health, shall conduct a study for the purpose of—

''(1) determining the policies of third-party payors regarding the payment of the costs of appropriate health services that are provided incident to the participation of individuals as subjects in clinical trials conducted in the development of drugs with respect to acquired immune deficiency syndrome, cancer, and other life-threatening illnesses; and

''(2) developing recommendations regarding such policies.''

PERSONNEL STUDY OF RECRUITMENT, RETENTION AND TURNOVER

Section 1905 of Pub. L. 103–43 directed Secretary of Health and Human Services, acting through Director of the National Institutes of Health, to conduct a study to review the retention, recruitment, vacancy and turnover rates of support staff, including firefighters, law enforcement, procurement officers, technicians, nurses and clerical employees, to ensure that the National Institutes of Health is adequately supporting the conduct of efficient, effective and high quality research for the American public, and to submit a report to Congress on the results of such study not later than 1 year after June 10, 1993.

CHRONIC PAIN CONDITIONS

Section 1907 of Pub. L. 103–43 provided that:

''(a) IN GENERAL.—The Director of the National Institutes of Health (in this section referred to as the 'Director'), acting through the Director of the National Institute of Dental Research and as appropriate through the heads of other agencies of such Institutes, shall conduct a study for the purpose of determining the incidence in the United States of cases of chronic pain (including chronic pain resulting from back injuries) and the effect of such cases on the costs of health care in the United States.

''(b) CERTAIN ELEMENTS OF STUDY.—The cases of chronic pain with respect to which the study required in subsection (a) is conducted shall include reflex sympathetic dystrophy syndrome, temporomandibular joint disorder, post-herpetic neuropathy, painful diabetic neuropathy, phantom pain, and post-stroke pain.

''(c) REPORT.—Not later than 2 years after the date of the enactment of this Act [June 10, 1993], the Director shall complete the study required in subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made as a result of the study.''

SUPPORT FOR BIOENGINEERING RESEARCH

Section 1912 of Pub. L. 103–43 directed Secretary of Health and Human Services, acting through Director of the National Institutes of Health, to conduct a study for the purpose of determining the sources and amounts of public and private funding devoted to basic research in bioengineering, including biomaterials sciences, cellular bioprocessing, tissue and rehabilitation engineering, evaluating whether that commitment is sufficient to maintain the innovative edge that the United States has in these technologies, evaluating the role of the National Institutes of Health or any other Federal agency to achieve a greater commitment to innovation in bioengineering, and evaluating the need for better coordination and collaboration among Federal agencies and between the public and private sectors, and, not later than 1 year after June 10, 1993, to prepare and submit to Committee on Labor and Human Resources of Senate, and Committee on Energy and Commerce of House of Representatives, a report containing the findings of the study together with recommendations concerning the enactment of legislation to implement the results of such study.

MASTER PLAN FOR PHYSICAL INFRASTRUCTURE FOR RESEARCH

Section 2002 of Pub. L. 103–43 directed Secretary of Health and Human Services, acting through Director of the National Institutes of Health, not later than June 1, 1994, to present to Congress a master plan to provide for replacement or refurbishment of less than adequate buildings, utility equipment and distribution systems (including the resources that provide electrical and other utilities, chilled water, air handling, and other services that the Secretary, acting through the Director, deemed necessary), roads, walkways, parking areas, and grounds that underpin the laboratory and clinical facilities of the National Institutes of Health, and provided that the plan could make recommendations for the undertaking of new projects that are consistent with the objectives of this section, such as encircling the National Institutes of Health Federal enclave with an adequate chilled water conduit.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 283, 284, 285g–4, 289a of this title.

§ 283. Biennial report of Director to President and Congress; contents

The Secretary shall transmit to the President and to the Congress a biennial report which shall be prepared by the Director of NIH and which shall consist of—

(1) a description of the activities carried out by and through the National Institutes of Health and the policies respecting the programs of the National Institutes of Health and such recommendations respecting such policies as the Secretary considers appropriate;

(2) a description of the activities undertaken to improve grants and contracting accountability and technical and scientific peer review procedures of the National Institutes of Health and the national research institutes;

(3) the reports made by the Associate Director for Prevention under section 282(f) of this title during the period for which the biennial report is prepared;

(4) a description of the health related behavioral research that has been supported by the National Institutes of Health in the preceding 2-year period, and a description of any plans for future activity in such area; and

(5) the biennial reports of the Directors of each of the national research institutes, the Director of the Division of Research Resources, and the Director of the National Center for Nursing Research.

The first report under this section shall be submitted not later than July 1, 1986, and shall relate to the fiscal year ending September 30, 1985. The next report shall be submitted not later than December 30, 1988, and shall relate to the two-fiscal-year period ending on the preceding September 30. Each subsequent report shall be submitted not later than 90 days after the end of the two-fiscal-year period for which the report is to be submitted.

(July 1, 1944, ch. 373, title IV, § 403, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 826; amended

Nov. 4, 1988, Pub. L. 100–607, title I, §112, 102 Stat. 3052.)

AMENDMENTS

1988—Pars. (4), (5). Pub. L. 100–607 added par. (4) and redesignated former par. (4) as (5).

CHANGE OF NAME

Division of Research Resources changed to National Center for Research Resources by Pub. L. 103–43, title XV, §1501, June 10, 1993, 107 Stat. 172.

National Center for Nursing Research changed to National Institute of Nursing Research by Pub. L. 103–43, title XV, §1511, June 10, 1993, 107 Stat. 178.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 283e, 283g, 284b, 285g–4, 285q–3, 287a–1, 287d, 287d–2, 289a–2 of this title.

§ 283a. Establishment of program regarding DES

(a) In general

The Director of NIH shall establish a program for the conduct and support of research and training, the dissemination of health information, and other programs with respect to the diagnosis and treatment of conditions associated with exposure to the drug diethylstilbestrol (in this section referred to as ''DES'').

(b) Education programs

In carrying out subsection (a) of this section, the Director of NIH, after consultation with nonprofit private entities representing individuals who have been exposed to DES, shall conduct or support programs to educate health professionals and the public on the drug, including the importance of identifying and treating individuals who have been exposed to the drug.

(c) Longitudinal studies

After consultation with the Office of Research on Women's Health, the Director of NIH, acting through the appropriate national research institutes, shall in carrying out subsection (a) of this section conduct or support one or more longitudinal studies to determine the incidence of the following diseases or disorders in the indicated populations and the relationship of DES to the diseases or disorders:

(1) In the case of women to whom (on or after January 1, 1938) DES was administered while the women were pregnant, the incidence of all diseases and disorders (including breast cancer, gynecological cancers, and impairments of the immune system, including autoimmune disease).

(2) In the case of women exposed to DES in utero, the incidence of clear cell cancer (including recurrences), the long-term health effects of such cancer, and the effects of treatments for such cancer.

(3) In the case of men and women exposed to DES in utero, the incidence of all diseases and disorders (including impairments of the reproductive and autoimmune systems).

(4) In the case of children of men or women exposed to DES in utero, the incidence of all diseases and disorders.

(d) Exposure to DES in utero

For purposes of this section, an individual shall be considered to have been exposed to DES in utero if, during the pregnancy that resulted in the birth of such individual, DES was (on or after January 1, 1938) administered to the biological mother of the individual.

(e) Authorization of appropriations

In addition to any other authorization of appropriations available for the purpose of carrying out this section, there are authorized to be appropriated for such purpose such sums as may be necessary for each of the fiscal years 1993 through 1996.

(July 1, 1944, ch. 373, title IV, §403A, as added Oct. 13, 1992, Pub. L. 102–409, §2, 106 Stat. 2092.)

§ 283b. Office of Research on Minority Health

(a) Establishment

There is established within the Office of the Director of NIH an office to be known as the Office of Research on Minority Health (in this section referred to as the ''Office''). The Office shall be headed by a director, who shall be appointed by the Director of NIH.

(b) Purpose

The Director of the Office shall—

(1) identify projects of research on minority health that should be conducted or supported by the national research institutes;

(2) identify multidisciplinary research relating to research on minority health that should be so conducted or supported;

(3) promote coordination and collaboration among entities conducting research identified under paragraph (1) or (2);

(4) encourage the conduct of such research by entities receiving funds from the national research institutes;

(5) recommend an agenda for conducting and supporting such research;

(6) promote the sufficient allocation of the resources of the national research institutes for conducting and supporting such research; and

(7) assist in the administration of section 289a–2 of this title with respect to the inclusion of members of minority groups as subjects in clinical research.

(July 1, 1944, ch. 373, title IV, §404, as added June 10, 1993, Pub. L. 103–43, title I, §151, 107 Stat. 139.)

§ 283c. Office of Behavioral and Social Sciences Research

(a) There is established within the Office of the Director of NIH an office to be known as the Office of Behavioral and Social Sciences Research (in this section referred to as the ''Office''). The Office shall be headed by a director, who shall be appointed by the Director of NIH.

(b)(1) With respect to research on the relationship between human behavior and the development, treatment, and prevention of medical conditions, the Director of the Office shall—

(A) coordinate research conducted or supported by the agencies of the National Institutes of Health; and

(B) identify projects of behavioral and social sciences research that should be conducted or supported by the national research institutes, and develop such projects in cooperation with such institutes.

(2) Research authorized under paragraph (1) includes research on teen pregnancy, infant mortality, violent behavior, suicide, and homelessness. Such research does not include neurobiological research, or research in which the behavior of an organism is observed for the purpose of determining activity at the cellular or molecular level.

(July 1, 1944, ch. 373, title IV, § 404A, as added June 10, 1993, Pub. L. 103–43, title II, § 203(a), 107 Stat. 145.)

EFFECTIVE DATE

Section 203(c) of Pub. L. 103–43 provided that: ''The amendment described in subsection (a) [enacting this section] is made upon the date of the enactment of this Act [June 10, 1993] and takes effect July 1, 1993. Subsection (b) [107 Stat. 145] takes effect on such date.''

§ 283d. Children's Vaccine Initiative

(a) Development of new vaccines

The Secretary, in consultation with the Director of the National Vaccine Program under subchapter XIX of this chapter and acting through the Directors of the National Institute for Allergy and Infectious Diseases, the National Institute for Child Health and Human Development, the National Institute for Aging, and other public and private programs, shall carry out activities, which shall be consistent with the global Children's Vaccine Initiative, to develop affordable new and improved vaccines to be used in the United States and in the developing world that will increase the efficacy and efficiency of the prevention of infectious diseases. In carrying out such activities, the Secretary shall, to the extent practicable, develop and make available vaccines that require fewer contacts to deliver, that can be given early in life, that provide long lasting protection, that obviate refrigeration, needles and syringes, and that protect against a larger number of diseases.

(b) Report

In the report required in section 300aa–4 of this title, the Secretary, acting through the Director of the National Vaccine Program under subchapter XIX of this chapter, shall include information with respect to activities and the progress made in implementing the provisions of this section and achieving its goals.

(c) Authorization of appropriations

In addition to any other amounts authorized to be appropriated for activities of the type described in this section, there are authorized to be appropriated to carry out this section $20,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(July 1, 1944, ch. 373, title IV, § 404B, as added June 10, 1993, Pub. L. 103–43, title II, § 204, 107 Stat. 146.)

§ 283e. Plan for use of animals in research

(a) Preparation

The Director of NIH, after consultation with the committee established under subsection (e) of this section, shall prepare a plan—

(1) for the National Institutes of Health to conduct or support research into—

(A) methods of biomedical research and experimentation that do not require the use of animals;

(B) methods of such research and experimentation that reduce the number of animals used in such research;

(C) methods of such research and experimentation that produce less pain and distress in such animals; and

(D) methods of such research and experimentation that involve the use of marine life (other than marine mammals);

(2) for establishing the validity and reliability of the methods described in paragraph (1);

(3) for encouraging the acceptance by the scientific community of such methods that have been found to be valid and reliable; and

(4) for training scientists in the use of such methods that have been found to be valid and reliable.

(b) Submission to Congressional committees

Not later than October 1, 1993, the Director of NIH shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, the plan required in subsection (a) of this section and shall begin implementation of the plan.

(c) Periodic review and revision

The Director of NIH shall periodically review, and as appropriate, make revisions in the plan required under subsection (a) of this section. A description of any revision made in the plan shall be included in the first biennial report under section 283 of this title that is submitted after the revision is made.

(d) Dissemination of information

The Director of NIH shall take such actions as may be appropriate to convey to scientists and others who use animals in biomedical or behavioral research or experimentation information respecting the methods found to be valid and reliable under subsection (a)(2) of this section.

(e) Interagency Coordinating Committee on the Use of Animals in Research

(1) The Director of NIH shall establish within the National Institutes of Health a committee to be known as the Interagency Coordinating Committee on the Use of Animals in Research (in this subsection referred to as the ''Committee'').

(2) The Committee shall provide advice to the Director of NIH on the preparation of the plan required in subsection (a) of this section.

(3) The Committee shall be composed of—

(A) the Directors of each of the national research institutes and the Director of the Center for Research Resources (or the designees of such Directors); and

(B) representatives of the Environmental Protection Agency, the Food and Drug Administration, the Consumer Product Safety Commission, the National Science Foundation, and such additional agencies as the Director of NIH determines to be appropriate, which representatives shall include not less than one veterinarian with expertise in laboratory-animal medicine.

(July 1, 1944, ch. 373, title IV, § 404C, as added June 10, 1993, Pub. L. 103–43, title II, § 205(a), 107 Stat. 146.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 283f. Requirements regarding surveys of sexual behavior

With respect to any survey of human sexual behavior proposed to be conducted or supported through the National Institutes of Health, the survey may not be carried out unless—

(1) the proposal has undergone review in accordance with any applicable requirements of sections 289 and 289a of this title; and

(2) the Secretary, in accordance with section 289a–1 of this title, makes a determination that the information expected to be obtained through the survey will assist—

(A) in reducing the incidence of sexually transmitted diseases, the incidence of infection with the human immunodeficiency virus, or the incidence of any other infectious disease; or

(B) in improving reproductive health or other conditions of health.

(July 1, 1944, ch. 373, title IV, § 404D, as added June 10, 1993, Pub. L. 103–43, title II, § 207, 107 Stat. 148.)

PROHIBITION AGAINST SHARP ADULT SEX SURVEY AND AMERICAN TEENAGE SEX SURVEY

Section 2015 of Pub. L. 103–43 provided that: ''The Secretary of Health and Human Services may not during fiscal year 1993 or any subsequent fiscal year conduct or support the SHARP survey of adult sexual behavior or the American Teenage Study of adolescent sexual behavior. This section becomes effective on the date of the enactment of this Act [June 10, 1993].''

§ 283g. Office of Alternative Medicine

(a) Establishment

There is established within the Office of the Director of NIH an office to be known as the Office of Alternative Medicine (in this section referred to as the ''Office''), which shall be headed by a director appointed by the Director of NIH.

(b) Purpose

The purpose of the Office is to facilitate the evaluation of alternative medical treatment modalities, including acupuncture and Oriental medicine, homeopathic medicine, and physical manipulation therapies.

(c) Advisory council

The Secretary shall establish an advisory council for the purpose of providing advice to the Director of the Office on carrying out this section. Section 217a of this title applies to such council to the same extent and in the same manner as such section applies to committees or councils established under such section.

(d) Duties

In carrying out subsection (b) of this section, the Director of the Office shall—

(1) establish an information clearinghouse to exchange information with the public about alternative medicine;

(2) support research training—

(A) for which fellowship support is not provided under section 288 of this title; and

(B) that is not residency training of physicians or other health professionals; and

(3)(A) prepare biennial reports on the activities carried out or to be carried out by the Office; and

(B) submit each such report to the Director of NIH for inclusion in the biennial report under section 283 of this title.

(July 1, 1944, ch. 373, title IV, § 404E, as added June 10, 1993, Pub. L. 103–43, title II, § 209, 107 Stat. 149.)

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

PART B—GENERAL PROVISIONS RESPECTING NATIONAL RESEARCH INSTITUTES

§ 284. Directors of national research institutes

(a) Appointment

The Director of the National Cancer Institute shall be appointed by the President and the Directors of the other national research institutes shall be appointed by the Secretary. Each Director of a national research institute shall report directly to the Director of NIH.

(b) Duties and authority; grants, contracts, and cooperative agreements

(1) In carrying out the purposes of section 241 of this title with respect to human diseases or disorders or other aspects of human health for which the national research institutes were established, the Secretary, acting through the Director of each national research institute—

(A) shall encourage and support research, investigations, experiments, demonstrations, and studies in the health sciences related to—

(i) the maintenance of health,

(ii) the detection, diagnosis, treatment, and prevention of human diseases and disorders,

(iii) the rehabilitation of individuals with human diseases, disorders, and disabilities, and

(iv) the expansion of knowledge of the processes underlying human diseases, disorders, and disabilities, the processes underlying the normal and pathological functioning of the body and its organ systems, and the processes underlying the interactions between the human organism and the environment;

(B) may, subject to the peer review prescribed under section 289a(b) of this title and any advisory council review under section 284a(a)(3)(A)(i) of this title, conduct the research, investigations, experiments, demonstrations, and studies referred to in subparagraph (A);

(C) may conduct and support research training (i) for which fellowship support is not provided under section 288 of this title, and (ii) which is not residency training of physicians or other health professionals;

(D) may develop, implement, and support demonstrations and programs for the application of the results of the activities of the institute to clinical practice and disease prevention activities;

(E) may develop, conduct, and support public and professional education and information programs;

(F) may secure, develop and maintain, distribute, and support the development and maintenance of resources needed for research;

(G) may make available the facilities of the institute to appropriate entities and individuals engaged in research activities and cooperate with and assist Federal and State agencies charged with protecting the public health;

(H) may accept unconditional gifts made to the institute for its activities, and, in the case of gifts of a value in excess of $50,000, establish suitable memorials to the donor;

(I) may secure for the institute consultation services and advice of persons from the United States or abroad;

(J) may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, with or without reimbursement therefor;

(K) may accept voluntary and uncompensated services; and

(L) may perform such other functions as the Secretary determines are needed to carry out effectively the purposes of the institute.

The indemnification provisions of section 2354 of title 10 shall apply with respect to contracts entered into under this subsection and section 282(b) of this title.

(2) Support for an activity or program under this subsection may be provided through grants, contracts, and cooperative agreements. The Secretary, acting through the Director of each national research institute—

(A) may enter into a contract for research, training, or demonstrations only if the contract has been recommended after technical and scientific peer review required by regulations under section 289a of this title;

(B) may make grants and cooperative agreements under paragraph (1) for research, training, or demonstrations, except that—

(i) if the direct cost of the grant or cooperative agreement to be made does not exceed $50,000, such grant or cooperative agreement may be made only if such grant or cooperative agreement has been recommended after technical and scientific peer review required by regulations under section 289a of this title, and

(ii) if the direct cost of the grant or cooperative agreement to be made exceeds $50,000, such grant or cooperative agreement may be made only if such grant or cooperative agreement has been recommended after technical and scientific peer review required by regulations under section 289a of this title and is recommended under section 284a(a)(3)(A)(ii) of this title by the advisory council for the national research institute involved; and

(C) shall, subject to section 300cc–40b(d)(2) of this title, receive from the President and the Office of Management and Budget directly all funds appropriated by the Congress for obligation and expenditure by the Institute.

(c) Coordination with other public and private entities; cooperation with other national research institutes; appointment of additional peer review groups

In carrying out subsection (b) of this section, each Director of a national research institute—

(1) shall coordinate, as appropriate, the activities of the institute with similar programs of other public and private entities;

(2) shall cooperate with the Directors of the other national research institutes in the development and support of multidisciplinary research and research that involves more than one institute;

(3) may, in consultation with the advisory council for the Institute and with the approval of the Director of NIH—

(A) establish technical and scientific peer review groups in addition to those appointed under section 282(b)(6) of this title; and

(B) appoint the members of peer review groups established under subparagraph (A); and

(4) may publish, or arrange for the publication of, information with respect to the purpose of the Institute without regard to section 501 of title 44.

The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under paragraph (3).

(July 1, 1944, ch. 373, title IV, § 405, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 826; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 116, 102 Stat. 3053; Nov. 18, 1988, Pub. L. 100–690, title II, § 2613(c), 102 Stat. 4239; June 10, 1993, Pub. L. 103–43, title III, § 301(a)(1), (b), 107 Stat. 150.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (c), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1993—Subsec. (b)(2)(C). Pub. L. 103–43, § 301(a)(1), added subpar. (C).

Subsec. (c). Pub. L. 103–43, § 301(b)(2), inserted concluding provisions relating to Federal Advisory Committee Act.

Subsec. (c)(3). Pub. L. 103–43, § 301(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''may, in consultation with the advisory council for the Institute and the approval of the Director of NIH, establish and appoint technical and scientific peer review groups in addition to those established and appointed under section 282(b)(6) of this title; and''.

1988—Subsec. (b)(1). Pub. L. 100–607, §116(1), struck out ''the'' after ''with respect to'' in introductory provisions.

Subsec. (c)(3). Pub. L. 100–690 substituted ''establish and appoint'' and ''established and appointed'' for ''establish'' and ''established'', respectively.

Pub. L. 100–607, §116(2)(A), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''may, with the approval of the advisory council for the institute and the Director of NIH, appoint technical and scientific peer review groups in addition to those appointed under section 282(b)(6) of this title.''

Subsec. (c)(4). Pub. L. 100–607, §116(2)(C), added par. (4).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 284a, 285a–2, 285b–3, 289a, 300cc–41 of this title.

§ 284a. Advisory councils

(a) Establishment; acceptance of conditional gifts; functions

(1) Except as provided in subsection (h) of this section, the Secretary shall appoint an advisory council for each national research institute which (A) shall advise, assist, consult with, and make recommendations to the Secretary and the Director of such institute on matters related to the activities carried out by and through the institute and the policies respecting such activities, and (B) shall carry out the special functions prescribed by part C of this subchapter.

(2) Each advisory council for a national research institute may recommend to the Secretary acceptance, in accordance with section 238 of this title, of conditional gifts for study, investigation, or research respecting the diseases, disorders, or other aspect of human health with respect to which the institute was established, for the acquisition of grounds, or for the construction, equipping, or maintenance of facilities for the institute.

(3) Each advisory council for a national research institute—

(A)(i) may on the basis of the materials provided under section 289a(b)(2) of this title respecting research conducted at the institute, make recommendations to the Director of the institute respecting such research,

(ii) may review applications for grants and cooperative agreements for research or training and for which advisory council approval is required under section 284(b)(2) of this title and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge, and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the institute;

(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspect of human health with respect to which the institute was established and with the approval of the Director of the institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership; compensation

(1) Each advisory council shall consist of ex officio members and not more than eighteen members appointed by the Secretary. The ex officio members shall be nonvoting members.

(2) The ex officio members of an advisory council shall consist of—

(A) the Secretary, the Director of NIH, the Director of the national research institute for which the council is established, the Under Secretary for Health of the Department of Veterans Affairs or the Chief Dental Director of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) The members of an advisory council who are not ex officio members shall be appointed as follows:

(A) Two-thirds of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including not less than two individuals who are leaders in the fields of public health and the behavioral or social sciences) relevant to the activities of the national research institute for which the advisory council is established.

(B) One-third of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, law, health policy, economics, and management.

(4) Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of an advisory council shall receive, for each day (including traveltime) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule.

(c) Term of office; reappointment; vacancy

The term of office of an appointed member of an advisory council is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term for 180 days after the date of such expiration. A member who has been appointed for a term of four years may not be reappointed to an advisory council before two years from the date of expiration of such term of office. If a vacancy occurs in the advisory coun-

cil among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

(d) Chairman; term of office

The chairman of an advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the national research institute for which the advisory council is established to be the chairman of the advisory council. The term of office of the chairman shall be two years.

(e) Meetings

The advisory council shall meet at the call of the chairman or upon the request of the Director of the national research institute for which it was established, but at least three times each fiscal year. The location of the meetings of each advisory council is subject to the approval of the Director of the national research institute for which the advisory council was established.

(f) Appointment of executive secretary; training and orientation for new members

The Director of the national research institute for which an advisory council is established shall designate a member of the staff of the institute to serve as the executive secretary of the advisory council. The Director of such institute shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of such institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

(g) Comments and recommendations for inclusion in biennial report; additional reports

Each advisory council may prepare, for inclusion in the biennial report made under section 284b of this title, (1) comments respecting the activities of the advisory council in the fiscal years respecting which the report is prepared, (2) comments on the progress of the national research institute for which it was established in meeting its objectives, and (3) recommendations respecting the future directions and program and policy emphasis of the institute. Each advisory council may prepare such additional reports as it may determine appropriate.

(h) Advisory councils in existence; application of section to National Cancer Advisory Board and advisory council to National Heart, Lung, and Blood Institute

(1) Except as provided in paragraph (2), this section does not terminate the membership of any advisory council for a national research institute which was in existence on November 20, 1985. After November 20, 1985—

(A) the Secretary shall make appointments to each such advisory council in such a manner as to bring about as soon as practicable the composition for such council prescribed by this section;

(B) each advisory council shall organize itself in accordance with this section and exercise the functions prescribed by this section; and

(C) the Director of each national research institute shall perform for such advisory council the functions prescribed by this section.

(2)(A) The National Cancer Advisory Board shall be the advisory council for the National Cancer Institute. This section applies to the National Cancer Advisory Board, except that—

(i) appointments to such Board shall be made by the President;

(ii) the term of office of an appointed member shall be 6 years;

(iii) of the members appointed to the Board not less than five members shall be individuals knowledgeable in environmental carcinogenesis (including carcinogenesis involving occupational and dietary factors);

(iv) the chairman of the Board shall be selected by the President from the appointed members and shall serve as chairman for a term of two years;

(v) the ex officio members of the Board shall be nonvoting members and shall be the Secretary, the Director of the Office of Science and Technology Policy, the Director of NIH, the Under Secretary for Health of the Department of Veterans Affairs, the Director of the National Institute for Occupational Safety and Health, the Director of the National Institute of Environmental Health Sciences, the Secretary of Labor, the Commissioner of the Food and Drug Administration, the Administrator of the Environmental Protection Agency, the Chairman of the Consumer Product Safety Commission, the Assistant Secretary of Defense for Health Affairs, and the Director of the Office of Energy Research of the Department of Energy (or the designees of such officers); and

(vi) the Board shall meet at least four times each fiscal year.

(B) This section applies to the advisory council to the National Heart, Lung, and Blood Institute, except that the advisory council shall meet at least four times each fiscal year.

(July 1, 1944, ch. 373, title IV, § 406, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 828; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 117, 102 Stat. 3053; Aug. 18, 1990, Pub. L. 101–381, title I, § 102(1), 104 Stat. 585; Oct. 9, 1992, Pub. L. 102–405, title III, § 302(e)(1), 106 Stat. 1985; June 10, 1993, Pub. L. 103–43, title II, § 210(a), title XX, §§ 2008(b)(1), 2010(b)(2), 107 Stat. 149, 210, 214.)

AMENDMENTS

1993—Subsec. (a)(2). Pub. L. 103–43, § 2010(b)(2), substituted ''section 238'' for ''section 300aaa''.

Subsec. (b)(2)(A). Pub. L. 103–43, § 2008(b)(1)(A), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in two places.

Subsec. (c). Pub. L. 103–43, § 210(a), substituted ''for 180 days after the date of such expiration'' for ''until a successor has taken office''.

Subsec. (h)(2)(A)(v). Pub. L. 103–43, § 2008(b)(1)(B), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsecs. (b)(2)(A), (h)(2)(A)(v). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1990—Subsec. (a)(2). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

1988—Subsec. (b)(1). Pub. L. 100–607, § 117(a), inserted at end ''The ex officio members shall be nonvoting members.''

Subsec. (b)(3)(A). Pub. L. 100–607, § 117(b), inserted ''not less than two individuals who are leaders in the fields of'' after ''(including''.

Subsec. (h)(2)(A)(v). Pub. L. 100–607, § 117(c), inserted ''shall be nonvoting members and'' after ''Board'' and substituted ''the Assistant Secretary of Defense for Health Affairs, and the Director of the Office of Energy Research of the Department of Energy'' for ''and the Assistant Secretary of Defense for Health Affairs''.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 284, 284b, 285b–7, 285c–6, 289c, 300cc–40a of this title.

§ 284b. Biennial report

The Director of each national research institute, after consultation with the advisory council for the institute, shall prepare for inclusion in the biennial report made under section 283 of this title a biennial report which shall consist of a description of the activities of the institute and program policies of the Director of the institute in the fiscal years respecting which the report is prepared. The Director of each national research institute may prepare such additional reports as the Director determines appropriate. The Director of each national research institute shall provide the advisory council for the institute an opportunity for the submission of the written comments referred to in section 284a(g) of this title.

(July 1, 1944, ch. 373, title IV, § 407, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 831.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 284a, 285a–2, 285a–5, 285a–6, 285b–6, 285c–7, 285g–3, 285g–4, 285n–1, 285*o*–1, 285p–1 of this title.

§ 284c. Certain uses of funds

(a)(1) Except as provided in paragraph (2), the sum of the amounts obligated in any fiscal year for administrative expenses of the National Institutes of Health may not exceed an amount which is 5.5 percent of the total amount appropriated for such fiscal year for the National Institutes of Health.

(2) Paragraph (1) does not apply to the National Library of Medicine, the National Center for Nursing Research, the John E. Fogarty International Center for Advanced Study in the Health Sciences, the Warren G. Magnuson Clinical Center, and the Office of Medical Applications of Research.

(3) For purposes of paragraph (1), the term ''administrative expenses'' means expenses incurred for the support of activities relevant to the award of grants, contracts, and cooperative agreements and expenses incurred for general administration of the scientific programs and activities of the National Institutes of Health. In identifying expenses incurred for such support and administration the Secretary shall consult with the Comptroller General of the United States.

(4) Not later than December 31, 1987, and December 31 of each succeeding year, the Secretary shall report to the Congress the amount obligated in the fiscal year preceding such date for administrative expenses of the National Institutes of Health and the total amount appropriated for the National Institutes of Health for such fiscal year. The Secretary shall consult with the Comptroller General of the United States in preparing each report.

(b) For fiscal year 1989 and subsequent fiscal years, amounts made available to the National Institutes of Health shall be available for payment of nurses and allied health professionals in accordance with payment authorities, scheduling options, benefits, and other authorities provided under chapter 73 of title 38 for nurses of the Department of Veterans Affairs.

(July 1, 1944, ch. 373, title IV, § 408, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 831; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 118, 102 Stat. 3053; Nov. 18, 1988, Pub. L. 100–690, title II, § 2613(d), 102 Stat. 4239; June 10, 1993, Pub. L. 103–43, title IV, § 403(b)(1), title XX, § 2008(b)(2), 107 Stat. 158, 211.)

AMENDMENTS

1993—Pub. L. 103–43 amended section catchline generally, redesignated subsec. (b) as (a) and par. (5) of subsec. (a) as (b), struck out former subsec. (a) which authorized appropriations in addition to amounts otherwise appropriated under this subchapter for the National Cancer Institute for programs other than under section 285a–1 of this title and for its program under section 285a–1 of this title and for the National Heart, Lung, and Blood Institute for programs other than under section 285b–1 of this title and for its program under section 285b–1 of this title, and substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in subsec. (b).

1988—Subsec. (a)(1), (2). Pub. L. 100–607, § 118(a), amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1)(A) For the National Cancer Institute (other than its programs under section 285a–1 of this title), there are authorized to be appropriated $1,194,000,000 for fiscal year 1986, $1,270,000,000 for fiscal year 1987, and $1,344,000,000 for fiscal year 1988.

''(B) For the programs under section 285a–1 of this title, there are authorized to be appropriated $68,000,000

for fiscal year 1986, $74,000,000 for fiscal year 1987, and $80,000,000 for fiscal year 1988.

''(2)(A) For the National Heart, Lung, and Blood Institute (other than its programs under section 285b–1 of this title), there are authorized to be appropriated $809,000,000 for fiscal year 1986, $871,000,000 for fiscal year 1987, and $927,000,000 for fiscal year 1988. Of the amount appropriated under this subsection for such fiscal year, not less than 15 percent of such amount shall be reserved for programs respecting diseases of the lung and not less than 15 percent of such amount shall be reserved for programs respecting blood diseases and blood resources.

''(B) For the programs under section 285b–1 of this title, there are authorized to be appropriated $82,000,000 for fiscal year 1986, $90,000,000 for fiscal year 1987, and $98,000,000 for fiscal year 1988.''

Subsec. (a)(2)(B). Pub. L. 100–690 inserted a comma after ''section 285b–1 of this title''.

Subsec. (b)(5). Pub. L. 100–607, § 118(b), added par. (5).

CHANGE OF NAME

National Center for Nursing Research changed to National Institute of Nursing Research by Pub. L. 103–43, title XV, § 1511, June 10, 1993, 107 Stat. 178.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

WARREN G. MAGNUSON CLINICAL CENTER; AVAILABILITY OF FUNDS FOR PAYMENT OF NURSES; RATE OF PAY AND OPTIONS AND BENEFITS

Pub. L. 99–349, title I, July 2, 1986, 100 Stat. 738, provided that: ''Funds made available for fiscal year 1986 and hereafter to the Warren G. Magnuson Clinical Center of the National Institutes of Health shall be available for payment of nurses at the rates of pay and with schedule options and benefits authorized for the Veterans Administration pursuant to 38 U.S.C. 4107.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285m–6 of this title.

§ 284d. "Health services research" defined

For purposes of this subchapter, the term ''health services research'' means research endeavors that study the impact of the organization, financing and management of health services on the quality, cost, access to and outcomes of care. Such term does not include research on the efficacy of services to prevent, diagnose, or treat medical conditions.

(July 1, 1944, ch. 373, title IV, § 409, as added July 10, 1992, Pub. L. 102–321, title I, § 121(b), 106 Stat. 358; amended June 10, 1993, Pub. L. 103–43, title XX, § 2016(a), 107 Stat. 218.)

AMENDMENTS

1993—Pub. L. 103–43 inserted at end ''Such term does not include research on the efficacy of services to prevent, diagnose, or treat medical conditions.''

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 284e. Research on osteoporosis, Paget's disease, and related bone disorders

(a) Establishment

The Directors of the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the National Institute on Aging, the National Institute of Dental Research, and the National Institute of Diabetes and Digestive and Kidney Diseases, shall expand and intensify the programs of such Institutes with respect to research and related activities concerning osteoporosis, Paget's disease, and related bone disorders.

(b) Coordination

The Directors referred to in subsection (a) of this section shall jointly coordinate the programs referred to in such subsection and consult with the Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee and the Interagency Task Force on Aging Research.

(c) Information clearinghouse

(1) In general

In order to assist in carrying out the purpose described in subsection (a) of this section, the Director of NIH shall provide for the establishment of an information clearinghouse on osteoporosis and related bone disorders to facilitate and enhance knowledge and understanding on the part of health professionals, patients, and the public through the effective dissemination of information.

(2) Establishment through grant or contract

For the purpose of carrying out paragraph (1), the Director of NIH shall enter into a grant, cooperative agreement, or contract with a nonprofit private entity involved in activities regarding the prevention and control of osteoporosis and related bone disorders.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(July 1, 1944, ch. 373, title IV, § 409A, as added June 10, 1993, Pub. L. 103–43, title III, § 302, 107 Stat. 151.)

PART C—SPECIFIC PROVISIONS RESPECTING NATIONAL RESEARCH INSTITUTES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 284a, 289c–1 of this title.

SUBPART 1—NATIONAL CANCER INSTITUTE

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 280e–4 of this title.

§ 285. Purpose of Institute

The general purpose of the National Cancer Institute (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to the cause, diagnosis, prevention, and treatment of cancer, rehabilitation from cancer, and the continuing care of cancer patients and the families of cancer patients.

(July 1, 1944, ch. 373, title IV, § 410, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 832; amended

Nov. 4, 1988, Pub. L. 100–607, title I, § 121, 102 Stat. 3054.)

AMENDMENTS

1988—Pub. L. 100–607 inserted ", rehabilitation from cancer," after "treatment of cancer".

§ 285a. National Cancer Program

The National Cancer Program shall consist of (1) an expanded, intensified, and coordinated cancer research program encompassing the research programs conducted and supported by the Institute and the related research programs of the other national research institutes, including an expanded and intensified research program for the prevention of cancer caused by occupational or environmental exposure to carcinogens, and (2) the other programs and activities of the Institute.

(July 1, 1944, ch. 373, title IV, § 411, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 832.)

§ 285a–1. Cancer control programs

The Director of the Institute shall establish and support demonstration, education, and other programs for the detection, diagnosis, prevention, and treatment of cancer and for rehabilitation and counseling respecting cancer. Programs established and supported under this section shall include—

(1) locally initiated education and demonstration programs (and regional networks of such programs) to transmit research results and to disseminate information respecting—

(A) the detection, diagnosis, prevention, and treatment of cancer,

(B) the continuing care of cancer patients and the families of cancer patients, and

(C) rehabilitation and counseling respecting cancer,

to physicians and other health professionals who provide care to individuals who have cancer;

(2) the demonstration of and the education of students of the health professions and health professionals in—

(A) effective methods for the prevention and early detection of cancer and the identification of individuals with a high risk of developing cancer, and

(B) improved methods of patient referral to appropriate centers for early diagnosis and treatment of cancer; and

(3) the demonstration of new methods for the dissemination of information to the general public concerning the prevention, early detection, diagnosis, and treatment and control of cancer and information concerning unapproved and ineffective methods, drugs, and devices for the diagnosis, prevention, treatment, and control of cancer.

(July 1, 1944, ch. 373, title IV, § 412, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 832.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 285a–6, 285a–7, 285a–8 of this title.

§ 285a–2. Special authorities of Director

(a)(1) The Director of the Institute shall establish an information and education program to collect, identify, analyze, and disseminate on a timely basis, through publications and other appropriate means, to cancer patients and their families, physicians and other health professionals, and the general public, information on cancer research, diagnosis, prevention, and treatment (including information respecting nutrition programs for cancer patients and the relationship between nutrition and cancer). The Director of the Institute may take such action as may be necessary to insure that all channels for the dissemination and exchange of scientific knowledge and information are maintained between the Institute and the public and between the Institute and other scientific, medical, and biomedical disciplines and organizations nationally and internationally.

(2) In carrying out paragraph (1), the Director of the Institute shall—

(A) provide public and patient information and education programs, providing information that will help individuals take personal steps to reduce their risk of cancer, to make them aware of early detection techniques and to motivate appropriate utilization of those techniques, to help individuals deal with cancer if it strikes, and to provide information to improve long-term survival;

(B) continue and expand programs to provide physicians and the public with state-of-the-art information on the treatment of particular forms of cancers, and to identify those clinical trials that might benefit patients while advancing knowledge of cancer treatment;

(C) assess the incorporation of state-of-the-art cancer treatments into clinical practice and the extent to which cancer patients receive such treatments and include the results of such assessments in the biennial reports required under section 284b of this title;

(D) maintain and operate the International Cancer Research Data Bank, which shall collect, catalog, store, and disseminate insofar as feasible the results of cancer research and treatment undertaken in any country for the use of any person involved in cancer research and treatment in any country; and

(E) to the extent practicable, in disseminating the results of such cancer research and treatment, utilize information systems available to the public.

(b) The Director of the Institute in carrying out the National Cancer Program—

(1) shall establish or support the large-scale production or distribution of specialized biological materials and other therapeutic substances for cancer research and set standards of safety and care for persons using such materials;

(2) shall, in consultation with the advisory council for the Institute, support (A) research in the cancer field outside the United States by highly qualified foreign nationals which can be expected to benefit the American people, (B) collaborative research involving American and foreign participants, and (C) the training of American scientists abroad and foreign scientists in the United States;

(3) shall, in consultation with the advisory council for the Institute, support appropriate programs of education and training (including

continuing education and laboratory and clinical research training);

(4) shall encourage and coordinate cancer research by industrial concerns where such concerns evidence a particular capability for such research;

(5) may obtain (after consultation with the advisory council for the Institute and in accordance with section 3109 of title 5, but without regard to the limitation in such section on the period of service) the services of not more than one hundred and fifty-one experts or consultants who have scientific or professional qualifications;

(6)(A) may, in consultation with the advisory council for the Institute, acquire, construct, improve, repair, operate, and maintain laboratories, other research facilities, equipment, and such other real or personal property as the Director determines necessary;

(B) may, in consultation with the advisory council for the Institute, make grants for construction or renovation of facilities; and

(C) may, in consultation with the advisory council for the Institute, acquire, without regard to section 34 of title 40, by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years;

(7) may, in consultation with the advisory council for the Institute, appoint one or more advisory committees composed of such private citizens and officials of Federal, State, and local governments to advise the Director with respect to the Director's functions;

(8) may, subject to section 284(b)(2) of this title and without regard to section 3324 of title 31 and section 5 of title 41, enter into such contracts, leases, cooperative agreements, as may be necessary in the conduct of functions of the Director, with any public agency, or with any person, firm, association, corporation, or educational institution; and

(9) shall, notwithstanding section 284(a) of this title, prepare and submit, directly to the President for review and transmittal to Congress, an annual budget estimate (including an estimate of the number and type of personnel needs for the Institute) for the National Cancer Program, after reasonable opportunity for comment (but without change) by the Secretary, the Director of NIH, and the Institute's advisory council.

Except as otherwise provided, experts and consultants whose services are obtained under paragraph (5) shall be paid or reimbursed, in accordance with title 5 for their travel to and from their place of service and for other expenses associated with their assignment. Such expenses shall not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (5) unless the expert or consultant has agreed in writing to complete the entire period of the assignment or one year of the assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the Director of the Institute. If the expert or consultant violates the agreement, the money spent by the United States for such expenses is recoverable from the expert or consultant as a debt due the United States. The Secretary may waive in whole or in part a right of recovery under the preceding sentence.

(July 1, 1944, ch. 373, title IV, § 413, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 833; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 122, 102 Stat. 3054; Aug. 16, 1989, Pub. L. 101–93, § 5(c), 103 Stat. 611; June 10, 1993, Pub. L. 103–43, title III, § 301(a)(2), 107 Stat. 150.)

REFERENCES IN TEXT

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (b), are classified generally to section 5701 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1993—Subsec. (b)(9). Pub. L. 103–43 struck out subpar. (A) designation and subpar. (B) which permitted Director to receive from President and Office of Management and Budget directly all funds appropriated by Congress for obligation and expenditure by Institute.

1989—Subsec. (a)(1). Pub. L. 101–93 substituted ''Institute and'' for ''Institute and and''.

1988—Subsec. (a). Pub. L. 100–607, § 122(1), designated existing provisions as par. (1), substituted ''education program'' for ''education center'', inserted ''and the public and between the Institute and'' after ''between the Institute'', and added par. (2).

Subsec. (b)(5). Pub. L. 100–607, § 122(2)(A), substituted ''after consultation with'' for ''with the approval of''.

Subsec. (b)(8) to (10). Pub. L. 100–607, § 122(2)(B), inserted ''and'' after ''or educational institution;'' in par. (8), redesignated par. (10) as (9), and struck out former par. (9) which related to International Cancer Research Data Bank.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 285a–6, 285a–7, 285a–8 of this title.

§ 285a–3. National cancer research and demonstration centers

(a) Cooperative agreements and grants for establishing and supporting

(1) The Director of the Institute may enter into cooperative agreements with and make grants to public or private nonprofit entities to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for centers for basic and clinical research into, training in, and demonstration of advanced diagnostic, prevention, control, and treatment methods for cancer.

(2) A cooperative agreement or grant under paragraph (1) shall be entered into in accordance with policies established by the Director of NIH and after consultation with the Institute's advisory council.

(b) Uses for Federal payments under cooperative agreements or grants

Federal payments made under a cooperative agreement or grant under subsection (a) of this section may be used for—

(1) construction (notwithstanding any limitation under section 289e of this title);

(2) staffing and other basic operating costs, including such patient care costs as are required for research;

(3) clinical training, including training for allied health professionals, continuing education for health professionals and allied health professions personnel, and information programs for the public respecting cancer; and

(4) demonstration purposes.

As used in this paragraph, the term ''construction'' does not include the acquisition of land, and the term ''training'' does not include research training for which National Research Service Awards may be provided under section 288 of this title.

(c) Period of support; additional periods

Support of a center under subsection (a) of this section may be for a period of not to exceed five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 414, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 835; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 123, 102 Stat. 3055.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100–607 inserted ''control,'' after ''prevention,''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 285a–6, 285a–7 of this title.

§ 285a–4. President's Cancer Panel; establishment, membership, etc., functions

(a)(1) The President's Cancer Panel (hereafter in this section referred to as the ''Panel'') shall be composed of three persons appointed by the President who by virtue of their training, experience, and background are exceptionally qualified to appraise the National Cancer Program. At least two members of the Panel shall be distinguished scientists or physicians.

(2)(A) Members of the Panel shall be appointed for three-year terms, except that (i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of such term, and (ii) a member may serve until the member's successor has taken office. If a vacancy occurs in the Panel, the President shall make an appointment to fill the vacancy not later than 90 days after the date the vacancy occurred.

(B) The President shall designate one of the members to serve as the chairman of the Panel for a term of one year.

(C) Members of the Panel shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties as members of the Panel and shall be paid or reimbursed, in accordance with title 5, for their travel to and from their place of service and for other expenses associated with their assignment.

(3) The Panel shall meet at the call of the chairman, but not less often than four times a year. A transcript shall be kept of the proceedings of each meeting of the Panel, and the chairman shall make such transcript available to the public.

(b) The Panel shall monitor the development and execution of the activities of the National Cancer Program, and shall report directly to the President. Any delays or blockages in rapid execution of the Program shall immediately be brought to the attention of the President. The Panel shall submit to the President periodic progress reports on the National Cancer Program and shall submit to the President, the Secretary, and the Congress an annual evaluation of the efficacy of the Program and suggestions for improvements, and shall submit such other reports as the President shall direct.

(July 1, 1944, ch. 373, title IV, § 415, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 835.)

REFERENCES IN TEXT

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (a)(2)(C), are classified generally to section 5701 et seq. of Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY PANELS

Advisory panels established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a panel established by the President or an officer of the Federal Government, such panel is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a panel established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 285a–5. Associate Director for Prevention; appointment; function

(a) There shall be in the Institute an Associate Director for Prevention to coordinate and promote the programs in the Institute concerning the prevention of cancer. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or experience are experts in public health or preventive medicine.

(b) The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 416, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 836.)

§ 285a–6. Breast and gynecological cancers

(a) Expansion and coordination of activities

The Director of the Institute, in consultation with the National Cancer Advisory Board, shall expand, intensify, and coordinate the activities of the Institute with respect to research on breast cancer, ovarian cancer, and other cancers of the reproductive system of women.

(b) Coordination with other institutes

The Director of the Institute shall coordinate the activities of the Director under subsection (a) of this section with similar activities conducted by other national research institutes and agencies of the National Institutes of Health to the extent that such Institutes[1] and agencies have responsibilities that are related to breast cancer and other cancers of the reproductive system of women.

(c) Programs for breast cancer

(1) In general

In carrying out subsection (a) of this section, the Director of the Institute shall conduct or support research to expand the understanding of the cause of, and to find a cure for, breast cancer. Activities under such subsection shall provide for an expansion and intensification of the conduct and support of—

(A) basic research concerning the etiology and causes of breast cancer;

(B) clinical research and related activities concerning the causes, prevention, detection and treatment of breast cancer;

(C) control programs with respect to breast cancer in accordance with section 285a–1 of this title, including community-based programs designed to assist women who are members of medically underserved populations, low-income populations, or minority groups;

(D) information and education programs with respect to breast cancer in accordance with section 285a–2 of this title; and

(E) research and demonstration centers with respect to breast cancer in accordance with section 285a–3 of this title, including the development and operation of centers for breast cancer research to bring together basic and clinical, biomedical and behavioral scientists to conduct basic, clinical, epidemiological, psychosocial, prevention and treatment research and related activities on breast cancer.

Not less than six centers shall be operated under subparagraph (E). Activities of such centers should include supporting new and innovative research and training programs for new researchers. Such centers shall give priority to expediting the transfer of research advances to clinical applications.

(2) Implementation of plan for programs

(A) The Director of the Institute shall ensure that the research programs described in paragraph (1) are implemented in accordance with a plan for the programs. Such plan shall include comments and recommendations that the Director of the Institute considers appropriate, with due consideration provided to the professional judgment needs of the Institute as expressed in the annual budget estimate prepared in accordance with section 285a–2(9)[2] of this title. The Director of the Institute, in consultation with the National Cancer Advisory Board, shall periodically review and revise such plan.

(B) Not later than October 1, 1993, the Director of the Institute shall submit a copy of the plan to the President's Cancer Panel, the Secretary and the Director of NIH.

(C) The Director of the Institute shall submit any revisions of the plan to the President's Cancer Panel, the Secretary, and the Director of NIH.

(D) The Secretary shall provide a copy of the plan submitted under subparagraph (A), and any revisions submitted under subparagraph (C), to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(d) Other cancers

In carrying out subsection (a) of this section, the Director of the Institute shall conduct or support research on ovarian cancer and other cancers of the reproductive system of women. Activities under such subsection shall provide for the conduct and support of—

(1) basic research concerning the etiology and causes of ovarian cancer and other cancers of the reproductive system of women;

(2) clinical research and related activities into the causes, prevention, detection and treatment of ovarian cancer and other cancers of the reproductive system of women;

(3) control programs with respect to ovarian cancer and other cancers of the reproductive system of women in accordance with section 285a–1 of this title;

(4) information and education programs with respect to ovarian cancer and other cancers of the reproductive system of women in accordance with section 285a–2 of this title; and

(5) research and demonstration centers with respect to ovarian cancer and cancers of the reproductive system in accordance with section 285a–3 of this title.

(e) Report

The Director of the Institute shall prepare, for inclusion in the biennial report submitted under section 284b of this title, a report that describes the activities of the National Cancer Institute under the research programs referred to in subsection (a) of this section, that shall include—

(1) a description of the research plan with respect to breast cancer prepared under subsection (c) of this section;

(2) an assessment of the development, revision, and implementation of such plan;

(3) a description and evaluation of the progress made, during the period for which such report is prepared, in the research pro-

[1] So in original. Probably should not be capitalized.

[2] So in original. Probably should be section ''285a–2(b)(9)''.

grams on breast cancer and cancers of the reproductive system of women;

(4) a summary and analysis of expenditures made, during the period for which such report is made, for activities with respect to breast cancer and cancers of the reproductive system of women conducted and supported by the National Institutes of Health; and

(5) such comments and recommendations as the Director considers appropriate.

(July 1, 1944, ch. 373, title IV, § 417, as added June 10, 1993, Pub. L. 103–43, title IV, § 401, 107 Stat. 153.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285a–8 of this title.

§ 285a–7. Prostate cancer

(a) Expansion and coordination of activities

The Director of the Institute, in consultation with the National Cancer Advisory Board, shall expand, intensify, and coordinate the activities of the Institute with respect to research on prostate cancer.

(b) Coordination with other institutes

The Director of the Institute shall coordinate the activities of the Director under subsection (a) of this section with similar activities conducted by other national research institutes and agencies of the National Institutes of Health to the extent that such Institutes[1] and agencies have responsibilities that are related to prostate cancer.

(c) Programs

(1) In general

In carrying out subsection (a) of this section, the Director of the Institute shall conduct or support research to expand the understanding of the cause of, and to find a cure for, prostate cancer. Activities under such subsection shall provide for an expansion and intensification of the conduct and support of—

(A) basic research concerning the etiology and causes of prostate cancer;

(B) clinical research and related activities concerning the causes, prevention, detection and treatment of prostate cancer;

(C) prevention and control and early detection programs with respect to prostate cancer in accordance with section 285a–1 of this title, particularly as it relates to intensifying research on the role of prostate specific antigen for the screening and early detection of prostate cancer;

(D) an Inter-Institute Task Force, under the direction of the Director of the Institute, to provide coordination between relevant National Institutes of Health components of research efforts on prostate cancer;

(E) control programs with respect to prostate cancer in accordance with section 285a–1 of this title;

(F) information and education programs with respect to prostate cancer in accordance with section 285a–2 of this title; and

(G) research and demonstration centers with respect to prostate cancer in accordance with section 285a–3 of this title, including the development and operation of centers for prostate cancer research to bring together basic and clinical, biomedical and behavioral scientists to conduct basic, clinical, epidemiological, psychosocial, prevention and control, treatment, research, and related activities on prostate cancer.

Not less than six centers shall be operated under subparagraph (G). Activities of such centers should include supporting new and innovative research and training programs for new researchers. Such centers shall give priority to expediting the transfer of research advances to clinical applications.

(2) Implementation of plan for programs

(A) The Director of the Institute shall ensure that the research programs described in paragraph (1) are implemented in accordance with a plan for the programs. Such plan shall include comments and recommendations that the Director of the Institute considers appropriate, with due consideration provided to the professional judgment needs of the Institute as expressed in the annual budget estimate prepared in accordance with section 285a–2(9)[2] of this title. The Director of the Institute, in consultation with the National Cancer Advisory Board, shall periodically review and revise such plan.

(B) Not later than October 1, 1993, the Director of the Institute shall submit a copy of the plan to the President's Cancer Panel, the Secretary, and the Director of NIH.

(C) The Director of the Institute shall submit any revisions of the plan to the President's Cancer Panel, the Secretary, and the Director of NIH.

(D) The Secretary shall provide a copy of the plan submitted under subparagraph (A), and any revisions submitted under subparagraph (C), to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(July 1, 1944, ch. 373, title IV, § 417A, as added June 10, 1993, Pub. L. 103–43, title IV, § 402, 107 Stat. 155.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285a–8 of this title.

§ 285a–8. Authorization of appropriations

(a) Activities generally

For the purpose of carrying out this subpart, there are authorized to be appropriated

[1] So in original. Probably should not be capitalized

[2] So in original. Probably should be section ''285a–2(b)(9)''.

$2,728,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(b) Breast cancer and gynecological cancers

(1) Breast cancer

(A) For the purpose of carrying out subparagraph (A) of section 285a–6(c)(1) of this title, there are authorized to be appropriated $225,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996. Such authorizations of appropriations are in addition to the authorizations of appropriations established in subsection (a) of this section with respect to such purpose.

(B) For the purpose of carrying out subparagraphs (B) through (E) of section 285a–6(c)(1) of this title, there are authorized to be appropriated $100,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996. Such authorizations of appropriations are in addition to the authorizations of appropriations established in subsection (a) of this section with respect to such purpose.

(2) Other cancers

For the purpose of carrying out subsection (d) of section 285a–6 of this title, there are authorized to be appropriated $75,000,000 for fiscal year 1994, and such sums as are necessary for each of the fiscal years 1995 and 1996. Such authorizations of appropriations are in addition to the authorizations of appropriations established in subsection (a) of this section with respect to such purpose.

(c) Prostate cancer

For the purpose of carrying out section 285a–7 of this title, there are authorized to be appropriated $72,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996. Such authorizations of appropriations are in addition to the authorizations of appropriations established in subsection (a) of this section with respect to such purpose.

(d) Allocation regarding cancer control

(1) In general

Of the amounts appropriated for the National Cancer Institute for a fiscal year, the Director of the Institute shall make available not less than the applicable percentage specified in paragraph (2) for carrying out the cancer control activities authorized in section 285a–1 of this title and for which budget estimates are made under section 285a–2(b)(9) of this title for the fiscal year.

(2) Applicable percentage

The percentage referred to in paragraph (1) is—

(A) 7 percent, in the case of fiscal year 1994;

(B) 9 percent, in the case of fiscal year 1995; and

(C) 10 percent, in the case of fiscal year 1996 and each subsequent fiscal year.

(July 1, 1944, ch. 373, title IV, § 417B, as added June 10, 1993, Pub. L. 103–43, title IV, § 403(a), 107 Stat. 157.)

SUBPART 2—NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

§ 285b. Purpose of Institute

The general purpose of the National Heart, Lung, and Blood Institute (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to heart, blood vessel, lung, and blood diseases and with respect to the use of blood and blood products and the management of blood resources.

(July 1, 1944, ch. 373, title IV, § 418, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 836.)

§ 285b–1. Heart, blood vessel, lung, and blood disease prevention and control programs

(a) The Director of the Institute shall conduct and support programs for the prevention and control of heart, blood vessel, lung, and blood diseases. Such programs shall include community-based and population-based programs carried out in cooperation with other Federal agencies, with public health agencies of State or local governments, with nonprofit private entities that are community-based health agencies, or with other appropriate public or nonprofit private entities.

(b) In carrying out programs under subsection (a) of this section, the Director of the Institute shall give special consideration to the prevention and control of heart, blood vessel, lung, and blood diseases in children, and in populations that are at increased risk with respect to such diseases.

(July 1, 1944, ch. 373, title IV, § 419, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 836; amended June 10, 1993, Pub. L. 103–43, title V, § 505, 107 Stat. 160.)

AMENDMENTS

1993—Pub. L. 103–43 substituted subsecs. (a) and (b) for former section which read as follows: ''The Director of the Institute, under policies established by the Director of NIH and after consultation with the advisory council for the Institute, shall establish programs as necessary for cooperation with other Federal health agencies, State, local, and regional public health agencies, and nonprofit private health agencies in the diagnosis, prevention, and treatment (including the provision of emergency medical services) of heart, blood vessel, lung, and blood diseases, appropriately emphasizing the prevention, diagnosis, and treatment of such diseases of children.''

§ 285b–2. Information and education

The Director of the Institute shall collect, identify, analyze, and disseminate on a timely basis, through publications and other appropriate means, to patients, families of patients, physicians and other health professionals, and the general public, information on research, prevention, diagnosis, and treatment of heart, blood vessel, lung, and blood diseases, the maintenance of health to reduce the incidence of such diseases, and on the use of blood and blood products and the management of blood resources. In carrying out this section, the Director of the Institute shall place special emphasis upon the utilization of collaborative efforts with both the public and private sectors to—

(1) increase the awareness and knowledge of health care professionals and the public regarding the prevention of heart and blood vessel, lung, and blood diseases and the utilization of blood resources; and

(2) develop and disseminate to health professionals, patients and patient families, and the public information designed to encourage adults and children to adopt healthful practices concerning the prevention of such diseases.

(July 1, 1944, ch. 373, title IV, § 420, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 837; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 126, 102 Stat. 3055.)

AMENDMENTS

1988—Pub. L. 100–607 amended second sentence generally. Prior to amendment, second sentence read as follows: ''In carrying out this section the Director of the Institute shall place special emphasis upon—

''(1) the dissemination of information regarding diet and nutrition, environmental pollutants, exercise, stress, hypertension, cigarette smoking, weight control, and other factors affecting the prevention of arteriosclerosis and other cardiovascular diseases and of pulmonary and blood diseases; and

''(2) the dissemination of information designed to encourage children to adopt healthful habits respecting the risk factors related to the prevention of such diseases.''

§ 285b–3. National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program; administrative provisions

(a)(1) The National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program (hereafter in this subpart referred to as the ''Program'') may provide for—

(A) investigation into the epidemiology, etiology, and prevention of all forms and aspects of heart, blood vessel, lung, and blood diseases, including investigations into the social, environmental, behavioral, nutritional, biological, and genetic determinants and influences involved in the epidemiology, etiology, and prevention of such diseases;

(B) studies and research into the basic biological processes and mechanisms involved in the underlying normal and abnormal heart, blood vessel, lung, and blood phenomena;

(C) research into the development, trial, and evaluation of techniques, drugs, and devices (including computers) used in, and approaches to, the diagnosis, treatment (including the provision of emergency medical services), and prevention of heart, blood vessel, lung, and blood diseases and the rehabilitation of patients suffering from such diseases;

(D) establishment of programs that will focus and apply scientific and technological efforts involving the biological, physical, and engineering sciences to all facets of heart, blood vessel, lung, and blood diseases with emphasis on the refinement, development, and evaluation of technological devices that will assist, replace, or monitor vital organs and improve instrumentation for detection, diagnosis, and treatment of and rehabilitation from such diseases;

(E) establishment of programs for the conduct and direction of field studies, large-scale testing and evaluation, and demonstration of preventive, diagnostic, therapeutic, and rehabilitative approaches to, and emergency medical services for, such diseases;

(F) studies and research into blood diseases and blood, and into the use of blood for clinical purposes and all aspects of the management of blood resources in the United States, including the collection, preservation, fractionation, and distribution of blood and blood products;

(G) the education (including continuing education) and training of scientists, clinical investigators, and educators, in fields and specialties (including computer sciences) requisite to the conduct of clinical programs respecting heart, blood vessel, lung, and blood diseases and blood resources;

(H) public and professional education relating to all aspects of such diseases, including the prevention of such diseases, and the use of blood and blood products and the management of blood resources;

(I) establishment of programs for study and research into heart, blood vessel, lung, and blood diseases of children (including cystic fibrosis, hyaline membrane, hemolytic diseases such as sickle cell anemia and Cooley's anemia, and hemophilic diseases) and for the development and demonstration of diagnostic, treatment, and preventive approaches to such diseases; and

(J) establishment of programs for study, research, development, demonstrations and evaluation of emergency medical services for people who become critically ill in connection with heart, blood vessel, lung, or blood diseases.

(2) The Program shall be coordinated with other national research institutes to the extent that they have responsibilities respecting such diseases and shall give special emphasis to the continued development in the Institute of programs related to the causes of stroke and to effective coordination of such programs with related stroke programs in the National Institute of Neurological and Communicative Disorders and Stroke. The Director of the Institute, with the advice of the advisory council for the Institute, shall revise annually the plan for the Program and shall carry out the Program in accordance with such plan.

(b) In carrying out the Program, the Director of the Institute, under policies established by the Director of NIH—

(1) may, after consultation with the advisory council for the Institute, obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the period of such service) the services of not more than one hundred experts or consultants who have scientific or professional qualifications;

(2)(A) may, in consultation with the advisory council for the Institute, acquire and construct, improve, repair, operate, alter, renovate, and maintain, heart, blood vessel, lung, and blood disease and blood resource laboratories, research, training, and other facilities, equipment, and such other real or personal property as the Director determines necessary;

(B) may, in consultation with the advisory council for the Institute, make grants for construction or renovation of facilities; and

(C) may, in consultation with the advisory council for the Institute, acquire, without regard to section 34 of title 40, by lease or otherwise, through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years;

(3) subject to section 284(b)(2) of this title and without regard to section 3324 of title 31 and section 5 of title 41, may enter into such contracts, leases, cooperative agreements, or other transactions, as may be necessary in the conduct of the Director's functions, with any public agency, or with any person, firm, association, corporation, or educational institutions;

(4) may make grants to public and nonprofit private entities to assist in meeting the cost of the care of patients in hospitals, clinics, and related facilities who are participating in research projects; and

(5) shall, in consultation with the advisory council for the Institute, conduct appropriate intramural training and education programs, including continuing education and laboratory and clinical research training programs.

Except as otherwise provided, experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed, in accordance with title 5, for their travel to and from their place of service and for other expenses associated with their assignment. Such expenses shall not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless the expert or consultant has agreed in writing to complete the entire period of the assignment or one year of the assignment, whichever is shorter, unless separated or reassigned for reasons which are beyond the control of the expert or consultant and which are acceptable to the Director of the Institute. If the expert or consultant violates the agreement, the money spent by the United States for such expenses is recoverable from the expert or consultant as a debt due the United States. The Secretary may waive in whole or in part a right of recovery under the preceding sentence.

(July 1, 1944, ch. 373, title IV, § 421, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 837; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 127, 102 Stat. 3055; June 10, 1993, Pub. L. 103–43, title V, § 501, title XX, § 2008(b)(3), 107 Stat. 158, 211.)

REFERENCES IN TEXT

The provisions of title 5 relating to reimbursement for travel expenses, referred to in subsec. (b), are classified generally to section 5701 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–43, § 2008(b)(3), inserted comma after ''may''.

Subsec. (b)(5). Pub. L. 103–43, § 501, added par. (5).

1988—Subsec. (a)(1)(D). Pub. L. 100–607, § 127(1), inserted ''and rehabilitation from'' after ''and treatment of''.

Subsec. (b)(1). Pub. L. 100–607, § 127(2), substituted ''after consultation with'' for '', after approval of''.

§ 285b–4. National research and demonstration centers

(a) Heart, blood vessel, lung, blood diseases, and blood resources; utilization of centers for prevention programs

(1) The Director of the Institute may provide, in accordance with subsection (c) of this section, for the development of—

(A) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment and rehabilitation methods (including methods of providing emergency medical services) for heart and blood vessel diseases;

(B) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment and rehabilitation methods (including methods of providing emergency medical services) for lung diseases (including bronchitis, emphysema, asthma, cystic fibrosis, and other lung diseases of children);

(C) ten centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods (including methods of providing emergency medical services) for blood diseases and research into blood, in the use of blood products and in the management of blood resources; and

(D) three centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment (including genetic studies, intrauterine environment studies, postnatal studies, heart arrhythmias, and acquired heart disease and preventive cardiology) for cardiovascular diseases in children.

(2) The centers developed under paragraph (1) shall, in addition to being utilized for research, training, and demonstrations, be utilized for the following prevention programs for cardiovascular, pulmonary, and blood diseases:

(A) Programs to develop improved methods of detecting individuals with a high risk of developing cardiovascular, pulmonary, and blood diseases.

(B) Programs to develop improved methods of intervention against those factors which cause individuals to have a high risk of developing such diseases.

(C) Programs to develop health professions and allied health professions personnel highly skilled in the prevention of such diseases.

(D) Programs to develop improved methods of providing emergency medical services for persons with such diseases.

(E) Programs of continuing education for health and allied health professionals in the diagnosis, prevention, and treatment of such diseases and the maintenance of health to reduce the incidence of such diseases and information programs for the public respecting the prevention and early diagnosis and treatment of such diseases and the maintenance of health.

(3) The research, training, and demonstration activities carried out through any such center

may relate to any one or more of the diseases referred to in paragraph (1) of this subsection.

(b) Sickle cell anemia

The Director of the Institute shall provide, in accordance with subsection (c) of this section, for the development of ten centers for basic and clinical research into the diagnosis, treatment, and control of sickle cell anemia.

(c) Cooperative agreements and grants for establishing and supporting; uses for Federal payments; period of support, additional periods

(1) The Director of the Institute may enter into cooperative agreements with and make grants to public or private nonprofit entities to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for centers for basic and clinical research into, training in, and demonstration of the management of blood resources and advanced diagnostic, prevention, and treatment methods for heart, blood vessel, lung, or blood diseases.

(2) A cooperative agreement or grant under paragraph (1) shall be entered into in accordance with policies established by the Director of NIH and after consultation with the Institute's advisory council.

(3) Federal payments made under a cooperative agreement or grant under paragraph (1) may be used for—

(A) construction (notwithstanding any limitation under section 289e of this title);

(B) staffing and other basic operating costs, including such patient care costs as are required for research;

(C) training, including training for allied health professionals; and

(D) demonstration purposes.

As used in this subsection, the term ''construction'' does not include the acquisition of land, and the term ''training'' does not include research training for which National Research Service Awards may be provided under section 288 of this title.

(4) Support of a center under paragraph (1) may be for a period of not to exceed five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 422, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 839; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 128, 102 Stat. 3055; June 10, 1993, Pub. L. 103–43, title V, § 502, 107 Stat. 158.)

AMENDMENTS

1993—Subsec. (a)(1)(D). Pub. L. 103–43 added subpar. (D).

1988—Subsec. (a)(1)(A), (B). Pub. L. 100–607 inserted ''and rehabilitation'' after ''prevention, and treatment''.

§ 285b–5. Repealed. Pub. L. 100–607, title I, § 129, Nov. 4, 1988, 102 Stat. 3055

Section, act July 1, 1944, ch. 373, title IV, § 423, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 841, directed Secretary to establish an Interagency Technical Committee on Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources.

§ 285b–6. Associate Director for Prevention; appointment; function

(a) There shall be in the Institute an Associate Director for Prevention to coordinate and promote the programs in the Institute concerning the prevention of heart, blood vessel, lung, and blood diseases. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or experience are experts in public health or preventive medicine.

(b) The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 423, formerly § 424, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 841; renumbered § 423, Nov. 4, 1988, Pub. L. 100–607, title I, § 129, 102 Stat. 3055.)

PRIOR PROVISIONS

A prior section 423 of act July 1, 1944, was classified to section 285b–5 of this title prior to repeal by Pub. L. 100–607.

§ 285b–7. National Center on Sleep Disorders Research

(a) Establishment

Not later than 1 year after June 10, 1993, the Director of the Institute shall establish the National Center on Sleep Disorders Research (in this section referred to as the ''Center''). The Center shall be headed by a director, who shall be appointed by the Director of the Institute.

(b) Purpose

The general purpose of the Center is—

(1) the conduct and support of research, training, health information dissemination, and other activities with respect to sleep disorders, including biological and circadian rhythm research, basic understanding of sleep, chronobiological and other sleep related research; and

(2) to coordinate the activities of the Center with similar activities of other Federal agencies, including the other agencies of the National Institutes of Health, and similar activities of other public entities and nonprofit entities.

(c) Sleep Disorders Research Advisory Board

(1) The Director of the National Institutes of Health shall establish a board to be known as the Sleep Disorders Research Advisory Board (in this section referred to as the ''Advisory Board'').

(2) The Advisory Board shall advise, assist, consult with, and make recommendations to the Director of the National Institutes of Health, through the Director of the Institute, and the Director of the Center concerning matters relating to the scientific activities carried out by and through the Center and the policies respecting such activities, including recommendations with

respect to the plan required in subsection (c)[1] of this section.

(3)(A) The Director of the National Institutes of Health shall appoint to the Advisory Board 12 appropriately qualified representatives of the public who are not officers or employees of the Federal Government. Of such members, eight shall be representatives of health and scientific disciplines with respect to sleep disorders and four shall be individuals representing the interests of individuals with or undergoing treatment for sleep disorders.

(B) The following officials shall serve as ex officio members of the Advisory Board:

(i) The Director of the National Institutes of Health.

(ii) The Director of the Center.

(iii) The Director of the National Heart, Lung and Blood Institute.

(iv) The Director of the National Institute of Mental Health.

(v) The Director of the National Institute on Aging.

(vi) The Director of the National Institute of Child Health and Human Development.

(vii) The Director of the National Institute of Neurological Disorders and Stroke.

(viii) The Assistant Secretary for Health.

(ix) The Assistant Secretary of Defense (Health Affairs).

(x) The Chief Medical Director of the Veterans' Administration.

(4) The members of the Advisory Board shall, from among the members of the Advisory Board, designate an individual to serve as the chair of the Advisory Board.

(5) Except as inconsistent with, or inapplicable to, this section, the provisions of section 284a of this title shall apply to the advisory board[2] established under this section in the same manner as such provisions apply to any advisory council established under such section.

(d) Development of comprehensive research plan; revision

(1) After consultation with the Director of the Center and the advisory board[2] established under subsection (c) of this section, the Director of the National Institutes of Health shall develop a comprehensive plan for the conduct and support of sleep disorders research.

(2) The plan developed under paragraph (1) shall identify priorities with respect to such research and shall provide for the coordination of such research conducted or supported by the agencies of the National Institutes of Health.

(3) The Director of the National Institutes of Health (after consultation with the Director of the Center and the advisory board[2] established under subsection (c) of this section) shall revise the plan developed under paragraph (1) as appropriate.

(e) Collection and dissemination of information

The Director of the Center, in cooperation with the Centers for Disease Control and Prevention, is authorized to coordinate activities with the Department of Transportation, the Department of Defense, the Department of Education, the Department of Labor, and the Department of Commerce to collect data, conduct studies, and disseminate public information concerning the impact of sleep disorders and sleep deprivation.

(July 1, 1944, ch. 373, title IV, § 424, as added June 10, 1993, Pub. L. 103–43, title V, § 503, 107 Stat. 159.)

CHANGE OF NAME

Reference to Chief Medical Director of Department of Veterans Affairs deemed to refer to Under Secretary for Health of Department of Veterans Affairs pursuant to section 302(e) of Pub. L. 102–405, set out as a note under section 305 of Title 38, Veterans' Benefits.

Reference to Chief Medical Director of Veterans' Administration deemed to refer to Chief Medical Director of Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 201 of Title 38.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 285b–8. Authorization of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $1,500,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(July 1, 1944, ch. 373, title IV, § 425, as added June 10, 1993, Pub. L. 103–43, title V, § 504, 107 Stat. 160.)

SUBPART 3—NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES

§ 285c. Purpose of Institute

The general purpose of the National Institute of Diabetes and Digestive and Kidney Diseases (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to diabetes mellitus and endocrine and metabolic diseases, digestive diseases and nutritional disorders, and kidney, urologic, and hematologic diseases.

(July 1, 1944, ch. 373, title IV, § 426, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 841.)

REVIEW OF DISEASE RESEARCH PROGRAMS OF THE NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE AND KIDNEY DISEASES

Section 10 of Pub. L. 99–158 provided that: ''The Secretary of Health and Human Services shall conduct an administrative review of the disease research programs

[1] So in original. Probably should be subsection ''(d)''.

[2] So in original. Probably should be capitalized.

of the National Institute of Diabetes and Digestive and Kidney Diseases to determine if any of such programs could be more effectively and efficiently managed by other national research institutes. The Secretary shall complete such review within the one-year period beginning on the date of enactment of this Act [Nov. 20, 1985].''

§ 285c–1. Data systems and information clearinghouses

(a) National Diabetes Data System and National Diabetes Clearinghouse

The Director of the Institute shall (1) establish the National Diabetes Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with diabetes, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing diabetes, and (2) establish the National Diabetes Information Clearinghouse to facilitate and enhance knowledge and understanding of diabetes on the part of health professionals, patients, and the public through the effective dissemination of information.

(b) National Digestive Diseases Data System and National Digestive Diseases Information Clearinghouse

The Director of the Institute shall (1) establish the National Digestive Diseases Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with digestive diseases, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing digestive diseases, and (2) establish the National Digestive Diseases Information Clearinghouse to facilitate and enhance knowledge and understanding of digestive diseases on the part of health professionals, patients, and the public through the effective dissemination of information.

(c) National Kidney and Urologic Diseases Data System and National Kidney and Urologic Diseases Information Clearinghouse

The Director of the Institute shall (1) establish the National Kidney and Urologic Diseases Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with kidney and urologic diseases, including, where possible, data involving general populations for the purpose of detection of individuals with a risk of developing kidney and urologic diseases, and (2) establish the National Kidney and Urologic Diseases Information Clearinghouse to facilitate and enhance knowledge and understanding of kidney and urologic diseases on the part of health professionals, patients, and the public through the effective dissemination of information.

(July 1, 1944, ch. 373, title IV, § 427, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 841.)

§ 285c–2. Division Directors for Diabetes, Endocrinology, and Metabolic Diseases, Digestive Diseases and Nutrition, and Kidney, Urologic, and Hematologic Diseases; functions

(a)(1) In the Institute there shall be a Division Director for Diabetes, Endocrinology, and Metabolic Diseases, a Division Director for Digestive Diseases and Nutrition, and a Division Director for Kidney, Urologic, and Hematologic Diseases. Such Division Directors, under the supervision of the Director of the Institute, shall be responsible for—

(A) developing a coordinated plan (including recommendations for expenditures) for each of the national research institutes within the National Institutes of Health with respect to research and training concerning diabetes, endocrine and metabolic diseases, digestive diseases and nutrition, and kidney, urologic, and hematologic diseases;

(B) assessing the adequacy of management approaches for the activities within such institutes concerning such diseases and nutrition and developing improved approaches if needed;

(C) monitoring and reviewing expenditures by such institutes concerning such diseases and nutrition; and

(D) identifying research opportunities concerning such diseases and nutrition and recommending ways to utilize such opportunities.

(2) The Director of the Institute shall transmit to the Director of NIH the plans, recommendations, and reviews of the Division Directors under subparagraphs (A) through (D) of paragraph (1) together with such comments and recommendations as the Director of the Institute determines appropriate.

(b) The Director of the Institute, acting through the Division Director for Diabetes, Endocrinology, and Metabolic Diseases, the Division Director for Digestive Diseases and Nutrition, and the Division Director for Kidney, Urologic, and Hematologic Diseases, shall—

(1) carry out programs of support for research and training (other than training for which National Research Service Awards may be made under section 288 of this title) in the diagnosis, prevention, and treatment of diabetes mellitus and endocrine and metabolic diseases, digestive diseases and nutritional disorders, and kidney, urologic, and hematologic diseases, including support for training in medical schools, graduate clinical training, graduate training in epidemiology, epidemiology studies, clinical trials, and interdisciplinary research programs; and

(2) establish programs of evaluation, planning, and dissemination of knowledge related to such research and training.

(July 1, 1944, ch. 373, title IV, § 428, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 842; amended June 10, 1993, Pub. L. 103–43, title XX, § 2008(b)(4), 107 Stat. 211.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–43 substituted ''the'' for ''the the'' before ''Division Director for Diabetes'' in introductory provisions.

§ 285c–3. Interagency coordinating committees

(a) Establishment and purpose

For the purpose of—

(1) better coordination of the research activities of all the national research institutes relating to diabetes mellitus, digestive diseases, and kidney, urologic, and hematologic diseases; and

(2) coordinating those aspects of all Federal health programs and activities relating to such diseases to assure the adequacy and technical soundness of such programs and activities and to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities;

the Secretary shall establish a Diabetes Mellitus Interagency Coordinating Committee, a Digestive Diseases Interagency Coordinating Committee, and a Kidney, Urologic, and Hematologic Diseases Coordinating Committee (hereafter in this section individually referred to as a ''Committee'').

(b) Membership; chairman; meetings

Each Committee shall be composed of the Directors of each of the national research institutes and divisions involved in research with respect to the diseases for which the Committee is established, the Division Director of the Institute for the diseases for which the Committee is established, the Under Secretary for Health of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers) and shall include representation from all other Federal departments and agencies whose programs involve health functions or responsibilities relevant to such diseases, as determined by the Secretary. Each Committee shall be chaired by the Director of NIH (or the designee of the Director). Each Committee shall meet at the call of the chairman, but not less often than four times a year.

(c) Annual report

Each Committee shall prepare an annual report for—

(1) the Secretary;

(2) the Director of NIH; and

(3) the Advisory Board established under section 285c–4 of this title for the diseases for which the Committee was established,

detailing the work of the Committee in carrying out paragraphs (1) and (2) of subsection (a) of this section in the fiscal year for which the report was prepared. Such report shall be submitted not later than 120 days after the end of each fiscal year.

(July 1, 1944, ch. 373, title IV, § 429, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 843; amended Oct. 25, 1988, Pub. L. 100–527, § 10(4), 102 Stat. 2641; Oct. 9, 1992, Pub. L. 102–405, title III, § 302(e)(1), 106 Stat. 1985.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–405 substituted ''Under Secretary for Health of the Department of Veterans Affairs'' for ''Chief Medical Director of the Department of Veterans Affairs''.

1988—Subsec. (b). Pub. L. 100–527 substituted ''Chief Medical Director of the Department of Veterans Affairs'' for ''Chief Medical Director of the Veterans' Administration''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

§ 285c–4. Advisory boards

(a) Establishment

The Secretary shall establish in the Institute the National Diabetes Advisory Board, the National Digestive Diseases Advisory Board, and the National Kidney and Urologic Diseases Advisory Board (hereafter in this section individually referred to as an ''Advisory Board'').

(b) Membership; ex officio members

Each Advisory Board shall be composed of eighteen appointed members and nonvoting ex officio members as follows:

(1) The Secretary shall appoint—

(A) twelve members from individuals who are scientists, physicians, and other health professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to the diseases with respect to which the Advisory Board is established; and

(B) six members from the general public who are knowledgeable with respect to such diseases, including at least one member who is a person who has such a disease and one member who is a parent of a person who has such a disease.

Of the appointed members at least five shall by virtue of training or experience be knowledgeable in the fields of health education, nursing, data systems, public information, and community program development.

(2)(A) The following shall be ex officio members of each Advisory Board:

(i) The Assistant Secretary for Health, the Director of NIH, the Director of the National Institute of Diabetes and Digestive and Kidney Diseases, the Director of the Centers for Disease Control and Prevention, the Under Secretary for Health of the Department of Veterans Affairs, the Assistant Secretary of Defense for Health Affairs, and the Division Director of the National Institute of Diabetes and Digestive and Kidney Diseases for the diseases for which the Board is established (or the designees of such officers).

(ii) Such other officers and employees of the United States as the Secretary determines necessary for the Advisory Board to carry out its functions.

(B) In the case of the National Diabetes Advisory Board, the following shall also be ex officio members: The Director of the National Heart, Lung, and Blood Institute, the Director of the National Eye Institute, the Director of the National Institute of Child Health and Human Development, and the Administrator of the Health Resources and Services Administration (or the designees of such officers).

(c) Compensation

Members of an Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule for each day (including

traveltime) they are engaged in the performance of their duties as members of the Board.

(d) Term of office; vacancy

The term of office of an appointed member of an Advisory Board is four years, except that no term of office may extend beyond the expiration of the Advisory Board. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in an Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than 90 days from the date the vacancy occurred.

(e) Chairman

The members of each Advisory Board shall select a chairman from among the appointed members.

(f) Executive director; professional and clerical staff; administrative support services and facilities

The Secretary shall, after consultation with and consideration of the recommendations of an Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, such services of consultants, such information, and (through contracts or other arrangements) such administrative support services and facilities, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

(g) Meetings

Each Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

(h) Functions of National Diabetes Advisory Board and National Digestive Diseases Advisory Board

The National Diabetes Advisory Board and the National Digestive Diseases Advisory Board shall—

(1) review and evaluate the implementation of the plan (referred to in section 285c–7 of this title) respecting the diseases with respect to which the Advisory Board was established and periodically update the plan to ensure its continuing relevance;

(2) for the purpose of assuring the most effective use and organization of resources respecting such diseases, advise and make recommendations to the Congress, the Secretary, the Director of NIH, the Director of the Institute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

(3) maintain liaison with other advisory bodies related to Federal agencies involved in the implementation of such plan, the coordinating committee for such diseases, and with key non-Federal entities involved in activities affecting the control of such diseases.

(i) Subcommittees; establishment and membership

In carrying out its functions, each Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

(j) Annual report

Each Advisory Board shall prepare an annual report for the Secretary which—

(1) describes the Advisory Board's activities in the fiscal year for which the report is made;

(2) describes and evaluates the progress made in such fiscal year in research, treatment, education, and training with respect to the diseases with respect to which the Advisory Board was established;

(3) summarizes and analyzes expenditures made by the Federal Government for activities respecting such diseases in such fiscal year; and

(4) contains the Advisory Board's recommendations (if any) for changes in the plan referred to in section 285c–7 of this title.

(k) Termination of predecessor boards; time within which to appoint members

The National Diabetes Advisory Board and the National Digestive Diseases Advisory Board in existence on November 20, 1985, shall terminate upon the appointment of a successor Board under subsection (a) of this section. The Secretary shall make appointments to the Advisory Boards established under subsection (a) of this section before the expiration of 90 days after November 20, 1985. The members of the Boards in existence on November 20, 1985, may be appointed, in accordance with subsections (b) and (d) of this section, to the Boards established under subsection (a) of this section for diabetes and digestive diseases, except that at least one-half of the members of the National Diabetes Advisory Board in existence on November 20, 1985, shall be appointed to the National Diabetes Advisory Board first established under subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 430, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 844; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 131, 102 Stat. 3056; Oct. 9, 1992, Pub. L. 102–405, title III, § 302(e)(1), 106 Stat. 1985; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(6), 106 Stat. 3504; June 10, 1993, Pub. L. 103–43, title XX, § 2008(b)(5), 107 Stat. 211.)

AMENDMENTS

1993—Subsec. (b)(2)(A)(i). Pub. L. 103–43 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsec. (b)(2)(A)(i). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1988—Subsecs. (k), (*l*). Pub. L. 100–607 redesignated subsec. (*l*) as (k) and struck out former subsec. (k) which read as follows: ''Each Advisory Board shall expire on September 30, 1988.''

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285c–3 of this title.

§ 285c–5. Research and training centers; development or expansion

(a) Diabetes mellitus and related endocrine and metabolic diseases

(1) Consistent with applicable recommendations of the National Commission on Diabetes, the Director of the Institute shall provide for the development or substantial expansion of centers for research and training in diabetes mellitus and related endocrine and metabolic diseases. Each center developed or expanded under this subsection shall—

(A) utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research and training qualifications as may be prescribed by the Secretary; and

(B) conduct—

(i) research in the diagnosis and treatment of diabetes mellitus and related endocrine and metabolic diseases and the complications resulting from such diseases;

(ii) training programs for physicians and allied health personnel in current methods of diagnosis and treatment of such diseases and complications, and in research in diabetes; and

(iii) information programs for physicians and allied health personnel who provide primary care for patients with such diseases or complications.

(2) A center may use funds provided under paragraph (1) to provide stipends for nurses and allied health professionals enrolled in research training programs described in paragraph (1)(B)(ii).

(b) Digestive diseases and related functional, congenital, metabolic disorders, and normal development of digestive tract

Consistent with applicable recommendations of the National Digestive Diseases Advisory Board, the Director shall provide for the development or substantial expansion of centers for research in digestive diseases and related functional, congenital, metabolic disorders, and normal development of the digestive tract. Each center developed or expanded under this subsection—

(1) shall utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research qualifications as may be prescribed by the Secretary;

(2) shall develop and conduct basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of digestive diseases and nutritional disorders and related functional, congenital, or metabolic complications resulting from such diseases or disorders;

(3) shall encourage research into and programs for—

(A) providing information for patients with such diseases and the families of such patients, physicians and others who care for such patients, and the general public;

(B) model programs for cost effective and preventive patient care; and

(C) training physicians and scientists in research on such diseases, disorders, and complications; and

(4) may perform research and participate in epidemiological studies and data collection relevant to digestive diseases and disorders and disseminate such research, studies, and data to the health care profession and to the public.

(c) Kidney and urologic diseases

The Director shall provide for the development or substantial expansion of centers for research in kidney and urologic diseases. Each center developed or expanded under this subsection—

(1) shall utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research qualifications as may be prescribed by the Secretary;

(2) shall develop and conduct basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of kidney and urologic diseases;

(3) shall encourage research into and programs for—

(A) providing information for patients with such diseases, disorders, and complications and the families of such patients, physicians and others who care for such patients, and the general public;

(B) model programs for cost effective and preventive patient care; and

(C) training physicians and scientists in research on such diseases; and

(4) may perform research and participate in epidemiological studies and data collection relevant to kidney and urologic diseases in order to disseminate such research, studies, and data to the health care profession and to the public.

(d) Nutritional disorders

(1) The Director of the Institute shall, subject to the extent of amounts made available in ap-

propriations Acts, provide for the development or substantial expansion of centers for research and training regarding nutritional disorders, including obesity.

(2) The Director of the Institute shall carry out paragraph (1) in collaboration with the Director of the National Cancer Institute and with the Directors of such other agencies of the National Institutes of Health as the Director of NIH determines to be appropriate.

(3) Each center developed or expanded under paragraph (1) shall—

(A) utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research and training qualifications as may be prescribed by the Director;

(B) conduct basic and clinical research into the cause, diagnosis, early detection, prevention, control and treatment of nutritional disorders, including obesity and the impact of nutrition and diet on child development;

(C) conduct training programs for physicians and allied health professionals in current methods of diagnosis and treatment of such diseases and complications, and in research in such disorders; and

(D) conduct information programs for physicians and allied health professionals who provide primary care for patients with such disorders or complications.

(e) Geographic distribution; period of support, additional periods

Insofar as practicable, centers developed or expanded under this section should be geographically dispersed throughout the United States and in environments with proven research capabilities. Support of a center under this section may be for a period of not to exceed five years and such period may be extended by the Director of the Institute for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 431, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 846; amended June 10, 1993, Pub. L. 103–43, title VI, § 601(b), 107 Stat. 161.)

AMENDMENTS

1993—Subsecs. (d), (e). Pub. L. 103–43 added subsec. (d) and redesignated former subsec. (d) as (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285c–7 of this title.

§ 285c–6. Advisory council subcommittees

There are established within the advisory council for the Institute appointed under section 284a of this title a subcommittee on diabetes and endocrine and metabolic diseases, a subcommittee on digestive diseases and nutrition, and a subcommittee on kidney, urologic, and hematologic diseases. The subcommittees shall be composed of members of the advisory council who are outstanding in the diagnosis, prevention, and treatment of the diseases for which the subcommittees are established and members of the advisory council who are leaders in the fields of education and public affairs. The subcommittees are authorized to review applications made to the Director of the Institute for grants for research and training projects relating to the diagnosis, prevention, and treatment of the diseases for which the subcommittees are established and shall recommend to the advisory council those applications and contracts that the subcommittees determine will best carry out the purposes of the Institute. The subcommittees shall also review and evaluate the diabetes and endocrine and metabolic diseases, digestive diseases and nutrition, and kidney, urologic, and hematologic diseases programs of the Institute and recommend to the advisory council such changes in the administration of such programs as the subcommittees determine are necessary.

(July 1, 1944, ch. 373, title IV, § 432, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 847.)

§ 285c–7. Biennial report

The Director of the Institute shall prepare for inclusion in the biennial report made under section 284b of this title a description of the Institute's activities—

(1) under the current diabetes plan under the National Diabetes Mellitus Research and Education Act; and

(2) under the current digestive diseases plan formulated under the Arthritis, Diabetes, and Digestive Diseases Amendments of 1976.

The description submitted by the Director shall include an evaluation of the activities of the centers supported under section 285c–5 of this title.

(July 1, 1944, ch. 373, title IV, § 433, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 848.)

REFERENCES IN TEXT

The National Diabetes Mellitus Research and Education Act, referred to in par. (1), is Pub. L. 93–354, July 23, 1974, 88 Stat. 373, as amended, which enacted former sections 289c–1a, 289c–2, and 289c–3 of this title, amended section 247b and former section 289c–1 of this title, and enacted provisions formerly set out as notes under section 289c–2 of this title. For complete classification of this Act to the Code, see Short Title of 1974 Amendments note set out under section 201 of this title and Tables.

The Arthritis, Diabetes, and Digestive Diseases Amendments of 1976, referred to in par. (2), is Pub. L. 94–562, Oct. 19, 1976, 90 Stat. 2645, as amended, which enacted former sections 289c–3a, 289c–7, and 289c–8 of this title, amended former sections 289c–2, 289c–5, and 289c–6 of this title, and enacted provisions formerly set out as notes under sections 289a, 289c–3a, and 289c–7 of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendments note set out under section 201 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285c–4 of this title.

§ 285c–8. Nutritional disorders program

(a) Establishment

The Director of the Institute, in consultation with the Director of NIH, shall establish a pro-

gram of conducting and supporting research, training, health information dissemination, and other activities with respect to nutritional disorders, including obesity.

(b) Support of activities

In carrying out the program established under subsection (a) of this section, the Director of the Institute shall conduct and support each of the activities described in such subsection.

(c) Dissemination of information

In carrying out the program established under subsection (a) of this section, the Director of the Institute shall carry out activities to facilitate and enhance knowledge and understanding of nutritional disorders, including obesity, on the part of health professionals, patients, and the public through the effective dissemination of information.

(July 1, 1944, ch. 373, title IV, § 434, as added June 10, 1993, Pub. L. 103–43, title VI, § 601[(a)], 107 Stat. 161.)

SUBPART 4—NATIONAL INSTITUTE OF ARTHRITIS AND MUSCULOSKELETAL AND SKIN DISEASES

§ 285d. Purpose of Institute

The general purpose of the National Institute of Arthritis and Musculoskeletal and Skin Diseases (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research and training, the dissemination of health information, and other programs with respect to arthritis and musculoskeletal and skin diseases (including sports-related disorders), with particular attention to the effect of these diseases on children.

(July 1, 1944, ch. 373, title IV, § 435, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 848; amended June 10, 1993, Pub. L. 103–43, title VII, § 701(a), 107 Stat. 162.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''(including sports-related disorders), with particular attention to the effect of these diseases on children'' for '', including sports-related disorders''.

§ 285d–1. National arthritis and musculoskeletal and skin diseases program

(a) Plan to expand, intensify, and coordinate activities; submission; periodic review and revision

The Director of the Institute, with the advice of the Institute's advisory council, shall prepare and transmit to the Director of NIH a plan for a national arthritis and musculoskeletal and skin diseases program to expand, intensify, and coordinate the activities of the Institute respecting arthritis and musculoskeletal and skin diseases. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The plan shall place particular emphasis upon expanding research into better understanding the causes and the development of effective treatments for arthritis affecting children. The Director of the Institute shall periodically review and revise such plan and shall transmit any revisions of such plan to the Director of NIH.

(b) Coordination of activities with other national research institutes; minimum activities under program

Activities under the national arthritis and musculoskeletal and skin diseases program shall be coordinated with the other national research institutes to the extent that such institutes have responsibilities respecting arthritis and musculoskeletal and skin diseases, and shall, at least, provide for—

(1) investigation into the epidemiology, etiology, and prevention of all forms of arthritis and musculoskeletal and skin diseases, including sports-related disorders, primarily through the support of basic research in such areas as immunology, genetics, biochemistry, microbiology, physiology, bioengineering, and any other scientific discipline which can contribute important knowledge to the treatment and understanding of arthritis and musculoskeletal and skin diseases;

(2) research into the development, trial, and evaluation of techniques, drugs, and devices used in the diagnosis, treatment, including medical rehabilitation, and prevention of arthritis and musculoskeletal and skin diseases;

(3) research on the refinement, development, and evaluation of technological devices that will replace or be a substitute for damaged bone, muscle, and joints and other supporting structures;

(4) the establishment of mechanisms to monitor the causes of athletic injuries and identify ways of preventing such injuries on scholastic athletic fields; and

(5) research into the causes of arthritis affecting children and the development, trial, and evaluation of techniques, drugs and devices used in the diagnosis, treatment (including medical rehabilitation), and prevention of arthritis in children.

(c) Program to be carried out in accordance with plan

The Director of the Institute shall carry out the national arthritis and musculoskeletal and skin diseases program in accordance with the plan prepared under subsection (a) of this section and any revisions of such plan made under such subsection.

(July 1, 1944, ch. 373, title IV, § 436, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 848; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 136, 102 Stat. 3056; June 10, 1993, Pub. L. 103–43, title VII, § 701(b), 107 Stat. 162.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–43, § 701(b)(1), inserted after second sentence ''The plan shall place particular emphasis upon expanding research into better understanding the causes and the development of effective treatments for arthritis affecting children.''

Subsec. (b)(5). Pub. L. 103–43, § 701(b)(2), added par. (5).

1988—Pub. L. 100–607 inserted ''and skin'' after ''musculoskeletal'' in section catchline and wherever appearing in text.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285d–7 of this title.

§ 285d–2. Research and training

The Director of the Institute shall—

(1) carry out programs of support for research and training (other than training for which National Research Service Awards may be made under section 288 of this title) in the diagnosis, prevention, and treatment of arthritis and musculoskeletal and skin diseases, including support for training in medical schools, graduate clinical training, graduate training in epidemiology, epidemiology studies, clinical trials, and interdisciplinary research programs; and

(2) establish programs of evaluation, planning, and dissemination of knowledge related to such research and training.

(July 1, 1944, ch. 373, title IV, § 437, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 849.)

§ 285d–3. Data system and information clearinghouse

(a) The Director of the Institute shall establish the National Arthritis and Musculoskeletal and Skin Diseases Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with arthritis and musculoskeletal and skin diseases, including where possible, data involving general populations for the purpose of detection of individuals with a risk of developing arthritis and musculoskeletal and skin diseases.

(b) The Director of the Institute shall establish the National Arthritis and Musculoskeletal and Skin Diseases Information Clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of arthritis and musculoskeletal and skin diseases by health professionals, patients, and the public.

(July 1, 1944, ch. 373, title IV, § 438, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 849.)

§ 285d–4. Interagency coordinating committees

(a) Establishment and purpose

For the purpose of—

(1) better coordination of the research activities of all the national research institutes relating to arthritis, musculoskeletal diseases, and skin diseases, including sports-related disorders; and

(2) coordinating the aspects of all Federal health programs and activities relating to arthritis, musculoskeletal diseases, and skin diseases in order to assure the adequacy and technical soundness of such programs and activities and in order to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities,

the Secretary shall establish an Arthritis and Musculoskeletal Diseases Interagency Coordinating Committee and a Skin Diseases Interagency Coordinating Committee (hereafter in this section individually referred to as a ''Committee'').

(b) Membership; chairman; meetings

Each Committee shall be composed of the Directors of each of the national research institutes and divisions involved in research regarding the diseases with respect to which the Committee is established, the Under Secretary for Health of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and representatives of all other Federal departments and agencies (as determined by the Secretary) whose programs involve health functions or responsibilities relevant to arthritis and musculoskeletal diseases or skin diseases, as the case may be. Each Committee shall be chaired by the Director of NIH (or the designee of the Director). Each Committee shall meet at the call of the chairman, but not less often than four times a year.

(c) Annual report

Not later than 120 days after the end of each fiscal year, each Committee shall prepare and transmit to the Secretary, the Director of NIH, the Director of the Institute, and the advisory council for the Institute a report detailing the activities of the Committee in such fiscal year in carrying out paragraphs (1) and (2) of subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 439, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 849; amended Oct. 9, 1992, Pub. L. 102–405, title III, § 302(e)(1), 106 Stat. 1985; June 10, 1993, Pub. L. 103–43, title XX, § 2008(b)(6), 107 Stat. 211.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–43 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsec. (b). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285d–7 of this title.

§ 285d–5. Arthritis and musculoskeletal diseases demonstration projects

(a) Grants for establishment and support

The Director of the Institute may make grants to public and private nonprofit entities to establish and support projects for the development and demonstration of methods for screening, detection, and referral for treatment of arthritis and musculoskeletal diseases and for the dissemination of information on such methods to the health and allied health professions. Activities under such projects shall be coordinated with Federal, State, local, and regional health agencies, centers assisted under section 285d–6 of this title, and the data system established under subsection (c) of this section.

(b) Programs included

Projects supported under this section shall include—

(1) programs which emphasize the development and demonstration of new and improved methods of screening and early detection, referral for treatment, and diagnosis of individuals with a risk of developing arthritis and musculoskeletal diseases;

(2) programs which emphasize the development and demonstration of new and improved methods for patient referral from local hospitals and physicians to appropriate centers for early diagnosis and treatment;

(3) programs which emphasize the development and demonstration of new and improved means of standardizing patient data and recordkeeping;

(4) programs which emphasize the development and demonstration of new and improved methods of dissemination of knowledge about the programs, methods, and means referred to in paragraphs (1), (2), and (3) of this subsection to health and allied health professionals;

(5) programs which emphasize the development and demonstration of new and improved methods for the dissemination to the general public of information—

(A) on the importance of early detection of arthritis and musculoskeletal diseases, of seeking prompt treatment, and of following an appropriate regimen; and

(B) to discourage the promotion and use of unapproved and ineffective diagnostic, preventive treatment, and control methods for arthritis and unapproved and ineffective drugs and devices for arthritis and musculoskeletal diseases; and

(6) projects for investigation into the epidemiology of all forms and aspects of arthritis and musculoskeletal diseases, including investigations into the social, environmental, behavioral, nutritional, and genetic determinants and influences involved in the epidemiology of arthritis and musculoskeletal diseases.

(c) Standardization of patient data and recordkeeping

The Director shall provide for the standardization of patient data and recordkeeping for the collection, storage, analysis, retrieval, and dissemination of such data in cooperation with projects assisted under this section, centers assisted under section 285d–6 of this title, and other persons engaged in arthritis and musculoskeletal disease programs.

(July 1, 1944, ch. 373, title IV, § 440, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 850.)

§ 285d–6. Multipurpose arthritis and musculoskeletal diseases centers

(a) Development, modernization, and operation

The Director of the Institute shall, after consultation with the advisory council for the Institute, provide for the development, modernization, and operation (including staffing and other operating costs such as the costs of patient care required for research) of new and existing centers for arthritis and musculoskeletal diseases. For purposes of this section, the term ''modernization'' means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

(b) Duties and functions

Each center assisted under this section shall—

(1)(A) use the facilities of a single institution or a consortium of cooperating institutions, and (B) meet such qualifications as may be prescribed by the Secretary; and

(2) conduct—

(A) basic and clinical research into the cause, diagnosis, early detection, prevention, control, and treatment of and rehabilitation from arthritis and musculoskeletal diseases and complications resulting from arthritis and musculoskeletal diseases, including research into implantable biomaterials and biomechanical and other orthopedic procedures;

(B) training programs for physicians, scientists, and other health and allied health professionals;

(C) information and continuing education programs for physicians and other health and allied health professionals who provide care for patients with arthritis and musculoskeletal diseases; and

(D) programs for the dissemination to the general public of information—

(i) on the importance of early detection of arthritis and musculoskeletal diseases, of seeking prompt treatment, and of following an appropriate regimen; and

(ii) to discourage the promotion and use of unapproved and ineffective diagnostic, preventive, treatment, and control methods and unapproved and ineffective drugs and devices.

A center may use funds provided under subsection (a) of this section to provide stipends for health professionals enrolled in training programs described in paragraph (2)(B).

(c) Optional programs

Each center assisted under this section may conduct programs to—

(1) establish the effectiveness of new and improved methods of detection, referral, and diagnosis of individuals with a risk of developing arthritis and musculoskeletal diseases;

(2) disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping; and

(3) develop community consultative services to facilitate the referral of patients to centers for treatment.

(d) Geographical distribution

The Director of the Institute shall, insofar as practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of children affected by arthritis and musculoskeletal diseases.

(e) Period of support; additional periods

Support of a center under this section may be for a period of not to exceed five years. Such period may be extended by the Director of the Institute for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(f) Treatment and rehabilitation of children

Not later than October 1, 1993, the Director shall establish a multipurpose arthritis and

musculoskeletal disease center for the purpose of expanding the level of research into the cause, diagnosis, early detection, prevention, control, and treatment of, and rehabilitation of children with arthritis and musculoskeletal diseases.

(July 1, 1944, ch. 373, title IV, § 441, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 851; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 137, 102 Stat. 3056; June 10, 1993, Pub. L. 103–43, title VII, § 701(c), 107 Stat. 162.)

AMENDMENTS

1993—Subsec. (f). Pub. L. 103–43 added subsec. (f).

1988—Subsec. (b)(2)(A). Pub. L. 100–607 inserted ''and rehabilitation from'' after ''and treatment of''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285d–5 of this title.

§ 285d–7. Advisory Board

(a) Establishment

The Secretary shall establish in the Institute the National Arthritis and Musculoskeletal and Skin Diseases Advisory Board (hereafter in this section referred to as the ''Advisory Board'').

(b) Membership; ex officio members

The Advisory Board shall be composed of twenty appointed members and nonvoting, ex officio members, as follows:

(1) The Secretary shall appoint—

(A) twelve members from individuals who are scientists, physicians, and other health professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to arthritis, musculoskeletal diseases, and skin diseases; and

(B) eight members from the general public who are knowledgeable with respect to such diseases, including one member who is a person who has such a disease, one person who is the parent of an adult with such a disease, and two members who are parents of children with arthritis.

Of the appointed members at least five shall by virtue of training or experience be knowledgeable in health education, nursing, data systems, public information, or community program development.

(2) The following shall be ex officio members of the Advisory Board:

(A) the Assistant Secretary for Health, the Director of NIH, the Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the Director of the Centers for Disease Control and Prevention, the Under Secretary for Health of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

(B) such other officers and employees of the United States as the Secretary determines necessary for the Advisory Board to carry out its functions.

(c) Compensation

Members of the Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Advisory Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Advisory Board.

(d) Term of office; vacancy

The term of office of an appointed member of the Advisory Board is four years. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in the Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than 90 days after the date the vacancy occurred.

(e) Chairman

The members of the Advisory Board shall select a chairman from among the appointed members.

(f) Executive director, professional and clerical staff; administrative support services and facilities

The Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, and (through contracts or other arrangements) with such administrative support services and facilities, such information, and such services of consultants, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

(g) Meetings

The Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

(h) Duties and functions

The Advisory Board shall—

(1) review and evaluate the implementation of the plan prepared under section 285d–1(a) of this title and periodically update the plan to ensure its continuing relevance;

(2) for the purpose of assuring the most effective use and organization of resources respecting arthritis, musculoskeletal diseases and skin diseases, advise and make recommendations to the Congress, the Secretary, the Director of NIH, the Director of the Institute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

(3) maintain liaison with other advisory bodies for Federal agencies involved in the implementation of such plan, the interagency coordinating committees for such diseases established under section 285d–4 of this title, and

with key non-Federal entities involved in activities affecting the control of such diseases.

(i) Subcommittees; establishment and membership

In carrying out its functions, the Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

(j) Annual report

The Advisory Board shall prepare an annual report for the Secretary which—

(1) describes the Advisory Board's activities in the fiscal year for which the report is made;

(2) describes and evaluates the progress made in such fiscal year in research, treatment, education, and training with respect to arthritis, musculoskeletal diseases, and skin diseases;

(3) summarizes and analyzes expenditures made by the Federal Government for activities respecting such diseases in such fiscal year for which the report is made;

(4) contains the Advisory Board's recommendations (if any) for changes in the plan prepared under section 285d–1 of this title; and

(5) contains recommendations for expanding the Institute's funding of research directly applicable to the cause, diagnosis, early detection, prevention, control, and treatment of, and rehabilitation of children with arthritis and musculoskeletal diseases.

(k) Termination of predecessor board; time within which to appoint members

The National Arthritis Advisory Board in existence on November 20, 1985, shall terminate upon the appointment of a successor Board under subsection (a) of this section . The Secretary shall make appointments to the Advisory Board established under subsection (a) of this section before the expiration of 90 days after November 20, 1985. The member of the Board in existence on November 20, 1985, may be appointed, in accordance with subsections (b) and (d) of this section, to the Advisory Board established under subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 442, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 852; amended Oct. 9, 1992, Pub. L. 102–405, title III, § 302(e)(1), 106 Stat. 1985; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(7), 106 Stat. 3504; June 10, 1993, Pub. L. 103–43, title VII, § 701(d), title XX, § 2008(b)(7), 107 Stat. 162, 211.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–43, § 701(d)(1), inserted ''and Musculoskeletal and Skin Diseases'' after ''Arthritis''.

Subsec. (b). Pub. L. 103–43, §§ 701(d)(2), 2008(b)(7), substituted ''twenty'' for ''eighteen'' in introductory provisions, ''eight'' for ''six'' and ''including one member who is a person who has such a disease, one person who is the parent of an adult with such a disease, and two members who are parents of children with arthritis'' for ''including at least one member who is a person who has such a disease and one member who is a parent of a person who has such a disease'' in par. (1)(B), and ''Department of Veterans Affairs'' for ''Veterans' Administration'' in par. (2)(A).

Subsec. (j)(5). Pub. L. 103–43, § 701(d)(3), added par. (5).

1992—Subsec. (b)(2)(A). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SUBPART 5—NATIONAL INSTITUTE ON AGING

§ 285e. Purpose of Institute

The general purpose of the National Institute on Aging (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of biomedical, social, and behavioral research, training, health information dissemination, and other programs with respect to the aging process and the diseases and other special problems and needs of the aged.

(July 1, 1944, ch. 373, title IV, § 443, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 854.)

STUDY OF MALNUTRITION IN ELDERLY

Pub. L. 103–43, title XIX, § 1902, June 10, 1993, 107 Stat. 201, provided that:

''(a) STUDY.—

''(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the 'Secretary'), acting through the National Institute on Aging, coordinating with the Agency for Health Care Policy and Research and, to the degree possible, in consultation with the head of the National Nutrition Monitoring and Related Research Program established by section 5311(a) of Public Law 101–445 (7 U.S.C. 5301 et seq.) [probably means section 101(a) of Pub. L. 101–445, 7 U.S.C. 5311(a)], shall conduct a 3-year nutrition screening and intervention activities study of the elderly.

''(2) EFFICACY AND COST-EFFECTIVENESS OF NUTRITION SCREENING AND INTERVENTION ACTIVITIES.—In conducting the study, the Secretary shall determine the efficacy and cost-effectiveness of nutrition screening and intervention activities conducted in the elderly health and long-term care continuum, and of a program that would institutionalize nutrition screening and intervention activities. In evaluating such a program, the Secretary shall determine—

''(A) if health or quality of life is measurably improved for elderly individuals who receive routine nutritional screening and treatment;

''(B) if federally subsidized home or institutional care is reduced because of increased independence of elderly individuals resulting from improved nutritional status;

''(C) if a multidisciplinary approach to nutritional care is effective in addressing the nutritional needs of elderly individuals; and

''(D) if reimbursement for nutrition screening and intervention activities is a cost-effective approach to improving the health status of elderly individuals.

''(3) POPULATIONS.—The populations of elderly individuals in which the study will be conducted shall include populations of elderly individuals who are—

''(A) living independently, including—

''(i) individuals who receive home and community-based services or family support;

''(ii) individuals who do not receive additional services and support;

''(iii) individuals with low incomes; and

''(iv) individuals who are minorities;

''(B) hospitalized, including individuals admitted from home and from institutions; and

''(C) institutionalized in residential facilities such as nursing homes and adult homes.

''(b) MALNUTRITION STUDY.—The Secretary, acting through the National Institute on Aging, shall conduct a 3-year study to determine the extent of malnutrition in elderly individuals in hospitals and long-term care facilities and in elderly individuals who are living independently.

''(c) REPORT.—The Secretary shall submit a report to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives containing the findings resulting from the studies described in subsections (a) and (b), including a determination regarding whether a program that would institutionalize nutrition screening and intervention activities should be adopted, and the rationale for the determination.

''(d) ADVISORY PANEL.—

''(1) ESTABLISHMENT.—The Secretary, acting through the Director of the National Institute on Aging, shall establish an advisory panel that shall oversee the design, implementation, and evaluation of the studies described in subsections (a) and (b).

''(2) COMPOSITION.—The advisory panel shall include representatives appointed for the life of the panel by the Secretary from the Health Care Financing Administration, the Social Security Administration, the National Center for Health Statistics, the Administration on Aging, the National Council on the Aging, the American Dietetic Association, the American Academy of Family Physicians, and such other agencies or organizations as the Secretary determines to be appropriate.

''(3) COMPENSATION AND EXPENSES.—

''(A) COMPENSATION.—Each member of the advisory panel who is not an employee of the Federal Government shall receive compensation for each day engaged in carrying out the duties of the panel, including time engaged in traveling for purposes of such duties. Such compensation may not be provided in an amount in excess of the maximum rate of basic pay payable for GS–18 of the General Schedule.

''(B) TRAVEL EXPENSES.—Each member of the advisory panel shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

''(4) DETAIL OF FEDERAL EMPLOYEES.—On the request of the advisory panel, the head of any Federal agency shall detail, without reimbursement, any of the personnel of the agency to the advisory panel to assist the advisory panel in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

''(5) TECHNICAL ASSISTANCE.—On the request of the advisory panel, the head of a Federal agency shall provide such technical assistance to the advisory panel as the advisory panel determines to be necessary to carry out its duties.

''(6) TERMINATION.—Notwithstanding section 15 of the Federal Advisory Committee Act (5 U.S.C. App.), the advisory panel shall terminate 3 years after the date of enactment of this Act [June 10, 1993].''

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

STUDY OF PERSONNEL FOR HEALTH NEEDS OF ELDERLY

Section 8 of Pub. L. 99–158 directed Secretary to conduct a study on the adequacy and availability of personnel to meet the current and projected health needs (including needs for home and community-based care) of elderly Americans through the year 2020, and report the results of the study, with recommendations, to Congress by Mar. 1, 1987.

§ 285e–1. Special functions

(a) Education and training of adequate numbers of personnel

In carrying out the training responsibilities under this chapter or any other Act for health and allied health professions personnel, the Secretary shall take appropriate steps to insure the education and training of adequate numbers of allied health, nursing, and paramedical personnel in the field of health care for the aged.

(b) Scientific studies

The Director of the Institute shall conduct scientific studies to measure the impact on the biological, medical, social, and psychological aspects of aging of programs and activities assisted or conducted by the Department of Health and Human Services.

(c) Public information and education programs

The Director of the Institute shall carry out public information and education programs designed to disseminate as widely as possible the findings of research sponsored by the Institute, other relevant aging research and studies, and other information about the process of aging which may assist elderly and near-elderly persons in dealing with, and all Americans in understanding, the problems and processes associated with growing older.

(d) Grants for research relating to Alzheimer's Disease

The Director of the Institute shall make grants to public and private nonprofit institutions to conduct research relating to Alzheimer's Disease.

(July 1, 1944, ch. 373, title IV, § 444, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 854.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285e–10 of this title.

§ 285e–2. Alzheimer's Disease centers

(a) Cooperative agreements and grants for establishing and supporting

(1) The Director of the Institute may enter into cooperative agreements with and make grants to public or private nonprofit entities (including university medical centers) to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support (including staffing) for centers for basic and clinical research (including multidisciplinary research) into, training in, and demonstration of advanced diagnostic, prevention, and treatment methods for Alzheimer's disease.

(2) A cooperative agreement or grant under paragraph (1) shall be entered into in accordance with policies established by the Director of NIH and after consultation with the Institute's advisory council.

(b) Use of Federal payments under cooperative agreement or grant

(1) Federal payments made under a cooperative agreement or grant under subsection (a) of this section may, with respect to Alzheimer's disease, be used for—

(A) diagnostic examinations, patient assessments, patient care costs, and other costs necessary for conducting research;

(B) training, including training for allied health professionals;

(C) diagnostic and treatment clinics designed to meet the special needs of minority and rural populations and other underserved populations;

(D) activities to educate the public; and

(E) the dissemination of information.

(2) For purposes of paragraph (1), the term ''training'' does not include research training for which National Research Service Awards may be provided under section 288 of this title.

(c) Support period; additional periods

Support of a center under subsection (a) of this section may be for a period of not to exceed five years. Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 445, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 855; amended Nov. 15, 1990, Pub. L. 101–557, title II, § 201, 104 Stat. 2767.)

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–557, § 201(1), inserted ''(including university medical centers)'' after ''nonprofit entities'', ''(including staffing)'' after ''operating support'', and ''(including multidisciplinary research)'' after ''clinical research'' and substituted ''Alzheimer's disease'' for ''Alzheimer's Disease''.

Subsec. (b). Pub. L. 101–557, § 201(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Federal payments made under a cooperative agreement or grant under subsection (a) of this section may be used for—

''(1) construction (notwithstanding any limitation under section 289e of this title);

''(2) staffing and other basic operating costs, including such patient care costs as are required for research;

''(3) training, including training for allied health professionals; and

''(4) demonstration purposes.

As used in this subsection, the term 'construction' does not include the acquisition of land, and the term 'training' does not include research training for which National Research Service Awards may be provided under section 288 of this title.''

ALZHEIMER'S DISEASE RESEARCH

Pub. L. 100–175, title III, Nov. 29, 1987, 101 Stat. 972, provided that:

''SEC. 301. REQUIREMENT FOR CLINICAL TRIALS.

''(a) IN GENERAL.—The Director of the National Institute on Aging shall provide for the conduct of clinical trials on the efficacy of the use of such promising therapeutic agents as have been or may be discovered and recommended for further scientific analysis by the National Institute on Aging and the Food and Drug Administration to treat individuals with Alzheimer's disease, to retard the progression of symptoms of Alzheimer's disease, or to improve the functioning of individuals with such disease.

''(b) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to affect adversely any research being conducted as of the date of the enactment of this Act [Nov. 29, 1987].

''SEC. 302. AUTHORIZATION OF APPROPRIATIONS.

''For the purpose of carrying out section 301, there is authorized to be appropriated $2,000,000 for fiscal year 1988.''

ALZHEIMER'S DISEASE REGISTRY

Section 12 of Pub. L. 99–158, which was formerly set out as a note under this section, was renumbered section 445G of the Public Health Service Act by Pub. L. 103–43, title VIII, § 801(a), 107 Stat. 163, and is classified to section 285e–9 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 285e–4, 285e–5, 11212, 11221, 11251, 11292, 11293 of this title.

§ 285e–3. Claude D. Pepper Older Americans Independence Centers

(a) Development and expansion of centers

The Director of the Institute shall enter into cooperative agreements with, and make grants to, public and private nonprofit entities for the development or expansion of not less than 10 centers of excellence in geriatric research and training of researchers. Each such center shall be known as a Claude D. Pepper Older Americans Independence Center.

(b) Functions of centers

Each center developed or expanded under this section shall—

(1) utilize the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such research and training qualifications as may be prescribed by the Director; and

(2) conduct—

(A) research into the aging processes and into the diagnosis and treatment of diseases, disorders, and complications related to aging, including menopause, which research includes research on such treatments, and on medical devices and other medical interventions regarding such diseases, disorders,

and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the independence of the individuals; and

(B) programs to develop individuals capable of conducting research described in subparagraph (A).

(c) Geographic distribution of centers

In making cooperative agreements and grants under this section for the development or expansion of centers, the Director of the Institute shall ensure that, to the extent practicable, any such centers are distributed equitably among the principal geographic regions of the United States.

(d) "Independence" defined

For purposes of this section, the term ''independence'', with respect to diseases, disorders, and complications of aging, means the functional ability of individuals to perform activities of daily living or instrumental activities of daily living without assistance or supervision.

(July 1, 1944, ch. 373, title IV, § 445A, as added Nov. 4, 1988, Pub. L. 100–607, title I, § 141, 102 Stat. 3056; amended Nov. 15, 1990, Pub. L. 101–557, title II, § 202, 104 Stat. 2767.)

AMENDMENTS

1990—Pub. L. 101–557, § 202(a)(1), substituted ''Claude D. Pepper Older Americans Independence Centers'' for ''Centers of geriatric research and training'' in section catchline.

Subsec. (a). Pub. L. 101–557, § 202(a)(2), (b)(1)(A), inserted ''not less than 10'' before ''centers of excellence'' and inserted provision designating centers as Claude D. Pepper Older Americans Independence Centers.

Subsec. (b)(2)(A). Pub. L. 101–557, § 202(b)(1)(B), inserted before semicolon at end '', including menopause, which research includes research on such treatments, and on medical devices and other medical interventions regarding such diseases, disorders, and complications, that can assist individuals in avoiding institutionalization and prolonged hospitalization and in otherwise increasing the independence of the individuals''.

Subsec. (b)(2)(B). Pub. L. 101–557, § 202(b)(2), substituted ''research described in subparagraph (A)'' for ''research concerning aging and concerning such diseases, disorders, and complications.''

Subsec. (d). Pub. L. 101–557, § 202(c), added subsec. (d).

§ 285e–4. Awards for leadership and excellence in Alzheimer's disease and related dementias

(a) Senior researchers in biomedical research

The Director of the Institute shall make awards to senior researchers who have made distinguished achievements in biomedical research in areas relating to Alzheimer's disease and related dementias. Awards under this section shall be used by the recipients to support research in areas relating to such disease and dementias, and may be used by the recipients to train junior researchers who demonstrate exceptional promise to conduct research in such areas.

(b) Eligible centers

The Director of the Institute may make awards under this section to researchers at centers supported under section 285e–2 of this title and to researchers at other public and nonprofit private entities.

(c) Required recommendation

The Director of the Institute shall make awards under this section only to researchers who have been recommended for such awards by the National Advisory Council on Aging.

(d) Selection procedures

The Director of the Institute shall establish procedures for the selection of the recipients of awards under this section.

(e) Term of award; renewal

Awards under this section shall be made for a one-year period, and may be renewed for not more than six additional consecutive one-year periods.

(July 1, 1944, ch. 373, title IV, § 445B, formerly Pub. L. 99–660, title IX, § 931, Nov. 14, 1986, 100 Stat. 3807; renumbered § 445B of act July 1, 1944; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 142(a), (d)(1), 102 Stat. 3057.)

CODIFICATION

Section was formerly classified to section 11231 of this title prior to renumbering by Pub. L. 100–607.

AMENDMENTS

1988—Pub. L. 100–607, § 142(a), renumbered section 11231 of this title as this section.

Subsec. (a). Pub. L. 100–607, § 142(d)(1)(A), substituted ''the Institute'' for ''the National Institute on Aging''.

Subsec. (b). Pub. L. 100–607, § 142(d)(1)(B), substituted ''the Institute'' for ''the National Institute on Aging'' and made technical amendment to reference to section 285e–2 of this title to correct reference to corresponding provision of original act.

Subsecs. (c), (d). Pub. L. 100–607, § 142(d)(1)(C), substituted ''the Institute'' for ''the National Institute on Aging''.

AVAILABILITY OF APPROPRIATIONS

Section 142(b) of Pub. L. 100–607 provided that: ''With respect to amounts made available in appropriation Acts for the purpose of carrying out the programs transferred by subsection (a) to the Public Health Service Act [sections 285e–4 to 285e–8 of this title], such subsection may not be construed to affect the availability of such funds for such purpose.''

§ 285e–5. Research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families

(a) Grants for research

The Director of the Institute shall conduct, or make grants for the conduct of, research relevant to appropriate services for individuals with Alzheimer's disease and related dementias and their families.

(b) Preparation of plan; contents; revision

(1) Within 6 months after November 14, 1986, the Director of the Institute shall prepare and transmit to the Chairman of the Council on Alzheimer's Disease (in this section referred to as the ''Council'') a plan for the research to be conducted under subsection (a) of this section. The plan shall—

(A) provide for research concerning—

(i) the epidemiology of, and the identification of risk factors for, Alzheimer's disease and related dementias; and

(ii) the development and evaluation of reliable and valid multidimensional diagnostic

and assessment procedures and instruments; and

(B) ensure that research carried out under the plan is coordinated with, and uses, to the maximum extent feasible, resources of, other Federal programs relating to Alzheimer's disease and related dementias, including centers supported under section 285e–2 of this title, centers supported by the National Institute of Mental Health on the psychopathology of the elderly, relevant activities of the Administration on Aging, other programs and centers involved in research on Alzheimer's disease and related dementias supported by the Department, and other programs relating to Alzheimer's disease and related dementias which are planned or conducted by Federal agencies other than the Department, State or local agencies, community organizations, or private foundations.

(2) Within one year after transmitting the plan required under paragraph (1), and annually thereafter, the Director of the Institute shall prepare and transmit to the Chairman of the Council such revisions of such plan as the Director considers appropriate.

(c) Consultation for preparation and revision of plan

In preparing and revising the plan required by subsection (b) of this section, the Director of the Institute shall consult with the Chairman of the Council and the heads of agencies within the Department.

(d) Grants for promoting independence and preventing secondary disabilities

the[1] Director of the Institute may develop, or make grants to develop—

(1) model techniques to—

(A) promote greater independence, including enhanced independence in performing activities of daily living and instrumental activities of daily living, for persons with Alzheimer's disease and related disorders; and

(B) prevent or reduce the severity of secondary disabilities, including confusional episodes, falls, bladder and bowel incontinence, and adverse effects of prescription and over-the-counter medications, in such persons; and

(2) model curricula for health care professionals, health care paraprofessionals, and family caregivers, for training and application in the use of such techniques.

(e) "Council on Alzheimer's Disease" defined

For purposes of this section, the term ''Council on Alzheimer's Disease'' means the council established in section 11211(a) of this title.

(July 1, 1944, ch. 373, title IV, § 445C, formerly Pub. L. 99–660, title IX, § 941, Nov. 14, 1986, 100 Stat. 3808; renumbered § 445C of act July 1, 1944; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 142(a), (d)(2), 102 Stat. 3057, 3058; Oct. 24, 1992, Pub. L. 102–507, § 9, 106 Stat. 3287; June 10, 1993, Pub. L. 103–43, title VIII, § 804, 107 Stat. 164.)

[1] So in original. Probably should be capitalized.

CODIFICATION

Section was formerly classified to section 11241 of this title prior to renumbering by Pub. L. 100–607.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–43, § 804(1), inserted ''on Alzheimer's Disease (in this section referred to as the 'Council')'' after ''Council''.

Subsec. (e). Pub. L. 103–43, § 804(2), added subsec. (e).

1992—Subsec. (d). Pub. L. 102–507 added subsec. (d).

1988—Pub. L. 100–607, § 142(a), renumbered section 11241 of this title as this section.

Subsec. (a). Pub. L. 100–607, § 142(d)(2)(A), substituted ''the Institute'' for ''the National Institute on Aging''.

Subsec. (b)(1). Pub. L. 100–607, § 142(d)(2)(B)(i)(I), in introductory provisions, substituted ''the date of enactment of the Alzheimer's Disease and Related Dementias Services Research Act of 1986'' for ''the date of enactment of this Act'', which for purposes of codification was translated as ''November 14, 1986'', thus requiring no change in text.

Pub. L. 100–607, § 142(d)(2)(B)(i)(II), in introductory provisions, substituted ''the Institute'' for ''the National Institute on Aging''.

Subsec. (b)(1)(B). Pub. L. 100–607, § 142(d)(2)(B)(ii), made technical amendment to reference to section 285e–2 of this title to correct reference to corresponding provision of original act.

Subsecs. (b)(2), (c). Pub. L. 100–607, § 142(d)(2)(B)(iii), (C), substituted ''the Institute'' for ''the National Institute on Aging''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285e–6 of this title.

§ 285e–6. Dissemination of research results

The Director of the Institute shall disseminate the results of research conducted under section 285e–5 of this title and this section to appropriate professional entities and to the public.

(July 1, 1944, ch. 373, title IV, § 445D, formerly Pub. L. 99–660, title IX, § 942, Nov. 14, 1986, 100 Stat. 3809; renumbered § 445D of act July 1, 1944; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 142(a), (d)(3), 102 Stat. 3057, 3058.)

CODIFICATION

Section was formerly classified to section 11242 of this title prior to renumbering by Pub. L. 100–607.

AMENDMENTS

1988—Pub. L. 100–607, § 142(a), renumbered section 11242 of this title as this section.

Pub. L. 100–607, § 142(d)(3), substituted ''the Institute'' for ''the National Institute on Aging'' and ''section 285e–5 of this title and this section'' for ''this part''.

§ 285e–7. Clearinghouse on Alzheimer's Disease

(a) Establishment; purpose; duties; publication of summary

The Director of the Institute shall establish the Clearinghouse on Alzheimer's Disease (hereinafter referred to as the ''Clearinghouse''). The purpose of the Clearinghouse is the dissemination of information concerning services available for individuals with Alzheimer's disease and related dementias and their families. The Clearinghouse shall—

(1) compile, archive, and disseminate information concerning research, demonstration, evaluation, and training programs and projects concerning Alzheimer's disease and related dementias; and

(2) annually publish a summary of the information compiled under paragraph (1) during the preceding 12-month period, and make such information available upon request to appropriate individuals and entities, including educational institutions, research entities, and Federal and public agencies.

(b) Fee for information

The Clearinghouse may charge an appropriate fee for information provided through the toll-free telephone line established under subsection (a)(3).[1]

(c) Summaries of research findings from other agencies

The Director of the Institute, the Director of the National Institute of Mental Health, and the Director of the National Center for Health Services Research and Health Care Technology Assessment shall provide to the Clearinghouse summaries of the findings of research conducted under part D.

(July 1, 1944, ch. 373, title IV, § 445E, formerly Pub. L. 99–660, title IX, § 951, Nov. 14, 1986, 100 Stat. 3813; renumbered § 445E of act July 1, 1944, and amended Nov. 4, 1988, Pub. L. 100–607, title I, § 142(a), (d)(4), 102 Stat. 3057, 3058.)

REFERENCES IN TEXT

Part D, referred to in subsec. (c), probably means part D of title IX of Pub. L. 99–660, Nov. 14, 1986, 100 Stat. 3808, as amended, which is classified to subchapter IV (§ 11251 et seq.) of chapter 118 of this title. Prior to renumbering by Pub. L. 100–607, this section was part of title IX of Pub. L. 99–660.

CODIFICATION

Section was formerly classified to section 11281 of this title prior to renumbering by Pub. L. 100–607.

AMENDMENTS

1988—Pub. L. 100–607, § 142(a), renumbered section 11281 of this title as this section.

Subsec. (a). Pub. L. 100–607, § 142(d)(4)(A), substituted ''the Institute'' for ''the National Institute on Aging'' in introductory provisions.

Subsec. (c). Pub. L. 100–607, § 142(d)(4)(B), substituted ''the Institute'' for ''the National Institute on Aging'' and ''part D'' for ''part E''.

§ 285e–8. Dissemination project

(a) Grant or contract for establishment

The Director of the Institute shall make a grant to, or enter into a contract with, a national organization representing individuals with Alzheimer's disease and related dementias for the conduct of the activities described in subsection (b) of this section.

(b) Project activities

The organization receiving a grant or contract under this section shall—

(1) establish a central computerized information system to—

(A) compile and disseminate information concerning initiatives by State and local governments and private entities to provide programs and services for individuals with Alzheimer's disease and related dementias; and

(B) translate scientific and technical information concerning such initiatives into information readily understandable by the general public, and make such information available upon request; and

(2) establish a national toll-free telephone line to make available the information described in paragraph (1), and information concerning Federal programs, services, and benefits for individuals with Alzheimer's disease and related dementias and their families.

(c) Fees for information; exception

The organization receiving a grant or contract under this section may charge appropriate fees for information provided through the toll-free telephone line established under subsection (b)(2) of this section, and may make exceptions to such fees for individuals and organizations who are not financially able to pay such fees.

(d) Application for grant or contract; contents

In order to receive a grant or contract under this section, an organization shall submit an application to the Director of the Institute. Such application shall contain—

(1) information demonstrating that such organization has a network of contacts which will enable such organization to receive information necessary to the operation of the central computerized information system described in subsection (b)(1) of this section;

(2) information demonstrating that, by the end of fiscal year 1991, such organization will be financially able to, and will, carry out the activities described in subsection (b) of this section without a grant or contract from the Federal Government; and

(3) such other information as the Director may prescribe.

(July 1, 1944, ch. 373, title IV, § 445F, formerly Pub. L. 99–660, title IX, § 952, Nov. 14, 1986, 100 Stat. 3813; renumbered § 445F of act July 1, 1944, and amended Nov. 4, 1988, Pub. L. 100–607, title I, § 142(a), (d)(5), 102 Stat. 3057, 3058.)

CODIFICATION

Section was formerly classified to section 11282 of this title prior to renumbering by Pub. L. 100–607.

AMENDMENTS

1988—Pub. L. 100–607, § 142(a), renumbered section 11282 of this title as this section.

Subsecs. (a), (d). Pub. L. 100–607, § 142(d)(5), substituted ''the Institute'' for ''the National Institute on Aging''.

§ 285e–9. Alzheimer's disease registry

(a) In general

The Director of the Institute may make a grant to develop a registry for the collection of epidemiological data about Alzheimer's disease and its incidence in the United States, to train personnel in the collection of such data, and for other matters respecting such disease.

(b) Qualifications

To qualify for a grant under subsection (a) of this section an applicant shall—

(1) be an accredited school of medicine or public health which has expertise in the col-

[1] So in original. No subsec. (a)(3) has been enacted.

lection of epidemiological data about individuals with Alzheimer's disease and in the development of disease registries, and

(2) have access to a large patient population, including a patient population representative of diverse ethnic backgrounds.

(July 1, 1944, ch. 373, title IV, § 445G, formerly Pub. L. 99–158, § 12, Nov. 20, 1985, 99 Stat. 885, as renumbered § 445G and amended June 10, 1993, Pub. L. 103–43, title VIII, § 801, 107 Stat. 163.)

CODIFICATION

Section was formerly set out as a note under section 285e–2 of this title prior to renumbering by Pub. L. 103–43.

AMENDMENTS

1993—Pub. L. 103–43, § 801(b)(1), reenacted section catchline without change.

Subsec. (a). Pub. L. 103–43, § 801(b)(1), substituted in heading ''In general'' for ''Grant authority'' and in text substituted ''Director of the Institute'' for ''Director of the National Institute on Aging''.

Subsec. (c). Pub. L. 103–43, § 801(b)(2), struck out subsec. (c) which authorized appropriations of $2,500,000 for grants to remain available until expended or through fiscal year 1989, whichever occurred first.

§ 285e–10. Aging processes regarding women

The Director of the Institute, in addition to other special functions specified in section 285e–1 of this title and in cooperation with the Directors of the other national research institutes and agencies of the National Institutes of Health, shall conduct research into the aging processes of women, with particular emphasis given to the effects of menopause and the physiological and behavioral changes occurring during the transition from pre- to post-menopause, and into the diagnosis, disorders, and complications related to aging and loss of ovarian hormones in women.

(July 1, 1944, ch. 373, title IV, § 445H, as added June 10, 1993, Pub. L. 103–43, title VIII, § 802, 107 Stat. 163.)

§ 285e–11. Authorization of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $500,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(July 1, 1944, ch. 373, title IV, § 445I, as added June 10, 1993, Pub. L. 103–43, title VIII, § 803, 107 Stat. 163.)

SUBPART 6—NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

§ 285f. Purpose of Institute

The general purpose of the National Institute of Allergy and Infectious Diseases is the conduct and support of research, training, health information dissemination, and other programs with respect to allergic and immunologic diseases and disorders and infectious diseases, including tropical diseases.

(July 1, 1944, ch. 373, title IV, § 446, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 855; amended June 10, 1993, Pub. L. 103–43, title IX, § 901, 107 Stat. 164.)

AMENDMENTS

1993—Pub. L. 103–43 inserted before period at end '', including tropical diseases''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285f–2 of this title.

§ 285f–1. Research centers regarding chronic fatigue syndrome

(a) The Director of the Institute, after consultation with the advisory council for the Institute, may make grants to, or enter into contracts with, public or nonprofit private entities for the development and operation of centers to conduct basic and clinical research on chronic fatigue syndrome.

(b) Each center assisted under this section shall use the facilities of a single institution, or be formed from a consortium of cooperating institutions, meeting such requirements as may be prescribed by the Director of the Institute.

(July 1, 1944, ch. 373, title IV, § 447, as added June 10, 1993, Pub. L. 103–43, title IX, § 902(a), 107 Stat. 164.)

CODIFICATION

Another section 447 of act July 1, 1944, is classified to section 285f–2 of this title.

EXTRAMURAL STUDY SECTION

Section 902(b) of Pub. L. 103–43 provided that: ''Not later than 6 months after the date of enactment of this Act [June 10, 1993], the Secretary of Health and Human Services shall establish an extramural study section for chronic fatigue syndrome research.''

RESEARCH ACTIVITIES ON CHRONIC FATIGUE SYNDROME

Section 1903 of Pub. L. 103–43 provided that: ''The Secretary of Health and Human Services shall, not later than October 1, 1993, and annually thereafter for the next 3 years, prepare and submit to the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report that summarizes the research activities conducted or supported by the National Institutes of Health concerning chronic fatigue syndrome. Such report should include information concerning grants made, cooperative agreements or contracts entered into, intramural activities, research priorities and needs, and a plan to address such priorities and needs.''

§ 285f–2. Research and research training regarding tuberculosis

(a) In carrying out section 285f of this title, the Director of the Institute shall conduct or support research and research training regarding the cause, diagnosis, early detection, prevention and treatment of tuberculosis.

(b) For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated $50,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998. Such authorization is in addition to any other authorization of appropriations that is available for such purpose.

(July 1, 1944, ch. 373, title IV, § 447, as added Dec. 14, 1993, Pub. L. 103–183, title III, § 302(a), 107 Stat. 2235.)

CODIFICATION

Another section 447 of act July 1, 1944, is classified to section 285f–1 of this title.

RESEARCH THROUGH FOOD AND DRUG ADMINISTRATION

Section 303 of Pub. L. 103–183 provided that: ''The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall implement a tuberculosis drug and device research program under which the Commissioner may—

''(1) provide assistance to other Federal agencies for the development of tuberculosis protocols;

''(2) review and evaluate medical devices designed for the diagnosis and control of airborne tuberculosis; and

''(3) conduct research concerning drugs or devices to be used in diagnosing, controlling and preventing tuberculosis.''

SUBPART 7—NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT

§ 285g. Purpose of Institute

The general purpose of the National Institute of Child Health and Human Development (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to maternal health, child health, mental retardation, human growth and development, including prenatal development, population research, and special health problems and requirements of mothers and children.

(July 1, 1944, ch. 373, title IV, § 448, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 856.)

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY; COMPOSITION; VOLUNTARY SERVICES; DURATION

Pub. L. 100–436, title IV, Sept. 20, 1988, 102 Stat. 1709, provided that: ''Notwithstanding any other provision of law, the Commission [National Commission to Prevent Infant Mortality] shall be composed of sixteen members, including seven at large members. Furthermore, the Commission has the power to accept voluntary and uncompensated services, notwithstanding section 1342 of title 31, and shall continue operating, notwithstanding sections 208 and 209 of Public Law 99–660 [set out below].''

NATIONAL COMMISSION TO PREVENT INFANT MORTALITY

Pub. L. 99–660, title II, Nov. 14, 1986, 100 Stat. 3752, provided that:

''SEC. 201. SHORT TITLE.

''This title may be cited as the 'National Commission to Prevent Infant Mortality Act of 1986'.

''SEC. 202. DEFINITION.

''For the purposes of this title, the term 'infant mortality' refers to the number of infants born alive but who die before their first birthday.

''SEC. 203. ESTABLISHMENT OF A NATIONAL COMMISSION.

''(a) ESTABLISHMENT.—There is established the National Commission to Prevent Infant Mortality (hereinafter referred to as the 'Commission').

''(b) COMPOSITION.—The Commission shall be composed of fifteen members, as follows:

''(1) Two members of the Senate, one to be selected by the majority leader of the Senate, the other to be selected by the minority leader of the Senate.

''(2) Two members of the House, one to be selected by the Speaker of the House, the other to be selected by the minority leader of the House.

''(3) Three representatives of State government shall be jointly selected by the majority leader of the Senate and the Speaker of the House. One shall be a Governor; one shall be a chief State official responsible for administering the State medicaid program; and one shall be the chief State official responsible for administering the State maternal and child health programs.

''(4) The Secretary of Health and Human Services shall be a member.

''(5) The Comptroller General of the United States shall be a member.

''(6) Six at large members, with demonstrated expertise in maternal and child health, including representatives of health care consumer and provider organizations, shall be jointly selected by the majority leader of the Senate and the Speaker of the House.

''(c) CHAIRMAN AND VICE CHAIRMAN.—The Commission shall select a Chairperson and Vice Chairperson from among its members.

''(d) QUORUM.—Eight members of the Commission shall constitute a quorum, but a lesser number may hold hearings.

''(e) MEETINGS.—The Commission shall meet at the call of the Chairperson.

''(f) VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

''SEC. 204. DUTIES OF THE COMMISSION.

''(a) DUTIES.—The Commission shall:

''(1) Identify and examine comprehensively Federal, State, local, and private resources which impact infant mortality, including but not limited to—

''(A) the effectiveness and adequacy of programs such as the Supplemental Feeding Program for Women, Infants, and Children; the Maternal and Child Health Block Grant; Community Health Centers; prepregnancy services and other programs that increase access to prenatal and postnatal education, care, and nutrition;

''(B) the effectiveness of current Federal and State policies under the Medicaid Program to ensure adequate access to prenatal and post-natal care for low-income pregnant women, mothers, and infants up to age one;

''(C) the role of income maintenance and other programs that impact infant mortality such as Aid to Families with Dependent Children and Federal housing subsidies;

''(D) the adequacy of current Federal and State efforts to enable an appropriate distribution of properly trained health care professionals to provide comprehensive maternal and child health services;

''(E) the adequacy of private health care financing systems and mechanisms to enable pregnant women and infants to receive comprehensive health care; and

''(F) the adequacy of the national biostatistics registration system with respect to the collection and reporting of infant health statistics.

''(2) Identify current financial, intergovernmental, and within the Federal Government, interagency barriers to the health care needed to prevent high infant mortality.

''(3) Review recommendations made in recent regional and national reports that promote the health status of childbearing women and their infants and carry forward such recommendations as deemed appropriate.

''(4) Hold hearings, in accordance with section 205(a), in areas of the United States with high infant mortality rates.

''(b) RECOMMENDATIONS.—The Commission shall—

''(1) recommend a national policy designed to reduce and prevent infant mortality, including recommendations concerning populations at risk of high infant death rates and recommendations concerning appropriate roles for the Federal Government, States, local governments, and private sector;

''(2) recommend to the Congress and the President the specific changes needed within Federal laws and Federal programs to achieve an effective Federal role

in preventing infant mortality, including the programs specified in subparagraphs (A) and (B) of subsection (a)(1);

''(3) recommend to the Congress and the President the specific changes needed to improve the national vital statistics registration system with respect to infant death statistics; and

''(4) present such recommendations to the President, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Finance and Governmental Affairs of the Senate no later than one year after enactment of this Act [Nov. 14, 1986].

''SEC. 205. POWERS OF THE COMMISSION.

''(a) HEARINGS.—The Commission, or at its direction, any subcommittee or member thereof, may for the purpose of carrying out the provisions of this title, hold such hearings, sit and act at such times and places, take such testimony, receive such evidence and administer such oaths, as the Commission or such subcommittee or member may deem advisable. Any member of the Commission may administer oaths or affirmations to witnesses appearing before the Commission, subcommittee, or member thereof.

''(b) INFORMATION.—The Commission may secure directly from any Federal department or agency such information as may be necessary to enable the Commission to carry out this title. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

''(c) CONTRACTS.—To carry out this title, the Commission may enter into such contracts and other arrangements to such extent or in such amounts as are provided in appropriation Acts, and without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5). Contracts and other arrangements may be entered into under this subsection with or without consideration or bond.

''(d) APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.—The provisions of the Federal Advisory Committee Act [5 App. U.S.C.] shall not apply to the Commission.

''SEC. 206. COMMISSION STAFF.

''(a) EXECUTIVE DIRECTOR.—The Chairperson and Vice Chairperson of the Commission shall appoint an executive director. The employment of such executive director shall be subject to confirmation by the Commission.

''(b) OTHER PERSONNEL.—The Commission may appoint and terminate the executive director selected under subsection (a) and such other personnel as it considers appropriate to assist in the performance of its duties under this title, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may pay such executive director and other personnel without regard to the provisions of chapter 51 and subchapter 111 [III] of chapter 53 of such title relating to classification and General Schedule pay rates, except that the rate of pay for such executive director and other personnel may not exceed the rate payable for GS–18 of the General Schedule under section 5332 of such title.

''(c) APPLICABILITY OF OTHER FEDERAL LAWS.—Service of an individual as a member of the Commission or employment of an individual by the Commission on a part-time or full-time basis and with or without compensation shall not be considered as service or employment bringing such individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a member of the Commission or as an employee of the Commission, shall not be considered service in an appointive or elective position in the Government for purposes of section 8344 of title 5, United States Code, or comparable provisions of Federal law.

''(d) EXPERTS AND CONSULTANTS.—Subject to such rules as may be prescribed by the Commission, the Chairman of the Commission may procure temporary and intermittent services under section 3109 of title 5, United States Code, at rates for individuals not to exceed the daily rate payable for GS–18 of the General Schedule under section 5332 of such title.

''SEC. 207. SUNSHINE PROVISION.

''The Commission shall establish procedures to ensure its proceedings are open to the public to the maximum extent practicable.

''SEC. 208. TERMINATION OF THE COMMISSION.

''Ninety days after the Commission submits its recommendations as required by section 204(b)(4) the Commission shall terminate.

''SEC. 209. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to the Commission such sums as may be necessary. Amounts appropriated under this section shall remain available until the day on which the Commission terminates under section 208.''

§ 285g–1. Sudden infant death syndrome research

The Director of the Institute shall conduct and support research which specifically relates to sudden infant death syndrome.

(July 1, 1944, ch. 373, title IV, § 449, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 856.)

§ 285g–2. Mental retardation research

The Director of the Institute shall conduct and support research and related activities into the causes, prevention, and treatment of mental retardation.

(July 1, 1944, ch. 373, title IV, § 450, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 856.)

§ 285g–3. Associate Director for Prevention; appointment; function

(a) There shall be in the Institute an Associate Director for Prevention to coordinate and promote the programs in the Institute concerning the prevention of health problems of mothers and children. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or experience are experts in public health or preventive medicine.

(b) The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 451, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 856.)

§ 285g–4. National Center for Medical Rehabilitation Research

(a) Establishment of Center

There shall be in the Institute an agency to be known as the National Center for Medical Rehabilitation Research (hereafter in this section referred to as the ''Center''). The Director of the Institute shall appoint a qualified individual to serve as Director of the Center. The Director of the Center shall report directly to the Director of the Institute.

(b) Purpose

The general purpose of the Center is the conduct and support of research and research train-

ing (including research on the development of orthotic and prosthetic devices), the dissemination of health information, and other programs with respect to the rehabilitation of individuals with physical disabilities resulting from diseases or disorders of the neurological, musculoskeletal, cardiovascular, pulmonary, or any other physiological system (hereafter in this section referred to as ''medical rehabilitation'').

(c) Authority of Director

(1) In carrying out the purpose described in subsection (b) of this section, the Director of the Center may—

(A) provide for clinical trials regarding medical rehabilitation;

(B) provide for research regarding model systems of medical rehabilitation;

(C) coordinate the activities of the Center with similar activities of other agencies of the Federal Government, including the other agencies of the National Institutes of Health, and with similar activities of other public entities and of private entities;

(D) support multidisciplinary medical rehabilitation research conducted or supported by more than one such agency;

(E) in consultation with the advisory council for the Institute and with the approval of the Director of NIH—

(i) establish technical and scientific peer review groups in addition to those appointed under section 282(b)(6) of this title; and

(ii) appoint the members of peer review groups established under subparagraph (A); and

(F) support medical rehabilitation research and training centers.

The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under subparagraph (E).

(2) In carrying out this section, the Director of the Center may make grants and enter into cooperative agreements and contracts.

(d) Research Plan

(1) In consultation with the Director of the Center, the coordinating committee established under subsection (e) of this section, and the advisory board established under subsection (f) of this section, the Director of the Institute shall develop a comprehensive plan for the conduct and support of medical rehabilitation research (hereafter in this section referred to as the ''Research Plan'').

(2) The Research Plan shall—

(A) identify current medical rehabilitation research activities conducted or supported by the Federal Government, opportunities and needs for additional research, and priorities for such research; and

(B) make recommendations for the coordination of such research conducted or supported by the National Institutes of Health and other agencies of the Federal Government.

(3)(A) Not later than 18 months after the date of the enactment of the National Institutes of Health Revitalization Amendments of 1990, the Director of the Institute shall transmit the Research Plan to the Director of NIH, who shall submit the Plan to the President and the Congress.

(B) Subparagraph (A) shall be carried out independently of the process of reporting that is required in sections 283 and 284b of this title.

(4) The Director of the Institute shall periodically revise and update the Research Plan as appropriate, after consultation with the Director of the Center, the coordinating committee established under subsection (e) of this section, and the advisory board established under subsection (f) of this section. A description of any revisions in the Research Plan shall be contained in each report prepared under section 284b of this title by the Director of the Institute.

(e) Medical Rehabilitation Coordinating Committee

(1) The Director of NIH shall establish a committee to be known as the Medical Rehabilitation Coordinating Committee (hereafter in this section referred to as the ''Coordinating Committee'').

(2) The Coordinating Committee shall make recommendations to the Director of the Institute and the Director of the Center with respect to the content of the Research Plan and with respect to the activities of the Center that are carried out in conjunction with other agencies of the National Institutes of Health and with other agencies of the Federal Government.

(3) The Coordinating Committee shall be composed of the Director of the Center, the Director of the Institute, and the Directors of the National Institute on Aging, the National Institute of Arthritis and Musculoskeletal and Skin Diseases, the National Heart, Lung, and Blood Institute, the National Institute of Neurological Disorders and Stroke, and such other national research institutes and such representatives of other agencies of the Federal Government as the Director of NIH determines to be appropriate.

(4) The Coordinating Committee shall be chaired by the Director of the Center.

(f) National Advisory Board on Medical Rehabilitation Research

(1) Not later than 90 days after the date of the enactment of the National Institutes of Health Revitalization Amendments of 1990, the Director of NIH shall establish a National Advisory Board on Medical Rehabilitation Research (hereafter in this section referred to as the ''Advisory Board'').

(2) The Advisory Board shall review and assess Federal research priorities, activities, and findings regarding medical rehabilitation research, and shall advise the Director of the Center and the Director of the Institute on the provisions of the Research Plan.

(3)(A) The Director of NIH shall appoint to the Advisory Board 18 qualified representatives of the public who are not officers or employees of the Federal Government. Of such members, 12 shall be representatives of health and scientific disciplines with respect to medical rehabilitation and 6 shall be individuals representing the interests of individuals undergoing, or in need of, medical rehabilitation.

(B) The following officials shall serve as ex officio members of the Advisory Board:

(i) The Director of the Center.

(ii) The Director of the Institute.

(iii) The Director of the National Institute on Aging.

(iv) The Director of the National Institute of Arthritis and Musculoskeletal and Skin Diseases.

(v) The Director of the National Institute on Deafness and Other Communication Disorders.

(vi) The Director of the National Heart, Lung, and Blood Institute.

(vii) The Director of the National Institute of Neurological Disorders and Stroke.

(viii) The Director of the National Institute on Disability and Rehabilitation Research.

(ix) The Commissioner for Rehabilitation Services Administration.

(x) The Assistant Secretary of Defense (Health Affairs).

(xi) The Under Secretary for Health of the Department of Veterans Affairs.

(4) The members of the Advisory Board shall, from among the members appointed under paragraph (3)(A), designate an individual to serve as the chair of the Advisory Board.

(July 1, 1944, ch. 373, title IV, § 452, as added Nov. 16, 1990, Pub. L. 101–613, § 3(a), 104 Stat. 3227; amended Oct. 9, 1992, Pub. L. 102–405, title III, § 302(e)(1), 106 Stat. 1985.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (c)(1), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The date of the enactment of the National Institutes of Health Revitalization Amendments of 1990, referred to in subsecs. (d)(3)(A) and (f)(1), probably means the date of enactment of the National Institutes of Health Amendments of 1990, Pub. L. 101–613, which was approved Nov. 16, 1990.

AMENDMENTS

1992—Subsec. (f)(3)(B)(xi). Pub. L. 102–405 substituted ''Under Secretary for Health of the Department of Veterans Affairs'' for ''Chief Medical Director of the Department of Veterans Affairs''.

PREVENTING DUPLICATIVE PROGRAMS OF MEDICAL REHABILITATION RESEARCH

Section 3(b) of Pub. L. 101–613 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services and the heads of other Federal agencies shall—

''(A) jointly review the programs being carried out (or proposed to be carried out) by each such official with respect to medical rehabilitation research; and

''(B) as appropriate, enter into agreements for preventing duplication among such programs.

''(2) TIME FOR COMPLETION.—The agreements required in paragraph (1)(B) shall be made not later than one year after the date of the enactment of this Act [Nov. 16, 1990].

''(3) DEFINITION OF MEDICAL REHABILITATION.—For purposes of this subsection, the term 'medical rehabilitation' means the rehabilitation of individuals with physical disabilities resulting from diseases or disorders of the neurological, musculoskeletal, cardiovascular, pulmonary, or any other physiological system.''

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 285g–5. Research centers with respect to contraception and infertility

(a) Grants and contracts

The Director of the Institute, after consultation with the advisory council for the Institute, shall make grants to, or enter into contracts with, public or nonprofit private entities for the development and operation of centers to conduct activities for the purpose of improving methods of contraception and centers to conduct activities for the purpose of improving methods of diagnosis and treatment of infertility.

(b) Number of centers

In carrying out subsection (a) of this section, the Director of the Institute shall, subject to the extent of amounts made available in appropriations Acts, provide for the establishment of three centers with respect to contraception and for two centers with respect to infertility.

(c) Duties

(1) Each center assisted under this section shall, in carrying out the purpose of the center involved—

(A) conduct clinical and other applied research, including—

(i) for centers with respect to contraception, clinical trials of new or improved drugs and devices for use by males and females (including barrier methods); and

(ii) for centers with respect to infertility, clinical trials of new or improved drugs and devices for the diagnosis and treatment of infertility in males and females;

(B) develop protocols for training physicians, scientists, nurses, and other health and allied health professionals;

(C) conduct training programs for such individuals;

(D) develop model continuing education programs for such professionals; and

(E) disseminate information to such professionals and the public.

(2) A center may use funds provided under subsection (a) of this section to provide stipends for health and allied health professionals enrolled in programs described in subparagraph (C) of paragraph (1), and to provide fees to individuals serving as subjects in clinical trials conducted under such paragraph.

(d) Coordination of information

The Director of the Institute shall, as appropriate, provide for the coordination of information among the centers assisted under this section.

(e) Facilities

Each center assisted under subsection (a) of this section shall use the facilities of a single in-

stitution, or be formed from a consortium of cooperating institutions, meeting such requirements as may be prescribed by the Director of the Institute.

(f) Period of support

Support of a center under subsection (a) of this section may be for a period not exceeding 5 years. Such period may be extended for one or more additional periods not exceeding 5 years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(g) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $30,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(July 1, 1944, ch. 373, title IV, § 452A, as added June 10, 1993, Pub. L. 103–43, title X, § 1001, 107 Stat. 165.)

§ 285g–6. Program regarding obstetrics and gynecology

The Director of the Institute shall establish and maintain within the Institute an intramural laboratory and clinical research program in obstetrics and gynecology.

(July 1, 1944, ch. 373, title IV, § 452B, as added June 10, 1993, Pub. L. 103–43, title X, § 1011, 107 Stat. 166.)

§ 285g–7. Child health research centers

The Director of the Institute shall develop and support centers for conducting research with respect to child health. Such centers shall give priority to the expeditious transfer of advances from basic science to clinical applications and improving the care of infants and children.

(July 1, 1944, ch. 373, title IV, § 452C, as added June 10, 1993, Pub. L. 103–43, title X, § 1021, 107 Stat. 167.)

§ 285g–8. Prospective longitudinal study on adolescent health

(a) In general

Not later than October 1, 1993, the Director of the Institute shall commence a study for the purpose of providing information on the general health and well-being of adolescents in the United States, including, with respect to such adolescents, information on—

(1) the behaviors that promote health and the behaviors that are detrimental to health; and

(2) the influence on health of factors particular to the communities in which the adolescents reside.

(b) Design of study

(1) In general

The study required in subsection (a) of this section shall be a longitudinal study in which a substantial number of adolescents participate as subjects. With respect to the purpose described in such subsection, the study shall monitor the subjects throughout the period of the study to determine the health status of the subjects and any change in such status over time.

(2) Population-specific analyses

The study required in subsection (a) of this section shall be conducted with respect to the population of adolescents who are female, the population of adolescents who are male, various socioeconomic populations of adolescents, and various racial and ethnic populations of adolescents. The study shall be designed and conducted in a manner sufficient to provide for a valid analysis of whether there are significant differences among such populations in health status and whether and to what extent any such differences are due to factors particular to the populations involved.

(c) Coordination with Women's Health Initiative

With respect to the national study of women being conducted by the Secretary and known as the Women's Health Initiative, the Secretary shall ensure that such study is coordinated with the component of the study required in subsection (a) of this section that concerns adolescent females, including coordination in the design of the 2 studies.

(July 1, 1944, ch. 373, title IV, § 452D, as added June 10, 1993, Pub. L. 103–43, title X, § 1031, 107 Stat. 167.)

SUBPART 8—NATIONAL INSTITUTE OF DENTAL RESEARCH

§ 285h. Purpose of Institute

The general purpose of the National Institute of Dental Research is the conduct and support of research, training, health information dissemination, and other programs with respect to the cause, prevention, and methods of diagnosis and treatment of dental and oral diseases and conditions.

(July 1, 1944, ch. 373, title IV, § 453, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 856.)

SUBPART 9—NATIONAL EYE INSTITUTE

§ 285i. Purpose of Institute

The general purpose of the National Eye Institute (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to blinding eye diseases, visual disorders, mechanisms of visual function, preservation of sight, and the special health problems and requirements of the blind. Subject to section 285i–1 of this title, the Director of the Institute may carry out a program of grants for public and private nonprofit vision research facilities.

(July 1, 1944, ch. 373, title IV, § 455, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 856; amended June 10, 1993, Pub. L. 103–43, title XI, § 1101(b), 107 Stat. 169.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''Subject to section 285i–1 of this title, the Director'' for ''The Director'' in second sentence.

§ 285i–1. Clinical research on eye care and diabetes

(a) Program of grants

The Director of the Institute, in consultation with the advisory council for the Institute, may award research grants to one or more Diabetes Eye Research Institutions for the support of programs in clinical or health services aimed at—

(1) providing comprehensive eye care services for people with diabetes, including a full complement of preventive, diagnostic and treatment procedures;

(2) developing new and improved techniques of patient care through basic and clinical research;

(3) assisting in translation of the latest research advances into clinical practice; and

(4) expanding the knowledge of the eye and diabetes through further research.

(b) Use of funds

Amounts received under a grant awarded under this section shall be used for the following:

(1) Establishing the biochemical, cellular, and genetic mechanisms associated with diabetic eye disease and the earlier detection of pending eye abnormalities. The focus of work under this paragraph shall require that ophthalmologists have training in the most up-to-date molecular and cell biological methods.

(2) Establishing new frontiers in technology, such as video-based diagnostic and research resources, to—

(A) provide improved patient care;

(B) provide for the evaluation of retinal physiology and its affect on diabetes; and

(C) provide for the assessment of risks for the development and progression of diabetic eye disease and a more immediate evaluation of various therapies aimed at preventing diabetic eye disease.

Such technologies shall be designed to permit evaluations to be performed both in humans and in animal models.

(3) The translation of the results of vision research into the improved care of patients with diabetic eye disease. Such translation shall require the application of institutional resources that encompass patient care, clinical research and basic laboratory research.

(4) The conduct of research concerning the outcomes of eye care treatments and eye health education programs as they relate to patients with diabetic eye disease, including the evaluation of regional approaches to such research.

(c) Authorized expenditures

The purposes for which a grant under subsection (a) of this section may be expended include equipment for the research described in such subsection.

(July 1, 1944, ch. 373, title IV, § 456, as added June 10, 1993, Pub. L. 103–43, title XI, § 1101(a), 107 Stat. 168.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285i of this title.

SUBPART 10—NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE

AMENDMENTS

1988—Pub. L. 100–553, § 2(2), Oct. 28, 1988, 102 Stat. 2769, and Pub. L. 100–607, title I, § 101(2), Nov. 4, 1988, 102 Stat. 3049, made identical amendments to subpart heading, substituting ''Neurological Disorders'' for ''Neurological and Communicative Disorders''. Pub. L. 100–690, title II, § 2613(b)(2), Nov. 18, 1988, 102 Stat. 4238, amended subpart heading to read as if the amendment by Pub. L. 100–607 had not been enacted.

§ 285j. Purpose of Institute

The general purpose of the National Institute of Neurological Disorders and Stroke (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to neurological disease and disorder and stroke.

(July 1, 1944, ch. 373, title IV, § 457, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 857; amended Oct. 28, 1988, Pub. L. 100–553, § 2(3), 102 Stat. 2769; Nov. 4, 1988, Pub. L. 100–607, title I, § 101(3), 102 Stat. 3049; Nov. 18, 1988, Pub. L. 100–690, title II, § 2613(b)(2), 102 Stat. 4238; Aug. 16, 1989, Pub. L. 101–93, § 5(a), 103 Stat. 611.)

AMENDMENTS

1989—Pub. L. 101–93 substituted ''disease and'' for ''disease and and''.

1988—Pub. L. 100–553 and Pub. L. 100–607 made identical amendments, substituting ''Neurological Disorders'' for ''Neurological and Communicative Disorders'' and ''and disorder and stroke'' for ''disorder, stroke, and disorders of human communication''. Pub. L. 100–690 amended this section to read as if the amendments by Pub. L. 100–607 had not been enacted.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

§ 285j–1. Spinal cord regeneration research

The Director of the Institute shall conduct and support research into spinal cord regeneration.

(July 1, 1944, ch. 373, title IV, § 458, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 857.)

INTERAGENCY COMMITTEE ON SPINAL CORD INJURY

Section 7 of Pub. L. 99–158 provided that:

''(a) ESTABLISHMENT.—Within 90 days after the date of enactment of this Act [Nov. 20, 1985], the Secretary of Health and Human Services shall establish in the National Institute of Neurological and Communicative Diseases and Stroke an Interagency Committee on Spinal Cord Injury (hereafter in this section referred to as the 'Interagency Committee'). The Interagency Committee shall plan, develop, coordinate, and implement comprehensive Federal initiatives in research on spinal cord injury and regeneration.

''(b) COMMITTEE COMPOSITION AND MEETINGS.—(1) The Interagency Committee shall consist of representatives from—

''(A) the National Institute on Neurological and Communicative Disorders and Stroke;

''(B) the Department of Defense;

''(C) the Department of Education;

''(D) the Veterans' Administration;

''(E) the Office of Science and Technology Policy; and

''(F) the National Science Foundation;
designated by the heads of such entities.

''(2) The Interagency Committee shall meet at least four times. The Secretary of Health and Human Services shall select the Chairman of the Interagency Committee from the members of the Interagency Committee.

''(c) REPORT.—Within the 18 months after the date of enactment of this Act [Nov. 20, 1985], the Interagency Committee shall prepare and transmit to the Congress a report concerning its activities under this section. The report shall include a description of research projects on spinal cord injury and regeneration conducted or supported by Federal agencies during such 18-month period, the nature and purpose of each such project, the amounts expended for each such project, and an identification of the entity which conducted the research under each such project.

''(d) TERMINATION.—The Interagency Committee shall terminate 90 days after the date on which the Interagency Committee transmits the report required by subsection (c) to the Congress.''

§ 285j–2. Bioengineering research

The Director of the Institute shall make grants or enter into contracts for research on the means to overcome paralysis of the extremities through electrical stimulation and the use of computers.

(July 1, 1944, ch. 373, title IV, § 459, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 857.)

§ 285j–3. Research on multiple sclerosis

The Director of the Institute shall conduct and support research on multiple sclerosis, especially research on effects of genetics and hormonal changes on the progress of the disease.

(July 1, 1944, ch. 373, title IV, § 460, as added June 10, 1993, Pub. L. 103–43, title XII, § 1201, 107 Stat. 169.)

SUBPART 11—NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

§ 285k. Purpose of Institute

The general purpose of the National Institute of General Medical Sciences is the conduct and support of research, training, and, as appropriate, health information dissemination, and other programs with respect to general or basic medical sciences and related natural or behavioral sciences which have significance for two or more other national research institutes or are outside the general area of responsibility of any other national research institute.

(July 1, 1944, ch. 373, title IV, § 461, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 857.)

SUBPART 12—NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

§ 285*l*. Purpose of Institute

The general purpose of the National Institute of Environmental Health Sciences (in this subpart referred to as the ''Institute'') is the conduct and support of research, training, health information dissemination, and other programs with respect to factors in the environment that affect human health, directly or indirectly.

(July 1, 1944, ch. 373, title IV, § 463, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 857; amended June 10, 1993, Pub. L. 103–43, title XIII, § 1301(b), 107 Stat. 170.)

AMENDMENTS

1993—Pub. L. 103–43 inserted ''(in this subpart referred to as the 'Institute')'' after ''Sciences''.

§ 285*l*–1. Applied Toxicological Research and Testing Program

(a) There is established within the Institute a program for conducting applied research and testing regarding toxicology, which program shall be known as the Applied Toxicological Research and Testing Program.

(b) In carrying out the program established under subsection (a) of this section, the Director of the Institute shall, with respect to toxicology, carry out activities—

(1) to expand knowledge of the health effects of environmental agents;

(2) to broaden the spectrum of toxicology information that is obtained on selected chemicals;

(3) to develop and validate assays and protocols, including alternative methods that can reduce or eliminate the use of animals in acute or chronic safety testing;

(4) to establish criteria for the validation and regulatory acceptance of alternative testing and to recommend a process through which scientifically validated alternative methods can be accepted for regulatory use;

(5) to communicate the results of research to government agencies, to medical, scientific, and regulatory communities, and to the public; and

(6) to integrate related activities of the Department of Health and Human Services.

(July 1, 1944, ch. 373, title IV, § 463A, as added June 10, 1993, Pub. L. 103–43, title XIII, § 1301(a), 107 Stat. 169.)

SUBPART 13—NATIONAL INSTITUTE ON DEAFNESS AND OTHER COMMUNICATION DISORDERS

§ 285m. Purpose of Institute

The general purpose of the National Institute on Deafness and Other Communication Disorders (hereafter referred to in this subpart as the ''Institute'') is the conduct and support of research and training, the dissemination of health information, and other programs with respect to disorders of hearing and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell.

(July 1, 1944, ch. 373, title IV, § 464, as added Oct. 28, 1988, Pub. L. 100–553, § 2(4), 102 Stat. 2769, and Nov. 4, 1988, Pub. L. 100–607, title I, § 101(4), 102 Stat. 3049; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2613(b)(2), 102 Stat. 4238.)

CODIFICATION

Pub. L. 100–553 and Pub. L. 100–607 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1988—Pub. L. 100–690 amended this section to read as if the amendments made by Pub. L. 100–607, which en-

acted this section, had not been enacted. See Codification note above.

SHORT TITLE OF 1988 AMENDMENT

For short title of Pub. L. 100–553 which enacted this subpart and amended sections 281 and 285j of this title as the ''National Deafness and Other Communication Disorders Act of 1988'', see section 1 of Pub. L. 100–553, set out as a note under section 301 of this title.

EFFECT OF ENACTMENT OF SIMILAR PROVISIONS

Section 2613(b) of Pub. L. 100–690 provided that:

''(1) Paragraphs (2) and (3) shall take effect immediately after the enactment of both the bill, S. 1727, of the One Hundredth Congress [Pub. L. 100–553, approved Oct. 28, 1988], and the Health Omnibus Programs Extension of 1988 [Pub. L. 100–607, approved Nov. 4, 1988].

''(2)(A) The provisions of the Public Health Service Act referred to in subparagraph (B), as similarly amended by the enactment of the bill, S. 1727, of the One Hundredth Congress, by subtitle A of title I of the Health Omnibus Programs Extension of 1988, and by subsection (a)(1) of this section, are amended to read as if the amendments made by such subtitle A and such subsection (a)(1) had not been enacted.

''(B) The provisions of the Public Health Service Act referred to in subparagraph (A) are—

''(A) sections 401(b)(1) and 457 [sections 281(b)(1) and 285j of this title];

''(B) part C of title IV [this part]; and

''(C) the heading for subpart 10 of such part C [42 U.S.C. prec. 285j].

''(3) Subsection (a)(2) of this section [set out below] is repealed.''

TRANSITIONAL AND SAVINGS PROVISIONS

Section 3 of Pub. L. 100–553 provided that:

''(a) TRANSFER OF PERSONNEL, ASSETS, AND LIABILITIES.—Personnel employed by the National Institutes of Health in connection with the functions vested under section 2 [enacting this subpart and amending sections 281 and 285j of this title] in the Director of the National Institute on Deafness and Other Communication Disorders, and assets, property, contracts, liabilities, records, unexpended balances of appropriations, authorizations, allocations, and other funds of the National Institutes of Health, arising from or employed, held, used, available to, or to be made available, in connection with such functions shall be transferred to the Director for appropriate allocation. Unexpended funds transferred under this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

''(b) SAVINGS PROVISIONS.—With respect to functions vested under section 1 [probably means section 2, enacting this subpart and amending sections 281 and 285j of this title] in the Director of the National Institute on Deafness and Other Communication Disorders, all orders, rules, regulations, grants, contracts, certificates, licenses, privileges, and other determinations, actions, or official documents, that have been issued, made, granted, or allowed to become effective, and that are effective on the date of the enactment of this Act [Oct. 28, 1988], shall continue in effect according to their terms unless changed pursuant to law.''

Section 2612(a)(2) of Pub. L. 100–690, which enacted provisions that were substantially identical to the transitional and savings provisions above, was repealed by section 2613(b)(3) of Pub. L. 100–690.

§ 285m–1. National Deafness and Other Communication Disorders Program

(a) The Director of the Institute, with the advice of the Institute's advisory council, shall establish a National Deafness and Other Communication Disorders Program (hereafter in this section referred to as the ''Program''). The Director or[1] the Institute shall, with respect to the Program, prepare and transmit to the Director of NIH a plan to initiate, expand, intensify and coordinate activities of the Institute respecting disorders of hearing (including tinnitus) and other communication processes, including diseases affecting hearing, balance, voice, speech, language, taste, and smell. The plan shall include such comments and recommendations as the Director of the Institute determines appropriate. The Director of the Institute shall periodically review and revise the plan and shall transmit any revisions of the plan to the Director of NIH.

(b) Activities under the Program shall include—

(1) investigation into the etiology, pathology, detection, treatment, and prevention of all forms of disorders of hearing and other communication processes, primarily through the support of basic research in such areas as anatomy, audiology, biochemistry, bioengineering, epidemiology, genetics, immunology, microbiology, molecular biology, the neurosciences, otolaryngology, psychology, pharmacology, physiology, speech and language pathology, and any other scientific disciplines that can contribute important knowledge to the understanding and elimination of disorders of hearing and other communication processes;

(2) research into the evaluation of techniques (including surgical, medical, and behavioral approaches) and devices (including hearing aids, implanted auditory and nonauditory prosthetic devices and other communication aids) used in diagnosis, treatment, rehabilitation, and prevention of disorders of hearing and other communication processes;

(3) research into prevention, and early detection and diagnosis, of hearing loss and speech and language disturbances (including stuttering) and research into preventing the effects of such disorders on learning and learning disabilities with extension of programs for appropriate referral and rehabilitation;

(4) research into the detection, treatment, and prevention of disorders of hearing and other communication processes in the growing elderly population with extension of rehabilitative programs to ensure continued effective communication skills in such population;

(5) research to expand knowledge of the effects of environmental agents that influence hearing or other communication processes; and

(6) developing and facilitating intramural programs on clinical and fundamental aspects of disorders of hearing and all other communication processes.

(July 1, 1944, ch. 373, title IV, § 464A, as added Oct. 28, 1988, Pub. L. 100–553, § 2(4), 102 Stat. 2769, and Nov. 4, 1988, Pub. L. 100–607, title I, § 101(4), 102 Stat. 3049; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2613(b)(2), 102 Stat. 4238.)

CODIFICATION

Pub. L. 100–553 and Pub. L. 100–607 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1988—Pub. L. 100–690 amended this section to read as if the amendments made by Pub. L. 100–607, which en-

[1] So in original. Probably should be ''of''.

acted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285m–4 of this title.

§ 285m–2. Data System and Information Clearinghouse

(a) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Data System for the collection, storage, analysis, retrieval, and dissemination of data derived from patient populations with disorders of hearing or other communication processes, including where possible, data involving general populations for the purpose of identifying individuals at risk of developing such disorders.

(b) The Director of the Institute shall establish a National Deafness and Other Communication Disorders Information Clearinghouse to facilitate and enhance, through the effective dissemination of information, knowledge and understanding of disorders of hearing and other communication processes by health professionals, patients, industry, and the public.

(July 1, 1944, ch. 373, title IV, § 464B, as added Oct. 28, 1988, Pub. L. 100–553, § 2(4), 102 Stat. 2770, and Nov. 4, 1988, Pub. L. 100–607, title I, § 101(4), 102 Stat. 3050; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2613(b)(2), 102 Stat. 4238.)

CODIFICATION

Pub. L. 100–553 and Pub. L. 100–607 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1988—Pub. L. 100–690 amended this section to read as if the amendments made by Pub. L. 100–607, which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

§ 285m–3. Multipurpose deafness and other communication disorders center

(a) Development, modernization and operation; "modernization" defined

The Director of the Institute shall, after consultation with the advisory council for the Institute, provide for the development, modernization, and operation (including care required for research) of new and existing centers for studies of disorders of hearing and other communication processes. For purposes of this section, the term ''modernization'' means the alteration, remodeling, improvement, expansion, and repair of existing buildings and the provision of equipment for such buildings to the extent necessary to make them suitable for use as centers described in the preceding sentence.

(b) Use of facilities; qualifications

Each center assisted under this section shall—

(1) use the facilities of a single institution or a consortium of cooperating institutions; and

(2) meet such qualifications as may be prescribed by the Secretary.

(c) Requisite programs

Each center assisted under this section shall, at least, conduct—

(1) basic and clinical research into the cause diagnosis, early detection, prevention, control and treatment of disorders of hearing and other communication processes and complications resulting from such disorders, including research into rehabilitative aids, implantable biomaterials, auditory speech processors, speech production devices, and other otolaryngologic procedures;

(2) training programs for physicians, scientists, and other health and allied health professionals;

(3) information and continuing education programs for physicians and other health and allied health professionals who will provide care for patients with disorders of hearing or other communication processes; and

(4) programs for the dissemination to the general public of information—

(A) on the importance of early detection of disorders of hearing and other communication processes, of seeking prompt treatment, rehabilitation, and of following an appropriate regimen; and

(B) on the importance of avoiding exposure to noise and other environmental toxic agents that may affect disorders of hearing or other communication processes.

(d) Stipends

A center may use funds provided under subsection (a) of this section to provide stipends for health professionals enrolled in training programs described in subsection (c)(2) of this section.

(e) Discretionary programs

Each center assisted under this section may conduct programs—

(1) to establish the effectiveness of new and improved methods of detection, referral, and diagnosis of individuals at risk of developing disorders of hearing or other communication processes; and

(2) to disseminate the results of research, screening, and other activities, and develop means of standardizing patient data and recordkeeping.

(f) Equitable geographical distribution; needs of elderly and children

The Director of the Institute shall, to the extent practicable, provide for an equitable geographical distribution of centers assisted under this section. The Director shall give appropriate consideration to the need for centers especially suited to meeting the needs of the elderly, and of children (particularly with respect to their education and training), affected by disorders of hearing or other communication processes.

(g) Period of support; recommended extensions of peer review group

Support of a center under this section may be for a period not to exceed seven years. Such pe-

riod may be extended by the Director of the Institute for one or more additional periods of not more than five years if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director, with the advice of the Institute's advisory council, if such group has recommended to the Director that such period should be extended.

(July 1, 1944, ch. 373, title IV, § 464C, as added Oct. 28, 1988, Pub. L. 100–553, § 2(4), 102 Stat. 2771, and Nov. 4, 1988, Pub. L. 100–607, title I, § 101(4), 102 Stat. 3050; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2613(b)(2), 102 Stat. 4238.)

CODIFICATION

Pub. L. 100–553 and Pub. L. 100–607 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1988—Pub. L. 100–690 amended this section to read as if the amendments made by Pub. L. 100–607, which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

§ 285m–4. National Institute on Deafness and Other Communication Disorders Advisory Board

(a) Establishment

The Secretary shall establish in the Institute the National Deafness and Other Communication Disorders Advisory Board (hereafter in this section referred to as the ''Advisory Board'').

(b) Composition; qualifications; appointed and ex officio members

The Advisory Board shall be composed of eighteen appointed members and nonvoting ex officio members as follows:

(1) The Secretary shall appoint—

(A) twelve members from individuals who are scientists, physicians, and other health and rehabilitation professionals, who are not officers or employees of the United States, and who represent the specialties and disciplines relevant to deafness and other communication disorders, including not less than two persons with a communication disorder; and

(B) six members from the general public who are knowledgeable with respect to such disorders, including not less than one person with a communication disorder and not less than one person who is a parent of an individual with such a disorder.

Of the appointed members, not less than five shall by virtue of training or experience be knowledgeable in diagnoses and rehabilitation of communication disorders, education of the hearing, speech, or language impaired, public health, public information, community program development, occupational hazards to communications senses, or the aging process.

(2) The following shall be ex officio members of each Advisory Board:

(A) The Assistant Secretary for Health, the Director of NIH, the Director of the National Institute on Deafness and Other Communication Disorders, the Director of the Centers for Disease Control and Prevention, the Under Secretary for Health of the Department of Veterans Affairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers).

(B) Such other officers and employees of the United States as the Secretary determines necessary for the Advisory Board to carry out its functions.

(c) Compensation

Members of an Advisory Board who are officers or employees of the Federal Government shall serve as members of the Advisory Board without compensation in addition to that received in their regular public employment. Other members of the Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Board.

(d) Term of office; vacancies

The term of office of an appointed member of the Advisory Board is four years, except that no term of office may extend beyond the expiration of the Advisory Board. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member may serve after the expiration of the member's term until a successor has taken office. If a vacancy occurs in the Advisory Board, the Secretary shall make an appointment to fill the vacancy not later than 90 days from the date the vacancy occurred.

(e) Chairman

The members of the Advisory Board shall select a chairman from among the appointed members.

(f) Personnel; executive director; professional and clerical staff members; consultants; information and administrative support services and facilities

The Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with an executive director and one other professional staff member. In addition, the Secretary shall, after consultation with and consideration of the recommendations of the Advisory Board, provide the Advisory Board with such additional professional staff members, such clerical staff members, such services of consultants, such information, and (through contracts or other arrangements) such administrative support services and facilities, as the Secretary determines are necessary for the Advisory Board to carry out its functions.

(g) Meetings

The Advisory Board shall meet at the call of the chairman or upon request of the Director of the Institute, but not less often than four times a year.

(h) Functions

The Advisory Board shall—

(1) review and evaluate the implementation of the plan prepared under section 285m–1(a) of this title and periodically update the plan to ensure its continuing relevance;

(2) for the purpose of assuring the most effective use and organization of resources respecting deafness and other communication disorders, advise and make recommendations to the Congress, the Secretary, the Director of NIH, the Director of the Institute, and the heads of other appropriate Federal agencies for the implementation and revision of such plan; and

(3) maintain liaison with other advisory bodies related to Federal agencies involved in the implementation of such plan and with key non-Federal entities involved in activities affecting the control of such disorders.

(i) Subcommittee activities; workshops and conferences; collection of data

In carrying out its functions, the Advisory Board may establish subcommittees, convene workshops and conferences, and collect data. Such subcommittees may be composed of Advisory Board members and nonmember consultants with expertise in the particular area addressed by such subcommittees. The subcommittees may hold such meetings as are necessary to enable them to carry out their activities.

(j) Annual report

The Advisory Board shall prepare an annual report for the Secretary which—

(1) describes the Advisory Board's activities in the fiscal year for which the report is made;

(2) describes and evaluates the progress made in such fiscal year in research, treatment, education, and training with respect to the deafness and other communication disorders;

(3) summarizes and analyzes expenditures made by the Federal Government for activities respecting such disorders in such fiscal year; and

(4) contains the Advisory Board's recommendations (if any) for changes in the plan prepared under section 285m–1(a) of this title.

(k) Commencement of existence

The National Deafness and Other Communication Disorders Advisory Board shall be established not later than April 1, 1989.

(July 1, 1944, ch. 373, title IV, § 464D, as added Oct. 28, 1988, Pub. L. 100–553, § 2(4), 102 Stat. 2772, and Nov. 18, 1988, Pub. L. 100–690, title II, § 2613(a)(1), 102 Stat. 4235; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2613(b)(2), 102 Stat. 4238; Aug. 16, 1989, Pub. L. 101–93, § 5(b), 103 Stat. 611; Oct. 9 1992, Pub. L. 102–405, title III, § 302(e)(1), 106 Stat. 1985; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(8), 106 Stat. 3504; June 10, 1993, Pub. L. 103–43, title XX, § 2008(b)(8), 107 Stat. 211.)

CODIFICATION

Pub. L. 100–553 and section 2613(a)(1) of Pub. L. 100–690 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1993—Subsec. (b)(2)(A). Pub. L. 103–43 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsec. (b)(2)(A). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1989—Subsec. (k). Pub. L. 101–93 substituted ''April 1, 1989'' for ''90 days after the date of the enactment of the National Institute on Deafness and Other Communication Disorders Act''.

1988—Pub. L. 100–690, § 2613(b)(2), amended this section to read as if the amendments made by Pub. L. 100–690, § 2613(a)(1), which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by section 2613(b)(2) of Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 285m–5. Interagency Coordinating Committee

(a) Establishment

The Secretary may establish a committee to be known as the Deafness and Other Communication Disorders Interagency Coordinating Committee (hereafter in this section referred to as the ''Coordinating Committee'').

(b) Functions

The Coordinating Committee shall, with respect to deafness and other communication disorders—

(1) provide for the coordination of the activities of the national research institutes; and

(2) coordinate the aspects of all Federal health programs and activities relating to deafness and other communication disorders in order to assure the adequacy and technical soundness of such programs and activities and in order to provide for the full communication and exchange of information necessary to maintain adequate coordination of such programs and activities.

(c) Composition

The Coordinating Committee shall be composed of the directors of each of the national re-

search institutes and divisions involved in research with respect to deafness and other communication disorders and representatives of all other Federal departments and agencies whose programs involve health functions or responsibilities relevant to deafness and other communication disorders.

(d) Chairman; meetings

The Coordinating Committee shall be chaired by the Director of NIH (or the designee of the Director). The Committee shall meet at the call of the chair, but not less often than four times a year.

(e) Annual report; recipients of report

Not later than 120 days after the end of each fiscal year, the Coordinating Committee shall prepare and transmit to the Secretary, the Director of NIH, the Director of the Institute, and the advisory council for the Institute a report detailing the activities of the Committee in such fiscal year in carrying out subsection (b) of this section.

(July 1, 1944, ch. 373, title IV, § 464E, as added Oct. 28, 1988, Pub. L. 100–553, § 2(4), 102 Stat. 2774, and Nov. 18, 1988, Pub. L. 100–690, title II, § 2613(a)(1), 102 Stat. 4237; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2613(b)(2), 102 Stat. 4238; June 10, 1993, Pub. L. 103–43, title XX, § 2008(b)(9), 107 Stat. 211.)

CODIFICATION

Pub. L. 100–553 and section 2613(a)(1) of Pub. L. 100–690 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1993—Subsecs. (d), (e). Pub. L. 103–43 inserted ''Coordinating'' before ''Committee'' in first sentence of subsec. (d) and before first reference to ''Committee'' in subsec. (e).

1988—Pub. L. 100–690, § 2613(b)(2), amended this section to read as if the amendments made by Pub. L. 100–690, § 2613(a)(1), which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by section 2613(b)(2) of Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

§ 285m–6. Limitation on administrative expenses

With respect to amounts appropriated for a fiscal year for the National Institutes of Health, the limitation established in section 284c(a)(1) of this title on the expenditure of such amounts for administrative expenses shall apply to administrative expenses of the National Institute on Deafness and Other Communication Disorders.

(July 1, 1944, ch. 373, title IV, § 464F, as added Oct. 28, 1988, Pub. L. 100–553, § 2(4), 102 Stat. 2774, and Nov. 18, 1988, Pub. L. 100–690, title II, § 2613(a)(1), 102 Stat. 4238; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2613(b)(2), 102 Stat. 4238; June 10, 1993, Pub. L. 103–43, title IV, § 403(b)(2), 107 Stat. 158.)

CODIFICATION

Pub. L. 100–553 and section 2613(a)(1) of Pub. L. 100–690 contained identical provisions enacting this section. See 1988 Amendment note below.

AMENDMENTS

1993—Pub. L. 103–43 substituted ''section 284c(a)(1)'' for ''section 284c(b)(1)''.

1988—Pub. L. 100–690, § 2613(b)(2), amended this section to read as if the amendments made by Pub. L. 100–690, § 2613(a)(1), which enacted this section, had not been enacted. See Codification note above.

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date of amendment by section 2613(b)(2) of Pub. L. 100–690, see section 2613(b)(1) of Pub. L. 100–690, set out as an Effect of Enactment of Similar Provisions note under section 285m of this title.

SUBPART 14—NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 289c–1 of this title.

§ 285n. Purpose of Institute

(a) In general

The general purpose of the National Institute on Alcohol Abuse and Alcoholism (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of biomedical and behavioral research, health services research, research training, and health information dissemination with respect to the prevention of alcohol abuse and the treatment of alcoholism.

(b) Research program

The research program established under this subpart shall encompass the social, behavioral, and biomedical etiology, mental and physical health consequences, and social and economic consequences of alcohol abuse and alcoholism. In carrying out the program, the Director of the Institute is authorized to—

(1) collect and disseminate through publications and other appropriate means (including the development of curriculum materials), information as to, and the practical application of, the research and other activities under the program;

(2) make available research facilities of the Public Health Service to appropriate public authorities, and to health officials and scientists engaged in special study;

(3) make grants to universities, hospitals, laboratories, and other public or nonprofit institutions, and to individuals for such research projects as are recommended by the National Advisory Council on Alcohol Abuse and Alcoholism, giving special consideration to projects relating to—

(A) the relationship between alcohol abuse and domestic violence,

(B) the effects of alcohol use during pregnancy,

(C) the impact of alcoholism and alcohol abuse on the family, the workplace, and systems for the delivery of health services,

(D) the relationship between the abuse of alcohol and other drugs,

(E) the effect on the incidence of alcohol abuse and alcoholism of social pressures, legal requirements respecting the use of alcoholic beverages, the cost of such beverages, and the economic status and education of users of such beverages,

(F) the interrelationship between alcohol use and other health problems,

(G) the comparison of the cost and effectiveness of various treatment methods for alcoholism and alcohol abuse and the effectiveness of prevention and intervention programs for alcoholism and alcohol abuse,

(H) alcoholism and alcohol abuse among women;

(4) secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

(5) promote the coordination of research programs conducted by the Institute, and similar programs conducted by the National Institute of Drug Abuse and by other departments, agencies, organizations, and individuals, including all National Institutes of Health research activities which are or may be related to the problems of individuals suffering from alcoholism or alcohol abuse or those of their families or the impact of alcohol abuse on other health problems;

(6) conduct an intramural program of biomedical, behavioral, epidemiological, and social research, including research into the most effective means of treatment and service delivery, and including research involving human subjects, which is—

(A) located in an institution capable of providing all necessary medical care for such human subjects, including complete 24-hour medical diagnostic services by or under the supervision of physicians, acute and intensive medical care, including 24-hour emergency care, psychiatric care, and such other care as is determined to be necessary for individuals suffering from alcoholism and alcohol abuse; and

(B) associated with an accredited medical or research training institution;

(7) for purposes of study, admit and treat at institutions, hospitals, and stations of the Public Health Service, persons not otherwise eligible for such treatment;

(8) provide to health officials, scientists, and appropriate public and other nonprofit institutions and organizations, technical advice and assistance on the application of statistical and other scientific research methods to experiments, studies, and surveys in health and medical fields;

(9) enter into contracts under this subchapter without regard to section 3324(a) and (b) of title 31 and section 5 of title 41; and

(10) adopt, upon recommendation of the National Advisory Council on Alcohol Abuse and Alcoholism, such additional means as he deems necessary or appropriate to carry out the purposes of this section.

(c) Collaboration

The Director of the Institute shall collaborate with the Administrator of the Substance Abuse and Mental Health Services Administration in focusing the services research activities of the Institute and in disseminating the results of such research to health professionals and the general public.

(d) Funding

(1) Authorization of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $300,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(2) Allocation for health services research

Of the amounts appropriated under paragraph (1) for a fiscal year, the Director shall obligate not less than 15 percent to carry out health services research relating to alcohol abuse and alcoholism.

(July 1, 1944, ch. 373, title IV, § 464H, as added and amended July 10, 1992, Pub. L. 102–321, title I, § 122(a), (b), 106 Stat. 358, 359; Aug. 26, 1992, Pub. L. 102–352, § 2(a)(1), 106 Stat. 938.)

CODIFICATION

Section 290bb(b) of this title, which was transferred to subsec. (b) of this section and amended by Pub. L. 102–321, was based on act July 1, 1944, ch. 373, title V, § 510, formerly Pub. L. 91–616, title V, § 501(b), as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1038; amended Pub. L. 95–622, title II, § 268(d), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96–180, § 14(b), Jan. 2, 1980, 93 Stat. 1305; renumbered § 510(b) of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(9), 97 Stat. 179; Oct. 19, 1984, Pub. L. 98–509, title II, § 205(a)(1), 98 Stat. 2361.

In subsec. (b)(9), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–352 substituted ''Institute on Alcohol'' for ''Institute of Alcohol''.

Subsec. (b). Pub. L. 102–321, § 122(b)(1), (2)(A), transferred subsec. (b) of section 290bb of this title to subsec. (b) of this section, substituted ''(b) RESEARCH PROGRAM.—The research program established under this subpart shall encompass the social, behavioral, and biomedical etiology, mental and physical health consequences, and social and economic consequences of alcohol abuse and alcoholism. In carrying out the program, the Director of the Institute is authorized'' for ''(b) In carrying out the program described in subsection (a) of this section, the Secretary, acting through the Institute, is authorized'' in introductory provisions, and substituted a semicolon for period at end of par. (3)(H).

Subsecs. (c), (d). Pub. L. 102–321, § 122(b)(2)(B), added subsecs. (c) and (d).

EFFECTIVE DATE OF 1992 AMENDMENT

Section 3 of Pub. L. 102–352 provided that: ''The amendments made by—

''(1) subsection (a) of section 2 [amending this section and sections 285n–2, 285*o*, 285*o*–2, 285p, 290aa–1, 290aa–3, 300x–7, 300x–27, 300x–33, 300x–53, and 300y of this title], shall take effect immediately upon the effectuation of the amendments made by titles I and II of the ADAMHA Reorganization Act [Pub. L. 102–321, see Effective Date of 1992 Amendment note set out under section 236 of this title]; and

''(2) subsections (b) and (c) of section 2 [amending sections 290cc–21, 290cc–28, and 290cc–30 of this title and provisions set out as notes under sections 290aa and 300x of this title], shall take effect on the date of enactment of this Act [Aug. 26, 1992].''

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

REQUIRED ALLOCATIONS FOR HEALTH SERVICES RESEARCH

Pub. L. 103–43, title XX, § 2016(b), June 10, 1993, 107 Stat. 218, provided that:

''(1) IN GENERAL.—With respect to the allocation for health services research required in each of the provisions of law specified in paragraph (2), the term '15 percent' appearing in each of such provisions is, in the case of allocations for fiscal year 1993, deemed to be 12 percent.

''(2) RELEVANT PROVISIONS OF LAW.—The provisions of law referred to in paragraph (1) are—

''(A) section 464H(d)(2) of the Public Health Service Act, as added by section 122 of Public Law 102–321 (106 Stat. 358) [subsec. (d)(2) of this section];

''(B) section 464L(d)(2) of the Public Health Service Act, as added by section 123 of Public Law 102–321 (106 Stat. 360) [section 285*o*(d)(2) of this title]; and

''(C) section 464R(f)(2) of the Public Health Service Act, as added by section 124 of Public Law 102–321 (106 Stat. 364) [section 285p(f)(2) of this title].''

STUDY ON FETAL ALCOHOL EFFECT AND FETAL ALCOHOL SYNDROME

Section 705 of Pub. L. 102–321 directed Secretary of Health and Human Services to enter into a contract with a public or nonprofit private entity to conduct a study on the prevalence of fetal alcohol effect and fetal alcohol syndrome in the general population of the United States and on the adequacy of Federal efforts to reduce the incidence of such conditions (including efforts regarding appropriate training for health care providers in identifying such effect or syndrome), and to ensure that a report outlining this study be submitted to Congress not later than 18 months after July 10, 1992.

ALCOHOLISM AND ALCOHOL ABUSE TREATMENT STUDY

Pub. L. 99–570, title IV, § 4022, Oct. 27, 1986, 100 Stat. 3207–124, directed Secretary of Health and Human Services, acting through Director of National Institute on Alcohol Abuse and Alcoholism, to conduct a study of alternative approaches for alcoholism and alcohol abuse treatment and rehabilitation and of financing alternatives including policies and experiences of third party insurers and State and municipal governments; to recommend policies and programs for research, planning, administration, and reimbursement for treatment and rehabilitation; to request National Academy of Sciences to conduct such study in consultation with Director of National Institute on Alcohol Abuse and Alcoholism under an arrangement entered into with consent of Academy that actual expenses of Academy will be paid by Secretary and that Academy would submit a final report to Secretary no later than 24 months after the arrangement was entered into; and to transmit a final report to Congress no later than 30 days after receiving Academy's report.

§ 285n–1. Associate Director for Prevention

(a) In general

There shall be in the Institute an Associate Director for Prevention who shall be responsible for the full-time coordination and promotion of the programs in the Institute concerning the prevention of alcohol abuse and alcoholism. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or expertise are experts in alcohol abuse and alcoholism or the prevention of such.

(b) Biennial report

The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 464I, as added July 10, 1992, Pub. L. 102–321, title I, § 122(c), 106 Stat. 359.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285n–2. National Alcohol Research Centers; mandatory grant for research of effects of alcohol on elderly

(a) Designation; procedures applicable for approval of applications

The Secretary acting through the Institute may designate National Alcohol Research Centers for the purpose of interdisciplinary research relating to alcoholism and other biomedical, behavioral, and social issues related to alcoholism and alcohol abuse. No entity may be designated as a Center unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be submitted in such manner and contain such information as the Secretary may reasonably require. The Secretary may not approve such an application unless—

(1) the application contains or is supported by reasonable assurances that—

(A) the applicant has the experience, or capability, to conduct, through biomedical, behavioral, social, and related disciplines, long-term research on alcoholism and other alcohol problems and to provide coordination of such research among such disciplines;

(B) the applicant has available to it sufficient facilities (including laboratory, reference, and data analysis facilities) to carry out the research plan contained in the application;

(C) the applicant has facilities and personnel to provide training in the prevention and treatment of alcoholism and other alcohol problems;

(D) the applicant has the capacity to train predoctoral and postdoctoral students for careers in research on alcoholism and other alcohol problems;

(E) the applicant has the capacity to conduct courses on alcohol problems and research on alcohol problems for undergraduate and graduate students, and for medical and osteopathic, nursing, social work, and other specialized graduate students; and

(F) the applicant has the capacity to conduct programs of continuing education in such medical, legal, and social service fields as the Secretary may require.[1]

(2) the application contains a detailed five-year plan for research relating to alcoholism and other alcohol problems.

(b) Annual grants; amount; limitation on uses

The Secretary shall, under such conditions as the Secretary may reasonably require, make an-

[1] So in original. The period probably should be ''; and''.

nual grants to Centers which have been designated under this section. No funds provided under a grant under this subsection may be used for the purchase of any land or the purchase, construction, preservation, or repair of any building. For the purposes of the preceding sentence, the term ''construction'' has the meaning given that term by section 292a(1)[2] of this title. The Secretary shall include in the grants made under this section for fiscal years beginning after September 30, 1981, a grant to a designated Center for research on the effects of alcohol on the elderly.

(July 1, 1944, ch. 373, title IV, §464J, formerly title V, §511, formerly Pub. L. 91–616, title V, §503, formerly §504, as added Pub. L. 94–371, §7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 95–622, title I, §110(d), Nov. 9, 1978, 92 Stat. 3420; Pub. L. 96–180, §16, Jan. 2, 1980, 93 Stat. 1305; renumbered §503 of Pub. L. 91–616 and amended Pub. L. 97–35, title IX, §965(b), (c), Aug. 13, 1981, 95 Stat. 594; renumbered §511 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, §2(b)(9), 97 Stat. 179; Oct. 27, 1986, Pub. L. 99–570, title IV, §4008, 100 Stat. 3207–115; renumbered title IV, §464J and amended July 10, 1992, Pub. L. 102–321, title I, §122(d), 106 Stat. 360; Aug. 26, 1992, Pub. L. 102–352, §2(a)(2), 106 Stat. 938.)

REFERENCES IN TEXT

Section 292a of this title, referred to in subsec. (b), was in the original a reference to section 701 of act July 1, 1944. Section 701 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 701 of act July 1, 1944, relating to statement of purpose, and a new section 702, relating to scope and duration of loan insurance program, which are classified to sections 292 and 292a, respectively, of this title. For provisions relating to definitions, see sections 292*o* and 295p of this title.

CODIFICATION

Section was formerly classified to section 290bb–1 of this title prior to renumbering by Pub. L. 102–321.

Section was formerly classified to section 4587 of this title prior to renumbering by Pub. L. 98–24.

Section was formerly classified to section 4588 of this title prior to renumbering by Pub. L. 97–35.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–352 substituted ''292a(1)'' for ''292a(2)''.

Pub. L. 102–321, §122(d)(2), struck ''or rental'' before ''of any land''.

1986—Subsec. (b). Pub. L. 99–570, §4008(1), which directed that subsec. (b) be amended by striking out ''or rental'' before ''any land'', could not be executed because ''or rental'' appeared before ''of any land''.

Pub. L. 99–570, §4008(2), struck out ''rental,'' before ''purchase''.

1983—Subsec. (a). Pub. L. 98–24, §2(b)(9)(B)(i), struck out direction that, insofar as practicable, the Secretary approve applications under this subsection in a manner resulting in an equitable geographic distribution of Centers.

Subsec. (b). Pub. L. 98–24, §2(b)(9)(B)(ii), (iii), struck out provision that no annual grant to any Center might exceed $1,500,000, and made a technical amendment to reference to section 292a of this title to reflect the transfer of this section to the Public Health Service Act.

Subsec. (c). Pub. L. 98–24, §2(b)(9)(B)(iv), struck out subsec. (c) which authorized $6,000,000 for each of fiscal years ending Sept. 30, 1977, 1978, and 1979, $8,000,000 for fiscal year ending Sept. 30, 1980, and $9,000,000 for fiscal year ending Sept. 30, 1981.

1981—Subsec. (b). Pub. L. 97–35, §965(b), inserted provisions relating to grants made for fiscal years beginning after Sept. 30, 1981.

1980—Subsec. (a). Pub. L. 96–180, §16(a), substituted: in first sentence ''biomedical, behavioral, and social issues related to alcoholism and alcohol abuse'' for ''alcohol problems''; in par. (1)(B) ''facilities (including laboratory, reference, and data analysis facilities) to carry out the research plan contained in the application'' for ''laboratory facilities and reference services (including reference services that will afford access to scientific alcohol literature)''; and in par. (1)(E) ''medical and osteopathic, nursing, social work, and other specialized graduate students; and'' for ''medical and osteopathic students and physicians;'', and added par. (1)(F).

Subsec. (b). Pub. L. 96–180, §16(b), increased annual grant limitation to $1,500,000 from $1,000,000.

Subsec. (c). Pub. L. 96–180, §16(c), authorized appropriation of $8,000,000 and $9,000,000 for fiscal years ending Sept. 30, 1980, and 1981.

1978—Subsec. (a). Pub. L. 95–622 inserted provision following par. (2) relating to approval of applications under this subsection by the Secretary in a manner which results in equitable geographic distribution of Centers.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

[2] See References in Text note below.

SUBPART 15—NATIONAL INSTITUTE ON DRUG ABUSE

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 289c–1 of this title.

§ 285*o*. Purpose of Institute

(a) In general

The general purpose of the National Institute on Drug Abuse (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of biomedical and behavioral research, health services research, research training, and health information dissemination with respect to the prevention of drug abuse and the treatment of drug abusers.

(b) Research program

The research program established under this subpart shall encompass the social, behavioral, and biomedical etiology, mental and physical health consequences, and social and economic consequences of drug abuse. In carrying out the program, the Director of the Institute shall give special consideration to projects relating to drug abuse among women (particularly with respect to pregnant women).

(c) Collaboration

The Director of the Institute shall collaborate with the Substance Abuse and Mental Health Services Administration in focusing the services research activities of the Institute and in disseminating the results of such research to health professionals and the general public.

(d) Funding

(1) Authorization of appropriations

For the purpose of carrying out this subpart, other than section 285*o*–4 of this title, there are authorized to be appropriated $440,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(2) Allocation for health services research

Of the amounts appropriated under paragraph (1) for a fiscal year, the Director shall obligate not less than 15 percent to carry out health services research relating to drug abuse.

(July 1, 1944, ch. 373, title IV, § 464L, as added July 10, 1992, Pub. L. 102–321, title I, § 123(a), 106 Stat. 360; amended Aug. 26, 1992, Pub. L. 102–352, § 2(a)(3), 106 Stat. 938.)

AMENDMENTS

1992—Subsec. (d)(1). Pub. L. 102–352 inserted ''other than section 285*o*–4 of this title,'' after ''this subpart,''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

REQUIRED ALLOCATIONS FOR HEALTH SERVICES RESEARCH

With respect to fiscal year 1993 allocations for health services research required in subsec. (d)(2) of this section, the term ''15 percent'' deemed to be 12 percent, see section 2016(b) of Pub. L. 103–43, set out as a note under section 285n of this title.

§ 285*o*–1. Associate Director for Prevention

(a) In general

There shall be in the Institute an Associate Director for Prevention who shall be responsible for the full-time coordination and promotion of the programs in the Institute concerning the prevention of drug abuse. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or expertise are experts in drug abuse and the prevention of such abuse.

(b) Report

The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 464M, as added July 10, 1992, Pub. L. 102–321, title I, § 123(b), 106 Stat. 361.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285*o*–2. Drug Abuse Research Centers

(a) Authority

The Director of the Institute may designate National Drug Abuse Research Centers for the purpose of interdisciplinary research relating to drug abuse and other biomedical, behavioral, and social issues related to drug abuse. No entity may be designated as a Center unless an application therefore has been submitted to, and approved by, the Secretary. Such an application shall be submitted in such manner and contain such information as the Secretary may reasonably require. The Secretary may not approve such an application unless—

(1) the application contains or is supported by reasonable assurances that—

(A) the applicant has the experience, or capability, to conduct, through biomedical, behavioral, social, and related disciplines, long-term research on drug abuse and to provide coordination of such research among such disciplines;

(B) the applicant has available to it sufficient facilities (including laboratory, reference, and data analysis facilities) to carry out the research plan contained in the application;

(C) the applicant has facilities and personnel to provide training in the prevention and treatment of drug abuse;

(D) the applicant has the capacity to train predoctoral and postdoctoral students for careers in research on drug abuse;

(E) the applicant has the capacity to conduct courses on drug abuse problems and research on drug abuse for undergraduate and graduate students, and medical and osteopathic, nursing, social work, and other specialized graduate students; and

(F) the applicant has the capacity to conduct programs of continuing education in such medical, legal, and social service fields as the Secretary may require.[1]

(2) the application contains a detailed five-year plan for research relating to drug abuse.

(b) Grants

The Director of the Institute shall, under such conditions as the Secretary may reasonably require, make annual grants to Centers which have been designated under this section. No funds provided under a grant under this subsection may be used for the purchase of any land or the purchase, construction, preservation, or repair of any building. For the purposes of the preceding sentence, the term ''construction'' has the meaning given that term by section 292a(1)[2] of this title.

(July 1, 1944, ch. 373, title IV, § 464N, as added July 10, 1992, Pub. L. 102–321, title I, § 123(b), 106 Stat. 361; amended Aug. 26, 1992, Pub. L. 102–352, § 2(a)(4), 106 Stat. 938.)

REFERENCES IN TEXT

Section 292a of this title, referred to in subsec. (b), was in the original a reference to section 701 of act July 1, 1944. Section 701 of that Act was omitted in the gen-

[1] So in original. The period probably should be ''; and''.

[2] See References in Text note below.

eral revision of subchapter V of this chapter by Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 701 of act July 1, 1944, relating to statement of purpose, and a new section 702, relating to scope and duration of loan insurance program, which are classified to sections 292 and 292a, respectively, of this title. For provisions relating to definitions, see sections 292*o* and 295p of this title.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–352 substituted ''292a(1)'' for ''292a(2)''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285*o*–3. Office on AIDS

The Director of the Institute shall establish within the Institute an Office on AIDS. The Office shall be responsible for the coordination of research and determining the direction of the Institute with respect to AIDS research related to—

(1) primary prevention of the spread of HIV, including transmission via drug abuse;

(2) drug abuse services research; and

(3) other matters determined appropriate by the Director.

(July 1, 1944, ch. 373, title IV, §464O, as added July 10, 1992, Pub. L. 102–321, title I, §123(b), 106 Stat. 362.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

STUDY BY NATIONAL ACADEMY OF SCIENCES

Section 706 of Pub. L. 102–321 directed Secretary of Health and Human Services to contract for a study or studies relating to programs that provide both sterile hypodermic needles and bleach to individuals in order to reduce the risk of contracting acquired immune deficiency syndrome or related conditions, in order to determine extent to which such programs promote the abuse of drugs or otherwise altered any behaviors constituting a substantial risk of contracting AIDS or hepatitus, or of transmitting such conditions, and further directed Secretary to ensure that a report is submitted to Congress on the results of this study not later than 18 months after July 10, 1992.

§ 285*o*–4. Medication Development Program

(a) Establishment

There is established in the Institute a Medication Development Program through which the Director of such Institute shall—

(1) conduct periodic meetings with the Commissioner of Food and Drugs to discuss measures that may facilitate the approval process of drug abuse treatments;

(2) encourage and promote (through grants, contracts, international collaboration, or otherwise) expanded research programs, investigations, experiments, community trials, and studies, into the development and use of medications to treat drug addiction;

(3) establish or provide for the establishment of research facilities;

(4) report on the activities of other relevant agencies relating to the development and use of pharmacotherapeutic treatments for drug addiction;

(5) collect, analyze, and disseminate data useful in the development and use of pharmacotherapeutic treatments for drug addiction and collect, catalog, analyze, and disseminate through international channels, the results of such research;

(6) directly or through grants, contracts, or cooperative agreements, support training in the fundamental sciences and clinical disciplines related to the pharmacotherapeutic treatment of drug abuse, including the use of training stipends, fellowships, and awards where appropriate; and

(7) coordinate the activities conducted under this section with related activities conducted within the National Institute on Alcohol Abuse and Alcoholism, the National Institute of Mental Health, and other appropriate institutes and shall consult with the Directors of such Institutes.

(b) Duties

In carrying out the activities described in subsection (a) of this section, the Director of the Institute—

(1) shall collect and disseminate through publications and other appropriate means, information pertaining to the research and other activities under this section;

(2) shall make grants to or enter into contracts and cooperative agreements with individuals and public and private entities to further the goals of the program;

(3) may, in accordance with section 289e of this title, and in consultation with the National Advisory Council on Drug Abuse, acquire, construct, improve, repair, operate, and maintain pharmacotherapeutic research centers, laboratories, and other necessary facilities and equipment, and such other real or personal property as the Director determines necessary, and may, in consultation with such Advisory Council, make grants for the construction or renovation of facilities to carry out the purposes of this section;

(4) may accept voluntary and uncompensated services;

(5) may accept gifts, or donations of services, money, or property, real, personal, or mixed, tangible or intangible; and

(6) shall take necessary action to ensure that all channels for the dissemination and exchange of scientific knowledge and information are maintained between the Institute and the other scientific, medical, and biomedical disciplines and organizations nationally and internationally.

(c) Report

(1) In general

Not later than December 31, 1992, and each December 31 thereafter, the Director of the In-

stitute shall submit to the Office of National Drug Control Policy established under section 1501 of title 21 a report, in accordance with paragraph (3), that describes the objectives and activities of the program assisted under this section.

(2) National Drug Control Strategy

The Director of National Drug Control Policy shall incorporate, by reference or otherwise, each report submitted under this subsection in the National Drug Control Strategy submitted the following February 1 under section 1504 of title 21.

(d) "Pharmacotherapeutics" defined

For purposes of this section, the term ''pharmacotherapeutics'' means medications used to treat the symptoms and disease of drug abuse, including medications to—

(1) block the effects of abused drugs;

(2) reduce the craving for abused drugs;

(3) moderate or eliminate withdrawal symptoms;

(4) block or reverse the toxic effect of abused drugs; or

(5) prevent relapse in persons who have been detoxified from drugs of abuse.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $85,000,000 for fiscal year 1993, and $95,000,000 for fiscal year 1994.

(July 1, 1944, ch. 373, title IV, § 464P, as added July 10, 1992, Pub. L. 102–321, title I, § 123(b), 106 Stat. 362; amended June 10, 1993, Pub. L. 103–43, title XX, § 2008(b)(10), 107 Stat. 211.)

AMENDMENTS

1993—Subsec. (b)(6). Pub. L. 103–43 substituted ''Institute'' for ''Administration''.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

REPORT BY INSTITUTE ON MEDICINE

Section 701 of Pub. L. 102–321 directed Secretary of Health and Human Services to enter into a contract with a public or nonprofit private entity to conduct a study concerning (1) role of the private sector in development of anti-addiction medications, including legislative proposals designed to encourage private sector development of such medications, (2) process by which anti-addiction medications receive marketing approval from Food and Drug Administration, including an assessment of feasibility of expediting marketing approval process in a manner consistent with maintaining safety and effectiveness of such medications, (3) with respect to pharmacotherapeutic treatments for drug addiction (A) recommendations with respect to a national strategy for developing such treatments and improvements in such strategy, (B) state of the scientific knowledge concerning such treatments, and (C) assessment of progress toward development of safe, effective pharmacological treatments for drug addiction, and (4) other related information determined appropriate by the authors of the study, and to submit to Congress a report of the results of such study not later than 18 months after July 10, 1992.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285*o* of this title.

SUBPART 16—NATIONAL INSTITUTE OF MENTAL HEALTH

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 289c–1 of this title.

§ 285p. Purpose of Institute

(a) In general

The general purpose of the National Institute of Mental Health (hereafter in this subpart referred to as the ''Institute'') is the conduct and support of biomedical and behavioral research, health services research, research training, and health information dissemination with respect to the cause, diagnosis, treatment, control and prevention of mental illness.

(b) Research program

The research program established under this subpart shall include support for biomedical and behavioral neuroscience and shall be designed to further the treatment and prevention of mental illness, the promotion of mental health, and the study of the psychological, social and legal factors that influence behavior.

(c) Collaboration

The Director of the Institute shall collaborate with the Administrator of the Substance Abuse and Mental Health Services Administration in focusing the services research activities of the Institute and in disseminating the results of such research to health professionals and the general public.

(d) Information with respect to suicide

(1) In general

The Director of the Institute shall—

(A) develop and publish information with respect to the causes of suicide and the means of preventing suicide; and

(B) make such information generally available to the public and to health professionals.

(2) Youth suicide

Information described in paragraph (1) shall especially relate to suicide among individuals under 24 years of age.

(e) Associate Director for Special Populations

(1) In general

The Director of the Institute shall designate an Associate Director for Special Populations.

(2) Duties

The Associate Director for Special Populations shall—

(A) develop and coordinate research policies and programs to assure increased emphasis on the mental health needs of women and minority populations;

(B) support programs of basic and applied social and behavioral research on the mental health problems of women and minority populations;

(C) study the effects of discrimination on institutions and individuals, including majority institutions and individuals;

(D) support and develop research designed to eliminate institutional discrimination; and

(E) provide increased emphasis on the concerns of women and minority populations in training programs, service delivery programs, and research endeavors of the Institute.

(f) Funding

(1) Authorization of appropriations

For the purpose of carrying out this subpart, there are authorized to be appropriated $675,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(2) Allocation for health services research

Of the amounts appropriated under paragraph (1) for a fiscal year, the Director shall obligate not less than 15 percent to carry out health services research relating to mental health.

(July 1, 1944, ch. 373, title IV, § 464R, as added July 10, 1992, Pub. L. 102–321, title I, § 124(a), 106 Stat. 364; amended Aug. 26, 1992, Pub. L. 102–352, § 2(a)(5), 106 Stat. 938.)

AMENDMENTS

1992—Subsec. (f)(1). Pub. L. 102–352 struck out ''other than section 285*o*–4 of this title'' after ''this subpart''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

REQUIRED ALLOCATIONS FOR HEALTH SERVICES RESEARCH

With respect to fiscal year 1993 allocations for health services research required in subsec. (f)(2) of this section, the term ''15 percent'' deemed to be 12 percent, see section 2016(b) of Pub. L. 103–43, set out as a note under section 285n of this title.

STUDY OF BARRIERS TO INSURANCE COVERAGE OF TREATMENT FOR MENTAL ILLNESS AND SUBSTANCE ABUSE

Section 704 of Pub. L. 102–321 directed Secretary of Health and Human Services, acting through Director of the National Institute of Mental Health and in consultation with Administrator of Health Care Financing Administration, to conduct a study of the barriers to insurance coverage for the treatment of mental illness and substance abuse and to submit a report to Congress on the results of such study not later than Oct. 1, 1993.

§ 285p–1. Associate Director for Prevention

(a) In general

There shall be in the Institute an Associate Director for Prevention who shall be responsible for the full-time coordination and promotion of the programs in the Institute concerning the prevention of mental disorder. The Associate Director shall be appointed by the Director of the Institute from individuals who because of their professional training or expertise are experts in mental disorder and the prevention of such.

(b) Report

The Associate Director for Prevention shall prepare for inclusion in the biennial report made under section 284b of this title a description of the prevention activities of the Institute, including a description of the staff and resources allocated to those activities.

(July 1, 1944, ch. 373, title IV, § 464S, as added July 10, 1992, Pub. L. 102–321, title I, § 124(b), 106 Stat. 365.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285p–2. Office of Rural Mental Health Research

(a) In general

There is established within the Institute an office to be known as the Office of Rural Mental Health Research (hereafter in this section referred to as the ''Office''). The Office shall be headed by a director, who shall be appointed by the Director of such Institute from among individuals experienced or knowledgeable in the provision of mental health services in rural areas. The Secretary shall carry out the authorities established in this section acting through the Director of the Office.

(b) Coordination of activities

The Director of the Office, in consultation with the Director of the Institute and with the Director of the Office of Rural Health Policy, shall—

(1) coordinate the research activities of the Department of Health and Human Services as such activities relate to the mental health of residents of rural areas; and

(2) coordinate the activities of the Office with similar activities of public and nonprofit private entities.

(c) Research, demonstrations, evaluations, and dissemination

The Director of the Office may, with respect to the mental health of adults and children residing in rural areas—

(1) conduct research on conditions that are unique to the residents of rural areas, or more serious or prevalent in such residents;

(2) conduct research on improving the delivery of services in such areas; and

(3) disseminate information to appropriate public and nonprofit private entities.

(d) Authority regarding grants and contracts

The Director of the Office may carry out the authorities established in subsection (c) of this section directly and through grants, cooperative agreements, or contracts with public or nonprofit private entities.

(e) Report to Congress

Not later than February 1, 1993, and each fiscal year thereafter, the Director shall submit to the Subcommittee on Health and the Environment of the Committee on Energy and Commerce (of the House of Representatives), and to the Committee on Labor and Human Resources (of the Senate), a report describing the activities of the Office during the preceding fiscal year, including a summary of the activities of demonstration projects and a summary of evaluations of the projects.

(July 1, 1944, ch. 373, title IV, § 464T, as added July 10, 1992, Pub. L. 102–321, title I, § 124(b), 106 Stat. 365.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 285p–3. Office on AIDS

The Director of the Institute shall establish within the Institute an Office on AIDS. The Office shall be responsible for the coordination of research and determining the direction of the Institute with respect to AIDS research related to—

(1) primary prevention of the spread of HIV, including transmission via sexual behavior;

(2) mental health services research; and

(3) other matters determined appropriate by the Director.

(July 1, 1944, ch. 373, title IV, § 464U, as added July 10, 1992, Pub. L. 102–321, title I, § 124(b), 106 Stat. 366.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SUBPART 17—NATIONAL INSTITUTE OF NURSING RESEARCH

§ 285q. Purpose of Institute

The general purpose of the National Institute of Nursing Research (in this subpart referred to as the ''Institute'') is the conduct and support of, and dissemination of information respecting, basic and clinical nursing research, training, and other programs in patient care research.

(July 1, 1944, ch. 373, title IV, § 464V, formerly § 483, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 867; renumbered § 464V and amended June 10, 1993, Pub. L. 103–43, title XV, § 1511(a)(1), (b)(2), 107 Stat. 178, 179.)

CODIFICATION

Section was formerly classified to section 287c of this title prior to renumbering by Pub. L. 103–43.

AMENDMENTS

1993—Pub. L. 103–43, § 1511(a)(1) substituted ''Institute'' for ''Center'' in section catchline and ''National Institute of Nursing Research (in this subpart referred to as the 'Institute')'' for ''National Center for Nursing Research (hereafter in this subpart referred to as the 'Center')'' in text.

STUDY ON ADEQUACY OF NUMBER OF NURSES

Section 1512 of Pub. L. 103–43 directed Secretary of Health and Human Services, acting through Director of National Institute of Nursing Research, to enter into a contract with a public or nonprofit private entity to conduct a study for purpose of determining whether and to what extent there is a need for an increase in the number of nurses in hospitals and nursing homes in order to promote the quality of patient care and reduce the incidence among nurses of work-related injuries and stress and to complete such study and submit a report to Congress not later than 18 months after June 10, 1993.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285q–1 of this title.

§ 285q–1. Specific authorities

To carry out section 285q of this title, the Director of the Institute may provide research training and instruction and establish, in the Institute and other nonprofit institutions, research traineeships and fellowships in the study and investigation of the prevention of disease, health promotion, and the nursing care of individuals with and the families of individuals with acute and chronic illnesses. The Director of the Institute may provide individuals receiving such training and instruction or such traineeships or fellowships with such stipends and allowances (including amounts for travel and subsistence and dependency allowances) as the Director determines necessary. The Director may make grants to nonprofit institutions to provide such training and instruction and traineeships and fellowships.

(July 1, 1944, ch. 373, title IV, § 464W, formerly § 484, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 867; renumbered § 464W and amended June 10, 1993, Pub. L. 103–43, title XV, § 1511(a)(2), (b)(2), (4)(A), 107 Stat. 178, 179.)

CODIFICATION

Section was formerly classified to section 287c–1 of this title prior to renumbering by Pub. L. 103–43.

AMENDMENTS

1993—Pub. L. 103–43, § 1511(a)(2), (b)(4)(A), substituted ''section 285q'' for ''section 287c'' and ''Institute'' for ''Center'' wherever appearing.

§ 285q–2. Advisory council

(a) Appointment; functions and duties; acceptance of conditional gifts; subcommittees

(1) The Secretary shall appoint an advisory council for the Institute which shall advise, assist, consult with, and make recommendations to the Secretary and the Director of the Institute on matters related to the activities carried out by and through the Institute and the policies respecting such activities.

(2) The advisory council for the Institute may recommend to the Secretary acceptance, in accordance with section 238 of this title, of conditional gifts for study, investigations, and research and for the acquisition of grounds or construction, equipping, or maintenance of facilities for the Institute.

(3) The advisory council for the Institute—

(A)(i) may make recommendations to the Director of the Institute respecting research conducted at the Institute,

(ii) may review applications for grants and cooperative agreements for research or training and recommend for approval applications for projects which show promise of making

valuable contributions to human knowledge, and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the Institute;

(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspects of human health with respect to which the Institute is concerned and with the approval of the Director of the Institute make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership; ex officio members; compensation

(1) The advisory council shall consist of ex officio members and not more than eighteen members appointed by the Secretary.

(2) The ex officio members of the advisory council shall consist of—

(A) the Secretary, the Director of NIH, the Director of the Institute, the chief nursing officer of the Department of Veterans Affairs, the Assistant Secretary of Defense for Health Affairs, the Director of the Division of Nursing of the Health Resources and Services Administration (or the designees of such officers), and

(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) The members of the advisory council who are not ex officio members shall be appointed as follows:

(A) Two-thirds of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the Institute. Of the members appointed pursuant to this subparagraph, at least seven shall be professional nurses who are recognized experts in the area of clinical practice, education, or research.

(B) One-third of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, law, health policy, economics, and management.

(4) Members of the advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of the advisory council shall receive, for each day (including traveltime) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule.

(c) Term of office; vacancy; reappointment

The term of office of an appointed member of the advisory council is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of four years may not be reappointed to an advisory council before two years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

(d) Chairman; selection; term of office

The chairman of the advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the Institute to be the chairman of the advisory council. The term of office of the chairman shall be two years.

(e) Meetings

The advisory council shall meet at the call of the chairman or upon the request of the Director of the Institute, but at least three times each fiscal year. The location of the meetings of the advisory council is subject to the approval of the Director of the Institute.

(f) Executive secretary; staff; orientation and training for new members

The Director of the Institute shall designate a member of the staff of the Institute to serve as the executive secretary of the advisory council. The Director of the Institute shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of the Institute shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

(g) Material for inclusion in biennial report; additional reports

The advisory council may prepare, for inclusion in the biennial report made under section 285q–3 of this title, (1) comments respecting the activities of the advisory council in the fiscal years respecting which the report is prepared, (2) comments on the progress of the Institute in meeting its objectives, and (3) recommendations respecting the future directions and program and policy emphasis of the Institute. The advisory council may prepare such additional reports as it may determine appropriate.

(July 1, 1944, ch. 373, title IV, § 464X, formerly § 485, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 867; amended Aug. 18, 1990, Pub. L. 101–381, title I, § 102(4), 104 Stat. 586; June 13, 1991, Pub. L. 102–54, § 13(q)(1)(E), 105 Stat. 279; renumbered § 464X and amended June 10, 1993, Pub. L. 103–43, title XV, § 1511(a)(3), (b)(2), (4)(B), title XX, §§ 2008(b)(13), 2010(b)(5), 107 Stat. 178, 179, 211, 214.)

CODIFICATION

Section was formerly classified to section 285c–2 of this title prior to renumbering by Pub. L. 103–43.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–43, § 1511(a)(3)(A), substituted ''Institute'' for ''Center'' wherever appearing.

Subsec. (a)(2). Pub. L. 103–43, § 2010(b)(5), which directed the substitution of ''section 238'' for ''section 300aaa'' in section 287c–2(a)(2) of this title, was executed to subsec. (a)(2) of this section to reflect the probable intent of Congress and the renumbering of this section. See Codification note above.

Subsec. (b)(2)(A). Pub. L. 103–43, § 2008(b)(13), which directed the substitution of ''Department of Veterans Affairs'' for ''Veterans' Administration'' in section 287c–2(b)(2)(A) of this title could not be executed because the words ''Veterans' Administration'' do not appear in subsec. (b)(2)(A) of this section subsequent to amendment by Pub. L. 102–54 and because of the renumbering of this section. See Codification note above and 1991 Amendment note below.

Pub. L. 103–43, §§ 1511(a)(3)(B)(i), substituted ''Institute'' for ''Center''.

Subsec. (b)(3)(A). Pub. L. 103–43, § 1511(a)(3)(B)(ii), substituted ''Institute'' for ''Center''.

Subsecs. (d) to (f). Pub. L. 103–43, § 1511(a)(3)(C), substituted ''Institute'' for ''Center'' wherever appearing.

Subsec. (g). Pub. L. 103–43, § 1511(a)(3)(C), (b)(4)(B), substituted ''section 285q–3'' for ''section 287c–3'' and ''Institute'' for ''Center'' in two places.

1991—Subsec. (b)(2)(A). Pub. L. 102–54 substituted ''chief nursing officer of the Department of Veterans Affairs'' for ''Chief Nursing Officer of the Veterans' Administration''.

1990—Subsec. (a)(2). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285q–3 of this title.

§ 285q–3. Biennial report

The Director of the Institute after consultation with the advisory council for the Institute, shall prepare for inclusion in the biennial report made under section 283 of this title a biennial report which shall consist of a description of the activities of the Institute and program policies of the Director of the Institute in the fiscal years respecting which the report is prepared. The Director of the Institute may prepare such additional reports as the Director determines appropriate. The Director of the Institute shall provide the advisory council of the Institute an opportunity for the submission of the written comments referred to in section 285q–2(g) of this title.

(July 1, 1944, ch. 373, title IV, § 464Y, formerly § 486, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 869; renumbered § 485A, renumbered § 464Y, and amended June 10, 1993, Pub. L. 103–43, title I, § 141(a)(1), title XV, § 1511(a)(4), (b)(2), (4)(C), 107 Stat. 136, 179.)

CODIFICATION

Section was formerly classified to section 287c–3 of this title prior to renumbering by Pub. L. 103–43.

AMENDMENTS

1993—Pub. L. 103–43, § 1511(a)(4), (b)(4)(C), substituted ''Institute'' for ''Center'' wherever appearing and ''section 285q–2(g)'' for ''section 287c–2(g)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 285q–2 of this title.

PART D—NATIONAL LIBRARY OF MEDICINE

SUBPART 1—GENERAL PROVISIONS

§ 286. National Library of Medicine

(a) Purpose and establishment

In order to assist the advancement of medical and related sciences and to aid the dissemination and exchange of scientific and other information important to the progress of medicine and to the public health, there is established the National Library of Medicine (hereafter in this part referred to as the ''Library'').

(b) Functions

The Secretary, through the Library and subject to subsection (d) of this section, shall—

(1) acquire and preserve books, periodicals, prints, films, recordings, and other library materials pertinent to medicine;

(2) organize the materials specified in paragraph (1) by appropriate cataloging, indexing, and bibliographical listings;

(3) publish and disseminate the catalogs, indexes, and bibliographies referred to in paragraph (2);

(4) make available, through loans, photographic or other copying procedures, or otherwise, such materials in the Library as the Secretary determines appropriate;

(5) provide reference and research assistance;

(6) publicize the availability from the Library of the products and services described in any of paragraphs (1) through (5);

(7) promote the use of computers and telecommunications by health professionals (including health professionals in rural areas) for the purpose of improving access to biomedical information for health care delivery and medical research; and

(8) engage in such other activities as the Secretary determines appropriate and as the Library's resources permit.

(c) Exchange, destruction, or disposal of materials not needed

The Secretary may exchange, destroy, or otherwise dispose of any books, periodicals, films, and other library materials not needed for the permanent use of the Library.

(d) Availability of publications, materials, facilities, or services; prescription of rules

(1) The Secretary may, after obtaining the advice and recommendations of the Board of Regents, prescribe rules under which the Library will—

(A) provide copies of its publications or materials,

(B) will make available its facilities for research, or

(C) will make available its bibliographic, reference, or other services,

to public and private entities and individuals.

(2) Rules prescribed under paragraph (1) may provide for making available such publications, materials, facilities, or services—

(A) without charge as a public service,

(B) upon a loan, exchange, or charge basis, or

(C) in appropriate circumstances, under contract arrangements made with a public or other nonprofit entity.

(e) Regional medical libraries; establishment

Whenever the Secretary, with the advice of the Board of Regents, determines that—

(1) in any geographic area of the United States there is no regional medical library adequate to serve such area;

(2) under criteria prescribed for the administration of section 286b–6 of this title, there is a need for a regional medical library to serve such area; and

(3) because there is no medical library located in such area which, with financial assistance under section 286b–6 of this title, can feasibly be developed into a regional medical library adequate to serve such area,

the Secretary may establish, as a branch of the Library, a regional medical library to serve the needs of such area.

(f) Acceptance and administration of gifts; memorials

Section 238 of this title shall be applicable to the acceptance and administration of gifts made for the benefit of the Library or for carrying out any of its functions, and the Board of Regents shall make recommendations to the Secretary relating to establishment within the Library of suitable memorials to the donors.

(g) "Medicine" and "medical" defined

For purposes of this part, the terms ''medicine'' and ''medical'', except when used in section 286a of this title, include preventive and therapeutic medicine, dentistry, pharmacy, hospitalization, nursing, public health, and the fundamental sciences related thereto, and other related fields of study, research, or activity.

(July 1, 1944, ch. 373, title IV, § 465, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 857; amended Nov. 14, 1986, Pub. L. 99–660, title III, § 311(b)(1), 100 Stat. 3779; Dec. 22, 1987, Pub. L. 100–202, § 101(h) [title II, § 215], 101 Stat. 1329–256, 1329–275; Nov. 4, 1988, Pub. L. 100–607, title II, § 204(2), 102 Stat. 3079; Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(b)(1), 102 Stat. 4244; Aug. 18, 1990, Pub. L. 101–381, title I, § 102(2), 104 Stat. 585; June 10, 1993, Pub. L. 103–43, title XIV, § 1401(a), (c)(1), title XX, § 2010(b)(3), 107 Stat. 170, 214.)

AMENDMENTS

1993—Pub. L. 103–43, § 1401(c)(1), repealed amendment by Pub. L. 100–202. See 1987 Amendment note below.

Subsec. (b)(6) to (8). Pub. L. 103–43, § 1401(a), added pars. (6) and (7) and redesignated former par. (6) as (8).

Subsec. (f). Pub. L. 103–43, § 2010(b)(3), substituted ''Section 238'' for ''Section 300aaa''.

1990—Subsec. (f). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

1988—Subsec. (f). Pub. L. 100–690 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

Pub. L. 100–607 substituted ''300aaa'' for ''300cc''.

1987—Pub. L. 100–202, which directed the amendment of ''Section 465(B) of 42 U.S.C. 286'' by inserting ''between (5) and (6) an additional charge to the Secretary to 'publicize the availability of the above products and services of the National Library of Medicine' '', was repealed by Pub. L. 103–43, § 1401(c)(1).

1986—Subsec. (f). Pub. L. 99–660 substituted ''section 300cc of this title'' for ''section 300aa of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

APPLICABILITY OF CERTAIN NEW AUTHORITY

Section 1401(c)(2) of Pub. L. 103–43 provided that: ''With respect to the authority established for the National Library of Medicine in section 465(b)(6) of the Public Health Service Act, as added by subsection (a) of this section [subsec. (b)(6) of this section], such authority shall be effective as if the authority had been established on December 22, 1987.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 286c of this title.

§ 286a. Board of Regents

(a) Membership; ex officio members

(1)(A) The Board of Regents of the National Library of Medicine consists of ex officio members and ten members appointed by the Secretary.

(B) The ex officio members are the Surgeons General of the Public Health Service, the Army, the Navy, and the Air Force, the Under Secretary for Health of the Department of Veterans Affairs, the Dean of the Uniformed Services University of the Health Sciences, the Assistant Director for Biological, Behavioral, and Social Sciences of the National Science Foundation, the Director of the National Agricultural Library, and the Librarian of Congress (or their designees).

(C) The appointed members shall be selected from among leaders in the various fields of the

fundamental sciences, medicine, dentistry, public health, hospital administration, pharmacology, health communications technology, or scientific or medical library work, or in public affairs. At least six of the appointed members shall be selected from among leaders in the fields of medical, dental, or public health research or education.

(2) The Board shall annually elect one of the appointed members to serve as chairman until the next election. The Secretary shall designate a member of the Library staff to act as executive secretary of the Board.

(b) Recommendations on matters of policy; recommendations included in annual report; use of services of members by Secretary

The Board shall advise, consult with, and make recommendations to the Secretary on matters of policy in regard to the Library, including such matters as the acquisition of materials for the Library, the scope, content, and organization of the Library's services, and the rules under which its materials, publications, facilities, and services shall be made available to various kinds of users. The Secretary shall include in the annual report of the Secretary to the Congress a statement covering the recommendations made by the Board and the disposition thereof. The Secretary may use the services of any member of the Board in connection with matters related to the work of the Library, for such periods, in addition to conference periods, as the Secretary may determine.

(c) Term of office; vacancy; reappointment

Each appointed member of the Board shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor of such member was appointed shall be appointed for the remainder of such term. None of the appointed members shall be eligible for reappointment within one year after the end of the preceding term of such member.

(July 1, 1944, ch. 373, title IV, § 466, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 859; amended Oct. 9, 1992, Pub. L. 102–405, title III, § 302(e)(1), 106 Stat. 1985; June 10, 1993, Pub. L. 103–43, title XX, § 2008(b)(11), 107 Stat. 211.)

AMENDMENTS

1993—Subsec. (a)(1)(B). Pub. L. 103–43 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1992—Subsec. (a)(1)(B). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 286 of this title.

§ 286a–1. Library facilities

There are authorized to be appropriated amounts sufficient for the erection and equipment of suitable and adequate buildings and facilities for use of the Library. The Administrator of General Services may acquire, by purchase, condemnation, donation, or otherwise, a suitable site or sites, selected by the Secretary in accordance with the direction of the Board, for such buildings and facilities and to erect thereon, furnish, and equip such buildings and facilities. The amounts authorized to be appropriated by this section include the cost of preparation of drawings and specifications, supervision of construction, and other administrative expenses incident to the work. The Administrator of General Services shall prepare the plans and specifications, make all necessary contracts, and supervise construction.

(July 1, 1944, ch. 373, title IV, § 467, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 859.)

§ 286a–2. Authorization of appropriations

(a) For the purpose of carrying out this part, there are authorized to be appropriated $150,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(b) Amounts appropriated under subsection (a) of this section and made available for grants or contracts under any of sections 286b–3 through 286b–7 of this title shall remain available until the end of the fiscal year following the fiscal year for which the amounts were appropriated.

(July 1, 1944, ch. 373, title IV, § 468, as added June 10, 1993, Pub. L. 103–43, title XIV, § 1402(a), 107 Stat. 170.)

SUBPART 2—FINANCIAL ASSISTANCE

§ 286b. Repealed. Pub. L. 103–43, title XIV, § 1402(b), June 10, 1993, 107 Stat. 171

Section, act July 1, 1944, ch. 373, title IV, § 469, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 860; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 146(a), 102 Stat. 3058, authorized appropriations for grants and contracts under sections 286b–3 through 286b–7 of this title.

§ 286b–1. Definitions

As used in this subpart—

(1) the term ''medical library'' means a library related to the sciences related to health; and

(2) the term ''sciences related to health'' includes medicine, osteopathy, dentistry, and public health, and fundamental and applied sciences when related thereto.

(July 1, 1944, ch. 373, title IV, § 470, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 860.)

§ 286b–2. National Medical Libraries Assistance Advisory Board

(a) Board of Regents of National Library of Medicine to serve as

The Board of Regents of the National Library of Medicine shall also serve as the National Medical Libraries Assistance Advisory Board (hereafter in this subpart referred to as the ''Board'').

(b) Functions

The Board shall advise and assist the Secretary in the preparation of general regulations and with respect to policy matters arising in the administration of this subpart.

(c) Use of services of members by Secretary

The Secretary may use the services of any member of the Board, in connection with mat-

ters related to the administration of this part for such periods, in addition to conference periods, as the Secretary may determine.

(d) Compensation

Appointed members of the Board who are not otherwise in the employ of the United States, while attending conferences of the Board or otherwise serving at the request of the Secretary in connection with the administration of this subpart, shall be entitled to receive compensation, per diem in lieu of subsistence, and travel expenses in the same manner and under the same conditions as that prescribed under section 210(c) of this title when attending conferences, traveling, or serving at the request of the Secretary in connection with the Board's function under this section.

(July 1, 1944, ch. 373, title IV, § 471, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 860.)

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 286b–3. Grants for training in medical library sciences

The Secretary shall make grants—

(1) to individuals to enable them to accept traineeships and fellowships leading to post-baccalaureate academic degrees in the field of medical library science, in related fields pertaining to sciences related to health, or in the field of the communication of information;

(2) to individuals who are librarians or specialists in information on sciences relating to health, to enable them to undergo intensive training or retraining so as to attain greater competence in their occupations (including competence in the fields of automatic data processing and retrieval);

(3) to assist appropriate public and private nonprofit institutions in developing, expanding, and improving training programs in library science and the field of communications of information pertaining to sciences relating to health; and

(4) to assist in the establishment of internship programs in established medical libraries meeting standards which the Secretary shall prescribe.

(July 1, 1944, ch. 373, title IV, § 472, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 860.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 286a–2, 286b–8 of this title.

§ 286b–4. Assistance for projects in sciences related to health, for research and development in medical library science, and for development of education technologies

(a) Compilation of existing and original writings on health

The Secretary shall make grants to physicians and other practitioners in the sciences related to health, to scientists, and to public or nonprofit private institutions on behalf of such physicians, other practitioners, and scientists for the compilation of existing, or the writing of original, contributions relating to scientific, social, or cultural advancements in sciences related to health. In making such grants, the Secretary shall make appropriate arrangements under which the facilities of the Library and the facilities of libraries of public and private nonprofit institutions of higher learning may be made available in connection with the projects for which such grants are made.

(b) Medical library science and related activities

The Secretary shall make grants to appropriate public or private nonprofit institutions and enter into contracts with appropriate persons, for purposes of carrying out projects of research, investigations, and demonstrations in the field of medical library science and related activities and for the development of new techniques, systems, and equipment, for processing, storing, retrieving, and distributing information pertaining to sciences related to health.

(c) Development of education technologies

(1) The Secretary shall make grants to public or nonprofit private institutions for the purpose of carrying out projects of research on, and development and demonstration of, new education technologies.

(2) The purposes for which a grant under paragraph (1) may be made include projects concerning—

(A) computer-assisted teaching and testing of clinical competence at health professions and research institutions;

(B) the effective transfer of new information from research laboratories to appropriate clinical applications;

(C) the expansion of the laboratory and clinical uses of computer-stored research databases; and

(D) the testing of new technologies for training health care professionals.

(3) The Secretary may not make a grant under paragraph (1) unless the applicant for the grant agrees to make the projects available with respect to—

(A) assisting in the training of health professions students; and

(B) enhancing and improving the capabilities of health professionals regarding research and teaching.

(July 1, 1944, ch. 373, title IV, § 473, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 861; amended June 10, 1993, Pub. L. 103–43, title XIV, § 1411, 107 Stat. 171.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 286a–2, 286b–8 of this title.

§ 286b–5. Grants for establishing, expanding, and improving basic resources of medical libraries and related instrumentalities

(a) The Secretary shall make grants of money, materials, or both, to public or private nonprofit medical libraries and related scientific communication instrumentalities for the purpose of establishing, expanding, and improving their basic medical library or related resources. A grant under this subsection may be used for—

(1) the acquisition of books, journals, photographs, motion picture and other films, and other similar materials;

(2) cataloging, binding, and other services and procedures for processing library resource materials for use by those who are served by the library or related instrumentality;

(3) the acquisition of duplication devices, facsimile equipment, film projectors, recording equipment, and other equipment to facilitate the use of the resources of the library or related instrumentality by those who are served by it; and

(4) the introduction of new technologies in medical librarianship.

(b)(1) The amount of any grant under this section to any medical library or related instrumentality shall be determined by the Secretary on the basis of the scope of library or related services provided by such library or instrumentality in relation to the population and purposes served by it. In making a determination of the scope of services served by any medical library or related instrumentality, the Secretary shall take into account—

(A) the number of graduate and undergraduate students making use of the resources of such library or instrumentality;

(B) the number of physicians and other practitioners in the sciences related to health utilizing the resources of such library or instrumentality;

(C) the type of supportive staffs, if any, available to such library or instrumentality;

(D) the type, size, and qualifications of the faculty of any school with which such library or instrumentality is affiliated;

(E) the staff of any hospital or hospitals or of any clinic or clinics with which such library or instrumentality is affiliated; and

(F) the geographic area served by such library or instrumentality and the availability within such area of medical library or related services provided by other libraries or related instrumentalities.

(2) Grants to such medical libraries or related instrumentalities under this section shall be in such amounts as the Secretary may by regulation prescribe with a view to assuring adequate continuing financial support for such libraries or instrumentalities from other sources during and after the period for which grants are provided, except that in no case shall any grant under this section to a medical library or related instrumentality for any fiscal year exceed $1,000,000.

(July 1, 1944, ch. 373, title IV, § 474, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 861; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 146(b), 102 Stat. 3058; June 10, 1993, Pub. L. 103–43, title XIV, § 1401(b), 107 Stat. 170.)

AMENDMENTS

1993—Subsec. (b)(2). Pub. L. 103–43 substituted ''$1,000,000'' for ''$750,000''.

1988—Subsec. (b)(2). Pub. L. 100–607 substituted ''$750,000'' for ''$500,000''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 286a–2, 286b–8 of this title.

§ 286b–6. Grants and contracts for establishment of regional medical libraries

(a) Existing public or private nonprofit medical libraries

The Secretary, with the advice of the Board, shall make grants to and enter into contracts with existing public or private nonprofit medical libraries so as to enable each of them to serve as the regional medical library for the geographical area in which it is located.

(b) Uses for grants and contracts

The uses for which grants and contracts under this section may be employed include the—

(1) acquisition of books, journals, and other similar materials;

(2) cataloging, binding, and other procedures for processing library resource materials for use by those who are served by the library;

(3) acquisition of duplicating devices and other equipment to facilitate the use of the resources of the library by those who are served by it;

(4) acquisition of mechanisms and employment of personnel for the speedy transmission of materials from the regional library to local libraries in the geographic area served by the regional library; and

(5) planning for services and activities under this section.

(c) Conditions

(1) Grants and contracts under this section shall only be made to or entered into with medical libraries which agree—

(A) to modify and increase their library resources, and to supplement the resources of cooperating libraries in the region, so as to be able to provide adequate supportive services to all libraries in the region as well as to individual users of library services; and

(B) to provide free loan services to qualified users and make available photoduplicated or facsimile copies of biomedical materials which qualified requesters may retain.

(2) The Secretary, in awarding grants and contracts under this section, shall give priority to medical libraries having the greatest potential of fulfilling the needs for regional medical libraries. In determining the priority to be assigned to any medical library, the Secretary shall consider—

(A) the adequacy of the library (in terms of collections, personnel, equipment, and other facilities) as a basis for a regional medical library; and

(B) the size and nature of the population to be served in the region in which the library is located.

(d) Basic resources materials; limitation on grant or contract

Grants and contracts under this section for basic resource materials to a library may not exceed—

(1) 50 percent of the library's annual operating expense (exclusive of Federal financial assistance under this part) for the preceding year; or

(2) in case of the first year in which the library receives a grant under this section for basic resource materials, 50 percent of its average annual operating expenses over the past three years (or if it had been in operation for less than three years, its annual operating expenses determined by the Secretary in accordance with regulations).

(July 1, 1944, ch. 373, title IV, § 475, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 862.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 286, 286a–2, 286b–8 of this title.

§ 286b–7. Financial support of biomedical scientific publications

(a) The Secretary, with the advice of the Board, shall make grants to, and enter into appropriate contracts with, public or private nonprofit institutions of higher education and individual scientists for the purpose of supporting biomedical scientific publications of a nonprofit nature and to procure the compilation, writing, editing, and publication of reviews, abstracts, indices, handbooks, bibliographies, and related matter pertaining to scientific works and scientific developments.

(b) Grants under subsection (a) of this section in support of any single periodical publication may not be made for more than three years, except in those cases in which the Secretary determines that further support is necessary to carry out the purposes of subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 476, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 863.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 286a–2, 286b–8 of this title.

§ 286b–8. Grant payments, records, and audit

(a) Payments under grants made under sections 286b–3, 286b–4, 286b–5, 286b–6, and 286b–7 of this title may be made in advance or by way of reimbursement and in such installments as the Secretary shall prescribe by regulation after consultation with the Board.

(b)(1) Each recipient of a grant under this subpart shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the project or undertaking in connection with which such grant is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such recipients that are pertinent to any grant received under this subpart.

(July 1, 1944, ch. 373, title IV, § 477, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 863.)

SUBPART 3—NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION

§ 286c. Purpose, establishment, functions, and funding of National Center for Biotechnology Information

(a) Establishment

In order to focus and expand the collection, storage, retrieval, and dissemination of the results of biotechnology research by information systems, and to support and enhance the development of new information technologies to aid in the understanding of the molecular processes that control health and disease, there is established the National Center for Biotechnology Information (hereinafter in this section referred to as the ''Center'') in the National Library of Medicine.

(b) Functions

The Secretary, through the Center and subject to section 286(d) of this title, shall—

(1) design, develop, implement, and manage automated systems for the collection, storage, retrieval, analysis, and dissemination of knowledge concerning human molecular biology, biochemistry, and genetics;

(2) perform research into advanced methods of computer-based information processing capable of representing and analyzing the vast number of biologically important molecules and compounds;

(3) enable persons engaged in biotechnology research and medical care to use systems developed under paragraph (1) and methods described in paragraph (2); and

(4) coordinate, as much as is practicable, efforts to gather biotechnology information on an international basis.

(July 1, 1944, ch. 373, title IV, § 478, as added Nov. 4, 1988, Pub. L. 100–607, title I, § 105, 102 Stat. 3052; amended June 10, 1993, Pub. L. 103–43, title XIV, § 1402(b), 107 Stat. 171.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 struck out subsec. (c) which read as follows: ''For the purpose of performing the duties specified in subsection (b) of this section, there are authorized to be appropriated $8,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990. Funds appropriated under this subsection shall remain available until expended.''

SUBPART 4—NATIONAL INFORMATION CENTER ON HEALTH SERVICES RESEARCH AND HEALTH CARE TECHNOLOGY

§ 286d. National Information Center

(a) Establishment

There is established within the Library an entity to be known as the National Information Center on Health Services Research and Health Care Technology (in this section referred to as the ''Center'').

(b) Purpose

The purpose of the Center is the collection, storage, analysis, retrieval, and dissemination of information on health services research, clinical practice guidelines, and on health care technology, including the assessment of such technology. Such purpose includes developing and maintaining data bases and developing and implementing methods of carrying out such purpose.

(c) Electronic, convenient format; criteria for inclusion

The Director of the Center shall ensure that information under subsection (b) of this section concerning clinical practice guidelines is collected and maintained electronically and in a convenient format. Such Director shall develop and publish criteria for the inclusion of practice guidelines and technology assessments in the information center database.

(d) Coordination with Administrator for Health Care Policy and Research

The Secretary, acting through the Center, shall coordinate the activities carried out under this section through the Center with related activities of the Administrator for Health Care Policy and Research.

(July 1, 1944, ch. 373, title IV, § 478A, as added June 10, 1993, Pub. L. 103–43, title XIV, § 1421, 107 Stat. 171.)

CONSTRUCTION

Section 1422(b) of Pub. L. 103–43 provided that: ''The amendments made by section 3 of Public Law 102–410 (106 Stat. 2094) [amending section 299a–1 of this title], by section 1421 of this Act [enacting this section], and by subsection (a) of this section [amending section 299a–1 of this title] may not be construed as terminating the information center on health care technologies and health care technology assessment established under section 904 of the Public Health Service Act [section 299a–2 of this title], as in effect on the day before the date of the enactment of Public Law 102–410 [Oct. 13, 1992]. Such center shall be considered to be the center established in section 478A of the Public Health Service Act, as added by section 1421 of this Act [this section], and shall be subject to the provisions of such section 478A.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 299a–1 of this title.

PART E—OTHER AGENCIES OF NIH

SUBPART 1—NATIONAL CENTER FOR RESEARCH RESOURCES

§ 287. General purpose

The general purpose of the National Center for Research Resources (in this subpart referred to as the ''Center'') is to strengthen and enhance the research environments of entities engaged in health-related research by developing and supporting essential research resources.

(July 1, 1944, ch. 373, title IV, § 479, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 864; amended June 10, 1993, Pub. L. 103–43, title XV, § 1501(2)(B), 107 Stat. 172.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''the National Center for Research Resources (in this subpart referred to as the 'Center')'' for ''the Division of Research Resources''.

§ 287a. Advisory council

(a) Appointment; functions and duties; acceptance of conditional gifts; subcommittees

(1) The Secretary shall appoint an advisory council for the Center which shall advise, assist, consult with, and make recommendations to the Secretary and the Director of the Center on matters related to the activities carried out by and through the Center and the policies respecting such activities.

(2) The advisory council for the Center may recommend to the Secretary acceptance, in accordance with section 238 of this title, of conditional gifts for study, investigations, and research and for the acquisition of grounds or construction, equipping, or maintenance of facilities for the Center.

(3) The advisory council for the Center—

(A)(i) may make recommendations to the Director of the Center respecting research conducted at the Center,

(ii) may review applications for grants and cooperative agreements for research or training and recommend for approval applications for projects which show promise of making valuable contributions to human knowledge, and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the Center;

(B) may collect, by correspondence or by personal investigation, information as to studies which are being carried on in the United States or any other country as to the diseases, disorders, or other aspects of human health with respect to which the Center is concerned and with the approval of the Director of the Center make available such information through appropriate publications for the benefit of public and private health entities and health professions personnel and scientists and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership; ex officio members; compensation

(1) The advisory council shall consist of ex officio members and not more than eighteen members appointed by the Secretary.

(2) The ex officio members of the advisory council shall consist of—

(A) the Secretary, the Director of NIH, the Director of the Center, the Under Secretary for Health of the Department of Veterans Af-

fairs, and the Assistant Secretary of Defense for Health Affairs (or the designees of such officers), and

(B) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) The members of the advisory council who are not ex officio members shall be appointed as follows:

(A) Two-thirds of the members shall be appointed by the Secretary from among the leading representatives of the health and scientific disciplines (including public health and the behavioral or social sciences) relevant to the activities of the Center.

(B) One-third of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, law, health policy, economics, and management.

(4) Members of the advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The other members of the advisory council shall receive, for each day (including traveltime) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS–18 of the General Schedule.

(c) Term of office; vacancy; reappointment

The term of office of an appointed member of the advisory council is four years, except that any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term and the Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members do not all expire in the same year. A member may serve after the expiration of the member's term until a successor has taken office. A member who has been appointed for a term of four years may not be reappointed to an advisory council before two years from the date of expiration of such term of office. If a vacancy occurs in the advisory council among the appointed members, the Secretary shall make an appointment to fill the vacancy within 90 days from the date the vacancy occurs.

(d) Chairman; selection; term of office

The chairman of the advisory council shall be selected by the Secretary from among the appointed members, except that the Secretary may select the Director of the Center to be the chairman of the advisory council. The term of office of the chairman shall be two years.

(e) Meetings

The advisory council shall meet at the call of the chairman or upon the request of the Director of the Center, but at least three times each fiscal year. The location of the meetings of the advisory council is subject to the approval of the Director of the Center.

(f) Executive secretary; staff; orientation and training for new members

The Director of the Center shall designate a member of the staff of the Center to serve as the executive secretary of the advisory council. The Director of the Center shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Director of the Center shall provide orientation and training for new members of the advisory council to provide them with such information and training as may be appropriate for their effective participation in the functions of the advisory council.

(g) Material for inclusion in biennial report; additional reports

The advisory council may prepare, for inclusion in the biennial report made under section 287a–1 of this title, (1) comments respecting the activities of the advisory council in the fiscal years respecting which the report is prepared, (2) comments on the progress of the Center in meeting its objectives, and (3) recommendations respecting the future directions and program and policy emphasis of the Center. The advisory council may prepare such additional reports as it may determine appropriate.

(h) Advisory council in existence on November 20, 1985

This section does not terminate the membership of the advisory council for the Center which was in existence on November 20, 1985. After November 20, 1985—

(1) the Secretary shall make appointments to such advisory council in such a manner as to bring about as soon as practicable the composition for such council prescribed by this section;

(2) the advisory council shall organize itself in accordance with this section and exercise the functions prescribed by this section; and

(3) the Director of the Center shall perform for such advisory council the functions prescribed by this section.

(July 1, 1944, ch. 373, title IV, § 480, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 864; amended Aug. 18, 1990, Pub. L. 101–381, title I, § 102(3), 104 Stat. 586; Oct. 9, 1992, Pub. L. 102–405, title III, § 302(e)(1), 106 Stat. 1985; June 10, 1993, Pub. L. 103–43, title XV, § 1501(2)(C), (D), title XX, §§ 2008(b)(12), 2010(b)(4), 107 Stat. 172, 173, 211, 214.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–43, § 1501(2)(C), (D), substituted ''the Center'' for ''the Division of Research Resources'' after ''advisory council for'' and substituted ''the Center'' for ''the Division'' in two places.

Subsec. (a)(2). Pub. L. 103–43, §§ 1501(2)(C), (D), 2010(b)(4), substituted ''the Center'' for ''the Division of Research Resources'' after ''advisory council for'', ''section 238'' for ''section 300aaa'', and ''the Center'' for ''the Division''.

Subsec. (a)(3). Pub. L. 103–43, § 1501(2)(D), substituted ''the Center'' for ''the Division'' wherever appearing.

Subsec. (b). Pub. L. 103–43, §§ 1501(2)(C), (D), 2008(b)(12), in par. (2)(A) substituted ''the Center'' for ''the Division of Research Resources'' and ''Department of Veterans Affairs'' for ''Veterans' Administration'' and in par. (3)(A) substituted ''the Center'' for ''the Division''.

Subsec. (d). Pub. L. 103–43, § 1501(2)(C), substituted ''the Center'' for ''the Division of Research Resources''.

Subsec. (e). Pub. L. 103–43, § 1501(2)(C), (D), substituted ''the Center'' for ''the Division of Research Resources'' and ''the Center'' for ''the Division''.

Subsec. (f). Pub. L. 103–43, § 1501(2)(C), (D), substituted ''the Center'' for ''the Division of Research Resources'' and ''the Center'' for ''the Division'' in three places.

Subsec. (g). Pub. L. 103–43, §1501(2)(C), (D), substituted ''the Center'' for ''the Division of Research Resources'' and ''the Center'' for ''the Division''.

Subsec. (h). Pub. L. 103–43, §1501(2)(C), substituted ''the Center'' for ''the Division of Research Resources'' in introductory provisions and in par. (3).

1992—Subsec. (b)(2)(A). Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1990—Subsec. (a)(2). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 287a–1, 287a–2 of this title.

§ 287a–1. Biennial report

The Director of the Center, after consultation with the advisory council for the Center, shall prepare for inclusion in the biennial report made under section 283 of this title a biennial report which shall consist of a description of the activities of the Center and program policies of the Director of the Center in the fiscal years respecting which the report is prepared. The Director of the Center may prepare such additional reports as the Director determines appropriate. The Director of the Center shall provide the advisory council of the Center an opportunity for the submission of the written comments referred to in section 287a(g) of this title.

(July 1, 1944, ch. 373, title IV, §481, as added Nov. 20, 1985, Pub. L. 99–158, §2, 99 Stat. 866; amended June 10, 1993, Pub. L. 103–43, title XV, §1501(2)(C), (D), 107 Stat. 172, 173.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''the Center'' for ''the Division of Research Resources'' and ''the Center'' for ''the Division'' wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 287a of this title.

§ 287a–2. Biomedical and behavioral research facilities

(a) Modernization and construction of facilities

(1) In general

The Director of NIH, acting through the Director of the Center, may make grants to public and nonprofit private entities to expand, remodel, renovate, or alter existing research facilities or construct new research facilities, subject to the provisions of this section.

(2) Construction and cost of construction

For purposes of this section, the terms ''construction'' and ''cost of construction'' include the construction of new buildings and the expansion, renovation, remodeling, and alteration of existing buildings, including architects' fees, but do not include the cost of acquisition of land or off-site improvements.

(b) Scientific and technical review boards for merit-based review of proposals

(1) In general; approval as precondition to grants

(A) There is established within the Center a Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities (referred to in this section as the ''Board'').

(B) The Director of the Center may approve an application for a grant under subsection (a) of this section only if the Board has under paragraph (2) recommended the application for approval.

(2) Duties

(A) The Board shall provide advice to the Director of the Center and the advisory council established under section 287a of this title (in this section referred to as the ''Advisory Council'') on carrying out this section.

(B) In carrying out subparagraph (A), the Board shall make a determination of the merit of each application submitted for a grant under subsection (a) of this section, after consideration of the requirements established in subsection (c) of this section, and shall report the results of the determination to the Director of the Center and the Advisory Council. Such determinations shall be conducted in a manner consistent with procedures established under section 289a of this title.

(C) In carrying out subparagraph (A), the Board shall, in the case of applications recommended for approval, make recommendations to the Director and the Advisory Council on the amount that should be provided in the grant.

(D) In carrying out subparagraph (A), the Board shall prepare an annual report for the Director of the Center and the Advisory Council describing the activities of the Board in the fiscal year for which the report is made. Each such report shall be available to the public, and shall—

(i) summarize and analyze expenditures made under this section;

(ii) provide a summary of the types, numbers, and amounts of applications that were recommended for grants under subsection (a) of this section but that were not approved by the Director of the Center; and

(iii) contain the recommendations of the Board for any changes in the administration of this section.

(3) Membership

(A) Subject to subparagraph (B), the Board shall be composed of 9 appointed members, and such ex officio members as the Director of the Center determines to be appropriate.

(B) Not more than 3 individuals who are officers or employees of the Federal Government may serve as members of the Board.

(4) Certain requirements regarding membership

In selecting individuals for membership on the Board, the Director of the Center shall ensure that the members are individuals who, by virtue of their training or experience, are eminently qualified to perform peer review functions. In selecting such individuals for such membership, the Director of the Center shall ensure that the members of the Board collectively—

(A) are experienced in the planning, construction, financing, and administration of entities that conduct biomedical or behavioral research sciences;

(B) are knowledgeable in making determinations of the need of entities for biomedical or behavioral research facilities, including such facilities for the dentistry, nursing, pharmacy, and allied health professions;

(C) are knowledgeable in evaluating the relative priorities for applications for grants under subsection (a) of this section in view of the overall research needs of the United States; and

(D) are experienced with emerging centers of excellence, as described in subsection (c)(3) of this section.

(5) Certain authorities

(A) In carrying out paragraph (2), the Board may convene workshops and conferences, and collect data as the Board considers appropriate.

(B) In carrying out paragraph (2), the Board may establish subcommittees within the Board. Such subcommittees may hold meetings as determined necessary to enable the subcommittee to carry out its duties.

(6) Terms

(A) Except as provided in subparagraph (B), each appointed member of the Board shall hold office for a term of 4 years. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which such member's predecessor was appointed shall be appointed for the remainder of the term of the predecessor.

(B) Of the initial members appointed to the Board (as specified by the Director of the Center when making the appointments)—

(i) 3 shall hold office for a term of 3 years;

(ii) 3 shall hold office for a term of 2 years; and

(iii) 3 shall hold office for a term of 1 year.

(C) No member is eligible for reappointment to the Board until 1 year has elapsed after the end of the most recent term of the member.

(7) Compensation

Members of the Board who are not officers or employees of the United States shall receive for each day the members are engaged in the performance of the functions of the Board compensation at the same rate received by members of other national advisory councils established under this subchapter.

(c) Requirements for grants

(1) In general

The Director of the Center may make a grant under subsection (a) of this section only if the applicant for the grant meets the following conditions:

(A) The applicant is determined by such Director to be competent to engage in the type of research for which the proposed facility is to be constructed.

(B) The applicant provides assurances satisfactory to the Director that—

(i) for not less than 20 years after completion of the construction, the facility will be used for the purposes of research for which it is to be constructed;

(ii) sufficient funds will be available to meet the non-Federal share of the cost of constructing the facility;

(iii) sufficient funds will be available, when construction is completed, for the effective use of the facility for the research for which it is being constructed; and

(iv) the proposed construction will expand the applicant's capacity for research, or is necessary to improve or maintain the quality of the applicant's research.

(C) The applicant meets reasonable qualifications established by the Director with respect to—

(i) the relative scientific and technical merit of the applications, and the relative effectiveness of the proposed facilities, in expanding the capacity for biomedical or behavioral research and in improving the quality of such research;

(ii) the quality of the research or training, or both, to be carried out in the facilities involved;

(iii) the need of the applicant for such facilities in order to maintain or expand the applicant's research and training mission;

(iv) the congruence of the research activities to be carried out within the facility with the research and investigator manpower needs of the United States; and

(v) the age and condition of existing research facilities and equipment.

(D) The applicant has demonstrated a commitment to enhancing and expanding the research productivity of the applicant.

(2) Consideration of certain factors

In making grants under subsection (a) of this section, the Director of the Center may, in addition to the requirements established in paragraph (1), consider the following factors:

(A) To what extent the applicant has the capacity to broaden the scope of research and research training programs of the applicant by promoting—

(i) interdisciplinary research;

(ii) research on emerging technologies, including those involving novel analytical techniques or computational methods; or

(iii) other novel research mechanisms or programs.

(B) To what extent the applicant has broadened the scope of research and research training programs of qualified institutions by promoting genomic research with an emphasis on interdisciplinary research, including research related to pediatric investigations.

(3) Institutions of emerging excellence

Of the amounts appropriated under subsection (h) of this section for a fiscal year, the Director of the Center shall make available 25 percent for grants under subsection (a) of this section to applicants that, in addition to meeting the requirements established in paragraph (1), have demonstrated emerging excellence in biomedical or behavioral research, as follows:

(A) The applicant has a plan for research or training advancement and possesses the ability to carry out the plan.

(B) The applicant carries out research and research training programs that have a special relevance to a problem, concern, or unmet health need of the United States.

(C) The applicant has been productive in research or research development and training.

(D) The applicant—

(i) has been designated as a center of excellence under section 293c of this title;

(ii) is located in a geographic area whose population includes a significant number of individuals with a health-status deficit, and the applicant provides health services to such individuals; or

(iii) is located in a geographic area in which a deficit in health care technology, services, or research resources may adversely affect health status of the population of the area in the future, and the applicant is carrying out activities with respect to protecting the health status of such population.

(d) Requirement of application

The Director of the Center may make a grant under subsection (a) of this section only if an application for the grant is submitted to the Director and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director determines to be necessary to carry out this section.

(e) Amount of grant; payments

(1) Amount

The amount of any grant awarded under subsection (a) of this section shall be determined by the Director of the Center, except that such amount shall not exceed—

(A) 50 percent of the necessary cost of the construction of a proposed facility as determined by the Director; or

(B) in the case of a multipurpose facility, 40 percent of that part of the necessary cost of construction that the Director determines to be proportionate to the contemplated use of the facility.

(2) Reservation of amounts

On approval of any application for a grant under subsection (a) of this section, the Director of the Center shall reserve, from any appropriation available therefore, the amount of such grant, and shall pay such amount, in advance or by way of reimbursement, and in such installments consistent with the construction progress, as the Director may determine appropriate. The reservation of the Director of any amount by the Director under this paragraph may be amended by the Director, either on the approval of an amendment of the application or on the revision of the estimated cost of construction of the facility.

(3) Exclusion of certain costs

In determining the amount of any grant under this subsection (a) of this section, there shall be excluded from the cost of construction an amount equal to the sum of—

(A) the amount of any other Federal grant that the applicant has obtained, or is assured of obtaining, with respect to construction that is to be financed in part by a grant authorized under this section; and

(B) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant.

(4) Waiver of limitations

The limitations imposed by paragraph (1) may be waived at the discretion of the Director for applicants meeting the conditions described in paragraphs (1) and (2) of subsection (c) of this section.

(f) Recapture of payments

If, not later than 20 years after the completion of construction for which a grant has been awarded under subsection (a) of this section—

(1) the applicant or other owner of the facility shall cease to be a public or nonprofit private entity; or

(2) the facility shall cease to be used for the research purposes for which it was constructed (unless the Director determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from obligation to do so);

the United States shall be entitled to recover from the applicant or other owner of the facility the amount bearing the same ratio to the current value (as determined by an agreement between the parties or by action brought in the United States District Court for the district in which such facility is situated) of the facility as the amount of the Federal participation bore to the cost of the construction of such facility.

(g) Guidelines

Not later than 6 months after June 10, 1993, the Director of the Center, after consultation with the Advisory Council, shall issue guidelines with respect to grants under subsection (a) of this section.

(h) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated

$150,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(July 1, 1944, ch. 373, title IV, § 481A, as added June 10, 1993, Pub. L. 103–43, title XV, § 1502, 107 Stat. 173.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 287a–3 of this title.

§ 287a–3. Construction of regional centers for research on primates

(a) With respect to activities carried out by the National Center for Research Resources to support regional centers for research on primates, the Director of NIH shall, for each of the fiscal years 1994 through 1996, reserve from the amounts appropriated under section 287a–2(h) of this title $5,000,000 for the purpose of making awards of grants and contracts to public or nonprofit private entities to construct, renovate, or otherwise improve such regional centers. The reservation of such amounts for any fiscal year is subject to the availability of qualified applicants for such awards.

(b) The Director of NIH may not make a grant or enter into a contract under subsection (a) of this section unless the applicant for such assistance agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such subsection, to make available (directly or through donations from public or private entities) non-Federal contributions in cash toward such costs in an amount equal to not less than $1 for each $4 of Federal funds provided in such assistance.

(July 1, 1944, ch. 373, title IV, § 481B, as added June 10, 1993, Pub. L. 103–43, title XV, § 1503, 107 Stat. 178.)

SUBPART 2—JOHN E. FOGARTY INTERNATIONAL CENTER FOR ADVANCED STUDY IN HEALTH SCIENCES

§ 287b. General purpose

The general purpose of the John E. Fogarty International Center for Advanced Study in the Health Sciences is to—

(1) facilitate the assembly of scientists and others in the biomedical, behavioral, and related fields for discussion, study, and research relating to the development of health science internationally;

(2) provide research programs, conferences, and seminars to further international cooperation and collaboration in the life sciences;

(3) provide postdoctorate fellowships for research training in the United States and abroad and promote exchanges of senior scientists between the United States and other countries;

(4) coordinate the activities of the National Institutes of Health concerned with the health sciences internationally; and

(5) receive foreign visitors to the National Institutes of Health.

(July 1, 1944, ch. 373, title IV, § 482, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 866.)

SUBPART 3—NATIONAL CENTER FOR HUMAN GENOME RESEARCH

§ 287c. Purpose of Center

(a) General purpose

The general purpose of the National Center for Human Genome Research (in this subpart referred to as the ''Center'') is to characterize the structure and function of the human genome, including the mapping and sequencing of individual genes. Such purpose includes—

(1) planning and coordinating the research goal of the genome project;

(2) reviewing and funding research proposals;

(3) developing training programs;

(4) coordinating international genome research;

(5) communicating advances in genome science to the public; and

(6) reviewing and funding proposals to address the ethical and legal issues associated with the genome project (including legal issues regarding patents).

(b) Research training

The Director of the Center may conduct and support research training—

(1) for which fellowship support is not provided under section 288 of this title; and

(2) that is not residency training of physicians or other health professionals.

(c) Amount available for ethical and legal issues

(1) Except as provided in paragraph (2), of the amounts appropriated to carry out subsection (a) of this section for a fiscal year, the Director of the Center shall make available not less than 5 percent for carrying out paragraph (6) of such subsection.

(2) With respect to providing funds under subsection (a)(6) of this section for proposals to address the ethical issues associated with the genome project, paragraph (1) shall not apply for a fiscal year if the Director of the Center certifies to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, that the Director has determined that an insufficient number of such proposals meet the applicable requirements of sections 289 and 289a of this title.

(July 1, 1944, ch. 373, title IV, § 485B, as added June 10, 1993, Pub. L. 103–43, title XV, § 1521(2), 107 Stat. 180.)

PRIOR PROVISIONS

A prior section 287c, act July 1, 1944, ch. 373, title IV, § 483, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 867, and amended, which related to purpose of National Center for Nursing Research, was renumbered section 464V of act July 1, 1944, by Pub. L. 103–43, title XV, § 1511(b)(2), June 10, 1993, 107 Stat. 179, and transferred to section 285q of this title.

A prior section 287c–1, act July 1, 1944, ch. 373, title IV, § 484, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 867, and amended, which related to specific authorities of the Director of the Center, was renumbered section 464W of act July 1, 1944, by Pub. L. 103–43, title XV, § 1511(b)(2), June 10, 1993, 107 Stat. 179, and transferred to section 285q–1 of this title.

A prior section 287c–2, act July 1, 1944, ch. 373, title IV, § 485, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99

Stat. 867, and amended, which related to the advisory council for the Center, was renumbered section 464X of act July 1, 1944, by Pub. L. 103–43, title XV, § 1511(b)(2), June 10, 1993, 107 Stat. 179, and transferred to section 285q–2 of this title.

A prior section 287c–3, act July 1, 1944, ch. 373, title IV, § 486, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 869, and amended, which related to biennial report of activities of the Center, was renumbered section 464Y of act July 1, 1944, by Pub. L. 103–43, title XV, § 1511(b)(2), June 10, 1993, 107 Stat. 179, and transferred to section 285q–3 of this title.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SUBPART 4—OFFICE OF DIETARY SUPPLEMENTS

§ 287c–11. Dietary supplements

(a) Establishment

The Secretary shall establish an Office of Dietary Supplements within the National Institutes of Health.

(b) Purpose

The purposes of the Office are—

(1) to explore more fully the potential role of dietary supplements as a significant part of the efforts of the United States to improve health care; and

(2) to promote scientific study of the benefits of dietary supplements in maintaining health and preventing chronic disease and other health-related conditions.

(c) Duties

The Director of the Office of Dietary Supplements shall—

(1) conduct and coordinate scientific research within the National Institutes of Health relating to dietary supplements and the extent to which the use of dietary supplements can limit or reduce the risk of diseases such as heart disease, cancer, birth defects, osteoporosis, cataracts, or prostatism;

(2) collect and compile the results of scientific research relating to dietary supplements, including scientific data from foreign sources or the Office of Alternative Medicine;

(3) serve as the principal advisor to the Secretary and to the Assistant Secretary for Health and provide advice to the Director of the National Institutes of Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of Food and Drugs on issues relating to dietary supplements including—

(A) dietary intake regulations;

(B) the safety of dietary supplements;

(C) claims characterizing the relationship between—

(i) dietary supplements; and

(ii)(I) prevention of disease or other health-related conditions; and

(II) maintenance of health; and

(D) scientific issues arising in connection with the labeling and composition of dietary supplements;

(4) compile a database of scientific research on dietary supplements and individual nutrients; and

(5) coordinate funding relating to dietary supplements for the National Institutes of Health.

(d) "Dietary supplement" defined

As used in this section, the term ''dietary supplement'' has the meaning given the term in section 321(ff) of title 21.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 1994 and such sums as may be necessary for each subsequent fiscal year.

(July 1, 1944, ch. 373, title IV, § 485C, as added Oct. 25, 1994, Pub. L. 103–417, § 13(a), 108 Stat. 4334.)

PART F—RESEARCH ON WOMEN'S HEALTH

§ 287d. Office of Research on Women's Health

(a) Establishment

There is established within the Office of the Director of NIH an office to be known as the Office of Research on Women's Health (in this part referred to as the ''Office''). The Office shall be headed by a director, who shall be appointed by the Director of NIH.

(b) Purpose

The Director of the Office shall—

(1) identify projects of research on women's health that should be conducted or supported by the national research institutes;

(2) identify multidisciplinary research relating to research on women's health that should be so conducted or supported;

(3) carry out paragraphs (1) and (2) with respect to the aging process in women, with priority given to menopause;

(4) promote coordination and collaboration among entities conducting research identified under any of paragraphs (1) through (3);

(5) encourage the conduct of such research by entities receiving funds from the national research institutes;

(6) recommend an agenda for conducting and supporting such research;

(7) promote the sufficient allocation of the resources of the national research institutes for conducting and supporting such research;

(8) assist in the administration of section 289a–2 of this title with respect to the inclusion of women as subjects in clinical research; and

(9) prepare the report required in section 287d–2 of this title.

(c) Coordinating Committee

(1) In carrying out subsection (b) of this section, the Director of the Office shall establish a committee to be known as the Coordinating Committee on Research on Women's Health (in this subsection referred to as the ''Coordinating Committee'').

(2) The Coordinating Committee shall be composed of the Directors of the national research institutes (or the designees of the Directors).

(3) The Director of the Office shall serve as the chair of the Coordinating Committee.

(4) With respect to research on women's health, the Coordinating Committee shall assist the Director of the Office in—

(A) identifying the need for such research, and making an estimate each fiscal year of the funds needed to adequately support the research;

(B) identifying needs regarding the coordination of research activities, including intramural and extramural multidisciplinary activities;

(C) supporting the development of methodologies to determine the circumstances in which obtaining data specific to women (including data relating to the age of women and the membership of women in ethnic or racial groups) is an appropriate function of clinical trials of treatments and therapies;

(D) supporting the development and expansion of clinical trials of treatments and therapies for which obtaining such data has been determined to be an appropriate function; and

(E) encouraging the national research institutes to conduct and support such research, including such clinical trials.

(d) Advisory Committee

(1) In carrying out subsection (b) of this section, the Director of the Office shall establish an advisory committee to be known as the Advisory Committee on Research on Women's Health (in this subsection referred to as the ''Advisory Committee'').

(2) The Advisory Committee shall be composed of no fewer than 12, and not more than 18 individuals, who are not officers or employees of the Federal Government. The Director of the Office shall make appointments to the Advisory Committee from among physicians, practitioners, scientists, and other health professionals, whose clinical practice, research specialization, or professional expertise includes a significant focus on research on women's health. A majority of the members of the Advisory Committee shall be women.

(3) The Director of the Office shall serve as the chair of the Advisory Committee.

(4) The Advisory Committee shall—

(A) advise the Director of the Office on appropriate research activities to be undertaken by the national research institutes with respect to—

(i) research on women's health;

(ii) research on gender differences in clinical drug trials, including responses to pharmacological drugs;

(iii) research on gender differences in disease etiology, course, and treatment;

(iv) research on obstetrical and gynecological health conditions, diseases, and treatments; and

(v) research on women's health conditions which require a multidisciplinary approach;

(B) report to the Director of the Office on such research;

(C) provide recommendations to such Director regarding activities of the Office (including recommendations on the development of the methodologies described in subsection (c)(4)(C) of this section and recommendations on priorities in carrying out research described in subparagraph (A)); and

(D) assist in monitoring compliance with section 289a–2 of this title regarding the inclusion of women in clinical research.

(5)(A) The Advisory Committee shall prepare a biennial report describing the activities of the Committee, including findings made by the Committee regarding—

(i) compliance with section 289a–2 of this title;

(ii) the extent of expenditures made for research on women's health by the agencies of the National Institutes of Health; and

(iii) the level of funding needed for such research.

(B) The report required in subparagraph (A) shall be submitted to the Director of NIH for inclusion in the report required in section 283 of this title.

(e) Representation of women among researchers

The Secretary, acting through the Assistant Secretary for Personnel and in collaboration with the Director of the Office, shall determine the extent to which women are represented among senior physicians and scientists of the national research institutes and among physicians and scientists conducting research with funds provided by such institutes, and as appropriate, carry out activities to increase the extent of such representation.

(f) Definitions

For purposes of this part:

(1) The term ''women's health conditions'', with respect to women of all age, ethnic, and racial groups, means all diseases, disorders, and conditions (including with respect to mental health)—

(A) unique to, more serious, or more prevalent in women;

(B) for which the factors of medical risk or types of medical intervention are different for women, or for which it is unknown whether such factors or types are different for women; or

(C) with respect to which there has been insufficient clinical research involving women as subjects or insufficient clinical data on women.

(2) The term ''research on women's health'' means research on women's health conditions, including research on preventing such conditions.

(July 1, 1944, ch. 373, title IV, § 486, as added June 10, 1993, Pub. L. 103–43, title I, § 141(a)(3), 107 Stat. 136.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 282 of this title.

§ 287d–1. National data system and clearinghouse on research on women's health

(a) Data system

(1) The Director of NIH, in consultation with the Director of the Office and the Director of the National Library of Medicine, shall establish a data system for the collection, storage, analysis, retrieval, and dissemination of information regarding research on women's health that is conducted or supported by the national research institutes. Information from the data system shall be available through information systems available to health care professionals and providers, researchers, and members of the public.

(2) The data system established under paragraph (1) shall include a registry of clinical trials of experimental treatments that have been developed for research on women's health. Such registry shall include information on subject eligibility criteria, sex, age, ethnicity or race, and the location of the trial site or sites. Principal investigators of such clinical trials shall provide this information to the registry within 30 days after it is available. Once a trial has been completed, the principal investigator shall provide the registry with information pertaining to the results, including potential toxicities or adverse effects associated with the experimental treatment or treatments evaluated.

(b) Clearinghouse

The Director of NIH, in consultation with the Director of the Office and with the National Library of Medicine, shall establish, maintain, and operate a program to provide information on research and prevention activities of the national research institutes that relate to research on women's health.

(July 1, 1944, ch. 373, title IV, § 486A, as added June 10, 1993, Pub. L. 103–43, title I, § 141(a)(3), 107 Stat. 138.)

§ 287d–2. Biennial report

(a) In general

With respect to research on women's health, the Director of the Office shall, not later than February 1, 1994, and biennially thereafter, prepare a report—

(1) describing and evaluating the progress made during the preceding 2 fiscal years in research and treatment conducted or supported by the National Institutes of Health;

(2) describing and analyzing the professional status of women physicians and scientists of such Institutes, including the identification of problems and barriers regarding advancements;

(3) summarizing and analyzing expenditures made by the agencies of such Institutes (and by such Office) during the preceding 2 fiscal years; and

(4) making such recommendations for legislative and administrative initiatives as the Director of the Office determines to be appropriate.

(b) Inclusion in biennial report of Director of NIH

The Director of the Office shall submit each report prepared under subsection (a) of this section to the Director of NIH for inclusion in the report submitted to the President and the Congress under section 283 of this title.

(July 1, 1944, ch. 373, title IV, § 486B, as added June 10, 1993, Pub. L. 103–43, title I, § 141(a)(3), 107 Stat. 139.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 287d of this title.

PART G—AWARDS AND TRAINING

AMENDMENTS

1993—Pub. L. 103–43, title I, § 141(a)(2), June 10, 1993, 107 Stat. 136, redesignated part F ''Awards and Training'' as G. Former part G ''General Provisions'' redesignated H.

§ 288. National Research Service Awards

(a) Biomedical and behavioral research and research training; programs and institutions included; restriction; special consideration

(1) The Secretary shall—

(A) provide National Research Service Awards for—

(i) biomedical and behavioral research at the National Institutes of Health in matters relating to the cause, diagnosis, prevention, and treatment of the diseases or other health problems to which the activities of the National Institutes of Health and Administration[1] are directed;

(ii) training at the National Institutes of Health and at the Administration[1] of individuals to undertake such research;

(iii) biomedical and behavioral research and health services research (including research in primary medical care) at public and nonprofit private entities; and

(iv) pre-doctoral and post-doctoral training at public and private institutions of individuals to undertake biomedical and behavioral research;

(B) make grants to public and nonprofit private institutions to enable such institutions to make National Research Service Awards for research (and training to undertake biomedical and behavioral research) in the matters described in subparagraph (A)(i) to individuals selected by such institutions; and

(C) provide contracts for scholarships and loan repayments in accordance with sections 288–4 and 288–5 of this title, subject to providing not more than an aggregate 50 such contracts during the fiscal years 1994 through 1996.

A reference in this subsection to the National Institutes of Health shall be considered to include the institutes, agencies, divisions, and bureaus included in the National Institutes of Health or under the Administration,[1] as the case may be.

(2) National Research Service Awards may not be used to support residency training of physicians and other health professionals.

[1] So in original. Reference to Administration probably should not appear.

(3) In awarding National Research Service Awards under this section, the Secretary shall take account of the Nation's overall need for biomedical research personnel by giving special consideration to physicians who agree to undertake a minimum of two years of biomedical research.

(4) The Secretary shall carry out paragraph (1) in a manner that will result in the recruitment of women, and individuals from disadvantaged backgrounds (including racial and ethnic minorities), into fields of biomedical or behavioral research and in the provision of research training to women and such individuals.

(b) Prerequisites for Award; review and approval by appropriate advisory councils; Award period; uses for Award; payments to non-Federal public or nonprofit private institutions

(1) No National Research Service Award may be made by the Secretary to any individual unless—

(A) the individual has submitted to the Secretary an application therefor and the Secretary has approved the application;

(B) the individual provides, in such form and manner as the Secretary shall by regulation prescribe, assurances satisfactory to the Secretary that the individual will meet the service requirement of subsection (c) of this section; and

(C) in the case of a National Research Service Award for a purpose described in subsection (a)(1)(A)(iii) of this section, the individual has been sponsored (in such manner as the Secretary may by regulation require) by the institution at which the research or training under the award will be conducted.

An application for an award shall be in such form, submitted in such manner, and contain such information, as the Secretary may by regulation prescribe.

(2) The making of grants under subsection (a)(1)(B) of this section for National Research Service Awards shall be subject to review and approval by the appropriate advisory councils within the Department of Health and Human Services (A) whose activities relate to the research or training under the awards, or (B) for the entity at which such research or training will be conducted.

(3) No grant may be made under subsection (a)(1)(B) of this section unless an application therefor has been submitted to and approved by the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary may by regulation prescribe. Subject to the provisions of this section (other than paragraph (1)), National Research Service Awards made under a grant under subsection (a)(1)(B) of this section shall be made in accordance with such regulations as the Secretary shall prescribe.

(4) The period of any National Research Service Award made to any individual under subsection (a) of this section may not exceed—

(A) five years in the aggregate for pre-doctoral training; and

(B) three years in the aggregate for post-doctoral training;

unless the Secretary for good cause shown waives the application of such limit to such individual.

(5) National Research Service Awards shall provide for such stipends, tuition, fees, and allowances (including travel and subsistence expenses and dependency allowances), adjusted periodically to reflect increases in the cost of living, for the recipients of the awards as the Secretary may deem necessary. A National Research Service Award made to an individual for research or research training at a non-Federal public or nonprofit private institution shall also provide for payments to be made to the institution for the cost of support services (including the cost of faculty salaries, supplies, equipment, general research support, and related items) provided such individual by such institution. The amount of any such payments to any institution shall be determined by the Secretary and shall bear a direct relationship to the reasonable costs of the institution for establishing and maintaining the quality of its biomedical and behavioral research and training programs.

(c) Health research or teaching; service period; recovery upon noncompliance with service requirement, formula; cancellation or waiver of obligation

(1) Each individual who is awarded a National Research Service Award for postdoctoral research training shall, in accordance with paragraph (3), engage in research training, research, or teaching that is health-related (or any combination thereof) for the period specified in paragraph (2). Such period shall be served in accordance with the usual patterns of scientific employment.

(2)(A) The period referred to in paragraph (1) is 12 months, or one month for each month for which the individual involved receives a National Research Service Award for postdoctoral research training, whichever is less.

(B) With respect to postdoctoral research training, in any case in which an individual receives a National Research Service Award for more than 12 months, the 13th month and each subsequent month of performing activities under the Award shall be considered to be activities engaged in toward satisfaction of the requirement established in paragraph (1) regarding a period of service.

(3) The requirement of paragraph (1) shall be complied with by any individual to whom it applies within such reasonable period of time, after the completion of such individual's award, as the Secretary shall by regulation prescribe. The Secretary shall by regulation prescribe the type of research and teaching in which an individual may engage to comply with such requirement and such other requirements respecting research and teaching as the Secretary considers appropriate.

(4)(A) If any individual to whom the requirement of paragraph (1) is applicable fails, within the period prescribed by paragraph (3), to comply with such requirements, the United States shall be entitled to recover from such individual an amount determined in accordance with the formula—

$$t - s$$

$$A=\phi\left(\frac{s}{t}\right)$$

in which ''A'' is the amount the United States is entitled to recover; ''ϕ'' is the sum of the total amount paid under one or more National Research Service Awards to such individual; ''t'' is the total number of months in such individual's service obligation; and ''s'' is the number of months of such obligation served by such individual in accordance with paragraphs (1) and (2) of this subsection.

(B) Any amount which the United States is entitled to recover under subparagraph (A) shall, within the three-year period beginning on the date the United States becomes entitled to recover such amount, be paid to the United States. Until any amount due the United States under subparagraph (A) on account of any National Research Service Award is paid, there shall accrue to the United States interest on such amount at a rate fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date the United States becomes entitled to such amount.

(5)(A) Any obligation of an individual under paragraph (1) shall be canceled upon the death of such individual.

(B) The Secretary shall by regulation provide for the waiver or suspension of any such obligation applicable to any individual whenever compliance by such individual is impossible or would involve substantial hardship to such individual or would be against equity and good conscience.

(d) Authorization of appropriations; apportionment

For the purpose of carrying out this section, there are authorized to be appropriated $400,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996. Of the amounts appropriated under this subsection—

(1) not less than 15 percent shall be made available for payments under National Research Service Awards provided by the Secretary under subsection (a)(1)(A) of this section;

(2) not less than 50 percent shall be made available for grants under subsection (a)(1)(B) of this section for National Research Service Awards;

(3) 1 percent shall be made available to the Secretary, acting through the Administrator of the Health Resources and Services Administration, for payments under National Research Service Awards which (A) are made to individuals affiliated with entities which have received grants or contracts under section 293k, 293*l*, or 293m of this title, and (B) are for research in primary medical care; and 1 percent shall be made available for payments under National Research Service Awards made for health services research by the Agency for Health Care Policy and Research under section 242b(a) of this title; and

(4) not more than 4 percent may be obligated for National Research Service Awards for periods of three months or less.

(July 1, 1944, ch. 373, title IV, § 487, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 869; amended Nov. 4, 1988, Pub. L. 100–607, title I, § 151, title VI, § 635, 102 Stat. 3058, 3148; Aug. 16, 1989, Pub. L. 101–93, § 5(d), 103 Stat. 612; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(e)(7), 103 Stat. 2208; July 10, 1992, Pub. L. 102–321, title I, § 163(b)(4), 106 Stat. 376; June 10, 1993, Pub. L. 103–43, title XVI, §§ 1601, 1602, 1632, 1641, title XX, § 2008(b)(14), 107 Stat. 181, 186, 211.)

AMENDMENTS

1993—Subsec. (a)(1)(C). Pub. L. 103–43, § 1632, added subpar. (C).

Subsec. (a)(4). Pub. L. 103–43, § 1601, added par. (4).

Subsec. (c)(1), (2). Pub. L. 103–43, § 1602, added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) Each individual who is awarded a National Research Service Award (other than an individual who is a pre-baccalaureate student who is awarded a National Research Service Award for research training) shall, in accordance with paragraph (3), engage in health research or teaching or any combination thereof which is in accordance with the usual patterns of academic employment, for a period computed in accordance with paragraph (2).

''(2) For each month for which an individual receives a National Research Service Award which is made for a period in excess of twelve months, such individual shall engage in one month of health research or teaching or any combination thereof which is in accordance with the usual patterns of academic employment.''

Subsec. (d). Pub. L. 103–43, § 1641(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''For the purpose of making payments under National Research Service Awards and under grants for such Awards, there are authorized to be appropriated $300,000,000 for fiscal year 1989 and such sums as may be necessary for fiscal year 1990.''

Subsec. (d)(3). Pub. L. 103–43, §§ 1641(2), 2008(b)(14), substituted ''1 percent'' for ''one-half of one percent'' in two places, ''293k, 293*l*, or 293m'' for ''295g, 295g–4, or 295g–6'', and ''242b(a)'' for ''242b(a)(3)''.

1992—Subsec. (a)(1). Pub. L. 102–321 struck out ''and the Alcohol, Drug Abuse, and Mental Health Administration'' before ''in matters relating to'' in subpar. (A)(i) and struck out ''or the Alcohol, Drug Abuse, and Mental Health Administration'' before ''shall be considered'' in last sentence.

1989—Subsec. (d)(3). Pub. L. 101–93 directed that par. (3), as similarly amended by sections 151(2) and 635 of Pub. L. 100–607, be amended to read as if the amendment made by such section 635 had not been enacted. See 1988 Amendment note below.

Subsec. (d)(3)(B). Pub. L. 101–239 substituted ''Agency for Health Care Policy and Research'' for ''National Center for Health Services Research and Health Care Technology Assessment''.

1988—Subsec. (d). Pub. L. 100–607, § 151(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''There are authorized to be appropriated to make payments under National Research Service Awards and under grants for such awards $244,000,000 for fiscal year 1986, $260,000,000 for fiscal year 1987, and $275,000,000 for fiscal year 1988.''

Subsec. (d)(3). Pub. L. 100–607, §§ 151(2), 635, made identical amendments, inserting ''to the Secretary, acting through the Administrator of the Health Resources and Services Administration,'' after first reference to ''available''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242, 254m, 283g, 284, 285a–3, 285b–4, 285c–2, 285d–2, 285e–2, 287c, 288–4, 288–5, 300cc–16 of this title.

§ 288–1. Loan repayment program for research with respect to acquired immune deficiency syndrome

(a) In general

The Secretary shall carry out a program of entering into agreements with appropriately qualified health professionals under which such health professionals agree to conduct, as employees of the National Institutes of Health, research with respect to acquired immune deficiency syndrome in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $20,000 of the principal and interest of the educational loans of such health professionals.

(b) Applicability of certain provisions

With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter, the provisions of such subpart shall, except as inconsistent with subsection (a) of this section, apply to the program established in such subsection (a) of this section in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program established in such subpart.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1994 through 1996.

(July 1, 1944, ch. 373, title IV, § 487A, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 634(a), 102 Stat. 3148; amended June 10, 1993, Pub. L. 103–43, title XVI, § 1611(a), 107 Stat. 181.)

AMENDMENTS

1993—Pub. L. 103–43 amended section generally, in subsec. (a) redesignating former par. (1) as entire subsec., striking out provisions setting a deadline for implementation of the program and former par. (2) containing a limitation that the health professional have a substantial amount of educational loans relative to income and not have been employed at the National Institutes of Health during the 1-year period preceding Nov. 4, 1988, reenacting subsec. (b) without change, and in subsec. (c) redesignating former par. (1) as entire subsec., substituting authorization of appropriations for fiscal years 1994 through 1996 for authorization of appropriations for fiscal years 1989 through 1991, and striking out former par. (2) relating to continued availability of appropriated amounts.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 1611(b) of Pub. L. 103–43 provided that: ''The amendment made by subsection (a) [amending this section] does not apply to any agreement entered into under section 487A of the Public Health Service Act [this section] before the date of the enactment of this Act [June 10, 1993]. Each such agreement continues to be subject to the terms of the agreement in effect on the day before such date.''

§ 288–2. Loan repayment program for research with respect to contraception and infertility

(a) Establishment

The Secretary, in consultation with the Director of the National Institute of Child Health and Human Development, shall establish a program of entering into contracts with qualified health professionals (including graduate students) under which such health professionals agree to conduct research with respect to contraception, or with respect to infertility, in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $20,000 of the principal and interest of the educational loans of such health professionals.

(b) Contracts, obligated service, breach of contract

The provisions of sections 254*l*–1, 254m, and 254*o* of this title shall, except as inconsistent with subsection (a) of this section, apply to the program established in subsection (a) of this section to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter.

(c) Availability of funds

Amounts available for carrying out this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were made available.

(July 1, 1944, ch. 373, title IV, § 487B, as added June 10, 1993, Pub. L. 103–43, title X, § 1002, 107 Stat. 166.)

§ 288–3. Loan repayment program for research generally

(a) In general

(1) Authority for program

Subject to paragraph (2), the Secretary shall carry out a program of entering into contracts with appropriately qualified health professionals under which such health professionals agree to conduct research, as employees of the National Institutes of Health, in consideration of the Federal Government agreeing to repay, for each year of such service, not more than $20,000 of the principal and interest of the educational loans of such health professionals.

(2) Limitation

The Secretary may not enter into an agreement with a health professional pursuant to paragraph (1) unless such professional—

(A) has a substantial amount of educational loans relative to income; and

(B) agrees to serve as an employee of the National Institutes of Health for purposes of paragraph (1) for a period of not less than 3 years.

(b) Applicability of certain provisions

With respect to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter, the provisions of such subpart shall, except as inconsistent with subsection (a) of this section, apply to the program established in such subsection (a) of this section in the same manner and to the same extent as such provisions apply to the National Health Service Corps Loan Repayment Program established in such subpart.

(July 1, 1944, ch. 373, title IV, § 487C, as added June 10, 1993, Pub. L. 103–43, title XVI, § 1621, 107 Stat. 182.)

§ 288–4. Undergraduate scholarship program regarding professions needed by National Research Institutes

(a) Establishment of program

(1) In general

Subject to section 288(a)(1)(C) of this title, the Secretary, acting through the Director of NIH, may carry out a program of entering into contracts with individuals described in paragraph (2) under which—

(A) the Director of NIH agrees to provide to the individuals scholarships for pursuing, as undergraduates at accredited institutions of higher education, academic programs appropriate for careers in professions needed by the National Institutes of Health; and

(B) the individuals agree to serve as employees of the National Institutes of Health, for the period described in subsection (c) of this section, in positions that are needed by the National Institutes of Health and for which the individuals are qualified.

(2) Individuals from disadvantaged backgrounds

The individuals referred to in paragraph (1) are individuals who—

(A) are enrolled or accepted for enrollment as full-time undergraduates at accredited institutions of higher education; and

(B) are from disadvantaged backgrounds.

(b) Facilitation of interest of students in careers at National Institutes of Health

In providing employment to individuals pursuant to contracts under subsection (a)(1) of this section, the Director of NIH shall carry out activities to facilitate the interest of the individuals in pursuing careers as employees of the National Institutes of Health.

(c) Period of obligated service

(1) Duration of service

For purposes of subparagraph (B) of subsection (a)(1) of this section, the period of service for which an individual is obligated to serve as an employee of the National Institutes of Health is, subject to paragraph (2)(A), 12 months for each academic year for which the scholarship under such subsection is provided.

(2) Schedule for service

(A) Subject to subparagraph (B), the Director of NIH may not provide a scholarship under subsection (a) of this section unless the individual applying for the scholarship agrees that—

(i) the individual will serve as an employee of the National Institutes of Health full-time for not less than 10 consecutive weeks of each year during which the individual is attending the educational institution involved and receiving such a scholarship;

(ii) the period of service as such an employee that the individual is obligated to provide under clause (i) is in addition to the period of service as such an employee that the individual is obligated to provide under subsection (a)(1)(B) of this section; and

(iii) not later than 60 days after obtaining the educational degree involved, the individual will begin serving full-time as such an employee in satisfaction of the period of service that the individual is obligated to provide under subsection (a)(1)(B) of this section.

(B) The Director of NIH may defer the obligation of an individual to provide a period of service under subsection (a)(1)(B) of this section, if the Director determines that such a deferral is appropriate.

(3) Applicability of certain provisions relating to appointment and compensation

For any period in which an individual provides service as an employee of the National Institutes of Health in satisfaction of the obligation of the individual under subsection (a)(1)(B) of this section or paragraph (2)(A)(i), the individual may be appointed as such an employee without regard to the provisions of title 5 relating to appointment and compensation.

(d) Provisions regarding scholarship

(1) Approval of academic program

The Director of NIH may not provide a scholarship under subsection (a) of this section for an academic year unless—

(A) the individual applying for the scholarship has submitted to the Director a proposed academic program for the year and the Director has approved the program; and

(B) the individual agrees that the program will not be altered without the approval of the Director.

(2) Academic standing

The Director of NIH may not provide a scholarship under subsection (a) of this section for an academic year unless the individual applying for the scholarship agrees to maintain an acceptable level of academic standing, as determined by the educational institution involved in accordance with regulations issued by the Secretary.

(3) Limitation on amount

The Director of NIH may not provide a scholarship under subsection (a) of this section for an academic year in an amount exceeding $20,000.

(4) Authorized uses

A scholarship provided under subsection (a) of this section may be expended only for tuition expenses, other reasonable educational expenses, and reasonable living expenses incurred in attending the school involved.

(5) Contract regarding direct payments to institution

In the case of an institution of higher education with respect to which a scholarship under subsection (a) of this section is provided, the Director of NIH may enter into a contract with the institution under which the amounts provided in the scholarship for tuition and other educational expenses are paid directly to the institution.

(e) Penalties for breach of scholarship contract

The provisions of section 254*o* of this title shall apply to the program established in sub-

section (a) of this section to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in section 254*l*–1 of this title.

(f) Requirement of application

The Director of NIH may not provide a scholarship under subsection (a) of this section unless an application for the scholarship is submitted to the Director and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Director determines to be necessary to carry out this section.

(g) Availability of authorization of appropriations

Amounts appropriated for a fiscal year for scholarships under this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were appropriated.

(July 1, 1944, ch. 373, title IV, § 487D, as added June 10, 1993, Pub. L. 103–43, title XVI, § 1631, 107 Stat. 183.)

REFERENCES IN TEXT

The provisions of title 5 relating to appointment and compensation, referred to in subsec. (c)(3), are classified generally to section 3301 et seq. and section 5301 et seq., respectively, of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 288 of this title.

§ 288–5. Loan repayment program regarding clinical researchers from disadvantaged backgrounds

(a) Implementation of program

(1) In general

Subject to section 288(a)(1)(C) of this title, the Secretary, acting through the Director of NIH may, subject to paragraph (2), carry out a program of entering into contracts with appropriately qualified health professionals who are from disadvantaged backgrounds under which such health professionals agree to conduct clinical research as employees of the National Institutes of Health in consideration of the Federal Government agreeing to pay, for each year of such service, not more than $20,000 of the principal and interest of the educational loans of the health professionals.

(2) Limitation

The Director of NIH may not enter into a contract with a health professional pursuant to paragraph (1) unless such professional has a substantial amount of education loans relative to income.

(3) Applicability of certain provisions regarding obligated service

Except to the extent inconsistent with this section, the provisions of sections 254m and 254*o* of this title shall apply to the program established in paragraph (1) to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in section 254*l*–1 of this title.

(b) Availability of authorization of appropriations

Amounts appropriated for a fiscal year for contracts under subsection (a) of this section shall remain available until the expiration of the second fiscal year beginning after the fiscal year for which the amounts were appropriated.

(July 1, 1944, ch. 373, title IV, § 487E, as added June 10, 1993, Pub. L. 103–43, title XVI, § 1631, 107 Stat. 185.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 288 of this title.

§ 288a. Visiting Scientist Awards

(a) The Secretary may make awards (hereafter in this section referred to as ''Visiting Scientist Awards'') to outstanding scientists who agree to serve as visiting scientists at institutions of postsecondary education which have significant enrollments of disadvantaged students. Visiting Scientist Awards shall be made by the Secretary to enable the faculty and students of such institutions to draw upon the special talents of scientists from other institutions for the purpose of receiving guidance, advice, and instruction with regard to research, teaching, and curriculum development in the biomedical and behavioral sciences and such other aspects of these sciences as the Secretary shall deem appropriate.

(b) The amount of each Visiting Scientist Award shall include such sum as shall be commensurate with the salary or remuneration which the individual receiving the award would have been entitled to receive from the institution with which the individual has, or had, a permanent or immediately prior affiliation. Eligibility for and terms of Visiting Scientist Awards shall be determined in accordance with regulations the Secretary shall prescribe.

(July 1, 1944, ch. 373, title IV, § 488, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 872.)

§ 288b. Studies respecting biomedical and behavioral research personnel

(a) Scope of undertaking

The Secretary shall, in accordance with subsection (b) of this section, arrange for the conduct of a continuing study to—

(1) establish (A) the Nation's overall need for biomedical and behavioral research personnel, (B) the subject areas in which such personnel are needed and the number of such personnel needed in each such area, and (C) the kinds and extent of training which should be provided such personnel;

(2) assess (A) current training programs available for the training of biomedical and behavioral research personnel which are conducted under this chapter, at or through national research institutes under the National Institutes of Health, and (B) other current training programs available for the training of such personnel;

(3) identify the kinds of research positions available to and held by individuals completing such programs;

(4) determine, to the extent feasible, whether the programs referred to in clause (B) of

paragraph (2) would be adequate to meet the needs established under paragraph (1) if the programs referred to in clause (A) of paragraph (2) were terminated; and

(5) determine what modifications in the programs referred to in paragraph (2) are required to meet the needs established under paragraph (1).

(b) Arrangement with National Academy of Sciences or other nonprofit private groups or associations

(1) The Secretary shall request the National Academy of Sciences to conduct the study required by subsection (a) of this section under an arrangement under which the actual expenses incurred by such Academy in conducting such study will be paid by the Secretary. If the National Academy of Sciences is willing to do so, the Secretary shall enter into such an arrangement with such Academy for the conduct of such study.

(2) If the National Academy of Sciences is unwilling to conduct such study under such an arrangement, then the Secretary shall enter into a similar arrangement with other appropriate nonprofit private groups or associations under which such groups or associations will conduct such study and prepare and submit the reports thereon as provided in subsection (c) of this section.

(3) The National Academy of Sciences or other group or association conducting the study required by subsection (a) of this section shall conduct such study in consultation with the Director of NIH.

(c) Report to Congressional committees

A report on the results of the study required under subsection (a) of this section shall be submitted by the Secretary to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate at least once every four years.

(July 1, 1944, ch. 373, title IV, § 489, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 872; amended July 10, 1992, Pub. L. 102–321, title I, § 163(b)(5), 106 Stat. 376.)

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–321 struck out ''and institutes under the Alcohol, Drug Abuse, and Mental Health Administration'' after ''National Institutes of Health''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

PART H—GENERAL PROVISIONS

AMENDMENTS

1993—Pub. L. 103–43, title I, § 141(a)(2), June 10, 1993, 107 Stat. 136, redesignated part G ''General Provisions'' as H. Former part H ''National Foundation for Biomedical Research'' redesignated I.

§ 289. Institutional review boards; ethics guidance program

(a) The Secretary shall by regulation require that each entity which applies for a grant, contract, or cooperative agreement under this chapter for any project or program which involves the conduct of biomedical or behavioral research involving human subjects submit in or with its application for such grant, contract, or cooperative agreement assurances satisfactory to the Secretary that it has established (in accordance with regulations which the Secretary shall prescribe) a board (to be known as an ''Institutional Review Board'') to review biomedical and behavioral research involving human subjects conducted at or supported by such entity in order to protect the rights of the human subjects of such research.

(b)(1) The Secretary shall establish a program within the Department of Health and Human Services under which requests for clarification and guidance with respect to ethical issues raised in connection with biomedical or behavioral research involving human subjects are responded to promptly and appropriately.

(2) The Secretary shall establish a process for the prompt and appropriate response to information provided to the Director of NIH respecting incidences of violations of the rights of human subjects of research for which funds have been made available under this chapter. The process shall include procedures for the receiving of reports of such information from recipients of funds under this chapter and taking appropriate action with respect to such violations.

(July 1, 1944, ch. 373, title IV, § 491, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 873.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280e, 283f, 287c, 289a–1 of this title.

§ 289a. Peer review requirements

(a) Applications for biomedical and behavioral research grants, cooperative agreements, and contracts; regulations

(1) The Secretary, acting through the Director of NIH, shall by regulation require appropriate technical and scientific peer review of—

(A) applications made for grants and cooperative agreements under this chapter for biomedical and behavioral research; and

(B) applications made for biomedical and behavioral research and development contracts to be administered through the National Institutes of Health.

(2) Regulations promulgated under paragraph (1) shall require that the review of applications made for grants, contracts, and cooperative agreements required by the regulations be conducted—

(A) to the extent practical, in a manner consistent with the system for technical and scientific peer review applicable on November 20, 1985, to grants under this chapter for biomedical and behavioral research, and

(B) to the extent practical, by technical and scientific peer review groups performing such review on or before November 20, 1985,

and shall authorize such review to be conducted by groups appointed under sections 282(b)(6) and 284(c)(3) of this title.

(b) Periodic review of research at National Institutes of Health

The Director of NIH shall establish procedures for periodic technical and scientific peer review of research at the National Institutes of Health. Such procedures shall require that—

(1) the reviewing entity be provided a written description of the research to be reviewed, and

(2) the reviewing entity provide the advisory council of the national research institute involved with such description and the results of the review by the entity,

and shall authorize such review to be conducted by groups appointed under sections 282(b)(6) and 284(c)(3) of this title.

(c) Compliance with requirements for inclusion of women and minorities in clinical research

(1) In technical and scientific peer review under this section of proposals for clinical research, the consideration of any such proposal (including the initial consideration) shall, except as provided in paragraph (2), include an evaluation of the technical and scientific merit of the proposal regarding compliance with section 289a–2 of this title.

(2) Paragraph (1) shall not apply to any proposal for clinical research that, pursuant to subsection (b) of section 289a–2 of this title, is not subject to the requirement of subsection (a) of such section regarding the inclusion of women and members of minority groups as subjects in clinical research.

(July 1, 1944, ch. 373, title IV, § 492, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 874; amended June 10, 1993, Pub. L. 103–43, title I, § 132, 107 Stat. 135.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280e, 282, 283f, 284, 284a, 287a–2, 287c, 289a–1, 289c of this title.

§ 289a–1. Certain provisions regarding review and approval of proposals for research

(a) Review as precondition to research

(1) Protection of human research subjects

(A) In the case of any application submitted to the Secretary for financial assistance to conduct research, the Secretary may not approve or fund any application that is subject to review under section 289(a) of this title by an Institutional Review Board unless the application has undergone review in accordance with such section and has been recommended for approval by a majority of the members of the Board conducting such review.

(B) In the case of research that is subject to review under procedures established by the Secretary for the protection of human subjects in clinical research conducted by the National Institutes of Health, the Secretary may not authorize the conduct of the research unless the research has, pursuant to such procedures, been recommended for approval.

(2) Peer review

In the case of any proposal for the National Institutes of Health to conduct or support research, the Secretary may not approve or fund any proposal that is subject to technical and scientific peer review under section 289a of this title unless the proposal has undergone such review in accordance with such section and has been recommended for approval by a majority of the members of the entity conducting such review.

(b) Ethical review of research

(1) Procedures regarding withholding of funds

If research has been recommended for approval for purposes of subsection (a) of this section, the Secretary may not withhold funds for the research because of ethical considerations unless—

(A) the Secretary convenes an advisory board in accordance with paragraph (5) to study such considerations; and

(B)(i) the majority of the advisory board recommends that, because of such considerations, the Secretary withhold funds for the research; or

(ii) the majority of such board recommends that the Secretary not withhold funds for the research because of such considerations, but the Secretary finds, on the basis of the report submitted under paragraph (5)(B)(ii), that the recommendation is arbitrary and capricious.

(2) Rules of construction

Paragraph (1) may not be construed as prohibiting the Secretary from withholding funds for research on the basis of—

(A) the inadequacy of the qualifications of the entities that would be involved with the conduct of the research (including the entity that would directly receive the funds from the Secretary), subject to the condition that, with respect to the process of review through which the research was recommended for approval for purposes of subsection (a) of this section, all findings regarding such qualifications made in such process are conclusive; or

(B) the priorities established by the Secretary for the allocation of funds among projects of research that have been so recommended.

(3) Applicability

The limitation established in paragraph (1) regarding the authority to withhold funds because of ethical considerations shall apply without regard to whether the withholding of funds on such basis is characterized as a disapproval, a moratorium, a prohibition, or other characterization.

(4) Preliminary matters regarding use of procedures

(A) If the Secretary makes a determination that an advisory board should be convened for

purposes of paragraph (1), the Secretary shall, through a statement published in the Federal Register, announce the intention of the Secretary to convene such a board.

(B) A statement issued under subparagraph (A) shall include a request that interested individuals submit to the Secretary recommendations specifying the particular individuals who should be appointed to the advisory board involved. The Secretary shall consider such recommendations in making appointments to the board.

(C) The Secretary may not make appointments to an advisory board under paragraph (1) until the expiration of the 30-day period beginning on the date on which the statement required in subparagraph (A) is made with respect to the board.

(5) Ethics advisory boards

(A) Any advisory board convened for purposes of paragraph (1) shall be known as an ethics advisory board (in this paragraph referred to as an ''ethics board'').

(B)(i) An ethics board shall advise, consult with, and make recommendations to the Secretary regarding the ethics of the project of biomedical or behavioral research with respect to which the board has been convened.

(ii) Not later than 180 days after the date on which the statement required in paragraph (4)(A) is made with respect to an ethics board, the board shall submit to the Secretary, and to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report describing the findings of the board regarding the project of research involved and making a recommendation under clause (i) of whether the Secretary should or should not withhold funds for the project. The report shall include the information considered in making the findings.

(C) An ethics board shall be composed of no fewer than 14, and no more than 20, individuals who are not officers or employees of the United States. The Secretary shall make appointments to the board from among individuals with special qualifications and competence to provide advice and recommendations regarding ethical matters in biomedical and behavioral research. Of the members of the board—

(i) no fewer than 1 shall be an attorney;

(ii) no fewer than 1 shall be an ethicist;

(iii) no fewer than 1 shall be a practicing physician;

(iv) no fewer than 1 shall be a theologian; and

(v) no fewer than one-third, and no more than one-half, shall be scientists with substantial accomplishments in biomedical or behavioral research.

(D) The term of service as a member of an ethics board shall be for the life of the board. If such a member does not serve the full term of such service, the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(E) A member of an ethics board shall be subject to removal from the board by the Secretary for neglect of duty or malfeasance or for other good cause shown.

(F) The Secretary shall designate an individual from among the members of an ethics board to serve as the chair of the board.

(G) In carrying out subparagraph (B)(i) with respect to a project of research, an ethics board shall conduct inquiries and hold public hearings.

(H) In carrying out subparagraph (B)(i) with respect to a project of research, an ethics board shall have access to all relevant information possessed by the Department of Health and Human Services, or available to the Secretary from other agencies.

(I) Members of an ethics board shall receive compensation for each day engaged in carrying out the duties of the board, including time engaged in traveling for purposes of such duties. Such compensation may not be provided in an amount in excess of the maximum rate of basic pay payable for GS–18 of the General Schedule.

(J) The Secretary, acting through the Director of the National Institutes of Health, shall provide to each ethics board reasonable staff and assistance to carry out the duties of the board.

(K) An ethics board shall terminate 30 days after the date on which the report required in subparagraph (B)(ii) is submitted to the Secretary and the congressional committees specified in such subparagraph.

(6) "Ethical considerations" defined

For purposes of this subsection, the term ''ethical considerations'' means considerations as to whether the nature of the research involved is such that it is unethical to conduct or support the research.

(July 1, 1944, ch. 373, title IV, § 492A, as added June 10, 1993, Pub. L. 103–43, title I, § 101, 107 Stat. 126.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 283f of this title.

§ 289a–2. Inclusion of women and minorities in clinical research

(a) Requirement of inclusion

(1) In general

In conducting or supporting clinical research for purposes of this subchapter, the Director of NIH shall, subject to subsection (b) of this section, ensure that—

(A) women are included as subjects in each project of such research; and

(B) members of minority groups are included as subjects in such research.

(2) Outreach regarding participation as subjects

The Director of NIH, in consultation with the Director of the Office of Research on Women's Health and the Director of the Office of Research on Minority Health, shall conduct or support outreach programs for the recruitment of women and members of minority groups as subjects in projects of clinical research.

(b) Inapplicability of requirement

The requirement established in subsection (a) of this section regarding women and members of minority groups shall not apply to a project of clinical research if the inclusion, as subjects in the project, of women and members of minority groups, respectively—

(1) is inappropriate with respect to the health of the subjects;

(2) is inappropriate with respect to the purpose of the research; or

(3) is inappropriate under such other circumstances as the Director of NIH may designate.

(c) Design of clinical trials

In the case of any clinical trial in which women or members of minority groups will under subsection (a) of this section be included as subjects, the Director of NIH shall ensure that the trial is designed and carried out in a manner sufficient to provide for a valid analysis of whether the variables being studied in the trial affect women or members of minority groups, as the case may be, differently than other subjects in the trial.

(d) Guidelines

(1) In general

Subject to paragraph (2), the Director of NIH, in consultation with the Director of the Office of Research on Women's Health and the Director of the Office of Research on Minority Health, shall establish guidelines regarding the requirements of this section. The guidelines shall include guidelines regarding—

(A) the circumstances under which the inclusion of women and minorities as subjects in projects of clinical research is inappropriate for purposes of subsection (b) of this section;

(B) the manner in which clinical trials are required to be designed and carried out for purposes of subsection (c) of this section; and

(C) the operation of outreach programs under subsection (a) of this section.

(2) Certain provisions

With respect to the circumstances under which the inclusion of women or members of minority groups (as the case may be) as subjects in a project of clinical research is inappropriate for purposes of subsection (b) of this section, the following applies to guidelines under paragraph (1):

(A)(i) In the case of a clinical trial, the guidelines shall provide that the costs of such inclusion in the trial is not a permissible consideration in determining whether such inclusion is inappropriate.

(ii) In the case of other projects of clinical research, the guidelines shall provide that the costs of such inclusion in the project is not a permissible consideration in determining whether such inclusion is inappropriate unless the data regarding women or members of minority groups, respectively, that would be obtained in such project (in the event that such inclusion were required) have been or are being obtained through other means that provide data of comparable quality.

(B) In the case of a clinical trial, the guidelines may provide that such inclusion in the trial is not required if there is substantial scientific data demonstrating that there is no significant difference between—

(i) the effects that the variables to be studied in the trial have on women or members of minority groups, respectively; and

(ii) the effects that the variables have on the individuals who would serve as subjects in the trial in the event that such inclusion were not required.

(e) Date certain for guidelines; applicability

(1) Date certain

The guidelines required in subsection (d) of this section shall be established and published in the Federal Register not later than 180 days after June 10, 1993.

(2) Applicability

For fiscal year 1995 and subsequent fiscal years, the Director of NIH may not approve any proposal of clinical research to be conducted or supported by any agency of the National Institutes of Health unless the proposal specifies the manner in which the research will comply with this section.

(f) Reports by advisory councils

The advisory council of each national research institute shall prepare biennial reports describing the manner in which the institute has complied with this section. Each such report shall be submitted to the Director of the institute involved for inclusion in the biennial report under section 283 of this title.

(g) Definitions

For purposes of this section:

(1) The term ''project of clinical research'' includes a clinical trial.

(2) The term ''minority group'' includes subpopulations of minority groups. The Director of NIH shall, through the guidelines established under subsection (d) of this section, define the terms ''minority group'' and ''subpopulation'' for purposes of the preceding sentence.

(July 1, 1944, ch. 373, title IV, § 492B, as added June 10, 1993, Pub. L. 103–43, title I, § 131, 107 Stat. 133.)

INAPPLICABILITY TO CURRENT PROJECTS

Section 133 of Pub. L. 103–43 provided that: ''Section 492B of the Public Health Service Act, as added by sec-

tion 131 of this Act [this section], shall not apply with respect to projects of clinical research for which initial funding was provided prior to the date of the enactment of this Act [June 10, 1993]. With respect to the inclusion of women and minorities as subjects in clinical research conducted or supported by the National Institutes of Health, any policies of the Secretary of Health and Human Services regarding such inclusion that are in effect on the day before the date of the enactment of this Act shall continue to apply to the projects referred to in the preceding sentence.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 283b, 287d, 289a of this title; title 38 section 318.

§ 289b. Office of Research Integrity

(a) In general

(1) Establishment of Office

Not later than 90 days after June 10, 1993, the Secretary shall establish an office to be known as the Office of Research Integrity (referred to in this section as the ''Office''), which shall be established as an independent entity in the Department of Health and Human Services.

(2) Appointment of Director

The Office shall be headed by a Director, who shall be appointed by the Secretary, be experienced and specially trained in the conduct of research, and have experience in the conduct of investigations of research misconduct. The Secretary shall carry out this section acting through the Director of the Office. The Director shall report to the Secretary.

(3) Definitions

(A) The Secretary shall by regulation establish a definition for the term ''research misconduct'' for purposes of this section.

(B) For purposes of this section, the term ''financial assistance'' means a grant, contract, or cooperative agreement.

(b) Existence of administrative processes as condition of funding for research

The Secretary shall by regulation require that each entity that applies for financial assistance under this chapter for any project or program that involves the conduct of biomedical or behavioral research submit in or with its application for such assistance—

(1) assurances satisfactory to the Secretary that such entity has established and has in effect (in accordance with regulations which the Secretary shall prescribe) an administrative process to review reports of research misconduct in connection with biomedical and behavioral research conducted at or sponsored by such entity;

(2) an agreement that the entity will report to the Director any investigation of alleged research misconduct in connection with projects for which funds have been made available under this chapter that appears substantial; and

(3) an agreement that the entity will comply with regulations issued under this section.

(c) Process for response of Director

The Secretary shall by regulation establish a process to be followed by the Director for the prompt and appropriate—

(1) response to information provided to the Director respecting research misconduct in connection with projects for which funds have been made available under this chapter;

(2) receipt of reports by the Director of such information from recipients of funds under this chapter;

(3) conduct of investigations, when appropriate; and

(4) taking of other actions, including appropriate remedies, with respect to such misconduct.

(d) Monitoring by Director

The Secretary shall by regulation establish procedures for the Director to monitor administrative processes and investigations that have been established or carried out under this section.

(e) Protection of whistleblowers

(1) In general

In the case of any entity required to establish administrative processes under subsection (b) of this section, the Secretary shall by regulation establish standards for preventing, and for responding to the occurrence of retaliation by such entity, its officials or agents, against an employee in the terms and conditions of employment in response to the employee having in good faith—

(A) made an allegation that the entity, its officials or agents, has engaged in or failed to adequately respond to an allegation of research misconduct; or

(B) cooperated with an investigation of such an allegation.

(2) Monitoring by Secretary

The Secretary shall by regulation establish procedures for the Director to monitor the implementation of the standards established by an entity under paragraph (1) for the purpose of determining whether the procedures have been established, and are being utilized, in accordance with the standards established under such paragraph.

(3) Noncompliance

The Secretary shall by regulation establish remedies for noncompliance by an entity, its officials or agents, which has engaged in retaliation in violation of the standards established under paragraph (1). Such remedies may include termination of funding provided by the Secretary for such project or recovery of funding being provided by the Secretary for such project, or other actions as appropriate.

(July 1, 1944, ch. 373, title IV, § 493, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 874; amended June 10, 1993, Pub. L. 103–43, title I, §§ 161, 163, 107 Stat. 140, 142.)

CODIFICATION

June 10, 1993, referred to in subsec. (a)(1), was in the original ''the date of enactment of this section'' which was translated as meaning the date of enactment of Pub. L. 103–43, which amended this section generally, to reflect the probable intent of Congress.

AMENDMENTS

1993—Pub. L. 103–43, § 161, amended section generally. Prior to amendment, section read as follows:

''(a) The Secretary shall by regulation require that each entity which applies for a grant, contract, or cooperative agreement under this chapter for any project or program which involves the conduct of biomedical or behavioral research submit in or with its application for such grant, contract, or cooperative agreement assurances satisfactory to the Secretary that such entity—

''(1) has established (in accordance with regulations which the Secretary shall prescribe) an administrative process to review reports of scientific fraud in connection with biomedical and behavioral research conducted at or sponsored by such entity; and

''(2) will report to the Secretary any investigation of alleged scientific fraud which appears substantial.

''(b) The Director of NIH shall establish a process for the prompt and appropriate response to information provided the Director of NIH respecting scientific fraud in connection with projects for which funds have been made available under this chapter. The process shall include procedures for the receiving of reports of such information from recipients of funds under this chapter and taking appropriate action with respect to such fraud.''

Subsec. (e). Pub. L. 103–43, § 163, added subsec. (e).

REGULATIONS

Section 165 of Pub. L. 103–43 provided that:

''(a) ISSUANCE OF FINAL RULES.—

''(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act [June 10, 1993], the Secretary shall, subject to paragraph (2), issue the final rule for each regulation required in section 493 or 493A of the Public Health Service Act [this section and section 289b–1 of this title].

''(2) DEFINITION OF RESEARCH MISCONDUCT.—Not later than 90 days after the date on which the report required in section 162(e) [107 Stat. 142] is submitted to the Secretary, the Secretary shall issue the final rule for the regulations required in section 493 of the Public Health Service Act with respect to the definition of the term 'research misconduct'.

''(b) APPLICABILITY TO ONGOING INVESTIGATIONS.—The final rule issued pursuant to subsection (a) for investigations under section 493 of the Public Health Service Act [this section] does not apply to investigations commenced before the date of the enactment of this Act [June 10, 1993] under authority of such section as in effect before such date.

''(c) DEFINITIONS.—For purposes of this section:

''(1) The term 'section 493 of the Public Health Service Act' means such section as amended by sections 161 and 163 of this Act [this section], except as indicated otherwise in subsection (b).

''(2) The term 'section 493A of the Public Health Service Act' means such section as added by section 164 of this Act [section 289b–1 of this title].

''(3) The term 'Secretary' means the Secretary of Health and Human Services.''

§ 289b–1. Protection against financial conflicts of interest in certain projects of research

(a) Issuance of regulations

The Secretary shall by regulation define the specific circumstances that constitute the existence of a financial interest in a project on the part of an entity or individual that will, or may be reasonably expected to, create a bias in favor of obtaining results in such project that are consistent with such financial interest. Such definition shall apply uniformly to each entity or individual conducting a research project under this chapter. In the case of any entity or individual receiving assistance from the Secretary for a project of research described in subsection (b) of this section, the Secretary shall by regulation establish standards for responding to, including managing, reducing, or eliminating, the existence of such a financial interest. The entity may adopt individualized procedures for implementing the standards.

(b) Relevant projects

A project of research referred to in subsection (a) of this section is a project of clinical research whose purpose is to evaluate the safety or effectiveness of a drug, medical device, or treatment and for which such entity is receiving assistance from the Secretary.

(c) Identifying and reporting to Secretary

The Secretary shall by regulation require that each entity described in subsection (a) of this section that applies for assistance under this chapter for any project described in subsection (b) of this section submit in or with its application for such assistance—

(1) assurances satisfactory to the Secretary that such entity has established and has in effect an administrative process under subsection (a) of this section to identify financial interests (as defined under subsection (a) of this section) that exist regarding the project; and

(2) an agreement that the entity will report to the Secretary such interests identified by the entity and how any such interests identified by the entity will be managed or eliminated in order that the project in question will be protected from bias that may stem from such interests; and

(3) an agreement that the entity will comply with regulations issued under this section.

(d) Monitoring of process

The Secretary shall monitor the establishment and conduct of the administrative process established by an entity pursuant to subsection (a) of this section.

(e) Response

In any case in which the Secretary determines that an entity has failed to comply with subsection (c) of this section regarding a project of research described in subsection (b) of this section, the Secretary—

(1) shall require that, as a condition of receiving assistance, the entity disclose the existence of a financial interest (as defined under subsection (a) of this section) in each public presentation of the results of such project; and

(2) may take such other actions as the Secretary determines to be appropriate.

(f) Definitions

For purposes of this section:

(1) The term ''financial interest'' includes the receipt of consulting fees or honoraria and the ownership of stock or equity.

(2) The term ''assistance'', with respect to conducting a project of research, means a grant, contract, or cooperative agreement.

(July 1, 1944, ch. 373, title IV, § 493A, as added June 10, 1993, Pub. L. 103–43, title I, § 164, 107 Stat. 142.)

REGULATIONS

Final rule for regulations required in this section to be issued not later than 180 days after June 10, 1993, see

section 165 of Pub. L. 103–43, set out as a note under section 289b of this title.

§ 289c. Research on public health emergencies; report to Congressional committees

(a) If the Secretary determines, after consultation with the Director of NIH, the Commissioner of the Food and Drug Administration, or the Director of the Centers for Disease Control and Prevention, that a disease or disorder constitutes a public health emergency, the Secretary, acting through the Director of NIH—

(1) shall expedite the review by advisory councils under section 284a of this title and by peer review groups under section 289a of this title of applications for grants for research on such disease or disorder or proposals for contracts for such research;

(2) shall exercise the authority in section 5 of title 41 respecting public exigencies to waive the advertising requirements of such section in the case of proposals for contracts for such research;

(3) may provide administrative supplemental increases in existing grants and contracts to support new research relevant to such disease or disorder; and

(4) shall disseminate, to health professionals and the public, information on the cause, prevention, and treatment of such disease or disorder that has been developed in research assisted under this section.

The amount of an increase in a grant or contract provided under paragraph (3) may not exceed one-half the original amount of the grant or contract.

(b) Not later than 90 days after the end of a fiscal year, the Secretary shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate on actions taken under subsection (a) of this section in such fiscal year.

(July 1, 1944, ch. 373, title IV, § 494, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 875; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(9), 106 Stat. 3504.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 289c–1. Collaborative use of certain health services research funds

(a) In general

The Secretary shall ensure that amounts made available under subparts 14, 15 and 16 of part C for health services research relating to alcohol abuse and alcoholism, drug abuse and mental health be used collaboratively, as appropriate, and in consultation with the Agency for Health Care Policy Research.

(b) Report

Not later than September 30, 1993, and annually thereafter, the Secretary shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report concerning the activities carried out with the amounts referred to in subsection (a) of this section.

(July 1, 1944, ch. 373, title IV, § 494A, as added July 10, 1992, Pub. L. 102–321, title I, § 125, 106 Stat. 366; amended June 10, 1993, Pub. L. 103–43, title XX, § 2016(c), 107 Stat. 218.)

REFERENCES IN TEXT

Subparts 14, 15 and 16 of part C, referred to in subsec. (a), are classified to sections 285n et seq., 285*o* et seq., and 285p et seq., respectively, of this title.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–43 substituted ''September 30, 1993'' for ''May 3, 1993''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 289d. Animals in research

(a) Establishment of guidelines

The Secretary, acting through the Director of NIH, shall establish guidelines for the following:

(1) The proper care of animals to be used in biomedical and behavioral research.

(2) The proper treatment of animals while being used in such research. Guidelines under this paragraph shall require—

(A) the appropriate use of tranquilizers, analgesics, anesthetics, paralytics, and euthanasia for animals in such research; and

(B) appropriate pre-surgical and post-surgical veterinary medical and nursing care for animals in such research.

Such guidelines shall not be construed to prescribe methods of research.

(3) The organization and operation of animal care committees in accordance with subsection (b) of this section.

(b) Animal care committees; establishment; membership; functions

(1) Guidelines of the Secretary under subsection (a)(3) of this section shall require animal care committees at each entity which conducts biomedical and behavioral research with funds provided under this chapter (including the National Institutes of Health and the national research institutes) to assure compliance with the guidelines established under subsection (a) of this section.

(2) Each animal care committee shall be appointed by the chief executive officer of the entity for which the committee is established, shall be composed of not fewer than three members, and shall include at least one individual who has no association with such entity and at least one doctor of veterinary medicine.

(3) Each animal care committee of a research entity shall—

(A) review the care and treatment of animals in all animal study areas and facilities of the research entity at least semi-annually to evaluate compliance with applicable guidelines established under subsection (a) of this section for appropriate animal care and treatment;

(B) keep appropriate records of reviews conducted under subparagraph (A); and

(C) for each review conducted under subparagraph (A), file with the Director of NIH at least annually (i) a certification that the review has been conducted, and (ii) reports of any violations of guidelines established under subsection (a) of this section or assurances required under paragraph (1) which were observed in such review and which have continued after notice by the committee to the research entity involved of the violations.

Reports filed under subparagraph (C) shall include any minority views filed by members of the committee.

(c) Assurances required in application or contract proposal; reasons for use of animals; notice and comment requirements for promulgation of regulations

The Director of NIH shall require each applicant for a grant, contract, or cooperative agreement involving research on animals which is administered by the National Institutes of Health or any national research institute to include in its application or contract proposal, submitted after the expiration of the twelve-month period beginning on November 20, 1985—

(1) assurances satisfactory to the Director of NIH that—

(A) the applicant meets the requirements of the guidelines established under paragraphs (1) and (2) of subsection (a) of this section and has an animal care committee which meets the requirements of subsection (b) of this section; and

(B) scientists, animal technicians, and other personnel involved with animal care, treatment, and use by the applicant have available to them instruction or training in the humane practice of animal maintenance and experimentation, and the concept, availability, and use of research or testing methods that limit the use of animals or limit animal distress; and

(2) a statement of the reasons for the use of animals in the research to be conducted with funds provided under such grant or contract.

Notwithstanding subsection (a)(2) of section 553 of title 5, regulations under this subsection shall be promulgated in accordance with the notice and comment requirements of such section.

(d) Failure to meet guidelines; suspension or revocation of grant or contract

If the Director of NIH determines that—

(1) the conditions of animal care, treatment, or use in an entity which is receiving a grant, contract, or cooperative agreement involving research on animals under this subchapter do not meet applicable guidelines established under subsection (a) of this section;

(2) the entity has been notified by the Director of NIH of such determination and has been given a reasonable opportunity to take corrective action; and

(3) no action has been taken by the entity to correct such conditions;

the Director of NIH shall suspend or revoke such grant or contract under such conditions as the Director determines appropriate.

(e) Disclosure of trade secrets or privileged or confidential information

No guideline or regulation promulgated under subsection (a) or (c) of this section may require a research entity to disclose publicly trade secrets or commercial or financial information which is privileged or confidential.

(July 1, 1944, ch. 373, title IV, § 495, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 875.)

PROHIBITION ON FUNDING OF PROJECTS INVOLVING USE OF CHIMPANZEES OBTAINED FROM THE WILD

Pub. L. 102–394, title II, § 213, Oct. 6, 1992, 106 Stat. 1812, provided that: ''No funds appropriated under this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall be used by the National Institutes of Health, or any other Federal agency, or recipient of Federal funds on any project that entails the capture or procurement of chimpanzees obtained from the wild. For purposes of this section, the term 'recipient of Federal funds' includes private citizens, corporations, or other research institutions located outside of the United States that are recipients of Federal funds.''

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, § 213, Nov. 26, 1991, 105 Stat. 1127.

Pub. L. 101–517, title II, § 211, Nov. 5, 1990, 104 Stat. 2209.

Pub. L. 101–166, title II, § 214, Nov. 21, 1989, 103 Stat. 1178.

PLAN FOR RESEARCH INVOLVING ANIMALS

Section 4 of Pub. L. 99–158 directed Director of National Institutes of Health to establish, not later than Oct. 1, 1986, a plan for research into methods of biomedical research and experimentation which reduces the use of animals in research or which produce less pain and distress in animals to develop methods found to be valid and reliable, to train scientists in use of such methods, to disseminate information on such methods and to establish an Interagency Coordinating Committee to assist in development of the plan, prior to repeal by Pub. L. 103–43, title II, § 205(b), June 10, 1993, 107 Stat. 148. See section 283e of this title.

§ 289e. Use of appropriations

(a) Appropriations to carry out the purposes of this subchapter, unless otherwise expressly provided, may be expended in the District of Columbia for—

(1) personal services;

(2) stenographic recording and translating services;

(3) travel expenses (including the expenses of attendance at meetings when specifically authorized by the Secretary);

(4) rental;

(5) supplies and equipment;

(6) purchase and exchange of medical books, books of reference, directories, periodicals, newspapers, and press clippings;

(7) purchase, operation, and maintenance of passenger motor vehicles;

(8) printing and binding (in addition to that otherwise provided by law); and

(9) all other necessary expenses in carrying out this subchapter.

Such appropriations may be expended by contract if deemed necessary, without regard to section 5 of title 41.

(b)(1) None of the amounts appropriated under this chapter for the purposes of this subchapter may be obligated for the construction of facilities (including the acquisition of land) unless a provision of this subchapter establishes express authority for such purpose and unless the Act making appropriations under such provision specifies that the amounts appropriated are available for such purpose.

(2) Any grants, cooperative agreements, or contracts authorized in this subchapter for the construction of facilities may be awarded only on a competitive basis.

(July 1, 1944, ch. 373, title IV, § 496, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 877; amended Nov. 29, 1989, Pub. L. 101–190, § 8, 103 Stat. 1695; June 10, 1993, Pub. L. 103–43, title XX, § 2008(b)(15), 107 Stat. 211.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–43 substituted ''Appropriations to carry out the purposes of this subchapter'' for ''Such appropriations''.

1989—Subsec. (a). Pub. L. 101–190 designated existing provisions as subsec. (a), struck out first sentence which read as follows: ''Appropriations to carry out the purposes of this subchapter shall be available for the acquisition of land or the erection of buildings only if so specified.'', and added subsec. (b).

CONSTRUCTION OF BIOMEDICAL FACILITIES FOR DEVELOPMENT AND BREEDING OF SPECIALIZED STRAINS OF MICE

Sections 1 to 7 of Pub. L. 101–190, as amended by Pub. L. 101–374, § 4(a), (c)(1), Aug. 15, 1990, 104 Stat. 458, 459, authorized a reservation of funds for making a grant to construct facilities for development and breeding of specialized strains of mice for use in biomedical research, provided for a competitive grant award process, required applicant for the grant to agree to a twenty-year transferable obligation, restricted grant applicant to public or nonprofit private status, with assurances of sufficient financial resources, set forth other grant requirements, and specified consequences of failure to comply with agreements and violation of the twenty-year obligation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 285a–3, 285b–4, 285*o*–4 of this title.

§ 289f. Gifts and donations; memorials

The Secretary may, in accordance with section 238 of this title, accept conditional gifts for the National Institutes of Health or a national research institute or for the acquisition of grounds or for the erection, equipment, or maintenance of facilities for the National Institutes of Health or a national research institute. Donations of $50,000 or over for the National Institutes of Health or a national research institute for carrying out the purposes of this subchapter may be acknowledged by the establishment within the National Institutes of Health or a national research institute of suitable memorials to the donors.

(July 1, 1944, ch. 373, title IV, § 497, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 877; amended Nov. 14, 1986, Pub. L. 99–660, title III, § 311(b)(1), 100 Stat. 3779; Nov. 4, 1988, Pub. L. 100–607, title II, § 204(3), 102 Stat. 3079; Nov. 18, 1988, Pub. L. 100–690, title II, § 2620(b)(2), 102 Stat. 4244; Aug. 18, 1990, Pub. L. 101–381, title I, § 102(5), 104 Stat. 586; June 10, 1993, Pub. L. 103–43, title XX, § 2010(b)(6), 107 Stat. 214.)

AMENDMENTS

1993—Pub. L. 103–43 substituted ''section 238'' for ''section 300aaa''.

1990—Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

1988—Pub. L. 100–690 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

Pub. L. 100–607 substituted ''300aaa'' for ''300cc''.

1986—Pub. L. 99–660 substituted ''section 300cc of this title'' for ''section 300aa of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

§ 289g. Fetal research

(a) Conduct or support by Secretary; restrictions

The Secretary may not conduct or support any research or experimentation, in the United States or in any other country, on a nonviable living human fetus ex utero or a living human fetus ex utero for whom viability has not been ascertained unless the research or experimentation—

(1) may enhance the well-being or meet the health needs of the fetus or enhance the probability of its survival to viability; or

(2) will pose no added risk of suffering, injury, or death to the fetus and the purpose of the research or experimentation is the development of important biomedical knowledge which cannot be obtained by other means.

(b) Risk standard for fetuses intended to be aborted and fetuses intended to be carried to term to be same

In administering the regulations for the protection of human research subjects which—

(1) apply to research conducted or supported by the Secretary;

(2) involve living human fetuses in utero; and

(3) are published in section 46.208 of part 46 of title 45 of the Code of Federal Regulations;

or any successor to such regulations, the Secretary shall require that the risk standard (published in section 46.102(g) of such part 46 or any successor to such regulations) be the same for fetuses which are intended to be aborted and fetuses which are intended to be carried to term.

(July 1, 1944, ch. 373, title IV, § 498, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 877; amended

Nov. 4, 1988, Pub. L. 100–607, title I, §§156, 157(b), 102 Stat. 3059; June 10, 1993, Pub. L. 103–43, title I, §121(b)(1), 107 Stat. 133.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–43 struck out subsec. (c) which directed Biomedical Ethics Advisory Committee to conduct a study of the nature, advisability, and biomedical and ethical implications of exercising any waiver of the risk standard published in section 46.102(g) of part 46 of title 45 of the Code of Federal Regulations and to report its finding to the Biomedical Ethics Board not later than 24 months after Nov. 4, 1988, which report was to be then transmitted to specified Congressional committees.

1988—Subsec. (c)(1). Pub. L. 100–607, §157(b), substituted ''24 months after November 4, 1988'' for ''thirty months after November 20, 1985''.

Subsec. (c)(2). Pub. L. 100–607, §156(1), substituted ''24-month period beginning on November 4, 1988'' for ''thirty-six month period beginning on November 20, 1985''.

Subsec. (c)(3). Pub. L. 100–607, §156(2), substituted ''1990'' for ''1988''.

NULLIFICATION OF CERTAIN PROVISIONS

Section 121(c) of Pub. L. 103–43 provided that: ''The provisions of Executive Order 12806 (57 Fed. Reg. 21589 (May 21, 1992)) [formerly set out below] shall not have any legal effect. The provisions of section 204(d) of part 46 of title 45 of the Code of Federal Regulations (45 CFR 46.204(d)) shall not have any legal effect.''

EXECUTIVE ORDER NO. 12806. ESTABLISHMENT OF FETAL TISSUE BANK

Ex. Ord. No. 12806, May 19, 1992, 57 F.R. 21589, which established a human fetal tissue bank, was nullified by Pub. L. 103–43, title I, §121(c), June 10, 1993, 107 Stat. 133, set out above.

FEDERAL FUNDING OF FETAL TISSUE TRANSPLANTATION RESEARCH

Memorandum of President of the United States, Jan. 22, 1993, 58 F.R. 7457, provided:

Memorandum for the Secretary of Health and Human Services

On March 22, 1988, the Assistant Secretary for Health of Health and Human Services (''HHS'') imposed a temporary moratorium on Federal funding of research involving transplantation of fetal tissue from induced abortions. Contrary to the recommendations of a National Institutes of Health advisory panel, on November 2, 1989, the Secretary of Health and Human Services extended the moratorium indefinitely. This moratorium has significantly hampered the development of possible treatments for individuals afflicted with serious diseases and disorders, such as Parkinson's disease, Alzheimer's disease, diabetes, and leukemia. Accordingly, I hereby direct that you immediately lift the moratorium.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

§ 289g–1. Research on transplantation of fetal tissue

(a) Establishment of program

(1) In general

The Secretary may conduct or support research on the transplantation of human fetal tissue for therapeutic purposes.

(2) Source of tissue

Human fetal tissue may be used in research carried out under paragraph (1) regardless of whether the tissue is obtained pursuant to a spontaneous or induced abortion or pursuant to a stillbirth.

(b) Informed consent of donor

(1) In general

In research carried out under subsection (a) of this section, human fetal tissue may be used only if the woman providing the tissue makes a statement, made in writing and signed by the woman, declaring that—

(A) the woman donates the fetal tissue for use in research described in subsection (a) of this section;

(B) the donation is made without any restriction regarding the identity of individuals who may be the recipients of transplantations of the tissue; and

(C) the woman has not been informed of the identity of any such individuals.

(2) Additional statement

In research carried out under subsection (a) of this section, human fetal tissue may be used only if the attending physician with respect to obtaining the tissue from the woman involved makes a statement, made in writing and signed by the physician, declaring that—

(A) in the case of tissue obtained pursuant to an induced abortion—

(i) the consent of the woman for the abortion was obtained prior to requesting or obtaining consent for a donation of the tissue for use in such research;

(ii) no alteration of the timing, method, or procedures used to terminate the pregnancy was made solely for the purposes of obtaining the tissue; and

(iii) the abortion was performed in accordance with applicable State law;

(B) the tissue has been donated by the woman in accordance with paragraph (1); and

(C) full disclosure has been provided to the woman with regard to—

(i) such physician's interest, if any, in the research to be conducted with the tissue; and

(ii) any known medical risks to the woman or risks to her privacy that might be associated with the donation of the tissue and that are in addition to risks of such type that are associated with the woman's medical care.

(c) Informed consent of researcher and donee

In research carried out under subsection (a) of this section, human fetal tissue may be used only if the individual with the principal responsibility for conducting the research involved makes a statement, made in writing and signed by the individual, declaring that the individual—

(1) is aware that—

(A) the tissue is human fetal tissue;

(B) the tissue may have been obtained pursuant to a spontaneous or induced abortion or pursuant to a stillbirth; and

(C) the tissue was donated for research purposes;

(2) has provided such information to other individuals with responsibilities regarding the research;

(3) will require, prior to obtaining the consent of an individual to be a recipient of a

transplantation of the tissue, written acknowledgment of receipt of such information by such recipient; and

(4) has had no part in any decisions as to the timing, method, or procedures used to terminate the pregnancy made solely for the purposes of the research.

(d) Availability of statements for audit

(1) In general

In research carried out under subsection (a) of this section, human fetal tissue may be used only if the head of the agency or other entity conducting the research involved certifies to the Secretary that the statements required under subsections (b)(2) and (c) of this section will be available for audit by the Secretary.

(2) Confidentiality of audit

Any audit conducted by the Secretary pursuant to paragraph (1) shall be conducted in a confidential manner to protect the privacy rights of the individuals and entities involved in such research, including such individuals and entities involved in the donation, transfer, receipt, or transplantation of human fetal tissue. With respect to any material or information obtained pursuant to such audit, the Secretary shall—

(A) use such material or information only for the purposes of verifying compliance with the requirements of this section;

(B) not disclose or publish such material or information, except where required by Federal law, in which case such material or information shall be coded in a manner such that the identities of such individuals and entities are protected; and

(C) not maintain such material or information after completion of such audit, except where necessary for the purposes of such audit.

(e) Applicability of State and local law

(1) Research conducted by recipients of assistance

The Secretary may not provide support for research under subsection (a) of this section unless the applicant for the financial assistance involved agrees to conduct the research in accordance with applicable State law.

(2) Research conducted by Secretary

The Secretary may conduct research under subsection (a) of this section only in accordance with applicable State and local law.

(f) Report

The Secretary shall annually submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the activities carried out under this section during the preceding fiscal year, including a description of whether and to what extent research under subsection (a) of this section has been conducted in accordance with this section.

(g) "Human fetal tissue" defined

For purposes of this section, the term ''human fetal tissue'' means tissue or cells obtained from a dead human embryo or fetus after a spontaneous or induced abortion, or after a stillbirth.

(July 1, 1944, ch. 373, title IV, § 498A, as added June 10, 1993, Pub. L. 103–43, title I, § 111, 107 Stat. 129.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

NULLIFICATION OF MORATORIUM

Section 113 of Pub. L. 103–43 provided that:

''(a) IN GENERAL.—Except as provided in subsection (c), no official of the executive branch may impose a policy that the Department of Health and Human Services is prohibited from conducting or supporting any research on the transplantation of human fetal tissue for therapeutic purposes. Such research shall be carried out in accordance with section 498A of the Public Health Service Act [this section] (as added by section 111 of this Act), without regard to any such policy that may have been in effect prior to the date of the enactment of this Act [June 10, 1993].

''(b) PROHIBITION AGAINST WITHHOLDING OF FUNDS IN CASES OF TECHNICAL AND SCIENTIFIC MERIT.—

''(1) IN GENERAL.—Subject to subsection (b)(2) of section 492A of the Public Health Service Act [section 289a–1(b)(2) of this title] (as added by section 101 of this Act), in the case of any proposal for research on the transplantation of human fetal tissue for therapeutic purposes, the Secretary of Health and Human Services may not withhold funds for the research if—

''(A) the research has been approved for purposes of subsection (a) of such section 492A;

''(B) the research will be carried out in accordance with section 498A of such Act [this section] (as added by section 111 of this Act); and

''(C) there are reasonable assurances that the research will not utilize any human fetal tissue that has been obtained in violation of section 498B(a) of such Act [section 289g–2(a) of this title] (as added by section 112 of this Act).

''(2) STANDING APPROVAL REGARDING ETHICAL STATUS.—In the case of any proposal for research on the transplantation of human fetal tissue for therapeutic purposes, the issuance in December 1988 of the Report of the Human Fetal Tissue Transplantation Research Panel shall be deemed to be a report—

''(A) issued by an ethics advisory board pursuant to section 492A(b)(5)(B)(ii) of the Public Health Service Act (as added by section 101 of this Act); and

''(B) finding, on a basis that is neither arbitrary nor capricious, that the nature of the research is such that it is not unethical to conduct or support the research.

''(c) AUTHORITY FOR WITHHOLDING FUNDS FROM RESEARCH.—In the case of any research on the transplantation of human fetal tissue for therapeutic purposes, the Secretary of Health and Human Services may withhold funds for the research if any of the conditions specified in any of subparagraphs (A) through (C) of subsection (b)(1) are not met with respect to the research.

''(d) DEFINITION.—For purposes of this section, the term 'human fetal tissue' has the meaning given such term in section 498A(f) of the Public Health Service Act [subsec. (f) of this section] (as added by section 111 of this Act).''

REPORT BY GENERAL ACCOUNTING OFFICE ON ADEQUACY OF REQUIREMENTS

Section 114 of Pub. L. 103–43 provided that:

''(a) IN GENERAL.—With respect to research on the transplantation of human fetal tissue for therapeutic purposes, the Comptroller General of the United States shall conduct an audit for the purpose of determining—

''(1) whether and to what extent such research conducted or supported by the Secretary of Health and Human Services has been conducted in accordance with section 498A of the Public Health Service Act [this section] (as added by section 111 of this Act); and

''(2) whether and to what extent there have been violations of section 498B of such Act [section 289g–2 of this title] (as added by section 112 of this Act).

''(b) REPORT.—Not later than May 19, 1995, the Comptroller General of the United States shall complete the audit required in subsection (a) and submit to the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made pursuant to the audit.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 289g–2 of this title.

§ 289g–2. Prohibitions regarding human fetal tissue

(a) Purchase of tissue

It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human fetal tissue for valuable consideration if the transfer affects interstate commerce.

(b) Solicitation or acceptance of tissue as directed donation for use in transplantation

It shall be unlawful for any person to solicit or knowingly acquire, receive, or accept a donation of human fetal tissue for the purpose of transplantation of such tissue into another person if the donation affects interstate commerce, the tissue will be or is obtained pursuant to an induced abortion, and—

(1) the donation will be or is made pursuant to a promise to the donating individual that the donated tissue will be transplanted into a recipient specified by such individual;

(2) the donated tissue will be transplanted into a relative of the donating individual; or

(3) the person who solicits or knowingly acquires, receives, or accepts the donation has provided valuable consideration for the costs associated with such abortion.

(c) Criminal penalties for violations

(1) In general

Any person who violates subsection (a) or (b) of this section shall be fined in accordance with title 18, subject to paragraph (2), or imprisoned for not more than 10 years, or both.

(2) Penalties applicable to persons receiving consideration

With respect to the imposition of a fine under paragraph (1), if the person involved violates subsection (a) or (b)(3) of this section, a fine shall be imposed in an amount not less than twice the amount of the valuable consideration received.

(d) Definitions

For purposes of this section:

(1) The term ''human fetal tissue'' has the meaning given such term in section 289g–1(f)[1] of this title.

(2) The term ''interstate commerce'' has the meaning given such term in section 321(b) of title 21.

(3) The term ''valuable consideration'' does not include reasonable payments associated with the transportation, implantation, processing, preservation, quality control, or storage of human fetal tissue.

(July 1, 1944, ch. 373, title IV, § 498B, as added June 10, 1993, Pub. L. 103–43, title I, § 112, 107 Stat. 131.)

§ 289h. Repealed. Pub. L. 103–43, title I, § 121(b)(2), June 10, 1993, 107 Stat. 133

Section, act July 1, 1944, ch. 373, title IV, § 499, as added Nov. 20, 1985, Pub. L. 99–158, § 2, 99 Stat. 878, related to construction of subchapter.

§ 290. National Institutes of Health Management Fund; establishment; advancements; availability; final adjustments of advances

For the purpose of facilitating the economical and efficient conduct of operations in the National Institutes of Health which are financed by two or more appropriations where the costs of operation are not readily susceptible of distribution as charges to such appropriations, there is established the National Institutes of Health Management Fund. Such amounts as the Director of the National Institutes of Health may determine to represent a reasonable distribution of estimated costs among the various appropriations involved may be advanced each year to this fund and shall be available for expenditure for such costs under such regulations as may be prescribed by said Director, including the operation of facilities for the sale of meals to employees and others at rates to be determined by said Director to be sufficient to cover the reasonable value of the meals served and the proceeds thereof shall be deposited to the credit of this fund: *Provided*, That funds advanced to this fund shall be available only in the fiscal year in which they are advanced: *Provided further*, That final adjustments of advances in accordance with actual costs shall be effected wherever practicable with the appropriations from which such funds are advanced.

(Pub. L. 85–67, title II, § 201, June 29, 1957, 71 Stat. 220; Pub. L. 87–290, title II, § 201, Sept. 22, 1961, 75 Stat. 603.)

CODIFICATION

Section was enacted as a part of the Department of Health, Education, and Welfare Appropriation Act, 1958, and not as a part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1961—Pub. L. 87–290 substituted ''reasonable value of the meals served'' for ''cost of such operation''.

§ 290a. Victims of fire

(a) Research on burns, burn injuries, and rehabilitation

The Secretary of Health and Human Services shall establish, within the National Institutes of Health and in cooperation with the Secretary of Commerce, an expanded program of research on burns, treatment of burn injuries, and rehabili-

[1] So in original. Probably should be section ''289g–1(g)''.

tation of victims of fires. The National Institutes of Health shall—

(1) sponsor and encourage the establishment throughout the Nation of twenty-five additional burn centers, which shall comprise separate hospital facilities providing specialized burn treatment and including research and teaching programs and twenty-five additional burn units, which shall comprise specialized facilities in general hospitals used only for burn victims;

(2) provide training and continuing support of specialists to staff the new burn centers and burn units;

(3) sponsor and encourage the establishment of ninety burn programs in general hospitals which comprise staffs of burn injury specialists;

(4) provide special training in emergency care for burn victims;

(5) augment sponsorship of research on burns and burn treatment;

(6) administer and support a systematic program of research concerning smoke inhalation injuries; and

(7) sponsor and support other research and training programs in the treatment and rehabilitation of burn injury victims.

(b) Authorization of appropriations

For purposes of this section, there are authorized to be appropriated not to exceed $5,000,000 for the fiscal year ending June 30, 1975 and not to exceed $8,000,000 for the fiscal year ending June 30, 1976.

(Pub. L. 93–498, § 19, Oct. 29, 1974, 88 Stat. 1547; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

CODIFICATION

In subsec. (a), ''Secretary of Commerce'' substituted for ''Secretary'' pursuant to section 4(6) of the Federal Fire Prevention and Control Act of 1974, Pub. L. 93–498, which is classified to section 2203(6) of Title 15, Commerce and Trade.

Section was enacted as part of the Federal Fire Prevention and Control Act of 1974 (which is classified principally to chapter 49 (§ 2201 et seq.) of Title 15), and not as a part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

PART I—NATIONAL FOUNDATION FOR BIOMEDICAL RESEARCH

AMENDMENTS

1993—Pub. L. 103–43, title I, § 141(a)(2), June 10, 1993, 107 Stat. 136, redesignated part H ''National Foundation for Biomedical Research'' as I.

§ 290b. Establishment and duties of Foundation

(a) In general

The Secretary shall, acting through the Director of NIH, establish a nonprofit corporation to be known as the National Foundation for Biomedical Research (hereafter in this section referred to as the ''Foundation''). The Foundation shall not be an agency or instrumentality of the United States Government.

(b) Purpose of Foundation

The purpose of the Foundation shall be to support the National Institutes of Health in its mission, and to advance collaboration with biomedical researchers from universities, industry, and nonprofit organizations.

(c) Certain activities of Foundation

(1) In general

In carrying out subsection (b) of this section, the Foundation may solicit and accept gifts, grants, and other donations, establish accounts, and invest and expend funds in support of the following activities with respect to the purpose described in such subsection:

(A) A program to provide and administer endowed positions that are associated with the research program of the National Institutes of Health. Such endowments may be expended for the compensation of individuals holding the positions, for staff, equipment, quarters, travel, and other expenditures that are appropriate in supporting the endowed positions.

(B) A program to provide and administer fellowships and grants to research personnel in order to work and study in association with the National Institutes of Health. Such fellowships and grants may include stipends, travel, health insurance benefits and other appropriate expenses. The recipients of fellowships shall be selected by the donors and the Foundation upon the recommendation of the National Institutes of Health employees in the laboratory where the fellow would serve, and shall be subject to the agreement of the Director of the National Institutes of Health and the Executive Director of the Foundation.

(C) Supplementary programs to provide for—

(i) scientists of other countries to serve in research capacities in the United States in association with the National Institutes of Health or elsewhere, or opportunities for employees of the National Institutes of Health or other public health officials in the United States to serve in such capacities in other countries, or both;

(ii) the conduct and support of studies, projects, and research, which may include stipends, travel and other support for personnel in collaboration with national and international non-profit and for-profit organizations;

(iii) the conduct and support of forums, meetings, conferences, courses, and training workshops that may include undergraduate, graduate, post-graduate, and post-doctoral accredited courses and the maintenance of accreditation of such courses by the Foundation at the State and national level for college or continuing education credits or for degrees;

(iv) programs to support and encourage teachers and students of science at all levels of education and programs for the gen-

eral public which promote the understanding of science;

(v) programs for writing, editing, printing, publishing, and vending of books and other materials; and

(vi) the conduct of other activities to carry out and support the purpose described in subsection (b) of this section.

(2) Fees

The Foundation may assess fees for the provision of professional, administrative and management services by the Foundation in amounts determined reasonable and appropriate by the Executive Director.

(3) Authority of Foundation

The Foundation shall be the sole entity responsible for carrying out the activities described in this subsection.

(d) Board of Directors

(1) Composition

(A) The Foundation shall have a Board of Directors (hereafter referred to in this section as the ''Board''), which shall be composed of ex officio and appointed members in accordance with this subsection. All appointed members of the Board shall be voting members.

(B) The ex officio members of the Board shall be—

(i) the Chairman and ranking minority member of the Subcommittee on Health and the Environment (Committee on Energy and Commerce) or their designees, in the case of the House of Representatives;

(ii) the Chairman and ranking minority member of the Committee on Labor and Human Resources or their designees, in the case of the Senate; and

(iii) the Director of the National Institutes of Health.

(C) The ex officio members of the Board under subparagraph (B) shall appoint to the Board 11 individuals from among a list of candidates to be provided by the National Academy of Science. Of such appointed members—

(i) 4 shall be representative of the general biomedical field;

(ii) 2 shall be representatives of the general biobehavorial field; and

(iii) 5 shall be representatives of the general public.

(D)(i) Not later than 30 days after June 10, 1993, the Director of the National Institutes of Health shall convene a meeting of the ex officio members of the Board to—

(I) incorporate the Foundation and establish the general policies of the Foundation for carrying out the purposes of subsection (b) of this section, including the establishment of the bylaws of the Foundation; and

(II) appoint the members of the Board in accordance with subparagraph (C).

(ii) Upon the appointment of the members of the Board under clause (i)(II), the terms of service of the ex officio members of the Board as members of the Board shall terminate.

(E) The agreement of not less than three-fifths of the members of the ex officio members of the Board shall be required for the appointment of each member to the initial Board.

(F) No employee of the National Institutes of Health shall be appointed as a member of the Board.

(G) The Board may, through amendments to the bylaws of the Foundation, provide that the number of members of the Board shall be greater than the number specified in subparagraph (C).

(2) Chair

(A) The ex officio members of the Board under paragraph (1)(B) shall designate an individual to serve as the initial Chair of the Board.

(B) Upon the termination of the term of service of the initial Chair of the Board, the appointed members of the Board shall elect a member of the Board to serve as the Chair of the Board.

(3) Terms and vacancies

(A) The term of office of each member of the Board appointed under paragraph (1)(C) shall be 5 years, except that the terms of offices for the initial appointed members of the Board shall expire as determined by the ex officio members and the Chair.

(B) Any vacancy in the membership of the Board shall be filled in the manner in which the original position was made and shall not affect the power of the remaining members to execute the duties of the Board.

(C) If a member of the Board does not serve the full term applicable under subparagraph (A), the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(D) A member of the Board may continue to serve after the expiration of the term of the member until a successor is appointed.

(4) Compensation

Members of the Board may not receive compensation for service on the Board. Such members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Board, as set forth in the bylaws issued by the Board.

(5) Meetings and quorum

A majority of the members of the Board shall constitute a quorum for purposes of conducting the business of the Board.

(6) Certain bylaws

(A) In establishing bylaws under this subsection, the Board shall ensure that the following are provided for:

(i) Policies for the selection of the officers, employees, agents, and contractors of the Foundation.

(ii) Policies, including ethical standards, for the acceptance, solicitation, and disposition of donations and grants to the Foundation and for the disposition of the assets of the Foundation. Policies with respect to ethical standards shall ensure that officers, employees and agents of the Foundation (including members of the Board) avoid encum-

brances that would result in a conflict of interest, including a financial conflict of interest or a divided allegiance. Such policies shall include requirements for the provision of information concerning any ownership or controlling interest in entities related to the activities of the Foundation by such officers, employees and agents and their spouses and relatives.

(iii) Policies for the conduct of the general operations of the Foundation.

(iv) Policies for writing, editing, printing, publishing, and vending of books and other materials.

(B) In establishing bylaws under this subsection, the Board shall ensure that such bylaws (and activities carried out under the bylaws) do not—

(i) reflect unfavorably upon the ability of the Foundation or the National Institutes of Health to carry out its responsibilities or official duties in a fair and objective manner; or

(ii) compromise, or appear to compromise, the integrity of any governmental agency or program, or any officer or employee involved in such program.

(e) Redesignated (g)

(f) Incorporation

The initial members of the Board shall serve as incorporators and shall take whatever actions necessary to incorporate the Foundation.

(g) Nonprofit status

The Foundation shall be considered to be a corporation under section 501(c) of title 26, and shall be subject to the provisions of such section.

(h) Executive Director

(1) In general

The Foundation shall have an Executive Director who shall be appointed by the Board and shall serve at the pleasure of the Board. The Executive Director shall be responsible for the day-to-day operations of the Foundation and shall have such specific duties and responsibilities as the Board shall prescribe.

(2) Compensation

The rate of compensation of the Executive Director shall be fixed by the Board.

(i) Powers

In carrying out subsection (b) of this section, the Foundation may—

(1) operate under the direction of its Board;

(2) adopt, alter, and use a corporate seal, which shall be judicially noticed;

(3) provide for 1 or more officers, employees, and agents, as may be necessary, define their duties, and require surety bonds or make other provisions against losses occasioned by acts of such persons;

(4) hire, promote, compensate, and discharge officers and employees of the Foundation, and define the duties of the officers and employees;

(5) with the consent of any executive department or independent agency, use the information, services, staff, and facilities of such in carrying out this section;

(6) sue and be sued in its corporate name, and complain and defend in courts of competent jurisdiction;

(7) modify or consent to the modification of any contract or agreement to which it is a party or in which it has an interest under this part;

(8) establish a process for the selection of candidates for positions under subsection (c) of this section;

(9) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of books and other material;

(10) take such action as may be necessary to obtain patents and licenses for devices and procedures developed by the Foundation and its employees;

(11) solicit[1] accept, hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Foundation;

(12) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation;

(13) appoint other groups of advisors as may be determined necessary from time to time to carry out the functions of the Foundation;

(14) enter into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to conduct the activities of the Foundation; and

(15) exercise other powers as set forth in this section, and such other incidental powers as are necessary to carry out its powers, duties, and functions in accordance with this part.

(j) Administrative control

No participant in the program established under this part shall exercise any administrative control over any Federal employee.

(k) General provisions

(1) Foundation integrity

The members of the Board shall be accountable for the integrity of the operations of the Foundation and shall ensure such integrity through the development and enforcement of criteria and procedures relating to standards of conduct (including those developed under subsection (d)(2)(B)(i)(II)),[2] financial disclosure statements, conflict of interest rules, recusal and waiver rules, audits and other matter determined appropriate by the Board.

(2) Financial conflicts of interest

Any individual who is an officer, employee, or member of the Board of the Foundation may not (in accordance with policies and requirements developed under subsection (d)(2)(B)(i)(II))[2] personally or substantially participate in the consideration or determination by the Foundation of any matter that would directly or predictably affect any financial interest of the individual or a relative (as such term is defined in section 109(16) of the Ethics in Government Act of 1978) of the indi-

[1] So in original. Probably should be followed by a comma.

[2] So in original. Probably should be subsection ''(d)(6)(A)''.

vidual, of any business organization or other entity, or of which the individual is an officer or employee, or is negotiating for employment, or in which the individual has any other financial interest.

(3) Audits; availability of records

The Foundation shall—

(A) provide for annual audits of the financial condition of the Foundation; and

(B) make such audits, and all other records, documents, and other papers of the Foundation, available to the Secretary and the Comptroller General of the United States for examination or audit.

(4) Reports

(A) Not later than 5 months following the end of each fiscal year, the Foundation shall publish a report describing the activities of the Foundation during the preceding fiscal year. Each such report shall include for the fiscal year involved a comprehensive statement of the operations, activities, financial condition, and accomplishments of the Foundation.

(B) With respect to the financial condition of the Foundation, each report under subparagraph (A) shall include the source, and a description of, all gifts or grants to the Foundation of real or personal property, and the source and amount of all gifts or grants to the Foundation of money. Each such report shall include a specification of any restrictions on the purposes for which gifts or grants to the Foundation may be used.

(C) The Foundation shall make copies of each report submitted under subparagraph (A) available for public inspection, and shall upon request provide a copy of the report to any individual for a charge not exceeding the cost of providing the copy.

(D) The Board shall annually hold a public meeting to summarize the activities of the Foundation and distribute written reports concerning such activities and the scientific results derived from such activities.

(5) Service of Federal employees

Federal employees may serve on committees advisory to the Foundation and otherwise cooperate with and assist the Foundation in carrying out its function, so long as the employees do not direct or control Foundation activities.

(6) Relationship with existing entities

The Foundation may, pursuant to appropriate agreements, merge with, acquire, or use the resources of existing nonprofit private corporations with missions similar to the purposes of the Foundation, such as the Foundation for Advanced Education in the Sciences.

(7) Intellectual property rights

The Board shall adopt written standards with respect to the ownership of any intellectual property rights derived from the collaborative efforts of the Foundation prior to the commencement of such efforts.

(8) National Institutes of Health Amendments of 1990

The activities conducted in support of the National Institutes of Health Amendments of 1990 (Public Law 101–613), and the amendments made by such Act, shall not be nullified by the enactment of this section.[3]

(9) Limitation of activities

The Foundation shall exist solely as an entity to work in collaboration with the research programs of the National Institutes of Health. The Foundation may not undertake activities (such as the operation of independent laboratories or competing for Federal research funds) that are independent of those of the National Institutes of Health research programs.

(10) Transfer of funds

The Foundation may not transfer funds to the National Institutes of Health.

(*l*) Duties of Director

(1) Applicability of certain standards to non-Federal employees

In the case of any individual who is not an employee of the Federal Government and who serves in association with the National Institutes of Health, with respect to financial assistance received from the Foundation, the Foundation may not provide the assistance of, or otherwise permit the work at the National Institutes of Health to begin until a memorandum of understanding between the individual and the Director of the National Institutes of Health, or the designee of such Director, has been executed specifying that the individual shall be subject to such ethical and procedural standards of conduct relating to duties performed at the National Institutes of Health, as the Director of the National Institutes of Health determines is appropriate.

(2) Support services

The Director of the National Institutes of Health may provide facilities, utilities and support services to the Foundation if it is determined by the Director to be advantageous to the research programs of the National Institutes of Health.

(m) Funding

(1) Authorization of appropriations

For the purpose of carrying out this part, there is authorized to be appropriated an aggregate $200,000 for the fiscal years 1994 and 1995.

(2) Limitation regarding other funds

Amounts appropriated under any provision of law other than paragraph (1) may not be expended to establish or operate the Foundation.

(n) Report on adequacy of compliance

(1) In general

With respect to the mission and function of the Foundation, the Comptroller General of the United States shall conduct an audit to determine—

(A) whether the Foundation is in compliance with the guidelines established under this section; and

(B) whether the procedures utilized under this section are adequate to prevent con-

[3] So in original. Probably should be ''subsection''.

flicts of interest involving the Foundation, the employees of the Foundation or members of the Board of the Foundation.

(2) Report

Not later than 18 months after the date on which the Foundation is incorporated, the Comptroller General of the United States shall complete the audit required under paragraph (1) and prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a report describing the findings made with respect to such audit.

(July 1, 1944, ch. 373, title IV, § 499, formerly § 499A, as added Nov. 16, 1990, Pub. L. 101–613, § 2, 104 Stat. 3224; amended Nov. 26, 1991, Pub. L. 102–170, title II, § 216, 105 Stat. 1128; July 10, 1992, Pub. L. 102–321, title I, § 163(b)(6), 106 Stat. 376; renumbered § 499 and amended June 10, 1993, Pub. L. 103–43, title I, § 121(b)(3), title XVII, § 1701, 107 Stat. 133, 186.)

REFERENCES IN TEXT

Section 109(16) of the Ethics in Government Act of 1978, referred to in subsec. (k)(2), is section 109(16) of Pub. L. 95–521, which is set out in the Appendix to Title 5, Government Organization and Employees.

The National Institutes of Health Amendments of 1990, referred to in subsec. (k)(8), is Pub. L. 101–613, Nov. 16, 1990, 104 Stat. 3224, as amended, which enacted this section, section 285g–4 of this title, and provisions set out as notes under section 201 and 285g–4 of this title. For complete classification of this Act to the Code, see Short Title of 1990 Amendments note set out under section 201 of this title and Tables.

PRIOR PROVISIONS

A prior section 499 of act July 1, 1944, was classified to section 289h of this title prior to repeal by Pub. L. 103–43.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–43, § 1701(1), inserted '', acting through the Director of NIH,'' after ''Secretary shall'' and struck out '', except for the purposes of the Ethics in Government Act and the Technology Transfer Act,'' after ''shall not''.

Subsec. (b). Pub. L. 103–43, § 1701(3), added subsec. (b) and struck out heading and text of former subsec. (b). Text related to duties of Foundation.

Subsec. (c). Pub. L. 103–43, § 1701(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 103–43, § 1701(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (f).

Subsec. (d)(1). Pub. L. 103–43, § 1701(4)(A), substituted ''appointed members of the Board'' for ''members of the Foundation'' in subpar. (A), ''Board'' for ''Council'' in subpar. (B), and ''appoint to the Board'' for ''appoint to the Council'' in subpar. (C), and added subpars. (D) to (G).

Subsec. (d)(2). Pub. L. 103–43, § 1701(4)(B), designated existing provisions as subpar. (A), substituted ''an individual to serve as the initial Chair'' for ''an appointed member of the Board to serve as the Chair'', and added subpar. (B).

Subsec. (d)(3)(A). Pub. L. 103–43, § 1701(4)(C), substituted ''(1)(C)'' for ''(2)(C)''.

Subsec. (d)(5), (6). Pub. L. 103–43, § 1701(4)(D), added pars. (5) and (6).

Subsec. (e). Pub. L. 103–43, § 1701(2), redesignated subsec. (e) as (g).

Subsecs. (f) to (h). Pub. L. 103–43, § 1701(2), redesignated subsecs. (d) to (f) as (f) to (h), respectively. Former subsecs. (g) and (h) redesignated (i) and (j), respectively.

Subsec. (i). Pub. L. 103–43, § 1701(2), redesignated subsec. (g) as (i). Former subsec. (i) redesignated (m).

Subsec. (i)(4). Pub. L. 103–43, § 1701(5)(A), inserted before period at end '', and define the duties of the officers and employees''.

Subsec. (i)(5), (6). Pub. L. 103–43, § 1701(5)(B), (C), redesignated par. (6) as (5) and struck out former par. (5) which read as follows: ''prescribe by its Board its bylaws, that shall be consistent with law, and that shall provide for the manner in which—

''(A) its officers, employees, and agents are selected;

''(B) its property is acquired, held, and transferred;

''(C) its general operations are to be conducted; and

''(D) the privileges granted by law are exercised and enjoyed;''.

Subsec. (i)(7). Pub. L. 103–43, § 1701(5)(C), (D), redesignated par. (8) as (7) and substituted ''part'' for ''subtitle''. Former par. (7) redesignated (6).

Subsec. (i)(8). Pub. L. 103–43, § 1701(5)(C), (E), redesignated par. (9) as (8) and substituted ''establish a process for the selection of candidates for positions under subsection (c) of this section'' for ''establish a mechanism for the selection of candidates, subject to the approval of the Director of the National Institutes of Health, for the endowed scientific positions within the organizational structure of the intramural research programs of the National Institutes of Health and candidates for participation in the National Institutes of Health Scholars program''.

Subsec. (i)(9), (10). Pub. L. 103–43, § 1701(5)(C), redesignated pars. (10) and (11) as (9) and (10), respectively. Former par. (9) redesignated (8).

Subsec. (i)(11). Pub. L. 103–43, § 1701(5)(C), (F), redesignated par. (12) as (11) and inserted ''solicit'' before ''accept''. Former par. (11) redesignated (10).

Subsec. (i)(12), (13). Pub. L. 103–43, § 1701(5)(C), redesignated pars. (13) and (14) as (12) and (13), respectively. Former par. (12) redesignated (11).

Subsec. (i)(14). Pub. L. 103–43, § 1701(5)(G), (H), added par. (14). Former par. (14) redesignated (13).

Subsec. (i)(15). Pub. L. 103–43, § 1701(5)(I), substituted ''part'' for ''subtitle''.

Subsec. (j). Pub. L. 103–43, § 1701(2), redesignated subsec. (h) as (j).

Subsecs. (k), (*l*). Pub. L. 103–43, § 1701(6), added subsecs. (k) and (*l*).

Subsec. (m). Pub. L. 103–43, § 1701(7), amended heading and text of subsec. (m) generally. Prior to amendment, text read as follows:

''(1) AUTHORIZATION OF APPROPRIATIONS.—Subject to paragraph (2), for the purpose of carrying out this part, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 1995.

''(2) LIMITATIONS.—

''(A) Amounts appropriated under paragraph (1) or made available under subparagraph (C) may not be provided to the fund established under subsection (b)(1)(A) of this section.

''(B) For the first fiscal year for which amounts are appropriated under paragraph (1), $200,000 is authorized to be appropriated.

''(C) With respect to the first fiscal year for which amounts are appropriated under paragraph (1), the Secretary may, from amounts appropriated for such fiscal year for the programs of the Department of Health and Human Services, make available not more than $200,000 for carrying out this part, subject to subparagraph (A).''

Pub. L. 103–43, § 1701(2), redesignated subsec. (i) as (m).

Subsec. (n). Pub. L. 103–43, § 1701(8), added subsec. (n).

1992—Subsec. (g)(9). Pub. L. 102–321 struck out ''or the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration'' after ''Director of the National Institutes of Health'' and ''and the Alcohol, Drug Abuse, and Mental Health Administration'' after ''research programs of the National Institutes of Health''.

1991—Subsec. (c)(1)(C). Pub. L. 102–170, § 216(1), substituted ''11'' for ''9''.

Subsec. (c)(1)(C)(iii). Pub. L. 102–170, § 216(2), substituted ''5'' for ''3''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

SUBCHAPTER III–A—SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 247b–6, 256d of this title; title 31 section 6703.

PART A—ORGANIZATION AND GENERAL AUTHORITIES

§ 290aa. Substance Abuse and Mental Health Services Administration

(a) Establishment

The Substance Abuse and Mental Health Services Administration (hereafter referred to in this subchapter as the ''Administration'') is an agency of the Service.

(b) Agencies

The following entities are agencies of the Administration:

(1) The Center for Substance Abuse Treatment.

(2) The Center for Substance Abuse Prevention.

(3) The Center for Mental Health Services.

(c) Administrator and Deputy Administrator

(1) Administrator

The Administration shall be headed by an Administrator (hereinafter in this subchapter referred to as the ''Administrator'') who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) Deputy Administrator

The Administrator, with the approval of the Secretary, may appoint a Deputy Administrator and may employ and prescribe the functions of such officers and employees, including attorneys, as are necessary to administer the activities to be carried out through the Administration.

(d) Authorities

The Secretary, acting through the Administrator, shall—

(1) supervise the functions of the agencies of the Administration in order to assure that the programs carried out through each such agency receive appropriate and equitable support and that there is cooperation among the agencies in the implementation of such programs;

(2) establish and implement, through the respective agencies, a comprehensive program to improve the provision of treatment and related services to individuals with respect to substance abuse and mental illness and to improve prevention services, promote mental health and protect the legal rights of individuals with mental illnesses and individuals who are substance abusers;

(3) carry out the administrative and financial management, policy development and planning, evaluation, knowledge dissemination, and public information functions that are required for the implementation of this subchapter;

(4) assure that the Administration conduct and coordinate demonstration projects, evaluations, and service system assessments and other activities necessary to improve the availability and quality of treatment, prevention and related services;

(5) support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs;

(6) in cooperation with the National Institutes of Health, the Centers for Disease Control and the Health Resources and Services Administration develop educational materials and intervention strategies to reduce the risks of HIV or tuberculosis among substance abusers and individuals with mental illness and to develop appropriate mental health services for individuals with such illnesses;

(7) coordinate Federal policy with respect to the provision of treatment services for substance abuse utilizing anti-addiction medications, including methadone;

(8) conduct programs, and assure the coordination of such programs with activities of the National Institutes of Health and the Agency for Health Care Policy Research, as appropriate, to evaluate the process, outcomes and community impact of treatment and prevention services and systems of care in order to identify the manner in which such services can most effectively be provided;

(9) collaborate with the Director of the National Institutes of Health in the development of a system by which the relevant research findings of the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism, the National Institute of Mental Health, and, as appropriate, the Agency for Health Care Policy Research are disseminated to service providers in a manner designed to improve the delivery and effectiveness of treatment and prevention services;

(10) encourage public and private entities that provide health insurance to provide benefits for substance abuse and mental health services;

(11) promote the integration of substance abuse and mental health services into the mainstream of the health care delivery system of the United States;

(12) monitor compliance by hospitals and other facilities with the requirements of sections 290dd–1 and 290dd–2 of this title;

(13) with respect to grant programs authorized under this subchapter, assure that—

(A) all grants that are awarded for the provision of services are subject to performance and outcome evaluations; and

(B) all grants that are awarded to entities other than States are awarded only after the State in which the entity intends to provide services—

(i) is notified of the pendency of the grant application; and

(ii) is afforded an opportunity to comment on the merits of the application;

(14) assure that services provided with amounts appropriated under this subchapter are provided bilingually, if appropriate;

(15) improve coordination among prevention programs, treatment facilities and nonhealth care systems such as employers, labor unions, and schools, and encourage the adoption of employee assistance programs and student assistance programs;

(16) maintain a clearinghouse for substance abuse and mental health information to assure the widespread dissemination of such information to States, political subdivisions, educational agencies and institutions, treatment providers, and the general public;

(17) in collaboration with the National Institute on Aging, and in consultation with the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism and the National Institute of Mental Health, as appropriate, promote and evaluate substance abuse services for older Americans in need of such services, and mental health services for older Americans who are seriously mentally ill; and

(18) promote the coordination of service programs conducted by other departments, agencies, organizations and individuals that are or may be related to the problems of individuals suffering from mental illness or substance abuse, including liaisons with the Social Security Administration, Health Care Financing Administration, and other programs of the Department, as well as liaisons with the Department of Education, Department of Justice, and other Federal Departments and offices, as appropriate.

(e) Associate Administrator for Alcohol Prevention and Treatment Policy

(1) In general

There shall be in the Administration an Associate Administrator for Alcohol Prevention and Treatment Policy to whom the Administrator shall delegate the functions of promoting, monitoring, and evaluating service programs for the prevention and treatment of alcoholism and alcohol abuse within the Center for Substance Abuse Prevention, the Center for Substance Abuse Treatment, and the Center for Mental Health Services, and coordinating such programs among the Centers, and among the Centers and other public and private entities. The Associate Administrator also shall ensure that alcohol prevention, education, and policy strategies are integrated into all programs of the Centers that address substance abuse prevention, education, and policy, and that the Center for Substance Abuse Prevention addresses the Healthy People 2000 goals and the National Dietary Guidelines of the Department of Health and Human Services and the Department of Agriculture related to alcohol consumption.

(2) Plan

(A) The Administrator, acting through the Associate Administrator for Alcohol Prevention and Treatment Policy, shall develop, and periodically review and as appropriate revise, a plan for programs and policies to treat and prevent alcoholism and alcohol abuse. The plan shall be developed (and reviewed and revised) in collaboration with the Directors of the Centers of the Administration and in consultation with members of other Federal agencies and public and private entities.

(B) Not later than 1 year after July 10, 1992, the Administrator shall submit to the Congress the first plan developed under subparagraph (A).

(3) Report

(A) Not less than once during each 2 years, the Administrator, acting through the Associate Administrator for Alcohol Prevention and Treatment Policy, shall prepare a report describing the alcoholism and alcohol abuse prevention and treatment programs undertaken by the Administration and its agencies, and the report shall include a detailed statement of the expenditures made for the activities reported on and the personnel used in connection with such activities.

(B) Each report under subparagraph (A) shall include a description of any revisions in the plan under paragraph (2) made during the preceding 2 years.

(C) Each report under subparagraph (A) shall be submitted to the Administrator for inclusion in the biennial report under subsection (k) of this section.

(f) Associate Administrator for Women's Services

(1) Appointment

The Administrator, with the approval of the Secretary, shall appoint an Associate Administrator for Women's Services.

(2) Duties

The Associate Administrator appointed under paragraph (1) shall—

(A) establish a committee to be known as the Coordinating Committee for Women's Services (hereafter in this subparagraph referred to as the ''Coordinating Committee''), which shall be composed of the Directors of the agencies of the Administration (or the designees of the Directors);

(B) acting through the Coordinating Committee, with respect to women's substance abuse and mental health services—

(i) identify the need for such services, and make an estimate each fiscal year of the funds needed to adequately support the services;

(ii) identify needs regarding the coordination of services;

(iii) encourage the agencies of the Administration to support such services; and

(iv) assure that the unique needs of minority women, including Native American, Hispanic, African-American and Asian women, are recognized and addressed within the activities of the Administration; and

(C) establish an advisory committee to be known as the Advisory Committee for Women's Services, which shall be composed of not more than 10 individuals, a majority of whom shall be women, who are not officers or employees of the Federal Government, to be appointed by the Administrator from among physicians, practitioners, treatment providers, and other health professionals, whose clinical practice, specialization, or professional expertise includes a significant focus on women's substance abuse and mental health conditions, that shall—

(i) advise the Associate Administrator on appropriate activities to be undertaken by the agencies of the Administration with respect to women's substance abuse and mental health services, including services which require a multidisciplinary approach;

(ii) collect and review data, including information provided by the Secretary (including the material referred to in paragraph (3)), and report biannually to the Administrator regarding the extent to which women are represented among senior personnel, and make recommendations regarding improvement in the participation of women in the workforce of the Administration; and

(iii) prepare, for inclusion in the biennial report required pursuant to subsection (k) of this section, a description of activities of the Committee, including findings made by the Committee regarding—

(I) the extent of expenditures made for women's substance abuse and mental health services by the agencies of the Administration; and

(II) the estimated level of funding needed for substance abuse and mental health services to meet the needs of women;

(D) improve the collection of data on women's health by—

(i) reviewing the current data at the Administration to determine its uniformity and applicability;

(ii) developing standards for all programs funded by the Administration so that data are, to the extent practicable, collected and reported using common reporting formats, linkages and definitions; and

(iii) reporting to the Administrator a plan for incorporating the standards developed under clause (ii) in all Administration programs and a plan to assure that the data so collected are accessible to health professionals, providers, researchers, and members of the public; and

(E) shall establish, maintain, and operate a program to provide information on women's substance abuse and mental health services.

(3) Study

(A) The Secretary, acting through the Assistant Secretary for Personnel, shall conduct a study to evaluate the extent to which women are represented among senior personnel at the Administration.

(B) Not later than 90 days after July 10, 1992, the Assistant Secretary for Personnel shall provide the Advisory Committee for Women's Services with a study plan, including the methodology of the study and any sampling frames. Not later than 180 days after July 10, 1992, the Assistant Secretary shall prepare and submit directly to the Advisory Committee a report concerning the results of the study conducted under subparagraph (A).

(C) The Secretary shall prepare and provide to the Advisory Committee for Women's Services any additional data as requested.

(4) Definition

For purposes of this subsection, the term ''women's substance abuse and mental health conditions'', with respect to women of all age, ethnic, and racial groups, means all aspects of substance abuse and mental illness—

(A) unique to or more prevalent among women; or

(B) with respect to which there have been insufficient services involving women or insufficient data.

(g) Services of experts

(1) In general

The Administrator may obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the number of days or the period of service) the services of not more than 20 experts or consultants who have professional qualifications. Such experts and consultants shall be obtained for the Administration and for each of its agencies.

(2) Compensation and expenses

(A) Experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with sections 5724, 5724a(a)(1), 5724a(a)(3), and 5726(c) of title 5.

(B) Expenses specified in subparagraph (A) may not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1), unless and until the expert or consultant agrees in writing to complete the entire period of assignment or one year, whichever is shorter, unless separated or reassigned for reasons beyond the control of the expert or consultant that are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for the expenses specified in subparagraph (A) is recoverable from the expert or consultant as a debt of the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

(h) Peer review groups

The Administrator shall, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates, estab-

lish such peer review groups and program advisory committees as are needed to carry out the requirements of this subchapter and appoint and pay members of such groups, except that officers and employees of the United States shall not receive additional compensation for services as members of such groups. The Federal Advisory Committee Act shall not apply to the duration of a peer review group appointed under this subsection.

(i) Voluntary services

The Administrator may accept voluntary and uncompensated services.

(j) Administration

The Administrator shall ensure that programs and activities assigned under this subchapter to the Administration are fully administered by the respective Centers to which such programs and activities are assigned.

(k) Report concerning activities and progress

Not later than February 10, 1994, and once every 2 years thereafter, the Administrator shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, the report containing—

(1) a description of the activities carried out by the Administration;

(2) a description of any measurable progress made in improving the availability and quality of substance abuse and mental health services;

(3) a description of the mechanisms by which relevant research findings of the National Institute on Drug Abuse, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute of Mental Health have been disseminated to service providers or otherwise utilized by the Administration to further the purposes of this subchapter; and

(4) any report required in this subchapter to be submitted to the Adminstrator[1] for inclusion in the report under this subsection.

(*l*) Applications for grants and contracts

With respect to awards of grants, cooperative agreements, and contracts under this subchapter, the Administrator, or the Director of the Center involved, as the case may be, may not make such an award unless—

(1) an application for the award is submitted to the official involved;

(2) with respect to carrying out the purpose for which the award is to be provided, the application provides assurances of compliance satisfactory to such official; and

(3) the application is otherwise in such form, is made in such manner, and contains such agreements, assurances, and information as the official determines to be necessary to carry out the purpose for which the award is to be provided.

(m) Authorization of appropriations

For the purpose of providing grants, cooperative agreements, and contracts under this section, there are authorized to be appropriated $25,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(July 1, 1944, ch. 373, title V, § 501, formerly Pub. L. 93–282, title II, § 201, May 14, 1974, 88 Stat. 134, as amended Pub. L. 94–371, § 8, July 26, 1976, 90 Stat. 1040; renumbered § 501 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(2), 97 Stat. 176; Oct. 19, 1984, Pub. L. 98–509, title II, § 201, title III, § 301(c)(1), 98 Stat. 2359, 2364; Oct. 27, 1986, Pub. L. 99–570, title IV, § 4003, 100 Stat. 3207–106; Nov. 18, 1988, Pub. L. 100–690, title II, § 2058(a)(2), 102 Stat. 4213; Aug. 16, 1989, Pub. L. 101–93, § 3(f), 103 Stat. 611; July 10, 1992, Pub. L. 102–321, title I, § 101(a), 106 Stat. 324.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (h), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5.

CODIFICATION

Section was formerly classified to section 3511 of this title prior to renumbering by Pub. L. 98–24.

PRIOR PROVISIONS

A prior section 501 of act July 1, 1944, which was classified to section 219 of this title, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

AMENDMENTS

1992—Pub. L. 102–321 amended section generally, substituting provisions relating to the Substance Abuse and Mental Health Services Administration for provisions relating to the Alcohol, Drug Abuse, and Mental Health Administration.

1989—Subsec. (b)(4). Pub. L. 101–93, § 3(f)(1), substituted ''for'' for ''of''.

Subsec. (j). Pub. L. 101–93, § 3(f)(2), substituted ''section 290aa–5 of this title, establish program advisory committees, and pay members of such groups and committees'' for ''section 290aa–5 of this title and appoint and pay members of such groups'' and ''as members of such groups or committees'' for ''as members of such groups''.

1988—Subsec. (b)(4). Pub. L. 100–690, § 2058(a)(2)(A), added par. (4).

Subsec. (e)(2). Pub. L. 100–690, § 2058(a)(2)(B), substituted ''Not less than once each three years, the Administrator'' for ''The Administrator'' and ''shall submit'' for ''shall annually submit''.

Subsec. (f). Pub. L. 100–690, § 2058(a)(2)(C), substituted ''misconduct'' for ''fraud'' in heading and two places in text.

Subsecs. (k) to (m). Pub. L. 100–690, § 2058(a)(2)(D), (E), added subsecs. (k) to (m) and struck out former subsec. (k), which related to Alcohol, Drug Abuse, and Mental Health Advisory Board, including its duties, membership, terms of office, compensation, personnel, chairman, meetings, and reports to Congress.

1986—Pub. L. 99–570 amended section generally, revising and restating former subsecs. (a), (b), (c), (d), (e), (f), (g), and (h) as (c), (d), (k), (h), (e), (f), (g), and (i), respectively, and adding new subsecs. (a), (b), and (j).

1984—Pub. L. 98–509, § 301(c)(1), amended directory language of Pub. L. 98–24, § 2(b)(2). See 1983 Amendment note below.

Subsec. (c). Pub. L. 98–509, § 201(a), substituted provisions relating to the Alcohol, Drug Abuse, and Mental Health Advisory Board for provisions relating to the National Panel on Alcohol, Drug Abuse, and Mental Health.

Subsecs. (g), (h). Pub. L. 98–509, § 201(b), added subsecs. (g) and (h).

[1] So in original. Probably should be ''Administrator''.

1983—Pub. L. 98–24, §2(b)(2), as amended by Pub. L. 98–509, §301(c)(1), renumbered section 3511 of this title as this section.

Subsec. (a). Pub. L. 98–24, §2(b)(2)(A), struck out ''of Health, Education, and Welfare'' after ''The Secretary'' and ''Department''.

Subsec. (c). Pub. L. 98–24, §2(b)(2)(A), (B), struck out ''of Health, Education, and Welfare'' after ''The Secretary'', and made a technical amendment to reference to section 218 of this title to reflect the transfer of this section to the Public Health Service Act.

Subsec. (d). Pub. L. 98–24, §2(b)(2)(C), substituted provisions directing the Administrator to distribute information on the hazards of alcoholism and the abuse of alcohol and drugs for provisions directing the Secretary, through the Administration, to evaluate and make recommendations regarding improved, coordinated activities, where appropriate, for public education and other prevention programs with respect to the abuse of alcohol and other substances.

Subsecs. (e), (f). Pub. L. 98–24, §2(b)(2)(D), added subsecs. (e) and (f).

1976—Subsec. (d). Pub. L. 94–371 added subsec. (d).

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, §312, Oct. 27, 1992, 106 Stat. 3504.

Section 161 of Pub. L. 102–321 provided that: ''Reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Alcohol, Drug Abuse and Mental Health Administration or to the Administrator of the Alcohol, Drug Abuse and Mental Health Administration shall be deemed to refer to the Substance Abuse and Mental Health Services Administration or to the Administrator of the Substance Abuse and Mental Health Services Administration.''

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

TRANSFER PROVISIONS

Subtitle D of title I of Pub. L. 102–321, as amended by Pub. L. 102–352, §2(b)(1), Aug. 26, 1992, 106 Stat. 939, provided that:

''SEC. 141. TRANSFERS.

''(a) SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION.—Except as specifically provided otherwise in this Act [see Tables for classification] or an amendment made by this Act, there are transferred to the Administrator of the Substance Abuse and Mental Health Services Administration all service related functions which the Administrator of the Alcohol, Drug Abuse and Mental Health Administration, or the Director of any entity within the Alcohol, Drug Abuse and Mental Health Administration, exercised before the date of the enactment of this Act [July 10, 1992] and all related functions of any officer or employee of the Alcohol, Drug Abuse and Mental Health Administration.

''(b) NATIONAL INSTITUTES.—Except as specifically provided otherwise in this Act or an amendment made by this Act, there are transferred to the appropriate Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health, through the Director of the National Institutes of Health, all research related functions which the Administrator of the Alcohol, Drug Abuse and Mental Health Administration exercised before the date of the enactment of this Act and all related functions of any officer or employee of the Alcohol, Drug Abuse, and Mental Health Administration.

''(c) ADEQUATE PERSONNEL AND RESOURCES.—The transfers required under this subtitle shall be effectuated in a manner that ensures that the Substance Abuse and Mental Health Services Administration has adequate personnel and resources to carry out its statutory responsibilities and that the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health have adequate personnel and resources to enable such institutes to carry out their respective statutory responsibilities.

''SEC. 142. TRANSFER AND ALLOCATIONS OF APPROPRIATIONS AND PERSONNEL.

''(a) SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION.—Except as otherwise provided in the Public Health Service Act [this chapter], all personnel employed in connection with, and all assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred to the Administrator of the Substance Abuse and Mental Health Services Administration by this subtitle, subject to section 1531 of title 31, United States Code, shall be transferred to the Substance Abuse and Mental Health Services Administration. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

''(b) NATIONAL INSTITUTES.—Except as otherwise provided in the Public Health Service Act, all personnel employed in connection with, and all assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, used, held, arising from, available to, or to be made available in connection with the functions transferred to the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health by this subtitle, subject to section 1531 of title 31, United States Code, shall be transferred to the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health. Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally authorized and appropriated.

''(c) CUSTODY OF BALANCES.—The actual transfer of custody of obligation balances is not required in order to implement this section.

''SEC. 143. INCIDENTAL TRANSFERS.

''Prior to October 1, 1992, the Secretary of Health and Human Services is authorized to make such determinations as may be necessary with regard to the functions transferred by this subtitle, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this subtitle and the Public Health Service Act [this chapter]. Such Secretary shall provide for the termination of the affairs of all entities terminated by this subtitle and for such further measures and dispositions as may be necessary to effectuate the purposes of this subtitle.

''SEC. 144. EFFECT ON PERSONNEL.

''(a) IN GENERAL.—Except as otherwise provided by this subtitle and the Public Health Service Act [this chapter], the transfer pursuant to this subtitle of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer of such employee under this subtitle.

''(b) EXECUTIVE SCHEDULE POSITIONS.—Any person who, on the day preceding the effective date of this Act [see Effective Date of 1992 Amendment note set out under section 236 of this title], held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Substance Abuse and Mental Health Services Administration to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

''SEC. 145. SAVINGS PROVISIONS.

''(a) EFFECT ON PREVIOUS DETERMINATIONS.—All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges that—

''(1) have been issued, made, granted, or allowed to become effective by the President, any Federal agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred by this subtitle; and

''(2) are in effect on the date of enactment of this Act [July 10, 1992];

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Director of the National Institutes of Health, or the Administrator of the Substance Abuse and Mental Health Services Administration, as appropriate, a court of competent jurisdiction, or by operation of law.

''(b) CONTINUATION OF PROCEEDINGS.—

''(1) IN GENERAL.—The provisions of this subtitle shall not affect any proceedings, including notices of proposed rule making, or any application for any license, permit, certificate, or financial assistance pending on the date of enactment of this Act before the Department of Health and Human Services, which relates to the Alcohol, Drug Abuse and Mental Health Administration or the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, or the National Institute of Mental Health, or any office thereof with respect to functions transferred by this subtitle. Such proceedings or applications, to the extent that they relate to functions transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made under such orders, as if this Act [see Tables for classification] had not been enacted, and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health by a court of competent jurisdiction, or by operation of law. Nothing in this subsection prohibits the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this subtitle had not been enacted.

''(2) REGULATIONS.—The Secretary of Health and Human Services is authorized to issue regulations providing for the orderly transfer of proceedings continued under paragraph (1).

''(c) EFFECT ON LEGAL ACTIONS.—Except as provided in subsection (e)—

''(1) the provisions of this subtitle do not affect actions commenced prior to the date of enactment of this Act [July 10, 1992]; and

''(2) in all such actions, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this Act had not been enacted.

''(d) NO ABATEMENT OF ACTIONS OR PROCEEDINGS.—No action or other proceeding commenced by or against any officer in his official capacity as an officer of the Department of Health and Human Services with respect to functions transferred by this subtitle shall abate by reason of the enactment of this Act [see Tables for classification]. No cause of action by or against the Department of Health and Human Services with respect to functions transferred by this subtitle, or by or against any officer thereof in his official capacity, shall abate by reason of the enactment of this Act. Causes of action and actions with respect to a function transferred by this subtitle, or other proceedings may be asserted by or against the United States or the Administrator of the Alcohol, Drug Abuse and Mental Health Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health, as may be appropriate, and, in an action pending when this Act takes effect [see Effective Date of 1992 Amendment note set out under section 236 of this title], the court may at any time, on its own motion or that of any party, enter an order which will give effect to the provisions of this subsection.

''(e) SUBSTITUTION.—If, before the date of enactment of this Act [July 10, 1992], the Department of Health and Human Services, or any officer thereof in the official capacity of such officer, is a party to an action, and under this subtitle any function of such Department, Office, or officer is transferred to the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health, then such action shall be continued with the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health, as the case may be, substituted or added as a party.

''(f) JUDICIAL REVIEW.—Orders and actions of the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health in the exercise of functions transferred to the Directors by this subtitle shall be subject to judicial review to the same extent and in the same manner as if such orders and actions had been by the Administrator of the Alcohol, Drug Abuse and Mental Health Administration or the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health, or any office or officer thereof, in the exercise of such functions immediately preceding their transfer. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function transferred by this subtitle shall apply to the exercise of such function by the Administrator of the Substance Abuse and Mental Health Services Administration or the Directors.

''SEC. 146. TRANSITION.

''With the consent of the Secretary of Health and Human Services, the Administrator of the Substance Abuse and Mental Health Services Administration and the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health are authorized to utilize—

''(1) the services of such officers, employees, and other personnel of the Department with respect to functions transferred to the Administrator of the Substance Abuse and Mental Health Services Administration and the Director of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health by this subtitle; and

''(2) funds appropriated to such functions for such period of time as may reasonably be needed to facilitate the orderly implementation of this subtitle.

''SEC. 147. PEER REVIEW.

''With respect to fiscal years 1993 through 1996, the peer review systems, advisory councils and scientific advisory committees utilized, or approved for utilization, by the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse and the National Institute of Mental Health prior to the transfer of such Institutes to the National Institute of Health shall be utilized by such Institutes.

''SEC. 148. MERGERS.

''Notwithstanding the provisions of section 401(c)(2) of the Public Health Service Act (42 U.S.C. 281(c)(2)), the Secretary of Health and Human Services may not merge the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse or the National Institute of Mental Health with any other institute or entity (or with each other) within the national research institutes for a 5-year period beginning on the date of enactment of this Act [July 10, 1992].

''SEC. 149. CONDUCT OF MULTI-YEAR RESEARCH PROJECTS.

''With respect to multi-year grants awarded prior to fiscal year 1993 by the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health with amounts received under section 1911(b) [former section 300x(b) of this title], as such section existed one day prior to the date of enactment of this Act [July 10, 1992], such grants shall be continued for the entire period of the grant through the utilization of funds made available pursuant to sections 464H, 464L, and 464R [sections 285n, 285*o*, 285p of this title], as appropriate, subject to satisfactory performance.

''SEC. 150. SEPARABILITY.

''If a provision of this subtitle or its application to any person or circumstance is held invalid, neither the remainder of this Act [see Tables for classification] nor the application of the provision to other persons or circumstances shall be affected.

''SEC. 151. BUDGETARY AUTHORITY.

''With respect to fiscal years 1994 and 1995, the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health shall notwithstanding section 405(a) [section 284(a) of this title], prepare and submit, directly to the President for review and transmittal to Congress, an annual budget estimate (including an estimate of the number and type of personnel needs for the Institute) for their respective Institutes, after reasonable opportunity for comment (but without change) by the Secretary of Health and Human Services, the Director of the National Institutes of Health, and the Institute's advisory council.''

REPORT BY SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION

Section 708 of Pub. L. 102–321 directed Administrator of Substance Abuse and Mental Health Services Administration to submit to Congress an interim report, not later than 6 months after July 10, 1992, and a final report, not later than Oct. 1, 1993, concerning current policies and barriers to provision of substance abuse and mental health services, with emphasis on barriers to health insurance and Medicaid coverage of such services, and further directed Secretary of Health and Human Services to initiate, not later than Jan. 1, 1994, research and demonstration projects which, consistent with information from reports submitted by the Administrator, explore alternative mechanisms of providing health insurance and treatment services for substance abuse and mental illness.

RELATIONSHIP BETWEEN MENTAL ILLNESS AND SUBSTANCE ABUSE

Section 2071 of Pub. L. 100–690 directed Secretary of Health and Human Services to conduct a study for the purpose of determining the relationship between mental illness and substance abuse, and developing recommendations on the most effective methods of treatment for individuals with both mental illness and substance abuse problems, and, not later than 12 months after Nov. 18, 1988, to complete the study and submit to Congress the findings made as a result of the study.

REPORT WITH RESPECT TO ADMINISTRATION OF CERTAIN RESEARCH PROGRAMS

Section 2073 of Pub. L. 100–690 directed Secretary of Health and Human Services to request National Academy of Sciences to conduct a review of research activities of National Institutes of Health and the Alcohol, Drug Abuse, and Mental Health Administration and, not later than 12 months after the date on which any contract requested is entered into, provide for the completion of the review and submit to Congress a report describing the findings made as a result of the review, with Secretary of Health and Human Services authorized to enter into a contract with National Academy of Sciences to carry out the review.

CONGRESSIONAL STATEMENT OF POLICY FOR ALCOHOL AND DRUG ABUSE AMENDMENTS OF 1983

Section 1(b) of Pub. L. 98–24 provided that: ''It is the policy of the United States and the purpose of this Act [see Short Title of 1983 Amendment note set out under section 201 of this title] to provide leadership in the national effort to reduce the incidence of alcoholism and alcohol-related problems and drug abuse through—

''(1) a continued Federal commitment to research into the behavioral and biomedical etiology, the treatment, and the mental and physical health and social and economic consequences of alcohol abuse and alcoholism and drug abuse;

''(2) a commitment to—

''(A) extensive dissemination to States, units of local government, community organizations, and private groups of the most recent information and research findings with respect to alcohol abuse and alcoholism and drug abuse, including information with respect to the application of research findings; and

''(B) the accomplishment of such dissemination through up-to-date publications, demonstrations, educational programs, and other appropriate means;

''(3) the provision of technical assistance to research personnel; services personnel, and prevention personnel in the field of alcohol abuse and alcoholism and drug abuse;

''(4) the development and encouragement of prevention programs designed to combat the spread of alcoholism, alcohol abuse, drug abuse, and the abuse of other legal and illegal substances;

''(5) the development and encouragement of effective occupational prevention and treatment programs within Government and in cooperation with the private sector; and

''(6) the provision of a Federal response to alcohol abuse and alcoholism and drug abuse which encourages the greatest participation by the private sector, both financially and otherwise, and concentrates on carrying out functions relating to alcohol abuse and alcoholism and drug abuse which are truly national in scope.''

ALCOHOL AND DRUG ABUSE AND MENTAL HEALTH REPORTS BY THE SECRETARY

Section 3 of Pub. L. 98–24 directed Secretary of Health and Human Services to submit to Congress, on or before Jan. 15, 1984, a report describing the extent to which Federal and State programs, departments, and agencies are concerned and are dealing effectively with problems of alcohol abuse and alcoholism, problems of drug abuse, and mental illness.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290bb–1 of this title; title 20 section 7131.

§ 290aa–1. Advisory councils

(a) Appointment

(1) In general

The Secretary shall appoint an advisory council for—

(A) the Substance Abuse and Mental Health Services Administration;

(B) the Center for Substance Abuse Treatment;

(C) the Center for Substance Abuse Prevention; and

(D) the Center for Mental Health Services.

Each such advisory council shall advise, consult with, and make recommendations to the Secretary and the Administrator or Director of the Administration or Center for which the advisory council is established concerning matters relating to the activities carried out by and through the Administration or Center and the policies respecting such activities.

(2) Function and activities

An advisory council—

(A)(i) may on the basis of the materials provided by the organization respecting activities conducted at the organization, make recommendations to the Administrator or Director of the Administration or Center for which it was established respecting such activities;

(ii) shall review applications submitted for grants and cooperative agreements for activities for which advisory council approval is required under section 290aa–3(d)(2) of this title and recommend for approval applications for projects that show promise of making valuable contributions to the Administration's mission; and

(iii) may review any grant, contract, or cooperative agreement proposed to be made or entered into by the organization;

(B) may collect, by correspondence or by personal investigation, information as to studies and services that are being carried on in the United States or any other country as to the diseases, disorders, or other aspects of human health with respect to which the organization was established and with the approval of the Administrator or Director, whichever is appropriate, make such information available through appropriate publications for the benefit of public and private health entities and health professions personnel and for the information of the general public; and

(C) may appoint subcommittees and convene workshops and conferences.

(b) Membership

(1) In general

Each advisory council shall consist of nonvoting ex officio members and not more than 12 members to be appointed by the Secretary under paragraph (3).

(2) Ex officio members

The ex officio members of an advisory council shall consist of—

(A) the Secretary;

(B) the Administrator;

(C) the Director of the Center for which the council is established;

(D) the Under Secretary for Health of the Department of Veterans Affairs;

(E) the Assistant Secretary for Defense for Health Affairs (or the designates of such officers); and

(F) such additional officers or employees of the United States as the Secretary determines necessary for the advisory council to effectively carry out its functions.

(3) Appointed members

Individuals shall be appointed to an advisory council under paragraph (1) as follows:

(A) Nine of the members shall be appointed by the Secretary from among the leading representatives of the health disciplines (including public health and behavioral and social sciences) relevant to the activities of the Administration or Center for which the advisory council is established.

(B) Three of the members shall be appointed by the Secretary from the general public and shall include leaders in fields of public policy, public relations, law, health policy economics, or management.

(4) Compensation

Members of an advisory council who are officers or employees of the United States shall not receive any compensation for service on the advisory council. The remaining members of an advisory council shall receive, for each day (including travel time) they are engaged in the performance of the functions of the advisory council, compensation at rates not to exceed the daily equivalent to the annual rate in effect for grade GS–18 of the General Schedule.

(c) Terms of office

(1) In general

The term of office of a member of an advisory council appointed under subsection (b) of this section shall be 4 years, except that any member appointed to fill a vacancy for an unexpired term shall serve for the remainder of such term. The Secretary shall make appointments to an advisory council in such a manner as to ensure that the terms of the members not all expire in the same year. A member of an advisory council may serve after the expiration of such member's term until a successor has been appointed and taken office.

(2) Reappointments

A member who has been appointed to an advisory council for a term of 4 years may not be reappointed to an advisory council during the 2-year period beginning on the date on which such 4-year term expired.

(3) Time for appointment

If a vacancy occurs in an advisory council among the members under subsection (b) of this section, the Secretary shall make an appointment to fill such vacancy within 90 days from the date the vacancy occurs.

(d) Chair

The Secretary shall select a member of an advisory council to serve as the chair of the coun-

cil. The Secretary may so select an individual from among the appointed members, or may select the Administrator or the Director of the Center involved. The term of office of the chair shall be 2 years.

(e) Meetings

An advisory council shall meet at the call of the chairperson or upon the request of the Administrator or Director of the Administration or Center for which the advisory council is established, but in no event less than 3 times during each fiscal year. The location of the meetings of each advisory council shall be subject to the approval of the Administrator or Director of Administration or Center for which the council was established.

(f) Executive Secretary and staff

The Administrator or Director of the Administration or Center for which the advisory council is established shall designate a member of the staff of the Administration or Center for which the advisory council is established to serve as the Executive Secretary of the advisory council. The Administrator or Director shall make available to the advisory council such staff, information, and other assistance as it may require to carry out its functions. The Administrator or Director shall provide orientation and training for new members of the advisory council to provide for their effective participation in the functions of the advisory council.

(July 1, 1944, ch. 373, title V, § 502, formerly § 505, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4004(a), 100 Stat. 3207–109; amended Oct. 25, 1988, Pub. L. 100–527, § 10(4), 102 Stat. 2641; Aug. 18, 1990, Pub. L. 101–381, title I, § 102(6), 104 Stat. 586; renumbered § 502 and amended July 10, 1992, Pub. L. 102–321, title I, § 102, 106 Stat. 331; Aug. 26, 1992, Pub. L. 102–352, § 2(a)(6), 106 Stat. 938; Nov. 2, 1994, Pub. L. 103–446, title XII, § 1203(a)(1), 108 Stat. 4689.)

CODIFICATION

Section was formerly classified to section 290aa–3a of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 290aa–1, act July 1, 1944, ch. 373, title V, § 502, formerly Pub. L. 91–616, title I, § 101, Dec. 31, 1970, 84 Stat. 1848, as amended Pub. L. 93–282, title II, § 203(a), May 14, 1974, 88 Stat. 135; Pub. L. 96–180, § 3, Jan. 2, 1980, 93 Stat. 1302; Pub. L. 97–35, title IX, § 966(a), Aug. 13, 1981, 95 Stat. 595; renumbered § 502 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(3), 97 Stat. 177; Oct. 19, 1984, Pub. L. 98–509, title II, § 205(b)(2), 98 Stat. 2361; Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(b)(1), 100 Stat. 3207–114, related to National Institute on Alcohol Abuse and Alcoholism, prior to repeal by Pub. L. 102–321, title I, § 101(b), July 10, 1992, 106 Stat. 331. See section 285n of this title.

A prior section 502 of act July 1, 1944, which was classified to section 220 of this title, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

AMENDMENTS

1994—Subsec. (b)(2)(D). Pub. L. 103–446 amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''the Chief Medical Director of the Veterans Administration; and''.

1992—Pub. L. 102–352 substituted ''or management'' for ''and management'' in subsec. (b)(3)(B).

Pub. L. 102–321 amended section generally, substituting provisions relating to appointment of advisory councils to Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, Center for Substance Abuse Prevention, and Center for Mental Health Services for provisions appointing advisory councils for National Institute on Alcohol Abuse and Alcoholism, National Institute on Drug Abuse, and National Institute of Mental Health.

1990—Subsec. (a)(2). Pub. L. 101–381 made technical amendment to reference to section 300aaa of this title to reflect renumbering of corresponding section of original act.

1988—Subsec. (b)(2)(A). Pub. L. 100–527 substituted ''Chief Medical Director of the Department of Veterans Affairs'' for ''Chief Medical Director of the Veterans' Administration''.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

CONTINUATION OF EXISTING ADVISORY COUNCILS

Section 4004(b) of Pub. L. 99–570 provided that: ''The amendment made by subsection (a) [enacting this section and renumbering this section and section 290aa–5 of this title] does not terminate the membership of any advisory council for the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, or the National Institute of Mental Health which was in existence on the date of enactment of this Act [Oct. 27, 1986]. After such date—

''(1) the Secretary of Health and Human Services shall make appointments to each such advisory council in such a manner as to bring about as soon as practicable the composition for such council prescribed by section 505 [now 502] of the Public Health Service Act [this section];

''(2) each advisory council shall organize itself in accordance with such section and exercise the functions prescribed by such section; and

''(3) the Director of each such institute shall perform for such advisory council the functions prescribed by such section.''

§ 290aa–2. Reports: health consequences, current research, recommendations

(a) Alcoholism and alcohol abuse

The Secretary shall submit to Congress on or before January 15, 1984, and every three years thereafter a report—

(1) containing current information on the health consequences of using alcoholic beverages,

(2) containing a description of current research findings made with respect to alcohol abuse and alcoholism, and

(3) containing such recommendations for legislation and administrative action as the Secretary may deem appropriate.

(b) Drug abuse

The Secretary shall submit to Congress on or before January 15, 1984, and every three years thereafter a report—

(1) describing the health consequences and extent of drug abuse in the United States;

(2) describing current research findings made with respect to drug abuse, including current findings on the health effects of marihuana and the addictive property of tobacco; and

(3) containing such recommendations for legislation and administrative action as the Secretary may deem appropriate.

(July 1, 1944, ch. 373, title V, § 503, formerly § 505, as added Apr. 26, 1983, Pub. L. 98–24, § 2(b)(7), 97 Stat. 178; renumbered § 506, Oct. 27, 1986, Pub. L. 99–570, title IV, § 4004(a), 100 Stat. 3207–109; renumbered § 503, July 10, 1992, Pub. L. 102–321, title I, § 103, 106 Stat. 333.)

CODIFICATION

Section was formerly classified to section 290aa–4 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 290aa–2, act July 1, 1944, ch. 373, title V, § 503, formerly Pub. L. 92–255, title IV, § 406(a), title V, § 501, Mar. 21, 1972, 86 Stat. 78, 85; amended Pub. L. 93–282, title II, § 204, May 14, 1974, 88 Stat. 136; Pub. L. 94–237, § 12(a), Mar. 19, 1976, 90 Stat. 247; Pub. L. 96–181, § 10, Jan. 2, 1980, 93 Stat. 1314; Pub. L. 97–35, title IX, §§ 968(a), 973(f), Aug. 13, 1981, 95 Stat. 595, 598; renumbered § 503 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(4), (5), 97 Stat. 177; Oct. 19, 1984, Pub. L. 98–509, title II, §§ 202, 205(b)(1), 98 Stat. 2360, 2361; Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(b)(2), 100 Stat. 3207–114, related to National Institute on Drug Abuse, prior to repeal by Pub. L. 102–321, title I, § 101(b), July 10, 1992, 106 Stat. 331. See section 285*o* of this title.

A prior section 503 of act July 1, 1944, which was classified to section 221 of this title, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

REGULATIONS

Secretary of Health and Human Services to promulgate regulations, within 90 days of Oct. 19, 1984, for the administration of section 802(28) of Title 21, Food and Drugs, as amended by Pub. L. 98–509, title III, § 301(a), Oct. 19, 1984, 98 Stat. 2364, and to include in the first report submitted under subsec. (b) of this section after such period the findings of the Secretary with respect to the effect of the amendment by section 301(a) of Pub. L. 98–509, see section 301(b) of Pub. L. 98–509, set out as a note under section 802 of Title 21.

RELATIONSHIP BETWEEN CONSUMPTION OF LEGAL AND ILLEGAL DRUGS

Pub. L. 103–43, title XIX, § 1908, June 10, 1993, 107 Stat. 204, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall review and consider all existing relevant data and research concerning whether there is a relationship between an individual's receptivity to use or consume legal drugs and the consumption or abuse by the individual of illegal drugs. On the basis of such review, the Secretary shall determine whether additional research is necessary. If the Secretary determines additional research is required, the Secretary shall conduct a study of those subjects where the Secretary's review indicates additional research is needed, including, if necessary, a review of—

''(1) the effect of advertising and marketing campaigns that promote the use of legal drugs on the public;

''(2) the correlation of legal drug abuse with illegal drug abuse; and

''(3) other matters that the Secretary determines appropriate.

''(b) REPORT.—Not later than 12 months after the date of enactment of this Act [June 10, 1993], the Secretary shall prepare and submit, to the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives and Committee on Labor and Human Resources of the Senate, a report containing the results of the review conducted under subsection (b)[(a)]. If the Secretary determines additional research is required, no later than 2 years after the date of enactment of this Act, the Secretary shall prepare and submit, to the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives and Committee on Labor and Human Resources of the Senate, a report containing the results of the additional research conducted under subsection (b)[(a)].''

§ 290aa–3. Peer review

(a) In general

The Secretary, after consultation with the Directors of the Center for Substance Abuse Treatment, the Center for Substance Abuse Prevention, and the Center for Mental Health Services, shall require appropriate peer review of grants, cooperative agreements, and contracts to be administered through such Centers.

(b) Members

The members of any peer review group established under regulations under subsection (a) of this section shall be individuals who by virtue of their training or experience are eminently qualified to perform the review functions of the group. Not more than one-fourth of the members of any peer review group established under such regulation shall be officers or employees of the United States.

(c) Requirements

Regulations promulgated pursuant to subsection (a) of this section—

(1) shall require that the reviewing entity be provided a written description of the matter to be reviewed;

(2) shall require that the reviewing entity provide the advisory council of the Center involved with such description and the results of the review by the entity; and

(3) may specify the conditions under which limited exceptions may be granted to the limitations contained in the last sentence of subsection (b) of this section and subsection (d) of this section.

(d) Recommendations

(1) In general

If the direct cost of a grant, cooperative agreement, or contract (described in subsection (a) of this section) to be made does not exceed $50,000, the Secretary may make such grant, cooperative agreement, or contract only if such grant, cooperative agreement, or contract is recommended after peer review required by regulations under subsection (a) of this section.

(2) By appropriate advisory council

If the direct cost of a grant, cooperative agreement, or contract (described in subsection (a) of this section) to be made exceeds $50,000, the Secretary may make such grant, cooperative agreement, or contract only if such grant, cooperative agreement, or contract is recommended—

(A) after peer review required by regulations under subsection (a) of this section, and

(B) by the appropriate advisory council.

(July 1, 1944, ch. 373, title V, § 504, formerly § 506, as added Apr. 26, 1983, Pub. L. 98–24, § 2(b)(7), 97 Stat. 178; amended Nov. 20, 1985, Pub. L. 99–158, § 3(c), 99 Stat. 879; renumbered § 507 and amended Oct. 27, 1986, Pub. L. 99–570, title IV, §§ 4004(a), 4007, 100 Stat. 3207–109, 3207–115; renumbered § 504 and amended July 10, 1992, Pub. L. 102–321, title I, § 104, 106 Stat. 333; Aug. 26, 1992, Pub. L. 102–352, § 2(a)(7), 106 Stat. 938.)

CODIFICATION

Section was formerly classified to section 290aa–5 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 290aa–3, act July 1, 1944, ch. 373, title V, § 504, formerly title IV, § 455, as added May 14, 1974, Pub. L. 93–282, title II, § 202, 88 Stat. 135; amended Oct. 7, 1980, Pub. L. 96–398, title III, § 325, title IV, § 401(a), title VIII, § 804(a), 94 Stat. 1596, 1597, 1608; Aug. 13, 1981, Pub. L. 97–35, title IX, § 902(g)(1), 95 Stat. 560; renumbered title V, § 504, Apr. 26, 1983, Pub. L. 98–24, § 2(b)(6), 97 Stat. 177; Oct. 19, 1984, Pub. L. 98–509, title II, §§ 203, 204, 98 Stat. 2360, 2361; Oct. 7, 1985, Pub. L. 99–117, § 11(b), 99 Stat. 495; Oct. 27, 1986, Pub. L. 99–570, title IV, §§ 4011(a), 4012, 4013, 4021(a), (b)(1), 100 Stat. 3207–115, 3207–116, 3207–124; Nov. 14, 1986, Pub. L. 99–660, title V, § 504, 100 Stat. 3797; Nov. 18, 1988, Pub. L. 100–690, title II, § 2057(1), (2), 102 Stat. 4211, related to National Institute of Mental Health, prior to repeal by Pub. L. 102–321, title I, § 101(b), July 10, 1992, 106 Stat. 331. See section 285p of this title.

A prior section 504 of act July 1, 1944, which was classified to section 222 of this title, was renumbered section 2104 of act July 1, 1944, by Pub. L. 98–24 and transferred to section 300aa–3 of this title, renumbered section 2304 of act July 1, 1944, by Pub. L. 99–660 and transferred to section 300cc–3 of this title, prior to repeal by Pub. L. 98–621, § 10(s), Nov. 8, 1984, 98 Stat. 3381.

AMENDMENTS

1992—Pub. L. 102–352 struck out ''by regulation'' after ''Center for Mental Health Services, shall'' in subsec. (a).

Pub. L. 102–321 amended section generally, substituting provisions relating to peer review of grants, cooperative agreements, and contracts administered through the Centers for Substance Abuse Treatment, Substance Abuse Prevention, and Mental Health Services for provisions relating to peer review of biomedical and behavioral research and development grants, cooperative agreements, and contracts administered through the National Institutes of Mental Health, Alcohol Abuse and Alcoholism, and Drug Abuse.

1986—Subsec. (b). Pub. L. 99–570, § 4007, inserted ''applications made for'' before ''grants, cooperative'' in introductory text.

1985—Subsec. (e). Pub. L. 99–158 added subsec. (e).

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290aa–1 of this title.

§ 290aa–3a. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title V, § 505, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4004(a), 100 Stat. 3207–109, and amended, which related to advisory councils for the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health, was renumbered section 502 of act July 1, 1944, by Pub. L. 102–321, title I, § 102(1), July 10, 1992, 106 Stat. 331, and transferred to section 290aa–1 of this title.

§ 290aa–4. Data collection

(a) Requirement of annual collection of data on mental illness and substance abuse

The Secretary, acting through the Administrator, shall collect data each year on—

(1) the national incidence and prevalence of the various forms of mental illness and substance abuse; and

(2) the incidence and prevalence of such various forms in major metropolitan areas selected by the Administrator.

(b) Requisite areas of data collection on mental health

With respect to the activities of the Administrator under subsection (a) of this section relating to mental health, the Administrator shall ensure that such activities include, at a minimum, the collection of data on—

(1) the number and variety of public and nonprofit private treatment programs;

(2) the number and demographic characteristics of individuals receiving treatment through such programs;

(3) the type of care received by such individuals; and

(4) such other data as may be appropriate.

(c) Requisite areas of data collection on substance abuse

(1) With respect to the activities of the Administrator under subsection (a) of this section relating to substance abuse, the Administrator

shall ensure that such activities include, at a minimum, the collection of data on—

(A) the number of individuals admitted to the emergency rooms of hospitals as a result of the abuse of alcohol or other drugs;

(B) the number of deaths occurring as a result of substance abuse, as indicated in reports by coroners;

(C) the number and variety of public and private nonprofit treatment programs, including the number and type of patient slots available;

(D) the number of individuals seeking treatment through such programs, the number and demographic characteristics of individuals receiving such treatment, the percentage of individuals who complete such programs, and, with respect to individuals receiving such treatment, the length of time between an individual's request for treatment and the commencement of treatment;

(E) the number of such individuals who return for treatment after the completion of a prior treatment in such programs and the method of treatment utilized during the prior treatment;

(F) the number of individuals receiving public assistance for such treatment programs;

(G) the costs of the different types of treatment modalities for drug and alcohol abuse and the aggregate relative costs of each such treatment modality provided within a State in each fiscal year;

(H) to the extent of available information, the number of individuals receiving treatment for alcohol or drug abuse who have private insurance coverage for the costs of such treatment;

(I) the extent of alcohol and drug abuse among high school students and among the general population; and

(J) the number of alcohol and drug abuse counselors and other substance abuse treatment personnel employed in public and private treatment facilities.

(2) Annual surveys shall be carried out in the collection of data under this subsection. Summaries and analyses of the data collected shall be made available to the public.

(d) Development of uniform criteria for data collection

After consultation with the States and with appropriate national organizations, the Administrator shall develop uniform criteria for the collection of data, using the best available technology, pursuant to this section.

(July 1, 1944, ch. 373, title V, § 505, formerly § 509D, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2052(a), 102 Stat. 4207; amended Aug. 16, 1989, Pub. L. 101–93, § 3(b), 103 Stat. 609; renumbered § 505, July 10, 1992, Pub. L. 102–321, title I, § 105, 106 Stat. 334; June 10, 1993, Pub. L. 103–43, title XX, § 2010(b)(7), 107 Stat. 214.)

CODIFICATION

Section was formerly classified to section 290aa–11 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 290aa–4, act July 1, 1944, ch. 373, title V, § 506, formerly § 505, as added Apr. 26, 1983, Pub. L. 98–24, § 2(b)(7), 97 Stat. 178; renumbered § 506, Oct. 27, 1986, Pub. L. 99–570, title IV, § 4004(a), 100 Stat. 3207–109, which related to reports on alcoholism and alcohol and drug abuse, was renumbered section 503 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290aa–2 of this title.

A prior section 505 of act July 1, 1944, was renumbered section 502 by section 102 of Pub. L. 102–321 and is classified to section 290aa–1 of this title.

Another prior section 505 of act July 1, 1944, which was classified to section 223 of this title, was renumbered section 2105 of act July 1, 1944, by Pub. L. 98–24 and transferred to section 300aa–4 of this title, renumbered section 2305 of act July 1, 1944, by Pub. L. 99–660 and transferred to section 300cc–4 of this title, prior to repeal by Pub. L. 99–117, § 12(f), Oct. 7, 1985, 99 Stat. 495.

AMENDMENTS

1993—Pub. L. 103–43, § 2010(b)(7), which directed the substitution of ''section 238 of this title'' for ''section 300aaa of this title'' in section 505(a)(2) of act July 1, 1944 (this section), could not be executed because the language did not appear. Amendment was probably intended for prior section 505 which was renumbered section 502 and amended generally by Pub. L. 102–321, § 102, which is classified to section 290aa–1 of this title.

1989—Subsec. (c)(1)(A). Pub. L. 101–93, § 3(b)(1), substituted ''alcohol or'' for ''alcohol and''.

Subsec. (c)(2). Pub. L. 101–93, § 3(b)(2), substituted ''this subsection'' for ''this section''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300x–9, 300x–35, 300x–53 of this title.

§ 290aa–5. Grants for benefit of homeless individuals

(a) Grants for benefit of homeless individuals

The Secretary, acting through the Administrator, may make grants to, and enter into contracts and cooperative agreements with, community-based public and private nonprofit entities for the purpose of developing and expanding mental health and substance abuse treatment services for homeless individuals. In carrying out this subsection, the Administrator shall consult with the Administrator of the Health Resources and Services Administration, the Directors of the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health, and the Commissioner of the Administration for Children, Youth and Families.

(b) Preference

In awarding grants under subsection (a) of this section, the Secretary shall give preference to entities that provide integrated primary health care, substance abuse and mental health services to homeless individuals.

(c) Services for certain individuals

In making awards under subsection (a) of this section, the Secretary may not prohibit the provision of services under such subsection to homeless individuals who have a primary diagnosis of substance abuse and are not suffering from mental illness.

(d) Term of grant

No entity may receive grants under subsection (a) of this section for more than 5 years although such grants may be renewed.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $50,000,000 for fiscal year

1993, and such sums as may be necessary for fiscal year 1994.

(July 1, 1944, ch. 373, title V, § 506, formerly § 512, as added Oct. 19, 1984, Pub. L. 98–509, title II, § 206(a), 98 Stat. 2361; amended July 22, 1987, Pub. L. 100–77, title VI, § 613(a), (b), 101 Stat. 524; renumbered § 506 and amended July 10, 1992, Pub. L. 102–321, title I, § 106, 106 Stat. 334.)

CODIFICATION

Section was formerly classified to section 290bb–1a of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 290aa–5, act July 1, 1944, ch. 373, title V, § 507, formerly § 506, as added Apr. 26, 1983, Pub. L. 98–24, § 2(b)(7), 97 Stat. 178; amended Nov. 20, 1985, Pub. L. 99–158, § 3(c), 99 Stat. 879; renumbered § 507 and amended Oct. 27, 1986, Pub. L. 99–570, title IV, §§ 4004(a), 4007, 100 Stat. 3207–109, 3207–115, which related to peer review of biomedical and behavioral research and development grants, was renumbered section 504 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290aa–3 of this title.

A prior section 506 of act July 1, 1944, which was classified to section 224 of this title, was successively renumbered by subsequent acts, and transferred, see section 238c of this title.

AMENDMENTS

1992—Pub. L. 102–321 amended section generally, substituting provisions relating to grants for benefit of homeless individuals for provisions relating to alcohol abuse and alcoholism demonstration projects.

1987—Subsecs. (c), (d). Pub. L. 100–77 added subsec. (c), redesignated former subsec. (c) as (d), and substituted ''subsection (a) or (c)'' for ''subsection (a)''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§§ 290aa–6 to 290aa–8. Transferred

CODIFICATION

Section 290aa–6, act July 1, 1944, ch. 373, title V, § 508, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(a), 100 Stat. 3207–111, and amended, which related to the Office of Substance Abuse Prevention, was renumbered section 515 of act July 1, 1944, by Pub. L. 102–321, title I, § 113(b), July 10, 1992, 106 Stat. 345, and transferred to section 290bb–21 of this title.

Section 290aa–7, act July 1, 1944, ch. 373, title V, § 509, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(a), 100 Stat. 3207–112, which related to Alcohol and Drug Abuse Information Clearinghouse, was renumbered section 516 of act July 1, 1944, by Pub. L. 102–321, title I, § 113(f)(1)–(3), July 10, 1992, 106 Stat. 345, and transferred to section 290bb–22 of this title.

Section 290aa–8, act July 1, 1944, ch. 373, title V, § 509A, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(a), 100 Stat. 3207–113, and amended, which related to alcohol and drug abuse prevention, treatment, and rehabilitation model projects for high risk youth, was renumbered section 517 of act July 1, 1944, by Pub. L. 102–321, title I, § 114(a), July 10, 1992, 106 Stat. 346, and transferred to section 290bb–23 of this title.

§§ 290aa–9, 290aa–10. Repealed. Pub. L. 102–321, title I, § 120(a), July 10, 1992, 106 Stat. 358

Section 290aa–9, act July 1, 1944, ch. 373, title V, § 509B, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4006, 100 Stat. 3207–114; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(11), 106 Stat. 3505, related to research on public health emergencies.

Section 290aa–10, act July 1, 1944, ch. 373, title V, § 509C, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 420 [4020], 100 Stat. 3207–122, related to guidelines for use of animals in research.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290aa–11. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title V, § 509D, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2052(a), 102 Stat. 4207, and amended, which related to the collection of data on mental illness and substance abuse, was renumbered section 505 of act July 1, 1944, by Pub. L. 102–321, title I, § 105, July 10, 1992, 106 Stat. 334, and transferred to section 290aa–4 of this title.

§§ 290aa–12 to 290aa–14. Repealed. Pub. L. 102–321, title I, § 120(a), July 10, 1992, 106 Stat. 358

Section 290aa–12, act July 1, 1944, ch. 373, title V, § 509E, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2053, 102 Stat. 4208; amended Aug. 16, 1989, Pub. L. 101–93, § 3(c), 103 Stat. 610; Aug. 15, 1990, Pub. L. 101–374, § 2(a)–(c)(2), 104 Stat. 456, related to reduction of waiting periods for drug abuse treatment.

Section 290aa–13, act July 1, 1944, ch. 373, title V, § 509F, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2054, 102 Stat. 4209, related to model projects for pregnant and post partum women and their infants.

Section 290aa–14, act July 1, 1944, ch. 373, title V, § 509G, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2055, 102 Stat. 4210; amended Aug. 16, 1989, Pub. L. 101–93, § 3(d), 103 Stat. 610, related to drug abuse demonstration projects of national significance.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

PART B—CENTERS AND PROGRAMS

SUBPART 1—CENTER FOR SUBSTANCE ABUSE TREATMENT

§ 290bb. Center for Substance Abuse Treatment

(a) Establishment

There is established in the Administration a Center for Substance Abuse Treatment (hereafter in this section referred to as the ''Center''). The Center shall be headed by a Director (hereafter in this section referred to as the ''Director'') appointed by the Secretary from among individuals with extensive experience or academic qualifications in the treatment of substance abuse or in the evaluation of substance abuse treatment systems.

(b) Duties

The Director of the Center shall—

(1) administer the substance abuse treatment block grant program authorized in section 300x–21 of this title;

(2) collaborate with the Director of the Center for Substance Abuse Prevention in order to provide outreach services to identify individuals in need of treatment services, with emphasis on the provision of such services to

pregnant and postpartum women and their infants and to individuals who abuse drugs intravenously;

(3) collaborate with the Director of the National Institute on Drug Abuse, with the Director of the National Institute on Alcohol Abuse and Alcoholism, and with the States to promote the study, dissemination, and implementation of research findings that will improve the delivery and effectiveness of treatment services;

(4) collaborate with the Administrator of the Health Resources and Services Administration and the Administrator of the Health Care Financing Administration to promote the increased integration into the mainstream of the health care system of the United States of programs for providing treatment services;

(5) evaluate plans submitted by the States pursuant to section 300x–32(a)(6) of this title in order to determine whether the plans adequately provide for the availability, allocation, and effectiveness of treatment services, and monitor the use of revolving loan funds pursuant to section 300x–25 of this title;

(6) sponsor regional workshops on improving the quality and availability of treatment services;

(7) provide technical assistance to public and nonprofit private entities that provide treatment services, including technical assistance with respect to the process of submitting to the Director applications for any program of grants or contracts carried out by the Director;

(8) encourage the States to expand the availability (relative to fiscal year 1992) of programs providing treatment services through self-run, self-supported recovery based on the programs of housing operated pursuant to section 300x–25 of this title;

(9) carry out activities to educate individuals on the need for establishing treatment facilities within their communities;

(10) encourage public and private entities that provide health insurance to provide benefits for outpatient treatment services and other nonhospital-based treatment services;

(11) evaluate treatment programs to determine the quality and appropriateness of various forms of treatment, including the effect of living in housing provided by programs established under section 300x–25 of this title, which shall be carried out through grants, contracts, or cooperative agreements provided to public or nonprofit private entities; and

(12) in carrying out paragraph (11), assess the quality, appropriateness, and costs of various treatment forms for specific patient groups.

(c) Grants and contracts

In carrying out the duties established in subsection (b) of this section, the Director may make grants to and enter into contracts and cooperative agreements with public and nonprofit private entities.

(July 1, 1944, ch. 373, title V, § 507, as added July 10, 1992, Pub. L. 102–321, title I, § 107(2), 106 Stat. 335.)

PRIOR PROVISIONS

A prior section 290bb, act July 1, 1944, ch. 373, title V, § 510, formerly Pub. L. 91–616, title V, § 501, as added Pub. L. 94–371, § 7, July 26, 1976, 90 Stat. 1038; amended Pub. L. 95–622, title II, § 268(c), (d), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96–180, § 14, Jan. 2, 1980, 93 Stat. 1305; renumbered § 510 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(9), 97 Stat. 179; Oct. 19, 1984, Pub. L. 98–509, title II, §§ 205(a)(1), 206(c)(1), 98 Stat. 2361, 2362, related to encouragement of alcohol abuse and alcoholism research, prior to repeal by Pub. L. 102–321, § 122(b)(1). Prior to repeal, section 510(b) of act July 1, 1944, was renumbered section 464H(b) by Pub. L. 102–321 and transferred to section 285n(b) of this title.

A prior section 507 of act July 1, 1944, which was classified to section 290aa–5 of this title, was renumbered section 504 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290aa–3 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290bb–1. Residential treatment programs for pregnant and postpartum women

(a) In general

The Director of the Center for Substance Abuse Treatment shall provide awards of grants, cooperative agreement, or contracts to public and nonprofit private entities for the purpose of providing to pregnant and postpartum women treatment for substance abuse through programs in which, during the course of receiving treatment—

(1) the women reside in facilities provided by the programs;

(2) the minor children of the women reside with the women in such facilities, if the women so request; and

(3) the services described in subsection (d) of this section are available to or on behalf of the women.

(b) Availability of services for each participant

A funding agreement for an award under subsection (a) of this section for an applicant is that, in the program operated pursuant to such subsection—

(1) treatment services and each supplemental service will be available through the applicant, either directly or through agreements with other public or nonprofit private entities; and

(2) the services will be made available to each woman admitted to the program.

(c) Individualized plan of services

A funding agreement for an award under subsection (a) of this section for an applicant is that—

(1) in providing authorized services for an eligible woman pursuant to such subsection, the applicant will, in consultation with the women, prepare an individualized plan for the provision to the woman of the services; and

(2) treatment services under the plan will include—

(A) individual, group, and family counseling, as appropriate, regarding substance abuse; and

(B) follow-up services to assist the woman in preventing a relapse into such abuse.

(d) Required supplemental services

In the case of an eligible woman, the services referred to in subsection (a)(3) of this section are as follows:

(1) Prenatal and postpartum health care.

(2) Referrals for necessary hospital services.

(3) For the infants and children of the woman—

(A) pediatric health care, including treatment for any perinatal effects of maternal substance abuse and including screenings regarding the physical and mental development of the infants and children;

(B) counseling and other mental health services, in the case of children; and

(C) comprehensive social services.

(4) Providing supervision of children during periods in which the woman is engaged in therapy or in other necessary health or rehabilitative activities.

(5) Training in parenting.

(6) Counseling on the human immunodeficiency virus and on acquired immune deficiency syndrome.

(7) Counseling on domestic violence and sexual abuse.

(8) Counseling on obtaining employment, including the importance of graduating from a secondary school.

(9) Reasonable efforts to preserve and support the family units of the women, including promoting the appropriate involvement of parents and others, and counseling the children of the women.

(10) Planning for and counseling to assist reentry into society, both before and after discharge, including referrals to any public or nonprofit private entities in the community involved that provide services appropriate for the women and the children of the women.

(11) Case management services, including—

(A) assessing the extent to which authorized services are appropriate for the women and their children;

(B) in the case of the services that are appropriate, ensuring that the services are provided in a coordinated manner; and

(C) assistance in establishing eligibility for assistance under Federal, State, and local programs providing health services, mental health services, housing services, employment services, educational services, or social services.

(e) Minimum qualifications for receipt of award

(1) Certification by relevant State agency

With respect to the principal agency of the State involved that administers programs relating to substance abuse, the Director may make an award under subsection (a) of this section to an applicant only if the agency has certified to the Director that—

(A) the applicant has the capacity to carry out a program described in subsection (a) of this section;

(B) the plans of the applicant for such a program are consistent with the policies of such agency regarding the treatment of substance abuse; and

(C) the applicant, or any entity through which the applicant will provide authorized services, meets all applicable State licensure or certification requirements regarding the provision of the services involved.

(2) Status as medicaid provider

(A) Subject to subparagraphs (B) and (C), the Director may make an award under subsection (a) of this section only if, in the case of any authorized service that is available pursuant to the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(i) the applicant for the award will provide the service directly, and the applicant has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(ii) the applicant will enter into an agreement with a public or nonprofit private entity under which the entity will provide the service, and the entity has entered into such a participation agreement plan and is qualified to receive such payments.

(B)(i) In the case of an entity making an agreement pursuant to subparagraph (A)(ii) regarding the provision of services, the requirement established in such subparagraph regarding a participation agreement shall be waived by the Director if the entity does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits plan.

(ii) A determination by the Director of whether an entity referred to in clause (i) meets the criteria for a waiver under such clause shall be made without regard to whether the entity accepts voluntary donations regarding the provision of services to the public.

(C) With respect to any authorized service that is available pursuant to the State plan described in subparagraph (A), the requirements established in such subparagraph shall not apply to the provision of any such service by an institution for mental diseases to an individual who has attained 21 years of age and who has not attained 65 years of age. For purposes of the preceding sentence, the term ''institution for mental diseases'' has the meaning given such term in section 1905(i) of the Social Security Act [42 U.S.C. 1396d(i)].

(f) Requirement of matching funds

(1) In general

With respect to the costs of the program to be carried out by an applicant pursuant to subsection (a) of this section, a funding agreement for an award under such subsection is that the applicant will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that—

(A) for the first fiscal year for which the applicant receives payments under an award under such subsection, is not less than $1 for each $9 of Federal funds provided in the award;

(B) for any second such fiscal year, is not less than $1 for each $9 of Federal funds provided in the award; and

(C) for any subsequent such fiscal year, is not less than $1 for each $3 of Federal funds provided in the award.

(2) Determination of amount contributed

Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(g) Outreach

A funding agreement for an award under subsection (a) of this section for an applicant is that the applicant will provide outreach services in the community involved to identify women who are engaging in substance abuse and to encourage the women to undergo treatment for such abuse.

(h) Accessibility of program; cultural context of services

A funding agreement for an award under subsection (a) of this section for an applicant is that—

(1) the program operated pursuant to such subsection will be operated at a location that is accessible to low-income pregnant and postpartum women; and

(2) authorized services will be provided in the language and the cultural context that is most appropriate.

(i) Continuing education

A funding agreement for an award under subsection (a) of this section is that the applicant involved will provide for continuing education in treatment services for the individuals who will provide treatment in the program to be operated by the applicant pursuant to such subsection.

(j) Imposition of charges

A funding agreement for an award under subsection (a) of this section for an applicant is that, if a charge is imposed for the provision of authorized services to on[1] behalf of an eligible woman, such charge—

(1) will be made according to a schedule of charges that is made available to the public;

(2) will be adjusted to reflect the income of the woman involved; and

(3) will not be imposed on any such woman with an income of less than 185 percent of the official poverty line, as established by the Director of the Office for Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(k) Reports to Director

A funding agreement for an award under subsection (a) of this section is that the applicant involved will submit to the Director a report—

(1) describing the utilization and costs of services provided under the award;

(2) specifying the number of women served, the number of infants served, and the type and costs of services provided; and

(3) providing such other information as the Director determines to be appropriate.

(*l*) Requirement of application

The Director may make an award under subsection (a) of this section only if an application for the award is submitted to the Director containing such agreements, and the application is in such form, is made in such manner, and contains such other agreements and such assurances and information as the Director determines to be necessary to carry out this section.

(m) Equitable allocation of awards

In making awards under subsection (a) of this section, the Director shall ensure that the awards are equitably allocated among the principal geographic regions of the United States, subject to the availability of qualified applicants for the awards.

(n) Duration of award

The period during which payments are made to an entity from an award under subsection (a) of this section may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Director of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments. This subsection may not be construed to establish a limitation on the number of awards under such subsection that may be made to an entity.

(*o*) Evaluations; dissemination of findings

The Director shall, directly or through contract, provide for the conduct of evaluations of programs carried out pursuant to subsection (a) of this section. The Director shall disseminate to the States the findings made as a result of the evaluations.

(p) Reports to Congress

Not later than October 1, 1994, the Director shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing programs carried out pursuant to this section. Every 2 years thereafter, the Director shall prepare a report describing such programs carried out during the preceding 2 years, and shall submit the report to the Administrator for inclusion in the biennial report under section 290aa(k) of this title. Each report under this subsection shall include a summary of any evaluations conducted under subsection (m) of this section during the period with respect to which the report is prepared.

(q) Definitions

For purposes of this section:

(1) The term ''authorized services'' means treatment services and supplemental services.

(2) The term ''eligible woman'' means a woman who has been admitted to a program operated pursuant to subsection (a) of this section.

(3) The term ''funding agreement under subsection (a)'' of this section, with respect to an award under subsection (a) of this section, means that the Director may make the award only if the applicant makes the agreement involved.

(4) The term ''treatment services'' means treatment for substance abuse, including the counseling and services described in subsection (c)(2) of this section.

(5) The term ''supplemental services'' means the services described in subsection (d) of this section.

[1] So in original. Probably should be preceded by ''or''.

(r) Authorization of appropriations

(1) In general

For the purpose of carrying out this section and section 290bb–2 of this title, there are authorized to be appropriated $100,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(2) Transfer

For the purpose described in paragraph (1), in addition to the amounts authorized in such paragraph to be appropriated for a fiscal year, there is authorized to be appropriated for the fiscal year from the special forfeiture fund of the Director of the Office of National Drug Control Policy such sums as may be necessary.

(3) Rule of construction

The amounts authorized in this subsection to be appropriated are in addition to any other amounts that are authorized to be appropriated and are available for the purpose described in paragraph (1).

(July 1, 1944, ch. 373, title V, §508, as added July 10, 1992, Pub. L. 102–321, title I, §108(a), 106 Stat. 336.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 290bb–1, act July 1, 1944, ch. 373, title V, §511, formerly Pub. L. 91–616, title V, §503, formerly §504, as added Pub. L. 94–371, §7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 95–622, title I, §110(d), Nov. 9, 1978, 92 Stat. 3420; Pub. L. 96–180, §16, Jan. 2, 1980, 93 Stat. 1305; renumbered §503 of Pub. L. 91–616 and amended Pub. L. 97–35, title IX, §965(b), (c), Aug. 13, 1981, 95 Stat. 594; renumbered §511 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, §2(b)(9), 97 Stat. 179; Oct. 27, 1986, Pub. L. 99–570, title IV, §4008, 100 Stat. 3207–115, which related to National Alcohol Research Centers and a mandatory grant for research of the effects of alcohol on the elderly, was renumbered section 464J of title IV of act July 1, 1944, by Pub. L. 102–321 and transferred to section 285n–2 of this title.

A prior section 508 of act July 1, 1944, which was classified to section 290aa–6 of this title, was renumbered section 515 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290bb–21 of this title.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

TRANSITIONAL AND SAVINGS PROVISIONS

Section 108(b) of Pub. L. 102–321 provided that:

''(1) SAVINGS PROVISION FOR COMPLETION OF CURRENT PROJECTS.—

''(A) Subject to paragraph (2), in the case of any project for which a grant under former section 509F [former 42 U.S.C. 290aa–13] was provided for fiscal year 1992, the Secretary of Health and Human Services may continue in effect the grant for fiscal year 1993 and subsequent fiscal years, subject to the duration of any such grant not exceeding the period determined by the Secretary in first approving the grant. Subject to approval by the Administrator, such grants may be administered by the Center for Substance Abuse Prevention.

''(B) Subparagraph (A) shall apply with respect to a project notwithstanding that the project is not eligible to receive a grant under current section 508 or 509 [42 U.S.C. 290bb–1, 290bb–2].

''(2) LIMITATION ON FUNDING FOR CERTAIN PROJECTS.—With respect to the amounts appropriated for any fiscal year under current section 508, any such amounts appropriated in excess of the amount appropriated for fiscal year 1992 under former section 509F shall be available only for grants under current section 508.

''(3) DEFINITIONS.—For purposes of this subsection:

''(A) The term 'former section 509F' means section 509F of the Public Health Service Act [former 42 U.S.C. 290aa–13], as in effect for fiscal year 1992.

''(B) The term 'current section 508' means section 508 of the Public Health Service Act [42 U.S.C. 290bb–1], as in effect for fiscal year 1993 and subsequent fiscal years.

''(C) The term 'current section 509' means section 509 of the Public Health Service Act [42 U.S.C. 290bb–2], as in effect for fiscal year 1993 and subsequent fiscal years.''

§ 290bb–1a. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title V, §512, as added Oct. 19, 1984, Pub. L. 98–509, title II, §206(a), 98 Stat. 2361, and amended, which related to alcohol abuse and alcoholism demonstration projects, was renumbered section 506 of act July 1, 1944, by Pub. L. 102–321, title I, §106(a), July 10, 1992, 106 Stat. 334, and transferred to section 290aa–5 of this title.

§ 290bb–2. Outpatient treatment programs for pregnant and postpartum women

(a) Grants

The Secretary, acting through the Director of the Treatment Center, shall make grants to establish projects for the outpatient treatment of substance abuse among pregnant and postpartum women, and in the case of conditions arising in the infants of such women as a result of such abuse by the women, the outpatient treatment of the infants for such conditions.

(b) Prevention

Entities receiving grants under this section shall engage in activities to prevent substance abuse among pregnant and postpartum women.

(c) Evaluation

The Secretary shall evaluate projects carried out under subsection (a) of this section and shall disseminate to appropriate public and private entities information on effective projects.

(July 1, 1944, ch. 373, title V, §509, as added July 10, 1992, Pub. L. 102–321, title I, §108(a), 106 Stat. 341.)

PRIOR PROVISIONS

A prior section 290bb–2, act July 1, 1944, ch. 373, title V, §513, formerly §512, formerly Pub. L. 91–616, title V, §504, formerly §503, as added Pub. L. 94–371, §7, July 26, 1976, 90 Stat. 1039; amended Pub. L. 96–180, §15, Jan. 2, 1980, 93 Stat. 1305; renumbered §504 of Pub. L. 91–616 and amended Pub. L. 97–35, title IX, §965(a), (c), Aug. 13, 1981, 95 Stat. 594; Pub. L. 97–414, §9(e), Jan. 4, 1983, 96

Stat. 2064; renumbered §512 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, §2(b)(9), 97 Stat. 179; renumbered §513 and amended Oct. 19, 1984, Pub. L. 98–509, title II, §§206(a), 207(a), 98 Stat. 2361, 2362; Oct. 27, 1986, Pub. L. 99–570, title IV, §4010(a), 100 Stat. 3207–115; July 22, 1987, Pub. L. 100–77, title VI, §613(c), 101 Stat. 524; Nov. 4, 1988, Pub. L. 100–607, title VIII, §822, 102 Stat. 3171; Nov. 7, 1988, Pub. L. 100–628, title VI, §622, 102 Stat. 3244; Nov. 18, 1988, Pub. L. 100–690, title II, §2056(a), 102 Stat. 4211; Aug. 16, 1989, Pub. L. 101–93, §5(t)(1), 103 Stat. 615; Nov. 29, 1990, Pub. L. 101–645, title V, §522, 104 Stat. 4734, authorized appropriations to carry out alcohol abuse and alcoholism research, prior to repeal by Pub. L. 102–321, §122(d)[(e)].

A prior section 509 of act July 1, 1944, which was classified to section 290aa–7 of this title, was renumbered section 516 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290bb–22 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290bb–1 of this title.

§ 290bb–3. Demonstration projects of national significance

(a) Grants for treatment improvement

The Director of the Center for Substance Abuse Treatment shall provide grants to public and nonprofit private entities for the purpose of establishing demonstration projects that will improve the provision of treatment services for substance abuse.

(b) Nature of projects

Grants under subsection (a) of this section shall be awarded to—

(1) projects that provide treatment to adolescents, female addicts and their children, racial and ethnic minorities, or individuals in rural areas, with preference given to such projects that provide treatment for substance abuse to women with dependent children, which treatment is provided in settings in which both primary health services for the women and pediatric care are available;

(2) projects that provide treatment in exchange for public service;

(3) projects that provide treatment services and which are operated by public and nonprofit private entities receiving grants under section 254b, 254c, 256, 256a[1] of this title, or other public or nonprofit private entities that provide primary health services;

(4) ''treatment campus'' projects that—

(A) serve a significant number of individuals simultaneously;

(B) provide residential, non-community based drug treatment;

(C) provide patients with ancillary social services and referrals to community-based aftercare; and

(D) provide services on a voluntary basis;

(5) projects in large metropolitan areas to identify individuals in need of treatment services and to improve the availability and delivery of such services in the areas;

(6) in the case of drug abusers who are at risk of HIV infection, projects to conduct outreach activities to the individuals regarding the prevention of exposure to and the transmission of the human immunodefiency[2] virus, and to encourage the individuals to seek treatment for such abuse; and

(7) projects to determine the long-term efficacy of the projects described in this section and to disseminate to appropriate public and private entities information on the projects that have been effective.

(c) Preferences in making grants

In awarding grants under subsection (a) of this section, the Director of the Treatment Center shall give preference to projects that—

(1) demonstrate a comprehensive approach to the problems associated with substance abuse and provide evidence of broad community involvement and support; or

(2) initiate and expand programs for the provision of treatment services (including renovation of facilities, but not construction) in localities in which, and among populations for which, there is a public health crisis as a result of the inadequate availability of such services and a substantial rate of substance abuse.

(d) Duration of grants

The period during which payments are made under a grant under subsection (a) of this section may not exceed 5 years.

(e) Authorization of appropriations

(1) In general

For the purpose of carrying out this section, there are authorized to be appropriated $175,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994. The amounts so authorized are in addition to any other amounts that are authorized to be appropriated and available for such purpose.

(2) Allocation

Of the amounts appropriated under paragraph (1) for a fiscal year, the Director of the Treatment Center shall reserve not less than 5 percent for carrying out projects described in subsections (b)(2) and (b)(3) of this section.

(July 1, 1944, ch. 373, title V, §510, as added July 10, 1992, Pub. L. 102–321, title I, §109, 106 Stat. 342.)

PRIOR PROVISIONS

A prior section 510 of act July 1, 1944, was classified to section 290bb of this title, prior to repeal by Pub. L. 102–321, §122(b)(1). Prior to repeal, section 510(b) of act July 1, 1944, was renumbered section 464H(b) by Pub. L. 102–321 and transferred to section 285n(b) of this title.

Another prior section 510 of act July 1, 1944, which was classified to section 228 of this title, was successively renumbered by subsequent acts and transferred, see section 238g of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

[1] So in original. Probably should be preceded by ''or''.

[2] So in original. Probably should be ''immunodeficiency''.

§ 290bb–4. Grants for substance abuse treatment in State and local criminal justice systems

(a) In general

The Director of the Center for Substance Abuse Treatment shall provide grants to public and nonprofit private entities that provide treatment for substance abuse to individuals under criminal justice supervision.

(b) Eligibility

In awarding grants under subsection (a) of this section, the Director shall ensure that the grants are reasonably distributed among—

(1) projects that provide treatment services to individuals who are incarcerated in prisons, jails, or community correctional settings; and

(2) projects that provide treatment services to individuals who are not incarcerated, but who are under criminal justice supervision because of their status as pretrial releasees, post-trial releasees, probationers, parolees, or supervised releasees.

(c) Priority

In awarding grants under subsection (a) of this section, the Director shall give priority to programs commensurate with the extent to which such programs provide, directly or in conjunction with other public or private nonprofit entities, one or more of the following—

(1) a continuum of offender management services as individuals enter, proceed through, and leave the criminal justice system, including identification and assessment, substance abuse treatment, pre-release counseling and pre-release referrals with respect to housing, employment and treatment;

(2) comprehensive treatment services for juvenile offenders;

(3) comprehensive treatment services for female offenders, including related services such as violence counseling, parenting and child development classes, and perinatal care;

(4) outreach services to identify individuals under criminal justice supervision who would benefit from substance abuse treatment and to encourage such individuals to seek treatment; or

(5) treatment services that function as an alternative to incarceration for appropriate categories of offenders or that otherwise enable individuals to remain under criminal justice supervision in the least restrictive setting consistent with public safety.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $50,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(July 1, 1944, ch. 373, title V, § 511, as added July 10, 1992, Pub. L. 102–321, title I, § 110, 106 Stat. 343.)

PRIOR PROVISIONS

A prior section 511 of act July 1, 1944, which was classified to section 290bb–1 of this title, was renumbered section 464J of act July 1, 1944, by Pub. L. 102–321 and transferred to section 285n–2 of this title.

Another prior section 511 of act July 1, 1944, which was classified to section 229 of this title, was successively renumbered by subsequent acts and transferred, see section 238h of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290bb–5. Training in provision of treatment services

(a) In general

The Director of the Center for Substance Abuse Treatment shall develop programs to increase the number of substance abuse treatment professionals and the number of health professionals providing treatment services through the awarding of grants to appropriate public and nonprofit private entities, including agencies of State and local governments, hospitals, schools of medicine, schools of osteopathic medicine, schools of nursing, schools of social work, and graduate programs in marriage and family therapy.

(b) Priority

In awarding grants under subsection (a) of this section, the Director shall give priority to projects that train full-time substance abuse treatment professionals and projects that will receive financial support from public entities for carrying out the projects.

(c) Health professions education

In awarding grants under subsection (a) of this section, the Director may make grants—

(1) to train individuals in the diagnosis and treatment of alcohol abuse and other drug abuse; and

(2) to develop appropriate curricula and materials for the training described in paragraph (1).

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $30,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(July 1, 1944, ch. 373, title V, § 512, as added July 10, 1992, Pub. L. 102–321, title I, § 111, 106 Stat. 344.)

PRIOR PROVISIONS

A prior section 512 of act July 1, 1944, which was classified to section 290bb–1a of this title, was renumbered section 506 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290aa–5 of this title.

Another prior section 512 of act July 1, 1944, was renumbered section 513 by Pub. L. 98–509 and classified to section 290bb–2 of this title, prior to repeal by Pub. L. 102–321, § 122(d)[(e)].

Another prior section 512 of act July 1, 1944, which was classified to section 229a of this title, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§ 290bb–6. Action by Center for Substance Abuse Treatment and States concerning military facilities

(a) Center for Substance Abuse Treatment

The Director of the Center for Substance Abuse Treatment shall—

(1) coordinate with the agencies represented on the Commission on Alternative Utilization of Military Facilities the utilization of military facilities or parts thereof, as identified by such Commission, established under the National Defense Authorization Act of 1989, that could be utilized or renovated to house nonviolent persons for drug treatment purposes;

(2) notify State agencies responsible for the oversight of drug abuse treatment entities and programs of the availability of space at the installations identified in paragraph (1); and

(3) assist State agencies responsible for the oversight of drug abuse treatment entities and programs in developing methods for adapting the installations described in paragraph (1) into residential treatment centers.

(b) States

With regard to military facilities or parts thereof, as identified by the Commission on Alternative Utilization of Military Facilities established under section 3042 of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988,[1] that could be utilized or renovated to house nonviolent persons for drug treatment purposes, State agencies responsible for the oversight of drug abuse treatment entities and programs shall—

(1) establish eligibility criteria for the treatment of individuals at such facilities;

(2) select treatment providers to provide drug abuse treatment at such facilities;

(3) provide assistance to treatment providers selected under paragraph (2) to assist such providers in securing financing to fund the cost of the programs at such facilities; and

(4) establish, regulate, and coordinate with the military official in charge of the facility, work programs for individuals receiving treatment at such facilities.

(c) Reservation of space

Prior to notifying States of the availability of space at military facilities under subsection (a)(2) of this section, the Director may reserve space at such facilities to conduct research or demonstration projects.

(July 1, 1944, ch. 373, title V, § 513, formerly § 561, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2081(a), 102 Stat. 4215; renumbered § 513 and amended July 10, 1992, Pub. L. 102–321, title I, § 112(a), (b)(1), 106 Stat. 344, 345.)

REFERENCES IN TEXT

The National Defense Authorization Act of 1989, referred to in subsec. (a)(1), probably means the National Defense Authorization Act, Fiscal Year 1989, Pub. L. 100–456, Sept. 29, 1988, 102 Stat. 1918. For complete classification of this Act to the Code, see Tables.

Section 3042 of the Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988, referred to in subsec. (b), probably should be a reference to section 2819 of the National Defense Authorization Act, Fiscal Year 1989, Pub. L. 100–456, div. B, title XXVIII, Sept. 29, 1988, 102 Stat. 2119, which established the Commission on Alternative Utilization of Military Facilities and which is set out as a note under section 2391 of Title 10, Armed Forces. The Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988 is subtitle A of title II of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4193, and does not contain a section 3042.

CODIFICATION

Section was formerly classified to section 290ff of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 513 of act July 1, 1944, was classified to section 290bb–2 of this title prior to repeal by Pub. L. 102–321, title I, § 122(d)[(e)], July 10, 1992, 106 Stat. 360.

Another prior section 513 of act July 1, 1944, which was classified to section 229b of this title, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–321, § 112(b)(1), substituted provisions relating to Center for Substance Abuse Treatment for provisions relating to National Institute on Drug Abuse in heading and text.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

SUBPART 2—CENTER FOR SUBSTANCE ABUSE PREVENTION

§ 290bb–21. Office for Substance Abuse Prevention

(a) Establishment; Director

There is established in the Administration an Office for Substance Abuse Prevention (hereafter referred to in this part as the ''Prevention Center''). The Office[1] shall be headed by a Director appointed by the Secretary from individuals with extensive experience or academic qualifications in the prevention of drug or alcohol abuse.

(b) Duties of Director

The Director of the Prevention Center shall—

(1) sponsor regional workshops on the prevention of drug and alcohol abuse;

(2) coordinate the findings of research sponsored by agencies of the Service on the prevention of drug and alcohol abuse;

(3) develop effective drug and alcohol abuse prevention literature (including literature on the adverse effects of cocaine free base (known as ''crack''));

(4) in cooperation with the Secretary of Education, assure the widespread dissemination of prevention materials among States, political subdivisions, and school systems;

(5) support clinical training programs for substance abuse counselors and other health professionals involved in drug abuse education, prevention,;[2]

(6) in cooperation with the Director of the Centers for Disease Control and Prevention,

[1] See References in Text note below.

[1] So in original. Probably should be ''Prevention Center''.

[2] So in original. Probably should be ''education and prevention;''.

develop educational materials to reduce the risks of acquired immune deficiency syndrome among intravenous drug abusers;

(7) conduct training, technical assistance, data collection, and evaluation activities of programs supported under the Drug Free Schools and Communities Act of 1986;

(8) support the development of model, innovative, community-based programs to discourage alcohol and drug abuse among young people;

(9) prepare for distribution documentary films and public service announcements for television and radio to educate the public concerning the dangers to health resulting from the consumption of alcohol and drugs and, to the extent feasible, use appropriate private organizations and business concerns in the preparation of such announcements; and

(10) develop and support innovative demonstration programs designed to identify and deter the improper use or abuse of anabolic steroids by students, especially students in secondary schools.

(c) Grants, contracts and cooperative agreements

The Director may make grants and enter into contracts and cooperative agreements in carrying out subsection (b) of this section.

(d) National data base

The Director of the Prevention Center shall establish a national data base providing information on programs for the prevention of substance abuse. The data base shall contain information appropriate for use by public entities and information appropriate for use by nonprofit private entities.

(July 1, 1944, ch. 373, title V, § 515, formerly § 508, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(a), 100 Stat. 3207–111; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2051(a)–(c), 102 Stat. 4206; Aug. 16, 1989, Pub. L. 101–93, § 3(a), 103 Stat. 609; Nov. 29, 1990, Pub. L. 101–647, title XIX, § 1906, 104 Stat. 4854; renumbered § 515 and amended July 10, 1992, Pub. L. 102–321, title I, § 113(b)–(e), 106 Stat. 345; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(10), 106 Stat. 3505.)

REFERENCES IN TEXT

The Drug-Free Schools and Communities Act of 1986, referred to in subsec. (b)(7), means title V of Pub. L. 89–10 as added by Pub. L. 100–297, title I, § 1001, Apr. 28, 1988, 102 Stat. 252, which was classified generally to subchapter V (§ 3171 et seq.) of chapter 47 of Title 20, Education, prior to the general amendment of Pub. L. 89–10 by Pub. L. 103–382, title I, § 101, Oct. 20, 1994, 108 Stat. 3519. For provisions relating to safe and drug-free schools and communities, see section 7101 et seq. of Title 20.

CODIFICATION

Section was formerly classified to section 290aa–6 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 515 of act July 1, 1944, was classified to section 290cc of this title, prior to repeal by Pub. L. 102–321, title I, § 123(c), July 10, 1992, 106 Stat. 363.

Another prior section 515 of act July 1, 1944, which was classified to section 229d of this title, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–321, § 113(e)(1), substituted ''(hereafter referred to in this part as the 'Prevention Center')'' for ''(hereafter in this part referred to as the 'Office')''.

Subsec. (b). Pub. L. 102–321, § 113(e)(2), substituted ''Prevention Center'' for ''Office'' in introductory provisions.

Subsec. (b)(5). Pub. L. 102–321, § 113(c)(1), struck out ''and intervention'' after ''prevention,''.

Subsec. (b)(6). Pub. L. 102–531, which directed the amendment of ''section 508(b)(6) (42 U.S.C. 290aa–6(b)(6))'' of act July 1, 1944, by substituting ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'', was executed to subsec. (b)(6) of this section to reflect the probable intent of Congress and the intervening renumbering of section 508 of act July 1, 1944, as section 515 of that act by Pub. L. 102–321, § 113(b)(2).

Subsec. (b)(9). Pub. L. 102–321, § 113(c)(4), inserted ''and'' after semicolon at end.

Subsec. (b)(10) to (12). Pub. L. 102–321, § 113(c)(2)–(4), redesignated par. (12) as (10) and struck out former pars. (10) and (11) which read as follows:

''(10)(A) provide assistance to communities to develop comprehensive long-term strategies for the prevention of substance abuse; and

''(B) evaluate the success of different community approaches toward the prevention of substance abuse;

''(11) through schools of health professions, schools of allied health professions, schools of nursing, and schools of social work, carry out programs—

''(A) to train individuals in the diagnosis and treatment of alcohol and drug abuse; and

''(B) to develop appropriate curricula and materials for the training described in subparagraph (A); and''.

Subsec. (d). Pub. L. 102–321, § 113(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(1) For the purpose of carrying out this section and sections 290aa–7, 290aa–8, and 290aa–13 of this title, there are authorized to be appropriated $95,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

''(2) Of the amounts appropriated pursuant to paragraph (1) for a fiscal year, the Secretary shall make available not less than $5,000,000 to carry out paragraphs (5) and (11) of subsection (b) of this section.''

1990—Subsec. (b)(12). Pub. L. 101–647 added par. (12).

1989—Subsec. (b)(11)(B). Pub. L. 101–93, § 3(a)(2), substituted ''subparagraph (A)'' for ''subparagraph (a)''.

Subsec. (d)(1). Pub. L. 101–93, § 3(a)(1), inserted a comma after ''290aa–13 of this title''.

1988—Subsec. (b)(5). Pub. L. 100–690, § 2051(b)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''support programs of clinical training of substance abuse counselors and other health professionals;''.

Subsec. (b)(10). Pub. L. 100–690, § 2051(b)(2) added par. (10).

Subsec. (b)(11). Pub. L. 100–690, § 2051(c), added par. (11).

Subsec. (d). Pub. L. 100–690, § 2051(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Of the amounts available under the second sentence of section 300y(a) of this title to carry out this section and section 290aa–8 of this title, $20,000,000 shall be available to carry out section 290aa–8 of this title.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x–35 of this title.

§ 290bb–22. Community programs

(a) In general

The Secretary, acting through the Director of the Prevention Center, shall—

(1) provide assistance to communities to develop comprehensive long-term strategies for the prevention of substance abuse; and

(2) evaluate the success of different community approaches toward the prevention of such abuse.

(b) Strategies for reducing use

The Director of the Prevention Center shall ensure that strategies developed under subsection (a)(1) of this section include strategies for reducing the use of alcoholic beverages and tobacco products by individuals to whom it is unlawful to sell or distribute such beverages or products.

(c) Authorization of appropriations

For the purpose of carrying out subsection (a) of this section, there are authorized to be appropriated $120,000,000 for fiscal year 1993, such sums as may be necessary for fiscal year 1994.

(July 1, 1944, ch. 373, title V, § 516, formerly § 509, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(a), 100 Stat. 3207–112; renumbered § 516 and amended July 10, 1992, Pub. L. 102–321, title I, § 113(f), 106 Stat. 345.)

CODIFICATION

Section was formerly classified to section 290aa–7 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 516 of act July 1, 1944, was classified to section 290cc–1 of this title, prior to repeal by Pub. L. 102–321, title I, § 123(c), July 10, 1992, 106 Stat. 363.

AMENDMENTS

1992—Pub. L. 102–321, § 113(f)(4), amended section generally, substituting provisions relating to community programs for provisions relating to alcohol and drug abuse information clearinghouse.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290bb–23. Prevention, treatment, and rehabilitation model projects for high risk youth

(a) Grants to public and nonprofit private entities

The Secretary, through the Director of the Prevention Center, shall make grants to public and nonprofit private entities for projects to demonstrate effective models for the prevention, treatment, and rehabilitation of drug abuse and alcohol abuse among high risk youth.

(b) Priority of projects

(1) In making grants for drug abuse and alcohol abuse prevention projects under this section, the Secretary shall give priority to applications for projects directed at children of substance abusers, latchkey children, children at risk of abuse or neglect, preschool children eligible for services under the Head Start Act [42 U.S.C. 9831 et seq.], children at risk of dropping out of school, children at risk of becoming adolescent parents, and children who do not attend school and who are at risk of being unemployed.

(2) In making grants for drug abuse and alcohol abuse treatment and rehabilitation projects under this section, the Secretary shall give priority to projects which address the relationship between drug abuse or alcohol abuse and physical child abuse, sexual child abuse, emotional child abuse, dropping out of school, unemployment, delinquency, pregnancy, violence, suicide, or mental health problems.

(3) In making grants under this section, the Secretary shall give priority to applications from community based organizations for projects to develop innovative models with multiple, coordinated services for the prevention or for the treatment and rehabilitation of drug abuse or alcohol abuse by high risk youth.

(4) In making grants under this section, the Secretary shall give priority to applications for projects to demonstrate effective models with multiple, coordinated services which may be replicated and which are for the prevention or for the treatment and rehabilitation of drug abuse or alcohol abuse by high risk youth.

(5) In making grants under this section, the Secretary shall give priority to applications that employ research designs adequate for evaluating the effectiveness of the program.

(c) Strategies for reducing use

The Secretary shall ensure that projects under subsection (a) of this section include strategies for reducing the use of alcoholic beverages and tobacco products by individuals to whom it is unlawful to sell or distribute such beverages or products.

(d) Regionally equal distribution of grants

To the extent feasible, the Secretary shall make grants under this section in all regions of the United States, and shall ensure the distribution of grants under this section among urban and rural areas.

(e) Application for grants

In order to receive a grant for a project under this section for a fiscal year, a public or nonprofit private entity shall submit an application to the Secretary, acting through the Office.[1] The Secretary may provide to the Governor of the State the opportunity to review and comment on such application. Such application shall be in such form, shall contain such information, and shall be submitted at such time as the Secretary may by regulation prescribe.

(f) Evaluation of projects

The Director of the Office[1] shall evaluate projects conducted with grants under this section.

(g) "High risk youth" defined

For purposes of this section, the term ''high risk youth'' means an individual who has not attained the age of 21 years, who is at high risk of becoming, or who has become, a drug abuser or an alcohol abuser, and who—

(1) is identified as a child of a substance abuser;

[1] So in original. Probably should be ''Prevention Center''.

(2) is a victim of physical, sexual, or psychological abuse;

(3) has dropped out of school;

(4) has become pregnant;

(5) is economically disadvantaged;

(6) has committed a violent or delinquent act;

(7) has experienced mental health problems;

(8) has attempted suicide;

(9) has experienced long-term physical pain due to injury; or

(10) has experienced chronic failure in school.

(h) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $70,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(July 1, 1944, ch. 373, title V, § 517, formerly § 509A, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4005(a), 100 Stat. 3207–113; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2051(d), 102 Stat. 4206; renumbered § 517 and amended July 10, 1992, Pub. L. 102–321, title I, § 114, 106 Stat. 346.)

REFERENCES IN TEXT

The Head Start Act, referred to in subsec. (b)(1), is subchapter B (§§ 635–657) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 499, as amended, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

CODIFICATION

Section was formerly classified to section 290aa–8 of this title prior to renumbering by Pub. L. 102–321.

PRIOR PROVISIONS

A prior section 517 of act July 1, 1944, was classified to section 290cc–2 of this title, prior to repeal by Pub. L. 102–321, title I, § 123(c), July 10, 1992, 106 Stat. 363.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–321, § 114(d), substituted ''Prevention Center'' for ''Office''.

Subsecs. (c) to (g). Pub. L. 102–321, § 114(b), added subsec. (c) and redesignated former subsecs. (c) through (f) as (d) through (g), respectively.

Subsec. (h). Pub. L. 102–321, § 114(c), added subsec. (h).

1988—Subsec. (b)(5). Pub. L. 100–690, § 2051(d)(1), added par. (5).

Subsec. (f)(9). Pub. L. 100–690, § 2051(d)(2)(B), amended par. (9) generally, substituting ''has experienced long-term physical pain due to injury; or'' for ''is disabled by injuries.''

Subsec. (f)(10). Pub. L. 100–690, § 2051(d)(2)(C), added par. (10).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290bb–24. Employee assistance programs

(a) In general

The Director of the Prevention Center may make grants to public and nonprofit private entities for the purpose of assisting business organizations in establishing employee assistance programs to provide appropriate services for employees of the organizations regarding substance abuse, including education and prevention services and referrals for treatment.

(b) Certain requirements

A business organization may not be assisted under subsection (a) of this section if the organization has an employee assistance program in operation. The organization may receive such assistance only if the organization lacks the financial resources for operating such a program.

(c) Special consideration for certain small businesses

In making grants under subsection (a) of this section, the Director of the Prevention Office shall give special consideration to business organizations with 50 or fewer employers.[1]

(d) Consultation and technical assistance

In the case of small businesses being assisted under subsection (a) of this section, the Secretary shall consult with the entities and organizations involved and provide technical assistance and training with respect to establishing and operating employee assistance programs in accordance with this subtitle.[2] Such assistance shall include technical assistance in establishing workplace substance abuse programs.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $3,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(July 1, 1944, ch. 373, title V, § 518, as added July 10, 1992, Pub. L. 102–321, title I, § 171, 106 Stat. 377.)

REFERENCES IN TEXT

This subtitle, referred to in subsec. (d), probably means subtitle F of title I of Pub. L. 102–321, which enacted this section. Neither title V of act July 1, 1944, which is classified to this subchapter, nor any other title of that act, contains subtitles.

PRIOR PROVISIONS

A prior section 518 of act July 1, 1944, was classified to section 290cc–11 of this title, prior to repeal by Pub. L. 102–321, § 120(b)(3).

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SUBPART 3—CENTER FOR MENTAL HEALTH SERVICES

§ 290bb–31. Center for Mental Health Services

(a) Establishment

There is established in the Administration a Center for Mental Health Services (hereafter in this section referred to as the ''Center''). The Center shall be headed by a Director (hereafter in this section referred to as the ''Director'') appointed by the Secretary from among individuals with extensive experience or academic qualifications in the provision of mental health services or in the evaluation of mental health service systems.

---

[1] So in original. Probably should be ''employees.''

[2] See References in Text note below.

(b) Duties

The Director of the Center shall—

(1) design national goals and establish national priorities for—

(A) the prevention of mental illness; and

(B) the promotion of mental health;

(2) encourage and assist local entities and State agencies to achieve the goals and priorities described in paragraph (1);

(3) develop and coordinate Federal prevention policies and programs and to assure increased focus on the prevention of mental illness and the promotion of mental health;

(4) develop improved methods of treating individuals with mental health problems and improved methods of assisting the families of such individuals;

(5) administer the mental health services block grant program authorized in section 300x of this title;

(6) promote policies and programs at Federal, State, and local levels and in the private sector that foster independence and protect the legal rights of persons with mental illness, including carrying out the provisions of the Protection and Advocacy of Mentally Ill Individuals Act [42 U.S.C. 10801 et seq.];

(7) carry out the programs authorized under sections 290bb–32 and 290cc–21 of this title, including the Community Support Program and the Child and Adolescent Service System Programs;

(8) carry out responsibilities for the Human Resource Development program, and programs of clinical training for professional and paraprofessional personnel pursuant to section 242a of this title;

(9) conduct services-related assessments, including evaluations of the organization and financing of care, self-help and consumer-run programs, mental health economics, mental health service systems, rural mental health, and improve the capacity of State to conduct evaluations of publicly funded mental health programs;

(10) establish a clearinghouse for mental health information to assure the widespread dissemination of such information to States, political subdivisions, educational agencies and institutions, treatment and prevention service providers, and the general public, including information concerning the practical application of research supported by the National Institute of Mental Health that is applicable to improving the delivery of services;

(11) provide technical assistance to public and private entities that are providers of mental health services;

(12) monitor and enforce obligations incurred by community mental health centers pursuant to the Community Mental Health Centers Act (as in effect prior to the repeal of such Act on August 13, 1981, by section 902(e)(2)(B) of Public Law 97–35 (95 Stat. 560));

(13) conduct surveys with respect to mental health, such as the National Reporting Program; and

(14) assist States in improving their mental health data collection.

(c) Grants and contracts

In carrying out the duties established in subsection (b) of this section, the Director may make grants to and enter into contracts and cooperative agreements with public and nonprofit private entities.

(July 1, 1944, ch. 373, title V, § 520, as added July 10, 1992, Pub. L. 102–321, title I, § 115(a), 106 Stat. 346.)

REFERENCES IN TEXT

The Protection and Advocacy of Mentally Ill Individuals Act, referred to in subsec. (b)(6), probably means the Protection and Advocacy for Mentally Ill Individuals Act of 1986, which is Pub. L. 99–319, May 23, 1986, 100 Stat. 478, which is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

The Community Mental Health Centers Act, referred to in subsec. (b)(12), is title II of Pub. L. 88–164, as added by Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 309, and amended, which was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title prior to its repeal by Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560.

PRIOR PROVISIONS

A prior section 520 of act July 1, 1944, which was classified to section 290cc–13 of this title, was renumbered section 520A of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290bb–32 of this title.

Another prior section 520 of act July 1, 1944, was renumbered section 519 by Pub. L. 101–93 and classified to section 290cc–12 of this title, prior to repeal by Pub. L. 102–321, § 117.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

MENTAL HEALTH SERVICES FOR INDIVIDUALS IN CORRECTIONAL FACILITIES

Section 703 of Pub. L. 102–321 provided that: ''Not later than 18 months after the date of enactment of this Act [July 10, 1992], the Secretary of Health and Human Services, acting through the Director of the Center for Mental Health Services, shall prepare and submit to the appropriate committees of Congress a report concerning the most effective methods for providing mental health services to individuals who come into contact with the criminal justice system, including those individuals incarcerated in correctional facilities (including local jails and detention facilities), and the obstacles to providing such services. Such study shall be carried out in consultation with the National Institute of Mental Health, the Department of Justice, and other appropriate public and private entities.''

§ 290bb–32. Establishment of grant programs for demonstration projects

(a) Seriously mentally ill individuals, and children and adolescents with serious emotional and mental disturbances

(1) In general

The Secretary, acting through the Director of the Center for Mental Health Services, may make grants to States, political subdivisions of States, and nonprofit private agencies for—

(A) mental health services demonstration projects for the planning, coordination and improvement of community services (including outreach and consumer-run self-help services) for seriously mentally ill individ-

uals and their families, seriously emotionally and mentally disturbed children and youth and their families, and seriously mentally ill homeless and elderly individuals;

(B) demonstration projects for the prevention of youth suicide;

(C) demonstration projects for the improvement of the recognition, assessment, treatment and clinical management of depressive disorders;

(D) demonstration projects for programs to prevent the occurrence of sex offenses, and for the provision of treatment and psychological assistance to the victims of sex offenses; and

(E) demonstration projects for programs to provide mental health services to victims of family violence.

(2) Mental health services

Mental health services provided under paragraph (1)(A) should encompass a range of delivery systems designed to permit individuals to receive treatment in the most therapeutically appropriate, least restrictive setting. Grants shall be awarded under such paragraph for—

(A) research demonstration programs concerning such services; and

(B) systems improvements to assist States and local entities to develop appropriate comprehensive mental health systems for adults with serious long-term mental illness and children and adolescents with serious emotional and mental disturbance.

(b) Individuals at risk of mental illness

(1) The Secretary, acting through the Director, may make grants to States, political subdivisions of States, and private nonprofit agencies for prevention services demonstration projects for the provision of prevention services for individuals who, in the determination of the Secretary, are at risk of developing mental illness.

(2) Demonstration projects under paragraph (1) may include—

(A) prevention services for populations at risk of developing mental illness, particularly displaced workers, young children, and adolescents;

(B) the development and dissemination of education materials;

(C) the sponsoring of local, regional, or national workshops or conferences;

(D) the conducting of training programs with respect to the provision of mental health services to individuals described in paragraph (1); and

(E) the provision of technical assistance to providers of such services.

(c) Limitation on duration of grant

The Secretary may make a grant under subsection (a) or (b) of this section for not more than five consecutive one-year periods.

(d) Limitation on administrative expenses

The Secretary may not make a grant under subsection (a) or (b) of this section to an applicant unless the applicant agrees that not more than 10 percent of such a grant will be expended for administrative expenses.

(e) Authorizations of appropriations

(1) For the purposes of carrying out this section, there are authorized to be appropriated $50,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(2) Of the amounts appropriated pursuant to paragraph (1), the Secretary shall make available 15 percent for demonstration projects to carry out the purpose of this section in rural areas.

(July 1, 1944, ch. 373, title V, §520A, as added Nov. 18, 1988, Pub. L. 100–690, title II, §2057(3), 102 Stat. 4212; renumbered §520 and amended Aug. 16, 1989, Pub. L. 101–93, §3(e), (g), 103 Stat. 610, 611; Nov. 28, 1990, Pub. L. 101–639, §2, 104 Stat. 4600; renumbered §520A and amended July 10, 1992, Pub. L. 102–321, title I, §116, 106 Stat. 348.)

CODIFICATION

Section was formerly classified to section 290cc–13 of this title prior to renumbering by Pub. L. 102–321.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–321, §116(b)(1), substituted ''Center for Mental Health Services'' for ''National Institute of Mental Health''.

Subsec. (c). Pub. L. 102–321, §116(b)(2), substituted ''five'' for ''three''.

Subsec. (e)(1). Pub. L. 102–321, §116(b)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purposes of carrying out this section, there are authorized to be appropriated $40,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 and 1993.''

1990—Subsec. (a). Pub. L. 101–639, §2(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''The Secretary, acting through the Director, may make grants to States, political subdivisions of States, and nonprofit private agencies—

''(1) for mental health services demonstration projects for the planning, coordination, and improvement of community services (including outreach and self-help services) for seriously mentally ill individuals, seriously emotionally disturbed children and youth, elderly individuals, and homeless seriously mentally ill individuals, and for the conduct of research concerning such services;

''(2) for demonstration projects for the prevention of youth suicide;

''(3) for demonstration projects for the improvement of the recognition, assessment, treatment, and clinical management of depressive disorders; and

''(4) for demonstration projects for treatment and prevention relating to sex offenses.''

Subsec. (e)(1). Pub. L. 101–639, §2(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purposes of carrying out this section, there are authorized to be appropriated $60,000,000 for each of the fiscal years 1989 and 1990.''

1989—Pub. L. 101–93 substituted ''programs'' for ''program'' in section catchline and in subsec. (a) substituted ''seriously mentally ill'' for ''chronically mentally ill'' wherever appearing, redesignated par. (5) as (4), and inserted ''for'' before ''demonstration'' in pars. (2), (3), and (4).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

COMMUNITY MENTAL HEALTH SERVICES DEMONSTRATION PROJECTS FOR HOMELESS INDIVIDUALS WHO ARE CHRONICALLY MENTALLY ILL

Pub. L. 100–77, title VI, §612, July 22, 1987, 101 Stat. 523, as amended by Pub. L. 100–607, title VIII, §821, Nov.

4, 1988, 102 Stat. 3171; Pub. L. 100–628, title VI, § 621, Nov. 7, 1988, 102 Stat. 3244; Pub. L. 101–93, § 5(t)(1), (2), Aug. 16, 1989, 103 Stat. 615; Pub. L. 101–645, title V, § 521, Nov. 29, 1990, 104 Stat. 4734, provided that:

''(a) IN GENERAL.—For payments pursuant to section 520 [now 520A] of the Public Health Service Act [this section], there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 1993, in addition to any other amounts authorized to be appropriated for such payments for each of such fiscal years. Such additional amounts shall be available only for the provision of community-based mental health services to homeless individuals who are chronically mentally ill.

''(b) AVAILABILITY.—Amounts paid to a grantee under section 520 [now 520A] of the Public Health Service Act pursuant to subsection (a) remaining unobligated at the end of the fiscal year in which the amounts were received shall remain available to the grantee during the succeeding fiscal year for the purposes for which the payments were made.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290bb–31 of this title.

§ 290bb–33. Demonstration projects for individuals with positive test results

(a) In general

The Secretary, acting through the Director of the Center for Mental Health Services, may make grants to public and nonprofit private entities for demonstration projects for the development, establishment, or expansion of programs to provide counseling and mental health treatment—

(1) for individuals who experience serious psychological reactions as a result of being informed that the results of testing for the etiologic agent for acquired immune deficiency syndrome indicate that the individuals are infected with such etiologic agent; and

(2) for the families of such individuals, and for others, who experience serious psychological reactions as a result of being informed of the results of such testing of such individuals.

(b) Preferences in making grants

In making grants under subsection (a) of this section, the Secretary shall give preference to applicants that are based at, or have relationships with, entities providing comprehensive health services to individuals who are infected with the etiologic agent for acquired immune deficiency syndrome.

(c) Requirement of provision of information on prevention

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees that counseling provided pursuant to such subsection will include counseling relating to measures for the prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

(d) Authority for training

A grantee under subsection (a) of this section may expend the grant to train individuals to provide the services described in such subsection.

(e) Requirement of identification of needs and objectives

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant submits to the Secretary—

(1) information demonstrating that the applicant has, with respect to mental health treatment related to the etiologic agent for acquired immune deficiency syndrome, identified the need for such treatment in the area in which the program will be developed, established, or expanded; and

(2) a description of—

(A) the objectives established by the applicant for the conduct of the program; and

(B) the method the applicant will use to evaluate the activities conducted under the program and to determine the extent to which such objectives have been met.

(f) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless—

(1) an application for the grant is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary;

(3) the application contains the information required to be submitted under subsection (e) of this section; and

(4) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(g) Requirement of minimum number of grants for fiscal year 1989

Subject to the extent of amounts made available in appropriations Acts, the Secretary shall, for fiscal year 1989, make not less than 6 grants under subsection (a) of this section.

(h) Technical assistance and administrative support

The Secretary, acting through the Director of the National Institute of Mental Health, may provide technical assistance and administrative support to grantees under subsection (a) of this section.

(i) "Mental health treatment" defined

For purposes of this section, the term ''mental health treatment'' means individual, family or group services designed to alleviate distress, improve functional ability, or assist in changing dysfunctional behavior patterns.

(j) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1994.

(July 1, 1944, ch. 373, title V, § 520B, formerly title XXIV, § 2441, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3092; renumbered title V, § 520B, and amended July 10, 1992, Pub. L. 102–321, title I, § 118(a), (b)(2), 106 Stat. 348, 349.)

CODIFICATION

Section was formerly classified to section 300dd–41 of this title prior to renumbering by Pub. L. 102–321.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–321, §118(b)(2)(A), inserted '', acting through the Director of the Center for Mental Health Services,'' after ''Secretary'' in introductory provisions.

Subsec. (j). Pub. L. 102–321, §118(b)(2)(B), substituted ''1994'' for ''1991''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§§ 290cc to 290cc–2, 290cc–11, 290cc–12. Repealed. Pub. L. 102–321, title I, §§117, 120(b)(3), 123(c), July 10, 1992, 106 Stat. 348, 358, 363

Section 290cc, act July 1, 1944, ch. 373, title V, §515, formerly Pub. L. 92–255, title V, §503, as added Pub. L. 94–237, §13(a), Mar. 19, 1976, 90 Stat. 248; amended Pub. L. 95–461, §2(c), Oct. 14, 1978, 92 Stat. 1268; Pub. L. 96–181, §12, Jan. 2, 1980, 93 Stat. 1315; Pub. L. 97–35, title IX, §972(a), (b), Aug. 13, 1981, 95 Stat. 597; renumbered §515 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, §2(b)(11), 97 Stat. 180; Oct. 19, 1984, Pub. L. 98–509, title II, §§205(a)(2), 206(c)(2), 207(b), 98 Stat. 2361–2363; Oct. 27, 1986, Pub. L. 99–570, title IV, §4009, 100 Stat. 3207–115; Nov. 18, 1988, Pub. L. 100–690, title II, §2058(a)(3), 102 Stat. 4214, related to encouraging drug abuse research.

Section 290cc–1, act July 1, 1944, ch. 373, title V, §516, as added Oct. 19, 1984, Pub. L. 98–509, title II, §206(b), 98 Stat. 2362; amended Nov. 18, 1988, Pub. L. 100–690, title II, §2058(a)(4), 102 Stat. 4214, related to drug abuse demonstration projects.

Section 290cc–2, act July 1, 1944, ch. 373, title V, §517, as added Oct. 19, 1984, Pub. L. 98–509, title II, §207(b), 98 Stat. 2363; amended Oct. 27, 1986, Pub. L. 99–570, title IV, §4010(b), 100 Stat. 3207–115; Nov. 18, 1988, Pub. L. 100–690, title II, §2056(b), 102 Stat. 4211; Aug. 15, 1990, Pub. L. 101–374, §3(a), 104 Stat. 457, authorized appropriations for drug abuse research.

Section 290cc–11, act July 1, 1944, ch. 373, title V, §518, formerly §519, as added Nov. 18, 1988, Pub. L. 100–690, title II, §2057(3), 102 Stat. 4212; renumbered §518, Aug. 16, 1989, Pub. L. 101–93, §3(e)(1)(A), 103 Stat. 610, related to establishment of a mental health research program.

Section 290cc–12, act July 1, 1944, ch. 373, title V, §519, formerly §520, as added Nov. 18, 1988, Pub. L. 100–690, title II, §2057(3), 102 Stat. 4212; renumbered §519, Aug. 16, 1989, Pub. L. 101–93, §3(e)(1)(A), 103 Stat. 610, related to National Mental Health Education Program.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

§290cc–13. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title V, §520, formerly §520A, as added Nov. 18, 1988, Pub. L. 100–690, title II, §2057(3), 102 Stat. 4212, and amended, which related to establishment of grant programs for demonstration projects for drug abuse research, was renumbered section 520A of act July 1, 1944 by Pub. L. 102–321, title I, §116(a), July 10, 1992, 106 Stat. 348, and transferred to section 290bb–32 of this title.

PART C—PROJECTS FOR ASSISTANCE IN TRANSITION FROM HOMELESSNESS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 11465 of this title.

§290cc–21. Formula grants to States

For the purpose of carrying out section 290cc–22 of this title, the Secretary, acting through the Director of the Center for Mental Health Services, shall for each of the fiscal years 1991 through 1994 make an allotment for each State in an amount determined in accordance with section 290cc–24 of this title. The Secretary shall make payments, as grants, each such fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 290cc–29 of this title.

(July 1, 1944, ch. 373, title V, §521, as added July 22, 1987, Pub. L. 100–77, title VI, §611(3), 101 Stat. 516; amended Nov. 4, 1988, Pub. L. 100–607, title VIII, §813(1), 102 Stat. 3170; Nov. 7, 1988, Pub. L. 100–628, title VI, §613(1), 102 Stat. 3243; Aug. 16, 1989, Pub. L. 101–93, §5(t)(1), 103 Stat. 615; Nov. 29, 1990, Pub. L. 101–645, title V, §511, 104 Stat. 4726; July 10, 1992, Pub. L. 102–321, title I, §§162(1), 163(a)(1), 106 Stat. 375; Aug. 26, 1992, Pub. L. 102–352, §2(b)(2), 106 Stat. 939.)

PRIOR PROVISIONS

A prior section 521 of act July 1, 1944, was renumbered section 542 by section 611(2) of Pub. L. 100–77 and is classified to section 290dd–1 of this title.

AMENDMENTS

1992—Pub. L. 102–352 repealed Pub. L. 102–321, §163(a)(1), which directed the substitution of ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''Director of the National Institute of Mental Health''.

Pub. L. 102–321, §162(1), substituted ''Center for Mental Health Services'' for ''National Institute of Mental Health''.

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to formula grants to States for provisions relating to establishment of block grant program for services to homeless individuals who are chronically mentally ill.

1989—Subsec. (a). Pub. L. 101–93 directed that subsec. (a) of this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, amending first sentence generally. Prior to amendment, first sentence read as follows: ''The Secretary shall for fiscal years 1987 and 1988 allot to each State an amount determined in accordance with sections 290cc–28 and 290cc–29 of this title.''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 256 of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 256 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290bb–31, 290cc–22, 290cc–23, 290cc–24, 290cc–25, 290cc–26, 290cc–27,

290cc–28, 290cc–29, 290cc–31, 290cc–32, 290cc–33, 290cc–35 of this title.

§ 290cc–22. Purpose of grants

(a) In general

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that the payments will be expended solely for making grants to political subdivisions of the State, and to nonprofit private entities (including community-based veterans organizations and other community organizations), for the purpose of providing the services specified in subsection (b) of this section to individuals who—

(1)(A) are suffering from serious mental illness; or

(B) are suffering from serious mental illness and from substance abuse; and

(2) are homeless or at imminent risk of becoming homeless.

(b) Specification of services

The services referred to in subsection (a) of this section are—

(1) outreach services;

(2) screening and diagnostic treatment services;

(3) habilitation and rehabilitation services;

(4) community mental health services;

(5) alcohol or drug treatment services;

(6) staff training, including the training of individuals who work in shelters, mental health clinics, substance abuse programs, and other sites where homeless individuals require services;

(7) case management services, including—

(A) preparing a plan for the provision of community mental health services to the eligible homeless individual involved, and reviewing such plan not less than once every 3 months;

(B) providing assistance in obtaining and coordinating social and maintenance services for the eligible homeless individuals, including services relating to daily living activities, personal financial planning, transportation services, and habilitation and rehabilitation services, prevocational and vocational services, and housing services;

(C) providing assistance to the eligible homeless individual in obtaining income support services, including housing assistance, food stamps, and supplemental security income benefits;

(D) referring the eligible homeless individual for such other services as may be appropriate; and

(E) providing representative payee services in accordance with section 1631(a)(2) of the Social Security Act [42 U.S.C. 1383(a)(2)] if the eligible homeless individual is receiving aid under title XVI of such act [42 U.S.C. 1381 et seq.] and if the applicant is designated by the Secretary to provide such services;

(8) supportive and supervisory services in residential settings;

(9) referrals for primary health services, job training, educational services, and relevant housing services;

(10) subject to subsection (h)(1) of this section—

(A) minor renovation, expansion, and repair of housing;

(B) planning of housing;

(C) technical assistance in applying for housing assistance;

(D) improving the coordination of housing services;

(E) security deposits;

(F) the costs associated with matching eligible homeless individuals with appropriate housing situations; and

(G) 1-time rental payments to prevent eviction; and

(11) other appropriate services, as determined by the Secretary.

(c) Coordination

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees to make grants pursuant to subsection (a) of this section only to entities that have the capacity to provide, directly or through arrangements, the services specified in subsection (b) of this section, including coordinating the provision of services in order to meet the needs of eligible homeless individuals who are both mentally ill and suffering from substance abuse.

(d) Special consideration regarding veterans

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that, in making grants to entities pursuant to subsection (a) of this section, the State will give special consideration to entities with a demonstrated effectiveness in serving homeless veterans.

(e) Special rules

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that grants pursuant to subsection (a) of this section will not be made to any entity that—

(1) has a policy of excluding individuals from mental health services due to the existence or suspicion of substance abuse; or

(2) has a policy of excluding individuals from substance abuse services due to the existence or suspicion of mental illness.

(f) Administrative expenses

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that not more than 4 percent of the payments will be expended for administrative expenses regarding the payments.

(g) Maintenance of effort

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that the State will maintain State expenditures for services specified in subsection (b) of this section at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive such payments.

(h) Restrictions on use of funds

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that—

(1) not more than 20 percent of the payments will be expended for housing services under subsection (b)(10) of this section; and

(2) the payments will not be expended—

(A) to support emergency shelters or construction of housing facilities;

(B) for inpatient psychiatric treatment costs or inpatient substance abuse treatment costs; or

(C) to make cash payments to intended recipients of mental health or substance abuse services.

(July 1, 1944, ch. 373, title V, § 522, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 516; amended Nov. 29, 1990, Pub. L. 101–645, title V, § 511, 104 Stat. 4726.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(7)(E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVI of the Act is classified generally to subchapter XVI (§ 1381 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 522 of act July 1, 1944, was renumbered section 543 by section 611(2) of Pub. L. 100–77 and is classified to section 290dd–2 of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to purpose of grants for provisions relating to requirement of submission of application containing certain agreements.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290cc–21, 290cc–23, 290cc–25, 290cc–27, 290cc–31, 290cc–34, 290cc–35 of this title.

§ 290cc–23. Requirement of matching funds

(a) In general

The Secretary may not make payments under section 290cc–21 of this title unless, with respect to the costs of providing services pursuant to section 290cc–22 of this title, the State involved agrees to make available, directly or through donations from public or private entities, non-Federal contributions toward such costs in an amount that is not less than $1 for each $3 of Federal funds provided in such payments.

(b) Determination of amount

Non-Federal contributions required in subsection (a) of this section may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, shall not be included in determining the amount of such non-Federal contributions.

(c) Limitation regarding grants by States

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that the State will not require the entities to which grants are provided pursuant to section 290cc–22(a) of this title to provide non-Federal contributions in excess of the non-Federal contributions described in subsection (a) of this section.

(July 1, 1944, ch. 373, title V, § 523, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 517; amended Nov. 29, 1990, Pub. L. 101–645, title V, § 511, 104 Stat. 4728.)

PRIOR PROVISIONS

A prior section 523 of act July 1, 1944, was renumbered section 544 by section 611(2) of Pub. L. 100–77 and is classified to section 290dd–3 of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), general requirements; and in subsec. (b), determination of amount of non-Federal contribution.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290cc–26 of this title.

§ 290cc–24. Determination of amount of allotment

(a) Minimum allotment

The allotment for a State under section 290cc–21 of this title for a fiscal year shall be the greater of—

(1) $300,000 for each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, and $50,000 for each of Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands; and

(2) an amount determined in accordance with subsection (b) of this section.

(b) Determination under formula

The amount referred to in subsection (a)(2) of this section is the product of—

(1) an amount equal to the amount appropriated under section 290cc–35(a) of this title for the fiscal year; and

(2) a percentage equal to the quotient of—

(A) an amount equal to the population living in urbanized areas of the State involved, as indicated by the most recent data collected by the Bureau of the Census; and

(B) an amount equal to the population living in urbanized areas of the United States, as indicated by the sum of the respective amounts determined for the States under subparagraph (A).

(July 1, 1944, ch. 373, title V, § 524, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 517; amended Nov. 29, 1990, Pub. L. 101–645, title V, § 511, 104 Stat. 4728.)

PRIOR PROVISIONS

A prior section 524 of act July 1, 1944, was renumbered section 545 by section 611(2) of Pub. L. 100–77 and is classified to section 290ee of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to determination of amount of allotment for provisions relating to requiring provision of certain mental health services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290cc–21, 290cc–35 of this title.

§ 290cc–25. Conversion to categorical program in event of failure of State regarding expenditure of grants

(a) In general

Subject to subsection (c) of this section, the Secretary shall, from the amounts specified in subsection (b) of this section, make grants to public and nonprofit private entities for the purpose of providing to eligible homeless individuals the services specified in section 290cc–22(b) of this title.

(b) Specification of funds

The amounts referred to in subsection (a) of this section are any amounts made available in appropriations Acts for allotments under section 290cc–21 of this title that are not paid to a State as a result of—

(A) the failure of the State to submit an application under section 290cc–29 of this title;

(B) the failure of the State, in the determination of the Secretary, to prepare the application in accordance with such section or to submit the application within a reasonable period of time; or

(C) the State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

(c) Requirement of provision of services in State involved

With respect to grants under subsection (a) of this section, amounts made available under subsection (b) of this section as a result of the State involved shall be available only for grants to provide services in such State.

(July 1, 1944, ch. 373, title V, § 525, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 518; amended Nov. 29, 1990, Pub. L. 101–645, title V, § 511, 104 Stat. 4729.)

PRIOR PROVISIONS

A prior section 525 of act July 1, 1944, was renumbered section 546 by section 611(2) of Pub. L. 100–77 and is classified to section 290ee–1 of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to conversion to categorical program in event of failure of State regarding expenditure of grants for provisions relating to restrictions on use of payments.

§ 290cc–26. Provision of certain information from State

The Secretary may not make payments under section 290cc–21 of this title to a State unless, as part of the application required in section 290cc–29 of this title, the State submits to the Secretary a statement—

(1) identifying existing programs providing services and housing to eligible homeless individuals and identify gaps in the delivery systems of such programs;

(2) containing a plan for providing services and housing to eligible homeless individuals, which plan—

(A) describes the coordinated and comprehensive means of providing services and housing to homeless individuals; and

(B) includes documentation that suitable housing for eligible homeless individuals will accompany the provision of services to such individuals;

(3) describes the source of the non-Federal contributions described in section 290cc–23 of this title;

(4) contains assurances that the non-Federal contributions described in section 290cc–23 of this title will be available at the beginning of the grant period;

(5) describe any voucher system that may be used to carry out this part; and

(6) contain such other information or assurances as the Secretary may reasonably require.

(July 1, 1944, ch. 373, title V, § 526, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 519; amended Nov. 29, 1990, Pub. L. 101–645, title V, § 511, 104 Stat. 4729.)

PRIOR PROVISIONS

A prior section 526 of act July 1, 1944, was renumbered section 547 by section 611(2) of Pub. L. 100–77 and is classified to section 290ee–2 of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to providing certain information from State for provisions relating to requirement of submission of description of intended use of block grant.

§ 290cc–27. Description of intended expenditures of grant

(a) In general

The Secretary may not make payments under section 290cc–21 of this title unless—

(1) as part of the application required in section 290cc–29 of this title, the State involved submits to the Secretary a description of the intended use for the fiscal year of the amounts for which the State is applying pursuant to such section;

(2) such description identifies the geographic areas within the State in which the greatest numbers of homeless individuals with a need for mental health, substance abuse, and housing services are located;

(3) such description provides information relating to the programs and activities to be supported and services to be provided, including information relating to coordinating such programs and activities with any similar programs and activities of public and private entities; and

(4) the State agrees that such description will be revised throughout the year as may be necessary to reflect substantial changes in the programs and activities assisted by the State pursuant to section 290cc–22 of this title.

(b) Opportunity for public comment

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that, in developing and carrying out the description required in subsection (a) of this section, the State will provide public notice with respect to the description (including any revisions) and such opportunities as may be necessary to provide interested persons, such as family members, consumers, and mental health, substance abuse, and housing agencies, an op-

portunity to present comments and recommendations with respect to the description.

(c) Relationship to State comprehensive mental health services plan

(1) In general

The Secretary may not make payments under section 290cc–21 of this title unless the services to be provided pursuant to the description required in subsection (a) of this section are consistent with the State comprehensive mental health services plan required in subpart 2[1] of part B of subchapter XVII of this chapter.

(2) Special rule

The Secretary may not make payments under section 290cc–21 of this title unless the services to be provided pursuant to the description required in subsection (a) of this section have been considered in the preparation of, have been included in, and are consistent with, the State comprehensive mental health services plan referred to in paragraph (1).

(July 1, 1944, ch. 373, title V, § 527, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 520; amended Nov. 29, 1990, Pub. L. 101–645, title V, § 511, 104 Stat. 4730.)

REFERENCES IN TEXT

Subpart 2 of part B of subchapter XVII of this chapter, referred to in subsec. (c)(1), which related to State comprehensive mental health services plans and which was classified to section 300x–10 et seq. of this title, was repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378, and a new subpart 2 of part B of subchapter XVII of this chapter, relating to block grants for prevention and treatment of substance abuse, was added by section 202 of Pub. L. 102–321 and classified to section 300x–21 et seq. of this title.

PRIOR PROVISIONS

A prior section 527 of act July 1, 1944, was renumbered section 548 by section 611(2) of Pub. L. 100–77 and is classified to section 290ee–3 of this title.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to description of intended expenditures of grant for provisions relating to requirement of reports by States.

§ 290cc–28. Requirement of reports by States

(a) In general

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees that, by not later than January 31 of each fiscal year, the State will prepare and submit to the Secretary a report in such form and containing such information as the Secretary determines (after consultation with the Comptroller General of the United States, and the Administrator of the Substance Abuse and Mental Health Services Administration) to be necessary for—

(1) securing a record and a description of the purposes for which amounts received under section 290cc–21 of this title were expended during the preceding fiscal year and of the recipients of such amounts; and

(2) determining whether such amounts were expended in accordance with the provisions of this part.

(b) Availability to public of reports

The Secretary may not make payments under section 290cc–21 of this title unless the State involved agrees to make copies of the reports described in subsection (a) of this section available for public inspection.

(c) Evaluations by Comptroller General

The Comptroller General of the United States in cooperation with the Administrator of the Substance Abuse and Mental Health Services Administration, shall evaluate at least once every 3 years the expenditures of grants under this part by eligible entities in order to ensure that expenditures are consistent with the provisions of this part, and shall include in such evaluation recommendations regarding changes needed in program design or operations.

(July 1, 1944, ch. 373, title V, § 528, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 520; amended Nov. 4, 1988, Pub. L. 100–607, title VIII, § 812(b), 102 Stat. 3170; Nov. 7, 1988, Pub. L. 100–628, title VI, § 612(b), 102 Stat. 3243; Nov. 18, 1988, Pub. L. 100–690, title II, § 2614(a), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(t)(1), 103 Stat. 615; Nov. 29, 1990, Pub. L. 101–645, title V, § 511, 104 Stat. 4730; July 10, 1992, Pub. L. 102–321, title I, § 163(a)(1), formerly § 163(a)(2), 106 Stat. 375, renumbered § 163(a)(1), Aug. 26, 1992, Pub. L. 102–352, § 2(b)(2), 106 Stat. 939.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–321, § 163(a)(1)(A), as renumbered by Pub. L. 102–352, substituted ''and the Administrator of the Substance Abuse and Mental Health Services Administration'' for ''the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse''.

Subsec. (c). Pub. L. 102–321, § 163(a)(1)(B), as renumbered by Pub. L. 102–352, substituted ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''National Institute of Mental Health''.

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to requirement of reports by States for provisions relating to determination of amount of allotments.

1989—Subsec. (a)(1). Pub. L. 101–93 directed that subsec. (a)(1) of this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Subsec. (a)(1). Pub. L. 100–690 substituted ''the Commonwealth of the Northern Mariana Islands'' for ''the Northern Mariana Islands''.

Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, amending par. (1) generally. Prior to amendment, par. (1) read as follows: ''$275,000; and''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

[1] See References in Text note below.

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 256 of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 256 of this title.

§ 290cc–29. Requirement of application

The Secretary may not make payments under section 290cc–21 of this title unless the State involved—

(1) submits to the Secretary an application for the payments containing agreements and information in accordance with this part;

(2) the agreements are made through certification from the chief executive officer of the State; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(July 1, 1944, ch. 373, title V, § 529, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 520; amended Nov. 4, 1988, Pub. L. 100–607, title VIII, § 811(b), 102 Stat. 3170; Nov. 7, 1988, Pub. L. 100–628, title VI, § 611(b), 102 Stat. 3243; Aug. 16, 1989, Pub. L. 101–93, § 5(t)(1), 103 Stat. 615; Nov. 29, 1990, Pub. L. 101–645, title V, § 511, 104 Stat. 4731.)

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to requirement of application for provisions relating to conversion to State categorical program in event of failure of State with respect to expending allotment.

1989—Pub. L. 101–93 directed that this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, amending section generally by substituting present provisions for provisions which had related to: in subsec. (a), additional allotments for certain States; in subsec. (b), description of funds; and in subsec. (c), determination of amount of allotment.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 256 of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 256 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290cc–21, 290cc–25, 290cc–26, 290cc–27, 290cc–31 of this title.

§ 290cc–30. Technical assistance

The Secretary, through the agencies of the Administration, shall provide technical assistance to eligible entities in developing planning and operating programs in accordance with the provisions of this part.

(July 1, 1944, ch. 373, title V, § 530, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 521; amended Nov. 29, 1990, Pub. L. 101–645, title V, § 511, 104 Stat. 4731; July 10, 1992, Pub. L. 102–321, title I, §§ 162(2), 163(a)(3), 106 Stat. 375; Aug. 26, 1992, Pub. L. 102–352, § 2(b)(2), 106 Stat. 939.)

AMENDMENTS

1992—Pub. L. 102–352 repealed Pub. L. 102–321, § 163(a)(3), which directed the substitution of ''the Administrator of the Substance Abuse and Mental Health Services Administration'' for ''the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse''.

Pub. L. 102–321, § 162(2), which directed the substitution of ''through the agencies of the Administration'' for ''through the National'' and all that follows through ''Abuse'', was executed by making the substitution for ''through the National Institute of Mental Health, the National Institute of Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse'' to reflect the probable intent of Congress.

1990—Pub. L. 101–645 amended section generally, substituting provision relating to technical assistance for provision relating to disbursement and availability of funds.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 290cc–31. Failure to comply with agreements

(a) Repayment of payments

(1) The Secretary may, subject to subsection (c) of this section, require a State to repay any payments received by the State under section 290cc–21 of this title that the Secretary determines were not expended by the State in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 290cc–29 of this title.

(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under section 290cc–21 of this title.

(b) Withholding of payments

(1) The Secretary may, subject to subsection (c) of this section, withhold payments due under section 290cc–21 of this title if the Secretary determines that the State involved is not expending amounts received under such section in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 290cc–29 of this title.

(2) The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under section 290cc–21 of this title in accordance with the agreements referred to in such paragraph.

(3) The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the agreements referred to in such paragraph.

(c) Opportunity for hearing

Before requiring repayment of payments under subsection (a)(1) of this section, or withholding payments under subsection (b)(1) of this section, the Secretary shall provide to the State an opportunity for a hearing.

(d) Rule of construction

Notwithstanding any other provision of this part, a State receiving payments under section

290cc–21 of this title may not, with respect to any agreements required to be contained in the application submitted under section 290cc–29 of this title, be considered to be in violation of any such agreements by reason of the fact that the State, in the regular course of providing services under section 290cc–22(b) of this title to eligible homeless individuals, incidentally provides services to homeless individuals who are not eligible homeless individuals.

(July 1, 1944, ch. 373, title V, § 531, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 521; amended Nov. 29, 1990, Pub. L. 101–645, title V, § 511, 104 Stat. 4731.)

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to failure to comply with agreements for provision relating to technical assistance.

§ 290cc–32. Prohibition against certain false statements

(a) In general

(1) A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which amounts may be paid by a State from payments received by the State under section 290cc–21 of this title.

(2) A person with knowledge of the occurrence of any event affecting the right of the person to receive any amounts from payments made to the State under section 290cc–21 of this title may not conceal or fail to disclose any such event with the intent of securing such an amount that the person is not authorized to receive or securing such an amount in an amount greater than the amount the person is authorized to receive.

(b) Criminal penalty for violation of prohibition

Any person who violates a prohibition established in subsection (a) of this section may for each violation be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(July 1, 1944, ch. 373, title V, § 532, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 521; amended Nov. 29, 1990, Pub. L. 101–645, title V, § 511, 104 Stat. 4732.)

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to prohibition against certain false statements for provisions relating to failure to comply with agreements.

§ 290cc–33. Nondiscrimination

(a) In general

(1) Rule of construction regarding certain civil rights laws

For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under section 290cc–21 of this title shall be considered to be programs and activities receiving Federal financial assistance.

(2) Prohibition

No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under section 290cc–21 of this title.

(b) Enforcement

(1) Referrals to Attorney General after notice

Whenever the Secretary finds that a State, or an entity that has received a payment pursuant to section 290cc–21 of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(B) exercise the powers and functions provided by the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], as may be applicable; or

(C) take such other actions as may be authorized by law.

(2) Authority of Attorney General

When a matter is referred to the Attorney General pursuant to paragraph (1)(A), or whenever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(July 1, 1944, ch. 373, title V, § 533, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 522; amended Nov. 29, 1990, Pub. L. 101–645, title V, § 511, 104 Stat. 4732.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1) and (b)(1)(B), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsecs. (a)(1) and (b)(1)(B), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Education Amendments of 1972 is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1001 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1) and (b)(1)(B), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to nondiscrimination for provision relating to establishment of prohibition against making certain false statements.

§ 290cc–34. Definitions

For purposes of this part:

(1) Eligible homeless individual

The term ''eligible homeless individual'' means an individual described in section 290cc–22(a) of this title.

(2) Homeless individual

The term ''homeless individual'' has the meaning given such term in section 256(r) of this title.

(3) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) Substance abuse

The term ''substance abuse'' means the abuse of alcohol or other drugs.

(July 1, 1944, ch. 373, title V, § 534, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 522; amended Nov. 29, 1990, Pub. L. 101–645, title V, § 511, 104 Stat. 4733.)

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting provisions relating to definitions for provisions relating to nondiscrimination.

§ 290cc–35. Funding

(a) Authorization of appropriations

For the purpose of carrying out this part, there is authorized to be appropriated $75,000,000 for each of the fiscal years 1991 through 1994.

(b) Effect of insufficient appropriations for minimum allotments

(1) In general

If the amounts made available under subsection (a) of this section for a fiscal year are insufficient for providing each State with an allotment under section 290cc–21 of this title of not less than the applicable amount under section 290cc–24(a)(1) of this title, the Secretary shall, from such amounts as are made available under such subsection, make grants to the States for providing to eligible homeless individuals the services specified in section 290cc–22(b) of this title.

(2) Rule of construction

Paragraph (1) may not be construed to require the Secretary to make a grant under such paragraph to each State.

(July 1, 1944, ch. 373, title V, § 535, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 523; amended Nov. 4, 1988, Pub. L. 100–607, title VIII, § 811(a), 102 Stat. 3169; Nov. 7, 1988, Pub. L. 100–628, title VI, § 611(a), 102 Stat. 3242; Aug. 16, 1989, Pub. L. 101–93, § 5(t)(1), 103 Stat. 615; Nov. 29, 1990, Pub. L. 101–645, title V, § 511, 104 Stat. 4733.)

PRIOR PROVISIONS

A prior section 290cc–36, act July 1, 1944, ch. 373, title V, § 536, as added July 22, 1987, Pub. L. 100–77, title VI, § 611(3), 101 Stat. 523, and amended Nov. 4, 1988, Pub. L. 100–607, title VIII, §§ 802(b)(3), 812(a), 102 Stat. 3169, 3170; Nov. 7, 1988, Pub. L. 100–628, title VI, §§ 602(b)(3), 612(a), 102 Stat. 3242, 3243; Nov. 18, 1988, Pub. L. 100–690, title II, § 2614(b), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(t)(1), 103 Stat. 615, defined terms used in this part, prior to the general revision of this part by Pub. L. 101–645.

AMENDMENTS

1990—Pub. L. 101–645 amended section generally, substituting present provisions for similar provisions authorizing appropriations and providing for minimum allotments.

1989—Pub. L. 101–93 directed that this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Pub. L. 100–607 and Pub. L. 100–628 made identical amendments, amending section generally. Prior to amendment, section read as follows: ''There are authorized to be appropriated to carry out this part $35,000,000 for fiscal year 1987 and such sums as may be necessary for fiscal year 1988.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 256 of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 256 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290cc–24 of this title.

PART D—MISCELLANEOUS PROVISIONS RELATING TO SUBSTANCE ABUSE AND MENTAL HEALTH

§ 290dd. Substance abuse among government and other employees

(a) Programs and services

(1) Development

The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall be responsible for fostering substance abuse prevention and treatment programs and services in State and local governments and in private industry.

(2) Model programs

(A) In general

Consistent with the responsibilities described in paragraph (1), the Secretary, act-

ing through the Administrator of the Substance Abuse and Mental Health Services Administration, shall develop a variety of model programs suitable for replication on a cost-effective basis in different types of business concerns and State and local governmental entities.

(B) Dissemination of information

The Secretary, acting through the Administrator of the Substance Abuse and Mental Health Services Administration, shall disseminate information and materials relative to such model programs to the State agencies responsible for the administration of substance abuse prevention, treatment, and rehabilitation activities and shall, to the extent feasible provide technical assistance to such agencies as requested.

(b) Deprivation of employment

(1) Prohibition

No person may be denied or deprived of Federal civilian employment or a Federal professional or other license or right solely on the grounds of prior substance abuse.

(2) Application

This subsection shall not apply to employment in—

(A) the Central Intelligence Agency;

(B) the Federal Bureau of Investigation;

(C) the National Security Agency;

(D) any other department or agency of the Federal Government designated for purposes of national security by the President; or

(E) in any position in any department or agency of the Federal Government, not referred to in subparagraphs (A) through (D), which position is determined pursuant to regulations prescribed by the head of such agency or department to be a sensitive position.

(3) Rehabilitation Act

The inapplicability of the prohibition described in paragraph (1) to the employment described in paragraph (2) shall not be construed to reflect on the applicability of the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] or other anti-discrimination laws to such employment.

(c) Construction

This section shall not be construed to prohibit the dismissal from employment of a Federal civilian employee who cannot properly function in his employment.

(July 1, 1944, ch. 373, title V, §541, formerly Pub. L. 91–616, title III, §301, Dec. 31, 1970, 84 Stat. 1849, as amended Pub. L. 92–554, Oct. 25, 1972, 86 Stat. 1167; Pub. L. 93–282, title I, §105(a), May 14, 1974, 88 Stat. 127; Pub. L. 94–371, §3(a), July 26, 1976, 90 Stat. 1035; Pub. L. 96–180, §7, Jan. 2, 1980, 93 Stat. 1303; Pub. L. 97–35, title IX, §962(a), Aug. 13, 1981, 95 Stat. 592; renumbered §520 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, §2(b)(13), 97 Stat. 181; Oct. 19, 1984, Pub. L. 98–509, title III, §301(c)(2), 98 Stat. 2364; renumbered §541, July 22, 1987, Pub. L. 100–77, title VI, §611(2), 101 Stat. 516; Nov. 4, 1988, Pub. L. 100–607, title VIII, §813(2), 102 Stat. 3170; Nov. 7, 1988, Pub. L. 100–628, title VI, §613(2), 102 Stat. 3243; Aug. 16, 1989, Pub. L. 101–93, §5(t)(1), 103 Stat. 615; July 10, 1992, Pub. L. 102–321, title I, §131, 106 Stat. 366.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (b)(3), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified principally to chapter 16 (§701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

CODIFICATION

Section was formerly classified to section 4571 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1992—Pub. L. 102–321 amended section generally, substituting provisions relating to substance abuse among government and other employees for provisions relating to technical assistance to States relative to alcohol abuse and alcoholism programs.

1989—Subsec. (a)(4). Pub. L. 101–93 directed that subsec. (a)(4) of this section as similarly amended by title VIII of Pub. L. 100–607 and title VI of Pub. L. 100–628 be amended to read as if the amendments made by title VI of Pub. L. 100–628 had not been enacted. See 1988 Amendment note below.

1988—Subsec. (a)(4). Pub. L. 100–607 and Pub. L. 100–628 made identical technical amendments to reference to section 290dd–2 of this title to reflect renumbering of corresponding section of original act.

1984—Pub. L. 98–509 amended directory language of Pub. L. 98–24, §2(b)(13). See 1983 Amendment note below.

1983—Pub. L. 98–24, §2(b)(13), as amended by Pub. L. 98–509 renumbered section 4571 of this title as this section.

Subsec. (a). Pub. L. 98–24, §2(b)(13)(A)(i), substituted ''the National Institute on Alcohol Abuse and Alcoholism'' for ''the Institute''.

Subsec. (a)(4). Pub. L. 98–24, §2(b)(13)(A)(ii), substituted ''section 290dd–2 of this title'' for ''section 4581 of this title''.

Subsec. (b). Pub. L. 98–24, §2(b)(13)(A)(iii), substituted ''this subchapter'' for references to ''this chapter'', meaning chapter 60 (§4541 et seq.) of this title, and the Drug Abuse Prevention, Treatment, and Rehabilitation Act [21 U.S.C. 1101 et seq.].

1981—Pub. L. 97–35 restructured provisions and substituted provisions relating to technical assistance for enumerated activities, and improvement of coordination with Drug Abuse Prevention, Treatment, and Rehabilitation Act, for provisions authorizing appropriations through fiscal year ending Sept. 30, 1981, for covered activities.

1980—Pub. L. 96–180 authorized appropriation of $60,000,000 and $65,000,000 for fiscal years ending Sept. 30, 1980, and 1981.

1976—Pub. L. 94–371 struck out ''and'' after ''1975'' and inserted provisions authorizing $70,000,000 to be appropriated for fiscal year ending Sept. 30, 1977, $77,000,000 to be appropriated for fiscal year ending Sept. 30, 1978, and $85,000,000 to be appropriated for fiscal year ending Sept. 30, 1979.

1974—Pub. L. 93–282 authorized appropriation of $80,000,000 for fiscal years ending June 30, 1975 and June 30, 1976.

1972—Pub. L. 92–554 substituted ''for each of the next two fiscal years'' for ''for the fiscal year ending June 30, 1973''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Nov. 7, 1988, see section 631 of Pub. L. 100–628, set out as a note under section 256 of this title.

Amendment by Pub. L. 100–607 effective Nov. 4, 1988, see section 831 of Pub. L. 100–607, set out as a note under section 256 of this title.

§ 290dd–1. Admission of substance abusers to private and public hospitals and outpatient facilities

(a) Nondiscrimination

Substance abusers who are suffering from medical conditions shall not be discriminated against in admission or treatment, solely because of their substance abuse, by any private or public general hospital, or outpatient facility (as defined in section 300s–3(4) of this title) which receives support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency.

(b) Regulations

(1) In general

The Secretary shall issue regulations for the enforcement of the policy of subsection (a) of this section with respect to the admission and treatment of substance abusers in hospitals and outpatient facilities which receive support of any kind from any program administered by the Secretary. Such regulations shall include procedures for determining (after opportunity for a hearing if requested) if a violation of subsection (a) of this section has occurred, notification of failure to comply with such subsection, and opportunity for a violator to comply with such subsection. If the Secretary determines that a hospital or outpatient facility subject to such regulations has violated subsection (a) of this section and such violation continues after an opportunity has been afforded for compliance, the Secretary may suspend or revoke, after opportunity for a hearing, all or part of any support of any kind received by such hospital from any program administered by the Secretary. The Secretary may consult with the officials responsible for the administration of any other Federal program from which such hospital or outpatient facility receives support of any kind, with respect to the suspension or revocation of such other Federal support for such hospital or outpatient facility.

(2) Department of Veterans Affairs

The Secretary of Veterans Affairs, acting through the Under Secretary for Health, shall, to the maximum feasible extent consistent with their responsibilities under title 38, prescribe regulations making applicable the regulations prescribed by the Secretary under paragraph (1) to the provision of hospital care, nursing home care, domiciliary care, and medical services under such title 38 to veterans suffering from substance abuse. In prescribing and implementing regulations pursuant to this paragraph, the Secretary shall, from time to time, consult with the Secretary of Health and Human Services in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribe.

(July 1, 1944, ch. 373, title V, § 542, formerly Pub. L. 91–616, title II, § 201, Dec. 31, 1970, 84 Stat. 1849, as amended Pub. L. 96–180, § 6(a), (b)(1), (2)(B), Jan. 2, 1980, 93 Stat. 1302, 1303; Pub. L. 97–35, title IX, §§ 961, 966(d), (e), Aug. 13, 1981, 95 Stat. 592, 595; renumbered § 521 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(13), 97 Stat. 181; Oct. 19, 1984, Pub. L. 98–509, title III, § 301(c)(2), 98 Stat. 2364; Oct. 27, 1986, Pub. L. 99–570, title VI, § 6002(b)(1), 100 Stat. 3207–158; renumbered § 542, July 22, 1987, Pub. L. 100–77, title VI, § 611(2), 101 Stat. 516; July 10, 1992, Pub. L. 102–321, title I, § 131, 106 Stat. 368; Nov. 2, 1994, Pub. L. 103–446, title XII, § 1203(a)(2), 108 Stat. 4689.)

CODIFICATION

Section was formerly classified to section 4561 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–446 substituted ''Under Secretary for Health'' for ''Chief Medical Director''.

1992—Pub. L. 102–321 amended section generally, substituting provisions relating to admission of substance abusers to private and public hospitals and outpatient facilities for provisions relating to programs for government and other employees.

1986—Subsec. (a). Pub. L. 99–570, § 6002(b)(1), redesignated subsec. (b) as (a), struck out ''similar'' after ''fostering and encouraging'' in par. (1), and struck out former subsec. (a) which read as follows: ''The Office of Personnel Management shall be responsible for developing and maintaining, in cooperation with the Secretary and with other Federal agencies and departments, and in accordance with the provisions of subpart F of part III of title 5, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among Federal civilian employees, consistent with the purposes of this chapter. Such agencies and departments are encouraged to extend, to the extent feasible, these programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such policies and services shall make optimal use of existing governmental facilities, services, and skills.''

Subsecs. (b) to (d). Pub. L. 99–570, § 6002(b)(1)(C), redesignated subsecs. (c) and (d) as (b) and (c), respectively. Former subsec. (b) redesignated (a).

1984—Pub. L. 98–509 amended directory language of Pub. L. 98–24, § 2(b)(13). See 1983 Amendment note below.

1983—Pub. L. 98–24, § 2(b)(13), as amended by Pub. L. 98–509, renumbered section 4561 of this title as this section.

Subsec. (b)(4). Pub. L. 98–24, § 2(b)(13)(B)(i), substituted ''section 290ee–1 of this title'' for ''section 1180(b) of title 21''.

Subsec. (d). Pub. L. 98–24, § 2(b)(13)(B)(ii), substituted ''this section'' for ''this subchapter'', meaning subchapter II (§ 4561 et seq.) of chapter 60 of this title.

1981—Subsec. (b). Pub. L. 97–35, §§ 961, 966(d), made changes in nomenclature, and substituted provisions relating to responsible State administrative agencies, for provisions relating to single State agencies designated pursuant to section 4573 of this title.

1980—Pub. L. 96–180, § 6(b)(2)(A), amended section catchline.

Subsec. (a). Pub. L. 96–180, § 6(a), substituted ''Office of Personnel Management'' for ''Civil Service Commission'' and inserted provisions that require compliance with provisions of subpart F of part III of title 5 and encourage agencies and departments to extend the pro-

grams and services to the families of alcoholic employees and to employees who have family members who are alcoholics.

Subsec. (b). Pub. L. 96–180, § 6(b)(1), designated existing provisions as par. (1), made the Secretary responsible for encouragement of programs and services, required the programs and services to be designed for application to families of employees and to employees who have family members who are alcoholics, and added pars. (2) to (4).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290aa of this title.

§ 290dd–2. Confidentiality of records

(a) Requirement

Records of the identity, diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall, except as provided in subsection (e) of this section, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized under subsection (b) of this section.

(b) Permitted disclosure

(1) Consent

The content of any record referred to in subsection (a) of this section may be disclosed in accordance with the prior written consent of the patient with respect to whom such record is maintained, but only to such extent, under such circumstances, and for such purposes as may be allowed under regulations prescribed pursuant to subsection (g) of this section.

(2) Method for disclosure

Whether or not the patient, with respect to whom any given record referred to in subsection (a) of this section is maintained, gives written consent, the content of such record may be disclosed as follows:

(A) To medical personnel to the extent necessary to meet a bona fide medical emergency.

(B) To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner.

(C) If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor, including the need to avert a substantial risk of death or serious bodily harm. In assessing good cause the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

(c) Use of records in criminal proceedings

Except as authorized by a court order granted under subsection (b)(2)(C) of this section, no record referred to in subsection (a) of this section may be used to initiate or substantiate any criminal charges against a patient or to conduct any investigation of a patient.

(d) Application

The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when such individual ceases to be a patient.

(e) Nonapplicability

The prohibitions of this section do not apply to any interchange of records—

(1) within the Armed Forces or within those components of the Department of Veterans Affairs furnishing health care to veterans; or

(2) between such components and the Armed Forces.

The prohibitions of this section do not apply to the reporting under State law of incidents of suspected child abuse and neglect to the appropriate State or local authorities.

(f) Penalties

Any person who violates any provision of this section or any regulation issued pursuant to this section shall be fined in accordance with title 18.

(g) Regulations

Except as provided in subsection (h) of this section, the Secretary shall prescribe regulations to carry out the purposes of this section. Such regulations may contain such definitions, and may provide for such safeguards and procedures, including procedures and criteria for the issuance and scope of orders under subsection (b)(2)(C) of this section, as in the judgment of the Secretary are necessary or proper to effectuate the purposes of this section, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(h) Application to Department of Veterans Affairs

The Secretary of Veterans Affairs, acting through the Under Secretary for Health, shall, to the maximum feasible extent consistent with their responsibilities under title 38, prescribe regulations making applicable the regulations prescribed by the Secretary of Health and Human Services under subsection (g) of this section to records maintained in connection with the provision of hospital care, nursing home care, domiciliary care, and medical services under such title 38 to veterans suffering from substance abuse. In prescribing and implementing regulations pursuant to this subsection, the Secretary of Veterans Affairs shall, from time to time, consult with the Secretary of Health and Human Services in order to achieve the

maximum possible coordination of the regulations, and the implementation thereof, which they each prescribe.

(July 1, 1944, ch. 373, title V, § 543, formerly Pub. L. 91–616, title III, § 321, Dec. 31, 1970, 84 Stat. 1852, as amended Pub. L. 93–282, title I, § 121(a), May 14, 1974, 88 Stat. 130; Pub. L. 94–371, § 11(a), (b), July 26, 1976, 90 Stat. 1041; Pub. L. 94–581, title I, § 111(c)(1), Oct. 21, 1976, 90 Stat. 2852; renumbered § 522 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(13), 97 Stat. 181; renumbered § 543, July 22, 1987, Pub. L. 100–77, title VI, § 611(2), 101 Stat. 516; July 10, 1992, Pub. L. 102–321, title I, § 131, 106 Stat. 368; Oct. 9, 1992, Pub. L. 102–405, title III, § 302(e)(1), 106 Stat. 1985.)

CODIFICATION

Section was formerly classified to section 4581 of this title prior to renumbering by Pub. L. 98–24.

AMENDMENTS

1992—Pub. L. 102–405 substituted ''Under Secretary for Health'' for ''Chief Medical Director'' in subsec. (h).

Pub. L. 102–321 amended section generally, substituting provisions relating to confidentiality of records for provisions relating to admission of alcohol abusers and alcoholics to general hospitals and outpatient facilities.

1983—Pub. L. 98–24, § 2(b)(13), renumbered section 4581 of this title as this section.

Subsec. (a). Pub. L. 98–24, § 2(b)(13)(C), made a technical amendment to reference to section 300s–3 of this title.

1976—Subsec. (a). Pub. L. 94–371, § 11(a), inserted '', or outpatient facility (as defined in section 300s–3(6) of this title)'' after ''hospital''.

Subsec. (b)(1). Pub. L. 94–371, § 11(b), inserted ''and outpatient facilities'' after ''hospitals'', and ''or outpatient facility'' after ''hospital'' wherever appearing, and substituted ''shall issue regulations not later than December 31, 1976'' for ''is authorized to make regulations''.

Subsec. (b)(2). Pub. L. 94–581 provided that subsec. (b)(2), which directed the Administrator of Veteran's Affairs, through the Chief Medical Director, to prescribe regulations making applicable the regulations prescribed by the Secretary under subsec. (b)(1) to the provision of hospital care, nursing home care, domiciliary care, and medical services under title 38 to veterans suffering from alcohol abuse or alcoholism and to consult with the Secretary in order to achieve the maximum possible coordination of the regulations, and the implementation thereof, which they each prescribed, was superseded by section 4131 [now 7331] et seq. of Title 38, Veterans' Benefits.

1974—Subsec. (a). Pub. L. 93–282, in revising text, prohibited discrimination because of alcohol abuse, substituted provisions respecting eligibility for admission and treatment based on suffering from medical conditions for former provision based on medical need and ineligibility, because of discrimination, for support in any form from any program supported in whole or in part by funds appropriated to any Federal department or agency for former requirement for treatment by a general hospital which received Federal funds, and deleted prohibition against receiving Federal financial assistance for violation of section and for termination of Federal assistance on failure to comply, now incorporated in regulation authorization of subsec. (b) of this section.

Subsec. (b). Pub. L. 93–282 substituted provisions respecting issuance of regulations by the Secretary concerning enforcement procedures and suspension or revocation of Federal support and by the Administrator concerning applicable regulations for veterans, and for coordination of the respective regulations for former provisions respecting judicial review.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–581 effective Oct. 21, 1976, see section 211 of Pub. L. 94–581, set out as a note under section 111 of Title 38, Veterans' Benefits.

REPORT OF ADMINISTRATOR OF VETERANS' AFFAIRS TO CONGRESSIONAL COMMITTEES; PUBLICATION IN FEDERAL REGISTER

Section 121(b) of Pub. L. 93–282, which directed Administrator of Veterans' Affairs to submit to appropriate committees of House of Representatives and Senate a full report (1) on regulations (including guidelines, policies, and procedures thereunder) he had prescribed pursuant to section 321(b)(2) of Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [former subsec. (b)(2) of this section], (2) explaining bases for any inconsistency between such regulations and regulations of Secretary under section 321(b)(1) of such Act [subsec. (b)(1) of this section], (3) on extent, substance, and results of his consultations with Secretary respecting prescribing and implementation of Administrator's regulations, and (4) containing such recommendations for legislation and administrative actions as he determined were necessary and desirable, with Administrator to submit report not later than sixty days after effective date of regulations prescribed by Secretary under such section 321(b)(1) [subsec. (b)(1) of this section], and to publish such report in Federal Register, was characterized by section 111(c)(5) of Pub. L. 94–581 as having been superseded by section 4134 [now 7334] of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290aa of this title.

§§ 290dd–3 to 290ee–3. Omitted

CODIFICATION

Sections 290dd–3 to 290ee–3 were omitted in the general revision of this part by Pub. L. 102–321.

Section 290dd–3, act July 1, 1944, ch. 373, title V, § 544, formerly Pub. L. 91–616, title III, § 333, Dec. 31, 1970, 84 Stat. 1853, as amended Pub. L. 93–282, title I, § 122(a), May 14, 1974, 88 Stat. 131; Pub. L. 94–581, title I, § 111(c)(4), Oct. 21, 1976, 90 Stat. 2852; renumbered § 523 of act July 1, 1944, Apr. 26, 1983, Pub. L. 98–24, § 2(b)(13), 97 Stat. 181; Aug. 27, 1986, Pub. L. 99–401, title I, § 106(a), 100 Stat. 907; renumbered § 544, July 22, 1987, Pub. L. 100–77, title VI, § 611(2), 101 Stat. 516; June 13, 1991, Pub. L. 102–54, § 13(q)(1)(A)(ii), 105 Stat. 278, related to confidentiality of patient records for alcohol abuse and alcoholism programs. See section 290dd–2 of this title.

Section 290ee, act July 1, 1944, ch. 373, title V, § 545, formerly Pub. L. 92–255, title V, § 502, as added Pub. L. 94–237, § 12(b)(1), Mar. 19, 1976, 90 Stat. 247, and amended Pub. L. 95–461, § 5, Oct. 14, 1978, 92 Stat. 1269; Pub. L. 96–181, § 11, Jan. 2, 1980, 93 Stat. 1315; renumbered § 524 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, § 2(b)(15), 97 Stat. 181; renumbered § 545, July 22, 1987, Pub. L. 100–77, title VI, § 611(2), 101 Stat. 516; Nov. 4, 1988, Pub. L. 100–607, title VIII, § 813(3), 102 Stat. 3170; Nov. 7, 1988, Pub. L. 100–628, title VI, § 613(3), 102 Stat. 3243; Aug. 16, 1989, Pub. L. 101–93, § 5(t)(1), 103 Stat. 615, related to technical assistance to State and local agencies by National Institute on Drug Abuse.

Section 290ee–1, act July 1, 1944, ch. 373, title V, § 546, formerly Pub. L. 92–255, title IV, § 413, Mar. 21, 1972, 86 Stat. 84, as amended Pub. L. 96–181, § 8(a), (b)(1), Jan. 2, 1980, 93 Stat. 1313, 1314; Pub. L. 97–35, title IX, § 973(e), Aug. 13, 1981, 95 Stat. 598; renumbered § 525 of act July

1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, §2(b)(16)(A), 97 Stat. 182; Oct. 27, 1986, Pub. L. 99–570, title VI, §6002(b)(2), 100 Stat. 3207–159; renumbered §546, July 22, 1987, Pub. L. 100–77, title VI, §611(2), 101 Stat. 516; Nov. 4, 1988, Pub. L. 100–607, title VIII, §813(4), 102 Stat. 3171; Nov. 7, 1988, Pub. L. 100–628, title VI, §613(4), 102 Stat. 3243; Aug. 16, 1989, Pub. L. 101–93, §5(t)(1), 103 Stat. 615, related to drug abuse among government and other employees.

Section 290ee–2, act July 1, 1944, ch. 373, title V, §547, formerly Pub. L. 92–255, title IV, §407, Mar. 21, 1972, 86 Stat. 78, as amended Pub. L. 94–237, §6(a), Mar. 19, 1976, 90 Stat. 244; Pub. L. 94–581, title I, §111(c)(2), Oct. 21, 1976, 90 Stat. 2852; renumbered §526 of act July 1, 1944, Apr. 26, 1983. Pub. L. 98–24, §2(b)(16)(B), 97 Stat. 182; renumbered §547, July 22, 1987, Pub. L. 100–77, title VI, §611(2), 101 Stat. 516, related to admission of drug abusers to private and public hospitals.

Section 290ee–3, act July 1, 1944, ch. 373, title V, §548, formerly Pub. L. 92–255, title IV, §408, Mar. 21, 1972, 86 Stat. 79, as amended Pub. L. 93–282, title III, §303(a), (b), May 14, 1974, 88 Stat. 137, 138; Pub. L. 94–237, §4(c)(5)(A), Mar. 19, 1976, 90 Stat. 244; Pub. L. 94–581, title I, §111(c)(3), Oct. 21, 1976, 90 Stat. 2852; Pub. L. 97–35, title IX, §973(d), Aug. 13, 1981, 95 Stat. 598; renumbered §527 of act July 1, 1944, and amended Apr. 26, 1983, Pub. L. 98–24, §2(b)(16)(B), 97 Stat. 182; Aug. 27, 1986, Pub. L. 99–401, title I, §106(b), 100 Stat. 907; renumbered §548, July 22, 1987, Pub. L. 100–77, title VI, §611(2), 101 Stat. 516; June 13, 1991, Pub. L. 102–54, §13(q)(1)(A)(iii), (B)(ii), 105 Stat. 278, related to confidentiality of patient records for drug abuse programs. See section 290dd–2 of this title.

PART E—CHILDREN WITH SERIOUS EMOTIONAL DISTURBANCES

§ 290ff. Comprehensive community mental health services for children with serious emotional disturbances

(a) Grants to certain public entities

(1) In general

The Secretary, acting through the Director of the Center for Mental Health Services, shall make grants to public entities for the purpose of providing comprehensive community mental health services to children with a serious emotional disturbance.

(2) "Public entity" defined

For purposes of this part, the term ''public entity'' means any State, any political subdivision of a State, and any Indian tribe or tribal organization (as defined in section 450b(b) and section 450b(c)[1] of title 25).

(b) Considerations in making grants

(1) Requirement of status as grantee under part B of subchapter XVII

The Secretary may make a grant under subsection (a) of this section to a public entity only if—

(A) in the case of a public entity that is a State, the State is a grantee under section 300x of this title;

(B) in the case of a public entity that is a political subdivision of a State, the State in which the political subdivision is located is such a grantee; and

(C) in the case of a public entity that is an Indian tribe or tribal organization, the State in which the tribe or tribal organization is located is such a grantee.

[1] See References in Text note below.

(2) Requirement of status as medicaid provider

(A) Subject to subparagraph (B), the Secretary may make a grant under subsection (a) of this section only if, in the case of any service under such subsection that is covered in the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State involved—

(i) the public entity involved will provide the service directly, and the entity has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(ii) the public entity will enter into an agreement with an organization under which the organization will provide the service, and the organization has entered into such a participation agreement and is qualified to receive such payments.

(B)(i) In the case of an organization making an agreement under subparagraph (A)(ii) regarding the provision of services under subsection (a) of this section, the requirement established in such subparagraph regarding a participation agreement shall be waived by the Secretary if the organization does not, in providing health or mental health services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(ii) A determination by the Secretary of whether an organization referred to in clause (i) meets the criteria for a waiver under such clause shall be made without regard to whether the organization accepts voluntary donations regarding the provision of services to the public.

(3) Certain considerations

In making grants under subsection (a) of this section, the Secretary shall—

(A) equitably allocate such assistance among the principal geographic regions of the United States;

(B) consider the extent to which the public entity involved has a need for the grant; and

(C) in the case of any public entity that is a political subdivision of a State or that is an Indian tribe or tribal organization—

(i) shall consider any comments regarding the application of the entity for such a grant that are received by the Secretary from the State in which the entity is located; and

(ii) shall give special consideration to the entity if the State agrees to provide a portion of the non-Federal contributions required in subsection (c) of this section regarding such a grant.

(c) Matching funds

(1) In general

A funding agreement for a grant under subsection (a) of this section is that the public entity involved will, with respect to the costs to be incurred by the entity in carrying out the purpose described in such subsection, make available (directly or through donations from public or private entities) non-Federal con-

tributions toward such costs in an amount that—

(A) for the first fiscal year for which the entity receives payments from a grant under such subsection, is not less than $1 for each $3 of Federal funds provided in the grant;

(B) for any second or third such fiscal year, is not less than $1 for each $3 of Federal funds provided in the grant;

(C) for any fourth such fiscal year, is not less than $1 for each $1 of Federal funds provided in the grant; and

(D) for any fifth such fiscal year, is not less than $2 for each $1 of Federal funds provided in the grant.

(2) Determination of amount contributed

(A) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) In making a determination of the amount of non-Federal contributions for purposes of subparagraph (A), the Secretary may include only non-Federal contributions in excess of the average amount of non-Federal contributions made by the public entity involved toward the purpose described in subsection (a) of this section for the 2-year period preceding the first fiscal year for which the entity receives a grant under such section.

(July 1, 1944, ch. 373, title V, § 561, as added July 10, 1992, Pub. L. 102–321, title I, § 119, 106 Stat. 349; amended June 10, 1993, Pub. L. 103–43, title XX, § 2017(1), 107 Stat. 218.)

REFERENCES IN TEXT

Subsections (b) and (c) of section 450b of title 25, referred to in subsec. (a)(2), do not contain definitions of the terms ''Indian tribe'' and ''tribal organization''. However, such terms are defined elsewhere in section 450b of Title 25, Indians.

The Social Security Act, referred to in subsec. (b)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 290ff, act July 1, 1944, ch. 373, title V, § 561, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2081(a), 102 Stat. 4216, which related to action by National Institute on Drug Abuse and States concerning military facilities, was renumbered section 513 of act July 1, 1944, by Pub. L. 102–321 and transferred to section 290bb–6 of this title.

AMENDMENTS

1993—Subsec. (a)(2). Pub. L. 103–43, § 2017(1)(A), substituted ''this part'' for ''this subpart''.

Subsec. (b)(1)(B), (C). Pub. L. 103–43, § 2017(1)(B), substituted ''is such a grantee'' for ''is receiving such payments''.

EFFECTIVE DATE

Part effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290ff–1, 290ff–2, 290ff–3, 290ff–4 of this title.

§ 290ff–1. Requirements with respect to carrying out purpose of grants

(a) Systems of comprehensive care

(1) In general

A funding agreement for a grant under section 290ff(a) of this title is that, with respect to children with a serious emotional disturbance, the public entity involved will carry out the purpose described in such section only through establishing and operating 1 or more systems of care for making each of the mental health services specified in subsection (c) of this section available to each child provided access to the system. In providing for such a system, the public entity may make grants to, and enter into contracts with, public and nonprofit private entities.

(2) Structure of system

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under paragraph (1) will—

(A) be established in a community selected by the public entity involved;

(B) consist of such public agencies and nonprofit private entities in the community as are necessary to ensure that each of the services specified in subsection (c) of this section is available to each child provided access to the system;

(C) be established pursuant to agreements that the public entity enters into with the agencies and entities described in subparagraph (B);

(D) coordinate the provision of the services of the system; and

(E) establish an office whose functions are to serve as the location through which children are provided access to the system, to coordinate the provision of services of the system, and to provide information to the public regarding the system.

(3) Collaboration of local public entities

A funding agreement for a grant under section 290ff(a) of this title is that, for purposes of the establishment and operation of a system of care under paragraph (1), the public entity involved will seek collaboration among all public agencies that provide human services in the community in which the system is established, including but not limited to those providing mental health services, educational services, child welfare services, or juvenile justice services.

(b) Limitation on age of children provided access to system

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under subsection (a) of this section will not provide an individual with access to the system if the individual is more than 21 years of age.

(c) Required mental health services of system

A funding agreement for a grant under section 290ff(a) of this title is that mental health serv-

ices provided by a system of care under subsection (a) of this section will include, with respect to a serious emotional disturbance in a child—

(1) diagnostic and evaluation services;

(2) outpatient services provided in a clinic, office, school or other appropriate location, including individual, group and family counseling services, professional consultation, and review and management of medications;

(3) emergency services, available 24-hours a day, 7 days a week;

(4) intensive home-based services for children and their families when the child is at imminent risk of out-of-home placement;

(5) intensive day-treatment services;

(6) respite care;

(7) therapeutic foster care services, and services in therapeutic foster family homes or individual therapeutic residential homes, and groups homes caring for not more than 10 children; and

(8) assisting the child in making the transition from the services received as a child to the services to be received as an adult.

(d) Required arrangements regarding other appropriate services

(1) In general

A funding agreement for a grant under section 290ff(a) of this title is that—

(A) a system of care under subsection (a) of this section will enter into a memorandum of understanding with each of the providers specified in paragraph (2) in order to facilitate the availability of the services of the provider involved to each child provided access to the system; and

(B) the grant under such section 290ff(a) of this title, and the non-Federal contributions made with respect to the grant, will not be expended to pay the costs of providing such non-mental health services to any individual.

(2) Specification of non-mental health services

The providers referred to in paragraph (1) are providers of medical services other than mental health services, providers of educational services, providers of vocational counseling and vocational rehabilitation services, and providers of protection and advocacy services with respect to mental health.

(3) Facilitation of services of certain programs

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under subsection (a) of this section will, for purposes of paragraph (1), enter into a memorandum of understanding regarding facilitation of—

(A) services available pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], including services regarding early periodic screening, diagnosis, and treatment;

(B) services available under parts B and H of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.; 1471 et seq.]; and

(C) services available under other appropriate programs, as identified by the Secretary.

(e) General provisions regarding services of system

(1) Case management services

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under subsection (a) of this section will provide for the case management of each child provided access to the system in order to ensure that—

(A) the services provided through the system to the child are coordinated and that the need of each such child for the services is periodically reassessed;

(B) information is provided to the family of the child on the extent of progress being made toward the objectives established for the child under the plan of services implemented for the child pursuant to section 290ff–2 of this title; and

(C) the system provides assistance with respect to—

(i) establishing the eligibility of the child, and the family of the child, for financial assistance and services under Federal, State, or local programs providing for health services, mental health services, educational services, social services, or other services; and

(ii) seeking to ensure that the child receives appropriate services available under such programs.

(2) Other provisions

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under subsection (a) of this section, in providing the services of the system, will—

(A) provide the services of the system in the cultural context that is most appropriate for the child and family involved;

(B) ensure that individuals providing such services to the child can effectively communicate with the child and family in the most direct manner;

(C) provide the services without discriminating against the child or the family of the child on the basis of race, religion, national origin, sex, disability, or age;

(D) seek to ensure that each child provided access to the system of care remains in the least restrictive, most normative environment that is clinically appropriate; and

(E) provide outreach services to inform individuals, as appropriate, of the services available from the system, including identifying children with a serious emotional disturbance who are in the early stages of such disturbance.

(3) Rule of construction

An agreement made under paragraph (2) may not be construed—

(A) with respect to subparagraph (C) of such paragraph—

(i) to prohibit a system of care under subsection (a) of this section from requiring that, in housing provided by the grantee for purposes of residential treatment services authorized under subsection (c) of this section, males and females be segregated to the extent appropriate in the treatment of the children involved; or

(ii) to prohibit the system of care from complying with the agreement made under subsection (b) of this section; or

(B) with respect to subparagraph (D) of such paragraph, to authorize the system of care to expend the grant under section 290ff(a) of this title (or the non-Federal contributions made with respect to the grant) to provide legal services or any service with respect to which expenditures regarding the grant are prohibited under subsection (d)(1)(B) of this section.

(f) Restrictions on use of grant

A funding agreement for a grant under section 290ff(a) of this title is that the grant, and the non-Federal contributions made with respect to the grant, will not be expended—

(1) to purchase or improve real property (including the construction or renovation of facilities);

(2) to provide for room and board in residential programs serving 10 or fewer children;

(3) to provide for room and board or other services or expenditures associated with care of children in residential treatment centers serving more than 10 children or in inpatient hospital settings, except intensive home-based services and other services provided on an ambulatory or outpatient basis; or

(4) to provide for the training of any individual, except training authorized in section 290ff–3(a)(2) of this title and training provided through any appropriate course in continuing education whose duration does not exceed 2 days.

(July 1, 1944, ch. 373, title V, § 562, as added July 10, 1992, Pub. L. 102–321, title I, § 119, 106 Stat. 351.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(3)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (d)(3)(B), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Parts B and H of the Act are classified generally to subchapters II (§ 1411 et seq.) and VIII (§ 1471 et seq.), respectively, of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290ff–2, 290ff–3, 290ff–4 of this title.

§ 290ff–2. Individualized plan for services

(a) In general

A funding agreement for a grant under section 290ff(a) of this title is that a system of care under section 290ff–1(a) of this title will develop and carry out an individualized plan of services for each child provided access to the system, and that the plan will be developed and carried out with the participation of the family of the child and, unless clinically inappropriate, with the participation of the child.

(b) Multidisciplinary team

A funding agreement for a grant under section 290ff(a) of this title is that the plan required in subsection (a) of this section will be developed, and reviewed and as appropriate revised not less than once each year, by a multidisciplinary team of appropriately qualified individuals who provide services through the system, including as appropriate mental health services, other health services, educational services, social services, and vocational counseling and rehabilitation;[1]

(c) Coordination with services under Individuals with Disabilities Education Act

A funding agreement for a grant under section 290ff(a) of this title is that, with respect to a plan under subsection (a) of this section for a child, the multidisciplinary team required in subsection (b) of this section will—

(1) in developing, carrying out, reviewing, and revising the plan consider any individualized education program in effect for the child pursuant to part B of the Individuals with Disabilities Education Act [42 U.S.C. 1411 et seq.];

(2) ensure that the plan is consistent with such individualized education program and provides for coordinating services under the plan with services under such program; and

(3) ensure that the memorandum of understanding entered into under section 290ff–1(d)(3)(B) of this title regarding such Act [20 U.S.C. 1400 et seq.] includes provisions regarding compliance with this subsection.

(d) Contents of plan

A funding agreement for a grant under section 290ff(a) of this title is that the plan required in subsection (a) of this section for a child will—

(1) identify and state the needs of the child for the services available pursuant to section 290ff–1 of this title through the system;

(2) provide for each of such services that is appropriate to the circumstances of the child, including, except in the case of children who are less than 14 years of age, the provision of appropriate vocational counseling and rehabilitation, and transition services (as defined in section 602(a)(19) of the Individuals with Disabilities Education Act [20 U.S.C. 1401(a)(19)]);

(3) establish objectives to be achieved regarding the needs of the child and the methodology for achieving the objectives; and

(4) designate an individual to be responsible for providing the case management required in section 290ff–1(e)(1) of this title or certify that case management services will be provided to the child as part of the individualized education program of the child under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.].

(July 1, 1944, ch. 373, title V, § 563, as added July 10, 1992, Pub. L. 102–321, title I, § 119, 106 Stat. 354.)

[1] So in original. The semicolon probably should be a period.

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsecs. (c)(1), (3) and (d)(4), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. Part B of the Act is classified generally to subchapter II (§ 1411 et seq.) of chapter 33 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290ff–1, 290ff–3 of this title.

§ 290ff–3. Additional provisions

(a) Optional services

In addition to services described in subsection (c) of section 290ff–1 of this title, a system of care under subsection (a) of such section may, in expending a grant under section 290ff(a) of this title, provide for—

(1) preliminary assessments to determine whether a child should be provided access to the system;

(2) training in—

(A) the administration of the system;

(B) the provision of intensive home-based services under paragraph (4) of section 290ff–1(c) of this title, intensive day treatment under paragraph (5) of such section, and foster care or group homes under paragraph (7) of such section; and

(C) the development of individualized plans for purposes of section 290ff–2 of this title;

(3) recreational activities for children provided access to the system; and

(4) such other services as may be appropriate in providing for the comprehensive needs with respect to mental health of children with a serious emotional disturbance.

(b) Comprehensive plan

The Secretary may make a grant under section 290ff(a) of this title only if, with respect to the jurisdiction of the public entity involved, the entity has submitted to the Secretary, and has had approved by the Secretary, a plan for the development of a jurisdiction-wide system of care for community-based services for children with a serious emotional disturbance that specifies the progress the public entity has made in developing the jurisdiction-wide system, the extent of cooperation across agencies serving children in the establishment of the system, the Federal and non-Federal resources currently committed to the establishment of the system, and the current gaps in community services and the manner in which the grant under section 290ff(a) of this title will be expended to address such gaps and establish local systems of care.

(c) Limitation on imposition of fees for services

A funding agreement for a grant under section 290ff(a) of this title is that, if a charge is imposed for the provision of services under the grant, such charge—

(1) will be made according to a schedule of charges that is made available to the public;

(2) will be adjusted to reflect the income of the family of the child involved; and

(3) will not be imposed on any child whose family has income and resources of equal to or less than 100 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(d) Relationship to items and services under other programs

A funding agreement for a grant under section 290ff(a) of this title is that the grant, and the non-Federal contributions made with respect to the grant, will not be expended to make payment for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(2) by an entity that provides health services on a prepaid basis.

(e) Limitation on administrative expenses

A funding agreement for a grant under section 290ff(a) of this title is that not more than 2 percent of the grant will be expended for administrative expenses incurred with respect to the grant by the public entity involved.

(f) Reports to Secretary

A funding agreement for a grant under section 290ff(a) of this title is that the public entity involved will annually submit to the Secretary a report on the activities of the entity under the grant that includes a description of the number of children provided access to systems of care operated pursuant to the grant, the demographic characteristics of the children, the types and costs of services provided pursuant to the grant, the availability and use of third-party reimbursements, estimates of the unmet need for such services in the jurisdiction of the entity, and the manner in which the grant has been expended toward the establishment of a jurisdiction-wide system of care for children with a serious emotional disturbance, and such other information as the Secretary may require with respect to the grant.

(g) Description of intended uses of grant

The Secretary may make a grant under section 290ff(a) of this title only if—

(1) the public entity involved submits to the Secretary a description of the purposes for which the entity intends to expend the grant;

(2) the description identifies the populations, areas, and localities in the jurisdiction of the entity with a need for services under this section; and

(3) the description provides information relating to the services and activities to be provided, including a description of the manner in which the services and activities will be coordinated with any similar services or activities of public or nonprofit entities.

(h) Requirement of application

The Secretary may make a grant under section 290ff(a) of this title only if an application

for the grant is submitted to the Secretary, the application contains the description of intended uses required in subsection (g) of this section, and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(July 1, 1944, ch. 373, title V, § 564, as added July 10, 1992, Pub. L. 102–321, title I, § 119, 106 Stat. 355.)

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290ff–1 of this title.

§ 290ff–4. General provisions

(a) Duration of support

The period during which payments are made to a public entity from a grant under section 290ff(a) of this title may not exceed 5 fiscal years.

(b) Technical assistance

(1) In general

The Secretary shall, upon the request of a public entity receiving a grant under section 290ff(a) of this title—

(A) provide technical assistance to the entity regarding the process of submitting to the Secretary applications for grants under section 290ff(a) of this title; and

(B) provide to the entity training and technical assistance with respect to the planning, development, and operation of systems of care pursuant to section 290ff–1 of this title.

(2) Authority for grants and contracts

The Secretary may provide technical assistance under subsection (a) of this section directly or through grants to, or contracts with, public and nonprofit private entities.

(c) Evaluations and reports by Secretary

(1) In general

The Secretary shall, directly or through contracts with public or private entities, provide for annual evaluations of programs carried out pursuant to section 290ff(a) of this title. The evaluations shall assess the effectiveness of the systems of care operated pursuant to such section, including longitudinal studies of outcomes of services provided by such systems, other studies regarding such outcomes, the effect of activities under this part on the utilization of hospital and other institutional settings, the barriers to and achievements resulting from interagency collaboration in providing community-based services to children with a serious emotional disturbance, and assessments by parents of the effectiveness of the systems of care.

(2) Report to Congress

The Secretary shall, not later than 1 year after the date on which amounts are first appropriated under subsection (c) of this section, and annually thereafter, submit to the Congress a report summarizing evaluations carried out pursuant to paragraph (1) during the preceding fiscal year and making such recommendations for administrative and legislative initiatives with respect to this section as the Secretary determines to be appropriate.

(d) Definitions

For purposes of this part:

(1) The term ''child'' means an individual not more than 21 years of age.

(2) The term ''family'', with respect to a child provided access to a system of care under section 290ff–1(a) of this title, means—

(A) the legal guardian of the child; and

(B) as appropriate regarding mental health services for the child, the parents of the child (biological or adoptive, as the case may be) and any foster parents of the child.

(3) The term ''funding agreement'', with respect to a grant under section 290ff(a) of this title to a public entity, means that the Secretary may make such a grant only if the public entity makes the agreement involved.

(4) The term ''serious emotional disturbance'' includes, with respect to a child, any child who has a serious emotional disorder, a serious behavioral disorder, or a serious mental disorder.

(e) Rule of construction

Nothing in this part shall be construed as limiting the rights of a child with a serious emotional disturbance under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.].

(f) Funding

(1) Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $100,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(2) Limitation regarding technical assistance

Not more than 10 percent of the amounts appropriated under paragraph (1) for a fiscal year may be expended for carrying out subsection (b) of this section.

(July 1, 1944, ch. 373, title V, § 565, as added July 10, 1992, Pub. L. 102–321, title I, § 119, 106 Stat. 356; amended June 10, 1993, Pub. L. 103–43, title XX, § 2017(2), 107 Stat. 218.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (e), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

1993—Subsec. (c)(1), (d), (f)(1). Pub. L. 103–43, § 2017(2)(A), (B), (C)(i), substituted ''this part'' for ''this subpart''.

Subsec. (f)(2). Pub. L. 103–43, § 2017(2)(C)(ii), amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall make available not less than $3,000,000 for

the purpose of carrying out subsection (b) of this section.''

EFFECTIVE DATE

Section effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

PART F—MODEL COMPREHENSIVE PROGRAM FOR TREATMENT OF SUBSTANCE ABUSE

§ 290gg. Demonstration program in national capital area

(a) In general

The Secretary, in collaboration with the Director of the Treatment Center, shall make a demonstration grant for the establishment, within the national capital area, of a model program for providing comprehensive treatment services for substance abuse.

(b) Purposes

The Secretary may not make a grant under subsection (a) of this section unless, with respect to the comprehensive treatment services to be offered by the program under such subsection, the applicant for the grant agrees—

(1) to ensure, to the extent practicable, that the program has the capacity to provide the services to all individuals who seek and would benefit from the services;

(2) as appropriate, to provide education on obtaining employment and other matters with respect to assisting the individuals in preventing any relapse into substance abuse, including education on the appropriate involvement of parents and others in preventing such a relapse;

(3) to provide services in locations accessible to substance abusers and, to the extent practicable, to provide services through mobile facilities;

(4) to give priority to providing services to individuals who are intravenous drug abusers, to pregnant women, to homeless individuals, and to residents of publicly-assisted housing;

(5) with respect to women with dependent children, to provide child care to such women seeking treatment services for substance abuse;

(6) to conduct outreach activities to inform individuals of the availability of the services of the program;

(7) to provide case management services, including services to determine eligibility for assistance under Federal, State, and local programs providing health services, mental health services, or social services;

(8) to ensure the establishment of one or more offices to oversee the coordination of the activities of the program, to ensure that treatment is available to those seeking it, to ensure that the program is administered efficiently, and to ensure that the public is informed that the offices are the locations at which individuals may make inquiries concerning the program, including the location of available treatment services within the national capital area; and

(9) to develop and utilize standards for certifying the knowledge and training of individuals, and the quality of programs, to provide treatment services for substance abuse.

(c) Certain requirements

(1) Regarding eligibility for grant

(A) The Secretary may not make the grant under subsection (a) of this section unless the applicant involved is an organization of the general-purpose local governments within the national capital area, or another public or nonprofit private entity, and the applicant submits to the Secretary assurances satisfactory to the Secretary that, with respect to the communities in which services will be offered, the local governments of the communities will participate in the program.

(B) The Secretary may not make the grant under subsection (a) of this section unless—

(i) an application for the grant is submitted to the Secretary;

(ii) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

(iii) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(2) Authority for cooperative agreements

The grantee under subsection (a) of this section may provide the services required by such subsection directly or through arrangements with public and nonprofit private entities.

(d) Requirement of non-Federal contributions

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such subsection, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount not less than $1 for each $2 of Federal funds provided under the grant.

(2) Determination of amount contributed

Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(e) Evaluations

(1) By Secretary

The Secretary shall independently evaluate the effectiveness of the program carried out under subsection (a) of this section and determine its suitability as a model for the United States, particularly regarding the provision of high quality, patient-oriented, coordinated and accessible drug treatment services across jurisdictional lines. The Secretary shall consider the extent to which the program has improved patient retention, accessibility of services, staff retention and quality, reduced pa-

tient relapse, and provided a full range of drug treatment and related health and human services. The Secretary shall evaluate the extent to which the program has effectively utilized innovative methods for overcoming the resistance of the residents of communities to the establishment of treatment facilities within the communities.

(2) By grantee

The Secretary may require the grantee under subsection (a) of this section to evaluate any aspect of the program carried out under such subsection, and such evaluation shall, to the extent appropriate, be coordinated with the independent evaluation required in paragraph (1).

(3) Limitation

Funds made available under subsection (h) of this section may not be utilized to conduct the independent evaluation required in paragraph (1).

(f) Reports

(1) Initial criteria

The Secretary shall make a determination of the appropriate criteria for carrying out the program required in subsection (a) of this section, including the anticipated need for, and range of, services under the program in the communities involved and the anticipated costs of the program. Not later than 90 days after July 10, 1992, the Secretary shall submit to the Congress a report describing the findings made as a result of the determination.

(2) Annual reports

Not later than 2 years after the date on which the grant is made under subsection (a) of this section, and annually thereafter, the Secretary shall submit to the Congress a report describing the extent to which the program carried out under such subsection has been effective in carrying out the purposes of the program.

(g) "National capital area" defined

For purposes of this section, the term ''national capital area'' means the metropolitan Washington area, including the District of Columbia, the cities of Alexandria, Falls Church, and Fairfax in the State of Virginia, the counties of Arlington and Fairfax in such State (and the political subdivisions located in such counties), and the counties of Montgomery and Prince George's in the State of Maryland (and the political subdivisions located in such counties).

(h) Obligation of funds

Of the amounts appropriated for each of the fiscal years 1993 and 1994 for the programs of the Department of Health and Human Services, the Secretary shall make available $10,000,000 for carrying out this section. Of the amounts appropriated for fiscal year 1995 for the programs of such Department, the Secretary shall make available $5,000,000 for carrying out this section.

(July 1, 1944, ch. 373, title V, § 571, as added July 10, 1992, Pub. L. 102–321, title III, § 301, 106 Stat. 417.)

EFFECTIVE DATE

Section effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, see section 801(b), (d)(1) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SUBCHAPTER IV—CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND OTHER MEDICAL FACILITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 300q–2, 300s–6, 1395x, 2005b, 2005d of this title; title 40 App. sections 202, 214.

§ 291. Congressional declaration of purpose

The purpose of this subchapter is—

(a) to assist the several States in the carrying out of their programs for the construction and modernization of such public or other nonprofit community hospitals and other medical facilities as may be necessary, in conjunction with existing facilities, to furnish adequate hospital, clinic, or similar services to all their people;

(b) to stimulate the development of new or improved types of physical facilities for medical, diagnostic, preventive, treatment, or rehabilitative services; and

(c) to promote research, experiments, and demonstrations relating to the effective development and utilization of hospital, clinic, or similar services, facilities, and resources, and to promote the coordination of such research, experiments, and demonstrations and the useful application of their results.

(July 1, 1944, ch. 373, title VI, § 600, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 447.)

PRIOR PROVISIONS

A prior section 291, act July 1, 1944, ch. 373, title VI, § 601, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 6, 63 Stat. 900; July 12, 1954, ch. 471, § 4(a), 68 Stat. 464, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

Provisions similar to those comprising this section were contained in former section 291*o*, act July 1, 1944, ch. 373, title VI, § 641, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, prior to the general amendment of this subchapter by Pub. L. 88–443.

EFFECTIVE DATE

Section 3(b) of Pub. L. 88–443, as amended by Pub. L. 91–296, title I, § 120, June 30, 1970, 84 Stat. 343, provided that: ''The amendment made by subsection (a) [enacting this section and sections 291a to 291j, 291k to 291m, 291n, and 291*o* of this title] shall become effective upon the date of enactment of this Act [Aug. 18, 1964], except that—

''(1) all applications approved by the Surgeon General under title VI of the Public Health Service Act [this subchapter] prior to such date, and allotments of sums appropriated prior to such date, shall be governed by the provisions of such title VI in effect prior to such date;

''(2) allotment percentages promulgated by the Surgeon General under such title VI during 1962 shall continue to be effective for purposes of such title as amended by this Act for the fiscal year ending June 30, 1965;

''(3) the terms of members of the Federal Hospital Council who are serving on such Council prior to such

date shall expire on the date they would have expired had this Act not been enacted;

''(4) the provisions of the fourth sentence of section 636(a) of the Public Health Service Act [former section 291n of this title], as in effect prior to the enactment of this Act, shall apply in lieu of the fourth sentence of section 624(a) of the Public Health Service Act [section 291n(a) of this title], as amended by this Act, in the case of any project for construction of a facility or for acquisition of equipment with respect to which a grant for any part thereof or for planning such construction or equipment was made prior to the enactment of this Act;

''(5) no application with respect to a project for modernization of any facility in any State may be approved by the Surgeon General, for purposes of receiving funds from an allotment under section 602(a)(2) of the Public Health Service Act, as amended by this Act [section 291b(a)(2) of this title], before July 1, 1965, or before such State has had a State plan approved by the Surgeon General as meeting the requirements of section 604(a)(4)(E) [section 291d(a)(4)(E) of this title] as well as the other requirements of section 604 of such Act as so amended [section 291d of this title];

''(6) the provisions of clause (b) of section 609 of the Public Health Service Act [section 291i of this title], as amended by this Act, shall apply with respect to any project whether it was approved, and whether the event specified in such clause occurred, before, on, or after the date of enactment of this Act [June 30, 1970], except that it shall not apply in the case of any project with respect to which recovery under title VI of such Act [this subchapter] has been made prior to the enactment of this paragraph.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 291a of this title.

PART A—GRANTS AND LOANS FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND OTHER MEDICAL FACILITIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 291j–1, 300s of this title.

§ 291a. Authorization of appropriations

In order to assist the States in carrying out the purposes of section 291 of this title, there are authorized to be appropriated—

(a) for the fiscal year ending June 30, 1974—

(1) $20,800,000 for grants for the construction of public or other nonprofit facilities for long-term care;

(2) $70,000,000 for grants for the construction of public or other nonprofit outpatient facilities;

(3) $15,000,000 for grants for the construction of public or other nonprofit rehabilitation facilities;

(b) for grants for the construction of public or other nonprofit hospitals and public health centers, $150,000,000 for the fiscal year ending June 30, 1965, $160,000,000 for the fiscal year ending June 30, 1966, $170,000,000 for the fiscal year ending June 30, 1967, $180,000,000 each for the next two fiscal years, $195,000,000 for the fiscal year ending June 30, 1970, $147,500,000 for the fiscal year ending June 30, 1971, $152,500,000 for the fiscal year ending June 30, 1972, $157,500,000 for the fiscal year ending June 30, 1973, and $41,400,000 for the fiscal year ending June 30, 1974; and

(c) for grants for modernization of the facilities referred to in paragraphs (a) and (b), $65,000,000 for the fiscal year ending June 30, 1971, $80,000,000 for the fiscal year ending June 30, 1972, $90,000,000 for the fiscal year ending June 30, 1973, and $50,000,000 for the fiscal year ending June 30, 1974.

(July 1, 1944, ch. 373, title VI, § 601, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 448; amended Oct. 15, 1968, Pub. L. 90–574, title IV, § 402(a), 82 Stat. 1011; June 30, 1970, Pub. L. 91–296, title I, §§ 101(a), 102(a), 116(a), 84 Stat. 337, 341; June 18, 1973, Pub. L. 93–45, title I, § 108(a), 87 Stat. 92.)

PRIOR PROVISIONS

A prior section 291a, act July 1, 1944, ch. 373, title VI, § 611, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, authorized appropriations for surveys and planning, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291d, act July 1, 1944, ch. 373, title VI, § 621, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 2(a), 63 Stat. 897; July 27, 1953, ch. 243, 67 Stat. 196; Aug. 2, 1956, ch. 871, title IV, § 401, 70 Stat. 929; Aug. 14, 1958, Pub. L. 85–664, § 1(a), 72 Stat. 616, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291p, act July 1, 1944, ch. 373, title VI, § 646, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291s, act July 1, 1944, ch. 373, title VI, § 651, as added July 12, 1954, ch. 471, § 3, 68 Stat. 462; amended Aug. 2, 1956, ch. 871, title IV, § 402, 70 Stat. 929; Aug. 14, 1958, Pub. L. 85–664, § 1(b), 72 Stat. 616; Oct. 5, 1961, Pub. L. 87–395, § 3(a), 75 Stat. 825, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–45, § 108(a)(1), substituted introductory text reading ''fiscal year ending June 30, 1974'' for ''fiscal year ending June 30, 1965, and each of the next eight fiscal years'' and in cl. (1) ''$20,800,000'' for ''$85,000,000''.

Subsec. (b). Pub. L. 93–45, § 108(a)(2), authorized appropriations of $41,400,000 for fiscal year ending June 30, 1974.

Subsec. (c). Pub. L. 93–45, § 108(a)(3), authorized appropriations of $50,000,000 for fiscal year ending June 30, 1974.

1970—Par. (a). Pub. L. 91–296, §§ 101(a)(1), (2), 116(a), substituted ''outpatient facilities'' for ''diagnostic or treatment centers'' in enumeration of facilities eligible for construction grants, extended through fiscal year ending June 30, 1973, authority to appropriate funds for construction grants, increased from $70,000,000 to $85,000,000 annual authority to make grants for public or other nonprofit facilities for long-term care, from $20,000,000 to $70,000,000 authority for public or other nonprofit outpatient facilities, and from $10,000,000 to $15,000,000 authority for public or other nonprofit rehabilitation facilities.

Par. (b). Pub. L. 91–296, §§ 101(a)(3), 102(a)(1), struck out provisions authorizing grants for modernization of facilities and inserted provisions authorizing appropriation of $147,500,000 for fiscal year ending June 30, 1971, $152,500,000 for fiscal year ending June 30, 1972, and $157,500,000 for fiscal year ending June 30, 1973, for grants for construction of public or other nonprofit hospitals and public health centers

Par. (c). Pub. L. 91–296, § 102(a)(2), added par. (c).

1968—Par. (a). Pub. L. 90–574, § 402(a)(1), substituted ''next five'' for ''next four''.

Par. (b). Pub. L. 90–574, § 402(a)(2), authorized appropriation of $195,000,000 for fiscal year ending June 30, 1970.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 101(b) of Pub. L. 91–296 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect with respect to appropriations made under such section 601 [this section] for fiscal years beginning after June 30, 1970.''

Section 102(a) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to appropriations made under this section for fiscal years beginning after June 30, 1970.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 291b, 291d, 291g, 291*o* of this title.

§ 291b. State allotments

(a) Computation for individual States; formulas for both new construction and modernization

(1) Each State shall be entitled for each fiscal year to an allotment bearing the same ratio to the sums appropriated for such year pursuant to subparagraphs (1), (2), and (3), respectively, of section 291a(a) of this title, and to an allotment bearing the same ratio to the sums appropriated for such year pursuant to section 291a(b) of this title, as the product of—

(A) the population of such State, and

(B) the square of its allotment percentage,

bears to the sum of the corresponding products for all of the States.

(2) For each fiscal year, the Secretary shall, in accordance with regulations, make allotments among the States, from the sums appropriated for such year under section 291a(c) of this title, on the basis of the population, the financial need, and the extent of the need for modernization of the facilities referred to in paragraphs (a) and (b) of section 291a of this title, of the respective States.

(b) Minimum allotments

(1) The allotment to any State under subsection (a) of this section for any fiscal year which is less than—

(A) $50,000 for the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam and $100,000 for any other State, in the case of an allotment for grants for the construction of public or other nonprofit rehabilitation facilities,

(B) $100,000 for the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam and $200,000 for any other State in the case of an allotment for grants for the construction of public or other nonprofit outpatient facilities,

(C) $200,000 for the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam and $300,000 for any other State in the case of an allotment for grants for the construction of public or other nonprofit facilities for long-term care or for the construction of public or other nonprofit hospitals and public health centers, or for the modernization of facilities referred to in paragraph (a) or (b) of section 291a of this title, or

(D) $200,000 for the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam and $300,000 for any other State in the case of an allotment for grants for the modernization of facilities referred to in paragraphs (a) and (b) of section 291a of this title,

shall be increased to that amount, the total of the increases thereby required being derived by proportionately reducing the allotment from appropriations under such subparagraph or paragraph to each of the remaining States under subsection (a) of this section, but with such adjustments as may be necessary to prevent the allotment of any of such remaining States from appropriations under such subparagraph or paragraph from being thereby reduced to less than that amount.

(2) An allotment of the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or Guam for any fiscal year may be increased as provided in paragraph (1) only to the extent it satisfies the Surgeon General, at such time prior to the beginning of such year as the Surgeon General may designate, that such increase will be used for payments under and in accordance with the provisions of this part.

(c) Allotment percentages; definitions; determination

For the purposes of this part—

(1) The ''allotment percentage'' for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that (A) the allotment percentage shall in no case be more than 75 per centum or less than 33⅓ per centum, and (B) the allotment percentage for the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands shall be 75 per centum.

(2) The allotment percentages shall be determined by the Surgeon General between July 1 and September 30 of each even-numbered year, on the basis of the average of the per capita incomes of each of the States and of the United States for the three most recent consecutive years for which satisfactory data are available from the Department of Commerce, and the States shall be notified promptly thereof. Such determination shall be conclusive for each of the two fiscal years in the period beginning July 1 next succeeding such determination.

(3) The population of the several States shall be determined on the basis of the latest figures certified by the Department of Commerce.

(4) The term ''United States'' means (but only for purposes of paragraphs (1) and (2)) the fifty States and the District of Columbia.

(d) Availability of allotments in subsequent years

(1) Any sum allotted to a State, other than the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and Guam for a fiscal year under this section and remaining unobligated at the end of such year shall remain available to such State, for the purpose for which made, for the next two fiscal years (and for such years only), in addition to the sums allotted to such State for such purposes for such next two fiscal years.

(2) Any sum allotted to the Virgin Islands, American Samoa, the Trust Territory of the Pa-

cific Islands, or Guam for a fiscal year under this section and remaining unobligated at the end of such year shall remain available to it, for the purpose for which made, for the next two fiscal years (and for such years only), in addition to the sums allotted to it for such purpose for each of such next two fiscal years.

(e) Transfer of allotments

(1) Upon the request of any State that a specified portion of any allotment of such State under subsection (a) of this section for any fiscal year be added to any other allotment or allotments of such State under such subsection for such year, the Secretary shall promptly (but after application of subsection (b) of this section) adjust the allotments of such State in accordance with such request and shall notify the State agency; except that the aggregate of the portions so transferred from an allotment for a fiscal year pursuant to this paragraph may not exceed the amount specified with respect to such allotment in clause (A), (B), (C), or (D), as the case may be, of subsection (b)(1) of this section which is applicable to such State.

(2) In addition to the transfer of portions of allotments under paragraph (1), upon the request of any State that a specified portion of any allotment of such State under subsection (a) of this section, other than an allotment for grants for the construction of public or other nonprofit rehabilitation facilities, be added to another allotment of such State under such subsection, other than an allotment for grants for the construction of public or other nonprofit hospitals and public health centers, and upon simultaneous certification to the Secretary by the State agency in such State to the effect that—

(A) it has afforded a reasonable opportunity to make applications for the portion so specified and there have been no approvable applications for such portion, or

(B) in the case of a request to transfer a portion of an allotment for grants for the construction of public or other nonprofit hospitals and public health centers, use of such portion as requested by such State agency will better carry out the purposes of this subchapter,

the Secretary shall promptly (but after application of subsection (b) of this section) adjust the allotments of such State in accordance with such request and shall notify the State agency.

(3) In addition to the transfer of portions of allotments under paragraph (1) or (2), upon the request of any State that a specified portion of an allotment of such State under paragraph (2) of subsection (a) of this section be added to an allotment of such State under paragraph (1) of such subsection for grants for the construction of public or other nonprofit hospitals and public health centers, and upon simultaneous certification by the State agency in such State to the effect that the need for new public or other nonprofit hospitals and public health centers is substantially greater than the need for modernization of facilities referred to in paragraph (a) or (b) of section 291a of this title, the Secretary shall promptly (but after application of subsection (b) of this section) adjust the allotments of such State in accordance with such request and shall notify the State agency.

(4) After adjustment of allotments of any State, as provided in paragraph (1), (2), or (3) of this subsection, the allotments as so adjusted shall be deemed to be the State's allotments under this section.

(f) Request by State to transfer portion of allotment

In accordance with regulations, any State may file with the Surgeon General a request that a specified portion of an allotment to it under this part for grants for construction of any type of facility, or for modernization of facilities, be added to the corresponding allotment of another State for the purpose of meeting a portion of the Federal share of the cost of a project for the construction of a facility of that type in such other State, or for modernization of a facility in such other State, as the case may be. If it is found by the Surgeon General (or, in the case of a rehabilitation facility, by the Surgeon General and the Secretary) that construction or modernization of the facility with respect to which the request is made would meet needs of the State making the request and that use of the specified portion of such State's allotment, as requested by it, would assist in carrying out the purposes of this subchapter, such portion of such State's allotment shall be added to the corresponding allotment of the other State, to be used for the purpose referred to above.

(July 1, 1944, ch. 373, title VI, § 602, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 448; amended Oct. 15, 1968, Pub. L. 90–574, title IV, § 402(b), 82 Stat. 1011; June 30, 1970, Pub. L. 91–296, title I, §§ 103(a), (b), 104, 116(a), 119(a)–(c), 122, 84 Stat. 338, 341, 343, 344.)

PRIOR PROVISIONS

A prior section 291b, act July 1, 1944, ch. 373, title VI, § 612, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, related to a State application for funds, its requirements and its approval, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291c, act July 1, 1944, ch. 373, title VI, § 624, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1941, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291g, act July 1, 1944, ch. 373, title VI, § 624, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 29, 1948, ch. 728, § 1, 62 Stat. 1103; Oct. 25, 1949, ch. 722, §§ 3(b), 7, 63 Stat. 899, 901; Aug. 1, 1956, ch. 852, § 19(c), 70 Stat. 911; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(3), 76 Stat. 587, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291i(a) to (d), act July 1, 1944, ch. 373, title VI, § 631, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 19, 1948, ch. 544, 62 Stat. 531; Aug. 1, 1956, ch. 852, § 19(a), (b), 70 Stat. 911; June 25, 1959, Pub. L. 86–70, § 31(c), 73 Stat. 149; July 12, 1960, Pub. L. 86–624, § 29(d), 74 Stat. 419; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(2), 76 Stat. 587, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291n–1, act July 1, 1944, ch. 373, title VI, § 637, formerly § 654(c), as added July 12, 1954, ch. 471, § 3, 68 Stat. 463, renumbered and amended Aug. 14, 1959, Pub. L. 86–158, title II, § 201, 73 Stat. 349, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291r, act July 1, 1944, ch. 373, title VI, § 648, as added July 12, 1954, ch. 471, § 2, 68 Stat. 462, related to subject matter similar to this section, prior to

the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291t, act July 1, 1944, ch. 373, title VI, § 652, as added July 12, 1954, ch. 471, § 3, 68 Stat. 462; amended Aug. 1, 1956, ch. 852, § 19(c), 70 Stat. 911; Oct. 5, 1961, Pub. L. 87–395, § 3(b), 75 Stat. 825; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(3), 76 Stat. 587, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291v(b), act July 1, 1944, ch. 373, title VI, § 654, as added July 12, 1954, ch. 471, § 3, 68 Stat. 463, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (a)(1). Pub. L. 91–296, § 103(a), substituted ''sums appropriated for such year'' for ''new hospital portion of the sums appropriated for such year'' and struck out provision setting out a formula for determining new hospital portion of sums appropriated pursuant to section 291a(b) of this title.

Subsec. (a)(2). Pub. L. 91–296, § 103(a), substituted ''Secretary'' for ''Surgeon General'', and substituted reference to sums appropriated for such year under section 291a(c) of this title for reference to remainder of sums appropriated pursuant to section 291a(b) of this title (which portion was to be available for grants for modernization of facilities referred to in paragraphs (a) and (b) of section 291a of this title).

Subsec. (b)(1)(A). Pub. L. 91–296, §§ 103(b)(1), 119(a)(1), substituted ''$50,000'' and ''$100,000'' for ''$25,000'' and ''$50,000'', respectively, and inserted reference to Trust Territory of the Pacific Islands.

Subsec. (b)(1)(B). Pub. L. 91–296, §§ 103(b)(2), 116(a), 119(a)(1), substituted ''$100,000'' and ''$200,000'' for ''$50,000'' and ''$100,000'', respectively, substituted ''outpatient facilities'' for ''diagnostic or treatment centers'', and inserted reference to Trust Territory of the Pacific Islands.

Subsec. (b)(1)(C). Pub. L. 91–296, §§ 103(b)(3), 119(a)(1), substituted ''$200,000'' and ''$300,000'' for ''$100,000'' and ''$200,000'', respectively, and inserted reference to Trust Territory of the Pacific Islands.

Subsec. (b)(1)(D). Pub. L. 91–296, § 103(b)(4), added subpar. (D).

Subsecs. (b)(2), (c)(1). Pub. L. 91–296, § 119(a)(2), (b), inserted reference to Trust Territory of the Pacific Islands.

Subsec. (d)(1). Pub. L. 91–296, §§ 119(c), 122, inserted reference to Trust Territory of the Pacific Islands and substituted two years for one year as the time span following a year in which allotted sums remaining unobligated at the end thereof during which such unobligated funds remain available.

Subsec. (d)(2). Pub. L. 91–296, § 119(c), inserted references to Trust Territory of the Pacific Islands.

Subsec. (e). Pub. L. 91–296, § 104, authorized any State to make transfers of any amount up to the minimum amount allotted to any state for a particular category and authorized all amounts above such minimums to be transferred from one category of assistance to another without restriction on the amounts with the exception that no funds could be transferred from rehabilitation facilities category or to new hospital construction category and that all transfers be justified on the basis that either there are no approvable applications in the category from which funds are transferred or, in case of transfers from new hospital construction category, the purposes of the program would be better served by the transfer, and authorized transfers to new hospital construction from modernization category if need is greater.

1968—Subsec. (a)(1). Pub. L. 90–574, § 402(b)(1), inserted provision for two-thirds of the sums appropriated in the case of the fifth fiscal year thereafter.

Subsec. (e)(2)(E). Pub. L. 90–574, § 402(b)(2), added subpar. (E).

EFFECTIVE DATE OF 1970 AMENDMENT

Section 103(a) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to appropriations made pursuant to section 291a of this title for fiscal years beginning after June 30, 1970.

Section 103(b) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to allotments from appropriations made pursuant to section 291a of this title for fiscal years beginning after June 30, 1970.

Section 104 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to allotments made pursuant to section 291a of this title for fiscal years beginning after June 30, 1970.

Section 119(e) of Pub. L. 91–296 provided that: ''The amendments made by this section [amending this section and section 291*o* of this title] shall apply with respect to allotments (and grants therefrom) under part A of title VI of the Public Health Service Act [this part] for fiscal years ending after June 30, 1970, and with respect to loan guarantees and loans under part B of such title [part B of this subchapter] made after June 30, 1970.''

Section 122 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to allotments made from appropriations under section 291a of this title for fiscal years beginning after June 30, 1970.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

AVAILABILITY OF FUNDS FOR OBLIGATION FROM ALLOTMENT FOR ADMINISTRATION OF PLAN

Pub. L. 93–641, § 5(b), Jan. 4, 1975, 88 Stat. 2274, provided that any State having in the fiscal year ending June 30, 1975 or the next fiscal year funds available for obligation from its allotments under section 291a et seq. of this title, may in such fiscal year use for the proper and efficient administration during such year of its State plan an amount of such funds not exceeding 4 percentum of such funds or $100,000, whichever is less.

ALLOTMENT STUDY; REPORT TO CONGRESS

Section 103(c) of Pub. L. 91–296 directed Secretary to study effects of the formula specified in subsec. (a)(1) of this section for allotment among the States for construction of health facilities, with results of such study together with recommendations for change to be reported to Congress on May 15, 1972.

APPROVAL OF APPLICATION FOR MODERNIZATION PRIOR TO JULY 1, 1965, OR BEFORE APPROVAL OF A STATE PLAN

Section 3(b)(5) of Pub. L. 88–443, providing that no application for modernization of any facility may be approved for purposes of receiving funds before the approval of a State plan, as well as other requirements, is set out as an Effective Date note under section 291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 291*o* of this title.

§ 291c. General regulations

The Surgeon General, with the approval of the Federal Hospital Council and the Secretary of

Health and Human Services shall by general regulations prescribe—

(a) Priority of projects; determination

the general manner in which the State agency shall determine the priority of projects based on the relative need of different areas lacking adequate facilities of various types for which assistance is available under this part, giving special consideration—

(1) in the case of projects for the construction of hospitals, to facilities serving areas with relatively small financial resources and, at the option of the State, rural communities;

(2) in the case of projects for the construction of rehabilitation facilities, to facilities operated in connection with a university teaching hospital which will provide an integrated program of medical, psychological, social, and vocational evaluation and services under competent supervision;

(3) in the case of projects for modernization of facilities, to facilities serving densely populated areas;

(4) in the case of projects for construction or modernization of outpatient facilities, to any outpatient facility that will be located in, and provide services for residents of, an area determined by the Secretary to be a rural or urban poverty area;

(5) to projects for facilities which, alone or in conjunction with other facilities, will provide comprehensive health care, including outpatient and preventive care as well as hospitalization;

(6) to facilities which will provide training in health or allied health professions; and

(7) to facilities which will provide to a significant extent, for the treatment of alcoholism;

(b) Standards of construction and equipment

general standards of construction and equipment for facilities of different classes and in different types of location, for which assistance is available under this part;

(c) Criteria for determining needs for beds, hospitals and other facilities; plans for distribution of beds and facilities

criteria for determining needs for general hospital and long-term care beds, and needs for hospitals and other facilities for which aid under this part is available, and for developing plans for the distribution of such beds and facilities;

(d) Criteria for determining need for modernization

criteria for determining the extent to which existing facilities, for which aid under this part is available, are in need of modernization; and

(e) State plan requirements; assurances necessary for approval of application

that the State plan shall provide for adequate hospitals, and other facilities for which aid under this part is available, for all persons residing in the State, and adequate hospitals (and such other facilities) to furnish needed services for persons unable to pay therefor. Such regulations may also require that before approval of an application for a project is recommended by a State agency to the Surgeon General for approval under this part, assurance shall be received by the State from the applicant that (1) the facility or portion thereof to be constructed or modernized will be made available to all persons residing in the territorial area of the applicant; and (2) there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint.

(July 1, 1944, ch. 373, title VI, § 603, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 451; amended Sept. 4, 1964, Pub. L. 88–581, § 3(b), 78 Stat. 919; June 30, 1970, Pub. L. 91–296, title I, § 110, 84 Stat. 339; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695.)

PRIOR PROVISIONS

A prior section 291c, act July 1, 1944, ch. 373, title VI, § 613, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, related to allotments to States, the determination of their amount, and the disposition of unexpended funds, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291(a), (b) and (d) of this title.

Provisions similar to those comprising this section were contained in a prior section 291e, act July 1, 1944, ch. 373, title VI, § 622, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–296 struck out from cl. (1) provisions requiring that States give special consideration for projects for hospitals serving rural areas but inserted provisions making such preference optional with each State and added cls. (4) to (7).

1964—Subsec. (a)(4). Pub. L. 88–581 struck out cl. (4) relating to hospital facilities which ''will include new or expanded facilities for nurse training''.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 110 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to applications approved under this subchapter after June 30, 1970.

EFFECTIVE DATE OF 1964 AMENDMENT

Section 3(b) of Pub. L. 88–581 provided that the amendments made by such section 3(b) [amending this section and sections 291*o* and 293c of this title] are effective with respect to applications for grants from appropriations for fiscal years beginning after June 30, 1965.

TRANSFER OF FUNCTIONS

''Secretary of Health and Human Services'' substituted in text for ''Secretary of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 291d, 291e, 291i, 291j–3 of this title.

§ 291d. State plans

(a) Submission; requirements

Any State desiring to participate in this part may submit a State plan. Such plan must—

(1) designate a single State agency as the sole agency for the administration of the plan, or designate such agency as the sole agency for supervising the administration of the plan;

(2) contain satisfactory evidence that the State agency designated in accordance with paragraph (1) of this subsection will have authority to carry out such plan in conformity with this part;

(3) provide for the designation of a State advisory council which shall include (A) representatives of nongovernmental organizations or groups, and of public agencies, concerned with the operation, construction, or utilization of hospital or other facilities for diagnosis, prevention, or treatment of illness or disease, or for provision of rehabilitation services, and representatives particularly concerned with education or training of health professions personnel, and (B) an equal number of representatives of consumers familiar with the need for the services provided by such facilities, to consult with the State agency in carrying out the plan, and provide, if such council does not include any representatives of nongovernmental organizations or groups, or State agencies, concerned with rehabilitation, for consultation with organizations, groups, and State agencies so concerned;

(4) set forth, in accordance with criteria established in regulations prescribed under section 291c of this title and on the basis of a statewide inventory of existing facilities, a survey of need, and (except to the extent provided by or pursuant to such regulations) community, area, or regional plans—

(A) the number of general hospital beds and long-term care beds, and the number and types of hospital facilities and facilities for long-term care, needed to provide adequate facilities for inpatient care of people residing in the State, and a plan for the distribution of such beds and facilities in service areas throughout the State;

(B) the public health centers needed to provide adequate public health services for people residing in the State, and a plan for the distribution of such centers throughout the State;

(C) the outpatient facilities needed to provide adequate diagnostic or treatment services to ambulatory patients residing in the State, and a plan for distribution of such facilities throughout the State;

(D) the rehabilitation facilities needed to assure adequate rehabilitation services for disabled persons residing in the State, and a plan for distribution of such facilities throughout the State; and

(E) effective January 1, 1966, the extent to which existing facilities referred to in section 291a(a) or (b) of this title in the State are in need of modernization;

(5) set forth a construction and modernization program conforming to the provisions set forth pursuant to paragraph (4) of this subsection and regulations prescribed under section 291c of this title and providing for construction or modernization of the hospital or long-term care facilities, public health centers, outpatient facilities, and rehabilitation facilities which are needed, as determined under the provisions so set forth pursuant to paragraph (4) of this subsection;

(6) set forth, with respect to each of such types of medical facilities, the relative need, determined in accordance with regulations prescribed under section 291c of this title, for projects for facilities of that type, and provide for the construction or modernization, insofar as financial resources available therefor and for maintenance and operation make possible, in the order of such relative need;

(7) provide minimum standards (to be fixed in the discretion of the State) for the maintenance and operation of facilities providing inpatient care which receive aid under this part and, effective July 1, 1966, provide for enforcement of such standards with respect to projects approved by the Surgeon General under this part after June 30, 1964;

(8) provide such methods of administration of the State plan, including methods relating to the establishment and maintenance of personnel standards on a merit basis (except that the Surgeon General shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods), as are found by the Surgeon General to be necessary for the proper and efficient operation of the plan;

(9) provide for affording to every applicant for a construction or modernization project an opportunity for a hearing before the State agency;

(10) provide that the State agency will make such reports, in such form and containing such information, as the Surgeon General may from time to time reasonably require, and will keep such records and afford such access thereto as the Surgeon General may find necessary to assure the correctness and verification of such reports;

(11) provide that the Comptroller General of the United States or his duly authorized representatives shall have access for the purpose of audit and examination to the records specified in paragraph (10) of this subsection;

(12) provide that the State agency will from time to time, but not less often than annually, review its State plan and submit to the Surgeon General any modifications thereof which it considers necessary; and

(13) Effective July 1, 1971, provide that before any project for construction or modernization of any general hospital is approved by the State agency there will be reasonable assurance of adequate provision for extended care services (as determined in accordance with regulations) to patients of such hospital when such services are medically appropriate for them, with such services being provided in facilities which (A) are structurally part of,

physically connected with, or in immediate proximity to, such hospital, and (B) either (i) are under the supervision of the professional staff of such hospital or (ii) have organized medical staffs and have in effect transfer agreements with such hospital; except that the Secretary may, at the request of the State agency, waive compliance with clause (A) or (B), or both such clauses, as the case may be, in the case of any project if the State agency has determined that compliance with such clause or clauses in such case would be inadvisable.

(b) Approval by Surgeon General; hearing after disapproval

The Surgeon General shall approve any State plan and any modification thereof which complies with the provisions of subsection (a) of this section. If any such plan or modification thereof shall have been disapproved by the Surgeon General for failure to comply with subsection (a) of this section, the Federal Hospital Council shall, upon request of the State agency, afford it an opportunity for hearing. If such Council determines that the plan or modification complies with the provisions of such subsection, the Surgeon General shall thereupon approve such plan or modification.

(July 1, 1944, ch. 373, title VI, § 604, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 452; amended June 30, 1970, Pub. L. 91–296, title I, §§ 115, 116(b), (c), 123, 84 Stat. 341, 342, 344.)

PRIOR PROVISIONS

A prior section 291d, act July 1, 1944, ch. 373, title VI, § 621, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 2(a), 63 Stat. 898; July 27, 1953, ch. 243, 67 Stat. 196; Aug. 2, 1956, ch. 871, title IV, § 401, 70 Stat. 929; Aug. 14, 1958, Pub. L. 85–664, § 1(a), 72 Stat. 616, authorized appropriations for construction of hospitals and related facilities, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291a of this title.

Provisions similar to those comprising this section were contained in a prior section 291f(a), (b), act July 1, 1944, ch. 373, title VI, § 623, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (a)(3). Pub. L. 91–296, § 115, inserted requirement that State advisory councils include representatives particularly concerned with education or training of health professions personnel.

Subsec. (a)(4)(C). Pub. L. 91–296, § 116(b), substituted ''outpatient facilities'' for ''diagnostic or treatment centers'' and ''such facilities'' for ''such centers''.

Subsec. (a)(5). Pub. L. 91–296, § 116(c), substituted ''outpatient facilities'' for ''diagnostic or treatment centers''.

Subsec. (a)(13). Pub. L. 91–296, § 123, added par. (13).

EFFECTIVE DATE OF 1970 AMENDMENT

Section 115 of Pub. L. 91–296 provided that the amendment made by that section is effective July 1, 1970.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Health and Human Services under subsec. (a)(8) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(C) of this title.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

FUNDS FOR MODERNIZATION PROJECTS; CONDITIONS TO BE MET BEFORE APPROVAL

Section 3(b)(5) of Pub. L. 88–443 provided that no application with respect to a modernization project may be approved for purposes of receiving funds from an allotment under section 291(a)(2) of this title before July 1, 1965, or before a State plan has been approved, as well as certain other requirements. See Effective Date note under section 291 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 291e, 291g, 291i, 291j–3, 291j–9, 291*l*, 291*o*, 1320a–1, 4728 of this title; title 12 sections 1715w, 1715–7.

§ 291e. Projects for construction or modernization

(a) Application; contents

For each project pursuant to a State plan approved under this part, there shall be submitted to the Surgeon General, through the State agency, an application by the State or a political subdivision thereof or by a public or other nonprofit agency. If two or more such agencies join in the project, the application may be filed by one or more of such agencies. Such application shall set forth—

(1) a description of the site for such project;

(2) plans and specifications therefor, in accordance with regulations prescribed under section 291c of this title;

(3) reasonable assurance that title to such site is or will be vested in one or more of the agencies filing the application or in a public or other nonprofit agency which is to operate the facility on completion of the project;

(4) reasonable assurance that adequate financial support will be available for the completion of the project and for its maintenance and operation when completed;

(5) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of construction or modernization on the project will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended [40 U.S.C. 276a et seq.]; and the Secretary of Labor shall have with respect to the labor standards specified in this paragraph the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 276c of title 40; and

(6) a certification by the State agency of the Federal share for the project.

(b) Approval by Surgeon General; requisites; additional approval by Secretary of Health and Human Services

The Surgeon General shall approve such application if sufficient funds to pay the Federal share of the cost of such project are available from the appropriate allotment to the State, and if the Surgeon General finds (1) that the ap-

plication contains such reasonable assurance as to title, financial support, and payment of prevailing rates of wages; (2) that the plans and specifications are in accord with the regulations prescribed pursuant to section 291c of this title; (3) that the application is in conformity with the State plan approved under section 291d of this title and contains an assurance that in the operation of the project there will be compliance with the applicable requirements of the regulations prescribed under section 291c(e) of this title, and with State standards for operation and maintenance; and (4) that the application has been approved and recommended by the State agency, opportunity has been provided, prior to such approval and recommendation, for consideration of the project by the public or nonprofit private agency or organization which has developed the comprehensive regional, metropolitan area, or other local area plan or plans referred to in section 246(b) of this title covering the area in which such project is to be located or, if there is no such agency or organization, by the State agency administering or supervising the administration of the State plan approved under section 246(a) of this title, and the application is for a project which is entitled to priority over other projects within the State in accordance with the regulations prescribed pursuant to section 291c(a) of this title. Notwithstanding the preceding sentence, the Surgeon General may approve such an application for a project for construction or modernization of a rehabilitation facility only if it is also approved by the Secretary of Health and Human Services.

(c) Opportunity for hearing required prior to disapproval

No application shall be disapproved until the Surgeon General has afforded the State agency an opportunity for a hearing.

(d) Amendments subject to same approval as original applications

Amendment of any approved application shall be subject to approval in the same manner as an original application.

(e) Outpatient facilities; requirements of applicants

Notwithstanding any other provision of this subchapter, no application for an outpatient facility shall be approved under this section unless the applicant is (1) a State, political subdivision, or public agency, or (2) a corporation or association which owns and operates a nonprofit hospital (as defined in section 291*o* of this title) or which provides reasonable assurance that the services of a general hospital will be available to patients of such facility who are in need of hospital care.

(July 1, 1944, ch. 373, title VI, § 605, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 453; amended June 30, 1970, Pub. L. 91–296, title I, §§ 111(a), 116(e), 84 Stat. 340, 342; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695.)

REFERENCES IN TEXT

The Davis-Bacon Act, referred to in subsec. (a)(5), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to section 276a to 276a–5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (a)(5), is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 291e, act July 1944, ch. 373, title VI, § 622, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, authorized Surgeon General to prescribe general regulations, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291c of this title.

A prior section 291h(a), (c), act July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 8, 63 Stat. 901, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

A prior section 291v(d), act July 1, 1944, ch. 373, title VI, § 654, as added July 12, 1954, ch. 471, § 3, 68 Stat. 463, related to subject matter similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (b)(4). Pub. L. 91–296, § 111(a), inserted provisions requiring that the appropriate area wide health planning agency be given an opportunity to consider the project for which an application is made before approval is given.

Subsec. (e). Pub. L. 91–296, § 116(e), substituted ''an outpatient facility'' for ''a diagnostic or treatment center'' and inserted provisions extending coverage to include corporations and associations which, although not owning or operating hospitals offer services of a general hospital to patients in need of hospital care.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 111(a) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to applications approved under this subchapter after June 30, 1970.

Amendment by section 116(e) of Pub. L. 91–296 applicable with respect to applications approved under this subchapter after June 30, 1970, see section 116(g) of Pub. L. 91–296, set out as a note under section 291*o* of this title.

TRANSFER OF FUNCTIONS

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (b) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

APPLICATIONS APPROVED PRIOR TO AUG. 18, 1964

Section 3(b)(1) of Pub. L. 88–443, providing that applications approved, and allotments appropriated prior to Aug. 18, 1964, shall be governed by this subchapter as in effect prior to such date, is set out as an Effective Date note under section 291 of this title.

FUNDS FOR MODERNIZATION PROJECTS; CONDITIONS TO BE MET BEFORE APPROVAL

Section 3(b)(5) of Pub. L. 88–443 provided that no application with respect to a modernization project may

be approved for purposes of receiving funds from an allotment under section 291(a)(2) of this title before July 1, 1965, or before a State plan has been approved, as well as certain other requirements. See Effective Date note set out under section 291 of this title.

CROSS REFERENCES

Additional payments in cases of amended applications, see section 291f of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 291f, 291g, 291h, 291i, 291j–3 of this title.

§ 291f. Payments for construction or modernization

(a) Certification of work by Surgeon General; conditions affecting payments

Upon certification to the Surgeon General by the State agency, based upon inspection by it, that work has been performed upon a project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment is due to the applicant, such installment shall be paid to the State, from the applicable allotment of such State, except that (1) if the State is not authorized by law to make payments to the applicant, or if the State so requests, the payment shall be made directly to the applicant, (2) if the Surgeon General, after investigation or otherwise, has reason to believe that any act (or failure to act) has occurred requiring action pursuant to section 291g of this title, payment may, after he has given the State agency notice of opportunity for hearing pursuant to such section, be withheld, in whole or in part, pending corrective action or action based on such hearing, and (3) the total of payments under this subsection with respect to such project may not exceed an amount equal to the Federal share of the cost of construction of such project.

(b) Additional payments in cases of amended applications

In case an amendment to an approved application is approved as provided in section 291e of this title or the estimated cost of a project is revised upward, any additional payment with respect thereto may be made from the applicable allotment of the State for the fiscal year in which such amendment or revision is approved.

(c) Administration expenses; use of portion of allotments to defray; manner of payment

(1) At the request of any State, a portion of any allotment or allotments of such State under this part shall be available to pay one-half (or such smaller share as the State may request) of the expenditures found necessary by the Surgeon General for the proper and efficient administration during such year of the State plan approved under this part; except that not more than 4 per centum of the total of the allotments of such State for a year, or $100,000, whichever is less, shall be available for such purpose for such year. Payments of amounts due under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Surgeon General may determine.

(2) Any amount paid under paragraph (1) of this subsection to any State for any fiscal year shall be paid on condition that there shall be expended from State sources for such year for administration of the State plan approved under this part not less than the total amount expended for such purposes from such sources during the fiscal year ending June 30, 1970.

(July 1, 1944, ch. 373, title VI, § 606, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 454; amended June 30, 1970, Pub. L. 91–296, title I, § 112, 84 Stat. 340.)

PRIOR PROVISIONS

A prior section 291f, act July 1, 1944, ch. 373, title VI, § 623, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 19, 1948, ch. 554, 62 Stat. 536; Oct. 25, 1949, ch. 722, § 3(a), 63 Stat. 899, related to State plans, their submission, and their requirements, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291d of this title.

Provisions similar to those comprising subsec. (a) of this section were contained in former section 291h(b), acts July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 3(b), 63 Stat. 899, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (c)(1). Pub. L. 91–296, § 112(1), substituted ''4 per centum'' for ''2 per centum'' and ''$100,000 for $50,000''.

Subsec. (c)(2). Pub. L. 91–296, § 112(2), substituted ''June 30, 1970'' for ''June 30, 1964''.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 112 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to expenditures under a State plan approved under this subchapter which are made for administration of such plan during any fiscal year beginning after June 30, 1970.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 291i, 3338 of this title.

§ 291g. Withholding of payments; noncompliance with requirements

Whenever the Surgeon General, after reasonable notice and opportunity for hearing to the State agency designated as provided in section 291d(a)(1) of this title, finds—

(a) that the State agency is not complying substantially with the provisions required by section 291d of this title to be included in its State plan; or

(b) that any assurance required to be given in an application filed under section 291e of this title is not being or cannot be carried out; or

(c) that there is a substantial failure to carry out plans and specifications approved by the Surgeon General under section 291e of this title; or

(d) that adequate State funds are not being provided annually for the direct administration of the State plan,

the Surgeon General may forthwith notify the State agency that—

(e) no further payments will be made to the State under this part, or

(f) no further payments will be made from the allotments of such State from appropriations under any one or more subparagraphs or paragraphs of section 291a of this title, or for any project or projects, designated by the Surgeon General as being affected by the action or inaction referred to in paragraph (a), (b), (c), or (d) of this section,

as the Surgeon General may determine to be appropriate under the circumstances; and, except with regard to any project for which the application has already been approved and which is not directly affected, further payments may be withheld, in whole or in part, until there is no longer any failure to comply (or carry out the assurance or plans and specifications or provide adequate State funds, as the case may be) or, if such compliance (or other action) is impossible, until the State repays or arranges for the repayment of Federal moneys to which the recipient was not entitled.

(July 1, 1944, ch. 373, title VI, § 607, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 455.)

PRIOR PROVISIONS

A prior section 291g, act July 1, 1944, ch. 373, title VI, § 624, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 29, 1948, ch. 728, § 1, 62 Stat. 1103; Oct. 25, 1949, ch. 722, §§ 3(b), 7, 63 Stat. 899, 901; Aug. 1, 1956, ch. 852, § 19(c), 70 Stat. 911; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(3), 76 Stat. 587, authorized allotments to States for construction, specified their amount, and provided for availability for unexpended funds, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291b of this title.

Provisions similar to those comprising this section were contained in former section 291j(a), acts July 1, 1944, ch. 373, title VI, § 632, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, § 4, 63 Stat. 900; July 12, 1954, ch. 471, § 4(g), 68 Stat. 466, prior to the general amendment of this subchapter by Pub. L. 88–443.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 291f, 291h of this title.

§ 291h. Judicial review

(a) Refusal to approve application; procedure; jurisdiction of court of appeals

If the Surgeon General refuses to approve any application for a project submitted under section 291e of this title or section 291j of this title, the State agency through which such application was submitted, or if any State is dissatisfied with his action under section 291g of this title such State may appeal to the United States court of appeals for the circuit in which such State is located, by filing a petition with such court within sixty days after such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Surgeon General, or any officer designated by him for that purpose. The Surgeon General shall thereupon file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Surgeon General or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Surgeon General may modify or set aside his order.

(b) Conclusiveness of Surgeon General's findings; remand; new or modified findings

The findings of the Surgeon General as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Surgeon General to take further evidence, and the Surgeon General may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Review by Supreme Court; stay of Surgeon General's action

The judgment of the court affirming or setting aside, in whole or in part, any action of the Surgeon General shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. The commencement of proceedings under this section shall not, unless so specifically ordered by the court, operate as a stay of the Surgeon General's action.

(July 1, 1944, ch. 373, title VI, § 608, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 456.)

PRIOR PROVISIONS

A prior section 291h, act July 1, 1944, ch. 373, title VI, § 625, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, §§ 3(b–d), 8, 63 Stat. 899, 901; July 12, 1954, ch. 471, § 4(b), 68 Stat. 464, related to projects for construction, the application required and its contents and approval by the Surgeon General, and provided for a hearing prior to disapproval of the application, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291e of this title.

Provisions similar to those comprising this section were contained in former section 291j(b), act July 1, 1944, ch. 373, title VI, § 632, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 28, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; July 12, 1954, ch. 471, § 4(g), 68 Stat. 466; Aug. 28, 1958, Pub. L. 85–791, § 27, 72 Stat. 950, prior to the general amendment of this subchapter by Pub. L. 88–443.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education,

and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 291i. Recovery of expenditures under certain conditions

(a) Persons liable

If any facility with respect to which funds have been paid under section 291f of this title shall, at any time within 20 years after the completion of construction or modernization—

(1) be sold or transferred to any entity (A) which is not qualified to file an application under section 291e of this title, or (B) which is not approved as a transferee by the State agency designated pursuant to section 291d of this title, or its successor, or

(2) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility,

the United States shall be entitled to recover, whether from the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount determined under subsection (c) of this section.

(b) Notice to Secretary

The transferor of a facility which is sold or transferred as described in subsection (a)(1) of this section, or the owner of a facility the use of which is changed as described in subsection (a)(2) of this section, shall provide the Secretary written notice of such sale, transfer, or change not later than the expiration of 10 days from the date on which such sale, transfer, or change occurs.

(c) Amount of recovery; interest; interest period

(1) Except as provided in paragraph (2), the amount the United States shall be entitled to recover under subsection (a) of this section is an amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district for which the facility involved is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the construction or modernization of such project or projects.

(2)(A) After the expiration of—

(i) 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section, in the case of a facility which is sold or transferred or the use of which changes after July 18, 1984, or

(ii) thirty days after July 18, 1984, or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section, in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984.[1]

the amount which the United States is entitled to recover under paragraph (1) with respect to a facility shall be the amount prescribed by paragraph (1) plus interest, during the period described in subparagraph (B), at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly ninety-day Treasury bill auction rate.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984, thirty days after such date or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section,

(ii) in the case of a facility with respect to which notice is provided in accordance with subsection (b) of this section, upon the expiration of 180 days after the receipt of such notice, or

(iii) in the case of a facility with respect to which such notice is not provided as prescribed by subsection (b) of this section, on the date of the sale, transfer, or change of use for which such notice was to be provided,

and ending on the date the amount the United States is entitled to under paragraph (1) is collected.

(d) Waiver

(1) The Secretary may waive the recovery rights of the United States under subsection (a)(1) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that the entity to which the facility was sold or transferred—

(A) has established an irrevocable trust—

(i) in an amount equal to the greater of twice the cost of the remaining obligation of the facility under clause (2) of section 291c(e) of this title or the amount, determined under subsection (c) of this section, that the United States is entitled to recover, and

(ii) which will only be used by the entity to provide the care required by clause (2) of section 291c(e) of this title; and

(B) will meet the obligation of the facility under clause (1) of section 291c(e) of this title.

(2) The Secretary may waive the recovery rights of the United States under subsection (a)(2) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that there is good cause for waiving such rights with respect to such facility.

(e) Lien

The right of recovery of the United States under subsection (a) of this section shall not constitute a lien on any facility with respect to which funds have been paid under section 291f of this title.

(July 1, 1944, ch. 373, title VI, § 609, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 456; amended June 30, 1970, Pub. L. 91–296, title I § 116(d), 84 Stat. 342; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2381(a), 98 Stat. 1112.)

PRIOR PROVISIONS

A prior section 291i, act July 1, 1944, ch. 373, title VI, § 631, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 19, 1948, ch. 544, 62 Stat. 531; Oct. 25, 1949,

[1] So in original. The period probably should be a comma.

ch. 722, §9, 63 Stat. 901; July 12, 1954, ch. 471, §4(c)–(f), 68 Stat. 465, 466; Aug. 1, 1956, ch. 852, §19(a), (b), 70 Stat. 911; June 25, 1959, Pub. L. 86–70, §31(c), 73 Stat. 149; July 12, 1960, Pub. L. 86–624, §29(d), 74 Stat. 419; Oct. 5, 1961, Pub. L. 87–395, §5, 75 Stat. 826; Sept. 25, 1962, Pub. L. 87–688, §4(a)(2), 76 Stat. 587, related to allotment percentages, and contained various definitions, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291b of this title.

Provisions similar to those comprising this section were contained in section 291h(e) of this title, act July 1, 1944, ch. 373, title VI, §625, as added Aug. 13, 1946, ch. 958, §2, 60 Stat. 1041; amended Oct. 25, 1949, ch. 722, §3(c), 63 Stat. 899, 901; July 12, 1954, ch. 471, §4(b), 68 Stat. 464, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1984—Pub. L. 98–369 amended section generally. Prior to amendment, section read as follows: ''If any facility with respect to which funds have been paid under section 291f of this title shall, at any time within twenty years after the completion of construction—

''(a) be sold or transferred to any person, agency, or organization (1) which is not qualified to file an application under section 291e of this title, or (2) which is not approved as a transferee by the State agency designated pursuant to section 291d of this title, or its successor, or

''(b) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility, unless the Surgeon General determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from this obligation,

the United States shall be entitled to recover from either the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of the facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction or modernization under such project or projects. Such right of recovery shall not constitute a lien upon said facility prior to judgment.''

1970—Cl. (b). Pub. L. 91–296 substituted ''outpatient facility'' for ''diagnostic or treatment center''.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

REGULATIONS AND PERSONNEL

Section 2381(c) of Pub. L. 98–369 provided that: ''Not later than the expiration of the one-hundred-and-eighty-day period beginning on the date of the enactment of this section [July 18, 1984], the Secretary shall have in effect regulations and personnel to place in effect the amendments made by this section [amending sections 291i and 300s–1a of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 291j of this title.

§ 291j. Loans

(a) Authorization; conditions

In order further to assist the States in carrying out the purposes of this subchapter, the Surgeon General is authorized to make a loan of funds to the applicant for any project for construction or modernization which meets all of the conditions specified for a grant under this part.

(b) Approval; payments to applicants

Except as provided in this section, an application for a loan with respect to any project under this part shall be submitted, and shall be approved by the Surgeon General, in accordance with the same procedures and subject to the same limitations and conditions as would be applicable to the making of a grant under this part for such project. Any such application may be approved in any fiscal year only if sufficient funds are available from the allotment for the type of project involved. All loans under this section shall be paid directly to the applicant.

(c) Terms

(1) The amount of a loan under this part shall not exceed an amount equal to the Federal share of the estimated cost of construction or modernization under the project. Where a loan and a grant are made under this part with respect to the same project, the aggregate amount of such loan and such grant shall not exceed an amount equal to the Federal share of the estimated cost of construction or modernization under the project. Each loan shall bear interest at the rate arrived at by adding one-quarter of 1 per centum per annum to the rate which the Secretary of the Treasury determines to be equal to the current average yield on all outstanding marketable obligations of the United States as of the last day of the month preceding the date the application for the loan is approved and by adjusting the result so obtained to the nearest one-eighth of 1 per centum. Each loan made under this part shall mature not more than forty years after the date on which such loan is made, except that nothing in this part shall prohibit the payment of all or part of the loan at any time prior to the maturity date. In addition to the terms and conditions provided for, each loan under this part shall be made subject to such terms, conditions, and covenants relating to repayment of principal, payment of interest, and other matters as may be agreed upon by the applicant and the Surgeon General.

(2) The Surgeon General may enter into agreements modifying any of the terms and conditions of a loan made under this part whenever he determines such action is necessary to protect the financial interest of the United States.

(3) If, at any time before a loan for a project has been repaid in full, any of the events specified in clause (a) or clause (b) of section 291i[1] of this title occurs with respect to such project, the unpaid balance of the loan shall become immediately due and payable by the applicant, and any transferee of the facility shall be liable to the United States for such repayment.

(d) Funds; miscellaneous receipts

Any loan under this part shall be made out of the allotment from which a grant for the project concerned would be made. Payments of interest and repayments of principal on loans under this

[1] See References in Text note below.

part shall be deposited in the Treasury as miscellaneous receipts.

(July 1, 1944, ch. 373, title VI, § 610, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 457.)

REFERENCES IN TEXT

Section 291i of this title, referred to in subsec. (c)(3), was amended generally by Pub. L. 98–369, div. B, title III, § 2381(a), July 18, 1984, 98 Stat. 1112, and, as so amended, the provisions contained in former cls. (a) and (b) of section 291i are covered by section 291i(a)(1) and (2).

PRIOR PROVISIONS

A prior section 291j, act July 1, 1944, ch. 373, title VI, § 632, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 25, 1948, ch. 646, § 32(a), 62 Stat. 991; May 24, 1949, ch. 139, § 127, 63 Stat. 107; Oct. 25, 1949, ch. 722, § 4, 63 Stat. 900; July 12, 1954, ch. 471, § 4(g), 68 Stat. 466; Aug. 28, 1958, Pub. L. 85–791, § 27, 72 Stat. 950, related to withholding of certification for noncompliance with requirements, appeal, conclusiveness of findings, the jurisdiction of the courts of appeals and to review by the Supreme Court, prior to the general amendment of this subchapter by Pub. L. 88–443. See sections 291g and 291h of this title.

Provisions similar to those comprising this section were contained in sections 291w to 291z of this title, prior to the general amendment of this subchapter by Pub. L. 88–443.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 291h of this title.

PART B—LOAN GUARANTEES AND LOANS FOR MODERNIZATION AND CONSTRUCTION OF HOSPITALS AND OTHER MEDICAL FACILITIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 300s of this title; title 12 section 1717.

§ 291j–1. Loan guarantees and loans

(a) Authority of Secretary

(1) In order to assist nonprofit private agencies to carry out needed projects for the modernization or construction of nonprofit private hospitals, facilities for long-term care, outpatient facilities, and rehabilitation facilities, the Secretary, during the period July 1, 1970, through June 30, 1974, may, in accordance with the provisions of this part, guarantee to non-Federal lenders making loans to such agencies for such projects, payment of principal of and interest on loans, made by such lenders, which are approved under this part.

(2) In order to assist public agencies to carry out needed projects for the modernization or construction of public health centers, and public hospitals, facilities for long-term care, outpatient facilities, and rehabilitation facilities, the Secretary, during the period July 1, 1970, through June 30, 1974, may, in accordance with the provisions of this part, make loans to such agencies which shall be sold and guaranteed in accordance with section 291j–7 of this title.

(b) Cost limitations

(1) No loan guarantee under this part with respect to any modernization or construction project may apply to so much of the principal amount thereof as, when added to the amount of any grant or loan under part A of this subchapter with respect to such project, exceeds 90 per centum of the cost of such project.

(2) No loan to a public agency under this part shall be made in an amount which, when added to the amount of any grant or loan under part A of this subchapter with respect to such project, exceeds 90 per centum of the cost of such project.

(c) Administrative assistance

The Secretary, with the consent of the Secretary of Housing and Urban Development, shall obtain from the Department of Housing and Urban Development such assistance with respect to the administration of this part as will promote efficiency and economy thereof.

(July 1, 1944, ch. 373, title VI, § 621, as added June 30, 1970, Pub. L. 91–296, title II, § 201, 84 Stat. 344; amended June 18, 1973, Pub. L. 93–45, title I, § 108(b)(1), 87 Stat. 93.)

AMENDMENTS

1973—Subsec. (a). Pub. L. 93–45 extended termination date of guarantee and loan making period in pars. (1) and (2) from June 30, 1973, to June 30, 1974.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 291j–2 of this title.

§ 291j–2. Allocation among States

(a) Allotment regulations

For each fiscal year, the total amount of principal of loans to nonprofit private agencies which may be guaranteed or loans to public agencies which may be directly made under this part shall be allotted by the Secretary among the States, in accordance with regulations, on the basis of each State's relative population, financial need, need for construction of the facilities referred to in section 291j–1(a) of this title, and need for modernization of such facilities.

(b) Reallotment

Any amount allotted under subsection (a) of this section to a State for a fiscal year ending before July 1, 1973, and remaining unobligated at the end of such year shall remain available to such State, for the purpose for which made, for the next two fiscal years (and for such years only), and any such amount shall be in addition to the amounts allotted to such State for such purpose for each of such next two fiscal years; except that, with the consent of any such State, any such amount remaining unobligated at the end of the first of such next fiscal year may be reallotted (on such basis as the Secretary deems equitable and consistent with the purposes of this subchapter) to other States which have need therefor. Any amounts so reallotted to a

State shall be available for the purposes for which made until the close of the second such next two fiscal years and shall be in addition to the amount allotted and available to such State for the same period.

(c) Time of availability of amounts for subsequent allotment

Any amount allotted or reallotted to a State under this section for a fiscal year shall not, until the expiration of the period during which it is available for obligation, be considered as available for allotment for a subsequent fiscal year.

(d) Modernization or construction commenced on or after January 1, 1968

The allotments of any State under subsection (a) of this section for the fiscal year ending June 30, 1971, and the succeeding fiscal year shall also be available to guarantee loans with respect to any project, for modernization or construction of a nonprofit private hospital or other health facility referred to in section 291j–1(a)(1) of this title, if the modernization or construction of such facility was not commenced earlier than January 1, 1968, and if the State certifies and the Secretary finds that without such guaranteed loan such facility could not be completed and begin to operate or could not continue to operate, but with such guaranteed loan would be able to do so: *Provided*, That this subsection shall not apply to more than two projects in any one State.

(July 1, 1944, ch. 373, title VI, § 622, as added June 30, 1970, Pub. L. 91–296, title II, § 201, 84 Stat. 345.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 291j–3 of this title.

§ 291j–3. Applications and conditions

(a) Contents of applications

For each project for which a guarantee of a loan to a nonprofit private agency or a direct loan to a public agency is sought under this part, there shall be submitted to the Secretary, through the State agency designated in accordance with section 291d of this title, an application by such private nonprofit agency or by such public agency. If two or more private nonprofit agencies, or two or more public agencies, join in the project, the application may be filed by one or more such agencies. Such application shall (1) set forth all of the descriptions, plans, specifications, assurances, and information which are required by the third sentence of section 291e(a) of this title (other than clause (6) thereof) with respect to applications submitted under that section, (2) contain such other information as the Secretary may require to carry out the purposes of this part, and (3) include a certification by the State agency of the total cost of the project and the amount of the loan for which a guarantee is sought under this part, or the amount of the direct loan sought under this part, as the case may be.

(b) Conditions for approval

The Secretary may approve such application only if—

(1) there remains sufficient balance in the allotment determined for such State pursuant to section 291j–2 of this title to cover the amount of the loan for which a guarantee is sought, or the amount of the direct loan sought (as the case may be), in such application,

(2) he makes each of the findings which are required by clauses (1) through (4) of section 291e(b) of this title for the approval of applications for projects thereunder (except that, in the case of the finding required under such clause (4) of entitlement of a project to a priority established under section 291c(a) of this title; such finding shall be made without regard to the provisions of clauses (1) and (3) of such section),

(3) he finds that there is compliance with section 291e(e) of this title,

(4) he obtains assurances that the applicant will keep such records, and afford such access thereto, and make such reports, in such form and containing such information, as the Secretary may reasonably require, and

(5) he also determines, in the case of a loan for which a guarantee is sought, that the terms, conditions, maturity, security (if any), and schedule and amounts of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable and in accord with regulations, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States.

(c) Hearing

No application under this section shall be disapproved until the Secretary has afforded the State agency an opportunity for a hearing.

(d) Amendment of approved applications

Amendment of an approved application shall be subject to approval in the same manner as an original application.

(e) Recovery rights; terms and conditions

(1) In the case of any loan to a nonprofit private agency, the United States shall be entitled to recover from the applicant the amount of any payments made pursuant to any guarantee of such loan under this part, unless the Secretary for good cause waives its right of recovery, and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

(2) Guarantees of loans to nonprofit private agencies under this part shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this part will be achieved, and, to the extent permitted by subsection (f) of this section, any of such terms and conditions may be modified by the Secretary to the extent he determines it to be consistent with the financial interest of the United States.

(f) Incontestable guarantee

Any guarantee of a loan to a nonprofit private agency made by the Secretary pursuant to this part shall be incontestable in the hands of an applicant on whose behalf such guarantee is made, and as to any person who makes or contracts to make a loan to such applicant in reliance thereon, except for fraud or misrepresentation on the part of such applicant or such other person.

(July 1, 1944, ch. 373, title VI, § 623, as added June 30, 1970, Pub. L. 91–296, title II, § 201, 84 Stat. 346.)

§ 291j–4. Payment of interest on guaranteed loans

(a) Subject to the provisions of subsection (b) of this section, in the case of a guarantee of any loan to a nonprofit private agency under this part with respect to a hospital or other medical facility, the Secretary shall pay, to the holder of such loan and for and on behalf of such hospital or other medical facility amounts sufficient to reduce by 3 per centum per annum the net effective interest rate otherwise payable on such loan. Each holder of a loan, to a nonprofit private agency, which is guaranteed under this part shall have a contractual right to receive from the United States interest payments required by the preceding sentence.

(b) Contracts to make the payments provided for in this section shall not carry an aggregate amount greater than such amount as may be provided in appropriations Acts.

(July 1, 1944, ch. 373, title VI, § 624, as added June 30, 1970, Pub. L. 91–296, title II, § 201, 84 Stat. 347.)

§ 291j–5. Limitation on amounts of loans guaranteed or directly made

The cumulative total of the principal of the loans outstanding at any time with respect to which guarantees have been issued, or which have been directly made, under this part may not exceed the lesser of—

(1) such limitations as may be specified in appropriations Acts, or

(2) in the case of loans covered by allotments for the fiscal year ending June 30, 1971, $500,000,000; for the fiscal year ending June 30, 1972, $1,000,000,000; and for each of the fiscal years ending June 30, 1973, and June 30, 1974, $1,500,000,000.

(July 1, 1944, ch. 373, title VI, § 625, as added June 30, 1970, Pub. L. 91–296, title II, § 201, 84 Stat. 347; amended June 18, 1973, Pub. L. 93–45, title I, § 108(b)(2), 87 Stat. 93.)

AMENDMENTS

1973—Pub. L. 93–45 provided for a limitation of $1,500,000,000 on amount of loans outstanding in the case of loans covered by allotments for fiscal year ending June 30, 1974.

§ 291j–6. Loan guarantee and loan fund

(a)(1) There is hereby established in the Treasury a loan guarantee and loan fund (hereinafter in this section referred to as the ''fund'') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriations Acts, (i) to enable him to discharge his responsibilities under guarantees issued by him under this part, (ii) for payment of interest on the loans to nonprofit agencies which are guaranteed, (iii) for direct loans to public agencies which are sold and guaranteed, (iv) for payment of interest with respect to such loans, and (v) for repurchase by him of direct loans to public agencies which have been sold and guaranteed. There are authorized to be appropriated to the fund from time to time such amounts as may be necessary to provide capital required for the fund. To the extent authorized from time to time in appropriation Acts, there shall be deposited in the fund amounts received by the Secretary as interest payments or repayments of principal on loans and any other moneys, property, or assets derived by him from his operations under this part, including any moneys derived from the sale of assets.

(2) Of the moneys in the fund, there shall be available to the Secretary for the purpose of making of direct loans to public agencies only such sums as shall have been appropriated for such purpose pursuant to section 291j–7 of this title or sums received by the Secretary from the sale of such loans (in accordance with such section) and authorized in appropriations Acts to be used for such purpose.

(b) If at any time the moneys in the fund are insufficient to enable the Secretary to discharge his responsibilities under this part—

(i) to make payments of interest on loans to nonprofit private agencies which he has guaranteed under this part;

(ii) to otherwise comply with guarantees under this part of loans to nonprofit private agencies;

(iii) to make payments of interest subsidies with respect to loans to public agencies which he has made, sold, and guaranteed under this part;

(iv) in the event of default by public agencies to make payments of principal and interest on loans which the Secretary has made, sold, and guaranteed, under this part, to make such payments to the purchaser of such loan;

(v) to repurchase loans to public agencies which have been sold and guaranteed under this part,

he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, but only in such amounts as may be specified from time to time in appropriations Acts. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations issued hereunder and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter, are

extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this subsection shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from such fund.

(July 1, 1944, ch. 373, title VI, § 626, as added June 30, 1970, Pub. L. 91–296, title II, § 201, 84 Stat. 347.)

CODIFICATION

In subsec. (b), ''chapter 31 of title 31'' and ''that chapter'' substituted for ''the Second Liberty Bond Act, as amended'' and ''that Act, as amended'', respectively, on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 291j–7, 300q–2 of this title.

§ 291j–7. Loans to public facilities

(a) Interest rates; security; equitable geographical distribution

(1) Any loan made by the Secretary to a public agency under this part for the modernization or construction of a public hospital or other health facility shall require such public agency to pay interest thereon at a rate comparable to the current rate of interest prevailing with respect to loans, to nonprofit private agencies, which are guaranteed under this part, for the modernization or construction of similar facilities in the same or similar areas, minus 3 per centum per annum.

(2)(A) No loan to a public agency shall be made under this part unless—

(i) the Secretary is reasonably satisfied that such agency will be able to make payments of principal and interest thereon when due, and

(ii) such agency provides the Secretary with reasonable assurances that there will be available to such agency such additional funds as may be necessary to complete the project with respect to which such loan is requested.

(B) Any loan to a public agency shall have such security, have such maturity date, be repayable in such installments, and be subject to such other terms and conditions (including provision for recovery in case of default) as the Secretary determines to be necessary to carry out the purposes of this part while adequately protecting the financial interests of the United States.

(3) In making loans to public agencies under this part, the Secretary shall give due regard to achieving an equitable geographical distribution of such loans.

(b) Sale

(1) The Secretary shall from time to time, but with due regard to the financial interests of the United States, sell loans referred to in subsection (a)(1) of this section either on the private market or to the Federal National Mortgage Association in accordance with section 1717 of title 12.

(2) Any loan so sold shall be sold for an amount which is equal (or approximately equal) to the amount of the unpaid principal of such loan as of the time of sale.

(c) Agreements

(1) The Secretary is authorized to enter into an agreement with the purchaser of any loan sold under this part under which the Secretary agrees—

(A) to guarantee to such purchaser (and any successor in interest to such purchaser) payment of the principal and interest payable under such loan, and

(B) to pay as an interest subsidy to such purchaser (and any successor in interest of such purchaser) amounts which when added to the amount of interest payable on such loan, are equivalent to a reasonable rate of interest on such loan as determined by the Secretary, after taking into account the range of prevailing interest rates in the private market on similar loans and the risks assumed by the United States.

(2) Any such agreement—

(A) may provide that the Secretary shall act as agent of any such purchaser, for the purpose of collecting from the public agency to which such loan was made and paying over to such purchaser, any payments of principal and interest payable by such agency under such loan;

(B) may provide for the repurchase by the Secretary of any such loan on such terms and conditions as may be specified in the agreement;

(C) shall provide that, in the event of any default by the public agency to which such loan was made in payment of principal and interest due on such loan, the Secretary shall, upon notification to the purchaser (or to the successor in interest of such purchaser), have the option to close out such loan (and any obligations of the Secretary with respect thereto) by paying to the purchaser (or his successor in interest) the total amount of outstanding principal and interest due thereon at the time of such notification; and

(D) shall provide that, in the event such loan is closed out as provided in subparagraph (C), or in the event of any other loss incurred by the Secretary by reason of the failure of such public agency to make payments of principal and interest on such loan, the Secretary shall be subrogated to all rights of such purchaser for recovery of such loss from such public agency.

(d) Right of recovery; waiver

The Secretary may, for good cause, waive any right of recovery which he has against a public agency by reason of the failure of such agency to make payments of principal and interest on a loan made to such agency under this part.

(e) Interest and interest subsidies as gross income under Internal Revenue Code

After any loan to a public agency under this part has been sold and guaranteed, interest paid on such loan and any interest subsidy paid by

the Secretary with respect to such loan which is received by the purchaser thereof (or his successor in interest) shall be included in gross income for the purposes of chapter 1 of title 26.

(f) Sales proceeds; deposit and use

Amounts received by the Secretary as proceeds from the sale of loans under this section shall be deposited in the loan fund established by section 291j–6 of this title, and shall be available to the Secretary for the making of further loans under this part in accordance with the provisions of subsection (a)(2) of such section.

(g) Authorization of appropriations

There is authorized to be appropriated to the Secretary, for deposit in the loan fund established by section 291j–6 of this title, $30,000,000 to provide initial capital for the making of direct loans by the Secretary to public agencies for the modernization or construction of facilities referred to in subsection (a)(1) of this section.

(July 1, 1944, ch. 373, title VI, § 627, as added June 30, 1970, Pub. L. 91–296, title II, § 201, 84 Stat. 349; amended Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095.)

AMENDMENTS

1986—Subsec. (e). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

COMMITMENTS FOR DIRECT LOANS TO PUBLIC AGENCIES

Pub. L. 91–667, title II, § 200, Jan. 11, 1971, 84 Stat. 2007, provided: ''That the Secretary is authorized to issue commitments for direct loans to public agencies in accordance with section 627 of the Public Health Service Act [this section] which shall constitute contractual obligations of the United States, the total of such outstanding commitments not to exceed $30,000,000 at any given time; to sell obligations received pursuant to such commitments as provided in section 627, and the proceeds of any such sale shall be used to make a direct loan pursuant to the outstanding commitment under which the obligations were received.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 291j–1, 291j–6 of this title.

PART C—CONSTRUCTION OR MODERNIZATION OF EMERGENCY ROOMS

§ 291j–8. Authorization of appropriations

In order to assist in the provision of adequate emergency room service in various communities of the Nation for treatment of accident victims and handling of other medical emergencies through special project grants for the construction or modernization of emergency rooms of general hospitals, there are authorized to be appropriated $20,000,000 each for the fiscal year ending June 30, 1971, and the next two fiscal years.

(July 1, 1944, ch. 373, title VI, § 631, as added June 30, 1970, Pub. L. 91–296, title III, § 301, 84 Stat. 351.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 291j–9 of this title.

§ 291j–9. Eligibility for grants

Funds appropriated pursuant to section 291j–8 of this title shall be available for grants by the Secretary for not to exceed 50 per centum of the cost of construction or modernization of emergency rooms of public or nonprofit general hospitals, including provision or replacement of medical transportation facilities. Such grants shall be made by the Secretary only after consultation with the State agency designated in accordance with section 291d(a)(1) of this title. In order to be eligible for a grant under this part, the project, and the applicant therefor, must meet such criteria as may be prescribed by regulations. Such regulations shall be so designed as to provide aid only with respect to projects for which adequate assistance is not readily available from other Federal, State, local, or other sources, and to assist in providing modern, efficient, and effective emergency room service needed to care for victims of highway, industrial, agricultural, or other accidents and to handle other medical emergencies, and to assist in providing such service in geographical areas which have special need therefor.

(July 1, 1944, ch. 373, title VI, § 632, as added June 30, 1970, Pub. L. 91–296, title III, § 301, 84 Stat. 351.)

§ 291j–10. Payments

Grants under this part shall be paid in advance or by way of reimbursement, in such installments and on such conditions, as in the judgment of the Secretary will best carry out the purposes of this part.

(July 1, 1944, ch. 373, title VI, § 633, as added June 30, 1970, Pub. L. 91–296, title III, § 301, 84 Stat. 351.)

PART D—GENERAL PROVISIONS

§ 291k. Federal Hospital Council

(a) Membership; qualifications

In administering this subchapter, the Surgeon General shall consult with a Federal Hospital Council consisting of the Surgeon General, who shall serve as Chairman ex officio, and twelve members appointed by the Secretary of Health and Human Services. Six of the twelve appointed members shall be persons who are outstanding in fields pertaining to medical facility and health activities, and three of these six shall be authorities in matters relating to the operation of hospitals or other medical facilities, one of them shall be an authority in matters relating to the mentally retarded, and one of them shall be an authority in matters relating to mental health, and the other six members shall be appointed to represent the consumers of the services provided by such facilities and shall be persons familiar with the need for such services in urban or rural areas.

(b) Term of membership

Each appointed member shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remain-

der of such term. An appointed member shall not be eligible to serve continuously for more than two terms (whether beginning before or after August 18, 1964) but shall be eligible for reappointment if he has not served immediately preceding his reappointment.

(c) Meetings; annual or by call of Surgeon General

The Council shall meet as frequently as the Surgeon General deems necessary, but not less than once each year. Upon request by three or more members, it shall be the duty of the Surgeon General to call a meeting of the Council.

(d) Advisory or technical committees

The Council is authorized to appoint such special advisory or technical committees as may be useful in carrying out its functions.

(July 1, 1944, ch. 373, title VI, § 641, formerly § 621, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 458, renumbered § 641, June 30, 1970, Pub. L. 91–296, title II, § 201, 84 Stat. 344; amended Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in subsec. (b) of a prior section 291k, act July 1, 1944, ch. 373, title VI, § 633, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 24, 1948, ch. 621, § 6(b), 62 Stat. 602; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (e). Pub. L. 91–515 struck out subsec. (e) which related to payment of compensation and travel expenses of appointed Council members and members of advisory or technical committees while serving on Council business.

TRANSFER OF FUNCTIONS

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a) pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20.

TERMS OF FEDERAL HOSPITAL COUNCIL MEMBERS

Section 3(b)(3) of Pub. L. 88–443 providing that the terms of members serving on the Council prior to Aug. 18, 1964, shall expire on the date they would have expired had Pub. L. 88–443 not been enacted, is set out as an Effective Date note under section 291 of this title.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 291*l*. Conference of State agencies

Whenever in his opinion the purposes of this subchapter would be promoted by a conference, the Surgeon General may invite representatives of as many State agencies, designated in accordance with section 291d of this title, to confer as he deems necessary or proper. A conference of the representatives of all such State agencies shall be called annually by the Surgeon General. Upon the application of five or more of such State agencies, it shall be the duty of the Surgeon General to call a conference of representatives of all State agencies joining in the request.

(July 1, 1944, ch. 373, title VI, § 642, formerly § 622, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 458, and renumbered § 642, June 30, 1970, Pub. L. 91–296, title II, § 201, 84 Stat. 344.)

PRIOR PROVISIONS

A prior section 291*l*, act July 1, 1944, ch. 373, title VI, § 634, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041, contained provisions similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 291m. State control of operations

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility with respect to which any funds have been or may be expended under this subchapter.

(July 1, 1944, ch. 373, title VI, § 643, formerly § 623, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 458, and renumbered § 643, June 30, 1970, Pub. L. 91–296, title II, § 201, 84 Stat. 344.)

PRIOR PROVISIONS

A prior section 291m, act July 1, 1944, ch. 373, title VI, § 635, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended July 12, 1954, ch. 471, § 4(h), 68 Stat. 467, contained provisions similar to this section, prior to the general amendment of this subchapter by Pub. L. 88–443.

§ 291m–1. Loans for certain hospital experimentation projects

(a) Other public or private sources unavailable for alleviation of hardship due to increased construction costs

In order to alleviate hardship on any recipient of a grant under section 291n[1] of this title (as in effect immediately before August 18, 1964) for a project for the construction of an experimental or demonstration facility having as its specific purpose the application of novel means for the reduction of hospital costs with respect to which there has been a substantial increase in the cost of such construction (over the estimated cost of

[1] See References in Text note below.

such project on the basis of which such grant was made) through no fault of such recipient, the Secretary is authorized to make a loan to such recipient not exceeding 66⅔ per centum of such increased costs, as determined by the Secretary, if the Secretary determines that such recipient is unable to obtain such an amount for such purpose from other public or private sources.

(b) Application; form; information

Any such loan shall be made only on the basis of an application submitted to the Secretary in such form and containing such information and assurances as he may prescribe.

(c) Interest; repayment period

Each such loan shall bear interest at the rate of 2½ per centum per annum on the unpaid balance thereof and shall be repayable over a period determined by the Secretary to be appropriate, but not exceeding fifty years.

(d) Authorization of appropriation

There are hereby authorized to be appropriated $3,500,000 to carry out the provisions of this section.

(July 1, 1944, ch. 373, title VI, § 643A, formerly § 623A, as added Dec. 5, 1967, Pub. L. 90–174, § 11, 81 Stat. 541, and renumbered § 643A, June 30, 1970, Pub. L. 91–296, title II, § 201, 84 Stat. 344.)

REFERENCES IN TEXT

Section 291n of this title, referred to in subsec. (a), was repealed by Pub. L. 90–174, § 3(b)(1), Dec. 5, 1967, 81 Stat. 535.

§ 291n. Repealed. Pub. L. 90–174, § 3(b)(1), Dec. 5, 1967, 81 Stat. 535

Section, act July 1, 1944, ch. 373, title VI, § 644, formerly § 624, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 459, and renumbered § 644, June 30, 1970, Pub. L. 91–296, title II, § 201, 84 Stat. 344, provided for research, experiments and demonstrations in utilization of medical facilities, authorization, grants-in-aid, amounts, payment, conditions, authorization of appropriations, and right of recovery of United States Government. See section 242b of this title.

Provisions similar to those comprising this section were contained in a prior section 291n, act July 1, 1944, ch. 373, title VI, § 636, as added Oct. 25, 1949, ch. 722, § 5, 63 Stat. 900; amended Oct. 6, 1961, Pub. L. 87–395, § 4, 75 Stat. 825, prior to the general amendment of this subchapter by Pub. L. 88–443.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to appropriations for fiscal year ending after June 30, 1967, see section 3(b) of Pub. L. 90–174, set out as an Effective Date of 1967 Amendment note under section 246 of this title.

§ 291n–1. Omitted

CODIFICATION

Section, act July 1, 1944, ch. 373, title VI, § 637, formerly § 654(c), as added July 12, 1954, ch. 471, § 3, 68 Stat. 463; renumbered § 637 and amended Aug. 14, 1959, Pub. L. 86–158, title II, § 201, 73 Stat. 349, related to transfers of allotments between States, prior to the general amendment of this subchapter by Pub. L. 88–443, Aug. 18, 1964, 78 Stat. 447. See section 291b of this title.

§ 291*o*. Definitions

For the purposes of this subchapter—

(a) The term ''State'' includes the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the District of Columbia.

(b)(1) The term ''Federal share'' with respect to any project means the proportion of the cost of such project to be paid by the Federal Government under this subchapter.

(2) With respect to any project in any State for which a grant is made from an allotment from an appropriation under section 291a of this title, the Federal share shall be the amount determined by the State agency designated in accordance with section 291d of this title, but not more than 66⅔ per centum or the State's allotment percentage, whichever is the lower, except that, if the State's allotment percentage is lower than 50 per centum, such allotment percentage shall be deemed to be 50 per centum for purposes of this paragraph.

(3) Prior to the approval of the first project in a State during any fiscal year the State agency designated in accordance with section 291d of this title shall give the Secretary written notification of the maximum Federal share established pursuant to paragraph (2) of this subsection for projects in such State to be approved by the Secretary during such fiscal year and the method for determining the actual Federal share to be paid with respect to such projects; and such maximum Federal share and such method of determination for projects in such State approved during such fiscal year shall not be changed after such approval.

(4) Notwithstanding the provisions of paragraphs (2) and (3) of this subsection, the Federal share shall, at the option of the State agency, be equal to the per centum provided under such paragraphs plus an incentive per centum (which when combined with the per centum provided under such paragraphs shall not exceed 90 per centum) specified by the State agency in the case of (A) projects that will provide services primarily for persons in an area determined by the Secretary to be a rural or urban poverty area, and (B) projects that offer potential for reducing health care costs through shared services among health care facilities, through interfacility cooperation, or through the construction or modernization of free-standing outpatient facilities.

(c) The term ''hospital'' includes general, tuberculosis, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, facilities related to programs for home health services, self-care units, and central service facilities, operated in connection with hospitals, and also includes education or training facilities for health professions personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care.

(d) The term ''public health center'' means a publicly owned facility for the provision of public health services, including related publicly owned facilities such as laboratories, clinics, and administrative offices operated in connection with such a facility.

(e) The term ''nonprofit'' as applied to any facility means a facility which is owned and oper-

ated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(f) The term ''outpatient facility'' means a facility (located in or apart from a hospital) for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients)—

(1) which is operated in connection with a hospital, or

(2) in which patient care is under the professional supervision of persons licensed to practice medicine or surgery in the State, or, in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the State; or

(3) which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which provides to its patients a reasonably full-range of diagnostic and treatment services.

(g) The term ''rehabilitation facility'' means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of—

(1) medical evaluation and services, and

(2) psychological, social, or vocational evaluation and services,

under competent professional supervision, and in the case of which—

(3) the major portion of the required evaluation and services is furnished within the facility; and

(4) either (A) the facility is operated in connection with a hospital, or (B) all medical and related health services are prescribed by, or are under the general direction of, persons licensed to practice medicine or surgery in the State.

(h) The term ''facility for long-term care'' means a facility (including an extended care facility) providing in-patient care for convalescent or chronic disease patients who require skilled nursing care and related medical services—

(1) which is a hospital (other than a hospital primarily for the care and treatment of mentally ill or tuberculosis patients) or is operated in connection with a hospital, or

(2) in which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to practice medicine or surgery in the State.

(i) The term ''construction'' includes construction of new buildings, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings (including medical transportation facilities) and, in any case in which it will help to provide a service not previously provided in the community, equipment of any buildings; including architects' fees, but excluding the cost of off-site improvements and, except with respect to public health centers, the cost of the acquisition of land.

(j) The term ''cost'' as applied to construction or modernization means the amount found by the Surgeon General to be necessary for construction and modernization respectively, under a project, except that such term, as applied to a project for modernization of a facility for which a grant or loan is to be made from an allotment under section 291b(a)(2) of this title, does not include any amount found by the Surgeon General to be attributable to expansion of the bed capacity of such facility.

(k) The term ''modernization'' includes alteration, major repair (to the extent permitted by regulations), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and replacement of obsolete, built-in (as determined in accordance with regulations) equipment of existing buildings.

(*l*) The term ''title'', when used with reference to a site for a project, means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Surgeon General finds sufficient to assure for a period of not less than fifty years' undisturbed use and possession for the purposes of construction and operation of the project.

(July 1, 1944, ch. 373, title VI, § 645, formerly § 625, as added Aug. 18, 1964, Pub. L. 88–443, § 3(a), 78 Stat. 460; amended Sept. 4, 1964, Pub. L. 88–581, § 3(b), 78 Stat. 919; renumbered § 645 and amended June 30, 1970, Pub. L. 91–296, title I, §§ 113, 114(a), 116(f), 117, 118, 119(d), title II, § 201, 84 Stat. 340, 341, 342, 343, 344.)

PRIOR PROVISIONS

A prior section 291*o*, act July 1, 1944, ch. 373, title VI, § 641, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, related to a declaration of purpose with respect to diagnostic or treatment centers, chronic disease hospitals, rehabilitation facilities, and nursing homes, prior to the general amendment of this subchapter by Pub. L. 88–443. See section 291 of this title.

Provisions similar to those comprising this section were contained in section 291i(d) to (*o*), act July 1, 1944, ch. 373, title VI, § 631, as added Aug. 13, 1946, ch. 958, § 2, 60 Stat. 1041; amended June 19, 1948, ch. 544, § 1(b), 62 Stat. 531; Oct. 25, 1949, ch. 722, § 9, 63 Stat. 901; July 12, 1954, ch. 471, § 4(c) to (f), 68 Stat. 465, 466; Aug. 1, 1956, ch. 852, § 19(b), 70 Stat. 911; June 25, 1959, Pub. L. 86–70, § 31(c), 73 Stat. 149; July 12, 1960, Pub. L. 86–624, § 29(d), 74 Stat. 419; Oct. 5, 1961, Pub. L. 87–395, § 5, 75 Stat. 826; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(2), 76 Stat. 587, prior to the general amendment of this subchapter by Pub. L. 88–443.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–296, § 119(d), inserted reference to Trust Territory of the Pacific Islands.

Subsec. (b). Pub. L. 91–296, § 113, provided that Federal share of any project be in such amount, not in excess of two-thirds, as the State agency determined and authorized a higher Federal share of up to 90 per centum, in case of rural or urban poverty projects, and facilities which might reduce health costs through shared services, interfacility cooperation, and free-standing ambulatory care centers.

Subsec. (c). Pub. L. 91–296, § 114(a), inserted references to extended care facilities, facilities related to programs for home health services, and self-care units operated in connection with hospitals and education or training facilities for health professions personnel operated as an integral part of a hospital.

Subsec. (f). Pub. L. 91–296, § 116(f), substituted ''outpatient facility'' for ''diagnostic or treatment center'', inserted ''(located in or apart from a hospital)'' after ''means at facility'', inserted ''(including ambulatory inpatients)'' after ''ambulatory patients'', and added par. (3).

Subsec. (h). Pub. L. 91–296, § 117, inserted ''(including an extended care facility)'' after ''means a facility''.

Subsec. (i). Pub. L. 91–296, § 118, inserted reference to equipment of any buildings in cases in which such equipment will help to provide a service not previously provided in the community.

1964—Subsec. (c). Pub. L. 88–581 substituted ''nurses' home facilities'' for ''nurses' home and training facilities''.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 113 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to projects approved under this subchapter after June 30, 1970.

Section 114(a) of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to applications approved under this subchapter after June 30, 1970.

Section 116(g) of Pub. L. 91–296 provided that: ''The amendments made by subsection (e) [amending this section] and paragraphs (2) and (3) of subsection (f) of this section [amending section 291e of this title] shall apply with respect to applications approved under title VI of such Act [this subchapter] after June 30, 1970.''

Section 117 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to applications approved under this subchapter after June 30, 1970.

Section 118 of Pub. L. 91–296 provided that the amendment made by that section is effective with respect to projects approved under this subchapter after June 30, 1970.

Amendment by section 119(d) of Pub. L. 91–296 applicable with respect to allotments and grants therefrom under part A of this subchapter for fiscal years ending after June 30, 1970, and with respect to loan guarantees and loans under part B of this subchapter made after June 30, 1970, see section 119(e) of Pub. L. 91–296, set out as a note under section 291b of this title.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–581 effective with respect to applications for grants from appropriations for fiscal years beginning after June 30, 1965, see section 3(b) of Pub. L. 88–581, set out as a note under section 291c of this title.

TRANSFER OF FUNCTIONS

Office of Surgeon General abolished by section 3 of Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, and functions thereof transferred to Secretary of Health, Education, and Welfare by section 1 of Reorg. Plan No. 3 of 1966, set out as a note under section 202 of this title. Secretary of Health, Education, and Welfare redesignated Secretary of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 291e of this title; title 29 section 731.

§ 291*o*–1. Financial statements

In the case of any facility for which a grant, loan, or loan guarantee has been made under this subchapter, the applicant for such grant, loan, or loan guarantee (or, if appropriate, such other person as the Secretary may prescribe) shall file at least annually with the State agency for the State in which the facility is located a statement which shall be in such form, and contain such information, as the Secretary may require to accurately show—

(1) the financial operations of the facility, and

(2) the costs to the facility of providing health services in the facility and the charges made by the facility for providing such services,

during the period with respect to which the statement is filed.

(July 1, 1944, ch. 373, title VI, § 646, as added June 30, 1970, Pub. L. 91–296, title I, § 121, 84 Stat. 343.)

PRIOR PROVISIONS

Sections 291p to 291z were omitted in the general amendment of this subchapter by Pub. L. 88–443, Aug. 18, 1964, 78 Stat. 447.

Section 291p, act July 1, 1944, ch. 373, title VI, § 646, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, related to appropriations to States for carrying out purposes of section 291*o*(a) of this title.

Section 291q, act July 1, 1944, ch. 373, title VI, § 647, as added July 12, 1954, ch. 471, § 2, 68 Stat. 461, related to State application for funds for carrying out purposes of section 291*o*(a) of this title.

Section 291r, act July 1, 1944, ch. 373, title VI, § 648, as added July 12, 1954, ch. 471, § 2, 68 Stat. 462, related to allotments to States of appropriations made pursuant to section 291p of this title.

Section 291s, act July 1, 1944, ch. 373, title VI, § 651, as added July 12, 1954, ch. 471, § 3, 68 Stat. 462; amended Aug. 2, 1956, ch. 871, title IV, § 402, 70 Stat. 929; Aug. 14, 1958, Pub. L. 85–664, § 1(b), 72 Stat. 616; Oct. 5, 1961, Pub. L. 87–395, § 3(a), 75 Stat. 825, related to appropriations for assistance to States in carrying out purposes of section 291*o*(b) of this title.

Section 291t, act July 1, 1944, ch. 373, title VI, 652, as added July 12, 1954, ch. 471, § 3, 68 Stat. 462; amended Aug. 1, 1956, ch. 852, § 19(c), 70 Stat. 911; Oct. 5, 1961, Pub. L. 87–395, § 3(b), 75 Stat. 825; Sept. 25, 1962, Pub. L. 87–688, § 4(a)(3), 76 Stat. 587, related to allotments to States of sums appropriated under section 291s of this title.

Section 291u, act July 1, 1944, ch. 373, title VI, § 653, as added July 12, 1954, ch. 471, § 3, 68 Stat. 463, related to revision of regulations and State plans to cover benefits of sections 291s to 291v of this title.

Section 291v, act July 1, 1944, ch. 373, title VI, § 654, as added July 12, 1954, ch. 471, § 3, 68 Stat. 463; amended Aug. 14, 1959, Pub. L. 86–158, title II, § 201, 73 Stat. 349, related to applications and payments for projects under sections 291s to 291v of this title.

Section 291w, act July 1, 1944, ch. 373, title VI, § 661, as added Aug. 1, 1958, Pub. L. 85–589, 72 Stat. 489; amended Oct. 5, 1961, Pub. L. 87–395, § 6, 75 Stat. 826, related to an authorization of Surgeon General to make loans for construction.

Section 291x, act July 1, 1944, ch. 373, title VI, § 662, as added Aug. 1, 1958, Pub. L. 85–589, 72 Stat. 489, related to approval of construction loans by Surgeon General.

Section 291y, act July 1, 1944, ch. 373, title VI, § 663, as added Aug. 1, 1958, Pub. L. 85–589, 72 Stat. 489, related to terms of the loans with respect to sections 291w to 291z of this title.

Section 291z, act July 1, 1944, ch. 373, title VI, § 664, as added Aug. 1, 1958, Pub. L. 85–589, 72 Stat. 490, related to allotment of funds for loans under this subchapter.

SUBCHAPTER V—HEALTH PROFESSIONS EDUCATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 235, 300*l*–2, 12604 of this title; title 12 section 1715z–7; title 38 section 8201.

PART A—STUDENT LOANS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 10 section 16302.

SUBPART I—INSURED HEALTH EDUCATION ASSISTANCE LOANS TO GRADUATE STUDENTS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in title 20 section 1078–3.

§ 292. Statement of purpose

The purpose of this subpart is to enable the Secretary to provide a Federal program of student loan insurance for students in (and certain former students of) eligible institutions (as defined in section 292*o* of this title).

(July 1, 1944, ch. 373, title VII, § 701, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 1994.)

PRIOR PROVISIONS

A prior section 292, act July 1, 1944, ch. 373, title VII, § 700, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 201(b), 90 Stat. 2246, set forth limitations on use of appropriations, prior to repeal by Pub. L. 97–35, title XXVII, § 2715, Aug. 13, 1981, 95 Stat. 913.

Another prior section 292, act July 1, 1944, ch. 373, title VII, § 701, as added July 30, 1956, ch. 779, § 2, 70 Stat. 717; amended Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164, stated Congressional findings and declaration of policy respecting grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 701 of act July 1, 1944, was classified to section 292a of this title prior to the general revision of this subchapter by Pub. L. 102–408.

EFFECTIVE DATE

Section 103 of Pub. L. 102–408 provided that: ''The amendment made by section 102 [enacting this subchapter] takes effect on the date of the enactment of this Act [Oct. 13, 1992], except that section 708 of the Public Health Service Act [section 292g of this title], as added by section 102 of this Act, takes effect January 1, 1993. Until such date, section 732(c) of the Public Health Service Act [former section 294e(c) of this title], as in effect on the day before the date of the enactment of this Act, continues in effect in lieu of such section 708.''

STUDY ON EFFECTIVENESS OF HEALTH PROFESSIONS PROGRAMS

Section 309 of Pub. L. 102–408 provided that:

''(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the programs carried out under titles VII and VIII of the Public Health Service Act [this subchapter and subchapter VI of this chapter] (as amended by this Act) for the purpose of determining the effectiveness of such programs in—

''(1) increasing the number of primary care providers (physicians, physician assistants, nurse midwives, nurse practitioners and general dentists), nurses and allied health personnel;

''(2) improving the geographic distribution of health professionals in medically underserved and rural areas; and

''(3) recruiting and retaining as students in health professions schools individuals who are members of a minority group.

''(b) CERTAIN REQUIREMENTS.—The study conducted under subsection (a) shall determine—

''(1) whether funding under title VII of the Public Health Service Act [this subchapter] has increased the number of primary care practitioners (family medicine, general internal medicine, general pediatrics, general dentistry, and physician assistants) in medically underserved communities (as defined in section 799 of such Act [section 295p of this title]);

''(2) whether or not funding under such title VII has increased the number of allied health professionals in medically underserved or rural communities;

''(3) whether or not funding under title VIII of such Act [subchapter VI of this chapter] has increased the number of nurses in medically underserved or rural communities;

''(4) whether or not the various mechanisms under such titles VII and VIII (such as scholarships, fellowships, traineeships, loan repayment programs, project grants, and education centers) have been effective in producing health care professionals who work or practice in medically underserved and rural communities and the relative impact or effectiveness of each mechanism;

''(5) the duration of service in medically underserved communities (as defined in section 799 of such Act) of health professionals whose training was funded by such titles or who received financial incentives under such titles to practice in such communities;

''(6) the geographic distribution of former trainees under such titles who are practicing in medically underserved communities (as so defined);

''(7) with respect to the programs of such titles whose purpose is improving the health of individuals who are members of minority groups, whether such programs have had a significant impact on the number of such individuals entering the health professions; and

''(8) such other factors as may be relevant to the reauthorization of such title VII or VIII.

''(c) REPORT.—Not later than January 1, 1994, the Comptroller General of the United States shall complete the study required in subsection (a) and submit to the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives, a report describing the findings made as a result of the study and making such recommendations regarding the programs carried out under titles VII and VIII of the Public Health Service Act as the Comptroller General determines to be appropriate.''

§ 292a. Scope and duration of loan insurance program

(a) In general

The total principal amount of new loans made and installments paid pursuant to lines of credit (as defined in section 292*o* of this title) to borrowers covered by Federal loan insurance under this subpart shall not exceed $350,000,000 for fiscal year 1993, $375,000,000 for fiscal year 1994, and $425,000,000 for fiscal year 1995. If the total amount of new loans made and installments paid pursuant to lines of credit in any fiscal year is less than the ceiling established for such year, the difference between the loans made and installments paid and the ceiling shall be carried over to the next fiscal year and added to the ceiling applicable to that fiscal year, and if in any fiscal year no ceiling has been established, any difference carried over shall constitute the ceiling for making new loans (including loans to new borrowers) and paying installments for such fiscal year. Thereafter, Federal loan insurance pursuant to this subpart may be granted only for loans made (or for loan installments paid pursuant to lines of credit) to enable students, who have obtained prior loans insured under this subpart, to continue or complete their educational program or to obtain a loan under sec-

tion 292d(a)(1)(B) of this title to pay interest on such prior loans; but no insurance may be granted for any loan made or installment paid after September 30, 1998. The total principal amount of Federal loan insurance available under this subsection shall be granted by the Secretary without regard to any apportionment for the purpose of chapter 15 of title 31 and without regard to any similar limitation.

(b) Certain limitations and priorities

(1) Limitations regarding lenders, States, or areas

The Secretary may, if necessary to assure an equitable distribution of the benefits of this subpart, assign, within the maximum amounts specified in subsection (a) of this section, Federal loan insurance quotas applicable to eligible lenders, or to States or areas, and may from time to time reassign unused portions of these quotas.

(2) Priority for certain lenders

In providing certificates of insurance under section 292e of this title through comprehensive contracts, the Secretary shall give priority to eligible lenders that agree—

(A) to make loans to students at interest rates below the rates prevailing, during the period involved, for loans covered by Federal loan insurance pursuant to this subpart; or

(B) to make such loans under terms that are otherwise favorable to the student relative to the terms under which eligible lenders are generally making such loans during such period.

(c) Authority of Student Loan Marketing Association

(1) In general

Subject to paragraph (2), the Student Loan Marketing Association, established under part B of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.], is authorized to make advances on the security of, purchase, service, sell, consolidate, or otherwise deal in loans which are insured by the Secretary under this subpart, except that if any loan made under this subpart is included in a consolidated loan pursuant to the authority of the Association under part B of title IV of the Higher Education Act of 1965, the interest rate on such consolidated loan shall be set at the weighted average interest rate of all such loans offered for consolidation and the resultant per centum shall be rounded downward to the nearest one-eighth of 1 per centum, except that the interest rate shall be no less than the applicable interest rate of the guaranteed student loan program established under part B of title IV of the Higher Education Act of 1965. In the case of such a consolidated loan, the borrower shall be responsible for any interest which accrues prior to the beginning of the repayment period of the loan, or which accrues during a period in which principal need not be paid (whether or not such principal is in fact paid) by reason of any provision of the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.].

(2) Applicability of certain Federal regulations

With respect to Federal regulations for lenders, this subpart may not be construed to preclude the applicability of such regulations to the Student Loan Marketing Association or to any other entity in the business of purchasing student loans, including such regulations with respect to applications, contracts, and due diligence.

(July 1, 1944, ch. 373, title VII, § 702, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 1994.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (c)(1), is Pub. L. 89–329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. Part B of title IV of the Act is classified generally to part B (§ 1071 et seq.) of subchapter IV of chapter 28 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

PRIOR PROVISIONS

A prior section 292a, act July 1, 1944, ch. 373, title VII, § 701, formerly § 724, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 169; amended Oct. 22, 1965, Pub. L. 89–290, § 2(b), 79 Stat. 1056; Nov. 2, 1966, Pub. L. 89–709, § 2(c), 80 Stat. 1103; Aug. 16, 1968, Pub. L. 90–490, title I, § 105(c), 82 Stat. 774; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(c)(1)–(4), (f)(2)(B), 85 Stat. 431, 432, 435; renumbered § 701 and amended Oct. 12, 1976, Pub. L. 94–484, title II, § 201(c), (e), 90 Stat. 2247; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2716, 95 Stat. 913; Oct. 22, 1985, Pub. L. 99–129, title II, §§ 201(a), (b), 202, 203, 204(a), (b), 99 Stat. 525–527; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 620(a), 623, 628(1), 629(b)(1), (2), 102 Stat. 3141, 3142, 3145, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*l*), 103 Stat. 613, defined terms for purposes of this subchapter, prior to the general revision of this subchapter by Pub. L. 102–408. See sections 292*o* and 295p of this title.

Another prior section 292a, act July 1, 1944, ch. 373, title VII, § 702, as added July 30, 1956, ch. 779, § 2, 70 Stat. 717; amended Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164, defined ''Council'', ''construction'', ''cost of construction'', ''nonprofit institution'', and ''sciences related to health'' as applicable to grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 702 of act July 1, 1944, was classified to section 292b of this title prior to the general revision of this subchapter by Pub. L. 102–408.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 285n–2, 285*o*–2, 292e, 300u–5, 300w–9 of this title; title 20 section 1132i–1.

§ 292b. Limitations on individual insured loans and on loan insurance

(a) In general

The total of the loans made to a student in any academic year or its equivalent (as determined by the Secretary) which may be covered by Federal loan insurance under this subpart may not exceed $20,000 in the case of a student enrolled in a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, or podiatric medicine, and $12,500 in the case of a student enrolled in a school of pharmacy, public health, allied health, or chiropractic, or a graduate program in health administration or clinical psychology. The aggregate insured unpaid principal amount for all such insured loans made to any borrower shall not at

any time exceed $80,000 in the case of a borrower who is or was a student enrolled in a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, or podiatric medicine, and $50,000 in the case of a borrower who is or was a student enrolled in a school of pharmacy, public health, allied health, or chiropractic, or a graduate program in health administration or clinical psychology. The annual insurable limit per student shall not be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any year in excess of the annual limit.

(b) Extent of insurance liability

The insurance liability on any loan insured by the Secretary under this subpart shall be 100 percent of the unpaid balance of the principal amount of the loan plus interest. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under the provisions of section 292f or 292m of this title.

(July 1, 1944, ch. 373, title VII, § 703, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 1995.)

PRIOR PROVISIONS

A prior section 292b, act July 1, 1944, ch. 373, title VII, § 702, formerly § 725, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 169; amended Sept. 4, 1964, Pub. L. 88–581, § 3(c), 78 Stat. 919; Nov. 2, 1966, Pub. L. 89–709, § 2(d), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 3(a), 80 Stat. 1230; Dec. 5, 1967, Pub. L. 90–174, § 12(c), 81 Stat. 541; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; Nov. 18, 1971, Pub. L. 92–157, title I, § 108(a), 85 Stat. 460; renumbered § 702 and amended Oct. 12, 1976, Pub. L. 94–484, title II, §§ 201(c), 202(a)(1), (2), (b), 90 Stat. 2247, 2248; Oct. 22, 1985, Pub. L. 99–129, title II, § 205(a), 99 Stat. 527; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 620(b), 628(2), 102 Stat. 3141, 3145, related to National Advisory Council on Education for Health Professions, prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 292b, act July 1, 1944, ch. 373, title VII, § 703, as added July 30, 1956, ch. 779, § 2, 70 Stat. 717; amended Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164; Aug. 16, 1968, Pub. L. 90–490, title IV, § 403, 82 Stat. 789; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(a)(1), (b)(2), 84 Stat. 1310, 1311; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(2)(A), 85 Stat. 437, related to National Advisory Council on Health Research Facilities, providing for its establishment, composition, selection of members; its functions; and use of its services in administration of grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 703 of act July 1, 1994, was classified to section 292c of this title prior to repeal by Pub. L. 99–129.

§ 292c. Sources of funds

Loans made by eligible lenders in accordance with this subpart shall be insurable by the Secretary whether made from funds fully owned by the lender or from funds held by the lender in a trust or similar capacity and available for such loans.

(July 1, 1944, ch. 373, title VII, § 704, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 1996.)

PRIOR PROVISIONS

A prior section 292c, act July 1, 1944, ch. 373, title VII, § 703, formerly § 799, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 206, 84 Stat. 1354; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 109, 85 Stat. 461; renumbered § 703 and amended Oct. 12, 1976, Pub. L. 94–484, title II, §§ 201(c), 203, 90 Stat. 2247, 2248; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2717, 95 Stat. 914, related to advance funding for grants and contracts, prior to repeal by Pub. L. 99–129, title II, § 220(a), Oct. 22, 1985, 99 Stat. 543.

Another prior section 292c, act July 1, 1944, ch. 373, title VII, § 704, as added July 30, 1956, 779, § 2, 70 Stat. 718; amended Aug. 27, 1958, Pub. L. 85–777, § 1(a), 72 Stat. 933; Oct. 5, 1961, Pub. L. 87–395, § 8(a), (d), 75 Stat. 827; Oct. 17, 1962, Pub. L. 87–838, § 4(a), 76 Stat. 1074; Aug. 9, 1965, Pub. L. 89–115, § 2(a), 79 Stat. 448; Aug. 16, 1968, Pub. L. 90–490, title IV, § 401(a), 82 Stat. 789, related to authorization of appropriations and availability of funds for grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 704 of act July 1, 1944, was classified to section 292d of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 292d. Eligibility of borrowers and terms of insured loans

(a) In general

A loan by an eligible lender shall be insurable by the Secretary under the provisions of this subpart only if—

(1) made to—

(A) a student who—

(i)(I) has been accepted for enrollment at an eligible institution, or (II) in the case of a student attending an eligible institution, is in good standing at that institution, as determined by the institution;

(ii) is or will be a full-time student at the eligible institution;

(iii) has agreed that all funds received under such loan shall be used solely for tuition, other reasonable educational expenses, including fees, books, and laboratory expenses, and reasonable living expenses, incurred by such students;

(iv) if required under section 453 of title 50, Appendix, to present himself for and submit to registration under such section, has presented himself and submitted to registration under such section; and

(v) in the case of a pharmacy student, has satisfactorily completed three years of training; or

(B) an individual who—

(i) has previously had a loan insured under this subpart when the individual was a full-time student at an eligible institution;

(ii) is in a period during which, pursuant to paragraph (2), the principal amount of such previous loan need not be paid;

(iii) has agreed that all funds received under the proposed loan shall be used solely for repayment of interest due on previous loans made under this subpart; and

(iv) if required under section 453 of title 50, Appendix, to present himself for and submit to registration under such section, has presented himself and submitted to registration under such section;

(2) evidenced by a note or other written agreement which—

(A) is made without security and without endorsement, except that if the borrower is

a minor and such note or other written agreement executed by him would not, under the applicable law, create a binding obligation, an endorsement may be required;

(B) provides for repayment of the principal amount of the loan in installments over a period of not less than 10 years (unless sooner repaid) nor more than 25 years beginning not earlier than 9 months nor later than 12 months after the date of—

(i) the date on which—

(I) the borrower ceases to be a participant in an accredited internship or residency program of not more than four years in duration;

(II) the borrower completes the fourth year of an accredited internship or residency program of more than four years in duration; or

(III) the borrower, if not a participant in a program described in subclause (I) or (II), ceases to carry, at an eligible institution, the normal full-time academic workload as determined by the institution; or

(ii) the date on which a borrower who is a graduate of an eligible institution ceases to be a participant in a fellowship training program not in excess of two years or a participant in a full-time educational activity not in excess of two years, which—

(I) is directly related to the health profession for which the borrower prepared at an eligible institution, as determined by the Secretary; and

(II) may be engaged in by the borrower during such a two-year period which begins within twelve months after the completion of the borrower's participation in a program described in subclause (I) or (II) of clause (i) or prior to the completion of the borrower's participation in such program,

except as provided in subparagraph (C), except that the period of the loan may not exceed 33 years from the date of execution of the note or written agreement evidencing it, and except that the note or other written instrument may contain such provisions relating to repayment in the event of default in the payment of interest or in the payment of the costs of insurance premiums, or other default by the borrower, as may be authorized by regulations of the Secretary in effect at the time the loan is made;

(C) provides that periodic installments of principal and interest need not be paid, but interest shall accrue, during any period (i) during which the borrower is pursuing a full-time course of study at an eligible institution (or at an institution defined by section 1088(a) of title 20); (ii) not in excess of four years during which the borrower is a participant in an accredited internship or residency program (including any period in such a program described in subclause (I) or subclause (II) of subparagraph (B)(i)); (iii) not in excess of three years, during which the borrower is a member of the Armed Forces of the United States; (iv) not in excess of three years during which the borrower is in service as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.]; (v) not in excess of three years during which the borrower is a member of the National Health Service Corps; (vi) not in excess of three years during which the borrower is in service as a full-time volunteer under title I of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4951 et seq.]; (vii) not in excess of 3 years, for a borrower who has completed an accredited internship or residency training program in osteopathic general practice, family medicine, general internal medicine, preventive medicine, or general pediatrics and who is practicing primary care; (viii) not in excess of 1 year, for borrowers who are graduates of schools of chiropractic; (ix) any period not in excess of two years which is described in subparagraph (B)(ii); and (x) in addition to all other deferments for which the borrower is eligible under clauses (i) through (ix), any period during which the borrower is a member of the Armed Forces on active duty during the Persian Gulf conflict, and any period described in clauses (i) through (x) shall not be included in determining the 25-year period described in subparagraph (B);

(D) provides for interest on the unpaid principal balance of the loan at a yearly rate, not exceeding the applicable maximum rate prescribed and defined by the Secretary (within the limits set forth in subsection (b) of this section) on a national, regional, or other appropriate basis, which interest shall be compounded not more frequently than annually and payable in installments over the period of the loan except as provided in subparagraph (C), except that the note or other written agreement may provide that payment of any interest may be deferred until not later than the date upon which repayment of the first installment of principal falls due or the date repayment of principal is required to resume (whichever is applicable) and may further provide that, on such date, the amount of the interest which has so accrued may be added to the principal for the purposes of calculating a repayment schedule;

(E) offers, in accordance with criteria prescribed by regulation by the Secretary, a schedule for repayment of principal and interest under which payment of a portion of the principal and interest otherwise payable at the beginning of the repayment period (as defined in such regulations) is deferred until a later time in the period;

(F) entitles the borrower to accelerate without penalty repayment of the whole or any part of the loan;

(G) provides that the check for the proceeds of the loan shall be made payable jointly to the borrower and the eligible institution in which the borrower is enrolled; and

(H) contains such other terms and conditions consistent with the provisions of this subpart and with the regulations issued by the Secretary pursuant to this subpart, as may be agreed upon by the parties to such

loan, including, if agreed upon, a provision requiring the borrower to pay to the lender, in addition to principal and interest, amounts equal to the insurance premiums payable by the lender to the Secretary with respect to such loan; and

(3) subject to the consent of the student and subject to applicable law, the eligible lender has obtained from the student appropriate demographic information regarding the student, including racial or ethnic background.

(b) Limitation on rate of interest

The rate of interest prescribed and defined by the Secretary for the purpose of subsection (a)(2)(D) of this section may not exceed the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the previous quarter plus 3 percentage points, rounded to the next higher one-eighth of 1 percent.

(c) Minimum annual payment by borrower

The total of the payments by a borrower during any year or any repayment period with respect to the aggregate amount of all loans to that borrower which are insured under this subpart shall not be less than the annual interest on the outstanding principal, except as provided in subsection (a)(2)(C) of this section, unless the borrower, in the written agreement described in subsection (a)(2) of this section, agrees to make payments during any year or any repayment period in a lesser amount.

(d) Applicability of certain laws on rate or amount of interest

No provision of any law of the United States (other than subsections (a)(2)(D) and (b) of this section) or of any State that limits the rate or amount of interest payable on loans shall apply to a loan insured under this subpart.

(e) Determination regarding forbearance

Any period of time granted to a borrower under this subpart in the form of forbearance on the loan shall not be included in the 25-year total loan repayment period under subsection (a)(2)(C) of this section.

(f) Loan repayment schedule

Lenders and holders under this subpart shall offer borrowers graduated loan repayment schedules that, during the first 5 years of loan repayment, are based on the borrower's debt-to-income ratio.

(g) Rule of construction regarding determination of need of students

With respect to any determination of the financial need of a student for a loan covered by Federal loan insurance under this subpart, this subpart may not be construed to limit the authority of any school to make such allowances for students with special circumstances as the school determines appropriate.

(h) Definitions

For purposes of this section:

(1) The term ''active duty'' has the meaning given such term in section 101(18) of title 37, except that such term does not include active duty for training.

(2) The term ''Persian Gulf conflict'' means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

(July 1, 1944, ch. 373, title VII, § 705, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 1996; amended June 10, 1993, Pub. L. 103–43, title XX, § 2014(a)(1), 107 Stat. 215.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsec. (a)(2)(C), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (a)(2)(C), is Pub. L. 93–113, Oct. 1, 1973, 87 Stat. 394, as amended. Title I of the Act is classified generally to subchapter I (§ 4951 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4951 of this title and Tables.

PRIOR PROVISIONS

A prior section 292d, act July 1, 1944, ch. 373, title VII, § 704, formerly § 799A, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 207, 84 Stat. 1355; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 110(2), 85 Stat. 461; July 12, 1974, Pub. L. 93–348, title I, § 105, 88 Stat. 347; renumbered § 704, Oct. 12, 1976, Pub. L. 94–484, title II, § 201(c), 90 Stat. 2247; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 620(c), 628(3), 629(b)(2), 102 Stat. 3141, 3145, 3146, prohibited discrimination on the basis of sex, prior to the general revision of this subchapter by Pub. L. 102–408. See section 295m of this title.

Another prior section 292d, act July 1, 1944, ch. 373, title VII, § 705, as added July 30, 1956, ch. 779, § 2, 70 Stat. 718; amended Aug. 27, 1958, Pub. L. 85–777, § 1(b), 72 Stat. 933; Oct. 5, 1961, Pub. L. 87–395, § 8(b), (d), 75 Stat. 827; Oct. 17, 1962, Pub. L. 87–838, § 4(b), 76 Stat. 1074; Sept. 24, 1963, Pub. L. 88–129, §§ 2(a), 3(a), 77 Stat. 164, 173; Aug. 9, 1965, Pub. L. 89–115, § 2(b), 79 Stat. 448; Aug. 16, 1968, Pub. L. 90–490, title IV, § 401(b), 82 Stat. 789; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(1), (2)(A), 85 Stat. 437, related to applications for grants for construction of health research facilities, providing for time of filing, eligibility, recommendation and approval and requirement of findings, conditional approval, and matters considered, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 705 of act July 1, 1944, was classified to section 292e of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1993—Subsec. (a)(2)(H), (I). Pub. L. 103–43 redesignated subpar. (I) as (H) and struck out former subpar. (H) which read as follows: ''notwithstanding the provisions of the Fair Debt Collection Practices Act, authorizes an institution or postgraduate training program attended by the borrower to assist in the collection of any loan that becomes delinquent, including providing information concerning the borrower to the Secretary and to past and present lenders and holders of the borrower's loans; and''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 292a, 292e, 292n, 292*o* of this title.

§ 292e. Certificate of loan insurance; effective date of insurance

(a) In general

(1) Authority for issuance of certificate

If, upon application by an eligible lender, made upon such form, containing such infor-

mation, and supported by such evidence as the Secretary may require, and otherwise in conformity with this section, the Secretary finds that the applicant has made a loan to an eligible borrower which is insurable under the provisions of this subpart, he may issue to the applicant a certificate of insurance covering the loan and setting forth the amount and terms of the insurance.

(2) Effective date of insurance

Insurance evidenced by a certificate of insurance pursuant to subsection (a)(1) of this section shall become effective upon the date of issuance of the certificate, except that the Secretary is authorized, in accordance with regulations, to issue commitments with respect to proposed loans, or with respect to lines (or proposed lines) of credit, submitted by eligible lenders, and in that event, upon compliance with subsection (a)(1) of this section by the lender, the certificate of insurance may be issued effective as of the date when any loan, or any payment by the lender pursuant to a line of credit, to be covered by such insurance is made to a student described in section 292d(a)(1) of this title. Such insurance shall cease to be effective upon 60 days' default by the lender in the payment of any installment of the premiums payable pursuant to section 292g of this title.

(3) Certain agreements for lenders

An application submitted pursuant to subsection (a)(1) of this section shall contain—

(A) an agreement by the applicant to pay, in accordance with regulations, the premiums fixed by the Secretary pursuant to section 292g of this title; and

(B) an agreement by the applicant that if the loan is covered by insurance the applicant will submit such supplementary reports and statements during the effective period of the loan agreement, upon such forms, at such times, and containing such information as the Secretary may prescribe by or pursuant to regulation.

(b) Authority regarding comprehensive insurance coverage

(1) In general

In lieu of requiring a separate insurance application and issuing a separate certificate of insurance for each loan made by an eligible lender as provided in subsection (a) of this section, the Secretary may, in accordance with regulations consistent with section 292a of this title, issue to any eligible lender applying therefor a certificate of comprehensive insurance coverage which shall, without further action by the Secretary, insure all insurable loans made by that lender, on or after the date of the certificate and before a specified cutoff date, within the limits of an aggregate maximum amount stated in the certificate. Such regulations may provide for conditioning such insurance, with respect to any loan, upon compliance by the lender with such requirements (to be stated or incorporated by reference in the certificate) as in the Secretary's judgment will best achieve the purpose of this subsection while protecting the financial interest of the United States and promoting the objectives of this subpart, including (but not limited to) provisions as to the reporting of such loans and information relevant thereto to the Secretary and as to the payment of initial and other premiums and the effect of default therein, and including provision for confirmation by the Secretary from time to time (through endorsement of the certificate) of the coverage of specific new loans by such certificate, which confirmation shall be incontestable by the Secretary in the absence of fraud or misrepresentation of fact or patent error.

(2) Lines of credit beyond cutoff date

If the holder of a certificate of comprehensive insurance coverage issued under this subsection grants to a borrower a line of credit extending beyond the cutoff date specified in that certificate, loans or payments thereon made by the holder after that date pursuant to the line of credit shall not be deemed to be included in the coverage of that certificate except as may be specifically provided therein; but, subject to the limitations of section 292a of this title, the Secretary may, in accordance with regulations, make commitments to insure such future loans or payments, and such commitments may be honored either as provided in subsection (a) of this section or by inclusion of such insurance in comprehensive coverage under this subsection for the period or periods in which such future loans or payments are made.

(c) Assignment of insurance rights

The rights of an eligible lender arising under insurance evidenced by a certificate of insurance issued to it under this section may be assigned by such lender, subject to regulation by the Secretary, only to—

(1) another eligible lender (including a public entity in the business of purchasing student loans); or

(2) the Student Loan Marketing Association.

(d) Effect of consolidation of obligations

The consolidation of the obligations of two or more federally insured loans obtained by a borrower in any fiscal year into a single obligation evidenced by a single instrument of indebtedness shall not affect the insurance by the United States. If the loans thus consolidated are covered by separate certificates of insurance issued under subsection (a) of this section, the Secretary may upon surrender of the original certificates issue a new certificate of insurance in accordance with that subsection upon the consolidated obligation. If the loans thus consolidated are covered by a single comprehensive certificate issued under subsection (b) of this section, the Secretary may amend that certificate accordingly.

(e) Rule of construction regarding consolidation of debts

Nothing in this section shall be construed to preclude the lender and the borrower, by mutual agreement, from consolidating all of the borrower's debts into a single instrument under the terms applicable to an insured loan made at the same time as the consolidation. The lender or

loan holder should provide full information to the borrower concerning the advantages and disadvantages of loan consolidation. Nothing in this section shall be construed to preclude the consolidation of the borrower's loans insured under this subpart under section 1078–3 of title 20. Any loans insured pursuant to this subpart that are consolidated under section 1078–3 of title 20 shall not be eligible for special allowance payments under section 1087–1 of title 20.

(July 1, 1944, ch. 373, title VII, § 706, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2000.)

PRIOR PROVISIONS

A prior section 292e, act July 1, 1944, ch. 373, title VII, § 705, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 204, 90 Stat. 2248; amended Nov. 9, 1978, Pub. L. 95–623, § 11(f), 92 Stat. 3456; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2718, 95 Stat. 914, related to establishment and maintenance of records and annual financial reports and audits, prior to the general revision of this subchapter by Pub. L. 102–408. See section 295o(e) of this title.

Another prior section 292e, act July 1, 1944, ch. 373, title VII, § 706, as added July 30, 1956, 779, § 2, 70 Stat. 719; amended Oct. 5, 1961, Pub. L. 87–395, § 8(c), (d), 75 Stat. 827; Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164; Aug. 16, 1968, Pub. L. 90–490, title IV, § 402, 82 Stat. 789; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(2)(A), (B), 85 Stat. 437, limited amount of grant available for construction of health research facilities, including provisions relating to its maximum, reservation of amount, manner of payment, and exclusion of amounts granted by certain other funds, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 706 of act July 1, 1944, was classified to section 292f of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 706 of act July 1, 1944, was classified to section 230 of this title prior to repeal by act Apr. 27, 1956, ch. 211, § 5(e), 70 Stat. 117.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 292a, 292f, 300t–12 of this title.

§ 292f. Default of borrower

(a) Conditions for payment to beneficiary

Upon default by the borrower on any loan covered by Federal loan insurance pursuant to this subpart, and after a substantial collection effort (including, subject to subsection (h) of this section, commencement and prosecution of an action) as determined under regulations of the Secretary, the insurance beneficiary shall promptly notify the Secretary and the Secretary shall, if requested (at that time or after further collection efforts) by the beneficiary, or may on his own motion, if the insurance is still in effect, pay to the beneficiary the amount of the loss sustained by the insured upon that loan as soon as that amount has been determined. Not later than one year after October 13, 1992, the Secretary shall establish performance standards for lenders and holders of loans under this subpart, including fees to be imposed for failing to meet such standards.

(b) Subrogation

Upon payment by the Secretary of the amount of the loss pursuant to subsection (a) of this section, the United States shall be subrogated for all of the rights of the holder of the obligation upon the insured loan and shall be entitled to an assignment of the note or other evidence of the insured loan by the insurance beneficiary. If the net recovery made by the Secretary on a loan after deduction of the cost of that recovery (including reasonable administrative costs) exceeds the amount of the loss, the excess shall be paid over to the insured. The Secretary may sell without recourse to eligible lenders (or other entities that the Secretary determines are capable of dealing in such loans) notes or other evidence of loans received through assignment under the first sentence.

(c) Forbearance

Nothing in this section or in this subpart shall be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the insured loan and approved by the Secretary or to preclude forbearance by the Secretary in the enforcement of the insured obligation after payment on that insurance.

(d) Reasonable care and diligence regarding loans

Nothing in this section or in this subpart shall be construed to excuse the eligible lender or holder of a federally insured loan from exercising reasonable care and diligence in the making of loans under the provisions of this subpart and from exercising a substantial effort in the collection of loans under the provisions of this subpart. If the Secretary, after reasonable notice and opportunity for hearing to an eligible lender, finds that the lender has failed to exercise such care and diligence, to exercise such substantial efforts, to make the reports and statements required under section 292e(a)(3) of this title, or to pay the required Federal loan insurance premiums, he shall disqualify that lender from obtaining further Federal insurance on loans granted pursuant to this subpart until he is satisfied that its failure has ceased and finds that there is reasonable assurance that the lender will in the future exercise necessary care and diligence, exercise substantial effort, or comply with such requirements, as the case may be.

(e) Definitions

For purposes of this section:

(1) The term ''insurance beneficiary'' means the insured or its authorized assignee in accordance with section 292e(c) of this title.

(2) The term ''amount of the loss'' means, with respect to a loan, unpaid balance of the principal amount and interest on such loan, less the amount of any judgment collected pursuant to default proceedings commenced by the eligible lender or holder involved.

(3) The term ''default'' includes only such defaults as have existed for 120 days.

(f) Reductions in Federal reimbursements or payments for defaulting borrowers

The Secretary shall, after notice and opportunity for a hearing, cause to be reduced Federal reimbursements or payments for health services under any Federal law to borrowers who are practicing their professions and have defaulted on their loans insured under this subpart in amounts up to the remaining balance of such

loans. Procedures for reduction of payments under the medicare program are provided under section 1395ccc of this title. Notwithstanding such section 1395ccc of this title, any funds recovered under this subsection shall be deposited in the insurance fund established under section 292i of this title.

(g) Conditions for discharge of debt in bankruptcy

A debt which is a loan insured under the authority of this subpart may be released by a discharge in bankruptcy under any chapter of title 11, only if such discharge is granted—

(1) after the expiration of the seven-year period beginning on the first date when repayment of such loan is required, exclusive of any period after such date in which the obligation to pay installments on the loan is suspended;

(2) upon a finding by the Bankruptcy Court that the nondischarge of such debt would be unconscionable; and

(3) upon the condition that the Secretary shall not have waived the Secretary's rights to apply subsection (f) of this section to the borrower and the discharged debt.

(h) Requirement regarding actions for default

(1) In general

With respect to the default by a borrower on any loan covered by Federal loan insurance under this subpart, the Secretary shall, under subsection (a) of this section, require an eligible lender or holder to commence and prosecute an action for such default unless—

(A) in the determination of the Secretary—

(i) the eligible lender or holder has made reasonable efforts to serve process on the borrower involved and has been unsuccessful with respect to such efforts, or

(ii) prosecution of such an action would be fruitless because of the financial or other circumstances of the borrower;

(B) for such loans made before November 4, 1988, the loan involved was made in an amount of less than $5,000; or

(C) for such loans made after November 4, 1988, the loan involved was made in an amount of less than $2,500.

(2) Relationship to claim for payment

With respect to an eligible lender or holder that has commenced an action pursuant to subsection (a) of this section, the Secretary shall make the payment required in such subsection, or deny the claim for such payment, not later than 60 days after the date on which the Secretary determines that the lender or holder has made reasonable efforts to secure a judgment and collect on the judgment entered into pursuant to this subsection.

(3) State court judgments

With respect to any State court judgment that is obtained by a lender or holder against a borrower for default on a loan insured under this subpart and that is subrogated to the United States under subsection (b) of this section, any United States attorney may register such judgment with the Federal courts for enforcement.

(i) Inapplicability of Federal and State statute of limitations on actions for loan collection

Notwithstanding any other provision of Federal or State law, there shall be no limitation on the period within which suit may be filed, a judgment may be enforced, or an offset, garnishment, or other action may be initiated or taken by the Secretary, the Attorney General, or other administrative head of another Federal agency, as the case may be, for the repayment of the amount due from a borrower on a loan made under this subpart that has been assigned to the Secretary under subsection (b) of this section.

(j) School collection assistance

An institution or postgraduate training program attended by a borrower may assist in the collection of any loan of that borrower made under this subpart which becomes delinquent, including providing information concerning the borrower to the Secretary and to past and present lenders and holders of the borrower's loans, contacting the borrower in order to encourage repayment, and withholding services in accordance with regulations issued by the Secretary under section 292n(a)(7) of this title. The institution or postgraduate training program shall not be subject to section 1692g of title 15 for purposes of carrying out activities authorized by this section.

(July 1, 1944, ch. 373, title VII, § 707, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2002; amended June 10, 1993, Pub. L. 103–43, title XX, § 2014(a)(2), 107 Stat. 215.)

PRIOR PROVISIONS

A prior section 292f, act July 1, 1944, ch. 373, title VII, § 706, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 204, 90 Stat. 2249, authorized contracts under this subchapter without regard to certain provisions, prior to the general revision of this subchapter by Pub. L. 102–408. See section 295*o*(d) of this title.

Another prior section 292f, act July 1, 1944, ch. 373, title VII, § 707, as added July 30, 1956, ch. 779, § 2, 70 Stat. 720; amended Oct. 5, 1961, Pub. L. 87–395, § 8(d), 75 Stat. 827; Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(2)(A), 85 Stat. 437, provided for recapture of payments relating to grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 707 of act July 1, 1944, was classified to section 292g of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1993—Subsec. (g)(1). Pub. L. 103–43, § 2014(a)(2)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''after the expiration of the five-year period beginning on the first date, as specified in subparagraphs (B) and (C) of section 292d(a)(2) of this title, when repayment of such loan is required;''.

Subsec. (j). Pub. L. 103–43, § 2014(a)(2)(B), added subsec. (j).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 292b, 292h, 292*o* of this title.

§ 292g. Risk-based premiums

(a) Authority

With respect to a loan made under this subpart on or after January 1, 1993, the Secretary,

in accordance with subsection (b) of this section, shall assess a risk-based premium on an eligible borrower and, if required under this section, an eligible institution that is based on the default rate of the eligible institution involved (as defined in section 292*o* of this title).

(b) Assessment of premium

Except as provided in subsection (d)(2) of this section, the risk-based premium to be assessed under subsection (a) of this section shall be as follows:

(1) Low-risk rate

With respect to an eligible borrower seeking to obtain a loan for attendance at an eligible institution that has a default rate of not to exceed five percent, such borrower shall be assessed a risk-based premium in an amount equal to 6 percent of the principal amount of the loan.

(2) Medium-risk rate

(A) In general

With respect to an eligible borrower seeking to obtain a loan for attendance at an eligible institution that has a default rate of in excess of five percent but not to exceed 10 percent—

(i) such borrower shall be assessed a risk-based premium in an amount equal to 8 percent of the principal amount of the loan; and

(ii) such institution shall be assessed a risk-based premium in an amount equal to 5 percent of the principal amount of the loan.

(B) Default management plan

An institution of the type described in subparagraph (A) shall prepare and submit to the Secretary for approval, an annual default management plan, that shall specify the detailed short-term and long-term procedures that such institution will have in place to minimize defaults on loans to borrowers under this subpart. Under such plan the institution shall, among other measures, provide an exit interview to all borrowers that includes information concerning repayment schedules, loan deferments, forbearance, and the consequences of default.

(3) High-risk rate

(A) In general

With respect to an eligible borrower seeking to obtain a loan for attendance at an eligible institution that has a default rate of in excess of 10 percent but not to exceed 20 percent—

(i) such borrower shall be assessed a risk-based premium in an amount equal to 8 percent of the principal amount of the loan; and

(ii) such institution shall be assessed a risk-based premium in an amount equal to 10 percent of the principal amount of the loan.

(B) Default management plan

An institution of the type described in subparagraph (A) shall prepare and submit to the Secretary for approval a plan that meets the requirements of paragraph (2)(B).

(4) Ineligibility

An individual shall not be eligible to obtain a loan under this subpart for attendance at an institution that has a default rate in excess of 20 percent.

(c) Reduction of risk-based premium

Lenders shall reduce by 50 percent the risk-based premium to eligible borrowers if a credit worthy parent or other responsible party co-signs the loan note.

(d) Administrative waivers

(1) Hearing

The Secretary shall afford an institution not less than one hearing, and may consider mitigating circumstances, prior to making such institution ineligible for participation in the program under this subpart.

(2) Exceptions

In carrying out this section with respect to an institution, the Secretary may grant an institution a waiver of requirements of paragraphs (2) through (4) of subsection (b) of this section if the Secretary determines that the default rate for such institution is not an accurate indicator because the volume of the loans under this subpart made by such institution has been insufficient.

(3) Transition for certain institutions

During the 3-year period beginning on October 13, 1992—

(A) subsection (b)(4) of this section shall not apply with respect to any eligible institution that is a Historically Black College or University; and

(B) any such institution that has a default rate in excess of 20 percent, and any eligible borrower seeking a loan for attendance at the institution, shall be subject to subsection (b)(3) of this section to the same extent and in the same manner as eligible institutions and borrowers described in such subsection.

(e) Payoff to reduce risk category

An institution may pay off the outstanding principal and interest owed by the borrowers of such institution who have defaulted on loans made under this subpart in order to reduce the risk category of the institution.

(July 1, 1944, ch. 373, title VII, § 708, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2004.)

PRIOR PROVISIONS

A prior section 292g, act July 1, 1944, ch. 373, title VII, § 707, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 205, 90 Stat. 2249; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(r), 91 Stat. 395, related to delegation of authority by the Secretary, prior to the general revision of this subchapter by Pub. L. 102–408. See section 295*o*(b) of this title.

Another prior section 292g, act July 1, 1944, ch. 373, title VII, § 708, as added July 30, 1956, ch. 779, § 2, 70 Stat. 720; amended Oct. 5, 1961, Pub. L. 87–395, § 8(d), 75 Stat. 827; Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164, prohibited Federal interference with administration of institutions where grants were made for construction of

health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 708 of act July 1, 1944, was classified to section 292h of this title prior to the general revision of this subchapter by Pub. L. 102–408.

EFFECTIVE DATE

Section effective Jan. 1, 1993, and until such date, former section 294e(c) of this title, as in effect on the day before Oct. 13, 1992, to continue in effect in lieu of this section, see section 103 of Pub. L. 102–408, set out as a note under section 292 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 292e of this title.

§ 292h. Office for Health Education Assistance Loan Default Reduction

(a) Establishment

The Secretary shall establish, within the Division of Student Assistance of the Bureau of Health Professions, an office to be known as the Office for Health Education Assistance Loan Default Reduction (in this section referred to as the ''Office'').

(b) Purpose and functions

It shall be the purpose of the Office to achieve a reduction in the number and amounts of defaults on loans guaranteed under this subpart. In carrying out such purpose the Office shall—

(1) conduct analytical and evaluative studies concerning loans and loan defaults;

(2) carry out activities designed to reduce loan defaults;

(3) respond to special circumstances that may exist in the financial lending environment that may lead to loan defaults;

(4) coordinate with other Federal entities that are involved with student loan programs, including—

(A) with respect to the Department of Education, in the development of a single student loan application form, a single student loan deferment form, a single disability form, and a central student loan database; and

(B) with respect to the Department of Justice, in the recovery of payments from health professionals who have defaulted on loans guaranteed under this subpart;

(5) provide technical assistance to borrowers, lenders, holders, and institutions concerning deferments and collection activities; and

(6) prepare and submit a report not later than March 31, 1993, and annually, thereafter, to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce of the House of Representatives concerning—

(A) the default rates for each—

(i) institution described in section 292*o*(1) of this title that is participating in the loan programs under this subpart;

(ii) lender participating in the loan program under this subpart; and

(iii) loan holder under this subpart;

(B) the total amounts recovered pursuant to section 292f(b) of this title during the preceding fiscal year; and

(C) a plan for improving the extent of such recoveries during the current fiscal year.

(c) Additional duties

In conjunction with the report submitted under subsection (b) of this section, the Office shall—

(1) compile, and publish in the Federal Register, a list of the borrowers who are in default under this subpart; and

(2) send the report and notices of default with respect to these borrowers to relevant Federal agencies and to schools, school associations, professional and specialty associations, State licensing boards, hospitals with which such borrowers may be associated, and any other relevant organizations.

(d) Allocation of funds for Office

In the case of amounts reserved under section 292i(a)(2)(B) of this title for obligation under this subsection, the Secretary may obligate the amounts for the purpose of administering the Office, including 7 full-time equivalent employment positions for such Office. With respect to such purpose, amounts made available under the preceding sentence are in addition to amounts made available to the Health Resources and Services Administration for program management for the fiscal year involved. With respect to such employment positions, the positions are in addition to the number of full-time equivalent employment positions that otherwise is authorized for the Department of Health and Human Services for the fiscal year involved.

(July 1, 1944, ch. 373, title VII, § 709, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2006.)

PRIOR PROVISIONS

A prior section 292h, act July 1, 1944, ch. 373, title VII, § 708, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 206, 90 Stat. 2250; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(a), 91 Stat. 389; Nov. 9, 1978, Pub. L. 95–623, § 12(a), 92 Stat. 3457; Dec. 11, 1980, Pub. L. 96–511, § 4(c), 94 Stat. 2826; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2719, 95 Stat. 914; Oct. 22, 1985, Pub. L. 99–129, title II, § 220(b), 99 Stat. 543; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 616(c)(1), 626, 102 Stat. 3139, 3144; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(a), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(m), 103 Stat. 613, related to health professions data, prior to the general revision of this subchapter by Pub. L. 102–408. See section 295k of this title.

Another prior section 292h, act July 1, 1944, ch. 373, title VII, § 709, as added July 30, 1956, ch. 779, § 2, 70 Stat. 720; amended Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(2)(C), 85 Stat. 437, provided for issuance of general, administrative, and other regulations for implementation of grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 709 of act July 1, 1944, was classified to section 292i of this title prior to repeal by Pub. L. 97–35, title XXVII, § 2720(a), Aug. 13, 1981, 95 Stat. 915.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 292i of this title.

§ 292i. Insurance account

(a) In general

(1) Establishment

There is hereby established a student loan insurance account (in this section referred to as the ''Account'') which shall be available without fiscal year limitation to the Secretary for making payments in connection with the collection and default of loans insured under this subpart by the Secretary.

(2) Funding

(A) Except as provided in subparagraph (B), all amounts received by the Secretary as premium charges for insurance and as receipts, earnings, or proceeds derived from any claim or other assets acquired by the Secretary in connection with his operations under this subpart, and any other moneys, property, or assets derived by the Secretary from the operations of the Secretary in connection with this section, shall be deposited in the Account.

(B) With respect to amounts described in subparagraph (A) that are received by the Secretary for any of the fiscal years 1993 through 1996, the Secretary may, before depositing such amounts in the Account, reserve from the amounts each such fiscal year not more than $1,000,000 for obligation under section 292h(d) of this title.

(3) Expenditures

All payments in connection with the default of loans insured by the Secretary under this subpart shall be paid from the Account.

(b) Contingent authority for issuance of notes or other obligations

If at any time the moneys in the Account are insufficient to make payments in connection with the collection or default of any loan insured by the Secretary under this subpart, the Secretary of the Treasury may lend the Account such amounts as may be necessary to make the payments involved, subject to the Federal Credit Reform Act of 1990 [2 U.S.C. 661 et seq.].

(July 1, 1944, ch. 373, title VII, § 710, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2007.)

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (b), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, § 13201(a), Nov. 5, 1990, 104 Stat. 1388–609, which is classified generally to subchapter III (§ 661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 621 of Title 2 and Tables.

PRIOR PROVISIONS

A prior section 292i, act July 1, 1944, ch. 373, title VII, § 709, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 207, 90 Stat. 2252; amended Nov. 9, 1978, Pub. L. 95–623, § 12(b), 92 Stat. 3457, related to shared schedule residency training positions, prior to repeal by Pub. L. 97–35, title XXVII, § 2720(a), Aug. 13, 1981, 95 Stat. 915.

Another prior section 292i, act July 1, 1944, ch. 373, title VII, § 710, as added July 30, 1956, ch. 779, § 2, 70 Stat. 720; amended Sept. 24, 1963, Pub. L. 88–129, § 2(a), 77 Stat. 164; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(2)(A), 85 Stat. 437, related to preparation and submission of annual reports to the Congress through the President, including its contents, as to grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

A prior section 710 of act July 1, 1944, was classified to section 292k of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 710 of act July 1, 1944, was renumbered section 709 by Pub. L. 97–35 and was classified to section 292j of this title prior to the general revision of this subchapter by Pub. L. 102–408.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 292f, 292h, 292m of this title; title 20 section 1078–3.

§ 292j. Powers and responsibilities of Secretary

(a) In general

In the performance of, and with respect to, the functions, powers, and duties vested in the Secretary by this subpart, the Secretary is authorized as follows:

(1) To prescribe such regulations as may be necessary to carry out the purposes of this subpart.

(2) To sue and be sued in any district court of the United States. Such district courts shall have jurisdiction of civil actions arising under this subpart without regard to the amount in controversy, and any action instituted under this subsection by or against the Secretary shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in that office. No attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Secretary or property under the control of the Secretary. Nothing herein shall be constructed to except litigation arising out of activities under this subpart from the application of sections 517 and 547 of title 28.

(3) To include in any contract for Federal loan insurance such terms, conditions, and covenants relating to repayment of principal and payments of interest, relating to his obligations and rights and to those of eligible lenders, and borrowers in case of default, and relating to such other matters as the Secretary determines to be necessary to assure that the purposes of this subpart will be achieved. Any term, condition, and covenant made pursuant to this paragraph or any other provisions of this subpart may be modified by the Secretary if the Secretary determines that modification is necessary to protect the financial interest of the United States.

(4) Subject to the specific limitations in the subpart, to consent to the modification of any note or other instrument evidencing a loan which has been insured by him under this subpart (including modifications with respect to the rate of interest, time of payment of any installment of principal and interest or any portion thereof, or any other provision).

(5) To enforce, pay, compromise, waive, or release any right, title, claim, lien, or demand, however acquired, including any equity or any right or[1] redemption.

[1] So in original. Probably should be ''of''.

(b) Annual budget; accounts

The Secretary shall, with respect to the financial operations arising by reason of this subpart—

(1) prepare annually and submit a budget program as provided for wholly owned Government corporations by chapter 91 of title 31; and

(2) maintain with respect to insurance under this subpart an integral set of accounts.

(July 1, 1944, ch. 373, title VII, § 711, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2007.)

CODIFICATION

In subsec. (b)(1), ''chapter 91 of title 31'' was substituted for ''the Government Corporation Control Act'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 292j, act July 1, 1944, ch. 373, title VII, § 709, formerly § 710, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 208, 90 Stat. 2252; renumbered § 709 and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, §§ 2720(b), 2721, 95 Stat. 915; Oct. 22, 1985, Pub. L. 99–129, title II, § 206, 99 Stat. 527, related to payment under grants, prior to the general revision of this subchapter by Pub. L. 102–408. See section 295*o*(f) of this title.

Another prior section 292j, act July 1, 1944, ch. 373, title VII, § 711, as added Sept. 24, 1963, Pub. L. 88–129, § 3(b), 77 Stat. 173; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 102(k)(2)(A), 85 Stat. 437, provided for technical assistance in connection with grants for construction of health research facilities, prior to repeal by Pub. L. 94–484, title II, § 201(a), Oct. 12, 1976, 90 Stat. 2246.

§ 292k. Participation by Federal credit unions in Federal, State, and private student loan insurance programs

Notwithstanding any other provision of law, Federal credit unions shall, pursuant to regulations of the Administrator of the National Credit Union Administration, have power to make insured loans to eligible students in accordance with the provisions of this subpart relating to Federal insured loans.

(July 1, 1944, ch. 373, title VII, § 712, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2008.)

PRIOR PROVISIONS

A prior section 292k, act July 1, 1944, ch. 373, title VII, § 710, formerly § 711, as added Oct. 12, 1976, Pub. L. 94–484, title II, § 209, 90 Stat. 2253; renumbered § 710 and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, §§ 2720(b), 2722, 95 Stat. 915, related to differential tuition and fees, prior to the general revision of this subchapter by Pub. L. 102–408. See section 295*o*(c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254*l* of this title.

§ 292*l*. Determination of eligible students

For purposes of determining eligible students under this part, in the case of a public school in a State that offers an accelerated, integrated program of study combining undergraduate premedical education and medical education leading to advanced entry, by contractual agreement, into an accredited four-year school of medicine which provides the remaining training leading to a degree of doctor of medicine, whenever in this part a provision refers to a student at a school of medicine, such reference shall include only a student enrolled in any of the last four years of such accelerated, integrated program of study.

(July 1, 1944, ch. 373, title VII, § 713, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2008.)

§ 292m. Repayment by Secretary of loans of deceased or disabled borrowers

If a borrower who has received a loan dies or becomes permanently and totally disabled (as determined in accordance with regulations of the Secretary), the Secretary shall discharge the borrower's liability on the loan by repaying the amount owed on the loan from the account established under section 292i of this title.

(July 1, 1944, ch. 373, title VII, § 714, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2008.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 292b of this title.

§ 292n. Additional requirements for institutions and lenders

(a) In general

Notwithstanding any other provision of this subpart, the Secretary is authorized to prescribe such regulations as may be necessary to provide for—

(1) a fiscal audit of an eligible institution with regard to any funds obtained from a borrower who has received a loan insured under this subpart;

(2) the establishment of reasonable standards of financial responsibility and appropriate institutional capability for the administration by an eligible institution of a program of student financial aid with respect to funds obtained from a student who has received a loan insured under this subpart;

(3) the limitation, suspension, or termination of the eligibility under this subpart of any otherwise eligible institution, whenever the Secretary has determined, after notice and affording an opportunity for hearing, that such institution has violated or failed to carry out any regulation prescribed under this subpart;

(4) the collection of information from the borrower, lender, or eligible institution to assure compliance with the provisions of section 292d of this title;

(5) the assessing of tuition or fees to borrowers in amounts that are the same or less than the amount of tuition and fees assessed to nonborrowers;

(6) the submission, by the institution or the lender to the Office of Health Education Assistance Loan Default Reduction, of information concerning each loan made under this subpart, including the date when each such loan was originated, the date when each such loan is sold, the identity of the loan holder

and information concerning a change in the borrower's status;

(7) the withholding of services, including academic transcripts, financial aid transcripts, and alumni services, by an institution from a borrower upon the default of such borrower of a loan under this subpart, except in case of a borrower who has filed for bankruptcy; and

(8) the offering, by the lender to the borrower, of a variety of repayment options, including fixed-rate, graduated repayment with negative amortization permitted, and income dependent payments for a limited period followed by level monthly payments.

(b) Recording by institution of information on students

The Secretary shall require an eligible institution to record, and make available to the lender and to the Secretary upon request, the name, address, postgraduate destination, and other reasonable identifying information for each student of such institution who has a loan insured under this subpart.

(c) Workshop for student borrowers

Each participating eligible institution must have, at the beginning of each academic year, a workshop concerning the provisions of this subpart that all student borrowers shall be required to attend.

(July 1, 1944, ch. 373, title VII, § 715, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2009.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 292f of this title.

§ 292*o*. Definitions

For purposes of this subpart:

(1) The term ''eligible institution'' means, with respect to a fiscal year, a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, allied health, or chiropractic, or a graduate program in health administration or clinical psychology.

(2) The term ''eligible lender'' means an eligible institution that became a lender under this subpart prior to September 15, 1992, an agency or instrumentality of a State, a financial or credit institution (including an insurance company) which is subject to examination and supervision by an agency of the United States or of any State, a pension fund approved by the Secretary for this purpose, or a nonprofit private entity designated by the State, regulated by the State, and approved by the Secretary.

(3) The term ''line of credit'' means an arrangement or agreement between the lender and the borrower whereby a loan is paid out by the lender to the borrower in annual installments, or whereby the lender agrees to make, in addition to the initial loan, additional loans in subsequent years.

(4) The term ''school of allied health'' means a program in a school of allied health (as defined in section 295p of this title) which leads to a masters' degree or a doctoral degree.

(5)(A) The term ''default rate'', in the case of an eligible entity, means the percentage constituted by the ratio of—

(i) the principal amount of loans insured under this subpart—

(I) that are made with respect to the entity and that enter repayment status after April 7, 1987; and

(II) for which amounts have been paid under section 292f(a) of this title to insurance beneficiaries, exclusive of any loan for which amounts have been so paid as a result of the death or total and permanent disability of the borrower; exclusive of any loan for which the borrower begins payments to the Secretary on the loan pursuant to section 292f(b) of this title and maintains payments for 12 consecutive months in accordance with the agreement involved (with the loan subsequently being included or excluded, as the case may be, as amounts paid under section 292f(a) of this title according to whether further defaults occur and whether with respect to the default involved compliance with such requirement regarding 12 consecutive months occurs); and exclusive of any loan on which payments may not be recovered by reason of the obligation under the loan being discharged in bankruptcy under title 11; to

(ii) the total principal amount of loans insured under this subpart that are made with respect to the entity and that enter repayment status after April 7, 1987.

(B) For purposes of subparagraph (A), a loan insured under this subpart shall be considered to have entered repayment status if the applicable period described in subparagraph (B) of section 292d(a)(2) of this title regarding the loan has expired (without regard to whether any period described in subparagraph (C) of such section is applicable regarding the loan).

(C) For purposes of subparagraph (A), the term ''eligible entity'' means an eligible institution, an eligible lender, or a holder, as the case may be.

(D) For purposes of subparagraph (A), a loan is made with respect to an eligible entity if—

(i) in the case of an eligible institution, the loan was made to students of the institution;

(ii) in the case of an eligible lender, the loan was made by the lender; and

(iii) in the case of a holder, the loan was purchased by the holder.

(July 1, 1944, ch. 373, title VII, § 719, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2009.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 292, 292a, 292g, 292h of this title.

§ 292p. Authorization of appropriations

(a) In general

For fiscal year 1993 and subsequent fiscal years, there are authorized to be appropriated such sums as may be necessary for the adequacy

of the student loan insurance account under this subpart and for the purpose of administering this subpart.

(b) Availability of sums

Sums appropriated under subsection (a) of this section shall remain available until expended.

(July 1, 1944, ch. 373, title VII, § 720, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2011.)

PRIOR PROVISIONS

A prior section 720 of act July 1, 1944, was classified to section 293 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

SUBPART II—FEDERALLY-SUPPORTED STUDENT LOAN FUNDS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in title 20 section 1078–3.

§ 292q. Agreements for operation of school loan funds

(a) Fund agreements

The Secretary is authorized to enter into an agreement for the establishment and operation of a student loan fund in accordance with this subpart with any public or other nonprofit school of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, or veterinary medicine.

(b) Requirements

Each agreement entered into under this section shall—

(1) provide for establishment of a student loan fund by the school;

(2) provide for deposit in the fund of—

(A) the Federal capital contributions to the fund;

(B) an amount equal to not less than one-ninth of such Federal capital contributions, contributed by such institution;

(C) collections of principal and interest on loans made from the fund;

(D) collections pursuant to section 292r(j) of this title; and

(E) any other earnings of the fund;

(3) provide that the fund shall be used only for loans to students of the school in accordance with the agreement and for costs of collection of such loans and interest thereon;

(4) provide that loans may be made from such funds only to students pursuing a full-time course of study at the school leading to a degree of doctor of medicine, doctor of dentistry or an equivalent degree, doctor of osteopathy, bachelor of science in pharmacy or an equivalent degree, doctor of pharmacy or an equivalent degree, doctor of podiatric medicine or an equivalent degree, doctor of optometry or an equivalent degree, or doctor of veterinary medicine or an equivalent degree;

(5) provide that the school shall advise, in writing, each applicant for a loan from the student loan fund of the provisions of section 292r of this title under which outstanding loans from the student loan fund may be paid (in whole or in part) by the Secretary; and

(6) contain such other provisions as are necessary to protect the financial interests of the United States.

(c) Failure of school to collect loans

(1) In general

Any standard established by the Secretary by regulation for the collection by schools of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, or veterinary medicine of loans made pursuant to loan agreements under this subpart shall provide that the failure of any such school to collect such loans shall be measured in accordance with this subsection. This subsection may not be construed to require such schools to reimburse the student loan fund under this subpart for loans that became uncollectible prior to August 1985 or to penalize such schools with respect to such loans.

(2) Extent of failure

The measurement of a school's failure to collect loans made under this subpart shall be the ratio (stated as a percentage) that the defaulted principal amount outstanding of such school bears to the matured loans of such school.

(3) Definitions

For purposes of this subsection:

(A) The term ''default'' means the failure of a borrower of a loan made under this subpart to—

(i) make an installment payment when due; or

(ii) comply with any other term of the promissory note for such loan,

except that a loan made under this subpart shall not be considered to be in default if the loan is discharged in bankruptcy or if the school reasonably concludes from written contracts with the borrower that the borrower intends to repay the loan.

(B) The term ''defaulted principal amount outstanding'' means the total amount borrowed from the loan fund of a school that has reached the repayment stage (minus any principal amount repaid or canceled) on loans—

(i) repayable monthly and in default for at least 120 days; and

(ii) repayable less frequently than monthly and in default for at least 180 days;

(C) The term ''grace period'' means the period of one year beginning on the date on which the borrower ceases to pursue a full-time course of study at a school of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, or veterinary medicine; and

(D) The term ''matured loans'' means the total principal amount of all loans made by a school under this subpart minus the total principal amount of loans made by such school to students who are—

(i) enrolled in a full-time course of study at such school; or

(ii) in their grace period.

(July 1, 1944, ch. 373, title VII, § 721, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2011.)

PRIOR PROVISIONS

A prior section 721 of act July 1, 1944, was classified to section 293a of this title prior to the general revision of this subchapter by Pub. L. 102–408.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 292r, 292s, 292t, 292v, 292x, 292y of this title.

§ 292r. Loan provisions

(a) Amount of loan

(1) In general

Loans from a student loan fund (established under an agreement with a school under section 292q of this title) may not, subject to paragraph (2), exceed for any student for a school year (or its equivalent) the sum of—

(A) the cost of tuition for such year at such school, and

(B) $2,500.

(2) Third and fourth years of medical school

For purposes of paragraph (1), the amount $2,500 may, in the case of the third or fourth year of a student at[1] school of medicine or osteopathic medicine, be increased to the extent necessary (including such $2,500) to pay the balances of loans that, from sources other than the student loan fund under section 292q of this title, were made to the individual for attendance at the school. The authority to make such an increase is subject to the school and the student agreeing that such amount (as increased) will be expended to pay such balances.

(b) Terms and conditions

Subject to section 292s of this title, any such loans shall be made on such terms and conditions as the school may determine, but may be made only to a student—

(1) who is in need of the amount thereof to pursue a full-time course of study at the school leading to a degree of doctor of medicine, doctor of dentistry or an equivalent degree, doctor of osteopathy, bachelor of science in pharmacy or an equivalent degree, doctor of pharmacy or an equivalent degree, doctor of podiatric medicine or an equivalent degree, doctor of optometry or an equivalent degree, or doctor of veterinary medicine or an equivalent degree; and

(2) who, if required under section 453 of title 50, Appendix, to present himself for and submit to registration under such section, has presented himself and submitted to registration under such section.

(c) Repayment; exclusions from ten-year period

Such loans shall be repayable in equal or graduated periodic installments (with the right of the borrower to accelerate repayment) over the ten-year period which begins one year after the student ceases to pursue a full-time course of study at a school of medicine, osteopathic medicine, dentistry, pharmacy, podiatry, optometry, or veterinary medicine, excluding from such ten-year period—

(1) all periods—

(A) not in excess of three years of active duty performed by the borrower as a member of a uniformed service;

(B) not in excess of three years during which the borrower serves as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.];

(C) during which the borrower participates in advanced professional training, including internships and residencies; and

(D) during which the borrower is pursuing a full-time course of study at such a school; and

(2) a period—

(A) not in excess of two years during which a borrower who is a full-time student in such a school leaves the school, with the intent to return to such school as a full-time student, in order to engage in a full-time educational activity which is directly related to the health profession for which the borrower is preparing, as determined by the Secretary; or

(B) not in excess of two years during which a borrower who is a graduate of such a school is a participant in a fellowship training program or a full-time educational activity which—

(i) is directly related to the health profession for which such borrower prepared at such school, as determined by the Secretary; and

(ii) may be engaged in by the borrower during such a two-year period which begins within twelve months after the completion of the borrower's participation in advanced professional training described in paragraph (1)(C) or prior to the completion of such borrower's participation in such training.

(d) Cancellation of liability

The liability to repay the unpaid balance of such a loan and accrued interest thereon shall be canceled upon the death of the borrower, or if the Secretary determines that he has become permanently, and totally disabled.

(e) Rate of interest

Such loans shall bear interest, on the unpaid balance of the loan, computed only for periods for which the loan is repayable, at the rate of 5 percent per year.

(f) Security or endorsement

Loans shall be made under this subpart without security or endorsement, except that if the borrower is a minor and the note or other evidence of obligation executed by him would not, under the applicable law, create a binding obligation, either security or endorsement may be required.

(g) Transferring and assigning loans

No note or other evidence of a loan made under this subpart may be transferred or assigned by the school making the loan except that, if the borrowers transfer to another school participating in the program under this subpart, such note or other evidence of a loan may be transferred to such other school.

[1] So in original. Probably should be ''at a''.

(h) Charge with respect to insurance for certain cancellations

Subject to regulations of the Secretary, a school may assess a charge with respect to loans made this subpart[2] to cover the costs of insuring against cancellation of liability under subsection (d) of this section.

(i) Charge with respect to late payments

Subject to regulations of the Secretary, and in accordance with this section, a school shall assess a charge with respect to a loan made under this subpart for failure of the borrower to pay all or any part of an installment when it is due and, in the case of a borrower who is entitled to deferment of the loan under subsection (c) of this section, for any failure to file timely and satisfactory evidence of such entitlement. No such charge may be made if the payment of such installment or the filing of such evidence is made within 60 days after the date on which such installment or filing is due. The amount of any such charge may not exceed an amount equal to 6 percent of the amount of such installment. The school may elect to add the amount of any such charge to the principal amount of the loan as of the first day after the day on which such installment or evidence was due, or to make the amount of the charge payable to the school not later than the due date of the next installment after receipt by the borrower of notice of the assessment of the charge.

(j) Authority of schools regarding rate of payment

A school may provide, in accordance with regulations of the Secretary, that during the repayment period of a loan from a loan fund established pursuant to an agreement under this subpart payments of principal and interest by the borrower with respect to all the outstanding loans made to him from loan funds so established shall be at a rate equal to not less than $15 per month.

(k) Authority regarding repayments by Secretary

Upon application by a person who received, and is under an obligation to repay, any loan made to such person as a health professions student to enable him to study medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, or podiatry, the Secretary may undertake to repay (without liability to the applicant) all or any part of such loan, and any interest or portion thereof outstanding thereon, upon his determination, pursuant to regulations establishing criteria therefor, that the applicant—

(1) failed to complete such studies leading to his first professional degree;

(2) is in exceptionally needy circumstances;

(3) is from a low-income or disadvantaged family as those terms may be defined by such regulations; and

(4) has not resumed, or cannot reasonably be expected to resume, the study of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, or podiatric medicine, within two years following the date upon which he terminated such studies.

[2] So in original. Probably should be ''under this subpart''.

(*l*) Collection efforts by Secretary

The Secretary is authorized to attempt to collect any loan which was made under this subpart, which is in default, and which was referred to the Secretary by a school with which the Secretary has an agreement under this subpart, on behalf of that school under such terms and conditions as the Secretary may prescribe (including reimbursement from the school's student loan fund for expenses the Secretary may reasonably incur in attempting collection), but only if the school has complied with such requirements as the Secretary may specify by regulation with respect to the collection of loans under this subpart. A loan so referred shall be treated as a debt subject to section 5514 of title 5. Amounts collected shall be deposited in the school's student loan fund. Whenever the Secretary desires the institution of a civil action regarding any such loan, the Secretary shall refer the matter to the Attorney General for appropriate action.

(July 1, 1944, ch. 373, title VII, § 722, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2012; amended June 10, 1993, Pub. L. 103–43, title XX, § 2014(b), 107 Stat. 215.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsec. (c)(1)(B), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

PRIOR PROVISIONS

A prior section 722 of act July 1, 1944, was classified to section 293b of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–43, § 2014(b)(1), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: ''Loans from a student loan fund (established under an agreement with a school under section 292q of this title) may not exceed for any student for each school year (or its equivalent) the sum of—

''(1) the cost of tuition for such year at such school, and

''(2) $2,500.''

Subsec. (b)(2), (3). Pub. L. 103–43, § 2014(b)(2), redesignated par. (3) as (2) and struck out former par. (2), which read as follows: ''who, if pursuing a full-time course of study at the school leading to a degree of doctor of medicine or doctor of osteopathy, is of exceptional financial need (as defined by regulations of the Secretary); and''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 292q, 292s, 292v of this title.

§ 292s. Medical schools and primary health care

(a) Requirements for students

(1) In general

Subject to the provisions of this subsection, in the case of student loan funds established under section 292q of this title by schools of medicine or osteopathic medicine, each agreement entered into under such section with

such a school shall provide (in addition to the provisions required in subsection (b) of such section) that the school will make a loan from such fund to a student only if the student agrees—

(A) to enter and complete a residency training program in primary health care not later than 4 years after the date on which the student graduates from such school; and

(B) to practice in such care through the date on which the loan is repaid in full.

(2) Inapplicability to certain students

(A) The requirement established in paragraph (1) regarding the student loan fund of a school does not apply to a student if—

(i) the first loan to the student from such fund is made before July 1, 1993; or

(ii) the loan is made from—

(I) a Federal capital contribution under section 292q of this title that is made from amounts appropriated under section 292t(f) of this title (in this section referred to as an ''exempt Federal capital contribution''); or

(II) a school contribution made under section 292q of this title pursuant to such a Federal capital contribution (in this section referred to as an ''exempt school contribution'').

(B) A Federal capital contribution under section 292q of this title may not be construed as being an exempt Federal capital contribution if the contribution was made from amounts appropriated before October 1, 1990. A school contribution under section 292q of this title may not be construed as being an exempt school contribution if the contribution was made pursuant to a Federal capital contribution under such section that was made from amounts appropriated before such date.

(3) Noncompliance by student

Each agreement entered into with a student pursuant to paragraph (1) shall provide that, if the student fails to comply with the agreement—

(A) the balance due on the loan involved will be immediately recomputed from the date of issuance at an interest rate of 12 percent per year, compounded annually; and

(B) the recomputed balance will be paid not later than the expiration of the 3-year period beginning on the date on which the student fails to comply with the agreement.

(4) Waivers

(A) With respect to the obligation of an individual under an agreement made under paragraph (1) as a student, the Secretary shall provide for the partial or total waiver or suspension of the obligation whenever compliance by the individual is impossible, or would involve extreme hardship to the individual, and if enforcement of the obligation with respect to the individual would be unconscionable.

(B) For purposes of subparagraph (A), the obligation of an individual shall be waived if—

(i) the status of the individual as a student of the school involved is terminated before graduation from the school, whether voluntarily or involuntarily; and

(ii) the individual does not, after such termination, resume attendance at the school or begin attendance at any other school of medicine or osteopathic medicine.

(C) If an individual resumes or begins attendance for purposes of subparagraph (B), the obligation of the individual under the agreement under paragraph (1) shall be considered to have been suspended for the period in which the individual was not in attendance.

(D) This paragraph may not be construed as authorizing the waiver or suspension of the obligation of a student to repay, in accordance with section 292r of this title, loans from student loan funds under section 292q of this title.

(b) Requirements for schools

(1) In general

Subject to the provisions of this subsection, in the case of student loan funds established under section 292q of this title by schools of medicine or osteopathic medicine, each agreement entered into under such section with such a school shall provide (in addition to the provisions required in subsection (b) of such section) that, for the 1-year period ending on June 30, 1997;[1] and for the 1-year period ending on June 30 of each subsequent fiscal year, the school will meet not less than 1 of the conditions described in paragraph (2) with respect to graduates of the school whose date of graduation from the school occurred approximately 3 years before the end of the 1-year period involved.

(2) Description of conditions

With respect to graduates described in paragraph (1) (in this paragraph referred to as ''designated graduates''), the conditions referred to in such paragraph for a school for a 1-year period are as follows:

(A) Not less than 50 percent of designated graduates of the school meet the criterion of either being in a residency training program in primary health care, or being engaged in a practice in such care (having completed such a program).

(B) Not less than 25 percent of the designated graduates of the school meet such criterion, and such percentage is not less than 5 percentage points above the percentage of such graduates meeting such criterion for the preceding 1-year period.

(C) In the case of schools of medicine or osteopathic medicine with student loans funds under section 292q of this title, the school involved is at or above the 75th percentile of such schools whose designated graduates meet such criterion.

(3) Determinations by Secretary

Not later than 90 days after the close of each 1-year period described in paragraph (1), the Secretary shall make a determination of whether the school involved has for such period complied with such paragraph and shall in writing inform the school of the determination. Such determination shall be made only after consideration of the report submitted to

[1] So in original. The semicolon probably should be a comma.

the Secretary by the school under paragraph (6).

(4) Noncompliance by school

(A)(i) Subject to subparagraph (C), each agreement under section 292q of this title with a school of medicine or osteopathic medicine shall provide that, if the school fails to comply with paragraph (1) for a 1-year period under such paragraph, the school—

(I) will pay to the Secretary the amount applicable under subparagraph (B) for the period; and

(II) will pay such amount not later than 90 days after the school is informed under paragraph (3) of the determination of the Secretary regarding such period.

(ii) Any amount that a school is required to pay under clause (i) may be paid from the student loan fund of the school under section 292q of this title.

(B) For purposes of subparagraph (A), the amount applicable for a school, subject to subparagraph (C), is—

(i) for the 1-year period ending June 30, 1997, an amount equal to 10 percent of the income received during such period by the student loan fund of the school under section 292q of this title;

(ii) for the 1-year period ending June 30, 1998, an amount equal to 20 percent of the income received during such period by the student loan fund; and

(iii) for any subsequent 1-year period under paragraph (1), an amount equal to 30 percent of the income received during such period by the student loan fund.

(C) In determining the amount of income that a student loan fund has received for purposes of subparagraph (B), the Secretary shall exclude any income derived from exempt contributions. Payments made to the Secretary under subparagraph (A) may not be made with such contributions or with income derived from such contributions.

(5) Expenditure of payments

(A) Amounts paid to the Secretary under paragraph (4) shall be expended to make Federal capital contributions to student loan funds under section 292q of this title of schools that are in compliance with paragraph (1).

(B) A Federal capital contribution under section 292q of this title may not be construed as being an exempt Federal capital contribution if the contribution is made from payments under subparagraph (A). A school contribution under such section may not be construed as being an exempt school contribution if the contribution is made pursuant to a Federal capital contribution from such payments.

(6) Reports by schools

Each agreement under section 292q of this title with a school of medicine or osteopathic medicine shall provide that the school will submit to the Secretary a report for each 1-year period under paragraph (1) that provides such information as the Secretary determines to be necessary for carrying out this subsection. Each such report shall include statistics concerning the current training or practice status of all graduates of such school whose date of graduation from the school occurred approximately 4 years before the end of the 1-year period involved.

(c) Reports by Secretary

The Secretary shall each fiscal year submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate, a report regarding the administration of this section, including the extent of compliance with the requirements of this section, during the preceding fiscal year.

(d) Definitions

For purposes of this section:

(1) The term ''exempt contributions'' means exempt Federal capital contributions and exempt school contributions.

(2) The term ''exempt Federal capital contribution'' means a Federal capital contribution described in subclause (I) of subsection (a)(2)(A)(ii) of this section.

(3) The term ''exempt school contribution'' means a school contribution described in subclause (II) of subsection (a)(2)(A)(ii) of this section.

(4) The term ''income'', with respect to a student fund under section 292q of this title, means payments of principal and interest on any loan made from the fund, and any other earnings of the fund.

(5) The term ''primary health care'' means family medicine, general internal medicine, general pediatrics, preventive medicine, or osteopathic general practice.

(July 1, 1944, ch. 373, title VII, § 723, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2015; amended June 10, 1993, Pub. L. 103–43, title XX, § 2014(c), 107 Stat. 216.)

PRIOR PROVISIONS

A prior section 723 of act July 1, 1944, was classified to section 293c of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1993—Subsec. (a)(4). Pub. L. 103–43, § 2014(c)(1), added par. (4).

Subsec. (b)(1). Pub. L. 103–43, § 2014(c)(2)(A), substituted ''1997;'' for ''1994,'' and ''3 years before'' for ''4 years before''.

Subsec. (b)(2)(B). Pub. L. 103–43, § 2014(c)(2)(B), substituted ''25 percent'' for ''15 percent''.

Subsec. (b)(4)(B). Pub. L. 103–43, § 2014(c)(2)(C), substituted ''1997'' for ''1994'' in cl. (i) and ''1998'' for ''1995'' in cl. (ii).

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 292r, 292t, 292y of this title.

§ 292t. Individuals from disadvantaged backgrounds

(a) Fund agreements regarding certain amounts

With respect to amounts appropriated under subsection (f) of this section, each agreement

entered into under section 292q of this title with a school shall provide (in addition to the provisions required in subsection (b) of such section) that—

(1) any Federal capital contribution made to the student loan fund of the school from such amounts, together with the school contribution appropriate under subsection (b)(2)(B) of such section to the amount of the Federal capital contribution, will be utilized only for the purpose of—

(A) making loans to individuals from disadvantaged backgrounds; and

(B) the costs of the collection of the loans and interest on the loans; and

(2) collections of principal and interest on loans made pursuant to paragraph (1), and any other earnings of the student loan fund attributable to amounts that are in the fund pursuant to such paragraph, will be utilized only for the purpose described in such paragraph.

(b) Minimum qualifications for schools

The Secretary may not make a Federal capital contribution for purposes of subsection (a) of this section for a fiscal year unless the health professions school involved—

(1) is carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including racial and ethnic minorities; and

(2) is carrying out a program for recruiting and retaining minority faculty.

(c) Certain agreements regarding education of students; date certain for compliance

The Secretary may not make a Federal capital contribution for purposes of subsection (a) of this section for a fiscal year unless the health professions school involved agrees—

(1) to ensure that adequate instruction regarding minority health issues is provided for in the curricula of the school;

(2) with respect to health clinics providing services to a significant number of individuals who are from disadvantaged backgrounds, including members of minority groups, to enter into arrangements with 1 or more such clinics for the purpose of providing students of the school with experience in providing clinical services to such individuals;

(3) with respect to public or nonprofit private secondary educational institutions and undergraduate institutions of higher education, to enter into arrangements with 1 or more such institutions for the purpose of carrying out programs regarding the educational preparation of disadvantaged students, including minority students, to enter the health professions and regarding the recruitment of such individuals into the health professions;

(4) to establish a mentor program for assisting disadvantaged students, including minority students, regarding the completion of the educational requirements for degrees from the school;

(5) to be carrying out each of the activities specified in any of paragraphs (1) through (4) by not later than 1 year after the date on which the first Federal capital contribution is made to the school for purposes of subsection (a) of this section; and

(6) to continue carrying out such activities, and the activities specified in paragraphs (1) and (2) of subsection (b) of this section, throughout the period during which the student loan fund established pursuant to section 292q(b) of this title is in operation.

(d) Availability of other amounts

With respect to Federal capital contributions to student loan funds under agreements under section 292q(b) of this title, any such contributions made before October 1, 1990, together with the school contributions appropriate under paragraph (2)(B) of such section to the amount of the Federal capital contributions, may be utilized for the purpose of making loans to individuals from disadvantaged backgrounds, subject to section 292s(a)(2)(B) of this title.

(e) "Disadvantaged" defined

For purposes of this section, the term ''disadvantaged'', with respect to an individual, shall be defined by the Secretary.

(f) Authorization of appropriations

(1) In general

With respect to making Federal capital contributions to student loan funds for purposes of subsection (a) of this section, there is authorized to be appropriated for such contributions $15,000,000 for fiscal year 1993.

(2) Special consideration for certain schools

In making Federal capital contributions to student loan funds for purposes of subsection (a) of this section, the Secretary shall give special consideration to health professions schools that have enrollments of underrepresented minorities above the national average for health professions schools.

(July 1, 1944, ch. 373, title VII, § 724, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2018.)

PRIOR PROVISIONS

A prior section 724 of act July 1, 1944, was classified to section 293d of this title prior to the general revision of this subchapter by Pub. L. 102–408.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 292s of this title.

§ 292u. Administrative provisions

The Secretary may agree to modifications of agreements or loans made under this subpart, and may compromise, waive, or release any right, title, claim, or demand of the United States arising or acquired under this subpart.

(July 1, 1944, ch. 373, title VII, § 725, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2019.)

PRIOR PROVISIONS

A prior section 725 of act July 1, 1944, was classified to section 293e of this title prior to the general revision of this subchapter by Pub. L. 102–408.

HEALTH PROFESSIONS EDUCATION FUND; AVAILABILITY OF FUND; DEPOSIT IN FUND OF: INTEREST PAYMENTS OR REPAYMENTS OF PRINCIPAL ON LOANS; TRANSFER OF EXCESS MONEYS TO GENERAL FUND OF THE TREASURY; AUTHORIZATION OF APPROPRIATIONS FOR PAYMENTS UNDER AGREEMENTS

Section 406(b), (c) of Pub. L. 94–484 provided that:

''(b) The health professions education fund created within the Treasury by section 744(d)(1) of the Public Health Service Act (as in effect before the date of enactment of this Act) [former section 294d(d)(1) of this title] shall remain available to the Secretary of Health, Education, and Welfare [now Health and Human Services] for the purpose of meeting his responsibilities respecting participations in obligations acquired under such section. The Secretary shall continue to deposit in such fund all amounts received by him as interest payments or repayments of principal on loans under such section 744 [former section 294d of this title]. If at any time the Secretary determines the moneys in the fund exceed the present and any reasonable prospective future requirements of such fund, such excess may be transferred to the general fund of the Treasury.

''(c) There are authorized to be appropriated without fiscal year limitation such sums as may be necessary to enable the Secretary to make payments under agreements entered into under section 744(b) [former section 294d(b) of this title] of the Public Health Service Act before September 30, 1977.''

§ 292v. Provision by schools of information to students

(a) In general

With respect to loans made by a school under this subpart after June 30, 1986, each school, in order to carry out the provisions of sections 292q and 292r of this title, shall, at any time such school makes such a loan to a student under this subpart, provide thorough and adequate loan information on loans made under this subpart to the student. The loan information required to be provided to the student by this subsection shall include—

(1) the yearly and cumulative maximum amounts that may be borrowed by the student;

(2) the terms under which repayment of the loan will begin;

(3) the maximum number of years in which the loan must be repaid;

(4) the interest rate that will be paid by the borrower and the minimum amount of the required monthly payment;

(5) the amount of any other fees charged to the borrower by the lender;

(6) any options the borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the loan;

(7) a definition of default on the loan and a specification of the consequences which will result to the borrower if the borrower defaults, including a description of any arrangements which may be made with credit bureau organizations;

(8) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

(9) a description of the actions that may be taken by the Federal Government to collect the loan, including a description of the type of information concerning the borrower that the Federal Government may disclose to (A) officers, employees, or agents of the Department of Health and Human Services, (B) officers, employees, or agents of schools with which the Secretary has an agreement under this subpart, or (C) any other person involved in the collection of a loan under this subpart.

(b) Statement regarding loan

Each school shall, immediately prior to the graduation from such school of a student who receives a loan under this subpart after June 30, 1986, provide such student with a statement specifying—

(1) each amount borrowed by the student under this subpart;

(2) the total amount borrowed by the student under this subpart; and

(3) a schedule for the repayment of the amounts borrowed under this subpart, including the number, amount, and frequency of payments to be made.

(July 1, 1944, ch. 373, title VII, § 726, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2020.)

PRIOR PROVISIONS

A prior section 726 of act July 1, 1944, was classified to section 293f of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 726 of act July 1, 1944, was classified to section 293f of this title prior to repeal by Pub. L. 94–484.

§ 292w. Procedures for appeal of termination of agreements

In any case in which the Secretary intends to terminate an agreement with a school under this subpart, the Secretary shall provide the school with a written notice specifying such intention and stating that the school may request a formal hearing with respect to such termination. If the school requests such a hearing within 30 days after the receipt of such notice, the Secretary shall provide such school with a hearing conducted by an administrative law judge.

(July 1, 1944, ch. 373, title VII, § 727, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2020.)

PRIOR PROVISIONS

A prior section 727 of act July 1, 1944, was classified to section 294 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 727 of act July 1, 1944, was classified to section 293g of this title prior to renumbering by Pub. L. 94–484.

§ 292x. Distribution of assets from loan funds

(a) Distribution after termination of fund

If a school terminates a loan fund established under an agreement pursuant to section 292q(b) of this title, or if the Secretary for good cause terminates the agreement with the school, there shall be a capital distribution as follows:

(1) The Secretary shall first be paid an amount which bears the same ratio to such balance in such fund on the date of termination of the fund as the total amount of the Federal capital contributions to such fund by the Secretary pursuant to section 292q(b)(2)(A) of this title bears to the total amount in such fund derived from such Federal capital contributions and from funds deposited therein pursuant to section 292q(b)(2)(B) of this title.

(2) The remainder of such balance shall be paid to the school.

(b) Payment of proportionate share to Secretary

If a capital distribution is made under subsection (a) of this section, the school involved

shall, after the capital distribution, pay to the Secretary, not less often than quarterly, the same proportionate share of amounts received by the school in payment of principal or interest on loans made from the loan fund established pursuant to section 292q(b) of this title as was determined by the Secretary under subsection (a) of this section.

(July 1, 1944, ch. 373, title VII, § 728, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2021.)

PRIOR PROVISIONS

A prior section 728 of act July 1, 1944, was classified to section 294a of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 728 of act July 1, 1944, was classified to section 293h of this title prior to renumbering by Pub. L. 94–484.

§ 292y. General provisions

(a) Date certain for applications

The Secretary shall from time to time set dates by which schools must file applications for Federal capital contributions.

(b) Contingent reduction in allotments

If the total of the amounts requested for any fiscal year in such applications exceeds the amounts appropriated under this section for that fiscal year, the allotment to the loan fund of each such school shall be reduced to whichever of the following is the smaller: (A) the amount requested in its application; or (B) an amount which bears the same ratio to the amounts appropriated as the number of students estimated by the Secretary to be enrolled in such school during such fiscal year bears to the estimated total number of students in all such schools during such year. Amounts remaining after allotment under the preceding sentence shall be reallotted in accordance with clause (B) of such sentence among schools whose applications requested more than the amounts so allotted to their loan funds, but with such adjustments as may be necessary to prevent the total allotted to any such school's loan fund from exceeding the total so requested by it.

(c) Allotment of excess funds

Funds available in any fiscal year for payment to schools under this subpart which are in excess of the amount appropriated pursuant to this section for that year shall be allotted among schools in such manner as the Secretary determines will best carry out the purposes of this subpart.

(d) Payment of installments to schools

Allotments to a loan fund of a school shall be paid to it from time to time in such installments as the Secretary determines will not result in unnecessary accumulations in the loan fund at such school.

(e) Disposition of funds returned to Secretary

(1) Expenditure for Federal capital contributions

Subject to section 292s(b)(5) of this title, any amounts from student loan funds under section 292q of this title that are returned to the Secretary by health professions schools shall be expended to make Federal capital contributions to such funds.

(2) Date certain for contributions

Amounts described in paragraph (1) that are returned to the Secretary before the fourth quarter of a fiscal year shall be obligated before the end of such fiscal year, and may not be obligated before the fourth quarter. For purposes of the preceding sentence, amounts returned to the Secretary during the last quarter of a fiscal year are deemed to have been returned during the first three quarters of the succeeding fiscal year.

(3) Preference in making contributions

In making Federal capital contributions to student loans funds under section 292q of this title for a fiscal year from amounts described in paragraph (1), the Secretary shall give preference to health professions schools of the same disciplines as the health professions schools returning such amounts for the period during which the amounts expended for such contributions were received by the Secretary. Any such amounts that, prior to being so returned, were available only for the purpose of loans under this subpart to individuals from disadvantaged backgrounds shall be available only for such purpose.

(f) Funding for certain medical schools

(1) Authorization of appropriations

For the purpose of making Federal capital contributions to student loan funds established under section 292q of this title by schools of medicine or osteopathic medicine, there is authorized to be appropriated $10,000,000 for each of the fiscal years 1994 through 1996.

(2) Minimum requirements

(A) Subject to subparagraph (B), the Secretary may make a Federal capital contribution pursuant to paragraph (1) only if the school of medicine or osteopathic medicine involved meets the conditions described in subparagraph (A) of section 292s(b)(2) of this title or the conditions described in subparagraph (C) of such section.

(B) For purposes of subparagraph (A), the conditions referred to in such subparagraph shall be applied with respect to graduates of the school involved whose date of graduation occurred approximately 3 years before June 30 of the fiscal year preceding the fiscal year for which the Federal capital contribution involved is made.

(July 1, 1944, ch. 373, title VII, § 735, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2021; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 313(a)(1), 106 Stat. 3507; June 10, 1993, Pub. L. 103–43, title XX, § 2014(d), 107 Stat. 217.)

PRIOR PROVISIONS

A prior section 735 of act July 1, 1944, was classified to section 294h of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1993—Subsec. (f). Pub. L. 103–43 added subsec. (f).

1992—Subsec. (b). Pub. L. 102–531 inserted designations for cls. (A) and (B) in first sentence.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 313(c) of Pub. L. 102–531 provided that: ''The amendments described in this section [amending this section and sections 293j, 293*l*, 294n, 295j, 295*l*, 295n, 295*o*, 296k, and 298b–7 of this title, repealing section 297j of this title, redesignating subpart IV of part B of subchapter VI of this chapter as subpart III, and amending provisions set out as a note under section 295k of this title] are made, and take effect, immediately after the enactment of the bill, H.R. 3508, of the One Hundred Second Congress [Pub. L. 102–408, approved Oct. 13, 1992].''

PART B—STUDENTS FROM DISADVANTAGED BACKGROUNDS

§ 293. Scholarships for students of exceptional financial need

(a) In general

The Secretary shall make grants to public and nonprofit private schools of medicine, osteopathic medicine, and dentistry for scholarships to be awarded by the schools to full-time students thereof who are of exceptional financial need, subject to section 295n of this title (relating to residency training and practice in primary health care).

(b) Requirements regarding scholarships

(1) Acceptance for full-time enrollment

Scholarships may be awarded by a school from a grant under subsection (a) of this section only to individuals who have been accepted by it for enrollment as full-time students.

(2) Authorized expenditures

A scholarship provided to a student for a school year under a grant under subsection (a) of this section shall consist of payment to, or (in accordance with paragraph (4)) on behalf of, the student of an amount (except as provided in section 295*o*(c) of this title) equivalent to the amount of—

(A) the tuition of the student in such school year; and

(B) all other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the student in such year.

(3) Authority regarding payments to educational institution

The Secretary may contract with an educational institution in which is enrolled a student who has received a scholarship with a grant under subsection (a) of this section for the payment to the educational institution of the amounts of tuition and other reasonable educational expenses described in paragraph (2). Payment to such an educational institution may be made without regard to section 3324 of title 31.

(c) Authorization of appropriations

For the purpose of making grants under this section, there is authorized to be appropriated $11,000,000 for fiscal year 1993.

(July 1, 1944, ch. 373, title VII, § 736, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2022.)

PRIOR PROVISIONS

A prior section 293, act July 1, 1944, ch. 373, title VII, § 720, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 164; amended Sept. 4, 1964, Pub. L. 88–581, § 3(a), 78 Stat. 919; Oct. 22, 1965, Pub. L. 89–290, § 3(a), 79 Stat. 1056; Nov. 2, 1966, Pub. L. 89–709, § 2(a), 80 Stat. 1103; Aug. 16, 1968, Pub. L. 90–490, title I, § 101(a), (b)(1), 82 Stat. 773; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(a), 85 Stat. 431; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(c), title III, § 302, 90 Stat. 2244, 2253; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2723(a), (b), 95 Stat. 915, authorized grants for construction of teaching facilities for medical, dental, and other health personnel, prior to the general revision of this subchapter by Pub. L. 102–408.

A prior section 736 of act July 1, 1944, was classified to section 294i of this title prior to the general revision of this subchapter by Pub. L. 102–408.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 293d of this title.

§ 293a. Scholarships generally; certain other purposes

(a) Establishment of program

(1) In general

Subject to subsection (e) of this section, the Secretary may make grants to health professions schools for the purpose of assisting such schools in providing scholarships to individuals described in paragraph (2).

(2) Eligible individuals

The individuals referred to in paragraph (1) are individuals who—

(A) are from disadvantaged backgrounds; and

(B) are enrolled (or accepted for enrollment) as full-time students in such schools.

(3) Health professions schools

For purposes of this section, the term ''health professions schools'' means schools of medicine, nursing (as schools of nursing are defined in section 298b of this title), osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, or allied health, or schools offering graduate programs in clinical psychology.

(b) Minimum qualifications of grantees

The Secretary may not make a grant under subsection (a) of this section unless the health professions school—

(1) is carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including racial and ethnic minorities; and

(2) is carrying out a program for recruiting and retaining minority faculty.

(c) Preferences in providing scholarships

The Secretary may not make a grant under subsection (a) of this section unless the health professions school involved agrees that, in providing scholarships pursuant to the grant, the school will give preference to students—

(1) who are from disadvantaged backgrounds; and

(2) for whom the costs of attending the school would constitute a severe financial hardship.

(d) Use of scholarship

A scholarship provided pursuant to subsection (a) of this section for attendance at a health professions school—

(1) may be expended only for tuition expenses, other reasonable educational expenses, and reasonable living expenses incurred in such attendance; and

(2) may not, for any year of such attendance for which the scholarship is provided, provide an amount exceeding the total amount required for the year for the expenses specified in paragraph (1).

(e) Provisions regarding purposes other than scholarships

(1) Authority regarding assistance for undergraduates

With respect to undergraduates who have demonstrated a commitment to pursuing a career in the health professions, a health professions school may expend not more than 25 percent of a grant under subsection (a) of this section for the purpose of providing financial assistance to such undergraduates in order to facilitate the completion of the educational requirements for such careers.

(2) Required activities of school

The Secretary may not make a grant under subsection (a) of this section unless the health professions school involved agrees—

(A) to ensure that adequate instruction regarding minority health issues is provided for in the curricula of the school;

(B) with respect to health clinics providing services to a significant number of individuals who are from disadvantaged backgrounds, including members of minority groups, to enter into arrangements with 1 or more such clinics for the purpose of providing students of the school with experience in providing clinical services to such individuals;

(C) with respect to public or nonprofit secondary educational institutions and undergraduate institutions of higher education, to enter into arrangements with 1 or more such institutions for the purpose of carrying out programs regarding the educational preparation of disadvantaged students, including minority students, to enter the health professions and regarding the recruitment of such students into the health professions;

(D) to establish a mentor program for assisting disadvantaged students, including minority students, regarding the completion of the educational requirements for degrees from the school;

(E) to be carrying out the activities specified in subparagraphs (A) through (D) by not later than 1 year after the date on which a grant under subsection (a) of this section is first made to the school; and

(F) to continue carrying out such activities, and the activities specified in paragraphs (1) and (2) of subsection (b) of this section, throughout the period during which the school is receiving a grant under subsection (a) of this section.

(3) Restrictions on use of grant

The Secretary may not make a grant under subsection (a) of this section for a fiscal year unless the health professions school involved agrees that the grant will not be expended to carry out the activities specified in paragraph (1) or (2) of subsection (b) of this section, or in any of subparagraphs (A) through (D) of paragraph (2) of this subsection.

(f) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(g) "School of nursing" defined

For purposes of this section, the term ''school of nursing'' has the meaning given such term in section 298b of this title.

(h) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for fiscal year 1993.

(2) Allocations by Secretary

In making grants under subsection (a) of this section, the Secretary—

(A) shall, of the amounts appropriated under paragraph (1), make available 30 percent for such grants to schools of nursing; and

(B) shall give special consideration to health professions schools that have enrollments of underrepresented minorities above the national average for health professions schools.

(July 1, 1944, ch. 373, title VII, § 737, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2023.)

PRIOR PROVISIONS

A prior section 293a, act July 1, 1944, ch. 373, title VII, § 721, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 165; amended Sept. 4, 1964, Pub. L. 88–581, § 3(b), 78 Stat. 919; Oct. 22, 1965, Pub. L. 89–290, §§ 3(b), (c), 5(a), 79 Stat. 1056–1058; Nov. 2, 1966, Pub. L. 89–709, § 2(b), 80 Stat. 1103; Aug. 16, 1968, Pub. L. 90–490, title I, §§ 103(a)(3), 105(a), (b), 82 Stat. 774; Nov. 18, 1971, Pub. L. 92–157, title I, §§ 102(e), (f)(1), (2)(A), (g), (h), (j)(2), (3), (7)(A), 108(b)(1), 85 Stat. 434–437, 461; Oct. 12, 1976, Pub. L. 94–484, title III, §§ 301, 303, 308(a), 90 Stat. 2253, 2254, 2256; Aug. 1, 1977, Pub. L. 95–83, title III, § 307(b), 91 Stat. 389; Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §§ 2723(c), (d), 2724(a), 95 Stat. 916; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 628(4), 629(b)(2), 102 Stat. 3145, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(1), 103 Stat. 614, related to applications and eligibility for grants for construction of teaching facilities for medical, dental, and other health personnel, prior to the general revision of this subchapter by Pub. L. 102–408.

A prior section 737 of act July 1, 1944, was classified to section 294j of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 293b. Loan repayments and fellowships regarding faculty positions

(a) Loan repayments

(1) Establishment of program

The Secretary shall establish a program of entering into contracts with individuals de-

scribed in subsection (b)[1] under which the individuals agree to serve as members of the faculties of schools described in paragraph (3) in consideration of the Federal Government agreeing to pay, for each year of such service, not more than $20,000 of the principal and interest of the educational loans of such individuals.

(2) Eligible individuals

The individuals referred to in paragraph (1) are individuals from disadvantaged backgrounds who—

(A) have a degree in medicine, osteopathic medicine, dentistry, or another health profession;

(B) are enrolled in an approved graduate training program in medicine, osteopathic medicine, dentistry, or other health profession; or

(C) are enrolled as a full-time student—

(i) in an accredited (as determined by the Secretary) school described in paragraph (3); and

(ii) in the final year of a course of a study or program, offered by such institution and approved by the Secretary, leading to a degree from such a school.

(3) Eligible health professions schools

The schools described in this paragraph are schools of medicine, nursing (as schools of nursing are defined in section 298b of this title), osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, or public health, or schools offering graduate programs in clinical psychology.

(4) Additional limitation on amount of repayments

Payments made under this subsection regarding the educational loans of an individual may not, for any year for which the payments are made, exceed an amount equal to 20 percent of the outstanding principal and interest on the loans.

(5) Requirements regarding faculty positions

The Secretary may not enter into a contract under paragraph (1) unless—

(A) the individual involved has entered into a contract with a school described in paragraph (3) to serve as a member of the faculty of the school for not less than 2 years, and the individual has not been a member of the faculty of any school at any time during the 18-month period preceding the date on which the Secretary receives the request of the individual for a contract under paragraph (1); and

(B) the contract referred to in subparagraph (A) provides that—

(i) the school will, for each year for which the individual will serve as a member of the faculty under the contract with the school, make payments of the principal and interest due on the educational loans of the individual for such year in an amount equal to the amount of such payments made by the Secretary for the year; and

(ii) the payments made by the school pursuant to clause (i) on behalf of the individual will be in addition to the pay that the individual would otherwise receive for serving as a member of such faculty.

(6) Waiver regarding school contributions

The Secretary may waive the requirement established in paragraph (5)(B) if the Secretary determines that the requirement will impose an undue financial hardship on the school involved. If the Secretary grants such a waiver, paragraph (4) shall not apply with respect to the individual involved.

(7) Applicability of certain provisions

The provisions of sections 254*l*–1, 254m, and 254*o* of this title shall apply to the program established in paragraph (1) to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of subchapter II of this chapter, including the applicability of provisions regarding reimbursements for increased tax liability and regarding bankruptcy.

(b) Fellowships

(1) In general

The Secretary may make grants to and enter into contracts with schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, health administration, clinical psychology, and other public or private nonprofit health or educational entities of the type described in section 295p of this title, to assist such schools in increasing the number of underrepresented minority faculty members at such schools.

(2) Applications

To be eligible to receive a grant or contract under this subsection, a school shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including an assurance that—

(A) amounts received under such a grant or contract will be used to award a fellowship to an individual only if—

(i) the individual has not been a member of the faculty of any school at any time during the 18-month period preceding the date on which the individual submits a request for the fellowship; and

(ii) the individual meets the requirements of paragraphs (3) and (4); and

(B) each fellowship awarded pursuant to the grant or contract will include a stipend in an amount not exceeding 50 percent of the regular salary of a similar faculty member, or $30,000, whichever is less.

(3) Eligibility

To be eligible to receive a grant or contract under paragraph (1), an applicant shall demonstrate to the Secretary that such applicant has or will have the ability to—

(A) identify, recruit and select individuals from underrepresented minorities in health

[1] So in original. Probably should be ''paragraph (2)''.

professions who have the potential for teaching, administration, or conducting research at a health professions institution;

(B) provide such individuals with the skills necessary to enable them to secure a tenured faculty position at such institution, which may include training with respect to pedagogical skills, program administration, the design and conduct of research, grants writing, and the preparation of articles suitable for publication in peer reviewed journals;

(C) provide services designed to assist such individuals in their preparation for an academic career, including the provision of mentors; and

(D) provide health services to rural or medically underserved populations.

(4) Requirements

To be eligible to receive a grant or contract under paragraph (1) an applicant shall—

(A) provide an assurance that such applicant will make available (directly through cash donations) $1 for every $1 of Federal funds received under this section for the fellowship;

(B) provide an assurance that institutional support will be provided for the individual for a second year at a level that is not less than the total amount of Federal and institutional funds provided in the year in which the grant or contract was awarded;

(C) provide an assurance that the individual that will receive the fellowship will be a member of the faculty of the applicant school; and

(D) provide an assurance that the individual that will receive the fellowship will have, at a minimum, appropriate advanced preparation (such as a master's or doctoral degree) and special skills necessary to enable such individual to teach and practice.

(5) "Minority" defined

For purposes of this subsection, the term ''minority'' means an individual from a racial or ethnic group that is underrepresented in the health professions.

(c) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $4,000,000 for fiscal year 1993.

(July 1, 1944, ch. 373, title VII, § 738, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2025.)

REFERENCES IN TEXT

Subpart III of part D of subchapter II of this chapter, referred to in subsec. (a)(7), is classified to section 254*l* et seq. of this title.

PRIOR PROVISIONS

A prior section 293b, act July 1, 1944, ch. 373, title VII, § 722, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 168; amended Aug. 16, 1968, Pub. L. 90–490, title I, §§ 102(a), 104(a), 82 Stat. 773, 774; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(b), (j)(4), (7), 85 Stat. 431, 436, 437; Oct. 12, 1976, Pub. L. 94–484, title III, § 304, 90 Stat. 2255; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2723(e), 95 Stat. 916, related to amounts of grants and grants for multipurpose facilities, prior to the general revision of this subchapter by Pub. L. 102–408.

A prior section 738 of act July 1, 1944, was classified to section 294k of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 293c. Centers of excellence

(a) In general

The Secretary shall make grants to health professions schools described in subsection (c) of this section for the purpose of assisting the schools in supporting programs of excellence in health professions education for minority individuals.

(b) Required use of funds

The Secretary may not make a grant under subsection (a) of this section unless the health professions school involved agrees to expend the grant—

(1) to establish, strengthen, or expand programs to enhance the academic performance of minority students attending the school;

(2) to establish, strengthen, or expand programs to increase the number and quality of minority applicants to the school;

(3) to improve the capacity of such school to train, recruit, and retain minority faculty;

(4) with respect to minority health issues, to carry out activities to improve the information resources and curricula of the school and clinical education at the school; and

(5) to facilitate faculty and student research on health issues particularly affecting minority groups.

(c) Centers of excellence

(1) In general

(A) The health professions schools referred to in subsection (a) of this section are such schools that meet each of the conditions specified in subparagraph (B), and that—

(i) meet each of the conditions specified in paragraph (2)(A);

(ii) meet each of the conditions specified in paragraph (3);

(iii) meet each of the conditions specified in paragraph (4); or

(iv) meet each of the conditions specified in paragraph (5).

(B) The conditions specified in this subparagraph are that a health professions school—

(i) has a significant number of minority individuals enrolled in the school, including individuals accepted for enrollment in the school;

(ii) has been effective in assisting minority students of the school to complete the program of education and receive the degree involved;

(iii) has been effective in recruiting minority individuals to attend the school, including providing scholarships and other financial assistance to such individuals and encouraging minority students of secondary educational institutions to attend the health professions school; and

(iv) has made significant recruitment efforts to increase the number of minority individuals serving in faculty or administrative positions at the school.

(C) In the case of any criteria established by the Secretary for purposes of determining

whether schools meet the conditions described in subparagraph (B), this section may not, with respect to racial and ethnic minorities, be construed to authorize, require, or prohibit the use of such criteria in any program other than the program established in this section.

(2) Centers of excellence at certain historically Black colleges and universities

(A) The conditions specified in this subparagraph are that a health professions school—

(i) is a school described in section 295p(1) of this title; and

(ii) received a contract under section 295g–8b of this title for fiscal year 1987, as such section was in effect for such fiscal year.

(B) In addition to the purposes described in subsection (b) of this section, a grant under subsection (a) of this section to a health professions school meeting the conditions described in subparagraph (A) may be expended—

(i) to develop a plan to achieve institutional improvements, including financial independence, to enable the school to support programs of excellence in health professions education for minority individuals; and

(ii) to provide improved access to the library and informational resources of the school.

(3) Hispanic centers of excellence

The conditions specified in this paragraph are that—

(A) with respect to Hispanic individuals, each of clauses (i) through (iv) of paragraph (1)(B) applies to the health professions school involved; and

(B) the health professions school agree, as a condition of receiving a grant under subsection (a) of this section, that the school will, in carrying out the duties described in subsection (b) of this section, give priority to carrying out the duties with respect to Hispanic individuals.

(4) Native American centers of excellence

Subject to subsection (e) of this section, the conditions specified in this paragraph are that—

(A) with respect to Native Americans, each of clauses (i) through (iv) of paragraph (1)(B) applies to the health professions school involved;

(B) the health professions school agree, as a condition of receiving a grant under subsection (a) of this section, that the school will, in carrying out the duties described in subsection (b) of this section, give priority to carrying out the duties with respect to Native Americans; and

(C) the health professions school agree, as a condition of receiving a grant under subsection (a) of this section, that—

(i) the school will establish an arrangement with 1 or more public or nonprofit private institutions of higher education whose enrollment of students has traditionally included a significant number of Native Americans, the purpose of which arrangement will be to carry out a program—

(I) to identify Native American students of the institution who are interested in a career in the health profession or professions involved; and

(II) to facilitate the educational preparation of such students to enter the health professions school; and

(ii) the health professions school will make efforts to recruit Native American students, including students who have participated in the undergraduate program carried out under arrangements established by the school pursuant to clause (i) and will assist Native American students regarding the completion of the educational requirements for a degree from the health professions school.

(5) Other centers of excellence

The conditions specified in this paragraph are that a health professions school has an enrollment of underrepresented minorities above the national average for such enrollments of health professions schools.

(d) Designation as Center of Excellence

(1) In general

Any health professions school receiving a grant under subsection (a) of this section and meeting the conditions described in paragraph (2) or (5) of subsection (c) of this section shall, for purposes of this section, be designated by the Secretary as a Center of Excellence in Minority Health Professions Education.

(2) Hispanic centers of excellence

Any health professions school receiving a grant under subsection (a) of this section and meeting the conditions described in subsection (c)(3) of this section shall, for purposes of this section, be designated by the Secretary as a Hispanic Center of Excellence in Health Professions Education.

(3) Native American centers of excellence

Any health professions school receiving a grant under subsection (a) of this section and meeting the conditions described in subsection (c)(4) of this section shall, for purposes of this section, be designated by the Secretary as a Native American Center of Excellence in Health Professions Education. Any consortium receiving such a grant pursuant to subsection (e) of this section shall, for purposes of this section, be so designated.

(e) Authority regarding Native American Centers of Excellence

(1) Authority for collectively meeting relevant requirements

With respect to meeting the conditions specified in subsection (c)(4) of this section, the Secretary may make a grant under subsection (a) of this section to any school of medicine, osteopathic medicine, dentistry, or pharmacy that has in accordance with paragraph (2) formed a consortium of schools that meets such conditions (without regard to whether the schools of the consortium individually meet such conditions).

(2) Requirements regarding consortium

A consortium of schools has been formed in accordance with this paragraph if—

(A) the consortium consists of a school seeking a grant pursuant to paragraph (1) and 1 or more schools of medicine, osteopathic medicine, dentistry, pharmacy, nursing, allied health, or public health;

(B) the schools of the consortium have entered into an agreement for the allocation of such grant among the schools;

(C) each of the schools agrees to expend the grant in accordance with this section; and

(D) each of the schools of the consortium—

(i) is part of the same institution of higher education as the school seeking the grant; or

(ii) is located not farther than 50 miles from the school seeking the grant.

(f) Duration and amount of grant

(1) Duration

The period during which payments are made under a grant under subsection (a) of this section may not exceed 3 years. Such payments shall be subject to annual approval by the Secretary and to the availability of appropriations for the fiscal year involved to make the payments.

(2) Amount

A grant under subsection (a) of this section for a fiscal year may not be made in an amount that is less than $500,000.

(g) Maintenance of effort

(1) In general

With respect to activities for which a grant under subsection (a) of this section is authorized to be expended, the Secretary may not make such a grant to a health professions school for any fiscal year unless the school agrees to maintain expenditures of non-Federal amounts for such activities at a level that is not less than the level of such expenditures maintained by the school for the fiscal year preceding the fiscal year for which the school receives such a grant.

(2) Use of Federal funds

With respect to any Federal amounts received by a health professions school and available for carrying out activities for which a grant under subsection (a) of this section is authorized to be expended, the Secretary may not make such a grant to the school for any fiscal year unless the school agrees that the school will, before expending the grant, expend the Federal amounts obtained from sources other than the grant.

(h) Definitions

For purposes of this section:

(1)(A) The term ''health professions school'' means, except as provided in subparagraph (B), a school of medicine, a school of osteopathic medicine, a school of dentistry, or a school of pharmacy.

(B) The definition established in subparagraph (A) shall not apply to the use of the term ''health professions school'' for purposes of subsection (c)(2) of this section.

(2) The term ''program of excellence'' means any program carried out by a health professions school with a grant made under subsection (a) of this section, if the program is for purposes for which the school involved is authorized in subsection (b) or (c) of this section to expend the grant.

(3) The term ''Native Americans'' means American Indians, Alaskan Natives, Aleuts, and Native Hawaiians.

(i) Funding

(1) Authorization of appropriations

For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated such sums as may be necessary for fiscal year 1993.

(2) Allocations by Secretary

(A) Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall make available $12,000,000 for grants under subsection (a) of this section to health professions schools that are eligible for such grants pursuant to meeting the conditions described in paragraph (2)(A) of subsection (c) of this section.

(B) Of the amounts appropriated under paragraph (1) for a fiscal year and available after compliance with subparagraph (A), the Secretary shall make available 60 percent for grants under subsection (a) of this section to health professions schools that are eligible for such grants pursuant to meeting the conditions described in paragraph (3) or (4) of subsection (c) of this section (including meeting conditions pursuant to subsection (e) of this section).

(C) Of the amounts appropriated under paragraph (1) for a fiscal year and available after compliance with subparagraph (A), the Secretary shall make available 40 percent for grants under subsection (a) of this section to health professions schools that are eligible for such grants pursuant to meeting the conditions described in paragraph (5) of subsection (c) of this section.

(July 1, 1944, ch. 373, title VII, § 739, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2027.)

REFERENCES IN TEXT

Section 295g–8b of this title, referred to in subsec. (c)(2)(A)(ii), was omitted in the general revision of this subchapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.

PRIOR PROVISIONS

A prior section 293c, act July 1, 1944, ch. 373, title VII, § 723, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 168; amended Aug. 16, 1968, Pub. L. 90–490, title I, § 103(a)(1), (2), 82 Stat. 773; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(c)(5), (f)(2)(C), (j)(1), (5), 85 Stat. 432, 435–437; Oct. 12, 1976, Pub. L. 94–484, title III, § 305, 90 Stat. 2255; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2723(f), 95 Stat. 916; Oct. 22, 1985, Pub. L. 99–129, title II, § 207(a), 99 Stat. 527, related to recovery by United States of grant moneys where facility was no longer owned by a public or nonprofit agency or where it ceased to be used for teaching or training purposes, prior to the general revision of this subchapter by Pub. L. 102–408.

A prior section 739 of act July 1, 1944, was classified to section 294*l* of this title prior to the general revision of this subchapter by Pub. L. 102–408.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 287a–2 of this title.

§ 293d. Educational assistance regarding undergraduates

(a) In general

(1) Authority for grants

For the purpose of assisting individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Secretary, to undertake education to enter a health profession, the Secretary may make grants to and enter into contracts with schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, and podiatric medicine, public and nonprofit private schools which offer graduate programs in clinical psychology, and other public or private nonprofit health or educational entities to assist in meeting the costs described in paragraph (2).

(2) Authorized expenditures

A grant or contract under paragraph (1) may be used by the health or educational entity to meet the cost of—

(A) identifying, recruiting, and selecting individuals from disadvantaged backgrounds, as so determined, for education and training in a health profession,

(B) facilitating the entry of such individuals into such a school,

(C) providing counseling or other services designed to assist such individuals to complete successfully their education at such a school,

(D) providing, for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education designed to assist them to complete successfully such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education,

(E) publicizing existing sources of financial aid available to students in the education program of such a school or who are undertaking training necessary to qualify them to enroll in such a program,

(F) paying such scholarships as the Secretary may determine for such individuals for any period of health professions education at a school of medicine, osteopathic medicine, or dentistry,[1]

(G) paying such stipends as the Secretary may approve for such individuals for any period of education in student-enhancement programs (other than regular courses) at any school described in subsection (a)(1) of this section, except that such a stipend may not be provided to an individual for more than 12 months, and such a stipend shall be in an amount of $40 per day (notwithstanding any other provision of law regarding the amount of stipends).

The term ''regular course of education of such a school'' as used in subparagraph (D) includes a graduate program in clinical psychology.

[1] So in original. Probably should be followed by ''and''.

(b) Requirements regarding enrollment; priority in making grants

(1) Increased enrollment of individuals from disadvantaged backgrounds

Schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, podiatric medicine and public and nonprofit schools that offer graduate programs in clinical psychology that receive a grant under subsection (a) of this section shall, during a period of 3 years commencing on the date of the award of the grant, increase their first year enrollments of individuals from disadvantaged backgrounds by at least 20 percent over enrollments in the base year 1987.

(2) Conditions for schools to receive priority

The Secretary shall give priority for funding, in years subsequent to the expiration of the 3-year period described in paragraph (1)—

(A) to schools that attain such increase in their first year enrollment by the end of such 3-year period, and

(B) to schools that attain a 20 percent increase over such base year enrollment.

(3) Applicability of certain condition for priority

The requirement for at least a 20 percent increase in such enrollment shall apply only to those schools referred to in paragraph (1) that have a proportionate enrollment of such individuals from disadvantaged backgrounds that is less than 200 percent of the national average percentage of such individuals in all schools of each health professions discipline.

(4) Determination of enrollment

Determination of both first year and total enrollment of such individuals shall be made by the Secretary in accordance with section 295k of this title.

(c) Equitable allocation of financial assistance

The Secretary shall ensure that services and activities under subsection (a) of this section are equitably allocated among the various racial and ethnic populations.

(d) Funding

(1) Authorization of appropriations

For the purpose of grants and contracts under subsection (a)(1) of this section, there is authorized to be appropriated $31,500,000 for fiscal year 1993.

(2) Allocations

Of the amounts appropriated under paragraph (1) for any fiscal year, the Secretary shall obligate amounts in accordance with the following:

(A) 70 percent shall be obligated for grants or contracts to institutions of higher education.

(B) 20 percent shall be obligated for scholarships under subsection (a)(2)(F) of this section to individuals of exceptional financial need (as defined by the Secretary under section 293 of this title) who are students at schools of medicine, osteopathic medicine, or dentistry. The provision of such scholar-

ships to such individuals shall be subject to section 295n of this title (relating to residency training and practice in primary health care). Such scholarships shall be administered and awarded in the same manner and subject to the same requirements as scholarships under section 293 of this title.

(C) 10 percent shall be obligated for community-based programs.

(D) Not more than 5 percent may be obligated for grants and contracts having the primary purpose of informing individuals about the existence and general nature of health careers.

(July 1, 1944, ch. 373, title VII, § 740, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2032.)

PRIOR PROVISIONS

A prior section 293d, act July 1, 1944, ch. 373, title VII, § 724, formerly § 727, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 102(j)(7)(B), 85 Stat. 437; renumbered § 724 and amended Oct. 12, 1976, Pub. L. 94–484, title III, § 308(c), (d), 90 Stat. 2257, related to promulgation of regulations by Secretary, prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 293d, act July 1, 1944, ch. 373, title VII, § 701, formerly § 724, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 169; amended Oct. 22, 1965, Pub. L. 89–290, § 2(b), 79 Stat. 1056; Nov. 2, 1966, Pub. L. 89–709, § 2(c), 80 Stat. 1103; Aug. 16, 1968, Pub. L. 90–490, title I, § 105(c), 82 Stat. 774; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(c)(1)–(4), (f)(2)(B), 85 Stat. 431, 432, 435, which related to definitions, was renumbered § 701 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 292a of this title.

A prior section 740 of act July 1, 1944, was classified to section 294m of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Sections 293e and 293f were omitted in the general revision of this subchapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.

Section 293e, act July 1, 1944, ch. 373, title VII, § 725, formerly § 728, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170; amended Sept. 4, 1964, Pub. L. 88–581, § 3(d), 78 Stat. 919; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(i), 85 Stat. 436; renumbered § 725, Oct. 12, 1976, Pub. L. 94–484, title III, § 308(d), 90 Stat. 2257, related to technical assistance to applicants for grants for construction of teaching facilities for medical, dental, and other health personnel, and to States or interstate planning agencies to plan programs for relieving shortages of training of health personnel.

A prior section 293e, act July 1, 1944, ch. 373, title VII, § 702, formerly § 725, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 169; amended Sept. 4, 1964, Pub. L. 88–581, § 3(c), 78 Stat. 919; Nov. 2, 1966, Pub. L. 89–709, § 2(d), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 3(a), 80 Stat. 1230; Dec. 5, 1967, Pub. L. 90–174, § 12(c), 81 Stat. 541; Oct. 30, 1970, Pub. L. 91–515, title VI, § 601(b)(2), 84 Stat. 1311; Nov. 18, 1971, Pub. L. 92–157, title I, § 108(a), 85 Stat. 460, was renumbered § 702 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 292b of this title.

Section 293f, act July 1, 1944, ch. 373, title VII, § 726, formerly § 729, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 102(d), 85 Stat. 432; renumbered § 726 and amended Oct. 12, 1976, Pub. L. 94–484, title I, § 101(d), title III, §§ 306, 308(d), 90 Stat. 2244, 2256, 2257; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2725, 95 Stat. 916, related to loan guarantees and interest subsidies.

A prior section 293f, act July 1, 1944, ch. 373, title VII, § 726, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170, provided for noninterference with administration of institutions, prior to repeal by Pub. L. 94–484, title III, § 308(b), Oct. 12, 1976, 90 Stat. 2257.

Section 293g, act July 1, 1944, ch. 373, title VII, § 727, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 102(j)(7)(B), 85 Stat. 437, which related to regulations, was renumbered section 724 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 293d of this title.

Section 293h, act July 1, 1944, ch. 373, title VII, § 728, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170; amended Sept. 4, 1964, Pub. L. 88–581, § 3(d), 78 Stat. 919; Nov. 18, 1971, Pub. L. 92–157, title I, § 102(i), 85 Stat. 436, which related to technical assistance, was renumbered section 726 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 293e of this title.

Section 293i, act July 1, 1944, ch. 373, title VII, § 729, as added Nov. 18, 1971, Pub. L. 92–157, title I, § 102(d), 85 Stat. 432, which related to loan guarantees and interest subsidies, was renumbered section 725 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 293f of this title.

PART C—TRAINING IN PRIMARY HEALTH CARE

§ 293j. Area health education center programs

(a) Authority for provision of financial assistance

(1) Assistance for planning, development, and operation of programs

(A) The Secretary shall provide financial assistance to schools of medicine and osteopathic medicine for the planning, development, and operation of area health education center programs.

(B)(i) Subject to clause (ii), the period during which payments are made from an award under subparagraph (A) may not exceed 12 years. The provision of the payments shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments. The preceding sentence may not be construed as establishing a limitation on the number of awards under such subparagraph that may be made to the school involved.

(ii) In the case of an area health education center planned, developed, or operated with an award under subparagraph (A), the period during which the award is expended for the center may not exceed 6 years.

(2) Assistance for certain projects of existing programs

(A) The Secretary shall provide financial assistance to schools of medicine and osteopathic medicine—

(i) which have previously received Federal financial assistance for an area health education center program under section 802 of the Health Professions Educational Assistance Act of 1976 in fiscal year 1979 or under paragraph (1), or

(ii) which are receiving assistance under paragraph (1),

to carry out projects described in subparagraph (B) through area health education centers for which Federal financial assistance was provided under paragraph (1) and which are no longer eligible to receive such assistance.

(B) Projects for which assistance may be provided under subparagraph (A) are—

(i) projects to improve the distribution, supply, quality, utilization, and efficiency of

health personnel in the health services delivery system;

(ii) projects to encourage the regionalization of educational responsibilities of the health professions schools; and

(iii) projects designed to prepare, through preceptorships and other programs, individuals subject to a service obligation under the National Health Service Corps Scholarship Program to effectively provide health services in health professional shortage areas.

(C) In the case of the requirement established in section 3804(e)(1) of part 57 of title 42, Code of Federal Regulations (42 CFR 57.3804(e)(1)) (relating to the location of area health education centers), the Secretary shall waive such requirement with respect to an area health education center having, at the time of initial application for financial assistance under this section or under a previous authorizing law, an operating program supported by both appropriations of a State legislature and local resources.

(3) Assistance for operation of model programs

(A) In the case of any school of medicine or osteopathic medicine that is operating an area health education center program and that is not receiving financial assistance under paragraph (1), the Secretary may provide financial assistance to the school for the costs of operating the program, and for carrying out activities described in subparagraph (E), if the school makes the agreements described in subparagraphs (B) through (D).

(B)(i) For purposes of subparagraph (A), the agreement described in this subparagraph for a school is that, with respect to the costs of operating the area health education center program of the school, the school will make available (directly or through donations from public or private entities) non-Federal contributions in cash toward such costs in an amount that is not less than 50 percent of such costs.

(ii) Amounts provided by the Federal Government may not be included in determining the amount of non-Federal contributions in cash made for purposes of the requirement established in clause (i).

(C) For purposes of subparagraph (A), the agreement described in this subparagraph for a school is that, in operating the area health education program of the school, the school will—

(i) coordinate the activities of the program with the activities of any office of rural health established by the State or States in which the program is operating;

(ii) conduct health professions education and training activities consistent with national and State priorities in the area served by the program in coordination with the National Health Service Corps, entities receiving funds under section 254b or 254c of this title, and public health departments; and

(iii) cooperate with any entities that are in operation in the area served by the program and that receive Federal or State funds to carry out activities regarding the recruitment and retention of health care providers.

(D) For purposes of subparagraph (A), the agreement described in this subparagraph for a school is that, with respect to the costs of operating the area health education center program of the school, the school will maintain expenditures of non-Federal amounts for such costs at a level that is not less than the level of such expenditures maintained by the school for the fiscal year preceding the first fiscal year for which the school receives an award under subparagraph (A).

(E) A school may expend not more than 10 percent of an award under subparagraph (A) for demonstration projects for any or all of the following purposes:

(i) The establishment of computer-based information programs or telecommunication networks that will link health science centers and service delivery sites.

(ii) The provision of disease specific educational programs for health providers and students in areas of concern to the United States.

(iii) The development of information dissemination models to make available new information and technologies emerging from biological research centers to the practicing medical community.

(iv) The institution of new minority recruitment and retention programs, targeted to improved service delivery in areas the program determines to be medically underserved.

(v) The establishment of programs to place physicians from health manpower shortage areas into similar areas to encourage retention of physicians and to provide flexibility to States in filling positions in health professional shortage areas.

(vi) The establishment or improvement of education and training programs for State emergency medical systems.

(vii) The establishment of programs to train health care providers in the identification and referral of cases of domestic violence.

(F) The aggregate amount of awards provided under subparagraph (A) to schools in a State for a fiscal year may not exceed the lesser of—

(i) $2,000,000; and

(ii) an amount equal to the product of $250,000 and the aggregate number of area health education centers operated in the State by the schools.

(b) Structure of programs

(1) In general

An area health education center program shall be a cooperative program of one or more medical (M.D. and D.O.) schools and one or more nonprofit private or public area health education centers.

(2) Certain requirements

With respect to an area health education center program, a school may not receive an award under paragraph (1) of subsection (a) of

this section for operational expenses, or an award under paragraph (2) or (3) of such subsection, unless the program—

(A) maintains preceptorship educational experiences for health science students;

(B) maintains community-based primary care residency programs or is affiliated with such programs;

(C) maintains continuing education programs for health professionals or coordinates with such programs;

(D) maintains learning resource and dissemination systems for information identification and retrieval;

(E) has agreements with community-based organizations for the delivery of education and training in the health professions;

(F) is involved in the training of health professionals (including nurses and allied health professionals), except to the extent inconsistent with the law of the State in which the training is conducted; and

(G) carries out recruitment programs for the health science professions, or programs for health-career awareness, among minority and other elementary or secondary students from areas the program has determined to be medically underserved.

(c) Requirements for schools

Each medical (M.D. and D.O.) school participating in an area health education center program shall—

(1) provide for the active participation in such program by individuals who are associated with the administration of the school and each of the departments (or specialties if the school has no such departments) of internal medicine, pediatrics, obstetrics and gynecology, surgery, psychiatry, and family medicine;

(2) provide that no less than 10 percent of all undergraduate medical (M.D. and D.O.) clinical education of the school will be conducted in an area health education center and at locations under the sponsorship of such center;

(3) be responsible for, or conduct, a program for the training of physician assistants (as defined in section 295p of this title) or nurse practitioners (as defined under section 296m of this title) which gives special consideration to the enrollment of individuals from, or intending to practice in, the area served by the area health education center of the program; and

(4) provide for the active participation of at least 2 schools or programs of other health professions (including a school of dentistry and a graduate program of mental health practice if there are ones affiliated with the university with which the school of medicine or osteopathic medicine is affiliated) in the educational program conducted in the area served by the area health education center.

The requirement of paragraph (3) shall not apply to a medical (M.D. and D.O.) school participating in an area health education center program if another such school participating in the same program meets the requirement of that paragraph.

(d) Requirements for centers

(1) Service area

Each area health education center shall specifically designate a geographic area in which it will serve, or shall specifically designate a medically underserved population it will serve (such area or population with respect to such center in this section referred to as ''the area served by the center''), which area or population is in a location remote from the main site of the teaching facilities of the school or schools which participate in the program with such center.

(2) Other requirements

Each area health education center shall—

(A) provide for or conduct training in health education services, including education in nutrition evaluation and counseling, in the area served by the center;

(B) assess the health manpower needs of the area served by the center and assist in the planning and development of training programs to meet such needs;

(C) provide for or conduct a rotating osteopathic internship or a medical residency training program in family medicine, general internal medicine, or general pediatrics in which no fewer than four individuals are enrolled in first-year positions in such program;

(D) provide opportunities for continuing medical education (including education in disease prevention) to all physicians and other health professionals (including allied health personnel) practicing within the area served by the center;

(E) provide continuing medical education and other educational support services to the National Health Service Corps members serving within the area served by the center;

(F) conduct interdisciplinary training and practice involving physicians and other health personnel including, where practicable, physician assistants, nurse practitioners, and nurse midwives;

(G) arrange and support educational opportunities for medical and other students at health facilities, ambulatory care centers, and health agencies throughout the area served by the center; and

(H) have an advisory board of which at least 75 percent of the members shall be individuals, including both health service providers and consumers, from the area served by the center.

Any area health education center which is participating in an area health education center program in which another center has a medical residency training program described in subparagraph (C) need not provide for or conduct such a medical residency training program.

(e) Certain provisions regarding funding

(1) Programs

Subject to paragraph (2), in providing financial assistance under this section to a school, the Secretary shall assure that—

(A) at least 75 percent of the total funds provided to the school are expended by an

area health education center program in the area health education centers, and that the school enters into an agreement with each of such centers for purposes of specifying the allocation of such 75 percent;

(B) with respect to the operating costs of the area health education program of the school, non-Federal contributions for such costs are made in an amount that is not less than 25 percent of such costs; and

(C) no award provides funds solely for the planning or development of such a program for a period exceeding two years.

The Secretary may vest in entities which have received financial assistance under section 802 of the Health Professions Educational Assistance Act of 1976, section 295f–4 of this title as in effect before October 1, 1977, or under subsection (a) of this section for area health education centers programs title to any property acquired on behalf of the United States by that entity (or furnished to that entity by the United States) under that award.

(2) Centers

With respect to the period during which an area health education center is planned, developed or operated pursuant to an award under subsection (a)(1) of this section, not more than 55 percent of the total amounts expended for the center in any fifth or sixth year of such period may be provided by the Secretary, subject to paragraph (3).

(3) Applicability of provision regarding centers

Paragraph (2) shall apply only in the case of an area health education center program for which the initial award under subsection (a)(1) of this section is provided on or after October 13, 1992.

(f) Health education and training centers

(1) In general

The Secretary shall provide financial assistance to schools of medicine and osteopathic medicine for the purpose of planning, developing, establishing, maintaining, and operating health education and training centers—

(A) to improve the supply, distribution, quality, and efficiency of personnel providing health services in the State of Florida or (in the United States) along the border between the United States and Mexico;

(B) to improve the supply, distribution, quality, and efficiency of personnel providing, in other urban and rural areas (including frontier areas) of the United States, health services to any population group, including Hispanic individuals, that has demonstrated serious unmet health care needs; and

(C) to encourage health promotion and disease prevention through public education in the areas described.

(2) Arrangements with other entities

The Secretary may not provide financial assistance under paragraph (1) unless the applicant for such assistance agrees, in carrying out the purpose described in such paragraph, to enter into arrangements with one or more public or nonprofit private entities in the State that have expertise in providing health education to the public.

(3) Service area

The Secretary shall, after consultation with health education and training centers, designate the geographic area in which each such center will carry out the purpose described in paragraph (1). The service area of such a center shall be located entirely within the State in which the center is located. Each border health education and training center shall be located in a county (or other political subdivision) of the State in close proximity to the border between the United States and Mexico.

(4) Advisory group; operational plan

The Secretary may not provide financial assistance under paragraph (1) unless the applicant for such assistance agrees—

(A) to establish an advisory group comprised of health service providers, educators and consumers from the service area and of faculty from participating schools;

(B) after consultation with such advisory group, to develop a plan for carrying out the purpose described in paragraph (1) in the service area;

(C) to enter into contracts, as needed, with other institutions or entities to carry out such plan; and

(D) to be responsible for the evaluation of the program.

(5) Certain activities

The Secretary may not provide financial assistance under paragraph (1) unless the applicant for such assistance agrees—

(A) to evaluate the specific service needs for health care personnel in the service area;

(B) to assist in the planning, development, and conduct of training programs to meet the needs identified pursuant to subparagraph (A);

(C) to conduct or support not less than one training and education program for physicians and one program for nurses for at least a portion of the clinical training of such students;

(D) to conduct or support training in health education services, including training to prepare community health workers to implement health education programs in communities, health departments, health clinics, and public schools that are located in the service area;

(E) to conduct or support continuing medical education programs for physicians and other health professionals (including allied health personnel) practicing in the service area;

(F) to support health career educational opportunities designed to provide students residing in the service area with counseling, education, and training in the health professions;

(G) with respect to border health education and training centers, to assist in coordinating its activities and programs carried out pursuant to paragraph (1)(A) with any similar programs and activities carried out in Mexico along the border between the United States and Mexico;

(H) to make available technical assistance in the service area in the aspects of health care organization, financing and delivery; and

(I) in the case of any school of public health located in the service area of the health education and training center operated with the assistance, to permit any such school to participate in the program of the center if the school makes a request to so participate.

(6) Allocation of funds by centers

In carrying out this subsection, the Secretary shall ensure that—

(A) not less than 75 percent of the total funds provided to a school or schools of medicine or osteopathic medicine will be expended in the development and operation of the health education and training center in the service area of such program;

(B) to the maximum extent feasible, the school of medicine or osteopathic medicine will obtain from nongovernmental sources the amount of the total operating funds for such program which are not provided by the Secretary;

(C) no award shall provide funds solely for the planning or development of a health education and training center program for a period in excess of two years;

(D) not more than 10 percent of the annual budget of each program may be utilized for the renovation and equipping of clinical teaching sites; and

(E) no award shall provide funds to be used outside the United States except as the Secretary may prescribe for travel and communications purposes related to the conduct of a border health education and training center.

(7) Definitions

For purposes of this subsection:

(A) The term ''border health education and training center'' means an entity that is a recipient of an award under paragraph (1) and that is carrying out (or will carry out) the purpose described in subparagraph (A) of such paragraph.

(B) The term ''health education and training center'' means an entity that is a recipient of an award under paragraph (1).

(C) The term ''service area'' means, with respect to a health education and training center, the geographic area designated for the center under paragraph (3).

(8) Allocation of funds by Secretary

(A) Of the amounts appropriated pursuant to subsection (i)(2) of this section for a fiscal year, the Secretary shall make available 50 percent for allocations each fiscal year for applications approved by the Secretary for border health education and training centers. The amount of the allocation for each such center shall be determined in accordance with subparagraph (B).

(B) The amount of an allocation under subparagraph (A) for a fiscal year shall be determined in accordance with a formula prescribed by the Secretary, which formula shall be based—

(i) with respect to the service area of the border health education and training center involved, on the low-income population, including Hispanic individuals, in the State of Florida and along the border between the United States and Mexico, and the growth rate of such population;

(ii) on the need of such population for additional personnel to provide health care services along such border; and

(iii) on the most current information concerning mortality and morbidity and other indicators of health status for such population.

(g) Definitions

For purposes of this section:

(1) The term ''area health education center program'' means a program which is organized as provided in subsection (b) of this section and under which the participating medical (M.D. and D.O.) schools and the area health education centers meet the requirements of subsections (c) and (d) of this section.

(2) The term ''award'' means an award of financial assistance.

(3) The term ''financial assistance'' means a grant, cooperative agreement, or contract.

(h) Criteria and standards

The Secretary shall establish standards and criteria for the requirements of this section.

(i) Authorization of appropriations

(1) Area health education center programs

(A) For the purpose of carrying out this section other than subsection (f) of this section, there is authorized to be appropriated $25,000,000 for each of the fiscal years 1993 through 1995.

(B) Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary may not obligate more than 20 percent for awards under subsection (a)(2) of this section.

(C) Of the amounts appropriated under paragraph (1) for fiscal year 1993, the Secretary shall obligate for awards under subsection (a)(3) of this section such amounts as are appropriated in excess of $19,200,000. Of the amounts appropriated under paragraph (1) for each of the fiscal years 1994 and 1995, the Secretary shall obligate for such awards such amounts as are appropriated in excess of $18,700,000.

(2) Health education and training centers

For the purpose of carrying out subsection (f) of this section, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title VII, § 746, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2034; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 313(a)(2), 106 Stat. 3507; June 10, 1993, Pub. L. 103–43, title XX, § 2008(i)(3), 107 Stat. 213.)

REFERENCES IN TEXT

Section 802 of the Health Professions Educational Assistance Act of 1976, referred to in subsecs. (a)(2)(A)(i) and (e)(1), is section 802 of Pub. L. 94–484, as amended, which was set out as a note under section 295g–1 of this title prior to the general revision of this subchapter by section 102 of Pub. L. 102–408.

Section 295f–4 of this title, referred to in subsec. (e)(1), was repealed by Pub. L. 94–484, title V, § 502, Oct. 12, 1976, 90 Stat. 2293, effective with respect to fiscal years beginning after Sept. 30, 1977.

PRIOR PROVISIONS

A prior section 746 of act July 1, 1944, was classified to section 294q–2 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1993—Subsec. (i)(1). Pub. L. 103–43 amended par. (1) to read as if the amendment by Pub. L. 103–531, § 313(a)(2)(B), had not been enacted. See 1992 Amendment note below.

1992—Subsec. (a)(2)(A). Pub. L. 102–531, § 313(a)(2)(A)(ii), realigned margin of concluding provisions.

Subsec. (a)(2)(A)(i). Pub. L. 102–531, § 313(a)(2)(A)(i), substituted ''Health Professions'' for ''Health Professionals''.

Subsec. (i)(1). Pub. L. 102–531, § 313(a)(2)(B), realigned margins of subpars. (A) to (C).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

§ 293k. Family medicine

(a) Training generally

The Secretary may make grants to, or enter into contracts with, any public or nonprofit private hospital, school of medicine or osteopathic medicine, or to or with a public or private nonprofit entity (which the Secretary has determined is capable of carrying out such grant or contract)—

(1) to plan, develop, and operate, or participate in, an approved professional training program (including an approved residency or internship program) in the field of family medicine for medical (M.D. and D.O.) students, interns (including interns in internships in osteopathic medicine), residents, or practicing physicians;

(2) to provide financial assistance (in the form of traineeships and fellowships) to medical (M.D. and D.O.) students, interns (including interns in internships in osteopathic medicine), residents, practicing physicians, or other medical personnel, who are in need thereof, who are participants in any such program, and who plan to specialize or work in the practice of family medicine;

(3) to plan, develop, and operate a program for the training of physicians who plan to teach in family medicine training programs; and

(4) to provide financial assistance (in the form of traineeships and fellowships) to physicians who are participants in any such program and who plan to teach in a family medicine training program.

(b) Academic administrative units

(1) In general

The Secretary may make grants to or enter into contracts with schools of medicine or osteopathic medicine to meet the costs of projects to establish, maintain, or improve academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine.

(2) Preference in making awards

In making awards of grants and contracts under paragraph (1), the Secretary shall give preference to any qualified applicant for such an award that agrees to expend the award for the purpose of—

(A) establishing an academic administrative unit for programs in family medicine; or

(B) substantially expanding the programs of such a unit.

(c) Duration of award

The period during which payments are made to an entity from an award of a grant or contract under subsection (a) of this section may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments.

(d) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $54,000,000 for each of the fiscal years 1993 through 1995.

(2) Allocation

Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary shall make available not less than 20 percent for awards of grants and contracts under subsection (b) of this section.

(July 1, 1944, ch. 373, title VII, § 747, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2042.)

PRIOR PROVISIONS

A prior section 747 of act July 1, 1944, was classified to section 294q–3 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 288, 295j of this title.

§ 293*l*. General internal medicine and general pediatrics

(a) In general

The Secretary may make grants to and enter into contracts with schools of medicine and osteopathic medicine, public or private nonprofit hospitals, or any other public or private nonprofit entity to meet the costs of projects—

(1) to plan, develop, and operate, or participate in, an approved professional training program (including an approved residency or internship program) in the field of internal medicine or pediatrics for medical (M.D. and D.O.) students, interns (including interns in internships in osteopathic medicine), residents, or practicing physicians, which training program emphasizes training for the practice of general internal medicine or general pediatrics (as defined by the Secretary in regulations);

(2) to provide financial assistance (in the form of traineeships and fellowships) to medi-

cal (M.D. and D.O.) students, interns (including interns in internships in osteopathic medicine), residents, practicing physicians, or other medical personnel, who are in need thereof, who are participants in any such training program, and who plan to specialize in or work in the practice of general internal medicine or general pediatrics;

(3) to plan, develop, and operate a program for the training of physicians who will teach in a general internal medicine or general pediatrics training program; and

(4) which provide financial assistance (in the form of traineeships and fellowships) to physicians who are participants in any such program and who plan to teach in a general internal medicine or general pediatrics training program.

(b) Duration of award

The period during which payments are made to an entity from an award of a grant or contract under subsection (a) of this section may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments.

(c) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $25,000,000 for each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title VII, § 748, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2043; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 313(a)(3), 106 Stat. 3507.)

PRIOR PROVISIONS

A prior section 748 of act July 1, 1944, was classified to section 294r of this title prior to renumbering by Pub. L. 97–35.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''hospitals'' for ''hospital'' in introductory provisions.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 288, 295j of this title.

§ 293m. General practice of dentistry

(a) In general

The Secretary may make grants to, and enter into contracts with, any public or nonprofit private school of dentistry or accredited postgraduate dental training institution—

(1) to plan, develop, and operate an approved residency program in the general practice of dentistry or an approved advanced educational program in the general practice of dentistry;

(2) to provide financial assistance (in the form of traineeships and fellowships) to participants in such a program who are in need of financial assistance and who plan to specialize in the practice of general dentistry; and

(3) to fund innovative, nontraditional models for the provision of postdoctoral General Dentistry training.

(b) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $6,000,000 for each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title VII, § 749, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2043.)

PRIOR PROVISIONS

A prior section 749 of act July 1, 1944, was classified to section 294s of this title prior to renumbering by Pub. L. 97–35.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 288, 295j of this title.

§ 293n. Physician assistants

(a) In general

The Secretary may make grants to and enter into contracts with public or nonprofit private schools of medicine and osteopathic medicine and other public or nonprofit private entities to meet the costs of projects to plan, develop, and operate or maintain programs—

(1) for the training of physician assistants (as defined in section 295p of this title); and

(2) for the training of individuals who will teach programs of such training.

(b) Regulations

After consultation with appropriate organizations, the Secretary shall prescribe regulations for programs receiving assistance under subsection (a) of this section for the training of physician assistants. Such regulations shall, as a minimum, require that such a program—

(1) extend for at least one academic year and consist of—

(A) supervised clinical practice; and

(B) at least four months (in the aggregate) of classroom instruction, directed toward preparing students to deliver health care;

(2) have an enrollment of not less than eight students; and

(3) train students in primary care, disease prevention, health promotion, geriatric medicine, and home health care.

(c) Placement of graduates

No grant or contract may be made under subsection (a) of this section unless the school or other entity involved provides assurances satisfactory to the Secretary that the school or entity has appropriate mechanisms for placing graduates of the training program with respect to which the application is submitted in positions for which they have been trained.

(d) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $9,000,000 for each of the fiscal years 1993 through 1995.

(2) Limitation

Not more than 10 percent of the amounts appropriated under paragraph (1) may be ex-

pended for carrying out subsection (a)(2) of this section.

(July 1, 1944, ch. 373, title VII, § 750, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2044.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 295j, 295p of this title.

§ 293*o*. Podiatric medicine

(a) In general

The Secretary may make grants to, and enter into contracts with, public and nonprofit private hospitals and schools of podiatric medicine for the purpose of planning and implementing projects in primary care training for podiatric physicians in approved or provisionally approved residency programs which shall provide financial assistance in the form of traineeships to residents who participate in such projects and who plan to specialize in primary care.

(b) Preference in making grants

In making grants under subsection (a) of this section, the Secretary shall give preference to qualified applicants that provide clinical training in podiatric medicine in a variety of medically underserved communities.

(c) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $1,000,000 for each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title VII, § 751, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2044.)

PRIOR PROVISIONS

A prior section 751 of act July 1, 1944, was classified to section 294r of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 751 of act July 1, 1944, was classified to section 294t of this title prior to renumbering by Pub. L. 97–35.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 295j of this title.

§ 293p. General provisions

(a) Traineeships and fellowships

(1) Traineeships

Payments by recipients of grants or contracts under this part for traineeships shall be limited to such amounts as the Secretary finds necessary to cover the cost of tuition and fees of, and stipends and allowances (including travel and subsistence expenses and dependency allowances) for the trainees.

(2) Fellowships

Payments by recipients of grants or contracts under this part for fellowships shall be limited to such amounts as the Secretary finds necessary to cover the cost of advanced study by, and stipends and allowances (including travel and subsistence expenses and dependency allowances) for, the fellows.

(b) Amount of grant

The amount of any grant or contract under this part shall be determined by the Secretary.

(July 1, 1944, ch. 373, title VII, § 752, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2045.)

PRIOR PROVISIONS

A prior section 752 of act July 1, 1944, was classified to section 294u of this title prior to renumbering by Pub. L. 97–35.

PART D—TRAINING IN CERTAIN HEALTH PROFESSIONS

SUBPART I—PUBLIC HEALTH AND PREVENTIVE MEDICINE

§ 294. Public health traineeships

(a) In general

The Secretary may make grants to accredited schools of public health, and to other public or nonprofit private institutions accredited for the provision of graduate or specialized training in public health, for the purpose of assisting such schools and institutions in providing traineeships to individuals described in subsection (b)(3) of this section.

(b) Certain requirements

(1) Application for grant

No grant for traineeships may be made under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, be submitted in such manner, and contain such information, as the Secretary by regulation may prescribe. Traineeships under such a grant shall be awarded in accordance with such regulations as the Secretary shall prescribe. The amount of any such grant shall be determined by the Secretary.

(2) Use of grant

Traineeships awarded under grants made under subsection (a) of this section shall provide for tuition and fees and such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the trainees as the Secretary may deem necessary.

(3) Eligible individuals

The individuals referred to in subsection (a) of this section are individuals who are pursuing a course of study in a health professions field in which there is a severe shortage of health professionals (which fields include the fields of epidemiology, environmental health, biostatistics, toxicology, nutrition, and maternal and child health).

(July 1, 1944, ch. 373, title VII, § 761, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2045; amended June 10, 1993, Pub. L. 103–43, title XX, § 2014(e), 107 Stat. 217.)

PRIOR PROVISIONS

A prior section 294, act July 1, 1944, ch. 373, title VII, § 727, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2257; amended Dec. 19, 1977, Pub. L. 95–215, § 4(e)(1), 91 Stat. 1506, stated purpose of and authorized appropriations for Federal program of student loan insurance, prior to the general revision of this subchapter by Pub. L. 102–408. See sections 292 and 292p of this title.

Another prior section 294, act July 1, 1944, ch. 373, title VII, §740, as added Sept. 24, 1963, Pub. L. 88–129, §2(b), 77 Stat. 170; amended Oct. 13, 1964, Pub. L. 88–654, §1(a), (b), 78 Stat. 1086; Oct. 22, 1965, Pub. L. 89–290, §§2(b), 4(a), (f)(1), (2), 79 Stat. 1056 to 1058; Nov. 2, 1966, Pub. L. 89–709, §3(a), (b), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, §5(c)(1), 80 Stat. 1232; Aug. 16, 1968, Pub. L. 90–490, title I §121(a)(1), (2), (5)(B), 82 Stat. 777, 778; Nov. 18, 1971, Pub. L. 92–157, title I, §105(e)(1), (4), (f)(2), 85 Stat. 451; Aug. 23, 1974, Pub. L. 93–385, §2(b), 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title XI, 1105(b), 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title IV, §402, 90 Stat. 2266, which related to loan agreements for the establishment of student loan funds, was transferred to section 294m of this title.

A prior section 761 of act July 1, 1944, was classified to section 294cc of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 761 of act July 1, 1944, was classified to section 295 of this title prior to repeal by Pub. L. 99–129.

Another prior section 761 of act July 1, 1944, was classified to section 295 of this title prior to the general revision of part D of this subchapter by Pub. L. 91–696.

AMENDMENTS

1993—Subsec. (b)(3). Pub. L. 103–43 substituted ''nutrition, and maternal and child health'' for ''and nutrition''.

§ 294a. Public health special projects

(a) In general

The Secretary may make grants to and enter into contracts with accredited schools of public health for the costs of planning, developing, demonstrating, operating, and evaluating projects that are in furtherance of the goals established by the Secretary for the year 2000 in the area of—

(1) preventive medicine;

(2) health promotion and disease prevention;

(3) improving access to and quality of health services in medically underserved communities; or

(4) reducing the incidence of domestic violence.

(b) Preferences in making awards

In making awards of grants and contracts under subsection (a) of this section, the Secretary shall give preference to qualified schools agreeing that the project for which the award is made—

(1) will establish or strengthen field placements for students in public or nonprofit private health agencies or organizations; and

(2) will involve faculty members and students in collaborative projects to enhance public health services to medically underserved communities.

(c) Participation and training of students

The Secretary may make an award of a grant or contract under subsection (a) of this section only if the school involved agrees that the students of the school will, through participation in the project for which the award is made, receive training in the activities carried out by the project.

(d) Application for award

The Secretary may make an award of a grant or contract under subsection (a) of this section only if an application for the award is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) Establishment of goals; related reports

(1) Goals

(A) The Secretary shall establish goals for projects under subsection (a) of this section (including goals regarding the training of students), and shall require that, as a condition of the receipt of grants and contracts under such subsection, schools carry out activities in furtherance of meeting the goals.

(B) The Secretary shall establish and implement a methodology for measuring the extent of progress that has been made toward the goals established under subparagraph (A) by schools receiving grants or contracts under subsection (a) of this section.

(2) Reports

Not later than February 1, 1994, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate, a report describing the progress made by projects under subsection (a) of this section during the preceding fiscal years toward the goals established under paragraph (1). For purposes of the report, the extent of such progress shall be measured through the methodology established under subparagraph (B) of such paragraph.

(July 1, 1944, ch. 373, title VII, §762, as added Oct. 13, 1992, Pub. L. 102–408, title I, §102, 106 Stat. 2046.)

PRIOR PROVISIONS

A prior section 294a, act July 1, 1944, ch. 373, title VII, §728, as added Oct. 12, 1976, Pub. L. 94–484, title IV, §401(b)(3), 90 Stat. 2257; amended Dec. 19, 1977, Pub. L. 95–215, §4(e)(2)–(4), 91 Stat. 1506; Dec. 17, 1980, Pub. L. 96–538, title IV, §401, 94 Stat. 3192; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2726, 95 Stat. 916; Oct. 22, 1985, Pub. L. 99–129, title I, §101, title II, §208(h), 99 Stat. 523, 532; Nov. 4, 1988, Pub. L. 100–607, title VI, §§602(a)–(d), 636, title VII, §707, 102 Stat. 3122, 3149, 3159; Nov. 18, 1988, Pub. L. 100–690, title II, §2615(b), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, §5(g)(1), 103 Stat. 612, related to Federal student loan insurance program, prior to the general revision of this subchapter by Pub. L. 102–408. See section 292a of this title.

Another prior section 294a, act July 1, 1944, ch. 373, title VII, §741, as added Sept. 24, 1963, Pub. L. 88–129, §2(b), 77 Stat. 171; amended Oct. 13, 1964, Pub. L. 88–654, §1(c), (d), 78 Stat. 1086; Oct. 22, 1965, Pub. L. 89–290, §4(b), (f)(3), (4), (g)(1), 79 Stat. 1057, 1058; Nov. 2, 1966, Pub. L. 89–709, §3(c), (d), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, §4, 80 Stat. 1230; Aug. 16, 1968, Pub. L. 90–490, title I, §121(a)(3), (4), (5)(A), 82 Stat. 777; Nov. 18, 1971, Pub. L. 92–157, title I, §105(b)–(d), (e)(4), (f)(2), 85 Stat. 449–451; Oct. 27, 1972, Pub. L. 92–585, §4, 86 Stat. 1293; Oct. 12, 1976, Pub. L. 94–484, title IV, §§403(a), (b), (d), 407(d)(1), 90 Stat. 2266, 2279, which related to loan provisions, was transferred to section 294n of this title.

A prior section 762 of act July 1, 1944, was classified to section 295a of this title prior to repeal by Pub. L. 99–129.

Another prior section 762 of act July 1, 1944, was classified to section 295a of this title prior to the general revision of part D of this subchapter by Pub. L. 91–696.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 294c of this title; title 20 section 1092a.

§ 294b. Preventive medicine; dental public health

(a) In general

The Secretary may make grants to and enter into contracts with schools of medicine, osteopathic medicine, public health, and dentistry to meet the costs of projects—

(1) to plan and develop new residency training programs and to maintain or improve existing residency training programs in preventive medicine and dental public health; and

(2) to provide financial assistance to residency trainees enrolled in such programs.

(b) Administration

(1) Amount

The amount of any grant under subsection (a) of this section shall be determined by the Secretary.

(2) Application

No grant may be made under subsection (a) of this section unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

(3) Eligibility

To be eligible for a grant under subsection (a) of this section, the applicant must demonstrate to the Secretary that it has or will have available full-time faculty members with training and experience in the fields of preventive medicine or dental public health and support from other faculty members trained in public health and other relevant specialties and disciplines.

(4) Other funds

Schools of medicine, osteopathic medicine, dentistry, and public health may use funds committed by State, local, or county public health officers as matching amounts for Federal grant funds for residency training programs in preventive medicine.

(July 1, 1944, ch. 373, title VII, § 763, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2047.)

PRIOR PROVISIONS

A prior section 294b, act July 1, 1944, ch. 373, title VII, § 729, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2258; amended Dec. 19, 1977, Pub. L. 95–215, § 4(e)(5), 91 Stat. 1506; Sept. 29, 1979, Pub. L. 96–76, title II, § 201, 93 Stat. 582; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2727, 95 Stat. 917; Oct. 22, 1985, Pub. L. 99–129, title II, § 208(g)(1), 99 Stat. 531; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 628(5), 629(b)(2), 102 Stat. 3145, 3146, related to limitations on individually insured loans and loan insurance, prior to the general revision of this subchapter by Pub. L. 102–408. See section 292b of this title.

Another prior section 294b, act July 1, 1944, ch. 373, title VII, § 742, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 172; amended Oct. 22, 1965, Pub. L. 89–290, § 4(c), 79 Stat. 1057; Nov. 2, 1966, Pub. L. 89–709, § 3(e), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 5(b), 80 Stat. 1232; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(b), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, § 1(a), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(a), (f)(2), 85 Stat. 449, 451; Aug. 23, 1974, Pub. L. 93–385, § 2(a), 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title XI, § 1105(a), 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(e), title IV, §§ 404, 406(d), 90 Stat. 2244, 2267, 2268, which related to authorization of appropriations, was transferred to section 294*o* of this title.

A prior section 763 of act July 1, 1944, was classified to section 295b of this title prior to repeal by Pub. L. 99–129.

Another prior section 763 of act July 1, 1944, was classified to section 295b of this title prior to the general revision of part D of this subchapter by Pub. L. 91–696.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 295j of this title; title 20 section 1092a.

§ 294c. Authorization of appropriations

(a) In general

For the purpose of carrying out this subpart, there is authorized to be appropriated $15,500,000 for each of the fiscal years 1993 through 1995.

(b) Limitation regarding certain program

In obligating amounts appropriated under subsection (a) of this section, the Secretary may not obligate more than 40 percent for carrying out section 294a of this title.

(July 1, 1944, ch. 373, title VII, § 765, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2047.)

PRIOR PROVISIONS

A prior section 294c, act July 1, 1944, ch. 373, title VII, § 730, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2258, related to sources of funds for eligible student loans, prior to the general revision of this subchapter by Pub. L. 102–408. See section 292c of this title.

Another prior section 294c, act July 1, 1944, ch. 373, title VII, § 743, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 172; amended Oct. 22, 1965, Pub. L. 89–290, § 4(d), 79 Stat. 1057; Nov. 3, 1966, Pub. L. 89–751, § 5(c)(2), (3), 80 Stat. 1233; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(c), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, § 1(b), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(e)(2), (f)(2), 85 Stat. 451; Oct. 12, 1976, Pub. L. 94–484, title IV, §§ 405, 406(e), 90 Stat. 2267, 2268, which related to the distribution of assets from loan funds, was transferred to section 294p of this title.

A prior section 765 of act July 1, 1944, was classified to section 295d of this title prior to repeal by Pub. L. 99–129.

Another prior section 765 of act July 1, 1944, was classified to section 295d of this title prior to the general revision of part D of this subchapter by Pub. L. 91–696.

SUBPART II—ALLIED HEALTH PROFESSIONS

§ 294d. Advanced training

(a) In general

The Secretary may award grants to and enter into contracts with eligible entities to assist such entities in meeting the costs associated with projects designed to—

(1) plan, develop, establish or expand post-baccalaureate programs for the advanced training of allied health professionals; and

(2) provide financial assistance, in the form of traineeships or fellowships, to postbaccalaureate students who are participants in any such program and who commit to teaching in the allied health profession involved.

(b) Preference

In awarding grants under subsection (a) of this section, the Secretary shall give preference to qualified projects demonstrating that not less than 50 percent of the graduates of such schools or programs during the preceding 2-year period are engaged as full-time teaching faculty in an allied health shortage specialty.

(c) Limitation

The Secretary shall limit grants and contracts awarded or entered into under subsection (a) of this section to those allied health fields or specialties as the Secretary shall, from time to time, determine to have—

(1) the most significant national or regional shortages of practitioners;

(2) insufficient numbers of qualified faculty in entry level or advanced educational programs; or

(3) a significant role in the care and rehabilitation of patients who are elderly or disabled including physical therapists and occupational therapists.

(d) Eligible entities

For purposes of this section, the term ''eligible entities'' means entities that are—

(1) public or private nonprofit schools, universities, or other educational entities that provide for education and training in the allied health professions and that meet such standards as the Secretary may by regulation prescribe; or

(2) public or nonprofit private entities capable, as determined by the Secretary, of carrying out projects described in subsection (a) of this section.

(e) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title VII, § 766, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2047.)

PRIOR PROVISIONS

A prior section 294d, act July 1, 1944, ch. 373, title VII, § 731, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2258; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(c)(1), (2), 91 Stat. 389, 390; Dec. 19, 1977, Pub. L. 95–215, § 4(a)–(d), (e)(6), 91 Stat. 1505, 1506; Dec. 17, 1980, Pub. L. 96–538, title IV, § 402, 94 Stat. 3192; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2728, 95 Stat. 918; Oct. 22, 1985, Pub. L. 99–129, title II, §§ 208(a), (b)(1), (2), (c)(1), (d), (i), 211(a)(2), 99 Stat. 529–532, 539; Nov. 4, 1988, Pub. L. 100–607, title VI, § 602(e), (f), 102 Stat. 3123; Apr. 6, 1991, Pub. L. 102–25, title III, § 374, 105 Stat. 95; July 23, 1992, Pub. L. 102–325, title IV, § 427(b)(2), 106 Stat. 549, related to eligibility of borrowers and terms of insurance, prior to the general revision of this subchapter by Pub. L. 102–408. See section 292d of this title.

Another prior section 294d, act July 1, 1944, ch. 373, title VII, § 744, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 173; amended Oct. 22, 1965, Pub. L. 89–290, § 4(e), 79 Stat. 1057; Nov. 3, 1966, Pub. L. 89–751, § 5(a), 80 Stat. 1230; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(d), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, § 1(c), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(e)(3), (f)(2), 85 Stat. 451, provided for loans to schools to capitalize health professions student loan funds, prior to repeal by Pub. L. 94–484, title IV, § 406(a)(1), Oct. 12, 1976, 90 Stat. 2268.

A prior section 766 of act July 1, 1944, was classified to section 295d–1 of this title prior to repeal by Pub. L. 99–129.

Another prior section 766 of act July 1, 1944, was classified to section 295d–1 of this title prior to the general revision of part D of this subchapter by Pub. L. 91–696.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 294e, 295j of this title.

§ 294e. Project grants and contracts

(a) Projects related to strengthening training and increasing enrollment in allied health professions

The Secretary may make grants to and enter into contracts with eligible entities to assist such entities in meeting the costs associated with expanding or establishing programs that will increase the number of individuals trained in allied health professions. Programs and activities funded under this section may include—

(1) those that expand enrollments in allied health professions with the greatest shortages or whose services are most needed by the elderly;

(2) those that provide rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences;

(3) those that establish community-based allied health training programs that link academic centers to rural clinical settings;

(4) those that provide career advancement training for practicing allied health professionals;

(5) those that expand or establish clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained;

(6) those that develop curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics;

(7) those that expand or establish interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly;

(8) those that expand or establish demonstration centers to emphasize innovative models to link allied health clinical practice, education, and research; and

(9) those that provide financial assistance (in the form of traineeships) to students who are participants in any such program; and

(A) who plan to pursue a career in an allied health field that has a demonstrated personnel shortage; and

(B) who agree upon completion of the training program to practice in a medically underserved community;

that shall be utilized to assist in the payment of all or part of the costs associated with tui-

tion, fees and such other stipends as the Secretary may consider necessary.

(b) Application

(1) Requirement

No grant may be awarded or contract entered into under this section unless an application therefore[1] has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

(2) Preference

In considering an application submitted for a grant under this section, the Secretary shall give preference to qualified applicants that—

(A) expand and maintain first-year enrollment by not less than 10 percent over enrollments in base year 1992; or

(B) demonstrate that not less than 20 percent of the graduates of such training programs during the preceding 2-year period are working in medically underserved communities.

(c) Eligible entities

For purposes of this section, the term ''eligible entities'' has the meaning given such term in section 294d of this title.

(d) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title VII, §767, as added Oct. 13, 1992, Pub. L. 102–408, title I, §102, 106 Stat. 2048.)

PRIOR PROVISIONS

A prior section 294e, act July 1, 1944, ch. 373, title VII, §732, as added Oct. 12, 1976, Pub. L. 94–484, title IV, §401(b)(3), 90 Stat. 2260; amended Aug. 1, 1977, Pub. L. 95–83, title III, §307(c)(3), (4), 91 Stat. 390; Dec. 19, 1977, Pub. L. 95–215, §4(e)(8), (9), 91 Stat. 1506; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2729, 95 Stat. 918; Oct. 22, 1985, Pub. L. 99–129, title II, §208(e), 99 Stat. 531; Nov. 4, 1988, Pub. L. 100–607, title VI, §602(g), 102 Stat. 3123, related to certificates of loan insurance, prior to the general revision of this subchapter by Pub. L. 102–408. See section 292e of this title.

Another prior section 294e, act July 1, 1944, ch. 373, title VII, §744, formerly §745, as added Sept. 24, 1963, Pub. L. 88–129, §2(b), 77 Stat. 173; amended Nov. 18, 1971, Pub. L. 92–157, title I, §105(f)(2), 85 Stat. 451; renumbered §744, Oct. 12, 1976, Pub. L. 94–484, title IV, §406(a)(2), 90 Stat. 2268, which related to administrative provisions, was transferred to section 294q of this title.

A prior section 767 of act July 1, 1944, was classified to section 295e–1 of this title prior to repeal by Pub. L. 99–129.

Another prior section 767 of act July 1, 1944, was classified to section 295d–2 of this title prior to repeal by Pub. L. 99–129.

Sections 294f to 294h were omitted in the general revision of this subchapter by Pub. L. 102–408, title I, §102, Oct. 13, 1992, 106 Stat. 1994.

Section 294f, act July 1, 1944, ch. 373, title VII, §733, as added Oct. 12, 1976, Pub. L. 94–484, title IV, §401(b)(3), 90 Stat. 2262; amended Dec. 19, 1977, Pub. L. 95–215, §4(e)(10), 91 Stat. 1506; Nov. 6, 1978, Pub. L. 95–598, title III, §327, 92 Stat. 2679; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2730, 95 Stat. 919; July 1, 1988, Pub. L. 100–360, title IV, §411(f)(10)(C)(ii), 102 Stat. 781; Nov. 4, 1988, Pub. L. 100–607, title VI, §602(h)–(k), 102 Stat. 3123; Aug. 16, 1989, Pub. L. 101–93, §7, 103 Stat. 615, related to procedures upon default by borrower under student loan insurance program. See section 292f of this title.

A prior section 294f, act July 1, 1944, ch. 373, title VII, §746, as added Aug. 16, 1968, Pub. L. 90–490, title I, §121(e), 82 Stat. 778; amended Nov. 18, 1971, Pub. L. 92–157, title I, §§105(f)(2), 106(b)(5), 85 Stat. 451, 453, provided for transfer of funds to scholarships in relation to loans to students studying in United States, prior to repeal by Pub. L. 94–484, title IV, §406(a)(1), Oct. 12, 1976, 90 Stat. 2268.

Section 294g, act July 1, 1944, ch. 373, title VII, §734, as added Oct. 12, 1976, Pub. L. 94–484, title IV, §401(b)(3), 90 Stat. 2263; amended Oct. 22, 1985, Pub. L. 99–129, title II, §208(f), 99 Stat. 531, related to establishment of a student loan insurance fund. See section 292i of this title.

A prior section 294g, act July 1, 1944, ch. 373, title VII, §747, as added Nov. 18, 1971, Pub. L. 92–157, title I, §105(f)(4), 85 Stat. 451; amended Oct. 12, 1976, Pub. L. 94–484, title I, §101(f), 90 Stat. 2244, provided for student loans to citizens of United States who were full-time students in schools of medicine located outside United States, prior to repeal by Pub. L. 94–484, title IV, §401(a), Oct. 12, 1976, 90 Stat. 2257, effective Oct. 1, 1976.

Section 294h, act July 1, 1944, ch. 373, title VII, §735, as added Oct. 12, 1976, Pub. L. 94–484, title IV, §401(b)(3), 90 Stat. 2263; amended Aug. 1, 1977, Pub. L. 95–83, title III, §307(c)(5), 91 Stat. 390; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2709(e)(4)(B), 95 Stat. 911; Nov. 16, 1990, Pub. L. 101–597, title IV, §401(b)[(a)], 104 Stat. 3035, related to functions, powers, and duties of the Secretary under the Federal student loan insurance program. See section 292j of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 295j of this title.

SUBPART III—HEALTH ADMINISTRATION

§ 294i. Traineeships and special projects

(a) In general

The Secretary may make grants to public or nonprofit private educational entities (including graduate schools of social work but excluding accredited schools of public health) that offer a program described in subsection (b) of this section—

(1) to provide traineeships for students enrolled in such a program; and

(2) to assist programs of health administration in the development or improvement of programs to prepare students for employment with public or nonprofit private entities.

(b) Relevant programs

The program referred to in subsection (a) of this section is a program in health administration, hospital administration, or health policy analysis and planning, which program is accredited by a body or bodies approved for such purpose by the Secretary of Education and which meets such other quality standards as the Secretary of Health and Human Services by regulation may prescribe.

(c) Preference in making grants

In making grants under subsection (a) of this section, the Secretary shall give preference to qualified applicants that meet the following conditions:

(1) Not less than 25 percent of the graduates of the applicant are engaged in full-time prac-

[1] So in original. Probably should be ''therefor''.

tice settings in medically underserved communities.

(2) The applicant recruits and admits students from medically underserved communities.

(3) For the purpose of training students, the applicant has established relationships with public and nonprofit providers of health care in the community involved.

(4) In training students, the applicant emphasizes employment with public or nonprofit private entities.

(d) Certain provisions regarding traineeships

(1) Use of grant

Traineeships awarded under grants made under subsection (a) of this section shall provide for tuition and fees and such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the trainees as the Secretary may deem necessary.

(2) Preference for certain students

Each entity applying for a grant under subsection (a) of this section for traineeships shall assure to the satisfaction of the Secretary that the entity will give priority to awarding the traineeships to students who demonstrate a commitment to employment with public or nonprofit private entities in the fields with respect to which the traineeships are awarded.

(e) Application for grant

No grant may be made under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, be submitted in such manner, and contain such information, as the Secretary may prescribe. Traineeships under such a grant shall be awarded in accordance with such requirements as the Secretary shall prescribe. The amount of any such grant shall be determined by the Secretary.

(f) Funding

(1) Authorization of appropriations

For payments under grants under subsection (a) of this section, there is authorized to be appropriated $2,500,000 for each of the fiscal years 1993 through 1995.

(2) Limitation

In obligating amounts appropriated under paragraph (1) for a fiscal year, the Secretary may not obligate more than 30 percent for grants under subsection (a)(2) of this section.

(July 1, 1944, ch. 373, title VII, § 771, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2049.)

PRIOR PROVISIONS

A prior section 294i, act July 1, 1944, ch. 373, title VII, § 736, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2265; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(d), 91 Stat. 390, related to participation by Federal credit unions in Federal, State, and private student loan insurance programs, prior to the general revision of this subchapter by Pub. L. 102–408. See section 292k of this title.

A prior section 771 of act July 1, 1944, was classified to section 295f–1 of this title prior to repeal by act July 1, 1944, ch. 373, title VII, § 773, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 606(b), 102 Stat. 3127.

Sections 294j to 294m were omitted in the general revision of this subchapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994.

Section 294j, act July 1, 1944, ch. 373, title VII, § 737, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2265; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(c)(6), 91 Stat. 390; Dec. 19, 1977, Pub. L. 95–215, § 4(f), 91 Stat. 1506; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2731, 95 Stat. 919; Jan. 4, 1983, Pub. L. 97–414, § 8(i), 96 Stat. 2061; Oct. 22, 1985, Pub. L. 99–129, title II, §§ 201(c), 204(c), 208(g)(2), 99 Stat. 525, 527, 531; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 602(*l*), 628(6), 629(b)(2), 102 Stat. 3124, 3145, 3146, defined ''eligible institution'', ''eligible lender'', ''line of credit'', and ''school of allied health''. See section 292*o* of this title.

Section 294j–1, act July 1, 1944, ch. 373, title VII, § 737A, as added Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2732, 95 Stat. 919, related to determination of eligible students. See section 292*l* of this title.

Section 294k, act July 1, 1944, ch. 373, title VII, § 738, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2265; amended Dec. 19, 1977, Pub. L. 95–215, § 4(e)(12), 91 Stat. 1506, related to repayment of loans of deceased or disabled borrowers from student loan insurance fund. See section 292m of this title.

Section 294*l*, act July 1, 1944, ch. 373, title VII, § 739, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 401(b)(3), 90 Stat. 2266; amended Dec. 19, 1977, Pub. L. 95–215, § 4(e)(13), 91 Stat. 1506; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2733, 95 Stat. 920, related to eligibility of institutions and recordation and availability of information. See section 292n of this title.

Section 294*l*–1, act July 1, 1944, ch. 373, title VII, § 739A, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 602(m), 102 Stat. 3124, related to reissuance and refinancing of certain loans.

Section 294m, act July 1, 1944, ch. 373, title VII, § 740, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 170; amended Oct. 13, 1964, Pub. L. 88–654, § 1(a), (b), 78 Stat. 1086; Oct. 22, 1965, Pub. L. 89–290, §§ 2(b), 4 (a), (f)(1), (2), 79 Stat. 1056–1058; Nov. 2, 1966, Pub. L. 89–709, § 3(a), (b), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 5(c)(1), 80 Stat. 1232; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(a)(1), (2), (5)(B), 82 Stat. 777, 778; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(e)(1), (4), (f)(2), 85 Stat. 451; Aug. 23, 1974, Pub. L. 93–385, § 2(b), 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title XI, § 1105(b), 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title IV, § 402, 90 Stat. 2266; Oct. 22, 1985, Pub. L. 99–129, title II, § 209(a)(1), (j)(1), 99 Stat. 532, 536; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 603(a), 628(7), 629(b)(2), 102 Stat. 3125, 3145, 3146; Nov. 6, 1990, Pub. L. 101–527, § 5(a), (b), 104 Stat. 2322, 2323, related to loan agreements for establishment of student loan funds. See section 292q of this title.

PART E—SPECIAL TRAINING PROJECTS

§ 294n. Acquired immune deficiency syndrome

(a) Schools; centers

(1) In general

The Secretary may make grants and enter into contracts to assist public and nonprofit private entities and schools and academic health science centers in meeting the costs of projects—

(A) to train the faculty of schools of, and graduate departments or programs of, medicine, nursing, osteopathic medicine, dentistry, public health, allied health, and mental health practice to teach health professions students to provide for the health care needs of individuals with HIV disease;

(B) to train practitioners to provide for the health care needs of such individuals;

(C) with respect to improving clinical skills in the diagnosis, treatment, and prevention of such disease, to educate and train the health professionals and clinical staff of schools of medicine, osteopathic medicine, and dentistry; and

(D) to develop and disseminate curricula and resource materials relating to the care and treatment of individuals with such disease and the prevention of the disease among individuals who are at risk of contracting the disease.

(2) Preference in making grants

In making grants under paragraph (1), the Secretary shall give preference to qualified projects which will—

(A) train, or result in the training of, health professionals who will provide treatment for minority individuals with HIV disease and other individuals who are at high risk of contracting such disease; and

(B) train, or result in the training of, minority health professionals and minority allied health professionals to provide treatment for individuals with such disease.

(3) Application

No grant or contract may be made under paragraph (1) unless an application is submitted to the Secretary in such form, at such time, and containing such information, as the Secretary may prescribe.

(b) Dental schools

(1) In general

The Secretary may make grants to assist dental schools and programs described in section 294*o*(b)(4)(B) of this title with respect to oral health care to patients with HIV disease.

(2) Application

Each dental school or program described in section 294*o*(b)(4)(B) of this title may annually submit an application documenting the unreimbursed costs of oral health care provided to patients with HIV disease by that school or hospital during the prior year.

(3) Distribution

The Secretary shall distribute the available funds among all eligible applicants, taking into account the number of patients with HIV disease served and the unreimbursed oral health care costs incurred by each institution as compared with the total number of patients served and costs incurred by all eligible applicants.

(4) Maintenance of effort

The Secretary shall not make a grant under this subsection if doing so would result in any reduction in State funding allotted for such purposes.

(c) Definitions

For purposes of this section:

(1) The term ''HIV disease'' means infection with the human immunodeficiency virus, and includes any condition arising from such infection.

(2) The term ''human immunodeficiency virus'' means the etiologic agent for acquired immune deficiency syndrome.

(d) Authorization of appropriations

(1) Schools; centers

For the purpose of grants under subsection (a) of this section, there is authorized to be appropriated $23,000,000 for each of the fiscal years 1993 through 1995.

(2) Dental schools

For the purpose of grants under subsection (b) of this section, there is authorized to be appropriated $7,000,000 for each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title VII, § 776, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2050; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 313(a)(4), 106 Stat. 3507.)

PRIOR PROVISIONS

A prior section 294n, act July 1, 1944, ch. 373, title VII, § 741, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 171; amended Oct. 13, 1964, Pub. L. 88–654, § 1(c), (d), 78 Stat. 1086; Oct. 22, 1965, Pub. L. 89–290, § 4(b), (f)(3), (4), (g)(1), 79 Stat. 1057, 1058; Nov. 2, 1966, Pub. L. 89–709, § 3(c), (d), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, § 4, 80 Stat. 1230; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(a)(3), (4), (5)(A), 82 Stat. 777; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(b)–(d), (e)(4), (f)(2), 85 Stat. 449–451; Oct. 27, 1972, Pub. L. 92–585, § 4, 86 Stat. 1293; Oct. 12, 1976, Pub. L. 94–484, title IV, §§ 403(a), (b), (d), 407(d)(1), 90 Stat. 2266, 2267, 2279; Aug. 1, 1977, Pub. L. 95–83, title III, § 307(e)(1), (2), 91 Stat. 390; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2735, 95 Stat. 920; Oct. 22, 1985, Pub. L. 99–129, title II, § 209(a)(2), (3), (b), (c)(1), (d)–(f), 99 Stat. 532, 534; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 603(b), (c), 628(8), 629(b)(2), 102 Stat. 3125, 3145, 3146; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(b)[(a)], 104 Stat. 3035, outlined provisions for loans from a student loan fund, prior to the general revision of this subchapter by Pub. L. 102–408. See section 292r of this title.

A prior section 776 of act July 1, 1944, was classified to section 295f–6 of this title prior to renumbering by Pub. L. 94–484.

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–531, which directed the substitution of ''No grant'' for ''no grant'' in par. (3), could not be executed because the words ''no grant'' did not appear in par. (3).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

§ 294*o*. Geriatrics

(a) Geriatric education centers

The Secretary may make grants to and enter into contracts with accredited health professions schools or programs described in paragraph (1), (3), or (4) of section 295p of this title or in section 298b(2) of this title to assist in meeting the costs of such schools or programs of projects to—

(1) improve the training of health professionals in geriatrics;

(2) develop and disseminate curricula relating to the treatment of the health problems of elderly individuals;

(3) expand and strengthen instruction in methods of such treatment;

(4) support the training and retraining of faculty to provide such instruction;

(5) support continuing education of health professionals and allied health professionals who provide such treatment; and

(6) establish new affiliations with nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers in order to provide students with clinical training in geriatric medicine.

(b) Geriatric training regarding physicians and dentists

(1) In general

The Secretary may make grants to, and enter into contracts with, schools of medicine, schools of osteopathic medicine, teaching hospitals, and graduate medical education programs, for the purpose of providing support (including residencies, traineeships, and fellowships) for geriatric training projects to train physicians and dentists who plan to teach geriatric medicine, geriatric psychiatry, or geriatric dentistry.

(2) Requirements

Each project for which a grant or contract is made under this subsection shall—

(A) be staffed by full-time teaching physicians who have experience or training in geriatric medicine or geriatric psychiatry;

(B) be staffed, or enter into an agreement with an institution staffed by full-time or part-time teaching dentists who have experience or training in geriatric dentistry;

(C) be based in a graduate medical education program in internal medicine or family medicine or in a department of geriatrics or psychiatry;

(D) provide training in geriatrics and exposure to the physical and mental disabilities of elderly individuals through a variety of service rotations, such as geriatric consultation services, acute care services, dental services, geriatric psychiatry units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals; and

(E) provide training in geriatrics through one or both of the training options described in subparagraphs (A) and (B) of paragraph (3).

(3) Training options

The training options referred to in subparagraph (F)[1] of paragraph (2) shall be as follows:

(A) A 1-year retraining program in geriatrics for—

(i) physicians who are faculty members in departments of internal medicine, family medicine, gynecology, geriatrics, and psychiatry at schools of medicine and osteopathic medicine; and

(ii) dentists who are faculty members at schools of dentistry or at hospital departments of dentistry.

(B) A 2-year internal medicine or family medicine fellowship program providing emphasis in geriatrics, which shall be designed to provide training in clinical geriatrics and geriatrics research for—

(i) physicians who have completed graduate medical education programs in internal medicine, family medicine, psychiatry, neurology, gynecology, or rehabilitation medicine; and

(ii) dentists who have demonstrated a commitment to an academic career and who have completed postdoctoral dental training, including postdoctoral dental education programs or who have relevant advanced training or experience.

(4) Definitions

For purposes of this subsection:

(A) The term ''graduate medical education program'' means a program sponsored by a school of medicine, a school of osteopathic medicine, a hospital, or a public or private institution that—

(i) offers postgraduate medical training in the specialties and subspecialties of medicine; and

(ii) has been accredited by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association through its Committee on Postdoctoral Training.

(B) The term ''post-doctoral dental education program'' means a program sponsored by a school of dentistry, a hospital, or a public or private institution that—

(i) offers post-doctoral training in the specialties of dentistry, advanced education in general dentistry, or a dental general practice residency; and

(ii) has been accredited by the Commission on Dental Accreditation.

(c) Geriatric training regarding optometrists

The Secretary may make grants to, and enter into contracts with, schools and colleges of optometry for the purpose of providing support for projects—

(1) to plan, develop, and operate projects in postgraduate geriatric care training for optometrists who will teach geriatric optometry;

(2) to provide financial assistance (in the form of residencies, traineeships, and fellowships) to participants in such projects; and

(3) to establish new affiliations with nursing homes, ambulatory care centers, senior centers, and other public or nonprofit private entities.

(d) Authorization of appropriations

(1) Education centers; training

For grants and contracts under subsections (a) and (b) of this section, there is authorized to be appropriated $17,000,000 for each of the fiscal years 1993 through 1995.

(2) Optometry

For grants and contracts under subsection (c) of this section, there is authorized to be appropriated $400,000 for each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title VII, § 777, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2052.)

[1] So in original. Probably should be subparagraph ''(E)''.

PRIOR PROVISIONS

A prior section 294*o*, act July 1, 1944, ch. 373, title VII, §742, as added Sept. 24, 1963, Pub. L. 88–129, §2(b), 77 Stat. 172; amended Oct. 22, 1965, Pub. L. 89–290, §4(c), 79 Stat. 1057; Nov. 2, 1966, Pub. L. 89–709, §3(e), 80 Stat. 1103; Nov. 3, 1966, Pub. L. 89–751, §5(b), 80 Stat. 1232; Aug. 16, 1968, Pub. L. 90–490, title I, §121(b), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, §1(a), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, §105(a), (f)(2), 85 Stat. 449, 451; Aug. 23, 1974, Pub. L. 93–385, §2(a), 88 Stat. 741; Apr. 22, 1976, Pub. L. 94–278, title XI, §1105(a), 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title I, §101(e), title IV, §§404, 406(d), 90 Stat. 2244, 2267, 2268; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2734, 95 Stat. 920; Oct. 22, 1985, Pub. L. 99–129, title II, §209(g), 99 Stat. 534; Nov. 6, 1990, Pub. L. 101–527, §5(c), 104 Stat. 2323, provided for authorization of appropriations for purpose of making Federal contributions into student loan funds, prior to the general revision of this subchapter by Pub. L. 102–408. See sections 292t and 292y of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 294n of this title.

§ 294p. Rural areas

(a) Grants

The Secretary may make grants to, or enter into contracts with, any eligible applicant to help such applicant fund authorized activities under an application approved under subsection (d) of this section.

(b) Use of amounts

(1) In general

Amounts provided under subsection (a) of this section shall be used by the recipients to fund interdisciplinary training projects designed to—

(A) use new and innovative methods to train health care practitioners to provide services in rural areas;

(B) demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care;

(C) deliver health care services to individuals residing in rural areas;

(D) enhance the amount of relevant research conducted concerning health care issues in rural areas; and

(E) increase the recruitment and retention of health care practitioners in rural areas and make rural practice a more attractive career choice for health care practitioners.

(2) Methods

A recipient of funds under subsection (a) of this section may use various methods in carrying out the projects described in paragraph (1), including—

(A) the distribution of stipends to students of eligible applicants;

(B) the establishment of a post-doctoral fellowship program;

(C) the training of faculty in the economic and logistical problems confronting rural health care delivery systems; or

(D) the purchase or rental of transportation and telecommunication equipment where the need for such equipment due to unique characteristics of the rural area is demonstrated by the recipient.

(3) Administration

(A) In general

An applicant shall not use more than 10 percent of the funds made available to such applicant under subsection (a) of this section for administrative expenses.

(B) Training

Not more than 10 percent of the individuals receiving training with funds made available to an applicant under subsection (a) of this section shall be trained as doctors of medicine or doctors of osteopathy.

(C) Limitation

An institution that receives a grant under this section shall use amounts received under such grant to supplement, not supplant, amounts made available by such institution for activities of the type described in subsection (b)(1) of this section in the fiscal year preceding the year for which the grant is received.

(c) Eligible applicants

Applicants eligible to obtain funds under subsection (a) of this section shall include local health departments, nonprofit organizations and public or nonprofit colleges, universities, or schools of, or programs that specialize in, nursing, mental health practice, optometry, public health, dentistry, osteopathy, physicians assistants, pharmacy, podiatry, medicine, chiropractic, and allied health professions if such applicants submit applications approved by the Secretary under subsection (d) of this section. Applicants eligible to obtain funds under subsection (a) of this section shall not include for-profit entities, either directly or through a subcontract or subgrant.

(d) Applications

(1) Submission

In order to receive a grant under subsection (a) of this section an entity shall submit an application to the Secretary.

(2) Forms

An application submitted under this subsection shall be in such form, be submitted by such date, and contain such information as the Secretary shall require.

(3) Applications

Applications submitted under this subsection shall—

(A) be jointly submitted by at least two eligible applicants with the express purpose of assisting individuals in academic institutions in establishing long-term collaborative relationships with health care providers in rural areas;

(B) designate a rural health care agency or agencies for clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community mental health centers, long-term care facilities, Native Hawaiian health centers, or facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health

Service under the Indian Self-Determination Act [25 U.S.C. 450f et seq.]; and

(C) provide any additional information required by the Secretary.

(e) "Rural" defined

For the purposes of this section, the term ''rural'' means geographic areas that are located outside of standard metropolitan statistical areas.

(f) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $7,000,000 for each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title VII, § 778, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2054.)

REFERENCES IN TEXT

The Indian Self-Determination Act, referred to in subsec. (d)(3)(B), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 294p, act July 1, 1944, ch. 373, title VII, § 743, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 172; amended Oct. 22, 1965, Pub. L. 89–290, § 4(d), 79 Stat. 1057; Nov. 3, 1966, Pub. L. 89–751, § 5(c)(2), (3), 80 Stat. 1233; Aug. 16, 1968, Pub. L. 90–490, title I, § 121(c), 82 Stat. 778; July 9, 1971, Pub. L. 92–52, § 1(b), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, § 105(e)(2), (f)(2), 85 Stat. 451; Oct. 12, 1976, Pub. L. 94–484, title IV, §§ 405, 406(e), 90 Stat. 2267, 2268; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2736, 95 Stat. 920; Oct. 22, 1985, Pub. L. 99–129, title II, § 209(i), 99 Stat. 536; Nov. 4, 1988, Pub. L. 100–607, title VI, § 603(d), 102 Stat. 3125, related to distribution of assets from loan funds, prior to the general revision of this subchapter by Pub. L. 102–408. See section 292x of this title.

Sections 294q to 294r were omitted in the general revision of this subchapter by Pub. L. 102–408.

Section 294q, act July 1, 1944, ch. 373, title VII, § 744, formerly § 745, as added Sept. 24, 1963, Pub. L. 88–129, § 2(b), 77 Stat. 173; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 105(f)(2), 85 Stat. 451; renumbered § 744, Oct. 12, 1976, Pub. L. 94–484, title IV, § 406(a)(2), 90 Stat. 2268, related to administrative provisions. See section 292u of this title.

Section 294q–1, act July 1, 1944, ch. 373, title VII, § 745, as added Oct. 22, 1985, Pub. L. 99–129, title II, § 209(h)(2), 99 Stat. 535, related to student loan information to be furnished to students. See section 292v of this title.

Section 294q–2, act July 1, 1944, ch. 373, title VII, § 746, as added Oct. 22, 1985, Pub. L. 99–129, title II, § 209(h)(2), 99 Stat. 536, related to procedures for appeal of terminations of agreements with schools. See section 292w of this title.

Section 294q–3, act July 1, 1944, ch. 373, title VII, § 747, formerly § 745, as added and renumbered § 747, Oct. 22, 1985, Pub. L. 99–129, title II, § 209(a)(4), (h)(1), 99 Stat. 532, 535, defined ''school of pharmacy''.

Section 294r, act July 1, 1944, ch. 373, title VII, § 751, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 604, 102 Stat. 3126, related to establishment of a loan repayment program for allied health personnel.

A prior section 294r, act July 1, 1944, ch. 373, title VII, § 748, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(a), 90 Stat. 2279; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(f), 91 Stat. 391; Dec. 19, 1977, Pub. L. 95–215, § 3, 91 Stat. 1504; Sept. 29, 1979, Pub. L. 96–76, title II, § 206(a), 93 Stat. 583, which related to traineeships for students in schools of public health, was renumbered section 792 of act July 1, 1944, by Pub. L. 97–35 and transferred to section 295h–1b of this title.

Section 294s, act July 1, 1944, ch. 373, title VII, § 749, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(a), 90 Stat. 2280; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(f), 91 Stat. 391, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, which related to traineeships for students in other graduate programs, was renumbered section 791A of act July 1, 1944, by Pub. L. 97–35 and transferred to section 295h–1a of this title.

Section 294t, act July 1, 1944, ch. 373, title VII, § 751, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2281; amended Dec. 19, 1977, Pub. L. 95–215, § 5, 91 Stat. 1506; Nov. 9, 1978, Pub. L. 95–623, § 12(c), 92 Stat. 3457; Nov. 10, 1978, Pub. L. 95–626, title I, § 113(b), 92 Stat. 3563; July 10, 1979, Pub. L. 96–32, § 7(i), 93 Stat. 84, which related to National Health Service Corps Scholarships Program, was renumbered section 338A of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254*l* of this title.

Section 294u, act July 1, 1944, ch. 373, title VII, § 752, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2284; amended Nov. 10, 1978, Pub. L. 95–626, title I, § 113(b), 92 Stat. 3563; Sept. 29, 1979, Pub. L. 96–76, title II, § 202(a), (b), 93 Stat. 582, which related to obligated service under contract, was renumbered section 338B of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254m of this title, and subsequently renumbered section 338C of act July 1, 1944, by Pub. L. 100–177.

Section 294v, act July 1, 1944, ch. 373, title VII, § 753, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2285; amended Dec. 17, 1980, Pub. L. 96–538, title IV, § 403, 94 Stat. 3192, which related to private practice, was renumbered section 338C of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254n of this title, and subsequently renumbered section 338D of act July 1, 1944, by Pub. L. 100–177.

Section 294w, act July 1, 1944, ch. 373, title VII, § 754, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2286; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(g), 91 Stat. 391, which related to breach of scholarship contract, was renumbered section 338D of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254*o* of this title, and subsequently renumbered section 338E of act July 1, 1944, by Pub. L. 100–177.

Section 294x, act July 1, 1944, ch. 373, title VII, § 755, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2287, which related to special grants for former Corps member to enter private practice, was renumbered section 338E of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254p of this title, and subsequently renumbered section 338F of act July 1, 1944, by Pub. L. 100–177.

Section 294y, act July 1, 1944, ch. 373, title VII, § 756, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(b)(1), 90 Stat. 2288, which related to authorization of appropriations, was renumbered section 338F of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254q of this title, and subsequently renumbered section 338G of act July 1, 1944, prior to repeal by Pub. L. 100–177, title II, §§ 201(2), 203, Dec. 1, 1987, 101 Stat. 992, 999.

Section 294y–1, act July 1, 1944, ch. 373, title VII, § 757, as added Aug. 1, 1977, Pub. L. 95–83, title III, § 307(n)(1), 91 Stat. 392; amended Dec. 17, 1980, Pub. L. 96–537, § 3(d), 94 Stat. 3174, which related to Indian Health Scholarships, was renumbered section 338G of act July 1, 1944, by Pub. L. 97–35 and transferred to section 254r of this title, and subsequently renumbered section 338I of act July 1, 1944, by Pub. L. 100–177, prior to repeal by Pub. L. 100–713, title I, § 104(b)(1), Nov. 23, 1988, 102 Stat. 4787.

Sections 294z to 294cc were omitted in the general revision of this subchapter by Pub. L. 102–408.

Section 294z, act July 1, 1944, ch. 373, title VII, § 758, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(c), 90 Stat. 2289; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(h), 91 Stat. 391; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2737, 95 Stat. 920; Oct. 22, 1985, Pub. L. 99–129, title I, § 102, title II, § 210(a), 99 Stat. 523, 537; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 605, 628(9), 629(b)(2), 102

Stat. 3126, 3146, related to scholarships for students of exceptional financial need. See section 293 of this title.

Section 294aa, act July 1, 1944, ch. 373, title VII, § 759, as added Oct. 12, 1976, Pub. L. 94–484, title IV, § 408(c), 90 Stat. 2289; amended Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(b)[(a)], 104 Stat. 3035, established a Lister Hill scholarship program of grants for family practice of medicine.

Section 294bb, act July 1, 1944, ch. 373, title VII, § 760, as added Nov. 6, 1990, Pub. L. 101–527, § 6, 104 Stat. 2323, related to grants and other assistance for students from disadvantaged backgrounds. See section 293 et seq. of this title.

Section 294cc, act July 1, 1944, ch. 373, title VII, § 761, as added Nov. 6, 1990, Pub. L. 101–527, § 6, 104 Stat. 2325, related to a loan repayment program regarding service on faculties of certain health professions schools. See section 293b of this title.

A prior section 761 of act July 1, 1944, ch. 373, title VII, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–1; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, which provided the Congressional declaration of purpose for former part D of this subchapter, was classified to section 295 of this title, prior to repeal by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Another prior section 761 of act July 1, 1944, ch. 373, title VII, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 282, which related to authorization of appropriations respecting grants for construction of mental retardation facilities, was classified to section 295 of this title, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

PART F—MISCELLANEOUS PROGRAMS

§ 295. Research on certain health professions issues

(a) Educational indebtedness

(1) In general

Subject to paragraph (2), the Secretary may make grants to and enter into contracts with public and nonprofit private entities for the purpose of conducting research on the extent to which the debt incurred by medical students for attendance at educational institutions has had a detrimental effect on the decisions made by the students on entering primary care specialities.

(2) Evaluation of rate of increase

In carrying out paragraph (1), the Secretary shall provide for a determination of the reasons underlying the rate of increase occurring since January 1, 1981, in tuition and fees for attending health professions schools. The Secretary shall ensure that the determination includes the justifications of such schools for such rate.

(b) Effect of programs for minority and disadvantaged individuals

(1) In general

The Secretary may make grants to and enter into contracts with public and nonprofit private entities for the purpose of conducting research on the effects that federally-funded educational programs or policies for minority or disadvantaged individuals have on—

(A) the number of such individuals attending health professions school;

(B) the number of such individuals completing the programs of education involved; and

(C) the decisions made by such individuals on which of the health professions specialities to enter.

(2) Separate specifications for certain categories of schools

The Secretary may provide a grant or contract under paragraph (1) only if the applicant involved agrees that in conducting research under such paragraph the applicant will make findings specific to the following categories of health professions schools:

(A) Health professions schools of historically black[1] colleges and universities.

(B) Other health professions schools attended by a substantial number of minority individuals.

(C) Health professions schools generally.

(c) Extent of investigations and disciplinary actions by State licensing authorities

The Secretary may make grants to and enter into contracts with public and nonprofit private entities for the purpose of conducting research on the effectiveness of the States in protecting the public health through—

(1) identifying health care providers with respect to whom investigations of professional qualifications are warranted;

(2) conducting such investigations; and

(3) taking disciplinary actions against health care providers determined through such investigations to have engaged in conduct inconsistent with protecting the public health.

(d) Primary health care

(1) In general

The Secretary may make grants to and enter into contracts with public and nonprofit private entities for the purpose of conducting research—

(A) to determine the extent to which Federal programs and related financial incentives influence the percentage of medical school graduates selecting a primary care career;

(B) to determine the extent to which Federal programs and related financial incentives adequately support the training of mid-level primary care providers relative to other health professions education receiving Federal assistance;

(C) to assess the impact that direct and indirect payments for graduate medical education (including the appropriateness of payments for independent, ambulatory training sites) have on increasing the percentage of physicians graduating from medical school who enter primary care careers;

(D) to assess the impact of medical school admission policies on specialty selection and recommend ways admission policies can better facilitate and promote the selection of primary care as a medical career;

(E) to assess the impact that Federal funding for biomedical research influences the design of medical school curriculum and the availability of primary care educational opportunities;

(F) to assess the impact of medical school curriculum, including the availability of

[1] So in original. Probably should be capitalized.

clinical training in ambulatory care settings, influences the percentage of physicians selecting primary care residencies and selecting primary care as a medical career; and

(G) to assess the extent to which current physician payment policies under resource based relative value scale are sufficient to encourage physicians graduating from medical school to enter and remain in primary care careers.

(2) Definitions

For purposes of this subsection:

(A) The term ''primary care careers'', with respect to medicine, means family practice, general internal medicine and general pediatrics.

(B) The term ''mid-level primary care health professions'' means physician assistants, nurse practitioners, and nurse midwives.

(e) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $4,000,000 for each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title VII, § 781, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2055.)

PRIOR PROVISIONS

A prior section 295, act July 1, 1944, ch. 373, title VII, § 761, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–1; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, provided Congressional declaration of purpose for former part D of this subchapter, prior to repeal by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Another prior section 295, act July 1, 1944, ch. 373, title VII, § 761, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 282, related to authorization of appropriations respecting grants for construction of mental retardation facilities, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

A prior section 781 of act July 1, 1944, was classified to section 295g–1 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

§ 295a. Chiropractic demonstration projects

(a) In general

The Secretary may make grants to and enter into contracts with schools, colleges, and universities of chiropractic for the purpose of carrying out demonstration projects in which chiropractors and physicians collaborate to identify and provide effective treatment for spinal and lower-back conditions.

(b) Participation of medical schools

The Secretary may make an award of a grant or contract under subsection (a) of this section only if the applicant involved has entered into such agreements as may be necessary to ensure that in the project under such subsection a school of medicine or osteopathic medicine will participate in the project.

(c) Peer review

Each peer review group under section 295*o*(a) of this title reviewing proposals for grants or contracts under subsection (a) of this section shall include no fewer than two, and no more than three, chiropractors.

(d) Report to Congress

(1) In general

The Secretary shall prepare a report that—

(A) summarizes the applications submitted to the Secretary for grants or contracts under subsection (a) of this section;

(B) specifies the identity of entities receiving the grants or contracts; and

(C) evaluates the effectiveness of the programs operated with the grants and contracts.

(2) Date certain for submission

Not later than February 10, 1995, the Secretary shall complete the report required in paragraph (1) and submit the report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(e) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $1,000,000 for each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title VII, § 782, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2057.)

PRIOR PROVISIONS

Prior sections 295a to 295e–5 were repealed by Pub. L. 99–129, title II, § 220(c), Oct. 22, 1985, 99 Stat. 544.

Section 295a, act July 1, 1944, ch. 373, title VII, § 762, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–2, authorized appropriations for former part D of this subchapter.

Section 295a, act July 1, 1944, ch. 373, title VII, § 762, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 282, related to applications for grants for construction of mental retardation facilities, including their approval by Surgeon General and consideration of certain matters, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

A prior section 782 of act July 1, 1944, was classified to section 295g–2 of this title, prior to the general revision of this subchapter by Pub. L. 102–408.

Section 295b, act July 1, 1944, ch. 373, title VII, § 763, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–2, authorized Secretary to make grants and to set limitations and conditions on grants, required applications for grants, limited use of grant funds, set forth method of payment of grants, and provided for protection of financial interests of the United States.

Another prior section 295b, act July 1, 1944, ch. 373, title VII, § 763, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 283, related to amount of grants for construction of mental retardation facilities, including maximum payments, advances or reimbursement, installments, conditions, and nonduplication of grants, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

Section 295c, act July 1, 1944, ch. 373, title VII, § 764, as added Dec. 25, 1970, Pub. L. 91–696, § 101, 84 Stat. 2080–2; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, established requirements of eligibility for grants.

Another prior section 295c, act July 1, 1944, ch. 373, title VII, § 764, as added Oct. 31, 1963, Pub. L. 88–164, title I, § 101, 77 Stat. 283, related to recovery of expenditures under certain conditions respecting grants for construction of mental retardation facilities, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

Section 295d, act July 1, 1944, ch. 373, title VII, §765, as added Dec. 25, 1970, Pub. L. 91–696, §101, 84 Stat. 2080–3; amended Oct. 17, 1979, Pub. L. 96–88, title III, §301(a)(1), title V, §507, 93 Stat. 677, 692, related to requisites for approval of grants, establishment of separate medical school departments of family medicine, establishment of special hospital programs of family medicine, and supplementation of non-Federal funds.

Another prior section 295d, act July 1, 1944, ch. 373, title VII, §765, as added Oct. 31, 1963, Pub. L. 88–164, title I, §101, 77 Stat. 284, related to noninterference with administration of institutions respecting grants for construction of mental retardation facilities, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

Section 295d–1, act July 1, 1944, ch. 373, title VII, §766, as added Dec. 25, 1970, Pub. L. 91–696, §101, 84 Stat. 2080–4, related to establishment and funding of planning and developmental grants.

Another prior section 295d–1, act July 1, 1944, ch. 373, title VII, §766, as added Oct. 31, 1963, Pub. L. 88–164, title I, §101, 77 Stat. 284, related to definitions in connection with grants for construction of mental retardation research facilities, prior to the general amendment of former part D of this subchapter by section 101 of Pub. L. 91–696.

Section 295d–2, act July 1, 1944, ch. 373, title VII, §767, as added Dec. 25, 1970, Pub. L. 91–696, §101, 84 Stat. 2080–4, established Advisory Council on Family Medicine and provided for its composition, term and compensation of its members, and its duties and functions.

Section 295e, act July 1, 1944, ch. 373, title VII, §768, as added Dec. 25, 1970, Pub. L. 91–696, §101, 84 Stat. 2080–5, set forth definitions for former part D of this subchapter.

Another prior section 295e consisted of section 766 of act July 1, 1944. The classification of section 766 of act July 1, 1944, was changed to section 295d–1 of this title for purposes of codification.

Section 295e–1, act July 1, 1944, ch. 373, title VII, §767, as added Nov. 18, 1971, Pub. L. 92–157, title I, §107(b), 85 Stat. 457; amended Oct. 12, 1976, Pub. L. 94–484, title I, §101(g), 90 Stat. 2244, authorized appropriations for grants to public or nonprofit private hospitals for training, traineeships, and fellowships in family medicine.

Section 295e–2, act July 1, 1944, ch. 373, title VII, §768, as added Nov. 18, 1971, Pub. L. 92–157, title I, §107(b), 85 Stat. 458; amended Oct. 12, 1976, Pub. L. 94–484, title I, §101(h), 90 Stat. 2244, established grants for postgraduate training programs for physicians and dentists and authorized appropriations for those grants.

Section 295e–3, act July 1, 1944, ch. 373, title VII, §769, as added Nov. 18, 1971, Pub. L. 92–157, title I, §107(b), 85 Stat. 459; amended Oct. 12, 1976, Pub. L. 94–484, title I, §101(i), 90 Stat. 2245, authorized the Secretary to make grants for training, traineeships, and fellowships for health professions teaching personnel and authorized appropriations for those grants.

Section 295e–4, act July 1, 1944, ch. 373, title VII, §769A, as added Nov. 18, 1971, Pub. L. 92–157, title I, §107(b), 85 Stat. 459; amended Oct. 12, 1976, Pub. L. 94–484, title I, §101(j), 90 Stat. 2245, authorized appropriations for grants for computer technology health care demonstration programs.

Section 295e–5, act July 1, 1944, ch. 373, title VII, §769B, as added Nov. 18, 1971, Pub. L. 92–157, title I, §107(b), 85 Stat. 460, required applications for grants and approval of grants by Secretary and set forth payment limitations.

Prior sections 295f to 295f–3 were repealed by act July 1, 1944, ch. 373, title VII, §773, as added Nov. 4, 1988, Pub. L. 100–607, title VI, §606(b), 102 Stat. 3127, effective Oct. 1, 1990.

Section 295f, act July 1, 1944, ch. 373, title VII, §770, as added Oct. 22, 1965, Pub. L. 89–290, §2(a), 79 Stat. 1052; amended Aug. 16, 1968, Pub. L. 90–490, title I, §111(a), 82 Stat. 774; Nov. 18, 1971, Pub. L. 92–157, title I, §104(a), 85 Stat. 437; Oct. 12, 1976, Pub. L. 94–484, title I, §101(k), title V, §501(a)–(c), 90 Stat. 2245, 2290, 2291; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2746(a)(1), 95 Stat. 927; Oct. 22, 1985, Pub. L. 99–129, title II, §211(a)(1), 99 Stat. 537; Nov. 4, 1988, Pub. L. 100–607, title VI, §606(a), 102 Stat. 3127, related to capitation grants for schools of public health.

Section 295f–1, act July 1, 1944, ch. 373, title VII, §771, as added Oct. 12, 1976, Pub. L. 94–484, title V, §502, 90 Stat. 2293; amended Aug. 1, 1977, Pub. L. 95–83, title III, §307(i), 91 Stat. 391; Dec. 19, 1977, Pub. L. 95–215, §§1(a), 2, 91 Stat. 1503, 1504; Nov. 9, 1978, Pub. L. 95–623, §§11(g), 12(d), 92 Stat. 3456, 3457; Sept. 29, 1979, Pub. L. 96–76, title II, §207, 93 Stat. 583; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2746(a)(2), 95 Stat. 927; Oct. 22, 1985, Pub. L. 99–129, title II, §211(b), 99 Stat. 539, related to eligibility for capitation grants.

Another prior section 295f–1, act July 1, 1944, ch. 373, title VII, §771, as added Oct. 22, 1965, Pub. L. 89–290, §2(a), 79 Stat. 1052; amended Aug. 16, 1968, Pub. L. 90–490, title I, §111(a), 82 Stat. 775; Nov. 2, 1970, Pub. L. 91–519, title I, §101(a), 84 Stat. 1343; Nov. 18, 1971, Pub. L. 92–157, title I, §104(a), 85 Stat. 443; Oct. 12, 1976, Pub. L. 94–484, title I, §101(*l*), 90 Stat. 2245, authorized start-up assistance, prior to repeal by Pub. L. 94–484, title V, §502, Oct. 12, 1976, 90 Stat. 2293, effective with respect to fiscal years beginning after Sept. 30, 1977.

Section 295f–2, act July 1, 1944, ch. 373, title VII, §772, formerly §775, as added Nov. 18, 1971, Pub. L. 92–157, title I, §104(a), 85 Stat. 448; renumbered §772 and amended Oct. 12, 1976, Pub. L. 94–484, title V, §503(a), 90 Stat. 2300; Dec. 19, 1977, Pub. L. 95–215, §§1(b), 8(c), 91 Stat. 1504, 1507; Nov. 9, 1978, Pub. L. 95–623, §12(j), 92 Stat. 3457; Oct. 22, 1985, Pub. L. 99–129, title II, §211(c), 99 Stat. 539, related to applications for capitation grants.

Another prior section 295f–2, act July 1, 1944, ch. 373, title VII, §772, as added Oct. 22, 1965, Pub. L. 89–290, §2(a), 79 Stat. 1053; amended Aug. 16, 1968, Pub. L. 90–490, title I, §111(a), (e), 82 Stat. 776, 777; Nov. 2, 1970, Pub. L. 91–519, title I, §102(a), 84 Stat. 1343; Nov. 18, 1971, Pub. L. 92–157, title I, §104(a), 85 Stat. 444; Nov. 16, 1973, Pub. L. 93–154, §3(b), 87 Stat. 604; July 12, 1974, Pub. L. 93–348, title II, §215, 88 Stat. 354; Oct. 12, 1976, Pub. L. 94–484, title I, §101(m), 90 Stat. 2245, provided special project grants and contracts, prior to repeal by Pub. L. 94–484, title V, §502, Oct. 12, 1976, 90 Stat. 2293, effective with respect to fiscal years beginning after Sept. 30, 1977.

Section 295f–3, act July 1, 1944, ch. 373, title VII, §773, as added Nov. 4, 1988, Pub. L. 100–607, title VI, §606(b), 102 Stat. 3127, provided for repeal of former part D of this subchapter, effective Oct. 1, 1990.

Another prior section 295f–3, act July 1, 1944, ch. 373, title VII, §773, as added Oct. 22, 1965, Pub. L. 89–290, §2(a), 79 Stat. 1053; amended Aug. 16, 1968, Pub. L. 90–490, title I, §111(b), 82 Stat. 776; Nov. 18, 1971, Pub. L. 92–157, title I, §104(a), 85 Stat. 446; July 12, 1974, Pub. L. 93–348, title I, §106, 88 Stat. 347; Oct. 12, 1976, Pub. L. 94–484, title I, §101(n), 90 Stat. 2245, authorized grants to assist health professions schools which were in financial distress, prior to repeal by Pub. L. 94–484, title V, §502, Oct. 12, 1976, 90 Stat. 2293, effective with respect to fiscal years beginning after Sept. 30, 1977.

A prior section 295f–4, act July 1, 1944, ch. 373, title VII, §774, as added Oct. 22, 1965, Pub. L. 89–290, §2(a), 79 Stat. 1054; amended Aug. 16, 1968, Pub. L. 90–490, title I, §111(c)(1), (2), 82 Stat. 777; Oct. 30, 1970, Pub. L. 91–515, title VI, §601(b)(2), 84 Stat. 1311; Nov. 18, 1971, Pub. L. 92–157, title I, §104(a), 85 Stat. 446; Nov. 16, 1973, Pub. L. 93–154, §3(c), 87 Stat. 605; Oct. 12, 1976, Pub. L. 94–484, title I, §101(*o*), 90 Stat. 2245, authorized health manpower education initiative awards prior to repeal by Pub. L. 94–484, title V, §502, Oct. 12, 1976, 90 Stat. 2293, effective with respect to fiscal years beginning after Sept. 30, 1977.

A prior section 295f–5, act July 1, 1944, ch. 373, title VII, §775, as added Nov. 18, 1971, Pub. L. 92–157, title I, §104(a), 85 Stat. 448, which related to applications for capitation, start-up, special project, and financial distress grants, was renumbered section 772 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 295f–2 of this title.

A prior section 295f–6, act July 1, 1944, ch. 373, title VII, § 776, as added Nov. 16, 1973, Pub. L. 93–154, § 3(a), 87 Stat. 604, which related to training in emergency medical services, was renumbered section 789 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 295g–9 of this title.

Prior sections 295g to 295g–2 were omitted in the general revision of this subchapter by Pub. L. 102–408.

Section 295g, act July 1, 1944, ch. 373, title VII, § 780, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2311; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2738, 95 Stat. 921; Oct. 22, 1985, Pub. L. 99–129, title I, § 103, title II, § 212, 99 Stat. 523, 540; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 607, 629(b)(1), 102 Stat. 3127, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), 103 Stat. 614, related to project grants for establishment of departments of family medicine.

Another prior section 295g, act July 1, 1944, ch. 373, title VII, § 780, as added Oct. 22, 1965, Pub. L. 89–290, § 2(a), 79 Stat. 1055; amended Aug. 16, 1968, Pub. L. 90–490, title I, §§ 111(c)(4), 122(a) to (c), 82 Stat. 777, 779; July 9, 1971, Pub. L. 92–52, § 2, 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–157, title I, §§ 106(a), (b)(3), (4), 108(b)(2), title III, § 301(g), 85 Stat. 452, 453, 461, 464; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(p), 90 Stat. 2245, related to scholarship grants for study in United States, prior to repeal by Pub. L. 94–484, title IV, § 409(a), Oct. 12, 1976, 90 Stat. 2290, effective Oct. 1, 1976.

Section 295g–1, act July 1, 1944, ch. 373, title VII, § 781, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2312; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(j), 91 Stat. 392; Sept. 29, 1979, Pub. L. 96–76, title II, § 203, 93 Stat. 582; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2739, 95 Stat. 921; Jan. 4, 1983, Pub. L. 97–414, § 8(j), 96 Stat. 2061; Aug. 15, 1985, Pub. L. 99–91, § 7, 99 Stat. 392; Oct. 22, 1985, Pub. L. 99–129, title I, § 104, title II, § 213, 99 Stat. 523, 540; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 608, 629(b)(3), 102 Stat. 3127, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), (5), (6), 103 Stat. 614; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(b)[(a)], 104 Stat. 3035, related to area health education centers. See section 293j of this title.

Another prior section 295g–1, act July 1, 1944, ch. 373, title VII, § 781, as added Aug. 16, 1968, Pub. L. 90–490, title I, § 122(d), 82 Stat. 779; amended Nov. 18, 1971, Pub. L. 92–157, title I, §§ 105(f)(3), 106(b)(4), 85 Stat. 451, 453, provided for transfer of monies to student loan fund, prior to repeal by Pub. L. 94–484, title IV, § 409(a), Oct. 12, 1976, 90 Stat. 2290, effective Oct. 1, 1976.

Section 295g–2, act July 1, 1944, ch. 373, title VII, § 782, formerly § 788A, as added Aug. 18, 1987, Pub. L. 100–97, § 3, 101 Stat. 713; renumbered § 782 and amended Nov. 4, 1988, Pub. L. 100–607, title VI, § 614, 102 Stat. 3136; amended Aug. 16, 1989, Pub. L. 101–93, § 5(i), 103 Stat. 613; Nov. 6, 1990, Pub. L. 101–527, § 4(a), 104 Stat. 2318, provided for programs of excellence in health professions education for minorities. See section 293c of this title.

Another prior section 295g–2, act July 1, 1944, ch. 373, title VII, § 782, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2314; amended Nov. 9, 1978, Pub. L. 95–623, § 12(e), 92 Stat. 3457, authorized Secretary to make grants to schools of medicine and osteopathy for programs to train United States citizens formerly enrolled in medical schools in foreign countries, authorized appropriations for those grants, and set forth reporting requirements, prior to repeal by Pub. L. 99–129, title II, § 220(d), Oct. 22, 1985, 99 Stat. 544.

A prior section 295g–3, act July 1, 1944, ch. 373, title VII, § 783, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2314; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2740, 95 Stat. 922; Oct. 22, 1985, Pub. L. 99–129, title I, § 105, 99 Stat. 524, related to programs for physician assistants, prior to repeal by Pub. L. 100–607, title VI, § 615(b), Nov. 4, 1988, 102 Stat. 3138.

Prior sections 295g–4 to 295g–8 were omitted in the general revision of this subchapter by Pub. L. 102–408.

Section 295g–4, act July 1, 1944, ch. 373, title VII, § 784, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2315; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2741, 95 Stat. 922; Jan. 4, 1983, Pub. L. 97–414, § 9(f), 96 Stat. 2064; Oct. 22, 1985, Pub. L. 99–129, title I, § 106, title II, § 214, 99 Stat. 524, 540; Nov. 4, 1988, Pub. L. 100–607, title VI, § 609, 102 Stat. 3130; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(c), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), 103 Stat. 614, related to grants and contracts for training, traineeships, and fellowships in general internal medicine and general pediatrics. See section 293*l* of this title.

Section 295g–5, act July 1, 1944, ch. 373, title VII, § 785, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 610(a)(2), 102 Stat. 3130, related to residency programs in the general practice of dentistry. See section 293m of this title.

Another prior section 295g–5, act July 1, 1944, ch. 373, title VII, § 785, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2315, established grants to public or private nonprofit colleges or universities for occupational health training and education centers and authorized appropriations for those grants, prior to repeal by Pub. L. 99–129, title II, § 220(e), Oct. 22, 1985, 99 Stat. 544.

Section 295g–6, act July 1, 1944, ch. 373, title VII, § 786, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2316; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2742, 95 Stat. 923; Oct. 22, 1985, Pub. L. 99–129, title I, § 107, title II, § 215, 99 Stat. 524, 540; Nov. 4, 1988, Pub. L. 100–607, title VI, § 610(a)(1), (b), 102 Stat. 3130, 3131; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), (6), 103 Stat. 614, related to grants and contracts for specified family medicine programs. See section 293k of this title.

Section 295g–7, act July 1, 1944, ch. 373, title VII, § 787, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2317; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2743, 95 Stat. 923; Oct. 22, 1985, Pub. L. 99–129, title I, § 108, title II, § 216, 99 Stat. 524, 541; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 611(a)–(e), 628(10), 629(b)(2), 102 Stat. 3131, 3132, 3146; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(d), (e), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, § 5(h), (*o*)(2), 103 Stat. 612, 614, related to educational assistance to individuals from disadvantaged backgrounds. See section 293d of this title.

Section 295g–7a, act July 1, 1944, ch. 373, title VII, § 787A, as added and amended Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 612, 629(b)(2), 102 Stat. 3132, 3146, related to a retention program for health professions schools with individuals from disadvantaged backgrounds. See section 293 et seq. of this title.

Section 295g–8, act July 1, 1944, ch. 373, title VII, § 788, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, § 801(a), 90 Stat. 2318; amended Nov. 9, 1978, Pub. L. 95–623, § 12(f), 92 Stat. 3457; Sept. 29, 1979, Pub. L. 96–76, title II, § 205, 93 Stat. 583; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2744(a)(1), (b)–(f), 95 Stat. 923, 924; Oct. 22, 1985, Pub. L. 99–129, title I, § 109, title II, § 217, 99 Stat. 524, 541; Nov. 14, 1986, Pub. L. 99–660, title VI, § 601, 100 Stat. 3797; Dec. 1, 1987, Pub. L. 100–177, title IV, § 401, 101 Stat. 1007; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 613(a), 628(11), 629(b)(2), 102 Stat. 3133, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(2), (3), 103 Stat. 614; July 23, 1992, Pub. L. 102–325, title XV, § 1559, 106 Stat. 841, related to grants and contracts for special projects. See sections 293n, 293*o*, 294a, and 294b of this title.

Another prior section 295g–8, act July 1, 1944, ch. 373, title VII, § 788A, as added Aug. 18, 1987, Pub. L. 100–97, § 3, 101 Stat. 713, which related to grants for minority education, was renumbered section 782 of act July 1, 1944, by Pub. L. 100–607 and transferred to section 295g–2 of this title.

A prior section 295g–8a, act July 1, 1944, ch. 373, title VII, § 788A, as added Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2745, 95 Stat. 925, authorized Secretary to make grants or enter into contracts with schools in serious financial distress to assist their operations, under certain terms and conditions, prior to repeal by Pub. L. 99–129, title II, § 220(f)(1), Oct. 22, 1985, 99 Stat. 544.

Prior sections 295g–8b to 295g–10 were omitted in the general revision of this subchapter by Pub. L. 102–408.

Section 295g–8b, act July 1, 1944, ch. 373, title VII, § 788A, formerly § 788B, as added Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2745, 95 Stat. 926; amended Oct. 22, 1985, Pub. L. 99–129, title I, § 110, title II, §§ 218,

220(f)(2)–(4), 99 Stat. 524, 543, 544; Nov. 4, 1988, Pub. L. 100–607, title VI, §§622, 629(b)(2), 102 Stat. 3141, 3146; Nov. 18, 1988, Pub. L. 100–690, title II, §2615(g), 102 Stat. 4239; renumbered §788A and amended Aug. 16, 1989, Pub. L. 101–93, §5(k), (*o*)(4), 103 Stat. 613, 614, related to training with respect to acquired immune deficiency syndrome. See section 294n of this title.

Another prior section 788A of act July 1, 1944, was renumbered section 782 by section 614(a) of Pub. L. 100–607, as amended, and classified to section 295g–2 of this title.

Section 295g–9, act July 1, 1944, ch. 373, title VII, §789, as added and amended Nov. 4, 1988, Pub. L. 100–607, title VI, §§615(a), 629(b)(1), 102 Stat. 3136, 3146; Aug. 16, 1989, Pub. L. 101–93, §5(*o*)(3), 103 Stat. 614, related to geriatric education centers and geriatric training. See section 294*o* of this title.

Another prior section 295g–9, act July 1, 1944, ch. 373, title VII, §789, formerly §776, as added Nov. 16, 1973, Pub. L. 93–154, §3(a), 87 Stat. 604; renumbered §789, Oct. 12, 1976, Pub. L. 94–484, title VIII, §801(b), 90 Stat. 2322; amended Oct. 21, 1976, Pub. L. 94–573, §12, 90 Stat. 2717; July 10, 1979, Pub. L. 96–32, §7(h), 93 Stat. 84; Aug. 1, 1977, Pub. L. 95–83, title III, §307(k), 91 Stat. 392; Dec. 12, 1979, Pub. L. 96–142, title I, §102, 93 Stat. 1067, authorized Secretary to make grants and enter into contracts for training in emergency medical services, set forth eligibility requirements and amounts, directed Secretary to use a uniform funding cycle, and authorized appropriations for those grants and contracts, prior to repeal by Pub. L. 99–129, title II, §220(g), Oct. 22, 1985, 99 Stat. 544.

Section 295g–10, act July 1, 1944, ch. 373, title VII, §790, as added Oct. 12, 1976, Pub. L. 94–484, title VIII, §801(c), 90 Stat. 2322; amended Nov. 4, 1988, Pub. L. 100–607, title VI, §616(a), (b), 102 Stat. 3138, provided general provisions. See section 293p of this title.

A prior section 295g–10a, Pub. L. 100–607, title VI, §633, Nov. 4, 1988, 102 Stat. 3147, required with respect to the application and award process for certain health personnel training programs the semiannual issuance of solicitations for grant applications and the preliminary review of applications for technical sufficiency, prior to repeal by Pub. L. 102–408, title III, §311, Oct. 13, 1992, 106 Stat. 2091.

A prior section 295g–11, act July 1, 1944, ch. 373, title VII, §790A, as added Nov. 4, 1988, Pub. L. 100–607, title VI, §617, 102 Stat. 3140, related to public health special projects, prior to the general revision of this subchapter by Pub. L. 102–408. See section 294a of this title.

Another prior section 295g–11, act July 1, 1944, ch. 373, title VII, §785, as added Nov. 18, 1971, Pub. L. 92–157, title I, §106(b)(6), 85 Stat. 453; amended Oct. 12, 1976, Pub. L. 94–484, title I, §101(q), 90 Stat. 2245, provided scholarship grants for study abroad, prior to repeal by Pub. L. 94–484, title IV, §409(a), Oct. 12, 1976, 90 Stat. 2290, effective Oct. 1, 1976.

Prior sections 295g–21 to 295g–23 were repealed by Pub. L. 94–484, title IV, §409(a), Oct. 12, 1976, 90 Stat. 2290, effective Oct. 1, 1976.

Section 295g–21, act July 1, 1944, ch. 373, title VII, §784, as added Nov. 18, 1971, Pub. L. 92–157, title I, §106(c), 85 Stat. 455, provided scholarship grants in relation to physician shortage area scholarship program.

Section 295g–22, act July 1, 1944, ch. 373, title VII, §785, as added Nov. 18, 1971, Pub. L. 92–157, title I, §106(c), 85 Stat. 457, related to administration of and contractual arrangements for implementation of the physician shortage area scholarship program.

Section 295g–23, act July 1, 1944, ch. 373, title VII, §786, as added Nov. 18, 1971 Pub. L. 92–157, title I, §106(c), 85 Stat. 457; amended Apr. 22, 1976, Pub. L. 94–278, title XI, §1104, 90 Stat. 416; Oct. 12, 1976, Pub. L. 94–484, title I, §101(r), 90 Stat. 2246, authorized appropriations for physician shortage area scholarships in amount of $2,500,000; $3,000,000; $3,500,000; $3,500,000; and $2,000,000 for fiscal years ending June 30, 1972, through 1976, and for fiscal years ending Sept. 30, 1977, and thereafter such sums necessary to continue making grants to students who prior to July 1, 1976, received grants and were eligible for grants during the succeeding fiscal year.

A prior section 295h, act July 1, 1944, ch. 373, title VII, §791, as added Oct. 12, 1976, Pub. L. 94–484, title VII, §701(a), 90 Stat. 2303; amended Oct. 17, 1979, Pub. L. 96–88, title III, §301(a)(1), title V, §507, 93 Stat. 677, 692; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2746(b)(1), 95 Stat. 927; Jan. 4, 1983, Pub. L. 97–414, §8(k)(2), 96 Stat. 2061; Oct. 22, 1985, Pub. L. 99–129, title I, §111, title II, §219, 99 Stat. 524, 543; Nov. 4, 1988, Pub. L. 100–607, title VI, §618, 102 Stat. 3140; Nov. 18, 1988, Pub. L. 100–690, title II, §2615(f), 102 Stat. 4239; Aug. 16, 1989, Pub. L. 101–93, §5(j), 103 Stat. 613, related to grants for graduate programs in health administration, prior to the general revision of this subchapter by Pub. L. 102–408. See section 294i of this title.

Another prior section 295h, act July 1, 1944, ch. 373, title VII, §791, as added Nov. 3, 1966, Pub. L. 89–751, §2, 80 Stat. 1222; amended Aug. 16, 1968, Pub. L. 90–490, title III, §301(a)(1), 82 Stat. 788; Nov. 2, 1970, Pub. L. 91–519, title II, §201, 84 Stat. 1344, provided for grants for construction of teaching facilities of allied health professions personnel, prior to the general revision of this part by Pub. L. 94–484.

A prior section 295h–1, act July 1, 1944, ch. 373, title VII, §792, as added Oct. 12, 1976, Pub. L. 94–484, title VII, §701(a), 90 Stat. 2304; amended Nov. 10, 1978, Pub. L. 95–626, title I, §121, 92 Stat. 3570; Sept. 29, 1979, Pub. L. 96–76, title II, §206(b), 93 Stat. 583, related to special projects for accredited schools of public health and graduate programs in health administration, prior to repeal by Pub. L. 97–35, title XXVII, §2746(c), Aug. 13, 1981, 95 Stat. 927.

Another prior section 295h–1, act July 1, 1944, ch. 373, title VII, §792, as added Nov. 3, 1966, Pub. L. 89–751, §2, 80 Stat. 1226; amended Aug. 16, 1968, Pub. L. 90–490, title III, §301(a)(2), 82 Stat. 788; Nov. 2, 1970, Pub. L. 91–519, title II, §202(a), (b), 84 Stat. 1344, 1345; June 18, 1973, Pub. L. 93–45, title I, §109(a), (b), 87 Stat. 93; Oct. 12, 1976, Pub. L. 94–484, title I, §101(s)(1), (2), 90 Stat. 2246, provided for grants to improve quality of training centers for allied health professions, prior to the general revision of this part by Pub. L. 94–484.

Prior sections 295h–1a to 295h–2 were omitted in the general revision of this subchapter by Pub. L. 102–408.

Section 295h–1a, act July 1, 1944, ch. 373, title VII, §791A, formerly §749, as added Oct. 12, 1976, Pub. L. 94–484, title IV, §408(a), 90 Stat. 2280; amended Aug. 1, 1977, Pub. L. 95–83, title III, §307(f), 91 Stat. 391; Oct. 17, 1979, Pub. L. 96–88, title III, §301(a)(1), title V, §507, 93 Stat. 677, 692; renumbered §791A and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2746(b)(2), 95 Stat. 927; Jan. 4, 1983, Pub. L. 97–414, §8(k)(1), 96 Stat. 2061; Oct. 22, 1985, Pub. L. 99–129, title I, §112, 99 Stat. 525; Nov. 4, 1988, Pub. L. 100–607, title VI, §619, 102 Stat. 3140, related to traineeships for students in other graduate programs. See section 294i of this title.

Section 295h–1b, act July 1, 1944, ch. 373, title VII, §792; formerly §748, as added Oct. 12, 1976, Pub. L. 94–484, title IV, §408(a), 90 Stat. 2279; amended Aug. 1, 1977, Pub. L. 95–83, title III, §307(f), 91 Stat. 391; Dec. 19, 1977, Pub. L. 95–215, §3, 91 Stat. 1504; Sept. 29, 1979, Pub. L. 96–76, title II, §206(a), 93 Stat. 583; renumbered §792 and amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2746(d), 95 Stat. 927; Oct. 22, 1985, Pub. L. 99–129, title I, §113, 99 Stat. 525; Nov. 4, 1988, Pub. L. 100–607, title VI, §621, 102 Stat. 3141, related to traineeships for students in schools of public health. See section 294 of this title.

Another prior section 792 of act July 1, 1944, as added Oct. 12, 1976, Pub. L. 94–484, title VII, §701(a), 90 Stat. 2304, was classified to section 295h–1 of this title prior to repeal by Pub. L. 97–35, title XXVII, §2746(c), Aug. 13, 1981, 95 Stat. 927.

Section 295h–1c, act July 1, 1944, ch. 373, title VII, §793, as added Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2746(f), 95 Stat. 928; amended Oct. 22, 1985, Pub. L. 99–129, title I, §114, 99 Stat. 525; Nov. 4, 1988, Pub. L. 100–607, title VI, §629(b)(2), 102 Stat. 3146, related to training in preventive medicine. See section 294b of this title.

Another prior section 793 of act July 1, 1944, was renumbered section 794 by Pub. L. 97–35, title XXVII, § 2746(f), Aug. 13, 1981, 95 Stat. 928, and classified to section 295h–2 of this title.

Section 295h–2, act July 1, 1944, ch. 373, title VII, § 794, formerly § 793, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2305; amended S. Res. No. 4, Feb. 4, 1977; Nov. 9, 1978, Pub. L. 95–623, § 12(g), 92 Stat. 3457; S. Res. No. 30, Mar. 7, 1979; H. Res. No. 549, Mar. 25, 1980; renumbered § 794, Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2746(f), 95 Stat. 928, related to statistics and annual report to Congress. See section 295*l* of this title.

Another prior section 295h–2, act July 1, 1944, ch. 373, title VII, § 793, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1228; amended Aug. 16, 1968, Pub. L. 90–490, title III, § 301(a)(3), 82 Stat. 788; Nov. 2, 1970, Pub. L. 91–519, title II, § 203, 84 Stat. 1436; June 18, 1973, Pub. L. 93–45, title I, § 109(c), 87 Stat. 93; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(s)(3), 90 Stat. 2246, provided traineeships for advanced training of allied health professions personnel, including authorization of appropriations, prior to the general revision of this part by Pub. L. 94–484.

Another prior section 794 of act July 1, 1944, ch. 373, title VII, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1228, was classified to section 294h–3 of this title prior to repeal by Pub. L. 91–519, title II, § 202(d), Nov. 2, 1970, 84 Stat. 1345.

A prior section 295h–3, act July 1, 1944, ch. 373, title VII, § 794, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1228; amended Aug. 16, 1968, Pub. L. 90–490, title III, § 301(a)(4), (b), 82 Stat. 788, authorized appropriations for grants to public or nonprofit private agencies, institutions, and organizations for projects to develop, demonstrate, or evaluate curriculums and methods for the training of health technologists, prior to repeal by Pub. L. 91–519, title II, § 202(d), Nov. 2, 1970, 84 Stat. 1345, effective with respect to the fiscal year beginning July 1, 1970.

Prior sections 295h–3a to 295h–3d were omitted in the general revision of this part by Pub. L. 94–484.

Section 295h–3a, act July 1, 1944, ch. 373, title VII, § 794A, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 204, 84 Stat. 1346; amended June 18, 1973, Pub. L. 93–45, title I, § 109(d), 87 Stat. 93; Oct. 12, 1976, Pub. L. 94–484, title I, § 101(s)(4), 90 Stat. 2246, provided for grants and contracts to encourage full utilization of educational talent for allied health professions and authorizing appropriations.

Section 295h–3b, act July 1, 1944, ch. 373, title VII, § 794B, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 204, 84 Stat. 1346, provided for scholarship grants for training in allied health professions.

Section 295h–3c, act July 1, 1944, ch. 373, title VII, § 794C, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 204, 84 Stat. 1347, provided for work-study programs in training in allied health professions.

Section 295h–3d, act July 1, 1944, ch. 373, title VII, § 794D, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 204, 84 Stat. 1349; amended Nov. 18, 1971, Pub. L. 92–157, title III, § 301(e), 85 Stat. 464, provided for loans for students of allied health professions.

Prior sections 295h–4 to 295h–7 were omitted in the general revision of this subchapter by Pub. L. 102–408.

Section 295h–4, act July 1, 1944, ch. 373, title VII, § 795, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2306; amended Oct. 17, 1979, Pub. L. 96–88, title III, § 301(a)(1), title V, § 507, 93 Stat. 677, 692, defined ''allied health personnel'', ''training center for allied health professions'', and ''nonprofit''. See section 295p of this title.

Another prior section 295h–4, act July 1, 1944, ch. 373, title VII, § 795, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1228; amended Dec. 5, 1967, Pub. L. 90–174, § 12(e), 81 Stat. 542; Nov. 2, 1970, Pub. L. 91–519, title II, § 202(c), 84 Stat. 1344; Nov. 18, 1971, Pub. L. 92–157, title III, § 301(f), 85 Stat. 464, defined ''training center for allied health professions''; ''full-time student''; ''nonprofit''; ''construction'' and ''cost of construction''; and ''affiliated hospital'', prior to the general revision of this part by Pub. L. 94–484.

Section 295h–5, act July 1, 1944, ch. 373, title VII, § 796, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2307; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(*l*), (m), 91 Stat. 392; Nov. 4, 1988, Pub. L. 100–607, title VI, § 624, 102 Stat. 3143; Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(f) [(h)], 102 Stat. 4240, related to project grants and contracts with eligible entities to improve the effectiveness of allied health administration and practitioners. See section 294e of this title.

Another prior section 295h–5, act July 1, 1944, ch. 373, title VII, § 796, as added Nov. 3, 1966, Pub. L. 89–751, § 2, 80 Stat. 1230, provided for keeping of records and audits in relation to training in allied health professions, prior to the general revision of this part by Pub. L. 94–484.

Section 295h–6, act July 1, 1944, ch. 373, title VII, § 797, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2308; amended Nov. 4, 1988, Pub. L. 100–607, title VI, § 625, 102 Stat. 3144, related to traineeships for advanced training of allied health personnel. See section 294d of this title.

Another prior section 295h–6, act July 1, 1944, ch. 373, title VII, § 797, as added Aug. 16, 1968, Pub. L. 90–490, title III, § 301(c), 82 Stat. 788, authorized the use of up to one-half of one per centum of appropriated funds for evaluation of programs covered thereby, prior to repeal by Pub. L. 91–296, title IV, § 401(b)(1)(E), June 30, 1970, 84 Stat. 352, effective with respect to appropriations for fiscal years beginning after June 30, 1970.

Section 295h–7, act July 1, 1944, ch. 373, title VII, § 798, as added Oct. 12, 1976, Pub. L. 94–484, title VII, § 701(a), 90 Stat. 2309, related to educational assistance to disadvantaged individuals in allied health training.

Another prior section 295h–7, act July 1, 1944, ch. 373, title VII, § 798(a), as added Aug. 16, 1968, Pub. L. 90–490, title III, § 301(d), 82 Stat. 788; amended Nov. 2, 1970, Pub. L. 91–519, title II, § 205, 84 Stat. 1354, required the Secretary to conduct a study of the allied health programs, prior to the general revision of this part by Pub. L. 94–484.

A prior section 295h–8, act July 1, 1944, ch. 373, title VII, § 799, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 206, 84 Stat. 1354; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 109, 85 Stat. 461, which related to advance funding, was renumbered section 703 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 292c of this title.

A prior section 295h–9, act July 1, 1944, ch. 373, title VII, § 799A, as added Nov. 2, 1970, Pub. L. 91–519, title II, § 207, 84 Stat. 1355, § 704; amended Nov. 18, 1971, Pub. L. 92–157, title I, § 110(2), 85 Stat. 461; July 12, 1974, Pub. L. 93–348, title I, § 105, 88 Stat. 347, which related to sexual discrimination, was renumbered section 704 of act July 1, 1944, by Pub. L. 94–484 and transferred to section 292d of this title.

A prior section 295i, act July 1, 1944, ch. 373, title VII, § 799, as added Apr. 7, 1986, Pub. L. 99–272, title XVII, § 17001, 100 Stat. 357; amended Oct. 25, 1988, Pub. L. 100–527, § 10(4), 102 Stat. 2641; Nov. 4, 1988, Pub. L. 100–607, title VI, §§ 627, 629(b)(1), 102 Stat. 3145, 3146; Aug. 16, 1989, Pub. L. 101–93, § 5(*o*)(3), 103 Stat. 614; Oct. 9, 1992, Pub. L. 102–405, title III, § 302(e)(1), 106 Stat. 1985, established a Council on Graduate Medical Education, prior to the general revision of this subchapter by Pub. L. 102–408. See section 301 of Pub. L. 102–408, set out as a note under section 295k of this title.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

PART G—GENERAL PROVISIONS

§ 295j. Preferences and required information in certain programs

(a) Preferences in making awards

(1) In general

Subject to paragraph (2), in making awards of grants or contracts under any of sections 293k through 293*o* of this title, under section 294b of this title, or under section 294d or 294e of this title, the Secretary shall give preference to any qualified applicant that—

(A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

(2) Limitation regarding peer review

For purposes of paragraph (1), the Secretary may not give an applicant preference if the proposal of the applicant is ranked at or below the 20th percentile of proposals that have been recommended for approval by peer review groups under section 295*o*(a) of this title.

(b) Required submission of information

The Secretary may make an award of a grant or contract under any of sections 293k through 293*o* of this title or under section 294b, 294d, or 294e of this title only if the applicant for the award submits to the Secretary (through the application required in section 295*o*(f)(2) of this title) the following information regarding the programs of the applicant:

(1) A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.

(2) The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.

(3) With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

(4) If applicable, the number of recent graduates who have chosen careers in primary health care.

(5) The number of recent graduates whose practices are serving medically underserved communities.

(6) A description of whether and to what extent the applicant is able to operate without Federal assistance under this subchapter.

(c) "Graduate" defined

For purposes of this section, the term ''graduate'' means, unless otherwise specified, an individual who has successfully completed all training and residency requirements necessary for full certification in the health profession selected by the individual.

(July 1, 1944, ch. 373, title VII, § 791, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2058; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 313(a)(5), 106 Stat. 3507.)

PRIOR PROVISIONS

A prior section 295j, act July 1, 1944, ch. 373, title VII, § 799A, as added Nov. 4, 1988, Pub. L. 100–607, title VI, § 637(a), 102 Stat. 3149; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2615(g)[(i)], 102 Stat. 4240; Aug. 16, 1989, Pub. L. 101–93, § 5(n), 103 Stat. 613, related to grants and contracts to provide health care in rural areas, prior to the general revision of this subchapter by Pub. L. 102–408. See section 294p of this title.

Another prior section 295j, act July 1, 1944, ch. 373, title VII, § 799A, as added Nov. 23, 1988, Pub. L. 100–713, title VII, § 714, 102 Stat. 4834, relating to grants and contracts to provide health care in rural areas, prior to repeal by Pub. L. 100–607, title VI, § 637(b), Nov. 4, 1988, 102 Stat. 3151. Subsequently, section 637(b) of Pub. L. 100–607 was repealed by Pub. L. 101–93, § 5(n)(1), Aug. 16, 1989, 103 Stat. 613, and section 5(n)(2) of Pub. L. 101–93 amended this subchapter to read as if the amendment made by section 714 of Pub. L. 100–713 had not been enacted.

A prior section 791 of act July 1, 1944, was classified to section 295h of this title prior to the general revision of this subchapter by Pub. L. 102–408.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–531, in introductory provisions, inserted references to sections 294d and 294e of this title and substituted reference to section 295*o*(f)(2) of this title for reference to section 293p(a) of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

REQUIRED ASSURANCES REGARDING BLOODBORNE DISEASES

Section 308 of Pub. L. 102–408 provided that: ''With respect to awards of grants or contracts under title VII or VIII of the Public Health Service Act [this subchapter or subchapter VI of this chapter], the Secretary of Health and Human Services may make such an award for the provision of traineeships only if the applicant for the award provides assurances satisfactory to the Secretary that all trainees will, as appropriate, receive instruction in the utilization of universal precautions and infection control procedures for the prevention of the transmission of bloodborne diseases.''

§ 295k. Health professions data

(a) In general

The Secretary shall establish a program, including a uniform health professions data reporting system, to collect, compile, and analyze data on health professions personnel which program shall initially include data respecting all physicians and dentists in the States. The Secretary is authorized to expand the program to include, whenever he determines it necessary, the collection, compilation, and analysis of data respecting pharmacists, optometrists, podiatrists, veterinarians, public health personnel, audiologists, speech pathologists, health care administration personnel, nurses, allied health personnel, medical technologists, chiropractors, clinical psychologists, and any other health personnel in States designated by the Secretary to

be included in the program. Such data shall include data respecting the training, licensure status (including permanent, temporary, partial, limited, or institutional), place or places of practice, professional specialty, practice characteristics, place and date of birth, sex, and socioeconomic background of health professions personnel and such other demographic information regarding health professions personnel as the Secretary may require.

(b) Certain authorities and requirements

(1) Sources of information

In carrying out subsection (a) of this section, the Secretary shall collect available information from appropriate local, State, and Federal agencies and other appropriate sources.

(2) Contracts for studies of health professions

The Secretary shall conduct or enter into contracts for the conduct of analytic and descriptive studies of the health professions, including evaluations and projections of the supply of, and requirements for, the health professions by specialty and geographic location. Such studies shall include studies determining by specialty and geographic location the number of health professionals (including allied health professionals and health care administration personnel) who are members of minority groups, including Hispanics, and studies providing by specialty and geographic location evaluations and projections of the supply of, and requirements for, health professionals (including allied health professionals and health care administration personnel) to serve minority groups, including Hispanics.

(3) Grants and contracts regarding States

The Secretary is authorized to make grants and to enter into contracts with States (or an appropriate nonprofit private entity in any State) for the purpose of participating in the program established under subsection (a) of this section. The Secretary shall determine the amount and scope of any such grant or contract. To be eligible for a grant or contract under this paragraph a State or entity shall submit an application in such form and manner and containing such information as the Secretary shall require. Such application shall include reasonable assurance, satisfactory to the Secretary, that—

(A) such State (or nonprofit entity within a State) will establish a program of mandatory annual registration of the health professions personnel described in subsection (a) of this section who reside or practice in such State and of health institutions licensed by such State, which registration shall include such information as the Secretary shall determine to be appropriate;

(B) such State or entity shall collect such information and report it to the Secretary in such form and manner as the Secretary shall prescribe; and

(C) such State or entity shall comply with the requirements of subsection (e) of this section.

(d)[1] Reports to Congress

The Secretary shall submit to the Congress on October 1, 1993, and biennially thereafter, the following reports:

(1) A comprehensive report regarding the status of health personnel according to profession, including a report regarding the analytic and descriptive studies conducted under this section.

(2) A comprehensive report regarding applicants to, and students enrolled in, programs and institutions for the training of health personnel, including descriptions and analyses of student indebtedness, student need for financial assistance, financial resources to meet the needs of students, student career choices such as practice specialty and geographic location and the relationship, if any, between student indebtedness and career choices.

(e) Requirements regarding personal data

(1) In general

The Secretary and each program entity shall in securing and maintaining any record of individually identifiable personal data (hereinafter in this subsection referred to as ''personal data'') for purposes of this section—

(A) inform any individual who is asked to supply personal data whether he is legally required, or may refuse, to supply such data and inform him of any specific consequences, known to the Secretary or program entity, as the case may be, of providing or not providing such data;

(B) upon request, inform any individual if he is the subject of personal data secured or maintained by the Secretary or program entity, as the case may be, and make the data available to him in a form comprehensible to him;

(C) assure that no use is made of personal data which use is not within the purposes of this section unless an informed consent has been obtained from the individual who is the subject of such data; and

(D) upon request, inform any individual of the use being made of personal data respecting such individual and of the identity of the individuals and entities which will use the data and their relationship to the programs under this section.

(2) Consent as precondition to disclosure

Any entity which maintains a record of personal data and which receives a request from the Secretary or a program entity for such data for purposes of this section shall not transfer any such data to the Secretary or to a program entity unless the individual whose personal data is to be so transferred gives an informed consent for such transfer.

(3) Disclosure by Secretary

(A) Notwithstanding any other provision of law, personal data collected by the Secretary or any program entity under this section may not be made available or disclosed by the Secretary or any program entity to any person other than the individual who is the subject of

[1] So in original. No subsec. (c) has been enacted.

such data unless (i) such person requires such data for purposes of this section, or (ii) in response to a demand for such data made by means of compulsory legal process. Any individual who is the subject of personal data made available or disclosed under clause (ii) shall be notified of the demand for such data.

(B) Subject to all applicable laws regarding confidentiality, only the data collected by the Secretary under this section which is not personal data shall be made available to bona fide researchers and policy analysts (including the Congress) for the purposes of assisting in the conduct of studies respecting health professions personnel.

(4) "Program entity" defined

For purposes of this subsection, the term ''program entity'' means any public or private entity which collects, compiles, or analyzes health professions data under a grant, contract, or other arrangement with the Secretary under this section.

(g)[2] Technical assistance

The Secretary shall provide technical assistance to the States and political subdivisions thereof in the development of systems (including model laws) concerning confidentiality and comparability of data collected pursuant to this section.

(h) Grants and contracts regarding nonprofit entities

(1) In general

In carrying out subsection (a) of this section, the Secretary may make grants, or enter into contracts and cooperative agreements with, and provide technical assistance to, any nonprofit entity in order to establish a uniform allied health professions data reporting system to collect, compile, and analyze data on the allied health professions personnel.

(2) Reports

With respect to reports required in subsection (d) of this section, each such report made on or after October 1, 1991, shall include a description and analysis of data collected pursuant to paragraph (1).

(July 1, 1944, ch. 373, title VII, § 792, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2058.)

PRIOR PROVISIONS

A prior section 792 of act July 1, 1944, was classified to section 295h–1b of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 792 of act July 1, 1944, was classified to section 295h–1 of this title prior to repeal by Pub. L. 97–35.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 293d of this title.

ADVISORY COUNCIL ON GRADUATE MEDICAL EDUCATION

Section 301 of Pub. L. 102–408, as amended by Pub. L. 102–531, title III, § 313(b), Oct. 27, 1992, 106 Stat. 3507, provided that:

''(a) ESTABLISHMENT; DUTIES.—There is established the Council on Graduate Medical Education (in this section referred to as the 'Council'). The Council shall—

''(1) make recommendations to the Secretary of Health and Human Services (in this section referred to as the 'Secretary'), and to the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives, with respect to—

''(A) the supply and distribution of physicians in the United States;

''(B) current and future shortages or excesses of physicians in medical and surgical specialties and subspecialties;

''(C) issues relating to foreign medical school graduates;

''(D) appropriate Federal policies with respect to the matters specified in subparagraphs (A), (B), and (C), including policies concerning changes in the financing of undergraduate and graduate medical education programs and changes in the types of medical education training in graduate medical education programs;

''(E) appropriate efforts to be carried out by hospitals, schools of medicine, schools of osteopathic medicine, and accrediting bodies with respect to the matters specified in subparagraphs (A), (B), and (C), including efforts for changes in undergraduate and graduate medical education programs; and

''(F) deficiencies in, and needs for improvements in, existing data bases concerning the supply and distribution of, and postgraduate training programs for, physicians in the United States and steps that should be taken to eliminate those deficiencies; and

''(2) encourage entities providing graduate medical education to conduct activities to voluntarily achieve the recommendations of the Council under paragraph (1)(E).

''(b) COMPOSITION.—The Council shall be composed of—

''(1) the Assistant Secretary for Health or the designee of the Assistant Secretary;

''(2) the Administrator of the Health Care Financing Administration;

''(3) the Chief Medical Director [now Under Secretary for Health] of the Department of Veterans Affairs;

''(4) 6 members appointed by the Secretary to include representatives of practicing primary care physicians, national and specialty physician organizations, foreign medical graduates, and medical student and house staff associations;

''(5) 4 members appointed by the Secretary to include representatives of schools of medicine and osteopathic medicine and public and private teaching hospitals; and

''(6) 4 members appointed by the Secretary to include representatives of health insurers, business, and labor.

''(c) TERMS OF APPOINTED MEMBERS.—

''(1) IN GENERAL; STAGGERED ROTATION.—Members of the Council appointed under paragraphs (4), (5), and (6) of subsection (b) shall be appointed for a term of 4 years, except that the term of office of the members first appointed shall expire, as designated by the Secretary at the time of appointment, 4 at the end of 1 year, 4 at the end of 2 years, 3 at the end of 3 years, and 3 at the end of 4 years.

''(2) DATE CERTAIN FOR APPOINTMENT.—The Secretary shall appoint the first members to the Council under paragraphs (4), (5), and (6) of subsection (b) within 60 days after the date of enactment of this section [Oct. 13, 1992].

''(d) CHAIR.—The Council shall elect one of its members as Chairman of the Council.

''(e) QUORUM.—Nine members of the Council shall constitute a quorum, but a lesser number may hold hearings.

''(f) VACANCIES.—Any vacancy in the Council shall not affect its power to function.

''(g) COMPENSATION.—Each member of the Council who is not otherwise employed by the United States

[2] So in original. No subsec. (f) has been enacted.

Government shall receive compensation at a rate equal to the daily rate prescribed for GS–18 under the General Schedule under section 5332 of title 5, United States Code, for each day, including traveltime, such member is engaged in the actual performance of duties as a member of the Council. A member of the Council who is an officer or employee of the United States Government shall serve without additional compensation. All members of the Council shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties.

''(h) CERTAIN AUTHORITIES AND DUTIES.—

''(1) AUTHORITIES.—In order to carry out the provisions of this section, the Council is authorized to—

''(A) collect such information, hold such hearings, and sit and act at such times and places, either as a whole or by subcommittee, and request the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as the Council or such subcommittee may consider available; and

''(B) request the cooperation and assistance of Federal departments, agencies, and instrumentalities, and such departments, agencies, and instrumentalities are authorized to provide such cooperation and assistance.

''(2) COORDINATION OF ACTIVITIES.—The Council shall coordinate its activities with the activities of the Secretary under section 792 of the Public Health Service Act [42 U.S.C. 295k]. The Secretary shall, in cooperation with the Council and pursuant to the recommendations of the Council, take such steps as are practicable to eliminate deficiencies in the data base established under such section 792 and shall make available in its reports such comprehensive data sets as are developed pursuant to this section.

''(i) REQUIREMENT REGARDING REPORTS.—In the reports required under subsection (a), the Council shall specify its activities during the period for which the report is made.

''(j) FINAL REPORT.—Not later than April 1, 1995, the Council shall submit a final report under subsection (a).

''(k) TERMINATION.—The Council shall terminate September 30, 1995.''

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

COMMISSION ON ALLIED HEALTH

Section 302 of Pub. L. 102–408 provided for establishment of a National Commission on Allied Health, charged with (1) making recommendations to the Secretary of Health and Human Services and Congress with respect to nationwide supply and distribution of allied health personnel, current and future shortages of personnel, priority research needs within allied health professions, Federal policies relating to personnel and research as well as undergraduate and graduate financing, concerted efforts on part of allied health facilities and educational institutions to address such matters, and needs with respect to nationwide data bases concerning supply and distribution of allied health personnel, and (2) encouraging entities providing allied health education to voluntarily achieve recommendations of Commission, and further provided for composition of Commission, date certain for appointments to Commission, resources for Commission activities, an interim progress report due not later than Oct. 1, 1993, a final report due not later than Apr. 1, 1994, and termination of Commission 60 days after submission of final report.

STUDY REGARDING SHORTAGE OF CLINICAL LABORATORY TECHNOLOGISTS FOR MEDICALLY UNDERSERVED AND RURAL COMMUNITIES

Section 303 of Pub. L. 102–408 directed Secretary of Health and Human Services, with respect to the shortage of clinical laboratory technologists, to conduct a study for the purpose of determining whether there are special or unique factors affecting the supply of clinical laboratory technologists in medically underserved and rural communities, and assessing alternative routes for certification of the competence of individuals to serve as such technologists, with consideration of the role of entities providing such certifications, and, not later than Oct. 1, 1993, complete the study and submit to Committee on Energy and Commerce of House of Representatives, and to Committee on Labor and Human Resources of Senate, a report describing the findings made as result of the study.

NATIONAL ADVISORY COUNCIL ON MEDICAL LICENSURE

Section 307 of Pub. L. 102–408 provided that:

''(a) ADVISORY COUNCIL.—

''(1) IN GENERAL.—The Secretary of Health and Human Services shall establish an advisory council to be known as the 'National Advisory Council on Medical Licensure'.

''(2) DUTIES.—

''(A) ADVICE.—The Council shall provide advice to the Secretary regarding the operation of the system established by the American Medical Association for the purpose of verifying and maintaining information regarding the qualifications of individuals to practice medicine, and advice regarding the establishment and operation of any similar system.

''(B) ACTIVITIES.—In carrying out subparagraph (A), the Council shall—

''(i) monitor and review the operation of the private credentials verification system and develop recommendations regarding methods by which the system can be improved, and make recommendations for the establishment of nondiscriminatory policies and practices for the operation of the system;

''(ii) determine to what extent the system has expedited and otherwise improved the efficiency and equitable operation of the process in the States for licensing individuals to practice medicine who previously have been licensed by another State (commonly known as licensure by endorsement); and

''(iii) review the policies and practices of the States (including any relevant laws) in licensing international medical graduates and in licensing domestic medical graduates, and determine the effects of the policies.

''(3) COMPOSITION.—

''(A) IN GENERAL.—The Council shall be composed of 15 voting members selected in accordance with subparagraphs (B) and (C).

''(B) HEALTH RESOURCES AND SERVICES ADMINISTRATION.—The Secretary shall designate one official or employee of the Health Resources and Services Administration to serve as a member of the Council. The official or employee so designated shall be a graduate of a medical school located in the United States.

''(C) APPOINTMENTS.—From among individuals who are not officers or employees of the Federal Government, the Secretary shall, subject to subparagraph (D), make appointments to the Council as follows:

''(i) One individual from an organization representing State authorities that license individuals to practice medicine.

''(ii) One individual representing a national organization that represents practicing physicians in the United States.

''(iii) One individual representing an organization in the United States that tests international medical graduates regarding medical knowledge.

''(iv) One individual representing an organization in the United States that tests individuals who are graduates of medical schools located in the United States regarding medical knowledge.

''(v) One physician representing one or more medical schools located in the United States.

''(vi) One individual who is a representative of the private credentials verification system.

''(vii) One individual who is a graduate of a medical school located in the United States, who has been licensed to practice medicine by a State and has been so licensed by such State for a continuous period of at least 20 years, and who has applied for and received licensure by endorsement during the 5-year period ending on the date of the enactment of this Act [Oct. 13, 1992].

''(viii) One individual who is a graduate of a medical school located in the United States and who represents a State authority that licenses individuals to practice medicine, which State either has a significant number of practicing physicians who are international medical graduates or has a significant shortage of physicians.

''(ix) One individual who is an international medical graduate and who represents a coalition representing such graduates.

''(x) One individual who is an international medical graduate and who is a native of the United States.

''(xi) One individual who is a native of a country located in southern or eastern Asia (including southern or eastern Asian islands) and who is an international medical graduate by virtue of being a graduate of a medical school located in such a country.

''(xii) One individual who is a native of a European country or of Australia or New Zealand and who is an international medical graduate by virtue of being a graduate of a medical school located in such a country.

''(xiii) One individual who is a native of a Latin American or Caribbean country and who is an international medical graduate by virtue of being a graduate of a medical school located in such a country.

''(xiv) One individual who is a native of a country located in sub-Saharan Africa and who is an international medical graduate by virtue of being a graduate of a medical school located in such a country.

At least one member appointed by the Secretary under this subparagraph shall be a physician who is practicing in a medically underserved community, as defined in section 799 of the Public Health Service Act [42 U.S.C. 295p]. A physician may serve on the Council only if the physician is licensed by one or more States to practice medicine.

''(D) CONSULTATION.—The Secretary shall make the appointments described in subparagraph (C) only after consultation with relevant organizations and coalitions.

''(4) CHAIR.—From among the members appointed under paragraph (3)(C), the Council shall designate an individual to serve as the chair of the Council.

''(5) DURATION.—The Council shall continue in existence until the submission of the report required under paragraph (7), or not later than September 30, 1995, whichever is earlier.

''(6) INTERIM REPORT.—Not later than September 30, 1993, the Council shall submit to the Secretary, the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives, an interim report describing the findings and recommendations of the Council pursuant to the duties established in paragraph (2). The Secretary shall provide a copy of the report to the private credentials verification system.

''(7) FINAL REPORT.—

''(A) IN GENERAL.—Not later than September 30, 1995, the Council shall prepare and submit to the Secretary, the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives, a final report that shall include recommendations regarding activities conducted pursuant to paragraph (2), that shall include a determination as to whether the private credentials verification system is operating with a reasonable degree of efficiency and whether the policies and practices of the system are nondiscriminatory.

''(B) RECOMMENDATIONS.—If the Secretary determines that the private credentials verification system fails to meet either of the criteria with respect to the determination described in subparagraph (A), the Secretary, in consultation with the Council and relevant organizations, shall make a recommendation concerning the establishment of an alternative private system and concerning the specifications for such a system as described in paragraph (2)(B).

''(b) STUDY OF STATE LICENSURE PROCESS.—

''(1) IN GENERAL.—With respect to the licensure by the States of individuals to practice medicine, the Secretary, in consultation with the Council, shall conduct a study of not less than 10 States for the purpose of determining—

''(A) the average length of time required for the States involved to process the licensure applications of domestic medical graduates and the average length of time required for the States to process the licensure applications of international medical graduates, and the reasons underlying any significant differences in such times; and

''(B) the percentage of licensure applications from domestic medical graduates that are approved and the percentage of licensure applications from graduates of international medical schools that are approved, and the reasons underlying any significant differences in such percentages.

''(2) REPORT.—Not later than September 30, 1994, the Secretary shall submit to the Committee on Labor and Human Resources of the Senate and the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives a report describing the findings made as a result of the study required in paragraph (1) for the fiscal year.

''(c) DEFINITIONS.—For purposes of this section:

''(1) COUNCIL.—The term 'Council' means the National Advisory Council on Medical Licensure established in subsection (a)(1).

''(2) DOMESTIC MEDICAL GRADUATE.—The term 'domestic medical graduate' means an individual who is a graduate of a medical school located in the United States or Canada.

''(3) INTERNATIONAL MEDICAL GRADUATE.—The term 'international medical graduate' means an individual who is a graduate of a medical school located in a country other than the United States or Canada.

''(4) MEDICAL SCHOOL.—The term 'medical school' means a school of medicine or a school of osteopathic medicine, as such terms are defined in section 799 of the Public Health Service Act [42 U.S.C. 295p].

''(5) NONDISCRIMINATORY.—The term 'nondiscriminatory', with respect to policies and practices, means that such policies and practices do not discriminate on the basis of race, color, religion, gender, national origin, age, disability, marital status, or educational affiliation.

''(6) PRIVATE CREDENTIALS VERIFICATION SYSTEM.—The term 'private credentials verification system' means the system described in subsection (a)(2)(A) and established by the American Medical Association.

''(7) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.

''(8) STATE.—The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

''(d) NECESSARY RESOURCES.—The Secretary shall ensure that necessary resources are made available to implement the provisions of this section.''

[For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.]

§ 295*l*. Statistics; annual report

(a) Statistics and other information

The Secretary shall, in coordination with the National Center for Health Statistics (established under section 242k of this title), continuously develop, publish, and disseminate on a nationwide basis statistics and other information respecting public and community health personnel, including—

(1) detailed descriptions of the various types of activities in which public and community health personnel are engaged,

(2) the current and anticipated needs for the various types of public and community health personnel, and

(3) the number, employment, geographic locations, salaries, and surpluses and shortages of public and community health personnel, the educational and licensure requirements for the various types of such personnel, and the cost of training such personnel.

(b) Requirements regarding personal data

(1) In general

The Secretary and each program entity shall in securing and maintaining any record of individually identifiable personal data (in this subsection referred to as ''personal data'') for purposes of this section—

(A) inform any individual who is asked to supply personal data whether he is legally required, or may refuse, to supply such data and inform him of any specific consequences, known to the Secretary or program entity as the case may be, of providing or not providing such data;

(B) upon request, inform any individual if he is the subject of personal data secured or maintained by the Secretary or program entity, as the case may be, and make the data available to him in a form comprehensible to him;

(C) assure that no use is made of personal data which is not within the purposes of this section unless an informed consent has been obtained from the individual who is the subject of such data; and

(D) upon request, inform any individual of the use being made of personal data respecting such individual and of the identity of the individuals and entities which will use the data and their relationship to the activities conducted under this section.

(2) Consent as precondition to transfer of information

Any entity which maintains a record of personal data and which receives a request from the Secretary or a program entity to use such data for purposes of this section shall not transfer any such data to the Secretary or to a program entity unless the individual whose personal data is to be so transferred gives an informed consent for such transfer.

(3) Disclosure by Secretary

(A) Notwithstanding any other provision of law, personal data collected by the Secretary or any program entity for purposes of this section may not be made available or disclosed by the Secretary or any program entity to any person other than the individual who is the subject of such data unless (i) such person requires such data for purposes of this section, or (ii) in response to a demand for such data made by means of compulsory legal process. Any individual who is the subject of personal data made available or disclosed under clause (ii) shall be notified of the demand for such data.

(B) Subject to all applicable laws regarding confidentiality, only the data collected by the Secretary under this section which is not personal data shall be made available to bona fide researchers and policy analysts (including the Congress) for the purposes of assisting in the conduct of studies respecting health professions personnel.

(4) "Program entity" defined

For purposes of this subsection, the term ''program entity'' means any public or private entity which collects, compiles, or analyzes health professions data under an arrangement with the Secretary for purposes of this section.

(c) Report

The Secretary shall submit biennially to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Labor and Human Resources of the Senate a report on—

(1) the statistics and other information developed pursuant to subsection (a) of this section; and

(2) the activities conducted under this subchapter, including an evaluation of such activities.

Such report shall contain such recommendations for legislation as the Secretary determines are needed to improve the programs authorized under such subparts.[1] The Office of Management and Budget may review such report before its submission to such Committees, but the Office may not revise the report or delay its submission beyond the date prescribed for its submission and may submit to such Committees its comments respecting such report.

(d) "Public and community health personnel" defined

For purposes of this section, the term ''public and community health personnel'' means individuals who are engaged in—

(1) the planning, development, monitoring, or management of health care or health care institutions, organizations, or systems,

(2) research on health care development and the collection and analysis of health statistics, data on the health of population groups, and any other health data,

(3) the development and improvement of individual and community knowledge of health (including environmental health and preventive medicine) and the health care system, or

(4) the planning and development of a healthful environment and control of environmental health hazards.

(July 1, 1944, ch. 373, title VII, § 793, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat.

[1] See References in Text note below.

2061; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 313(a)(6), 106 Stat. 3507.)

REFERENCES IN TEXT

Such subparts, referred to in subsec. (c), meant subparts I and II of part D of this subchapter prior to the amendment of subsec. (c)(2) by Pub. L. 102–531. See 1992 Amendment note below.

PRIOR PROVISIONS

A prior section 793 of act July 1, 1944, was classified to section 295h–1c of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 793 of act July 1, 1944, was renumbered section 794 by Pub. L. 97–35 and classified to section 295h–2 of this title.

AMENDMENTS

1992—Subsec. (c)(2). Pub. L. 102–531 substituted ''this subchapter'' for ''subparts I and II of part D of this subchapter''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

§ 295m. Prohibition against discrimination on basis of sex

The Secretary may not make a grant, loan guarantee, or interest subsidy payment under this subchapter to, or for the benefit of, any school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, pharmacy, podiatric medicine, or public health or any training center for allied health personnel, or graduate program in clinical psychology, unless the application for the grant, loan guarantee, or interest subsidy payment contains assurances satisfactory to the Secretary that the school or training center will not discriminate on the basis of sex in the admission of individuals to its training programs. The Secretary may not enter into a contract under this subchapter with any such school or training center unless the school, training center, or graduate program furnishes assurances satisfactory to the Secretary that it will not discriminate on the basis of sex in the admission of individuals to its training programs. In the case of a school of medicine which—

(1) on October 13, 1992, is in the process of changing its status as an institution which admits only female students to that of an institution which admits students without regard to their sex, and

(2) is carrying out such change in accordance with a plan approved by the Secretary,

the provisions of the preceding sentences of this section shall apply only with respect to a grant, contract, loan guarantee, or interest subsidy to, or for the benefit of such a school for a fiscal year beginning after June 30, 1979.

(July 1, 1944, ch. 373, title VII, § 794, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2063.)

PRIOR PROVISIONS

A prior section 794 of act July 1, 1944, was classified to section 295h–2 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 794 of act July 1, 1944, was classified to section 294h–3 of this title prior to repeal by Pub. L. 91–519.

§ 295n. Obligated service regarding certain programs

(a) In general

In the case of any program under this subchapter under which a scholarship, stipend, or other financial assistance is provided to an individual with respect to education as a health professional (including a program that provides for the repayment of loans), if the program provides that the provision of the financial assistance involved is subject to this section, then the assistance may be provided only if the individual makes agreements as follows:

(1) The individual will complete the program of education with respect to which such assistance is provided (in the case of assistance provided for purposes other than the repayment of loans).

(2) In the case of an individual who receives such assistance with respect to attendance at a school of medicine or osteopathic medicine, the individual will—

(A) enter and complete a residency training program in a specialty in primary health care not later than 4 years after completing the program of education described in paragraph (1); and

(B) practice in the specialty for 5 years after completing the residency training program.

(3) In the case of an individual who receives such assistance with respect to attendance at a school of dentistry, the individual will practice in general dentistry for 5 years (exclusive of any period during which the individual is attending a residency training program in general dentistry).

(4) Subsection (b) of this section applies with respect to the breach of agreements made under any of paragraphs (1) through (3).

(b) Breach of agreements

(1) In general

For purposes of subsection (a)(4) of this section, the following applies:

(A) In the case of a program under this subchapter that provides financial assistance for attendance at a program of education in a health profession, the individual is liable to the Federal Government for the amount of the award (including amounts provided for expenses related to such attendance), and for interest on such amount at the maximum legal prevailing rate, if the individual—

(i) fails to maintain an acceptable level of academic standing in the program of education (as indicated by such program in accordance with requirements established by the Secretary);

(ii) is dismissed from the program for disciplinary reasons; or

(iii) voluntarily terminates the program.

(B) The individual is liable to the Federal Government for the amount of the award (including amounts provided for expenses related to such attendance), and for interest on such amount at the maximum legal prevailing rate, if the individual fails to comply with the agreement made under subsection (a)(2) of this section.

(2) Waiver or suspension of liability

In the case of an individual making agreements under subsection (a) of this section, the Secretary shall provide for the waiver or suspension of liability under paragraph (1) if compliance by the individual with the agreements involved is impossible, or would involve extreme hardship to the individual, and if enforcement of the agreements with respect to the individual would be unconscionable.

(3) Date certain for recovery

Subject to paragraph (2), any amount that the Federal Government is entitled to recover under paragraph (1) shall be paid to the United States not later than the expiration of the three-year period beginning on the date the United States becomes so entitled.

(July 1, 1944, ch. 373, title VII, § 795, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2063; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 313(a)(7), 106 Stat. 3507.)

PRIOR PROVISIONS

A prior section 795 of act July 1, 1944, was classified to section 295h–4 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 795 of act July 1, 1944, was classified to section 295h–4 of this title prior to the general revision of part G of this subchapter by Pub. L. 94–484.

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–531 substituted ''In the case'' for ''in the case''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 293, 293d of this title.

§ 295o. Certain general provisions

(a) Peer review

Each application for a grant or contract under this subchapter shall be submitted to a peer review group for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval. Each peer review group under this subsection shall be composed principally of individuals who are not officers or employees of the Federal Government. This subsection shall be carried out by the Secretary acting through the Administrator of the Health Resources and Services Administration.

(b) Delegation of authority of Secretary

The Secretary may delegate the authority to administer any program authorized by this subchapter to the administrator of a central or regional office or offices of the Department, except that the authority to make such a grant, enter into such a contract, continue such a grant or contract, or modify such a contract, shall not be delegated to any administrator of, or officer in, a regional office or offices of the Department.

(c) Differential tuition and fees

The Secretary may not enter into a contract with, or make a grant, loan guarantee, or interest subsidy payment under this subchapter or subchapter VI of this chapter, to or for the benefit of, any school, program, or training center if the tuition levels or educational fees at such school, program, or training center are higher for certain students solely on the basis that such students are the recipients of traineeships, loans, loan guarantees, service scholarships, or interest subsidies from the Federal Government.

(d) Applicability of certain provisions on contracts

Contracts authorized by this subchapter may be entered into without regard to section 3324 of title 31 or section 5 of title 41.

(e) Records and audits

(1) Maintenance of records

(A) Each entity which receives a grant, loan, loan guarantee, or interest subsidy or which enters into a contract with the Secretary under this subchapter, shall establish and maintain such records as the Secretary shall by regulation or order require.

(B) The Secretary may specify, by regulation, the form and manner in which such records, required by subparagraph (A), shall be established and maintained.

(2) Biennial audits

Each entity which received a grant or entered into a contract under this subchapter shall provide for a biennial financial audit of any books, accounts, financial records, files, and other papers and property which relate to the disposition or use of the funds received under such grant or contract and such other funds received by or allocated to the project or undertaking for which such grant or contract was made. For purposes of assuring accurate, current, and complete disclosure of the disposition or use of the funds received, each such audit shall be conducted in accordance with such requirements concerning the individual or agency which conducts the audit, and such standards applicable to the performance of the audit, as the Secretary may by regulation provide. A report of each such audit shall be filed with the Secretary at such time and in such manner as he may require.

(3) Applicability to students

A student recipient of a scholarship, traineeship, loan, or loan guarantee under this subchapter shall not be required to establish or maintain the records required in paragraph (1) or provide for an audit required in paragraph (2).

(4) Availability of documents, etc.

(A) Each entity which is required to establish and maintain records or to provide for an

audit under this subsection shall make such books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of such entity upon a reasonable request therefor.

(B) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have the authority to carry out the purposes of this paragraph.

(f) Miscellaneous provisions

(1) Payments under grants

Grants made under this subchapter may be paid (A) in advance or by way of reimbursement, (B) at such intervals and on such conditions as the Secretary may find necessary, and (C) with appropriate adjustments on account of overpayments or underpayments previously made.

(2) Applications for grants and contracts

No grant may be made or contract entered into under this subchapter unless an application therefor has been submitted to and approved by the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe.

(3) Assurances

Whenever in this subchapter an applicant is required to provide assurances to the Secretary, or an application is required to contain assurances or be supported by assurances, the Secretary shall determine before approving the application that the assurances provided are made in good faith.

(4) Technical assistance

Funds appropriated under this subchapter may be used by the Secretary to provide technical assistance in relation to any of the authorities under this subchapter.

(5) Graduates of foreign medical schools

The Secretary may make an award of a grant, cooperative agreement, or contract under this subchapter to an entity (including a school) that provides graduate training in the health professions only if the entity agrees that, in considering applications for admissions to a program of such training, the entity will not refuse to consider an application solely on the basis that the application is submitted by a graduate of a foreign medical school. This paragraph may not be construed as establishing any private right of action.

(July 1, 1944, ch. 373, title VII, § 798, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2064; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 313(a)(8), 106 Stat. 3507.)

PRIOR PROVISIONS

A prior section 798 of act July 1, 1944, was classified to section 295h–7 of this title prior to the general revision of this subchapter by Pub. L. 102–408.

Another prior section 798(a) of act July 1, 1944, was classified to section 295h–7 of this title prior to the general revision of part G of this subchapter by Pub. L. 94–484.

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–531 made technical amendment to reference in original to section 5 of title 41.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 293, 295a, 295j of this title.

§ 295p. Definitions

For purposes of this subchapter:

(1)(A) The terms ''school of medicine'', ''school of dentistry'', ''school of osteopathic medicine'', ''school of pharmacy'', ''school of optometry'', ''school of podiatric medicine'', ''school of veterinary medicine'', ''school of public health'', and ''school of chiropractic'' mean an accredited public or nonprofit private school in a State that provides training leading, respectively, to a degree of doctor of medicine, a degree of doctor of dentistry or an equivalent degree, a degree of doctor of osteopathy, a degree of bachelor of science in pharmacy or an equivalent degree or a degree of doctor of pharmacy or an equivalent degree, a degree of doctor of optometry or an equivalent degree, a degree of doctor of podiatric medicine or an equivalent degree, a degree of doctor of veterinary medicine or an equivalent degree, a graduate degree in public health or an equivalent degree, and a degree of doctor of chiropractic or an equivalent degree, and including advanced training related to such training provided by any such school.

(B) The terms ''graduate program in health administration'' and ''graduate program in clinical psychology'' mean an accredited graduate program in a public or nonprofit private institution in a State that provides training leading, respectively, to a graduate degree in health administration or an equivalent degree and a doctoral degree in clinical psychology or an equivalent degree.

(C) The terms ''graduate program in clinical social work'' and ''graduate program in marriage and family therapy'' mean an accredited graduate program in a public or nonprofit private institution in a State that provides training, respectively, in a concentration in health or mental health care leading to a graduate degree in social work and a concentration leading to a graduate degree in marriage and family therapy.

(D) The term ''graduate program in mental health practice'' means a graduate program in clinical psychology, clinical social work, or marriage and family therapy.

(E) The term ''accredited'', when applied to a school of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatry, pharmacy, public health, or chiropractic, or a graduate program in health administration, clinical psychology, clinical social

work, or marriage and family therapy, means a school or program that is accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, except that a new school or program that, by reason of an insufficient period of operation, is not, at the time of application for a grant or contract under this subchapter, eligible for accreditation by such a recognized body or bodies, shall be deemed accredited for purposes of this subchapter, if the Secretary of Education finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the school or program will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of the first entering class in such school or program.

(2) The term ''teaching facilities'' means areas dedicated for use by students, faculty, or administrative or maintenance personnel for clinical purposes, research activities, libraries, classrooms, offices, auditoriums, dining areas, student activities, or other related purposes necessary for, and appropriate to, the conduct of comprehensive programs of education. Such term includes interim facilities but does not include off-site improvements or living quarters.

(3) The term ''program for the training of physician assistants'' means an educational program that—

(A) has as its objective the education of individuals who will, upon completion of their studies in the program, be qualified to provide primary health care under the supervision of a physician; and

(B) meets regulations prescribed by the Secretary in accordance with section 293n(b) of this title.

(4) The term ''school of allied health'' means a public or nonprofit private college, junior college, or university or hospital-based educational entity that—

(A) provides, or can provide, programs of education to enable individuals to become allied health professionals or to provide additional training for allied health professionals;

(B) provides training for not less than a total of twenty persons in the allied health curricula (except that this subparagraph shall not apply to any hospital-based educational entity);

(C) includes or is affiliated with a teaching hospital; and

(D) is accredited by a recognized body or bodies approved for such purposes by the Secretary of Education, or which provides to the Secretary satisfactory assurance by such accrediting body or bodies that reasonable progress is being made toward accreditation.

(5) The term ''allied health professionals'' means a health professional (other than a registered nurse or physician assistant)—

(A) who has received a certificate, an associate's degree, a bachelor's degree, a master's degree, a doctoral degree, or postbaccalaureate training, in a science relating to health care;

(B) who shares in the responsibility for the delivery of health care services or related services, including—

(i) services relating to the identification, evaluation, and prevention of disease and disorders;

(ii) dietary and nutrition services;

(iii) health promotion services;

(iv) rehabilitation services; or

(v) health systems management services; and

(C) who has not received a degree of doctor of medicine, a degree of doctor of osteopathy, a degree of doctor of dentistry or an equivalent degree, a degree of doctor of veterinary medicine or an equivalent degree, a degree of doctor of optometry or an equivalent degree, a degree of doctor of podiatric medicine or an equivalent degree, a degree of bachelor of science in pharmacy or an equivalent degree, a degree of doctor of pharmacy or an equivalent degree, a graduate degree in public health or an equivalent degree, a degree of doctor of chiropractic or an equivalent degree, a graduate degree in health administration or an equivalent degree, a doctoral degree in clinical psychology or an equivalent degree, or a degree in social work or an equivalent degree.

(6) The term ''medically underserved community'' means an urban or rural area or population that—

(A) is eligible for designation under section 254e of this title as a health professional shortage area;

(B) is eligible to be served by a migrant health center under section 254b of this title, a community health center under section 254c of this title, a grantee under section 256 of this title (relating to homeless individuals), or a grantee under section 256a of this title (relating to residents of public housing); or

(C) has a shortage of personal health services, as determined under criteria issued by the Secretary under section 1395x(aa)(2) of this title (relating to rural health clinics).

(7) The term ''Department'' means the Department of Health and Human Services.

(8) The term ''nonprofit'' refers to the status of an entity owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(9) The term ''State'' includes, in addition to the several States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(10)(A) Subject to subparagraph (B), the term ''underrepresented minorities'' means, with respect to a health profession, racial and ethnic populations that are underrepresented in the health profession relative to the number of individuals who are members of the population involved.

(B) For purposes of subparagraph (A), Asian individuals shall be considered by the various subpopulations of such individuals.

(July 1, 1944, ch. 373, title VII, § 799, as added Oct. 13, 1992, Pub. L. 102–408, title I, § 102, 106 Stat. 2066.)

PRIOR PROVISIONS

A prior section 799 of act July 1, 1944, was classified to section 295i of this title prior to the general revision of this subchapter by Pub. L. 102–408.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 292*o*, 293b, 293c, 293j, 293n, 294*o*, 298b of this title.

SUBCHAPTER VI—NURSE EDUCATION

AMENDMENTS

1985—Pub. L. 99–92, § 9(b)(3), Aug. 16, 1985, 99 Stat. 400, substituted ''NURSE EDUCATION'' for ''NURSE TRAINING'' in subchapter VI heading.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 235, 295*o*, 300*l*–2, 12604 of this title; title 38 section 8201.

PART A—SPECIAL PROJECTS

AMENDMENTS

1985—Pub. L. 99–92, § 9(b)(1), (2), Aug. 16, 1985, 99 Stat. 400, substituted ''Special Projects'' for ''Assistance for Expansion and Improvement of Nurse Training'' as part A heading, and struck out headings for subparts I, II, III, and IV of part A which read as follows: ''Subpart I—Construction Assistance'', ''Subpart II—Capitation Grants'', ''Subpart III—Financial Distress Grants'', and ''Subpart IV—Special Projects''.

§§ 296 to 296b. Repealed. Pub. L. 99–92, § 9(a)(1), Aug. 16, 1985, 99 Stat. 400

Section 296, act July 1, 1944, ch. 373, title VIII, § 801 as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 908; amended Nov. 3, 1966, Pub. L. 89–751, § 8(a), 80 Stat. 1236; Aug. 16, 1968, Pub. L. 90–490, title II, § 201(a), 82 Stat. 780; Nov. 18, 1971, Pub. L. 92–158, § 2(a), 85 Stat. 465; July 29, 1975, Pub. L. 94–63, title IX, §§ 902(a), 910(a)(1), 89 Stat. 354, 355; Sept. 29, 1979, Pub. L. 96–76, title I, § 102, 93 Stat. 579, authorized appropriations for construction grants.

Section 296a, act July 1, 1944, ch. 373, title VIII, § 802, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 909; amended Aug. 16, 1968, Pub. L. 90–490, title II, § 201(b), 82 Stat. 780; Nov. 18, 1971, Pub. L. 92–158, §§ 2(d)(3), (e), (f), 13, 85 Stat. 468, 480; July 29, 1975, Pub. L. 94–63, title IX, §§ 910(a)(2), 941(a), 89 Stat. 355, 363, related to time of submission, determinations, etc., respecting applications for construction grants.

Section 296b, act July 1, 1944, ch. 373, title VIII, § 803, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 911; amended Aug. 16, 1968, Pub. L. 90–490, title II, § 202, 82 Stat. 780; Nov. 18, 1971, Pub. L. 92–158, §§ 2(b), 13, 85 Stat. 465, 480; July 29, 1975, Pub. L. 94–63, title IX, § 941(b), 89 Stat. 364, set forth provisions relating to amount of construction grant.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as an Effective Date of 1985 Amendment note under section 296k of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 905 of Pub. L. 94–63 provided that: ''Except as may otherwise be specifically provided, the amendments made by this part [part B (§§ 905–937) of title IX of Pub. L. 94–63, enacting sections 296j to 296m of this title, amending sections 296, 296a, 296d, 296e, 297 to 297c, 297e, and 297j of this title, repealing sections 296d, 296g, 296i, 297f, and 298c–7 of this title, and enacting provisions set out as notes under sections 296, 296a, 296d, 296e, 296m, 297, 297b, and 297f of this title] shall take effect July 1, 1975. The amendments made by this part to provisions of title VIII of the Public Health Service Act [this subchapter] (hereinafter in this part referred to as the 'Act') are made to such provisions as amended by part A of this title [amending sections 296, 296d, 296e, 296g, 296i, 297j, and 298c–7 of this title].''

Section 942 of Pub. L. 94–63 provided that: ''The amendments made by section 941 [enacting section 298b–3 of this title, amending sections 296a to 296d, 296f, 297a to 297e, 297g to 297k, 298, and 298b of this title, and repealing section 298c–8 of this title] shall take effect July 1, 1975. Except as otherwise specifically provided, the amendments made by section 941 to provisions of title VIII of the Act [this subchapter] are made to such provisions as in effect July 1, 1975, and as amended by part B of this title [see note set out above].''

SHORT TITLE

For short title of Pub. L. 88–581, which enacted this subchapter, as the ''Nurse Training Act of 1964'', see section 1 of Pub. L. 88–581, set out as a Short Title of 1964 Amendments note under section 201 of this title.

STUDY RESPECTING DETERMINATIONS OF NEED FOR CONTINUED SUPPORT OF SPECIFIC NURSING EDUCATION PROGRAMS, PRACTICE OF NURSING IN MEDICALLY UNDERSERVED AREAS, AND MAINTENANCE OR RE-ENTRY OF NURSES INTO PROFESSION; CONDUCT OF STUDY; REPORT TO CONGRESSIONAL COMMITTEES ON RECOMMENDATIONS

Section 113 of Pub. L. 96–76, as amended by S. Res. 30, Mar. 7, 1979; H. Res. 549, Mar. 25, 1980; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, directed Secretary of Health and Human Services to arrange for a study to determine (1) the need to continue a specific program of Federal financial support for nursing education, (2) the reasons nurses do not practice in medically underserved areas and to develop recommendations for actions which could be taken to encourage nurses to practice in such areas, and (3) the rate at which and the reasons for which nurses leave the nursing profession and to develop recommendations for actions which could be taken to encourage nurses to remain or re-enter the nursing profession, including actions involving practice settings conducive to the retention of nurses, and further directed Secretary to request the National Academy of Sciences to conduct such study, and if the Academy refused such request, to make arrangements with another appropriate public or nonprofit private entity to conduct such study, and further provided for submission to Congress of preliminary and final recommendations of such study within two years after the date of arrangement of such study.

INFORMATION RESPECTING SUPPLY AND DISTRIBUTION OF AND REQUIREMENTS FOR NURSES; DETERMINATION PROCEDURES; SURVEYS AND COLLECTION OF DATES; ANNUAL REPORT TO CONGRESS ON DETERMINATIONS, ETC.; REVIEW BY OFFICE OF MANAGEMENT AND BUDGET OF REPORT PRIOR TO SUBMISSION

Section 951 of Pub. L. 94–63, as amended by Pub. L. 95–623, § 12(h), Nov. 9, 1978, 92 Stat. 3457, provided that: ''(a)(1) Using procedures developed in accordance with paragraph (3), the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter in this section referred to as the 'Secretary') shall determine on a continuing basis—

''(A) the supply (both current and projected and within the United States and within each State) of

registered nurses, licensed practical and vocational nurses, nurse's aides, registered nurses with advanced training or graduate degrees, and nurse practitioners;

''(B) the distribution within the United States and within each State, of such nurses so as to determine (i) those areas of the United States which are oversupplied or undersupplied, or which have an adequate supply of such nurses in relation to the population of the area, and (ii) the demand for the services which such nurses provide; and

''(C) the current and future requirements for such nurses, nationally and within each State.

''(2) The Secretary shall survey and gather data, on a continuing basis, on—

''(A) the number and distribution of nurses, by type of employment and location of practice;

''(B) the number of nurses who are practicing full time and those who are employed part time, within the United States and within each State;

''(C) the average rates of compensation for nurses, by type of practice and location of practice;

''(D) the activity status of the total number of registered nurses within the United States and within each State;

''(E) the number of nurses with advanced training or graduate degrees in nursing, by specialty, including nurse practitioners, nurse clinicians, nurse researchers, nurse educators, and nurse supervisors and administrators; and

''(F) the number of registered nurses entering the United States annually from other nations, by country of nurse training and by immigrant status.

''(3) Within six months of the date of the enactment of this Act [July 29, 1975], the Secretary shall develop procedures for determining (on both a current and projected basis) the supply and distribution of and requirements for nurses within the United States and within each State.

''(b) Not later than October 1, 1979, and October 1 of each odd-numbered year thereafter, the Secretary shall report to the Congress—

''(1) his determinations under subsection (a)(1) and the data gathered under subsection (a)(2);

''(2) an analysis of such determination and data; and

''(3) recommendations for such legislation as the Secretary determines, based on such determinations and data, will achieve (A) an equitable distribution of nurses within the United States and within each State, and (B) adequate supplies of nurses within the United States and within each State.

''(c) The Office of Management and Budget may review the Secretary's report under subsection (b) before its submission to the Congress, but the Office may not revise the report or delay its submission, and it may submit to the Congress its comments (and those of other departments or agencies of the Government) respecting such report.''

§ 296c. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title VIII, § 804, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 911; amended Nov. 18, 1971, Pub. L. 92–158, §§ 2(d)(3), 13, 85 Stat. 468, 480; July 29, 1975, Pub. L. 94–63, title IX, § 941(c), 89 Stat. 364, which related to recovery of payments of funds by United States for construction of facilities, was renumbered section 858 of act July 1, 1944, by Pub. L. 99–92 and transferred to section 298b–5 of this title.

§§ 296d to 296f. Repealed. Pub. L. 99–92, § 9(a)(1), Aug. 16, 1985, 99 Stat. 400

Section 296d, act July 1, 1944, ch. 373, title VIII, § 805, formerly § 809, as added Nov. 18, 1971, Pub. L. 92–158, § 2(c), 85 Stat. 465; renumbered § 805 and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 902(d), 910(b)(1)(A), (B)(i), (2), (c), 911(b), 941(d), 89 Stat. 355, 356, 364; Sept. 29, 1979, Pub. L. 96–76, title I, § 103, 93 Stat. 579, related to applications, amounts, etc., for loan guarantees and interest subsidies for construction of training facilities by nonprofit nursing schools.

A prior section 296d, act July 1, 1944, ch. 373, title VIII, § 805, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 912; amended Aug. 16, 1968, Pub. L. 90–490, title II, §§ 211, 215, 82 Stat. 780, 783; Nov. 18, 1971, Pub. L. 92–158, § 3(b), 85 Stat. 469, relating to special project grants and contracts for nurse training programs, was repealed by Pub. L. 94–63, title IX, § 922, July 29, 1975, 89 Stat. 359, eff. July 1, 1975.

Section 296e, act July 1, 1944, ch. 373, title VIII, § 810, formerly § 806, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 912; amended Dec. 5, 1967, Pub. L. 90–174, § 12(a), 81 Stat. 541; Aug. 16, 1968, Pub. L. 90–490, title II, § 211, 82 Stat. 781; Nov. 18, 1971, Pub. L. 92–158, § 4(a), 85 Stat. 470; renumbered § 810 and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 902(b), 915(a)–(c), 916(a), (b), 941(e), 89 Stat. 354, 356, 358, 365; Aug. 1, 1977, Pub. L. 95–83, title III, § 307(*o*)(1)–(4), 91 Stat. 393; Sept. 29, 1979, Pub. L. 96–76, title I, § 104, 93 Stat. 579, set forth provisions relating to computation, requirements, etc., respecting grants for institutional support.

Section 296f, act July 1, 1944, ch. 373, title VIII, § 811, formerly § 807, as added Aug. 16, 1968, Pub. L. 90–490, title II, § 212, 82 Stat. 782; amended Nov. 18, 1971, Pub. L. 92–158, § 4(c), 85 Stat. 475; renumbered § 811 and amended July 29, 1975, Pub. L. 94–63, title IX, § 941(f), 89 Stat. 365, related to filing dates, etc., for applications for grants.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as an Effective Date of 1985 Amendment note under section 296k of this title.

§ 296g. Repealed. Pub. L. 94–63, title IX, § 922, July 29, 1975, 89 Stat. 359

Section, act July 1, 1944, ch. 373, title VIII, § 808, as added Aug. 16, 1968, Pub. L. 90–490, title II § 212, 82 Stat. 783; amended Nov. 18, 1971, Pub. L. 92–158, § 3(a), 85 Stat. 469; July 29, 1975, Pub. L. 94–63, title IX, § 902(c), 89 Stat. 354, authorized appropriations for special project grants and contracts and financial distress grants from the fiscal year ending June 30, 1972 through the fiscal year ending June 30, 1975.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1975, see section 905 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 296 of this title.

§ 296h. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title VIII, § 809, as added Nov. 18, 1971, Pub. L. 92–158, § 2(c), 85 Stat. 465, which related to loan guarantees and interest subsidies for construction of training facilities by nonprofit nursing schools, was renumbered section 805 of act July 1, 1944, by Pub. L. 94–63 and transferred to section 296d of this title.

§ 296i. Repealed. Pub. L. 94–63, title IX, § 931(b), July 29, 1975, 89 Stat. 362

Section, act July 1, 1944, ch. 373, title VIII, § 810, as added Nov. 18, 1971, Pub. L. 92–158, § 4(b), 85 Stat. 474; amended July 29, 1975, Pub. L. 94–63, title IX, § 902(e), 89 Stat. 355, authorized grants for start-up programs for new nurse training programs, and set out prerequisites, etc.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1975, see section 905 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 296 of this title.

§ 296j. Repealed. Pub. L. 99–92, § 9(a)(1), Aug. 16, 1985, 99 Stat. 400

Section, act July 1, 1944, ch. 373, title VIII, § 815, as added July 29, 1975, Pub. L. 94–63, title IX, § 921, 89 Stat. 358; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2752, 95 Stat. 929, set forth provisions relating to authorization, terms and conditions, etc., respecting grants for operational costs or meeting accreditation requirements.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as an Effective Date of 1985 Amendment note under section 296k of this title.

SUBPART I—SPECIAL PROJECTS IN GENERAL

PRIOR PROVISIONS

A prior Subpart I related to construction assistance and consisted of sections 296 to 296d of this title, prior to repeal or transfer by Pub. L. 99–92.

§ 296k. Special project grants and contracts

(a) Expansion of enrollment in professional nursing programs

(1) In general

The Secretary may make grants to and enter into contracts with public and nonprofit private schools of nursing with programs of education in professional nursing for the purpose of assisting the schools in increasing the number of students enrolled in such programs. Such a grant or contract may be made only with respect to such programs that are in operation on October 13, 1992.

(2) Preference

In making awards of grants and contracts under paragraph (1), the Secretary shall give preference to any qualified school that provides students of the school with clinical training in the provision of primary health care in publicly-funded—

(A) urban or rural outpatient facilities, home health agencies, or public health agencies; or

(B) rural hospitals.

(3) Matching funds

(A) With respect to the costs of the program to be carried out by a school pursuant to paragraph (1), the Secretary may provide an award of a grant or contract under such paragraph only if the school agrees to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that—

(i) for the first fiscal year for which the school receives such an award, is not less than $1 for each $9 of Federal funds provided through the award (10 percent of such costs);

(ii) for any second such fiscal year, is not less than $1 for each $3 of Federal funds provided through the award (25 percent of such costs);

(iii) for any third such fiscal year, is not less than $1 for each $1 of Federal funds provided through the award (50 percent of such costs); and

(iv) for any fourth or fifth such fiscal year, is not less than $3 for each $1 of Federal funds provided through the award (75 percent of such costs).

(B) Non-Federal contributions required in subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(b) Primary health care in noninstitutional settings

(1) In general

The Secretary may make grants to and enter into contracts with public and nonprofit private schools of nursing for the establishment or expansion of nursing practice arrangements in noninstitutional settings to demonstrate methods to improve access to primary health care in medically underserved communities.

(2) Operation and staffing of programs

The Secretary may make an award of a grant or contract under paragraph (1) only if the school involved agrees that the program carried out with the award will be operated and staffed by the faculty and students of the school.

(3) Design

The Secretary may make an award of a grant or contract under paragraph (1) only if the program to be carried out under such paragraph by the school involved is designed to provide at least 25 percent of the students of the school with a structured clinical experience in primary health care.

(c) Continuing education for nurses in medically underserved communities

The Secretary may make grants to and enter into contracts with public and nonprofit private entities for the purpose of providing continuing education for nurses serving in medically underserved communities.

(d) Long-term care fellowships for certain paraprofessionals

(1) In general

The Secretary may make grants to and enter into contracts with public and nonprofit private entities that operate accredited programs of education in professional nursing, or State-board approved programs of practical or vocational nursing, for the purpose of providing fellowships to individuals described in paragraph (2) for attendance in such programs.

(2) Eligible individuals

The individuals referred to in paragraph (1) are individuals who are employed by nursing facilities or home health agencies as nursing paraprofessionals.

(3) Preference for schools with rapid transition programs

In making awards of grants and contracts under paragraph (1), the Secretary shall give preference to any qualified applicant operating an accredited program of education in professional nursing that provides for the rapid transition to status as a professional nurse from status as a nursing paraprofessional.

(4) Preference in award of fellowships

The Secretary may make an award of a grant or contract under paragraph (1) only if the applicant involved agrees that, in providing fellowships under the award, the applicant will give preference to individuals described in paragraph (2) who—

(A) are economically disadvantaged individuals, particularly such individuals who are members of a minority group that is underrepresented among registered nurses; or

(B) are employed by a nursing facility that will assist in paying the costs or expenses described in paragraph (5)(A) with respect to the individuals.

(5) Use of award

The Secretary may make an award of a grant or contract under paragraph (1) only if the applicant involved agrees that fellowships provided with the award will pay all or part of the costs of—

(A) the tuition, books, and fees of the program of nursing with respect to which the fellowship is provided; and

(B) reasonable living expenses of the individual during the period for which the fellowship is provided.

(6) Definitions

For purposes of this section:

(A) The term ''home health agency'' has the meaning given such term in section 1395x of this title.

(B) The term ''nursing facility'' has the meaning given such term in section 1396r of this title.

(e) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $10,500,000 for each of the fiscal years 1993 and 1994.

(July 1, 1944, ch. 373, title VIII, § 820, as added July 29, 1975, Pub. L. 94–63, title IX, § 931(a), 89 Stat. 359; amended Sept. 29, 1979, Pub. L. 96–76, title I, § 105, 93 Stat. 579; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2753(a)(1), (b), 95 Stat. 929; Aug. 16, 1985, Pub. L. 99–92, § 3, 99 Stat. 393; Oct. 22, 1985, Pub. L. 99–129, title II, § 227(a), 99 Stat. 547; Nov. 4, 1988, Pub. L. 100–607, title VII, §§ 701(a)(2), (b)–(i), 721(b)(1), 102 Stat. 3153–3156, 3165; Oct. 13, 1992, Pub. L. 102–408, title II, § 202(a), 106 Stat. 2069; Oct. 27, 1992, Pub. L. 102–531, title III, § 313(a)(9), 106 Stat. 3507.)

AMENDMENTS

1992—Pub. L. 102–531, which directed the substitution of ''nursing with respect to'' for ''nursing respect to'' in subsec. (d)(5)(A), could not be executed because the phrase ''nursing respect to'' did not appear in text.

Pub. L. 102–408 amended section generally, substituting present provisions for provisions relating to grants and contracts for special projects including geriatric health education centers, innovative hospital nursing practice models, and long-term nursing practice demonstrations, and further providing for utilization of medical facilities by Federal departments and agencies for nurse training programs, submission and approval of application for grants and contracts, and authorization of appropriations.

1988—Subsec. (a)(1). Pub. L. 100–607, § 701(a)(2), (b)(2), redesignated par. (2) as (1) and struck out former par. (1) which related to nursing education opportunities for individuals from disadvantaged backgrounds.

Subsec. (a)(2). Pub. L. 100–607, § 701(b)(2), (c), redesignated par. (4) as (2) and amended it generally. Prior to amendment, such par. read as follows: ''demonstrate improved geriatric training in preventive care, acute care, and long-term care (including home health care and institutional care);''. Former par. (2) redesignated (1).

Subsec. (a)(3). Pub. L. 100–607, § 701(b)(2), (d)(1), redesignated par. (5) as (3) and amended it generally. Prior to amendment, such par. read as follows: ''help to increase the supply or improve the distribution by geographic area or by specialty group of adequately trained nursing personnel (including nursing personnel who are bilingual) needed to meet the health needs of the Nation, including the need to increase the availability of personal health services and the need to promote preventive health care;''.

Pub. L. 100–607, § 701(b)(1), struck out former par. (3) which related to appropriate retraining opportunities for nurses who (after periods of professional inactivity) desire again actively to engage in the nursing profession.

Subsec. (a)(4). Pub. L. 100–607, § 701(b)(2), (d)(2), redesignated par. (6) as (4) and amended it generally. Prior to amendment, such par. read as follows: ''provide training and education to upgrade the skills of licensed vocational or practical nurses, nursing assistants, and other paraprofessional nursing personnel;''. Former par. (4) redesignated (2).

Subsec. (a)(5). Pub. L. 100–607, § 701(b)(2), redesignated par. (8) as (5). Former par. (5) redesignated (3).

Subsec. (a)(6). Pub. L. 100–607, § 701(b)(2), (e), added par. (6) and redesignated former par. (6) as (4).

Subsec. (a)(7). Pub. L. 100–607, § 701(b)(1), struck out par. (7) which related to demonstrating clinical nurse education programs which combine educational curricula and clinical practice in health care delivery organizations, including acute care facilities, long-term care facilities, and ambulatory care facilities.

Subsec. (a)(8). Pub. L. 100–607, § 701(b)(2), redesignated par. (8) as (5).

Subsec. (a)(9). Pub. L. 100–607, § 701(b)(2), struck out par. (9) which related to demonstrating methods to encourage nursing graduates to practice in health manpower shortage areas (designated under section 254e of this title) in order to improve the specialty and geographical distribution of nurses in the United States.

Subsecs. (b) to (d). Pub. L. 100–607, § 701(f)–(h), added subsecs. (b) to (d) and redesignated former subsecs. (b) to (d) as (e) to (g), respectively.

Subsec. (e). Pub. L. 100–607, § 721(b)(1)(A), substituted ''Advisory Council on Nurses Education'' for ''National Advisory Council on Nurse Training''.

Pub. L. 100–607, § 701(f)(1), redesignated former subsec. (b) as (e).

Subsec. (f). Pub. L. 100–607, § 721(b)(1)(B), substituted ''Advisory Council on Nurses Education'' for ''National Advisory Council on Nurse Training''.

Pub. L. 100–607, § 701(f)(1), redesignated former subsec. (c) as (f).

Subsec. (g). Pub. L. 100–607, § 701(i), amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows:

''(1) For payments under grants and contracts under paragraphs (1) through (6) of subsection (a) of this section, there are authorized to be appropriated $9,500,000 for the fiscal year ending September 30, 1986, $9,500,000 for the fiscal year ending September 30, 1987, and $9,500,000 for the fiscal year ending September 30, 1988. Of the funds appropriated under this paragraph for any fiscal year beginning after September 30, 1985, not less than 20 percent of the funds shall be obligated for payments under grants and contracts for special projects described in subsection (a)(1) of this section, not less than 20 percent of the funds shall be obligated for payments under grants and contracts for special projects described in subsection (a)(4) of this section, and not less than 10 percent of the funds shall be obligated for

payments under grants and contracts for special projects described in subsection (a)(5) of this section.

''(2) For payments under grants and contracts under paragraphs (7), (8), and (9) of subsection (a) of this section, there are authorized to be appropriated $2,700,000 for the fiscal year ending September 30, 1986, $2,700,000 for the fiscal year ending September 30, 1987, and $2,700,000 for the fiscal year ending September 30, 1988. In making grants and entering into contracts with amounts appropriated under this paragraph, the Secretary shall give priority to applications for grants and contracts under paragraph (8) of subsection (a) of this section.''

Pub. L. 100–607, §701(f)(1), redesignated former subsec. (d) as (g).

1985—Subsec. (a)(4), (5). Pub. L. 99–129, §227(a)(1), added par. (4) and redesignated former par. (4) as (5).

Subsec. (a)(6) to (9). Pub. L. 99–129, §227(a)(1), redesignated pars. (6) to (8) as pars. (7) to (9), respectively.

Pub. L. 99–92, §3(a), added pars. (6) to (8).

Subsec. (d)(1). Pub. L. 99–129, §227(a)(2)(A), substituted ''paragraphs (1) through (6)'' for ''paragraphs (1) through (5)''.

Pub. L. 99–92, §3(b)(1)–(3), redesignated former subsec. (d) as par. (1) and, as so designated, substituted provisions authorizing appropriations under subsec. (a)(1) to (5) for fiscal years ending Sept. 30, 1986, 1987, and 1988, for provisions authorizing appropriations under this section for fiscal year 1976 through fiscal year ending Sept. 30, 1984, and substituted ''1985'' for ''1981'', and ''this paragraph'' for ''this subsection''.

Subsec. (d)(2). Pub. L. 99–129, §227(a)(2)(B), (C), substituted ''paragraphs (7), (8), and (9)'' for ''paragraphs (6), (7), and (8)'', and ''paragraph (8)'' for ''paragraph (7)''.

Pub. L. 99–92, §3(b)(4), added par. (2).

1981—Subsec. (a). Pub. L. 97–35, §2753(a)(1), redesignated pars. (3) to (7) as (1) to (5), respectively. Former pars. (1), (2), and (8), which related to assistance leading to establishment of nurse training programs, modification or creation of new nursing programs, and assistance for costs of developing short-term in-service training programs, respectively, were struck out.

Subsec. (d). Pub. L. 97–35, §2753(b)(1), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

Pub. L. 97–35, §2753(b)(2), substituted provisions respecting obligation of funds for fiscal years beginning after Sept. 30, 1981 for provisions respecting obligation of funds for any fiscal year.

1979—Subsec. (d). Pub. L. 96–76 authorized appropriations of $17,000,000 for fiscal year ending Sept. 30, 1980.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

EFFECTIVE DATE OF 1985 AMENDMENT

Section 10 of Pub. L. 99–92 provided that:

''(a) Except as provided in subsection (b), this Act [enacting section 297i of this title, transferring section 296c to section 298b–5 of this title, amending this section, sections 296*l*, 296m, 297, 297–1, 297a, 297b, 297d, 297e, 298, 298b, and 298b–5 of this title, sections 1332, 1333, 1336, and 1341 of Title 15, Commerce and Trade, and section 6103 of Title 26, Internal Revenue Code, repealing sections 296 to 296b, 296d to 296f, 296j, 297h, and 297j of this title, and enacting provisions set out as notes under sections 201 and 298b–5 of this title and section 1333 of Title 15] and the amendments and repeals made by this Act shall take effect on October 1, 1985.

''(b)(1) The provisions of section 9(c) of this Act [transferring section 296c of this title to section 298b–5 of this title, amending section 298b–5 of this title, and enacting provisions set out as notes under section 298b–5 of this title] and the amendment made by paragraph (1) of such section shall take effect on the date of enactment of this Act [Aug. 16, 1985].

''(2) The amendment made by section 8(a) of this Act [amending section 297a of this title] shall take effect June 30, 1984.''

SAVINGS PROVISION FOR CURRENT PROJECTS

Section 202(c) of Pub. L. 102–408 provided that: ''In the case of any authority for making awards of grants or contracts that is terminated by the amendment made by subsection (a) [amending this section], the Secretary of Health and Human Services may, notwithstanding the termination of the authority, continue in effect any grant or contract made under the authority that is in effect on the day before the date of the enactment of this Act [Oct. 13, 1992], subject to the duration of any such grant or contract not exceeding the period determined by the Secretary in first approving such financial assistance, or in approving the most recent request made (before the date of such enactment) for continuation of such assistance, as the case may be.''

REQUIRED ASSURANCES REGARDING BLOODBORNE DISEASES

Secretary of Health and Human Services may make an award of a grant or contract under this subchapter for provision of traineeships only if applicant provides assurances satisfactory to Secretary that all trainees will, as appropriate, receive instruction in utilization of universal precautions and infection control procedures for prevention of transmission of bloodborne diseases, see section 308 of Pub. L. 102–408, set out as a note under section 295j of this title.

ELIGIBILITY TO RECEIVE ADDITIONAL GRANTS

Section 2753(a)(2) of Pub. L. 97–35 provided that: ''Notwithstanding the amendment made by paragraph (1) of this subsection and paragraph (2) of subsection (b) [amending this section], an entity which received a grant or contract under section 820(a) of the Public Health Service Act [subsec. (a) of this section] for the fiscal year ending September 30, 1981, for a project described in paragraph (1), (2), or (8) of such section (as in effect when it received the grant or contract) may receive one additional grant or contract under such section for such project.''

§ 296*l*. Advanced nurse education

(a) In general

The Secretary may make grants to and enter into contracts with public and nonprofit private collegiate schools of nursing to meet the costs of projects that, in the case of programs described in susbsection[1] (b) of this section—

(1) plan, develop, and operate new such programs; or

(2) significantly expand existing such programs.

(b) Authorized programs

The programs referred to in subsection (a) of this section are programs leading to advanced degrees that prepare nurses to serve as nurse educators or public health nurses, or in other clinical nurse specialties determined by the Secretary to require advanced education.

(c) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $12,000,000 for each of the fiscal years 1993 and 1994.

(2) Limitation

Of the amounts appropriated under paragraph (1), the Secretary may not obligate

[1] So in original. Probably should be ''subsection''.

more than 10 percent for providing grants or contracts under subsection (a) of this section for programs leading to doctoral degrees.

(July 1, 1944, ch. 373, title VIII, § 821, as added July 29, 1975, Pub. L. 94–63, title IX, § 931(a), 89 Stat. 361; amended Sept. 29, 1979, Pub. L. 96–76, title I, § 106, 93 Stat. 579; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2754, 95 Stat. 930; Aug. 16, 1985, Pub. L. 99–92, § 4, 99 Stat. 394; Oct. 22, 1985, Pub. L. 99–129, title II, § 227(b), 99 Stat. 548; Nov. 4, 1988, Pub. L. 100–607, title VII, § 702, 102 Stat. 3157; Oct. 13, 1992, Pub. L. 102–408, title II, § 203, 106 Stat. 2072.)

AMENDMENTS

1992—Pub. L. 102–408 amended section generally, substituting present provisions for provisions which authorized grants and contracts for programs to prepare nurses to serve as nurse educators, administrators, or researchers or to serve in clinical nurse specialties, and which further established a priority for projects in geriatric and gerentological nursing, and provided for appropriations through fiscal year 1991.

1988—Subsec. (b). Pub. L. 100–607 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For payments under grants and contracts under this section, there are authorized to be appropriated $16,500,000 for the fiscal year ending September 30, 1986, $17,000,000 for the fiscal year ending September 30, 1987, and $17,500,000 for the fiscal year ending September 30, 1988.''

1985—Subsec. (a). Pub. L. 99–129 inserted at end ''In making grants and entering into contracts under this section, the Secretary shall give priority to applications for grants and contracts for education projects in geriatric and gerentological nursing.''

Pub. L. 99–92 amended subsec. (a) generally, substituting provisions relating to covered advanced nurse education programs, for provisions relating to covered advanced nurse training programs.

Subsec. (b). Pub. L. 99–92 amended subsec. (b) generally, substituting provisions relating to authorizing appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988, for provisions relating to authorizing appropriations for fiscal year 1975 through fiscal year ending Sept. 30, 1984.

1981—Subsec. (a). Pub. L. 97–35, § 2754(a), (c), substituted ''to teach'' for ''to each'', which for purposes of codification had already been substituted, and ''(1)'', ''(2)'', and ''(3)'' for ''(A)'', ''(B)'', and ''(C)'', respectively, and struck out ''(1)'' after ''(a)''.

Subsec. (b). Pub. L. 97–35, § 2754(b), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1979—Subsec. (b). Pub. L. 96–76 authorized appropriations of $13,500,000 for fiscal year ending Sept. 30, 1980.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 296k of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 298b–7 of this title.

§ 296m. Nurse practitioner and nurse midwife programs

(a) In general

The Secretary may make grants to and enter into contracts with public and nonprofit private schools of nursing or other public and nonprofit private entities to meet the costs of projects that, with respect to programs described in subsection (b) of this section—

(1) plan, develop, and operate new such programs; or

(2) maintain or significantly expand existing such programs.

(b) Authorized programs

(1) In general

The programs referred to in subsection (a) of this section are educational programs for registered nurses (irrespective of the type of school of nursing in which the nurses received their training) that—

(A) meet guidelines prescribed by the Secretary in accordance with paragraph (2); and

(B) have as their objective the education of nurses who will, upon completion of their studies in such programs, be qualified to effectively provide primary health care, including primary health care in homes and in ambulatory care facilities, long-term care facilities and other health care institutions.

(2) Guidelines

After consultation with appropriate educational organizations and professional nursing and medical organizations, the Secretary shall prescribe guidelines for programs described in paragraph (1). Such guidelines shall, as a minimum, require that such a program—

(A) extend for at least one academic year and consist of—

(i) supervised clinical practice directed toward preparing nurses to deliver primary health care; and

(ii) at least four months (in the aggregate) of classroom instruction that is so directed; and

(B) have an enrollment of not less than six full-time equivalent students.

(c) Certain considerations in making awards

(1) Preference

In making awards of grants and contracts under subsection (a) of this section, the Secretary shall give preference to any qualified applicant that, with respect to programs described in subsection (b) of this section, agrees to expend the award to plan, develop, and operate new such programs or to significantly expand existing such programs.

(2) Special consideration

In making awards of grants and contracts under subsection (a) of this section, the Secretary shall give special consideration to qualified applicants that agree to expend the award to train individuals as nurse practitioners and nurse midwives who will practice in health professional shortage areas designated under section 254e of this title.

(d) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $20,000,000 for each of the fiscal years 1993 and 1994.

(July 1, 1944, ch. 373, title VIII, § 822, as added July 29, 1975, Pub. L. 94–63, title IX, § 931(a), 89 Stat. 361; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 307(*o*)(5)(A), 91 Stat. 393; Sept. 29, 1979, Pub. L. 96–76, title I, § 107, 93 Stat. 579; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2755, 95 Stat.

930; Aug. 16, 1985, Pub. L. 99–92, § 5, 99 Stat. 394; Oct. 22, 1985, Pub. L. 99–129, title II, § 227(c), 99 Stat. 548; Nov. 4, 1988, Pub. L. 100–607, title VII, § 703, 102 Stat. 3157; Aug. 16, 1989, Pub. L. 101–93, § 5(q), 103 Stat. 614; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(b)[(a)], 104 Stat. 3035; Oct. 13, 1992, Pub. L. 102–408, title II, § 204, 106 Stat. 2072.)

AMENDMENTS

1992—Pub. L. 102–408 amended section generally, substituting present provisions for provisions outlining covered costs in nurse practitioner and midwife programs, providing for traineeship programs for nurse practitioners and midwives, setting out required assurances in applications for grants or contracts for the practitioner and midwife programs, and authorizing of appropriations.

1990—Subsecs. (a)(1), (b)(1), (3). Pub. L. 101–597 substituted reference to health professional shortage area for reference to health manpower shortage area.

1989—Subsec. (b)(3). Pub. L. 101–93 inserted period at end.

1988—Subsec. (a)(2)(B)(ii). Pub. L. 100–607, § 703(a), substituted ''six full-time equivalent students'' for ''eight students''.

Subsec. (b)(3). Pub. L. 100–607, § 703(b), substituted ''254e of this title), in an Indian Health Service health center, in a Native Hawaiian health center, in a public health care facility, in a migrant health center (as defined in section 254b(a)(1) of this title), in a rural health clinic (as defined in section 1395x(aa)(2) of this title), or in a community health center (as defined in section 254c(a) of this title)'' for ''254e of this title) or in a public health care facility for a period equal to one month for each month for which the recipient receives such a traineeship.''

Subsec. (c). Pub. L. 100–607, § 703(c)(1), inserted ''under subsection (a) or (b) of this section'' after ''operate a program''.

Pub. L. 100–607, § 703(c)(2), which directed the substitution of ''midwives unless the application'' for ''midwives unless this application'', could not be executed, because the phrase already appears as ''midwives unless the application'' in text.

Subsec. (d). Pub. L. 100–607, § 703(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''For payments under grants and contracts under this section, there are authorized to be appropriated $12,000,000 for the fiscal year ending September 30, 1986, $12,000,000 for the fiscal year ending September 30, 1987, and $12,000,000 for the fiscal year ending September 30, 1988.''

1985—Pub. L. 99–92, § 5(f), inserted reference to nurse midwife programs in section catchline.

Subsec. (a)(1). Pub. L. 99–129 inserted ''(particularly problems in the delivery of preventive care, acute care, and long-term care (including home health care and institutional care) to such patients)'' after ''geriatric patients''.

Pub. L. 99–92, § 5(a)(1), amended par. (1) generally, substituting provisions relating to programs for the education of nurse practitioners and nurse midwives for provisions relating to programs for the training of nurse practitioners.

Subsec. (a)(2)(A). Pub. L. 99–92, § 5(a)(2)(A), amended subpar. (A) generally, substituting provisions defining ''programs for the education of nurse practitioners and nurse midwives'' for provisions defining ''programs for the training of nurse practitioners''.

Subsec. (a)(2)(B). Pub. L. 99–92, § 5(a)(2)(B), (C), substituted ''education of nurse practitioners and nurse midwives'' for ''training of nurse practitioners''.

Subsec. (b)(1). Pub. L. 99–92, § 5(b)(1), (2), inserted requirement that schools of medicine receive grants or contracts prior to Oct. 1, 1985, and applicability to nurse midwives.

Subsec. (b)(3). Pub. L. 99–92, § 5(b)(3), (4), inserted applicability to a nurse midwife, and to practice in a public health care facility.

Subsec. (c). Pub. L. 99–92, § 5(c), substituted ''education of nurse practitioners and nurse midwives'' for ''training of nurse practitioners''.

Subsecs. (d), (e). Pub. L. 99–92, § 5(d), (e), redesignated subsec. (e) as (d) and amended it generally, substituting authorization of appropriations for fiscal years 1986 through 1988 for authorization of appropriations for fiscal years 1976 through 1984. Former subsec. (d), relating to additional covered costs, was struck out.

1981—Subsec. (b). Pub. L. 97–35, § 2755(a), (b), in par. (1) inserted provisions respecting consideration of applications for a grant or contract, in par. (3) inserted provisions respecting one month service, and added par. (4).

Subsec. (e). Pub. L. 97–35, § 2755(c), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1979—Subsec. (e). Pub. L. 96–76 authorized appropriations of $15,000,000 for fiscal year ending Sept. 30, 1980.

1977—Subsec. (a)(1). Pub. L. 95–83, § 307(*o*)(5)(A)(i), inserted ''for the training of nurse practitioners who will practice in health manpower shortage areas (designated under section 254e of this title) and'' after ''contracts for programs''.

Subsecs. (b) to (e). Pub. L. 95–83, § 307(*o*)(5)(A)(ii), added subsec. (b) and redesignated former subsecs. (b) to (d) as (c) to (e), respectively.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 296k of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 307(*o*)(5)(C) of Pub. L. 95–83 provided that: ''The amendments made by this paragraph [amending this section and section 297 of this title] shall be effective as of October 12, 1976.''

GUIDELINES FOR NURSE PRACTITIONER TRAINING PROGRAMS

Section 932 of Pub. L. 94–63 required the Secretary of Health, Education, and Welfare to prescribe guidelines for nurse practitioner programs specified in subsec. (a) of this section, within ninety days after July 29, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 293j, 297, 298b–7 of this title.

SUBPART II—NURSING EDUCATION OPPORTUNITIES FOR INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS

PRIOR PROVISIONS

A prior subpart II related to capitation grants and consisted of sections 296e to 296i of this title, prior to repeal by Pub. L. 99–92.

§ 296r. Special projects

(a) Covered costs

The Secretary may make grants to public and nonprofit private schools of nursing and other public or nonprofit private entities, and enter into contracts with any public or private entity, to meet the costs of special projects to increase nursing education opportunities for individuals from disadvantaged backgrounds, as determined in accordance with criteria prescribed by the Secretary—

(1) by identifying, recruiting, and selecting such individuals,

(2) by facilitating the entry of such individuals into schools of nursing,

(3) by providing counseling or other services designed to assist such individuals to complete successfully their nursing education,

(4) by providing, for a period prior to the entry of such individuals into the regular course of education at a school of nursing, preliminary education designed to assist them to complete successfully such regular course of education,

(5) by paying such stipends (including allowances for travel and dependents) as the Secretary may determine for such individuals for any period of nursing education,

(6) by publicizing, especially to licensed vocational or practical nurses, existing sources of financial aid available to persons enrolled in schools of nursing or who are undertaking training necessary to qualify them to enroll in such schools, and

(7) by providing training, information, or advice to the faculty of such schools with respect to encouraging such individuals to complete the programs of nursing education in which the individuals are enrolled.

(b) Application; contents

No grant or contract may be made under this section unless an application therefor has been submitted to and approved by the Secretary. The Secretary may not approve or disapprove such an application except after consultation with the National Advisory Council on Nurse Education. Such an application shall provide for such fiscal control and accounting procedures and reports, and access to the records of the applicant, as the Secretary may require to assure proper disbursement of and accounting for Federal funds paid to the applicant under this section.

(c) Authorization of appropriations

For payments under grants and contracts under subsection (a) of this section, there are authorized to be appropriated $3,000,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, $5,000,000 for fiscal year 1991, $5,000,000 for fiscal year 1993, and $6,000,000 for fiscal year 1994.

(July 1, 1944, ch. 373, title VIII, § 827, as added Nov. 4, 1988, Pub. L. 100–607, title VII, § 701(a)(3), 102 Stat. 3153; amended Oct. 13, 1992, Pub. L. 102–408, title II, § 205, 106 Stat. 2073.)

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–408 struck out ''and'' after ''1990,'' and inserted before period '', $5,000,000 for fiscal year 1993, and $6,000,000 for fiscal year 1994''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 298b–7 of this title.

PART B—ASSISTANCE TO NURSING STUDENTS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 5 section 5379; title 10 section 16302.

SUBPART I—TRAINEESHIPS

§ 297. Traineeships for advanced education of professional nurses

(a) In general

The Secretary may make grants to public and nonprofit private entities to meet the costs of—

(1) traineeships for individuals in advanced-degree programs in order to educate the individuals to serve in and prepare for practice as nurse practitioners, nurse midwives, nurse educators, public health nurses, or in other clinical nursing specialties determined by the Secretary to require advanced education; and

(2) traineeships for participation in certificate nurse midwifery programs that conform to guidelines established by the Secretary under section 296m(b) of this title.

(b) Special consideration in making grants

In making grants for traineeships under subsection (a) of this section, the Secretary shall give special consideration to applications for traineeship programs that conform to guidelines established by the Secretary under section 296m(b)(2) of this title.

(c) Preference in provision of traineeships

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that, in providing traineeships under such subsection, the applicant will give preference to individuals who are residents of health professional shortage areas designated under section 254e of this title.

(d) Eligibility of individuals in master's degree programs

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that the applicant will not provide a traineeship under such subsection to an individual enrolled in a masters of nursing program unless the individual has completed basic nursing preparation, as determined by the applicant.

(e) Use of grant

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that traineeships provided with the grant will pay all or part of the costs of—

(A) the tuition, books, and fees of the program of nursing with respect to which the traineeship is provided; and

(B) reasonable living expenses of the individual during the period for which the traineeship is provided.

(f) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $20,000,000 for each of the fiscal years 1993 and 1994.

(2) Limitation regarding certain traineeships

Of the amounts appropriated under paragraph (1) for a fiscal year, the Secretary may not obligate more than 10 percent for providing traineeships under subsection (a) of this section for individuals in doctoral degree programs.

(July 1, 1944, ch. 373, title VIII, § 830, formerly § 821, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 913; amended Aug. 16, 1968, Pub. L. 90–490, title II, § 221, 82 Stat. 783; July 9, 1971, Pub. L. 92–52, § 5, 85 Stat. 145; Nov. 18, 1971, Pub. L. 92–158, §§ 5, 13, 85 Stat. 475, 480; renumbered § 830 and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 935, 941(g)(2), 89 Stat. 362, 365; Oct. 12, 1976,

Pub. L. 94–484, title IX, § 901, 90 Stat. 2323; Aug. 1, 1977, Pub. L. 95–83, title III, § 307(*o*)(5)(B), 91 Stat. 394; Sept. 29, 1979, Pub. L. 96–76, title I, § 108, 93 Stat. 579; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2756, 95 Stat. 931; Aug. 16, 1985, Pub. L. 99–92, § 6, 99 Stat. 395; Nov. 4, 1988, Pub. L. 100–607, title VII, § 711, 102 Stat. 3159; Oct. 13, 1992, Pub. L. 102–408, title II, § 206, 106 Stat. 2073; June 10, 1993, Pub. L. 103–43, title XX, § 2014(f), 107 Stat. 217.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–43 substituted ''meet the costs of—'' for ''meet the cost of'', inserted ''(1), and added par. (2).

1992—Pub. L. 102–408 amended section generally, substituting present provisions for provisions authorizing grants to cover costs of traineeships for education of professional nurses, including post-baccalaureate fellowships for faculty of schools of nursing and traineeships for certain part-time students in advanced nursing programs, and authorizing appropriations.

1988—Subsec. (c). Pub. L. 100–607, § 711(a), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–607, § 711, redesignated former subsec. (c) as (d) and amended it generally. Prior to amendment, such subsec. read as follows:

''(1) There are authorized to be appropriated for the purposes of subsection (a) of this section $11,500,000 for the fiscal year ending September 30, 1986, $12,250,000 for the fiscal year ending September 30, 1987, and $13,000,000 for the fiscal year ending September 30, 1988. Priority in the award of traineeships under subsection (a)(1)(A)(i) of this section shall go to nurse midwife trainees.

''(2) There are authorized to be appropriated for the purposes of subsection (b) of this section $1,100,000 for the fiscal year ending September 30, 1986, $1,100,000 for the fiscal year ending September 30, 1987, and $1,100,000 for the fiscal year ending September 30, 1988.''

1985—Pub. L. 99–92, § 6(b)(7), substituted ''education'' for ''training'' in section catchline.

Subsec. (a)(1). Pub. L. 99–92, § 6(a), amended par. (1) generally, substituting provisions relating to costs of traineeships for nurses in masters' degree and doctoral degree programs and traineeships to educate nurses for practice as nurse midwives for provisions relating to costs of traineeships for the training of professional nurses for teaching and service.

Subsec. (b). Pub. L. 99–92, § 6(b)(1), (6), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99–92, § 6(b)(1)–(5), redesignated former subsec. (b) as par. (1) and substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988, for provisions authorizing appropriations for fiscal year ending June 30, 1976, through fiscal year ending Sept. 30, 1984, and minimum amounts required to be obligated for traineeships, struck out provision relating to obligation of not less than 25 percent of the funds appropriated under subsec. (c) for traineeships described in subsec. (a)(1)(A), and added par. (2).

1981—Subsec. (b). Pub. L. 97–35 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984, and relating to priorities for obligation of funds.

1979—Subsec. (b). Pub. L. 96–76 authorized appropriations of $15,000,000 for fiscal year ending Sept. 30, 1980.

1977—Subsec. (a)(2). Pub. L. 95–83, § 307(*o*)(5)(B)(1), struck out ''(A) for the training of nurse practitioners who will practice in health manpower shortage areas (designated under section 254e of this title), and (B) for traineeship programs'' after ''traineeship programs''.

Subsec. (b). Pub. L. 95–83, § 307(*o*)(5)(B)(2), (3), struck out subsec. (b) relating to grants and contracts for establishment and operation of traineeship programs for residents of health manpower shortage areas, amount of award, and service commitment in health manpower shortage areas and redesignated subsec. (c) as (b).

1976—Subsec. (a)(1). Pub. L. 94–484, § 901(1), (2), designated existing provisions as par. (1), incorporated first sentence provisions of former subsec. (b) in introductory text reading ''The Secretary may make grants to public or private nonprofit institutions'', struck out former introductory appropriations authorization provision for $15,000,000; $20,000,000; and $25,000,000 for fiscal years 1976, 1977, and 1978, now incorporated in subsec. (c), and redesignated as subpars. (A) through (D) former pars. (1) through (4), respectively.

Subsec. (a)(2). Pub. L. 94–484, § 901(3), added cl. (A) provisions and incorporated second sentence provisions of former subsec. (b) in provisions designated as cl. (B)

Subsec. (a)(3). Pub. L. 94–484, § 901(4), (5), substituted ''subsection'' for ''section'' and redesignated such amended former subsec. (c) as par. (3).

Subsec. (b). Pub. L. 94–484, § 901(6), added subsec. (b). Pub. L. 94–484, § 901(3), struck out provisions of former subsec. (b), first sentence reading ''Traineeships under this section shall be awarded by the Secretary through grants to public or nonprofit private institutions providing the training.'' and now covered in subsec. (a)(1), and second sentence reading ''In making grants for traineeships under this section, the Secretary shall give special consideration to applications for traineeship programs which conform to guidelines established by the Secretary under section 296m(a)(2)(B) of this title.'' and now covered in subsec. (a)(2)(B) of this section.

Subsec. (c). Pub. L. 94–484, § 901(6), incorporated introductory appropriations authorization provision of former subsec. (a) in provision designated as subsec. (c), substituted provision making appropriations available for fiscal years ending June 30, 1976, Sept. 30, 1977, and Sept. 30, 1978, for provision making appropriations available for fiscal years 1976, 1977, and 1978, respectively. Former subsec. (c) redesignated (a)(3).

1975—Subsec. (a). Pub. L. 94–63, § 935(a), substituted provisions relating to authorization of appropriations for fiscal years 1976 through 1978, for provisions relating to authorization of appropriations for fiscal year ending June 30, 1965 through fiscal year ending June 30, 1975, and inserted provision authorizing use of funds for training nurses to serve as nurse practitioners.

Subsec. (b). Pub. L. 94–63, § 935(b), inserted provision relating to preference to application conforming to guidelines under section 296m(a)(2)(B) of this title.

1971—Subsec. (a). Pub. L. 92–158, §§ 5, 13, authorized appropriations of $20,000,000, $22,000,000, and $24,000,000 for fiscal years ending June 3, 1972, 1973, and 1974, respectively and substituted ''Secretary'' for ''Surgeon General''.

Pub. L. 92–52 substituted ''each for the fiscal year ending June 30, 1971, and the next fiscal year'' for ''for the fiscal year ending June 30, 1971''.

Subsecs. (b), (c). Pub. L. 92–158, § 13, substituted ''Secretary'' for ''Surgeon General''.

1968—Subsec. (a). Pub. L. 90–490 authorized appropriations of $15,000,000 and $19,000,000 for fiscal years ending June 30, 1970, and 1971, respectively.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 296k of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 935(a) of Pub. L. 94–63 effective July 1, 1975, see section 905 of Pub. L. 94–63, set out as a note under section 296 of this title.

Section 935(b) of Pub. L. 94–63 provided that the amendment made by that section is effective with respect to grants under this section from appropriations under this section for fiscal years beginning after June 30, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 298b–7 of this title.

§ 297–1. Nurse anesthetists

(a) Authority of Secretary; program eligibility; payments; limitations

(1) The Secretary may make grants to public or private nonprofit institutions to cover the costs of traineeships for licensed registered nurses to become nurse anesthetists and to cover the costs of projects to develop and operate programs for the education of nurse anesthetists. In order to be eligible for such a grant, the program of an institution must be accredited by an entity or entities designated by the Secretary of Education and must meet such requirements as the Secretary shall by regulation prescribe.

(2)(A) In making grants under paragraph (1), the Secretary shall give preference to qualified applicants carrying out traineeship programs whose participants gain significant experience in providing health services at rural health facilities.

(B) The Secretary may make a grant under paragraph (1) only if the institution involved agrees that, in providing traineeships under such paragraph, the institution will give preference to individuals who are residents of health professional shortage areas designated under section 254e of this title.

(3) The Secretary may make a grant under paragraph (1) only if the applicant involved agrees that traineeships provided with the grant will pay all or part of the costs of—

(A) the tuition, books, and fees of the program of nursing with respect to which the traineeship is provided; and

(B) reasonable living expenses of the individual during the period for which the traineeship is provided.

(b) Additional granting authorities

The Secretary may make grants to public or private nonprofit institutions to cover the cost of projects to improve existing programs for the education of nurse anesthetists which are accredited by an entity or entities designated by the Secretary of Education. Such grants shall include grants to such institutions for the purpose of providing financial assistance and support to certified registered nurse anesthetists who are faculty members of accredited programs to enable such nurse anesthetists to obtain advanced education relevant to their teaching functions.

(c) Authorization of appropriations; limitations

For the purpose of making grants under this section, there is authorized to be appropriated $1,800,000 for each of the fiscal years 1989 through 1991, $3,000,000 for fiscal year 1993, and $4,000,000 for fiscal year 1994. Not more than 20 percent of the amount appropriated under this section for any fiscal year shall be obligated for grants under the second sentence of subsection (b) of this section.

(July 1, 1944, ch. 373, title VIII, § 831, as added Sept. 29, 1979, Pub. L. 96–76, title I, § 111, 93 Stat. 580; amended Jan. 4, 1983, Pub. L. 97–414, § 8(*l*), 96 Stat. 2061; Aug. 16, 1985, Pub. L. 99–92, § 7, 99 Stat. 396; Nov. 4, 1988, Pub. L. 100–607, title VII, § 712, 102 Stat. 3160; Oct. 13, 1992, Pub. L. 102–408, title II, § 207, 106 Stat. 2074.)

AMENDMENTS

1992—Subsec. (a)(2), (3). Pub. L. 102–408, § 207(a), added pars. (2) and (3) and struck out former par. (2) which read as follows: ''Payments to institutions under this subsection may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary. Payments for traineeships shall be limited to such amounts as the Secretary determines to be necessary to cover the costs of tuition and fees and a stipend and allowances (including travel and subsistence expenses) for trainees.''

Subsec. (c). Pub. L. 102–408, § 207(b), inserted before period at end of first sentence '', $3,000,000 for fiscal year 1993, and $4,000,000 for fiscal year 1994''.

1988—Subsec. (a)(1). Pub. L. 100–607, § 712(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Secretary may make grants to public or private nonprofit institutions to cover the costs of traineeships for the training, in programs which meet such requirements as the Secretary shall by regulation prescribe and which are accredited by an entity or entities designated by the Secretary of Education, of licensed, registered nurses to be nurse anesthetists.''

Subsec. (a)(2). Pub. L. 100–607, § 712(a)(2), amended second sentence generally. Prior to amendment, sentence read as follows: ''Such payments may be used only for traineeships and shall be limited to such amounts as the Secretary finds necessary to cover the costs of tuition and fees, and a stipend and allowances (including travel and subsistence expenses) for the trainees.''

Subsec. (c). Pub. L. 100–607, § 712(b), amended first sentence generally. Prior to amendment, sentence read as follows: ''For the purpose of making grants under this section, there are authorized to be appropriated $800,000 for the fiscal year ending September 30, 1986, $800,000 for the fiscal year ending September 30, 1987, and $800,000 for the fiscal year ending September 30, 1988.''

1985—Pub. L. 99–92, § 7(d), struck out ''traineeships for training of'' in section catchline.

Subsec. (a)(1). Pub. L. 99–92, § 7(a), substituted ''Secretary of Education'' for ''Commissioner of Education''.

Subsec. (b). Pub. L. 99–92, § 7(b), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99–92, § 7(b), (c), redesignated former subsec. (b) as (c) and amended it generally, substituting provisions authorizing appropriations for fiscal years ending Sept. 30, 1986, 1987, and 1988, for provisions authorizing appropriations for fiscal years ending Sept. 30, 1980, 1983, and 1984, and inserting provision imposing 20 percent limitation on obligations for grants under second sentence of subsec. (b).

1983—Subsec. (b). Pub. L. 97–414 inserted provisions relating to fiscal years 1983 and 1984.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 296k of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 298b–7 of this title.

SUBPART II—STUDENT LOANS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 297n, 298b of this title; title 20 section 1078–3; title 26 section 6103.

§ 297a. Student loan fund

(a) Agreements to establish and operate fund authorized

The Secretary is authorized to enter into an agreement for the establishment and operation of a student loan fund in accordance with this subpart with any public or nonprofit private school of nursing which is located in a State.

(b) Provisions of agreements

Each agreement entered into under this section shall—

(1) provide for establishment of a student loan fund by the school;

(2) provide for deposit in the fund, except as provided in section 297h of this title, of (A) the Federal capital contributions paid from allotments under section 297d of this title to the school by the Secretary, (B) an additional amount from other sources equal to not less than one-ninth of such Federal capital contributions, (C) collections of principal and interest on loans made from the fund, (D) collections pursuant to section 297b(f) of this title, and (E) any other earnings of the fund;

(3) provide that the fund, except as provided in section 297h of this title, shall be used only for loans to students of the school in accordance with the agreement and for costs of collection of such loans and interest thereon;

(4) provide that loans may be made from such fund only to students pursuing a fulltime or half-time course of study at the school leading to a baccalaureate or associate degree in nursing or an equivalent degree or a diploma in nursing, or to a graduate degree in nursing;

(5) contain such other provisions as are necessary to protect the financial interests of the United States.

(c) Regulatory standards applicable to collection of loans

(1) Any standard established by the Secretary by regulation for the collection by schools of nursing of loans made pursuant to loan agreements under this subpart shall provide that the failure of any such school to collect such loans shall be measured in accordance with this subsection. With respect to the student loan fund established pursuant to such agreements, this subsection may not be construed to require such schools to reimburse such loan fund for loans that became uncollectable prior to 1983.

(2) The measurement of a school's failure to collect loans made under this subpart shall be the ratio (stated as a percentage) that the defaulted principal amount outstanding of such school bears to the matured loans of such school.

(3) For purposes of this subsection—

(A) the term ''default'' means the failure of a borrower of a loan made under this subpart to—

(i) make an installment payment when due; or

(ii) comply with any other term of the promissory note for such loan,

except that a loan made under this subpart shall not be considered to be in default if the loan is discharged in bankruptcy or if the school reasonably concludes from written contacts with the borrower that the borrower intends to repay the loan;

(B) the term ''defaulted principal amount outstanding'' means the total amount borrowed from the loan fund of a school that has reached the repayment stage (minus any principal amount repaid or cancelled) on loans—

(i) repayable monthly and in default for at least 120 days; and

(ii) repayable less frequently than monthly and in default for at least 180 days;

(C) the term ''grace period'' means the period of nine months beginning on the date on which the borrower ceases to pursue a full-time or half-time course of study at a school of nursing; and

(D) the term ''matured loans'' means the total principal amount of all loans made by a school of nursing under this subpart minus the total principal amount of loans made by such school to students who are—

(i) enrolled in a full-time or half-time course of study at such school; or

(ii) in their grace period.

(July 1, 1944, ch. 373, title VIII, § 835, formerly § 822, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 913; amended Aug. 16, 1968, Pub. L. 90–490, title II, § 222(a), (c)(2), 82 Stat. 783, 784; Nov. 18, 1971, Pub. L. 92–158, § 6(d)(3), (e), 85 Stat. 478; Aug. 23, 1974, Pub. L. 93–385, § 3(b), 88 Stat. 741; renumbered § 835 and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 936(a), 941(h)(1)–(3), (i)(1), (2), 89 Stat. 362, 365, 366; Sept. 29, 1979, Pub. L. 96–76, title I, § 109(a), 93 Stat. 579; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2757(a), 95 Stat. 931; Aug. 16, 1985, Pub. L. 99–92, § 8(a), 99 Stat. 397; Oct. 22, 1985, Pub. L. 99–129, title II, § 209(j)(2), 99 Stat. 536; Nov. 4, 1988, Pub. L. 100–607, title VII, § 713(a), 102 Stat. 3160.)

AMENDMENTS

1988—Subsec. (c)(1). Pub. L. 100–607 inserted provisions relating to reimbursement of student loan fund for certain uncollectable loans.

1985—Subsec. (c). Pub. L. 99–92 added subsec. (c).

Subsec. (c)(3)(C). Pub. L. 99–129, § 209(j)(2)(A), substituted provisions defining ''grace period'' as the period of nine months beginning on the date on which the borrower ceases to pursue a full-time or half-time course of study at a school of nursing for former provisions defining ''grace period'' as the period of one year beginning on (i) the date on which the borrower ceased to pursue a full-time or half-time course of study at a school of nursing; or (ii) the date on which ended any period described in clause (A) or (B) of section 297b(b)(2) of this title which was applicable to such borrower, whichever was later.

Subsec. (c)(3)(D)(ii). Pub. L. 99–129, § 209(j)(2)(B), struck out ''first'' before ''grace period.''

1981—Subsec. (b)(4). Pub. L. 97–35 struck out provisions respecting prohibition on loans to students attending school before Oct. 1, 1980.

1979—Subsec. (b)(4). Pub. L. 96–76 substituted ''1980'' for ''1978''.

1975—Subsec. (a). Pub. L. 94–63, § 941(h)(1), (2), substituted ''subpart'' for ''part'' and struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsec. (b). Pub. L. 94–63, §§ 936(a), 941(h)(3), (i)(2), in cl. (2) substituted ''from allotments under section 297d of this title'' for ''under this part'', in cl. (4) substituted ''October 1, 1978'' for ''July 1, 1975'', and in cls. (2) and (3) substituted references to sections 836 and 841 of the Act for references to sections 823 and 829, which had previously been translated as sections 297b and 297h of this title, respectively, requiring no further translations in the text as a result of the renumbering of the Public Health Service Act.

1974—Subsec. (b)(4). Pub. L. 93–385 substituted ''1975'' for ''1974''.

1971—Subsec. (b)(4). Pub. L. 92–158 substituted ''full-time or half-time course of study'' for ''full-time course of study'' and ''1974'' for ''1971''.

1968—Subsec. (b)(2). Pub. L. 90–490, § 222(a)(1), (c)(2), inserted '', except as provided in section 297h of this

title,'' after ''fund'' where first appearing and added cl. (D) and redesignated former cl. (D) as (E), respectively.

Subsec. (b)(3). Pub. L. 90–490, § 222(a)(1), inserted '', except as provided in section 297h of this title'' after ''fund'' where first appearing and authorized the cancellation of an additional 50 per centum of a nursery student loan.

Subsec. (b)(4). Pub. L. 90–490, § 222(a)(2), substituted ''1971'' for ''1969''.

EFFECTIVE DATE OF 1985 AMENDMENTS

Amendment by Pub. L. 99–129 effective June 30, 1984, see section 228(b)(5) of Pub. L. 99–129, set out as a note under section 254*l* of this title.

Amendment by Pub. L. 99–92 effective June 30, 1984, see section 10(b)(2) of Pub. L. 99–92, set out as a note under section 296k of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 936(a) of Pub. L. 94–63 effective July 1, 1975, see section 905 of Pub. L. 94–63, set out as a note under section 296 of this title.

Amendment by section 941(h)(1)–(3), (i)(1), (2) of Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 296a of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 222(c)(2) of Pub. L. 90–490 applicable with respect to loans made after June 30, 1969, see section 222(i) of Pub. L. 90–490, set out as a note under section 297b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 296e, 297c, 297d, 297e of this title.

§ 297b. Loan provisions

(a) Maximum amount per individual per year; preference to first year students

The total of the loans for any academic year (or its equivalent, as determined under regulations of the Secretary) made by schools of nursing from loan funds established pursuant to agreements under this subpart may not exceed $2,500 in the case of any student, except that for the final two academic years of the program involved, such total may not exceed $4,000. The aggregate of the loans for all years from such funds may not exceed $13,000 in the case of any student. In the granting of such loans, a school shall give preference to licensed practical nurses, to persons with exceptional financial need, and to persons who enter as first-year students after enactment of this subchapter.

(b) Terms and conditions

Loans from any such student loan fund by any school shall be made on such terms and conditions as the school may determine; subject, however, to such conditions, limitations, and requirements as the Secretary may prescribe (by regulation or in the agreement with the school) with a view to preventing impairment of the capital of such fund to the maximum extent practicable in the light of the objective of enabling the student to complete his course of study; and except that—

(1) such a loan may be made only to a student who (A) is in need of the amount of the loan to pursue a full-time or half-time course of study at the school leading to a baccalaureate or associate degree in nursing or an equivalent degree, or a diploma in nursing, or a graduate degree in nursing, (B) is capable, in the opinion of the school, of maintaining good standing in such course of study, and (C) with respect to any student enrolling in the school after June 30, 1986, is of financial need (as defined in regulations issued by the Secretary).;[1]

(2) such a loan shall be repayable in equal or graduated periodic installments (with the right of the borrower to accelerate repayment) over the ten-year period which begins nine months after the student ceases to pursue a full-time or half-time course of study at a school of nursing, excluding from such 10-year period all (A) periods (up to three years) of (i) active duty performed by the borrower as a member of a uniformed service, or (ii) service as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.], and (B) periods (up to ten years) during which the borrower is pursuing a full-time or half-time course of study at a collegiate school of nursing leading to baccalaureate degree in nursing or an equivalent degree, or to graduate degree in nursing, or is otherwise pursuing advanced professional training in nursing (or training to be a nurse anesthetist);

(3) in the case of a student who received such a loan before September 29, 1979, an amount up to 85 per centum of any such loan made before such date (plus interest thereon) shall be canceled for full-time employment as a professional nurse (including teaching in any of the fields of nurse training and service as an administrator, supervisor, or consultant in any of the fields of nursing) in any public or nonprofit private agency, institution, or organization (including neighborhood health centers), at the rate of 15 per centum of the amount of such loan (plus interest) unpaid on the first day of such service for each of the first, second, and third complete year of such service, and 20 per centum of such amount (plus interest) for each complete fourth and fifth year of such service;

(4) the liability to repay the unpaid balance of such loan and accrued interest thereon shall be canceled upon the death of the borrower, or if the Secretary determines that he has become permanently and totally disabled;

(5) such a loan shall bear interest on the unpaid balance of the loan, computed only for periods during which the loan is repayable, at the rate of 5 percent per annum;

(6) such a loan shall be made without security or endorsement, except that if the borrower is a minor and the note or other evidence of obligation executed by him would not, under the applicable law, create a binding obligation, either security or endorsement may be required;

(7) no note or other evidence of any such loan may be transferred or assigned by the school making the loan except that, if the borrower transfers to another school participating in the program under this subpart such note or other evidence of a loan may be transferred to such other school.

(c) Cancellation

Where all or any part of a loan, or interest, is canceled under this section, the Secretary shall

[1] So in original.

pay to the school an amount equal to the school's proportionate share of the canceled portion, as determined by the Secretary.

(d) Installments

Any loan for any year by a school from a student loan fund established pursuant to an agreement under this subpart shall be made in such installments as may be provided in regulations of the Secretary or such agreement and, upon notice to the Secretary by the school that any recipient of a loan is failing to maintain satisfactory standing, any or all further installments of his loan shall be withheld, as may be appropriate.

(e) Availability to eligible students in need

An agreement under this subpart with any school shall include provisions designed to make loans from the student loan fund established thereunder reasonably available (to the extent of the available funds in such fund) to all eligible students in the school in need thereof.

(f) Penalty for late payment

Subject to regulations of the Secretary and in accordance with this section, a school shall assess a charge with respect to a loan from the loan fund established pursuant to an agreement under this subpart for failure of the borrower to pay all or any part of an installment when it is due and, in the case of a borrower who is entitled to deferment of the loan under subsection (b)(2) of this section or cancellation of part or all of the loan under subsection (b)(3) of this section, for any failure to file timely and satisfactory evidence for such entitlement. No such charge may be made if the payment of such installment or the filing of such evidence is made within 60 days after the date on which such installment or filing is due. The amount of any such charge may not exceed an amount equal to 6 percent of the amount of such installment. The school may elect to add the amount of any such charge to the principal amount of the loan as of the first day after the day on which such installment or evidence was due, or to make the amount of the charge payable to the school not later than the due date of the next installment after receipt by the borrower of notice of the assessment of the charge.

(g) Minimum monthly repayment

A school may provide in accordance with regulations of the Secretary, that during the repayment period of a loan from a loan fund established pursuant to an agreement under this subpart payments of principal and interest by the borrower with respect to all the outstanding loans made to him from loan funds so established shall be at a rate equal to not less than $15 per month.

(h) Loan cancellation

Notwithstanding the amendment made by section 6(b) of the Nurse Training Act of 1971 to this section—

(A) any person who obtained one or more loans from a loan fund established under this subpart, who before November 18, 1971, became eligible for cancellation of all or part of such loans (including accrued interest) under this section (as in effect on the day before such date), and who on such date was not engaged in a service for which loan cancellation was authorized under this section (as so in effect), may at any time elect to receive such cancellation in accordance with this subsection (as so in effect); and

(B) in the case of any person who obtained one or more loans from a loan fund established under this subpart and who on such date was engaged in a service for which cancellation of all or part of such loans (including accrued interest) was authorized under this section (as so in effect), this section (as so in effect) shall continue to apply to such person for purposes of providing such loan cancellation until he terminates such service.

Nothing in this subsection shall be construed to prevent any person from entering into an agreement for loan cancellation under subsection (h)[2] of this section (as amended by section 6(b)(2) of the Nurse Training Act of 1971).

(i) Loan repayment

Upon application by a person who received, and is under an obligation to repay, any loan made to such person as a nursing student, the Secretary may undertake to repay (without liability to the applicant) all or any part of such loan, and any interest or portion thereof outstanding thereon, upon his determination, pursuant to regulations establishing criteria therefor, that the applicant—

(1) failed to complete the nursing studies with respect to which such loan was made;

(2) is in exceptionally needy circumstances; and

(3) has not resumed, or cannot reasonably be expected to resume, such nursing studies within two years following the date upon which the applicant terminated the studies with respect to which such loan was made.

(j) Collection by Secretary of loan in default; preconditions and procedures applicable

The Secretary is authorized to attempt to collect any loan which was made under this subpart, which is in default, and which was referred to the Secretary by a school of nursing with which the Secretary has an agreement under this subpart, on behalf of that school under such terms and conditions as the Secretary may prescribe (including reimbursement from the school's student loan fund for expenses the Secretary may reasonably incur in attempting collection), but only if the school has complied with such requirements as the Secretary may specify by regulation with respect to the collection of loans under this subpart. A loan so referred shall be treated as a debt subject to section 5514 of title 5. Amounts collected shall be deposited in the school's student loan fund. Whenever the Secretary desires the institution of a civil action regarding any such loan, the Secretary shall refer the matter to the Attorney General for appropriate action.

(July 1, 1944, ch. 373, title VIII, § 836, formerly § 823, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 914; amended Oct. 22, 1965, Pub. L. 89–290, § 4(g)(2), 79 Stat. 1058; Aug. 16, 1968, Pub. L.

[2] See References in Text note below.

90–490, title II, § 222(b), (c)(1), 82 Stat. 783, 784; Nov. 18, 1971, Pub. L. 92–158, § 6(a), (b)(1), (e), 85 Stat. 475, 476, 478; renumbered § 836 and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 936(b), 941(h)(1), (2), (5), (i)(1), 89 Stat. 363, 365; Sept. 29, 1979, Pub. L. 96–76, title I, § 112, 93 Stat. 580; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2757(b), 95 Stat. 931; Aug. 16, 1985, Pub. L. 99–92, § 8(b)–(d), 99 Stat. 398; Nov. 4, 1988, Pub. L. 100–607, title VII, §§ 713(b)–(g), 714(a)–(c), 102 Stat. 3160, 3161; Aug. 16, 1989, Pub. L. 101–93, § 5(r), 103 Stat. 614; Oct. 13, 1992, Pub. L. 102–408, title II, § 211(a)(1), 106 Stat. 2078.)

REFERENCES IN TEXT

The Peace Corps Act, referred to in subsec. (b)(2), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Subsection (h) of this section, referred to in subsec. (h), was struck out and subsec. (i) was redesignated (h) by Pub. L. 102–408. See 1992 Amendment note below.

Section 6(b) of the Nurse Training Act of 1971, referred to in subsec. (h), is section 6(b) of Pub. L. 92–158, Nov. 18, 1971, 85 Stat. 477. Section 6(b)(1) amended subsec. (b)(3) of this section, added former subsec. (h) of this section, and enacted the provisions editorially classified to subsec. (i) [now (h)] of this section. Section 6(b)(2) enacted section 297i of this title which was transferred and redesignated as subsec. (j) [now (i)] of this section pursuant to section 941(h)(5) of Pub. L. 94–63.

CODIFICATION

Provisions of subsec. (h) of this section were, in the original, enacted by section 6(b)(1) of Pub. L. 92–158, without directory language with respect to classification in the Code and were editorially set out as subsec. (i) [now (h)] as the probable intent of Congress.

AMENDMENTS

1992—Subsecs. (h) to (k). Pub. L. 102–408 redesignated subsecs. (i) to (k) as (h) to (j), respectively, and struck out former subsec. (h) which provided for a loan repayment program. See section 297n of this title.

1989—Subsec. (h)(6)(C). Pub. L. 101–93 substituted ''means a skilled nursing facility, as such term is defined in section 1395x(j) of this title, and an intermediate care facility, as such term is defined in section 1396d(c) of this title'' for ''means an intermediate care facility and a skilled nursing facility, as such terms are defined in subsections (c) and (i), respectively, of section 1396d of this title''.

1988—Subsec. (a). Pub. L. 100–607, § 713(b), (c), inserted in first sentence '', except that for the final two academic years of the program involved, such total may not exceed $4,000'', substituted ''$13,000'' for ''$10,000'' in second sentence, and inserted '', to persons with exceptional financial need,'' after ''nurses'' in third sentence.

Subsec. (b)(1)(C). Pub. L. 100–607, § 713(d), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''if a student who will enroll in the school after June 30, 1986, is of exceptional financial need (as defined by regulations of the Secretary)''.

Subsec. (b)(2)(B). Pub. L. 100–607, § 713(e), substituted ''ten'' for ''five'' and inserted ''or half-time'' after ''a full-time''.

Subsec. (b)(5). Pub. L. 100–607, § 713(f), substituted ''5 percent'' for ''6 per centum''.

Subsec. (h)(1)(C). Pub. L. 100–607, § 714(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''who enters into an agreement with the Secretary to serve as a nurse for a period of at least two years in an area in a State determined by the Secretary, after consultation with the appropriate State health authority (as determined by the Secretary by regulations), to have a shortage of and need for nurses;''.

Subsecs. (h)(5), (6). Pub. L. 100–607, § 714(b), (c), added pars. (5) and (6).

Subsec. (j)(2) to (4). Pub. L. 100–607, § 713(g), redesignated par. (4) as (3) and struck out former par. (3) which related to low-income or disadvantaged family.

1985—Subsec. (b)(1). Pub. L. 99–92, § 8(b), which directed that cl. (C) be inserted before period, was executed by inserting cl. (C) before the semicolon as the probable intent of Congress.

Subsec. (f). Pub. L. 99–92, § 8(c), substituted ''the Secretary and in accordance with this section, a school shall'' for ''the Secretary, a school may'', and substituted provisions relating to charges not allowed in certain cases and allowed where payment is late for provisions relating to maximum amount of late charges.

Subsec. (k). Pub. L. 99–92, § 8(d), added subsec. (k).

1981—Subsec. (b)(5). Pub. L. 97–35 substituted ''6'' for ''3''.

1979—Subsec. (b)(3). Pub. L. 96–76 inserted provisions requiring conditions to be applicable to loans arising prior to Sept. 29, 1979.

1975—Subsec. (a). Pub. L. 94–63, § 941(h)(1), substituted ''subpart'' for ''part''.

Subsec. (b). Pub. L. 94–63, § 941(h)(2), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsec. (b)(2)(B). Pub. L. 94–63, § 936(b), inserted ''(or training to be a nurse anesthetist)'' after ''professional training in nursing''.

Subsec. (b)(7). Pub. L. 94–63, § 941(h)(1), substituted ''subpart'' for ''part''.

Subsec. (c). Pub. L. 94–63, § 941(h)(2), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsecs. (d) to (i). Pub. L. 94–63, § 941(h)(1), substituted ''subpart'' for ''part'' whenever appearing.

Subsec. (j). Pub. L. 94–63, § 941(h)(5), added subsec. (j), formerly classified as section 297i of this title pursuant to enactment as section 830 of act July 1, 1944, ch. 373. Section 941(h)(5)(A) of Pub. L. 94–63 transferred such former section to this section and section 941(h)(5)(B) redesignated provision as subsec. (j).

1971—Subsec. (a). Pub. L. 92–158, § 6(a), substituted''$2,500'' for ''$1,500'' and ''$10,000'' for ''$60,000''.

Subsec. (b)(1). Pub. L. 92–158, § 6(e), substituted ''full-time or half-time course of study'' for ''full-time course of study''.

Subsec. (b)(2). Pub. L. 92–158, § 6(e), in text preceding cl. (A), substituted ''full-time or half-time course of study'' for ''full-time course of study''.

Subsec. (b)(3). Pub. L. 92–158, § 6(b)(1)(A), substituted provisions cancelling up to 85 per centum of loan, for provisions cancelling up to 50 per centum of loan, where borrower holds full-time employment as a professional nurse, added to areas of possible employment under this par. by inserting reference to any public or nonprofit organization including neighborhood health centers, substituted, with regard to the rate of cancellation of loan, the rate of 15 per centum of the amount unpaid on the first day of service, continuing at such rate with each of the first, second and third complete years of such service and 20 per centum of such amount with each complete fourth and fifth year of service for the rate of 10 per centum of the amount unpaid on the first day of service and to continue with each complete year of service, and struck out reference to 15 per centum rate of cancellation per complete year of service plus, for the purpose of such higher rate, the cancellation of an additional 50 per centum of such loan where such service is in a public or nonprofit hospital in any area which is determined, in accordance with the regulations of the Secretary, to be in an area having a substantial shortage of such nurses at such hospitals.

Subsec. (h). Pub. L. 92–158, § 6(b)(1)(B), added subsec. (h).

1968—Subsec. (a). Pub. L. 90–490, § 222(b)(1), increased limitation on amount of annual loans per student from $1,000 to $1,500, required preferences in granting of loans to licensed practical nurses, and limited aggregate of loans for all years to any one student to $6,000.

Subsec. (b)(2). Pub. L. 90–490, § 222(b)(2), provided for commencement of repayment nine months, rather than one year, after student ceases to pursue full-time course of study, excluded from ten-year repayment period periods (up to three years) of active duty as member of a uniformed service or Peace Corps volunteer service and periods (up to five years) as undergraduate or graduate degree student in nursing, including advanced professional training in nursing, and struck out prohibition against accrual of interest on loans.

Subsec. (b)(3). Pub. L. 90–490, § 222(b)(3), authorized cancellation of an additional 50 per centum of a nursing student loan (plus interest) at rate of 15 per centum for each complete year of service in a public or other nonprofit hospital in an area with a substantial shortage of nurses.

Subsec. (b)(5). Pub. L. 90–490, § 222(b)(4), struck out provisions for an interest rate which is the greater of 3 per centum or the going Federal rate at time loan is made, defining going Federal rate, and making rate determined for first loan applicable to any subsequent loan.

Subsecs. (f), (g). Pub. L. 90–490, § 222(c)(1), added subsecs. (f) and (g).

1965—Subsec. (b)(5). Pub. L. 89–290 applied rate of interest for first loan obtained by a student from a loan fund established under this part to any subsequent loan to such student from such fund during his course of study.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 296k of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 936(b) of Pub. L. 94–63 provided that the amendment made by that section is effective with respect to periods of training to be a nurse anesthetist undertaken on or after July 29, 1975.

Amendment by section 941(h)(1), (2), (5), (i)(1) of Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 296a of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 6(a)(1) of Pub. L. 92–158 provided that the amendment made by that section is effective with respect to academic years (or their equivalent as determined under regulations of the Secretary of Health, Education, and Welfare under this section) beginning after June 30, 1971.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 222(i) of Pub. L. 90–490 provided that: ''The amendments made by subsection (b)(1) and (2) [amending this section] shall apply with respect to all loans made after June 30, 1969, and with respect to loans made from a student loan fund established under an agreement pursuant to section 822 [section 297a of this title], before July 1, 1969, to the extent agreed to by the school which made the loans and the Secretary (but then only for years beginning after June 30, 1968). The amendments made by subsection (b)(4) [amending this section] and subsection (c) [amending this section and section 297a of this title] shall apply with respect to loans made after June 30, 1969. The amendment made by subsection (h) [enacting section 297h of this title] shall apply with respect to appropriations for fiscal years beginning after June 30, 1969. The amendment made by subsection (b)(3) [amending this section] shall apply with respect to service, specified in section 823(b)(3) of such Act [subsec. (b)(3) of this section] performed during academic years beginning after the enactment of this Act, whether the loan was made before or after such enactment [Aug. 16, 1968].''

CONSTRUCTION OF 1992 AMENDMENT

Section 211(b) of Pub. L. 102–408 provided that: ''With respect to section 836(h) of the Public Health Service Act [former subsec. (h) of this section], as in effect prior to the date of the enactment of this Act [Oct. 13, 1992], any agreement entered into under such section that is in effect on the day before such date remains in effect in accordance with the terms of the agreement, notwithstanding the amendment made by subsection (a) of this section [enacting section 297n of this title, amending this section, and repealing section 297c–1 of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 297a of this title.

§ 297c. Authorization of appropriations for student loan funds

There are authorized to be appropriated for allotments under section 297d of this title to schools of nursing for Federal capital contributions to their student loan funds established under section 297a of this title, $25,000,000 for fiscal year 1976, $30,000,000 for fiscal year 1977, $35,000,000 for fiscal year 1978, $13,500,000 for the fiscal year ending September 30, 1980, $14,000,000 for the fiscal year ending September 30, 1982, $16,000,000 for the fiscal year ending September 30, 1983, and $18,000,000 for the fiscal year ending September 30, 1984. For the fiscal year ending September 30, 1985, and for each of the next two succeeding fiscal years there are authorized to be appropriated such sums as may be necessary to enable students who have received a loan for any academic year ending before October 1, 1984, to continue or complete their education. Of the amount appropriated under the first sentence for the fiscal year ending September 30, 1982, and the two succeeding fiscal years, not less than $1,000,000 shall be obligated in each such fiscal year for loans from student loan funds established under section 297a of this title to individuals who are qualified to receive such loans and who, on the date they receive the loan, have not been employed on a full-time basis or been enrolled in any educational institution on a full-time basis for at least seven years. A loan to such an individual may not exceed $500 for any academic year.

(July 1, 1944, ch. 373, title VIII, § 837, formerly § 824, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 915; amended Nov. 3, 1966, Pub. L. 89–751, § 6(b), 80 Stat. 1235; Aug. 16, 1968, Pub. L. 90–490, title II, § 222(d), 82 Stat. 784; July 9, 1971, Pub. L. 92–52, § 3(a), 85 Stat. 144; Nov. 18, 1971, Pub. L. 92–158, § 6(c), 85 Stat. 477; Aug. 23, 1974, Pub. L. 93–385, § 3(a), 88 Stat. 741; renumbered § 837 and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 936(c), 941(i)(1), (3), 89 Stat. 363, 365, 366; Sept. 29, 1979, Pub. L. 96–76, title I, § 109(b), 93 Stat. 580; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2757(c), 95 Stat. 931.)

AMENDMENTS

1981—Pub. L. 97–35 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984, and provisions relating to priorities for obligation of funds, and substituted ''1985'' for ''1981'', and ''October 1, 1984'' for ''October 1, 1980''.

1979—Pub. L. 96–76 authorized appropriations of $13,500,000 for fiscal year ending Sept. 30, 1980, and substituted provisions relating to authorizations of appro-

priations through the fiscal year ending Sept. 30, 1981, for loans for any academic year ending before Oct. 1, 1980, for provisions relating to authorizations of appropriations for fiscal year 1979, for loans for any academic year ending before Oct. 1, 1978.

1975—Pub. L. 94–63, §§ 936(c), 941(i)(3), substituted provisions authorizing appropriations for allotments for schools of nursing for Federal capital contributions to their student loan funds for fiscal years 1976 to 1978 and for fiscal 1979 and next two succeeding fiscal years additional necessary sums, for provisions authorizing appropriations for capital contributions for fiscal year ending June 30, 1965 through fiscal year ending June 30, 1974, and for fiscal year ending June 30, 1975 and next two succeeding fiscal years additional necessary sums, and substituted references to sections 838 and 835 of Act for references to sections 825 and 822, respectively, which for purposes of codification were translated as sections 297d and 297a of this title.

1974—Pub. L. 93–385 authorized appropriations of $35,000,000 for fiscal year ending June 30, 1975.

1971—Pub. L. 92–158 substituted authorized appropriations of $21,000,000, $25,000,000, $30,000,000 and $35,000,000 for fiscal years ending June 30, 1971, 1972, 1973, and 1974, respectively, plus such sums for fiscal year ending June 30, 1975, and each of two succeeding fiscal years as may be necessary to enable students receiving a loan for any academic year ending before July 1, 1974 to continue or complete their education, for an authorized appropriation of $21,000,000 each for fiscal years ending June 30, 1971 and 1972, plus such sums for fiscal year ending June 30, 1973, and each of two succeeding fiscal years as may be necessary to enable students receiving a loan for any academic year ending before July 1, 1972, to continue or complete their education.

Pub. L. 92–52 substituted ''each for the fiscal year ending June 30, 1971, and the next fiscal year'' for ''for the fiscal year ending June 30, 1971'', ''1973'' for ''1972'' and ''July 1, 1972'' for ''July 1, 1971''.

1968—Pub. L. 90–490 authorized appropriations of $20,000,000 and $21,000,000 for fiscal years ending June 30, 1970, and 1971, respectively, and necessary sums for fiscal year ending June 31, 1972, rather than 1970, and two succeeding fiscal years for loans to students receiving loan for any academic year ending before July 1, 1971, rather than 1969; and made appropriations available for transfers pursuant to section 297h of this title, respectively.

1966—Pub. L. 89–751 authorized availability of appropriations for payments into fund established by section 297f(d) of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 936(c) of Pub. L. 94–63 effective July 1, 1975, see section 905 of Pub. L. 94–63, set out as a note under section 296 of this title.

Amendment by section 941(i)(3) of Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 296a of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 6(e)(1) of Pub. L. 89–751 provided that: ''The amendments made by this section [amending this section and sections 297d to 297f of this title] shall be effective in the case of payments to student loan funds made after the enactment of this Act [Nov. 3, 1966], except in the case of payments pursuant to commitments (made prior to enactment of this Act) to make loans under section 827 of the Public Health Service Act [section 297f of this title] as in effect prior to the enactment of this Act.''

APPLICABILITY OF REORG. PLAN NO. 3 OF 1966

Section 9 of Pub. L. 89–751 provided that: ''The amendments made by this Act [enacting former sections 295h to 295h–5 and 298c to 298c–8 of this title and amending this section, former sections 292b, 294d, 294n to 294p, and 296, sections 297d and 297e, former section 297f, and section 298 of this title, and section 1717 of Title 12, Banks and Banking] shall be subject to the provisions of Reorganization Plan Numbered 3 of 1966 [set out as a note under section 202 of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 297d of this title.

§ 297c–1. Repealed. Pub. L. 102–408, title II, § 211(a)(2), Oct. 13, 1992, 106 Stat. 2078

Section, act July 1, 1944, ch. 373, title VIII, § 837A, as added Nov. 4, 1988, Pub. L. 100–607, title VII, § 714(d), 102 Stat. 3162, authorized appropriations for educational loan repayments for service in certain health facilities.

§ 297d. Allotments and payments of Federal capital contributions

(a) Application for allotment; reduction or adjustment of amount requested in application; reallotment; continued availability of funds

(1) The Secretary shall from time to time set dates by which schools of nursing must file applications for Federal capital contributions.

(2)(A) If the total of the amounts requested for any fiscal year in such applications exceeds the total amount appropriated under section 297c of this title for that fiscal year, the allotment from such total amount to the loan fund of each school of nursing shall be reduced to whichever of the following is the smaller:

(i) The amount requested in its application.

(ii) An amount which bears the same ratio to the total amount appropriated as the number of students estimated by the Secretary to be enrolled on a full-time basis in such school during such fiscal year bears to the estimated total number of students enrolled in all such schools on a full-time basis during such year.

(B) Amounts remaining after allotment under subparagraph (A) shall be reallotted in accordance with clause (ii) of such subparagraph among schools whose applications requested more than the amounts so allotted to their loan funds, but with such adjustments as may be necessary to prevent the total allotted to any such school's loan fund under this paragraph and paragraph (3) from exceeding the total so requested by it.

(3) Funds which, pursuant to section 297e(c) of this title or pursuant to a loan agreement under section 297a of this title are returned to the Secretary in any fiscal year, shall be available for allotment until expended. Funds described in the preceding sentence shall be allotted among schools of nursing in such manner as the Secretary determines will best carry out this subpart.

(b) Installment payment of allotments

Allotments to a loan fund of a school shall be paid to it from time to time in such installments as the Secretary determines will not result in unnecessary accumulations in the loan fund at such school.

(c) Manner of payment

The Federal capital contributions to a loan fund of a school under this subpart shall be paid to it from time to time in such installments as the Secretary determines will not result in unnecessary accumulations in the loan fund at such school.

(July 1, 1944, ch. 373, title VIII, § 838, formerly § 825, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 915; amended Nov. 3, 1966, Pub. L. 89–751, § 6(c), 80 Stat. 1235; Aug. 16, 1968, Pub. L. 90–490, title II, § 222(e), 82 Stat. 785; renumbered § 838 and amended July 29, 1975, Pub. L. 94–63, title IX, § 941(h)(1), (2), (4)(A), (i)(1), (4), 89 Stat. 365, 366; Aug. 16, 1985, Pub. L. 99–92, § 8(e), 99 Stat. 398; Nov. 4, 1988, Pub. L. 100–607, title VII, § 713(h)(1), 102 Stat. 3161; Oct. 13, 1992, Pub. L. 102–408, title II, § 208(a), 106 Stat. 2075.)

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–408 struck out ''(A)'' after ''(3)'', substituted ''available for allotment until expended.'' for ''available for allotment in such fiscal year and in the fiscal year succeeding the fiscal year.'' and ''this subpart.'' for ''this subpart, except that in making such allotments, the Secretary shall give priority to schools of nursing which established student loan funds under this subpart after September 30, 1975.'', and struck out subpar. (B) which read as follows: ''With respect to funds available pursuant to subparagraph (A), any such funds returned to the Secretary and not allotted by the Secretary, during the period of availability specified in such subparagraph, shall be available to carry out section 297j of this title and, for such purpose, shall remain available until expended.''

1988—Subsec. (a)(3). Pub. L. 100–607 designated existing provisions as subpar. (A) and added subpar. (B).

1985—Subsec. (a). Pub. L. 99–92 amended subsec. (a) generally, substituting provisions relating to application for allotment, reduction or adjustment of amount requested in application, reallotment, and availability of funds for allotment during fiscal years for provisions relating to determination of amount of allotment.

Subsec. (b). Pub. L. 99–92 amended subsec. (b) generally, substituting provisions relating to payment to a loan fund of a school of allotments for provisions relating to application for allotment, adjustment or reduction of amount requested in application, and reallotment.

1975—Subsec. (a). Pub. L. 94–63, § 941(h)(1), (4)(A)(i), (i)(4), substituted ''subpart'' for ''part'' wherever appearing, struck out ''(whether as Federal capital contributions or as loans to schools under section 297f of this title)'' before ''which are in excess'', and substituted references to section 847 of the Act for references to section 824, which had previously been translated as section 297c of this title, requiring no further translations in text as a result of renumbering of the Public Health Service Act.

Subsec. (b)(1). Pub. L. 94–63, § 941(h)(4)(A)(ii), struck out '', and for loans pursuant to section 297f of this title,'' after ''contributions''.

Subsec. (b)(2). Pub. L. 94–63, § 941(h)(2), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsec. (c). Pub. L. 94–63, § 941(h)(1), substituted ''subpart'' for ''part''.

1968—Subsec. (a). Pub. L. 90–490 substituted a new formula for distribution of Federal funds among schools of nursing by providing for allotment of funds among the schools entirely on the basis of their relative enrollments for former provisions which allocated funds among the States, 50 per centum on the basis of relative number of high school graduates, and 50 per centum on the basis of relative number of students enrolled in schools of nursing, and provided for determination of number of persons enrolled in such schools for most recent year for which satisfactory data are available to the Secretary.

1966—Subsec. (a). Pub. L. 89–751, § 6(c)(1), authorized allotment of appropriations for payment as Federal capital contributions or as loans to schools under section 297f of this title, and directed that funds available in any fiscal year for payment to schools under this part (whether as Federal capital contributions or as loans to schools under section 297f of this title) which are in excess of the amount appropriated pursuant to section 297c of this title for that year shall be allotted among States and among schools within States in such manner as the Secretary determinates will best carry out the purposes of this part.

Subsec. (b)(1). Pub. L. 89–751, § 6(c)(2), substituted ''schools of nursing in a State must file applications for Federal capital contributions, and for loans pursuant to section 297f of this title, from the allotment of such State under the first two sentences of subsection (a) of this section'' for ''schools of nursing with which he has in effect agreements under this part must file applications for Federal capital contributions to their loan funds pursuant to section 297a(b)(2)(A) of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 713(h)(2) of Pub. L. 100–607 provided that: ''Except as provided in Public Law 100–436 [Sept. 20, 1988, 102 Stat. 1680, see Tables for classification], the amendment made by paragraph (1) [amending this section] shall take effect as if such amendment had been effective on September 30, 1988, and as if section 843 of the Public Health Service Act, as added by section 715 of this title [section 297j of this title], had been effective on such date.''

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 296k of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 296a of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–751 effective in the case of payments to student loan funds made after Nov. 3, 1966, except in the case of payments pursuant to commitments (made prior to Nov. 3, 1966) to make loans under section 297f of this title as in effect prior to Nov. 3, 1966, see section 6(e)(1) of Pub. L. 89–751, set out as a note under section 297c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 297a, 297c, 298b of this title.

§ 297e. Distribution of assets from loan funds

(a) Capital distribution of balance of loan fund

After September 30, 1996, and not later than December 31, 1999, there shall be a capital distribution of the balance of the loan fund established under an agreement pursuant to section 297a of this title by each school as follows:

(1) The Secretary shall first be paid an amount which bears the same ratio to such balance in such fund at the close of September 30, 1999, as the total amount of the Federal capital contributions to such fund by the Secretary pursuant to section 297a(b)(2)(A) of this title bears to the total amount in such fund derived from such Federal capital contributions and from funds deposited therein pursuant to section 297a(b)(2)(B) of this title.

(2) The remainder of such balance shall be paid to the school.

(b) Payment of principal or interest on loans

After December 31, 1999, each school with which the Secretary has made an agreement under this subpart shall pay to the Secretary, not less often than quarterly, the same proportionate share of amounts received by the school

after September 30, 1999, in payment of principal or interest on loans made from the loan fund established pursuant to such agreement as was determined for the Secretary under subsection (a) of this section.

(c) Payment of balance of loan fund

(1) Within 90 days after the termination of any agreement with a school under section 297a of this title or the termination in any other manner of a school's participation in the loan program under this subpart, such school shall pay to the Secretary from the balance of the loan fund of such school established under section 297a of this title, an amount which bears the same ratio to the balance in such fund on the date of such termination as the total amount of the Federal capital contributions to such fund by the Secretary pursuant to section 297a(b)(2)(A) of this title bears to the total amount in such fund on such date derived from such Federal capital contributions and from funds deposited in the fund pursuant to section 297a(b)(2)(B) of this title. The remainder of such balance shall be paid to the school.

(2) A school to which paragraph (1) applies shall pay to the Secretary after the date on which payment is made under such paragraph and not less than quarterly, the same proportionate share of amounts received by the school after the date of termination referred to in paragraph (1) in payment of principal or interest on loans made from the loan fund as was determined for the Secretary under such paragraph.

(July 1, 1944, ch. 373, title VIII, § 839, formerly § 826, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 916; amended Nov. 3, 1966, Pub. L. 89–751, § 6(d), 80 Stat. 1235; Aug. 16, 1968, Pub. L. 90–490, title II, § 222(f), 82 Stat. 785; July 9, 1971, Pub. L. 92–52, § 3(b), 85 Stat. 145; Nov. 18, 1971, Pub. L. 92–158, § 6(d)(1), 85 Stat. 478; renumbered § 839 and amended July 29, 1975, Pub. L. 94–63, title IX, §§ 936(d), 941(h)(1), (2), (4)(B), (i)(1), (5), 89 Stat. 363, 365, 366; July 10, 1979, Pub. L. 96–32, § 7(j), 93 Stat. 84; Sept. 29, 1979, Pub. L. 96–76, title I, § 109(c), 93 Stat. 580; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2757(d), 95 Stat. 931; Aug. 16, 1985, Pub. L. 99–92, § 8(f), 99 Stat. 399; Nov. 4, 1988, Pub. L. 100–607, title VII, § 713(i), 102 Stat. 3161; Oct. 13, 1992, Pub. L. 102–408, title II, § 208(b), 106 Stat. 2075.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–408, § 208(b)(2), substituted ''1999'' for ''1994'' in introductory provisions and in par. (1).

Pub. L. 102–408, § 208(b)(1), substituted ''1996'' for ''1991'' in introductory provisions.

Subsec. (b). Pub. L. 102–408, § 208(b)(2), substituted ''1999'' for ''1994'' in two places.

1988—Subsec. (a). Pub. L. 100–607, § 713(i)(1)(A), which directed substitution of ''1994'' for ''1991'' in text preceding par. (1), was executed by making the substitution for ''1991'' the second time appearing to reflect the probable intent of Congress.

Subsec. (a)(1). Pub. L. 100–607, § 713(i)(1)(B), substituted ''1994'' for ''1991''.

Subsec. (b). Pub. L. 100–607, § 713(i)(2), substituted ''1994'' for ''1991'' in two places.

1985—Subsecs. (a), (b). Pub. L. 99–92, § 8(f)(1), substituted ''1991'' for ''1987'' wherever appearing.

Subsec. (c). Pub. L. 99–92, § 8(f)(2), added subsec. (c).

1981—Pub. L. 97–35 substituted ''1987'' for ''1983'' wherever appearing.

1979—Subsec. (a). Pub. L. 96–76, § 109(c)(1), substituted ''September 30, 1983, and not later than December 31, 1983'' for ''September 30, 1980, and not later than December 31, 1981''. Prior to amendment, subsec. (a) referred to ''December 31, 1980'' rather than to ''December 31, 1981'' as cited in directory language of Pub. L. 96–76. See below for explanation of amendment by Pub. L. 96–32.

Pub. L. 96–32 substituted ''December 31, 1980'' for ''September 30, 1977''.

Subsec. (a)(1). Pub. L. 96–76, § 109(c)(2), substituted ''1983'' for ''1980''.

Subsec. (b). Pub. L. 96–76, § 109(c)(3), substituted ''1983'' for ''1980'' wherever appearing.

1975—Subsec. (a). Pub. L. 94–63, §§ 936(d), 941(h)(2), (i)(5), substituted ''September 30, 1980'' for ''June 30, 1977'' wherever appearing, struck out ''of Health, Education, and Welfare'' after ''Secretary'', and substituted references to section 835 of the Act for references to section 822, which had previously been translated as section 297a of this title, requiring no further translations in text as a result of renumbering of the Public Health Service Act.

Subsec. (b). Pub. L. 94–63, §§ 936(d), 941(h)(1), (4)(B), substituted ''subpart'' for ''part'', ''September 30, 1980'' for ''June 30, 1977'', and ''December 31, 1980'' for ''September 30, 1977'' and struck out provisions relating to payments from revolving fund established by section 297f(d) of this title.

1971—Pub. L. 92–158 substituted ''1977'' for ''1975'' wherever appearing.

Pub. L. 92–52 substituted ''1975'' for ''1974'' wherever appearing.

1968—Pub. L. 90–490 substituted ''1974'' for ''1972'' wherever appearing.

1966—Subsec. (a). Pub. L. 89–751, § 6(d)(1), (2), substituted ''an agreement pursuant to section 297a(b) of this title'' for ''this part'' in opening provisions, and in par. (1) substituted ''such balance'' for ''the balance''.

Subsec. (b). Pub. L. 89–751, § 6(d)(3), inserted ''(other than so much of such fund as relates to payments from the revolving fund established by section 297f(d) of this title)''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 296k of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 936(d) of Pub. L. 94–63 effective July 1, 1975, see section 905 of Pub. L. 94–63, set out as a note under section 296 of this title.

Amendment by section 941(h)(1), (2), (4)(B), (i)(1), (5) of Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 296a of this title.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–751 effective in the case of payments to student loan funds made after Nov. 3, 1966, except in the case of payments pursuant to commitments (made prior to Nov. 3, 1966) to make loans under section 297f of this title as in effect prior to Nov. 3, 1966, see section 6(e)(1) of Pub. L. 89–751, set out as a note under section 297c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 297d of this title.

§ 297f. Repealed. Pub. L. 94–63, title IX, § 936(e)(1), July 29, 1975, 89 Stat. 363

Section, act July 1, 1944, ch. 373, title VIII, § 827, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 917; amended Nov. 3, 1966, Pub. L. 89–751, § 6(a), 80 Stat. 1233; Aug. 16, 1968, Pub. L. 90–490, title II, § 222(g), 82 Stat. 785; July 9, 1971, Pub. L. 92–52, § 3(c), 85 Stat. 145; Nov. 18, 1971, Pub. L. 92–158, § 6(d)(2), 85 Stat. 478, set out provi-

sions relating to terms, conditions, limitations, manner of payment, etc., of loans to schools of nursing to capitalize student loan funds.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1975, see section 905 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 296 of this title.

AVAILABILITY OF NURSE TRAINING REVOLVING FUND FOR PAYMENT OF OBLIGATIONS DEPOSITS INTO FUND; TRANSFER OF EXCESS AMOUNTS TO GENERAL FUND OF TREASURY AUTHORIZATION OF APPROPRIATIONS

Section 936(e)(2), (3) of Pub. L. 94–63 provided that:

''(2) The nurse training fund created within the Treasury by section 827(d)(1) of the Act [section 297f(d)(1) of this section] shall remain available to the Secretary of Health, Education, and Welfare [now Health and Human Services] for the purpose of meeting his responsibilities respecting participations in obligations acquired under section 827 of the Act [this section]. The Secretary shall continue to deposit in such fund all amounts received by him as interest payments or repayments of principal on loans under such section 27[827]. If at any time the Secretary determines the moneys in the funds exceed the present and any reasonable prospective further requirements of such fund, such excess may be transferred to the general fund of the Treasury.

''(3) There are authorized to be appropriated without fiscal year limitation such sums as may be necessary to enable the Secretary to make payments under agreements entered into under section 827(b) of the Act [section 297f(b) of this title] before the date of the enactment of this Act [July 29, 1975].''

CONVERSION OF FEDERAL CAPITAL CONTRIBUTION TO A LOAN UNDER SECTION 297f OF THIS TITLE

Pub. L. 89–751, §6(e)(2), Nov. 3, 1966, 80 Stat. 1236, authorized the Secretary of Health, Education, and Welfare to convert a Federal capital contribution to a student loan fund of a particular institution, made under this subchapter, from funds appropriated pursuant thereto for the fiscal year ending June 30, 1967, to a loan under section 297f of this title.

§ 297g. Modification of agreements; compromise, waiver or release

The Secretary may agree to modifications of agreements made under this subpart, and may compromise, waive, or release any right, title, claim, or demand of the United States arising or acquired under this subpart.

(July 1, 1944, ch. 373, title VIII, §840, formerly §828, as added Sept. 4, 1964, Pub. L. 88–581, §2, 78 Stat. 917; renumbered §840 and amended July 29, 1975, Pub. L. 94–63, title IX, §941(h)(1), (4)(C), (i)(1), 89 Stat. 365.)

AMENDMENTS

1975—Pub. L. 94–63, §941(h)(1), (4)(C), substituted ''subpart'' for ''part'' wherever appearing and struck out ''or loans'' after ''agreements''.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 296a of this title.

§ 297h. Repealed. Pub. L. 99–92, § 9(a)(1), Aug. 16, 1985, 99 Stat. 400

Section, act July 1, 1944, ch. 373, title VIII, §841, formerly §829, as added Aug. 16, 1968, Pub. L. 90–490, title II, §222(h), 82 Stat. 785; renumbered §841 and amended July 29, 1975, Pub. L. 94–63, title IX, §941(i)(1), (6), 89 Stat. 365, 366, related to transfers to the scholarship program.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as an Effective Date of 1985 Amendment note under section 296k of this title.

§ 297i. Procedures for appeal of terminations

In any case in which the Secretary intends to terminate an agreement with a school of nursing under this subpart, the Secretary shall provide the school with a written notice specifying such intention and stating that the school may request a formal hearing with respect to such termination. If the school requests such a hearing within 30 days after the receipt of such notice, the Secretary shall provide such school with a hearing conducted by an administrative law judge.

(July 1, 1944, ch. 373, title VIII, §842, as added Aug. 16, 1985, Pub. L. 99–92, §8(g), 99 Stat. 399.)

PRIOR PROVISIONS

A prior section 297i, act July 1, 1944, ch. 373, title VIII, §830, as added Nov. 18, 1971, Pub. L. 92–158, §6(b)(2), 85 Stat. 477, relating to loan forgiveness, was transferred to and redesignated as subsec. (j) of section 823 of act July 1, 1944, which is classified to section 297b of this title, by Pub. L. 94–63, title IX, §941(h)(5), July 29, 1975, 89 Stat. 365.

EFFECTIVE DATE

Section effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as an Effective Date of 1985 Amendment note under section 296k of this title.

SUBPART III—LOAN REPAYMENT PROGRAM

PRIOR PROVISIONS

A prior subpart III related to scholarships for undergraduate education of professional nurses and consisted of section 297j of this title, prior to repeal by Pub. L. 102–531.

Another prior subpart III related to scholarship grants to schools of nursing and consisted of a prior section 297j of this title, prior to repeal by Pub. L. 99–92.

§ 297j. Repealed. Pub. L. 102–531, title III, § 313(a)(11), Oct. 27, 1992, 106 Stat. 3507

Section, act July 1, 1944, ch. 373, title VIII, §843, as added Nov. 4, 1988, Pub. L. 100–607, title VII, §715, 102 Stat. 3162; amended Nov. 18, 1988, Pub. L. 100–690, title II, §2616(a), 102 Stat. 4240; Aug. 16, 1989, Pub. L. 101–93, §5(s), 103 Stat. 614, provided grant authority for scholarships for undergraduate education of professional nurses.

A prior section 297j, act July 1, 1944, ch. 373, title VIII, §845, formerly §860, as added Aug. 16, 1968, Pub. L. 90–490, title II, §223(a), 82 Stat. 785; amended July 9, 1971, Pub. L. 92–52, §4, 85 Stat. 145; Nov. 18, 1971, Pub. L. 92–158, §7, 85 Stat. 478; renumbered §845 and amended July 29, 1975, Pub. L. 94–63, title IX, §§902(f), 937, 941(j)(1), (2), 89 Stat. 355, 363, 366; Sept. 29, 1979, Pub. L. 96–76, title I, §110(a), (b), 93 Stat. 580; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2758(a), (b), 95 Stat. 932, set forth provisions relating to scholarship grants to schools of nursing, prior to repeal by Pub. L. 99–92, §9(a)(2), Aug. 16, 1985, 99 Stat. 400, eff. Oct. 1, 1985.

A prior section 297k, act July 1, 1944, ch. 373, title VIII, §846, formerly §861, as added Aug. 16, 1968, Pub. L. 90–490, title II, §223(a), 82 Stat. 786; renumbered §846 and amended July 29, 1975, Pub. L. 94–63, title IX, §§941(j)(1), (3), 89 Stat. 366, related to transfers of funds to student

loan program, prior to repeal by Pub. L. 97–35, title XXVII, § 2758(c), Aug. 13, 1981, 95 Stat. 932.

EFFECTIVE DATE OF REPEAL

Repeal effective immediately after enactment of Pub. L. 102–408, approved Oct. 13, 1992, see section 313(c) of Pub. L. 102–531, set out as an Effective Date of 1992 Amendment note under section 292y of this title.

§ 297n. Loan repayment program

(a) In general

In the case of any individual—

(1) who has received a baccalaureate or associate degree in nursing (or an equivalent degree), a diploma in nursing, or a graduate degree in nursing;

(2) who obtained (A) one or more loans from a loan fund established under subpart II, or (B) any other educational loan for nurse training costs; and

(3) who enters into an agreement with the Secretary to serve as nurse for a period of not less than two years in an Indian Health Service health center, in a Native Hawaiian health center, in a public hospital, in a migrant health center, in a community health center, in a rural health clinic, or in a public or nonprofit private health facility determined by the Secretary to have a critical shortage of nurses;

the Secretary shall make payments in accordance with subsection (b) of this section, for and on behalf of that individual, on the principal of and interest on any loan of that individual described in paragraph (2) of this subsection which is outstanding on the date the individual begins the service specified in the agreement described in paragraph (3) of this subsection.

(b) Manner of payments

The payments described in subsection (a) of this section shall be made by the Secretary as follows:

(1) Upon completion by the individual for whom the payments are to be made of the first year of the service specified in the agreement entered into with the Secretary under subsection (a) of this section, the Secretary shall pay 30 percent of the principal of, and the interest on each loan of such individual described in subsection (a)(2) of this section which is outstanding on the date he began such practice.

(2) Upon completion by that individual of the second year of such service, the Secretary shall pay another 30 percent of the principal of, and the interest on each such loan.

(3) Upon completion by that individual of a third year of such service, the Secretary shall pay another 25 percent of the principal of, and the interest on each such loan.

(c) Payment by due date

Notwithstanding the requirement of completion of practice specified in subsection (b) of this section, the Secretary shall, on or before the due date thereof, pay any loan or loan installment which may fall due within the period of service for which the borrower may receive payments under this subsection, upon the declaration of such borrower, at such times and in such manner as the Secretary may prescribe (and supported by such other evidence as the Secretary may reasonably require), that the borrower is then serving as described by subsection (a)(3) of this section, and that the borrower will continue to so serve for the period required (in the absence of this subsection) to entitle the borrower to have made the payments provided by this subsection for such period; except that not more than 85 percent of the principal of any such loan shall be paid pursuant to this subsection.

(d) Breach of agreement

The Secretary may make payments under subsection (a) of this section on behalf of an individual only if the agreement under such subsection provides that section 298b–7(c) of this title is applicable to the individual.

(e) Preferences regarding participants

In entering into agreements under subsection (a) of this section, the Secretary shall give preference—

(1) to qualified applicants with the greatest financial need; and

(2) to qualified applicants that, with respect to health facilities described in such subsection, agree to serve in such health facilities located in geographic areas with a shortage of and need for nurses, as determined by the Secretary.

(f) Definitions

For purposes of this section:

(1) The term ''community health center'' has the meaning given such term in section 254c(a) of this title.

(2) The term ''migrant health center'' has the meaning given such term in section 254b(a)(1) of this title.

(3) The term ''rural health clinic'' has the meaning given such term in section 1395x(aa)(2) of this title.

(g) Authorization of appropriations

For the purpose of payments under agreements entered into under subsection (a) of this section, there are authorized to be appropriated $5,000,000 for fiscal year 1993, and $6,000,000 for fiscal year 1994.

(July 1, 1944, ch. 373, title VIII, § 846, as added Oct. 13, 1992, Pub. L. 102–408, title II, § 211(a)(3), 106 Stat. 2078.)

PRIOR PROVISIONS

A prior section 297n, act July 1, 1944, ch. 373, title VIII, § 847, as added Nov. 4, 1988, Pub. L. 100–607, title VII, § 716, 102 Stat. 3163; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2616(b), 102 Stat. 4240, established a demonstration program for student loans with respect to service in certain health care facilities in underserved areas, prior to repeal by Pub. L. 102–408, title II, § 210, Oct. 13, 1992, 106 Stat. 2078.

A prior section 846 of act July 1, 1944, was classified to section 297k of this title and was repealed by Pub. L. 97–35.

PART C—GENERAL

§ 298. Advisory Council on Nurse Education and Practice

(a) There is hereby established a National Advisory Council on Nurse Education and Practice

(in this section referred to as the ''Council''), consisting of the Secretary (or his delegate), who shall be Chairman, and an ex officio member, and twenty-one members appointed by the Secretary without regard to the civil service laws. Three of the appointed members shall be selected from full-time students enrolled in schools of nursing, four of the appointed members shall be selected from the general public, one of the appointed members shall be selected from practicing professional nurses, one of the appointed members shall be selected from among representatives of associate degree schools of nursing, and twelve shall be selected from among leading authorities in the various fields of nursing, higher, and secondary education, and from representatives of hospitals and other institutions and organizations which provide nursing services. The student members of the Council shall be appointed for terms of one year and shall be eligible for reappointment to the Council.

(b) The Council shall advise the Secretary (or his delegate) in the preparation of general regulations and with respect to policy matters arising in the administration of this subchapter.

(July 1, 1944, ch. 373, title VIII, §851, formerly §841, as added Sept. 4, 1964, Pub. L. 88–581, §2, 78 Stat. 917; amended Nov. 3, 1966, Pub. L. 89–751, §3(b), 80 Stat. 1230; Oct. 30, 1970, Pub. L. 91–515, title VI, §601(b)(2), 84 Stat. 1311; Nov. 18, 1971, Pub. L. 92–158, §§9, 13, 85 Stat. 479, 480; renumbered §851 and amended July 29, 1975, Pub. L. 94–63, title IX, §941(k)(1), (2), 89 Stat. 366; Aug. 13, 1981, Pub. L. 97–35, title XXVII, §2759(a), 95 Stat. 932; Aug. 16, 1985, Pub. L. 99–92, §9(d), 99 Stat. 402; Nov. 4, 1988, Pub. L. 100–607, title VII, §721(a), 102 Stat. 3165; Oct. 13, 1992, Pub. L. 102–408, title II, §212, 106 Stat. 2079.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

AMENDMENTS

1992—Pub. L. 102–408, §212(2), substituted ''Nurse Education and Practice'' for ''Nurses Education'' in section catchline.

Subsec. (a). Pub. L. 102–408, §212(1), substituted ''National Advisory Council on Nurse Education and Practice (in this section referred to as the 'Council'), consisting'' for ''Advisory Council on Nurses Education, consisting''.

1988—Pub. L. 100–607, §721(a)(1), substituted ''Advisory Council on Nurses Education'' for ''National Advisory Council on Nurse Training'' in section catchline.

Subsec. (a). Pub. L. 100–607, §721(a)(2), substituted ''Advisory Council on Nurses Education'' for ''National Advisory Council on Nurse Training'' and ''twenty-one'' for ''nineteen'', and inserted '', one of the appointed members shall be selected from practicing professional nurses, one of the appointed members shall be selected from among representatives of associate degree schools of nursing,'' after ''the general public''.

1985—Subsec. (b). Pub. L. 99–92 struck out provisions respecting review of application functions of the Council.

1981—Subsec. (a). Pub. L. 97–35 substituted ''an ex officio member'' for ''the Commissioner of Education, both of whom shall be ex officio members''.

1975—Subsec. (a). Pub. L. 94–63, §941(k)(2)(C), redesignated subsec. (a)(1) as (a). Former subsec. (a)(2) redesignated (b).

Subsec. (b). Pub. L. 94–63, §941(k)(2)(A), (B), (D), redesignated subsec. (a)(2) as (b) and inserted ''subpart I of'' after ''projects under'' and ''and of applications under subpart III of part A of this subchapter'' after ''296d of this title,''. Former subsec. (b), which related to appointment, membership, etc., of review committees, was struck out.

1971—Subsec. (a)(1). Pub. L. 92–158, §§9, 13, substituted ''nineteen members'' for ''sixteen members'', and ''Three of the appointed members shall be selected from full-time students enrolled in schools of nursing, four'' for ''Four'', inserted ''The student-members of the Council shall be appointed for terms of one year and shall be eligible for reappointment to the Council.'' and substituted ''Secretary (or his delegate)'' for ''Surgeon General''.

Subsec. (a)(2). Pub. L. 92–158, §13, substituted ''Secretary (or his delegate)'' for ''Surgeon General''.

1970—Subsec. (c). Pub. L. 91–515 struck out subsec. (c) which related to payment of compensation and travel expenses of appointed members of the Council or the review committee who are not regular full-time employees of the United States.

1966—Subsec. (c). Pub. L. 89–751 substituted ''$100'' for ''$75''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 296k of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 296a of this title.

TERMINATION OF ADVISORY COUNCILS

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 298a. Noninterference with administration of institutions

Nothing contained in this subchapter shall be construed as authorizing any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over, or impose any requirement or condition with respect to, the personnel, curriculum, methods of instruction, or administration of any institution.

(July 1, 1944, ch. 373, title VIII, §852, formerly §842, as added Sept. 4, 1964, Pub. L. 88–581, §2, 78 Stat. 918; renumbered §852 and amended July 29, 1975, Pub. L. 94–63, title IX, §941(k)(1), 89 Stat. 366.)

§ 298b. Definitions

For purposes of this subchapter—

(1) The term ''State'' means a State, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, or the Trust Territory of the Pacific Islands.

(2) The term ''school of nursing'' means a collegiate, associate degree, or diploma school of nursing in a State.

(3) The term ''collegiate school of nursing'' means a department, division, or other administrative unit in a college or university which pro-

vides primarily or exclusively a program of education in professional nursing and allied subjects leading to the degree of bachelor of arts, bachelor of science, bachelor of nursing, or to an equivalent degree, or to a graduate degree in nursing, and including advanced training related to such program of education provided by such school, but only if such program, or such unit, college, or university is accredited.

(4) The term ''associate degree school of nursing'' means a department, division, or other administrative unit in a junior college, community college, college, or university which provides primarily or exclusively a two-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or to an equivalent degree, but only if such program, or such unit, college, or university is accredited.

(5) The term ''diploma school of nursing'' means a school affiliated with a hospital or university, or an independent school, which provides primarily or exclusively a program of education in professional nursing and allied subjects leading to a diploma or to equivalent indicia that such program has been satisfactorily completed, but only if such program, or such affiliated school or such hospital or university or such independent school is accredited.

(6) The term ''accredited'' when applied to any program of nurse education means a program accredited by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education and when applied to a hospital, school, college, or university (or a unit thereof) means a hospital, school, college, or university (or a unit thereof) which is accredited by a recognized body or bodies, or by a State agency, approved for such purpose by the Secretary of Education, except that a school of nursing seeking an agreement under subpart II of part B of this subchapter for the establishment of a student loan fund, which is not, at the time of the application under such subpart, eligible for accreditation by such a recognized body or bodies or State agency, shall be deemed accredited for purposes of such subpart if the Secretary of Education finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the school will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of students who are in their first year of instruction at such school during the fiscal year in which the agreement with such school is made under such subpart; except that the provisions of this clause shall not apply for purposes of section 297d of this title. For the purpose of this paragraph, the Secretary of Education shall publish a list of recognized accrediting bodies, and of State agencies, which the Secretary of Education determines to be reliable authority as to the quality of education offered.

(7) The term ''nonprofit'' as applied to any school, agency, organization, or institution means one which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(8) The term ''secondary school'' means a school which provides secondary education, as determined under State law except that it does not include any education provided beyond grade 12.

(9) The terms ''construction'' and ''cost of construction'' include (A) the construction of new buildings, and the acquisition, expansion, remodeling, replacement, and alteration of existing buildings, including architects' fees, but not including the cost of acquisition of land (except in the case of acquisition of an existing building), off-site improvements, living quarters, or patient-care facilities, and (B) equipping new buildings and existing buildings, whether or not acquired, expanded, remodeled, or altered. For purposes of this paragraph, the term ''buildings'' includes interim facilities.

(10) The term ''interim facilities'' means teaching facilities designed to provide teaching space on a short-term (less than ten years) basis while facilities of a more permanent nature are being planned and constructed.

(11) The term ''medically underserved community'' has the meaning given such term in section 295p of this title.

(July 1, 1944, ch. 373, title VIII, § 853, formerly § 843, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 918; amended Oct. 22, 1965, Pub. L. 89–290, § 5(b), 79 Stat. 1058; Aug. 16, 1968, Pub. L. 90–490, title II, §§ 203, 204, 213, 231, 82 Stat. 780, 783, 787; Nov. 18, 1971, Pub. L. 92–158, § 2(d)(1), (2), 85 Stat. 467, 468; renumbered § 853 and amended July 29, 1975, Pub. L. 94–63, title IX, § 941(k)(1), (3), 89 Stat. 366, 367; July 10, 1979, Pub. L. 96–32, § 7(k), 93 Stat. 84; Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2759(b), 95 Stat. 932; Aug. 16, 1985, Pub. L. 99–92, § 9(e), (f), 99 Stat. 402; Oct. 13, 1992, Pub. L. 102–408, title II, § 202(b), 106 Stat. 2071.)

AMENDMENTS

1992—Par. (11). Pub. L. 102–408 added par. (11).

1985—Par. (1). Pub. L. 99–92, § 9(e), substituted ''Commonwealth of the Northern Mariana Islands'' for ''Canal Zone''.

Par. (6). Pub. L. 99–92, § 9(f), amended par. (6) generally, substituting provisions relating to accreditation of a school of nursing seeking an agreement under subpart II of part B for the establishment of a student loan fund not eligible for accreditation under such subpart for provisions relating to accreditation of a program, or a hospital, school, college, or university (or a unit thereof) for purposes of this subchapter not eligible for accreditation at the time of application under this subchapter.

1981—Par. (2). Pub. L. 97–35, § 2759(b)(1), inserted ''in a State'' after ''nursing''.

Par. (6). Pub. L. 97–35, § 2759(b)(2), substituted ''Secretary'' for ''Commissioner'' wherever appearing.

1979—Par. (6). Pub. L. 96–32 substituted ''this clause'' for ''this clause (3)''.

1975—Pars. (1) to (5). Pub. L. 94–63, § 941(k)(3)(E), redesignated subsecs. (a) to (e) as pars. (1) to (5), respectively.

Par. (6). Pub. L. 94–63, § 941(k)(3)(A)–(G), redesignated subsec. (f) as par. (6), inserted ''subpart I of'' after ''the case of an applicant under'', redesignated cls. (1) to (3) as (A) to (C) and subcls. (A) and (B) as (i) and (ii), substituted ''section 297a of this title'' for ''part B of this subchapter'' wherever appearing, and substituted references to sections 810 and 838 of the Act for references to sections 806 and 825, which had previously been translated as sections 296e and 297d of this title, respectively, requiring no further translations in text as a re-

sult of the renumbering of the Public Health Service Act.

Pars. (7), (8). Pub. L. 94–63, §941(k)(3)(E), redesignated subsecs. (g) and (h) as pars. (7) and (8), respectively.

Par. (9). Pub. L. 94–63, §941(k)(3)(E), (H), redesignated subsec. (i) as par. (9) and substituted ''(A)'' for ''(1)'' and ''(B)'' for ''(2)''.

Par. (10). Pub. L. 94–63, §941(k)(3)(E), redesignated subsec. (j) as par. (10).

1971—Subsec. (i). Pub. L. 92–158, §2(d)(1), defined ''buildings'' as including interim facilities.

Subsec. (j). Pub. L. 92–158, §2(d)(2), added subsec. (j).

1968—Subsec. (a). Pub. L. 90–490, §203, included Trust Territory of the Pacific Islands in term ''State''.

Subsec. (c). Pub. L. 90–490, §§204, 231(a), (c), defined ''collegiate school of nursing'' as one also providing advanced training related to the program of education provided by such school, substituted ''a program'' for ''an accredited program'', and required that the program, unit, college, or university be accredited, respectively.

Subsec. (d). Pub. L. 90–490, §231(b), (d), substituted ''a two-year program'' for ''an accredited two-year program'' and required that the program, unit, college, or university be accredited, respectively.

Subsec. (e). Pub. L. 90–490, §231(a), (e), substituted ''a program'' for ''an accredited program'' and required that the program, affiliated school, hospital, university, or independent school be accredited, respectively.

Subsec. (f). Pub. L. 90–490, §231(f), (g), amended text preceding cl. (1) to authorize program accreditation by a State agency, to define ''accredited'' when applied to a hospital, school, college, or university, struck out ''or a program accredited for the purpose of this subchapter by the Commissioner of Education'' before '', except that a program'' and ''by the school which provides or will provide such programs'' before '', eligible for accreditation'', and inserted '', or a hospital, school, college, or university (or a unit thereof),'' after ''except that a program'' and '', or the hospital, school, college, or university (or a unit thereof),'' after ''reasonable assurance that the program''; and inserted last sentence requiring Commissioner to publish a list of recognized accrediting bodies, and of State agencies, which he determines to be reliable authority as to quality of training offered, respectively.

Subsec. (f)(2). Pub. L. 90–490, §213, substituted ''section 296e of this title for any fiscal year, prior to the beginning of the first academic year following the normal graduation date of the class which is the entering class for such fiscal year (or is the first such class in such year if there is more than one)'' for ''section 296d of this title for a project to strengthen, improve, or expand its programs to teach and train nurses, prior to or upon completion of the project with respect to which the application is filed''.

1965—Subsec. (f). Pub. L. 89–290 inserted ''or a program accredited for the purpose of this subchapter by the Commissioner of Education'', and substituted ''new school (which shall include a school that has not had a sufficient period of operation to be eligible for accreditation), (A) upon completion of such project and other construction projects (if any) then under construction or planned and to be commenced within a reasonable time, or (B) if later, then prior to the beginning of the first academic year following the normal graduation date of the first entering class in such school'' for ''new school, prior to or upon completion of the facility with respect to which the application is filed''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Oct. 1, 1985, see section 10(a) of Pub. L. 99–92, set out as a note under section 296k of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 296a of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 205 of Pub. L. 90–490 provided that: ''The amendments made by sections 201 and 204 [amending this section and sections 296 and 296a of this title] shall apply with respect to appropriations for fiscal years ending after June 30, 1969.''

Section 214 of Pub. L. 90–490 provided that: ''The amendments made by the preceding provisions of this part [enacting sections 296f and 296g of this title and amending this section and sections 296d and 296e of this title] shall apply with respect to appropriations for fiscal years ending after June 30, 1969.''

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 293a, 293b, 294*o* of this title; title 20 section 1132i–1.

§ 298b–1. Advance funding

Any appropriation Act which appropriates funds for any fiscal year for grants, contracts, or other payments under this subchapter may also appropriate for the next fiscal year the funds that are authorized to be appropriated for such payments for such next fiscal year; but no funds may be made available therefrom for obligation for such payments before the fiscal year for which such funds are authorized to be appropriated.

(July 1, 1944, ch. 373, title VIII, §854, formerly §844, as added Nov. 18, 1971, Pub. L. 92–158, §10, 85 Stat. 479; renumbered §854, July 29, 1975, Pub. L. 94–63, title IX, §941(k)(1), 89 Stat. 366.)

§ 298b–2. Prohibition against discrimination by schools on basis of sex

The Secretary may not make a grant, loan guarantee, or interest subsidy payment under this subchapter to, or for the benefit of, any school of nursing unless the application for the grant, loan guarantee, or interest subsidy payment contains assurances satisfactory to the Secretary that the school will not discriminate on the basis of sex in the admission of individuals to its training programs. The Secretary may not enter into a contract under this subchapter with any school unless the school furnishes assurances satisfactory to the Secretary that it will not discriminate on the basis of sex in the admission of individuals to its training programs.

(July 1, 1944, ch. 373, title VIII, §855, formerly, §845, as added Nov. 18, 1971, Pub. L. 92–158, §11, 85 Stat. 479; renumbered §855, July 29, 1975, Pub. L. 94–63, title IX, §941(k)(1), 89 Stat. 366.)

§ 298b–3. Delegation of authority to administer programs; exceptions

The Secretary may delegate the authority to administer any program authorized by this subchapter to the administrator of a central or regional office or offices in the Department of Health and Human Services, except that the authority—

(1) to review, and prepare comments on the merit of, any application for a grant or con-

tract under any program authorized by this subchapter for purposes of presenting such application to the Advisory Council on Nurses Education, or

(2) to make such a grant or enter into such a contract,

shall not be further delegated to any administrator of, or officer in, any regional office or offices in the Department.

(July 1, 1944, ch. 373, title VIII, § 856, as added July 29, 1975, Pub. L. 94–63, title IX, § 941(k)(4), 89 Stat. 367; amended Aug. 13, 1981, Pub. L. 97–35, title XXVII, § 2759(c), 95 Stat. 932; Nov. 4, 1988, Pub. L. 100–607, title VII, § 721(b)(2), 102 Stat. 3165.)

AMENDMENTS

1988—Par. (1). Pub. L. 100–607 substituted ''Advisory Council on Nurses Education'' for ''National Advisory Council on Nurse Training''.

1981—Pub. L. 97–35 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

EFFECTIVE DATE

Section effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 296a of this title.

§ 298b–4. Technical assistance

Funds appropriated under this subchapter may be used by the Secretary to provide technical assistance in relation to any of the authorities under this subchapter.

(July 1, 1944, ch. 373, title VIII, § 857, as added Jan. 4, 1983, Pub. L. 97–414, § 8(m), 96 Stat. 2061.)

§ 298b–5. Recovery for construction assistance

(a) Conditions for recovery by United States of base amount and interest

If at any time within 20 years (or within such shorter period as the Secretary may prescribe by regulation for an interim facility) after the completion of construction of a facility with respect to which funds have been paid under subpart I of part A of this subchapter (as such subpart was in effect on September 30, 1985)—

(1) the owner of the facility ceases to be a public or nonprofit school,

(2) the facility ceases to be used for the training purposes for which it was constructed, or

(3) the facility is used for sectarian instruction or as a place for religious worship,

the United States shall be entitled to recover from the owner of the facility the base amount prescribed by subsection (c)(1) of this section plus the interest (if any) prescribed by subsection (c)(2) of this section.

(b) Notice by owner of cessation or change of use of facility

The owner of a facility which ceases to be a public or nonprofit school as described in paragraph (1) of subsection (a) of this section, or the owner of a facility the use of which changes as described in paragraph (2) or (3) of such subsection shall provide the Secretary written notice of such cessation or change of use within 10 days after the date on which such cessation or change of use occurs or within 30 days after October 22, 1985, whichever is later.

(c) Computation of base amount and interest

(1) The base amount that the United States is entitled to recover under subsection (a) of this section is the amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district in which the facility is situated) of the facility as the amount of the Federal participation bore to the cost of the construction.

(2)(A) The interest that the United States is entitled to recover under subsection (a) of this section is the interest for the period (if any) described in subparagraph (B) at a rate (determined by the Secretary) based on the average of the bond equivalent rates of 91-day Treasury bills auctioned during such period.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) if notice is provided as prescribed by subsection (b) of this section, 191 days after the date on which the owner of the facility ceases to be a public or nonprofit school as described in paragraph (1) of subsection (a) of this section, or 191 days after the date on which the use of the facility changes as described in paragraph (2) or (3) of such subsection, or

(ii) if notice is not provided as prescribed by subsection (b) of this section, 11 days after the date on which such cessation or change of use occurs,

and ending on the date the amount the United States is entitled to recover is collected.

(d) Waiver of recovery rights of United States

The Secretary may waive the recovery rights of the United States under subsection (a)(2) of this section with respect to a facility (under such conditions as the Secretary may establish by regulation) if the Secretary determines that there is good cause for waiving such rights.

(e) Nature of prejudgment right of recovery

The right of recovery of the United States under subsection (a) of this section shall not, prior to judgment, constitute a lien on any facility.

(July 1, 1944, ch. 373, title VIII, § 858, formerly § 804, as added Sept. 4, 1964, Pub. L. 88–581, § 2, 78 Stat. 911; amended Nov. 18, 1971, Pub. L. 92–158, §§ 2(d)(3), 13, 85 Stat. 468, 480; July 29, 1975, Pub. L. 94–63, title IX, § 941(c), 89 Stat. 364; renumbered § 858 and amended Aug. 16, 1985, Pub. L. 99–92, § 9(c)(1), 99 Stat. 400; Oct. 22, 1985, Pub. L. 99–129, title II, § 207(e)(1)–(3), 99 Stat. 529.)

REFERENCES IN TEXT

Subpart I of part A of this subchapter, referred to in subsec. (a), which consisted of sections 296 to 296d of this title was repealed (except for section 296c which was transferred to this section) by section 9(a)(1), (b)(1), (c)(1) of Pub. L. 99–92.

CODIFICATION

Provisions of this section were classified to section 296c of this title prior to renumbering by Pub. L. 99–92.

AMENDMENTS

1985—Subsec. (a). Pub. L. 99–92, in amending section generally, designated existing provisions as subsec. (a)

and substituted provisions relating to recovery of funds paid under subpart I of part A, as in effect on Sept. 30, 1985, of the base amount and interest prescribed by subsec. (c), for provisions relating to recovery of funds paid under subpart I of part A of the amount bearing the same ratio to the value, as determined by the parties or in a judicial action, which the amount of the Federal participation bore to the cost of construction of the facility.

Subsec. (b). Pub. L. 99–129, §207(e)(1), substituted ''within'' for ''not later than'' and inserted ''or within 30 days after October 22, 1985, whichever is later''.

Pub. L. 99–92 added subsec. (b).

Subsec. (c). Pub. L. 99–92 added subsec. (c).

Subsec. (c)(2)(B)(i). Pub. L. 99–129, §207(e)(2), substituted designation ''(i)'' for ''(1)'' before ''if notice is provided''.

Subsec. (d). Pub. L. 99–129, §207(e)(3), substituted ''subsection (a)(2) of this section'' for ''subsection (a) of this section''.

Pub. L. 99–92 added subsec. (d).

Subsec. (e). Pub. L. 99–92 added subsec. (e).

1975—Pub. L. 94–63 substituted ''subpart'' for ''part'' and redesignated pars. (a), (b), and (c) as (1), (2), and (3), respectively.

1971—Pub. L. 92–158, in text preceding subsec. (a), inserted ''(or in the case of interim facilities, within such shorter period as the Secretary shall by regulation prescribe)'' after ''twenty years'' and in subsec. (b), substituted ''Secretary'' for ''Surgeon General''.

EFFECTIVE DATE OF 1985 AMENDMENT

Amendment by Pub. L. 99–92 effective Aug. 16, 1985, see section 10(b)(1) of Pub. L. 99–92, set out as a note under section 296k of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as a note under section 296a of this title.

INTEREST PERIOD FOR FACILITY CONSTRUCTED ON OR BEFORE AUGUST 16, 1985, OR WITHIN 180 DAYS AFTER AUGUST 16, 1985

Section 9(c)(2) of Pub. L. 99–92 as amended by Pub. L. 99–129, title II, §207(e)(4), Aug. 16, 1985, 99 Stat. 529, provided that: ''In the case of any facility that was or is constructed on or before the date of enactment of this Act [Aug. 16, 1985] or within 180 days after the date of enactment of this Act, the period described in clause (i) or (ii), as the case may be, of section 858(c)(2)(B) of the Public Health Service Act [subsec. (c)(2)(B)(i), (ii) of this section] (as amended by paragraph (1) of this subsection) shall begin no earlier than 181 days after the date of enactment of this Act.''

PRESERVATION OF LEGAL RIGHTS OF UNITED STATES

Section 9(c)(3) of Pub. L. 99–92 provided that: ''The amendments made by paragraph (1) of this subsection [transferring section 296c of this title to section 298b–5 of this title and amending section 298b–5 of this title] shall not adversely affect other legal rights of the United States.''

§ 298b–6. Evaluations

(a) Evaluations directly or through contractual arrangement; dissemination of information

The Secretary shall, directly or through contracts with public and private entities, provide for evaluations of projects carried out pursuant to this subchapter and for the dissemination of information developed as result[1] of such projects. Such evaluations shall include an evaluation of the effectiveness of such projects in increasing the recruitment and retention of nurses.

(b) Reports to Congress

The Secretary shall, not later than January 10, 1994, and every 2 years thereafter, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report summarizing evaluations carried out pursuant to subsection (a) of this section during the preceding two fiscal years.

(c) Amounts available from appropriated funds

Of the amounts appropriated each fiscal year to carry out this subchapter, the Secretary shall make available one percent to carry out this section.

(July 1, 1944, ch. 373, title VIII, §859, as added Nov. 4, 1988, Pub. L. 100–607, title VII, §722, 102 Stat. 3165; amended Oct. 13, 1992, Pub. L. 102–408, title II, §213, 106 Stat. 2080.)

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–408 struck out par. (1) which read as follows: ''The Secretary shall, not later than January 10, 1989, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the manner in which the Secretary intends to carry out subsection (a) of this section.'', struck out par. designation ''(2)'' before ''The Secretary'', and substituted ''not later than January 10, 1994, and every 2 years thereafter, submit'' for ''not later than January 10, 1991, and biannually thereafter, submit''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 298b–7. Certain generally applicable provisions

(a) Application for grants, cooperative agreements, or contracts

The Secretary may make an award of a grant, cooperative agreement, or contract under this subchapter only if an application for the award is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out the program authorizing the award.

(b) Duration of assistance

(1) In general

Subject to paragraph (2), in the case of an award to an entity of a grant, cooperative agreement, or contract under this subchapter, the period during which payments are made to the entity under the award may not exceed 5 years. The provision of payments under the award shall be subject to annual approval by the Secretary of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments. This paragraph may not be construed as limiting the number of awards under the program involved that may be made to the entity.

(2) Limitation

In the case of an award to an entity of a grant, cooperative agreement, or contract

[1] So in original. Probably should be ''as a result''.

under this subchapter, paragraph (1) shall apply only to the extent not inconsistent with any other provision of this subchapter that relates to the period during which payments may be made under the award.

(c) Breach of agreements for obligated service

(1) In general

In the case of any program under this subchapter under which an individual makes an agreement to provide health services for a period of time in accordance with such program in consideration of receiving an award of Federal funds regarding education as a nurse (including an award for the repayment of loans), the following applies if the agreement provides that this subsection is applicable:

(A) In the case of a program under this subchapter that makes an award of Federal funds for attending an accredited program of nursing (in this subsection referred to as ''nursing program''), the individual is liable to the Federal Government for the amount of such award (including amounts provided for expenses related to such attendance), and for interest on such amount at the maximum legal prevailing rate, if the individual—

(i) fails to maintain an acceptable level of academic standing in the nursing program (as indicated by the program in accordance with requirements established by the Secretary);

(ii) is dismissed from the nursing program for disciplinary reasons; or

(iii) voluntarily terminates the nursing program.

(B) The individual is liable to the Federal Government for the amount of such award (including amounts provided for expenses related to such attendance), and for interest on such amount at the maximum legal prevailing rate, if the individual fails to provide health services in accordance with the program under this subchapter for the period of time applicable under the program.

(2) Waiver or suspension of liability

In the case of an individual or health facility making an agreement for purposes of paragraph (1), the Secretary shall provide for the waiver or suspension of liability under such paragraph if compliance by the individual or the health facility, as the case may be, with the agreements involved is impossible, or would involve extreme hardship to the individual or facility, and if enforcement of the agreements with respect to the individual or facility would be unconscionable.

(3) Date certain for recovery

Subject to paragraph (2), any amount that the Federal Government is entitled to recover under paragraph (1) shall be paid to the United States not later than the expiration of the three-year period beginning on the date the United States becomes so entitled.

(4) Availability

Amounts recovered under paragraph (1) with respect to a program under this subchapter shall be available for the purposes of such program, and shall remain available for such purposes until expended.

(d) Peer review regarding certain programs

Each application for a grant or contract under any of sections 296*l*, 296m, and 296r of this title shall be submitted to a peer review group for an evaluation of the merits of the proposals made in the application. The Secretary may not approve such an application unless a peer review group has recommended the application for approval. Each peer review group under this subsection shall be composed principally of individuals who are not officers or employees of the Federal Government. This subsection shall be carried out by the Secretary acting through the Administrator of the Health Resources and Services Administration.

(e) Preferences and required information in certain programs

(1) Preferences in making awards

(A) Subject to subparagraph (B), in awarding grants or contracts under any of sections 296*l*, 296m, 297, and 297–1 of this title, the Secretary shall give preference to any qualified applicant that—

(i) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(ii) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

(B) For purposes of subparagraph (A), the Secretary may not give an applicant preference if the proposal of the applicant is ranked at or below the 20th percentile of proposals that have been recommended for approval by peer review groups under subsection (d) of this section.

(2) Required submission of information

The Secretary may make an award of a grant or contract under any of sections 296*l*, 296m, 297, and 297–1 of this title only if the applicant for the award submits to the Secretary (through the application for the award) the following information regarding the programs of the applicant:

(A) A description of rotations or preceptorships for students that have the principal focus of providing health care to medically underserved communities.

(B) The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved or rural communities.

(C) With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.

(D) If applicable to the applicant, the number of recent graduates who have chosen careers in primary health care.

(E) The number of recent graduates whose practices are serving medically underserved communities.

(F) A description of whether and to what extent the applicant is able to operate without Federal assistance under this subchapter.

(3) "Graduate" defined

For purposes of this subsection, the term ''graduate'' means, unless otherwise specified, an individual who has successfully completed all training requirements necessary for full certification in the health profession selected by the individual.

(July 1, 1944, ch. 373, title VIII, §860, as added Oct. 13, 1992, Pub. L. 102–408, title II, §209, 106 Stat. 2075; amended Oct. 27, 1992, Pub. L. 102–531, title III, §313(a)(10), 106 Stat. 3507; June 10, 1993, Pub. L. 103–43, title XX, §2014(g), 107 Stat. 217.)

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–43, which directed the substitution of ''296*l*, 296m, and 296r'' for ''296*l*, 296m, 297, and 297–1'', was executed by making the substitution for ''296*l*, 296m, 296r, 297, and 297–1'' to reflect the probable intent of Congress and the amendment by Pub. L. 102–531. See below.

1992—Subsec. (d). Pub. L. 102–531 inserted reference to section 296r of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–531 effective immediately after enactment of Pub. L. 102–408, see section 313(c) of Pub. L. 102–531, set out as a note under section 292y of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 297n of this title.

PART D—SCHOLARSHIP GRANTS TO SCHOOLS OF NURSING

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 296e of this title.

§§ 298c, 298c–1. Transferred

CODIFICATION

Section 298c, act July 1, 1944, ch. 373, title VIII, §860, as added Aug. 16, 1968, Pub. L. 90–490, title II, §223(a), 82 Stat. 785; amended July 9, 1971, Pub. L. 92–52, §4, 85 Stat. 145; Nov. 18, 1971, Pub. L. 92–158, §7, 85 Stat. 478, which related to scholarship grants, was renumbered section 845 of act July 1, 1944, by Pub. L. 94–63 and transferred to section 297j of this title and subsequently repealed.

A prior section 298c, act July 1, 1944, ch. 373, title VIII, §861, as added Nov. 3, 1966, Pub. L. 89–751, §8(b), 80 Stat. 1236, stated the purposes of opportunity grants for nursing education and authorized appropriations of $3,000,000, $5,000,000, and $7,000,000 for fiscal years ending June 30, 1967, 1968, and 1969, respectively, to be available for payments to institutions until close of fiscal year succeeding fiscal year for which appropriated, prior to the reorganization and amendment of this subchapter by Pub. L. 90–490.

Section 298c–1, act July 1, 1944, ch. 373, title VIII, §861, as added Aug. 16, 1968, Pub. L. 90–490, title II, §223(a), 82 Stat. 786, related to transfers to student loan program, was renumbered section 846 of act July 1, 1944, by Pub. L. 94–63 and transferred to section 297k of this title and subsequently repealed.

A prior section 298c–1, act July 1, 1944, ch. 373, title VIII, §862, as added Nov. 3, 1966, Pub. L. 89–751, §8(b), 80 Stat. 1237, prescribed amount of nursing educational opportunity grant and provided for its annual determination, prior to the reorganization and amendment of this subchapter by Pub. L. 90–490.

§§ 298c–2 to 298c–6. Omitted

CODIFICATION

Sections 298c–2 to 298c–6 were omitted in the reorganization and amendment of this subchapter by Pub. L. 90–490, title II, §223, Aug. 16, 1968, 82 Stat. 785.

Section 298c–2, act July 1, 1944, ch. 373, title VIII, §863, as added Nov. 3, 1966, Pub. L. 89–751, §8(b), 80 Stat. 1237, related to duration of a nursing educational opportunity grant.

Section 298c–3, act July 1, 1944, ch. 373, title VIII, §864, as added Nov. 3, 1966, Pub. L. 89–751, §8(b), 80 Stat. 1238, related to selection of recipients of nursing educational opportunity grants.

Section 298c–4, act July 1, 1944, ch. 373, title VIII, §865, as added Nov. 3, 1966, Pub. L. 89–751, §8(b), 80 Stat. 1238, related to allotment of nursing educational opportunity grant funds among States.

Section 298c–5, act July 1, 1944, ch. 373, title VIII, §866, as added Nov. 3, 1966, Pub. L. 89–751, §8(b), 80 Stat. 1238, related to allocation of allotted funds to schools of nursing.

Section 298c–6, act July 1, 1944, ch. 373, title VIII, §867, as added Nov. 3, 1966, Pub. L. 89–751, §8(b), 80 Stat. 1239, related to agreements with schools of nursing.

§ 298c–7. Repealed. Pub. L. 94–63, title IX, § 931(b), July 29, 1975, 89 Stat. 362

Section, act July 1, 1944, ch. 373, title VIII, §868, as added Nov. 3, 1966, Pub. L. 89–751, §8(b), 80 Stat. 1239; amended Nov. 18, 1971, Pub. L. 92–158, §8, 85 Stat. 478; July 29, 1975, Pub. L. 94–63, title IX, §902(g), 89 Stat. 355, authorized grants and contracts to encourage full utilization of educational talent for nursing profession and authorized appropriations from fiscal year ending June 30, 1972 through fiscal year ending June 30, 1975 for implementation.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1975, see section 905 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 296 of this title.

§ 298c–8. Repealed. Pub. L. 94–63, title IX, § 941(j)(4), July 29, 1975, 89 Stat. 366

Section, act, July 1, 1944, ch. 373, title VIII, §869, as added Nov. 3, 1966, Pub. L. 89–751, §8(b), 80 Stat. 1240, defined ''academic year''.

EFFECTIVE DATE OF REPEAL

Repeal effective July 1, 1975, see section 942 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 296a of this title.

SUBCHAPTER VII—AGENCY FOR HEALTH CARE POLICY AND RESEARCH

PRIOR PROVISIONS

A prior subchapter VII, related to education, research, training, and demonstrations in heart disease, cancer, stroke, and related diseases and consisted of sections 299 to 299j, prior to repeal by Pub. L. 99–117, §12(d), Oct. 7, 1985, 99 Stat. 495.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 242b, 242*l* of this title.

PART A—ESTABLISHMENT AND GENERAL DUTIES

§ 299. Establishment

(a) In general

There is established within the Service an agency to be known as the Agency for Health Care Policy and Research.

(b) Purpose

The purpose of the Agency is to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services, through the establishment of a broad base of scientific research and through the promotion of improvements in clinical practice (including the prevention of diseases and other health conditions) and in the organization, financing, and delivery of health care services.

(c) Appointment of Administrator

There shall be at the head of the Agency an official to be known as the Administrator for Health Care Policy and Research. The Administrator shall be appointed by the Secretary. The Secretary, acting through the Administrator, shall carry out the authorities and duties established in this subchapter.

(July 1, 1944, ch. 373, title IX, § 901, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(a), 103 Stat. 2189; amended Oct. 13, 1992, Pub. L. 102–410, § 2(a), 106 Stat. 2094.)

PRIOR PROVISIONS

A prior section 299, act July 1, 1944, ch. 373, title IX, § 900, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 926; amended Oct. 30, 1970, Pub. L. 91–515, title I, § 102, 84 Stat. 1297, set forth Congressional declaration of purpose of this subchapter to encourage and assist regional cooperative arrangements among medical schools, research institutions, and hospitals for research, training and medical data exchange, and to improve quality and capacity of health manpower and facilities available throughout the nation, prior to repeal by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

A prior section 901 of act July 1, 1944, was classified to section 299a of this title prior to repeal by Pub. L. 99–117.

AMENDMENTS

1992—Subsec. (b). Pub. L. 102–410 inserted ''(including the prevention of diseases and other health conditions)'' after ''improvements in clinical practice''.

TRANSITIONAL AND SAVINGS PROVISIONS

Section 6103(f) of Pub. L. 101–239 provided that:

''(1) TRANSFER OF PERSONNEL, ASSETS, AND LIABILITIES.—Personnel of the Department of Health and Human Services employed on the date of the enactment of this Act [Dec. 19, 1989] in connection with the functions vested in the Administrator for Health Care Policy and Research pursuant to the amendments made by this section [enacting this section and sections 299a to 299c–6 and 1320b–12 of this title, amending sections 242b, 242k, 242*l*, 242m, 254c, 288, 1395y, 1395*ll*, and 11111 of this title, repealing sections 242c and 242n of this title, and amending provisions set out as a note under section 11137 of this title], and assets, property, contracts, liabilities, records, unexpended balances of appropriations, authorizations, allocations, and other funds, of such Department arising from or employed, held, used, or available on such date, or to be made available after such date, in connection with such functions shall be transferred to the Administrator for appropriate allocation. Unexpended funds transferred under this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

''(2) SAVINGS PROVISIONS.—With respect to functions vested in the Administrator for Health Care Policy and Research pursuant to the amendments made by this section, all orders, rules, regulations, grants, contracts, certificates, licenses, privileges, and other determinations, actions, or official documents, of the Department of Health and Human Services that have been issued, made, granted, or allowed to become effective in the performance of such functions, and that are effective on the date of the enactment of this Act [Dec. 19, 1989], shall continue in effect according to their terms unless changed pursuant to law.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 299a, 299a–2, 299c, 299c–2 of this title.

§ 299a. General authorities and duties

(a) In general

In carrying out section 299(b) of this title, the Administrator shall conduct and support research, demonstration projects, evaluations, training, guideline development, and the dissemination of information, on health care services and on systems for the delivery of such services, including activities with respect to—

(1) the effectiveness, efficiency, and quality of health care services;

(2) subject to subsection (d)[1] of this section, the outcomes of health care services and procedures;

(3) clinical practice, including primary care and practice-oriented research;

(4) health care technologies, facilities, and equipment;

(5) health care costs, productivity, and market forces;

(6) health promotion and disease prevention;

(7) health statistics and epidemiology; and

(8) medical liability.

(b) Requirements with respect to rural areas and underserved populations

In carrying out subsection (a) of this section, the Administrator shall undertake and support research, demonstration projects, and evaluations with respect to—

(1) the delivery of health care services in rural areas (including frontier areas); and

(2) the health of low-income groups, minority groups, and the elderly.

(c) Health services training grants

The Administrator may provide training grants in the field of health services research related to activities authorized under subsection (a) of this section, to include pre- and post-doctoral fellowships and training programs, young investigator awards, and other programs and activities as appropriate.

(d) Multidisciplinary centers

The Administrator may provide financial assistance to public or nonprofit private entities for meeting the costs of planning and establishing new centers, and operating existing and new centers, for multidisciplinary health services research, demonstration projects, evaluations, training, policy analysis, and demonstrations respecting the matters referred to in subsection (a) of this section.

(e) Relation to certain authorities regarding social security

Activities authorized in this section may include, and shall be appropriately coordinated with, experiments, demonstration projects, and other related activities authorized by the Social

[1] See References in Text note below.

Security Act [42 U.S.C. 301 et seq.] and the Social Security Amendments of 1967. Activities under subsection (a)(2) of this section that affect the programs under titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.] shall be carried out consistent with section 1142 of such Act [42 U.S.C. 1320b–12].

(July 1, 1944, ch. 373, title IX, § 902, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(a), 103 Stat. 2189; amended Nov. 28, 1990, Pub. L. 101–639, § 3(d), 104 Stat. 4603; Oct. 13, 1992, Pub. L. 102–410, § 2(b), 106 Stat. 2094.)

REFERENCES IN TEXT

Subsection (d) of this section, referred to in subsec. (a)(2), was redesignated subsection (e) by Pub. L. 102–410, § 2(b)(1), Oct. 13, 1992, 106 Stat. 2094.

The Social Security Act, referred to in subsec. (e), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Social Security Amendments of 1967, referred to in subsec. (e), is Pub. L. 90–248, Jan. 2, 1968, 81 Stat. 821, as amended. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 299a, act July 1, 1944, ch. 373, title IX, § 901, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 926; amended Oct. 15, 1968, Pub. L. 90–574, title I, §§ 101, 102, 107, 82 Stat. 1005, 1006; June 30, 1970, Pub. L. 91–296, title IV, § 401(b)(1)(F), 84 Stat. 352; Oct. 30, 1970, Pub. L. 91–515, title I, § 103, 84 Stat. 1298; June 18, 1973, Pub. L. 93–45, title I, § 110, 87 Stat. 93, authorized appropriations for grants and contracts to carry out purposes of this subchapter and set forth extent of and limitations on grants, prior to repeal by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

A prior section 902 of act July 1, 1944, was classified to section 299b of this title prior to repeal by Pub. L. 99–117.

AMENDMENTS

1992—Subsecs. (c) to (e). Pub. L. 102–410 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1990—Subsec. (c). Pub. L. 101–639 substituted ''subsection (a)'' for ''subsection (b)''.

REDUCING ADMINISTRATIVE HEALTH CARE COSTS

Pub. L. 103–43, title XIX, § 1909, June 10, 1993, 107 Stat. 205, provided that: ''The Secretary of Health and Human Services, acting through the Agency for Health Care Policy and Research and, to the extent possible, in consultation with the Health Care Financing Administration, may fund research to develop a text-based standardized billing process, through the utilization of text-based information retrieval and natural language processing techniques applied to automatic coding and analysis of textual patient discharge summaries and other text-based electronic medical records, within a parallel general purpose (shared memory) high performance computing environment. The Secretary shall determine whether such a standardized approach to medical billing, through the utilization of the text-based hospital discharge summary as well as electronic patient records can reduce the administrative billing costs of health care delivery.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 299b–2, 299b–3 of this title.

§ 299a–1. Dissemination

(a) In general

The Administrator shall—

(1) promptly publish, make available, and otherwise disseminate, in a form understandable and on as broad a basis as practicable so as to maximize its use, the results of research, demonstration projects, and evaluations conducted or supported under this subchapter and the guidelines, standards, and review criteria developed under this subchapter;

(2) promptly make available to the public data developed in such research, demonstration projects, and evaluations;

(3) provide indexing, abstracting, translating, publishing, and other services leading to a more effective and timely dissemination of information on research, demonstration projects, and evaluations with respect to health care to public and private entities and individuals engaged in the improvement of health care delivery and the general public, and undertake programs to develop new or improved methods for making such information available; and

(4) as appropriate, provide technical assistance to State and local government and health agencies and conduct liaison activities to such agencies to foster dissemination.

(b) Prohibition against restrictions

Except as provided in subsection (c) of this section, the Administrator may not restrict the publication or dissemination of data from, or the results of, projects conducted or supported under this subchapter.

(c) Limitation on use of certain information

No information, if an establishment or person supplying the information or described in it is identifiable, obtained in the course of activities undertaken or supported under this subchapter may be used for any purpose other than the purpose for which it was supplied unless such establishment or person has consented (as determined under regulations of the Secretary) to its use for such other purpose. Such information may not be published or released in other form if the person who supplied the information or who is described in it is identifiable unless such person has consented (as determined under regulations of the Secretary) to its publication or release in other form.

(d) Certain interagency agreement

The Administrator and the Director of the National Library of Medicine shall enter into an agreement providing for the implementation of subsection (a)(3) of this section.

(e) Required interagency agreement

The Administrator and the Director of the National Library of Medicine shall enter into an agreement providing for the implementation of section 286d of this title.

(July 1, 1944, ch. 373, title IX, § 903, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(a), 103 Stat. 2190; amended Oct. 13, 1992, Pub. L. 102–410, § 3, 106 Stat. 2094; June 10, 1993, Pub. L. 103–43, title XIV, § 1422(a), 107 Stat. 172.)

PRIOR PROVISIONS

A prior section 903 of act July 1, 1944, was classified to section 299c of this title prior to repeal by Pub. L. 99–117.

AMENDMENTS

1993—Subsec. (e). Pub. L. 103–43 amended heading and text of subsec. (e) generally. Prior to amendment, text related to establishment at the National Library of Medicine of an information center on health services research and on selected technology assessments and clinical practice guidelines, duties of the Administrator to ensure electronic and convenient collection and maintenance of information concerning clinical practice guidelines and to develop and publish criteria for inclusion of practice guidelines and technology assessments in the database, and requirement of an interagency agreement with the Director of the National Library of Medicine. See section 286d of this title.

1992—Subsec. (e). Pub. L. 102–410 added subsec. (e).

CONSTRUCTION

Enactment of subsec. (e) of this section by Pub. L. 102–410 and amendment of subsec. (e) of this section by Pub. L. 103–43 not to be construed as terminating the information center on health care technologies and health care technology assessment established under section 299a–2 of this title, as in effect on the day before Oct. 13, 1992, with such center to be considered the center established in and subject to provisions of section 286d of this title, see section 1422(b) of Pub. L. 103–43, set out as a note under section 286d of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 299c–5 of this title.

§ 299a–2. Health care technology and technology assessment

(a) In general

In carrying out section 299(b) of this title, the Administrator shall promote the development and application of appropriate health care technology assessments—

(1) by identifying needs in, and establishing priorities for, the assessment of specific health care technologies;

(2) by developing and evaluating criteria and methodologies for health care technology assessment;

(3) by conducting and supporting research on the development and diffusion of health care technology;

(4) by conducting and supporting research on assessment methodologies;

(5) by promoting education, training, and technical assistance in the use of health care technology assessment methodologies and results; and

(6) by conducting assessments and reassessments of existing and new health care technologies.

(b) Specific assessments

(1) In general

In carrying out section 299(b) of this title, the Administrator shall conduct and support specific assessments of health care technologies.

(2) Consideration of certain factors

In carrying out paragraph (1), the Administrator shall consider the safety, efficacy, and effectiveness, and, as appropriate, the legal, social, and ethical implications, and appropriate uses of such technologies, including consideration of geographic factors. In carrying out such paragraph, the Administrator shall also consider the cost effectiveness of such technologies where cost information is available and reliable.

(c) Agenda and priorities

(1) Establishment of priorities

In accordance with paragraph (2), the Administrator, in consultation with the Advisory Council established under section 299c of this title, shall establish an annual list of technology assessments under consideration by the Agency, including those assessments performed at the request of the Health Care Financing Administration and the Department of Defense and those assessments performed under subsections (d) and (f) of this section.

(2) Public notice

The Administrator, in consultation with the Advisory Council, shall publish the list established in paragraph (1) annually in the Federal Register.

(d) Conduct of assessments

(1) Recommendations with respect to health care technology

The Administrator shall make recommendations to the Secretary with respect to whether specific health care technologies should be reimbursable under federally financed health programs, including recommendations with respect to any conditions and requirements under which any such reimbursements should be made.

(2) Considerations of certain factors

In making recommendations respecting health care technologies, the Administrator shall consider the safety, efficacy, and effectiveness, and, as appropriate, the appropriate uses of such technologies. The Administrator shall also consider the cost effectiveness of such technologies where cost information is available and reliable.

(3) Additional assessments

The Administrator may conduct technology assessments in addition to those assessments performed at the request of the Administrator of the Health Care Financing Administration or of the Secretary of Defense.

(4) Criteria

The Administrator shall develop criteria for determining the priority of assessments performed under this subsection. Such criteria shall include—

(A) the prevalence of the health condition for which the technology aims to prevent, diagnose, treat and clinically manage;

(B) variations in current practice;

(C) the economic burden posed by the prevention, diagnosis, treatment, and clinical management of the health condition, including the impact on publicly-funded programs;

(D) aggregate cost of the use of technology;

(E) the morbidity and mortality associated with the health condition; and

(F) the potential of an assessment to improve health outcomes or affect costs associated with the prevention, diagnosis, or treatment of the condition.

(5) Consultations

In carrying out this subsection, the Administrator shall cooperate and consult with the Director of the National Institutes of Health, the Commissioner of Food and Drugs, and the heads of any other interested Federal department or agency.

(e) Description of process

Not later than January 1, 1994, the Administrator shall develop and publish a description of the methodology used to establish priorities for technology assessment and the process used to conduct its technology assessments under this section.

(f) Program of innovative assessments

(1) In general

The Administrator may make grants to, or enter cooperative agreements or contracts with, entities described in paragraph (2) for the establishment of collaborative arrangements for the purpose of conducting assessments of experimental, emerging, existing, or potentially outmoded health care technologies, and for related activities. Such assessments may include controlled clinical trials, large simple trials, and other methodologies that can be conducted in partnership between the public and private sectors or among multiple government agencies.

(2) Eligible entities

The entities referred to in paragraph (1) are entities determined to be appropriate by the Administrator, which entities may include academic medical centers, research institutions, nonprofit professional organizations, public or private third party payers, other governmental agencies, and consortia of appropriate research entities established for the purpose of conducting technology assessments.

(3) Use of award

A grant, cooperative agreement, or contract under paragraph (1) may be expended for data collection, data analysis, protocol development, report development, dissemination and evaluation, and other activities determined to be appropriate by the Administrator. Such funds shall not be used for direct services.

(4) Application for award

To be eligible to receive a grant, cooperative agreement, or contract under paragraph (1), an entity shall prepare and submit to the Administrator an application, at such time, in such form, and containing such information as the Administrator may require.

(5) Interagency memoranda of understanding

In carrying out paragraph (1), the Administrator may enter into memoranda of understanding with the heads of other Federal agencies.

(July 1, 1944, ch. 373, title IX, § 904, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(a), 103 Stat. 2191; amended Oct. 13, 1992, Pub. L. 102–410, § 4(a), 106 Stat. 2095; June 10, 1993, Pub. L. 103–43, title XX, § 2013(1), 107 Stat. 214.)

PRIOR PROVISIONS

A prior section 904 of act July 1, 1944, was classified to section 299d of this title prior to repeal by Pub. L. 99–117.

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–43 added pars. (1) and (2), substituted ''Additional assessments'' for ''In general'' as heading of former par. (1) and redesignated it as (3), redesignated former par. (2) as (4), and added par. (5).

1992—Subsec. (a)(6). Pub. L. 102–410, § 4(a)(1), added par. (6).

Subsec. (b)(2). Pub. L. 102–410, § 4(a)(2), struck out ''cost-effectiveness,'' before ''legal, social, and ethical implications'' and inserted at end ''In carrying out such paragraph, the Administrator shall also consider the cost effectiveness of such technologies where cost information is available and reliable.''

Subsec. (c). Pub. L. 102–410, § 4(a)(3), amended subsec. (c) generally, substituting provisions relating to establishment of annual list of technology assessments under consideration for provisions relating to establishment of an information center on health care technologies and health care technology assessment at National Library of Medicine.

Subsec. (d). Pub. L. 102–410, § 4(a)(4), amended subsec. (d) generally, substituting provisions relating to conduct of assessments and criteria for determining priority of assessments performed for provisions relating to recommendations and consideration of factors with respect to health care technologies.

Subsecs. (e), (f). Pub. L. 102–410, § 4(a)(5), added subsecs. (e) and (f).

CONSTRUCTION

Enactment of subsec. (e) of this section 299a–1 of this title by Pub. L. 102–410 and enactment of section 286d of this title and amendment of subsec. (e) of section 299a–1 of this title by Pub. L. 103–43 not to be construed as terminating the information center on health care technologies and health care technology assessment established under this section, as in effect on the day before Oct. 13, 1992, with such center to be considered to be the center established in and subject to provisions of section 286d of this title, see section 1422(b) of Pub. L. 103–43, set out as a note under section 286d of this title.

REPORT REGARDING INNOVATIVE ASSESSMENTS

Section 4(b) of Pub. L. 102–410 provided that, not later than Jan. 1, 1994, Administrator for Health Care Policy and Research was to submit to Congress, a report concerning the program established in 42 U.S.C. 299a–2(f), including the plan of such Administrator for implementing the program.

CONTRACT FOR TEMPORARY ASSISTANCE TO SECRETARY OF HEALTH AND HUMAN SERVICES WITH RESPECT TO HEALTH CARE TECHNOLOGY ASSESSMENT

Section 6103(d)(2) of Pub. L. 101–239 provided that:

''(A) The Secretary of Health and Human Services shall request the Institute of Medicine of the National Academy of Sciences to enter into a contract—

''(i) to develop and recommend to the Secretary priorities for the assessment of specific health care technologies under section 904 of the Public Health Service Act [42 U.S.C. 299a–2] (as added by subsection (a) of this section); and

''(ii) to assist the Administrator for Health Care Policy and Research, and the Director of the National Library of Medicine, in establishing the information center required under subsection (c)(1) of such section 904.

''(B) In carrying out section 904(c)(1) of the Public Health Service Act (as added by subsection (a) of this

section), the Secretary of Health and Human Services shall, as appropriate, provide for the transfer to the Secretary of any information and materials developed by the council on health care technology under section 309(c)(1)(A) of the Public Health Service Act [former section 242n(c)(1)(A) of this title] (as such section was in effect on the day before the effective date of this section [Dec. 19, 1989]).

''(C) The Secretary of Health and Human Services shall ensure that the contract under subparagraph (A) specifies that the activities described in clauses (i) and (ii) of such subparagraph shall be completed not later than 1 year after the date on which the Secretary enters into the contract.

''(D) For the purpose of carrying out the contract under subparagraph (A), there is authorized to be appropriated $300,000 for fiscal year 1990.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 299b–3, 299c–5 of this title.

PART B—FORUM FOR QUALITY AND EFFECTIVENESS IN HEALTH CARE

§ 299b. Establishment of office

There is established within the Agency an office to be known as the Office of the Forum for Quality and Effectiveness in Health Care. The office shall be headed by a director, who shall be appointed by the Administrator. The Administrator shall carry out this part acting through the Director.

(July 1, 1944, ch. 373, title IX, § 911, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(a), 103 Stat. 2192; amended Oct. 13, 1992, Pub. L. 102–410, § 5(b), 106 Stat. 2097.)

PRIOR PROVISIONS

A prior section 299b, act July 1, 1944, ch. 373, title IX, § 902, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 927; amended Oct. 15, 1968, Pub. L. 90–574, title I, § 103, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91–515, title I, §§ 104, 111(b), 84 Stat. 1299, 1301, defined terms for purposes of this subchapter, prior to repeal by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

AMENDMENTS

1992—Pub. L. 102–410 inserted at end ''The Administrator shall carry out this part acting through the Director.''

§ 299b–1. Duties

(a) Establishment of forum program

The Administrator shall establish a program to be known as the Forum for Quality and Effectiveness in Health Care. For the purpose of promoting the quality, appropriateness, and effectiveness of health care, the Administrator, using the process set forth in section 299b–2 of this title, shall arrange for the development and periodic review and updating of—

(1) clinically relevant guidelines that may be used by physicians, educators, and health care practitioners to assist in determining how diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically; and

(2) standards of quality, performance measures, and medical review criteria through which health care providers and other appropriate entities may assess or review the provision of health care and assure the quality of such care.

(b) Certain requirements

Guidelines, standards, performance measures, and review criteria under subsection (a) of this section shall—

(1) be based on the best available research and professional judgment regarding the effectiveness and appropriateness of health care services and procedures;

(2) be presented in formats appropriate for use by physicians, health care practitioners, providers, medical educators, and medical review organizations and in formats appropriate for use by consumers of health care;

(3) include treatment-specific or condition-specific practice guidelines for clinical treatments and conditions in forms appropriate for use in clinical practice, for use in educational programs, and for use in reviewing quality and appropriateness of medical care; and[1]

(4) include information on risks and benefits of alternative strategies for prevention, diagnosis, treatment, and management of a given disease, disorder, or other health condition; and

(5) include information on the costs of alternative strategies for the prevention, diagnosis, treatment, and management of a given disease, disorder, or other health condition, where cost information is available and reliable.

(c) Authority for contracts

In carrying out this part, the Administrator may enter into contracts with public or nonprofit private entities.

(d) Date certain for initial guidelines and standards

The Administrator, by not later than January 1, 1991, shall assure the development of an initial set of guidelines, standards, performance measures, and review criteria under subsection (a) of this section that includes not less than 3 clinical treatments or conditions described in section 1142(a)(3) of the Social Security Act [42 U.S.C. 1320b–12(a)(3)].

(e) Relationship with medicare program

To assure an appropriate reflection of the needs and priorities of the program under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], activities under this part that affect such program shall be conducted consistent with section 1142 of such Act [42 U.S.C. 1320b–12].

(f) Development of certain guidelines and standards

Not later than January 1, 1996, the Administrator shall ensure that a set of guidelines, standards, performance measures, and review criteria, are developed under subsection (a)(1) of this section that address the prevention of not fewer than three conditions that account for significant national health expenditures. In carrying out this subsection the Administrator shall consult with the United States Preventive Services Task Force and other recognized experts in the field of disease prevention.

---

[1] So in original. The word ''and'' probably should not appear.

(July 1, 1944, ch. 373, title IX, § 912, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(a), 103 Stat. 2192; amended Oct. 13, 1992, Pub. L. 102–410, §§ 5(a)(1), (c)(1), 6(b), 106 Stat. 2096, 2097, 2100.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–410, § 5(c)(1)(A), struck out '', acting through the Director,'' after ''The Administrator'' and substituted ''Administrator'' for ''Director'' after ''health care, the''.

Subsec. (b)(4), (5). Pub. L. 102–410, § 5(a)(1), added pars. (4) and (5).

Subsec. (c). Pub. L. 102–410, § 5(c)(1)(B), substituted ''Administrator'' for ''Director''.

Subsec. (f). Pub. L. 102–410, § 6(b), added subsec. (f).

STUDY AND REPORT ON METHODS FOR COLLECTING AND ANALYZING DATA

Section 5(a)(2) of Pub. L. 102–410 directed Administrator for Health Care Policy and Research to conduct or support a study to develop methods for collecting and analyzing primary and secondary data to be used in generating cost estimates of alternative strategies for the prevention, diagnosis, treatment, and management of a given disease, disorder, or the health condition to be included in guideline documents and to submit to Congress, not later than June 1, 1994, a report concerning such study.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 299b–2, 299b–3, 1320b–12 of this title.

§ 299b–2. Process for development of guidelines and standards

(a) Development through contracts and panels

The Administrator shall—

(1) enter into contracts with public and nonprofit private entities for the purpose of developing and periodically reviewing and updating the guidelines, standards, performance measures, and review criteria described in section 299b–1(a) of this title; and

(2) convene panels of appropriately qualified experts (including practicing physicians with appropriate expertise) and health care consumers for the purpose of—

(A) developing and periodically reviewing and updating the guidelines, standards, performance measures, and review criteria described in section 299b–1(a) of this title; and

(B) reviewing the guidelines, standards, performance measures, and review criteria developed under contracts under paragraph (1).

(b) Authority for additional panels

The Administrator may convene panels of appropriately qualified experts (including practicing physicians with appropriate expertise) and health care consumers for the purpose of—

(1) developing the standards and criteria described in section 299b–3(b) of this title; and

(2) providing advice to the Administrator and the Director with respect to any other activities carried out under this part or under section 299a(a)(2) of this title.

(c) Selection of panel members

The Administrator shall select the chairpersons and the members of the panels convened as well as other participants in the guideline process under this section. In selecting individuals to serve on panels convened under this section, the Administrator shall consult with a broad range of interested individuals and organizations, including organizations representing physicians in the general practice of medicine and organizations representing physicians in specialties and subspecialties pertinent to the purposes of the panel involved. The Administrator shall seek to appoint physicians reflecting a variety of practice settings. In making such selections, the Administrator shall ensure that a balance is maintained between individuals selected from academic settings and individuals selected without full-time academic appointments. At least two other members of such panels shall be individuals who do not derive their primary source of revenue directly from the performance of procedures discussed in the guideline. The Administrator shall ensure that at least one participant in the guideline process shall have expertise in epidemiology as well as familiarity with the clinical condition or treatment in question. The Administrator shall also ensure that at least one participant in the guideline process shall have expertise in health services research or health economics as well as familiarity with the clinical condition or treatment in question.

(July 1, 1944, ch. 373, title IX, § 913, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(a), 103 Stat. 2193; amended Oct. 13, 1992, Pub. L. 102–410, § 5(c)(2), (f)(1)(A), 106 Stat. 2097, 2098.)

AMENDMENTS

1992—Subsecs. (a), (b). Pub. L. 102–410, § 5(c)(2)(A), (B), substituted ''Administrator'' for ''Director'' in introductory provisions.

Subsec. (c). Pub. L. 102–410, § 5(f)(1)(A), inserted after subsec. designation ''The Administrator shall select the chairpersons and the members of the panels convened as well as other participants in the guideline process under this section.'' and inserted at end ''In making such selections, the Administrator shall ensure that a balance is maintained between individuals selected from academic settings and individuals selected without full-time academic appointments. At least two other members of such panels shall be individuals who do not derive their primary source of revenue directly from the performance of procedures discussed in the guideline. The Administrator shall ensure that at least one participant in the guideline process shall have expertise in epidemiology as well as familiarity with the clinical condition or treatment in question. The Administrator shall also ensure that at least one participant in the guideline process shall have expertise in health services research or health economics as well as familiarity with the clinical condition or treatment in question.''

Pub. L. 102–410, § 5(c)(2)(C), substituted ''Administrator'' for ''Director'' in two places.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 5(f)(1)(B) of Pub. L. 102–410 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply only with respect to panels convened under section 913 of the Public Health Service Act [this section] on or after the date of enactment of this Act [Oct. 13, 1992].''

STUDY OF PROCESS

Section 5(f)(2) of Pub. L. 102–410 provided that:

''(A) The Administrator for Health Care Policy and Research shall conduct or support a study to evaluate the process described in section 913 of the Public Health Service Act [this section] for the development of guidelines, standards, and review criteria. The evaluation shall address—

''(i) the optimal methods for setting priorities for guideline topics;

''(ii) the different methods for generating guidelines, comparing the cost of producing the guidelines and the validity and utility of the guidelines produced; and

''(iii) the methods for assessing the quality of practice guidelines, including an evaluation of the validity, reliability, and impact of the guidelines.

''(B) Not later than June 1, 1995, the Administrator for Health Care Policy and Research shall submit to the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report concerning the study conducted under subparagraph (A).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 299b–1, 299b–3, 1320b–12 of this title.

§ 299b–3. Additional requirements

(a) Program agenda

(1) In general

The Administrator shall provide for an agenda for the development of the guidelines, standards, performance measures, and review criteria described in section 299b–1(a) of this title, including—

(A) with respect to the guidelines, identifying specific diseases, disorders, and other health conditions for which the guidelines are to be developed and those that are to be given priority in the development of the guidelines; and

(B) with respect to the standards, performance measures, and review criteria, identifying specific aspects of health care for which the standards, performance measures, and review criteria are to be developed and those that are to be given priority in the development of the standards, performance measures, and review criteria.

(2) Consideration of certain factors in establishing priorities

(A) Factors considered by the Administrator in establishing priorities for purposes of paragraph (1) shall include consideration of the extent to which the guidelines, standards, performance measures, and review criteria involved can be expected—

(i) to improve methods for disease prevention;

(ii) to improve methods of diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;

(iii) to reduce clinically significant variations among physicians in the particular services and procedures utilized in making diagnoses and providing treatments; and

(iv) to reduce clinically significant variations in the outcomes of health care services and procedures.

(B) In providing for the agenda required in paragraph (1), including the priorities, the Administrator shall consult with the Administrator of the Health Care Financing Administration and otherwise act consistent with section 1320b–12(b)(3) of this title.

(C) The Administrator shall develop and publish a methodology for establishing priorities for guideline topics. Such methodology may include the considerations described in section 299a–2(d)(2) of this title or this paragraph, and other considerations determined by the Administrator to be appropriate. Using such methodology, the Administrator shall establish and publish annually in the Federal Register a list of guideline topics under consideration.

(b) Standards and criteria

(1) Process for development, review, and updating

The Administrator shall establish standards and criteria to be utilized by the recipients of contracts under section 299b–2 of this title, and by the expert panels convened under such section, with respect to the development and periodic review and updating of the guidelines, standards, performance measures, and review criteria described in section 299b–1(a) of this title.

(2) Award of contracts

The Administrator shall establish standards and criteria to be utilized for the purpose of ensuring that contracts entered into for the development or periodic review or updating of the guidelines, standards, performance measures, and review criteria described in section 299b–1(a) of this title will be entered into only with appropriately qualified entities.

(3) Certain requirements for standards and criteria

The Administrator shall ensure that the standards and criteria established under paragraphs (1) and (2) specify that—

(A) appropriate consultations with interested individuals and organizations are to be conducted in the development of the guidelines, standards, performance measures, and review criteria described in section 299b–1(a) of this title; and

(B) such development may be accomplished through the adoption, with or without modification, of guidelines, standards, performance measures, and review criteria that—

(i) meet the requirements of this part; and

(ii) are developed by entities independently of the program established in this part.

(4) Improvements of standards and criteria

The Administrator shall conduct and support research with respect to improving the standards and criteria developed under this subsection.

(c) Dissemination

The Administrator shall promote and support the dissemination of the guidelines, standards, performance measures, and review criteria described in section 299b–1(a) of this title. Such

dissemination shall be carried out through organizations representing health care providers, organizations representing health care consumers, peer review organizations, accrediting bodies, and other appropriate entities.

(d) Pilot testing

The Administrator may conduct or support pilot testing of the guidelines, standards, performance measures, and review criteria developed under section 299b–1(a) of this title. Any such pilot testing may be conducted prior to, or concurrently with, their dissemination under subsection (c) of this section.

(e) Evaluations

The Administrator shall conduct and support evaluations of the extent to which the guidelines, standards, performance standards, and review criteria developed under section 299b–1 of this title have had an effect on the clinical practice of medicine. Evaluations shall be developed prior to the completion and release of the guideline, so that baseline data concerning practice patterns and health care costs may be obtained as part of the evaluation.

(f) Recommendations to Administrator

The Director shall make recommendations to the Administrator on activities that should be carried out under section 299a(a)(2) of this title and under section 1320b–12 of this title, including recommendations of particular research projects that should be carried out with respect to—

(1) evaluating the outcomes of health care services and procedures;

(2) developing the standards and criteria required in subsection (b) of this section; and

(3) promoting the utilization of the guidelines, standards, performance standards, and review criteria developed under section 299b–1(a) of this title.

(July 1, 1944, ch. 373, title IX, § 914, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(a), 103 Stat. 2193; amended Oct. 13, 1992, Pub. L. 102–410, §§ 5(c)(3), 6(a), 7, 106 Stat. 2097, 2099, 2100; June 10, 1993, Pub. L. 103–43, title XX, § 2013(2), 107 Stat. 215.)

AMENDMENTS

1993—Subsec. (a)(2)(C). Pub. L. 103–43 substituted ''section 299a–2(d)(2)'' for ''section 299a–2(c)(2)''.

1992—Subsec. (a)(2)(A). Pub. L. 102–410, § 6(a), added cls. (i) and (ii), redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively, and struck out former cl. (i) which read as follows: ''to improve methods of prevention, diagnosis, treatment, and clinical management for the benefit of a significant number of individuals;''.

Subsec. (a)(2)(C). Pub. L. 102–410, § 7(1), added subpar. (C).

Subsecs. (b) to (d). Pub. L. 102–410, § 5(c)(3)(A)–(C), substituted ''Administrator'' for ''Director'' wherever appearing.

Subsec. (e). Pub. L. 102–410, §§ 5(c)(3)(D), 7(2), substituted ''Administrator'' for ''Director'' and inserted at end ''Evaluations shall be developed prior to the completion and release of the guideline, so that baseline data concerning practice patterns and health care costs may be obtained as part of the evaluation.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 299b–2, 1320b–12 of this title.

PART C—GENERAL PROVISIONS

§ 299c. Advisory Council for Health Care Policy, Research, and Evaluation

(a) Establishment

There is established an advisory council to be known as the National Advisory Council for Health Care Policy, Research, and Evaluation.

(b) Duties

(1) In general

The Council shall advise the Secretary and the Administrator with respect to activities to carry out the purpose of the Agency under section 299(b) of this title.

(2) Certain recommendations

Activities of the Council under paragraph (1) shall include making recommendations to the Administrator regarding priorities for a national agenda and strategy for—

(A) the conduct of research, demonstration projects, and evaluations with respect to health care, including clinical practice and primary care;

(B) the development and application of appropriate health care technology assessments;

(C) the development and periodic review and updating of guidelines for clinical practice, standards of quality, performance measures, and medical review criteria with respect to health care; and

(D) the conduct of research on outcomes of health care services and procedures.

(c) Membership

(1) In general

The Council shall, in accordance with this subsection, be composed of appointed members and ex officio members. All members of the Council shall be voting members, other than officials designated under paragraph (3)(B) as ex officio members of the Council.

(2) Appointed members

The Secretary shall appoint to the Council 17 appropriately qualified representatives of the public who are not officers or employees of the United States. The Secretary shall ensure that the appointed members of the Council, as a group, are representative of professions and entities concerned with, or affected by, activities under this subchapter and under section 1320b–12 of this title. Of such members—

(A) 8 shall be individuals distinguished in the conduct of research, demonstration projects, and evaluations with respect to health care;

(B) 3 shall be individuals distinguished in the practice of medicine;

(C) 2 shall be individuals distinguished in the health professions;

(D) 2 shall be individuals distinguished in the fields of business, law, ethics, economics, and public policy; and

(E) 2 shall be individuals representing the interests of consumers of health care.

(3) Ex officio members

The Secretary shall designate as ex officio members of the Council—

(A) the Director of the National Institutes of Health, the Director of the Centers for Disease Control, the Administrator of the Health Care Financing Administration, the Assistant Secretary of Defense (Health Affairs), the Chief Medical Officer of the Department of Veterans Affairs; and

(B) such other Federal officials as the Secretary may consider appropriate.

(d) Terms

(1) In general

Except as provided in paragraph (2), members of the Council appointed under subsection (c)(2) of this section shall serve for a term of 3 years.

(2) Staggered rotation

Of the members first appointed to the Council under subsection (c)(2) of this section, the Secretary shall appoint 6 members to serve for a term of 3 years, 6 members to serve for a term of 2 years, and 5 members to serve for a term of 1 year.

(3) Service beyond term

A member of the Council appointed under subsection (c)(2) of this section may continue to serve after the expiration of the term of the member until a successor is appointed.

(e) Vacancies

If a member of the Council appointed under subsection (c)(2) of this section does not serve the full term applicable under subsection (d) of this section, the individual appointed to fill the resulting vacancy shall be appointed for the remainder of the term of the predecessor of the individual.

(f) Chair

The Administrator shall, from among the members of the Council appointed under subsection (c)(2) of this section, designate an individual to serve as the chair of the Council.

(g) Meetings

The Council shall meet not less than once during each discrete 4-month period and shall otherwise meet at the call of the Administrator or the chair.

(h) Compensation and reimbursement of expenses

(1) Appointed members

Members of the Council appointed under subsection (c)(2) of this section shall receive compensation for each day (including traveltime) engaged in carrying out the duties of the Council. Such compensation may not be in an amount in excess of the maximum rate of basic pay payable for GS–18 of the General Schedule.

(2) Ex officio members

Officials designated under subsection (c)(3) of this section as ex officio members of the Council may not receive compensation for service on the Council in addition to the compensation otherwise received for duties carried out as officers of the United States.

(i) Staff

The Administrator shall provide to the Council such staff, information, and other assistance as may be necessary to carry out the duties of the Council.

(j) Duration

Notwithstanding section 14(a) of the Federal Advisory Committee Act, the Council shall continue in existence until otherwise provided by law.

(July 1, 1944, ch. 373, title IX, § 921, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(c), 103 Stat. 2199; amended Oct. 13, 1992, Pub. L. 102–410, § 8, 106 Stat. 2100.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (h)(1), is set out under section 5332 of Title 5, Government Organization and Employees.

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (j), is section 14(a) of Pub. L. 92–463, which is set out in the Appendix to Title 5.

PRIOR PROVISIONS

A prior section 299c, act July 1, 1944, ch. 373, title IX, § 903, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 927; amended Oct. 15, 1968, Pub. L. 90–574, title I, § 104, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91–515, title I, §§ 105, 111(b), 84 Stat. 1299, 1301, authorized Secretary to make planning grants and set forth requirements for grant applications, prior to repeal by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–410, § 8(1), (2), redesignated subsec. (e) as (d) and struck out former subsec. (d) which related to establishment of subcouncil on outcomes and guidelines and designation of its membership.

Subsec. (e). Pub. L. 102–410, § 8(2), (3), redesignated subsec. (f) as (e) and substituted ''subsection (d)'' for ''subsection (e)''. Former subsec. (e) redesignated (d).

Subsecs. (f) to (k). Pub. L. 102–410, § 8(2), redesignated subsecs. (g) to (k) as (f) to (j), respectively. Former subsec. (f) redesignated (e).

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 299a–2 of this title.

§ 299c–1. Peer review with respect to grants and contracts

(a) Requirement of review

(1) In general

Appropriate technical and scientific peer review shall be conducted with respect to each application for a grant, cooperative agreement, or contract under this subchapter.

(2) Reports to Administrator

Each peer review group to which an application is submitted pursuant to paragraph (1) shall report its finding and recommendations respecting the application to the Administrator in such form and in such manner as the Administrator shall require.

(b) Approval as precondition of awards

The Administrator may not approve an application described in subsection (a)(1) of this section unless the application is recommended for

approval by a peer review group established under subsection (c) of this section.

(c) Establishment of peer review groups

(1) In general

The Administrator shall establish such technical and scientific peer review groups as may be necessary to carry out this section. Such groups shall be established without regard to the provisions of title 5 that govern appointments in the competitive service, and without regard to the provisions of chapter 51, and subchapter III of chapter 53, of such title that relate to classification and pay rates under the General Schedule.

(2) Membership

The members of any peer review group established under this section shall be appointed from among individuals who by virtue of their training or experience are eminently qualified to carry out the duties of such peer review group. Officers and employees of the United States may not constitute more than 25 percent of the membership of any such group. Such officers and employees may not receive compensation for service on such groups in addition to the compensation otherwise received for duties carried out as such officers and employees.

(3) Duration

Notwithstanding section 14(a) of the Federal Advisory Committee Act, peer review groups established under this section shall continue in existence until otherwise provided by law.

(d) Categories of review

(1) In general

With respect to technical and scientific peer review under this section, there shall be two categories of peer review groups as follows:

(A) One category of such groups shall, subject to subparagraph (B), review applications with respect to research, demonstration projects, or evaluations.

(B) The other category of such groups shall review applications with respect to dissemination activities or the development of research agendas (including conferences, workshops, and meetings). If the purpose of a proposal presented in an application is a matter described in the preceding sentence, the application shall be reviewed by the groups referred to in such sentence, notwithstanding that the proposal involves research, demonstration projects, or evaluations.

(2) Authority for procedural adjustments in certain cases

In the case of applications described in subsection (a)(1) of this section for financial assistance whose direct costs will not exceed $50,000, the Administrator may make appropriate adjustments in the procedures otherwise established by the Administrator for the conduct of peer review under this section. Such adjustments may be made for the purpose of encouraging the entry of individuals into the field of research, for the purpose of encouraging clinical practice-oriented research, and for such other purposes as the Administrator may determine to be appropriate.

(e) Regulations

The Secretary shall issue regulations for the conduct of peer review under this section.

(July 1, 1944, ch. 373, title IX, § 922, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(c), 103 Stat. 2201; amended Nov. 5, 1990, Pub. L. 101–508, title IV, § 4118(f)(2)(F), 104 Stat. 1388–70; Oct. 13, 1992, Pub. L. 102–410, § 5(d), 106 Stat. 2098.)

REFERENCES IN TEXT

The provisions of title 5 that govern appointments in the competitive service, referred to in subsec. (c)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (c)(3), is section 14(a) of Pub. L. 92–463, which is set out in the Appendix to Title 5.

AMENDMENTS

1992—Subsec. (c)(2). Pub. L. 102–410, § 5(d)(1), struck out ''who are not officers or employees of the United States and'' after ''from among individuals'' and inserted at end ''Officers and employees of the United States may not constitute more than 25 percent of the membership of any such group. Such officers and employees may not receive compensation for service on such groups in addition to the compensation otherwise received for duties carried out as such officers and employees.''

Subsec. (d)(1). Pub. L. 102–410, § 5(d)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''With respect to technical and scientific peer review under this section, such review of applications with respect to research, demonstration projects, or evaluations (other than of dissemination activities) shall be conducted by different peer review groups than the peer review groups that conduct such review of applications with respect to research, demonstration projects, or evaluations of dissemination activities or the development of research agendas (including conferences, workshops, and meetings).''

1990—Subsec. (d)(1). Pub. L. 101–508 inserted ''(other than of dissemination activities)'' after ''evaluations'' and ''research, demonstration projects, or evaluations of'' after ''applications with respect to'', the latter being executed by inserting such words after the second reference to ''applications with respect to'' to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4118(f)(2)(F) of Pub. L. 101–508 provided that the amendment made by that section is effective as if included in the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239.

§ 299c–2. Certain provisions with respect to development, collection, and dissemination of data

(a) Standards with respect to utility of data

(1) In general

With respect to data developed or collected by any entity for the purpose described in section 299(b) of this title, the Administrator shall, in order to assure the utility, accuracy, and sufficiency of such data for all interested entities, establish guidelines for uniform methods of developing and collecting such data. Such guidelines shall include specifications for the development and collection of data on the outcomes of health care services and procedures.

(2) Relationship with medicare program

In any case where guidelines under paragraph (1) may affect the administration of the

program under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], the guidelines shall be in the form of recommendations to the Secretary for such program.

(b) Statistics

The Administrator shall—

(1) take such action as may be necessary to assure that statistics developed under this subchapter are of high quality, timely, and comprehensive, as well as specific, standardized, and adequately analyzed and indexed; and

(2) publish, make available, and disseminate such statistics on as wide a basis as is practicable.

(c) Authority regarding certain requests

Upon the request of a public or nonprofit private entity, the Administrator may tabulate and analyze statistics under arrangements under which such entity will pay the cost of the service provided. Amounts appropriated to the Administrator from payments made under such arrangements shall be available to the Administrator for obligation until expended.

(July 1, 1944, ch. 373, title IX, § 923, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(c), 103 Stat. 2202; amended Oct. 12, 1992, Pub. L. 102–410, § 5(e), 106 Stat. 2098.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–410 added subsec. (c).

§ 299c–3. Additional provisions with respect to grants and contracts

(a) Financial conflicts of interest

With respect to projects for which awards of grants, cooperative agreements, or contracts are authorized to be made under this subchapter, the Administrator shall by regulation define—

(1) the specific circumstances that constitute financial interests in such projects that will, or may be reasonably expected to, create a bias in favor of obtaining results in the projects that are consistent with such interests; and

(2) the actions that will be taken by the Administrator in response to any such interests identified by the Administrator.

(b) Requirement of application

The Administrator may not, with respect to any program under this subchapter authorizing the provision of grants, cooperative agreements, or contracts, provide any such financial assistance unless an application for the assistance is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Administrator determines to be necessary to carry out the program involved.

(c) Provision of supplies and services in lieu of funds

(1) In general

Upon the request of an entity receiving a grant, cooperative agreement, or contract under this subchapter, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the entity in carrying out the project involved and, for such purpose, may detail to the entity any officer or employee of the Department of Health and Human Services.

(2) Corresponding reduction in funds

With respect to a request described in paragraph (1), the Secretary shall reduce the amount of the financial assistance involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Administrator. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(d) Applicability of certain provisions with respect to contracts

Contracts may be entered into under this part without regard to section 3324(a) and (b) of title 31 and section 5 of title 41.

(July 1, 1944, ch. 373, title IX, § 924, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(c), 103 Stat. 2202; amended Oct. 13, 1992, Pub. L. 102–410, § 9, 106 Stat. 2100.)

CODIFICATION

In subsec. (d), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1992—Pub. L. 102–410 added subsec. (a) and redesignated former subsecs. (a) to (c) as (b) to (d), respectively.

§ 299c–4. Certain administrative authorities

(a) Deputy administrator and other officers and employees

(1) Deputy administrator

The Administrator may appoint a deputy administrator for the Agency.

(2) Other officers and employees

The Administrator may appoint and fix the compensation of such officers and employees as may be necessary to carry out this subchapter. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5.

(b) Facilities

The Secretary, in carrying out this subchapter—

(1) may acquire, without regard to section 34 of title 40, by lease or otherwise through the Administrator of General Services, buildings or portions of buildings in the District of Co-

lumbia or communities located adjacent to the District of Columbia for use for a period not to exceed 10 years; and

(2) may acquire, construct, improve, repair, operate, and maintain laboratory, research, and other necessary facilities and equipment, and such other real or personal property (including patents) as the Secretary deems necessary.

(c) Provision of financial assistance

The Administrator, in carrying out this subchapter, may make grants to, and enter into cooperative agreements with, public and nonprofit private entities and individuals, and when appropriate, may enter into contracts with public and private entities and individuals.

(d) Utilization of certain personnel and resources

(1) Department of Health and Human Services

The Administrator, in carrying out this subchapter, may utilize personnel and equipment, facilities, and other physical resources of the Department of Health and Human Services, permit appropriate (as determined by the Secretary) entities and individuals to utilize the physical resources of such Department, and provide technical assistance and advice.

(2) Other agencies

The Administrator, in carrying out this subchapter, may use, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local public agencies, or of any foreign government, with or without reimbursement of such agencies.

(e) Consultants

The Secretary, in carrying out this subchapter, may secure, from time to time and for such periods as the Administrator deems advisable but in accordance with section 3109 of title 5, the assistance and advice of consultants from the United States or abroad.

(f) Experts

(1) In general

The Secretary may, in carrying out this subchapter, obtain the services of not more than 50 experts or consultants who have appropriate scientific or professional qualifications. Such experts or consultants shall be obtained in accordance with section 3109 of title 5, except that the limitation in such section on the duration of service shall not apply.

(2) Travel expenses

(A) Experts and consultants whose services are obtained under paragraph (1) shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with sections 5724, 5724a(a)(1), 5724a(a)(3), and 5726(c) of title 5.

(B) Expenses specified in subparagraph (A) may not be allowed in connection with the assignment of an expert or consultant whose services are obtained under paragraph (1) unless and until the expert agrees in writing to complete the entire period of assignment, or one year, whichever is shorter, unless separated or reassigned for reasons that are beyond the control of the expert or consultant and that are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for the expenses specified in subparagraph (A) is recoverable from the expert or consultant as a debt of the United States. The Secretary may waive in whole or in part a right of recovery under this subparagraph.

(g) Voluntary and uncompensated services

The Administrator, in carrying out this subchapter, may accept voluntary and uncompensated services.

(July 1, 1944, ch. 373, title IX, § 925, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(c), 103 Stat. 2203.)

REFERENCES IN TEXT

The civil-service laws, referred to in subsec. (a)(2), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

§ 299c–5. Funding

(a) Authorization of appropriations

For the purpose of carrying out this subchapter, there are authorized to be appropriated $115,000,000 for fiscal year 1993, $145,000,000 for fiscal year 1994, and $175,000,000 for fiscal year 1995.

(b) Evaluations

In addition to amounts available pursuant to subsection (a) of this section for carrying out this subchapter, there shall be made available for such purpose, from the amounts made available pursuant to section 238j of this title (relating to evaluations), an amount equal to 40 percent of the maximum amount authorized in such section 238j of this title to be made available.

(c) Information center

For purposes of carrying out the activities under section 299a–1(e) of this title, there are authorized to be appropriated $3,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 and 1995.

(d) Health care technology assessment

For the purpose of carrying out technology assessment activities under section 299a–2(d) of this title, there are authorized to be appropriated $2,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 and 1995.

(e) Program of innovative assessments

For purposes of establishing the program of innovative assessments under section 299a–2(f) of this title, there are authorized to be appropriated $2,000,000 for fiscal year 1993, and such sums as may be necessary in each of the fiscal years 1994 and 1995.

(July 1, 1944, ch. 373, title IX, § 926, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(c), 103 Stat. 2204; amended Aug. 18, 1990, Pub. L. 101–381, title I, § 102(7), 104 Stat. 586; Oct. 13, 1992, Pub. L. 102–410, § 10, 106 Stat. 2101; June 10, 1993, Pub. L. 103–43, title XX, § 2010(b)(8), 107 Stat. 214.)

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–43 substituted ''section 238j'' for ''section 300aaa–10'' in two places.

1992—Subsec. (a). Pub. L. 102–410, § 10(1), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For the purpose of carrying out this subchapter, there are authorized to be appropriated $35,000,000 for fiscal year 1990, $50,000,000 for fiscal year 1991, and $70,000,000 for fiscal year 1992.''

Subsecs. (c) to (e). Pub. L. 102–410, § 10(2), added subsecs. (c) to (e).

1990—Subsec. (b). Pub. L. 101–381 made technical amendment to references to section 300aaa–10 of this title wherever appearing to reflect renumbering of corresponding section of original act.

§ 299c–6. Definitions

For purposes of this subchapter:

(1) The term ''Administrator'' means the Administrator for Health Care Policy and Research.

(2) The term ''Agency'' means the Agency for Health Care Policy and Research.

(3) The term ''Council'' means the National Advisory Council on Health Care Policy, Research, and Evaluation.

(4) The term ''Director'' means the Director of the Office of the Forum for Quality and Effectiveness in Health Care.

(July 1, 1944, ch. 373, title IX, § 927, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(c), 103 Stat. 2204.)

PRIOR PROVISIONS

Prior sections 299d to 299j were repealed by Pub. L. 99–117, § 12(d), Oct. 7, 1985, 99 Stat. 495.

Section 299d, act July 1, 1944, ch. 373, title IX, § 904, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 928; amended Oct. 15, 1968, Pub. L. 90–574, title I, § 104, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91–515, title I, §§ 106, 111(b), 84 Stat. 1299, 1301, authorized Secretary to make grants for establishment and operation of regional medical programs and set forth requirements for grant applications.

Section 299e, act July 1, 1944, ch. 373, title IX, § 905, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 929; amended Oct. 15, 1968, Pub. L. 90–574, title I, § 105, 82 Stat. 1005; Oct. 30, 1970, Pub. L. 91–515, title I, §§ 107(a), 111(b), title VI, § 601(b)(2), (4), 84 Stat. 1299, 1301, 1311; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided for establishment of a National Advisory Council on Regional Medical Programs and its functions.

Section 299f, act July 1, 1944, ch. 373, title IX, § 906, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 930; amended Oct. 30, 1970, Pub. L. 91–515, title I, § 111(b), 84 Stat. 1301, authorized Secretary to establish rules and regulations covering terms of approval of grant applications and coordination of programs.

Section 299g, act July 1, 1944, ch. 373, title IX, § 907, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 930; amended Oct. 30, 1970, Pub. L. 91–515, title I, §§ 108, 111(b), 84 Stat. 1300, 1301, directed Secretary to compile a list of facilities equipped and staffed to provide most advanced methods for diagnosing and treating certain diseases and illnesses.

Section 299h, act July 1, 1944, ch. 373, title IX, § 908, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 930, called for a report to the President and the Congress on or before June 30, 1967, by Surgeon General concerning activities under this subchapter with required statements, appraisals, and recommendations.

Section 299i, act July 1, 1944, ch. 373, title IX, § 909, as added Oct. 6, 1965, Pub. L. 89–239, § 2, 79 Stat. 930; amended Oct. 30, 1970, Pub. L. 91–515, title I, §§ 109, 111(b), 84 Stat. 1300, 1301; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided for recordkeeping by grant recipients and for accessibility of records for audit and examination.

Section 299j, act July 1, 1944, ch. 373, title IX, § 910, as added Oct. 15, 1968, Pub. L. 90–574, title I, § 106, 82 Stat. 1005; amended Oct. 30, 1970, Pub. L. 91–515, title I, § 110, 84 Stat. 1300, related to grants and contracts for multiprogram services, costs of special projects, and support of research, studies, investigations, training, and demonstrations.

SUBCHAPTER VIII—POPULATION RESEARCH AND VOLUNTARY FAMILY PLANNING PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 300z–5 of this title.

§ 300. Project grants and contracts for family planning services

(a) Authority of Secretary

The Secretary is authorized to make grants to and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). To the extent practical, entities which receive grants or contracts under this subsection shall encourage familiy[1] participation in projects assisted under this subsection.

(b) Factors determining awards; establishment and preservation of rights of local and regional entities

In making grants and contracts under this section the Secretary shall take into account the number of patients to be served, the extent to which family planning services are needed locally, the relative need of the applicant, and its capacity to make rapid and effective use of such assistance. Local and regional entities shall be assured the right to apply for direct grants and contracts under this section, and the Secretary shall by regulation fully provide for and protect such right.

(c) Reduction of grant amount

The Secretary, at the request of a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by the fair market value of any supplies or equipment furnished the grant recipient by the Secretary. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment on which the reduction of such grant is based. Such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(d) Authorization of appropriations

For the purpose of making grants and contracts under this section, there are authorized to be appropriated $30,000,000 for the fiscal year ending June 30, 1971; $60,000,000 for the fiscal year ending June 30, 1972; $111,500,000 for the fiscal year ending June 30, 1973, $111,500,000 each

[1] So in original. Probably should be ''family''.

for the fiscal years ending June 30, 1974, and June 30, 1975; $115,000,000 for fiscal year 1976; $115,000,000 for the fiscal year ending September 30, 1977; $136,400,000 for the fiscal year ending September 30, 1978; $200,000,000 for the fiscal year ending September 30, 1979; $230,000,000 for the fiscal year ending September 30, 1980; $264,500,000 for the fiscal year ending September 30, 1981; $126,510,000 for the fiscal year ending September 30, 1982; $139,200,000 for the fiscal year ending September 30, 1983; $150,830,000 for the fiscal year ending September 30, 1984; and $158,400,000 for the fiscal year ending September 30, 1985.

(July 1, 1944, ch. 373, title X, §1001, as added Dec. 24, 1970, Pub. L. 91–572, §6(c), 84 Stat. 1506; amended Sept. 30, 1972, Pub. L. 92–449, title III, §301, 86 Stat. 754; June 18, 1973, Pub. L. 93–45, title I, §111(a), 87 Stat. 93; July 29, 1975, Pub. L. 94–63, title II, §§202(a), 204(a), (b), title VII, §701(d), 89 Stat. 306–308, 352; Aug. 1, 1977, Pub. L. 95–83, title III, §305(a), 91 Stat. 388; Nov. 8, 1978, Pub. L. 95–613, §1(a)(1), (b)(1), 92 Stat. 3093; Aug. 13, 1981, Pub. L 97–35, title IX, §931(a)(1), (b)(1), 95 Stat. 570; Jan. 4, 1983, Pub. L. 97–414, §§8(n), 9(a), 96 Stat. 2061, 2064; Oct. 19, 1984, Pub. L. 98–512, §3(a), 98 Stat. 2409; Oct. 30, 1984, Pub. L. 98–555, §9, 98 Stat. 2857.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–555 added subsec. (c). Former subsec. (c) redesignated (d).

Pub. L. 98–512 inserted provisions authorizing appropriations for the fiscal year ending Sept. 30, 1985.

Subsec. (d). Pub. L. 98–555 redesignated former subsec. (c) as (d).

1983—Subsec. (c). Pub. L. 97–414, §8(n), substituted a semicolon for a comma after ''1981''.

Pub. L. 97–414, §9(a), amended directory language of Pub. L. 97–35, §931(a)(1), to correct a typographical error and did not involve any change in text. See 1981 Amendment note below.

1981—Subsec. (a). Pub. L. 97–35, §931(b)(1), inserted provisions relating to family participation in projects.

Subsec. (c). Pub. L. 97–35, §931(a)(1), as amended by Pub. L. 97–414, §9(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1978—Subsec. (a). Pub. L. 95–613, §1(a)(1), inserted provisions relating to infertility services and services for adolescents.

Subsec. (c). Pub. L. 95–613, §1(b)(1), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (c). Pub. L. 95–83 substituted provision authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977.

1975—Subsec. (a). Pub. L. 94–63, §204(a), inserted provision relating to scope of family planning projects to be offered.

Subsec. (b). Pub. L. 94–63, §204(b), inserted provision relating to direct grants and contracts for local and regional entities.

Subsec. (c). Pub. L. 94–63, §§202(a), 701(d), inserted provisions authorizing appropriations for fiscal years ending June 30, 1975, 1976, and 1977.

1973—Subsec. (c). Pub. L. 93–45 inserted provisions authorizing appropriations for fiscal year ending June 30, 1974.

1972—Subsec. (c). Pub. L. 92–449 increased appropriations authorization for fiscal year ending June 30, 1973, to $111,500,000 from $90,000,000.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by sections 202(a) and 204(a), (b) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

STUDY AS TO DISCRIMINATION BY SCHOOLS OF MEDICINE, NURSING, OR OSTEOPATHY AGAINST APPLICANTS BECAUSE OF RELUCTANCE OR WILLINGNESS TO PARTICIPATE IN ABORTIONS OR STERILIZATIONS; REPORT NOT LATER THAN FEBRUARY 1, 1978

Pub. L. 95–215, §7, Dec. 19, 1977, 91 Stat. 1507, required Secretary of Health, Education, and Welfare to conduct a study and report to specific committees of Congress not later than Feb. 1, 1978, as to whether schools of medicine, nursing, or osteopathy discriminate against applicants because of applicant's reluctance or unwillingness to participate in performance of abortions or sterilizations contrary to religious beliefs or moral convictions.

CONGRESSIONAL DECLARATION OF PURPOSE

Section 2 of Pub. L. 91–572 provided that: ''It is the purpose of this Act [see Short Title of 1970 Amendment note set out under section 201 of this title]—

''(1) to assist in making comprehensive voluntary family planning services readily available to all persons desiring such services;

''(2) to coordinate domestic population and family planning research with the present and future needs of family planning programs;

''(3) to improve administrative and operational supervision of domestic family planning services and of population research programs related to such services;

''(4) to enable public and nonprofit private entities to plan and develop comprehensive programs of family planning services;

''(5) to develop and make readily available information (including educational materials) on family planning and population growth to all persons desiring such information;

''(6) to evaluate and improve the effectiveness of family planning service programs and of population research;

''(7) to assist in providing trained manpower needed to effectively carry out programs of population research and family planning services; and

''(8) to establish an Office of Population Affairs in the Department of Health, Education, and Welfare as a primary focus within the Federal Government on matters pertaining to population research and family planning, through which the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereafter in this Act referred to as the 'Secretary') shall carry out the purposes of this Act.''

THE TITLE X ''GAG RULE''

Memorandum of President of the United States, Jan. 22, 1993, 58 F.R. 7455, provided:

Memorandum for the Secretary of Health and Human Services

Title X of the Public Health Services Act [42 U.S.C. 300 et seq.] provides Federal funding for family planning clinics to provide services for low-income patients. The Act specifies that Title X funds may not be used for the performance of abortions, but places no restrictions on the ability of clinics that receive Title X funds to provide abortion counseling and referrals or to perform abortions using non-Title X funds. During the first 18 years of the program, medical professionals at Title X clinics provided complete, uncensored information, including nondirective abortion counseling. In February 1988, the Department of Health and Human Services adopted regulations, which have become known as the ''Gag Rule,'' prohibiting Title X recipients from providing their patients with information, counseling, or referrals concerning abortion. Subsequent attempts by the Bush Administration to modify the Gag Rule and ensuing litigation have created con-

fusion and uncertainty about the current legal status of the regulations.

The Gag Rule endangers women's lives and health by preventing them from receiving complete and accurate medical information and interferes with the doctor-patient relationship by prohibiting information that medical professionals are otherwise ethically and legally required to provide to their patients. Furthermore, the Gag Rule contravenes the clear intent of a majority of the members of both the United States Senate and House of Representatives, which twice passed legislation to block the Gag Rule's enforcement but failed to override Presidential vetoes.

For these reasons, you have informed me that you will suspend the Gag Rule pending the promulgation of new regulations in accordance with the ''notice and comment'' procedures of the Administrative Procedure Act [5 U.S.C. 551 et seq.]. I hereby direct you to take that action as soon as possible. I further direct that, within 30 days, you publish in the Federal Register new proposed regulations for public comment.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 247c–1, 256b, 256d, 300a–1, 300a–4, 300ff–52 of this title.

§ 300a. Formula grants to States for family planning services

(a) Authority of Secretary; prerequisites

The Secretary is authorized to make grants, from allotments made under subsection (b) of this section, to State health authorities to assist in planning, establishing, maintaining, coordinating, and evaluating family planning services. No grant may be made to a State health authority under this section unless such authority has submitted, and had approved by the Secretary, a State plan for a coordinated and comprehensive program of family planning services.

(b) Factors determining amount of State allotments

The sums appropriated to carry out the provisions of this section shall be allotted to the States by the Secretary on the basis of the population and the financial need of the respective States.

(c) "State" defined

For the purposes of this section, the term ''State'' includes the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, the District of Columbia, and the Trust Territory of the Pacific Islands.

(d) Authorization of appropriations

For the purpose of making grants under this section, there are authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1971; $15,000,000 for the fiscal year ending June 30, 1972; and $20,000,000 for the fiscal year ending June 30, 1973.

(July 1, 1944, ch. 373, title X, § 1002, as added Dec. 24, 1970, Pub. L. 91–572, § 6(c), 84 Stat. 1506; amended Oct. 12, 1976, Pub. L. 94–484, title IX, § 905(b)(1), 90 Stat. 2325.)

AMENDMENTS

1976—Subsec. (c). Pub. L. 94–484 defined ''State'' to include Northern Mariana Islands.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

STUDY OF STATE DELIVERY OF SERVICES; REPORT TO CONGRESS

Pub. L. 97–35, title IX, § 931(c), Aug. 13, 1981, 95 Stat. 570, directed Secretary of Health and Human Services to conduct a study of possible ways of State delivery of services for which assistance is authorized by title X of the Public Health Service Act [this subchapter] and to report to Congress on results of such study 18 months after Aug. 13, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300a–1 of this title.

§ 300a–1. Training grants and contracts; authorization of appropriations

(a) The Secretary is authorized to make grants to public or nonprofit private entities and to enter into contract with public or private entities and individuals to provide the training for personnel to carry out family planning service programs described in section 300 or 300a of this title.

(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $2,000,000 for the fiscal year ending June 30, 1971; $3,000,000 for the fiscal year ending June 30, 1972; $4,000,000 for the fiscal year ending June 30, 1973; $3,000,000 each for the fiscal years ending June 30, 1974 and June 30, 1975; $4,000,000 for fiscal year ending 1976; $5,000,000 for the fiscal year ending September 30, 1977; $3,000,000 for the fiscal year ending September 30, 1978; $3,100,000 for the fiscal year ending September 30, 1979; $3,600,000 for the fiscal year ending September 30, 1980; $4,100,000 for the fiscal year ending September 30, 1981; $2,920,000 for the fiscal year ending September 30, 1982; $3,200,000 for the fiscal year ending September 30, 1983; $3,500,000 for the fiscal year ending September 30, 1984; and $3,500,000 for the fiscal year ending September 30, 1985.

(July 1, 1944, ch. 373, title X, § 1003, as added Dec. 24, 1970, Pub. L. 91–572, § 6(c), 84 Stat. 1507; amended June 18, 1973, Pub. L. 93–45, title I, § 111(b), 87 Stat. 93; July 29, 1975, Pub. L. 94–63, title II, § 202(b), title VII, § 701(d), 89 Stat. 306, 352; Aug. 1, 1977, Pub. L. 95–83, title III, § 305(b), 91 Stat. 389; Nov. 8, 1978, Pub. L. 95–613, § 1(b)(2), 92 Stat. 3093; Aug. 13, 1981, Pub. L. 97–35, title IX, § 931(a)(2), 95 Stat. 570; Jan. 4, 1983, Pub. L. 97–414, §§ 8(n), 9(a), 96 Stat. 2061, 2064; Oct. 19, 1984, Pub. L. 98–512, § 3(b), 98 Stat. 2410.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–512 inserted provisions authorizing appropriations for fiscal year ending Sept. 30, 1985.

1983—Subsec. (b). Pub. L. 97–414, § 8(n), substituted a semicolon for a comma after ''1981''.

Pub. L. 97–414, § 9(a), amended directory language of Pub. L. 97–35, § 931(a)(2), to correct a typographical error and did not involve any change in text. See 1981 Amendment note below.

1981—Subsec. (b). Pub. L. 97–35, as amended by Pub. L. 97–414, § 9(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1978—Subsec. (b). Pub. L. 95–613 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (b). Pub. L. 95–83 substituted provision authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977.

1975—Subsec. (b). Pub. L. 94–63 inserted provisions authorizing appropriations for fiscal years ending June 30, 1975, 1976, and 1977.

1973—Subsec. (b). Pub. L. 93–45 inserted provisions authorizing appropriations for fiscal year ending June 30, 1974.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 202(b) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

§ 300a–2. Conduct, etc., of research activities

The Secretary may—

(1) conduct, and

(2) make grants to public or nonprofit private entities and enter into contracts with public or private entities and individuals for projects for,

research in the biomedical, contraceptive development, behavioral, and program implementation fields related to family planning and population.

(July 1, 1944, ch. 373, title X, § 1004, as added Dec. 24, 1970, Pub. L. 91–572, § 6(c), 84 Stat. 1507; amended June 18, 1973, Pub. L. 93–45, title I, § 111(c), 87 Stat. 93; July 29, 1975, Pub. L. 94–63, title II, § 202(c), title VII, § 701(d), 89 Stat. 306, 352; Aug. 1, 1977, Pub. L. 95–83, title III, § 305(c), 91 Stat. 389; Nov. 8, 1978, Pub. L. 95–613, § 1(b)(3), 92 Stat. 3093; July 10, 1979, Pub. L. 96–32, § 1(a), 93 Stat. 82; Aug. 13, 1981, Pub. L. 97–35, title IX, § 931(b)(2), 95 Stat. 570.)

AMENDMENTS

1981—Pub. L. 97–35 redesignated existing subsec. (a) as entire section, and struck out subsec. (b) which related to authorization and availability of appropriations.

1979—Subsec. (b)(1). Pub. L. 95–613, as amended by Pub. L. 96–32, substituted ''$120,800,000'' for ''$3,600,000'' as authorized appropriation for fiscal year ending Sept. 30, 1980.

1978—Subsec. (b)(1). Pub. L. 95–613 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (b). Pub. L. 95–83 in par. (1) substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977, and in par. (2) prohibited use of funds for administration of this section.

1975—Subsec. (a). Pub. L. 94–63, § 202(c), revised structure of provisions, inserted authorization for Secretary to conduct research, and struck out authority for grants and contracts in research training in specified fields.

Subsec. (b). Pub. L. 94–63, §§ 202(c), 701(d), revised structure of provisions and substituted provisions relating to authorization of appropriations for fiscal years 1976 and 1977 and availability of appropriated funds, for provisions authorizing appropriations for fiscal years ending June 30, 1971, through fiscal year ending June 30, 1975.

1973—Subsec. (b). Pub. L. 93–45 inserted provisions authorizing appropriations for fiscal year ending June 30, 1974.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 1(b) of Pub. L. 96–32 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as of November 8, 1978.''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 202(c) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

§ 300a–3. Informational and educational materials development grants and contracts; authorization of appropriations

(a) The Secretary is authorized to make grants to public or nonprofit private entities and to enter into contracts with public or private entities and individuals to assist in developing and making available family planning and population growth information (including educational materials) to all persons desiring such information (or materials).

(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $750,000 for the fiscal year ending June 30, 1971; $1,000,000 for the fiscal year ending June 30, 1972; $1,250,000 for the fiscal year ending June 30, 1973; $909,000 each for the fiscal years ending June 30, 1974, and June 30, 1975; $2,000,000 for fiscal year 1976; $2,500,000 for the fiscal year ending September 30, 1977; $600,000 for the fiscal year ending September 30, 1978; $700,000 for the fiscal year ending September 30, 1979; $805,000 for the fiscal year ending September 30, 1980; $926,000 for the fiscal year ending September 30, 1981; $570,000 for the fiscal year ending September 30, 1982; $600,000 for the fiscal year ending September 30, 1983; $670,000 for the fiscal year ending September 30, 1984; and $700,000 for the fiscal year ending September 30, 1985.

(July 1, 1944, ch. 373, title X, § 1005, as added Dec. 24, 1970, Pub. L. 91–572, § 6(c), 84 Stat. 1507; amended June 18, 1973, Pub. L. 93–45, title I, § 111(d), 87 Stat. 93; July 29, 1975, Pub. L. 94–63, title II, § 202(d), title VII, § 701(d), 89 Stat. 307, 352; Aug. 1, 1977, Pub. L. 95–83, title III, § 305(d), 91 Stat. 389; Nov. 8, 1978, Pub. L. 95–613, § 1(b)(4), 92 Stat. 3093; Aug. 13, 1981, Pub. L. 97–35, title IX, § 931(a)(3), 95 Stat. 570; Jan. 4, 1983, Pub. L. 97–414, §§ 8(n), 9(a), 96 Stat. 2061, 2064; Oct. 19, 1984, Pub. L. 98–512, § 3(c), 98 Stat. 2410.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–512 inserted provisions authorizing appropriations for fiscal year ending Sept. 30, 1985.

1983—Subsec. (b). Pub. L. 97–414, § 8(n), substituted a semicolon for a comma after ''1981''.

Pub. L. 97–414, § 9(a), amended directory language of Pub. L. 97–35, § 931(a)(3), to correct typographical error and did not involve any change in text. See 1981 Amendment note below.

1981—Subsec. (b). Pub. L. 97–35, as amended by Pub. L. 97–414, § 9(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1982, 1983, and 1984.

1978—Subsec. (b). Pub. L. 95–613 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (b). Pub. L. 95–83 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977.

1975—Subsec. (b). Pub. L. 94–63 inserted provisions authorizing appropriations for fiscal years ending June 30, 1975, 1976, and 1977.

1973—Subsec. (b). Pub. L. 93–45 inserted provisions authorizing appropriations for fiscal year ending June 30, 1974.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 202(d) of Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300a–4 of this title.

§ 300a–4. Grants and contracts

(a) Promulgation of regulations governing execution; amount of grants

Grants and contracts made under this subchapter shall be made in accordance with such regulations as the Secretary may promulgate. The amount of any grant under any section of this subchapter shall be determined by the Secretary; except that no grant under any such section for any program or project for a fiscal year beginning after June 30, 1975, may be made for less than 90 per centum of its costs (as determined under regulations of the Secretary) unless the grant is to be made for a program or project for which a grant was made (under the same section) for the fiscal year ending June 30, 1975, for less than 90 per centum of its costs (as so determined), in which case a grant under such section for that program or project for a fiscal year beginning after that date may be made for a percentage which shall not be less than the percentage of its costs for which the fiscal year 1975 grant was made.

(b) Payment of grants

Grants under this subchapter shall be payable in such installments and subject to such conditions as the Secretary may determine to be appropriate to assure that such grants will be effectively utilized for the purposes for which made.

(c) Prerequisites; "low-income family" defined

A grant may be made or contract entered into under section 300 or 300a of this title for a family planning service project or program only upon assurances satisfactory to the Secretary that—

(1) priority will be given in such project or program to the furnishing of such services to persons from low-income families; and

(2) no charge will be made in such project or program for services provided to any person from a low-income family except to the extent that payment will be made by a third party (including a government agency) which is authorized or is under legal obligation to pay such charge.

For purposes of this subsection, the term ''low-income family'' shall be defined by the Secretary in accordance with such criteria as he may prescribe so as to insure that economic status shall not be a deterrent to participation in the programs assisted under this subchapter.

(d) Suitability of informational or educational materials

(1) A grant may be made or a contract entered into under section 300 or 300a–3 of this title only upon assurances satisfactory to the Secretary that informational or educational materials developed or made available under the grant or contract will be suitable for the purposes of this subchapter and for the population or community to which they are to be made available, taking into account the educational and cultural background of the individuals to whom such materials are addressed and the standards of such population or community with respect to such materials.

(2) In the case of any grant or contract under section 300 of this title, such assurances shall provide for the review and approval of the suitability of such materials, prior to their distribution, by an advisory committee established by the grantee or contractor in accordance with the Secretary's regulations. Such a committee shall include individuals broadly representative of the population or community to which the materials are to be made available.

(July 1, 1944, ch. 373, title X, § 1006, as added Dec. 24, 1970, Pub. L. 91–572, § 6(c), 84 Stat. 1507; amended July 29, 1975, Pub. L. 94–63, title II, § 204(c), (d), 89 Stat. 308; Nov. 8, 1978, Pub. L. 95–613, § 1(a)(2), 92 Stat. 3093.)

AMENDMENTS

1978—Pub. L. 95–613 added subsec. (d).

1975—Subsec. (a). Pub. L. 94–63, § 204(c), inserted provisions relating to amount of grants authorized pursuant to sections of this subchapter.

Subsec. (c). Pub. L. 94–63, § 204(d), inserted provision relating to economic status as part of the criteria to be included within definition of ''low-income family''.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–63 effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as a note under section 247b of this title.

§ 300a–5. Voluntary participation by individuals; participation not prerequisite for eligibility or receipt of other services and information

The acceptance by any individual of family planning services or family planning or population growth information (including educational materials) provided through financial assistance under this subchapter (whether by grant or contract) shall be voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program of the entity or individual that provided such service or information.

(July 1, 1944, ch. 373, title X, § 1007, as added Dec. 24, 1970, Pub. L. 91–572, § 6(c), 84 Stat. 1508.)

§ 300a–6. Prohibition against funding programs using abortion as family planning method

None of the funds appropriated under this subchapter shall be used in programs where abortion is a method of family planning.

(July 1, 1944, ch. 373, title X, § 1008, as added Dec. 24, 1970, Pub. L. 91–572, § 6(c), 84 Stat. 1508.)

§ 300a–6a. Plans and reports

(a) Submission of report to Congress; purposes of plan

Not later than seven months after the close of each fiscal year, the Secretary shall make a report to the Congress setting forth a plan to be carried out over the next five fiscal years for—

(1) extension of family planning services to all persons desiring such services,

(2) family planning and population research programs,

(3) training of necessary manpower for the programs authorized by this subchapter and other Federal laws for which the Secretary has responsibility and which pertain to family planning, and

(4) carrying out the other purposes set forth in this subchapter and the Family Planning Services and Population Research Act of 1970.

(b) Minimum requirements for plan

Such a plan shall, at a minimum, indicate on a phased basis—

(1) the number of individuals to be served by family planning programs under this subchapter and other Federal laws for which the Secretary has responsibility, the types of family planning and population growth information and educational materials to be developed under such laws and how they will be made available, the research goals to be reached under such laws, and the manpower to be trained under such laws;

(2) an estimate of the costs and personnel requirements needed to meet the purposes of this subchapter and other Federal laws for which the Secretary has responsibility and which pertain to family planning programs; and

(3) the steps to be taken to maintain a systematic reporting system capable of yielding comprehensive data on which service figures and program evaluations for the Department of Health and Human Services shall be based.

(c) Contents of report

Each report submitted under subsection (a) of this section shall—

(1) compare results achieved during the preceding fiscal year with the objectives established for such year under the plan contained in the previous such report;

(2) indicate steps being taken to achieve the objectives during the fiscal years covered by the plan contained in such report and any revisions to plans in previous reports necessary to meet these objectives; and

(3) make recommendations with respect to any additional legislative or administrative action necessary or desirable in carrying out the plan contained in such report.

(July 1, 1944, ch. 373, title X, §1009, as added July 29, 1975, Pub. L. 94–63, title II, §203(a), 89 Stat. 307; amended Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695.)

REFERENCES IN TEXT

The Family Planning Services and Population Research Act of 1970, referred to in subsec. (a), is Pub. L. 91–572, Dec. 24, 1970, 84 Stat. 1504, which enacted sections 300 to 300a–6 and 3505a to 3505c of this title, amended sections 211a and 212a of this title and section 763c of Title 33, Navigation and Navigable Waters, and enacted provisions set out as notes under sections 201, 222, and 300 of this title. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 201 of this title and Tables.

CHANGE OF NAME

''Department of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (b)(3), pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

§ 300a–7. Sterilization or abortion

(a) Omitted

(b) Prohibition of public officials and public authorities from imposition of certain requirements contrary to religious beliefs or moral convictions

The receipt of any grant, contract, loan, or loan guarantee under the Public Health Service Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6000 et seq.] by any individual or entity does not authorize any court or any public official or other public authority to require—

(1) such individual to perform or assist in the performance of any sterilization procedure or abortion if his performance or assistance in the performance of such procedure or abortion would be contrary to his religious beliefs or moral convictions; or

(2) such entity to—

(A) make its facilities available for the performance of any sterilization procedure or abortion if the performance of such procedure or abortion in such facilities is prohibited by the entity on the basis of religious beliefs or moral convictions, or

(B) provide any personnel for the performance or assistance in the performance of any sterilization procedure or abortion if the performance or assistance in the performance of such procedures or abortion by such personnel would be contrary to the religious beliefs or moral convictions of such personnel.

(c) Discrimination prohibition

(1) No entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6000 et seq.] after June 18, 1973, may—

(A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel,

because he performed or assisted in the performance of a lawful sterilization procedure or abortion, because he refused to perform or assist in the performance of such a procedure or abortion on the grounds that his performance or assistance in the performance of the procedure or abortion would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting sterilization procedures or abortions.

(2) No entity which receives after July 12, 1974, a grant or contract for biomedical or behavioral research under any program administered by the Secretary of Health and Human Services may—

(A) discriminate in the employment, promotion, or termination of employment of any physician or other health care personnel, or

(B) discriminate in the extension of staff or other privileges to any physician or other health care personnel,

because he performed or assisted in the performance of any lawful health service or research activity, because he refused to perform or assist in the performance of any such service or activity on the grounds that his performance or assistance in the performance of such service or activity would be contrary to his religious beliefs or moral convictions, or because of his religious beliefs or moral convictions respecting any such service or activity.

(d) Individual rights respecting certain requirements contrary to religious beliefs or moral convictions

No individual shall be required to perform or assist in the performance of any part of a health service program or research activity funded in whole or in part under a program administered by the Secretary of Health and Human Services if his performance or assistance in the performance of such part of such program or activity would be contrary to his religious beliefs or moral convictions.

(e) Prohibition on entities receiving Federal grant, etc., from discriminating against applicants for training or study because of refusal of applicant to participate on religious or moral grounds

No entity which receives, after September 29, 1979, any grant, contract, loan, loan guarantee, or interest subsidy under the Public Health Service Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. 6000 et seq.] may deny admission or otherwise discriminate against any applicant (including applicants for internships and residencies) for training or study because of the applicant's reluctance, or willingness, to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions or sterilizations contrary to or consistent with the applicant's religious beliefs or moral convictions.

(Pub. L. 93–45, title IV, § 401, June 18, 1973, 87 Stat. 95; Pub. L. 93–348, title II, § 214, July 12, 1974, 88 Stat. 353; Pub. L. 96–76, title II, § 208, Sept. 29, 1979, 93 Stat. 583; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsecs. (b), (c)(1), and (e), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to this chapter (§ 201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Community Mental Health Centers Act, referred to in subsecs. (b), (c)(1), and (e), is title II of Pub. L. 88–164, as added Pub. L. 94–63, title III, § 303, July 29, 1975, 89 Stat. 309, and amended, which was classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title prior to its repeal by Pub. L. 97–35, title IX, § 902(e)(2)(B), Aug. 13, 1981, 95 Stat. 560.

The Developmental Disabilities Services and Facilities Construction Act, referred to in subsecs. (b) and (c)(1), is title I of Pub. L. 88–164, as added by Pub. L. 94–103, Oct. 4, 1975, 89 Stat. 496, and amended. Title I of Pub. L. 88–164, as amended generally by Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2662, is known as the Developmental Disabilities Assistance and Bill of Rights Act and is classified generally to chapter 75 (§ 6000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsec. (e), is title I of Pub. L. 88–164, as added by Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2662, which is classified generally to chapter 75 (§ 6000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

CODIFICATION

Section was enacted as part of Health Programs Extension Act of 1973, and not as part of Public Health Services Act which comprises this chapter.

Subsec. (a) of this section amended section 601 of Pub. L. 91–296, which is set out as an Availability of Appropriations note under section 201 of this title.

AMENDMENTS

1979—Subsec. (e). Pub. L. 96–76 added subsec. (e).

1974—Subsec. (c). Pub. L. 93–348, § 214, designated existing provisions as par. (1), redesignated pars. (1) and (2) of such provisions as subpars. (A) and (B), and added par. (2).

Subsec. (d). Pub. L. 93–348, § 214(b), added subsec. (d).

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsecs. (c)(2) and (d), pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 300a–8. Penalty for United States, etc., officer or employee coercing or endeavoring to coerce procedure upon beneficiary of Federal program

Any—

(1) officer or employee of the United States,

(2) officer or employee of any State, political subdivision of a State, or any other entity, which administers or supervises the administration of any program receiving Federal financial assistance, or

(3) person who receives, under any program receiving Federal financial assistance, compensation for services,

who coerces or endeavors to coerce any person to undergo an abortion or sterilization procedure by threatening such person with the loss of, or disqualification for the receipt of, any benefit or service under a program receiving Federal financial assistance shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(Pub. L. 94–63, title II, § 205, July 29, 1975, 89 Stat. 308.)

CODIFICATION

Section was enacted as part of the Family Planning and Population Research Act of 1975, and not as part of the Public Health Service Act which comprises this chapter.

EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

SUBCHAPTER VIII–A—ADOLESCENT PREGNANCIES

PART A—GRANT PROGRAM

§§ 300a–21 to 300a–28. Repealed. Pub. L. 97–35, title IX, § 955(b), title XXI, § 2193(f), Aug. 13, 1981, 95 Stat. 592, 828

Section 300a–21, Pub. L. 95–626, title VI, § 601, Nov. 10, 1978, 92 Stat. 3595, set forth Congressional findings and declaration of purpose with respect to grant program.

Section 300a–22, Pub. L. 95–626, title VI, § 602, Nov. 10, 1978, 92 Stat. 3595; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, defined terms ''Secretary'', ''eligible person'', ''eligible grant recipient'', ''core services'', ''supplemental services'', ''adolescent parent''.

Section 300a–23, Pub. L. 95–626, title VI, § 603, Nov. 10, 1978, 92 Stat. 3596, set forth authority to make grants.

Section 300a–24, Pub. L. 95–626, title VI, § 604, Nov. 10, 1978, 92 Stat. 3597, set forth authorized uses for grants.

Section 300a–25, Pub. L. 95–626, title VI, § 605, Nov. 10, 1978, 92 Stat. 3597, set forth provisions respecting priorities, amounts, and duration of grants.

Section 300a–26, Pub. L. 95–626, title VI, § 606, Nov. 10, 1978, 92 Stat. 3598, set forth application, etc., requirements for grant approval.

Section 300a–27, Pub. L. 95–626, title VI, § 607, Nov. 10, 1978, 92 Stat. 3601; Pub. L. 97–35, title XXI, § 2193(a)(2), Aug. 13, 1981, 95 Stat. 827, authorized appropriations from fiscal year ending Sept. 30, 1979, through fiscal year ending Sept. 30, 1982.

Section 300a–28, Pub. L. 95–626, title VI, § 608, Nov. 10, 1978, 92 Stat. 3601, set forth prohibition respecting use of funds to pay for performance of abortion.

See section 300z et seq. of this title.

EFFECTIVE DATE OF REPEAL

Section 955(b) of Pub. L. 97–35 provided that the repeal of sections 300a–21 to 300a–28 of this title is effective Oct. 1, 1981.

For effective date, savings, and transitional provisions relating to the repeal of sections 321a–21 to 321a–28 of this title by section 2193(f) of Pub. L. 97–35, and relating to the amendment of section 300a–27 of this title by section 2193(a)(2) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

STUDY OF ADOLESCENT PREGNANCY; REPORT NOT LATER THAN NOVEMBER 10, 1979

Pub. L. 95–626, title VIII, § 801, Nov. 10, 1978, 92 Stat. 3602, which provided for a study of the problem of adolescent pregnancies and the effectiveness of existing programs and a report, was repealed by section 955(b) of Pub. L. 97–35.

§ 300a–29. Omitted

CODIFICATION

Section, Pub. L. 95–626, title III, § 301, Nov. 10, 1978, 92 Stat. 3590, provided that grants or contracts made under this subchapter would be considered to have been made under this chapter for the purposes of sections 300*l*–2(e) and 300m–3(c)(6) of this title.

PART B—IMPROVING COORDINATION OF FEDERAL AND STATE PROGRAMS

§ 300a–41. Repealed. Pub. L. 97–35, title IX, § 955(b), title XXI, § 2193(f), Aug. 13, 1981, 95 Stat. 592, 828

Section, Pub. L. 95–626, title VII, § 701, Nov. 10, 1978, 92 Stat. 3601; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to improving coordination of Federal and State policies and programs.

EFFECTIVE DATE OF REPEAL

Section 955(b) of Pub. L. 97–35 provided that the repeal of this section is effective Oct. 1, 1981.

For effective date, savings, and transitional provisions relating to the repeal of this section by section 2193(f) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

SUBCHAPTER IX—GENETIC DISEASES, HEMOPHILIA PROGRAMS, AND SUDDEN INFANT DEATH SYNDROME

AMENDMENTS

1976—Pub. L. 94–278, title IV, § 403(b)(3), Apr. 22, 1976, 90 Stat. 409, substituted ''GENETIC DISEASES'' for ''GENETIC BLOOD DISORDERS'' and inserted ''HEMOPHILIA PROGRAMS'' in subchapter heading.

1974—Pub. L. 93–270, § 3(b), Apr. 22, 1974, 88 Stat. 92, inserted ''SUDDEN INFANT DEATH SYNDROME'' in subchapter heading.

1972—Pub. L. 92–414, § 4(1), Aug. 29, 1972, 86 Stat. 652, substituted ''GENETIC BLOOD DISORDERS'' for ''SICKLE CELL ANEMIA PROGRAM'' as subchapter heading and designated former subchapter heading as part A, substituting ''Programs'' for ''Program''.

PART A—GENETIC DISEASES

AMENDMENTS

1976—Pub. L. 94–278, title IV, § 403(a), Apr. 22, 1976, 90 Stat. 407, substituted ''Genetic Diseases'' for ''Sickle Cell Anemia Programs'' in part A heading.

§ 300b. Repealed. Pub. L. 97–35, title XXI, § 2193(b)(1), Aug. 13, 1981, 95 Stat. 827

Section, act July 1, 1944, ch. 373, title XI, § 1101, as added Apr. 22, 1976, Pub. L. 94–278, title IV, § 403(a), 90 Stat. 407; amended Nov. 10, 1978, Pub. L. 95–626, title II, § 205(b), (d)(2), (e), 92 Stat. 3583, 3584; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(1)(B), 95 Stat. 826; Jan. 4, 1983, Pub. L. 97–414, § 8(*o*), 96 Stat. 2061, related to testing, counseling, information and education programs.

A prior section 300b, act July 1, 1944, ch. 373, title XI, § 1101, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 137; amended Aug. 29, 1972, Pub. L. 92–414, § 4(2), 86 Stat. 652, authorized Secretary to make grants and enter contracts with public and nonprofit private entities with respect to establishment of voluntary sickle cell anemia screening and counseling programs and to develop and disseminate informational and educational materials relating to sickle cell anemia, prior to the general amendment of this part by Pub. L. 94–278.

EFFECTIVE DATE OF 1981 AMENDMENT AND REPEAL, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to the amendment and repeal of this section by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300b–1. Research project grants and contracts

In carrying out section 241 of this title, the Secretary may make grants to public and nonprofit private entities, and may enter into contracts with public and private entities and individuals, for projects for (1) basic or applied research leading to the understanding, diagnosis, treatment, and control of genetic diseases, (2) planning, establishing, demonstrating, and developing special programs for the training of genetic counselors, social and behavioral scientists, and other health professionals, (3) the

development of programs to educate practicing physicians, other health professionals, and the public regarding the nature of genetic processes, the inheritance patterns of genetic diseases, and the means, methods, and facilities available to diagnose, control, counsel, and treat genetic diseases, and (4) the development of counseling and testing programs and other programs for the diagnosis, control, and treatment of genetic diseases. In making grants and entering into contracts for projects described in clause (1) of the preceding sentence, the Secretary shall give priority to applications for such grants or contracts which are submitted for research on sickle cell anemia and for research on Cooley's anemia.

(July 1, 1944, ch. 373, title XI, § 1102, as added Apr. 22, 1976, Pub. L. 94–278, title IV, § 403(a), 90 Stat. 408.)

PRIOR PROVISIONS

A prior section 300b–1, act July 1, 1944, ch. 373, title XI, § 1102, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 138, authorized Secretary to make grants and enter contracts with public and private entities and individuals for projects concerned with research, research training in diagnosis, treatment and control of sickle cell anemia, informational and educational programs with respect to sickle cell anemia and development of counseling and testing programs, prior to the general amendment of this part by Pub. L. 94–278 and is covered by this section.

EFFECTIVE DATE

Section 403(c) of Pub. L. 94–278 provided that: ''The amendments made by subsections (a) and (b) [see section 401 of Pub. L. 94–278, set out as a Short Title of 1976 Amendment note under section 201 of this title] shall take effect July 1, 1976.''

SHORT TITLE OF 1976 AMENDMENT

For short title of title IV of Pub. L. 94–278, which enacted this part, omitted former part B of this subchapter, redesignated former parts C and D of this subchapter as parts B and C of this subchapter, respectively, as the ''National Sickle Cell Anemia, Cooley's Anemia, Tay-Sachs, and Genetic Diseases Act'', see section 401 of Pub. L. 94–278, set out as a note under section 201 of this title.

CONGRESSIONAL DECLARATION OF PURPOSE

Section 402 of Pub. L. 94–278, as amended by Pub. L. 95–626, title II, § 205(a), Nov. 10, 1978, 92 Stat. 3583, provided that: ''In order to preserve and protect the health and welfare of all citizens, it is the purpose of this title [see section 401 of Pub. L. 94–278, set out as a Short Title of 1976 Amendment note under section 201 of this title] to establish a national program to provide for basic and applied research, research training, testing, counseling, and information and education programs with respect to genetic diseases, and genetic conditions, such as Sickle Cell anemia, Cooley's Anemia, Tay–Sachs disease, cystic fibrosis, dysautonomia, hemophilia, retinitis pigmentosa, Huntington's chorea, muscular dystrophy, and genetic conditions leading to mental retardation or genetically caused mental disorders.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300b–3 of this title.

§ 300b–2. Voluntary participation by individuals

The participation by any individual in any program or portion thereof under this part shall be wholly voluntary and shall not be a prerequisite to eligibility for or receipt of any other service or assistance from, or to participation in, any other program.

(July 1, 1944, ch. 373, title XI, § 1103, as added Apr. 22, 1976, Pub. L. 94–278, title IV, § 403(a), 90 Stat. 408.)

PRIOR PROVISIONS

A prior section 300b–2, act July 1, 1944, ch. 373, title XI, § 1103, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86 Stat. 138; amended Aug. 29, 1972, Pub. L. 92–414, § 4(3), 86 Stat. 652, was identical to this section, prior to the general amendment of this part by Pub. L. 94–278.

§ 300b–3. Application; special consideration to prior sickle cell anemia grant recipients

(a) Manner of submission; contents

A grant or contract under this part may be made upon application submitted to the Secretary at such time, in such manner, and containing and accompanied by such information, as the Secretary may require, including assurances for an evaluation whether performed by the applicant or by the Secretary. Such grant or contract may be made available on less than a statewide or regional basis. Each applicant shall—

(1) provide that the programs and activities for which assistance under this part is sought will be administered by or under the supervision of the applicant;

(2) provide for strict confidentiality of all test results, medical records, and other information regarding testing, diagnosis, counseling, or treatment of any person treated, except for (A) such information as the patient (or his guardian) gives informed consent to be released, or (B) statistical data compiled without reference to the identity of any such patient;

(3) provide for community representation where appropriate in the development and operation of voluntary genetic testing or counseling programs funded by a grant or contract under this part; and

(4) establish fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting of Federal funds paid to the applicant under this part.

(b) Considerations for grants and contracts under section 300b–1 of this title

In making grants and entering into contracts for any fiscal year under section 241 of this title for projects described in section 300b–1 of this title the Secretary shall give special consideration to applications from entities that received grants from, or entered into contracts with, the Secretary for the preceding fiscal year for the conduct of comprehensive sickle cell centers or sickle cell screening and education clinics.

(July 1, 1944, ch. 373, title XI, § 1104, as added Apr. 22, 1976, Pub. L. 94–278, title IV, § 403(a), 90 Stat. 408; amended Nov. 10, 1978, Pub. L. 95–626, title II, § 205(c), 92 Stat. 3584; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(b)(2), (3), 95 Stat. 827.)

PRIOR PROVISIONS

A prior section 300b–3, act July 1, 1944, ch. 373, title XI, § 1104, as added May 16, 1972, Pub. L. 92–294, § 3(c), 86

Stat. 138; amended Aug. 29, 1972, Pub. L. 92–414, §4(3), 86 Stat. 652, authorized grants to be made upon application to Secretary and required supervision of programs by applicant, confidentiality of test results, medical records and other information obtained from treated person, community representation in programs, assurances by applicant that priority will be given to persons of child bearing years, and demonstration by applicant of proper fiscal control and accounting procedures, prior to the general amendment of this part by Pub. L. 94–278 and is covered by this section.

AMENDMENTS

1981—Subsec. (a)(4), (5). Pub. L. 97–35, §2193(b)(2), redesignated par. (5) as (4). Former par. (4), which related to testing and counseling requirements, was struck out.

Subsec. (b). Pub. L. 97–35, §2193(b)(3), struck out subsec. (b) which related to grants and contracts under section 300b of this title. Former subsec. (c) was redesignated (b) and, as so redesignated, struck out reference to section 300b of this title.

Subsec. (c). Pub. L. 97–35, §2193(b)(3), redesignated subsec. (c) as (b).

Subsec. (d). Pub. L. 97–35, §2193(b)(3), struck out subsec. (d) which related to procedures applicable to grants, etc., under section 300b of this title.

1978—Subsec. (a). Pub. L. 95–626, §205(c)(1), inserted requirement that application contain assurances for an evaluation whether performed by applicant or by Secretary and that grant or contract be made available on less than a statewide or regional basis.

Subsec. (d). Pub. L. 95–626, §205(c)(2), added subsec. (d).

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300b–4. Public Health Service facilities

The Secretary shall establish a program within the Service to provide voluntary testing, diagnosis, counseling, and treatment of individuals respecting genetic diseases. Services under such program shall be made available through facilities of the Service to persons requesting such services, and the program shall provide appropriate publicity of the availability and voluntary nature of such services.

(July 1, 1944, ch. 373, title XI, §1105, as added Apr. 22, 1976, Pub. L. 94–278, title IV, §403(a), 90 Stat. 409.)

PRIOR PROVISIONS

A prior section 300b–4, act July 1, 1944, ch. 373, title XI, §1105, as added May 16, 1972, Pub. L. 92–294, §3(c), 86 Stat. 139, authorized Secretary to establish a program within the Public Health Service with respect to sickle cell anemia with such program to be made available through facilities of Public Health Service, prior to the general amendment of this part by Pub. L. 94–278 and is covered by this section.

§ 300b–5. Repealed. Pub. L. 97–35, title XXI, § 2193(b)(4), Aug. 13, 1981, 95 Stat. 827

Section, act July 1, 1944, ch. 373, title XI, §1106, as added Apr. 22, 1976, Pub. L. 94–278, title IV, §403(a), 90 Stat. 409, related to an annual report to President and Congress on administration of this part.

A prior section 300b–5, act July 1, 1944, ch. 373, title XI, §1106, as added May 16, 1972, Pub. L. 92–294, §3(c), 86 Stat. 139; amended Aug. 29, 1972, Pub. L. 92–414, §4(3), 86 Stat. 652, was identical to this section, prior to the general amendment of this part by Pub. L. 94–278.

EFFECTIVE DATE OF REPEAL, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to repeal by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300b–6. Applied technology

The Secretary, acting through an identifiable administrative unit, shall—

(1) conduct epidemiological assessments and surveillance of genetic diseases to define the scope and extent of such diseases and the need for programs for the diagnosis, treatment, and control of such diseases, screening for such diseases, and the counseling of persons with such diseases;

(2) on the basis of the assessments and surveillance described in paragraph (1), develop for use by the States programs which combine in an effective manner diagnosis, treatment, and control of such diseases, screening for such diseases, and counseling of persons with such diseases; and

(3) on the basis of the assessments and surveillance described in paragraph (1), provide technical assistance to States to implement the programs developed under paragraph (2) and train appropriate personnel for such programs.

In carrying out this section, the Secretary may, from funds allotted for use under section 702(a) of this title, make grants to or contracts with public or nonprofit private entities (including grants and contracts for demonstration projects).

(July 1, 1944, ch. 373, title XI, §1107, as added Nov. 10, 1978, Pub. L. 95–626, title II, §205(d)(1), 92 Stat. 3584; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, §2193(b)(5), 95 Stat. 827.)

AMENDMENTS

1981—Pub. L. 97–35 substituted provisions relating to allotments under section 702(a) of this title for provisions relating to appropriations under section 300b(b) of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§§ 300c to 300c–4. Omitted

CODIFICATION

Sections 300c to 300c–4 were omitted in the general amendment of this part by Pub. L. 94–278, title IV, §403(a), Apr. 22, 1976, 90 Stat. 407.

Section 300c, act July 1, 1944, ch. 373, title XI, §1111, as added Aug. 29, 1972, Pub. L. 92–414, §3, 86 Stat. 650, authorized Secretary to make grants and enter contracts with public and private entities for establishment of screening, treatment, and counseling programs with respect to Cooley's Anemia.

Section 300c–1, act July 1, 1944, ch. 373, title XI, §1112, as added Aug. 29, 1972, Pub. L. 92–414, §3, 86 Stat. 651, required that any participation by an individual in any Cooley's Anemia programs should be on a purely voluntary basis.

Section 300c–2, act July 1, 1944, ch. 373, title XI, §1113, as added Aug. 29, 1972, Pub. L. 92–414, §3, 86 Stat. 651,

provided for making of grant upon application to Secretary and listed certain requirements to be met by applicant.

Section 300c–3, act July 1, 1944, ch. 373, title XI, § 1114, as added Aug. 29, 1972, Pub. L. 92–414, § 3, 86 Stat. 652, authorized Secretary to establish a program with Public Health Service to provide for screening, counseling, and treatment with respect to Cooley's Anemia.

Section 300c–4, act July 1, 1944, ch. 373, title XI, § 1115, as added Aug. 29, 1972, Pub. L. 92–414, § 3, 86 Stat. 652, provided for Secretary's submission of a report to President for transmittal to Congress annually.

PART B—SUDDEN INFANT DEATH SYNDROME

AMENDMENTS

1976—Pub. L. 94–278, title IV, § 403(b)(2), Apr. 22, 1976, 90 Stat. 409, redesignated part C heading as part B.

§ 300c–11. Repealed. Pub. L. 97–35, title XXI, § 2193(b)(1), Aug. 13, 1981, 95 Stat. 827

Section, act July 1, 1944, ch. 373, title XI, § 1121, as added Apr. 22, 1974, Pub. L. 93–270, § 3(a), 88 Stat. 91; amended Apr. 22, 1976, Pub. L. 94–278, title IV, § 403(b)(1), 90 Stat. 409; S. Res. 4, Feb. 4, 1977; Aug. 1, 1977, Pub. L. 95–83, title III, § 306(a), 91 Stat. 389; Dec. 19, 1977, Pub. L. 95–215, § 8(a), 91 Stat. 1507; Nov. 8, 1978, Pub. L. 95–613, § 2, 92 Stat. 3094; Dec. 12, 1979, Pub. L. 96–142, title II, § 202, 93 Stat. 1070; H. Res. 549, Mar. 25, 1980; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(1)(C), 95 Stat. 827, related to sudden infant death syndrome counseling, information, educational, and statistical programs.

EFFECTIVE DATE OF 1981 AMENDMENT AND REPEAL, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to the amendment and repeal of this section by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300c–12. Sudden infant death syndrome research and research reports

(a) Adequate amounts for identification and prevention progress

From the sums appropriated to the National Institute of Child Health and Human Development, the Secretary shall assure that there are applied to research of the type described in subparagraphs (A) and (B) of subsection (b)(1) of this section such amounts each year as will be adequate, given the leads and findings then available from such research, in order to make maximum feasible progress toward identification of infants at risk of sudden infant death syndrome and prevention of sudden infant death syndrome.

(b) Reports to Congressional committees; contents: data as to applications and funds for specific and general research, summary of findings and plan for taking advantage of research leads and findings

(1) Not later than ninety days after the close of the fiscal year ending September 30, 1979, and of each fiscal year thereafter, the Secretary shall report to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives specific information for such fiscal year on—

(A) the (i) number of applications approved by the Secretary in the fiscal year reported on for grants and contracts under this chapter for research which relates specifically to sudden infant death syndrome, (ii) total amount requested under such applications, (iii) number of such applications for which funds were provided in such fiscal year, and (iv) total amount of such funds; and

(B) the (i) number of applications approved by the Secretary in such fiscal year for grants and contracts under this chapter for research which relates generally to sudden infant death syndrome, including high-risk pregnancy and high-risk infancy research which directly relates to sudden infant death syndrome, (ii) relationship of the high-risk pregnancy and high-risk infancy research to sudden infant death syndrome, (iii) total amount requested under such applications, (iv) number of such applications for which funds were provided in such fiscal year, and (v) total amount of such funds.

(2) Each report submitted under paragraph (1) of this subsection shall—

(A) contain a summary of the findings of intramural and extramural research supported by the National Institute of Child Health and Human Development relating to sudden infant death syndrome as described in subparagraphs (A) and (B) of such paragraph (1), and the plan of such Institute for taking maximum advantage of such research leads and findings; and

(B) provide an estimate of the need for additional funds over each of the next five fiscal years for grants and contracts under this chapter for research activities described in such subparagraphs.

(c) Reports to Congressional committees; current and past estimates for research

Within five days after the Budget is transmitted by the President to the Congress for each fiscal year after fiscal year 1980, the Secretary shall transmit to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives an estimate of the amounts requested for the National Institute of Child Health and Human Development and any other Institutes of the National Institutes of Health, respectively, for research relating to sudden infant death syndrome as described in subparagraphs (A) and (B) of subsection (b)(1) of this section, and a comparison of such amounts with the amounts requested for the preceding fiscal year.

(July 1, 1944, ch. 373, title XI, § 1122, as added Dec. 12, 1979, Pub. L. 96–142, title II, § 202, 93 Stat. 1072; amended Nov. 20, 1985, Pub. L. 99–158, § 3(a)(6), 99 Stat. 879; Nov. 2, 1994, Pub. L. 103–437, § 15(a)(1), 108 Stat. 4591.)

AMENDMENTS

1994—Subsecs. (b)(1), (c). Pub. L. 103–437 substituted ''Energy and Commerce'' for ''Interstate and Foreign Commerce''.

1985—Subsec. (a). Pub. L. 99–158 struck out ''under section 289d of this title'' before '', the Secretary''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce

of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

PART C—HEMOPHILIA PROGRAMS

AMENDMENTS

1976—Pub. L. 94–278, title IV, § 403(b)(2), Apr. 22, 1976, 90 Stat. 409, redesignated part D heading as part C.

§ 300c–21. Repealed. Pub. L. 97–35, title XXI, § 2193(b)(1), Aug. 13, 1981, 95 Stat. 827

Section, act July 1, 1944, ch. 373, title XI, § 1131, as added July 29, 1975, Pub. L. 94–63, title VI, § 606, 89 Stat. 350; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 306(b), 91 Stat. 389; Nov. 10, 1978, Pub. L. 95–626, title II, § 206(a), 92 Stat. 3584; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(1)(D), 95 Stat. 827, related to comprehensive hemophilia diagnostic and treatment centers.

EFFECTIVE DATE OF 1981 AMENDMENT AND REPEAL, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to the amendment and repeal of this section by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

§ 300c–22. Blood-separation centers

(a) Grants and contracts with public and nonprofit private entities for projects to develop and expand existing facilities; definitions

The Secretary may make grants to and enter into contracts with public and nonprofit private entities for projects to develop and expand, within existing facilities, blood-separation centers to separate and make available for distribution blood components to providers of blood services and manufacturers of blood fractions. For purposes of this section—

(1) the term ''blood components'' means those constituents of whole blood which are used for therapy and which are obtained by physical separation processes which result in licensed products such as red blood cells, platelets, white blood cells, AHF-rich plasma, fresh-frozen plasma, cryoprecipitate, and single unit plasma for infusion; and

(2) the term ''blood fractions'' means those constituents of plasma which are used for therapy and which are obtained by licensed fractionation processes presently used in manufacturing which result in licensed products such as normal serum albumin, plasma, protein fraction, prothrombin complex, fibrinogen, AHF concentrate, immune serum globulin, and hyperimmune globulins.

(b) Grants for alleviation of insufficient supplies of blood fractions

In the event the Secretary finds that there is an insufficient supply of blood fractions available to meet the needs for treatment of persons suffering from hemophilia, and that public and other nonprofit private centers already engaged in the production of blood fractions could alleviate such insufficiency with assistance under this subsection, he may make grants not to exceed $500,000 to such centers for the purposes of alleviating the insufficiency.

(c) Approval of application as prerequisite for grant or contract; form, manner of submission, and contents of application

No grant or contract may be made under subsection (a) or (b) of this section unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be in such form, submitted in such manner, and contain such information as the Secretary shall by regulation prescribe.

(d) Nonapplicability of statutory provisions to contracts

Contracts may be entered into under subsection (a) of this section without regard to section 3324(a) and (b) of title 31 and section 5 of title 41.

(e) Authorization of appropriations

For the purpose of making payments under grants and contracts under subsections (a) and (b) of this section, there are authorized to be appropriated $4,000,000 for fiscal year 1976, $5,000,000 for the fiscal year ending September 30, 1977, $3,450,000 for the fiscal year ending September 30, 1978, $2,500,000 for the fiscal year ending September 30, 1979, $3,000,000 for the fiscal year ending September 30, 1980, and $3,500,000 for the fiscal year ending September 30, 1981.

(July 1, 1944, ch. 373, title XI, § 1132, as added July 29, 1975, Pub. L. 94–63, title VI, § 606, 89 Stat. 351; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 306(c), 91 Stat. 389; Nov. 10, 1978, Pub. L. 95–626, title II, § 206(b), 92 Stat. 3584.)

CODIFICATION

In subsec. (d), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1978—Subsec. (e). Pub. L. 95–626 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, and 1981.

1977—Subsec. (e). Pub. L. 95–83 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year 1977.

EFFECTIVE DATE

Section effective July 1, 1975, see section 608 of Pub. L. 94–63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

SUBCHAPTER X—TRAUMA CARE

PART A—GENERAL AUTHORITY AND DUTIES OF SECRETARY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300d–31, 300d–32 of this title.

§ 300d. Establishment

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall, with respect to trauma care—

(1) conduct and support research, training, evaluations, and demonstration projects;

(2) foster the development of appropriate, modern systems of such care through the sharing of information among agencies and individuals involved in the study and provision of such care;

(3) provide to State and local agencies technical assistance; and

(4) sponsor workshops and conferences.

(b) Grants, cooperative agreements, and contracts

The Secretary may make grants, and enter into cooperative agreements and contracts, for the purpose of carrying out subsection (a) of this section.

(c) Administration

The Administrator of the Health Resources and Services Administration shall ensure that this subchapter is administered by the Division of Trauma and Emergency Medical Systems within such Administration. Such Division shall be headed by a director appointed by the Secretary from among individuals who are knowledgeable by training or experience in the development and operation of trauma and emergency medical systems.

(July 1, 1944, ch. 373, title XII, §1201, as added Nov. 16, 1990, Pub. L. 101–590, §3, 104 Stat. 2916; amended Dec. 14, 1993, Pub. L. 103–183, title VI, §601(a), 107 Stat. 2238.)

PRIOR PROVISIONS

A prior section 300d, act July 1, 1944, ch. 373, title XII, §1201, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 594; amended Oct. 12, 1976, Pub. L. 94–484, title IX, §905(b)(1), 90 Stat. 2325; Oct. 21, 1976, Pub. L. 94–573, §§2, 14(2), 90 Stat. 2709, 2718, defined terms applicable to this subchapter, prior to repeal by Pub. L. 97–35, title IX, §902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

A prior section 1201 of act July 1, 1944, ch. 373, title XII, formerly §1205, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 597, was classified to section 300d–4 of this title prior to repeal by Pub. L. 99–117, §12(e), Oct. 7, 1985, 99 Stat. 495.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–183, §601(a)(1), in introductory provisions inserted ‘‘, acting through the Administrator of the Health Resources and Services Administration,’’ after ‘‘Secretary’’.

Subsec. (c). Pub. L. 103–183, §601(a)(2), added subsec. (c).

CONGRESSIONAL STATEMENT OF FINDINGS

Section 2 of Pub. L. 101–590 provided that: ‘‘The Congress finds that—

‘‘(1) the Federal Government and the governments of the States have established a history of cooperation in the development, implementation, and monitoring of integrated, comprehensive systems for the provision of emergency medical services throughout the United States;

‘‘(2) physical trauma is the leading cause of death of Americans between the ages of 1 and 44 and is the third leading cause of death in the general population of the United States;

‘‘(3) physical trauma in the United States results in an aggregate annual cost of $180,000,000,000 in medical expenses, insurance, lost wages, and property damage;

‘‘(4) barriers to the provision of prompt and appropriate emergency medical services exist in many areas of the United States;

‘‘(5) few States and communities have developed and implemented trauma care systems;

‘‘(6) many trauma centers have incurred substantial uncompensated costs in providing trauma care, and such costs have caused many such centers to cease participation in trauma care systems; and

‘‘(7) the number of incidents of physical trauma in the United States is a serious medical and social problem, and the number of deaths resulting from such incidents can be substantially reduced by improving the trauma-care components of the systems for the provision of emergency medical services in the United States.’’

§ 300d–1. Repealed. Pub. L. 103–183, title VI, § 601(b)(1), Dec. 14, 1993, 107 Stat. 2238

Section, act July 1, 1944, ch. 373, title XII, §1202, as added Nov. 16, 1990, Pub. L. 101–590, §3, 104 Stat. 2916, provided for establishment, membership, duties, etc., of Advisory Council on Trauma Care Systems.

A prior section 300d–1, act July 1, 1944, ch. 373, title XII, §1202, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 595; amended Oct. 21, 1976, Pub. L. 94–573, §3, 90 Stat. 2709; Dec. 12, 1979, Pub. L. 96–142, title I, §103, 93 Stat. 1067, set forth provisions relating to grants and contracts for feasibility studies and planning, prior to repeal by Pub. L. 97–35, title IX, §902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

§ 300d–2. Clearinghouse on Trauma Care and Emergency Medical Services

(a) Establishment

The Secretary shall by contract provide for the establishment and operation of a National Clearinghouse on Trauma Care and Emergency Medical Services (hereafter in this section referred to as the ‘‘Clearinghouse’’).

(b) Duties

The Clearinghouse shall—

(1) foster the development of appropriate, modern trauma care and emergency medical services (including the development of policies for the notification of family members of individuals involved in medical emergencies) through the sharing of information among agencies and individuals involved in planning, furnishing, and studying such services and care;

(2) collect, compile, and disseminate information on the achievements of, and problems experienced by, State and local agencies and private entities in providing trauma care and emergency medical services and, in so doing, give special consideration of the unique needs of rural areas;

(3) provide technical assistance relating to trauma care and emergency medical services to State and local agencies; and

(4) sponsor workshops and conferences on trauma care and emergency medical services.

(c) Fees and assessments

A contract entered into by the Secretary under this section may provide that the Clearinghouse charge fees or assessments in order to defray, and beginning with fiscal year 1992, to cover, the costs of operating the Clearinghouse.

(July 1, 1944, ch. 373, title XII, §1202, formerly §1203, as added Nov. 16, 1990, Pub. L. 101–590, §3, 104 Stat. 2917; renumbered §1202, Dec. 14, 1993, Pub. L. 103–183, title VI, §601(b)(2), 107 Stat. 2238.)

PRIOR PROVISIONS

A prior section 300d–2, act July 1, 1944, ch. 373, title XII, §1203, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 596; amended Oct. 21, 1976, Pub. L. 94–573, §4, 90 Stat. 2710; Nov. 10, 1978, Pub. L. 95–626, title II, §210(a),

92 Stat. 3588; July 10, 1979, Pub. L. 96–32, §7(*l*), 93 Stat. 84, set forth provisions relating to grants and contracts for establishing and initial operation of emergency medical services systems, prior to repeal by Pub. L. 97–35, title IX, §902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

A prior section 1202 of act July 1, 1944, was classified to section 300d–1 of this title prior to repeal by Pub. L. 103–183.

Another prior section 1202 of act July 1, 1944, was classified to section 300d–6 of this title prior to repeal by Pub. L. 99–117.

§ 300d–3. Establishment of programs for improving trauma care in rural areas

(a) In general

The Secretary may make grants to public and nonprofit private entities for the purpose of carrying out research and demonstration projects with respect to improving the availability and quality of emergency medical services in rural areas—

(1) by developing innovative uses of communications technologies and the use of new communications technology;

(2) by developing model curricula for training emergency medical services personnel, including first responders, emergency medical technicians, emergency nurses and physicians, and paramedics—

(A) in the assessment, stabilization, treatment, preparation for transport, and resuscitation of seriously injured patients, with special attention to problems that arise during long transports and to methods of minimizing delays in transport to the appropriate facility; and

(B) in the management of the operation of the emergency medical services system;

(3) by making training for original certification, and continuing education, in the provision and management of emergency medical services more accessible to emergency medical personnel in rural areas through telecommunications, home studies, providing teachers and training at locations accessible to such personnel, and other methods;

(4) by developing innovative protocols and agreements to increase access to prehospital care and equipment necessary for the transportation of seriously injured patients to the appropriate facilities; and

(5) by evaluating the effectiveness of protocols with respect to emergency medical services and systems.

(b) Special consideration for certain rural areas

In making grants under subsection (a) of this section, the Secretary shall give special consideration to any applicant for the grant that will provide services under the grant in any rural area identified by a State under section 300d–14(c)(1) of this title.

(c) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(July 1, 1944, ch. 373, title XII, §1203, formerly §1204, as added Nov. 16, 1990, Pub. L. 101–590, §3, 104 Stat. 2918; renumbered §1203 and amended Dec. 14, 1993, Pub. L. 103–183, title VI, §601(b)(2), (f)(1), 107 Stat. 2238, 2239.)

PRIOR PROVISIONS

A prior section 300d–3, act July 1, 1944, ch. 373, title XII, §1204, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 597; amended Oct. 21, 1976, Pub. L. 94–573, §5, 90 Stat. 2711; Nov. 10, 1978, Pub. L. 95–626, title II, §210(b), 92 Stat. 3588; Dec. 12, 1979, Pub. L. 96–142, title I, §104(a), (b), 93 Stat. 1067, 1068, set forth provisions relating to grants and contracts for expansion and improvements, prior to repeal by Pub. L. 97–35, title IX, §902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

A prior section 1203 of act July 1, 1994, was renumbered section 1202 and is classified to section 300d–2 of this title.

A prior section 300d–4, act July 1, 1944, ch. 373, title XII, §1201, formerly §1205, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 597; amended Oct. 21, 1976, Pub. L. 94–573, §6, 90 Stat. 2713, renumbered §1201 and amended Aug. 13, 1981, Pub. L. 97–35, title IX, §902(d)(1), (3), 95 Stat. 560, authorized Secretary to make grants and enter into contracts to support research in emergency medical techniques, methods, devices, and delivery, prior to repeal by Pub. L. 99–117, §12(e), Oct. 7, 1985, 99 Stat. 495.

A prior section 300d–5, act July 1, 1944, ch. 373, title XII, §1206, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 598; amended Oct. 21, 1976, Pub. L. 94–573, §§7, 14(2), 90 Stat. 2713, 2718; Nov. 10, 1978, Pub. L. 95–626, title II, §210(c), 92 Stat. 3588; Dec. 12, 1979, Pub. L. 96–142, title I, §104(c), 93 Stat. 1068, set forth general provisions respecting grants and contracts, prior to repeal by Pub. L. 97–35, title IX, §902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

A prior section 300d–6, act July 1, 1944, ch. 373, title XII, §1202, formerly §1207, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 602; amended Oct. 21, 1976, Pub. L. 94–573, §8, 90 Stat. 2714; Nov. 10, 1978, Pub. L. 95–626, title II, §210(d), 92 Stat. 3588; Dec. 12, 1979, Pub. L. 96–142, title I, §105, 93 Stat. 1068; renumbered §1202 and amended Aug. 13, 1981, Pub. L. 97–35, title IX, §902(d)(1), (4), 95 Stat. 560, authorized appropriations for purposes of this subchapter, prior to repeal by Pub. L. 99–117, §12(e), Oct. 7, 1985, 99 Stat. 495.

Prior sections 300d–7 to 300d–9 were repealed by Pub. L. 97–35, title IX, §902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

Section 300d–7, act July 1, 1944, ch. 373, title XII, §1208, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 602; amended Oct. 12, 1976, Pub. L. 94–484, title VIII, §801(b), 90 Stat. 2322; Oct. 21, 1976, Pub. L. 94–573, §9, 90 Stat. 2715, set forth provisions relating to administration of emergency medical services administrative unit.

Section 300d–8, act July 1, 1944, ch. 373, title XII, §1209, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 602; amended Oct. 21, 1976, Pub. L. 94–573, §10, 90 Stat. 2716; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695; Dec. 12, 1979, Pub. L. 96–142, title I, §106, 93 Stat. 1069, related to Interagency Committee on Emergency Medical Services.

Section 300d–9, act July 1, 1944, ch. 373, title XII, §1210, as added Nov. 16, 1973, Pub. L. 93–154, §2(a), 87 Stat. 603; amended Oct. 21, 1976, Pub. L. 94–573, §11, 90 Stat. 2717, related to annual report to Congress.

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–183, §601(f)(1), which directed amendment of subsec. (c) of section 1204 of act July 1, 1944, by inserting ''determines to be necessary to carry out this section'' before period at end, was executed to this section, which is section 1203 of act July 1, 1944, to reflect the probable intent of Congress and the renumbering of this section by Pub. L. 103–183, §601(b)(1).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300d–32 of this title.

PART B—FORMULA GRANTS WITH RESPECT TO MODIFICATIONS OF STATE PLANS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300d–31, 300d–32 of this title.

§ 300d–11. Establishment of program

(a) Requirement of allotments for States

The Secretary shall for each fiscal year make an allotment for each State in an amount determined in accordance with section 300d–18 of this title. The Secretary shall make payments, as grants, each fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 300d–17 of this title.

(b) Purpose

Except as provided in section 300d–33[1] of this title, the Secretary may not make payments under this part for a fiscal year unless the State involved agrees that, with respect to the trauma care component of the State plan for the provision of emergency medical services, the payments will be expended only for the purpose of developing, implementing, and monitoring the modifications to such component described in section 300d–13 of this title.

(July 1, 1944, ch. 373, title XII, § 1211, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2919.)

REFERENCES IN TEXT

Section 300d–33 of this title, referred to in subsec. (b), was repealed by Pub. L. 103–183, title VI, § 601(e), Dec. 14, 1993, 107 Stat. 2239.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300d–12, 300d–13, 300d–14, 300d–15, 300d–16, 300d–17, 300d–18, 300d–19, 300d–20, 300d–21, 300d–22, 300d–32 of this title.

§ 300d–12. Requirement of matching funds for fiscal years subsequent to first fiscal year of payments

(a) Non-Federal contributions

(1) In general

The Secretary may not make payments under section 300d–11(a) of this title unless the State involved agrees, with respect to the costs described in paragraph (2), to make available non-Federal contributions (in cash or in kind under subsection (b)(1) of this section) toward such costs in an amount equal to—

(A) for the second fiscal year of such payments to the State, not less than $1 for each $1 of Federal funds provided in such payments for such fiscal year; and

(B) for any subsequent fiscal year of such payments to the State, not less than $3 for each $1 of Federal funds provided in such payments for such fiscal year.

[1] See References in Text note below.

(2) Program costs

The costs referred to in paragraph (1) are—

(A) the costs to be incurred by the State in carrying out the purpose described in section 300d–11(b) of this title; or

(B) the costs of improving the quality and availability of emergency medical services in rural areas of the State.

(3) Initial year of payments

The Secretary may not require a State to make non-Federal contributions as a condition of receiving payments under section 300d–11(a) of this title for the first fiscal year of such payments to the State.

(b) Determination of amount of non-Federal contribution

With respect to compliance with subsection (a) of this section as a condition of receiving payments under section 300d–11(a) of this title—

(1) a State may make the non-Federal contributions required in such subsection in cash or in kind, fairly evaluated, including plant, equipment, or services;

(2) the Secretary may not, in making a determination of the amount of non-Federal contributions, include amounts provided by the Federal Government or services assisted or subsidized to any significant extent by the Federal Government; and

(3) the Secretary shall, in making such a determination, include only non-Federal contributions in excess of the amount of non-Federal contributions made by the State during fiscal year 1990 toward—

(A) the costs of providing trauma care in the State; and

(B) the costs of improving the quality and availability of emergency medical services in rural areas of the State.

(July 1, 1944, ch. 373, title XII, § 1212, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2919; amended Dec. 14, 1993, Pub. L. 103–183, title VI, § 601(f)(2), 107 Stat. 2239.)

AMENDMENTS

1993—Subsec. (a)(2)(A). Pub. L. 103–183 substituted ''section 300d–11(b)'' for ''section 300d–11(c)''.

§ 300d–13. Requirements with respect to carrying out purpose of allotments

(a) Trauma care modifications to State plan for emergency medical services

With respect to the trauma care component of a State plan for the provision of emergency medical services, the modifications referred to in section 300d–11(b) of this title are such modifications to the State plan as may be necessary for the State involved to ensure that the plan provides for access to the highest possible quality of trauma care, and that the plan—

(1) specifies that the modifications required pursuant to paragraphs (2) through (10) will be implemented by the principal State agency with respect to emergency medical services or by the designee of such agency;

(2) specifies any public or private entity that will designate trauma care regions and trauma centers in the State;

(3) subject to subsection (b) of this section, contains standards and requirements for the designation of level I and level II trauma centers, and in the case of rural areas level III trauma centers (including trauma centers with specified capabilities and expertise in the care of the pediatric trauma patient), by such entity, including standards and requirements for—

(A) the number and types of trauma patients for whom such centers must provide care in order to ensure that such centers will have sufficient experience and expertise to be able to provide quality care for victims of injury;

(B) the resources and equipment needed by such centers; and

(C) the availability of rehabilitation services for trauma patients;

(4) subject to subsection (b) of this section, contains standards and requirements for the implementation of regional trauma care systems, including standards and guidelines (consistent with the provisions of section 1395dd of this title) for medically directed triage and transportation of trauma patients (including patients injured in rural areas) prior to care in designated trauma centers;

(5) subject to subsection (b) of this section, contains standards and requirements for medically directed triage and transport of severely injured children to designated trauma centers with specified capabilities and expertise in the care of the pediatric trauma patient;

(6) specifies procedures for the evaluation of designated trauma centers (including trauma centers described in paragraph (5)) and trauma care systems;

(7) provides for the establishment and collection of data from each designated trauma center in the State of a central data reporting and analysis system—

(A) to identify the number of severely injured trauma patients within regional trauma care systems in the State;

(B) to identify the cause of the injury and any factors contributing to the injury;

(C) to identify the nature and severity of the injury;

(D) to monitor trauma patient care (including prehospital care) in each designated trauma center within regional trauma care systems in the State (including relevant emergency-department discharges and rehabilitation information) for the purpose of evaluating the diagnosis, treatment and treatment outcome of such trauma patients;

(E) to identify the total amount of uncompensated trauma care expenditures for each fiscal year by each designated trauma center in the State; and

(F) to identify patients transferred within a regional trauma system, including reasons for such transfer;

(8) provides for for[1] the use of procedures by paramedics and emergency medical technicians to assess the severity of the injuries incurred by trauma patients;

(9) provides for appropriate transportation and transfer policies to ensure the delivery of patients to designated trauma centers and other facilities within and outside of the jurisdiction of such system, including policies to ensure that only individuals appropriately identified as trauma patients are transferred to designated trauma centers, and provides for periodic reviews of the transfers and the auditing of such transfers that are determined to be appropriate;

(10) conducts public education activities concerning injury prevention and obtaining access to trauma care; and

(11) with respect to the requirements established in this subsection, provides for coordination and cooperation between the State and any other State with which the State shares any standard metropolitan statistical area.

(b) Certain standards with respect to trauma care centers and systems

(1) In general

The Secretary may not make payments under section 300d–11(a) of this title for a fiscal year unless the State involved agrees that, in carrying out paragraphs (3) through (5) of subsection (a) of this section, the State will adopt standards for the designation of trauma centers, and for triage, transfer, and transportation policies, and that the State will, in adopting such standards—

(A) take into account national standards concerning such;

(B) consult with medical, surgical, and nursing speciality groups, hospital associations, emergency medical services State and local directors, concerned advocates and other interested parties;

(C) conduct hearings on the proposed standards after providing adequate notice to the public concerning such hearing; and

(D) beginning in fiscal year 1992, take into account the model plan described in subsection (c) of this section.

(2) Quality of trauma care

The highest quality of trauma care shall be the primary goal of State standards adopted under this subsection.

(3) Approval by Secretary

The Secretary may not make payments under section 300d–11(a) of this title to a State if the Secretary determines that—

(A) in the case of payments for fiscal year 1991 and subsequent fiscal years, the State has not taken into account national standards, including those of the American College of Surgeons, the American College of Emergency Physicians and the American Academy of Pediatrics, in adopting standards under this subsection; or

(B) in the case of payments for fiscal year 1992 and subsequent fiscal years, the State has not, in adopting such standards, taken into account the model plan developed under subsection (c) of this section.

(c) Model trauma care plan

Not later than 1 year after November 16, 1990, the Secretary shall develop a model plan for the designation of trauma centers and for triage, transfer and transportation policies that may be

[1] So in original.

adopted for guidance by the State. Such plan shall—

(1) take into account national standards, including those of the American College of Surgeons, American College of Emergency Physicians and the American Academy of Pediatrics;

(2) take into account existing State plans;

(3) be developed in consultation with medical, surgical, and nursing speciality groups, hospital associations, emergency medical services State directors and associations, and other interested parties; and

(4) include standards for the designation of rural health facilities and hospitals best able to receive, stabilize, and transfer trauma patients to the nearest appropriate designated trauma center, and for triage, transfer, and transportation policies as they relate to rural areas.

Standards described in paragraph (4) shall be applicable to all rural areas in the State, including both non-metropolitan areas and frontier areas that have populations of less than 6,000 per square mile.

(d) Rule of construction with respect to number of designated trauma centers

With respect to compliance with subsection (a) of this section as a condition of the receipt of a grant under section 300d–11(a) of this title, such subsection may not be construed to specify the number of trauma care centers designated pursuant to such subsection.

(July 1, 1944, ch. 373, title XII, § 1213, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2920; amended Dec. 14, 1993, Pub. L. 103–183, title VI, § 601(f)(3), 107 Stat. 2239.)

AMENDMENTS

1993—Subsec. (a)(4). Pub. L. 103–183, § 601(f)(3)(A), substituted ''section 1395dd of this title)'' for ''section 1395dd of this title''.

Subsec. (a)(8), (9). Pub. L. 103–183, § 601(f)(3)(B), substituted ''provides for'' for ''to provide'' wherever appearing.

Subsec. (a)(10). Pub. L. 103–183, § 601(f)(3)(C), substituted ''conducts'' for ''to conduct''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300d–11, 300d–14, 300d–31, 300d–41, 300w–3 of this title.

§ 300d–14. Requirement of submission to Secretary of trauma plan and certain information

(a) Trauma plan

(1) In general

For fiscal year 1991 and subsequent fiscal years, the Secretary may not make payments under section 300d–11(a) of this title unless, subject to paragraph (2), the State involved submits to the Secretary the trauma care component of the State plan for the provision of emergency medical services.

(2) Interim plan or description of efforts

For fiscal year 1991, if a State has not completed the trauma care component of the State plan described in paragraph (1), the State may provide, in lieu of a completed such component, an interim component or a description of efforts made toward the completion of the component.

(b) Information received by State reporting and analysis system

The Secretary may not make payments under section 300d–11(a) of this title for a fiscal year unless the State involved agrees that the State will, not less than once each year, provide to the Secretary the information received by the State pursuant to section 300d–13(a)(7) of this title.

(c) Availability of emergency medical services in rural areas

The Secretary may not make payments under section 300d–11(a) of this title for a fiscal year unless—

(1) the State involved identifies any rural area in the State for which—

(A) there is no system of access to emergency medical services through the telephone number 911;

(B) there is no basic life-support system; or

(C) there is no advanced life-support system; and

(2) the State submits to the Secretary a list of rural areas identified pursuant to paragraph (1) or, if there are no such areas, a statement that there are no such areas.

(July 1, 1944, ch. 373, title XII, § 1214, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2922.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300d–3, 300d–17 of this title.

§ 300d–15. Restrictions on use of payments

(a) In general

The Secretary may not, except as provided in subsection (b) of this section, make payments under section 300d–11(a) of this title for a fiscal year unless the State involved agrees that the payments will not be expended—

(1) subject to section 300d–33[1] of this title, for any purpose other than developing, implementing, and monitoring the modifications required by section 300d–11(b) of this title to be made to the State plan for the provision of emergency medical services.[2]

(2) to make cash payments to intended recipients of services provided pursuant to such section;

(3) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical or communication equipment, ambulances, or aircraft;

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) to provide financial assistance to any entity other than a public or nonprofit private entity.

(b) Exception

If the Secretary finds that the purpose described in section 300d–11(b) of this title cannot

[1] See References in Text note below.

[2] So in original. The period probably should be a semicolon.

otherwise be carried out, the Secretary may, with respect to an otherwise qualified State, waive the restriction established in subsection (a)(3) of this section.

(July 1, 1944, ch. 373, title XII, § 1215, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2923.)

REFERENCES IN TEXT

Section 300d–33 of this title, referred to in subsec. (a)(1), was repealed by Pub. L. 103–183, title VI, § 601(e), Dec. 14, 1993, 107 Stat. 2239.

§ 300d–16. Requirement of reports by States

(a) In general

The Secretary may not make payments under section 300d–11(a) of this title for a fiscal year unless the State involved agrees to prepare and submit to the Secretary an annual report in such form and containing such information as the Secretary determines (after consultation with the States and the Comptroller General of the United States) to be necessary for—

(1) securing a record and a description of the purposes for which payments received by the State pursuant to such section were expended and of the recipients of such payments; and

(2) determining whether the payments were expended in accordance with the purpose of the program involved.

(b) Availability to public of reports

The Secretary may not make payments under section 300d–11(a) of this title unless the State involved agrees that the State will make copies of the report described in subsection (a) of this section available for public inspection.

(c) Evaluations by Comptroller General

The Comptroller General of the United States shall evaluate the expenditures by States of payments under section 300d–11(a) of this title in order to assure that expenditures are consistent with the provisions of this part, and not later than December 1, 1994, prepare and submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report concerning such evaluation.

(July 1, 1944, ch. 373, title XII, § 1216, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2923; amended Dec. 14, 1993, Pub. L. 103–183, title VI, § 601(c), 107 Stat. 2238.)

AMENDMENTS

1993—Subsec. (c). Pub. L. 103–183 substituted ''1994'' for ''1993''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 300d–17. Requirement of submission of application containing certain agreements and assurances

The Secretary may not make payments under section 300d–11(a) of this title to a State for a fiscal year unless—

(1) the State submits to the Secretary an application for the payments containing agreements in accordance with this part;

(2) the agreements are made through certification from the chief executive officer of the State;

(3) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

(4) the application contains the plan provisions and the information required to be submitted to the Secretary pursuant to section 300d–14 of this title; and

(5) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(July 1, 1944, ch. 373, title XII, § 1217, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2924.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300d–11, 300d–18, 300d–32 of this title.

§ 300d–18. Determination of amount of allotment

(a) Minimum allotment

Subject to the extent of amounts made available in appropriations Acts, the amount of an allotment under section 300d–11(a) of this title for a State for a fiscal year shall be the greater of—

(1) the amount determined under subsection (b)(1) of this section; and

(2) $250,000 in the case of each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, and $50,000 in the case of each of the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) Determination under formula

(1) In general

The amount referred to in subsection (a)(1) of this section for a State for a fiscal year is the sum of—

(A) an amount determined under paragraph (2); and

(B) an amount determined under paragraph (3).

(2) Amount relating to population

The amount referred to in subparagraph (A) of paragraph (1) for a State for a fiscal year is the product of—

(A) an amount equal to 80 percent of the amounts appropriated under section 300d–32(a) of this title for the fiscal year and available for allotment under section 300d–11(a) of this title; and

(B) a percentage equal to the quotient of—

(i) an amount equal to the population of the State; divided by

(ii) an amount equal to the population of all States.

(3) Amount relating to square mileage

The amount referred to in subparagraph (B) of paragraph (1) for a State for a fiscal year is the product of—

(A) an amount equal to 20 percent of the amounts appropriated under section 300d–32(a) of this title for the fiscal year and available for allotment under section 300d–11(a) of this title; and

(B) a percentage equal to the quotient of—

(i) an amount equal to the lesser of 266,807 and the amount of the square mileage of the State; divided by

(ii) an amount equal to the sum of the respective amounts determined for the States under clause (i).

(c) Disposition of certain funds appropriated for allotments

(1) In general

Amounts described in paragraph (2) shall, in accordance with paragraph (3), be allotted by the Secretary to States receiving payments under section 300d–11(a) of this title for the fiscal year (other than any State referred to in paragraph (2)(C)).

(2) Type of amounts

The amounts referred to in paragraph (1) are any amounts made available pursuant to 300d–32(b)(3) of this title that are not paid under section 300d–11(a) of this title to a State as a result of—

(A) the failure of the State to submit an application under section 300d–17 of this title;

(B) the failure, in the determination of the Secretary, of the State to prepare within a reasonable period of time such application in compliance with such section; or

(C) the State informing the Secretary that the State does not intend to expend the full amount of the allotment made for the State.

(3) Amount

The amount of an allotment under paragraph (1) for a State for a fiscal year shall be an amount equal to the product of—

(A) an amount equal to the amount described in paragraph (2) for the fiscal year involved; and

(B) the percentage determined under subsection (b)(2) of this section for the State.

(July 1, 1944, ch. 373, title XII, §1218, as added Nov. 16, 1990, Pub. L. 101–590, §3, 104 Stat. 2924.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300d–11, 300d–32 of this title.

§ 300d–19. Failure to comply with agreements

(a) Repayment of payments

(1) Requirement

The Secretary may, in accordance with subsection (b) of this section, require a State to repay any payments received by the State pursuant to section 300d–11(a) of this title that the Secretary determines were not expended by the State in accordance with the agreements required to be made by the State as a condition of the receipt of payments under such section.

(2) Offset of amounts

If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against any amount due to be paid to the State under section 300d–11(a) of this title.

(b) Opportunity for hearing

Before requiring repayment of payments under subsection (a)(1) of this section, the Secretary shall provide to the State an opportunity for a hearing.

(July 1, 1944, ch. 373, title XII, §1219, as added Nov. 16, 1990, Pub. L. 101–590, §3, 104 Stat. 2925.)

§ 300d–20. Prohibition against certain false statements

(a) In general

(1) False statements or representations

A person may not knowingly and willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payments may be made by a State from amounts paid to the State under section 300d–11(a) of this title.

(2) Concealing or failing to disclose information

A person with knowledge of the occurrence of any event affecting the right of the person to receive any payments from amounts paid to the State under section 300d–11(a) of this title may not conceal or fail to disclose any such event with the intent of fraudulently securing such amount.

(b) Criminal penalty for violation of prohibition

Any person who violates a prohibition established in subsection (a) of this section may for each violation be fined in accordance with title 18, or imprisoned for not more than 5 years, or both.

(July 1, 1944, ch. 373, title XII, §1220, as added Nov. 16, 1990, Pub. L. 101–590, §3, 104 Stat. 2925.)

§ 300d–21. Technical assistance and provision by Secretary of supplies and services in lieu of grant funds

(a) Technical assistance

The Secretary shall, without charge to a State receiving payments under section 300d–11(a) of this title, provide to the State (or to any public or nonprofit private entity designated by the State) technical assistance with respect to the planning, development, and operation of any program carried out pursuant to section 300d–11(b) of this title. The Secretary may provide such technical assistance directly, through contract, or through grants.

(b) Provision by Secretary of supplies and services in lieu of grant funds

(1) In general

Upon the request of a State receiving payments under section 300d–11(a) of this title, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out section 300d–11(b) of this title and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) Reduction in payments

With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments to the State under section 300d–11(a) of this title by an amount equal

to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XII, § 1221, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2926.)

PRIOR PROVISIONS

A prior section 300d–21, act July 1, 1944, ch. 373, title XII, § 1221, as added Oct. 21, 1976, Pub. L. 94–573, § 14(3), 90 Stat. 2718; amended Dec. 12, 1979, Pub. L. 96–142, title I, § 107(a)–(c), 93 Stat. 1069, related to programs for burn, trauma, and poison injuries, prior to repeal by Pub. L. 97–35, title IX, § 902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561, effective Oct. 1, 1981.

§ 300d–22. Report by Secretary

Not later than October 1, 1995, the Secretary shall report to the appropriate committees of Congress on the activities of the States carried out pursuant to section 300d–11 of this title. Such report shall include an assessment of the extent to which Federal and State efforts to develop systems of trauma care and to designate trauma centers have reduced the incidence of mortality, and the incidence of permanent disability, resulting from trauma. Such report may include any recommendations of the Secretary for appropriate administrative and legislative initiatives with respect to trauma care.

(July 1, 1944, ch. 373, title XII, § 1222, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2926; amended Dec. 14, 1993, Pub. L. 103–183, title VI, § 601(d), 107 Stat. 2238.)

AMENDMENTS

1993—Pub. L. 103–183 substituted ''1995'' for ''1992'' and inserted after first sentence ''Such report shall include an assessment of the extent to which Federal and State efforts to develop systems of trauma care and to designate trauma centers have reduced the incidence of mortality, and the incidence of permanent disability, resulting from trauma.''

PART C—GENERAL PROVISIONS REGARDING PARTS A AND B

§ 300d–31. Definitions

For purposes of this part and parts A and B of this subchapter:

(1) Designated trauma center

The term ''designated trauma center'' means a trauma center designated in accordance with the modifications to the State plan described in section 300d–13 of this title.

(2) State plan regarding emergency medical services

The term ''State plan'', with respect to the provision of emergency medical services, means a plan for a comprehensive, organized system to provide for the access, response, triage, field stabilization, transport, hospital stabilization, definitive care, and rehabilitation of patients of all ages with respect to emergency medical services.

(3) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(4) Trauma

The term ''trauma'' means an injury resulting from exposure to a mechanical force.

(5) Trauma care component of State plan

The term ''trauma care component'', with respect to components of the State plan for the provision of emergency medical services, means a plan for a comprehensive health care system, within rural and urban areas of the State, for the prompt recognition, prehospital care, emergency medical care, acute surgical and medical care, rehabilitation, and outcome evaluation of seriously injured patients.

(July 1, 1944, ch. 373, title XII, § 1231, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2926; amended July 10, 1992, Pub. L. 102–321, title VI, § 602(2), 106 Stat. 436; Dec. 14, 1993, Pub. L. 103–183, title VI, § 601(f)(4), 107 Stat. 2239.)

AMENDMENTS

1993—Par. (3). Pub. L. 103–183 substituted ''Puerto Rico,'' for ''Puerto Rico;''.

1992—Pub. L. 102–321 substituted ''this part and parts A and B of this subchapter'' for ''this subchapter'' in introductory provisions.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective July 10, 1992, with provision for programs providing financial assistance, see section 801(b), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300d–61 of this title.

§ 300d–32. Funding

(a) Authorization of appropriations

For the purpose of carrying out parts A and B of this subchapter, there are authorized to be appropriated $6,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996.

(b) Allocation of funds by Secretary

(1) General authority

For the purpose of carrying out part A of this subchapter, the Secretary shall make available 10 percent of the amounts appropriated for a fiscal year under subsection (a) of this section.

(2) Rural grants

For the purpose of carrying out section 300d–3[1] of this title, the Secretary shall make available 10 percent of the amounts appropriated for a fiscal year under subsection (a) of this section.

(3) Formula grants

(A) For the purpose of making allotments under section 300d–11(a) of this title, the Secretary shall, subject to subsection (c) of this section, make available 80 percent of the amounts appropriated for a fiscal year pursuant to subsection (a) of this section.

[1] See References in Text note below.

(B) Amounts paid to a State under section 300d–11(a) of this title for a fiscal year shall, for the purposes for which the amounts were paid, remain available for obligation until the end of the fiscal year immediately following the fiscal year for which the amounts were paid.

(c) Effect of insufficient appropriations for minimum allotments

(1) In general

If the amounts made available under subsection (b)(3)(A) of this section for a fiscal year are insufficient for providing each State with an allotment under section 300d–11(a) of this title of not less than the applicable amount under section 300d–18(a)(2) of this title, the Secretary shall, from such amounts as are made available under subsection (b)(3)(A) of this section, make grants to States described in paragraph (2) for carrying out part B of this subchapter.

(2) Eligible States

The States referred to in paragraph (1) are States that—

(A) have the greatest need to develop, implement, and maintain trauma care systems; and

(B) demonstrate in their applications under section 300d–17 of this title the greatest commitment to establishing and maintaining such systems.

(3) Rule of construction

Paragraph (1) may not be construed to require the Secretary to make a grant under such paragraph to each State.

(July 1, 1944, ch. 373, title XII, § 1232, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2927; amended July 10, 1992, Pub. L. 102–321, title VI, § 602(3), 106 Stat. 436; Dec. 14, 1993, Pub. L. 103–183, title VI, § 602, 107 Stat. 2239.)

REFERENCES IN TEXT

Section 300d–3 of this title, referred to in subsec. (b)(2), was in the original a reference to section 1204, meaning section 1204 of act July 1, 1944. Section 1204 was renumbered section 1203 by Pub. L. 103–183, title VI, § 601(b)(2), Dec. 14, 1993, 107 Stat. 2238.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–183, which directed the amendment of subsec. (a) by substituting ''For the purpose of carrying out parts A and B of this subchapter, there are authorized to be appropriated $6,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 and 1996'' for '' 'for the purpose' and all that follows'', was executed by making the substitution for ''For the purpose of carrying out parts A and B of this subchapter, there are authorized to be appropriated $60,000,000 for fiscal year 1991 and such sums as may be necessary for each of the fiscal years 1992 and 1993'' to reflect the probable intent of Congress because ''for the purpose'' did not appear in text.

1992—Subsec. (a). Pub. L. 102–321 substituted ''parts A and B of this subchapter'' for ''this subchapter''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective July 10, 1992, with provision for programs providing financial assistance, see section 801(b), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300d–18 of this title.

§ 300d–33. Repealed. Pub. L. 103–183, title VI, § 601(e), Dec. 14, 1993, 107 Stat. 2239

Section, act July 1, 1944, ch. 373, title XII, § 1233, as added Nov. 16, 1990, Pub. L. 101–590, § 3, 104 Stat. 2927, related to waiver of requirement regarding purpose of grants.

PART D—TRAUMA CENTERS OPERATING IN AREAS SEVERELY AFFECTED BY DRUG-RELATED VIOLENCE

§ 300d–41. Grants for certain trauma centers

(a) In general

The Secretary may make grants for the purpose of providing for the operating expenses of trauma centers that have incurred substantial uncompensated costs in providing trauma care in geographic areas with a significant incidence of violence arising directly or indirectly from illicit trafficking in drugs. Grants under this subsection may be made only to such trauma centers.

(b) Minimum qualifications of centers

(1) Significant incidence of treating certain patients

(A) The Secretary may not make a grant under subsection (a) of this section to a trauma center unless the population of patients that has been served by the center for the period specified in subparagraph (B) includes a significant number of patients who were treated for—

(i) trauma resulting from the penetration of the skin by knives, bullets, or any other implement that can be used as a weapon; or

(ii) trauma that the center reasonably believes results from violence arising directly or indirectly from illicit trafficking in drugs.

(B) The period specified in this subparagraph is the 2-year period preceding the fiscal year for which the trauma center involved is applying to receive a grant under subsection (a) of this section.

(2) Participation in trauma care system operating under certain professional guidelines

The Secretary may not make a grant under subsection (a) of this section unless the trauma center involved is a participant in a system that—

(A) provides comprehensive medical care to victims of trauma in the geographic area in which the trauma center is located;

(B) is established by the State or political subdivision in which such center is located; and

(C)(i) has adopted guidelines for the designation of trauma centers, and for triage, transfer, and transportation policies, equivalent to (or more protective than) the applicable guidelines developed by the American College of Surgeons or utilized in the model plan established under section 300d–13(c) of this title; or

(ii) agrees that such guidelines will be adopted by the system not later than 6 months after the date on which the trauma center submits to the Secretary the application for the grant.

(3) Submission and approval of long-term plan

The Secretary may not make a grant under subsection (a) of this section unless the trauma center involved—

(A) submits to the Secretary a plan satisfactory to the Secretary that—

(i) is developed on the assumption that the center will continue to incur substantial uncompensated costs in providing trauma care; and

(ii) provides for the long-term continued operation of the center with an acceptable standard of medical care, notwithstanding such uncompensated costs; and

(B) agrees to implement the plan according to a schedule approved by the Secretary.

(July 1, 1944, ch. 373, title XII, § 1241, as added July 10, 1992, Pub. L. 102–321, title VI, § 601, 106 Stat. 433.)

EFFECTIVE DATE

Part effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, see section 801(b), (d)(1) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300d–42, 300d–43, 300d–44 of this title.

§ 300d–42. Preferences in making grants

(a) In general

In making grants under section 300d–41(a) of this title, the Secretary shall give preference to any application—

(1) made by a trauma center that, for the purpose specified in such section, will receive financial assistance from the State or political subdivision involved for each fiscal year during which payments are made to the center from the grant, which financial assistance is exclusive of any assistance provided by the State or political subdivision as a non-Federal contribution under any Federal program requiring such a contribution; or

(2) made by a trauma center that, with respect to the system described in section 300d–41(b)(2) of this title in which the center is a participant—

(A) is providing trauma care in a geographic area in which the availability of trauma care has significantly decreased as a result of a trauma center in the area permanently ceasing participation in such system as of a date occurring during the 2-year period specified in section 300d–41(b)(1)(B) of this title; or

(B) will, in providing trauma care during the 1-year period beginning on the date on which the application for the grant is submitted, incur uncompensated costs in an amount rendering the center unable to continue participation in such system, resulting in a significant decrease in the availability of trauma care in the geographic area.

(b) Further preference for certain applications

With respect to applications for grants under section 300d–41 of this title that are receiving preference for purposes of subsection (a) of this section, the Secretary shall give further preference to any such application made by a trauma center for which a disproportionate percentage of the uncompensated costs of the center result from the provision of trauma care to individuals who neither are citizens nor aliens lawfully admitted to the United States for permanent residence.

(July 1, 1944, ch. 373, title XII, § 1242, as added July 10, 1992, Pub. L. 102–321, title VI, § 601, 106 Stat. 434.)

§ 300d–43. Certain agreements

(a) Commitment regarding continued participation in trauma care system

The Secretary may not make a grant under subsection (a) of section 300d–41 of this title unless the trauma center involved agrees that—

(1) the center will continue participation in the system described in subsection (b) of such section throughout the 3-year period beginning on the date that the center first receives payments under the grant; and

(2) if the agreement made pursuant to paragraph (1) is violated by the center, the center will be liable to the United States for an amount equal to the sum of—

(A) the amount of assistance provided to the center under subsection (a) of such section; and

(B) an amount representing interest on the amount specified in subparagraph (A).

(b) Maintenance of financial support

With respect to activities for which a grant under section 300d–41 of this title is authorized to be expended, the Secretary may not make such a grant unless the trauma center involved agrees that, during the period in which the center is receiving payments under the grant, the center will maintain expenditures for such activities at a level that is not less than the level maintained by the center during the fiscal year preceding the first fiscal year for which the center receives such payments.

(c) Trauma care registry

The Secretary may not make a grant under section 300d–41(a) of this title unless the trauma center involved agrees that—

(1) the center will operate a registry of trauma cases in accordance with the applicable guidelines described in section 300d–41(b)(2)(C) of this title, and will begin operation of the registry not later than 6 months after the date on which the center submits to the Secretary the application for the grant; and

(2) in carrying out paragraph (1), the center will maintain information on the number of trauma cases treated by the center and, for each such case, the extent to which the center incurs uncompensated costs in providing trauma care.

(July 1, 1944, ch. 373, title XII, § 1243, as added July 10, 1992, Pub. L. 102–321, title VI, § 601, 106 Stat. 434.)

§ 300d–44. General provisions

(a) Application

The Secretary may not make a grant under section 300d–41(a) of this title unless an applica-

tion for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(b) Limitation on duration of support

The period during which a trauma center receives payments under section 300d–41(a) of this title may not exceed 3 fiscal years, except that the Secretary may waive such requirement for the center and authorize the center to receive such payments for 1 additional fiscal year.

(c) Limitation on amount of grant

A grant under section 300d–41 of this title may not be made in an amount exceeding $2,000,000.

(July 1, 1944, ch. 373, title XII, § 1244, as added July 10, 1992, Pub. L. 102–321, title VI, § 601, 106 Stat. 435.)

§ 300d–45. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $100,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994. Such authorization of appropriations is in addition to any other authorization of appropriations or amounts that are available for such purpose.

(July 1, 1944, ch. 373, title XII, § 1245, as added July 10, 1992, Pub. L. 102–321, title VI, § 601, 106 Stat. 435.)

PART E—MISCELLANEOUS PROGRAMS

§ 300d–51. Residency training programs in emergency medicine

(a) In general

The Secretary may make grants to public and nonprofit private entities for the purpose of planning and developing approved residency training programs in emergency medicine.

(b) Identification and referral of domestic violence

The Secretary may make a grant under subsection (a) of this section only if the applicant involved agrees that training programs under subsection (a) of this section will provide education and training in identifying and referring cases of domestic violence.

(c) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $400,000 for each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title XII, § 1251, as added Oct. 13, 1992, Pub. L. 102–408, title III, § 304, 106 Stat. 2084.)

PART F—INTERAGENCY PROGRAM FOR TRAUMA RESEARCH

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 282 of this title.

§ 300d–61. Establishment of Program

(a) In general

The Secretary, acting through the Director of the National Institutes of Health (in this section referred to as the ''Director''), shall establish a comprehensive program of conducting basic and clinical research on trauma (in this section referred to as the ''Program''). The Program shall include research regarding the diagnosis, treatment, rehabilitation, and general management of trauma.

(b) Plan for Program

(1) In general

The Director, in consultation with the Trauma Research Interagency Coordinating Committee established under subsection (g) of this section, shall establish and implement a plan for carrying out the activities of the Program, including the activities described in subsection (d) of this section. All such activities shall be carried out in accordance with the plan. The plan shall be periodically reviewed, and revised as appropriate.

(2) Submission to Congress

Not later than December 1, 1993, the Director shall submit the plan required in paragraph (1) to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, together with an estimate of the funds needed for each of the fiscal years 1994 through 1996 to implement the plan.

(c) Participating agencies; coordination and collaboration

The Director—

(1) shall provide for the conduct of activities under the Program by the Directors of the agencies of the National Institutes of Health involved in research with respect to trauma;

(2) shall ensure that the activities of the Program are coordinated among such agencies; and

(3) shall, as appropriate, provide for collaboration among such agencies in carrying out such activities.

(d) Certain activities of Program

The Program shall include—

(1) studies with respect to all phases of trauma care, including prehospital, resuscitation, surgical intervention, critical care, infection control, wound healing, nutritional care and support, and medical rehabilitation care;

(2) basic and clinical research regarding the response of the body to trauma and the acute treatment and medical rehabilitation of individuals who are the victims of trauma; and

(3) basic and clinical research regarding trauma care for pediatric and geriatric patients.

(e) Mechanisms of support

In carrying out the Program, the Director, acting through the Directors of the agencies referred to in subsection (c)(1) of this section, may make grants to public and nonprofit entities, including designated trauma centers.

(f) Resources

The Director shall assure the availability of appropriate resources to carry out the Program, including the plan established under subsection (b) of this section (including the activities described in subsection (d) of this section).

(g) Coordinating Committee

(1) In general

There shall be established a Trauma Research Interagency Coordinating Committee (in this section referred to as the ''Coordinating Committee'').

(2) Duties

The Coordinating Committee shall make recommendations regarding—

(A) the activities of the Program to be carried out by each of the agencies represented on the Committee and the amount of funds needed by each of the agencies for such activities; and

(B) effective collaboration among the agencies in carrying out the activities.

(3) Composition

The Coordinating Committee shall be composed of the Directors of each of the agencies that, under subsection (c) of this section, have responsibilities under the Program, and any other individuals who are practitioners in the trauma field as designated by the Director of the National Institutes of Health.

(h) Definitions

For purposes of this section:

(1) The term ''designated trauma center'' has the meaning given such term in section 300d–31(1) of this title.

(2) The term ''Director'' means the Director of the National Institutes of Health.

(3) The term ''trauma'' means any serious injury that could result in loss of life or in significant disability and that would meet prehospital triage criteria for transport to a designated trauma center.

(July 1, 1944, ch. 373, title XII, § 1261, as added June 10, 1993, Pub. L. 103–43, title III, § 303(a), 107 Stat. 151.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SUBCHAPTER XI—HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1396a of this title; title 12 section 1721.

§ 300e. Requirements of health maintenance organizations

(a) "Health maintenance organization" defined

For purposes of this subchapter, the term ''health maintenance organization'' means a public or private entity which is organized under the laws of any State and which (1) provides basic and supplemental health services to its members in the manner prescribed by subsection (b) of this section, and (2) is organized and operated in the manner prescribed by subsection (c) of this section.

(b) Manner of supplying basic and supplemental health services to members

A health maintenance organization shall provide, without limitations as to time or cost other than those prescribed by or under this subchapter, basic and supplemental health services to its members in the following manner:

(1) Each member is to be provided basic health services for a basic health services payment which (A) is to be paid on a periodic basis without regard to the dates health services (within the basic health services) are provided; (B) is fixed without regard to the frequency, extent, or kind of health service (within the basic health services) actually furnished; (C) except in the case of basic health services provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education, is fixed under a community rating system; and (D) may be supplemented by additional nominal payments which may be required for the provision of specific services (within the basic health services), except that such payments may not be required where or in such a manner that they serve (as determined under regulations of the Secretary) as a barrier to the delivery of health services. Such additional nominal payments shall be fixed in accordance with the regulations of the Secretary. If a health maintenance organization offers to its members the opportunity to obtain basic health services through a physician not described in subsection (b)(3)(A) of this section, the organization may require, in addition to payments described in clause (D) of this paragraph, a reasonable deductible to be paid by a member when obtaining a basic health service from such a physician. A health maintenance organization may include a health service, defined as a supplemental health service by section 300e–1(2) of this title, in the basic health services provided its members for a basic health services payment described in the first sentence. In the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 300e–9(d) of this title) provided comprehensive health services on a prepaid basis, the requirement of clause (C) shall not apply to such entity until the expiration of the forty-eight month period beginning with the month following the month in which the entity became such a qualified health organization. The requirements of this paragraph respecting the basic health services payment shall not apply to the provision of basic health services to a member for an illness or injury for which the member is entitled to benefits under a workmen's compensation law or an insurance policy but only to the extent such benefits apply to such services. For the provision of such services for an illness or injury for which a member is entitled to benefits under such a law, the health maintenance organization may, if authorized by such law, charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law, the insurance carrier, employer, or other entity which under such law is to pay for the provision of such services or, to the extent that such member has been paid under such law for such services, such member. For the provision of such services for an illness or injury for which a member is entitled to bene-

fits under an insurance policy, a health maintenance organization may charge or authorize the provider of such services to charge the insurance carrier under such policy or, to the extent that such member has been paid under such policy for such services, such member.

(2) For such payment or payments (hereinafter in this subchapter referred to as ''supplemental health services payments'') as the health maintenance organization may require in addition to the basic health services payment, the organization may provide to each of its members any of the health services which are included in supplemental health services (as defined in section 300e–1(2) of this title). Supplemental health services payments which are fixed on a prepayment basis shall be fixed under a community rating system unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education, except that, in the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 300e–9(d) of this title) provided comprehensive health services on a prepaid basis, the requirement of this sentence shall not apply to such entity during the forty-eight month period beginning with the month following the month in which the entity became such a qualified health maintenance organization.

(3)(A) Except as provided in subparagraph (B), at least 90 percent of the services of a physician which are provided as basic health services shall be provided through—

(i) members of the staff of the health maintenance organization,

(ii) a medical group (or groups),

(iii) an individual practice association (or associations),

(iv) physicians or other health professionals who have contracted with the health maintenance organization for the provision of such services, or

(v) any combination of such staff, medical group (or groups), individual practice association (or associations) or physicians or other health professionals under contract with the organization.

(B) Subparagraph (A) does not apply to the provision of the services of a physician—

(i) which the health maintenance organization determines, in conformity with regulations of the Secretary, are unusual or infrequently used, or

(ii) which are provided a member of the organization in a manner other than that prescribed by subparagraph (A) because of an emergency which made it medically necessary that the service be provided to the member before it could be provided in a manner prescribed by subparagraph (A).

(C) Contracts between a health maintenance organization and health professionals for the provision of basic and supplemental health services shall include such provisions as the Secretary may require, but only to the extent that such requirements are designed to insure the delivery of quality health care services and sound fiscal management.

(D) For purposes of this paragraph the term ''health professional'' means physicians, dentists, nurses, podiatrists, optometrists, and such other individuals engaged in the delivery of health services as the Secretary may by regulation designate.

(4) Basic health services (and only such supplemental health services as members have contracted for) shall within the area served by the health maintenance organization be available and accessible to each of its members with reasonable promptness and in a manner which assures continuity, and when medically necessary be available and accessible twenty-four hours a day and seven days a week, except that a health maintenance organization which has a service area located wholly in a nonmetropolitan area may make a basic health service available outside its service area if that basic health service is not a primary care or emergency health care service and if there is an insufficient number of providers of that basic health service within the service area who will provide such service to members of the health maintenance organization. A member of a health maintenance organization shall be reimbursed by the organization for his expenses in securing basic and supplemental health services other than through the organization if the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition.

(5) To the extent that a natural disaster, war, riot, civil insurrection, or any other similar event not within the control of a health maintenance organization (as determined under regulations of the Secretary) results in the facilities, personnel, or financial resources of a health maintenance organization not being available to provide or arrange for the provision of a basic or supplemental health service in accordance with the requirements of paragraphs (1) through (4) of this subsection, such requirements only require the organization to make a good-faith effort to provide or arrange for the provision of such service within such limitation on its facilities, personnel, or resources.

(c) Organizational requirements

Each health maintenance organization shall—

(1)(A) have—

(i) a fiscally sound operation, and

(ii) adequate provision against the risk of insolvency,

which is satisfactory to the Secretary, and (B) have administrative and managerial arrangements satisfactory to the Secretary;

(2) assume full financial risk on a prospective basis for the provision of basic health services, except that a health maintenance organization may (A) obtain insurance or make other arrangements for the cost of providing to any member basic health services the aggregate value of which exceeds $5,000 in any year, (B) obtain insurance or make other arrangements for the cost of basic health services provided to its members other than through the organization because medical ne-

cessity required their provision before they could be secured through the organization, (C) obtain insurance or make other arrangements for not more than 90 per centum of the amount by which its costs for any of its fiscal years exceed 115 per centum of its income for such fiscal year, and (D) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions;

(3)(A) enroll persons who are broadly representative of the various age, social, and income groups within the area it serves, except that in the case of a health maintenance organization which has a medically underserved population located (in whole or in part) in the area it serves, not more than 75 per centum of the members of that organization may be enrolled from the medically underserved population unless the area in which such population resides is also a rural area (as designated by the Secretary), and (B) carry out enrollment of members who are entitled to medical assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] in accordance with procedures approved under regulations promulgated by the Secretary;

(4) not expel or refuse to re-enroll any member because of his health status or his requirements for health services;

(5) be organized in such a manner that provides meaningful procedures for hearing and resolving grievances between the health maintenance organization (including the medical group or groups and other health delivery entities providing health services for the organization) and the members of the organization;

(6) have organizational arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for its health services which program (A) stresses health outcomes, and (B) provides review by physicians and other health professionals of the process followed in the provision of health services;

(7) adopt at least one of the following arrangements to protect its members from incurring liability for payment of any fees which are the legal obligation of such organization—

(A) a contractual arrangement with any hospital that is regularly used by the members of such organization prohibiting such hospital from holding any such member liable for payment of any fees which are the legal obligation of such organization;

(B) insolvency insurance, acceptable to the Secretary;

(C) adequate financial reserve, acceptable to the Secretary; and

(D) other arrangements, acceptable to the Secretary, to protect members,

except that the requirements of this paragraph shall not apply to a health maintenance organization if applicable State law provides the members of such organization with protection from liability for payment of any fees which are the legal obligation of such organization; and

(8) provide, in accordance with regulations of the Secretary (including safeguards concerning the confidentiality of the doctor-patient relationship), and effective procedure for developing, compiling, evaluating, and reporting to the Secretary, statistics and other information (which the Secretary shall publish and disseminate on an annual basis and which the health maintenance organization shall disclose, in a manner acceptable to the Secretary, to its members and the general public) relating to (A) the cost of its operations, (B) the patterns of utilization of its services, (C) the availability, accessibility, and acceptability of its services, (D) to the extent practical, developments in the health status of its members, and (E) such other matters as the Secretary may require.

The Secretary shall issue regulations stating the circumstances under which the Secretary, in administering paragraph (1)(A), will consider the resources of an organization which owns or controls a health maintenance organization. Such regulations shall require as a condition to consideration of resources that an organization which owns or controls a health maintenance organization shall provide satisfactory assurances that it will assume the financial obligations of the health maintenance organization.

(July 1, 1944, ch. 373, title XIII, §1301, as added Dec. 29, 1973, Pub. L. 93–222, §2, 87 Stat. 914; amended Oct. 8, 1976, Pub. L. 94–460, title I, §§101, 102(a), 103, 105(a), 90 Stat. 1945–1947; Nov. 1, 1978, Pub. L. 95–559, §§9(b), 10, 11(a)–(d), 92 Stat. 2137–2139; July 10, 1979, Pub. L. 96–32, §2(b), 93 Stat. 82; Aug. 13, 1981, Pub. L. 97–35, title IX, §942(a)(1), (2), (b)–(e), 95 Stat. 573, 574; Oct. 24, 1988, Pub. L. 100–517, §§2–4(a), 5(a)(1), (2), (b), 102 Stat. 2578, 2579.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(3)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–517, §2, substituted ''public or private entity which is organized under the laws of any State and'' for ''legal entity''.

Subsec. (b)(1). Pub. L. 100–517, §3, inserted after second sentence ''If a health maintenance organization offers to its members the opportunity to obtain basic health services through a physician not described in subsection (b)(3)(A) of this section, the organization may require, in addition to payments described in clause (D) of this paragraph, a reasonable deductible to be paid by a member when obtaining a basic health service from such a physician.''

Subsec. (b)(3)(A). Pub. L. 100–517, §4(a), substituted ''at least 90 percent of the services of a physician'' for ''the services of a physician''.

Subsec. (c). Pub. L. 100–517, §5(a)(2), inserted at end ''The Secretary shall issue regulations stating the circumstances under which the Secretary, in administering paragraph (1)(A), will consider the resources of an organization which owns or controls a health maintenance organization. Such regulations shall require as a

condition to consideration of resources that an organization which owns or controls a health maintenance organization shall provide satisfactory assurances that it will assume the financial obligations of the health maintenance organization.''

Subsec. (c)(1)(A). Pub. L. 100–517, § 5(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''have a fiscally sound operation and adequate provision against the risk of insolvency which is satisfactory to the Secretary, and''.

Subsec. (c)(5) to (9). Pub. L. 100–517, § 5(b), redesignated pars. (6) to (9) as (5) to (8), respectively, and struck out former par. (5) which read as follows: ''(A) in the case of a private health maintenance organization, be organized in such a manner that assures that (i) at least one-third of the membership of the policymaking body of the health maintenance organization will be members of the organization, and (ii) there will be equitable representation on such body of members from medically underserved populations served by the organization, and (B) in the case of a public health maintenance organization, have an advisory board to the policymaking body of the public entity operating the organization which board meets the requirements of clause (A) of this paragraph and to which may be delegated policymaking authority for the organization;''.

1981—Subsec. (b). Pub. L. 97–35, § 942(a)(1), (2), (b), (c), in par. (3)(A)(iv) struck out reference to subpar. (C), in par. (3)(B) substituted ''(B)'' for ''(B)(i)'', ''(i)'' for ''(I)'', ''(ii)'' for ''(II)'', and struck out cl. (ii) which related to forty-eight-month period after qualification as an organization, struck out par. (3)(C) which related to expiration of first four fiscal years as a qualified organization, redesignated par. (3)(D) as (3)(C) and substituted requirements respecting delivery and fiscal management, for requirements respecting appropriate continuing education, redesignated par. (3)(E) as (3)(D), and in par. (4) inserted provisions relating to service areas located in nonmetropolitan area, and substituted ''with reasonable promptness'' for ''promptly as appropriate''.

Subsec. (c). Pub. L. 97–35, § 942(d)(1), (e), in par. (2) substituted provisions specifying requirements with respect to insurance, etc., for provisions generalizing such insurance, etc., requirements, and added cl. (D), struck out par. (4) which related to open enrollment period, redesignated pars. (5) to (8) as (4) to (7), respectively, added par. (8), struck out pars. (9) and (10) which related to medical social and health education services, and continuing education, respectively, and redesignated par. (11) as (9).

Subsec. (d). Pub. L. 97–35, § 942(d)(2), struck out subsec. (d) which related to requirements, etc., respecting open enrollment period.

1979—Subsec. (b)(3). Pub. L. 96–32 amended directory language of section 11(a) of Pub. L. 95–559 by substituting reference to section ''1301'' for ''1310'' of the Public Health Service Act, as section to be amended, and required no change in text because amendment made by Pub. L. 95–559 had been executed to this section as the probable intent of Congress.

1978—Subsec. (b)(1). Pub. L. 95–559, §§ 10(a), 11(b), inserted ''except in the case of basic health services provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education,'' after ''the requirement of clause (C)'' and inserted provisions permitting the health maintenance organization to seek reimbursement for the cost of services provided to a member who is entitled to benefits under a workmen's compensation law or insurance policy.

Subsec. (b)(2). Pub. L. 95–559, § 10(a), inserted ''unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education,'' after ''community rating system''.

Subsec. (b)(3). Pub. L. 95–559, § 11(a), as amended by Pub. L. 96–32, inserted provisions limiting the health maintenance organization from entering into contracts for health services with physicians other than members of the staff of the health maintenance organization, medical groups, or individual practice associations.

Subsec. (b)(4). Pub. L. 95–559, § 11(c), substituted ''basic and supplemental'' for ''basic or supplemental'' and ''if the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition'' for ''if it was medically necessary that the services be provided before it could secure them through the organization''.

Subsec. (b)(5). Pub. L. 95–559, § 11(d), added par. (5).

Subsec. (c)(1). Pub. L. 95–559, § 10(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(3). Pub. L. 95–559, § 9(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(6). Pub. L. 95–559, § 10(c), designated existing provisions as subpar. (A), inserted ''in the case of a private health maintenance organization,'' before ''be organized in such'', and substituted ''(i)'' for ''(A)'' and ''(ii)'' for ''(B)'', and added subpar. (B).

1976—Subsec. (b)(1). Pub. L. 94–460, §§ 101(a), 105(a)(1), provided that a health maintenance organization may include a health service, defined as a supplemental health service by section 300e–1(2) of this title, in the basic health services provided its members for a basic health service payment described in the first sentence, and also provided that, in the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 300e–9(d) of this title) provided comprehensive health services on a prepaid basis, the requirement of clause (C) would not apply to such entity until the expiration of the forty-eight month period beginning with the month following the month in which the entity became such a qualified health organization.

Subsec. (b)(2). Pub. L. 94–460, §§ 101(b), 105(a)(2), substituted ''the organization may provide to each of its members any of the health services which are included in supplemental health services (as defined in section 300e–1(2) of this title)'' for ''the organization shall provide to each of its members each health service (A) which is included in supplemental health services (as defined in section 300e–1(2) of this title), (B) for which the required health manpower are available in the area served by the organization, and (C) for the provision of which the member has contracted with the organization'' and inserted ''except that, in the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 300e–9(d) of this title) provided comprehensive health services on a prepaid basis, the requirement of this sentence shall not apply to such entity during the forty-eight month period beginning with the month following the month in which the entity became such a qualified health maintenance organization'' after ''Supplemental health services payments which are fixed on a prepayment basis shall be fixed under a community rating system''.

Subsec. (b)(3). Pub. L. 94–460, § 102(a), inserted references to health professionals who have contracted with the health maintenance organization for the provision of such services and to the combination of staff, medical groups, individual practice associations, or health professionals under contract with the health maintenance organization, and inserted provisions allowing a health maintenance organization, during the thirty-six month period beginning with the month following the month in which the organization becomes a qualified health maintenance organization (within the meaning of section 300e–9(d) of this title), to provide basic and supplemental health services through an entity which but for the requirement of section 300e–1(4)(C)(i) of this title would be a medical group for purposes of this subchapter, directing that after the expiration of such period, the organization may provide basic or supplemental health services through such an entity only if authorized by the Secretary in accordance with regulations which take into consideration the unusual circumstances of such entity, directing that a health maintenance organization may not, in any of its fiscal years, enter into contracts with health

professionals or entities other than medical groups or individual practice associations if the amounts paid under such contracts for basic and supplemental health services exceed fifteen percent of the total amount to be paid in such fiscal year by the health maintenance organization to physicians for the provision of basic and supplemental health services, or, if the health maintenance organization principally serves a rural area, thirty percent of such amount, except that the sentence would not apply to the entering into of contracts for the purchase of basic and supplemental health services through an entity which but for the requirements of section 300e–1(4)(C)(i) of this title would be a medical group for purposes of this subchapter, and directing that contracts between a health maintenance organization and health professionals for the provision of basic and supplemental health services include such provisions as the Secretary may require (including provisions requiring appropriate continuing education).

Subsec. (b)(4). Pub. L. 94–460, §101(c), substituted ''and only such supplemental health services as members have contracted for'' for ''and supplemental health services in the case of the members who have contracted therefor''.

Subsec. (c)(4). Pub. L. 94–460, §103(a), substituted provisions making a simple reference to an open enrollment period in accordance with the provisions of subsec. (d) of this section for provisions spelling out in detail the requirements for a health maintenance organization with regard to an open enrollment period.

Subsec. (d). Pub. L. 94–460, §103(b), added subsec. (d).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 118 of title I of Pub. L. 94–460 provided that:

''(a) Except as provided in subsection (b), the amendments made by this title [enacting section 300e–15 of this title and amending this section, sections 300e–1 to 300e–11, 300e–13, and 300n–1 of this title, and section 8902 of Title 5, Government Organization and Employees] shall take effect on the date of the enactment of this Act [Oct. 8, 1976].

''(b)(1) The amendments made by sections 101 [amending this section], 102 [amending this section and section 300e–1 of this title], 103 [amending this section], 104 [amending section 300e–1 of this title], and 106 [amending section 300e–1 of this title] shall (A) apply with respect to grants, contracts, loans, and loan guarantees made under sections 1303, 1304, and 1305 of the Public Health Service Act [sections 300e–2, 300e–3, and 300e–4 of this title] for fiscal years beginning after September 30, 1976, (B) apply with respect to health benefit plans offered under section 1310 of such Act [section 300e–9 of this title] after such date, and (C) for purposes of section 1312 [section 300e–11 of this title] take effect October 1, 1976.

''(2) Subsection (d) of section 1301 of the Public Health Service Act [subsec. (d) of this section] (added by section 103(b) of this Act) shall take effect with respect to fiscal years of health maintenance organizations beginning on or after the date of the enactment of this Act [Oct. 8, 1976].

''(3) The amendments made by section 107 [amending sections 300e–2, 300e–3, and 300e–4 of this title] shall apply with respect to grants, contracts, loans, and loan guarantees made under sections 1303, 1304, and 1305 of the Public Health Service Act [sections 300e–2, 300e–3 and 300e–4 of this title] for fiscal years beginning after September 30, 1976.

''(4) The amendments made by sections 109(a)(1) [amending section 300e–4 of this title] and 109(c) [amending section 300e–7 of this title] shall apply with respect to loan guarantees made under section 1305 of the Public Health Service Act [section 300e–4 of this title] after September 30, 1976.

''(5) The amendment made by section 109(e) [amending section 300e–3 of this title] shall apply with respect to projects assisted under section 1304 of the Public Health Service Act [section 300e–3 of this title] after September 30, 1976.

''(6) The amendments made by paragraphs (1) and (2) of section 110(a) [amending section 300e–9 of this title] shall apply with respect to calendar quarters which begin after the date of the enactment of this Act [Oct. 8, 1976].

''(7) The amendments made by paragraphs (3) and (4) of section 110 [amending section 300e–9 of this title] shall apply with respect to failures of employers to comply with section 1310(a) of the Public Health Service Act [section 300e–9 of this title] after the date of the enactment of this Act [Oct. 8, 1976].

''(8) The amendment made by section 111 [amending section 300e–11 of this title] shall apply with respect to determinations of the Secretary of Health, Education, and Welfare described in section 1312(a) of the Public Health Service Act [section 300e–11(a) of this title] and made after the date of the enactment of this Act [Oct. 8, 1976].''

SHORT TITLE OF 1978 AMENDMENT

For short title of Pub. L. 95–559 as the ''Health Maintenance Organization Amendments of 1978'', see section 1 of Pub. L. 95–559, set out as a note under section 201 of this title.

SHORT TITLE OF 1976 AMENDMENT

For short title of Pub. L. 94–460 which substantially amended this subchapter, as the ''Health Maintenance Organization Amendments of 1976'', see section 1(a) of Pub. L. 94–460, set out as a note under section 201 of this title.

SHORT TITLE

For short title of Pub. L. 93–222, which enacted this subchapter, as the ''Health Maintenance Organization Act of 1973'', see section 1 of Pub. L. 93–222, set out as a Short Title of 1973 Amendments note under section 201 of this title.

QUALIFICATION OF HEALTH MAINTENANCE ORGANIZATION CONTINGENT UPON CONTROLLING ORGANIZATION'S ASSUMPTION OF FINANCIAL OBLIGATIONS AND MEETING OTHER REQUIREMENTS

Section 5(a)(3) of Pub. L. 100–517 provided that: ''During the period prior to the effective date of regulations issued under section 1301(c) of the Public Health Service Act [subsec. (c) of this section] (as amended by paragraph (2)), the Secretary of Health and Human Services shall consider the application for qualification under section 1301(c)(1)(A) of such Act of a health maintenance organization—

''(A) which is owned or controlled by another organization, and

''(B) which requests that the resources of the other organization be considered in determining its qualification under such section,

if the Secretary receives satisfactory assurances from the other organization that it will assume the financial obligations of the health maintenance organization and if the Secretary determines that the other organization meets such other requirements as the Secretary determines are necessary.''

STUDY ON HEALTH MAINTENANCE ORGANIZATION PROGRAM

Pub. L. 99–660, title VIII, §813, Nov. 14, 1986, 100 Stat. 3801, which provided for a study to assess the operation and impact of the provisions of this subchapter and a report to Congress on the findings and conclusions of such study within 18 months after Nov. 14, 1986, was repealed by Pub. L. 102–531, title III, §311(a), Oct. 27, 1992, 106 Stat. 3503, effective as if such repeal was enacted on Nov. 14, 1986.

HEALTH CARE QUALITY ASSURANCE PROGRAMS STUDY

Section 4 of Pub. L. 93–222 required Secretary of Health, Education, and Welfare to contract for conduct of a study of health care quality assurance programs and submit a final report to specific committees of Congress by Jan. 31, 1976.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e–5, 300e–6, 300e–9, 300e–10, 300e–11, 300e–14, 1301, 1320a–3, 1395mm of this title.

§ 300e–1. Definitions

For purposes of this subchapter:

(1) The term ''basic health services'' means—

(A) physician services (including consultant and referral services by a physician);

(B) inpatient and outpatient hospital services;

(C) medically necessary emergency health services;

(D) short-term (not to exceed twenty visits), outpatient evaluative and crisis intervention mental health services;

(E) medical treatment and referral services (including referral services to appropriate ancillary services) for the abuse of or addiction to alcohol and drugs;

(F) diagnostic laboratory and diagnostic and therapeutic radiologic services;

(G) home health services; and

(H) preventive health services (including (i) immunizations, (ii) well-child care from birth, (iii) periodic health evaluations for adults, (iv) voluntary family planning services, (v) infertility services, and (vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction).

Such term does not include a health service which the Secretary, upon application of a health maintenance organization, determines is unusual and infrequently provided and not necessary for the protection of individual health. The Secretary shall publish in the Federal Register each determination made by him under the preceding sentence. If a service of a physician described in the preceding sentence may also be provided under applicable State law by a dentist, optometrist, podiatrist, psychologist, or other health care personnel, a health maintenance organization may provide such service through a dentist, optometrist, podiatrist, psychologist, or other health care personnel (as the case may be) licensed to provide such service. Such term includes a health service directly associated with an organ transplant only if such organ transplant was required to be included in basic health services on April 15, 1985. For purposes of this paragraph, the term ''home health services'' means health services provided at a member's home by health care personnel, as prescribed or directed by the responsible physician or other authority designated by the health maintenance organization.

(2) The term ''supplemental health services'' means any health service which is not included as a basic health service under paragraph (1) of this section. If a health service provided by a physician may also be provided under applicable State law by a dentist, optometrist, podiatrist, psychologist, or other health care personnel, a health maintenance organization may provide such service through an optometrist, dentist, podiatrist, psychologist, or other health care personnel (as the case may be) licensed to provide such service.

(3) The term ''member'' when used in connection with a health maintenance organization means an individual who has entered into a contractual arrangement, or on whose behalf a contractual arrangement has been entered into, with the organization under which the organization assumes the responsibility for the provision to such individual of basic health services and of such supplemental health services as may be contracted for.

(4) The term ''medical group'' means a partnership, association, or other group—

(A) which is composed of health professionals licensed to practice medicine or osteopathy and of such other licensed health professionals (including dentists, optometrists, podiatrists, and psychologists) as are necessary for the provision of health services for which the group is responsible;

(B) a majority of the members of which are licensed to practice medicine or osteopathy; and

(C) the members of which (i) as their principal professional activity engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility for the delivery of health services to members of a health maintenance organization, except that this clause does not apply before the end of the forty-eight month period beginning after the month in which the health maintenance oranization[1] becomes a qualified health maintenance organization as defined in section 300e–9(d) of this title, or as authorized by the Secretary in accordance with regulations that take into consideration the unusual circumstances of the group; (ii) pool their income from practice as members of the group and distribute it among themselves according to a prearranged salary or drawing account or other similar plan unrelated to the provision of specific health services; (iii) share medical and other records and substantial portions of major equipment and of professional, technical, and administrative staff; (iv) arrange for and encourage continuing education in the field of clinical medicine and related areas for the members of the group; and (v) establish an arrangement whereby a member's enrollment status is not known to the health professional who provides health services to the member.

(5) The term ''individual practice association'' means a partnership, corporation, association, or other legal entity which has entered into a services arrangement (or arrangements) with persons who are licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, psychology, or other health profession in a State and a majority of whom are licensed to practice medicine or osteopathy. Such an arrangement shall provide—

(A) that such persons shall provide their professional services in accordance with a compensation arrangement established by the entity; and

(B) to the extent feasible, for the sharing by such persons of medical and other records, equipment, and professional, technical, and administrative staff.

---

[1] So in original. Probably should be ''organization''.

(6) The term ''health systems agency'' means an entity which is designated in accordance with section 300*l*–4 of this title.

(7) The term ''medically underserved population'' means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services. Such a designation may be made by the Secretary only after consideration of the comments (if any) of (A) each State health planning and development agency which covers (in whole or in part) such urban or rural area or the area in which such population group resides, and (B) each health systems agency designated for a health service area which covers (in whole or in part) such urban or rural area or the area in which such population group resides.

(8)(A) The term ''community rating system'' means the systems, described in subparagraphs (B) and (C), of fixing rates of payments for health services. A health maintenance organization may fix its rates of payments under the system described in subparagraph (B) or (C) or under both such systems, but a health maintenance organization may use only one such system for fixing its rates of payments for any one group.

(B) A system of fixing rates of payment for health services may provide that the rates shall be fixed on a per-person or per-family basis and may authorize the rates to vary with the number of persons in a family, but, except as authorized in subparagraph (D), such rates must be equivalent for all individuals and for all families of similar composition.

(C) A system of fixing rates of payment for health services may provide that the rates shall be fixed for individuals and families by groups. Except as authorized in subparagraph (D), such rates must be equivalent for all individuals in the same group and for all families of similar composition in the same group. If a health maintenance organization is to fix rates of payment for individuals and families by groups, it shall—

(i)(I) classify all of the members of the organization into classes based on factors which the health maintenance organization determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary,

(II) determine its revenue requirements for providing services to the members of each class established under subclause (I), and

(III) fix the rates of payments for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under subclause (II) for providing services to them as members of the classes established under subclause (I), or

(ii) fix the rates of payments for the individuals and families of a group on the basis of the organization's revenue requirements for providing services to the group, except that the rates of payments for the individuals and families of a group of less than 100 persons may not be fixed at rates greater than 110 percent of the rate that would be fixed for such individuals and families under subparagraph (B) or clause (i) of this subparagraph.

The Secretary shall review the factors used by each health maintenance organization to establish classes under clause (i). If the Secretary determines that any such factor may not reasonably be used to predict the use of the health services by individuals and families, the Secretary shall disapprove such factor for such purpose. If a health maintenance organization is to fix rates of payment for a group under clause (ii), it shall, upon request of the entity with which it contracts to provide services to such group, disclose to that entity the method and data used in calculating the rates of payment.

(D) The following differentials in rates of payments may be established under the systems described in subparagraphs (B) and (C):

(i) Nominal differentials in such rates may be established to reflect differences in marketing costs and the different administrative costs of collecting payments from the following categories of members:

(I) Individual members (including their families).

(II) Small groups of members (as determined under regulations of the Secretary).

(III) Large groups of members (as determined under regulations of the Secretary).

(ii) Nominal differentials in such rates may be established to reflect the compositing of the rates of payment in a systematic manner to accommodate group purchasing practices of the various employers.

(iii) Differentials in such rates may be established for members enrolled in a health maintenance organization pursuant to a contract with a governmental authority under section 1079 or 1086 of title 10 or under any other governmental program (other than the health benefits program authorized by chapter 89 of title 5) or any health benefits program for employees of States, political subdivision of States, and other public entities.

(9) The term ''non-metropolitan area'' means an area no part of which is within an area designated as a standard metropolitan statistical area by the Office of Management and Budget and which does not contain a city whose population exceeds fifty thousand individuals.

(July 1, 1944, ch. 373, title XIII, §1302, as added Dec. 29, 1973, Pub. L. 93–222, §2, 87 Stat. 917; amended Oct. 8, 1976, Pub. L. 94–460, title I, §§102(b), 104, 105(b), (c), 106, 117(b)(1), (2), 90 Stat. 1946–1948, 1955; Nov. 1, 1978, Pub. L. 95–559, §11(e), 92 Stat. 2139; Aug. 13, 1981, Pub. L. 97–35, title IX, §942(f)–(j), 95 Stat. 574, 575; Jan. 4, 1983, Pub. L. 97–414, §9(c), 96 Stat. 2064; Nov. 14, 1986, Pub. L. 99–660, title VIII, §§812(a), 814, 100 Stat. 3801, 3802; Oct. 24, 1988, Pub. L. 100–517, §6(b), 102 Stat. 2579.)

AMENDMENTS

1988—Par. (8)(C). Pub. L. 100–517, §6(b)(1), amended third sentence generally. Prior to amendment, third sentence read as follows: ''If a health maintenance organization is to fix rates of payment for individuals and families by groups, it shall—

''(i) classify all of the members of the organization into classes based on factors which the health main-

tenance organization determines predict the differences in the use of health services by the individuals or families in each class and which have not been disapproved by the Secretary,

''(ii) determine its revenue requirements for providing services to the members of each class established under clause (i), and

''(iii) fix the rates of payment for the individuals and families of a group on the basis of a composite of the organization's revenue requirements determined under clause (ii) for providing services to them as members of the classes established under clause (i).''

Pub. L. 100–517, § 6(b)(2), inserted at end ''If a health maintenance organization is to fix rates of payment for a group under clause (ii), it shall, upon request of the entity with which it contracts to provide services to such group, disclose to that entity the method and data used in calculating the rates of payment.''

1986—Par. (1). Pub. L. 99–660, § 814(a), inserted ''psychologist,'' in two places in fourth sentence.

Pub. L. 99–660, § 812(a), (b)(1), temporarily inserted ''Such term includes a health service directly associated with an organ transplant only if such organ transplant was required to be included in basic health services on April 15, 1985.'' in closing provisions. See Effective and Termination Dates of 1986 Amendment note below.

Par. (2). Pub. L. 99–660, § 814(a), inserted ''psychologist,'' in two places.

Par. (4)(A). Pub. L. 99–660, § 814(b), substituted ''podiatrists, and psychologists'' for ''and podiatrists''.

Par. (5). Pub. L. 99–660, § 814(c), inserted ''psychology,''.

1983—Par. (5)(B). Pub. L. 97–414 amended directory language of Pub. L. 97–35, § 942(i), to correct a typographical error, and did not involve any change in text. See 1981 Amendment note below.

1981—Par. (1). Pub. L. 97–35, § 942(f), struck out provisions authorizing health maintenance organizations to maintain, etc., drug use profiles of members.

Par. (2). Pub. L. 97–35, § 942(g), substituted provisions to include services not included under par. (1), for provisions enumerating specific services, substituted ''health service provided by a physician'' for ''service of a physician described in the preceding sentence'', and struck out provisions authorizing health maintenance organizations to maintain, etc., drug use profiles of members.

Par. (4)(C)(i). Pub. L. 97–35, § 942(h), inserted provisions relating to applicability to qualified organizations.

Par. (5)(B). Pub. L. 97–35, § 942(i), as amended by Pub. L. 97–414, § 9(c), struck out ''(i)'' after ''feasible'', and struck out cl. (ii) which related to continuing education.

Par. (8). Pub. L. 97–35, § 942(j), reorganized and restructured provisions and, among many changes, provided for determinations based upon subpars. (B) and (C), and set out determinations respecting differentials contained in former subpars. (B) and (C) as subpar. (D).

1978—Par. (1). Pub. L. 95–559 inserted provisions to exclude a health service which the Secretary, upon application of a health maintenance organization, determines is unusual and infrequently provided and not necessary for protection of individual health and that the Secretary publish in Federal Register each determination made by him under preceding sentence.

1976—Par. (1). Pub. L. 94–460, § 104(a), substituted reference to immunization, well-child care from birth, periodic health evaluations for adults, and children's ear examinations conducted to determine need for hearing correction for reference to preventive dental care for children in (H) and, in the provisions following subpar. (H), inserted reference to ''other health care personnel''.

Par. (2). Pub. L. 94–460, § 104(b), substituted ''basic health service'' for ''basic health service under paragraph (1)(A) or (1)(H)'' in subpars. (B) and (C), added subpar. (G), and inserted reference to ''other health care personnel'' in provisions following subpar. (G).

Par. (4)(C). Pub. L. 94–460, §§ 102(b)(1), 106, substituted ''as their principal professional activity engage in the coordinated practice of their profession and as a group responsibility have substantial responsibility for the delivery of health services to members of a health maintenance organization'' for ''as their principal professional activity and as a group responsibility engage in the coordinated practice of their profession for a health maintenance organization'' in cl. (i), substituted ''similar plan unrelated to the provision of specific health services'' for ''plan'' in cl. (ii), struck out former cl. (iv) which covered the utilization of additional professional personnel, allied health professions personnel, and other health personnel as are available and appropriate for the effective and efficient delivery of the services of the members of the group, redesignated former cl. (v) as (iv), and added cl. (v).

Par. (5)(B). Pub. L. 94–460, § 102(b)(2), struck out former cl. (i) which covered the utilization of additional professional personnel, allied health professions personnel, and other personnel as are available and appropriate for the effective and efficient delivery of the services of the persons who are parties to the arrangement, and redesignated former cls. (ii) and (iii) as (i) and (ii), respectively.

Par. (6). Pub. L. 94–460, § 117(b)(1), substituted provisions defining ''health systems agency'' for provisions defining ''section 314(a) State health planning agency'' and ''section 314(b) areawide health planning agency''.

Par. (7). Pub. L. 94–460, § 117(b)(2), substituted ''State health planning and development agency which'' for ''section 314(a) State health planning agency whose section 314(a) plan'' and ''health systems agency designated for a health service area which'' for ''section 314(b) areawide health planning agency whose section 314(b) plan''.

Par. (8). Pub. L. 94–460, § 105(b), (c), substituted ''to reflect differences in marketing costs and the different administrative costs'' for ''to reflect the different administrative costs'' in subpar. (A) preceding cl. (i), added subpar. (B), and redesignated former subpar. (B) as (C).

EFFECTIVE AND TERMINATION DATES OF 1986 AMENDMENT

Section 812(b)(1) of Pub. L. 99–660, which provided that amendment by subsection (a), amending this section, was to take effect on Oct. 1, 1985, and was to cease to be in effect on Apr. 1, 1988, was repealed by Pub. L. 100–517, § 6(a), Oct. 24, 1988, 102 Stat. 2579.

Section 815 of title VIII of Pub. L. 99–660 provided that:

''(a) Except as provided in subsection (b) and section 812(b) [enacting provisions set out as notes above and below], this title and the amendments made by this title [amending this section and sections 300e–4, 300e–5 to 300e–10, 300e–16, and 300e–17 of this title, repealing sections 300e–2, 300e–3, and 300e–4a of this title, and enacting provisions set out as notes under this section and sections 201, 300e, 300e–4, and 300e–5 of this title] shall take effect on October 1, 1985.

''(b) Section 813 [enacting provisions set out as a note under section 300e of this title] shall take effect on the date of enactment of this Act [Nov. 14, 1986].''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, except that amendment of pars. (1) and (2) of this section by section 104 of Pub. L. 94–460 and the amendment of pars. (4)(C) and (5)(B) of this section by sections 102 and 106 of Pub. L. 94–460 applicable with respect to grants, contracts, loans, and loan guarantees made under sections 300e–2, 300e–3, and 300e–4 of this title for fiscal years beginning after Sept. 30, 1976, applicable with respect to health benefit plans offered under section 300e–9 of this title after Sept. 30, 1976, and effective for purposes of section 300e–11 of this title on Oct. 1, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

CONSTRUCTION

Section 816 of title VIII of Pub. L. 99–660 provided that: ''The provisions of this title and of the amendments made by this title [amending this section and sections 300e–4, 300e–5 to 300e–10, 300e–16, and 300e–17 of this title, repealing sections 300e–2, 300e–3, and 300e–4a of this title, and enacting provisions set out as notes under this section and sections 201, 300e, 300e–4, and 300e–5 of this title] do not authorize the appropriation of any funds for fiscal year 1986.''

BASIC HEALTH SERVICE STATUS OF CERTAIN ORGAN TRANSPLANT SERVICES AFTER APRIL 1, 1988

Section 812(b)(2) of Pub. L. 99–660, which provided that after Apr. 1, 1988, for purposes of this subchapter, no health service directly associated with an organ transplant was to be considered to be a basic health service if such service would otherwise have been added as a basic health service between Apr. 15, 1985, and Apr. 1, 1988, was repealed by Pub. L. 100–517, §6(a), Oct. 24, 1988, 102 Stat. 2579.

REPORTS RESPECTING MEDICALLY UNDERSERVED AREAS AND POPULATION GROUPS AND NON-METROPOLITAN AREAS

Section 5 of Pub. L. 93–222 directed Secretary of Health, Education, and Welfare to report to Congress the criteria used in the designation of medically underserved areas and population groups for purposes of par. (7) of this section by Dec. 29, 1973, and report to Congress the areas and population groups designated under par. (7) of this section, the comments of State and areawide health planning agencies, and areas which meet the definitional standards of par. (9) of this section for non-metropolitan areas by Dec. 29, 1974, and that the Office of Management and Budget may review such reports before their submission to Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e, 1395x, 1395mm, 1396b of this title.

§§ 300e–2, 300e–3. Repealed. Pub. L. 99–660, title VIII, § 803(a), Nov. 14, 1986, 100 Stat. 3799

Section 300e–2, act July 1, 1944, ch. 373, title XIII, §1303, as added Dec. 29, 1973, Pub. L. 93–222, §2, 87 Stat. 920; amended Oct. 8, 1976, Pub. L. 94–460, title I, §§107(a), 109(d)(1), 117(b)(3), 90 Stat. 1948, 1950, 1955; Aug. 13, 1981, Pub. L. 97–35, title IX, §947(a), 95 Stat. 577, provided for grants and contracts for feasibility surveys.

Section 300e–3, act July 1, 1944, ch. 373, title XIII, §1304, as added Dec. 29, 1973, Pub. L. 93–222, §2, 87 Stat. 921; amended Apr. 21, 1976, Pub. L. 94–273, §40, 90 Stat. 381; Oct. 8, 1976, Pub. L. 94–460, title I, §§107(b), 108(a), (b), (d)(1), 109(d)(2), (3), (e), 113(a), 117(b)(4), 90 Stat. 1948–1950, 1953, 1955; Nov. 1, 1978, Pub. L. 95–559, §§2(a), 3(a)–(c), 6, 92 Stat. 2131, 2134; July 10, 1979, Pub. L. 96–32, §2(a), 93 Stat. 82; Aug. 13, 1981, Pub. L. 97–35, title IX, §§941(c), 947(b), 95 Stat. 573, 577, provided for grants, contracts, and loan guarantees for planning and for initial development costs.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99–660, set out as an Effective Date of 1986 Amendment note under section 300e–5 of this title.

Repeal effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

§ 300e–4. Loans and loan guarantees for initial operation costs

(a) Authority

The Secretary may—

(1) make loans to public or private health maintenance organizations to assist them in meeting the amount by which their costs of operation during a period not to exceed the first sixty months of their operation exceed their revenues in that period;

(2) make loans to public or private health maintenance organizations to assist them in meeting the amount by which their costs of operation, which the Secretary determines are attributable to significant expansion in their membership or area served and which are incurred during a period not to exceed the first sixty months of their operation after such expansion, exceed their revenues in that period which the Secretary determines are attributable to such expansion; and

(3) guarantee to non-Federal lenders payment of the principal of and the interest on loans made to private health maintenance organizations for the amounts referred to in paragraphs (1) and (2).

No loan or loan guarantee may be made under this subsection for the costs of operation of a health maintenance organization unless the Secretary determines that the organization has made all reasonable attempts to meet such costs, and unless the Secretary has made a grant or loan to, entered into a contract with, or guaranteed a loan for, the organization in fiscal year 1981, 1982, 1983, 1984, or 1985 under this section or section 300e–3(b)[1] of this title (as in effect before October 1, 1985).

(b) Limitations

(1) Except as provided in paragraph (2), the aggregate amount of principal of loans made or guaranteed, or both, under subsection (a) of this section for a health maintenance organization may not exceed $7,000,000. In any twelve-month period the amount disbursed to a health maintenance organization under this section (either directly by the Secretary, by an escrow agent under the terms of an escrow agreement, or by a lender under a guaranteed loan) may not exceed $3,000,000.

(2) The cumulative total of the principal of the loans outstanding at any time which have been directly made, or with respect to which guarantees have been issued, under subsection (a) of this section may not exceed such limitations as may be specified in appropriation Acts.

(c) Source of loan funds

Loans under this section shall be made from the fund established under section 300e–7(e) of this title.

(d) Time limit on loans and loan guarantees

No loan may be made or guaranteed under this section after September 30, 1986.

(e) Repealed. Pub. L. 97–35, title IX, § 947(c), Aug. 13, 1981, 95 Stat. 577

(f) Medically underserved populations

In considering applications for loan guarantees under this section, the Secretary shall give special consideration to applications for health maintenance organizations which will serve medically underserved populations.

[1] See References in Text note below.

(July 1, 1944, ch. 373, title XIII, § 1305, as added Dec. 29, 1973, Pub. L. 93–222, § 2, 87 Stat. 924; amended Jan. 4, 1975, Pub. L. 93–641, § 8, 88 Stat. 2276; Apr. 21, 1976, Pub. L. 94–273, § 2(21), 90 Stat. 376; Oct. 8, 1976, Pub. L. 94–460, title I, §§ 107(c), 108(c), (d)(2), 109(a)(1), (2), 113(b), 90 Stat. 1949, 1953; Nov. 1, 1978, Pub. L. 95–559, §§ 2(b), 4(a), (b), 92 Stat. 2131, 2132; July 10, 1979, Pub. L. 96–32, § 2(d), 93 Stat. 82; Aug. 13, 1981, Pub. L. 97–35, title IX, §§ 943(a)–(c), 947(c), 95 Stat. 576, 577; Nov. 14, 1986, Pub. L. 99–660, title VIII, § 804(a), 100 Stat. 3800.)

REFERENCES IN TEXT

Section 300e–3(b) of this title, referred to in subsec. (a), was repealed by Pub. L. 99–660, title VIII, § 803(a), Nov. 14, 1986, 100 Stat. 3799.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–660 inserted '', and unless the Secretary has made a grant or loan to, entered into a contract with, or guaranteed a loan for, the organization in fiscal year 1981, 1982, 1983, 1984, or 1985 under this section or section 300e–3(b) of this title (as in effect before October 1, 1985)'' at end of last sentence.

1981—Subsec. (a). Pub. L. 97–35, § 943(a), in pars. (1) and (2) struck out ''nonprofit'' before ''private'', and in par. (3) substituted provisions respecting guarantees for private health maintenance organizations, for guarantees for nonprofit private health maintenance organizations.

Subsec. (b)(1). Pub. L. 97–35, § 943(b), generally revised limitations and, among many changes, increased amounts subject to coverage, and struck out requirements respecting Congressional oversight for increases in amounts.

Subsec. (d). Pub. L. 97–35, § 943(c), substituted ''1986'' for ''1981''.

Subsec. (e). Pub. L. 97–35, § 947(c), struck out subsec. (e) which related to projects in nonmetropolitan areas.

1979—Subsec. (b)(1). Pub. L. 96–32 substituted ''$4,500,000'' for ''$4,000,000'' in two places.

1978—Subsec. (a). Pub. L. 95–559, § 4(b)(1), substituted ''costs of operation'' for ''operating costs'' wherever appearing.

Subsec. (b)(1). Pub. L. 95–559, § 4(a), (b)(2), inserted ''(or $4,000,000 if the Secretary makes a written determination that such loans or loan guarantees are necessary to preserve the fiscally sound operation of the health maintenance organization and to protect against the risk of insolvency of the health maintenance organization and, within 30 days of the making of such loans or loan guarantees, furnishes the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives with written notification of the making of the loans or loan guarantees and a copy of the written determination made with respect to the loans or loan guarantees and the reasons for the determination) through September 30, 1979, and $4,000,000 thereafter'' after ''$2,500,000'' and ''(or $2,000,000 if the Secretary makes a written determination that such disbursements are necessary to preserve the fiscally sound operation of the health maintenance organization and protect against the risk of insolvency of the health maintenance organization and, within 30 days of such disbursement, furnishes the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives with written notification of the making of the disbursement and a copy of the written determination made with respect to it and the reasons for the determination) through September 30, 1979, and $2,000,000 thereafter'' after ''$1,000,000'' and substituted ''any twelve-month period'' for ''any fiscal year''.

Subsec. (d). Pub. L. 95–559, § 2(b), substituted ''September 30, 1981'' for ''September 30, 1980''.

1976—Subsec. (a)(1), (2). Pub. L. 94–460, §§ 107(c), 109(a)(1), substituted ''during a period not to exceed the first sixty months'' for ''in the period of the first thirty-six months''.

Subsec. (a)(3). Pub. L. 94–460, § 108(c), substituted reference to loans made to nonprofit private health maintenance organizations for the amounts referred to in paragraph (1) or (2), or to other private health maintenance organizations for such amounts but only if the health maintenance organization will serve a medically underserved population for reference to loans made to any private health maintenance organization (other than a private nonprofit health maintenance organization) for the amounts referred to in paragraph (1) or (2), but only if such health maintenance organization will serve a medically underserved population.

Subsec. (b)(1). Pub. L. 94–460, § 109(a)(2), substituted ''In any fiscal year the amount disbursed to a health maintenance organization under this section (either directly by the Secretary or by an escrow agent under the terms of an escrow agreement or by a lender under a loan guaranteed under this section) may not exceed $1,000,000'' for ''In any fiscal year, the amount disbursed under a loan or loans made or guaranteed under this section for a health maintenance organization may not exceed $1,000,000,000''.

Subsec. (d). Pub. L. 94–460, § 113(b), substituted ''No loan may be made or guaranteed under this section after September 30, 1980'' for ''A loan or loan guarantee may be made under this section through the fiscal year ending June 30, 1978''.

Pub. L. 94–273 substituted ''September'' for ''June''.

Subsec. (f). Pub. L. 94–460, § 108(d)(2), added subsec. (f).

1975—Subsec. (b)(1). Pub. L. 93–641 substituted provisions that amount disbursed under a loan or loans made or guaranteed under this section for a health maintenance organization may not exceed $1,000,000,000 for provisions that principal amount of any loan made or guaranteed under subsec. (a) of this section for a health maintenance organization may not exceed $1,000,000.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 804(b) of Pub. L. 99–660 provided that: ''The amendment made by subsection (a) [amending this section] does not apply to any loan or loan guarantee for the initial costs of operation of a health maintenance organization made under title XIII of the Public Health Service Act [this subchapter] before October 1, 1985.''

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(d) of Pub. L. 95–559 provided that: ''The amendments made by this section [amending this section and section 300e–7 of this title] shall only be effective for fiscal years beginning on or after October 1, 1978.''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, except that the amendment of subsec. (a)(1), (2) of this section by section 107(c) of Pub. L. 94–460 applicable with respect to grants, contracts, loans, and loan guarantees made under this section and sections 300e–2 and 300e–3 of this title for fiscal years beginning after Sept. 30, 1976, and except that the amendment of subsec. (a)(1), (2) of this section by section 109(a)(1) of Pub. L. 94–460 applicable with respect to loan guarantees made under this section after Sept. 30, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300e–5 of this title.

§ 300e–4a. Repealed. Pub. L. 99–660, title VIII, § 805(a), Nov. 14, 1986, 100 Stat. 3800

Section, act July 1, 1944, ch. 373, title XIII, § 1305A, as added Nov. 1, 1978, Pub. L. 95–559, § 5(a), 92 Stat. 2133;

amended July 10, 1979, Pub. L. 96–32, §2(e), 93 Stat. 82; Aug. 13, 1981, Pub. L. 97–35, title IX, §944, 95 Stat. 576, related to loans and loan guarantees for acquisition and construction of ambulatory health care facilities.

EFFECTIVE DATE OF REPEAL

Repeal not applicable to any loan or loan guarantee made under this section before Oct. 1, 1985, see section 805(c) of Pub. L. 99–660, set out as an Effective Date of 1986 Amendment note under section 300e–5 of this title.

Repeal effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

§ 300e–5. Application requirements

(a) Submission to and approval by Secretary required for making loans and loan guarantees

No loan or loan guarantee may be made under this subchapter unless an application therefor has been submitted to, and approved by, the Secretary.

(b) Application contents

The Secretary may not approve an application for a loan or loan guarantee under this subchapter unless—

(1) such application meets the requirements of section 300e–7 of this title;

(2) in the case of an application for assistance under section 300e–4 of this title, he determines that the applicant making the application would not be able to complete the project or undertaking for which the application is submitted without the assistance applied for;

(3) the application contains satisfactory specification of the existing or anticipated (A) population group or groups to be served by the proposed or existing health maintenance organization described in the application, (B) membership of such organization, (C) methods, terms, and periods of the enrollment of members of such organization, (D) estimated costs per member of the health and educational services to be provided by such organization and the nature of such costs, (E) sources of professional services for such organization, and organizational arrangements of such organization for providing health and educational services, (F) organizational arrangements of such organization for an ongoing quality assurance program in conformity with the requirements of section 300e(c) of this title, (G) sources of prepayment and other forms of payment for the services to be provided by such organization, (H) facilities, and additional capital investments and sources of financing therefor, available to such organization to provide the level and scope of services proposed, (I) administrative, managerial, and financial arrangements and capabilities of such organization, (J) role for members in the planning and policymaking for such organization, (K) grievance procedures for members of such organization, and (L) evaluations of the support for and acceptance of such organization by the population to be served, the sources of operating support, and the professional groups to be involved or affected thereby;

(4) contains or is supported by assurances satisfactory to the Secretary that the applicant making the application will, in accordance with such criteria as the Secretary shall by regulation prescribe, enroll, and maintain an enrollment of the maximum number of members that its available and potential resources (as determined under regulations of the Secretary) will enable it to effectively serve;

(5) in the case of an application made for a project which previously received a grant, contract, loan, or loan guarantee under this subchapter, such application contains or is supported by assurances satisfactory to the Secretary that the applicant making the application has the financial capability to adequately carry out the purposes of such project and has developed and operated such project in accordance with the requirements of this subchapter and with the plans contained in previous applications for such assistance;

(6) the application contains such assurances as the Secretary may require respecting the intent and the ability of the applicant to meet the requirements of paragraphs (1) and (2) of section 300e(b) of this title respecting the fixing of basic health services payments and supplemental health services payments under a community rating system; and

(7) the application is submitted in such form and manner, and contains such additional information, as the Secretary shall prescribe in regulations.

An organization making multiple applications for more than one loan or loan guarantee under this subchapter, simultaneously or over the course of time, shall not be required to submit duplicate or redundant information but shall be required to update the specifications (required by paragraph (3)) respecting the existing or proposed health maintenance organization in such manner and with such frequency as the Secretary may by regulation prescribe. In determining, for purposes of paragraph (2), whether an applicant would be able to complete a project or undertaking without the assistance applied for, the Secretary shall not consider any asset of the applicant the obligation of which for such undertaking or project would jeopardize the fiscal soundness of the applicant.

(c) Regulations

The Secretary shall by regulation establish standards and procedures for health systems agencies to follow in reviewing and commenting on applications for loans and loan guarantees under this subchapter.

(July 1, 1944, ch. 373, title XIII, §1306, as added Dec. 29, 1973, Pub. L. 93–222, §2, 87 Stat. 925; amended Oct. 8, 1976, Pub. L. 94–460, title I, §§105(a)(3), 117(b)(5), (6), 90 Stat. 1948, 1955; Nov. 1, 1978, Pub. L. 95–559, §12(b), (c), 92 Stat. 2140; Nov. 14, 1986, Pub. L. 99–660, title VIII, §§803(b)(1), 805(b), 806, 100 Stat. 3799, 3800.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–660, §803(b)(1)(A), substituted ''loan'' for ''grant, contract, loan,''.

Subsec. (b). Pub. L. 99–660, §803(b)(1)(A), substituted ''loan'' for ''grant, contract, loan,'' in introductory text and in second sentence.

Subsec. (b)(1). Pub. L. 99–660, §803(b)(1)(B), struck out ''in the case of an application for assistance under sec-

tion 300e–2 or 300e–3 of this title, such application meets the application requirements of such section and in the case of an application for a loan or loan guarantee,'' before ''such application''.

Subsec. (b)(2). Pub. L. 99–660, § 805(b), struck out reference to section 300e–4a.

Pub. L. 99–660, § 803(b)(1)(C), struck out reference to section 300e–3.

Subsec. (b)(5) to (8). Pub. L. 99–660, § 806, redesignated pars. (6), (7), and (8) as (5), (6), and (7), respectively, and struck out former par. (5) which read as follows: ''each health systems agency designated for a health service area which covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted;''.

Subsec. (c). Pub. L. 99–660, § 803(b)(1)(D), substituted ''loans'' for ''grants, contracts, loans,''.

1978—Subsec. (b). Pub. L. 95–559 in par. (2) inserted ''in the case of an application for assistance under section 300e–3, 300e–4, or 300e–4a of this title,'' before ''he determines'' and in provisions following par. (8) inserted provision that in determining, for purposes of par. (2), whether an applicant would be able to complete a project or undertaking without the assistance applied for, the Secretary not consider any asset of the applicant the obligation of which for such undertaking or project would jeopardize the fiscal soundness of the applicant.

1976—Subsec. (b)(5). Pub. L. 94–460, § 117(b)(5), substituted ''each health systems agency designated for a health service area which covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted;'' for ''the section 314(b) areawide health planning agency whose section 314(b) plan covers (in whole or in part) the area to be served by the health maintenance organization for which such application is submitted, or if there is no such agency, the section 314(a) State health planning agency whose section 314(a) plan covers (in whole or in part) such area, has, in accordance with regulations of the Secretary under subsection (c) of this section, been provided an opportunity to review the application and to submit to the Secretary for his consideration its recommendations respecting approval of the application or if under applicable State law such an application may not be submitted without the approval of the section 314(b) areawide health planning agency or the section 314(a) State health planning agency, the required approval has been obtained;''.

Subsec. (b)(7), (8). Pub. L. 94–460, § 105(a)(3), added par. (7) and redesignated former par. (7) as (8).

Subsec. (c). Pub. L. 94–460, § 117(b)(6), substituted ''health systems agencies'' for ''section 314(b) areawide health planning agencies and section 314(a) State health planning agencies''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 803(c) of Pub. L. 99–660 provided that: ''The amendments made by this section [amending this section and sections 300e–6, 300e–8, and 300e–16 of this title and repealing sections 300e–2 and 300e–3 of this title] do not apply to any grant made or contract entered into under title XIII of the Public Health Service Act [this subchapter] before October 1, 1985.''

Section 805(c) of Pub. L. 99–660 provided that: ''The amendments made by this section [amending this section and repealing section 300e–4a of this title] do not apply to any loan or loan guarantee made under section 1305A of the Public Health Service Act [former section 300e–4a of this title] before October 1, 1985.''

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e–6, 300e–16 of this title.

§ 300e–6. Administration of assistance programs

(a) Recordkeeping; audit and examination

(1) Each recipient of a loan or loan guarantee under this subchapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of the loan (directly made or guaranteed), the total cost of the undertaking in connection with which the loan was given or used, the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary, or any of his duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipients of a loan or loan guarantee under this subchapter which relate to such assistance.

(b) Report upon expiration of period

Upon expiration of the period for which a loan or loan guarantee was provided an entity under this subchapter, such entity shall make a full and complete report to the Secretary in such manner as he may by regulation prescribe. Each such report shall contain, among such other matters as the Secretary may by regulation require, descriptions of plans, developments, and operations relating to the matters referred to in section 300e–5(b)(3) of this title.

(c) Repealed. Pub. L. 99–660, title VIII, § 803(a), Nov. 14, 1986, 100 Stat. 3799

(d) Other entities considered health maintenance organizations

An entity which provides health services to a defined population on a prepaid basis and which has members who are entitled to insurance benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] or to medical assistance under a State plan approved under title XIX of such Act [42 U.S.C. 1396 et seq.] may be considered as a health maintenance organization for purposes of receiving assistance under this subchapter if—

(1) with respect to its members who are entitled to such insurance benefits or to such medical assistance it (A) provides health services in accordance with section 300e(b) of this title, except that (i) it does not furnish to those members the health services (within the basic health services) for which it may not be compensated under such title XVIII [42 U.S.C. 1395 et seq.] or such State plan, and (ii) it does not fix the basic or supplemental health services payment for such members under a community rating system, and (B) is organized and operated in the manner prescribed by section 300e(c) of this title, except that it does not assume full financial risk on a prospective basis for the provision to such members of basic or supplemental health services with respect to which it is not required under such title XVIII or such State plan to assume such financial risk; and

(2) with respect to its other members it provides health services in accordance with section 300e(b) of this title and is organized and operated in the manner prescribed by section 300e(c) of this title.

An entity which provides health services to a defined population on a prepaid basis and which has members who are enrolled under the health benefits program authorized by chapter 89 of title 5, may be considered as a health maintenance organization for purposes of receiving assistance under this subchapter if with respect to its other members it provides health services in accordance with section 300e(b) of this title and is organized and operated in the manner prescribed by section 300e(c) of this title.

(July 1, 1944, ch. 373, title XIII, §1307, as added Dec. 29, 1973, Pub. L. 93–222, §2, 87 Stat. 926; amended Oct. 8, 1976, Pub. L. 94–460, title I, §§109(b)(1), 112, 90 Stat. 1950, 1953; Aug. 13, 1981, Pub. L. 97–35, title IX, §943(d), 95 Stat. 576; Nov. 14, 1986, Pub. L. 99–660, title VIII, §803(a), (b)(2), 100 Stat. 3799, 3800.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§1395 et seq.) and XIX (§1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–660, §803(b)(2), substituted ''loan or loan guarantee'' for ''grant, contract, loan, or loan guarantee'', ''proceeds of the loan'' for ''proceeds of the grant, contract, or loan'', and ''with which the loan was given'' for ''with which such assistance was given''.

Subsecs. (a)(2), (b). Pub. L. 99–660, §803(b)(2)(A), substituted ''loan or loan guarantee'' for ''grant, contract, loan, or loan guarantee''.

Subsec. (c). Pub. L. 99–660, §803(a), struck out subsec. (c) which read as follows: ''If in any fiscal year the funds appropriated under section 300e–8 of this title are insufficient to fund all applications approved under this subchapter for that fiscal year, the Secretary shall, after applying the applicable priorities under sections 300e–2 and 300e–3 of this title, give priority to the funding of applications for projects which the Secretary determines are the most likely to be economically viable.''

1981—Subsec. (e). Pub. L. 97–35 struck out subsec. (e) which related to limitation on cumulative total of loan guarantees in any fiscal year.

1976—Subsec. (d). Pub. L. 94–460, §112, inserted sentence at end setting conditions upon which an entity providing health services to a defined population on a prepaid basis may be considered as a health maintenance organization for purposes of receiving assistance under this subchapter.

Subsec. (e). Pub. L. 94–460, §109(b)(1), inserted ''for a private health maintenance organization (other than a private nonprofit health maintenance organization)'' after ''may be made'', and ''for private health maintenance organizations (other than private nonprofit health maintenance organizations)'' after ''guaranteed''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99–660, set out as a note under section 300e–5 of this title.

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–7. General provisions relating to loan guarantees and loans

(a) Conditions

(1) The Secretary may not approve an application for a loan guarantee under this subchapter unless he determines that (A) the terms, conditions, security (if any), and schedule and amount of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for loans with similar maturities, terms, conditions, and security and the risks assumed by the United States, and (B) the loan would not be available on reasonable terms and conditions without the guarantee under this subchapter.

(2)(A) The United States shall be entitled to recover from the applicant for a loan guarantee under this subchapter the amount of any payment made pursuant to such guarantee, unless the Secretary for good cause waives such right of recovery; and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

(B) To the extent permitted by subparagraph (C), any terms and conditions applicable to a loan guarantee under this subchapter (including terms and conditions imposed under subparagraph (D)) may be modified by the Secretary to the extent he determines it to be consistent with the financial interest of the United States.

(C) Any loan guarantee made by the Secretary under this subchapter shall be incontestable (i) in the hands of an applicant on whose behalf such guarantee is made unless the applicant engaged in fraud or misrepresentation in securing such guarantee, and (ii) as to any person (or his successor in interest) who makes or contracts to make a loan to such applicant in reliance thereon unless such person (or his successor in interest) engaged in fraud or misrepresentation in making or contracting to make such loan.

(D) Guarantees of loans under this subchapter shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this subchapter will be achieved.

(b) Application requirements

(1) The Secretary may not approve an application for a loan under this subchapter unless—

(A) the Secretary is reasonably satisfied that the applicant therefor will be able to make payments of principal and interest thereon when due, and

(B) the applicant provides the Secretary with reasonable assurances that there will be available to it such additional funds as may be necessary to complete the project or undertaking with respect to which such loan is requested.

(2) Any loan made under this subchapter shall (A) have such security, (B) have such maturity date, (C) be repayable in such installments, (D) on the date the loan is made, bear interest at a rate comparable to the rate of interest prevailing on such date with respect to marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges, and (E) be subject to such other terms and conditions (including provisions for recovery in case of default) as the Secretary determines to be necessary to carry out the purposes of this subchapter while adequately protecting the financial interests of the United States. On the date disbursements are made under a loan after the initial disbursement under the loan, the Secretary may change the rate of interest on the amount of the loan disbursed on that date to a rate which is comparable to the rate of interest prevailing on the date the subsequent disbursement is made with respect to marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges.

(3) The Secretary may, for good cause but with due regard to the financial interests of the United States, waive any right of recovery which he has by reason of the failure of a borrower to make payments of principal of and interest on a loan made under this subchapter, except that if such loan is sold and guaranteed, any such waiver shall have no effect upon the Secretary's guarantee of timely payment of principal and interest.

(c) Sale of loans

(1) The Secretary may from time to time, but with due regard to the financial interests of the United States, sell loans made by him under this subchapter.

(2) The Secretary may agree, prior to his sale of any such loan, to guarantee to the purchaser (and any successor in interest of the purchaser) compliance by the borrower with the terms and conditions of such loan. Any such agreement shall contain such terms and conditions as the Secretary considers necessary to protect the financial interests of the United States or as otherwise appropriate. Any such agreement may (A) provide that the Secretary shall act as agent of any such purchaser for the purpose of collecting from the borrower to which such loan was made and paying over to such purchaser, any payments of principal and interest payable by such organization under such loan; and (B) provide for the repurchase by the Secretary of any such loan on such terms and conditions as may be specified in the agreement. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this paragraph.

(3) After any loan under this subchapter to a public health maintenance organization has been sold and guaranteed under this subsection, interest paid on such loan which is received by the purchaser thereof (or his successor in interest) shall be included in the gross income of the purchaser of the loan (or his successor in interest) for the purpose of chapter 1 of title 26.

(4) Amounts received by the Secretary as proceeds from the sale of loans under this subsection shall be deposited in the loan fund established under subsection (e) of this section.

(5) Any reference in this subchapter (other than in this subsection and in subsection (d) of this section) to a loan guarantee under this subchapter does not include a loan guarantee made under this subsection.

(d) Loan guarantee fund

(1) There is established in the Treasury a loan guarantee fund (hereinafter in this subsection referred to as the ''fund'') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts, to enable him to discharge his responsibilities under loan guarantees issued by him under this subchapter and to take the action authorized by subsection (f) of this section. There are authorized to be appropriated from time to time such amounts as may be necessary to provide the sums required for the fund. To the extent authorized in appropriation Acts, there shall also be deposited in the fund amounts received by the Secretary in connection with loan guarantees under this subchapter and other property or assets derived by him from his operations respecting such loan guarantees, including any money derived from the sale of assets.

(2) If at any time the sums in the funds are insufficient to enable the Secretary to discharge his responsibilities under guarantees issued by him before October 1, 1986, under this subchapter and to take the action authorized by subsection (f) of this section, he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued under this paragraph and for that purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which the securities may be issued under that chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this paragraph shall be deposited in the fund and redemption of such notes

and obligations shall be made by the Secretary from the fund.

(e) Loan fund

There is established in the Treasury a loan fund (hereinafter in this subsection referred to as the ''fund'') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts, to enable him to make loans under this subchapter and to take the action authorized by subsection (f) of this section. There shall also be deposited in the fund amounts received by the Secretary as interest payments and repayment of principal on loans made under this subchapter and other property or assets derived by him from his operations respecting such loans, from the sale of loans under subsection (c) of this section, or from the sale of assets.

(f) Actions to protect interest of United States in event of default

The Secretary may take such action as he deems appropriate to protect the interest of the United States in the event of a default on a loan made or guaranteed under this subchapter, including taking possession of, holding, and using real property pledged as security for such a loan or loan guarantee.

(July 1, 1944, ch. 373, title XIII, §1308, as added Dec. 29, 1973, Pub. L. 93–222, §2, 87 Stat. 927; amended Oct. 8, 1976, Pub. L. 94–460, title I, §109(b)(2), (c), 90 Stat. 1950; Nov. 1, 1978, Pub. L. 95–559, §4(c), 92 Stat. 2132; Aug. 13, 1981, Pub. L. 97–35, title IX, §945, 95 Stat. 577; Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095; Nov. 14, 1986, Pub. L. 99–660, title VIII, §807, 100 Stat. 3800.)

CODIFICATION

In subsec. (d)(2), ''chapter 31 of title 31'' and ''that chapter'' substituted for ''the Second Liberty Bond Act'' and ''that Act'', respectively, on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1986—Subsec. (c)(3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

Subsec. (d)(2). Pub. L. 99–660 inserted ''before October 1, 1986,'' after ''guarantees issued by him''.

1981—Subsec. (b)(2). Pub. L. 97–35 inserted provisions relating to changes in the rate of interest by the Secretary, and in cl. (D) made changes in nomenclature.

1978—Subsec. (d). Pub. L. 95–559, §4(c)(2)(A), in pars. (1) and (2) inserted ''and to take the action authorized by subsection (f) of this section'' after ''by him under this subchapter''.

Subsec. (e). Pub. L. 95–559, §4(c)(2)(B), inserted ''and to take the action authorized by subsection (f) of this section'' after ''loans under this subchapter''.

Subsec. (f). Pub. L. 95–559, §4(c)(1), added subsec. (f).

1976—Subsec. (a)(1)(A). Pub. L. 94–460, §109(c)(1), substituted ''for loans with similar maturities, terms, conditions, and security'' for ''for similar loans''.

Subsec. (b)(2)(D). Pub. L. 94–460, §109(c)(2), substituted ''marketable obligations of the United States of comparable maturities, adjusted to provide for appropriate administrative charges'' for ''loans guaranteed under this subchapter''.

Subsec. (c)(5). Pub. L. 94–460, §109(b)(2), added par. (5).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–559 effective only for fiscal years beginning on or after October 1, 1978, see section 4(d) of Pub. L. 95–559, set out as a note under section 300e–4 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, except that the amendment by section 109(c) of Pub. L. 94–460 applicable with respect to loan guarantees made under section 300e–4 of this title after Sept. 30, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e–4, 300e–5, 300e–8 of this title.

§ 300e–8. Authorization of appropriations

(a) For grants under section 300e–16 of this title there is authorized to be appropriated $1,000,000 for each of the fiscal years 1982, 1983, and 1984.

(b) To meet the obligations of the loan fund established under section 300e–7(e) of this title resulting from defaults on loans made from the fund and to meet the other obligations of the fund, there is authorized to be appropriated to the loan fund for fiscal years 1987, 1988, and 1989, such sums as may be necessary.

(July 1, 1944, ch. 373, title XIII, §1309, as added Dec. 29, 1973, Pub. L. 93–222, §2, 87 Stat. 930; amended Oct. 8, 1976, Pub. L. 94–460, title I, §113(c), 90 Stat. 1954; Aug. 1, 1977, Pub. L. 95–83, title I, §105(b), 91 Stat. 384; Nov. 1, 1978, Pub. L. 95–559, §§2(c), 7(b), 92 Stat. 2131, 2135; Aug. 13, 1981, Pub. L. 97–35, title IX, §941(a), (b), 95 Stat. 572; Nov. 14, 1986, Pub. L. 99–660, title VIII, §§803(b)(3), 811, 100 Stat. 3800, 3801.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–660, §803(b)(3), struck out par. (2) designation and struck out par. (1) which read as follows: ''For grants and contracts under sections 300e–2 and 300e–3 of this title there is authorized to be appropriated $20,000,000 for the fiscal years 1982, 1983, and 1984. No funds appropriated under this paragraph may be expended or obligated for a grant or contract unless the entity received a grant or contract under section 242a or 242b of this title during or before the fiscal year 1981.''

Subsec. (b). Pub. L. 99–660, §811, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''To maintain in the loan fund established under section 300e–7(e) of this title for the purpose of making new loans a balance of at least $5,000,000 at the end of each fiscal year and to meet the obligations of the loan fund resulting from defaults on loans made from the fund and to meet the other obligations of the fund, there is authorized to be appropriated to the loan fund for fiscal years 1982, 1983, and 1984, such sums as may be necessary to assure such balance and meet such obligations.''

1981—Subsec. (a). Pub. L. 97–35, §941(a), substituted provisions authorizing appropriations for fiscal years 1982, 1983, and 1984, and provisions respecting prior receipt of funds, for provisions authorizing appropriations for fiscal years ending June 30, 1974, 1975, and 1976, and Sept. 30, 1977, 1978, 1979, 1980, and 1981.

Subsec. (b). Pub. L. 97–35, §941(b), substituted provisions relating to maintenance of the loan fund for fiscal years 1982, 1983, and 1984, for provisions relating to

maintenance of the loan fund for fiscal years ending June 30, 1974, and 1975.

1978—Subsec. (a). Pub. L. 95–559 substituted ''300e–3(b) and 300e–16 of this title'' for ''and 300e–3(b) of this title'' and '', $31,000,000 for the fiscal year ending September 30, 1979, $65,000,000 for the fiscal year ending September 30, 1980, and $68,000,000 for the fiscal year ending September 30, 1981'' for ''; and for the purpose of making payments under grants and contracts under section 300e–3(b) of this title for the fiscal year ending September 30, 1979, there is authorized to be appropriated $50,000,000''.

1977—Subsec. (a). Pub. L. 95–83 substituted, where appearing the second time, ''September 30, 1979'' for ''September 30, 1977''.

1976—Subsec. (a). Pub. L. 94–460 substituted ''$40,000,000 for the fiscal year ending June 30, 1976, $45,000,000 for the fiscal year ending September 30, 1977, and $45,000,000 for the fiscal year ending September 30, 1978;'' for ''and $85,000,000 for the fiscal year ending June 30, 1976;'' and ''for the fiscal year ending September 30, 1977, there is authorized to be appropriated $50,000,000'' for ''for the fiscal year ending June 30, 1977, there is authorized to be appropriated $85,000,000''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 803(b)(3) of Pub. L. 99–660 not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99–660, set out as a note under section 300e–5 of this title.

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 7(b) of Pub. L. 95–559 effective only for fiscal years beginning on or after Oct. 1, 1978, see section 7(c) of Pub. L. 95–559, set out as an Effective Date note under section 300e–16 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–9. Employees' health benefits plan

(a) Regulations; membership option; acceptance of offer

(1) In accordance with regulations which the Secretary shall prescribe—

(A) each employer—

(i) which is now or hereafter required during any calendar quarter to pay its employees the minimum wage prescribed by section 206 of title 29 (or would be required to pay its employees such wage but for section 213(a) of title 29), and

(ii) which during such calendar quarter employed an average number of employees of not less than 25,

shall include in any health benefits plan, and

(B) any State and each political subdivision thereof which during any calendar quarter employed an average number of employees of not less than 25, as a condition of the payment to the State of funds under section 246(d), 247b, 247c, 300a, 300m–4, or 300p–3 of this title, shall include in any health benefits plan,

offered to such employees in the calendar year beginning after such calendar quarter the option of membership in qualified health maintenance organizations which are engaged in the provision of basic health services in health maintenance organization service areas in which at least 25 of such employees reside.

(2) If any of the employees of an employer or State or political subdivision thereof described in paragraph (1) are represented by a collective bargaining representative or other employee representative designated or selected under any law, offer of membership in a qualified health maintenance organization required by paragraph (1) to be made in a health benefits plan offered to such employees (A) shall first be made to such collective bargaining representative or other employee representative, and (B) if such offer is accepted by such representative, shall then be made to each such employee.

(b) Basic health service requirement

If there is more than one qualified health maintenance organization which is engaged in the provision of basic and supplemental health services in the area in which the employees of an employer or a State or political subdivision reside and if—

(1) one or more of such organizations provides more than one-half of its basic health services which are provided by physicians through physicians or other health professionals who are members of the staff of the organization or a medical group (or groups) and provides at least 90 percent of such services through physicians described in section 300e(b)(3)(A) of this title, and

(2) one or more of such organizations provides its basic health services which are provided by physicians through (A) an individual practice association (or associations), (B) individual physicians and other health professionals under contract with the organization, or (C) a combination of such association (or associations), medical group (or groups), staff, and individual physicians and other health professionals under contract with the organization and provides no more than 10 percent of such services through physicians who are not described in section 300e(b)(3)(A) of this title,

then of the qualified health maintenance organizations included in a health benefits plan of such employer or State or political subdivision pursuant to subsection (a) of this section at least one shall be an organization which provides basic health services as described in clause (1) and at least one shall be an organization which provides basic health services as described in clause (2).

(c) Effect on costs; payroll deductions; nondiscriminatory contributions for services

No employer or State or political subdivision shall be required to pay more for health benefits as a result of the application of this section than would otherwise be required by any prevailing collective bargaining agreement or other legally enforceable contract for the provision of health benefits between the employer or State or political subdivision and its employees. Each employer or State or political subdivision which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefits plan to which an employee contribution is not required

and which is required by subsection (a) of this section to offer his employees the option of membership in a qualified health maintenance organization shall, with the consent of an employee who exercises such option, arrange for the employee's contribution for such membership to be paid through payroll deductions. If a health benefits plan offered by an employer or a State or political subdivision under subsection (a) of this section includes contributions for services offered under the plan, the employer or State or political subdivision shall make a contribution under the plan for services offered by a qualified health maintenance organization in an amount which does not financially discriminate against an employee who enrolls in such organization. For purposes of the preceding sentence, an employer's or a State's or political subdivision's contribution does not financially discriminate if the employer's or State's or political subdivision's method of determining the contributions on behalf of all employees is reasonable and is designed to assure employees a fair choice among health benefits plans.

(d) "Qualified health maintenance organization" defined

For purposes of this section, the term ''qualified health maintenance organization'' means (1) a health maintenance organization which has provided assurances satisfactory to the Secretary that it provides basic and supplemental health services to its members in the manner prescribed by section 300e(b) of this title and that it is organized and operated in the manner prescribed by section 300e(c) of this title, and (2) an entity which proposes to become a health maintenance organization and which the Secretary determines will when it becomes operational provide basic and supplemental health services to its members in the manner prescribed by section 300e(b) of this title and will be organized and operated in the manner prescribed by section 300e(c) of this title.

(e) Civil penalty; notice and presentation of views; review

(1) Any employer who knowingly does not comply with one or more of the requirements of subsection (a), (b), or (c) of this section shall be subject to a civil penalty of not more than $10,000. If such noncompliance continues, a civil penalty may be assessed and collected under this subsection for each thirty-day period such noncompliance continues. Such penalty may be assessed by the Secretary and collected in a civil action brought by the United States in a United States district court.

(2) In any proceeding by the Secretary to assess a civil penalty under this subsection, no penalty shall be assessed until the employer charged shall have been given notice and an opportunity to present its views on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the Secretary shall consider the gravity of the noncompliance and the demonstrated good faith of the employer charged in attempting to achieve rapid compliance after notification by the Secretary of a noncompliance.

(3) In any civil action brought to review the assessment of a civil penalty assessed under this subsection, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty and in any civil action to collect such a civil penalty, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty unless in a prior civil action to review the assessment of such penalty the court held a trial de novo on such assessment.

(f) "Employer" defined

For purposes of this section, the term ''employer'' does not include (1) the Government of the United States, the government of the District of Columbia or any territory or possession of the United States, a State or any political subdivision thereof, or any agency or instrumentality (including the United States Postal Service and Postal Rate Commission) of any of the foregoing, except that such term includes nonappropriated fund instrumentalities of the Government of the United States; or (2) a church, convention or association of churches, or any organization operated, supervised or controlled by a church, convention or association of churches which organization (A) is an organization described in section 501(c)(3) of title 26, and (B) does not discriminate (i) in the employment, compensation, promotion, or termination of employment of any personnel, or (ii) in the extension of staff or other privileges to any physician or other health personnel, because such persons seek to obtain or obtained health care, or participate in providing health care, through a health maintenance organization.

(g) Termination of payment for failure to comply

If the Secretary, after reasonable notice and opportunity for hearing to a State, finds that it or any of its political subdivisions has failed to comply with one or more of the requirements of subsection (a) of this section, the Secretary shall terminate payments to such State under sections 246(d), 247b, 247c, 300a, 300m–4, and 300p–3 of this title and notify the Governor of such State that further payments under such sections will not be made to the State until the Secretary is satisfied that there will no longer be any such failure to comply.

(July 1, 1944, ch. 373, title XIII, § 1310, as added Dec. 29, 1973, Pub. L. 93–222, § 2, 87 Stat. 930; amended Oct. 8, 1976, Pub. L. 94–460, title I, § 110(a), 90 Stat. 1950; Nov. 1, 1978, Pub. L. 95–559, §§ 8, 12(a)(1), 92 Stat. 2135, 2140; July 10, 1979, Pub. L. 96–32, § 2(f), 93 Stat. 82; Aug. 13, 1981, Pub. L. 97–35, title IX, §§ 942(a)(3), (4), 946, 95 Stat. 573, 577; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095; Nov. 14, 1986, Pub. L. 99–660, title VIII, § 808, 100 Stat. 3801; Oct. 24, 1988, Pub. L. 100–517, §§ 4(b), 7(a)(1), (2), (b), 102 Stat. 2578, 2580.)

AMENDMENT OF SECTION

Pub. L. 100–517, § 7(b), Oct. 24, 1988, 102 Stat. 2580, provided that, effective 7 years after Oct. 24, 1988, this section is amended to read as follows:

§ 300e–9. Employees' health benefits plans

(a) Regulations; membership option

In accordance with regulations which the Secretary shall prescribe—

(1) each employer—

(A) which is required during any calendar quarter to pay its employees the minimum wage prescribed by section 206 of title 29 (or would be required to pay its employees such wage but for section 213(a) of title 29), and

(B) which during such calendar quarter employed an average number of employees of not less than 25, and

(2) any State and each political subdivision thereof which during any calendar quarter employed an average number of employees of not less than 25, as a condition of payment to the State of funds under section 247b, 247c, or 300a of this title,

which offers to its employees in the calendar year beginning after such calendar quarter the option of membership in a qualified health maintenance organization which is engaged in the provision of basic health services in a health maintenance organization service area in which at least 25 of such employees reside shall meet the requirements of subsection (b) of this section with respect to any qualified health maintenance organization offered by the employer or State or political subdivision.

(b) Nondiscriminatory contributions for services; payroll deductions; effect on costs

(1) If a health benefits plan offered by an employer or a State or political subdivision includes contributions for services offered under the plan, the employer or State or political subdivision shall make a contribution under the plan for services offered by a qualified health maintenance organization in an amount which does not financially discriminate against an employee who enrolls in such organization. For purposes of the preceding sentence, an employer's or a State's or political subdivision's contribution does not financially discriminate if the employer's or State's or political subdivision's method of determining the contributions on behalf of all employees is reasonable and is designed to assure employees a fair choice among health benefits plans.

(2) Each employer or State or political subdivision which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefits plan to which an employee contribution is not required shall, with the consent of an employee who exercises option of membership in a qualified health maintenance organization, arrange for the employee's contribution for membership in the organization to be paid through payroll deductions.

(3) No employer or State or political subdivision shall be required to pay more for health benefits as a result of the application of this subsection than would otherwise be required by any prevailing collective bargaining agreement or other legally enforceable contract for the provision of health benefits between the employer or State or political subdivision and its employees.

(c) ''Qualified health maintenance organization'' defined

For purposes of this section, the term ''qualified health maintenance organization'' means (1) a health maintenance organization which has provided assurances satisfactory to the Secretary that it provides basic and supplemental health services to its members in the manner prescribed by section 300e(b) of this title and that it is organized and operated in the manner prescribed by section 300e(c) of this title, and (2) an entity which proposes to become a health maintenance organization and which the Secretary determines will when it becomes operational provide basic and supplemental health services to its members in the manner prescribed by section 300e(b) of this title and will be organized and operated in the manner prescribed by section 300e(c) of this title.

(d) Civil penalty; notice and presentation of views; review

(1) Any employer who knowingly does not comply with one or more of the requirements of paragraph (1) or (2) of subsection (b) of this section shall be subject to a civil penalty of not more than $10,000. If such noncompliance continues, a civil penalty may be assessed and collected under this subsection for each thirty-day period such noncompliance continues. Such penalty may be assessed by the Secretary and collected in a civil action brought by the United States in a United States district court.

(2) In any proceeding by the Secretary to assess a civil penalty under this subsection, no penalty shall be assessed until the employer charged shall have been given notice and an opportunity to present its views on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the Secretary shall consider the gravity of the noncompliance and the demonstrated good faith of the employer charged in attempting to achieve rapid compliance after notification by the Secretary of a noncompliance.

(3) In any civil action brought to review the assessment of a civil penalty assessed under this subsection, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty and in any civil action to collect such a civil penalty, the court shall, at the request of any party to such action, hold a trial de novo on the assessment of such civil penalty unless in a prior civil action to review the assessment of such penalty the court held a trial de novo on such assessment.

(e) ''Employer'' defined

For purposes of this section, the term ''employer'' does not include (1) the Government of the United States, the government of the District of Columbia or any territory or possession of the United States, a State or any political subdivision thereof, or any agency or instrumentality (including the United States Postal Service and Postal Rate Commission) of any of the foregoing, except that such term includes nonappropriated fund instrumentalities of the Government of the United States; or (2) a church, convention or association of churches, or any organization operated, supervised or controlled by a church, convention or association of churches which organization (A) is an organization described in section 501(c)(3) of title 26, and (B) does not discriminate (i) in the employment, compensation, promotion, or termination of employment of any personnel, or (ii) in the extension of staff or other privileges to any physician or other health personnel, because such persons seek to obtain or obtained health care, or participate in providing health care, through a health maintenance organization.

(f) Termination of payment for failure to comply

If the Secretary, after reasonable notice and opportunity for a hearing to a State, finds that it or

any of its political subdivisions has failed to comply with paragraph (1) or (2) of subsection (b) of this section, the Secretary shall terminate payments to such State under sections 247b, 247c, and 300a of this title and notify the Governor of such State that further payments under such sections will not be made to the State until the Secretary is satisfied that there will no longer be any such failure to comply.

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–517, §§4(b), 7(a)(1)(A), in introductory provisions, substituted ''or a State or political subdivision'' for ''subject to subsection (a) of this section'', in par. (1), inserted ''and provides at least 90 percent of such services through physicians described in section 300e(b)(3)(A) of this title'', in par. (2), inserted ''and provides no more than 10 percent of such services through physicians who are not described in section 300e(b)(3)(A) of this title'', and in concluding provisions, substituted ''employer or State or political subdivision pursuant'' for ''employer pursuant''.

Subsec. (c). Pub. L. 100–517, §7(a)(1)(B), (2), substituted ''No employer or State or political subdivision'' for ''No employer'', ''between the employer or State or political subdivision'' for ''between the employer'', and ''Each employer or State or political subdivision'' for ''Each employer'', and inserted at end ''If a health benefits plan offered by an employer or a State or political subdivision under subsection (a) of this section includes contributions for services offered under the plan, the employer or State or political subdivision shall make a contribution under the plan for services offered by a qualified health maintenance organization in an amount which does not financially discriminate against an employee who enrolls in such organization. For purposes of the preceding sentence, an employer's or a State's or political subdivision's contribution does not financially discriminate if the employer's or State's or political subdivision's method of determining the contributions on behalf of all employees is reasonable and is designed to assure employees a fair choice among health benefits plans.''

1986—Subsec. (d). Pub. L. 99–660 struck out last sentence which read as follows: ''Every two years (or such longer period as the Secretary may by regulation prescribe) after the date a health maintenance organization becomes a qualified health maintenance organization under this subsection, the health maintenance organization must demonstrate to the Secretary that it is qualified within the meaning of this subsection.''

Subsec. (f). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1981—Subsec. (b)(1). Pub. L. 97–35, §942(a)(3)(A), substituted provisions respecting provision of more than one-half of the basic services provided by physicians, for provisions respecting provision of basic services.

Subsec. (b)(2). Pub. L. 97–35, §942(a)(3)(B), (4), inserted reference to provision by physicians, added cl. (B), and redesignated former cl. (B) as (C).

Subsec. (d). Pub. L. 97–35, §946(a), inserted provisions relating to demonstration of continued qualification of organization.

Subsec. (f)(1). Pub. L. 97–35, §946(b), inserted reference to United States nonappropriated fund instrumentalities.

1979—Subsec. (e)(1). Pub. L. 96–32 substituted ''subsection (a), (b), or (c)'' for ''subsection (a)''.

1978—Subsec. (b). Pub. L. 95–559, §8(b), substituted in par. (1) ''through physicians or other health professionals who are members of the staff of the organization or a medical group (or groups)'' for ''(A) without the use of an individual practice association and (B) without the use of contracts (except for contracts for unusual or infrequently used services) with health professionals'' and in par. (2) ''(B) a combination of such association (or associations), medical group (or groups), staff, and individual physicians and other health professionals under contract with the organization'' for ''(B) health professionals who have contracted with the health maintenance organization for the provision of such services, or (C) a combination of such association (or associations) or health professionals under contract with the organization''.

Subsec. (c). Pub. L. 95–559, §8(a), inserted provision that each employer which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefits plan to which an employee contribution is not required and which is required by subsection (a) of this section to offer his employees the option of membership in a qualified health maintenance organization shall, with the consent of an employee who exercises such option, arrange for the employee's contribution for such membership to be paid through payroll deductions.

Subsec. (h). Pub. L. 95–559, §12(a)(1), struck out subsec. (h) which provided that the duties and functions of the Secretary, insofar as they involve determinations as to whether an organization is a qualified health maintenance organization within the meaning of subsection (d) of this section, be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions be integrated with the administration of section 300e–11(a) of this title.

1976—Subsec. (a). Pub. L. 94–460, §110(a)(1), substituted reference to each employer which is now or hereafter required for reference to each employer which is required, reference to basic health services in health maintenance organization service areas in which at least 25 of such employees reside for reference to basic and supplemental health services in the areas in which such employees reside, and inserted provisions requiring certain States and political subdivisions thereof to include in any health benefits plan the option of membership in qualified health maintenance organizations as a condition of payment to the State of funds under section 246(d), 247b, 247c, 300a, 300m–4, or 300p–3 of this title, and that the offer of membership in such an organization be first made to the employees' representative, if any, and then be made to each employee if the offer is accepted by the representative.

Subsec. (b)(1). Pub. L. 94–460, §110(a)(2), substituted ''(A) without the use of an individual practice association and (B) without the use of contracts (except for contracts for unusual or infrequently used services) with health professionals'' for ''through professionals who are members of the staff of the organization or a medical group (or groups)''.

Subsec. (b)(2). Pub. L. 94–460, §110(a)(2), substituted ''basic health services through (A) an individual practice association (or associations), (B) health professionals who have contracted with the health maintenance organization for the provision of such services, or (C) a combination of such association (or associations) or health professionals under contract with the organization'' for ''such services through an individual practice association (or associations)''.

Subsec. (c). Pub. L. 94–460, §110(a)(3), struck out provision that failure of any employer to comply with the requirements of subsection (a) of this section be considered a willful violation of section 215 of title 29.

Subsecs. (e) to (h). Pub. L. 94–460, §110(a)(4), added subsecs. (e) to (h).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 7(b) of Pub. L. 100–517 provided that the amendment made by that section is effective 7 years after Oct. 24, 1988.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 942(a)(5) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (3)(A) [amending this section] shall apply with respect to the offering of a health maintenance organization in accordance with section 1310(b)(1) of the Public Health Service Act [subsec. (b)(1) of this section] after four years after the date the organization becomes a qualified health maintenance organization for purposes of section 1310 of such Act [this section] if the health maintenance organization provides assurances satisfactory to the Secretary that upon the expiration of such four years it will provide more than one half of its basic health services which are provided by physicians through physicians or other health professionals who are members of the staff of the organization or a medical group (or groups).''

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 110(a)(1), (2) of Pub. L. 94–460 applicable with respect to calendar quarters which began after Oct. 8, 1976, and amendment by section 110(a)(3), (4) of Pub. L. 94–460 applicable with respect to failures of employers to comply with section 300e–9 of this title after Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

COLLECTIVE BARGAINING AGREEMENTS IN EFFECT ON OCTOBER 24, 1988, UNAFFECTED

Section 7(a)(3) of Pub. L. 100–517 provided that: ''Nothing in section 1310 of the Public Health Service Act (42 U.S.C. 300e–9), as amended by this Act, shall be construed to supersede any provision of a collective bargaining agreement in effect on the date of enactment of this Act [Oct. 24, 1988].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e, 300e–1, 300e–10, 300e–11, 300e–14, 300e–16, 300e–17, 300*l*–1, 1395mm, 1395nn, 1396b of this title; title 5 section 8902.

§ 300e–10. Restrictive State laws and practices

(a) Entities operating as health maintenance organizations

In the case of any entity—

(1) which cannot do business as a health maintenance organization in a State in which it proposes to furnish basic and supplemental health services because that State by law, regulation, or otherwise—

(A) requires as a condition to doing business in that State that a medical society approve the furnishing of services by the entity,

(B) requires that physicians constitute all or a percentage of its governing body,

(C) requires that all physicians or a percentage of physicians in the locale participate or be permitted to participate in the provision of services for the entity,

(D) requires that the entity meet requirements for insurers of health care services doing business in that State respecting initial capitalization and establishment of financial reserves against insolvency, or

(E) imposes requirements which would prohibit the entity from complying with the requirements of this subchapter, and

(2) for which a grant, contract, loan, or loan guarantee was made under this subchapter or which is a qualified health maintenance organization for purposes of section 300e–9 of this title (relating to employees' health benefits plans),

such requirements shall not apply to that entity so as to prevent it from operating as a health maintenance organization in accordance with section 300e of this title.

(b) Advertising

No State may establish or enforce any law which prevents a health maintenance organization for which a grant, contract, loan, or loan guarantee was made under this subchapter or which is a qualified health maintenance organization for purposes of section 300e–9 of this title (relating to employees' health benefits plans), from soliciting members through advertising its services, charges, or other nonprofessional aspects of its operation. This subsection does not authorize any advertising which identifies, refers to, or makes any qualitative judgement concerning, any health professional who provides services for a health maintenance organization.

(c) Digest of State laws, regulations, and practices; legal consultative assistance

The Secretary shall, within 6 months after October 8, 1976, develop a digest of State laws, regulations, and practices pertaining to development, establishment, and operation of health maintenance organizations which shall be updated at least annually and relevant sections of which shall be provided to the Governor of each State annually. Such digest shall indicate which State laws, regulations, and practices appear to be inconsistent with the operation of this section. The Secretary shall also insure that appropriate legal consultative assistance is available to the States for the purpose of complying with the provisions of this section.

(July 1, 1944, ch. 373, title XIII, § 1311, as added Dec. 29, 1973, Pub. L. 93–222, § 2, 87 Stat. 931; amended Oct. 8, 1976, Pub. L. 94–460, title I, § 114, 90 Stat. 1954; Nov. 14, 1986, Pub. L. 99–660, title VIII, § 809, 100 Stat. 3801; Oct. 24, 1988, Pub. L. 100–517, § 8, 102 Stat. 2583.)

PRIOR PROVISIONS

A prior section 1311 of act July 1, 1944, was classified to section 211a of this title prior to repeal by Pub. L. 93–222, § 7(b).

AMENDMENTS

1988—Subsec. (a)(1)(E). Pub. L. 100–517 added subpar. (E).

1986—Subsec. (c). Pub. L. 99–660 substituted ''annually'' for ''quarterly'' after ''at least''.

1976—Subsec. (c). Pub. L. 94–460 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 effective Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

§ 300e–11. Continued regulation of health maintenance organizations

(a) Determination of deficiency

If the Secretary determines that an entity which received a grant, contract, loan, or loan

guarantee under this subchapter as a health maintenance organization or which was included in a health benefits plan offered to employees pursuant to section 300e–9 of this title—

(1) fails to provide basic and supplemental services to its members,

(2) fails to provide such services in the manner prescribed by section 300e(b) of this title, or

(3) is not organized or operated in the manner prescribed by section 300e(c) of this title,

the Secretary may take the action authorized by subsection (b) of this section.

(b) Action by Secretary upon determination

(1) If the Secretary makes, with respect to any entity which provided assurances to the Secretary under section 300e–9(d)(1) of this title, a determination described in subsection (a) of this section, the Secretary shall notify the entity in writing of the determination. Such notice shall specify the manner in which the entity has not complied with such assurances and direct that the entity initiate (within 30 days of the date the notice is issued by the Secretary or within such longer period as the Secretary determines is reasonable) such action as may be necessary to bring (within such period as the Secretary shall prescribe) the entity into compliance with the assurances. If the entity fails to initiate corrective action within the period prescribed by the notice or fails to comply with the assurances within such period as the Secretary prescribes, then after the Secretary provides the entity a reasonable opportunity for reconsideration of his determination, including, at the entity's election, a fair hearing (A) the entity shall not be a qualified health maintenance organization for purposes of section 300e–9 of this title until such date as the Secretary determines that it is in compliance with the assurances, and (B) each employer which has offered membership in the entity in compliance with section 300e–9 of this title, each lawfully recognized collective bargaining representative or other employee representative which represents the employees of each such employer, and the members of such entity shall be notified by the entity that the entity is not a qualified health maintenance organization for purposes of such section. The notice required by clause (B) of the preceding sentence shall contain, in readily understandable language, the reasons for the determination that the entity is not a qualified health maintenance organization. The Secretary shall publish in the Federal Register each determination referred to in this paragraph.

(2) If the Secretary makes, with respect to an entity which has received a grant, contract, loan, or loan guarantee under this subchapter, a determination described in subsection (a) of this section, the Secretary may, in addition to any other remedies available to him, bring a civil action in the United States district court for the district in which such entity is located to enforce its compliance with the assurances it furnished respecting the provision of basic and supplemental health services or its organization or operation, as the case may be, which assurances were made in connection with its application under this subchapter for the grant, contract, loan, or loan guarantee.

(July 1, 1944, ch. 373, title XIII, §1312, as added Dec. 29, 1973, Pub. L. 93–222, §2, 87 Stat. 931; amended Oct. 8, 1976, Pub. L. 94–460, title I, §111, 90 Stat. 1952; Nov. 1, 1978, Pub. L. 95–559, §12(a)(2), 92 Stat. 2140; Aug. 13, 1981, Pub. L. 97–35, title IX, §949(a), 95 Stat. 578.)

PRIOR PROVISIONS

A prior section 1312 of act July 1, 1944, was classified to section 212a of this title prior to repeal by Pub. L. 93–222, §7(b).

AMENDMENTS

1981—Subsec. (b)(1). Pub. L. 97–35 inserted provisions relating to opportunity for reconsideration of determination of Secretary.

1978—Subsec. (c). Pub. L. 95–559 struck out subsec. (c) which provided that the Secretary, acting through the Assistant Secretary for Health, administer subsections (a) and (b) of this section in the Office of the Assistant Secretary for Health.

1976—Subsec. (a). Pub. L. 94–460, §111(a), substituted ''the Secretary may take the action authorized by subsection (b) of this section'' for ''the Secretary may, in addition to any other remedies available to him, bring a civil action in the United States district court for the district in which such entity is located to enforce its compliance with any assurances it furnished him respecting the provision of basic and supplemental health services or its organization or operation, as the case may be, which assurances were made under section 300e–9 of this title or when application was made under this subchapter for a grant, contract, loan, or loan guarantee''.

Subsecs. (b), (c). Pub. L. 94–460, §111(b), (c), added subsec. (b), redesignated former subsec. (b) as (c), and substituted ''acting through the Assistant Secretary for Health, shall administer subsections (a) and (b) of this section'' for ''through the Assistant Secretary for Health, shall administer subsection (a) of this section''.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–460 applicable with respect to determinations of the Secretary of Health, Education, and Welfare described in subsec. (a) of this section and made after Oct. 8, 1976, see section 118 of Pub. L. 94–460, set out as a note under section 300e of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396b of this title.

§ 300e–12. Limitation on source of funding for health maintenance organizations

No funds appropriated under any provision of this chapter (except as provided in sections 254b, 254c, and 256[1] of this title) other than this subchapter may be used—

(1) for grants or contracts for surveys or other activities to determine the feasibility of developing or expanding health maintenance organizations or other entities which provide, directly or indirectly, health services to a defined population on a prepaid basis;

(2) for grants or contracts, or for payments under loan guarantees, for planning projects for the establishment or expansion of such organizations or entities;

(3) for grants or contracts, or for payments under loan guarantees, for projects for the initial development or expansion of such organizations or entities; or

[1] See References in Text note below.

(4) for loans, or for payments under loan guarantees, to assist in meeting the costs of the initial operation after establishment or expansion of such organizations or entities or in meeting the costs of such organizations in acquiring or constructing ambulatory health care facilities.

(July 1, 1944, ch. 373, title XIII, § 1313, as added Dec. 29, 1973, Pub. L. 93–222, § 2, 87 Stat. 932; amended Nov. 1, 1978, Pub. L. 95–559, § 5(b), 92 Stat. 2133; Nov. 10, 1978, Pub. L. 95–626, title I, § 107, 92 Stat. 3562.)

REFERENCES IN TEXT

Section 256 of this title, referred to in text, was repealed by Pub. L. 97–35, title IX, § 903(c), Aug. 13, 1981, 95 Stat. 561, eff. Oct. 1, 1982.

AMENDMENTS

1978—Pub. L. 95–626 inserted ''(except as provided in sections 254b, 254c, and 256 of this title)'' after ''under any provision of this chapter'' in provisions preceding par. (1).

Par. (4). Pub. L. 95–559 inserted ''or in meeting the costs of such organizations in acquiring or constructing ambulatory health care facilities'' after ''or entities''.

§ 300e–13. Repealed. Pub. L. 97–35, title IX, § 949(b), Aug. 13, 1981, 95 Stat. 578

Section, acts July 1, 1944, ch. 373, title XIII, § 1314, as added Dec. 29, 1973, Pub. L. 93–222, § 2, 87 Stat. 932; amended Oct. 8, 1976, Pub. L. 94–460, title I, § 115, 90 Stat. 1954; Nov. 1, 1978, Pub. L. 95–559, § 13, 92 Stat. 2140, required the Comptroller General to: (a) evaluate the operations, particularly, specified aspects of the operations, of at least ten or one-half, whichever is greater, of the health maintenance organizations for which assistance was provided under sections 300e–2, 300e–3, and 300e–4 of this title, and which, by Dec. 31, 1976, were designated by the Secretary under section 300e–9(d) of this title as qualified health maintenance organizations, to Congress by June 30, 1978; (b) conduct a study of the economic effects on employers resulting from their compliance with the requirements of section 300e–9 of this title and report to Congress not later than 36 months after Dec. 29, 1973; (c) evaluate the operations of health maintenance organizations in comparison with others in distinct categories, in comparison with alternative forms of health care delivery, and their impact on the health of the public and report to Congress not later than 36 months after Dec. 29, 1973; and (d) evaluate the adequacy and effectiveness of the policies and procedures of the Secretary for the management of the grant and loan programs established by this subchapter and the adequacy of the amounts of assistance available under these programs and report to Congress not later than May 1, 1979.

§ 300e–14. Annual report

(a) The Secretary shall periodically review the programs of assistance authorized by this subchapter and make an annual report to the Congress of a summary of the activities under each program. The Secretary shall include in such summary—

(1) a summary of each grant, contract, loan, or loan guarantee made under this subchapter in the period covered by the report and a list of the health maintenance organizations which during such period became qualified health maintenance organizations for purposes of section 300e–9 of this title;

(2) the statistics and other information reported in such period to the Secretary in accordance with section 300e(c)(11)[1] of this title;

(3) findings with respect to the ability of the health maintenance organizations assisted under this subchapter—

(A) to operate on a fiscally sound basis without continued Federal financial assistance,

(B) to meet the requirements of section 300e(c) of this title respecting their organization and operation,

(C) to provide basic and supplemental health services in the manner prescribed by section 300e(b) of this title,

(D) to include indigent and high-risk individuals in their membership, and

(E) to provide services to medically underserved populations; and

(4) findings with respect to—

(A) the operation of distinct categories of health maintenance organizations in comparison with each other,

(B) health maintenance organizations as a group in comparison with alternative forms of health care delivery, and

(C) the impact that health maintenance organizations, individually, by category, and as a group, have on the health of the public.

(b) The Office of Management and Budget may review the Secretary's report under subsection (a) of this section before its submission to the Congress, but the Office may not revise the report or delay its submission, and it may submit to the Congress its comments (and those of other departments or agencies of the Government) respecting such report.

(July 1, 1944, ch. 373, title XIII, § 1315, as added Dec. 29, 1973, Pub. L. 93–222, § 2, 87 Stat. 933.)

REFERENCES IN TEXT

Section 300e(c)(11) of this title, referred to in subsec. (a)(2), was redesignated section 300e(c)(9) of this title by Pub. L. 97–35, title IX, § 942(d)(1), Aug. 13, 1981, 95 Stat. 574, and redesignated section 300e(c)(8) of this title by Pub. L. 100–517, § 5(b), Oct. 24, 1988, 102 Stat. 2579.

§ 300e–14a. Health services for Indians and domestic agricultural migratory and seasonal workers

The Secretary of Health and Human Services, in connection with existing authority (except section 254b of this title) for the provisions of health services to domestic agricultural migratory workers, to persons who perform seasonal agricultural services similar to the services performed by such workers, and to the families of such workers and persons, is authorized to arrange for the provision of health services to such workers and persons and their families through health maintenance organizations. In carrying out this section the Secretary may only use sums appropriated after December 29, 1973.

(Pub. L. 93–222, § 6(b), Dec. 29, 1973, 87 Stat. 936; Pub. L. 95–626, title I, § 102(b)(2), Nov. 10, 1978, 92 Stat. 3551; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

[1] See References in Text note below.

CODIFICATION

Section was enacted as part of the Health Maintenance Organization Act of 1973, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1978—Pub. L. 95–626 substituted ''section 254b'' for ''section 247d''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in text, pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 300e–15. Repealed. Pub. L. 97–35, title IX, § 949(b), Aug. 13, 1981, 95 Stat. 578

Section, act July 1, 1944, ch. 373, title XIII, § 1316, as added Oct. 8, 1976, Pub. L. 94–460, title I, § 116, 90 Stat. 1954, related to administration of programs.

§ 300e–16. Training and technical assistance

(a) National Health Maintenance Organization Intern Program

(1) The Secretary shall establish a National Health Maintenance Organization Intern Program (hereinafter in this subsection referred to as the ''Program'') for the purpose of providing training to individuals to become administrators and medical directors of health maintenance organizations or to assume other managerial positions with health maintenance organizations. Under the Program the Secretary may directly provide internships for such training and may make grants to or enter into contracts with health maintenance organizations and other entities to provide such internships.

(2) No internship may be provided by the Secretary and no grant may be made or contract entered into by the Secretary for the provision of internships unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be in such form and contain such information, and be submitted to the Secretary in such manner, as the Secretary shall prescribe. Section 300e–5 of this title does not apply to an application submitted under this section.

(3) Internships under the Program shall provide for such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the recipients of the internships as the Secretary deems necessary. An internship provided an individual for training at a health maintenance organization or any other entity shall also provide for payments to be made to the organization or other entity for the cost of support services (including the cost of salaries, supplies, equipment, and related items) provided such individual by such organization or other entity. The amount of any such payments to any organization or other entity shall be determined by the Secretary and shall bear a direct relationship to the reasonable costs of the organization or other entity for establishing and maintaining its training programs.

(4) Payments under grants under the Program may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary.

(b) Technical assistance

The Secretary shall provide technical assistance (1) to entities intending to become a qualified health maintenance organization within the meaning of section 300e–9(d) of this title, and (2) to health maintenance organizations. The Secretary may provide such technical assistance through grants to public and nonprofit private entities and contracts with public and private entities.

(c) Amounts provided in advance in appropriation acts

The authority of the Secretary to enter into contracts under subsections (a) and (b) of this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(July 1, 1944, ch. 373, title XIII, § 1317, as added Nov. 1, 1978, Pub. L. 95–559, § 7(a), 92 Stat. 2134; amended Nov. 14, 1986, Pub. L. 99–660, title VIII, § 803(b)(4), 100 Stat. 3800.)

AMENDMENTS

1986—Subsec. (b). Pub. L. 99–660 redesignated cls. (2) and (3) as (1) and (2), respectively, and struck out former cl. (1) which read as follows: ''to entities in connection with projects for which assistance is being provided under section 300e–2 or 300e–3 of this title,''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 not applicable to any grant made or contract entered into under this subchapter before Oct. 1, 1985, see section 803(c) of Pub. L. 99–660, set out as a note under section 300e–5 of this title.

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effective and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

EFFECTIVE DATE

Section 7(c) of Pub. L. 95–559 provided that: ''The amendments made by this section [enacting this section and amending section 300e–8 of this title] shall only be effective for fiscal years beginning on or after October 1, 1978.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300e–8 of this title.

§ 300e–17. Financial disclosure

(a) Financial information reported to Secretary

Each health maintenance organization shall, in accordance with regulations of the Secretary, report to the Secretary financial information which shall include the following:

(1) Such information as the Secretary may require demonstrating that the health maintenance organization has a fiscally sound operation.

(2) A copy of the report, if any, filed with the Health Care Financing Administration containing the information required to be reported under section 1320a–3 of this title by disclosing entities and the information required to be supplied under section 1396a(a)(38) of this title.

(3) A description of transactions, as specified by the Secretary, between the health maintenance organization and a party in interest. Such transactions shall include—

(A) any sale or exchange, or leasing of any property between the health maintenance organization and a party in interest;

(B) any furnishing for consideration of goods, services (including management services), or facilities between the health maintenance organization and a party in interest, but not including salaries paid to employees for services provided in the normal course of their employment and health services provided to members by hospitals and other providers and by staff, medical group (or groups), individual practice association (or associations), or any combination thereof; and

(C) any lending of money or other extension of credit between a health maintenance organization and a party in interest.

The Secretary may require that information reported respecting a health maintenance organization which controls, is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(b) "Party in interest" defined

For the purposes of this section the term ''party in interest'' means:

(1) any director, officer, partner, or employee responsible for management or administration of a health maintenance organization, any person who is directly or indirectly the beneficial owner of more than 5 per centum of the equity of the organization, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 per centum of the health maintenance organization, and, in the case of a health maintenance organization organized as a nonprofit corporation, an incorporator or member of such corporation under applicable State corporation law;

(2) any entity in which a person described in paragraph (1)—

(A) is an officer or director;

(B) is a partner (if such entity is organized as a partnership);

(C) has directly or indirectly a beneficial interest of more than 5 per centum of the equity; or

(D) has a mortgage, deed of trust, note, on other interest valuing more than 5 per centum of the assets of such entity;

(3) any person directly or indirectly controlling, controlled by, or under common control with a health maintenance organization; and

(4) any spouse, child, or parent of an individual described in paragraph (1).

(c) Information availability

Each health maintenance organization shall make the information reported pursuant to subsection (a) of this section available to its enrollees upon reasonable request.

(d) Evaluation of transactions

The Secretary shall, as he deems necessary, conduct an evaluation of transactions reported to the Secretary under subsection (a)(3) of this section for the purpose of determining their adverse impact, if any, on the fiscal soundness and reasonableness of charges to the health maintenance organization with respect to which they transpired. The Secretary shall evaluate the reported transactions of not less than five, or if there are more than twenty health maintenance organizations reporting such transactions, not less than one-fourth of the health maintenance organizations reporting any such transactions under subsection (a)(3) of this section.

(e) Repealed. Pub. L. 99–660, title VIII, § 810, Nov. 14, 1986, 100 Stat. 3801

(f) Rates

Nothing in this section shall be construed to confer upon the Secretary any authority to approve or disapprove the rates charged by any health maintenance organization.

(g) Annual financial statement

Any health maintenance organization failing to file with the Secretary the annual financial statement required in subsection (a) of this section shall be ineligible for any Federal assistance under this subchapter until such time as such statement is received by the Secretary and shall not be a qualified health maintenance organization for purposes of section 300e–9 of this title.

(h) Penalties

Whoever knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any statement filed pursuant to this section shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(July 1, 1944, ch. 373, title XIII, § 1318, as added Nov. 1, 1978, Pub. L. 95–559, § 9(a), 92 Stat. 2135; amended Aug. 13, 1981, Pub. L. 97–35, title IX, § 948, 95 Stat. 577; Nov. 14, 1986, Pub. L. 99–660, title VIII, § 810, 100 Stat. 3801.)

AMENDMENTS

1986—Subsec. (e). Pub. L. 99–660 struck out subsec. (e) which read as follows: ''The Secretary shall file an annual report with the Congress on the operation of this section. Such report shall include—

''(1) an enumeration of standards and norms utilized to make the evaluations required under subsection (d) of this section;

''(2) an assessment of the degree of conformity or nonconformity of each health maintenance organization evaluated by the Secretary under subsection (d) of this section with such standards and norms;

''(3) what action, if any, the Secretary considers necessary under section 300e–11 of this title with respect to health maintenance organizations evaluated under subsection (d) of this section.''

1981—Subsec. (a). Pub. L. 97–35, § 948(a), (b), in par. (2) inserted reference to copy of the report, if any, filed with the Health Care Financing Administration, and in par. (3)(B) reorganized excluding provisions and, among revisions, inserted salaries paid to employees for services.

Subsec. (b)(1). Pub. L. 97–35, § 948(c), inserted ''responsible for management or administration'' after ''employee''.

Subsec. (b)(4). Pub. L. 97–35, § 948(d), substituted ''spouse, child, or parent'' for ''member of the immediate family''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–660 effective Oct. 1, 1985, see section 815(a) of Pub. L. 99–660, set out as an Effec-

tive and Termination Dates of 1986 Amendment note under section 300e–1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395mm, 1396b of this title.

SUBCHAPTER XII—SAFETY OF PUBLIC WATER SYSTEMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 300j–10, 4365, 6905, 6924, 6925, 6939b, 7412, 9601, 9621, 10341 of this title; title 7 sections 1926a, 1926b, 6510; title 10 section 2704; title 16 sections 460zz–2, 471i, 3838c; title 18 section 1956; title 22 section 277d–12.

PART A—DEFINITIONS

§ 300f. Definitions

For purposes of this subchapter:

(1) The term ''primary drinking water regulation'' means a regulation which—

(A) applies to public water systems;

(B) specifies contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons;

(C) specifies for each such contaminant either—

(i) a maximum contaminant level, if, in the judgment of the Administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or

(ii) if, in the judgment of the Administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1 of this title; and

(D) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to (i) the minimum quality of water which may be taken into the system and (ii) siting for new facilities for public water systems.

(2) The term ''secondary drinking water regulation'' which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the Administrator, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water (A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use, or (B) which may otherwise adversely affect the public welfare. Such regulations may vary accordingly to geographic and other circumstances.

(3) The term ''maximum contaminant level'' means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

(4) The term ''public water system'' means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes (A) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (B) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(5) The term ''supplier of water'' means any person who owns or operates a public water system.

(6) The term ''contaminant'' means any physical, chemical, biological, or radiological substance or matter in water.

(7) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(8) The term ''Agency'' means the Environmental Protection Agency.

(9) The term ''Council'' means the National Drinking Water Advisory Council established under section 300j–5 of this title.

(10) The term ''municipality'' means a city, town, or other public body created by or pursuant to State law, or an Indian Tribe.

(11) The term ''Federal agency'' means any department, agency, or instrumentality of the United States.

(12) The term ''person'' means an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency).

(13) The term ''State'' includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(14) The term ''Indian Tribe'' means any Indian tribe having a Federally recognized governing body carrying out substantial governmental duties and powers over any area.

(July 1, 1944, ch. 373, title XIV, § 1401, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660; amended June 23, 1976, Pub. L. 94–317, title III, § 301(b)(2), 90 Stat. 707; Oct. 12, 1976, Pub. L. 94–484, title IX, § 905(b)(1), 90 Stat. 2325; Nov. 16, 1977, Pub. L. 95–190, § 8(b), 91 Stat. 1397; June 19, 1986, Pub. L. 99–339, title III, § 302(b), 100 Stat. 666.)

AMENDMENTS

1986—Par. (10). Pub. L. 99–339, § 302(b)(2), substituted ''Indian Tribe'' for ''Indian tribal organization authorized by law''.

Par. (14). Pub. L. 99–339, § 302(b)(1), added par. (14).

1977—Par. (12). Pub. L. 95–190 expanded definition of ''person'' to include Federal agency, and officers, employees, and agents of any corporation, company, etc.

1976—Par. (13). Pub. L. 94–484 defined ''State'' to include Northern Mariana Islands.

Pub. L. 94–317 added par. (13).

SHORT TITLE OF 1986 AMENDMENT

For short title of Pub. L. 99–339, which amended this subchapter, as the ''Safe Drinking Water Act Amendments of 1986'', see section 1 of Pub. L. 99–339, set out as a note under section 201 of this title.

SHORT TITLE OF 1977 AMENDMENT

For short title of Pub. L. 95–190, which amended this subchapter, as the ''Safe Drinking Water Amendments of 1977'', see section 1 of Pub. L. 95–190, set out as a note under section 201 of this title.

SHORT TITLE

For short title of Pub. L. 93–523, which enacted this subchapter, as the ''Safe Drinking Water Act'', see section 1 of Pub. L. 93–523, set out as a Short Title of 1974 Amendments note under section 201 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SAFE DRINKING WATER AMENDMENTS OF 1977 RESTRICTIONS ON APPROPRIATIONS FOR RESEARCH

Section 2(e) of Pub. L. 95–190 provided that: ''Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to authorize the appropriation of any amount for research under title XIV of the Public Health Service Act [this subchapter] (relating to safe drinking water).''

SAFE DRINKING WATER AMENDMENTS OF 1977 AS NOT AFFECTING AUTHORITY OF ADMINISTRATOR WITH RESPECT TO CONTAMINANTS

Section 3(e)(2) of Pub. L. 95–190 provided that: ''Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to alter or affect the Administrator's authority or duty under title 14 of the Public Health Service Act [this subchapter] to promulgate regulations or take other action with respect to any contaminant.''

RURAL WATER SURVEY; REPORT TO PRESIDENT AND CONGRESS; AUTHORIZATION OF APPROPRIATIONS

Section 3 of Pub. L. 93–523, as amended by Pub. L. 95–190, §§2(d), 3(d), Nov. 16, 1977, 91 Stat. 1393, 1394, directed Administrator of Environmental Protection Agency, after consultation with Secretary of Agriculture and the several States, to enter into arrangements with public or private entities to conduct a survey of quantity, quality, and availability of rural drinking water supplies, which survey was to include, but not be limited to, consideration of number of residents in each rural area who presently are being inadequately served by a public or private drinking water supply system, or by an individual home drinking water supply system, or who presently have limited or otherwise inadequate access to drinking water, or who, due to absence or inadequacy of a drinking water supply system, are exposed to an increased health hazard, and who have experienced incidents of chronic or acute illness, which may be attributed to inadequacy of a drinking water supply system. Survey to be completed within eighteen months of Dec. 16, 1974, and a final report thereon submitted, not later than six months after completion of survey, to President and to Congress.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, §6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 300g–4, 300g–5 of this title.

PART B—PUBLIC WATER SYSTEMS

§ 300g. Coverage

Subject to sections 300g–4 and 300g–5 of this title, national primary drinking water regulations under this part shall apply to each public water system in each State; except that such regulations shall not apply to a public water system—

(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(2) which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(3) which does not sell water to any person; and

(4) which is not a carrier which conveys passengers in interstate commerce.

(July 1, 1944, ch. 373, title XIV, §1411, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1662.)

§ 300g–1. National drinking water regulations

(a) National primary drinking water regulations; maximum contaminant level goals; simultaneous publication of regulations and goals

(1) Effective on June 19, 1986, each national interim or revised primary drinking water regulation promulgated under this section before June 19, 1986, shall be deemed to be a national primary drinking water regulation under subsection (b) of this section. No such regulation shall be required to comply with the standards set forth in subsection (b)(4) of this section unless such regulation is amended to establish a different maximum contaminant level after June 19, 1986.

(2) After June 19, 1986, each recommended maximum contaminant level published before June 19, 1986, shall be treated as a maximum contaminant level goal.

(3) Whenever a national primary drinking water regulation is proposed under paragraph (1), (2), or (3) of subsection (b) of this section for any contaminant, the maximum contaminant level goal for such contaminant shall be proposed simultaneously. Whenever a national primary drinking water regulation is promulgated under paragraph (1), (2), or (3) of subsection (b) of this section for any contaminant, the maximum contaminant level goal for such contaminant shall be published simultaneously.

(4) Paragraph (3) shall not apply to any recommended maximum contaminant level published before June 19, 1986.

(b) Standard setting schedules and deadlines; substitution of contaminants; additional contaminants; adequate safety margin in levels; "feasible" defined; technology, techniques, or other means to meet contaminant level; alternative treatment techniques; filtration and disinfection as required treatment techniques; amendment, review, effective date, and supersedure of regulations; addition of substances unrelated to contamination

(1) In the case of those contaminants listed in the Advance Notice of Proposed Rulemaking published in volume 47, Federal Register, page 9352, and in volume 48, Federal Register, page 45502, the Administrator shall publish maximum contaminant level goals and promulgate national primary drinking water regulations—

(A) not later than 12 months after June 19, 1986, for not less than 9 of those listed contaminants;

(B) not later than 24 months after June 19, 1986, for not less than 40 of those listed contaminants; and

(C) not later than 36 months after June 19, 1986, for the remainder of such listed contaminants.

(2)(A) If the Administrator identifies a drinking water contaminant the regulation of which, in the judgment of the Administrator, is more likely to be protective of public health (taking into account the schedule for regulation under paragraph (1)) than a contaminant referred to in paragraph (1), the Administrator may publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for such identified contaminant in lieu of regulating the contaminant referred to in such paragraph. There may be no more than 7 contaminants in paragraph (1) for which substitutions may be made. Regulation of a contaminant identified under this paragraph shall be in accordance with the schedule applicable to the contaminant for which the substitution is made.

(B) If the Administrator identifies one or more contaminants for substitution under this paragraph, the Administrator shall publish in the Federal Register not later than one year after June 19, 1986, a list of contaminants proposed for substitution, the contaminants referred to in paragraph (1) for which substitutions are to be made, and the basis for the judgment that regulation of such proposed substitute contaminants is more likely to be protective of public health (taking into account the schedule for regulation under such paragraph). Following a period of 60 days for public comment, the Administrator shall publish in the Federal Register a final list of contaminants to be substituted and contaminants referred to in paragraph (1) for which substitutions are to be made, together with responses to significant comments.

(C) Any contaminant referred to in paragraph (1) for which a substitution is made, pursuant to subparagraph (A) of this paragraph, shall be included on the priority list to be published by the Administrator not later than January 1, 1988, pursuant to paragraph (3)(A).

(D) The Administrator's decision to regulate a contaminant identified pursuant to this paragraph in lieu of a contaminant referred to in paragraph (1) shall not be subject to judicial review.

(3)(A) The Administrator shall publish maximum contaminant level goals and promulgate national primary drinking water regulations for each contaminant (other than a contaminant referred to in paragraph (1) or (2) for which a national primary drinking water regulation was promulgated) which, in the judgment of the Administrator, may have any adverse effect on the health of persons and which is known or anticipated to occur in public water systems. Not later than January 1, 1988, and at 3 year intervals thereafter, the Administrator shall publish a list of contaminants which are known or anticipated to occur in public water systems and which may require regulation under this chapter.

(B) For the purpose of establishing the list under subparagraph (A), the Administrator shall form an advisory working group including members from the National Toxicology Program and the Environmental Protection Agency's Offices of Drinking Water, Pesticides, Toxic Substances, Ground Water, Solid Waste and Emergency Response and any others the Administrator deems appropriate. The Administrator's consideration of priorities shall include, but not be limited to, substances referred to in section 9601(14) of this title, and substances registered as pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.].

(C) Not later than 24 months after the listing of contaminants under subparagraph (A), the Administrator shall publish proposed maximum contaminant level goals and national primary drinking water regulations for not less than 25 contaminants from the list established under subparagraph (A).

(D) Not later than 36 months after the listing of contaminants under subparagraph (A), the Administrator shall publish a maximum contaminant goal and promulgate a national primary drinking water regulation for those contaminants for which proposed maximum contaminant level goals and proposed national primary drinking water regulations were published under subparagraph (C).

(4) Each maximum contaminant level goal established under this subsection shall be set at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety. Each national primary drinking water regulation for a contaminant for which a maximum contaminant level goal is established under this subsection shall specify a maximum level for such contaminant which is as close to the maximum contaminant level goal as is feasible.

(5) For the purposes of this subsection, the term ''feasible'' means feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purpose of paragraph (4), granular activated carbon is feasible for the control of synthetic organic chemicals, and any technology, treatment technique, or other means found to be the best available for the control of

synthetic organic chemicals must be at least as effective in controlling synthetic organic chemicals as granular activated carbon.

(6) Each national primary drinking water regulation which establishes a maximum contaminant level shall list the technology, treatment techniques, and other means which the Administrator finds to be feasible for purposes of meeting such maximum contaminant level, but a regulation under this paragraph shall not require that any specified technology, treatment technique, or other means be used for purposes of meeting such maximum contaminant level.

(7)(A) The Administrator is authorized to promulgate a national primary drinking water regulation that requires the use of a treatment technique in lieu of establishing a maximum contaminant level, if the Administrator makes a finding that it is not economically or technologically feasible to ascertain the level of the contaminant. In such case, the Administrator shall identify those treatment techniques which, in the Administrator's judgment, would prevent known or anticipated adverse effects on the health of persons to the extent feasible. Such regulations shall specify each treatment technique known to the Administrator which meets the requirements of this paragraph, but the Administrator may grant a variance from any specified treatment technique in accordance with section 300g–4(a)(3) of this title.

(B) Any schedule referred to in this subsection for the promulgation of a national primary drinking water regulation for any contaminant shall apply in the same manner if the regulation requires a treatment technique in lieu of establishing a maximum contaminant level.

(C)(i) Not later than 18 months after June 19, 1986, the Administrator shall propose and promulgate national primary drinking water regulations specifying criteria under which filtration (including coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems supplied by surface water sources. In promulgating such rules, the Administrator shall consider the quality of source waters, protection afforded by watershed management, treatment practices (such as disinfection and length of water storage) and other factors relevant to protection of health.

(ii) In lieu of the provisions of section 300g–4 of this title the Administrator shall specify procedures by which the State determines which public water systems within its jurisdiction shall adopt filtration under the criteria of clause (i). The State may require the public water system to provide studies or other information to assist in this determination. The procedures shall provide notice and opportunity for public hearing on this determination. If the State determines that filtration is required, the State shall prescribe a schedule for compliance by the public water system with the filtration requirement. A schedule shall require compliance within 18 months of a determination made under clause (iii).

(iii) Within 18 months from the time that the Administrator establishes the criteria and procedures under this subparagraph, a State with primary enforcement responsibility shall adopt any necessary regulations to implement this subparagraph. Within 12 months of adoption of such regulations the State shall make determinations regarding filtration for all the public water systems within its jurisdiction supplied by surface waters.

(iv) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to make the determination in clause (ii) in such State as the State would have under that clause. Any filtration requirement or schedule under this subparagraph shall be treated as if it were a requirement of a national primary drinking water regulation.

(8) Not later than 36 months after June 19, 1986, the Administrator shall propose and promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems. The Administrator shall simultaneously promulgate a rule specifying criteria that will be used by the Administrator (or delegated State authorities) to grant variances from this requirement according to the provisions of sections 300g–4(a)(1)(B) and 300g–4(a)(3) of this title. In implementing section 300j–1(g) of this title the Administrator or the delegated State authority shall, where appropriate, give special consideration to providing technical assistance to small public water systems in complying with the regulations promulgated under this paragraph.

(9) National primary drinking water regulations shall be amended whenever changes in technology, treatment techniques, and other means permit greater protection of the health of persons, but in any event such regulations shall be reviewed at least once every 3 years. Such review shall include an analysis of innovations or changes in technology, treatment techniques or other activities that have occurred over the previous 3-year period and that may provide for greater protection of the health of persons. The findings of such review shall be published in the Federal Register. If, after opportunity for public comment, the Administrator concludes that the technology, treatment techniques, or other means resulting from such innovations or changes are not feasible within the meaning of paragraph (5), an explanation of such conclusion shall be published in the Federal Register.

(10) National primary drinking water regulations promulgated under this subsection (and amendments thereto) shall take effect eighteen months after the date of their promulgation. Regulations under subsection (a) of this section shall be superseded by regulations under this subsection to the extent provided by the regulations under this subsection.

(11) No national primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

(c) Secondary regulations; publication of proposed regulations; promulgation; amendments

The Administrator shall publish proposed national secondary drinking water regulations within 270 days after December 16, 1974. Within 90 days after publication of any such regulation, he shall promulgate such regulation with such

modifications as he deems appropriate. Regulations under this subsection may be amended from time to time.

(d) Regulations; public hearings; administrative consultations

Regulations under this section shall be prescribed in accordance with section 553 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section, the Administrator shall consult with the Secretary and the National Drinking Water Advisory Council.

(e) Science Advisory Board comments

The Administrator shall request comments from the Science Advisory Board (established under the Environmental Research, Development, and Demonstration Act of 1978) prior to proposal of a maximum contaminant level goal and national primary drinking water regulation. The Board shall respond, as it deems appropriate, within the time period applicable for promulgation of the national primary drinking water standard concerned. This subsection shall, under no circumstances, be used to delay final promulgation of any national primary drinking water standard.

(July 1, 1944, ch. 373, title XIV, §1412, as added Dec. 16, 1974, Pub. L. 93–523, §2(a), 88 Stat. 1662; amended Nov. 16, 1977, Pub. L. 95–190, §§3(c), 12(a), 91 Stat. 1394, 1398; June 19, 1986, Pub. L. 99–339, title I, §101(a)–(c)(1), (d), (e), 100 Stat. 642–646.)

REFERENCES IN TEXT

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (b)(3)(B), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Environmental Research, Development, and Demonstration Act of 1978, referred to in subsec. (e), probably means the Environmental Research, Development, and Demonstration Authorization Act of 1978 which is Pub. L. 95–155, Nov. 8, 1977, 91 Stat. 1257, as amended. Provisions of the Act establishing the Science Advisory Board are classified to section 4365 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–339, §101(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows:

''(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after December 16, 1974. Within 180 days after December 16, 1974, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

''(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on December 16, 1974.

''(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation.''

Subsec. (b)(1). Pub. L. 99–339, §101(b), substituted provisions establishing standard setting schedules and deadlines for provisions relating to establishment of maximum contaminant levels and a list of contaminants with adverse effect but of undetermined levels.

Subsec. (b)(2). Pub. L. 99–339, §101(b), substituted provisions authorizing the Administrator to substitute contaminants for those referred to in par. (1) and to supply a list of the contaminants proposed for substitution, with the decision of the Administrator to regulate such contaminant not subject to judicial review, for provisions which authorized the Administrator to publish in the Federal Register proposed revised national interim primary drinking water regulations and 180 days after the date of such proposed regulations to promulgate such revised regulations with modification as deemed appropriate.

Subsec. (b)(3). Pub. L. 99–339, §101(b), substituted provisions directing the Administrator to publish maximum contaminant level goals and promulgate national primary drinking water regulations for contaminants, other than specified in par. (1) or (2), which may have an adverse effect on health and are known or anticipated to occur in public water systems, to establish an advisory working group to aid in establishing a list of such contaminants, and to publish, within a specified time, both proposed and final goals and regulations for provisions which required that revised national primary drinking water regulations specify a maximum contaminant level or require the use of treatment techniques for each contaminant, which level or technique was to be as close to the recommended level or technique as feasible, and defined the term ''feasible''.

Subsec. (b)(4) to (11). Pub. L. 99–339, §101(b), (c)(1), (d), added pars. (4) to (8), redesignated former pars. (4) to (6) as pars. (9) to (11), respectively, in par. (9) substituted ''National'' for ''Revised National'' and inserted provision that review include analysis, and publication in Federal Register, of innovations in technology, treatment techniques or other activities occurring during previous three years and their feasibility, and in par. (10) substituted ''National'' for ''Revised National''.

Subsec. (e). Pub. L. 99–339, §101(e), amended subsec. (e) generally, substituting provisions which relate to the request by the Administrator of comments by the Science Advisory Board prior to proposal of a maximum contaminant level goal and national primary drinking water regulation for provisions which related to study by the National Academy of Sciences to determine the maximum contaminant levels, report to Congress, and funding therefor.

1977—Subsec. (e)(2). Pub. L. 95–190 inserted provisions relating to revisions of the required report and cl. (G).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300f, 300g–2, 300g–3, 300g–4, 300g–5, 300j–1, 300j–2, 300j–3, 300j–3b, 300j–4 of this title; title 21 section 349.

§ 300g–2. State primary enforcement responsibility; regulations; notice and hearing; publication in Federal Register; applications

(a) For purposes of this subchapter, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b) of this section) that such State—

(1) has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations in effect under sections 300g–1(a) and 300g–1(b) of this title;

(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation;

(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation;

(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meet the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than the conditions under, and the manner in which variances and exemptions may be granted under sections 300g–4 and 300g–5 of this title;

(5) has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances.

(b)(1) The Administrator shall, by regulation (proposed within 180 days of December 16, 1974), prescribe the manner in which a State may apply to the Administrator for a determination that the requirements of paragraphs (1), (2), (3), and (4) of subsection (a) of this section are satisfied with respect to the State, the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met or are no longer met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall specify a State's authority under this subchapter when it is determined to have primary enforcement responsibility for public water systems.

(2) When an application is submitted in accordance with the Administrator's regulations under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) deny the application and notify the applicant in writing of the reasons for his denial.

(July 1, 1944, ch. 373, title XIV, § 1413, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1665; amended June 19, 1986, Pub. L. 99–339, title I, § 101(c)(2), 100 Stat. 646.)

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–339 substituted ''are no less stringent than the national primary drinking water regulations in effect under sections 300g–1(a) and 300g–1(b) of this title'' for subpars. (A) and (B) which related to stringency of State drinking water regulations between period of promulgation and effective date of national interim drinking water regulations and during the period after such effective date.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300g–3, 300j–2 of this title.

§ 300g–3. Enforcement of drinking water regulations

(a) Notice to State and public water system; issuance of administrative order; civil action

(1)(A) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for public water systems (within the meaning of section 300g–2(a) of this title) that any public water system—

(i) for which a variance under section 300g–4 or an exemption under section 300g–5 of this title is not in effect, does not comply with any national primary drinking water regulation in effect under section 300g–1 of this title, or

(ii) for which a variance under section 300g–4 or an exemption under section 300g–5 of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

he shall so notify the State and such public water system and provide such advice and technical assistance to such State and public water system as may be appropriate to bring the system into compliance with such regulation or requirement by the earliest feasible time.

(B) If, beyond the thirtieth day after the Administrator's notification under subparagraph (A), the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds during a period during which a State does not have primary enforcement responsibility for public water systems that a public water system in such State—

(A) for which a variance under section 300g–4(a)(2) or an exemption under section 300g–5(f) of this title is not in effect, does not comply with any national primary drinking water regulation in effect under section 300g–1 of this title, or

(B) for which a variance under section 300g–4(a)(2) or an exemption under section 300g–5(f) of this title is in effect, does not comply with any schedule or other requirement imposed pursuant thereto,

the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(b) Judicial determinations in appropriate Federal district courts; civil penalties, separate violations

The Administrator may bring a civil action in the appropriate United States district court to require compliance with a national primary drinking water regulation with an order issued under subsection (g) of this section, or with any schedule or other requirement imposed pursuant to a variance or exemption granted under section 300g–4 or 300g–5 of this title if—

(1) authorized under paragraph (1) or (2) of subsection (a) of this section, or

(2) if requested by (A) the chief executive officer of the State in which is located the public water system which is not in compliance with such regulation or requirement, or (B) the agency of such State which has jurisdiction over compliance by public water systems in the State with national primary drinking water regulations or State drinking water regulations.

The court may enter, in an action brought under this subsection, such judgement as protection of public health may require, taking into consideration the time necessary to comply and the availability of alternative water supplies; and, if the court determines that there has been a violation of the regulation or schedule or other requirement with respect to which the action was brought, the court may, taking into account the seriousness of the violation, the population at risk, and other appropriate factors, impose on the violator a civil penalty of not to exceed $25,000 for each day in which such violation occurs.

(c) Notice of owner or operator of public water system to persons served; regulations for form, manner, and frequency of notice; amendment of regulations to provide different types and frequencies of notice; penalties

Each owner or operator of a public water system shall give notice to the persons served by it—

(1) of any failure on the part of the public water system to—

(A) comply with an applicable maximum contaminant level or treatment technique requirement of, or a testing procedure prescribed by, a national primary drinking water regulation, or

(B) perform monitoring required by section 300j–4(a) of this title, and

(2) if the public water system is subject to a variance granted under section 300g–4(a)(1)(A) or 300g–4(a)(2) of this title for an inability to meet a maximum contaminant level requirement or is subject to an exemption granted under section 300g–5 of this title, of—

(A) the existence of such variance or exemption, and

(B) any failure to comply with the requirements of any schedule prescribed pursuant to the variance or exemption.

The Administrator shall by regulation prescribe the form, manner, and frequency for giving notice under this subsection. Within 15 months after June 19, 1986, the Administrator shall amend such regulations to provide for different types and frequencies of notice based on the differences between violations which are intermittent or infrequent and violations which are continuous or frequent. Such regulations shall also take into account the seriousness of any potential adverse health effects which may be involved. Notice of any violation of a maximum contaminant level or any other violation designated by the Administrator as posing a serious potential adverse health effect shall be given as soon as possible, but in no case later than 14 days after the violation. Notice of a continuous violation of a regulation other than a maximum contaminant level shall be given no less frequently than every 3 months. Notice of violations judged to be less serious shall be given no less frequently than annually. The Administrator shall specify the types of notice to be used to provide information as promptly and effectively as possible taking into account both the seriousness of any potential adverse health effects and the likelihood of reaching all affected persons. Notification of violations shall include notice by general circulation newspaper serving the area and, whenever appropriate, shall also include a press release to electronic media and individual mailings. Notice under this subsection shall provide a clear and readily understandable explanation of the violation, any potential adverse health effects, the steps that the system is taking to correct such violation, and the necessity for seeking alternative water supplies, if any, until the violation is corrected. Until such amended regulations are promulgated, the regulations in effect on June 19, 1986, shall remain in effect. The Administrator may also require the owner or operator of a public water system to give notice to the persons served by it of contaminant levels of any unregulated contaminant required to be monitored under section 300j–4(a) of this title. Any person who violates this subsection or regulations issued under this subsection shall be subject to a civil penalty of not to exceed $25,000.

(d) Notice of noncompliance with secondary drinking water regulations

Whenever, on the basis of information available to him, the Administrator finds that within a reasonable time after national secondary drinking water regulations have been promulgated, one or more public water systems in a State do not comply with such secondary regulations, and that such noncompliance appears to result from a failure of such State to take reasonable action to assure that public water systems throughout such State meet such secondary regulations, he shall so notify the State.

(e) State authority to adopt or enforce laws or regulations respecting drinking water regulations or public water systems unaffected

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting drinking water regulations or public water systems, but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter.

(f) Notice and public hearing; availability of recommendations transmitted to State and public water system

If the Administrator makes a finding of noncompliance (described in subparagraph (A) or (B) of subsection (a)(1) of this section) with respect to a public water system in a State which has primary enforcement responsibility, the Administrator may, for the purpose of assisting that State in carrying out such responsibility and upon the petition of such State or public water system or persons served by such system, hold, after appropriate notice, public hearings for the purpose of gathering information from technical

or other experts, Federal, State, or other public officials, representatives of such public water system, persons served by such system, and other interested persons on—

(1) the ways in which such system can within the earliest feasible time be brought into compliance with the regulation or requirement with respect to which such finding was made, and

(2) the means for the maximum feasible protection of the public health during any period in which such system is not in compliance with a national primary drinking water regulation or requirement applicable to a variance or exemption.

On the basis of such hearings the Administrator shall issue recommendations which shall be sent to such State and public water system and shall be made available to the public and communications media.

(g) Administrative order requiring compliance; notice and hearing; civil penalty; civil actions

(1) In any case in which the Administrator is authorized to bring a civil action under this section or under section 300j–4 of this title with respect to any regulation, schedule, or other requirement, the Administrator also may issue an order to require compliance with such regulation, schedule, or other requirement.

(2) An order issued under this subsection shall not take effect until after notice and opportunity for public hearing and, in the case of a State having primary enforcement responsibility for public water systems in that State, until after the Administrator has provided the State with an opportunity to confer with the Administrator regarding the proposed order. A copy of any order proposed to be issued under this subsection shall be sent to the appropriate State agency of the State involved if the State has primary enforcement responsibility for public water systems in that State. Any order issued under this subsection shall state with reasonable specificity the nature of the violation. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be issued to appropriate corporate officers.

(3)(A) Any person who violates, or fails or refuses to comply with, an order under this subsection shall be liable to the United States for a civil penalty of not more than $25,000 per day of violation.

(B) Whenever any civil penalty sought by the Administrator under this paragraph does not exceed a total of $5,000, the penalty shall be assessed by the Administrator after notice and opportunity for a hearing on the record in accordance with section 554 of title 5.

(C) Whenever any civil penalty sought by the Administrator under this paragraph exceeds $5,000, the penalty shall be assessed by a civil action brought by the Administrator in the appropriate United States district court (as determined under the provisions of title 28).

(D) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court of appeals has entered final judgment in favor of the Administrator, the Attorney General shall recover the amount for which such person is liable in any appropriate district court of the United States. In any such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(July 1, 1944, ch. 373, title XIV, § 1414, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1666; amended Nov. 16, 1977, Pub. L. 95–190, § 12(b), 91 Stat. 1398; June 19, 1986, Pub. L. 99–339, title I, §§ 102, 103, 100 Stat. 647, 648.)

AMENDMENTS

1986—Pub. L. 99–339, § 102(d)(2), substituted ''Enforcement'' for ''Failure of State to assure enforcement'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 99–339, § 102(a), inserted ''and such public water system'' after ''notify the State'' in provisions following cl. (ii).

Subsec. (a)(1)(B). Pub. L. 99–339, § 102(b)(1), amended subpar. (B) generally, substituting provisions which relate to issuance of an order to public water system to comply with regulations, or commencement of civil action if the State has not commenced appropriate enforcement action for provisions which related to public notice of noncompliance and commencement of civil action by Administrator if State failed to take steps to obtain compliance by public water system.

Subsec. (a)(2). Pub. L. 99–339, § 102(b)(2), substituted ''the Administrator shall issue an order under subsection (g) of this section requiring the public water system to comply with such regulation or requirement or the Administrator shall commence a civil action under subsection (b) of this section'' for ''he may commence a civil action under subsection (b) of this section''.

Subsec. (b). Pub. L. 99–339, § 102(c), inserted '', with an order issued under subsection (g) of this section,'' before ''or with any schedule'' and substituted ''there has been a violation'' for ''there has been a willful violation'' and ''$25,000'' for ''$5,000''.

Subsec. (c). Pub. L. 99–339, § 103, substituted provisions relating to amendment of regulations within fifteen months after June 19, 1986, to provide different types and frequencies of notice based on the differences between violations which are intermittent or continuous, manner and content of notices, notice required to public served by owner or operator of public water system, and civil penalty of $25,000, for provisions relating to form, manner, and frequency of notice based on three month billing period for water bills, notice required to public served by owner or operator of public water system, and civil penalty of $5,000.

Subsec. (g). Pub. L. 99–339, § 102(d), added subsec. (g).

1977—Subsec. (c). Pub. L. 95–190 inserted provisions relating to frequency of required notice, and notice respecting contaminant levels, and substituted ''issued under this subsection'' for ''thereunder''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300g–4, 300g–5 of this title.

§ 300g–4. Variances

(a) Characteristics of raw water sources; specific treatment technique; notice to Administrator, reasons for variance; compliance, enforcement; approval or revision of schedules and revocation of variances; review of variances and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting variances or failing to prescribe schedules; State corrective action; authority of Administrator in a State without primary enforcement responsibility; alternative treatment techniques

Notwithstanding any other provision of this part, variances from national primary drinking water regulations may be granted as follows:

(1)(A) A State which has primary enforcement responsibility for public water systems may grant one or more variances from an applicable national primary drinking water regulation to one or more public water systems within its jurisdiction which, because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels of such drinking water regulation. A variance may only be issued to a system after the system's application of the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration). The Administrator shall propose and promulgate his finding of the best available technology, treatment techniques or other means available for each contaminant for purposes of this subsection at the time he proposes and promulgates a maximum contaminant level for each such contaminant. The Administrator's finding of best available technology, treatment techniques or other means for purposes of this subsection may vary depending on the number of persons served by the system or for other physical conditions related to engineering feasibility and costs of compliance with maximum contaminant levels as considered appropriate by the Administrator. Before a State may grant a variance under this subparagraph, the State must find that the variance will not result in an unreasonable risk to health. If a State grants a public water system a variance under this subparagraph, the State shall prescribe at the time the variance is granted, a schedule for—

(i) compliance (including increments of progress) by the public water system with each containment level requirement with respect to which the variance was granted, and

(ii) implementation by the public water system of such additional control measures as the State may require for each contaminant, subject to such contaminant level requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subparagraph may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice. A schedule prescribed pursuant to this subparagraph for a public water system granted a variance shall require compliance by the system with each contaminant level requirement with respect to which the variance was granted as expeditiously as practicable (as the State may reasonably determine).

(B) A State which has primary enforcement responsibility for public water systems may grant to one or more public water systems within its jurisdiction one or more variances from any provision of the national primary drinking water regulation which requires the use of a specified treatment technique with respect to a contaminant if the public water system applying for the variance demonstrates to the satisfaction of the State that such treatment technique is not necessary to protect the health of persons because of the nature of the raw water source of such system. A variance granted under this subparagraph shall be conditioned on such monitoring and other requirements as the Administrator may prescribe.

(C) Before a variance proposed to be granted by a State under subparagraph (A) or (B) may take effect, such State shall provide notice and opportunity for public hearing on the proposed variance. A notice given pursuant to the preceding sentence may cover the granting of more than one variance and a hearing held pursuant to such notice shall include each of the variances covered by the notice. The State shall promptly notify the Administrator of all variances granted by it. Such notification shall contain the reason for the variance (and in the case of a variance under subparagraph (A), the basis for the finding required by that subparagraph before the granting of the variance) and documentation of the need for the variance.

(D) Each public water system's variance granted by a State under subparagraph (A) shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to that subparagraph. The requirements of each schedule prescribed by a State pursuant to that subparagraph shall be enforceable by the State under its laws. Any requirement of a schedule on which a variance granted under that subparagraph is conditioned may be enforced under section 300g–3 of this title as if such requirement was part of a national primary drinking water regulation.

(E) Each schedule prescribed by a State pursuant to subparagraph (A) shall be deemed approved by the Administrator unless the variance for which it was prescribed is revoked by the Administrator under subparagraph (G) or the schedule is revised by the Administrator under such subparagraph.

(F) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the

variances granted under subparagraph (A) (and schedules prescribed pursuant thereto) and under subparagraph (B) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of variances and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (i) provide information respecting the location of data and other information respecting the variances to be reviewed (including data and other information concerning new scientific matters bearing on such variances), and (ii) advise of the opportunity to submit comments on the variances reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review together with findings responsive to comments submitted in connection with such review.

(G)(i) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting variances under subparagraph (A) or (B) or that in a substantial number of cases the State has failed to prescribe schedules in accordance with subparagraph (A), the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting variances in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the variances and if the requirements applicable to the granting of the variances were complied with. A notice under this clause shall—

(I) identify each public water system with respect to which the finding was made,

(II) specify the reasons for the finding, and

(III) as appropriate, propose revocations of specific variances or propose revised schedules or other requirements for specific public water systems granted variances, or both.

(ii) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to clause (i) of this subparagraph. After a hearing on a notice pursuant to such clause, the Administrator shall (I) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (II) promulgate (with such modifications as he deems appropriate) such variance revocations and revised schedules or other requirements proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to clause (i) of this subparagraph, the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(iii) If a State is notified under clause (i) of this subparagraph of a finding of the Administrator made with respect to a variance granted a public water system within that State or to a schedule or other requirement for a variance and if, before a revocation of such variance or a revision of such schedule or other requirement promulgated by the Administrator takes effect, the State takes corrective action with respect to such variance or schedule or other requirement which the Administrator determines makes his finding inapplicable to such variance or schedule or other requirement, the Administrator shall rescind the application of his finding to that variance on schedule or other requirement. No variance revocation or revised schedule or other requirement may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule or other requirement was proposed.

(2) If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to grant variances in such State as the State would have under paragraph (1) if it had primary enforcement responsibility.

(3) The Administrator may grant a variance from any treatment technique requirement of a national primary drinking water regulation upon a showing by any person that an alternative treatment technique not included in such requirement is at least as efficient in lowering the level of the contaminant with respect to which such requirement was prescribed. A variance under this paragraph shall be conditioned on the use of the alternative treatment technique which is the basis of the variance.

(b) Enforcement of schedule or other requirement

Any schedule or other requirement on which a variance granted under paragraph (1)(B) or (2) of subsection (a) of this section is conditioned may be enforced under section 300g–3 of this title as if such schedule or other requirement was part of a national primary drinking water regulation.

(c) Applications for variances; regulations: reasonable time for acting

If an application for a variance under subsection (a) of this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(d) "Treatment technique requirement" defined

For purposes of this section, the term ''treatment technique requirement'' means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300f(1)(C)(ii) of this title) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1(b)(3) of this title.

(July 1, 1944, ch. 373, title XIV, § 1415, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1669; amended June 19, 1986, Pub. L. 99–339, title I, § 104, 100 Stat. 649.)

AMENDMENTS

1986—Subsec. (a)(1)(A). Pub. L. 99–339, § 104(1)–(3), substituted ''such drinking water regulation. A variance

may only be issued to a system after the system's application'' for ''such drinking water regulation despite application'', struck out ''generally'' after ''finds are'', inserted provisions relating to proposal and promulgation by Administrator of a finding on best available technology, treatment techniques or other means available for each contaminant at time of proposal and promulgation of maximum contaminant levels, and substituted ''at the time'' for ''within one year of the date''.

Subsec. (a)(1)(A)(ii). Pub. L. 99–339, § 104(4), substituted ''water system of such additional control'' for ''water system of such control''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300g, 300g–1, 300g–2, 300g–3, 300j–2, 300j–7, 300j–8 of this title.

§ 300g–5. Exemptions

(a) Requisite findings

A State which has primary enforcement responsibility may exempt any public water system within the State's jurisdiction from any requirement respecting a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that—

(1) due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level or treatment technique requirement,

(2) the public water system was in operation on the effective date of such contaminant level or treatment technique requirement, or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system, and

(3) the granting of the exemption will not result in an unreasonable risk to health.

(b) Compliance schedule and implementation of control measures; notice and hearing; dates for compliance with schedule; extension of final date for compliance; compliance, enforcement; approval or revision of schedules and revocation of exemptions

(1) If a State grants a public water system an exemption under subsection (a) of this section, the State shall prescribe, at the time the exemption is granted, a schedule for—

(A) compliance (including increments of progress) by the public water system with each contaminant level requirement and treatment technique requirement with respect to which the exemption was granted, and

(B) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

(2)(A) A schedule prescribed pursuant to this subsection for a public water system granted an exemption under subsection (a) of this section shall require compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but (except as provided in subparagraph (B))—

(i) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by the national primary drinking water regulations promulgated under section 300g–1(a) of this title, not later than 12 months after June 19, 1986; and

(ii) in the case of an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by national primary drinking water regulations, other than a regulation referred to in section 300g–1(a) of this title, 12 months after the date of the issuance of the exemption.

(B) The final date for compliance provided in any schedule in the case of any exemption may be extended by the State (in the case of a State which has primary enforcement responsibility) or by the Administrator (in any other case) for a period not to exceed 3 years after the date of the issuance of the exemption if the public water system establishes that—

(i) the system cannot meet the standard without capital improvements which cannot be completed within the period of such exemption;

(ii) in the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance; or

(iii) the system has entered into an enforceable agreement to become a part of a regional public water system; and

the system is taking all practicable steps to meet the standard.

(C) In the case of a system which does not serve more than 500 service connections and which needs financial assistance for the necessary improvements, an exemption granted under clause (i) or (ii) of subparagraph (B) may be renewed for one or more additional 2-year periods if the system establishes that it is taking all practicable steps to meet the requirements of subparagraph (B).

(3) Each public water system's exemption granted by a State under subsection (a) of this section shall be conditioned by the State upon compliance by the public water system with the schedule prescribed by the State pursuant to this subsection. The requirements of each schedule prescribed by a State pursuant to this subsection shall be enforceable by the State under its laws. Any requirement of a schedule on which an exemption granted under this section is conditioned may be enforced under section 300g–3 of this title as if such requirement was part of a national primary drinking water regulation.

(4) Each schedule prescribed by a State pursuant to this subsection shall be deemed approved by the Administrator unless the exemption for

which it was prescribed is revoked by the Administrator under subsection (d)(2) of this section or the schedule is revised by the Administrator under such subsection.

(c) Notice to Administrator; reasons for exemption

Each State which grants an exemption under subsection (a) of this section shall promptly notify the Administrator of the granting of such exemption. Such notification shall contain the reasons for the exemption (including the basis for the finding required by subsection (a)(3) of this section before the exemption may be granted) and document the need for the exemption.

(d) Review of exemptions and schedules; publication in Federal Register, notice and results of review; notice to State; considerations respecting abuse of discretion in granting exemptions or failing to prescribe schedules; State corrective action

(1) Not later than 18 months after the effective date of the interim national primary drinking water regulations the Administrator shall complete a comprehensive review of the exemptions granted (and schedules prescribed pursuant thereto) by the States during the one-year period beginning on such effective date. The Administrator shall conduct such subsequent reviews of exemptions and schedules as he deems necessary to carry out the purposes of this subchapter, but each subsequent review shall be completed within each 3-year period following the completion of the first review under this subparagraph. Before conducting any review under this subparagraph, the Administrator shall publish notice of the proposed review in the Federal Register. Such notice shall (A) provide information respecting the location of data and other information respecting the exemptions to be reviewed (including data and other information concerning new scientific matters bearing on such exemptions), and (B) advise of the opportunity to submit comments on the exemptions reviewed and on the need for continuing them. Upon completion of any such review, the Administrator shall publish in the Federal Register the results of his review, together with findings responsive to comments submitted in connection with such review.

(2)(A) If the Administrator finds that a State has, in a substantial number of instances, abused its discretion in granting exemptions under subsection (a) of this section or failed to prescribe schedules in accordance with subsection (b) of this section, the Administrator shall notify the State of his findings. In determining if a State has abused its discretion in granting exemptions in a substantial number of instances, the Administrator shall consider the number of persons who are affected by the exemptions and if the requirements applicable to the granting of the exemptions were complied with. A notice under this subparagraph shall—

(i) identify each exempt public water system with respect to which the finding was made,

(ii) specify the reasons for the finding, and

(iii) as appropriate, propose revocations of specific exemptions or propose revised schedules for specific exempt public water systems, or both.

(B) The Administrator shall provide reasonable notice and public hearing on the provisions of each notice given pursuant to subparagraph (A). After a hearing on notice pursuant to subparagraph (A), the Administrator shall (i) rescind the finding for which the notice was given and promptly notify the State of such rescission, or (ii) promulgate (with such modifications as he deems appropriate) such exemption revocations and revised schedules proposed in such notice as he deems appropriate. Not later than 180 days after the date a notice is given pursuant to subparagraph (A), the Administrator shall complete the hearing on the notice and take the action required by the preceding sentence.

(C) If a State is notified under subparagraph (A) of a finding of the Administrator made with respect to an exemption granted a public water system within that State or to a schedule prescribed pursuant to such an exemption and if before a revocation of such exemption or a revision of such schedule promulgated by the Administrator takes effect the State takes corrective action with respect to such exemption or schedule which the Administrator determines makes his finding inapplicable to such exemption or schedule, the Administrator shall rescind the application of his finding to that exemption or schedule. No exemption revocation or revised schedule may take effect before the expiration of 90 days following the date of the notice in which the revocation or revised schedule was proposed.

(e) "Treatment technique requirement" defined

For purposes of this section, the term ''treatment technique requirement'' means a requirement in a national primary drinking water regulation which specifies for a contaminant (in accordance with section 300f(1)(C)(ii) of this title) each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 300g–1(b) of this title.

(f) Authority of Administrator in a State without primary enforcement responsibility

If a State does not have primary enforcement responsibility for public water systems, the Administrator shall have the same authority to exempt public water systems in such State from maximum contaminant level requirements and treatment technique requirements under the same conditions and in the same manner as the State would be authorized to grant exemptions under this section if it had primary enforcement responsibility.

(g) Applications for exemptions; regulations; reasonable time for acting

If an application for an exemption under this section is made, the State receiving the application or the Administrator, as the case may be, shall act upon such application within a reasonable period (as determined under regulations prescribed by the Administrator) after the date of its submission.

(July 1, 1944, ch. 373, title XIV, § 1416, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1672; amended Nov. 16, 1977, Pub. L. 95–190, § 10(a), 91 Stat. 1398; Dec. 5, 1980, Pub. L. 96–502, §§ 1, 4(b), 94 Stat. 2737, 2738; June 19, 1986, Pub. L. 99–339, title I, §§ 101(c)(4), 105, 100 Stat. 646, 649.)

AMENDMENTS

1986—Subsec. (b)(1). Pub. L. 99–339, §105(a)(1), substituted ''at the time'' for ''within one year of the date''.

Subsec. (b)(2)(A)(i). Pub. L. 99–339, §105(a)(2), struck out ''interim'' before ''national primary'' and substituted ''not later than 12 months after June 19, 1986'' for ''not later than January 1, 1984''.

Subsec. (b)(2)(A)(ii). Pub. L. 99–339, §105(a)(3), struck out ''revised'' before ''national primary'' and substituted ''other than a regulation referred to in section 300g–1(a) of this title, 12 months after the date of the issuance of the exemption'' for ''not later than seven years after the date such requirement takes effect''.

Subsec. (b)(2)(B). Pub. L. 99–339, §105(a)(4), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Notwithstanding clauses (i) and (ii) of subparagraph (A) of this paragraph, the final date for compliance prescribed in a schedule prescribed pursuant to this subsection for an exemption granted for a public water system which (as determined by the State granting the exemption) has entered into an enforceable agreement to become a part of a regional public water system shall—

''(i) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by interim national primary drinking water regulations, be not later than January 1, 1986; and

''(ii) in the case of a schedule prescribed for an exemption granted with respect to a contaminant level or treatment technique requirement prescribed by revised national primary drinking water regulations, be not later than nine years after such requirement takes effect.''

Subsec. (b)(2)(C). Pub. L. 99–339, §105(a)(4), added subpar. (C).

Subsec. (e). Pub. L. 99–339, §101(c)(4), substituted ''300g–1(b)'' for ''300g–1(b)(3)''.

1980—Subsec. (a)(2). Pub. L. 96–502, §4(b), substituted ''treatment technique requirement, or, for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to such new system, and'' for ''treatment technique requirement, and''.

Subsec. (b)(2)(A)(i). Pub. L. 96–502, §1, substituted ''January 1, 1984'' for ''January 1, 1981''.

Subsec. (b)(2)(B)(i). Pub. L. 96–502, §1, substituted ''January 1, 1986'' for ''January 1, 1983''.

1977—Subsec. (b)(1). Pub. L. 95–190 substituted ''contaminant'' for ''containment'' wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300g, 300g–2, 300g–3, 300j–2, 300j–7, 300j–8 of this title.

§ 300g–6. Prohibition on use of lead pipes, solder, and flux

(a) In general

(1) Prohibition

Any pipe, solder, or flux, which is used after June 19, 1986, in the installation or repair of—

(A) any public water system, or

(B) any plumbing in a residential or nonresidential facility providing water for human consumption which is connected to a public water system,

shall be lead free (within the meaning of subsection (d) of this section). This paragraph shall not apply to leaded joints necessary for the repair of cast iron pipes.

(2) Public notice requirements

(A) In general

Each public water system shall identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:

(i) The lead content in the construction materials of the public water distribution system.

(ii) Corrosivity of the water supply sufficient to cause leaching of lead.

The notice shall be provided in such manner and form as may be reasonably required by the Administrator. Notice under this paragraph shall be provided notwithstanding the absence of a violation of any national drinking water standard.

(B) Contents of notice

Notice under this paragraph shall provide a clear and readily understandable explanation of—

(i) the potential sources of lead in the drinking water,

(ii) potential adverse health effects,

(iii) reasonably available methods of mitigating known or potential lead content in drinking water,

(iv) any steps the system is taking to mitigate lead content in drinking water, and

(v) the necessity for seeking alternative water supplies, if any.

(b) State enforcement

(1) Enforcement of prohibition

The requirements of subsection (a)(1) of this section shall be enforced in all States effective 24 months after June 19, 1986. States shall enforce such requirements through State or local plumbing codes, or such other means of enforcement as the State may determine to be appropriate.

(2) Enforcement of public notice requirements

The requirements of subsection (a)(2) of this section shall apply in all States effective 24 months after June 19, 1986.

(c) Penalties

If the Administrator determines that a State is not enforcing the requirements of subsection (a) of this section as required pursuant to subsection (b) of this section, the Administrator may withhold up to 5 percent of Federal funds available to that State for State program grants under section 300j–2(a) of this title.

(d) "Lead free" defined

For purposes of this section, the term ''lead free''—

(1) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

(2) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

(July 1, 1944, ch. 373, title XIV, §1417, as added June 19, 1986, Pub. L. 99–339, title I, §109(a), 100 Stat. 651.)

NOTIFICATION TO STATES

Section 109(b) of Pub. L. 99–339 provided that: ''The Administrator of the Environmental Protection Agency shall notify all States with respect to the require-

ments of section 1417 of the Public Health Service Act [this section] within 90 days after the enactment of this Act [June 19, 1986].''

BAN ON LEAD WATER PIPES, SOLDER, AND FLUX IN VA AND HUD INSURED OR ASSISTED PROPERTY

Section 109(c) of Pub. L. 99–339, as amended by Pub. L. 102–54, §13(q)(2), June 13, 1991, 105 Stat. 279, provided that:

''(1) PROHIBITION.—The Secretary of Housing and Urban Development and the Secretary of Veterans Affairs may not insure or guarantee a mortgage or furnish assistance with respect to newly constructed residential property which contains a potable water system unless such system uses only lead free pipe, solder, and flux.

''(2) DEFINITION OF LEAD FREE.—For purposes of paragraph (1) the term 'lead free'—

''(A) when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead, and

''(B) when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead.

''(3) EFFECTIVE DATE.—Paragraph (1) shall become effective 24 months after the enactment of this Act [June 19, 1986].''

CROSS REFERENCES

Housing assistance by Secretary of Veterans Affairs, see section 3701 et seq. of Title 38, Veterans' Benefits.

Housing assistance by Secretary of Housing and Urban Development, see section 1701 et seq. of Title 12, Banks and Banking.

PART C—PROTECTION OF UNDERGROUND SOURCES OF DRINKING WATER

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 6939b, 9601 of this title; title 33 section 1345.

§ 300h. Regulations for State programs

(a) Publication of proposed regulations; promulgation; amendments; public hearings; administrative consultations

(1) The Administrator shall publish proposed regulations for State underground injection control programs within 180 days after December 16, 1974. Within 180 days after publication of such proposed regulations, he shall promulgate such regulations with such modifications as he deems appropriate. Any regulation under this subsection may be amended from time to time.

(2) Any regulation under this section shall be proposed and promulgated in accordance with section 553 of title 5 (relating to rulemaking), except that the Administrator shall provide opportunity for public hearing prior to promulgation of such regulations. In proposing and promulgating regulations under this section the Administrator shall consult with the Secretary, the National Drinking Water Advisory Council, and other appropriate Federal entities and with interested State entities.

(b) Minimum requirements; restrictions

(1) Regulations under subsection (a) of this section for State underground injection programs shall contain minimum requirements for effective programs to prevent underground injection which endangers drinking water sources within the meaning of subsection (d)(2) of this section. Such regulations shall require that a State program, in order to be approved under section 300h–1 of this title—

(A) shall prohibit, effective on the date on which the applicable underground injection control program takes effect, any underground injection in such State which is not authorized by a permit issued by the State (except that the regulations may permit a State to authorize underground injection by rule);

(B) shall require (i) in the case of a program which provides for authorization of underground injection by permit, that the applicant for the permit to inject must satisfy the State that the underground injection will not endanger drinking water sources, and (ii) in the case of a program which provides for such an authorization by rule, that no rule may be promulgated which authorizes any underground injection which endangers drinking water sources;

(C) shall include inspection, monitoring, recordkeeping, and reporting requirements; and

(D) shall apply (i) as prescribed by section 300j–6(b) of this title, to underground injections by Federal agencies, and (ii) to underground injections by any other person whether or not occurring on property owned or leased by the United States.

(2) Regulations of the Administrator under this section for State underground injection control programs may not prescribe requirements which interfere with or impede—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection.

(3)(A) The regulations of the Administrator under this section shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State.

(B)(i) In prescribing regulations under this section the Administrator shall, to the extent feasible, avoid promulgation of requirements which would unnecessarily disrupt State underground injection control programs which are in effect and being enforced in a substantial number or[1] States.

(ii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed to disrupt a State underground injection control program only if it would be infeasible to comply with both such regulation and the State underground injection control program.

(iii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed unnecessary only if, without such regulation, underground sources of drinking water will not be endangered by an underground injection.

(C) Nothing in this section shall be construed to alter or affect the duty to assure that under-

[1] So in original. Probably should be ''of''.

ground sources of drinking water will not be endangered by any underground injection.

(c) Temporary permits; notice and hearing

(1) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) of this section) temporary permits for underground injection which may be effective until the, expiration of four years after December 16, 1974, if—

(A) the Administrator finds that the State has demonstrated that it is unable and could not reasonably have been able to process all permit applications within the time available;

(B) the Administrator determines the adverse effect on the environment of such temporary permits is not unwarranted;

(C) such temporary permits will be issued only with respect to injection wells in operation on the date on which such State's permit program approved under this part first takes effect and for which there was inadequate time to process its permit application; and

(D) the Administrator determines the temporary permits require the use of adequate safeguards established by rules adopted by him.

(2) The Administrator may, upon application of the Governor of a State which authorizes underground injection by means of permits, authorize such State to issue (without regard to subsection (b)(1)(B)(i) of this section), but after reasonable notice and hearing, one or more temporary permits each of which is applicable to a particular injection well and to the underground injection of a particular fluid and which may be effective until the expiration of four years after December 16, 1974, if the State finds, on the record of such hearing—

(A) that technology (or other means) to permit safe injection of the fluid in accordance with the applicable underground injection control program is not generally available (taking costs into consideration);

(B) that injection of the fluid would be less harmful to health than the use of other available means of disposing of waste or producing the desired product; and

(C) that available technology or other means have been employed (and will be employed) to reduce the volume and toxicity of the fluid and to minimize the potentially adverse effect of the injection on the public health.

(d) "Underground injection" defined; underground injection endangerment of drinking water sources

For purposes of this part:

(1) The term ''underground injection'' means the subsurface emplacement of fluids by well injection. Such term does not include the underground injection of natural gas for purposes of storage.

(2) Underground injection endangers drinking water sources if such injection may result in the presence in underground water which supplies or can reasonably be expected to supply any public water system of any contaminant, and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons.

(July 1, 1944, ch. 373, title XIV, § 1421, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1674; amended Nov. 16, 1977, Pub. L. 95–190, § 6(b), 91 Stat. 1396; Dec. 5, 1980, Pub. L. 96–502, §§ 3, 4(c), 94 Stat. 2738; June 19, 1986, Pub. L. 99–339, title II, § 201(a), 100 Stat. 653.)

AMENDMENTS

1986—Subsec. (b)(2)(A). Pub. L. 99–339 inserted ''or natural gas storage operations'' after ''production''.

1980—Subsec. (b)(1)(A). Pub. L. 96–502, § 4(c), substituted ''effective on the date on which the applicable underground injection control program takes effect'' for ''effective three years after December 16, 1974''.

Subsec. (d)(1). Pub. L. 96–502, § 3, inserted provision that such term does not include the underground injection of natural gas for purposes of storage.

1977—Subsec. (b)(3). Pub. L. 95–190 added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300h–1, 300h–4, 300j–2, 300j–6 of this title.

§ 300h–1. State primary enforcement responsibility

(a) List of States in need of a control program; amendment of list

Within 180 days after December 16, 1974, the Administrator shall list in the Federal Register each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources. Such list may be amended from time to time.

(b) State applications; notice to Administrator of compliance with revised or added requirements; approval or disapproval by Administrator; duration of State primary enforcement responsibility; public hearing

(1)(A) Each State listed under subsection (a) of this section shall within 270 days after the date of promulgation of any regulation under section 300h of this title (or, if later, within 270 days after such State is first listed under subsection (a) of this section) submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State—

(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program which meets the requirements of regulations in effect under section 300h of this title; and

(ii) will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation.

The Administrator may, for good cause, extend the date for submission of an application by any State under this subparagraph for a period not to exceed an additional 270 days.

(B) Within 270 days of any amendment of a regulation under section 300h of this title revising or adding any requirement respecting State underground injection control programs, each State listed under subsection (a) of this section shall submit (in such form and manner as the

Administrator may require) a notice to the Administrator containing a showing satisfactory to him that the State underground injection control program meets the revised or added requirement.

(2) Within ninety days after the State's application under paragraph (1)(A) or notice under paragraph (1)(B) and after reasonable opportunity for presentation of views, the Administrator shall by rule either approve, disapprove, or approve in part and disapprove in part, the State's underground injection control program.

(3) If the Administrator approves the State's program under paragraph (2), the State shall have primary enforcement responsibility for underground water sources until such time as the Administrator determines, by rule, that such State no longer meets the requirements of clause (i) or (ii) of paragraph (1)(A) of this subsection.

(4) Before promulgating any rule under paragraph (2) or (3) of this subsection, the Administrator shall provide opportunity for public hearing respecting such rule.

(c) Program by Administrator for State without primary enforcement responsibility; restrictions

If the Administrator disapproves a State's program (or part thereof) under subsection (b)(2) of this section, if the Administrator determines under subsection (b)(3) of this section that a State no longer meets the requirements of clause (i) or (ii) of subsection (b)(1)(A) of this section, or if a State fails to submit an application or notice before the date of expiration of the period specified in subsection (b)(1) of this section, the Administrator shall by regulation within 90 days after the date of such disapproval, determination, or expiration (as the case may be) prescribe (and may from time to time by regulation revise) a program applicable to such State meeting the requirements of section 300h(b) of this title. Such program may not include requirements which interfere with or impede—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas,

unless such requirements are essential to assure that underground sources of drinking water will not be endangered by such injection. Such program shall apply in such State to the extent that a program adopted by such State which the Administrator determines meets such requirements is not in effect. Before promulgating any regulation under this section, the Administrator shall provide opportunity for public hearing respecting such regulation.

(d) "Applicable underground injection control program" defined

For purposes of this subchapter, the term ''applicable underground injection control program'' with respect to a State means the program (or most recent amendment thereof) (1) which has been adopted by the State and which has been approved under subsection (b) of this section, or (2) which has been prescribed by the Administrator under subsection (c) of this section.

(e) Primary enforcement responsibility by Indian Tribe

An Indian Tribe may assume primary enforcement responsibility for underground injection control under this section consistent with such regulations as the Administrator has prescribed pursuant to this part and section 300j–11 of this title. The area over which such Indian Tribe exercises governmental jurisdiction need not have been listed under subsection (a) of this section, and such Tribe need not submit an application to assume primary enforcement responsibility within the 270-day deadline noted in subsection (b)(1)(A) of this section. Until an Indian Tribe assumes primary enforcement responsibility, the currently applicable underground injection control program shall continue to apply. If an applicable underground injection control program does not exist for an Indian Tribe, the Administrator shall prescribe such a program pursuant to subsection (c) of this section, and consistent with section 300h(b) of this title, within 270 days after June 19, 1986, unless an Indian Tribe first obtains approval to assume primary enforcement responsibility for underground injection control.

(July 1, 1944, ch. 373, title XIV, § 1422, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1676; amended Nov. 16, 1977, Pub. L. 95–190, § 6(a), 91 Stat. 1396; June 19, 1986, Pub. L. 99–339, title II, § 201(a), title III, § 302(c), 100 Stat. 653, 666.)

AMENDMENTS

1986—Subsec. (c)(1). Pub. L. 99–339, § 201(a), inserted ''or natural gas storage operations, or'' after ''production''.

Subsec. (e). Pub. L. 99–339, § 302(c), added subsec. (e).

1977—Subsec. (b)(1)(A). Pub. L. 95–190 inserted provisions relating to extension of date for submission of applications by any State.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300h, 300h–2, 300h–4, 300j–2, 300j–4 of this title.

§ 300h–2. Enforcement of program

(a) Notice to State and violator; issuance of administrative order; civil action

(1) Whenever the Administrator finds during a period during which a State has primary enforcement responsibility for underground water sources (within the meaning of section 300h–1(b)(3) of this title or section 300h–4(c) of this title) that any person who is subject to a requirement of an applicable underground injection control program in such State is violating such requirement, he shall so notify the State and the person violating such requirement. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order under subsection (c) of this section requiring the person to comply with such requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(2) Whenever the Administrator finds during a period during which a State does not have pri-

mary enforcement responsibility for underground water sources that any person subject to any requirement of any applicable underground injection control program in such State is violating such requirement, the Administrator shall issue an order under subsection (c) of this section requiring the person to comply with such requirement or the Administrator shall commence a civil action under subsection (b) of this section.

(b) Civil and criminal actions

Civil actions referred to in paragraphs (1) and (2) of subsection (a) of this section shall be brought in the appropriate United States district court. Such court shall have jurisdiction to require compliance with any requirement of an applicable underground injection program or with an order issued under subsection (c) of this section. The court may enter such judgment as protection of public health may require. Any person who violates any requirement of an applicable underground injection control program or an order requiring compliance under subsection (c) of this section—

(1) shall be subject to a civil penalty of not more than $25,000 for each day of such violation, and

(2) if such violation is willful, such person may, in addition to or in lieu of the civil penalty authorized by paragraph (1), be imprisoned for not more than 3 years, or fined in accordance with title 18, or both.

(c) Administrative orders

(1) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation or other requirement of this part other than those relating to—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $10,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

(2) In any case in which the Administrator is authorized to bring a civil action under this section with respect to any regulation, or other requirement of this part relating to—

(A) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production, or

(B) any underground injection for the secondary or tertiary recovery of oil or natural gas,

the Administrator may also issue an order under this subsection either assessing a civil penalty of not more than $5,000 for each day of violation for any past or current violation, up to a maximum administrative penalty of $125,000, or requiring compliance with such regulation or other requirement, or both.

(3)(A) An order under this subsection shall be issued by the Administrator after opportunity (provided in accordance with this subparagraph) for a hearing. Before issuing the order, the Administrator shall give to the person to whom it is directed written notice of the Administrator's proposal to issue such order and the opportunity to request, within 30 days of the date the notice is received by such person, a hearing on the order. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

(B) The Administrator shall provide public notice of, and reasonable opportunity to comment on, any proposed order.

(C) Any citizen who comments on any proposed order under subparagraph (B) shall be given notice of any hearing under this subsection and of any order. In any hearing held under subparagraph (A), such citizen shall have a reasonable opportunity to be heard and to present evidence.

(D) Any order issued under this subsection shall become effective 30 days following its issuance unless an appeal is taken pursuant to paragraph (6).

(4)(A) Any order issued under this subsection shall state with reasonable specificity the nature of the violation and may specify a reasonable time for compliance.

(B) In assessing any civil penalty under this subsection, the Administrator shall take into account appropriate factors, including (i) the seriousness of the violation; (ii) the economic benefit (if any) resulting from the violation; (iii) any history of such violations; (iv) any good-faith efforts to comply with the applicable requirements; (v) the economic impact of the penalty on the violator; and (vi) such other matters as justice may require.

(5) Any violation with respect to which the Administrator has commenced and is diligently prosecuting an action, or has issued an order under this subsection assessing a penalty, shall not be subject to an action under subsection (b) of this section or section 300h–3(c) or 300j–8 of this title, except that the foregoing limitation on civil actions under section 300j–8 of this title shall not apply with respect to any violation for which—

(A) a civil action under section 300j–8(a)(1) of this title has been filed prior to commencement of an action under this subsection, or

(B) a notice of violation under section 300j–8(b)(1) of this title has been given before commencement of an action under this subsection and an action under section 300j–8(a)(1) of this title is filed before 120 days after such notice is given.

(6) Any person against whom an order is issued or who commented on a proposed order pursuant to paragraph (3) may file an appeal of such order with the United States District Court for the District of Columbia or the district in which the violation is alleged to have occurred. Such an appeal may only be filed within the 30-day period beginning on the date the order is issued. Appellant shall simultaneously send a copy of the appeal by certified mail to the Administrator and to the Attorney General. The Admin-

istrator shall promptly file in such court a certified copy of the record on which such order was imposed. The district court shall not set aside or remand such order unless there is not substantial evidence on the record, taken as a whole, to support the finding of a violation or, unless the Administrator's assessment of penalty or requirement for compliance constitutes an abuse of discretion. The district court shall not impose additional civil penalties for the same violation unless the Administrator's assessment of a penalty constitutes an abuse of discretion. Notwithstanding section 300j–7(a)(2) of this title, any order issued under paragraph (3) shall be subject to judicial review exclusively under this paragraph.

(7) If any person fails to pay an assessment of a civil penalty—

(A) after the order becomes effective under paragraph (3), or

(B) after a court, in an action brought under paragraph (6), has entered a final judgment in favor of the Administrator,

the Administrator may request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus costs, attorneys' fees, and interest at currently prevailing rates from the date the order is effective or the date of such final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review.

(8) The Administrator may, in connection with administrative proceedings under this subsection, issue subpoenas compelling the attendance and testimony of witnesses and subpoenas duces tecum, and may request the Attorney General to bring an action to enforce any subpoena under this section. The district courts shall have jurisdiction to enforce such subpoenas and impose sanction.

(d) State authority to adopt or enforce laws or regulations respecting underground injection unaffected

Nothing in this subchapter shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection but no such law or regulation shall relieve any person of any requirement otherwise applicable under this subchapter.

(July 1, 1944, ch. 373, title XIV, § 1423, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1677; amended Dec. 5, 1980, Pub. L. 96–502, § 2(b), 94 Stat. 2738; June 19, 1986, Pub. L. 99–339, title II, § 202, 100 Stat. 654.)

AMENDMENTS

1986—Pub. L. 99–339, § 202(d), substituted ''Enforcement'' for ''Failure of State to assure enforcement'' in section catchline.

Subsec. (a)(1). Pub. L. 99–339, § 202(a)(1), substituted provisions which related to issuance of an order of compliance or commencement of a civil action by the Administrator if the State has not commenced enforcement against the violator for provisions directing the Administrator to give public notice and request that the State report within 15 days thereafter as to steps taken to enforce compliance and authorizing the Administrator to commence a civil action upon failure by the State to comply timely.

Subsec. (a)(2). Pub. L. 99–339, § 202(a)(2), substituted provision that the Administrator issue an order under subsec. (c) of this section or commence a civil action under subsec. (b) of this section for provision that he commence a civil action under subsec. (b)(1) of this section.

Subsec. (b). Pub. L. 99–339, § 202(b), amended subsec. (b) generally, substituting provisions relating to jurisdiction of the appropriate Federal district court, entry of judgment, civil penalty of $25,000 per day, criminal liability and fine for willful violation for provisions which related to judicial determinations in appropriate Federal district courts, civil penalties of $5,000 per day, and fines of $10,000 per day for willful violations.

Subsecs. (c), (d). Pub. L. 99–339, § 202(c), added subsec. (c) and redesignated former subsec. (c) as (d).

1980—Subsec. (a)(1). Pub. L. 96–502 inserted reference to section 300h–4(c) of this title.

§ 300h–3. Interim regulation of underground injections

(a) Necessity for well operation permit; designation of one aquifer areas

(1) Any person may petition the Administrator to have an area of a State (or States) designated as an area in which no new underground injection well may be operated during the period beginning on the date of the designation and ending on the date on which the applicable underground injection control program covering such area takes effect unless a permit for the operation of such well has been issued by the Administrator under subsection (b) of this section. The Administrator may so designate an area within a State if he finds that the area has one aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health.

(2) Upon receipt of a petition under paragraph (1) of this subsection, the Administrator shall publish it in the Federal Register and shall provide an opportunity to interested persons to submit written data, views, or arguments thereon. Not later than the 30th day following the date of the publication of a petition under this paragraph in the Federal Register, the Administrator shall either make the designation for which the petition is submitted or deny the petition.

(b) Well operation permits; publication in Federal Register; notice and hearing; issuance or denial; conditions for issuance

(1) During the period beginning on the date an area is designated under subsection (a) of this section and ending on the date the applicable underground injection control program covering such area takes effect, no new underground injection well may be operated in such area unless the Administrator has issued a permit for such operation.

(2) Any person may petition the Administrator for the issuance of a permit for the operation of such a well in such an area. A petition submitted under this paragraph shall be submitted in such manner and contain such information as the Administrator may require by regulation. Upon receipt of such a petition, the Administrator shall publish it in the Federal Register. The Administrator shall give notice of any proceeding on a petition and shall provide opportunity for agency hearing. The Administrator

shall act upon such petition on the record of any hearing held pursuant to the preceding sentence respecting such petition. Within 120 days of the publication in the Federal Register of a petition submitted under this paragraph, the Administrator shall either issue the permit for which the petition was submitted or shall deny its issuance.

(3) The Administrator may issue a permit for the operation of a new underground injection well in an area designated under subsection (a) of this section only, if he finds that the operation of such well will not cause contamination of the aquifer of such area so as to create a significant hazard to public health. The Administrator may condition the issuance of such a permit upon the use of such control measures in connection with the operation of such well, for which the permit is to be issued, as he deems necessary to assure that the operation of the well will not contaminate the aquifer of the designated area in which the well is located so as to create a significant hazard to public health.

(c) Civil penalties; separate violations; penalties for willful violations; temporary restraining order or injunction

Any person who operates a new underground injection well in violation of subsection (b) of this section, (1) shall be subject to a civil penalty of not more than $5,000 for each day in which such violation occurs, or (2) if such violation is willful, such person may, in lieu of the civil penalty authorized by clause (1), be fined not more than $10,000 for each day in which such violation occurs. If the Administrator has reason to believe that any person is violating or will violate subsection (b) of this section, he may petition the United States district court to issue a temporary restraining order or injunction (including a mandatory injunction) to enforce such subsection.

(d) "New underground injection well" defined

For purposes of this section, the term ''new underground injection well'' means an underground injection well whose operation was not approved by appropriate State and Federal agencies before December 16, 1974.

(e) Areas with one aquifer; publication in Federal Register; commitments for Federal financial assistance

If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

(July 1, 1944, ch. 373, title XIV, § 1424, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1678.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300h–2, 300h–6, 300j–4 of this title.

§ 300h–4. Optional demonstration by States relating to oil or natural gas

(a) Approval of State underground injection control program; alternative showing of effectiveness of program by State

For purposes of the Administrator's approval or disapproval under section 300h–1 of this title of that portion of any State underground injection control program which relates to—

(1) the underground injection of brine or other fluids which are brought to the surface in connection with oil or natural gas production or natural gas storage operations, or

(2) any underground injection for the secondary or tertiary recovery of oil or natural gas,

in lieu of the showing required under subparagraph (A) of section 300h–1(b)(1) of this title the State may demonstrate that such portion of the State program meets the requirements of subparagraphs (A) through (D) of section 300h(b)(1) of this title and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

(b) Revision or amendment of requirements of regulation; showing of effectiveness of program by State

If the Administrator revises or amends any requirement of a regulation under section 300h of this title relating to any aspect of the underground injection referred to in subsection (a) of this section, in the case of that portion of a State underground injection control program for which the demonstration referred to in subsection (a) of this section has been made, in lieu of the showing required under section 300h–1(b)(1)(B) of this title the State may demonstrate that, with respect to that aspect of such underground injection, the State program meets the requirements of subparagraphs (A) through (D) of section 300h(b)(1) of this title and represents an effective program (including adequate recordkeeping and reporting) to prevent underground injection which endangers drinking water sources.

(c) Primary enforcement responsibility of State; voiding by Administrator under duly promulgated rule

(1) Section 300h–1(b)(3) of this title shall not apply to that portion of any State underground injection control program approved by the Administrator pursuant to a demonstration under subsection (a) of this section (and under subsection (b) of this section where applicable).

(2) If pursuant to such a demonstration, the Administrator approves such portion of the State program, the State shall have primary enforcement responsibility with respect to that portion until such time as the Administrator determines, by rule, that such demonstration is no longer valid. Following such a determination, the Administrator may exercise the authority of subsection (c) of section 300h–1 of this title in the same manner as provided in such subsection

with respect to a determination described in such subsection.

(3) Before promulgating any rule under paragraph (2), the Administrator shall provide opportunity for public hearing respecting such rule.

(July 1, 1944, ch. 373, title XIV, § 1425, as added Dec. 5, 1980, Pub. L. 96–502, § 2(a), 94 Stat. 2737; amended June 19, 1986, Pub. L. 99–339, title II, § 201(a), 100 Stat. 653.)

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–339 inserted ''or natural gas storage operations, or'' after ''production''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300h–2, 300j–2 of this title.

§ 300h–5. Regulation of State programs

(a) Monitoring methods

Not later than 18 months after June 19, 1986, the Administrator shall modify regulations issued under this chapter for Class I injection wells to identify monitoring methods, in addition to those in effect on November 1, 1985, including groundwater monitoring. In accordance with such regulations, the Administrator, or delegated State authority, shall determine the applicability of such monitoring methods, wherever appropriate, at locations and in such a manner as to provide the earliest possible detection of fluid migration into, or in the direction of, underground sources of drinking water from such wells, based on its assessment of the potential for fluid migration from the injection zone that may be harmful to human health or the environment. For purposes of this subsection, a class I injection well is defined in accordance with 40 CFR 146.05 as in effect on November 1, 1985.

(b) Report

The Administrator shall submit a report to Congress, no later than September 1987, summarizing the results of State surveys required by the Administrator under this section. The report shall include each of the following items of information:

(1) The numbers and categories of class V wells which discharge nonhazardous waste into or above an underground source of drinking water.

(2) The primary contamination problems associated with different categories of these disposal wells.

(3) Recommendations for minimum design, construction, installation, and siting requirements that should be applied to protect underground sources of drinking water from such contamination wherever necessary.

(July 1, 1944, ch. 373, title XIV, § 1426, as added June 19, 1986, Pub. L. 99–339, title II, § 201(b), 100 Stat. 653.)

§ 300h–6. Sole source aquifer demonstration program

(a) Purpose

The purpose of this section is to establish procedures for development, implementation, and assessment of demonstration programs designed to protect critical aquifer protection areas located within areas designated as sole or principal source aquifers under section 300h–3(e) of this title.

(b) "Critical aquifer protection area" defined

For purposes of this section, the term ''critical aquifer protection area'' means either of the following:

(1) All or part of an area located within an area for which an application or designation as a sole or principal source aquifer pursuant to section 300h–3(e) of this title, has been submitted and approved by the Administrator not later than 24 months after June 19, 1986, and which satisfies the criteria established by the Administrator under subsection (d) of this section.

(2) All or part of an area which is within an aquifer designated as a sole source aquifer as of June 19, 1986, and for which an areawide ground water quality protection plan has been approved under section 208 of the Clean Water Act [33 U.S.C. 1288] prior to June 19, 1986.

(c) Application

Any State, municipal or local government or political subdivision thereof or any planning entity (including any interstate regional planning entity) that identifies a critical aquifer protection area over which it has authority or jurisdiction may apply to the Administrator for the selection of such area for a demonstration program under this section. Any applicant shall consult with other government or planning entities with authority or jurisdiction in such area prior to application. Applicants, other than the Governor, shall submit the application for a demonstration program jointly with the Governor.

(d) Criteria

Not later than 1 year after June 19, 1986, the Administrator shall, by rule, establish criteria for identifying critical aquifer protection areas under this section. In establishing such criteria, the Administrator shall consider each of the following:

(1) The vulnerability of the aquifer to contamination due to hydrogeologic characteristics.

(2) The number of persons or the proportion of population using the ground water as a drinking water source.

(3) The economic, social and environmental benefits that would result to the area from maintenance of ground water of high quality.

(4) The economic, social and environmental costs that would result from degradation of the quality of the ground water.

(e) Contents of application

An application submitted to the Administrator by any applicant for a demonstration program under this section shall meet each of the following requirements:

(1) The application shall propose boundaries for the critical aquifer protection area within its jurisdiction.

(2) The application shall designate or, if necessary, establish a planning entity (which shall be a public agency and which shall in-

clude representation of elected local and State governmental officials) to develop a comprehensive management plan (hereinafter in this section referred to as the ''plan'') for the critical protection area. Where a local government planning agency exists with adequate authority to carry out this section with respect to any proposed critical protection area, such agency shall be designated as the planning entity.

(3) The application shall establish procedures for public participation in the development of the plan, for review, approval, and adoption of the plan, and for assistance to municipalities and other public agencies with authority under State law to implement the plan.

(4) The application shall include a hydrogeologic assessment of surface and ground water resources within the critical protection area.

(5) The application shall include a comprehensive management plan for the proposed protection area.

(6) The application shall include the measures and schedule proposed for implementation of such plan.

(f) Comprehensive plan

(1) The objective of a comprehensive management plan submitted by an applicant under this section shall be to maintain the quality of the ground water in the critical protection area in a manner reasonably expected to protect human health, the environment and ground water resources. In order to achieve such objective, the plan may be designed to maintain, to the maximum extent possible, the natural vegetative and hydrogeological conditions. Each of the following elements shall be included in such a protection plan:

(A) A map showing the detailed boundary of the critical protection area.

(B) An identification of existing and potential point and nonpoint sources of ground water degradation.

(C) An assessment of the relationship between activities on the land surface and ground water quality.

(D) Specific actions and management practices to be implemented in the critical protection area to prevent adverse impacts on ground water quality.

(E) Identification of authority adequate to implement the plan, estimates of program costs, and sources of State matching funds.

(2) Such plan may also include the following:

(A) A determination of the quality of the existing ground water recharged through the special protection area and the natural recharge capabilities of the special protection area watershed.

(B) Requirements designed to maintain existing underground drinking water quality or improve underground drinking water quality if prevailing conditions fail to meet drinking water standards, pursuant to this chapter and State law.

(C) Limits on Federal, State, and local government, financially assisted activities and projects which may contribute to degradation of such ground water or any loss of natural surface and subsurface infiltration of purification capability of the special protection watershed.

(D) A comprehensive statement of land use management including emergency contingency planning as it pertains to the maintenance of the quality of underground sources of drinking water or to the improvement of such sources if necessary to meet drinking water standards pursuant to this chapter and State law.

(E) Actions in the special protection area which would avoid adverse impacts on water quality, recharge capabilities, or both.

(F) Consideration of specific techniques, which may include clustering, transfer of development rights, and other innovative measures sufficient to achieve the objectives of this section.

(G) Consideration of the establishment of a State institution to facilitate and assist funding a development transfer credit system.

(H) A program for State and local implementation of the plan described in this subsection in a manner that will insure the continued, uniform, consistent protection of the critical protection area in accord with the purposes of this section.

(I) Pollution abatement measures, if appropriate.

(g) Plans under section 208 of Clean Water Act

A plan approved before June 19, 1986, under section 208 of the Clean Water Act [33 U.S.C. 1288] to protect a sole source aquifer designated under section 300h–3(e) of this title shall be considered a comprehensive management plan for the purposes of this section.

(h) Consultation and hearings

During the development of a comprehensive management plan under this section, the planning entity shall consult with, and consider the comments of, appropriate officials of any municipality and State or Federal agency which has jurisdiction over lands and waters within the special protection area, other concerned organizations and technical and citizen advisory committees. The planning entity shall conduct public hearings at places within the special protection area for the purpose of providing the opportunity to comment on any aspect of the plan.

(i) Approval or disapproval

Within 120 days after receipt of an application under this section, the Administrator shall approve or disapprove the application. The approval or disapproval shall be based on a determination that the critical protection area satisfies the criteria established under subsection (d) of this section and that a demonstration program for the area would provide protection for ground water quality consistent with the objectives stated in subsection (f) of this section. The Administrator shall provide to the Governor a written explanation of the reasons for the disapproval of any such application. Any petitioner may modify and resubmit any application which is not approved. Upon approval of an application, the Administrator may enter into a cooperative agreement with the applicant to estab-

lish a demonstration program under this section.

(j) Grants and reimbursement

Upon entering a cooperative agreement under subsection (i) of this section, the Administrator may provide to the applicant, on a matching basis, a grant of 50 per centum of the costs of implementing the plan established under this section. The Administrator may also reimburse the applicant of an approved plan up to 50 per centum of the costs of developing such plan, except for plans approved under section 208 of the Clean Water Act [33 U.S.C. 1288]. The total amount of grants under this section for any one aquifer, designated under section 300h–3(e) of this title, shall not exceed $4,000,000 in any one fiscal year.

(k) Activities funded under other law

No funds authorized under this subsection[1] may be used to fund activities funded under other sections of this chapter or the Clean Water Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.] or other environmental laws.

(*l*) Report

Not later than December 31, 1989, each State shall submit to the Administrator a report assessing the impact of the program on ground water quality and identifying those measures found to be effective in protecting ground water resources. No later than September 30, 1990, the Administrator shall submit to Congress a report summarizing the State reports, and assessing the accomplishments of the sole source aquifer demonstration program including an identification of protection methods found to be most effective and recommendations for their application to protect ground water resources from contamination whenever necessary.

(m) Savings provision

Nothing under this section shall be construed to amend, supersede or abrogate rights to quantities of water which have been established by interstate water compacts, Supreme Court decrees, or State water laws; or any requirement imposed or right provided under any Federal or State environmental or public health statute.

(n) Authorization of appropriations

There are authorized to be appropriated to carry out this section not more than the following amounts:

Fiscal year:

	Amount
1987	$10,000,000
1988	15,000,000
1989	17,500,000
1990	17,500,000
1991	17,500,000

Matching grants under this section may also be used to implement or update any water quality management plan for a sole or principal source aquifer approved (before June 19, 1986) by the Administrator under section 208 of the Federal Water Pollution Control Act [33 U.S.C. 1288].

[1] So in original. Probably should be ''section''.

(July 1, 1944, ch. 373, title XIV, § 1427, as added and amended June 19, 1986, Pub. L. 99–339, title II, § 203, title III, § 301(f), 100 Stat. 657, 664.)

REFERENCES IN TEXT

The Clean Water Act, referred to in subsec. (k), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, also known as the Federal Water Pollution Control Act, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (k), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (k), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§ 9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

AMENDMENTS

1986—Subsec. (n). Pub. L. 99–339 added subsec. (n).

§ 300h–7. State programs to establish wellhead protection areas

(a) State programs

The Governor or Governor's designee of each State shall, within 3 years of June 19, 1986, adopt and submit to the Administrator a State program to protect wellhead areas within their jurisdiction from contaminants which may have any adverse effect on the health of persons. Each State program under this section shall, at a minimum—

(1) specify the duties of State agencies, local governmental entities, and public water supply systems with respect to the development and implementation of programs required by this section;

(2) for each wellhead, determine the wellhead protection area as defined in subsection (e) of this section based on all reasonably available hydrogeologic information on ground water flow, recharge and discharge and other information the State deems necessary to adequately determine the wellhead protection area;

(3) identify within each wellhead protection area all potential anthropogenic sources of contaminants which may have any adverse effect on the health of persons;

(4) describe a program that contains, as appropriate, technical assistance, financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply within wellhead protection areas from such contaminants;

(5) include contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or wellfield contamination by such contaminants; and

(6) include a requirement that consideration be given to all potential sources of such con-

taminants within the expected wellhead area of a new water well which serves a public water supply system.

(b) Public participation

To the maximum extent possible, each State shall establish procedures, including but not limited to the establishment of technical and citizens' advisory committees, to encourage the public to participate in developing the protection program for wellhead areas. Such procedures shall include notice and opportunity for public hearing on the State program before it is submitted to the Administrator.

(c) Disapproval

(1) In general

If, in the judgment of the Administrator, a State program (or portion thereof, including the definition of a wellhead protection area), is not adequate to protect public water systems as required by this section, the Administrator shall disapprove such program (or portion thereof). A State program developed pursuant to subsection (a) of this section shall be deemed to be adequate unless the Administrator determines, within 9 months of the receipt of a State program, that such program (or portion thereof) is inadequate for the purpose of protecting public water systems as required by this section from contaminants that may have any adverse effect on the health of persons. If the Administrator determines that a proposed State program (or any portion thereof) is inadequate, the Administrator shall submit a written statement of the reasons for such determination to the Governor of the State.

(2) Modification and resubmission

Within 6 months after receipt of the Administrator's written notice under paragraph (1) that any proposed State program (or portion thereof) is inadequate, the Governor or Governor's designee, shall modify the program based upon the recommendations of the Administrator and resubmit the modified program to the Administrator.

(d) Federal assistance

After the date 3 years after June 19, 1986, no State shall receive funds authorized to be appropriated under this section except for the purpose of implementing the program and requirements of paragraphs (4) and (6) of subsection (a) of this section.

(e) "Wellhead protection area" defined

As used in this section, the term ''wellhead protection area'' means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield. The extent of a wellhead protection area, within a State, necessary to provide protection from contaminants which may have any adverse effect on the health of persons is to be determined by the State in the program submitted under subsection (a) of this section. Not later than one year after June 19, 1986, the Administrator shall issue technical guidance which States may use in making such determinations. Such guidance may reflect such factors as the radius of influence around a well or wellfield, the depth of drawdown of the water table by such well or wellfield at any given point, the time or rate of travel of various contaminants in various hydrologic conditions, distance from the well or wellfield, or other factors affecting the likelihood of contaminants reaching the well or wellfield, taking into account available engineering pump tests or comparable data, field reconnaissance, topographic information, and the geology of the formation in which the well or wellfield is located.

(f) Prohibitions

(1) Activities under other laws

No funds authorized to be appropriated under this section may be used to support activities authorized by the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 U.S.C. 9601 et seq.], or other sections of this chapter.

(2) Individual sources

No funds authorized to be appropriated under this section may be used to bring individual sources of contamination into compliance.

(g) Implementation

Each State shall make every reasonable effort to implement the State wellhead area protection program under this section within 2 years of submitting the program to the Administrator. Each State shall submit to the Administrator a biennial status report describing the State's progress in implementing the program. Such report shall include amendments to the State program for water wells sited during the biennial period.

(h) Federal agencies

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any potential source of contaminants identified by a State program pursuant to the provisions of subsection (a)(3) of this section shall be subject to and comply with all requirements of the State program developed according to subsection (a)(4) of this section applicable to such potential source of contaminants, both substantive and procedural, in the same manner, and to the same extent, as any other person is subject to such requirements, including payment of reasonable charges and fees. The President may exempt any potential source under the jurisdiction of any department, agency, or instrumentality in the executive branch if the President determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to the lack of an appropriation unless the President shall have specifically requested such appropriation as part of the budgetary process and the Congress shall have failed to make available such requested appropriations.

(i) Additional requirement

(1) In general

In addition to the provisions of subsection (a) of this section, States in which there are more than 2,500 active wells at which annular injection is used as of January 1, 1986, shall include in their State program a certification that a State program exists and is being adequately enforced that provides protection from contaminants which may have any adverse effect on the health of persons and which are associated with the annular injection or surface disposal of brines associated with oil and gas production.

(2) "Annular injection" defined

For purposes of this subsection, the term ''annular injection'' means the reinjection of brines associated with the production of oil or gas between the production and surface casings of a conventional oil or gas producing well.

(3) Review

The Administrator shall conduct a review of each program certified under this subsection.

(4) Disapproval

If a State fails to include the certification required by this subsection or if in the judgment of the Administrator the State program certified under this subsection is not being adequately enforced, the Administrator shall disapprove the State program submitted under subsection (a) of this section.

(j) Coordination with other laws

Nothing in this section shall authorize or require any department, agency, or other instrumentality of the Federal Government or State or local government to apportion, allocate or otherwise regulate the withdrawal or beneficial use of ground or surface waters, so as to abrogate or modify any existing rights to water established pursuant to State or Federal law, including interstate compacts.

(k) Authorization of appropriations

Unless the State program is disapproved under this section, the Administrator shall make grants to the State for not less than 50 or more than 90 percent of the costs incurred by a State (as determined by the Administrator) in developing and implementing each State program under this section. For purposes of making such grants there is authorized to be appropriated not more than the following amounts:

Fiscal year:

	Amount
1987	$20,000,000
1988	20,000,000
1989	35,000,000
1990	35,000,000
1991	35,000,000

(July 1, 1944, ch. 373, title XIV, § 1428, as added and amended June 19, 1986, Pub. L. 99–339, title II, § 205, title III, § 301(e), 100 Stat. 660, 664.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (f)(1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (f)(1), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in subsec. (f)(1), is Pub. L. 96–510, Dec. 11, 1980, 94 Stat. 2767, as amended, which is classified principally to chapter 103 (§ 9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

AMENDMENTS

1986—Subsec. (k). Pub. L. 99–339, § 301(e), added subsec. (k).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 3838c.

PART D—EMERGENCY POWERS

§ 300i. Emergency powers

(a) Actions authorized against imminent and substantial endangerment to health

Notwithstanding any other provision of this subchapter the Administrator, upon receipt of information that a contaminant which is present in or is likely to enter a public water system or an underground source of drinking water may present an imminent and substantial endangerment to the health of persons, and that appropriate State and local authorities have not acted to protect the health of such persons, may take such actions as he may deem necessary in order to protect the health of such persons. To the extent he determines it to be practicable in light of such imminent endangerment, he shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken under this subsection is based and to ascertain the action which such authorities are or will be taking. The action which the Administrator may take may include (but shall not be limited to) (1) issuing such orders as may be necessary to protect the health of persons who are or may be users of such system (including travelers), including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment, and (2) commencing a civil action for appropriate relief, including a restraining order or permanent or temporary injunction.

(b) Penalties for violations; separate offenses

Any person who violates or fails or refuses to comply with any order issued by the Administrator under subsection (a)(1) of this section may, in an action brought in the appropriate United States district court to enforce such order, be subject to a civil penalty of not to exceed $5,000 for each day in which such violation occurs or failure to comply continues.

(July 1, 1944, ch. 373, title XIV, § 1431, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1680;

amended June 19, 1986, Pub. L. 99–339, title II, § 204, 100 Stat. 660.)

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–339, § 204(1), (2), inserted ''or an underground source of drinking water'' after ''to enter a public water system'' and ''including orders requiring the provision of alternative water supplies by persons who caused or contributed to the endangerment,'' after ''including travelers),''.

Subsec. (b). Pub. L. 99–339, § 204(3), struck out ''willfully'' after ''person who'' and substituted ''subject to a civil penalty of not to exceed'' for ''fined not more than''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7412, 9606 of this title.

§ 300i–1. Tampering with public water systems

(a) Tampering

Any person who tampers with a public water system shall be imprisoned for not more than 5 years, or fined in accordance with title 18, or both.

(b) Attempt or threat

Any person who attempts to tamper, or makes a threat to tamper, with a public drinking water system be imprisoned for not more than 3 years, or fined in accordance with title 18, or both.

(c) Civil penalty

The Administrator may bring a civil action in the appropriate United States district court (as determined under the provisions of title 28) against any person who tampers, attempts to tamper, or makes a threat to tamper with a public water system. The court may impose on such person a civil penalty of not more than $50,000 for such tampering or not more than $20,000 for such attempt or threat.

(d) "Tamper" defined

For purposes of this section, the term ''tamper'' means—

(1) to introduce a contaminant into a public water system with the intention of harming persons; or

(2) to otherwise interfere with the operation of a public water system with the intention of harming persons.

(July 1, 1944, ch. 373, title XIV, § 1432, as added June 19, 1986, Pub. L. 99–339, title I, § 108, 100 Stat. 651.)

PART E—GENERAL PROVISIONS

§ 300j. Assurances of availability of adequate supplies of chemicals necessary for treatment of water

(a) Certification of need application

If any person who uses chlorine, activated carbon, lime, ammonia, soda ash, potassium permanganate, caustic soda, or other chemical or substance for the purpose of treating water in any public water system or in any public treatment works determines that the amount of such chemical or substance necessary to effectively treat such water is not reasonably available to him or will not be so available to him when required for the effective treatment of such water, such person may apply to the Administrator for a certification (hereinafter in this section referred to as a ''certification of need'') that the amount of such chemical or substance which such person requires to effectively treat such water is not reasonably available to him or will not be so available when required for the effective treatment of such water.

(b) Application requirements; publication in Federal Register; waiver; certification, issuance or denial

(1) An application for a certification of need shall be in such form and submitted in such manner as the Administrator may require and shall (A) specify the persons the applicant determines are able to provide the chemical or substance with respect to which the application is submitted, (B) specify the persons from whom the applicant has sought such chemical or substance, and (C) contain such other information as the Administrator may require.

(2) Upon receipt of an application under this section, the Administrator shall (A) publish in the Federal Register a notice of the receipt of the application and a brief summary of it, (B) notify in writing each person whom the President or his delegate (after consultation with the Administrator) determines could be made subject to an order required to be issued upon the issuance of the certification of need applied for in such application, and (C) provide an opportunity for the submission of written comments on such application. The requirements of the preceding sentence of this paragraph shall not apply when the Administrator for good cause finds (and incorporates the finding with a brief statement of reasons therefor in the order issued) that waiver of such requirements is necessary in order to protect the public health.

(3) Within 30 days after—

(A) the date a notice is published under paragraph (2) in the Federal Register with respect to an application submitted under this section for the issuance of a certification of need, or

(B) the date on which such application is received if as authorized by the second sentence of such paragraph no notice is published with respect to such application,

the Administrator shall take action either to issue or deny the issuance of a certification of need.

(c) Certification of need; issuance; executive orders; implementation of orders; equitable apportionment of orders; factors considered

(1) If the Administrator finds that the amount of a chemical or substance necessary for an applicant under an application submitted under this section to effectively treat water in a public water system or in a public treatment works is not reasonably available to the applicant or will not be so available to him when required for the effective treatment of such water, the Administrator shall issue a certification of need. Not later than seven days following the issuance of such certification, the President or his delegate shall issue an order requiring the provision to such person of such amounts of such chemical or substance as the Administrator deems necessary

in the certification of need issued for such person. Such order shall apply to such manufactures, producers, processors, distributors, and repackagers of such chemical or substance as the President or his delegate deems necessary and appropriate, except that such order may not apply to any manufacturer, producer, or processor of such chemical or substance who manufactures, produces, or processes (as the case may be) such chemical or substance solely for its own use. Persons subject to an order issued under this section shall be given a reasonable opportunity to consult with the President or his delegate with respect to the implementation of the order.

(2) Orders which are to be issued under paragraph (1) to manufacturers, producers, and processors of a chemical or substance shall be equitably apportioned, as far as practicable, among all manufacturers, producers, and processors of such chemical or substance; and orders which are to be issued under paragraph (1) to distributors and repackagers of a chemical or substance shall be equitably apportioned, as far as practicable, among all distributors and repackagers of such chemical or substance. In apportioning orders issued under paragraph (1) to manufacturers, producers, processors, distributors, and repackagers of chlorine, the President or his delegate shall, in carrying out the requirements of the preceding sentence, consider—

(A) the geographical relationships and established commercial relationships between such manufacturers, producers, processors, distributors, and repackagers and the persons for whom the orders are issued;

(B) in the case of orders to be issued to producers of chlorine, the (i) amount of chlorine historically supplied by each such producer to treat water in public water systems and public treatment works, and (ii) share of each such producer of the total annual production of chlorine in the United States; and

(C) such other factors as the President or his delegate may determine are relevant to the apportionment of orders in accordance with the requirements of the preceding sentence.

(3) Subject to subsection (f) of this section, any person for whom a certification of need has been issued under this subsection may upon the expiration of the order issued under paragraph (1) upon such certification apply under this section for additional certifications.

(d) Breach of contracts; defense

There shall be available as a defense to any action brought for breach of contract in a Federal or State court arising out of delay or failure to provide, sell, or offer for sale or exchange a chemical or substance subject to an order issued pursuant to subsection (c)(1) of this section, that such delay or failure was caused solely by compliance with such order.

(e) Penalties for noncompliance with orders; temporary restraining orders and preliminary or permanent injunctions

(1) Whoever knowingly fails to comply with any order issued pursuant to subsection (c)(1) of this section shall be fined not more than $5,000 for each such failure to comply.

(2) Whoever fails to comply with any order issued pursuant to subsection (c)(1) of this section shall be subject to a civil penalty of not more than $2,500 for each such failure to comply.

(3) Whenever the Administrator or the President or his delegate has reason to believe that any person is violating or will violate any order issued pursuant to subsection (c)(1) of this section, he may petition a United States district court to issue a temporary restraining order or preliminary or permanent injunction (including a mandatory injunction) to enforce the provision of such order.

(f) Termination date

No certification of need or order issued under this section may remain in effect for more than one year[1]

(July 1, 1944, ch. 373, title XIV, § 1441, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1680; amended Nov. 16, 1977, Pub. L. 95–190, § 7, 91 Stat. 1396; Sept. 6, 1979, Pub. L. 96–63, § 3, 93 Stat. 411; June 19, 1986, Pub. L. 99–339, title III, § 301(d), 100 Stat. 664.)

AMENDMENTS

1986—Subsec. (f). Pub. L. 99–339 substituted ''in effect for more than one year'' for ''in effect— (1) for more than one year, or (2) September 30, 1982, whichever occurs first.''

1979—Subsec. (f)(2). Pub. L. 96–63 substituted ''September 30, 1982'' for ''September 30, 1979''.

1977—Subsec. (f). Pub. L. 95–190 substituted ''September 30, 1979'' for ''June 30, 1977''.

EX. ORD. NO. 11879. DELEGATION OF FUNCTIONS TO SECRETARY OF COMMERCE RELATING TO ORDERS FOR PROVISION OF CHEMICALS OR SUBSTANCES NECESSARY FOR TREATMENT OF WATER

Ex. Ord. No. 11879, Sept. 17, 1975, 40 F.R. 43197, provided:

By virtue of the authority vested in me by Section 1441 of the Public Health Service Act, as amended by the Safe Drinking Water Act (88 Stat. 1680, 42 U.S.C. 300j), and as President of the United States, the Secretary of Commerce is hereby delegated, with power to redelegate to agencies, officers and employees of the Government, the functions of the President contained in said section 1441 [this section]. Those functions shall be administered under regulations or agreements which are identical or compatible with other regulations and agreements, including those provided pursuant to Executive Order No. 10480, as amended [formerly set out as a note under section 2153 of Title 50, Appendix, War and National Defense], for the allocation of similar chemicals or substances.

GERALD R. FORD.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300j–4 of this title.

§ 300j–1. Research, technical assistance, information, training of personnel

(a) Specific powers and duties of Administrator

(1) The Administrator may conduct research, studies, and demonstrations relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments of man resulting directly or indirectly from contaminants in water, or to the

[1] So in original. Probably should be followed by a period.

provision of a dependably safe supply of drinking water, including—

(A) improved methods (i) to identify and measure the existence of contaminants in drinking water (including methods which may be used by State and local health and water officials), and (ii) to identify the source of such contaminants;

(B) improved methods to identify and measure the health effects of contaminants in drinking water;

(C) new methods of treating raw water to prepare it for drinking, so as to improve the efficiency of water treatment and to remove contaminants from water;

(D) improved methods for providing a dependably safe supply of drinking water, including improvements in water purification and distribution, and methods of assessing the health related hazards of drinking water; and

(E) improved methods of protecting underground water sources of public water systems from contamination.

(2)(A) The Administrator shall, to the maximum extent feasible, provide technical assistance to the States and municipalities in the establishment and administration of public water system supervision programs (as defined in section 300j–2(c)(1) of this title).

(B) The Administrator is authorized to provide technical assistance and to make grants to States, or publicly owned water systems to assist in responding to and alleviating any emergency situation affecting public water systems (including sources of water for such systems) which the Administrator determines to present substantial danger to the public health. Grants provided under this subparagraph shall be used only to support those actions which (i) are necessary for preventing, limiting or mitigating danger to the public health in such emergency situation and (ii) would not, in the judgment of the Administrator, be taken without such emergency assistance. The Administrator may carry out the program authorized under this subparagraph as part of, and in accordance with the terms and conditions of, any other program of assistance for environmental emergencies which the Administrator is authorized to carry out under any other provision of law. No limitation on appropriations for any such other program shall apply to amounts appropriated under this subparagraph.

(3)(A) The Administrator shall conduct studies, and make periodic reports to Congress, on the costs of carrying out regulations prescribed under section 300g–1 of this title.

(B) Not later than eighteen months after November 16, 1977, the Administrator shall submit a report to Congress which identifies and analyzes—

(i) the anticipated costs of compliance with interim and revised national primary drinking water regulations and the anticipated costs to States and units of local governments in implementing such regulations;

(ii) alternative methods of (including alternative treatment techniques for) compliance with such regulations;

(iii) methods of paying the costs of compliance by public water systems with national primary drinking water regulations, including user charges, State or local taxes or subsidies, Federal grants (including planning or construction grants, or both), loans, and loan guarantees, and other methods of assisting in paying the costs of such compliance;

(iv) the advantages and disadvantages of each of the methods referred to in clauses (ii) and (iii);

(v) the sources of revenue presently available (and projected to be available) to public water systems to meet current and future expenses; and

(vi) the costs of drinking water paid by residential and industrial consumers in a sample of large, medium, and small public water systems and of individually owned wells, and the reasons for any differences in such costs.

The report required by this subparagraph shall identify and analyze the items required in clauses (i) through (v) separately with respect to public water systems serving small communities. The report required by this subparagraph shall include such recommendations as the Administrator deems appropriate.

(4) The Administrator shall conduct a survey and study of—

(A) disposal of waste (including residential waste) which may endanger underground water which supplies, or can reasonably be expected to supply, any public water systems, and

(B) means of control of such waste disposal.

Not later than one year after December 16, 1974, he shall transmit to the Congress the results of such survey and study, together with such recommendations as he deems appropriate.

(5) The Administrator shall carry out a study of methods of underground injection which do not result in the degradation of underground drinking water sources.

(6) The Administrator shall carry out a study of methods of preventing, detecting, and dealing with surface spills of contaminants which may degrade underground water sources for public water systems.

(7) The Administrator shall carry out a study of virus contamination of drinking water sources and means of control of such contamination.

(8) The Administrator shall carry out a study of the nature and extent of the impact on underground water which supplies or can reasonably be expected to supply public water systems of (A) abandoned injection or extraction wells; (B) intensive application of pesticides and fertilizers in underground water recharge areas; and (C) ponds, pools, lagoons, pits, or other surface disposal of contaminants in underground water recharge areas.

(9) The Administrator shall conduct a comprehensive study of public water supplies and drinking water sources to determine the nature, extent, sources of and means of control of contamination by chemicals or other substances suspected of being carcinogenic. Not later than six months after December 16, 1974, he shall transmit to the Congress the initial results of such study, together with such recommendations for further review and corrective action as he deems appropriate.

(10) The Administrator shall carry out a study of the reaction of chlorine and humic acids and the effects of the contaminants which result from such reaction on public health and on the safety of drinking water, including any carcinogenic effect.

(11) The Administrator shall carry out a study of polychlorinated biphenyl contamination of actual or potential sources of drinking water, contamination of such sources by other substances known or suspected to be harmful to public health, the effects of such contamination, and means of removing, treating, or otherwise controlling such contamination. To assist in carrying out this paragraph, the Administrator is authorized to make grants to public agencies and private nonprofit institutions.

(b) Other powers and duties of Administrator

In carrying out this subchapter, the Administrator is authorized to—

(1) collect and make available information pertaining to research, investigations, and demonstrations with respect to providing a dependably safe supply of drinking water together with appropriate recommendations in connection therewith;

(2) make available research facilities of the Agency to appropriate public authorities, institutions, and individuals engaged in studies and research relating to the purposes of this subchapter;

(3) make grants to, and enter into contracts with, any public agency, educational institution, and any other organization, in accordance with procedures prescribed by the Administrator, under which he may pay all or part of the costs (as may be determined by the Administrator) of any project or activity which is designed—

(A) to develop, expand, or carry out a program (which may combine training education and employment) for training persons for occupations involving the public health aspects of providing safe drinking water;

(B) to train inspectors and supervisory personnel to train or supervise persons in occupations involving the public health aspects of providing safe drinking water; or

(C) to develop and expand the capability of programs of States and municipalities to carry out the purposes of this subchapter (other than by carrying out State programs of public water system supervision or underground water source protection (as defined in section 300j–2(c) of this title)).

(c) Report to Congress on present and projected future availability of safe drinking water; additional contents; utilization of information and data

Not later than eighteen months after November 16, 1977, the Administrator shall submit a report to Congress on the present and projected future availability of an adequate and dependable supply of safe drinking water to meet present and projected future need. Such report shall include an analysis of the future demand for drinking water and other competing uses of water, the availability and use of methods to conserve water or reduce demand, the adequacy of present measures to assure adequate and dependable supplies of safe drinking water, and the problems (financial, legal, or other) which need to be resolved in order to assure the availability of such supplies for the future. Existing information and data complied by the National Water Commission and others shall be utilized to the extent possible.

(d) Establishment of training programs and grants for training; training fees

The Administrator shall—

(1) provide training for, and make grants for training (including postgraduate training) of (A) personnel of State agencies which have primary enforcement responsibility and of agencies or units of local government to which enforcement responsibilities have been delegated by the State, and (B) personnel who manage or operate public water systems, and

(2) make grants for postgraduate training of individuals (including grants to educational institutions for traineeships) for purposes of qualifying such individuals to work as personnel referred to in paragraph (1).

Reasonable fees may be charged for training provided under paragraph (1)(B) to persons other than personnel of State or local agencies but such training shall be provided to personnel of State or local agencies without charge.

(e) Repealed. Pub. L. 99–339, title III, § 304(a), June 19, 1986, 100 Stat. 667

(f) Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this section other than subsection (a)(2)(B) of this section and provisions relating to research $15,000,000 for the fiscal year ending June 30, 1975; $25,000,000 for the fiscal year ending June 30, 1976; $35,000,000 for the fiscal year ending June 30, 1977; $17,000,000 for each of the fiscal years 1978 and 1979; $21,405,000 for the fiscal year ending September 30, 1980; $30,000,000 for the fiscal year ending September 30, 1981; and $35,000,000 for the fiscal year ending September 30, 1982. There are authorized to be appropriated to carry out subsection (a)(2)(B) of this section $8,000,000 for each of the fiscal years 1978 through 1982. There are authorized to be appropriated to carry out subsection (a)(2)(B) of this section not more than the following amounts:

Fiscal year:	*Amount*
1987	$7,650,000
1988	7,650,000
1989	8,050,000
1990	8,050,000
1991	8,050,000

There are authorized to be appropriated to carry out the provisions of this section (other than subsection (g) of this section, subsection (a)(2)(B) of this section, and provisions relating to research), not more than the following amounts:

Fiscal year:	*Amount*
1987	$35,600,000
1988	35,600,000
1989	38,020,000
1990	38,020,000
1991	38,020,000

(g) Technical assistance for small systems; authorization of appropriations; amount to be utilized for public water systems owned or operated by Indian tribes

The Administrator is authorized to provide technical assistance to small public water systems to enable such systems to achieve and maintain compliance with national drinking water regulations. Such assistance may include ''circuit-rider'' programs, training, and preliminary engineering studies. There are authorized to be appropriated to carry out this subsection $10,000,000 for each of the fiscal years 1987 through 1991. Not less than the greater of—

(1) 3 percent of the amounts appropriated under this subsection, or

(2) $280,000

shall be utilized for technical assistance to public water systems owned or operated by Indian tribes.

(July 1, 1944, ch. 373, title XIV, § 1442, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1682; amended Nov. 16, 1977, Pub. L. 95–190, §§ 2(a), 3(a), (b), (e)(1), 4, 9, 10(b), 13, 91 Stat. 1393–1395, 1397–1399; Sept. 6, 1979, Pub. L. 96–63, § 1, 93 Stat. 411; Dec. 5, 1980, Pub. L. 96–502, § 5, 94 Stat. 2738; June 19, 1986, Pub. L. 99–339, title I, § 107, title III, §§ 301(a), (g), 304(a), 100 Stat. 651, 663, 665, 667.)

AMENDMENTS

1986—Subsec. (e). Pub. L. 99–339, § 304(a), struck out subsec. (e) which authorized the Administrator to make grants to public water systems which are required, under State or local law, to meet standards relating to drinking turbidity which are more stringent than the standards in effect under this subchapter.

Subsec. (f). Pub. L. 99–339, § 301(a), authorized appropriations to carry out subsec. (a)(2)(B) of this section for fiscal years 1987 to 1991 and to carry out provisions of this section other than subsecs. (a)(2)(B) and (g) and provisions relating to research for fiscal years 1987 to 1991.

Subsec. (g). Pub. L. 99–339, § 301(g), authorized appropriations to carry out this subsection of $10,000,000 for each of fiscal years 1987 through 1991 and specified amount to be utilized for public water systems owned or operated by Indian tribes.

Pub. L. 99–339, § 107 added subsec. (g).

1980—Subsecs. (e), (f). Pub. L. 96–502 added subsec. (e) and redesignated former subsec. (e) as (f).

1979—Subsec. (e). Pub. L. 96–63 authorized appropriations of $21,405,000 for fiscal year ending Sept. 30, 1980, $30,000,000 for fiscal year ending Sept. 30, 1981, and $35,000,000 for fiscal year ending Sept. 30, 1982 for purposes other than those of subsec. (a)(2)(B) of this section and for purposes of subsec. (a)(2)(B) of this section, $8,000,000 for fiscal years 1980 through 1982.

1977—Subsec. (a)(2). Pub. L. 95–190, §§ 9, 13, designated existing provisions as subpar. (A), added subpar. (B) and, in subpar. (B) as added, substituted provisions authorizing Administrator to make grants and provide technical assistance for any emergency situation affecting public water systems and criteria for such grants and assistance for provisions authorizing Administrator to make grants and provide technical assistance for any emergency situation respecting drinking water and criteria for determination of such situations.

Subsec. (a)(3). Pub. L. 95–190, § 3(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10), (11). Pub. L. 95–190, § 3(e)(1), added pars. (10) and (11).

Subsec. (b)(3)(C). Pub. L. 95–190, § 10(b), substituted ''300j–2(c)'' for ''300j–2(d)''.

Subsecs. (c), (d). Pub. L. 95–190, §§ 3(b), 4, added subsecs. (c) and (d). Former subsec. (c) redesignated (e).

Subsec. (e). Pub. L. 95–190, §§ 2(a), 3(b), redesignated former subsec. (c) as (e) and inserted provisions authorizing appropriations for fiscal years 1978 and 1979, and provisions relating to appropriations for subsec. (a)(2)(B) of this section and for research.

COMPARATIVE HEALTH EFFECTS ASSESSMENT

Section 304(b) of Pub. L. 99–339 provided that: ''The Administrator of the Environmental Protection Agency shall conduct a comparative health effects assessment, using available data, to compare the public health effects (both positive and negative) associated with water treatment chemicals and their byproducts to the public health effects associated with contaminants found in public water supplies. Not later than 18 months after the date of the enactment of this Act [June 19, 1986], the Administrator shall submit a report to the Congress setting forth the results of such assessment.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300g–1, 300j–3b of this title.

§ 300j–2. Grants for State programs

(a) Public water systems supervision programs; applications for grants; allotment of sums; waiver of grant restrictions; notice of approval or disapproval of application; authorization of appropriations

(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out public water system supervision programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. The Administrator may not approve an application of a State for its first grant under paragraph (1) unless he determines that the State—

(A) has established or will establish within one year from the date of such grant a public water system supervision program, and

(B) will, within that one year, assume primary enforcement responsibility for public water systems within the State.

No grant may be made to a State under paragraph (1) for any period beginning more than one year after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for public water systems within the State. The prohibitions contained in the preceding two sentences shall not apply to such grants when made to Indian Tribes.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's costs (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, a public water system supervision program.

(4) In each fiscal year the Administrator shall, in accordance, with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, number of public water systems, and other relevant factors. No State shall receive less than 1 per centum of the annual appropriation for grants under paragraph (1): *Provided*, That the Administrator may, by regula-

tion, reduce such percentage in accordance with the criteria specified in this paragraph: *And provided further*, That such percentage shall not apply to grants allotted to Guam, American Samoa, or the Virgin Islands.

(5) The prohibition contained in the last sentence of paragraph (2) may be waived by the Administrator with respect to a grant to a State through fiscal year 1979 but such prohibition may only be waived if, in the judgment of the Administrator—

(A) the State is making a diligent effort to assume and maintain primary enforcement responsibility for public water systems within the State;

(B) the State has made significant progress toward assuming and maintaining such primary enforcement responsibility; and

(C) there is reason to believe the State will assume such primary enforcement responsibility by October 1, 1979.

The amount of any grant awarded for the fiscal years 1978 and 1979 pursuant to a waiver under this paragraph may not exceed 75 per centum of the allotment which the State would have received for such fiscal year if it had assumed and maintained such primary enforcement responsibility. The remaining 25 per centum of the amount allotted to such State for such fiscal year shall be retained by the Administrator, and the Administrator may award such amount to such State at such time as the State assumes such responsibility before the beginning of fiscal year 1980. At the beginning of each fiscal years 1979 and 1980 the amounts retained by the Administrator for any preceding fiscal year and not awarded by the beginning of fiscal year 1979 or 1980 to the States to which such amounts were originally allotted may be removed from the original allotment and reallotted for fiscal year 1979 or 1980 (as the case may be) to States which have assumed primary enforcement responsibility by the beginning of such fiscal year.

(6) The Administrator shall notify the State of the approval or disapproval of any application for a grant under this section—

(A) within ninety days after receipt of such application, or

(B) not later than the first day of the fiscal year for which the grant application is made,

whichever is later.

(7) For purposes of making grants under paragraph (1) there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1976, $25,000,000 for the fiscal year ending June 30, 1977, $35,000,000 for fiscal year 1978, $45,000,000 for fiscal year 1979, $29,450,000 for the fiscal year ending September 30, 1980, $32,000,000 for the fiscal year ending September 30, 1981, and $34,000,000 for the fiscal year ending September 30, 1982. For the purposes of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

Fiscal year:

	Amount
1987	$37,200,000
1988	37,200,000
1989	40,150,000
1990	40,150,000
1991	40,150,000

(b) Underground water source protection programs; applications for grants; allotment of sums; authorization of appropriations

(1) From allotments made pursuant to paragraph (4), the Administrator may make grants to States to carry out underground water source protection programs.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to the Administrator in such form and manner as he may require. No grant may be made to any State under paragraph (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 300h of this title. The prohibition contained in the preceding sentence shall not apply to such grants when made to Indian Tribes.

(3) A grant under paragraph (1) shall be made to cover not more than 75 per centum of the grant recipient's cost (as determined under regulations of the Administrator) in carrying out, during the one-year period beginning on the date the grant is made, and underground water source protection program.

(4) In each fiscal year the Administrator shall, in accordance with regulations, allot the sums appropriated for such year under paragraph (5) among the States on the basis of population, geographical area, and other relevant factors.

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1976, $7,500,000 for the fiscal year ending June 30, 1977, $10,000,000 for each of the fiscal years 1978 and 1979, $7,795,000 for the fiscal year ending September 30, 1980, $18,000,000 for the fiscal year ending September 30, 1981, and $21,000,000 for the fiscal year ending September 30, 1982. For the purpose of making grants under paragraph (1) there are authorized to be appropriated not more than the following amounts:

Fiscal year:

	Amount
1987	$19,700,000
1988	19,700,000
1989	20,850,000
1990	20,850,000
1991	20,850,000

(c) Definitions

For purposes of this section:

(1) The term ''public water system supervision program'' means a program for the adoption and enforcement of drinking water regulations (with such variances and exemptions from such regulations under conditions and in a manner which is not less stringent than the conditions under, and the manner in, which variances and exemptions may be granted under sections 300g–4 and 300g–5 of this title) which are no less stringent than the national primary drinking water regulations under section 300g–1 of this title, and for keeping records and making reports required by section 300g–2(a)(3) of this title.

(2) The term ''underground water source protection program'' means a program for the adoption and enforcement of a program which meets the requirements of regulations under

section 300h of this title, and for keeping records and making reports required by section 300h–1(b)(1)(A)(ii) of this title. Such term includes, where applicable, a program which meets the requirements of section 300h–4 of this title.

(July 1, 1944, ch. 373, title XIV, § 1443, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1684; amended Nov. 16, 1977, Pub. L. 95–190, §§ 2(b), (c), 5(a), 91 Stat. 1393, 1395; Sept. 6, 1979, Pub. L. 96–63, § 2, 93 Stat. 411; Dec. 5, 1980, Pub. L. 96–502, §§ 2(c), 4(d), 94 Stat. 2738; June 19, 1986, Pub. L. 99–339, title III, §§ 301(b), (c), 302(d), 100 Stat. 664, 666.)

AMENDMENTS

1986—Subsec. (a)(2). Pub. L. 99–339, § 302(d)(1), inserted provision that prohibitions contained in preceding two sentences not apply to such grants when made to Indian Tribes.

Subsec. (a)(7). Pub. L. 99–339, § 301(b), authorized appropriations for grants under par. (1) of not more than $37,200,000 for fiscal years 1987 and 1988 and of not more than $40,150,000 for fiscal years 1989 to 1991.

Subsec. (b)(2). Pub. L. 99–339, § 302(d)(2), inserted provision that prohibition contained in preceding sentence not apply to such grants when made to Indian Tribes.

Subsec. (b)(5). Pub. L. 99–339, § 301(c), authorized appropriations for grants under par. (1) of not more than $19,700,000 for fiscal years 1987 and 1988 and of not more than $20,850,000 for fiscal years 1989 to 1991.

1980—Subsec. (b)(2). Pub. L. 96–502, § 4(d), substituted provisions that no grant may be made to any State under par. (1) unless the State has assumed primary enforcement responsibility within two years after the date the Administrator promulgates regulations for State underground injection control programs under section 300h of this title for provisions that the Administrator may not approve an application of a State for its first grant under par. (1) unless he determines that the State has established or will establish within two years from the date of such grant an underground water source protection, and will, within such two years, assume primary enforcement responsibility for underground water sources within the State and that no grant may be made to a State under par. (1) for any period beginning more than two years after the date of the State's first grant unless the State has assumed and maintains primary enforcement responsibility for underground water sources within the State.

Subsec. (c)(2). Pub. L. 96–502, § 2(c), inserted provision that such term includes, where applicable, a program which meets requirements of section 300h–4 of this title.

1979—Subsec. (a)(7). Pub. L. 96–63, § 2(a), authorized appropriation of $29,450,000, $32,000,000, and $34,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

Subsec. (b)(5). Pub. L. 96–63, § 2(b), authorized appropriation of $7,795,000, $18,000,000, and $21,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

1977—Subsec. (a)(5), (6). Pub. L. 95–190, § 5(a), added pars. (5) and (6). Former par. (5) redesignated (7).

Subsec. (a)(7). Pub. L. 95–190, §§ 2(b), 5(a), redesignated former par. (5) as (7) and authorized appropriations for fiscal years 1978 and 1979.

Subsec. (b)(5). Pub. L. 95–190, § 2(c), inserted provisions authorizing appropriations for fiscal years 1978 and 1979.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300g–6, 300j–1 of this title.

§ 300j–3. Special project grants and guaranteed loans

(a) Special study and demonstration project grants

The Administrator may make grants to any person for the purposes of—

(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or improved method, approach, or technology, for providing a dependably safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health implications involved in the reclamation, recycling, and reuse of waste waters for drinking and the processes and methods for the preparation of safe and acceptable drinking water.

(b) Limitations

Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66⅔ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consulting the National Drinking Water Advisory Council, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(4) Priority for grants under this section shall be given where there are known or potential public health hazards which require advanced technology for the removal of particles which are too small to be removed by ordinary treatment technology.

(c) Authorization of appropriations

For the purposes of making grants under subsections (a) and (b) of this section there are authorized to be appropriated $7,500,000 for the fiscal year ending June 30, 1975; and $7,500,000 for the fiscal year ending June 30, 1976; and $10,000,000 for the fiscal year ending June 30, 1977.

(d) Loan guarantees to public water systems; conditions; indebtedness limitation; regulations

The Administrator during the fiscal years ending June 30, 1975, and June 30, 1976, shall carry out a program of guaranteeing loans made by private lenders to small public water systems for the purpose of enabling such systems to

meet national primary drinking water regulations prescribed under section 300g–1 of this title. No such guarantee may be made with respect to a system unless (1) such system cannot reasonably obtain financial assistance necessary to comply with such regulations from any other source, and (2) the Administrator determines that any facilities constructed with a loan guaranteed under this subsection is not likely to be made obsolete by subsequent changes in primary regulations. The aggregate amount of indebtedness guaranteed with respect to any system may not exceed $50,000. The aggregate amount of indebtedness guaranteed under this subsection may not exceed $50,000,000. The Administrator shall prescribe regulations to carry out this subsection.

(July 1, 1944, ch. 373, title XIV, § 1444, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1685; amended June 19, 1986, Pub. L. 99–339, title I, § 101(c)(3), 100 Stat. 646.)

AMENDMENTS

1986—Subsec. (d). Pub. L. 99–339 struck out ''(including interim regulations)'' before ''prescribed'' in first sentence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300j–3b of this title.

§ 300j–3a. Grants to public sector agencies

(a) Assistance for development and demonstration projects

The Administrator of the Environmental Protection Agency shall offer grants to public sector agencies for the purposes of—

(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or improved method, approach, or technology for providing a dependably safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health and conservation implications involved in the reclamation, recycling, and reuse of wastewaters for drinking and agricultural use or the processes and methods for the preparation of safe and acceptable drinking water.

(b) Limitations

Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66⅔ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consultation, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(c) Authorization of appropriations

There are authorized to be appropriated for the purposes of this section $25,000,000 for fiscal year 1978.

(Pub. L. 95–155, § 5, Nov. 8, 1977, 91 Stat. 1258; Pub. L. 95–477, § 7(a)(1), Oct. 18, 1978, 92 Stat. 1511.)

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95–477 inserted ''agricultural use or'' after ''drinking and''.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 7(a)(2) of Pub. L. 95–477 provided that: ''This subsection [amending this section] shall become effective October 1, 1978.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300j–3b of this title.

§ 300j–3b. Contaminant standards or treatment technique guidelines

(1) Not later than nine months after October 18, 1978, the Administrator shall promulgate guidelines establishing supplemental standards or treatment technique requirements for microbiological, viral, radiological, organic, and inorganic contaminants, which guidelines shall be conditions, as provided in paragraph (2), of any grant for a demonstration project for water reclamation, recycling, and reuse funded under section 300j–3a of this title or under section 300j–3(a)(2) of this title, where such project involves direct human consumption of treated wastewater. Such guidelines shall provide for sufficient control of each such contaminant, such that in the Administrator's judgement, no adverse effects on the health of persons may reasonably be anticipated to occur, allowing an adequate margin of safety.

(2) A grant referred to in paragraph (1) for a project which involves direct human consumption of treated wastewater may be awarded on or after the date of promulgation of guidelines under this section only if the applicant demonstrates to the satisfaction of the Administrator that the project—

(A) will comply with all national primary drinking water regulations under section 300g–1 of this title;

(B) will comply with all guidelines under this section; and

(C) will in other respects provide safe drinking water.

Any such grant awarded before the date of promulgation of such guidelines shall be conditioned on the applicant's agreement to comply

to the maximum feasible extent with such guidelines as expeditiously as practicable following the date of promulgation thereof.

(3) Guidelines under this section may, in the discretion of the Administrator—

(A) be nationally and uniformly applicable to all projects funded under section 300j–3a of this title or section 300j–1(a)(2) of this title;

(B) vary for different classes or categories of such projects (as determined by the Administrator);

(C) be established and applicable on a project-by-project basis; or

(D) any combination of the above.

(4) Nothing in this section shall be construed to prohibit or delay the award of any grant referred to in paragraph (1) prior to the date of promulgation of such guidelines.

(Pub. L. 95–477, § 7(b), Oct. 18, 1978, 92 Stat. 1511.)

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the Public Health Service Act which comprises this chapter.

§ 300j–4. Records and inspections

(a) Persons subject to requirements; size of system and likely contaminants as considerations for monitoring; monitoring for unregulated contaminants; notification of availability of results; waiver of monitoring requirement; authorization of appropriations

(1) Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 300g–1 of this title or to an applicable underground injection control program (as defined in section 300h–1(c) of this title), who is or may be subject to the permit requirement of section 300h–3 of this title, or to an order issued under section 300j of this title, or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter in administering any program of financial assistance under this subchapter, in evaluating the health risks of unregulated contaminants, or in advising the public of such risks. In requiring a public water system to monitor under this subsection, the Administrator may take into consideration the system size and the contaminants likely to be found in the system's drinking water.

(2) Not later than 18 months after June 19, 1986, the Administrator shall promulgate regulations requiring every public water system to conduct a monitoring program for unregulated contaminants. The regulations shall require monitoring of drinking water supplied by the system and shall vary the frequency and schedule of monitoring requirements for systems based on the number of persons served by the system, the source of supply, and the contaminants likely to be found. Each system shall be required to monitor at least once every 5 years after the effective date of the Administrator's regulations unless the Administrator requires more frequent monitoring.

(3) Regulations under paragraph (2) shall list unregulated contaminants for which systems may be required to monitor, and shall include criteria by which the primary enforcement authority in each State could show cause for addition or deletion of contaminants from the designated list. The primary State enforcement authority may delete contaminants for an individual system, in accordance with these criteria, after obtaining approval of assessment of the contaminants potentially to be found in the system. The Administrator shall approve or disapprove such an assessment submitted by a State within 60 days. A State may add contaminants, in accordance with these criteria, without making an assessment, but in no event shall such additions increase Federal expenditures authorized by this section.

(4) Public water systems conducting monitoring of unregulated contaminants pursuant to this section shall provide the results of such monitoring to the primary enforcement authority.

(5) Notification of the availability of the results of the monitoring programs required under paragraph (2), and notification of the availability of the results of the monitoring program referred to in paragraph (6), shall be given to the persons served by the system and the Administrator.

(6) The Administrator may waive the monitoring requirement under paragraph (2) for a system which has conducted a monitoring program after January 1, 1983, if the Administrator determines the program to have been consistent with the regulations promulgated under this section.

(7) Any system supplying less than 150 service connections shall be treated as complying with this subsection if such system provides water samples or the opportunity for sampling according to rules established by the Administrator.

(8) There are authorized to be appropriated $30,000,000 in the fiscal year ending September 30, 1987[1] to remain available until expended to carry out the provisions of this subsection.

(b) Entry of establishments, facilities, or other property; inspections; conduct of certain tests; audit and examination of records; entry restrictions; prohibition against informing of a proposed entry

(1) Except as provided in paragraph (2), the Administrator, or representatives of the Administrator duly designated by him, upon presenting appropriate credentials and a written notice to any supplier of water or other person subject to (A) a national primary drinking water regulation prescribed under section 300g–1 of this title, (B) an applicable underground injection control program, or (C) any requirement to monitor an unregulated contaminant pursuant to subsection (a) of this section, or person in charge of any of the property of such supplier or other person referred to in clause (A), (B), or (C), is authorized to enter any establishment, facility, or other property of such supplier or other person

[1] So in original. Probably should be followed by a comma.

in order to determine whether such supplier or other person has acted or is acting in compliance with this subchapter, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source. The Administrator or the Comptroller General (or any representative designated by either) shall have access for the purpose of audit and examination to any records, reports, or information of a grantee which are required to be maintained under subsection (a) of this section or which are pertinent to any financial assistance under this subchapter.

(2) No entry may be made under the first sentence of paragraph (1) in an establishment, facility, or other property of a supplier of water or other person subject to a national primary drinking water regulation if the establishment, facility, or other property is located in a State which has primary enforcement responsibility for public water systems unless, before written notice of such entry is made, the Administrator (or his representative) notifies the State agency charged with responsibility for safe drinking water of the reasons for such entry. The Administrator shall, upon a showing by the State agency that such an entry will be detrimental to the administration of the State's program of primary enforcement responsibility, take such showing into consideration in determining whether to make such entry. No State agency which receives notice under this paragraph of an entry proposed to be made under paragraph (1) may use the information contained in the notice to inform the person whose property is proposed to be entered of the proposed entry; and if a State agency so uses such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency has provided him satisfactory assurances that it will no longer so use information contained in a notice under this paragraph.

(c) Penalty

Whoever fails or refuses to comply with any requirement of subsection (a) of this section or to allow the Administrator, the Comptroller General, or representatives of either, to enter and conduct any audit or inspection authorized by subsection (b) of this section shall be subject to a civil penalty of not to exceed $25,000.

(d) Confidential information; trade secrets and secret processes; information disclosure; "information required under this section" defined

(1) Subject to paragraph (2), upon a showing satisfactory to the Administrator by any person that any information required under this section from such person, if made public, would divulge trade secrets or secret processes of such person, the Administrator shall consider such information confidential in accordance with the purposes of section 1905 of title 18. If the applicant fails to make a showing satisfactory to the Administrator, the Administrator shall give such applicant thirty days' notice before releasing the information to which the application relates (unless the public health or safety requires an earlier release of such information).

(2) Any information required under this section (A) may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this subchapter or to committees of the Congress, or when relevant in any proceeding under this subchapter, and (B) shall be disclosed to the extent it deals with the level of contaminants in drinking water. For purposes of this subsection the term ''information required under this section'' means any papers, books, documents, or information, or any particular part thereof, reported to or otherwise obtained by the Administrator under this section.

(e) "Grantee" and "person" defined

For purposes of this section, (1) the term ''grantee'' means any person who applies for or receives financial assistance, by grant, contract, or loan guarantee under this subchapter, and (2) the term ''person'' includes a Federal agency.

(f) Information regarding drinking water coolers

The Administrator may utilize the authorities of this section for purposes of part F of this subchapter. Any person who manufactures, imports, sells, or distributes drinking water coolers in interstate commerce shall be treated as a supplier of water for purposes of applying the provisions of this section in the case of persons subject to part F of this subchapter.

(July 1, 1944, ch. 373, title XIV, § 1445, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1686; amended Nov. 16, 1977, Pub. L. 95–190, § 12(c), (d), 91 Stat. 1398; June 19, 1986, Pub. L. 99–339, title I, § 106, title III, § 301(h), 100 Stat. 650, 665; Oct. 31, 1988, Pub. L. 100–572, § 5, 102 Stat. 2889.)

AMENDMENTS

1988—Subsec. (f). Pub. L. 100–572 added subsec. (f).

1986—Subsec. (a)(1). Pub. L. 99–339, § 106(a), (b), designated existing provisions as par. (1) and inserted provisions permitting Administrator to consider size of system and contaminants likely to be found.

Subsec. (a)(2) to (7). Pub. L. 99–339, § 106(b), added pars. (2) to (7).

Subsec. (a)(8). Pub. L. 99–339, § 301(h), added par. (8).

Subsec. (c). Pub. L. 99–339, § 106(c), substituted ''shall be subject to a civil penalty of not to exceed $25,000'' for ''may be fined not more than $5,000''.

1977—Subsec. (a). Pub. L. 95–190, § 12(c), inserted provisions relating to evaluating and advising of health risks of unregulated contaminants.

Subsec. (b)(1). Pub. L. 95–190, § 12(d), designated existing provisions as cls. (A) and (B) and added cl. (C) and reference to such cls. (A) to (C).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300g–3, 7412, 9606 of this title.

§ 300j–5. National Drinking Water Advisory Council

(a) Establishment; membership; representation of interests; term of office, vacancies; reappointment

There is established a National Drinking Water Advisory Council which shall consist of fifteen members appointed by the Administrator after consultation with the Secretary. Five members shall be appointed from the general public; five members shall be appointed from appropriate State and local agencies concerned

with water hygiene and public water supply; and five members shall be appointed from representatives of private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Each member of the Council shall hold office for a term of three years, except that—

(1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(2) the terms of the members first taking office shall expire as follows: Five shall expire three years after December 16, 1974, five shall expire two years after such date, and five shall expire one year after such date, as designated by the Administrator at the time of appointment.

The members of the Council shall be eligible for reappointment.

(b) Functions

The Council shall advise, consult with, and make recommendations to, the Administrator on matters relating to activities, functions, and policies of the Agency under this subchapter.

(c) Compensation and allowances; travel expenses

Members of the Council appointed under this section shall, while attending meetings or conferences of the Council or otherwise engaged in business of the Council, receive compensation and allowances at a rate to be fixed by the Administrator, but not exceeding the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Council. While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b)[1] of title 5.

(d) Advisory committee termination provision inapplicable

Section 14(a) of the Federal Advisory Committee Act (relating to termination) shall not apply to the Council.

(July 1, 1944, ch. 373, title XIV, § 1446, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1688.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (c), was amended generally by Pub. L. 94–22, § 4, May 19, 1975, 89 Stat. 85, and, as so amended, does not contain a subsec. (b).

Section 14(a) of the Federal Advisory Committee Act, referred to in subsec. (d), is section 14(a) of Pub. L. 92–463, which is set out in the Appendix to Title 5, Government Organization and Employees.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300f of this title.

[1] See References in Text note below.

§ 300j–6. Federal agencies

(a) Compliance with Federal, State, and local requirements, etc.; scope of applicability of compliance requirements, etc.; liability for civil penalties

Each Federal agency (1) having jurisdiction over any federally owned or maintained public water system or (2) engaged in any activity resulting, or which may result in, underground injection which endangers drinking water (within the meaning of section 300h(d)(2) of this title) shall be subject to, and comply with, all Federal, State, and local requirements, administrative authorities, and process and sanctions respecting the provision of safe drinking water and respecting any underground injection program in the same manner, and to the same extent, as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits, and any other requirement whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process or sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply, notwithstanding any immunity of such agencies, under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty under this subchapter with respect to any act or omission within the scope of his official duties.

(b) Waiver; national security; records available in judicial proceedings; publication in Federal Register; notice to Congressional committees

The Administrator shall waive compliance with subsection (a) of this section upon request of the Secretary of Defense and upon a determination by the President that the requested waiver is necessary in the interest of national security. The Administrator shall maintain a written record of the basis upon which such waiver was granted and make such record available for in camera examination when relevant in a judicial proceeding under this subchapter. Upon the issuance of such a waiver, the Administrator shall publish in the Federal Register a notice that the waiver was granted for national security purposes, unless, upon the request of the Secretary of Defense, the Administrator de-

termines to omit such publication because the publication itself would be contrary to the interests of national security, in which event the Administrator shall submit notice to the Armed Services Committee of the Senate and House of Representatives.

(c) Indian rights and sovereignty as unaffected; "Federal agency" defined

(1) Nothing in the Safe Drinking Water Amendments of 1977 shall be construed to alter or affect the status of American Indian lands or water rights nor to waive any sovereignty over Indian lands guaranteed by treaty or statute.

(2) For the purposes of this chapter, the term ''Federal agency'' shall not be construed to refer to or include any American Indian tribe, nor to the Secretary of the Interior in his capacity as trustee of Indian lands.

(July 1, 1944, ch. 373, title XIV, § 1447, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1688; amended Nov. 16, 1977, Pub. L. 95–190, § 8(a), (d), 91 Stat. 1396, 1397.)

REFERENCES IN TEXT

The Safe Drinking Water Amendments of 1977, referred to in subsec. (c)(1), is Pub. L. 95–190, Nov. 16, 1977, 91 Stat. 1393. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 201 of this title and Tables.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–190, § 8(a), substituted provisions relating to compliance by Federal agencies having jurisdiction over federally owned or maintained public water systems, or engaged in underground injection activities with Federal, State, and local requirements, etc., for provisions relating to compliance by Federal agencies having jurisdiction over federally owned or maintained public water systems with national primary drinking water regulations.

Subsec. (c). Pub. L. 95–190, § 8(d), added subsec. (c).

CHANGE OF NAME

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300h, 300j–8 of this title.

§ 300j–7. Judicial review

(a) Courts of appeals; petition for review: actions respecting regulations; filing period; grounds arising after expiration of filing period; exclusiveness of remedy

A petition for review of—

(1) actions pertaining to the establishment of national primary drinking water regulations (including maximum contaminant level goals) may be filed only in the United States Court of Appeals for the District of Columbia circuit; and

(2) any other action of the Administrator under this chapter may be filed in the circuit in which the petitioner resides or transacts business which is directly affected by the action.

Any such petition shall be filed within the 45-day period beginning on the date of the promulgation of the regulation or issuance of the order with respect to which review is sought or on the date of the determination with respect to which review is sought, and may be filed after the expiration of such 45-day period if the petition is based solely on grounds arising after the expiration of such period. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(b) District courts; petition for review: actions respecting variances or exemptions; filing period; grounds arising after expiration of filing period; exclusiveness of remedy

The United States district courts shall have jurisdiction of actions brought to review (1) the granting of, or the refusing to grant, a variance or exemption under section 300g–4 or 300g–5 of this title or (2) the requirements of any schedule prescribed for a variance or exemption under such section or the failure to prescribe such a schedule. Such an action may only be brought upon a petition for review filed with the court within the 45-day period beginning on the date the action sought to be reviewed is taken or, in the case of a petition to review the refusal to grant a variance or exemption or the failure to prescribe a schedule, within the 45-day period beginning on the date action is required to be taken on the variance, exemption, or schedule, as the case may be. A petition for such review may be filed after the expiration of such period if the petition is based solely on grounds arising after the expiration of such period. Action with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or in any civil action to enjoin enforcement.

(c) Judicial order for additional evidence before Administrator; modified or new findings; recommendation for modification or setting aside of original determination

In any judicial proceeding in which review is sought of a determination under this subchapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such term and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(July 1, 1944, ch. 373, title XIV, § 1448, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1689; amended June 19, 1986, Pub. L. 99–339, title III, § 303, 100 Stat. 667.)

AMENDMENTS

1986—Subsec. (a)(1). Pub. L. 99–339, § 303(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''action of the Administrator in promulgating any national primary drinking water regulation under section 300g–1 of this title, any regulation under section 300g–2(b)(1) of this title, any regulation under section 300g–3(c) of this title, any regulation for State underground injection control programs under section 300h of this title, or any general regulation for the administration of this subchapter may be filed only in the United States Court of Appeals for the District of Columbia Circuit; and''.

Subsec. (a)(2). Pub. L. 99–339, § 303(2), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''action of the Administrator in promulgating any other regulation under this subchapter, issuing any order under this subchapter, or making any determination under this subchapter may be filed only in the United States court of appeals for the appropriate circuit.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300h–2, 300j–8 of this title.

§ 300j–8. Citizen's civil action

(a) Persons subject to civil action; jurisdiction of enforcement proceedings

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (A) the United States, and (B) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any requirement prescribed by or under this subchapter, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this subchapter which is not discretionary with the Administrator.

No action may be brought under paragraph (1) against a public water system for a violation of a requirement prescribed by or under this subchapter which occurred within the 27-month period beginning on the first day of the month in which this subchapter is enacted. The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce in an action brought under this subsection any requirement prescribed by or under this subchapter or to order the Administrator to perform an act or duty described in paragraph (2), as the case may be.

(b) Conditions for commencement of civil action; notice

No civil action may be commenced—

(1) under subsection (a)(1) of this section respecting violation of a requirement prescribed by or under this subchapter—

(A) prior to sixty days after the plaintiff has given notice of such violation (i) to the Administrator, (ii) to any alleged violator of such requirement and (iii) to the State in which the violation occurs, or

(B) if the Administrator, the Attorney General, or the State has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with such requirement, but in any such action in a court of the United States any person may intervene as a matter of right; or

(2) under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator.

Notice required by this subsection shall be given in such manner as the Administrator shall prescribe by regulation. No person may commence a civil action under subsection (a) of this section to require a State to prescribe a schedule under section 300g–4 or 300g–5 of this title for a variance or exemption, unless such person shows to the satisfaction of the court that the State has in a substantial number of cases failed to prescribe such schedules.

(c) Intervention of right

In any action under this section, the Administrator or the Attorney General, if not a party, may intervene as a matter of right.

(d) Costs; attorney fees; expert witness fees; filing of bond

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Availability of other relief

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement prescribed by or under this subchapter or to seek any other relief. Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State or local government from—

(1) bringing any action or obtaining any remedy or sanction in any State or local court, or

(2) bringing any administrative action or obtaining any administrative remedy or sanction,

against any agency of the United States under State or local law to enforce any requirement respecting the provision of safe drinking water or respecting any underground injection control program. Nothing in this section shall be construed to authorize judicial review of regulations or orders of the Administrator under this subchapter, except as provided in section 300j–7 of this title. For provisions providing for application of certain requirements to such agencies in the same manner as to nongovernmental entities, see section 300j–6 of this title.

(July 1, 1944, ch. 373, title XIV, § 1449, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1690; amended Nov. 16, 1977, Pub. L. 95–190, § 8(c), 91 Stat. 1397.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1977—Subsec. (e). Pub. L. 95–190 inserted provisions relating to suits by State or local governments for enforcement of safe drinking water, etc., requirements.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300h–2 of this title.

§ 300j–9. General provisions

(a) Regulations; delegation of functions

(1) The Administrator is authorized to prescribe such regulations as are necessary or appropriate to carry out his functions under this subchapter.

(2) The Administrator may delegate any of his functions under this subchapter (other than prescribing regulations) to any officer or employee of the Agency.

(b) Utilization of officers and employees of Federal agencies

The Administrator, with the consent of the head of any other agency of the United States, may utilize such officers and employees of such agency as he deems necessary to assist him in carrying out the purposes of this subchapter.

(c) Assignment of Agency personnel to State or interstate agencies

Upon the request of a State or interstate agency, the Administrator may assign personnel of the Agency to such State or interstate agency for the purposes of carrying out the provisions of this subchapter.

(d) Payments of grants; adjustments; advances; reimbursement; installments; conditions; eligibility for grants; "nonprofit agency or institution" defined

(1) The Administrator may make payments of grants under this subchapter (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as he may determine.

(2) Financial assistance may be made available in the form of grants only to individuals and nonprofit agencies or institutions. For purposes of this paragraph, the term ''nonprofit agency or institution'' means an agency or institution no part of the net earnings of which inure, or may lawfully inure, to the benefit of any private shareholder or individual.

(e) Labor standards

The Administrator shall take such action as may be necessary to assure compliance with provisions of the Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a—276a–5). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40.

(f) Appearance and representation of Administrator through Attorney General or attorney appointees

The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this subchapter to which the Administrator is a party. Unless, within a reasonable time, the Attorney General notifies the Administrator that he will appear in such action, attorneys appointed by the Administrator shall appear and represent him.

(g) Authority of Administrator under other provisions unaffected

The provisions of this subchapter shall not be construed as affecting any authority of the Administrator under part G of subchapter II of this chapter.

(h) Reports to Congressional committees; review by Office of Management and Budget: submittal of comments to Congressional committees

Not later than April 1 of each year, the Administrator shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report respecting the activities of the Agency under this subchapter and containing such recommendations for legislation as he considers necessary. The report of the Administrator under this subsection which is due not later than April 1, 1975, and each subsequent report of the Administrator under this subsection shall include a statement on the actual and anticipated cost to public water systems in each State of compliance with the requirements of this subchapter. The Office of Management and Budget may review any report required by this subsection before its submission to such committees of Congress, but the Office may not revise any such report, require any revision in any such report, or delay its submission beyond the day prescribed for its submission, and may submit to such committees of Congress its comments respecting any such report.

(i) Discrimination prohibition; filing of complaint; investigation; orders of Secretary; notice and hearing; settlements; attorneys' fees; judicial review; filing of petition; procedural requirements; stay of orders; exclusiveness of remedy; civil actions for enforcement of orders; appropriate relief; mandamus proceedings; prohibition inapplicable to undirected but deliberate violations

(1) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee) has—

(A) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this subchapter or a proceeding for the administration or enforcement of drinking water regulations or underground injection control programs of a State,

(B) testified or is about to testify in any such proceeding, or

(C) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this subchapter.

(2)(A) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of paragraph (1) may, within 30 days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the ''Secretary'') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(B)(i) Upon receipt of a complaint filed under subparagraph (A), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within 90 days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by clause (ii) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for agency hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(ii) If in response to a complaint filed under subparagraph (A) the Secretary determines that a violation of paragraph (1) has occurred, the Secretary shall order (I) the person who committed such violation to take affirmative action to abate the violation, (II) such person to reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, (III) compensatory damages, and (IV) where appropriate, exemplary damages. If such an order is issued, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(3)(A) Any person adversely affected or aggrieved by an order issued under paragraph (2) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(B) An order of the Secretary with respect to which review could have been obtained under subparagraph (A) shall not be subject to judicial review in any criminal or other civil proceeding.

(4) Whenever a person has failed to comply with an order issued under paragraph (2)(B), the Secretary shall file a civil action in the United States District Court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(5) Any nondiscretionary duty imposed by this section is enforceable in mandamus proceeding brought under section 1361 of title 28.

(6) Paragraph (1) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this subchapter.

(July 1, 1944, ch. 373, title XIV, § 1450, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1691; amended Nov. 8, 1984, Pub. L. 98–620, title IV, § 402(38), 98 Stat. 3360; Nov. 2, 1994, Pub. L. 103–437, § 15(a)(2), 108 Stat. 4591.)

REFERENCES IN TEXT

Act of March 3, 1931 (known as the Davis-Bacon Act; 40 U.S.C. 276a—276a–5), referred to in subsec. (e), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a–5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), referred to in subsec. (e), is set out in the Appendix to Title 5, Government Organization and Employees.

Part C of subchapter II of this chapter, referred to in subsec. (g), is classified to section 264 of this title.

AMENDMENTS

1994—Subsec. (h). Pub. L. 103–437 substituted ''Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House'' for ''Committee on Commerce of the Senate and the Committee on Interstate and Foreign Commerce of the House''.

1984—Subsec. (i)(4). Pub. L. 98–620 struck out provision which required civil actions filed under par. (4) to be heard and decided expeditiously.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

FEDERAL RULES OF CIVIL PROCEDURE

Injunctions, see rule 65, Title 28, Appendix, Judiciary and Judicial Procedure.

Writ of mandamus abolished in United States district courts, but relief available by appropriate action or motion, see rule 81.

§ 300j–10. Appointment of scientific, etc., personnel by Administrator of Environmental Protection Agency for implementation of responsibilities; compensation

To the extent that the Administrator of the Environmental Protection Agency deems such action necessary to the discharge of his functions under title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.] (relating to safe drinking water) and under other provisions of law, he may appoint personnel to fill not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS–18 of the General Schedule under section 5332 of title 5.

(Pub. L. 95–190, § 11(b), Nov. 16, 1977, 91 Stat. 1398.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title XIV of the Public Health Service Act is classified generally to this subchapter (§ 300f et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The civil service laws, referred to in text, are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

CODIFICATION

Section was enacted as part of the Safe Drinking Water Amendments of 1977, and not as part of the Public Health Service Act which comprises this chapter.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 300j–11. Indian Tribes

(a) In general

Subject to the provisions of subsection (b) of this section, the Administrator—

(1) is authorized to treat Indian Tribes as States under this subchapter,

(2) may delegate to such Tribes primary enforcement responsibility for public water systems and for underground injection control, and

(3) may provide such Tribes grant and contract assistance to carry out functions provided by this subchapter.

(b) EPA regulations

(1) Specific provisions

The Administrator shall, within 18 months after June 19, 1986, promulgate final regulations specifying those provisions of this subchapter for which it is appropriate to treat Indian Tribes as States. Such treatment shall be authorized only if:

(A) the Indian Tribe is recognized by the Secretary of the Interior and has a governing body carrying out substantial governmental duties and powers;

(B) the functions to be exercised by the Indian Tribe are within the area of the Tribal Government's jurisdiction; and

(C) the Indian Tribe is reasonably expected to be capable, in the Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this subchapter and of all applicable regulations.

(2) Provisions where treatment as State inappropriate

For any provision of this subchapter where treatment of Indian Tribes as identical to States is inappropriate, administratively infeasible or otherwise inconsistent with the purposes of this subchapter, the Administrator may include in the regulations promulgated under this section, other means for administering such provision in a manner that will achieve the purpose of the provision. Nothing in this section shall be construed to allow Indian Tribes to assume or maintain primary enforcement responsibility for public water systems or for underground injection control in a manner less protective of the health of persons than such responsibility may be assumed or maintained by a State. An Indian tribe[1] shall not be required to exercise criminal enforcement jurisdiction for purposes of complying with the preceding sentence.

(July 1, 1944, ch. 373, title XIV, § 1451, as added June 19, 1986, Pub. L. 99–339, title III, § 302(a), 100 Stat. 665.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300h–1 of this title.

PART F—ADDITIONAL REQUIREMENTS TO REGULATE SAFETY OF DRINKING WATER

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 300j–4 of this title.

§ 300j–21. Definitions

As used in this part—

(1) Drinking water cooler

The term ''drinking water cooler'' means any mechanical device affixed to drinking water supply plumbing which actively cools water for human consumption.

(2) Lead free

The term ''lead free'' means, with respect to a drinking water cooler, that each part or component of the cooler which may come in contact with drinking water contains not more than 8 percent lead, except that no drinking water cooler which contains any solder, flux, or storage tank interior surface which may come in contact with drinking water shall be considered lead free if the solder, flux, or storage tank interior surface contains more than 0.2 percent lead. The Administrator may establish more stringent requirements for treating any part or component of a drinking water cooler as lead free for purposes of this part whenever he determines that any

[1] So in original. Probably should be capitalized.

such part may constitute an important source of lead in drinking water.

(3) Local educational agency

The term ''local educational agency'' means—

(A) any local educational agency as defined in section 8801 of title 20,

(B) the owner of any private, nonprofit elementary or secondary school building, and

(C) the governing authority of any school operating under the defense dependent's education system provided for under the Defense Dependent's Education Act of 1978 (20 U.S.C. 921 and following).

(4) Repair

The term ''repair'' means, with respect to a drinking water cooler, to take such corrective action as is necessary to ensure that water cooler is lead free.

(5) Replacement

The term ''replacement'', when used with respect to a drinking water cooler, means the permanent removal of the water cooler and the installation of a lead free water cooler.

(6) School

The term ''school'' means any elementary school or secondary school as defined in section 8801 of title 20 and any kindergarten or day care facility.

(7) Lead-lined tank

The term ''lead-lined tank'' means a water reservoir container in a drinking water cooler which container is constructed of lead or which has an interior surface which is not lead free.

(July 1, 1944, ch. 373, title XIV, §1461, as added Oct. 31, 1988, Pub. L. 100–572, §2(a), 102 Stat. 2884; amended Oct. 20, 1994, Pub. L. 103–382, title III, §391(p), 108 Stat. 4024.)

REFERENCES IN TEXT

The Defense Dependent's Education Act of 1978, referred to in par. (3)(C), probably means the Defense Dependents' Education Act of 1978, title XIV of Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2365, as amended, which is classified principally to chapter 25A (§921 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 921 of Title 20 and Tables.

AMENDMENTS

1994—Par. (3)(A). Pub. L. 103–382, §391(p)(1), substituted ''section 8801 of title 20'' for ''section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 3381)''.

Par. (6). Pub. L. 103–382, §391(p)(2), substituted ''section 8801 of title 20'' for ''section 198 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2854)''.

§ 300j–22. Recall of drinking water coolers with lead-lined tanks

For purposes of the Consumer Product Safety Act [15 U.S.C. 2051 et seq.], all drinking water coolers identified by the Administrator on the list under section 300j–23 of this title as having a lead-lined tank shall be considered to be imminently hazardous consumer products within the meaning of section 12 of such Act (15 U.S.C. 2061). After notice and opportunity for comment, including a public hearing, the Consumer Product Safety Commission shall issue an order requiring the manufacturers and importers of such coolers to repair, replace, or recall and provide a refund for such coolers within 1 year after October 31, 1988. For purposes of enforcement, such order shall be treated as an order under section 15(d) of that Act (15 U.S.C. 2064(d)).

(July 1, 1944, ch. 373, title XIV, §1462, as added Oct. 31, 1988, Pub. L. 100–572, §2(a), 102 Stat. 2885.)

REFERENCES IN TEXT

The Consumer Product Safety Act, referred to in text, is Pub. L. 92–573, Oct. 27, 1972, 86 Stat. 1207, as amended, which is classified generally to chapter 47 (§2051 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2051 of Title 15 and Tables.

§ 300j–23. Drinking water coolers containing lead

(a) Publication of lists

The Administrator shall, after notice and opportunity for public comment, identify each brand and model of drinking water cooler which is not lead free, including each brand and model of drinking water cooler which has a lead-lined tank. For purposes of identifying the brand and model of drinking water coolers under this subsection, the Administrator shall use the best information available to the Environmental Protection Agency. Within 100 days after October 31, 1988, the Administrator shall publish a list of each brand and model of drinking water cooler identified under this subsection. Such list shall separately identify each brand and model of cooler which has a lead-lined tank. The Administrator shall continue to gather information regarding lead in drinking water coolers and shall revise and republish the list from time to time as may be appropriate as new information or analysis becomes available regarding lead contamination in drinking water coolers.

(b) Prohibition

No person may sell in interstate commerce, or manufacture for sale in interstate commerce, any drinking water cooler listed under subsection (a) of this section or any other drinking water cooler which is not lead free, including a lead-lined drinking water cooler.

(c) Criminal penalty

Any person who knowingly violates the prohibition contained in subsection (b) of this section shall be imprisoned for not more than 5 years, or fined in accordance with title 18, or both.

(d) Civil penalty

The Administrator may bring a civil action in the appropriate United States District Court (as determined under the provisions of title 28) to impose a civil penalty on any person who violates subsection (b) of this section. In any such action the court may impose on such person a civil penalty of not more than $5,000 ($50,000 in the case of a second or subsequent violation).

(July 1, 1944, ch. 373, title XIV, §1463, as added Oct. 31, 1988, Pub. L. 100–572, §2(a), 102 Stat. 2885.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300j–22, 300j–24 of this title.

§ 300j–24. Lead contamination in school drinking water

(a) Distribution of drinking water cooler list

Within 100 days after October 31, 1988, the Administrator shall distribute to the States a list of each brand and model of drinking water cooler identified and listed by the Administrator under section 300j–23(a) of this title.

(b) Guidance document and testing protocol

The Administrator shall publish a guidance document and a testing protocol to assist schools in determining the source and degree of lead contamination in school drinking water supplies and in remedying such contamination. The guidance document shall include guidelines for sample preservation. The guidance document shall also include guidance to assist States, schools, and the general public in ascertaining the levels of lead contamination in drinking water coolers and in taking appropriate action to reduce or eliminate such contamination. The guidance document shall contain a testing protocol for the identification of drinking water coolers which contribute to lead contamination in drinking water. Such document and protocol may be revised, republished and redistributed as the Administrator deems necessary. The Administrator shall distribute the guidance document and testing protocol to the States within 100 days after October 31, 1988.

(c) Dissemination to schools, etc.

Each State shall provide for the dissemination to local educational agencies, private nonprofit elementary or secondary schools and to day care centers of the guidance document and testing protocol published under subsection (b) of this section, together with the list of drinking water coolers published under section 300j–23(a) of this title.

(d) Remedial action program

(1) Testing and remedying lead contamination

Within 9 months after October 31, 1988, each State shall establish a program, consistent with this section, to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies.

(2) Public availability

A copy of the results of any testing under paragraph (1) shall be available in the administrative offices of the local educational agency for inspection by the public, including teachers, other school personnel, and parents. The local educational agency shall notify parent, teacher, and employee organizations of the availability of such testing results.

(3) Coolers

In the case of drinking water coolers, such program shall include measures for the reduction or elimination of lead contamination from those water coolers which are not lead free and which are located in schools. Such measures shall be adequate to ensure that within 15 months after October 31, 1988, all such water coolers in schools under the jurisdiction of such agencies are repaired, replaced, permanently removed, or rendered inoperable unless the cooler is tested and found (within the limits of testing accuracy) not to contribute lead to drinking water.

(July 1, 1944, ch. 373, title XIV, § 1464, as added Oct. 31, 1988, Pub. L. 100–572, § 2(a), 102 Stat. 2886.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300j–25 of this title.

§ 300j–25. Federal assistance for State programs regarding lead contamination in school drinking water

(a) School drinking water programs

The Administrator shall make grants to States to establish and carry out State programs under section 300j–24 of this title to assist local educational agencies in testing for, and remedying, lead contamination in drinking water from drinking water coolers and from other sources of lead contamination at schools under the jurisdiction of such agencies. Such grants may be used by States to reimburse local educational agencies for expenses incurred after October 31, 1988, for such testing and remedial action.

(b) Limits

Each grant under this section shall be used as[1] by the State for testing water coolers in accordance with section 300j–24 of this title, for testing for lead contamination in other drinking water supplies under section 300j–24 of this title, or for remedial action under State programs under section 300j–24 of this title. Not more than 5 percent of the grant may be used for program administration.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section not more than $30,000,000 for fiscal year 1989, $30,000,000 for fiscal year 1990, and $30,000,000 for fiscal year 1991.

(July 1, 1944, ch. 373, title XIV, § 1465, as added Oct. 31, 1988, Pub. L. 100–572, § 2(a), 102 Stat. 2887.)

§ 300j–26. Certification of testing laboratories

The Administrator of the Environmental Protection Agency shall assure that programs for the certification of testing laboratories which test drinking water supplies for lead contamination certify only those laboratories which provide reliable accurate testing. The Administrator (or the State in the case of a State to which certification authority is delegated under this subsection) shall publish and make available to the public upon request the list of laboratories certified under this subsection.[1]

(Pub. L. 100–572, § 4, Oct. 31, 1988, 102 Stat. 2889.)

---

[1] So in original.

[1] So in original. Probably should be ''section.''

CODIFICATION

Section enacted as part of the Lead Contamination Control Act of 1988, and not as part of the Public Health Service Act which comprises this chapter.

SUBCHAPTER XIII—PREVENTIVE HEALTH MEASURES WITH RESPECT TO BREAST AND CERVICAL CANCERS

§ 300k. Establishment of program of grants to States

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to States on the basis of an established competitive review process for the purpose of carrying out programs—

(1) to screen women for breast and cervical cancer as a preventive health measure;

(2) to provide appropriate referrals for medical treatment of women screened pursuant to paragraph (1) and to ensure, to the extent practicable, the provision of appropriate follow-up services;

(3) to develop and disseminate public information and education programs for the detection and control of breast and cervical cancer;

(4) to improve the education, training, and skills of health professionals (including allied health professionals) in the detection and control of breast and cervical cancer;

(5) to establish mechanisms through which the States can monitor the quality of screening procedures for breast and cervical cancer, including the interpretation of such procedures; and

(6) to evaluate activities conducted under paragraphs (1) through (5) through appropriate surveillance or program-monitoring activities.

(b) Grant and contract authority of States

(1) In general

A State receiving a grant under subsection (a) of this section may, subject to paragraphs (2) and (3), expend the grant to carry out the purpose described in such subsection through grants to, and contracts with, public or nonprofit private entities.

(2) Limited authority regarding other entities

In addition to the authority established in paragraph (1) for a State with respect to grants and contracts, the State may provide for screenings under subsection (a)(1) of this section through entering into contracts with private entities that are not nonprofit entities.

(3) Payments for screenings

The amount paid by a State to an entity under this subsection for a screening procedure under subsection (a)(1) of this section may not exceed the amount that would be paid under part B of title XVIII of the Social Security Act [42 U.S.C. 1395j et seq.] if payment were made under such part for furnishing the procedure to a woman enrolled under such part.

(c) Special consideration for certain States

In making grants under subsection (a) of this section to States whose initial grants under such subsection are made for fiscal year 1995 or any subsequent fiscal year, the Secretary shall give special consideration to any State whose proposal for carrying out programs under such subsection—

(1) has been approved through a process of peer review; and

(2) is made with respect to geographic areas in which there is—

(A) a substantial rate of mortality from breast or cervical cancer; or

(B) a substantial incidence of either of such cancers.

(c)[1] Coordinating committee regarding year 2000 health objectives

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish a committee to coordinate the activities of the agencies of the Public Health Service (and other appropriate Federal agencies) that are carried out toward achieving the objectives established by the Secretary for reductions in the rate of mortality from breast and cervical cancer in the United States by the year 2000. Such committee shall be comprised of Federal officers or employees designated by the heads of the agencies involved to serve on the committee as representatives of the agencies, and such representatives from other public or private entities as the Secretary determines to be appropriate.

(July 1, 1944, ch. 373, title XV, § 1501, as added Aug. 10, 1990, Pub. L. 101–354, § 2, 104 Stat. 409; amended June 10, 1993, Pub. L. 103–43, title XX, § 2008(c)(1), 107 Stat. 211; Dec. 14, 1993, Pub. L. 103–183, title I, § 101(a), (b), (f), (g)(1), 107 Stat. 2227–2229.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part B of title XVIII of the Act is classified generally to part B (§ 1395j et seq.) of subchapter XVIII of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 300k, Pub. L. 93–641, § 2, Jan. 4, 1975, 88 Stat. 2226, set forth Congressional findings relating to national health planning and development, prior to omission in connection with repeal of former section 300k–1 et seq. of this title.

A prior section 1501 of act July 1, 1944, ch. 373, title XV, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2227; amended Oct. 4, 1979, Pub. L. 96–79, title I, § 101(a)(1)(A), (2), (3), 93 Stat. 593; Dec. 17, 1980, Pub. L. 96–538, title III, § 301, 94 Stat. 3190, which related to guidelines for national health policy, was classified to section 300k–1 of this title, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Prior sections 300k–2 and 300k–3 were repealed by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Section 300k–2, act July 1, 1944, ch. 373, title XV, § 1502, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2227; amended Nov. 9, 1978, Pub. L. 95–619, title III, § 303(a), 92 Stat. 3248; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 102(a), 103(a), (b), 93 Stat. 594, 595, related to national health priorities and strengthening competition in supply of services.

[1] So in original. Probably should be "(d)".

Section 300k–3, act July 1, 1944, ch. 373, title XV, §1503, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2228; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(a), 91 Stat. 384; July 10, 1979, Pub. L. 96–32, §7(g), 93 Stat. 84; Oct. 4, 1979, Pub. L. 96–79, title I, §102(b), 93 Stat. 594; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695, related to National Council on Health Planning and Development.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–183, §101(g)(1), substituted ''Control and Prevention'' for ''Control'' in introductory provisions.

Subsec. (b). Pub. L. 103–183, §101(a), substituted ''paragraphs (2) and (3)'' for ''paragraph (2)'' in par. (1), added pars. (2) and (3), and struck out heading and text of former par. (2). Text read as follows: ''In addition to the authority established in paragraph (1) for a State with respect to grants and contracts, the State may provide for screenings under subsection (a)(1) of this section through entering into contracts with private entities. The amount paid by a State to a private entity under the preceding sentence for a screening procedure may not exceed the amount that would be paid under part B of title XVIII of the Social Security Act if payment were made under such part for furnishing the procedure to a woman enrolled under such part.''

Pub. L. 103–43, §2008(c)(1), designated existing provisions as par. (1), inserted par. heading, substituted ''may, subject to paragraph (2), expend'' for ''may expend'', and added par. (2).

Subsec. (c). Pub. L. 103–183, §101(f), added subsec. (c) relating to coordinating committee regarding year 2000 health objectives.

Pub. L. 103–183, §101(b), added subsec. (c) relating to special consideration for certain States.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300*l*, 300*l*–1, 300m, 300n, 300n–1, 300n–2, 300n–3, 300n–4, 300n–4a of this title.

§ 300*l*. Requirement of matching funds

(a) In general

The Secretary may not make a grant under section 300k of this title unless the State involved agrees, with respect to the costs to be incurred by the State in carrying out the purpose described in such section, to make available non-Federal contributions (in cash or in kind under subsection (b) of this section) toward such costs in an amount equal to not less than $1 for each $3 of Federal funds provided in the grant. Such contributions may be made directly or through donations from public or private entities.

(b) Determination of amount of non-Federal contribution

(1) In general

Non-Federal contributions required in subsection (a) of this section may be in cash or in kind, fairly evaluated, including equipment or services (and excluding indirect or overhead costs). Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(2) Maintenance of effort

In making a determination of the amount of non-Federal contributions for purposes of subsection (a) of this section, the Secretary may include only non-Federal contributions in excess of the average amount of non-Federal contributions made by the State involved toward the purpose described in section 300k of this title for the 2-year period preceding the first fiscal year for which the State is applying to receive a grant under such section.

(3) Inclusion of relevant non-Federal contributions for medicaid

In making a determination of the amount of non-Federal contributions for purposes of subsection (a) of this section, the Secretary shall, subject to paragraphs (1) and (2) of this subsection, include any non-Federal amounts expended pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] by the State involved toward the purpose described in paragraphs (1) and (2) of section 300k(a) of this title.

(July 1, 1944, ch. 373, title XV, §1502, as added Aug. 10, 1990, Pub. L. 101–354, §2, 104 Stat. 410.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 300*l*, act July 1, 1944, ch. 373, title XV, §1511, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2229; amended Apr. 22, 1976, Pub. L. 94–278, title XI, §1106(a), 90 Stat. 416; Aug. 1, 1977, Pub. L. 95–83, title I, §106(b), 91 Stat. 384; Oct. 4, 1979, Pub. L. 96–79, title I, §104(a)(1), (b), 93 Stat. 595, 596, related to establishment of health service areas, prior to repeal by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

A prior section 1502 of act July 1, 1944, ch. 373, title XV, was classified to section 300k–2 of this title prior to repeal by Pub. L. 99–660.

§ 300*l*–1. Requirement regarding medicaid

The Secretary may not make a grant under section 300k of this title for a program in a State unless the State plan under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State includes the screening procedures specified in subparagraphs (A) and (B) of section 300m(a)(2) of this title as medical assistance provided under the plan.

(July 1, 1944, ch. 373, title XV, §1502A, as added Oct. 27, 1992, Pub. L. 102–531, title III, §307, 106 Stat. 3495.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

Prior sections 300*l*–1 to 300*l*–5 were repealed by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Section 300*l*–1, act July 1, 1944, ch. 373, title XV, §1512, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2232; amended Mar. 19, 1976, Pub. L. 94–237, §14(b), 90 Stat. 249; Oct. 12, 1976, Pub. L. 94–484, title IX, §902(a), 90 Stat. 2324; Aug. 1, 1977, Pub. L. 95–83, title I, §106(c), (d),

91 Stat. 384; Oct. 4, 1979, Pub. L. 96–79, title I, §§108(a)–(d)(1), (e), 109, 110(a)–(d)(1), (e)(1), (2)(A), (3), 111(a), (b), 112, 113(a), 114, 93 Stat. 601–607; Aug. 13, 1981, Pub. L. 97–35, title IX, §935(d), 95 Stat. 571; Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095, related to composition and operation of health systems agencies.

Section 300*l*–2, act July 1, 1944, ch. 373, title XV, §1513, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2235; amended Mar. 19, 1976, Pub. L. 94–237, §14(a), 90 Stat. 249; Aug. 1, 1977, Pub. L. 95–83, title I, §106(e)–(i), 91 Stat. 384, 385; July 10, 1979, Pub. L. 96–32, §7(m), 93 Stat. 84; Oct. 4, 1979, Pub. L. 96–79, title I, §§101(b)(1), 103(c), 107(a), 110(e)(4), (f), 115(b)(1), (2), (c)(2), (d)(1), (2), (e), (f), (h), (i)(1), 118(a)(1), (b)(1), (c), 119(b), 120(a), 121, 122(a), 123(c)(1)(B), 93 Stat. 593, 595, 600, 604, 607–610, 620–625; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695; Jan. 2, 1980, Pub. L. 96–181, §15(b), 93 Stat. 1316; Oct. 7, 1980, Pub. L. 96–398, title VIII, §804(d), 94 Stat. 1608; Aug. 13, 1981, Pub. L. 97–35, title IX, §902(g)(4), 95 Stat. 561, related to functions of health systems agencies.

Section 300*l*–3, act July 1, 1944, ch. 373, title XV, §1514, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2239; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(j), 91 Stat. 385; Oct. 4, 1979, Pub. L. 96–79, title I, §105(f), 93 Stat. 598, provided for assistance to entities desiring to be designated as health systems agencies.

Section 300*l*–4, act July 1, 1944, ch. 373, title XV, §1515, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2239; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(k), 91 Stat. 385; Dec. 19, 1977, Pub. L. 95–215, §6(a)(1), 91 Stat. 1507; Oct. 4, 1979, Pub. L. 96–79, title I, §105(a)–(d)(1)(A), (2), (e), (g), (h), 93 Stat. 596–598; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695, provided for designation of health systems agencies.

Section 300*l*–5, act July 1, 1944, ch. 373, title XV, §1516, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2241; amended Aug. 1, 1977, Pub. L. 95–83, title I, §102(a), 91 Stat. 383; Dec. 19, 1977, Pub. L. 95–215, §6(a)(2), 91 Stat. 1507; Oct. 4, 1979, Pub. L. 96–79, title I, §§106, 107(b), 127(a), 93 Stat. 598, 600, 629; Dec. 17, 1980, Pub. L. 96–538, title III, §302, 94 Stat. 3190; Aug. 13, 1981, Pub. L. 97–35, title IX, §§933(a)(1), 934(a), 95 Stat. 570, 571, provided for planning grants to health systems agencies.

§ 300m. Requirements with respect to type and quality of services

(a) Requirement of provision of all services by date certain

The Secretary may not make a grant under section 300k of this title unless the State involved agrees—

(1) to ensure that, initially and throughout the period during which amounts are received pursuant to the grant, not less than 60 percent of the grant is expended to provide each of the services or activities described in paragraphs (1) and (2) of section 300k(a) of this title, including making available screening procedures for both breast and cervical cancers;

(2) subject to subsection (b) of this section, to ensure that—

(A) in the case of breast cancer, both a physical examination of the breasts and the screening procedure known as a mammography are conducted; and

(B) in the case of cervical cancer, both a pelvic examination and the screening procedure known as a pap smear are conducted;

(3) to ensure that, by the end of any second fiscal year of payments pursuant to the grant, each of the services or activities described in section 300k(a) of this title is provided; and

(4) to ensure that not more than 40 percent of the grant is expended to provide the services or activities described in paragraphs (3) through (6) of such section.

(b) Use of improved screening procedures

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that, if any screening procedure superior to a procedure described in subsection (a)(2) of this section becomes commonly available and is recommended for use, any entity providing screening procedures pursuant to the grant will utilize the superior procedure rather than the procedure described in such subsection.

(c) Quality assurance regarding screening procedures

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that the State will, in accordance with applicable law, assure the quality of screening procedures conducted pursuant to such section.

(July 1, 1944, ch. 373, title XV, §1503, as added Aug. 10, 1990, Pub. L. 101–354, §2, 104 Stat. 410; amended Dec. 14, 1993, Pub. L. 103–183, title I, §101(c)(1), 107 Stat. 2227.)

PRIOR PROVISIONS

Prior sections 300m to 300m–6 were repealed by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Section 300m, act July 1, 1944, ch. 373, title XV, §1521, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2242; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(*l*), (m), 91 Stat. 385; Dec. 19, 1977, Pub. L. 95–215, §6(b), 91 Stat. 1507; July 16, 1979, Pub. L. 96–33, 93 Stat. 86; Oct. 4, 1979, Pub. L. 96–79, title I, §123(a), (b)(1)(A), (2), (d), (f), (g)(2), 93 Stat. 624–627; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695; Jan. 2, 1980, Pub. L. 96–181, §15(b), 93 Stat. 1316; Dec. 17, 1980, Pub. L. 96–538, title III, §303(b), 94 Stat. 3190; Aug. 13, 1981, Pub. L. 97–35, title IX, §§902(g)(5), 936(b), 95 Stat. 561, 572; Jan. 4, 1983, Pub. L. 97–414, §9(b), 96 Stat. 2064, provided for designation of State health planning and development agencies.

A prior section 1503 of act July 1, 1944, ch. 373, title XV, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2228; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(a), 91 Stat. 384; July 10, 1979, Pub. L. 96–32, §7(g), 93 Stat. 84; Oct. 4, 1979, Pub. L. 96–79, title I, §102(b), 93 Stat. 594; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695, which related to National Council on Health Planning and Development, was classified to section 300k–3 of this title.

Section 300m–1, act July 1, 1944, ch. 373, title XV, §1522, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2244; amended 1978 Reorg. Plan No. 2, §102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783; Oct. 4, 1979, Pub. L. 96–79, title I, §§101(b)(2), 111(c), 115(b)(3), 117(b)(4), 120(b), 122(b), 123(c)(1)(A), (e)(1), 93 Stat. 594, 605, 607, 620, 622, 624, 625, 626; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695, related to State administrative programs.

Section 300m–2, act July 1, 1944, ch. 373, title XV, §1523, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2246; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(n), 91 Stat. 385; Oct. 4, 1979, Pub. L. 96–79, title I, §§115(c)(1)(A)–(C), (i)(2), 117(b)(1), (2), 118(a)(2), (b)(2), 123(c)(2), (3), (e)(2), (g)(1), 93 Stat. 607, 608, 610, 618, 619, 621, 625–627; Oct. 7, 1980, Pub. L. 96–398, title III, §303, 94 Stat. 1588, related to State health planning and development functions.

Section 300m–3, act July 1, 1944, ch. 373, title XV, §1524, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2247; amended Oct. 4, 1979, Pub. L. 96–79, title I, §§110(d)(2), 113(b), 115(a), (c)(1)(D), (d)(3), (g), (i)(2)–(4), 119(a), 124, 93 Stat. 604, 606–610, 621, 627; Jan. 2, 1980, Pub. L. 96–181, §15(b), 93 Stat. 1316; Dec. 17, 1980, Pub. L. 96–538, title III, §§304, 305, 94 Stat. 3191; Aug. 13, 1981, Pub. L. 97–35, title IX, §902(g)(6), 95 Stat. 561, related to composition and functions of Statewide Health Coordinating Councils.

Section 300m–4, act July 1, 1944, ch. 373, title XV, § 1525, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2249; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 102(b), 91 Stat. 383; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 107(c), 127(b), 93 Stat. 600, 629; Aug. 13, 1981, Pub. L. 97–35, title IX, § 933(a)(2), 95 Stat. 570, provided for grants for State health planning and development.

Section 300m–5, act July 1, 1944, ch. 373, title XV, § 1526, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2249; amended Aug. 1, 1977, Pub. L. 95–83, title I, §§ 102(c), 106(*o*), 91 Stat. 383, 385; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 107(d), 120(c), 127(c), 93 Stat. 600, 622, 629, provided for grants for rate regulation.

Section 300m–6, act July 1, 1944, ch. 373, title XV, § 1527, as added Oct. 4, 1979, Pub. L. 96–79, title I, § 117(a), 93 Stat. 614; amended Dec. 17, 1980, Pub. L. 96–538, title III, §§ 306, 307, 94 Stat. 3191; Aug. 13, 1981, Pub. L. 97–35, title IX, § 949(c), 95 Stat. 578, related to certificate of need program.

AMENDMENTS

1993—Subsecs. (c) to (e). Pub. L. 103–183 added subsec. (c) and struck out former subsecs. (c) which related to quality assurance regarding screening for breast cancer, (d) which related to quality assurance regarding screening for cervical cancer, and (e) which related to issuance by Secretary of guidelines with respect to quality of mammography and cytological services.

TRANSITION RULE REGARDING MAMMOGRAPHIES

Section 101(c)(2) of Pub. L. 103–183 provided that: ''With respect to the screening procedure for breast cancer known as a mammography, the requirements in effect on the day before the date of the enactment of this Act [Dec. 14, 1993] under section 1503(c) of the Public Health Service Act [subsec. (c) of this section] remain in effect (for an individual or facility conducting such procedures pursuant to a grant to a State under section 1501 of such Act [section 300k of this title]) until there is in effect for the facility a certificate (or provisional certificate) issued under section 354 of such Act [section 263b of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300*l*–1 of this title.

§ 300n. Additional required agreements

(a) Priority for low-income women

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that low-income women will be given priority in the provision of services and activities pursuant to paragraphs (1) and (2) of section 300k(a) of this title.

(b) Limitation on imposition of fees for services

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that, if a charge is imposed for the provision of services or activities under the grant, such charge—

(1) will be made according to a schedule of charges that is made available to the public;

(2) will be adjusted to reflect the income of the woman involved; and

(3) will not be imposed on any woman with an income of less than 100 percent of the official poverty line, as established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(2) of this title.

(c) Statewide provision of services

(1) In general

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that services and activities under the grant will be made available throughout the State, including availability to members of any Indian tribe or tribal organization (as such terms are defined in section 450b of title 25).

(2) Waiver

The Secretary may waive the requirement established in paragraph (1) for a State if the Secretary determines that compliance by the State with the requirement would result in an inefficient allocation of resources with respect to carrying out the purpose described in section 300k(a) of this title.

(3) Grants to tribes and tribal organizations

(A) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to tribes and tribal organizations (as such terms are used in paragraph (1)) for the purpose of carrying out programs described in section 300k(a) of this title. This subchapter applies to such a grant (in relation to the jurisdiction of the tribe or organization) to the same extent and in the same manner as such subchapter applies to a grant to a State under section 300k of this title (in relation to the jurisdiction of the State).

(B) If a tribe or tribal organization is receiving a grant under subparagraph (A) and the State in which the tribe or organization is located is receiving a grant under section 300k of this title, the requirement established in paragraph (1) for the State regarding the tribe or organization is deemed to have been waived under paragraph (2).

(d) Relationship to items and services under other programs

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that the grant will not be expended to make payment for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service—

(1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(2) by an entity that provides health services on a prepaid basis.

(e) Coordination with other breast and cervical cancer programs

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that the services and activities funded through the grant shall be coordinated with other Federal, State, and local breast and cervical cancer programs.

(f) Limitation on administrative expenses

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that not more than 10 percent of the grant will be expended for administrative expenses with respect to the grant.

(g) Restrictions on use of grant

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that the grant will not be ex-

pended to provide inpatient hospital services for any individual.

(h) Records and audits

The Secretary may not make a grant under section 300k of this title unless the State involved agrees that—

(1) the State will establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the State under such section; and

(2) upon request, the State will provide records maintained pursuant to paragraph (1) to the Secretary or the Comptroller of the United States for purposes of auditing the expenditures by the State of the grant.

(i) Reports to Secretary

The Secretary may not make a grant under section 300k of this title unless the State involved agrees to submit to the Secretary such reports as the Secretary may require with respect to the grant.

(July 1, 1944, ch. 373, title XV, §1504, as added Aug. 10, 1990, Pub. L. 101–354, §2, 104 Stat. 412; amended Dec. 14, 1993, Pub. L. 103–183, title I, §101(d), 107 Stat. 2228.)

PRIOR PROVISIONS

A prior section 300n, act July 1, 1944, ch. 373, title XV, §1531, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2250; amended Mar. 19, 1976, Pub. L. 94–237, §14(c), 90 Stat. 249; Oct. 12, 1976, Pub. L. 94–484, title IX, §902(b), 90 Stat. 2324; Oct. 4, 1979, Pub. L. 96–79, title I, §§104(c)(2), 108(d)(2), 117(b)(3), 126(a)(1), (b), 93 Stat. 596, 602, 619, 628; Dec. 17, 1980, Pub. L. 96–538, title III, §§308, 309, 94 Stat. 3192; Aug. 13, 1981, Pub. L. 97–35, title IX, §936(a), 95 Stat. 572, defined terms applicable to this subchapter, prior to repeal by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

AMENDMENTS

1993—Subsec. (c)(3). Pub. L. 103–183 added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300n–4 of this title.

§ 300n–1. Description of intended uses of grant

The Secretary may not make a grant under section 300k of this title unless—

(1) the State involved submits to the Secretary a description of the purposes for which the State intends to expend the grant;

(2) the description identifies the populations, areas, and localities in the State with a need for the services or activities described in section 300k(a) of this title;

(3) the description provides information relating to the services and activities to be provided, including a description of the manner in which the services and activities will be coordinated with any similar services or activities of public and nonprofit private entities; and

(4) the description provides assurances that the grant funds will be used in the most cost-effective manner.

(July 1, 1944, ch. 373, title XV, §1505, as added Aug. 10, 1990, Pub. L. 101–354, §2, 104 Stat. 414; amended June 10, 1993, Pub. L. 103–43, title XX, §2008(c)(2), 107 Stat. 211; Dec. 14, 1993, Pub. L. 103–183, title I, §101(g)(2), 107 Stat. 2229.)

PRIOR PROVISIONS

A prior section 300n–1, act July 1, 1944, ch. 373, title XV, §1532, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2251; amended Oct. 8, 1976, Pub. L. 94–460, title I, §117(a), 90 Stat. 1954; Nov. 9, 1978, Pub. L. 95–619, title III, §303(b), (c), 92 Stat. 3248; Oct. 4, 1979, Pub. L. 96–79, title I, §§103(d), 116, 117(b)(5), 93 Stat. 595, 610, 620; Dec. 17, 1980, Pub. L. 96–538, title III, §310, 94 Stat. 3192, provided for procedures and criteria for review of proposed health system changes, prior to repeal by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

AMENDMENTS

1993—Par. (3). Pub. L. 103–183, §101(g)(2)(A), substituted ''public and nonprofit private entities; and'' for ''public or nonprivate entities (and additionally, in the case of services and activities under section 300k(a)(1) of this title, with any similar services or activities of private entities); and''.

Pub. L. 103–43 inserted before semicolon ''(and additionally, in the case of services and activities under section 300k(a)(1) of this title, with any similar services or activities of private entities)''.

Par. (4). Pub. L. 103–183, §101(g)(2)(B), inserted ''will'' after ''grant funds''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300n–2 of this title.

§ 300n–2. Requirement of submission of application

The Secretary may not make a grant under section 300k of this title unless an application for the grant is submitted to the Secretary, the application contains the description of intended uses required in section 300n–1 of this title, and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subchapter.

(July 1, 1944, ch. 373, title XV, §1506, as added Aug. 10, 1990, Pub. L. 101–354, §2, 104 Stat. 414.)

PRIOR PROVISIONS

A prior section 300n–2, act July 1, 1944, ch. 373, title XV, §1533, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2253, provided for technical assistance to health systems agencies and State agencies, prior to repeal by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

§ 300n–3. Technical assistance and provision of supplies and services in lieu of grant funds

(a) Technical assistance

The Secretary may provide training and technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to section 300k of this title. The Secretary may provide such technical assistance directly or through grants to, or contracts with, public and private entities.

(b) Provision of supplies and services in lieu of grant funds

(1) In general

Upon the request of a State receiving a grant under section 300k of this title, the Sec-

retary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out such section and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) Corresponding reduction in payments

With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under the grant under section 300k of this title to the State involved by an amount equal to the costs of detailing personnel (including pay, allowances, and travel expenses) and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XV, § 1507, as added Aug. 10, 1990, Pub. L. 101–354, § 2, 104 Stat. 414.)

PRIOR PROVISIONS

A prior section 300n–3, act July 1, 1944, ch. 373, title XV, § 1534, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2255; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 102(d), 91 Stat. 383; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 125, 127(d), 93 Stat. 628, 629; Aug. 13, 1981, Pub. L. 97–35, title IX, § 933(a)(3), 95 Stat. 570, provided for developing new centers for health planning, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300n–5 of this title.

§ 300n–4. Evaluations and reports

(a) Evaluations

The Secretary shall, directly or through contracts with public or private entities, provide for annual evaluations of programs carried out pursuant to section 300k of this title. Such evaluations shall include evaluations of the extent to which States carrying out such programs are in compliance with section 300k(a)(2) of this title and with section 300n(c) of this title.

(b) Report to Congress

The Secretary shall, not later than 1 year after the date on which amounts are first appropriated pursuant to section 300n–5(a)[1] of this title, and annually thereafter, submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report summarizing evaluations carried out pursuant to subsection (a) of this section during the preceding fiscal year and making such recommendations for administrative and legislative initiatives with respect to this subchapter as the Secretary determines to be appropriate, including recommendations regarding compliance by the States with section 300k(a)(2) of this title and with section 300n(c) of this title.

(July 1, 1944, ch. 373, title XV, § 1508, as added Aug. 10, 1990, Pub. L. 101–354, § 2, 104 Stat. 415; amended Dec. 14, 1993, Pub. L. 103–183, title I, § 101(e), 107 Stat. 2228.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 300n–5(a) of this title, referred to in subsec. (b), was in the original a reference to section 1509(a), meaning section 1509(a) of act July 1, 1944. Section 1509 was renumbered section 1510 by Pub. L. 103–183, title I, § 102(a)(1), Dec. 14, 1993, 107 Stat. 2229.

PRIOR PROVISIONS

A prior section 300n–4, act July 1, 1944, ch. 373, title XV, § 1535, as added Jan. 4, 1975, Pub. L. 93–641, § 3, 88 Stat. 2256, provided for review by Secretary of operations of designated health systems agencies and State agencies, prior to repeal by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–183, § 101(e)(1), inserted at end ''Such evaluations shall include evaluations of the extent to which States carrying out such programs are in compliance with section 300k(a)(2) of this title and with section 300n(c) of this title.''

Subsec. (b). Pub. L. 103–183, § 101(e)(2), inserted before period at end '', including recommendations regarding compliance by the States with section 300k(a)(2) of this title and with section 300n(c) of this title''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 300n–4a. Supplemental grants for additional preventive health services

(a) Demonstration projects

In the case of States receiving grants under section 300k of this title, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to not more than 3 such States to carry out demonstration projects for the purpose of—

(1) providing preventive health services in addition to the services authorized in such section, including screenings regarding blood pressure and cholesterol, and including health education;

(2) providing appropriate referrals for medical treatment of women receiving services pursuant to paragraph (1) and ensuring, to the extent practicable, the provision of appropriate follow-up services; and

(3) evaluating activities conducted under paragraphs (1) and (2) through appropriate surveillance or program-monitoring activities.

(b) Status as participant in program regarding breast and cervical cancer

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that services under the grant will be provided only through entities that are screening women for breast or cervical cancer pursuant to a grant under section 300k of this title.

(c) Applicability of provisions of general program

This subchapter applies to a grant under subsection (a) of this section to the same extent and in the same manner as such subchapter applies to a grant under section 300k of this title.

(d) Funding

(1) In general

Subject to paragraph (2), for the purpose of carrying out this section, there are authorized to be appropriated $3,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998.

(2) Limitation regarding funding with respect to breast and cervical cancer

The authorization of appropriations established in paragraph (1) is not effective for a fiscal year unless the amount appropriated under section 300n–5(a) of this title for the fiscal year is equal to or greater than $100,000,000.

(July 1, 1944, ch. 373, title XV, §1509, as added Dec. 14, 1993, Pub. L. 103–183, title I, §102(a)(2), 107 Stat. 2229.)

PRIOR PROVISIONS

A prior section 1509 of act July 1, 1944, was renumbered section 1510 and is classified to section 300n–5 of this title.

§300n–5. Funding for general program

(a) Authorization of appropriations

For the purpose of carrying out this subchapter, there are authorized to be appropriated $50,000,000 for fiscal year 1991, such sums as may be necessary for each of the fiscal years 1992 and 1993, $150,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998.

(b) Set-aside for technical assistance and provision of supplies and services

Of the amounts appropriated under subsection (a) of this section for a fiscal year, the Secretary shall reserve not more than 20 percent for carrying out section 300n–3 of this title.

(July 1, 1944, ch. 373, title XV, §1510, formerly §1509, as added Aug. 10, 1990, Pub. L. 101–354, §2, 104 Stat. 415; renumbered §1510 and amended Dec. 14, 1993, Pub. L. 103–183, title I, §§102(a)(1), (b), 103, 107 Stat. 2229, 2230.)

PRIOR PROVISIONS

Prior sections 300n–5 and 300n–6 were repealed by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799, effective Jan. 1, 1987.

Section 300n–5, act July 1, 1944, ch. 373, title XV, §1536, as added Jan. 4, 1975, Pub. L. 93–641, §3, 88 Stat. 2257; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(p), (q), 91 Stat. 385; Oct. 4, 1979, Pub. L. 96–79, title I, §104(c)(1), 93 Stat. 596; Aug. 13, 1981, Pub. L. 97–35, title IX, §935(a), 95 Stat. 571; Jan. 4, 1983, Pub. L. 97–414, §8(p), 96 Stat. 2062, made special provisions for certain States and territories.

Section 300n–6, act July 1, 1944, ch. 373, title XV, §1537, as added Aug. 13, 1981, Pub. L. 97–35, title IX, §933(b), 95 Stat. 570, authorized appropriations for grants and contracts under former sections 300*l*–5(a), 300m–4(a), and 300n–3(a) of this title.

AMENDMENTS

1993—Pub. L. 103–183, §102(b), inserted ''for general program'' after ''Funding'' in section catchline.

Subsec. (a). Pub. L. 103–183, §103, struck out ''and'' after ''1991,'' and inserted before period at end '', $150,000,000 for fiscal year 1994, and such sums as may be necessary for each of the fiscal years 1995 through 1998''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300n–4, 300n–4a of this title.

SUBCHAPTER XIV—HEALTH RESOURCES DEVELOPMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1395x of this title; title 40 App. section 214.

§§300*o* to 300*o*–3. Repealed. Pub. L. 96–79, title II, §202(a), Oct. 4, 1979, 93 Stat. 632

Sections 300*o* to 300*o*–3, act July 1, 1944, ch. 373, title XVI, §§1601–1604, as added Jan. 4, 1975, Pub. L. 93–641, §4, 88 Stat. 2258–2260; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(r)–(v), 91 Stat. 385, were repealed by Pub. L. 96–79, title II, §202(a), Oct. 4, 1979, 93 Stat. 632.

Section 300*o* related to statement of purpose.

Section 300*o*–1 provided for promulgation of regulations and required provisions.

Section 300*o*–2 related to State medical facilities plans, submission and approval of plans as prerequisite for approval of project assistance applications, required provisions, and procedure upon disapproval of plans.

Section 300*o*–3 provided for medical facility project applications, covering in submission of applications, required provisions, waivers, and projects subject to requirements, criteria for approval, procedure for disapproval, amendment of approved applications, and review by health systems agencies.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

§§300p to 300p–3. Repealed. Pub. L. 96–79, title II, §201(a), Oct. 4, 1979, 93 Stat. 630

Sections 300p to 300p–3, act July 1, 1944, ch. 373, title XVI, §§1610–1613, as added Jan. 4, 1975, Pub. L. 93–641, §4, 88 Stat. 2262–2264; amended Apr. 22, 1976, Pub. L. 94–278, title XI, §1106(b), 90 Stat. 416; Aug. 1, 1977, Pub. L. 95–83, title I, §§103(a), 106(w), 91 Stat. 383, 385, were repealed by Pub. L. 96–79, title II, §201(a), Oct. 4, 1979, 93 Stat. 632.

Section 300p related to allotments to States for health resources development.

Section 300p–1 related to payments to States for approved medical facility projects.

Section 300p–2 related to compliance provisions and withholding of payments for noncompliance.

Section 300p–3 authorized appropriations for allotments to States.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

PART A—LOANS AND LOAN GUARANTEES

AMENDMENTS

1979—Pub. L. 96–79, title II, §202(a), Oct. 4, 1979, 93 Stat. 632, repealed part A relating to purpose, State plan, and project approval, and comprising former sections 300*o* to 300*o*–3 of this title, and redesignated former part C as part A relating to loans and loan guarantees.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300s, 300s–1 of this title.

§ 300q. Loan and loan guarantee authority

(a) Covered projects: duration; payment of principal and interest on loans for covered projects: duration; payments for reduction of interest rate

(1) The Secretary, during the period ending September 30, 1982, may, in accordance with this part, make loans from the fund established under section 300q–2(d) of this title to any public or nonprofit private entity for projects for—

(A) the discontinuance of unneeded hospital services or facilities,

(B) the conversion of unneeded hospital services and facilities to needed health services and medical facilities, including outpatient medical facilities and facilities for long-term care;

(C) the renovation and modernization of medical facilities, particularly projects for the prevention or elimination of safety hazards, projects to avoid noncompliance with licensure or accreditation standards, or projects to replace obsolete facilities;

(D) the construction of new outpatient medical facilities; and

(E) the construction of new inpatient medical facilities in areas which have experienced (as determined by the Secretary) recent rapid population growth.

(2)(A) The Secretary, during the period ending September 30, 1982, may, in accordance with this part, guarantee to—

(i) non-Federal lenders for their loans to public and nonprofit private entities for medical facilities projects described in paragraph (1), and

(ii) the Federal Financing Bank for its loans to public and nonprofit private entities for such projects,

payment of principal and interest on such loans.

(B) In the case of a guarantee of any loan to a public or nonprofit private entity under subparagraph (A)(i) which is located in an urban or rural poverty area, the Secretary may pay, to the holder of such loan and for and on behalf of the project for which the loan was made, amounts sufficient to reduce by not more than one half the net effective interest rate otherwise payable on such loan if the Secretary finds that without such assistance the project could not be undertaken.

(b) Amount of loans for medical facilities projects and such projects in urban or rural poverty areas

The principal amount of a loan directly made or guaranteed under subsection (a) of this section for a medical facilities project, when added to any other assistance provided such project under part B, may not exceed 90 per centum of the cost of such project unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the principal amount, when added to other assistance under part B, may cover up to 100 per centum of such costs.

(c) Limitation on cumulative total of principal of outstanding loans

The cumulative total of the principal of the loans outstanding at any time with respect to which guarantees have been issued, or which have been directly made, may not exceed such limitations as may be specified in appropriation Acts.

(d) Administrative assistance of Department of Housing and Urban Development

The Secretary, with the consent of the Secretary of Housing and Urban Development, shall obtain from the Department of Housing and Urban Development such assistance with respect to the administration of this part as will promote efficiency and economy thereof.

(July 1, 1944, ch. 373, title XVI, § 1601, formerly § 1620, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2264; amended Apr. 21, 1976, Pub. L. 94–273, § 2(21), 90 Stat. 376; Aug. 1, 1977, Pub. L. 95–83, title I, § 106(x)(1), 91 Stat. 385; renumbered § 1601 and amended Oct. 4, 1979, Pub. L. 96–79, title II, §§ 201(b)(1), 203(a)(1), (2), 93 Stat. 630, 635.)

PRIOR PROVISIONS

A prior section 1601 of act July 1, 1944, ch. 373, title XVI, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2258, was classified to section 300*o* of this title, prior to repeal by Pub. L. 96–79, § 202(a).

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–79, §§ 201(b)(1), 203(a)(2), added par. (1); substituted reference to section 1602(d) for 1622(d), set out in text as ''section 300q–2(d) of this title''; incorporated in par. (2) former subsec. (b) provisions made applicable for period ending Sept. 30, 1982, previously covering period beginning July 1, 1974, and ending Sept. 30, 1978, extended provisions to public entities, struck out existing condition that applications for assistance under subchapter be approved under former section 300*o*–3 of this title, substituted in subpar. (2)(B) provision for payment of amounts sufficient to reduce by not more than one half net effective interest otherwise payable on the loan for prior provision for amounts sufficient to reduce by 3 per centum per annum net effective interest rate on the loan, and struck out provision granting contractual right of holder of a guaranteed loan to receive from the United States such interest payments.

Subsec. (b). Pub. L. 96–79, § 201(b)(1), added subsec. (b) and incorporated existing provisions of subsec. (b) relating to loan guarantee authority for payment of principal and interest on loans for approved projects, their duration, and payments for reduction of interest rate in subsec. (a)(2) of this section.

1977—Subsecs. (a), (b)(1). Pub. L. 95–83 substituted ''September 30, 1978'' for ''September 30, 1977''.

1976—Subsecs. (a), (b)(1). Pub. L. 94–273 substituted ''September'' for ''June''.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 204 of Pub. L. 96–79 provided that: ''The amendments made by this title [enacting sections 300s, 300s–1, and 300s–6, amending this section and sections 201, 300q–2, 300r, 300s–1a, 300s–3, and 300s–5, and repealing sections 300*o* to 300*o*–3, 300p to 300p–3, 300q–1, and 300s of this title] shall take effect October 1, 1979, except that the amendments made by section 201(b) [amending this section and section 300q–2 of this title] respecting the payment of an interest subsidy for a loan or loan guarantee made under part A of title XVI of the Public Health Service Act [this part] shall apply only with respect to loans and loan guarantees made after October 1, 1979, and with respect to loans and loan guarantees made under such part before such date the Secretary shall continue to pay the interest subsidy authorized for such loans and loan guarantees before such date.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300q–2 of this title.

§ 300q–1. Repealed. Pub. L. 96–79, title II, § 203(a)(1), Oct. 4, 1979, 93 Stat. 635

Section, act July 1, 1944, ch. 373, title XVI, § 1621, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2265, related to allocation among States of total amount of principal, criteria, availability of unobligated amounts, and reallotments.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

§ 300q–2. General provisions

(a) Loan guarantees; criteria for approval; recovery of payments by United States; modification, etc., of terms and conditions; incontestability

(1) The Secretary may not approve a loan guarantee for a project under this part unless he determines that (A) the terms, conditions, security (if any), and schedule and amount of repayments with respect to the loan are sufficient to protect the financial interests of the United States and are otherwise reasonable, including a determination that the rate of interest does not exceed such per centum per annum on the principal obligation outstanding as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the United States, and (B) the loan would not be available on reasonable terms and conditions without the guarantee under this part.

(2)(A) The United States shall be entitled to recover from the applicant for a loan guarantee under this part the amount of any payment made pursuant to such guarantee, unless the Secretary for good cause waives such right of recovery; and, upon making any such payment, the United States shall be subrogated to all of the rights of the recipient of the payments with respect to which the guarantee was made.

(B) To the extent permitted by subparagraph (C), any terms and conditions applicable to a loan guarantee under this part (including terms and conditions imposed under subparagraph (D)) may be modified by the Secretary to the extent he determines it to be consistent with the financial interest of the United States.

(C) Any loan guarantee made by the Secretary under this part shall be incontestable (i) in the hands of an applicant on whose behalf such guarantee is made unless the applicant engaged in fraud or misrepresentation in securing such guarantee, and (ii) as to any person (or his successor in interest) who makes or contracts to make a loan to such applicant in reliance thereon unless such person (or his successor in interest) engaged in fraud or misrepresentation in making or contracting to make such loan.

(D) Guarantees of loans under this part shall be subject to such further terms and conditions as the Secretary determines to be necessary to assure that the purposes of this subchapter will be achieved.

(b) Loans; criteria for approval; terms and conditions; waiver of recovery of payments by United States

(1) The Secretary may not approve a loan under this part unless—

(A) the Secretary is reasonably satisfied that the applicant under the project for which the loan would be made will be able to make payments of principal and interest thereon when due, and

(B) the applicant provides the Secretary with reasonable assurances that there will be available to it such additional funds as may be necessary to complete the project or undertaking with respect to which such loan is requested.

(2) Any loan made under this part shall (A) have such security, (B) have such maturity date, (C) be repayable in such installments, (D) bear interest at a rate comparable to the current rate of interest prevailing, on the date the loan is made, with respect to loans guaranteed under this part, minus any interest subsidy made in accordance with section 300q(a)(2)(B) of this title with respect to a loan made for a project located in an urban or rural poverty area, and (E) be subject to such other terms and conditions (including provisions for recovery in case of default), as the Secretary determines to be necessary to carry out the purposes of this subchapter while adequately protecting the financial interests of the United States.

(3) The Secretary may, for good cause but with due regard to the financial interests of the United States, waive any right of recovery which he has by reasons of the failure of a borrower to make payments of principal of and interest on a loan made under this part, except that if such loan is sold and guaranteed, any such waiver shall have no effect upon the Secretary's guarantee of timely payment of principal and interest.

(c) Sale of loans; authority; amount; agreements with purchasers; deposit of proceeds

(1) The Secretary shall from time to time, but with due regard to the financial interests of the United States, sell loans made under this part either on the private market or to the Federal National Mortgage Association in accordance with section 1717 of title 12 or to the Federal Financing Bank.

(2) Any loan so sold shall be sold for an amount which is equal (or approximately equal) to the amount of the unpaid principal of such loans as of time of sale.

(3)(A) The Secretary is authorized to enter into an agreement with the purchaser of any loan sold under this part under which the Secretary agrees—

(i) to guarantee to such purchaser (and any successor in interest to such purchaser) payments of the principal and interest payable under such loan, and

(ii) to pay as an interest subsidy to such purchaser (and any successor in interest of such purchaser) amounts which, when added to the amount of interest payable on such loan, are equivalent to a reasonable rate of interest on such loan as determined by the Secretary after taking into account the range of prevailing interest rates in the private market on similar loans and the risks assumed by the United States.

(B) Any agreement under subparagraph (A)—

(i) may provide that the Secretary shall act as agent of any such purchaser, for the purpose of collecting from the entity to which such loan was made and paying over to such purchaser any payments of principal and interest payable by such entity under such loan;

(ii) may provide for the repurchase by the Secretary of any such loan on such terms and conditions as may be specified in the agreement;

(iii) shall provide that, in the event of any default by the entity to which such loan was made in payment of principal or interest due on such loan, the Secretary shall, upon notification to the purchaser (or to the successor in interest of such purchaser), have the option to close out such loan (and any obligations of the Secretary with respect thereto) by paying to the purchaser (or his successor in interest) the total amount of outstanding principal and interest due thereon at the time of such notification; and

(iv) shall provide that, in the event such loan is closed out as provided in clause (iii), or in the event of any other loss incurred by the Secretary by reason of the failure of such entity to make payments of principal or interest on such loan, the Secretary shall be subrogated to all rights of such purchaser for recovery of such loss from such entity.

(4) Amounts received by the Secretary as proceeds from the sale of loans under this subsection shall be deposited in the fund established under subsection (d) of this section.

(5) If any loan to a public entity under this part is sold and guaranteed by the Secretary under this subsection, interest paid on such loan after its sale and any interest subsidy paid, under paragraph (3)(A)(ii), by the Secretary with respect to such loan which is received by the purchaser of the loan (or the purchaser's successor in interest) shall be included in the gross income of the purchaser or successor for the purpose of chapter 1 of title 26.

(d) Loan and loan guarantee fund; establishment; amounts authorized to be appropriated; issuance, purchase, and sale of notes, obligations, etc.; interest rates; public debt transactions

(1) There is established in the Treasury a loan and loan guarantee fund (hereinafter in this subsection referred to as the ''fund'') which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriations Acts—

(A) to enable him to make loans under this part,

(B) to enable him to discharge his responsibilities under loan guarantees issued by him under this part,

(C) for payment of interest under section 300q(a)(2)(B) of this title on loans guaranteed under this part,

(D) for repurchase of loans under subsection (c)(3)(B) of this section,

(E) for payment of interest on loans which are sold and guaranteed, and

(F) to enable the Secretary to take the action authorized by subsection (f) of this section.

There are authorized to be appropriated from time to time such amounts as may be necessary to provide the sums required for the fund. There shall also be deposited in the fund amounts received by the Secretary in connection with loans and loan guarantees under this part and other property or assets derived by him from his operations respecting such loans and loan guarantees, including any money derived from the sale of assets.

(2) If at any time the sums in the funds are insufficient to enable the Secretary—

(A) to make payments of interest under section 300q(a)(2)(B) of this title,

(B) to otherwise comply with guarantees under this part of loans to nonprofit private entities,

(C) in the case of a loan which was made, sold, and guaranteed under this part, to make to the purchaser of such loan payments of principal and interest on such loan after default by the entity to which the loan was made, or

(D) to repurchase loans under subsection (c)(3)(B) of this section,

(E) to make payments of interest on loans which are sold and guaranteed, and

(F) to enable the Secretary to take the action authorized by subsection (f) of this section,

he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued under this paragraph and for that purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which the securities may be issued under that chapter are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this paragraph shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from the fund.

(e) Transfers to and additional capitalization of loan and loan guarantee fund

(1) The assets, commitments, obligations, and outstanding balances of the loan guarantee and loan fund established in the Treasury by section 291j–6 of this title shall be transferred to the fund established by subsection (d) of this section.

(2) To provide additional capitalization for the fund established under subsection (d) of this section there are authorized to be appropriated to the fund, such sums as may be necessary for the fiscal years ending June 30, 1975, June 30, 1976, September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982.

(f) Default prevention measures; terms and conditions; implementation of reforms; foreclosures; protection of Federal interest on default

(1) The Secretary may take such action as may be necessary to prevent a default on a loan made or guaranteed under this part or under subchapter IV of this chapter, including the waiver of regulatory conditions, deferral of loan payments, renegotiation of loans, and the expenditure of funds for technical and consultative assistance, for the temporary payment of the interest and principal on such a loan, and for other purposes. Any such expenditure made under the preceding sentence on behalf of a medical facility shall be made under such terms and conditions as the Secretary shall prescribe, including the implementation of such organizational, operational, and financial reforms as the Secretary determines are appropriate and the disclosure of such financial or other information as the Secretary may require to determine the extent of the implementation of such reforms.

(2) The Secretary may take such action, consistent with State law respecting foreclosure procedures, as he deems appropriate to protect the interest of the United States in the event of a default on a loan made or guaranteed under this part or under subchapter IV of this chapter, including selling real property pledged as security for such a loan or loan guarantee and for a reasonable period of time taking possession of, holding, and using real property pledged as security for such a loan or loan guarantee.

(July 1, 1944, ch. 373, title XVI, §1602, formerly §1622, as added Jan. 4, 1975, Pub. L. 93–641, §4, 88 Stat. 2265; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(x)(2), (y), 91 Stat. 385; renumbered §1602 and amended Oct. 4, 1979, Pub. L. 96–79, title II, §§201(b)(2), (3), 203(a)(1), (3), (g), 93 Stat. 631, 635; Jan. 4, 1983, Pub. L. 97–414, §8(q), 96 Stat. 2062; Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095.)

REFERENCES IN TEXT

Subchapter IV of this chapter, referred to in subsec. (f), is classified to section 291 et seq. of this title.

CODIFICATION

In subsec. (d), ''chapter 31 of title 31'' and ''that chapter'' substituted for ''the Second Liberty Bond Act'' and ''that Act'', respectively, on authority of Pub. L. 97–258, §4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

A prior section 1602 of act July 1, 1944, ch. 373, title XVI, as added Jan. 4, 1975, Pub. L. 93–641, §4, 88 Stat. 2258; amended Aug. 1, 1977, Pub. L. 95–83, title I, §106(r), (s), 91 Stat. 385, was classified to section 300*o*–1 of this title, prior to repeal by Pub. L. 96–79, title II, §202(a), Oct. 4, 1979, 93 Stat. 632.

AMENDMENTS

1986—Subsec. (c)(5). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1983—Subsec. (f)(2). Pub. L. 97–414 inserted ''selling real property pledged as security for such a loan or loan guarantee and'' after ''including''.

1979—Subsec. (b)(2)(D). Pub. L. 96–79, §201(b)(2), substituted ''minus any interest subsidy made in accordance with section 300q(a)(2)(B) of this title (with respect to a loan made for a project located in an urban or rural poverty area'' for ''minus 3 per centum per annum''.

Subsec. (d)(1). Pub. L. 96–79, §203(a)(3), (g)(2), substituted in subpar. (C) reference to section ''300q(a)(2)(B)'' for ''300q(b)(2)'' of this title, and added subpar. (F).

Subsec. (d)(2). Pub. L. 96–79, §203(a)(3), (g)(3), substituted in subpar. (A) reference to section ''300q(a)(2)(B)'' for ''300q(b)(2)'' of this title, and added subpar. (F).

Subsec. (e)(2). Pub. L. 96–79, §201(b)(3), authorized appropriations for fiscal years ending Sept. 30, 1979 through 1982.

Subsec. (f). Pub. L. 96–79, §203(g)(1), added subsec. (f).

1977—Subsec. (c)(5). Pub. L. 95–83, §106(y), added subsec. (c)(5).

Subsec. (e)(2). Pub. L. 95–83, §106(x)(2), substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1977 and 1978, for prior such authorization for fiscal year ending June 30, 1977.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, except that amendment of subsec. (b)(2)(D) respecting interest subsidy payments for loans or loan guarantees applicable only with respect to loans and loan guarantees made after Oct. 1, 1979, and that subsidies for such commitments made before Oct. 1, 1979, payable as authorized before Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300q of this title.

PART B—PROJECT GRANTS

AMENDMENTS

1979—Pub. L. 96–79, title II, §§201(a), 202(a), Oct. 4, 1979, 93 Stat. 630, 632, repealed part B relating to allotments, and comprising former sections 300p to 300p–3 of this title, and redesignated former part D as part B relating to project grants.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300q, 300s, 300s–1, 300s–3 of this title.

§ 300r. Grants for construction or modernization projects

(a) Authority; objectives; eligible grantees; maximum amounts; authorization of appropriations; availability of unobligated funds

(1)(A) The Secretary may make grants for construction or modernization projects designed to—

(i) eliminate or prevent in medical facilities imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, or

(ii) avoid noncompliance by medical facilities with State or voluntary licensure or accreditation standards.

(B) A grant under subparagraph (A) may only be made to—

(i) a State or political subdivision of a State, including any city, town, county, borough, hospital district authority, or public or quasi-public corporation, for any medical facility owned or operated by the State or political subdivision; and

(ii) a nonprofit private entity for any medical facility owned or operated by the entity but only if the Secretary determines—

(I) the level of community service provided by the facility and the proportion of its patients who are unable to pay for services rendered in the facility is similar to such level and proportion in a medical facility of a State or political subdivision, and

(II) that without a grant under subparagraph (A) there would be a disruption of the provision of health care to low-income individuals.

(2) The amount of any grant under paragraph (1) may not exceed 75 per centum of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may cover up to 100 per centum of such costs.

(3) There are authorized to be appropriated for grants under paragraph (1) $40,000,000 for the fiscal year ending September 30, 1980, $50,000,000 for the fiscal year ending September 30, 1981, and $50,000,000 for the fiscal year ending September 30, 1982. Funds available for obligation under this subsection (as in effect before October 4, 1979) in the fiscal year ending September 30, 1979, shall remain available for obligation under this subsection in the succeeding fiscal year.

(b) Projects for medically underserved populations; eligible grantees; maximum amounts; authorization of appropriations

(1) The Secretary may make grants to public and nonprofit private entities for projects for (A) construction or modernization of outpatient medical facilities which are located apart from hospitals and which will provide services for medically underserved populations, and (B) conversion of existing facilities into outpatient medical facilities or facilities for long-term care to provide services for such populations.

(2) The amount of any grant under paragraph (1) may not exceed 80 per centum of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may cover up to 100 per centum of such costs.

(3) There are authorized to be appropriated for grants under paragraph (1) $15,000,000 for the fiscal year ending September 30, 1981, and $15,000,000 for the fiscal year ending September 30, 1982.

(July 1, 1944, ch. 373, title XVI, § 1610, formerly § 1625, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2268; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 103(b), 91 Stat. 383; renumbered § 1610 and amended Oct. 4, 1979, Pub. L. 96–79, title II, §§ 201(c), 203(b), 93 Stat. 631, 635.)

PRIOR PROVISIONS

A prior section 1610 of act July 1, 1944, ch. 373, title XVI, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2262; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 106(w), 91 Stat. 385, was classified to section 300p of this title, prior to repeal by Pub. L. 96–79, title II, § 201(a), Oct. 4, 1979, 93 Stat. 630.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–79, § 201(c), incorporated existing provisions in par. (1); inserted in subpar. (A) in cls. (i) and (ii) the phrases ''in medical facilities'' and ''by medical facilities''; substituted in subpar. (B)(i) ''for any medical facility owned or operated by the State or political subdivision'' for ''for a project described in the preceding sentence for any medical facility owned or operated by it''; added cl. (a)(1)(B)(ii); redesignated former subsec. (c) as par. (2); and added par. (3).

Subsec. (b). Pub. L. 96–79, § 201(c), inserted provisions respecting projects for medically underserved populations and struck out provisions respecting criteria for approval of applications under former section 300*o*–3 of this title.

Subsec. (c). Pub. L. 96–79, § 201(c), redesignated subsec. (c) as par. (2) of subsec. (a).

Subsec. (d). Pub. L. 96–79, § 201(c), struck out subsec. (d) which related to provisions making available 22 per centum of sums appropriated under former section 300p–3 of this title for subsec. (a) grants, including an additional appropriations authorization of $67,500,000 for such grants for fiscal year ending Sept. 30, 1978.

1977—Subsec. (d). Pub. L. 95–83 authorized additional grant appropriations of $67,500,000 for fiscal year ending Sept. 30, 1978.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

PART C—GENERAL PROVISIONS

AMENDMENTS

1979—Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632, redesignated former part E as part C relating to general provisions and former part C as part A.

§ 300s. General regulations

The Secretary shall by regulation—

(1) prescribe the manner in which he shall determine the priority among projects for which assistance is available under part A or B, based on the relative need of different areas for such projects and giving special consideration—

(A) to projects for medical facilities serving areas with relatively small financial resources and for medical facilities serving rural communities,

(B) in the case of projects for modernization of medical facilities, to projects for facilities serving densely populated areas,

(C) in the case of projects for construction of outpatient medical facilities, to projects that will be located in, and provide services for residents of, areas determined by the Secretary to be rural or urban poverty areas,

(D) to projects designed to (i) eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, or (ii) avoid noncompliance with State or voluntary licensure or accreditation standards, and

(E) to projects for medical facilities which, alone or in conjunction with other facilities, will provide comprehensive health care, including outpatient and preventive care as well as hospitalization;

(2) prescribe for medical facilities projects assisted under part A or B general standards of construction, modernization, and equipment, which standards may vary on the basis of the class of facilities and their location; and

(3) prescribe the general manner in which each entity which receives financial assistance under part A or B or has received financial assistance under part A or B or subchapter IV of this chapter shall be required to comply with the assurances required to be made at the time such assistance was received and the means by which such entity shall be required to demonstrate compliance with such assurances.

An entity subject to the requirements prescribed pursuant to paragraph (3) respecting compliance with assurances made in connection with receipt of financial assistance shall submit periodically to the Secretary data and information which reasonably supports the entity's compliance with such assurances. The Secretary may not waive the requirement of the preceding sentence.

(July 1, 1944, ch. 373, title XVI, § 1620, as added Oct. 4, 1979, Pub. L. 96–79, title II, § 202(b), 93 Stat. 632.)

PRIOR PROVISIONS

A prior section 300s, act July 1, 1944, ch. 373, title XVI, § 1630, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2269, provided for judicial review by the United States Court of Appeals, prior to repeal by Pub. L. 96–79, § 202(b), eff. Oct. 1, 1979.

A prior section 1620 of act July 1, 1944, was renumbered section 1601 by Pub. L. 96–79, title II, § 203(a)(1), Oct. 4, 1979, 93 Stat. 635, and is classified to section 300q of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300s–1 of this title.

§ 300s–1. Medical facility project applications

(a) Submissions

No loan, loan guarantee, or grant may be made under part A or B for a medical facilities project unless an application for such project has been submitted to and approved by the Secretary. If two or more entities join in a project, an application for such project may be filed by any of such entities or by all of them.

(b) Form; required provisions; waiver; projects subject to requirements

(1) An application for a medical facilities project shall be submitted in such form and manner as the Secretary shall by regulation prescribe and shall, except as provided in paragraph (2), set forth—

(A) in the case of a modernization project for a medical facility for continuation of existing health services, a finding by the State Agency of a continued need for such services, and, in the case of any other project for a medical facility, a finding by the State Agency of the need for the new health services to be provided through the medical facility upon completion of the project;

(B) in the case of an application for a grant, assurances satisfactory to the Secretary that (i) the applicant making the application would not be able to complete the project for which the application is submitted without the grant applied for, and (ii) in the case of a project to construct a new medical facility, it would be inappropriate to convert an existing medical facility to provide the services to be provided through the new medical facility;

(C) in the case of a project for the discontinuance of a service or facility or the conversion of a service or a facility, an evaluation of the impact of such discontinuance or conversion on the provision of health care in the health service area in which such service was provided or facility located;

(D) a description of the site of such project;

(E) plans and specifications therefor which meet the requirements of the regulations prescribed under section 300s(2) of this title;

(F) reasonable assurance that title to such site is or will be vested in one or more of the entities filing the application or in a public or other nonprofit entity which is to operate the facility on completion of the project;

(G) reasonable assurance that adequate financial support will be available for the completion of the project and for its maintenance and operation when completed, and, for the purpose of determining if the requirements of this subparagraph are met, Federal assistance provided directly to a medical facility which is located in an area determined by the Secretary to be an urban or rural poverty area or through benefits provided individuals served at such facility shall be considered as financial support;

(H) the type of assistance being sought under part A or B for the project;

(I) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on a project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act), and the Secretary of Labor shall have with respect to such labor standards the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176; 5 U.S.C. Appendix) and section 276c of title 40;

(J) in the case of a project for the construction or modernization of an outpatient facility, reasonable assurance that the services of a general hospital will be available to patients at such facility who are in need of hospital care; and

(K) reasonable assurance that at all times after such application is approved (i) the facility or portion thereof to be constructed, modernized, or converted will be made available to all persons residing or employed in the area served by the facility, and (ii) there will be made available in the facility or portion thereof to be constructed, modernized, or converted

a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from a financial viewpoint.

(2)(A) The Secretary may waive—

(i) the requirements of subparagraph (D) of paragraph (1) for compliance with modernization and equipment standards prescribed pursuant to section 300s(2) of this title, and

(ii) the requirement of subparagraph (E) of paragraph (1) respecting title to a project site,

in the case of an application for a project described in subparagraph (B) of this paragraph.

(B) A project referred to in subparagraph (A) is a project—

(i) for the modernization of an outpatient medical facility which will provide general purpose health services, which is not part of a hospital, and which will serve a medically underserved population as defined in section 300s–3 of this title or as designated by a health systems agency, and

(ii) for which the applicant seeks a loan under part A the principal amount of which does not exceed $20,000.

(July 1, 1944, ch. 373, title XVI, § 1621, as added Oct. 4, 1979, Pub. L. 96–79, title II, § 202(b), 93 Stat. 633.)

REFERENCES IN TEXT

Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act), referred to in subsec. (b)(1)(I), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a–5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

PRIOR PROVISIONS

A prior section 300s–1 was redesignated 300s–1a and amended as part of the general revision of this subchapter by Pub. L. 96–79.

A prior section 1621 of act July 1, 1944, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2265, which related to the allocation among States of the total amount of principal of loans and loan guarantees, was classified to section 300q–1 of this title, prior to repeal as part of the general revision of this subchapter by Pub. L. 96–79.

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300s–1a, 300s–5 of this title.

§ 300s–1a. Recovery of expenditures under certain conditions

(a) Persons liable

If any facility with respect to which funds have been paid under this subchapter shall, at any time within 20 years after the completion of construction or modernization—

(1) be sold or transferred to any entity (A) which is not qualified to file an application under section 300s–1 or 300t–12 of this title or (B) which is not approved as a transferee by the State Agency of the State in which such facility is located, or its successor, or

(2) cease to be a public health center or a public or other nonprofit hospital, outpatient facility, facility for long-term care, or rehabilitation facility,

the United States shall be entitled to recover, whether from the transferor or the transferee (or, in the case of a facility which has ceased to be public or nonprofit, from the owners thereof) an amount determined under subsection (c) of this section.

(b) Notice to Secretary

The transferor of a facility which is sold or transferred as described in subsection (a)(1) of this section, or the owner of a facility the use of which is changed as described in subsection (a)(2) of this section, shall provide the Secretary written notice of such sale, transfer, or change not later than the expiration of 10 days from the date on which such sale, transfer, or change occurs.

(c) Amount of recovery; interest; interest period

(1) Except as provided in paragraph (2), the amount the United States shall be entitled to recover under subsection (a) of this section is an amount bearing the same ratio to the then value (as determined by the agreement of the parties or in an action brought in the district court of the United States for the district for which the facility involved is situated) of so much of the facility as constituted an approved project or projects as the amount of the Federal participation bore to the cost of the construction or modernization of such project or projects.

(2)(A) After the expiration of—

(i) 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section in the case of a facility which is sold or transferred or the use of which changes after July 18, 1984, or

(ii) thirty days after July 18, 1984, or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section, in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984,

the amount which the United States is entitled to recover under paragraph (1) with respect to a facility shall be the amount prescribed by paragraph (1) plus interest, during the period described in subparagraph (B), at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day Treasury bill auction rate.

(B) The period referred to in subparagraph (A) is the period beginning—

(i) in the case of a facility which was sold or transferred or the use of which changed before July 18, 1984, thirty days after such date or if later 180 days after the date of the sale, transfer, or change of use for which a notice is required by subsection (b) of this section.[1]

(ii) in the case of a facility with respect to which notice is provided in accordance with

[1] So in original. The period probably should be a comma.

subsection (b) of this section, upon the expiration of 180 days after the receipt of such notice, or

(iii) in the case of a facility with respect to which such notice is not provided as prescribed by subsection (b) of this section, on the date of the sale, transfer, or changes of use for which such notice was to be provided,

and ending on the date the amount the United States is entitled to under paragraph (1) is collected.

(d) Waiver

(1) The Secretary may waive the recovery rights of the United States under subsection (a)(1) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that the entity to which the facility was sold or transferred—

(A) has established an irrevocable trust—

(i) in an amount equal to the greater of twice the cost of the remaining obligation of the facility under clause (ii) of section 300s–1(b)(1)(K) of this title or the amount, determined under subsection (c) of this section, that the United States is entitled to recover, and

(ii) which will only be used by the entity to provide the care required by clause (ii) of section 300s–1(b)(1)(K) of this title; and

(B) will meet the obligation of the facility under clause (i) of section 300s–1(b)(1)(K) of this title.

(2) The Secretary may waive the recovery rights of the United States under subsection (a)(2) of this section with respect to a facility in any State if the Secretary determines, in accordance with regulations, that there is good cause for waiving such rights with respect to such facility.

(e) Lien

The right of recovery of the United States under subsection (a) of this section shall not constitute a lien on any facility with respect to which funds have been paid under this subchapter.

(July 1, 1944, ch. 373, title XVI, § 1622, formerly § 1631, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2269; amended Apr. 22, 1976, Pub. L. 94–278, title XI, § 1106(c), 90 Stat. 416; renumbered § 1622 and amended Oct. 4, 1979, Pub. L. 96–79, title II, §§ 202(b), 203(c), 93 Stat. 632, 635; July 18, 1984, Pub. L. 98–369, div. B. title III, § 2381(b), 98 Stat. 1114.)

CODIFICATION

Section was formerly classified to section 300s–1 of this title prior to the general revision of this subchapter by Pub. L. 96–79.

PRIOR PROVISIONS

A prior section 1622 of act July 1, 1944, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2265, was renumbered section 1602 as part of the general revision of this subchapter by Pub. L. 96–79 and is classified to section 300q–2 of this title.

AMENDMENTS

1984—Pub. L. 98–369 amended section generally. Prior to the amendment, section read as follows:

''(a) If any facility constructed, modernized, or converted with funds provided under this subchapter is, at any time within twenty years after the completion of such construction, modernization, or conversion with such funds—

''(1) sold or transferred to any person or entity (A) which is not qualified to file an application under section 300s–1 or 300t–12 of this title or (B) which is not approved as a transferee by the State Agency of the State in which such facility is located, or its successor; or

''(2) not used as a medical facility, and the Secretary has not determined that there is good cause for termination of such use,

the United States shall be entitled to recover from either the transferor or the transferee in the case of a sale or transfer or from the owner in the case of termination of use an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of such facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction, modernization, or conversion of such project or projects. Such right of recovery shall not constitute a lien upon such facility prior to judgment.

''(b) The Secretary may waive the recovery rights of the United States under subsection (a) of this section with respect to a facility in any State—

''(1) if (as determined under regulations prescribed by the Secretary) the amount which could be recovered under subsection (a) of this section with respect to such facility is applied to the development, expansion, or support of another medical facility located in such State which has been approved by the Statewide Health Coordinating Council for such State as consistent with the State health plan established pursuant to section 300m–3(c) of this title; or

''(2) if the Secretary determines, in accordance with regulations, that there is good cause for waiving such requirement with respect to such facility.

If the amount which the United States is entitled to recover under subsection (a) of this section exceeds 90 per centum of the total cost of the construction or modernization project for a facility, a waiver under this subsection shall only apply with respect to an amount which is not more than 90 per centum of such total cost.''

1979—Subsec. (a)(1)(A). Pub. L. 96–79, § 203(c), substituted ''section 300s–1 or 300t–12 of this title'' for ''section 300*o*–3 of this title''.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

REGULATIONS AND PERSONNEL

Requirements for regulations and personnel to implement this section, see section 2381(c) of Pub. L. 98–369, set out as a note under section 291i of this title.

§ 300s–2. State supervision or control of operations of facilities receiving funds

Except as otherwise specifically provided, nothing in this subchapter shall be construed as conferring on any Federal officer or employee, the right to exercise any supervision or control over the administration, personnel, maintenance, or operation of any facility with respect to which any funds have been or may be expended under this subchapter.

(July 1, 1944, ch. 373, title XVI, § 1623, formerly § 1632, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2270; renumbered § 1623, Oct. 4, 1979, Pub. L. 96–79, title II, § 202(b), 93 Stat. 632.)

§ 300s–3. Definitions

Except as provided in section 300t–12(e) of this title, for purposes of this subchapter—

(1) The term ''hospital'' includes general, tuberculosis, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, facilities related to programs for home health services, self-care units, and central service facilities, operated in connection with hospitals, and also includes education or training facilities for health professonal[1] personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care.

(2) The term ''public health center'' means a publicly owned facility for the provision of public health services, including related publicly owned facilities such as laboratories, clinics, and administrative offices operated in connection with such a facility.

(3) The term ''nonprofit'' as applied to any facility means a facility which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(4) The term ''outpatient medical facility'' means a medical facility (located in or apart from a hospital) for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients)—

(A) which is operated in connection with a hospital,

(B) in which patient care is under the professional supervision of persons licensed to practice medicine or surgery in the State, or in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the State; or

(C) which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which provides to its patients a reasonably full-range of diagnostic and treatment services.

(5) The term ''rehabilitation facility'' means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of—

(A) medical evaluation and services, and

(B) psychological, social, or vocational evaluation and services,

under competent professional supervision, and in the case of which the major portion of the required evaluation and services is furnished within the facility; and either the facility is operated in connection with a hospital, or all medical and related health services are prescribed by, or are under the general direction of, persons licensed to practice medicine or surgery in the State.

(6) The term ''facility for long-term care'' means a facility (including a skilled nursing or intermediate care facility) providing in-patient care for convalescent or chronic disease patients who required skilled nursing or intermediate care and related medical services—

(A) which is a hospital (other than a hospital primarily for the care and treatment of mentally ill or tuberculous patients) or is operated in connection with a hospital, or

(B) in which such care and medical services are prescribed by, or are performed under the general direction of, persons licensed to practice medicine or surgery in the State.

(7) The term ''construction'' means construction of new buildings and initial equipment of such buildings and, in any case in which it will help to provide a service not previously provided in the community, equipment of any buildings; including architects' fees, but excluding the cost of off-site improvements and, except with respect to public health centers, the cost of the acquisition of land.

(8) The term ''cost'' as applied to construction, modernization, or conversion means the amount found by the Secretary to be necessary for construction, modernization, or conversion, respectively, under a project, except that, in the case of a modernization project or a project assisted under part B of this subchapter, such term does not include any amount found by the Secretary to be attributable to expansion of the bed capacity of any facility.

(9) The term ''modernization'' includes the alteration, expansion, major repair (to the extent permitted by regulations), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and the replacement of obsolete equipment of existing buildings.

(10) The term ''title,''[2] when used with reference to a site for a project, means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Secretary finds sufficient to assure for a period of not less than twenty-five years' undisturbed use and possession for the purposes of construction, modernization, or conversion and operation of the project for a period of not less than (A) twenty years in the case of a project assisted under an allotment or grant under this subchapter, or (B) the term of repayment of a loan made or guaranteed under this subchapter in the case of a project assisted by a loan or loan guarantee.

(11) The term ''medical facility'' means a hospital, public health center, outpatient medical facility, rehabilitation facility, facility for long-term care, or other facility (as may be designated by the Secretary) for the provision of health care to ambulatory patients.

(12) The term ''State Agency'' means the State health planning and development agency of a State designated under subchapter XIII of this chapter.[3]

(13) The term ''urban or rural poverty area'' means an urban or rural geographical area (as defined by the Secretary) in which a percentage (as defined by the Secretary in accordance with the next sentence) of the residents of the area have incomes below the poverty level (as defined by the Secretary of Commerce). The percentage

[1] So in original. Probably should be ''professional''.

[2] So in original. The comma probably should follow the ending quotations.

[3] See References in Text note below.

referred to in the preceding sentence shall be defined so that the percentage of the population of the United States residing in urban and rural poverty areas is—

(A) not more than the percentage of the total population of the United States with incomes below the poverty level (as so defined) plus five per centum, and

(B) not less than such percentage minus five per centum.

(14) The term ''medically underserved population'' means the population of an urban or rural area designated by the Secretary as an area with a shortage of health facilities or a population group designated by the Secretary as having a shortage of such facilities.

(July 1, 1944, ch. 373, title XVI, § 1624, formerly § 1633, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2270; amended Oct. 12, 1976, Pub. L. 94–484, title IX, § 905(b)(1), 90 Stat. 2325; Aug. 1, 1977, Pub. L. 95–83, title I, § 106(z), 91 Stat. 386; renumbered § 1624 and amended Oct. 4, 1979, Pub. L. 96–79, title II, §§ 202(b), 203(e)(1), title III, § 301(b), 93 Stat. 632, 635, 640.)

REFERENCES IN TEXT

Subchapter XIII of this chapter, referred to in par. (12), was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

CODIFICATION

''Part B of this subchapter'' substituted for ''Part D of this subchapter'' in par. (8) pursuant to the redesignation of former part D of this subchapter as B by Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632.

AMENDMENTS

1979—Pub. L. 96–79, § 301(b), inserted ''Except as provided in section 300t–12(e) of this title''.

Pars. (1) to (16). Pub. L. 96–79, § 203(e)(1), struck out pars. (1) and (2) which defined ''State'' and ''Federal share'' and redesignated pars. (3) through (16) as pars. (1) through (14), respectively.

1977—Par. (14). Pub. L. 95–83 substituted ''subchapter XIII'' for ''subchapter XII''.

1976—Par. (1). Pub. L. 94–484 defined ''State'' to include Northern Mariana Islands.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290dd–1, 300s–1, 6372 of this title.

§ 300s–4. Reporting and audit requirements for recipients

(a) Filing of financial statement with appropriate State Agency; form and contents

In the case of any facility for which an allotment payment, grant, loan, or loan guarantee has been made under this subchapter, the applicant for such payment, grant, loan, or loan guarantee (or, if appropriate, such other person as the Secretary may prescribe) shall file at least annually with the State Agency for the State in which the facility is located a statement which shall be in such form, and contain such information, as the Secretary may require to accurately show—

(1) the financial operations of the facility, and

(2) the costs of the facility of providing health services in the facility and the charges made by the facility for providing such services,

during the period with respect to which the statement is filed.

(b) Maintenance of records; access to books, etc., for audit and examination

(1) Each entity receiving Federal assistance under this subchapter shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such entity of the proceeds of such assistance, the total cost of the project in connection with which such assistance is given or used, the amount of that portion of the cost of the project supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of such entities which in the opinion of the Secretary or the Comptroller General may be related or pertinent to the assistance referred to in paragraph (1).

(c) Filing of financial statement with Secretary; form and contents

Each such entity shall file at least annually with the Secretary a statement which shall be in such form, and contain such information, as the Secretary may require to accurately show—

(1) the financial operations of the facility constructed or modernized with such assistance, and

(2) the costs to such facility of providing health services in such facility, and the charges made for such services, during the period with respect to which the statement is filed.

(July 1, 1944, ch. 373, title XVI, § 1625, formerly § 1634, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2273; renumbered § 1625, Oct. 4, 1979, Pub. L. 96–79, title II, § 202(b), 93 Stat. 632.)

PRIOR PROVISIONS

A prior section 1625 of act July 1, 1944, was renumbered section 1610 by Pub. L. 96–79, title II, § 203(b), Oct. 4, 1979, 93 Stat. 635, and is classified to section 300r of this title.

§ 300s–5. Availability of technical and other nonfinancial assistance to eligible applicants

The Secretary shall provide (either through the Department of Health and Human Services or by contract) all necessary technical and other nonfinancial assistance to any public or other entity which is eligible to apply for assistance under this subchapter to assist such entity in developing applications to be submitted to the Secretary under section 300s–1 or 300t–12 of this title. The Secretary shall make every effort to inform eligible applicants of the availability of assistance under this subchapter.

(July 1, 1944, ch. 373, title XVI, § 1626, formerly § 1635, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88

Stat. 2273; renumbered § 1626 and amended Oct. 4, 1979, Pub. L. 96–79, title II, §§ 202(b), 203(f), 93 Stat. 632, 635; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695.)

AMENDMENTS

1979—Pub. L. 96–79, § 203(f), substituted ''other entity'' for ''other nonprofit entity'' and ''section 300s–1 or 300t–12 of this title'' for ''section 300*o*–3 of this title.''

CHANGE OF NAME

''Department of Health and Human Services'' substituted in text for ''Department of Health, Education, and Welfare'' pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96–79 effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as a note under section 300q of this title.

§ 300s–6. Enforcement of assurances

The Secretary shall investigate and ascertain, on a periodic basis, with respect to each entity which is receiving financial assistance under this subchapter or which has received financial assistance under subchapter IV of this chapter or this subchapter, the extent of compliance by such entity with the assurances required to be made at the time such assistance was received. If the Secretary finds that such an entity has failed to comply with any such assurance, the Secretary shall report such noncompliance to the health systems agency for the health service area in which such entity is located and the State health planning and development agency of the State in which the entity is located and shall take any action authorized by law (including an action for specific performance brought by the Attorney General upon request of the Secretary) which will effect compliance by the entity with such assurances. An action to effectuate compliance with any such assurance may be brought by a person other than the Secretary only if a complaint has been filed by such person with the Secretary and the Secretary has dismissed such complaint or the Attorney General has not brought a civil action for compliance with such assurance within six months after the date on which the complaint was filed with the Secretary.

(July 1, 1944, ch. 373, title XVI, § 1627, as added Oct. 4, 1979, Pub. L. 96–79, title II, § 202(c), 93 Stat. 634.)

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 204 of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

PART D—AREA HEALTH SERVICES DEVELOPMENT FUNDS

AMENDMENTS

1979—Pub. L. 96–79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632, redesignated former part F as part D relating to area health services development funds and former part D as part B.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 38 section 8156.

§ 300t. Development grants for health systems agencies

(a) Eligible recipients; purpose of grants

The Secretary shall make in each fiscal year a grant to each health system agency—

(1) with which there is in effect a designation agreement under section 300*l*–4(c)[1] of this title,

(2) which has in effect an HSP and AIP reviewed by the Statewide Health Coordinating Council, and

(3) which, as determined under the review made under section 300n–4(c)[1] of this title, is organized and operated in the manner prescribed by section 300*l*–1(b)[1] of this title and is performing its functions under section 300*l*–2[1] of this title in a manner satisfactory to the Secretary,

to enable the agency to establish and maintain an Area Health Service Development Fund from which it may make grants and enter into contracts in accordance with section 300*l*–2(c)(3)[1] of this title.

(b) Determination of amounts; maximum amounts

(1) Except as provided in paragraph (2), the amount of any grant under subsection (a) of this section shall be determined by the Secretary after taking into consideration the population of the health service area for which the health systems agency is designated, the average family income of the area, and the supply of health services in the area.

(2) The amount of any grant under subsection (a) of this section to a health systems agency for any fiscal year may not exceed the product of $1 and the population of the health service area for which such agency is designated.

(c) Applications; submission and approval as prerequisite; form and contents

No grant may be made under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and contain such information as the Secretary may require.

(d) Authorization of appropriations

For the purpose of making payments pursuant to grants under subsection (a) of this section, there are authorized to be appropriated $25,000,000 for the fiscal year ending June 30, 1975, $75,000,000 for the fiscal year ending June 30, 1976, $120,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, $20,000,000 for the fiscal year ending September 30, 1981, and $30,000,000 for the fiscal year ending September 30, 1982.

(July 1, 1944, ch. 373, title XVI, § 1640, as added Jan. 4, 1975, Pub. L. 93–641, § 4, 88 Stat. 2273; amended Aug. 1, 1977, Pub. L. 95–83, title I, § 103(c), 91 Stat. 383; Oct. 4, 1979, Pub. L. 96–79, title I, § 127(e), 93 Stat. 629.)

REFERENCES IN TEXT

Sections 300*l*–2, 300*l*–4, and 300n–4 of this title, referred to in subsec. (a), were repealed effective Jan. 1, 1987, by

[1] See References in Text note below.

Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 300*l*–1 of this title, referred to in subsec. (a)(3), was in the original a reference to section 1512 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 102–531, title III, §307, Oct. 27, 1992, 106 Stat. 3495, enacted section 1502A of act July 1, 1944, which is classified to section 300*l*–1 of this title.

AMENDMENTS

1979—Subsec. (d). Pub. L. 96–79 authorized appropriations of $20,000,000 for fiscal year ending Sept. 30, 1981, and $30,000,000 for fiscal year ending Sept. 30, 1982.

1977—Subsec. (d). Pub. L. 95–83 substituted ''each for the fiscal years ending September 30, 1977, and September 30, 1978'' for ''for the fiscal year ending June 30, 1977''.

PART E—PROGRAM TO ASSIST AND ENCOURAGE VOLUNTARY DISCONTINUANCE OF UNNEEDED HOSPITAL SERVICES AND CONVERSION OF UNNEEDED HOSPITAL SERVICES TO OTHER HEALTH SERVICES NEEDED BY COMMUNITY

AMENDMENTS

1979—Pub. L. 96–79, title II, §202(a), title III, §301(a), Oct. 4, 1979, 93 Stat. 632, 636, added part E relating to program to assist and encourage voluntary discontinuance of unneeded hospital services and conversion of unneeded hospital services to other health services needed by the community and redesignated former part E as part C.

§ 300t–11. Grants and assistance for establishment of program

The Secretary shall, by April 1, 1980, establish a program under which—

(1) grants and technical assistance may be provided to hospitals in operation on October 4, 1979, (A) for the discontinuance of unneeded hospital services, and (B) for the conversion of unneeded hospital services to other health services needed by the community; and

(2) grants may be provided to State Agencies designated under section 300m(b)(3)[1] of this title for reducing excesses in resources and facilities of hospitals.

(July 1, 1944, ch. 373, title XVI, §1641, as added Oct. 4, 1979, Pub. L. 96–79, title III, §301(a), 93 Stat. 636.)

REFERENCES IN TEXT

Section 300m of this title, referred to in par. (2), was in the original a reference to section 1521 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 101–354, §2, Aug. 10, 1990, 104 Stat. 410, enacted section 1503 of act July 1, 1944, which is classified to section 300m of this title.

UNNEEDED HOSPITAL SERVICES; STUDY AND REPORT OF EFFECT OF ELIMINATION

Section 302 of Pub. L. 96–79, as amended by Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, which provided that the Secretary of Health and Human Services conduct a study of the effect on the elimination of unneeded hospital services made during the two fiscal year period ending Sept. 30, 1981, by the program authorized by this part, and not later than Jan. 1, 1982, report the results of the study to Congress, was repealed by Pub. L. 97–414, §9(h), Jan. 4, 1983, 96 Stat. 2064.

[1] See References in Text note below.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300t–12 of this title.

§ 300t–12. Grants for discontinuance and conversion

(a) Terms and conditions; determination of amount; authorized uses

(1) A grant to a hospital under the program shall be subject to such terms and conditions as the Secretary may by regulation prescribe to assure that the grant is used for the purpose for which it was made.

(2) The amount of any such grant shall be determined by the Secretary. The recipient of such a grant may use the grant—

(A) in the case of a grantee which discontinues the provision of all hospital services or all inpatient hospital services or an identifiable part of a hospital facility which provides inpatient hospital services, for the liquidation of the outstanding debt on the facilities of the grantee used for the provision of the services or for the liquidation of the outstanding debt of the grantee on such identifiable part;

(B) in the case of a grantee which in discontinuing the provision of an inpatient hospital service converts or proposes to convert an identifiable part of a hospital facility used in the provision of the discontinued service to the delivery of other health services, for the planning, development (including construction and acquisition of equipment), and delivery of the health service;

(C) to provide reasonable termination pay for personnel of the grantee who will lose employment because of the discontinuance of hospital services made by the grantee, retraining of such personnel, assisting such personnel in securing employment, and other costs of implementing arrangements described in subsection (c) of this section; and

(D) for such other costs which the Secretary determines may need to be incurred by the grantee in discontinuing hospital services.

(b) Application; submission and approval; form; required provisions; review by health systems agency; basis of State Agency's recommendations; urban or rural poverty population considerations; approval by Secretary; restrictions and special considerations

(1) No grant may be made to a hospital unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form and submitted in such manner as the Secretary may prescribe and shall include—

(A) a description of each service to be discontinued and, if a part of a hospital is to be discontinued or converted to another use in connection with such discontinuance, a description of such part;

(B) an evaluation of the impact of such discontinuance and conversion on the provision of health care in the health service area in which such service is provided;

(C) an estimate of the change in the applicant's costs which will result from such discontinuance and conversion; and

(D) reasonable assurance that all laborers and mechanics employed by contractors or

subcontractors in the performance of work on a project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act), and the Secretary of Labor shall have with respect to such labor standards the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176; 5 U.S.C. Appendix) and section 276c of title 40;

(E) such other information as the Secretary may require.

(2)(A) The health systems agency for the health service area in which is located a hospital applying for a grant under the program shall (i) in making the review of the applicant's application under section 300*l*–2(e)[1] of this title, determine the need for each service or part proposed to be discontinued by the applicant, (ii) in the case of an application for the conversion of a facility, determine the need for each service which will be provided as a result of the conversion, and (iii) make a recommendation to the State Agency for the State in which the applicant is located respecting approval by the Secretary of the applicant's application.

(B) A State Agency which has received a recommendation from a health systems agency under subparagraph (A) respecting an application shall, after consideration of such recommendation, make a recommendation to the Secretary respecting the approval by the Secretary of the application. A State Agency's recommendation under this subparagraph respecting the approval of an application (i) shall be based upon (I) the need for each service or part proposed to be discontinued by the applicant, (II) in the case of an application for the conversion of a facility, the need for each service which will be provided as a result of the conversion, and (III) such other criteria as the Secretary may prescribe, and (ii) shall be accompanied by the health systems agency's recommendation made with respect to the approval of the application.

(C) In determining, under subparagraphs (A) and (B), the need for the service (or services) or part proposed to be discontinued or converted by an applicant for a grant, a health systems agency and State Agency shall give special consideration to the unmet needs and existing access patterns of urban or rural poverty populations.

(3)(A) The Secretary may not approve an application of a hospital for a grant—

(i) if a State Agency recommended that the application not be approved, or

(ii) if the Secretary is unable to determine that the cost of providing inpatient health services in the health service area in which the applicant is located will be less than if the inpatient health services proposed to be discontinued were not discontinued.

(B) In considering applications of hospitals for grants the Secretary shall consider the recommendations of health systems agencies and State Agencies and shall give special consideration to applications (i) which will assist health systems agencies and State Agencies to meet the goals in their health systems plans and State health plans, or (ii) which will result in the greatest reduction in hospital costs within a health service area.

(c) Certification of protective arrangements for employment benefits and interests; guidelines; satisfactory arrangement determinations

(1) Except as provided in paragraph (3), the Secretary may not approve an application submitted under subsection (b) of this section unless the Secretary of Labor has certified that fair and equitable arrangements have been made to protect the interests of employees affected by the discontinuance of services against a worsening of their positions with respect to their employment, including arrangements to preserve the rights of employees under collective-bargaining agreements, continuation of collective-bargaining rights consistent with the provisions of the National Labor Relations Act [29 U.S.C. 151 et seq.], reassignment of affected employees to other jobs, retraining programs, protecting pension, health benefits, and other fringe benefits of affected employees, and arranging adequate severance pay, if necessary.

(2) The Secretary of Labor shall by regulation prescribe guidelines for arrangements for the protection of the interests of employees affected by the discontinuance of hospital services. The Secretary of Labor shall consult with the Secretary of Health and Human Services in the promulgation of such guidelines. Such guidelines shall first be promulgated not later than the promulgation of regulations by the Secretary for the administration of the grants authorized by section 300t–11 of this title.

(3) The Secretary of Labor shall review each application submitted under subsection (b) of this section to determine if the arrangements described in paragraph (1) have been made and if they are satisfactory and shall notify the Secretary respecting his determination. Such review shall be completed within—

(A) ninety days from the date of the receipt of the application from the Secretary of Health and Human Services, or

(B) one hundred and twenty days from such date if the Secretary of Labor has by regulation prescribed the circumstances under which the review will require at least one hundred and twenty days.

If within the applicable period, the Secretary of Labor does not notify the Secretary of Health and Human Services respecting his determination, the Secretary of Health and Human Services shall review the application to determine if the applicant has made the arrangements described in paragraph (1) and if such arrangements are satisfactory. The Secretary may not approve the application unless he determines that such arrangements have been made and that they are satisfactory.

(d) Records and audits requirements

The records and audits requirements of section 292e[2] of this title shall apply with respect

[1] See References in Text note below.

[2] See References in Text note below.

to grants made under subsection (a) of this section.

(e) "Hospital" defined

For purposes of this part, the term ''hospital'' means, with respect to any fiscal year, an institution (including a distinct part of an institution participating in the programs established under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.])—

(1) which satisfies paragraphs (1) and (7) of section 1861(e) of such Act [42 U.S.C. 1395x(e)],

(2) imposes charges or accepts payments for services provided to patients, and

(3) the average duration of a patient's stay in which was thirty days or less in the preceding fiscal year,

but such term does not include a Federal hospital or a psychiatric hospital (as described in section 1861(f)(1) of the Social Security Act [42 U.S.C. 1395x(f)(1)]).

(July 1, 1944, ch. 373, title XVI, § 1642, as added Oct. 4, 1979, Pub. L. 96–79, title III, § 301(a), 93 Stat. 637; amended Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695.)

REFERENCES IN TEXT

Act of March 3, 1931 (40 U.S.C. 276a—276a–5, known as the Davis-Bacon Act), referred to in subsec. (b)(1)(D), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a–5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

Section 300*l*–2, of this title, referred to in subsec. (b)(2)(A), was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

The National Labor Relations Act, referred to in subsec. (c)(1), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

Section 292e of this title, referred to in subsec. (d), was in the original a reference to section 705 of act July 1, 1944. Section 705 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 705 of act July 1, 1944, relating to eligibility of borrowers and terms of insured loans, and a new section 706, relating to certificates of loan insurance, which are classified to sections 292d and 292e, respectively, of this title. Provisions relating to records and audits requirements are now contained in section 295*o* of this title.

The Social Security Act, referred to in subsec. (e), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (c)(2) and (3), pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300s–1a, 300s–3, 300s–5, 300t–14 of this title.

§ 300t–13. Grants to States for reduction of excess hospital capacity

(a) "Excess hospital capacity" defined; particular activities

For the purpose of demonstrating the effectiveness of various means for reducing excesses in resources and facilities of hospitals (referred to in this section as ''excess hospital capacity''), the Secretary may make grants to State Agencies designated under section 300m(b)(3)[1] of this title to assist such Agencies in—

(1) identifying (by geographic region or by health service) excess hospital capacity,

(2) developing programs to inform the public of the costs associated with excess hospital capacity,

(3) developing programs to reduce excess hospital capacity in a manner which will produce the greatest savings in the cost of health care delivery,

(4) developing means to overcome barriers to the reduction of excess hospital capacity,

(5) in planning, evaluating, and carrying out programs to decertify health care facilities providing health services that are not appropriate, and

(6) any other activity related to the reduction of excess hospital capacity.

(b) Terms and conditions

Grants under subsection (a) of this section shall be made on such terms and conditions as the Secretary may prescribe.

(July 1, 1944, ch. 373, title XVI, § 1643, as added Oct. 4, 1979, Pub. L. 96–79, title III, § 301(a), 93 Stat. 639.)

REFERENCES IN TEXT

Section 300m of this title, referred to in subsec. (a), was in the original a reference to section 1521 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 410, enacted section 1503 of act July 1, 1944, which is classified to section 300m of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300t–14 of this title.

§ 300t–14. Authorization of appropriations

To make payments under grants under sections 300t–12 and 300t–13 of this title there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1980, $50,000,000 for the fiscal year ending September 30, 1981, and $75,000,000 for the fiscal year ending September 30, 1982, except that in any fiscal year not more than 10 percent of the amount appropriated under this section may be obligated for grants under section 300t–13 of this title.

(July 1, 1944, ch. 373, title XVI, § 1644, as added Oct. 4, 1979, Pub. L. 96–79, title III, § 301(a), 93 Stat. 640.)

[1] See References in Text note below.

SUBCHAPTER XV—HEALTH INFORMATION AND HEALTH PROMOTION

§ 300u. General authority of Secretary

(a) Development, support, and implementation of programs, activities, etc.

The Secretary shall—

(1) formulate national goals, and a strategy to achieve such goals, with respect to health information and health promotion, preventive health services, and education in the appropriate use of health care;

(2) analyze the necessary and available resources for implementing the goals and strategy formulated pursuant to paragraph (1), and recommend appropriate educational and quality assurance policies for the needed manpower resources identified by such analysis;

(3) undertake and support necessary activities and programs to—

(A) incorporate appropriate health education components into our society, especially into all aspects of education and health care,

(B) increase the application and use of health knowledge, skills, and practices by the general population in its patterns of daily living, and

(C) establish systematic processes for the exploration, development, demonstration, and evaluation of innovative health promotion concepts;

(4) undertake and support research and demonstrations respecting health information and health promotion, preventive health services, and education in the appropriate use of health care;

(5) undertake and support appropriate training in, and undertake and support appropriate training in the operation of programs concerned with, health information and health promotion, preventive health services, and education in the appropriate use of health care;

(6) undertake and support, through improved planning and implementation of tested models and evaluation of results, effective and efficient programs respecting health information and health promotion, preventive health services, and education in the appropriate use of health care;

(7)(A) develop model programs through which employers in the public sector, and employers that are small businesses (as defined in section 632 of title 15), can provide for their employees a program to promote healthy behaviors and to discourage participation in unhealthy behaviors;

(B) provide technical assistance to public and private employers in implementing such programs (including private employers that are not small businesses and that will implement programs other than the programs developed by the Secretary pursuant to subparagraph (A)); and

(C) in providing such technical assistance, give preference to small businesses;

(8) foster the exchange of information respecting, and foster cooperation in the conduct of, research, demonstration, and training programs respecting health information and health promotion, preventive health services, and education in the appropriate use of health care;

(9) provide technical assistance in the programs referred to in paragraph (8);

(10) use such other authorities for programs respecting health information and health promotion, preventive health services, and education in the appropriate use of health care as are available and coordinate such use with programs conducted under this subchapter; and

(11) establish in the Office of the Assistant Secretary for Health an Office of Disease Prevention and Health Promotion, which shall—

(A) coordinate all activities within the Department which relate to disease prevention, health promotion, preventive health services, and health information and education with respect to the appropriate use of health care;

(B) coordinate such activities with similar activities in the private sector;

(C) establish a national information clearinghouse to facilitate the exchange of information concerning matters relating to health information and health promotion, preventive health services (which may include information concerning models and standards for insurance coverage of such services), and education in the appropriate use of health care, to facilitate access to such information, and to assist in the analysis of issues and problems relating to such matters; and

(D) support projects, conduct research, and disseminate information relating to preventive medicine, health promotion, and physical fitness and sports medicine.

The Secretary shall appoint a Director for the Office of Disease Prevention and Health Promotion established pursuant to paragraph (11) of this subsection. The Secretary shall administer this subchapter in cooperation with health care providers, educators, voluntary organizations, businesses, and State and local health agencies in order to encourage the dissemination of health information and health promotion activities.

(b) Authorization of appropriations

For the purpose of carrying out this section and sections 300u–1 through 300u–4 of this title, there are authorized to be appropriated $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1996.

(c) Application; submission and approval as prerequisite; form and content

No grant may be made or contract entered into under this subchapter unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such form and manner and contain such information as the Secretary may prescribe. Contracts may be entered into under this subchapter without regard to section 3324(a) and (b) of title 31 and section 5 of title 41.

(July 1, 1944, ch. 373, title XVII, § 1701, as added June 23, 1976, Pub. L. 94–317, title I, § 102, 90 Stat.

695; amended July 10, 1979, Pub. L. 96–32, § 7(n), 93 Stat. 85; Sept. 29, 1979, Pub. L. 96–76, title II, § 209, 93 Stat. 584; Oct. 30, 1984, Pub. L. 98–551, § 2(a), 98 Stat. 2815; Nov. 4, 1988, Pub. L. 100–607, title III, § 312(a)(1), (b)(1), (c), 102 Stat. 3113, 3114; Nov. 26, 1991, Pub. L. 102–168, title I, § 101, 105 Stat. 1102; Oct. 27, 1992, Pub. L. 102–531, title III, § 311(b)(1), 106 Stat. 3503.)

CODIFICATION

In subsec. (c), ''section 3324(a) and (b) of title 31'' substituted for ''section 3648 of the Revised Statutes (31 U.S.C. 529)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1992—Subsec. (a)(11)(C). Pub. L. 102–531 substituted ''preventive health services (which may include information concerning models and standards for insurance coverage of such services),'' for ''preventive health services,''.

1991—Subsec. (b). Pub. L. 102–168 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''To carry out sections 300u through 300u–4 of this title, there are authorized to be appropriated $9,000,000 for the fiscal year ending September 30, 1985, $9,500,000 for the fiscal year ending September 30, 1986, $10,000,000 for the fiscal year ending September 30, 1987, and $10,000,000 for each of the fiscal years 1989 through 1991.''

1988—Subsec. (a). Pub. L. 100–607, § 312(c)(2), in concluding provisions, struck out ''The Secretary shall administer this subchapter in a manner consistent with the national health priorities set forth in section 300k–2 of this title.'' before ''The Secretary shall appoint'', and substituted ''paragraph (11)'' for ''paragraph (10)''.

Subsec. (a)(7), (8). Pub. L. 100–607, § 312(b)(1), added par. (7) and redesignated former par. (7) as (8). Former par. (8) redesignated (9).

Subsec. (a)(9). Pub. L. 100–607, § 312(c)(1), substituted ''paragraph (8)'' for ''paragraph (7)''.

Pub. L. 100–607, § 312(b)(1)(A), redesignated par. (8) as (9). Former par. (9) redesignated (10).

Subsec. (a)(10), (11). Pub. L. 100–607, § 312(b)(1)(A), redesignated pars. (9) and (10) as (10) and (11), respectively.

Subsec. (b). Pub. L. 100–607, § 312(a)(1), substituted ''sections 300u through 300u–4 of this title'' for ''this subchapter'', struck out ''and'' after ''September 30, 1986,'', and inserted '', and $10,000,000 for each of the fiscal years 1989 through 1991''.

1984—Subsec. (a). Pub. L. 98–551, § 2(a)(1), added par. (10), and in provisions following par. (10) struck out ''and with health planning and resource development activities undertaken under subchapters XIII and XIV of this chapter'' after ''section 300k–2 of this title'' and inserted provisions for appointment of a Director for Office of Disease Prevention and Health Promotion and cooperation in administration of this subchapter.

Subsec. (b). Pub. L. 98–551, § 2(a)(2), substituted ''To carry out this subchapter, there are authorized to be appropriated $9,000,000 for the fiscal year ending September 30, 1985, $9,500,000 for the fiscal year ending September 30, 1986, and $10,000,000 for the fiscal year ending September 30, 1987'' for ''For payments under grants and contracts under this subchapter (other than grants and contracts under sections 300u–6, 300u–7, and 300u–8 of this title) there are authorized to be appropriated $7,000,000 for the fiscal year ending September 30, 1977, $10,000,000 for the fiscal year ending September 30, 1978, $14,000,000 for the fiscal year ending September 30, 1979, $14,000,000 for the fiscal year ending September 30, 1980, $15,000,000 for the fiscal year ending September 30, 1981, and $16,000,000 for the fiscal year ending September 30, 1982.''

1979—Subsec. (b). Pub. L. 96–76 inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1980, Sept. 30, 1981, and Sept. 30, 1982.

Pub. L. 96–32 inserted ''(other than grants and contracts under sections 300u–6, 300u–7, and 300u–8 of this title)'' after ''grants and contracts under this subchapter''.

SHORT TITLE

For short title of title I of Pub. L. 94–317, which enacted this subchapter as the ''National Consumer Health Information and Health Promotion Act of 1976'', see section 101 of Pub. L. 94–317, set out as a Short Title of 1976 Amendments note under section 201 of this title.

MODEL PROGRAMS FOR EMPLOYEE HEALTH PROMOTION AND DISEASE PREVENTION; DEVELOPMENT COMPLETION

Section 312(b)(2) of Pub. L. 100–607 required Secretary of Health and Human Services, not later than 18 months after Nov. 4, 1988, to complete development of model programs required in section 1701(a)(7)(A) of the Public Health Service Act (subsec. (a)(7)(A) of this section).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300u–4 of this title.

§ 300u–1. Grants and contracts for research programs; authority of Secretary; review of applications; additional functions; periodic public survey

(a) The Secretary is authorized to conduct and support by grant or contract (and encourage others to support) research in health information and health promotion, preventive health services, and education in the appropriate use of health care. Applications for grants and contracts under this section shall be subject to appropriate peer review. The Secretary shall also—

(1) provide consultation and technical assistance to persons who need help in preparing research proposals or in actually conducting research;

(2) determine the best methods of disseminating information concerning personal health behavior, preventive health services and the appropriate use of health care and of affecting behavior so that such information is applied to maintain and improve health, and prevent disease, reduce its risk, or modify its course or severity;

(3) determine and study environmental, occupational, social, and behavioral factors which affect and determine health and ascertain those programs and areas for which educational and preventive measures could be implemented to improve health as it is affected by such factors;

(4) develop (A) methods by which the cost and effectiveness of activities respecting health information and health promotion, preventive health services, and education in the appropriate use of health care, can be measured, including methods for evaluating the effectiveness of various settings for such activities and the various types of persons engaged in such activities, (B) methods for reimbursement or payment for such activities, and (C) models and standards for the conduct of such activities, including models and standards for the education, by providers of institutional health services, of individuals receiving such services respecting the nature of the institutional health services provided the individuals and the symptoms, signs, or diagnoses which led to provision of such services;

(5) develop a method for assessing the cost and effectiveness of specific medical services and procedures under various conditions of use, including the assessment of the sensitivity and specificity of screening and diagnostic procedures; and

(6) enumerate and assess, using methods developed under paragraph (5), preventive health measures and services with respect to their cost and effectiveness under various conditions of use (which measures and services may include blood pressure screening, cholesterol screening and control, smoking cessation programs, substance abuse programs, cancer screening, dietary and nutritional counseling, diabetes screening and education, intraocular pressure screening, and stress management).

(b) The Secretary shall make a periodic survey of the needs, interest, attitudes, knowledge, and behavior of the American public regarding health and health care. The Secretary shall take into consideration the findings of such surveys and the findings of similar surveys conducted by national and community health education organizations, and other organizations and agencies for formulating policy respecting health information and health promotion, preventive health services, and education in the appropriate use of health care.

(July 1, 1944, ch. 373, title XVII, § 1702, as added June 23, 1976, Pub. L. 94–317, title I, § 102, 90 Stat. 696; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 311(b)(2), 106 Stat. 3504.)

AMENDMENTS

1992—Subsec. (a)(6). Pub. L. 102–531 inserted before period ''(which measures and services may include blood pressure screening, cholesterol screening and control, smoking cessation programs, substance abuse programs, cancer screening, dietary and nutritional counseling, diabetes screening and education, intraocular pressure screening, and stress management)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300u of this title.

§ 300u–2. Grants and contracts for community health programs

(a) Authority of Secretary; particular activities

The Secretary is authorized to conduct and support by grant or contract (and encourage others to support) new and innovative programs in health information and health promotion, preventive health services, and education in the appropriate use of health care, and may specifically—

(1) support demonstration and training programs in such matters which programs (A) are in hospitals, ambulatory care settings, home care settings, schools, day care programs for children, and other appropriate settings representative of broad cross sections of the population, and include public education activities of voluntary health agencies, professional medical societies, and other private nonprofit health organizations, (B) focus on objectives that are measurable, and (C) emphasize the prevention or moderation of illness or accidents that appear controllable through individual knowledge and behavior;

(2) provide consultation and technical assistance to organizations that request help in planning, operating, or evaluating programs in such matters;

(3) develop health information and health promotion materials and teaching programs including (A) model curriculums for the training of educational and health professionals and paraprofessionals in health education by medical, dental, and nursing schools, schools of public health, and other institutions engaged in training of educational or health professionals, (B) model curriculums to be used in elementary and secondary schools and institutions of higher learning, (C) materials and programs for the continuing education of health professionals and paraprofessionals in the health education of their patients, (D) materials for public service use by the printed and broadcast media, and (E) materials and programs to assist providers of health care in providing health education to their patients; and

(4) support demonstration and evaluation programs for individual and group self-help programs designed to assist the participant in using his individual capacities to deal with health problems, including programs concerned with obesity, hypertension, and diabetes.

(b) Grants to States and other public and nonprofit private entities; costs of demonstrating and evaluating programs; development of models

The Secretary is authorized to make grants to States and other public and nonprofit private entities to assist them in meeting the costs of demonstrating and evaluating programs which provide information respecting the costs and quality of health care or information respecting health insurance policies and prepaid health plans, or information respecting both. After the development of models pursuant to section 300u–3(4) and 300u–3(5) of this title for such information, no grant may be made under this subsection for a program unless the information to be provided under the program is provided in accordance with one of such models applicable to the information.

(c) Private nonprofit entities; limitation on amount of grant or contract

The Secretary is authorized to support by grant or contract (and to encourage others to support) private nonprofit entities working in health information and health promotion, preventive health services, and education in the appropriate use of health care. The amount of any grant or contract for a fiscal year beginning after September 30, 1978, for an entity may not exceed 25 per centum of the expenses of the entity for such fiscal year for health information and health promotion, preventive health services, and education in the appropriate use of health care.

(July 1, 1944, ch. 373, title XVII, § 1703, as added June 23, 1976, Pub. L. 94–317, title I, § 102, 90 Stat. 697.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300u of this title.

§ 300u–3. Grants and contracts for information programs; authority of Secretary; particular activities

The Secretary is authorized to conduct and support by grant or contract (and encourage others to support) such activities as may be required to make information respecting health information and health promotion, preventive health services, and education in the appropriate use of health care available to the consumers of medical care, providers of such care, schools, and others who are or should be informed respecting such matters. Such activities may include at least the following:

(1) The publication of information, pamphlets, and other reports which are specially suited to interest and instruct the health consumer, which information, pamphlets, and other reports shall be updated annually, shall pertain to the individual's ability to improve and safeguard his own health; shall include material, accompanied by suitable illustrations, on child care, family life and human development, disease prevention (particularly prevention of pulmonary disease, cardiovascular disease, and cancer), physical fitness, dental health, environmental health, nutrition, safety and accident prevention, drug abuse and alcoholism, mental health, management of chronic diseases (including diabetes and arthritis), and venereal diseases; and shall be designed to reach populations of different languages and of different social and economic backgrounds.

(2) Securing the cooperation of the communications media, providers of health care, schools, and others in activities designed to promote and encourage the use of health maintaining information and behavior.

(3) The study of health information and promotion in advertising and the making to concerned Federal agencies and others such recommendations respecting such advertising as are appropriate.

(4) The development of models and standards for the publication by States, insurance carriers, prepaid health plans, and others (except individual health practitioners) of information for use by the public respecting the cost and quality of health care, including information to enable the public to make comparisons of the cost and quality of health care.

(5) The development of models and standards for the publication by States, insurance carriers, prepaid health plans, and others of information for use by the public respecting health insurance policies and prepaid health plans, including information on the benefits provided by the various types of such policies and plans, the premium charges for such policies and plans, exclusions from coverage or eligibility for coverage, cost sharing requirements, and the ratio of the amounts paid as benefits to the amounts received as premiums and information to enable the public to make relevant comparisons of the costs and benefits of such policies and plans.

(July 1, 1944, ch. 373, title XVII, § 1704, as added June 23, 1976, Pub. L. 94–317, title I, § 102, 90 Stat. 698; amended Oct. 30, 1984, Pub. L. 98–551, § 2(b), 98 Stat. 2816.)

AMENDMENTS

1984—Par. (6). Pub. L. 98–551 struck out par. (6) which provided grant authority to the Secretary to assess, with respect to the effectiveness, safety, cost, and required training for and conditions of use, of new aspects of health care, and new activities, programs, and services designed to improve human health and publish in readily understandable language for public and professional use such assessments and, in the case of controversial aspects of health care, activities, programs, or services, publish differing views or opinions respecting the effectiveness, safety, cost, and required training for and conditions of use, of such aspects of health care, activities, programs, or services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300u, 300u–2 of this title.

§ 300u–4. Status reports to President and Congress; study of health education and preventive health services with respect to insurance coverage

(a) The Secretary shall, not later than two years after June 23, 1976, and annually thereafter, submit to the President for transmittal to Congress a report on the status of health information and health promotion, preventive health services, and education in the appropriate use of health care. Each such report shall include—

(1) a statement of the activities carried out under this subchapter since the last report and the extent to which each such activity achieves the purposes of this subchapter;

(2) an assessment of the manpower resources needed to carry out programs relating to health information and health promotion, preventive health services, and education in the appropriate use of health care, and a statement describing the activities currently being carried out under this subchapter designed to prepare teachers and other manpower for such programs;

(3) the goals and strategy formulated pursuant to section 300u(a)(1) of this title, the models and standards developed under this subchapter, and the results of the study required by subsection (b) of this section; and

(4) such recommendations as the Secretary considers appropriate for legislation respecting health information and health promotion, preventive health services, and education in the appropriate use of health care, including recommendations for revisions to and extension of this subchapter.

(b) The Secretary shall conduct a study of health education services and preventive health services to determine the coverage of such services under public and private health insurance programs, including the extent and nature of such coverage and the cost sharing requirements required by such programs for coverage of such services.

(July 1, 1944, ch. 373, title XVII, § 1705, as added June 23, 1976, Pub. L. 94–317, title I, § 102, 90 Stat. 699.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 247b, 300u of this title.

§ 300u–5. Centers for research and demonstration of health promotion and disease prevention

(a) Establishment; grants; contracts; research and demonstration projects

The Secretary shall make grants or enter into contracts with academic health centers for the establishment, maintenance, and operation of centers for research and demonstration with respect to health promotion and disease prevention. Centers established, maintained, or operated under this section shall undertake research and demonstration projects in health promotion, disease prevention, and improved methods of appraising health hazards and risk factors, and shall serve as demonstration sites for the use of new and innovative research in public health techniques to prevent chronic diseases.

(b) Location; types of research and projects

Each center established, maintained, or operated under this section shall—

(1) be located in an academic health center with—

(A) a multidisciplinary faculty with expertise in public health and which has working relationships with relevant groups in such fields as medicine, psychology, nursing, social work, education and business;

(B) graduate training programs relevant to disease prevention;

(C) a core faculty in epidemiology, biostatistics, social sciences, behavioral and environmental health sciences, and health administration;

(D) a demonstrated curriculum in disease prevention;

(E) a capability for residency training in public health or preventive medicine; and

(F) such other qualifications as the Secretary may prescribe;

(2) conduct—

(A) health promotion and disease prevention research, including retrospective studies and longitudinal prospective studies in population groups and communities;

(B) demonstration projects for the delivery of services relating to health promotion and disease prevention to defined population groups using, as appropriate, community outreach and organization techniques and other methods of educating and motivating communities; and

(C) evaluation studies on the efficacy of demonstration projects conducted under subparagraph (B) of this paragraph.

The design of any evaluation study conducted under subparagraph (C) shall be established prior to the commencement of the demonstration project under subparagraph (B) for which the evaluation will be conducted.

(c) Equitable geographic distribution of centers; procedures

(1) In making grants and entering into contracts under this section, the Secretary shall provide for an equitable geographical distribution of centers established, maintained, and operated under this section and for the distribution of such centers among areas containing a wide range of population groups which exhibit incidences of diseases which are most amenable to preventive intervention.

(2) The Secretary, through the Director of the Centers for Disease Control and Prevention and in consultation with the Director of the National Institutes of Health, shall establish procedures for the appropriate peer review of applications for grants and contracts under this section by peer review groups composed principally of non-Federal experts.

(d) "Academic health center" defined

For purposes of this section, the term ''academic health center'' means a school of medicine, a school of osteopathy, or a school of public health, as such terms are defined in section 292a(4)[1] of this title.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $10,000,000 for fiscal year 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1998.

(July 1, 1944, ch. 373, title XVII, § 1706, as added Oct. 30, 1984, Pub. L. 98–551, § 2(d), 98 Stat. 2816; amended Nov. 4, 1988, Pub. L. 100–607, title III, § 312(a)(2), 102 Stat. 3113; Nov. 26, 1991, Pub. L. 102–168, title I, § 102, 105 Stat. 1102; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(12), 106 Stat. 3505; Dec. 14, 1993, Pub. L. 103–183, title VII, § 705(d), 107 Stat. 2241.)

REFERENCES IN TEXT

Section 292a of this title, referred to in subsec. (d), was in the original a reference to section 701 of act July 1, 1944. Section 701 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 701 of act July 1, 1944, relating to statement of purpose, and a new section 702, relating to scope and duration of loan insurance program, which are classified to sections 292 and 292a, respectively, of this title. For provisions relating to definitions, see section 295p of this title.

PRIOR PROVISIONS

A prior section 300u–5, act July 1, 1944, ch. 373, title XVII, § 1706, as added June 23, 1976, Pub. L. 94–317, title I, § 102, 90 Stat. 700; amended Nov. 10, 1978, Pub. L. 95–626, title V, § 501, 92 Stat. 3592; Jan. 4, 1983, Pub. L. 97–414, § 8(r), 96 Stat. 2062, related to establishment of the Office of Health Promotion, prior to repeal by Pub. L. 98–551, § 2(c), Oct. 30, 1984, 98 Stat. 2816.

AMENDMENTS

1993—Subsec. (e). Pub. L. 103–183 substituted ''through 1998'' for ''through 1996''.

1992—Subsec. (c)(2). Pub. L. 102–531, which directed amendment of subsec. (c)(2)(B) by substituting ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'', was executed by making the substitution in subsec. (c)(2) to reflect the probable intent of Congress and the redesignation of subsec. (c)(2)(B) as subsec. (c)(2) by Pub. L. 102–168. See 1991 Amendment note below.

1991—Subsec. (c). Pub. L. 102–168, § 102(b), redesignated subpars. (A) and (B) of par. (2) as pars. (1) and (2), respectively, and struck out former par. (1), which read as follows: ''During fiscal year 1985, the Secretary shall make grants or enter into contracts for the establishment of three centers under this section. During fiscal year 1986, the Secretary shall make grants and enter

[1] See References in Text note below.

into contracts for the establishment of five centers under this section and the maintenance and operation of the three centers established under this section in fiscal year 1985. During fiscal year 1987, the Secretary shall make grants and enter into contracts for the establishment of five centers under this section and the operation and maintenance of the eight centers established under this section in fiscal years 1985 and 1986.''

Subsec. (e). Pub. L. 102–168, § 102(a), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''To carry out this section, there are authorized to be appropriated $3,000,000 for the fiscal year ending September 30, 1985, $8,000,000 for the fiscal year ending September 30, 1986, $13,000,000 for the fiscal year ending September 30, 1987, $6,000,000 for fiscal year 1989, $8,000,000 for fiscal year 1990, and $10,000,000 for fiscal year 1991.''

1988—Subsec. (e). Pub. L. 100–607 struck out ''and'' after ''1986,'' and inserted '', $6,000,000 for fiscal year 1989, $8,000,000 for fiscal year 1990, and $10,000,000 for fiscal year 1991'' before period at end.

EX. ORD. NO. 12345. PHYSICAL FITNESS AND SPORTS

Ex. Ord. No. 12345, Feb. 2, 1982, 47 F.R. 5189, as amended by Ex. Ord. No. 12539, Dec. 3, 1985, 50 F.R. 49829; Ex. Ord. No. 12694, Oct. 11, 1989, 54 F.R. 42285; Ex. Ord. No. 12709, Apr. 4, 1990, 55 F.R. 13097, provided:

By virtue of the authority vested in me as President of the United States of America, and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.), in order to expand the program for physical fitness and sports and to continue the President's Council on Physical Fitness and Sports, it is hereby ordered as follows:

SECTION 1. The Secretary of Health and Human Services shall, in carrying out his responsibilities for public health and human services, develop and coordinate a national program for physical fitness and sports. The Secretary shall:

(a) Enlist the active support and assistance of individual citizens, civic groups, private enterprise, voluntary organizations, and others in efforts to promote and improve the fitness of all Americans through regular participation in physical fitness and sports activities.

(b) Initiate programs to inform the general public of the importance of exercise and the link which exists between regular physical activity and such qualities as good health and effective performance.

(c) Strengthen coordination of Federal services and programs relating to physical fitness and sports participation and invite appropriate Federal agencies to participate in an interagency committee to coordinate physical fitness and sports activities of the Federal establishment.

(d) Encourage State and local governments to emphasize the importance of regular physical fitness and sports participation.

(e) Seek to advance the physical fitness of children, youth, adults, and senior citizens by systematically encouraging the development of community recreation, physical fitness, and sports participation programs.

(f) Develop cooperative programs with medical, dental, and other similar professional societies to encourage the implementation of sound physical fitness practices and sports medicine services.

(g) Stimulate and encourage research in the areas of sports medicine, physical fitness, and sports performance.

(h) Assist educational agencies at all levels in developing high quality, innovative health and physical education programs which emphasize the importance of exercise to good health.

(i) Assist recreation agencies and national sports governing bodies at all levels in developing ''sports for all'' programs which emphasize the value of sports to physical, mental, and emotional fitness.

(j) Assist business, industry, government, and labor organizations in establishing sound physical fitness programs to elevate employee fitness and to reduce the financial and human costs resulting from physical inactivity.

SEC. 2. *President's Council on Physical Fitness and Sports.* (a) There is hereby continued the President's Council on Physical Fitness and Sports.

(b) The Council shall be composed of twenty members appointed by the President. The President may, as he deems appropriate, designate one or more members to be Chairmen and to be Vice Chairmen.

SEC. 3. *Functions of the Council.* (a) The Council shall advise the President and the Secretary concerning progress made in carrying out the provisions of this Order and shall recommend to the President and the Secretary, as necessary, actions to accelerate progress.

(b) The Council shall advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports activities.

(c) The Council shall also advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

SEC. 4. *Administrative Provisions Concerning the Council.* (a) The Secretary and the Council are authorized to request from any Federal agency such information or assistance deemed necessary to carry out their functions under this Order.

(b) Each Federal agency is authorized, to the extent permitted by law and within available funds, to furnish such information and assistance to the Secretary and the Council as they may request.

(c) The members of the Council shall serve without compensation for their work on the Council. However, members of the Council may receive travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in government service (5 U.S.C. 5701–5707).

(d) To the extent permitted by law, the Secretary shall furnish the Council with necessary staff, supplies, facilities, and other administrative services. The expenses of the Council shall be paid from funds available to the Secretary.

(e) The Secretary shall appoint an Executive Director of the Council.

(f) The seal prescribed by Executive Order No. 10830 of July 24, 1959, as amended [not classified to the Code], shall continue to be the seal of the President's Council on Physical Fitness and Sports continued by this Order.

SEC. 5. *General Provisions Concerning the Council.*

(a) Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), except that of reporting annually to the Congress, shall be performed by the Secretary in accordance with guidelines and procedures established by the Administrator of General Services.

(b) In accordance with the Federal Advisory Committee Act, as amended, the Council shall terminate on December 31, 1982, unless sooner extended.

(c) Executive Order No. 11562, as amended [not classified to the Code], is revoked.

EXTENSION OF TERM OF PRESIDENT'S COUNCIL ON PHYSICAL FITNESS AND SPORTS

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1985, by Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1993, by Ex. Ord. No. 12774, Sept. 27, 1991, 56 F.R. 49835, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the President's Council on Physical Fitness and Sports extended until Sept. 30, 1995, by Ex. Ord. No. 12869, Sept. 30, 1993, 58 F.R. 51751, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

§ 300u–6. Establishment of Office of Minority Health

(a) In general

There is established an Office of Minority Health within the Office of the Assistant Secretary for Health. There shall be in the Department of Health and Human Services a Deputy Assistant Secretary for Minority Health, who shall be the head of the Office of Minority Health. The Secretary, acting through such Deputy Assistant Secretary, shall carry out this section.

(b) Duties

The Secretary shall, with respect to the health concerns of individuals from disadvantaged backgrounds, including racial and ethnic minorities—

(1) establish short-range and long-range goals and objectives and coordinate all other activities within the Department of Health and Human Services that relate to disease prevention, health promotion, service delivery, and research concerning such individuals;

(2) enter into interagency agreements with other agencies of the Service to increase the participation of such individuals in health service and promotion programs;

(3) establish a national minority health resource center to facilitate the exchange of information regarding matters relating to health information and health promotion, preventive health services, and education in the appropriate use of health care, to facilitate access to such information, to assist in the analysis of issues and problems relating to such matters, and to provide technical assistance with respect to the exchange of such information (including facilitating the development of materials for such technical assistance);

(4) support research, demonstrations and evaluations to test new and innovative models, to increase knowledge and understanding of health risk factors, and to develop mechanisms that support better information dissemination, education, prevention, and service delivery to individuals from disadvantaged backgrounds, including racial and ethnic minorities;

(5) coordinate efforts to promote minority health programs and policies in the voluntary and corporate sectors;

(6) develop health information and health promotion materials and teaching programs, including—

(A) models for the training of health professionals;

(B) model curriculums to be used in primary and secondary schools and institutions of higher learning;

(C) materials and programs for the continuing education of health professionals;

(D) materials for public service use by the print and broadcast media; and

(E) materials and programs to assist health care professionals in providing health education to their patients;

(7) assist providers of primary health care and preventive health services in obtaining, with respect to the provision of such care and services, the assistance of bilingual health professionals and other bilingual individuals (including such assistance in the provision of services regarding maternal and child health, nutrition, mental health, and substance abuse); and

(8) support expansion and enhancement of tertiary perinatal facilities in rural States with infant mortality rates among individuals from disadvantaged backgrounds, including minorities, that are significantly above the national average for such rates.

(c) Certain requirements regarding duties

(1) Equitable allocation of services

In carrying out subsection (b) of this section, the Secretary shall ensure that services provided under such subsection are equitably allocated among all groups served under this section by the Secretary.

(2) Appropriate context of services

In carrying out subsection (b) of this section, the Secretary shall ensure that information and services provided under such subsection are provided in the language and cultural context that is most appropriate for the individuals for whom the information and services are intended.

(3) Bilingual assistance regarding health care

In carrying out subsection (b)(7) of this section, the Secretary shall give special consideration to the unique linguistic needs of health care providers serving Asians, and American Samoans and other Pacific Islanders, including such needs regarding particular subpopulations of such groups.

(d) Grants and contracts regarding duties

(1) Authority

In carrying out subsection (b) of this section, the Secretary may make grants to, and enter into cooperative agreements and contracts with, public and nonprofit private entities.

(2) Evaluation and dissemination

(A) The Secretary shall, directly or through contracts with public and private entities, provide for evaluations of projects carried out with financial assistance provided under paragraph (1) and for the dissemination of information developed as result of such projects.

(B) Not later than January 20 of fiscal year 1993 and of each second year thereafter, the Secretary shall prepare a report summarizing evaluations carried out under subparagraph (A) during the preceding 2 fiscal years. The report shall be included in the report required in subsection (e) of this section for the fiscal year involved.

(e) Reports

Not later than January 31 of fiscal year 1993 and of each second year thereafter, the Secretary shall submit to the Congress a report describing the activities carried out under this section during the preceding 2 fiscal years.

(f) Funding

(1) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $25,000,000 for each of the fiscal year[1] 1991 through 1993.

(2) Allocation of funds by Secretary

Of the amounts appropriated under paragraph (1) in excess of $15,000,000, the Secretary shall make available not less than $3,000,000 to carry out subsection (b)(7) of this section.

(July 1, 1944, ch. 373, title XVII, §1707, as added Nov. 6, 1990, Pub. L. 101–527, §2, 104 Stat. 2312; amended Nov. 15, 1990, Pub. L. 101–557, title IV, §401(a)(1), 104 Stat. 2770.)

PRIOR PROVISIONS

A prior section 300u–6, act July 1, 1944, ch. 373, title XVII, §1707, as added Nov. 10, 1978, Pub. L. 95–626, title V, §502, 92 Stat. 3593; amended July 10, 1979, Pub. L. 96–32, §6(k), 93 Stat. 84, related to project grants to State Councils on Physical Fitness for physical fitness improvement, prior to repeal by Pub. L. 98–551, §2(c), Oct. 30, 1984, 98 Stat. 2816.

AMENDMENTS

1990—Subsec. (b)(8). Pub. L. 101–557 added par. (8).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 401(a)(2) of Pub. L. 101–557 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of the Disadvantaged Minority Health Improvement Act of 1990 [Nov. 6, 1990].''

CONGRESSIONAL FINDINGS

Section 1(b) of Pub. L. 101–527 provided that: ''The Congress finds that—

''(1) racial and ethnic minorities are disproportionately represented among individuals from disadvantaged backgrounds;

''(2) the health status of individuals from disadvantaged backgrounds, including racial and ethnic minorities, in the United States is significantly lower than the health status of the general population of the United States;

''(3) minorities suffer disproportionately high rates of cancer, stroke, heart diseases, diabetes, substance abuse, acquired immune deficiency syndrome, and other diseases and disorders;

''(4) the incidence of infant mortality among minorities is almost double that for the general population;

''(5) Blacks, Hispanics, and Native Americans constitute approximately 12 percent, 7.9 percent, and 0.01 percent, respectively, of the population of the United States;

''(6) Blacks, Hispanics, and Native Americans in the United States constitute approximately 3 percent, 4 percent, and less than 0.01 percent, respectively, of physicians, 2.7 percent, 1.7 percent, and less than 0.01 percent, respectively, of dentists, and 4.5 percent, 1.6 percent, and less than 0.01 percent, respectively, of nurses;

''(7) the number of individuals who are from disadvantaged backgrounds in health professions should be increased for the purpose of improving the access of other such individuals to health services;

''(8) minority health professionals have historically tended to practice in low-income areas and to serve minorities;

''(9) minority health professionals have historically tended to engage in the general practice of medicine and specialties providing primary care;

''(10) reports published in leading medical journals indicate that access to health care among minorities can be substantially improved by increasing the number of minority health professionals;

''(11) increasing the number of minorities serving on the faculties of health professions schools can be an important factor in attracting minorities to pursue a career in the health professions;

''(12) diversity in the faculty and student body of health professions schools enhances the quality of education for all students attending the schools;

''(13) the Report of the Secretary's Task Force on Black and Minority Health (prepared for the Secretary of Health and Human Services and issued in 1985) described the health status problems of minorities, and made recommendations concerning measures that should be implemented by the Secretary with respect to improving the health status of minorities through programs for providing health information and education; and

''(14) the Office of Minority Health, created in 1985 by the Secretary of Health and Human Services, should be authorized pursuant to statute and should receive increased funding to support efforts to improve the health of individuals from disadvantaged backgrounds, including minorities, including the implementation of the recommendations made by the Secretary's Task Force on Black and Minority Health.''

§ 300u–7. Office of Adolescent Health

(a) In general

There is established an Office of Adolescent Health within the Office of the Assistant Secretary for Health, which office[1] shall be headed by a director[1] appointed by the Secretary. The Secretary shall carry out this section acting through the Director of such Office.

(b) Duties

With respect to adolescent health, the Secretary shall—

(1) coordinate all activities within the Department of Health and Human Services that relate to disease prevention, health promotion, preventive health services, and health information and education with respect to the appropriate use of health care, including coordinating—

(A) the design of programs, support for programs, and the evaluation of programs;

(B) the monitoring of trends;

(C) projects of research (including multidisciplinary projects) on adolescent health; and

(D) the training of health providers who work with adolescents, particularly nurse

[1] So in original. Probably should be ''years''.

[1] So in original. Probably should be capitalized.

practitioners, physician assistants, and social workers;

(2) coordinate the activities described in paragraph (1) with similar activities in the private sector; and

(3) support projects, conduct research, and disseminate information relating to preventive medicine, health promotion, and physical fitness and sports medicine.

(c) Certain demonstration projects

(1) In general

In carrying out subsection (b)(3) of this section, the Secretary may make grants to carry out demonstration projects for the purpose of improving adolescent health, including projects to train health care providers in providing services to adolescents and projects to reduce the incidence of violence among adolescents, particularly among minority males.

(2) Authorization of appropriations

For the purpose of carrying out paragraph (1), there are authorized to be appropriated $5,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1997.

(d) Information clearinghouse

In carrying out subsection (b) of this section, the Secretary shall establish and maintain a National Information Clearinghouse on Adolescent Health to collect and disseminate to health professionals and the general public information on adolescent health.

(e) National plan

In carrying out subsection (b) of this section, the Secretary shall develop a national plan for improving adolescent health. The plan shall be consistent with the applicable objectives established by the Secretary for the health status of the people of the United States for the year 2000, and shall be periodically reviewed, and as appropriate, revised. The plan, and any revisions in the plan, shall be submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(f) Adolescent health

For purposes of this section, the term ''adolescent health'', with respect to adolescents of all ethnic and racial groups, means all diseases, disorders, and conditions (including with respect to mental health)—

(1) unique to adolescents, or more serious or more prevalent in adolescents;

(2) for which the factors of medical risk or types of medical intervention are different for adolescents, or for which it is unknown whether such factors or types are different for adolescents; or

(3) with respect to which there has been insufficient clinical research involving adolescents as subjects or insufficient clinical data on adolescents.

(July 1, 1944, ch. 373, title XVII, §1708, as added Oct. 27, 1992, Pub. L. 102–531, title III, §302, 106 Stat. 3483.)

PRIOR PROVISIONS

A prior section 300u–7, act July 1, 1944, ch. 373, title XVII, §1708, as added Nov. 10, 1978, Pub. L. 95–626, title V, §502, 92 Stat. 3594; amended July 10, 1979, Pub. L. 96–32, §6(*l*), 93 Stat. 84, related to project grants for physical fitness improvement and research projects, prior to repeal by Pub. L. 98–551, §2(c), Oct. 30, 1984, 98 Stat. 2816.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 300u–8. Biennial report regarding nutrition and health

(a) Biennial report

The Secretary shall require the Surgeon General of the Public Health Service to prepare biennial reports on the relationship between nutrition and health. Such reports may, with respect to such relationship, include any recommendations of the Secretary and the Surgeon General.

(b) Submission to Congress

The Secretary shall ensure that, not later than February 1 of 1995 and of every second year thereafter, a report under subsection (a) of this section is submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(July 1, 1944, ch. 373, title XVII, §1709, as added Dec. 14, 1993, Pub. L. 103–183, title VII, §704, 107 Stat. 2240.)

PRIOR PROVISIONS

A prior section 300u–8, act July 1, 1944, ch. 373, title XVII, §1709, as added Nov. 10, 1978, Pub. L. 95–626, title V, §502, 92 Stat. 3594, related to establishment of national program on sports medicine research, prior to repeal by Pub. L. 98–551, §2(c), Oct. 30, 1984, 98 Stat. 2816.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 300u–9. Repealed. Pub. L. 98–551, §2(c), Oct. 30, 1984, 98 Stat. 2816

Section, act July 1, 1944, ch. 373, title XVII, §1710, as added Nov. 10, 1978, Pub. L. 95–626, title V, §502, 92 Stat. 3594; amended Oct. 17, 1979, Pub. L. 96–88, title III, §301(b)(2), title V, §507, 93 Stat. 678, 692, related to Conference on Education in Lifetime Sports.

SUBCHAPTER XVI—PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIOR RESEARCH

§ 300v. Commission

(a) Establishment; composition; appointment of members; vacancies

(1) There is established the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (hereinafter in this subchapter referred to as the ''Commission'') which shall be composed of eleven members appointed by the President. The members of the Commission shall be appointed as follows:

(A) Three of the members shall be appointed from individuals who are distinguished in biomedical or behavioral research.

(B) Three of the members shall be appointed from individuals who are distinguished in the practice of medicine or otherwise distinguished in the provision of health care.

(C) Five of the members shall be appointed from individuals who are distinguished in one or more of the fields of ethics, theology, law, the natural sciences (other than a biomedical or behavioral science), the social sciences, the humanities, health administration, government, and public affairs.

(2) No individual who is a full–time officer or employee of the United States may be appointed as a member of the Commission. The Secretary of Health and Human Services, the Secretary of Defense, the Director of Central Intelligence, the Director of the Office of Science and Technology Policy, the Secretary of Veterans Affairs, and the Director of the National Science Foundation shall each designate an individual to provide liaison with the Commission.

(3) No individual may be appointed to serve as a member of the Commission if the individual has served for two terms of four years each as such a member.

(4) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(b) Terms of members

(1) Except as provided in paragraphs (2) and (3), members shall be appointed for terms of four years.

(2) Of the members first appointed—

(A) four shall be appointed for terms of three years, and

(B) three shall be appointed for terms of two years,

as designated by the President at the time of appointment.

(3) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(c) Chairman

The Chairman of the Commission shall be appointed by the President, by and with the advice and consent of the Senate, from members of the Commission.

(d) Meetings

(1) Seven members of the Commission shall constitute a quorum for business, but a lesser number may conduct hearings.

(2) The Commission shall meet at the call of the Chairman or at the call of a majority of its members.

(e) Compensation; travel expenses, etc.

(1) Members of the Commission shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

(July 1, 1944, ch. 373, title XVIII, § 1801, as added Nov. 9, 1978, Pub. L. 95–622, title III, § 301, 92 Stat. 3437; amended Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Oct. 25, 1988, Pub. L. 100–527, § 10(1), 102 Stat. 2640.)

AMENDMENTS

1988—Subsec. (a)(2). Pub. L. 100–527 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(2) pursuant to section 509(b) of Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

APPOINTMENT OF INITIAL MEMBERS

Section 302(a) of Pub. L. 95–622 directed President to initially appoint members to President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (established under the amendment made by section 301) [enacting this subchapter] not later than 90 days after Nov. 9, 1978.

EXECUTIVE ORDER NO. 12184

Ex. Ord. No. 12184, Dec. 17, 1979, 44 F.R. 75091, which established the President's Special Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

§ 300v–1. Duties of Commission

(a) Studies and investigations; priority and order; report to President and Congress

(1) The Commission shall undertake studies of the ethical and legal implications of—

(A) the requirements for informed consent to participation in research projects and to otherwise undergo medical procedures;

(B) the matter of defining death, including the advisability of developing a uniform definition of death;

(C) voluntary testing, counseling, and information and education programs with respect to genetic diseases and conditions, taking into account the essential equality of all human beings, born and unborn;

(D) the differences in the availability of health services as determined by the income or residence of the persons receiving the services;

(E) current procedures and mechanisms designed (i) to safeguard the privacy of human subjects of behavioral and biomedical research, (ii) to ensure the confidentiality of individually identifiable patient records, and (iii) to ensure appropriate access of patients to information continued[1] in such records,[2] and

(F) such other matters relating to medicine or biomedical or behavioral research as the President may designate for study by the Commission.

The Commission shall determine the priority and order of the studies required under this paragraph.

(2) The Commission may undertake an investigation or study of any other appropriate matter which relates to medicine or biomedical or behavioral research (including the protection of human subjects of biomedical or behavioral research) and which is consistent with the purposes of this subchapter on its own initiative or at the request of the head of a Federal agency.

(3) In order to avoid duplication of effort, the Commission may, in lieu of, or as part of, any study or investigation required or otherwise conducted under this subsection, use a study or investigation conducted by another entity if the Commission sets forth its reasons for such use.

(4) Upon the completion of each investigation or study undertaken by the Commission under this subsection (including a study or investigation which merely uses another study or investigation), it shall report its findings (including any recommendations for legislation or administrative action) to the President and the Congress and to each Federal agency to which a recommendation in the report applies.

(b) Recommendations to agencies; subsequent administrative requirements

(1) Within 60 days of the date a Federal agency receives a recommendation from the Commission that the agency take any action with respect to its rules, policies, guidelines, or regulations, the agency shall publish such recommendation in the Federal Register and shall provide opportunity for interested persons to submit written data, views, and arguments with respect to adoption of the recommendation.

(2) Within the 180-day period beginning on the date of such publication, the agency shall determine whether the action proposed by such recommendation is appropriate, and, to the extent that it determines that—

(A) such action is not appropriate, the agency shall, within such time period, provide the Commission with, and publish in the Federal Register, a notice of such determination (including an adequate statement of the reasons for the determination), or

(B) such action is appropriate, the agency shall undertake such action as expeditiously as feasible and shall notify the Commission of the determination and the action undertaken.

(c) Report on protection of human subjects; scope; submission to President, etc.

The Commission shall biennially report to the President, the Congress, and appropriate Federal agencies on the protection of human subjects of biomedical and behavioral research. Each such report shall include a review of the adequacy and uniformity (1) of the rules, policies, guidelines, and regulations of all Federal agencies regarding the protection of human subjects of biomedical or behavioral research which such agencies conduct or support, and (2) of the implementation of such rules, policies, guidelines, and regulations by such agencies, and may include such recommendations for legislation and administrative action as the Commission deems appropriate.

(d) Annual report; scope; submission to President, etc.

Not later than December 15 of each year (beginning with 1979) the Commission shall report to the President, the Congress, and appropriate Federal agencies on the activities of the Commission during the fiscal year ending in such year. Each such report shall include a complete list of all recommendations described in subsection (b)(1) of this section made to Federal agencies by the Commission during the fiscal year and the actions taken, pursant[3] to subsection (b)(2) of this section, by the agencies upon such recommendations, and may include such recommendations for legislation and administrative action as the Commission deems appropriate.

(e) Publication and dissemination of reports

The Commission may at any time publish and disseminate to the public reports respecting its activities.

(f) Definitions

For purposes of this section:

(1) The term ''Federal agency'' means an authority of the government of the United States, but does not include (A) the Congress, (B) the courts of the United States, and (C) the government of the Commonwealth of Puerto Rico, the government of the District of Columbia, or the government of any territory or possession of the United States.

(2) The term ''protection of human subjects'' includes the protection of the health, safety, and privacy of individuals.

(July 1, 1944, ch. 373, title XVIII, § 1802, as added Nov. 9, 1978, Pub. L. 95–622, title III, § 301, 92 Stat. 3439; amended July 10, 1979, Pub. L. 96–32, § 4, 93 Stat. 82.)

AMENDMENTS

1979—Subsec. (f). Pub. L. 96–32 redesignated definitions subsection following subsec. (e) as (f), which in original was designated as ''(b)''.

§ 300v–2. Administrative provisions

(a) Hearings

The Commission may for the purpose of carrying out this subchapter hold such hearings, sit and act at such times and places, take such tes-

[1] So in original. Probably should be ''contained''.

[2] So in original. The comma probably should be a semicolon.

[3] So in original. Probably should be ''pursuant''.

timony, and receive such evidence, as the Commission may deem advisable.

(b) Appointment and compensation of staff personnel; procurement and compensation of temporary and intermittent services; detail of personnel from other Federal agencies

(1) The Commission may appoint and fix the pay of such staff personnel as it deems desirable. Such personnel shall be appointed subject to the provisions of title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS–18 of the General Schedule.

(3) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under this subchapter.

(c) Contracting authority

The Commission, in performing its duties and functions under this subchapter, may enter into contracts with appropriate public or nonprofit private entities. The authority of the Commission to enter into such contracts is effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(d) Informational requirements and prohibitions

(1) The Commission may secure directly from any Federal agency information necessary to enable it to carry out this subchapter. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

(2) The Commission shall promptly arrange for such security clearances for its members and appropriate staff as are necessary to obtain access to classified information needed to carry out its duties under this subchapter.

(3) The Commission shall not disclose any information reported to or otherwise obtained by the Commission which is exempt from disclosure under subsection (a) of section 552 of title 5 by reason of paragraphs (4) and (6) of subsection (b) of such section.

(e) Support services from Administrator of General Services

The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(July 1, 1944, ch. 373, title XVIII, §1803, as added Nov. 9, 1978, Pub. L. 95–622, title III, §301, 92 Stat. 3440.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b)(1), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, §101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

§ 300v–3. Authorization of appropriations; termination of Commission

(a) To carry out this subchapter there are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1979, $5,000,000 for the fiscal year ending September 30, 1980, $5,000,000 for the fiscal year ending September 30, 1981, and $5,000,000 for the fiscal year ending September 30, 1982.

(b) The Commission shall be subject to the Federal Advisory Committee Act, except that, under section 14(a)(1)(B) of such Act, the Commission shall terminate on December 31, 1982.

(July 1, 1944, ch. 373, title XVIII, §1804, as added Nov. 9, 1978, Pub. L. 95–622, title III, §301, 92 Stat. 3441.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER XVII—BLOCK GRANTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 247b–6, 256d, 3013, 8623 of this title; title 31 section 6703.

PART A—PREVENTIVE HEALTH AND HEALTH SERVICES BLOCK GRANTS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 9875 of this title; title 25 section 1680h.

§ 300w. Authorization of appropriations

(a) For the purpose of allotments under section 300w–1 of this title, there are authorized to be appropriated $205,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 through 1998.

(b) Of the amount appropriated for any fiscal year under subsection (a) of this section, at least $7,000,000 shall be made available for allotments under section 300w–1(b) of this title.

(July 1, 1944, ch. 373, title XIX, §1901, as added Aug. 13, 1981, Pub. L. 97–35, title IX, §901, 95 Stat. 535; amended Oct. 30, 1984, Pub. L. 98–555, §4, 98 Stat. 2855; Nov. 4, 1988, Pub. L. 100–607, title III, §301(a), 102 Stat. 3111; Oct. 27, 1992, Pub. L. 102–531, title I, §101, 106 Stat. 3469; Dec. 14, 1993, Pub. L. 103–183, title VII, §705(e), 107 Stat. 2241.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–183 substituted ''through 1998'' for ''through 1997''.

1992—Subsec. (a). Pub. L. 102–531, §101(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''For the purpose of allotments under section 300w–1 of this title, there is authorized to be appropriated $95,000,000 for fiscal year 1982, $96,500,000 for

fiscal year 1983, $98,500,000 for fiscal year 1984, $98,500,000 for the fiscal year ending September 30, 1985, $98,500,000 for the fiscal year ending September 30, 1986, $98,500,000 for the fiscal year ending September 30, 1987, $110,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991.''

Subsec. (b). Pub. L. 102–531, § 101(b), substituted ''$7,000,000'' for ''$3,500,000''.

1988—Subsec. (a). Pub. L. 100–607 struck out ''and'' after ''1986,'' and inserted '', $110,000,000 for fiscal year 1989, and such sums as may be necessary for each of the fiscal years 1990 and 1991'' before period at end.

1984—Subsec. (a). Pub. L. 98–555, § 4(a), inserted provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, 1986, and 1987.

Subsec. (b). Pub. L. 98–555, § 4(b), substituted ''$3,500,000'' for ''$3,000,000''.

EFFECTIVE DATE

Section 901 of Pub. L. 97–35 provided in part that this subchapter is effective Oct. 1, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300w–1 of this title.

§ 300w–1. Allotments

(a) Availability based upon prior year distributions

(1) From the amounts appropriated under section 300w of this title for any fiscal year and available for allotment under this subsection, the Secretary shall allot to each State an amount which bears the same ratio to the available amounts for that fiscal year as the amounts provided by the Secretary under the provisions of law listed in paragraph (2) to the State and entities in the State for fiscal year 1981 bore to the total amount appropriated for such provisions of law for fiscal year 1981.

(2) The provisions of law referred to in paragraph (1) are the following provisions of law as in effect on September 30, 1981:

(A) The authority for grants under section 247b of this title for preventive health service programs for the control of rodents.

(B) The authority for grants under section 247b of this title for establishing and maintaining community and school-based fluoridation programs.

(C) The authority for grants under section 247b of this title for preventive health service programs for hypertension.

(D) Sections 247b–1[1] and 247b–2 of this title.

(E) Section 246(d)[1] of this title.

(F) Section 255(a)[1] of this title.

(G) Sections 300d–1,[1] 300d–2,[1] and 300d–3[1] of this title.

(b) Population

From the amount required to be made available under section 300w(b) of this title for allotments under this subsection for any fiscal year, the Secretary shall make allotments to each State on the basis of the population of the State.

(c) Distribution of appropriated funds not allotted

To the extent that all the funds appropriated under section 300w of this title for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—

(1) one or more States have not submitted an application or description of activities in accordance with section 300w–4 of this title for the fiscal year;

(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

(3) some State allotments are offset or repaid under section 300w–5(b)(3) of this title;

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subsection.

(d) Distributions to Indian tribes

(1) If the Secretary—

(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this part be provided directly by the Secretary to such tribe or organization, and

(B) determines that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this part,

the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) of this section for the fiscal year the amount determined under paragraph (2).

(2) The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to such State under subsection (a) of this section an amount equal to the amount which bears the same ratio to the State's allotment for the fiscal year involved as the total amount provided or allotted for fiscal year 1981 by the Secretary to such tribe or tribal organization under the provisions of law referred to in subsection (a) of this section bore to the total amount provided or allotted for such fiscal year by the Secretary to the State and entities (including Indian tribes and tribal organizations) in the State under such provisions of law.

(3) The amount reserved by the Secretary on the basis of a determination under this subsection shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(4) In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.

(5) The terms ''Indian tribe'' and ''tribal organization'' have the same meaning given such terms in section 450b(b) and (c)[2] of title 25.

(e) Report on equitable distribution of available funds

The Secretary shall conduct a study for the purpose of devising a formula for the equitable distribution of funds available for allotment to the States under this section. In conducting the study, the Secretary shall take into account—

(1) the financial resources of the various States,

[1] See References in Text note below.

[2] See References in Text note below.

(2) the populations of the States, and

(3) any other factor which the Secretary may consider appropriate.

Before June 30, 1982, the Secretary shall submit a report to the Congress respecting the development of a formula and make such recommendations as the Secretary may deem appropriate in order to ensure the most equitable distribution of funds under allotments under this section.

(July 1, 1944, ch. 373, title XIX, § 1902, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 535.)

REFERENCES IN TEXT

Section 247b–1 of this title, referred to in subsec. (a)(2)(D), was in the original a reference to section 401 of the Health Services and Centers Amendments of 1978, Pub. L. 95–626, which was repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(a), (h), Aug. 13, 1981, 95 Stat. 559, 561. Pub. L. 100–572, § 3, Oct. 31, 1988, 102 Stat. 2887, enacted section 317A of act July 1, 1944, which is classified to section 247b–1 of this title.

Section 247b–2 of this title, referred to in subsec. (a)(2)(D), was repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(a), (h), Aug. 13, 1981, 95 Stat. 559, 561.

Section 246(d) of this title, referred to in subsec. (a)(2)(E), was repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(b), (h), Aug. 13, 1981, 95 Stat. 559, 561.

Section 255 of this title, referred to in subsec. (a)(2)(F), was in the original a reference to section 339 of act July 1, 1944, which was repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(b), (h), Aug. 13, 1981, 95 Stat. 559, 561. Pub. L. 97–414, § 6(a), Jan. 4, 1983, 96 Stat. 2057, added a new section 339 of act July 1, 1944, which is classified to section 255 of this title.

Sections 300d–1, 300d–2, and 300d–3 of this title, referred to in subsec. (a)(2)(G), were in the original references to sections 1202, 1203, and 1204, respectively, of act July 1, 1944, which were repealed effective Oct. 1, 1981, by Pub. L. 97–35, title IX, § 902(d)(1), (h), Aug. 13, 1981, 95 Stat. 560, 561. Pub. L. 101–590, § 3, Nov. 16, 1990, 104 Stat. 2916–2918, enacted new sections 1202, 1203, and 1204 of act July 1, 1944, which were classified to sections 300d–1, 300d–2, and 300d–3, respectively, of this title. Pub. L. 103–183, title VI, § 601(b), Dec. 14, 1983, 107 Stat. 2238, repealed section 1202 and renumbered sections 1203 and 1204 as 1202 and 1203, respectively.

Section 450b of title 25, referred to in subsec. (d)(5), has been amended, and subsecs. (b) and (c) of section 450b no longer define the terms ''Indian tribe'' and ''tribal organization''. However, such terms are defined elsewhere in that section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300w, 300w–2, 300w–3, 300w–4, 300w–7 of this title.

§ 300w–2. Payments under allotments to States

(a)(1) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, to each State from its allotment under section 300w–1 of this title (other than any amount reserved under section 300w–1(d) of this title) from amounts appropriated for that fiscal year.

(2) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

(b) The Secretary, at the request of a State, may reduce the amount of payments under subsection (a) of this section by—

(1) the fair market value of any supplies or equipment furnished the State, and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the State and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of supplies or equipment or the detail of an officer or employee is for the convenience of and at the request of the State and for the purpose of conducting activities described in section 300w–3 of this title. The amount by which any payment is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which the reduction of the payment is based, and the amount shall be deemed to be part of the payment and shall be deemed to have been paid to the State.

(July 1, 1944, ch. 373, title XIX, § 1903, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 537.)

CODIFICATION

In subsec. (a)(1), ''section 6503(a) of title 31'' substituted for ''section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300w–3, 300w–4, 300w–5, 9875 of this title.

§ 300w–3. Use of allotments

(a) Preventive health services, comprehensive public health services, emergency medical services, etc.

(1) Except as provided in subsections (b) and (c) of this section, payments made to a State under section 300w–2 of this title may be used for the following:

(A) Activities consistent with making progress toward achieving the objectives established by the Secretary for the health status of the population of the United States for the year 2000 (in this part referred to as ''year 2000 health objectives'').

(B) Preventive health service programs for the control of rodents and for community and school-based fluoridation programs.

(C) Feasibility studies and planning for emergency medical services systems and the establishment, expansion, and improvement of such systems. Amounts for such systems may not be used for the costs of the operation of the systems or the purchase of equipment for the systems, except that such amounts may be used for the payment of not more than 50 percent of the costs of purchasing communications equipment for the systems. Amounts may be expended for feasibility studies or planning for the trauma-care components of such systems only if the studies or planning, respectively, is consistent with the requirements of section 300d–13(a) of this title.

(D) Providing services to victims of sex offenses and for prevention of sex offenses.

(E) With respect to activities described in any of subparagraphs (A) through (D), related

planning, administration, and educational activities.

(F) Monitoring and evaluation of activities carried out under any of subparagraphs (A) through (E)[1]

(2) Except as provided in subsection (b) of this section, amounts paid to a State under section 300w–2 of this title from its allotment under section 300w–1(b) of this title may only be used for providing services to rape victims and for rape prevention.

(3) The Secretary may provide technical assistance to States in planning and operating activities to be carried out under this part.

(b) Prohibited uses

A State may not use amounts paid to it under section 300w–2 of this title to—

(1) provide inpatient services,

(2) make cash payments to intended recipients of health services,

(3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment,

(4) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds, or

(5) provide financial assistance to any entity other than a public or nonprofit private entity.

Except as provided in subsection (a)(1)(E) of this section, the Secretary may waive the limitation contained in paragraph (3) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this part.

(c) Transfer of funds

A State may transfer not more than 7 percent of the amount allotted to the State under section 300w–1(a) of this title for any fiscal year for use by the State under part B of this subchapter and title V of the Social Security Act [42 U.S.C. 701 et seq.] in such fiscal year as follows: At any time in the first three quarters of the fiscal year a State may transfer not more than 3 percent of the allotment of the State for the fiscal year for such use, and in the last quarter of a fiscal year a State may transfer for such use not more than the remainder of the amount of its allotment which may be transferred.

(d) Limitation on administrative costs

Of the amount paid to any State under section 300w–2 of this title, not more than 10 percent paid from each of its allotments under subsections (a) and (b) of section 300w–1 of this title may be used for administering the funds made available under section 300w–2 of this title. The State will pay from non-Federal sources the remaining costs of administering such funds.

(July 1, 1944, ch. 373, title XIX, § 1904, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 537; amended Jan. 4, 1983, Pub. L. 97–414, § 8(s), 96 Stat. 2062; Nov. 10, 1986, Pub. L. 99–646, § 87(d)(1)(A), 100 Stat. 3623; Nov. 14, 1986, Pub. L. 99–654, § 3(b)(1)(A), 100 Stat. 3663; Nov. 4, 1988, Pub. L. 100–607, title III, § 301(b), 102 Stat. 3111; Oct. 27, 1992, Pub. L. 102–531, title I, § 102, 106 Stat. 3470.)

[1] So in original. Probably should be followed by a period.

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title V of the Social Security Act is classified generally to subchapter V (§ 701 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–531, § 102(a), amended par. (1) generally, substituting present provisions for provisions authorizing, except as provided in subsecs. (b) and (c), use of the amounts paid to a State under section 300w–2 of this title from its allotment under section 300w–1(a) of this title and amounts transferred by the State, for use in preventive health service programs, including hypertension and high cholesterol services, health-risk reduction programs, immunization services, home health agencies, emergency medical services, services to victims of sex offenses, and uterine cancer and breast cancer services.

Subsec. (c). Pub. L. 102–531, § 102(b), substituted ''part B'' for ''parts B and C''.

1988—Subsec. (a)(1)(B). Pub. L. 100–607, § 301(b)(1), inserted ''and elevated serum cholesterol'' before period at end.

Subsec. (a)(1)(C). Pub. L. 100–607, § 301(b)(2), inserted '', including programs designed to reduce the incidence of chronic diseases'' before period at end.

Subsec. (a)(1)(D). Pub. L. 100–607, § 301(b)(3), inserted '', including immunization services'' before period at end.

Subsec. (a)(1)(F). Pub. L. 100–607, § 301(b)(4), substituted ''systems, except that such amounts may be used for the payment of not more than 50 percent of the costs of purchasing communications equipment for the systems'' for ''systems (other than systems with respect to which grants were made as prescribed by section 300w–4(c)(2) of this title)''.

Subsec. (a)(1)(H). Pub. L. 100–607, § 301(b)(5), added subpar. (H).

1986—Subsec. (a)(1)(G). Pub. L. 99–646 and Pub. L. 99–654 amended subpar. (G) identically, substituting ''victims of sex offenses and for prevention of sex offenses'' for ''rape victims and for rape prevention''.

1983—Subsec. (a)(1)(F). Pub. L. 97–414 inserted ''(other than systems with respect to which grants were made as prescribed by section 300w–4(c)(2) of this title)'' after ''equipment for the systems''.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99–646 and Pub. L. 99–654 effective 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, respectively, see section 87(e) of Pub. L. 99–646 and section 4 of Pub. L. 99–654, set out as an Effective Date note under section 2241 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300w–2, 300w–4, 300w–5, 300w–9, 300w–10 of this title.

§ 300w–4. Application for payments; State plan

(a) In general

The Secretary may make payments under section 300w–2 of this title to a State for a fiscal year only if—

(1) the State submits to the Secretary an application for the payments;

(2) the application contains a State plan in accordance with subsection (b) of this section;

(3) the application contains the certification described in subsection (c) of this section;

(4) the application contains such assurances as the Secretary may require regarding the compliance of the State with the requirements of this part (including assurances regarding compliance with the agreements described in subsection (c) of this section); and

(5) the application is in such form and is submitted by such date as the Secretary may require.

(b) State plan

A State plan required in subsection (a)(2) of this section for a fiscal year is in accordance with this subsection if the plan meets the following conditions:

(1) The plan is developed by the State agency with principal responsibility for public health programs, in consultation with the advisory committee established pursuant to subsection (c)(2) of this section.

(2) The plan specifies the activities authorized in section 300w–3 of this title that are to be carried out with payments made to the State under section 300w–2 of this title, including a specification of the year 2000 health objectives for which the State will expend the payments.

(3) The plan specifies the populations in the State for which such activities are to be carried out.

(4) The plan specifies any populations in the State that have a disparate need for such activities.

(5) With respect to each population specified under paragraph (3), the plan contains a strategy for expending such payments to carry out such activities to make progress toward improving the health status of the population, which strategy includes—

(A) a description of the programs and projects to be carried out;

(B) an estimate of the number of individuals to be served by the programs and projects; and

(C) an estimate of the number of public health personnel needed to carry out the strategy.

(6) The plan specifies the amount of such payments to be expended for each of such activities and, with respect to the activity involved—

(A) the amount to be expended for each population specified under paragraph (3); and

(B) the amount to be expended for each population specified under paragraph (4).

(c) State certification

The certification referred to in subsection (a)(3) of this section for a fiscal year is a certification to the Secretary by the chief executive officer of the State involved as follows:

(1)(A) In the development of the State plan required in subsection (a)(2) of this section—

(i) the chief health officer of the State held public hearings on the plan; and

(ii) proposals for the plan were made public in a manner that facilitated comments from public and private entities (including Federal and other public agencies).

(B) The State agrees that, if any revisions are made in such plan during the fiscal year, the State will, with respect to the revisions, hold hearings and make proposals public in accordance with subparagraph (A), and will submit to the Secretary a description of the revisions.

(2) The State has established an advisory committee in accordance with subsection (d) of this section.

(3) The State agrees to expend payments under section 300w–2 of this title only for the activities authorized in section 300w–3 of this title.

(4) The State agrees to expend such payments in accordance with the State plan submitted under subsection (a)(2) of this section (with any revisions submitted to the Secretary under paragraph (1)(B)), including making expenditures to carry out the strategy contained in the plan pursuant to subsection (b)(5) of this section.

(5)(A) The State agrees that, in the case of each population for which such strategy is carried out, the State will measure the extent of progress being made toward improving the health status of the population.

(B) The State agrees that—

(i) the State will collect and report data in accordance with section 300w–5(a) of this title; and

(ii) for purposes of subparagraph (A), progress will be measured through use of each of the applicable uniform data items developed by the Secretary under paragraph (2) of such section, or if no such items are applicable, through use of the uniform criteria developed by the Secretary under paragraph (3) of such section.

(6) With respect to the activities authorized in section 300w–3 of this title, the State agrees to maintain State expenditures for such activities at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payments under section 300w–2 of this title.

(7) The State agrees to establish reasonable criteria to evaluate the effective performance of entities that receive funds from such payments and procedures for procedural and substantive independent State review of the failure by the State to provide funds for any such entity.

(8) The State agrees to permit and cooperate with Federal investigations undertaken in accordance with section 300w–6 of this title.

(9) The State has in effect a system to protect from inappropriate disclosure patient and sex offense victim records maintained by the State in connection with an activity funded under this part or by any entity which is receiving payments from the allotment of the State under this part.

(10) The State agrees to provide the officer of the State government responsible for the administration of the State highway safety program with an opportunity to—

(A) participate in the development of any plan by the State relating to emergency medical services, as such plan relates to highway safety; and

(B) review and comment on any proposal by any State agency to use any Federal grant or Federal payment received by the State for the provision of emergency medical services as such proposal relates to highway safety.

(d) State Advisory Committee

(1) In general

For purposes of subsection (c)(2) of this section, an advisory committee is in accordance with this subsection if such committee is known as the State Preventive Health Advisory Committee (in this subsection referred to as the ''Committee'') and the Committee meets the conditions described in the subsequent paragraphs of this subsection.

(2) Duties

A condition under paragraph (1) for a State is that the duties of the Committee are—

(A) to hold public hearings on the State plan required in subsection (a)(2) of this section; and

(B) to make recommendations pursuant to subsection (b)(1) of this section regarding the development and implementation of such plan, including recommendations on—

(i) the conduct of assessments of the public health;

(ii) which of the activities authorized in section 300w–3 of this title should be carried out in the State;

(iii) the allocation of payments made to the State under section 300w–2 of this title;

(iv) the coordination of activities carried out under such plan with relevant programs of other entities; and

(v) the collection and reporting of data in accordance with section 300w–5(a) of this title.

(3) Composition

(A) A condition under paragraph (1) for a State is that the Committee is composed of such members of the general public, and such officials of the health departments of political subdivisions of the State, as may be necessary to provide adequate representation of the general public and of such health departments.

(B) With respect to compliance with subparagraph (A), the membership of advisory committees established pursuant to subsection (c)(2) of this section may include representatives of community-based organizations (including minority community-based organizations), schools of public health, and entities to which the State involved awards grants or contracts to carry out activities authorized in section 300w–3 of this title.

(4) Chair; meetings

A condition under paragraph (1) for a State is that the State public health officer serves as the chair of the Committee, and that the Committee meets not less than twice each fiscal year.

(July 1, 1944, ch. 373, title XIX, § 1905, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 538; amended Oct. 30, 1984, Pub. L. 98–555, § 5(a), (d), 98 Stat. 2855, 2856; Nov. 10, 1986, Pub. L. 99–646, § 87(d)(1)(B), 100 Stat. 3624; Nov. 14, 1986, Pub. L. 99–654, § 3(b)(1)(B), 100 Stat. 3663; Nov. 4, 1988, Pub. L. 100–607, title III, § 301(c), 102 Stat. 3112; Nov. 16, 1990, Pub. L. 101–590, § 4, 104 Stat. 2928; Oct. 27, 1992, Pub. L. 102–531, title I, § 103(a), 106 Stat. 3470.)

AMENDMENTS

1992—Pub. L. 102–531 amended section generally, substituting present provisions for provisions relating to submission and form of application for assistance under this part as well as required assurances, public hearings on proposed use and distribution of funds, certifications by chief executive officer of State, and a description of intended use of funds as well as public access to and revision of such description.

1990—Subsec. (c). Pub. L. 101–590, which directed amendment of subsec. (c) by adding at the end thereof a new par. (7), was executed by adding par. (7) after par. (6) and before the last sentence to reflect the probable intent of Congress.

1988—Subsec. (d). Pub. L. 100–607 inserted at end ''The description shall include a statement of the public health objectives expected to be achieved by the State through the use of the payments the State will receive under section 300w–2 of this title.''

1986—Subsec. (c)(6). Pub. L. 99–646 and Pub. L. 99–654 amended par. (6) identically, substituting ''sex offense'' for ''rape''.

1984—Subsec. (c)(2). Pub. L. 98–555, § 5(a), redesignated par. (3) as (2). Former par. (2), which related to grants for fiscal year 1982, was struck out.

Subsec. (c)(3). Pub. L. 98–555, § 5(a), redesignated par. (5) as (3). Former par. (3) redesignated (2).

Subsec. (c)(4). Pub. L. 98–555, § 5(a), redesignated par. (6) as (4). Former par. (4), which related to grants for preventive health service programs for hypertension, was struck out.

Subsec. (c)(5) to (8). Pub. L. 98–555, § 5(a), redesignated pars. (7) and (8) as (5) and (6), respectively. Former pars. (5) and (6) redesignated (3) and (4), respectively.

Subsec. (e). Pub. L. 98–555, § 5(d), struck out subsec. (e) which related to grants by States.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendments by Pub. L. 99–646 and Pub. L. 99–654 effective 30 days after Nov. 10, 1986, and 30 days after Nov. 14, 1986, respectively, see section 87(e) of Pub. L. 99–646 and section 4 of Pub. L. 99–654, set out as an Effective Date note under section 2241 of Title 18, Crimes and Criminal Procedure.

DELAYED APPLICABILITY OF REQUIREMENT REGARDING ADVISORY COMMITTEES

Section 103(b) of Pub. L. 102–531 provided that: ''With respect to compliance with the requirement established in subsection (c)(2) of section 1905 of the Public Health Service Act [subsec. (c)(2) of this section] (as amended by subsection (a) of this section), a State is deemed, notwithstanding such section, to be in compliance with such requirement if the State establishes an advisory committee in accordance with subsection (d) of such section not later than 180 days after the date of the enactment of this Act [Oct. 27, 1992].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300w–1, 300w–5, 300w–6, 300w–10 of this title.

§ 300w–5. Reports, data, and audits

(a) Annual reports; contents; data collection; copies

(1) For purposes of section 300w–4(c)(5)(B)(i) of this title, a State is collecting and reporting data for a fiscal year in accordance with this subsection if the State submits to the Secretary, not later than February 1 of the succeeding fiscal year, a report that—

(A) describes the purposes for which the State expended payments made to the State under section 300w–2 of this title;

(B) pursuant to section 300w–4(c)(5)(A) of this title, describes the extent of progress made by the State for purposes of such section;

(C) meets the conditions described in the subsequent paragraphs of this subsection; and

(D) contains such additional information regarding activities authorized in section 300w–3 of this title, and is submitted in such form, as the Secretary may require.

(2)(A) The Secretary, in consultation with the States, shall develop sets of data for uniformly defining health status for purposes of the year 2000 health objectives (which sets are in this subsection referred to as ''uniform data sets''). Each of such sets shall consist of one or more categories of information (in this subsection individually referred to as a ''uniform data item''). The Secretary shall develop formats for the uniform collecting and reporting of information on such items.

(B) A condition under paragraph (1)(C) for a fiscal year is that the State involved will, in accordance with the applicable format under subparagraph (A), collect during such year, and include in the report under paragraph (1), the necessary information for one uniform data item from each of the uniform data sets, which items are selected for the State by the Secretary.

(C) In the case of fiscal year 1995 and each subsequent fiscal year, a condition under paragraph (1) for a State is that the State will, in accordance with the applicable format under subparagraph (A), collect during such year, and include in the report under paragraph (1), the necessary information for each of the uniform data sets appropriate to the year 2000 health objectives that the State has, in the State plan submitted under section 300w–4 of this title for the fiscal year, specified as a purpose for which payments under section 300w–2 of this title are to be expended.

(3) The Secretary, in consultation with the States, shall establish criteria for the uniform collection and reporting of data on activities authorized in section 300w–3 of this title with respect to which no uniform data items exist.

(4) A condition under paragraph (1) for a fiscal year is that the State involved will make copies of the report submitted under such paragraph for the fiscal year available for public inspection, and will upon request provide a copy of the report to any individual for a charge not exceeding the cost of providing the copy.

(b) Fiscal control; accounting procedures; annual audits; repayments and offsets; public inspection; Comptroller General evaluations; report to Congress

(1) Each State shall establish fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of and accounting for Federal funds paid to the State under section 300w–2 of this title and funds transferred under section 300w–3(c) of this title for use under this part.

(2) Each State shall annually audit its expenditures from payments received under section 300w–2 of this title. Such State audits shall be conducted by an entity independent of any agency administering a program funded under this part and, in so far as practical, in accordance with the Comptroller General's standards for auditing governmental organizations, programs, activities, and functions. Within 30 days following the date each audit is completed, the chief executive officer of the State shall transmit a copy of that audit to the Secretary.

(3) Each State shall, after being provided by the Secretary with adequate notice and opportunity for a hearing within the State, repay to the United States amounts found not to have been expended in accordance with the requirements of this part or the certification provided by the State under section 300w–4 of this title. If such repayment is not made, the Secretary shall, after providing the State with adequate notice and opportunity for a hearing within the State, offset such amounts against the amount of any allotment to which the State is or may become entitled under this part.

(4) The State shall make copies of the reports and audits required by this section available for public inspection within the State.

(5) The Comptroller General of the United States shall, from time to time, evaluate the expenditures by States of grants under this part in order to assure that expenditures are consistent with the provisions of this part and the certification provided by the State under section 300w–4 of this title.

(6) Not later than October 1, 1990, the Secretary shall report to the Congress on the activities of the States that have received funds under this part and may include in the report any recommendations for appropriate changes in legislation.

(c) Inapplicability of title XVII of Omnibus Budget Reconciliation Act of 1981

Title XVII of the Omnibus Budget Reconciliation Act of 1981 shall not apply with respect to audits of funds allotted under this part.

(July 1, 1944, ch. 373, title XIX, §1906, as added Aug. 13, 1981, Pub. L. 97–35, title IX, §901, 95 Stat. 540; amended Oct. 30, 1984, Pub. L. 98–555, §5(b), (c), 98 Stat. 2855, 2856; Nov. 4, 1988, Pub. L. 100–607, title III, §301(d), 102 Stat. 3112; Oct. 27, 1992, Pub. L. 102–531, title I, §104, 106 Stat. 3473.)

REFERENCES IN TEXT

The Omnibus Budget Reconciliation Act of 1981, referred to in subsec. (c), is Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 357, as amended. Title XVII of the Omnibus Budget Reconciliation Act of 1981 enacted sections 3595, and 4511 to 4514 of Title 5, Government Organization and Employees, amended sections 3393, 3593, 3596, 4501, 4502, 4505, 4506, 7542, 7543, 8340, and 8345 of Title 5, and sections 2003 and 2401 of Title 39, Postal Service, and enacted provisions set out as notes under sections 3595, 4501, 5303, 5343, 8340, and 8345 of Title 5, section 1243 of former Title 31, Money and Finance, and sections 403, 2003, 2004, and 2401 of Title 39. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1992—Pub. L. 102–531, §104(b)(1), substituted ''Reports, data, and audits'' for ''Reports and audits'' in section catchline.

Subsec. (a). Pub. L. 102–531, §104(a), amended subsec. (a) generally, substituting present provisions for provi-

sions requiring an annual report by each State of its activities under this part, outlining the contents of such report, and for providing copies of the report to interested persons.

Subsec. (d). Pub. L. 102–531, § 104(b)(2), struck out subsec. (d) which provided for development of model criteria and forms for collection of data and information on services provided under this part.

1988—Subsec. (a)(3). Pub. L. 100–607, § 301(d)(1), added par. (3).

Subsec. (b)(6). Pub. L. 100–607, § 301(d)(2), substituted ''1990'' for ''1983''.

1984—Subsec. (a)(1)(B). Pub. L. 98–555, § 5(b), substituted ''preventive health and preventive health services programs in the State assisted by funds from allotments under this part, including a summary of the services which were provided, the providers of such services, and the individuals who received such services'' for ''activities of the State under this part''.

Subsec. (d). Pub. L. 98–555, § 5(c), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300w–1, 300w–4, 300w–10, 9875 of this title.

§ 300w–6. Withholding of funds

(a) Prerequisites

(1) The Secretary shall, after adequate notice and an opportunity for a hearing conducted within the affected State, withhold funds from any State which does not use its allotment in accordance with the requirements of this part or the certification provided under section 300w–4 of this title. The Secretary shall withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(2) The Secretary may not institute proceedings to withhold funds under paragraph (1) unless the Secretary has conducted an investigation concerning whether the State has used its allotment in accordance with the requirements of this part or the certification provided under section 300w–4 of this title. Investigations required by this paragraph shall be conducted within the affected State by qualified investigators.

(3) The Secretary shall respond in an expeditious manner to complaints of a substantial or serious nature that a State has failed to use funds in accordance with the requirements of this part or certifications provided under section 300w–4 of this title.

(4) The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the requirements of this part or certifications provided under section 300w–4 of this title.

(b) Investigations

(1) The Secretary shall conduct in several States in each fiscal year investigations of the use of funds received by the States under this part in order to evaluate compliance with the requirements of this part and certifications provided under section 300w–4 of this title.

(2) The Comptroller General of the United States may conduct investigations of the use of funds received under this part by a State in order to insure compliance with the requirements of this part and certifications provided under section 300w–4 of this title.

(c) Availability of books, documents, papers, and records

Each State, and each entity which has received funds from an allotment made to a State under this part, shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(d) Information not readily available

(1) In conducting any investigation in a State, the Secretary or the Comptroller General of the United States may not make a request for any information not readily available to such State or an entity which has received funds from an allotment made to the State under this part or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

(2) Paragraph (1) does not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding.

(July 1, 1944, ch. 373, title XIX, § 1907, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 541.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300w–4, 300w–10, 9875 of this title.

§ 300w–7. Nondiscrimination provisions

(a) Programs and activities receiving Federal financial assistance

(1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under this part are considered to be programs and activities receiving Federal financial assistance.

(2) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this part.

(b) Failure to comply

Whenever the Secretary finds that a State, or an entity that has received a payment from an allotment to a State under section 300w–1 of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period

of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], as may be applicable, or

(3) take such other action as may be provided by law.

(c) Civil actions by Attorney General

When a matter is referred to the Attorney General pursuant to subsection (b)(1) of this section, or whenever he has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(July 1, 1944, ch. 373, title XIX, § 1908, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 542.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1) and (b)(2), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Education Amendments of 1972 is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1001 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1) and (b)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300w–10, 9875 of this title.

§ 300w–8. Criminal penalty for false statements

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payment may be made by a State from funds allotted to the State under this part, or

(2) having knowledge of the occurrence of any event affecting his initial or continued right to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(July 1, 1944, ch. 373, title XIX, § 1909, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 542.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300w–10, 9875 of this title.

§ 300w–9. Emergency medical services for children

(a) Grant authority

For activities in addition to the activities which may be carried out by States under section 300w–3(a)(1)(F)[1] of this title, the Secretary may make grants to States or accredited schools of medicine in States to support a program of demonstration projects for the expansion and improvement of emergency medical services for children who need treatment for trauma or critical care. Any grant made under this subsection shall be for not more than a two-year period, subject to annual evaluation by the Secretary. Only one grant under this subsection may be made in a State (to a State or to a school of medicine in such State) in any fiscal year.

(b) Renewals

The Secretary may renew a grant made under subsection (a) of this section for one additional one-year period only if the Secretary determines that renewal of such grant will provide significant benefits through the collection, analysis, and dissemination of information or data which will be useful to States in which grants under such subsection have not been made.

(c) Definitions

For purposes of this section—

(1) the term ''school of medicine'' has the same meaning as in section 292a(4)[1] of this title; and

(2) the term ''accredited'' has the same meaning as in section 292a(5)[1] of this title.

(d) Authorization of appropriations

To carry out this section, there are authorized to be appropriated $2,000,000 for fiscal year 1985 and for each of the two succeeding fiscal years, $3,000,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, $5,000,000 for each of the fiscal years 1991 and 1992, and such sums as may be necessary for each of the fiscal years 1993 through 1997.

(July 1, 1944, ch. 373, title XIX, § 1910, as added Oct. 30, 1984, Pub. L. 98–555, § 7, 98 Stat. 2856; amended Apr. 7, 1986, Pub. L. 99–272, title XVII, § 17004, 100 Stat. 360; Nov. 4, 1988, Pub. L. 100–607, title III, § 302, 102 Stat. 3112; Nov. 16, 1990, Pub. L. 101–590, § 5, 104 Stat. 2928; Oct. 13, 1992, Pub. L. 102–410, § 11, 106 Stat. 2101.)

REFERENCES IN TEXT

Section 300w–3(a)(1) of this title, referred to in subsec. (a), was amended generally by Pub. L. 102–531, title I, § 102(a), Oct. 27, 1992, 106 Stat. 3470, and, as so amended, provisions formerly appearing in subpar. (F) are contained in subpar. (C).

[1] See References in Text note below.

Section 292a of this title, referred to in subsec. (c), was in the original a reference to section 701 of act July 1, 1944. Section 701 of that Act was omitted in the general revision of subchapter V of this chapter by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. Pub. L. 102–408 enacted a new section 701 of act July 1, 1944, relating to statement of purpose, and a new section 702, relating to scope and duration of loan insurance program, which are classified to sections 292 and 292a, respectively, of this title. For provisions relating to definitions, see section 295p of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–410, § 11(1), substituted ''grants'' for ''not more than four grants in any fiscal year'' after ''Secretary may make'' in first sentence.

Subsec. (d). Pub. L. 102–410, § 11(2), substituted ''$5,000,000'' for ''and $5,000,000'' and inserted before period '', and such sums as may be necessary for each of the fiscal years 1993 through 1997''.

1990—Subsec. (a). Pub. L. 101–590, § 5(1)(A), which directed the substitution of ''grants'' for ''not more that four grants in any fiscal year'' could not be executed because the language to be stricken did not appear in text.

Pub. L. 101–590, § 5(1)(B), struck out ''in such States'' after ''demonstration projects'' in first sentence.

Subsec. (d). Pub. L. 101–590, § 5(2), substituted ''each of the fiscal years 1991 and 1992'' for ''fiscal year 1991''.

1988—Subsec. (a). Pub. L. 100–607, § 302(a), substituted ''shall be for not more than a two-year period, subject to annual evaluation by the Secretary'' for ''shall be for a one-year period''.

Subsec. (d). Pub. L. 100–607, § 302(b), inserted '', $3,000,000 for fiscal year 1989, $4,000,000 for fiscal year 1990, and $5,000,000 for fiscal year 1991'' before period at end.

1986—Subsec. (a). Pub. L. 99–272, § 17004(1), which directed substitution of ''not more than four grants in any fiscal year to States or accredited schools of medicine in States'' for ''grant to not more than four States in any fiscal year'' was made by substituting former phrase for ''grants to not more than four States in any fiscal year'', as the probable intent of Congress.

Pub. L. 99–272, § 17004(2), inserted at end ''Only one grant under this subsection may be made in a State (to a State or to a school of medicine in such State) in any fiscal year.''

Subsec. (b). Pub. L. 99–272, § 17004(3), substituted ''States in which grants under such subsection have not been made'' for ''other States''.

Subsecs. (c), (d). Pub. L. 99–272, § 17004(4), (5), added subsec. (c) and redesignated former subsec. (c) as (d).

§ 300w–10. Use of allotments for rape prevention education

(a) Permitted use

Notwithstanding section 300w–3(a)(1) of this title, amounts transferred by the State for use under this part may be used for rape prevention and education programs conducted by rape crisis centers or similar nongovernmental nonprofit entities for—

(1) educational seminars;

(2) the operation of hotlines;

(3) training programs for professionals;

(4) the preparation of informational materials; and

(5) other efforts to increase awareness of the facts about, or to help prevent, sexual assault, including efforts to increase awareness in underserved racial, ethnic, and language minority communities.

(b) Targeting of education programs

States providing grant monies must ensure that at least 25 percent of the monies are devoted to education programs targeted for middle school, junior high school, and high school students.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) $35,000,000 for fiscal year 1996;

(2) $35,000,000 for fiscal year 1997;

(3) $45,000,000 for fiscal year 1998;

(4) $45,000,000 for fiscal year 1999; and

(5) $45,000,000 for fiscal year 2000.

(d) Limitation

Funds authorized under this section may only be used for providing rape prevention and education programs.

(e) "Rape prevention and education" defined

For purposes of this section, the term ''rape prevention and education'' includes education and prevention efforts directed at offenses committed by offenders who are not known to the victim as well as offenders who are known to the victim.

(f) Terms

The Secretary shall make allotments to each State on the basis of the population of the State, and subject to the conditions provided in this section and sections 300w–3 through 300w–8 of this title.

(July 1, 1944, ch. 373, title XIX, § 1910A, as added Sept. 13, 1994, Pub. L. 103–322, title IV, § 40151, 108 Stat. 1920.)

CODIFICATION

Section 40151 of Pub. L. 103–322, which directed that this section be added at the end of part A of title XIX of the ''Public Health and Human Services Act'', was executed by adding this section at the end of part A of title XIX of the Public Health Service Act, to reflect the probable intent of Congress.

PRIOR PROVISIONS

A prior section 300w–10, act July 1, 1944, ch. 373, title XIX, § 1910A, as added Oct. 30, 1984, Pub. L. 98–555, § 8, 98 Stat. 2856, related to State planning grants, prior to repeal by Pub. L. 100–607, title III, § 303, Nov. 4, 1988, 102 Stat. 3112.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14214 of this title.

PART B—BLOCK GRANTS REGARDING MENTAL HEALTH AND SUBSTANCE ABUSE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 290ff, 300w–3, 6024 of this title; title 7 section 2012.

SUBPART I—BLOCK GRANTS FOR COMMUNITY MENTAL HEALTH SERVICES

§ 300x. Formula grants to States

(a) In general

For the purpose described in subsection (b) of this section, the Secretary, acting through the Director of the Center for Mental Health Services, shall make an allotment each fiscal year for each State in an amount determined in accordance with section 300x–7 of this title. The

Secretary shall make a grant to the State of the allotment made for the State for the fiscal year if the State submits to the Secretary an application in accordance with section 300x–6 of this title.

(b) Purpose of grants

A funding agreement for a grant under subsection (a) of this section is that, subject to section 300x–5 of this title, the State involved will expend the grant only for the purpose of—

(1) carrying out the plan submitted under section 300x–1(a) of this title by the State for the fiscal year involved;

(2) evaluating programs and services carried out under the plan; and

(3) planning, administration, and educational activities related to providing services under the plan.

(July 1, 1944, ch. 373, title XIX, § 1911, as added July 10, 1992, Pub. L. 102–321, title II, § 201(2), 106 Stat. 378.)

PRIOR PROVISIONS

A prior section 300x, act July 1, 1944, ch. 373, title XIX, § 1911, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 543; amended Oct. 19, 1984, Pub. L. 98–509, title I, §§ 101, 106(a), 98 Stat. 2353, 2358; Nov. 18, 1988, Pub. L. 100–690, title II, § 2021, 102 Stat. 4194, authorized appropriations in fiscal years 1990 and 1991 for purpose of carrying out this subpart and section 290aa–11 of this title, prior to repeal by Pub. L. 102–321, § 201(2).

EFFECTIVE DATE

Part effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, and with provision that section 205(a) of Pub. L. 102–321, set out below, regarding allotments made for fiscal year 1992 under this part as in effect on the day before July 10, 1992, applies with respect to the program established in this part, see section 801(b), (d) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

TEMPORARY PROVISIONS REGARDING FUNDING

Section 205 of Pub. L. 102–321, as amended by Pub. L. 102–352, § 2(c), Aug. 26, 1992, 106 Stat. 939; Pub. L. 102–408, title III, § 312, Oct. 13, 1992, 106 Stat. 2091, provided that, with respect to allotments made for fiscal year 1992 under this part, as in effect on the day before July 10, 1992, any portion of the total of such allotments that has not been paid to the States as of the first day of the fourth quarter of such fiscal year be reallotted with the result that the total allotment made for a State for fiscal year 1992 be the amount indicated for the State in a specified table, authorized Secretary of Health and Human Services to make a grant to a State of the reallotment if the State agrees that the grant be subject to all conditions upon which allotments and payments under this part, as in effect on the day before July 10, 1992, are made for fiscal 1992, with specified exceptions, permitted transfers of allotments made in fiscal years 1993 and 1994 between this part and subpart II, section 300x–21 of this title, under certain circumstances, defined terms as used, and directed funding, subject to a limitation, of a program for pregnant and postpartum women for fiscal year 1993.

REPORT ON ALLOTMENT FORMULA

Section 707 of Pub. L. 102–321 directed Secretary of Health and Human Services to enter into a contract with National Academy of Sciences, or if such Academy declines, with another public or nonprofit private agency, for purpose of conducting a study or studies concerning statutory formulae under which funds made available under this section and section 300x–21 of this title are allocated among States and territories, specified findings to be made by the study or studies, directed Secretary to ensure that not later than 6 months after July 10, 1992, the study was completed and a report submitted to Committee on Energy and Commerce of House of Representatives and Committee on Labor and Human Resources of Senate, and directed entity preparing the report to consult with Comptroller General with Comptroller General to review the study after its submittal and within three months make appropriate recommendations concerning such report to such committees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290bb–31, 290ff, 300x–1, 300x–2, 300x–3, 300x–4, 300x–5, 300x–6, 300x–7, 300x–8, 300x–51, 300x–52, 300x–53, 300x–54, 300x–55, 300x–56, 300x–57, 300x–58, 300x–59, 300x–60, 300x–63, 300x–64 of this title.

§ 300x–1. State plan for comprehensive community mental health services for certain individuals

(a) In general

The Secretary may make a grant under section 300x of this title only if—

(1) the State involved submits to the Secretary a plan for providing comprehensive community mental health services to adults with a serious mental illness and to children with a serious emotional disturbance;

(2) the plan meets the criteria specified in subsection (b) of this section; and

(3) the plan is approved by the Secretary.

(b) Criteria for plan

With respect to the provision of comprehensive community mental health services to individuals who are either adults with a serious mental illness or children with a serious emotional disturbance, the criteria referred to in subsection (a) of this section regarding a plan are as follows:

(1) The plan provides for the establishment and implementation of an organized community-based system of care for such individuals.

(2) The plan contains quantitative targets to be achieved in the implementation of such system, including the numbers of such individuals residing in the areas to be served under such system.

(3) The plan describes available services, available treatment options, and available resources (including Federal, State and local public services and resources, and to the extent practicable, private services and resources) to be provided such individuals.

(4) The plan describes health and mental health services, rehabilitation services, employment services, housing services, educational services, medical and dental care, and other support services to be provided to such individuals with Federal, State and local public and private resources to enable such individuals to function outside of inpatient or residential institutions to the maximum extent of their capabilities, including services to be provided by local school systems under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.].

(5) The plan describes the financial resources and staffing necessary to implement the re-

quirements of such plan, including programs to train individuals as providers of mental health services, and the plan emphasizes training of providers of emergency health services regarding mental health.

(6) The plan provides for activities to reduce the rate of hospitalization of such individuals.

(7)(A) Subject to subparagraph (B), the plan requires the provision of case management services to each such individual in the State who receives substantial amounts of public funds or services.

(B) The plan may provide that the requirement of subparagraph (A) will not be substantially completed until the end of fiscal year 1993.

(8) The plan provides for the establishment and implementation of a program of outreach to, and services for, such individuals who are homeless.

(9) In the case of children with a serious emotional disturbance, the plan—

(A) subject to subparagraph (B), provides for a system of integrated social services, educational services, juvenile services, and substance abuse services that, together with health and mental health services, will be provided in order for such children to receive care appropriate for their multiple needs (which system includes services provided under the Individuals with Disabilities Education Act [20 U.S.C. 1400 et seq.]);

(B) provides that the grant under section 300x of this title for the fiscal year involved will not be expended to provide any service of such system other than comprehensive community mental health services; and

(C) provides for the establishment of a defined geographic area for the provision of the services of such system.

(10) The plan describes the manner in which mental health services will be provided to individuals residing in rural areas.

(11) The plan contains an estimate of the incidence and prevalence in the State of serious mental illness among adults and serious emotional disturbance among children.

(12) The plan contains a description of the manner in which the State intends to expend the grant under section 300x of this title for the fiscal year involved to carry out the provisions of the plan required in paragraphs (1) through (11).

(c) Definitions regarding mental illness and emotional disturbance; methods for estimate of incidence and prevalence

(1) Establishment by Secretary of definitions; dissemination

For purposes of this subpart, the Secretary shall establish definitions for the terms ''adults with a serious mental illness'' and ''children with a serious emotional disturbance''. The Secretary shall disseminate the definitions to the States.

(2) Standardized methods

The Secretary shall establish standardized methods for making the estimates required in subsection (b)(11) of this section with respect to a State. A funding agreement for a grant under section 300x of this title for the State is that the State will utilize such methods in making the estimates.

(3) Date certain for compliance by Secretary

Not later than 90 days after July 10, 1992, the Secretary shall establish the definitions described in paragraph (1), shall begin dissemination of the definitions to the States, and shall establish the standardized methods described in paragraph (2).

(d) Requirement of implementation of plan

(1) Complete implementation

Except as provided in paragraph (2), in making a grant under section 300x of this title to a State for a fiscal year, the Secretary shall make a determination of the extent to which the State has implemented the plan required in subsection (a) of this section. If the Secretary determines that a State has not completely implemented the plan, the Secretary shall reduce the amount of the allotment under section 300x of this title for the State for the fiscal year involved by an amount equal to 10 percent of the amount determined under section 300x–7 of this title for the State for the fiscal year.

(2) Substantial implementation and good faith effort regarding fiscal year 1993

(A) In making a grant under section 300x of this title to a State for fiscal year 1993, the Secretary shall make a determination of the extent to which the State has implemented the plan required in subsection (a) of this section. If the Secretary determines that the State has not substantially implemented the plan, the Secretary shall, subject to subparagraph (B), reduce the amount of the allotment under section 300x of this title for the State for such fiscal year by an amount equal to 10 percent of the amount determined under section 300x–7 of this title for the State for the fiscal year.

(B) In carrying out subparagraph (A), if the Secretary determines that the State is making a good faith effort to implement the plan required in subsection (a) of this section, the Secretary may make a reduction under such subparagraph in an amount that is less than the amount specified in such subparagraph, except that the reduction may not be made in an amount that is less than 5 percent of the amount determined under section 300x–7 of this title for the State for fiscal year 1993.

(July 1, 1944, ch. 373, title XIX, § 1912, as added July 10, 1992, Pub. L. 102–321, title II, § 201(2), 106 Stat. 379.)

REFERENCES IN TEXT

The Individuals with Disabilities Education Act, referred to in subsec. (b)(4), (9)(A), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

PRIOR PROVISIONS

Prior sections 300x–1 to 300x–1b were repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

Section 300x–1, act July 1, 1944, ch. 373, title XIX, § 1912, as added Oct. 19, 1984, Pub. L. 98–509, title I,

§ 102(a), 98 Stat. 2353, authorized grants for training of employees adversely affected by changes in delivery of mental health services and for providing assistance in securing employment.

Another prior section 300x–1, act July 1, 1944, ch. 373, title XIX, § 1912, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 543; amended Jan. 4, 1983, Pub. L. 97–414, § 8(t), 96 Stat. 2062; Oct. 19, 1984, Pub. L. 98–509, title I, § 106(e), 98 Stat. 2358, contained provisions relating to grants and allotment of grants for alcohol, drug abuse, and mental health services, prior to repeal by section 102(a) of Pub. L. 98–509.

Section 300x–1a, act July 1, 1944, ch. 373, title XIX, § 1912A, as added and amended Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2022(a)–(c), 2023, 102 Stat. 4194, 4196, 4197; Aug. 16, 1989, Pub. L. 101–93, § 2(a), 103 Stat. 603, related to allotments of grants for alcohol, drug abuse, and mental health services.

Another prior section 300x–1a, act July 1, 1944, ch. 373, title XIX, § 1913, as added Oct. 19, 1984, Pub. L. 98–509, title I, § 102(a), 98 Stat. 2353, was transferred to section 300x–1b of this title.

Section 300x–1b, act July 1, 1944, ch. 373, title XIX, § 1913, as added Oct. 19, 1984, Pub. L. 98–509, title I, § 102(a), 98 Stat. 2353; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2022(d), 102 Stat. 4197; Aug. 16, 1989, Pub. L. 101–93, § 2(b), 103 Stat. 605, related to allotments to States and Indian tribes or tribal organizations for alcohol, drug abuse, and mental health services.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300x, 300x–2, 300x–4, 300x–6, 300x–8, 300x–51, 300x–54, 300x–55 of this title.

§ 300x–2. Certain agreements

(a) Allocation for systems of integrated services for children

(1) In general

With respect to children with a serious emotional disturbance, a funding agreement for a grant under section 300x of this title is that—

(A) in the case of a grant for fiscal year 1993, the State involved will expend not less than 10 percent of the grant to increase (relative to fiscal year 1992) funding for the system of integrated services described in section 300x–1(b)(9) of this title;

(B) in the case of a grant for fiscal year 1994, the State will expend not less than 10 percent of the grant to increase (relative to fiscal year 1993) funding for such system; and

(C) in the case of a grant for any subsequent fiscal year, the State will expend for such system not less than an amount equal to the amount expended by the State for fiscal year 1994.

(2) Waiver

(A) Upon the request of a State, the Secretary may provide to the State a waiver of all or part of the requirement established in paragraph (1) if the Secretary determines that the State is providing an adequate level of comprehensive community mental health services for children with a serious emotional distrubance,[1] as indicated by a comparison of the number of such children for which such services are sought with the availability in the State of the services.

(B) The Secretary shall approve or deny a request for a waiver under subparagraph (A) not later than 120 days after the date on which the request is made.

(C) Any waiver provided by the Secretary under subparagraph (A) shall be applicable only to the fiscal year involved.

(b) Providers of services

A funding agreement for a grant under section 300x of this title for a State is that, with respect to the plan submitted under section 300x–1(a) of this title for the fiscal year involved—

(1) services under the plan will be provided only through appropriate, qualified community programs (which may include community mental health centers, child mental-health programs, psychosocial rehabilitation programs, mental health peer-support programs, and mental-health primary consumer-directed programs); and

(2) services under the plan will be provided through community mental health centers only if the centers meet the criteria specified in subsection (c) of this section.

(c) Criteria for mental health centers

The criteria referred to in subsection (b)(2) of this section regarding community mental health centers are as follows:

(1) With respect to mental health services, the centers provide services as follows:

(A) Services principally to individuals residing in a defined geographic area (hereafter in this subsection referred to as a ''service area'').

(B) Outpatient services, including specialized outpatient services for children, the elderly, individuals with a serious mental illness, and residents of the service areas of the centers who have been discharged from inpatient treatment at a mental health facility.

(C) 24-hour-a-day emergency care services.

(D) Day treatment or other partial hospitalization services, or psychosocial rehabilitation services.

(E) Screening for patients being considered for admission to State mental health facilities to determine the appropriateness of such admission.

(2) The mental health services of the centers are provided, within the limits of the capacities of the centers, to any individual residing or employed in the service area of the center regardless of ability to pay for such services.

(3) The mental health services of the centers are available and accessible promptly, as appropriate and in a manner which preserves human dignity and assures continuity and high quality care.

(July 1, 1944, ch. 373, title XIX, § 1913, as added July 10, 1992, Pub. L. 102–321, title II, § 201(2), 106 Stat. 381.)

PRIOR PROVISIONS

A prior section 300x–2, act July 1, 1944, ch. 373, title XIX, § 1914, formerly § 1913, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 545; renumbered § 1914 and amended Oct. 19, 1984, Pub. L. 98–509, title I, § 106(a), (c)–(e), (g), 98 Stat. 2358, 2359; Nov. 18, 1988, Pub. L. 100–690, title II, § 2022(e), 102 Stat. 4197; Aug. 16, 1989, Pub. L. 101–93, § 2(c)(1), 103 Stat. 605, related to payment to States of allotments of grants for alcohol, drug abuse, and mental health services, prior to repeal by Pub. L. 102–321, § 201(2).

[1] So in original. Probably should be ''disturbance,''.

A prior section 1913 of act July 1, 1944, was classified to section 300x–1b of this title and repealed by Pub. L. 102–321.

§ 300x–3. State mental health planning council

(a) In general

A funding agreement for a grant under section 300x of this title is that the State involved will establish and maintain a State mental health planning council in accordance with the conditions described in this section.

(b) Duties

A condition under subsection (a) of this section for a Council is that the duties of the Council are—

(1) to review plans provided to the Council pursuant to section 300x–4(a) of this title by the State involved and to submit to the State any recommendations of the Council for modifications to the plans;

(2) to serve as an advocate for adults with a serious mental illness, children with a severe emotional disturbance, and other individuals with mental illnesses or emotional problems; and

(3) to monitor, review, and evaluate, not less than once each year, the allocation and adequacy of mental health services within the State.

(c) Membership

(1) In general

A condition under subsection (a) of this section for a Council is that the Council be composed of residents of the State, including representatives of—

(A) the principal State agencies with respect to—

(i) mental health, education, vocational rehabilitation, criminal justice, housing, and social services; and

(ii) the development of the plan submitted pursuant to title XIX of the Social Security Act [42 U.S.C. 1396 et seq.];

(B) public and private entities concerned with the need, planning, operation, funding, and use of mental health services and related support services;

(C) adults with serious mental illnesses who are receiving (or have received) mental health services; and

(D) the families of such adults or families of children with emotional disturbance.

(2) Certain requirements

A condition under subsection (a) of this section for a Council is that—

(A) with respect to the membership of the Council, the ratio of parents of children with a serious emotional disturbance to other members of the Council is sufficient to provide adequate representation of such children in the deliberations of the Council; and

(B) not less than 50 percent of the members of the Council are individuals who are not State employees or providers of mental health services.

(d) "Council" defined

For purposes of this section, the term ''Council'' means a State mental health planning council.

(July 1, 1944, ch. 373, title XIX, § 1914, as added July 10, 1992, Pub. L. 102–321, title II, § 201(2), 106 Stat. 382.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(1)(A)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 300x–3, act July 1, 1944, ch. 373, title XIX, § 1915, formerly § 1914, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 545; renumbered § 1915 and amended Oct. 19, 1984, Pub. L. 98–509, title I, §§ 105(b), 106(a), (b), (d), (g), 98 Stat. 2358, 2359; Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2024–2026, 102 Stat. 4198, 4199; Aug. 16, 1989, Pub. L. 101–93, § 2(d), 103 Stat. 606; Nov. 28, 1990, Pub. L. 101–639, § 3(a)(2), 104 Stat. 4601, related to the use of grant allotments for alcohol, drug abuse, and mental health services, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1914 of act July 1, 1944, was classified to section 300x–2 of this title prior to repeal by Pub. L. 102–321.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x–4 of this title; title 29 sections 725, 2212.

§ 300x–4. Additional provisions

(a) Review of State plan by mental health planning council

The Secretary may make a grant under section 300x of this title to a State only if—

(1) the plan submitted under section 300x–1(a) of this title with respect to the grant has been reviewed by the State mental health planning council under section 300x–3 of this title; and

(2) the State submits to the Secretary any recommendations received by the State from such council for modifications to the plan (without regard to whether the State has made the recommended modifications).

(b) Maintenance of effort regarding State expenditures for mental health

(1) In general

A funding agreement for a grant under section 300x of this title is that the State involved will maintain State expenditures for community mental health services at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying for the grant.

(2) Waiver

The Secretary may, upon the request of a State, waive the requirement established in paragraph (1) if the Secretary determines that extraordinary economic conditions in the State justify the waiver.

(3) Noncompliance by State

(A) In making a grant under section 300x of this title to a State for a fiscal year, the Secretary shall make a determination of whether, for the previous fiscal year, the State maintained material compliance with the agree-

ment made under paragraph (1). If the Secretary determines that a State has failed to maintain such compliance, the Secretary shall reduce the amount of the allotment under section 300x of this title for the State for the fiscal year for which the grant is being made by an amount equal to the amount constituting such failure for the previous fiscal year.

(B) The Secretary may make a grant under section 300x of this title for a fiscal year only if the State involved submits to the Secretary information sufficient for the Secretary to make the determination required in subparagraph (A).

(July 1, 1944, ch. 373, title XIX, § 1915, as added July 10, 1992, Pub. L. 102–321, title II, § 201(2), 106 Stat. 383.)

PRIOR PROVISIONS

Prior sections 300x–4 and 300x–4a were repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

Section 300x–4, act July 1, 1944, ch. 373, title XIX, § 1916, formerly § 1915, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 546; amended Jan. 4, 1983, Pub. L. 97–414, § 8(u), 96 Stat. 2063; renumbered § 1916 and amended Oct. 19, 1984, Pub. L. 98–509, title I, §§ 103, 106(a)–(c), (f), (g), 98 Stat. 2355, 2358, 2359; Oct. 7, 1985, Pub. L. 99–117, § 7(a), 99 Stat. 492; Nov. 14, 1986, Pub. L. 99–660, title V, § 503, 100 Stat. 3797; Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2027–2035, 2037(a)(2), 102 Stat. 4199–4201, 4203; Aug. 16, 1989, Pub. L. 101–93, § 2(e)–(*l*), (p)(1), (q)(1), 103 Stat. 606–609; Aug. 15, 1990, Pub. L. 101–374, § 4(b), 104 Stat. 459, required States to make application and describe their activities in relation to allotments for grants for alcohol, drug abuse, and mental health services.

A prior section 1915 of act July 1, 1944, was classified to section 300x–3 of this title prior to repeal by Pub. L. 102–321.

Section 300x–4a, act July 1, 1944, ch. 373, title XIX, § 1916A, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2036, 102 Stat. 4202; amended Aug. 16, 1989, Pub. L. 101–93, § 2(m), 103 Stat. 608, related to group homes for recovering substance abusers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300x–3, 300x–6, 300x–24, 300x–54, 300x–55 of this title.

§ 300x–5. Restrictions on use of payments

(a) In general

A funding agreement for a grant under section 300x of this title is that the State involved will not expend the grant—

(1) to provide inpatient services;

(2) to make cash payments to intended recipients of health services;

(3) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) to provide financial assistance to any entity other than a public or nonprofit private entity.

(b) Limitation on administrative expenses

A funding agreement for a grant under section 300x of this title is that the State involved will not expend more than 5 percent of the grant for administrative expenses with respect to the grant.

(July 1, 1944, ch. 373, title XIX, § 1916, as added July 10, 1992, Pub. L. 102–321, title II, § 201(2), 106 Stat. 384.)

PRIOR PROVISIONS

A prior section 300x–5, act July 1, 1944, ch. 373, title XIX, § 1917, formerly § 1916, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 549; renumbered § 1917 and amended Oct. 19, 1984, Pub. L. 98–509, title I, §§ 104, 106(a), (b), (d), (g), 98 Stat. 2357–2359; Oct. 7, 1985, Pub. L. 99–117, § 7(b), 99 Stat. 493; Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2037(a)(1), (b), 2052(b), 102 Stat. 4203, 4208; Aug. 16, 1989, Pub. L. 101–93, § 2(p)(2), 103 Stat. 609, related to reports and audits relative to grants for alcohol, drug abuse, and mental health services, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1916 of act July 1, 1944, was classified to section 300x–4 of this title prior to repeal by Pub. L. 102–321.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300x, 300x–6 of this title.

§ 300x–6. Application for grant

(a) In general

For purposes of section 300x of this title, an application for a grant under such section for a fiscal year in accordance with this section if, subject to subsection (b) of this section—

(1) the State involved submits the application not later than the date specified by the Secretary as being the date after which applications for such a grant will not be considered (in any case in which the Secretary specifies such a date);

(2) the application contains each funding agreement that is described in this subpart or subpart III for such a grant (other than any such agreement that is not applicable to the State);

(3) the agreements are made through certification from the chief executive officer of the State;

(4) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

(5) the application contains the plan required in section 300x–1(a) of this title, the information required in section 300x–4(b)(3)(B) of this title, and the report required in section 300x–52(a) of this title;

(6) the application contains recommendations in compliance with section 300x–4(a) of this title, or if no such recommendations are received by the State, the application otherwise demonstrates compliance with such section; and

(7) the application (including the plan under section 300x–1(a) of this title) is otherwise in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subpart.

(b) Waivers regarding certain territories

In the case of any territory of the United States whose allotment under section 300x of this title for the fiscal year is the amount speci-

fied in section 300x–7(c)(2)(B) of this title, the Secretary may waive such provisions of this subpart and subpart III as the Secretary determines to be appropriate, other than the provisions of section 300x–5 of this title.

(July 1, 1944, ch. 373, title XIX, § 1917, as added July 10, 1992, Pub. L. 102–321, title II, § 201(2), 106 Stat. 384.)

PRIOR PROVISIONS

A prior section 300x–6, act July 1, 1944, ch. 373, title XIX, § 1918, formerly § 1917, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 550; renumbered § 1918 and amended Oct. 19, 1984, Pub. L. 98–509, title I, § 106(d), (g), 98 Stat. 2358, 2359, authorized withholding funds from States which did not use allotments of grants for alcohol, drug abuse, and mental health services in accordance with requirements, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1917 of act July 1, 1944, was classified to section 300x–5 of this title prior to repeal by Pub. L. 102–321.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x of this title.

§ 300x–7. Determination of amount of allotment

(a) States

(1) Determination under formula

Subject to subsection (b) of this section, the Secretary shall determine the amount of the allotment required in section 300x of this title for a State for a fiscal year in accordance with the following formula:

$$A \left(\frac{X}{U} \right)$$

(2) Determination of term "A"

For purposes of paragraph (1), the term ''A'' means the difference between—

(A) the amount appropriated under section 300x–9(a) of this title for allotments under section 300x of this title for the fiscal year involved; and

(B) an amount equal to 1.5 percent of the amount referred to in subparagraph (A).

(3) Determination of term "U"

For purposes of paragraph (1), the term ''U'' means the sum of the respective terms ''X'' determined for the States under paragraph (4).

(4) Determination of term "X"

For purposes of paragraph (1), the term ''X'' means the product of—

(A) an amount equal to the product of—

(i) the term ''P'', as determined for the State involved under paragraph (5); and

(ii) the factor determined under paragraph (8) for the State; and

(B) the greater of—

(i) 0.4; and

(ii) an amount equal to an amount determined for the State in accordance with the following formula:

$$1 - .35 \left(\frac{R\%}{P\%} \right)$$

(5) Determination of term "P"

(A) For purposes of paragraph (4), the term ''P'' means the sum of—

(i) an amount equal to the product of 0.107 and the number of individuals in the State who are between 18 and 24 years of age (inclusive);

(ii) an amount equal to the product of 0.166 and the number of individuals in the State who are between 25 and 44 years of age (inclusive);

(iii) an amount equal to the product of 0.099 and the number of individuals in the State who are between 45 and 64 years of age (inclusive); and

(iv) an amount equal to the product of 0.082 and the number of individuals in the State who are 65 years of age or older.

(B) With respect to data on population that is necessary for purposes of making a determination under subparagraph (A), the Secretary shall use the most recent data that is available from the Secretary of Commerce pursuant to the decennial census and pursuant to reasonable estimates by such Secretary of changes occurring in the data in the ensuing period.

(6) Determination of term "R%"

(A) For purposes of paragraph (4), the term ''R%'', except as provided in subparagraph (D), means the percentage constituted by the ratio of the amount determined under subparagraph (B) for the State involved to the amount determined under subparagraph (C).

(B) The amount determined under this subparagraph for the State involved is the quotient of—

(i) the most recent 3-year arithmetic mean of the total taxable resources of the State, as determined by the Secretary of the Treasury; divided by

(ii) the factor determined under paragraph (8) for the State.

(C) The amount determined under this subparagraph is the sum of the respective amounts determined for the States under subparagraph (B) (including the District of Columbia).

(D)(i) In the case of the District of Columbia, for purposes of paragraph (4), the term ''R%'' means the percentage constituted by the ratio of the amount determined under clause (ii) for such District to the amount determined under clause (iii).

(ii) The amount determined under this clause for the District of Columbia is the quotient of—

(I) the most recent 3-year arithmetic mean of total personal income in such District, as determined by the Secretary of Commerce; divided by

(II) the factor determined under paragraph (8) for the District.

(iii) The amount determined under this clause is the sum of the respective amounts determined for the States (including the District of Columbia) by making, for each State, the same determination as is described in clause (ii) for the District of Columbia.

(7) Determination of term "P%"

For purposes of paragraph (4), the term ''P%'' means the percentage constituted by

the ratio of the term ''P'' determined under paragraph (5) for the State involved to the sum of the respective terms ''P'' determined for the States.

(8) Determination of certain factor

(A) The factor determined under this paragraph for the State involved is a factor whose purpose is to adjust the amount determined under clause (i) of paragraph (4)(A), and the amounts determined under each of subparagraphs (B)(i) and (D)(ii)(I) of paragraph (6), to reflect the differences that exist between the State and other States in the costs of providing comprehensive community mental health services to adults with a serious mental illness and to children with a serious emotional disturbance.

(B) Subject to subparagraph (C), the factor determined under this paragraph and in effect for the fiscal year involved shall be determined according to the methodology described in the report entitled ''Adjusting the Alcohol, Drug Abuse and Mental Health Services Block Grant Allocations for Poverty Populations and Cost of Service'', dated March 30, 1990, and prepared by Health Economics Research, a corporation, pursuant to a contract with the National Institute on Drug Abuse.

(C) The factor determined under this paragraph for the State involved may not for any fiscal year be greater than 1.1 or less than 0.9.

(D)(i) Not later than October 1, 1992, the Secretary, after consultation with the Comptroller General, shall in accordance with this section make a determination for each State of the factor that is to be in effect for the State under this paragraph. The factor so determined shall remain in effect through fiscal year 1994, and shall be recalculated every third fiscal year thereafter.

(ii) After consultation with the Comptroller General, the Secretary shall, through publication in the Federal Register, periodically make such refinements in the methodology referred to in subparagraph (B) as are consistent with the purpose described in subparagraph (A).

(b) Minimum allotments for States

For each of the fiscal years 1993 and 1994, the amount of the allotment required in section 300x of this title for a State for the fiscal year involved shall be the greater of—

(1) the amount determined under subsection (a) of this section for the State for the fiscal year; and

(2) an amount equal to 20.6 percent of the amount received by the State from allotments made pursuant to this part for fiscal year 1992 (including reallotments under section 205(a) of the ADAMHA Reorganization Act).

(c) Territories

(1) Determination under formula

Subject to paragraphs (2) and (4), the amount of an allotment under section 300x of this title for a territory of the United States for a fiscal year shall be the product of—

(A) an amount equal to the amounts reserved under paragraph (3) for the fiscal year; and

(B) a percentage equal to the quotient of—

(i) the civilian population of the territory, as indicated by the most recently available data; divided by

(ii) the aggregate civilian population of the territories of the United States, as indicated by such data.

(2) Minimum allotment for territories

The amount of an allotment under section 300x of this title for a territory of the United States for a fiscal year shall be the greater of—

(A) the amount determined under paragraph (1) for the territory for the fiscal year;

(B) $50,000; and

(C) with respect to fiscal years 1993 and 1994, an amount equal to 20.6 percent of the amount received by the territory from allotments made pursuant to this part for fiscal year 1992.

(3) Reservation of amounts

The Secretary shall each fiscal year reserve for the territories of the United States 1.5 percent of the amounts appropriated under section 300x–9(a) of this title for allotments under section 300x of this title for the fiscal year.

(4) Availability of data on population

With respect to data on the civilian population of the territories of the United States, if the Secretary determines for a fiscal year that recent such data for purposes of paragraph (1)(B) do not exist regarding a territory, the Secretary shall for such purposes estimate the civilian population of the territory by modifying the data on the territory to reflect the average extent of change occurring during the ensuing period in the population of all territories with respect to which recent such data do exist.

(5) Applicability of certain provisions

For purposes of subsection (a) of this section, the term ''State'' does not include the territories of the United States.

(July 1, 1944, ch. 373, title XIX, §1918, as added July 10, 1992, Pub. L. 102–321, title II, §201(2), 106 Stat. 385; amended Aug. 26, 1992, Pub. L. 102–352, §2(a)(8), (9), 106 Stat. 938.)

REFERENCES IN TEXT

Section 205(a) of the ADAMHA Reorganization Act, referred to in subsec. (b)(2), is section 205(a) of Pub. L. 102–321, which is set out as a note under section 300x of this title.

PRIOR PROVISIONS

A prior section 300x–7, act July 1, 1944, ch. 373, title XIX, §1919, formerly §1918, as added Aug. 13, 1981, Pub. L. 97–35, title IX, §901, 95 Stat. 551; renumbered §1919 and amended Oct. 19, 1984, Pub. L. 98–509, title I, §106(a), (g), 98 Stat. 2358, 2359, related to nondiscrimination provisions with respect to alcohol, drug abuse, and mental health programs, prior to repeal by Pub. L. 102–321, §201(2).

A prior section 1918 of act July 1, 1944, was classified to section 300x–6 of this title prior to repeal by Pub. L. 102–321.

AMENDMENTS

1992—Subsec. (a)(5)(A)(iii). Pub. L. 102–352, §2(a)(8), substituted ''45'' for ''25''.

Subsec. (c)(2)(C). Pub. L. 102–352, § 2(a)(9), added subpar. (C).

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300x, 300x–1, 300x–6, 300x–33, 300x–64 of this title.

§ 300x–8. Definitions

For purposes of this subpart:

(1) The terms ''adults with a serious mental illness'' and ''children with a serious emotional disturbance'' have the meanings given such terms under section 300x–1(c)(1) of this title.

(2) The term ''funding agreement'', with respect to a grant under section 300x of this title to a State, means that the Secretary may make such a grant only if the State makes the agreement involved.

(July 1, 1944, ch. 373, title XIX, § 1919, as added July 10, 1992, Pub. L. 102–321, title II, § 201(2), 106 Stat. 388.)

PRIOR PROVISIONS

A prior section 300x–8, act July 1, 1944, ch. 373, title XIX, § 1920, formerly § 1919, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552; renumbered § 1920, Oct. 19, 1984, Pub. L. 98–509, title I, § 106(g), 98 Stat. 2359, authorized criminal penalty for false statements in connection with services furnished relative to alcohol, drug abuse, and mental health services block grant, prior to repeal by Pub. L. 102–321, § 201(2).

A prior section 1919 of act July 1, 1944, was classified to section 300x–7 of this title prior to repeal by Pub. L. 102–321.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x–64 of this title.

§ 300x–9. Funding

(a) Authorization of appropriations

For the purpose of carrying out this subpart, and subpart III and section 290aa–4 of this title with respect to mental health, there are authorized to be appropriated $450,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(b) Allocations for technical assistance, data collection, and program evaluation

(1) In general

For the purpose of carrying out section 300x–58(a) of this title with respect to mental health and the purposes specified in paragraphs (2) and (3), the Secretary shall obligate 5 percent of the amounts appropriated under subsection (a) of this section for a fiscal year.

(2) Data collection

The purpose specified in this paragraph is carrying out section 290aa–4 of this title with respect to mental health.

(3) Program evaluation

The purpose specified in this paragraph is the conduct of evaluations of prevention and treatment programs and services with respect to mental health to determine methods for improving the availability and quality of such programs and services.

(July 1, 1944, ch. 373, title XIX, § 1920, as added July 10, 1992, Pub. L. 102–321, title II, § 201(2), 106 Stat. 388.)

PRIOR PROVISIONS

Prior sections 300x–9 to 300x–13 were repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

Section 300x–9, act July 1, 1944, ch. 373, title XIX, § 1921, formerly § 1920, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552; renumbered § 1920A and amended Oct. 19, 1984, Pub. L. 98–509, title I, §§ 105(a), 106(g), 98 Stat. 2358, 2359; Oct. 7, 1985, Pub. L. 99–117, § 7(c), 99 Stat. 493; renumbered § 1921 and amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2038(2), (6), 102 Stat. 4203, authorized technical assistance with respect to development of services under alcohol, drug abuse, and mental health services block grants.

A prior section 1920 of act July 1, 1944, was classified to section 300x–8 of this title and repealed by Pub. L. 102–321.

Section 300x–9a, act July 1, 1944, ch. 373, title XIX, § 1922, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2039(a), 102 Stat. 4204; amended Aug. 16, 1989, Pub. L. 101–93, § 2(n)(1), 103 Stat. 608, related to service research on community-based alcohol and drug abuse treatment programs.

Section 300x–9b, act July 1, 1944, ch. 373, title XIX, § 1923, as added Nov. 18, 1988, Pub. L. 100–690, title II, § 2040, 102 Stat. 4204; amended Aug. 16, 1989, Pub. L. 101–93, § 2(q)(2), 103 Stat. 609, related to service research on community-based mental health treatment programs.

Section 300x–10, act July 1, 1944, ch. 373, title XIX, § 1924, formerly § 1920B, as added Nov. 14, 1986, Pub. L. 99–660, title V, § 502(2), 100 Stat. 3795; renumbered § 1924 and amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2038(3), (4), 102 Stat. 4203; Nov. 28, 1990, Pub. L. 101–639, § 3(a)(1), 104 Stat. 4601, related to development grants for State comprehensive mental health services plans.

Section 300x–11, act July 1, 1944, ch. 373, title XIX, § 1925, formerly § 1920C, as added Nov. 14, 1986, Pub. L. 99–660, title V, § 502(2), 100 Stat. 3795; renumbered § 1925 and amended Nov. 18, 1988, Pub. L. 100–690, title II, §§ 2038(3), 2041(a), 102 Stat. 4203, 4205; Aug. 16, 1989, Pub. L. 101–93, § 2(*o*)(1), 103 Stat. 608; Nov. 28, 1990, Pub. L. 101–639, § 3(b), 104 Stat. 4601, related to State comprehensive mental health services plans.

Section 300x–12, act July 1, 1944, ch. 373, title XIX, § 1926, formerly § 1920D, as added Nov. 14, 1986, Pub. L. 99–660, title V, § 502(2), 100 Stat. 3796; renumbered § 1926 and amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2038(3), (5), 102 Stat. 4203; Aug. 16, 1989, Pub. L. 101–93, § 2(*o*)(2), 103 Stat. 609; Nov. 28, 1990, Pub. L. 101–639, § 3(c), 104 Stat. 4602, related to enforcement of requirement of developing State comprehensive mental health services plans.

Section 300x–13, act July 1, 1944, ch. 373, title XIX, § 1927, formerly § 1920E, as added Nov. 14, 1986, Pub. L. 99–660, title V, § 502(2), 100 Stat. 3797; renumbered § 1927, Nov. 18, 1988, Pub. L. 100–690, title II, § 2038(3), 102 Stat. 4203, related to development of model standards for provision of care to chronically mentally ill persons.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x–7 of this title.

SUBPART II—BLOCK GRANTS FOR PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

§ 300x–21. Formula grants to States

(a) In general

For the purpose described in subsection (b) of this section, the Secretary, acting through the

Center for Substance Abuse Treatment, shall make an allotment each fiscal year for each State in an amount determined in accordance with section 300x–33 of this title. The Secretary shall make a grant to the State of the allotment made for the State for the fiscal year if the State submits to the Secretary an application in accordance with section 300x–32 of this title.

(b) Authorized activities

A funding agreement for a grant under subsection (a) of this section is that, subject to section 300x–31 of this title, the State involved will expend the grant only for the purpose of planning, carrying out, and evaluating activities to prevent and treat substance abuse and for related activities authorized in section 300x–24 of this title.

(July 1, 1944, ch. 373, title XIX, § 1921, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 388.)

PRIOR PROVISIONS

A prior section 1921 of act July 1, 1944, was classified to section 300x–9 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1921 of act July 1, 1944, was classified to section 300y of this title prior to repeal by Pub. L. 100–690.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290bb, 300x–22, 300x–23, 300x–24, 300x–25, 300x–26, 300x–27, 300x–28, 300x–29, 300x–30, 300x–31, 300x–32, 300x–33, 300x–34, 300x–51, 300x–52, 300x–53, 300x–54, 300x–55, 300x–56, 300x–57, 300x–58, 300x–59, 300x–60, 300x–63, 300x–64 of this title.

§ 300x–22. Certain allocations

(a) Allocations regarding alcohol and other drugs

A funding agreement for a grant under section 300x–21 of this title is that, in expending the grant, the State involved will expend—

(1) not less than 35 percent for prevention and treatment activities regarding alcohol; and

(2) not less than 35 percent for prevention and treatment activities regarding other drugs.

(b) Allocation regarding primary prevention programs

A funding agreement for a grant under section 300x–21 of this title is that, in expending the grant, the State involved—

(1) will expend not less than 20 percent for programs for individuals who do not require treatment for substance abuse, which programs—

(A) educate and counsel the individuals on such abuse; and

(B) provide for activities to reduce the risk of such abuse by the individuals;

(2) will, in carrying out paragraph (1)—

(A) give priority to programs for populations that are at risk of developing a pattern of such abuse; and

(B) ensure that programs receiving priority under subparagraph (A) develop community-based strategies for the prevention of such abuse, including strategies to discourage the use of alcoholic beverages and tobacco products by individuals to whom it is unlawful to sell or distribute such beverages or products.

(c) Allocations regarding women

(1) In general

Subject to paragraph (2), a funding agreement for a grant under section 300x–21 of this title for a fiscal year is that—

(A) in the case of a grant for fiscal year 1993, the State involved will expend not less than 5 percent of the grant to increase (relative to fiscal year 1992) the availability of treatment services designed for pregnant women and women with dependent children (either by establishing new programs or expanding the capacity of existing programs);

(B) in the case of a grant for fiscal year 1994, the State will expend not less than 5 percent of the grant to so increase (relative to fiscal year 1993) the availability of such services for such women; and

(C) in the case of a grant for any subsequent fiscal year, the State will expend for such services for such women not less than an amount equal to the amount expended by the State for fiscal year 1994.

(2) Waiver

(A) Upon the request of a State, the Secretary may provide to the State a waiver of all or part of the requirement established in paragraph (1) if the Secretary determines that the State is providing an adequate level of treatments services for women described in such paragraph, as indicated by a comparison of the number of such women seeking the services with the availability in the State of the services.

(B) The Secretary shall approve or deny a request for a waiver under subparagraph (A) not later than 120 days after the date on which the request is made.

(C) Any waiver provided by the Secretary under subparagraph (A) shall be applicable only to the fiscal year involved.

(3) Childcare and prenatal care

A funding agreement for a grant under section 300x–21 of this title for a State is that each entity providing treatment services with amounts reserved under paragraph (1) by the State will, directly or through arrangements with other public or nonprofit private entities, make available prenatal care to women receiving such services and, while the women are receiving the services, childcare.

(July 1, 1944, ch. 373, title XIX, § 1922, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 389.)

PRIOR PROVISIONS

A prior section 1922 of act July 1, 1944, was classified to section 300x–9a of this title prior to repeal by Pub. L. 102–321.

Another prior section 1922 of act July 1, 1944, was classified to section 300y–1 of this title prior to repeal by Pub. L. 100–690.

§ 300x–23. Intravenous substance abuse

(a) Capacity of treatment programs

(1) Notification of reaching capacity

A funding agreement for a grant under section 300x–21 of this title is that the State involved will, in the case of programs of treatment for intravenous drug abuse, require that any such program receiving amounts from the grant, upon reaching 90 percent of its capacity to admit individuals to the program, provide to the State a notification of such fact.

(2) Provision of treatment

A funding agreement for a grant under section 300x–21 of this title is that the State involved will, with respect to notifications under paragraph (1), ensure that each individual who requests and is in need of treatment for intravenous drug abuse is admitted to a program of such treatment not later than—

(A) 14 days after making the request for admission to such a program; or

(B) 120 days after the date of such request, if no such program has the capacity to admit the individual on the date of such request and if interim services are made available to the individual not later than 48 hours after such request.

(b) Outreach regarding intravenous substance abuse

A funding agreement for a grant under section 300x–21 of this title is that the State involved, in providing amounts from the grant to any entity for treatment services for intravenous drug abuse, will require the entity to carry out activities to encourage individuals in need of such treatment to undergo treatment.

(July 1, 1944, ch. 373, title XIX, § 1923, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 390.)

PRIOR PROVISIONS

A prior section 1923 of act July 1, 1944, was classified to section 300x–9b of this title prior to repeal by Pub. L. 102–321.

Another prior section 1923 of act July 1, 1944, was classified to section 300y–2 of this title prior to repeal by Pub. L. 100–690.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x–29 of this title.

§ 300x–24. Requirements regarding tuberculosis and human immunodeficiency virus

(a) Tuberculosis

(1) In general

A funding agreement for a grant under section 300x–21 of this title is that the State involved will require that any entity receiving amounts from the grant for operating a program of treatment for substance abuse—

(A) will, directly or through arrangements with other public or nonprofit private entities, routinely make available tuberculosis services to each individual receiving treatment for such abuse; and

(B) in the case of an individual in need of such treatment who is denied admission to the program on the basis of the lack of the capacity of the program to admit the individual, will refer the individual to another provider of tuberculosis services.

(2) Tuberculosis services

For purposes of paragraph (1), the term ''tuberculosis services'', with respect to an individual, means—

(A) counseling the individual with respect to tuberculosis;

(B) testing to determine whether the individual has contracted such disease and testing to determine the form of treatment for the disease that is appropriate for the individual; and

(C) providing such treatment to the individual.

(b) Human immunodeficiency virus

(1) Requirement for certain States

In the case of a State described in paragraph (2), a funding agreement for a grant under section 300x–21 of this title is that—

(A) with respect to individuals undergoing treatment for substance abuse, the State will, subject to paragraph (3), carry out 1 or more projects to make available to the individuals early intervention services for HIV disease at the sites at which the individuals are undergoing such treatment;

(B) for the purpose of providing such early intervention services through such projects, the State will make available from the grant the percentage that is applicable for the State under paragraph (4); and

(C) the State will, subject to paragraph (5), carry out such projects only in geographic areas of the State that have the greatest need for the projects.

(2) Designated States

For purposes of this subsection, a State described in this paragraph is any State whose rate of cases of acquired immune deficiency syndrome is 10 or more such cases per 100,000 individuals (as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control for the most recent calendar year for which such data are available).

(3) Use of existing programs regarding substance abuse

With respect to programs that provide treatment services for substance abuse, a funding agreement for a grant under section 300x–21 of this title for a designated State is that each such program participating in a project under paragraph (1) will be a program that began operation prior to the fiscal year for which the State is applying to receive the grant. A program that so began operation may participate in a project under paragraph (1) without regard to whether the program has been providing early intervention services for HIV disease.

(4) Applicable percentage regarding expenditures for services

(A)(i) For purposes of paragraph (1)(B), the percentage that is applicable under this para-

graph for a designated State is, subject to subparagraph (B), the percentage by which the amount of the grant under section 300x–21 of this title for the State for the fiscal year involved is an increase over the amount specified in clause (ii).

(ii) The amount specified in this clause is the amount that was reserved by the designated State involved from the allotment of the State under section 300x–1a[1] of this title for fiscal year 1991 in compliance with section 300x–4(c)(6)(A)(ii)[1] of this title (as such sections were in effect for such fiscal year).

(B) If the percentage determined under subparagraph (A) for a designated State for a fiscal year is less than 2 percent (including a negative percentage, in the case of a State for which there is no increase for purposes of such subparagraph), the percentage applicable under this paragraph for the State is 2 percent. If the percentage so determined is 2 percent or more, the percentage applicable under this paragraph for the State is the percentage determined under subparagraph (A), subject to not exceeding 5 percent.

(5) Requirement regarding rural areas

(A) A funding agreement for a grant under section 300x–21 of this title for a designated State is that, if the State will carry out 2 or more projects under paragraph (1), the State will carry out 1 such project in a rural area of the State, subject to subparagraph (B).

(B) The Secretary shall waive the requirement established in subparagraph (A) if the State involved certifies to the Secretary that—

(i) there is insufficient demand in the State to carry out a project under paragraph (1) in any rural area of the State; or

(ii) there are no rural areas in the State.

(6) Manner of providing services

With respect to the provision of early intervention services for HIV disease to an individual, a funding agreement for a grant under section 300x–21 of this title for a designated State is that—

(A) such services will be undertaken voluntarily by, and with the informed consent of, the individual; and

(B) undergoing such services will not be required as a condition of receiving treatment services for substance abuse or any other services.

(7) Definitions

For purposes of this subsection:

(A) The term ''designated State'' means a State described in paragraph (2).

(B) The term ''early intervention services'', with respect to HIV disease, means—

(i) appropriate pretest counseling;

(ii) testing individuals with respect to such disease, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;

(iii) appropriate post-test counseling; and

(iv) providing the therapeutic measures described in clause (ii).

(C) The term ''HIV disease'' means infection with the etiologic agent for acquired immune deficiency syndrome.

(c) Expenditure of grant for compliance with agreements

(1) In general

A grant under section 300x–21 of this title may be expended for purposes of compliance with the agreements required in this section, subject to paragraph (2).

(2) Limitation

A funding agreement for a grant under section 300x–21 of this title for a State is that the grant will not be expended to make payment for any service provided for purposes of compliance with this section to the extent that payment has been made, or can reasonably be expected to be made, with respect to such service—

(A) under any State compensation program, under any insurance policy, or under any Federal or State health benefits program (including the program established in title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] and the program established in title XIX of such Act [42 U.S.C. 1396 et seq.]); or

(B) by an entity that provides health services on a prepaid basis.

(d) Maintenance of effort

With respect to services provided for by a State for purposes of compliance with this section, a funding agreement for a grant under section 300x–21 of this title is that the State will maintain expenditures of non-Federal amounts for such services at a level that is not less than average level of such expenditures maintained by the State for 2-year period preceding the first fiscal year for which the State receives such a grant.

(e) Applicability of certain provision

Section 300x–31 of this title applies to this section (and to each other provision of this subpart).

(July 1, 1944, ch. 373, title XIX, § 1924, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 391.)

REFERENCES IN TEXT

Section 300x–1a of this title, referred to in subsec. (b)(4)(A)(ii), was repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

Section 300x–4 of this title, referred to in subsec. (b)(4)(A)(ii), was in the original a reference to section 1916 of act July 1, 1944, which was repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378. Section 201(2) of Pub. L. 102–321 enacted new sections 1915 and 1916 of act July 1, 1944, which are classified to sections 300x–4 and 300x–5, respectively, of this title.

The Social Security Act, referred to in subsec. (c)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as

[1] See References in Text note below.

amended. Titles XVIII and XIX of the Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 1924 of act July 1, 1944, was classified to section 300x–10 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1924 of act July 1, 1944, was classified to section 300y–3 of this title prior to repeal by Pub. L. 99–280.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x–21 of this title.

§ 300x–25. Group homes for recovering substance abusers

(a) State revolving funds for establishment of homes

For fiscal year 1993 and subsequent fiscal years, the Secretary may make a grant under section 300x–21 of this title only if the State involved has established, and is providing for the ongoing operation of, a revolving fund as follows:

(1) The purpose of the fund is to make loans for the costs of establishing programs for the provision of housing in which individuals recovering from alcohol or drug abuse may reside in groups of not less than 6 individuals. The fund is established directly by the State or through the provision of a grant or contract to a nonprofit private entity.

(2) The programs are carried out in accordance with guidelines issued under subsection (b) of this section.

(3) Not less than $100,000 is available for the fund.

(4) Loans made from the revolving fund do not exceed $4,000 and each such loan is repaid to the revolving fund by the residents of the housing involved not later than 2 years after the date on which the loan is made.

(5) Each such loan is repaid by such residents through monthly installments, and a reasonable penalty is assessed for each failure to pay such periodic installments by the date specified in the loan agreement involved.

(6) Such loans are made only to nonprofit private entities agreeing that, in the operation of the program established pursuant to the loan—

(A) the use of alcohol or any illegal drug in the housing provided by the program will be prohibited;

(B) any resident of the housing who violates such prohibition will be expelled from the housing;

(C) the costs of the housing, including fees for rent and utilities, will be paid by the residents of the housing; and

(D) the residents of the housing will, through a majority vote of the residents, otherwise establish policies governing residence in the housing, including the manner in which applications for residence in the housing are approved.

(b) Issuance by Secretary of guidelines

The Secretary shall ensure that there are in effect guidelines under this subpart for the operation of programs described in subsection (a) of this section.

(c) Applicability to territories

The requirements established in subsection (a) of this section shall not apply to any territory of the United States other than the Commonwealth of Puerto Rico.

(July 1, 1944, ch. 373, title XIX, § 1925, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 393.)

PRIOR PROVISIONS

A prior section 1925 of act July 1, 1944, was classified to section 300x–11 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1925 of act July 1, 1944, was classified to section 300y–4 of this title prior to repeal by Pub. L. 99–280.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290bb of this title.

§ 300x–26. State law regarding sale of tobacco products to individuals under age of 18

(a) Relevant law

(1) In general

Subject to paragraph (2), for fiscal year 1994 and subsequent fiscal years, the Secretary may make a grant under section 300x–21 of this title only if the State involved has in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under the age of 18.

(2) Delayed applicability for certain States

In the case of a State whose legislature does not convene a regular session in fiscal year 1993, and in the case of a State whose legislature does not convene a regular session in fiscal year 1994, the requirement described in paragraph (1) as a condition of a receipt of a grant under section 300x–21 of this title shall apply only for fiscal year 1995 and subsequent fiscal years.

(b) Enforcement

(1) In general

For the first applicable fiscal year and for subsequent fiscal years, a funding agreement for a grant under section 300x–21 of this title is that the State involved will enforce the law described in subsection (a) of this section in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18.

(2) Activities and reports regarding enforcement

For the first applicable fiscal year and for subsequent fiscal years, a funding agreement for a grant under section 300x–21 of this title is that the State involved will—

(A) annually conduct random, unannounced inspections to ensure compliance with the law described in subsection (a) of this section; and

(B) annually submit to the Secretary a report describing—

(i) the activities carried out by the State to enforce such law during the fiscal year preceding the fiscal year for which the State is seeking the grant;

(ii) the extent of success the State has achieved in reducing the availability of tobacco products to individuals under the age of 18; and

(iii) the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought.

(c) Noncompliance of State

Before making a grant under section 300x–21 of this title to a State for the first applicable fiscal year or any subsequent fiscal year, the Secretary shall make a determination of whether the State has maintained compliance with subsections (a) and (b) of this section. If, after notice to the State and an opportunity for a hearing, the Secretary determines that the State is not in compliance with such subsections, the Secretary shall reduce the amount of the allotment under such section for the State for the fiscal year involved by an amount equal to—

(1) in the case of the first applicable fiscal year, 10 percent of the amount determined under section 300x–33 of this title for the State for the fiscal year;

(2) in the case of the first fiscal year following such applicable fiscal year, 20 percent of the amount determined under section 300x–33 of this title for the State for the fiscal year;

(3) in the case of the second such fiscal year, 30 percent of the amount determined under section 300x–33 of this title for the State for the fiscal year; and

(4) in the case of the third such fiscal year or any subsequent fiscal year, 40 percent of the amount determined under section 300x–33 of this title for the State for the fiscal year.

(d) "First applicable fiscal year" defined

For purposes of this section, the term ''first applicable fiscal year'' means—

(1) fiscal year 1995, in the case of any State described in subsection (a)(2) of this section; and

(2) fiscal year 1994, in the case of any other State.

(July 1, 1944, ch. 373, title XIX, § 1926, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 394.)

PRIOR PROVISIONS

A prior section 1926 of act July 1, 1944, was classified to section 300x–12 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1926 of act July 1, 1944, was classified to section 300y–5 of this title prior to repeal by Pub. L. 99–280.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300x–54, 300x–55 of this title.

§ 300x–27. Treatment services for pregnant women

(a) In general

A funding agreement for a grant under section 300x–21 of this title is that the State involved—

(1) will ensure that each pregnant woman in the State who seeks or is referred for and would benefit from such services is given preference in admissions to treatment facilities receiving funds pursuant to the grant; and

(2) will, in carrying out paragraph (1), publicize the availability to such women of services from the facilities and the fact that the women receive such preference.

(b) Referrals regarding States

A funding agreement for a grant under section 300x–21 of this title is that, in carrying out subsection (a)(1) of this section—

(1) the State involved will require that, in the event that a treatment facility has insufficient capacity to provide treatment services to any woman described in such subsection who seeks the services from the facility, the facility refer the woman to the State; and

(2) the State, in the case of each woman for whom a referral under paragraph (1) is made to the State—

(A) will refer the woman to a treatment facility that has the capacity to provide treatment services to the woman; or

(B) will, if no treatment facility has the capacity to admit the woman, make interim services available to the woman not later than 48 hours after the women[1] seeks the treatment services.

(July 1, 1944, ch. 373, title XIX, § 1927, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 395; amended Aug. 26, 1992, Pub. L. 102–352, § 2(a)(10), 106 Stat. 938.)

PRIOR PROVISIONS

A prior section 1927 of act July 1, 1944, was classified to section 300x–12 of this title prior to repeal by Pub. L. 102–321.

Another prior section 1927 of act July 1, 1944, was classified to section 300y–6 of this title prior to repeal by Pub. L. 99–280.

AMENDMENTS

1992—Subsec. (b)(2)(B). Pub. L. 102–352 struck out ''available'' before ''interim services available''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x–29 of this title.

§ 300x–28. Additional agreements

(a) Improvement of process for appropriate referrals for treatment

With respect to individuals seeking treatment services, a funding agreement for a grant under section 300x–21 of this title is that the State in-

[1] So in original. Probably should be ''woman''.

volved will improve (relative to fiscal year 1992) the process in the State for referring the individuals to treatment facilities that can provide to the individuals the treatment modality that is most appropriate for the individuals.

(b) Continuing education

With respect to any facility for treatment services or prevention actitivities[1] that is receiving amounts from a grant under section 300x–21 of this title, a funding agreement for a State for a grant under such section is that continuing education in such services or activities (or both, as the case may be) will be made available to employees of the facility who provide the services or activities.

(c) Coordination of various activities and services

A funding agreement for a grant under section 300x–21 of this title is that the State involved will coordinate prevention and treatment activities with the provision of other appropriate services (including health, social, correctional and criminal justice, educational, vocational rehabilitation, and employment services).

(d) Waiver of requirement

(1) In general

Upon the request of a State, the Secretary may provide to a State a waiver of any or all of the requirements established in this section if the Secretary determines that, with respect to services for the prevention and treatment of substance abuse, the requirement involved is unnecessary for maintaining quality in the provision of such services in the State.

(2) Date certain for acting upon request

The Secretary shall approve or deny a request for a waiver under paragraph (1) not later than 120 days after the date on which the request is made.

(3) Applicability of waiver

Any waiver provided by the Secretary under paragraph (1) shall be applicable only to the fiscal year involved.

(July 1, 1944, ch. 373, title XIX, § 1928, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 396.)

PRIOR PROVISIONS

A prior section 1928 of act July 1, 1944, was classified to section 300y–7 of this title prior to repeal by Pub. L. 99–280.

§ 300x–29. Submission to Secretary of statewide assessment of needs

The Secretary may make a grant under section 300x–21 of this title only if the State submits to the Secretary an assessment of the need in the State for authorized activities (which assessment is conducted in accordance with criteria issued by the Secretary), both by locality and by the State in general, which assessment includes a description of—

(1) the incidence and prevalence in the State of drug abuse and the incidence and prevalence in the State of alcohol abuse and alcoholism;

(2) current prevention and treatment activities in the State;

(3) the need of the State for technical assistance to carry out such activities;

(4) efforts by the State to improve such activities; and

(5) the extent to which the availability of such activities is insufficient to meet the need for the activities, the interim services to be made available under sections 300x–23(a) and 300x–27(b) of this title, and the manner in which such services are to be so available.

(July 1, 1944, ch. 373, title XIX, § 1929, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 396.)

PRIOR PROVISIONS

A prior section 1929 of act July 1, 1944, was classified to section 300y–8 of this title prior to repeal by Pub. L. 99–280.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x–32 of this title.

§ 300x–30. Maintenance of effort regarding State expenditures

(a) In general

With respect to the principal agency of a State for carrying out authorized activities, a funding agreement for a grant under section 300x–21 of this title for the State for a fiscal year is that such agency will for such year maintain aggregate State expenditures for authorized activities at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying for the grant.

(b) Waiver

(1) In general

Upon the request of a State, the Secretary may waive all or part of the requirement established in subsection (a) of this section if the Secretary determines that extraordinary economic conditions in the State justify the waiver.

(2) Date certain for acting upon request

The Secretary shall approve or deny a request for a waiver under paragraph (1) not later than 120 days after the date on which the request is made.

(3) Applicability of waiver

Any waiver provided by the Secretary under paragraph (1) shall be applicable only to the fiscal year involved.

(c) Noncompliance by State

(1) In general

In making a grant under section 300x–21 of this title to a State for a fiscal year, the Secretary shall make a determination of whether, for the previous fiscal year, the State maintained material compliance with any agreement made under subsection (a) of this section. If the Secretary determines that a State has failed to maintain such compliance, the Secretary shall reduce the amount of the allotment under section 300x–21 of this title for

[1] So in original. Probably should be ''activities''.

the State for the fiscal year for which the grant is being made by an amount equal to the amount constituting such failure for the previous fiscal year.

(2) Submission of information to Secretary

The Secretary may make a grant under section 300x–21 of this title for a fiscal year only if the State involved submits to the Secretary information sufficient for the Secretary to make the determination required in paragraph (1).

(July 1, 1944, ch. 373, title XIX, § 1930, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 397.)

PRIOR PROVISIONS

A prior section 1930 of act July 1, 1944, was classified to section 300y–9 of this title prior to repeal by Pub. L. 99–280.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300x–32, 300x–54, 300x–55 of this title.

§ 300x–31. Restrictions on expenditure of grant

(a) In general

(1) Certain restrictions

A funding agreement for a grant under section 300x–21 of this title is that the State involved will not expend the grant—

(A) to provide inpatient hospital services, except as provided in subsection (b) of this section;

(B) to make cash payments to intended recipients of health services;

(C) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(D) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds;

(E) to provide financial assistance to any entity other than a public or nonprofit private entity; or

(F) to carry out any program prohibited by section 300ee–5 of this title.

(2) Limitation on administrative expenses

A funding agreement for a grant under section 300x–21 of this title is that the State involved will not expend more than 5 percent of the grant to pay the costs of administering the grant.

(3) Limitation regarding penal and correctional institutions

A funding agreement for a State for a grant under section 300x–21 of this title is that, in expending the grant for the purpose of providing treatment services in penal or correctional institutions of the State, the State will not expend more than an amount equal to the amount expended for such purpose by the State from the grant made under section 300x–1a[1] of this title to the State for fiscal year 1991 (as section 300x–1a[1] of this title was in effect for such fiscal year).

(b) Exception regarding inpatient hospital services

(1) Medical necessity as precondition

With respect to compliance with the agreement made under subsection (a) of this section, a State may expend a grant under section 300x–21 of this title to provide inpatient hospital services as treatment for substance abuse only if it has been determined, in accordance with guidelines issued by the Secretary, that such treatment is a medical necessity for the individual involved, and that the individual cannot be effectively treated in a community-based, nonhospital, residential program of treatment.

(2) Rate of payment

In the case of an individual for whom a grant under section 300x–21 of this title is expended to provide inpatient hospital services described in paragraph (1), a funding agreement for the grant for the State involved is that the daily rate of payment provided to the hospital for providing the services to the individual will not exceed the comparable daily rate provided for community-based, nonhospital, residential programs of treatment for substance abuse.

(c) Waiver regarding construction of facilities

(1) In general

The Secretary may provide to any State a waiver of the restriction established in subsection (a)(1)(C) of this section for the purpose of authorizing the State to expend a grant under section 300x–21 of this title for the construction of a new facility or rehabilitation of an existing facility, but not for land acquisition.

(2) Standard regarding need for waiver

The Secretary may approve a waiver under paragraph (1) only if the State demonstrates to the Secretary that adequate treatment cannot be provided through the use of existing facilities and that alternative facilities in existing suitable buildings are not available.

(3) Amount

In granting a waiver under paragraph (1), the Secretary shall allow the use of a specified amount of funds to construct or rehabilitate a specified number of beds for residential treatment and a specified number of slots for outpatient treatment, based on reasonable estimates by the State of the costs of construction or rehabilitation. In considering waiver applications, the Secretary shall ensure that the State has carefully designed a program that will minimize the costs of additional beds.

(4) Matching funds

The Secretary may grant a waiver under paragraph (1) only if the State agrees, with respect to the costs to be incurred by the State in carrying out the purpose of the waiver, to make available non-Federal contributions in cash toward such costs in an amount equal to

[1] See References in Text note below.

not less than $1 for each $1 of Federal funds provided under section 300x–21 of this title.

(5) Date certain for acting upon request

The Secretary shall act upon a request for a waiver under paragraph (1) not later than 120 days after the date on which the request is made.

(July 1, 1944, ch. 373, title XIX, § 1931, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 397.)

REFERENCES IN TEXT

Section 300x–1a of this title, referred to in subsec. (a)(3), was repealed by Pub. L. 102–321, title II, § 201(2), July 10, 1992, 106 Stat. 378.

PRIOR PROVISIONS

A prior section 1931 of act July 1, 1944, was classified to section 300y–21 of this title and subsequently omitted from the Code.

Another prior section 1931 of act July 1, 1944, was classified to section 300y–10 of this title prior to repeal by Pub. L. 99–280.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300x–21, 300x–24, 300x–32, 300x–34 of this title.

§ 300x–32. Application for grant; approval of State plan

(a) In general

For purposes of section 300x–21 of this title, an application for a grant under such section for a fiscal year is in accordance with this section if, subject to subsections (c) and (d)(2) of this section—

(1) the State involved submits the application not later than the date specified by the Secretary;

(2) the application contains each funding agreement that is described in this subpart or subpart III for such a grant (other than any such agreement that is not applicable to the State);

(3) the agreements are made through certification from the chief executive officer of the State;

(4) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary;

(5) the application contains the information required in section 300x–29 of this title, the information required in section 300x–30(c)(2) of this title, and the report required in section 300x–52(a) of this title;

(6)(A) the application contains a plan in accordance with subsection (b) of this section and the plan is approved by the Secretary; and

(B) the State provides assurances satisfactory to the Secretary that the State complied with the provisions of the plan under subparagraph (A) that was approved by the Secretary for the most recent fiscal year for which the State received a grant under section 300x–21 of this title; and

(7) the application (including the plan under paragraph (6)) is otherwise in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this subpart.

(b) State plan

(1) In general

A plan submitted by a State under subsection (a)(6) of this section is in accordance with this subsection if the plan contains detailed provisions for complying with each funding agreement for a grant under section 300x–21 of this title that is applicable to the State, including a description of the manner in which the State intends to expend the grant.

(2) Authority of Secretary regarding modifications

As a condition of making a grant under section 300x–21 of this title to a State for a fiscal year, the Secretary may require that the State modify any provision of the plan submitted by the State under subsection (a)(6) of this section (including provisions on priorities in carrying out authorized activities). If the Secretary approves the plan and makes the grant to the State for the fiscal year, the Secretary may not during such year require the State to modify the plan.

(3) Authority of Center for Substance Abuse Prevention

With respect to plans submitted by the States under subsection (a)(6) of this section, the Secretary, acting through the Director of the Center for Substance Abuse Prevention, shall review and approve or disapprove the provisions of the plans that relate to prevention activities.

(c) Waivers regarding certain territories

In the case of any territory of the United States whose allotment under section 300x–21 of this title for the fiscal year is the amount specified in section 300x–33(c)(2)(B) of this title, the Secretary may waive such provisions of this subpart and subpart III as the Secretary determines to be appropriate, other than the provisions of section 300x–31 of this title.

(d) Issuance of regulations; precondition to making grants

(1) Regulations

Not later than August 25, 1992, the Secretary, acting as appropriate through the Director of the Center for Treatment Improvement or the Director of the Center for Substance Abuse Prevention, shall by regulation establish standards specifying the circumstances in which the Secretary will consider an application for a grant under section 300x–21 of this title to be in accordance with this section.

(2) Issuance as precondition to making grants

The Secretary may not make payments under any grant under section 300x–21 of this title for fiscal year 1993 on or after January 1, 1993, unless the Secretary has issued standards under paragraph (1).

(July 1, 1944, ch. 373, title XIX, § 1932, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 399.)

PRIOR PROVISIONS

A prior section 1932 of act July 1, 1944, was classified to section 300y–22 of this title and subsequently omitted from the Code.

Another prior section 1932 of act July 1, 1944, was classified to section 300y–11 of this title prior to repeal by Pub. L. 99–280.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290bb, 300x–21, 300x–51 of this title.

§ 300x–33. Determination of amount of allotment

(a) States

(1) In general

Subject to subsection (b) of this section, the Secretary shall determine the amount of the allotment required in section 300x–21 of this title for a State for a fiscal year as follows:

(A) The formula established in paragraph (1) of section 300x–7(a) of this title shall apply to this subsection to the same extent and in the same manner as the formula applies for purposes of section 300x–7(a) of this title, except that, in the application of such formula for purposes of this subsection, the modifications described in subparagraph (B) shall apply.

(B) For purposes of subparagraph (A), the modifications described in this subparagraph are as follows:

(i) The amount specified in paragraph (2)(A) of section 300x–7(a) of this title is deemed to be the amount appropriated under section 300x–35(a) of this title for allotments under section 300x–21 of this title for the fiscal year involved.

(ii) The term ''P'' is deemed to have the meaning given in paragraph (2) of this subsection. Section 300x–7(a)(5)(B) of this title applies to the data used in determining such term for the States.

(iii) The factor determined under paragraph (8) of section 300x–7(a) of this title is deemed to have the purpose of reflecting the differences that exist between the State involved and other States in the costs of providing authorized services.

(2) Determination of term "P"

For purposes of this subsection, the term ''P'' means the percentage that is the arithmetic mean of the percentage determined under subparagraph (A) and the percentage determined under subparagraph (B), as follows:

(A) The percentage constituted by the ratio of—

(i) an amount equal to the sum of the total number of individuals who reside in the State involved and are between 18 and 24 years of age (inclusive) and the number of individuals in the State who reside in urbanized areas of the State and are between such years of age; to

(ii) an amount equal to the total of the respective sums determined for the States under clause (i).

(B) The percentage constituted by the ratio of—

(i) the total number of individuals in the State who are between 25 and 64 years of age (inclusive); to

(ii) an amount equal to the sum of the respective amounts determined for the States under clause (i).

(b) Minimum allotments for States

For each of the fiscal years 1993 and 1994, the amount of the allotment required in section 300x–21 of this title for a State for the fiscal year involved shall be the greater of—

(1) the amount determined under subsection (a) of this section for the State for the fiscal year; and

(2) an amount equal to 79.4 percent of the amount received by the State from allotments made pursuant to this part for fiscal year 1992 (including reallotments under section 205(a) of the ADAMHA Reorganization Act).

(c) Territories

(1) Determination under formula

Subject to paragraphs (2) and (4), the amount of an allotment under section 300x–21 of this title for a territory of the United States for a fiscal year shall be the product of—

(A) an amount equal to the amounts reserved under paragraph (3) for the fiscal year; and

(B) a percentage equal to the quotient of—

(i) the civilian population of the territory, as indicated by the most recently available data; divided by

(ii) the aggregate civilian population of the territories of the United States, as indicated by such data.

(2) Minimum allotment for territories

The amount of an allotment under section 300x–21 of this title for a territory of the United States for a fiscal year shall be the greater of—

(A) the amount determined under paragraph (1) for the territory for the fiscal year;

(B) $50,000; and

(C) with respect to fiscal years 1993 and 1994, an amount equal to 79.4 percent of the amount received by the territory from allotments made pursuant to this part for fiscal year 1992.

(3) Reservation of amounts

The Secretary shall each fiscal year reserve for the territories of the United States 1.5 percent of the amounts appropriated under section 300x–35(a) of this title for allotments under section 300x–21 of this title for the fiscal year.

(4) Availability of data on population

With respect to data on the civilian population of the territories of the United States, if the Secretary determines for a fiscal year that recent such data for purposes of paragraph (1)(B) do not exist regarding a territory, the Secretary shall for such purposes estimate the civilian population of the territory by modifying the data on the territory to reflect the average extent of change occurring during the ensuing period in the population of all territories with respect to which recent such data do exist.

(5) Applicability of certain provisions

For purposes of subsections (a) and (b) of this section, the term ''State'' does not include the territories of the United States.

(d) Indian tribes and tribal organizations

(1) In general

If the Secretary—

(A) receives a request from the governing body of an Indian tribe or tribal organization within any State that funds under this subpart be provided directly by the Secretary to such tribe or organization; and

(B) makes a determination that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this;[1]

the Secretary shall reserve from the allotment under section 300x–21 of this title for the State for the fiscal year involved an amount that bears the same ratio to the allotment as the amount provided under this subpart to the tribe or tribal organization for fiscal year 1991 for activities relating to the prevention and treatment of the abuse of alcohol and other drugs bore to the amount of the portion of the allotment under this subpart for the State for such fiscal year that was expended for such activities.

(2) Tribe or tribal organization as grantee

The amount reserved by the Secretary on the basis of a determination under this paragraph[2] shall be granted to the Indian tribe or tribal organization serving the individuals for whom such a determination has been made.

(3) Application

In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this paragraph,[2] it shall submit to the Secretary a plan for such fiscal year that meets such criteria as the Secretary may prescribe.

(4) Definitions

The terms ''Indian tribe'' and ''tribal organization'' have the same meaning given such terms in subsections (b) and (c)[3] of section 450b of title 25.

(July 1, 1944, ch. 373, title XIX, § 1933, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 400; amended Aug. 26, 1992, Pub. L. 102–352, § 2(a)(11), 106 Stat. 938.)

REFERENCES IN TEXT

Section 205(a) of the ADAMHA Reorganization Act, referred to in subsec. (b)(2), is section 205(a) of Pub. L. 102–321, which is set out as a note under section 300x of this title.

Section 450b of title 25, referred to in subsec. (d)(4), was amended, and subsecs. (b) and (c) of section 450 no longer define the terms ''Indian tribe'' and ''tribal organization''. However, such terms are defined elsewhere in that section.

PRIOR PROVISIONS

A prior section 1933 of act July 1, 1944, was classified to section 300y–23 of this title and subsequently omitted from the Code.

AMENDMENTS

1992—Subsec. (c)(2)(C). Pub. L. 102–352 added subpar. (C).

[1] So in original. Probably should be ''this subpart;''.

[2] So in original. Probably should be ''subsection''.

[3] See References in Text note below.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300x–21, 300x–26, 300x–32, 300x–64 of this title.

§ 300x–34. Definitions

For purposes of this subpart:

(1) The term ''authorized activities'', subject to section 300x–31 of this title, means the activities described in section 300x–21(b) of this title.

(2) The term ''funding agreement'', with respect to a grant under section 300x–21 of this title to a State, means that the Secretary may make such a grant only if the State makes the agreement involved.

(3) The term ''prevention activities'', subject to section 300x–31 of this title, means activities to prevent substance abuse.

(4) The term ''substance abuse'' means the abuse of alcohol or other drugs.

(5) The term ''treatment activities'' means treatment services and, subject to section 300x–31 of this title, authorized activities that are related to treatment services.

(6) The term ''treatment facility'' means an entity that provides treatment services.

(7) The term ''treatment services'', subject to section 300x–31 of this title, means treatment for substance abuse.

(July 1, 1944, ch. 373, title XIX, § 1934, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 402.)

PRIOR PROVISIONS

A prior section 1934 of act July 1, 1944, was classified to section 300y–24 of this title and subsequently omitted from the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x–64 of this title.

§ 300x–35. Funding

(a) Authorization of appropriations

For the purpose of carrying out this subpart, subpart III and section 290aa–4 of this title with respect to substance abuse, and section 290bb–21(d) of this title, there are authorized to be appropriated $1,500,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(b) Allocations for technical assistance, national data base, data collection, and program evaluations

(1) In general

(A) For the purpose of carrying out section 300x–58(a) of this title with respect to substance abuse, section 290bb–21(d) of this title, and the purposes specified in subparagraphs (B) and (C), the Secretary shall obligate 5 percent of the amounts appropriated under subsection (a) of this section each fiscal year.

(B) The purpose specified in this subparagraph is the collection of data in this para-

graph[1] is carrying out section 290aa–4 of this title with respect to substance abuse.

(C) The purpose specified in this subparagraph is the conduct of evaluations of authorized activities to determine methods for improving the availability and quality of such activities.

(2) Activities of Center for Substance Abuse Prevention

Of the amounts reserved under paragraph (1) for a fiscal year, the Secretary, acting through the Director of the Center for Substance Abuse Prevention, shall obligate 20 percent for carrying out paragraph (1)(C), section 300x–58(a)[2] of this title with respect to prevention activities, and section 290bb–21(d) of this title.

(July 1, 1944, ch. 373, title XIX, § 1935, as added July 10, 1992, Pub. L. 102–321, title II, § 202, 106 Stat. 403.)

REFERENCES IN TEXT

Section 300x–58(a) of this title, referred to in subsec. (b)(2), was in the original ''section 1949(a)'', meaning section 1949(a) of act July 1, 1944, which is classified to section 300x–59 of this title, and was translated as reading ''section 1948(a)'' to reflect the probable intent of Congress because of context and because section 300x–59 does not contain a subsec. (a).

PRIOR PROVISIONS

A prior section 1935 of act July 1, 1944, was classified to section 300y–25 of this title and subsequently omitted from the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x–33 of this title.

SUBPART III—GENERAL PROVISIONS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 300x–6, 300x–9, 300x–32, 300x–35 of this title.

§ 300x–51. Opportunity for public comment on State plans

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State involved will make the plan required in section 300x–1 of this title, and the plan required in section 300x–32 of this title, respectively, public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during the development of the plan (including any revisions) and after the submission of the plan to the Secretary.

(July 1, 1944, ch. 373, title XIX, § 1941, as added July 10, 1992, Pub. L. 102–321, title II, § 203(a), 106 Stat. 403.)

§ 300x–52. Requirement of reports and audits by States

(a) Report

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State involved will submit to the Secretary a report in such form and containing such information as the Secretary determines (after consultation with the States and the Comptroller General) to be necessary for securing a record and a description of—

(1) the purposes for which the grant received by the State for the preceding fiscal year under the program involved were expended and a description of the activities of the State under the program; and

(2) the recipients of amounts provided in the grant.

(b) Audits

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State will, with respect to the grant, comply with chapter 75 of title 31.

(c) Availability to public

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State involved will—

(1) make copies of the reports and audits described in this section available for public inspection within the State; and

(2) provide copies of the report under subsection (a) of this section, upon request, to any interested person (including any public agency).

(July 1, 1944, ch. 373, title XIX, § 1942, as added July 10, 1992, Pub. L. 102–321, title II, § 203(a), 106 Stat. 403.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300x–6, 300x–32 of this title.

§ 300x–53. Additional requirements

(a) In general

A funding agreement for a grant under section 300x or 300x–21 of this title is that the State involved will—

(1)(A) for the fiscal year for which the grant involved is provided, provide for independent peer review to assess the quality, appropriateness, and efficacy of treatment services provided in the State to individuals under the program involved; and

(B) ensure that, in the conduct of such peer review, not fewer than 5 percent of the entities providing services in the State under such program are reviewed (which 5 percent is representative of the total population of such entities);

(2) permit and cooperate with Federal investigations undertaken in accordance with section 300x–55 of this title; and

(3) provide to the Secretary any data required by the Secretary pursuant to section 290aa–4 of this title and will cooperate with the Secretary in the development of uniform criteria for the collection of data pursuant to such section.

(b) Patient records

The Secretary may make a grant under section 300x or 300x–21 of this title only if the State involved has in effect a system to protect from inappropriate disclosure patient records main-

[1] So in original. The words ''is the collection of data in this paragraph'' probably should not appear.

[2] See References in Text note below.

tained by the State in connection with an activity funded under the program involved or by any entity which is receiving amounts from the grant.

(July 1, 1944, ch. 373, title XIX, § 1943, as added July 10, 1992, Pub. L. 102–321, title II, § 203(a), 106 Stat. 404; amended Aug. 26, 1992, Pub. L. 102–352, § 2(a)(12), 106 Stat. 939.)

AMENDMENTS

1992—Subsec. (a)(3). Pub. L. 102–352 substituted ''section 290aa–4 of this title'' for ''section 290bb–21 of this title''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

§ 300x–54. Disposition of certain funds appropriated for allotments

(a) In general

Amounts described in subsection (b) of this section and available for a fiscal year pursuant to section 300x or 300x–21 of this title, as the case may be, shall be allotted by the Secretary and paid to the States receiving a grant under the program involved, other than any State referred to in subsection (b) of this section with respect to such program. Such amounts shall be allotted in a manner equivalent to the manner in which the allotment under the program involved was determined.

(b) Specification of amounts

The amounts referred to in subsection (a) of this section are any amounts that—

(1) are not paid to States under the program involved as a result of—

(A) the failure of any State to submit an application in accordance with the program;

(B) the failure of any State to prepare such application in compliance with the program; or

(C) any State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State under the program;

(2) are terminated, repaid, or offset under section 300x–55 of this title;

(3) in the case of the program established in section 300x of this title, are available as a result of reductions in allotments under such section pursuant to section 300x–1(d) or 300x–4(b) of this title; or

(4) in the case of the program established in section 300x–21 of this title, are available as a result of reductions in allotments under such section pursuant to section 300x–26 or 300x–30 of this title.

(July 1, 1944, ch. 373, title XIX, § 1944, as added July 10, 1992, Pub. L. 102–321, title II, § 203(a), 106 Stat. 404.)

§ 300x–55. Failure to comply with agreements

(a) Suspension or termination of payments

Subject to subsection (e) of this section, if the Secretary determines that a State has materially failed to comply with the agreements or other conditions required for the receipt of a grant under the program involved, the Secretary may in whole or in part suspend payments under the grant, terminate the grant for cause, or employ such other remedies (including the remedies provided for in subsections (b) and (c) of this section) as may be legally available and appropriate in the circumstances involved.

(b) Repayment of payments

(1) In general

Subject to subsection (e) of this section, the Secretary may require a State to repay with interest any payments received by the State under section 300x or 300x–21 of this title that the Secretary determines were not expended by the State in accordance with the agreements required under the program involved.

(2) Offset against payments

If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under the program involved.

(c) Withholding of payments

(1) In general

Subject to subsections (e) and (g)(3) of this section, the Secretary may withhold payments due under section 300x or 300x–21 of this title if the Secretary determines that the State involved is not expending amounts received under the program involved in accordance with the agreements required under the program.

(2) Termination of withholding

The Secretary shall cease withholding payments from a State under paragraph (1) if the Secretary determines that there are reasonable assurances that the State will expend amounts received under the program involved in accordance with the agreements required under the program.

(d) Applicability of remedies to certain violations

(1) In general

With respect to agreements or other conditions for receiving a grant under the program involved, in the case of the failure of a State to maintain material compliance with a condition referred to in paragraph (2), the provisions for noncompliance with the condition that are provided in the section establishing the condition shall apply in lieu of subsections (a) through (c) of this section.

(2) Relevant conditions

For purposes of paragraph (1):

(A) In the case of the program established in section 300x of this title, a condition referred to in this paragraph is the condition established in section 300x–1(d) of this title and the condition established in section 300x–4(b) of this title.

(B) In the case of the program established in section 300x–21 of this title, a condition referred to in this paragraph is the condition established in section 300x–26 of this title and the condition established in section 300x–30 of this title.

(e) Opportunity for hearing

Before taking action against a State under any of subsections (a) through (c) of this section (or under a section referred to in subsection (d)(2) of this section, as the case may be), the Secretary shall provide to the State involved adequate notice and an opportunity for a hearing.

(f) Requirement of hearing in certain circumstances

(1) In general

If the Secretary receives a complaint that a State has failed to maintain material compliance with the agreements or other conditions required for receiving a grant under the program involved (including any condition referred to for purposes of subsection (d) of this section), and there appears to be reasonable evidence to support the complaint, the Secretary shall promptly conduct a hearing with respect to the complaint.

(2) Finding of material noncompliance

If in a hearing under paragraph (1) the Secretary finds that the State involved has failed to maintain material compliance with the agreement or other condition involved, the Secretary shall take such action under this section as may be appropriate to ensure that material compliance is so maintained, or such action as may be required in a section referred to in subsection (d)(2) of this section, as the case may be.

(g) Certain investigations

(1) Requirement regarding Secretary

The Secretary shall in fiscal year 1994 and each subsequent fiscal year conduct in not less than 10 States investigations of the expenditure of grants received by the States under section 300x or 300x–21 of this title in order to evaluate compliance with the agreements required under the program involved.

(2) Provision of records, etc., upon request

Each State receiving a grant under section 300x or 300x–21 of this title, and each entity receiving funds from the grant, shall make appropriate books, documents, papers, and records available to the Secretary or the Comptroller General, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(3) Limitations on authority

The Secretary may not institute proceedings under subsection (c) of this section unless the Secretary has conducted an investigation concerning whether the State has expended payments under the program involved in accordance with the agreements required under the program. Any such investigation shall be conducted within the State by qualified investigators.

(July 1, 1944, ch. 373, title XIX, § 1945, as added July 10, 1992, Pub. L. 102–321, title II, § 203(a), 106 Stat. 405.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300x–53, 300x–54 of this title.

§ 300x–56. Prohibitions regarding receipt of funds

(a) Establishment

(1) Certain false statements and representations

A person shall not knowingly and willfully make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payments may be made by a State from a grant made to the State under section 300x or 300x–21 of this title.

(2) Concealing or failing to disclose certain events

A person with knowledge of the occurrence of any event affecting the initial or continued right of the person to receive any payments from a grant made to a State under section 300x or 300x–21 of this title shall not conceal or fail to disclose any such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such amount is due.

(b) Criminal penalty for violation of prohibition

Any person who violates any prohibition established in subsection (a) of this section shall for each violation be fined in accordance with title 18 or imprisoned for not more than 5 years, or both.

(July 1, 1944, ch. 373, title XIX, § 1946, as added July 10, 1992, Pub. L. 102–321, title II, § 203(a), 106 Stat. 406.)

§ 300x–57. Nondiscrimination

(a) In general

(1) Rule of construction regarding certain civil rights laws

For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under section 300x or 300x–21 of this title shall be considered to be programs and activities receiving Federal financial assistance.

(2) Prohibition

No person shall on the ground of sex (including, in the case of a woman, on the ground that the woman is pregnant), or on the ground of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under section 300x or 300x–21 of this title.

(b) Enforcement

(1) Referrals to Attorney General after notice

Whenever the Secretary finds that a State, or an entity that has received a payment pur-

suant to section 300x or 300x–21 of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), the Secretary shall notify the chief executive officer of the State and shall request the chief executive officer to secure compliance. If within a reasonable period of time, not to exceed 60 days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(A) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(B) exercise the powers and functions provided by the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], as may be applicable; or

(C) take such other actions as may be authorized by law.

(2) Authority of Attorney General

When a matter is referred to the Attorney General pursuant to paragraph (1)(A), or whenever the Attorney General has reason to believe that a State or an entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(July 1, 1944, ch. 373, title XIX, § 1947, as added July 10, 1992, Pub. L. 102–321, title II, § 203(a), 106 Stat. 407.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1) and (b)(1)(B), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsecs. (a)(1) and (b)(1)(B), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Act is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1001 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1) and (b)(1)(B), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Act is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§ 300x–58. Technical assistance and provision of supplies and services in lieu of grant funds

(a) Technical assistance

The Secretary shall, without charge to a State receiving a grant under section 300x or 300x–21 of this title, provide to the State (or to any public or nonprofit private entity within the State) technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to the program involved. The Secretary may provide such technical assistance directly, through contract, or through grants.

(b) Provision of supplies and services in lieu of grant funds

(1) In general

Upon the request of a State receiving a grant under section 300x or 300x–21 of this title, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out the program involved and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) Corresponding reduction in payments

With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under the program involved to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XIX, § 1948, as added July 10, 1992, Pub. L. 102–321, title II, § 203(a), 106 Stat. 408.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300x–9, 300x–35 of this title.

§ 300x–59. Report by Secretary

Not later than January 24, 1994, the Secretary shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report on the activities of the States carried out pursuant to the programs established in sections 300x and 300x–21 of this title. Such report may include any recommendations of the Secretary for appropriate changes in legislation.

(July 1, 1944, ch. 373, title XIX, § 1949, as added July 10, 1992, Pub. L. 102–321, title II, § 203(a), 106 Stat. 408.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 300x–60. Rule of construction regarding delegation of authority to States

With respect to States receiving grants under section 300x or 300x–21 of this title, this part may not be construed to authorize the Secretary to delegate to the States the primary responsibility for interpreting the governing provisions of this part.

(July 1, 1944, ch. 373, title XIX, § 1950, as added July 10, 1992, Pub. L. 102–321, title II, § 203(a), 106 Stat. 408.)

§ 300x–61. Solicitation of views of certain entities

In carrying out this part, the Secretary, as appropriate, shall solicit the views of the States and other appropriate entities.

(July 1, 1944, ch. 373, title XIX, § 1951, as added July 10, 1992, Pub. L. 102–321, title II, § 203(a), 106 Stat. 408.)

§ 300x–62. Availability to States of grant payments

(a) In general

Subject to subsection (b) of this section, any amounts paid to a State under the program involved shall be available for obligation until the end of the fiscal year for which the amounts were paid, and if obligated by the end of such year, shall remain available for expenditure until the end of the succeeding fiscal year.

(b) Exception regarding noncompliance of subgrantees

If a State has in accordance with subsection (a) of this section obligated amounts paid to the State under the program involved, in any case in which the Secretary determines that the obligation consists of a grant or contract awarded by the State, and that the State has terminated or reduced the amount of such financial assistance on the basis of the failure of the recipient of the assistance to comply with the terms upon which the assistance was conditioned—

(1) the amounts involved shall be available for reobligation by the State through September 30 of the fiscal year following the fiscal year for which the amounts were paid to the State; and

(2) any of such amounts that are obligated by the State in accordance with paragraph (1) shall be available for expenditure through such date.

(July 1, 1944, ch. 373, title XIX, § 1952, as added July 10, 1992, Pub. L. 102–321, title II, § 203(a), 106 Stat. 409.)

§ 300x–63. Continuation of certain programs

(a) In general

Of the amount allotted to the State of Hawaii under section 300x of this title, and the amount allotted to such State under section 300x–21 of this title, an amount equal to the proportion of Native Hawaiians residing in the State to the total population of the State shall be available, respectively, for carrying out the program involved for Native Hawaiians.

(b) Expenditure of amounts

The amount made available under subsection (a) of this section may be expended only through contracts entered into by the State of Hawaii with public and private nonprofit organizations to enable such organizations to plan, conduct, and administer comprehensive substance abuse and treatment programs for the benefit of Native Hawaiians. In entering into contracts under this section, the State of Hawaii shall give preference to Native Hawaiian organizations and Native Hawaiian health centers.

(c) Definitions

For the purposes of this subsection,[1] the terms ''Native Hawaiian'', ''Native Hawaiian organization'', and ''Native Hawaiian health center'' have the meaning given such terms in section 11707 of this title.

(July 1, 1944, ch. 373, title XIX, § 1953, as added July 10, 1992, Pub. L. 102–321, title II, § 203(a), 106 Stat. 409.)

§ 300x–64. Definitions

(a) Definitions for this subpart

For purposes of this subpart:

(1) The term ''program involved'' means the program of grants established in section 300x or 300x–21 of this title, or both, as indicated by whether the State involved is receiving or is applying to receive a grant under section 300x or 300x–21 of this title, or both.

(2)(A) The term ''funding agreement'', with respect to a grant under section 300x of this title, has the meaning given such term in section 300x–8 of this title.

(B) The term ''funding agreement'', with respect to a grant under section 300x–21 of this title, has the meaning given such term in section 300x–34 of this title.

(b) Definitions for this part

For purposes of this part:

(1) The term ''Comptroller General'' means the Comptroller General of the United States.

(2) The term ''State'', except as provided in sections 300x–7(c)(5) of this title and 300x–33(c)(5) of this title, means each of the several States, the District of Columbia, and each of the territories of the United States.

(3) The term ''territories of the United States'' means each of the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Palau, the Marshall Islands, and Micronesia.

(4) The term ''interim services'', in the case of an individual in need of treatment for substance abuse who has been denied admission to a program of such treatment on the basis of the lack of the capacity of the program to admit the individual, means services for reducing the adverse health effects of such abuse, for promoting the health of the individual, and for reducing the risk of transmission of disease, which services are provided until the individual is admitted to such a program.

(July 1, 1944, ch. 373, title XIX, § 1954, as added July 10, 1992, Pub. L. 102–321, title II, § 203(a), 106 Stat. 409.)

PART C—CERTAIN PROGRAMS REGARDING SUBSTANCE ABUSE

SUBPART I—EXPANSION OF CAPACITY FOR PROVIDING TREATMENT

§ 300y. Categorical grants to States

(a) Grants for States with insufficient capacity

(1) In general

The Secretary, acting through the Director of the Center for Substance Abuse Treatment,

[1] So in original. Probably should be ''section,''.

may make grants to States for the purpose of increasing the maximum number of individuals to whom public and nonprofit private entities in the States are capable of providing effective treatment for substance abuse.

(2) Eligible States

The Director may not make a grant under subsection (a) of this section to a State unless the number of individuals seeking treatment services in the State significantly exceeds the maximum number described in paragraph (1) that is applicable to the State.

(b) Priority in making grants

(1) Residential treatment services for pregnant women

In making grants under subsection (a) of this section, the Director shall give priority to States that agree to give priority in the expenditure of the grant to carrying out the purpose described in such subsection as the purpose relates to the provision of residential treatment services to pregnant women.

(2) Additional priority regarding matching funds

In the case of any application for a grant under subsection (a) of this section that is receiving priority under paragraph (1), the Director shall give further priority to the application if the State involved agrees as a condition of receiving the grant to provide non-Federal contributions under subsection (c) of this section in a greater amount than the amount required under such subsection for the applicable fiscal year.

(c) Requirement of matching funds

(1) In general

Subject to paragraph (3), the Director may not make a grant under subsection (a) of this section unless the State agrees, with respect to the costs of the program to be carried out by the State pursuant to such subsection, to make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount that is—

(A) for the first fiscal year for which the State receives such a grant, not less than $1 for each $9 of Federal funds provided in the grant;

(B) for any second or third such fiscal year, not less than $1 for each $9 of Federal funds provided in the grant; and

(C) for any subsequent such fiscal year, not less than $1 for each $3 of Federal funds provided in the grant.

(2) Determination of amount of non-Federal contribution

Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(3) Waiver

The Director may waive the requirement established in paragraph (1) if the Director determines that extraordinary economic conditions in the State justify the waiver.

(d) Limitation regarding direct treatment services

The Director may not make a grant under subsection (a) of this section unless the State involved agrees that the grant will be expended only for the direct provision of treatment services. The preceding sentence may not be construed to authorize the expenditure of such a grant for the planning or evaluation of treatment services.

(e) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(f) Duration of grant

The period during which payments are made to a State from a grant under subsection (a) of this section may not exceed 5 years. The provision of such payments shall be subject to annual approval by the Director of the payments and subject to the availability of appropriations for the fiscal year involved to make the payments.

(g) Maintenance of effort

The Director may not make a grant under subsection (a) of this section unless the State involved agrees to maintain State expenditures for substance abuse treatment services at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the first fiscal year for which the State receives such a grant.

(h) Restrictions on use of grant

The Director may not make a grant under subsection (a) of this section unless the State involved agrees that the grant will not be expended—

(1) to provide inpatient hospital services;

(2) to make cash payments to intended recipients of health services;

(3) to purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) to provide financial assistance to any entity other than a public or nonprofit private entity.

(i) Definitions

For purposes of this section—

(1) The term ''Director'' means the Director of the Center for Substance Abuse Treatment.

(2) The term ''substance abuse'' means the abuse of alcohol or other drugs.

(j) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated

$86,000,000 for fiscal year 1993, and such sums as may be necessary for fiscal year 1994.

(July 1, 1944, ch. 373, title XIX, § 1971, as added July 10, 1992, Pub. L. 102–321, title II, § 204, 106 Stat. 410; amended Aug. 26, 1992, Pub. L. 102–352, § 2(a)(13), 106 Stat. 939.)

PRIOR PROVISIONS

A prior section 300y, act July 1, 1944, ch. 373, title XIX, § 1921, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4002, 100 Stat. 3207–103, related to establishment of special alcohol abuse and drug abuse programs, prior to repeal by Pub. L. 100–690, title II, § 2038(1), Nov. 18, 1988, 102 Stat. 4203.

Another prior section 300y, act July 1, 1944, ch. 373, title XIX, § 1921, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552, related to planning grants, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Prior sections 300y–1 and 300y–2 were repealed by Pub. L. 100–690, title II, § 2038(1), Nov. 18, 1988, 102 Stat. 4203.

Section 300y–1, act July 1, 1944, ch. 373, title XIX, § 1922, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4002, 100 Stat. 3207–106, related to transfer of funds to Administrator of Veterans' Affairs.

Another prior section 300y–1, act July 1, 1944, ch. 373, title XIX, § 1922, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552, authorized appropriations, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Section 300y–2, act July 1, 1944, ch. 373, title XIX, § 1923, as added Oct. 27, 1986, Pub. L. 99–570, title IV, § 4002, 100 Stat. 3207–106, related to evaluation of treatment programs.

Another prior section 300y–2, act July 1, 1944, ch. 373, title XIX, § 1923, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 552, provided for grants under section 254c of this title, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Prior sections 300y–3 to 300y–10 were repealed by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Section 300y–3, act July 1, 1944, ch. 373, title XIX, § 1924, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 553, provided that allotments be based upon prior year distributions and provided for direct distributions to Indian tribes.

Section 300y–4, act July 1, 1944, ch. 373, title XIX, § 1925, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 553, related to payments under allotments to States.

Section 300y–5, act July 1, 1944, ch. 373, title XIX, § 1926, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 554, related to State grants to community health centers from allotments.

Section 300y–6, act July 1, 1944, ch. 373, title XIX, § 1927, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 556, related to application requirements and submittal, availability for public comment, and revision of a description of intended use of funds.

Section 300y–7, act July 1, 1944, ch. 373, title XIX, § 1928, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 557, related to reporting and auditing requirements.

Section 300y–8, act July 1, 1944, ch. 373, title XIX, § 1929, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 558, related to withholding of funds from a State not in compliance.

Section 300y–9, act July 1, 1944, ch. 373, title XIX, § 1930, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 558, related to nondiscrimination requirements.

Section 300y–10, act July 1, 1944, ch. 373, title XIX, § 1931, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 559, provided criminal penalty for false statements.

AMENDMENTS

1992—Subsec. (g). Pub. L. 102–352 inserted ''substance abuse'' before ''treatment services''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–352 effective immediately upon effectuation of amendment made by Pub. L. 102–321, see section 3(1) of Pub. L. 102–352, set out as a note under section 285n of this title.

EFFECTIVE DATE

Section effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, see section 801(b), (d)(1) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SUBPART II—INTERIM MAINTENANCE TREATMENT OF NARCOTICS DEPENDENCE

§ 300y–11. Interim maintenance treatment

(a) Requirement regarding Secretary

Subject to the following subsections of this section, for the purpose of reducing the incidence of the transmission of HIV disease pursuant to the intravenous abuse of heroin or other morphine-like drugs, the Secretary, in establishing conditions for the use of methadone in public or nonprofit private programs of treatment for dependence on such drugs, shall authorize such programs—

(1) to dispense methadone for treatment purposes to individuals who—

(A) meet the conditions for admission to such programs that dispense methadone as part of comprehensive treatment for such dependence; and

(B) are seeking admission to such programs that so dispense methadone, but as a result of the limited capacity of the programs, will not gain such admission until 14 or more days after seeking admission to the programs; and

(2) in dispensing methadone to such individuals, to provide only minimum ancillary services during the period in which the individuals are waiting for admission to programs of comprehensive treatment.

(b) Inapplicability of requirement in certain circumstances

(1) In general

The requirement established in subsection (a) of this section for the Secretary does not apply if any or all of the following conditions are met:

(A) The preponderance of scientific research indicates that the risk of the transmission of HIV disease pursuant to the intravenous abuse of drugs is minimal.

(B) The preponderance of scientific research indicates that the medically supervised dispensing of methadone is not an effective method of reducing the extent of dependence on heroin and other morphine-like drugs.

(C) The preponderance of available data indicates that, of treatment programs that dispense methadone as part of comprehensive treatment, a substantial majority admit all individuals seeking services to the programs not later than 14 days after the individuals seek admission to the programs.

(2) Evaluation by Secretary

In evaluating whether any or all of the conditions described in paragraph (1) have been

met, the Secretary shall consult with the National Commission on Acquired Immune Deficiency Syndrome.

(c) Conditions for obtaining authorization from Secretary

(1) In general

In carrying out the requirement established in subsection (a) of this section, the Secretary shall, after consultation with the National Commission on Acquired Immune Deficiency Syndrome, by regulation issue such conditions for treatment programs to obtain authorization from the Secretary to provide interim maintenance treatment as may be necessary to carry out the purpose described in such subsection. Such conditions shall include conditions for preventing the unauthorized use of methadone.

(2) Counseling on HIV disease

The regulations issued under paragraph (1) shall provide that an authorization described in such paragraph may not be issued to a treatment program unless the program provides to recipients of the treatment counseling on preventing exposure to and the transmission of HIV disease.

(3) Permission of relevant State as condition of authorization

The regulations issued under paragraph (1) shall provide that the Secretary may not provide an authorization described in such paragraph to any treatment program in a State unless the chief public health officer of the State has certified to the Secretary that—

(A) such officer does not object to the provision of such authorizations to treatment programs in the State; and

(B) the provision of interim maintenance services in the State will not reduce the capacity of comprehensive treatment programs in the State to admit individuals to the programs (relative to the date on which such officer so certifies).

(4) Date certain for issuance of regulations; failure of Secretary

The Secretary shall issue the final rule for purposes of the regulations required in paragraph (1), and such rule shall be effective, not later than the expiration of the 180-day period beginning on July 10, 1992. If the Secretary fails to meet the requirement of the preceding sentence, the proposed rule issued on March 2, 1989, with respect to part 291 of title 21, Code of Federal Regulations (docket numbered 88N–0444; 54 Fed. Reg. 8973 et seq.) is deemed to take effect as a final rule upon the expiration of such period, and the provisions of paragraph (3) of this subsection are deemed to be incorporated into such rule.

(d) Definitions

For purposes of this section:

(1) The term ''interim maintenance services'' means the provision of methadone in a treatment program under the circumstances described in paragraphs (1) and (2) of subsection (a) of this section.

(2) The term ''HIV disease'' means infection with the etiologic agent for acquired immune deficiency syndrome.

(3) The term ''treatment program'' means a public or nonprofit private program of treatment for dependence on heroin or other morphine-like drugs.

(July 1, 1944, ch. 373, title XIX, § 1976, as added July 10, 1992, Pub. L. 102–321, title II, § 204, 106 Stat. 412.)

PRIOR PROVISIONS

A prior section 300y–11, act July 1, 1944, ch. 373, title XIX, § 1932, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 559; amended Jan. 4, 1983, Pub. L. 97–414, § 8(v), 96 Stat. 2063, related to applicability of other provisions and promulgation of regulations, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Sections 300y–21 to 300y–27 terminated Jan. 1, 1991, pursuant to section 300y–27 and were omitted from the Code.

Section 300y–21, act July 1, 1944, ch. 373, title XIX, § 1931, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3117, provided definitions for this part.

A prior section 1931 of act July 1, 1944, ch. 373, title XIX, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 559, provided criminal penalty for false statements and was classified to former section 300y–10 of this title, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Section 300y–22, act July 1, 1944, ch. 373, title XIX, § 1932, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3117, authorized appropriations for this part.

A prior section 1932 of act July 1, 1944, ch. 373, title XIX, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 901, 95 Stat. 559; amended Jan. 4, 1983, Pub. L. 97–414, § 8(v), 96 Stat. 2063, related to applicability of other provisions and promulgation of regulations and was classified to former section 300y–11 of this title, prior to repeal by Pub. L. 99–280, § 5, Apr. 24, 1986, 100 Stat. 400.

Section 300y–23, act July 1, 1944, ch. 373, title XIX, § 1933, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3117, provided for allotments under this part.

Section 300y–24, act July 1, 1944, ch. 373, title XIX, § 1934, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3118, provided for payments under allotments to States.

Section 300y–25, act July 1, 1944, ch. 373, title XIX, § 1935, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3118, specified use of allotments.

Section 300y–26, act July 1, 1944, ch. 373, title XIX, § 1936, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3119, provided for applications, requirements of the application, and description of activities.

Section 300y–27, act July 1, 1944, ch. 373, title XIX, § 1937, as added Nov. 4, 1988, Pub. L. 100–607, title IV, § 408(a), 102 Stat. 3120; amended Aug. 16, 1989, Pub. L. 101–93, § 5(f)(1)(B), 103 Stat. 612, provided for termination of this part effective Jan. 1, 1991.

EFFECTIVE DATE

Section effective July 10, 1992, with programs making awards providing financial assistance in fiscal year 1993 and subsequent years effective for awards made on or after Oct. 1, 1992, see section 801(b), (d)(1) of Pub. L. 102–321, set out as an Effective Date of 1992 Amendment note under section 236 of this title.

SUBCHAPTER XVIII—ADOLESCENT FAMILY LIFE DEMONSTRATION PROJECTS

§ 300z. Findings and purposes

(a) The Congress finds that—

(1) in 1978, an estimated one million one hundred thousand teenagers became pregnant, more than five hundred thousand teenagers

carried their babies to term, and over one-half of the babies born to such teenagers were born out of wedlock;

(2) adolescents aged seventeen and younger accounted for more than one-half of the out of wedlock births to teenagers;

(3) in a high proportion of cases, the pregnant adolescent is herself the product of an unmarried parenthood during adolescence and is continuing the pattern in her own lifestyle;

(4) it is estimated that approximately 80 per centum of unmarried teenagers who carry their pregnancies to term live with their families before and during their pregnancy and remain with their families after the birth of the child;

(5) pregnancy and childbirth among unmarried adolescents, particularly young adolescents, often results in severe adverse health, social, and economic consequences including: a higher percentage of pregnancy and childbirth complications; a higher incidence of low birth weight babies; a higher infant mortality and morbidity; a greater likelihood that an adolescent marriage will end in divorce; a decreased likelihood of completing schooling; and higher risks of unemployment and welfare dependency; and therefore, education, training, and job research services are important for adolescent parents;

(6)(A) adoption is a positive option for unmarried pregnant adolescents who are unwilling or unable to care for their children since adoption is a means of providing permanent families for such children from available approved couples who are unable or have difficulty in conceiving or carrying children of their own to term; and

(B) at present, only 4 per centum of unmarried pregnant adolescents who carry their babies to term enter into an adoption plan or arrange for their babies to be cared for by relatives or friends;

(7) an unmarried adolescent who becomes pregnant once is likely to experience recurrent pregnancies and childbearing, with increased risks;

(8)(A) the problems of adolescent premarital sexual relations, pregnancy, and parenthood are multiple and complex and are frequently associated with or are a cause of other troublesome situations in the family; and

(B) such problems are best approached through a variety of integrated and essential services provided to adolescents and their families by other family members, religious and charitable organizations, voluntary associations, and other groups in the private sector as well as services provided by publicly sponsored initiatives;

(9) a wide array of educational, health, and supportive services are not available to adolescents with such problems or to their families, or when available frequently are fragmented and thus are of limited effectiveness in discouraging adolescent premarital sexual relations and the consequences of such relations;

(10)(A) prevention of adolescent sexual activity and adolescent pregnancy depends primarily upon developing strong family values and close family ties, and since the family is the basic social unit in which the values and attitudes of adolescents concerning sexuality and pregnancy are formed, programs designed to deal with issues of sexuality and pregnancy will be successful to the extent that such programs encourage and sustain the role of the family in dealing with adolescent sexual activity and adolescent pregnancy;

(B) Federal policy therefore should encourage the development of appropriate health, educational, and social services where such services are now lacking or inadequate, and the better coordination of existing services where they are available; and

(C) services encouraged by the Federal Government should promote the involvement of parents with their adolescent children, and should emphasize the provision of support by other family members, religious and charitable organizations, voluntary associations, and other groups in the private sector in order to help adolescents and their families deal with complex issues of adolescent premarital sexual relations and the consequences of such relations; and

(11)(A) there has been limited research concerning the societal causes and consequences of adolescent pregnancy;

(B) there is limited knowledge concerning which means of intervention are effective in mediating or eliminating adolescent premarital sexual relations and adolescent pregnancy; and

(C) it is necessary to expand and strengthen such knowledge in order to develop an array of approaches to solving the problems of adolescent premarital sexual relations and adolescent pregnancy in both urban and rural settings.

(b) Therefore, the purposes of this subchapter are—

(1) to find effective means, within the context of the family, of reaching adolescents before they become sexually active in order to maximize the guidance and support available to adolescents from parents and other family members, and to promote self discipline and other prudent approaches to the problem of adolescent premarital sexual relations, including adolescent pregnancy;

(2) to promote adoption as an alternative for adolescent parents;

(3) to establish innovative, comprehensive, and integrated approaches to the delivery of care services both for pregnant adolescents, with primary emphasis on unmarried adolescents who are seventeen years of age or under, and for adolescent parents, which shall be based upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration, and linkages among such existing programs in order to—

(A) enable pregnant adolescents to obtain proper care and assist pregnant adolescents and adolescent parents to become productive independent contributors to family and community life; and

(B) assist families of adolescents to understand and resolve the societal causes which are associated with adolescent pregnancy;

(4) to encourage and support research projects and demonstration projects concerning the societal causes and consequences of adolescent premarital sexual relations, contraceptive use, pregnancy, and child rearing;

(5) to support evaluative research to identify effective services which alleviate, eliminate, or resolve any negative consequences of adolescent premarital sexual relations and adolescent childbearing for the parents, the child, and their families; and

(6) to encourage and provide for the dissemination of results, findings, and information from programs and research projects relating to adolescent premarital sexual relations, pregnancy, and parenthood.

(July 1, 1944, ch. 373, title XX, § 2001, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 955(a), 95 Stat. 578; amended Oct. 19, 1984, Pub. L. 98–512, § 2(b), (c), 98 Stat. 2409.)

AMENDMENTS

1984—Subsec. (a)(5). Pub. L. 98–512, § 2(b), struck out reference relating to developmental disabilities and inserted provision relating to importance of education, training, and job research services for adolescent parents.

Subsec. (b)(3). Pub. L. 98–512, § 2(c), inserted ''both'' before ''for pregnant adolescents''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300z–7 of this title.

§ 300z–1. Definitions; regulations applicable

(a) For the purposes of this subchapter, the term—

(1) ''Secretary'' means the Secretary of Health and Human Services;

(2) ''eligible person'' means—

(A) with regard to the provision of care services, a pregnant adolescent, an adolescent parent, or the family of a pregnant adolescent or an adolescent parent; or

(B) with regard to the provision of prevention services and referral to such other services which may be appropriate, a nonpregnant adolescent;

(3) ''eligible grant recipient'' means a public or nonprofit private organization or agency which demonstrates, to the satisfaction of the Secretary—

(A) in the case of an organization which will provide care services, the capability of providing all core services in a single setting or the capability of creating a network through which all core services would be provided; or

(B) in the case of an organization which will provide prevention services, the capability of providing such services;

(4) ''necessary services'' means services which may be provided by grantees which are—

(A) pregnancy testing and maternity counseling;

(B) adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(C) primary and preventive health services including prenatal and postnatal care;

(D) nutrition information and counseling;

(E) referral for screening and treatment of venereal disease;

(F) referral to appropriate pediatric care;

(G) educational services relating to family life and problems associated with adolescent premarital sexual relations, including—

(i) information about adoption;

(ii) education on the responsibilities of sexuality and parenting;

(iii) the development of material to support the role of parents as the provider of sex education; and

(iv) assistance to parents, schools, youth agencies, and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(H) appropriate educational and vocational services;

(I) referral to licensed residential care or maternity home services; and

(J) mental health services and referral to mental health services and to other appropriate physical health services;

(K) child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(L) consumer education and homemaking;

(M) counseling for the immediate and extended family members of the eligible person;

(N) transportation;

(O) outreach services to families of adolescents to discourage sexual relations among unemancipated minors;

(P) family planning services; and

(Q) such other services consistent with the purposes of this subchapter as the Secretary may approve in accordance with regulations promulgated by the Secretary;

(5) ''core services'' means those services which shall be provided by a grantee, as determined by the Secretary by regulation;

(6) ''supplemental services'' means those services which may be provided by a grantee, as determined by the Secretary by regulation;

(7) ''care services'' means necessary services for the provision of care to pregnant adolescents and adolescent parents and includes all core services with respect to the provision of such care prescribed by the Secretary by regulation;

(8) ''prevention services'' means necessary services to prevent adolescent sexual relations, including the services described in subparagraphs (A), (D), (E), (G), (H), (M), (N), (O), and (Q) of paragraph (4);

(9) ''adolescent'' means an individual under the age of nineteen; and

(10) ''unemancipated minor'' means a minor who is subject to the control, authority, and supervision of his or her parents or guardians, as determined under State law.

(b) Until such time as the Secretary promulgates regulations pursuant to the second sen-

tence of this subsection, the Secretary shall use the regulations promulgated under title VI of the Health Services and Centers Amendments of 1978 [42 U.S.C. 300a–21 et seq.] which were in effect on August 13, 1981, to determine which necessary services are core services for purposes of this subchapter. The Secretary may promulgate regulations to determine which necessary services are core services for purposes of this subchapter based upon an evaluation of and information concerning which necessary services are essential to carry out the purposes of this subchapter and taking into account (1) factors such as whether services are to be provided in urban or rural areas, the ethnic groups to be served, and the nature of the populations to be served, and (2) the results of the evaluations required under section 300z–5(b) of this title. The Secretary may from time to time revise such regulations.

(July 1, 1944, ch. 373, title XX, § 2002, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 955(a), 95 Stat. 580; amended Oct. 19, 1984, Pub. L. 98–512, § 2(d), 98 Stat. 2409.)

REFERENCES IN TEXT

The Health Services and Centers Amendments of 1978, referred to in subsec. (b), is Pub. L. 95–626, Nov. 10, 1978, 92 Stat. 3551, as amended. Title VI of the Health Services and Centers Amendments of 1978 was classified generally to part A (§ 300a–21 et seq.) of subchapter VIII–A of this chapter prior to its repeal by Pub. L. 97–35, title IX, § 955(b), title XXI, § 2193(f), Aug. 13, 1981, 95 Stat. 592, 828. For complete classification of this Act to the Code, see Short Title of 1978 Amendments note set out under section 201 of this title and Tables.

AMENDMENTS

1984—Subsec. (a)(4)(H). Pub. L. 98–512 struck out ''and referral to such services'' after ''vocational services''.

§ 300z–2. Demonstration projects; grant authorization, etc.

(a) The Secretary may make grants to further the purposes of this subchapter to eligible grant recipients which have submitted an application which the Secretary finds meets the requirements of section 300z–5 of this title for demonstration projects which the Secretary determines will help communities provide appropriate care and prevention services in easily accessible locations. Demonstration projects shall, as appropriate, provide, supplement, or improve the quality of such services. Demonstration projects shall use such methods as will strengthen the capacity of families to deal with the sexual behavior, pregnancy, or parenthood of adolescents and to make use of support systems such as other family members, friends, religious and charitable organizations, and voluntary associations.

(b) Grants under this subchapter for demonstration projects may be for the provision of—

(1) care services;

(2) prevention services; or

(3) a combination of care services and prevention services.

(July 1, 1944, ch. 373, title XX, § 2003, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 955(a), 95 Stat. 582.)

§ 300z–3. Uses of grants for demonstration projects for services

(a) Covered projects

Except as provided in subsection (b) of this section, funds provided for demonstration projects for services under this subchapter may be used by grantees only to—

(1) provide to eligible persons—

(A) care services;

(B) prevention services; or

(C) care and prevention services (in the case of a grantee who is providing a combination of care and prevention services);

(2) coordinate, integrate, and provide linkages among providers of care, prevention, and other services for eligible persons in furtherance of the purposes of this subchapter;

(3) provide supplemental services where such services are not adequate or not available to eligible persons in the community and which are essential to the care of pregnant adolescents and to the prevention of adolescent premarital sexual relations and adolescent pregnancy;

(4) plan for the administration and coordination of pregnancy prevention services and programs of care for pregnant adolescents and adolescent parents which will further the objectives of this subchapter; and

(5) fulfill assurances required for grant approval by section 300z–5 of this title.

(b) Family planning services; availability in community

(1) No funds provided for a demonstration project for services under this subchapter may be used for the provision of family planning services (other than counseling and referral services) to adolescents unless appropriate family planning services are not otherwise available in the community.

(2) Any grantee who receives funds for a demonstration project for services under this subchapter and who, after determining under paragraph (1) that appropriate family planning services are not otherwise available in the community, provides family planning services (other than counseling and referral services) to adolescents may only use funds provided under this subchapter for such family planning services if all funds received by such grantee from all other sources to support such family planning services are insufficient to support such family planning services.

(c) Fees for services: criteria

Grantees who receive funds for a demonstration project for services under this subchapter shall charge fees for services pursuant to a fee schedule approved by the Secretary as a part of the application described in section 300z–5 of this title which bases fees charged by the grantee on the income of the eligible person or the parents or legal guardians of the eligible person and takes into account the difficulty adolescents face in obtaining resources to pay for services. A grantee who receives funds for a demonstration project for services under this subchapter may not, in any case, discriminate with regard to the provision of services to any indi-

vidual because of that individual's inability to provide payment for such services, except that in determining the ability of an unemancipated minor to provide payment for services, the income of the family of an unemancipated minor shall be considered in determining the ability of such minor to make such payments unless the parents or guardians of the unemancipated minor refuse to make such payments.

(July 1, 1944, ch. 373, title XX, § 2004, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 955(a), 95 Stat. 583.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300z–5 of this title.

§ 300z–4. Grants for demonstration projects for services

(a) Priorities

In approving applications for grants for demonstration projects for services under this subchapter, the Secretary shall give priority to applicants who—

(1) serve an area where there is a high incidence of adolescent pregnancy;

(2) serve an area with a high proportion of low-income families and where the availability of programs of care for pregnant adolescents and adolescent parents is low;

(3) show evidence—

(A) in the case of an applicant who will provide care services, of having the ability to bring together a wide range of needed core services and, as appropriate, supplemental services in comprehensive single-site projects, or to establish a well-integrated network of such services (appropriate for the target population and geographic area to be served including the special needs of rural areas) for pregnant adolescents or adolescent parents; or

(B) in the case of an applicant who will provide prevention services, of having the ability to provide prevention services for adolescents and their families which are appropriate for the target population and the geographic area to be served, including the special needs of rural areas;

(4) will utilize to the maximum extent feasible existing available programs and facilities such as neighborhood and primary health care centers, maternity homes which provide or can be equipped to provide services to pregnant adolescents, agencies serving families, youth, and children with established programs of service to pregnant adolescents and vulnerable families, licensed adoption agencies, children and youth centers, maternal and infant health centers, regional rural health facilities, school and other educational programs, mental health programs, nutrition programs, recreation programs, and other ongoing pregnancy prevention services and programs of care for pregnant adolescents and adolescent parents;

(5) make use, to the maximum extent feasible, of other Federal, State, and local funds, programs, contributions, and other third-party reimbursements;

(6) can demonstrate a community commitment to the program by making available to the demonstration project non-Federal funds, personnel, and facilities;

(7) have involved the community to be served, including public and private agencies, adolescents, and families, in the planning and implementation of the demonstration project; and

(8) will demonstrate innovative and effective approaches in addressing the problems of adolescent premarital sexual relations, pregnancy, or parenthood, including approaches to provide pregnant adolescents with adequate information about adoption.

(b) Factors to be considered in making grants; special needs of rural areas

(1) The amount of a grant for a demonstration project for services under this subchapter shall be determined by the Secretary, based on factors such as the incidence of adolescent pregnancy in the geographic area to be served, and the adequacy of pregnancy prevention services and programs of care for pregnant adolescents and adolescent parents in such area.

(2) In making grants for demonstration projects for services under this subchapter, the Secretary shall consider the special needs of rural areas and, to the maximum extent practicable, shall distribute funds taking into consideration the relative number of adolescents in such areas in need of such services.

(c) Duration; Federal share

(1) A grantee may not receive funds for a demonstration project for services under this subchapter for a period in excess of 5 years.

(2)(A) Subject to paragraph (3), a grant for a demonstration project for services under this subchapter may not exceed—

(i) 70 per centum of the costs of the project for the first and second years of the project;

(ii) 60 per centum of such costs for the third year of the project;

(iii) 50 per centum of such costs for the fourth year of the project; and

(iv) 40 per centum of such costs for the fifth year of the project.

(B) Non-Federal contributions required by subparagraph (A) may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(3) The Secretary may waive the limitation specified in paragraph (2)(A) for any year in accordance with criteria established by regulation.

(July 1, 1944, ch. 373, title XX, § 2005, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 955(a), 95 Stat. 584.)

§ 300z–5. Requirements for applications

(a) Form, content, and assurances

An application for a grant for a demonstration project for services under this subchapter shall be in such form and contain such information as the Secretary may require, and shall include—

(1) an identification of the incidence of adolescent pregnancy and related problems;

(2) a description of the economic conditions and income levels in the geographic area to be served;

(3) a description of existing pregnancy prevention services and programs of care for pregnant adolescents and adolescent parents (including adoption services), and including where, how, by whom, and to which population groups such services are provided, and the extent to which they are coordinated in the geographic area to be served;

(4) a description of the major unmet needs for services for adolescents at risk of initial or recurrent pregnancies and an estimate of the number of adolescents not being served in the area;

(5)(A) in the case of an applicant who will provide care services, a description of how all core services will be provided in the demonstration project using funds under this subchapter or will otherwise be provided by the grantee in the area to be served, the population to which such services will be provided, how such services will be coordinated, integrated, and linked with other related programs and services and the source or sources of funding of such core services in the public and private sectors; or

(B) in the case of an applicant who will provide prevention services, a description of the necessary services to be provided and how the applicant will provide such services;

(6) a description of the manner in which adolescents needing services other than the services provided directly by the applicant will be identified and how access and appropriate referral to such other services (such as medicaid; licensed adoption agencies; maternity home services; public assistance; employment services; child care services for adolescent parents; and other city, county, and State programs related to adolescent pregnancy) will be provided, including a description of a plan to coordinate such other services with the services supported under this subchapter;

(7) a description of the applicant's capacity to continue services as Federal funds decrease and in the absence of Federal assistance;

(8) a description of the results expected from the provision of services, and the procedures to be used for evaluating those results;

(9) a summary of the views of public agencies, providers of services, and the general public in the geographic area to be served, concerning the proposed use of funds provided for a demonstration project for services under this subchapter and a description of procedures used to obtain those views, and, in the case of applicants who propose to coordinate services administered by a State, the written comments of the appropriate State officials responsible for such services;

(10) assurances that the applicant will have an ongoing quality assurance program;

(11) assurances that, where appropriate, the applicant shall have a system for maintaining the confidentiality of patient records in accordance with regulations promulgated by the Secretary;

(12) assurances that the applicant will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(13) assurances that the applicant (A) has or will have a contractual or other arrangement with the agency of the State (in which the applicant provides services) that administers or supervises the administration of a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the payment of all or a part of the applicant's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (B) has made or will make every reasonable effort to enter into such an arrangement;

(14) assurances that the applicant has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to benefits under title V of the Social Security Act [42 U.S.C. 701 et seq.], to medical assistance under a State plan approved under title XIX of such Act [42 U.S.C. 1396 et seq.], or to assistance for medical expenses under any other public assistance program or private health insurance program;

(15) assurances that the applicant has or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing services to persons entitled to services under parts B and E of title IV [42 U.S.C. 620 et seq., 670 et seq.] and title XX of the Social Security Act [42 U.S.C. 1397 et seq.];

(16)(A) a description of—

(i) the schedule of fees to be used in the provision of services, which shall comply with section 300z–3(c) of this title and which shall be designed to cover all reasonable direct and indirect costs incurred by the applicant in providing services; and

(ii) a corresponding schedule of discounts to be applied to the payment of such fees, which shall comply with section 300z–3(c) of this title and which shall be adjusted on the basis of the ability of the eligible person to pay;

(B) assurances that the applicant has made and will continue to make every reasonable effort—

(i) to secure from eligible persons payment for services in accordance with such schedules;

(ii) to collect reimbursement for health or other services provided to persons who are entitled to have payment made on their behalf for such services under any Federal or other government program or private insurance program; and

(iii) to seek such reimbursement on the basis of the full amount of fees for services without application of any discount; and

(C) assurances that the applicant has submitted or will submit to the Secretary such reports as the Secretary may require to determine compliance with this paragraph;

(17) assurances that the applicant will make maximum use of funds available under subchapter VIII of this chapter;

(18) assurances that the acceptance by any individual of family planning services or fam-

ily planning information (including educational materials) provided through financial assistance under this subchapter shall be voluntary and shall not be a prerequisite to eligibility for or receipt of any other service furnished by the applicant;

(19) assurances that fees collected by the applicant for services rendered in accordance with this subchapter shall be used by the applicant to further the purposes of this subchapter;

(20) assurances that the applicant, if providing both prevention and care services will not exclude or discriminate against any adolescent who receives prevention services and subsequently requires care services as a pregnant adolescent;

(21) a description of how the applicant will, as appropriate in the provision of services—

(A) involve families of adolescents in a manner which will maximize the role of the family in the solution of problems relating to the parenthood or pregnancy of the adolescent;

(B) involve religious and charitable organizations, voluntary associations, and other groups in the private sector as well as services provided by publicly sponsored initiatives;

(22)(A) assurances that—

(i) except as provided in subparagraph (B) and subject to clause (ii), the applicant will notify the parents or guardians of any unemancipated minor requesting services from the applicant and, except as provided in subparagraph (C), will obtain the permission of such parents or guardians with respect to the provision of such services; and

(ii) in the case of a pregnant unemancipated minor requesting services from the applicant, the applicant will notify the parents or guardians of such minor under clause (i) within a reasonable period of time;

(B) assurances that the applicant will not notify or request the permission of the parents or guardian of any unemancipated minor without the consent of the minor—

(i) who solely is requesting from the applicant pregnancy testing or testing or treatment for venereal disease;

(ii) who is the victim of incest involving a parent; or

(iii) if an adult sibling of the minor or an adult aunt, uncle, or grandparent who is related to the minor by blood certifies to the grantee that notification of the parents or guardians of such minor would result in physical injury to such minor; and

(C) assurances that the applicant will not require, with respect to the provision of services, the permission of the parents or guardians of any pregnant unemancipated minor if such parents or guardians are attempting to compel such minor to have an abortion;

(23) assurances that primary emphasis for services supported under this subchapter shall be given to adolescents seventeen and under who are not able to obtain needed assistance through other means;

(24) assurances that funds received under this subchapter shall supplement and not supplant funds received from any other Federal, State, or local program or any private sources of funds; and

(25) a plan for the conduct of, and assurances that the applicant will conduct, evaluations of the effectiveness of the services supported under this subchapter in accordance with subsection (b) of this section.

(b) Evaluations: amount, conduct, and technical assistance

(1) Each grantee which receives funds for a demonstration project for services under this subchapter shall expend at least 1 per centum but not in excess of 5 per centum of the amounts received under this subchapter for the conduct of evaluations of the services supported under this subchapter. The Secretary may, for a particular grantee upon good cause shown, waive the provisions of the preceding sentence with respect to the amounts to be expended on evaluations, but may not waive the requirement that such evaluations be conducted.

(2) Evaluations required by paragraph (1) shall be conducted by an organization or entity which is independent of the grantee providing services supported under this subchapter. To assist in conducting the evaluations required by paragraph (1), each grantee shall develop a working relationship with a college or university located in the grantee's State which will provide or assist in providing monitoring and evaluation of services supported under this subchapter unless no college or university in the grantee's State is willing or has the capacity to provide or assist in providing such monitoring and assistance.

(3) The Secretary may provide technical assistance with respect to the conduct of evaluations required under this subsection to any grantee which is unable to develop a working relationship with a college or university in the applicant's State for the reasons described in paragraph (2).

(c) Reports

Each grantee which receives funds for a demonstration project for services under this subchapter shall make such reports concerning its use of Federal funds as the Secretary may require. Reports shall include, at such times as are considered appropriate by the Secretary, the results of the evaluations of the services supported under this subchapter.

(d) Notification of parents; "adult" defined

(1) A grantee shall periodically notify the Secretary of the exact number of instances in which a grantee does not notify the parents or guardians of a pregnant unemancipated minor under subsection (a)(22)(B)(iii) of this section.

(2) For purposes of subsection (a)(22)(B)(iii) of this section, the term ''adult'' means an adult as defined by State law.

(e) Submission of applications to Governor; comments by Governor

Each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to the Secretary for a grant for a demonstration project for services under this subchapter. The Governor shall submit to the applicant comments on any

such application within the period of sixty days beginning on the day when the Governor receives such copy. The applicant shall include the comments of the Governor with such application.

(f) Availability of core services

No application submitted for a grant for a demonstration project for care services under this subchapter may be approved unless the Secretary is satisfied that core services shall be available through the applicant within a reasonable time after such grant is received.

(July 1, 1944, ch. 373, title XX, § 2006, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 955(a), 95 Stat. 585.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(13) to (15), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Parts B and E of title IV of the Social Security Act are classified generally to part B (§ 620 et seq.) and part E (§ 670 et seq.) of subchapter IV of chapter 7 of this title. Titles V, XIX, and XX of the Social Security Act are classified generally to subchapters V (§ 701 et seq.), XIX (§ 1396 et seq.), and XX (§ 1397 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300z–1, 300z–2, 300z–3 of this title.

§ 300z–6. Coordination of programs

(a) The Secretary shall coordinate Federal policies and programs providing services relating to the prevention of adolescent sexual relations and initial and recurrent adolescent pregnancies and providing care services for pregnant adolescents. In achieving such coordination, the Secretary shall—

(1) require grantees who receive funds for demonstration projects for services under this subchapter to report periodically to the Secretary concerning Federal, State, and local policies and programs that interfere with the delivery of and coordination of pregnancy prevention services and other programs of care for pregnant adolescents and adolescent parents;

(2) provide technical assistance to facilitate coordination by State and local recipients of Federal assistance;

(3) review all programs administered by the Department of Health and Human Services which provide prevention services or care services to determine if the policies of such programs are consistent with the policies of this subchapter, consult with other departments and agencies of the Federal Government who administer programs that provide such services, and encourage such other departments and agencies to make recommendations, as appropriate, for legislation to modify such programs in order to facilitate the use of all Government programs which provide such services as a basis for delivery of more comprehensive prevention services and more comprehensive programs of care for pregnant adolescents and adolescent parents;

(4) give priority in the provision of funds, where appropriate, to applicants using single or coordinated grant applications for multiple programs; and

(5) give priority, where appropriate, to the provision of funds under Federal programs administered by the Secretary (other than the program established by this subchapter) to projects providing comprehensive prevention services and comprehensive programs of care for pregnant adolescents and adolescent parents.

(b) Any recipient of a grant for a demonstration project for services under this subchapter shall coordinate its activities with any other recipient of such a grant which is located in the same locality.

(July 1, 1944, ch. 373, title XX, § 2007, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 955(a), 95 Stat. 589.)

§ 300z–7. Research

(a) Grants and contracts; duration; renewal; amount

(1) The Secretary may make grants and enter into contracts with public agencies or private organizations or institutions of higher education to support the research and dissemination activities described in paragraphs (4), (5), and (6) of section 300z(b) of this title.

(2) The Secretary may make grants or enter into contracts under this section for a period of one year. A grant or contract under this section for a project may be renewed for four additional one-year periods, which need not be consecutive.

(3) A grant or contract for any one-year period under this section may not exceed $100,000 for the direct costs of conducting research or disemination[1] activities under this section and may include such additional amounts for the indirect costs of conducting such activities as the Secretary determines appropriate. The Secretary may waive the preceding sentence with respect to a specific project if he determines that—

(A) exceptional circumstances warrant such waiver and that the project will have national impact; or

(B) additional amounts are necessary for the direct costs of conducting limited demonstration projects for the provision of necessary services in order to provide data for research carried out under this subchapter.

(4) The amount of any grant or contract made under this section may remain available for obligation or expenditure after the close of the one-year period for which such grant or contract is made in order to assist the recipient in preparing the report required by subsection (f)(1) of this section.

(b) Scope of permissible activities

(1) Funds provided for research under this section may be used for descriptive or explanatory surveys, longitudinal studies, or limited demonstration projects for services that are for the purpose of increasing knowledge and understanding of the matters described in paragraphs (4) and (5) of section 300z(b) of this title.

[1] So in original. Probably should be ''dissemination''.

(2) Funds provided under this section may not be used for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility.

(c) Applications

The Secretary may not make any grant or enter into any contract to support research or dissemination activities under this section unless—

(1) the Secretary has received an application for such grant or contract which is in such form and which contains such information as the Secretary may by regulation require;

(2) the applicant has demonstrated that the applicant is capable of conducting one or more of the types of research or dissemination activities described in paragraph (4), (5), or (6) of section 300z(b) of this title; and

(3) in the case of an application for a research project, the panel established by subsection (e)(2) of this section has determined that the project is of scientific merit.

(d) Coordination with National Institutes of Health

The Secretary shall, where appropriate, coordinate research and dissemination activities carried out under this section with research and dissemination activities carried out by the National Institutes of Health.

(e) Review of applications for grants and contracts; establishment of review panel

(1) The Secretary shall establish a system for the review of applications for grants and contracts under this section. Such system shall be substantially similar to the system for scientific peer review of the National Institutes of Health and shall meet the requirements of paragraphs (2) and (3).

(2) In establishing the system required by paragraph (1), the Secretary shall establish a panel to review applications under this section. Not more than 25 per centum of the members of the panel shall be physicians. The panel shall meet as often as may be necessary to facilitate the expeditious review of applications under this section, but not less than once each year. The panel shall review each project for which an application is made under this section, evaluate the scientific merit of the project, determine whether the project is of scientific merit, and make recommendations to the Secretary concerning whether the application for the project should be approved.

(3) The Secretary shall make grants under this section from among the projects which the panel established by paragraph (2) has determined to be of scientific merit and may only approve an application for a project if the panel has made such determination with respect to such a project. The Secretary shall make a determination with respect to an application within one month after receiving the determinations and recommendations of such panel with respect to the application.

(f) Reports

(1)(A) The recipient of a grant or contract for a research project under this section shall prepare and transmit to the Secretary a report describing the results and conclusions of such research. Except as provided in subparagraph (B), such report shall be transmitted to the Secretary not later than eighteen months after the end of the year for which funds are provided under this section. The recipient may utilize reprints of articles published or accepted for publication in professional journals to supplement or replace such report if the research contained in such articles was supported under this section during the year for which the report is required.

(B) In the case of any research project for which assistance is provided under this section for two or more consecutive one-year periods, the recipient of such assistance shall prepare and transmit the report required by subparagraph (A) to the Secretary not later than twelve months after the end of each one-year period for which such funding is provided.

(2) Recipients of grants and contracts for dissemination under this section shall submit to the Secretary such reports as the Secretary determines appropriate.

(July 1, 1944, ch. 373, title XX, § 2008, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 955(a), 95 Stat. 589; amended Oct. 19, 1984, Pub. L. 98–512, § 2(e), 98 Stat. 2409.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98–512 struck out subsec. (g) which provided for collection of survey data used primarily for generation of national population estimates.

§ 300z–8. Evaluation and administration

(a) Of the funds appropriated under this subchapter, the Secretary shall reserve not less than 1 per centum and not more than 3 per centum for the evaluation of activities carried out under this subchapter. The Secretary shall submit to the appropriate committees of the Congress a summary of each evaluation conducted under this section.

(b) The officer or employee of the Department of Health and Human Services designated by the Secretary to carry out the provisions of this subchapter shall report directly to the Assistant Secretary for Health with respect to the activities of such officer or employee in carrying out such provisions.

(July 1, 1944, ch. 373, title XX, § 2009, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 955(a), 95 Stat. 591.)

§ 300z–9. Authorization of appropriations

(a) For the purpose of carrying out this subchapter, there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1982, $30,000,000 for the fiscal year ending September 30, 1983, $30,000,000 for the fiscal year ending September 30, 1984, and $30,000,000 for the fiscal year ending September 30, 1985.

(b) At least two-thirds of the amounts appropriated to carry out this subchapter shall be used to make grants for demonstration projects for services.

(c) Not more than one-third of the amounts specified under subsection (b) of this section for use for grants for demonstration projects for services shall be used for grants for demonstration projects for prevention services.

(July 1, 1944, ch. 373, title XX, § 2010, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 955(a), 95 Stat. 591; amended Oct. 19, 1984, Pub. L. 98–512, § 2(a), 98 Stat. 2409.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–509 inserted provisions authorizing appropriations for fiscal year ending Sept. 30, 1985.

§ 300z–10. Restrictions

(a) Grants or payments may be made only to programs or projects which do not provide abortions or abortion counseling or referral, or which do not subcontract with or make any payment to any person who provides abortions or abortion counseling or referral, except that any such program or project may provide referral for abortion counseling to a pregnant adolescent if such adolescent and the parents or guardians of such adolescent request such referral; and grants may be made only to projects or programs which do not advocate, promote, or encourage abortion.

(b) The Secretary shall ascertain whether programs or projects comply with subsection (a) of this section and take appropriate action if programs or projects do not comply with such subsection, including withholding of funds.

(July 1, 1944, ch. 373, title XX, § 2011, as added Aug. 13, 1981, Pub. L. 97–35, title IX, § 955(a), 95 Stat. 592.)

SUBCHAPTER XIX—VACCINES

PRIOR PROVISIONS

A prior subchapter XIX (§ 300aa et seq.), comprised of title XXI of the Public Health Service Act, act July 1, 1944, ch. 373, §§ 2101 to 2116, was renumbered title XXIII, §§ 2301 to 2316, of the Public Health Service Act, and transferred to subchapter XXI (§ 300cc et seq.) of this chapter, renumbered title XXV, §§ 2501 to 2514, of the Public Health Service Act, and transferred to subchapter XXV (§ 300aaa et seq.) of this chapter, renumbered title XXVI, §§ 2601 to 2614, of the Public Health Service Act, renumbered title XXVII, §§ 2701 to 2714, of the Public Health Service Act, and renumbered title II, part B, §§ 231 to 244, of the Public Health Service Act, and transferred to part B (§ 238 et seq.) of subchapter I of this chapter.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 283d of this title; title 26 section 9510.

PART 1—NATIONAL VACCINE PROGRAM

§ 300aa–1. Establishment

The Secretary shall establish in the Department of Health and Human Services a National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The Program shall be administered by a Director selected by the Secretary.

(July 1, 1944, ch. 373, title XXI, § 2101, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3756.)

PRIOR PROVISIONS

A prior section 300aa–1, act July 1, 1944, § 2102, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

A prior section 2101 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

EFFECTIVE DATE

Section 323 of title III of Pub. L. 99–660, as amended by Pub. L. 100–203, title IV, § 4302(a), Dec. 22, 1987, 101 Stat. 1330–221; Pub. L. 102–168, title II, § 201(a), Nov. 26, 1991, 105 Stat. 1102, provided that: ''Subtitle 1 of title XXI of the Public Health Service Act [part 1 of this subchapter (42 U.S.C. 300aa–1 to 300aa–6)] shall take effect on the date of the enactment of this Act [Nov. 14, 1986] and parts A and B of subtitle 2 of such title [subparts A and B of part 2 of this subchapter (42 U.S.C. 300aa–10 to 300aa–23)] shall take effect on October 1, 1988 and parts C and D of such title [subparts C and D of part 2 of this subchapter (42 U.S.C. 300aa–25 to 300aa–33)] and this title [probably means provisions of title III of Pub. L. 99–660 other than those that enacted this subchapter and redesignated former sections 300aa to 300aa–15 of this title as sections 300cc to 300cc–15 of this title; these other provisions amended sections 218, 242c, 262, 286, and 289f of this title and enacted provisions set out as notes under sections 201, 300aa–1, and 300aa–4 of this title] shall take effect on the date of the enactment of the Vaccine Compensation Amendments of 1987 [Dec. 22, 1987].''

SEVERABILITY

Section 322 of title III of Pub. L. 99–660, as amended by Pub. L. 101–239, title VI, § 6602, Dec. 19, 1989, 103 Stat. 2293; Pub. L. 101–502, § 5(g)(1), Nov. 3, 1990, 104 Stat. 1288, provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), if any provision [of] part A or B of subtitle 2 of title XXI of the Public Health Service Act [subparts A and B of part 2 of this subchapter], as added by section 311(a), or the application of such a provision to any person or circumstance is held invalid by reason of a violation of the Constitution, both such parts shall be considered invalid.

''(b) SPECIAL RULE.—If any amendment made by section 6601 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, amending sections 300aa–10 to 300aa–17, 300aa–21, 300aa–23, 300aa–26, and 300aa–27 of this title] to title XXI of the Public Health Service Act [this subchapter] or the application of such a provision to any person or circumstance is held invalid by reason of the Constitution, subsection (a) shall not apply and such title XXI of the Public Health Service Act without such amendment shall continue in effect.''

[Amendment by section 5(g)(1) of Pub. L. 101–502 to section 322(a) of Pub. L. 99–660, set out above, effective Nov. 14, 1986, see section 5(h) of Pub. L. 101–502, set out as an Effective Date of 1990 Amendment note under section 300aa–11 of this title.]

EVALUATION OF PROGRAM; STUDY AND REPORT TO CONGRESS

Pub. L. 101–239, title VI, § 6601(t), Dec. 19, 1989, 103 Stat. 2293, as amended by Pub. L. 102–168, title II, § 201(b), Nov. 26, 1991, 105 Stat. 1103, directed the Secretary of Health and Human Services to evaluate the National Vaccine Injury Compensation Program under this subchapter and report results of such study to Committee on Energy and Commerce of House of Representatives and Committee on Labor and Human Resources of Senate not later than Jan. 1, 1993.

RELATED STUDIES

Section 312 of title III of Pub. L. 99–660 directed Secretary of Health and Human Services, not later than 3 years after the effective date of this title (see Effective Date note above), to conduct, through studies by the Institute of Medicine of the National Academy of Sciences or other appropriate nonprofit private groups or associations, a review of pertussis vaccines and related illnesses and conditions and MMR vaccines, vaccines containing material intended to prevent or confer im-

munity against measles, mumps, and rubella disease, and related illnesses and conditions, make specific findings and report these findings in the Federal Register not later than 3 years after the effective date of this title, and at the same time these findings are published in the Federal Register, propose regulations as a result of such findings, and not later than 42 months after the effective date of this title, promulgate such proposed regulations with such modifications as may be necessary after opportunity for public hearing.

STUDY OF OTHER VACCINE RISKS

Section 313 of title III of Pub. L. 99–660 provided that: ''(a) STUDY.—

''(1) Not later than 3 years after the effective date of this title [see Effective Date note above], the Secretary shall, after consultation with the Advisory Commission on Childhood Vaccines established under section 2119 of the Public Health Service Act [section 300aa–19 of this title]—

''(A) arrange for a broad study of the risks (other than the risks considered under section 102 [21 U.S.C. 382]) to children associated with each vaccine set forth in the Vaccine Injury Table under section 2114 of such Act [section 300aa–14 of this title], and

''(B) establish guidelines, after notice and opportunity for public hearing and consideration of all relevant medical and scientific information, respecting the administration of such vaccines which shall include—

''(i) the circumstances under which any such vaccine should not be administered,

''(ii) the circumstances under which administration of any such vaccine should be delayed beyond its usual time of administration, and

''(iii) the groups, categories, or characteristics of potential recipients of such vaccine who may be at significantly higher risk of major adverse reactions to such vaccine than the general population of potential recipients.

''(2)(A) The Secretary shall request the Institute of Medicine of the National Academy of Sciences to conduct the study required by paragraph (1) under an arrangement by which the actual expenses incurred by such Academy in conducting such study will be paid by the Secretary.

''(B) If the Institute of Medicine is unwilling to conduct such study under such an arrangement, the Secretary shall enter into a similar arrangement with other appropriate nonprofit private groups or associations under which such groups or associations will conduct such study.

''(C) The Institute of Medicine or other group or association conducting the study required by paragraph (1) shall conduct such studies in consultation with the Advisory Commission on Childhood Vaccines established under section 2119 of the Public Health Service Act [section 300aa–19 of this title].

''(b) REVISION OF GUIDELINES.—The Secretary shall periodically, but at least every 3 years after establishing guidelines under subsection (a), review and revise such guidelines after notice and opportunity for public hearing and consideration of all relevant medical and scientific information, unless the Secretary finds that on the basis of all relevant information no revision of such guidelines is warranted and publishes such finding in the Federal Register.

''(c) FACTORS AFFECTING GUIDELINES.—Guidelines under subsection (a) shall take into account—

''(1) the risk to potential recipients of the vaccines with respect to which the guidelines are established,

''(2) the medical and other characteristics of such potential recipients, and

''(3) the risks to the public of not having such vaccines administered.

''(d) DISSEMINATION.—The Secretary shall widely disseminate the guidelines established under subsection (a) to—

''(1) physicians and other health care providers,

''(2) professional health associations,

''(3) State and local governments and agencies, and

''(4) other relevant entities.''

REVIEW OF WARNINGS, USE INSTRUCTIONS, AND PRECAUTIONARY INFORMATION

Section 314 of title III of Pub. L. 99–660 directed Secretary of Health and Human Services, not later than 1 year after the effective date of this title (see Effective Date note above) and after consultation with Advisory Commission on Childhood Vaccines and with other appropriate entities, to review the warnings, use instructions, and precautionary information presently issued by manufacturers of vaccines set forth in the Vaccine Injury Table set out in section 300aa–14 of this title and by rule determine whether such warnings, instructions, and information adequately warn health care providers of the nature and extent of dangers posed by such vaccines, and, if any such warning, instruction, or information is determined to be inadequate for such purpose in any respect, require at the same time that the manufacturers revise and reissue such warning, instruction, or information as expeditiously as practical, but not later than 18 months after the effective date of this title.

WAIVER OF PAPERWORK REDUCTION

Section 321 of title III of Pub. L. 99–660 provided that: ''Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this title and implementing the amendments made by this title [enacting this subchapter, amending sections 218, 242c, 262, 286, and 289f of this title, redesignating former sections 300aa to 300aa–15 of this title as sections 300cc to 300cc–15 of this title, and enacting provisions set out as notes under sections 201, 300aa–1, and 300aa–4 of this title].''

§ 300aa–2. Program responsibilities

(a) The Director of the Program shall have the following responsibilities:

(1) Vaccine research

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction for research carried out in or through the National Institutes of Health, the Centers for Disease Control and Prevention, the Office of Biologics Research and Review of the Food and Drug Administration, the Department of Defense, and the Agency for International Development on means to induce human immunity against naturally occurring infectious diseases and to prevent adverse reactions to vaccines.

(2) Vaccine development

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction for activities carried out in or through the National Institutes of Health, the Office of Biologics Research and Review of the Food and Drug Administration, the Department of Defense, and the Agency for International Development to develop the techniques needed to produce safe and effective vaccines.

(3) Safety and efficacy testing of vaccines

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction for safety and efficacy testing of vaccines carried out in or through the National Institutes of Health, the Centers for Disease Control and

Prevention, the Office of Biologics Research and Review of the Food and Drug Administration, the Department of Defense, and the Agency for International Development.

(4) Licensing of vaccine manufacturers and vaccines

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction for the allocation of resources in the implementation of the licensing program under section 263a of this title.

(5) Production and procurement of vaccines

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, ensure that the governmental and non-governmental production and procurement of safe and effective vaccines by the Public Health Service, the Department of Defense, and the Agency for International Development meet the needs of the United States population and fulfill commitments of the United States to prevent human infectious diseases in other countries.

(6) Distribution and use of vaccines

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction to the Centers for Disease Control and Prevention and assistance to States, localities, and health practitioners in the distribution and use of vaccines, including efforts to encourage public acceptance of immunizations and to make health practitioners and the public aware of potential adverse reactions and contraindications to vaccines.

(7) Evaluating the need for and the effectiveness and adverse effects of vaccines and immunization activities

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, coordinate and provide direction to the National Institutes of Health, the Centers for Disease Control and Prevention, the Office of Biologics Research and Review of the Food and Drug Administration, the National Center for Health Statistics, the National Center for Health Services Research and Health Care Technology Assessment, and the Health Care Financing Administration in monitoring the need for and the effectiveness and adverse effects of vaccines and immunization activities.

(8) Coordinating governmental and non-governmental activities

The Director of the Program shall, through the plan issued under section 300aa–3 of this title, provide for the exchange of information between Federal agencies involved in the implementation of the Program and non-governmental entities engaged in the development and production of vaccines and in vaccine research and encourage the investment of non-governmental resources complementary to the governmental activities under the Program.

(9) Funding of Federal agencies

The Director of the Program shall make available to Federal agencies involved in the implementation of the plan issued under section 300aa–3 of this title funds appropriated under section 300aa–6 of this title to supplement the funds otherwise available to such agencies for activities under the plan.

(b) In carrying out subsection (a) of this section and in preparing the plan under section 300aa–3 of this title, the Director shall consult with all Federal agencies involved in research on and development, testing, licensing, production, procurement, distribution, and use of vaccines.

(July 1, 1944, ch. 373, title XXI, §2102, as added Nov. 14, 1986, Pub. L. 99–660, title III, §311(a), 100 Stat. 3756; amended Oct. 27, 1992, Pub. L. 102–531, title III, §312(d)(13), 106 Stat. 3505.)

PRIOR PROVISIONS

A prior section 300aa–2, act July 1, 1944, §2103, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

A prior section 2102 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

AMENDMENTS

1992—Subsec. (a)(1), (3), (6), (7). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

DEMONSTRATION PROJECTS FOR OUTREACH PROGRAMS

Pub. L. 101–502, §2(b), Nov. 3, 1990, 104 Stat. 1285, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, may make grants to public and nonprofit private entities for the purpose of carrying out demonstration projects—

''(A) to provide, without charge, immunizations against vaccine-preventable diseases to children not more than 2 years of age who reside in communities whose population includes a significant number of low-income individuals; and

''(B) to provide outreach services to identify such children and to inform the parents (or other guardians) of the children of the availability from the entities of the immunizations specified in subparagraph (A).

''(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraph (1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1991 through 1993.''

[Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, §312, Oct. 27, 1992, 106 Stat. 3504.]

SUPPLY OF VACCINES

Pub. L. 101–502, §3, Nov. 3, 1990, 104 Stat. 1285, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall acquire and maintain a supply of vaccines sufficient to provide vaccinations throughout a 6-month period. Any proceeds received by the Secretary from the sale of vaccines from such supply shall be available to the Secretary for the purpose of purchasing vaccines for the supply. Such proceeds shall remain available for such purpose until expended.

''(b) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out subsection (a), there are authorized to be appropriated $5,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995.''

[Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, §312, Oct. 27, 1992, 106 Stat. 3504.]

Pub. L. 100–177, title I, §110(b), Dec. 1, 1987, 101 Stat. 991, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control, shall acquire and maintain a supply of vaccines sufficient to provide vaccinations throughout a 6-month period.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out paragraph (1) $5,000,000 for fiscal year 1988, and such sums as may be necessary for each of the fiscal years 1989 and 1990.''

[Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, §312, Oct. 27, 1992, 106 Stat. 3504.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300aa–3, 300aa–5, 300aa–6 of this title.

§ 300aa–3. Plan

The Director of the Program shall prepare and issue a plan for the implementation of the responsibilities of the Director under section 300aa–2 of this title. The plan shall establish priorities in research and the development, testing, licensing, production, procurement, distribution, and effective use of vaccines, describe an optimal use of resources to carry out such priorities, and describe how each of the various departments and agencies will carry out their vaccine functions in consultation and coordination with the Program and in conformity with such priorities. The first plan under this section shall be prepared not later than January 1, 1987, and shall be revised not later than January 1 of each succeeding year.

(July 1, 1944, ch. 373, title XXI, §2103, as added Nov. 14, 1986, Pub. L. 99–660, title III, §311(a), 100 Stat. 3757.)

PRIOR PROVISIONS

A prior section 300aa–3, act July 1, 1944, §2104, which was renumbered section 2304 by Pub. L. 99–660, was transferred to section 300cc–3 of this title, prior to repeal by Pub. L. 98–621, §10(s), Nov. 8, 1984, 98 Stat. 3381.

A prior section 2103 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300aa–2, 300aa–4, 300aa–5 of this title.

§ 300aa–4. Report

The Director shall report to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate not later than January 1, 1988, and annually thereafter on the implementation of the Program and the plan prepared under section 300aa–3 of this title.

(July 1, 1944, ch. 373, title XXI, §2104, as added Nov. 14, 1986, Pub. L. 99–660, title III, §311(a), 100 Stat. 3757.)

PRIOR PROVISIONS

A prior section 300aa–4, act July 1, 1944, §2105, was repealed by Pub. L. 99–117, §12(f), Oct. 7, 1985, 99 Stat. 495. See section 300cc–4 of this title.

A prior section 2104 of act July 1, 1944, was renumbered section 2304 by Pub. L. 99–660 and classified to section 300cc–3 of this title, and was repealed by Pub. L. 98–621, §10(s), Nov. 8, 1984, 98 Stat. 3381.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

STUDY OF IMPACT ON SUPPLY OF VACCINES

Section 316 of title III of Pub. L. 99–660 provided that: ''On June 30, 1987, and on June 30 of each second year thereafter, the Secretary of Health and Human Services shall submit to the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives and the Committee on Labor and Human Resources of the Senate—

''(1) an assessment of the impact of the amendments made by this title [enacting this subchapter, amending sections 218, 242c, 262, 286, and 289f of this title, redesignating former sections 300aa to 300aa–15 of this title as sections 300cc to 300cc–15 of this title, and enacting provisions set out as notes under this section and sections 201 and 300aa–1 of this title] on the supply of vaccines listed in the Vaccine Injury Table under section 2114 of the Public Health Service Act [section 300aa–14 of this title], and

''(2) an assessment of the ability of the administrators of vaccines (including public clinics and private administrators) to provide such vaccines to children.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 283d, 300aa–5 of this title.

§ 300aa–5. National Vaccine Advisory Committee

(a) There is established the National Vaccine Advisory Committee. The members of the Committee shall be appointed by the Director of the Program, in consultation with the National Academy of Sciences, from among individuals who are engaged in vaccine research or the manufacture of vaccines or who are physicians, members of parent organizations concerned with immunizations, or representatives of State or local health agencies or public health organizations.

(b) The Committee shall—

(1) study and recommend ways to encourage the availability of an adequate supply of safe and effective vaccination products in the States,

(2) recommend research priorities and other measures the Director of the Program should take to enhance the safety and efficacy of vaccines,

(3) advise the Director of the Program in the implementation of sections 300aa–2, 300aa–3, and 300aa–4 of this title, and

(4) identify annually for the Director of the Program the most important areas of government and non-government cooperation that should be considered in implementing sections 300aa–2, 300aa–3, and 300aa–4 of this title.

(July 1, 1944, ch. 373, title XXI, §2105, as added Nov. 14, 1986, Pub. L. 99–660, title III, §311(a), 100 Stat. 3758.)

PRIOR PROVISIONS

A prior section 300aa–5, act July 1, 1944, §2106, was successively renumbered by subsequent acts and transferred, see section 238c of this title.

A prior section 2105 of act July 1, 1944, was repealed by Pub. L. 99–117, §12(f), Oct. 7, 1985, 99 Stat. 495. See section 300cc–4 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 300aa–6. Authorization of appropriations

(a) To carry out this part other than section 300aa–2(9) of this title there are authorized to be appropriated $4,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995.

(b) To carry out section 300aa–2(9) of this title there are authorized to be appropriated $30,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995.

(July 1, 1944, ch. 373, title XXI, § 2106, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3758; amended Nov. 3, 1990, Pub. L. 101–502, § 4, 104 Stat. 1286.)

PRIOR PROVISIONS

A prior section 300aa–6, act July 1, 1944, § 2107, was successively renumbered by subsequent acts and transferred, see section 238d of this title.

A prior section 2106 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238c of this title.

Prior sections 300aa–7 to 300aa–9, act July 1, 1944, §§ 2108–2110, respectively, were successively renumbered by subsequent acts and transferred, see sections 238e to 238g, respectively, of this title.

AMENDMENTS

1990—Pub. L. 101–502 substituted provisions authorizing appropriations for fiscal years 1991 through 1995 for provisions authorizing appropriations for fiscal years 1987 through 1991 in subsecs. (a) and (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300aa–2 of this title.

PART 2—NATIONAL VACCINE INJURY COMPENSATION PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 26 section 9510.

SUBPART A—PROGRAM REQUIREMENTS

§ 300aa–10. Establishment of program

(a) Program established

There is established the National Vaccine Injury Compensation Program to be administered by the Secretary under which compensation may be paid for a vaccine-related injury or death.

(b) Attorney's obligation

It shall be the ethical obligation of any attorney who is consulted by an individual with respect to a vaccine-related injury or death to advise such individual that compensation may be available under the program[1] for such injury or death.

(c) Publicity

The Secretary shall undertake reasonable efforts to inform the public of the availability of the Program.

(July 1, 1944, ch. 373, title XXI, § 2110, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3758; amended Dec. 19, 1989, Pub. L. 101–239, title VI, § 6601(b), 103 Stat. 2285.)

PRIOR PROVISIONS

A prior section 300aa–10, act July 1, 1944, § 2111, was successively renumbered by subsequent acts and transferred, see section 238h of this title.

A prior section 2110 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238g of this title.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–239 added subsec. (c).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6601(s) of Pub. L. 101–239, as amended by Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 300aa–11 to 300aa–17, 300aa–21, 300aa–23, 300aa–26, and 300aa–27 of this title] shall apply as follows:

''(A) Petitions filed after the date of enactment of this section [Dec. 19, 1989] shall proceed under the National Vaccine Injury Compensation Program under title XXI of the Public Health Service Act [this subchapter] as amended by this section.

''(B) Petitions currently pending in which the evidentiary record is closed shall continue to proceed under the Program in accordance with the law in effect before the date of the enactment of this section, except that if the United States Court of Federal Claims is to review the findings of fact and conclusions of law of a special master on such a petition, the court may receive further evidence in conducting such review.

''(C) Petitions currently pending in which the evidentiary record is not closed shall proceed under the Program in accordance with the law as amended by this section.

All pending cases which will proceed under the Program as amended by this section shall be immediately suspended for 30 days to enable the special masters and parties to prepare for proceeding under the Program as amended by this section. In determining the 240-day period prescribed by section 2112(d) of the Public Health Service Act [42 U.S.C. 300aa–12(d)], as amended by this section, or the 420-day period prescribed by section 2121(b) of such Act [42 U.S.C. 300aa–21(b)], as so amended, any period of suspension under the preceding sentence shall be excluded.

''(2) The amendments to section 2115 of the Public Health Service Act [42 U.S.C. 300aa–15] shall apply to all pending and subsequently filed petitions.''

EFFECTIVE DATE

Subpart effective Oct. 1, 1988, see section 323 of Pub. L. 99–660, as amended, set out as a note under section 300aa–1 of this title.

§ 300aa–11. Petitions for compensation

(a) General rule

(1) A proceeding for compensation under the Program for a vaccine-related injury or death

[1] So in original. Probably should be capitalized.

shall be initiated by service upon the Secretary and the filing of a petition containing the matter prescribed by subsection (c) of this section with the United States Court of Federal Claims. The clerk of the United States Court of Federal Claims shall immediately forward the filed petition to the chief special master for assignment to a special master under section 300aa–12(d)(1) of this title.

(2)(A) No person may bring a civil action for damages in an amount greater than $1,000 or in an unspecified amount against a vaccine administrator or manufacturer in a State or Federal court for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, and no such court may award damages in an amount greater than $1,000 in a civil action for damages for such a vaccine-related injury or death, unless a petition has been filed, in accordance with section 300aa–16 of this title, for compensation under the Program for such injury or death and—

(i)(I) the United States Court of Federal Claims has issued a judgment under section 300aa–12 of this title on such petition, and

(II) such person elects under section 300aa–21(a) of this title to file such an action, or

(ii) such person elects to withdraw such petition under section 300aa–21(b) of this title or such petition is considered withdrawn under such section.

(B) If a civil action which is barred under subparagraph (A) is filed in a State or Federal court, the court shall dismiss the action. If a petition is filed under this section with respect to the injury or death for which such civil action was brought, the date such dismissed action was filed shall, for purposes of the limitations of actions prescribed by section 300aa–16 of this title, be considered the date the petition was filed if the petition was filed within one year of the date of the dismissal of the civil action.

(3) No vaccine administrator or manufacturer may be made a party to a civil action (other than a civil action which may be brought under paragraph (2)) for damages for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988.

(4) If in a civil action brought against a vaccine administrator or manufacturer before October 1, 1988, damages were denied for a vaccine-related injury or death or if such civil action was dismissed with prejudice, the person who brought such action may file a petition under subsection (b) of this section for such injury or death.

(5)(A) A plaintiff who on October 1, 1988, has pending a civil action for damages for a vaccine-related injury or death may, at any time within 2 years after October 1, 1988, or before judgment, whichever occurs first, petition to have such action dismissed without prejudice or costs and file a petition under subsection (b) of this section for such injury or death.

(B) If a plaintiff has pending a civil action for damages for a vaccine-related injury or death, such person may not file a petition under subsection (b) of this section for such injury or death.

(6) If a person brings a civil action after November 15, 1988[1] for damages for a vaccine-related injury or death associated with the administration of a vaccine before November 15, 1988, such person may not file a petition under subsection (b) of this section for such injury or death.

(7) If in a civil action brought against a vaccine administrator or manufacturer for a vaccine-related injury or death damages are awarded under a judgment of a court or a settlement of such action, the person who brought such action may not file a petition under subsection (b) of this section for such injury or death.

(8) If on October 1, 1988, there was pending an appeal or rehearing with respect to a civil action brought against a vaccine administrator or manufacturer and if the outcome of the last appellate review of such action or the last rehearing of such action is the denial of damages for a vaccine-related injury or death, the person who brought such action may file a petition under subsection (b) of this section for such injury or death.

(9) This subsection applies only to a person who has sustained a vaccine-related injury or death and who is qualified to file a petition for compensation under the Program.

(10) The Clerk of the United States Claims Court[2] is authorized to continue to receive, and forward, petitions for compensation for a vaccine-related injury or death associated with the administration of a vaccine on or after October 1, 1992.

(b) Petitioners

(1)(A) Except as provided in subparagraph (B), any person who has sustained a vaccine-related injury, the legal representative of such person if such person is a minor or is disabled, or the legal representative of any person who died as the result of the administration of a vaccine set forth in the Vaccine Injury Table may, if the person meets the requirements of subsection (c)(1) of this section, file a petition for compensation under the Program.

(B) No person may file a petition for a vaccine-related injury or death associated with a vaccine administered before October 1, 1988, if compensation has been paid under this part for 3500 petitions for such injuries or deaths.

(2) Only one petition may be filed with respect to each administration of a vaccine.

(c) Petition content

A petition for compensation under the Program for a vaccine-related injury or death shall contain—

(1) except as provided in paragraph (3), an affidavit, and supporting documentation, demonstrating that the person who suffered such injury or who died—

(A) received a vaccine set forth in the Vaccine Injury Table or, if such person did not receive such a vaccine, contracted polio, directly or indirectly, from another person who received an oral polio vaccine,

(B)(i) if such person received a vaccine set forth in the Vaccine Injury Table—

[1] So in original. Probably should be followed by a comma.

[2] See Change of Name note below.

(I) received the vaccine in the United States or in its trust territories,

(II) received the vaccine outside the United States or a trust territory and at the time of the vaccination such person was a citizen of the United States serving abroad as a member of the Armed Forces or otherwise as an employee of the United States or a dependent of such a citizen, or

(III) received the vaccine outside the United States or a trust territory and the vaccine was manufactured by a vaccine manufacturer located in the United States and such person returned to the United States not later than 6 months after the date of the vaccination,

(ii) if such person did not receive such a vaccine but contracted polio from another person who received an oral polio vaccine, was a citizen of the United States or a dependent of such a citizen,

(C)(i) sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table in association with the vaccine referred to in subparagraph (A) or died from the administration of such vaccine, and the first symptom or manifestation of the onset or of the significant aggravation of any such illness, disability, injury, or condition or the death occurred within the time period after vaccine administration set forth in the Vaccine Injury Table, or

(ii)(I) sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by a vaccine referred to in subparagraph (A), or

(II) sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine referred to in subparagraph (A),

(D)(i) suffered the residual effects or complications of such illness, disability, injury, or condition for more than 6 months after the administration of the vaccine and incurred unreimbursable expenses due in whole or in part to such illness, disability, injury, or condition in an amount greater than $1,000, or (ii) died from the administration of the vaccine, and

(E) has not previously collected an award or settlement of a civil action for damages for such vaccine-related injury or death,

(2) except as provided in paragraph (3), maternal prenatal and delivery records, newborn hospital records (including all physicians' and nurses' notes and test results), vaccination records associated with the vaccine allegedly causing the injury, pre- and post-injury physician or clinic records (including all relevant growth charts and test results), all post-injury inpatient and outpatient records (including all provider notes, test results, and medication records), if applicable, a death certificate, and if applicable, autopsy results, and

(3) an identification of any records of the type described in paragraph (1) or (2) which are unavailable to the petitioner and the reasons for their unavailability.

(d) Additional information

A petition may also include other available relevant medical records relating to the person who suffered such injury or who died from the administration of the vaccine.

(e) Schedule

The petitioner shall submit in accordance with a schedule set by the special master assigned to the petition assessments, evaluations, and prognoses and such other records and documents as are reasonably necessary for the determination of the amount of compensation to be paid to, or on behalf of, the person who suffered such injury or who died from the administration of the vaccine.

(July 1, 1944, ch. 373, title XXI, §2111, as added Nov. 14, 1986, Pub. L. 99–660, title III, §311(a), 100 Stat. 3758; amended Dec. 22, 1987, Pub. L. 100–203, title IV, §§4302(b), 4304(a), (b), 4306, 4307(1), (2), 101 Stat. 1330–221, 1330–223, 1330–224; Dec. 19, 1989, Pub. L. 101–239, title VI, §6601(c)(1)–(7), 103 Stat. 2285, 2286; Nov. 3, 1990, Pub. L. 101–502, §5(a), 104 Stat. 1286; Nov. 26, 1991, Pub. L. 102–168, title II, §201(h)(1), 105 Stat. 1104; Oct. 29, 1992, Pub. L. 102–572, title IX, §902(b)(1), 106 Stat. 4516; June 10, 1993, Pub. L. 103–43, title XX, §2012, 107 Stat. 214.)

CODIFICATION

In subsecs. (a)(2)(A), (3), (4), (5)(A), (8), and (b)(1)(B), ''October 1, 1988'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

PRIOR PROVISIONS

A prior section 300aa–11, act July 1, 1944, §2112, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

A prior section 2111 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238h of this title.

AMENDMENTS

1993—Subsec. (a)(10). Pub. L. 103–43 added par. (10).

1992—Subsec. (a)(1), (2)(A)(i)(I). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' wherever appearing.

1991—Subsec. (a)(2)(A)(i), (ii). Pub. L. 102–168 realigned margins of cls. (i) and (ii).

1990—Subsec. (a)(2)(A). Pub. L. 101–502, §5(a)(1), substituted ''unless a petition has been filed, in accordance with section 300aa–16 of this title, for compensation under the Program for such injury or death and—'' and cls. (i) and (ii) for ''unless—

''(i) a petition has been filed, in accordance with section 300aa–16 of this title, for compensation under the Program for such injury or death,

''(ii) the United States Claims Court has issued a judgment under section 300aa–12 of this title on such petition, and

''(iii) such person elects under section 300aa–21(a) of this title to file such an action.''

Subsec. (a)(5)(A). Pub. L. 101–502, §5(a)(2), struck out ''without prejudice'' after ''without prejudice or costs''.

Subsec. (a)(5)(B). Pub. L. 101–502, §5(a)(3), substituted ''plaintiff'' for ''plaintiff who''.

Subsec. (d). Pub. L. 101–502, §5(a)(4), struck out ''(d) except as provided in paragraph (3),'' before ''(d) Additional information''.

Subsec. (e). Pub. L. 101–502, § 5(a)(5), substituted ''(e) Schedule'' for ''(e)(e) Schedule''.

1989—Subsec. (a)(1). Pub. L. 101–239, § 6601(c)(1), substituted ''filing of a petition containing the matter prescribed in subsection (c) of this section'' for ''filing of a petition'' and inserted at end ''The clerk of the United States Claims Court shall immediately forward the filed petition to the chief special master for assignment to a special master under section 300aa–12(d)(1) of this title.''

Subsec. (a)(2)(A)(i). Pub. L. 101–239, § 6601(c)(2), struck out ''under subsection (b) of this section'' after ''section 300aa–16 of this title,''.

Subsec. (a)(5)(A). Pub. L. 101–239, § 6601(c)(3)(A), substituted ''petition to have such action dismissed without prejudice or costs'' for ''elect to withdraw such action''.

Subsec. (a)(5)(B). Pub. L. 101–239, § 6601(c)(3)(B), substituted ''has pending'' for ''on October 1, 1988, had pending'' and struck out ''does not withdraw the action under subparagraph (A)'' after ''vaccine-related injury or death''.

Subsec. (a)(6). Pub. L. 101–239, § 6601(c)(4), substituted ''November 15, 1988'' for ''the effective date of this subpart'' in two places.

Subsec. (a)(8). Pub. L. 101–239, § 6601(c)(5), added par. (8). Former par. (8) redesignated (9).

Subsec. (a)(9). Pub. L. 101–239, § 6601(c)(5), (7), redesignated par. (8) as (9) and realigned margin.

Subsec. (c)(1). Pub. L. 101–239, § 6601(c)(6)(A), inserted ''except as provided in paragraph (3),'' after ''(1)'' in introductory provisions.

Subsec. (c)(2). Pub. L. 101–239, § 6601(c)(6)(B), (C), added par. (2) and redesignated former par. (2) as subsec. (d).

Pub. L. 101–239, § 6601(c)(6)(A), inserted ''except as provided in paragraph (3),'' after ''(2)''.

Subsec. (c)(3). Pub. L. 101–239, § 6601(c)(6)(C), (D), added par. (3). Former par. (3) redesignated subsec. (e).

Subsec. (d). Pub. L. 101–239, § 6601(c)(6)(B), redesignated former subsec. (c)(2) as subsec. (d), expanded margin to full measure, inserted subsec. designation and heading, substituted ''A petition may also include other available'' for ''all available'', struck out ''(including autopsy reports, if any)'' after ''relevant medical records'', and substituted ''administration of the vaccine.'' for ''administration of the vaccine and an identification of any unavailable records known to the petitioner and the reasons for their unavailability, and''.

Subsec. (e). Pub. L. 101–239, § 6601(c)(6)(D), redesignated former subsec. (c)(3) as subsec. (e), expanded margin to full measure, inserted subsec. designation and heading, and substituted ''The petitioner shall submit in accordance with a schedule set by the special master assigned to the petition'' for ''appropriate''.

1987—Subsec. (a)(1). Pub. L. 100–203, § 4307(1), which directed that par. (1) be amended by substituting ''with the United States Claims Court'' for ''with the United States district court for the district in which the petitioner resides or the injury or death occurred'', was executed making the substitution for ''with the United States district court for the district in which the petitioner resides or in which the injury or death occurred'', as the probable intent of Congress.

Subsec. (a)(2)(A). Pub. L. 100–203, § 4306, substituted ''vaccine administrator or manufacturer'' for ''vaccine manufacturer''.

Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (a)(2)(A)(ii). Pub. L. 100–203, § 4307(2), substituted ''the United States Claims Court'' for ''a district court of the United States''.

Subsec. (a)(3). Pub. L. 100–203, § 4306, substituted ''vaccine administrator or manufacturer'' for ''vaccine manufacturer''.

Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (a)(4). Pub. L. 100–203, § 4306, substituted ''vaccine administrator or manufacturer'' for ''vaccine manufacturer''.

Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (a)(5)(A). Pub. L. 100–203, § 4302(b)(2), substituted ''after the effective date of this subpart'' for ''after the effective date of this subchapter''.

Pub. L. 100–203, § 4302(b)(1), substituted ''who on the effective date of this subpart'' for ''who on the effective date of this part''.

Subsec. (a)(5)(B). Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (a)(6). Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part'' in two places.

Subsec. (a)(7). Pub. L. 100–203, § 4306, substituted ''vaccine administrator or manufacturer'' for ''vaccine manufacturer''.

Subsec. (a)(8). Pub. L. 100–203, § 4304(a), added par. (8).

Subsec. (b)(1)(A). Pub. L. 100–203, § 4304(b)(1), substituted ''may, if the person meets the requirements of subsection (c)(1) of this section, file'' for ''may file''.

Subsec. (b)(1)(B). Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (c)(1)(D). Pub. L. 100–203, § 4304(b)(2), substituted ''for more than 6 months'' for ''for more than 1 year'', ''and incurred'' for '', (ii) incurred'', and ''(ii)'' for ''(iii)''.

CHANGE OF NAME

References to United States Claims Court deemed to refer to United States Court of Federal Claims, see section 902(b) of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Section 201(i) of Pub. L. 102–168 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 300aa–12, 300aa–15, 300aa–16, 300aa–19, and 300aa–21 of this title and provisions set out as a note under section 300aa–1 of this title] shall take effect on the date of the enactment of this Act [Nov. 26, 1991].

''(2) The amendments made by subsections (d) and (f) [amending sections 300aa–12, 300aa–15, 300aa–16, and 300aa–21 of this title] shall take effect as if the amendments had been in effect on and after October 1, 1988.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5(h) of Pub. L. 101–502 provided that: ''The amendments made by subsections (f)(1) and (g) [amending section 300aa–21 of this title and provisions set out as a note under section 300aa–1 of this title and enacting provisions set out as a note under section 300aa–12 of this title] shall take effect as of November 14, 1986, and the amendments made by subsections (a) through (e) and subsection (f)(2) [amending this section and sections 300aa–12, 300aa–13, 300aa–15, 300aa–16, and 300aa–21 of this title] shall take effect as of September 30, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300aa–12, 300aa–13, 300aa–14, 300aa–15, 300aa–16, 300aa–21, 300aa–23, 300aa–34 of this title.

§ 300aa–12. Court jurisdiction

(a) General rule

The United States Court of Federal Claims and the United States Court of Federal Claims special masters shall, in accordance with this section, have jurisdiction over proceedings to determine if a petitioner under section 300aa–11 of this title is entitled to compensation under the Program and the amount of such compensation. The United States Court of Federal Claims may issue and enforce such orders as the court deems necessary to assure the prompt payment of any compensation awarded.

(b) Parties

(1) In all proceedings brought by the filing of a petition under section 300aa–11(b) of this title, the Secretary shall be named as the respondent, shall participate, and shall be represented in accordance with section 518(a) of title 28.

(2) Within 30 days after the Secretary receives service of any petition filed under section 300aa–11 of this title the Secretary shall publish notice of such petition in the Federal Register. The special master designated with respect to such petition under subsection (c) of this section shall afford all interested persons an opportunity to submit relevant, written information—

(A) relating to the existence of the evidence described in section 300aa–13(a)(1)(B) of this title, or

(B) relating to any allegation in a petition with respect to the matters described in section 300aa–11(c)(1)(C)(ii) of this title.

(c) United States Court of Federal Claims special masters

(1) There is established within the United States Court of Federal Claims an office of special masters which shall consist of not more than 8 special masters. The judges of the United States Court of Federal Claims shall appoint the special masters, 1 of whom, by designation of the judges of the United States Court of Federal Claims, shall serve as chief special master. The appointment and reappointment of the special masters shall be by the concurrence of a majority of the judges of the court.

(2) The chief special master and other special masters shall be subject to removal by the judges of the United States Court of Federal Claims for incompetency, misconduct, or neglect of duty or for physical or mental disability or for other good cause shown.

(3) A special master's office shall be terminated if the judges of the United States Court of Federal Claims determine, upon advice of the chief special master, that the services performed by that office are no longer needed.

(4) The appointment of any individual as a special master shall be for a term of 4 years, subject to termination under paragraphs (2) and (3). Individuals serving as special masters on December 19, 1989, shall serve for 4 years from the date of their original appointment, subject to termination under paragraphs (2) and (3). The chief special master in office on December 19, 1989, shall continue to serve as chief special master for the balance of the master's term, subject to termination under paragraphs (2) and (3).

(5) The compensation of the special masters shall be determined by the judges of the United States Court of Federal Claims, upon advice of the chief special master. The salary of the chief special master shall be the annual rate of basic pay for level IV of the Executive Schedule, as prescribed by section 5315, title 5. The salaries of the other special masters shall not exceed the annual rate of basic pay of level V of the Executive Schedule, as prescribed by section 5316, title 5.

(6) The chief special master shall be responsible for the following:

(A) Administering the office of special masters and their staff, providing for the efficient, expeditious, and effective handling of petitions, and performing such other duties related to the Program as may be assigned to the chief special master by a concurrence of a majority of the United States Claims Courts[1] judges.

(B) Appointing and fixing the salary and duties of such administrative staff as are necessary. Such staff shall be subject to removal for good cause by the chief special master.

(C) Managing and executing all aspects of budgetary and administrative affairs affecting the special masters and their staff, subject to the rules and regulations of the Judicial Conference of the United States. The Conference rules and regulations pertaining to United States magistrates shall be applied to the special masters.

(D) Coordinating with the United States Court of Federal Claims the use of services, equipment, personnel, information, and facilities of the United States Court of Federal Claims without reimbursement.

(E) Reporting annually to the Congress and the judges of the United States Court of Federal Claims on the number of petitions filed under section 300aa–11 of this title and their disposition, the dates on which the vaccine-related injuries and deaths for which the petitions were filed occurred, the types and amounts of awards, the length of time for the disposition of petitions, the cost of administering the Program, and recommendations for changes in the Program.

(d) Special masters

(1) Following the receipt and filing of a petition under section 300aa–11 of this title, the clerk of the United States Court of Federal Claims shall forward the petition to the chief special master who shall designate a special master to carry out the functions authorized by paragraph (3).

(2) The special masters shall recommend rules to the Court of Federal Claims and, taking into account such recommended rules, the Court of Federal Claims shall promulgate rules pursuant to section 2071 of title 28. Such rules shall—

(A) provide for a less-adversarial, expeditious, and informal proceeding for the resolution of petitions,

(B) include flexible and informal standards of admissibility of evidence,

---

[1] So in original. Probably should be a reference to the United States Court of Federal Claims.

(C) include the opportunity for summary judgment,

(D) include the opportunity for parties to submit arguments and evidence on the record without requiring routine use of oral presentations, cross examinations, or hearings, and

(E) provide for limitations on discovery and allow the special masters to replace the usual rules of discovery in civil actions in the United States Court of Federal Claims.

(3)(A) A special master to whom a petition has been assigned shall issue a decision on such petition with respect to whether compensation is to be provided under the Program and the amount of such compensation. The decision of the special master shall—

(i) include findings of fact and conclusions of law, and

(ii) be issued as expeditiously as practicable but not later than 240 days, exclusive of suspended time under subparagraph (C), after the date the petition was filed.

The decision of the special master may be reviewed by the United States Court of Federal Claims in accordance with subsection (e) of this section.

(B) In conducting a proceeding on a petition a special master—

(i) may require such evidence as may be reasonable and necessary,

(ii) may require the submission of such information as may be reasonable and necessary,

(iii) may require the testimony of any person and the production of any documents as may be reasonable and necessary,

(iv) shall afford all interested persons an opportunity to submit relevant written information—

(I) relating to the existence of the evidence described in section 300aa–13(a)(1)(B) of this title, or

(II) relating to any allegation in a petition with respect to the matters described in section 300aa–11(c)(1)(C)(ii) of this title, and

(v) may conduct such hearings as may be reasonable and necessary.

There may be no discovery in a proceeding on a petition other than the discovery required by the special master.

(C) In conducting a proceeding on a petition a special master shall suspend the proceedings one time for 30 days on the motion of either party. After a motion for suspension is granted, further motions for suspension by either party may be granted by the special master, if the special master determines the suspension is reasonable and necessary, for an aggregate period not to exceed 150 days.

(D) If, in reviewing proceedings on petitions for vaccine-related injuries or deaths associated with the administration of vaccines before October 1, 1988, the chief special master determines that the number of filings and resultant workload place an undue burden on the parties or the special master involved in such proceedings, the chief special master may, in the interest of justice, suspend proceedings on any petition for up to 30 months (but for not more than 6 months at a time) in addition to the suspension time under subparagraph (C).

(4)(A) Except as provided in subparagraph (B), information submitted to a special master or the court in a proceeding on a petition may not be disclosed to a person who is not a party to the proceeding without the express written consent of the person who submitted the information.

(B) A decision of a special master or the court in a proceeding shall be disclosed, except that if the decision is to include information—

(i) which is trade secret or commercial or financial information which is privileged and confidential, or

(ii) which are medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy,

and if the person who submitted such information objects to the inclusion of such information in the decision, the decision shall be disclosed without such information.

(e) Action by United States Court of Federal Claims

(1) Upon issuance of the special master's decision, the parties shall have 30 days to file with the clerk of the United States Court of Federal Claims a motion to have the court review the decision. If such a motion is filed, the other party shall file a response with the clerk of the United States Court of Federal Claims no later than 30 days after the filing of such motion.

(2) Upon the filing of a motion under paragraph (1) with respect to a petition, the United States Court of Federal Claims shall have jurisdiction to undertake a review of the record of the proceedings and may thereafter—

(A) uphold the findings of fact and conclusions of law of the special master and sustain the special master's decision,

(B) set aside any findings of fact or conclusion of law of the special master found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and issue its own findings of fact and conclusions of law, or

(C) remand the petition to the special master for further action in accordance with the court's direction.

The court shall complete its action on a petition within 120 days of the filing of a response under paragraph (1) excluding any days the petition is before a special master as a result of a remand under subparagraph (C). The court may allow not more than 90 days for remands under subparagraph (C).

(3) In the absence of a motion under paragraph (1) respecting the special master's decision or if the United States Court of Federal Claims takes the action described in paragraph (2)(A) with respect to the special master's decision, the clerk of the United States Court of Federal Claims shall immediately enter judgment in accordance with the special master's decision.

(f) Appeals

The findings of fact and conclusions of law of the United States Court of Federal Claims on a petition shall be final determinations of the matters involved, except that the Secretary or

any petitioner aggrieved by the findings or conclusions of the court may obtain review of the judgment of the court in the United States court of appeals for the Federal Circuit upon petition filed within 60 days of the date of the judgment with such court of appeals within 60 days of the date of entry of the United States Claims Court's[2] judgment with such court of appeals.

(g) Notice

If—

(1) a special master fails to make a decision on a petition within the 240 days prescribed by subsection (d)(3)(A)(ii) of this section (excluding (A) any period of suspension under subsection (d)(3)(C) or (d)(3)(D) of this section, and (B) any days the petition is before a special master as a result of a remand under subsection (e)(2)(C) of this section), or

(2) the United States Court of Federal Claims fails to enter a judgment under this section on a petition within 420 days (excluding (A) any period of suspension under subsection (d)(3)(C) or (d)(3)(D) of this section, and (B) any days the petition is before a special master as a result of a remand under subsection (e)(2)(C) of this section) after the date on which the petition was filed,

the special master or court shall notify the petitioner under such petition that the petitioner may withdraw the petition under section 300aa–21(b) of this title or the petitioner may choose under section 300aa–21(b) of this title to have the petition remain before the special master or court, as the case may be.

(July 1, 1944, ch. 373, title XXI, §2112, as added Nov. 14, 1986, Pub. L. 99–660, title III, §311(a), 100 Stat. 3761; amended Dec. 22, 1987, Pub. L. 100–203, title IV, §§4303(d)(2)(A), 4307(3), 4308(a), (b), 101 Stat. 1330–222, 1330–224; July 1, 1988, Pub. L. 100–360, title IV, §411(*o*)(2), (3)(A), 102 Stat. 808; Dec. 19, 1989, Pub. L. 101–239, title VI, §6601(d)–(i), 103 Stat. 2286–2290; Nov. 3, 1990, Pub. L. 101–502, §5(b), 104 Stat. 1286; Nov. 26, 1991, Pub. L. 102–168, title II, §201(c), (d)(1), (h)(2), (3), 105 Stat. 1103, 1104; Oct. 29, 1992, Pub. L. 102–572, title IX, §902(b), 106 Stat. 4516; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13632(c), 107 Stat. 646.)

CODIFICATION

In subsec. (c)(4), ''on December 19, 1989,'' substituted for ''upon the date of the enactment of this subsection'' and ''on the date of the enactment of this subsection''.

In subsec. (d)(3)(D), ''October 1, 1988,'' substituted for ''the effective date of this part''.

PRIOR PROVISIONS

A prior section 300aa–12, act July 1, 1944, §2113, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

A prior section 2112 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

AMENDMENTS

1993—Subsec. (d)(3)(D). Pub. L. 103–66 substituted ''30 months (but for not more than 6 months at a time)'' for ''540 days''.

1992—Subsecs. (a), (c) to (g). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' and ''Court of Federal Claims'' for ''Claims Court'', wherever appearing.

1991—Subsec. (d)(3)(D). Pub. L. 102–168, §201(c), (h)(2), realigned margin and substituted ''540 days'' for ''180 days''.

Subsec. (g). Pub. L. 102–168, §201(h)(3), made technical amendment to underlying provisions of original Act.

Pub. L. 102–168, §201(d)(1), substituted ''or the petitioner may choose under section 300aa–21(b) of this title to have the petition remain before the special master or court, as the case may be'' for ''and the petition will be considered withdrawn under such section if the petitioner, the special master, or the court do not take certain actions'' before period at end.

1990—Subsec. (d)(3)(D). Pub. L. 101–502, §5(b)(1), added subpar. (D).

Subsec. (g). Pub. L. 101–502, §5(b)(2), added subsec. (g).

1989—Subsec. (a). Pub. L. 101–239, §6601(d), substituted ''and the United States Claims Court special masters shall, in accordance with this section, have jurisdiction'' for ''shall have jurisdiction (1)'', ''. The United States Claims Court may issue'' for '', and (2) to issue'', and ''deems'' for ''deem''.

Subsec. (b)(1). Pub. L. 101–239, §6601(f), substituted ''In all proceedings brought by the filing of a petition under section 300aa–11(b) of this title, the Secretary shall be named as the respondent, shall participate, and shall be represented in accordance with section 518(a) of title 28.'' for ''The Secretary shall be named as the respondent in all proceedings brought by the filing of a petition under section 300aa–11(b) of this title. Except as provided in paragraph (2), no other person may intervene in any such proceeding.''

Subsec. (c). Pub. L. 101–239, §6601(e)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 101–239, §6601(e)(1), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 101–239, §6601(g)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Following receipt of a petition under subsection (a) of this section, the United States Claims Court shall designate a special master to carry out the functions authorized by paragraph (2).''

Subsec. (d)(2) to (4). Pub. L. 101–239, §6601(g)(2), added pars. (2) to (4) and struck out former par. (2) which prescribed functions of special masters.

Subsec. (e). Pub. L. 101–239, §6601(h), substituted ''Action by United States Claims Court'' for ''Action by court'' as heading and amended text generally. Prior to amendment, text read as follows:

''(1) Upon objection by the petitioner or respondent to the proposed findings of fact or conclusions of law prepared by the special master or upon the court's own motion, the court shall undertake a review of the record of the proceedings and may thereafter make a de novo determination of any matter and issue its judgment accordingly, including findings of fact and conclusions of law, or remand for further proceedings.

''(2) If no objection is filed under paragraph (1) or if the court does not choose to review the proceeding, the court shall adopt the proposed findings of fact and conclusions of law of the special master as its own and render judgment thereon.

''(3) The court shall render its judgment on any petition filed under the Program as expeditiously as practicable but not later than 365 days after the date on which the petition was filed.''

Pub. L. 101–239, §6601(e)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 101–239, §6601(i), inserted ''within 60 days of the date of entry of the United States Claims Court's judgment with such court of appeals'' after ''with such court of appeals''.

Pub. L. 101–239, §6601(e)(1), redesignated subsec. (e) as (f).

1988—Subsec. (c)(2). Pub. L. 100–360, §411(*o*)(3)(A), added Pub. L. 100–203, §4308(a), see 1987 Amendment note below.

Subsec. (e). Pub. L. 100–360, §411(*o*)(2), made technical amendment to directory language of Pub. L. 100–203, §4307(3)(C), see 1987 Amendment note below.

[2] So in original. Probably should be a reference to the United States Court of Federal Claims.

Pub. L. 100–360, § 411(*o*)(3)(A), added Pub. L. 100–203, § 4308(b), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–203, § 4307(3)(A), substituted ''United States Claims Court'' for ''district courts of the United States'' and ''the court'' for ''the courts''.

Subsec. (c)(1). Pub. L. 100–203, § 4307(3)(B), substituted ''the United States Claims Court'' for ''the district court of the United States in which the petition is filed''.

Subsec. (c)(2). Pub. L. 100–203, § 4308(a), as added by Pub. L. 100–360, § 411(*o*)(3)(A), inserted '', shall prepare and submit to the court proposed findings of fact and conclusions of law,'' in introductory provisions and struck out subpar. (E) which read as follows: ''prepare and submit to the court proposed findings of fact and conclusions of law.''

Subsec. (e). Pub. L. 100–203, § 4308(b), as added by Pub. L. 100–360, § 411(*o*)(3)(A), inserted ''within 60 days of the date of the judgment'' after ''petition filed''.

Pub. L. 100–203, § 4307(3)(C), as amended by Pub. L. 100–360, § 411(*o*)(2), substituted ''the United States Claims Court'' for ''a district court of the United States'' and ''for the Federal Circuit'' for ''for the circuit in which the court is located''.

Pub. L. 100–203, § 4303(d)(2)(A), redesignated subsec. (g) as (e) and struck out former subsec. (e) relating to administration of an award.

Subsec. (f). Pub. L. 100–203, § 4303(d)(2)(A), struck out subsec. (f) which related to revision of an award.

Subsec. (g). Pub. L. 100–203, § 4303(d)(2)(A), redesignated subsec. (g) as (e).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 201(d)(1) of Pub. L. 102–168 effective as if in effect on and after Oct. 1, 1988, see section 201(i)(2) of Pub. L. 102–168, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, except that such suspension be excluded in determining the 240-day period prescribed in subsec. (d) of this section, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

REVIEW BY 3-JUDGE PANEL

Section 322(c) of Pub. L. 99–660, as added by Pub. L. 101–502, § 5(g)(2), Nov. 3, 1990, 104 Stat. 1288, and amended by Pub. L. 102–572, title IX, § 902(b)(1), Oct. 29, 1992, 106 Stat. 4516, provided that: ''If the review authorized by section 2112(f) [subsec. (f) of this section] is held invalid because the judgment of the United States Court of Federal Claims being reviewed did not arise from a case or controversy under Article III of the Constitution, such judgment shall be reviewed by a 3-judge panel of the United States Court of Federal Claims. Such panel shall not include the judge who participated in such judgment.''

[Enactment of section 322(c) of Pub. L. 99–660 by section 5(g)(2) of Pub. L. 101–502, set out above, effective Nov. 14, 1986, see section 5(h) of Pub. L. 101–502, set out as an Effective Date of 1990 Amendment note under section 300aa–11 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300aa–11, 300aa–15, 300aa–21 of this title.

§ 300aa–13. Determination of eligibility and compensation

(a) General rule

(1) Compensation shall be awarded under the Program to a petitioner if the special master or court finds on the record as a whole—

(A) that the petitioner has demonstrated by a preponderance of the evidence the matters required in the petition by section 300aa–11(c)(1) of this title, and

(B) that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition.

The special master or court may not make such a finding based on the claims of a petitioner alone, unsubstantiated by medical records or by medical opinion.

(2) For purposes of paragraph (1), the term ''factors unrelated to the administration of the vaccine''—

(A) does not include any idiopathic, unexplained, unknown, hypothetical, or undocumentable cause, factor, injury, illness, or condition, and

(B) may, as documented by the petitioner's evidence or other material in the record, include infection, toxins, trauma (including birth trauma and related anoxia), or metabolic disturbances which have no known relation to the vaccine involved, but which in the particular case are shown to have been the agent or agents principally responsible for causing the petitioner's illness, disability, injury, condition, or death.

(b) Matters to be considered

(1) In determining whether to award compensation to a petitioner under the Program, the special master or court shall consider, in addition to all other relevant medical and scientific evidence contained in the record—

(A) any diagnosis, conclusion, medical judgment, or autopsy or coroner's report which is contained in the record regarding the nature, causation, and aggravation of the petitioner's illness, disability, injury, condition, or death, and

(B) the results of any diagnostic or evaluative test which are contained in the record and the summaries and conclusions.

Any such diagnosis, conclusion, judgment, test result, report, or summary shall not be binding

on the special master or court. In evaluating the weight to be afforded to any such diagnosis, conclusion, judgment, test result, report, or summary, the special master or court shall consider the entire record and the course of the injury, disability, illness, or condition until the date of the judgment of the special master or court.

(2) The special master or court may find the first symptom or manifestation of onset or significant aggravation of an injury, disability, illness, condition, or death described in a petition occurred within the time period described in the Vaccine Injury Table even though the occurrence of such symptom or manifestation was not recorded or was incorrectly recorded as having occurred outside such period. Such a finding may be made only upon demonstration by a preponderance of the evidence that the onset or significant aggravation of the injury, disability, illness, condition, or death described in the petition did in fact occur within the time period described in the Vaccine Injury Table.

(c) "Record" defined

For purposes of this section, the term ''record'' means the record established by the special masters of the United States Court of Federal Claims in a proceeding on a petition filed under section 300aa–11 of this title.

(July 1, 1944, ch. 373, title XXI, § 2113, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3763; amended Dec. 22, 1987, Pub. L. 100–203, title IV, § 4307(4), 101 Stat. 1330–224; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6601(j), 103 Stat. 2290; Nov. 3, 1990, Pub. L. 101–502, § 5(c), 104 Stat. 1287; Oct. 29, 1992, Pub. L. 102–572, title IX, § 902(b)(1), 106 Stat. 4516.)

PRIOR PROVISIONS

A prior section 300aa–13, act July 1, 1944, § 2114, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

A prior section 2113 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1990—Subsec. (c). Pub. L. 101–502 inserted ''the'' after ''special masters of''.

1989—Subsecs. (a)(1), (b). Pub. L. 101–239, § 6601(j)(1), substituted ''special master or court'' for ''court'' wherever appearing.

Subsec. (c). Pub. L. 101–239, § 6601(j)(2), inserted ''special masters of'' after ''established by the''.

1987—Subsec. (c). Pub. L. 100–203 substituted ''the United States Claims Court'' for ''a district court of the United States''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300aa–12 of this title.

§ 300aa–14. Vaccine Injury Table

(a) Initial table

The following is a table of vaccines, the injuries, disabilities, illnesses, conditions, and deaths resulting from the administration of such vaccines, and the time period in which the first symptom or manifestation of onset or of the significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths is to occur after vaccine administration for purposes of receiving compensation under the Program:

VACCINE INJURY TABLE

I.	DTP; P; DTP/Polio Combination; or Any Other Vaccine Containing Whole Cell Pertussis Bacteria, Extracted or Partial Cell Bacteria, or Specific Pertussis Antigen(s).	
	Illness, disability, injury, or condition covered:	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration:
	A. Anaphylaxis or anaphylactic shock	24 hours
	B. Encephalopathy (or encephalitis)	3 days
	C. Shock-collapse or hypotonic-hyporesponsive collapse	3 days
	D. Residual seizure disorder in accordance with subsection (b)(2)	3 days
	E. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable
II.	Measles, mumps, rubella, or any vaccine containing any of the foregoing as a component; DT; Td; or Tetanus Toxoid.	
	A. Anaphylaxis or anaphylactic shock	24 hours
	B. Encephalopathy (or encephalitis)	15 days (for mumps, rubella, measles, or any vaccine containing any of the foregoing as a component). 3 days (for DT, Td, or tetanus toxoid).
	C. Residual seizure disorder in accordance with subsection (b)(2)	15 days (for mumps, rubella, measles, or any vaccine containing any of the foregoing as a component). 3 days (for DT, Td, or tetanus toxoid).
	D. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable

VACCINE INJURY TABLE—Continued

III.	Polio Vaccines (other than Inactivated Polio Vaccine).	
	A. Paralytic polio	
	—in a non-immunodeficient recipient	30 days
	—in an immunodeficient recipient	6 months
	—in a vaccine-associated community case	Not applicable
	B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable
IV.	Inactivated Polio Vaccine.	
	A. Anaphylaxis or anaphylactic shock	24 hours
	B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed	Not applicable

(b) Qualifications and aids to interpretation

The following qualifications and aids to interpretation shall apply to the Vaccine Injury Table in subsection (a) of this section:

(1) A shock-collapse or a hypotonic-hyporesponsive collapse may be evidenced by indicia or symptoms such as decrease or loss of muscle tone, paralysis (partial or complete), hemiplegia or hemiparesis, loss of color or turning pale white or blue, unresponsiveness to environmental stimuli, depression of consciousness, loss of consciousness, prolonged sleeping with difficulty arousing, or cardiovascular or respiratory arrest.

(2) A petitioner may be considered to have suffered a residual seizure disorder if the petitioner did not suffer a seizure or convulsion unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit before the first seizure or convulsion after the administration of the vaccine involved and if—

(A) in the case of a measles, mumps, or rubella vaccine or any combination of such vaccines, the first seizure or convulsion occurred within 15 days after administration of the vaccine and 2 or more seizures or convulsions occurred within 1 year after the administration of the vaccine which were unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit, and

(B) in the case of any other vaccine, the first seizure or convulsion occurred within 3 days after administration of the vaccine and 2 or more seizures or convulsions occurred within 1 year after the administration of the vaccine which were unaccompanied by fever or accompanied by a fever of less than 102 degrees Fahrenheit.

(3)(A) The term ''encephalopathy'' means any significant acquired abnormality of, or injury to, or impairment of function of the brain. Among the frequent manifestations of encephalopathy are focal and diffuse neurologic signs, increased intracranial pressure, or changes lasting at least 6 hours in level of consciousness, with or without convulsions. The neurological signs and symptoms of encephalopathy may be temporary with complete recovery, or may result in various degrees of permanent impairment. Signs and symptoms such as high pitched and unusual screaming, persistent unconsolable crying, and bulging fontanel are compatible with an encephalopathy, but in and of themselves are not conclusive evidence of encephalopathy. Encephalopathy usually can be documented by slow wave activity on an electroencephalogram.

(B) If in a proceeding on a petition it is shown by a preponderance of the evidence that an encephalopathy was caused by infection, toxins, trauma, or metabolic disturbances the encephalopathy shall not be considered to be a condition set forth in the table. If at the time a judgment is entered on a petition filed under section 300aa–11 of this title for a vaccine-related injury or death it is not possible to determine the cause, by a preponderance of the evidence, of an encephalopathy, the encephalopathy shall be considered to be a condition set forth in the table. In determining whether or not an encephalopathy is a condition set forth in the table, the court shall consider the entire medical record.

(4) For purposes of paragraphs (2) and (3), the terms ''seizure'' and ''convulsion'' include grand mal, petit mal, absence, myoclonic, tonic-clonic, and focal motor seizures and signs. If a provision of the table to which paragraph (1), (2), (3), or (4) applies is revised under subsection (c) or (d) of this section, such paragraph shall not apply to such provision after the effective date of the revision unless the revision specifies that such paragraph is to continue to apply.

(c) Administrative revision of table

(1) The Secretary may promulgate regulations to modify in accordance with paragraph (3) the Vaccine Injury Table. In promulgating such regulations, the Secretary shall provide for notice and opportunity for a public hearing and at least 180 days of public comment.

(2) Any person (including the Advisory Commission on Childhood Vaccines) may petition the Secretary to propose regulations to amend the Vaccine Injury Table. Unless clearly frivolous, or initiated by the Commission, any such petition shall be referred to the Commission for its recommendations. Following—

(A) receipt of any recommendation of the Commission, or

(B) 180 days after the date of the referral to the Commission,

whichever occurs first, the Secretary shall conduct a rulemaking proceeding on the matters proposed in the petition or publish in the Federal Register a statement of reasons for not conducting such proceeding.

(3) A modification of the Vaccine Injury Table under paragraph (1) may add to, or delete from, the list of injuries, disabilities, illnesses, conditions, and deaths for which compensation may be provided or may change the time periods for the first symptom or manifestation of the onset or the significant aggravation of any such injury, disability, illness, condition, or death.

(4) Any modification under paragraph (1) of the Vaccine Injury Table shall apply only with respect to petitions for compensation under the

Program which are filed after the effective date of such regulation.

(d) Role of Commission

Except with respect to a regulation recommended by the Advisory Commission on Childhood Vaccines, the Secretary may not propose a regulation under subsection (c) of this section or any revision thereof, unless the Secretary has first provided to the Commission a copy of the proposed regulation or revision, requested recommendations and comments by the Commission, and afforded the Commission at least 90 days to make such recommendations.

(e) Additional vaccines

(1) Vaccines recommended before August 1, 1993

By August 1, 1995, the Secretary shall revise the Vaccine Injury Table included in subsection (a) of this section to include—

(A) vaccines which are recommended to the Secretary by the Centers for Disease Control and Prevention before August 1, 1993, for routine administration to children,

(B) the injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines, and

(C) the time period in which the first symptoms or manifestations of onset or other significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines may occur.

(2) Vaccines recommended after August 1, 1993

When after August 1, 1993, the Centers for Disease Control and Prevention recommends a vaccine to the Secretary for routine administration to children, the Secretary shall, within 2 years of such recommendation, amend the Vaccine Injury Table included in subsection (a) of this section to include—

(A) vaccines which were recommended for routine administration to children,

(B) the injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines, and

(C) the time period in which the first symptoms or manifestations of onset or other significant aggravation of such injuries, disabilities, illnesses, conditions, and deaths associated with such vaccines may occur.

(July 1, 1944, ch. 373, title XXI, §2114, as added Nov. 14, 1986, Pub. L. 99–660, title III, §311(a), 100 Stat. 3764; amended Dec. 19, 1989, Pub. L. 101–239, title VI, §6601(k), 103 Stat. 2290; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13632(a)(2), 107 Stat. 645.)

PRIOR PROVISIONS

A prior section 300aa–14, act July 1, 1944, §2115, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

A prior section 2114 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

AMENDMENTS

1993—Subsec. (e). Pub. L. 103–66 amended heading and text of subsec. (e) generally. Prior to amendment, text read as follows: ''The Secretary may recommend to Congress revisions of the table to change the vaccines covered by the table.''

1989—Subsec. (a). Pub. L. 101–239, §6601(k)(1), substituted ''(b)(2)'' for ''(c)(2)'' in items I.D. and II.C. in table.

Subsec. (b)(3)(B). Pub. L. 101–239, §6601(k)(2), substituted ''300aa–11 of this title'' for ''300aa–11(b) of this title''.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

REVISIONS OF VACCINE INJURY TABLE; EFFECTIVE DATES

Section 13632(a)(3) of Pub. L. 103–66 provided that: ''A revision by the Secretary under section 2114(e) of the Public Health Service Act (42 U.S.C. 300aa–14(e)) (as amended by paragraph (2)) shall take effect upon the effective date of a tax enacted to provide funds for compensation paid with respect to the vaccine to be added to the vaccine injury table in section 2114(a) of the Public Health Service Act (42 U.S.C. 300aa–14(a)).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300aa–25, 300aa–33 of this title.

§ 300aa–15. Compensation

(a) General rule

Compensation awarded under the Program to a petitioner under section 300aa–11 of this title for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, shall include the following:

(1)(A) Actual unreimbursable expenses incurred from the date of the judgment awarding such expenses and reasonable projected unreimbursable expenses which—

(i) result from the vaccine-related injury for which the petitioner seeks compensation,

(ii) have been or will be incurred by or on behalf of the person who suffered such injury, and

(iii)(I) have been or will be for diagnosis and medical or other remedial care determined to be reasonably necessary, or

(II) have been or will be for rehabilitation, developmental evaluation, special education, vocational training and placement, case management services, counseling, emotional or behavioral therapy, residential and custodial care and service expenses, special equipment, related travel expenses, and facilities determined to be reasonably necessary.

(B) Subject to section 300aa–16(a)(2) of this title, actual unreimbursable expenses incurred before the date of the judgment awarding such expenses which—

(i) resulted from the vaccine-related injury for which the petitioner seeks compensation,

(ii) were incurred by or on behalf of the person who suffered such injury, and

(iii) were for diagnosis, medical or other remedial care, rehabilitation, developmental

evaluation, special education, vocational training and placement, case management services, counseling, emotional or behavioral therapy, residential and custodial care and service expenses, special equipment, related travel expenses, and facilities determined to be reasonably necessary.

(2) In the event of a vaccine-related death, an award of $250,000 for the estate of the deceased.

(3)(A) In the case of any person who has sustained a vaccine-related injury after attaining the age of 18 and whose earning capacity is or has been impaired by reason of such person's vaccine-related injury for which compensation is to be awarded, compensation for actual and anticipated loss of earnings determined in accordance with generally recognized actuarial principles and projections.

(B) In the case of any person who has sustained a vaccine-related injury before attaining the age of 18 and whose earning capacity is or has been impaired by reason of such person's vaccine-related injury for which compensation is to be awarded and whose vaccine-related injury is of sufficient severity to permit reasonable anticipation that such person is likely to suffer impaired earning capacity at age 18 and beyond, compensation after attaining the age of 18 for loss of earnings determined on the basis of the average gross weekly earnings of workers in the private, non-farm sector, less appropriate taxes and the average cost of a health insurance policy, as determined by the Secretary.

(4) For actual and projected pain and suffering and emotional distress from the vaccine-related injury, an award not to exceed $250,000.

(b) Vaccines administered before effective date

Compensation awarded under the Program to a petitioner under section 300aa–11 of this title for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, may include the compensation described in paragraphs (1)(A) and (2) of subsection (a) of this section and may also include an amount, not to exceed a combined total of $30,000, for—

(1) lost earnings (as provided in paragraph (3) of subsection (a) of this section),

(2) pain and suffering (as provided in paragraph (4) of subsection (a) of this section), and

(3) reasonable attorneys' fees and costs (as provided in subsection (e) of this section.[1]

(c) Residential and custodial care and service

The amount of any compensation for residential and custodial care and service expenses under subsection (a)(1) of this section shall be sufficient to enable the compensated person to remain living at home.

(d) Types of compensation prohibited

Compensation awarded under the Program may not include the following:

(1) Punitive or exemplary damages.

(2) Except with respect to compensation payments under paragraphs (2) and (3) of subsection (a) of this section, compensation for other than the health, education, or welfare of the person who suffered the vaccine-related injury with respect to which the compensation is paid.

(e) Attorneys' fees

(1) In awarding compensation on a petition filed under section 300aa–11 of this title the special master or court shall also award as part of such compensation an amount to cover—

(A) reasonable attorneys' fees, and

(B) other costs,

incurred in any proceeding on such petition. If the judgment of the United States Court of Federal Claims on such a petition does not award compensation, the special master or court may award an amount of compensation to cover petitioner's reasonable attorneys' fees and other costs incurred in any proceeding on such petition if the special master or court determines that the petition was brought in good faith and there was a reasonable basis for the claim for which the petition was brought.

(2) If the petitioner, before October 1, 1988, filed a civil action for damages for any vaccine-related injury or death for which compensation may be awarded under the Program, and petitioned under section 300aa–11(a)(5) of this title to have such action dismissed and to file a petition for compensation under the Program, in awarding compensation on such petition the special master or court may include an amount of compensation limited to the costs and expenses incurred by the petitioner and the attorney of the petitioner before October 1, 1988, in preparing, filing, and prosecuting such civil action (including the reasonable value of the attorney's time if the civil action was filed under contingent fee arrangements).

(3) No attorney may charge any fee for services in connection with a petition filed under section 300aa–11 of this title which is in addition to any amount awarded as compensation by the special master or court under paragraph (1).

(f) Payment of compensation

(1) Except as provided in paragraph (2), no compensation may be paid until an election has been made, or has been deemed to have been made, under section 300aa–21(a) of this title to receive compensation.

(2) Compensation described in subsection (a)(1)(A)(iii) of this section shall be paid from the date of the judgment of the United States Court of Federal Claims under section 300aa–12 of this title awarding the compensation. Such compensation may not be paid after an election under section 300aa–21(a) of this title to file a civil action for damages for the vaccine-related injury or death for which such compensation was awarded.

(3) Payments of compensation under the Program and the costs of carrying out the Program shall be exempt from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985 [2 U.S.C. 900 et seq.].

(4)(A) Except as provided in subparagraph (B), payment of compensation under the Program shall be determined on the basis of the net

[1] So in original. Probably should be preceded by a closing parenthesis.

present value of the elements of the compensation and shall be paid from the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26 in a lump sum of which all or a portion may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner.

(B) In the case of a payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, the compensation shall be determined on the basis of the net present value of the elements of compensation and shall be paid from appropriations made available under subsection (j) of this section in a lump sum of which all or a portion may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner. Any reasonable attorneys' fees and costs shall be paid in a lump sum. If the appropriations under subsection (j) of this section are insufficient to make a payment of an annual installment, the limitation on civil actions prescribed by section 300aa–21(a) of this title shall not apply to a civil action for damages brought by the petitioner entitled to the payment.

(C) In purchasing an annuity under subparagraph (A) or (B), the Secretary may purchase a guarantee for the annuity, may enter into agreements regarding the purchase price for and rate of return of the annuity, and may take such other actions as may be necessary to safeguard the financial interests of the United States regarding the annuity. Any payment received by the Secretary pursuant to the preceding sentence shall be paid to the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26, or to the appropriations account from which the funds were derived to purchase the annuity, whichever is appropriate.

(g) Program not primarily liable

Payment of compensation under the Program shall not be made for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program (other than under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.]), or (2) by an entity which provides health services on a prepaid basis.

(h) Liability of health insurance carriers, prepaid health plans, and benefit providers

No policy of health insurance may make payment of benefits under the policy secondary to the payment of compensation under the Program and—

(1) no State, and

(2) no entity which provides health services on a prepaid basis or provides health benefits,

may make the provision of health services or health benefits secondary to the payment of compensation under the Program, except that this subsection shall not apply to the provision of services or benefits under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(i) Source of compensation

(1) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, shall be made by the Secretary from appropriations under subsection (j) of this section.

(2) Payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine on or after October 1, 1988, shall be made from the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26.

(j) Authorization

For the payment of compensation under the Program to a petitioner for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, there are authorized to be appropriated to the Department of Health and Human Services $80,000,000 for fiscal year 1989, $80,000,000 for fiscal year 1990, $80,000,000 for fiscal year 1991, $80,000,000 for fiscal year 1992, $110,000,000 for fiscal year 1993, and $110,000,000 for each succeeding fiscal year in which a payment of compensation is required under subsection (f)(4)(B) of this section. Amounts appropriated under this subsection shall remain available until expended.

(July 1, 1944, ch. 373, title XXI, §2115, as added Nov. 14, 1986, Pub. L. 99–660, title III, §311(a), 100 Stat. 3767; amended Dec. 22, 1987, Pub. L. 100–203, title IV, §§4302(b), 4303(a)–(d)(1), (e), (g), 4307(5), (6), 101 Stat. 1330–221 to 1330–223, 1330–225; July 1, 1988, Pub. L. 100–360, title IV, §411(*o*)(1), 102 Stat. 808; Dec. 19, 1989, Pub. L. 101–239, title VI, §6601(c)(8), (*l*), 103 Stat. 2286, 2290; Nov. 3, 1990, Pub. L. 101–502, §5(d), 104 Stat. 1287; Nov. 26, 1991, Pub. L. 102–168, title II, §201(e), (f), 105 Stat. 1103; Oct. 27, 1992, Pub. L. 102–531, title III, §314, 106 Stat. 3508; Oct. 29, 1992, Pub. L. 102–572, title IX, §902(b)(1), 106 Stat. 4516; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13632(b), 107 Stat. 646.)

REFERENCES IN TEXT

The Balanced Budget and Emergency Deficit Control Act of 1985, referred to in subsec. (f)(3), is title II of Pub. L. 99–177, Dec. 12, 1985, 99 Stat. 1038. Part C of the Act is classified generally to subchapter I (§900 et seq.) of chapter 20 of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 900 of Title 2 and Tables.

The Social Security Act, referred to in subsecs. (g) and (h), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

CODIFICATION

In subsecs. (a), (b), (e)(2), (f)(4)(B), (i), and (j), ''October 1, 1988'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

PRIOR PROVISIONS

A prior section 300aa–15, act July 1, 1944, §2116, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

A prior section 2115 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

AMENDMENTS

1993—Subsec. (j). Pub. L. 103–66 substituted ''$110,000,000 for each succeeding fiscal year'' for ''$80,000,000 for each succeeding fiscal year''.

1992—Subsecs. (e)(1), (f)(2). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

Subsec. (j). Pub. L. 102–531 increased authorization for fiscal year 1993 from $80,000,000 to $110,000,000.

1991—Subsec. (f)(4)(A). Pub. L. 102–168, § 201(e)(1)(A), (2), struck out ''of the proceeds'' after ''portion'' and substituted ''Vaccine Injury Compensation Trust Fund established under section 9510 of title 26'' for ''trust fund''.

Subsec. (f)(4)(B). Pub. L. 102–168, § 201(e)(1)(B), which directed substitution of ''shall be paid from appropriations made available under subsection (j) of this section in a lump sum of which all or a portion'' for ''paid in 4 equal installments of which all or portion of the proceeds'' was executed by making the substitution for ''paid in 4 equal annual installments of which all or a portion of the proceeds'' to reflect the probable intent of Congress.

Subsec. (f)(4)(C). Pub. L. 102–168, § 201(f), added subpar. (C).

1990—Subsec. (e)(2). Pub. L. 101–502, § 5(d)(1), inserted ''of compensation'' before ''limited to the costs''.

Subsec. (f)(2). Pub. L. 101–502, § 5(d)(2)(A), substituted ''section 300aa–21(a)'' for ''section 300aa–21(b)''.

Subsec. (f)(4)(B). Pub. L. 101–502, § 5(d)(2)(B), substituted ''subsection (j)'' for ''subsection (i)'' and ''the limitation on civil actions prescribed by section 300aa–21(a) of this title'' for ''section 300aa–11(a) of this title''.

Subsec. (j). Pub. L. 101–502, § 5(d)(3), inserted before period at end of first sentence '', and $80,000,000 for each succeeding fiscal year in which a payment of compensation is required under subsection (f)(4)(B) of this section''.

1989—Subsec. (b). Pub. L. 101–239, § 6601(*l*)(1), substituted ''may include the compensation described in paragraphs (1)(A) and (2) of subsection (a) of this section and may also include an amount, not to exceed a combined total of $30,000, for—'' and cls. (1) to (3) for ''may not include the compensation described in paragraph (1)(B) of subsection (a) of this section and may include attorneys' fees and other costs included in a judgment under subsection (e) of this section, except that the total amount that may be paid as compensation under paragraphs (3) and (4) of subsection (a) of this section and included as attorneys' fees and other costs under subsection (e) of this section may not exceed $30,000.''

Subsec. (e)(1). Pub. L. 101–239, § 6601(*l*)(2)(A), substituted ''In awarding compensation on a petition filed under section 300aa–11 of this title the special master or court shall also award as part of such compensation an amount to cover'' for ''The judgment of the United States Claims Court on a petition filed under section 300aa–11 of this title awarding compensation shall include an amount to cover''.

Pub. L. 101–239, § 6601(*l*)(2)(B), (C), substituted ''the special master or court may award an amount of compensation to cover'' for ''the court may include in the judgment an amount to cover'' and ''the special master or court determines that the petition was brought in good faith and there was a reasonable basis for the claim for which the petition'' for ''the court determines that the civil action was brought in good faith and there was a reasonable basis for the claim for which the civil action''.

Subsec. (e)(2). Pub. L. 101–239, § 6601(*l*)(2)(D), which directed amendment of par. (2) by substituting ''the special master or court may also award an amount of compensation'' for ''the judgment of the court on such petition may include an amount'', could not be executed because of the prior amendment by Pub. L. 101–239, § 6601(c)(8)(B), see Amendment note below.

Pub. L. 101–239, § 6601(c)(8), substituted ''and petitioned under section 300aa–11(a)(5) of this title to have such action dismissed'' for ''and elected under section 300aa–11(a)(4) of this title to withdraw such action'' and ''in awarding compensation on such petition the special master or court may include'' for ''the judgment of the court on such petition may include''.

Subsec. (e)(3). Pub. L. 101–239, § 6601(*l*)(2)(E), substituted ''awarded as compensation by the special master or court under paragraph (1)'' for ''included under paragraph (1) in a judgment on such petition''.

Subsec. (f)(3). Pub. L. 101–239, § 6601(*l*)(3)(A), inserted ''under the Program and the costs of carrying out the Program'' after ''Payments of compensation''.

Subsec. (f)(4)(A). Pub. L. 101–239, § 6601(*l*)(3)(B), struck out ''made in a lump sum'' after ''the Program shall be'' and inserted ''and shall be paid from the trust fund in a lump sum of which all or a portion of the proceeds may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner'' after ''elements of the compensation''.

Subsec. (f)(4)(B). Pub. L. 101–239, § 6601(*l*)(3)(C), substituted ''determined on the basis of the net present value of the elements of compensation and paid in 4 equal annual installments of which all or a portion of the proceeds may be used as ordered by the special master to purchase an annuity or otherwise be used, with the consent of the petitioner, in a manner determined by the special master to be in the best interests of the petitioner. Any reasonable attorneys' fees and costs shall be paid in a lump sum'' for ''paid in 4 equal annual installments''.

Subsec. (g). Pub. L. 101–239, § 6601(*l*)(4)(A), inserted ''(other than under title XIX of the Social Security Act)'' after ''State health benefits program''.

Subsec. (h). Pub. L. 101–239, § 6601(*l*)(4)(B), inserted before period at end '', except that this subsection shall not apply to the provision of services or benefits under title XIX of the Social Security Act''.

Subsec. (i)(1). Pub. L. 101–239, § 6601(*l*)(5), which directed amendment of par. (1) by substituting ''(j)'' for ''(i)'', could not be executed because ''(i)'' did not appear.

Subsec. (j). Pub. L. 101–239, § 6601(*l*)(6), struck out ''and'' after ''fiscal year 1991,'' and inserted '', $80,000,000 for fiscal year 1993'' after ''fiscal year 1992''.

1988—Subsec. (i)(1). Pub. L. 100–360, § 411(*o*)(1)(A), substituted ''by the Secretary from appropriations under subsection (j)'' for ''from appropriations under subsection (i)''.

Subsec. (j). Pub. L. 100–360, § 411(*o*)(1)(B), inserted ''to the Department of Health and Human Services''.

1987—Subsec. (a). Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Pub. L. 100–203, § 4303(d)(1)(A), struck out last two sentences which read as follows: ''Payments for projected expenses shall be paid on a periodic basis (but no payment may be made for a period in excess of 1 year). Payments for pain and suffering and emotional distress and incurred expenses may be paid in a lump sum.''

Subsec. (a)(1). Pub. L. 100–203, § 4303(c), struck out last sentence of subpars. (A) and (B) each of which read as follows: ''The amount of unreimbursable expenses which may be recovered under this subparagraph shall be limited to the amount in excess of the amount set forth in section 300aa–11(c)(1)(D)(ii) of this title.''

Subsec. (b). Pub. L. 100–203, § 4303(e), substituted ''may not include the compensation described in paragraph (1)(B) of subsection (a) of this section and may include attorneys' fees and other costs included in a judgment under subsection (e) of this section, except that the total amount that may be paid as compensation under paragraphs (3) and (4) of subsection (a) of this section and included as attorneys' fees and other

costs under subsection (e) of this section may not exceed $30,000'' for ''shall only include the compensation described in paragraphs (1)(A) and (2) of subsection (a) of this section''.

Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (e)(1). Pub. L. 100–203, § 4307(5), substituted ''of the United States Claims Court'' for ''of a court'' in two places.

Subsec. (e)(2). Pub. L. 100–203, § 4302(b), substituted ''effective date of this subpart, filed a'' for ''effective date of this subchapter, filed a'' and ''effective date of this subpart in preparing'' for ''effective date of this part in preparing''.

Subsec. (f). Pub. L. 100–203, § 4303(d)(1)(B), (g), added par. (4) and redesignated a second subsec. (f), relating to the Program not being primarily liable, as subsec. (g).

Subsec. (f)(2). Pub. L. 100–203, § 4307(6), substituted ''United States Claims Court'' for ''district court of the United States''.

Subsecs. (g), (h). Pub. L. 100–203, § 4303(g), redesignated a second subsec. (f), relating to the Program not being liable, as (g) and redesignated former subsec. (g) as (h).

Subsecs. (i), (j). Pub. L. 100–203, § 4303(a), (b), added subsecs. (i) and (j).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by section 201(f) of Pub. L. 102–168 effective as if in effect on and after Oct. 1, 1988, see section 201(i)(2) of Pub. L. 102–168, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to all pending and subsequently filed petitions, see section 6601(s)(2) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

§ 300aa–16. Limitations of actions

(a) General rule

In the case of—

(1) a vaccine set forth in the Vaccine Injury Table which is administered before October 1, 1988, if a vaccine-related injury or death occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury or death after the expiration of 28 months after October 1, 1988, and no such petition may be filed if the first symptom or manifestation of onset or of the significant aggravation of such injury occurred more than 36 months after the date of administration of the vaccine,

(2) a vaccine set forth in the Vaccine Injury Table which is administered after October 1, 1988, if a vaccine-related injury occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such injury after the expiration of 36 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of such injury, and

(3) a vaccine set forth in the Vaccine Injury Table which is administered after October 1, 1988, if a death occurred as a result of the administration of such vaccine, no petition may be filed for compensation under the Program for such death after the expiration of 24 months from the date of the death and no such petition may be filed more than 48 months after the date of the occurrence of the first symptom or manifestation of onset or of the significant aggravation of the injury from which the death resulted.

(b) Effect of revised table

If at any time the Vaccine Injury Table is revised and the effect of such revision is to permit an individual who was not, before such revision, eligible to seek compensation under the Program, or to significantly increase the likelihood of obtaining compensation, such person may, notwithstanding section 300aa–11(b)(2) of this title, file a petition for such compensation not later than 2 years after the effective date of the revision, except that no compensation may be provided under the Program with respect to a vaccine-related injury or death covered under the revision of the table if—

(1) the vaccine-related death occurred more than 8 years before the date of the revision of the table, or

(2) the vaccine-related injury occurred more than 8 years before the date of the revision of the table.

(c) State limitations of actions

If a petition is filed under section 300aa–11 of this title for a vaccine-related injury or death, limitations of actions under State law shall be stayed with respect to a civil action brought for such injury or death for the period beginning on the date the petition is filed and ending on the date (1) an election is made under section 300aa–21(a) of this title to file the civil action or (2) an election is made under section 300aa–21(b) of this title to withdraw the petition.

(July 1, 1944, ch. 373, title XXI, § 2116, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3769; amended Dec. 22, 1987, Pub. L. 100–203, title IV, § 4302(b)(2), 101 Stat. 1330–221; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6601(m)(1), 103 Stat. 2291; Nov. 3, 1990, Pub. L. 101–502, § 5(e), 104 Stat. 1287; Nov. 26, 1991, Pub. L. 102–168, title II, § 201(d)(2), 105 Stat. 1103; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13632(a)(1), 107 Stat. 645.)

CODIFICATION

In subsec. (a)(1) to (3), ''October 1, 1988'' and ''October 1, 1988,'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

PRIOR PROVISIONS

A prior section 2116 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

AMENDMENTS

1993—Subsec. (b). Pub. L. 103–66 substituted ''or to significantly increase the likelihood of obtaining compensation, such person may, notwithstanding section 300aa–11(b)(2) of this title, file'' for ''such person may file''.

1991—Subsec. (c). Pub. L. 102–168 substituted ''or (2)'' for '', (2)'' and struck out '', or (3) the petition is considered withdrawn under section 300aa–21(b) of this title.''

1990—Subsec. (a)(1). Pub. L. 101–502, § 5(e)(1), substituted ''28 months'' for ''24 months'' and inserted before comma at end ''and no such petition may be filed if the first symptom or manifestation of onset or of the significant aggravation of such injury occurred more than 36 months after the date of administration of the vaccine''.

Subsec. (c). Pub. L. 101–502, § 5(e)(2), substituted ''and ending on the date (1) an election is made under section 300aa–21(a) of this title to file the civil action, (2) an election is made under section 300aa–21(b) of this title to withdraw the petition, or (3) the petition is considered withdrawn under section 300aa–21(b) of this title'' for ''and ending on the date a final judgment is entered on the petition''.

1989—Subsec. (c). Pub. L. 101–239 substituted ''300aa–11 of this title'' for ''300aa–11(b) of this title''.

1987—Subsec. (a). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this subchapter'' in pars. (1) to (3).

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–168 effective as if in effect on and after Oct. 1, 1988, see section 201(i)(2) of Pub. L. 102–168, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300aa–11, 300aa–15, 300aa–21 of this title.

§ 300aa–17. Subrogation

(a) General rule

Upon payment of compensation to any petitioner under the Program, the trust fund which has been established to provide such compensation shall be subrograted[1] to all rights of the petitioner with respect to the vaccine-related injury or death for which compensation was paid, except that the trust fund may not recover under such rights an amount greater than the amount of compensation paid to the petitioner.

(b) Disposition of amounts recovered

Amounts recovered under subsection (a) of this section shall be collected on behalf of, and deposited in, the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26.

(July 1, 1944, ch. 373, title XXI, § 2117, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3770; amended Dec. 22, 1987, Pub. L. 100–203, title IV, § 4307(7), 101 Stat. 1330–225; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6601(m)(2), 103 Stat. 2291.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 substituted ''the Vaccine Injury Compensation Trust Fund established under section 9510 of title 26'' for ''the trust fund which has been established to provide compensation under the Program''.

1987—Subsec. (a). Pub. L. 100–203 struck out par. (1) designation before ''Upon'' and struck out par. (2) which read as follows: ''In any case in which it deems such action appropriate, a district court of the United States may, after entry of a final judgment providing for compensation to be paid under section 300aa–15 of this title for a vaccine-related injury or death, refer the record of such proceeding to the Secretary and the Attorney General with such recommendation as the court deems appropriate with respect to the investigation or commencement of a civil action by the Secretary under paragraph (1).''

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

§ 300aa–18. Repealed. Pub. L. 100–203, title IV, § 4303(d)(2)(B), Dec. 22, 1987, 101 Stat. 1330–222

Section, act July 1, 1944, ch. 373, title XXI, § 2118, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3771, provided for annual increases for inflation of compensation under subsections (a)(2) and (a)(4) of section 300aa–15 of this title and civil penalty under section 300aa–27(b) of this title.

§ 300aa–19. Advisory Commission on Childhood Vaccines

(a) Establishment

There is established the Advisory Commission on Childhood Vaccines. The Commission shall be composed of:

(1) Nine members appointed by the Secretary as follows:

(A) Three members who are health professionals, who are not employees of the United States, and who have expertise in the health care of children, the epidemiology, etiology, and prevention of childhood diseases, and the adverse reactions associated with vaccines, of whom at least two shall be pediatricians.

(B) Three members from the general public, of whom at least two shall be legal representatives of children who have suffered a vaccine-related injury or death.

(C) Three members who are attorneys, of whom at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related

[1] So in original. Probably should be ''subrogated''.

injury or death and of whom one shall be an attorney whose specialty includes representation of vaccine manufacturers.

(2) The Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of Food and Drugs (or the designees of such officials), each of whom shall be a nonvoting ex officio member.

The Secretary shall select members of the Commission within 90 days of October 1, 1988. The members of the Commission shall select a Chair from among the members.

(b) Term of office

Appointed members of the Commission shall be appointed for a term of office of 3 years, except that of the members first appointed, 3 shall be appointed for a term of 1 year, 3 shall be appointed for a term of 2 years, and 3 shall be appointed for a term of 3 years, as determined by the Secretary.

(c) Meetings

The Commission shall first meet within 60 days after all members of the Commission are appointed, and thereafter shall meet not less often than four times per year and at the call of the chair. A quorum for purposes of a meeting is 5. A decision at a meeting is to be made by a ballot of a majority of the voting members of the Commission present at the meeting.

(d) Compensation

Members of the Commission who are officers or employees of the Federal Government shall serve as members of the Commission without compensation in addition to that received in their regular public employment. Members of the Commission who are not officers or employees of the Federal Government shall be compensated at a rate not to exceed the daily equivalent of the rate in effect for grade GS–18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Commission. All members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5 for employees serving intermittently.

(e) Staff

The Secretary shall provide the Commission with such professional and clerical staff, such information, and the services of such consultants as may be necessary to assist the Commission in carrying out effectively its functions under this section.

(f) Functions

The Commission shall—

(1) advise the Secretary on the implementation of the Program,

(2) on its own initiative or as the result of the filing of a petition, recommend changes in the Vaccine Injury Table,

(3) advise the Secretary in implementing the Secretary's responsibilities under section 300aa–27 of this title regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions,

(4) survey Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 300aa–25(b) of this title, and advise the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and

(5) recommend to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out this part.

(July 1, 1944, ch. 373, title XXI, § 2119, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3771; amended Dec. 22, 1987, Pub. L. 100–203, title IV, § 4302(b)(1), 101 Stat. 1330–221; Nov. 26, 1991, Pub. L. 102–168, title II, § 201(g), 105 Stat. 1104; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(14), 106 Stat. 3505.)

CODIFICATION

In subsec. (a), ''October 1, 1988'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1991—Subsec. (c). Pub. L. 102–168 inserted ''present at the meeting'' before period at end.

1987—Subsec. (a). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part'' in last sentence.

TERMINATION OF ADVISORY COMMISSIONS

Advisory commissions established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a commission established by the President or an officer of the Federal Government, such commission is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a commission established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300aa–33 of this title.

SUBPART B—ADDITIONAL REMEDIES

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 300aa–34 of this title.

§ 300aa–21. Authority to bring actions

(a) Election

After judgment has been entered by the United States Court of Federal Claims or, if an appeal is taken under section 300aa–12(f) of this title, after the appellate court's mandate is issued, the petitioner who filed the petition under section 300aa–11 of this title shall file with the clerk of the United States Court of Federal Claims—

(1) if the judgment awarded compensation, an election in writing to receive the compensation or to file a civil action for damages for such injury or death, or

(2) if the judgment did not award compensation, an election in writing to accept the judgment or to file a civil action for damages for such injury or death.

An election shall be filed under this subsection not later than 90 days after the date of the court's final judgment with respect to which the election is to be made. If a person required to file an election with the court under this subsection does not file the election within the time prescribed for filing the election, such person shall be deemed to have filed an election to accept the judgment of the court. If a person elects to receive compensation under a judgment of the court in an action for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, or is deemed to have accepted the judgment of the court in such an action, such person may not bring or maintain a civil action for damages against a vaccine administrator or manufacturer for the vaccine-related injury or death for which the judgment was entered. For limitations on the bringing of civil actions for vaccine-related injuries or deaths associated with the administration of a vaccine after October 1, 1988, see section 300aa–11(a)(2) of this title.

(b) Continuance or withdrawal of petition

A petitioner under a petition filed under section 300aa–11 of this title may submit to the United States Court of Federal Claims a notice in writing choosing to continue or to withdraw the petition if—

(1) a special master fails to make a decision on such petition within the 240 days prescribed by section 300aa–12(d)(3)(A)(ii) of this title (excluding (i) any period of suspension under section 300aa–12(d)(3)(C) or 300aa–12(d)(3)(D) of this title, and (ii) any days the petition is before a special master as a result of a remand under section 300aa–12(e)(2)(C) of this title), or

(2) the court fails to enter a judgment under section 300aa–12 of this title on the petition within 420 days (excluding (i) any period of suspension under section 300aa–12(d)(3)(C) or 300aa–12(d)(3)(D) of this title, and (ii) any days the petition is before a special master as a result of a remand under section 300aa–12(e)(2)(C) of this title) after the date on which the petition was filed.

Such a notice shall be filed within 30 days of the provision of the notice required by section 300aa–12(g) of this title.

(c) Limitations of actions

A civil action for damages arising from a vaccine-related injury or death for which a petition was filed under section 300aa–11 of this title shall, except as provided in section 300aa–16(c) of this title, be brought within the period prescribed by limitations of actions under State law applicable to such civil action.

(July 1, 1944, ch. 373, title XXI, § 2121, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3772; amended Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4304(c), 4307(8), 4308(c), 101 Stat. 1330–224, 1330–225; July 1, 1988, Pub. L. 100–360, title IV, § 411(*o*)(3)(A), 102 Stat. 808; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6601(n), 103 Stat. 2291; Nov. 3, 1990, Pub. L. 101–502, § 5(f), 104 Stat. 1287; Nov. 26, 1991, Pub. L. 102–168, title II, § 201(d)(3), 105 Stat. 1103; Oct. 29, 1992, Pub. L. 102–572, title IX, § 902(b)(1), 106 Stat. 4516.)

CODIFICATION

In subsec. (a), ''October 1, 1988,'' and ''October 1, 1988'' substituted for ''the effective date of this part''.

AMENDMENTS

1992—Subsecs. (a), (b). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' wherever appearing.

1991—Subsec. (b). Pub. L. 102–168 substituted ''Continuance or withdrawal of petition'' for ''Withdrawal of petition'' in heading, redesignated introductory provisions of par. (1) as introductory provisions of subsec. (b) and substituted ''a notice in writing choosing to continue or to withdraw the petition'' for ''a notice in writing withdrawing the petition'', redesignated subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and realigned margins, struck out at end of former par. (1) ''If such a notice is not filed before the expiration of such 30 days, the petition with respect to which the notice was to be filed shall be considered withdrawn under this paragraph.'', and struck out par. (2) which read as follows: ''If a special master or the court does not enter a decision or make a judgment on a petition filed under section 300aa–11 of this title within 30 days of the provision of the notice in accordance with section 300aa–12(g) of this title, the special master or court shall no longer have jurisdiction over such petition and such petition shall be considered as withdrawn under paragraph (1).''

1990—Subsec. (a). Pub. L. 101–502, § 5(f)(1), in closing provisions, inserted after second sentence ''If a person elects to receive compensation under a judgment of the court in an action for a vaccine-related injury or death associated with the administration of a vaccine before October 1, 1988, or is deemed to have accepted the judgment of the court in such an action, such person may not bring or maintain a civil action for damages against a vaccine administrator or manufacturer for the vaccine-related injury or death for which the judgment was entered.'' and inserted ''for vaccine-related injuries or deaths associated with the administration of a vaccine after October 1, 1988'' after ''actions'' in last sentence.

Subsec. (b). Pub. L. 101–502, § 5(f)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''If the United States Claims Court fails to enter a judgment under section 300aa–12 of this title on a petition filed under section 300aa–11 of this title within 420 days (excluding any period of suspension under section 300aa–12(d) of this title and excluding any days the petition is before a special master as a result of a remand under section 300aa–12(e)(2)(C) of this title)

after the date on which the petition was filed, the petitioner may submit to the court a notice in writing withdrawing the petition. An election shall be filed under this subsection not later than 90 days after the date of the entry of the Claims Court's judgment or the appellate court's mandate with respect to which the election is to be made. A person who has submitted a notice under this subsection may, notwithstanding section 300aa–11(a)(2) of this title, thereafter maintain a civil action for damages in a State or Federal court without regard to this subpart and consistent with otherwise applicable law.''

1989—Subsec. (a). Pub. L. 101–239, §6601(n)(1)(A), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''After the judgment of the United States Claims Court under section 300aa–11 of this title on a petition filed for compensation under the Program for a vaccine-related injury or death has become final, the person who filed the petition shall file with the court—''.

Pub. L. 101–239, §6601(n)(1)(B), amended last sentence generally. Prior to amendment, last sentence read as follows: ''If a person elects to receive compensation under a judgment of the court or is deemed to have accepted the judgment of the court, such person may not bring or maintain a civil action for damages against a vaccine manufacturer for the vaccine-related injury or death for which the judgment was entered.''

Subsec. (b). Pub. L. 101–239, §6601(n)(2), substituted ''within 420 days (excluding any period of suspension under section 300aa–12(d) of this title and excluding any days the petition is before a special master as a result of a remand under section 300aa–12(e)(2)(C) of this title)'' for ''within 365 days'' in first sentence and amended second sentence generally. Prior to amendment, second sentence read as follows: ''An election shall be filed under this subsection not later than 90 days after the date of the entry of the Claims Court's judgment or the appellate court's mandate with respect to which the election is to be made.''

1988—Subsec. (a). Pub. L. 100–360 added Pub. L. 100–203, §4308(c), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–203, §4308(c), as added by Pub. L. 100–360, substituted ''the court's final judgment'' for ''the entry of the court's judgment'' in concluding provisions.

Pub. L. 100–203, §4307(8), substituted ''the United States Claims Court'' for ''a district court of the United States'' and ''the court'' for ''a court'' in three places.

Subsecs. (b), (c). Pub. L. 100–203, §4304(c), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendment by Pub. L. 102–168 effective as in effect on and after Oct. 1, 1988, see section 201(i)(2) of Pub. L. 102–168, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5(f)(1) of Pub. L. 101–502 effective Nov. 14, 1986, and amendment by section 5(f)(2) of Pub. L. 101–502 effective Sept. 30, 1990, see section 5(h) of Pub. L. 101–502, set out as a note under section 300aa–11 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, except that such suspension be excluded in determining the 420-day period prescribed in subsec. (b) of this section, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Subpart effective Oct. 1, 1988, see section 323 of Pub. L. 99–660, set out as a note under section 300aa–1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300aa–11, 300aa–12, 300aa–15, 300aa–16, 300aa–34 of this title.

§ 300aa–22. Standards of responsibility

(a) General rule

Except as provided in subsections (b), (c), and (e) of this section State law shall apply to a civil action brought for damages for a vaccine-related injury or death.

(b) Unavoidable adverse side effects; warnings

(1) No vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings.

(2) For purposes of paragraph (1), a vaccine shall be presumed to be accompanied by proper directions and warnings if the vaccine manufacturer shows that it complied in all material respects with all requirements under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] and section 262 of this title (including regulations issued under such provisions) applicable to the vaccine and related to vaccine-related injury or death for which the civil action was brought unless the plaintiff shows—

(A) that the manufacturer engaged in the conduct set forth in subparagraph (A) or (B) of section 300aa–23(d)(2) of this title, or

(B) by clear and convincing evidence that the manufacturer failed to exercise due care notwithstanding its compliance with such Act and section (and regulations issued under such provisions).

(c) Direct warnings

No vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, solely due to the manufacturer's failure to provide direct warnings to the injured party (or the injured party's legal representative) of the potential dangers resulting from the administration of the vaccine manufactured by the manufacturer.

(d) Construction

The standards of responsibility prescribed by this section are not to be construed as authoriz-

ing a person who brought a civil action for damages against a vaccine manufacturer for a vaccine-related injury or death in which damages were denied or which was dismissed with prejudice to bring a new civil action against such manufacturer for such injury or death.

(e) Preemption

No State may establish or enforce a law which prohibits an individual from bringing a civil action against a vaccine manufacturer for damages for a vaccine-related injury or death if such civil action is not barred by this part.

(July 1, 1944, ch. 373, title XXI, § 2122, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3773; amended Dec. 22, 1987, Pub. L. 100–203, title IV, § 4302(b)(1), 101 Stat. 1330–221.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(2), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsecs. (b)(1), (c), ''October 1, 1988'' was substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1987—Subsecs. (b)(1), (c). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300aa–23 of this title.

§ 300aa–23. Trial

(a) General rule

A civil action against a vaccine manufacturer for damages for a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, which is not barred by section 300aa–11(a)(2) of this title shall be tried in three stages.

(b) Liability

The first stage of such a civil action shall be held to determine if a vaccine manufacturer is liable under section 300aa–22 of this title.

(c) General damages

The second stage of such a civil action shall be held to determine the amount of damages (other than punitive damages) a vaccine manufacturer found to be liable under section 300aa–22 of this title shall be required to pay.

(d) Punitive damages

(1) If sought by the plaintiff, the third stage of such an action shall be held to determine the amount of punitive damages a vaccine manufacturer found to be liable under section 300aa–22 of this title shall be required to pay.

(2) If in such an action the manufacturer shows that it complied, in all material respects, with all requirements under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] and this chapter applicable to the vaccine and related to the vaccine injury or death with respect to which the action was brought, the manufacturer shall not be held liable for punitive damages unless the manufacturer engaged in—

(A) fraud or intentional and wrongful withholding of information from the Secretary during any phase of a proceeding for approval of the vaccine under section 262 of this title,

(B) intentional and wrongful withholding of information relating to the safety or efficacy of the vaccine after its approval, or

(C) other criminal or illegal activity relating to the safety and effectiveness of vaccines,

which activity related to the vaccine-related injury or death for which the civil action was brought.

(e) Evidence

In any stage of a civil action, the Vaccine Injury Table, any finding of fact or conclusion of law of the United States Court of Federal Claims or a special master in a proceeding on a petition filed under section 300aa–11 of this title and the final judgment of the United States Court of Federal Claims and subsequent appellate review on such a petition shall not be admissible.

(July 1, 1944, ch. 373, title XXI, § 2123, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3774; amended Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4302(b)(1), 4307(9), 101 Stat. 1330–221, 1330–225; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6601(*o*), 103 Stat. 2292; Oct. 29, 1992, Pub. L. 102–572, title IX, § 902(b)(1), 106 Stat. 4516.)

REFERENCES IN TEXT

The Federal Food, Drug, and Cosmetic Act, referred to in subsec. (d)(2), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Tables.

CODIFICATION

In subsec. (a), ''October 1, 1988'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1992—Subsec. (e). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court'' in two places.

1989—Subsec. (e). Pub. L. 101–239 substituted ''finding of fact or conclusion of law'' for ''finding'', ''special master'' for ''master appointed by such court'', and directed substitution of ''the United States Claims Court and subsequent appellate review'' for ''a district court of the United States'' which was executed by inserting ''and subsequent appellate review'' after ''the United States Claims Court'' the second place it appeared to reflect the probable intent of Congress and the amendment by Pub. L. 100–203, § 4307(a), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–203, § 4302(b)(1), substituted ''effective date of this subpart'' for ''effective date of this part''.

Subsec. (e). Pub. L. 100–203, § 4307(9), substituted ''the United States Claims Court'' for ''a district court of the United States'' in two places.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300aa–22 of this title.

SUBPART C—ASSURING A SAFER CHILDHOOD VACCINATION PROGRAM IN UNITED STATES

§ 300aa–25. Recording and reporting of information

(a) General rule

Each health care provider who administers a vaccine set forth in the Vaccine Injury Table to any person shall record, or ensure that there is recorded, in such person's permanent medical record (or in a permanent office log or file to which a legal representative shall have access upon request) with respect to each such vaccine—

(1) the date of administration of the vaccine,

(2) the vaccine manufacturer and lot number of the vaccine,

(3) the name and address and, if appropriate, the title of the health care provider administering the vaccine, and

(4) any other identifying information on the vaccine required pursuant to regulations promulgated by the Secretary.

(b) Reporting

(1) Each health care provider and vaccine manufacturer shall report to the Secretary—

(A) the occurrence of any event set forth in the Vaccine Injury Table, including the events set forth in section 300aa–14(b) of this title which occur within 7 days of the administration of any vaccine set forth in the Table or within such longer period as is specified in the Table or section,

(B) the occurrence of any contraindicating reaction to a vaccine which is specified in the manufacturer's package insert, and

(C) such other matters as the Secretary may by regulation require.

Reports of the matters referred to in subparagraphs (A) and (B) shall be made beginning 90 days after December 22, 1987. The Secretary shall publish in the Federal Register as soon as practicable after such date a notice of the reporting requirement.

(2) A report under paragraph (1) respecting a vaccine shall include the time periods after the administration of such vaccine within which vaccine-related illnesses, disabilities, injuries, or conditions, the symptoms and manifestations of such illnesses, disabilities, injuries, or conditions, or deaths occur, and the manufacturer and lot number of the vaccine.

(3) The Secretary shall issue the regulations referred to in paragraph (1)(C) within 180 days of December 22, 1987.

(c) Release of information

(1) Information which is in the possession of the Federal Government and State and local governments under this section and which may identify an individual shall not be made available under section 552 of title 5, or otherwise, to any person except—

(A) the person who received the vaccine, or

(B) the legal representative of such person.

(2) For purposes of paragraph (1), the term ''information which may identify an individual'' shall be limited to the name, street address, and telephone number of the person who received the vaccine and of that person's legal representative and the medical records of such person relating to the administration of the vaccine, and shall not include the locality and State of vaccine administration, the name of the health care provider who administered the vaccine, the date of the vaccination, or information concerning any reported illness, disability, injury, or condition resulting from the administration of the vaccine, any symptom or manifestation of such illness, disability, injury, or condition, or death resulting from the administration of the vaccine.

(3) Except as provided in paragraph (1), all information reported under this section shall be available to the public.

(July 1, 1944, ch. 373, title XXI, § 2125, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3774; amended Dec. 22, 1987, Pub. L. 100–203, title IV, § 4302(b)(1), 101 Stat. 1330–221.)

CODIFICATION

In subsec. (b)(1), (3), ''December 22, 1987'' was substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1987—Subsec. (b)(1), (3). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

EFFECTIVE DATE

Subpart effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, set out as a note under section 300aa–1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300aa–19 of this title.

§ 300aa–26. Vaccine information

(a) General rule

Not later than 1 year after December 22, 1987, the Secretary shall develop and disseminate vaccine information materials for distribution by health care providers to the legal representatives of any child or to any other individual receiving a vaccine set forth in the Vaccine Injury Table. Such materials shall be published in the Federal Register and may be revised.

(b) Development and revision of materials

Such materials shall be developed or revised—

(1) after notice to the public and 60 days of comment thereon, and

(2) in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care providers and parent organizations, the Centers for Disease Control and Pre-

vention, and the Food and Drug Administration.

(c) Information requirements

The information in such materials shall be based on available data and information, shall be presented in understandable terms and shall include—

(1) a concise description of the benefits of the vaccine,

(2) a concise description of the risks associated with the vaccine,

(3) a statement of the availability of the National Vaccine Injury Compensation Program, and

(4) such other relevant information as may be determined by the Secretary.

(d) Health care provider duties

On and after a date determined by the Secretary which is—

(1) after the Secretary develops the information materials required by subsection (a) of this section, and

(2) not later than 6 months after the date such materials are published in the Federal Register,

each health care provider who administers a vaccine set forth in the Vaccine Injury Table shall provide to the legal representatives of any child or to any other individual to whom such provider intends to administer such vaccine a copy of the information materials developed pursuant to subsection (a) of this section, supplemented with visual presentations or oral explanations, in appropriate cases. Such materials shall be provided prior to the administration of such vaccine.

(July 1, 1944, ch. 373, title XXI, § 2126, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3775; amended Dec. 22, 1987, Pub. L. 100–203, title IV, § 4302(b)(1), 101 Stat. 1330–221; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6601(p), 103 Stat. 2292; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(15), 106 Stat. 3505; Dec. 14, 1993, Pub. L. 103–183, title VII, § 708, 107 Stat. 2242.)

CODIFICATION

In subsec. (a), ''December 22, 1987'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–183, § 708(c), inserted ''or to any other individual'' after ''to the legal representatives of any child''.

Subsec. (b). Pub. L. 103–183, § 708(a), struck out ''by rule'' after ''revised'' in introductory provisions and substituted ''and 60'' for '', opportunity for a public hearing, and 90'' in par. (1).

Subsec. (c). Pub. L. 103–183, § 708(b), inserted in introductory provisions ''shall be based on available data and information,'' after ''such materials'', added pars. (1) to (4), and struck out former pars. (1) to (10) which read as follows:

''(1) the frequency, severity, and potential long-term effects of the disease to be prevented by the vaccine,

''(2) the symptoms or reactions to the vaccine which, if they occur, should be brought to the immediate attention of the health care provider,

''(3) precautionary measures legal representatives should take to reduce the risk of any major adverse reactions to the vaccine that may occur,

''(4) early warning signs or symptoms to which legal representatives should be alert as possible precursors to such major adverse reactions,

''(5) a description of the manner in which legal representatives should monitor such major adverse reactions, including a form on which reactions can be recorded to assist legal representatives in reporting information to appropriate authorities,

''(6) a specification of when, how, and to whom legal representatives should report any major adverse reaction,

''(7) the contraindications to (and bases for delay of) the administration of the vaccine,

''(8) an identification of the groups, categories, or characteristics of potential recipients of the vaccine who may be at significantly higher risk of major adverse reaction to the vaccine than the general population,

''(9) a summary of—

''(A) relevant Federal recommendations concerning a complete schedule of childhood immunizations, and

''(B) the availability of the Program, and

''(10) such other relevant information as may be determined by the Secretary.''

Subsec. (d). Pub. L. 103–183, § 708(c), (d), in concluding provisions, inserted ''or to any other individual'' after ''to the legal representatives of any child'', substituted ''supplemented with visual presentations or oral explanations, in appropriate cases'' for ''or other written information which meets the requirements of this section'', and struck out ''or other information'' after ''Such materials''.

1992—Subsec. (b)(2). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1989—Subsec. (c)(9). Pub. L. 101–239 amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''a summary of relevant State and Federal laws concerning the vaccine, including information on—

''(A) the number of vaccinations required for school attendance and the schedule recommended for such vaccinations, and

''(B) the availability of the Program, and''.

1987—Subsec. (a). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

§ 300aa–27. Mandate for safer childhood vaccines

(a) General rule

In the administration of this part and other pertinent laws under the jurisdiction of the Secretary, the Secretary shall—

(1) promote the development of childhood vaccines that result in fewer and less serious adverse reactions than those vaccines on the market on December 22, 1987, and promote the refinement of such vaccines, and

(2) make or assure improvements in, and otherwise use the authorities of the Secretary with respect to, the licensing, manufacturing, processing, testing, labeling, warning, use instructions, distribution, storage, administration, field surveillance, adverse reaction reporting, and recall of reactogenic lots or batches, of vaccines, and research on vaccines, in order to reduce the risks of adverse reactions to vaccines.

(b) Task force

(1) The Secretary shall establish a task force on safer childhood vaccines which shall consist of the Director of the National Institutes of Health, the Commissioner of the Food and Drug Administration, and the Director of the Centers for Disease Control.

(2) The Director of the National Institutes of Health shall serve as chairman of the task force.

(3) In consultation with the Advisory Commission on Childhood Vaccines, the task force shall prepare recommendations to the Secretary concerning implementation of the requirements of subsection (a) of this section.

(c) Report

Within 2 years after December 22, 1987, and periodically thereafter, the Secretary shall prepare and transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report describing the actions taken pursuant to subsection (a) of this section during the preceding 2-year period.

(July 1, 1944, ch. 373, title XXI, § 2127, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3777; amended Dec. 22, 1987, Pub. L. 100–203, title IV, § 4302(b)(1), 101 Stat. 1330–221; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6601(q), 103 Stat. 2292.)

CODIFICATION

In subsecs. (a)(1), (c), ''December 22, 1987'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1989—Subsecs. (b), (c). Pub. L. 101–239 added subsec. (b) and redesignated former subsec. (b) as (c).

1987—Subsecs. (a)(1), (b). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

CHANGE OF NAME

Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1989 AMENDMENT

For applicability of amendments by Pub. L. 101–239 to petitions filed after Dec. 19, 1989, petitions currently pending in which the evidentiary record is closed, and petitions currently pending in which the evidentiary record is not closed, with provision for an immediate suspension for 30 days of all pending cases, see section 6601(s)(1) of Pub. L. 101–239, set out as a note under section 300aa–10 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300aa–19 of this title.

§ 300aa–28. Manufacturer recordkeeping and reporting

(a) General rule

Each vaccine manufacturer of a vaccine set forth in the Vaccine Injury Table or any other vaccine the administration of which is mandated by the law or regulations of any State, shall, with respect to each batch, lot, or other quantity manufactured or licensed after December 22, 1987—

(1) prepare and maintain records documenting the history of the manufacturing, processing, testing, repooling, and reworking of each batch, lot, or other quantity of such vaccine, including the identification of any significant problems encountered in the production, testing, or handling of such batch, lot, or other quantity,

(2) if a safety test on such batch, lot, or other quantity indicates a potential imminent or substantial public health hazard is presented, report to the Secretary within 24 hours of such safety test which the manufacturer (or manufacturer's representative) conducted, including the date of the test, the type of vaccine tested, the identity of the batch, lot, or other quantity tested, whether the batch, lot, or other quantity tested is the product of repooling or reworking of previous batches, lots, or other quantities (and, if so, the identity of the previous batches, lots, or other quantities which were repooled or reworked), the complete test results, and the name and address of the person responsible for conducting the test,

(3) include with each such report a certification signed by a responsible corporate official that such report is true and complete, and

(4) prepare, maintain, and upon request submit to the Secretary product distribution records for each such vaccine by batch, lot, or other quantity number.

(b) Sanction

Any vaccine manufacturer who intentionally destroys, alters, falsifies, or conceals any record or report required under paragraph (1) or (2) of subsection (a) of this section shall—

(1) be subject to a civil penalty of up to $100,000 per occurrence, or

(2) be fined $50,000 or imprisoned for not more than 1 year, or both.

Such penalty shall apply to the person who intentionally destroyed, altered, falsified, or concealed such record or report, to the person who directed that such record or report be destroyed, altered, falsified, or concealed, and to the vaccine manufacturer for which such person is an agent, employee, or representative. Each act of destruction, alteration, falsification, or concealment shall be treated as a separate occurrence.

(July 1, 1944, ch. 373, title XXI, § 2128, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3777; amended Dec. 22, 1987, Pub. L. 100–203, title IV, § 4302(b)(1), 101 Stat. 1330–221.)

CODIFICATION

In subsec. (a), ''December 22, 1987'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–203 substituted ''effective date of this subpart'' for ''effective date of this part''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300aa–33 of this title.

SUBPART D—GENERAL PROVISIONS

§ 300aa–31. Citizen's actions

(a) General rule

Except as provided in subsection (b) of this section, any person may commence in a district court of the United States a civil action on such person's own behalf against the Secretary where there is alleged a failure of the Secretary to perform any act or duty under this part.

(b) Notice

No action may be commenced under subsection (a) of this section before the date which is 60 days after the person bringing the action has given written notice of intent to commence such action to the Secretary.

(c) Costs of litigation

The court, in issuing any final order in any action under this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any plaintiff who substantially prevails on one or more significant issues in the action.

(July 1, 1944, ch. 373, title XXI, § 2131, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3778; amended Dec. 22, 1987, Pub. L. 100–203, title IV, § 4305, 101 Stat. 1330–224.)

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–203, which directed that subsec. (c) be amended by substituting ''to any plaintiff who substantially prevails on one or more significant issues in the action'' for ''to any party, whenever the court determines that such award is appropriate'', was executed by making the substitution for ''to any party, whenever the court determines such award is appropriate'', to reflect the probable intent of Congress.

EFFECTIVE DATE

Subpart effective Dec. 22, 1987, see section 323 of Pub. L. 99–660, set out as a note under section 300aa–1 of this title.

§ 300aa–32. Judicial review

A petition for review of a regulation under this part may be filed in a court of appeals of the United States within 60 days from the date of the promulgation of the regulation or after such date if such petition is based solely on grounds arising after such 60th day.

(July 1, 1944, ch. 373, title XXI, § 2132, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3778.)

§ 300aa–33. Definitions

For purposes of this part:

(1) The term ''health care provider'' means any licensed health care professional, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities) under whose authority a vaccine set forth in the Vaccine Injury Table is administered.

(2) The term ''legal representative'' means a parent or an individual who qualifies as a legal guardian under State law.

(3) The term ''manufacturer'' means any corporation, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities), which manufactures, imports, processes, or distributes under its label any vaccine set forth in the Vaccine Injury Table, except that, for purposes of section 300aa–28 of this title, such term shall include the manufacturer of any other vaccine covered by that section. The term ''manufacture'' means to manufacture, import, process, or distribute a vaccine.

(4) The term ''significant aggravation'' means any change for the worse in a preexisting condition which results in markedly greater disability, pain, or illness accompanied by substantial deterioration of health.

(5) The term ''vaccine-related injury or death'' means an illness, injury, condition, or death associated with one or more of the vaccines set forth in the Vaccine Injury Table, except that the term does not include an illness, injury, condition, or death associated with an adulterant or contaminant intentionally added to such a vaccine.

(6)(A) The term ''Advisory Commission on Childhood Vaccines'' means the Commission established under section 300aa–19 of this title.

(B) The term ''Vaccine Injury Table'' means the table set out in section 300aa–14 of this title.

(July 1, 1944, ch. 373, title XXI, § 2133, as added Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3778.)

§ 300aa–34. Termination of program

(a) Reviews

The Secretary shall review the number of awards of compensation made under the program to petitioners under section 300aa–11 of this title for vaccine-related injuries and deaths associated with the administration of vaccines on or after December 22, 1987, as follows:

(1) The Secretary shall review the number of such awards made in the 12-month period beginning on December 22, 1987.

(2) At the end of each 3-month period beginning after the expiration of the 12-month period referred to in paragraph (1) the Secretary shall review the number of such awards made in the 3-month period.

(b) Report

(1) If in conducting a review under subsection (a) of this section the Secretary determines that at the end of the period reviewed the total number of awards made by the end of that period and accepted under section 300aa–21(a) of this title exceeds the number of awards listed next to the period reviewed in the table in paragraph (2)—

(A) the Secretary shall notify the Congress of such determination, and

(B) beginning 180 days after the receipt by Congress of a notification under paragraph (1), no petition for a vaccine-related injury or death associated with the administration of a vaccine on or after December 22, 1987, may be filed under section 300aa–11 of this title.

Section 300aa–11(a) of this title and subpart B of this part shall not apply to civil actions for damages for a vaccine-related injury or death for which a petition may not be filed because of subparagraph (B).

(2) The table referred to in paragraph (1) is as follows:

Period reviewed:	Total number of awards by the end of the period reviewed
12 months after December 22, 1987	150
13th through the 15th month after December 22, 1987	188
16th through the 18th month after December 22, 1987	225
19th through the 21st month after December 22, 1987	263
22nd through the 24th month after December 22, 1987	300
25th through the 27th month after December 22, 1987	338
28th through the 30th month after December 22, 1987	375
31st through the 33rd month after December 22, 1987	413
34th through the 36th month after December 22, 1987	450
37th through the 39th month after December 22, 1987	488
40th through the 42nd month after December 22, 1987	525
43rd through the 45th month after December 22, 1987	563
46th through the 48th month after December 22, 1987	600.

(July 1, 1944, ch. 373, title XXI, §2134, as added Dec. 22, 1987, Pub. L. 100–203, title IV, §4303(f), 101 Stat. 1330–222.)

CODIFICATION

In subsecs. (a) and (b), ''December 22, 1987'' substituted for ''the effective date of this subpart'' on authority of section 323 of Pub. L. 99–660, as amended, set out as an Effective Date note under section 300aa–1 of this title.

SUBCHAPTER XX—REQUIREMENTS FOR CERTAIN GROUP HEALTH PLANS FOR CERTAIN STATE AND LOCAL EMPLOYEES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1396a, 1396e of this title.

§ 300bb–1. State and local governmental group health plans must provide continuation coverage to certain individuals

(a) In general

In accordance with regulations which the Secretary shall prescribe, each group health plan that is maintained by any State that receives funds under this chapter, by any political subdivision of such a State, or by any agency or instrumentality of such a State or political subdivision, shall provide, in accordance with this subchapter, that each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event is entitled, under the plan, to elect, within the election period, continuation coverage under the plan.

(b) Exception for certain plans

Subsection (a) of this section shall not apply to—

(1) any group health plan for any calendar year if all employers maintaining such plan normally employed fewer than 20 employees on a typical business day during the preceding calendar year, or

(2) any group health plan maintained for employees by the government of the District of Columbia or any territory or possession of the United States or any agency or instrumentality.

(July 1, 1944, ch. 373, title XXII, §2201, as added Apr. 7, 1986, Pub. L. 99–272, title X, §10003(a), 100 Stat. 232; amended Dec. 19, 1989, Pub. L. 101–239, title VI, §6801(a)(1), 103 Stat. 2296.)

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 struck out at end ''Under regulations, rules similar to the rules of subsections (a) and (b) of section 52 of title 26 (relating to employers under common control) shall apply for purposes of paragraph (1).''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6801(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to years beginning after December 31, 1986.''

EFFECTIVE DATE

Section 10003(b) of Pub. L. 99–272 provided that:

''(1) GENERAL RULE.—The amendments made by this section [enacting this subchapter] shall apply to plan years beginning on or after July 1, 1986.

''(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of a group health plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act [Apr. 7, 1986], the amendments made by this section shall not apply to plan years beginning before the later of—

''(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

''(B) January 1, 1987.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300bb–2 of this title.

§ 300bb–2. Continuation coverage

For purposes of section 300bb–1 of this title, the term ''continuation coverage'' means coverage under the plan which meets the following requirements:

(1) Type of benefit coverage

The coverage must consist of coverage which, as of the time the coverage is being provided, is identical to the coverage provided under the plan to similarly situated beneficiaries under the plan with respect to whom a qualifying event has not occurred. If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part[1] in connection with such group.

[1] So in original. This subchapter is not divided into parts.

(2) Period of coverage

The coverage must extend for at least the period beginning on the date of the qualifying event and ending not earlier than the earliest of the following:

(A) Maximum required period

(i) General rule for terminations and reduced hours

In the case of a qualifying event described in section 300bb–3(2) of this title, except as provided in clause (ii), the date which is 18 months after the date of the qualifying event.

(ii) Special rule for multiple qualifying events

If a qualifying event occurs during the 18 months after the date of a qualifying event described in section 300bb–3(2) of this title, the date which is 36 months after the date of the qualifying event described in section 300bb–3(2) of this title.

(iii) General rule for other qualifying events

In the case of a qualifying event not described in section 300bb–3(2) of this title, the date which is 36 months after the date of the qualifying event.

In the case of an individual who is determined, under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.], to have been disabled at the time of a qualifying event described in section 300bb–3(2) of this title, any reference in clause (i) or (ii) to 18 months with respect to such event is deemed a reference to 29 months, but only if the qualified beneficiary has provided notice of such determination under section 300bb–6(3) of this title before the end of such 18 months.

(iv)[2] Qualifying event involving medicare entitlement

In the case of an event described in section 300bb–3(4) of this title (without regard to whether such event is a qualifying event), the period of coverage for qualified beneficiaries other than the covered employee for such event or any subsequent qualifying event shall not terminate before the close of the 36-month period beginning on the date the covered employee becomes entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(B) End of plan

The date on which the employer ceases to provide any group health plan to any employee.

(C) Failure to pay premium

The date on which coverage ceases under the plan by reason of a failure to make timely payment of any premium required under the plan with respect to the qualified beneficiary. The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.

(D) Group health plan coverage or medicare entitlement

The date on which the qualified beneficiary first becomes, after the date of the election—

(i) covered under any other group health plan (as an employee or otherwise) which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary, or

(ii) entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(E) Termination of extended coverage for disability

In the case of a qualified beneficiary who is disabled at the time of a qualifying event described in section 300bb–3(2) of this title, the month that begins more than 30 days after the date of the final determination under title II or XVI of the Social Security Act [42 U.S.C. 401 et seq., 1381 et seq.] that the qualified beneficiary is no longer disabled.

(3) Premium requirements

The plan may require payment of a premium for any period of continuation coverage, except that such premium—

(A) shall not exceed 102 percent of the applicable premium for such period, and

(B) may, at the election of the payor, be made in monthly installments.

In no event may the plan require the payment of any premium before the day which is 45 days after the day on which the qualified beneficiary made the initial election for continuation coverage.[3] In the case of an individual described in the last sentence of paragraph (2)(A), any reference in subparagraph (A) of this paragraph to ''102 percent'' is deemed a reference to ''150 percent'' for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).

(4) No requirement of insurability

The coverage may not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(5) Conversion option

In the case of a qualified beneficiary whose period of continuation coverage expires under paragraph (2)(A), the plan must, during the 180-day period ending on such expiration date, provide to the qualified beneficiary the option of enrollment under a conversion health plan otherwise generally available under the plan.

(July 1, 1944, ch. 373, title XXII, § 2202, as added Apr. 7, 1986, Pub. L. 99–272, title X, § 10003(a), 100 Stat. 233; amended Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1895(d)(1)(C), (2)(C), (3)(C), (4)(C), 100 Stat. 2937–2939; Dec. 19, 1989, Pub. L. 101–239, title

[2] So in original. Clause (iv) probably should immediately follow clause (iii).

[3] See 1989 Amendment note below.

VI, §§ 6702(a), (b), 6801(b)(1)(A), (2)(A), (3)(A), 103 Stat. 2295, 2297.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (2)(A), (D)(ii), and (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II, XVI, and XVIII of the Social Security Act are classified generally to subchapters II (§ 401 et seq.), XVI (§ 1381 et seq.), and XVIII (§ 1395 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1989—Par. (2)(A). Pub. L. 101–239, § 6702(a)(1), inserted after cl. (iii) ''In the case of an individual who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 300bb–3(2) of this title, any reference in clause (i) or (ii) to 18 months with respect to such event is deemed a reference to 29 months, but only if the qualified beneficiary has provided notice of such determination under section 300bb–6(3) of this title before the end of such 18 months.''

Par. (2)(A)(iv). Pub. L. 101–239, § 6801(b)(1)(A), added cl. (iv).

Par. (2)(D). Pub. L. 101–239, § 6801(b)(2)(A), substituted ''entitlement'' for ''eligibility'' in heading and inserted ''which does not contain any exclusion or limitation with respect to any preexisting condition of such beneficiary'' after ''or otherwise)'' in cl. (i).

Par. (2)(E). Pub. L. 101–239, § 6702(a)(2), added subpar. (E).

Par. (3). Pub. L. 101–239, § 6801(b)(3)(A), which directed the general amendment of the concluding provision was executed by amending the first sentence of the concluding provision generally to reflect the probable intent of Congress and amendment of concluding provision by Pub. L. 101–239, § 6702(b). Prior to amendment, first sentence of the concluding provision read as follows: ''If an election is made after the qualifying event, the plan shall permit payment for continuation coverage during the period preceding the election to be made within 45 days of the date of the election.''

Pub. L. 101–239, § 6702(b), inserted at end of concluding provision ''In the case of an individual described in the last sentence of paragraph (2)(A), any reference in subparagraph (A) of this paragraph to '102 percent' is deemed a reference to '150 percent' for any month after the 18th month of continuation coverage described in clause (i) or (ii) of paragraph (2)(A).'' See Amendment note above.

1986—Par. (1). Pub. L. 99–514, § 1895(d)(1)(C), inserted at end ''If coverage is modified under the plan for any group of similarly situated beneficiaries, such coverage shall also be modified in the same manner for all individuals who are qualified beneficiaries under the plan pursuant to this part in connection with such group.''

Par. (2)(A). Pub. L. 99–514, § 1895(d)(2)(C), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''MAXIMUM PERIOD.—In the case of—

''(i) a qualifying event described in section 300bb–3(2) of this title (relating to terminations and reduced hours), the date which is 18 months after the date of the qualifying event, and

''(ii) any qualifying event not described in clause (i), the date which is 36 months after the date of the qualifying event.''

Par. (2)(C). Pub. L. 99–514, § 1895(d)(3)(C), inserted at end ''The payment of any premium (other than any payment referred to in the last sentence of paragraph (3)) shall be considered to be timely if made within 30 days after the date due or within such longer period as applies to or under the plan.''

Par. (2)(D). Pub. L. 99–514, § 1895(d)(4)(C)(ii), (iii), substituted ''Group health plan coverage'' for ''Reemployment'' in heading, added cl. (i), and struck out former cl. (i) which read as follows: ''a covered employee under any other group health plan, or''.

Par. (2)(E). Pub. L. 99–514, § 1895(d)(4)(C)(i), struck out subpar. (E), remarriage of spouse, which read as follows: ''In the case of an individual who is a qualified beneficiary by reason of being the spouse of a covered employee, the date on which the beneficiary remarries and becomes covered under a group health plan.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6702(d) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 300bb–6 of this title] shall apply to plan years beginning on or after the date of the enactment of this Act [Dec. 19, 1989], regardless of whether the qualifying event occurred before, on, or after such date.''

Section 6801(b)(1)(B) of Pub. L. 101–239 provided that: ''The amendments made by this paragraph [amending this section] shall apply to plan years beginning after December 31, 1989.''

Section 6801(b)(2)(B) of Pub. L. 101–239 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to—

''(i) qualifying events occurring after December 31, 1989, and

''(ii) in the case of qualified beneficiaries who elected continuation coverage after December 31, 1988, the period for which the required premium was paid (or was attempted to be paid but was rejected as such).''

Section 6801(b)(3)(B) of Pub. L. 101–239 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to plan years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 300bb–3. Qualifying event

For purposes of this subchapter, the term ''qualifying event'' means, with respect to any covered employee, any of the following events which, but for the continuation coverage required under this subchapter, would result in the loss of coverage of a qualified beneficiary:

(1) The death of the covered employee.

(2) The termination (other than by reason of such employee's gross misconduct), or reduction of hours, of the covered employee's employment.

(3) The divorce or legal separation of the covered employee from the employee's spouse.

(4) The covered employee becoming entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.].

(5) A dependent child ceasing to be a dependent child under the generally applicable requirements of the plan.

(July 1, 1944, ch. 373, title XXII, § 2203, as added Apr. 7, 1986, Pub. L. 99–272, title X, § 10003(a), 100 Stat. 234.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300bb–2, 300bb–6, 300bb–8 of this title.

§ 300bb–4. Applicable premium

For purposes of this subchapter—

(1) In general

The term ''applicable premium'' means, with respect to any period of continuation coverage of qualified beneficiaries, the cost to the plan for such period of the coverage for similarly situated beneficiaries with respect to whom a qualifying event has not occurred (without regard to whether such cost is paid by the employer or employee).

(2) Special rule for self-insured plans

To the extent that a plan is a self-insured plan—

(A) In general

Except as provided in subparagraph (B), the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to a reasonable estimate of the cost of providing coverage for such period for similarly situated beneficiaries which—

(i) is determined on an actuarial basis, and

(ii) takes into account such factors as the Secretary may prescribe in regulations.

(B) Determination on basis of past cost

If a plan administrator elects to have this subparagraph apply, the applicable premium for any period of continuation coverage of qualified beneficiaries shall be equal to—

(i) the cost to the plan for similarly situated beneficiaries for the same period occurring during the preceding determination period under paragraph (3), adjusted by

(ii) the percentage increase or decrease in the implicit price deflator of the gross national product (calculated by the Department of Commerce and published in the Survey of Current Business) for the 12-month period ending on the last day of the sixth month of such preceding determination period.

(C) Subparagraph (B) not to apply where significant change

A plan administrator may not elect to have subparagraph (B) apply in any case in which there is any significant difference, between the determination period and the preceding determination period, in coverage under, or in employees covered by, the plan. The determination under the preceding sentence for any determination period shall be made at the same time as the determination under paragraph (3).

(3) Determination period

The determination of any applicable premium shall be made for a period of 12 months and shall be made before the beginning of such period.

(July 1, 1944, ch. 373, title XXII, § 2204, as added Apr. 7, 1986, Pub. L. 99–272, title X, § 10003(a), 100 Stat. 234.)

§ 300bb–5. Election

For purposes of this subchapter—

(1) Election period

The term ''election period'' means the period which—

(A) begins not later than the date on which coverage terminates under the plan by reason of a qualifying event,

(B) is of at least 60 days' duration, and

(C) ends not earlier than 60 days after the later of—

(i) the date described in subparagraph (A), or

(ii) in the case of any qualified beneficiary who receives notice under section 300bb–6(4) of this title, the date of such notice.

(2) Effect of election on other beneficiaries

Except as otherwise specified in an election, any election of continuation coverage by a qualified beneficiary described in subparagraph (A)(i) or (B) of section 300bb–8(3) of this title shall be deemed to include an election of continuation coverage on behalf of any other qualified beneficiary who would lose coverage under the plan by reason of the qualifying event. If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.

(July 1, 1944, ch. 373, title XXII, § 2205, as added Apr. 7, 1986, Pub. L. 99–272, title X, § 10003(a), 100 Stat. 235; amended Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1895(d)(5)(C), 100 Stat. 2939.)

AMENDMENTS

1986—Par. (2). Pub. L. 99–514 inserted ''of continuation coverage'' after ''any election'' and inserted at end ''If there is a choice among types of coverage under the plan, each qualified beneficiary is entitled to make a separate selection among such types of coverage.''.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

§ 300bb–6. Notice requirements

In accordance with regulations prescribed by the Secretary—

(1) the group health plan shall provide, at the time of commencement of coverage under the plan, written notice to each covered employee and spouse of the employee (if any) of the rights provided under this subsection,[1]

(2) the employer of an employee under a plan must notify the plan administrator of a qualifying event described in paragraph (1), (2), or (4) of section 300bb–3 of this title within 30 days of the date of the qualifying event,

(3) each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of any qualifying event described in paragraph (3) or (5) of section 300bb–3 of this title within 60 days after the date of the qualifying event and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act [42 U.S.C. and for notifying the plan administrator within 30 days after the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled, and

(4) the plan administrator shall notify—

(A) in the case of a qualifying event described in paragraph (1), (2), or (4) of section 300bb–3 of this title, any qualified beneficiary with respect to such event, and

(B) in the case of a qualifying event described in paragraph (3) or (5) of section 300bb–3 of this title where the covered employee notifies the plan administrator under paragraph (3), any qualified beneficiary with respect to such event,

of such beneficiary's rights under this subsection.[1]

For purposes of paragraph (4), any notification shall be made within 14 days of the date on which the plan administrator is notified under paragraph (2) or (3), whichever is applicable, and any such notification to an individual who is a qualified beneficiary as the spouse of the covered employee shall be treated as notification to all other qualified beneficiaries residing with such spouse at the time such notification is made.

(July 1, 1944, ch. 373, title XXII, § 2206, as added Apr. 7, 1986, Pub. L. 99–272, title X, § 10003(a), 100 Stat. 235; amended Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1895(d)(6)(C), 100 Stat. 2939; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4009(j)(8), 101 Stat. 1330–59; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6702(c), 103 Stat. 2295.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVI of the Social Security Act are classified generally to subchapters II (§ 401 et seq.) and XVI (§ 1381 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1989—Par. (3). Pub. L. 101–239 inserted ''and each qualified beneficiary who is determined, under title II or XVI of the Social Security Act, to have been disabled at the time of a qualifying event described in section 300bb–3(2) of this title is responsible for notifying the plan administrator of such determination within 60 days after the date of the determination and for notifying the plan administrator within 30 days after the date of any final determination under such title or titles that the qualified beneficiary is no longer disabled'' after ''date of the qualifying event''.

1987—Par. (3). Pub. L. 100–203 amended directory language of Pub. L. 99–514, see 1986 Amendment note below.

1986—Par. (3). Pub. L. 99–514, as amended by Pub. L. 100–203, inserted ''within 60 days after the date of the qualifying event''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to plan years beginning on or after Dec. 19, 1989, regardless of whether the qualifying event occurred before, on, or after such date, see section 6702(d) of Pub. L. 101–239, set out as a note under section 300bb–2 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4009(j)(8) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in Pub. L. 99–514.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable only with respect to qualifying events occurring after Oct. 22, 1986, see section 1895(d)(6)(D) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

NOTIFICATION TO COVERED EMPLOYEES

Section 10003(c) of Pub. L. 99–272 provided that: ''At the time that the amendments made by this section [enacting this subchapter] apply to a group health plan (covered under section 2201 of the Public Health Service Act [section 300bb–1 of this title]), the plan shall notify each covered employee, and spouse of the employee (if any), who is covered under the plan at that time of the continuation coverage required under title XXII of such Act [this subchapter]. The notice furnished under this subsection is in lieu of notice that may otherwise be required under section 2206(1) of such Act [par. (1) of this section] with respect to such individuals.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300bb–2, 300bb–5 of this title.

§ 300bb–7. Enforcement

Any individual who is aggrieved by the failure of a State, political subdivision, or agency or instrumentality thereof, to comply with the requirements of this subchapter may bring an action for appropriate equitable relief.

(July 1, 1944, ch. 373, title XXII, § 2207, as added Apr. 7, 1986, Pub. L. 99–272, title X, § 10003(a), 100 Stat. 236.)

CONTINUED COVERAGE OF COSTS OF PEDIATRIC VACCINE UNDER CERTAIN GROUP HEALTH PLANS

Pub. L. 103–66, title XIII, § 13631(d), Aug. 10, 1993, 107 Stat. 643, provided that:

''(1) REQUIREMENT.—The requirement of this paragraph, with respect to a group health plan for plan years beginning after the date of the enactment of this Act [Aug. 10, 1993], is that the group health plan not reduce its coverage of the costs of pediatric vaccines (as defined under section 1928(h)(6) of the Social Security Act [section 1396s(h)(6) of this title]) below the coverage it provided as of May 1, 1993.

''(2) ENFORCEMENT.—For purposes of section 2207 of the Public Health Service Act [this section], the re-

[1] So in original. Probably should be ''subchapter''.

quirement of paragraph (1) is deemed a requirement of title XXII of such Act [this subchapter].''

§ 300bb–8. Definitions

For purposes of this subchapter—

(1) Group health plan

The term ''group health plan'' has the meaning given such term in section 162(i)(2)[1] of title 26.

(2) Covered employee

The term ''covered employee'' means an individual who is (or was) provided coverage under a group health plan by virtue of the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of title 26).

(3) Qualified beneficiary

(A) In general

The term ''qualified beneficiary'' means, with respect to a covered employee under a group health plan, any other individual who, on the day before the qualifying event for that employee, is a beneficiary under the plan—

(i) as the spouse of the covered employee, or

(ii) as the dependent child of the employee.

(B) Special rule for terminations and reduced employment

In the case of a qualifying event described in section 300bb–3(2) of this title, the term ''qualified beneficiary'' includes the covered employee.

(4) Plan administrator

The term ''plan administrator'' has the meaning given the term ''administrator'' by section 1002(16)(A) of title 29.

(July 1, 1944, ch. 373, title XXII, § 2208, as added Apr. 7, 1986, Pub. L. 99–272, title X, § 10003(a), 100 Stat. 236; amended Nov. 10, 1988, Pub. L. 100–647, title III, § 3011(b)(7), 102 Stat. 3625; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6801(c)(1), 103 Stat. 2297.)

REFERENCES IN TEXT

Section 162(i)(2) of title 26, referred to in par. (1), was repealed by Pub. L. 101–239, title VI, § 6202(b)(3)(A), Dec. 19, 1989, 103 Stat. 2233. For definition of ''group health plan'', see section 5000 of Title 26, Internal Revenue Code.

AMENDMENTS

1989—Par. (2). Pub. L. 101–239 substituted ''the performance of services by the individual for 1 or more persons maintaining the plan (including as an employee defined in section 401(c)(1) of title 26)'' for ''the individual's employment or previous employment with an employer''.

1988—Par. (1). Pub. L. 100–647 substituted ''section 162(i)(2) of the Internal Revenue Code of 1986'' for ''section 162(i)(3) of the Internal Revenue Code of 1954'', which for purposes of codification was translated as ''section 162(i)(2) of title 26''.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6801(c)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to plan years beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, but not applicable to any plan for any plan year to which section 162(k) of Title 26, Internal Revenue Code (as in effect on the day before Nov. 10, 1988), did not apply by reason of section 10001(e)(2) of Pub. L. 99–272, see section 3011(d) of Pub. L. 100–647, set out as a note under section 162 of Title 26.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300bb–5 of this title.

SUBCHAPTER XXI—RESEARCH WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

PRIOR PROVISIONS

A prior subchapter XXI (§ 300cc et seq.), comprised of title XXIII of the Public Health Service Act, act July 1, 1944, ch. 373, 2301–2316, was renumbered title XXV, §§ 2501–2514, of the Public Health Service Act, and transferred to subchapter XXV (§ 300aaa et seq.) of this chapter, renumbered title XXVI, §§ 2601–2614, of the Public Health Service Act, renumbered title XXVII, §§ 2701–2714, of the Public Health Service Act, and renumbered title II, part B, §§ 231–244, of the Public Health Service Act, and transferred to part B (§ 238 et seq.) of subchapter I of this chapter.

PART A—ADMINISTRATION OF RESEARCH PROGRAMS

§ 300cc. Requirement of annual comprehensive report on all expenditures by Secretary with respect to acquired immune deficiency syndrome

(a) In general

Not later than December 1 of each fiscal year, the Secretary shall prepare and submit to the Congress a report on the expenditures by the Secretary of amounts appropriated for the preceding fiscal year with respect to acquired immune deficiency syndrome.

(b) Inclusion of certain information

The report required in subsection (a) of this section shall, with respect to acquired immune deficiency syndrome, include—

(1) for each program, project, or activity with respect to such syndrome, a specification of the amount obligated by each office and agency of the Department of Health and Human Services;

(2) a summary description of each such program, project, or activity;

(3) a list of such programs, projects, or activities that are directed towards members of minority groups;

(4) a description of the extent to which programs, projects, and activities described in paragraph (3) have been coordinated between the Director of the Office of Minority Health and the Director of the Centers for Disease Control and Prevention;

(5) a summary of the progress made by each such program, project, or activity with respect to the prevention and control of acquired immune deficiency syndrome;

(6) a summary of the evaluations conducted under this subchapter; and

[1] See References in Text note below.

(7) any report required in this chapter to be submitted to the Secretary for inclusion in the report required in subsection (a) of this section.

(July 1, 1944, ch. 373, title XXIII, § 2301, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3063; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(16), 106 Stat. 3505.)

PRIOR PROVISIONS

A prior section 300cc, act July 1, 1944, § 2301, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

AMENDMENTS

1992—Subsec. (b)(4). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

VACCINES FOR HUMAN IMMUNODEFICIENCY VIRUS

Pub. L. 103–43, title XIX, § 1901(b), June 10, 1993, 107 Stat. 200, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services, acting through the National Institutes of Health, shall develop a plan for the appropriate inclusion of HIV-infected women, including pregnant women, HIV-infected infants, and HIV-infected children in studies conducted by or through the National Institutes of Health concerning the safety and efficacy of HIV vaccines for the treatment and prevention of HIV infection. Such plan shall ensure the full participation of other Federal agencies currently conducting HIV vaccine studies and require that such studies conform fully to the requirements of part 46 of title 45, Code of Federal Regulations.

''(2) REPORT.—Not later than 180 days after the date of the enactment of this Act [June 10, 1993], the Secretary of Health and Human Services shall prepare and submit to the Committee on Energy and Commerce of the House of Representatives, and the Committee on Labor and Human Resources of the Senate, a report concerning the plan developed under paragraph (1).

''(3) IMPLEMENTATION.—Not later than 12 months after the date of the enactment of this Act, the Secretary of Health and Human Services shall implement the plan developed under paragraph (1), including measures for the full participation of other Federal agencies currently conducting HIV vaccine studies.

''(4) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1994 through 1996.''

REQUIREMENT OF CERTAIN RESEARCH STUDIES

Section 203 of Pub. L. 100–607 provided that after consultation with Director of National Center for Health Services Research and Health Care Technology Assessment, the Secretary of Health and Human Services, acting through the Director of Centers for Disease Control, was to conduct a study for purpose of determining mortality rates with respect to acquired immune deficiency syndrome among individuals of various groups at risk of such syndrome, among various geographic areas, and among individuals with varying financial resources for payment of health care services, with a report to be submitted to Congress not later than 18 months after Nov. 4, 1988, and further directed Secretary to request the National Academy of Sciences and other similar appropriate nonprofit institutions to report to the Secretary findings made by such institutions with respect to the manner in which research on, and the development of, vaccines and drugs for the prevention and treatment of acquired immune deficiency syndrome and related conditions can be enhanced by the establishment of consortia designed to combine and share resources needed for such research and development, consisting of businesses involved in such research and development, of nonprofit research institutions, or of combinations of such businesses and such institutions, and the appropriate participation, if any, of the Federal Government in such consortia, with a report to be submitted to Congress not later than 1 year after Nov. 4, 1988.

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Subtitle D (§§ 241–249) of title II of Pub. L. 100–607, as amended by Pub. L. 100–690, title II, § 2602(a), Nov. 18, 1988, 102 Stat. 4233, established National Commission on Acquired Immune Deficiency Syndrome for the purpose of promoting the development of a national consensus on policy concerning acquired immune deficiency syndrome and of studying and making recommendations for a consistent national policy concerning such syndrome, including financing of health care needs and research, dissemination of information to prevent spread of such syndrome, behavioral changes needed to combat such syndrome, and related civil rights issues, provided for membership of Commission, reports, executive director and staff of Commission, powers, and appropriations, and provided for termination of Commission 30 days after submission of its final report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300cc–1, 300cc–41, 300ee–22 of this title.

§ 300cc–1. Requirement of expediting awards of grants and contracts for research

(a) In general

The Secretary shall expedite the award of grants, contracts, and cooperative agreements for research projects relating to acquired immune deficiency syndrome (including such research projects initiated independently of any solicitation by the Secretary for proposals for such research projects).

(b) Time limitations with respect to certain applications

(1) With respect to programs of grants, contracts, and cooperative agreements described in subsection (a) of this section, any application submitted in response to a solicitation by the Secretary for proposals pursuant to such a program—

(A) may not be approved if the application is submitted after the expiration of the 3-month period beginning on the date on which the solicitation is issued; and

(B) shall be awarded, or otherwise finally acted upon, not later than the expiration of the 6-month period beginning on the expiration of the period described in subparagraph (A).

(2) If the Secretary makes a determination that it is not practicable to administer a program referred to in paragraph (1) in accordance with the time limitations described in such paragraph, the Secretary may adjust the time limitations accordingly.

(c) Requirements with respect to adjustments in time limitations

With respect to any program for which a determination described in subsection (b)(2) of this section is made, the Secretary shall—

(1) if the determination is made before the Secretary issues a solicitation for proposals pursuant to the program, ensure that the so-

licitation describes the time limitations as adjusted by the determination; and

(2) if the determination is made after the Secretary issues such a solicitation for proposals, issue a statement describing the time limitations as adjusted by the determination and individually notify, with respect to the determination, each applicant whose application is submitted before the expiration of the 3-month period beginning on the date on which the solicitation was issued.

(d) Annual reports to Congress

Except as provided in subsection (e) of this section, the Secretary shall annually prepare, for inclusion in the comprehensive report required in section 300cc of this title, a report—

(A) summarizing programs for which the Secretary has made a determination described in subsection (b)(2) of this section, including a description of the time limitations as adjusted by the determination and including a summary of the solicitation issued by the Secretary for proposals pursuant to the program; and

(B) summarizing applications that—

(i) were submitted pursuant to a program of grants, contracts, or cooperative agreements referred to in paragraph (1) of subsection (b) of this section for which a determination described in paragraph (2) of such subsection has not been made; and

(ii) were not processed in accordance with the time limitations described in such paragraph (1).

(e) Quarterly reports for fiscal year 1989

For fiscal year 1989, the report required in subsection (d) of this section shall, not less than quarterly, be prepared and submitted to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(July 1, 1944, ch. 373, title XXIII, § 2302, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3063.)

PRIOR PROVISIONS

A prior section 300cc–1, act July 1, 1944, § 2302, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 300cc–2. Requirements with respect to processing of requests for personnel and administrative support

(a) In general

The Director of the Office of Personnel Management or the Administrator of General Services, as the case may be, shall respond to any priority request made by the Administrator of the Substance Abuse and Mental Health Services Administration, the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, or the Director of the National Institutes of Health, not later than 21 days after the date on which such request is made. If the Director of the Office of Personnel Management or the Administrator of General Services, as the case may be, does not disapprove a priority request during the 21-day period, the request shall be deemed to be approved.

(b) Notice to Secretary and to Assistant Secretary for Health

The Administrator of the Substance Abuse and Mental Health Services Administration, the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, and the Director of the National Institutes of Health, shall, respectively, transmit to the Secretary and the Assistant Secretary for Health a copy of each priority request made under this section by the agency head involved. The copy shall be transmitted on the date on which the priority request involved is made.

(c) "Priority request" defined

For purposes of this section, the term ''priority request'' means any request that—

(1) is designated as a priority request by the Administrator of the Substance Abuse and Mental Health Services Administration, the Director of the Centers for Disease Control and Prevention, the Commissioner of Food and Drugs, or the Director of the National Institutes of Health; and

(2)(A) is made to the Director of the Office of Personnel Management for the allocation of personnel to carry out activities with respect to acquired immune deficiency syndrome; or

(B) is made to the Administrator of General Services for administrative support or space in carrying out such activities.

(July 1, 1944, ch. 373, title XXIII, § 2303, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3064; amended July 10, 1992, Pub. L. 102–321, title I, §§ 161, 163(b)(7), 106 Stat. 375, 376; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(17), 106 Stat. 3505.)

PRIOR PROVISIONS

A prior section 300cc–2, act July 1, 1944, § 2303, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–321, § 161, substituted ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''Administrator of the Alcohol, Drug Abuse, and Mental Health Administration''.

Subsec. (b). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–321, § 163(b)(7)(A), substituted ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''Administrator of the Alcohol, Drug Abuse, and Mental Health Administration''.

Subsec. (c)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

Pub. L. 102–321, § 163(b)(7)(B), substituted ''Administrator of the Substance Abuse and Mental Health Services Administration'' for ''Administrator of the Alcohol, Drug Abuse, and Mental Health Administration''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, see section 801(c) of Pub. L. 102–321, set out as a note under section 236 of this title.

§ 300cc–3. Establishment of Research Advisory Committee

(a) In general

After consultation with the Commissioner of Food and Drugs, the Secretary, acting through the Director of the National Institute of Allergy and Infectious Diseases, shall establish within such Institute an advisory committee to be known as the AIDS Research Advisory Committee (hereafter in this section referred to as the ''Committee'').

(b) Composition

The Committee shall be composed of physicians whose clinical practice includes a significant number of patients with acquired immune deficiency syndrome.

(c) Duties

The Committee shall—

(1) advise the Director of such Institute (and may provide advice to the Directors of other agencies of the National Institutes of Health, as appropriate) on appropriate research activities to be undertaken with respect to clinical treatment of such syndrome, including advice with respect to—

(A) research on drugs for preventing or minimizing the development of symptoms or conditions arising from infection with the etiologic agent for such syndrome, including recommendations on the projects of research with respect to diagnosing immune deficiency and with respect to predicting, diagnosing, preventing, and treating opportunistic cancers and infectious diseases; and

(B) research on the effectiveness of treating such symptoms or conditions with drugs that—

(i) are not approved by the Commissioner of Food and Drugs for the purpose of treating such symptoms or conditions; and

(ii) are being utilized for such purpose by individuals infected with such etiologic agent;

(2)(A) review ongoing publicly and privately supported research on clinical treatment for acquired immune deficiency syndrome, including research on drugs described in paragraph (1); and

(B) periodically issue, and make available to health care professionals, reports describing and evaluating such research;

(3) conduct studies and convene meetings for the purpose of determining the recommendations among physicians in clinical practice on clinical treatment of acquired immune deficiency syndrome, including treatment with the drugs described in paragraph (1); and

(4) conduct a study for the purpose of developing, with respect to individuals infected with the etiologic agent for acquired immune deficiency syndrome, a consensus among health care professionals on clinical treatments for preventing or minimizing the development of symptoms or conditions arising from infection with such etiologic agent.

(July 1, 1944, ch. 373, title XXIII, § 2304, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3065; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2617(a), 102 Stat. 4240; June 10, 1993, Pub. L. 103–43, title XVIII, § 1811(1), title XX, § 2008(d)(1), 107 Stat. 199, 212.)

PRIOR PROVISIONS

A prior section 300cc–3, acts July 1, 1944, ch. 373, title XXIII, § 2304, formerly title V, § 504, 58 Stat. 710; June 25, 1948, ch. 654, § 6, 62 Stat. 1018; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered title XXI, § 2104, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176; renumbered title XXIII, § 2304, Nov. 14, 1986, Pub. L. 99–660, title III, § 311(a), 100 Stat. 3755, related to care of Service patients at Saint Elizabeths Hospital, prior to repeal by Pub. L. 98–621, § 10(s), Nov. 8, 1984, 98 Stat. 3381, effective Oct. 1, 1987. Subsequent to repeal, section 2104 of title XXI of act July 1, 1944, was renumbered section 2304 of title XXIII of that act by section 311(a) of Pub. L. 99–660.

A prior section 300cc–4, acts July 1, 1944, ch. 373, title XXI, § 2105, formerly title V, § 505, 58 Stat. 710; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; renumbered title XXI, § 2105, Apr. 26, 1983, Pub. L. 98–24, § 2(a)(1), 97 Stat. 176, provided procedures under which the Secretary could settle claims for damages from collisions or incident to the operation of vessels within a year of the accrual of such claims and not to exceed $3,000, prior to repeal by Pub. L. 99–117, § 12(f), Oct. 7, 1985, 99 Stat. 495. Subsequent to repeal, section 2105 of title XXI of act July 1, 1944, was renumbered section 2305 of title XXIII of that act by Pub. L. 99–660, title III, § 311(a), Nov. 14, 1986, 100 Stat. 3755.

Prior sections 300cc–5 to 300cc–10, act July 1, 1944, §§ 2306 to 2311, respectively, were successively renumbered by subsequent acts and transferred, see sections 238c to 238h of this title.

AMENDMENTS

1993—Pub. L. 103–43, § 2008(d)(1)(A), substituted ''Research Advisory Committee'' for ''Clinical Research Review Committee'' in section catchline.

Subsec. (a). Pub. L. 103–43, § 2008(d)(1)(B), substituted ''AIDS Research Advisory Committee'' for ''AIDS Clinical Research Review Committee''.

Subsec. (c)(1). Pub. L. 103–43, § 1811(1), in introductory provisions inserted ''(and may provide advice to the Directors of other agencies of the National Institutes of Health, as appropriate)'' after ''Director of such Institute'' and in subpar. (A) inserted before semicolon at end '', including recommendations on the projects of research with respect to diagnosing immune deficiency and with respect to predicting, diagnosing, preventing, and treating opportunistic cancers and infectious diseases''.

1988—Subsec. (c)(2)(B). Pub. L. 100–690 substituted semicolon for period.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as

may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300cc–12, 300cc–14, 300cc–17, 300cc–18 of this title.

PART B—RESEARCH AUTHORITY

§ 300cc–11. Clinical evaluation units at National Institutes of Health

(a) In general

The Secretary, acting through the Director of the National Cancer Institute and the Director of the National Institute of Allergy and Infectious Diseases, shall for each such Institute establish a clinical evaluation unit at the Clinical Center at the National Institutes of Health. Each of the clinical evaluation units—

(1) shall conduct clinical evaluations of experimental treatments for acquired immune deficiency syndrome developed within the preclinical drug development program, including evaluations of methods of diagnosing immune deficiency and evaluations of methods of predicting, diagnosing, preventing, and treating opportunistic cancers and infectious diseases; and

(2) may conduct clinical evaluations of experimental treatments for such syndrome that are developed by any other national research institute of the National Institutes of Health or by any other entity.

(b) Personnel and administrative support

(1) For the purposes described in subsection (a) of this section, the Secretary, acting through the Director of the National Institutes of Health, shall provide each of the clinical evaluation units required in such subsection—

(A)(i) with not less than 50 beds; or

(ii) with an outpatient clinical capacity equal to not less than twice the outpatient clinical capacity, with respect to acquired immune deficiency syndrome, possessed by the Clinical Center of the National Institutes of Health on June 1, 1988; and

(B) with such personnel, such administrative support, and such other support services as may be necessary.

(2) Facilities, personnel, administrative support, and other support services provided pursuant to paragraph (1) shall be in addition to the number or level of facilities, personnel, administrative support, and other support services that otherwise would be available at the Clinical Center at the National Institutes of Health for the provision of clinical care for individuals with diseases or disorders.

(c) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(July 1, 1944, ch. 373, title XXIII, § 2311, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3066; amended June 10, 1993, Pub. L. 103–43, title XVIII, § 1811(2), 107 Stat. 199.)

PRIOR PROVISIONS

A prior section 300cc–11, act July 1, 1944, § 2312, was successively renumbered by subsequent acts and transferred, see section 238i of this title.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–43 inserted before semicolon at end ", including evaluations of methods of diagnosing immune deficiency and evaluations of methods of predicting, diagnosing, preventing, and treating opportunistic cancers and infectious diseases".

§ 300cc–12. Use of investigational new drugs with respect to acquired immune deficiency syndrome

(a) Encouragement of applications with respect to clinical trials

(1) If, in the determination of the Secretary, there is preliminary evidence that a new drug has effectiveness in humans with respect to the prevention or treatment of acquired immune deficiency syndrome, the Secretary shall, through statements published in the Federal Register—

(A) announce the fact of such determination; and

(B) with respect to the new drug involved, encourage an application for an exemption for investigational use of the new drug under regulations issued under section 355(i) of title 21.

(2)(A) The AIDS Research Advisory Committee established pursuant to section 300cc–3 of this title shall make recommendations to the Secretary with respect to new drugs appropriate for determinations described in paragraph (1).

(B) The Secretary shall, as soon as is practicable, determine the merits of recommendations received by the Secretary pursuant to subparagraph (A).

(b) Encouragement of applications with respect to treatment use in circumstances other than clinical trials

(1) In the case of a new drug with respect to which the Secretary has made a determination described in subsection (a) of this section and with respect to which an exemption is in effect for purposes of section 355(i) of title 21, the Secretary shall—

(A) as appropriate, encourage the sponsor of the investigation of the new drug to submit to the Secretary, in accordance with regulations issued under such section, an application to use the drug in the treatment of individuals—

(i) who are infected with the etiologic agent for acquired immune deficiency syndrome; and

(ii) who are not participating in the clinical trials conducted pursuant to such exemption; and

(B) if such an application is approved, encourage, as appropriate, licensed medical practitioners to obtain, in accordance with such regulations, the new drug from such sponsor for the purpose of treating such individuals.

(2) If the sponsor of the investigation of a new drug described in paragraph (1) does not submit to the Secretary an application described in such paragraph (relating to treatment use), the Secretary shall, through statements published in the Federal Register, encourage, as appropriate, licensed medical practitioners to submit to the Secretary such applications in accordance with regulations described in such paragraph.

(c) Technical assistance with respect to treatment use

In the case of a new drug with respect to which the Secretary has made a determination described in subsection (a) of this section, the Secretary may, directly or through grants or contracts, provide technical assistance with respect to the process of—

(1) submitting to the Secretary applications for exemptions described in paragraph (1)(B) of such subsection;

(2) submitting to the Secretary applications described in subsection (b) of this section; and

(3) with respect to sponsors of investigations of new drugs, facilitating the transfer of new drugs from such sponsors to licensed medical practitioners.

(d) "New drug" defined

For purposes of this section, the term ''new drug'' has the meaning given such term in section 321 of title 21.

(July 1, 1944, ch. 373, title XXIII, § 2312, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3066; June 10, 1993, Pub. L. 103–43, title XX, § 2008(d)(2), 107 Stat. 212.)

PRIOR PROVISIONS

A prior section 300cc–12, act July 1, 1944, § 2313, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

AMENDMENTS

1993—Subsec. (a)(2)(A). Pub. L. 103–43 substituted ''AIDS Research Advisory Committee'' for ''AIDS Clinical Research Review Committee''.

§ 300cc–13. Terry Beirn Community-Based AIDS Research Initiative

(a) In general

After consultation with the Commissioner of Food and Drugs, the Director of the National Institutes of Health, acting through the Director of the National Institute of Allergy and Infectious Diseases, may make grants to public entities and nonprofit private entities concerned with acquired immune deficiency syndrome, and may enter into contracts with public and private such[1] entities, for the purpose of planning and conducting, in the community involved, clinical trials of experimental treatments for infection with the etiologic agent for such syndrome that are approved by the Commissioner of Food and Drugs for investigational use under regulations issued under section 355 of title 21.

(b) Requirement of certain projects

(1) Financial assistance under subsection (a) of this section shall include such assistance to community-based organizations and community health centers for the purpose of—

(A) retaining appropriate medical supervision;

(B) assisting with administration, data collection and record management; and

(C) conducting training of community physicians, nurse practitioners, physicians' assistants and other health professionals for the purpose of conducting clinical trials.

(2)(A) Financial assistance under subsection (a) of this section shall include such assistance for demonstration projects designed to implement and conduct community-based clinical trials in order to provide access to the entire scope of communities affected by infections with the etiologic agent for acquired immune deficiency syndrome, including minorities, hemophiliacs and transfusion-exposed individuals, women, children, users of intravenous drugs, and individuals who are asymptomatic with respect to such infection.

(B) The Director of the National Institutes of Health may not provide financial assistance under this paragraph unless the application for such assistance is approved—

(i) by the Commissioner of Food and Drugs;

(ii) by a duly constituted Institutional Review Board that meets the requirements of part 56 of title 21, Code of Federal Regulations; and

(iii) by the Director of the National Institute of Allergy and Infectious Diseases.

(c) Participation of private industry, schools of medicine and primary providers

Programs carried out with financial assistance provided under subsection (a) of this section shall be designed to encourage private industry and schools of medicine, osteopathic medicine, and existing consortia of primary care providers organized to conduct clinical research concerning acquired immune deficiency syndrome to participate in, and to support, the clinical trials conducted pursuant to the programs.

(d) Requirement of application

The Secretary may not provide financial assistance under subsection (a) of this section unless—

(1) an application for the assistance is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the assistance is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) Authorization of appropriations

(1) For the purpose of carrying out subsection (b)(1) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1996.

(2) For the purpose of carrying out subsection (b)(2) of this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1996.

(July 1, 1944, ch. 373, title XXIII, § 2313, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3068; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2617(b), 102 Stat. 4240; Aug. 16, 1989, Pub. L. 101–93, § 6, 103 Stat. 615; Aug. 14, 1991, Pub. L. 102–96, § 3, 105 Stat. 481.)

PRIOR PROVISIONS

A prior section 300cc–13, act July 1, 1944, § 2314, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

[1] So in original.

AMENDMENTS

1991—Pub. L. 102–96, § 3(1), substituted ''Terry Beirn Community-Based AIDS Research Initiative'' for ''Community-based evaluations of experimental therapies'' in section catchline.

Subsec. (c). Pub. L. 102–96, § 3(2), substituted '', schools of medicine and primary providers'' for ''and schools of medicine'' in heading and substituted ''schools of medicine, osteopathic medicine, and existing consortia of primary care providers organized to conduct clinical research concerning acquired immune deficiency syndrome'' for ''schools of medicine and osteopathic medicine''.

Subsec. (e). Pub. L. 102–96, § 3(3), substituted ''1996'' for ''1991'' in pars. (1) and (2).

1989—Subsec. (c). Pub. L. 101–93 inserted ''and osteopathic medicine'' after ''schools of medicine''.

1988—Subsec. (a). Pub. L. 100–690, § 2617(b)(1), which directed substitution of ''through the Director of the National Institute of Allergy'' for ''through the National Institutes of Allergy'', was executed by making substitution for ''through the National Institute of Allergy'' as the probable intent of Congress.

Subsec. (b)(2)(B)(iii). Pub. L. 100–690, § 2617(b)(2), which directed substitution of ''Institute'' for ''Institutes'', could not be executed because ''Institute'' was singular in original.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

FINDINGS AND SENSE OF CONGRESS

Section 2 of Pub. L. 102–96 provided that:

''(a) FINDINGS.—Congress finds that—

''(1) community-based clinical trials complement the National Institute of Allergy and Infectious Diseases' university-based research in order to provide increased access to experimental therapies;

''(2) community-based clinical trials provide an efficient and cost-effective means to develop new HIV-related treatments, benefiting all people living with HIV disease and other illnesses; and

''(3) because the community-based clinical trials model has a proven ability to conduct rapid trials that meet the very highest standards of scientific inquiry, this program should be reauthorized and significantly expanded.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that, because of Terry Beirn's tireless efforts to foster a partnership among all parties invested in AIDS research (including the National Institutes of Health university-based research system, primary care physicians practicing in the community, and patients), the community-based clinical trials program should be renamed as the 'Terry Beirn Community-Based AIDS Research Initiative' in his honor.''

§ 300cc–14. Evaluation of certain treatments

(a) Establishment of program

(1) After consultation with the AIDS Research Advisory Committee established pursuant to section 300cc–3 of this title, the Secretary shall establish a program for the evaluation of drugs that—

(A) are not approved by the Commissioner of Food and Drugs for the purpose of treatments with respect to acquired immune deficiency syndrome; and

(B) are being utilized for such purpose by individuals infected with the etiologic agent for such syndrome.

(2) The program established under paragraph (1) shall include evaluations of the effectiveness and the risks of the treatment involved, including the risks of foregoing treatments with respect to acquired immune deficiency syndrome that are approved by the Commissioner of Food and Drugs.

(b) Authority with respect to grants and contracts

(1) For the purpose of conducting evaluations required in subsection (a) of this section, the Secretary may make grants to, and enter into cooperative agreements and contracts with, public and nonprofit private entities.

(2) Nonprofit private entities under paragraph (1) may include nonprofit private organizations that—

(A) are established for the purpose of evaluating treatments with respect to acquired immune deficiency syndrome; and

(B) consist primarily of individuals infected with the etiologic agent for such syndrome.

(c) Scientific and ethical guidelines

(1) The Secretary shall establish appropriate scientific and ethical guidelines for the conduct of evaluations carried out pursuant to this section. The Secretary may not provide financial assistance under subsection (b)(1) of this section unless the applicant for such assistance agrees to comply with such guidelines.

(2) The Secretary may establish the guidelines described in paragraph (1) only after consulting with—

(A) physicians whose clinical practice includes a significant number of individuals with acquired immune deficiency syndrome;

(B) individuals who are infected with the etiologic agent for such syndrome; and

(C) other individuals with appropriate expertise or experience.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(July 1, 1944, ch. 373, title XXIII, § 2314, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3069; amended June 10, 1993, Pub. L. 103–43, title XX, § 2008(d)(3), 107 Stat. 212.)

PRIOR PROVISIONS

A prior section 300cc–14, act July 1, 1944, § 2315, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–43 substituted ''AIDS Research Advisory Committee'' for ''Clinical Research Review Committee'' in introductory provisions.

§ 300cc–15. Support of international efforts

(a) Grants and contracts for research

(1) Under section 242*l* of this title, the Secretary, acting through the Director of the National Institutes of Health—

(A) shall, for the purpose described in paragraph (2), make grants to, enter into cooperative agreements and contracts with, and provide technical assistance to, international organizations concerned with public health; and

(B) may, for such purpose, provide technical assistance to foreign governments.

(2) The purpose referred to in paragraph (1) is promoting and expediting international research and training concerning the natural history and pathogenesis of the human immunodeficiency virus and the development and evaluation of vaccines and treatments for acquired immune deficiency syndrome and opportunistic infections.

(b) Grants and contracts for additional purposes

After consultation with the Administrator of the Agency for International Development, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall under section 242*l* of this title make grants to, enter into contracts with, and provide technical assistance to, international organizations concerned with public health and may provide technical assistance to foreign governments, in order to support—

(1) projects for training individuals with respect to developing skills and technical expertise for use in the prevention, diagnosis, and treatment of acquired immune deficiency syndrome; and

(2) epidemiological research relating to acquired immune deficiency syndrome.

(c) Special Programme of World Health Organization

Support provided by the Secretary pursuant to this section shall be in furtherance of the global strategy of the World Health Organization Special Programme on Acquired Immunodeficiency Syndrome.

(d) Preferences

In providing grants, cooperative agreements, contracts, and technical assistance under subsections (a) and (b) of this section, the Secretary shall—

(1) give preference to activities under such subsections conducted by, or in cooperation with, the World Health Organization; and

(2) with respect to activities carried out under such subsections in the Western Hemisphere, give preference to activities conducted by, or in cooperation with, the Pan American Health Organization or the World Health Organization.

(e) Requirement of application

The Secretary may not make a grant or enter into a cooperative agreement or contract under this section unless—

(1) an application for such assistance is submitted to the Secretary;

(2) with respect to carrying out the purpose for which such assistance is to be provided, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(f) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(July 1, 1944, ch. 373, title XXIII, § 2315, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3070; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(18), 106 Stat. 3505; June 10, 1993, Pub. L. 103–43, title XVIII, § 1811(3), 107 Stat. 199.)

PRIOR PROVISIONS

A prior section 300cc–15, act July 1, 1944, § 2316, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

AMENDMENTS

1993—Subsec. (a)(2). Pub. L. 103–43, § 1811(3)(A), substituted ''international research and training concerning the natural history and pathogenesis of the human immunodeficiency virus and the development and evaluation of vaccines and treatments for acquired immune deficiency syndrome and opportunistic infections'' for ''international research concerning the development and evaluation of vaccines and treatments for acquired immune deficiency syndrome''.

Subsec. (f). Pub. L. 103–43, § 1811(3)(B), substituted ''such sums as may be necessary for each fiscal year'' for ''there are authorized to be appropriated $40,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991''.

1992—Subsec. (b). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

§ 300cc–16. Research centers

(a) In general

(1) The Secretary, acting through the Director of the National Institute of Allergy and Infectious Diseases, may make grants to, and enter into contracts with, public and nonprofit private entities to assist such entities in planning, establishing, or strengthening, and providing basic operating support for, centers for basic and clinical research into, and training in, advanced diagnostic, prevention, and treatment methods for acquired immune deficiency syndrome.

(2) A grant or contract under paragraph (1) shall be provided in accordance with policies established by the Secretary, acting through the Director of the National Institutes of Health, and after consultation with the advisory council for the National Institute of Allergy and Infectious Diseases.

(3) The Secretary shall ensure that, as appropriate, clinical research programs carried out under paragraph (1) include as research subjects women, children, hemophiliacs, and minorities.

(b) Use of financial assistance

(1) Financial assistance under subsection (a) of this section may be expended for—

(A) the renovation or leasing of space;

(B) staffing and other basic operating costs, including such patient care costs as are required for clinical research;

(C) clinical training with respect to acquired immune deficiency syndrome (including such training for allied health professionals); and

(D) demonstration purposes, including projects in the long-term monitoring and outpatient treatment of individuals infected with the etiologic agent for such syndrome.

(2) Financial assistance under subsection (a) of this section may not be expended to provide research training for which National Research Service Awards may be provided under section 288 of this title.

(c) Duration of support

Support of a center under subsection (a) of this section may be for not more than five years.

Such period may be extended by the Director for additional periods of not more than five years each if the operations of such center have been reviewed by an appropriate technical and scientific peer review group established by the Director and if such group has recommended to the Director that such period should be extended.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(July 1, 1944, ch. 373, title XXIII, § 2316, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3071.)

§ 300cc–17. Information services

(a) Establishment of program

The Secretary shall establish, maintain, and operate a program with respect to information on research, treatment, and prevention activities relating to infection with the etiologic agent for acquired immune deficiency syndrome. The program shall, with respect to the agencies of the Department of Health and Human Services, be integrated and coordinated.

(b) Toll-free telephone communications for health care entities

(1) After consultation with the Director of the Office of AIDS Research, the Administrator of the Health Resources and Services Administration, and the Director of the Centers for Disease Control and Prevention, the Secretary shall provide for toll-free telephone communications to provide medical and technical information with respect to acquired immune deficiency syndrome to health care professionals, allied health care providers, and to professionals providing emergency health services.

(2) Information provided pursuant to paragraph (1) shall include—

(A) information on prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome; and

(B) information contained in the data banks established in subsections (c) and (d) of this section.

(c) Data bank on research information

(1) After consultation with the Director of the Office of AIDS Research, the Director of the Centers for Disease Control and Prevention, and the National Library of Medicine, the Secretary shall establish a data bank of information on the results of research with respect to acquired immune deficiency syndrome conducted in the United States and other countries.

(2) In carrying out paragraph (1), the Secretary shall collect, catalog, store, and disseminate the information described in such paragraph. To the extent practicable, the Secretary shall make such information available to researchers, physicians, and other appropriate individuals, of countries other than the United States.

(d) Data bank on clinical trials and treatments

(1) After consultation with the Commissioner of Food and Drugs, the AIDS Research Advisory Committee established under section 300cc–3 of this title, and the Director of the Office of AIDS Research, the Secretary shall, in carrying out subsection (a) of this section, establish a data bank of information on clinical trials and treatments with respect to infection with the etiologic agent for acquired immune deficiency syndrome (hereafter in this section referred to as the ''Data Bank'').

(2) In carrying out paragraph (1), the Secretary shall collect, catalog, store, and disseminate the information described in such paragraph. The Secretary shall disseminate such information through information systems available to individuals infected with the etiologic agent for acquired immune deficiency syndrome, to other members of the public, to health care providers, and to researchers.

(e) Requirements with respect to data bank on clinical trials and treatments

The Data Bank shall include the following:

(1) A registry of clinical trials of experimental treatments for acquired immune deficiency syndrome and related illnesses conducted under regulations promulgated pursuant to section 355 of title 21 that provides a description of the purpose of each experimental drug protocol either with the consent of the protocol sponsor, or when a trial to test efficacy begins. Information provided shall include eligibility criteria and the location of trial sites, and must be forwarded to the Data Bank by the sponsor of the trial not later than 21 days after the approval by the Food and Drug Administration.

(2) Information pertaining to experimental treatments for acquired immune deficiency syndrome that may be available under a treatment investigational new drug application that has been submitted to the Food and Drug Administration pursuant to part 312 of title 21, Code of Federal Regulations. The Data Bank shall also include information pertaining to the results of clinical trials of such treatments, with the consent of the sponsor, of such experimental treatments, including information concerning potential toxicities or adverse effects associated with the use or administration of such experimental treatment.

(July 1, 1944, ch. 373, title XXIII, § 2317, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3071; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2617(c), 102 Stat. 4240; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(19), 106 Stat. 3505; June 10, 1993, Pub. L. 103–43, title XX, § 2008(d)(4), 107 Stat. 212.)

AMENDMENTS

1993—Subsec. (d)(1). Pub. L. 103–43 substituted ''AIDS Research Advisory Committee established under section 300cc–3 of this title'' for ''Clinical Research Review Committee''.

1992—Subsecs. (b)(1), (c)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1988—Subsec. (e). Pub. L. 100–690 substituted ''data bank on clinical trials and treatments'' for ''data bank'' in heading.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved

Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300cc–18. Development of model protocols for clinical care of infected individuals

(a) In general

(1) The Secretary, acting through the Director of the National Institutes of Health and after consultation with the Administrator for Health Care Policy and Research, may make grants to public and nonprofit private entities for the establishment of projects to develop model protocols for the clinical care of individuals infected with the etiologic agent for acquired immune deficiency syndrome, including treatment and prevention of HIV infection and related conditions among women.

(2) The Secretary may not make a grant under paragraph (1) unless—

(A) the applicant for the grant is a provider of comprehensive primary care; or

(B) the applicant for the grant agrees, with respect to the project carried out pursuant to paragraph (1), to enter into a cooperative arrangement with an entity that is a provider of comprehensive primary care.

(b) Requirement of provision of certain services

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees that, with respect to patients participating in the project carried out with the grant, services provided pursuant to the grant will include—

(1) monitoring, in clinical laboratories, of the condition of such patients;

(2) clinical intervention for infection with the etiologic agent for acquired immune deficiency syndrome, including measures for the prevention of conditions arising from the infection;

(3) information and counseling on the availability of treatments for such infection approved by the Commissioner of Food and Drugs, on the availability of treatments for such infection not yet approved by the Commissioner, and on the reports issued by the AIDS Research Advisory Committee under section 300cc–3(c)(2)(B) of this title;

(4) support groups; and

(5) information on, and referrals to, entities providing appropriate social support services.

(c) Limitation on imposition of charges for services

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees that, if the applicant will routinely impose a charge for providing services pursuant to the grant, the applicant will not impose the charge on any individual seeking such services who is unable to pay the charge.

(d) Evaluation and reports

(1) The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees, with respect to the project carried out pursuant to subsection (a) of this section, to submit to the Secretary—

(A) information sufficient to assist in the replication of the model protocol developed pursuant to the project; and

(B) such reports as the Secretary may require.

(2) The Secretary shall provide for evaluations of projects carried out pursuant to subsection (a) of this section and shall annually submit to the Congress a report describing such projects. The report shall include the findings made as a result of such evaluations and may include any recommendations of the Secretary for appropriate administrative and legislative initiatives with respect to the program established in this section.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991, and such sums as may be necessary for each of the fiscal years 1994 through 1996.

(July 1, 1944, ch. 373, title XXIII, § 2318, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3073; amended June 10, 1993, Pub. L. 103–43, title XVIII, § 1811(4), title XX, § 2008(d)(5), 107 Stat. 199, 212.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–43, § 1811(4)(A), inserted '', acting through the Director of the National Institutes of Health and after consultation with the Administrator for Health Care Policy and Research,'' after ''The Secretary'' and '', including treatment and prevention of HIV infection and related conditions among women'' after ''syndrome''.

Subsec. (b)(3). Pub. L. 103–43, § 2008(d)(5), substituted ''AIDS Research Advisory Committee'' for ''Clinical Research Review Committee''.

Subsec. (e). Pub. L. 103–43, § 1811(4)(B), inserted before period at end '', and such sums as may be necessary for each of the fiscal years 1994 through 1996''.

§ 300cc–19. National blood resource education program

After consultation with the Director of the National Heart, Lung, and Blood Institute and the Commissioner of Food and Drugs, the Secretary shall establish a program of research and education regarding blood donations and transfusions to maintain and improve the safety of the blood supply. Education programs shall be directed at health professionals, patients, and the community to—

(1) in the case of the public and patients undergoing treatment—

(A) increase awareness that the process of donating blood is safe;

(B) promote the concept that blood donors are contributors to a national need to maintain an adequate and safe blood supply;

(C) encourage blood donors to donate more than once a year; and

(D) encourage repeat blood donors to recruit new donors;

(2) in the case of health professionals—

(A) improve knowledge, attitudes, and skills of health professionals in the appropriate use of blood and blood components;

(B) increase the awareness and understanding of health professionals regarding the risks versus benefits of blood transfusion; and

(C) encourage health professionals to consider alternatives to the administration of blood or blood components for their patients; and

(3) in the case of the community, increase coordination, communication, and collaboration among community, professional, industry, and government organizations regarding blood donation and transfusion issues.

(July 1, 1944, ch. 373, title XXIII, § 2319, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3074.)

§ 300cc–20. Additional authority with respect to research

(a) Data collection with respect to national prevalence

(1) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may, through representative sampling and other appropriate methodologies, provide for the continuous collection of data on the incidence in the United States of cases of acquired immune deficiency syndrome and of cases of infection with the etiologic agent for such syndrome. The Secretary may carry out the program of data collection directly or through cooperative agreements and contracts with public and nonprofit private entities.

(2) The Secretary shall encourage each State to enter into a cooperative agreement or contract under paragraph (1) with the Secretary in order to facilitate the prompt collection of the most recent accurate data on the incidence of cases described in such paragraph.

(3) The Secretary shall ensure that data collected under paragraph (1) includes data on the demographic characteristics of the population of individuals with cases described in paragraph (1), including data on specific subpopulations at risk of infection with the etiologic agent for acquired immune deficiency syndrome.

(4) In carrying out this subsection, the Secretary shall, for the purpose of assuring the utility of data collected under this section, request entities with expertise in the methodologies of data collection to provide, as soon as is practicable, assistance to the Secretary and to the States with respect to the development and utilization of uniform methodologies of data collection.

(5) The Secretary shall provide for the dissemination of data collected pursuant to this subsection. In carrying out this paragraph, the Secretary may publish such data as frequently as the Secretary determines to be appropriate with respect to the protection of the public health. The Secretary shall publish such data not less than once each year.

(b) Epidemiological and demographic data

(1) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall develop an epidemiological data base and shall provide for long-term studies for the purposes of—

(A) collecting information on the demographic characteristics of the population of individuals infected with the etiologic agent for acquired immune deficiency syndrome and the natural history of such infection; and

(B) developing models demonstrating the long-term domestic and international patterns of the transmission of such etiologic agent.

(2) The Secretary may carry out paragraph (1) directly or through grants to, or cooperative agreeements[1] or contracts with, public and nonprofit private entities, including Federal agencies.

(c) Long-term research

The Secretary may make grants to public and nonprofit private entities for the purpose of assisting grantees in conducting long-term research into treatments for acquired immune deficiency syndrome developed from knowledge of the genetic nature of the etiologic agent for such syndrome.

(d) Social sciences research

The Secretary, acting through the Director of the National Institute of Mental Health, may make grants to public and nonprofit private entities for the purpose of assisting grantees in conducting scientific research into the psychological and social sciences as such sciences relate to acquired immune deficiency syndrome.

(e) Authorization of appropriations

(1) For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(2) Amounts appropriated pursuant to paragraph (1) to carry out subsection (c) of this section shall remain available until expended.

(July 1, 1944, ch. 373, title XXIII, § 2320, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3074; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2617(d), 102 Stat. 4240; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(20), 106 Stat. 3505; June 10, 1993, Pub. L. 103–43, title XVIII, § 1811(5), (6), 107 Stat. 200.)

AMENDMENTS

1993—Subsec. (b)(1)(A). Pub. L. 103–43, § 1811(5), inserted ''and the natural history of such infection'' after ''syndrome''.

Subsec. (e)(1). Pub. L. 103–43, § 1811(6), substituted ''fiscal year'' for ''of the fiscal years 1989 through 1991''.

1992—Subsecs. (a)(1), (b)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1988—Subsec. (a)(5). Pub. L. 100–690 substituted ''subsection'' for ''section''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

PART C—RESEARCH TRAINING

§ 300cc–31. Fellowships and training

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall establish fellowship and training programs to be conducted by the Centers for Disease Control and Prevention to train individuals to de-

[1] So in original.

velop skills in epidemiology, surveillance, testing, counseling, education, information, and laboratory analysis relating to acquired immune deficiency syndrome. Such programs shall be designed to enable health professionals and health personnel trained under such programs to work, after receiving such training, in national and international efforts toward the prevention, diagnosis, and treatment of acquired immune deficiency syndrome.

(b) Programs conducted by National Institute of Mental Health

The Secretary, acting through the Director of the National Institute of Mental Health, shall conduct or support fellowship and training programs for individuals pursuing graduate or postgraduate study in order to train such individuals to conduct scientific research into the psychological and social sciences as such sciences relate to acquired immune deficiency syndrome.

(c) Relationship to limitation on number of employees

Any individual receiving a fellowship or receiving training under subsection (a) or (b) of this section shall not be included in any determination of the number of full-time equivalent employees of the Department of Health and Human Services for the purpose of any limitation on the number of such employees established by law prior to, on, or after November 4, 1988.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each fiscal year.

(July 1, 1944, ch. 373, title XXIII, § 2341, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3076; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2617(e), 102 Stat. 4240; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(21), 106 Stat. 3505; June 10, 1993, Pub. L. 103–43, title XVIII, § 1811(7), 107 Stat. 200.)

AMENDMENTS

1993—Subsec. (d). Pub. L. 103–43 substituted ''fiscal year'' for ''of the fiscal years 1989 through 1991''.

1992—Subsec. (a). Pub. L. 102–531, which directed the substitution of ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'', was executed by making the substitution in two places to reflect the probable intent of Congress.

1988—Subsec. (c). Pub. L. 100–690 substituted ''date of the enactment of the AIDS Amendments of 1988'' for ''date of the enactment of the AIDS Federal Policy Act of 1988'' which for purposes of codification was translated as ''November 4, 1988''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

PART D—OFFICE OF AIDS RESEARCH

SUBPART I—INTERAGENCY COORDINATION OF ACTIVITIES

AMENDMENTS

1993—Pub. L. 103–43, title XVIII, § 1801(a)(1), (3), June 10, 1993, 107 Stat. 192, added part D designation and heading and subpart I heading and struck out former part D designation and heading ''Special Authorities of the Director of the National Institutes of Health''.

§ 300cc–40. Establishment of Office

(a) In general

There is established within the National Institutes of Health an office to be known as the Office of AIDS Research. The Office shall be headed by a director, who shall be appointed by the Secretary.

(b) Duties

(1) Interagency coordination of AIDS activities

With respect to acquired immune deficiency syndrome, the Director of the Office shall plan, coordinate, and evaluate research and other activities conducted or supported by the agencies of the National Institutes of Health. In carrying out the preceding sentence, the Director of the Office shall evaluate the AIDS activities of each of such agencies and shall provide for the periodic reevaluation of such activities.

(2) Consultations

The Director of the Office shall carry out this subpart (including developing and revising the plan required in section 300cc–40b of this title) in consultation with the heads of the agencies of the National Institutes of Health, with the advisory councils of the agencies, and with the advisory council established under section 300cc–40a of this title.

(3) Coordination

The Director of the Office shall act as the primary Federal official with responsibility for overseeing all AIDS research conducted or supported by the National Institutes of Health, and

(A) shall serve to represent the National Institutes of Health AIDS Research Program at all relevant Executive branch task forces and committees; and

(B) shall maintain communications with all relevant Public Health Service agencies and with various other departments of the Federal Government, to ensure the timely transmission of information concerning advances in AIDS research and the clinical treatment of acquired immune deficiency syndrome and its related conditions, between these various agencies for dissemination to affected communities and health care providers.

(July 1, 1944, ch. 373, title XXIII, § 2351, as added June 10, 1993, Pub. L. 103–43, title XVIII, § 1801(a)(3), 107 Stat. 192.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300cc–40b of this title.

§ 300cc–40a. Advisory Council; coordinating committees

(a) Advisory Council

(1) In general

The Secretary shall establish an advisory council for the purpose of providing advice to

the Director of the Office on carrying out this part. (Such council is referred to in this subsection as the ''Advisory Council''.)

(2) Composition, compensation, terms, chair, etc.

Subsections (b) through (g) of section 284a of this title apply to the Advisory Council to the same extent and in the same manner as such subsections apply to advisory councils for the national research institutes, except that—

(A) in addition to the ex officio members specified in section 284a(b)(2) of this title, there shall serve as such members of the Advisory Council a representative from the advisory council of each of the National Cancer Institute and the National Institute on Allergy and Infectious Diseases; and

(B) with respect to the other national research institutes, there shall serve as ex officio members of such Council, in addition to such members specified in subparagraph (A), a representative from the advisory council of each of the 2 institutes that receive the greatest funding for AIDS activities.

(b) Individual coordinating committees regarding research disciplines

(1) In general

The Director of the Office shall establish, for each research discipline in which any activity under the plan required in section 300cc–40b of this title is carried out, a committee for the purpose of providing advice to the Director of the Office on carrying out this part with respect to such discipline. (Each such committee is referred to in this subsection as a ''coordinating committee''.)

(2) Composition

Each coordinating committee shall be composed of representatives of the agencies of the National Institutes of Health with significant responsibilities regarding the research discipline involved.

(July 1, 1944, ch. 373, title XXIII, § 2352, as added June 10, 1993, Pub. L. 103–43, title XVIII, § 1801(a)(3), 107 Stat. 193.)

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pub. L. 93–641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300cc–40, 300cc–40b, 300cc–43 of this title.

§ 300cc–40b. Comprehensive plan for expenditure of appropriations

(a) In general

Subject to the provisions of this section and other applicable law, the Director of the Office, in carrying out section 300cc–40 of this title, shall—

(1) establish a comprehensive plan for the conduct and support of all AIDS activities of the agencies of the National Institutes of Health (which plan shall be first established under this paragraph not later than 12 months after June 10, 1993);

(2) ensure that the Plan establishes priorities among the AIDS activities that such agencies are authorized to carry out;

(3) ensure that the Plan establishes objectives regarding such activities, describes the means for achieving the objectives, and designates the date by which the objectives are expected to be achieved;

(4) ensure that all amounts appropriated for such activities are expended in accordance with the Plan;

(5) review the Plan not less than annually, and revise the Plan as appropriate; and

(6) ensure that the Plan serves as a broad, binding statement of policies regarding AIDS activities of the agencies, but does not remove the responsibility of the heads of the agencies for the approval of specific programs or projects, or for other details of the daily administration of such activities, in accordance with the Plan.

(b) Certain components of Plan

With respect to AIDS activities of the agencies of the National Institutes of Health, the Director of the Office shall ensure that the Plan—

(1) provides for basic research;

(2) provides for applied research;

(3) provides for research that is conducted by the agencies;

(4) provides for research that is supported by the agencies;

(5) provides for proposals developed pursuant to solicitations by the agencies and for proposals developed independently of such solicitations; and

(6) provides for behavioral research and social sciences research.

(c) Budget estimates

(1) Full-funding budget

(A) With respect to a fiscal year, the Director of the Office shall prepare and submit directly to the President, for review and transmittal to the Congress, a budget estimate for carrying out the Plan for the fiscal year, after reasonable opportunity for comment (but without change) by the Secretary, the Director of the National Institutes of Health, and the advisory council established under section 300cc–40a of this title. The budget estimate shall include an estimate of the number and type of personnel needs for the Office.

(B) The budget estimate submitted under subparagraph (A) shall estimate the amounts necessary for the agencies of the National Institutes of Health to carry out all AIDS activi-

ties determined by the Director of the Office to be appropriate, without regard to the probability that such amounts will be appropriated.

(2) Alternative budgets

(A) With respect to a fiscal year, the Director of the Office shall prepare and submit to the Secretary and the Director of the National Institutes of Health the budget estimates described in subparagraph (B) for carrying out the Plan for the fiscal year. The Secretary and such Director shall consider each of such estimates in making recommendations to the President regarding a budget for the Plan for such year.

(B) With respect to the fiscal year involved, the budget estimates referred to in subparagraph (A) for the Plan are as follows:

(i) The budget estimate submitted under paragraph (1).

(ii) A budget estimate developed on the assumption that the amounts appropriated will be sufficient only for—

(I) continuing the conduct by the agencies of the National Institutes of Health of existing AIDS activities (if approved for continuation), and continuing the support of such activities by the agencies in the case of projects or programs for which the agencies have made a commitment of continued support; and

(II) carrying out, of activities that are in addition to activities specified in subclause (I), only such activities for which the Director determines there is the most substantial need.

(iii) Such other budget estimates as the Director of the Office determines to be appropriate.

(d) Funding

(1) Authorization of appropriations

For the purpose of carrying out AIDS activities under the Plan, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1994 through 1996.

(2) Receipt of funds

For the first fiscal year beginning after the date on which the Plan first established under subsection (a)(1) of this section has been in effect for 12 months, and for each subsequent fiscal year, the Director of the Office shall receive directly from the President and the Director of the Office of Management and Budget all funds available for AIDS activities of the National Institutes of Health.

(3) Allocations for agencies

(A) Each fiscal year the Director of the Office shall, from the amounts received under paragraph (2) for the fiscal year, allocate to the agencies of the National Institutes of Health (in accordance with the Plan) all amounts available for such year for carrying out the AIDS activities specified in subsection (c)(2)(B)(ii)(I) of this section for such year. Such allocation shall, to the extent practicable, be made not later than 15 days after the date on which the Director receives amounts under paragraph (2).

(B) Each fiscal year the Director of the Office shall, from the amounts received under paragraph (2) for the fiscal year, allocate to the agencies of the National Institutes of Health (in accordance with the Plan) all amounts available for such year for carrying out AIDS activities that are not referred to in subparagraph (A). Such allocation shall, to the extent practicable, be made not later than 30 days after the date on which the Director receives amounts under paragraph (2).

(July 1, 1944, ch. 373, title XXIII, § 2353, as added June 10, 1993, Pub. L. 103–43, title XVIII, § 1801(a)(3), 107 Stat. 194.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 284, 300cc–40, 300cc–40a, 300cc–45 of this title.

§ 300cc–41. Additional authorities

(a) In general

In carrying out AIDS research, the Director of the Office—

(1) shall develop and expand clinical trials of treatments and therapies for infection with the etiologic agent for acquired immune deficiency syndrome, including such clinical trials for women, infants, children, hemophiliacs, and minorities;

(2) may establish or support the large-scale development and preclinical screening, production, or distribution of specialized biological materials and other therapeutic substances for AIDS research and set standards of safety and care for persons using such materials;

(3) may support—

(A) AIDS research conducted outside the United States by qualified foreign professionals if such research can reasonably be expected to benefit the people of the United States;

(B) collaborative research involving American and foreign participants; and

(C) the training of American scientists abroad and foreign scientists in the United States;

(4) may encourage and coordinate AIDS research conducted by any industrial concern that evidences a particular capability for the conduct of such research;

(5)(A) may acquire, improve, repair, operate, and maintain laboratories, other research facilities, equipment, and such other real or personal property as the Director of the Office determines necessary;

(B) may make grants for the construction or renovation of facilities; and

(C) may acquire, without regard to section 34 of title 40 by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the National Institutes of Health for a period not to exceed ten years; and

(6) subject to section 284(b)(2) of this title and without regard to section 3324 of title 31 and section 5 of title 41, may enter into such contracts and cooperative agreements with

any public agency, or with any person, firm, association, corporation, or educational institution, as may be necessary to expedite and coordinate research relating to acquired immune deficiency syndrome.

(b) Report to Secretary

The Director of the Office shall each fiscal year prepare and submit to the Secretary, for inclusion in the comprehensive report required in section 300cc(a) of this title, a report—

(1) describing and evaluating the progress made in such fiscal year in research, treatment, and training with respect to acquired immune deficiency syndrome conducted or supported by the Institutes;

(2) summarizing and analyzing expenditures made in such fiscal year for activities with respect to acquired immune deficiency syndrome conducted or supported by the National Institutes of Health; and

(3) containing such recommendations as the Director considers appropriate.

(c) Projects for cooperation among public and private health entities

In carrying out subsection (a) of this section, the Director of the Office shall establish projects to promote cooperation among Federal agencies, State, local, and regional public health agencies, and private entities, in research concerning the diagnosis, prevention, and treatment of acquired immune deficiency syndrome.

(July 1, 1944, ch. 373, title XXIII, § 2354, formerly § 2351, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3076; renumbered § 2354 and amended June 10, 1993, Pub. L. 103–43, title XVIII, § 1801(a)(2), (b), 107 Stat. 192, 196.)

AMENDMENTS

1993—Pub. L. 103–43, § 1801(b)(1), substituted ''Additional'' for ''Establishment of'' in section catchline.

Subsec. (a). Pub. L. 103–43, § 1801(b)(2)(A), in introductory provisions substituted ''AIDS research, the Director of the Office'' for ''research with respect to acquired immune deficiency syndrome, the Secretary, acting through the Director of the National Institutes of Health''.

Subsec. (a)(1). Pub. L. 103–43, § 1801(b)(2)(B), redesignated par. (3) as (1) and struck out former par. (1) which read as follows:

''(A) shall establish an office to be known as the Office of AIDS Research, which Office shall be headed by a Director appointed by the Director of the National Institutes of Health; and

''(B) shall provide administrative support and support services to the Director of such Office;''.

Subsec. (a)(2). Pub. L. 103–43, § 1801(b)(2)(B), (E), redesignated par. (4) as (2), substituted ''AIDS research'' for ''research relating to acquired immune deficiency syndrome'', and struck out former par. (2) which read as follows: ''shall coordinate activities relating to acquired immune deficiency syndrome conducted by the national research institutes and the agencies of the National Institutes of Health;''.

Subsec. (a)(3). Pub. L. 103–43, § 1801(b)(2)(B), (C), (E), redesignated par. (5) as (3), struck out '', in consultation with the advisory council for the appropriate national research institute of the National Institutes of Health,'' after ''may'' in introductory provisions, and substituted ''AIDS research'' for ''research relating to acquired immune deficiency syndrome'' in subpar. (A). Former par. (3) redesignated (1).

Subsec. (a)(4). Pub. L. 103–43, § 1801(b)(2)(B), (E), redesignated par. (6) as (4) and substituted ''AIDS research'' for ''research relating to acquired immune deficiency syndrome''. Former par. (4) redesignated (2).

Subsec. (a)(5). Pub. L. 103–43, § 1801(b)(2)(B), (D), redesignated par. (7) as (5), in subpar. (A) struck out '', in consultation with such advisory council,'' after ''may'' and substituted ''Director of the Office determines'' for ''Director of the National Institutes of Health determines'', and in subpars. (B) and (C) struck out '', in consultation with such advisory council,'' after ''may''. Former par. (5) redesignated (3).

Subsec. (a)(6) to (8). Pub. L. 103–43, § 1801(b)(2)(B), redesignated pars. (6) to (8) as (4) to (6), respectively.

Subsec. (b). Pub. L. 103–43, § 1801(b)(3), substituted ''The Director of the Office shall'' for ''The Director of the National Institutes of Health, acting through the Director of the Office of AIDS Research, shall''.

Subsec. (c). Pub. L. 103–43, § 1801(b)(4), substituted ''the Director of the Office shall'' for ''the Director of the National Institutes of Health shall''.

SUBPART II—EMERGENCY DISCRETIONARY FUND

§ 300cc–43. Emergency Discretionary Fund

(a) In general

(1) Establishment

There is established a fund consisting of such amounts as may be appropriated under subsection (g) of this section. Subject to the provisions of this section, the Director of the Office, after consultation with the advisory council established under section 300cc–40a of this title, may expend amounts in the Fund for the purpose of conducting and supporting such AIDS activities, including projects of AIDS research, as may be authorized in this chapter for the National Institutes of Health.

(2) Preconditions to use of Fund

Amounts in the Fund may be expended only if—

(A) the Director identifies the particular set of AIDS activities for which such amounts are to be expended;

(B) the set of activities so identified constitutes either a new project or additional AIDS activities for an existing project;

(C) the Director of the Office has made a determination that there is a significant need for such set of activities; and

(D) as of June 30 of the fiscal year preceding the fiscal year in which the determination is made, such need was not provided for in any appropriations Act passed by the House of Representatives to make appropriations for the Departments of Labor, Health and Human Services (including the National Institutes of Health), Education, and related agencies for the fiscal year in which the determination is made.

(3) Two-year use of Fund for project involved

In the case of an identified set of AIDS activities, obligations of amounts in the Fund may not be made for such set of activities after the expiration of the 2-year period beginning on the date on which the initial obligation of such amounts is made for such set.

(b) Peer review

With respect to an identified set of AIDS activities carried out with amounts in the Fund, this section may not be construed as waiving applicable requirements for peer review.

(c) Limitations on use of Fund

(1) Construction of facilities

Amounts in the Fund may not be used for the construction, renovation, or relocation of facilities, or for the acquisition of land.

(2) Congressional disapproval of projects

(A) Amounts in the Fund may not be expended for the fiscal year involved for an identified set of AIDS activities, or a category of AIDS activities, for which—

(i)(I) amounts were made available in an appropriations Act for the preceding fiscal year; and

(II) amounts are not made available in any appropriations Act for the fiscal year involved; or

(ii) amounts are by law prohibited from being expended.

(B) A determination under subparagraph (A)(i) of whether amounts have been made available in appropriations Acts for a fiscal year shall be made without regard to whether such Acts make available amounts for the Fund.

(3) Investment of Fund amounts

Amounts in the Fund may not be invested.

(d) Applicability of limitation regarding number of employees

The purposes for which amounts in the Fund may be expended include the employment of individuals necessary to carry out identified sets of AIDS activities approved under subsection (a) of this section. Any individual employed under the preceding sentence may not be included in any determination of the number of full-time equivalent employees for the Department of Health and Human Services for the purpose of any limitation on the number of such employees established by law prior to, on, or after June 10, 1993.

(e) Report to Congress

Not later than February 1 of each fiscal year, the Director of the Office shall submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report on the identified sets of AIDS activities carried out during the preceding fiscal year with amounts in the Fund. The report shall provide a description of each such set of activities and an explanation of the reasons underlying the use of the Fund for the set.

(f) Definitions

For purposes of this section:

(1) The term ''Fund'' means the fund established in subsection (a) of this section.

(2) The term ''identified set of AIDS activities'' means a particular set of AIDS activities identified under subsection (a)(2)(A) of this section.

(g) Funding

(1) Authorization of appropriations

For the purpose of providing amounts for the Fund, there is authorized to be appropriated $100,000,000 for each of the fiscal years 1994 through 1996.

(2) Availability

Amounts appropriated for the Fund are available until expended.

(July 1, 1944, ch. 373, title XXIII, § 2356, as added June 10, 1993, Pub. L. 103–43, title XVIII, § 1802, 107 Stat. 196.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

SUBPART III—GENERAL PROVISIONS

§ 300cc–45. General provisions regarding Office

(a) Administrative support for Office

The Secretary, acting through the Director of the National Institutes of Health, shall provide administrative support and support services to the Director of the Office and shall ensure that such support takes maximum advantage of existing administrative structures at the agencies of the National Institutes of Health.

(b) Evaluation and report

(1) Evaluation

Not later than 5 years after June 10, 1993, the Secretary shall conduct an evaluation to—

(A) determine the effect of this section on the planning and coordination of the AIDS research programs at the institutes, centers and divisions of the National Institutes of Health;

(B) evaluate the extent to which this part has eliminated the duplication of administrative resources among such Institutes, centers and divisions; and

(C) provide recommendations concerning future alterations with respect to this part.

(2) Report

Not later than 1 year after the date on which the evaluation is commenced under paragraph (1), the Secretary shall prepare and submit to the Committee on Labor and Human Resources of the Senate, and the Committee on Energy and Commerce of the House of Representatives, a report concerning the results of such evaluation.

(c) Definitions

For purposes of this part:

(1) The term ''AIDS activities'' means AIDS research and other activities that relate to acquired immune deficiency syndrome.

(2) The term ''AIDS research'' means research with respect to acquired immune deficiency syndrome.

(3) The term ''Office'' means the Office of AIDS Research.

(4) The term ''Plan'' means the plan required in section 300cc–40b(a)(1) of this title.

(July 1, 1944, ch. 373, title XXIII, § 2359, as added June 10, 1993, Pub. L. 103–43, title XVIII, § 1803, 107 Stat. 198.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

PART E—GENERAL PROVISIONS

§ 300cc–51. Definitions

For purposes of this subchapter:

(1) The term ''infection'', with respect to the etiologic agent for acquired immune deficiency syndrome, includes opportunistic cancers and infectious diseases and any other conditions arising from infection with such etiologic agent.

(2) The term ''treatment'', with respect to the etiologic agent for acquired immune deficiency syndrome, includes primary and secondary prophylaxis.

(July 1, 1944, ch. 373, title XXIII, § 2361, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 201(4), 102 Stat. 3078; amended June 10, 1993, Pub. L. 103–43, title XVIII, § 1811(8), 107 Stat. 200.)

AMENDMENTS

1993—Pub. L. 103–43 substituted provisions defining ''infection'' and ''treatment'' for former provisions which read as follows: ''For purposes of this subchapter, the term 'infection with the etiologic agent for acquired immune deficiency syndrome' includes any condition arising from infection with such etiologic agent''.

SUBCHAPTER XXII—HEALTH SERVICES WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

PART A—FORMULA GRANTS TO STATES FOR HOME AND COMMUNITY-BASED HEALTH SERVICES

§§ 300dd to 300dd–14. Repealed. July 1, 1944, ch. 373, title XXIV, § 2415, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3088; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(g), 102 Stat. 4241

Section 300dd, act July 1, 1944, ch. 373, title XXIV, § 2401, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3079, established program of formula grants for home and community-based health services.

Section 300dd–1, act July 1, 1944, ch. 373, title XXIV, § 2402, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3080; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(a), 102 Stat. 4240, provided requirements for carrying out purpose of grants.

Section 300dd–2, act July 1, 1944, ch. 373, title XXIV, § 2403, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3081, required submission of description of intended uses of grant.

Section 300dd–3, act July 1, 1944, ch. 373, title XXIV, § 2404, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3081; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(b), 102 Stat. 4240, restricted use of grants.

Section 300dd–4, act July 1, 1944, ch. 373, title XXIV, § 2405, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3082, required reports and audits by States.

Section 300dd–5, act July 1, 1944, ch. 373, title XXIV, § 2406, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3083, required additional agreements.

Section 300dd–6, act July 1, 1944, ch. 373, title XXIV, § 2407, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3084, required submission of application containing certain agreements and assurances.

Section 300dd–7, act July 1, 1944, ch. 373, title XXIV, § 2408, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3084, provided for determination of amount of allotments for States.

Section 300dd–8, act July 1, 1944, ch. 373, title XXIV, § 2409, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3085; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(c), 102 Stat. 4241, related to failure to comply with agreements.

Section 300dd–9, act July 1, 1944, ch. 373, title XXIV, § 2410, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3087, prohibited certain false statements.

Section 300dd–10, act July 1, 1944, ch. 373, title XXIV, § 2411, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3087; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(d), 102 Stat. 4241, authorized the Secretary to provide technical assistance and supplies and services in lieu of grant funds.

Section 300dd–11, act July 1, 1944, ch. 373, title XXIV, § 2412, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3087, required report by Secretary.

Section 300dd–12, act July 1, 1944, ch. 373, title XXIV, § 2413, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3087; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(e), 102 Stat. 4241, defined terms for this part.

Section 300dd–13, act July 1, 1944, ch. 373, title XXIV, § 2414, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3088; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(f), 102 Stat. 4241, provided funding.

Section 300dd–14, act July 1, 1944, ch. 373, title XXIV, § 2415, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3088; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(g), 102 Stat. 4241, repealed this part effective with respect to appropriations made for any period after fiscal year 1990.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to appropriations made for any period after fiscal year 1990, see section 2415 of act July 1, 1944, which was classified to former section 300dd–14 of this title.

PART B—SUBACUTE CARE

§ 300dd–21. Demonstration projects

(a) Definitions

As used in this section:

(1) The term ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' means individuals who have a disease, or are recovering from a disease, attributable to the infection of such individuals with such etiologic agent, and as a result of the effects of such disease, are in need of subacute-care services.

(2) The term ''subacute care'' means medical and health care services that are required for individuals recovering from acute care episodes that are less intensive than the level of care provided in acute-care hospitals, and includes skilled nursing care, hospice care, and other types of health services provided in other long-term-care facilities.

(b) Authorization to conduct three projects

The Secretary shall conduct three demonstration projects to determine the effectiveness and cost of providing the subacute-care services described in subsection (b) of this section to individuals infected with the etiologic agent for acquired immune deficiency syndrome, and the impact of such services on the health status of such individuals.

(c) Services

(1) The services provided under each demonstration project shall be designed to meet the specific needs of individuals infected with the etiologic agent for acquired immune deficiency syndrome, and shall include—

(A) the care and treatment of such individuals by providing—

(i) subacute care;

(ii) emergency medical care and specialized diagnostic and therapeutic services as needed and where appropriate, either directly or through affiliation with a hospital that has experience in treating individuals with acquired immune deficiency syndrome; and

(iii) case management services to ensure, through existing services and programs whenever possible, appropriate discharge planning for such individuals; and

(B) technical assistance, to other facilities in the region served by such facility, that is directed toward education and training of physicians, nurses, and other health-care professionals in the subacute care and treatment of individuals infected with the etiologic agent for acquired immune deficiency syndrome.

(2) Services provided under each demonstration project may also include—

(A) hospice services;

(B) outpatient care; and

(C) outreach activities in the surrounding community to hospitals and other health-care facilities that serve individuals infected with the etiologic agent for acquired immune deficiency syndrome.

(d) Time and place

The demonstration projects shall be conducted—

(1) during a 4-year period beginning not later than 9 months after November 4, 1988; and

(2) at sites that—

(A) are geographically diverse and located in areas that are appropriate for the provision of the required and authorized services; and

(B) have the highest incidence of cases of acquired immune deficiency syndrome and the greatest need for subacute-care services.

(e) Evaluation and report

The Secretary shall evaluate the operations of the demonstration projects and shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate—

(1) not later than 18 months after the beginning of the first project, a preliminary report that contains—

(A) a description of the sites at which the projects are being conducted and of the services being provided in each project; and

(B) a preliminary evaluation of the experience of the projects in the first 12 months of operation; and

(2) not later than 6 months after the completion of the last project, a final report that contains—

(A) an assessment of the costs of subacute care for individuals infected with the etiologic agent for acquired immune deficiency syndrome, including a breakdown of all other sources of funding for the care provided to cover subacute care; and

(B) recommendations for appropriate legislative changes.

(f) Other research

Each demonstration project shall provide for other research to be carried out at the site of such demonstration project including—

(1) clinical research on acquired immune deficiency syndrome, concentrating on research on the neurological manifestations resulting from infection with the etiologic agent for such syndrome; and

(2) the study of the psychological and mental health issues related to such syndrome.

(g) Authorization of appropriations

(1) To carry out this section, there are authorized to be appropriated $10,000,000 for fiscal year 1989 and such sums as are necessary for each of the fiscal years 1990 through 1992.

(2) Amounts appropriated pursuant to paragraph (1) shall remain available until September 10, 1992.

(h) Services to veterans

The Secretary shall enter into an agreement with the Secretary of the Department of Veterans Affairs to ensure that appropriate provision will be made for the furnishing, through demonstration projects, of services to eligible veterans, under contract with the Department of Veterans Affairs pursuant to section 1720 of title 38.

(July 1, 1944, ch. 373, title XXIV, § 2421, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3088; amended Oct. 25, 1988, Pub. L. 100–527, § 10(1), (2), 102 Stat. 2640, 2641; Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(h), 102 Stat. 4241; Aug. 6, 1991, Pub. L. 102–83, § 5(c)(2), 105 Stat. 406.)

AMENDMENTS

1991—Subsec. (h). Pub. L. 102–83 substituted ''section 1720 of title 38'' for ''section 620 of title 38''.

1988—Subsec. (a)(1). Pub. L. 100–690, § 2618(h)(1), substituted '' 'individuals infected with the etiologic agent for acquired immune deficiency syndrome' means individuals who'' for '' 'patients infected with the human immunodeficiency virus' means persons who'' and ''such individuals with such etiologic agent'' for ''such person with the human immunodeficiency virus''.

Subsec. (a)(2). Pub. L. 100–690, § 2618(h)(2), substituted ''individuals'' for ''persons''.

Subsec. (b). Pub. L. 100–690, § 2618(h)(3), substituted ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' for ''patients infected with the human immunodeficiency virus'' and ''such individuals'' for ''such patients''.

Subsec. (c)(1). Pub. L. 100–690, § 2618(h)(4)(A), in introductory provisions substituted ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' for ''patients infected with the human immunodeficiency virus''.

Subsec. (c)(1)(A). Pub. L. 100–690, § 2618(h)(4)(B), substituted in introductory provisions ''such individuals'' for ''such patients'', in cl. (ii) ''individuals with acquired immune deficiency syndrome'' for ''AIDS patients'', and in cl. (iii) ''such individuals'' for ''patients''.

Subsec. (c)(1)(B), (2)(C). Pub. L. 100–690, § 2618(h)(4)(C), (5), substituted ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' for ''patients infected with the human immunodeficiency virus''.

Subsec. (d)(2)(B). Pub. L. 100–690, § 2618(h)(6), substituted ''cases of acquired immune deficiency syndrome'' for ''AIDS cases''.

Subsec. (e)(2)(A). Pub. L. 100–690, § 2618(h)(7), substituted ''individuals infected with the etiologic agent for acquired immune deficiency syndrome'' for ''pa-

tients infected with the human immunodeficiency virus''.

Subsec. (f)(1). Pub. L. 100–690, § 2618(h)(8), substituted ''acquired immune deficiency syndrome'' for ''the acquired immunodeficiency syndrome'' and ''etiologic agent for such syndrome'' for ''human immunodeficiency virus''.

Subsec. (f)(2). Pub. L. 100–690, § 2618(h)(9), substituted ''such syndrome'' for ''the acquired immunodeficiency syndrome''.

Subsec. (g)(1). Pub. L. 100–690, § 2618(h)(10), substituted ''fiscal year 1989'' for ''fiscal year 1988'' and ''fiscal years 1990 through 1992'' for ''fiscal years 1989 through 1991''.

Subsec. (h). Pub. L. 100–527 substituted ''Secretary of the Department of Veterans Affairs'' and ''Department of Veterans Affairs'' for ''Administrator of the Veterans' Administration'' and ''Veterans' Administration'', respectively.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

Amendment by Pub. L. 100–527 effective Mar. 15, 1989, see section 18(a) of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

PART C—OTHER HEALTH SERVICES

CODIFICATION

Prior to revision by Pub. L. 102–321, this part was comprised of subpart I, consisting of sections 300dd–31 to 300dd–33, and subpart II, consisting of section 300dd–41.

§ 300dd–31. Grants for anonymous testing

The Secretary may make grants to the States for the purpose of providing opportunities for individuals—

(1) to undergo counseling and testing with respect to the etiologic agent for acquired immune deficiency syndrome without being required to provide any information relating to the identity of the individuals; and

(2) to undergo such counseling and testing through the use of a pseudonym.

(July 1, 1944, ch. 373, title XXIV, § 2431, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3090.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300dd–32, 300dd–33 of this title.

§ 300dd–32. Requirement of provision of certain counseling services

(a) Counseling before testing

The Secretary may not make a grant under section 300dd–31 of this title to a State unless the State agrees that, before testing an individual pursuant to such section, the State will provide to the individual appropriate counseling with respect to acquired immune deficiency syndrome (based on the most recent scientific data relating to such syndrome), including—

(1) measures for the prevention of exposure to, and the transmission of, the etiologic agent for such syndrome;

(2) the accuracy and reliability of the results of such testing;

(3) the significance of the results of such testing, including the potential for developing acquired immune deficiency syndrome; and

(4) encouraging individuals, as appropriate, to undergo testing for such etiologic agent and providing information on the benefits of such testing.

(b) Counseling of individuals with negative test results

The Secretary may not make a grant under section 300dd–31 of this title to a State unless the State agrees that, if the results of testing conducted pursuant to such section indicate that an individual is not infected with the etiologic agent for acquired immune deficiency syndrome, the State will review for the individual the information provided pursuant to subsection (a) of this section with respect to such syndrome, including—

(1) the information described in paragraphs (1) through (3) of such subsection; and

(2) the appropriateness of further counseling, testing, and education of the individual with respect to acquired immune deficiency syndrome.

(c) Counseling of individuals with positive test results

The Secretary may not make a grant under section 300dd–31 of this title to a State unless the State agrees that, if the results of testing conducted pursuant to such section indicate that an individual is infected with the etiologic agent for acquired immune deficiency syndrome, the State will provide to the individual appropriate counseling with respect to such syndrome, including—

(1) reviewing the information described in paragraphs (1) through (3) of subsection (a) of this section;

(2) reviewing the appropriateness of further counseling, testing, and education of the individual with respect to acquired immune deficiency syndrome;

(3) the importance of not exposing others to the etiologic agent for acquired immune deficiency syndrome;

(4) the availability in the geographic area of any appropriate services with respect to health care, including mental health care and social and support services;

(5) the benefits of locating and counseling any individual by whom the infected individual may have been exposed to the etiologic agent for acquired immune deficiency syndrome and any individual whom the infected individual may have exposed to such etiologic agent; and

(6) the availability, if any, of the services of public health authorities with respect to locating and counseling any individual described in paragraph (5).

(d) Rule of construction with respect to counseling without testing

Agreements entered into pursuant to subsections (a) through (c) of this section may not

be construed to prohibit any grantee under section 300dd–31 of this title from expending the grant for the purpose of providing counseling services described in such subsections to an individual who will not undergo testing described in such section as a result of the grantee or the individual determining that such testing of the individual is not appropriate.

(e) Use of funds

(1) The purpose of this subpart[1] is to provide for counseling and testing services to prevent and reduce exposure to, and transmission of, the etiologic agent for acquired immune deficiency syndrome.

(2) All individuals receiving counseling pursuant to this subpart[1] are to be counseled about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(3) None of the fund appropriated to carry out this subpart[1] may be used to provide counseling that is designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous drug abuse.

(4) Paragraph (3) may not be construed to prohibit a counselor who has already performed the counseling of an individual required by paragraph (2), to provide accurate information about means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.

(July 1, 1944, ch. 373, title XXIV, § 2432, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3090; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2618(i), 102 Stat. 4242; July 10, 1992, Pub. L. 102–321, title I, § 118(b)(1)(B), 106 Stat. 348.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–321, which directed the substitution of ''part'' for ''subpart'' wherever appearing in subsec. (a), could not be executed because the word ''subpart'' does not appear in subsec. (a).

1988—Subsec. (c). Pub. L. 100–690, § 2618(i)(1), substituted ''indicate that an individual'' for ''indicate that the individual'' in introductory provisions and ''paragraph (5)'' for ''paragraph (4)'' in par. (6).

Subsec. (e)(1) to (3). Pub. L. 100–690, § 2618(i)(2), substituted ''subpart'' for ''part''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–321 effective Oct. 1, 1992, with provision for programs providing financial assistance, see section 801(c), (d) of Pub. L. 102–321, set out as a note under section 236 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300dd–33. Funding

For the purpose of grants under section 300dd–31 of this title, there are authorized to be appropriated $100,000,000 for each of the fiscal years 1989 and 1990.

(July 1, 1944, ch. 373, title XXIV, § 2433, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3091.)

[1] So in original. Probably should be ''part''.

§ 300dd–41. Transferred

CODIFICATION

Section, act July 1, 1944, ch. 373, title XXIV, § 2441, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 211, 102 Stat. 3092, which related to demonstration projects for individuals with positive AIDS test results, was renumbered section 520B of act July 1, 1944, by Pub. L. 102–321, title I, § 118(a), July 10, 1992, 106 Stat. 348, and was transferred to section 290bb–33 of this title.

SUBCHAPTER XXIII—PREVENTION OF ACQUIRED IMMUNE DEFICIENCY SYNDROME

§ 300ee. Use of funds

(a) In general

The purpose of this subchapter is to provide for the establishment of education and information programs to prevent and reduce exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

(b) Contents of programs

All programs of education and information receiving funds under this subchapter shall include information about the harmful effects of promiscuous sexual activity and intravenous substance abuse, and the benefits of abstaining from such activities.

(c) Limitation

None of the funds appropriated to carry out this subchapter may be used to provide education or information designed to promote or encourage, directly, homosexual or heterosexual sexual activity or intravenous substance abuse.

(d) Construction

Subsection (c) of this section may not be construed to restrict the ability of an education program that includes the information required in subsection (b) of this section to provide accurate information about various means to reduce an individual's risk of exposure to, or the transmission of, the etiologic agent for acquired immune deficiency syndrome, provided that any informational materials used are not obscene.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2500, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3093; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2619(a), 102 Stat. 4242; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–690 substituted ''this subchapter'' for ''this part''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–1. Establishment of office with respect to minority health and acquired immune deficiency syndrome

The Secretary of Health and Human Services, acting through the Director of the Centers for Disease Control and Prevention, shall establish an office for the purpose of ensuring that, in carrying out the duties of the Secretary with re-

spect to prevention of acquired immune deficiency syndrome, the Secretary develops and implements prevention programs targeted at minority populations and provides appropriate technical assistance in the implementation of such programs.

(Pub. L. 100–607, title II, § 252, Nov. 4, 1988, 102 Stat. 3108; Pub. L. 102–531, title III, § 312(e)(2), Oct. 27, 1992, 106 Stat. 3506.)

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Extension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1992—Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

REQUIREMENT OF STUDY WITH RESPECT TO MINORITY HEALTH AND ACQUIRED IMMUNE DEFICIENCY SYNDROME

Section 251 of Pub. L. 100–607, as amended by Pub. L. 100–690, title II, § 2602(b), Nov. 18, 1988, 102 Stat. 4234, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services, acting through the Director of the Office of Minority Health, shall conduct a study for the purpose of determining—

''(1) the level of knowledge within minority communities concerning acquired immune deficiency syndrome, the risks of the transmission of the etiologic agent for such syndrome, and the means of reducing such risk; and

''(2) the effectiveness of Federal, State, and local prevention programs with respect to acquired immune deficiency syndrome in minority communities.

''(b) REPORT.—The Secretary shall, not later than 12 months after the date of the enactment of this title [Nov. 4, 1988], complete the study required in subsection (a) and submit to the Congress a report describing the findings made as a result of the study.''

§ 300ee–2. Information for health and public safety workers

(a) Development and dissemination of guidelines

Not later than 90 days after November 4, 1988, the Secretary of Health and Human Services (hereafter in this section referred to as the ''Secretary''), acting through the Director of the Centers for Disease Control and Prevention, shall develop, issue, and disseminate emergency guidelines to all health workers and public safety workers (including emergency response employees) in the United States concerning—

(1) methods to reduce the risk in the workplace of becoming infected with the etiologic agent for acquired immune deficiency syndrome; and

(2) circumstances under which exposure to such etiologic agent may occur.

(b) Use in occupational standards

The Secretary shall transmit the guidelines issued under subsection (a) of this section to the Secretary of Labor for use by the Secretary of Labor in the development of standards to be issued under the Occupational Safety and Health Act of 1970 [29 U.S.C. 651 et seq.].

(c) Development and dissemination of model curriculum for emergency response employees

(1) Not later than 90 days after November 4, 1988, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall develop a model curriculum for emergency response employees with respect to the prevention of exposure to the etiologic agent for acquired immune deficiency syndrome during the process of responding to emergencies.

(2) In carrying out paragraph (1), the Secretary shall consider the guidelines issued by the Secretary under subsection (a) of this section.

(3) The model curriculum developed under paragraph (1) shall, to the extent practicable, include—

(A) information with respect to the manner in which the etiologic agent for acquired immune deficiency syndrome is transmitted; and

(B) information that can assist emergency response employees in distinguishing between conditions in which such employees are at risk with respect to such etiologic agent and conditions in which such employees are not at risk with respect[1] such etiologic agent.

(4) The Secretary shall establish a task force to assist the Secretary in developing the model curriculum required in paragraph (1). The Secretary shall appoint to the task force representatives of the Centers for Disease Control and Prevention, representatives of State governments, and representatives of emergency response employees.

(5) The Secretary shall—

(A) transmit to State public health officers copies of the guidelines and the model curriculum developed under paragraph (1) with the request that such officers disseminate such copies as appropriate throughout the State; and

(B) make such copies available to the public.

(Pub. L. 100–607, title II, § 253, Nov. 4, 1988, 102 Stat. 3108; Pub. L. 100–690, title II, § 2602(c), Nov. 18, 1988, 102 Stat. 4234; Pub. L. 102–531, title III, § 312(e)(3), Oct. 27, 1992, 106 Stat. 3506.)

REFERENCES IN TEXT

The Occupational Safety and Health Act of 1970, referred to in subsec. (b), is Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Extension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1992—Subsecs. (a), (c)(1), (4). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1988—Subsec. (a). Pub. L. 100–690 substituted ''health workers and public safety workers'' for ''health workers, public safety workers''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved

[1] So in original. Probably should be ''respect to''.

Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

GUIDELINES FOR PREVENTION OF TRANSMISSION OF HUMAN IMMUNODEFICIENCY AND HEPATITIS B VIRUSES DURING INVASIVE PROCEDURES

Pub. L. 102–141, title VI, § 633, Oct. 28, 1991, 105 Stat. 876, provided that: ''Notwithstanding any other provision of law, each State Public Health Official shall, not later than one year after the date of enactment of this Act [Oct. 28, 1991], certify to the Secretary of Health and Human Services that guidelines issued by the Centers for Disease Control, or guidelines which are equivalent to those promulgated by the Centers for Disease Control concerning recommendations for preventing the transmission of the human immunodeficiency virus and the hepatitis B virus during exposure prone invasive procedures, except for emergency situations when the patient's life or limb is in danger, have been instituted in the State. State guidelines shall apply to health professionals practicing within the State and shall be consistent with Federal law. Compliance with such guidelines shall be the responsibility of the State Public Health Official. Said responsibilities shall include a process for determining what appropriate disciplinary or other actions shall be taken to ensure compliance. If such certification is not provided under this section within the one-year period, the State shall be ineligible to receive assistance under the Public Health Service Act (42 U.S.C. 301 [201] et seq.) until such certification is provided, except that the Secretary may extend the time period for a State, upon application of such State, that additional time is required for instituting said guidelines.''

[Centers for Disease Control changed to Centers for Disease Control and Prevention by Pub. L. 102–531, title III, § 312, Oct. 27, 1992, 106 Stat. 3504.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ee–12, 300ff–80 of this title.

§ 300ee–3. Continuing education for health care providers

(a) In general

The Secretary of Health and Human Services (hereafter in this section referred to as the ''Secretary'') may make grants to nonprofit organizations composed of, or representing, health care providers to assist in the payment of the costs of projects to train such providers concerning—

(1) appropriate infection control procedures to reduce the transmission of the etiologic agent for acquired immune deficiency syndrome; and

(2) the provision of care and treatment to individuals with such syndrome or related illnesses.

(b) Limitation

The Secretary may make a grant under subsection (a) of this section to an entity only if the entity will provide services under the grant in a geographic area, or to a population of individuals, not served by a program substantially similar to the program described in subsection (a) of this section.

(c) Requirement of matching funds

(1) The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees, with respect to the costs to be incurred by the applicant in carrying out the purpose described in such subsection, to make available, directly or through donations from public or private entities, non-Federal contributions (in cash or in kind under paragraph (2)) toward such costs in an amount equal to not less than $2 for each $1 of Federal funds provided in such payments.

(2) Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, or services assisted or subsidized to any significant extent by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(d) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless—

(1) an application for the grant is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(e) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1989 through 1991.

(Pub. L. 100–607, title II, § 254, Nov. 4, 1988, 102 Stat. 3109.)

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Extension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

§ 300ee–4. Technical assistance

The Secretary of Health and Human Services shall provide technical assistance to public and nonprofit private entities carrying out programs, projects, and activities relating to acquired immune deficiency syndrome.

(Pub. L. 100–607, title II, § 255, Nov. 4, 1988, 102 Stat. 3110.)

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Extension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

§ 300ee–5. Use of funds to supply hypodermic needles or syringes for illegal drug use; prohibition

None of the funds provided under this Act or an amendment made by this Act shall be used to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for acquired immune deficiency syndrome.

(Pub. L. 100–607, title II, § 256(b), Nov. 4, 1988, 102 Stat. 3110; Pub. L. 100–690, title II, § 2602(d)(1), Nov. 18, 1988, 102 Stat. 4234.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 100–607, Nov. 4, 1988, 102 Stat. 3048, as amended, known as the ''Health Omnibus Programs Extension of 1988''. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the AIDS Amendments of 1988 and as part of the Health Omnibus Programs Extension of 1988, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1988—Pub. L. 100–690 substituted ''Surgeon General of the Public Health Service'' for ''Surgeon General of the United States''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300x–31 of this title.

§ 300ee–6. Transferred

CODIFICATION

Section, Pub. L. 100–607, title IX, § 902, Nov. 4, 1988, 102 Stat. 3171; Pub. L. 100–690, title II, § 2605(a), Nov. 18, 1988, 102 Stat. 4234, which provided for testing of State prisoners, was renumbered section 2648 of the Public Health Service Act by Pub. L. 101–381, title III, § 301(b)(1), Aug. 18, 1990, 104 Stat. 615, and is classified to section 300ff–48 of this title.

PART A—FORMULA GRANTS TO STATES

§ 300ee–11. Establishment of program

(a) Allotments for States

For the purpose described in subsection (b) of this section, the Secretary shall for each of the fiscal years 1989 through 1991 make an allotment for each State in an amount determined in accordance with section 300ee–17 of this title. The Secretary shall make payments each such fiscal year to each State from the allotment for the State if the Secretary approves for the fiscal year involved an application submitted by the State pursuant to section 300ee–13 of this title.

(b) Purpose of grants

The Secretary may not make payments under subsection (a) of this section for a fiscal year unless the State involved agrees to expend the payments only for the purpose of carrying out, in accordance with section 300ee–12 of this title, public information activities with respect to acquired immune deficiency syndrome.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2501, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3093; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2501 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ee–12, 300ee–13, 300ee–14, 300ee–15, 300ee–16, 300ee–17, 300ee–18, 300ee–19, 300ee–20, 300ee–24 of this title.

§ 300ee–12. Provisions with respect to carrying out purpose of grants

A State may expend payments received under section 300ee–11(a) of this title—

(1) to develop, establish, and conduct public information activities relating to the prevention and diagnosis of acquired immune deficiency syndrome for those populations or communities in the State in which there are a significant number of individuals at risk of infection with the etiologic agent for such syndrome;

(2) to develop, establish, and conduct such public information activities for the general public relating to the prevention and diagnosis of such syndrome;

(3) to develop, establish, and conduct activities to reduce risks relating to such syndrome, including research into the prevention of such syndrome;

(4) to conduct demonstration projects for the prevention of such syndrome;

(5) to provide technical assistance to public entities, to nonprofit private entities concerned with such syndrome, to schools, and to employers, for the purpose of developing information programs relating to such syndrome;

(6) with respect to education and training programs for the prevention of such syndrome, to conduct such programs for health professionals (including allied health professionals), public safety workers (including emergency response employees), teachers, school administrators, and other appropriate education personnel;

(7) to conduct appropriate programs for educating school-aged children with respect to such syndrome, after consulting with local school boards;

(8) to make available to physicians and dentists in the State information with respect to acquired immune deficiency syndrome, including measures for the prevention of exposure to, and the transmission of, the etiologic agent for such syndrome (which information is updated not less than annually with the most recently available scientific date[1] relating to such syndrome);

(9) to carry out the initial implementation of recommendations contained in the guidelines and the model curriculum developed under section 300ee–2 of this title; and

(10) to make grants to public entities, and to nonprofit private entities concerned with acquired immune deficiency syndrome, for the purpose of the development, establishment, and expansion of programs for education directed toward individuals at increased risk of infection with the etiologic agent for such syndrome and activities to reduce the risks of exposure to such etiologic agent, with preference to programs directed toward populations in which there is significant evidence of such infection.

[1] So in original. Probably should be ''data''.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2502, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3094; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2619(b), 102 Stat. 4242; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2502 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238a of this title.

AMENDMENTS

1988—Par. (9). Pub. L. 100–690 made technical amendment to reference to section 300ee–2 of this title to correct reference to corresponding provision of original act.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ee–11, 300ee–16 of this title.

§ 300ee–13. Requirement of submission of application containing certain agreements and assurances

(a) In general

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless—

(1) the State involved submits to the Secretary a description of the purposes for which the State intends to expend the payments for the fiscal year;

(2) the description identifies the populations, areas, and localities in the State with a need for the services for which amounts may be provided by the State under this part;

(3) the description provides information relating to the programs and activities to be supported and services to be provided, including a description of the manner in which such programs and activities will be coordinated with any similar programs and activities of public and private entities;

(4) the State submits to the Secretary an application for the payments containing agreements in accordance with this part;

(5) the agreements are made through certification from the chief executive officer of the State;

(6) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary; and

(7) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(b) Opportunity for public comment

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that, in developing and carrying out the description required in subsection (a) of this section, the State will provide public notice with respect to the description (including any revisions) and will facilitate comments from interested persons.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2503, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3095; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2619(c), 102 Stat. 4242; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2503 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238b of this title.

AMENDMENTS

1988—Subsec. (a)(3). Pub. L. 100–690 struck out ''and'' after semicolon.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ee–11, 300ee–15, 300ee–17, 300ee–18 of this title.

§ 300ee–14. Restrictions on use of grant

(a) In general

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that the payments will not be expended—

(1) to provide inpatient services;

(2) to make cash payments to intended recipients of services;

(3) to purchase or improve real property (other than minor remodeling of existing improvements to real property) or to purchase major medical equipment; or

(4) to satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds.

(b) Limitation on administrative expenses

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that the State will not expend more than 5 percent of the payments for administrative expenses with respect to carrying out the purpose described in section 300ee–11(b) of this title.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2504, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3095; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2504 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238c of this title.

§ 300ee–15. Requirement of reports and audits by States

(a) Reports

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees to prepare and submit to the Secretary an annual report in

such form and containing such information as the Secretary determines to be necessary for—

(1) securing a record and a description of the purposes for which payments received by the State pursuant to such section were expended and of the recipients of such payments;

(2) determining whether the payments were expended in accordance with the needs within the State required to be identified pursuant to section 300ee–13(a)(2) of this title;

(3) determining whether the payments were expended in accordance with the purpose described in section 300ee–11(b) of this title; and

(4) determining the percentage of payments received pursuant to such section that were expended by the State for administrative expenses during the preceding fiscal year.

(b) Audits

(1) The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees to establish such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursal of, and accounting for, amounts received by the State under such section.

(2) The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that—

(A) the State will provide for—

(i) a financial and compliance audit of such payments; or

(ii) a single financial and compliance audit of each entity administering such payments;

(B) the audit will be performed biennially and will cover expenditures in each fiscal year; and

(C) the audit will be conducted in accordance with standards established by the Comptroller General of the United States for the audit of governmental organizations, programs, activities, and functions.

(3) The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that, not later than 30 days after the completion of an audit under paragraph (2), the State will provide a copy of the audit report to the State legislature.

(4) For purposes of paragraph (2), the term ''financial and compliance audit'' means an audit to determine whether the financial statements of an audited entity present fairly the financial position, and the results of financial operations, of the entity in accordance with generally accepted accounting principles, and whether the entity has complied with laws and regulations that may have a material effect upon the financial statements.

(c) Availability to public

The Secretary may not make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees to make copies of the reports and audits described in this section available for public inspection.

(d) Evaluations by Comptroller General

The Comptroller General of the United States shall, from time to time, evaluate the expenditures by States of payments received under section 300ee–11(a) of this title in order to ensure that expenditures are consistent with the provisions of this part.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2505, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3095; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2619(d), 102 Stat. 4242; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2505 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238d of this title.

AMENDMENTS

1988—Subsec. (b)(1), (2). Pub. L. 100–690 substituted ''make payments'' for ''payments''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–16. Additional required agreements

(a) In general

The Secretary may not, except as provided in subsection (b) of this section, make payments under section 300ee–11(a) of this title for a fiscal year unless the State involved agrees that—

(1) all programs conducted or supported by the State with such payments will establish objectives for the program and will determine the extent to which the objectives are met;

(2) information provided under this part will be scientifically accurate and factually correct;

(3) in carrying out section 300ee–11(b) of this title, the State will give priority to programs described in section 300ee–12(10) of this title for individuals described in such section;

(4) with respect to a State in which there is a substantial number of individuals who are intravenous substance abusers, the State will place priority on activities under this part directed at such substance abusers;

(5) with respect to a State in which there is a significant incidence of reported cases of acquired immune deficiency syndrome, the State will—

(A) for the purpose described in subsection (b) of section 300ee–11 of this title, expend not less than 50 percent of payments received under subsection (a) of such section for a fiscal year—

(i) to make grants to public entities, to migrant health centers (as defined in section 254b(a) of this title), to community health centers (as defined in section 254c(a) of this title), and to nonprofit private entities concerned with acquired immune deficiency syndrome; or

(ii) to enter into contracts with public and private entities; and

(B) of the amounts reserved for a fiscal year by the State for expenditures required in subparagraph (A), expend not less than 50 percent to carry out section 300ee–12(10) of this title through grants to nonprofit pri-

vate entities, including minority entities, concerned with acquired immune deficiency syndrome located in and representative of communities and subpopulations reflecting the local incidence of such syndrome;

(6) with respect to programs carried out pursuant to section 300ee–12(10) of this title, the State will ensure that any applicant for a grant under such section agrees—

(A) that any educational or informational materials developed with a grant pursuant to such section will contain material, and be presented in a manner, that is specifically directed toward the group for which such materials are intended;

(B) to provide a description of the manner in which the applicant has planned the program in consultation with, and of the manner in which such applicant will consult during the conduct of the program with—

(i) appropriate local officials and community groups for the area to be served by the program;

(ii) organizations comprised of, and representing, the specific population to which the education or prevention effort is to be directed; and

(iii) individuals having expertise in health education and in the needs of the population to be served;

(C) to provide information demonstrating that the applicant has continuing relationships, or will establish continuing relationships, with a portion of the population in the service area that is at risk of infection with the etiologic agent for acquired immune deficiency syndrome and with public and private entities in such area that provide health or other support services to individuals with such infection;

(D) to provide a description of—

(i) the objectives established by the applicant for the conduct of the program; and

(ii) the methods the applicant will use to evaluate the activities conducted under the program to determine if such objectives are met; and

(E) such other information as the Secretary may prescribe;

(7) with respect to programs carried out pursuant to section 300ee–12(10) of this title, the State will give preference to any applicant for a grant pursuant to such section that is located in, has a history of service in, and will serve under the program, any geographic area in which—

(A) there is a significant incidence of acquired immune deficiency syndrome;

(B) there has been a significant increase in the incidence of such syndrome; or

(C) there is a significant risk of becoming infected with the etiologic agent for such syndrome;

(8) the State will establish reasonable criteria to evaluate the effective performance of entities that receive funds from payments made to the State under section 300ee–11(a) of this title and will establish procedures for procedural and substantive independent State review of the failure by the State to provide funds for any such entity;

(9) the State will permit and cooperate with Federal investigations undertaken in accordance with section 300ee–18(e) of this title;

(10) the State will maintain State expenditures for services provided pursuant to section 300ee–11 of this title at a level equal to not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payments.

(b) "Significant percentage" defined

For purposes of subsection (a)(5) of this section, the term ''significant percentage'' means at least a percentage of 1 percent of the number of reported cases of acquired immune deficiency syndrome in the United States.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2506, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3097; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2619(d) [(e)], 102 Stat. 4243; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2506 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238e of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–690, § 2619(d)(1) [(e)(1)], designated existing provisions as subsec. (a).

Subsec. (a)(5). Pub. L. 100–690, § 2619(d)(2) [(e)(2)], struck out concluding provisions which read as follows: ''(For purposes of this section, the term 'significant percentage' means at least a percentage of 1 percent of the number of reported cases of such syndrome in the United States);''.

Subsec. (a)(8). Pub. L. 100–690, § 2619(d)(3) [(e)(3)], substituted ''funds from payments'' for ''funds from to payments'' and struck out ''and'' after semicolon.

Subsec. (a)(9). Pub. L. 100–690, § 2619(d)(4) [(e)(4)], substituted ''section 300ee–18(e) of this title'' for ''section 300ee–19(e) of this title''.

Subsec. (b). Pub. L. 100–690, § 2619(d)(5) [(e)(5)], added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–17. Determination of amount of allotments for States

(a) Minimum allotment

Subject to the extent of amounts made available in appropriation Acts, the allotment for a State under section 300ee–11(a) of this title for a fiscal year shall be the greater of—

(1) the applicable amount specified in subsection (b) of this section; or

(2) the amount determined in accordance with subsection (c) of this section.

(b) Determination of minimum allotment

(1) If the total amount appropriated under section 300ee–24(a) of this title for a fiscal year exceeds $100,000,000, the amount referred to in subsection (a)(1) of this section shall be $300,000 for the fiscal year.

(2) If the total amount appropriated under section 300ee–24(a) of this title for a fiscal year equals or exceeds $50,000,000, but is less than $100,000,000, the amount referred to in subsection (a)(1) of this section shall be $200,000 for the fiscal year.

(3) If the total amount appropriated under section 300ee–24(a) of this title for a fiscal year is less than $50,000,000, the amount referred to in subsection (a)(1) of this section shall be $100,000 for the fiscal year.

(c) Determination under formula

(1) The amount referred to in subsection (a)(2) of this section is the sum of—

(A) the amount determined under paragraph (2); and

(B) the amount determined under paragraph (3).

(2) The amount referred to in paragraph (1)(A) is the product of—

(A) an amount equal to 50 percent of the amounts appropriated pursuant to section 300ee–24(a) of this title; and

(B) a percentage equal to the quotient of—

(i) the population of the State involved; divided by

(ii) the population of the United States.

(3) The amount referred to in paragraph (1)(B) is the product of—

(A) an amount equal to 50 percent of the amounts appropriated pursuant to section 300ee–24(a) of this title; and

(B) a percentage equal to the quotient of—

(i) the number of additional cases of acquired immune deficiency syndrome reported to and confirmed by the Secretary for the State involved for the most recent fiscal year for which such data is available; divided by

(ii) the number of additional cases of such syndrome reported to and confirmed by the Secretary for the United States for such fiscal year.

(d) Disposition of certain funds appropriated for allotments

(1) Amounts described in paragraph (2) shall be allotted by the Secretary to States receiving payments under section 300ee–11(a) of this title for the fiscal year (other than any State referred to in paragraph (2)(C)). Such amounts shall be allotted according to a formula established by the Secretary. The formula shall be equivalent to the formula described in this section under which the allotment under section 300ee–11(a) of this title for the State for the fiscal year involved was determined.

(2) The amounts referred to in paragraph (1) are any amounts that are not paid to States under section 300ee–11(a) of this title as a result of—

(A) the failure of any State to submit an application under section 300ee–13 of this title;

(B) the failure, in the determination of the Secretary, of any State to prepare within a reasonable period of time such application in compliance with such section; or

(C) any State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2507, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3098; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2619(e) [(f)], 102 Stat. 4243; renumbered title XXV and amended Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), (2), 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2507 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238f of this title.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–93, § 5(e)(2), substituted ''Subject to the extent of amounts made available in appropriation Acts, the allotment'' for ''The allotment''.

1988—Subsec. (a)(1). Pub. L. 100–690, § 2619(e)(1) [(f)(1)], substituted ''applicable amount specified'' for ''amount described''.

Subsec. (b)(1). Pub. L. 100–690, § 2619(e)(2)(A)(i) [(f)(2)(A)(i)], made technical amendment to reference to section 300ee–24(a) of this title to correct reference to corresponding provision of original act.

Pub. L. 100–690, § 2619(e)(2)(A)(ii) [(f)(2)(A)(ii)], substituted ''subsection (a)(1) of this section shall be'' for ''subsection (a)(1) of this section is''.

Subsec. (b)(2), (3). Pub. L. 100–690, § 2619(e)(2)(B), (C) [(f)(2)(B), (C)], substituted ''subsection (a)(1) of this section shall be'' for ''subsection (a)(1) of this section is''.

Subsec. (d). Pub. L. 100–690, § 2619(e)(3) [(f)(3)], substituted ''allotment under section 300ee–11(a) of this title'' for ''allotment'' in par. (1) and ''section 300ee–13 of this title'' for ''section 300ee–17 of this title'' in par. (2)(A).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ee–11 of this title.

§ 300ee–18. Failure to comply with agreements

(a) Repayment of payments

(1) The Secretary may, subject to subsection (c) of this section, require a State to repay any payments received by the State under section 300ee–11(a) of this title that the Secretary determines were not expended by the State in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 300ee–13 of this title.

(2) If a State fails to make a repayment required in paragraph (1), the Secretary may offset the amount of the repayment against the amount of any payment due to be paid to the State under section 300ee–11(a) of this title.

(b) Withholding of payments

(1) The Secretary may, subject to subsection (c) of this section, withhold payments due under section 300ee–11(a) of this title if the Secretary determines that the State involved is not expending amounts received under such section in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 300ee–13 of this title.

(2) The Secretary shall cease withholding payments from a State under paragraph (1) if the

Secretary determines that there are reasonable assurances that the State will expend amounts received under section 300ee–11(a) of this title in accordance with the agreements referred to in such paragraph.

(3) The Secretary may not withhold funds under paragraph (1) from a State for a minor failure to comply with the agreements referred to in such paragraph.

(c) Opportunity for hearing

Before requiring repayment of payments under subsection (a)(1) of this section, or withholding payments under subsection (b)(1) of this section, the Secretary shall provide to the State an opportunity for a hearing conducted within the State.

(d) Prompt response to serious allegations

The Secretary shall promptly respond to any complaint of a substantial or serious nature that a State has failed to expend amounts received under section 300ee–11(a) of this title in accordance with the agreements required to be contained in the application submitted by the State pursuant to section 300ee–13 of this title.

(e) Investigations

(1) The Secretary shall conduct in several States in each fiscal year investigations of the expenditure of payments received by the States under section 300ee–11(a) of this title in order to evaluate compliance with the agreements required to be contained in the applications submitted to the Secretary pursuant to section 300ee–13 of this title.

(2) The Comptroller General of the United States may conduct investigations of the expenditure of funds received under section 300ee–11(a) of this title by a State in order to ensure compliance with the agreements referred to in paragraph (1).

(3) Each State, and each entity receiving funds from payments made to a State under section 300ee–11(a) of this title, shall make appropriate books, documents, papers, and records available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for examination, copying, or mechanical reproduction on or off the premises of the appropriate entity upon a reasonable request therefor.

(4)(A) In conducting any investigation in a State, the Secretary and the Comptroller General of the United States may not make a request for any information not readily available to the State, or to an entity receiving funds from payments made to the State under section 300ee–11(a) of this title, or make an unreasonable request for information to be compiled, collected, or transmitted in any form not readily available.

(B) Subparagraph (A) shall not apply to the collection, compilation, or transmittal of data in the course of a judicial proceeding.

(July 1, 1944, ch. 373, title XXV, formerly title XV, §2508, as added Nov. 4, 1988, Pub. L. 100–607, title II, §221, 102 Stat. 3099; amended Nov. 18, 1988, Pub. L. 100–690, title II, §2619(f) [(g)], 102 Stat. 4243; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, §5(e)(1), 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2508 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238g of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–690, §2619(f)(1) [(g)(1)], substituted ''300ee–13 of this title'' for ''300ee–17 of this title''.

Subsec. (b). Pub. L. 100–690, §2619(f)(2) [(g)(2)], inserted ''of payments'' after ''Withholding'' in heading and substituted ''300ee–13 of this title'' for ''300ee–17 of this title'' in par. (1).

Subsecs. (d), (e)(1). Pub. L. 100–690, §2619(f)(3), (4) [(g)(3), (4)], substituted ''300ee–13 of this title'' for ''300ee–17 of this title''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ee–16 of this title.

§ 300ee–19. Prohibition against certain false statements

(a) In general

(1) A person may not knowingly make or cause to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which amounts may be paid by a State from payments received by the State under section 300ee–11(a) of this title.

(2) A person with knowledge of the occurrence of any event affecting the right of the person to receive any amounts from payments made to the State under section 300ee–11(a) of this title may not conceal or fail to disclose any such event with the intent of fraudulently securing such amounts.

(b) Criminal penalty for violation of prohibition

Any person who violates a prohibition established in subsection (a) of this section may for each violation be fined in accordance with title 18, or imprisoned for not more than 5 years, or both.

(July 1, 1944, ch. 373, title XXV, formerly title XV, §2509, as added Nov. 4, 1988, Pub. L. 100–607, title II, §221, 102 Stat. 3101; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, §5(e)(1), 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2509 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238h of this title.

§ 300ee–20. Technical assistance and provision by Secretary of supplies and services in lieu of grant funds

(a) Technical assistance

The Secretary may provide training and technical assistance to States with respect to the planning, development, and operation of any program or service carried out pursuant to this part. The Secretary may provide such technical assistance directly or through grants or contracts.

(b) Provision by Secretary of supplies and services in lieu of grant funds

(1) Upon the request of a State receiving payments under this part, the Secretary may, subject to paragraph (2), provide supplies, equipment, and services for the purpose of aiding the State in carrying out such part and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(2) With respect to a request described in paragraph (1), the Secretary shall reduce the amount of payments under section 300ee–11(a) of this title to the State by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2510, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3101; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2619(g) [(h)], 102 Stat. 4243; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2510 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238i of this title.

AMENDMENTS

1988—Subsec. (b)(2). Pub. L. 100–690 substituted ''section 300ee–11(a) of this title'' for ''the program involved''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–21. Evaluations

The Secretary shall, directly or through grants or contracts, evaluate the services provided and activities carried out with payments to States under this part.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2511, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3101; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2511 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238j of this title.

§ 300ee–22. Report by Secretary

The Secretary shall annually prepare a report on the activities of the States carried out pursuant to this part. Such report may include any recommendations of the Secretary for appropriate administrative and legislative initiatives. The report shall be submitted to the Congress through inclusion in the comprehensive report required in section 300cc(a) of this title.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2512, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3101; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2619(h) [(i)], 102 Stat. 4243; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2512 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238k of this title.

AMENDMENTS

1988—Pub. L. 100–690 substituted ''section 300cc(a)'' for ''section 300cc''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

§ 300ee–23. Definition

For purposes of this part, the term ''infection with the etiologic agent for acquired immune deficiency syndrome'' includes any condition arising from such etiologic agent.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2513, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3102; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2513 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238*l* of this title.

§ 300ee–24. Funding

(a) Authorization of appropriations

For the purpose of making allotments under section 300ee–11(a) of this title, there are authorized to be appropriated $165,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

(b) Availability to States

Any amounts paid to a State under section 300ee–11(a) of this title shall remain available to the State until the expiration of the 1-year period beginning on the date on which the State receives such amounts.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2514, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3102; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612.)

PRIOR PROVISIONS

A prior section 2514 of act July 1, 1944, was successively renumbered by subsequent acts, see section 238m of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ee–17 of this title.

PART B—NATIONAL INFORMATION PROGRAMS

§ 300ee–31. Availability of information to general public

(a) Comprehensive information plan

The Secretary, acting through the Director of the Centers for Disease Control and Prevention,

shall annually prepare a comprehensive plan, including a budget, for a National Acquired Immune Deficiency Syndrome Information Program. The plan shall contain provisions to implement the provisions of this subchapter. The Director shall submit such plan to the Secretary. The authority established in this subsection may not be construed to be the exclusive authority for the Director to carry out information activities with respect to acquired immune deficiency syndrome.

(b) Clearinghouse

(1) The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may establish a clearinghouse to make information concerning acquired immune deficiency syndrome available to Federal agencies, States, public and private entities, and the general public.

(2) The clearinghouse may conduct or support programs—

(A) to develop and obtain educational materials, model curricula, and methods directed toward reducing the transmission of the etiologic agent for acquired immune deficiency syndrome;

(B) to provide instruction and support for individuals who provide instruction in methods and techniques of education relating to the prevention of acquired immune deficiency syndrome and instruction in the use of the materials and curricula described in subparagraph (A); and

(C) to conduct, or to provide for the conduct of, the materials, curricula, and methods described in paragraph (1) and the efficacy of such materials, curricula, and methods in preventing infection with the the[1] etiologic agent for acquired immune deficiency syndrome.

(c) Toll-free telephone communications

The Secretary shall provide for the establishment and maintenance of toll-free telephone communications to provide information to, and respond to queries from, the public concerning acquired immune deficiency syndrome. Such communications shall be available on a 24-hour basis.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2521, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3102; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(22), 106 Stat. 3505.)

AMENDMENTS

1992—Subsecs. (a), (b)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ee–34 of this title.

§ 300ee–32. Public information campaigns

(a) In general

The Secretary, acting through the Director of the Centers for Disease Control and Prevention, may make grants to public entities, and to nonprofit private entities concerned with acquired immune deficiency syndrome, and shall enter into contracts with public and private entities, for the development and delivery of public service announcements and paid advertising messages that warn individuals about activities which place them at risk of infection with the etiologic agent for such syndrome.

(b) Requirement of application

The Secretary may not provide financial assistance under subsection (a) of this section unless—

(1) an application for such assistance is submitted to the Secretary;

(2) with respect to carrying out the purpose for which the assistance is to be provided, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2522, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3103; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(23), 106 Stat. 3505.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ee–34 of this title.

§ 300ee–33. Provision of information to underserved populations

(a) In general

The Secretary may make grants to public entities, to migrant health centers (as defined in section 254b(a) of this title), to community health centers (as defined in section 254c(a) of this title), and to nonprofit private entities concerned with acquired immune deficiency syndrome, for the purpose of assisting grantees in providing services to populations of individuals that are underserved with respect to programs providing information on the prevention of exposure to, and the transmission of, the etiologic agent for acquired immune deficiency syndrome.

(b) Preferences in making grants

In making grants under subsection (a) of this section, the Secretary shall give preference to any applicant for such a grant that has the ability to disseminate rapidly the information described in subsection (a) of this section (including any national organization with such ability).

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2523, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3103; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612.)

[1] So in original.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ee–34 of this title.

§ 300ee–34. Authorization of appropriations

(a) In general

For the purpose of carrying out sections 300ee–31 through 300ee–33 of this title, there are authorized to be appropriated $105,000,000 for fiscal year 1989 and such sums as may be necessary for each of the fiscal years 1990 and 1991.

(b) Allocations

(1) Of the amounts appropriated pursuant to subsection (a) of this section, the Secretary shall make available $45,000,000 to carry out section 300ee–32 of this title and $30,000,000 to carry out this part through financial assistance to minority entities for the provision of services to minority populations.

(2) After consultation with the Director of the Office of Minority Health and with the Indian Health Service, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall, not later than 90 days after November 4, 1988, publish guidelines to provide procedures for applications for funding pursuant to paragraph (1) and for public comment.

(July 1, 1944, ch. 373, title XXV, formerly title XV, § 2524, as added Nov. 4, 1988, Pub. L. 100–607, title II, § 221, 102 Stat. 3103; amended Nov. 18, 1988, Pub. L. 100–690, title II, § 2619(i) [(j)], 102 Stat. 4244; renumbered title XXV, Aug. 16, 1989, Pub. L. 101–93, § 5(e)(1), 103 Stat. 612; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(24), 106 Stat. 3505.)

AMENDMENTS

1992—Subsec. (b)(2). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1988—Subsec. (b)(2). Pub. L. 100–690 substituted ''the date of the enactment of the AIDS Amendments of 1988'' for ''the date of the enactment of this section'', which for purposes of codification was translated as ''November 4, 1988''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

SUBCHAPTER XXIV—HIV HEALTH CARE SERVICES PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 256b, 256d of this title.

§ 300ff. Purpose

It is the purpose of this Act to provide emergency assistance to localities that are disproportionately affected by the Human Immunodeficiency Virus epidemic and to make financial assistance available to States and other public or private nonprofit entities to provide for the development, organization, coordination and operation of more effective and cost efficient systems for the delivery of essential services to individuals and families with HIV disease.

(Pub. L. 101–381, § 2, Aug. 18, 1990, 104 Stat. 576.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–381, Aug. 18, 1990, 104 Stat. 576, known as the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, which enacted this subchapter, transferred section 300ee–6 of this title to section 300ff–48 of this title, amended sections 284a, 286, 287a, 287c–2, 289f, 290aa–3a, 299c–5, 300ff–48, and 300aaa to 300aaa–13 [now 238 to 238m] of this title, and enacted provisions set out as notes under sections 201, 300x–4, 300ff–11, 300ff–46, and 300ff–80 of this title. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, and not as part of the Public Health Service Act which comprises this chapter.

§ 300ff–1. Prohibition on use of funds

None of the funds made available under this Act, or an amendment made by this Act, shall be used to provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs.

(Pub. L. 101–381, title IV, § 422, Aug. 18, 1990, 104 Stat. 628.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 101–381, Aug. 18, 1990, 104 Stat. 576, known as the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, which enacted this subchapter, transferred section 300ee–6 of this title to section 300ff–48 of this title, amended sections 284a, 286, 287a, 287c–2, 289f, 290aa–3a, 299c–5, 300ff–48, and 300aaa to 300aaa–13 [now 238 to 238m] of this title, and enacted provisions set out as notes under sections 201, 300x–4, 300ff–11, 300ff–46, and 300ff–80 of this title. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990, and not as part of the Public Health Service Act which comprises this chapter.

PART A—EMERGENCY RELIEF FOR AREAS WITH SUBSTANTIAL NEED FOR SERVICES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300ff–28, 300ff–41, 300ff–51 of this title.

§ 300ff–11. Establishment of program of grants

(a) Eligible areas

The Secretary, acting through the Administrator of the Health Resources and Services Administration, shall, subject to subsection (b) of this section, make grants in accordance with section 300ff–13 of this title for the purpose of assisting in the provision of the services specified in[1] 300ff–14 of this title in any metropolitan area for which, as of June 30, 1990, in the case of grants for fiscal year 1991, and as of March 31 of the most recent fiscal year for which such data is available in the case of a grant for any subsequent fiscal year—

(1) there has been reported to and confirmed by the Director of the Centers for Disease Con-

[1] So in original. Probably should be followed by ''section''.

trol and Prevention a cumulative total of more than 2,000 cases of acquired immune deficiency syndrome; or

(2) the per capita incidence of cumulative cases of such syndrome (computed on the basis of the most recently available data on the population of the area) is not less than 0.0025.

(b) Requirement regarding confirmation of cases

The Secretary may not make a grant under subsection (a) of this section for a metropolitan area unless, before making any payments under the grant, the cases of acquired immune deficiency syndrome reported for purposes of such subsection have been confirmed by the Secretary, acting through the Director of the Centers for Disease Control and Prevention.

(July 1, 1944, ch. 373, title XXVI, § 2601, as added Aug. 18, 1990, Pub. L. 101–381, title I, § 101(3), 104 Stat. 576; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(25), 106 Stat. 3505.)

PRIOR PROVISIONS

A prior section 2601 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238 of this title.

AMENDMENTS

1992—Subsecs. (a)(1), (b). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

STUDY REGARDING HIV DISEASE IN RURAL AREAS

Section 403 of Pub. L. 101–381 provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services, after consultation with the Director of the Office of Rural Health Policy, shall—

''(1) conduct a study for the purpose of estimating the incidence and prevalence in rural areas of cases of acquired immune deficiency syndrome and cases of infection with the etiologic agent for such syndrome; and

''(2) in carrying out such study, determine the adequacy in rural areas of services for diagnosing such cases and providing treatment for such cases that are in the early stages of infection.

''(b) REPORT.—Not later than 1 year after the date of the enactment of this Act [Aug. 18, 1990], the Secretary of Health and Human Services shall complete the study required under subsection (a) and prepare and submit, to the appropriate committees of Congress a report describing the findings made as a result of such study.

''(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, such sums as may be necessary for each of the fiscal years 1991 through 1995.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–12, 300ff–13, 300ff–14, 300ff–15, 300ff–17, 300ff–47 of this title.

§ 300ff–12. Administration and planning council

(a) Administration

(1) In general

Assistance made available under grants awarded under this part shall be directed to the chief elected official of the city or urban county that administers the public health agency that provides outpatient and ambulatory services to the greatest number of individuals with AIDS, as reported to and confirmed by the Centers for Disease Control and Prevention, in the eligible area that is awarded such a grant.

(2) Requirements

(A) In general

To receive assistance under section 300ff–11(a) of this title, the chief elected official of the eligible area involved shall—

(i) establish, through intergovernmental agreements with the chief elected officials of the political subdivisions described in subparagraph (B), an administrative mechanism to allocate funds and services based on—

(I) the number of AIDS cases in such subdivisions;

(II) the severity of need for outpatient and ambulatory care services in such subdivisions; and

(III) the health and support services personnel needs of such subdivisions; and

(ii) establish an HIV health services planning council in accordance with subsection (b) of this section.

(B) Local political subdivision

The political subdivisions referred to in subparagraph (A) are those political subdivisions in the eligible area—

(i) that provide HIV-related health services; and

(ii) for which the number of cases reported for purposes of section 300ff–11(a) of this title constitutes not less than 10 percent of the number of such cases reported for the eligible area.

(b) HIV health services planning council

(1) Establishment

To be eligible for assistance under this part, the chief elected official described in subsection (a)(1) of this section shall establish or designate an HIV health services planning council that shall include representatives of—

(A) health care providers;

(B) community-based and AIDS service organizations;

(C) social service providers;

(D) mental health care providers;

(E) local public health agencies;

(F) hospital planning agencies or health care planning agencies;

(G) affected communities, including individuals with HIV disease;

(H) non-elected community leaders;

(I) State government;

(J) grantees under subpart II of part C of this subchapter; and

(K) the lead agency of any Health Resources and Services Administration adult and pediatric HIV-related care demonstration project operating in the area to be served.

(2) Method of providing for council

(A) In general

In providing for a council for purposes of paragraph (1), a chief elected official receiving a grant under section 300ff–11(a) of this title may establish the council directly or designate an existing entity to serve as the council, subject to subparagraph (B).

(B) Consideration regarding designation of council

In making a determination of whether to establish or designate a council under sub-

paragraph (A), a chief elected official receiving a grant under section 300ff–11(a) of this title shall give priority to the designation of an existing entity that has demonstrated experience in planning for the HIV health care service needs within the eligible area and in the implementation of such plans in addressing those needs. Any existing entity so designated shall be expanded to include a broad representation of the full range of entities that provide such services within the geographic area to be served.

(3) Duties

The planning council established or designated under paragraph (1) shall—

(A) establish priorities for the allocation of funds within the eligible area;

(B) develop a comprehensive plan for the organization and delivery of health services described in section 300ff–14 of this title that is compatible with any existing State or local plan regarding the provision of health services to individuals with HIV disease; and

(C) assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the eligible area.

(July 1, 1944, ch. 373, title XXVI, § 2602, as added Aug. 18, 1990, Pub. L. 101–381, title I, § 101(3), 104 Stat. 577; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(26), 106 Stat. 3505.)

PRIOR PROVISIONS

A prior section 2602 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238a of this title.

AMENDMENTS

1992—Subsec. (a)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–14, 300ff–15 of this title.

§ 300ff–13. Type and distribution of grants

(a) Grants based on relative need of area

(1) In general

In carrying out section 300ff–11(a) of this title, the Secretary shall make a grant for each eligible area for which an application under section 300ff–15(a) of this title has been approved. Each such grant shall be made in an amount determined in accordance with paragraph (3).

(2) Expedited distribution

Not later than—

(A) 90 days after an appropriation becomes available to carry out this part for fiscal year 1991; and

(B) 60 days after an appropriation becomes available to carry out this part for each of fiscal years 1992 through 1995;

the Secretary shall, except in the case of waivers granted under section 300ff–15(c) of this title, disburse 50 percent of the amount appropriated under section 300ff–18 of this title for such fiscal year through grants to eligible areas under section 300ff–11(a) of this title.

(3) Amount of grant

(A) In general

(i) Subject to the extent of amounts made available in appropriations Acts, a grant made for purposes of this paragraph to an eligible area shall be made in an amount equal to the product of—

(I) an amount equal to the amount available for distribution under paragraph (2) for the fiscal year involved; and

(II) the percentage constituted by the ratio of the distribution factor for the eligible area to the sum of the respective distribution factors for all eligible areas.

(ii) For purposes of clause (i)(II), the term ''distribution factor'' means the sum of—

(I) an amount equal to the product of 3 and the amount determined under subparagraph (B) for the eligible area involved; and

(II) an amount equal to the product of the amount determined under subparagraph (B) for the eligible area and the amount determined under subparagraph (C) for the area.

(B) Amount relating to cumulative number of cases

The amount determined in this subparagraph is an amount equal to the ratio of—

(i) an amount equal to the cumulative number of cases of acquired immune deficiency syndrome in the eligible area involved, as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control and Prevention by the applicable date specified in section 300ff–11(a) of this title; to

(ii) an amount equal to the sum of the respective amounts determined under clause (i) for each eligible area for which an application for a grant for purposes of this paragraph has been approved.

(C) Amount relating to per capita incidence of cases

The amount determined in this subparagraph is an amount equal to the ratio of—

(i) the per capita incidence of cumulative cases of acquired immune deficiency syndrome in the eligible area involved (computed on the basis of the most recently available data on the population of the area); to

(ii) the per capita incidence of cumulative such cases in all eligible areas for which applications for grants for purposes of this paragraph have been approved (computed on the basis of the most recently available data on the population of the areas).

(b) Supplemental grants

(1) In general

Not later than 150 days after the date on which appropriations are made under section 300ff–18 of this title for a fiscal year, the Secretary shall disburse the remainder of amounts not disbursed under subsection (a)(2) of this section for such fiscal year for the pur-

pose of making grants under section 300ff–11(a) of this title to eligible areas whose application under section 300ff–15(b) of this title—

(A) contains a report concerning the dissemination of emergency relief funds under subsection (a) of this section and the plan for utilization of such funds;

(B) demonstrates the severe need in such area for supplemental financial assistance to combat the HIV epidemic;

(C) demonstrates the existing commitment of local resources of the area, both financial and in-kind, to combating the HIV epidemic;

(D) demonstrates the ability of the area to utilize such supplemental financial resources in a manner that is immediately responsive and cost effective; and

(E) demonstrates that resources will be allocated in accordance with the local demographic incidence of AIDS including appropriate allocations for services for infants, children, women, and families with HIV disease.

(2) Remainder of amounts

In determining the amount of funds to be obligated under paragraph (1), the Secretary shall include amounts that are not paid to the eligible areas under expedited procedures under subsection (a)(2) of this section as a result of—

(A) the failure of any eligible area to submit an application under section 300ff–15(c) of this title; or

(B) any eligible area informing the Secretary that such eligible area does not intend to expend the full amount of its grant under such section.

(3) Amount of grant

The amount of each grant made for purposes of this subsection shall be determined by the Secretary based on the application submitted by the eligible area under section 300ff–15(b) of this title.

(4) Failure to submit

(A) In general

The failure of an eligible area to submit an application for an expedited grant under subsection (a)(2) of this section shall not result in such area being ineligible for a grant under this subsection.

(B) Application

The application of an eligible area submitted under section 300ff–15(b) of this title shall contain the assurances required under subsection (a) of such section if such eligible area fails to submit an application for an expedited grants[1] under subsection (a)(2) of this section.

(July 1, 1944, ch. 373, title XXVI, § 2603, as added Aug. 18, 1990, Pub. L. 101–381, title I, § 101(3), 104 Stat. 578; amended Nov. 3, 1990, Pub. L. 101–502, § 6(a), 104 Stat. 1289; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(27), 106 Stat. 3506.)

PRIOR PROVISIONS

A prior section 2603 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238b of this title.

[1] So in original. Probably should be ''grant''.

AMENDMENTS

1992—Subsec. (a)(3)(B)(i). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1990—Subsec. (a)(3). Pub. L. 101–508 amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(A) IN GENERAL.—Subject to the extent of amounts made available in appropriations Acts, a grant made for purposes of this paragraph for an eligible area shall be made in an amount equal to the sum of—

''(i) an amount determined in accordance with subparagraph (B); and

''(ii) an amount determined in accordance with subparagraph (C).

''(B) AMOUNT RELATING TO CUMULATIVE NUMBER OF CASES.—The amount referred to in clause (i) of subparagraph (A) is an amount equal to the product of—

''(i) an amount equal to 75 percent of the amounts available for distribution under paragraph (2) for the fiscal year involved; and

''(ii) a percentage equal to the quotient of—

''(I) the cumulative number of cases of acquired immune deficiency syndrome in the eligible area involved, as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control on the applicable date described in section 300ff–11(a) of this title; divided by

''(II) the sum of the cumulative number of such cases in all eligible areas for which an application for a grant under paragraph (1) has been approved.

''(C) AMOUNT RELATING TO PER CAPITA INCIDENCE OF CASES.—The amount referred to in clause (ii) of subparagraph (A) is an amount equal to the product of—

''(i) an amount equal to 25 percent of the amounts available for distribution under paragraph (2) for the fiscal year involved; and

''(ii) a percentage developed by the Secretary through consideration of the ratio of—

''(I) the per capita incidence of cumulative cases of acquired immune deficiency syndrome in the eligible area involved (computed on the basis of the most recently available data on the population of the area); to

''(II) the per capita incidence of such cumulative cases in all eligible areas for which an application for a grant under paragraph (1) has been approved (computed on the basis of the most recently available data on the population of such areas).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–11, 300ff–15 of this title.

§ 300ff–14. Use of amounts

(a) Requirements

The Secretary may not make a grant under section 300ff–11(a) of this title to the chief elected official of an eligible area unless such political subdivision agrees that—

(1) subject to paragraph (2), the allocation of funds and services within the eligible area will be made in accordance with the priorities established, pursuant to section 300ff–12(b)(3)(A) of this title, by the HIV health services planning council that serves such eligible area; and

(2) funds provided under section 300ff–11 of this title will be expended only for the purposes described in subsections (b) and (c) of this section.

(b) Primary purposes

(1) In general

The chief elected official shall use amounts received under a grant under section 300ff–11 of

this title to provide direct financial assistance to entities described in paragraph (2) for the purpose of delivering or enhancing HIV-related—

(A) outpatient and ambulatory health and support services, including case management and comprehensive treatment services, for individuals and families with HIV disease; and

(B) inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities.

(2) Appropriate entities

(A) In general

Subject to subparagraph (B), direct financial assistance may be provided under paragraph (1) to public or nonprofit private entities, including hospitals (which may include Department of Veterans Affairs facilities), community-based organizations, hospices, ambulatory care facilities, community health centers, migrant health centers, and homeless health centers.

(B) Priority

In providing direct financial assistance under paragraph (1) the chief elected official shall give priority to entities that are currently participating in Health Resources and Services Administration HIV health care demonstration projects.

(c) Limited expenditures for personnel needs

(1) In general

A chief elected official, in accordance with paragraph (3), may use not to exceed 10 percent of amounts received under a grant under section 300ff–11 of this title to provide financial assistance or services, for the purposes described in paragraph (2), to any public or nonprofit private entity, including hospitals (which may include Veterans Administration facilities), nursing homes, subacute and transitional care facilities, and hospices that—

(A) provide HIV-related care or services to a disproportionate share of low-income individuals and families with HIV disease;

(B) incur uncompensated costs in the provision of such care or services to such individuals and families;

(C) have established, and agree to implement, a plan to evaluate the utilization of services provided in the care of individuals and families with HIV disease; and

(D) have established a system designed to ensure that such individuals and families are referred to the most medically appropriate level of care as soon as such referral is medically indicated.

(2) Use

A chief elected official may use amounts referred to in paragraph (1) to—

(A) provide direct financial assistance to institutions and entities of the type referred to in such paragraph to assist such institutions and entities in recruiting or training and paying compensation to qualified personnel determined, under paragraph (3), to be necessary by the HIV health services planning council, specifically for the care of individuals with HIV disease; or

(B) in lieu of providing direct financial assistance, make arrangements for the provision of the services of such qualified personnel to such institutions and entities.

(3) Requirement of determination by council

A chief elected official shall not use any of the amounts received under a grant under section 300ff–11(a) of this title to provide assistance or services under paragraph (2) unless the HIV health services planning council of the eligible area has made a determination that, with respect to the care of individuals with HIV disease—

(A) a shortage of specific health, mental health or support service personnel exists within specific institutions or entities in the eligible area;

(B) the shortage of such personnel has resulted in the inappropriate utilization of inpatient services within the area; and

(C) assistance or services provided to an institution or entity under paragraph (2), will not be used to supplant the existing resources devoted by such institution or entity to the uses described in such paragraph.

(d) Requirement of status as medicaid provider

(1) Provision of service

Subject to paragraph (2), the Secretary may not make a grant under section 300ff–11(a) of this title for the provision of services under this section in a State unless, in the case of any such service that is available pursuant to the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State—

(A) the political subdivision involved will provide the service directly, and the political subdivision has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(B) the political subdivision will enter into an agreement with a public or nonprofit private entity under which the entity will provide the service, and the entity has entered into such a participation agreement and is qualified to receive such payments.

(2) Waiver

(A) In general

In the case of an entity making an agreement pursuant to paragraph (1)(B) regarding the provision of services, the requirement established in such paragraph shall be waived by the HIV health services planning council for the eligible area if the entity does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(B) Determination

A determination by the HIV health services planning council of whether an entity referred to in subparagraph (A) meets the criteria for a waiver under such subpara-

graph shall be made without regard to whether the entity accepts voluntary donations for the purpose of providing services to the public.

(e) Administration and planning

The chief executive officer of an eligible area shall not use in excess of 5 percent of amounts received under a grant awarded under this part for administration, accounting, reporting, and program oversight functions.

(f) Construction

A State may not use amounts received under a grant awarded under this part to purchase or improve land, or to purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or to make cash payments to intended recipients of services.

(July 1, 1944, ch. 373, title XXVI, § 2604, as added Aug. 18, 1990, Pub. L. 101–381, title I, § 101(3), 104 Stat. 580; amended Nov. 2, 1994, Pub. L. 103–446, title XII, § 1203(a)(3), 108 Stat. 4689.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 2604 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238c of this title.

AMENDMENTS

1994—Subsec. (b)(2)(A). Pub. L. 103–446 substituted ''Department of Veterans Affairs facilities'' for ''Veterans Administration facilities''.

CHANGE OF NAME

Reference to Veterans Administration deemed to refer to Department of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–11, 300ff–12, 300ff–15 of this title.

§ 300ff–15. Application

(a) In general

To be eligible to receive a grant under section 300ff–11 of this title, an eligible area shall prepare and submit to the Secretary an application at such time, in such form, and containing such information as the Secretary shall require, including assurances adequate to ensure—

(1)(A) that funds received under a grant awarded under this part will be utilized to supplement not supplant State funds made available in the year for which the grant is awarded to provide HIV-related services to individuals with HIV disease;

(B) that the political subdivisions within the eligible area will maintain the level of expenditures by such political subdivisions for HIV-related services for individuals with HIV disease at a level that is equal to the level of such expenditures by such political subdivisions for the 1-year period preceding the first fiscal year for which a grant is received by the eligible area; and

(C) that political subdivisions within the eligible area will not use funds received under a grant awarded under this part in maintaining the level of expenditures for HIV-related services as required in subparagraph (B);

(2) that the eligible area has an HIV health services planning council and has entered into intergovernmental agreements pursuant to section 300ff–12 of this title, and has developed or will develop the comprehensive plan in accordance with section 300ff–12(b)(3)(B) of this title;

(3) that entities within the eligible area that will receive funds under a grant provided under section 300ff–11(a) of this title shall participate in an established HIV community-based continuum of care if such continuum exists within the eligible area;

(4) that funds received under a grant awarded under this part will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service—

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(B) by an entity that provides health services on a prepaid basis; and

(5) to the maximum extent practicable, that—

(A) HIV health care and support services provided with assistance made available under this part will be provided without regard—

(i) to the ability of the individual to pay for such services; and

(ii) to the current or past health condition of the individual to be served;

(B) such services will be provided in a setting that is accessible to low-income individuals with HIV-disease; and

(C) a program of outreach will be provided to low-income individuals with HIV-disease to inform such individuals of such services.

(b) Additional application

An eligible area that desires to receive a grant under section 300ff–13(b) of this title shall prepare and submit to the Secretary an additional application at such time, in such form, and containing such information as the Secretary shall require, including the information required under such subsection and information concerning—

(1) the number of individuals to be served within the eligible area with assistance provided under the grant;

(2) demographic data on the population of such individuals;

(3) the average cost of providing each category of HIV-related health services and the extent to which such cost is paid by third-party payors; and

(4) the aggregate amounts expended for each such category of services.

(c) Date certain for submission

(1) Requirement

Except as provided in paragraph (2), to be eligible to receive a grant under section 300ff–11(a) of this title for a fiscal year, an application under subsection (a) of this section shall be submitted not later than 45 days after the date on which appropriations are made under section 300ff–18 of this title for the fiscal year.

(2) Exception

The Secretary may extend the time for the submission of an application under paragraph (1) for a period of not to exceed 60 days if the Secretary determines that the eligible area has made a good faith effort to comply with the requirement of such paragraph but has otherwise been unable to submit its application.

(3) Distribution by Secretary

Not later than 45 days after receiving an application that meets the requirements of subsection (a) of this section from an eligible area, the Secretary shall distribute to such eligible area the amounts awarded under the grant for which the application was submitted.

(4) Redistribution

Any amounts appropriated in any fiscal year under this part and not obligated to an eligible entity as a result of the failure of such entity to submit an application shall be redistributed by the Secretary to other eligible entities in proportion to the original grants made to such eligible areas under[1] 300ff–11(a) of this title.

(d) Requirements regarding imposition of charges for services

(1) In general

The Secretary may not make a grant under section 300ff–11 of this title to an eligible area unless the eligible area provides assurances that in the provision of services with assistance provided under the grant—

(A) in the case of individuals with an income less than or equal to 100 percent of the official poverty line, the provider will not impose charges on any such individual for the provision of services under the grant;

(B) in the case of individuals with an income greater than 100 percent of the official poverty line, the provider—

(i) will impose a charge on each such individual for the provision of such services; and

(ii) will impose the charge according to a schedule of charges that is made available to the public;

(C) in the case of individuals with an income greater than 100 percent of the official poverty line and not exceeding 200 percent of such poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 5 percent of the annual gross income of the individual involved;

(D) in the case of individuals with an income greater than 200 percent of the official poverty line and not exceeding 300 percent of such poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 7 percent of the annual gross income of the individual involved; and

(E) in the case of individuals with an income greater than 300 percent of the official poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 10 percent of the annual gross income of the individual involved.

(2) Assessment of charge

With respect to compliance with the assurance made under paragraph (1), a grantee or entity receiving assistance under this part may, in the case of individuals subject to a charge for purposes of such paragraph—

(A) assess the amount of the charge in the discretion of the grantee, including imposing only a nominal charge for the provision of services, subject to the provisions of such paragraph regarding public schedules and regarding limitations on the maximum amount of charges; and

(B) take into consideration the medical expenses of individuals in assessing the amount of the charge, subject to such provisions.

(3) Applicability of limitation on amount of charge

The Secretary may not make a grant under section 300ff–11 of this title to an eligible area unless the eligible area agrees that the limitations established in subparagraphs (C), (D) and (E) of paragraph (1) regarding the imposition of charges for services applies to the annual aggregate of charges imposed for such services, without regard to whether they are characterized as enrollment fees, premiums, deductibles, cost sharing, copayments, coinsurance, or other charges.

(4) Waiver regarding secondary agreements

The requirements established in paragraphs (1) through (3) shall be waived in accordance with section 300ff–14(d)(2) of this title.

(July 1, 1944, ch. 373, title XXVI, § 2605, as added Aug. 18, 1990, Pub. L. 101–381, title I, § 101(3), 104 Stat. 582.)

PRIOR PROVISIONS

A prior section 2605 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238d of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ff–13 of this title.

§ 300ff–16. Technical assistance

The Administrator of the Health Resources and Services Administration may, beginning on August 18, 1990, provide technical assistance to assist entities in complying with the requirements of this part in order to make such entities eligible to receive a grant under this part.

(July 1, 1944, ch. 373, title XXVI, § 2606, as added Aug. 18, 1990, Pub. L. 101–381, title I, § 101(3), 104 Stat. 585.)

[1] So in original. Probably should be followed by ''section''.

PRIOR PROVISIONS

A prior section 2606 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238e of this title.

§ 300ff–17. Definitions

For purposes of this part:

(1) Eligible area

The term ''eligible area'' means a metropolitan area described in section 300ff–11(a) of this title.

(2) Metropolitan area

The term ''metropolitan area'' means an area referred to in the HIV/AIDS Surveillance Report of the Centers for Disease Control and Prevention as a metropolitan area.

(July 1, 1944, ch. 373, title XXVI, § 2607, as added Aug. 18, 1990, Pub. L. 101–381, title I, § 101(3), 104 Stat. 585; amended Nov. 15, 1990, Pub. L. 101–557, title IV, § 401(b)(1), 104 Stat. 2771; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(28), 106 Stat. 3506.)

PRIOR PROVISIONS

A prior section 2607 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238f of this title.

AMENDMENTS

1992—Par. (2). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

1990—Par. (1). Pub. L. 101–557 substituted ''300ff–11(a)'' for ''300ff–11(a)(1)''.

§ 300ff–18. Authorization of appropriations

There are authorized to be appropriated to make grants under this part, $275,000,000 in each of the fiscal years 1991 and 1992, and such sums as may be necessary in each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title XXVI, § 2608, as added Aug. 18, 1990, Pub. L. 101–381, title I, § 101(3), 104 Stat. 585.)

PRIOR PROVISIONS

A prior section 2608 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238g of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–13, 300ff–15 of this title.

PART B—CARE GRANT PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300ff–41, 300ff–51 of this title.

§ 300ff–21. Grants

The Secretary shall, subject to the availability of appropriations, make grants to States to enable such States to improve the quality, availability and organization of health care and support services for individuals and families with HIV disease.

(July 1, 1944, ch. 373, title XXVI, § 2611, as added Aug. 18, 1990, Pub. L. 101–381, title II, § 201, 104 Stat. 586.)

PRIOR PROVISIONS

A prior section 2611 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238j of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ff–27 of this title.

§ 300ff–22. General use of grants

(a) In general

A State may use amounts provided under grants made under this part—

(1) to establish and operate HIV care consortia within areas most affected by HIV disease that shall be designed to provide a comprehensive continuum of care to individuals and families with HIV disease in accordance with section 300ff–23 of this title;

(2) to provide home- and community-based care services for individuals with HIV disease in accordance with section 300ff–24 of this title;

(3) to provide assistance to assure the continuity of health insurance coverage for individuals with HIV disease in accordance with section 300ff–25 of this title; and

(4) to provide treatments, that have been determined to prolong life or prevent serious deterioration of health, to individuals with HIV disease in accordance with section 300ff–26 of this title.

(b) Infants and women, etc.

A State shall use not less than 15 percent of funds allocated under this part to provide health and support services to infants, children, women, and families with HIV disease.

(July 1, 1944, ch. 373, title XXVI, § 2612, as added Aug. 18, 1990, Pub. L. 101–381, title II, § 201, 104 Stat. 586.)

PRIOR PROVISIONS

A prior section 2612 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238k of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–23, 300ff–24, 300ff–25, 300ff–26, 300ff–29, 300ff–51 of this title.

§ 300ff–23. Grants to establish HIV care consortia

(a) Consortia

A State may use amounts provided under a grant awarded under this part to provide assistance under section 300ff–22(a)(1) of this title to an entity that—

(1) is an association of one or more public, and one or more nonprofit private, health care and support service providers and community based organizations operating within areas determined by the State to be most affected by HIV disease; and

(2) agrees to use such assistance for the planning, development and delivery, through the direct provision of services or through entering into agreements with other entities for the provision of such services, of comprehensive outpatient health and support services for individuals with HIV disease, that may include—

(A) essential health services such as case management services, medical, nursing, and dental care, diagnostics, monitoring, and medical follow-up services, mental health, developmental, and rehabilitation services, home health and hospice care; and

(B) essential support services such as transportation services, attendant care, homemaker services, day or respite care, benefits advocacy, advocacy services provided through public and nonprofit private entities, and services that are incidental to the provision of health care services for individuals with HIV disease including nutrition services, housing referral services, and child welfare and family services (including foster care and adoption services).

An entity or entities of the type described in this subsection shall hereinafter be referred to in this subchapter as a ''consortium'' or ''consortia''.

(b) Assurances

(1) Requirement

To receive assistance from a State under subsection (a) of this section, an applicant consortium shall provide the State with assurances that—

(A) within any locality in which such consortium is to operate, the populations and subpopulations of individuals and families with HIV disease have been identified by the consortium;

(B) the service plan established under subsection (c)(2) of this section by such consortium addresses the special care and service needs of the populations and subpopulations identified under subparagraph (A); and

(C) except as provided in paragraph (2), the consortium will be a single coordinating entity that will integrate the delivery of services among the populations and subpopulations identified under subparagraph (A).

(2) Exception

Subparagraph (C) of paragraph (1) shall not apply to any applicant consortium that the State determines will operate in a community or locality in which it has been demonstrated by the applicant consortium that—

(A) subpopulations exist within the community to be served that have unique service requirements; and

(B) such unique service requirements cannot be adequately and efficiently addressed by a single consortium serving the entire community or locality.

(c) Application

(1) In general

To receive assistance from the State under subsection (a) of this section, a consortium shall prepare and submit to the State, an application that—

(A) demonstrates that the consortium includes agencies and community-based organizations—

(i) with a record of service to populations and subpopulations with HIV disease requiring care within the community to be served; and

(ii) that are representative of populations and subpopulations reflecting the local incidence of HIV and that are located in areas in which such populations reside;

(B) demonstrates that the consortium has carried out an assessment of service needs within the geographic area to be served and, after consultation with the entities described in paragraph (2), has established a plan to ensure the delivery of services to meet such identified needs that shall include—

(i) assurances that service needs will be addressed through the coordination and expansion of existing programs before new programs are created;

(ii) assurances that, in metropolitan areas, the geographic area to be served by the consortium corresponds to the geographic boundaries of local health and support services delivery systems to the extent practicable;

(iii) assurances that, in the case of services for individuals residing in rural areas, the applicant consortium shall deliver case management services that link available community support services to appropriate specialized medical services; and

(iv) assurances that the assessment of service needs and the planning of the delivery of services will include participation by individuals with HIV disease;

(C) demonstrates that adequate planning has occurred to meet the special needs of families with HIV disease, including family centered care;

(D) demonstrates that the consortium has created a mechanism to evaluate periodically—

(i) the success of the consortium in responding to identified needs; and

(ii) the cost-effectiveness of the mechanisms employed by the consortium to deliver comprehensive care; and

(E) demonstrates that the consortium will report to the State the results of the evaluations described in subparagraph (D) and shall make available to the State or the Secretary, on request, such data and information on the program methodology that may be required to perform an independent evaluation.

(2) Consultation

In establishing the plan required under paragraph (1)(B), the consortium shall consult with—

(A)(i) the public health agency that provides or supports ambulatory and outpatient HIV-related health care services within the geographic area to be served; or

(ii) in the case of a public health agency that does not directly provide such HIV-related health care services such agency shall consult with an entity or entities that directly provide ambulatory and outpatient HIV-related health care services within the geographic area to be served; and

(B) not less than one community-based organization that is organized solely for the

purpose of providing HIV-related support services to individuals with HIV disease.

The organization to be consulted under subparagraph (B) shall be at the discretion of the applicant consortium.

(d) "Family centered care" defined

As used in this part, the term ''family centered care'' means the system of services described in this section that is targeted specifically to the special needs of infants, children, women, and families. Family centered care shall be based on a partnership between parents, professionals, and the community designed to ensure an integrated, coordinated, culturally sensitive, and community-based continuum of care for children, women, and families with HIV disease.

(e) Priority

In providing assistance under subsection (a) of this section, the State shall, among applicants that meet the requirements of this section, give priority—

(1) first to consortia that are receiving assistance from the Health Resources and Services Administration for adult and pediatric HIV-related care demonstration projects; and then

(2) to any other existing HIV care consortia.

(July 1, 1944, ch. 373, title XXVI, § 2613, as added Aug. 18, 1990, Pub. L. 101–381, title II, § 201, 104 Stat. 586.)

PRIOR PROVISIONS

A prior section 2613 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238*l* of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–22, 300ff–28 of this title.

§ 300ff–24. Grants for home- and community-based care

(a) Uses

A State may use amounts provided under a grant awarded under this part to make grants under section 300ff–22(a)(2) of this title to entities to—

(1) provide home- and community-based health services for individuals with HIV disease pursuant to written plans of care prepared by a case management team, that shall include appropriate health care professionals, in such State for providing such services to such individuals;

(2) provide outreach services to individuals with HIV disease, including those individuals in rural areas; and

(3) provide for the coordination of the provision of services under this section with the provision of HIV-related health services provided by public and private entities.

(b) Priority

In awarding grants under subsection (a) of this section, a State shall give priority to entities that provide assurances to the State that—

(1) such entities will participate in HIV care consortia if such consortia exist within the State; and

(2) such entities will utilize amounts provided under such grants for the provision of home- and community-based services to low-income individuals with HIV disease.

(c) "Home- and community-based health services" defined

As used in this part, the term ''home- and community-based health services''—

(1) means, with respect to an individual with HIV disease, skilled health services furnished to the individual in the individual's home pursuant to a written plan of care established by a case management team, that shall include appropriate health care professionals, for the provision of such services and items described in paragraph (2);

(2) includes—

(A) durable medical equipment;

(B) homemaker or home health aide services and personal care services furnished in the home of the individual;

(C) day treatment or other partial hospitalization services;

(D) home intravenous and aerosolized drug therapy (including prescription drugs administered as part of such therapy);

(E) routine diagnostic testing administered in the home of the individual; and

(F) appropriate mental health, developmental, and rehabilitation services; and

(3) does not include—

(A) inpatient hospital services; and

(B) nursing home and other long term care facilities.

(July 1, 1944, ch. 373, title XXVI, § 2614, as added Aug. 18, 1990, Pub. L. 101–381, title II, § 201, 104 Stat. 589.)

PRIOR PROVISIONS

A prior section 2614 of act July 1, 1944, was successively renumbered by subsequent acts and transferred, see section 238m of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ff–22 of this title.

§ 300ff–25. Continuum of health insurance coverage

(a) In general

A State may use amounts received under a grant awarded under this part to establish a program of financial assistance under section 300ff–22(a)(3) of this title to assist eligible low-income individuals with HIV disease in—

(1) maintaining a continuity of health insurance; or

(2) receiving medical benefits under a health insurance program, including risk-pools.

(b) Limitations

Assistance shall not be utilized under subsection (a) of this section—

(1) to pay any costs associated with the creation, capitalization, or administration of a liability risk pool (other than those costs paid on behalf of individuals as part of premium contributions to existing liability risk pools); and

(2) to pay any amount expended by a State under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

(July 1, 1944, ch. 373, title XXVI, § 2615, as added Aug. 18, 1990, Pub. L. 101–381, title II, § 201, 104 Stat. 590.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–22, 300ff–27 of this title.

§ 300ff–26. Provision of treatments

(a) In general

A State may use amounts provided under a grant awarded under this part to establish a program under section 300ff–22(a)(4) of this title to provide treatments that have been determined to prolong life or prevent the serious deterioration of health arising from HIV disease in eligible individuals.

(b) Eligible individual

To be eligible to receive assistance from a State under this section an individual shall—

(1) have a medical diagnosis of HIV disease; and

(2) be a low-income individual, as defined by the State.

(c) State duties

In carrying out this section the State shall—

(1) determine, in accordance with guidelines issued by the Secretary, which treatments are eligible to be included under the program established under this section;

(2) provide assistance for the purchase of treatments determined to be eligible under paragraph (1), and the provision of such ancillary devices that are essential to administer such treatments;

(3) provide outreach to individuals with HIV disease, and as appropriate to the families of such individuals; and

(4) facilitate access to treatments for such individuals.

(July 1, 1944, ch. 373, title XXVI, § 2616, as added Aug. 18, 1990, Pub. L. 101–381, title II, § 201, 104 Stat. 590.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ff–22 of this title.

§ 300ff–27. State application

(a) In general

The Secretary shall not make a grant to a State under this part for a fiscal year unless the State prepares and submits, to the Secretary, an application at such time, in such form, and containing such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(b) Description of intended uses and agreements

The application submitted under subsection (a) of this section shall contain—

(1) a detailed description of the HIV-related services provided in the State to individuals and families with HIV disease during the year preceding the year for which the grant is requested, and the number of individuals and families receiving such services, that shall include—

(A) a description of the types of programs operated or funded by the State for the provision of HIV-related services during the year preceding the year for which the grant is requested and the methods utilized by the State to finance such programs;

(B) an accounting of the amount of funds that the State has expended for such services and programs during the year preceding the year for which the grant is requested; and

(C) information concerning—

(i) the number of individuals to be served with assistance provided under the grant;

(ii) demographic data on the population of the individuals to be served;

(iii) the average cost of providing each category of HIV-related health services and the extent to which such cost is paid by third-party payors; and

(iv) the aggregate amounts expended for each such category of services;

(2) a comprehensive plan for the organization and delivery of HIV health care and support services to be funded with assistance received under this part that shall include a description of the purposes for which the State intends to use such assistance, including—

(A) the services and activities to be provided and an explanation of the manner in which the elements of the program to be implemented by the State with such assistance will maximize the quality of health and support services available to individuals with HIV disease throughout the State; and

(B) a description of the manner in which services funded with assistance provided under this part will be coordinated with other available related services for individuals with HIV disease; and

(3) an assurance by the State that—

(A) the public health agency that is administering the grant for the State will conduct public hearings concerning the proposed use and distribution of the assistance to be received under this part;

(B) the State will—

(i) to the maximum extent practicable, ensure that HIV-related health care and support services delivered pursuant to a program established with assistance provided under this part will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual with HIV disease;

(ii) ensure that such services will be provided in a setting that is accessible to low-income individuals with HIV disease;

(iii) provide outreach to low-income individuals with HIV disease to inform such individuals of the services available under this part; and

(iv) in the case of a State that intends to use amounts provided under the grant for purposes described in [1] 300ff–25 of this title, submit a plan to the Secretary that demonstrates that the State has established a program that assures that—

(I) such amounts will be targeted to individuals who would not otherwise be able to afford health insurance coverage; and

(II) income, asset, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance under such program, and information concerning such criteria shall be made available to the public;

(C) the State will provide for periodic independent peer review to assess the quality and appropriateness of health and support services provided by entities that receive funds from the State under this part;

(D) the State will permit and cooperate with any Federal investigations undertaken regarding programs conducted under this part;

(E) the State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State is applying to receive a grant under this part; and

(F) the State will ensure that grant funds are not utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service—

(i) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(ii) by an entity that provides health services on a prepaid basis.

(c) Requirements regarding imposition of charges for services

(1) In general

The Secretary may not make a grant under section 300ff–21 of this title to a State unless the State provides assurances that in the provision of services with assistance provided under the grant—

(A) in the case of individuals with an income less than or equal to 100 percent of the official poverty line, the provider will not impose charges on any such individual for the provision of services under the grant;

(B) in the case of individuals with an income greater than 100 percent of the official poverty line, the provider—

(i) will impose charges on each such individual for the provision of such services; and

(ii) will impose charges according to a schedule of charges that is made available to the public;

(C) in the case of individuals with an income greater than 100 percent of the official poverty line and not exceeding 200 percent of such poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 5 percent of the annual gross income of the individual involved;

(D) in the case of individuals with an income greater than 200 percent of the official poverty line and not exceeding 300 percent of such poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 7 percent of the annual gross income of the individual involved; and

(E) in the case of individuals with an income greater than 300 percent of the official poverty line, the provider will not, for any calendar year, impose charges in an amount exceeding 10 percent of the annual gross income of the individual involved.

(2) Assessment of charge

With respect to compliance with the assurance made under paragraph (1), a grantee under this part may, in the case of individuals subject to a charge for purposes of such paragraph—

(A) assess the amount of the charge in the discretion of the grantee, including imposing only a nominal charge for the provision of services, subject to the provisions of such paragraph regarding public schedules regarding limitation on the maximum amount of charges; and

(B) take into consideration the medical expenses of individuals in assessing the amount of the charge, subject to such provisions.

(3) Applicability of limitation on amount of charge

The Secretary may not make a grant under section 300ff–21 of this title unless the applicant of the grant agrees that the limitations established in subparagraphs (C), (D), and (E) of paragraph (1) regarding the imposition of charges for services applies to the annual aggregate of charges imposed for such services, without regard to whether they are characterized as enrollment fees, premiums, deductibles, cost sharing, copayments, coinsurance, or other charges.

(4) Waiver

(A) In general

The State shall waive the requirements established in paragraphs (1) through (3) in the case of an entity that does not, in providing health care services, impose a charge or accept reimbursement from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(B) Determination

A determination by the State of whether an entity referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the entity accepts voluntary donations regarding the provision of services to the public.

[1] So in original. Probably should be followed by ''section''.

(d) Requirement of matching funds regarding State allotments

(1) In general

In the case of any State to which the criterion described in paragraph (3) applies, the Secretary may not make a grant under this part unless the State agrees that, with respect to the costs to be incurred by the State in carrying out the program for which the grant was awarded, the State will, subject to subsection (b)(2) of this section, make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount equal to—

(A) for the first fiscal year of payments under the grant, not less than 16⅔ percent of such costs ($1 for each $5 of Federal funds provided in the grant);

(B) for any second fiscal year of such payments, not less than 20 percent of such costs ($1 for each $4 of Federal funds provided in the grant);

(C) for any third fiscal year of such payments, not less than 25 percent of such costs ($1 for each $3 of Federal funds provided in the grant);

(D) for any fourth fiscal year of such payments, not less than 33⅓ percent of such costs ($1 for each $2 of Federal funds provided in the grant); and

(E) for any subsequent fiscal year of such payments, not less than 33⅓ percent of such costs ($1 for each $2 of Federal funds provided in the grant).

(2) Determination of amount of non-Federal contribution

(A) In general

Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, and any portion of any service subsidized by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(B) Inclusion of certain amounts

(i) In making a determination of the amount of non-Federal contributions made by a State for purposes of paragraph (1), the Secretary shall, subject to clause (ii), include any non-Federal contributions provided by the State for HIV-related services, without regard to whether the contributions are made for programs established pursuant to this subchapter;

(ii) In making a determination for purposes of clause (i), the Secretary may not include any non-Federal contributions provided by the State as a condition of receiving Federal funds under any program under this subchapter (except for the program established in this part) or under other provisions of law.

(3) Applicability of requirement

(A) Number of cases

A State referred to in paragraph (1) is any State for which the number of cases of acquired immune deficiency syndrome reported to and confirmed by the Director of the Centers for Disease Control and Prevention for the period described in subparagraph (B) constitutes in excess of 1 percent of the aggregate number of such cases reported to and confirmed by the Director for such period for the United States.

(B) Period of time

The period referred to in subparagraph (A) is the 2-year period preceding the fiscal year for which the State involved is applying to receive a grant under subsection (a) of this section.

(C) Puerto Rico

For purposes of paragraph (1), the number of cases of acquired immune deficiency syndrome reported and confirmed for the Commonwealth of Puerto Rico for any fiscal year shall be deemed to be less than 1 percent.

(4) Diminished State contribution

With respect to a State that does not make available the entire amount of the non-Federal contribution referred to in paragraph (1), the State shall continue to be eligible to receive Federal funds under a grant under this part, except that the Secretary in providing Federal funds under the grant shall provide such funds (in accordance with the ratios prescribed in paragraph (1)) only with respect to the amount of funds contributed by such State.

(July 1, 1944, ch. 373, title XXVI, § 2617, as added Aug. 18, 1990, Pub. L. 101–381, title II, § 201, 104 Stat. 590; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(29), 106 Stat. 3506.)

AMENDMENTS

1992—Subsec. (d)(3)(A). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

§ 300ff–28. Distribution of funds

(a) Special projects of national significance

(1) In general

Of the amount appropriated under section 300ff–30 of this title for each fiscal year, the Secretary shall use not to exceed 10 percent of such amount to establish and administer a special projects of national significance program to award direct grants to public and nonprofit private entities including community-based organizations to fund special programs for the care and treatment of individuals with HIV disease.

(2) Grants

The Secretary shall award grants under subsection (a) of this section based on—

(A) the need to assess the effectiveness of a particular model for the care and treatment of individuals with HIV disease;

(B) the innovative nature of the proposed activity; and

(C) the potential replicability of the proposed activity in other similar localities or nationally.

(3) Special projects

Special projects of a national significance may include those that are designed to—

(A) establish a system designed to increase the number of health care facilities willing and able to serve low-income individuals and families with HIV disease;

(B) deliver drug abuse treatment and HIV health care services at a single location, through either an outpatient or residential facility;

(C) provide support and respite care for participants in family-based care networks critical to the delivery of comprehensive HIV care in the minority community;

(D) deliver an enhanced spectrum of comprehensive health care and support services to underserved hemophilia populations, including minorities and those in rural and underserved areas, utilizing established networks of hemophilia diagnostic and treatment centers and community-based outreach systems;

(E) deliver HIV health care and support services to Indians with HIV disease and their families;

(F) improve the provision of HIV health care and support services to individuals and families with HIV disease located in rural areas;

(G) deliver HIV health care and support services to homeless individuals and families with HIV disease; and

(H) deliver HIV health care and support services to individuals with HIV disease who are incarcerated.

(b) Amount of grant to State

(1) Minimum allotment

Subject to the extent of amounts made available under section 300ff–30 of this title, the amount of a grant to be made under this part for—

(A) each of the several States and the District of Columbia for a fiscal year shall be the greater of—

(i) $100,000, and

(ii) an amount determined under paragraph (2); and

(B) each territory of the United States, as defined in paragraph 3,[1] shall be an amount determined under paragraph (2).

(2) Determination

(A) Formula

The amount referred to in paragraph (1)(A)(ii) for a State and paragraph (1)(B) for a territory of the United States shall be the product of—

(i) an amount equal to the amount appropriated under section 300ff–30 of this title for the fiscal year involved; and

(ii) the ratio of the distribution factor for the State or territory to the sum of the distribution factors for all the States or territories.

(B) Distribution factor

As used in subparagraph (A)(ii), the term ''distribution factor'' means—

(i) in the case of a State, the product of—

(I) the number of cases of acquired immune deficiency syndrome in the State, as indicated by the number of cases reported to and confirmed by the Secretary for the 2 most recent fiscal years for which such data are available; and

(II) the cube root of the ratio (based on the most recent available data) of—

(aa) the average per capita income of individuals in the United States (including the territories); to

(bb) the average per capita income of individuals in the State; and

(ii) in the case of a territory of the United States the number of additional cases of such syndrome in the specific territory, as indicated by the number of cases reported to and confirmed by the Secretary for the 2 most recent fiscal years for which such data is available.

(3) Definitions

As used in this subsection—

(A) the term ''State'' means each of the 50 States, the District of Columbia and the Commonwealth of Puerto Rico; and

(B) the term ''territory of the United States'' means the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands.

(c) Allocation of assistance by States

(1) Consortia

In a State that has reported 1 percent or more of all AIDS cases reported to and confirmed by the Centers for Disease Control and Prevention in all States, not less than 50 percent of the amount received by the State under a grant awarded under this part shall be utilized for the creation and operation of community-based comprehensive care consortia under section 300ff–23 of this title, in those areas within the State in which the largest number of individuals with HIV disease reside.

(2) Allowances

Prior to allocating assistance under this subsection, a State shall consider the unmet needs of those areas that have not received financial assistance under part A of this subchapter.

(3) Planning and evaluations

A State may not use in excess of 5 percent of amounts received under a grant awarded under this part for planning and evaluation activities.

(4) Administration

A State may not use in excess of 5 percent of amounts received under a grant awarded under this part for administration, accounting, reporting, and program oversight functions.

(5) Construction

A State may not use amounts received under a grant awarded under this part to purchase or improve land, or to purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or to make cash payments to intended recipients of services.

[1] So in original. Probably should be paragraph ''(3),''.

(d) Expedited distribution

(1) In general

Not less than 75 percent of the amounts received under a grant awarded to a State under this part shall be obligated to specific programs and projects and made available for expenditure not later than—

(A) in the case of the first fiscal year for which amounts are received, 150 days after the receipt of such amounts by the State; and

(B) in the case of succeeding fiscal years, 120 days after the receipt of such amounts by the State.

(2) Public comment

Within the time periods referred to in paragraph (1), the State shall invite and receive public comment concerning methods for the utilization of such amounts.

(e) Reallocation

Any amounts appropriated in any fiscal year and made available to a State under this part that have not been obligated as described in subsection (d) of this section shall be repaid to the Secretary and reallotted to other States in proportion to the original grants made to such States.

(July 1, 1944, ch. 373, title XXVI, § 2618, as added Aug. 18, 1990, Pub. L. 101–381, title II, § 201, 104 Stat. 595; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(30), 106 Stat. 3506.)

AMENDMENTS

1992—Subsec. (c)(1). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

§ 300ff–29. Technical assistance

The Secretary may provide technical assistance in administering and coordinating the activities authorized under section 300ff–22 of this title.

(July 1, 1944, ch. 373, title XXVI, § 2619, as added Aug. 18, 1990, Pub. L. 101–381, title II, § 201, 104 Stat. 597.)

§ 300ff–30. Authorization of appropriations

There are authorized to be appropriated to make grants under this part, $275,000,000 in each of the fiscal years 1991 and 1992, and such sums as may be necessary in each of the fiscal years 1993 through 1995.

(July 1, 1944, ch. 373, title XXVI, § 2620, as added Aug. 18, 1990, Pub. L. 101–381, title II, § 201, 104 Stat. 597.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ff–28 of this title.

PART C—EARLY INTERVENTION SERVICES

SUBPART I—FORMULA GRANTS FOR STATES

§ 300ff–41. Establishment of program

(a) Allotments for States

For the purposes described in subsection (b) of this section, the Secretary, acting through the Director of the Centers for Disease Control and Prevention and in consultation with the Administrator of the Health Resources and Services Administration, shall for each of the fiscal years 1991 through 1995 make an allotment for each State in an amount determined in accordance with section 300ff–49 of this title. The Secretary shall make payments, as grants, to each State from the allotment for the State for the fiscal year involved if the Secretary approves for the fiscal year an application submitted by the State pursuant to section 300ff–65 of this title.

(b) Purposes of grants

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees to expend the grant for the purposes of providing, on an outpatient basis, each of the early intervention services specified in paragraph (2) with respect to HIV disease.

(2) Specification of early intervention services

The early intervention services referred to in paragraph (1) are—

(A) counseling individuals with respect to HIV disease in accordance with section 300ff–62 of this title;

(B) testing individuals with respect to such disease, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;

(C) referrals described in paragraph (3);

(D) other clinical and diagnostic services with respect to HIV disease, and periodic medical evaluations of individuals with the disease; and

(E) providing the therapeutic measures described in subparagraph (B).

(3) Referrals

The services referred to in paragraph (2)(C) are referrals of individuals with HIV disease to appropriate providers of health and support services, including, as appropriate—

(A) to entities receiving amounts under part A or B of this subchapter for the provision of such services;

(B) to biomedical research facilities of institutions of higher education that offer experimental treatment for such disease, or to community-based organizations or other entities that provide such treatment; or

(C) to grantees under section 300ff–71 of this title, in the case of pregnant women.

(4) Requirement of availability of all early intervention services through each grantee

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that each of the early intervention services specified in paragraph (2) will be available through the State. With respect to compliance with such agreement, a State may expend the grant to provide the early intervention services directly, and may expend

the grant to enter into agreements with public or nonprofit private entities under which the entities provide the services.

(5) Optional services

A State receiving a grant under subsection (a) of this section—

(A) may expend not more than 5 percent of the grant to provide early intervention services through making grants to hospitals that—

(i) for the most recent fiscal year for which the data is available, have admitted—

(I) not fewer than 250 individuals with acquired immune deficiency syndrome; or

(II) a number of such individuals constituting 20 percent of the number of inpatients of the hospital admitted during such period;

(ii) agree to offer and encourage such services with respect to inpatients of the hospitals; and

(iii) agree that subsections (c) and (d) of section 300ff–44 of this title will apply to the hospitals to the same extent and in the same manner as such subsections apply to entities described in such section;

(B) may expend the grant to provide outreach services to individuals who may have HIV disease, or may be at risk of the disease, and who may be unaware of the availability and potential benefits of early treatment of the disease, and to provide outreach services to health care professionals who may be unaware of such availability and potential benefits; and

(C) may, in the case of individuals who seek early intervention services from the grantee, expend the grant—

(i) for case management to provide coordination in the provision of health care services to the individuals and to review the extent of utilization of the services by the individuals; and

(ii) to provide assistance to the individuals regarding establishing the eligibility of the individuals for financial assistance and services under Federal, State, or local programs providing for health services, mental health services, social services, or other appropriate services.

(6) Allocations

(A) Subject to subparagraphs (B) and (C), the Secretary may not make a grant under subsection (a) of this section unless the State involved agrees—

(i) to expend not less than 35 percent of the grant to provide the early intervention services specified in subparagraphs (A) through (C) of paragraph (2); and

(ii) to expend not less than 35 percent of the grant to provide the early intervention services specified in subparagraphs (D) and (E) of such paragraph.

(B) With respect to compliance with the agreement under subparagraph (A), amounts reserved by a State for fiscal year 1991 for purposes of clauses (i) and (ii) of such subparagraph may be expended to provide the services specified in paragraph (5).

(C) The Secretary shall ensure that, of the amounts appropriated under section 300ff–50 of this title for fiscal year 1991, an amount equal to $130,000,000 is expended to provide the early intervention services specified in subparagraphs (A) through (C) of paragraph (2).

(July 1, 1944, ch. 373, title XXVI, § 2641, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 597; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(31), 106 Stat. 3506.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–42, 300ff–43, 300ff–44, 300ff–45, 300ff–46, 300ff–47, 300ff–48, 300ff–49, 300ff–49a, 300ff–50, 300ff–61, 300ff–64 of this title.

§ 300ff–42. Provision of services through medicaid providers

(a) In general

Subject to subsection (b) of this section, the Secretary may not make a grant under section 300ff–41 of this title to a State unless, in the case of any service described in subsection (b) of such section that is available pursuant to the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State—

(1) the State will provide the service through a State entity, and the State entity has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(2) the State will enter into an agreement with a public or nonprofit private entity under which the entity will provide the service, and the entity has entered into such a participation agreement and is qualified to receive such payments.

(b) Waiver regarding certain secondary agreements

(1) In general

In the case of an entity making an agreement pursuant to subsection (a)(2) of this section regarding the provision of services, the requirement established in such subsection regarding a participation agreement shall be waived by the Secretary if the entity does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(2) Acceptance of voluntary donations

A determination by the Secretary of whether an entity referred to in paragraph (1) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the entity accepts voluntary donations for the purpose of providing services to the public.

(July 1, 1944, ch. 373, title XXVI, § 2642, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 599.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ff–64 of this title.

§ 300ff–43. Requirement of matching funds

(a) In general

In the case of any State to which the criterion described in subsection (c) of this section applies, the Secretary may not make a grant under section 300ff–41 of this title unless the State agrees that, with respect to the costs to be incurred by the State in carrying out the purpose referred to in such subsection, the State will, subject to subsection (b)(2) of this section, make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount equal to—

(1) for the first fiscal year for which such criterion applies to the State, not less than 16⅔ percent of such costs ($1 for each $5 of Federal funds provided in the grant);

(2) for any second such fiscal year, not less than 20 percent of such costs ($1 for each $4 of Federal funds provided in the grant);

(3) for any third such fiscal year, not less than 25 percent of such costs ($1 for each $3 of Federal funds provided in the grant); and

(4) for any subsequent fiscal year, not less than 33⅓ percent of such costs ($1 for each $2 of Federal funds provided in the grant).

(b) Determination of amount of non-Federal contribution

(1) In general

Non-Federal contributions required in subsection (a) of this section may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, and any portion of any service subsidized by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(2) Inclusion of certain amounts

(A) In making a determination of the amount of non-Federal contributions made by a State for purposes of subsection (a) of this section, the Secretary shall, subject to subparagraph (B), include any non-Federal contributions provided by the State for HIV-related services, without regard to whether the contributions are made for programs established pursuant to this subchapter.

(B) In making a determination for purposes of subparagraph (A), the Secretary may not include any non-Federal contributions provided by the State as a condition of receiving Federal funds under any program under this subchapter (except for the program established in section 300ff–41 of this title) or under other provisions of law.

(c) Applicability of matching requirement

(1) Percentage of national number of cases

(A) The criterion referred to in subsection (a) of this section is, with respect to a State, that the number of cases of acquired immune deficiency syndrome reported to and confirmed by the Director of the Centers for Disease Control and Prevention for the State for the period described in subparagraph (B) constitutes more than 1 percent of the number of such cases reported to and confirmed by the Director for the United States for such period.

(B) The period referred to in subparagraph (A) is the 2-year period preceding the fiscal year for which the State involved is applying to receive a grant under section 300ff–41 of this title.

(2) Exemption

For purposes of paragraph (1), the number of cases of acquired immune deficiency syndrome reported and confirmed for the Commonwealth of Puerto Rico for any fiscal year shall be deemed to be less than 1 percent.

(d) Diminished State contribution

With respect to a State that does not make available the entire amount of the non-Federal contribution referred to in subsection (a) of this section, the State shall continue to be eligible to receive Federal funds under a grant under section 300ff–41 of this title, except that the Secretary in providing Federal funds under the grant shall provide such funds (in accordance with the ratios prescribed in paragraph (1)) only with respect to the amount of funds contributed by such State.

(July 1, 1944, ch. 373, title XXVI, § 2643, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 600; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(32), 106 Stat. 3506.)

AMENDMENTS

1992—Subsec. (c)(1)(A). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control''.

§ 300ff–44. Offering and encouraging early intervention services

(a) In general

The Secretary may not make a grant under section 300ff–41 of this title unless, in the case of entities to which the State provides amounts from the grant for the provision of early intervention services, the State involved agrees that—

(1) if the entity is a health care provider that regularly provides treatment for sexually transmitted diseases, the entity will offer and encourage such services with respect to individuals to whom the entity provides such treatment;

(2) if the entity is a health care provider that regularly provides treatment for intravenous substance abuse, the entity will offer and encourage such services with respect to individuals to whom the entity provides such treatment;

(3) if the entity is a family planning clinic, the entity will offer and encourage such serv-

ices with respect to individuals to whom the entity provides family planning services and whom the entity has reason to believe has HIV disease; and

(4) if the entity is a health care provider that provides treatment for tuberculosis, the entity will offer and encourage such services with respect to individuals to whom the entity provides such treatment.

(b) Sufficiency of amount of grant

With respect to compliance with the agreement made under subsection (a) of this section, an entity to which subsection (a) of this section applies may be required to offer, encourage, and provide early intervention services only to the extent that the amount of the grant is sufficient to pay the costs of offering, encouraging, and providing the services.

(c) Criteria for offering and encouraging

Subject to section 300ff–41(b)(4) of this title, an entity to which subsection (a) of this section applies is, for purposes of such subsection, offering and encouraging early intervention services with respect to the individuals involved if the entity—

(1) offers such services to the individuals, and encourages the individuals to receive the services, as a regular practice in the course of providing the health care involved; and

(2) provides the early intervention services only with the consent of the individuals.

(July 1, 1944, ch. 373, title XXVI, § 2644, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 601.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ff–41 of this title.

§ 300ff–45. Notification of certain individuals receiving blood transfusions

(a) In general

The Secretary may not make a grant under section 300ff–41 of this title unless the State involved provides assurances satisfactory to the Secretary that, with respect to individuals in the State receiving, between January 1, 1978, and April 1, 1985 (inclusive), a transfusion of whole blood or a blood-clotting factor, the State will provide public education and information for the purpose of—

(1) encouraging the population of such individuals to receive early intervention services; and

(2) informing such population of any health facilities in the geographic area involved that provide such services.

(b) Rule of construction

An agreement made under subsection (a) of this section may not be construed to require that, in carrying out the activities described in such subsection, a State receiving a grant under section 300ff–41 of this title provide individual notifications to the individuals described in such subsection.

(July 1, 1944, ch. 373, title XXVI, § 2645, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 602.)

§ 300ff–46. Reporting and partner notification

(a) Reporting

The Secretary may not make a grant under section 300ff–41 of this title unless, with respect to testing for HIV disease, the State involved provides assurances satisfactory to the Secretary that the State will require that any entity carrying out such testing confidentially report to the State public health officer information sufficient—

(1) to perform statistical and epidemiological analyses of the incidence in the State of cases of such disease;

(2) to perform statistical and epidemiological analyses of the demographic characteristics of the population of individuals in the State who have the disease; and

(3) to assess the adequacy of early intervention services in the State.

(b) Partner notification

The Secretary may not make a grant under section 300ff–41 of this title unless the State involved provides assurances satisfactory to the Secretary that the State will require that the public health officer of the State, to the extent appropriate in the determination of the officer, carry out a program of partner notification regarding cases of HIV disease.

(c) Rules of construction

An agreement made under this section may not be construed—

(1) to require or prohibit any State from providing that identifying information concerning individuals with HIV disease is required to be submitted to the State; or

(2) to require any State to establish a requirement that entities other than the public health officer of the State are required to make the notifications referred to in subsection (b) of this section.

(July 1, 1944, ch. 373, title XXVI, § 2646, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 602.)

STUDY REGARDING PARTNER NOTIFICATION

Section 402 of Pub. L. 101–381 provided that:

''(a) IN GENERAL.—The Secretary shall conduct a study of programs of HIV partner notification for the purpose of determining—

''(1) in the case of individuals who have been notified under such programs, the percentage of such individuals who undergo counseling and testing regarding HIV disease;

''(2) in the case of such individuals who have undergone HIV testing, the number of such individuals determined through such tests to have HIV disease;

''(3) the extent to which such programs have, in the case of such individuals, resulted in behavioral changes that are effective regarding the prevention of exposure to, and the transmission of, HIV disease; and

''(4) the extent to which such programs represent a cost effective use of available HIV-related resources.

''(b) REPORT.—Not later than 1 year after the date of enactment of this Act [Aug. 18, 1990], the Secretary of Health and Human Services shall complete the study required under subsection (a) and prepare and submit, to the appropriate committees of Congress, a report describing the findings made as a result of such study.''

§ 300ff–47. Requirement of State law protection against intentional transmission

(a) In general

The Secretary may not make a grant under section 300ff–41 of this title to a State unless the chief executive officer determines that the criminal laws of the State are adequate to prosecute any HIV infected individual, subject to the condition described in subsection (b) of this section, who—

(1) makes a donation of blood, semen, or breast milk, if the individual knows that he or she is infected with HIV and intends, through such donation, to expose another HIV[1] in the event that the donation is utilized;

(2) engages in sexual activity if the individual knows that he or she is infected with HIV and intends, through such sexual activity, to expose another to HIV; and

(3) injects himself or herself with a hypodermic needle and subsequently provides the needle to another person for purposes of hypodermic injection, if the individual knows that he or she is infected and intends, through the provision of the needle, to expose another to such etiologic agent in the event that the needle is utilized.

(b) Consent to risk of transmission

The State laws described in subsection (a) of this section need not apply to circumstances under which the conduct described in paragraphs (1) through (3) of subsection (a) of this section if the individual who is subjected to the behavior involved knows that the other individual is infected and provides prior informed consent to the activity.

(c) State certification with respect to required laws

With respect to complying with subsection (a) of this section as a condition of receiving a grant under section 300ff–11 of this title, the Secretary may not require a State to enact any statute, or to issue any regulation, if the chief executive officer of the State certifies to the Secretary that the laws of the State are adequate. The existence of a criminal law of general application, which can be applied to the conduct described in paragraphs (1) through (3) of subsection (a) of this section, is sufficient for compliance with this section.

(d) Time limitations with respect to required laws

With respect to receiving a grant under section 300ff–11 of this title, if a State is unable to certify compliance with subsection (a) of this section, the Secretary may make a grant to a State under such section if—

(1) for each of the fiscal years 1991 and 1992, the State provides assurances satisfactory to the Secretary that by not later than October 1, 1992, the State has in place or will establish the prohibitions described in subsection (a) of this section; and

(2) for fiscal year 1993 and subsequent fiscal years, the State has established such prohibitions.

[1] So in original. Probably should be ''to HIV''.

(July 1, 1944, ch. 373, title XXVI, § 2647, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 603; amended Nov. 3, 1990, Pub. L. 101–502, § 6(c), 104 Stat. 1291.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–502 inserted ''certifies to the Secretary that the laws of the State'' before ''are adequate'' in first sentence and substituted ''subsection (a) of this section,'' for ''subsection (a) of this section'' in second sentence.

§ 300ff–48. Testing and other early intervention services for State prisoners

(a) In general

In addition to grants under section 300ff–41 of this title, the Secretary may make grants to States for the purpose of assisting the States in providing early intervention services to individuals sentenced by the State to a term of imprisonment. The Secretary may make such a grant only if the State involved requires, subject to subsection (d) of this section, that—

(1) the services be provided to such individuals; and

(2) each such individual be informed of the requirements of subsection (c) of this section regarding testing and be informed of the results of such testing of the individual.

(b) Requirement of matching funds

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that, with respect to the costs to be incurred by the State in carrying out the purpose described in such subsection, the State will make available (directly or through donations from public or private entities) non-Federal contributions toward such costs in an amount equal to—

(A) for the first fiscal year of payments under the grant, not less than $1 for each $2 of Federal funds provided in the grant; and

(B) for any subsequent fiscal year of such payments, not less than $1 for each $1 of Federal funds provided in the grant.

(2) Determination of amount of non-Federal contribution

Non-Federal contributions required in paragraph (1) may be in cash or in kind, fairly evaluated, including plant, equipment, or services. Amounts provided by the Federal Government, and services (or portions of services) subsidized by the Federal Government, may not be included in determining the amount of such non-Federal contributions.

(c) Testing

The Secretary may not make a grant under subsection (a) of this section unless—

(1) the State involved requires that, subject to subsection (d) of this section, any individual sentenced by the State to a term of imprisonment be tested for HIV disease—

(A) upon entering the State penal system; and

(B) during the 30-day period preceding the date on which the individual is released from such system;

(2) with respect to informing employees of the penal system of the results of such testing of the individual, the State—

(A) upon the request of any such employee, provides the results to the employee in any case in which the medical officer of the prison determines that there is a reasonable basis for believing that the employee has been exposed by the individual to such disease; and

(B) informs the employees of the availability to the employees of such results under the conditions described in subparagraph (A);

(3) with respect to informing the spouse of the individual of the results of such testing of the individual, the State—

(A) upon the request of the spouse, provides such results to the spouse prior to any conjugal visit and provides such results to the spouse during the period described in paragraph (1)(B); and

(B) informs the spouse of the availability to the spouse of such results under the conditions described in subparagraph (A);

(4) with respect to such testing upon entering the State penal system of such an individual who has been convicted of rape or aggravated sexual assault, the State—

(A) upon the request of the victim of the rape or assault, provides such results to the victim; and

(B) informs the victim of the availability to the victim of such results; and

(5) the State, except as provided in any of paragraphs (2) through (4), maintains the confidentiality of the results of testing for HIV disease in each prison operated by the State or with amounts provided by the State, and makes disclosures of such results only as medically necessary.

(d) Determination of prisons subject to requirement

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that the requirement established in such subsection regarding the provision of early intervention services to inmates will apply only to inmates who are incarcerated in prisons with respect to which the State public health officer, after consultation with the chief State correctional officer, has, on the basis of the criteria described in paragraph (2), determined that the provision of such services is appropriate with respect to the public health and safety.

(2) Description of criteria

The criteria to be considered for purposes of paragraph (1) are—

(A) with respect to the geographic areas in which inmates of the prison involved resided before incarceration in the prison—

(i) the severity of the epidemic of HIV disease in the areas during the period in which the inmates resided in the areas; and

(ii) the incidence, in the areas during such period, of behavior that places individuals at significant risk of developing HIV disease; and

(B) the extent to which medical examinations conducted by the State for inmates of the prison involved indicate that the inmates have engaged in such behavior.

(e) Applicability of provisions regarding informed consent, counseling, and other matters

The Secretary may not make a grant under subsection (a) of this section unless the State involved agrees that sections 300ff–41(b)(4), 300ff–62, and 300ff–64(c) of this title will apply to the provision of early intervention services pursuant to the grant in the same manner and to the same extent as such sections apply to the provision of such services by grantees under section 300ff–41 of this title.

(f) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(g) [1] Rule of construction

With respect to testing inmates of State prisons for HIV disease without the consent of the inmates, the agreements made under this section may not be construed to authorize, prohibit, or require any State to conduct such testing, except as provided in subparagraphs (A) and (B) of subsection (c)(1) of this section.

(g) [1] Authorization of appropriations

To carry out this section, there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 1988 through 1995.

(July 1, 1944, ch. 373, title XXVI, § 2648, formerly Pub. L. 100–607, title IX, § 902, Nov. 4, 1988, 102 Stat. 3171; amended Pub. L. 100–690, title II, § 2605(a), Nov. 18, 1988, 102 Stat. 4234; renumbered § 2648 and amended Aug. 18, 1990, Pub. L. 101–381, title III, § 301(b), 104 Stat. 614.)

CODIFICATION

Section was formerly classified to section 300ee–6 of this title prior to renumbering by Pub. L. 101–381.

AMENDMENTS

1990—Pub. L. 101–381, § 301(b)(1), renumbered section 300ee–6 of this title as this section.

Pub. L. 101–381, § 301(b)(4), substituted ''and other early intervention services for'' for ''of'' in section catchline.

Subsecs. (a) to (f). Pub. L. 101–381, § 301(b)(3), substituted subsecs. (a) to (f) relating to grants for early intervention services for State prisoners, requirement of matching funds, testing of State prisoners, determination of prisons subject to requirement, applicability of provisions regarding informed consent, counseling, and other matters, and requirement of application for grants, for former subsecs. (a) to (f) relating to testing of State prisoners, requirement of confidentiality of testing, education and counseling through prison medical facilities of individuals tested, funding, and promulgation of regulations.

Subsec. (g). Pub. L. 101–381, § 301(b)(2), (3), added subsec. (g) relating to rule of construction and substituted

[1] So in original. Two subsecs. (g) were enacted.

''1995'' for ''1990'' in subsec. (g) relating to authorization of appropriations.

1988—Subsecs. (c), (d)(3)(B)(i). Pub. L. 100–690 substituted ''the etiologic agent for acquired immune deficiency syndrome'' for ''the human immunodeficiency virus''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–690 effective immediately after enactment of Pub. L. 100–607, which was approved Nov. 4, 1988, see section 2600 of Pub. L. 100–690, set out as a note under section 242m of this title.

EFFECTIVE DATE

Section 904 of title IX of Pub. L. 100–607 provided that: ''This title [enacting this section and provisions set out as notes under this section] shall become effective 180 days after the date of enactment of this Act [Nov. 4, 1988].''

SHORT TITLE

Section 901 of title IX of Pub. L. 100–607 provided that: ''This title [enacting this section and provisions set out as notes below] may be cited as the 'Prison Testing Act of 1988'.''

STUDY BY ATTORNEY GENERAL; REPORT TO CONGRESS

Section 903 of title IX of Pub. L. 100–607, as amended by Pub. L. 100–690, title II, § 2605(b), Nov. 18, 1988, 102 Stat. 4234, directed Attorney General of the United States to complete, not later than Nov. 5, 1989, a study and submit a report to appropriate committees of Congress concerning appropriateness or inappropriateness of mandated prison sentences for any individual convicted of an intravenous drug or sex offense who thereafter knowingly places others at risk of becoming infected with the etiologic agent for acquired immune deficiency syndrome.

§ 300ff–49. Determination of amount of allotments

(a) Minimum allotment

Subject to the extent of amounts made available in appropriations Acts, the amount of an allotment under section 300ff–41(a) of this title for a State for a fiscal year shall be the greater of—

(1) $100,000 for each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, and $50,000 for each of the territories of the United States other than the Commonwealth of Puerto Rico; and

(2) an amount determined under subsection (b) of this section.

(b) Determination under formula

The amount referred to in subsection (a)(2) of this section is the product of—

(1) an amount equal to the amount appropriated under subsection (a)[1] of section 300ff–50 of this title for the fiscal year involved; and

(2) a percentage equal to the quotient of—

(A) an amount equal to the number of cases of acquired immune deficiency syndrome reported to and confirmed by the Director of the Centers for Disease Control and Prevention for the State involved for the most recent fiscal year for which such data is available; divided by

(B) an amount equal to the number of cases of acquired immune deficiency syndrome reported to and confirmed by the Director of the Centers for Disease Control and Prevention for the United States for the most recent fiscal year for which such data is available.

(c) Certain allocations by Secretary

(1) Discretionary grants to certain States

After determining the amount of an allotment under this[2] subsection (a) of this section for a fiscal year, the Secretary shall reduce the amount of the allotment of each State by 10 percent. From the amounts available as a result of such reductions, the Secretary shall, on a discretionary basis, make grants to States receiving allotments for the fiscal year involved. Such grants shall be made subject to each of the agreements and assurances required as a condition of receiving grants under section 300ff–41 of this title.

(2) Grants to certain political subdivisions

(A)(i) In the case of a State containing any political subdivision described in clause (ii), the Secretary shall, subject to subparagraph (B), make a reduction in the amount of the allotment under subsection (a) of this section for the State for each fiscal year in an amount necessary for carrying out subparagraphs (B) and (C) with respect to the political subdivision. Any such reduction shall be in addition to the reduction required in paragraph (1) for the fiscal year involved.

(ii) The political subdivision referred to in clause (i) is any political subdivision that received a cooperative agreement from the Secretary, acting through the Director of the Centers for Disease Control and Prevention, for fiscal year 1990 for programs to provide counseling and testing with respect to acquired immune deficiency syndrome.

(B) In the case of a State described in subparagraph (A), the Secretary shall, from the amounts made available as a result of reductions under such subparagraph, make a grant each fiscal year to each political subdivision described in such subparagraph that exists in the State if the political subdivision involved agrees that the provisions of subparts II and III will apply to the political subdivision to the same extent and in the same manner as such subparts apply to entities receiving grants under section 300ff–51(a) of this title.

(C) Grants under subparagraph (B) for a fiscal year for a political subdivision shall be provided in an amount equal to the amount received by the political subdivision in fiscal year 1990 under the cooperative agreement described in subparagraph (A).

(d) Disposition of certain funds appropriated for allotments

(1) In general

Any amounts available pursuant to paragraph (2) shall, in accordance with paragraph (3), be allotted by the Secretary each fiscal year to States receiving payments under section 300ff–41(a) of this title for the fiscal year (other than any State referred to in paragraph

[1] So in original. Section 300ff–50 of this title does not contain a subsec. (a).

[2] So in original. The word ''this'' probably should not appear.

(2)(C)). The Secretary shall make payments, as grants, to each such State from any such allotment for the State for the fiscal year involved.

(2) Specification of amounts

The amounts referred to in paragraph (1) are any amounts that are not paid to States under section 300ff–41(a) of this title as a result of—

(A) the failure of any State to submit an application under section 300ff–51 of this title;

(B) the failure, in the determination of the Secretary, of any State to prepare the application in compliance with such section or to submit the application within a reasonable period of time; or

(C) any State informing the Secretary that the State does not intend to expend the full amount of the allotment made to the State.

(3) Amount of allotment

The amount of an allotment under paragraph (1) for a State for a fiscal year shall be an amount equal to the product of—

(A) an amount equal to the amount available pursuant to paragraph (2) for the fiscal year involved; and

(B) the percentage determined under subsection (b)(2) of this section for the State.

(e) Transition rules

(1) For the fiscal years 1991 through 1993, the amount of an allotment under section 300ff–41 of this title shall be the greater of the amount determined under subsection (a) of this section and an amount equal to the amount applicable under paragraph (2) for the fiscal year involved.

(2) For purposes of paragraph (1)—

(A) the amount applicable for fiscal year 1991 is an amount equal to the amount received by the State involved from the Secretary, acting through the Director of the Centers for Disease Control and Prevention, for fiscal year 1990 for the provision of counseling and testing services with respect to HIV;

(B) the amount applicable for fiscal year 1992 is 85 percent of the amount specified in subparagraph (A); and

(C) the amount applicable for fiscal year 1993 is 70 percent of the amount specified in subparagraph (A).

(July 1, 1944, ch. 373, title XXVI, § 2649, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 604; amended Nov. 3, 1990, Pub. L. 101–502, § 6(b), 104 Stat. 1290; Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(33), 106 Stat. 3506.)

AMENDMENTS

1992—Subsecs. (b)(2), (c)(2)(A)(ii), (e)(2)(A). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'' wherever appearing.

1990—Subsec. (c). Pub. L. 101–502 designated existing provisions as par. (1), inserted heading, and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ff–41 of this title.

§ 300ff–49a. Miscellaneous provisions

The Secretary may not make a grant under section 300ff–41 of this title unless—

(1) the State involved submits to the Secretary a comprehensive plan for the organization and delivery of the early intervention services to be funded with the grant that includes a description of the purposes for which the State intends to use such assistance, including—

(A) the services and activities to be provided and an explanation of the manner in which the elements of the program to be implemented by the State with the grant will maximize the quality of early intervention services available to individuals with HIV disease throughout the State; and

(B) a description of the manner in which services funded with the grant will be coordinated with other available related services for individuals with HIV disease; and

(2) the State agrees that—

(A) the public health agency administering the grant will conduct public hearings regarding the proposed use and distribution of the grant;

(B) to the maximum extent practicable, early intervention services delivered pursuant to the grant will be provided without regard to the ability of the individual to pay for such services and without regard to the current or past health condition of the individual with HIV disease;

(C) early intervention services under the grant will be provided in settings accessible to low-income individuals with HIV disease; and

(D) outreach to low-income individuals with HIV disease will be provided to inform such individuals of the services available pursuant to the grant.

(July 1, 1944, ch. 373, title XXVI, § 2649A, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 605.)

§ 300ff–50. Authorization of appropriations

For the purpose of making grants under section 300ff–41 of this title, there are authorized to be appropriated $230,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995.

(July 1, 1944, ch. 373, title XXVI, § 2650, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 606.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–41, 300ff–49 of this title.

SUBPART II—CATEGORICAL GRANTS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 256b, 300ff–12, 300ff–49 of this title.

§ 300ff–51. Establishment of program

(a) In general

For the purposes described in subsection (b) of this section, the Secretary, acting through the Administrator of the Health Resources and Services Administration, may make grants to public and nonprofit private entities specified in section 300ff–52(a) of this title.

(b) Purposes of grants

(1) In general

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees to expend the grant for the purposes of providing, on an outpatient basis, each of the early intervention services specified in paragraph (2) with respect to HIV disease.

(2) Specification of early intervention services

The early intervention services referred to in paragraph (1) are—

(A) counseling individuals with respect to HIV disease in accordance with section 300ff–62 of this title;

(B) testing individuals with respect to such disease, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;

(C) referrals described in paragraph (3);

(D) other clinical and diagnostic services regarding HIV disease, and periodic medical evaluations of individuals with the disease;

(E) providing the therapeutic measures described in subparagraph (B).

(3) Referrals

The services referred to in paragraph (2)(C) are referrals of individuals with HIV disease to appropriate providers of health and support services, including, as appropriate—

(A) to entities receiving amounts under part A or B of this subchapter for the provision of such services;

(B) to biomedical research facility[1] of institutions of higher education that offer experimental treatment for such disease, or to community-based organizations or other entities that provide such treatment; or

(C) to grantees under section 300ff–71 of this title, in the case of a pregnant woman.

(4) Requirement of availability of all early intervention services through each grantee

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees that each of the early intervention services specified in paragraph (2) will be available through the grantee. With respect to compliance with such agreement, such a grantee may expend the grant to provide the early intervention services directly, and may expend the grant to enter into agreements with public or nonprofit private entities under which the entities provide the services.

(5) Optional services

A grantee under subsection (a) of this section—

(A) may expend the grant to provide outreach services to individuals who may have HIV disease or may be at risk of the disease, and who may be unaware of the availability and potential benefits of early treatment of the disease, and to provide outreach services to health care professionals who may be unaware of such availability and potential benefits; and

(B) may, in the case of individuals who seek early intervention services from the grantee, expend the grant—

(i) for case management to provide coordination in the provision of health care services to the individuals and to review the extent of utilization of the services by the individuals; and

(ii) to provide assistance to the individuals regarding establishing the eligibility of the individuals for financial assistance and services under Federal, State, or local programs providing for health services, mental health services, social services, or other appropriate services.

(c) Participation in certain consortium

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees to make reasonable efforts to participate in a consortium established with a grant under section 300ff–22(a)(1) of this title regarding comprehensive services to individuals with HIV disease, if such a consortium exist[2] in the geographic area with respect to which the applicant is applying to receive such a grant.

(July 1, 1944, ch. 373, title XXVI, § 2651, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 606; amended Nov. 15, 1990, Pub. L. 101–557, title IV, § 401(b)(2), 104 Stat. 2771.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–557 substituted ''section 300ff–52(a)'' for ''section 300ff–52(a)(1)''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–49, 300ff–52, 300ff–53, 300ff–54, 300ff–55, 300ff–61 of this title.

§ 300ff–52. Minimum qualifications of grantees

(a) In general

The entities referred to in section 300ff–51(a) of this title are public entities and nonprofit private entities that are—

(1) migrant health centers under section 254b of this title or community health centers under section 254c of this title;

(2) grantees under section 256 of this title (regarding health services for the homeless);

(3) grantees under section 300 of this title (regarding family planning) other than States;

(4) comprehensive hemophilia diagnostic and treatment centers;

(5) Federally-qualified health centers under section 1905(*l*)(2)(B) of the Social Security Act [42 U.S.C. 1396d(*l*)(2)(B)]; or

(6) nonprofit private entities that provide comprehensive primary care services to populations at risk of HIV disease.

(b) Status as medicaid provider

(1) In general

Subject to paragraph (2), the Secretary may not make a grant under section 300ff–51 of this

[1] So in original. Probably should be ''facilities''.

[2] So in original. Probably should be ''exists''.

title for the provision of services described in subsection (b) of such section in a State unless, in the case of any such service that is available pursuant to the State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the State—

(A) the applicant for the grant will provide the service directly, and the applicant has entered into a participation agreement under the State plan and is qualified to receive payments under such plan; or

(B) the applicant for the grant will enter into an agreement with a public or nonprofit private entity under which the entity will provide the service, and the entity has entered into such a participation agreement and is qualified to receive such payments.

(2) Waiver regarding certain secondary agreements

(A) In the case of an entity making an agreement pursuant to paragraph (1)(B) regarding the provision of services, the requirement established in such paragraph regarding a participation agreement shall be waived by the Secretary if the entity does not, in providing health care services, impose a charge or accept reimbursement available from any third-party payor, including reimbursement under any insurance policy or under any Federal or State health benefits program.

(B) A determination by the Secretary of whether an entity referred to in subparagraph (A) meets the criteria for a waiver under such subparagraph shall be made without regard to whether the entity accepts voluntary donations regarding the provision of services to the public.

(July 1, 1944, ch. 373, title XXVI, § 2652, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 607; amended Nov. 15, 1990, Pub. L. 101–557, title IV, § 401(b)(3), 104 Stat. 2771.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (b)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–557 substituted ''referred to in section 300ff–51(a) of this title'' for ''referred to in subsection (b) of this section'', redesignated pars. (A) to (F) as (1) to (6), respectively, and substituted ''nonprofit private entities that provide'' for ''a nonprofit private entity that provides'' in par. (6).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–51, 300ff–64 of this title.

§ 300ff–53. Preferences in making grants

(a) In general

In making grants under section 300ff–51 of this title, the Secretary shall give preference to any qualified applicant experiencing an increase in the burden of providing services regarding HIV disease, as indicated by the factors specified in subsection (b) of this section.

(b) Specification of factors

(1) In general

In the case of the geographic area with respect to which the entity involved is applying for a grant under section 300ff–51 of this title, the factors referred to in subsection (a) of this section, as determined for the period specified in paragraph (2), are—

(A) the number of cases of acquired immune deficiency syndrome;

(B) the rate of increase in such cases;

(C) the lack of availability of early intervention services;

(D) the number of other cases of sexually transmitted diseases, and the number of cases of tuberculosis and of drug abuse;

(E) the rate of increase in each of the cases specified in subparagraph (D);

(F) the lack of availability of primary health services from providers other than such applicant; and

(G) the distance between such area and the nearest community that has an adequate level of availability of appropriate HIV-related services, and the length of time required to travel such distance.

(2) Relevant period of time

The period referred to in paragraph (1) is the 2-year period preceding the fiscal year for which the entity involved is applying to receive a grant under section 300ff–51 of this title.

(c) Equitable allocations

In providing preferences for purposes of subsection (b) of this section, the Secretary shall equitably allocate the preferences among urban and rural areas.

(July 1, 1944, ch. 373, title XXVI, § 2653, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 608.)

§ 300ff–54. Miscellaneous provisions

(a) Services for individuals with hemophilia

In making grants under section 300ff–51 of this title, the Secretary shall ensure that any such grants made regarding the provision of early intervention services to individuals with hemophilia are made through the network of comprehensive hemophilia diagnostic and treatment centers.

(b) Technical assistance

The Secretary may, directly or through grants or contracts, provide technical assistance to nonprofit private entities regarding the process of submitting to the Secretary applications for grants under section 300ff–51 of this title, and may provide technical assistance with respect to the planning, development, and operation of any program or service carried out pursuant to such section.

(July 1, 1944, ch. 373, title XXVI, § 2654, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 608.)

§ 300ff–55. Authorization of appropriations

For the purpose of making grants under section 300ff–51 of this title, there are authorized to

be appropriated $75,000,000 for fiscal years 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995.

(July 1, 1944, ch. 373, title XXVI, § 2655, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 609.)

SUBPART III—GENERAL PROVISIONS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 300ff–49 of this title.

§ 300ff–61. Confidentiality and informed consent

(a) Confidentiality

The Secretary may not make a grant under this part unless—

(1) in the case of any State applying for a grant under section 300ff–41 of this title, the State agrees to ensure that information regarding the receipt of early intervention services is maintained confidentially pursuant to law or regulations in a manner not inconsistent with applicable law; and

(2) in the case of any entity applying for a grant under section 300ff–51 of this title, the entity agrees to ensure that information regarding the receipt of early intervention services pursuant to the grant is maintained confidentially in a manner not inconsistent with applicable law.

(b) Informed consent

(1) In general

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, in testing an individual for HIV disease, the applicant will test an individual only after obtaining from the individual a statement, made in writing and signed by the individual, declaring that the individual has undergone the counseling described in section 300ff–62(a) of this title and that the decision of the individual with respect to undergoing such testing is voluntarily made.

(2) Provisions regarding anonymous testing

(A) If, pursuant to section 300ff–64(b) of this title, an individual will undergo testing pursuant to this part through the use of a pseudonym, a grantee under such section shall be considered to be in compliance with the agreement made under paragraph (1) if the individual signs the statement described in such subsection using the pseudonym.

(B) If, pursuant to section 300ff–64(b) of this title, an individual will undergo testing pursuant to this part without providing any information relating to the identity of the individual, a grantee under such section shall be considered to be in compliance with the agreement made under paragraph (1) if the individual orally provides the declaration described in such paragraph.

(July 1, 1944, ch. 373, title XXVI, § 2661, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 609.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ff–63 of this title.

§ 300ff–62. Provision of certain counseling services

(a) Counseling before testing

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, before testing an individual for HIV disease, the applicant will provide to the individual appropriate counseling regarding the disease (based on the most recently available scientific data), including counseling on—

(1) measures for the prevention of exposure to, and the transmission of, HIV;

(2) the accuracy and reliability of the results of testing for HIV disease;

(3) the significance of the results of such testing, including the potential for developing acquired immune deficiency syndrome;

(4) encouraging the individual, as appropriate, to undergo such testing;

(5) the benefits of such testing, including the medical benefits of diagnosing HIV disease in the early stages and the medical benefits of receiving early intervention services during such stages;

(6) provisions of law relating to the confidentiality of the process of receiving such services, including information regarding any disclosures that may be authorized under applicable law and information regarding the availability of anonymous counseling and testing pursuant to section 300ff–64(b) of this title; and

(7) provisions of applicable law relating to discrimination against individuals with HIV disease.

(b) Counseling of individuals with negative test results

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, if the results of testing conducted for HIV disease indicate that an individual does not have the disease, the applicant will review for the individual the information provided pursuant to subsection (a) of this section, including—

(1) the information described in paragraphs (1) through (3) of such subsection; and

(2) the appropriateness of further counseling, testing, and education of the individual regarding such disease.

(c) Counseling of individuals with positive test results

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, if the results of testing for HIV disease indicate that the individual has the disease, the applicant will provide to the individual appropriate counseling regarding such disease, including—

(1) reviewing the information described in paragraphs (1) through (3) of subsection (a) of this section;

(2) reviewing the appropriateness of further counseling, testing, and education of the individual regarding such disease; and

(3) providing counseling on—

(A) the availability, through the applicant, of early intervention services;

(B) the availability in the geographic area of appropriate health care, mental health

care, and social and support services, including providing referrals for such services, as appropriate;

(C) the benefits of locating and counseling any individual by whom the infected individual may have been exposed to HIV and any individual whom the infected individual may have exposed to HIV; and

(D) the availability of the services of public health authorities with respect to locating and counseling any individual described in subparagraph (C).

(d) Additional requirements regarding appropriate counseling

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, in counseling individuals with respect to HIV disease, the applicant will ensure that the counseling is provided under conditions appropriate to the needs of the individuals.

(e) Counseling of emergency response employees

The Secretary may not make a grant under this part to a State unless the State agrees that, in counseling individuals with respect to HIV disease, the State will ensure that, in the case of emergency response employees, the counseling is provided to such employees under conditions appropriate to the needs of the employees regarding the counseling.

(f) Rule of construction regarding counseling without testing

Agreements made pursuant to this section may not be construed to prohibit any grantee under this part from expending the grant for the purpose of providing counseling services described in this section to an individual who does not undergo testing for HIV disease as a result of the grantee or the individual determining that such testing of the individual is not appropriate.

(July 1, 1944, ch. 373, title XXVI, § 2662, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 610.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–41, 300ff–48, 300ff–51, 300ff–61, 300ff–63 of this title.

§ 300ff–63. Applicability of requirements regarding confidentiality, informed consent, and counseling

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, with respect to testing for HIV disease, any such testing carried out by the applicant will, without regard to whether such testing is carried out with Federal funds, be carried out in accordance with conditions described in sections 300ff–61 and 300ff–62 of this title.

(July 1, 1944, ch. 373, title XXVI, § 2663, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 611.)

§ 300ff–64. Additional required agreements

(a) Reports to Secretary

The Secretary may not make a grant under this part unless—

(1) the applicant submits to the Secretary—

(A) a specification of the expenditures made by the applicant for early intervention services for the fiscal year preceding the fiscal year for which the applicant is applying to receive the grant; and

(B) an estimate of the number of individuals to whom the applicant has provided such services for such fiscal year; and

(2) the applicant agrees to submit to the Secretary a report providing—

(A) the number of individuals to whom the applicant provides early intervention services pursuant to the grant;

(B) epidemiological and demographic data on the population of such individuals;

(C) the extent to which the costs of HIV-related health care for such individuals are paid by third-party payors;

(D) the average costs of providing each category of early intervention service; and

(E) the aggregate amounts expended for each such category.

(b) Provision of opportunities for anonymous counseling and testing

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, to the extent permitted under State law, regulation or rule, the applicant will offer substantial opportunities for an individual—

(1) to undergo counseling and testing regarding HIV disease without being required to provide any information relating to the identity of the individual; and

(2) to undergo such counseling and testing through the use of a pseudonym.

(c) Prohibition against requiring testing as condition of receiving other health services

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, with respect to an individual seeking health services from the applicant, the applicant will not require the individual to undergo testing for HIV as a condition of receiving any health services unless such testing is medically indicated in the provision of the health services sought by the individual.

(d) Maintenance of support

The Secretary may not make a grant under this part unless the applicant for the grant agrees to maintain the expenditures of the applicant for early intervention services at a level equal to not less than the level of such expenditures maintained by the State for the fiscal year preceding the fiscal year for which the applicant is applying to receive the grant.

(e) Requirements regarding imposition of charges for services

(1) In general

The Secretary may not make a grant under this part unless, subject to paragraph (5), the applicant for the grant agrees that—

(A) in the case of individuals with an income less than or equal to 100 percent of the official poverty line, the applicant will not impose a charge on any such individual for the provision of early intervention services under the grant;

(B) in the case of individuals with an income greater than 100 percent of the official poverty line, the applicant—

(i) will impose a charge on each such individual for the provision of such services; and

(ii) will impose the charge according to a schedule of charges that is made available to the public.

(2) Limitation on charges regarding individuals subject to charges

With respect to the imposition of a charge for purposes of paragraph (1)(B)(ii), the Secretary may not make a grant under this part unless, subject to paragraph (5), the applicant for the grant agrees that—

(A) in the case of individuals with an income greater than 100 percent of the official poverty line and not exceeding 200 percent of such poverty line, the applicant will not, for any calendar year, impose charges in an amount exceeding 5 percent of the annual gross income of the individual involved;

(B) in the case of individuals with an income greater than 200 percent of the official poverty line and not exceeding 300 percent of such poverty line, the applicant will not, for any calendar year, impose charges in an amount exceeding 7 percent of the annual gross income of the individual involved; and

(C) in the case of individuals with an income greater than 300 percent of the official poverty line, the applicant will not, for any calendar year, impose charges in an amount exceeding 10 percent of the annual gross income of the individual involved.

(3) Assessment of charge

With respect to compliance with the agreement made under paragraph (1), a grantee under this part may, in the case of individuals subject to a charge for purposes of such paragraph—

(A) assess the amount of the charge in the discretion of the grantee, including imposing only a nominal charge for the provision of services, subject to the provisions of such paragraph regarding public schedules and of paragraph (2) regarding limitations on the maximum amount of charges; and

(B) take into consideration the medical expenses of individuals in assessing the amount of the charge, subject to such provisions.

(4) Applicability of limitation on amount of charge

The Secretary may not make a grant under this part unless the applicant for the grant agrees that the limitations established in paragraph (2) regarding the imposition of charges for services applies to the annual aggregate of charges imposed for such services, without regard to whether they are characterized as enrollment fees, premiums, deductibles, cost sharing, copayments, coinsurance, or similar charges.

(5) Waiver regarding certain secondary agreements

The requirement established in paragraph (1)(B)(i) shall be waived by the Secretary in the case of any entity for whom the Secretary has granted a waiver under section 300ff–42(b) or 300ff–52(b)(2) of this title.

(f) Relationship to items and services under other programs

(1) In general

The Secretary may not make a grant under this part unless the applicant for the grant agrees that, subject to paragraph (2), the grant will not be expended by the applicant, or by any entity receiving amounts from the applicant for the provision of early intervention services, to make payment for any such service to the extent that payment has been made, or can reasonably be expected to be made, with respect to such service—

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(B) by an entity that provides health services on a prepaid basis.

(2) Applicability to certain secondary agreements for provision of services

An agreement made under paragraph (1) shall not apply in the case of an entity through which a grantee under this part provides early intervention services if the Secretary has provided a waiver under section 300ff–42(b) or 300ff–52(b)(2) of this title regarding the entity.

(g) Administration of grant

The Secretary may not make a grant under this part unless the applicant for the grant agrees that—

(1) the applicant will not expend amounts received pursuant to this part for any purpose other than the purposes described in the subpart under which the grant involved is made;

(2) the applicant will establish such procedures for fiscal control and fund accounting as may be necessary to ensure proper disbursement and accounting with respect to the grant; and

(3) the applicant will not expend more than 5 percent of the grant for administrative expenses with respect to the grant.

(h) Construction

A State may not use amounts received under a grant awarded under section 300ff–41 of this title to purchase or improve land, or to purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or to make cash payments to intended recipients of services.

(July 1, 1944, ch. 373, title XXVI, § 2664, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 611.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–48, 300ff–61, 300ff–62, 300ff–65 of this title.

§ 300ff–65. Requirement of submission of application containing certain agreements and assurances

The Secretary may not make a grant under this part unless—

(1) an application for the grant is submitted to the Secretary containing agreements and assurances in accordance with this part and containing the information specified in section 300ff–64(a)(1) of this title;

(2) with respect to such agreements, the application provides assurances of compliance satisfactory to the Secretary; and

(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this part.

(July 1, 1944, ch. 373, title XXVI, § 2665, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 614.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ff–41 of this title.

§ 300ff–66. Provision by Secretary of supplies and services in lieu of grant funds

(a) In general

Upon the request of a grantee under this part, the Secretary may, subject to subsection (b) of this section, provide supplies, equipment, and services for the purpose of aiding the grantee in providing early intervention services and, for such purpose, may detail to the State any officer or employee of the Department of Health and Human Services.

(b) Limitation

With respect to a request described in subsection (a) of this section, the Secretary shall reduce the amount of payments under the grant involved by an amount equal to the costs of detailing personnel and the fair market value of any supplies, equipment, or services provided by the Secretary. The Secretary shall, for the payment of expenses incurred in complying with such request, expend the amounts withheld.

(July 1, 1944, ch. 373, title XXVI, § 2666, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 614.)

§ 300ff–67. Use of funds

Counseling programs carried out under this part—

(1) shall not be designed to promote or encourage, directly, intravenous drug abuse or sexual activity, homosexual or heterosexual;

(2) shall be designed to reduce exposure to and transmission of HIV disease by providing accurate information; and

(3) shall provide information on the health risks of promiscuous sexual activity and intravenous drug abuse.

(July 1, 1944, ch. 373, title XXVI, § 2667, as added Aug. 18, 1990, Pub. L. 101–381, title III, § 301(a), 104 Stat. 614.)

PART D—GENERAL PROVISIONS

§ 300ff–71. Demonstration grants for research and services for pediatric patients regarding acquired immune deficiency syndrome

(a) In general

The Secretary, acting through the Administrator of the Health Resources and Services Administration and the Director of the National Institutes of Health, shall make demonstration grants to community health centers, and other appropriate public or nonprofit private entities that provide primary health care to the public, for the purpose of—

(1) conducting, at the health facilities of such entities, clinical research on therapies for pediatric patients with HIV disease as well as pregnant women with HIV disease; and

(2) with respect to the pediatric patients who participate in such research, providing health care on an outpatient basis to such patients and the families of such patients.

(b) Minimum qualifications of grantees

The Secretary may not make a grant under subsection (a) of this section unless the health facility operated by the applicant for the grant serves a significant number of pediatric patients and pregnant women with HIV disease.

(c) Cooperation with biomedical institutions

(1) Design of research protocol

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant—

(A) has entered into a cooperative agreement or contract with an appropriately qualified entity with expertise in biomedical research under which the entity will assist the applicant in designing and conducting a protocol for the research to be conducted pursuant to the grant; and

(B) agrees to provide the clinical data developed in the research to the Director of the National Institutes of Health.

(2) Analysis and evaluation

The Secretary, acting through the Director of the National Institutes of Health—

(A) may assist grantees under subsection (a) of this section in designing and conducting protocols described in subparagraph (A) of paragraph (1); and

(B) shall analyze and evaluate the data submitted to the Director pursuant to subparagraph (B) of such paragraph.

(d) Case management

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees to provide for the case management of the pediatric patient involved and the family of the patient.

(e) Referrals for additional services

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees to provide for the pediatric patient involved and the family of the patient—

(1) referrals for inpatient hospital services, treatment for substance abuse, and mental health services; and

(2) referrals for other social and support services, as appropriate.

(f) Incidental services

The Secretary may not make a grant under subsection (a) of this section unless the applicant for the grant agrees to provide the family of the pediatric patient involved with such

transportation, child care, and other incidental services as may be necessary to enable the pediatric patient and the family of the patient to participate in the program established by the applicant pursuant to such subsection.

(g) Application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(h) Evaluations

The Secretary shall, directly or through contracts with public and private entities, provide for evaluations of programs carried out pursuant to subsection (a) of this section.

(i) "Community health center" defined

For purposes of this section, the term ''community health center'' has the meaning given such term in section 254c(a) of this title.

(j) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated $20,000,000 for fiscal year 1991, and such sums as may be necessary for each of the fiscal years 1992 through 1995.

(July 1, 1944, ch. 373, title XXVI, § 2671, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 401, 104 Stat. 617.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–41, 300ff–51 of this title.

§ 300ff–72. Provisions relating to blood banks

(a) Informational and training programs

The Secretary shall—

(1) develop and make available to technical and supervisory personnel employed at blood banks and facilities that produce blood products, materials and information concerning measures that may be implemented to protect the safety of the blood supply with respect to the activities of such personnel, including—

(A) state-of-the-art diagnostic and testing procedures relating to pathogens in the blood supply; and

(B) quality assurance procedures relating to the safety of the blood supply and of blood products; and

(2) develop and implement a training program that is designed to increase the number of employees of the Department of Health and Human Services who are qualified to conduct inspections of blood banks and facilities that produce blood products.

(b) Updates

The Secretary shall periodically review and update the materials and information made available under informational or training programs conducted under subsection (a) of this section.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section, $1,500,000 for fiscal year 1991, and such sums as may be necessary in each of the fiscal years 1992 through 1995.

(July 1, 1944, ch. 373, title XXVI, § 2672, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 401, 104 Stat. 618.)

§ 300ff–73. Research, evaluation, and assessment program

(a) Establishment

The Secretary, acting through the Agency for Health Care Policy and Research, shall establish a program to enable independent research to be conducted by individuals and organizations with appropriate expertise in the fields of health, health policy, and economics (particularly health care economics) to develop—

(1) a comparative assessment of the impact and cost-effectiveness of major models for organizing and delivering HIV-related health care, mental health care, early intervention, and support services, that shall include a report concerning patient outcomes, satisfaction, perceived quality of care, and total cumulative cost, and a review of the appropriateness of such models for the delivery of health and support services to infants, children, women, and families with HIV disease;

(2) through a review of private sector financing mechanisms for the delivery of HIV-related health and support services, an assessment of strategies for maintaining private health benefits for individuals with HIV disease and an assessment of specific business practices or regulatory barriers that could serve to reduce access to private sector benefit programs;

(3) an assessment of the manner in which different points-of-entry to the health care system affect the cost, quality, and outcome of the care and treatment of individuals and families with HIV disease; and

(4) a summary report concerning the major and continuing unmet needs in health care, mental health care, early intervention, and support services for individuals and families with HIV disease in urban and rural areas.

(b) Report

Not later than 2 years after August 18, 1990, and periodically thereafter, the Secretary shall prepare and submit, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate, a progress report that contains the findings and assessments developed under subsection (a) of this section.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section, such sums as may be necessary for each of the fiscal years 1991 through 1995.

(July 1, 1944, ch. 373, title XXVI, § 2673, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 401, 104 Stat. 619.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 300ff–74. Evaluations and reports

(a) Evaluations

The Secretary shall, directly or through grants and contracts, evaluate programs carried out under this subchapter.

(b) Report to Congress

The Secretary shall, not later than 1 year after the date on which amounts are first appropriated under this subchapter, and annually thereafter, prepare and submit to the appropriate Committees of Congress a report—

(1) summarizing all of the reports that are required to be submitted to the Secretary under this subchapter;

(2) recommending criteria to be used in determining the geographic areas with the most substantial need for HIV-related health services;

(3) summarizing all of the evaluations carried out pursuant to subsection (a) of this section during the period for which the report under this subsection is prepared; and

(4) making such recommendations for administrative and legislative initiatives with respect to this subchapter as the Secretary determines to be appropriate.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out this section, such sums as may be necessary for each of the fiscal years 1991 through 1995.

(July 1, 1944, ch. 373, title XXVI, § 2674, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 401, 104 Stat. 620.)

§ 300ff–75. Coordination

(a) Requirement

The Secretary shall assure that the Health Resources and Services Administration and the Centers for Disease Control and Prevention will coordinate the planning of the funding of programs authorized under this subchapter to assure that health support services for individuals with HIV disease are integrated with each other and that the continuity of care of individuals with HIV disease is enhanced. In coordinating the allocation of funds made available under this subchapter the Health Resources and Services Administration and the Centers for Disease Control and Prevention shall utilize planning information submitted to such agencies by the States and entities eligible for support.

(b) Integration by State

As a condition of receipt of funds under this subchapter, a State shall assure the Secretary that health support services funded under this subchapter will be integrated with each other, that programs will be coordinated with other available programs (including Medicaid) and that the continuity of care of individuals with HIV disease is enhanced.

(c) Integration by local or private entities

As a condition of receipt of funds under this subchapter, a local government or private nonprofit entity shall assure the Secretary that services funded under this subchapter will be integrated with each other, that programs will be coordinated with other available programs (including Medicaid) and that the continuity of care of individuals with HIV is enhanced.

(July 1, 1944, ch. 373, title XXVI, § 2675, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 401, 104 Stat. 620; amended Oct. 27, 1992, Pub. L. 102–531, title III, § 312(d)(34), 106 Stat. 3506.)

AMENDMENTS

1992—Subsec. (a). Pub. L. 102–531 substituted ''Centers for Disease Control and Prevention'' for ''Centers for Disease Control'' in two places.

§ 300ff–76. Definitions

For purposes of this subchapter:

(1) Counseling

The term ''counseling'' means such counseling provided by an individual trained to provide such counseling.

(2) Designated officer of emergency response employees

The term ''designated officer of emergency response employees'' means an individual designated under section 26____[1] by the public health officer of the State involved.

(3) Emergency

The term ''emergency'' means an emergency involving injury or illness.

(4) Emergency response employees

The term ''emergency response employees'' means firefighters, law enforcement officers, paramedics, emergency medical technicians, and other individuals (including employees of legally organized and recognized volunteer organizations, without regard to whether such employees receive nominal compensation) who, in the course of professional duties, respond to emergencies in the geographic area involved.

(5) Employer of emergency response employees

The term ''employer of emergency response employees'' means an organization that, in the course of professional duties, responds to emergencies in the geographic area involved.

(6) Exposed

The term ''exposed'', with respect to HIV disease or any other infectious disease, means to be in circumstances in which there is a significant risk of becoming infected with the etiologic agent for the disease involved.

(7) Families with HIV disease

The term ''families with HIV disease'' means families in which one or more members have HIV disease.

(8) HIV

The term ''HIV'' means infection with the etiologic agent for acquired immune deficiency syndrome.

(9) HIV disease

The term ''HIV disease'' means infection with the etiologic agent for acquired immune

[1] So in original. Probably should be a reference to section 300ff–86(a) of this title.

deficiency syndrome, and includes any condition arising from such syndrome.

(10) Official poverty line

The term ''official poverty line'' means the poverty line established by the Director of the Office of Management and Budget and revised by the Secretary in accordance with section 9902(a)[2] of this title.

(11) Person

The term ''person'' includes one or more individuals, governments (including the Federal Government and the governments of the States), governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, receivers, trustees, and trustees in cases under title 11.

(12) State

The term ''State'', except as otherwise specifically provided, means each of the 50 States, the District of Columbia, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, Puerto Rico, and the Republic of the Marshall Islands.

(July 1, 1944, ch. 373, title XXVI, § 2676, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 401, 104 Stat. 620.)

PART E—EMERGENCY RESPONSE EMPLOYEES

SUBPART I—GUIDELINES AND MODEL CURRICULUM

§ 300ff–80. Grants for implementation

(a) In general

With respect to the recommendations contained in the guidelines and the model curriculum developed under section 300ee–2 of this title, the Secretary shall make grants to States and political subdivisions of States for the purpose of assisting grantees regarding the initial implementation of such portions of the recommendations as are applicable to emergency response employees.

(b) Requirement of application

The Secretary may not make a grant under subsection (a) of this section unless an application for the grant is submitted to the Secretary and the application is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

(c) Authorization of appropriations

For the purpose of carrying out this section, there is authorized to be appropriated $5,000,000 for each of the fiscal years 1991 through 1995.

(July 1, 1944, ch. 373, title XXVI, § 2680, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 411(a), 104 Stat. 622.)

EFFECTIVE DATE

Section 411(b) of Pub. L. 101–381 provided that: ''Sections 2680 and 2681 of part E of title XXVI of the Public Health Service Act [sections 300ff–80 and 300ff–81 of this title], as added by subsection (a) of this section, shall take effect upon the date of the enactment of this Act [Aug. 18, 1990]. Such part shall otherwise take effect upon the expiration of the 30-day period beginning on the date on which the Secretary issues guidelines under section 2681(a).''

SUBPART II—NOTIFICATIONS OF POSSIBLE EXPOSURE TO INFECTIOUS DISEASES

§ 300ff–81. Infectious diseases and circumstances relevant to notification requirements

(a) In general

Not later than 180 days after August 18, 1990, the Secretary shall complete the development of—

(1) a list of potentially life-threatening infectious diseases to which emergency response employees may be exposed in responding to emergencies;

(2) guidelines describing the circumstances in which such employees may be exposed to such diseases, taking into account the conditions under which emergency response is provided; and

(3) guidelines describing the manner in which medical facilities should make determinations for purposes of section 300ff–83(d) of this title.

(b) Specification of airborne infectious diseases

The list developed by the Secretary under subsection (a)(1) of this section shall include a specification of those infectious diseases on the list that are routinely transmitted through airborne or aerosolized means.

(c) Dissemination

The Secretary shall—

(1) transmit to State public health officers copies of the list and guidelines developed by the Secretary under subsection (a) of this section with the request that the officers disseminate such copies as appropriate throughout the States; and

(2) make such copies available to the public.

(July 1, 1944, ch. 373, title XXVI, § 2681, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 411(a), 104 Stat. 623.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300ff–83 of this title.

§ 300ff–82. Routine notifications with respect to airborne infectious diseases in victims assisted

(a) Routine notification of designated officer

(1) Determination by treating facility

If a victim of an emergency is transported by emergency response employees to a medical facility and the medical facility makes a determination that the victim has an airborne infectious disease, the medical facility shall notify the designated officer of the emergency response employees who transported the victim to the medical facility of the determination.

(2) Determination by facility ascertaining cause of death

If a victim of an emergency is transported by emergency response employees to a medical

[2] So in original. Probably should be section ''9902(2)''.

facility and the victim dies at or before reaching the medical facility, the medical facility ascertaining the cause of death shall notify the designated officer of the emergency response employees who transported the victim to the initial medical facility of any determination by the medical facility that the victim had an airborne infectious disease.

(b) Requirement of prompt notification

With respect to a determination described in paragraph (1) or (2), the notification required in each of such paragraphs shall be made as soon as is practicable, but not later than 48 hours after the determination is made.

(July 1, 1944, ch. 373, title XXVI, § 2682, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 411(a), 104 Stat. 623.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–84, 300ff–85 of this title.

§ 300ff–83. Request for notifications with respect to victims assisted

(a) Initiation of process by employee

If an emergency response employee believes that the employee may have been exposed to an infectious disease by a victim of an emergency who was transported to a medical facility as a result of the emergency, and if the employee attended, treated, assisted, or transported the victim pursuant to the emergency, then the designated officer of the employee shall, upon the request of the employee, carry out the duties described in subsection (b) of this section regarding a determination of whether the employee may have been exposed to an infectious disease by the victim.

(b) Initial determination by designated officer

The duties referred to in subsection (a) of this section are that—

(1) the designated officer involved collect the facts relating to the circumstances under which, for purposes of subsection (a) of this section, the employee involved may have been exposed to an infectious disease; and

(2) the designated officer evaluate such facts and make a determination of whether, if the victim involved had any infectious disease included on the list issued under paragraph (1) of section 300ff–81(a) of this title, the employee would have been exposed to the disease under such facts, as indicated by the guidelines issued under paragraph (2) of such section.

(c) Submission of request to medical facility

(1) In general

If a designated officer makes a determination under subsection (b)(2) of this section that an emergency response employee may have been exposed to an infectious disease, the designated officer shall submit to the medical facility to which the victim involved was transported a request for a response under subsection (d) of this section regarding the victim of the emergency involved.

(2) Form of request

A request under paragraph (1) shall be in writing and be signed by the designated officer involved, and shall contain a statement of the facts collected pursuant to subsection (b)(1) of this section.

(d) Evaluation and response regarding request to medical facility

(1) In general

If a medical facility receives a request under subsection (c) of this section, the medical facility shall evaluate the facts submitted in the request and make a determination of whether, on the basis of the medical information possessed by the facility regarding the victim involved, the emergency response employee was exposed to an infectious disease included on the list issued under paragraph (1) of section 300ff–81(a) of this title, as indicated by the guidelines issued under paragraph (2) of such section.

(2) Notification of exposure

If a medical facility makes a determination under paragraph (1) that the emergency response employee involved has been exposed to an infectious disease, the medical facility shall, in writing, notify the designated officer who submitted the request under subsection (c) of this section of the determination.

(3) Finding of no exposure

If a medical facility makes a determination under paragraph (1) that the emergency response employee involved has not been exposed to an infectious disease, the medical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of this section of the determination.

(4) Insufficient information

(A) If a medical facility finds in evaluating facts for purposes of paragraph (1) that the facts are insufficient to make the determination described in such paragraph, the medical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of this section of the insufficiency of the facts.

(B)(i) If a medical facility finds in making a determination under paragraph (1) that the facility possesses no information on whether the victim involved has an infectious disease included on the list under section 300ff–81(a) of this title, the medical facility shall, in writing, inform the designated officer who submitted the request under subsection (c) of this section of the insufficiency of such medical information.

(ii) If after making a response under clause (i) a medical facility determines that the victim involved has an infectious disease, the medical facility shall make the determination described in paragraph (1) and provide the applicable response specified in this subsection.

(e) Time for making response

After receiving a request under subsection (c) of this section (including any such request resubmitted under subsection (g)(2) of this section), a medical facility shall make the applicable response specified in subsection (d) of this section as soon as is practicable, but not later than 48 hours after receiving the request.

(f) Death of victim of emergency

(1) Facility ascertaining cause of death

If a victim described in subsection (a) of this section dies at or before reaching the medical facility involved, and the medical facility receives a request under subsection (c) of this section, the medical facility shall provide a copy of the request to the medical facility ascertaining the cause of death of the victim, if such facility is a different medical facility than the facility that received the original request.

(2) Responsibility of facility

Upon the receipt of a copy of a request for purposes of paragraph (1), the duties otherwise established in this subpart regarding medical facilities shall apply to the medical facility ascertaining the cause of death of the victim in the same manner and to the same extent as such duties apply to the medical facility originally receiving the request.

(g) Assistance of public health officer

(1) Evaluation of response of medical facility regarding insufficient facts

(A) In the case of a request under subsection (c) of this section to which a medical facility has made the response specified in subsection (d)(4)(A) of this section regarding the insufficiency of facts, the public health officer for the community in which the medical facility is located shall evaluate the request and the response, if the designated officer involved submits such documents to the officer with the request that the officer make such an evaluation.

(B) As soon as is practicable after a public health officer receives a request under paragraph (1), but not later than 48 hours after receipt of the request, the public health officer shall complete the evaluation required in such paragraph and inform the designated officer of the results of the evaluation.

(2) Findings of evaluation

(A) If an evaluation under paragraph (1)(A) indicates that the facts provided to the medical facility pursuant to subsection (c) of this section were sufficient for purposes of determinations under subsection (d)(1) of this section—

(i) the public health officer shall, on behalf of the designated officer involved, resubmit the request to the medical facility; and

(ii) the medical facility shall provide to the designated officer the applicable response specified in subsection (d) of this section.

(B) If an evaluation under paragraph (1)(A) indicates that the facts provided in the request to the medical facility were insufficient for purposes of determinations specified in subsection (c) of this section—

(i) the public health officer shall provide advice to the designated officer regarding the collection and description of appropriate facts; and

(ii) if sufficient facts are obtained by the designated officer—

(I) the public health officer shall, on behalf of the designated officer involved, resubmit the request to the medical facility; and

(II) the medical facility shall provide to the designated officer the appropriate response under subsection (c) of this section.

(July 1, 1944, ch. 373, title XXVI, § 2683, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 411(a), 104 Stat. 624.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300ff–81, 300ff–84, 300ff–85, 300ff–87 of this title.

§ 300ff–84. Procedures for notification of exposure

(a) Contents of notification to officer

In making a notification required under section 300ff–82 of this title or section 300ff–83(d)(2) of this title, a medical facility shall provide—

(1) the name of the infectious disease involved; and

(2) the date on which the victim of the emergency involved was transported by emergency response employees to the medical facility involved.

(b) Manner of notification

If a notification under section 300ff–82 of this title or section 300ff–82(d)(2)[1] of this title is mailed or otherwise indirectly made—

(1) the medical facility sending the notification shall, upon sending the notification, inform the designated officer to whom the notification is sent of the fact that the notification has been sent; and

(2) such designated officer shall, not later than 10 days after being informed by the medical facility that the notification has been sent, inform such medical facility whether the designated officer has received the notification.

(July 1, 1944, ch. 373, title XXVI, § 2684, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 411(a), 104 Stat. 626.)

§ 300ff–85. Notification of employee

(a) In general

After receiving a notification for purposes of section 300ff–82 or 300ff–83(d)(2) of this title, a designated officer of emergency response employees shall, to the extent practicable, immediately notify each of such employees who—

(1) responded to the emergency involved; and

(2) as indicated by guidelines developed by the Secretary, may have been exposed to an infectious disease.

(b) Certain contents of notification to employee

A notification under this subsection to an emergency response employee shall inform the employee of—

(1) the fact that the employee may have been exposed to an infectious disease and the name of the disease involved;

(2) any action by the employee that, as indicated by guidelines developed by the Secretary, is medically appropriate; and

(3) if medically appropriate under such criteria, the date of such emergency.

---

[1] So in original. Probably should be section ''300ff–83(d)(2)''.

(c) Responses other than notification of exposure

After receiving a response under paragraph (3) or (4) of subsection (d) of section 300ff–83 of this title, or a response under subsection (g)(1) of such section, the designated officer for the employee shall, to the extent practicable, immediately inform the employee of the response.

(July 1, 1944, ch. 373, title XXVI, § 2685, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 411(a), 104 Stat. 626.)

§ 300ff–86. Selection of designated officers

(a) In general

For the purposes of receiving notifications and responses and making requests under this subpart on behalf of emergency response employees, the public health officer of each State shall designate 1 official or officer of each employer of emergency response employees in the State.

(b) Preference in making designations

In making the designations required in subsection (a) of this section, a public health officer shall give preference to individuals who are trained in the provision of health care or in the control of infectious diseases.

(July 1, 1944, ch. 373, title XXVI, § 2686, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 411(a), 104 Stat. 627.)

§ 300ff–87. Limitations with respect to duties of medical facilities

The duties established in this subpart for a medical facility—

(1) shall apply only to medical information possessed by the facility during the period in which the facility is treating the victim for conditions arising from the emergency, or during the 60-day period beginning on the date on which the victim is transported by emergency response employees to the facility, whichever period expires first; and

(2) shall not apply to any extent after the expiration of the 30-day period beginning on the expiration of the applicable period referred to in paragraph (1), except that such duties shall apply with respect to any request under section 300ff–83(c) of this title received by a medical facility before the expiration of such 30-day period.

(July 1, 1944, ch. 373, title XXVI, § 2687, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 411(a), 104 Stat. 627.)

§ 300ff–88. Rules of construction

(a) Liability of medical facilities and designated officers

This subpart may not be construed to authorize any cause of action for damages or any civil penalty against any medical facility, or any designated officer, for failure to comply with the duties established in this subpart.

(b) Testing

This subpart may not, with respect to victims of emergencies, be construed to authorize or require a medical facility to test any such victim for any infectious disease.

(c) Confidentiality

This subpart may not be construed to authorize or require any medical facility, any designated officer of emergency response employees, or any such employee, to disclose identifying information with respect to a victim of an emergency or with respect to an emergency response employee.

(d) Failure to provide emergency services

This subpart may not be construed to authorize any emergency response employee to fail to respond, or to deny services, to any victim of an emergency.

(July 1, 1944, ch. 373, title XXVI, § 2688, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 411(a), 104 Stat. 627.)

§ 300ff–89. Injunctions regarding violation of prohibition

(a) In general

The Secretary may, in any court of competent jurisdiction, commence a civil action for the purpose of obtaining temporary or permanent injunctive relief with respect to any violation of this subpart.

(b) Facilitation of information on violations

The Secretary shall establish an administrative process for encouraging emergency response employees to provide information to the Secretary regarding violations of this subpart. As appropriate, the Secretary shall investigate alleged such violations and seek appropriate injunctive relief.

(July 1, 1944, ch. 373, title XXVI, § 2689, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 411(a), 104 Stat. 628.)

§ 300ff–90. Applicability of subpart

This subpart shall not apply in a State if the chief executive officer of the State certifies to the Secretary that the law of the State is in substantial compliance with this subpart.

(July 1, 1944, ch. 373, title XXVI, § 2690, as added Aug. 18, 1990, Pub. L. 101–381, title IV, § 411(a), 104 Stat. 628.)

SUBCHAPTER XXV—MISCELLANEOUS

CODIFICATION

Title XXVII of the Public Health Service Act, comprising this subchapter, was renumbered part B of title II by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and is classified to part B (§ 238 et seq.) of subchapter I of this chapter.

§§ 300aaa to 300aaa–13. Transferred

CODIFICATION

Section 300aaa, act July 1, 1944, ch. 373, title XXVII, § 2701, formerly title V, § 501, 58 Stat. 709, as amended, which related to gifts for benefit of Service, was renumbered section 231 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238 of this title.

Section 300aaa–1, act July 1, 1944, ch. 373, title XXVII, § 2702, formerly title V, § 502, 58 Stat. 710, as amended, which related to use of immigration station hospitals, was renumbered section 232 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, § 2010(a)(1)–(3), June 10,

1993, 107 Stat. 213, and transferred to section 238a of this title.

Section 300aaa–2, act July 1, 1944, ch. 373, title XXVII, §2703, formerly title V, §503, 58 Stat. 710, as amended, which related to disposition of money collected for care of patients, was renumbered section 233 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238b of this title.

Section 300aaa–3, act July 1, 1944, ch. 373, title XXVII, §2704, formerly title V, §506, 58 Stat. 710, as amended, which related to transportation of remains of officers, was renumbered section 234 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238c of this title.

Section 300aaa–4, act July 1, 1944, ch. 373, title XXVII, §2705, formerly title V, §507, as added June 24, 1967, Pub. L. 90–31, §5, 81 Stat. 79, and amended, which related to availability of appropriations for grants to Federal institutions, was renumbered section 235 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238d of this title.

Section 300aaa–5, act July 1, 1944, ch. 373, title XXVII, §2706, formerly title V, §508, 58 Stat. 711, as amended, which related to transfer of funds for continuance of transferred functions, was renumbered section 236 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238e of this title.

Section 300aaa–6, act July 1, 1944, ch. 373, title XXVII, §2707, formerly title V, §509, 58 Stat. 711, as amended, which related to availability of appropriations, was renumbered section 237 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238f of this title.

Section 300aaa–7, act July 1, 1944, ch. 373, title XXVII, §2708, formerly title V, §510, 58 Stat. 711, as amended, which related to wearing of uniforms, was renumbered section 238 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238g of this title.

Section 300aaa–8, act July 1, 1944, ch. 373, title XXVII, §2709, formerly title V, §511, 58 Stat. 711, as amended, which related to annual report of Surgeon General, was renumbered section 239 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238h of this title.

Section 300aaa–9, act July 1, 1944, ch. 373, title XXVII, §2710, formerly title V, §512, as added Oct. 15, 1968, Pub. L. 90–574, title V, §503(a), 82 Stat. 1012, and amended, which related to memorials and other acknowledgements for contributions to the health of the Nation, was renumbered section 240 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238i of this title.

Section 300aaa–10, act July 1, 1944, ch. 373, title XXVII, §2711, formerly title V, §513, as added June 30, 1970, Pub. L. 91–296, title IV, §401(a), 84 Stat. 351, and amended, which related to evaluation of programs, was renumbered section 241 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238j of this title.

Section 300aaa–11, act July 1, 1944, ch. 373, title XXVII, §2712, formerly title V, §514, as added Nov. 9, 1978, Pub. L. 95–623, §11(e), 92 Stat. 3456, and amended, which related to contract authority, was renumbered section 242 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238k of this title.

Section 300aaa–12, act July 1, 1944, ch. 373, title XXVII, §2713, formerly title V, §515, formerly Pub. L. 88–164, title II, §225, as added Pub. L. 94–63, title III, §303, July 29, 1975, 89 Stat. 326, and amended, which related to recovery by United States of base amount plus interest in certain circumstances, was renumbered section 243 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238*l* of this title.

Section 300aaa–13, act July 1, 1944, ch. 373, title XXVII, §2714, formerly title XXI, §2116, as added Apr. 7, 1986, Pub. L. 99–272, title XVII, §17003, 100 Stat. 359, and amended, which related to use of fiscal agents, was renumbered section 244 of title II of act July 1, 1944, by Pub. L. 103–43, title XX, §2010(a)(1)–(3), June 10, 1993, 107 Stat. 213, and transferred to section 238m of this title.

CHAPTER 7—SOCIAL SECURITY

SUBCHAPTER I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE

SUBCHAPTER II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 256b, 299a, 907a, 1437f, 4636, 11606, 13021 of this title; title 2 section 651; title 5 sections 8403, 8442; title 7 sections 2012, 2015; title 8 section 1324a; title 12 section 1701z–11; title 22 sections 3968, 4071i; title 25 sections 13d, 459e, 609c–1, 639, 640d–21, 1264, 1407, 1408, 2307, 3304; title 26 sections 86, 162, 401, 412, 415, 1402, 6103; title 29 sections 718, 728, 1082, 1552; title 31 sections 1516, 3701; title 38 sections 5303A, 8126; title 40 App. section 202; title 43 section 1626; title 45 sections 231, 231a, 231b, 231c, 231d, 231e, 231f, 231q, 231r, 231u; title 50 App. section 1291.

SUBCHAPTER I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE

REPEAL OF SUBCHAPTER I OF THIS CHAPTER; INAPPLICABILITY OF REPEAL TO PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this subchapter is repealed effective January 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1960—Pub. L. 86–778, title VI, § 601(a), Sept. 13, 1960, 74 Stat. 987, included medical assistance for the aged in subchapter heading.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 428, 602, 671, 1301, 1306a, 1308, 1309, 1311, 1315, 1316, 1318, 1319, 1320b–2, 1320b–3, 1320b–7, 1382, 1395v, 1395z, 1396a, 1396b, 1396d of this title; title 7 sections 2012, 2014; title 8 section 1255a; title 26 section 6103.

§ 301. Authorization of appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to aged needy individuals, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health and Human Services (hereinafter referred to as the ''Secretary''), State plans for old-age assistance.

(Aug. 14, 1935, ch. 531, title I, § 1, 49 Stat. 620; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(a), 64

Stat. 558; Aug. 1, 1956, ch. 836, title III, § 311(a), 70 Stat. 848; Sept. 13, 1960, Pub. L. 86–778, title VI, § 601(b), 74 Stat. 987; July 25, 1962, Pub. L. 87–543, title I, § 104(c)(1), 76 Stat. 185; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(a)(2), 95 Stat. 816.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 substituted ''purpose of enabling'' for ''purpose (a) of enabling'', struck out provisions designated as cls. (b) and (c) which authorized appropriations for the purpose of enabling each State to furnish medical assistance to aged individuals who are not recipients of old-age assistance but whose income and resources are insufficient to meet the cost of necessary medical care and of encouraging each State to furnish rehabilitation and other services to individuals to attain and retain capability for self-care, and struck out '', or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged'' after ''plans for old-age assistance''.

1962—Pub. L. 87–543 amended first sentence generally, striking from cl. (a) provision relating to the purpose of encouraging each State, as far as practicable under the conditions in the State, to help aged needy individuals attain self-care, and adding cl. (c) incorporating the struck out provision.

1960—Pub. L. 86–778 amended section generally, authorizing appropriations for the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish medical assistance on behalf of aged individuals who are not recipients of old-age assistance but whose income and resources are insufficient to meet the costs of necessary medical services.

1956—Act Aug. 1, 1956, struck out specific appropriation for fiscal year ending June 30, 1956, and inserted provisions relating to attainment of self-care by individuals.

1950—Act Aug. 28, 1950, § 361(a), substituted ''Federal Security Administrator (hereinafter referred to as the 'Administrator')'' for ''Social Security Board established by subchapter I of this chapter (hereinafter referred to as the 'Board')''.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 604 of Pub. L. 86–778 provided that: ''The amendments made by section 601 of this Act [amending this section and sections 302, 303, 304, and 306 of this title] shall take effect October 1, 1960, and the amendments made by section 602 [amending section 1308 of this title] shall be effective with respect to fiscal years ending after 1960.''

CHANGE OF NAME

Secretary of Health and Human Services substituted in text for Secretary of Health, Education, and Welfare pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SHORT TITLE

For short title of this chapter and of amendments thereto, see section 1305 of this title and Short Title notes set out thereunder.

DECLARATION OF PURPOSE OF TITLE III OF ACT AUGUST 1, 1956

Section 300 of act Aug. 1, 1956, provided that: ''It is the purpose of this title [enacting sections 906 and 1310 of this title and amending this section and sections 302, 303, 601, 602, 603, 606, 1201, 1202, 1203, 1301, 1308, 1351, 1352, and 1353 of this title] (a) to promote the health of the Nation by assisting States to extend and broaden their provisions for meeting the costs of medical care for persons eligible for public assistance by providing for separate matching of assistance expenditures for medical care, (b) to promote the well-being of the Nation by encouraging the States to place greater emphasis on helping to strengthen family life and helping needy families and individuals attain the maximum economic and personal independence of which they are capable, (c) to assist in improving the administration of public assistance programs (1) through making grants and contracts, and entering into jointly financed cooperative arrangements, for research or demonstration projects and (2) through Federal-State programs of grants to institutions and traineeships and fellowships so as to provide training of public welfare personnel, thereby securing more adequately trained personnel, and (d) to improve aid to dependent children.''

PUERTO RICO, GUAM, AND THE VIRGIN ISLANDS

Pub. L. 92–603, title III, § 303(b), Oct. 30, 1972, 86 Stat. 1484, provided that: ''The amendments made by sections 301 [enacting sections 1381 to 1383c of this title] and 302 [enacting sections 801 to 805 of this title] and the repeals made by subsection (a) [repealing this section and sections 302 to 306, 1201 to 1206, and 1351 to 1355 of this title] shall not be applicable in the case of Puerto Rico, Guam, and the Virgin Islands.''

CROSS REFERENCES

Railway labor, see notes under section 151 of Title 45, Railroads.

§ 302. State old-age plans

(a) Contents

A State plan for old-age assistance must—

(1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for assistance under the plan is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing;

(5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid sub-

professional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;

(8) provide that all individuals wishing to make application for assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide, if the plan includes assistance for or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(10) if the State plan includes old-age assistance—

(A) provide that the State agency shall, in determining need for such assistance, take into consideration any other income and resources of an individual claiming old-age assistance, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (i) the State agency may disregard not more than $7.50 per month of any income and (ii) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder;

(B) include reasonable standards, consistent with the objectives of this subchapter, for determining eligibility for and the extent of such assistance; and

(C) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of such assistance to help them attain self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and

(11) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(b) Approval by Secretary

The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which (A) in the case of applicants for old-age assistance, excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application, and (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State; or

(3) any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this subchapter.

(c) Limitation on number of plans

Nothing in this subchapter shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this subchapter.

(Aug. 14, 1935, ch. 531, title I, § 2, 49 Stat. 620; Aug. 10, 1939, ch. 666, title I, § 101, 53 Stat. 1360; Aug. 28, 1950, ch. 809, title III, pt. 1, § 301(a), (b), pt. 6, § 361(c), (d), 64 Stat. 548, 558; Aug. 1, 1956, ch. 836, title III, § 311(b), 70 Stat. 848; Aug. 28, 1958, Pub. L. 85–840, title V, § 510, 72 Stat. 1051; Sept. 13, 1960, Pub. L. 86–778, title VI, § 601(b), 74 Stat. 987; July 25, 1962, Pub. L. 87–543, title I, §§ 106(a)(1), 157, 76 Stat. 188, 207; July 30, 1965, Pub. L. 89–97, title II, § 221(a)(3), title IV, § 403(a), 79 Stat. 357, 418; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 210(a)(1), 213(a)(1), 81 Stat. 895, 898; Oct. 30, 1972, Pub. L. 92–603, title IV, §§ 405(a), 406(a), 407(a), 410(a), 413(a), 86 Stat. 1488, 1489, 1491, 1492; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(a)(3), 95 Stat. 816; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2651(e), 98 Stat. 1149.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1984—Subsec. (a)(11). Pub. L. 98–369 added par. (11).

1981—Subsec. (a). Pub. L. 97–35 struck out in provision preceding par. (1) '', or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged'' par. (11) which specified the contents the State plan must contain if it includes medical assistance for the aged, par. (12) which specified the contents the State plan must contain if it includes assistance to or in behalf of individuals who are patients in institutions for mental diseases, and par. (13) which provided that if the State plan includes assistance to or in be-

half of patients in public institutions for mental diseases, it show that the State is making satisfactory progress towards developing and implementing a comprehensive mental health program.

1972—Subsec. (a)(1). Pub. L. 92–603, §410(a), inserted ''except to the extent permitted by the Secretary with respect to services'' before ''provide''.

Subsec. (a)(4). Pub. L. 92–603, §407(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(7). Pub. L. 92–603, §413(a), substituted provisions permitting use or disclosure of information concerning applicants or recipients to public officials requiring such information in connection with their official duties and to other persons for purposes directly connected with administration of the State plan, for provisions restricting use or disclosure of such information to purposes directly connected with administration of the State plan.

Subsec. (a)(10)(C). Pub. L. 92–603, §405(a), inserted provision relating to use of whatever internal organizational arrangement found appropriate.

Subsec. (b). Pub. L. 92–603, §406(a), inserted provision relating to furnishing of manuals and other policy issuances to persons without charge and at option of the State.

1968—Subsec. (a)(5). Pub. L. 90–248, §210(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10)(A)(i). Pub. L. 90–248, §213(a)(1), increased from $5 to $7.50 limitation on amount of any income which the State may disregard in making its determination of need.

1965—Subsec. (a)(10)(A). Pub. L. 89–97, §403(a), placed a ceiling of $5 on amount of any income which the State may disregard in making its determination of need and substituted ''$80'' and ''$20'' for ''$50'' and ''$10'' respectively.

Subsec. (a)(12), (13). Pub. L. 89–97, §221(a)(3), added pars. (12) and (13).

1962—Subsec. (a)(10)(A). Pub. L. 87–543 inserted ''as well as any expenses reasonably attributable to the earning of any such income'' and exception provision.

1960—Subsec. (a). Pub. L. 86–778 amended subsec. (a) generally, inserting provisions relating to plans for medical assistance, and required plans that include old-age assistance to include reasonable standards, consistent with objectives of this subchapter, for determining eligibility for and extent of such assistance.

Subsec. (b). Pub. L. 86–778 amended subsec. (b) generally, substituting ''eligibility for assistance under the plan'' for ''eligibility for old-age assistance under the plan'' in opening provisions, struck out provisions from par. (1) which permitted plan to impose an age requirement of as much as 70 years until Jan. 1, 1940, and inserted provisions in par. (2) requiring the Secretary to disapprove any plan, in the case of applicants for medical assistance for the aged, which excludes any individual who resides in the State.

Subsec. (c). Pub. L. 86–778 added subsec. (c).

1958—Subsec. (a)(11). Pub. L. 85–840 inserted provisions in par. (11) requiring the State plan to include a description of the steps taken to assure, in provision of such services, maximum utilization of other agencies providing similar or related services.

1956—Subsec. (a)(11). Act Aug. 1, 1956, added par. (11).

1950—Subsec. (a). Act Aug. 28, 1950, substituted ''provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for old-age assistance is denied or is not acted upon with reasonable promptness'' for ''provide for granting to any individual, whose claim for old-age assistance is denied, an opportunity for a fair hearing before such State agency'' in par. (4), ''Administrator'' for ''Board'' wherever appearing, and ''he'', ''him'', or ''his'' for ''it'' or ''its'' wherever appearing, and added pars. (9) and (10).

1939—Subsec. (a). Act Aug. 10, 1939, amended subsec. (a) generally commencing with par. (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 210(b) of Pub. L. 90–248 provided that: ''Each of the amendments made by subsection (a) [amending this section and sections 602, 1202, 1352, 1382, and 1396a of this title] shall become effective July 1, 1969, or, if earlier (with respect to a State's plan approved under title [subchapter] I, X, XIV, XVI, or XIX, or part A of title IV [of this chapter]) on the date as of which the modification of the State plan to comply with such amendment is approved.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 221(e) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 303, 306, 1206, 1355, 1382, 1383, and 1385 of this title] shall apply in the case of expenditures made after December 31, 1965, under a State plan approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter].''

Section 403(a) of Pub. L. 89–97 provided that the amendment made by that section is effective Oct. 1, 1965.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 202(a) of Pub. L. 87–543 provided that: ''The amendments made by sections 102(b)(1), 103, 106, and 134 [amending this section and sections 602, 607, 723, 1202, and 1352 of this title] shall become effective July 1, 1963.''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Oct. 1, 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–840 effective Oct. 1, 1958, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 314 [315] of act Aug. 1, 1956, provided that: ''The amendments made by sections 311(b), 312(b), 313(b), and 314(b) [amending this section and sections 602, 1202, and 1352 of this title] shall become effective July 1, 1957.''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 301(c) of act Aug. 28, 1950, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect July 1, 1951.''

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary under subsec. (a)(5)(A) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(D) of this title.

DISREGARDING OF INCOME OF OASDI RECIPIENTS IN DETERMINING NEED FOR PUBLIC ASSISTANCE

Section 306 of Pub. L. 92–603 provided that: ''In addition to the requirements imposed by law as a condition of approval of a State plan to provide aid or assistance in the form of money payments to individuals under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter], there is hereby imposed the requirement (and the plan shall be deemed to require) that, in the case of any individual receiving aid or assistance for any month after October 1972, or, at the option of the State, September 1972, and before January 1974 who also receives in such month a monthly insurance benefit under title II of such Act [subchapter II of this chapter] which was increased as a result of the enactment of Public Law 92–336, the sum

of the aid or assistance received by him for such month, plus the monthly insurance benefit received by him in such month (not including any part of such benefit which is disregarded under such plan), shall exceed the sum of the aid or assistance which would have been received by him for such month under such plan as in effect for October 1972, plus the monthly insurance benefit which would have been received by him in such month, by an amount equal to $4 or (if less) to such increase in his monthly insurance benefit under such title II (whether such excess is brought about by disregarding a portion of such monthly insurance benefit or otherwise).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 304, 306, 602, 1202, 1315, 1352, 4728 of this title; title 25 sections 683, 686, 689, 996.

§ 303. Payments to States and certain territories; computation of amount; eligibility of State to receive payment

(a) Computation of amounts

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing October 1, 1960—

(1) Repealed. Pub. L. 97–35, title XXI, § 2184(a)(4)(A), Aug. 13, 1981, 95 Stat. 816.

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as old-age assistance under the State plan, not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of old-age assistance for such month; plus

(3) Repealed. Pub. L. 97–35, title XXI, § 2184(a)(4)(A), Aug. 13, 1981, 95 Stat. 816.

(4) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) Method of computing and paying amounts

The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health and Human Services shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of aged individuals in the State, and (C) such other investigation as the Secretary of Health and Human Services may find necessary.

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this section for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to assistance furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health and Human Services for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

(Aug. 14, 1935, ch. 531, title I, § 3, 49 Stat. 621; Aug. 10, 1939, ch. 666, title I, § 102, 53 Stat. 1361; 1940 Reorg. Plan No. III, § 1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; Aug. 10, 1946, ch. 951, title V, § 501, 60 Stat. 991; June 14, 1948, ch. 468, § 3(a), 62 Stat. 439; Aug. 28, 1950, ch. 809, title III, pt. 1, § 302(a), pt. 6, § 361(c), (d), 64 Stat. 548, 558; July 18, 1952, ch. 945, § 8(a), 66 Stat. 778; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 1, 1954, ch. 1206, title III, § 303, 68 Stat. 1097; Aug. 1, 1956, ch. 836, title III, §§ 301, 311(c), 341, 70 Stat. 846, 848, 852; Aug. 28, 1958, Pub. L. 85–840, title V, § 501, 72 Stat. 1047; Sept. 13, 1960, Pub. L. 86–778, title VI, § 601(c), (d), 74 Stat. 989, 990; May 8, 1961, Pub. L. 87–31, § 5(a), (b), 75 Stat. 77; June 30, 1961, Pub. L. 87–64, title III, § 303(a), 75 Stat. 143; July 25, 1962, Pub. L. 87–543, title I, §§ 101(a)(1), (b)(1), 132(a), 76 Stat. 173, 179, 193; July 30, 1965, Pub. L. 89–97, title I, § 122, title II, § 221(a)(4), title IV, § 401(a), 79 Stat. 353, 357, 414; Jan. 2, 1968, Pub. L. 90–248, title II, § 212(a), 81 Stat. 897; Oct. 20, 1972, Pub. L. 92–512, title III, § 301(b), (d), 86 Stat. 946, 947; Jan. 4, 1975, Pub. L. 93–647, §§ 3(e)(2), 5(a), 88 Stat. 2349, 2350; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(a)(4), title XXIII, § 2353(a), 95 Stat. 816, 871; Nov. 6, 1986, Pub. L. 99–603, title I, § 121(b)(4), 100 Stat. 3391; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13741(b), 107 Stat. 663.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1993—Subsec. (a)(4). Pub. L. 103–66 substituted ''50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.'' for ''the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

''(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

''(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title; plus

''(C) one-half of the remainder of such expenditures.''

1986—Subsec. (a)(4)(B), (C). Pub. L. 99–603 added subpar. (B) and redesignated former subpar. (B) as (C).

1981—Subsec. (a)(1). Pub. L. 97–35, §2184(a)(4)(A), struck out par. (1) which provided for computation of amount of payments in case of any State other than Puerto Rico, the Virgin Islands, and Guam.

Subsec. (a)(2). Pub. L. 97–35, §2184(a)(4)(B), amended par. (2) generally, striking out provisions including as old-age assistance under the State plan expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care and increasing amount payable by larger of two specifically computable amounts.

Subsec. (a)(3). Pub. L. 97–35, §2184(a)(4)(A), struck out par. (3) which provided for payment, in the case of any State, of an amount equal to the Federal medical percentage of total amounts expended for each quarter as medical assistance for the aged under the State plan, including expenditures for insurance premiums for medical or any other type of remedial care or cost thereof.

Subsec. (a)(4). Pub. L. 97–35, §2353(a)(1)(A), substituted provision making payments available to any State for provision making payments available to any State whose State plan approved under section 302 of this title meets the requirements of subsec. (c)(1) of this section and ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'', inserted provision including within the meaning of training both short and long term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions, and struck out provisions which included in the computation of the amount payable services and provisions which specified what services were includable.

Subsec. (a)(5). Pub. L. 97–35, §2353(a)(1)(B), struck out par. (5) which provided payment, in the case of any State whose State plan approved under section 302 of this title which did not meet the requirements of subsec. (c)(1) of this section, of an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

Subsec. (c). Pub. L. 97–35, §2353(a)(2), struck out subsec. (c) which provided for an eligibility requirement in order for a State to qualify for payments under subsec. (a)(4) of this section and prescribed action to be taken by the Secretary upon failure of the State to comply.

Subsec. (d). Pub. L. 97–35, §2184(a)(4)(C), struck out subsec. (d) which provided that the amount determined for any State for any quarter which is attributable to expenditures with respect to patients in institutions for mental diseases be paid only to the extent that the State makes a satisfactory showing that the total expenditures in the State from Federal, State, and local sources for mental health services under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures in the State from such sources for such services under such programs for each quarter of fiscal year ending June 30, 1965.

1975—Subsec. (a). Pub. L. 93–647, §3(e)(2), struck out ''(subject to section 1320b of this title)'' after ''the Secretary of the Treasury shall''.

Subsec. (a)(4)(A)(iv). Pub. L. 93–647, §5(a), inserted ''(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)'' after ''training''.

1972—Subsec. (a). Pub. L. 92–512, §301(d), substituted ''shall (subject to section 1320b of this title) pay'' for ''shall pay'' in text preceding par. (1).

Subsec. (a)(4)(E). Pub. L. 92–512, §301(b), substituted ''under conditions which shall be'' for ''subject to limitations''.

1968—Subsec. (a)(4)(D). Pub. L. 90–248 inserted '', except to the extent specified by the Secretary'' after ''shall'' in introductory text to subpar. (D).

1965—Subsec. (a)(1). Pub. L. 89–97, §§122, 401(a), inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase appearing in so much of par. (1) as precedes cl. (A); and changed first step of formula for determining Federal payments to States with approved plans for old-age assistance under this subchapter, contained in cl. (A), by providing Federal sharing in $^{31}/_{37}$ths of first $37 of the average monthly assistance payment instead of $^{29}/_{35}$ths of first $35 of the average monthly assistance payment, extended the application of the Federal percentage in second step of formula to an additional $38 of the State's average payment, restated formula for second and third steps by striking out cl. (C) and combining such steps in cl. (B) and making provision therein to give recognition to the State's expenditures for medical care before applying the Federal percentage to remaining expenditures for which Federal participation is available, respectively.

Subsec. (a)(2)(A). Pub. L. 89–97, §122, inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase.

Subsec. (d). Pub. L. 89–97, §221(a)(4), added subsec. (d).

1962—Subsec. (a)(1). Pub. L. 87–543, §132(a), substituted ''$^{29}/_{35}$'' and ''$35'' for ''four-fifths'' and ''$31'', respectively, in subpar. (A), ''$70'' for ''$66'' in subpar. (B), and ''$85'' and ''$70'' for ''$81'' and ''$66'', respectively, in subpar. (C).

Subsec. (a)(2). Pub. L. 87–543, §132(a), substituted ''$37.50'' for ''$35.50'', in subpar. (A) and ''$45'' and ''$37.50'' for ''$43'' and ''$35.50'', respectively, in subpar. (B).

Subsec. (a)(4). Pub. L. 87–543, §101(a)(1), (b)(1)(A), inserted in opening provisions ''whose State plan approved under section 302 of this title meets the requirements of subsection (c) of this section'' after ''any State'', and substituted provisions which increased the Federal share of expenses of administration of State public assistance plans by providing quarterly payments of the sum of 75 per centum of the quarterly expenses for certain prescribed services to help attain and retain capability for self-care, services likely to prevent or reduce dependency, and services appropriate for individuals who were or are likely to become applicants for or recipients of assistance and request such services, and training of State or local public assistance personnel administering such plans and one-half of other administrative expenses for other services, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and re-

quired the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary for former provisions requiring quarterly payments of one-half of quarterly expenses of administration of State plans, including staff services of State or local public assistance agencies to applicants for and recipients of old-age assistance to help them attain self-care.

Subsec. (a)(5). Pub. L. 87–543, § 101(b)(1)(B), added par. (5).

Subsec. (c). Pub. L. 87–543, § 101(b)(1)(C), added subsec. (c).

1961—Subsec. (a)(1). Pub. L. 87–64, § 303(a)(1), substituted ''$31'' for ''$30'' in subpar. (A), ''$66'' for ''$65'' in subpar. (B), and ''$81'' for ''$80'' and ''$66'' for ''$65'' in subpar. (C).

Pub. L. 87–31, § 5(a), substituted ''$80'' and ''$15'' for ''$77'' and ''$12'', respectively, in subpar. (C).

Subsec. (a)(2). Pub. L. 87–64, § 303(a)(2), substituted ''$35.50'' for ''$35'' in subpar. (A), and ''$35.50'' for ''$35'' and ''$43'' for ''$42.50'' in subpar. (B).

Pub. L. 87–31, § 5(b), substituted ''$42.50'' and ''$7.50'' for ''$41'' and ''$6'', respectively, in subpar. (B).

1960—Subsec. (a). Pub. L. 86–778, § 601(c), added pars. (1)(C), (2)(B), and (3).

Subsec. (b)(2). Pub. L. 86–778, § 601(d), substituted ''assistance furnished under the State plan'' for ''old-age assistance furnished under the State plan'' in cl. (B).

1958—Subsec. (a). Pub. L. 85–840 increased payments to the States to four-fifths of the first $30 of the average monthly payment per recipient, including assistance in the form of money payments and in the form of medical or any other type of remedial care, plus Federal percentage of the amount by which the expenditures exceed the maximum which may be counted under cl. (A), but excluding that part of the average monthly payment per recipient in excess of $65, increased average monthly payment to Puerto Rico and the Virgin Islands from $30 to $35, excluded Guam from provisions which authorize an average monthly payment of $65 and included Guam within provisions which authorize an average monthly payment of $35, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1956—Subsec. (a). Act Aug. 1, 1956, § 301, substituted ''during such quarter as old-age assistance in the form of money payments under the State plan'' for ''during such quarter as old-age assistance under the State plan'' in cls. (1) and (2), ''who received old-age assistance in the form of money payments for such month'' for ''who received old-age assistance for such month'' in par. (A) of cl. (1), and inserted cl. (4).

Act Aug. 1, 1956, § 311(c), struck out '', which shall be used exclusively as old-age assistance,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), and substituted ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of old-age assistance to help them attain self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for old-age assistance, or both, and for no other purpose'' in cl. (3).

Act Aug. 1, 1956, § 341, substituted ''October 1, 1956'' for ''October 1, 1952'', struck out '', which shall be used exclusively as old-age assistance,'' after ''the Virgin Islands, an amount'', and substituted ''$60'' for ''$55'', in cl. (1), substituted ''the product of $30'' for ''the product of $25'' in par. (A) of cl. (1), and ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of old-age assistance to help them attain self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for old-age assistance, or both, and for no other purpose'' in cl. (3).

1954—Subsec. (b). Act Sept. 1, 1954, § 303(b), substituted ''subsection (a)'' for ''clause (1) of subsection (a)'', wherever appearing, substituted ''such subsection'' for ''such clause'' in par. (1), and struck out ''increased by five per centum'' at end of par. (3).

Subsec. (b)(1). Act Sept. 1, 1954, § 303(a), substituted ''the State's proportionate share'' for ''one-half''.

1952—Subsec. (a). Act July 18, 1952, increased Federal share of State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed formulas for computing Federal share of public assistance for Puerto Rico and Virgin Islands.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'', and ''he'', ''him'' or ''his'' for ''it'', or ''its'' wherever appearing and in subsec. (a) changed basis for computation of Federal portion of old-age assistance.

1948—Subsec. (a). Act June 14, 1948, substituted $50 for $45 and $20 for $15.

1946—Subsec. (a). Act Aug. 10, 1946, § 501(a), temporarily increased maximum monthly State expenditure for an individual to which Federal Government will contribute from $40 to $45, increased Federal contribution for assistance from one-half the State's expenditure to two-thirds the State's expenditure up to $15 monthly per individual plus one-half the State's expenditure over $15 and changed the Federal contribution for administration from 5 percent of Federal contribution for assistance to one-half the State expenditure for administration. See Effective and Termination Date of 1946 Amendment note below.

Subsec. (b). Act Aug. 10, 1946, § 501(b), temporarily changed references to cl. (1) of subsec. (a) to refer to entire subsection, substituted ''the State's proportionate share'' for ''one-half'' in par. (1) and struck out ''increased by 5 per centum'' at end of par. (3). See Effective and Termination Date of 1986 Amendment note below.

1939—Act Aug. 10, 1939, amended section generally, including substitution of $40 for $30 in subsec. (a).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13741(c) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2) of this subsection, the amendments made by subsections (a) and (b) [amending this section and sections 603, 1203, and 1353 of this title and provisions set out as a note under section 1383 of this title] shall be effective with respect to calendar quarters beginning on or after April 1, 1994.

''(2) SPECIAL RULE.—In the case of a State whose legislature meets biennially, and does not have a regular session scheduled in calendar year 1994, the amendments made by subsections (a) and (b) shall be effective no later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2353(a) of Pub. L. 97–35 effective, except as otherwise specifically provided, Oct. 1, 1981, see section 2354 of Pub. L. 97–35, set out as a note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 7 of Pub. L. 93–647, as amended by Pub. L. 94–120, § 3, Oct. 21, 1975, 89 Stat. 609; Pub. L. 94–401, § 2, Sept. 7, 1976, 90 Stat. 1215, eff. Feb. 1, 1976; Pub. L. 95–171, § 1(d), Nov. 12, 1977, 91 Stat. 1353; eff. Oct. 1, 1977, provided that:

''(a)(1) The amendments made by sections 2 and 5 of this Act [enacting sections 1397 to 1397f of this title and amending this section, sections 603, 1203, and 1353 of this title, and provisions set out as a note under sec-

tion 1383 of this title] shall be effective with respect to payments for quarters commencing after September 30, 1975.

''(2) Notwithstanding the provisions of section 2004 of the Social Security Act, as amended by this Act [section 1397c of this title], the first services program year of each State shall begin on October 1, 1975, and end with the close of, at the option of the State—

''(A) the day in the twelve-month period beginning October 1, 1975, or

''(B) the day in the twelve-month period beginning October 1, 1976,

which is the last day of the twelve-month period established by the State as its services program year under that section. Notwithstanding the provisions of subsection (b) of section 2003 of the Social Security Act, as amended by this Act [section 1397b(b) of this title], the aggregate expenditures required by that subsection with respect to the first services program year of each State shall be the amount which bears the same ratio to the amount that would otherwise be required under that subsection as the number of months in the State's first services program year bears to twelve.

''(3) Notwithstanding paragraph (1) of this subsection or section 3(f) [set out as a note under section 1397a of this title], payments under title IV [subchapter IV of this chapter] or section 2002(a)(1) of the Social Security Act [section 1397a(a)(1) of this title] with respect to expenditures made prior to October 1, 1978, in connection with the provision of child day care services in day care centers and group day care homes, in the case of children between the ages of six weeks and six years, may be made without regard to the requirements relating to staffing standards which are imposed by or under section 2002(a)(9)(A)(ii) of such Act [section 1397a(a)(9)(A)(ii) of this title], so long as the staffing standards actually being applied in the provision of the services involved (A) comply with applicable State law (as in effect at the time the services are provided), (B) are no lower than the corresponding staffing standards which were imposed or required by applicable State law on September 15, 1975, and (C) are no lower, in the case of any day care center or group day care home, than the corresponding standards actually being applied in such center or home on September 15, 1975.

''(b) The amendments made by section 3 of this Act [amending this section and sections 602, 603, 606, 622, 1203, 1308, 1315, 1316, 1320b note, and 1383 note of this title, repealing sections 801 to 805 and 1320b of this title, and enacting provisions set out as notes under section 1320b and 1397a of this title] shall be effective with respect to payments under sections 403 and 603 of the Social Security Act [sections 603 and 803 of this title] for quarters commencing after September 30, 1975, except that the amendments made by section 3(a) [amending sections 602, 603, 606, and 623 of this title] shall not be effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands, or Guam.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 301(e) of Pub. L. 92–512 provided that: ''The amendments made by this section (other than by subsection (b)) [enacting section 1320b of this title and amending this section and sections 603, 1203, 1253, and 1383] shall be effective July 1, 1972, and the amendments made by subsection (b) [amending this section and sections 603, 1203, 1353, and 1383 of this title] shall be effective January 1, 1973.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 212(e) of Pub. L. 90–248 provided that: ''The amendments made by the preceding subsections of this section [amending this section and sections 1203, 1353, and 1383 of this title] shall take effect January 1, 1968.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221 of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 302 of this title.

Section 401(f) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 603, 1203, 1353, and 1383 of this title] shall apply in the case of expenditures made after December 31, 1965, under a State plan approved under title I, IV, X, XIV, or XVI of the Social Security Act [subchapter I, IV, X, XIV, or XVI of this chapter].''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 202(d) of Pub. L. 87–543 provided that: ''The amendments made by sections 109 and 132 (other than subsections (d) and (e) thereof) [amending this section and sections 606, 1203, and 1353 of this title] shall be applicable in the case of expenditures, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter], as the case may be, made after September 30, 1962.''

Section 202(f) of Pub. L. 87–543 provided that: ''The amendments made by section 101(a) [amending this section and sections 603, 1203, and 1353 of this title] shall be applicable in the case of expenditures, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter], as the case may be, made after August 31, 1962. The amendments made by section 101(b) [amending this section and sections 603, 608, 609, 1203, and 1353 of this title] shall be applicable in the case of expenditures, under a State plan approved under title I, IV, X, or XIV of the Social Security Act, as the case may be, made after June 30, 1963.''

EFFECTIVE DATE OF 1961 AMENDMENTS

Section 303(e) of Pub. L. 87–64, as amended by Pub. L. 87–543, title I, §132(e), provided that: ''The amendments made by subsections (a), (b), and (c) of this section [amending this section and sections 1203 and 1353 of this title] shall apply only in the case of expenditures made after September 30, 1961, and before October 1, 1962, under a State plan approved under title I, X, or XIV, as the case may be, of the Social Security Act [subchapter I, X, or XIV of this chapter].''

Section 5(c) of Pub. L. 87–31 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply in the case of expenditures made after June 30, 1961, under a State plan approved under title I of the Social Security Act [this subchapter].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Oct. 1, 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 512 of Pub. L. 85–840 provided that: ''Notwithstanding the provisions of sections 305 and 345 of the Social Security Amendments of 1956, as amended [set out as notes below], the amendments made by sections 501, 502, 503, 504, 505, and 506 [amending this section and sections 603, 1203, 1301, and 1353 of this title] shall be effective—

''(1) in the case of money payments, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter], for months after September 1958, and

''(2) in the case of assistance in the form of medical or any other type of remedial care, under such a plan, with respect to expenditures made after September 1958.

The amendment made by section 506 [amending section 1301 of this title] shall also become effective, for purposes of title V of the Social Security Act [subchapter V of this chapter], for fiscal years ending after June 30, 1959. The amendments made by section 507 [amending section 1308 of this title] shall be effective for fiscal years ending after June 30, 1958. The amendment made by section 508 [amending section 1304 of this title] shall

be effective for fiscal years ending after June 30, 1959. The amendment made by section 510 shall become effective October 1, 1958.''

EFFECTIVE AND TERMINATION DATE OF 1956 AMENDMENT

Section 345 of act Aug. 1, 1956, provided that: ''The amendments made by this part [part V (§§ 341–345) of title III of act Aug. 1, 1956, amending this section and sections 603, 1203, and 1353 of this title] shall be effective for the period beginning October 1, 1956, and ending with the close of June 30, 1959, and after such amendments cease to be in effect any provision of law amended thereby shall be in full force and effect as though this part had not been enacted.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 305 of act Aug. 1, 1956, as amended by Pub. L. 85–110, July 17, 1957, 71 Stat. 308, provided that:

''(a) Except as provided in subsection (b), the amendments made by this part [part I (§§ 301–305) of title III of act Aug. 1, 1956, amending this section and sections 603, 1203, and 1353 of this title] shall become effective July 1, 1957.

''(b) The amendments made by any section of this part shall not apply to any State (as defined in section 1101 of the Social Security Act [section 1301 of this title] for purposes of title I thereof [subchapter I of this chapter]) for any fiscal year for which there is in effect an election by it not to have the amendments made by such section apply to it. Any such election shall be in effect for a fiscal year only if notice of the election has been filed with the Secretary of Health, Education, and Welfare at some time prior to May 16 of the preceding fiscal year, except that any such election shall be in effect for the fiscal year beginning July 1, 1957, if notice of the election is filed with the Secretary prior to August 1, 1957. An election by a State under this subsection shall continue in effect until the close of any fiscal year designated in a notice of termination of such election which is filed with the Secretary of Health, Education, and Welfare prior to May 16 of such year. Elections hereunder shall be made, and notices thereof and notices of termination shall be filed, on such form or forms and in such manner as the Secretary of Health, Education, and Welfare may prescribe.''

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

Section 8(e) of act July 18, 1952, as amended by act Sept. 1, 1954, title III, § 301, provided that: ''The amendments made by this section [amending this section and sections 603, 1203, and 1353 of this title] shall be effective for the period beginning October 1, 1952, and ending with the close of September 30, 1956, and after such amendments cease to be in effect any provision of law amended thereby shall be in full force and effect as though this Act [July 18, 1952] had not been enacted.''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 302(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950.''

EFFECTIVE DATE OF 1948 AMENDMENT

Section 3(d) of act June 14, 1948, provided that: ''The amendments made by this section [amending this section and sections 603 and 1203 of this title] shall become effective on October 1, 1948.''

EFFECTIVE AND TERMINATION DATE OF 1946 AMENDMENT

Section 504 of act Aug. 10, 1946, as amended by act Aug. 6, 1947, ch. 510, § 3, 61 Stat. 794, provided that: ''Sections 501, 502, and 503 [amending this section and sections 603 and 1203 of this title] shall be effective with respect to the period commencing October 1, 1946, and ending on June 30, 1950.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 102 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Fiscal Service'' substituted for ''Division of Disbursement'' in subsec. (b)(3) on authority of section 1(a)(1) of Reorg. Plan No. III of 1940, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees, which consolidated such division into Fiscal Service of Treasury Department. See section 306 of Title 31, Money and Finance.

NONDUPLICATION OF PAYMENTS TO STATES: PROHIBITION OF PAYMENTS AFTER DECEMBER 31, 1969

Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub. L. 89–97, set out as a note under section 1396b of this title.

CROSS REFERENCES

Navajo and Hopi Indians, additional Federal contributions in connection with rehabilitation program, see section 639 of Title 25, Indians.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1306a, 1315, 1318, 1319, 1396a of this title.

§ 304. Stopping payment on deviation from required provisions of plan or failure to comply therewith

In the case of any State plan which has been approved under this subchapter by the Secretary, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 302(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 302(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply.

Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title I, §4, 49 Stat. 622; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(c), (d), 64 Stat. 558; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 13, 1960, Pub. L. 86–778, title VI, §601(e), 74 Stat. 991; Jan. 2, 1968, Pub. L. 90–248, title II, §245, 81 Stat. 918; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695.)

REPEAL OF SECTION

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1968—Pub. L. 90–248 inserted ''(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)'' after ''further payments will not be made to the State'' and substituted in last sentence ''further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)'' for ''further certification to the Secretary of the Treasury with respect to such State''.

1960—Pub. L. 86–778 substituted ''State plan which has been approved under this subchapter'' for ''State plan for old-age assistance which has been approved''.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'', and ''he'', ''him'', or ''his'' for ''it'', or ''its'', wherever appearing.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Oct. 1, 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1316 of this title.

§ 305. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title I, §5, 49 Stat. 622, made an appropriation for the fiscal year ending June 30, 1936.

§ 306. Definitions

(a) For the purposes of this subchapter, the term ''old-age assistance'' means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for assistance) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are 65 years of age or older, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution). Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 302 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such assistance through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of old-age assistance to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) of this subsection for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this subchapter so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of 90 consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for 30 consecutive days in the case of such an individual who has maintained his residence in such State during such period or 90 consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of assistance under such plan.

(b), (c) Repealed. Pub. L. 97–35, title XXI, §2184(a)(5), Aug. 13, 1981, 95 Stat. 817.

(Aug. 14, 1935, ch. 531, title I, §6, 49 Stat. 622; Aug. 10, 1939, ch. 666, title I, §103, 53 Stat. 1362;

Aug. 28, 1950, ch. 809, title III, pt. 1, § 303(a), 64 Stat. 549; Sept. 13, 1960, Pub. L. 86–778, title VI, § 601(f), 74 Stat. 991; July 25, 1962, Pub. L. 87–543, title I, § 156(a), 76 Stat. 207; July 30, 1965, Pub. L. 89–97, title II, §§ 221(a)(1), (2), 222(a), title IV, § 402(a), 79 Stat. 356, 360, 415; Oct. 30, 1972, Pub. L. 92–603, title IV, §§ 408(a), 409(a), 86 Stat. 1489, 1490; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(a)(5), 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Subsecs. (b), (c). Pub. L. 97–35 struck out subsecs. (b) and (c) which defined ''medical assistance for the aged'' and ''Federal medical percentage'', respectively.

1972—Subsec. (a). Pub. L. 92–603 authorized the State, at its option, to include within term ''old-age assistance'' provisions relating to money payments to an individual absent from such State for more than 90 consecutive days, and provisions relating to rent payments made directly to a public housing agency.

1965—Subsec. (a). Pub. L. 89–97, § 221(a)(1), struck out from definition of ''old-age assistance'' the exclusion of (1) payments to or medical care in behalf of any individual who is a patient in an institution for tuberculosis or mental diseases, or (2) payments to any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof, or (3) medical care in behalf of any individual, who is a patient in a medical institution as a result of a diagnosis that he has tuberculosis or psychosis, with respect to any period after the individual has been a patient in such an institution, as a result of such diagnosis, for forty-two days.

Pub. L. 89–97, § 402(a), extended definition of ''old-age assistance'' to include payments made on behalf of the recipient to an individual who (as determined in accordance with the standards prescribed by the Secretary) is interested in or concerned with the welfare of the recipient and inserted an enumeration of the five characteristics required of State plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs, special efforts to protect welfare, periodic review, and opportunity for fair hearing.

Subsec. (b). Pub. L. 89–97, §§ 221(a)(2), 222(a), struck out from provision at end of cl. (12) excluding certain payments from definition of ''medical assistance for the aged'' payments with respect to care or services for any individual who is a patient in an institution for tuberculosis or mental diseases or for any individual who is a patient in a medical institution as a result of a diagnosis of tuberculosis or psychosis, with respect to any period after the individual has been a patient in such an institution, for forty-two days and inserted in text preceding cl. (1) ''(except, for any month, for recipients of old-age assistance who are admitted to or discharged from a medical institution during such month)'' after ''who are not recipients of old-age assistance'', respectively.

1962—Subsec. (a). Pub. L. 87–543, § 156(a)(1), inserted ''(if provided in or after the third month before the month in which the recipient makes application for assistance)'' before ''medical care''.

Subsec. (b). Pub. L. 87–543, § 156(a)(2), inserted ''(if provided in or after the third month before the month in which the recipient makes application for assistance)'' after ''care and services''.

1960—Subsec. (a). Pub. L. 86–778, § 601(f)(1), (2), designated existing provisions as subsec. (a) and inserted provisions excluding from definition of ''old-age assistance'' any care in behalf of any individual, who is a patient in a medical institution as a result of a diagnosis that he has tuberculosis or psychosis, with respect to any period after the individual has been a patient in an institution, as a result of such diagnosis, for forty-two days.

Subsecs. (b), (c). Pub. L. 86–778, § 601(f)(2), added subsecs. (b) and (c).

1950—Act Aug. 28, 1950, redefined ''old-age assistance''.

1939—Act Aug. 10, 1939, inserted ''needy'' before ''individuals who''.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221 of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 302 of this title.

Section 222(c) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and section 1385 of this title] shall apply in the case of expenditures under a State plan approved under title I or XVI of the Social Security Act [subchapter I or XVI of this chapter] with respect to care and services provided under such plan after June 1965.''

Section 402(e) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 1206, 1355, and 1385 of this title] shall apply in the case of expenditures made after December 31, 1965, under a State plan approved under title I, X, XIV or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter].''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 156(e) of Pub. L. 87–543 provided that: ''The amendments made by this section [amending this section and sections 606, 1206, and 1355 of this title] shall apply in the case of applications made after September 30, 1962, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Oct. 1, 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 303(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950, except that the exclusion of money payments to needy individuals described in clause (a) or (b) of section 6 of the Social Security Act as so amended [clauses (a) or (b) of this section] shall, in the case of any of such individuals who are not patients in a public institution, be effective July 1, 1952.''

SUBCHAPTER II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

AMENDMENTS

1956—Act Aug. 1, 1956, ch. 836, title I, § 103(i), 70 Stat. 824, included disability insurance benefits in subchapter heading.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 300bb–2, 300bb–6, 602, 662, 664, 901, 903, 907a, 909, 1310, 1320a–6, 1320a–7, 1320a–7a, 1320a–8, 1320b–1, 1320b–7, 1320b–10, 1320b–13, 1320c–4, 1382, 1382b, 1382c, 1382f, 1382h, 1383, 1383b, 1383c, 1395c, 1395i–2, 1395v, 1395gg, 1395ii, 1395*oo*, 1395ww, 1396a, 1396d, 1396q, 3035r, 3058k, 5055, 11201, 11291 of this title; title 2 sections 632, 641, 905; title 5 sections 8116, 8141, 8311, 8334, 8349, 8401, 8421, 8442, 8443; title 7 sections 2012, 2014; title 10 section 1451; title 12 section

3413; title 14 section 707; title 22 sections 3310, 4045, 4046, 4071b; title 26 sections 22, 86, 401, 404, 411, 412, 416, 1402, 2032A, 3121, 4980B, 6402; title 29 sections 206, 623, 722, 762a, 771a, 1026, 1054, 1056, 1082, 1162, 1166, 1322, 1706; title 30 sections 922, 923; title 31 sections 3720A, 3803, 3806; title 38 sections 1312, 1315, 5105, 5312; title 45 sections 231b, 231c, 231d, 231e, 231f, 231i, 231n, 231r, 354; title 49 section 5307; title 50 sections 2021, 2151; title 50 App. section 36.

§ 401. Trust Funds

(a) Federal Old-Age and Survivors Insurance Trust Fund

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ''Federal Old-Age and Survivors Insurance Trust Fund''. The Federal Old-Age and Survivors Insurance Trust Fund shall consist of the securities held by the Secretary of the Treasury for the Old-Age Reserve Account and the amount standing to the credit of the Old-Age Reserve Account on the books of the Treasury on January 1, 1940, which securities and amount the Secretary of the Treasury is authorized and directed to transfer to the Federal Old-Age and Survivors Insurance Trust Fund, and, in addition, such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and such amounts as may be appropriated to, or deposited in, the Federal Old-Age and Survivors Insurance Trust Fund as hereinafter provided. There is hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1941, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes (including interest, penalties, and additions to the taxes) received under subchapter A of chapter 9 of the Internal Revenue Code of 1939 (and covered into the Treasury) which are deposited into the Treasury by collectors of internal revenue before January 1, 1951; and

(2) the taxes certified each month by the Commissioner of Internal Revenue as taxes received under subchapter A of chapter 9 of such Code which are deposited into the Treasury by collectors of internal revenue after December 31, 1950, and before January 1, 1953, with respect to assessments of such taxes made before January 1, 1951; and

(3) the taxes imposed by subchapter A of chapter 9 of such Code with respect to wages (as defined in section 1426 of such Code), and by chapter 21 (other than sections 3101(b) and 3111(b)) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 3121 of such Code) reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 after December 31, 1950, or to the Secretary of the Treasury or his delegates pursuant to subtitle F of the Internal Revenue Code of 1954 after December 31, 1954, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such subchapter or chapter 21 (other than sections 3101(b) and 3111(b)) to such wages, which wages shall be certified by the Commissioner of Social Security on the basis of the records of wages established and maintained by such Commissioner in accordance with such reports, less the amounts specified in clause (1) of subsection (b) of this section; and

(4) the taxes imposed by subchapter E of chapter 1 of the Internal Revenue Code of 1939, with respect to self-employment income (as defined in section 481 of such Code), and by chapter 2 (other than section 1401(b)) of the Internal Revenue Code of 1954 with respect to self-employment income (as defined in section 1402 of such Code) reported to the Commissioner of Internal Revenue on tax returns under such subchapter or to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such subchapter or chapter (other than section 1401(b)) to such self-employment income, which self-employment income shall be certified by the Commissioner of Social Security on the basis of the records of self-employment income established and maintained by the Commissioner of Social Security in accordance with such returns, less the amounts specified in clause (2) of subsection (b) of this section.

The amounts appropriated by clauses (3) and (4) of this subsection shall be transferred from time to time from the general fund in the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of subsection (b) of this section shall be transferred from time to time from the general fund in the Treasury to the Federal Disability Insurance Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in clauses (3) and (4) of this subsection, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such clauses (3) and (4) of this subsection. All amounts transferred to either Trust Fund under the preceding sentence shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of such Trust Fund. Notwithstanding the preceding sentence, in any case in which the Secretary of the Treasury determines that the assets of either such Trust Fund would otherwise be inadequate to meet such Fund's obligations for any month, the Secretary of the Treasury shall transfer to such Trust Fund on the first day of such month the amount which would have been transferred to such Fund under this section as in effect on October 1, 1990; and such Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of such Fund in the same month under subsection (d) of this section.

(b) Federal Disability Insurance Trust Fund

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ''Federal Disability Insurance Trust Fund''. The Federal Disability Insurance Trust Fund shall consist of such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and such amounts as may be appropriated to, or deposited in, such fund as provided in this section. There is hereby appropriated to the Federal Disability Insurance Trust Fund for the fiscal year ending June 30, 1957, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1)(A) ½ of 1 per centum of the wages (as defined in section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1956, and before January 1, 1966, and reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, (B) 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and before January 1, 1968, and so reported, (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, 1967, and before January 1, 1970, and so reported, (D) 1.10 per centum of the wages (as so defined) paid after December 31, 1969, and before January 1, 1973, and so reported, (E) 1.1 per centum of the wages (as so defined) paid after December 31, 1972, and before January 1, 1974, and so reported, (F) 1.15 per centum of the wages (as so defined) paid after December 31, 1973, and before January 1, 1978, and so reported, (G) 1.55 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1979, and so reported, (H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1980, and so reported, (I) 1.12 per centum of the wages (as so defined) paid after December 31, 1979, and before January 1, 1981, and so reported, (J) 1.30 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1982, and so reported, (K) 1.65 per centum of the wages (as so defined) paid after December 31, 1981, and before January 1, 1983, and so reported, (L) 1.25 per centum of the wages (as so defined) paid after December 31, 1982, and before January 1, 1984, and so reported, (M) 1.00 per centum of the wages (as so defined) paid after December 31, 1983, and before January 1, 1988, and so reported, (N) 1.06 per centum of the wages (as so defined) paid after December 31, 1987, and before January 1, 1990, and so reported, (O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 1994, and so reported, (P) 1.88 per centum of the wages (as so defined) paid after December 31, 1993, and before January 1, 1997, and so reported, (Q) 1.70 per centum of the wages (as so defined) paid after December 31, 1996, and before January 1, 2000, and so reported, and (R) 1.80 per centum of the wages (as so defined) paid after December 31, 1999, and so reported, which wages shall be certified by the Commissioner of Social Security on the basis of the records of wages established and maintained by such Commissioner in accordance with such reports; and

(2)(A) ⅜ of 1 per centum of the amount of self-employment income (as defined in section 1402 of the Internal Revenue Code of 1954) reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of the Internal Revenue Code of 1954 for any taxable year beginning after December 31, 1956, and before January 1, 1966, (B) 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965, and before January 1, 1968, (C) 0.7125 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967, and before January 1, 1970, (D) 0.825 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1969, and before January 1, 1973, (E) 0.795 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1972, and before January 1, 1974, (F) 0.815 of 1 per centum of the amount of self-employment income (as so defined) as reported for any taxable year beginning after December 31, 1973, and before January 1, 1978, (G) 1.090 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979, (H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1980, (I) 0.7775 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1979, and before January 1, 1981, (J) 0.9750 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1982, (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1981, and before January 1, 1983, (L) 0.9375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1982, and before January 1, 1984, (M) 1.00 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1983, and before January 1, 1988, (N) 1.06 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1987, and before January 1, 1990, (O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, and before January 1, 1994, (P) 1.88 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1993, and before January 1, 1997, (Q) 1.70 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1996, and before January 1, 2000, and (R) 1.80

per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999, which self-employment income shall be certified by the Commissioner of Social Security on the basis of the records of self-employment income established and maintained by the Commissioner of Social Security in accordance with such returns.

(c) Board of Trustees; duties; reports to Congress

With respect to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (hereinafter in this subchapter called the ''Trust Funds'') there is hereby created a body to be known as the Board of Trustees of the Trust Funds (hereinafter in this subchapter called the ''Board of Trustees'') which Board of Trustees shall be composed of the Commissioner of Social Security, the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this subchapter called the ''Managing Trustee''). The Deputy Commissioner of Social Security shall serve as Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Funds;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Funds during the preceding fiscal year and on their expected operation and status during the next ensuing five fiscal years;

(3) Report immediately to the Congress whenever the Board of Trustees is of the opinion that the amount of either of the Trust Funds is unduly small;

(4) Recommend improvements in administrative procedures and policies designed to effectuate the proper coordination of the old-age and survivors insurance and Federal-State unemployment compensation program; and

(5) Review the general policies followed in managing the Trust Funds, and recommend changes in such policies, including necessary changes in the provisions of the law which govern the way in which the Trust Funds are to be managed.

The report provided for in paragraph (2) of this subsection shall include a statement of the assets of, and the disbursements made from, the Trust Funds during the preceding fiscal year, an estimate of the expected future income to, and disbursements to be made from, the Trust Funds during each of the next ensuing five fiscal years, and a statement of the actuarial status of the Trust Funds. Such statement shall include a finding by the Board of Trustees as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, individually and collectively, are in close actuarial balance (as defined by the Board of Trustees). Such report shall include an actuarial opinion by the Chief Actuary of the Social Security Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall also include an actuarial analysis of the benefit disbursements made from the Federal Old-Age and Survivors Insurance Trust Fund with respect to disabled beneficiaries. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Funds.

(d) Investments

It shall be the duty of the Managing Trustee to invest such portion of the Trust Funds as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Funds. Such obligations issued for purchase by the Trust Funds shall have maturities fixed with due regard for the needs of the Trust Funds and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. Each obligation issued for purchase by the Trust Funds under this subsection shall be evidenced by a paper instrument in the form of a bond, note, or certificate of indebtedness issued by the Secretary of the Treasury setting forth the principal amount, date of maturity, and interest rate of the obligation, and stating on its face that the obligation shall be incontestable in the hands of the Trust Fund to which it is is-

sued, that the obligation is supported by the full faith and credit of the United States, and that the United States is pledged to the payment of the obligation with respect to both principal and interest. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(e) Sale of acquired obligations

Any obligations acquired by the Trust Funds (except public-debt obligations issued exclusively to the Trust Funds) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(f) Proceeds from sale or redemption of obligations; interest

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall be credited to and form a part of the Federal Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund, respectively. Payment from the general fund of the Treasury to either of the Trust Funds of any such interest or proceeds shall be in the form of paper checks drawn on such general fund to the order of such Trust Fund.

(g) Payments into Treasury

(1)(A) The Managing Trustee of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by subchapter XVIII of this chapter) is directed to pay from the Trust Funds into the Treasury—

(i) the amounts estimated by the Managing Trustee, the Commissioner of Social Security, and the Secretary of Health and Human Services which will be expended, out of moneys appropriated from the general fund in the Treasury, during a three-month period by the Department of Health and Human Services for the administration of subchapter XVIII of this chapter, and by the Department of the Treasury for the administration of subchapters II and XVIII of this chapter and chapters 2 and 21 of the Internal Revenue Code of 1986, less

(ii) the amounts estimated (pursuant to the applicable method prescribed under paragraph (4) of this subsection) by the Commissioner of Social Security which will be expended, out of moneys made available for expenditures from the Trust Funds, during such three-month period to cover the cost of carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i).

Such payments shall be carried into the Treasury as the net amount of repayments due the general fund account for reimbursement of expenses incurred in connection with the administration of subchapters II and XVIII of this chapter and chapters 2 and 21 of the Internal Revenue Code of 1986. A final accounting of such payments for any fiscal year shall be made at the earliest practicable date after the close thereof. There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this subchapter, subchapter XVI of this chapter, and subchapter XVIII of this chapter for which the Commissioner of Social Security is responsible, the costs of subchapter XVIII of this chapter for which the Secretary of Health and Human Services is responsible, and the costs of carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i) of the first sentence of this subparagraph.

(B) After the close of each fiscal year—

(i) the Commissioner of Social Security shall determine—

(I) the portion of the costs, incurred during such fiscal year, of administration of this subchapter, subchapter XVI of this chapter, and subchapter XVIII of this chapter for which the Commissioner is responsible and of carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund of the Treasury,

(II) the portion of such costs which should have been borne by the Federal Old-Age and Survivors Insurance Trust Fund,

(III) the portion of such costs which should have been borne by the Federal Disability Insurance Trust Fund,

(IV) the portion of such costs which should have been borne by the Federal Hospital Insurance Trust Fund, and

(V) the portion of such costs which should have been borne by the Federal Supplementary Medical Insurance Trust Fund, and

(ii) the Secretary of Health and Human Services shall determine—

(I) the portion of the costs, incurred during such fiscal year, of the administration of subchapter XVIII of this chapter for which the Secretary is responsible, which should have been borne by the general fund of the Treasury,

(II) the portion of such costs which should have been borne by the Federal Hospital Insurance Trust Fund, and

(III) the portion of such costs which should have been borne by the Federal Supplementary Medical Insurance Trust Fund.

(C) After the determinations under subparagraph (B) have been made for any fiscal year, the Commisioner of Social Security and the Secretary shall each certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other such Trust Funds and the amounts, if any, which should be

transferred between the Trust Funds (or one of the Trust Funds) and the general fund of the Treasury, in order to ensure that each of the Trust Funds and the general fund of the Treasury have borne their proper share of the costs, incurred during such fiscal year, for—

(i) the parts of the administration of this subchapter, subchapter XVI of this chapter, and subchapter XVIII of this chapter for which the Commissioner of Social Security is responsible,

(ii) the parts of the administration of subchapter XVIII of this chapter for which the Secretary is responsible, and

(iii) carrying out the functions of the Social Security Administration, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)).

The Managing Trustee shall transfer any such amounts in accordance with any certification so made.

(D) The determinations required under subclauses (IV) and (V) of subparagraph (B)(i) shall be made in accordance with the cost allocation methodology in existence on August 15, 1994, until such time as the methodology for making the determinations required under such subclauses is revised by agreement of the Commissioner and the Secretary, except that the determination of the amounts to be borne by the general fund of the Treasury with respect to expenditures incurred in carrying out the functions of the Social Security Administration specified in section 432 of this title shall be made pursuant to the applicable method prescribed under paragraph (4).

(2) The Managing Trustee is directed to pay from time to time from the Trust Funds into the Treasury the amount estimated by him as taxes imposed under section 3101(a) of the Internal Revenue Code of 1986 which are subject to refund under section 6413(c) of such Code with respect to wages (as defined in section 3121 of such Code). Such taxes shall be determined on the basis of the records of wages maintained by the Commissioner of Social Security in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code, and the Commissioner of Social Security shall furnish the Managing Trustee such information as may be required by the Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections. Payments pursuant to the first sentence of this paragraph shall be made from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in the ratio in which amounts were appropriated to such Trust Funds under clause (3) of subsection (a) of this section and clause (1) of subsection (b) of this section.

(3) Repayments made under paragraph (1) or (2) of this subsection shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under either such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(4) The Commissioner of Social Security shall utilize the method prescribed pursuant to this paragraph, as in effect immediately before August 15, 1994, for determining the costs which should be borne by the general fund of the Treasury of carrying out the functions of the Commissioner, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)). If at any time or times thereafter the Boards of Trustees of such Trust Funds consider such action advisable, they may modify the method of determining such costs.

(h) Benefit payments

Benefit payments required to be made under section 423 of this title, and benefit payments required to be made under subsection (b), (c), or (d) of section 402 of this title to individuals entitled to benefits on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits, shall be made only from the Federal Disability Insurance Trust Fund. All other benefit payments required to be made under this subchapter (other than section 426 of this title) shall be made only from the Federal Old-Age and Survivors Insurance Trust Fund.

(i) Gifts and bequests

(1) The Managing Trustee may accept on behalf of the United States money gifts and bequests made unconditionally to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund or to the Social Security Administration, the Department of Health and Human Services, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.

(2) Any such gift accepted pursuant to the authority granted in paragraph (1) of this subsection shall be deposited in—

(A) the specific trust fund designated by the donor or

(B) if the donor has not so designated, the Federal Old-Age and Survivors Insurance Trust Fund.

(j) Travel expenses

There are authorized to be made available for expenditure, out of the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund (as determined appropriate by the Commissioner of Social Security), such amounts as are required to pay travel expenses, either on an actual cost or commuted basis, to individuals for travel incident to medical examinations requested by the Commissioner of Social Security in connection with disability determinations under this subchapter, and to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 410(i) of this title) to attend reconsideration interviews

and proceedings before administrative law judges with respect to any determination under this subchapter. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Commissioner of Social Security) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations. The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.

(k) Experiment and demonstration project expenditures

Expenditures made for experiments and demonstration projects under section 505(a) of the Social Security Disability Amendments of 1980 shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security.

(*l*) Interfund borrowing

(1) If at any time prior to January 1988 the Managing Trustee determines that borrowing authorized under this subsection is appropriate in order to best meet the need for financing the benefit payments from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, the Managing Trustee may borrow such amounts as he determines to be appropriate from the other such Trust Fund, or, subject to paragraph (5), from the Federal Hospital Insurance Trust Fund established under section 1395i of this title, for transfer to and deposit in the Trust Fund whose need for financing is involved.

(2) In any case where a loan has been made to a Trust Fund under paragraph (1), there shall be transferred on the last day of each month after such loan is made, from the borrowing Trust Fund to the lending Trust Fund, the total interest accrued to such day with respect to the unrepaid balance of such loan at a rate equal to the rate which the lending Trust Fund would earn on the amount involved if the loan were an investment under subsection (d) of this section (even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan).

(3)(A) If in any month after a loan has been made to a Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B)(i) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Hospital Insurance Trust Fund to the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, the Managing Trustee determines that the OASDI trust fund ratio exceeds 15 percent, he shall transfer from the borrowing Trust Fund to the Federal Hospital Insurance Trust Fund an amount that—

(I) together with any amounts transferred from another borrowing Trust Fund under this paragraph for such year, will reduce the OASDI trust fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

(ii) Amounts required to be transferred under clause (i) shall be transferred on the last day of the first month of the year succeeding the year in which the determination described in clause (i) is made.

(iii) For purposes of this subparagraph, the term ''OASDI trust fund ratio'' means, with respect to any calendar year, the ratio of—

(I) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as of the last day of such calendar year, to

(II) the amount estimated by the Commissioner of Social Security to be the total amount to be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during the calendar year following such calendar year for all purposes authorized by this section (other than payments of interest on, and repayments of, loans from the Federal Hospital Insurance Trust Fund under paragraph (1), but excluding any transfer payments between such trust funds and reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account).

(C)(i) The full amount of all loans made under paragraph (1) (whether made before or after January 1, 1983) shall be repaid at the earliest feasible date and in any event no later than December 31, 1989.

(ii) For the period after December 31, 1987, and before January 1, 1990, the Managing Trustee shall transfer each month to the Federal Hospital Insurance Trust Fund from any Trust Fund with any amount outstanding on a loan made from the Federal Hospital Insurance Trust Fund under paragraph (1) an amount not less than an amount equal to (I) the amount owed to the Federal Hospital Insurance Trust Fund by such Trust Fund at the beginning of such month (plus the interest accrued on the outstanding balance of such loan during such month), divided by (II) the number of months elapsing after the preceding month and before January 1990. The Managing Trustee may, during this period, transfer larger amounts than prescribed by the preceding sentence.

(4) The Board of Trustees shall make a timely report to the Congress of any amounts transferred (including interest payments) under this subsection.

(5)(A) No amounts may be borrowed from the Federal Hospital Insurance Trust Fund under paragraph (1) during any month if the Hospital Insurance Trust Fund ratio for such month is less than 10 percent.

(B) For purposes of this paragraph, the term ''Hospital Insurance Trust Fund ratio'' means, with respect to any month, the ratio of—

(i) the balance in the Federal Hospital Insurance Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under this subsection, as of the last day of the second month preceding such month, to

(ii) the amount obtained by multiplying by twelve the total amount which (as estimated by the Secretary) will be paid from the Federal Hospital Insurance Trust Fund during the month for which such ratio is to be determined (other than payments of interest on, or repayments of loans from another Trust Fund under this subsection), and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfer into the Hospital Insurance Trust Fund from that Account.

(m) Accounting for unnegotiated benefit checks

(1) The Secretary of the Treasury shall implement procedures to permit the identification of each check issued for benefits under this subchapter that has not been presented for payment by the close of the sixth month following the month of its issuance.

(2) The Secretary of the Treasury shall, on a monthly basis, credit each of the Trust Funds for the amount of all benefit checks (including interest thereon) drawn on such Trust Fund more than 6 months previously but not presented for payment and not previously credited to such Trust Fund, to the extent provided in advance in appropriation Acts.

(3) If a benefit check is presented for payment to the Treasury and the amount thereof has been previously credited pursuant to paragraph (2) to one of the Trust Funds, the Secretary of the Treasury shall nevertheless pay such check, if otherwise proper, recharge such Trust Fund, and notify the Commissioner of Social Security.

(4) A benefit check bearing a current date may be issued to an individual who did not negotiate the original benefit check and who surrenders such check for cancellation if the Secretary of the Treasury determines it is necessary to effect proper payment of benefits.

(Aug. 14, 1935, ch. 531, title II, §201, 49 Stat. 622; Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362; Feb. 25, 1944, ch. 63, title IX, §902, 58 Stat. 93; Aug. 28, 1950, ch. 809, title I, §109(a), 64 Stat. 521; Aug. 1, 1956, ch. 836, title I, §103(e), 70 Stat. 819; Aug. 28, 1958, Pub. L. 85–840, title II, §205(a), 72 Stat. 1021; Sept. 22, 1959, Pub. L. 86–346, title I, §104(2), 73 Stat. 622; Sept. 13, 1960, Pub. L. 86–778, title VII, §701(a)–(e), 74 Stat. 992, 993; July 30, 1965, Pub. L. 89–97, title I, §108(a), title III, §§305, 327, 79 Stat. 338, 370, 400; Jan. 2, 1968, Pub. L. 90–248, title I, §§110, 169, 81 Stat. 837, 875; Dec. 30, 1969, Pub. L. 91–172, title X, §1005, 83 Stat. 741; July 1, 1972, Pub. L. 92–336, title II, §205, 86 Stat. 422; Oct. 30, 1972, Pub. L. 92–603, title I, §§132(a)–(c), 136, title III, §305(a), 86 Stat. 1360, 1364, 1484; Dec. 31, 1973, Pub. L. 93–233, §7, 87 Stat. 955; Jan. 2, 1976, Pub. L. 94–202, §8(d), 89 Stat. 1137; Dec. 20, 1977, Pub. L. 95–216, title I, §102(a), 91 Stat. 1513; June 9, 1980, Pub. L. 96–265, title III, §310(a), title V, §505(a)(5), 94 Stat. 459, 474; Oct. 9, 1980, Pub. L. 96–403, §1, 94 Stat. 1709; Dec. 29, 1981, Pub. L. 97–123, §1(a), 95 Stat. 1659; Apr. 20, 1983, Pub. L. 98–21, title I, §§126, 141(a), 142(a)(1), (2)(A), (3), (4), 152(a), 154(a), title III, §341(a), 97 Stat. 91, 98–100, 105, 107, 135; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§2661(a), 2663(a)(1), (j)(2)(A)(i), 98 Stat. 1156, 1160, 1170; Apr. 7, 1986, Pub. L. 99–272, title IX, §9213(a), 100 Stat. 180; July 1, 1988, Pub. L. 100–360, title II, §212(c)(1), 102 Stat. 741; Nov. 10, 1988, Pub. L. 100–647, title VIII, §8005(a), 102 Stat. 3781; Dec. 13, 1989, Pub. L. 101–234, title II, §202(a), 103 Stat. 1981; Nov. 5, 1990, Pub. L. 101–508, title V, §§5106(c), 5115(a), title XIII, §13304, 104 Stat. 1388–268, 1388–274, 1388–627; Aug. 15, 1994, Pub. L. 103–296, title I, §107(b), title III, §§301(a), (b), 321(a)(1), (c)(1)(A)(i), (B)(i), (C), 108 Stat. 1478, 1517, 1535, 1537; Oct. 22, 1994, Pub. L. 103–387, §3(a), (b), 108 Stat. 4074, 4075.)

REFERENCES IN TEXT

Subchapter A of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1) to (3), was comprised of sections 1400 to 1432, and was repealed (subject to certain exceptions) by section 7851(a)(3) of the Internal Revenue Code of 1986.

Sections 1426 and 1420(c) of the Internal Revenue Code of 1939, referred to in subsec. (a)(3), were a part of subchapter A of chapter 9 of the 1939 Code. See above.

Internal Revenue Code of 1954, referred to in subsecs. (a)(3), (4) and (b)(1)(A), (2)(A), redesignated Internal Revenue Code of 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.

Subchapter E of chapter 1 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), was comprised of sections 480 to 482, and was repealed (subject to certain exceptions) by section 7851(a)(1)(A) of the Internal Revenue Code of 1986.

Section 481 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4), was a part of subchapter E of chapter 1 of the 1939 Code. See above.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provision of the 1986 Code, see section 7852(b) if the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Chapters 2 and 21 and subtitle F of the Internal Revenue Code of 1986, referred to in subsec. (g)(1)(A), (2), are classified to sections 1401 et seq., 3101 et seq., and 6001 et seq., respectively, of Title 26, Internal Revenue Code.

Section 505(a) of the Social Security Disability Amendments of 1980, referred to in subsec. (k), is section 505(a) of Pub. L. 96–265, title V, June 9, 1980, 94 Stat. 473, which enacted subsec. (k) of this section and provisions set out as a note under section 1310 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, §321(a)(1), in closing provisions substituted ''and'' for ''and and'' before ''such Trust Fund shall pay''.

Subsec. (a)(3). Pub. L. 103–296, §107(b)(1), (2), substituted ''Commissioner of Social Security'' and ''such Commissioner'' for ''Secretary of Health and Human Services'' and ''such Secretary'', respectively.

Subsec. (a)(4). Pub. L. 103–296, §107(b)(1), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

Subsec. (b)(1). Pub. L. 103–296, §107(b)(1), (2), substituted ''Commissioner of Social Security'' and ''such

Commissioner'' for ''Secretary of Health and Human Services'' and ''such Secretary'', respectively.

Subsec. (b)(1)(O) to (R). Pub. L. 103–387, §3(a), substituted ''(O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 1994, and so reported, (P) 1.88 per centum of the wages (as so defined) paid after December 31, 1993, and before January 1, 1997, and so reported, (Q) 1.70 per centum of the wages (as so defined) paid after December 31, 1996, and before January 1, 2000, and so reported, and (R) 1.80 per centum of the wages (as so defined) paid after December 31, 1999, and so reported,'' for ''(O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 2000, and so reported, and (P) 1.42 per centum of the wages (as so defined) paid after December 31, 1999, and so reported,''.

Subsec. (b)(2). Pub. L. 103–296, §107(b)(1), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

Subsec. (b)(2)(O) to (R). Pub. L. 103–387, §3(b), substituted ''(O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, and before January 1, 1994, (P) 1.88 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1993, and before January 1, 1997, (Q) 1.70 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1996, and before January 1, 2000, and (R) 1.80 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999,'' for ''(O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, and before January 1, 2000, and (P) 1.42 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999,''.

Subsec. (c). Pub. L. 103–296, §107(b)(3), in introductory provisions, inserted ''the Commissioner of Social Security,'' after ''shall be composed of'' and inserted ''Deputy'' before ''Commissioner of Social Security shall serve''.

Subsec. (d). Pub. L. 103–296, §301(a), inserted after fifth sentence ''Each obligation issued for purchase by the Trust Funds under this subsection shall be evidenced by a paper instrument in the form of a bond, note, or certificate of indebtedness issued by the Secretary of the Treasury setting forth the principal amount, date of maturity, and interest rate of the obligation, and stating on its face that the obligation shall be incontestable in the hands of the Trust Fund to which it is issued, that the obligation is supported by the full faith and credit of the United States, and that the United States is pledged to the payment of the obligation with respect to both principal and interest.''

Subsec. (f). Pub. L. 103–296, §301(b), inserted at end ''Payment from the general fund of the Treasury to either of the Trust Funds of any such interest or proceeds shall be in the form of paper checks drawn on such general fund to the order of such Trust Fund.''

Subsec. (g)(1)(A). Pub. L. 103–296, §107(b)(4)(C), in text as amended by Pub. L. 103–296, §321(c)(1)(A)(i)(III), substituted ''subchapters II and XVIII'' for ''subchapters II, XVI, and XVIII'' in second sentence and amended last sentence generally. Prior to amendment, last sentence read as follows: ''There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter for which the Secretary of Health and Human Services is responsible and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 other than those referred to in clause (i) of the first sentence of this subparagraph.''

Pub. L. 103–296, §321(c)(1)(A)(i)(III), substituted ''chapters 2 and 21 of the Internal Revenue Code of 1986'' for ''subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954'' in second sentence and ''1986 other'' for ''1954 other'' in last sentence.

Subsec. (g)(1)(A)(i). Pub. L. 103–296, §321(c)(1)(A)(i)(I), substituted ''and chapters 2 and 21 of the Internal Revenue Code of 1986'' for ''and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, and chapters 2 and 21 of the Internal Revenue Code of 1954''.

Pub. L. 103–296, §107(b)(4)(A), substituted ''by the Managing Trustee, the Commissioner of Social Security, and the Secretary of Health and Human Services'' for ''by him and the Secretary of Health and Human Services'' and ''by the Department of Health and Human Services for the administration of subchapter XVIII of this chapter, and by the Department of the Treasury for the administration of subchapters II and XVIII of this chapter'' for ''by the Department of Health and Human Services and the Treasury Department for the administration of subchapters II, XVI, and XVIII of this chapter''.

Subsec. (g)(1)(A)(ii). Pub. L. 103–296, §321(c)(1)(A)(i)(II), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Pub. L. 103–296, §107(b)(4)(B), substituted ''applicable method prescribed under paragraph (4)'' for ''method prescribed by the Board of Trustees under paragraph (4)'', ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'', and ''Social Security Administration'' for ''Department of Health and Human Services''.

Subsec. (g)(1)(B). Pub. L. 103–296, §107(b)(4)(A), added subpar. (B) and struck out former subpar. (B), as amended by Pub. L. 103–296, §321(c)(1)(A)(i)(IV), which read as follows: ''After the close of each fiscal year the Secretary of Health and Human Services shall determine the portion of the costs, incurred during such fiscal year, of administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury and the portion of such costs which should have been borne by each of the Trust Funds; except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying out such functions specified in section 432 of this title shall be made pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection. After such determination has been made, the Secretary of Health and Human Services shall certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other of such Trust Funds and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund in the Treasury, in order to insure that each of the Trust Funds and the general fund in the Treasury have borne their proper share of the costs, incurred during such fiscal year, for the part of the administration of this subchapter, subchapter XVI, and subchapter XVIII of this chapter for which the Secretary of Health and Human Services is responsible and of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.''

Pub. L. 103–296, §321(c)(1)(A)(i)(IV), substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in two places.

Subsec. (g)(1)(C), (D). Pub. L. 103–296, §107(b)(4)(A), added subpars. (C) and (D).

Subsec. (g)(2). Pub. L. 103–296, §321(c)(1)(B)(i), in first sentence substituted ''section 3101(a) of the Internal Revenue Code of 1986 which are subject to refund under section 6413(c) of such Code with respect to wages (as defined in section 3121 of such Code).'' for ''section 3101(a) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 1426 of the Internal Revenue Code of 1939 and section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1950.'' and in second sentence substituted ''wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code,'' for ''wages reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 and to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954,''.

Pub. L. 103–296, §107(b)(5), in second sentence substituted ''maintained by the Commissioner of Social Security'' for ''established and maintained by the Secretary of Health and Human Services'' and ''Commissioner of Social Security shall furnish'' for ''Secretary shall furnish''.

Subsec. (g)(4). Pub. L. 103–296, §107(b)(6), amended generally par. (4) as amended by Pub. L. 103–296, §321(c)(1)(C). Prior to amendment, par. (4) read as follows: ''If at any time or times the Boards of Trustees of such Trust Funds deem such action advisable, they may modify the method prescribed by such Boards of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Department of Health and Human Services, specified in section 432 of this title, which relate to the administration of provisions of the Internal Revenue Code of 1986 (other than those referred to in clause (i) of the first sentence of paragraph (1)(A)).''

Pub. L. 103–296, §321(c)(1)(C), substituted ''If at any time or times the Boards of Trustees of such Trust Funds deem such action advisable, they may modify the method prescribed by such Boards'' for ''The Board of Trustees shall prescribe before January 1, 1981, the method'' and ''Code of 1986'' for ''Code of 1954'' and struck out at end ''If at any time or times thereafter the Boards of Trustees of such Trust Funds deem such action advisable they may modify the method so determined.''

Subsec. (i)(1). Pub. L. 103–296, §107(b)(7), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''The Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to any one or more of such Trust Funds or to the Department of Health and Human Services, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.''

Subsec. (j). Pub. L. 103–296, §107(b)(8), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (k). Pub. L. 103–296, §107(b)(8), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (*l*)(3)(B)(iii)(II). Pub. L. 103–296, §107(b)(9), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (m)(3). Pub. L. 103–296, §107(b)(10), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

1990—Subsec. (a). Pub. L. 101–508, §5115(a), in first sentence following cl. (4), substituted ''from time to time'' for ''monthly on the first day of each calendar month'' in two places and ''paid to or deposited into the Treasury'' for ''to be paid to or deposited into the Treasury during such month'', and in last sentence substituted ''Fund. Notwithstanding the preceding sentence, in any case in which the Secretary of the Treasury determines that the assets of either such Trust Fund would otherwise be inadequate to meet such Fund's obligations for any month, the Secretary of the Treasury shall transfer to such Trust Fund on the first day of such month the amount which would have been transferred to such Fund under this section as in effect on October 1, 1990; and'' for ''Fund;''.

Subsec. (c). Pub. L. 101–508, §13304, inserted after first sentence following cl. (5) ''Such statement shall include a finding by the Board of Trustees as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, individually and collectively, are in close actuarial balance (as defined by the Board of Trustees).''

Subsec. (j). Pub. L. 101–508, §5106(c), inserted at end ''The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.''

1989—Subsecs. (g)(1)(A), (i)(1). Pub. L. 101–234 repealed Pub. L. 100–360, §212(c)(1), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (c). Pub. L. 100–647 inserted after first sentence ''A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term.''

Subsec. (g)(1)(A). Pub. L. 100–360, §212(c)(1)(A), substituted '', Federal Supplementary Medical Insurance Trust Fund, and the Federal Catastrophic Drug Insurance Trust Fund'' for ''and the Federal Supplementary Medical Insurance Trust Fund''.

Subsec. (i)(1). Pub. L. 100–360, §212(c)(1)(B), substituted '', Federal Hospital Insurance Catastrophic Coverage Reserve Fund, Federal Supplementary Medical Insurance Trust Fund, and the Federal Catastrophic Drug Insurance Trust Fund'' for ''and the Federal Supplementary Medical Insurance Trust Fund''.

1986—Subsec. (c). Pub. L. 99–272, in provisions following par. (5), substituted ''. Such report shall'' for '': *Provided*, That the certification shall not refer to economic assumptions underlying the Trustee's report, and shall''.

1984—Subsecs. (a)(3), (4), (b)(1), (2). Pub. L. 98–369, §2663(j)(2)(A)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d). Pub. L. 98–369, §2663(a)(1)(A), substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended'' and ''public-debt obligations'' for ''public-debt obligation''.

Subsec. (g)(1). Pub. L. 98–369, §2663(j)(2)(A)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (g)(1)(B). Pub. L. 98–369, §2663(a)(1)(B), substituted ''clause'' for ''clauses'' in first sentence.

Subsecs. (g)(2), (4), (i)(1). Pub. L. 98–369, §2663(j)(2)(A)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (*l*)(3)(B)(i). Pub. L. 98–369, §2661(a), inserted ''Insurance'' after ''Survivors''.

1983—Subsec. (a). Pub. L. 98–21, §141(a), in provisions following par. (4), substituted ''monthly on the first day of each calendar month'' for ''from time to time'', wherever appearing, and ''to be paid or deposited into the Treasury during such month'' for ''paid to or deposited into the Treasury'', and inserted provision that all amounts transferred to either Trust Fund under the preceding sentence shall be invested by the Managing

Trustee in the same manner and to the same extent as the other assets of such Trust Fund; and such Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on Jan. 1, 1983) equal to the rate earned by the investments of such Fund in the same month under subsection (d) of this section.

Subsec. (b)(1)(K) to (P). Pub. L. 98–21, §126(a), substituted, in cls. (K), (L), and (M), appropriations equivalent to 100 per centum of (K) 1.65 per centum of the wages (as so defined) paid after Dec. 31, 1981, and before Jan. 1, 1983, and so reported, (L) 1.25 per centum of the wages (as so defined) paid after Dec. 31, 1982, and before Jan. 1, 1984, and so reported, (M) 1.00 per centum of the wages (as so defined) paid after Dec. 31, 1983, and before Jan. 1, 1988, and so reported, for such appropriations of (K) 1.65 per centum of the wages (as so defined) paid after Dec. 31, 1981, and before Jan. 1, 1985, and so reported, (L) 1.90 per centum of the wages (as so defined) paid Dec. 31, 1984, and before Jan. 1, 1990, and so reported, and (M) 2.20 per centum of the wages (as so defined) paid after Dec. 31, 1989, and so reported, and added cls. (N) to (P).

Subsec. (b)(2)(K) to (P). Pub. L. 98–21, §126(b), substituted, in cls. (K), (L), and (M), appropriations equivalent to 100 per centum of (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1981, and before Jan. 1, 1983, (L) 0.9375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1982, and before Jan. 1, 1984, (M) 1.00 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1983, and before Jan. 1, 1988, for such appropriations of (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1981, and before Jan. 1, 1985, (L) 1.4250 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1984, and before Jan. 1, 1990, and (M) 1.6500 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after Dec. 31, 1989, and added cls. (N) to (P).

Subsec. (c). Pub. L. 98–21, §341(a), substituted ''Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate'' for ''Secretary of Health, Education, and Welfare, all ex officio'' in provisions preceding par. (1), and inserted provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Funds, in provisions following par. (5).

Pub. L. 98–21, §154(a), in provisions following par. (5), inserted provision that the report referred to in par. (2) shall include an actuarial opinion by the Chief Actuary of the Social Security Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable, and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Subsec. (*l*)(1). Pub. L. 98–21, §142(a)(1), substituted reference to January 1988 for reference to January 1983, and inserted '', subject to paragraph (5),'' after ''such Trust Fund, or''.

Subsec. (*l*)(2). Pub. L. 98–21, §142(a)(2)(A), substituted ''on the last day of each month after such loan is made'' for ''from time to time'', substituted ''the total interest accrued to such day'' for ''interest'', and inserted ''(even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan)''.

Subsec. (*l*)(3). Pub. L. 98–21, §142(a)(3), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (*l*)(5). Pub. L. 98–21, §142(a)(4), added par. (5).

Subsec. (m). Pub. L. 98–21, §152(a), added subsec. (m).

1981—Subsec. (*l*). Pub. L. 97–123 added subsec. (*l*).

1980—Subsec. (b)(1)(H) to (M). Pub. L. 96–403, §1(a), substituted in cl. (H) reference to Jan. 1, 1980, for Jan. 1, 1981; added cls. (I) and (J); redesignated as cl. (K) former cl. (I) substituting reference to Dec. 31, 1981, for Dec. 31, 1980; and redesignated as cls. (L) and (M) former cls. (J) and (K).

Subsec. (b)(2)(H) to (M). Pub. L. 96–403, §1(b), substituted in cl. (H) reference to Jan. 1, 1980, for Jan. 1, 1981; added cls. (I) and (J); redesignated as cl. (K) former cl. (I) substituting reference to Dec. 31, 1981, for Dec. 31, 1980; and redesignated as cls. (L) and (M) former cls. (J) and (K).

Subsec. (j). Pub. L. 96–265, §310(a), added subsec. (j).

Subsec. (k). Pub. L. 96–265, §505(a)(5), added subsec. (k).

1977—Subsec. (b)(1)(G) to (K). Pub. L. 95–216, §102(a)(1), substituted ''(G) 1.55 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1979, and so reported, (H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1981, and so reported, (I) 1.65 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1985, and so reported, (J) 1.90 per centum of the wages (as so defined) paid after December 31, 1984, and before January 1, 1990, and so reported, and (K) 2.20 per centum of the wages (as so defined) paid after December 31, 1989, and so reported'' for ''(G) 1.2 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1981, and so reported, (H) 1.3 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1986, and so reported, (I) 1.4 per centum of the wages (as so defined) paid after December 31, 1985, and before January 1, 2011, and so reported, and (J) 1.7 per centum of the wages (as so defined) paid after December 31, 2010, and so reported''.

Subsec. (b)(2)(G) to (K). Pub. L. 95–216, §102(a)(2), substituted ''(G) 1.090 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979, (H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1981, (I) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1985, (J) 1.4250 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1984, and before January 1, 1990, and (K) 1.650 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989'' for ''(G) 0.850 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1981, (H) 0.920 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1986, (I) 0.990 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1985, and before January 1, 2011, and (J) 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 2010''.

1976—Subsec. (g)(1). Pub. L. 94–202, §8(d)(1), incorporated changes in the operations and responsibilities of the Managing Trustee of the Trust Funds and the Secretary of Health, Education, and Welfare occasioned by changes in the annual method of reporting wages for

social security purposes, by directing that estimated amounts paid from the Trust Funds into the Treasury, to replace amounts expended from the general fund in the Treasury, be estimated by both the Managing Trustee and the Secretary and that the Secretary determine the portion of costs attributable to the general fund in the Treasury and the portion attributable to the Trust Funds at the close of the fiscal year, by striking out reference to section 1381 of this title, and by inserting reference to par. (4) of this section, section 432 of this title, and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939.

Subsec. (g)(4). Pub. L. 94–202, §8(d)(2), added par. (4).

1973—Subsec. (b)(1)(E) to (J). Pub. L. 93–233, §7(a), substituted in: cl. (E) ''January 1, 1974'' for ''January 1, 1978''; cl. (F) ''December 31, 1973'' and ''January 1, 1978'' for ''December 31, 1977'' and January 1, 2011''; cl. (G) ''1.2'' for ''1.5'' per centum and ''paid after December 31, 1977, and before January 1, 1981'' for ''paid after December 31, 2010,'' and added cls. (H) to (J).

Subsec. (b)(2)(E) to (J). Pub. L. 93–233, §7(b), substituted in: cl. (E) ''January 1, 1974'' for January 1, 1978''; cl. (F) ''0.815 of 1 per centum'' for ''0.84 per centum'' and ''as reported for any taxable year beginning after December 31, 1973, and before January 1, 1978'' for ''so reported for any taxable year beginning after December 31, 1977, and before January 1, 2011''; cl. (G) ''0.850 of 1 percentum'' for ''0.895 per centum'' and ''taxable year beginning after December 31, 1977, and before January 1, 1981'' for ''taxable year beginning after December 31, 2010''; and added cls. (H) to (J).

1972—Subsec. (a). Pub. L. 92–603, §132(a), inserted ''such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and'' after ''in addition,'' in provisions preceding par. (1).

Subsec. (b). Pub. L. 92–603, §132(b), inserted ''such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and'' after ''consist of'' in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 92–603, §136(a), substituted ''1.1'' for ''1.0'' in cl. (E), ''1.15'' for ''1.1'' in cl. (F), and ''1.5'' for ''1.4'' in cl. (G).

Pub. L. 92–336, §205(a), struck out ''and'' before ''(D)'', inserted reference to wages paid before January 1, 1973, in cl. (D), and added cls. (E), (F), and (G).

Subsec. (b)(2). Pub. L. 92–603, §136(b), substituted ''0.795'' for ''0.75'' in cl. (E), ''0.84'' for ''0.825'' in cl. (F), and ''0.895'' for ''0.915'' in cl. (G).

Pub. L. 92–336, §205(b), struck out ''and'' before ''(D)'', inserted reference to self-employment income before January 1, 1973, in cl. (D), and added cls. (E), (F), and (G).

Subsec. (g)(1)(A). Pub. L. 92–603, §305(a), inserted references to subchapter XVI of this chapter and provisions relating to the general revenues of the United States with respect to subchapter XVI of this chapter and to the appropriations made pursuant to section 1381 of this title.

Subsec. (i). Pub. L. 92–603, §132(c), added subsec. (i).

1969—Subsec. (b)(1). Pub. L. 91–172, §1005(a), inserted reference to wages paid before Jan. 1, 1969, and inserted provision for the appropriation of amounts equal to 1.10 per centum of wages paid after Dec. 31, 1969.

Subsec. (b)(2). Pub. L. 91–172, §1005(b), inserted reference to self-employment income before Jan. 1, 1970, and inserted provision for the appropriation of 0.825 of 1 percent of the amount of self-employment income for taxable years beginning after Dec. 31, 1969.

1968—Subsec. (b)(1). Pub. L. 90–248, §110(a), designated existing provisions as cls. (A) and (B), inserted ''and before January 1, 1968,'' after ''1965,'' in cl. (B), and added cl. (C).

Subsec. (b)(2). Pub. L. 90–248, §110(b), designated existing provisions as cls. (A) and (B), inserted ''and before January 1, 1968, and'' after ''1965,'' in cl. (B), and added cl. (C).

Subsec. (c)(2). Pub. L. 90–248, §169(a), substituted ''April'' for ''March''.

Subsec. (c). Pub. L. 90–248, §169(b), inserted penultimate sentence for inclusion in reports of board of trustees to Congress of an actuarial analysis of the benefit disbursements made from the Federal Old-Age and Survivors Insurance Trust Fund with respect to disabled beneficiaries.

1965—Subsec. (a)(3). Pub. L. 89–97, §108(a)(1), inserted ''(other than sections 3101(b) and 3111(b))'' after ''chapter 21'' in two places.

Subsec. (a)(4). Pub. L. 89–97, §108(a)(2), inserted ''(other than section 1401(b))'' after ''chapter 2'' and ''such subchapter or chapter''.

Subsec. (b)(1). Pub. L. 89–97, §305(a), inserted ''and before January 1, 1966,'' after ''December 31, 1956,'' and ''and 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and so reported,'' after ''1954,''.

Subsec. (b)(2). Pub. L. 89–97, §305(b), inserted ''and before January 1, 1966, and 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965,'' after ''December 31, 1956,''.

Subsec. (c). Pub. L. 89–97, §327, extended from once each six months to once each calendar year the minimum number of times the Board of Trustees must meet.

Subsec. (g)(1). Pub. L. 89–97, §108(a)(3), included the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund among the Trust Funds available for reimbursement of the Treasury for administrative costs of this subchapter and subchapter XVIII of this chapter, deleted references to administrative costs of subchapter VIII of this chapter and subchapter E of chapter 1 and subchapter 9 of the Internal Revenue Code of 1939, and also provided for adjustment among the Trust Funds during each fiscal year so that the Funds bear the proportionate share of the administration costs.

Subsec. (g)(2). Pub. L. 89–97, §108(a)(4), inserted ''imposed under section 3101(a)'' after ''the amount estimated by him as taxes''.

Subsec. (h). Pub. L. 89–97, §108(a)(5), inserted ''(other than section 426 of this title)'' after ''this subchapter''.

1960—Subsec. (c). Pub. L. 86–778, §701(a)–(c), required the Board of Trustees to meet not less frequently than once each six months, struck out provisions from cl. (3) which required the Board to report immediately to the Congress whenever the Board is of the opinion that during the ensuing five fiscal years either of the Trust Funds will exceed three times the highest annual expenditures from such Trust Fund anticipated during that five-fiscal-year period, and added cl. (5).

Subsec. (d). Pub. L. 86–778, §701(d), substituted ''shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month'' for ''bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the Public Debt that are not due or callable until after the expiration of five years from the date of original issue'', and substituted provisions authorizing the purchase of other interest-bearing obligations when the Managing Trustee determines that it is in the public interest for provisions which authorized the issuance of obligations by the Trust Funds only if the Managing Trustee determined that the purchase of other obligations was not in the public interest.

Subsec. (e). Pub. L. 86–778, §701(e), substituted ''public-debt obligations'' for ''special obligations'' in two places.

1959—Subsec. (d). Pub. L. 86–346 substituted ''on original issue at the issue price'' for ''on original issue at par''.

1958—Subsec. (h). Pub. L. 85–840 provided that benefit payments required to be made under subsection (b), (c),

or (d) of section 402 of this title to individuals entitled to benefits on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits be made only from the Federal Disability Insurance Trust Fund.

1956—Act Aug. 1, 1956, amended section generally, inserting references to taxes imposed by the Internal Revenue Code of 1954, substituting ''Secretary of Health, Education, and Welfare'' for ''Federal Security Administrator,'' creating the Federal Disability Insurance Trust Fund, requiring obligations issued for purchase by the Trust Funds to have maturities fixed with due regard for the needs of the Trust Funds, authorizing to be made available for expenditure out of the Trust Funds such amounts as Congress deems necessary to pay costs of administration of subchapter, and requiring the Secretary of Health, Education, and Welfare to analyze costs of administration so that each Trust Fund may be charged with its proper share.

1950—Subsec. (a). Act Aug. 28, 1950, §109(a)(1)–(3), substituted ''such amounts as may be appropriated to, or deposited in, the Trust Fund'' for ''such amounts as may be appropriated to the Trust Fund'' in second sentence, simplified the accounting and collection processes required for determining the amounts appropriated to the trust fund, as set out in third sentence, and struck out fourth sentence authorizing appropriation of additional funds.

Subsec. (b). Act Aug. 28, 1950, §109(a)(4)–(8), substituted ''Federal Security Administrator'' for ''Chairman of the Social Security Board'', changed filing date for annual report from first day of each regular session of Congress to March 1 of each year, added par. (4), inserted sentence to require report to be printed as a House document, and made Commissioner of Social Security the Secretary of the Board of Trustees.

Subsec. (f). Act. Aug. 28, 1950, §109(a)(9), changed reference in text from Title II of the Federal Insurance Contributions Act to subchapter A of chapter 9 and subchapter E of chapter 1 of the Internal Revenue Code of 1939 to avoid confusion and to include the new provisions of such Code relating to the collection of taxes from the self-employed.

1944—Subsec. (a). Act Feb. 25, 1944, inserted sentence authorizing appropriation of additional funds.

1939—Act Aug. 10, 1939, amended section generally.

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 3(c) of Pub. L. 103–387 provided that: ''The amendments made by this section [amending this section] shall apply with respect to wages paid after December 31, 1993, and self-employment income for taxable years beginning after such date.''

Section 110 of title I of Pub. L. 103–296 provided that:

''(a) IN GENERAL.—Except as otherwise provided in this title, this title [see Tables for classification], and the amendments made by such title, shall take effect March 31, 1995.

''(b) TRANSITION RULES.—Section 106 [amending section 5315 of Title 5, Government Organization and Employees, and enacting provisions set out as a note under section 901 of this title] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].

''(c) EXCEPTIONS.—The amendments made by section 103 [amending section 903 of this title], subsections (b)(4) and (c) of section 105 [enacting provisions set out in a note under section 901 of this title], and subsections (a)(1), (e)(1), (e)(2), (e)(3), and (*l*)(2) of section 108 [enacting section 913 of this title and amending sections 5312, 5313, and 5315 of Title 5 and section 11 of Pub. L. 95–452, Inspector General Act of 1978, set out in the Appendix to Title 5] shall take effect on the date of the enactment of this Act.''

Section 301(c) of Pub. L. 103–296 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply with respect to obligations issued, and payments made, after 60 days after the date of the enactment of this Act [Aug. 15, 1994].

''(2) TREATMENT OF OUTSTANDING OBLIGATIONS.—Not later than 60 days after the date of the enactment of this Act, the Secretary of the Treasury shall issue to the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as applicable, a paper instrument, in the form of a bond, note, or certificate of indebtedness, for each obligation which has been issued to the Trust Fund under section 201(d) of the Social Security Act [subsec. (d) of this section] and which is outstanding as of such date. Each such document shall set forth the principal amount, date of maturity, and interest rate of the obligation, and shall state on its face that the obligation shall be incontestable in the hands of the Trust Fund to which it was issued, that the obligation is supported by the full faith and credit of the United States, and that the United States is pledged to the payment of the obligation with respect to both principal and interest.''

Section 321(c)(1)(A)(ii) of Pub. L. 103–296 provided that: ''The amendments made by clause (i) [amending this section] shall apply only with respect to periods beginning on or after the date of the enactment of this Act [Aug. 15, 1994].''

Section 321(c)(1)(B)(ii) of Pub. L. 103–296 provided that: ''The amendments made by clause (i) [amending this section] shall apply only with respect to wages paid on or after January 1, 1995.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5106(d) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 406, 1320a–6, 1383, and 1395i of this title] shall apply with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after April 1, 1991.''

Section 5115(c)[(b)] of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall become effective on the first day of the month following the month in which this Act is enacted [November 1991].''

Amendment by section 13304 of Pub. L. 101–508 effective for annual reports of the Board of Trustees issued in or after calendar year 1991, see section 13306 of Pub. L. 101–508, set out as a note under section 632 of Title 2, The Congress.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 202(b) of Pub. L. 101–234 provided that: ''The provisions of subsection (a) [set out below] shall take effect January 1, 1990, and the repeal of section 211 of MCCA [Pub. L. 100–360, which amended sections 1395r, 1395w, and 1395mm of this title and enacted provisions set out as a note under section 1395r of this title] shall apply to premiums for months beginning after December 31, 1989.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8005(b) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall apply to members of the Boards of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, of the Federal Hospital Insurance Trust Fund, and of the Federal Supplementary Medical Insurance Trust Fund serving on such Boards of Trustees as members of the public on or after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9213(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2664 of Pub. L. 98–369 provided that:

''(a) Except as otherwise specifically provided, the amendments made by sections 2661 and 2662 [amending this section and sections 402, 403, 405, 409, 410, 415, 416,

423, 428, and 429 of this title and sections 86, 134, 422A, 3121, 3306, and 6334 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 402 and 403 of this title and sections 3121 and 3306 of Title 26, and amending provisions set out as notes under sections 415 and 902 of this title, section 3121 of Title 26, and section 3023 [now 5123] of Title 38, Veterans' Benefits] shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 (Public Law 98–21).

''(b) Except to the extent otherwise specifically provided in this subtitle [subtitle D (§§ 2661–2664) of Pub. L. 98–369], the amendments made by section 2663 [amending this section and sections 402, 403, 405, 408–410, 411, 413, 415, 416–418, 421–423, 426, 428, 430, 431, 433, 502, 503, 602, 603, 606, 607, 609, 610, 614, 615, 620, 631, 632, 633, 634, 636, 641, 643–645, 652–654, 656, 660, 662, 674, 902, 903, 907, 1101, 1104, 1108, 1301, 1302, 1306, 1307, 1314–1316, 1320, 1320a–5, 1320b–1, 1381a–1382a, 1382c, 1382d, 1382g, 1382j, 1383, 1395i, 1395s–1395u, 1396, 1397a, and 1397e of this title and sections 51, 1402, 3121, 6057, 6103, and 6511 of Title 26, repealing sections 1331–1336 of this title, and enacting provisions set out as notes under sections 1301 and 1307 of this title] shall be effective on the date of the enactment of this Act [July 18, 1984]; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 141(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and section 1395i of this title] shall become effective on the first day of the month following the month in which this Act is enacted [April 1983].''

Section 142(a)(2)(B) of Pub. L. 98–21 provided that: ''The amendment made by this paragraph [amending this section] shall apply with respect to months beginning more than thirty days after the date of enactment of this Act [Apr. 20, 1983].''

Section 152(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to all checks for benefits under title II of the Social Security Act [this subchapter] which are issued on or after the first day of the twenty-fourth month following the month in which this Act is enacted [April 1983].''

Section 154(e) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall take effect on the date of the enactment of this Act [Apr. 20, 1983].''

Section 341(d) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall become effective on the date of enactment of this Act [Apr. 20, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1(c) of Pub. L. 97–123 provided that: ''The amendments made by this section [amending this section and section 1395i of this title] shall be effective on the date of the enactment of this Act [Dec. 29, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 2 of Pub. L. 96–403 provided that: ''The amendments made by the first section of this Act [amending this section] shall apply with respect to remuneration paid, and taxable years beginning after December 31, 1979.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 applicable with respect to remuneration paid or received, and taxable years beginning after 1977, see section 104 of Pub. L. 95–216, set out as a note under section 1401 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 132(f) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395i and 1395t of this title] shall apply with respect to gifts and bequests received after the date of enactment of this Act [Oct. 30, 1972].''

Section 305(c) of Pub. L. 92–603 provided that: ''The provisions of this section [amending this section and enacting provisions set out as a note under this section] shall become effective on the date of enactment of this Act [Oct. 30, 1972].''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 701(f) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section] shall take effect on the first day of the first month beginning after the date of the enactment of this Act [Sept. 13, 1960].''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

RULE OF CONSTRUCTION

Section 321(d) of Pub. L. 103–296 provided that:

''(1) The preceding provisions of this section [amending this section and sections 402, 403, 405, 408 to 411, 413, 415, 416, 418, 423, 429, 430, and 432 of this title, and enacting provisions set out as notes under this section and sections 402 and 430 of this title] shall be construed only as technical and clerical corrections and as reflecting the original intent of the provisions amended thereby.

''(2) Any reference in title II of the Social Security Act [this subchapter] to the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] shall be construed to include a reference to the Internal Revenue Code of 1954 to the extent necessary to carry out the provisions of paragraph (1).''

REPEAL OF CHANGES IN MEDICARE PART B MONTHLY PREMIUM AND FINANCING

Section 202(a) of Pub. L. 101–234 provided that: ''Sections 211 through 213 (other than sections 211(b) and 211(c)(3)(B)) of MCCA [Pub. L. 100–360, which enacted sections 1395t–1 and 1395t–2 of this title, amended this section and sections 1395i, 1395*l*, 1395r, 1395s, 1395t, 1395w, and 1395mm of this title, and enacted provisions set out as a note under section 1395r of this title] are repealed and the provisions of law amended or repealed by such sections are restored or revised as if such sections had not been enacted.''

TRANSFER OF EQUIVALENT OF 1983 TAX INCREASES TO PAYOR FUNDS; REPORTS

Section 121(e) of Pub. L. 98–21, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–66, title XIII, § 13215(c), Aug. 10, 1993, 107 Stat. 476, provided that:

''(1) IN GENERAL.—(A) There are hereby appropriated to each payor fund amounts equivalent to (i) the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1986 [26 U.S.C. 1 et seq.] which is attributable to the application of sections 86 and 871(a)(3) of such Code (as added by this section) [26 U.S.C. 86, 871(a)(3)] to payments from such payor fund, less (ii) the amounts equivalent to the aggregate increase in tax liabilities under chapter 1 of the Internal Revenue Code of 1986 which is attributable to the

amendments to section 86 of such Code made by section 13215 of the Revenue Reconciliation Act of 1993 [Pub. L. 103–66].

''(B) There are hereby appropriated to the hospital insurance trust fund amounts equal to the increase in tax liabilities described in subparagraph (A)(ii). Such appropriated amounts shall be transferred from the general fund of the Treasury on the basis of estimates of such tax liabilities made by the Secretary of the Treasury. Transfers shall be made pursuant to a schedule made by the Secretary of the Treasury that takes into account estimated timing of collection of such liabilities.

''(2) TRANSFERS.—The amounts appropriated by paragraph (1)(A) to any payor fund shall be transferred from time to time (but not less frequently than quarterly) from the general fund of the Treasury on the basis of estimates made by the Secretary of the Treasury of the amounts referred to in such paragraph. Any such quarterly payment shall be made on the first day of such quarter and shall take into account social security benefits estimated to be received during such quarter. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

''(3) DEFINITIONS.—For purposes of this subsection—

''(A) PAYOR FUND.—The term 'payor fund' means any trust fund or account from which payments of social security benefits are made.

''(B) HOSPITAL INSURANCE TRUST FUND.—The term 'hospital insurance trust fund' means the fund established pursuant to section 1817 of the Social Security Act [section 1395i of this title].

''(C) SOCIAL SECURITY BENEFITS.—The term 'social security benefits' has the meaning given such term by section 86(d)(1) of the Internal Revenue Code of 1986 [26 U.S.C. 86(d)(1)].

''(4) REPORTS.—The Secretary of the Treasury shall submit annual reports to the Congress and to the Secretary of Health and Human Services and the Railroad Retirement Board on—

''(A) the transfers made under this subsection during the year, and the methodology used in determining the amount of such transfers and the funds or account to which made, and

''(B) the anticipated operation of this subsection during the next 5 years.''

REIMBURSEMENT TO TRUST FUNDS FOR UNNEGOTIATED BENEFIT CHECKS

Section 152(c) of Pub. L. 98–21 provided that:

''(1) The Secretary of the Treasury shall transfer from the general fund of the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund and to the Federal Disability Insurance Trust Fund, in the month following the month in which this Act is enacted [April 1983] and in each of the succeeding 30 months, such sums as may be necessary to reimburse such Trust Funds in the total amount of all checks (including interest thereof) which he and the Secretary of Health and Human Services jointly determine to be unnegotiated benefit checks, to the extent provided in advance in appropriation Acts. After any amounts authorized by this subsection have been transferred to a Trust Fund with respect to any benefit check, the provisions of paragraphs (3) and (4) of section 201(m) of the Social Security Act [subsec. (m)(3), (4) of this section] (as added by subsection (a) of this section) shall be applicable to such check.

''(2) As used in paragraph (1), the term 'unnegotiated benefit checks' means checks for benefits under title II of the Social Security Act [this subchapter] which are issued prior to the twenty-fourth month following the month in which this Act is enacted [April 1983], which remain unnegotiated after the sixth month following the date on which they were issued, and with respect to which no transfers have previously been made in accordance with the first sentence of such paragraph.''

STUDY OF FLOAT PERIOD OF MONTHLY INSURANCE BENEFIT CHECKS

Section 153 of Pub. L. 98–21 directed Secretary of Health and Human Services and Secretary of the Treasury jointly to undertake a thorough study with respect to period of time (referred to as ''float period'') between issuance of checks from general fund of Treasury in payment of monthly insurance benefits under title II of the Social Security Act [this subchapter] and transfer to general fund from Federal Old-Age and Survivors Insurance Trust Fund or Federal Disability Insurance Trust Fund, as applicable, of amounts necessary to compensate general fund for issuance of such checks, with Secretaries to submit a report to President an Congress not later than twelve months after Apr. 20, 1983, on their findings as to necessity of making adjustments in procedures governing payment of monthly insurance benefits.

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Section 154(d) of Pub. L. 98–21 provided that notwithstanding sections 401(c)(2), 1395i(b)(2), and 1395t(b)(2) of this title, the annual reports of the Boards of Trustees of the Trust Funds which are required in calendar year 1983 under those sections may be filed at any time not later than forty-five days after Apr. 20, 1983.

STUDY RELATING TO ESTABLISHMENT OF TIME LIMITATIONS FOR DECISIONS ON CLAIMS FOR BENEFITS; REPORT

Section 308 of Pub. L. 96–265 directed Secretary of Health and Human Services to submit to Congress, no later than July 1, 1980, a report recommending establishment of appropriate time limitations governing decisions on claims for benefits under this subchapter, taking into account both need for expeditious processing of claims for benefits and need to assure that all such claims will be thoroughly considered and accurately determined.

EFFECTS OF CERTAIN AMENDMENTS BY PUB. L. 96–265; REPORT

Section 312 of Pub. L. 96–265 directed Secretary of Health and Human Services to submit to Congress, not later than Jan. 1, 1985, a full and complete report as to effects produced by reason of preceding provisions of this Act and amendments made thereby (see Tables for classification).

APPOINTMENT AND COMPENSATION OF INDIVIDUALS NECESSARY TO ASSIST THE BOARD OF TRUSTEES

Section 8(e) of Pub. L. 94–202 provided that: ''Any persons the Board of Trustees finds necessary to employ to assist it in performing its functions under section 201(g)(4) of the Social Security Act [subsec. (g)(4) of this section] may be appointed without regard to the civil service or classification laws, shall be compensated, while so employed at rates fixed by the Board of Trustees, but not exceeding $100 per day, and, while away from their homes or regular places of business, they may be allowed traveling expenses, including per diem in lieu of subsistence, as authorized by law for persons in the Government service employed intermittently.''

METHOD OF DETERMINING COSTS PRESCRIBED BY THE BOARD OF TRUSTEES CERTIFICATION AND TRANSFER OF FUNDS

Section 8(f) of Pub. L. 94–202, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The Secretary shall not make any estimates pursuant to section 201(g)(1)(A)(ii) of the Social Security Act [subsec. (g)(1)(A)(ii) of this section] before the Board of Trustees prescribes the method of determining costs as provided in section 201(g)(4) of such Act [subsec. (g)(4) of this section]. The determinations pursuant to section 201(g)(1)(B) of the Social Security Act [subsec.

(g)(1)(B) of this section] with respect to the carrying out of the functions of the Department of Health, Education, and Welfare [now Health and Human Services] specified in section 232 of such Act [section 432 of this title], which relate to the administration of provisions of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (other than those referred to in clause (i) of the first sentence of section 201(g)(1)(A) of the Social Security Act [subsec. (g)(1)(A) of this section]), during fiscal years ending before the Board of Trustees prescribes the method of making such determinations, shall be made after the Board of Trustees has prescribed such method. The Secretary of Health, Education, and Welfare [now Health and Human Services] shall certify to the Managing Trustee the amounts that should be transferred from the general fund in the Treasury to the Trust Funds (as referred to in section 201(g)(1)(A) of the Social Security Act [subsec. (g)(1)(A) of this section]) to insure that the general fund in the Treasury bears its proper share of the costs of carrying out such functions in such fiscal years. The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.''

ADVANCES FROM TRUST FUNDS FOR ADMINISTRATIVE EXPENSES

Section 305(b) of Pub. L. 92–603 provided that:

''(1) Sums appropriated pursuant to section 1601 of the Social Security Act [section 1381 of this title] shall be utilized from time to time, in amounts certified under the second sentence of section 201(g)(1)(A) of such Act [subsec. (g)(1)(A) of this section], to repay the Trust Funds for expenditures made from such Funds in any fiscal year under section 201(g)(1)(A) of such Act (as amended by subsection (a) of this section) [amending subsec. (g)(1)(A) of this section] on account of the costs of administration of title XVI of such Act [subchapter XVI of this chapter] (as added by section 301 of this Act).

''(2) If the Trust Funds have not theretofore been repaid for expenditures made in any fiscal year (as described in paragraph (1)) to the extent necessary on account of—

''(A) expenditures made from such Funds prior to the end of such fiscal year to the extent that the amount of such expenditures exceeded the amount of the expenditures which would have been made from such Funds if subsection (a) had not been enacted,

''(B) the additional administrative expenses, if any, resulting from the excess expenditures described in subparagraph (A), and

''(C) any loss in interest to such Funds resulting from such excess expenditures and such administrative expenses,

in order to place each such Fund in the same position (at the end of such fiscal year) as it would have been in if such excess expenditures had not been made, the amendments made by subsection (a) shall cease to be effective at the close of the fiscal year following such fiscal year.

''(3) As used in this subsection, the term 'Trust Funds' has the meaning given it in section 201(g)(1)(A) of the Social Security Act [subsec. (g)(1)(A) of this section].''

ADVANCES FROM TRUST FUNDS FOR ADMINISTRATIVE PURPOSES; FISCAL YEAR TRANSITION PERIOD OF JULY 1, 1976, THROUGH SEPTEMBER 30, 1976, DEEMED FISCAL YEAR

Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed fiscal year for purposes of section 305(b) of Pub. L. 92–603, set out as a note above, relating to advances from trust funds for administrative purposes, see section 201(11) of Pub. L. 94–274, title II, Apr. 21, 1976, 90 Stat. 390, set out as a note under section 343 of Title 7, Agriculture.

GIFTS AND BEQUESTS FOR THE USE OF THE UNITED STATES AND FOR EXCLUSIVELY PUBLIC PURPOSES

Section 132(g) of Pub. L. 92–603 provided that: ''For the purpose of Federal income, estate, and gift taxes, any gift or bequest to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund, or to the Department of Health, Education, and Welfare [now Health and Human Services], or any part or officer thereof, for the benefit of any of such Funds or any activity financed through any of such Funds, which is accepted by the Managing Trustee of such Trust Funds under the authority of section 201(i) of the Social Security Act [subsec. (i) of this section], shall be considered as a gift or bequest to or for the use of the United States and as made for exclusively public purposes.''

TAXES ON SERVICES RENDERED BY EMPLOYEES OF INTERNATIONAL ORGANIZATIONS PRIOR TO JAN. 1, 1946

Section 5(b) of act Dec. 29, 1945, ch. 652, title I, 59 Stat. 671, prohibited collection of tax under title VIII or IX of the Social Security Act or under the Federal Insurance Contributions Act or the Federal Unemployment Tax Act with respect to services rendered prior to January 1, 1946, which were described in paragraph (16) of sections 1426(b) and 1607(c) of the Internal Revenue Code of 1939, and authorized refund of taxes collected.

EXECUTIVE ORDER NO. 12335

Ex. Ord. No. 12335, Dec. 16, 1981, 46 F.R. 61633, as amended by Ex. Ord. No. 12397, Dec. 23, 1982, 47 F.R. 57651; Ex. Ord. No. 12402, Jan. 15, 1983, 48 F.R. 2311, which established the National Commission on Social Security Reform and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415, 417, 421, 429, 909, 910, 1320b–1, 1395i, 1395t of this title; title 26 section 3121.

§ 401a. Omitted

CODIFICATION

Section, acts Aug. 1, 1956, ch. 836, title I, § 116, 70 Stat. 833; Sept. 13, 1966, Pub. L. 86–778, title VII, § 704, 74 Stat. 994; July 30, 1965, Pub. L. 89–97, title I, § 109(b), 79 Stat. 340, which established an initial Advisory Council on Social Security Financing to review the status of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in relation to long term commitments to old-age, survivors, and disability insurance programs, appointed personnel and provided for their compensation, required a report of the findings and recommendations of the Council to be submitted to the Secretary of the Board of Trustees of the abovementioned Trust Funds not later than Jan. 1, 1959, at which time the Council terminated, provided for subsequent Advisory Councils to be appointed in 1963, 1966, and every fifth year thereafter and to submit reports to Congress, and required additional information be included in these reports, was omitted in view of the termination of the initial Advisory Council on submission of their report not later than Jan. 1, 1959, the repeal of subsec. (e) by Pub. L. 89–97, title I, § 109(b), July 30, 1965, 79 Stat. 340, which provided for the subsequent Advisory Councils, and the obsolescence of subsec. (f), which provided for additional information in reports to Congress, upon the repeal of subsec. (e).

§ 402. Old-age and survivors insurance benefit payments

(a) Old-age insurance benefits

Every individual who—

(1) is a fully insured individual (as defined in section 414(a) of this title),

(2) has attained age 62, and

(3) has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding the month in which he attained retirement age (as defined in section 416(*l*) of this title),

shall be entitled to an old-age insurance benefit for each month, beginning with—

(A) in the case of an individual who has attained retirement age (as defined in section 416(*l*) of this title), the first month in which such individual meets the criteria specified in paragraphs (1), (2), and (3), or

(B) in the case of an individual who has attained age 62, but has not attained retirement age (as defined in section 416(*l*) of this title), the first month throughout which such individual meets the criteria specified in paragraphs (1) and (2) (if in that month he meets the criterion specified in paragraph (3)),

and ending with the month preceding the month in which he dies. Except as provided in subsection (q) and subsection (w) of this section, such individual's old-age insurance benefit for any month shall be equal to his primary insurance amount (as defined in section 415(a) of this title) for such month.

(b) Wife's insurance benefits

(1) The wife (as defined in section 416(b) of this title) and every divorced wife (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—

(A) has filed application for wife's insurance benefits,

(B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced wife, is not married, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection (s) of this section) be entitled to a wife's insurance benefit for each month, beginning with—

(i) in the case of a wife or divorced wife (as so defined) of an individual entitled to old-age benefits, if such wife or divorced wife has attained retirement age (as defined in section 416(*l*) of this title), the first month in which she meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a wife or divorced wife (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such wife or divorced wife has not attained retirement age (as defined in section 416(*l*) of this title), or

(II) an individual entitled to disability insurance benefits,

the first month throughout which she is such a wife or divorced wife and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month she meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs—

(E) she dies,

(F) such individual dies,

(G) in the case of a wife, they are divorced and either (i) she has not attained age 62, or (ii) she has attained age 62 but has not been married to such individual for a period of 10 years immediately before the date the divorce became effective,

(H) in the case of a divorced wife, she marries a person other than such individual,

(I) in the case of a wife who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) she becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2) Except as provided in subsection (q) of this section and paragraph (4) of this subsection, such wife's insurance benefit for each month shall be equal to one-half of the primary insurance amount of her husband (or, in the case of a divorced wife, her former husband) for such month.

(3) In the case of any divorced wife who marries—

(A) an individual entitled to benefits under subsection (c), (f), (g), or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d) of this section,

such divorced wife's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) (but subject to subsection (s) of this section), not be terminated by reason of such marriage.

(4)(A) The amount of a wife's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k) of this section) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the wife (or divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity—

(i) such service did not constitute ''employment'' as defined in section 410 of this title, or

(ii) such service was being performed while in the service of the Federal Government, and constituted ''employment'' as so defined solely by reason of—

(I) clause (ii) or (iii) of subparagraph (G) of section 410(a)(5) of this title, where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

(II) an election to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 [22 U.S.C. 4071 et seq.] made pursuant to law after December 31, 1987,

unless subparagraph (B) applies. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

(B)(i) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title).

(ii) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted ''employment'' as defined in section 410 of this title if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the wife (or divorced wife) is eligible for benefits under this subsection and has made a valid application for such benefits.

(C) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Commissioner of Social Security) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term ''periodic benefit'' includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(5)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced wife of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced wife—

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a wife's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Commissioner of Social Security) in the manner otherwise provided for wife's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced wife first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A wife's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.

(c) Husband's insurance benefits

(1) The husband (as defined in section 416(f) of this title) and every divorced husband (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such husband or such divorced husband—

(A) has filed application for husband's insurance benefits,

(B) has attained age 62 or (in the case of a husband) has in his care (individually or jointly with such individual) at the time of filing such application a child entitled to child's insurance benefits on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced husband, is not married, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection(s) of this section) be entitled to a husband's insurance benefit for each month, beginning with—

(i) in the case of a husband or divorced husband (as so defined) of an individual who is entitled to an old-age insurance benefit, if such husband or divorced husband has attained retirement age (as defined in section 416(*l*) of this title), the first month in which he meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a husband or divorced husband (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such husband or divorced husband has not attained retirement age (as defined in section 416(*l*) of this title), or

(II) an individual entitled to disability insurance benefits,

the first month throughout which he is such a husband or divorced husband and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs:

(E) he dies,

(F) such individual dies,

(G) in the case of a husband, they are divorced and either (i) he has not attained age 62, or (ii) he has attained age 62 but has not been married to such individual for a period of 10 years immediately before the divorce became effective,

(H) in the case of a divorced husband, he marries a person other than such individual,

(I) in the case of a husband who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) he becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2)(A) The amount of a husband's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k) of this section) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the husband (or divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day he was employed by such entity—

(i) such service did not constitute ''employment'' as defined in section 410 of this title, or

(ii) such service was being performed while in the service of the Federal Government, and constituted ''employment'' as so defined solely by reason of—

(I) clause (ii) or (iii) of subparagraph (G) of section 410(a)(5) of this title, where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

(II) an election to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 [22 U.S.C. 4071 et seq.] made pursuant to law after December 31, 1987,

unless subparagraph (B) applies. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

(B)(i) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title).

(ii) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted ''employment'' as defined in section 410 of this title if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the husband (or divorced husband) is eligible for benefits under this subsection and has made a valid application for such benefits.

(C) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Commissioner of Social Security) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term ''periodic benefit'' includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(3) Except as provided in subsection (q) of this section and paragraph (2) of this subsection, such husband's insurance benefit for each month shall be equal to one-half of the primary insurance amount of his wife (or, in the case of a divorced husband, his former wife) for such month.

(4) In the case of any divorced husband who marries—

(A) an individual entitled to benefits under subsection (b), (e), (g), or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d) of this section, by reason of paragraph (1)(B)(ii) thereof,

such divorced husband's entitlement to benefits under this subsection, notwithstanding the provisions of paragraph (1) (but subject to subsection (s) of this section), shall not be terminated by reason of such marriage.

(5)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced husband of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 414 of this title), if such divorced husband—

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a husband's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Commissioner of Social Security) in the manner otherwise provided for husband's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced husband first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A husband's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.

(d) Child's insurance benefits

(1) Every child (as defined in section 416(e) of this title) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child—

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time elementary or secondary school student and had not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) which began before he attained the age of 22, and

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with—

(i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B), and (C), or

(ii) in the case of a child (as so defined) of an individual entitled to an old-age insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in subparagraphs (B) and (C) (if in such month he meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding whichever of the following first occurs—

(D) the month in which such child dies, or marries,

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time elementary or secondary school student during any part of such month,

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month; or

(G) if such child was under a disability (as so defined) at the time he attained the age of 18 or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22—

(i) the termination month, subject to section 423(e) of this title (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity),

or (if later) the earlier of—

(ii) the first month during no part of which he is a full-time elementary or secondary school student, or

(iii) the month in which he attains the age of 19,

but only if he was not under a disability (as so defined) in such earlier month.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 423(d) of this title except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.

(2) Such child's insurance benefit for each month shall, if the individual on the basis of whose wages and self-employment income the child is entitled to such benefit has not died prior to the end of such month, be equal to one-half of the primary insurance amount of such individual for such month. Such child's insurance benefit for each month shall, if such individual has died in or prior to such month, be equal to three-fourths of the primary insurance amount of such individual.

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) of this subsection unless, at such time, such individual was not living with or contributing to the support of such child and—

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child has been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 416(h)(2)(B) or section 416(h)(3) of this title shall be deemed to be the legitimate child of such individual.

(4) A child shall be deemed dependent upon his stepfather or stepmother at the time specified in paragraph (1)(C) of this subsection if, at such time, the child was living with or was receiving at least one-half of his support from such stepfather or stepmother.

(5) In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (c), (e), (f), (g), or (h) of this section or under section 423(a) of this title, or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection,

such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1)(D) has occurred) beginning with the first month thereafter in which he—

(A)(i) is a full-time elementary or secondary school student and has not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) and has not attained the age of 22, or

(B) is under a disability (as so defined) which began before the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability,

but only if he has filed application for such reentitlement. Such reentitlement shall end with the month preceding whichever of the following first occurs:

(C) the first month in which an event specified in paragraph (1)(D) occurs;

(D) the earlier of (i) the first month during no part of which he is a full-time elementary or secondary school student or (ii) the month in which he attains the age of 19, but only if he is not under a disability (as so defined) in such earlier month; or

(E) if he was under a disability (as so defined), the termination month (as defined in paragraph (1)(G)(i)), subject to section 423(e) of this title, or (if later) the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school student, or

(ii) the month in which he attains the age of 19.

(7) For the purposes of this subsection—

(A) A ''full-time elementary or secondary school student'' is an individual who is in full-time attendance as a student at an elementary or secondary school, as determined by the Commissioner of Social Security (in accordance with regulations prescribed by the Commissioner) in the light of the standards and practices of the schools involved, except that no individual shall be considered a ''full-time elementary or secondary school student'' if he is paid by his employer while attending an elementary or secondary school at the request, or pursuant to a requirement, of his employer. An individual shall not be considered a ''full-time elementary or secondary school student'' for the purpose of this section while that individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense (committed after the effective date of this sentence[1]) which constituted a felony under applicable law. An individual who is determined to be a full-time elementary or secondary school student shall be deemed to be such a student throughout the month with respect to which such determination is made.

(B) Except to the extent provided in such regulations, an individual shall be deemed to be a full-time elementary or secondary school student during any period of nonattendance at an elementary or secondary school at which he has been in full-time attendance if (i) such period is 4 calendar months or less, and (ii) he shows to the satisfaction of the Commissioner of Social Security that he intends to continue to be in full-time attendance at an elementary or secondary school immediately following such period. An individual who does not meet the requirement of clause (ii) with respect to such period of nonattendance shall be deemed to have met such requirement (as of the beginning of such period) if he is in full-time attendance at an elementary or secondary school immediately following such period.

(C)(i) An ''elementary or secondary school'' is a school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located.

(ii) For the purpose of determining whether a child is a ''full-time elementary or secondary school student'' or ''intends to continue to be in full-time attendance at an elementary or secondary school'', within the meaning of this subsection, there shall be disregarded any education provided, or to be provided, beyond grade 12.

(D) A child who attains age 19 at a time when he is a full-time elementary or secondary school student (as defined in subparagraph (A) of this paragraph and without application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in subparagraph (C)(i)) shall be deemed (for purposes of determining whether his entitlement to benefits under this subsection has terminated under paragraph (1)(F) and for purposes of determining his initial entitlement to such benefits under clause (i) of paragraph (1)(B)) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school (as defined in this paragraph) in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is so enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(8) In the case of—

(A) an individual entitled to old-age insurance benefits (other than an individual referred to in subparagraph (B)), or

(B) an individual entitled to disability insurance benefits, or an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits,

a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child—

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D)(i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States, and

(ii) in the case of a child who attained the age of 18 prior to the commencement of pro-

[1] See References in Text note below.

ceedings for adoption, the child was living with or receiving at least one-half of the child's support from such individual for the year immediately preceding the month in which the adoption is decreed.

(9)(A) A child who is a child of an individual under clause (3) of the first sentence of section 416(e) of this title and is not a child of such individual under clause (1) or (2) of such first sentence shall be deemed not to be dependent on such individual at the time specified in subparagraph (1)(C) of this subsection unless (i) such child was living with such individual in the United States and receiving at least one-half of his support from such individual (I) for the year immediately before the month in which such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (II) if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, or disability insurance benefits, or died, for the year immediately before the month in which such period of disability began, and (ii) the period during which such child was living with such individual began before the child attained age 18.

(B) In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of such child's birth.

(e) Widow's insurance benefits

(1) The widow (as defined in section 416(c) of this title) and every surviving divorced wife (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if such widow or such surviving divorced wife—

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 423(d) of this title) which began before the end of the period specified in paragraph (4),

(C)(i) has filed application for widow's insurance benefits,

(ii) was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which such individual died, and—

(I) has attained retirement age (as defined in section 416(*l*) of this title),

(II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or

(III) has in effect a certificate (described in paragraph (8)) filed by her with the Commissioner of Social Security, in accordance with regulations prescribed by the Commissioner of Social Security, in which she elects to receive widow's insurance benefits (subject to reduction as provided in subsection (q) of this section), or

(iii) was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which she attained retirement age (as defined in section 416(*l*) of this title), and

(D) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual,

shall be entitled to a widow's insurance benefit for each month, beginning with—

(E) if she satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which she becomes so entitled to such insurance benefits, or

(F) if she satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after her waiting period (as defined in paragraph (5)) in which she becomes so entitled to such insurance benefits, or

(ii) the first month during all of which she is under a disability and in which she becomes so entitled to such insurance benefits, but only if she was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (4) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: she remarries, dies, becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2)) of such deceased individual, or, if she became entitled to such benefits before she attained age 60, subject to section 423(e) of this title, the termination month (unless she attains retirement age (as defined in section 416(*l*) of this title) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which her disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which she engages or is determined able to engage in substantial gainful activity.

(2)(A) Except as provided in subsection (q) of this section, paragraph (7) of this subsection, and subparagraph (D) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.

(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 415(a)(1) of this title (as in effect after December 1978) is applicable in determining such individual's primary insurance amount—

(I) such primary insurance amount shall be determined under the formula set forth in section 415(a)(1)(B)(i) and (ii) of this title which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 415(b)(3)(A)(ii)(I) of this title, and

(III) such primary insurance amount shall be increased under section 415(i) of this title as if it were the primary insurance amount referred to in section 415(i)(2)(A)(ii)(II) of this title, except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(ii) The year specified in this clause is the earlier of—

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had he lived to that age, or

(II) the second year preceding the year in which the widow or surviving divorced wife first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 415 of this title.

(C) If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of such subsection (w) of this section.

(D) If the deceased individual (on the basis of whose wages and self-employment income a widow or surviving divorced wife is entitled to widow's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q) of this section, the widow's insurance benefit of such widow or surviving divorced wife for any month shall, if the amount of the widow's insurance benefit of such widow or surviving divorced wife (as determined under subparagraph (A) and after application of subsection (q) of this section) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q) of this section) for such month if such individual were still living and section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title were applied, where applicable, and

(ii) 82½ percent of the primary insurance amount (as determined without regard to subparagraph (C)) of such deceased individual,

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(3) For purposes of paragraph (1), if—

(A) a widow or surviving divorced wife marries after attaining age 60 (or after attaining age 50 if she was entitled before such marriage occurred to benefits based on disability under this subsection), or

(B) a disabled widow or disabled surviving divorced wife described in paragraph (1)(B)(ii) marries after attaining age 50,

such marriage shall be deemed not to have occurred.

(4) The period referred to in paragraph (1)(B)(ii), in the case of any widow or surviving divorced wife, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income her benefits are or would be based, or

(B) the last month for which she was entitled to mother's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widow's insurance benefits on the basis of such wages and self-employment income terminated because her disability had ceased,

and ending with the month before the month in which she attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(5)(A) The waiting period referred to in paragraph (1)(F), in the case of any widow or surviving divorced wife, is the earliest period of five consecutive calendar months—

(i) throughout which she has been under a disability, and

(ii) which begins not earlier than with whichever of the following is the later: (I) the first day of the seventeenth month before the month in which her application is filed, or (II) the first day of the fifth month before the month in which the period specified in paragraph (4) begins.

(B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first

month for which such widow or surviving divorced wife is first eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.

(6) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972, such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 415(i)(3) of this title) or any increase in benefits made under or pursuant to section 415(i) of this title, including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

(7)(A) The amount of a widow's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k) of this section, paragraph (2)(D), and paragraph (3)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity—

(i) such service did not constitute ''employment'' as defined in section 410 of this title, or

(ii) such service was being performed while in the service of the Federal Government, and constituted ''employment'' as so defined solely by reason of—

(I) clause (ii) or (iii) of subparagraph (G) of section 410(a)(5) of this title, where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

(II) an election to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 [22 U.S.C. 4071 et seq.] made pursuant to law after December 31, 1987,

unless subparagraph (B) applies. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

(B)(i) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title).

(ii) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted ''employment'' as defined in section 410 of this title if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the widow (or surviving divorced wife) is eligible for benefits under this subsection and has made a valid application for such benefits.

(C) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Commissioner of Social Security) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term ''periodic benefit'' includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(8) Any certificate filed pursuant to paragraph (1)(C)(ii)(III) shall be effective for purposes of this subsection—

(A) for the month in which it is filed and for any month thereafter, and

(B) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which she attains age 62.

(9) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.

(f) Widower's insurance benefits

(1) The widower (as defined in section 416(g) of this title) and every surviving divorced husband (as defined in section 416(d) of this title) of an individual who died a fully insured individual, if such widower or such surviving divorced husband—

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 423(d) of the title) which began before the end of the period specified in paragraph (5),

(C)(i) has filed application for widower's insurance benefits,

(ii) was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which such individual died, and—

(I) has attained retirement age (as defined in section 416(*l*) of this title),

(II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or

(III) has in effect a certificate (described in paragraph (8)) filed by him with the Commissioner of Social Security, in accordance with regulations prescribed by the Commissioner of Social Security, in which he elects to receive widower's insurance benefits (subject to reduction as provided in subsection (q) of this section), or

(iii) was entitled, on the basis of such wages and self-employment income, to father's insurance benefits for the month preceding the month in which he attained retirement age (as defined in section 416(*l*) of this title), and

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3)) of such deceased individual,

shall be entitled to a widower's insurance benefit for each month, beginning with—

(E) if he satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which he becomes so entitled to such insurance benefits, or

(F) if he satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after his waiting period (as defined in paragraph (6)) in which he becomes so entitled to such insurance benefits, or

(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (5) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3)) of such deceased individual, or, if he became entitled to such benefits before he attained age 60, subject to section 423(e) of this title, the termination month (unless he attains retirement age (as defined in section 416(*l*) of this title) on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.

(2)(A) The amount of a widower's insurance benefit for each month (as determined after application of the provisions of subsections (q) and (k) of this section, paragraph (3)(D), and paragraph (4)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the widower (or surviving divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day he was employed by such entity—

(i) such service did not constitute ''employment'' as defined in section 410 of this title, or

(ii) such service was being performed while in the service of the Federal Government, and constituted ''employment'' as so defined solely by reason of—

(I) clause (ii) or (iii) of subparagraph (G) of section 410(a)(5) of this title, where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

(II) an election to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 [22 U.S.C. 4071 et seq.] made pursuant to law after December 31, 1987,

unless subparagraph (B) applies. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

(B)(i) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title).

(ii) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted ''employment'' as defined in section 410 of this title if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the widower (or surviving divorced husband) is eligible for benefits under this subsection and has made a valid application for such benefits.

(C) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Commissioner of Social Security) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this

subparagraph, the term ''periodic benefit'' includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(3)(A) Except as provided in subsection (q) of this section, paragraph (2) of this subsection, and subparagraph (D) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.

(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 415(a)(1) of this title (as in effect after December 1978) is applicable in determining such individual's primary insurance amount—

(I) such primary insurance amount shall be determined under the formula set forth in section 415(a)(1)(B)(i) and (ii) of this title which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 415(b)(3)(A)(ii)(I) of this title, and

(III) such primary insurance amount shall be increased under section 415(i) of this title as if it were the primary insurance amount referred to in section 415(i)(2)(A)(ii)(II) of this title, except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(ii) The year specified in this clause is the earlier of—

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had she lived to that age, or

(II) the second year preceding the year in which the widower or surviving divorced husband first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 415 of this title.

(C) If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of such subsection (w) of this section.

(D) If the deceased individual (on the basis of whose wages and self-employment income a widower or surviving divorced husband is entitled to widower's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q) of this section, the widower's insurance benefit of such widower or surviving divorced husband for any month shall, if the amount of the widower's insurance benefit of such widower or surviving divorced husband (as determined under subparagraph (A) and after application of subsection (q) of this section) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q) of this section) for such month if such individual were still living and section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title were applied, where applicable, and

(ii) 82½ percent of the primary insurance amount (as determined without regard to subparagraph (C)) of such deceased individual;

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(4) For purposes of paragraph (1), if—

(A) a widower or surviving divorced husband marries after attaining age 60 (or after attaining age 50 if he was entitled before such marriage occurred to benefits based on disability under this subsection), or

(B) a disabled widower or surviving divorced husband described in paragraph (1)(B)(ii) marries after attaining age 50,

such marriage shall be deemed not to have occurred.

(5) The period referred to in paragraph (1)(B)(ii), in the case of any widower or surviving divorced husband, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income his benefits are or would be based,

(B) the last month for which he was entitled to father's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widower's insurance benefits on the basis of such wages and self-employment income terminated because his disability had ceased,

and ending with the month before the month in which he attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(6)(A) The waiting period referred to in paragraph (1)(F), in the case of any widower or sur-

viving divorced husband, is the earliest period of five consecutive calendar months—

(i) throughout which he has been under a disability, and

(ii) which begins not earlier than with whichever of the following is the later: (I) the first day of the seventeenth month before the month in which his application is filed, or (II) the first day of the fifth month before the month in which the period specified in paragraph (5) begins.

(B) For purposes of paragraph (1)(F)(i), each month in the period commencing with the first month for which such widower or surviving divorced husband is first eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), shall be included as one of the months of such waiting period for which the requirements of subparagraph (A) have been met.

(7) In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972, such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 415(i)(3) of this title) or any increase in benefits made under or pursuant to section 415(i) of this title, including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

(8) Any certificate filed pursuant to paragraph (1)(C)(ii)(III) shall be effective for purposes of this subsection—

(A) for the month in which it is filed and for any month thereafter, and

(B) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he attains age 62.

(9) An individual shall be deemed to be under a disability for purposes of paragraph (1)(B)(ii) if such individual is eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Commissioner of Social Security under an agreement referred to in such section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), for the month for which all requirements of paragraph (1) for entitlement to benefits under this subsection (other than being under a disability) are met.

(g) Mother's and father's insurance benefits

(1) The surviving spouse and every surviving divorced parent (as defined in section 416(d) of this title) of an individual who died a fully or currently insured individual, if such surviving spouse or surviving divorced parent—

(A) is not married,

(B) is not entitled to a surviving spouse's insurance benefit,

(C) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of such individual,

(D) has filed application for mother's or father's insurance benefits, or was entitled to a spouse's insurance benefit on the basis of the wages and self-employment income of such individual for the month preceding the month in which such individual died,

(E) at the time of filing such application has in his or her care a child of such individual entitled to a child's insurance benefit, and

(F) in the case of a surviving divorced parent—

(i) the child referred to in subparagraph (E) is his or her son, daughter, or legally adopted child, and

(ii) the benefits referred to in such subparagraph are payable on the basis of such individual's wages and self-employment income,

shall (subject to subsection (s) of this section) be entitled to a mother's or father's insurance benefit for each month, beginning with the first month in which he or she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child's insurance benefit, such surviving spouse or surviving divorced parent becomes entitled to an old-age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, he or she becomes entitled to a surviving spouse's insurance benefit, he or she remarries, or he or she dies. Entitlement to such benefits shall also end, in the case of a surviving divorced parent, with the month immediately preceding the first month in which no son, daughter, or legally adopted child of such surviving divorced parent is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased individual.

(2) Except as provided in paragraph (4) of this subsection, such mother's or father's insurance benefit for each month shall be equal to three-fourths of the primary insurance amount of such deceased individual.

(3) In the case of a surviving spouse or surviving divorced parent who marries—

(A) an individual entitled to benefits under this subsection or subsection (a), (b), (c), (e), (f), or (h) of this section, or under section 423(a) of this title, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

the entitlement of such surviving spouse or surviving divorced parent to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to

subsection (s) of this section, not be terminated by reason of such marriage.

(4)(A) The amount of a mother's or father's insurance benefit for each month (as determined after application of the provisions of subsection (k) of this section) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to the individual for such month which is based upon the individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day the individual was employed by such entity—

(i) such service did not constitute ''employment'' as defined in section 410 of this title, or

(ii) such service was being performed while in the service of the Federal Government, and constituted ''employment'' as so defined solely by reason of—

(I) clause (ii) or (iii) of subparagraph (G) of section 410(a)(5) of this title, where the lump-sum payment described in such clause (ii) or the cessation of coverage described in such clause (iii) (whichever is applicable) was received or occurred on or after January 1, 1988, or

(II) an election to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 [22 U.S.C. 4071 et seq.] made pursuant to law after December 31, 1987,

unless subparagraph (B) applies. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

(B)(i) Subparagraph (A)(i) shall not apply with respect to monthly periodic benefits based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title).

(ii) Subparagraph (A)(ii) shall not apply with respect to monthly periodic benefits based in whole or in part on service which constituted ''employment'' as defined in section 410 of this title if such service was performed for at least 60 months in the aggregate during the period beginning January 1, 1988, and ending with the close of the first calendar month as of the end of which the individual is eligible for benefits under this subsection and has made a valid application for such benefits.

(C) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Commissioner of Social Security) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term ''periodic benefit'' includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(h) Parent's insurance benefits

(1) Every parent (as defined in this subsection) of an individual who died a fully insured individual, if such parent—

(A) has attained age 62,

(B)(i) was receiving at least one-half of his support from such individual at the time of such individual's death or, if such individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of such death, and (ii) filed proof of such support within two years after the date of such death, or, if such individual had such a period of disability, within two years after the month in which such individual filed application with respect to such period of disability or two years after the date of such death, as the case may be,

(C) has not married since such individual's death,

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case), and

(E) has filed application for parent's insurance benefits,

shall be entitled to a parent's insurance benefit for each month beginning with the first month after August 1950 in which such parent becomes so entitled to such parent's insurance benefits and ending with the month preceding the first month in which any of the following occurs: such parent dies, marries, or becomes entitled to an old-age insurance benefit equal to or exceeding 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case).

(2)(A) Except as provided in subparagraphs (B) and (C), such parent's insurance benefit for each month shall be equal to 82½ percent of the primary insurance amount of such deceased individual.

(B) For any month for which more than one parent is entitled to parent's insurance benefits on the basis of such deceased individual's wages and self-employment income, such benefit for each such parent for such month shall (except as provided in subparagraph (C)) be equal to 75 percent of the primary insurance amount of such deceased individual.

(C) In any case in which—

(i) any parent is entitled to a parent's insurance benefit for a month on the basis of a deceased individual's wages and self-employment income, and

(ii) another parent of such deceased individual is entitled to a parent's insurance benefit for such month on the basis of such wages and self-employment income, and on the basis of an application filed after such month and after the month in which the application for the parent's benefits referred to in clause (i) was filed,

the amount of the parent's insurance benefit of the parent referred to in clause (i) for the month referred to in such clause shall be determined under subparagraph (A) instead of subparagraph (B) and the amount of the parent's insurance benefit of a parent referred to in clause (ii) for such month shall be equal to 150 percent of the primary insurance amount of the deceased individual minus the amount (before the application of section 403(a) of this title) of the benefit for such month of the parent referred to in clause (i).

(3) As used in this subsection, the term ''parent'' means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of sixteen, or an adopting parent by whom an individual was adopted before he attained the age of sixteen.

(4) In the case of a parent who marries—

(A) an individual entitled to benefits under this subsection or subsection (b), (c), (e), (f), or (g) of this section, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

such parent's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(i) Lump-sum death payments

Upon the death, after August 1950, of an individual who died a fully or currently insured individual, an amount equal to three times such individual's primary insurance amount (as determined without regard to the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981, relating to the repeal of the minimum benefit provisions), or an amount equal to $255, whichever is the smaller, shall be paid in a lump sum to the person, if any, determined by the Commissioner of Social Security to be the widow or widower of the deceased and to have been living in the same household with the deceased at the time of death. If there is no such person, or if such person dies before receiving payment, then such amount shall be paid—

(1) to a widow (as defined in section 416(c) of this title) or widower (as defined in section 416(g) of this title) who is entitled (or would have been so entitled had a timely application been filed), on the basis of the wages and self-employment income of such insured individual, to benefits under subsection (e), (f), or (g) of this section for the month in which occurred such individual's death; or

(2) if no person qualifies for payment under paragraph (1), or if such person dies before receiving payment, in equal shares to each person who is entitled (or would have been so entitled had a timely application been filed), on the basis of the wages and self-employment income of such insured individual, to benefits under subsection (d) of this section for the month in which occurred such individual's death.

No payment shall be made to any person under this subsection unless application therefor shall have been filed, by or on behalf of such person (whether or not legally competent), prior to the expiration of two years after the date of death of such insured individual, or unless such person was entitled to wife's or husband's insurance benefits, on the basis of the wages and self-employment income of such insured individual, for the month preceding the month in which such individual died. In the case of any individual who died outside the forty-eight States and the District of Columbia after December 1953 and before January 1, 1957, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the provisions of the preceding sentence shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment. In the case of any individual who died outside the fifty States and the District of Columbia after December 1956 while he was performing service, as a member of a uniformed service, to which the provisions of section 410(*l*)(1) of this title are applicable, and who is returned to any State, or to any Territory or possession of the United States, for interment or reinterment, the provisions of the third sentence of this subsection shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.

(j) Application for monthly insurance benefits

(1) Subject to the limitations contained in paragraph (4), an individual who would have been entitled to a benefit under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of this section for any month after August 1950 had he filed application therefor prior to the end of such month shall be entitled to such benefit for such month if he files application therefor prior to—

(A) the end of the twelfth month immediately succeeding such month in any case where the individual (i) is filing application for a benefit under subsection (e) or (f) of this section, and satisfies paragraph (1)(B) of such subsection by reason of clause (ii) thereof, or (ii) is filing application for a benefit under subsection (b), (c), or (d) of this section on the basis of the wages and self-employment income of a person entitled to disability insurance benefits, or

(B) the end of the sixth month immediately succeeding such month in any case where subparagraph (A) does not apply.

Any benefit under this subchapter for a month prior to the month in which application is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such applica-

tion, the Commissioner of Social Security has certified for payment for such prior month.

(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Commissioner of Social Security makes a final decision on the application and no request under section 405(b) of this title for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Commissioner of Social Security).

(3) Notwithstanding the provisions of paragraph (1), an individual may, at his option, waive entitlement to any benefit referred to in paragraph (1) for any one or more consecutive months (beginning with the earliest month for which such individual would otherwise be entitled to such benefit) which occur before the month in which such individual files application for such benefit; and, in such case, such individual shall not be considered as entitled to such benefits for any such month or months before such individual filed such application. An individual shall be deemed to have waived such entitlement for any such month for which such benefit would, under the second sentence of paragraph (1), be reduced to zero.

(4)(A) Except as provided in subparagraph (B), no individual shall be entitled to a monthly benefit under subsection (a), (b), (c), (e), or (f) of this section for any month prior to the month in which he or she files an application for benefits under that subsection if the amount of the monthly benefit to which such individual would otherwise be entitled for any such month would be subject to reduction pursuant to subsection (q) of this section.

(B)(i) If the individual applying for retroactive benefits is a widow, surviving divorced wife, or widower and is under a disability (as defined in section 423(d) of this title), and such individual would, except for subparagraph (A), be entitled to retroactive benefits as a disabled widow or widower or disabled surviving divorced wife for any month before attaining the age of 60, then subparagraph (A) shall not apply with respect to such month or any subsequent month.

(ii) Subparagraph (A) does not apply to a benefit under subsection (e) or (f) of this section for the month immediately preceding the month of application, if the insured individual died in that preceding month.

(iii) As used in this subparagraph, the term ''retroactive benefits'' means benefits to which an individual becomes entitled for a month prior to the month in which application for such benefits is filed.

(5) In any case in which it is determined to the satisfaction of the Commissioner of Social Security that an individual failed as of any date to apply for monthly insurance benefits under this subchapter by reason of misinformation provided to such individual by any officer or employee of the Social Security Administration relating to such individual's eligibility for benefits under this subchapter, such individual shall be deemed to have applied for such benefits on the later of—

(A) the date on which such misinformation was provided to such individual, or

(B) the date on which such individual met all requirements for entitlement to such benefits (other than application therefor).

(k) Simultaneous entitlement to benefits

(1) A child, entitled to child's insurance benefits on the basis of the wages and self-employment income of an insured individual, who would be entitled, on filing application, to child's insurance benefits on the basis of the wages and self-employment income of some other insured individual, shall be deemed entitled, subject to the provisions of paragraph (2) of this subsection, to child's insurance benefits on the basis of the wages and self-employment income of such other individual if an application for child's insurance benefits on the basis of the wages and self-employment income of such other individual has been filed by any other child who would, on filing application, be entitled to child's insurance benefits on the basis of the wages and self-employment income of both such insured individuals.

(2)(A) Any child who under the preceding provisions of this section is entitled for any month to child's insurance benefits on the wages and self-employment income of more than one insured individual shall, notwithstanding such provisions, be entitled to only one of such child's insurance benefits for such month. Such child's insurance benefits for such month shall be the benefit based on the wages and self-employment income of the insured individual who has the greatest primary insurance amount, except that such child's insurance benefits for such month shall be the largest benefit to which such child could be entitled under subsection (d) of this section (without the application of section 403(a) of this title) or subsection (m) of this section if entitlement to such benefit would not, with respect to any person, result in a benefit lower (after the application of section 403(a) of this title) than the benefit which would be applicable if such child were entitled on the wages and self-employment income of the individual with the greatest primary insurance amount. Where more than one child is entitled to child's insurance benefits pursuant to the preceding provisions of this paragraph, each such child who is entitled on the wages and self-employment income of the same insured individuals shall be entitled on the wages and self-employment income of the same such insured individual.

(B) Any individual (other than an individual to whom subsection (e)(3) or (f)(4) of this section applies) who, under the preceding provisions of this section and under the provisions of section 423 of this title, is entitled for any month to more than one monthly insurance benefit (other than an old-age or disability insurance benefit) under this subchapter shall be entitled to only one such monthly benefit for such month, such benefit to be the largest of the monthly benefits to which he (but for this subparagraph) would

otherwise be entitled for such month. Any individual who is entitled for any month to more than one widow's or widower's insurance benefit to which subsection (e)(3) or (f)(4) of this section applies shall be entitled to only one such benefit for such month, such benefit to be the largest of such benefits.

(3)(A) If an individual is entitled to an old-age or disability insurance benefit for any month and to any other monthly insurance benefit for such month, such other insurance benefit for such month, after any reduction under subsection (q), subsection (e)(2) or (f)(3) of this section, and any reduction under section 403(a) of this title, shall be reduced, but not below zero, by an amount equal to such old-age or disability insurance benefit (after reduction under such subsection (q) of this section).

(B) If an individual is entitled for any month to a widow's or widower's insurance benefit to which subsection (e)(3) or (f)(4) of this section applies and to any other monthly insurance benefit under this section (other than an old-age insurance benefit), such other insurance benefit for such month, after any reduction under subparagraph (A) of this paragraph, any reduction under subsection (q) of this section, and any reduction under section 403(a) of this title, shall be reduced, but not below zero, by an amount equal to such widow's or widower's insurance benefit after any reduction or reductions under such subparagraph (A) and such section 403(a).

(4) Any individual who, under this section and section 423 of this title, is entitled for any month to both an old-age insurance benefit and a disability insurance benefit under this subchapter shall be entitled to only the larger of such benefits for such month, except that, if such individual so elects, he shall instead be entitled to only the smaller of such benefits for such month.

(*l*) Entitlement to survivor benefits under railroad retirement provisions

If any person would be entitled, upon filing application therefor to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], or to a lump-sum payment under section 6(b) of such Act [45 U.S.C. 231e(b)], with respect to the death of an employee (as defined in such Act) no lump-sum death payment, and no monthly benefit for the month in which such employee died or for any month thereafter, shall be paid under this section to any person on the basis of the wages and self-employment income of such employee.

(m) Repealed. Pub. L. 97–35, title XXII, § 2201(b)(10), Aug. 13, 1981, 95 Stat. 831

(n) Termination of benefits upon deportation of primary beneficiary

(1) If any individual is (after September 1, 1954) deported under section 1251(a) of title 8 (other than under paragraph (1)(C) or (1)(E) thereof), then, notwithstanding any other provisions of this subchapter—

(A) no monthly benefit under this section or section 423 of this title shall be paid to such individual, on the basis of his wages and self-employment income, for any month occurring (i) after the month in which the Commissioner of Social Security is notified by the Attorney General that such individual has been so deported, and (ii) before the month in which such individual is thereafter lawfully admitted to the United States for permanent residence,

(B) if no benefit could be paid to such individual (or if no benefit could be paid to him if he were alive) for any month by reason of subparagraph (A), no monthly benefit under this section shall be paid, on the basis of his wages and self-employment income, for such month to any other person who is not a citizen of the United States and is outside the United States for any part of such month, and

(C) no lump-sum death payment shall be made on the basis of such individual's wages and self-employment income if he dies (i) in or after the month in which such notice is received, and (ii) before the month in which he is thereafter lawfully admitted to the United States for permanent residence.

Section 403(b), (c), and (d) of this title shall not apply with respect to any such individual for any month for which no monthly benefit may be paid to him by reason of this paragraph.

(2) As soon as practicable after the deportation of any individual under any of the paragraphs of section 1251(a) of title 8 (other than under paragraph (1)(C) or (1)(E) thereof), the Attorney General shall notify the Commissioner of Social Security of such deportation.

(3) For purposes of paragraphs (1) and (2) of this subsection, an individual against whom a final order of deportation has been issued under paragraph (19)[2] of section 1251(a) of title 8 (relating to persecution of others on account of race, religion, national origin, or political opinion, under the direction of or in association with the Nazi government of Germany or its allies) shall be considered to have been deported under such paragraph (19)[2] as of the date on which such order became final.

(*o*) Application for benefits by survivors of members and former members of uniformed services

In the case of any individual who would be entitled to benefits under subsection (d), (e), (g), or (h) of this section upon filing proper application therefor, the filing with the Administrator of Veterans' Affairs by or on behalf of such individual of an application for such benefits, on the form described in section 5105 of title 38, shall satisfy the requirement of such subsection (d), (e), (g), or (h) that an application for such benefits be filed.

(p) Extension of period for filing proof of support and applications for lump-sum death payment

In any case in which there is a failure—

(1) to file proof of support under subparagraph (B) of subsection (h)(1) of this section, or under clause (B) of subsection (f)(1) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such subparagraph or clause, or

(2) to file, in the case of a death after 1946, application for a lump-sum death payment

[2] See References in Text note below.

under subsection (i) of this section, or under subsection (g) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such subsection,

any such proof or application, as the case may be, which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Commissioner of Social Security that there was good cause for failure to file such proof or application within such period. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Commissioner of Social Security.

(q) Reduction of benefit amounts for certain beneficiaries

(1) Subject to paragraph (9), if the first month for which an individual is entitled to an old-age, wife's, husband's, widow's, or widower's insurance benefit is a month before the month in which such individual attains retirement age, the amount of such benefit for such month and for any subsequent month shall, subject to the succeeding paragraphs of this subsection, be reduced by—

(A) 5/9 of 1 percent of such amount if such benefit is an old-age insurance benefit, 25/36 of 1 percent of such amount if such benefit is a wife's or husband's insurance benefit, or 19/40 of 1 percent of such amount if such benefit is a widow's or widower's insurance benefit, multiplied by

(B)(i) the number of months in the reduction period for such benefit (determined under paragraph (6)), if such benefit is for a month before the month in which such individual attains retirement age, or

(ii) if less, the number of such months in the adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit is (I) for the month in which such individual attains age 62, or (II) for the month in which such individual attains retirement age.

(2) If an individual is entitled to a disability insurance benefit for a month after a month for which such individual was entitled to an old-age insurance benefit, such disability insurance benefit for each month shall be reduced by the amount such old-age insurance benefit would be reduced under paragraphs (1) and (4) for such month had such individual attained retirement age (as defined in section 416(*l*) of this title) in the first month for which he most recently became entitled to a disability insurance benefit.

(3)(A) If the first month for which an individual both is entitled to a wife's, husband's, widow's, or widower's insurance benefit and has attained age 62 (in the case of a wife's or husband's insurance benefit) or age 50 (in the case of a widow's or widower's insurance benefit) is a month for which such individual is also entitled to—

(i) an old-age insurance benefit (to which such individual was first entitled for a month before he attains retirement age (as defined in section 416(*l*) of this title)), or

(ii) a disability insurance benefit,

then in lieu of any reduction under paragraph (1) (but subject to the succeeding paragraphs of this subsection) such wife's, husband's, widow's, or widower's insurance benefit for each month shall be reduced as provided in subparagraph (B), (C), or (D).

(B) For any month for which such individual is entitled to an old-age insurance benefit and is not entitled to a disability insurance benefit, such individual's wife's or husband's insurance benefit shall be reduced by the sum of—

(i) the amount by which such old-age insurance benefit is reduced under paragraph (1) for such month, and

(ii) the amount by which such wife's or husband's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's or husband's insurance benefit (before reduction under this subsection) over such old-age insurance benefit (before reduction under this subsection).

(C) For any month for which such individual is entitled to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's insurance benefit shall be reduced by the sum of—

(i) the amount by which such disability insurance benefit is reduced under paragraph (2) for such month (if such paragraph applied to such benefit), and

(ii) the amount by which such wife's, husband's, widow's, or widower's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's, husband's, widow's, or widower's insurance benefit (before reduction under this subsection) over such disability insurance benefit (before reduction under this subsection).

(D) For any month for which such individual is entitled neither to an old-age insurance benefit nor to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's insurance benefit shall be reduced by the amount by which it would be reduced under paragraph (1).

(E) Notwithstanding subparagraph (A) of this paragraph, if the first month for which an individual is entitled to a widow's or widower's insurance benefit is a month for which such individual is also entitled to an old-age insurance benefit to which such individual was first entitled for that month or for a month before she or he became entitled to a widow's or widower's benefit, the reduction in such widow's or widower's insurance benefit shall be determined under paragraph (1).

(4) If—

(A) an individual is or was entitled to a benefit subject to reduction under paragraph (1) or (3) of this subsection, and

(B) such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based,

then the amount of the reduction of such benefit (after the application of any adjustment under paragraph (7)) for each month beginning with the month of such increase in the primary insurance amount shall be computed under paragraph (1) or (3), whichever applies, as though the increased primary insurance amount had been in effect for and after the month for which the in-

dividual first became entitled to such monthly benefit reduced under such paragraph (1) or (3).

(5)(A) No wife's or husband's insurance benefit shall be reduced under this subsection—

(i) for any month before the first month for which there is in effect a certificate filed by him or her with the Commissioner of Social Security, in accordance with regulations prescribed by the Commissioner of Social Security, in which he or she elects to receive wife's or husband's insurance benefits reduced as provided in this subsection, or

(ii) for any month in which he or she has in his or her care (individually or jointly with the person on whose wages and self-employment income the wife's or husband's insurance benefit is based) a child of such person entitled to child's insurance benefits.

(B) Any certificate described in subparagraph (A)(i) shall be effective for purposes of this subsection (and for purposes of preventing deductions under section 403(c)(2) of this title)—

(i) for the month in which it is filed and for any month thereafter, and

(ii) for months, in the period designated by the individual filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he or she attains age 62, nor shall it be effective for any month to which subparagraph (A)(ii) applies.

(C) If an individual does not have in his or her care a child described in subparagraph (A)(ii) in the first month for which he or she is entitled to a wife's or husband's insurance benefit, and if such first month is a month before the month in which he or she attains retirement age (as defined in section 416(*l*) of this title), he or she shall be deemed to have filed in such first month the certificate described in subparagraph (A)(i).

(D) No widow's or widower's insurance benefit for a month in which he or she has in his or her care a child of his or her deceased spouse (or deceased former spouse) entitled to child's insurance benefits shall be reduced under this subsection below the amount to which he or she would have been entitled had he or she been entitled for such month to mother's or father's insurance benefits on the basis of his or her deceased spouse's (or deceased former spouse's) wages and self-employment income.

(6) For purposes of this subsection, the ''reduction period'' for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the period—

(A) beginning—

(i) in the case of an old-age insurance benefit, with the first day of the first month for which such individual is entitled to such benefit,

(ii) in the case of a wife's or husband's insurance benefit, with the first day of the first month for which a certificate described in paragraph (5)(A)(i) is effective, or

(iii) in the case of a widow's or widower's insurance benefit, with the first day of the first month for which such individual is entitled to such benefit or the first day of the month in which such individual attains age 60, whichever is the later, and

(B) ending with the last day of the month before the month in which such individual attains retirement age.

(7) For purposes of this subsection, the ''adjusted reduction period'' for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the reduction period prescribed in paragraph (6) for such benefit, excluding—

(A) any month in which such benefit was subject to deductions under section 403(b), 403(c)(1), 403(d)(1), or 422(b) of this title,

(B) in the case of wife's or husband's insurance benefits, any month in which such individual had in his or her care (individually or jointly with the person on whose wages and self-employment income such benefit is based) a child of such person entitled to child's insurance benefits,

(C) in the case of wife's or husband's insurance benefits, any month for which such individual was not entitled to such benefits because of the occurrence of an event that terminated her or his entitlement to such benefits,

(D) in the case of widow's or widower's insurance benefits, any month in which the reduction in the amount of such benefit was determined under paragraph (5)(D),

(E) in the case of widow's or widower's insurance benefits, any month before the month in which she or he attained age 62, and also for any later month before the month in which she or he attained retirement age, for which she or he was not entitled to such benefit because of the occurrence of an event that terminated her or his entitlement to such benefits, and

(F) in the case of old-age insurance benefits, any month for which such individual was entitled to a disability insurance benefit.

(8) This subsection shall be applied after reduction under section 403(a) of this title and before application of section 415(g) of this title. If the amount of any reduction computed under paragraph (1), (2), or (3) is not a multiple of $0.10, it shall be increased to the next higher multiple of $0.10.

(9) The amount of the reduction for early retirement specified in paragraph (1)—

(A) for old-age insurance benefits, wife's insurance benefits, and husband's insurance benefits, shall be the amount specified in such paragraph for the first 36 months of the reduction period (as defined in paragraph (6)) or adjusted reduction period (as defined in paragraph (7)), and five-twelfths of 1 percent for any additional months included in such periods; and

(B) for widow's insurance benefits and widower's insurance benefits, shall be periodically revised by the Commissioner of Social Security such that—

(i) the amount of the reduction at early retirement age as defined in section 416(*l*) of this title shall be 28.5 percent of the full benefit; and

(ii) the amount of the reduction for each month in the reduction period (specified in paragraph (6)) or the adjusted reduction period (specified in paragraph (7)) shall be established by linear interpolation between 28.5 percent at the month of attainment of early retirement age and 0 percent at the month of attainment of retirement age.

(10) For purposes of applying paragraph (4), with respect to monthly benefits payable for any month after December 1977 to an individual who was entitled to a monthly benefit as reduced under paragraph (1) or (3) prior to January 1978, the amount of reduction in such benefit for the first month for which such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based and for all subsequent months (and similarly for all subsequent increases) shall be increased by a percentage equal to the percentage increase in such primary insurance amount (such increase being made in accordance with the provisions of paragraph (8)). In the case of an individual whose reduced benefit under this section is increased as a result of the use of an adjusted reduction period (in accordance with paragraphs (1) and (3) of this subsection), then for the first month for which such increase is effective, and for all subsequent months, the amount of such reduction (after the application of the previous sentence, if applicable) shall be determined—

(A) in the case of old-age, wife's, and husband's insurance benefits, by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period to (ii) the number of months in the reduction period,

(B) in the case of widow's and widower's insurance benefits for the month in which such individual attains age 62, by multiplying such amount by the ratio of (i) the number of months in the reduction period beginning with age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by 19/40 of 1 percent to (ii) the number of months in the reduction period multiplied by 19/40 of 1 percent, and

(C) in the case of widow's and widower's insurance benefits for the month in which such individual attains retirement age (as defined in section 416(*l*) of this title), by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period multiplied by 19/40 of 1 percent to (ii) the number of months in the reduction period beginning with age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by 19/40 of 1 percent,

such determination being made in accordance with the provisions of paragraph (8).

(11) When an individual is entitled to more than one monthly benefit under this subchapter and one or more of such benefits are reduced under this subsection, paragraph (10) shall apply separately to each such benefit reduced under this subsection before the application of subsection (k) of this section (pertaining to the method by which monthly benefits are offset when an individual is entitled to more than one kind of benefit) and the application of this paragraph shall operate in conjunction with paragraph (3).

(r) Presumed filing of application by individuals eligible for old-age insurance benefits and for wife's or husband's insurance benefits

(1) If the first month for which an individual is entitled to an old-age insurance benefit is a month before the month in which such individual attains retirement age (as defined in section 416(*l*) of this title), and if such individual is eligible for a wife's or husband's insurance benefit for such first month, such individual shall be deemed to have filed an application in such month for wife's or husband's insurance benefits.

(2) If the first month for which an individual is entitled to a wife's or husband's insurance benefit reduced under subsection (q) of this section is a month before the month in which such individual attains retirement age (as defined in section 416(*l*) of this title), and if such individual is eligible (but for subsection (k)(4) of this section) for an old-age insurance benefit for such first month, such individual shall be deemed to have filed an application for old-age insurance benefits—

(A) in such month, or

(B) if such individual is also entitled to a disability insurance benefit for such month, in the first subsequent month for which such individual is not entitled to a disability insurance benefit.

(3) For purposes of this subsection, an individual shall be deemed eligible for a benefit for a month if, upon filing application therefor in such month, he would be entitled to such benefit for such month.

(s) Child over specified age to be disregarded for certain benefit purposes unless disabled

(1) For the purposes of subsections (b)(1), (c)(1), (g)(1), (q)(5), and (q)(7) of this section and paragraphs (2), (3), and (4) of section 403(c) of this title, a child who is entitled to child's insurance benefits under subsection (d) of this section for any month, and who has attained the age of 16 but is not in such month under a disability (as defined in section 423(d) of this title), shall be deemed not entitled to such benefits for such month, unless he was under such a disability in the third month before such month.

(2) So much of subsections (b)(3), (c)(4), (d)(5), (g)(3), and (h)(4) of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability (as defined in section 423(d) of this title) or had been under such a disability in the third month before the month in which such marriage occurred.

(3) The last sentence of subsection (c) of section 403 of this title, subsection (f)(1)(C) of section 403 of this title, and subsections (b)(3)(B), (c)(6)(B), (f)(3)(B), and (g)(6)(B) of section 416 of this title shall not apply in the case of any child with respect to any month referred to therein unless in such month or the third month prior

thereto such child was under a disability (as defined in section 423(d) of this title).

(t) Suspension of benefits of aliens who are outside United States; residency requirements for dependents and survivors

(1) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual who is not a citizen or national of the United States for any month which is—

(A) after the sixth consecutive calendar month during all of which the Commissioner of Social Security finds, on the basis of information furnished to the Commissioner by the Attorney General or information which otherwise comes to the Commissioner's attention, that such individual is outside the United States, and

(B) prior to the first month thereafter for all of which such individual has been in the United States.

For purposes of the preceding sentence, after an individual has been outside the United States for any period of thirty consecutive days he shall be treated as remaining outside the United States until he has been in the United States for a period of thirty consecutive days.

(2) Subject to paragraph (11), paragraph (1) of this subsection shall not apply to any individual who is a citizen of a foreign country which the Commissioner of Social Security finds has in effect a social insurance or pension system which is of general application in such country and under which—

(A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and

(B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

(3) Paragraph (1) of this subsection shall not apply in any case where its application would be contrary to any treaty obligation of the United States in effect on August 1, 1956.

(4) Subject to paragraph (11), paragraph (1) of this subsection shall not apply to any benefit for any month if—

(A) not less than forty of the quarters elapsing before such month are quarters of coverage for the individual on whose wages and self-employment income such benefit is based, or

(B) the individual on whose wages and self-employment income such benefit is based has, before such month, resided in the United States for a period or periods aggregating ten years or more, or

(C) the individual entitled to such benefit is outside the United States while in the active military or naval service of the United States, or

(D) the individual on whose wages and self-employment income such benefit is based died, before such month, either (i) while on active duty or inactive duty training (as those terms are defined in section 410(*l*) (2) and (3) of this title) as a member of a uniformed service (as defined in section 410(m) of this title), or (ii) as the result of a disease or injury which the Secretary of Veterans Affairs determines was incurred or aggravated in line of duty while on active duty (as defined in section 410(*l*)(2) of this title), or an injury which he determines was incurred or aggravated in line of duty while on inactive duty training (as defined in section 410(*l*)(3) of this title), as a member of a uniformed service (as defined in section 410(m) of this title), if the Secretary of Veterans Affairs determines that such individual was discharged or released from the period of such active duty or inactive duty training under conditions other than dishonorable, and if the Secretary of Veterans Affairs certifies to the Commissioner of Social Security his determinations with respect to such individual under this clause, or

(E) the individual on whose employment such benefit is based had been in service covered by the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.] which was treated as employment covered by this chapter pursuant to the provisions of section 5(k)(1) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(k)(1)] or section 18(2) of the Railroad Retirement Act of 1974 [45 U.S.C. 231q(2)];

except that subparagraphs (A) and (B) of this paragraph shall not apply in the case of any individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies subparagraph (A) but not subparagraph (B) of paragraph (2), or who is a citizen of a foreign country that has no social insurance or pension system of general application if at any time within five years prior to the month in which the Social Security Amendments of 1967 are enacted (or the first month thereafter for which his benefits are subject to suspension under paragraph (1)) payments to individuals residing in such country were withheld by the Treasury Department under sections 3329(a) and 3330(a) of title 31.

(5) No person who is, or upon application would be, entitled to a monthly benefit under this section for December 1956 shall be deprived, by reason of paragraph (1) of this subsection, of such benefit or any other benefit based on the wages and self-employment income of the individual on whose wages and self-employment income such monthly benefit for December 1956 is based.

(6) If an individual is outside the United States when he dies and no benefit may, by reason of paragraph (1) or (10) of this subsection, be paid to him for the month preceding the month in which he dies, no lump-sum death payment may be made on the basis of such individual's wages and self-employment income.

(7) Subsections (b), (c), and (d) of section 403 of this title shall not apply with respect to any individual for any month for which no monthly benefit may be paid to him by reason of paragraph (1) of this subsection.

(8) The Attorney General shall certify to the Commissioner of Social Security such informa-

tion regarding aliens who depart from the United States to any foreign country (other than a foreign country which is territorially contiguous to the continental United States) as may be necessary to enable the Commissioner of Social Security to carry out the purposes of this subsection and shall otherwise aid, assist, and cooperate with the Commissioner of Social Security in obtaining such other information as may be necessary to enable the Commissioner of Social Security to carry out the purposes of this subsection.

(9) No payments shall be made under part A of subchapter XVIII of this chapter with respect to items or services furnished to an individual in any month for which the prohibition in paragraph (1) against payment of benefits to him is applicable (or would be if he were entitled to any such benefits).

(10) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title, for any month beginning after June 30, 1968, to an individual who is not a citizen or national of the United States and who resides during such month in a foreign country if payments for such month to individuals residing in such country are withheld by the Treasury Department under sections 3329(a) and 3330(a) of title 31.

(11)(A) Paragraph (2) and subparagraphs (A), (B), (C), and (E) of paragraph (4) shall apply with respect to an individual's monthly benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of this section only if such individual meets the residency requirements of this paragraph with respect to those benefits.

(B) An individual entitled to benefits under subsection (b), (c), (e), (f), or (g) of this section meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing bore a spousal relationship to the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years. For purposes of this subparagraph, a period of time for which an individual bears a spousal relationship to another person consists of a period throughout which the individual has been, with respect to such other person, a wife, a husband, a widow, a widower, a divorced wife, a divorced husband, a surviving divorced wife, a surviving divorced husband, a surviving divorced mother, a surviving divorced father, or (as applicable in the course of such period) any two or more of the foregoing.

(C) An individual entitled to benefits under subsection (d) of this section meets the residency requirements of this paragraph with respect to those benefits only if—

(i)(I) such individual has resided in the United States (as the child of the person on whose wages and self-employment income such entitlement is based) for a total period of not less than 5 years, or

(II) the person on whose wages and self-employment income such entitlement is based, and the individual's other parent (within the meaning of subsection (h)(3) of this section), if any, have each resided in the United States for a total period of not less than 5 years (or died while residing in the United States), and

(ii) in the case of an individual entitled to such benefits as an adopted child, such individual was adopted within the United States by the person on whose wages and self-employment income such entitlement is based, and has lived in the United States with such person and received at least one-half of his or her support from such person for a period (beginning before such individual attained age 18) consisting of—

(I) the year immediately before the month in which such person became eligible for old-age insurance benefits or disability insurance benefits or died, whichever occurred first, or

(II) if such person had a period of disability which continued until he or she became entitled to old-age insurance benefits or disability insurance benefits or died, the year immediately before the month in which such period of disability began.

(D) An individual entitled to benefits under subsection (h) of this section meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing was a parent (within the meaning of subsection (h)(3) of this section) of the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years.

(E) This paragraph shall not apply with respect to any individual who is a citizen or resident of a foreign country with which the United States has an agreement in force concluded pursuant to section 433 of this title, except to the extent provided by such agreement.

(u) Conviction of subversive activities, etc.

(1) If any individual is convicted of any offense (committed after August 1, 1956) under—

(A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18, or

(B) section 783 of title 50,

then the court may, in addition to all other penalties provided by law, impose a penalty that in determining whether any monthly insurance benefit under this section or section 423 of this title is payable to such individual for the month in which he is convicted or for any month thereafter, in determining the amount of any such benefit payable to such individual for any such month, and in determining whether such individual is entitled to insurance benefits under part A of subchapter XVIII of this chapter for any such month, there shall not be taken into account—

(C) any wages paid to such individual or to any other individual in the calendar year in which such conviction occurs or in any prior calendar year, and

(D) any net earnings from self-employment derived by such individual or by any other individual during a taxable year in which such conviction occurs or during any prior taxable year.

(2) As soon as practicable after an additional penalty has, pursuant to paragraph (1) of this

subsection, been imposed with respect to any individual, the Attorney General shall notify the Commissioner of Social Security of such imposition.

(3) If any individual with respect to whom an additional penalty has been imposed pursuant to paragraph (1) of this subsection is granted a pardon of the offense by the President of the United States, such additional penalty shall not apply for any month beginning after the date on which such pardon is granted.

(v) Waiver of benefits

(1) Notwithstanding any other provisions of this subchapter, and subject to paragraph (3), in the case of any individual who files a waiver pursuant to section 1402(g) of the Internal Revenue Code of 1986 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this subchapter to him, no payments shall be made on his behalf under part A of subchapter XVIII of this chapter, and no benefits or other payments under this subchapter shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver.

(2) Notwithstanding any other provision of this subchapter, and subject to paragraph (3), in the case of any individual who files a waiver pursuant to section 3127 of the Internal Revenue Code of 1986 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this subchapter to him, no payments shall be made on his behalf under part A of subchapter XVIII of this chapter, and no benefits or other payments under this subchapter shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver.

(3) If, after an exemption referred to in paragraph (1) or (2) is granted to an individual, such exemption ceases to be effective, the waiver referred to in such paragraph shall cease to be applicable in the case of benefits and other payments under this subchapter and part A of subchapter XVIII of this chapter to the extent based on—

(A) his wages for and after the calendar year following the calendar year in which occurs the failure to meet the requirements of section 1402(g) or 3127 of the Internal Revenue Code of 1986 on which the cessation of such exemption is based, and

(B) his self-employment income for and after the taxable year in which occurs such failure.

(w) Increase in old-age insurance benefit amounts on account of delayed retirement

(1) The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title as in effect in December 1978 or section 415(a)(1)(C)(i) of this title as in effect thereafter) which is payable without regard to this subsection to an individual shall be increased by—

(A) the applicable percentage (as determined under paragraph (6)) of such amount, multiplied by

(B) the number (if any) of the increment months for such individual.

(2) For purposes of this subsection, the number of increment months for any individual shall be a number equal to the total number of the months—

(A) which have elapsed after the month before the month in which such individual attained retirement age (as defined in section 416(*l*) of this title) or (if later) December 1970 and prior to the month in which such individual attained age 70, and

(B) with respect to which—

(i) such individual was a fully insured individual (as defined in section 414(a) of this title), and

(ii) such individual either was not entitled to an old-age insurance benefit or suffered deductions under section 403(b) or 403(c) of this title in amounts equal to the amount of such benefit.

(3) For purposes of applying the provisions of paragraph (1), a determination shall be made under paragraph (2) for each year, beginning with 1972, of the total number of an individual's increment months through the year for which the determination is made and the total so determined shall be applicable to such individual's old-age insurance benefits beginning with benefits for January of the year following the year for which such determination is made; except that the total number applicable in the case of an individual who attains age 70 after 1972 shall be determined through the month before the month in which he attains such age and shall be applicable to his old-age insurance benefit beginning with the month in which he attains such age.

(4) This subsection shall be applied after reduction under section 403(a) of this title.

(5) If an individual's primary insurance amount is determined under paragraph (3) of section 415(a) of this title as in effect in December 1978, or section 415(a)(1)(C)(i) of this title as in effect thereafter, and, as a result of this subsection, he would be entitled to a higher old-age insurance benefit if his primary insurance amount were determined under section 415(a) of this title (whether before, in, or after December 1978) without regard to such paragraph, such individual's old-age insurance benefit based upon his primary insurance amount determined under such paragraph shall be increased by an amount equal to the difference between such benefit and the benefit to which he would be entitled if his primary insurance amount were determined under such section without regard to such paragraph.

(6) For purposes of paragraph (1)(A), the ''applicable percentage'' is—

(A) ½ of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year before 1979;

(B) ¼ of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year after 1978 and before 1987;

(C) in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 1986 and before 2005, a percentage equal to the applicable percentage in effect under this paragraph for persons who first became eligible for an old-age insurance benefit in the preceding calendar year (as in-

creased pursuant to this subparagraph), plus 1/24 of 1 percent if the calendar year in which that particular individual first becomes eligible for such benefit is not evenly divisible by 2; and

(D) 2/3 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 2004.

(x) Limitation on payments to prisoners and certain other inmates of publicly funded institutions

(1)(A) Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual for any month during which such individual—

(i) is confined in a jail, prison, or other penal institution or correctional facility pursuant to his conviction of an offense punishable by imprisonment for more than 1 year (regardless of the actual sentence imposed), or

(ii) is confined by court order in an institution at public expense in connection with—

(I) a verdict or finding that the individual is guilty but insane, with respect to an offense punishable by imprisonment for more than 1 year,

(II) a verdict or finding that the individual is not guilty of such an offense by reason of insanity,

(III) a finding that such individual is incompetent to stand trial under an allegation of such an offense, or

(IV) a similar verdict or finding with respect to such an offense based on similar factors (such as a mental disease, a mental defect, or mental incompetence).

(B)(i) For purposes of clause (i) of subparagraph (A), an individual shall not be considered confined in an institution comprising a jail, prison, or other penal institution or correctional facility during any month throughout which such individual is residing outside such institution at no expense (other than the cost of monitoring) to such institution or the penal system or to any agency to which the penal system has transferred jurisdiction over the individual.

(ii) For purposes of clause (ii) of subparagraph (A), an individual confined in an institution as described in such clause (ii) shall be treated as remaining so confined until—

(I) he or she is released from the care and supervision of such institution, and

(II) such institution ceases to meet the individual's basic living needs.

(2) Benefits which would be payable to any individual (other than a confined individual to whom benefits are not payable by reason of paragraph (1)) under this subchapter on the basis of the wages and self-employment income of such a confined individual but for the provisions of paragraph (1), shall be payable as though such confined individual were receiving such benefits under this section or section 423 of this title.

(3) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law, any agency of the United States Government or of any State (or political subdivision thereof) shall make available to the Commissioner of Social Security, upon written request, the name and social security account number of any individual who is confined as described in paragraph (1) if the confinement is under the jurisdiction of such agency and the Commissioner of Social Security requires such information to carry out the provisions of this section.

(Aug. 14, 1935, ch. 531, title II, § 202, 49 Stat. 623; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1363; Aug. 10, 1946, ch. 951, title IV, §§ 402, 403(a), 404(a), 405(a), 60 Stat. 986, 987; Aug. 28, 1950, ch. 809, title I, § 101(a), 64 Stat. 482; Aug. 14, 1953, ch. 483, § 2, 67 Stat. 580; Sept. 1, 1954, ch. 1206, title I, §§ 102(i), 105(a), 107, 110, 68 Stat. 1073, 1079, 1083, 1085; Aug. 9, 1955, ch. 685, § 2, 69 Stat. 621; Aug. 1, 1956, ch. 836, title I, §§ 101(a)–(c), 102(c), (d)(1)–(10), 103(c)(1)–(3), 113, 114(a), 118(a), 121(a), 70 Stat. 807, 810–814, 818, 831, 832, 835, 838; Aug. 1, 1956, ch. 837, title IV, §§ 403(a), 407, 70 Stat. 871, 876; Aug. 30, 1957, Pub. L. 85–238, §§ 1, 3(a)–(g), 71 Stat. 518; Aug. 28, 1958, Pub. L. 85–798, § 1, 72 Stat. 964; Aug. 28, 1958, Pub. L. 85–840, title I, § 101(e), title II, § 205(b)–(i), title III, §§ 301(a)(1), (b)(1), (c)(1), 303, 304(a)(1), 305(a), 306(a), 307(a)–(e), 72 Stat. 1017, 1021–1024, 1026, 1027, 1029–1032; Sept. 2, 1958, Pub. L. 85–857, § 13(i)(1), 72 Stat. 1265; Sept. 6, 1958, Pub. L. 85–927, § 301, 72 Stat. 1783; June 25, 1959, Pub. L. 86–70, § 32(c)(1), 73 Stat. 149; July 12, 1960, Pub. L. 86–624, § 30(c)(1), 74 Stat. 420; Sept. 13, 1960, Pub. L. 86–778, title I, § 103(a)(1), (j)(2)(C), (D), title II, §§ 201(a), (b), 202(a), 203(a), 205(a), (b), 208(d), 211(i)–(*l*), title III, § 301(a), title IV, § 403(d), 74 Stat. 936, 937, 946, 947, 949, 952, 957–959, 1969; June 30, 1961, Pub. L. 87–64, title I, §§ 102(a), (b)(1), (2)(A), (3), (e), 104(a)–(d), 75 Stat. 131, 134–136, 138, 139; July 30, 1965, Pub. L. 89–97, title I, § 104(a), title III, §§ 303(d), 304(a)–(j), 306(a), (b), (c)(1)–(9), 307(a), (b), 308(a), (b), (d)(1), (2)(A), (3)–(5), (12), (13), 319(d), 323(a), 324(a), 328(a), 333(a)–(c), 334(e), (f), 339(b), 343(a), 79 Stat. 334, 367–379, 392, 397, 398, 400, 403–405, 410, 412; Jan. 2, 1968, Pub. L. 90–248, title I, §§ 103(a)–(d), 104(a)–(c), 112(a), 151(a)–(d)(1), (2), 157(a), (b), 158(c)(1), (2), 162(a)(1), (b)(1), (c)(1), (2), 81 Stat. 828–830, 838, 860, 867, 868, 871; Dec. 30, 1969, Pub. L. 91–172, title X, § 1004(a)–(c), 83 Stat. 741; Dec. 28, 1971, Pub. L. 92–223, § 1, 85 Stat. 802; Oct. 30, 1972, Pub. L. 92–603, title I, §§ 102(a), (b), (d)–(f), 103(a), (b), 107(a), 108(a)–(e), 109(a), 110(a), 111(a), 112(a), 113(b), 114(a)–(c), 116(b), (c), 86 Stat. 1335, 1336, 1338–1340, 1343–1348, 1350; July 9, 1973, Pub. L. 93–66, title II, § 240(a), 87 Stat. 161; Dec. 31, 1973, Pub. L. 93–233, §§ 1(f), (g), 18(b), 87 Stat. 947, 948, 967; Oct. 16, 1974, Pub. L. 93–445, title III, § 301, 88 Stat. 1357; Dec. 20, 1977, Pub. L. 95–216, title II, §§ 203, 204(a)–(d), 205(a), (b), title III, §§ 331(a)–(c), 332(a)(1), (2), 334(a)–(d)(4)(A), (5), (6), (e), 336(a), (b), 337(b), 353(f)(1), 91 Stat. 1527–1529, 1541–1548, 1554; Nov. 6, 1978, Pub. L. 95–600, title VII, § 703(j)(14)(A), 92 Stat. 2942; June 9, 1980, Pub. L. 96–265, title III, §§ 303(b)(1)(B)–(D), 306(a), 94 Stat. 451, 452, 457; Oct. 19, 1980, Pub. L. 96–473, §§ 5(b), 6(a), 94 Stat. 2265; Dec. 5, 1980, Pub. L. 96–499, title X, § 1011(a), 94 Stat. 2655; Aug. 13, 1981, Pub. L. 97–35, title XXII, §§ 2201(b)(10), (11), (d), (f), 2202(a)(1), 2203(a), (b)(1), (c)(1), (d)(1), (2), 2205(a), 2206(b)(1), 2210(a), 95 Stat. 831–838, 841; Dec. 29, 1981, Pub. L. 97–123, § 2(e), 95 Stat. 1660; Jan. 12, 1983, Pub. L. 97–455, § 7(c), 96 Stat. 2501; Apr. 20, 1983, Pub. L. 98–21, title I, §§ 111(a)(7), 113(d),

114(a)–(c)(1), 131(a)(1)–(3)(G), (b)(1)–(3)(F), (c), 132(a), 133(a), (b), 134(a), (b), title II, § 201(b), (c)(1)(A), title III, §§ 301(a), (b), 302, 306(a), (b), (d)–(h), 307(a), 309(a)–(e), 334(a), 337(a), 339(a), 340(a), (b), 97 Stat. 72, 79, 92, 93, 95–98, 108, 111–116, 130, 131, 133–135; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2661(b)–(f), 2662(c)(1), 2663(a)(2), 98 Stat. 1156, 1159, 1160; Apr. 7, 1986, Pub. L. 99–272, title XII, §§ 12104(a), 12107(a), 100 Stat. 285, 286; Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1883(a)(1)–(3), 100 Stat. 2916; Dec. 22, 1987, Pub. L. 100–203, title IX, §§ 9007(a)–(e), 9010(b)–(d), 101 Stat. 1330–289 to 1330–293; Nov. 10, 1988, Pub. L. 100–647, title VIII, §§ 8004(a), (b), 8007(b), 8010(a), (b), 8014(a), 102 Stat. 3780, 3782, 3788, 3790; Dec. 19, 1989, Pub. L. 101–239, title X, §§ 10203(a), 10301(a), (b), 10302(a)(1), 103 Stat. 2473, 2481; Nov. 5, 1990, Pub. L. 101–508, title V, §§ 5103(c)(2)(A), (B), (d), 5116(a), 104 Stat. 1388–252, 1388–253, 1388–274; Nov. 29, 1990, Pub. L. 101–649, title VI, § 603(b)(5), 104 Stat. 5085; May 7, 1991, Pub. L. 102–40, title IV, § 402(d)(2), 105 Stat. 239; June 13, 1991, Pub. L. 102–54, § 13(q)(3)(C), 105 Stat. 279; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title III, §§ 308(a), 321(a)(2)–(5), (b)(1), (c)(2), 108 Stat. 1478, 1522, 1535–1538; Oct. 22, 1994, Pub. L. 103–387, § 4(a), 108 Stat. 4076.)

References in Text

The Foreign Service Act of 1980, referred to in subsecs. (b)(4)(A)(ii)(II), (c)(2)(A)(ii)(II), (e)(7)(A)(ii)(II), (f)(2)(A)(ii)(II), and (g)(4)(A)(ii)(II), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Subchapter II of chapter 8 of title I of the Act is classified generally to part II (§ 4071 et seq.) of subchapter VIII of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

The effective date of this sentence, referred to in subsec. (d)(7)(A), is the effective date of section 5 of Pub. L. 96–473, which added such sentence effective with respect to benefits payable for months beginning on or after October 1, 1980. See Effective Date of 1980 Amendments note below.

Section 212 of Public Law 93–66, referred to in subsecs. (e)(5)(B), (9) and (f)(6)(B), (9), is set out as a note under section 1382 of this title.

Section 102(g) of the Social Security Amendments of 1972, referred to in subsecs. (e)(6) and (f)(7), is section 102(g) of Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a Redetermination of Widow's and Widower's Benefits note under this section.

Section 2201 of the Omnibus Budget Reconciliation Act of 1981, referred to in subsec. (i), is Pub. L. 97–35, title XXII, § 2201, Aug. 13, 1981, 95 Stat. 830, which enacted section 1382k of this title, amended sections 402, 403, 415, 417, and 433 of this title, and enacted provisions set out as notes under sections 415 and 1382k of this title.

Section 1251(a) of title 8, referred to in subsec. (n)(3), was amended generally by Pub. L. 101–649, title VI, § 602(a), Nov. 29, 1990, 104 Stat. 5077, and, as so amended, does not contain a par. (19).

Clause (B) of subsection (f)(1) of this section as in effect prior to the Social Security Act Amendments of 1950, and subsection (g) of this section as in effect prior to the Social Security Act Amendments of 1950, referred to in subsec. (p), means such subsections as in effect prior to September 1, 1950, which was the effective date of section 101(a) of act Aug. 28, 1950. See section 101(b), (1), (3) of act Aug. 28, 1950, set out as an Effective Date of 1950 Amendment note below.

The Railroad Retirement Act of 1937, referred to in subsec. (t)(4)(E), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred to in subsec. (t)(4)(E), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Pub. L. 93–445 completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45. For further details and complete classification of these Acts to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

The month in which the Social Security Amendments of 1967 were enacted, referred to in the provisions following subsec. (t)(4)(E), is Jan. 1968, date of approval of Pub. L. 90–248.

Part A of subchapter XVIII of this chapter, referred to in subsecs. (t)(9), (u)(1), and (v)(2), (3), is classified to section 1395c et seq. of this title.

The Internal Revenue Code of 1986, referred to in subsec. (v), is classified generally to Title 26, Internal Revenue Code.

Codification

In subsec. (t)(4), (10), ''sections 3329(a) and 3330(a) of title 31'' substituted for ''the first section of the Act of October 9, 1940 (31 U.S.C. 123)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Amendments

1994—Subsec. (b)(4)(A). Pub. L. 103–296, § 308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (b)(4)(B). Pub. L. 103–296, § 308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (b)(4)(C), (5)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(A). Pub. L. 103–296, § 308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (c)(2)(B). Pub. L. 103–296, § 308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (c)(2)(C), (5)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(7)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner'' for ''him''.

Subsec. (d)(7)(B). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(8)(D)(ii). Pub. L. 103–296, § 321(a)(2), inserted period at end and realigned margin.

Subsec. (e)(1)(C)(ii)(III), (5)(B). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (e)(7)(A). Pub. L. 103–296, § 308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (e)(7)(B). Pub. L. 103–296, § 308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (e)(7)(C), (9). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (f)(1)(C)(ii)(III). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (f)(2)(A). Pub. L. 103–296, §308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (f)(2)(B). Pub. L. 103–296, §308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (f)(2)(C), (6)(B), (9). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (g)(4)(A). Pub. L. 103–296, §308(a)(1), (2), transferred closing provision for cl. (ii), which read ''unless subparagraph (B) applies.'', to appear before ''The amount'' in closing provision for subpar. (A).

Subsec. (g)(4)(B). Pub. L. 103–296, §308(a)(3), designated existing provisions as cl. (ii) and added cl. (i).

Subsec. (g)(4)(C). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsecs. (i), (j)(1), (2), (5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (n)(1). Pub. L. 103–296, §321(b)(1), made technical amendment to directory language of Pub. L. 101–649, §603(b)(5)(A). See 1990 Amendment note below.

Subsecs. (n)(1)(A), (2), (p). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (q)(1)(A). Pub. L. 103–296, §321(a)(3), struck out dash after ''multiplied by'' at end.

Subsec. (q)(5)(A)(i). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (q)(9). Pub. L. 103–296, §321(a)(4), in introductory provisions substituted ''paragraph (1)'' for ''parargaph (1)''.

Subsec. (q)(9)(B). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (t)(1)(A). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'', ''the Commissioner by'' for ''him by'', and ''the Commissioner's attention'' for ''his attention''.

Subsec. (t)(2). Pub. L. 103–296, §107(a)(4), in introductory provisions substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (t)(4)(D). Pub. L. 103–296, §321(a)(5), inserted ''if the'' before ''Secretary of Veterans Affairs determines that such'' and before ''Secretary of Veterans Affairs certifies to the''.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' before ''his determinations with''.

Subsecs. (t)(8), (u)(2). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (v)(1). Pub. L. 103–296, §321(c)(2)(A), substituted ''Code of 1986'' for ''Code of 1954''.

Subsec. (v)(3)(A). Pub. L. 103–296, §321(c)(2)(B), inserted ''of the Internal Revenue Code of 1986'' after ''3127''.

Subsec. (x). Pub. L. 103–387, §4(a)(1), inserted ''and certain other inmates of publicly funded institutions'' in heading.

Subsec. (x)(1). Pub. L. 103–387, §4(a)(2), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Notwithstanding any other provision of this subchapter, no monthly benefits shall be paid under this section or under section 423 of this title to any individual for any month during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense which constituted a felony under applicable law, unless such individual is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for such individual by a court of law and, as determined by the Commissioner of Social Security, is expected to result in such individual being able to engage in substantial gainful activity upon release and within a reasonable time.''

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (x)(3). Pub. L. 103–387, §4(a)(3), substituted ''any individual who is confined as described in paragraph (1) if the confinement is under the jurisdiction of such agency and the Commissioner of Social Security requires such information to carry out the provisions of this section'' for ''any individual who is confined in a jail, prison, or other penal institution or correctional facility under the jurisdiction of such agency, pursuant to his conviction of an offense which constituted a felony under applicable law, which the Commissioner of Social Security may require to carry out the provisions of this subsection''.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

1991—Subsec. (*o*). Pub. L. 102–40 substituted ''section 5105 of title 38'' for ''section 3005 of title 38''.

Subsec. (t)(4)(D). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs'' before ''determines was'', ''Secretary of Veterans Affairs'' for ''if the Administrator'' before ''determines that'', and ''Secretary of Veterans Affairs'' for ''if the Administrator'' before ''certifies''.

1990—Subsec. (e)(5). Pub. L. 101–508, §5103(c)(2)(A), designated existing provision as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, in cl. (ii) substituted ''(I)'' and ''(II)'' for ''(i)'' and ''(ii)'', respectively, and added subpar. (B).

Subsec. (e)(9). Pub. L. 101–508, §5103(d)(1), added par. (9).

Subsec. (f)(6). Pub. L. 101–508, §5103(c)(2)(B), designated existing provision as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, in cl. (ii) substituted ''(I)'' and ''(II)'' for ''(i)'' and ''(ii)'', respectively, and added subpar. (B).

Subsec. (f)(9). Pub. L. 101–508, §5103(d)(2), added par. (9).

Subsec. (j)(4)(A). Pub. L. 101–508, §5116(a)(1), substituted ''if the amount of the monthly benefit to which such individual would otherwise be entitled for any such month would be subject to reduction pursuant to subsection (q) of this section'' for ''if the effect of entitlement to such benefit would be to reduce, pursuant to subsection (q) of this section, the amount of the monthly benefit to which such individual would otherwise be entitled for the month in which such application is filed''.

Subsec. (j)(4)(B)(i). Pub. L. 101–508, §5116(a)(2), redesignated cl. (ii) as (i) and struck out former cl. (i) which read as follows: ''If the individual applying for retroactive benefits is applying for such benefits under subsection (a) of this section, and there are one or more other persons who would (except for subparagraph (A)) be entitled for any month, on the basis of the wages and self-employment income of such individual and because of such individual's entitlement to such retroactive benefits, to retroactive benefits under subsection (b), (c), or (d) of this section not subject to reduction under subsection (q) of this section, then subparagraph (A) shall not apply with respect to such month or any subsequent month.''

Subsec. (j)(4)(B)(ii) to (v). Pub. L. 101–508, §5116(a)(2), redesignated cls. (iii) and (v) as (ii) and (iii), respectively, and struck out cl. (iv) which read as follows: ''If the individual applying for retroactive benefits has excess earnings (as defined in section 403(f) of this title) in the year in which he or she files an application for such benefits which could, except for subparagraph (A), be charged to months in such year prior to the month of application, then subparagraph (A) shall not apply to so many of such months immediately preceding the month of application as are required to charge such excess earnings to the maximum extent possible.'' Former cl. (ii) redesignated (i).

Subsec. (n)(1). Pub. L. 101–649, §603(b)(5)(A), as amended by Pub. L. 103–296, §321(b)(1), substituted ''under section 1251(a) of title 8 (other than under paragraph (1)(C)

or (1)(E) thereof)'' for ''under paragraph (1), (2), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (17), (18), or (19) of section 1251(a) of title 8''.

Subsec. (n)(2). Pub. L. 101–649, § 603(b)(5)(B), substituted ''(other than under paragraph (1)(C) or (1)(E) thereof)'' for ''enumerated in paragraph (1) in this subsection''.

1989—Subsec. (d)(8). Pub. L. 101–239, § 10301(b), struck out at end ''In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of birth of such child.''

Subsec. (d)(8)(D). Pub. L. 101–239, § 10301(a), inserted ''and'' after comma at end of cl. (i), added cl. (ii), and struck out former cls. (ii) and (iii) which related to children living with such individual in the United States and receiving at least one-half of support from such individual and who had not attained the age of 18 before living with such individual.

Subsec. (j)(5). Pub. L. 101–239, § 10302(a)(1), added par. (5).

Subsec. (q)(3). Pub. L. 101–239, § 10203(a), redesignated subpar. (H) as (E) and struck out former subpars. (E), (F), and (G) which related to reductions in benefits for individuals entitled to both old-age and widow's or widower's insurance, reductions in benefits for individuals age 62 or over who are entitled to both disability insurance and widow's or widower's insurance, and reductions in benefits for individuals under age 62 who are entitled to both disability insurance and widow's or widower's insurance.

1988—Subsecs. (b)(4)(A)(ii)(II), (c)(2)(A)(ii)(II). Pub. L. 100–647, § 8014(a), substituted ''the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980'' for ''chapter 84 of title 5''.

Subsec. (e)(1)(C). Pub. L. 100–647, § 8010(a)(1), (2), redesignated former cl. (ii) as (iii), added cls. (i) and (ii), and struck out former cl. (i) which read as follows: ''has filed application for widow's insurance benefits, or was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which he died, and (I) has attained retirement age (as defined in section 416(*l*) of this title) or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or''.

Subsec. (e)(7)(A)(ii)(II). Pub. L. 100–647, § 8014(a), substituted ''the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980'' for ''chapter 84 of title 5''.

Subsec. (e)(8). Pub. L. 100–647, § 8010(a)(3), added par. (8).

Subsec. (f)(1)(C). Pub. L. 100–647, § 8010(b)(1), (2), redesignated former cl. (ii) as (iii), added cls. (i) and (ii), and struck out former cl. (i) which read as follows: ''has filed application for widower's insurance benefits or was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which she died, and (I) has attained retirement age (as defined in section 416(*l*) of this title) or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title, or''.

Subsec. (f)(2)(A)(ii)(II). Pub. L. 100–647, § 8014(a), substituted ''the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980'' for ''chapter 84 of title 5''.

Subsec. (f)(8). Pub. L. 100–647, § 8010(b)(3), added par. (8).

Subsec. (g)(4)(A)(ii)(II). Pub. L. 100–647, § 8014(a), substituted ''the Federal Employees' Retirement System provided in chapter 84 of title 5 or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980'' for ''chapter 84 of title 5''.

Subsec. (n)(1). Pub. L. 100–647, § 8004(a), inserted reference to par. (19) of section 1251(a) of title 8 in introductory provisions.

Subsec. (n)(3). Pub. L. 100–647, § 8004(b), added par. (3).

Subsec. (v). Pub. L. 100–647, § 8007(b), designated existing provisions as par. (1), inserted ''and subject to paragraph (3),'' after ''Notwithstanding any other provisions of this subchapter,'', struck out ''; except that, if thereafter such individual's tax exemption under such section 1402(g) ceases to be effective, such waiver shall cease to be applicable in the case of benefits and other payments under this subchapter and part A of subchapter XVIII of this chapter to the extent based on his self-employment income for and after the first taxable year for which such tax exemption ceases to be effective and on his wages for and after the calendar year (if any) which begins in or with the beginning of such taxable year'' after ''the filing of such waiver'', and added pars. (2) and (3).

1987—Subsec. (b)(4). Pub. L. 100–203, § 9007(a), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a wife's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) of this section shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such wife (or divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

Subsec. (c)(2). Pub. L. 100–203, § 9007(b), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a husband's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) of this section shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such husband (or divorced husband) for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day he was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

Subsec. (d)(1)(G)(i). Pub. L. 100–203, § 9010(b), substituted ''36 months'' for ''15 months''.

Subsec. (e)(1). Pub. L. 100–203, § 9010(c), substituted ''36 months'' for ''15 months'' in subcl. (II) of last sentence.

Subsec. (e)(7). Pub. L. 100–203, § 9007(c), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a widow's insurance benefit for each month as determined (after application of the provisions of subsections (q) and (k) of this section, paragraph (2)(D), and paragraph (3)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or any political

subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

Subsec. (f)(1). Pub. L. 100–203, §9010(d), substituted ''36 months'' for ''15 months'' in subcl. (II) of last sentence.

Subsec. (f)(2). Pub. L. 100–203, §9007(d), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a widower's insurance benefit for each month (as determined after application of the provisions of subsections (k) and (q) of this section, paragraph (3)(D), and paragraph (4)) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such widower for such month which is based upon his earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day he was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

Subsec. (g)(4). Pub. L. 100–203, §9007(e), added subpars. (A) and (B), redesignated former subpar. (B) as (C), and struck out former subpar. (A) which read as follows: ''The amount of a mother's or father's insurance benefit for each month to which any individual is entitled under this subsection (as determined after application of subsection (k) of this section) shall be reduced (but not below zero) by an amount equal to two-thirds of the amount of any monthly periodic benefit payable to such individual for such month which is based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day such individual was employed by such entity, such service did not constitute 'employment' as defined in section 410 of this title for purposes of this subchapter. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.''

1986—Subsec. (c)(5)(B). Pub. L. 99–514, §1883(a)(1), substituted ''or (J)'' for ''or (I)''.

Subsec. (d)(6)(E). Pub. L. 99–272, §12107(a), substituted ''the termination month (as defined in paragraph (1)(G)(i)), subject to section 423(e) of this title,'' for ''the third month following the month in which he ceases to be under such disability''.

Subsec. (d)(8)(D)(ii)(III). Pub. L. 99–272, §12104(a), inserted ''or great-grandchild'' after ''grandchild''.

Subsec. (q)(5)(A)(i). Pub. L. 99–514, §1883(a)(2), substituted ''prescribed by the Secretary'' for ''prescribed by him''.

Subsec. (q)(5)(C). Pub. L. 99–514, §1883(a)(3), which directed substitution of ''he or she shall be deemed'' for ''she shall be deemed'' was not executed because of prior amendment substituting ''he or she'' for ''she'' by Pub. L. 98–21, §309(c)(4). See 1983 Amendment note below.

1984—Subsec. (a). Pub. L. 98–369, §2662(c)(1), made a clarifying amendment to Pub. L. 98–21, §201(c)(1)(A). See 1983 Amendment note below.

Subsec. (c)(1). Pub. L. 98–369, §2661(b)(1)(A), (B), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65'' in cls. (i) and (ii)(I) of provisions following subpar. (D) and preceding subpar. (E).

Pub. L. 98–369, §2661(b)(1)(C), substituted ''in which'' for ''to which'' in provisions following cl. (ii) of provisions following subpar. (D) and preceding subpar. (E).

Subsec. (c)(5)(A). Pub. L. 98–369, §2661(b)(2), substituted ''clauses (i) and (ii)'' for ''classes (i) and (ii)''.

Subsec. (d)(1). Pub. L. 98–369, §2663(a)(2)(A)(i), substituted ''subparagraphs'' for ''paragraphs'' and ''subparagraph'' for ''paragraph'' in cl. (ii) of provisions following subpar. (C) and preceding subpar. (D).

Subsec. (d)(1)(G). Pub. L. 98–369, §2663(a)(2)(A)(ii), in restructuring subpar. (G), struck out the comma after ''age of 18'', substituted a dash for a comma after ''the age of 22'', substituted ''(i) the termination month, subject to section 423(e) of this title (and for purposes'' for '', or, subject to section 423(e) of this title, the termination month (and for purposes'', and inserted closing parenthesis after ''activity'' and substituted ''(ii)'' and ''(iii)'' for ''(III)'' and ''(IV)'', respectively.

Subsec. (d)(7)(A). Pub. L. 98–369, §2663(a)(2)(A)(iii), substituted ''the effective date of this sentence'' for ''the date of enactment of this paragraph''.

Subsec. (e)(1). Pub. L. 98–369, §2663(a)(2)(B), in provisions following subpar. (F)(ii), struck out first of two commas following ''age 60'' and substituted ''she engages'' for ''he engages''.

Subsec. (e)(2)(A). Pub. L. 98–369, §2661(c)(1), substituted ''paragraph (7) of this subsection'' for ''paragraph (8) of this subsection''.

Subsec. (e)(2)(C). Pub. L. 98–369, §2661(c)(2), struck out the period after ''If such deceased individual'' and inserted a closing parenthesis after ''paragraph (3) of such subsection (w) of this section''.

Subsec. (e)(7)(A). Pub. L. 98–369, §2661(c)(3), substituted ''paragraph (2)(D)'' for ''paragraph (2)(B)''.

Subsec. (f)(1). Pub. L. 98–369, §2663(a)(2)(C), struck out the first of two commas after ''age 60'' in provisions following subpar. (F).

Subsec. (f)(1)(C)(ii). Pub. L. 98–369, §2661(d)(1), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65''.

Subsec. (f)(2)(A). Pub. L. 98–369, §2661(d)(2), substituted ''paragraph (3)(D)'' for ''paragraph (3)(B)''.

Subsec. (f)(3)(C). Pub. L. 98–369, §2661(d)(3), struck out the period after ''If such deceased individual''.

Subsec. (f)(3)(D)(i). Pub. L. 98–369, §2663(a)(2)(D), struck out the semicolon after ''applicable,''.

Subsec. (i). Pub. L. 98–369, §2663(a)(2)(E), amended language being deleted by Pub. L. 97–35, §2202(a)(1). See 1981 Amendment note below.

Subsec. (q)(3)(E). Pub. L. 98–369, §2662(c)(1), made a clarifying amendment to Pub. L. 98–21, §201(c)(1)(A). See 1983 Amendment note below.

Subsec. (q)(3)(G). Pub. L. 98–369, §2663(a)(2)(F)(i), substituted ''if the period'' for ''as if the period''.

Subsec. (q)(7)(E). Pub. L. 98–369, §2663(a)(2)(F)(ii), substituted ''she or he attained retirement age'' for ''he attained retirement age''.

Subsec. (q)(9)(B)(i). Pub. L. 98–369, §2661(e), substituted ''section 416(*l*) of this title'' for ''section 416(a) of this title''.

Subsec. (t)(4)(E). Pub. L. 98–369, §2663(a)(2)(G), inserted ''of 1937 or 1974'' after ''Railroad Retirement Act'' the first place it appears and substituted references to section 5(k)(1) of the Railroad Retirement Act of 1937 and section 18(2) of the Railroad Retirement Act of 1974 for reference to section 5(k)(1) of the Railroad Retirement Act.

Subsec. (u)(1)(B). Pub. L. 98–369, §2663(a)(2)(H), struck out '', 822, or 823'' after ''section 783''.

1983—Subsec. (a). Pub. L. 98–21, §201(c)(1)(A), as amended by Pub. L. 98–369, §2662(c)(1), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 or the age of 65, wherever appearing.

Subsec. (b)(1). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (b)(3). Pub. L. 98–21, §307(a), struck out exception in provisions following subpar. (B) that, in the case of such a marriage to an individual entitled to benefits under subsection (d) of this section, the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsection (d) of this section unless he ceased to be so entitled by reason of his death.

Subsec. (b)(3)(A). Pub. L. 98–21, §§301(a)(7), 309(a), inserted references to subsecs. (c) and (g), respectively.

Subsec. (b)(4)(A). Pub. L. 98–21, § 337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 97–455, § 7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (b)(5). Pub. L. 98–21, § 132(a), added par. (5).

Subsec. (c)(1). Pub. L. 98–21, § 301(a)(1), inserted ''and every divorced husband (as defined in section 416(d) of this title)'' before ''of an individual'', and ''or such divorced husband'' after ''if such husband'' in provisions preceding subpar. (A).

Pub. L. 98–21, § 306(d), in provisions following subpar. (D) and preceding subpar. (E), inserted ''(subject to subsection (s) of this section)'' after ''be entitled to''.

Pub. L. 98–21, § 201(c)(1)(A), which directed the substitution of ''retirement age (as defined in section 416(*l*) of this title'' for ''age 65'' in provisions following subpar. (D) and preceding subpar. (E) was executed to those provisions after the execution of the amendment by section 301(a)(2)(C) of Pub. L. 98–21 as the probable intent of Congress.

Pub. L. 98–21, § 301(a)(2)(C), amended provisions following subpar. (D) generally, inserting references to a divorced husband and to subpar. (D), designating existing provisions as subpars. (E) to (G) and (I) and (J), adding subpar. (H), and revising subpar. (G).

Subsec. (c)(1)(B). Pub. L. 98–21, § 306(e), inserted alternative provisions relating to the case of a husband.

Subsec. (c)(1)(C). Pub. L. 98–21, § 301(a)(2)(A), (B), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (c)(1)(D). Pub. L. 98–21, § 301(a)(8), substituted ''such individual'' for ''his wife'' after ''amount of''.

Pub. L. 98–21, § 301(a)(2)(B), redesignated former subpar. (C) as (D).

Subsec. (c)(1)(I) to (K). Pub. L. 98–21, § 306(f), added subpar. (I), and redesignated subpars. (I) and (J), as added by section 301(a)(2)(C) of Pub. L. 98–21, as (J) and (K).

Subsec. (c)(2)(A). Pub. L. 98–21, § 337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98–21, § 301(a)(6), inserted ''(or divorced husband)'' after ''payable to such husband''.

Pub. L. 97–455, § 7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (c)(3). Pub. L. 98–21, § 301(a)(3), inserted ''(or, in the case of a divorced husband, his former wife)'' before ''for such month''.

Subsec. (c)(4), (5). Pub. L. 98–21, § 301(a)(4), (5), added pars. (4) and (5).

Subsec. (d)(5). Pub. L. 98–21, § 307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to a male individual entitled to benefits under section 423(a) of this title or this subsection, the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under section 423(a) of this title or this subsection unless he ceased to be so entitled by reason of his death, or in the case of an individual entitled to benefits under section 423(a) of this title, he was entitled, for the month following such last month, to benefits under subsection (a) of this section.

Subsec. (d)(5)(A). Pub. L. 98–21, § 301(a)(9), inserted reference to subsec. (c).

Subsec. (d)(8)(D)(ii)(II). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (e)(1). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in provisions following subpar. (F).

Pub. L. 98–21, § 133(a)(2)(A), inserted ''(as determined after application of subparagraphs (B) and (C) of paragraph (2))'' after ''primary insurance amount'' in provisions following subpar. (F).

Subsec. (e)(1)(B)(ii). Pub. L. 98–21, § 131(a)(3)(B), substituted reference to par. (4) for reference to par. (5).

Subsec. (e)(1)(C). Pub. L. 98–21, § 201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in two places.

Subsec. (e)(1)(D). Pub. L. 98–21, § 133(a)(2)(A), inserted ''(as determined after application of subparagraphs (B) and (C) of paragraph (2))'' after ''primary insurance amount''.

Subsec. (e)(1)(F)(i). Pub. L. 98–21, § 131(a)(3)(C), substituted reference to par. (5) for reference to par. (6).

Subsec. (e)(1)(F)(ii). Pub. L. 98–21, § 131(a)(3)(C), substituted reference to par. (4) for reference to par. (5).

Subsec. (e)(2)(A). Pub. L. 98–21, § 133(a)(1)(B), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Except as provided in subsection (q) of this section, paragraph (7) of this subsection, and subparagraph (B) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of such deceased individual. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section the number of increment months shall include any month in the months of the calendar year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of subsection (w) of this section.''

Pub. L. 98–21, § 131(a)(3)(D), substituted reference to par. (7) for reference to par. (8).

Pub. L. 98–21, § 113(d), substituted ''section 415(f)(5), 415(f)(6), or 415(f)(9)(B)'' for ''section 415(f)(5) or (6)''.

Subsec. (e)(2)(B). Pub. L. 98–21, § 133(a)(1)(A), added subpar. (B) and redesignated former subpar. (B) as (D).

Subsec. (e)(2)(B)(i). Pub. L. 98–21, § 113(d), substituted ''section 415(f)(5), 415(f)(6), or 415(f)(9)(B)'' for ''section 415(f)(5) or (6)''.

Subsec. (e)(2)(C), (D). Pub. L. 98–21, § 133(a)(1), added subpar. (C) and redesignated former subpar. (B) as (D).

Subsec. (e)(2)(D)(ii). Pub. L. 98–21, § 133(a)(2)(B), inserted ''(as determined without regard to subparagraph (C))'' after ''primary insurance amount''.

Subsec. (e)(3). Pub. L. 98–21, § 131(a)(1)–(3)(A), redesignated par. (4) as (3) and substituted provision that, for purposes of par. (1), if (A) a widow or surviving divorced wife marries after attaining age 60 (or after attaining age 50 if she was entitled before such marriage occurred to benefits based on disability under this subsection, or (B) a disabled widow or disabled surviving divorced wife described in paragraph (1)(B)(ii) marries after attaining age 50, such marriage shall be deemed not to have occurred, for provision that if a widow, after attaining age 60, married, such marriage would for purposes of par. (1) be deemed not to have occurred. Former par. (3), which provided that if a widow before attaining age 60, or a surviving divorced wife, married (A) an individ-

ual entitled to benefits under subsec. (f) or (h), or (B) an individual who had attained the age of eighteen and was entitled to benefits under subsec. (d), such widow's or surviving divorced wife's entitlement to benefits under this subsection would, notwithstanding the provisions of par. (1) of this subsection, but subject to subsec. (s), not be terminated by reason of such marriage, except that, in the case of such a marriage to an individual entitled to benefits under subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsec. (d) unless he ceased to be so entitled by reason of his death, was struck out.

Subsec. (e)(4). Pub. L. 98–21, §131(a)(3)(A), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (e)(5). Pub. L. 98–21, §131(a)(3)(A), (E), redesignated par. (6) as (5) and substituted reference to par. (4) for reference to par. (5). Former par. (5) redesignated (4).

Subsec. (e)(6). Pub. L. 98–21, §131(a)(3)(A), redesignated par. (7) as (6). Former par. (6) redesignated (5).

Subsec. (e)(7). Pub. L. 98–21, §131(a)(3)(A), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (e)(7)(A). Pub. L. 98–21, §337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98–21, §131(a)(3)(F), substituted reference to par. (3) for reference to par. (4).

Subsec. (e)(8). Pub. L. 98–21, §131(a)(3)(A), redesignated par. (8) as (7).

Subsec. (e)(8)(A). Pub. L. 97–455, §7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (f)(1). Pub. L. 98–21, §301(b)(1), inserted ''and every surviving divorced husband (as defined in section 416(d) of this title)'' before ''of an individual'', and ''or such surviving divorced husband'' after ''if such widower'' in provisions preceding subpar. (A).

Pub. L. 98–21, §301(b)(2), substituted ''such deceased individual'' for ''his deceased wife'' in provisions following subpar. (F).

Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 in provisions following subpar. (F).

Pub. L. 98–21, §133(b)(2)(A), inserted ''(as determined after application of subparagraphs (B) and (C) of paragraph (3))'' after ''primary insurance amount'' in provisions following subpar. (F).

Subsec. (f)(1)(A). Pub. L. 98–21, §302, substituted ''is not married'' for ''has not remarried''.

Subsec. (f)(1)(B)(ii). Pub. L. 98–21, §131(b)(3)(B), substituted reference to par. (5) for reference to par. (6).

Subsec. (f)(1)(C)(i). Pub. L. 98–21, §306(g), designated existing provisions as cl. (i).

Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (f)(1)(C)(ii). Pub. L. 98–21, §201(c)(1)(A), which directed the substitution of ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65'' in cl. (ii) was executed to those provisions after the execution of section 306(g) of Pub. L. 98–21 as the probable intent of Congress.

Pub. L. 98–21, §306(g), added cl. (ii).

Subsec. (f)(1)(D). Pub. L. 98–21, §301(b)(2), substituted ''such deceased individual'' for ''his deceased wife''.

Pub. L. 98–21, §133(b)(2)(A), inserted ''(as determined after application of subparagraphs (B) and (C) of paragraph (3))'' after ''primary insurance amount''.

Subsec. (f)(1)(F)(i). Pub. L. 98–21, §131(b)(3)(C), substituted reference to par. (6) for reference to par. (7).

Subsec. (f)(1)(F)(ii)(I). Pub. L. 98–21, §131(b)(3)(C), substituted reference to par. (5) for reference to par. (6).

Subsec. (f)(2)(A). Pub. L. 98–21, §337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 98–21, §131(b)(3)(D), substituted reference to par. (4) for reference to par. (5).

Pub. L. 97–455, §7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (f)(3)(A). Pub. L. 98–21, §133(b)(1)(B), amended subpar. (A) generally. Prior to the amendment subpar. (A) read as follows: ''Except as provided in subsection (q) of this section, paragraph (2) of this subsection, and subparagraph (B) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of his deceased wife. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5), 415(f)(6), or 415(f)(9)(B) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of subsection (w) of this section.''

Pub. L. 98–21, §113(d), substituted ''section 415(f)(5), 415(f)(6), or 415(f)(9)(B)'' for ''section 415(f)(5) or (6)''.

Subsec. (f)(3)(B). Pub. L. 98–21, §133(b)(1), added subpar. (B) and redesignated former subpar. (B) as (D).

Pub. L. 98–21, §113(d), substituted ''section 415(f)(5), 415(f)(6), or 415(f)(9)'' for ''section 415(f)(5) or (6)''.

Subsec. (f)(3)(B)(ii)(II). Pub. L. 98–21, §301(b)(3), inserted ''or surviving divorced husband'' after ''widower''.

Subsec. (f)(3)(C). Pub. L. 98–21, §133(b)(1)(B), added subpar. (C).

Subsec. (f)(3)(D). Pub. L. 98–21, §301(b)(4), inserted ''or surviving divorced husband'' after ''widower'' wherever appearing.

Pub. L. 98–21, §301(b)(5), substituted ''individual'' for ''wife'' wherever appearing.

Pub. L. 98–21, §133(b)(1)(A), redesignated former subpar. (B) as (D).

Subsec. (f)(3)(D)(ii). Pub. L. 98–21, §133(b)(2)(B), inserted ''(as determined without regard to subparagraph (C))'' after ''primary insurance amount''.

Subsec. (f)(4). Pub. L. 98–21, §301(b)(4), inserted ''or surviving divorced husband'' after ''widower'' in two places.

Pub. L. 98–21, §131(b)(1)–(3)(A), redesignated par. (5) as (4), and amended par. (4) as so redesignated generally, substituting provision that for purposes of par. (1), if a widower married after attaining age 60 (or after attaining age 50 if entitled before such marriage occurred to benefits based on disability under this subsection), or a disabled widower described in paragraph (1)(B)(ii) married after attaining age 50, such marriage would be deemed not to have occurred, for provision that if a widower married after attaining age 60, such marriage would be deemed not to have occurred for purposes of par. (1). Former par. (4), which had provided that if a widower, before attaining age 60, remarried an individual entitled to benefits under subsec. (b), (e), (g), or (h) or an individual who had attained the age of eighteen

and was entitled to benefits under subsec. (d), such widower's entitlement to benefits under this subsection would, notwithstanding the provisions of par. (1) of this subsection but subject to subsec. (s), not be terminated by reason of such marriage, was struck out.

Subsec. (f)(5). Pub. L. 98–21, §301(b)(4), inserted ''or surviving divorced husband'' after ''widower'' in provisions preceding subpar. (A).

Pub. L. 98–21, §131(b)(3)(A), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (f)(5)(B), (C). Pub. L. 98–21, §306(h), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (f)(6). Pub. L. 98–21, §301(b)(4), inserted ''or surviving divorced husband'' after ''widower''.

Pub. L. 98–21, §131(b)(3)(A), (E), redesignated par. (7) as (6) and substituted reference to par. (5) for reference to par. (6). Former par. (6) redesignated (5).

Subsec. (f)(7), (8). Pub. L. 98–21, §131(b)(3)(A), redesignated par. (8) as (7). Former par. (7) redesignated (6).

Subsec. (g). Pub. L. 98–21, §306(a)(7), inserted ''or father's'' after ''mother's'' wherever appearing.

Subsec. (g)(1). Pub. L. 98–21, §306(a)(8), struck out ''after August 1950'' after ''beginning with the first month'' in provisions following subpar. (F).

Pub. L. 98–21, §306(a)(1), (2), (5), (6), substituted ''surviving spouse'' for ''widow'', ''surviving spouse's'' for ''widow's'', ''he or she'' for ''she'', and ''parent'' for ''mother'', wherever appearing.

Subsec. (g)(1)(D). Pub. L. 98–21, §306(a)(3), substituted ''a spouse's insurance benefit'' for ''wife's insurance benefits'' and ''such individual'' for ''he''.

Subsec. (g)(1)(E), (F)(i). Pub. L. 98–21, §306(a)(4), substituted ''his or her'' for ''her''.

Subsec. (g)(3). Pub. L. 98–21, §307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to an individual entitled to benefits under section 423(a) of this title or subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under section 423(a) of this title or subsec. (d) unless he ceased to be so entitled by reason of his death, or in the case of an individual entitled to benefits under section 423(a) of this title, he was entitled, for the month following such last month, to benefits under subsec. (a).

Pub. L. 98–21, §306(a)(1), (6), substituted ''surviving spouse'' for ''widow'' and ''parent'' for ''mother'' wherever appearing.

Subsec. (g)(3)(A). Pub. L. 98–21, §306(a)(9)(B), inserted reference to this subsection and subsecs. (b) and (e).

Pub. L. 98–21, §301(b)(6), inserted reference to subsec. (c).

Subsec. (g)(4)(A). Pub. L. 98–21, §337(a), substituted ''by an amount equal to two-thirds of the amount of any monthly periodic benefit'' for ''by an amount equal to the amount of any monthly periodic benefit'', and inserted provision that the amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.

Pub. L. 97–455, §7(c), inserted ''for purposes of this subchapter'' after ''as defined in section 410 of this title''.

Subsec. (h)(4). Pub. L. 98–21, §307(a), struck out exception in provisions following subpar. (B) that in the case of such a marriage to a male individual entitled to benefits under subsec. (d), the preceding provisions of this paragraph would not apply with respect to benefits for months after the last month for which such individual was entitled to such benefits under subsec. (d) unless he ceased to be so entitled by reason of his death.

Subsec. (h)(4)(A). Pub. L. 98–21, §301(b)(7), inserted reference to subsec. (c).

Subsec. (j)(4)(B)(iii) to (v). Pub. L. 98–21, §334(a), added cl. (iii) and redesignated former cls. (iii) and (iv) as (iv) and (v), respectively.

Subsec. (k)(2)(B), (3)(B). Pub. L. 98–21, §131(b)(3)(F), (G), substituted references to subsecs. (e)(3) and (f)(4) for references to subsecs. (e)(4) and (f)(5), respectively, wherever appearing.

Subsec. (m). Pub. L. 98–21, §§111(a)(7), 134(b), in par. (1) substituted ''November'' for ''May'' and in par. (2)(B) substituted ''subsection (q)(6)(B)'' for ''subsection (q)(6)(A)(ii)'', as subsec. (m) [notwithstanding its repeal by Pub. L. 97–35] continues to apply in certain cases by reason of section 2(j)(2)–(4) of Pub. L. 97–123, set out as an Effective Date of 1981 Amendment note under section 415 of this title. As thus amended subsec. (m) would read as follows:

''(1) In any case in which an individual is entitled to a monthly benefit under this section on the basis of a primary insurance amount computed under section 415(a) or (d) of this title, as in effect after December 1978, on the basis of the wages and self-employment income of a deceased individual for any month and no other person is (without the application of subsection (j)(1) of this section) entitled to a monthly benefit under this section for that month on the basis of such wages and self-employment income, the individual's benefit amount for that month, prior to reduction under subsection (k)(3) of this section, shall not be less than that provided by subparagraph (C)(1)(I) of section 415(a)(1) of this title and increased under section 415(i) of this title for months after November of the year in which the insured individual died as though such benefit were a primary insurance amount.

''(2) In the case of any such individual who is entitled to a monthly benefit under subsection (e) or (f) of this section, such individual's benefit amount, after reduction under subsection (q)(1) of this section, shall be not less than—

''(A) $84.50, if his first month of entitlement to such benefit is the month in which such individual attained age 62 or a subsequent month, or

''(B) $84.50 reduced under subsection (q)(1) of this section as if retirement age as specified in subsection (q)(6)(B) of this section were age 62 instead of the age specified in subsection (q)(9) of this section, if his first month of entitlement to such benefit is before the month in which he attained age 62.

''(3) In the case of any individual whose benefit amount was computed (or recomputed) under the provisions of paragraph (2) and such individual was entitled to benefits under subsection (e) or (f) of this section for a month prior to any month after 1972 for which a general benefit increase under this subchapter (as defined in section 415(i)(3) of this title) or a benefit increase under section 415(i) of this title becomes effective, the benefit amount of such individual as computed under paragraph (2) without regard to the reduction specified in subparagraph (B) thereof shall be increased by the percentage increase applicable for such benefit increase, prior to the application of subsection (q)(1) of this section pursuant to paragraph (2)(B) and subsection (q)(4) of this section.''

Subsec. (q)(1). Pub. L. 98–21, §201(b)(2), substituted ''Subject to paragraph (9), if'' for ''If'' at beginning of par. (1).

Pub. L. 98–21, §134(a)(1), struck out provisions following subpar. (B)(ii) which directed that in the case of a widow or widower whose first month of entitlement to a widow's or widower's insurance benefit was a month before the month in which such widow or widower attained age 60, such benefit, reduced pursuant to preceding provisions of this paragraph (and before the application of the second sentence of paragraph (8)), had to be further reduced by $\frac{43}{240}$ of 1 percent of the amount of such benefit, multiplied by the number of months in the additional reduction period for such benefit (determined under paragraph (6)(B)), if such benefit was for a month before the month in which such individual attained age 62, or if less, the number of months in the additional adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit was for the month in which such individual attained age 62 or any month thereafter.

Subsec. (q)(1)(B)(i). Pub. L. 98–21, §134(a)(2)(C), substituted ''paragraph (6)'' for ''paragraph (6)(A)''.

Subsec. (q)(2). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(3)(A)(i). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(3)(E). Pub. L. 98–21, §309(b), inserted ''or surviving divorced husband'' after ''widower''.

Pub. L. 98–21, §201(c)(1)(A), as amended by Pub. L. 98–369, §2662(c)(1), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to the age of 65.

Subsec. (q)(3)(E)(ii). Pub. L. 98–21, §134(a)(2)(C), substituted ''paragraph (6)'' for ''paragraph (6)(A)''.

Subsec. (q)(3)(F). Pub. L. 98–21, §309(b), inserted ''or surviving divorced husband'' after ''widower''.

Subsec. (q)(3)(F)(ii)(I). Pub. L. 98–21, §134(a)(2)(C), substituted ''paragraph (6)'' for ''paragraph (6)(A)''.

Subsec. (q)(3)(G). Pub. L. 98–21, §309(b), inserted ''or surviving divorced husband'' after ''widower''.

Pub. L. 98–21, §134(a)(2)(B), substituted ''paragraph (6)'' for ''paragraph (6)(A) (or, if such paragraph does not apply, the period specified in paragraph (6)(B))''.

Subsec. (q)(5). Pub. L. 98–21, §309(c)(4), substituted ''he or she'' for ''she'' wherever appearing.

Pub. L. 98–21, §309(c)(1), inserted ''or husband's'' after ''wife's'' wherever appearing.

Subsec. (q)(5)(A)(i). Pub. L. 98–21, §309(c)(2), substituted ''him or her'' for ''her''.

Subsec. (q)(5)(A)(ii). Pub. L. 98–21, §309(c)(3), substituted ''the'' for ''her'' after ''income''.

Subsec. (q)(5)(B)(ii). Pub. L. 98–21, §309(c)(6), substituted ''the individual'' for ''the woman''.

Subsec. (q)(5)(C). Pub. L. 98–21, §309(c)(6), substituted ''an individual'' for ''a woman''.

Pub. L. 98–21, §309(c)(5), substituted ''his or her'' for ''her''.

Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65 wherever appearing.

Subsec. (q)(5)(D). Pub. L. 98–21, §309(c)(7), inserted ''or widower's'' after ''widow's'', substituted ''spouse'' for ''husband'' wherever appearing, substituted ''spouse's'' for ''husband's'' wherever appearing, and inserted ''or father's'' after ''mother's''.

Pub. L. 98–21, §309(c)(5), substituted ''his or her'' for ''her'' in three places.

Subsec. (q)(6). Pub. L. 98–21, §134(a)(2)(A), amended par. (6) generally, striking out subpar. designation ''(A)'' after ''this subsection'' and redesignated cl. (i) as subpar. (A), in subpar. (A) as so redesignated, redesignated subcls. (I) to (III) as cls. (i) to (iii), respectively, redesignated former cl. (ii) as subpar. (B), and struck out former subpar. (B), which had provided that the ''additional reduction period'' for an individual's widow's or widower's insurance benefit was the period beginning with the first day of the first month for which such individual was entitled to such benefit, but only if such individual had not attained age 60 in such first month, and ending with the last day of the month before the month in which such individual attained age 60.

Subsec. (q)(6)(A)(i). Pub. L. 98–21, §309(d)(1), struck out ''or husband's'' after ''old-age''.

Subsec. (q)(6)(A)(ii). Pub. L. 98–21, §309(d)(1), inserted ''or husband's'' after ''wife's''.

Subsec. (q)(7). Pub. L. 98–21, §134(a)(3), amended provisions preceding subpar. (A) generally, substituting reference to par. (6) for reference to par. (6)(A), and striking out provision that the additional adjusted reduction period for an individual's, widow's, or widower's insurance benefit was the additional reduction period prescribed by par. (6)(B) for such benefit, with the same exclusions as from the adjusted reduction period.

Subsec. (q)(7)(B). Pub. L. 98–21, §309(d)(2)(A), inserted ''or husband's'' after ''wife's'', substituted ''such individual'' for ''she'', and inserted ''his or'' before ''her''.

Subsec. (q)(7)(D). Pub. L. 98–21, §309(d)(2)(B), inserted ''or widower's'' after ''widow's''.

Subsec. (q)(9). Pub. L. 98–21, §201(b)(1), amended par. (9) generally, substituting provisions defining the amount of reduction for early retirement specified in par. (1) for provision that, for purposes of this subsection, the term ''retirement age'' meant age 65.

Subsec. (q)(10). Pub. L. 98–21, §134(a)(4)(A), in that part of second sentence preceding cl. (A) struck out ''or an additional adjusted reduction period'' after ''the use of an adjusted reduction period''.

Subsec. (q)(10)(B)(i). Pub. L. 98–21, §134(a)(4)(B), struck out '', plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent'' before ''to (ii)''.

Subsec. (q)(10)(B)(ii). Pub. L. 98–21, §134(a)(4)(C), struck out ''plus the number of months in the additional reduction period multiplied by 43/240 of 1 percent,'' after ''1 percent''.

Subsec. (q)(10)(C). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (q)(10(C)(i). Pub. L. 98–21, §134(a)(4)(B), struck out '', plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent'' before ''to (ii)''.

Subsec. (q)(10)(C)(ii). Pub. L. 98–21, §134(a)(4)(D), struck out ''plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent.'' after ''1 percent,''.

Subsec. (r)(1), (2). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Subsec. (s)(1). Pub. L. 98–21, §309(e)(1), inserted reference to subsec. (c)(1).

Subsec. (s)(2). Pub. L. 98–21, §309(e)(2), inserted reference to subsec. (c)(4).

Pub. L. 98–21, §131(c)(1), substituted ''So much of subsections (b)(3), (d)(5), (g)(3), and (h)(4)'' for ''Subsection (f)(4), and so much of subsections (b)(3), (d)(5), (e)(3), (g)(3), and (h)(4)''.

Subsec. (s)(3). Pub. L. 98–21, §309(e)(3), substituted ''The last sentence'' for ''So much of subsections (b)(3), (d)(5), (g)(3), and (h)(4) of this section as follows the semicolon, the last sentence''.

Pub. L. 98–21, §131(c)(2), struck out ''(e)(3),'' after ''(d)(5),''.

Subsec. (t)(2), (4). Pub. L. 98–21, §340(b), substituted ''Subject to paragraph (11), paragraph (1)'' for ''Paragraph (1)''.

Subsec. (t)(11). Pub. L. 98–21, §340(a)(2), added par. (11).

Subsec. (w)(1)(A). Pub. L. 98–21, §114(a), substituted a definition of the multiplicand as the applicable percentage (as determined under paragraph (6)) of such amount for a definition of the multiplicand as 1/12 of 1 percent of such amount, or, in the case of an individual who first becomes eligible for an old-age insurance benefit after December 1978, one-quarter of 1 percent of such amount.

Subsec. (w)(2)(A). Pub. L. 98–21, §201(c)(1)(A), substituted reference to retirement age as defined in section 416(*l*) of this title for reference to age 65.

Pub. L. 98–21, §114(c)(1), substituted ''age 70'' for ''age 72''.

Subsec. (w)(3). Pub. L. 98–21, §114(c)(1), substituted ''age 70'' for ''age 72''.

Subsec. (w)(6). Pub. L. 98–21, §114(b), added par. (6).

Subsec. (x). Pub. L. 98–21, §339(a), added subsec. (x).

1981—Subsec. (a). Pub. L. 97–35, §2203(a), substituted in provision following par. (3) provision specifying the beginning month of entitlement in the case of an individual who has attained age 65 and in the case of an individual who has attained the age of 62, but not the age of 65, for provision specifying the beginning month of entitlement as the first month after August 1950 in which the individual becomes entitled.

Subsec. (b)(1). Pub. L. 97–35, §2203(b)(1), substituted in provision following subpar. (D) provision specifying the beginning month of entitlement in the case of a wife or divorced wife who has attained the age of 65 and in the case of a wife or divorced wife who has not attained the age of 65 or of an individual entitled to disability insurance benefits for provision specifying the beginning month of entitlement as the first month the wife or divorced wife becomes so entitled to such benefits.

Subsec. (c)(1). Pub. L. 97–35, §2203(c)(1), substituted in provision following subpar. (C) provision specifying the

beginning month of entitlement in the case of a husband who has attained the age of 65 and in the case of a husband who has not attained the age of 65 or of an individual entitled to disability benefits for provision specifying the beginning month of entitlement as the first month after August 1950 in which he becomes entitled to benefits.

Subsec. (d)(1). Pub. L. 97–35, §§ 2203(d)(1), 2210(a)(1), (5)(A), substituted in subpars. (B)(i), (E)(ii), (F)(i), and (G)(III) ''full-time elementary or secondary school student'' for ''full-time student'', in subpars. (B)(i), (F)(ii), and (G)(IV) ''19'' for ''22'', and in provision following subpar. (C) provision specifying the beginning month of entitlement in the case of a child of an individual who has died and of a child of an individual entitled to an old-age insurance benefit or a disability insurance benefit for provision specifying the beginning month of entitlement as the first month after August 1950 in which such child becomes entitled to benefits.

Subsec. (d)(6)(A). Pub. L. 97–35, § 2210(a)(5)(B), substituted ''full-time elementary or secondary school student and has not attained the age of 19, or (ii) is under a disability (as defined in section 423(d) of this title) and has not attained the age of 22'' for ''full-time student or is under a disability (as defined in section 423(d) of this title), and (ii) had not attained the age of 22''.

Subsec. (d)(6)(D), (E). Pub. L. 97–35, § 2210(a)(1), (5)(A), substituted in cl. (i) ''full-time elementary or secondary school student'' for ''full-time student'' and in cl. (ii) ''19'' for ''22''.

Subsec. (d)(7)(A). Pub. L. 97–35, §§ 2203(d)(2), 2210(a)(1), (2), substituted ''full-time elementary or secondary school student'' for ''full-time student'' wherever appearing, ''elementary or secondary school'' for ''educational institution'' wherever appearing, and ''schools involved'' for ''institutions involved'' and inserted provision that an individual who is determined to be a full-time elementary or secondary school student be deemed to be such a student throughout the month with respect to which such determination is made.

Subsec. (d)(7)(B). Pub. L. 97–35, § 2210(a)(1), (2)(A), substituted ''full-time elementary or secondary school student'' for ''full-time student'' and ''elementary or secondary school'' for ''educational institution'' wherever appearing.

Subsec. (d)(7)(C). Pub. L. 97–35, § 2210(a)(3), substituted provision defining ''elementary or secondary school'' and provision that for the purpose of determining whether a child is a ''full-time elementary or secondary school student'' or ''intends to continue to be in full-time attendance at an elementary or secondary school'' there be disregarded any education provided, or to be provided, beyond grade 12 for provision defining the term ''educational institution''.

Subsec. (d)(7)(D). Pub. L. 97–35, § 2210(a)(1), (2)(A), (4), (5)(A), substituted ''19'' for ''22'', ''full-time elementary or secondary school student'' for ''full-time student'', ''diploma or equivalent certificate from a secondary school (as defined in subparagraph (C)(i))'' for ''degree from a four-year college or university'', and ''elementary or secondary school'' for ''educational institution''.

Subsec. (i). Pub. L. 97–35, § 2201(f), inserted in provision preceding par. (1) ''(as determined without regard to the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981, relating to repeal of the minimum benefit provisions)''.

Pub. L. 97–35, § 2202(a)(1), as amended by Pub. L. 98–369, § 2663(a)(2)(E), substituted in par. (1) provision that a qualifying widow or widower be paid for provision that unpaid burial expenses to a funeral home be paid and in par. (2) provision for payment in the event that no one qualifies or if the person entitled dies before receiving payment for provision for payment if all burial expenses incurred by or through a funeral home were paid, and struck out pars. (3) and (4), which provided for payment if the body of the insured is not available for burial but expenses were incurred for a memorial marker, service, etc., and for distribution of any amounts remaining available after payments under this subsection were made, respectively, and struck out ''(except a payment authorized pursuant to clause (1)(A) of the preceding sentence)'' after ''No payment''.

Subsec. (m). Pub. L. 97–35, § 2201(b)(10), struck out subsec. (m) which related to the minimum survivor's benefit.

Subsec. (q)(4). Pub. L. 97–123, § 2(e)(1), substituted ''increased'' and ''increase'' for ''changed'' and ''change'', respectively, wherever appearing.

Pub. L. 97–35, § 2201(d)(1), substituted ''changed'' and ''change'' for ''increased'' and ''increase'', respectively, wherever appearing.

Subsec. (q)(8). Pub. L. 97–35, § 2206(b)(1), substituted ''before application of'' for ''after application of'' and ''increased to the next higher'' for ''reduced to the next lower''.

Subsec. (q)(10). Pub. L. 97–123, § 2(e)(2), substituted ''increased'', ''increase'', and ''increases'' for ''changed'', ''change'', and ''changes'', respectively, wherever appearing.

Pub. L. 97–35, § 2201(d)(2), substituted ''changed'', ''change'', and ''changes'' for ''increased'', ''increase'' and ''increases'', respectively, wherever appearing.

Subsec. (s)(1). Pub. L. 97–35, § 2205(a)(1), substituted ''the age of 16'' for ''the age of 18''.

Subsec. (w)(1), (5). Pub. L. 97–35, § 2201(b)(11), substituted ''section 415(a)(1)(C)(i) of this title'' for ''section 415(a)(1)(C)(i)(II) of this title''.

1980—Subsec. (d)(1)(G). Pub. L. 96–265, § 303(b)(1)(B), inserted provisions relating to an individual's termination month, including cls. (I) and (II), and redesignated existing cls. (i) and (ii) as cls. (III) and (IV), respectively.

Subsec. (d)(7)(A). Pub. L. 96–473, § 5(b), inserted provisions relating to individuals confined in a jail, prison, or other penal institutional or correctional facility.

Subsec. (e)(1). Pub. L. 96–265, § 303(b)(1)(C), in provisions following subpar. (F)(ii), inserted provisions relating to the termination month.

Subsec. (e)(2)(B)(i). Pub. L. 96–473, § 6(a), struck out second comma after ''where applicable'', which had been inserted by Pub. L. 95–216, § 204(b). See 1977 Amendment note below.

Subsec. (f)(1). Pub. L. 96–265, § 303(b)(1)(D), in provisions following subpar. (F)(ii), inserted provisions relating to the termination month.

Subsec. (j)(1). Pub. L. 96–499 designated existing provisions in part as subpar. (A) and expanded such provisions and added subpar. (B).

Subsec. (j)(2). Pub. L. 96–265, § 306(a), inserted provisions relating to limitations on the prospective effects of applications.

1978—Subsec. (v). Pub. L. 95–600 substituted ''1402(g)'' for ''1402(h)''.

1977—Subsec. (b)(1)(G). Pub. L. 95–216, § 337(b), substituted ''10'' for ''20''.

Subsec. (b)(2). Pub. L. 95–216, § 334(a)(1), inserted reference to par. (4) of this subsection.

Subsec. (b)(4). Pub. L. 95–216, § 334(a)(2), added par. (4).

Subsec. (c)(1). Pub. L. 95–216, § 334(b)(1), in subpar. (B) inserted ''and'' after ''62,'', struck out subpar. (C) which related to support payment requirements for the husband, and redesignated former subpar. (D) as (C).

Subsec. (c)(2). Pub. L. 95–216, § 334(b)(2), substituted provisions relating to reduction of the amount of the husband's insurance benefit for each month as determined after application of the provisions of subsecs. (q) and (k) of this section for provisions relating to applicability of provisions of former subsec. (c)(1)(C) of this section, as subject to subsec. (s) of this section.

Subsec. (c)(3). Pub. L. 95–216, § 334(b)(3), inserted reference to par. (2) of this subsection.

Subsec. (e)(2)(A). Pub. L. 95–216, §§ 204(a), 334(c)(1), 336(a)(1), inserted ''(as determined after application of the following sentence)'' after ''primary insurance amount'', provisions relating to entitlement of the deceased to an old-age insurance benefit which was increased or was to be increased on account of delayed retirement, and reference to par. (8) of this subsection, and struck out reference to par. (4) of this subsection.

Subsec. (e)(2)(B)(i). Pub. L. 95–216, §204(b), substituted ''living and section 415(f)(5) or (6) of this title were applied, where applicable,, and'' for ''living, and''. See 1980 Amendment note above.

Subsec. (e)(3). Pub. L. 95–216, §336(a)(2), substituted ''If a widow, before attaining age 60, or a surviving divorced wife,'' for ''In the case of a widow or surviving divorced wife who''.

Subsec. (e)(4). Pub. L. 95–216, §336(a)(3), struck out reference to an individual (other than one described in subsec. (e)(3)(A) or (B) of this section) as the husband, and provisions relating to benefits during the marriage.

Subsec. (e)(8). Pub. L. 95–216, §334(c)(2), added par. (8).

Subsec. (f)(1). Pub. L. 95–216, §334(d)(1), struck out subpar. (D) which related to receipt of support by the widower in accordance with regulations promulgated by the Secretary, and redesignated former subpars. (E) to (G) as (D) to (F), respectively.

Subsec. (f)(2). Pub. L. 95–216, §334(d)(2), substituted provisions relating to reduction of the amount of the widower's insurance benefit for each month as determined after application of the provisions of subsecs. (k) and (q) of this section and pars. (3)(B) and (5) of this subsec., for provisions relating to applicability of former subsec. (f)(1)(D) of this section, as subject to subsec. (s) of this section.

Subsec. (f)(3)(A). Pub. L. 95–216, §§204(c), 334(d)(3), 336(b)(1), inserted ''(as determined after application of the following sentence)'' after ''primary insurance amount'', inserted provisions relating to entitlement of the deceased to an old-age insurance benefit which was increased or was to be increased on account of delayed retirement, and substituted reference to par. (2) of this subsection for reference to par. (5) of this subsection.

Subsec. (f)(3)(B). Pub. L. 95–216, §204(d), inserted reference to section 415(f)(5) or (6) of this title in cl. (i).

Subsec. (f)(4). Pub. L. 95–216, §336(b)(2), substituted ''If a widower, before attaining age 60,'' for ''In the case of a widower who''.

Subsec. (f)(5). Pub. L. 95–216, §336(b)(3), struck out reference to an individual (other than one described in subsec. (f)(4)(A) or (B) of this section) as the wife, and provisions relating to benefits during the marriage.

Subsec. (f)(7). Pub. L. 95–216, §334(d)(4)(A), substituted ''(F)'' for ''(G)''.

Subsec. (g)(2). Pub. L. 95–216, §334(e)(1), substituted ''Except as provided in paragraph (4) of this subsection, such'' for ''Such''.

Subsec. (g)(4). Pub. L. 95–216, §334(e)(2), added par. (4).

Subsec. (j)(1). Pub. L. 95–216, §332(a)(1), substituted ''Subject to the limitations contained in paragraph (4), an'' for ''An''.

Subsec. (j)(4). Pub. L. 95–216, §332(a)(2), added par. (4).

Subsec. (m)(1). Pub. L. 95–216, §205(a), substituted provisions relating to entitlement to monthly benefits under this section on the basis of primary insurance amounts computed under section 415(a) or (d) of this title as in effect after Dec., 1978, for provisions relating to entitlement to monthly benefits under this section on the basis of wages and self-employment income of deceased individuals for any month.

Subsec. (p)(1). Pub. L. 95–216, §334(d)(5), struck out references to subsecs. (c)(1)(C) and (f)(1)(D)(i) or (ii) of this section.

Subsec. (q)(3)(H). Pub. L. 95–216, §331(c)(2), inserted ''for that month or'' after ''first entitled''.

Subsec. (q)(4). Pub. L. 95–216, §331(a), substituted provisions setting forth factors for the computation of the amount of the reduction of the benefit for each month beginning with the month of the increase in the primary insurance amount, after application of any adjustment under par. (7) of this subsec., for provisions setting forth factors for the computation of the amount of the reduction of the benefit for each month.

Subsec. (q)(7)(C). Pub. L. 95–216, §331(c)(1), substituted ''of the occurrence of an event that terminated her or his entitlement to such benefits'' for ''the spouse on whose wages and self-employment income such benefits were based ceased to be under a disability''.

Subsec. (q)(10), (11). Pub. L. 95–216, §331(b), added pars. (10) and (11).

Subsec. (s)(3). Pub. L. 95–216, §334(d)(6), substituted ''So'' for ''Subsections (c)(2)(B) and (f)(2)(B) of this section, so''.

Subsec. (u)(1)(C). Pub. L. 95–216, §353(f)(1), substituted ''year'' for ''quarter'' wherever appearing.

Subsec. (w)(1). Pub. L. 95–216, §§203(1), 205(b)(1), substituted ''The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title as in effect in December 1978 or section 415(a)(1)(C)(i)(II) of this title as in effect thereafter) which is payable without regard to this subsection to an individual'' for ''If the first month for which an old-age insurance benefit becomes payable to an individual is not earlier than the month in which such individual attains age 65 (or his benefit payable at such age is not reduced under subsection (q) of this section), the amount of the old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title) which is payable without regard to this subsection to such individual''.

Subsec. (w)(1)(A). Pub. L. 95–216, §203(2), inserted provision relating to individuals eligible after Dec., 1978.

Subsec. (w)(5). Pub. L. 95–216, §205(b)(2), (3), inserted ''as in effect in December 1978, or section 415(a)(1)(C)(i)(II) of this title as in effect thereafter,'' after ''(3) of section 415(a) of this title'' and ''(whether before, in, or after December 1978)'' after ''under section 415(a) of this title''.

1974—Subsec. (*l*). Pub. L. 93–445 substituted ''annuity under section 2 of the Railroad Retirement Act of 1974, or to a lump-sum payment under section 6(b) of such Act, with respect to the death of an employee (as defined in such Act)'' for ''annuity under section 5 of the Railroad Retirement Act of 1937 or to a lump-sum payment under subsection (f)(1) of such section with respect to the death of an employee (as defined in such Act)''.

1973—Subsec. (d)(8)(D)(ii). Pub. L. 93–66 added item (III).

Subsec. (e)(7). Pub. L. 93–233, §1(f), added par. (7).

Subsec. (f)(8). Pub. L. 93–233, §1(g), added par. (8).

Subsec. (w)(5). Pub. L. 93–233, §18(b), added par. (5).

1972—Subsec. (a). Pub. L. 92–603, §103(b), inserted reference to subsection (w) of this section.

Subsec. (b)(1). Pub. L. 92–603, §114(a), struck out subpar. (D) which covered support aspects involved with a divorced wife and redesignated subpars. (E) through (L) and subpars. (D) through (K), respectively.

Subsec. (d)(1). Pub. L. 92–603, §§108(a)–(c), 112(a), substituted ''age of 22'' for ''age of eighteen'' in subpar. (B)(ii), struck out provisions covering adoption in subpar. (D), inserted ''but only if he was not under a disability (as so defined) in such earlier month'' in subpar. (F), substituted ''age of 18, or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22'' for ''age of 18'' and inserted ''but only if he was not under a disability (as so defined) in such earlier month'' after ''attains the age of 22'' in subpar. (G), and inserted provision prohibiting payments under par. (1) to a child who would not meet the definition of disability in section 423(d) of this title except for par. (1)(B) thereof for any month in which he engages in substantial gainful activity.

Subsec. (d)(6). Pub. L. 92–603, §108(d), designated existing provisions as subpars. (A), (C), and (D), added subpars. (B) and (E), inserted ''or is under a disability (as defined in section 423(d) of this title)'' in subpar. (A)(i) as so redesignated, and inserted ''but only if he is not under a disability (as so defined) in such earlier month'' in subpar. (D)(ii) as so redesignated.

Subsec. (d)(7). Pub. L. 92–603, §109(a), added subpar. (D).

Subsec. (d)(8). Pub. L. 92–603, §111(a), combined into par. (8) the provisions formerly set out in both pars. (8) and (9) covering adoptions by disability and old-age insurance beneficiaries and struck out provisions covering supervision of an adoption by a public or private

child placement agency and provisions covering a special category of adoptions during the 24–month period beginning with the month after the month in which the individual most recently became entitled to disability insurance benefits or became entitled to old-age insurance benefits.

Subsec. (d)(9). Pub. L. 92–603, § 113(b), added par. (9). Former par. (9) incorporated, as amended, into par. (8).

Subsec. (e)(1). Pub. L. 92–603, §§ 102(a)(1), 114(b)(1), struck out subpar. (D) which covered support aspects involved with a surviving divorced wife and redesignated subpars. (E) through (G) as subpars. (D) through (F), respectively, substituted ''the primary insurance amount'' for ''82½ percent of the primary insurance amount'' in subpar. (D) and in the provisions following subpar. (F), substituted ''entitled to wife's insurance benefits,'' for ''entitled, after attainment of age 62, to wife's insurance benefits,'' in subpar. (C)(i), inserted ''and (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title,'' at end of subpar. (C)(i), and substituted ''age 65'' for ''age 62'' in subpar. (C)(ii) and in provisions following subpar. (F).

Subsec. (e)(2). Pub. L. 92–603, § 102(a)(2), designated existing provisions as subpar. (A), added subpar. (B), in subpar. (A) as so designated inserted reference to subpar. (B) of this par., and substituted ''the primary insurance amount'' for ''82½ percent of the primary amount''.

Subsec. (e)(6). Pub. L. 92–603, §§ 114(b)(2), 116(b), substituted ''five'', ''seventeenth'', and ''fifth'' for ''six'', ''eighteenth'', and ''sixth'', respectively, and ''paragraph (1)(F)'' for ''paragraph (1)(G)''.

Subsec. (f)(1). Pub. L. 92–603, §§ 102(b)(1), 107(a)(1), (2), substituted ''age 60'' for ''age 62'' in subpar. (B), substituted ''the primary insurance amount'' for ''82½ percent of the primary insurance amount'' in subpar. (E) and provisions following subpar. (G), inserted ''and (I) has attained age 65 or (II) is not entitled to benefits under subsection (a) of this section or section 423 of this title,'' at end of subpar. (C), and substituted ''age 65'' for ''age 62'' and inserted '', if he became entitled to such benefits before he attained age 60,'' before ''the third month'' in provisions following subpar. (G).

Subsec. (f)(3). Pub. L. 92–603, § 102(b)(2), designated existing provisions as subpar. (A), added subpar. (B), in subpar. (A) as so designated inserted reference to subpar. (B) of this par., and substituted ''the primary insurance amount'' for ''82½ percent of the primary amount''.

Subsec. (f)(5). Pub. L. 92–603, § 107(a)(3), substituted ''the age of 60'' for ''the age of 62''.

Subsec. (f)(6). Pub. L. 92–603, § 107(a)(1), substituted ''age 60'' for ''age 62''.

Subsec. (f)(7). Pub. L. 92–603, § 116(c), substituted ''five'', ''seventeenth'', and ''fifth'' for ''six'', ''eighteenth'', and ''sixth'', respectively.

Subsec. (g)(1)(F). Pub. L. 92–603, § 114(c), struck out cl. (i) covering the support aspects of a surviving divorced mother and redesignated cl. (ii) and (iii) as cl. (i) and (ii), respectively.

Subsec. (k)(2)(A). Pub. L. 92–603, § 110(a), inserted provisions establishing exceptions to rule that a child's benefits in the case where the child is entitled on more than one wage record shall be based on wages and self-employment of the insured individual with greatest primary insurance amount.

Subsec. (k)(3)(A). Pub. L. 92–603, § 102(d), inserted reference to subsection (e)(2) or (f)(3) of this section.

Subsec. (m). Pub. L. 92–603, § 102(f), amended subsec. (m) generally to increase the minimums on survivor's benefits.

Subsec. (q)(1). Pub. L. 92–603, § 102(e)(1), generally provided for an increase in widow's and widower's insurance benefits through the insertion of provisions covering such benefits in subpar. (A), and in provisions preceding subpar. (C), and through the substitution of a $^{43}/_{240}$ fraction in subpar. (C) for a $^{43}/_{198}$ fraction.

Subsec. (q)(3). Pub. L. 92–603, § 102(e)(2), (5), redesignated existing provisions of subpars. (E)(ii) and (F)(ii) as subcls. (I) and (II) and in subcls. (I) of each such subpar. as so redesignated substituted ''would be reduced under paragraph (1) if the period specified in paragraph (6)(A) ended with the month before the month in which she or he attained age 62'' for ''was reduced for the month in which such individual attained retirement age'', substituted in subpar. (G) ''as if the period specified in paragraph (6)(A) (or, if such paragraph does not apply, the period specified in paragraph (6)(B)) ended with the month before'' for ''had such individual attained age 62 in'', and added subpar. (H).

Subsec. (q)(7). Pub. L. 92–603, § 102(e)(3), divided existing source references for ''adjusted reduction period'' and ''additional adjusted reduction period'' into separate references to subpars. (A) and (B) of par. (6) in the provisions preceding subpar. (A) and, in subpar. (E), substituted ''attained age 62, and also for any later month before the month in which he attained retirement age,'' for ''attained retirement age''.

Subsec. (q)(9). Pub. L. 92–603, § 102(e)(4), struck out provisions which had set age 62 as the meaning of ''retirement age'' with respect to a widow's and widower's insurance benefits.

Subsec. (s). Pub. L. 92–603, § 108(e), struck out ''which began before he attained such age'' after ''disability (as defined in section 423(d) of this title)'' in par. (1) and struck out ''which began before such child attained the age of 18'' after ''disability (as defined in section 423(d) of this title)'' in pars. (2) and (3).

Subsec. (w). Pub. L. 92–603, § 103(a), added subsec. (w).

1971—Subsec. (i)(3). Pub. L. 92–223, § 1(a), added cl. (3).

Subsec. (i)(4). Pub. L. 92–223, § 1(a), (b), redesignated former cl. (3) as (4) and included reference to cl. (3) in the second sentence.

1969—Subsec. (b)(2). Pub. L. 91–172, § 1004(a), removed $105 ceiling on insurance benefits of wives.

Subsec. (c)(3). Pub. L. 91–172, § 1004(b), removed $105 ceiling on insurance benefits of husbands.

Subsec. (e)(4). Pub. L. 91–172, § 1004(c), removed $105 ceiling on insurance benefits of widows.

Subsec. (f)(5). Pub. L. 91–172, § 1004(c), removed $105 ceiling on insurance benefits of widowers.

1968—Subsec. (b)(2). Pub. L. 90–248, § 103(a), provided that a wife's insurance benefit may not exceed $105.

Subsec. (c)(1). Pub. L. 90–248, § 157(a)(1), substituted in text preceding subpar. (A) ''an individual'' for ''a currently insured individual (as defined in section 414(b) of this title)''.

Subsec. (c)(2). Pub. L. 90–248, § 157(a)(2), substituted in text preceding subpar. (A) ''The provisions of subparagraph (C) of paragraph (1) of this subsection'' for ''The requirement in paragraph (1) of this subsection that the individual entitled to old-age or disability insurance benefits be a currently insured individual, and the provisions of subparagraph (C) of such paragraph''.

Subsec. (c)(3). Pub. L. 90–248, § 103(b), provided that a husband's insurance benefit may not exceed $105.

Subsec. (d)(1)(B). Pub. L. 90–248, § 158(c)(1), substituted ''section 423(d)'' for ''section 423(c)''.

Subsec. (d)(3). Pub. L. 90–248, § 151(a), inserted in first sentence ''or his mother or adopting mother'' after ''adopting father'', and struck out in second sentence, ''if such individual is the child's father,'' after ''title shall''.

Subsec. (d)(4). Pub. L. 90–248, § 151(b), inserted, ''or stepmother'' after ''stepfather'' in two places.

Subsec. (d)(5) to (8). Pub. L. 90–248, § 151(c), struck out former par. (5) which provided that (1) a child is deemed dependent on his mother or adopting mother if she is currently insured, and (2) a child is deemed dependent on a mother who is not currently insured only if she is contributing one-half of the child's support or, if the child is not living with his father nor being supported by him, only if she is then living with or supporting the child, and redesignated former pars. (6) to (9) as (5) to (8), respectively.

Subsec. (d)(8). Pub. L. 90–248, §§ 112(a), 151(c), added subpar. (E) and redesignated former par. (9) as (8), respectively. Former par. (8) redesignated (7).

Subsec. (d)(9). Pub. L. 90–248, § 151(c), (d)(1), redesignated former par. (10) as (9) and substituted ''paragraph

(8)'' for ''paragraph (9)''. Former par. (9) redesignated (8).

Subsec. (d)(10). Pub. L. 90–248, §151(c), redesignated former par. (10) as (9).

Subsec. (e)(1). Pub. L. 90–248, §104(a)(2), set out part of text formerly following subpar. (E) after subpar. (G) and inserted therein: ''or, if she became entitled to such benefits before she attained age 60, the third month following the month in which her disability ceases (unless she attains age 62 on or before the last day of such third month)''.

Subsec. (e)(1)(B). Pub. L. 90–248, §104(a)(1), provided that a widow or surviving divorced wife may become entitled to widow's insurance benefits if she is disabled and her disability began within the period specified in subsec. (e)(5) even though she has not attained age 60.

Subsec. (e)(1)(F). Pub. L. 90–248, §104(a)(2), designated part of material formerly following subpar. (E) as subpar. (F) and inserted provision requiring satisfaction with subpar. (B) clause (i).

Subsec. (e)(1)(G). Pub. L. 90–248, §104(a)(2), added subpar. (G).

Subsec. (e)(4). Pub. L. 90–248, §103(c), provided that a remarried widow's insurance benefit may not exceed $105.

Subsec. (e)(5), (6). Pub. L. 90–248, §104(a)(3), added pars. (5) and (6).

Subsec. (f)(1). Pub. L. 90–248, §157(b)(1), struck out in text preceding subpar. (A) ''and currently'' before ''insured individual'' and in cl. (ii) of subpar. (D) '', and she was a currently insured individual,'' after ''from such individual''.

Subsec. (f)(1)(B). Pub. L. 90–248, §104(b)(1), provided that a dependent widower may become entitled to widower's insurance benefits if he is disabled and his disability began within the specified period even though such individual has not attained age 62.

Subsec. (f)(1). Pub. L. 90–248, §104(b)(2), set out part of text formerly following subpar. (E) after subpar. (G) and inserted: ''or the third month following the month in which his disability ceases (unless he attains age 62 on or before the last day of such third month)''.

Subsec. (f)(1)(F). Pub. L. 90–248, §104(b)(2), designated part of text formerly following subpar. (F) as subpar. (F) and inserted provision requiring satisfaction with subpar. (B) clause (i).

Subsec. (f)(1)(G). Pub. L. 90–248, §104(b)(2), added subpar. (G).

Subsec. (f)(2). Pub. L. 90–248, §157(b)(2), substituted in text preceding subpar. (A) ''The provisions of subparagraph (D) of paragraph (1) of this subsection'' for ''The requirement in paragraph (1) of this subsection that the deceased fully insured individual also be a currently insured individual, and the provisions of subparagraph (D) of such paragraph,''.

Subsec. (f)(3). Pub. L. 90–248, §104(b)(3), inserted reference to subsec. (q).

Subsec. (f)(5). Pub. L. 90–248, §103(d), provided that a remarried widower's insurance benefit may not exceed $105.

Subsec. (f)(6), (7). Pub. L. 90–248, §104(b)(4), added pars. (6) and (7).

Subsec. (q). Pub. L. 90–248, §104(c)(1), substituted ''Reduction of benefit amounts for certain beneficiaries'' for ''Reduction of old-age, disability, wife's, husband's, or widow's insurance benefit amounts'' in heading.

Subsec. (q)(1). Pub. L. 90–248, §104(c)(2)–(4), substituted ''widow's, or widower's'' for ''or widow's'' in text preceding subpar. (A), '', widow's, or widower's'' for ''or widow's'' in subpar. (A), and added subpar. (C) and (D) provisions for further reduction of a widow's or widower's insurance benefit.

Subsec. (q)(3)(A). Pub. L. 90–248, §104(c)(5), substituted ''widow's, or widower's'' for ''or widow's'' wherever appearing, ''50'' for ''60'', and inserted ''or widower's'' after ''(in the case of a widow's)''.

Subsec. (q)(3)(C). Pub. L. 90–248, §104(c)(6), substituted ''widow's, or widower's'' for ''or widow's'' wherever appearing.

Subsec. (q)(3)(D). Pub. L. 90–248, §104(c)(7), substituted ''widow's, or widower's'' for ''or widow's''.

Subsec. (q)(3)(E). Pub. L. 90–248, §104(c)(8), inserted ''in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower'' after ''(e)(1) of this section'', and ''or he'' after ''she'', and substituted ''widow's or widower's'' for ''widow's'' wherever appearing.

Subsec. (q)(3)(F). Pub. L. 90–248, §104(c)(9), inserted ''in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower'' after ''(e)(1) of this section'', and ''or he'' after ''she'', and substituted ''widow's or widower's'' for ''widow's''.

Subsec. (q)(3)(G). Pub. L. 90–248, §104(c)(10), inserted ''in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower'' before ''(e)(1) of this section'', and ''she or'' before ''he'', and substituted ''widow's or widower's'' for ''widow's'' wherever appearing.

Subsec. (q)(6). Pub. L. 90–248, §104(c)(11), extended definition of ''reduction period'' to apply to widower's insurance benefit, inserted second alternative in subpar. (A)(i)(III) that the reduction period for a widow's or widower's insurance benefit begins with the ''first day of the month in which such individual attains age 60, whichever is the later'', substituted paragraph ''(5)'' for ''(4)'' in item (II) of subpar. (A)(i), and added subpar. (B).

Subsec. (q)(7). Pub. L. 90–248, §104(c)(12), in text preceding subpar. (A), inserted ''or 'additional adjusted reduction period''' after ''the 'adjusted reduction period''', ''or additional reduction period (as the case may be)'' after ''the reduction period'', and substituted ''widow's, or widower's'' for ''or widow's'', and in subpar. (E) substituted ''widow's or widower's'', ''she or he'', and ''her or his'' for ''widow's'', ''she'', and ''her'', respectively.

Subsec. (q)(9). Pub. L. 90–248, §104(c)(13), inserted reference to widowers.

Subsec. (s). Pub. L. 90–248, §158(c)(2), substituted ''section 423(d)'' for ''section 423(c)'' in pars. (1) to (3).

Subsec. (s)(2), (3). Pub. L. 90–248, §151(d)(2), substituted ''(d)(5)'' for ''(d)(6)'' in pars. (2), (3).

Subsec. (t)(1). Pub. L. 90–248, §162(a)(1), provided that ''For purposes of the preceding sentence, after an individual has been outside the United States for any period of thirty consecutive days he shall be treated as remaining outside the United States until he has been in the United States for a period of thirty consecutive days.''

Subsec. (t)(4). Pub. L. 90–248, §162(b)(1), provided for exception to application of subpars. (A) and (B) of par. (4).

Subsec. (t)(6). Pub. L. 90–248, §162(c)(2), included reference to par. (10).

Subsec. (t)(10). Pub. L. 90–248, §162(c)(1), added par. (10).

1965—Subsec. (b)(1). Pub. L. 89–97, §308(a), made provisions applicable to divorced wife by inclusion of references to divorced wife in provisions preceding subpar. (A), substituted ''such individual'' for ''her husband'' in subpars. (B), (E), (G), (J) to (L); inserted in subpar. (B) ''(in the case of a wife)'' after ''age 62 or''; added subpars. (C) and (D); redesignated former subpar. (C) as (E); in provisions after subpar. (E), inserted ''(subject to subsection (s) of this section)'' and struck out ''after August 1950'' after ''beginning with the first month''; designated existing provisions as subpars. (F), (G), (J) to (L); and substituted provisions designated as subpars. (H) and (I) for former provisions reading ''they are divorced from vinculo matrimonii''.

Subsec. (b)(2). Pub. L. 89–97, §308(a), inserted ''(or, in the case of a divorced wife, her former husband)''.

Subsec. (b)(3). Pub. L. 89–97, §308(a), added par. (3).

Subsec. (c)(1). Pub. L. 89–97, §308(d)(1), substituted ''divorced'' for ''divorced a vinculo matrimonii'' in provisions following subpar. (D).

Subsec. (c)(2). Pub. L. 89–97, §§306(c)(2), 334(e), inserted in text preceding subpar. (A) ''(subject to subsection (s) of this section)'' after ''shall'', and added subpar. (C).

Subsec. (d)(1). Pub. L. 89–97, §§306(a), (b)(1), (2), 323(a)(1), 343(a), inserted in subpar. (B)(i) and (ii) ''or

was a full-time student and had not attained the age of 22'' and ''which began before he attained the age of 22'', respectively, and substituted ''is'' for ''was'' in cl. (ii) substituted ''preceding whichever of the following first occurs'' for ''preceding the first month in which any of the following occurs'' following provisions of subpar. (C), incorporated existing provisions in subpar. (D) and (E), substituting in such subpar. (E) ''but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time student during any part of such month'' for former provision and is not under a disability (as defined in section 423(c) of this title), which began before he attained such age'', added subpars. (F) and (G), and repealed the second sentence which provided for the termination of entitlement of any child to benefits under this subsection with the month preceding the third month following the month in which he ceases to be under a disability after the month in which he attains age eighteen; struck out the last sentence which related to adoptions by disabled workers; and substituted ''uncle, brother, or sister'' for ''or uncle'' in subpar. (D), respectively.

Subsec. (d)(3). Pub. L. 89–97, § 339(b), inserted ''or section 416(h)(3)'' after ''section 416(h)(2)(B)''.

Subsec. (d)(6). Pub. L. 89–97, § 306(c)(3), inserted in text following subpar. (B) ''but subject to subsection (s) of this section'' after ''notwithstanding the provisions of paragraph (1) of this subsection''.

Subsec. (d)(6)(A). Pub. L. 89–97, § 308(d)(2)(A), inserted reference to subsec. (b) of this section.

Subsec. (d)(7), (8). Pub. L. 89–97, § 306(b)(3), added pars. (7) and (8).

Subsec. (d)(9), (10). Pub. L. 89–97, § 323(a)(2), added pars. (9) and (10).

Subsec. (e)(1). Pub. L. 89–97, §§ 307(a)(1), 308(b)(1), substituted ''age 60'' for ''age 62'' in subpar. (B); and inserted references to surviving divorced wife in the provisions preceding subpar. (A), substituted in subpar. (A) ''is not married'' for ''has not remarried'', added subpar. (D), redesignated former subpar. (D) as (E) substituted in subpar. (E) and following provision ''such deceased individual'' ''her deceased husband'', and struck out from provisions following subpar. (E) ''after August 1950'' after ''beginning with the first month'', respectively.

Subsec. (e)(2). Pub. L. 89–97, §§ 307(a)(2), 308(b)(1), 333(a)(2), inserted introductory phrase ''Except as provided in subsection (q) of this section''; substituted ''such deceased individual'' for ''her deceased husband''; and inserted ''and paragraph (4) of this subsection'' before the comma, respectively.

Subsec. (e)(3). Pub. L. 89–97, §§ 306(c)(4), 308(b) (2), (3), inserted ''but subject to subsection (s) of this section'' after ''notwithstanding the provisions of paragraph (1)'' following subpar. (B); repealed former par. (3) which provided for reinstatement of benefits to a widow if she married a person who died within one year and was not a fully insured individual; and redesignated former par. (4) as (3), and substituted ''widow or surviving divorced wife'' and ''widow's or surviving divorced wife's'' for ''widow'' and ''widow's'', respectively.

Subsec. (e)(4). Pub. L. 89–97, § 333(a)(1), added par. (4). Former par. (4) redesignated (3).

Subsec. (f)(2). Pub. L. 89–97, §§ 306(c)(5), 334(f), inserted in text preceding subpar. (A) ''(subject to subsection (s) of this section)'' after ''shall'', and added subpar. (C).

Subsec. (f)(3). Pub. L. 89–97, § 333(b)(2), substituted ''Except as provided in paragraph (5), such'' for ''Such''.

Subsec. (f)(4). Pub. L. 89–97, § 306(c)(6), inserted in text following subpar. (B) ''but subject to subsection (s) of this section'' after ''notwithstanding the provisions of paragraph (1) of this subsection''.

Subsec. (f)(4)(A). Pub. L. 89–97, § 308(d)(2)(A), inserted reference to subsec. (b) of this section.

Subsec. (f)(5). Pub. L. 89–97, § 333(b)(1), added par. (5).

Subsec. (g)(1). Pub. L. 89–97, §§ 306(c)(7), 308(d) (3)–(5), inserted ''(subject to subsection (s) of this section)'' after ''shall'' in provisions following subpar. (F); substituted in subpar. (A) ''is not married'' for ''has not remarried''; in subpar. (F), substituted ''surviving divorced mother'' for ''former wife divorced'', incorporated existing provisions in cls. (i) (other than (I) to (III)), (ii), and (iii), and substituted provisions of cl. (i)(I) to (III) for receipt of one-half of support under administrative regulations and substantial contributions pursuant to written agreement or court order for former provision for receipt of one-half of support pursuant to agreements or court order; and substituted ''surviving divorced mother'' for ''former wife divorced'' twice in provisions before subpar. (A) and thrice in provisions following subpar. (F), respectively.

Subsec. (g)(3). Pub. L. 89–97, §§ 306(c)(8), 308(d)(5), (13), inserted ''but subject to subsection (s) of this section'' after ''notwithstanding the provisions of paragraph (1)'' following subpar. (B), substituted ''surviving divorced mother'' for ''former wife divorced'' in two places, and redesignated former par. (4) as (3), respectively. Pub. L. 89–97, § 308(d)(12), repealed former par. (3) which had provided that:

''In the case of any widow or former wife divorced of an individual—

''(A) who marries another individual, and

''(B) whose marriage to the individual referred to in subparagraph (A) is terminated by his death but she is not, and upon filing application therefor in the month in which he died would not be, entitled to benefits for such month on the basis of his wages and self-employment income,

the marriage to the individual referred to in clause (A) shall, for purpose of paragraph (1), be deemed not to have occurred. No benefits shall be payable under this subsection by reason of the preceding sentence for any month prior to whichever of the following is the latest: (i) the month in which the death referred to in subparagraph (B) of the preceding sentence occurs, (ii) the twelfth month before the month in which such widow or former wife divorced files application for purposes of this paragraph or (ii) September 1958.''

Subsec. (g)(4). Pub. L. 89–97, § 308(d)(13), redesignated former par. (4) as (3).

Subsec. (h)(4). Pub. L. 89–97, § 306(c)(9), inserted in text following subpar. (B) ''but subject to subsection (s) of this section'' after ''notwithstanding the provisions of paragraph (1) of this subsection''.

Subsec. (h)(4)(A). Pub. L. 89–97, § 308(d)(2)(A), inserted reference to subsec. (b) of this section.

Subsec. (j)(1). Pub. L. 89–97, § 303(d), inserted ''under this subchapter'' after ''any benefit''.

Subsec. (j)(2). Pub. L. 89–97, § 328(a), provided that an application for monthly benefits filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application and that the application shall be deemed to have been filed in the first month if the applicant is found to satisfy the requirements for entitlement.

Subsec. (k)(2)(B). Pub. L. 89–97, § 333(c)(1), inserted ''(other than an individual to whom subsection (e)(4) or (f)(5) of this section applies)'' after ''Any individual'' and inserted provision limiting to the largest of such benefits any individual who is entitled for any month to more than one widow's or widower's benefits to which subsections (e)(4) or (f)(5) of this section applies.

Subsec. (k)(3). Pub. L. 89–97, § 333(c)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (k)(4). Pub. L. 89–97, § 304(a), added par. (4).

Subsec. (p). Pub. L. 89–97, § 324(a), removed the 2-year limit on the allowed extension during which, for good cause shown, applications or proof may be filed and still be deemed filed within the prescribed period for filing applications or proof.

Subsec. (q). Pub. L. 89–97, § 304(b), substituted ''Reduction of old-age, disability, wife's, husband's, or widow's insurance benefit amounts'' for ''Adjustment of old-age, wife's or husband's insurance benefit amounts in accordance with age of beneficiary'' in heading.

Subsec. (q)(1). Pub. L. 89–97, § 307(b)(1), made provisions preceding subpar. (A) and the ⅝ of 1 percent re-

duction in subpar. (A) applicable to widow's insurance benefit, substituted ''retirement age'' for ''age 65'' in provisions preceding subpar. (A) and subpar. (B)(i) and (ii), substituted ''(6)'' and ''(7)'' for ''(5)'' and ''(6)'' in subpar. (B)(i) and (ii) and ''any month'' for ''any other month'' in subpar. (B)(ii).

Subsec. (q)(2). Pub. L. 89–97, §304(c), added par. (2) and redesignated former par. (2) as (3).

Subsec. (q)(3)(A). Pub. L. 89–97, §§304(c), 307(b)(2), redesignated former par. (2) as (3), and made provisions of subpar. (A) applicable to widow's insurance benefit and inserted ''(in the case of a wife's or husband's insurance benefit) or age 60 (in the case of a widow's insurance benefit)'' after ''age 62'', respectively. Former par. (3) redesignated (4).

Subsec. (q)(3)(B). Pub. L. 89–97, §304(c), (d), redesignated former par. (2) as (3), and substituted ''benefit and is not entitled to a disability insurance benefit'' for ''benefit'' the first time it appeared and inserted in cls. (i) and (ii) ''for such month'' after ''paragraph (1)'', respectively. Former par. (3) redesignated (4).

Subsec. (q)(3)(C). Pub. L. 89–97, §304(c), (e), redesignated former par. (2) as (3), and made provisions of subpar. (C) applicable to widow's insurance benefit, inserted cl. (i), incorporated existing provisions in cl. (ii), and inserted in such cl. (ii) ''for such month'' and ''(before reduction under this subsection)'' after ''disability insurance benefit'', respectively. Former par. (3) redesignated (4).

Subsec. (q)(3)(D), (E). Pub. L. 89–97, §§304(c), 307(b), (3), (4), redesignated former par. (2) as (3), made provisions of subpar. (D) applicable to widow's insurance benefit, and added subpar. (E), respectively. Former par. (3) redesignated (4).

Subsec. (q)(3)(F), (G). Pub. L. 89–97, §304(c), (f), redesignated former par. (2) as (3) and added subpars. (F) and (G), respectively. Former par. (3) redesignated (4).

Subsec. (q)(4). Pub. L. 89–97, §304(c), (g), redesignated former par. (3) as (4) and renumbered in text following subpar. (B) cross references to par. (2) as (3) in three places, and substituted in subpar. (A) ''under paragraph (1) or (3) of this subsection'' for ''under this subsection'', respectively. Former par. (4) redesignated (5).

Subsec. (q)(5)(D). Pub. L. 89–97, §§304(c), 307(b)(5), redesignated former par. (4) as (5) and added subpar. (D), respectively. Former par. (5) redesignated (6).

Subsec. (q)(6). Pub. L. 89–97, §§304(c), 307(b)(6), redesignated former par. (5) as (6) and renumbered in subpar. (A)(ii) cross reference to par. (4) as (5), and made provisions preceding subpar. (A) and provisions of subpar. (A)(i) applicable to widow's insurance benefit and substituted in subpar. (B) ''retirement age'' for ''age 65'', respectively. Former par. (6) redesignated (7).

Subsec. (q)(7). Pub. L. 89–97, §§304(c), (h), 307(b)(7), redesignated former par. (6) as (7) and renumbered in text preceding subpar. (A) cross reference to par. (5) as (6), added subpar. (F), and made provisions preceding subpar. (A) applicable to widow's insurance benefit and added subpars. (D), (E), respectively. Former par. (7), redesignated (8).

Subsec. (q)(8). Pub. L. 89–97, §304(c), (i), redesignated former par. (7) and (8) and renumbered cross reference to par. (2) as (3), and substituted ''(1), (2),'' for ''(1)'', respectively.

Subsec. (q)(9). Pub. L. 89–97, §307(b)(8), added par. (9).

Subsec. (r)(2). Pub. L. 89–97, §304(j), inserted ''(but for subsection (k)(4) of this section)'' after ''eligible''.

Subsec. (s). Pub. L. 89–97, §306(c)(1), added subsec. (s).

Subsec. (t)(9). Pub. L. 89–97, §104(a)(1), added par. (9).

Subsec. (u). Pub. L. 89–97, §104(a)(2), inserted ''in determining whether such individual is entitled to insurance benefits under part A of subchapter XVII of this chapter for any such month,''.

Subsec. (v). Pub. L. 89–97, §319(d), added subsec. (v).

1961—Subsec. (a)(2). Pub. L. 87–64, §102(a), substituted ''has attained age 62'' for ''has attained retirement age (as defined in section 416(a) of this title)''.

Subsec. (b)(1). Pub. L. 87–64, §102(a), (e), (1), (2), substituted ''age 62'' for ''retirement age'' in two places, ''less than one-half of the primary insurance amount of her husband'' for ''less than one-half of an old-age or disability insurance benefit of her husband'', and ''equal to or exceeds one-half of the primary insurance amount of her husband'' for ''equal to or exceeds one-half of an old-age or disability insurance benefit of her husband''.

Subsec. (b)(2). Pub. L. 87–64, §102(e)(3), substituted ''primary insurance amount'' for ''old-age or disability insurance benefit.''

Subsec. (c)(1). Pub. L. 87–64, §102(a), (e), (4), (5), substituted ''has attained age 62'' for ''has attained retirement age'' in cl. (B), ''based on a primary insurance amount which is less than one-half'' for ''each of which is less than one-half'' in cl. (D), and ''based on a primary insurance amount which is equal to or exceeds one-half'' for ''equal to or exceeding one-half'' in closing provisions.

Subsec. (c)(2)(A). Pub. L. 87–64, §102(a), substituted ''attainment of age 62'' for ''attainment of retirement age''.

Subsec. (c)(3). Pub. L. 87–64, §102(e)(6), substituted ''Except as provided in subsection (q) of this section, such'' for ''Such''.

Subsec. (e)(1). Pub. L. 87–64, §§102(a), 104(d)(1), substituted ''has attained age 62'' for ''has attained retirement age'' in subpar. (B), ''attainment of age 62'' for ''attainment of retirement age'' and ''attained age 62'' for ''attained retirement age'' in subpar. (C), and ''82½ percent'' for ''three-fourths'' in subpar. (D) and in closing provisions.

Subsec. (e)(2). Pub. L. 87–64, §104(a), substituted ''82½ percent'' for ''three-fourths''.

Subsec. (f)(1). Pub. L. 87–64, §§102(a), 104(d)(1), substituted ''has attained age 62'' for ''has attained retirement age'' in subpar. (B), and ''82½ percent'' for ''three-fourths'' in subpar. (E) and in closing provisions.

Subsec. (f)(2)(A). Pub. L. 87–64, §102(a), substituted ''attainment of age 62'' for ''attainment of retirement age''.

Subsec. (f)(3). Pub. L. 87–64, §104(b), substituted ''82½ percent'' for ''three-fourths''.

Subsec. (h)(1). Pub. L. 87–64, §§102(a), 104(d)(2), substituted ''has attained age 62'' for ''has attained retirement age'' in subpar. (A), and ''82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case)'' for ''three-fourths of the primary insurance amount of such deceased individual'' in subpar. (D) and in closing provisions.

Subsec. (h)(2). Pub. L. 87–64, §104(c), designated existing provisions as subpar. (A), increased the benefit from three-fourths to 82½ percent of the primary insurance amount, and added subpars. (B) and (C).

Subsec. (j). Pub. L. 87–64, §102(b)(3), extended provisions which formerly authorized waiver of old-age benefits or wife's benefits by a woman to permit waiver of any benefit by any individual.

Subsec. (q). Pub. L. 87–64, §102(b)(1), among other changes, authorized adjustment of the old-age insurance benefits for men and of the husband's insurance benefits for months prior to the month in which the individual attains age 65, simplified the formula for reducing benefits, and, in cases where an individual is entitled to a reduced benefit and such benefit is increased by reason of an increase in the primary insurance amount, required separate computation of the increase for and after the first month for which such increase is effective.

Subsec. (r). Pub. L. 87–64, §102(b)(1), extended application of the subsection to men, and provided in cases where an individual is entitled to a disability insurance benefit for the same month for which an application for a reduced wife's or husband's insurance benefit is effective, that the individual will be deemed to have filed an application for old-age insurance benefit in the first subsequent month for which the individual is not entitled to a disability insurance benefit.

Subsec. (s). Pub. L. 87–64, §102(b)(2)(A), repealed subsec. (s) which related to female disability insurance beneficiaries.

1960—Subsec. (d)(1). Pub. L. 86–778, §§ 201(a), (b), 205(a), 403(d), among other changes, struck out ''after 1939'' after ''fully or currently insured individual'' in opening clause, substituted ''a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits'' for ''a period of disability which did not end prior to the month in which he became entitled to old-age or disability insurance benefits or (if he has died) prior to the month in which he died, at the beginning of such period or at the time he became entitled to such benefits or died)'' in subpar. (C), and inserted provisions making subpar. (C)(1) inapplicable, in the case of an individual entitled to disability insurance benefits, to a child of such individual unless he is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual) or was legally adopted by such individual before the end of the 24–month period beginning with the month after the month in which such individual most recently became entitled to disability insurance benefits, and substituted provisions authorizing the payment of benefits until the month preceding the third month following the month in which a child ceases to be under a disability (as so defined) after the month in which he attains age 18 for provisions which authorized payment of benefits until the child ceases to be under a disability (as so defined) on or after the day on which he attains age 18.

Subsec. (d)(2). Pub. L. 86–778, § 301(a), struck out provisions which required each child's insurance benefit, if there is more than one child entitled to benefits on the basis of an individual's wages and self-employment income, to be equal to the sum of (A) one-half of the primary insurance amount of the individual, and (B) one-fourth of the primary insurance amount divided by the number of such children.

Subsec. (d)(3). Pub. L. 86–778, §§ 202(a), 208(d), inserted provisions requiring that for purposes of such paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 416(h)(2)(B) of this title, shall, if such individual is the child's father, be deemed to be the legitimate child of such individual, and struck out subpar. (C) which related to a child living with and receiving more than one-half of his support from his stepfather.

Subsec. (e)(1). Pub. L. 86–778, § 205(a), struck out ''after 1939'' after ''died a fully insured individual'' in opening clause.

Subsec. (f)(1). Pub. L. 86–778, § 205(b), struck out ''after August 1950'' after ''died a fully and currently insured individual'' in opening clause.

Subsecs. (g)(1), (h)(1). Pub. L. 86–778, § 205(a), struck out ''after 1939'' after ''died a fully or currently insured individual'' in opening clause.

Subsec. (i). Pub. L. 86–778, §§ 103(a), (j)(2)(C), 203(a), amended second and third sentences to require payment to the funeral home to the extent of the unpaid expenses if all or part of the burial expenses remain unpaid, and to prescribe the manner of payment of any balance that may remain after the funeral home and the persons equitably entitled thereto have received payment, and substituted ''the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa'' for ''Puerto Rico, or the Virgin Islands'', ''section 410(*l*)(1) of this title'' for ''section 410(m)(1) of this title'', and ''is returned to any State'' for ''is returned to any of such States, or the District of Columbia''.

Pub. L. 86–624 substituted ''fifty States'' for ''forty-nine States''.

Subsec. (n). Pub. L. 86–778, § 211(i), substituted ''Section 403(b), (c), and (d) of this title'' for ''Section 403 (b) and (c) of this title'' in last sentence of cl. (1).

Subsec. (q)(5). Pub. L. 86–778, § 211(j), substituted ''under section 403(b) of this title or paragraph (1) of section 403(c) of this title'' for ''under paragraph (1) or (2) of section 403(b) of this title'' in cl. (A), and ''section 403(b), under section 403(c)(1), under section 403(d)(1), or under section 422(b) of this title'' for ''paragraph (1) or (2) of section 403(b) of this title, under section 403(c) of this title, or under section 422(b) of this title'' in cl. (B).

Subsec. (q)(6). Pub. L. 86–778, § 211(k), substituted ''section 403(b), under section 403(c)(1), under section 403(d)(1), or under section 422(b) of this title'' for ''section 403(b) (1) or (2), under section 403(c), or under section 422(b) of this title'' in cl. (A), and ''under section 403(b) of this title or paragraph (1) of section 403(c) of this title'' for ''under paragraph (1) or (2) of section 403(b) of this title'' in cl. (D).

Subsec. (t)(4)(D). Pub. L. 86–778, § 103(j)(2)(D), substituted ''section 410(*l*)(2)'' for ''section 410(m)(2)'', ''section 410(*l*)(3)'' for ''section 410(m)(3)'', and ''section 410(m)'' for ''section 410(n)'', wherever appearing.

Subsec. (t)(7). Pub. L. 86–778, § 211(*l*), substituted ''Subsections (b), (c), and (d) of section 403 of this title'' for ''Subsections (b) and (c) of section 403 of this title''.

1959—Subsec. (i). Pub. L. 86–70 substituted ''forty-nine States'' for ''forty-eight States''.

1958—Subsec. (b). Pub. L. 85–840, § 205(b), substituted ''old-age or disability insurance'' for ''old-age insurance'' in seven places, and inserted provisions terminating the wife's insurance benefit the month preceding the first month in which her husband is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

Subsec. (c)(1). Pub. L. 85–840, § 205(c), substituted ''old-age or disability insurance'' for ''old-age insurance'' wherever appearing, inserted provisions in subpar. (C) entitling the husband to an insurance benefit if he was receiving at least one-half of his support from the individual if she had a period of disability which did not end prior to the month in which she became entitled to old-age or disability insurance benefits, at the beginning of such period or at the time she became entitled to such benefits provided he filed proof of such support within two years after the month in which she filed application with respect to such period of disability or after the month in which she became entitled to such benefits, and inserted provisions terminating the husband's insurance benefit the month preceding the first month in which his wife is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

Subsec. (c)(2), (3). Pub. L. 85–840, § 301(a)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (d)(1). Pub. L. 85–840, § 205(d), inserted provisions entitling the child of an individual entitled to disability insurance benefits to insurance benefits if the child was dependent upon such individual if such individual had a period of disability which did not end prior to the month in which he became entitled to old-age or disability insurance benefits or (if he has died) prior to the month in which he died, at the beginning of such period or at the time he became entitled to such benefits or died, and providing that the benefits to a child of a disability insurance beneficiary shall cease with the month before the first month for which the individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month.

Subsec. (d)(3) to (5). Pub. L. 85–840, § 306(a), struck out ''who has not attained the age of eighteen'' after ''A child'' wherever appearing.

Subsec. (d)(6). Pub. L. 85–840, § 307(a), added par. (6), and Pub. L. 85–840, § 306(a), repealed former par. (6), which related to dependency of a child who has attained the age of eighteen and who is under a disability which began before he attained the age of eighteen.

Subsec. (e)(3)(B). Pub. L. 85–840, § 301(b)(1), substituted ''which occurs within one year after such marriage and he did not die a fully insured individual'' for ''but she is not his widow (as defined in section 416(c) of this title)''.

Subsec. (e)(4). Pub. L. 85–840, § 307(b), added par. (4).

Subsec. (f)(1)(D). Pub. L. 85–840, § 205(e), inserted provisions entitling a widower to an insurance benefit if he was receiving at least one-half of his support from the individual, if the individual had a period of disability which did not end prior to the month in which she died,

at the time such period began, or at the time of her death, or at the time she became entitled to old-age or disability insurance benefits, and he filed proof of such support within two years after the month in which she filed application with respect to the period of disability or two years after the date of her entitlement to old-age or disability insurance benefits or her death.

Subsec. (f)(2), (3). Pub. L. 85–840, §301(c)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (f)(4). Pub. L. 85–840, §307(c), added par. (4).

Subsec. (g)(1)(F). Pub. L. 85–840, §205(f), inserted provisions entitling a former wife divorced to an insurance benefit, if she was receiving at least one-half of her support from an individual, if the individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of his death.

Subsec. (g)(3). Pub. L. 85–840, §303(a), added par. (3). Another par. (3), which was added by Pub. L. 85–798, was repealed by Pub. L. 85–840, §303(b), effective with respect to benefits payable for any month following August 1958.

Subsec. (g)(4). Pub. L. 85–840, §307(d), added par. (4).

Subsec. (h)(1). Pub. L. 85–840, §304(a)(1), struck out from opening clause provisions which prevented payment of a parent's benefit if the deceased individual left a widow who met the conditions in subsec. (e)(1)(D) of this section, a widower who met the conditions in subsec. (f)(1)(D) of this section, an unmarried child under the age of eighteen deemed dependent on such individual under subsec. (d)(3), (4), or (5) of this section, or an unmarried child who had attained the age of eighteen and was under a disability which began before he attained such age and who is deemed dependent on such individual under subsec. (d)(6) of this section.

Subsec. (h)(1)(B). Pub. L. 85–840, §205(g), inserted provisions entitling a parent to an insurance benefit if the parent was receiving at least one-half of his support from the individual, if the individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of such death, and the parent filed proof of such support within two years after the month in which the individual filed application with respect to such period of disability or two years after the date of such death.

Subsec. (h)(4). Pub. L. 85–840, §307(e), added par. (4).

Subsec. (i). Pub. L. 85–840, §305(a), required a widow or widower to be living in the same household with the deceased at the time of death in order to receive a lump-sum death payment.

Subsec. (k). Pub. L. 85–840, §205(h), substituted ''old-age or disability insurance'' for ''old-age insurance'' wherever appearing.

Subsec. (m). Pub. L. 85–840, §101(e), substituted ''less than the first figure in column IV of the table in section 415(a) of this title'' for ''less than $30'', and ''increased to the first figure in column IV of the table in section 415(a) of this title'' for ''increased to $30''.

Subsec. (*o*). Pub. L. 85–857 substituted ''described in section 3005 of Title 38'' for ''prescribed under section 601 of the Servicemen's and Veterans' Survivor Benefits Act''.

Subsec. (q)(5). Pub. L. 85–840, §205(i)(1), (2), inserted reference to section 422(b) of this title in subpar. (B), added subpar. (D), and substituted ''clauses (A), (B), (C), and (D)'' for ''clauses (A), (B), and (C)'' in closing provisions.

Subsec. (q)(6). Pub. L. 85–840, §205(i)(3), (4), inserted reference to section 422(b) of this title in subpar. (A), added subpar. (C), redesignated former subpar. (C) as (D), and substituted ''clauses (A), (B), (C), and (D))'' for ''clauses (A), (B), and (C)'' in closing provisions.

Subsec. (t)(4)(E). Pub. L. 85–927 added par. (E).

1957—Subsec. (b)(1). Pub. L. 85–238, §3(a), redesignated subpar. (D) as (C), and repealed former subpar. (C) which required the wife to be living with her husband at the time the application for benefits was filed.

Subsec. (c)(1). Pub. L. 85–238, §3(b), redesignated subpars. (D) and (E) as (C) and (D), respectively, and repealed former subpar. (C) which required the husband to be living with his wife at the time the application for benefits was filed.

Subsec. (e)(1). Pub. L. 85–238, §3(c), redesignated subpar. (E) as (D), and repealed former subpar. (D) which required the widow to be living with her husband at the time of his death.

Subsec. (f)(1). Pub. L. 85–238, §3(d), redesignated subpars. (E) and (F) as (D) and (E), respectively, and repealed former subpar. (D) which required the widower to be living with his wife at the time of her death.

Subsec. (g)(1)(F). Pub. L. 85–238, §3(e), struck out provisions which required the widow to be living with her husband at the time of his death.

Subsec. (h)(1). Pub. L. 85–238, §3(f), struck out references to subpar. (E) of subsec. (e)(1) of this section and to subpar. (F) of subsec. (f)(1) of this section.

Subsec. (p)(1). Pub. L. 85–238, §3(g), substituted ''subparagraph (C) of subsection (c)(1)'' for ''subparagraph (D) of subsection (c)(1)'' and ''subparagraph (D) of subsection (f)(1)'' for ''subparagraph (E) of subsection (f)(1)''.

Subsec. (t)(4)(D). Pub. L. 85–238, §1, added subpar. (D).

1956—Subsec. (a). Act Aug. 1, 1956, ch. 836, §102(d)(1), inserted ''Except as provided in subsection (q) of this section''.

Subsec. (a)(3). Act Aug. 1, 1956, ch. 836, §103(c)(1), included an individual entitled to disability insurance benefits for the month preceding the month in which he attained the age of 65.

Subsec. (b)(1). Act Aug. 1, 1956, ch. 836, §102(d)(2), (3), substituted ''old-age insurance benefits based on a primary insurance amount which'' for ''old-age insurance benefits each of which'' in cl. (D), and ''old-age insurance benefit based on a primary insurance amount which is equal to or exceeds'' for ''old-age insurance benefit equal to or exceeding'' in provisions following cl. (D).

Subsec. (b)(2). Act Aug. 1, 1956, ch. 836, §102(d)(4), inserted ''Except as provided in subsection (q) of this section''.

Subsec. (c)(1). Act. Aug. 1, 1956, ch. 836, §102(d)(5), (6), substituted ''the primary insurance amount of his wife'' for ''an old-age insurance benefit of his wife'' in cl. (E), and in provisions following cl. (E).

Subsec. (c)(2). Act Aug. 1, 1956, ch. 836, §102(d)(7), substituted ''primary insurance amount'' for ''old-age insurance benefit''.

Subsec. (d)(1). Act Aug. 1, 1956, ch. 836, §101(a), authorized child's insurance benefit for children, who at the time of filing application, are under a disability which began before they attained the age of 18, and permitted payment of such benefit until such disability ceases.

Subsec. (d)(2). Act Aug. 1, 1956, ch. 836, §102(d)(7), substituted ''primary insurance amount'' for ''old-age insurance benefit''.

Subsec. (d)(3) to (5). Act Aug. 1, 1956, ch. 836, §101(b)(1), substituted ''A child who has not attained the age of eighteen'' for ''A child'' wherever appearing in such paragraphs.

Subsec. (d)(6). Act Aug. 1, 1956, ch. 836, §101(b)(2), added par. (6).

Subsec. (e)(3). Act Aug. 1, 1956, ch. 836, §113, added par. (3).

Subsec. (h)(1). Act Aug. 1, 1956, ch. 836, §101(c), precluded payment of parent's benefit if an individual dies leaving an unmarried child over 18 who is under a disability which began before the age of 18 and who is deemed dependent on such individual.

Subsec. (i). Act Aug. 1, 1956, ch. 837, §403(a), substituted ''January 1, 1957'' for ''April 1956'', and inserted provisions authorizing payment of lump-sum death payment in the case of any individual who died outside the United States and the District of Columbia after December 1956 while performing service, as a member of a uniformed service, to which the provisions of section 410(m)(1) of this title are applicable.

Subsec. (j)(3). Act Aug. 1, 1956, ch. 836, §102(d)(8), added par. (3).

Subsec. (k)(2)(B). Act Aug. 1, 1956, ch. 836, §103(c)(2), inserted reference to section 423 of this title.

Subsec. (k)(3). Act Aug. 1, 1956, ch. 836, § 102(d)(9), inserted provisions requiring reduction under subsection (q) of this section, and provided that the reduction should be not below zero.

Subsec. (m). Act Aug. 1, 1956, ch. 836, § 102(d)(10), inserted references to subsection (q) of this section.

Subsec. (n)(1)(A). Act Aug. 1, 1956, ch. 836, § 103(c)(3), inserted reference to section 423 of this title.

Subsec. (*o*). Act Aug. 1, 1956, ch. 837, § 407, added subsec. (*o*).

Subsec. (p). Act Aug. 1, 1956, ch. 836, § 114(a), added subsec. (p).

Subsecs. (q) to (s). Act Aug. 1, 1956, ch. 836, § 102(c), added subsecs. (q) to (s).

Subsecs. (t), (u). Act Aug. 1, 1956, ch. 836, §§ 118(a), 121(a), added subsecs. (t) and (u), respectively.

1955—Subsec. (i). Act Aug. 9, 1955, made subsection applicable to cases of deaths occurring before April 1956.

1954—Subsec. (e)(1)(C). Act Sept. 1, 1954, § 110(a), provided that applications for widow's insurance benefits would not be required if the widow was entitled to a mother's insurance benefit in the month prior to the month in which she attained retirement age.

Subsec. (g)(1)(D). Act Sept. 1, 1954, § 110(b), provided that applications for mother's insurance benefits would not be required if the widow was entitled to a wife's insurance benefit for the month preceding the month in which the insured individual died.

Subsec. (i). Act Sept. 1, 1954, §§ 102(i)(2), 110(c), inserted '', or an amount equal to $255, whichever is the smaller'' after ''primary insurance amount.'', and provided that an application for a lump-sum death payment would not be required from an individual who was entitled to wife's or husband's insurance benefits for the month preceding the month in which the insured individual died.

Subsec. (j)(1). Act Sept. 1, 1954, § 105(a), substituted ''twelfth'' for ''sixth''.

Subsecs. (m), (n). Act Sept. 1, 1954, §§ 102(i)(1), 107, added subsecs. (m) and (n), respectively.

1953—Subsec. (i). Act Aug. 14, 1953, made subsec. (i) applicable to cases of deaths occurring before July 1955.

1950—Subsec. (a). Act Aug. 28, 1950, changed the name of the benefit provided by this subsection from ''primary insurance benefit'' to ''old-age insurance benefit'', and continued the conditions under which an individual becomes entitled to the benefits.

Subsec. (b). Act Aug. 28, 1950, continued the conditions required for the wife to be entitled to benefits.

Subsec. (c). Act Aug. 28, 1950, provided benefits for the dependent husband of a female old-age insurance beneficiary who was currently insured at the time of her entitlement to the old-age insurance benefit.

Subsec. (d). Act Aug. 28, 1950, increased the total amount of the family benefits in a survivor family in which there is at least one entitled child by one-fourth of the worker's old-age benefit and restates the circumstances under which a child is deemed dependent upon an individual.

Subsec. (e). Act Aug. 28, 1950, permitted a wife entitled to wife's insurance benefits to become entitled to widow's insurance benefits upon the husband's death without filing a new application.

Subsec. (f). Act Aug. 28, 1950, provided benefits for the dependent widower of a woman who is fully and currently insured at the time of her death.

Subsec. (g). Act Aug. 28, 1950, changed title of widow's current insurance benefits to mother's insurance benefits and provided for payment of such benefits to the divorced wife of a deceased insured worker if she had been receiving at least half her support from the worker, and if she is caring for her son, daughter, or legally adopted child who is receiving benefits on the worker's wage record.

Subsec. (h). Act Aug. 28, 1950, changed the requirement that a parent must have been chiefly dependent upon and supported by the wage earner to the requirement that the parent only need have been receiving one-half his support in order for the parent to be found a dependent.

Subsec. (i). Act Aug. 28, 1950, limited the amount of the lump-sum death payment to three times the worker's primary insurance amount instead of six times the amount.

Subsec. (j). Act Aug. 28, 1950, increased from 3 to 6 the number of months for which benefits may be paid retroactively to individuals who failed to file their applications as soon as they were otherwise eligible.

Subsecs. (k), (*l*). Act Aug. 28, 1950, added subsecs. (k) and (*l*).

1946—Subsec. (c). Act Aug. 10, 1946, § 402, changed par. (1) to prevent termination of benefits on adoption by a stepparent, grandparent, aunt or uncle and changed par. (3)(C) to omit qualification as to the time of such individual's death and to require the child to be chiefly supported by the stepfather.

Subsec. (f)(1). Act Aug. 10, 1946, § 403(a), provided that benefit payments to parents are prevented only if the individual leaves a widow or child who could become entitled to benefits and required parents to be chiefly instead of wholly dependent.

Subsec. (g). Act Aug. 10, 1946, § 404(a), required that a widow or widower must have been living with deceased at time of death to be entitled to a lump sum payment and provided that if there was no such spouse, the payment will be made to the person or persons equitably entitled thereto in the proportion and to the extent that he or they have paid the burial expenses.

Subsec. (h). Act Aug. 10, 1946, § 405(a), extended provision for payment of benefits retroactively for three months to the primary beneficiary and provided that retroactive benefits shall be reduced so as not to render erroneous any benefit previously paid.

1939—Act Aug. 10, 1939, amended section generally.

CHANGE OF NAME

Reference to Administrator of Veterans' Affairs deemed to refer to Secretary of Veterans Affairs pursuant to section 10 of Pub. L. 100–527, set out as a Department of Veterans Affairs Act note under section 301 of Title 38, Veterans' Benefits.

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 4(b) of Pub. L. 103–387 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits for months commencing after 90 days after the date of the enactment of this Act [Oct. 22, 1994].''

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 308(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply (notwithstanding section 215(f) of the Social Security Act [section 415(f) of this title]) with respect to benefits payable for months after December 1994.''

Section 321(b)(1) of Pub. L. 103–296 provided that the amendment made by that section is effective as if included in section 603(b)(5)(A) of Pub. L. 101–649.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101–649 not applicable to deportation proceedings for which notice has been provided to the alien before Mar. 1, 1991, see section 602(d) of Pub. L. 101–649, set out as a note under section 1251 of Title 8, Aliens and Nationality.

Section 5103(e) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 416, 423, 426, and 1383c of this title] (other than paragraphs (1) and (2)(C) of subsection (c) [amending sections 426 and 1383c of this title]) shall apply with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after January 1, 1991, or are pending on such date. The amendments made by subsection (c)(1) [amending section 1383c of this title] shall apply with respect to medical assistance provided after December 1990. The amendments made by sub-

section (c)(2)(C) [amending section 426 of this title] shall apply with respect to items and services furnished after December 1990.

''(2) APPLICATION REQUIREMENTS FOR CERTAIN INDIVIDUALS ON BENEFIT ROLLS.—In the case of any individual who—

''(A) is entitled to disability insurance benefits under section 223 of the Social Security Act [section 423 of this title] for December 1990 or is eligible for supplemental security income benefits under title XVI of such Act [subchapter XVI of this chapter], or State supplementary payments of the type referred to in section 1616(a) of such Act [section 1382e(a) of this title] (or payments of the type described in section 212(a) of Public Law 93–66 [set out as a note under section 1382 of this title]) which are paid by the Secretary under an agreement referred to in such section 1616(a) (or in section 212(b) of Public Law 93–66 [set out as a note under section 1382 of this title]), for January 1991,

''(B) applied for widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act during 1990 [subsec. (e) or (f) of this section], and

''(C) is not entitled to such benefits under such subsection (e) or (f) for any month on the basis of such application by reason of the definition of disability under section 223(d)(2)(B) of the Social Security Act (as in effect immediately before the date of the enactment of this Act [Nov. 5, 1990]), and would have been so entitled for such month on the basis of such application if the amendments made by this section had been applied with respect to such application,

for purposes of determining such individual's entitlement to such benefits under subsection (e) or (f) of section 202 of the Social Security Act for months after December 1990, the requirement of paragraph (1)(C)(i) of such subsection shall be deemed to have been met.''

Section 5116(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply with respect to applications for benefits filed on or after January 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10203(b) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply—

''(1) in the case of any individual's old-age insurance benefit referred to in section 202(q)(3)(E) of the Social Security Act [subsec. (q)(3)(E) of this section] (as in effect before the amendments made by this section), only if such individual attains age 62 on or after January 1, 1990, and

''(2) in the case of any individual's disability insurance benefit referred to in section 202(q)(3)(F) or (G) of such Act (as so in effect), only if such individual both attains age 62 and becomes disabled on or after such date.''

Section 10301(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits payable for months after December 1989, but only on the basis of applications filed on or after January 1, 1990.''

Section 10302(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to misinformation furnished after December 1982 and to benefits for months after December 1982.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8004(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply only in the case of deportations occurring, and final orders of deportation issued, on or after the date of enactment of this Act [Nov. 10, 1988], and only to benefits for months beginning (and deaths occurring) on or after such date.''

Amendment by section 8007(b) of Pub. L. 100–647 applicable to benefits paid for (and items and services furnished in) months after December 1988, see section 8007(d) of Pub. L. 100–647, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Section 8010(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to benefits payable under section 202(e) or section 202(f) of the Social Security Act [subsec. (e) or (f) of this section] on the basis of the wages and self-employment income of an individual who dies after the month in which this Act is enacted [Nov. 10, 1988].''

Section 8014(c) of Pub. L. 100–647 provided that: ''The preceding provisions of this section (including the amendments made by subsection (a)) [amending this section and enacting provisions set out below] shall apply as if they had been included or reflected in the provisions of section 9007 of the Omnibus Budget Reconciliation Act of 1987 (101 Stat. 1330–289) [Pub. L. 100–203, amending this section and enacting provisions set out below] at the time of its enactment [Dec. 22, 1987].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9007(f) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to benefits for months after December 1987; except that nothing in such amendments shall affect any exemption (from the application of the pension offset provisions contained in subsection (b)(4), (c)(2), (e)(7), (f)(2), or (g)(4) of section 202 of the Social Security Act [this section]) which any individual may have by reason of subsection (g) or (h) of section 334 of the Social Security Amendments of 1977 [section 334(g), (h) of Pub. L. 95–216, set out as notes below].''

Section 9010(f) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 416, 423, and 426 of this title] shall take effect January 1, 1988, and shall apply with respect to—

''(1) individuals who are entitled to benefits which are payable under subsection (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 202 of the Social Security Act [this section] or subsection (a)(1) of section 223 of such Act [section 423 of this title] for any month after December 1987, and

''(2) individuals who are entitled to benefits which are payable under any provision referred to in paragraph (1) for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by this section has not elapsed as of January 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1883(f) of Pub. L. 99–514 provided that: ''Except as otherwise provided in this section, the amendments made by this section [amending this section and sections 410, 411, 415, 418, 421, 423, 602, 657, 658, 664, 674, 1301, 1320b–6, 1382a, 1383, and 1397b of this title and sections 1402 and 3121 of Title 26, Internal Revenue Code, repealing section 1397f of this title, enacting provisions set out as notes under sections 602 and 678 of this title, and amending provisions set out as a note under section 410 of this title] shall take effect on the date of the enactment of this Act [Oct. 22, 1986].''

Section 12104(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for which application is filed after the date of the enactment of this Act [Apr. 7, 1986].''

Section 12107(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 423 of this title] are effective December 1, 1980, and shall apply with respect to any individual who is under a disability (as defined in section 223(d) of the Social Security Act [section 423(d) of this title]) on or after that date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by sections 2661(b)–(f) and 2662(c)(1) of Pub. L. 98–369 effective as though included in the enact-

ment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(2) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 111(a)(8) of Pub. L. 98–21 provided that: ''The amendments made by this subsection [amending this section and sections 403, 415, and 430 of this title] shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act [section 415(i) of this title] for years after 1982.''

Section 114(c)(2) of Pub. L. 98–21 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to increment months in calendar years after 1983.''

Section 131(d) of Pub. L. 98–21 provided that:

''(1) The amendments made by this section [amending this section and section 426 of this title] shall be effective with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1983.

''(2) In the case of an individual who was not entitled to a monthly benefit of the type involved under title II of such Act for December 1983, no benefit shall be paid under such title by reason of such amendments unless proper application for such benefit is made.''

Section 132(c)(1) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to monthly insurance benefits for months after December 1984, but only on the basis of applications filed on or after January 1, 1985.''

Section 133(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly insurance benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under section 202(e) or (f) of the Social Security Act [subsec. (e) or (f) of this section] (other than making application for such benefits) after December 1984.''

Section 134(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits for months after December 1983.''

Section 301(a)(5) of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title VI, § 2662(d), July 18, 1984, 98 Stat. 1159, provided that the amendment made by that section is effective with respect to monthly insurance benefits for months after December 1984 (but only on the basis of applications filed on or after January 1, 1985).

Section 307(b) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [April 1983], but only in cases in which the 'last month' referred to in the provision amended is a month after the month in which this Act is enacted.''

Section 310 of title III of Pub. L. 98–21 provided that:

''(a) Except as otherwise specifically provided in this title, the amendments made by this part [part A (§§ 301–310) of title III of Pub. L. 98–21, amending this section and sections 403, 405, 416, 417, 422, 423, 425, 426, 427, and 428 of this title] apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [April 1983].

''(b) Nothing in any amendment made by this part shall be construed as affecting the validity of any benefit which was paid, prior to the effective date of such amendment, as a result of a judicial determination.''

Section 334(b) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to survivors whose applications for monthly benefits are filed after the second month following the month in which this Act is enacted [April 1983].''

Section 337(b) of Pub. L. 98–21, as amended by Pub. L. 98–617, § 2(a)(1), Nov. 8, 1984, 98 Stat. 3294, provided that: ''The amendments made by subsection (a) of this section [amending this section] shall apply only with respect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months after June 1983.''

[Section 2(a)(2) of Pub. L. 98–617 provided that: ''The amendments made by this subsection [amending section 337(b) of Pub. L. 98–21, set out above] shall apply to benefits payable under title II of the Social Security Act [this subchapter] for months beginning after the month of enactment of this Act [November 1984].'']

Section 339(c) of Pub. L. 98–21 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 423 of this title] shall apply with respect to monthly benefits payable for months beginning on or after the date of enactment of this Act [Apr. 20, 1983].''

Section 340(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section] shall apply with respect to any individual who initially becomes eligible for benefits under section 202 or 223 [this section or section 423 of this title] after December 31, 1984.''

Section 7(d) of Pub. L. 97–455 provided that: ''The amendments made by subsections (a) [enacting and amending provisions set out as notes under this section] and (c) [amending this section] of this section shall be effective with respect to monthly insurance benefits for months after November 1982.''

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by section 2201(b)(10), (11), (d)(1), (2) of Pub. L. 97–35 and amendment by section 2(e) of Pub. L. 97–123 applicable with respect to benefits for months after December 1981, and amendment by section 2201(f) of Pub. L. 97–35 applicable with respect to deaths occurring after December 1981, with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 415 of this title.

Section 2202(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section and section 416 of this title] shall apply only with respect to deaths occurring after August 1981.''

Section 2203(f)(1), (2) of Pub. L. 97–35 provided that:

''(1) The amendments made by subsections (a), (b), and (c) [amending this section and section 416 of this title] of this section shall apply only to monthly insurance benefits payable to individuals who attain age 62 after August 1981.

''(2) The amendments made by subsection (d) of this section [amending this section and section 416 of this title] shall apply to monthly insurance benefits for months after August 1981, and only in the case of individuals who were not entitled to such insurance benefits for August 1981 or any preceding month.''

Section 2205(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to wife's and mother's insurance benefits for months after the month in which this Act is enacted [August 1981], except that, in the case of an individual who is entitled to such a benefit (on the basis of having a child in her care) for the month in which this Act is enacted [August 1981], such amendments shall not take effect until the first day of the first month which begins 2 years or more after the date of the enactment of this Act [Aug. 13, 1981].''

Section 2206(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 403 and 415 of this title] shall apply only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981.''

Section 2210(b) of Pub. L. 97–35 provided that: ''Except as provided in subsection (c) [section 2210(c) of Pub. L.

97–35, set out below], the amendments made by subsection (a) [amending this section] shall apply to child's insurance benefits under section 202(d) of the Social Security Act [subsec. (d) of this section] for months after July 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 1011(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to applications filed on or after the first day of the first month which begins 60 days or more after the date of the enactment of this Act [Dec. 5, 1980].''

Section 5(d) of Pub. L. 96–473 provided that: ''The amendments made by this section [amending this section and sections 416 and 423 of this title] shall be effective with respect to benefits payable for months beginning on or after October 1, 1980.''

Section 303(d) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and sections 416, 422, 423, 1382, and 1382c of this title] shall become effective on the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980], and shall apply with respect to any individual whose disability has not been determined to have ceased prior to such first day.''

Section 306(d) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and sections 416 and 423 of this title] shall apply to applications filed after the month in which this Act is enacted [June 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 206 of title II of Pub. L. 95–216 provided that: ''The amendments made by the provisions of this title other than sections 201(d), 204, and 205(a) [amending this section and sections 403, 415, 417, 424a, and 1395r of this title] shall be effective with respect to monthly benefits under title II of the Social Security Act [this subchapter] payable for months after December 1978 and with respect to lump-sum death payments with respect to deaths occurring after such month. The amendments made by section 201(d) [amending section 415 of this title] shall be effective with respect to monthly benefits of an individual who becomes eligible for an old-age or disability insurance benefit, or dies, after December 1977. The amendments made by section 204 [amending this section and section 403 of this title] shall be effective with respect to monthly benefits for months after May 1978. The amendment made by section 205(a) [amending this section] shall be effective with respect to monthly benefits payable for months after December 1978 based on the wages and self-employment income of individuals who die after December 1978.''

Section 331(d) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to monthly benefits payable for months after December 1977.''

Section 332(b) of Pub. L. 95–216 provided that: ''The amendments made by subsection (a) [amending this section and section 426 of this title] shall be effective with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] to which an individual becomes entitled on the basis of an application filed on or after January 1, 1978.''

Section 334(f) of Pub. L. 95–216 as amended by section 7(a)(2) of Pub. L. 97–455, provided that: ''Subject to subsections (g) and (h) [section 334(g) and (h) of Pub. L. 95–216, set out as notes below], the amendments made by this section [amending this section and section 426 of this title and enacting provisions set out as notes under this section] shall apply with respect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months beginning with the month in which this Act is enacted [December 1977], on the basis of applications filed in or after the month in which this Act is enacted.''

Section 336(c)(1) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1978, and, in the case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979.''

Section 337(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1978, and, in the case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979.''

Section 353(f)(1) of Pub. L. 95–216 provided that the amendment made by that section is effective with respect to convictions after Dec. 31, 1977.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 603 of Pub. L. 93–445 provided that: ''The provision of title II of this Act [set out as a note under section 231 of Title 45, Railroads] and the amendments made by title III and title IV of this Act [amending this section and sections 405, 410, 416, 426, 1395s, 1395u, 1395v, 1395gg, and 1395kk of this title and sections 352, 354, 360, 361, and 362 of Title 45] shall become effective on January 1, 1975.''

EFFECTIVE DATE OF 1973 AMENDMENT

Section 240(b) of Pub. L. 93–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [July 1973] on the basis of applications for such benefits filed in or after the month in which this Act is enacted.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 102(i) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 403 of this title and enacting provisions set out as notes under this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972.''

Section 103(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall be applicable with respect to old-age insurance benefits payable under title II of the Social Security Act [this subchapter] for months beginning after 1972.''

Section 107(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 403, 422, and 425 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972, except that in the case of an individual who was not entitled to a monthly benefit under title II of such Act for December 1972 such amendments shall apply only on the basis of an application filed in or after the month in which this Act is enacted [October 1972].''

Section 108(f) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after December 1972 except that in the case of an individual who was not entitled to a monthly benefit under such section 202 for December 1972 such amendments shall apply only on the basis of an application filed after September 30, 1972.''

Section 109(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972.''

Section 110(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972.''

Section 111(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1967 on the basis of an application filed in or after the month in which this Act is enacted [October 1972], except that such amendments shall not apply with respect to benefits for any month before the month in which this Act is enacted unless such application is filed before the close of the sixth month after the month in which this Act is enacted.''

Section 112(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months beginning with the month in which this Act is enacted [October 1972].''

Section 113(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972, but only on the basis of applications filed on or after the date of the enactment of this Act [Oct. 30, 1972].''

Section 114(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972 on the basis of applications filed on or after the date of enactment of this Act [Oct. 30, 1972].''

Amendment by section 116(b), (c) of Pub. L. 92–603 effective with respect to applications for widow's and widower's insurance benefits based on disability under this section filed in or after October 1972 or before October 1972 under specified conditions, see section 116(e) of Pub. L. 92–603, set out as a note under section 423 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 2 of Pub. L. 92–223 provided that: ''The amendments made by the first section of this Act [amending this section] shall be effective only in the case of lump-sum death payments under title II of the Social Security Act [this subchapter] made with respect to deaths which occur after December 31, 1970.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 1004(d) of Pub. L. 91–172 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1969.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 103(e) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a), (b), (c), and (d) [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968.''

Section 104(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and sections 403, 416, 422, and 425 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after the month in which this Act is enacted [January 1968].''

Section 112(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of applications filed after the date of enactment of this Act [Jan. 2, 1968].''

Section 151(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and section 228e of Title 45, Railroads] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] (and annuities accruing under the Railroad Retirement Act of 1937 [section 228a et seq. of Title 45]) for months after January 1968, but only on the basis of applications filed in or after the month in which this Act is enacted [January 1968].''

Section 157(d) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of applications filed in or after the month in which this Act is enacted [January 1968].''

Amendment by section 158(c)(1), (2) of Pub. L. 90–248, applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

Section 162(a)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to six-month periods (within the meaning of section 202(t)(1)(A) of the Social Security Act [subsec. (t)(1)(A) of this section]) which begin after the date of the enactment of this Act [Jan. 2, 1968].''

Section 162(b)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months beginning after June 30, 1968.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 303(d) of Pub. L. 89–97 effective with respect to applications for disability insurance benefits under section 423 of this title, and for disability determinations under section 416(i) of this title, filed in or after July 1965 or before July 1965, if the applicant has not died before such month and notice of final administrative decision has not been given to the applicant before such month, see section 303(f)(1), of Pub. L. 89–97, set out as a note under section 423 of this title.

Section 304(*o*) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 415, 416, and 423 of this title] shall apply with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] for and after the second month following the month [July 1965] in which this Act is enacted, but only on the basis of applications filed in or after the month in which this Act is enacted.''

Section 306(d) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 403, 416, 422, and 425 of this title] shall apply with respect to monthly insurance benefits under section 202 of the Social Security Act [this section] for months after December 1964; except that—

''(1) in the case of an individual who was not entitled to a child's insurance benefit under subsection (d) of such section [subsec. (d) of this section] for the month in which this Act is enacted [July 1965], such amendments shall apply only on the basis of an application filed in or after the month in which this Act is enacted, and

''(2) no monthly insurance benefit shall be payable for any month before the second month following the month in which this Act is enacted [July 1965] by reason of section 202(d)(1)(B)(ii) of the Social Security

Act [subsec. (d)(1)(B)(ii) of this section] as amended by this section.''

Section 307(c) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly insurance benefits under section 202 of the Social Security Act [this section] for and after the second month following the month [July 1965] in which this Act is enacted, but only on the basis of applications filed in or after the month in which this Act is enacted.''

Section 308(e) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 403, 405, 416, and 422 of this title] shall be applicable with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] beginning with the second month following the month in which this Act is enacted [July 1965]; but, in the case of an individual who was not entitled to a monthly insurance benefit under section 202 of such Act [this section] for the first month following the month in which this Act is enacted [July 1965], only on the basis of an application filed in or after the month in which this Act is enacted.''

Amendment by section 319(d) of Pub. L. 89–97 applicable with respect to taxable years beginning after December 31, 1950, see section 319(e) of Pub. L. 89–97, set out as a note under section 1402 of Title 26.

Section 323(b) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall be applicable to persons who file applications, or on whose behalf applications are filed, for benefits under section 202(d) of the Social Security Act [subsec. (d) of this section] on or after the date this section is enacted [July 30, 1965]. The time limit provided by section 202(d)(10)(B) of such Act [subsec. (d)(10)(B) of this section] as amended by this section for legally adopting a child shall not apply in the case of any child who is adopted before the end of the 12-month period following the month in which this section is enacted.''

Section 324(b) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to (1) applications for lump-sum death payments filed in or after the month [July 1965] in which this Act is enacted, and (2) monthly benefits based on applications filed in or after such month.''

Amendment by section 328(a) of Pub. L. 89–97 applicable with respect to applications filed on or after July 30, 1965, applications as to which the Secretary has not made a final decision before July 30, 1965, and, if a civil action with respect to a final decision of the Secretary has been commenced under section 405(g) of this title before July 30, 1965, applications as to which there has been no final judicial decision before July 30, 1965, see section 328(d) of Pub. L. 89–97, set out as a note under section 416 of this title.

Section 333(d) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly insurance benefits under section 202 of the Social Security Act [this section] beginning with the second month following the month in which this Act is enacted [July 1965]; but, in the case of an individual who was not entitled to a monthly insurance benefit under section 203(e) or (f) of such Act [subsec. (e) or (f) of this section] for the first month following the month in which this Act is enacted, only on the basis of an application filed in or after the month in which this Act is enacted.''

Section 334(g) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall be applicable only with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] beginning with the second month following the month in which this Act is enacted [July 1965], but only on the basis of applications filed in or after the month in which this Act is enacted.''

Amendment by section 339(b) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under subchapter II of this chapter beginning with September 1965 but only on the basis of an application filed in or after July 1965, see section 339(c) of Pub. L. 89–97, set out as a note under section 416 of this title.

Section 343(b) of Pub. L. 89–97 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [July 1965]; except that, in the case of an individual who was not entitled to child's insurance benefits under section 202(d) of such Act [subsec. (d) of this section] for the month in which this Act was enacted, such amendment shall apply only on the basis of an application filed in or after the month in which this Act is enacted.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 102(f) of title I of Pub. L. 87–64 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above] based on applications filed in or after March 1961.

''(2)(A) Except as provided in subparagraphs (B), (C), and (D), section 202(q) of such Act [subsec. (q) of this section], as amended by subsection (b)(1), shall apply with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(B) Section 202(q)(3) of such Act, as amended by subsection (b)(1), shall apply with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above], but only if the increase described in such section 202(q)(3)—

''(i) is not effective for any month beginning before the effective date of this title, or

''(ii) is based on an application for a recomputation filed on or after the effective date of this title.

''(C) In the case of any individual who attained age 65 before the effective date of this title, the adjustment in such individual's reduction period provided for in section 202(q)(6) of such Act [subsec. (q)(6) of this section], as amended by subsection (b)(1), shall not apply to such individual unless the total of the months specified in subparagraphs (A), (B), and (C) of such section 202(q)(6) is not less than 3.

''(D) In the case of any individual entitled to a monthly benefit for the last month beginning before the effective date of this title, if the amount of such benefit for any month thereafter is, solely by reason of the change in section 202(q) of such Act [subsec. (q) of this section] made by subsection (b)(1), lower than the amount of such benefit for such last month, then it shall be increased to the amount of such benefit for such last month.

''(3) Section 202(r) of such Act [subsec. (r) of this section], as amended by subsection (b)(1), shall apply only with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above], except that subparagraph (B) of section 202(r)(2) (as so amended) shall apply only if the first subsequent month described in such subparagraph (B) is a month beginning on or after the effective date of this title.

''(4) The amendments made by subsection (b)(2) [amending this section and sections 416 and 423 of this title] shall take effect on the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(5) The amendments made by subsection (b)(3) [amending this section] shall apply with respect to applications for monthly benefits filed on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(6) The amendments made by subsections (c) and (d)(1) and (2) [amending sections 409, 413, 415, 416, and 423 of this title] shall apply with respect to—

''(A) monthly benefits for months beginning on or after the Effective Date of this title [see Effective Date of 1961 Amendment note set out above] based on applications filed in or after March 1961, and

''(B) lump-sum death payments under title II of the Social Security Act [this subchapter] in the case of deaths on or after the effective date of this title.

''(7) The amendment made by subsection (d)(3) [amending section 415 of this title] shall take effect on the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(8) The amendments made by subsection (e) [amending this section] shall apply with respect to monthly benefits for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above].

''(9) For purposes of this subsection, the term 'monthly benefits' means monthly insurance benefits under title II of the Social Security Act [this subchapter].''

Section 104(e) of title I of Pub. L. 87–64 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning on or after the effective date of this title [see Effective Date of 1961 Amendment note set out above].''

Section 109 of title I of Pub. L. 87–64 provided that: ''Except as otherwise provided, the effective date of this title [see Tables for classifications] is the first day of the first calendar month which begins on or after the 30th day after the date of the enactment of this Act [June 30, 1961].''

EFFECTIVE DATE OF 1960 AMENDMENTS

Section 103(v) of Pub. L. 86–778, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) The amendments made by subsection (a) [amending this section and provisions set out as notes under this section] shall apply only with respect to reinterments after the date of the enactment of this Act [Sept. 13, 1960]. The amendments made by subsections (b), (e), and (f) [amending sections 403 and 410 of this title] shall apply only with respect to service performed after 1960; except that insofar as the carrying on of a trade or business (other than performance of service as an employee) is concerned, such amendments shall apply only in the case of taxable years beginning after 1960. The amendments made by subsections (d), (i), (*o*), and (p) [amending section 410 of this title and section 3121 of Title 26, Internal Revenue Code, and amending section 418 of this title and section 3121 of Title 26] shall apply only with respect to service performed after 1960. The amendments made by subsections (h) and (*l*) [amending section 411 of this title and section 1402 of Title 26] shall apply only in the case of taxable years beginning after 1960. The amendments made by subsections (c), (n), (q), and (r) [enacting section 3125 of Title 26 and amending section 410 of this title and sections 3121, 6205, and 6413 of Title 26] shall apply only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by title II of the Social Security Act [this subchapter] extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by such title II extended to the officers and employees of such Government and such political subdivisions and instrumentalities. The amendments made by subsections (g) and (k) [amending section 411 of this title and section 1402 of Title 26] shall apply only in the case of taxable years beginning after 1960, except that, insofar as they involve the nonapplication of section 932 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 932 of Title 26] to the Virgin Islands for purposes of chapter 2 of such Code and section 211 of the Social Security Act [section 411 of this title], such amendments shall be effective in the case of all taxable years with respect to which such chapter 2 (and corresponding provisions of prior law) and such section 211 [section 411 of this title] are applicable. The amendments made by subsections (j), (s), and (t) [amending this section and sections 405, 409, 410, 411, 415, 417, and 418 of this title and sections 7213 and 7701 of Title 26 and repealing section 419 of this title] shall take effect on the date of the enactment of this Act [Sept. 13, 1960]; and there are authorized to be appropriated such sums as may be necessary for the performance by any officer or employee of functions delegated to him by the Secretary of the Treasury in accordance with the amendment made by such subsection (t) [amending section 7701 of Title 26].

''(2) The amendments made by subsections (c) and (n) [amending section 410 of this title and section 3121 of Title 26] shall have application only as expressly provided therein, and determinations as to whether an officer or employee of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, is an employee of the United States or any agency or instrumentality thereof within the meaning of any provision of law not affected by such amendments, shall be made without any inferences drawn from such amendments.

''(3) The repeal (by subsection (j)(1)) of section 219 of the Social Security Act [section 419 of this title], and the elimination (by subsections (e), (f), (h), (j)(2), and (j)(3)) of other provisions of such Act [from sections 410 and 411 of this title] making reference to such section 219 [section 419 of this title], shall not be construed as changing or otherwise affecting the effective date specified in such section for the extension to the Commonwealth of Puerto Rico of the insurance system under title II of such Act [this subchapter], the manner or consequences of such extension, or the status of any individual with respect to whom the provisions so eliminated are applicable.''

Section 201(c) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section] shall apply as though this Act had been enacted on August 28, 1958, and with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after August 1958 based on applications for such benefits filed on or after August 28, 1958.''

Section 202(b) of Pub. L. 86–778 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning with the month in which this Act is enacted [September 1960], but only if an application for such benefits is filed in or after such month.''

Section 203(b) of Pub. L. 86–778 provided that: ''The amendment made by subsection (a) [amending this section] shall apply—

''(1) in the case of the death of an individual occurring on or after the date of the enactment of this Act [Sept. 13, 1960], and

''(2) in the case of the death of an individual occurring prior to such date, but only if no application for a lump-sum death payment under section 202(i) of the Social Security Act [subsec. (i) of this section] is filed on the basis of such individual's wages and self-employment income prior to the third calendar month beginning after such date.''

Section 205(d) of Pub. L. 86–778 provided that: ''The preceding provisions of this section and the amend-

ments made thereby [amending this section] shall apply only in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted [September 1960], on the basis of applications filed in or after such month.''

Amendment by section 208(d) of Pub. L. 86–778 applicable (1) with respect to monthly benefits under this subchapter for months beginning with September 1960 on the basis of an application filed in or after such month, and (2) in the case of a lump-sum death payment under this subchapter based on an application filed in or after September 1960, but only if no person, other than the person filing such application, has filed an application for a lump-sum death payment under this subchapter prior to Sept. 13, 1960 with respect to the death of the same individual, see section 208(f) of Pub. L. 86–778, set out as a note under section 416 of this title.

Amendment by section 211(i)–(*l*) of Pub. L. 86–778 effective in the manner provided in section 211(p) and (q) of Pub. L. 86–778, see section 211(p)–(s) of Pub. L. 86–778 set out as a note under section 403 of this title.

Section 301(b) of Pub. L. 86–778 provided that: ''The amendment made by this section [amending this section] shall apply only with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after the second month following the month in which this Act is enacted [September 1960].''

Amendment by section 403(d) of Pub. L. 86–778 applicable only with respect to benefits under subsec. (d) of this section for months after September 1960, in the case of individuals who, without regard to such amendment, would have been entitled to such benefits for September 1960, or for any succeeding month, see section 403(e) of Pub. L. 86–778, set out as a note under section 422 of this title.

Section 47(e) of Pub. L. 86–624 provided that: ''The amendment made by section 30(c)(1) [amending this section] shall be applicable in the case of deaths occurring on or after August 21, 1959.''

EFFECTIVE DATE OF 1959 AMENDMENT

Section 47(e) of Pub. L. 86–70 provided that: ''The amendment made by paragraph (1) of subsection (c) of section 32 [amending this section] shall apply in the case of deaths occurring on or after January 3, 1959.''

EFFECTIVE DATE OF 1958 AMENDMENTS

Section 302 of Pub. L. 85–927 provided that: ''The amendments made by section 301 of this Act [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after December 1956, and with respect to lump-sum death payments under such section 202 in the case of deaths occurring after December 1956.''

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding section 101 of Title 38, Veterans' Benefits.

Amendment by section 101(e) of Pub. L. 85–840 applicable in the case of monthly benefits under subchapter II of this chapter for months after December 1958, and in the case of lump-sum death payments under subchapter II of this chapter, with respect to deaths occurring after such month, see section 101(g) of Pub. L. 85–840, set out as a note under section 415 of this title.

Amendment by section 205(b)–(i) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

Section 301(f) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.''

Section 304(a)(2) of Pub. L. 85–840 provided that: ''The amendment made by this subsection [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.''

Section 305(c) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall apply in the case of lump-sum death payments under such section 202(i) [subsec. (i) of this section] on the basis of the wages and self-employment income of any individual who dies after the month in which this Act is enacted [August 1958].''

Section 306(b) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.''

Section 307(h)(1) of Pub. L. 85–840 provided that: ''The amendments made by this section (other than by subsections (f) and (g) [amending this section]) shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months following the month in which this Act is enacted [August 1958]; except that in any case in which benefits were terminated with the close of the month in which this Act is enacted or any prior month and, if the amendments made by this section had been in effect for such month, such benefits would not have been terminated, the amendments made by this section shall apply with respect to monthly benefits under section 202 of the Social Security Act for months beginning after the date of enactment of this Act, but only if an application for such benefits is filed after such date.''

EFFECTIVE DATE OF 1957 AMENDMENT

Section 2 of Pub. L. 85–238 provided that: ''The amendments made by the first section of this Act [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after December 1956, and with respect to lump-sum death payments under such section 202 in the case of deaths occurring after December 1956.''

Section 3(i) of Pub. L. 85–238 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 416 of this title] shall apply in the case of monthly benefits under section 202 of the Social Security Act [this section] for months after the month in which this Act is enacted [August 1957].

''(2) The amendment made by subsection (f) [amending this section] shall not apply in the case of benefits under section 202(h) of the Social Security Act [subsec. (h) of this section], based on the wages and self-employment income of a deceased individual who died in or prior to the month in which this Act is enacted [August 1957] for any parent who files the proof of support, required by such section 202(h), in or prior to the month in which this Act is enacted; and the amendment to section 216(h)(1) of such Act [section 416(h)(1) of this title] made by subsection (h) of this section shall not operate to deprive any such parent of benefits to which he would otherwise be entitled under section 202(h) of such Act.''

EFFECTIVE DATE OF 1956 AMENDMENTS

Section 403(b) of act Aug. 1, 1956, ch. 837, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as though it had been enacted on March 31, 1956.''

Section 101(h) of act Aug. 1, 1956, ch. 836, provided that:

''(1) The amendments made by this section [amending this section and section 403 of this title], other than subsection (c) [amending this section], shall apply with respect to monthly benefits under section 202 of the Social Security Act [this section] for months after December 1956, but only, except as provided in paragraph (2), on the basis of an application filed after September 1956. For purposes of title II of the Social Security Act, as amended by this Act [this subchapter], an application for wife's, child's, or mother's insurance benefits under such title II filed, by reason of this paragraph, by an individual who was entitled to benefits prior to, but not for, December 1956 and whose entitlement terminated as a result of a child's attainment of age eighteen shall be treated as the application referred to in subsection (b), (d), and (g), respectively, of section 202 of such Act.

''(2) In the case of an individual who was entitled, without the application of subsection (j)(1) of such section 202 [subsec. (j)(1) of this section], to a child's insurance benefit under subsection (d) of such section [subsec. (d) of this section] for December 1956, such amendments shall apply with respect to benefits under such section 202 [this section] for months after December 1956.

''(3) The amendment made by subsection (c) [amending this section] shall apply in the case of benefits under section 202(h) of the Social Security Act [subsec. (h) of this section] based on the wages and self-employment income of an individual who dies after August 1956.''

Section 114(b) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of lump-sum death payments under title II of the Social Security Act [this subchapter], and monthly benefits under such title for months after August 1956, based on applications filed after August 1956.''

Section 118(b) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1956 and in the case of lump-sum death payments under section 202(i) of such Act [subsec. (i) of this section] with respect to deaths occurring after December 1956.''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 105(b) of act Sept. 1, 1954, provided that: ''The amendment made by subsection (a) [amending this section] shall be applicable only in the case of applications for monthly benefits under section 202 of the Social Security Act [this section] filed after August 1954; except that no individual shall, by reason of such amendment, be entitled to any benefit for any month prior to February 1954.''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 101(b)(1), (3) of act Aug. 28, 1950, provided that:

''(1) Except as provided in paragraph (3), the amendment made by subsection (a) of this section [amending this section] shall take effect September 1, 1950.

''(3) Section 202(j)(2) of the Social Security Act [subsec. (j)(2) of this section], as amended by this Act, shall take effect on the date of enactment of this Act [Aug. 28, 1950].''

EFFECTIVE DATE OF 1946 AMENDMENT

Section 403(b) of act Aug. 10, 1946, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable only in cases of applications for benefits under that Act filed after December 31, 1946.''

Section 404(b) of act Aug. 10, 1946, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable only in cases where the death of the insured individual occurs after December 31, 1946.''

Subsec. 405(b) of act Aug. 10, 1946, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable only in cases of applications for benefits under this title [this subchapter] filed after December 31, 1946.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

CONSTRUCTION OF 1994 AMENDMENTS

Section 7 of Pub. L. 103–387 provided that: ''Until March 31, 1995, any reference in this Act [see Short Title of 1994 Amendments note, set out under section 1 of Title 26, Internal Revenue Code] (other than section 3(d) [108 Stat. 4075]) or any amendment made by this Act to the Commissioner of Social Security shall be deemed a reference to the Secretary of Health and Human Services.''

TREATMENT OF EMPLOYEES WHOSE FEDERAL EMPLOYMENT TERMINATED AFTER MAKING ELECTION INTO SOCIAL SECURITY COVERAGE BUT BEFORE EFFECTIVE DATE OF ELECTION

Section 8014(b) of Pub. L. 100–647 provided that: ''Subsections (b)(4)(A)(i), (c)(2)(A)(i), (e)(7)(A)(i), (f)(2)(A)(i), and (g)(4)(A)(i) of section 202 of the Social Security Act (42 U.S.C. 402(b)(4)(A)(i), (c)(2)(A)(i), (e)(7)(A)(i), (f)(2)(A)(i), (g)(4)(A)(i)) shall not apply with respect to monthly periodic benefits of any individual based solely on service which was performed while in the service of the Federal Government if—

''(1) such person made, before January 1, 1988, an election pursuant to law to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, United States Code, or the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of the Foreign Service Act of 1980 [22 U.S.C. 4071 et seq.] (or such person made such an election on or after January 1, 1988, and before July 1, 1988, pursuant to regulations of the Office of Personnel Management relating to belated elections and correction of administrative errors (5 CFR 846.204) as in effect on the date of the enactment of this Act [Nov. 10, 1988]), and

''(2) such service terminated before the date on which such election became effective.''

MONTHLY PAYMENTS TO SURVIVING SPOUSE OF MEMBER OR FORMER MEMBER OF ARMED FORCES WHERE SUCH PERSON HAS IN CARE A CHILD OF SUCH MEMBER; AMOUNT, CRITERIA, ETC.

Pub. L. 97–377, title I, § 156, Dec. 21, 1982, 96 Stat. 1920, as amended by Pub. L. 98–94, title IX, § 943, Sept. 24, 1983, 97 Stat. 654; Pub. L. 100–322, title III, § 314, May 20, 1988, 102 Stat. 535; Pub. L. 102–83, § 5(c)(2), Aug. 6, 1991, 105 Stat. 406, provided that:

''(a)(1) The head of the agency shall pay each month an amount determined under paragraph (2) to a person—

''(A) who is the surviving spouse of a member or former member of the Armed Forces described in subsection (c);

''(B) who has in such person's care a child of such member or former member who has attained sixteen years of age but not eighteen years of age and is entitled to a child's insurance benefit under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) for such month or who meets the requirements for entitlement to the equivalent of such benefit provided under section 1312(a) of title 38, United States Code; and

''(C) who is not entitled for such month to a mother's insurance benefit under section 202(g) of the Social Security Act (42 U.S.C. 402(g)), or to the equivalent of such benefit based on meeting the requirements of section 1312(a) of title 38, United States Code, by reason of having such child (or any other child of such member or former member) in her care.

''(2) A payment under paragraph (1) for any month shall be in the amount of the mother's insurance benefit, if any, that such person would receive for such month under section 202(g) of the Social Security Act [subsec. (g) of this section] if such child were under sixteen years of age, disregarding any adjustments made under section 215(i) of the Social Security Act [section 415(i) of this title] after August 1981. However, if such person is entitled for such month to a mother's insurance benefit under section 202(g) of such Act by reason of having the child of a person other than such member or former member of the Armed Forces in such person's care, the amount of the payment under the preceding sentence for such month shall be reduced (but not below zero) by the amount of the benefit payable by reason of having such child in such person's care.

''(b)(1) The head of the agency shall pay each month an amount determined under paragraph (2) to a person—

''(A) who is the child of a member or former member of the Armed Forces described in subsection (c);

''(B) who has attained eighteen years of age but not twenty-two years of age and is not under a disability as defined in section 223(d) of the Social Security Act (42 U.S.C. 423(d));

''(C) who is a full-time student at a postsecondary school, college, or university that is an educational institution (as such terms were defined in section 202(d)(7)(A) and (C) of the Social Security Act [subsec. (d)(7)(A) and (C) of this section] as in effect before the amendments made by section 2210(a) of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35; 95 Stat. 841)); and

''(D) who is not entitled for such month to a child's insurance benefit under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) or is entitled for such month to such benefit only by reason of section 2210(c) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 842) [section 2210(c) of Pub. L. 97–35, set out below].

''(2) A payment under paragraph (1) for any month shall be in the amount that the person concerned would have been entitled to receive for such month as a child's insurance benefit under section 202(d) of the Social Security Act [subsec. (d) of this section] (as in effect before the amendments made by section 2210(a) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 841) [section 2210(a) of Pub. L. 97–35]), disregarding any adjustments made under section 215(i) of the Social Security Act [section 415(i) of this title] after August 1981, but reduced for any month by any amount payable to such person for such month under section 2210(c) of the Omnibus Budget Reconciliation Act of 1981 (95 Stat. 842).

''(c) A member or former member of the Armed Forces referred to in subsection (a) or (b) as described in this subsection is a member or former member of the Armed Forces who died on active duty before August 13, 1981, or died from a service-connected disability incurred or aggravated before such date.

''(d)(1) The Secretary of Health and Human Services shall provide to the head of the agency such information as the head of the agency may require to carry out this section.

''(2) The head of the agency shall carry out this section under regulations which the head of the agency shall prescribe. Such regulations shall be prescribed not later than ninety days after the date of the enactment of this section [Dec. 21, 1982].

''(e)(1) Unless otherwise provided by law—

''(A) each time after December 31, 1981, that an increase is made by law in the dependency and indemnity compensation paid under section 1311 of title 38, United States Code, the head of the agency shall, at the same time and effective as of the same date on which such increase takes effect, increase the benefits paid under subsection (a) by a percentage that is equal to the overall average (rounded to the nearest one-tenth of 1 per centum) of the percentages by which each of the dependency and indemnity compensation rates under section 1311 of such title are increased above the rates as in effect immediately before such increase; and

''(B) each time after December 31, 1981, that an increase is made by law in the rates of educational assistance allowances provided for under section 3531(b) of title 38, United States Code, the head of the agency shall, at the same time and effective as of the same date on which such increase takes effect, increase the benefits paid under subsection (b) by a percentage that is equal to the overall average (rounded to the nearest one-tenth of 1 per centum) of the percentages by which each of the educational assistance allowance rates provided for under section 3531(b) of such title are increased above the rates as in effect immediately before such increase.

''(2) The amount of the benefit payable to any person under subsection (a) or (b) and the amount of any increase in any such benefit made pursuant to clause (1) or (2) of this subsection, if not a multiple of $1, shall be rounded to the next lower multiple of $1.

''(f) Payments under subsections (a) and (b) shall be made only for months after the month in which this section is enacted.

''(g)(1) During each fiscal year the Secretary of Defense shall transfer from time to time to the head of the agency such amounts as the head of the agency determines to be necessary to pay the benefits provided for under subsections (a) and (b) during such fiscal year and to pay the administrative expenses incurred in paying such benefits during such fiscal year. During fiscal year 1983, transfers under this subsection shall be made from the 'Retired Pay, Defense' account of the Department of Defense. During subsequent fiscal years, such transfers shall be made from such account or from funds otherwise available to the Secretary for the purpose of the payment of such benefits and expenses. The Secretary of Defense may transfer funds under this subsection in advance of the payment of benefits and expenses by the head of the agency.

''(2) The head of the agency shall establish on the books of the agency over which he exercises jurisdiction a new account to be used for the payment of benefits under subsections (a) and (b) and shall credit to such account all funds transferred to him for such purpose by the Secretary of Defense.

''(h) The head of the agency and the Secretary of Health and Human Services may enter into an agreement to provide for the payment by the Secretary or the head of the agency of benefits provided for under subsection (a) and benefits provided for under section 202(g) of the Social Security Act (42 U.S.C. 402(g)) in a single monthly payment and for the payment by the Secretary or the head of the agency of benefits provided for under subsection (b) and benefits provided for under section 202(d) of the Social Security Act (42 U.S.C. 402(d)) in a single monthly payment, if the head of the agency and the Secretary agree that such action would be practicable and cost effective to the Government.

''(i) For the purposes of this section:

''(1) The term 'head of the agency' means the head of such department or agency of the Government as the President shall designate to administer the provisions of this section.

''(2) The terms 'active military, naval, or air service' and 'service-connected' have the meanings given those terms in paragraphs (24) and (16), respectively, of section 101 of title 38, United States Code, except that for the purposes of this section such terms do not apply to any service in the commissioned corps of the Public Health Service or the National Oceanic and Atmospheric Administration.''

CHILD'S INSURANCE BENEFITS; CONTINUED ELIGIBILITY OF CERTAIN INDIVIDUALS; LIMITATIONS

Section 2210(c) of Pub. L. 97–35 provided that:

''(1) Notwithstanding the provisions of section 202(d) of the Social Security Act [subsec. (d) of this section] (as in effect prior to or after the amendments made by subsection (a)), any individual who—

''(A) has attained the age of 18;

''(B) is not under a disability (as defined in section 223(d) of such Act) [section 423(d) of this title];

''(C) is entitled to a child's insurance benefit under such section 202(d) [subsec. (d) of this section] for August 1981; and

''(D) is a full-time student at a postsecondary school, college, or university that is an educational institution (as such terms are defined in section 202(d)(7)(A) and (C) of such Act as in effect prior to the amendments made by subsection (a)) for any month prior to May 1982;

shall be entitled to a child's benefit under section 202(d) of such Act in accordance with the provisions of such section as in effect prior to the amendments made by subsection (a) for any month after July 1981 and prior to August 1985 if such individual would be entitled to such child's benefit for such month under such section 202(d) if subsections (a) and (b) of this section [amending subsec. (d) of this section and enacting a provision set out as a note under this section] had not been enacted, but such benefits shall be subject to the limitations set forth in this subsection.

''(2) No benefit described in paragraph (1) shall be paid to an individual to whom paragraph (1) applies for the months of May, June, July, and August, beginning with benefits otherwise payable for May 1982.

''(3) The amount of the monthly benefit payable under paragraph (1) to an individual to whom paragraph (1) applies for any month after July 1982 (prior to deductions on account of work required by section 203 of such Act) [section 403 of this title] shall not exceed the amount of the benefit to which such individual was entitled for August 1981 (prior to deductions on account of work required by section 203 of such Act), less an amount—

''(A) during the months after July 1982 and before August 1983, equal to 25 percent of such benefit for August 1981;

''(B) during the months after July 1983 and before August 1984, equal to 50 percent of such benefit for August 1981; and

''(C) during the months after July 1984 and before August 1985, equal to 75 percent of such benefit for August 1981.

''(4) Any individual to whom the provisions of paragraph (1) apply and whose entitlement to benefits under paragraph (1) ends after July 1982 shall not subsequently become entitled, or reentitled, to benefits under paragraph (1) or under section 202(d) of the Social Security Act [subsec. (d) of this section] as in effect after the amendments made by subsection (a) unless he meets the requirements of section 202(d)(1)(B)(ii) of that Act as so in effect.''

NONAPPLICABILITY OF AMENDMENTS BY SECTION 334 OF PUB. L. 95–216 TO MONTHLY INSURANCE BENEFITS PAYABLE TO INDIVIDUALS ELIGIBLE FOR MONTHLY PERIODIC BENEFITS; SAVINGS PROVISION

Section 334(g) of Pub. L. 95–216, as amended by Pub. L. 98–617, § 2(b)(1), Nov. 8, 1984, 98 Stat. 3294, provided that:

''(1) The amendments made by the preceding provisions of this section [see section 334(f) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note above] shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act [this section], to an individual—

''(A)(i) to whom there is payable for any month within the 60-month period beginning with the month in which this Act [December 1977] is enacted (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act) [section 418(b)(2) of this title], or (ii) who would have been eligible for such a monthly periodic benefit (within the meaning of paragraph (2)) before the close of such 60-month period, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

''(B) who at time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g) meets the requirements of that subsection as it was in effect and being administered in January 1977.

''(2) For purposes of paragraph (1)(A), an individual is eligible for a monthly periodic benefit for any month if such benefit would be payable to such individual for that month if such individual were not employed during that month and had made proper application for such benefit.

''(3) If any provision of this subsection, or the application thereof to any person or circumstance, is held invalid, the remainder of this section shall not be affected thereby, but the application of this subsection to any other persons or circumstances shall also be considered invalid.''

[Section 2(b)(3) of Pub. L. 98–617 provided that: ''The amendments made by this subsection [amending above note and provisions set out as an Offset Against Spouses' Benefits on Account of Public Pensions note below] shall apply with respect to benefits payable under title II of the Social Security Act [this subchapter] for months beginning after the month of enactment of this Act [November 1984].''']

OFFSET AGAINST SPOUSES' BENEFITS ON ACCOUNT OF PUBLIC PENSIONS

Section 334(h) of Pub. L. 95–216, as added by Pub. L. 97–455, § 7(a)(1), Jan. 12, 1983, 96 Stat. 2501, and amended by Pub. L. 98–617, § 2(b)(2), Nov. 8, 1984, 98 Stat. 3294, provided that: ''In addition, the amendments made by the preceding provisions of this section [see section 334(f) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note above] shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act [this section], to an individual—

''(1)(A) to whom there is payable for any month prior to July 1983 (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act [section 418(b)(2) of this title]), or (B) who would have been eligible for such a monthly periodic benefit (within the meaning of subsection (g)(2) [set out as a note above]) before the close of June 1983, except for a requirement which postponed eligibility (as so defined) for such monthly periodic benefit until the month following the month in which all other requirements were met; and

''(2) who at the time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g)—

''(A) meets the dependency test of one-half support set forth in paragraph (1)(C) of such subsection (c) as it read prior to the enactment of the amendments made by this section [see section 334(f) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note above], or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (b) or (c), or

''(B) meets the dependency test of one-half support set forth in paragraph (1)(D) of such subsection (f) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming enti-

tled to benefits under such subsection (e), (f), or (g).''

REDETERMINATION OF WIDOW'S AND WIDOWER'S MONTHLY INSURANCE BENEFITS FOR MONTHS AFTER DECEMBER 1978

Section 336(c)(2) of Pub. L. 95–216 provided that: ''In the case of an individual who was entitled for the month of December 1978 to monthly insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act [subsec. (e) or (f) of this section] to which the provisions of subsection (e)(4) or (f)(5) applied, the Secretary shall, if such benefits would be increased by the amendments made by this section [amending this section] redetermine the amount of such benefits for months after December 1978 as if such amendments had been in effect for the first month for which the provisions of section 202(e)(4) or 202(f)(5) became applicable.''

MINIMUM MONTHLY INSURANCE BENEFITS FOR MONTHS AFTER DECEMBER 1978, FOR WIDOW OR WIDOWER AND OTHER JOINTLY ENTITLED INDIVIDUALS

Section 336(d) of Pub. L. 95–216 provided that: ''Where—

''(1) two or more persons are entitled to monthly benefits under section 202 of the Social Security Act [this section] for December 1978 on the basis of the wages and self-employment income of a deceased individual, and one or more of such persons is so entitled under subsection (e) or (f) of such section 202 [subsec. (e) or (f) of this section], and

''(2) one or more of such persons is entitled on the basis of such wages and self-employment income to monthly benefits under subsection (e) or (f) of such section 202 (as amended by this section) for January 1979, and

''(3) the total of benefits to which all persons are entitled under section 202 of such Act on the basis of such wages and self-employment income for January 1979 is reduced by reason of section 203(a) of such Act as amended by this Act [section 403(a) of this title] (or would, but for the first sentence of section 203(a)(4), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) is entitled for months after December 1978 shall in no case be less after the application of this section [see section 336(c)(1) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note under this section] and such section 203(a) [section 403(a) of this title] than the amount it would have been without the application of this section.''

TERMINATION OF SPECIAL $50 PAYMENTS UNDER TAX REDUCTION ACT OF 1975

Pub. L. 95–30, title IV, § 406, May 23, 1977, 91 Stat. 156, provided that: ''Notwithstanding the provisions of section 702(a) of the Tax Reduction Act of 1975 [see Pub. L. 94–12, § 702, set out as a note under this section], no payment shall, after the date of the enactment of this Act [May 23, 1977], be made under that section.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Pub. L. 94–12, title VII, § 702, Mar. 29, 1975, 89 Stat. 66, provided that the Secretary of the Treasury, at the earliest practicable date after Mar. 29, 1975, make a $50 payment to each individual, who for the month of March, 1975, was entitled, without regard to section 402(j)(1) or 423(b) of this title or section 231d(a)(ii) of Title 45, Railroads, to a monthly insurance benefit payable under this subchapter, a monthly annuity or pension payment under the Railroad Retirement Act of 1935, the Railroad Retirement Act of 1937, or the Railroad Retirement Act of 1974, or a benefit under the supplemental security income benefits program under subchapter XVI of this title, except that payment be made only to individuals who were paid a benefit for March 1975 in a check issued no later than Aug. 31, 1975, that no payment be made to any individual who is not a resident of the United States as defined in section 410(i) of this title, and if an individual is entitled under two or more programs, this individual receive only one $50 payment, and that this payment received not be considered as income, or for the calendar year 1975, as a resource, for purposes of any Federal or State program which undertakes to furnish aid or assistance to individuals or families, where eligibility for the program is based upon need of the individual or family involved or as income for federal income tax purposes.

MARCH THROUGH MAY 1974 MONTHLY INSURANCE BENEFIT FOR ONLY INDIVIDUAL ENTITLED TO BENEFIT ON BASIS OF WAGES AND SELF-EMPLOYMENT INCOME OF DECEASED INDIVIDUAL

Section 1(i) of Pub. L. 93–233 provided that: ''In the case of an individual to whom monthly benefits are payable under title II of the Social Security Act [this subchapter] for February 1974 (without the application of section 202(j)(1) or 223(b) of such Act [subsec. (j)(1) of this section or section 423(b) of this title]), and to whom section 202(m) of such Act [subsec. (m) of this section] is applicable for such month, such section shall continue to be applicable to such benefits for the months of March through May 1974 for which such individual remains the only individual entitled to a monthly benefit on the basis of the wages and self-employment income of the deceased insured individual.''

COST-OF-LIVING INCREASE IN SOCIAL SECURITY BENEFITS; EFFECTIVE DATE; CONSUMER PRICE INDEX PERCENTAGE

Section 201 of Pub. L. 93–66, as amended by Pub. L. 93–233, § 1(a)–(e), Dec. 30, 1973, 87 Stat. 947, provided that:

''(a)(1) The Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter in this section referred to as the 'Secretary') shall, in accordance with the provisions of this section, increase the monthly benefits and lump-sum death payments payable under title II of the Social Security Act [this subchapter] by 7 per centum.

''(2) The provisions of this section (and the increase in benefits made hereunder) shall be effective, in the case of monthly benefits under title II of the Social Security Act [this subchapter] only for months after February 1974 and prior to June 1974, and, in the case of lump-sum death payments under such title [this subchapter], only with respect to deaths which occur after February 1974 and prior to June 1974.

''(b) The increase in social security benefits authorized under this section shall be provided, and any determinations by the Secretary in connection with the provision of such increase in benefits shall be made, in the manner prescribed in section 215(i) of the Social Security Act [section 415(i) of this title] for the implementation of cost-of-living increases authorized under title II of such Act [this subchapter] except that—

''(1) the amount of such increase shall be 7 per centum,

''(2) in the case of any individual entitled to monthly insurance benefits payable pursuant to section 202(e) of such Act [subsec. (e) of this section] for February 1974 (without the application of section 202(j)(1) or 223(b) of such Act [subsec. (j)(1) of this section or section 423(f) of this title]), including such benefits based on a primary insurance amount determined under section 215(a)(3) of such Act [section 415(a)(3) of this title] as amended by this section, such increase shall be determined without regard to paragraph (2)(B) of such section 202(e), and

''(3) in the case of any individual entitled to monthly insurance benefits payable pursuant to section 202(f) of such Act for February 1974 (without the application of section 202(j)(1) or 223(b) of such Act), including such benefits based on a primary insurance amount determined under section 215(a)(3) of such Act as amended by this section, such increase shall be determined without regard to paragraph (3)(B) of such section 202(f).

''(c) The increase in social security benefits provided by this section shall—

''(1) not be considered to be an increase in benefits made under or pursuant to section 215(i) of the Social Security Act [section 415(i) of this title], and

''(2) not (except for purposes of section 203(a)(2) of such Act [section 403(a)(2) of this title], as in effect after February 1974) be considered to be a 'general benefit increase under this title' [this subchapter] (as such term is defined in section 215(i)(3) of such Act) [section 415(i)(3) of this title];

and nothing in this section shall be construed as authorizing any increase in the 'contribution and benefit base' (as that term is employed in section 230 of such Act) [section 430 of this title], or any increase in the 'exempt amount' (as such term is used in section 203(f)(8) of such Act [section 403(f)(8) of this title]).

''(d) Nothing in this section shall be construed to authorize (directly or indirectly) any increase in monthly benefits under title II of the Social Security Act [this subchapter] for any month after May 1974, or any increase in lump-sum death payments payable under such title in the case of deaths occurring after May 1974. The recognition of the existence of the increase in benefits authorized by the preceding subsections of this section (during the period it was in effect) in the application, after May 1974, of the provisions of sections 202(q) and 203(a) of such Act [subsec. (q) of this section and section 403(a) of this title] shall not, for purposes of the preceding sentence, be considered to be an increase in a monthly benefit for a month after May 1974.''

REDETERMINATION OF WIDOW'S AND WIDOWER'S BENEFITS FOR DECEMBER 1972 AND AFTER TO PROVIDE FOR 1972 INCREASES

Section 102(g) of Pub. L. 92–603 provided that:

''(1) In the case of an individual who is entitled to widow's or widower's insurance benefits for the month of December 1972 the Secretary shall, if it would increase such benefits, redetermine the amount of such benefits for months after December 1972 under title II of the Social Security Act [this subchapter] as if the amendments made by this section [amending this section and section 403 of this title] had been in effect for the first month of such individual's entitlement to such benefits.

''(2) For purposes of paragraph (1)—

''(A) any deceased individual on whose wages and self-employment income the benefits of an individual referred to in paragraph (1) are based, shall be deemed not to have been entitled to benefits if the record, of insured individuals who were entitled to benefits, that is readily available to the Secretary contains no entry for such deceased individual; and

''(B) any deductions under subsections (b) and (c) of section 203 of such Act [section 403 of this title], applicable to the benefits of an individual referred to in paragraph (1) for any month prior to September 1965, shall be disregarded in applying the provisions of section 202(q)(7) of such Act [subsec. (q)(7) of this section] (as amended by this Act) [Pub. L. 92–603].''

ADJUSTMENT OF BENEFITS BASED ON DISABILITY WHICH BEGAN BETWEEN AGE 18 AND 22

Section 108(g) of Pub. L. 92–603 provided that: ''Where—

''(1) one or more persons are entitled (without the application of sections 202(j)(1) and 223(b) of the Social Security Act) [subsec. (j)(1) of this section and section 423(b) of this title] to monthly benefits under section 202 or 223 of such Act for December 1972 on the basis of the wages and self-employment income of an insured individual, and

''(2) one or more persons (not included in paragraph (1)) are entitled to monthly benefits under such section 202 or 223 [this section or section 423 of this title] for January 1973 solely by reason of the amendments made by this section on the basis of such wages and self-employment income, and

''(3) the total of benefits to which all persons are entitled under such sections 202 and 223 [this section and section 423 of this title] on the basis of such wages and self-employment income for January 1973 is reduced by reason of section 203(a) of such Act [section 403(a) of this title] as amended by this Act, or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each person referred to in paragraph (1) of this subsection is entitled for months after December 1972 shall be adjusted, after the application of such section 203(a) [section 403(a) of this title], to an amount no less than the amount it would have been if the person or persons referred to in paragraph (2) of this subsection were not entitled to a benefit referred to in such paragraph (2).''

TERMINATION OF CHILD'S INSURANCE BENEFITS BY REASON OF ADOPTION

Section 112(c) of Pub. L. 92–603 provided that: ''Any child—

''(1) whose entitlement to child's insurance benefits under section 202(d) of the Social Security Act [subsec. (d) of this section] was terminated by reason of his adoption, prior to the date of the enactment of this Act [Oct. 30, 1972], and

''(2) who, except for such adoption, would be entitled to child's insurance benefits under such section for a month after the month in which this Act is enacted [October 1972],

may, upon filing application for child's insurance benefits under the Social Security Act after the date of enactment of this Act, become reentitled to such benefits; except that no child shall, by reason of the enactment of this section, become reentitled to such benefits for any month prior to the month after the month in which this Act is enacted.''

SAVINGS PROVISION

1972—Section 102(h) of Pub. L. 92–603 provided that: ''Where—

''(1) two or more persons are entitled to monthly benefits under section 202 of the Social Security Act [this section] for December 1972 on the basis of the wages and self-employment income of a deceased individual, and one or more of such persons is so entitled under subsection (e) or (f) of such section 202, and

''(2) one or more of such persons is entitled on the basis of such wages and self-employment income to monthly benefits under subsection (e) or (f) of such section 202 (as amended by this section) for January 1973, and

''(3) the total of benefits to which all persons are entitled under section 202 of such Act [this section] on the basis of such wages and self-employment income for January 1973 is reduced by reason of section 203(a) of such Act [section 403(a) of this title], as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) is entitled for months after December 1972 shall in no case be less after the application of this section and such section 203(a) than the amount it would have been without the application of this section.''

Section 114(e) of Pub. L. 92–603 provided that: ''Where—

''(1) one or more persons are entitled (without the application of sections 202(j)(1) and 223(b) of the Social Security Act) [subsec. (j)(1) of this section and section 423(b) of this title] to monthly benefits under section 202 or 223 of such Act for December 1972 on the basis of the wages and self-employment income of an insured individual, and

''(2) one or more persons (not included in paragraph (1)) are entitled to monthly benefits under such section 202(g) as a surviving divorced mother (as defined in section 216(d)(3) [section 416(d)(3) of this title]) for a month after December 1972 on the basis of such wages and self-employment income, and

''(3) the total of benefits to which all persons are entitled under such section 202 and 223 [this section and section 423 of this title] on the basis of such wages and self-employment income for any month after December 1972 is reduced by reason of section 203(a) of such Act [section 403(a) of this title] as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced)

then the amount of the benefit to which each person referred to in paragraph (1) of this subsection is entitled beginning with the first month after December 1972 for which any person referred to in paragraph (2) becomes entitled shall be adjusted, after the application of such section 203(a), to an amount no less than the amount it would have been if the person or persons referred to in paragraph (2) of this subsection were not entitled to a benefit referred to in such paragraph (2).''

1961—Section 104(f) of Pub. L. 87–64 provided that: ''Where—

''(1) two or more persons were entitled (without the application of subsection (j)(1) of section 202 of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under such section 202 for the last month beginning before the effective date of this title [see Effective Date of 1961 Amendment note set out above] on the basis of the wages and self-employment income of a deceased individual, and one or more of such persons is entitled to a monthly insurance benefit under subsection (e), (f), or (h) of such section 202 for such last month; and

''(2) no person, other than the persons referred to in paragraph (1) of this subsection, is entitled to benefits under such section 202 on the basis of such individual's wages and self-employment income for a subsequent month or for any month after such last month and before such subsequent month; and

''(3) the total of the benefits to which all persons are entitled under such section 202 on the basis of such individual's wages and self-employment income for such subsequent month is reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title],

then the amount of the benefit to which each such person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall be determined without regard to this Act if, after the application of this Act, such benefit for such month is less than the amount of such benefit for such last month. The preceding provisions of this subsection shall not apply to any monthly benefit of any person for any month beginning after the effective date of this title [see Effective Date note of 1961 Amendment note set out above] unless paragraph (3) also applies to such benefit for the month beginning on such effective date (or would so apply but for the next to the last sentence of section 203(a) of the Social Security Act).''

1960—Section 208(e) of Pub. L. 86–778 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under section 202 of such Act for the month before the month in which this Act is enacted [September 1960] on the basis of the wages and self-employment income of an individual; and

''(2) any person is entitled to benefits under subsection (b), (c), (d), (e), (f), or (g) of section 202 of the Social Security Act for any subsequent month on the basis of such individual's wages and self-employment income and such person would not be entitled to such benefits but for the enactment of this section; and

''(3) the total of the benefits to which all persons are entitled under section 202 of the Social Security Act on the basis of such individual's wages and self-employment income for such subsequent month is reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title],

then the amount of the benefit to which each person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall not, after the application of such section 203(a), be less than the amount it would have been (determined without regard to section 301 [section 501 of this title]) if no person referred to in paragraph (2) of this subsection was entitled to a benefit referred to in such paragraph for such subsequent month on the basis of such wages and self-employment income of such individual.''

Section 301(c) of Pub. L. 86–778 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under section 202 of such Act for the second month following the month in which this Act is enacted [September 1960] on the basis of the wages and self-employment income of a deceased individual (but not including any person who became so entitled by reason of section 208 of this Act [section 408 of this title]); and

''(2) no person, other than (i) those persons referred to in paragraph (1) of this subsection (ii) those persons who are entitled to benefits under section 202(d), (e), (f), or (g) of the Social Security Act but would not be so entitled except for the enactment of section 208 of this Act [section 408 of this title], is entitled to benefits under such section 202 [this section] on the basis of such individual's wages and self-employment income for any subsequent month or for any month after the second month following the month in which this Act is enacted [September 1960] and prior to such subsequent month; and

''(3) the total of the benefits to which all persons referred to in paragraph (1) of this subsection are entitled under section 202 of the Social Security Act on the basis of such individual's wages and self-employment income for such subsequent month exceeds the maximum of benefits payable, as provided in section 203(a) of such Act [section 403(a) of this title], on the basis of such wages and self-employment income,

then the amount of the benefit to which each such person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall be determined—

''(4) in case such person is entitled to benefits under section 202(e), (f), (g), or (h), as though this section and section 208 [section 408 of this title] had not been enacted, or

''(5) in case such person is entitled to benefits under section 202(d), as though (i) no person is entitled to benefits under section 202(e), (f), (g), or (h) for such subsequent month, and (ii) the maximum of benefits payable, as described in paragraph (3), is such maximum less the amount of each person's benefit for such month determined pursuant to paragraph (4).''

1958—Section 304(b) of Pub. L. 85–840 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to monthly benefits under section 202 of such Act for the month in which this Act is enacted [August 1958] on the basis of the wages and self-employment income of an individual; and

''(2) a person is entitled to a parent's insurance benefit under section 202(h) of the Social Security Act for any subsequent month on the basis of such wages and self-employment income and such person would not be entitled to such benefit but for the enactment of this section; and

''(3) the total of the benefits to which all persons are entitled under section 202 of the Social Security Act on the basis of such wages and self-employment income for such subsequent month are reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title].

then the amount of the benefit to which each such person referred to in paragraph (1) of this subsection is entitled for such subsequent month shall be increased, after the application of such section 203(a), to the amount it would have been if no person referred to in paragraph (2) of this subsection was entitled to a par-

ent's insurance benefit for such subsequent month on the basis of such wages and self-employment income.''

1957—Section 5 of Pub. L. 85–238 provided that: ''Where—

''(a) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to parent's insurance benefits under section 202(h) of such Act for the month in which this Act [August 1957] is enacted on the basis of the wages and self-employment income of an individual;

''(b) a person becomes entitled to a widow's, widower's or mother's insurance benefit under section 202(e), (f), or (g) of the Social Security Act for any subsequent month on the basis of such wages and self-employment income;

''(c) the total of the benefits to which all persons are entitled under section 202 of the Social Security Act, on the basis of such wages and self-employment income for such subsequent month are reduced by reason of the application of section 203(a) of such Act [section 403(a) of this title];

then the amount of the benefit to which each such person referred to in paragraph (a) or (b) is entitled for such subsequent month shall be increased, after the application of such section 203(a), to the amount it would have been—

''(d) if, in the case of a parent's insurance benefit, the person referred to in paragraph (b) was not entitled to the benefit referred to in such paragraph, or

''(e) if, in the case of a benefit referred to in paragraph (b), no person was entitled to a parent's insurance benefit for such subsequent month on the basis of such wages and self-employment income.''

FILING OF PROOF OF SUPPORT

1968—Section 157(c) of Pub. L. 90–248 provided that: ''In the case of any husband who would not be entitled to husband's insurance benefits under section 202(c) of the Social Security Act [subsec. (c) of this section] or any widower who would not be entitled to widower's insurance benefits under section 202(f) of such Act except for the enactment of this section, the requirement in section 202(c)(1)(C) or 202(f)(1)(D) of such Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed within two years after the month following the month in which this Act is enacted [January 1968].''

1961—Section 103(c) of title I of Pub. L. 87–64 provided that: ''In the case of any widower or parent who would not be entitled to widower's insurance benefits under section 202(f) [subsec. (f) of this section], or parent's insurance benefits under section 202(h), of the Social Security Act except for the enactment of this Act (other than this subsection), the requirement in sections 202(f)(1)(D) and 202(h)(1)(B), respectively, of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed before the close of the 2–year period which begins on the effective date of this title [see Effective Date of 1961 Amendment note set out above].''

1958—Section 207(b) of Pub. L. 85–840 provided that: ''In the case of any husband, widower, or parent who would not be entitled to benefits under section 202(c), section 202(f), and section 202(h), respectively, of the Social Security Act [subsecs. (c), (f), and (h) of this section] except for the enactment of section 205 of this Act [amending this section and sections 401, 403, 414, 415, 422, and 425 of this title], the requirement in such section 202(c), section 202(f), or section 202(h), as the case may be, that proof of support be filed within a two-year period shall not apply if such proof is filed within two years after the month in which this Act is enacted [August 1958].''

Section 304(c) of Pub. L. 85–840 provided that: ''In the case of any parent who would not be entitled to parent's benefits under section 202(h) of the Social Security Act [subsec. (h) of this section] except for the enactment of this section, the requirement in such section 202(h) that proof of support be filed within two years of the date of death of the insured individual referred to therein shall not apply if such proof is filed within the two-year period beginning with the first day of the month after the month in which this Act is enacted [August 1958].''

1954—Section 113 of act Sept. 1, 1954, provided that:

''(a) For the purpose of determining the entitlement of any individual to husband's insurance benefits under subsection (c) of section 202 of the Social Security Act [subsec. (c) of this section] on the basis of his wife's wages and self-employment income, the requirements of paragraph (1)(D) of such subsection shall be deemed to be met if—

''(1) such individual was receiving at least one-half of his support, as determined in accordance with regulations prescribed by the Secretary of Health, Education, and Welfare, from his wife on the first day of the first month (A) for which she was entitled to a monthly benefit under subsection (a) of such section 202, and (B) in which an event described in paragraph (1) or (2) of section 203(b) of such Act [section 403(b) of this title] (as in effect before or after the enactment of this Act [Sept. 1, 1954]) did not occur.

''(2) such individual has filed proof of such support within two years after such first month, and

''(3) such wife was, without the application of subsection (j)(1) of such section 202, entitled to a primary insurance benefit under such Act for August 1950.

''(b) For the purpose of determining the entitlement of any individual to widower's insurance benefits under subsection (f) of section 202 of the Social Security Act on the basis of his deceased wife's wages and self-employment income, the requirements of paragraph (1)(E)(ii) of such subsection shall be deemed to be met if—

''(1) such individual was receiving at least one-half of his support, as determined in accordance with regulations prescribed by the Secretary of Health, Education, and Welfare, from his wife, and she was a currently insured individual, on the first day of the first month (A) for which she was entitled to a monthly benefit under subsection (a) of such section 202, and (B) in which an event described in paragraph (1) or (2) of section 203(b) of such Act (as in effect before or after the enactment of this Act [Sept. 1, 1954]) did not occur.

''(2) such individual has filed proof of such support within two years after such first month, and

''(3) such wife was, without the application of subsection (j)(1) of such section 202, entitled to a primary insurance benefit under such Act for August 1950.

''(c) For purposes of subsection (b)(1) of this section, and for purposes of section 202(c)(1) of the Social Security Act in cases to which subsection (a) of this section is applicable, the wife of an individual shall be deemed a currently insured individual if she had not less than six quarters of coverage (as determined under section 213 of the Social Security Act) [section 413 of this title] during the thirteen-quarter period ending with the calendar quarter in which occurs the first month (1) for which such wife was entitled to a monthly benefit under section 202(a) of such Act, and (2) in which an event described in paragraph (1) or (2) of section 203(b) of such Act (as in effect before or after the enactment of this Act [Sept. 1, 1954]) did not occur.

''(d) This section shall apply only with respect to husband's insurance benefits under section 202(c) of the Social Security Act [subsec. (c) of this section], and widower's insurance benefits under section 202(f) of such Act [subsec. (f) of this section], for months after August 1954, and only with respect to benefits based on applications filed after such month.''

1950—Section 101(c) of act Aug. 28, 1950, provided that:

''(1) Any individual entitled to primary insurance benefits or widow's current insurance benefits under section 202 of the Social Security Act [this section] as in effect prior to its amendment by this Act who would, but for the enactment of this Act, be entitled to such benefits for September 1950 shall be deemed to be enti-

tled to old-age insurance benefits or mother's insurance benefits (as the case may be) under section 202 of the Social Security Act, as amended by this Act, as though such individual became entitled to such benefits in such month.

''(2) Any individual entitled to any other monthly insurance benefits under section 202 of the Social Security Act as in effect prior to its amendment by this Act who would, but for the enactment of this Act, be entitled to such benefits for September 1950 shall be deemed to be entitled to such benefits under section 202 of the Social Security Act, as amended by this Act, as though such individual became entitled to such benefits in such month.

''(3) Any individual who files application after August 1950 for monthly benefits under any subsection of section 202 of the Social Security Act who would, but for the enactment of this Act, be entitled to benefits under such subsection (as in effect prior to such enactment) for any month prior to September 1950 shall be deemed entitled to such benefits for such month prior to September 1950 to the same extent and in the same amounts as though this Act had not been enacted.''

EXTENSION OF FILING PERIOD FOR HUSBAND'S, WIDOWER'S, OR PARENT'S BENEFITS IN CERTAIN CASES

Section 210 of Pub. L. 86–778 provided that:

''(a) In the case of any husband who would not be entitled to husband's insurance benefits under section 202(c) of the Social Security Act [subsec. (c) of this section] except for the enactment of this Act, the requirement in section 202(c)(1)(C) of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed within two years after the month in which this Act is enacted [September 1960].

''(b) In the case of any widower who would not be entitled to widower's insurance benefits under section 202(f) of the Social Security Act except for the enactment of this Act, the requirement in section 202(f)(1)(D) of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed within two years after the month in which this Act is enacted.

''(c) In the case of any parent who would not be entitled to parent's insurance benefits under section 202(h) of the Social Security Act except for the enactment of this Act, the requirement in section 202(h)(1)(B) of the Social Security Act relating to the time within which proof of support must be filed shall not apply if such proof of support is filed within two years after the month in which this Act is enacted.''

DISREGARDING OASDI BENEFIT INCREASES AND CHILD'S INSURANCE BENEFIT PAYMENTS BEYOND AGE 18 TO THE EXTENT ATTRIBUTABLE TO RETROACTIVE EFFECTIVE DATE OF 1965 AMENDMENTS

Authorization to disregard, in determining need for aid or assistance under an approved State plan, amounts paid under this subchapter for months occurring after December 1964 and before October 1965 to the extent to which payment is attributable to the payment of child's insurance benefits under the old-age, survivors, and disability insurance system after attainment of age 18, in the case of individuals attending school, resulting from enactment of section 306 of Pub. L. 89–97, see section 406 of Pub. L. 89–97, set out as a note under section 415 of this title.

LUMP-SUM PAYMENTS WHERE DEATH OCCURRED PRIOR TO SEPTEMBER 1, 1950

Section 101(d) of act Aug. 28, 1950, as amended July 18, 1952, ch. 945, §5(e)(1), 66 Stat. 775; Sept. 13, 1960, Pub. L. 86–778, title I, §103(a)(2), 74 Stat. 936, provided that: ''Lump-sum death payments shall be made in the case of individuals who died prior to September 1950 as though this Act had not been enacted; except that in the case of any individual who died outside the forty-eight States and the District of Columbia after December 6, 1941, and prior to August 10, 1946, the last sentence of section 202(g) of the Social Security Act [subsec. (g) of this section] as in effect prior to the enactment of this Act shall not be applicable if application for a lump-sum death payment is filed prior to September 1952, and except that in the case of any individual who died outside the forty-eight States and the District of Columbia on or after June 25, 1950, and prior to September 1950, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the last sentence of section 202(g) of the Social Security Act as in effect prior to the enactment of this Act [July 18, 1952] shall not prevent payment to any person under the second sentence thereof if application for a lump-sum death payment under such section with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.''

LUMP-SUM PAYMENTS FOR DEATHS BEFORE 1940; TIME LIMITATION

Lump-sum payments of 3½ percent of total wages paid with respect to employment after Dec. 31, 1936 and before reaching the age of 65 were provided for persons who were not qualified individuals upon reaching that age by section 204 of act Aug. 14, 1935, before amendment in 1939. Such lump-sum payments, except to the estate of an individual who died prior to Jan. 1, 1940, were prohibited after Aug. 10, 1939, by section 902(g) of act Aug. 10, 1939. Section 415 of act Aug. 10, 1946, provided that no lump-sum payments shall be made under section 204 of the 1935 act or section 902(g) of the 1939 act unless application therefor has been filed prior to the expiration of six months after Aug. 10, 1946.

DEATH OUTSIDE U.S.; EXTENSION OF FILING TIME FOR LUMP-SUM PAYMENTS

Section 5(e)(2) of act July 18, 1952, ch. 945, 66 Stat. 775, as amended by Pub. L. 86–778, title I, §103(a)(2), Sept. 13, 1960, 74 Stat. 936, provided that: ''In the case of any individual who died outside the forty-eight States and the District of Columbia after August 1950 and prior to January 1954, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the last sentence of section 202(i) of the Social Security Act [subsec. (i) of this section] shall not prevent payment to any person under the second sentence thereof if application for a lump-sum death payment with respect to such deceased individual is filed under such section by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.''

PAYMENT OF ANNUITIES TO OFFICERS AND EMPLOYEES OF THE UNITED STATES CONVICTED OF CERTAIN OFFENSES

Section 121(b) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall not be construed to restrict or otherwise affect any of the provisions of the Act entitled 'An Act to prohibit payments of annuities to officers and employees of the United States convicted of certain offenses, and for other purposes', approved September 1, 1954 (Public Law 769, Eighty-third Congress) [sections 2281 to 2288 of former Title 5, Executive Departments and Government Officers and Employees, and are covered by section 8311 et seq. of Title 5, Government Organization and Employees].''

APPLICATION FOR BENEFITS BY SURVIVORS OF MEMBERS AND FORMER MEMBERS OF UNIFORMED SERVICES

Forms for use by survivors of members and former members of the uniformed services in filing applications for benefits under this subchapter to be prescribed jointly by the Secretary of Veterans Affairs and the Secretary of Health and Human Services, see section 5105 of Title 38, Veterans' Benefits.

PAYMENTS OF ALIENS' BENEFITS WITHHELD UNDER FOREIGN DELIVERY RESTRICTION OF CHECKS AGAINST FEDERAL FUNDS

Section 162(c)(3) of Pub. L. 90–248 provided that: ''Whenever benefits which an individual who is not a citizen or national of the United States was entitled to receive under title II of the Social Security Act [this subchapter] are, on June 30, 1968, being withheld by the Treasury Department under the first section of the Act of October 9, 1940 (31 U.S.C. 123) [31 U.S.C. 3329(a) and 3330(a)], any such benefits, payable to such individual for months after the month in which the determination by the Treasury Department that the benefits should be so withheld was made, shall not be paid—

''(A) to any person other than such individual, or, if such individual dies before such benefits can be paid, to any person other than an individual who was entitled for the month in which the deceased individual died (with the application of section 202(j)(1) of the Social Security Act [subsec. (j)(1) of this section]) to a monthly benefit under title II of such Act [this subchapter] on the basis of the same wages and self-employment income as such deceased individual, or

''(B) in excess of the equivalent of the last twelve months' benefits that would have been payable to such individual.''

STUDY OF RETIREMENT TEST AND OF DRUG STANDARDS AND COVERAGE

Section 405 of Pub. L. 90–248 authorized the Secretary of Health, Education, and Welfare to make a study of the existing retirement test and proposals for the modification of the test, the quality and cost standards for drugs for which payments are made under this chapter, and the coverage of drugs under part B of subchapter XVIII of this chapter, and submit a report to the President and to Congress concerning his findings and recommendations on or before Jan. 1, 1969.

EX. ORD. NO. 12436. PAYMENT OF CERTAIN BENEFITS TO SURVIVORS OF PERSONS WHO DIED IN OR AS A RESULT OF MILITARY SERVICE

Ex. Ord. No. 12436, July 29, 1983, 48 F.R. 34931, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including Section 156 of Public Law 97–377 (96 Stat. 1920; 42 U.S.C. 402 note), in order to provide certain benefits to the surviving spouses and children of certain persons who died in or as a result of military service, it is hereby ordered as follows:

SECTION 1. The Administrator of Veterans' Affairs is designated to administer the provisions of Section 156 of Public Law 97–377.

SEC. 2. The Secretary of Health and Human Services shall provide to the Administrator of Veterans' Affairs such information and such technical assistance as the Administrator may reasonably require to discharge his responsibilities under Section 156. The Administrator of Veterans' Affairs shall reimburse the Department of Health and Human Services for all expenses it incurs in providing such information and technical assistance to the Veterans' Administration. Such expenses shall be paid from the Veterans' Administration account described in Section 3 of this Order.

SEC. 3. During fiscal year 1983 and each succeeding fiscal year, the Secretary of Defense shall transfer, from time to time, from the ''Retired Pay, Defense'' account of the Department of Defense to an account established in the Veterans' Administration, such amounts as the Administrator of Veterans' Affairs determines to be necessary to pay the benefits authorized by Section 156 during fiscal year 1983 and each succeeding fiscal year, and the expenses incurred by the Veterans' Administration in paying such benefits during fiscal year 1983 and each succeeding fiscal year. Such transfers shall, to the extent feasible, be made in advance of the payment of benefits and expenses by the Veterans' Administration.

SEC. 4. This Order shall be effective as of January 1, 1983.

RONALD REAGAN.

CROSS REFERENCES

Survivor benefits under Railroad Retirement Act of 1974 correlation with payments under this chapter, see section 231e of Title 45, Railroads.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 403, 405, 415, 416, 417, 422, 423, 424a, 425, 426, 426a, 427, 428, 433, 1320b–1, 1382, 1383, 1383c, 1395i–1, 1395p, 1395r, 1395s, 1396v of this title; title 5 sections 8332, 8421, 8442; title 30 sections 902, 922, 932; title 38 sections 1312, 1322; title 45 sections 231a, 231b, 231c, 231d, 231e, 231f; title 50 section 2082.

§ 403. Reduction of insurance benefits

(a) Maximum benefits

(1) In the case of an individual whose primary insurance amount has been computed or recomputed under section 415(a)(1) or (4) of this title, or section 415(d) of this title, as in effect after December 1978, the total monthly benefits to which beneficiaries may be entitled under section 402 or 423 of this title for a month on the basis of the wages and self-employment income of such individual shall, except as provided by paragraphs (3) and (6) (but prior to any increases resulting from the application of paragraph (2)(A)(ii)(III) of section 415(i) of this title), be reduced as necessary so as not to exceed—

(A) 150 percent of such individual's primary insurance amount to the extent that it does not exceed the amount established with respect to this subparagraph by paragraph (2),

(B) 272 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (A) but does not exceed the amount established with respect to this subparagraph by paragraph (2),

(C) 134 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (B) but does not exceed the amount established with respect to this subparagraph by paragraph (2), and

(D) 175 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (C).

Any such amount that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

(2)(A) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming so eligible for such benefits), in the calendar year 1979, the amounts established with respect to subparagraphs (A), (B), and (C) of paragraph (1) shall be $230, $332, and $433, respectively.

(B) For individuals who initially become eligible for old-age or disability insurance benefits,

or who die (before becoming so eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established for the calendar year 1979 by subparagraph (A) of this paragraph and the quotient obtained under subparagraph (B)(ii) of section 415(a)(1) of this title, with such product being rounded in the manner prescribed by section 415(a)(1)(B)(iii) of this title.

(C) In each calendar year after 1978 the Commissioner of Social Security shall publish in the Federal Register, on or before November 1, the formula which (except as provided in section 415(i)(2)(D) of this title) is to be applicable under this paragraph to individuals who become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in the following calendar year.

(D) A year shall not be counted as the year of an individual's death or eligibility for purposes of this paragraph or paragraph (8) in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual's eligibility for the disability insurance benefits to which he was entitled during such 12 months).

(3)(A) When an individual who is entitled to benefits on the basis of the wages and self-employment income of any insured individual and to whom this subsection applies would (but for the provisions of section 402(k)(2)(A) of this title) be entitled to child's insurance benefits for a month on the basis of the wages and self-employment income of one or more other insured individuals, the total monthly benefits to which all beneficiaries are entitled on the basis of such wages and self-employment income shall not be reduced under this subsection to less than the smaller of—

(i) the sum of the maximum amounts of benefits payable on the basis of the wages and self-employment income of all such insured individuals, or

(ii) an amount (I) initially equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title, for January of the year determined for purposes of this clause under the following two sentences, with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and (II) thereafter increased in accordance with the provisions of section 415(i)(2)(A)(ii) of this title.

The year established for purposes of clause (ii) shall be 1983 or, if it occurs later with respect to any individual, the year in which occurred the month that the application of the reduction provisions contained in this subparagraph began with respect to benefits payable on the basis of the wages and self-employment income of the insured individual. If for any month subsequent to the first month for which clause (ii) applies (with respect to benefits payable on the basis of the wages and self-employment income of the insured individual) the reduction under this subparagraph ceases to apply, then the year determined under the preceding sentence shall be redetermined (for purposes of any subsequent application of this subparagraph with respect to benefits payable on the basis of such wages and self-employment income) as though this subparagraph had not been previously applicable.

(B) When two or more persons were entitled (without the application of section 402(j)(1) of this title and section 423(b) of this title) to monthly benefits under section 402 or 423 of this title for January 1971 or any prior month on the basis of the wages and self-employment income of such insured individual and the provisions of this subsection as in effect for any such month were applicable in determining the benefit amount of any persons on the basis of such wages and self-employment income, the total of benefits for any month after January 1971 shall not be reduced to less than the largest of—

(i) the amount determined under this subsection without regard to this subparagraph,

(ii) the largest amount which has been determined for any month under this subsection for persons entitled to monthly benefits on the basis of such insured individual's wages and self-employment income, or

(iii) if any persons are entitled to benefits on the basis of such wages and self-employment income for the month before the effective month (after September 1972) of a general benefit increase under this title (as defined in section 415(i)(3) of this title) or a benefit increase under the provisions of section 415(i) of this title, an amount equal to the sum of amounts derived by multiplying the benefit amount determined under this subchapter (excluding any part thereof determined under section 402(w) of this title) for the month before such effective month (including this subsection, but without the application of section 422(b) of this title, section 402(q) of this title, and subsections (b), (c), and (d) of this section), for each such person for such month, by a percentage equal to the percentage of the increase provided under such benefit increase (with any such increased amount which is not a multiple of $0.10 being rounded to the next lower multiple of $0.10);

but in any such case (I) subparagraph (A) of this paragraph shall not be applied to such total of benefits after the application of clause (ii) or (iii), and (II) if section 402(k)(2)(A) of this title was applicable in the case of any such benefits for a month, and ceases to apply for a month after such month, the provisions of clause (ii) or (iii) shall be applied, for and after the month in which section 402(k)(2)(A) of this title ceases to apply, as though subparagraph (A) of this paragraph had not been applicable to such total of benefits for the last month for which clause (ii) or (iii) was applicable.

(C) When any of such individuals is entitled to monthly benefits as a divorced spouse under section 402(b) or (c) of this title or as a surviving divorced spouse under section 402(e) or (f) of this title for any month, the benefit to which he or she is entitled on the basis of the wages and self-employment income of such insured individual for such month shall be determined without regard to this subsection, and the benefits of all other individuals who are entitled for such

month to monthly benefits under section 402 of this title on the wages and self-employment income of such insured individual shall be determined as if no such divorced spouse or surviving divorced spouse were entitled to benefits for such month.

(D) In any case in which—

(i) two or more individuals are entitled to monthly benefits for the same month as a spouse under subsection (b) or (c) of section 402 of this title, or as a surviving spouse under subsection (e), (f), or (g) of section 402 of this title,

(ii) at least one of such individuals is entitled by reason of subparagraph (A)(ii) or (B) of section 416(h)(1) of this title, and

(iii) such entitlements are based on the wages and self-employment income of the same insured individual,

the benefit of the entitled individual whose entitlement is based on a valid marriage (as determined without regard to subparagraphs (A)(ii) and (B) of section 416(h)(1) of this title) to such insured individual shall, for such month and all months thereafter, be determined without regard to this subsection, and the benefits of all other individuals who are entitled, for such month or any month thereafter, to monthly benefits under section 402 of this title based on the wages and self-employment income of such insured individual shall be determined as if such entitled individual were not entitled to benefits for such month.

(4) In any case in which benefits are reduced pursuant to the provisions of this subsection, the reduction shall be made after any deductions under this section and after any deductions under section 422(b) of this title. Notwithstanding the preceding sentence, any reduction under this subsection in the case of an individual who is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for any month on the basis of the same wages and self-employment income as another person—

(A) who also is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for such month,

(B) who does not live in the same household as such individual, and

(C) whose benefit for such month is suspended (in whole or in part) pursuant to subsection (h)(3) of this section,

shall be made before the suspension under subsection (h)(3) of this section. Whenever a reduction is made under this subsection in the total of monthly benefits to which individuals are entitled for any month on the basis of the wages and self-employment income of an insured individual, each such benefit other than the old-age or disability insurance benefit shall be proportionately decreased.

(5) Notwithstanding any other provision of law, when—

(A) two or more persons are entitled to monthly benefits for a particular month on the basis of the wages and self-employment income of an insured individual and (for such particular month) the provisions of this subsection are applicable to such monthly benefits, and

(B) such individual's primary insurance amount is increased for the following month under any provision of this subchapter,

then the total of monthly benefits for all persons on the basis of such wages and self-employment income for such particular month, as determined under the provisions of this subsection, shall for purposes of determining the total monthly benefits for all persons on the basis of such wages and self-employment income for months subsequent to such particular month be considered to have been increased by the smallest amount that would have been required in order to assure that the total of monthly benefits payable on the basis of such wages and self-employment income for any such subsequent month will not be less (after the application of the other provisions of this subsection and section 402(q) of this title) than the total of monthly benefits (after the application of the other provisions of this subsection and section 402(q) of this title) payable on the basis of such wages and self-employment income for such particular month.

(6) Notwithstanding any of the preceding provisions of this subsection other than paragraphs (3)(A), (3)(C), (3)(D), (4), and (5) (but subject to section 415(i)(2)(A)(ii) of this title), the total monthly benefits to which beneficiaries may be entitled under sections 402 and 423 of this title for any month on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall be reduced (before the application of section 424a of this title) to the smaller of—

(A) 85 percent of such individual's average indexed monthly earnings (or 100 percent of his primary insurance amount, if larger), or

(B) 150 percent of such individual's primary insurance amount.

(7) In the case of any individual who is entitled for any month to benefits based upon the primary insurance amounts of two or more insured individuals, one or more of which primary insurance amounts were determined under section 415(a) or (d) of this title as in effect (without regard to the table contained therein) prior to January 1979 and one or more of which primary insurance amounts were determined under section 415(a)(1) or (4) of this title, or section 415(d) of this title, as in effect after December 1978, the total benefits payable to that individual and all other individuals entitled to benefits for that month based upon those primary insurance amounts shall be reduced to an amount equal to the amount determined in accordance with the provisions of paragraph (3)(A)(ii) of this subsection, except that for this purpose the references to subparagraph (A) in the last two sentences of paragraph (3)(A) shall be deemed to be references to paragraph (7).

(8) Subject to paragraph (7) and except as otherwise provided in paragraph (10)(C), this subsection as in effect in December 1978 shall remain in effect with respect to a primary insurance amount computed under section 415(a) or (d) of this title, as in effect (without regard to the table contained therein) in December 1978 and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990, except that a

primary insurance amount so computed with respect to an individual who first becomes eligible for an old-age or disability insurance benefit, or dies (before becoming eligible for such a benefit), after December 1978, shall instead be governed by this section as in effect after December 1978. For purposes of the preceding sentence, the phrase ''rounded to the next higher multiple of $0.10'', as it appeared in subsection (a)(2)(C) of this section as in effect in December 1978, shall be deemed to read ''rounded to the next lower multiple of $0.10''.

(9) When—

(A) one or more persons were entitled (without the application of section 402(j)(1) of this title) to monthly benefits under section 402 of this title for May 1978 on the basis of the wages and self-employment income of an individual,

(B) the benefit of at least one such person for June 1978 is increased by reason of the amendments made by section 204 of the Social Security Amendments of 1977; and

(C) the total amount of benefits to which all such persons are entitled under such section 402 of this title are reduced under the provisions of this subsection (or would be so reduced except for the first sentence of subsection (a)(4) of this section),

then the amount of the benefit to which each such person is entitled for months after May 1978 shall be increased (after such reductions are made under this subsection) to the amount such benefits would have been if the benefit of the person or persons referred to in subparagraph (B) had not been so increased.

(10)(A) Subject to subparagraphs (B) and (C)—

(i) the total monthly benefits to which beneficiaries may be entitled under sections 402 and 423 of this title for a month on the basis of the wages and self-employment income of an individual whose primary insurance amount is computed under section 415(a)(2)(B)(i) of this title shall equal the total monthly benefits which were authorized by this section with respect to such individual's primary insurance amount for the last month of his prior entitlement to disability insurance benefits, increased for this purpose by the general benefit increases and other increases under section 415(i) of this title that would have applied to such total monthly benefits had the individual remained entitled to disability insurance benefits until the month in which he became entitled to old-age insurance benefits or reentitled to disability insurance benefits or died, and

(ii) the total monthly benefits to which beneficiaries may be entitled under sections 402 and 423 of this title for a month on the basis of the wages and self-employment income of an individual whose primary insurance amount is computed under section 415(a)(2)(C) of this title shall equal the total monthly benefits which were authorized by this section with respect to such individual's primary insurance amount for the last month of his prior entitlement to disability insurance benefits.

(B) In any case in which—

(i) the total monthly benefits with respect to such individual's primary insurance amount for the last month of his prior entitlement to disability insurance benefits was computed under paragraph (6), and

(ii) the individual's primary insurance amount is computed under subparagraph (B)(i) or (C) of section 415(a)(2) of this title by reason of the individual's entitlement to old-age insurance benefits or death,

the total monthly benefits shall equal the total monthly benefits that would have been authorized with respect to the primary insurance amount for the last month of his prior entitlement to disability insurance benefits if such total monthly benefits had been computed without regard to paragraph (6).

(C) This paragraph shall apply before the application of paragraph (3)(A), and before the application of subsection (a)(1) of this section as in effect in December 1978.

(b) Deductions on account of work

(1) Deductions, in such amounts and at such time or times as the Commissioner of Social Security shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, and from any payment or payments to which any other persons are entitled on the basis of such individual's wages and self-employment income, until the total of such deductions equals—

(A) such individual's benefit or benefits under section 402 of this title for any month, and

(B) if such individual was entitled to old-age insurance benefits under section 402(a) of this title for such month, the benefit or benefits of all other persons for such month under section 402 of this title based on such individual's wages and self-employment income,

if for such month he is charged with excess earnings, under the provisions of subsection (f) of this section, equal to the total of benefits referred to in clauses (A) and (B). If the excess earnings so charged are less than such total of benefits, such deductions with respect to such month shall be equal only to the amount of such excess earnings. If a child who has attained the age of 18 and is entitled to child's insurance benefits, or a person who is entitled to mother's or father's insurance benefits, is married to an individual entitled to old-age insurance benefits under section 402(a) of this title, such child or such person, as the case may be, shall, for the purposes of this subsection and subsection (f) of this section, be deemed to be entitled to such benefits on the basis of the wages and self-employment income of such individual entitled to old-age insurance benefits. If a deduction has already been made under this subsection with respect to a person's benefit or benefits under section 402 of this title for a month, he shall be deemed entitled to payments under such section for such month for purposes of further deductions under this subsection, and for purposes of charging of each person's excess earnings under subsection (f) of this section, only to the extent of the total of his benefits remaining after such earlier deductions have been made. For purposes

of this subsection and subsection (f) of this section—

(i) an individual shall be deemed to be entitled to payments under section 402 of this title equal to the amount of the benefit or benefits to which he is entitled under such section after the application of subsection (a) of this section, but without the application of the first sentence of paragraph (4) thereof; and

(ii) if a deduction is made with respect to an individual's benefit or benefits under section 402 of this title because of the occurrence in any month of an event specified in subsection (c) or (d) of this section or in section 422(b) of this title, such individual shall not be considered to be entitled to any benefits under such section 402 for such month.

(2)(A) Except as provided in subparagraph (B), in any case in which—

(i) any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 402(b) or (c) of this title for any month, and

(ii) such person has been divorced for not less than 2 years,

the benefit to which he or she is entitled on the basis of the wages and self-employment income of the individual referred to in paragraph (1) for such month shall be determined without regard to deductions under this subsection as a result of excess earnings of such individual, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 402 of this title on the basis of the wages and self-employment income of such individual referred to in paragraph (1) shall be determined as if no such divorced spouse were entitled to benefits for such month.

(B) Clause (ii) of subparagraph (A) shall not apply with respect to any divorced spouse in any case in which the individual referred to in paragraph (1) became entitled to old-age insurance benefits under section 402(a) of this title before the date of the divorce.

(c) Deductions on account of noncovered work outside United States or failure to have child in care

Deductions, in such amounts and at such time or times as the Commissioner of Social Security shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, until the total of such deductions equals such individual's benefits or benefit under section 402 of this title for any month—

(1) in which such individual is under the age of seventy and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States;

(2) in which such individual, if a wife or husband under retirement age (as defined in section 416(*l*) of this title) entitled to a wife's or husband's insurance benefit, did not have in his or her care (individually or jointly with his or her spouse) a child of such spouse entitled to a child's insurance benefit and such wife's or husband's insurance benefit for such month was not reduced under the provisions of section 402(q) of this title;

(3) in which such individual, if a widow or widower entitled to a mother's or father's insurance benefit, did not have in his or her care a child of his or her deceased spouse entitled to a child's insurance benefit; or

(4) in which such an individual, if a surviving divorced mother or father entitled to a mother's or father's insurance benefit, did not have in his or her care a child of his or her deceased former spouse who (A) is his or her son, daughter, or legally adopted child and (B) is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased former spouse.

For purposes of paragraphs (2), (3), and (4) of this subsection, a child shall not be considered to be entitled to a child's insurance benefit for any month in which paragraph (1) of section 402(s) of this title applies or an event specified in section 422(b) of this title occurs with respect to such child. Subject to paragraph (3) of such section 402(s) of this title, no deduction shall be made under this subsection from any child's insurance benefit for the month in which the child entitled to such benefit attained the age of eighteen or any subsequent month; nor shall any deduction be made under this subsection from any widow's insurance benefit for any month in which the widow or surviving divorced wife is entitled and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower or surviving divorced husband is entitled and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if he became so entitled prior to attaining age 60).

(d) Deductions from dependents' benefits on account of noncovered work outside United States by old-age insurance beneficiary

(1)(A) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to old-age insurance benefits, to which a wife, divorced wife, husband, divorced husband, or child is entitled, until the total of such deductions equals such wife's, husband's, or child's insurance benefit or benefits under section 402 of this title for any month in which such individual is under the age of seventy and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States.

(B)(i) Except as provided in clause (ii), in any case in which—

(I) a divorced spouse is entitled to monthly benefits under section 402(b) or (c) of this title for any month, and

(II) such divorced spouse has been divorced for not less than 2 years,

the benefit to which he or she is entitled for such month on the basis of the wages and self-employment income of the individual entitled to old-age insurance benefits referred to in subparagraph (A) shall be determined without regard to deductions under this paragraph as a result of excess earnings of such individual, and the benefits of all other individuals who are en-

titled for such month to monthly benefits under section 402 of this title on the basis of the wages and self-employment income of such individual referred to in subparagraph (A) shall be determined as if no such divorced spouse were entitled to benefits for such month.

(ii) Subclause (II) of clause (i) shall not apply with respect to any divorced spouse in any case in which the individual entitled to old-age insurance benefits referred to in subparagraph (A) became entitled to such benefits before the date of the divorce.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled, or from any mother's or father's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or mother's or father's insurance benefit or benefits under section 402 of this title for any month in which such child or person entitled to mother's or father's insurance benefits is married to an individual under the age of seventy who is entitled to old-age insurance benefits and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States.

(e) Occurrence of more than one event

If more than one of the events specified in subsections (c) and (d) of this section and section 422(b) of this title occurs in any one month which would occasion deductions equal to a benefit for such month, only an amount equal to such benefit shall be deducted.

(f) Months to which earnings are charged

For purposes of subsection (b) of this section—

(1) The amount of an individual's excess earnings (as defined in paragraph (3)) shall be charged to months as follows: There shall be charged to the first month of such taxable year an amount of his excess earnings equal to the sum of the payments to which he and all other persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled for such month under section 402 of this title on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum), and the balance, if any, of such excess earnings shall be charged to each succeeding month in such year to the extent, in the case of each such month, of the sum of the payments to which such individual and all such other persons are entitled for such month under section 402 of this title on the basis of his wages and self-employment income, until the total of such excess has been so charged. Where an individual is entitled to benefits under section 402(a) of this title and other persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled to benefits under section 402(b), (c), or (d) of this title on the basis of the wages and self-employment income of such individual, the excess earnings of such individual for any taxable year shall be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Notwithstanding the preceding provisions of this paragraph but subject to section 402(s) of this title, no part of the excess earnings of an individual shall be charged to any month (A) for which such individual was not entitled to a benefit under this subchapter, (B) in which such individual was age seventy or over, (C) in which such individual, if a child entitled to child's insurance benefits, has attained the age of 18, (D) for which such individual is entitled to widow's insurance benefits and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if she became so entitled prior to attaining age 60), or widower's insurance benefits and has not attained retirement age (as defined in section 416(*l*) of this title) (but only if he became so entitled prior to attaining age 60), (E) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), if such month is in the taxable year in which occurs the first month after December 1977 that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title (without having been entitled for the preceding month to a benefit under any other of such subsections), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5)) of more than the applicable exempt amount as determined under paragraph (8), or (F) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), in the case of an individual entitled to benefits under section 402(b) or (c) of this title (but only by reason of having a child in his or her care within the meaning of paragraph (1)(B) of subsection (b) or (c) of this section, as may be applicable) or under section 402(d) or (g) of this title, if such month is in a year in which such entitlement ends for a reason other than the death of such individual, and such individual is not entitled to any benefits under this subchapter for the month following the month during which such entitlement under section 402(b), (d), or (g) of this title ended.

(2) As used in paragraph (1), the term ''first month of such taxable year'' means the earliest month in such year to which the charging of excess earnings described in such paragraph is not prohibited by the application of clauses (A), (B), (C), (D), (E), and (F) thereof.

(3) For purposes of paragraph (1) and subsection (h) of this section, an individual's excess earnings for a taxable year shall be 33⅓ percent of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8) in the case of an individual who has attained (or, but for the individual's death, would have attained) retirement age (as defined in section 416(*l*) of this title) before the close of such tax-

able year, or 50 percent of his earnings for such year in excess of such product in the case of any other individual, multiplied by the number of months in such year, except that, in determining an individual's excess earnings for the taxable year in which he attains age 70, there shall be excluded any earnings of such individual for the month in which he attains such age and any subsequent month (with any net earnings or net loss from self-employment in such year being prorated in an equitable manner under regulations of the Commissioner of Social Security). For purposes of the preceding sentence, notwithstanding section 411(e) of this title, the number of months in the taxable year in which an individual dies shall be 12. The excess earnings as derived under the first sentence of this paragraph, if not a multiple of $1, shall be reduced to the next lower multiple of $1.

(4) For purposes of clause (E) of paragraph (1)—

(A) An individual will be presumed, with respect to any month, to have been engaged in self-employment in such month until it is shown to the satisfaction of the Commissioner of Social Security that such individual rendered no substantial services in such month with respect to any trade or business the net income or loss of which is includible in computing (as provided in paragraph (5) of this subsection) his net earnings or net loss from self-employment for any taxable year. The Commissioner of Social Security shall by regulations prescribe the methods and criteria for determining whether or not an individual has rendered substantial services with respect to any trade or business.

(B) An individual will be presumed, with respect to any month, to have rendered services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8) until it is shown to the satisfaction of the Commissioner of Social Security that such individual did not render such services in such month for more than such amount.

(5)(A) An individual's earnings for a taxable year shall be (i) the sum of his wages for services rendered in such year and his net earnings from self-employment for such year, minus (ii) any net loss from self-employment for such year.

(B) For purposes of this section—

(i) an individual's net earnings from self-employment for any taxable year shall be determined as provided in section 411 of this title, except that paragraphs (1), (4), and (5) of section 411(c) of this title shall not apply and the gross income shall be computed by excluding the amounts provided by subparagraph (D) of this paragraph, and

(ii) an individual's net loss from self-employment for any taxable year is the excess of the deductions (plus his distributive share of loss described in section 702(a)(8) of the Internal Revenue Code of 1986) taken into account under clause (i) over the gross income (plus his distributive share of income so described) taken into account under clause (i).

(C) For purposes of this subsection, an individual's wages shall be computed without regard to the limitations as to amounts of remuneration specified in paragraphs (1), (6)(B), (6)(C), (7)(B), and (8) of section 409(a) of this title; and in making such computation services which do not constitute employment as defined in section 410 of this title, performed within the United States by the individual as an employee or performed outside the United States in the active military or naval service of the United States, shall be deemed to be employment as so defined if the remuneration for such services is not includible in computing his net earnings or net loss from self-employment. The term ''wages'' does not include—

(i) the amount of any payment made to, or on behalf of, an employee or any of his dependents (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement, or

(ii) any payment or series of payments by an employer to an employee or any of his dependents upon or after the termination of the employee's employment relationship because of retirement after attaining an age specified in a plan referred to in section 409(a)(11)(B) of this title or in a pension plan of the employer.

(D) In the case of—

(i) an individual who has attained retirement age (as defined in section 416(*l*) of this title) on or before the last day of the taxable year, and who shows to the satisfaction of the Commissioner of Social Security that he or she is receiving royalties attributable to a copyright or patent obtained before the taxable year in which he or she attained such age and that the property to which the copyright or patent relates was created by his or her own personal efforts, or

(ii) an individual who has become entitled to insurance benefits under this subchapter, other than benefits under section 423 of this title or benefits payable under section 402(d) of this title by reason of being under a disability, and who shows to the satisfaction of the Commissioner of Social Security that he or she is receiving, in a year after his or her initial year of entitlement to such benefits, any other income not attributable to services performed after the month in which he or she initially became entitled to such benefits,

there shall be excluded from gross income any such royalties or other income.

(E) For purposes of this section, any individual's net earnings from self-employment which result from or are attributable to the performance of services by such individual as a director of a corporation during any taxable year shall be deemed to have been derived (and received) by such individual in that year, at the time the services were performed, regardless of when the income, on which the computation of such net earnings from self-employment is based, is actually paid to or received by such individual (unless such income

was actually paid and received prior to that year).

(6) For purposes of this subsection, wages (determined as provided in paragraph (5)(C)) which, according to reports received by the Commissioner of Social Security, are paid to an individual during a taxable year shall be presumed to have been paid to him for services performed in such year until it is shown to the satisfaction of the Commissioner of Social Security that they were paid for services performed in another taxable year. If such reports with respect to an individual show his wages for a calendar year, such individual's taxable year shall be presumed to be a calendar year for purposes of this subsection until it is shown to the satisfaction of the Commissioner of Social Security that his taxable year is not a calendar year.

(7) Where an individual's excess earnings are charged to a month and the excess earnings so charged are less than the total of the payments (without regard to such charging) to which all persons (excluding divorced spouses referred to in subsection (b)(2) of this section) are entitled under section 402 of this title for such month on the basis of his wages and self-employment income, the difference between such total and the excess so charged to such month shall be paid (if it is otherwise payable under this subchapter) to such individual and other persons in the proportion that the benefit to which each of them is entitled (without regard to such charging, without the application of section 402(k)(3) of this title, and prior to the application of section 403(a) of this title) bears to the total of the benefits to which all of them are entitled.

(8)(A) Whenever the Commissioner of Social Security pursuant to section 415(i) of this title increases benefits effective with the month of December following a cost-of-living computation quarter[1] the Commissioner shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C)) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year in which such benefit increase is effective (or, in the case of an individual who dies during the calendar year after the calendar year in which the benefit increase is effective, with respect to such individual's taxable year which ends, upon his death, during such year).

(B) Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals, for each month of a particular taxable year, shall each be whichever of the following is the larger—

(i) the corresponding exempt amount which is in effect with respect to months in the taxable year in which the determination under subparagraph (A) is made, or

(ii) the product of the corresponding exempt amount which is in effect with respect to months in the taxable year ending after 1993 and before 1995, and the ratio of—

(I) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subparagraph (A) is made, to

(II) the national average wage index (as so defined) for 1992,

with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such product is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

Whenever the Commissioner of Social Security determines that an exempt amount is to be increased in any year under this paragraph, the Commissioner shall notify the House Committee on Ways and Means and the Senate Committee on Finance within 30 days after the close of the base quarter (as defined in section 415(i)(1)(A) of this title) in such year of the estimated amount of such increase, indicating the new exempt amount, the actuarial estimates of the effect of the increase, and the actuarial assumptions and methodology used in preparing such estimates.

(C) Notwithstanding the determination of a new exempt amount by the Commissioner of Social Security under subparagraph (A) (and notwithstanding any publication thereof under such subparagraph or any notification thereof under the last sentence of subparagraph (B)), such new exempt amount shall not take effect pursuant thereto if during the calendar year in which such determination is made a law increasing the exempt amount is enacted.

(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 416(*l*) of this title) before the close of the taxable year involved—

(i) shall be $333.33⅓ for each month of any taxable year ending after 1977 and before 1979,

(ii) shall be $375 for each month of any taxable year ending after 1978 and before 1980,

(iii) shall be $416.66⅔ for each month of any taxable year ending after 1979 and before 1981,

(iv) shall be $458.33⅓ for each month of any taxable year ending after 1980 and before 1982, and

(v) shall be $500 for each month of any taxable year ending after 1981 and before 1983.

(9) For purposes of paragraphs (3), (5)(D)(i), and (8)(D), the term ''retirement age (as defined in section 416(*l*) of this title)'', with respect to any individual entitled to monthly insurance benefits under section 402 of this title, means the retirement age (as so defined) which is applicable in the case of old-age insurance benefits, regardless of whether or not the particular benefits to which the individual is entitled (or the only such benefits) are old-age insurance benefits.

[1] So in original. Probably should be followed by a comma.

(g) Penalty for failure to report certain events

Any individual in receipt of benefits subject to deduction under subsection (c) of this section, (or who is in receipt of such benefits on behalf of another individual), because of the occurrence of an event specified therein, who fails to report such occurrence to the Commissioner of Social Security prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred, shall suffer deductions in addition to those imposed under subsection (c) of this section as follows:

(1) if such failure is the first one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than one month;

(2) if such failure is the second one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to two times his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than two months; and

(3) if such failure is the third or a subsequent one for which an additional deduction is imposed under this subsection, such additional deduction shall be equal to three times his benefit or benefits for the first month of the period for which there is a failure to report even though the failure to report is with respect to more than three months;

except that the number of additional deductions required by this subsection shall not exceed the number of months in the period for which there is a failure to report. As used in this subsection, the term ''period for which there is a failure to report'' with respect to any individual means the period for which such individual received and accepted insurance benefits under section 402 of this title without making a timely report and for which deductions are required under subsection (c) of this section.

(h) Report of earnings to Commissioner

(1)(A) If an individual is entitled to any monthly insurance benefit under section 402 of this title during any taxable year in which he has earnings or wages, as computed pursuant to paragraph (5) of subsection (f) of this section, in excess of the product of the applicable exempt amount as determined under subsection (f)(8) of this section times the number of months in such year, such individual (or the individual who is in receipt of such benefit on his behalf) shall make a report to the Commissioner of Social Security of his earnings (or wages) for such taxable year. Such report shall be made on or before the fifteenth day of the fourth month following the close of such year, and shall contain such information and be made in such manner as the Commissioner of Social Security may by regulations prescribe. Such report need not be made for any taxable year—

(i) beginning with or after the month in which such individual attained age 70, or

(ii) if benefit payments for all months (in such taxable year) in which such individual is under age 70 have been suspended under the provisions of the first sentence of paragraph (3) of this subsection, unless—

(I) such individual is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title,

(II) such benefits are reduced under subsection (a) of this section for any month in such taxable year, and

(III) in any such month there is another person who also is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title on the basis of the same wages and self-employment income and who does not live in the same household as such individual.

The Commissioner of Social Security may grant a reasonable extension of time for making the report of earnings required in this paragraph if the Commissioner finds that there is valid reason for a delay, but in no case may the period be extended more than four months.

(B) If the benefit payments of an individual have been suspended for all months in any taxable year under the provisions of the first sentence of paragraph (3) of this subsection, no benefit payment shall be made to such individual for any such month in such taxable year after the expiration of the period of three years, three months, and fifteen days following the close of such taxable year unless within such period the individual, or some other person entitled to benefits under this subchapter on the basis of the same wages and self-employment income, files with the Commissioner of Social Security information showing that a benefit for such month is payable to such individual.

(2) If an individual fails to make a report required under paragraph (1) of this subsection, within the time prescribed by or in accordance with such paragraph, for any taxable year and any deduction is imposed under subsection (b) of this section by reason of his earnings for such year, he shall suffer additional deductions as follows:

(A) if such failure is the first one with respect to which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 402 of this title, except that if the deduction imposed under subsection (b) of this section by reason of his earnings for such year is less than the amount of his benefit (or benefits) for the last month of such year for which he was entitled to a benefit under section 402 of this title, the additional deduction shall be equal to the amount of the deduction imposed under subsection (b) of this section but not less than $10;

(B) if such failure is the second one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to two times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 402 of this title;

(C) if such failure is the third or a subsequent one for which an additional deduction is

imposed under this paragraph, such additional deduction shall be equal to three times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 402 of this title;

except that the number of the additional deductions required by this paragraph with respect to a failure to report earnings for a taxable year shall not exceed the number of months in such year for which such individual received and accepted insurance benefits under section 402 of this title and for which deductions are imposed under subsection (b) of this section by reason of his earnings. In determining whether a failure to report earnings is the first or a subsequent failure for any individual, all taxable years ending prior to the imposition of the first additional deduction under this paragraph, other than the latest one of such years, shall be disregarded.

(3) If the Commissioner of Social Security determines, on the basis of information obtained by or submitted to the Commissioner, that it may reasonably be expected that an individual entitled to benefits under section 402 of this title for any taxable year will suffer deductions imposed under subsection (b) of this section by reason of his earnings for such year, the Commissioner of Social Security may, before the close of such taxable year, suspend the total or less than the total payment for each month in such year (or for only such months as the Commissioner of Social Security may specify) of the benefits payable on the basis of such individual's wages and self-employment income; and such suspension shall remain in effect with respect to the benefits for any month until the Commissioner of Social Security has determined whether or not any deduction is imposed for such month under subsection (b) of this section. The Commissioner of Social Security is authorized, before the close of the taxable year of an individual entitled to benefits during such year, to request of such individual that he make, at such time or times as the Commissioner of Social Security may specify, a declaration of his estimated earnings for the taxable year and that he furnish to the Commissioner of Social Security such other information with respect to such earnings as the Commissioner of Social Security may specify. A failure by such individual to comply with any such request shall in itself constitute justification for a determination under this paragraph that it may reasonably be expected that the individual will suffer deductions imposed under subsection (b) of this section by reason of his earnings for such year. If, after the close of a taxable year of an individual entitled to benefits under section 402 of this title for such year, the Commissioner of Social Security requests such individual to furnish a report of his earnings (as computed pursuant to paragraph (5) of subsection (f) of this section) for such taxable year or any other information with respect to such earnings which the Commissioner of Social Security may specify, and the individual fails to comply with such request, such failure shall in itself constitute justification for a determination that such individual's benefits are subject to deductions under subsection (b) of this section for each month in such taxable year (or only for such months thereof as the Commissioner of Social Security may specify) by reason of his earnings for such year.

(4) The Commissioner of Social Security shall develop and implement procedures in accordance with this subsection to avoid paying more than the correct amount of benefits to any individual under this subchapter as a result of such individual's failure to file a correct report or estimate of earnings or wages. Such procedures may include identifying categories of individuals who are likely to be paid more than the correct amount of benefits and requesting that they estimate their earnings or wages more frequently than other persons subject to deductions under this section on account of earnings or wages.

(i) Repealed. Pub. L. 103–296, title III, § 309(a), Aug. 15, 1994, 108 Stat. 1523

(j) Attainment of age seventy

For the purposes of this section, an individual shall be considered as seventy years of age during the entire month in which he attains such age.

(k) Noncovered remunerative activity outside United States

An individual shall be considered to be engaged in noncovered remunerative activity outside the United States if he performs services outside the United States as an employee and such services do not constitute employment as defined in section 410 of this title and are not performed in the active military or naval service of the United States, or if he carries on a trade or business outside the United States (other than the performance of service as an employee) the net income or loss of which (1) is not includible in computing his net earnings from self-employment for a taxable year and (2) would not be excluded from net earnings from self-employment, if carried on in the United States, by any of the numbered paragraphs of section 411(a) of this title. When used in the preceding sentence with respect to a trade or business (other than the performance of service as an employee), the term ''United States'' does not include the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa in the case of an alien who is not a resident of the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa); and the term ''trade or business'' shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1986.

(*l*) Good cause for failure to make reports required

The failure of an individual to make any report required by subsection (g) or (h)(1)(A) of this section within the time prescribed therein shall not be regarded as such a failure if it is shown to the satisfaction of the Commissioner of Social Security that he had good cause for failing to make such report within such time. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the

Commissioner of Social Security, except that in making any such determination, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).

(Aug. 14, 1935, ch. 531, title II, § 203, 49 Stat. 623; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1367; Aug. 10, 1946, ch. 951, title IV, § 406, 60 Stat. 988; Aug. 28, 1950, ch. 809, title I, §§ 102(a), 103(a), 64 Stat. 489; July 18, 1952, ch. 945, §§ 2(b)(2), 4(a)–(d), 66 Stat. 768, 773; Sept. 1, 1954, ch. 1206, title I, §§ 102(e)(7), 103(a)–(h), (i)(3), 112(a), 68 Stat. 1070, 1073–1077, 1078, 1085; Aug. 1, 1956, ch. 836, title I, §§ 101(d)–(g), 102(d)(11), 107(a), 112 (a), (b), 70 Stat. 808, 814, 829, 831; Aug. 28, 1958, Pub. L. 85–840, title I, § 101(f), title II, § 205(j), (k), title III, §§ 307(f), 308(a)–(e), 72 Stat. 1017, 1024, 1032, 1033; Sept. 13, 1960, Pub. L. 86–778, title I, § 103(b), title II, §§ 209(a), 211(a)–(h), title III, § 302(a), 74 Stat. 936, 953–957, 960; June 30, 1961, Pub. L. 87–64, title I, § 108(a), 75 Stat. 140; July 30, 1965, Pub. L. 89–97, title III, §§ 301(c), 306(c)(10)–(12), 308(d)(6)–(8), 310(a), 325(a), 79 Stat. 363, 373, 378–380, 399; Jan. 2, 1968, Pub. L. 90–248, title I, §§ 101(b), 104(d)(1), 107(a), 160, 161(a), (b), 163(a)(1), 81 Stat. 826, 832, 834, 870, 872; Dec. 30, 1969, Pub. L. 91–172, title X, § 1002(b)(1), 83 Stat. 739; Mar. 17, 1971, Pub. L. 92–5, title II, § 201(b), 85 Stat. 8; July 1, 1972, Pub. L. 92–336, title II, §§ 201(b), (h)(1), 202(a)(2)(A), (B), 86 Stat. 410, 411, 415; Oct. 30, 1972, Pub. L. 92–603, title I, §§ 101(b), 102(c), 103(c), 105(a), (b), 106(a), 107(b)(1), (2), 144(a)(2), (3), 86 Stat. 1334, 1336, 1340–1343, 1370; July 9, 1973, Pub. L. 93–66, title II, § 202(a)–(c), 87 Stat. 153; Dec. 31, 1973, Pub. L. 93–233, §§ 3(k), 18(a), 87 Stat. 953, 967; Jan. 2, 1976, Pub. L. 94–202, § 8(i), 89 Stat. 1140; Dec. 20, 1977, Pub. L. 95–216, title II, §§ 202, 204(e), title III, §§ 301(a), (b), (c)(1), (d), 302(a)–(d), 303(a), 353(a), 91 Stat. 1524, 1528, 1530, 1531, 1552; June 9, 1980, Pub. L. 96–265, title I, § 101(a)–(b)(2), 94 Stat. 442; Oct. 19, 1980, Pub. L. 96–473, §§ 1(a), 3(a), 4(a), 6(b), 94 Stat. 2263–2265; Aug. 13, 1981, Pub. L. 97–35, title XXII, §§ 2201(c)(6), 2206(b)(2)–(4), 95 Stat. 831, 838; Dec. 29, 1981, Pub. L. 97–123, § 2(f), 95 Stat. 1661; Apr. 20, 1983, Pub. L. 98–21, title I, §§ 111(a)(4), 132(b), title II, § 201(c)(1)(B), (2), title III, §§ 306(i), 309(f)–(h), 324(c)(4), 331(a), (b), 347(a), 97 Stat. 72, 94, 109, 114, 116, 117, 125, 128, 129, 138; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2602(a), 2661(g)(1)(A), (2)(A), 2662(c)(1), 2663(a)(3), 98 Stat. 1127, 1157, 1159, 1161; Apr. 7, 1986, Pub. L. 99–272, title XII, § 12108(a), 100 Stat. 286; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8002(a), (b), 102 Stat. 3779; Dec. 19, 1989, Pub. L. 101–239, title X, §§ 10208(b)(1)(A), (B), (d)(2)(A)(i), (ii), (vi), 10305(a), 103 Stat. 2477, 2480, 2481, 2483; Nov. 5, 1990, Pub. L. 101–508, title V, §§ 5117(a)(3)(B), 5119(c), (d), 5123(a)(1), (2), 5127(a), (b), 104 Stat. 1388–277, 1388–279, 1388–280, 1388–284, 1388–286; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title III, §§ 309(a)–(c), 310(a), (b), 314(a), 321(a)(6), (c)(6)(A), (g)(2), 108 Stat. 1478, 1523, 1524, 1530, 1536, 1538, 1543.)

References in Text

Section 5117 of the Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (a)(8), is section 5117 of Pub. L. 101–508, title V, Nov. 5, 1990, 104 Stat. 1388–274.

The amendments made by section 204 of the Social Security Amendments of 1977, referred to in subsec. (a)(9)(B), means the amendments made by section 204 of Pub. L. 95–216, which enacted subsec. (a)(9) of this section and amended section 402(e)(2)(A), (e)(2)(B)(i), (f)(3)(A), and (f)(3)(B)(i) of this title.

The Internal Revenue Code of 1986, referred to in subsecs. (f)(5)(B)(ii) and (k), is classified generally to Title 26, Internal Revenue Code.

Amendments

1994—Subsec. (a)(2)(C). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(4). Pub. L. 103–296, § 309(b), substituted ''section 422(b) of this title. Notwithstanding the preceding sentence, any reduction under this subsection in the case of an individual who is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for any month on the basis of the same wages and self-employment income as another person—

''(A) who also is entitled to a benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title for such month,

''(B) who does not live in the same household as such individual, and

''(C) whose benefit for such month is suspended (in whole or in part) pursuant to subsection (h)(3) of this section,

shall be made before the suspension under subsection (h)(3) of this section. Whenever'' for ''section 422(b) of this title. Whenever''.

Subsec. (a)(8). Pub. L. 103–296, § 310(b), substituted ''Subject to paragraph (7) and except as otherwise provided in paragraph (10)(C)'' for ''Subject to paragraph (7)''.

Subsec. (a)(10). Pub. L. 103–296, § 310(a), added par. (10).

Subsecs. (b)(1), (c), (f)(3), (4). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (f)(5)(B)(ii). Pub. L. 103–296, § 321(c)(6)(A), substituted ''Code of 1986'' for ''Code of 1954''.

Subsec. (f)(5)(C)(i), (ii). Pub. L. 103–296, § 321(a)(6), realigned margins.

Subsec. (f)(5)(D), (6). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (f)(8)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner'' for ''he''.

Subsec. (f)(8)(B). Pub. L. 103–296, § 107(a)(4), in closing provisions substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner shall'' for ''he shall''.

Subsec. (f)(8)(B)(ii). Pub. L. 103–296, § 321(g)(2), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''the product of the exempt amount described in clause (i) and the ratio of (I) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subparagraph (A) is made to (II) the deemed average total wages (as so defined) for the calendar year before the most recent calendar year in which an increase in the exempt amount was enacted or a determination resulting in such an increase was made under subparagraph (A), with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such product is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.''

Subsecs. (f)(8)(C), (g). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (h)(1)(A). Pub. L. 103–296, § 314(a), substituted ''four months'' for ''three months'' in last sentence.

Pub. L. 103–296, § 107(a)(4), in subpar. (A) as amended by Pub. L. 103–296, § 309(c), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner'' for ''he'' before ''finds''.

Pub. L. 103–296, §309(c), substituted ''Such report need not be made for any taxable year—

''(i) beginning with or after the month in which such individual attained age 70, or

''(ii) if benefit payments for all months (in such taxable year) in which such individual is under age 70 have been suspended under the provisions of the first sentence of paragraph (3) of this subsection, unless—

''(I) such individual is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title,

''(II) such benefits are reduced under subsection (a) of this section for any month in such taxable year, and

''(III) in any such month there is another person who also is entitled to benefits under subsection (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title on the basis of the same wages and self-employment income and who does not live in the same household as such individual.

The Secretary may grant'' for ''Such report need not be made for any taxable year (i) beginning with or after the month in which such individual attained age 70, or (ii) if benefit payments for all months (in such taxable year) in which such individual is under age 70 have been suspended under the provisions of the first sentence of paragraph (3) of this subsection. The Secretary may grant''.

Subsec. (h)(1)(B). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (h)(3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''submitted to the Commissioner'' for ''submitted to him''.

Subsec. (h)(4). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (i). Pub. L. 103–296, §309(a), struck out subsec. (i) which read as follows: ''In the case of any individual, deductions by reason of the provisions of subsection (b), (c), (g), or (h) of this section, or the provisions of section 422(b) of this title, shall, notwithstanding such provisions, be made from the benefits to which such individual is entitled only to the extent that such deductions reduce the total amount which would otherwise be paid, on the basis of the same wages and self-employment income, to such individual and the other individuals living in the same household.''

Subsec. (k). Pub. L. 103–296, §321(c)(6)(A), substituted ''Code of 1986'' for ''Code of 1954''.

Subsec. (*l*). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1990—Subsec. (a)(3)(D). Pub. L. 101–508, §5119(c), added subpar. (D).

Subsec. (a)(6). Pub. L. 101–508, §5119(d), inserted ''(3)(D),'' after ''(3)(C),''.

Subsec. (a)(8). Pub. L. 101–508, §5117(a)(3)(B), inserted ''and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990,'' after second reference to ''December 1978''.

Subsec. (b)(2). Pub. L. 101–508, §5127(a), designated existing provisions as subpar. (A), substituted ''Except as provided in subparagraph (B), in any case in which—'' and cls. (i) and (ii) for ''When any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 402(b) or (c) of this title for any month and such person has been so divorced for not less than 2 years,'', and added subpar. (B).

Subsec. (d)(1)(B). Pub. L. 101–508, §5127(b), designated existing provisions as cl. (i), substituted ''Except as provided in clause (ii), in any case in which—'' and subcls. (I) and (II) for ''When any divorced spouse is entitled to monthly benefits under section 402(b) or (c) of this title for any month and such divorced spouse has been so divorced for not less than 2 years,'', and added cl. (ii).

Subsec. (f)(5)(E). Pub. L. 101–508, §5123(a)(1), (2), redesignated last undesignated par. of section 411(a) of this title as subpar. (E) and substituted ''For purposes of this section, any individual's net earnings from self-employment which result from or are attributable to'' for ''Any income of an individual which results from or is attributable to'', ''the income, on which the computation of such net earnings from self-employment is based, is actually paid'' for ''the income is actually paid'', and ''unless such income was'' for ''unless it was''.

1989—Subsec. (f)(5)(C). Pub. L. 101–239, §10208(d)(2)(A)(ii), (vi), substituted ''paragraphs (1), (6)(B), (6)(C), (7)(B), and (8) of section 409(a)'' for ''subsections (a), (g)(2), (g)(3), (h)(2), and (j) of section 409'' in introductory provisions and ''409(a)(11)(B)'' for ''409(m)(2)'' in cl. (ii).

Subsec. (f)(8)(B)(ii)(I). Pub. L. 101–239, §10208(b)(1)(A), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, §10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (f)(8)(B)(ii)(II). Pub. L. 101–239, §10208(b)(1)(B), substituted ''the deemed average total wages (as so defined)'' for ''the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate''.

Subsec. (*l*). Pub. L. 101–239, §10305(a), substituted ''Secretary, except that in making any such determination, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language)'' for ''Secretary'' in last sentence.

1988—Subsec. (f)(3). Pub. L. 100–647 inserted ''(or, but for the individual's death, would have attained)'' after ''who has attained'' in first sentence, inserted after first sentence ''For purposes of the preceding sentence, notwithstanding section 411(e) of this title, the number of months in the taxable year in which an individual dies shall be 12.'', and substituted ''first sentence of this paragraph'' for ''preceding sentence'' in last sentence.

1986—Subsec. (a)(4). Pub. L. 99–272, §12108(a)(1), struck out ''preceding'' after ''pursuant to the'' in first sentence.

Subsec. (a)(6). Pub. L. 99–272, §12108(a)(2), substituted ''(4), and (5)'' for ''and (5)'' and ''shall be reduced'' for ''whether or not such total benefits are otherwise subject to reduction under this subsection but after any reduction under this subsection which would otherwise be applicable, shall be, reduced or further reduced''.

1984—Subsec. (a)(8). Pub. L. 98–369, §2663(a)(3)(A), inserted a period at end of par. (8).

Subsec. (d)(1)(A). Pub. L. 98–369, §2661(g)(1)(A)(i), substituted ''for more than forty-five hours of which such individual engaged'' for ''on seven or more different calendar days of which he engaged''.

Subsec. (d)(2). Pub. L. 98–369, §2663(a)(3)(B), substituted ''an individual under the age of seventy who is entitled'' for ''an individual who is entitled''.

Pub. L. 98–369, §2661(g)(1)(A)(ii), substituted ''for more than forty-five hours'' for ''on seven or more different calendar days''.

Subsec. (f)(5)(B)(ii). Pub. L. 98–369, §2663(a)(3)(C), substituted ''702(a)(8)'' for ''702(a)(9)''.

Subsec. (f)(5)(D)(i). Pub. L. 98–369, §2662(c)(1), made a clarifying amendment to Pub. L. 98–21, §201(c)(1)(B). See 1983 Amendment note below.

Subsec. (f)(8)(B), (C). Pub. L. 98–369, §2663(a)(3)(D), realigned margins of subpars. (B) and (C).

Subsec. (f)(9). Pub. L. 98–369, §2661(g)(2)(A), added par. (9).

Subsec. (h)(4). Pub. L. 98–369, §2602(a), added par. (4).

1983—Subsec. (a)(3)(A). Pub. L. 98–21, §331(a)(1), amended cl. (ii) generally, substituting provisions relating to an amount (I) initially equal to the product of 1.75 and the primary insurance amount that would be

computed under section 415(a)(1) of this title, for January of the year determined for purposes of this clause under the following two sentences, with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and (II) thereafter increased in accordance with the provisions of section 415(i)(2)(A)(ii) of this title, for provisions relating to an amount equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title, and inserted provisions following cl. (ii).

Subsec. (a)(7). Pub. L. 98–21, § 331(a)(2), substituted ''the amount determined in accordance with the provisions of paragraph (3)(A)(ii) of this subsection, except that for this purpose the references to subparagraph (A) in the last two sentences of paragraph (3)(A) shall be deemed to be references to paragraph (7)'' for ''the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined under section 430 of this title for the year in which that month occurs''.

Subsec. (b)(1). Pub. L. 98–21, § 309(f), inserted ''or father's'' after ''mother's'' in provisions following subpar. (B).

Pub. L. 98–21, § 132(b)(1)(A)(iii), substituted ''clauses (A) and (B)'' for ''clauses (1) and (2)'' in provisions following subpar. (B).

Pub. L. 98–21, § 132(b)(1)(A)(i), (ii), (iv), designated existing provisions of subsec. (b) as par. (1), and in par. (1), as so designated, redesignated cls. (1) and (2) as (A) and (B), respectively, and cls. (A) and (B) as (i) and (ii), respectively.

Subsec. (b)(1)(i). Pub. L. 98–21, § 331(b), substituted ''first sentence of paragraph (4)'' for ''penultimate sentence''.

Subsec. (b)(2). Pub. L. 98–21, § 132(b)(1)(A)(v), added par. (2).

Subsec. (c). Pub. L. 98–21, § 201(c)(2), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age sixty-five''.

Pub. L. 98–21, § 201(c)(1)(B), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65'' wherever appearing in provisions following par. (4).

Pub. L. 98–21, § 309(g), amended subsec. (c) generally, substituting in par. (1) specification of more than forty-five hours of nonrecovered remunerative activity for specification of seven or more different days of such activity, and in pars. (2) to (4) provisions not distinguishing between the sexes for provisions relating only to the entitlements of women, and in provisions following par. (4) inserting ''or surviving divorced husband'' after ''widower''.

Subsec. (d)(1). Pub. L. 98–21, § 309(h), inserted ''divorced husband,'' after ''husband,''.

Pub. L. 98–21, § 132(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(2). Pub. L. 98–21, § 309(h), inserted ''or father's'' after ''mother's'' in three places.

Subsec. (f)(1). Pub. L. 98–21, § 132(b)(1)(B)(i), inserted ''(excluding divorced spouses referred to in subsection (b)(2) of this section)'' after ''and all other persons'' and after ''other persons'' and inserted ''such'' after ''payments to which such individual and all'' in first sentence.

Subsec. (f)(1)(D). Pub. L. 98–21, § 201(c)(1)(B), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65'' in two places.

Subsec. (f)(1)(F). Pub. L. 98–21, § 306(i), substituted ''section 402(b) or (c) of this title (but only by reason of having a child in his or her care within the meaning of paragraph (1)(B) of subsection (b) or (c) of this section, as may be applicable)'' for ''section 402(b) of this title (but only by reason of having a child in her care within the meaning of paragraph (1)(B) of that subsection)''.

Subsec. (f)(3). Pub. L. 98–21, § 347(a), substituted ''33⅓ percent of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8) in the case of an individual who has attained retirement age (as defined in section 416(*l*) of this title) before the close of such taxable year, or 50 percent of his earnings for such year in excess of such product in the case of any other individual'' for ''50 per centum of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8)''.

Subsec. (f)(5)(C). Pub. L. 98–21, § 324(c)(4), inserted provision excluding from ''wages'' certain payments on account of retirement or under a pension plan of the employer.

Subsec. (f)(5)(D)(i). Pub. L. 98–21, § 201(c)(1)(B), as amended by Pub. L. 98–369, § 2662(c)(1), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''the age of 65''.

Subsec. (f)(7). Pub. L. 98–21, § 132(b)(1)(B)(ii), inserted ''(excluding divorced spouses referred to in subsection (b)(2) of this section)'' after ''all persons''.

Subsec. (f)(8)(A). Pub. L. 98–21, § 111(a)(4), substituted ''December'' for ''June''.

Subsec. (f)(8)(D). Pub. L. 98–21, § 201(c)(1)(B), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65''.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2206(b)(2), substituted in provisions following subpar. (D) ''decreased to the next lower'' for ''increased to the next higher''.

Subsec. (a)(3)(B)(iii). Pub. L. 97–35, § 2206(b)(3), substituted ''next lower multiple'' for ''next higher multiple''.

Subsec. (a)(8). Pub. L. 97–123, § 2(f), struck out '', modified by the application of section 415(a)(6) of this title''.

Pub. L. 97–35, §§ 2201(c)(6), 2206(b)(4), inserted '', modified by the application of section 415(a)(6) of this title'' and inserted provision that for the purposes of the preceding sentence, the phrase ''rounded to the next higher multiple of $0.10'', as it appeared in subsec. (a)(2)(C) of this section as in effect in December 1978, be deemed to read ''rounded to the next lower multiple of $0.10''.

1980—Subsec. (a). Pub. L. 96–265 added par. (6), redesignated former pars. (6) to (8) as (7) to (9), respectively, and made conforming amendments to pars. (1), (2)(D), and (8).

Subsec. (a)(3)(A). Pub. L. 96–473, § 6(b)(1), substituted ''entitled on the basis'' for ''entitled on the bases''.

Subsec. (a)(7). Pub. L. 96–473, § 6(b)(2), substituted ''benefit base'' for ''benefits base''.

Subsec. (f)(1). Pub. L. 96–473, §§ 1(a)(1), 4(a), inserted reference to December 1977 in cl. (E) and added cl. (F).

Subsec. (f)(2)(F). Pub. L. 96–473, § 1(a)(2), inserted reference to cl. (F).

Subsec. (f)(5)(D). Pub. L. 96–473, § 3(a), revised former cls. (i) and (ii) into cl. (i), inserted reference to women, and added cl. (ii).

1977—Subsec. (a)(1) to (7). Pub. L. 95–216, § 202, generally restated the provisions of existing pars. (1) to (5) with changes to take into account the revised system for computing primary insurance amounts based on wage-indexed earnings and redistributed those existing provisions as thus restated into pars. (1) to (7).

Subsec. (a)(8). Pub. L. 95–216, § 204(e), added par. (8).

Subsecs. (c)(1), (d)(1), (f)(1)(B). Pub. L. 95–216, § 302(a), substituted ''seventy'' for ''seventy-two''.

Subsec. (f)(1)(E). Pub. L. 95–216, §§ 301(d), 303(a), substituted ''the applicable exempt amount'' for ''$200 or the exempt amount'' and inserted '', if such month is in the taxable year in which occurs the first month that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title (without having been entitled for the preceding month to a benefit under any other of such subsections), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5)) of more than the applica-

ble exempt amount as determined under paragraph (8)'' after ''as determined under paragraph (8)''.

Subsec. (f)(3). Pub. L. 95–216, §301(d), substituted ''the applicable exempt amount'' for ''$200 or the exempt amount''.

Pub. L. 95–216, §302(b), substituted ''age 70'' for ''age 72''.

Subsec. (f)(4)(B). Pub. L. 95–216, §301(d), substituted ''the applicable exempt amount'' for ''$200 or the exempt amount''.

Subsec. (f)(8)(A). Pub. L. 95–216, §301(a), substituted ''the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year'' for ''a new exempt amount which shall be effective (unless such new exempt amount is prevented from becoming effective by subparagraph (C) of this paragraph) with respect to any individual's taxable year which ends after the calendar year''.

Subsec. (f)(8)(B). Pub. L. 95–216, §§301(b), 353(a), applicable with respect to taxable years ending after Dec. 1977, substituted ''Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals for each month of a particular taxable year, shall each be'' for ''The exempt amount for each month of a particular taxable year shall be'' in provisions preceding cl. (i), substituted ''the corresponding exempt amount'' for ''the exempt amount'' in cl. (i), and, in provisions following cl. (ii), substituted ''an exempt amount'' for ''the exempt amount'', and effective Jan. 1, 1979, substituted ''is'' for ''was'' in cl. (i) and, in cl. (ii), substituted ''(I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the calendar year in which the determination under subparagraph (A) is made to (II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before the most recent calendar year'' for ''(I) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year in which the determination under subparagraph (A) was made to (II) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973, or, if later, the calendar year preceding the most recent calendar year'' and struck out reference to wages for calendar year 1978.

Subsec. (f)(8)(D). Pub. L. 95–216, §301(c)(1), added subpar. (D).

Subsec. (h)(1)(A). Pub. L. 95–216, §301(d), substituted ''the applicable exempt amount'' for ''$200 or the exempt amount''.

Pub. L. 95–216, §302(c), substituted ''age 70'' for ''the age of 72'' and for ''age 72''.

Subsec. (j). Pub. L. 95–216, §302(a), (d), substituted ''seventy'' for ''seventy-two'' in heading and in text.

1976—Subsec. (f)(8)(B)(ii). Pub. L. 94–202 substituted ''wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year'' for ''taxable wages of all employees as reported to the Secretary for the first calendar quarter of the calendar year'' in cl. (I), substituted ''wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973, or, if later, the calendar year preceding'' for ''taxable wages of all employees as reported to the Secretary for the first calendar quarter of 1973, or, if later, the first calendar quarter of'' in cl. (II), and directed that the average wages for calendar year 1978, or any prior calendar year, be deemed equal to 400% of the average wages reported for the first quarter of that year.

1973—Subsec. (f). Pub. L. 93–66, §202(a), (b), substituted in pars. (1), (3), first sentence, and (4)(B), ''$200'' for ''$175''.

Subsec. (f)(8)(A). Pub. L. 93–233, §3(k)(1), substituted: ''with the month of June following'' for ''with the first month of the calendar year following'', ''which ends after the calendar year in which such benefit increase is effective'' for ''which ends with the close of or after the calendar year with the first month of which such benefit increase is effective'', and ''during the calendar year after the calendar year in which the benefit increase is effective'' for ''during such calendar year''; and struck out after ''such quarter occurs'' and before ''a new exempt amount'' parenthetical ''(along with the publication of such benefit increased as required by section 415(i)(2)(D) of this title)''.

Subsec. (f)(8)(B)(ii). Pub. L. 93–233, §18(a), substituted ''exempt amount'' for ''contribution and benefit base'' and ''subparagraph (A)'' for ''section 430(a) of this title'', respectively.

Subsec. (f)(8)(B) foll. (ii). Pub. L. 93–233, §3(k)(2), substituted ''within 30 days after the close of the base quarter (as defined in section 415(i)(1)(A) of this title) in such year'' for ''no later than August 15 of such year''.

Subsec. (f)(8)(C). Pub. L. 93–233, §3(k)(3), struck out ''or providing a general benefit increase under this subchapter (as defined in section 415(i)(3) of this title)'' after ''law increasing the exempt amount''.

Subsec. (h)(1)(A). Pub. L. 93–66, §202(c), substituted ''$200'' for ''$175''.

1972—Subsec. (a). Pub. L. 92–336, §202(a)(2)(A), inserted ''in or deemed to be'' after ''the table''.

Subsec. (a)(2). Pub. L. 92–336, §202(a)(2)(B), as amended by Pub. L. 92–603, §§103(c), 144(a)(3), substituted provisions relating to the reduction in the total benefits for any month after January 1971 where two or more persons were entitled to monthly benefits under section 402 or 423 of this title for January 1971 or any prior month, for provisions relating to the reduction in the total of benefits for September 1972 or any subsequent month where two or more persons were entitled to monthly benefits under section 402 or 423 of this title for August, 1972.

Pub. L. 92–336, §201(b), substituted provisions relating to the reduction in the total of benefits for September 1972 or any subsequent month where two or more persons were entitled to monthly benefits under section 402 or 423 of this title for August 1972, for provisions relating to the reduction in the total of benefits for January 1971 or any subsequent month where two or more persons were entitled to monthly benefits under section 402 or 423 of this title for January 1971.

Subsec. (a)(2)(B). Pub. L. 92–603, §144(a)(2), inserted ''such'' before ''person''.

Subsec. (a)(4). Pub. L. 92–336, §201(h)(1), added par. (4).

Subsec. (a)(5). Pub. L. 92–603, §101(b), added par. (5).

Subsec. (c). Pub. L. 92–603, §§102(c)(1), 107(b)(1), substituted ''attained age 65 (but only if she became so entitled prior to attaining age (60), or from any widower's insurance benefit for any month in which the widower is entitled and has not attained age 65 (but only if he became so entitled prior to attaining age 60)'' for ''attained age 62 (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower is entitled and has not attained age 62''.

Subsec. (f)(1). Pub. L. 92–603, §§102(c)(2), 105(a)(1), 107(b)(2), substituted ''attained age 65 (but only if she became so entitled prior to attaining age 60), or widower's insurance benefits and has not attained age 65 (but only if she became so entitled prior to attaining age 60)'' for ''attained age 62 (but only if she became so entitled prior to attaining age 60), or widower's insurance benefits and has not attained age 62'' in cl. (D) and substituted ''$175 or the exempt amount as determined under paragraph (8)'' for ''$140'' in cl. (E).

Subsec. (f)(3). Pub. L. 92–603, §§105(a)(3), 106(a), substituted ''shall be 50 per centum of his earnings for such year in excess of the product of $175 or the exempt amount as determined under paragraph (8),'' for ''shall be his earnings for such year in excess of the product of $140'' and struck out '', except that of the first $1,200

of such excess (or all of such excess if it is less than $1,200), an amount equal to one-half thereof shall not be included'' after ''number of months in such year'' and inserted provisions for the exclusion of certain earnings in the year of attaining age 72.

Subsec. (f)(4)(B). Pub. L. 92–603, § 105(a)(1), substituted ''$175 or the exempt amount as determined under paragraph (8)'' for ''$140''.

Subsec. (f)(8). Pub. L. 92–603, § 105(b), added par. (8).

Subsec. (h)(1)(A). Pub. L. 92–603, § 105(a)(2), substituted ''$175 or the exempt amount as determined under subsection (f)(8) of this section'' for ''$140''.

1971—Subsec. (a)(2). Pub. L. 92–5 substituted references to January 1971 for references to January 1970, substituted ''December 1970'' for ''December 1969'', and, in subpar. (B), substituted ''prior to March 17, 1971'' for ''prior to December 30, 1969 (and prior to January 1, 1970)'', and lowered the multiple of the benefit amount from 115 percent to 110 percent.

1969—Subsec. (a)(2). Pub. L. 91–172 substituted references to January 1970 for references to February 1968, and, in subpar. (B), substituted ''prior to December 30, 1969 (and prior to January 1, 1970)'' for ''prior to February 1968'', and raised the multiple of the benefit amount from 113 percent to 115 percent.

1968—Subsec. (a). Pub. L. 90–248, § 163(a)(1), provided for reduction of benefits in the total of monthly benefits to which individuals are entitled for any month on the basis of the wages and self-employment income of an insured individual and that where such total of benefits for such month includes any benefit or benefits under section 402(d) of this title which are payable solely by reason of section 416(h)(3) of this title, the reduction shall be first applied to reduce (proportionately where there is more than one benefit so payable) the benefits so payable (but not below zero).

Subsec. (a)(2). Pub. L. 90–248, § 101(b), substituted references to February 1968 for former references to December 1964 and for former references to the enactment of the Social Security Amendments of 1965, increased the multiple of the benefit amount from 107 to 113 percent, and struck out former cl. (ii) which provided that the total of monthly benefits shall not be reduced to less than the larger of the amount determined under subpar. (A) or with respect to any month after the month in which the Social Security Amendments of 1965 are enacted, an amount equal to the sum of the amounts derived by multiplying the benefit amount determined under this subchapter (including subsection (a) of this section, but without the application of section 422(b) of this title, section 402(q) of this title, and subsections (b), (c) and (d) of this section), as in effect prior to the enactment of such Amendments, for each such person (other than a person who would not be entitled to such benefits for such month without the application of the amendments made by section 306 of the Social Security Amendments of 1965) for the month of enactment, by 107 percent and raising each such increased amount, if it is not a multiple of $0.10, to the next higher multiple of $0.10.

Subsec. (c). Pub. L. 90–248, § 104(d)(1)(A), inserted after ''any subsequent month'' in third sentence ''; nor shall any deduction be made under this subsection from any widow's insurance benefit for any month in which the widow or surviving divorced wife is entitled and has not attained age 62 (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower is entitled and has not attained age 62''.

Subsec. (f)(1). Pub. L. 90–248, §§ 104(d)(1)(B), 107(a)(1), inserted in third sentence subpar. (D) and redesignated existing provisions as subpar. (E), and substituted ''$140'' for ''125''.

Subsec. (f)(2). Pub. L. 90–248, § 104(d)(1)(C), substituted ''(D), and (E)'' for ''and (D)''.

Subsec. (f)(3). Pub. L. 90–248, § 107(a)(1), substituted ''$140'' for ''$125''.

Subsec. (f)(4). Pub. L. 90–248, § 104(d)(1)(D), substituted ''(E)'' for ''(D)''.

Subsec. (f)(4)(B). Pub. L. 90–248, § 107(a)(1), substituted ''$140'' for ''$125''.

Subsec. (g). Pub. L. 90–248, § 161(b), substituted provisions that the penalty for the first failure to report will equal one month's benefit, for the second failure to report—two month's benefits, for the third or a subsequent failure to report—three month's benefits but in no case will the penalty exceed the number of months in the period for which there is a failure to report, and defining ''period for which there is a failure to report'' for present provisions that the penalty for the first failure to report is one month's benefit and for subsequent failures, the penalty is an amount equal to the total amount of the benefits for all the months in which the event occurred but was not reported within the prescribed time.

Subsec. (h)(1)(A). Pub. L. 90–248, §§ 107(a)(2), 160(a), inserted last sentence authorizing the Secretary to extend time to report earnings up to three months if there is a valid reason for delay, and substituted ''$140'' for ''$125''.

Subsec. (h)(2). Pub. L. 90–248, § 160(b), substituted in text preceding subpar. (A) ''by or in accordance with such paragraph'' for ''therein''.

Subsec. (h)(2)(A). Pub. L. 90–248, § 161(a), inserted exception provision that if the deduction is less than the amount of his benefits for the last month for which he was entitled to benefits, the additional deduction will be the amount of the deduction under subsec. (b) but not less than ten dollars.

1965—Subsec. (a)(2). Pub. L. 89–97, § 301(c), substituted provisions to assure an increase in the family benefits for families who were on the benefit rolls after December 1964 and whose benefits were determined under former provisions by providing that the maximum family benefit of each month after December 1964 will be the larger of (1) the family maximum specified in column V of the new table or (2) the sum of all family members' benefits after each such benefit has been increased by seven percent (and rounded to the next higher ten cents if it is not already a multiple of ten cents), for former provisions restricting the reduction of total benefits to individuals entitled to monthly benefits under section 402 or 423 of this title for December 1958.

Subsec. (a)(3). Pub. L. 89–97, §§ 301(c), 308(d)(6), struck out par. (3) which was a special saving clause for maximum family benefits of people who became disabled before 1959 since families whose benefits were determined under such par. (3) are now covered by subsec. (a)(2) of this section, and added par. (3), respectively.

Subsec. (c). Pub. L. 89–97, § 306(c)(10), (11), inserted in penultimate sentence ''paragraph (1) of section 402(s) of this title applies or'' after ''for any month in which'' and in last sentence the introductory phrase ''Subject to paragraph (3) of such section 402(s)''.

Subsec. (c)(4). Pub. L. 89–97, § 308(d)(7), substituted ''surviving divorced mother'' for ''former wife divorced''.

Subsec. (d)(1). Pub. L. 89–97, § 308(d)(8), inserted ''divorced wife,'' after ''wife,''.

Subsec. (f)(1). Pub. L. 89–97, §§ 306(c)(12), 310(a)(1), inserted ''but subject to section 402(s) of this title'' after ''Notwithstanding the preceding provisions of this paragraph'' in last sentence and substituted ''$125'' for ''$100''.

Subsec. (f)(3). Pub. L. 89–97, § 310(a)(1), (2), substituted ''$125'' for ''$100'' and ''$1,200'' for ''$500'' in two places.

Subsec. (f)(4)(B). Pub. L. 89–97, § 310(a)(1), substituted ''$125'' for ''$100''.

Subsec. (f)(5)(B). Pub. L. 89–97, § 325(a)(1), broke down existing provisions into cls. (i) and (ii), provided, in cl. (ii), for exclusion from gross income of amounts provided by subpar. (D) of this par., and, in cl. (ii), inserted reference to distributive share of loss described in section 702(a)(9) of Title 26.

Subsec. (f)(5)(D). Pub. L. 89–97, § 325(a)(2), added subpar. (D).

Subsec. (h)(1)(A). Pub. L. 89–97, § 310(a)(3), substituted ''$125'' for ''$100''.

1961—Subsec. (f)(3). Pub. L. 87–64 substituted ''$500'' for ''$300'' in two places.

1960—Subsec. (a)(3). Pub. L. 86–778, § 302(a), substituted '', then such total of benefits shall not be re-

duced to less than $99.10 if such primary insurance amount is $66, to less than $102.40 if such primary insurance amount is $67, to less than $106.50 if such primary insurance amount is $68, or, if such primary insurance amount is higher than $68, to less than the smaller of'' for ''and is not less than $68, then such total of benefits shall not be reduced to less than the smaller of'' in the provisions following cl. (B), and ''the amount determined under this subsection without regard to this paragraph, or $206.60, whichever is larger'' for ''the last figure in column V of the table appearing in section 415(a) of this title'' in cl. (C).

Subsec. (b). Pub. L. 86–778, §211(a), amended subsec. (b) generally, and among other changes, authorized deductions from payments to which any other persons are entitled on the basis of an individual's wages and self-employed income, substituted provisions requiring deductions for months in which an individual is charged with excess earnings under the provisions of subsec. (f) of this section for provisions which required deductions for months in which an individual is charged with any earnings under the provisions of subsec. (e) of this section, and inserted the second, third, fourth and fifth sentences. Former cls. (2)–(5) and the closing paragraph of subsec. (b) are covered by subsec. (c) of this section.

Subsec. (c). Pub. L. 86–778, §211(b), redesignated the opening provisions, cls. (2) to (5) and the closing provisions of former subsec. (b) of this section as the opening provisions, cls. (1) to (4) and the closing provisions of subsec. (c), respectively. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 86–778, §211(c), added subsec. (d) and redesignated former subsec. (d) as (e). Provisions of subsec. (d) were formerly contained in subsec. (c) of this section.

Subsec. (e). Pub. L. 86–778, §211(c), (d), redesignated former subsec. (d) as (e), substituted ''subsections (c) and (d) of this section'' for ''subsections (b) and (c) of this section'', and struck out provisions which required the charging of any earnings to any month to be treated as an event occurring in such month. Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 86–778, §211(c), (e), redesignated former subsec. (e) as (f), and amended such subsection by inserting pars. (3) and (7), substituting provisions requiring an amount of an individual's excess earnings equal to the sum of the payments to which he and all other persons are entitled for the month under section 402 of this title on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum) to be charged to the first month of the taxable year, and the balance, if any, of such excess earnings to be charged to each succeeding month in such year to the extent, in the case of each month, of the sum of the payments to which such individual and all other persons are entitled for such month under section 402 of this title on the basis of his wages and self-employment income, until the total of such excess has been so charged, for provisions which required the first $80 of earnings in excess of $1,200 to be charged to the first month of the taxable year, and the balance, if any, at the rate of $80 per month to each succeeding month in such year until all of the balance has been applied, and inserting provisions requiring the excess earnings of an individual for any taxable year, where an individual is entitled to benefits under section 402(a) of this title and other persons are entitled to benefits under section 402 (b), (c), or (d) of this title on the basis of the wages and self-employment income of such individual, to be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 86–778, §§209(a), 211(c), redesignated former subsec. (f) as (g), and substituted therein ''subsection (c) of this section'' for ''subsection (b) or (c) of this section'' in two places, and struck out ''(other than an event specified in subsection (b)(1) or (c)(1) of this section)'' after ''of an event specified therein.'' Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 86–778, §211(c), (f), redesignated former subsec. (g) as (h), and substituted therein ''paragraph (5) of subsection (f) of this section'' for ''paragraph (4) of subsection (e) of this section'' in two places, ''paragraph (3) of this subsection'' for ''paragraph (3) of subsection (g) of this section'', ''subsection (b) of this section'' for ''subsection (b)(1) of this section'' in five places, and ''suspend the total or less than the total payment'' for ''suspend the payment.'' Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 86–778, §211(c), (g), redesignated former subsec. (h) as (i) and substituted therein ''subsection (b), (c), (g), or (h) of this section'' for ''subsection (b), (f), or (g) of this section.'' Former subsec. (i) was repealed by Act Sept. 1, 1954, ch. 1206, title I, §112(a), 68 Stat. 1085.

Subsec. (k). Pub. L. 86–778, §103(b), substituted ''the Commonwealth of Puerto Rico, the Virgin Islands, Guam or American Samoa'' for ''Puerto Rico or the Virgin Islands'', and ''the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa'' for ''Puerto Rico and the Virgin Islands''.

Subsec. (*l*). Pub. L. 86–778, §211(h), substituted ''subsection (g) or (h)(1)(A) of this section'' for ''subsection (f) or (g)(1)(A) of this section''.

1958—Subsec. (a). Pub. L. 85–840, §101(f), substituted provisions limiting the total of monthly benefits under sections 402 and 423 of this title to the amount provided in column V of the table in section 415(a) of this title for provisions which limited the total of monthly benefits under section 402 of this title to $50, or 80% of the average monthly wage, or one and one-half times the primary insurance amount, whichever is greater, with a maximum amount of $200 and inserted provisions limiting the reduction for individuals who were entitled to monthly benefits under section 402 or 423 of this title for December 1958, and for individuals entitled to monthly benefits with respect to whom a period of disability began prior to January 1959 and continued until he became entitled to benefits under section 402 or 423 of this title, or he died, whichever first occurred.

Subsec. (c). Pub. L. 85–840, §205(j), inserted '', based on the wages and self-employment income of an individual entitled to old-age insurance benefits,'' before ''to which a wife'' in opening provisions of par. (1), and Pub. L. 85–840, §307(f), designated existing provisions of subsec. (c) as par. (1), redesignated subpars. (1) and (2) of par. (1) as subpars. (A) and (B), substituted in subpar. (B) of par. (1) ''subparagraph (A)'' for ''paragraph (1)'', and added par. (2).

Subsec. (e)(2). Pub. L. 85–840, §308(a), (c), substituted ''first month'' for ''last month'' and ''succeeding month'' for ''preceding month'' wherever appearing, and ''$100'' for ''$80'' in cl. (D).

Subsec. (e)(3). Pub. L. 85–840, §308(b), (c), substituted ''the term 'first month of such taxable year' means the earliest month'' for ''the term 'last month of such taxable year' means the latest month'' in cl. (A), and ''$100'' for ''$80'' in cl. (B)(ii).

Subsec. (g)(1). Pub. L. 85–840, §308(d), designated existing provisions thereof as subpar. (A) and inserted provisions therein dispensing with the need for a report for any taxable year if benefit payments for all months (in such taxable year) in which such individual is under age 72 have been suspended under the provisions of the first sentence of par. (3) of this subsection, and added subpar. (B).

Subsec. (h). Pub. L. 85–840, §205(k), struck out provisions that related to reductions by reason of the provisions of section 424 of this title.

Subsec. (*l*). Pub. L. 85–840, §308(e), substituted ''(g)(1)(A) of this section'' for ''(g) of this section''.

1956—Subsec. (a). Act Aug. 1, 1956, §101(d), inserted ''after any deductions under section 422(b) of this title, and after any reduction under section 424 of this title'' in two places.

Subsec. (b). Act Aug. 1, 1956, §101(e), inserted paragraph providing that a child should not be considered to be entitled to a child's insurance benefit for any month in which an event specified in section 422(b) of

this title occurs with respect to such child, and prohibiting any deduction from any child's insurance benefit for the month in which the child entitled to such benefit attained the age of 18 or any subsequent month.

Subsec. (b)(3). Act Aug. 1, 1956, § 102(d)(11), substituted ''age 65'' for ''retirement age'' and inserted ''any such wife's insurance benefit for such month was not reduced under the provisions of section 402(q) of this title''.

Subsec. (d). Act Aug. 1, 1956, § 101(f), included events specified in section 422(b) of this title.

Subsec. (e)(4)(C). Act Aug. 1, 1956, § 112(a), inserted ''or performed outside the United States in the active military or naval service of the United States'' after ''performed within the United States by the individual as an employee''.

Subsec. (g)(1). Act Aug. 1, 1956, § 107(a), permitted reports to be made on or before the fifteenth day of the fourth month following the close of the year.

Subsec. (h). Act Aug. 1, 1956, § 101(g), included deductions by reason of the provisions of section 422(b) of this title, and reductions by reason of the provisions of section 424 of this title.

Subsec. (k). Act Aug. 1, 1956, § 112(b), inserted ''and are not performed in the active military or naval service of the United States'' after ''section 410 of this title''.

1954—Subsec. (a). Act Sept. 1, 1954, § 102(e)(7), increased maximum limitations on the total monthly amount of benefits.

Subsec. (b)(1), (2). Act Sept. 1, 1954, § 103(a), (i)(3), put into effect an annual retirement test for beneficiaries whether they have wage or self-employment earnings, or both, inserted provision for making deductions on account of nonrecovered remunerative activity outside the United States, and provided that deductions because of such provisions be made from an individual's benefits only for months in which he is under the age of 72, rather than 75.

Subsec. (c). Act Sept. 1, 1954, § 103(b), (i)(3), provided that deductions be made from a dependent's benefits for any month in which the primary beneficiary was under the age of 72, and for which he was charged with any earnings for work deduction purposes under subsec. (e) or on 7 or more different calendar days of which he engaged in noncovered remunerative activity outside the United States.

Subsec. (d). Act Sept. 1, 1954, § 103(c), provided that the charging of earnings shall be treated as an event occurring in the month to which such earnings are charged.

Subsec. (e)(1), (2). Act Sept. 1, 1942, § 103(d)(1), (2), (i)(3), provided a method for charging earnings to particular months of the year for purposes of determining the deductions required under subsecs. (b) and (c).

Subsec. (e)(3)(B). Act Sept. 1, 1954, § 103(d)(3), provided authority to presume, for purposes of charging earnings to calendar months, that an individual rendered services for wages of more than $80 in any month.

Subsec. (e)(4), (5). Act Sept. 1, 1954, § 103(d)(4), added pars. (4) and (5).

Subsec. (f). Act Sept. 1, 1954, § 103(e), clarified the penalty provisions.

Subsec. (g). Act Sept. 1, 1954, § 103(f)(1), amended heading.

Subsec. (g)(1). Act Sept. 1, 1954, § 103(f)(2), (3), provided that if an individual entitled to any monthly benefit in a taxable year has earnings or wages in excess of $100 times the number of months in such year, he must make a report to the Secretary of his earnings for such taxable year, and substituted ''seventy-two'' for ''seventy-five''.

Subsec. (g)(2). Act Sept. 1, 1954, § 103(f)(4), provided a schedule of penalty deductions for failure to make required reports within the time prescribed by subsec. (g)(1) if any deduction is imposed because of earnings in such year.

Subsec. (g)(3). Act Sept. 1, 1954, § 103(f)(5), substituted ''subsection (b)(1)'' for ''subsection (b)(2)'', ''earnings'' for ''net earnings from self-employment'', and ''such earnings'' for ''such net earnings'', and added a new sentence at the end.

Subsec. (i). Act Sept. 1, 1954, § 112(a), repealed subsec. (i), effective Sept. 1, 1954, and also provided that no deductions should be made pursuant to such subsec. (i) from any benefits for any month after August 1954.

Subsec. (j). Act Sept. 1, 1954, § 103(f)(6), (i)(3), substituted ''seventy-two'' for ''seventy-five''.

Subsec. (k). Act Sept. 1, 1954, § 103(g), added subsec. (k).

Subsec. (*l*). Act Sept. 1, 1954, § 103(h), added subsec. (*l*).

1952—Subsec. (a). Act July 18, 1952, § 2(b)(2), increased the maximum and minimum monthly benefits payable a family.

Subsecs. (b)(1), (2), (c)(1), (2), (e), (g). Act July 18, 1952, § 4(a)–(d), substituted $75 for $50 wherever appearing.

1950—Subsec. (a). Act Aug. 28, 1950, § 102(a), amended subsec. (a) generally to consolidate provisions of former subsecs. (a) to (c) of this section and to liberalize the maximum amount of monthly benefits payable.

Subsec. (b). Act Aug. 28, 1950, § 103(a), provided that deductions are to be made from benefits for any month in which a beneficiary is under age 75 and either renders services for wages of more than $50, or is charged with net earnings from self-employment of more than $50, and provided that deductions are to be made for any month in which a wife, widow or divorced wife does not have in her care a child or her husband or former husband entitled to a child's insurance benefit.

Subsec. (c). Act Aug. 28, 1950, § 103(a), provided for the making of deductions from dependents benefits for any month in which the old-age beneficiary suffers a reduction in his benefit.

Subsec. (d). Act Aug. 28, 1950, § 103(a), inserted second sentence.

Subsec. (e). Act Aug. 28, 1950, § 103(a), provided the method for charging net earnings from self-employment to the particular months of the taxable year for the purpose of determining deductions under subsecs. (b)(2) and (c)(2) of this section.

Subsec. (f). Act Aug. 28, 1950, § 103(a), continued provisions requiring the reporting of any event which causes a deduction from benefits.

Subsec. (g). Act Aug. 28, 1950, § 103(a), outlined circumstances under which beneficiaries with net earnings from self-employment are required to file report with the Federal Security Administrator.

Subsec. (h). Act Aug. 28, 1950, § 103(a), pointed out circumstances under which deductions otherwise required under subsecs. (b), (f), and (g) of this section will not be made.

Subsecs. (i), (j). Act Aug. 28, 1950, § 103(a), added subsecs. (i) and (j).

1946—Subsec. (g). Act Aug. 10, 1946, § 406(b), inserted exception limiting the first deduction for failure to report to one month's benefit.

Subsec. (d)(2). Act Aug. 10, 1946, § 406(a), struck out par. (2) which related to deductions for failure to attend school.

1939—Act Aug. 10, 1939, amended section generally.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 309(e)(1) of Pub. L. 103–296 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section] shall apply with respect to benefits payable for months after December 1995.''

Section 310(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section] shall apply for the purpose of determining the total monthly benefits to which beneficiaries may be entitled under sections 202 and 223 of the Social Security Act [sections 402 and 423 of this title] based on the wages and self-employment income of an individual who—

''(1) becomes entitled to an old-age insurance benefit under section 202(a) of such Act,

''(2) becomes reentitled to a disability insurance benefit under section 223 of such Act, or

''(3) dies,
after December 1995.''

Section 314(b) of Pub. L. 103–296 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to reports of earnings for taxable years ending on or after December 31, 1994.''

Section 321(g)(3)(B) of Pub. L. 103–296 provided that: ''The amendment made by paragraph (2) [amending this section] shall be effective with respect to the determination of the exempt amounts applicable to any taxable year ending after 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5117(a)(4) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and section 415 of this title] shall apply with respect to the computation of the primary insurance amount of any insured individual in any case in which a person becomes entitled to benefits under section 202 or 223 [section 402 or 423 of this title] on the basis of such insured individual's wages and self-employment income for months after the 18-month period following the month in which this Act is enacted [November 1990], except that such amendments shall not apply if any person is entitled to benefits based on the wages and self-employment income of such insured individual for the month preceding the initial month of such person's entitlement to such benefits under section 202 or 223.

''(B) RECOMPUTATIONS.—The amendments made by this subsection shall apply with respect to any primary insurance amount upon the recomputation of such primary insurance amount if such recomputation is first effective for monthly benefits for months after the 18-month period following the month in which this Act is enacted.''

Section 5119(e) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and section 416 of this title] shall apply with respect to benefits for months after December 1990.

''(2) APPLICATION REQUIREMENT.—

''(A) GENERAL RULE.—Except as provided in subparagraph (B), the amendments made by this section shall apply only with respect to benefits for which application is filed with the Secretary of Health and Human Services after December 31, 1990.

''(B) EXCEPTION FROM APPLICATION REQUIREMENT.—Subparagraph (A) shall not apply with respect to the benefits of any individual if such individual is entitled to a benefit under subsection (b), (c), (e), or (f) of section 202 of the Social Security Act [section 402(b), (c), (e), or (f) of this title] for December 1990 and the individual on whose wages and self-employment income such benefit for December 1990 is based is the same individual on the basis of whose wages and self-employment income application would otherwise be required under subparagraph (A).''

Section 5123(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section, section 411 of this title, and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to income received for services performed in taxable years beginning after December 31, 1990.''

Section 5127(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits for months after December 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10208(b)(1)(A), (B) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

Section 10305(f) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and sections 404, 423, and 1383 of this title] shall apply with respect to determinations made on or after July 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8002(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to deaths after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12108(b) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, §1895(a), Oct. 22, 1986, 100 Stat. 2931, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to benefits payable for months after December 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2602(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective upon the date of the enactment of this Act [July 18, 1984].''

Section 2661(g)(1)(B) of Pub. L. 98–369 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply only with respect to months beginning with the second month after the month in which this Act is enacted [July 1984].''

Section 2661(g)(2)(B) of Pub. L. 98–369 provided that: ''The amendment made by subparagraph (A) [amending this section] shall be effective as though it had been enacted on April 20, 1983, as a part of section 201 of the Social Security Amendments of 1983 [section 201 of Pub. L. 98–21].''

Amendment by section 2662(c)(1) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(3) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 111(a)(4) of Pub. L. 98–21 applicable with respect to cost-of-living increases determined under section 415(i) of this title for years after 1982, see section 111(a)(8) of Pub. L. 98–21, set out as a note under section 402 of this title.

Section 132(c)(2) of Pub. L. 98–21 provided that: ''The amendments made by subsection (b) [amending this section] shall apply with respect to monthly insurance benefits for months after December 1984.''

Amendment by sections 306(i) and 309(f)–(h) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Amendment by section 324(c)(4) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98–21, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Section 331(c) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to payments made for months after December 1983.''

Section 347(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to taxable years beginning after December 1989, and only in the case of individuals who have attained retirement age (as defined in section 216(*l*) of the Social Security Act [42 U.S.C. 416(*l*)].''

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by section 2201(c)(6) of Pub. L. 97–35 and by section 2(f) of Pub. L. 97–123, applicable with respect to benefits for months after December 1981 with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 415 of this title.

Amendment by section 2206(b)(2)–(4) of Pub. L. 97–35 applicable only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981, see section 2206(c) of Pub. L. 97–35, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 1(b) of Pub. L. 96–473 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable for months after December 1977.''

Section 3(b) of Pub. L. 96–473 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1977, but only with respect to benefits payable for months after December 1977.''

Section 4(b) of Pub. L. 96–473 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable for months after December 1977.''

Section 101(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 415 of this title] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes eligible for benefits (determined under sections 215(a)(3)(B) and 215(a)(2)(A) of the Social Security Act [section 415(a)(3)(B) and (2)(A) of this title], as applied for this purpose) after 1978, and who first becomes entitled to disability insurance benefits after June 30, 1980.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 202 of Pub. L. 95–216 effective with respect to monthly benefits under this subchapter payable for months after Dec. 1978 and with respect to lump-sum death payments with respect to deaths occurring after such month, and amendment by section 204(e) of Pub. L. 95–216 effective with respect to monthly benefits for months after May 1978, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

Section 301(e) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall apply with respect to taxable years ending after December 1977.''

Section 302(e) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to taxable years ending after December 31, 1981.''

Section 303(b) of Pub. L. 95–216 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to monthly benefits payable for months after December 1977.''

Amendment by section 353(a) of Pub. L. 95–216 effective Jan. 1, 1979, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 202(d) of Pub. L. 93–66 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to taxable years beginning after December 31, 1973.''

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by section 101(b) of Pub. L. 92–603 applicable with respect to monthly insurance benefits under this subchapter for months after December 1972 and with respect to lump-sum death payments under this subchapter in the case of deaths occurring after such month, see section 101(g) of Pub. L. 92–603, set out as a note under section 415 of this title.

Section 202(a)(2)(A), (B) of Pub. L. 92–336 provided that the amendments made by that section are effective Jan. 1, 1974.

Amendment by section 201(b) of Pub. L. 92–336 applicable with respect to monthly benefits under subchapter II of this chapter for months after August 1972 and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after such month, see section 201(i) of Pub. L. 92–336, set out as a note under section 415 of this title.

Section 144(b) of Pub. L. 92–603 provided that: ''The amendments made by each of the paragraphs in subsection (a) [amending this section and sections 415 and 430 of this title] shall be effective in like manner as if such amendment had been included in title II of Public Law 92–336 in the particular provision of such title referred to in such paragraph.''

Amendment by section 201(h)(1) of Pub. L. 92–336 applicable with respect to monthly benefits under subchapter II of this chapter for months after December 1971, see section 201(i) of Pub. L. 92–336, set out as a note under section 415 of this title.

Amendment by section 102(c) of Pub. L. 92–603 applicable with respect to monthly benefits under this subchapter for months after December 1972, see section 102(i) of Pub. L. 92–603, set out as a note under section 402 of this title.

Amendment by section 107(b)(1), (2) of Pub. L. 92–603 applicable with respect to monthly benefits under this subchapter for months after December 1972, with specified exceptions, see section 107(c) of Pub. L. 92–603, set out as a note under section 402 of this title.

Section 105(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply with respect to taxable years ending after December 1972.''

Section 106(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section to provide for the exclusion of certain earnings in year of attaining age 72] shall apply with respect to taxable years ending after December 1972.''

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable with respect to monthly benefits under subchapter II of this chapter for months after December 1970 and with respect to lump-sum death payments under such subchapter in the case of deaths occurring in and after March 1971, see section 201(e) of Pub. L. 92–5, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable with respect to monthly benefits under this subchapter for months after December 1969 and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after December 1969, see section 1002(e) of Pub. L. 91–172, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 101(b) of Pub. L. 90–248 applicable with respect to monthly benefits and lump-sum death benefits in the case of deaths occurring after January 1968, under this subchapter for months after January 1968, see section 101(e) of Pub. L. 90–248, set out as a note under section 415 of this title.

Amendment by section 104(d)(1) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90–248, set out as a note under section 402 of this title.

Section 107(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 1967.''

Section 163(a)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) [amending this sec-

tion] shall apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] with respect to individuals who become entitled to benefits under section 202(d) of such Act [section 402(d) of this title] solely by reason of section 216(h)(3) of such Act [section 416(h)(3) of this title] in or after January 1968 (but without regard to section 202(j)(1) of such Act [section 402(j)(1) of this title]). The provisions of section 170 of this Act [set out as Savings Provisions note below] shall not apply with respect to any such individual.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 301(c) of Pub. L. 89–97 applicable with respect to monthly benefits under this subchapter for months after December 1964 and with respect to lump-sum death benefits payments under this subchapter in the case of deaths occurring in or after July 1965, see section 301(d) of Pub. L. 89–97, set out as a note under section 415 of this title.

Amendment by section 308(d)(6)–(8) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter beginning with the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

Section 310(b) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to taxable years ending after December 31, 1965.''

Section 325(b) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to the computation of net earnings from self-employment and the net loss from self-employment for taxable years beginning after 1964.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 108(b) of Pub. L. 87–64 provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of taxable years ending after the enactment of this Act [June 30, 1961].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 103(b) of Pub. L. 86–778 applicable only with respect to service performed after 1960, except that insofar as the carrying on of a trade or business (other than performance of service as an employee) is concerned, the amendment shall be applicable only in the case of taxable years beginning after 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Section 211(p)–(s) of Pub. L. 86–778 provided that:

''(p) Section 203(c), (d), (e), (g), and (i) of the Social Security Act [subsecs. (c), (d), (e), (g), and (i) of this section] as amended by this Act shall be effective with respect to monthly benefits for months after December 1960.

''(q) Section 203(b), (f), and (h) of the Social Security Act [subsecs. (b), (f), and (h) of this section] as amended by this Act shall be effective with respect to taxable years beginning after December 1960.

''(r) Section 203(*l*) of the Social Security Act [subsec. (*l*) of this section] as amended by this Act, to the extent that it applies to section 203(g) of the Social Security Act as amended by this Act, shall be effective with respect to monthly benefits for months after December 1960 and, to the extent that it applies to section 203(h)(1)(A) of the Social Security Act as amended by this Act, shall be effective with respect to taxable years beginning after December 1960.

''(s) The amendments made by subsections (i), (j), (k), (*l*), (m), (n), and (*o*) [amending sections 402, 408, and 415 of this title and sections 228c and 228e of Title 45, Railroads], to the extent that they make changes in references to provisions of section 203 of the Social Security Act [this section], shall take effect in the manner provided in subsections (p) and (q) of this section for the provisions of such section 203 to which the respective references so changed relate.''

Section 302(b) of Pub. L. 86–778 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only in the case of monthly benefits under section 202 or section 223 of the Social Security Act [section 402 or section 423 of this title] for months after the month following the month in which this Act is enacted [September 1960], and then only (1) if the insured individual on the basis of whose wages and self-employment income such monthly benefits are payable became entitled (without the application of section 202(j)(1) or section 223(b) of such Act) to benefits under section 202(a) or section 223 of such Act after the month following the month in which this Act is enacted, or (2) if such insured individual died before becoming so entitled and no person was entitled (without the application of section 202(j)(1) or section 223(b) of such Act) on the basis of such wages and self-employment income to monthly benefits under title II of the Social Security Act [this subchapter] for the month following the month in which this Act is enacted [September 1960] or any prior month.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 101(f) of Pub. L. 85–840 applicable in the case of monthly benefits under subchapter II of this chapter for months after December 1958, and in the case of lump-sum death payments under subchapter II of this chapter, with respect to deaths occurring after such month, see section 101(g) of Pub. L. 85–840, set out as a note under section 415 of this title.

Amendment by section 205(j) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, and amendment by section 205(k) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for August 1958 and succeeding months, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

Section 307(h)(2) of Pub. L. 85–840 provided that: ''The amendments made by subsection (f) [amending this section] shall apply with respect to monthly benefits under subsection (d) or (g) of section 202 of the Social Security Act [section 402 of this title] for months in any taxable year, of the individual to whom the person entitled to such benefits is married, beginning after the month in which this Act is enacted [August 1958].''

Section 308(f) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section] shall be applicable with respect to taxable years beginning after the month in which this Act is enacted [August 1958].''

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by section 101(d)–(g) of act Aug. 1, 1956, applicable with respect to monthly benefits under section 402 of this title for months after December 1956, but only on the basis of an application filed after September 1956, see section 101(h) of act Aug. 1, 1956, set out as a note under section 402 of this title.

Section 107(a) of act Aug. 1, 1956, provided that the amendment made by that section is applicable in the case of monthly benefits under this subchapter for months in any taxable year (of the individual entitled to such benefits) beginning after 1954.

Section 112(c) of act Aug. 1, 1956, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall be applicable with respect to taxable years ending after 1955.''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 103(i)(3) of act Sept. 1, 1954, provided that: ''Subsections (b)(1), (b)(2), (c), (e), and (j) of section 203 of the Social Security Act [this section] as in effect prior to the enactment of this Act, to the extent they

are in effect with respect to months after 1954, are each amended by striking out 'seventy-five' and inserting in lieu thereof 'seventy-two', but only with respect to such months after 1954.''

Amendment by section 102(e)(7) of act Sept. 1, 1954, applicable in the case of lump-sum death payments under section 402 of this title with respect to deaths occurring, and in the case of monthly benefits under such section for months after, August 1954, see section 102(f) of act Sept. 1, 1954, as amended, set out as a note under section 415 of this title.

Section 103(i)(1), (2) of act Sept. 1, 1954, provided that:

''(1) The amendments made by subsection (f) and by paragraph (1) of subsection (a) of this section [amending this section] shall be applicable in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months in any taxable year (of the individual entitled to such benefits) beginning after December 1954. The amendments made by paragraph (1) of subsection (b) of this section [amending this section] shall be applicable in the case of monthly benefits under such title II for months in any taxable year (of the individual on the basis of whose wages and self-employment income such benefits are payable) beginning after December 1954. The amendments made by subsections (e) and (g), and by paragraph (2) of subsection (a) and paragraph (2) of subsection (b) [amending this section] shall be applicable in the case of monthly benefits under such title II for months after December 1954. The remaining amendments made by this section (other than subsection (h)) [amending this section] shall be applicable, insofar as they are related to the monthly benefits of an individual which are based on his wages and self-employment income, in the case of monthly benefits under such title II for months in any taxable year (of such individual) beginning after December 1954 and, insofar as they are related to the monthly benefits of an individual which are based on the wages and self-employment income of someone else, in the case of monthly benefits under such title II for months in any taxable year (of the individual on whose wages and self-employment income such benefits are based) beginning after December 1954.

''(2) No deduction shall be imposed on or after the date of the enactment of this Act [Sept. 1, 1954] under subsection (f) or (g) of section 203 of the Social Security Act [subsec. (f) or (g) of this section], as in effect prior to such date, on account of failure to file a report of an event described in subsection (b)(1), (b)(2), or (c)(1) of such section (as in effect prior to such date); and no such deduction imposed prior to such date shall be collected after such date. In determining whether, under section 203(g)(2) of the Social Security Act, as amended by this Act, a failure to file a report is a first or subsequent failure, any failure with respect to a taxable year which began prior to January 1955 shall be disregarded.''

EFFECTIVE DATE OF 1952 AMENDMENT

For effective date of amendment by section 2(b)(2) of act July 18, 1952, see section 2(c)(2) of act July 18, 1952, set out as a note under section 415 of this title.

Section 4(e) of act July 18, 1952, provided that: ''The amendments made by subsection (a) [amending this section] shall apply in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months after August 1952. The amendments made by subsection (b) [amending this section] shall apply in the case of monthly benefits under such title II for months in any taxable year (of the individual entitled to such benefits) ending after August 1952. The amendments made by subsection (c) [amending this section] shall apply in the case of monthly benefits under such title II for months in any taxable year (of the individual on the basis of whose wages and self-employment income such benefits are payable) ending after August 1952. The amendments made by subsection (d) [amending this section] shall apply in the case of taxable years ending after August 1952. As used in this subsection, the term ''taxable year'' shall have the meaning assigned to it by section 211(e) of the Social Security Act [section 411(e) of this title].''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 102(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable with respect to benefits for months after August 1950.''

Section 103(b) of act Aug. 28, 1950, provided that: ''The amendments made by this section [amending this section] shall take effect September 1, 1950, except that the provisions of subsections (d), (e), and (f) of section 203 of the Social Security Act [this section] as in effect prior to the enactment of this Act [Aug. 28, 1950] shall be applicable for months prior to September 1950.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

SAVINGS PROVISION

Section 201(h)(2) of Pub. L. 92–336 provided that: ''In any case in which the provisions of section 1002(b)(2) of the Social Security Amendments of 1969 [set out as a note under this section] were applicable with respect to benefits for any month in 1970, the total of monthly benefits as determined under section 203(a) of the Social Security Act [subsec. (a) of this section] shall, for months after 1970, be increased to the amount that would be required in order to assure that the total of such monthly benefits (after the application of section 202(q) of such Act [section 402(q) of this title]) will not be less than the total of monthly benefits that was applicable (after the application of such sections 203(a) and 202(q)) for the first month for which the provisions of such section 1002(b)(2) applied.''

Section 1002(b)(2) of Pub. L. 91–172 provided that: ''Notwithstanding any other provisions of law, when two or more persons are entitled to monthly insurance benefits under title II of the Social Security Act [this subchapter] for any month after 1969 on the basis of the wages and self-employment income of an insured individual (and at least one of such persons was so entitled for a month before January 1971 on the basis of an application filed before 1971), the total of the benefits to which such persons are entitled under such title of such month (after the application of sections 203(a) and 202(q) of such Act [subsec. (a) of this section and section 402(q) of this title]) shall be not less than the total of the monthly insurance benefits to which such persons would be entitled under such title for such month (after the application of such sections 203(a) and 202(q)) without regard to the amendment made by subsection (a) of this section [amending section 415 of this title].''

Section 170 of Pub. L. 90–248 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to monthly benefits under section 202 or 223 of such Act [section 402 or 423 of this title] for January 1968 on the basis of the wages and self-employment income of an individual, and

''(2) one or more persons (not included in paragraph (1)) become entitled to monthly benefits under such section 202 [section 402 of this title] for February 1968 on the basis of such wages and self-employment by reason of the amendments made to such Act [this chapter] by sections 104 [amending this section and sections 402, 416, 422, and 425 of this title], 112 [amending section 402 of this title], 150 [amending section 416 of this title], 151 [amending section 402 of this title and section 228 of Title 45, Railroads], 156 [amending section 416 of this title], and 157 of this Act [amending section 402 and 402 note of this title], and

''(3) the total of benefits to which all persons are entitled under such section 202 or 223 [section 402 or 423 of this title] on the basis of such wages and self-employment for February 1968 are reduced by reason

of section 203(a) of such Act, as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) is entitled for months after January 1968 shall be increased, after the application of such section 203(a) [subsec. (a) of this section], to the amount it would have been if the person or persons referred to in paragraph (2) were not entitled to a benefit referred to in such paragraph.''

Section 102(h) of act Sept. 1, 1954, provided that:

''(1) Where—

''(A) an individual was entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to an old-age insurance benefit under title II of such Act [this subchapter] for August 1954;

''(B) one or more other persons were entitled (without the application of such section 202(j)(1) [section 402(j)(1) of this title]) to monthly benefits under such title for such month on the basis of the wages and self-employment income of such individual; and

''(C) the total of the benefits to which all persons are entitled under such title on the basis of such individual's wages and self-employment income for any subsequent month for which he is entitled to an old-age insurance benefit under such title, would (but for the provisions of this paragraph) be reduced by reason of the application of section 203(a) of the Social Security Act [subsec. (a) of this section], as amended by this Act,

then the total of benefits referred to in clause (C) for such subsequent month shall be reduced to whichever of the following is the larger—

''(D) the amount determined pursuant to section 203(a) of the Social Security Act [subsec. (a) of this section], as amended by this Act; or

''(E) the amount determined pursuant to such section, as in effect prior to the enactment of this Act [Sept. 1, 1954], for August 1954 plus the excess of (i) the amount of his old-age insurance benefit for such month computed as if the amendments made by the preceding subsections of this section [amending this section and section 415 of this title] had been applicable in the case of such benefit for such month over (ii) the amount of his old-age insurance benefit for such month, or

''(F) the amount determined pursuant to section 2(d)(1) of the Social Security Act Amendments of 1952 [set out as a note under section 415 of this title] for August 1954 plus the excess of (i) the amount of his old-age insurance benefit for such month computed as if the amendments made by the preceding subsections of this section had been applicable in the case of such benefit for such month over (ii) the amount of his old-age insurance benefit for such month.

''(2) Where—

''(A) two or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to monthly benefits under title II of such Act [this subchapter] for August 1954 on the basis of the wages and self-employment income of a deceased individual; and

''(B) to total of the benefits to which all such persons are entitled on the basis of such deceased individual's wages and self-employment income for any subsequent month would (but for the provisions of this paragraph) be reduced by reason of the application of the first sentence of section 203(a) of the Social Security Act [subsec. (a) of this section], as amended by this Act,

then, notwithstanding any other provision in title II of the Social Security Act [this subchapter], such deceased individual's average monthly wage shall, for purposes of such section 203(a), be whichever of the following is the larger:

''(C) his average monthly wage determined pursuant to section 215 of such Act [section 415 of this title], as amended by this Act; or

''(D) his average monthly wage determined under such section 215, as in effect prior to the enactment of this Act [Sept. 1, 1954], plus $7.''

TEMPORARY EXTENSION OF EARNINGS LIMITATIONS TO INCLUDE ALL PERSONS AGED LESS THAN SEVENTY-TWO

Section 2204 of Pub. L. 97–35 provided that:

''(a) Notwithstanding subsection (e) of section 302 of the Social Security Amendments of 1977 (91 Stat. 1531; Public Law 95–216) [set out as an Effective Date of 1977 Amendment note above], the amendments made to section 203 of the Social Security Act [this section] by subsections (a) through (d) of such section 302 shall, except as provided in subsection (b) of this section, apply only with respect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months after December 1982.

''(b) In the case of any individual whose first taxable year (as in effect on the date of the enactment of this Act [Aug. 13, 1981]) ending after December 31, 1981, begins before January 1, 1982, the amendments made by section 302 of the Social Security Amendments of 1977 [amending this section] shall apply with respect to taxable years beginning with such taxable year.''

INCREASED EXEMPT AMOUNTS FOR INDIVIDUALS DESCRIBED IN SUBSEC. (f)(8)(D); NOTIFICATION IN 1977 TO 1981; INDIVIDUALS OTHER THAN THOSE DESCRIBED IN SUBSEC. (f)(8)(D)

Section 301(c)(2) of Pub. L. 95–216 provided that: ''No notification with respect to an increased exempt amount for individuals described in section 203(f)(8)(D) of the Social Security Act [subsec. (f)(8)(D) of this section] (as added by paragraph (1) of this subsection) shall be required under the last sentence of section 203(f)(8)(B) of such Act in 1977, 1978, 1979, 1980, or 1981; and section 203(f)(8)(C) of such Act shall not prevent the new exempt amount determined and published under section 203(f)(8)(A) in 1977 from becoming effective to the extent that such new exempt amount applies to individuals other than those described in section 203(f)(8)(D) of such Act (as so added).''

RETIREMENT TEST EXEMPT AMOUNT FOR 1976

By notice of the Secretary of Health, Education, and Welfare, Oct. 22, 1975, 40 F.R. 50556, it was determined and announced that, pursuant to authority contained in subsec. (f)(8) of this section, the monthly exempt amount under the retirement test would be $230 with respect to taxable years ending in calendar year 1976.

COST-OF-LIVING INCREASE IN BENEFITS

For purposes of subsec. (f)(8) of this section, the increase in benefits provided by section 2 of Pub. L. 93–233, revising benefits table of section 415(a) of this title and amending sections 427(a), (b) and 428(b)(1), (2), (c)(3)(A), (B) of this title considered an increase under section 415(i) of this title, see section 3(i) of Pub. L. 93–233, set out as a note under section 415 of this title.

PENALTIES FOR FAILURE TO FILE TIMELY REPORTS OF EARNINGS AND OTHER EVENTS

Section 161(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to any deductions imposed on or after the date of the enactment of this Act [Jan. 2, 1968] under subsections (g) and (h) of section 203 of the Social Security Act [this section] on account of failure to make a report required thereby.''

COMPUTATION OF BENEFITS FOR CERTAIN CHILDREN

Section 163(b) of Pub. L. 90–248 provided that: ''Where—

''(1) one or more persons were entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to monthly benefits under section 202 or 223 of such Act [section 402 or 423 of this title] for January 1968 on the basis of the wages and self-employment income of an individual, and

''(2) one or more persons became entitled to monthly benefits before January 1968 under section 202(d) of

such Act [section 402(d) of this title] by reason of section 216(h)(3) of such Act [section 416(h)(3) of this section] (but without regard to section 202(j)(1)), on the basis of such wages and self-employment income and are so entitled for January 1968, and

''(3) the total of benefits to which all persons are entitled under such section 202 or 223 of such Act [section 402 or 423 of this title] on the basis of such wages and self-employment for January 1968 are reduced by reason of section 203(a) of such Act [subsec. (a) of this section], as amended by this Act (or would, but for the penultimate sentence of such section 203(a), be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) above (but not including persons referred to in paragraph (2) above) is entitled for months after January 1968 shall be increased, after the application of such section 203(a), to the amount it would have been if the person or persons referred to in paragraph (2) were not entitled to a benefit referred to in such paragraph (2).''

PROHIBITION ON IMPOSITION OF DEDUCTION FOR FAILURE TO FILE CERTAIN REPORTS OF EVENTS

Section 209(b) of Pub. L. 86–778 provided that: ''No deduction shall be imposed on or after the date of the enactment of this Act [Sept. 13, 1960] under section 203(f) of the Social Security Act [subsec. (f) of this section], as in effect prior to such date, on account of failure to file a report of an event described in section 203(c) of such Act, as in effect prior to such date; and no such deduction imposed prior to such date shall be collected after such date.''

PROHIBITION ON PAYMENT OF BENEFITS TO CERTAIN SPOUSES OR CHILDREN

Section 211(t) of Pub. L. 86–778 provided that: ''In any case where—

''(1) an individual has earnings (as defined in section 203(e)(4) of the Social Security Act [subsec. (e)(4) of this section] as in effect prior to the enactment of this Act [Sept. 13, 1960]) in a taxable year which begins before 1961 and ends in 1961 (but not on December 31, 1961), and

''(2) such individual's spouse or child entitled to monthly benefits on the basis of such individual's self-employment income has excess earnings (as defined in section 203(f)(3) of the Social Security Act as amended by this Act) in a taxable year which begins after 1960, and

''(3) one or more months in the taxable year specified in paragraph (2) are included in the taxable year specified in paragraph (1),

then, if a deduction is imposed against the benefits payable to such individual with respect to a month described in paragraph (3), such spouse or child, as the case may be, shall not, for purposes of subsections (b) and (f) of section 203 of the Social Security Act as amended by this Act, be entitled to a payment for such month.''

CROSS REFERENCES

Computation of primary insurance amount, see section 415 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 408, 409, 415, 423, 424a, 1382a of this title; title 5 sections 8349, 8421, 8421a, 8442; title 10 section 1451; title 26 sections 1402, 3127; title 30 sections 922, 932; title 45 sections 231a, 231q.

§ 404. Overpayments and underpayments

(a) Procedure for adjustment or recovery

(1) Whenever the Commissioner of Social Security finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, under regulations prescribed by the Commissioner of Social Security, as follows:

(A) With respect to payment to a person of more than the correct amount, the Commissioner of Social Security shall decrease any payment under this subchapter to which such overpaid person is entitled, or shall require such overpaid person or his estate to refund the amount in excess of the correct amount, or shall decrease any payment under this subchapter payable to his estate or to any other person on the basis of the wages and self-employment income which were the basis of the payments to such overpaid person, or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31, or shall apply any combination of the foregoing. A payment made under this subchapter on the basis of an erroneous report of death by the Department of Defense of an individual in the line of duty while he is a member of the uniformed services (as defined in section 410(m) of this title) on active duty (as defined in section 410(*l*) of this title) shall not be considered an incorrect payment for any month prior to the month such Department notifies the Commissioner of Social Security that such individual is alive.

(B) With respect to payment to a person of less than the correct amount, the Commissioner of Social Security shall make payment of the balance of the amount due such underpaid person, or, if such person dies before payments are completed or before negotiating one or more checks representing correct payments, disposition of the amount due shall be made in accordance with subsection (d) of this section.

(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

(A) is made by direct deposit to a financial institution;

(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

(C) such other person was entitled to a monthly benefit on the basis of the same wages and self-employment income as the deceased individual for the month preceding the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person.

(b) No recovery from persons without fault

In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience. In making for purposes of this subsection any determination of whether any individual is without fault, the Commissioner of Social Security shall

specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).

(c) Nonliability of certifying and disbursing officers

No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any person where the adjustment or recovery of such amount is waived under subsection (b) of this section, or where adjustment under subsection (a) of this section is not completed prior to the death of all persons against whose benefits deductions are authorized.

(d) Payment to survivors or heirs when eligible person is deceased

If an individual dies before any payment due him under this subchapter is completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

(1) to the person, if any, who is determined by the Commissioner of Social Security to be the surviving spouse of the deceased individual and who either (i) was living in the same household with the deceased at the time of his death or (ii) was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(2) if there is no person who meets the requirements of paragraph (1), or if the person who meets such requirements dies before the payment due him under this subchapter is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(3) if there is no person who meets the requirements of paragraph (1) or (2), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person, if any, determined by the Commissioner of Social Security to be the surviving spouse of the deceased individual;

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person or persons, if any, determined by the Commissioner of Social Security to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent); or

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the legal representative of the estate of the deceased individual, if any.

(e) Adjustments due to supplemental security income payments

For payments which are adjusted by reason of payment of benefits under the supplemental security income program established by subchapter XVI of this chapter, see section 1320a–6 of this title.

(f) Collection of delinquent amounts

(1) With respect to any delinquent amount, the Commissioner of Social Security may use the collection practices described in sections 3711(f), 3716, and 3718 of title 31 as in effect on October 1, 1994.

(2) For purposes of paragraph (1), the term ''delinquent amount'' means an amount—

(A) in excess of the correct amount of payment under this subchapter;

(B) paid to a person after such person has attained 18 years of age; and

(C) determined by the Commissioner of Social Security, under regulations, to be otherwise unrecoverable under this section after such person ceases to be a beneficiary under this subchapter.

(Aug. 14, 1935, ch. 531, title II, §204, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, 1368; Aug. 28, 1950, ch. 809, title I, §109(b)(1), 64 Stat. 523; Sept. 1, 1954, ch. 1206, title I, §111(a), 68 Stat. 1085; July 30, 1965, Pub. L. 89–97, title III, §329, 79 Stat. 401; Jan. 2, 1968, Pub. L. 90–248, title I, §§152, 153(a), 154(a), 81 Stat. 860, 861; June 9, 1980, Pub. L. 96–265, title V, §501(b), 94 Stat. 470; Apr. 7, 1986, Pub. L. 99–272, title XII, §12113(a), 100 Stat. 288; Dec. 19, 1989, Pub. L. 101–239, title X, §10305(b), 103 Stat. 2483; Nov. 5, 1990, Pub. L. 101–508, title V, §5129(a), 104 Stat. 1388–287; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), 108 Stat. 1478; Oct. 22, 1994, Pub. L. 103–387, §5(a), 108 Stat. 4077.)

AMENDMENTS

1994—Subsecs. (a)(1), (b), (d)(1), (4), (5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (f). Pub. L. 103–387 added subsec. (f).

1990—Subsec. (a)(1)(A). Pub. L. 101–508 inserted ''or shall obtain recovery by means of reduction in tax refunds based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31,'' after ''payments to such overpaid person,''.

1989—Subsec. (b). Pub. L. 101–239 inserted at end ''In making for purposes of this subsection any determination of whether any individual is without fault, the Secretary shall specifically take into account any

physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).''

1986—Subsec. (a). Pub. L. 99–272 redesignated existing subsec. (a) as (a)(1) and pars. (1) and (2) thereof as subpars. (A) and (B), respectively, and added par. (2).

1980—Subsec. (e). Pub. L. 96–265 added subsec. (e).

1968—Subsec. (a). Pub. L. 90–248, § 152(a), incorporated in text preceding par. (1) part of existing provisions and broadened the Secretary's authority to include recovery of overpayments.

Subsec. (a)(1). Pub. L. 90–248, § 153(a), inserted last sentence which provided that payments made on an erroneous report by the Defense Department of the death, in the line of duty, of a member of the uniformed services on active duty are not to be deemed incorrect payments until the Department notifies the Secretary that he is alive.

Subsec. (a)(2). Pub. L. 90–248, § 152(a), incorporated in par. (2) part of existing provisions and broadened Secretary's authority to provide that in the case of underpayments, the Secretary is to pay the balance due the underpaid person but if he dies before receiving the full amount due him or before negotiating checks representing the correct payments, the balance due or the amount for which the checks were issued but not negotiated are to be paid under subsec. (d) of this section.

Subsec. (b). Pub. L. 90–248, § 152(b), authorized the Secretary to waive adjustment or recovery of overpayments from any person who is without fault, even where he is not the overpaid person and the latter is at fault, whereas heretofore a condition for waiver was that the overpaid person be without fault.

Subsec. (d). Pub. L. 90–248, § 154(a), struck out, in text preceding par. (1), provision excepting subsec. (d) from subsec. (a) and provision that the total amount due at the time of death may not exceed the amount of the monthly insurance benefit to which an individual was entitled for the month preceding the month in which he died, added cl. (ii) in par. (1), added pars. (2) to (6), designated existing provisions as par. (7) and inserted therein references to pars. (1) to (6).

1965—Subsec. (d). Pub. L. 89–97 added subsec. (d).

1954—Subsec. (a). Act Sept. 1, 1954, inserted ''and self-employment income'' after ''wages'' in second sentence.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''board''.

1939—Act Aug. 10, 1939, omitted former provisions relating to payments to aged individuals not qualified for benefits and substituted the present section relating to overpayments and underpayments.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–387 applicable to collection activities begun on or after Oct. 22, 1994, and before Oct. 1, 1999, see section 5(c) of Pub. L. 103–387, set out as a note under section 3701 of Title 31, Money and Finance.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Jan. 1, 1991, and inapplicable to refunds to which the amendments made by section 2653 of the Deficit Reduction Act of 1984, Pub. L. 98–369, do not apply, see section 5129(d) of Pub. L. 101–508, set out as a note under section 6402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable with respect to determinations made on or after July 1, 1990, see section 10305(f) of Pub. L. 101–239, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12113(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply only in the case of deaths of which the Secretary is first notified on or after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 applicable in the case of payments of monthly insurance benefits under this subchapter, entitlement for which is determined on or after July 1, 1981, see section 501(d) of Pub. L. 96–265, set out as an Effective Date note under section 1320a–6 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 153(b) of Pub. L. 90–248 provided that: ''The amendment made by this section [amending this section] shall apply with respect to benefits under title II of the Social Security Act [this subchapter] if the individual to whom such benefits were paid would have been entitled to such benefits in or after the month in which this Act was enacted [January 1968] if the report mentioned in the amendment made by subsection (a) of this section had been correct (but without regard to the provisions of section 202(j)(1) of such Act [section 402(j)(1) of this title]).''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 405, 423, 425, 909 of this title; title 26 section 6402; title 30 section 923; title 31 sections 3701, 3720A.

§ 405. Evidence, procedure, and certification for payments

(a) Rules and regulations; procedures

The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

(b) Administrative determination of entitlement to benefits; findings of fact; hearings; investigations; evidentiary hearings in reconsiderations of disability benefit terminations; subsequent applications

(1) The Commissioner of Social Security is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this subchapter. Any such decision by the Commissioner of Social Security which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, surviving divorced father, husband, divorced husband, widower, surviving divorced husband, child, or parent who makes a showing in writing that his or her

rights may be prejudiced by any decision the Commissioner of Social Security has rendered, the Commissioner shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse the Commissioner's findings of fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request. The Commissioner of Social Security is further authorized, on the Commissioner's own motion, to hold such hearings and to conduct such investigations and other proceedings as the Commissioner may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under rules of evidence applicable to court procedure.

(2) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Commissioner of Social Security not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Commissioner of Social Security (before any hearing under paragraph (1) on the issue of such entitlement) of the Commissioner's determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Commissioner of Social Security where the finding was originally made by the State agency, and shall be made by the Commissioner of Social Security where the finding was originally made by the Commissioner of Social Security. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that made the finding described in subparagraph (B). In the case of a reconsideration by the Commissioner of Social Security of a finding described in subparagraph (B) which was originally made by the Commissioner of Social Security, the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).

(3)(A) A failure to timely request review of an initial adverse determination with respect to an application for any benefit under this subchapter or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any benefit under this subchapter if the applicant demonstrates that the applicant, or any other individual referred to in paragraph (1), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for benefits in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 421 of this title.

(B) In any notice of an adverse determination with respect to which a review may be requested under paragraph (1), the Commissioner of Social Security shall describe in clear and specific language the effect on possible entitlement to benefits under this subchapter of choosing to reapply in lieu of requesting review of the determination.

(c) Wage records

(1) For the purposes of this subsection—

(A) The term ''year'' means a calendar year when used with respect to wages and a taxable year when used with respect to self-employment income.

(B) The term ''time limitation'' means a period of three years, three months, and fifteen days.

(C) The term ''survivor'' means an individual's spouse, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent, who survives such individual.

(D) The term ''period'' when used with respect to self-employment income means a taxable year and when used with respect to wages means—

(i) a quarter if wages were reported or should have been reported on a quarterly basis on tax returns filed with the Secretary of the Treasury or his delegate under section 6011 of the Internal Revenue Code of 1986 or regulations thereunder (or on reports filed by a State under section 418(e)[1] of this title (as in effect prior to December 31, 1986) or regulations thereunder),

(ii) a year if wages were reported or should have been reported on a yearly basis on such tax returns or reports, or

(iii) the half year beginning January 1 or July 1 in the case of wages which were reported or should have been reported for calendar year 1937.

(2)(A) On the basis of information obtained by or submitted to the Commissioner of Social Security, and after such verification thereof as the Commissioner deems necessary, the Commissioner of Social Security shall establish and maintain records of the amounts of wages paid to, and the amounts of self-employment income derived by, each individual and of the periods in which such wages were paid and such income was derived and, upon request, shall inform any individual or his survivor, or the legal rep-

[1] See References in Text note below.

resentative of such individual or his estate, of the amounts of wages and self-employment income of such individual and the periods during which such wages were paid and such income was derived, as shown by such records at the time of such request.

(B)(i) In carrying out the Commissioner's duties under subparagraph (A) and subparagraph (F), the Commissioner of Social Security shall take affirmative measures to assure that social security account numbers will, to the maximum extent practicable, be assigned to all members of appropriate groups or categories of individuals by assigning such numbers (or ascertaining that such numbers have already been assigned):

(I) to aliens at the time of their lawful admission to the United States either for permanent residence or under other authority of law permitting them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment;

(II) to any individual who is an applicant for or recipient of benefits under any program financed in whole or in part from Federal funds including any child on whose behalf such benefits are claimed by another person; and

(III) to any other individual when it appears that he could have been but was not assigned an account number under the provisions of subclauses (I) or (II) but only after such investigation as is necessary to establish to the satisfaction of the Commissioner of Social Security, the identity of such individual, the fact that an account number has not already been assigned to such individual, and the fact that such individual is a citizen or a noncitizen who is not, because of his alien status, prohibited from engaging in employment;

and, in carrying out such duties, the Commissioner of Social Security is authorized to take affirmative measures to assure the issuance of social security numbers:

(IV) to or on behalf of children who are below school age at the request of their parents or guardians; and

(V) to children of school age at the time of their first enrollment in school.

(ii) The Commissioner of Social Security shall require of applicants for social security account numbers such evidence as may be necessary to establish the age, citizenship, or alien status, and true identity of such applicants, and to determine which (if any) social security account number has previously been assigned to such individual.

(iii) In carrying out the requirements of this subparagraph, the Commissioner of Social Security shall enter into such agreements as may be necessary with the Attorney General and other officials and with State and local welfare agencies and school authorities (including nonpublic school authorities).

(C)(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

(ii) In the administration of any law involving the issuance of a birth certificate, each State shall require each parent to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if the parent has more than one such number) issued to the parent unless the State (in accordance with regulations prescribed by the Commissioner of Social Security) finds good cause for not requiring the furnishing of such number. The State shall make numbers furnished under this subclause available to the agency administering the State's plan under part D of subchapter IV of this chapter in accordance with Federal or State law and regulation. Such numbers shall not be recorded on the birth certificate. A State shall not use any social security account number, obtained with respect to the issuance by the State of a birth certificate, for any purpose other than for the enforcement of child support orders in effect in the State, unless section 7(a) of the Privacy Act of 1974 does not prohibit the State from requiring the disclosure of such number, by reason of the State having adopted, before January 1, 1975, a statute or regulation requiring such disclosure.

(iii)(I) In the administration of section 9 of the Food Stamp Act of 1977 (7 U.S.C. 2018) involving the determination of the qualifications of applicants under such Act [7 U.S.C. 2011 et seq.], the Secretary of Agriculture may require each applicant retail store or wholesale food concern to furnish to the Secretary of Agriculture the social security account number of each individual who is an officer of the store or concern and, in the case of a privately owned applicant, furnish the social security account numbers of the owners of such applicant. No officer or employee of the Department of Agriculture shall have access to any such number for any purpose other than the establishment and maintenance of a list of the names and social security account numbers of such individuals for use in determining those applicants who have been previously sanctioned or convicted under section 12 or 15 of such Act (7 U.S.C. 2021 or 2024).

(II) The Secretary of Agriculture may share any information contained in any list referred to in subclause (I) with any other agency or instrumentality of the United States which otherwise has access to social security account numbers in accordance with this subsection or other applicable Federal law, except that the Secretary of Agriculture may share such information only to the extent that such Secretary determines such sharing would assist in verifying and matching such information against information maintained by such other agency or instrumentality. Any such information shared pursu-

ant to this subclause may be used by such other agency or instrumentality only for the purpose of effective administration and enforcement of the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.] or for the purpose of investigation of violations of other Federal laws or enforcement of such laws.

(III) The Secretary of Agriculture, and the head of any other agency or instrumentality referred to in this subclause, shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause only to officers and employees of the United States whose duties or responsibilities require access for the purposes described in subclause (II).

(IV) The Secretary of Agriculture, and the head of any agency or instrumentality with which information is shared pursuant to clause[2] (II), shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of the social security account numbers.

(iv) In the administration of section 506 of the Federal Crop Insurance Act [7 U.S.C. 1506], the Federal Crop Insurance Corporation may require each policyholder and each reinsured company to furnish to the insurer or to the Corporation the social security account number of such policyholder, subject to the requirements of this clause. No officer or employee of the Federal Crop Insurance Corporation shall have access to any such number for any purpose other than the establishment of a system of records necessary for the effective administration of such Act [7 U.S.C. 1501 et seq.]. The Manager of the Corporation may require each policyholder to provide to the Manager, at such times and in such manner as prescribed by the Manager, the social security account number of each individual that holds or acquires a substantial beneficial interest in the policyholder. For purposes of this clause, the term ''substantial beneficial interest'' means not less than 5 percent of all beneficial interest in the policyholder. The Secretary of Agriculture shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause only to officers and employees of the United States or authorized persons whose duties or responsibilities require access for the administration of the Federal Crop Insurance Act. The Secretary of Agriculture shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of such social security account numbers. For purposes of this clause the term ''authorized person'' means an officer or employee of an insurer whom the Manager of the Corporation designates by rule, subject to appropriate safeguards including a prohibition against the release of such social security account number (other than to the Corporation) by such person.

(v) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i), such provision shall, on and after October 4, 1976, be null, void, and of no effect. If and to the extent that any such provision is inconsistent with the requirement set forth in clause (ii), such provision shall, on and after October 13, 1988, be null, void, and of no effect.

(vi) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency operating pursuant to the provisions of part A or D of subchapter IV of this chapter.

(vii) For purposes of this subparagraph, the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(viii)(I) Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990, shall be confidential, and no authorized person shall disclose any such social security account number or related record.

(II) Paragraphs (1), (2), and (3) of section 7213(a) of the Internal Revenue Code of 1986 shall apply with respect to the unauthorized willful disclosure to any person of social security account numbers and related records obtained or maintained by an authorized person pursuant to a provision of law enacted on or after October 1, 1990, in the same manner and to the same extent as such paragraphs apply with respect to unauthorized disclosures of return and return information described in such paragraphs. Paragraph (4) of section 7213(a) of such Code shall apply with respect to the willful offer of any item of material value in exchange for any such social security account number or related record in the same manner and to the same extent as such paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

(III) For purposes of this clause, the term ''authorized person'' means an officer or employee of the United States, an officer or employee of any State, political subdivision of a State, or agency of a State or political subdivision of a State, and any other person (or officer or employee thereof), who has or had access to social security account numbers or related records pursuant to any provision of law enacted on or after October 1, 1990. For purposes of this subclause, the term ''officer or employee'' includes a former officer or employee.

(IV) For purposes of this clause, the term ''related record'' means any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom a social security account number or a request for a social security account number is maintained pursuant to this clause.

[2] So in original. Probably should be ''subclause''.

(ix) In the administration of the provisions of chapter 81 of title 5 and the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.), the Secretary of Labor may require by regulation that any person filing a notice of injury or a claim for benefits under such provisions provide as part of such notice or claim such person's social security account number, subject to the requirements of this clause. No officer or employee of the Department of Labor shall have access to any such number for any purpose other than the establishment of a system of records necessary for the effective administration of such provisions. The Secretary of Labor shall restrict, to the satisfaction of the Commissioner of Social Security, access to social security account numbers obtained pursuant to this clause to officers and employees of the United States whose duties or responsibilities require access for the administration or enforcement of such provisions. The Secretary of Labor shall provide such other safeguards as the Commissioner of Social Security determines to be necessary or appropriate to protect the confidentiality of the social security account numbers.

(D)(i) It is the policy of the United States that—

(I) any State (or any political subdivision of a State) and any authorized blood donation facility may utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of identifying blood donors, and

(II) any State (or political subdivision of a State) may require any individual who donates blood within such State (or political subdivision) to furnish to such State (or political subdivision), to any agency thereof having related administrative responsibility, or to any authorized blood donation facility the social security account number (or numbers, if the donor has more than one such number) issued to the donor by the Commissioner of Social Security.

(ii) If and to the extent that any provision of Federal law enacted before November 10, 1988, is inconsistent with the policy set forth in clause (i), such provision shall, on and after November 10, 1988, be null, void, and of no effect.

(iii) For purposes of this subparagraph—

(I) the term ''authorized blood donation facility'' means an entity described in section 1320b–11(h)(1)(B) of this title, and

(II) the term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(E)(i) It is the policy of the United States that—

(I) any State (or any political subdivision of a State) may utilize the social security account numbers issued by the Commissioner of Social Security for the additional purposes described in clause (ii) if such numbers have been collected and are otherwise utilized by such State (or political subdivision) in accordance with applicable law, and

(II) any district court of the United States may use, for such additional purposes, any such social security account numbers which have been so collected and are so utilized by any State.

(ii) The additional purposes described in this clause are the following:

(I) Identifying duplicate names of individuals on master lists used for jury selection purposes.

(II) Identifying on such master lists those individuals who are ineligible to serve on a jury by reason of their conviction of a felony.

(iii) To the extent that any provision of Federal law enacted before August 15, 1994, is inconsistent with the policy set forth in clause (i), such provision shall, on and after August 15, 1994, be null, void, and of no effect.

(iv) For purposes of this subparagraph, the term ''State'' has the meaning such term has in subparagraph (D).

(F) The Commissioner of Social Security shall require, as a condition for receipt of benefits under this subchapter, that an individual furnish satisfactory proof of a social security account number assigned to such individual by the Commissioner of Social Security or, in the case of an individual to whom no such number has been assigned, that such individual make proper application for assignment of such a number.

(G) The Commissioner of Social Security shall issue a social security card to each individual at the time of the issuance of a social security account number to such individual. The social security card shall be made of banknote paper, and (to the maximum extent practicable) shall be a card which cannot be counterfeited.

(3) The Commissioner's records shall be evidence for the purpose of proceedings before the Commissioner of Social Security or any court of the amounts of wages paid to, and self-employment income derived by, an individual and of the periods in which such wages were paid and such income was derived. The absence of an entry in such records as to wages alleged to have been paid to, or as to self-employment income alleged to have been derived by, an individual in any period shall be evidence that no such alleged wages were paid to, or that no such alleged income was derived by, such individual during such period.

(4) Prior to the expiration of the time limitation following any year the Commissioner of Social Security may, if it is brought to the Commissioner's attention that any entry of wages or self-employment income in the Commissioner's records for such year is erroneous or that any item of wages or self-employment income for such year has been omitted from such records, correct such entry or include such omitted item in the Commissioner's records, as the case may be. After the expiration of the time limitation following any year—

(A) the Commissioner's records (with changes, if any, made pursuant to paragraph (5) of this subsection) of the amounts of wages paid to, and self-employment income derived by, an individual during any period in such year shall be conclusive for the purposes of this subchapter;

(B) the absence of an entry in the Commissioner's records as to the wages alleged to

have been paid by an employer to an individual during any period in such year shall be presumptive evidence for the purposes of this subchapter that no such alleged wages were paid to such individual in such period; and

(C) the absence of an entry in the Commissioner's records as to the self-employment income alleged to have been derived by an individual in such year shall be conclusive for the purposes of this subchapter that no such alleged self-employment income was derived by such individual in such year unless it is shown that he filed a tax return of his self-employment income for such year before the expiration of the time limitation following such year, in which case the Commissioner of Social Security shall include in the Commissioner's records the self-employment income of such individual for such year.

(5) After the expiration of the time limitation following any year in which wages were paid or alleged to have been paid to, or self-employment income was derived or alleged to have been derived by, an individual, the Commissioner of Social Security may change or delete any entry with respect to wages or self-employment income in the Commissioner's records of such year for such individual or include in the Commissioner's records of such year for such individual any omitted item of wages or self-employment income but only—

(A) if an application for monthly benefits or for a lump-sum death payment was filed within the time limitation following such year; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon the application for monthly benefits or lump-sum death payment;

(B) if within the time limitation following such year an individual or his survivor makes a request for a change or deletion, or for an inclusion of an omitted item, and alleges in writing that the Commissioner's records of the wages paid to, or the self-employment income derived by, such individual in such year are in one or more respects erroneous; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon such request. Written notice of the Commissioner's decision on any such request shall be given to the individual who made the request;

(C) to correct errors apparent on the face of such records;

(D) to transfer items to records of the Railroad Retirement Board if such items were credited under this subchapter when they should have been credited under the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.], or to enter items transferred by the Railroad Retirement Board which have been credited under the Railroad Retirement Act of 1937 or 1974 when they should have been credited under this subchapter;

(E) to delete or reduce the amount of any entry which is erroneous as a result of fraud;

(F) to conform the Commissioner's records to—

(i) tax returns or portions thereof (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act [42 U.S.C. 1001 et seq.], under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939, under chapter 2 or 21 of the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986, or under regulations made under authority of such title, subchapter, or chapter;

(ii) wage reports filed by a State pursuant to an agreement under section 418 of this title or regulations of the Commissioner of Social Security thereunder; or

(iii) assessments of amounts due under an agreement pursuant to section 418 of this title (as in effect prior to December 31, 1986), if such assessments are made within the period specified in subsection (q)[3] of such section (as so in effect), or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section;

except that no amount of self-employment income of an individual for any taxable year (if such return or statement was filed after the expiration of the time limitation following the taxable year) shall be included in the Commissioner's records pursuant to this subparagraph;

(G) to correct errors made in the allocation, to individuals or periods, of wages or self-employment income entered in the records of the Commissioner of Social Security;

(H) to include wages paid during any period in such year to an individual by an employer;

(I) to enter items which constitute remuneration for employment under subsection (o) of this section, such entries to be in accordance with certified reports of records made by the Railroad Retirement Board pursuant to section 5(k)(3) of the Railroad Retirement Act of 1937 [45 U.S.C. 228e(k)(3)] or section 7(b)(7) of the Railroad Retirement Act of 1974 [45 U.S.C. 231f(b)(7)]; or

(J) to include self-employment income for any taxable year, up to, but not in excess of, the amount of wages deleted by the Commissioner of Social Security as payments erroneously included in such records as wages paid to such individual, if such income (or net earnings from self-employment), not already included in such records as self-employment income, is included in a return or statement (referred to in subparagraph (F) of this subsection) filed before the expiration of the time limitation following the taxable year in which such deletion of wages is made.

(6) Written notice of any deletion or reduction under paragraph (4) or (5) of this subsection shall be given to the individual whose record is involved or to his survivor, except that (A) in the case of a deletion or reduction with respect to any entry of wages such notice shall be given to such individual only if he has previously been notified by the Commissioner of Social Security of the amount of his wages for the period involved, and (B) such notice shall be given to such survivor only if he or the individual whose

[3] See References in Text note below.

record is involved has previously been notified by the Commissioner of Social Security of the amount of such individual's wages and self-employment income for the period involved.

(7) Upon request in writing (within such period, after any change or refusal of a request for a change of the Commissioner's records pursuant to this subsection, as the Commissioner of Social Security may prescribe), opportunity for hearing with respect to such change or refusal shall be afforded to any individual or his survivor. If a hearing is held pursuant to this paragraph the Commissioner of Social Security shall make findings of fact and a decision based upon the evidence adduced at such hearing and shall include any omitted items, or change or delete any entry, in the Commissioner's records as may be required by such findings and decision.

(8) A translation into English by a third party of a statement made in a foreign language by an applicant for or beneficiary of monthly insurance benefits under this subchapter shall not be regarded as reliable for any purpose under this subchapter unless the third party, under penalty of perjury—

(A) certifies that the translation is accurate; and

(B) discloses the nature and scope of the relationship between the third party and the applicant or recipient, as the case may be.

(9) Decisions of the Commissioner of Social Security under this subsection shall be reviewable by commencing a civil action in the United States district court as provided in subsection (g) of this section.

(d) Issuance of subpenas in administrative proceedings

For the purpose of any hearing, investigation, or other proceeding authorized or directed under this subchapter, or relative to any other matter within the Commissioner's jurisdiction hereunder, the Commissioner of Social Security shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the Commissioner of Social Security. Such attendance of witnesses and production of evidence at the designated place of such hearing, investigation, or other proceeding may be required from any place in the United States or in any Territory or possession thereof. Subpenas of the Commissioner of Social Security shall be served by anyone authorized by the Commissioner (1) by delivering a copy thereof to the individual named therein, or (2) by registered mail or by certified mail addressed to such individual at his last dwelling place or principal place of business. A verified return by the individual so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post-office receipt therefor signed by the individual so served, shall be proof of service. Witnesses so subpenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(e) Judicial enforcement of subpenas; contempt

In case of contumacy by, or refusal to obey a subpena duly served upon, any person, any district court of the United States for the judicial district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Commissioner of Social Security, shall have jurisdiction to issue an order requiring such person to appear and give testimony, or to appear and produce evidence, or both; any failure to obey such order of the court may be punished by said court as contempt thereof.

(f) Repealed. Pub. L. 91–452, title II, § 236, Oct. 15, 1970, 84 Stat. 930

(g) Judicial review

Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Commissioner of Social Security may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of the Commissioner's answer the Commissioner of Social Security shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. The findings of the Commissioner of Social Security as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Commissioner of Social Security or a decision is rendered under subsection (b) of this section which is adverse to an individual who was a party to the hearing before the Commissioner of Social Security, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Commissioner of Social Security shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm the Commissioner's findings of fact or the Commissioner's decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a

transcript of the additional record and testimony upon which the Commissioner's action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.

(h) Finality of Commissioner's decision

The findings and decision of the Commissioner of Social Security after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Commissioner of Social Security shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Commissioner of Social Security, or any officer or employee thereof shall be brought under section 1331 or 1346 of title 28 to recover on any claim arising under this subchapter.

(i) Certification for payment

Upon final decision of the Commissioner of Social Security, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this subchapter, the Commissioner of Social Security shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through the Fiscal Service of the Department of the Treasury, and prior to any action thereon by the General Accounting Office, shall make payment in accordance with the certification of the Commissioner of Social Security (except that in the case of (A) an individual who will have completed ten years of service creditable under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] or the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], (B) the wife or husband of such an individual, (C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], and (D) any other person entitled to benefits under section 402 of this title on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry, as defined in the Railroad Retirement Act of 1974, at the time of his death), such certification shall be made to the Railroad Retirement Board which shall provide for such payment or payments to such person on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974): *Provided,* That where a review of the Commissioner's decision is or may be sought under subsection (g) of this section the Commissioner of Social Security may withhold certification of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Commissioner of Social Security.

(j) Representative payees

(1)(A) If the Commissioner of Social Security determines that the interest of any individual under this subchapter would be served thereby, certification of payment of such individual's benefit under this subchapter may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's ''representative payee''). If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee has misused any individual's benefit paid to such representative payee pursuant to this subsection or section 1383(a)(2) of this title, the Commissioner of Social Security shall promptly revoke certification for payment of benefits to such representative payee pursuant to this subsection and certify payment to an alternative representative payee or, if the interest of the individual under this subchapter would be served thereby, to the individual.

(B) In the case of an individual entitled to benefits based on disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability, certification of payment of such benefits to a representative payee shall be deemed to serve the interest of such individual under this subchapter. In any case in which such certification is so deemed under this subparagraph to serve the interest of an individual, the Commissioner of Social Security shall include, in such individual's notification of entitlement, a notice that alcoholism or drug addiction is a contributing factor material to the Commissioner's determination of such individual's disability and that the Commissioner of Social Security is therefore required to make a certification of payment of such individual's benefits to a representative payee.

(2)(A) Any certification made under paragraph (1) for payment of benefits to an individual's representative payee shall be made on the basis of—

(i) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such certification and shall, to the extent practicable, include a face-to-face interview with such person, and

(ii) adequate evidence that such certification is in the interest of such individual (as determined by the Commissioner of Social Security in regulations).

(B)(i) As part of the investigation referred to in subparagraph (A)(i), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing

such identity has been submitted with an application for benefits under this subchapter or subchapter XVI of this chapter,

(II) verify such person's social security account number (or employer identification number),

(III) determine whether such person has been convicted of a violation of section 408 or 1383a of this title, and

(IV) determine whether certification of payment of benefits to such person has been revoked pursuant to this subsection or payment of benefits to such person has been terminated pursuant to section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter or subchapter XVI of this chapter.

(ii) The Commissioner of Social Security shall establish and maintain a centralized file, which shall be updated periodically and which shall be in a form which renders it readily retrievable by each servicing office of the Social Security Administration. Such file shall consist of—

(I) a list of the names and social security account numbers (or employer identification numbers) of all persons with respect to whom certification of payment of benefits has been revoked on or after January 1, 1991, pursuant to this subsection, or with respect to whom payment of benefits has been terminated on or after such date pursuant to section 1383(a)(2)(A)(iii) of this title, by reason of misuse of funds paid as benefits under this subchapter or subchapter XVI of this chapter, and

(II) a list of the names and social security account numbers (or employer identification numbers) of all persons who have been convicted of a violation of section 408 or 1383a of this title.

(C)(i) Benefits of an individual may not be certified for payment to any other person pursuant to this subsection if—

(I) such person has previously been convicted as described in subparagraph (B)(i)(III),

(II) except as provided in clause (ii), certification of payment of benefits to such person under this subsection has previously been revoked as described in subparagraph (B)(i)(IV), or payment of benefits to such person pursuant to section 1383(a)(2)(A)(ii) of this title has previously been terminated as described in section 1383(a)(2)(B)(ii)(IV) of this title, or

(III) except as provided in clause (iii), such person is a creditor of such individual who provides such individual with goods or services for consideration.

(ii) The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant exemptions to any person from the provisions of clause (i)(II) on a case-by-case basis if such exemption is in the best interest of the individual whose benefits would be paid to such person pursuant to this subsection.

(iii) Clause (i)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual,

(II) a legal guardian or legal representative of such individual,

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State,

(IV) a person who is an administrator, owner, or employee of a facility referred to in subclause (III) if such individual resides in such facility, and the certification of payment to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom such certification of payment would serve the best interests of such individual, or

(V) an individual who is determined by the Commissioner of Social Security, on the basis of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(iv) The procedures referred to in clause (iii)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(I) such individual poses no risk to the beneficiary,

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest, and

(III) no other more suitable representative payee can be found.

(v) In the case of an individual entitled to benefits based on disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability, when selecting such individual's representative payee, preference shall be given to—

(I) a community-based nonprofit social service agency licensed or bonded by the State,

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities,

(III) a State or local government agency with fiduciary responsibilities, or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate,

unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(D)(i) Subject to clause (ii), if the Commissioner of Social Security makes a determination described in the first sentence of paragraph (1) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subsection.

(ii)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a

benefit pursuant to clause (i) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual is, as of the date of the Commissioner's determination, legally incompetent, under the age of 15 years, or (if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability) is eligible for benefits under this subchapter by reason of disability..[4]

(iii) Payment pursuant to this subsection of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual or the representative payee as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interest of the individual entitled to such benefits.

(E)(i) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to certify payment of such individual's benefit to a representative payee under paragraph (1) or with the designation of a particular person to serve as representative payee shall be entitled to a hearing by the Commissioner of Social Security to the same extent as is provided in subsection (b) of this section, and to judicial review of the Commissioner's final decision as is provided in subsection (g) of this section.

(ii) In advance of the certification of payment of an individual's benefit to a representative payee under paragraph (1), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to certify such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(iii) Any notice described in clause (ii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (i) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(3)(A) In any case where payment under this subchapter is made to a person other than the individual entitled to such payment, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(B) Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a State institution. In such cases, the Commissioner of Social Security shall establish a system of accountability monitoring for institutions in each State.

(C) Subparagraph (A) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the other person to whom such payment is made is the institution.

(D) Notwithstanding subparagraphs (A), (B), and (C), the Commissioner of Social Security may require a report at any time from any person receiving payments on behalf of another, if the Commissioner of Social Security has reason to believe that the person receiving such payments is misusing such payments.

(E) The Commissioner of Social Security shall maintain a centralized file, which shall be updated periodically and which shall be in a form which will be readily retrievable by each servicing office of the Social Security Administration, of—

(i) the address and the social security account number (or employer identification number) of each representative payee who is receiving benefit payments pursuant to this subsection or section 1383(a)(2) of this title, and

(ii) the address and social security account number of each individual for whom each representative payee is reported to be providing services as representative payee pursuant to this subsection or section 1383(a)(2) of this title.

(F) Each servicing office of the Administration shall maintain a list, which shall be updated periodically, of public agencies and community-based nonprofit social service agencies which are qualified to serve as representative payees pursuant to this subsection or section 1383(a)(2) of this title and which are located in the area served by such servicing office.

(4)(A)(i) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to this subsection if such fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which the individual is entitled to benefits based on disability and alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability).

The Commissioner of Social Security shall adjust annually (after 1995) each dollar amount set forth in subclause (II) under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for

[4] So in original.

under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00. Any agreement providing for a fee in excess of the amount permitted under this subparagraph shall be void and shall be treated as misuse by such organization of such individual's benefits.

(ii) In the case of an individual who is no longer currently entitled to monthly insurance benefits under this subchapter but to whom all past-due benefits have not been paid, for purposes of clause (i), any amount of such past-due benefits payable in any month shall be treated as a monthly benefit referred to in clause (i)(I).

(B) For purposes of this paragraph, the term ''qualified organization'' means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee, if such agency, in accordance with any applicable regulations of the Commissioner of Social Security—

(i) regularly provides services as the representative payee, pursuant to this subsection or section 1383(a)(2) of this title, concurrently to 5 or more individuals,[5]

(ii) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exception from clause (ii) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(C) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under subparagraph (A) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, or imprisoned not more than 6 months, or both.

(5) In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to such misused benefits. The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(6) The Commissioner of Social Security shall include as a part of the annual report required under section 904[6] of this title information with respect to the implementation of the preceding provisions of this subsection, including the number of cases in which the representative payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Commissioner of Social Security, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Commissioner of Social Security determines to be appropriate.

(7) For purposes of this subsection, the term ''benefit based on disability'' of an individual means a disability insurance benefit of such individual under section 423 of this title or a child's, widow's, or widower's insurance benefit of such individual under section 402 of this title based on such individual's disability.

(k) Payments to incompetents

Any payment made after December 31, 1939, under conditions set forth in subsection (j) of this section, any payment made before January 1, 1940, to, or on behalf of, a legally incompetent individual, and any payment made after December 31, 1939, to a legally incompetent individual without knowledge by the Commissioner of Social Security of incompetency prior to certification of payment, if otherwise valid under this subchapter, shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(*l*) Delegation of powers and duties by Commissioner

The Commissioner of Social Security is authorized to delegate to any member, officer, or employee of the Social Security Administration designated by the Commissioner any of the powers conferred upon the Commissioner by this section, and is authorized to be represented by the Commissioner's own attorneys in any court in any case or proceeding arising under the provisions of subsection (e) of this section.

(m) Repealed. Aug. 28, 1950, ch. 809, title I, § 101(b)(2), 64 Stat. 488

(n) Joint payments

The Commissioner of Social Security may, in the Commissioner's discretion, certify to the Managing Trustee any two or more individuals of the same family for joint payment of the total benefits payable to such individuals for any month, and if one of such individuals dies before a check representing such joint payment is negotiated, payment of the amount of such unnegotiated check to the surviving individual or individuals may be authorized in accordance with regulations of the Secretary of the Treasury; except that appropriate adjustment or recovery shall be made under section 404(a) of this title with respect to so much of the amount of such check as exceeds the amount to which such surviving individual or individuals are entitled under this subchapter for such month.

(*o*) Crediting of compensation under Railroad Retirement Act

If there is no person who would be entitled, upon application therefor, to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a], or to a lump-sum payment under section 6(b) of such Act [45 U.S.C. 231e(b)], with respect to the death of an employee (as defined in such Act), then, notwithstanding section 410(a)(9) of this title, compensation (as defined in such Railroad Retirement Act, but ex-

[5] So in original. Probably should be followed by ''and''.

[6] See References in Text note below.

cluding compensation attributable as having been paid during any month on account of military service creditable under section 3(i) of such Act [45 U.S.C. 231b(i)] if wages are deemed to have been paid to such employee during such month under subsection (a) or (e) of section 417 of this title) of such employee shall constitute remuneration for employment for purposes of determining (A) entitlement to and the amount of any lump-sum death payment under this subchapter on the basis of such employee's wages and self-employment income and (B) entitlement to and the amount of any monthly benefit under this subchapter, for the month in which such employee died or for any month thereafter, on the basis of such wages and self-employment income. For such purposes, compensation (as so defined) paid in a calendar year before 1978 shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee rendered services for such compensation.

(p) Special rules in case of Federal service

(1) With respect to service included as employment under section 410 of this title which is performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service, to which the provisions of subsection (*l*)(1) of such section are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.], to which the provisions of section 410(*o*) of this title are applicable, the Commissioner of Social Security shall not make determinations as to the amounts of remuneration for such service, or the periods in which or for which such remuneration was paid, but shall accept the determinations with respect thereto of the head of the appropriate Federal agency or instrumentality, and of such agents as such head may designate, as evidenced by returns filed in accordance with the provisions of section 3122 of the Internal Revenue Code of 1954 and certifications made pursuant to this subsection. Such determinations shall be final and conclusive. Nothing in this paragraph shall be construed to affect the Commissioner's authority to determine under sections 409 and 410 of this title whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages.

(2) The head of any such agency or instrumentality is authorized and directed, upon written request of the Commissioner of Social Security, to make certification to the Commissioner with respect to any matter determinable for the Commissioner of Social Security by such head or his agents under this subsection, which the Commissioner of Social Security finds necessary in administering this subchapter.

(3) The provisions of paragraphs (1) and (2) of this subsection shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of paragraphs (1) and (2) of this subsection the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of paragraphs (1) and (2) shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of paragraphs (1) and (2) the Secretary of Transportation shall be deemed to be the head of such instrumentality.

(q) Expedited benefit payments

(1) The Commissioner of Social Security shall establish and put into effect procedures under which expedited payment of monthly insurance benefits under this subchapter will, subject to paragraph (4) of this subsection, be made as set forth in paragraphs (2) and (3) of this subsection.

(2) In any case in which—

(A) an individual makes an allegation that a monthly benefit under this subchapter was due him in a particular month but was not paid to him, and

(B) such individual submits a written request for the payment of such benefit—

(i) in the case of an individual who received a regular monthly benefit in the month preceding the month with respect to which such allegation is made, not less than 30 days after the 15th day of the month with respect to which such allegation is made (and in the event that such request is submitted prior to the expiration of such 30-day period, it shall be deemed to have been submitted upon the expiration of such period), and

(ii) in any other case, not less than 90 days after the later of (I) the date on which such benefit is alleged to have been due, or (II) the date on which such individual furnished the last information requested by the Commissioner of Social Security (and such written request will be deemed to be filed on the day on which it was filed, or the ninetieth day after the first day on which the Commissioner of Social Security has evidence that such allegation is true, whichever is later),

the Commissioner of Social Security shall, if the Commissioner finds that benefits are due, certify such benefits for payment, and payment shall be made within 15 days immediately following the date on which the written request is deemed to have been filed.

(3) In any case in which the Commissioner of Social Security determines that there is evidence, although additional evidence might be required for a final decision, that an allegation de-

scribed in paragraph (2)(A) is true, the Commissioner may make a preliminary certification of such benefit for payment even though the 30-day or 90-day periods described in paragraph (2)(B)(i) and (B)(ii) have not elapsed.

(4) Any payment made pursuant to a certification under paragraph (3) of this subsection shall not be considered an incorrect payment for purposes of determining the liability of the certifying or disbursing officer.

(5) For purposes of this subsection, benefits payable under section 428 of this title shall be treated as monthly insurance benefits payable under this subchapter. However, this subsection shall not apply with respect to any benefit for which a check has been negotiated, or with respect to any benefit alleged to be due under either section 423 of this title, or section 402 of this title to a wife, husband, or child of an individual entitled to or applying for benefits under section 423 of this title, or to a child who has attained age 18 and is under a disability, or to a widow or widower on the basis of being under a disability.

(r) Use of death certificates to correct program information

(1) The Commissioner of Social Security shall undertake to establish a program under which—

(A) States (or political subdivisions thereof) voluntarily contract with the Commissioner of Social Security to furnish the Commissioner of Social Security periodically with information (in a form established by the Commissioner of Social Security in consultation with the States) concerning individuals with respect to whom death certificates (or equivalent documents maintained by the States or subdivisions) have been officially filed with them; and

(B) there will be (i) a comparison of such information on such individuals with information on such individuals in the records being used in the administration of this chapter, (ii) validation of the results of such comparisons, and (iii) corrections in such records to accurately reflect the status of such individuals.

(2) Each State (or political subdivision thereof) which furnishes the Commissioner of Social Security with information on records of deaths in the State or subdivision under this subsection may be paid by the Commissioner of Social Security from amounts available for administration of this chapter the reasonable costs (established by the Commissioner of Social Security in consultations with the States) for transcribing and transmitting such information to the Commissioner of Social Security.

(3) In the case of individuals with respect to whom federally funded benefits are provided by (or through) a Federal or State agency other than under this chapter, the Commissioner of Social Security shall to the extent feasible provide such information through a cooperative arrangement with such agency, for ensuring proper payment of those benefits with respect to such individuals if—

(A) under such arrangement the agency provides reimbursement to the Commissioner of Social Security for the reasonable cost of carrying out such arrangement, and

(B) such arrangement does not conflict with the duties of the Commissioner of Social Security under paragraph (1).

(4) The Commissioner of Social Security may enter into similar agreements with States to provide information for their use in programs wholly funded by the States if the requirements of subparagraphs (A) and (B) of paragraph (3) are met.

(5) The Commissioner of Social Security may use or provide for the use of such records as may be corrected under this section, subject to such safeguards as the Commissioner of Social Security determines are necessary or appropriate to protect the information from unauthorized use or disclosure, for statistical and research activities conducted by Federal and State agencies.

(6) Information furnished to the Commissioner of Social Security under this subsection may not be used for any purpose other than the purpose described in this subsection and is exempt from disclosure under section 552 of title 5 and from the requirements of section 552a of such title.

(7) The Commissioner of Social Security shall include information on the status of the program established under this section and impediments to the effective implementation of the program in the 1984 report required under section 904 of this title.

(s) Notice requirements

The Commissioner of Social Security shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this subchapter by the Commissioner of Social Security or by a State agency—

(1) is written in simple and clear language, and

(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.

(t) Same-day personal interviews at field offices in cases where time is of essence

In any case in which an individual visits a field office of the Social Security Administration and represents during the visit to an officer or employee of the Social Security Administration in the office that the individual's visit is occasioned by—

(1) the receipt of a notice from the Social Security Administration indicating a time limit for response by the individual, or

(2) the theft, loss, or nonreceipt of a benefit payment under this subchapter,

the Commissioner of Social Security shall ensure that the individual is granted a face-to-face interview at the office with an officer or employee of the Social Security Administration before the close of business on the day of the visit.

(u) Redetermination of entitlement

(1)(A) The Commissioner of Social Security shall immediately redetermine the entitlement of individuals to monthly insurance benefits under this subchapter if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that such action by the Commissioner of Social Security with regard to beneficiaries in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud.

(B) When redetermining the entitlement, or making an initial determination of entitlement, of an individual under this subchapter, the Commissioner of Social Security shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence.

(2) For purposes of paragraph (1), similar fault is involved with respect to a determination if—

(A) an incorrect or incomplete statement that is material to the determination is knowingly made; or

(B) information that is material to the determination is knowingly concealed.

(3) If, after redetermining pursuant to this subsection the entitlement of an individual to monthly insurance benefits, the Commissioner of Social Security determines that there is insufficient evidence to support such entitlement, the Commissioner of Social Security may terminate such entitlement and may treat benefits paid on the basis of such insufficient evidence as overpayments.

(Aug. 14, 1935, ch. 531, title II, §205, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, 1368; June 25, 1948, ch. 646, §32(b), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Aug. 28, 1950, ch. 809, title I, §§101(b)(2), 108(a)–(c), 109(b), 64 Stat. 488, 518, 523; July 18, 1952, ch. 945, §5(b), 66 Stat. 775; Sept. 1, 1954, ch. 1206, title I, §101(a)(5), (c)(3), 68 Stat. 1052, 1054; Aug. 1, 1956, ch. 836, title I, §§107(b), 111(a), 117, 70 Stat. 829, 831, 834; Aug. 1, 1956, ch. 837, title IV, §402(b), 70 Stat. 871; June 11, 1960, Pub. L. 86–507, §1(35), 74 Stat. 202; Sept. 13, 1960, Pub. L. 86–778, title I, §§102(f)(2), 103(j)(2)(E), title VII, §702(a), 74 Stat. 933, 938, 993; Sept. 21, 1961, Pub. L. 87–293, title II, §202(b)(3), 75 Stat. 626; July 30, 1965, Pub. L. 89–97, title III, §§308(d)(9), (10), 330, 79 Stat. 379, 401, Jan. 2, 1968, Pub. L. 90–248, title I, §171(a), 81 Stat. 876; Oct. 15, 1970, Pub. L. 91–452, title II, §236, 84 Stat. 930; Oct. 30, 1972, Pub. L. 92–603, title I, §137, 86 Stat. 1364; Oct. 16, 1974, Pub. L. 93–445, title III, §§302(a), 303, 88 Stat. 1358; Jan. 2, 1976, Pub. L. 94–202, §4, 89 Stat. 1136; Oct. 4, 1976, Pub. L. 94–455, title XII, §1211(b), 90 Stat. 1711; Dec. 20, 1977, Pub. L. 95–216, title III, §353(f)(2), 91 Stat. 1554; Nov. 6, 1978, Pub. L. 95–600, title VII, §703(j)(14)(B), 92 Stat. 2942; June 9, 1980, Pub. L. 96–265, title III, §§305(a), 307, 94 Stat. 457, 458; Jan. 12, 1983, Pub. L. 97–455, §4(a), 96 Stat. 2499; Apr. 20, 1983, Pub. L. 98–21, title III, §§301(d), 309(i), 336, 345(a), 97 Stat. 111, 117, 130, 137; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§2661(h), 2663(a)(4), (j)(4), 98 Stat. 1157, 1162, 1171; Oct. 9, 1984, Pub. L. 98–460, §16(a), 98 Stat. 1809; Oct. 21, 1986, Pub. L. 99–509, title IX, §9002(c)(2)(A), (B), 100 Stat. 1971; Oct. 13, 1988, Pub. L. 100–485, title I, §125(a), 102 Stat. 2353; Nov. 10, 1988, Pub. L. 100–647, title VIII, §§8008(a), 8009(a), 8015(a)(1), 8016(a)(1), 102 Stat. 3783, 3787, 3790, 3792; Dec. 19, 1989, Pub. L. 101–239, title X, §§10303(a), 10304, 103 Stat. 2482, 2483; Nov. 5, 1990, Pub. L. 101–508, title V, §§5105(a)(1)(A), (2)(A)(i), (3)(A)(i), (b)(1)(A), (c)(1), (d)(1)(A), 5107(a)(1), 5109(a)(1), 104 Stat. 1388–254, 1388–255, 1388–260, 1388–263, 1388–265, 1388–269, 1388–271; Nov. 28, 1990, Pub. L. 101–624, title XVII, §1735(a), (b), title XXII, §2201(b), (c), 104 Stat. 3791, 3792, 3951, 3952; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(1), (2), (4), title II, §§201(a)(1)(A), (B), (2)(A)–(C), 206(a)(1), (d)(1), title III, §§304(a), 316(a), 318, 321(a)(7)–(11), (c)(3), (6)(B), (f)(2)(A), 108 Stat. 1477, 1478, 1490–1493, 1509, 1514, 1520, 1531, 1533, 1536, 1538, 1541.)

REFERENCES IN TEXT

Subsecs. (e) and (q) of section 418 of this title, referred to in subsec. (c)(1)(D)(i), (5)(F)(iii), which related to payments and reports by States, and to time limitation on assessments, respectively, were repealed, and subsec. (f) of section 418 of this title was redesignated as subsec. (e), by Pub. L. 99–509, title IX, §9002(c)(1), Oct. 21, 1986, 100 Stat. 1971.

Parts A and D of subchapter IV of this chapter, referred to in subsec. (c)(2)(C)(ii), (vi), are classified to sections 601 et seq. and 651 et seq., respectively, of this title.

Section 7(a) of the Privacy Act of 1974, referred to in subsec. (c)(2)(C)(ii), is section 7(a) of Pub. L. 93–579, which is set out as a note under section 552a of Title 5, Government Organization and Employees.

The Food Stamp Act of 1977, referred to in subsec. (c)(2)(C)(iii)(I), (II), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Federal Crop Insurance Act, referred to in subsec. (c)(2)(C)(iv), is title V of act Feb. 16, 1938, ch. 30, 52 Stat. 72, as amended, which is classified generally to chapter 36 (§1501 et seq.) of Title 7. For complete classification of this Act to the Code, see section 1501 of Title 7 and Tables.

Section 7213(a) of the Internal Revenue Code of 1986, referred to in subsec. (c)(2)(C)(viii)(II), is classified to section 7213(a) of Title 26, Internal Revenue Code.

The Longshore and Harbor Workers' Compensation Act, referred to in subsec. (c)(2)(C)(ix), is act Mar. 4, 1927, ch. 509, 44 Stat. 1424, as amended, which is classified generally to chapter 18 (§901 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see section 901 of Title 33 and Tables.

The Railroad Retirement Act of 1937, referred to in subsecs. (c)(5)(D) and (i), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred to in subsecs. (c)(5)(D), (i), and (*o*), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, §101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. Pub. L. 93–445 completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the

1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45. For further details and complete classification of these Acts to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Title VIII of the Social Security Act, referred to in subsec. (c)(5)(F)(i), was classified to subchapter VIII (§ 1001 et seq.) of this chapter, and has been omitted from the Code.

Subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (c)(5)(F)(i), were comprised of sections 480 to 482 and 1400 to 1432, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of the Internal Revenue Code of 1986.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Chapters 2 and 21 of the Internal Revenue Code of 1954, referred to in subsec. (c)(5)(F)(i), were redesignated chapters 2 and 21 of the Internal Revenue Code of 1986, and are classified to sections 1401 et seq. and 3101 et seq., respectively, of Title 26.

Section 904 of this title, referred to in subsec. (j)(6), was amended generally by Pub. L. 103–296, title I, § 104(a), Aug. 15, 1994, 108 Stat. 1470, and, as so amended, does not require an annual report.

The Peace Corps Act, referred to in subsec. (p)(1), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Section 3122 of the Internal Revenue Code of 1954, referred to in subsec. (p)(1), redesignated section 3122 of the Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, and is classified to section 3122 of Title 26, Internal Revenue Code.

CODIFICATION

August 15, 1994, referred to in subsec. (c)(2)(E)(iii), was in the original ''the date of the enactment of this subparagraph'' and ''that date'', which were translated as meaning the date of enactment of Pub. L. 103–296, which added subsec. (c)(2)(E) and redesignated former subsec. (c)(2)(E) as (c)(2)(F).

In subsec. (g), act June 25, 1948, as amended by act May 24, 1949, substituted United States District Court for the District of Columbia, for District Court of the United States for the District of Columbia.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (b)(1), (2). Pub. L. 103–296, § 107(a)(4), substituted wherever appearing ''Commissioner of Social Security'' for ''Secretary'', ''Commissioner's'' for ''Secretary's'', ''the Commissioner may'' for ''he may'', ''the Commissioner shall'' for ''he shall'', and ''the Commissioner's'' for ''his'' except in the phrase ''his or her rights''.

Subsec. (b)(3)(A). Pub. L. 103–296, § 321(a)(7), realigned margin.

Subsec. (b)(3)(B). Pub. L. 103–296, § 321(a)(7), realigned margin.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(1)(D)(i). Pub. L. 103–296, § 321(c)(6)(B), substituted ''Code of 1986'' for ''Code of 1954''.

Subsec. (c)(2)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places and ''the Commissioner deems'' for ''he deems''.

Subsec. (c)(2)(B)(i). Pub. L. 103–296, § 304(a)(1), substituted ''(F)'' for ''(E)'' in introductory provisions.

Pub. L. 103–296, § 107(a)(4), substituted ''In carrying out the Commissioner's duties'' for ''In carrying out his duties'' in introductory provisions and ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (c)(2)(B)(ii). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(B)(iii). Pub. L. 103–296, § 321(a)(8), substituted ''nonpublic'' for ''non-public''.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(C)(i), (ii). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (c)(2)(C)(iii). Pub. L. 103–296, § 321(a)(9)(B), redesignated the cl. (iii) as added by Pub. L. 101–624, § 2201(b)(3), as cl. (iv).

Pub. L. 103–296, § 316(a), amended cl. (iii) as added by Pub. L. 101–624, § 1735(a)(3), by inserting subcl. (I) designation before ''In the administration'' and by substituting subcls. (II) to (IV) for ''The Secretary of Agriculture shall restrict, to the satisfaction of the Secretary of Health and Human Services, access to social security account numbers obtained pursuant to this clause only to officers and employees of the United States whose duties or responsibilities require access for the administration or enforcement of the Food Stamp Act of 1977. The Secretary of Agriculture shall provide such other safeguards as the Secretary of Health and Human Services determines to be necessary or appropriate to protect the confidentiality of the social security account numbers.''

Subsec. (c)(2)(C)(iii)(III), (IV). Pub. L. 103–296, § 107(a)(1), in cl. (iii) as amended by Pub. L. 103–296, § 316(a), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

Subsec. (c)(2)(C)(iv). Pub. L. 103–296, § 321(a)(9)(B), redesignated the cl. (iii) as added by Pub. L. 101–624, § 2201(b)(3), as cl. (iv). Former cl. (iv) redesignated (v).

Pub. L. 103–296, § 107(a)(1), in cl. (iv) as redesignated by Pub. L. 103–296, § 321(a)(9)(B), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

Subsec. (c)(2)(C)(v). Pub. L. 103–296, § 321(a)(9)(B), (C), redesignated cl. (iv) as (v), and substituted ''policy set forth in clause (i)'' for ''policy set forth in subclause (I) of clause (i)'' and ''clause (ii)'' for ''subclause (II) of clause (i)''. Former cl. (v) redesignated (vi).

Subsec. (c)(2)(C)(vi). Pub. L. 103–296, § 321(a)(9)(B), redesignated cl. (v) as (vi). Former cl. (vi) redesignated (vii).

Subsec. (c)(2)(C)(vii). Pub. L. 103–296, § 321(a)(9)(B), redesignated cl. (vi) as (vii). Former cl. (vii) added by Pub. L. 101–624, § 1735(b), redesignated (viii).

Pub. L. 103–296, § 321(a)(9)(A), struck out cl. (vii) added by Pub. L. 101–624, § 2201(c), which was substantially identical to the cl. (vii) added by Pub. L. 101–624, § 1735(b).

Subsec. (c)(2)(C)(viii). Pub. L. 103–296, § 321(a)(9)(B), (D), redesignated the cl. (vii) added by Pub. L. 101–624, § 1735(b), as (viii) and inserted ''a social security account number or'' before ''a request for'' in subcl. (IV).

Subsec. (c)(2)(C)(ix). Pub. L. 103–296, § 318, added cl. (ix).

Pub. L. 103–296, § 107(a)(1), amended cl. (ix) as added by Pub. L. 103–296, § 318, by substituting ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

Subsec. (c)(2)(D)(i)(I), (II). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(E). Pub. L. 103–296, §304(a)(3), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 103–296, §107(a)(4), in subpar. (E) added by Pub. L. 103–296, §304(a)(3), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(F), (G). Pub. L. 103–296, §304(a)(2), redesignated subpars. (E) and (F) as (F) and (G), respectively.

Pub. L. 103–296, §107(a)(4), in subpars. (F) and (G) as redesignated by Pub. L. 103–296, §304(a)(2), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (c)(3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner's'' for ''Secretary's'' and ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(4). Pub. L. 103–296, §107(a)(4), in introductory provisions, substituted ''Commissioner of Social Security'' for ''Secretary'' and substituted ''the Commissioner's'' for ''his'' wherever appearing, in subpars. (A) and (B), substituted ''Commissioner's'' for ''Secretary's'', and in subpar. (C), substituted ''Commissioner's records as'' for ''Secretary's records as'', ''Commissioner of Social Security'' for ''Secretary'', and ''the Commissioner's records the'' for ''his records the''.

Subsec. (c)(5). Pub. L. 103–296, §107(a)(4), in introductory provisions substituted ''Commissioner of Social Security'' for ''Secretary'' and substituted ''the Commissioner's'' for ''his'' in two places.

Subsec. (c)(5)(B). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner's'' for ''Secretary's'' in two places.

Subsec. (c)(5)(F). Pub. L. 103–296, §107(a)(4), substituted ''the Commissioner's'' for ''his'' in introductory provisions, ''Commissioner of Social Security'' for ''Secretary'' in cl. (ii), and ''Commissioner's'' for ''Secretary's'' in closing provisions.

Subsec. (c)(5)(F)(i). Pub. L. 103–296, §321(c)(3), inserted ''or the Internal Revenue Code of 1986'' after ''Code of 1954''.

Subsec. (c)(5)(G), (J), (6), (7). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner's'' for ''his'' before ''records'' in two places in par. (7).

Subsec. (c)(8). Pub. L. 103–296, §206(a)(1)(B), added par. (8). Former par. (8) redesignated (9).

Subsec. (c)(9). Pub. L. 103–296, §206(a)(1)(A), redesignated par. (8) as (9).

Pub. L. 103–296, §107(a)(4), in par. (9) as redesignated by Pub. L. 103–296, §206(a)(1)(A), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''his'' before ''jurisdiction'', and ''by the Commissioner'' for ''by him''.

Subsec. (e). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (g). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''his'' wherever appearing except in second sentence, and ''the Commissioner files'' for ''he files''.

Subsec. (h). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (i). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's''.

Subsec. (j). Pub. L. 103–296, §321(a)(10), made technical amendment to heading.

Subsec. (j)(1). Pub. L. 103–296, §201(a)(1)(A), designated existing provisions as subpar. (A), in last sentence inserted '', if the interest of the individual under this subchapter would be served thereby,'' after ''payee or'', and added subpar. (B).

Pub. L. 103–296, §107(a)(4), in par. (1) as amended by Pub. L. 103–296, §201(a)(1)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in two places in subpar. (B).

Subsec. (j)(2)(A) to (C)(iv). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (j)(2)(C)(v). Pub. L. 103–296, §201(a)(2)(A), added cl. (v).

Pub. L. 103–296, §107(a)(4), in cl. (v) as added by Pub. L. 103–296, §201(a)(2)(A), substituted ''Commissioner's'' for ''Secretary's'' in introductory provisions and ''Commissioner of Social Security'' for ''Secretary'' in subcl. (IV) and closing provisions.

Subsec. (j)(2)(D)(i). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (j)(2)(D)(ii)(II). Pub. L. 103–296, §201(a)(1)(B), substituted '', under the age of 15 years, or (if alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is under a disability) is eligible for benefits under this subchapter by reason of disability.'' for ''or under the age of 15''.

Pub. L. 103–296, §107(a)(4), in subcl. (II) as amended by Pub. L. 103–296, §201(a)(1)(B), substituted ''Commissioner's'' for ''Secretary's'' in two places.

Subsec. (j)(2)(D)(iii), (E), (3)(A), (B), (D), (E). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in par. (2)(E)(i) and (ii).

Subsec. (j)(4)(A). Pub. L. 103–296, §201(a)(2)(B)(i), designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, added new subcl. (II) and struck out former subcl. (II) (as redesignated) which read ''$25.00 per month.'', inserted ''The Secretary shall adjust annually (after 1995) each dollar amount set forth in subclause (II) under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00.'' before ''Any agreement'' in concluding provisions, and added cl. (ii).

Pub. L. 103–296, §107(a)(4), in subpar. (A) as amended by Pub. L. 103–296, §201(a)(2)(B)(i), substituted ''Commissioner's'' for ''Secretary's'' and ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (j)(4)(B). Pub. L. 103–296, §201(a)(2)(B)(ii), in introductory provisions, inserted ''State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any'' after ''means any'', substituted ''representative payee, if such agency,'' for ''representative payee and which,'', substituted a period for '', and'' at end of cl. (ii), and struck out cl. (iii) which read as follows: ''was in existence on October 1, 1988.''

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (j)(4)(D). Pub. L. 103–296, §201(a)(2)(B)(iii), struck out subpar. (D) which read as follows: ''This paragraph shall cease to be effective on July 1, 1994.''

Subsec. (j)(5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (j)(6). Pub. L. 103–296, §321(f)(2)(A), made technical correction to Pub. L. 101–508, §5105(d)(1)(A). See 1990 Amendment note below.

Pub. L. 103–296, §107(a)(4), in par. (6) as amended by Pub. L. 103–296, §321(f)(2)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (j)(7). Pub. L. 103–296, §201(a)(2)(C), added par. (7).

Subsec. (k). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (*l*). Pub. L. 103–296, §107(a)(2), (4), substituted ''Commissioner of Social Security'' for ''Secretary'', ''Social Security Administration'' for ''Department of Health and Human Services'', ''by the Commissioner'' for ''by him'', ''upon the Commissioner'' for ''upon him'', and ''the Commissioner's'' for ''his''.

Subsec. (n). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security may, in the Commissioner's discretion'' for ''Secretary may, in his discretion''.

Subsec. (p)(1), (2). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''Secretary's'' in par. (1), and ''to the Commissioner'' for ''to him'' in par. (2).

Subsecs. (q), (r). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner finds'' for ''he finds'' in subsec. (q)(2), and ''the Commissioner may'' for ''he may'' in subsec. (q)(3).

Subsec. (s). Pub. L. 103–296, §321(a)(11), made technical amendment to heading.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places in introductory provisions.

Subsec. (t). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in closing provisions.

Subsec. (u). Pub. L. 103–296, §206(d)(1), added subsec. (u).

Pub. L. 103–296, §107(a)(4), in subsec. (u) added by Pub. L. 103–296, §206(d)(1), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1990—Subsec. (b)(3). Pub. L. 101–508, §5107(a)(1), added par. (3).

Subsec. (c)(2)(C). Pub. L. 101–624, §§1735(a), (b), 2201(b), (c), made similar amendments redesignating subcls. (I) and (II) of former cl. (i) as cls. (i) and (ii), respectively, adding two cls. (iii) which are different, redesignating former cls. (ii) to (iv) as (iv) to (vi), respectively, and adding two substantially identical cls. (vii). Cls. (iii) and (vii), as added by §1735 of Pub. L. 101–624, are set out first and cls. (iii) and (vii), as added by §2201 of Pub. L. 101–624, are set out second.

Subsec. (j). Pub. L. 101–508, §5105(a)(1)(A), inserted heading ''Representative payees''.

Subsec. (j)(1). Pub. L. 101–508, §5105(a)(1)(A), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.''

Subsec. (j)(2). Pub. L. 101–508, §5105(a)(2)(A)(i), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Any certification made under paragraph (1) for payment to a person other than the individual entitled to such payment must be made on the basis of an investigation, carried out either prior to such certification or within forty-five days after such certification, and on the basis of adequate evidence that such certification is in the interest of the individual entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such certifications are adequately reviewed.''

Subsec. (j)(3)(B), (C). Pub. L. 101–508, §5105(b)(1)(A)(i), (ii), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read as follows: ''Subparagraph (A) shall not apply in any case where the other person to whom such payment is made is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.''

Subsec. (j)(3)(D). Pub. L. 101–508, §5105(b)(1)(A)(ii), (iii), redesignated subpar. (E) as (D) and substituted ''(A), (B), and (C)'' for ''(A), (B), (C), and (D)''. Former subpar. (D) redesignated (C).

Subsec. (j)(3)(E), (F). Pub. L. 101–508, §5105(b)(1)(A)(ii), (iv), added subpars. (E) and (F) and redesignated former subpar. (E) as (D).

Subsec. (j)(4). Pub. L. 101–508, §5105(a)(3)(A)(i), added par. (4). Former par. (4) redesignated (5).

Subsec. (j)(5). Pub. L. 101–508, §5105(c)(1), added par. (5) relating to negligent failure of the Secretary to investigate or monitor. Former par. (5), relating to annual report, redesignated (6).

Pub. L. 101–508, §5105(a)(3)(A)(i), redesignated par. (4), relating to annual report, as (5).

Subsec. (j)(6). Pub. L. 101–508, §5105(d)(1)(A), as amended by Pub. L. 103–296, §321(f)(2)(A), amended par. (6) generally. Prior to amendment, par. (6) read as follows:

''(A) The Secretary shall make an initial report to each House of the Congress on the implementation of paragraphs (2) and (3) within 270 days after October 9, 1984.

''(B) The Secretary shall include as a part of the annual report required under section 904 of this title, information with respect to the implementation of paragraphs (2) and (3), including the number of cases in which the payee was changed, the number of cases discovered where there has been a misuse of funds, how any such cases were dealt with by the Secretary, the final disposition of such cases, including any criminal penalties imposed, and such other information as the Secretary determines to be appropriate.''

Pub. L. 101–508, §5105(c)(1), redesignated par. (5), relating to annual report, as (6).

Subsec. (s). Pub. L. 101–508, §5109(a)(1), added subsec. (s).

1989—Subsec. (c)(5)(H). Pub. L. 101–239, §10304, struck out ''if there is an absence of an entry in the Secretary's records of wages having been paid by such employer to such individual in such period'' before semicolon at end.

Subsec. (t). Pub. L. 101–239, §10303(a), added subsec. (t).

1988—Subsec. (c)(2)(B)(i). Pub. L. 100–647, §8009(a)(1), inserted ''and subparagraph (E)'' after ''subparagraph (A)''.

Subsec. (c)(2)(C)(i). Pub. L. 100–485, §125(a)(1), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (c)(2)(C)(ii). Pub. L. 100–485, §125(a)(2), substituted ''subclause (I) of clause (i)'' for ''clause (i) of this subparagraph'' and inserted at end ''If and to the extent that any such provision is inconsistent with the requirement set forth in subclause (II) of clause (i), such provision shall, on and after October 13, 1988, be null, void, and of no effect.''

Subsec. (c)(2)(C)(iii). Pub. L. 100–647, §8016(a)(1), substituted ''of this Act'' for ''of the Social Security Act'', which for purposes of codification was translated as ''of this chapter''.

Subsec. (c)(2)(D). Pub. L. 100–647, §8008(a)(2), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (c)(2)(E). Pub. L. 100–647, §8009(a)(3), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 100–647, §8008(a)(1), redesignated former subpar. (D) as (E).

Subsec. (c)(2)(F). Pub. L. 100–647, §8009(a)(2), redesignated former subpar. (E) as (F).

Subsec. (p)(1). Pub. L. 100–647, §8015(a)(1), substituted ''the Secretary shall not make determinations as to the amounts of remuneration for such service, or the periods in which or for which such remuneration was paid'' for ''the Secretary shall not make determinations as to whether an individual has performed such service, the periods of such service, the amounts of remuneration for such service which constitute wages under the provisions of section 409 of this title, or the periods in which or for which such wages were paid'' and inserted at end ''Nothing in this paragraph shall be construed to affect the Secretary's authority to determine under sections 409 and 410 of this title whether any such serv-

ice constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages.''

1986—Subsec. (c)(1)(D)(i). Pub. L. 99–509, §9002(c)(2)(A), inserted ''(as in effect prior to December 31, 1986)''.

Subsec. (c)(5)(F)(iii). Pub. L. 99–509, §9002(c)(2)(B), inserted ''(as in effect prior to December 31, 1986)'' and ''(as so in effect)''.

1984—Subsec. (c)(5)(D). Pub. L. 98–369, §2663(a)(4)(A), inserted ''of 1937 or 1974'' after ''Railroad Retirement Act'' in two places.

Subsec. (c)(5)(I). Pub. L. 98–369, §2663(a)(4)(B), inserted ''or section 7(b)(7) of the Railroad Retirement Act of 1974''.

Subsec. (e). Pub. L. 98–369, §2663(a)(4)(C), substituted ''an order'' for ''on order''.

Subsec. (h). Pub. L. 98–369, §2663(a)(4)(D), substituted ''section 1331 or 1346 of title 28'' for ''section 24 of the Judicial Code of the United States''.

Subsec. (i). Pub. L. 98–369, §2663(a)(4)(E), substituted ''the Fiscal Service of the Department of the Treasury'' for ''the Division of Disbursement of the Treasury Department''.

Subsec. (j). Pub. L. 98–460 designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (*l*). Pub. L. 98–369, §2663(j)(4), substituted ''Department of Health and Human Services'' for ''Federal Security Agency''.

Subsec. (p)(1). Pub. L. 98–369, §2663(a)(4)(F), substituted ''section 3122 of the Internal Revenue Code of 1954'' for ''section 1420(e) of the Internal Revenue Code of 1939''.

Subsec. (r)(4). Pub. L. 98–369, §2661(h)(1), substituted ''subparagraphs (A) and (B) of paragraph (3)'' for ''paragraph (3)(A) and (B)''.

Subsec. (r)(7). Pub. L. 98–369, §2661(h)(2), substituted ''this Act'' for ''the Act'' which was translated as ''this title''.

1983—Subsec. (b). Pub. L. 98–21, §§301(d)(1), 309(i)(1), in par. (1) inserted ''divorced husband,'' after ''husband,'', ''surviving divorced husband,'' after ''widower,'', and ''surviving divorced father,'' after ''surviving divorced mother,''.

Pub. L. 97–455 designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1)(C). Pub. L. 98–21, §§301(d)(2), 309(i)(2), inserted ''surviving divorced husband,'' after ''wife,'' and ''surviving divorced father,'' after ''surviving divorced mother,''.

Subsec. (c)(2)(D). Pub. L. 98–21, §345(a), added subpar. (D).

Subsec. (r). Pub. L. 98–21, §336, added subsec. (r).

1980—Subsec. (b). Pub. L. 96–265, §305(a), inserted provisions relating to the information that must accompany a decision by the Secretary.

Subsec. (g). Pub. L. 96–265, §307, substituted ''The court may, on motion of the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken before the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding;'' for ''The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary,''.

1978—Subsec. (p)(3). Pub. L. 95–600 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury'' in two places.

1977—Subsec. (c)(1)(A). Pub. L. 95–216, §353(f)(2)(A), struck out ''(as defined in section 411(e) of this title)'' after ''taxable year''.

Subsec. (c)(1)(D). Pub. L. 95–216, §353(f)(2)(B), added subpar. (D).

Subsec. (*o*). Pub. L. 95–216, §353(f)(2)(C), inserted ''before 1978'' after ''calendar year''.

1976—Subsec. (b). Pub. L. 94–202 substituted provisions that a request for a hearing following the decision of the Secretary be made within sixty days after notice of such decision is received for provisions which authorized the Secretary to prescribe by regulation the period within which to file a request, including the limitation that the period so prescribed be not less than six months after notice of the decision was mailed.

Subsec. (c)(2)(C). Pub. L. 94–455 added subpar. (C).

1974—Subsec. (i). Pub. L. 93–445, §302(a), inserted parenthetical provision covering service under the Railroad Retirement Acts of 1937 and 1974 and certification to the Railroad Retirement Board and payment on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974.

Subsec. (*o*). Pub. L. 93–445, §303, substituted ''annuity under section 2 of the Railroad Retirement Act of 1974'' for ''section 5 of the Railroad Retirement Act of 1937'', ''section 6(b) of such Act'' for ''subsection (f)(1) of such section'', and ''section 3(i) of such Act'' for ''section 4 of such Act''.

1972—Subsec. (c)(2). Pub. L. 92–603 designated existing provisions as par. (A) and added par. (B).

1970—Subsec. (f). Pub. L. 91–452 struck out subsec. (f) which related to the immunity from prosecution of any person compelled to testify or produce evidence after claiming his privilege against self-incrimination.

1968—Subsec. (q). Pub. L. 90–248, §171(a), added subsec. (q).

1965—Subsec. (b). Pub. L. 89–97, §308(d)(9), substituted in second sentence ''wife, divorced wife, widow, surviving divorced wife, surviving divorced mother,'' for ''wife, widow, former wife divorced,''.

Subsec. (c)(1)(C). Pub. L. 89–97, §308(d)(10), substituted ''surviving divorced wife, surviving divorced mother,'' for ''former wife divorced,''.

Subsec. (n). Pub. L. 89–97, §330, provided that Secretary of the Treasury may authorize surviving payee or payees of a combined benefit check to cash one or more such checks which were not negotiated before one of payees died, provided that part of proceeds from each check that represents an overpayment is to be adjusted or recovered as provided in section 404(a) of this title.

1961—Subsec. (p)(1). Pub. L. 87–293 provided that head of Federal agency having control of service or such agents as the head may designate would make determinations with respect to employment and wages in case of service performed by volunteers and volunteer leaders in Peace Corps.

1960—Subsec. (c)(5)(F). Pub. L. 86–778, §102(f)(2), authorized the Secretary to add, change, or delete entries to conform his records to assessments of amounts due under an agreement pursuant to section 418 of this title, if such assessments are made within the period specified in subsection (q) of such section, or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section, and inserted references to chapters 2 and 21 of the Internal Revenue Code of 1954.

Subsec. (d). Pub. L. 86–507 inserted ''or by certified mail'' after ''registered mail'' in two places.

Subsec. (g). Pub. L. 86–778, §702(a), inserted sentence providing that any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

Subsec. (p)(1). Pub. L. 86–778, §103(j)(2)(E), substituted ''subsection (*l*)(1)'' for ''subsection (m)(1)''.

1956—Subsec. (b). Act Aug. 1, 1956, ch. 836, §111(a), required requests with respect to decisions to be filed within such period as the Secretary prescribes by regulation, which period may not be less than six months after notice of the decision is mailed.

Subsec. (c)(1)(B). Act Aug. 1, 1956, ch. 836, §107(b), substituted ''three months'' for ''two months''.

Subsec. (c)(5)(F). Act Aug. 1, 1956, ch. 836, §117, struck out provisions prohibiting inclusion in records of amount of self-employment income in excess of the amount which had been deleted as payments erroneously included in such records as wages paid to such individual in such taxable year, which provisions are now covered by subsec. (c)(5)(J) of this section.

Subsec. (c)(5)(J). Act Aug. 1, 1956, ch. 836, § 117, added subpar. (J).

Subsec. (p)(1). Act Aug. 1, 1956, ch. 837, provided for determinations with respect to service performed as a member of a uniformed service to which the provisions of section 410(m)(1) of this title are applicable.

1954—Subsec. (*o*). Act Sept. 1, 1954, § 101(a)(5), substituted ''section 410(a)(9)'' for ''section 410(a)(10)''.

Subsec. (p)(3). Act Sept. 1, 1954, § 101(c)(3), inserted provisions making subsec. (p)(1) and (2) applicable to services performed by a civilian employee in the Coast Guard Exchanges or certain other activities at Coast Guard installations.

1952—Subsec. (*o*). Act July 18, 1952, substituted ''subsection (a) or (e) of section 417 of this title'' for ''section 417(a) of this title''.

1950—Act Aug. 28, 1950, § 109(b)(1), substituted ''Administrator'' for ''Board'', ''Administrator's'' for ''Board's'', ''he'', ''him'', and ''his'' for ''it'', and ''its'', wherever appearing.

Subsec. (b). Act Aug. 28, 1950, § 108(a), inserted ''former wife divorced, husband, widower,'' after ''widow''.

Subsec. (c). Act Aug. 28, 1950, § 108(b), amended subsec. (c) generally to include definitions, to provide for the maintaining of records of self-employed persons, to allow for the revision of the Administrator's record, to authorize corrections after the times limitations if an application for monthly benefits or a lump-sum death payment is filed within the time limitation and no final decision has been made on it, to continue the requirement that written notice of any deletion or reduction of wages be given to the individual whose record is involved, to give the Administrator discretion to prescribe the period, after any change or refusal to change his records, within which an individual may be granted a hearing, and to provide for judicial review.

Subsec. (*l*). Act Aug. 28, 1950, § 109(b)(2), amended subsec. (*l*) generally.

Subsecs. (*o*), (p). Act Aug. 28, 1950, § 108(c), added subsecs. (*o*) and (p).

1939—Act Aug. 10, 1939, omitted former section 405 relating to payments of $500 or less to estates, and added subsecs. (a) to (n).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(1), (2), (4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(a)(1)(D) of Pub. L. 103–296 provided that:

''(i) GENERAL RULE.—Except as provided in clause (ii), the amendments made by this paragraph [amending this section] shall apply with respect to benefits paid in months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994].''

''(ii) TREATMENT OF CURRENT BENEFICIARIES.—In any case in which—

''(I) an individual is entitled to benefits based on disability (as defined in section 205(j)(7) of the Social Security Act [subsec. (j)(7) of this section], as amended by this section),

''(II) the determination of disability was made by the Secretary of Health and Human Services during or before the 180-day period following the date of the enactment of this Act, and

''(III) alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is under a disability,

the amendments made by this paragraph shall apply with respect to benefits paid in months after the month in which such individual is notified by the Secretary in writing that alcoholism or drug addiction is a contributing factor material to the Secretary's determination and that the Secretary is therefore required to make a certification of payment of such individual's benefits to a representative payee.''

Section 201(a)(2)(B)(iii) of Pub. L. 103–296 provided that the amendment made by that section is effective July 1, 1994.

Section 201(a)(2)(D) of Pub. L. 103–296 provided that: ''Except as provided in subparagraph (B)(iii) [set out above], the amendments made by this paragraph [amending this section] shall apply with respect to months beginning after 90 days after the date of the enactment of this Act [Aug. 15, 1994].''

Section 206(a)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall apply to translations made on or after October 1, 1994.''

Section 206(d)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect on October 1, 1994, and shall apply to determinations made before, on, or after such date.''

Section 304(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section and section 1320b–10 of this title] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].''

Section 321(f)(5) of Pub. L. 103–296 provided that: ''Each amendment made by this subsection [amending this section and sections 406, 423, 1320a–6, and 1383 of this title] shall take effect as if included in the provisions of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508] to which such amendment relates, except that the amendments made by paragraph (3)(B) [amending sections 406 and 1320a–6 of this title] shall apply with respect to favorable judgments made after 180 days after the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by section 1735(a), (b) of Pub. L. 101–624 effective and implemented first day of month beginning 120 days after publication of implementing regulations to be promulgated not later than Oct. 1, 1991, see section 1781(a) of Pub. L. 101–624, set out as a note under section 2012 of Title 7, Agriculture.

Section 5105(a)(5) of Pub. L. 101–508 provided that:

''(A) USE AND SELECTION OF REPRESENTATIVE PAYEES.—The amendments made by paragraphs (1) and (2) [amending this section and section 1383 of this title] shall take effect July 1, 1991, and shall apply only with respect to—

''(i) certifications of payment of benefits under title II of the Social Security Act [this subchapter] to representative payees made on or after such date; and

''(ii) provisions for payment of benefits under title XVI of such Act [subchapter XVI of this chapter] to representative payees made on or after such date.

''(B) COMPENSATION OF REPRESENTATIVE PAYEES.—The amendments made by paragraph (3) [amending this section and section 1383 of this title] shall take effect July 1, 1991, and the Secretary of Health and Human Services shall prescribe initial regulations necessary to carry out such amendments not later than such date.''

Section 5105(b)(1)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect October 1, 1992, and the Secretary of Health and Human Services shall take such actions as are necessary to ensure that the requirements of section 205(j)(3)(E) of the Social Security Act [subsec. (j)(3)(E) of this section] (as amended by subparagraph (A) of this paragraph) are satisfied as of such date.''

Section 5105(d)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section and section 1383 of this title] shall apply with respect to annual reports issued for years after 1991.''

Section 5107(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply with respect to adverse determinations made on or after July 1, 1991.''

Section 5109(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply with respect to notices issued on or after July 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10303(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply to visits to field offices of the Social Security Administration on or after January 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8009(b) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to benefits entitlement to which commences after the sixth month following the month in which this Act is enacted [November 1988].''

Amendment by section 8015(a)(1) of Pub. L. 100–647 applicable to determinations relating to service commenced in any position on or after Nov. 10, 1988, see section 8015(a)(3) of Pub. L. 100–647, set out as a note under section 3122 of Title 26, Internal Revenue Code.

Amendment by section 8016(a)(1) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to Title 26, as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of Title 26.

Section 125(b) of Pub. L. 100–485 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the first day of the 25th month which begins on or after the date of the enactment of this Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of this title prior to Oct. 21, 1986, with certain exceptions, see section 9002(d) of Pub. L. 99–509 set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 16(d) of Pub. L. 98–460 provided that: ''The amendments made by this section [amending this section and sections 408, 1383, and 1383a of this title] shall become effective on the date of the enactment of this Act [Oct. 9, 1984], and, in the case of the amendments made by subsection (c) [amending sections 408 and 1383a of this title], shall apply with respect to violations occurring on or after such date.''

Amendment by section 2661(h) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(4), (j)(4) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by sections 301(d) and 309(i) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Section 345(b) of Pub. L. 98–21 provided that: ''The amendment made by this section [amending this section] shall apply with respect to all new and replacement social security cards issued more than 193 days after the date of the enactment of this Act [Apr. 20, 1983].''

Section 4(b) of Pub. L. 97–455 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to reconsiderations (of findings described in section 205(b)(2)(B) of the Social Security Act [subsec. (b)(2)(B) of this section]) which are requested on or after such date as the Secretary of Health and Human Services may specify, but in any event not later than January 1, 1984.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 305(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply with respect to decisions made on or after the first day of the 13th month following the month in which this Act is enacted [June, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective Jan. 1, 1978, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 5 of Pub. L. 94–202 provided that: ''The amendments made by the first two sections of this Act [amending section 1383 of this title], and the provisions of section 3 [enacting provisions set out as a note under section 1383 of this title], shall take effect on the date of the enactment of this Act [Jan. 2, 1976]. The amendment made by section 4 of this Act [amending this section] shall apply with respect to any decision or determination of which notice is received, by the individual requesting the hearing involved, after February 29, 1976. The amendment made by the first section of this Act [amending section 1383 of this title], to the extent that it changes the period within which hearings must be requested, shall apply with respect to any decision or determination of which notice is received, by the individual requesting the hearing involved, on or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 302(b) of Pub. L. 93–445 provided that: ''The amendment made by this section [amending this section] shall apply only with respect to benefits payable to individuals who first become entitled to benefits under title II of the Social Security Act [this subchapter] after 1974.''

Amendment by section 303 of Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–452 effective on sixtieth day following Oct. 15, 1970, and not to affect any immunity to which any individual is entitled under this section by reason of any testimony given before sixtieth day following Oct. 15, 1970, see section 260 of Pub. L. 91–452, set out as an Effective Date; Savings Provisions note under section 6001 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 171(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be effective with respect to written requests filed under section 205(q) of the Social Security Act [subsec. (q) of this section] after June 30, 1968.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 308(d)(9), (10) of Pub. L. 89–97 applicable with respect to monthly insurance benefits

under this subchapter beginning with the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 102(f)(2) of Pub. L. 86–778 effective on first day of second calendar year following 1960, see section 102(f)(3) of Pub. L. 86–778, set out as a note under section 418 of this title.

Amendment by section 103(j)(2)(E) of Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Section 702(b) of Pub. L. 86–778 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to actions which are pending in court on the date of the enactment of this Act or are commenced after such date.''

EFFECTIVE DATE OF 1956 AMENDMENTS

Section 111(b) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective upon enactment [Aug. 1, 1956]; except that the period of time prescribed by the Secretary pursuant to the third sentence of section 205(b) of the Social Security Act [subsec. (b) of this section], as amended by subsection (a) of this section, with respect to decisions notice of which has been mailed by him to any individual prior to the enactment of this Act may not terminate for such individual less than six months after the date of enactment of this Act.''

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

EFFECTIVE DATE OF 1954 AMENDMENT

Section 101(n) of act Sept. 1, 1954, provided that: ''The amendment made by paragraph (3) of subsection (g) [amending section 411 of this title] shall be applicable only with respect to taxable years beginning after 1950. The amendments made by paragraphs (1), (2), and (4) of such subsection [amending section 411 of this title] and by subsection (d) [amending section 411 of this title] shall, except for purposes of section 203 of the Social Security Act [section 403 of this title], be applicable only with respect to taxable years ending after 1954. The amendments made by paragraphs (1), (2), and (3) of subsection (a) [amending section 409 of this title] shall be applicable only with respect to remuneration paid after 1954. The amendments made by paragraphs (4), (5), and (6) of subsection (a) [amending sections 410 and 418 of this title] shall be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954. The amendment made by paragraph (3) of subsection (c) [amending this section] shall become effective January 1, 1955. The other amendments made by this section (other than the amendments made by subsections (h), (i), (j) and (m)[)] [amending section 410 of this title] shall be applicable only with respect to services performed after 1954. For purposes of section 203 of the Social Security Act [section 403 of this title], the amendments made by paragraphs (1), (2), and (4) of subsection (g) [amending section 411 of this title] and by subsection (d) [amending section 411 of this title] shall be effective with respect to net earnings from self-employment derived after 1954. The amount of net earnings from self-employment derived during any taxable year ending in, and not with the close of, 1955 shall be credited equally to the calendar quarter in which such taxable year ends and to each of the three or fewer preceding quarters any part of which is in such taxable year; and, for purposes of the preceding sentence of this subsection, net earnings from self-employment so credited to calendar quarters in 1955 shall be deemed to have been derived after 1954.''

EFFECTIVE DATE OF 1950 AMENDMENT

Section 108(d) of act Aug. 28, 1950, provided that: ''The amendments made by subsections (a) and (c) of this section [amending this section] shall take effect on September 1, 1950. The amendment made by subsection (b) of this section [amending this section] shall take effect January 1, 1951, except that, effective on September 1, 1950, the husband or former wife divorced of an individual shall be treated the same as a parent of such individual, and the legal representative of an individual or his estate shall be treated the same as the individual, for purposes of section 205(c) of the Social Security Act [subsec. (c) of this section] as in effect prior to the enactment of this Act [Aug. 28, 1950].''

Section 101(b)(2) of act Aug. 28, 1950, provided that: ''Section 205(m) of the Social Security Act [subsec. (m) of this section] is repealed effective with respect to monthly payments under section 202 of the Social Security Act [this section], as amended by this Act, for months after August 1950.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

REPEALS: AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(b)(3) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulation, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

NINETY-DAY DELAY IN DEFERRAL OR SUSPENSION OF BENEFITS FOR CURRENT BENEFICIARIES

Section 201(a)(1)(C) of Pub. L. 103–296 provided that: ''In the case of an individual who, as of 180 days after the date of the enactment of this Act [Aug. 15, 1994], has been determined to be under a disability, if alcoholism or drug addiction is a contributing factor material to the determination of the Secretary of Health and Human Services that the individual is under a disability, the Secretary may, notwithstanding clauses (i) and (ii) of section 205(j)(2)(D) of the Social Security Act [subsec. (j)(2)(D) of this section], make direct payment of benefits to such individual during the 90-day period commencing with the date on which such individual is provided the notice described in subparagraph (D)(ii) of this paragraph [set out above], until such time during such period as the selection of a representative payee is

made pursuant to section 205(j) of such Act [subsec. (j) of this section].''

STUDY REGARDING FEASIBILITY, COST, AND EQUITY OF REQUIRING REPRESENTATIVE PAYEES FOR ALL DISABILITY BENEFICIARIES SUFFERING FROM ALCOHOLISM OR DRUG ADDICTION

Section 201(a)(1)(E) of Pub. L. 103–296 provided that:

''(i) STUDY.—As soon as practicable after the date of the enactment of this Act [Aug. 15, 1994], the Secretary of Health and Human Services shall conduct a study of the representative payee program. In such study, the Secretary shall examine—

''(I) the feasibility, cost, and equity of requiring representative payees for all individuals entitled to benefits based on disability under title II or XVI of the Social Security Act [this subchapter and subchapter XVI of this chapter] who suffer from alcoholism or drug addiction, irrespective of whether the alcoholism or drug addiction was material in any case to the Secretary's determination of disability,

''(II) the feasibility, cost, and equity of providing benefits through non-cash means, including (but not limited to) vouchers, debit cards, and electronic benefits transfer systems,

''(III) the extent to which child beneficiaries are afflicted by drug addition or alcoholism and ways of addressing such affliction, including the feasibility of requiring treatment, and

''(IV) the extent to which children's representative payees are afflicted by drug addiction or alcoholism, and methods to identify children's representative payees afflicted by drug addition or alcoholism and to ensure that benefits continue to be provided to beneficiaries appropriately.

''(ii) REPORT.—Not later than December 31, 1995, the Secretary shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report setting forth the findings of the Secretary based on such study. Such report shall include such recommendations for administrative or legislative changes as the Secretary considers appropriate.''

ANNUAL REPORTS ON REVIEWS OF OASDI AND SSI CASES

Section 206(g) of Pub. L. 103–296, as amended by Pub. L. 103–296, title I, §108(b)(10)(B), Aug. 15, 1994, 108 Stat. 1483, provided that: ''The Commissioner of Social Security shall annually submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the extent to which the Commissioner has exercised his authority to review cases of entitlement to monthly insurance benefits under title II of the Social Security Act [this subchapter] and supplemental security income cases under title XVI of such Act [subchapter XVI of this chapter], and the extent to which the cases reviewed were those that involved a high likelihood or probability of fraud.''

REPORT ON FEASIBILITY OF OBTAINING READY ACCESS TO CERTAIN CRIMINAL FRAUD RECORDS

Section 5105(a)(2)(B) of Pub. L. 101–508 provided that: ''As soon as practicable after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services, in consultation with the Attorney General of the United States and the Secretary of the Treasury, shall study the feasibility of establishing and maintaining a current list, which would be readily available to local offices of the Social Security Administration for use in investigations undertaken pursuant to section 205(j)(2) or 1631(a)(2)(B) of the Social Security Act [subsec. (j)(2) of this section or section 1383(a)(2)(B) of this title], of the names and social security account numbers of individuals who have been convicted of a violation of section 495 of title 18, United States Code. The Secretary of Health and Human Services shall, not later than July 1, 1992, submit the results of such study, together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

REPORTS ON ORGANIZATIONS SERVING AS REPRESENTATIVE PAYEES AND FEES FOR SERVICES

Section 5105(a)(3)(B) of Pub. L. 101–508 provided that:

''(i) REPORT BY SECRETARY OF HEALTH AND HUMAN SERVICES.—Not later than January 1, 1993, the Secretary of Health and Human Services shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the number and types of qualified organizations which have served as representative payees and have collected fees for such service pursuant to any amendment made by subparagraph (A) [amending this section and section 1383 of this title].

''(ii) REPORT BY COMPTROLLER GENERAL.—Not later than July 1, 1992, the Comptroller General of the United States shall conduct a study of the advantages and disadvantages of allowing qualified organizations serving as representative payees to charge fees pursuant to the amendments made by subparagraph (A) and shall transmit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate setting forth the results of such study.''

STUDY RELATING TO FEASIBILITY OF SCREENING OF INDIVIDUALS WITH CRIMINAL RECORDS

Section 5105(a)(4) of Pub. L. 101–508 provided that: ''As soon as practicable after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall conduct a study of the feasibility of determining the type of representative payee applicant most likely to have a felony or misdemeanor conviction, the suitability of individuals with prior convictions to serve as representative payees, and the circumstances under which such applicants could be allowed to serve as representative payees. The Secretary shall transmit the results of such study to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1992.''

STUDY RELATING TO MORE STRINGENT OVERSIGHT OF HIGH-RISK REPRESENTATIVE PAYEES

Section 5105(b)(2) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—As soon as practicable after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall conduct a study of the need for a more stringent accounting system for high-risk representative payees than is otherwise generally provided under section 205(j)(3) or 1631(a)(2)(C) of the Social Security Act [subsec. (j)(3) of this section or section 1383(a)(2)(C) of this title], which would include such additional reporting requirements, record maintenance requirements, and other measures as the Secretary considers necessary to determine whether services are being appropriately provided by such payees in accordance with such sections 205(j) and 1631(a)(2).

''(B) SPECIAL PROCEDURES.—In such study, the Secretary shall determine the appropriate means of implementing more stringent, statistically valid procedures for—

''(i) reviewing reports which would be submitted to the Secretary under any system described in subparagraph (A), and

''(ii) periodic, random audits of records which would be kept under such a system,

in order to identify any instances in which high-risk representative payees are misusing payments made pursuant to section 205(j) or 1631(a)(2) of the Social Security Act.

''(C) HIGH-RISK REPRESENTATIVE PAYEE.—For purposes of this paragraph, the term 'high-risk representative

payee' means a representative payee under section 205(j) or 1631(a)(2) of the Social Security Act (42 U.S.C. 405(j) and 1383(a)(2), respectively) (other than a Federal or State institution) who—

''(i) regularly provides concurrent services as a representative payee under such section 205(j), such section 1631(a)(2), or both such sections, for 5 or more individuals who are unrelated to such representative payee,

''(ii) is neither related to an individual on whose behalf the payee is being paid benefits nor living in the same household with such individual,

''(iii) is a creditor of such individual, or

''(iv) is in such other category of payees as the Secretary may determine appropriate.

''(D) REPORT.—The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the results of the study, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing stricter accounting and review procedures for high-risk representative payees in all servicing offices of the Social Security Administration (together with proposed legislative language).''

DEMONSTRATION PROJECTS RELATING TO PROVISION OF INFORMATION TO LOCAL AGENCIES PROVIDING CHILD AND ADULT PROTECTIVE SERVICES

Section 5105(b)(3) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—As soon as practicable after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall implement a demonstration project under this paragraph in all or part of not fewer than 2 States. Under each such project, the Secretary shall enter into an agreement with the State in which the project is located to make readily available, for the duration of the project, to the appropriate State agency, a listing of addresses of multiple benefit recipients.

''(B) LISTING OF ADDRESSES OF MULTIPLE BENEFIT RECIPIENTS.—The list referred to in subparagraph (A) shall consist of a current list setting forth each address within the State at which benefits under title II [this subchapter], benefits under title XVI [subchapter XVI of this chapter], or any combination of such benefits are being received by 5 or more individuals. For purposes of this subparagraph, in the case of benefits under title II, all individuals receiving benefits on the basis of the wages and self-employment income of the same individual shall be counted as 1 individual.

''(C) APPROPRIATE STATE AGENCY.—The appropriate State agency referred to in subparagraph (A) is the agency of the State which the Secretary determines is primarily responsible for regulating care facilities operated in such State or providing for child and adult protective services in such State.

''(D) REPORT.—The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than July 1, 1992. Such report shall include an evaluation of the feasibility and desirability of legislation implementing the programs established pursuant to this paragraph on a permanent basis.

''(E) STATE.—For purposes of this paragraph, the term 'State' means a State, including the entities included in such term by section 210(h) of the Social Security Act (42 U.S.C. 410(h)).''

COUNTERFEITING OF SOCIAL SECURITY ACCOUNT NUMBER CARDS

Pub. L. 99–603, title I, §101(f), Nov. 6, 1986, 100 Stat. 3373, provided that:

''(1) The Comptroller General of the United States, upon consultation with the Attorney General and the Secretary of Health and Human Services as well as private sector representatives (including representatives of the financial, banking, and manufacturing industries), shall inquire into technological alternatives for producing and issuing social security account number cards that are more resistant to counterfeiting than social security account number cards being issued on the date of enactment of this Act [Nov. 6, 1986] by the Social Security Administration, including the use of encoded magnetic, optical, or active electronic media such as magnetic stripes, holograms, and integrated circuit chips. Such inquiry should focus on technologies that will help ensure the authenticity of the card, rather than the identity of the bearer.

''(2) The Comptroller General of the United States shall explore additional actions that could be taken to reduce the potential for fraudulently obtaining and using social security account number cards.

''(3) Not later than one year after the date of enactment of this Act [Nov. 6, 1986], the Comptroller General of the United States shall prepare and transmit to the Committee on the Judiciary and the Committee on Ways and Means of the House of Representatives and the Committee on the Judiciary and the Committee on Finance of the Senate a report setting forth his findings and recommendations under this subsection.''

CONDUCT OF FACE-TO-FACE RECONSIDERATIONS IN DISABILITY CASES

Section 5 of Pub. L. 97–455 provided that: ''The Secretary of Health and Human Services shall take such steps as may be necessary or appropriate to assure public understanding of the importance the Congress attaches to the face-to-face reconsiderations provided for in section 205(b)(2) of the Social Security Act [subsec. (b)(2) of this section] (as added by section 4 of this Act). For this purpose the Secretary shall—

''(1) provide for the establishment and implementation of procedures for the conduct of such reconsiderations in a manner which assures that beneficiaries will receive reasonable notice and information with respect to the time and place of reconsideration and the opportunities afforded to introduce evidence and be represented by counsel; and

''(2) advise beneficiaries who request or are entitled to request such reconsiderations of the procedures so established, of their opportunities to introduce evidence and be represented by counsel at such reconsiderations, and of the importance of submitting all evidence that relates to the question before the Secretary or the State agency at such reconsiderations.''

INCLUSION OF SELF-EMPLOYMENT INCOME IN RECORDS OF SECRETARY OF HEALTH, EDUCATION, AND WELFARE

Section 331(c) of Pub. L. 89–97 provided that: ''Notwithstanding any provision of section 205(c)(5)(F) of the Social Security Act [subsec. (c)(5)(F) of this section], the Secretary of Health, Education, and Welfare may conform, before April 16, 1970, his records to tax returns or statements of earnings which constitute self-employment income solely by reason of the filing of a certificate which is effective under section 1402(e)(5) of such Code [section 1402(e)(5) of Title 26, Internal Revenue Code].''

Section 101(e) of Pub. L. 86–778, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The provisions of section 205(c)(5)(F) of the Social Security Act [subsec. (c)(5)(F) of this section], insofar as they prohibit inclusion in the records of the Secretary of Health, Education, and Welfare of self-employment income for a taxable year when the return or statement including such income is filed after the time limitation following such taxable year, shall not be applicable to earnings which are derived in any taxable year ending before 1960 and which constitute self-employment income solely by reason of the filing of a certificate which is effective under section 1402(e)(3)(B) or (5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 1402(e)(3)(B) or (5) of Title 26].''

CROSS REFERENCES

Criminal contempt, see sections 401, 402, 3285, and 3691 of Title 18, Crimes and Criminal Procedure.

Final disability decisions of Secretary, review of, see section 421 of this title.

Immunity of witnesses, see section 6001 et seq. of Title 18, Crimes and Criminal Procedure.

Jurisdiction of court of appeals, see sections 1291, 1295 of Title 28, Judiciary and Judicial Procedure.

Per diem and mileage of witnesses generally, see section 1821 of Title 28.

Venue generally, see section 1391 et seq. of Title 28.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 406, 408, 415, 416, 421, 423, 424a, 602, 1306, 1320a–7, 1320a–7a, 1320a–8, 1320b–10, 1320c–4, 1320c–5, 1383, 1395cc, 1395ff, 1395ii, 1395mm, 1395*oo*, 1395rr, 1395ww, 1396i, 1396q of this title; title 5 section 8503; title 7 section 1506; title 8 section 1324a; title 19 section 2312; title 26 section 6109; title 30 section 923.

§ 405a. Regulations pertaining to frequency or due dates of payments and reports under voluntary agreements covering State and local employees; effective date

Notwithstanding any other provision of law, no regulation and no modification of any regulation, promulgated by the Secretary of Health and Human Services, after January 2, 1976, shall become effective prior to the end of the eighteen-month period which begins with the first day of the first calendar month which begins after the date on which such regulation or modification of a regulation is published in the Federal Register, if and insofar as such regulation or modification of a regulation pertains, directly or indirectly, to the frequency or due dates for payments and reports required under section 418(e)[1] of this title.

(Pub. L. 94–202, § 7, Jan. 2, 1976, 89 Stat. 1137; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695.)

REFERENCES IN TEXT

Subsec. (e) of section 418 of this title, referred to in text, which related to payments and reports by States, was repealed, and subsec. (f) of section 418 of this title was redesignated as subsec. (e), by Pub. L. 99–509, title IX, § 9002(c)(1), Oct. 21, 1986, 100 Stat. 1971.

CODIFICATION

Section was not enacted as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in text pursuant to section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TIME FOR MAKING SOCIAL SECURITY CONTRIBUTIONS WITH RESPECT TO COVERED STATE AND LOCAL EMPLOYEES

Pub. L. 96–265, title V, § 503(c), June 9, 1980, 94 Stat. 471, provided that: ''The provisions of section 7 of Public Law 94–202 [this section] shall not be applicable to any regulation which becomes effective on or after July 1, 1980, and which is designed to carry out the purposes of subsection (a) of this section [amending section 418 of this title].''

[1] See References in Text note below.

§ 406. Representation of claimants before Commissioner

(a) Recognition of representatives; fees for representation before Commissioner

(1) The Commissioner of Social Security may prescribe rules and regulations governing recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Commissioner of Social Security, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Commissioner of Social Security. The Commissioner of Social Security may, after due notice and opportunity for hearing, suspend or prohibit from further practice before the Commissioner any such person, agent, or attorney who refuses to comply with the Commissioner's rules and regulations or who violates any provision of this section for which a penalty is prescribed. The Commissioner of Social Security may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Commissioner of Social Security under this subchapter, and any agreement in violation of such rules and regulations shall be void. Except as provided in paragraph (2)(A), whenever the Commissioner of Social Security, in any claim before the Commissioner for benefits under this subchapter, makes a determination favorable to the claimant, the Commissioner shall, if the claimant was represented by an attorney in connection with such claim, fix (in accordance with the regulations prescribed pursuant to the preceding sentence) a reasonable fee to compensate such attorney for the services performed by him in connection with such claim.

(2)(A) In the case of a claim of entitlement to past-due benefits under this subchapter, if—

(i) an agreement between the claimant and another person regarding any fee to be recovered by such person to compensate such person for services with respect to the claim is presented in writing to the Commissioner of Social Security prior to the time of the Commissioner's determination regarding the claim,

(ii) the fee specified in the agreement does not exceed the lesser of—

(I) 25 percent of the total amount of such past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title), or

(II) $4,000, and

(iii) the determination is favorable to the claimant,

then the Commissioner of Social Security shall approve that agreement at the time of the favor-

able determination, and (subject to paragraph (3)) the fee specified in the agreement shall be the maximum fee. The Commissioner of Social Security may from time to time increase the dollar amount under clause (ii)(II) to the extent that the rate of increase in such amount, as determined over the period since January 1, 1991, does not at any time exceed the rate of increase in primary insurance amounts under section 415(i) of this title since such date. The Commissioner of Social Security shall publish any such increased amount in the Federal Register.

(B) For purposes of this subsection, the term ''past-due benefits'' excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 423 of this title.

(C) In any case involving—

(i) an agreement described in subparagraph (A) with any person relating to both a claim of entitlement to past-due benefits under this subchapter and a claim of entitlement to past-due benefits under subchapter XVI of this chapter, and

(ii) a favorable determination made by the Commissioner of Social Security with respect to both such claims,

the Commissioner of Social Security may approve such agreement only if the total fee or fees specified in such agreement does not exceed, in the aggregate, the dollar amount in effect under subparagraph (A)(ii)(II).

(D) In the case of a claim with respect to which the Commissioner of Social Security has approved an agreement pursuant to subparagraph (A), the Commissioner of Social Security shall provide the claimant and the person representing the claimant a written notice of—

(i) the dollar amount of the past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title) and the dollar amount of the past-due benefits payable to the claimant,

(ii) the dollar amount of the maximum fee which may be charged or recovered as determined under this paragraph, and

(iii) a description of the procedures for review under paragraph (3).

(3)(A) The Commissioner of Social Security shall provide by regulation for review of the amount which would otherwise be the maximum fee as determined under paragraph (2) if, within 15 days after receipt of the notice provided pursuant to paragraph (2)(D)—

(i) the claimant, or the administrative law judge or other adjudicator who made the favorable determination, submits a written request to the Commissioner of Social Security to reduce the maximum fee, or

(ii) the person representing the claimant submits a written request to the Commissioner of Social Security to increase the maximum fee.

Any such review shall be conducted after providing the claimant, the person representing the claimant, and the adjudicator with reasonable notice of such request and an opportunity to submit written information in favor of or in opposition to such request. The adjudicator may request the Commissioner of Social Security to reduce the maximum fee only on the basis of evidence of the failure of the person representing the claimant to represent adequately the claimant's interest or on the basis of evidence that the fee is clearly excessive for services rendered.

(B)(i) In the case of a request for review under subparagraph (A) by the claimant or by the person representing the claimant, such review shall be conducted by the administrative law judge who made the favorable determination or, if the Commissioner of Social Security determines that such administrative law judge is unavailable or if the determination was not made by an administrative law judge, such review shall be conducted by another person designated by the Commissioner of Social Security for such purpose.

(ii) In the case of a request by the adjudicator for review under subparagraph (A), the review shall be conducted by the Commissioner of Social Security or by an administrative law judge or other person (other than such adjudicator) who is designated by the Commissioner of Social Security.

(C) Upon completion of the review, the administrative law judge or other person conducting the review shall affirm or modify the amount which would otherwise be the maximum fee. Any such amount so affirmed or modified shall be considered the amount of the maximum fee which may be recovered under paragraph (2). The decision of the administrative law judge or other person conducting the review shall not be subject to further review.

(4)(A) Subject to subparagraph (B), if the claimant is determined to be entitled to past-due benefits under this subchapter and the person representing the claimant is an attorney, the Commissioner of Social Security shall, notwithstanding section 405(i) of this title, certify for payment out of such past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title) to such attorney an amount equal to so much of the maximum fee as does not exceed 25 percent of such past-due benefits (as determined before any applicable reduction under section 1320a–6(a) of this title).

(B) The Commissioner of Social Security shall not in any case certify any amount for payment to the attorney pursuant to this paragraph before the expiration of the 15-day period referred to in paragraph (3)(A) or, in the case of any review conducted under paragraph (3), before the completion of such review.

(5) Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this subchapter by word, circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Commissioner of Social Security shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both. The

Commissioner of Social Security shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Commissioner of Social Security, of the identity of any person representing such claimant in accordance with this subsection.

(b) Fees for representation before court

(1)(A) Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Commissioner of Social Security may, notwithstanding the provisions of section 405(i) of this title, certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits. In case of any such judgment, no other fee may be payable or certified for payment for such representation except as provided in this paragraph.

(B) For purposes of this paragraph—

(i) the term ''past-due benefits'' excludes any benefits with respect to which payment has been continued pursuant to subsection (g) or (h) of section 423 of this title, and

(ii) amounts of past-due benefits shall be determined before any applicable reduction under section 1320a–6(a) of this title.

(2) Any attorney who charges, demands, receives, or collects for services rendered in connection with proceedings before a court to which paragraph (1) of this subsection is applicable any amount in excess of that allowed by the court thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500, or imprisonment for not more than one year, or both.

(c) Notification of options for obtaining attorneys

The Commissioner of Social Security shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Commissioner of Social Security. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

(Aug. 14, 1935, ch. 531, title II, §206, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, §201, 53 Stat. 1362, 1372; Aug. 28, 1950, ch. 809, title I, §109(b)(1), 64 Stat. 523; Aug. 28, 1958, Pub. L. 85–840, title III, §309, 72 Stat. 1034; July 30, 1965, Pub. L. 89–97, title III, §332, 79 Stat. 403; Jan. 2, 1968, Pub. L. 90–248, title I, §173, 81 Stat. 877; Dec. 19, 1989, Pub. L. 101–239, title X, §10307(a)(1), (b)(1), 103 Stat. 2484, 2485; July 18, 1984, Pub. L. 98–369, title VI, §2663(*l*)(1), 98 Stat. 1171; Nov. 5, 1990, Pub. L. 101–508, title V, §5106(a)(1), 104 Stat. 1388–266; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), title III, §321(f)(3)(B)(i), (4), 108 Stat. 1478, 1541, 1542.)

AMENDMENTS

1994—Subsec. (a)(1), (2)(A). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''before the Commissioner'' for ''before him'' in two places, ''Commissioner's'' for ''Secretary's'' in two places, and ''the Commissioner shall, if the'' for ''he shall, if the'' in par. (1).

Subsec. (a)(2)(C). Pub. L. 103–296, §321(f)(4)(A)(ii), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 103–296, §107(a)(4), in subpar. (C) as added by Pub. L. 103–296, §321(f)(4)(A)(ii), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (a)(2)(D). Pub. L. 103–296, §321(f)(4)(A)(i), redesignated subpar. (C) as (D).

Pub. L. 103–296, §107(a)(4), in subpar. (D) as redesignated by Pub. L. 103–296, §321(f)(4)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places in introductory provisions.

Subsec. (a)(3)(A). Pub. L. 103–296, §321(f)(4)(B), substituted ''paragraph (2)(D)'' for ''paragraph (2)(C)'' in introductory provisions.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(3)(B), (4), (5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (b)(1). Pub. L. 103–296, §321(f)(3)(B)(i), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(1)(A). Pub. L. 103–296, §107(a)(4), in subpar. (A) as designated by Pub. L. 103–296, §321(f)(3)(B)(i), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

1990—Subsec. (a). Pub. L. 101–508 designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2)(A), whenever'' for ''Whenever'' in fifth sentence, substituted pars. (2) to (4) for ''If as a result of such determination, such claimant is entitled to past-due benefits under this subchapter, the Secretary shall, notwithstanding section 405(i) of this title, certify for payment (out of such past-due benefits) to such attorney an amount equal to whichever of the following is the smaller: (A) 25 per centum of the total amount of such past-due benefits, (B) the amount of the attorney's fee so fixed, or (C) the amount agreed upon between the claimant and such attorney as the fee for such attorney's services.'', and inserted ''(5)'' before ''Any person who''.

1989—Subsec. (a). Pub. L. 101–239, §10307(a)(1), inserted at end ''The Secretary shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Secretary, of the identity of any person representing such claimant in accordance with this subsection.''

Subsec. (c). Pub. L. 101–239, §10307(b)(1), added subsec. (c).

1984—Pub. L. 98–369 substituted ''Secretary'' and ''Secretary's'' for ''Administrator'' and ''Administrator's'', respectively, wherever appearing.

1968—Subsec. (a). Pub. L. 90–248 provided for fixing of attorneys fees for claimants and for certification of amount for payment out of past-due benefits.

1965—Pub. L. 89–97 designated existing provisions as subsec. (a) and added subsec. (b).

1958—Pub. L. 85–840 struck out provisions which required attorneys to file a certificate of their right to practice.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' and ''Administrator's'' for ''Board's''.

1939—Act Aug. 10, 1939, substituted the provisions of this section for former provisions relating to overpayments during life, now covered by section 404 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 321(f)(3)(B)(i), (4) of Pub. L. 103–296 effective as if included in the provisions of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, to which such amendment relates, except that amendment by section 321(f)(3)(B)(i) applicable with respect to favorable judgments made after 180 days after Aug. 15, 1994, see section 321(f)(5) of Pub. L. 103–296, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d) of Pub. L. 101–508, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10307(a)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect June 1, 1991.''

Section 10307(b)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall apply with respect to adverse determinations made on or after January 1, 1991.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 423, 1320a–6, 1383, 1395ff, 1395ii of this title; title 30 section 923.

§ 407. Assignment; amendment of section

(a) The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(Aug. 14, 1935, ch. 531, title II, § 207, 49 Stat. 624; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1372; Apr. 20, 1983, Pub. L. 98–21, title III, § 335(a), 97 Stat. 130.)

CODIFICATION

In subsec. (b), ''April 20, 1983'' substituted for ''the date of the enactment of this section'', which was translated as meaning the date of enactment of this subsection, as the probable intent of Congress.

AMENDMENTS

1983—Pub. L. 98–21 designated existing provisions as subsec. (a) and added subsec. (b).

1939—Act Aug. 10, 1939, amended section generally, incorporating provisions of former section 408 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 335(c) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only with respect to benefits payable or rights existing under the Social Security Act [this chapter] on or after the date of the enactment of this Act [Apr. 20, 1983].''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

FEDERAL RULES OF CIVIL PROCEDURE

One form of action, see rule 2, Title 28, Appendix, Judiciary and Judicial Procedure.

Seizure of person or property, see rule 64.

CROSS REFERENCES

Assignment of claims void, see section 3727 of Title 31, Money and Finance.

Enforcement of legal obligations to provide child support and make alimony payments, see section 659 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 659, 1320a–8, 1383 of this title; title 26 sections 86, 871, 6334; title 30 section 923.

§ 408. Penalties

(a) In general

Whoever—

(1) for the purpose of causing an increase in any payment authorized to be made under this subchapter, or for the purpose of causing any payment to be made where no payment is authorized under this subchapter, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954) as to—

(A) whether wages were paid or received for employment (as said terms are defined in this subchapter and the Internal Revenue Code), or the amount of wages or the period during which paid or the person to whom paid; or

(B) whether net earnings from self-employment (as such term is defined in this subchapter and in the Internal Revenue Code) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(C) whether a person entitled to benefits under this subchapter had earnings in or for a particular period (as determined under section 403(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(2) makes or causes to be made any false statement or representation of a material fact in any application for any payment or for a disability determination under this subchapter; or

(3) at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this subchapter; or

(4) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this subchapter, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such pay-

ment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(5) having made application to receive payment under this subchapter for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; or

(6) willfully, knowingly, and with intent to deceive the Commissioner of Social Security as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Commissioner of Social Security with respect to any information required by the Commissioner of Social Security in connection with the establishment and maintenance of the records provided for in section 405(c)(2) of this title; or

(7) for the purpose of causing an increase in any payment authorized under this subchapter (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this subchapter (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person, or for any other purpose—

(A) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Commissioner of Social Security (in the exercise of the Commissioner's authority under section 405(c)(2) of this title to establish and maintain records) on the basis of false information furnished to the Commissioner of Social Security by him or by any other person; or

(B) with intent to deceive, falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the social security account number assigned by the Commissioner of Social Security to him or to such other person; or

(C) knowingly alters a social security card issued by the Commissioner of Social Security, buys or sells a card that is, or purports to be, a card so issued, counterfeits a social security card, or possesses a social security card or counterfeit social security card with intent to sell or alter it; or

(8) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States;

shall be guilty of a felony and upon conviction thereof shall be fined under title 18 or imprisoned for not more than five years, or both.

(b) Violations by certified payees

Any person or other entity who is convicted of a violation of any of the provisions of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title on behalf of another individual (other than such person's spouse), upon his second or any subsequent such conviction shall, in lieu of the penalty set forth in the preceding provisions of this section, be guilty of a felony and shall be fined under title 18 or imprisoned for not more than five years, or both. In the case of any violation described in the preceding sentence, including a first such violation, if the court determines that such violation includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

(c) Effect upon certification as payee; definitions

Any individual or entity convicted of a felony under this section or under section 1383a(b) of this title may not be certified as a payee under section 405(j) of this title. For the purpose of subsection (a)(7) of this section, the terms ''social security number'' and ''social security account number'' mean such numbers as are assigned by the Commissioner of Social Security under section 405(c)(2) of this title whether or not, in actual use, such numbers are called social security numbers.

(d) Application of subsection (a)(6) and (7) to certain aliens

(1) Except as provided in paragraph (2), an alien—

(A) whose status is adjusted to that of lawful temporary resident under section 1160 or 1255a of title 8 or under section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989,

(B) whose status is adjusted to that of permanent resident—

(i) under section 202 of the Immigration Reform and Control Act of 1986, or

(ii) pursuant to section 1259 of title 8, or

(C) who is granted special immigrant status under section 1101(a)(27)(I) of title 8,

shall not be subject to prosecution for any alleged conduct described in paragraph (6) or (7) of subsection (a) of this section if such conduct is alleged to have occurred prior to 60 days after November 5, 1990.

(2) Paragraph (1) shall not apply with respect to conduct (described in subsection (a)(7)(C) of this section) consisting of—

(A) selling a card that is, or purports to be, a social security card issued by the Commissioner of Social Security,

(B) possessing a social security card with intent to sell it, or

(C) counterfeiting a social security card with intent to sell it.

(3) Paragraph (1) shall not apply with respect to any criminal conduct involving both the conduct described in subsection (a)(7) of this section to which paragraph (1) applies and any other criminal conduct if such other conduct would be criminal conduct if the conduct described in subsection (a)(7) of this section were not committed.

(Aug. 14, 1935, ch. 531, title II, § 208, 49 Stat. 625; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362,

1372; Aug. 28, 1950, ch. 809, title I, § 109(c), 64 Stat. 523; Sept. 1, 1954, ch. 1206, title I, § 111(b), 68 Stat. 1085; Aug. 28, 1958, Pub. L. 85–840, title III, § 310, 72 Stat. 1034; Sept. 13, 1960, Pub. L. 86–778, title II, § 211(m), 74 Stat. 958; Oct. 30, 1972, Pub. L. 92–603, title I, § 130(a), 86 Stat. 1359; Oct. 4, 1976, Pub. L. 94–455, title XII, § 1211(a), (d), 90 Stat. 1711, 1712; Dec. 29, 1981, Pub. L. 97–123, § 4(a), (b), 95 Stat. 1663, 1664; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(a)(5), 98 Stat. 1162; Oct. 9, 1984, Pub. L. 98–460, § 16(c)(2), 98 Stat. 1811; Nov. 18, 1988, Pub. L. 100–690, title VII, § 7088, 102 Stat. 4409; Nov. 5, 1990, Pub. L. 101–508, title V, §§ 5121, 5130(a)(1), 104 Stat. 1388–283, 1388–289; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(a)(12), 108 Stat. 1478, 1536.)

REFERENCES IN TEXT

Subchapter E of chapter 1 and subchapters A and E of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1), were comprised of sections 480–482, 1400–1432, and 1630–1636, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Chapters 2 and 21 and subtitle F of the Internal Revenue Code of 1954, referred to in subsec. (a)(1), were redesignated chapters 2 and 21 and subtitle F of the Internal Revenue Code of 1986, and are classified to sections 1401 et seq., 3101 et seq., and 6001 et seq., respectively, of Title 26.

Section 902 of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, referred to in subsec. (d)(1)(A), is section 902 of Pub. L. 100–204, which is set out as a note under section 1255a of Title 8, Aliens and Nationality.

Section 202 of the Immigration Reform and Control Act of 1986, referred to in subsec. (d)(1)(B)(i), is section 202 of Pub. L. 99–603, which is set out as a note under section 1255a of Title 8.

AMENDMENTS

1994—Subsec. (a)(6), (7). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner's authority'' for ''his authority'' in par. (7)(A).

Subsec. (c). Pub. L. 103–296, § 321(a)(12), substituted ''subsection (a)(7)'' for ''subsection (g)''.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(2)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

1990—Pub. L. 101–508, § 5121, inserted ''(a)'' before ''Whoever—'', redesignated former subsecs. (a) to (h) as pars. (1) to (8), respectively, of subsec. (a), in pars. (1) and (7) redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, inserted ''(b)'' before ''Any person or other entity who is convicted'', inserted ''(c)'' before ''Any individual or entity convicted of a felony'', and added subsec. (d).

Pub. L. 101–508, § 5130(a)(1), in the last undesignated paragraph substituted ''section 405(c)(2) of this title'' for ''section 605(c)(2) of this title''.

1988—Pub. L. 100–690 substituted ''under title 18'' for ''not more than $5,000'' in first undesignated par., substituted ''under title 18'' for ''not more than $25,000'' in second undesignated par., and inserted provisions at end defining for purposes of subsec. (g) ''social security number'' and ''social security account number''.

1984—Pub. L. 98–460 inserted provisions imposing a penalty of $25,000 or imprisonment for not more than five years, or both, on any person or other entity convicted for a second or subsequent violation of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a certified payee under section 405(j) of this title, and also granting the court discretion, in any case, including a first offense, involving a willful misuse of funds, to require full or partial restitution, and prohibiting the certification of any individual or entity convicted of a felony under this section or under section 1383a(b) of this title.

Subsecs. (f) to (h). Pub. L. 98–369 realigned margins of subsecs. (f) to (h).

1981—Pub. L. 97–123 substituted provisions making violation of section a felony for provisions making it a misdemeanor, increased the punishment from one to five years and penalty from $1,000 to $5,000, and in subsec. (g), in opening paragraph, substituted ''or for the purpose of obtaining anything of value from any person, or for any other purpose'' for ''or for any other purpose'', and added par. (3).

1976—Subsec. (g). Pub. L. 94–455, § 1211(a), inserted '', or for any other purpose'' after ''entitled'' in provisions preceding cl. (1).

Subsec. (h). Pub. L. 94–455, § 1211(d)(1), added subsec. (h).

1972—Subsecs. (f), (g). Pub. L. 92–603 added subsecs. (f) and (g).

1960—Subsec. (a)(3). Pub. L. 86–778 substituted ''section 403(f) of this title'' for ''section 403(e) of this title''.

1958—Pub. L. 85–840 amended section generally, by, among other changes, inserting references to the Internal Revenue Code of 1954, and making penalty provisions applicable to cases (1) where false statements or representations as to whether wages were paid or received for employment, or whether net earnings from self-employment were derived, or whether a person entitled to benefits under this subchapter had earnings in or for a particular period, or as to the amount thereof, are made for the purpose of obtaining or increasing benefits; (2) where false statements or representations are made in any application for disability determination; (3) where a person intentionally conceals or fails to disclose knowledge of any event affecting his or another's initial or continued right to payment, and (4) where a person converts a payment that he received for the use and benefit of another.

1954—Act Sept. 1, 1954, made it clear that the penalty provisions of the section extend to cases of false statements or representations as to the amount of net earnings from self-employment derived or the period during which derived.

1950—Act Aug. 28, 1950, substituted ''subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939'' for ''the Federal Insurance Contributions Act''.

1939—Act Aug. 10, 1939, amended section generally, incorporating provisions of section 409 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5130(a)(1) of Pub. L. 101–508 effective as if included in the enactment of Pub. L. 100–690, § 7088, see section 5130(b) of Pub. L. 101–508, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–460 effective Oct. 9, 1984, and applicable with respect to violations occurring on or after such date, see section 16(d) of Pub. L. 98–460, set out as a note under section 405 of this title.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 4(c) of Pub. L. 97–123 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall be effective with respect to violations committed after the date of the enactment of this Act [Dec. 29, 1981].''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 130(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to information furnished to the Secretary after the date of the enactment of this Act [Oct. 30, 1972].''

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective in the manner provided in section 211(p), (q) of Pub. L. 86–778, section 211(s) of Pub. L. 86–778, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 405, 1383, 1383a of this title; title 30 section 923.

§ 409. "Wages" defined

(a) In general

For the purposes of this subchapter, the term ''wages'' means remuneration paid prior to 1951 which was wages for the purposes of this subchapter under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

(1)(A) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $3,600 with respect to employment has been paid to an individual during any calendar year prior to 1955, is paid to such individual during such calendar year;

(B) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $4,200 with respect to employment has been paid to an individual during any calendar year after 1954 and prior to 1959, is paid to such individual during such calendar year;

(C) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $4,800 with respect to employment has been paid to an individual during any calendar year after 1958 and prior to 1966, is paid to such individual during such calendar year;

(D) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $6,600 with respect to employment has been paid to an individual during any calendar year after 1965 and prior to 1968, is paid to such individual during such calendar year;

(E) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $7,800 with respect to employment has been paid to an individual during any calendar year after 1967 and prior to 1972, is paid to such individual during such calendar year;

(F) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $9,000 with respect to employment has been paid to an individual during any calendar year after 1971 and prior to 1973, is paid to such individual during any such calendar year;

(G) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $10,800 with respect to employment has been paid to an individual during any calendar year after 1972 and prior to 1974, is paid to such individual during such calendar year;

(H) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $13,200 with respect to employment has been paid to an individual during any calendar year after 1973 and prior to 1975, is paid to such individual during such calendar year;

(I) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to the contribution and benefit base (determined under section 430 of this title) with respect to employment has been paid to an individual during any calendar year after 1974 with respect to which such contribution and benefit base is effective, is paid to such individual during such calendar year;

(2) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this clause shall exclude from the term ''wages'' only payments which are received under a workmen's compensation law), or (B) medical or hospitalization expenses in connection with sickness or accident disability, or (C) death, except that this subsection does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee under the Internal Revenue Code of 1986;

(3) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(4) Any payment made to, or on behalf of, an employee or his beneficiary (A) from or to a trust exempt from tax under section 165(a) of the Internal Revenue Code of 1939 at the time of such payment or, in the case of a payment after 1954, under sections 401 and 501(a) of the Internal Revenue Code of 1954 or the Internal Revenue Code of 1986, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (B) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1939 or, in the case of a payment after 1954 and prior to 1963, the requirements of section 401(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1954, or (C) under or to an annuity plan which, at the time of any such payment after 1962, is a plan described in section 403(a) of the Internal Revenue Code of 1986, or (D) under or to a bond purchase plan which, at the time of any such payment after 1962, is a qualified bond purchase plan described in section 405(a) of the Internal Revenue Code of 1954 (as in effect before July 18, 1984), or (E) under or to an annuity contract described in section 403(b) of the Internal Revenue Code of 1986, other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise), or (F) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3) of such Code), or (G) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subsection to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1002(2)(B)(ii)], or (H) under a simplified employee pension (as defined in section 408(k)(1) of such Code), other than any contributions described in section 408(k)(6) of such Code, or (I) under a cafeteria plan (within the meaning of section 125 of the Internal Revenue Code of 1986) if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received;

(5) The payment by an employer (without deduction from the remuneration of the employee)—

(A) of the tax imposed upon an employee under section 3101 of the Internal Revenue Code of 1986, or

(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(6)(A) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

(B) Cash remuneration paid by an employer in any calendar year to an employee for domestic service in a private home of the employer (including domestic service described in section 410(f)(5) of this title), if the cash remuneration paid in such year by the employer to the employee for such service is less than the applicable dollar threshold (as defined in section 3121(x) of the Internal Revenue Code of 1986) for such year;

(C) Cash remuneration paid by an employer in any calendar year to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such year by the employer to the employee for such service is less than $100. As used in this paragraph, the term ''service not in the course of the employer's trade or business'' does not include domestic service in a private home of the employer and does not include service described in section 410(f)(5) of this title;

(7)(A) Remuneration paid in any medium other than cash for agricultural labor;

(B) Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless—

(i) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or

(ii) the employer's expenditures for agricultural labor in such year equal or exceed $2,500,

except that clause (ii) shall not apply in determining whether remuneration paid to an employee constitutes ''wages'' under this section if such employee (I) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and generally recognized as having been, paid on a piece rate basis in the region of employment, (II) commutes daily from his permanent residence to the farm on which he is so employed, and (III) has been employed in agriculture less than 13 weeks during the preceding calendar year;

(8) Remuneration paid by an employer in any year to an employee for service described in section 410(j)(3)(C) of this title (relating to home workers), if the cash remuneration paid in such year by the employer to the employee for such service is less than $100;

(9) Remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the Internal Revenue Code of 1986 (determined without regard to section 274(n) of such Code);

(10)(A) Tips paid in any medium other than cash;

(B) Cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more;

(11) Any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (A)[1] death, or (B)[1] retirement for disability, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(12) Any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(13) Any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 423(a) of this title and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(14)(A) Remuneration paid by an organization exempt from income tax under section 501 of the Internal Revenue Code of 1986 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than $100;

(B) Any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 of the Internal Revenue Code of 1986 (relating to amounts received under qualified group legal services plans);

(15) Any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129 of the Internal Revenue Code of 1986;

(16) The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the Internal Revenue Code of 1986;

(17) Any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117, or 132 of the Internal Revenue Code of 1986; or

(18) Remuneration consisting of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights).

(b) Regulations providing exclusions from term

Nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1986 (relating to income tax withholding) which provides an exclusion from ''wages'' as used in such chapter shall be construed to require a similar exclusion from ''wages'' in the regulations prescribed for purposes of this subchapter.

(c) Individuals performing domestic services

For purposes of this subchapter, in the case of domestic service described in subsection (a)(6)(B) of this section, any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this subchapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a)(6)(B) of this section.

(d) Members of uniformed services

For purposes of this subchapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 410(*l*)(1) of this title are applicable, the term ''wages'' shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only (1) his basic pay as described in chapter 3 and section 1009 of title 37 in the case of an individual performing service to which subparagraph (A) of such section 410(*l*)(1) of this title applies, or (2) his compensation for such service as determined under section 206(a) of title 37 in the case of an individual performing service to which subparagraph (B) of such section 410(*l*)(1) of this title applies.

(e) Peace Corps volunteers

For purposes of this subchapter, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.], to which the provisions of section 410(*o*) of this title are applicable, (1) the term ''wages'' shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only amounts certified as payable pursuant to section 5(c) or 6(1) of the Peace Corps Act [22 U.S.C. 2504(c) or 2505(1)], and (2) any such amount shall be deemed to have been paid to such individual at the time the service, with respect to which it is paid, is performed.

(f) Tips

For purposes of this subchapter, tips received by an employee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be

[1] So in original. Probably should be designated cls. (i) and (ii), respectively.

paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1986 or (if no statement including such tips is so furnished) at the time received.

(g) Members of religious orders

For purposes of this subchapter, in any case where an individual is a member of a religious order (as defined in section 3121(r)(2) of the Internal Revenue Code of 1986) performing service in the exercise of duties required by such order, and an election of coverage under section 3121(r) of such Code is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term ''wages'' shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than $100 a month.

(h) Retired justices and judges

For purposes of this subchapter, in the case of an individual performing service under the provisions of section 294 of title 28 (relating to assignment of retired justices and judges to active duty), the term ''wages'' shall not include any payment under section 371(b) of such title 28 which is received during the period of such service.

(i) Employer contributions under sections 401(k) and 414(h)(2) of Internal Revenue Code

Nothing in any of the foregoing provisions of this section (other than subsection (a) of this section) shall exclude from the term ''wages''—

(1) Any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1986) to the extent not included in gross income by reason of section 402(a)(8) of such Code, or

(2) Any amount which is treated as an employer contribution under section 414(h)(2) of such Code where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

(j) Amounts deferred under nonqualified deferred compensation plans

Any amount deferred under a nonqualified deferred compensation plan (within the meaning of section 3121(v)(2)(C) of the Internal Revenue Code of 1986) shall be taken into account for purposes of this subchapter as of the later of when the services are performed, or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of the preceding sentence (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this subchapter.

(k) "National average wage index" and "deferred compensation amount" defined

(1) For purposes of sections 403(f)(8)(B)(ii), 413(d)(2)(B), 415(a)(1)(B)(ii), 415(a)(1)(C)(ii), 415(a)(1)(D), 415(b)(3)(A)(ii), 415(i)(1)(E), 415(i)(2)(C)(ii), 424a(f)(2)(B), and 430(b)(2) (and 430(b)(2) of this title as in effect immediately prior to the enactment of the Social Security Amendments of 1977), the term 'national average wage index' for any particular calendar year means, subject to regulations of the Commissioner of Social Security under paragraph (2), the average of the total wages for such particular calendar year.

(2) The Commissioner of Social Security shall prescribe regulations under which the national average wage index for any calendar year shall be computed—

(A) on the basis of amounts reported to the Secretary of the Treasury or his delegate for such year,

(B) by disregarding the limitation on wages specified in subsection (a)(1) of this section,

(C) with respect to calendar years after 1990, by incorporating deferred compensation amounts and factoring in for such years the rate of change from year to year in such amounts, in a manner consistent with the requirements of section 10208 of the Omnibus Budget Reconciliation Act of 1989, and

(D) with respect to calendar years before 1978, in a manner consistent with the manner in which the average of the total wages for each of such calendar years was determined as provided by applicable law as in effect for such years.

(3) For purposes of this subsection, the term ''deferred compensation amount'' means—

(A) any amount excluded from gross income under chapter 1 of the Internal Revenue Code of 1986 by reason of section 402(a)(8),[2] 402(h)(1)(B), or 457(a) of such Code or by reason of a salary reduction agreement under section 403(b) of such Code,

(B) any amount with respect to which a deduction is allowable under chapter 1 of such Code by reason of a contribution to a plan described in section 501(c)(18) of such Code, and

(C) to the extent provided in regulations of the Commissioner of Social Security, deferred compensation provided under any arrangement, agreement, or plan referred to in subsection (i) or (j) of this section.

(Aug. 14, 1935, ch. 531, title II, § 209, 49 Stat. 625; Aug. 10, 1939, ch. 666, title II, § 201, 53 Stat. 1362, 1373; Mar. 24, 1943, ch. 26, § 1(b)(2), 57 Stat. 47; Apr. 4, 1944, ch. 161, § 2, 58 Stat. 188; Oct. 23, 1945, ch. 433, § 7(b), 59 Stat. 548; Dec. 29, 1945, ch. 652, title I, § 5(a), 59 Stat. 671; Aug. 10, 1946, ch. 951, title IV, §§ 407(a), 408(a), 409(a), 410, 411, 414, 60 Stat. 988, 989, 990; Apr. 20, 1948, ch. 222, § 1(a), 62 Stat. 195; Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492; Sept. 1, 1954, ch. 1206, title I, §§ 101(a)(1)–(3), 104(a), 68 Stat. 1052, 1078; Aug. 1, 1956, ch. 836, title I, § 105(a), 70 Stat. 828; Aug. 1, 1956, ch. 837, title IV, § 401, 70 Stat. 869; Aug. 27, 1958, Pub. L. 85–786, § 1, 72 Stat. 938; Aug. 28, 1958, Pub. L. 85–840, title I, § 102(a), 72 Stat. 1019; Sept. 13, 1960, Pub. L. 86–778, title I, § 103(j)(2)(C), (F), 74 Stat. 937, 938; June 30, 1961, Pub. L. 87–64, title I, § 102(c)(3)(A), 75 Stat. 134; Sept. 22, 1961, Pub. L. 87–293, title II, § 202(b)(2), 75 Stat. 626; Feb. 26,

[2] See References in Text note below.

1964, Pub. L. 88–272, title II, § 220(c)(3), 78 Stat. 63; Oct. 13, 1964, Pub. L. 88–650, § 4(a), 78 Stat. 1077; July 30, 1965, Pub. L. 89–97, title III, §§ 313(a), 320(a)(1), 79 Stat. 382, 393; Jan. 2, 1968, Pub. L. 90–248, title I, § 108(a)(1), title V, § 504(c), 81 Stat. 834, 935; Mar. 17, 1971, Pub. L. 92–5, title II, § 203(a)(1), 85 Stat. 10; July 1, 1972, Pub. L. 92–336, title II, § 203(a)(1), 86 Stat. 417; Oct. 30, 1972, Pub. L. 92–603, title I, §§ 104(g), 122(a), 123(c)(1), 138(a), 86 Stat. 1341, 1354, 1356, 1365; July 9, 1973, Pub. L. 93–66, title II, § 203(a)(1), 87 Stat. 153; Dec. 31, 1973, Pub. L. 93–233, § 5(a)(1), 87 Stat. 953; Dec. 20, 1977, Pub. L. 95–216, title III, § 351(a)(1)–(3)(A), 91 Stat. 1549; Oct. 17, 1978, Pub. L. 95–472, § 3(c), 92 Stat. 1333; Nov. 6, 1978, Pub. L. 95–600, title I, § 164(b)(4), 92 Stat. 2814; Dec. 5, 1980, Pub. L. 96–499, title XI, § 1141(a)(2), 94 Stat. 2693; Aug. 13, 1981, Pub. L. 97–34, title I, § 124(e)(2)(B), 95 Stat. 201; Dec. 29, 1981, Pub. L. 97–123, § 3(a), 95 Stat. 1662; Apr. 20, 1983, Pub. L. 98–21, title I, § 101(c)(1), title III, §§ 324(c)(1)–(3), 327(a)(2), (b)(2), 328(b), 97 Stat. 70, 124, 125, 127, 128; July 18, 1984, Pub. L. 98–369, div. A, title IV, § 491(d)(39), title V, § 531(d)(1)(B), div. B, title VI, §§ 2661(i), 2663(a)(6), 98 Stat. 851, 884, 1157, 1162; Apr. 7, 1986, Pub. L. 99–272, title XII, § 12112(a), 100 Stat. 288; Oct. 22, 1986, Pub. L. 99–514, title I, § 122(e)(5), title XI, § 1151(d)(2)(C), 100 Stat. 2112, 2505; Dec. 22, 1987, Pub. L. 100–203, title IX, §§ 9001(a)(2), 9002(a), 9003(a)(1), 101 Stat. 1330–286, 1330–287; Nov. 10, 1988, Pub. L. 100–647, title I, §§ 1001(g)(4)(C), 1011(f)(8), 1011B(a)(22)(E), (23)(B), title III, § 3043(a), title VIII, § 8017(a), 102 Stat. 3352, 3463, 3486, 3641, 3793; Nov. 8, 1989, Pub. L. 101–140, title II, § 203(a)(2), 103 Stat. 830; Dec. 19, 1989, Pub. L. 101–239, title X, § 10208(a), (d)(1), 103 Stat. 2476, 2479; Nov. 5, 1990, Pub. L. 101–508, title V, § 5130(a)(5), 104 Stat. 1388–289; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(c)(4), (e)(1), 108 Stat. 1478, 1538, 1539; Oct. 22, 1994, Pub. L. 103–387, § 2(a)(2)(A), 108 Stat. 4072.)

REFERENCES IN TEXT

Section 165 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4)(A), (B), was a part of chapter 1 of the 1939 Code, and was repealed by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). Internal Revenue Code of 1954 redesignated Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

Section 405(a) of the Internal Revenue Code of 1954, referred to in subsec. (a)(4)(D), was repealed by Pub. L. 98–369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Internal Revenue Code of 1954, referred to in text, redesignated Internal Revenue Code of 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

Internal Revenue Code of 1986, referred to in text, is classified to Title 26.

The Peace Corps Act, referred to in subsec. (e), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

The enactment of the Social Security Amendments of 1977, referred to in subsec. (k)(1), means the enactment of Pub. L. 95–216, which was approved Dec. 20, 1977.

Section 10208 of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (k)(2)(C), is section 10208 of Pub. L. 101–239, title X, Dec. 19, 1989, 103 Stat. 2476, which amended this section, sections 403, 413, 415, 417, 418, 424a, and 430 of this title, section 206 of Title 29, Labor, and section 231 of Title 45, Railroads, and enacted provisions set out as a note under section 430 of this title.

Section 402 of the Internal Revenue Code of 1986, referred to in subsec. (k)(3)(A), was amended by Pub. L. 102–318, § 521, and, as so amended, provisions formerly contained in section 402(a)(8) are contained in section 402(e)(3).

AMENDMENTS

1994—Subsec. (a)(4)(A). Pub. L. 103–296, § 321(c)(4)(A), substituted ''Internal Revenue Code of 1954 or the Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (a)(4)(C), (E), (5)(A). Pub. L. 103–296, § 321(c)(4)(B)(i), (ii), substituted ''1986'' for ''1954'' after ''Code of''.

Subsec. (a)(6)(B). Pub. L. 103–387 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50. As used in this paragraph, the term 'domestic service in a private home of the employer' does not include service described in section 410(f)(5) of this title;''.

Subsecs. (a)(14)(A), (B), (15) to (17), (b), (f), (g), (i)(1), (j). Pub. L. 103–296, § 321(c)(4)(B)(iii)–(vi), (C), substituted ''1986'' for ''1954'' after ''Code of''.

Subsec. (k). Pub. L. 103–296, § 321(e)(1), added par. (1) and struck out former par. (1) which defined ''deemed average total wages'', added par. (2), and redesignated former par. (2) as (3) and in introductory provisions of par. (3) substituted ''this subsection'' for ''paragraph (1)''.

Pub. L. 103–296, § 107(a)(4), in subsec. (k) as amended by Pub. L. 103–296, § 321(e)(1), substituted ''Commissioner of Social Security'' for ''Secretary'' in par. (1), in introductory provisions of par. (2), and in par. (3)(C).

1990—Subsec. (a)(7)(B). Pub. L. 101–508 substituted ''clause (ii)'' for ''subparagraph (B)'' in concluding provisions.

1989—Subsec. (a). Pub. L. 101–239, § 10208(d)(1)(A)–(K), inserted ''(a)'' at beginning of text and in subsec. (a) as so designated, redesignated, respectively, former subsec. (a)(1) to (9) as par. (1)(A) to (I), former subsec. (b)(1) to (3) as par. (2)(A) to (C), former subsec. (d) as par. (3), former subsec. (e)(1) to (9) as par. (4)(A) to (I), former subsec. (f)(1) and (2) as par. (5)(A) and (B), former subsec. (g)(1) to (3) as par. (6)(A) to (C), former subsec. (h)(1), (2)(A) and (B), and (i) to (iii) as par. (7)(A), (B)(i) and (ii), and (I) to (III), former subsecs. (j) and (k) as pars. (8) and (9), former subsec. (*l*)(1) and (2) as par. (10)(A) and (B), former subsec. (m)(1) and (2) as par. (11)(A) and (B), former subsecs. (n) and (*o*) as pars. (12) and (13), former subsec. (p)(1) and (2) as par. (14)(A) and (B), and former subsecs. (q) to (t) as pars. (15) to (18).

Subsec. (b). Pub. L. 101–239, § 10208(d)(1)(L), designated par. beginning with ''Nothing in the regulations'' as subsec. (b). Former subsec. (b) redesignated subsec. (a)(2).

Subsec. (c). Pub. L. 101–239, § 10208(d)(1)(M), designated par. beginning with ''For purposes of this subchapter, in the case of domestic service'' as subsec. (c) and substituted ''subsection (a)(6)(B)'' for ''subsection (g)(2)'' in two places.

Subsec. (d). Pub. L. 101–239, § 10208(d)(1)(N), designated par. beginning with ''For purposes of this subchapter, in the case of an individual performing service, as a member'' as subsec. (d) and substituted ''subsection (a)(1)'' for ''subsection (a)'' in introductory provisions. Former subsec. (d) redesignated subsec. (a)(3).

Subsecs. (e) to (h). Pub. L. 101–239, § 10208(d)(1)(O)–(R), designated pars. beginning with ''For purposes of this

subchapter, in the case of an individual performing service, as a volunteer'', ''For purposes of this subchapter, tips received'', ''For purposes of this subchapter, in any case where'', and ''For purposes of this subchapter, in the case of an individual performing service under the provisions'', as subsecs. (e) to (h), respectively. Former subsecs. (e) to (h) redesignated subsec. (a)(4) to (7), respectively.

Subsec. (i). Pub. L. 101–239, § 10208(d)(1)(S), designated par. beginning with ''Nothing in any of the foregoing'' as subsec. (i).

Pub. L. 101–140 amended cls. (2) and (3) of next to last indented par. of closing provisions [now subsec. (i)] to read as if amendment by Pub. L. 100–647, § 1011B(a)(22)(E), had not been enacted, see 1988 Amendment note below.

Subsec. (j). Pub. L. 101–239, § 10208(d)(1)(T), designated par. beginning with ''Any amount deferred'' as subsec. (j). Former subsec. (j) redesignated subsec. (a)(8).

Subsec. (k). Pub. L. 101–239, § 10208(a), added subsec. (k).

1988—Pub. L. 100–647, § 1011B(a)(22)(E), in next to last indented par. of closing provisions, substituted '', or'' for period at end of cl. (2) and added cl. (3).

Subsec. (e)(8). Pub. L. 100–647, § 1011(f)(8), amended cl. (8) generally. Prior to amendment, cl. (8) read as follows: ''under a simplified employee pension (as defined in section 408(k) of the Internal Revenue Code of 1986) if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) of such Code for such payment,''.

Subsec. (e)(9). Pub. L. 100–647, § 1011B(a)(23)(B), inserted ''if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received'' after ''1986)''.

Subsec. (h)(2). Pub. L. 100–647, § 8017(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless (A) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or (B) the employer's expenditures for agricultural labor in such year equal or exceed $2,500;''.

Subsec. (k). Pub. L. 100–647, § 1001(g)(4)(C), substituted ''section 217 of the Internal Revenue Code of 1986 (determined without regard to section 274(n) of such Code)'' for ''section 217 of the Internal Revenue Code of 1954''.

Subsec. (t). Pub. L. 100–647, § 3043(a), added subsec. (t).

1987—Pub. L. 100–203, § 9001(a)(2), in second indented par. of closing provisions, substituted ''only (1) his basic pay as described in chapter 3 and section 1009 of title 37 in the case of an individual performing service to which subparagraph (A) of such section 410(*l*)(1) of this title applies, or (2) his compensation for such service as determined under section 206(a) of title 37 in the case of an individual performing service to which subparagraph (B) of such section 410(*l*)(1) of this title applies.'' for ''only his basic pay as described in chapter 3 and section 1009 of title 37.''

Subsec. (b)(3). Pub. L. 100–203, § 9003(a)(1), substituted ''death, except that this subsection does not apply to a payment for group-term life insurance to the extent that such payment is includible in the gross income of the employee under the Internal Revenue Code of 1986'' for ''death''.

Subsec. (h)(2)(B). Pub. L. 100–203, § 9002(a), added cl. (B) and struck out former cl. (B) which read as follows: ''the employee performs agricultural labor for the employer on twenty days or more during such year for cash remuneration computed on a time basis;''.

1986—Subsec. (e). Pub. L. 99–514, § 1151(d)(2)(C), added cl. (9).

Subsec. (s). Pub. L. 99–514, § 122(e)(5), substituted ''74(c), 117, or'' for ''117 or''.

Pub. L. 99–272 in third to last undesignated paragraph, substituted ''shall not include'' for ''shall, subject to the provisions of subsection (a) of this section, include''.

1984—Pub. L. 98–369, § 531(d)(1)(B)(i), inserted in introductory text ''(including benefits)'' before ''paid in any medium''.

Subsec. (a)(5) to (9). Pub. L. 98–369, § 2663(a)(6)(A)(i), realigned margins of pars. (5) to (9).

Subsec. (e). Pub. L. 98–369, § 2663(a)(6)(A)(v), realigned margin of subsec. (e).

Subsec. (e)(4). Pub. L. 98–369, § 491(d)(39), inserted ''(as in effect before July 18, 1984)'' after ''section 405(a) of the Internal Revenue Code of 1954''.

Subsec. (e)(7). Pub. L. 98–369, § 2661(i)(1), struck out the semicolon after ''Act of 1974''.

Subsecs. (f), (k) to (p). Pub. L. 98–369, § 2663(a)(6)(A)(v), realigned margins of subsecs. (f) and (k) to (p).

Subsec. (p). Pub. L. 98–369, § 2663(a)(6)(A)(ii)–(iv), redesignated the subsec. (p) enacted by Pub. L. 95–216 as par. (1) and the subsec. (p) enacted by Pub. L. 95–472 as par. (2), and substituted a semicolon for a period in par. (1) as so redesignated.

Subsecs. (q), (r). Pub. L. 98–369, § 2663(a)(6)(A)(v), realigned margins of subsecs. (q) and (r).

Subsec. (s). Pub. L. 98–369, § 531(d)(1)(B)(ii), added subsec. (s).

Pub. L. 98–369, § 2663(a)(6)(B), in undesignated par. relating to the meaning of ''wages'' in the case of a member of a uniformed service to which section 410(*l*)(1) of this title is applicable, substituted ''chapter 3 and section 1009 of title 37'' for ''section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act''.

Pub. L. 98–369, § 2661(i)(2), in undesignated par. relating to employer contributions as not being excluded from ''wages'', inserted ''where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)''.

1983—Subsec. (b). Pub. L. 98–21, § 324(c)(3)(A), struck out cl. (1) which read ''retirement'', and redesignated cls. (2) to (4) as (1) to (3), respectively.

Subsec. (c). Pub. L. 98–21, § 324(c)(3)(B), struck out subsec. (c) which related to any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement.

Subsec. (e)(5) to (7). Pub. L. 98–21, § 324(c)(2), added cls. (5) to (7).

Subsec. (e)(8). Pub. L. 98–21, § 328(b), added cl. (8).

Subsec. (i). Pub. L. 98–21, § 324(c)(3)(B), struck out subsec. (i) which related to any payment (other than vacation or sick pay) made to an employee after the month in which he attained age 62, if he did not work for the employer in the period for which such payment was made, and provided for this subsection that ''sick pay'' included remuneration for service in the employ of a State, a political subdivision (as defined in section 418(b)(2) of this title) of a State, or an instrumentality of two or more States, paid to an employee thereof for a period during which he was absent from work because of sickness.

Subsec. (m)(1)(C). Pub. L. 98–21, § 324(c)(3)(C), struck out subpar. (C) which related to retirement after attaining an age specified in the plan referred to in par. (2) or in a pension plan of the employer.

Subsec. (r). Pub. L. 98–21, § 327(a)(2), added subsec. (r).

Pub. L. 98–21, § 327(b)(2), inserted, immediately following subsec. (r), provision that nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1954 (relating to income tax withholding) which provides an exclusion from ''wages'' as used in such chapter shall be construed to require a similar exclusion from ''wages'' in the regulations prescribed for purposes of this subchapter.

Pub. L. 98–21, § 324(c)(1), inserted, at end of section, two undesignated pars. specifying the inclusion of certain employer contributions as ''wages'' and directing that any amount deferred under a nonqualified deferred compensation plan be taken into account under certain conditions but not treated as wages thereafter for purposes of this subchapter.

Pub. L. 98–21, § 101(c)(1), inserted, at end of section, undesignated par. defining ''wages'' for purposes of this

subchapter in the case of an individual performing service under provisions of section 294 of title 28 (relating to assignment of retired justices and judges to active duty) to include payments under section 371(b) of title 28 that is received during the period of such service.

1981—Subsec. (b)(2). Pub. L. 97–123 inserted ''(but, in the case of payments made to an employee or any of his dependents, this clause shall exclude from the term 'wages' only payments which are received under a workmen's compensation law)'' after ''sickness or accident disability''.

Subsec. (q). Pub. L. 97–34 substituted ''section 127 or 129'' for ''section 127''.

1980—Subsec. (f). Pub. L. 96–499 substituted ''section 3101 of the Internal Revenue Code of 1954'' for ''section 1400 of the Internal Revenue Code of 1939'' in subpar. (1) and inserted ''with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor''.

1978—Subsec. (p). Pub. L. 95–472 added a second subsec. (p).

Subsec. (q). Pub. L. 95–600 added subsec. (q).

1977—Subsecs. (g)(3), (j). Pub. L. 95–216, §351(a)(1), (2), substituted ''year'' for ''quarter'' wherever appearing and ''$100'' for ''$50''.

Subsec. (n). Pub. L. 95–216, §351(a)(3)(A), struck out ''or'' after ''such employee died''.

Subsec. (*o*). Pub. L. 95–216, §351(a)(3)(A), substituted ''payment is made; or'' for ''payment is made.''.

Subsec. (p). Pub. L. 95–216, §351(a)(3)(A), added subsec. (p).

1973—Subsec. (a)(8). Pub. L. 93–233 substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000''.

1972—Subsec. (a)(6). Pub. L. 92–336, §203(a)(1)(A), inserted ''and prior to 1973'' after ''1971''.

Subsec. (a)(7) to (9). Pub. L. 92–336, §203(a)(1)(B), added pars. (7) to (9).

Subsec. (i). Pub. L. 92–603, §104(g), struck out ''(if a woman) and age 65 (if a man)'' after ''attains age 62''.

Subsec. (n). Pub. L. 92–603, §122(a), added subsec. (n).

Subsec. (*o*). Pub. L. 92–603, §138(a), added subsec. (*o*).

Pub. L. 92–603, §123(c)(1), added par. at end defining ''wages'' in the case of members of a religious order when an election under section 3121(r) of the Internal Revenue Code of 1954 is in effect.

1971—Subsec. (a)(5). Pub. L. 92–5, §203(a)(1)(A), inserted ''and prior to 1972'' after ''1967''.

Subsec. (a)(6). Pub. L. 92–5, §203(a)(i)(B), added par. (6).

1968—Subsec. (a)(4), (5). Pub. L. 90–248, §108(a)(1)(A), (B), inserted ''and prior to 1968'' after ''1965'' and added par. (5), respectively.

Subsec. (m). Pub. L. 90–248, §504(c), added subsec. (m).

1965—Subsec. (a)(3). Pub. L. 89–97, §320(a)(1)(A), inserted ''and prior to 1966'' after ''1958''.

Subsec. (a)(4). Pub. L. 89–97, §320(a)(1)(B), added par. (4).

Subsec. (*l*). Pub. L. 89–97, §313(a)(1), added subsec. (*l*).

Pub. L. 89–97, §313(a)(2), added paragraph at end providing that tips be considered remuneration and that such remuneration be deemed paid as of the filing of a written statement or as of the time received.

1964—Subsec. (e). Pub. L. 88–272 included as ''wages'' payments after 1954 under or to trust exempt under sections 401 and 501(a), I.R.C. 1954, under annuity plans after 1954 and prior to 1963, under section 401(a)(3), (4), (5), and (6), I.R.C. 1954, under or to annuity plans which at time of payment after 1962, are described in section 403(a), I.R.C. 1954, and under or to a bond purchase plan which at time of any payment after 1962, is a qualified bond purchase plan described in section 405(a), I.R.C. 1954.

Subsec. (k). Pub. L. 88–650 added subsec. (k).

1961—Subsec. (i). Pub. L. 87–64 substituted ''attains age 62 (if a woman) or age 65 (if a man)'' for ''attains retirement age (as defined in section 416(a) of this title)''.

Pub. L. 87–293 added last paragraph providing for computation of wages for Peace Corps volunteer service.

1960—Subsec. (j). Pub. L. 86–778, §103(j)(2)(F), substituted ''section 410(j)(3)(C)'' for ''section 410(k)(3)(C)''.

Pub. L. 86–778, §103(j)(2)(C), substituted ''section 410(*l*)(1) of this title'' for ''section 410(m)(1) of this title'' in last par.

1958—Subsec. (a). Pub. L. 85–840 inserted ''and prior to 1959'' after ''any calendar year after 1954'' in cl. (2), and added cl. (3).

Subsec. (i). Pub. L. 85–786 inserted sentence to include remuneration for service in State employment paid to employee for period he was absent for illness in term ''sick pay''.

1956—Subsec. (h)(2). Act Aug. 1, 1956, ch. 836, included within definition of ''wages'' cash remuneration of $150 or more, and cash remuneration computed on a time basis where the employee performs agricultural labor for the employer on 20 days or more during the calendar year.

Act Aug. 1, 1956, ch. 837, added penultimate par. to define ''wages'' in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 410(m)(1) of this title are applicable.

1954—Subsec. (a). Act Sept. 1, 1954, §104(a), provided that for years after 1954 ''wages'' would exclude any remuneration in excess of $4,200 paid to an individual with respect to employment during a calendar year.

Subsec. (g)(2). Act Sept. 1, 1954, §101(a)(1), made coverage of domestic service depend solely on receipt by the employee, in a quarter, of $50 in cash remuneration from one employer for such service.

Subsec. (g)(3). Act Sept. 1, 1954, §101(a)(2), added par. (3).

Subsec. (h). Act Sept. 1, 1954, §101(a)(3), redesignated subsection as cl. (1) and added cl. (2).

1950—Act Aug. 28, 1950, amended section generally.

1948—Subsec. (b)(15). Act Apr. 20, 1948, inserted subpar. (B).

1946—Subsec. (a). Act Aug. 10, 1946, §414, in amending subsec. (a), made pars. (1) and (2) applicable only to payments before Jan. 1, 1947, added a new par. (3), applicable to payments after that date, and renumbered former pars. (3) to (6) to be pars. (4) to (7), respectively.

Subsec. (h). Act Aug. 10, 1946, §407(a), in amending subsec. (h), required a currently insured individual to have not less than six quarters of coverage during the period consisting of the quarter in which he died and the twelve preceding quarters.

Subsec. (i). Act Aug. 10, 1946, §408(a), in amending subsec. (i), required only that a wife be married to the insured individual for 36 months instead of requiring that they be married before Jan. 1, 1939, or before he became 60 years of age, as was formerly the case.

Subsec. (k). Act Aug. 10, 1946, §409(a), in amending subsec. (k), changed requirement that a stepchild or adopted child must have been such before the individual reached age 60 to require, in the case of a living individual, that the child must have been a stepchild or adopted child for 36 months.

Subsec. (q). Act Aug. 10, 1946, §410, added subsec. (q).

Subsec. (r). Act Aug. 10, 1946, §411, added subsec. (r).

1945—Subsec. (b)(16). Act. Dec. 29, 1945, added par. (16).

Subsec. (p). Act Oct. 23, 1945, added subsec. (p).

1944—Subsec. (*o*)(1). Act Apr. 4, 1944, §2, inserted ''but shall not include any such service performed (1) under a contract entered into without the United States and during the performance of which the vessel does not touch at a port in the United States, or (2) on a vessel documented under the laws of any foreign country and bareboat chartered to the War Shipping Administration''.

1943—Subsec. (*o*). Act Mar. 24, 1943, added subsec. (*o*).

1939—Act Aug. 10, 1939, amended section generally.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–387 applicable to remuneration paid after Dec. 31, 1993, see section 2(a)(3) of Pub. L. 103–387, set out as a note under section 3102 of Title 26, Internal Revenue Code.

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the enactment of Pub. L. 101–239, § 10208, see section 5130(b) of Pub. L. 101–508, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 10208(a) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

Amendment by Pub. L. 101–140 effective as if included in section 1151 of Pub. L. 99–514, see section 203(c) of Pub. L. 101–140, set out as a note under section 79 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 1001(g)(4)(C), 1011(f)(8), and 1011B(a)(23)(B) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 1011B(a)(22)(E) of Pub. L. 100–647 not applicable to any individual who separated from service with the employer before Jan. 1, 1989, see section 1011B(a)(22)(F) of Pub. L. 100–647, set out as a note under section 3121 of Title 26.

Amendment by section 3043(a) of Pub. L. 100–647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order, see section 3044 of Pub. L. 100–647, set out as an Effective Date note under section 7873 of Title 26.

Amendment by section 8017(a) of Pub. L. 100–647 effective as if included in amendments made by section 9002 of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 8017(c) of Pub. L. 100–647, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9001(a)(2) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9001(d) of Pub. L. 100–203, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 9002(a) of Pub. L. 100–203 applicable with respect to remuneration for agricultural labor paid after Dec. 31, 1987, see section 9002(c) of Pub. L. 100–203, set out as a note under section 3121 of Title 26.

Amendment by section 9003(a)(1) of Pub. L. 100–203 applicable with respect to group-term life insurance coverage in effect after Dec. 31, 1987, with exception for employer's group-term life insurance payments for certain former employees, see section 9003(b) of Pub. L. 100–203, as amended, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 122(e)(5) of Pub. L. 99–514 applicable to prizes and awards granted after Dec. 31, 1986, see section 151(c) of Pub. L. 99–514, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 1151(d)(2)(C) of Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1983, see section 1151(k)(5) of Pub. L. 99–514, set out as a note under section 79 of Title 26.

Section 12112(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall be effective with respect to service performed after December 31, 1983.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(39) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 62 of Title 26, Internal Revenue Code.

Amendment by section 531(d)(1)(B) of Pub. L. 98–369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98–369, set out as an Effective Date note under section 132 of Title 26.

Amendment by section 2661(i) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(6) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 101(c)(1) of Pub. L. 98–21 effective with respect to services performed after Dec. 31, 1983, see section 101(d) of Pub. L. 98–21, as amended, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 324(c)(1)–(3) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

Amendment by section 327(a)(2) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, see section 327(d)(1) of Pub. L. 98–21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 327(b)(2) of Pub. L. 98–21 applicable to remuneration (other than amounts excluded under 26 U.S.C. 119) paid after Mar. 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid, see section 327(d)(2) of Pub. L. 98–21, as amended, set out as a note under section 3121 of Title 26.

Amendment by section 328(b) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, see section 328(d)(1) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1981 AMENDMENTS

Amendment by Pub. L. 97–123 applicable, except as otherwise provided, to remuneration paid after Dec. 31, 1981, see section 3(g) of Pub. L. 97–123, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 97–34 applicable to remuneration paid after Dec. 31, 1981, see section 124(f) of Pub. L. 97–34, set out as a note under section 21 of Title 26.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–499, see section 1141(c) of Pub. L. 96–499, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. 95–600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95–600, set out as an Effective Date note under section 127 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 95–472 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 3(d) of Pub. L. 95–472, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 351(d) of Pub. L. 95–216 provided that: ''The amendments made by subsection (a) [amending this section and section 410 of this title] shall apply with respect to remuneration paid and services rendered after December 31, 1977. The amendments made by sub-

sections (b) and (c) [amending sections 412 and 413 of this title] shall be effective January 1, 1978.''

EFFECTIVE DATE OF 1973 AMENDMENTS

Section 5(e) of Pub. L. 93–233 provided that: ''The amendments made by this section [amending this section and sections 411, 413, and 430 of this title and sections 3121, 3122, 3125, 6413, and 6654 of Title 26, Internal Revenue Code], except subsection (a)(4), shall apply only with respect to remuneration paid after, and taxable years beginning after, 1973. The amendments made by subsection (a)(4) [amending section 415 of this title] shall apply with respect to calendar years after 1973.''

Section 203(e) of Pub. L. 93–66 provided that: ''The amendments made by this section [amending this section and sections 411, 415, and 430 of this title and sections 3121, 3122, 3125, 6413, and 6654 of Title 26] except subsection (a)(4), shall apply only with respect to remuneration paid after, and taxable years beginning after, 1973. The amendments made by subsection (a)(4) [amending section 415 of this title] shall apply with respect to calendar years after 1973.''

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by section 104(g) of Pub. L. 92–603 applicable only with respect to payments after 1974, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of this title.

Section 122(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply in the case of any payment made after December 1972.''

Section 138(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply in the case of any payment made after December 1972.''

Section 203(c) of Pub. L. 92–336 provided that: ''The amendments made by subsections (a)(1) and (a)(3)(A) [amending this section and section 413 of this title], and the amendments made by subsection (b) [amending sections 3121, 3122, 3125, and 6413 of Title 26, Internal Revenue Code] (except paragraphs (1) and (7) thereof), shall apply only with respect to remuneration paid after December 1972. The amendments made by subsections (a)(2), (a)(3)(B), (b)(1), and (b)(7) [amending sections 411 and 413 of this title and sections 1402 and 6654 of Title 26] shall apply only with respect to taxable years beginning after 1972. The amendment made by subsection (a)(4) [amending section 415 of this title] shall apply only with respect to calendar years after 1972.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 203(c) of Pub. L. 92–5 provided that: ''The amendments made by subsections (a)(1) and (a)(3)(A) [amending this section and section 413 of this title], and the amendments made by subsection (b) (except paragraphs (1) and (7) thereof) [amending sections 3121, 3122, 3125, and 6413 of Title 26, Internal Revenue Code], shall apply only with respect to remuneration paid after December 1971. The amendments made by subsections (a)(2), (a)(3)(B), (b)(1), and (b)(7) [amending sections 411 and 413 of this title and sections 1402 and 6654 of Title 26] shall apply only with respect to taxable years beginning after 1971. The amendment made by subsection (a)(4) [amending section 415 of this title] shall apply only with respect to calendar years after 1971.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 108(c) of Pub. L. 90–248 provided that: ''The amendment made by subsections (a)(1) and (a)(3)(A) [amending this section and section 423 of this title], and the amendments made by subsection (b) (except paragraph (1) thereof) [amending sections 1402, 3121, 3122, 3125, and 6413 of Title 26, Internal Revenue Code], shall apply only with respect to remuneration paid after December 1967. The amendments made by subsections (a)(2), (a)(3)(B), and (b)(1) [amending sections 411 and 413 of this title and section 1402 of Title 26] shall apply only with respect to taxable years ending after 1967. The amendment made by subsection (a)(4) [amending section 415 of this title] shall apply only with respect to calendar years after 1967.''

Amendment by section 504(c) of Pub. L. 90–248 applicable with respect to remuneration paid after Jan. 2, 1968, see section 504(d) of Pub. L. 90–248, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 313(a) of Pub. L. 89–97 applicable only with respect to tips received by employees after 1965, see section 313(f) of Pub. L. 89–97, set out as an Effective Date note under section 6053 of Title 26, Internal Revenue Code.

Amendment by section 320(a)(1) of Pub. L. 89–97 applicable with respect to remuneration paid after December 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1964 AMENDMENTS

Amendment by Pub. L. 88–650 applicable with respect to remuneration paid on or after the first day of the first calendar month which begins more than ten days after Oct. 13, 1964, see section 4(d) of Pub. L. 88–650, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 88–272 applicable to remuneration paid after Dec. 31, 1962, see section 220(d) of Pub. L. 88–272, set out as an Effective Date note under section 406 of Title 26.

EFFECTIVE DATE OF 1961 AMENDMENTS

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after August 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after August 1, 1961, see sections 102(f) and 109 of Pub. L. 87–64, set out as 1961 Increase in Monthly Benefits; Effective Date, and Effective Date of 1961 Amendment notes, respectively, under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 2 of Pub. L. 85–786 provided that: ''The amendment made by section 1 [amending this section] shall be applicable to remuneration paid after the enactment of this Act [Aug. 27, 1958], except that, in the case of any coverage group which is included under the agreement of a State under section 218 of the Social Security Act [section 418 of this title], the amendment made by section 1 shall also be applicable to remuneration for any member of such coverage group with respect to services performed after the effective date, specified in such agreement, for such coverage group, if such State has paid or agrees, prior to January 1, 1959, to pay, prior to such date, the amounts which under section 218(e) [section 418(e) of this title] would have been payable with respect to remuneration of all members of such coverage group had the amendment made by section 1 been in effect on and after January 1, 1951. Failure by a State to make such payments prior to January 1, 1959, shall be treated the same as failure to make payments when due under section 218(e).''

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

Section 105(d) of act Aug. 1, 1956, ch. 836, provided that: ''The amendment made by subsection (a) of this section [amending this section] shall apply with respect to remuneration paid after 1956, and the amendment made by subsection (b) of this section [amending section 410 of this title] shall apply with respect to service performed after 1956.''

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 101(a)(1)–(3) of act Sept. 1, 1954, applicable only with respect to remuneration paid after 1954, see section 101(m) of act Sept. 1, 1954, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 104(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect January 1, 1951, except that sections 214, 215, and 216 of the Social Security Act [sections 414 to 416 of this title] shall be applicable (1) in the case of monthly benefits for months after August 1950, and (2) in the case of lump-sum death payments with respect to deaths after August 1950.''

EFFECTIVE DATE OF 1948 AMENDMENT

Section 1(b) of act Apr. 20, 1948, provided in part that: ''The amendment made by subsection (a) [amending this section] shall be applicable with respect to services performed after the date of the enactment of this Act [Apr. 20, 1948].''

EFFECTIVE DATE OF 1946 AMENDMENT

Sections 407(b), 408(b), and 409(b) of act Aug. 10, 1946, each provided that: ''The amendment made by subsection (a) of this section [amending this section] shall be applicable only in cases of applications for benefits under this title [this subchapter] filed after December 31, 1946.''

EFFECTIVE DATE OF 1945 AMENDMENT

Section 5(a) of act Dec. 29, 1945, provided that the amendment made by that section is effective Jan. 1, 1946.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 201 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

REPEALS: AMENDMENTS AND APPLICATION OF AMENDMENTS UNAFFECTED

Section 202(b)(2) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, § 5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under former section 2515 of Title 22, Foreign Relations and Intercourse.

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

For purposes of this subchapter, the term ''wages'' shall not include the amount of any refund required under section 421 of Pub. L. 100–360 [42 U.S.C. 1395b note], see section 10202 of Pub. L. 101–239, set out as a note under section 1395b of this title.

NONENFORCEMENT OF AMENDMENT MADE BY SECTION 1151 OF PUB. L. 99–514; MONIES APPROPRIATED FOR FISCAL YEAR 1990 NOT TO BE USED FOR ENFORCEMENT OR IMPLEMENTATION OF AMENDMENT

No monies appropriated by Pub. L. 101–136 to be used to implement or enforce section 1151 of Pub. L. 99–514 or the amendments made by such section, see section 528 of Pub. L. 101–136, set out as a note under section 89 of Title 26, Internal Revenue Code.

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

Notwithstanding section 101(d) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note above, the amendment of this section by section 101(c)(1) of Pub. L. 98–21 is applicable only with respect to remuneration paid after Dec. 31, 1985, with remuneration paid prior to Jan. 1, 1986, under section 371(b) of Title 28, Judiciary and Judicial Procedure, to an individual performing service under section 294 of Title 28 not to be included in the term ''wages'' for purposes of this section or section 3121(a) of Title 26, Internal Revenue Code, see section 4 of Pub. L. 98–118, set out as a note under section 3121 of Title 26.

PAYMENTS UNDER STATE TEMPORARY DISABILITY LAW TO BE TREATED AS REMUNERATION FOR SERVICE

For purposes of applying this section with respect to the parenthetical matter contained in subsec. (b)(2) of this section, payments under a State temporary disability law to be treated as remuneration for service, see section 3(e) of Pub. L. 97–123, set out as a note under section 3121 of Title 26, Internal Revenue Code.

SERVICES FOR COOPERATIVES PRIOR TO 1951

Section 110 of act Aug. 28, 1950, provided that: ''In any case in which—

''(1) an individual has been employed at any time prior to 1951 by organizations enumerated in the first sentence of section 101(12) of the Internal Revenue Code [1939].

''(2) the service performed by such individual during the time he was so employed constituted agricultural labor as defined in section 209(*l*) of the Social Security Act [former subsec. (*l*) of this section] and section 1426(h) of the Internal Revenue Code [1939], as in effect prior to the enactment of this Act [Aug. 28, 1950], and such service would, but for the provisions of such sections, have constituted employment for the purposes of title II of the Social Security Act [this subchapter] and subchapter A of chapter 9 of such Code [1939].

''(3) the taxes imposed by sections 1400 and 1410 of the Internal Revenue Code [1939] have been paid with respect to any part of the remuneration paid to such individual by such organization for such service and the payment of such taxes by such organization has been made in good faith upon the assumption that such service did not constitute agricultural labor as so defined, and

''(4) no refund of such taxes has been obtained,

the amount of such remuneration with respect to which such taxes have been paid shall be deemed to constitute remuneration for employment as defined in section 209(b) of the Social Security Act [former subsec. (b) of this section] as in effect prior to the enactment of this Act [Aug. 28, 1950] (but it shall not constitute wages for purposes of deductions under section 203 of such Act [section 403 of this title] for months for which benefits under title II of such Act [this subchapter] have been certified and paid prior to the enactment of this act.''

REFUNDS OR CREDITS FOR OVERPAYMENTS

Section 3 of act Apr. 20, 1948, provided that: ''If any amount paid prior to the date of the enactment of this Act [Apr. 20, 1948] constitutes an overpayment of tax

solely by reason of an amendment made by this Act [amending this section], no refund or credit shall be made or allowed with respect to the amount of such overpayment.''

CROSS REFERENCES

Correlation of payments under Railroad Retirement Act and crediting railroad industry service under this subchapter in certain cases, see sections 231b, 231q, 231r of Title 45, Railroads.

Definitions under Internal Revenue Code, see section 7701 of Title 26, Internal Revenue Code.

Taxes on services rendered by employees of international organizations prior to Jan. 1, 1946, see note set out under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403, 405, 413, 415, 417, 418, 424a, 430 of this title; title 5 sections 5901, 8440; title 26 section 7701; title 29 section 206; title 38 section 1301; title 45 sections 231, 231b, 231e.

§ 410. Definitions relating to employment

For the purposes of this subchapter—

(a) Employment

The term ''employment'' means any service performed after 1936 and prior to 1951 which was employment for the purposes of this subchapter under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee (i) of an American employer (as defined in subsection (e) of this section), or (ii) of a foreign affiliate (as defined in section 3121(*l*)(6) of the Internal Revenue Code of 1986) of an American employer during any period for which there is in effect an agreement, entered into pursuant to section 3121(*l*) of such Code, with respect to such affiliate, or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 433 of this title; except that, in the case of service performed after 1950, such term shall not include—

(1) Service performed by foreign agricultural workers lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) Domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3)(A) Service performed by a child under the age of 18 in the employ of his father or mother;

(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual under the age of 21 in the employ of his father or mother, or performed by an individual in the employ of his spouse or son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service performed by an individual in the employ of his son or daughter if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

(4) Service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft when outside the United States and (B)(i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) Service performed in the employ of the United States or any instrumentality of the United States, if such service—

(A) would be excluded from the term ''employment'' for purposes of this subchapter if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1983 had remained in effect, and

(B) is performed by an individual who—

(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—

(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,

(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization as described under section 3343 of subchapter III of chapter 33 of title 5 or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

(III) if an individual performing service described in subparagraph (A) is reemployed or reinstated after being sepa-

rated from such service for the purpose of accepting employment with the American Institute of Taiwan as provided under section 3310 of title 22, then the service performed for that Institute shall be considered service described in subparagraph (A),

(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A), and

(V) if an individual performing service described in subparagraph (A) returns to the performance of such service after employment (by a tribal organization) to which section 450i(e)(2) of title 25 applies, then the service performed for that tribal organization shall be considered service described in subparagraph (A); or

(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);

except that this paragraph shall not apply with respect to any such service performed on or after any date on which such individual performs—

(C) service performed as the President or Vice President of the United States,

(D) service performed—

(i) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5,

(ii) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service, or

(iii) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107(a)(1) or (b)(1) of title 3, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(E) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Court of Federal Claims, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate judge, or a referee in bankruptcy or United States bankruptcy judge,

(F) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress,

(G) any other service in the legislative branch of the Federal Government if such service—

(i) is performed by an individual who was not subject to subchapter III of chapter 83 of title 5 or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983, or

(ii) is performed by an individual who has, at any time after December 31, 1983, received a lump-sum payment under section 8342(a) of title 5 or under the corresponding provision of the law establishing the other retirement system described in clause (i), or

(iii) is performed by an individual after such individual has otherwise ceased to be subject to subchapter III of chapter 83 of title 5, (without having an application pending for coverage under such subchapter), while performing service in the legislative branch (determined without regard to the provisions of subparagraph (B) relating to continuity of employment), for any period of time after December 31, 1983,

and for purposes of this subparagraph (G) an individual is subject to such subchapter III or to any such other retirement system at any time only if (a) such individual's pay is subject to deductions, contributions, or similar payments (concurrent with the service being performed at that time) under section 8334(a) of such title 5 or the corresponding provision of the law establishing such other system, or (in a case to which section 8332(k)(1) of such title applies) such individual is making payments of amounts equivalent to such deductions, contributions, or similar payments while on leave without pay, or (b) such individual is receiving an annuity from the Civil Service Retirement and Disability Fund, or is receiving benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), or

(H) service performed by an individual—

(i) on or after the effective date of an election by such individual, under section 301 of the Federal Employees' Retirement System Act of 1986 or section 2157 of title 50, to become subject to the Federal Employees' Retirement System provided in chapter 84 of title 5, or

(ii) on or after the effective date of an election by such individual, under regulations issued under section 860 of the Foreign Service Act of 1980 [22 U.S.C. 4071i], to become subject to the Foreign Service Pension System provided in subchapter II of chapter 8 of title I of such Act [22 U.S.C. 4071 et seq.];

(6) Service performed in the employ of the United States or any instrumentality of the United States if such service is performed—

(A) in a penal institution of the United States by an inmate thereof;

(B) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training; or

(C) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) service included under an agreement under section 418 of this title,

(B) service which, under subsection (k) of this section, constitutes covered transportation service,

(C) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this subchapter—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an officer or employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(D) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States; except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis,

(E) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (C) shall apply, or

(F) service in the employ of a State (other than the District of Columbia, Guam, or American Samoa), of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, by an individual who is not a member of a retirement system of such State, political subdivision, or instrumentality, except that the provisions of this subparagraph shall not be applicable to service performed—

(i) by an individual who is employed to relieve such individual from unemployment;

(ii) in a hospital, home, or other institution by a patient or inmate thereof;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency;

(iv) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year; or

(v) by an employee in a position compensated solely on a fee basis which is treated pursuant to section 411(c)(2)(E) of this title as a trade or business for purposes of inclusion of such fees in net earnings from self employment;

for purposes of this subparagraph, except as provided in regulations prescribed by the Secretary of the Treasury, the term ''retirement system'' has the meaning given such term by section 418(b)(4) of this title;

(8)(A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under section 3121(r) of the Internal Revenue Code of 1986 is in effect with respect to

such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) Service performed in the employ of a church or qualified church-controlled organization if such church or organization has in effect an election under section 3121(w) of the Internal Revenue Code of 1986, other than service in an unrelated trade or business (within the meaning of section 513(a) of such Code);

(9) Service performed by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1986;

(10) Service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) of the Internal Revenue Code of 1986 if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services in its employ performed by a student referred to in section 418(c)(5) of this title are covered under the agreement between the Commissioner of Social Security and such State entered into pursuant to section 418 of this title;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

(14)(A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) Service performed in the employ of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act (59 Stat. 669) [22 U.S.C. 288 et seq.], except service which constitutes ''employment'' under subsection (r) of this section;

(16) Service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and furbearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

(17) Service in the employ of any organization which is performed (A) in any year during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended [50 U.S.C. 781 et seq.], as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

(18) Service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section 1101(a)(15)(H)(ii) of title 8;

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 1101(a)(15) of title 8, and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q) as the case may be;

(20) Service (other than service described in paragraph (3)(A)) performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which—

(A) such individual does not receive any cash remuneration (other than as provided in subparagraph (B)),

(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individual's share depends on the amount of the boat's (or boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life,

but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals; or

(21) Domestic service in a private home of the employer which—

(A) is performed in any year by an individual under the age of 18 during any portion of such year; and

(B) is not the principal occupation of such employee.

(b) Included and excluded service

If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term ''pay period'' means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (a) of this section.

(c) American vessel

The term ''American vessel'' means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

(d) American aircraft

The term ''American aircraft'' means an aircraft registered under the laws of the United States.

(e) American employer

The term ''American employer'' means an employer which is (1) the United States or any instrumentality thereof, (2) a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing, (3) an individual who is a resident of the United States, (4) a partnership, if two-thirds or more of the partners are residents of the United States, (5) a trust, if all of the trustees are residents of the United States, or (6) a corporation organized under the laws of the United States or of any State.

(f) Agricultural labor

The term ''agricultural labor'' includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 1141j(g) of title 12, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(4)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A) of this paragraph, but only if such operators produced all of the commodity with respect to which such service is performed. For the purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than twenty at any time during the calendar year in which such service is performed.

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

The provisions of subparagraphs (A) and (B) of paragraph (4) of this subsection shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(g) Farm

The term ''farm'' includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(h) State

The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(i) United States

The term ''United States'' when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(j) Employee

The term ''employee'' means—

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2) of this subsection) who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term ''employee'' under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

(k) Covered transportation service

(1) Except as provided in paragraph (2) of this subsection, all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system is, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C) of this paragraph.

(3) All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) For the purposes of this subsection—

(A) The term ''general retirement system'' means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this subchapter, and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term ''political subdivision'' includes an instrumentality of (i) a State, (ii) one or more political subdivisions of a State, or (iii) a State and one or more of its political subdivisions.

(*l*) Service in uniformed services

(1) Except as provided in paragraph (4), the term ''employment'' shall, notwithstanding the provisions of subsection (a) of this section, include—

(A) service performed after December 1956 by an individual as a member of a uniformed service on active duty, but such term shall not include any such service which is performed while on leave without pay, and

(B) service performed after December 1987 by an individual as a member of a uniformed service on inactive duty training.

(2) The term ''active duty'' means ''active duty'' as described in paragraph (21) of section 101 of title 38, except that it shall also include ''active duty for training'' as described in paragraph (22) of such section.

(3) The term ''inactive duty training'' means ''inactive duty training'' as described in paragraph (23) of such section 101.

(4)(A) Paragraph (1) of this subsection shall not apply in the case of any service, performed by an individual as a member of a uniformed service, which is creditable under section 231b(i) of title 45. The Railroad Retirement Board shall notify the Commissioner of Social Security,[1] with respect to all such service which is so creditable.

(B) In any case where benefits under this subchapter are already payable on the basis of such individual's wages and self-employment income at the time such notification (with respect to such individual) is received by the Commissioner of Social Security, the Commissioner of Social Security shall certify no further benefits for payment under this subchapter on the basis of such individual's wages and self-employment income, or shall recompute the amount of any further benefits payable on the basis of such wages and self-employment income, as may be required as a consequence of subparagraph (A) of this paragraph. No payment of a benefit to any person on the basis of such individual's wages and self-employment income, certified by the Commissioner of Social Security prior to the end of the month in which the Commissioner receives such notification from the Railroad Retirement Board, shall be deemed by reason of this subparagraph to have been an erroneous payment or a payment to which such person was not entitled. The Commissioner of Social Security shall, as soon as possible after the receipt of such notification from the Railroad Retirement Board, advise such Board whether or not any such benefit will be reduced or terminated by reason of subparagraph (A) of this paragraph, and if any such benefit will be so reduced or terminated, specify the first month with respect to which such reduction or termination will be effective.

(m) Member of a uniformed service

The term ''member of a uniformed service'' means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component as defined in section 101(27) of title 38), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, the National Oceanic and Atmospheric Administration Corps, or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military, naval, or air service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Military Selective Service Act [50 App. U.S.C. 451 et seq.], has been selected for active military, naval, or air service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

(n) Crew leader

The term ''crew leader'' means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. A crew leader shall, with respect to services performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

(*o*) Peace Corps volunteer service

The term ''employment'' shall, notwithstanding the provisions of subsection (a) of this section, include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act [22 U.S.C. 2501 et seq.].

(p) Medicare qualified government employment

(1) For purposes of sections 426 and 426–1 of this title, the term ''medicare qualified govern-

[1] So in original. The comma probably should not appear.

ment employment'' means any service which would constitute ''employment'' as defined in subsection (a) of this section but for the application of the provisions of—

(A) subsection (a)(5) of this section, or

(B) subsection (a)(7) of this section, except as provided in paragraphs (2) and (3).

(2) Service shall not be treated as employment by reason of paragraph (1)(B) if the service is performed—

(A) by an individual who is employed by a State or political subdivision thereof to relieve him from unemployment,

(B) in a hospital, home, or other institution by a patient or inmate thereof as an employee of a State or political subdivision thereof or of the District of Columbia,

(C) by an individual, as an employee of a State or political subdivision thereof or of the District of Columbia, serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency,

(D) by any individual as an employee included under section 5351(2) of title 5 (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or a medical or dental resident in training, or

(E) by an election official or election worker if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year.

As used in this paragraph, the terms ''State'' and ''political subdivision'' have the meanings given those terms in section 418(b) of this title.

(3) Service performed for an employer shall not be treated as employment by reason of paragraph (1)(B) if—

(A) such service would be excluded from the term ''employment'' for purposes of this section if paragraph (1)(B) did not apply;

(B) such service is performed by an individual—

(i) who was performing substantial and regular service for remuneration for that employer before April 1, 1986,

(ii) who is a bona fide employee of that employer on March 31, 1986, and

(iii) whose employment relationship with that employer was not entered into for purposes of meeting the requirements of this subparagraph; and

(C) the employment relationship with that employer has not been terminated after March 31, 1986.

(4) For purposes of paragraph (3), under regulations (consistent with regulations established under section 3121(u)(2)(D) of the Internal Revenue Code of 1986)—

(A) all agencies and instrumentalities of a State (as defined in section 418(b) of this title) or of the District of Columbia shall be treated as a single employer, and

(B) all agencies and instrumentalities of a political subdivision of a State (as so defined) shall be treated as a single employer and shall not be treated as described in subparagraph (A).

(q) Treatment of real estate agents and direct sellers

Notwithstanding any other provision of this subchapter, the rules of section 3508 of the Internal Revenue Code of 1986 shall apply for purposes of this subchapter.

(r) Service in employ of international organizations by certain transferred Federal employees

(1) For purposes of this subchapter, service performed in the employ of an international organization by an individual pursuant to a transfer of such individual to such international organization pursuant to section 3582 of title 5 shall constitute ''employment'' if—

(A) immediately before such transfer, such individual performed service with a Federal agency which constituted ''employment'' as defined in subsection (a) of this section, and

(B) such individual would be entitled, upon separation from such international organization and proper application, to reemployment with such Federal agency under such section 3582.

(2) For purposes of this subsection:

(A) The term ''Federal agency'' means an agency, as defined in section 3581(1) of title 5.

(B) The term ''international organization'' has the meaning provided such term by section 3581(3) of title 5.

(Aug. 14, 1935, ch. 531, title II, §210, as added Aug. 10, 1946, ch. 951, title II, §201, 60 Stat. 979; amended, Aug. 28, 1950, ch. 809, title I, §104(a), 64 Stat. 492, 494; Oct. 31, 1949, ch. 792, title V, §506(a), formerly §505(a), as added July 12, 1951, ch. 223, 65 Stat. 120, and renumbered Oct. 3, 1961, Pub. L. 87–345, §3, 75 Stat. 761; Sept. 1, 1954, ch. 1206, title I, §101(a)(4), (5), (b), (c)(1), (2), (e), (f), (m), 68 Stat. 1052, 1061; Aug. 1, 1956, ch. 836, title I, §§104(a), (b), (c)(1), 105(b), 121(c), 70 Stat. 824, 828, 839; Aug. 1, 1956, ch. 837, title IV, §402(a), 70 Stat. 870; Aug. 28, 1958, Pub. L. 85–840, title III, §311(a), 312(a), 72 Stat. 1035; June 25, 1959, Pub. L. 86–70, §32(c)(2), 73 Stat. 149; Aug. 18, 1959, Pub. L. 86–168, title I, §104(h), title II, §202(a), 73 Stat. 387, 389; July 12, 1960, Pub. L. 86–624, §30(c)(2), 74 Stat. 420; Sept. 13, 1960, Pub. L. 86–778, title I, §§103(c)–(f), (j)(2)(A), (B), 104(a), 74 Stat. 936, 937, 942; Sept. 21, 1961, Pub. L. 87–256, §110(e)(2), 75 Stat. 537; Sept. 22, 1961, Pub. L. 87–293, title II, §202(b)(1), 75 Stat. 626; July 30, 1965, Pub. L. 89–97, title III, §§311(a)(3), (4), 317(a), 79 Stat. 380, 381, 388; Jan. 2, 1968, Pub. L. 90–248, title I, §123(a), title IV, §403(a), 81 Stat. 844, 931; Oct. 30, 1972, Pub. L. 92–603, title I, §§123(a)(1), 128(a), 129(a)(1), 86 Stat. 1354, 1358, 1359; Oct. 16, 1974, Pub. L. 93–445, title III, §311, 88 Stat. 1359; Oct. 4, 1976, Pub. L. 94–455, title XII, §1207(e)(2)(A), 90 Stat. 1707; Oct. 19, 1976, Pub. L. 94–563, §1(a), 90 Stat. 2655; Dec. 20, 1977, Pub. L. 95–216, title III, §351(a)(1), (3)(B), 91 Stat. 1549; Nov. 6, 1978, Pub. L. 95–600, title VII, §703(j)(14)(C), 92 Stat. 2942;

Sept. 3, 1982, Pub. L. 97–248, title II, §§269(b), 278(b)(1), 96 Stat. 552, 560; Jan. 12, 1983, Pub. L. 97–448, title III, §309(b)(23), 96 Stat. 2410; Apr. 20, 1983, Pub. L. 98–21, title I, §§101(a), 102(a), title III, §§321(b), 322(a)(1), 323(a)(2), 97 Stat. 67, 70, 118, 120, 121; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§2601(a), 2603(a)(1), 2661(j), 2663(a)(7), (j)(3)(A)(i), 98 Stat. 1122, 1128, 1157, 1162, 1170; Dec. 26, 1985, Pub. L. 99–221, §3(b), 99 Stat. 1735; Apr. 7, 1986, Pub. L. 99–272, title XIII, §§13205(b)(1), 13303(c)(2), 100 Stat. 316, 327; June 6, 1986, Pub. L. 99–335, title III, §304(a), 100 Stat. 606; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §§1883(a)(4), 1895(b)(18)(B), (19), 100 Stat. 2916, 2935; Dec. 22, 1987, Pub. L. 100–203, title IX, §§9001(a)(1), 9004(a), 9005(a), 9023(a), 101 Stat. 1330–286 to 1330–288, 1330–295; Nov. 10, 1988, Pub. L. 100–647, title I, §1001(d)(2)(E), title VIII, §§8015(b)(1), (c)(1), 8016(a)(4)(B), (C), 102 Stat. 3351, 3791–3793; Dec. 19, 1989, Pub. L. 101–239, title X, §10201(b)(1), 103 Stat. 2472; Nov. 5, 1990, Pub. L. 101–508, title XI, §11332(a), 104 Stat. 1388–469; Dec. 1, 1990, Pub. L. 101–650, title III, §321, 104 Stat. 5117; Oct. 29, 1992, Pub. L. 102–572, title IX, §902(b)(1), 106 Stat. 4516; Dec. 3, 1993, Pub. L. 103–178, title II, §204(d), 107 Stat. 2033; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), title III, §§303(a)(1), (b)(1), 319(b)(1), (3), 320(b), 321(a)(13), (c)(6)(C), (D), 108 Stat. 1478, 1518, 1519, 1534–1536, 1538; Oct. 22, 1994, Pub. L. 103–387, §2(a)(2)(B), 108 Stat. 4072.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is classified to Title 26, Internal Revenue Code.

The Civil Service Retirement and Disability Fund, referred to in subsec. (a)(5)(B)(ii), (G), is provided for in section 8348 of Title 5, Government Organization and Employees.

Section 301 of the Federal Employees' Retirement System Act of 1986, referred to in subsec. (a)(5)(H)(i), is section 301 of Pub. L. 99–335, which is set out as a note under section 8331 of Title 5.

The Foreign Service Act of 1980, referred to in subsec. (a)(5)(H)(ii), is Pub. L. 96–465, Oct. 17, 1980, 94 Stat. 2071, as amended. Subchapter II of chapter 8 of title I of the Act is classified generally to part II (§4071 et seq.) of subchapter VIII of chapter 52 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3901 of Title 22 and Tables.

The International Organizations Immunities Act, referred to in subsec. (a)(15), is act Dec. 29, 1945, ch. 652, title I, 59 Stat. 669, as amended, which is classified principally to subchapter XVIII (§288 et seq.) of chapter 7 of Title 22. For complete classification of that Act to the Code, see Short Title note set out under section 288 of Title 22 and Tables.

The Internal Security Act of 1950, as amended, referred to in subsec. (a)(17), is act Sept. 23, 1950, ch. 1024, 64 Stat. 987, as amended, which is classified principally to chapter 23 (§781 et seq.) of Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 781 of Title 50 and Tables.

The Military Selective Service Act, referred to in subsec. (m)(5)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

The Peace Corps Act, referred to in subsec. (*o*), is Pub. L. 87–293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of that Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, §321(c)(6)(C), substituted ''1986'' for ''1954'' after ''Code of'' in introductory provisions.

Subsec. (a)(5)(B)(i)(V). Pub. L. 103–296, §321(a)(13), made technical amendment to reference to section 450i(e)(2) of title 25 to reflect renumbering of corresponding section of original act.

Subsec. (a)(7)(F)(iv). Pub. L. 103–296, §303(a)(1), substituted ''$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year'' for ''$100''.

Subsec. (a)(8)(A), (B), (9). Pub. L. 103–296, §321(c)(6)(C), substituted ''1986'' for ''1954'' after ''Code of''.

Subsec. (a)(10)(B). Pub. L. 103–296, §321(c)(6)(C), substituted ''1986'' for ''1954'' after ''Code of''.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(15). Pub. L. 103–296, §319(b)(3), inserted before semicolon at end '', except service which constitutes 'employment' under subsection (r) of this section''.

Subsec. (a)(19). Pub. L. 103–296, §320(b), substituted ''(J), (M), or (Q)'' for ''(J), or (M)'' in two places.

Subsec. (a)(21). Pub. L. 103–387 added par. (21).

Subsec. (*l*)(4). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner receives'' for ''he receives'' in subpar. (B).

Subsec. (p)(2)(E). Pub. L. 103–296, §303(b)(1), substituted ''$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under section 418(c)(8)(B) of this title for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year'' for ''$100''.

Subsecs. (p)(4), (q). Pub. L. 103–296, §321(c)(6)(D), substituted ''1986'' for ''1954'' after ''Code of''.

Subsec. (r). Pub. L. 103–296, §319(b)(1), added subsec. (r).

1993—Subsec. (a)(5)(H)(i). Pub. L. 103–178 substituted ''section 2157 of title 50'' for ''section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees''.

1992—Subsec. (a)(5)(E). Pub. L. 102–572 substituted ''United States Court of Federal Claims'' for ''United States Claims Court''.

1990—Subsec. (a)(7)(F). Pub. L. 101–508 added subpar. (F).

1989—Subsec. (a). Pub. L. 101–239 substituted ''3121(*l*)(6)'' for ''3121(*l*)(8)'' in introductory provisions.

1988—Subsec. (a)(5). Pub. L. 100–647, §8015(c)(1), in provision following subpar. (B) inserted ''any such service performed on or after any date on which such individual performs'' after ''with respect to''.

Subsec. (a)(5)(H). Pub. L. 100–647, §8015(b)(1), amended subpar. (H) generally. Prior to amendment, subpar. (H) read as follows: ''service performed by an individual on or after the effective date of an election by such individual under section 301(a) of the Federal Employees' Retirement System Act of 1986, or under regulations issued under section 860 of the Foreign Service Act of 1980 or section 307 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, to become subject to chapter 84 of title 5;''.

Subsec. (a)(19). Pub. L. 100–647, §1001(d)(2)(E), substituted ''(F), (J), or (M)'' for ''(F) or (J)'' in two places.

Subsec. (a)(20). Pub. L. 100–647, §8016(a)(4)(B), (C), amended Pub. L. 99–272, §13303(c)(2), see 1986 Amendment note below.

1987—Subsec. (a)(3)(A). Pub. L. 100–203, §9005(a)(1), substituted ''18'' for ''twenty-one''.

Pub. L. 100–203, §9004(a)(1), struck out reference to service performed by an individual in the employ of his spouse.

Subsec. (a)(3)(B). Pub. L. 100–203, §9005(a)(2), inserted reference to an individual under the age of 21 in the employ of his father or mother.

Pub. L. 100–203, §9004(a)(2), substituted introductory provisions for former introductory provisions which read as follows: ''Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—''.

Subsec. (*l*)(1). Pub. L. 100–203, §9001(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (4) of this subsection, the term 'employment' shall, notwithstanding the provisions of subsection (a) of this section, include service performed after December 1956 by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.''

Subsec. (p). Pub. L. 100–203, §9023(p), directed that the heading of subsec. (p) be amended to read the same as it was set out in the general amendment of subsec. (p) by Pub. L. 99–272, see 1986 Amendment note below.

1986—Subsec. (a)(5)(G). Pub. L. 99–514, §1883(a)(4), substituted ''any other service'' for ''Any other service''.

Subsec. (a)(5)(H). Pub. L. 99–335 added subpar. (H).

Subsec. (a)(20). Pub. L. 99–272, §13303(c)(2), as amended by Pub. L. 100–647, §8016(a)(4)(B), (C), substituted ''Service (other than service described in paragraph (3)(A)) performed'' for ''Service performed'' in introductory provisions.

Subsec. (p). Pub. L. 99–272, §13205(b)(1), amended subsec. (p) generally. Prior to amendment, subsec. (p) read as follows: ''For purposes of sections 426 and 426–1 of this title, the term 'medicare qualified Federal employment' means any service which would constitute 'employment' as defined in subsection (a) of this section but for the application of the provisions of subsection (a)(5) of this section.''

Subsec. (p)(2)(E). Pub. L. 99–514, §1895(b)(18)(B), added subpar. (E).

Subsec. (p)(4)(B). Pub. L. 99–514, §1895(b)(19), struck out quotation marks before ''(A)''.

1985—Subsec. (a)(5)(B)(i)(V). Pub. L. 99–221 added subcl. (V).

1984—Subsec. (a). Pub. L. 98–369, §2661(j), struck out the second comma after ''such affiliate''.

Subsec. (a)(1). Pub. L. 98–369, §2663(a)(7)(A), struck out ''(A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended, or (B)''.

Subsec. (a)(5)(B). Pub. L. 98–369, §2601(a)(1), in amending subpar. (B) generally, substituted ''(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,'' for ''(i) has been continuously in the employ of the United States or an instrumentality thereof since December 31, 1983 (and for this purpose an individual who returns to the performance of such service after being separated therefrom following a previous period of such service shall nevertheless be considered upon such return as having been continuously in the employ of the United States or an instrumentality thereof, regardless of whether the period of such separation began before, on, or after December 31, 1983, if the period of such separation does not exceed 365 consecutive days),'', added subcls. (II) to (IV), and reenacted cl. (ii).

Subsec. (a)(5)(C) to (F). Pub. L. 98–369, §2601(a)(2)(A), (B), in provisions following ''except that this paragraph shall not apply with respect to—'' redesignated cls. (i), (ii), (iii), and (iv) as subpars. (C), (D), (E), and (F), respectively, and redesignated former subcls. (I), (II), and (III) as cls. (i), (ii), and (iii), respectively, of the redesignated subpar. (D).

Subsec. (a)(5)(G). Pub. L. 98–369, §2601(a)(2)(A), (C), in provisions following ''except that this paragraph shall not apply with respect to—'' redesignated former cl. (v) as subpar. (G), and in subpar. (G) as so redesignated, designated the existing provisions of subpar. (G) as the introductory language and the first phrase of cl. (i) and added the remainder of cl. (i) following ''chapter 38 of title 5'', cls. (ii) and (iii), and the provisions following cl. (iii).

Subsec. (a)(7)(D). Pub. L. 98–369, §2663(a)(7)(B), realigned margins of subpar. (D).

Subsec. (a)(8). Pub. L. 98–369, §2603(a)(1), designated existing provisions as subpar. (A), substituted ''this subparagraph'' for ''this paragraph'', and added subpar. (B).

Subsec. (a)(9). Pub. L. 98–369, §2663(a)(7)(C), substituted ''section 3231 of the Internal Revenue Code of 1954'' for ''section 1532 of the Internal Revenue Code of 1939''.

Subsec. (a)(10)(B). Pub. L. 98–369, §2663(j)(3)(A)(i), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsec. (a)(19). Pub. L. 98–369, §2663(a)(7)(D), struck out the comma after ''; or''.

Subsec. (*l*)(2). Pub. L. 98–369, §2663(a)(7)(E), substituted ''paragraph (21) of section 101 of title 38'' for ''section 102 of the Servicemen's and Veterans' Survivor Benefits Act'' and ''paragraph (22) of such section'' for ''such section''.

Subsec. (*l*)(3). Pub. L. 98–369, §2663(a)(7)(F), substituted ''paragraph (23) of such section 101'' for ''such section 102''.

Subsec. (*l*)(4)(A). Pub. L. 98–369, §2663(j)(3)(A)(i), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Subsec. (m). Pub. L. 98–369, §2663(a)(7)(G)(i), (ii), in provisions preceding par. (1), substituted ''a reserve component as defined in section 101(27) of title 38'' for ''a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act'' and inserted reference to the National Oceanic and Atmospheric Administration Corps.

Subsec. (m)(5). Pub. L. 98–369, §2663(a)(7)(G)(iii), substituted ''military, naval, or air'' for ''military or naval'' wherever appearing.

Subsec. (m)(5)(B). Pub. L. 98–369, §2663(a)(7)(G)(iv), substituted ''Military Selective Service Act'' for ''Universal Military Training and Service Act''.

1983—Subsec. (a). Pub. L. 98–21, §322(a)(1), added cl. (C) and struck out ''either'' before ''A'' in provisions preceding par. (1).

Pub. L. 98–21, §321(b), amended cl. (B) in provisions preceding par. (1) generally, substituting reference to section 3121(*l*)(8) of the Internal Revenue Code of 1954 for reference to section 3121(*l*) of such Code ''an American employer'' for ''a domestic corporation (as determined in accordance with section 7701 of the Internal Revenue Code of 1954)'', and ''affiliate'' for ''subsidiary'' after ''with respect to such''.

Pub. L. 98–21, §323(a)(2), substituted ''a citizen or resident of the United States'' for ''a citizen of the United States'' in cl. (B) in provisions preceding par. (1).

Subsec. (a)(5). Pub. L. 98–21, §101(a)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939, by virtue of any provision of law which specifically refers to such section in granting such exemption;''.

Subsec. (a)(6). Pub. L. 98–21, §101(a)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows:

''(A) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

''(B) Service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939, on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

''(i) service performed in the employ of a corporation which is wholly owned by the United States;

''(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

''(iii) service performed in the employ of a State, county, or community committee under the Production and Marketing Administration;

''(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

''(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

''(C) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

''(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

''(ii) in the legislative branch;

''(iii) in a penal institution of the United States by an inmate thereof;

''(iv) by any individual as an employee included under section 5351(2) of title 5, other than as a medical or dental intern or a medical or dental resident in training;

''(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

''(vi) by any individual to whom subchapter III of chapter 83 of title 5 does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);''.

Subsec. (a)(8). Pub. L. 98–21, §102(a), struck out subpar. (A) designation, struck out subpar. (B) which had related to service performed by employees of nonprofit organizations, and substituted ''this paragraph'' for ''this subparagraph''.

Subsec. (p). Pub. L. 98–21, §101(a)(2), struck out designations for pars. (1) and (2) and struck out par. (1) which related to application of the provisions of subparagraph (A), (B), or (C)(i), (ii), or (vi) of subsection (a)(6) of this section.

Subsec. (q). Pub. L. 97–448 redesignated subsec. (p), relating to treatment of real estate agents and direct sellers, as (q).

1982—Subsec. (p). Pub. L. 97–248, §269(b), added subsec. (p) relating to treatment of real estate agents and direct sellers.

Pub. L. 97–248, §278(b)(1), added subsec. (p) relating to medicare qualified Federal employment.

1978—Subsec. (a)(6)(B)(v). Pub. L. 95–600 substituted ''Secretary of Transportation'' for ''Secretary of the Treasury''.

1977—Subsec. (a)(10). Pub. L. 95–216, §351(a)(3)(B), struck out subpar. (A) which related to service performed in the employ of any exempt organization under section 101 of the Internal Revenue Code of 1939, and designated existing provisions of subpar. (B) as entire subsec. (a)(10) and, as so designated, redesignated cls. (i) and (ii) as subpars. (A) and (B).

Subsecs. (a)(17)(A), (f)(4)(B). Pub. L. 95–216, §351(a)(1), substituted ''year'' for ''quarter''.

1976—Subsec. (a)(8)(B). Pub. L. 94–563 inserted ''(or deemed to have been so filed under paragraph (4) or (5) of such section 3121(k))'' after ''section 3121(k) of the Internal Revenue Code of 1954'' in provisions preceding cl. (i), inserted ''(or deemed to have been filed)'' after ''filed'' in cls. (i), (ii), and (iii), and substituted ''is (or is deemed to be) in effect'' for ''is in effect'' in provisions following cl. (iii).

Subsec. (a)(20). Pub. L. 94–455 added par. (20).

1974—Subsec. (*l*)(4)(A). Pub. L. 93–445 substituted ''section 231b(i) of title 45'' for ''section 228c–1 of title 45'' and struck out '', as provided in section 228c–1(p)(2) of title 45'' after ''notify the Secretary of Health, Education, and Welfare''.

1972—Subsec. (a)(7)(E). Pub. L. 92–603, §128(a), added subpar. (E).

Subsec. (a)(8)(A). Pub. L. 92–603, §123(a)(1), inserted provisions referring to the election of coverage under section 3121(r) of the Internal Revenue Code of 1954.

Subsec. (a)(10)(B). Pub. L. 92–603, §129(a)(1), designated existing provisions as cl. (i) and added cl. (ii).

1968—Subsec. (a)(3)(B). Pub. L. 90–248, §123(a), inserted exception provision including cls. (i) to (iii).

Subsec. (a)(6)(C)(iv). Pub. L. 90–248, §403(a)(1), substituted reference to section 5351(2) of title 5 for former section 1052 of title 5.

Subsec. (a)(6)(C)(vi). Pub. L. 90–248, §403(a)(2), substituted ''subchapter III of chapter 83 of title 5'' for ''the Civil Service Retirement Act''.

Subsec. (a)(7)(D)(ii). Pub. L. 90–248, §403(a)(3), substituted reference to section 5351(2) of title 5 for former section 1052 of title 5.

1965—Subsec. (a)(6)(C)(iv). Pub. L. 89–97, §311(a)(3), inserted '', other than as a medical or dental intern or a medical or dental resident in training''.

Subsec. (a)(7)(D). Pub. L. 89–97, §317(a)(3), added subpar. (D).

Subsec. (a)(13). Pub. L. 89–97, §311(a)(4), struck out from definition of employment the exclusion of service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law.

1961—Subsec. (a)(19). Pub. L. 87–256 added par. (19).

Subsec. (*o*). Pub. L. 87–293 added subsec. (*o*).

1960—Subsec. (a)(3). Pub. L. 86–778, §104(a), designated existing provisions as cl. (A), struck out provisions which related to service performed by an individual in the employ of his son or daughter, and added cl. (B).

Subsec. (a)(7). Pub. L. 86–778, §103(c), excluded service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof.

Subsec. (a)(18). Pub. L. 86–778, §103(d), added par. (18).

Subsec. (h). Pub. L. 86–778, §103(e), included Guam and American Samoa.

Pub. L. 86–624 substituted ''includes the District of Columbia and'' for ''includes Hawaii, the District of Columbia, and''.

Subsec. (i). Pub. L. 86–778, §103(f), included Guam and American Samoa.

Pub. L. 86–624 struck out ''Hawaii,'' before ''the District of Columbia.''

Subsecs. (j) to (*o*). Pub. L. 86–778, §103(j)(2)(A), (B), repealed subsec. (j) and redesignated subsecs. (*l*) to (*o*) as (k) to (n), respectively.

1959—Subsec. (a)(6)(B)(ii). Pub. L. 86–168 substituted ''Federal land bank association'' for ''national farm loan association'', and included service in the employ

of Federal land banks, Federal intermediate credit banks and banks for cooperatives.

Subsecs. (h), (i). Pub. L. 86–70 struck out ''Alaska,'' before ''Hawaii''.

1958—Subsec. (a)(1). Pub. L. 85–840, §311(a), struck out provisions which excluded from coverage service performed in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 1141j(g) of title 12.

Subsec. (a)(8)(B). Pub. L. 85–840, §312(a), substituted references to the Internal Revenue Code of 1954 for references to the Internal Revenue Code of 1939, and inserted provisions making subparagraph inapplicable to service performed during the period for which a certificate is in effect if such service is performed by an employee who, after the calendar quarter in which the certificate was filed with respect to a group described in section 3121(k)(1)(E) of the Internal Revenue Code of 1954 became a member of such group, and making subparagraph applicable with respect to service performed by an employee as a member of a group described in section 3121(k)(1)(E) with respect to which no certificate is in effect.

1956—Subsec. (a)(1)(B). Act Aug. 1, 1956, ch. 836, §104(a), excluded from coverage service performed by foreign agricultural workers lawfully admitted on a temporary basis from any foreign country or possession thereof.

Subsec. (a)(6)(B)(ii). Act Aug. 1, 1956, ch. 836, §104(b)(1), included service performed in the employ of a Federal Home Loan Bank.

Subsec. (a)(6)(C)(vi). Act Aug. 1, 1956, ch. 836, §104(b)(2), substituted ''Civil Service Retirement Act'' for ''Civil Service Retirement Act of 1930'', and inserted ''(other than the retirement system of the Tennessee Valley Authority)'' after ''retirement system''.

Subsec. (a)(16), (17). Act Aug. 1, 1956, ch. 836, §§104(c)(1), 121(c), added pars. (16) and (17).

Subsecs. (m), (n). Act Aug. 1, 1956, ch. 837, added subsecs. (m) and (n).

Subsec. (*o*). Act Aug. 1, 1956, ch. 836, §105(b), added subsec. (*o*).

1954—Subsec. (a)(B). Act Sept. 1, 1954, §101(m), included within definition of ''employment'' service performed outside the United States by citizens of the United States as employees for foreign subsidiaries of domestic corporations under certain conditions.

Subsec. (a)(1). Act Sept. 1, 1954, §101(a)(4), removed specific exception from employment of services performed in connection with the ginning of cotton, and added an exception for services performed by West Indian agricultural workers lawfully admitted to the United States on a temporary basis.

Subsec. (a)(3). Act Sept. 1, 1954, §101(a)(5), redesignated par. (4) as (3) and struck out former par. (3).

Subsec. (a)(4). Act Sept. 1, 1954, §101(a)(5), (b), redesignated par. (5) as (4), and made the exclusion with respect to services on non-American vessels or aircraft applicable only if the individual is not a United States citizen or the employer is not an American employer. Former par. (4) redesignated (3).

Subsec. (a)(5). Act Sept. 1, 1954, §101(a)(5), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Subsec. (a)(6)(B). Act Sept. 1, 1954, §101(a)(5), (c)(1)(A), redesignated par. (7) as (6), and inserted ''by an individual'' after ''Service performed'' and ''and if such service is covered by a retirement system established by such instrumentality;'' after ''December 31, 1950.''

Subsec. (a)(6)(B)(v). Act Sept. 1, 1954, §101(a)(5), (c)(1)(A), redesignated par. (7) as (6), and added cl. (v).

Subsec. (a)(6)(C). Act Sept. 1, 1954, §101(a)(5), (c)(2), redesignated par. (7) as (6), and struck out exception from coverage for services in the following categories; temporary employees in the Post Office Department field service; temporary census-taking employees of the Bureau of the Census; Federal employees paid on a contract or fee basis; Federal employees receiving compensation of $12 a year or less; certain consular agents; individuals employed under Federal unemployment relief programs; and members of State, county, or community committees under the Production and Marketing Administration and similar bodies, unless such bodies are composed exclusively of full-time Federal employee and limited the exclusion of inmates or patients of United States institutions to inmates of penal institutions.

Subsec. (a)(7) to (17). Act Sept. 1, 1954, §101(a)(5), (e), struck out par. (15) and redesignated pars. (7) to (14), (16), and (17) as (6) to (15), respectively.

Subsec. (k)(3)(C). Act Sept. 1, 1954, §101(f), struck out requirement that services of homeworkers be subject to State licensing laws in order to constitute covered employment.

1951—Subsec. (a)(1)(C). Act Oct. 31, 1949, §505(a), as added by act July 12, 1951, added subpar. (C).

1950—Act Aug. 28, 1950, substituted a new section 410 for former section 410.

CHANGE OF NAME

''United States magistrate judge'' substituted for ''United States magistrate'' in subsec. (a)(5)(E) pursuant to section 321 of Pub. L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

Coast and Geodetic Survey consolidated with National Weather Bureau in 1965 to form Environmental Science Services Administration by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Employees. Commissioned Officer Corps of the Environmental Science Services Administration changed to Commissioned Officer Corps of National Oceanic and Atmospheric Administration, see Reorg. Plan No. 4 of 1970, §4(d), eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, set out in the Appendix to Title 5.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–387 applicable to services performed after Dec. 31, 1994, see section 2(a)(3)(B) of Pub. L. 103–387, set out as a note under section 3102 of Title 26, Internal Revenue Code.

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 303(e) of Pub. L. 103–296 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section, section 418 of this title, and section 3121 of Title 26, Internal Revenue Code] shall apply with respect to service performed on or after January 1, 1995.''

Amendment by section 319(b)(1), (3) of Pub. L. 103–296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103–296, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 320(b) of Pub. L. 103–296 effective with calendar quarter following Aug. 15, 1994, see section 320(c) of Pub. L. 103–296, set out as a note under section 871 of Title 26.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–572 effective Oct. 29, 1992, see section 911 of Pub. L. 102–572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to service performed after July 1, 1991, see section 11332(d) of Pub. L. 101–508, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable with respect to any agreement in effect under section 3121(*l*) of Title 26, Internal Revenue Code, on or after June 15, 1989, with respect to which no notice of termination is in effect on such date, see section 10201(c) of Pub. L. 101–239, set out as a note under section 406 of Title 26.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1001(d)(2)(E) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 8015(b)(1) of Pub. L. 100–647 applicable as if such amendment had been included or reflected in section 304 of Federal Employees' Retirement System Act of 1986, Pub. L. 99–335, at the time of its enactment (June 6, 1986), see section 8015(b)(3) of Pub. L. 100–647, set out as a note under section 3121 of Title 26.

Amendment by section 8015(c)(1) of Pub. L. 100–647 applicable to any individual only upon the performance by such individual of service described in subpar. (C), (D), (E), (F), (G), or (H) of subsec. (a)(5) of this section on or after Nov. 10, 1988, see section 8015(c)(3) of Pub. L. 100–647, set out as a note under section 3121 of Title 26.

Amendment by section 8016(a)(4)(B), (C) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to Title 26, as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of Title 26.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9001(a)(1) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9001(d) of Pub. L. 100–203, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 9004(a) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9004(c) of Pub. L. 100–203, set out as a note under section 3121 of Title 26.

Amendment by section 9005(a) of Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9005(c) of Pub. L. 100–203, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(a)(4) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1895(b)(18)(B) of Pub. L. 99–514 applicable to services performed after Mar. 31, 1986, see section 1895(b)(18)(C) of Pub. L. 99–514, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 1895(b)(19) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26.

Section 13205(d)(2) of Pub. L. 99–272 provided that:

''(A) IN GENERAL.—The amendments made by subsection (b) [amending this section and sections 426, 426–1, and 1395c of this title] shall be effective after March 31, 1986, and the amendments made by paragraph (3) of that subsection [subsection does not contain a paragraph (3)] shall apply to services performed (for medicare qualified government employment) after that date.

''(B) TREATMENT OF CERTAIN DISABILITIES.—For purposes of establishing entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act [section 1395c et seq. of this title] pursuant to the amendments made by subsection (b), no individual may be considered to be under a disability for any period beginning before April 1, 1986.''

EFFECTIVE DATE OF 1985 AMENDMENT

Section 3(c) of Pub. L. 99–221 provided that: ''The amendments made by subsection (b) [amending this section and section 3121 of Title 26, Internal Revenue Code] apply to any return to the performance of service in the employ of the United States, or of an instrumentality thereof, after 1983.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2601(f) of Pub. L. 98–369 provided that: ''Except as provided in subsection (d) [set out as a Qualification and Requalification of Federal Employees for Benefits note below], the amendments made by subsections (a) and (b) [amending this section and section 3121 of Title 26, Internal Revenue Code] (and provisions of subsection (e) [set out as a Services Performed for Nonprofit Organizations by Federal Employees note below]) shall be effective with respect to service performed after December 31, 1983.''

Section 2603(e) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 411 of this title and sections 1402 and 3121 of Title 26 and enacting provisions set out as a note under section 3121 of Title 26] shall apply to service performed after December 31, 1983.''

Amendment by section 2661(j) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(7), (j)(3)(A)(i) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 101(a) of Pub. L. 98–21 effective with respect to service performed after Dec. 31, 1983, see section 101(d) of Pub. L. 98–21, as amended, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by section 102(a) of Pub. L. 98–21 effective with respect to service performed after Dec. 31, 1983, see section 102(c) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

Amendment by section 321(b) of Pub. L. 98–21 applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21, set out as a note under section 406 of Title 26.

Amendment by section 322(a)(1) of Pub. L. 98–21 effective in taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98–21, set out as a note under section 3121 of Title 26.

Amendment by section 323(a)(2) of Pub. L. 98–21 applicable to remuneration paid after Dec. 31, 1983, see section 323(c)(1) of Pub. L. 98–21, set out as a note under 3121 of Title 26.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 269(b) of Pub. L. 97–248 applicable to services performed after Dec. 31, 1982, see section 269(e)(1) of Pub. L. 97–248, set out as an Effective Date note under section 3508 of Title 26, Internal Revenue Code.

Amendment by section 278(b)(1) of Pub. L. 97–248 effective on and after Jan. 1, 1983, see section 278(c)(2)(A) of Pub. L. 97–248, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 applicable with respect to remuneration paid and services rendered after Dec.

31, 1977, see section 351(d) of Pub. L. 95–216, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–563 applicable with respect to services performed after 1950, to the extent covered by waiver certificates filed or deemed to have been filed under section 3121(k)(4) or (5) of Title 26, see section 1(d) of Pub. L. 94–563, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 128(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply with respect to service performed on and after the first day of the first calendar quarter which begins on or after the date of the enactment of this Act [Oct. 30, 1972].''

Section 129(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section and section 3121 of Title 26] shall apply to services performed after December 31, 1972.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 123(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply with respect to services performed after December 31, 1967.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 311(c) of Pub. L. 89–97 provided that: ''The amendments made by paragraphs (1) and (2) of subsection (a) [amending section 411 of this title], and by paragraphs (1), (2), and (3) of subsection (b) [amending section 1402 of Title 26, Internal Revenue Code], shall apply only with respect to taxable years ending on or after December 31, 1965. The amendments made by paragraphs (3) and (4) of subsection (a) [amending this section], and by paragraphs (4) and (5) of subsection (b) [amending section 3121 of Title 26], shall apply only with respect to services performed after 1965.''

Section 317(g) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 3121, 3125, 6205, and 6413 of Title 26, Internal Revenue Code] shall apply with respect to service performed after the calendar quarter in which this section is enacted and after the calendar quarter in which the Secretary of the Treasury receives a certification from the Commissioners of the District of Columbia expressing their desire to have the insurance system established by title II (and part A of title XVIII) of the Social Security Act [this subchapter and part A of subchapter XVIII of this chapter] extended to the officers and employees coming under the provisions of such amendments.''

EFFECTIVE DATE OF 1961 AMENDMENTS

Amendment by Pub. L. 87–293 applicable with respect to service performed after Sept. 22, 1961, but in the case of persons serving under the Peace Corps agency established by executive order applicable with respect to service performed on or after the effective date of enrollment, see section 202(c) of Pub. L. 87–293, set out as a note under section 3121 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 87–256 applicable with respect to service performed after Dec. 31, 1961, see section 110(h)(3) of Pub. L. 87–256, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1960 AMENDMENTS

Amendment by section 103(c) of Pub. L. 86–778 applicable only with respect to (1) service in the employ of the Government of Guam or any political subdivision thereof, or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of Guam that legislation has been enacted by the Government of Guam expressing its desire to have the insurance system established by Title II of the Social Security Act, this subchapter, extended to the officers and employees of such Government and such political subdivisions and instrumentalities, and (2) service in the employ of the Government of American Samoa or any political subdivision thereof or any instrumentality of any one or more of the foregoing wholly owned thereby, which is performed after 1960 and after the calendar quarter in which the Secretary of the Treasury receives a certification by the Governor of American Samoa that the Government of American Samoa desires to have the insurance system established by this subchapter extended to the officers and employees of such Government and such political subdivisions and instrumentalities, see section 103(v)(1), (2) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(d) of Pub. L. 86–778 applicable only with respect to service performed after 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(e), (f) of Pub. L. 86–778 applicable only with respect to service performed after 1960, except that insofar as the carrying on of a trade or business (other than performance of service as an employee) is concerned, the amendment shall be applicable only in the case of taxable years beginning after 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(j)(2)(A), (B) of Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as a note under section 402 of this title.

Section 104(c) of Pub. L. 86–778 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 3121 of Title 26, Internal Revenue Code] shall apply only with respect to services performed after 1960.''

Amendment by Pub. L. 86–624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86–624, set out as a note under section 201 of this title.

EFFECTIVE DATE OF 1959 AMENDMENTS

Amendment by Pub. L. 86–168 effective Jan. 1, 1960, see section 203(c) of Pub. L. 86–168.

Amendment by Pub. L. 86–70 effective Jan. 3, 1959, see section 47(d) of Pub. L. 86–70.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 311(b) of Pub. L. 85–840 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to service performed after 1958.''

Section 312(b) of Pub. L. 85–840, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to certificates filed under section 3121(k)(1) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3121(k)(1) of Title 26, Internal Revenue Code] after the date of enactment of this Act [Aug. 28, 1958].''

EFFECTIVE DATE OF 1956 AMENDMENTS

Amendment by act Aug. 1, 1956, ch. 837, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

Section 104(i) of act Aug. 1, 1956, ch. 836, as amended by Pub. L. 92–603, title I, §125(b), Oct. 30, 1972, 86 Stat. 1357, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply with respect to service performed after 1956. The amendments made by paragraph (1) of subsection (c) [amending this section] shall apply

with respect to service performed after 1954. The amendment made by paragraph (2) of subsection (c) [amending section 411 of this title] shall apply with respect to taxable years ending after 1955. The amendment made by paragraph (3) of subsection (c) [amending section 411 of this title] shall apply with respect to taxable years ending after 1954. The amendment made by subsection (d) [amending section 411 of this title] shall apply with respect to taxable years ending after 1955. The amendment made by subsection (h) [amending section 411 of this title] shall apply with respect to the same taxable years with respect to which the amendment made by section 201(g) of this Act [amending section 1402 of Title 26, Internal Revenue Code] applies.

''(2)(A) Except as provided in subparagraphs (B) and (C), the amendments made by subsection (b) [amending this section] shall apply only with respect to service performed after June 30, 1957, and only if—

''(i) [Repealed. Pub. L. 92–603, title I, §125(b), Oct. 30, 1972, 86 Stat. 1357.]

''(ii) in the case of the amendment made by paragraph (2) of such subsection [amending this section], the conditions prescribed in subparagraph (C) are met.

''(B) [Repealed. Pub. L. 92–603, title I, §125(b), Oct. 30, 1972, 86 Stat. 1357.]

''(C) The amendment made by paragraph (2) of subsection (b) [amending this section] shall be effective only if—

''(i) the Board of Directors of the Tennessee Valley Authority submits to the Secretary of Health, Education, and Welfare, and the Secretary approves, before July 1, 1957, a plan, with respect to employees of the Tennessee Valley Authority, for the coordination, on an equitable basis, of the benefits provided by the retirement system applicable to such employees with the benefits provided by title II of the Social Security Act [this subchapter]; and

''(ii) such plan specifies, as the effective date of the plan, July 1, 1957, or the first day of a prior calendar quarter beginning not earlier than January 1, 1956. If the plan specifies as the effective date of the plan a day before July 1, 1957, the amendment made by paragraph (2) of subsection (b) [amending this section] shall apply with respect to service performed on or after such effective date; except that, if such effective date is prior to the day on which the Secretary approves the plan, such amendment shall not apply with respect to service performed, prior to the day on which the Secretary approves the plan, by an individual who is not an employee of the Tennessee Valley Authority on such day.

''(D) The Secretary of Health, Education, and Welfare shall, on or before July 31, 1957, submit a report to the Congress setting forth the details of any plan approved by him under subparagraph (B) or (C).''

Amendment by section 105(b) of act Aug. 1, 1956, ch. 836, applicable with respect to service performed after 1956, see section 105(d) of such act Aug. 1, 1956, set out as a note under section 409 of this title.

Effective Date of 1954 Amendment

Amendment by section 101(a)(4), (5) of act Sept. 1, 1954, applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954, and amendment by section 101(b), (c)(1), (2), (e), and (f) of act Sept. 1, 1954, applicable only with respect to services performed after 1954, see section 101(n) of act Sept. 1, 1954, set out as a note under section 405 of this title.

Effective Date of 1950 Amendment

Section as added by section 104(a) of act Aug. 28, 1950, effective Jan. 1, 1951, see section 104(b) of act Aug. 28, 1950, set out as a note under section 409 of this title. Former section 410 was struck out effective Sept. 1, 1950, by section 105 of act Aug. 28, 1950.

Repeals: Amendments and Application of Amendments Unaffected

Section 202(b)(1) of Pub. L. 87–293, cited as a credit to this section, was repealed by Pub. L. 89–572, §5(a), Sept. 13, 1966, 80 Stat. 765. Such repeal not deemed to affect amendments to this section contained in such provisions, and continuation in full force and effect until modified by appropriate authority of all determinations, authorization, regulations, orders, contracts, agreements, and other actions issued, undertaken, or entered into under authority of the repealed provisions, see section 5(b) of Pub. L. 89–572, set out as a note under section 2515 of Title 22, Foreign Relations and Intercourse.

Plan Amendments Not Required Until January 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

Federal Legislative Branch Employees Who Contribute Reduced Amounts by Reason of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983

Section 2601(c) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of section 210(a)(5)(G) of the Social Security Act [subsec. (a)(5)(G) of this section] and section 3121(b)(5)(G) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)(G)], an individual shall not be considered to be subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), if he is contributing a reduced amount by reason of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [Pub. L. 98–168, title II, Nov. 29, 1983, 97 Stat. 1106, set out as a note under section 8331 of Title 5, Government Organization and Employees].''

Qualification and Requalification of Federal Employees for Benefits

Section 2601(d) of Pub. L. 98–369, as amended by Pub. L. 99–514, §2, title XVIII, §1883(a)(5)(A), Oct. 22, 1986, 100 Stat. 2916, provided that:

''(1) Any individual who—

''(A) was subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983 (as determined for purposes of section 210(a)(5)(G) of the Social Security Act [subsec. (a)(5)(G) of this section]), and

''(B)(i) received a lump-sum payment under section 8342(a) of such title 5, or under the corresponding provision of the law establishing the other retirement system described in subparagraph (A), after December 31, 1983, and prior to June 15, 1984, or received such a payment on or after June 15, 1984, pursuant to an application which was filed in accordance with such section 8342(a) or the corresponding provision of the law establishing such other retirement system prior to that date, or

''(ii) otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code, for a period after December 31, 1983, to which section 210(a)(5)(G)(iii) of the Social Security Act applies,

shall, if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies

for coverage under such subchapter) after the date on which he last ceased to be subject to such subchapter but prior to, or within 30 days after, the date of the enactment of this Act [July 18, 1984], requalify for the exemption from social security coverage and taxes under section 210(a)(5) of the Social Security Act and section 3121(b)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)] as if the cessation of coverage under title 5 had not occurred.

''(2) An individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) who is not in the employ of the United States or an instrumentality thereof on the date of the enactment of this Act [July 18, 1984] may requalify for such exemptions in the same manner as under paragraph (1) if such individual again becomes subject to subchapter III of chapter 83 of title 5 (or effectively applies for coverage under such subchapter) within 30 days after the date on which he first returns to service in the legislative branch after such date of enactment, if such date (on which he returns to service) is within 365 days after he was last in the employ of the United States or an instrumentality thereof.

''(3) If an individual meeting the requirements of subparagraphs (A) and (B) of paragraph (1) does not again become subject to subchapter III of chapter 83 of title 5 (or effectively apply for coverage under such subchapter) prior to the date of the enactment of this Act or within the relevant 30-day period as provided in paragraph (1) or (2), social security coverage and taxes by reason of section 210(a)(5)(G) of the Social Security Act and section 3121(b)(5)(G) of the Internal Revenue Code of 1986 shall, with respect to such individual's service in the legislative branch of the Federal Government, become effective with the first month beginning after such 30-day period.

''(4) The provisions of paragraphs (1) and (2) shall apply only for purposes of reestablishing an exemption from social security coverage and taxes, and do not affect the amount of service to be credited to an individual for purposes of title 5, United States Code.''

[Section 1883(a)(5) of Pub. L. 99–514 provided in part that amendment of above note by section 1883(a)(5)(A) of Pub. L. 99–514 is effective July 18, 1984.]

SERVICES PERFORMED FOR NONPROFIT ORGANIZATIONS BY FEDERAL EMPLOYEES

Section 2601(e) of Pub. L. 98–369, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) For purposes of section 210(a)(5) of the Social Security Act [subsec. (a)(5) of this section] (as in effect in January 1983 and as in effect on and after January 1, 1984) and section 3121(b)(5) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)(5)] (as so in effect), service performed in the employ of a nonprofit organization described in section 501(c)(3) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3)] by an employee who is required by law to be subject to subchapter III of chapter 83 of title 5, United States Code, with respect to such service, shall be considered to be service performed in the employ of an instrumentality of the United States.

''(2) For purposes of section 203 of the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 [section 203 of Pub. L. 98–168, set out as a note under section 8331 of Title 5, Government Organization and Employees], service described in paragraph (1) which is also 'employment' for purposes of title II of the Social Security Act [this subchapter], shall be considered to be 'covered service'.''

ACCRUED FEDERAL RETIREMENT ENTITLEMENTS; REDUCTION PROHIBITED

Section 101(e) of Pub. L. 98–21 provided that: ''Nothing in this Act [see Short Title of 1983 Amendment note set out under section 1305 of this title] shall reduce the accrued entitlements to future benefits under the Federal Retirement System of current and retired Federal employees and their families.''

COVERAGE OF FEDERAL HOME LOAN BANK EMPLOYEES

Section 125(a) of Pub. L. 92–603, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''The provisions of section 210(a)(6)(B)(ii) of the Social Security Act [subsec. (a)(6)(B)(ii) of this section] and section 3121(b)(6)(B)(ii) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3121(b)(6)(B)(ii) of Title 26, Internal Revenue Code], insofar as they relate to service performed in the employ of a Federal home loan bank, shall be effective—

''(1) with respect to all service performed in the employ of a Federal home loan bank on and after the first day of the first calendar quarter which begins on or after the date of the enactment of this Act [Oct. 30, 1972]; and

''(2) in the case of individuals who are in the employ of a Federal home loan bank on such first day, with respect to any service performed in the employ of a Federal home loan bank after the last day of the sixth calendar year preceding the year in which this Act is enacted [1972]; but this paragraph shall be effective only if an amount equal to the taxes imposed by sections 3101 and 3111 of such Code [sections 3101 and 3111 of Title 26, Internal Revenue Code] with respect to the services of all such individuals performed in the employ of Federal home loan banks after the last day of the sixth calendar year preceding the year in which this Act is enacted [1972] are paid under the provisions of section 3122 of such Code [section 3122 of Title 26] by July 1, 1973, or by such later date as may be provided in an agreement entered into before such date with the Secretary of the Treasury or his delegate for purposes of this paragraph.''

COVERED EMPLOYMENT NOT COUNTED UNDER OTHER FEDERAL RETIREMENT SYSTEMS

Section 115 of act Sept. 1, 1954, which prohibited counting employment under other Federal retirement systems in determining eligibility for benefits under this subchapter, was repealed by Pub. L. 91–630, § 1, Dec. 31, 1970, 84 Stat. 1875. Section 2 of Pub. L. 91–630 provided that such repeal shall not apply in the case of a person who, on Dec. 31, 1970, is receiving or is entitled to receive benefits under any retirement system established by the United States or any instrumentality thereof unless he requests, in writing, the office which administers his retirement system to apply it in this case, and that any additional benefits payable pursuant to such request shall commence on January 1, 1971.

TERMINATION OF WAR AND EMERGENCIES

Joint Res. July 25, 1947, ch. 327, § 3, 61 Stat. 451, provided that in the interpretation of this section, the date July 25, 1947, shall be deemed to be the date of termination of any state of war theretofore declared by Congress and of the national emergencies proclaimed by the President on Sept. 8, 1939, and May 27, 1941.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 402, 403, 404, 405, 409, 411, 415, 416, 417, 418, 424a, 426, 426–1, 426a, 429, 1395i, 1395x of this title; title 5 section 8402; title 10 section 1451; title 20 section 125; title 26 section 3121; title 33 section 857; title 45 section 231q.

§ 410a. Transferred

CODIFICATION

Section, act Aug. 29, 1935, ch. 812, § 17, as added June 24, 1937, ch. 382, Pt. I, § 1, 50 Stat. 317; amended Oct. 30, 1951, ch. 632, § 24, 65 Stat. 690, was transferred to section 228q of Title 45, Railroads, and subsequently superseded. See section 231q of Title 45.

§ 411. Definitions relating to self-employment

For the purposes of this subchapter—

(a) Net earnings from self-employment

The term ''net earnings from self-employment'' means the gross income, as computed

under subtitle A of the Internal Revenue Code of 1986, derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 702(a)(8) of such Code, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) There shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares), together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) with respect to any such agricultural or horticultural commodity;

(2) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities;

(3) There shall be excluded any gain or loss (A) which is considered under subtitle A of the Internal Revenue Code of 1986 as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 of the Internal Revenue Code of 1986 applies to such gain or loss, or (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) The deduction for net operating losses provided in section 172 of the Internal Revenue Code of 1986 shall not be allowed;

(5)(A) If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife;

(B) If any portion of a partner's distributive share of the ordinary net income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(6) A resident of the Commonwealth of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to the provisions of section 933 of the Internal Revenue Code of 1986;

(7) An individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) of this section without regard to section 107 (relating to rental value of parsonages), section 119 (relating to meals and lodging furnished for the convenience of the employer), and section 911 (relating to earned income from sources without the United States) of the Internal Revenue Code of 1986;

(8) The exclusion from gross income provided by section 931 of the Internal Revenue Code of 1986 shall not apply;

(9) There shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary of the Treasury or his delegate, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A);

(10) The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1986 shall not apply;

(11) In lieu of the deduction provided by section 164(f) of the Internal Revenue Code of 1986 (relating to deduction for one-half of self-employment taxes), there shall be allowed a deduction equal to the product of—

(A) the taxpayer's net earnings from self-employment for the taxable year (determined without regard to this paragraph), and

(B) one-half of the sum of the rates imposed by subsections (a) and (b) of section 1401 of such Code for such year;

(12) There shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) of the Internal Revenue Code of 1986 to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services;

(13) In the case of church employee income, the special rules of subsection (i)(1) of this section shall apply;

(14) There shall be excluded income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (relating to income derived by Indians from exercise of fishing rights); and

(15) The deduction under section 162(m) of the Internal Revenue Code of 1986 (relating to health insurance costs of self-employed individuals) shall not be allowed.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of the partnership (even though beginning prior to 1951) ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 410(f) of this title—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than $2,400, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66⅔ percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than $2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than $1,600, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be $1,600; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1986 applies) is not more than $2,400, his distributive share of income described in section 702(a)(8) of such Code derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1986 applies) is more than $2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(8) of such Code derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,600, his distributive share of income described in such section 702(a)(8) derived from such trade or business may, at his option, be deemed to be $1,600.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (g) of this section, or by a partnership of which an individual is a member on a regular basis as defined in subsection (g) of this section, but only if such individual's net earnings from self-employment in the taxable year as determined without regard to this sentence are less than $1,600 and less than 66⅔ percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable

years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed $1,600.

(b) Self-employment income

The term ''self-employment income'' means the net earnings from self-employment derived by an individual (other than a nonresident alien individual, except as provided by an agreement under section 433 of this title) during any taxable year beginning after 1950; except that such term shall not include—

(1) That part of the net earnings from self-employment which is in excess of—

(A) For any taxable year ending prior to 1955, (i) $3,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(B) For any taxable year ending after 1954 and prior to 1959, (i) $4,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(C) For any taxable year ending after 1958 and prior to 1966, (i) $4,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(D) For any taxable year ending after 1965 and prior to 1968, (i) $6,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(E) For any taxable year ending after 1967 and beginning prior to 1972, (i) $7,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(F) For any taxable year beginning after 1971 and prior to 1973, (i) $9,000, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(G) For any taxable year beginning after 1972 and prior to 1974, (i) $10,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(H) For any taxable year beginning after 1973 and prior to 1975, (i) $13,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(I) For any taxable year beginning in any calendar year after 1974, (i) an amount equal to the contribution and benefit base (as determined under section 430 of this title) which is effective for such calendar year, minus (ii) the amount of the wages paid to such individual during such taxable year; or

(2) The net earnings from self-employment, if such net earnings for the taxable year are less than $400.

An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for the purpose of this subsection, be considered to be a nonresident alien individual. In the case of church employee income, the special rules of subsection (i)(2) of this section shall apply for purposes of paragraph (2).

(c) Trade or business

The term ''trade or business'', when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1986, except that such term shall not include—

(1) The performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 418 of this title;

(2) The performance of service by an individual as an employee, other than—

(A) service described in section 410(a)(14)(B) of this title performed by an individual who has attained the age of eighteen,

(B) service described in section 410(a)(16) of this title,

(C) service described in section 410(a) (11), (12), or (15) of this title performed in the United States by a citizen of the United States, except service which constitutes ''employment'' under section 410(r) of this title,

(D) service described in paragraph (4) of this subsection,

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Commissioner of Social Security pursuant to section 418 of this title,

(F) service described in section 410(a)(20) of this title, and

(G) service described in section 410(a)(8)(B) of this title;

(3) The performance of service by an individual as an employee or employee representative as defined in section 3231 of the Internal Revenue Code of 1986;

(4) The performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(5) The performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or

(6) The performance of service by an individual during the period for which an exemption under section 1402(g) of the Internal Revenue Code of 1986 is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under section 1402(e) of the Internal Revenue Code of 1986 is effective with respect to him.

(d) Partnership and partner

The term ''partnership'' and the term ''partner'' shall have the same meaning as when used in subchapter K of chapter 1 of the Internal Revenue Code of 1986.

(e) Taxable year

The term ''taxable year'' shall have the same meaning as when used in subtitle A of the Internal Revenue Code of 1986; and the taxable year of any individual shall be a calendar year unless he has a different taxable year for the purposes of subtitle A of such Code, in which case his taxable year for the purposes of this subchapter shall be the same as his taxable year under such subtitle A.

(f) Partner's taxable year ending as result of death

In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection—

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) the term ''deceased partner's distributive share'' includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

(g) Regular basis

An individual shall be deemed to be self-employed on a regular basis in a taxable year, or to be a member of a partnership on a regular basis in such year, if he had net earnings from self-employment, as defined in the first sentence of subsection (a) of this section, of not less than $400 in at least two of the three consecutive taxable years immediately preceding such taxable year from trades or businesses carried on by such individual or such partnership.

(h) Option dealers and commodity dealers

(1) In determining the net earnings from self-employment of any options dealer or commodities dealer—

(A) notwithstanding subsection (a)(3)(A) of this section, there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

(B) the deduction provided by section 1202 of the Internal Revenue Code of 1986 shall not apply.

(2) For purposes of this subsection—

(A) The term ''options dealer'' has the meaning given such term by section 1256(g)(8) of such Code.

(B) The term ''commodities dealer'' means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

(C) The term ''section 1256 contracts'' has the meaning given to such term by section 1256(b) of such Code.

(i) Church employee income

(1) In applying subsection (a) of this section—

(A) church employee income shall not be reduced by any deduction;

(B) church employee income and deductions attributable to such income shall not be taken into account in determining the amount of other net earnings from self-employment.

(2)(A) Subsection (b)(2) of this section shall be applied separately—

(i) to church employee income, and

(ii) to other net earnings from self-employment.

(B) In applying subsection (b)(2) of this section to church employee income, ''$100'' shall be substituted for ''$400''.

(3) Paragraph (1) shall not apply to any amount allowable as a deduction under subsection (a)(11) of this section, and paragraph (1) shall be applied before determining the amount so allowable.

(4) For purposes of this section, the term ''church employee income'' means gross income for services which are described in section 410(a)(8)(B) of this title (and are not described in section 410(a)(8)(A) of this title).

(Aug. 14, 1935, ch. 531, title II, § 211, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 502; amended Sept. 23, 1950, ch. 994, title II, § 221(j)(2), 64 Stat. 947; Sept. 1, 1954, ch. 1206, title I, §§ 101(d), (g), 104(b), 68 Stat. 1054, 1078; Aug. 1, 1956, ch. 836, title I, §§ 104(c)(2), (3), (d), (h), 106(a), 70 Stat. 824–826, 828; Aug. 30, 1957, Pub. L. 85–239, § 5(a), 71 Stat. 523; Aug. 28, 1958, Pub. L. 85–840, title I, § 102(b), title III, § 313(a), 72 Stat. 1019, 1036; Sept. 13, 1960, Pub. L. 86–778, title I, §§ 103(g), (h), (j)(3), 106(a), 74 Stat. 937, 938, 945; Feb. 26, 1964, Pub. L. 88–272, title II, § 227(b)(7), 78 Stat. 98; July 30, 1965, Pub. L. 89–97, title III, §§ 311(a)(1), (2), 312(a), 319(b), 320(a)(2), 79 Stat. 380, 381, 391, 393; Jan. 2, 1968, Pub. L. 90–248, title I, §§ 108(a)(2), 115(a), 118(b), 122(a), 81 Stat. 834, 839, 841, 843; Mar. 17, 1971, Pub. L. 92–5, title II, § 203(a)(2), 85 Stat. 10; July 1, 1972, Pub. L. 92–336, title II, § 203(a)(2), 86 Stat. 418; Oct. 30, 1972, Pub. L. 92–603, title I, §§ 121(a), 124(a), 140(a), 86 Stat. 1353, 1357, 1366; July 9, 1973, Pub. L. 93–66, title II, § 203(a)(2), 87 Stat. 153; Dec. 31, 1973, Pub. L. 93–233, § 5(a)(2), 87 Stat. 953; Aug. 7, 1974, Pub. L. 93–368, § 10(a), 88 Stat. 422; Oct. 4, 1976, Pub. L. 94–455, title XII, § 1207(e)(2)(B), 90 Stat. 1707; Dec. 20, 1977, Pub. L. 95–216, title III, § 313(a), 91 Stat. 1535; Nov. 6, 1978, Pub. L. 95–600, title VII, § 703(j)(14)(D), (E), 92 Stat. 2942; Apr. 20, 1983, Pub. L. 98–21, title I, § 124(c)(3), title III, §§ 322(b)(1), 323(b)(2), 97 Stat. 90, 121; July 18, 1984, Pub. L. 98–369, div. A, title I, § 102(c)(2), div. B,

title VI, §§2603(c)(1), (d)(1), 2663(a)(8), 98 Stat. 622, 1129, 1163; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §§1882(b)(2), 1883(a)(6), 100 Stat. 2915, 2916; Dec. 22, 1987, Pub. L. 100–203, title IX, §§9022(a), 9023(b), 101 Stat. 1330–295, 1330–296; Nov. 10, 1988, Pub. L. 100–647, title I, §1011B(b)(4), title III, §3043(b), title VIII, §8016(a)(2), 102 Stat. 3488, 3642, 3792; Nov. 5, 1990, Pub. L. 101–508, title V, §§5123(a)(1), 5130(a)(2), (3), 104 Stat. 1388–284, 1388–289; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), title III, §§319(b)(2), 321(a)(14), (c)(5), (6)(E)–(G), 108 Stat. 1478, 1535, 1536, 1538.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in text, is classified to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, §321(c)(6)(E), substituted ''1986'' for ''1954'' after ''Code of'' wherever appearing in introductory provisions, in pars. (3), (4), (6), (10), (11), and (12), and in cls. (iii) and (iv) of closing provisions.

Subsec. (a)(13) to (15). Pub. L. 103–296, §321(a)(14), (c)(5), struck out ''and'' at end of par. (13), substituted ''; and'' for period at end of par. (14), and inserted ''of the Internal Revenue Code of 1986'' after ''section 162(m)'' in par. (15).

Subsec. (c). Pub. L. 103–296, §321(c)(6)(F), substituted ''1986'' for ''1954'' after ''Code of'' in introductory and closing provisions.

Subsec. (c)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2)(C). Pub. L. 103–296, §319(b)(2), which directed that subpar. (C) be amended by inserting '', except service which constitutes 'employment' under section 410(r) of this title'' before the semicolon, was executed by making the insertion before the comma at end, to reflect the probable intent of Congress.

Subsec. (c)(2)(E). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(3), (6). Pub. L. 103–296, §321(c)(6)(F), substituted ''1986'' for ''1954'' after ''Code of''.

Subsecs. (d), (e), (h)(1)(B). Pub. L. 103–296, §321(c)(6)(G), substituted ''1986'' for ''1954'' after ''Code of''.

1990—Subsec. (a). Pub. L. 101–508, §5123(a)(1), redesignated last undesignated paragraph, relating to income of an individual which results from or is attributable to performance of services by such individual as a director of a corporation, as subsec. (f)(5) of section 403 of this title.

Subsec. (a)(14), (15). Pub. L. 101–508, §5130(a)(3), redesignated par. (14), relating to nonallowability of deduction under section 162(m) (health insurance costs of self-employed individuals), as (15).

Subsec. (b). Pub. L. 101–508, §5130(a)(2), made technical correction to directory language of Pub. L. 98–21, §322(b)(1). See 1983 Amendment note below.

1988—Subsec. (a)(7). Pub. L. 100–647, §8016(a)(2), inserted ''of the Internal Revenue Code of 1986'' before semicolon at end.

Subsec. (a)(14). Pub. L. 100–647, §3043(b), added par. (14) relating to the exclusion of income excluded from taxation under section 7873 of the Internal Revenue Code of 1986 (income derived by Indians from exercise of fishing rights).

Pub. L. 100–647, §1011B(b)(4), added par. (14) relating to nonallowability of deduction under section 162(m) (health insurance costs of self-employed individuals).

1987—Subsec. (a). Pub. L. 100–203, §9022(a), inserted par. at end relating to income of an individual which results from or is attributable to the performance of services by such individual as a director of a corporation.

Subsec. (a)(7). Pub. L. 100–203, §9023(b)(1), struck out reference to section 931 (relating to income from sources within possessions of the United States) of the Internal Revenue Code of 1954.

Subsec. (a)(8). Pub. L. 100–203, §9023(b)(2), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''The term 'possession of the United States' as used in sections 931 (relating to income from sources within the possessions of the United States) and 932 (relating to citizens of possessions of the United States) of the Internal Revenue Code of 1986 shall be deemed not to include the Virgin Islands, Guam, or American Samoa;''.

1986—Subsec. (a)(13). Pub. L. 99–514, §1882(b)(2)(B)(i), amended par. (13) generally. Prior to amendment, par. (13) read as follows: ''With respect to remuneration for service which are treated as services in a trade or business under subsection (c)(2)(G) of this section—

''(A) no deduction for trade or business expenses provided under the Internal Revenue Code of 1954 (other than the deduction under paragraph (11) of this subsection) shall apply;

''(B) the provisions of subsection (b)(2) of this section shall not apply; and

''(C) if the amount of such remuneration from an employer for the taxable year is less than $100, such remuneration from that employer shall not be included in self-employment income.''

Subsec. (b). Pub. L. 99–514, §1882(b)(2)(B)(ii), inserted at end ''In the case of church employee income, the special rules of subsection (i)(2) of this section shall apply for purposes of paragraph (2).''

Subsec. (c)(2)(G). Pub. L. 99–514, §1883(a)(6), realigned margins of subpar. (G).

Subsec. (i). Pub. L. 99–514, §1882(b)(2)(A), added subsec. (i).

1984—Subsec. (a). Pub. L. 98–369, §2663(a)(8)(A), substituted ''subtitle A of the Internal Revenue Code of 1954'' for ''chapter 1 of the Internal Revenue Code of 1939'', ''such subtitle'' for ''such chapter'', and ''section 702(a)(8) of the Internal Revenue Code of 1954'' for ''section 183 of the Internal Revenue Code of 1939''.

Pub. L. 98–369, §2663(a)(8)(D), in provisions following numbered pars., substituted ''702(a)(8)'' for ''702(a)(9)'' in cl. (iii) and in two places in cl. (iv).

Subsec. (a)(3). Pub. L. 98–369, §2663(a)(8)(B), substituted ''subtitle A of the Internal Revenue Code of 1954'' for ''chapter 1 of the Internal Revenue Code of 1939'' and inserted ''or'' before ''(C)''.

Subsec. (a)(4). Pub. L. 98–369, §2663(a)(8)(C), substituted ''section 172 of the Internal Revenue Code of 1954'' for ''section 23(s) of the Internal Revenue Code of 1939''.

Subsec. (a)(13). Pub. L. 98–369, §2603(d)(1), added par. (13).

Subsec. (b)(1)(D), (G) to (I). Pub. L. 98–369, §2663(a)(8)(E), realigned margins of subpars. (D) and (G) to (I).

Subsec. (c). Pub. L. 98–369, §2663(a)(8)(F), substituted ''section 162 of the Internal Revenue Code of 1954'' for ''section 23 of the Internal Revenue Code of 1939'' in provisions preceding par. (1).

Subsec. (c)(2)(G). Pub. L. 98–369, §2603(c)(1), added subpar. (G).

Subsec. (c)(3). Pub. L. 98–369, §2663(a)(8)(G), substituted ''section 3231 of the Internal Revenue Code of 1954'' for ''section 1532 of the Internal Revenue Code of 1939''.

Subsec. (d). Pub. L. 98–369, §2663(a)(8)(H), substituted ''subchapter K of chapter 1 of the Internal Revenue Code of 1954'' for ''supplement F of chapter 1 of the Internal Revenue Code of 1939''.

Subsec. (e). Pub. L. 98–369, §2663(a)(8)(I), substituted ''subtitle A of the Internal Revenue Code of 1954'' for ''chapter 1 of the Internal Revenue Code of 1939'' in three places.

Subsec. (h). Pub. L. 98–369, §102(c)(2), added subsec. (h).

1983—Subsec. (a)(10). Pub. L. 98–21, §323(b)(2)(A), substituted ''The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1954 shall not apply'' for ''In the case of an individual de-

scribed in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided by section 911(a)(1) of such Code shall not apply''.

Pub. L. 98–21, §323(b)(2)(B), temporarily amended par. (10) by substituting ''In the case of an individual described in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided by section 911(a)(1) of such Code shall not apply'' for ''In the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) of the Internal Revenue Code of 1954 shall not apply''. See Effective and Termination Dates of 1983 Amendment note below.

Subsec. (a)(11), (12). Pub. L. 98–21, §124(c)(3), added par. (11) and redesignated former par. (11) as (12).

Subsec. (b). Pub. L. 98–21, §322(b)(1), as amended by Pub. L. 101–508, §5130(a)(2), inserted '', except as provided by an agreement under section 433 of this title'' after ''non-resident alien individual'' in provisions preceding par. (1).

1978—Subsec. (a)(2). Pub. L. 95–600, §703(j)(14)(D), which directed that ''(other than interest described in section 35 of the Internal Revenue Code of 1954)'' be struck out from subsec. (a)(2) of this section, was executed by striking out ''(other than interest described in section 25(a) of the Internal Revenue Code of 1939)'' as the probable intent of Congress.

Subsec. (c)(6). Pub. L. 95–600, §703(j)(14)(E), substituted ''section 1402(g)'' for ''section 1402(h)''.

1977—Subsec. (a)(11). Pub. L. 95–216 added par. (11).

1976—Subsec. (c)(2)(F). Pub. L. 94–455 added subpar. (F).

1974—Subsec. (a)(1). Pub. L. 93–368 inserted ''(as determined without regard to any activities of an agent of such owner or tenant)'' after ''material participation by the owner or tenant'' wherever appearing.

1973—Subsec. (b)(1)(H). Pub. L. 93–233 substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000''.

1972—Subsec. (a). Pub. L. 92–603, §§121(a)(1), 124(a), 140(a), struck out provisions of par. (7) relating to citizens of the United States performing the specified services as an employee of an American employer (as defined in section 410(e) of this title) or as a minister in a foreign country who has a congregation composed predominantly of United States citizens, inserted provisions in par. (7) relating to the applicability of sections 911 and 931 of title 26, and added par. (10) and provisions for an optional method for determining self-employment earnings.

Subsec. (b)(1)(F). Pub. L. 92–336, §203(a)(2)(A), inserted ''and prior to 1973'' after ''1971''.

Subsec. (b)(1)(G) to (I). Pub. L. 92–336, §203(a)(2)(B), added subpars. (G) to (I).

Subsec. (g). Pub. L. 92–603, §121(a)(2), added subsec. (g).

1971—Subsec. (b)(1)(E). Pub. L. 92–5, §203(a)(2)(A), inserted ''and beginning prior to 1972'' after ''1967''.

Subsec. (b)(1)(F). Pub. L. 92–5, §203(a)(2)(B), added subpar. (F).

1968—Subsec. (a)(9). Pub. L. 90–248, §118(b), added par. (9).

Subsec. (b)(1)(D), (E). Pub. L. 90–248, §108(a)(2)(A), (B), inserted ''and prior to 1968'' after ''1965'' and added subpar. (E), respectively.

Subsec. (c). Pub. L. 90–248, §115(a), substituted in last sentence ''unless an exemption under section 1402(e) of the Internal Revenue Code of 1954 is effective with respect to him'' for ''during the period for which a certificate filed by him under section 1402(e) of the Internal Revenue Code of 1954 is in effect''.

Subsec. (c)(1). Pub. L. 90–248, §122(a)(1), included in term ''trade or business'' functions of a public office of a State or political subdivision thereof with respect to fees received in a position compensated solely on a fee basis and which position is not covered under a State social security coverage agreement.

Subsec. (c)(2)(E). Pub. L. 90–248, §122(a)(2), added subpar. (E).

1965—Subsec. (a). Pub. L. 89–97, §312(a), substituted ''$2,400'' for ''$1,800'' in cls. (i) to (iv) and ''$1,600'' for ''$1,200'' in cls. (ii) and (iv) of second sentence following par. (8), wherever appearing.

Subsec. (b)(1)(C). Pub. L. 89–97, §320(a)(2)(A), inserted ''and prior to 1966'' after ''1958'' and substituted ''and'' for ''or'' after the semicolon.

Subsec. (b)(1)(D). Pub. L. 89–97, §320(a)(2)(B), added subpar. (D).

Subsec. (c). Pub. L. 89–97, §311(a)(1), (2), struck out from par. (5) ''doctor of medicine or'' before, and ''; or the performance of such service by a partnership'' after ''Christian Science practitioner'' and consolidated into one sentence former last two sentences.

Subsec. (c)(6). Pub. L. 89–97, §319(b), added par. (6).

1964—Subsec. (a)(3)(B), Pub. L. 88–272 amended cl. (B) generally, substituting '', coal, or iron ore, if section 631 of the Internal Revenue Code of 1954 applies'' for ''or coal, if section 117(j) of the Internal Revenue Code of 1954 is applicable''.

1960—Subsec. (a)(6). Pub. L. 86–778, §103(j)(3), substituted ''section 933 of the Internal Revenue Code of 1954'' for ''section 116(1) of the Internal Revenue Code of 1954'', and struck out provisions which defined ''possession of the United States'' in the case of taxable years beginning before the effective date specified in former section 419 of this title.

Subsec. (a)(8). Pub. L. 86–778, §103(g), added par. (8) and inserted a reference to paragraph (8) in cls. (v) and (vi) of last sentence.

Subsec. (b). Pub. L. 86–778, §103(h), provided that individuals who are not citizens of the United States but who are residents of Guam or American Samoa shall not, for the purposes of this subsection, be considered to be nonresident alien individuals, and struck out provisions which related to individuals who were citizens of Puerto Rico prior to the effective date specified in section 419 of this title.

Subsec. (c)(2). Pub. L. 86–778, §106(a), excluded service described in section 410(a)(11), (12), or (15) of this title performed in the United States by a citizen of the United States.

1958—Subsec. (b)(1). Pub. L. 85–840, §102(b), inserted ''and prior to 1959'' after ''year ending after 1954'' in cl. (B), and added cl. (C).

Subsec. (f). Pub. L. 85–840, §313(a), added subsec. (f).

1957—Subsec. (a)(7). Pub. L. 85–239 permitted computation of net earnings without regard to sections 107 and 119 of the Internal Revenue Code of 1954.

1956—Subsec. (a). Act Aug. 1, 1956, §106(a), amended last two sentences generally, to include those businesses in which the income is computed under an accrual method, and partnerships, to change the method of computation of net earnings for individuals by permitting those whose gross income is not more than $1,800 to deem their net earnings to be 66⅔ percent of such gross income, and those whose gross income is more than $1,800 and the net earnings are less than $1,200, to deem the net earnings to be $1,200, and to provide for the computation of net earnings for members of partnerships.

Subsec. (a)(1). Act Aug. 1, 1956, §104(c)(2), struck out from exclusion, income derived by an owner or tenant to land if such income is derived under an arrangement with another individual for the production by such other individual of agricultural or horticultural commodities if such arrangement provides for material participation by the owner or tenant in the production or the management of the production of such commodities, and there is material participation by the owner or tenant with respect to any such commodity.

Subsec. (a)(7)(B). Act Aug. 1, 1956, §104(h), included citizens of the United States who are ministers in foreign countries and have congregations composed predominantly of citizens of the United States.

Subsec. (c)(2). Act Aug. 1, 1956, §104(c)(3), included within term ''trade or business'' service described in section 410(a)(16) of this title.

Subsec. (c)(5). Act Aug. 1, 1956, §104(d), struck out exclusion from coverage in the case of lawyers, dentists,

osteopaths, veterinarians, chiropractors, naturopaths, and optometrists.

1954—Subsec. (a)(1). Act Sept. 1, 1954, § 101(g)(2), made it clear that rentals paid in crop shares would be excluded as being rentals from real estate.

Subsec. (a)(2). Act Sept. 1, 1954, § 101(g)(1), redesignated par. (3) as (2), and struck out former par. (2).

Subsec. (a)(3). Act Sept. 1, 1954, § 101(g)(3), redesignated par. (4) as (3), and excluded from ''net earnings from self-employment'' the gain or loss derived from coal royalties under certain conditions. Former par. (3) redesignated (2).

Subsec. (a)(4) to (6). Act Sept. 1, 1954, § 101(g)(1), redesignated pars. (5) to (7) as (4) to (6), respectively. Former par. (4) redesignated (3).

Subsec. (a)(7). Act Sept. 1, 1954, § 101(d)(3), added par. (7).

Subsec. (a). Act Sept. 1, 1954, § 101(g)(1), inserted two sentences at end.

Subsec. (b)(1). Act Sept. 1, 1954, § 104(b), excluded from self-employment income, for taxable years after 1954 any amount in excess of $4,200 minus the amount of the wages paid to an individual during the taxable year.

Subsec. (c). Act Sept. 1, 1954, § 101(d)(2), inserted two sentences at end making provisions of par. (4) inapplicable to service performed during the period for which a certificate filed under section 1402(e) of title 26 is in effect.

Subsec. (c)(2). Act Sept. 1, 1954, § 101(d)(1), inserted ''and other than service described in paragraph (4) of this subsection'' after ''eighteen''.

Subsec. (c)(5). Act Sept. 1, 1954, § 101(g)(4), struck out exclusion from coverage in case of architects, certified public accountants, accountants registered or licensed as accountants under State or municipal law, full-time practicing public accountants, funeral directors, or professional engineers.

1950—Subsec. (a)(7). Act Sept. 23, 1950, made provisions applicable to Puerto Rico and provided the basis for computation of net earnings.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 319(b)(2) of Pub. L. 103–296 applicable with respect to service performed after calendar quarter following calendar quarter in which Aug. 15, 1994, occurs, see section 319(c) of Pub. L. 103–296, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5123(a)(1) of Pub. L. 101–508 applicable with respect to income received for services performed in taxable years beginning after Dec. 31, 1990, see section 5123(b) of Pub. L. 101–508, set out as a note under section 403 of this title.

Amendment by section 5130(a)(2) of Pub. L. 101–508 effective as if included in the enactment of Pub. L. 98–21, § 322(b)(1), and amendment by section 5130(a)(3) of Pub. L. 101–508 effective as if included in the enactment of Pub. L. 100–647, § 1011B(b)(4), see section 5130(b) of Pub. L. 101–508, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 1011B(b)(4) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by section 3043(b) of Pub. L. 100–647 applicable to all periods beginning before, on, or after Nov. 10, 1988, with no inference created as to existence or non-existence or scope of any exemption from tax for income derived from fishing rights secured as of Mar. 17, 1988, by any treaty, law, or Executive Order, see section 3044 of Pub. L. 100–647, set out as an Effective Date note under section 7873 of Title 26.

Amendment by section 8016(a)(2) of Pub. L. 100–647 effective Nov. 10, 1988, except that any amendment to a provision of a particular Public Law which is referred to by its number, or to a provision of the Social Security Act [42 U.S.C. 301 et seq.], or to Title 26, as added or amended by a provision of a particular Public Law which is so referred to, effective as though included or reflected in the relevant provisions of that Public Law at the time of its enactment, see section 8016(b) of Pub. L. 100–647, set out as a note under section 3111 of Title 26.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9022(a) of Pub. L. 100–203 applicable with respect to services performed in taxable years beginning on or after Jan. 1, 1988, see section 9022(c) of Pub. L. 100–203, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1882(b)(2) of Pub. L. 99–514 applicable to remuneration paid or derived in taxable years beginning after Dec. 31, 1985, see section 1882(b)(3) of Pub. L. 99–514, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 1883(a)(6) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(c)(2) of Pub. L. 98–369 applicable to taxable years beginning after July 18, 1984, except as otherwise provided, see section 102(f)(3), (g) of Pub. L. 98–369, set out as a note under section 1256 of Title 26, Internal Revenue Code.

Amendment by section 2603(c)(1), (d)(1) of Pub. L. 98–369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98–369, set out as a note under section 410 of this title.

Amendment by section 2663(a)(8) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Amendment by section 124(c)(3) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 1401 of Title 26, Internal Revenue Code.

Amendment by section 322(b)(2) of Pub. L. 98–21 effective in taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 3121 of Title 26.

Amendment by section 323(b)(2)(A) of Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, see section 323(c)(2) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 1402 of Title 26.

Section 323(b)(2)(B) of Pub. L. 98–21 provided that the amendment made by such section 323(b)(2)(B) is effective with respect to taxable years beginning after Dec. 31, 1981, and before Jan. 1, 1984.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 313(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this sec-

tion and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to taxable years beginning after December 31, 1977.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 10(c) of Pub. L. 93–368 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to taxable years beginning after December 31, 1973.''

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1972 AMENDMENTS

Section 121(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years beginning after December 31, 1972.''

Section 124(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26] shall apply with respect to taxable years beginning after December 31, 1972.''

Section 140(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26] shall apply with respect to taxable years beginning after December 31, 1972.''

Amendment by Pub. L. 92–336 applicable only with respect to taxable years beginning after 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable only with respect to taxable years beginning after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 108(a)(2) of Pub. L. 90–248 applicable only with respect to taxable years ending after 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of this title.

Amendment by section 115(a) of Pub. L. 90–248 applicable only with respect to taxable years ending after 1967, see section 115(c) of Pub. L. 90–248, set out as a note under section 1402 of Title 26, Internal Revenue Code.

Amendment by section 118(b) of Pub. L. 90–248 applicable only with respect to taxable years ending on or after Dec. 31, 1967, see section 118(c) of Pub. L. 90–248, set out as a note under section 1402 of Title 26.

Amendment by section 122(a)(1), (2) of Pub. L. 90–248 applicable with respect to fees received after 1967 and with respect to election to exempt fees from coverage as self-employment income, see section 122(c) of Pub. L. 90–248, set out as a note under section 1402 of Title 26.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 311(a)(1), (2) of Pub. L. 89–97 applicable only with respect to taxable years ending on or after Dec. 31, 1965, see section 311(c) of Pub. L. 89–97, set out as a note under section 410 of this title.

Section 312(c) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years beginning after December 31, 1965.''

Amendment by section 319(b) of Pub. L. 89–97 applicable with respect to taxable years beginning after December 31, 1950, see section 319(e) of Pub. L. 89–97, set out as a note under section 1402 of Title 26.

Amendment by section 320(a)(2) of Pub. L. 89–97 applicable with respect to taxable years ending after 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of Title 26.

EFFECTIVE DATE OF 1964 AMENDMENT

Amendment by Pub. L. 88–272 applicable with respect to amounts received or accrued in taxable years beginning after Dec. 31, 1963, attributable to iron ore mined in such years, see section 227(c) of Pub. L. 88–272, set out as a note under section 272 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 103(g) of Pub. L. 86–778 applicable only in the case of taxable years beginning after 1960, except that, insofar as involves the nonapplication of section 932 of Title 26, Internal Revenue Code, to the Virgin Islands for purposes of sections 1401 et seq. of Title 26 and this section, such amendment shall be effective in the case of all taxable years with respect to which such sections 1401 et seq. (and corresponding provisions of prior law) and this section are applicable, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(h) of Pub. L. 86–778 applicable only in the case of taxable years beginning after 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 103(j)(3) of Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as a note under section 402 of this title.

Section 106(c) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section and section 1402 of Title 26, Internal Revenue Code] shall apply only with respect to taxable years ending on or after December 31, 1960; except that for purposes of section 203 of the Social Security Act [section 403 of this title], the amendment made by subsection (a) [amending this section] shall apply only with respect to taxable years (of the individual performing the service involved) beginning after the date of the enactment of this Act [Sept. 13, 1960].''

EFFECTIVE DATE OF 1958 AMENDMENT

Section 313(b) of Pub. L. 85–840 provided that: ''The amendment made by subsection (a) [amending this section] shall apply—

''(1) with respect to individuals who die after the date of the enactment of this Act [Aug. 28, 1958], and

''(2) with respect to any individual who died after 1955 and on or before the date of the enactment of this Act [Aug. 28, 1958], but only if the requirements of section 403(b)(2) of this Act [section 603(b)(2) of this title] are met.''

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment by Pub. L. 85–239 applicable, except for purposes of section 403 of this title, only with respect to taxable years ending on or after December 31, 1957, see section 5(c) of Pub. L. 85–239, set out as a note under section 1402 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by section 104(c)(2), (d) of act Aug. 1, 1956, applicable with respect to taxable years ending after 1955, see section 104(i) of such act Aug. 1, 1956, set out as a note under section 410 of this title.

Amendment by section 104(c)(3) of act Aug. 1, 1956, applicable with respect to taxable years ending after 1954, see section 104(i) of act Aug. 1, 1956, set out as a note under section 410 of this title.

Amendment by section 104(h) of act Aug. 1, 1956, applicable with respect to the same taxable years with respect to which the amendment to section 3121(k)(1) of

Title 26, Internal Revenue Code, applies, see section 104(i) of act Aug. 1, 1956, set out as a note under section 410 of this title, and section 201(m)(2) of such act Aug. 1, 1956, set out as a note under section 3121 of Title 26.

Section 106(b) of act Aug. 1, 1956, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to taxable years ending on or after December 31, 1956.''

EFFECTIVE DATE OF 1954 AMENDMENT

Amendments by section 101(d), (g)(1), (2), (4) of act Sept. 1, 1954, applicable only with respect to taxable years ending after 1954, amendment by section 101(g)(3) of act Sept. 1, 1954, applicable only with respect to taxable years beginning after 1950, and, for purposes of section 403 of this title, the amendments made by paragraphs (1), (2), and (4) of subsection (g) and by subsection (d) [of said section 101] effective with respect to net earnings from self-employment derived after 1954, see section 101(n) of act Sept. 1, 1954, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Sept. 23, 1950, applicable with respect to taxable years beginning after Dec. 31, 1950, see section 221(k) of act Sept. 23, 1950.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

TREATY OBLIGATIONS

Section 214 of act Sept. 23, 1950, provided that: ''No amendment made by this Act [see Tables for classification] shall apply in any case where its application would be contrary to any treaty obligation of the United States.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403, 410, 424a, 430, 1382a of this title; title 45 sections 231b, 231e.

§ 412. Self-employment income credited to calendar years

(a) For the purposes of determining average monthly wage and quarters of coverage the amount of self-employment income derived during any taxable year which begins before 1978 shall—

(1) in the case of a taxable year which is a calendar year, be credited equally to each quarter of such calendar year; and

(2) in the case of any other taxable year, be credited equally to the calendar quarter in which such taxable year ends and to each of the next three or fewer preceding quarters any part of which is in such taxable year.

(b) For the purposes of determining average indexed monthly earnings, average monthly wage, and quarters of coverage the amount of self-employment income derived during any taxable year which begins after 1977 shall—

(1) in the case of a taxable year which is a calendar year or which begins with or during a calendar year and ends with or during such year, be credited to such calendar year; and

(2) in the case of any other taxable year, be allocated proportionately to the two calendar years, portions of which are included within such taxable year, on the basis of the number of months in each such calendar year which are included completely within the taxable year.

For purposes of clause (2), the calendar month in which a taxable year ends shall be treated as included completely within that taxable year.

(Aug. 14, 1935, ch. 531, title II, § 212, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 504; amended Dec. 20, 1977, Pub. L. 95–216, title III, § 351(b), 91 Stat. 1549.)

AMENDMENTS

1977—Pub. L. 95–216 designated existing provisions as subsec. (a), substituted provisions relating to crediting of self-employment income to calendar years for provisions relating to crediting of self-employment income to calendar quarters, and added subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective Jan. 1, 1978, see section 351(d) of Pub. L. 95–216, set out as a note under section 409 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 413, 415 of this title.

§ 413. Quarter and quarter of coverage

(a) Definitions

For the purposes of this subchapter—

(1) The term ''quarter'', and the term ''calendar quarter'', mean a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(2)(A) The term ''quarter of coverage'' means—

(i) for calendar years before 1978, and subject to the provisions of subparagraph (B), a quarter in which an individual has been paid $50 or more in wages (except wages for agricultural labor paid after 1954) or for which he has been credited (as determined under section 412 of this title) with $100 or more of self-employment income; and

(ii) for calendar years after 1977, and subject to the provisions of subparagraph (B), each portion of the total of the wages paid and the self-employment income credited (pursuant to section 412 of this title) to an individual in a calendar year which equals the amount required for a quarter of coverage in that calendar year (as determined under subsection (d) of this section), with such quarter of coverage being assigned to a specific calendar quarter in such calendar year only if necessary in the case of any individual who has attained age 62 or died or is under a disability and the requirements for insured status in subsection (a) or (b) of section 414 of this title, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 416(i) of this title would not otherwise be met.

(B) Notwithstanding the provisions of subparagraph (A)—

(i) no quarter after the quarter in which an individual dies shall be a quarter of coverage, and no quarter any part of which is included in a period of disability (other than the initial

quarter and the last quarter of such period) shall be a quarter of coverage;

(ii) if the wages paid to an individual in any calendar year equal $3,000 in the case of a calendar year before 1951, or $3,600 in the case of a calendar year after 1950 and before 1955, or $4,200 in the case of a calendar year after 1954 and before 1959, or $4,800 in the case of a calendar year after 1958 and before 1966, or $6,600 in the case of a calendar year after 1965 and before 1968, or $7,800 in the case of a calendar year after 1967 and before 1972, or $9,000 in the case of the calendar year 1972, or $10,800 in the case of the calendar year 1973, or $13,200 in the case of the calendar year 1974, or an amount equal to the contribution and benefit base (as determined under section 430 of this title) in the case of any calendar year after 1974 and before 1978 with respect to which such contribution and benefit base is effective, each quarter of such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

(iii) if an individual has self-employment income for a taxable year, and if the sum of such income and the wages paid to him during such year equals $3,600 in the case of a taxable year beginning after 1950 and ending before 1955, or $4,200 in the case of a taxable year ending after 1954 and before 1959, or $4,800 in the case of a taxable year ending after 1958 and before 1966, or $6,600 in the case of a taxable year ending after 1965 and before 1968, or $7,800 in the case of a taxable year ending after 1967 and before 1972, or $9,000 in the case of a taxable year beginning after 1971 and before 1973, or $10,800 in the case of a taxable year beginning after 1972 and before 1974, or $13,200 in the case of a taxable year beginning after 1973 and before 1975, or an amount equal to the contribution and benefit base (as determined under section 430 of this title) which is effective for the calendar year in the case of any taxable year beginning in any calendar year after 1974 and before 1978, each quarter any part of which falls in such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

(iv) if an individual is paid wages for agricultural labor in a calendar year after 1954 and before 1978, then, subject to clauses (i) and (v), (I) the last quarter of such year which can be but is not otherwise a quarter of coverage shall be a quarter of coverage if such wages equal or exceed $100 but are less than $200; (II) the last two quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $200 but are less than $300; (III) the last three quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $300 but are less than $400; and (IV) each quarter of such year which is not otherwise a quarter of coverage shall be a quarter of coverage if such wages are $400 or more;

(v) no quarter shall be counted as a quarter of coverage prior to the beginning of such quarter;

(vi) not more than one quarter of coverage may be credited to a calendar quarter; and

(vii) no more than four quarters of coverage may be credited to any calendar year after 1977.

If in the case of an individual who has attained age 62 or died or is under a disability and who has been paid wages for agricultural labor in a calendar year after 1954 and before 1978, the requirements for insured status in subsection (a) or (b) of section 414 of this title, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 416(i) of this title are not met after assignment of quarters of coverage to quarters in such year as provided in clause (iv) of the preceding sentence, but would be met if such quarters of coverage were assigned to different quarters in such year, then such quarters of coverage shall instead be assigned, for purposes only of determining compliance with such requirements, to such different quarters. If, in the case of an individual who did not die prior to January 1, 1955, and who attained age 62 (if a woman) or age 65 (if a man) or died before July 1, 1957, the requirements for insured status in section 414(a)(3) of this title are not met because of his having too few quarters of coverage but would be met if his quarters of coverage in the first calendar year in which he had any covered employment had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid (any such wages paid that are reallocated on an earned basis shall not be used in determining quarters of coverage for subsequent calendar years), then upon application filed by the individual or his survivors and satisfactory proof of his record of wages earned being furnished by such individual or his survivors, the quarters of coverage in such calendar year may be determined on the basis of the periods during which wages were earned.

(b) Crediting of wages paid in 1937

With respect to wages paid to an individual in the six-month periods commencing either January 1, 1937, or July 1, 1937; (A) if wages of not less than $100 were paid in any such period, one-half of the total amount thereof shall be deemed to have been paid in each of the calendar quarters in such period; and (B) if wages of less than $100 were paid in any such period, the total amount thereof shall be deemed to have been paid in the latter quarter of such period, except that if in any such period, the individual attained age sixty-five, all of the wages paid in such period shall be deemed to have been paid before such age was attained.

(c) Alternative method for determining quarters of coverage with respect to wages in period from 1937 to 1950

For purposes of sections 414(a) and 415(d) of this title, an individual shall be deemed to have one quarter of coverage for each $400 of his total wages prior to 1951 (as defined in section 415(d)(1)(C) of this title), except where such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment in-

come credited to such individual for periods after 1950.

(d) Amount required for a quarter of coverage

(1) The amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in any year under subsection (a)(2)(A)(ii) of this section shall be $250 in the calendar year 1978 and the amount determined under paragraph (2) of this subsection for years after 1978.

(2) The Commissioner of Social Security shall, on or before November 1 of 1978 and of every year thereafter, determine and publish in the Federal Register the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in the succeeding calendar year. The amount required for a quarter of coverage shall be the larger of—

(A) the amount in effect in the calendar year in which the determination under this subsection is made, or

(B) the product of the amount prescribed in paragraph (1) which is required for a quarter of coverage in 1978 and the ratio of the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the year in which the determination under this paragraph is made to the national average wage index (as so defined) for 1976,

with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

(Aug. 14, 1935, ch. 531, title II, §213, as added Aug. 28, 1950, ch. 809, title I, §104(a), 64 Stat. 492, 504; amended July 18, 1952, ch. 945, §§3(a), 66 Stat. 770; Sept. 1, 1954, ch. 1206, title I, §§104(c), 106(a), 108(b), 68 Stat. 1078, 1084; Aug. 1, 1956, ch. 836, title I, §105(c), 70 Stat. 828; Aug. 28, 1958, Pub. L. 85–840, title I, §102(c), 72 Stat. 1019; Apr. 22, 1960, Pub. L. 86–442, §3, 74 Stat. 82; Sept. 13, 1960, Pub. L. 86–778, title II, §206(a), 74 Stat. 949; June 30, 1961, Pub. L. 87–64, title I, §102(c)(2)(A), (3)(B), 75 Stat. 134, 135; July 30, 1965, Pub. L. 89–97, title III, §320(a)(3), 79 Stat. 393; Jan. 2, 1968, Pub. L. 90–248, title I, §§108(a)(3), 155(b)(1), 81 Stat. 834, 865; Mar. 17, 1971, Pub. L. 92–5, title II, §203(a)(3), 85 Stat. 10; July 1, 1972, Pub. L. 92–336, title II, §203(a)(3), 86 Stat. 418; July 9, 1973, Pub. L. 93–66, title II, §203(a)(3), 87 Stat. 153; Dec. 31, 1973, Pub. L. 93–233, §5(a)(3), 87 Stat. 953; Dec. 20, 1977, Pub. L. 95–216, title III, §§351(c), 352(a), (b), 91 Stat. 1550, 1552; Oct. 19, 1980, Pub. L. 96–473, §6(c), 94 Stat. 2265; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(a)(9), 98 Stat. 1164; Dec. 19, 1989, Pub. L. 101–239, title X, §10208(b)(2)(A), (B), (d)(2)(A)(i), 103 Stat. 2477, 2478, 2480; Nov. 5, 1990, Pub. L. 101–508, title V, §5117(c)(1), 104 Stat. 1388–278; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), title III, §321(a)(15), (e)(2)(A), 108 Stat. 1478, 1536, 1539.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–296, §321(a)(15), substituted ''sections'' for ''section'' before ''414(a) and 415(d) of this title''.

Subsec. (d)(2). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions.

Subsec. (d)(2)(B). Pub. L. 103–296, §321(e)(2)(A), substituted ''national average wage index'' for ''deemed average total wages'' before ''(as defined in'' and ''the national average wage index (as so defined) for 1976,'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate for 1976 (as published in the Federal Register in accordance with section 415(a)(1)(D) of this title),''.

1990—Subsec. (c). Pub. L. 101–508 inserted ''and 415(d)'' after ''section 414(a)'' and substituted ''except where such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to such individual for periods after 1950.'' for ''except where—

''(1) such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to him for periods after 1950, or

''(2) such individual's elapsed years (for purposes of section 414(a)(1) of this title) are less than 7.''

1989—Subsec. (d)(2)(B). Pub. L. 101–239, §10208(b)(2)(A), (B), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate'' and ''(as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title)'' for ''(as so defined and computed)''.

Pub. L. 101–239, §10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

1984—Subsec. (a)(1). Pub. L. 98–369, §2663(a)(9)(A), substituted ''mean'' for ''means''.

Subsec. (a)(2)(B)(ii). Pub. L. 98–369, §2663(a)(9)(B), substituted ''equal $3,000'' for ''equal to $3,000''.

1980—Subsec. (a)(2)(A). Pub. L. 96–473 substituted reference to quarter of coverage, for reference to quarters of coverage.

1977—Subsec. (a)(2). Pub. L. 95–216, §§351(c), 352(a), substituted provisions relating to factors respecting definition of ''quarters of coverage'' for calendar years before 1978, subject to the provisions of subpar. (B) of this par., and for calendar years after 1977, subject to the provisions of subpar. (B) of this par., for provisions relating to factors respecting definition of ''quarter of coverage'' as a quarter in which the individual has been paid $50 or more in wages (except wages for agricultural labor paid after 1954) or for which he has been credited (as determined under section 412 of this title) with $100 or more of self-employment income.

Subsec. (d). Pub. L. 95–216, §352(b), added subsec. (d).

1973—Subsec. (a)(2)(ii), (iii). Pub. L. 93–233 substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000'', in cls. (ii) and (iii).

1972—Subsec. (a)(2)(ii). Pub. L. 92–336, §203(a)(3)(A), inserted provisions for determining a quarter of coverage based on amounts earned as wages after 1971 and before 1975, and amounts equal to the contribution and benefit base in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective.

Subsec. (a)(2)(iii). Pub. L. 92–336, §203(a)(3)(B), inserted provisions for determining a quarter of coverage based on amounts earned as wages after 1971 and before 1975, and amounts equal to the contribution and benefit base which is effective for the calendar year in the case of any taxable year beginning in any calendar year after 1974.

1971—Subsec. (a)(2)(ii). Pub. L. 92–5, §203(a)(3)(A), substituted ''after 1967 and before 1972, or $9,000 in the case of a calendar year after 1971'' for ''after 1967''.

Subsec. (a)(2)(iii). Pub. L. 92–5, §203(a)(3)(B), substituted ''after 1967 and beginning before 1972, or $9,000

in the case of a taxable year beginning after 1971'' for ''after 1967''.

1968—Subsec. (a)(2)(ii). Pub. L. 90–248, § 108(a)(3)(A), inserted ''and before 1968, or $7,800 in the case of a calendar year after 1967'' after ''1965''.

Subsec. (a)(2)(iii). Pub. L. 90–248, § 108(a)(3)(B), inserted ''and before 1968, or $7,800 in the case of a taxable year ending after 1967'' after ''1965''.

Subsec. (c). Pub. L. 90–248, § 155(b)(1), added subsec. (c).

1965—Subsec. (a)(2)(ii). Pub. L. 89–97, § 320(a)(3)(A), substituted ''after 1958 and before 1966, or $6,600 in the case of a calendar year after 1965'' for ''after 1958''.

Subsec. (a)(2)(iii). Pub. L. 89–97, § 320(a)(3)(B), substituted ''after 1958 and before 1966, or $6,600 in the case of a taxable year ending after 1965'' for ''after 1958''.

1961—Subsec. (a). Pub. L. 87–64 substituted ''has attained age 62'' for ''has attained retirement age'', and ''who attained age 62 (if a woman) or age 65 (if a man)'' for ''who attained retirement age''.

1960—Subsec. (a)(2). Pub. L. 86–778 required each quarter of a calendar year before 1951 to be counted as a quarter of coverage if the individual received wages equal to $3,000 in the calendar year.

Pub. L. 86–442 inserted sentence in cl. (B) to permit the quarters of coverage in a calendar year to be determined on the basis of the periods during which wages were earned in the case of individuals who did not die prior to Jan. 1, 1955, and who attained retirement age or died before July 1, 1957, who did not meet the requirements for insured status because of having too few quarters of coverage but who would meet the requirements if the quarters of coverage in the first calendar year in which they had any covered employment had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid.

1958—Subsec. (a)(2)(B). Pub. L. 85–840 inserted ''and before 1959, or $4,800 in the case of a calendar year after 1958'' after ''after 1954'' in cl. (ii), and ''and before 1959, or $4,800 in the case of a taxable year ending after 1958'' after ''after 1954'' in cl. (iii).

1956—Subsec. (a)(2)(B)(iv). Act Aug. 1, 1956, substituted ''if such wages equal or exceed $100 but are less than $200'' for ''if such wages are less than $200''.

1954—Subsec. (a)(2)(A). Act Sept. 1, 1954, § 106(a)(1), redefined ''quarter of coverage,'' in the case of quarters occurring before 1951, to exclude any quarter any part of which was included in a period of disability, other than the initial quarter of such period, and which provided that any quarter any part of which was included in a period of disability, other than the first quarter of such period, could not be counted as a quarter of coverage in a calendar year in which wages of $3,000 or more were paid.

Subsec. (a)(2)(B). Act Sept. 1, 1954, § 104(c), provided that for calendar years after 1954 an individual shall be credited with a quarter of coverage for each quarter of the year if his wages for the year equal $4,200 and he shall be credited with a quarter of coverage for each quarter of a taxable year ending after 1954 in which the sum of his wages and self-employment income equal $4,200.

Act Sept. 1, 1954, § 108(b), provided for crediting quarters of coverage on basis of annual amounts of wages received for agricultural labor.

Subsec. (a)(2)(B)(i). Act Sept. 1, 1954, § 106(a)(2), redefined ''quarter of coverage'', for quarters occurring after 1950, to exclude any quarter any part of which was included in a period of disability, other than the first and last quarters of such period.

1952—Subsec. (a)(2)(A). Act July 18, 1952, § 3(a)(1), redefined ''quarter of coverage''.

Subsec. (a)(2)(B)(i). Act July 18, 1952, § 3(a)(2), inserted ''and no quarter any part of which was included in a period of disability (other than the initial quarter and the last quarter of such period) shall be a quarter of coverage''.

Subsec. (a)(2)(B)(iii). Act July 18, 1952, § 3(a)(3), substituted ''shall (subject to clause (i) of this subparagraph) be a quarter of coverage'' for ''shall be a quarter of coverage''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5117(c)(3) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note below] shall apply only with respect to individuals who—

''(A) make application for benefits under section 202 of the Social Security Act [section 402 of this title] after the 18-month period following the month in which this Act is enacted [November 1990], and

''(B) are not entitled to benefits under section 227 or 228 of such Act [section 427 or 428 of this title] for the month in which such application is made.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10208(b)(2)(A), (B) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 351(c) of Pub. L. 95–216 effective Jan. 1, 1978, see section 351(d) of Pub. L. 95–216, set out as a note under section 409 of this title.

Section 352(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section] shall be effective January 1, 1978.''

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 203(a)(3)(A) of Pub. L. 92–336 applicable only with respect to remuneration paid after December 1972, and amendment by section 203(a)(3)(B) of Pub. L. 92–336 applicable only with respect to taxable years beginning after 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by section 203(a)(3)(A) of Pub. L. 92–5 applicable only with respect to remuneration paid after December 1971, and amendment by section 203(a)(3)(B) of Pub. L. 92–5 applicable only with respect to taxable years beginning after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 108(a)(3)(A) of Pub. L. 90–248 applicable only with respect to remuneration paid after December 1967, and amendment by section 108(a)(3)(B) applicable only with respect to taxable years ending after 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of this title.

Section 155(b)(2) of Pub. L. 90–248, as amended by Pub. L. 101–508, title V, § 5117(c)(2), Nov. 5, 1990, 104 Stat. 1388–278, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply only in the case of an individual who applies for benefits under section 202(a) of the Social Security Act [section 402(a) of this title] after the date of the enactment of this Act [Jan. 2, 1968], or who dies without being entitled to benefits under section 202(a) or 223 of the Social Security Act [section 402(a) or 423 of this title].''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 320(a)(3)(A) of Pub. L. 89–97 applicable with respect to remuneration paid after December, 1965, and amendment by section 320(a)(3)(B) of Pub. L. 89–97 applicable with respect to taxable years ending after 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after August 1, 1961 based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after August 1, 1961, see sections 102(f) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 206(b) of Pub. L. 86–778 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply only in the case of monthly benefits under title II of the Social Security Act [this subchapter], and the lump-sum death payment under section 202 of such Act [section 402 of this title], based on the wages and self-employment income of an individual—

''(A) who becomes entitled to benefits under section 202(a) or 223 of such Act [section 402(a) or 423 of this title] on the basis of an application filed in or after the month in which this Act is enacted [September 1960]; or

''(B) who is (or would, but for the provisions of section 215(f)(6) of the Social Security Act [section 415(b)(6) of this section], be) entitled to a recomputation of his primary insurance amount under section 215(f)(2)(A) of such Act on the basis of an application filed in or after the month in which this Act is enacted [September 1960]; or

''(C) who dies without becoming entitled to benefits under section 202(a) or 223 of the Social Security Act [section 402(a) or 423 of this title], and (unless he dies a currently insured individual but not a fully insured individual (as those terms are defined in section 214 of such Act [section 414 of this title])) without leaving any individual entitled (on the basis of his wages and self-employment income) to survivor's benefits or a lump-sum death payment under section 202 of such Act [section 402 of this title] on the basis of an application filed prior to the month in which this Act is enacted [September 1960]; or

''(D) who dies in or after the month in which this Act is enacted [September 1960] and whose survivors are (or would, but for the provisions of section 215(f)(6) of the Social Security Act [section 415(f)(6) of this title], be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act; or

''(E) who dies prior to the month in which this Act is enacted [September 1960] and (i) whose survivors are (or would, but for the provisions of section 215(f)(6) of the Social Security Act, be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act [section 415(f)(4)(A) of this title], and (ii) on the basis of whose wages and self-employment income no individual was entitled to survivor's benefits or a lump-sum death payment under section 202 of such Act [section 402 of this title] on the basis of an application filed prior to the month in which this Act is enacted [September 1960] (and no individual was entitled to such a benefit, without the filing of an application, for any month prior to the month in which this Act is enacted [September 1960]); or

''(F) who files an application for a recomputation under section 102(f)(2)(B) of the Social Security Amendments of 1954 [set out as a note under section 415 of this title] in or after the month in which this Act is enacted [September 1960] and is (or would, but for the fact that such recomputation would not result in a higher primary insurance amount, be) entitled to have his primary insurance amount recomputed under such subparagraph; or

''(G) who dies and whose survivors are (or would, but for the fact that such recomputation would not result in a higher primary insurance amount for such individual, be) entitled, on the basis of an application filed in or after the month in which this Act [September 1960] is enacted, to have his primary insurance amount recomputed under section 102(f)(2)(B) of the Social Security Amendments of 1954 [set out as a note under section 415 of this title].

''(2) The amendment made by subsection (a) [amending this section] shall also be applicable in the case of applications for disability determination under section 216(i) of the Social Security Act [section 416(i) of this title] filed in or after the month in which this Act is enacted [September 1960].

''(3) Notwithstanding any other provisions of this subsection, in the case of any individual who would not be a fully insured individual under section 214(a) of the Social Security Act [section 414(a) of this title] except for the enactment of this section, no benefits shall be payable on the basis of his wages and self-employment income for any month prior to the month in which this Act is enacted [September 1960].''

Section 3 of Pub. L. 86–442 provided in part that: ''This amendment [amending this section] shall be applicable in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months after June 1957, and in the case of the lump-sum death payments under such title, with respect to deaths occurring after such month; the requirements for filing applications for such benefits and payments within certain time limits, as prescribed in sections 202(i) and 202(j) of such title [sections 402(i) and 402(j) of this title], shall not apply if an application is filed within the one-year period beginning with the first day of the month after the month in which this Act is enacted [April 1960].''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 106(h) of act Sept. 1, 1954, provided that: ''Notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f) of this title], the amendments made by subsections (a), (b), (c), (d), (e), and (f) of this section [amending this section and sections 414 to 417 of this title and section 228e of Title 45, Railroads] shall apply with respect to monthly benefits under title II of the Social Security Act [subchapter II of this chapter] for months after June 1955, and with respect to lump-sum death payments under such title in the case of deaths occurring after June 1955; but no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [section 415(f) of this title].''

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

Section 3(f) of act July 18, 1952, provided that: ''Notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title], the amendments made by subsections (a), (b), (c), and (d) of this section [amending this section and sections 414 to 416, 420, and 421 of this title] shall apply to monthly benefits under title II of the Social Security Act [sub-

chapter II of this chapter] for months after June 1953, and to lump-sum death payments under such title in the case of deaths occurring after June 1953; but no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [section 415(f) of this title].''

Section 3(g) of act July 18, 1952, provided that: ''Notwithstanding the preceding provisions of this section and the amendments made thereby [amending this section and sections 414 to 416, 420, and 421 of this title], such provisions and amendments shall cease to be in effect at the close of June 30, 1953, and after such amendments cease to be in effect any provision of law amended thereby shall be in full force and effect as though this Act had not been enacted.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 409, 430, 433, 607 of this title.

§ 414. Insured status for purposes of old-age and survivors insurance benefits

For the purposes of this subchapter—

(a) "Fully insured individual" defined

The term ''fully insured individual'' means any individual who had not less than—

(1) one quarter of coverage (whenever acquired) for each calendar year elapsing after 1950 (or, if later, the year in which he attained age 21) and before the year in which he died or (if earlier) the year in which he attained age 62, except that in no case shall an individual be a fully insured individual unless he has at least 6 quarters of coverage; or

(2) 40 quarters of coverage; or

(3) in the case of an individual who died before 1951, 6 quarters of coverage;

not counting as an elapsed year for purposes of paragraph (1) any year any part of which was included in a period of disability (as defined in section 416(i) of this title).

(b) "Currently insured individual" defined

The term ''currently insured individual'' means any individual who had not less than six quarters of coverage during the thirteen-quarter period ending with (1) the quarter in which he died, (2) the quarter in which he became entitled to old-age insurance benefits, (3) the quarter in which he became entitled to primary insurance benefits under this subchapter as in effect prior to August 28, 1950, or (4) in the case of any individual entitled to disability insurance benefits, the quarter in which he most recently became entitled to disability insurance benefits, not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage.

(Aug. 14, 1935, ch. 531, title II, § 214, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 505; amended July 18, 1952, ch. 945, § 3(b), 66 Stat. 770; Sept. 1, 1954, ch. 1206, title I, §§ 106(b), 108(a), 68 Stat. 1079, 1083; Aug. 1, 1956, ch. 836, title I, § 108, 70 Stat. 830; Aug. 28, 1958, Pub. L. 85–840, title II, § 205(*l*), 72 Stat. 1025; Sept. 13, 1960, Pub. L. 86–778, title II, § 204(a), 74 Stat. 948; June 30, 1961, Pub. L. 87–64, title I, § 103(a), 75 Stat. 137; Oct. 30, 1972, Pub. L. 92–603, title I, § 104(a), 86 Stat. 1340.)

AMENDMENTS

1972—Subsec. (a)(1). Pub. L. 92–603 struck out provisions setting a separate age computation point for women and reduced from age 65 to age 62 the age computation point for men.

1961—Subsec. (a). Pub. L. 87–64 required one quarter of coverage for each calendar year elapsing after 1950 (or after the year in which the individual attained age 21, if that was later than 1950) instead of one quarter of coverage for each three of the quarters elapsing after 1950, and struck out ''unless such quarter was a quarter of coverage'' after ''a period of disability (as defined in section 41i(i) of this title)''.

1960—Subsec. (a). Pub. L. 86–778 changed provisions which required an individual to have one quarter of coverage for each two quarters to provide that an individual is fully insured if he has not less than one quarter of coverage for each three quarters elapsing after Dec. 31, 1950, or, if later, December 31 of the year in which he attained the age of 21 years, and inserted provisions defining fully insured in the case of an individual who died prior to 1951 as one who had six quarters of coverage.

1958—Subsec. (b). Pub. L. 85–840 included within definition of ''currently insured individual'' an individual entitled to disability insurance benefits who has not less than six quarters of coverage during the thirteen-quarter period ending with the quarter in which he most recently became entitled to disability insurance benefits.

1956—Subsec. (a)(3). Act Aug. 1, 1956, provided that an individual who had at least six quarters of coverage after 1954 would be fully insured if all but four of the quarters elapsing after 1954 and prior to July 1, 1957, or if later, the quarter in which he attained retirement age or died, whichever first occurred, are quarters of coverage.

1954—Subsec. (a)(2)(B). Act Sept. 1, 1954, § 106(b)(1), excluded from the elapsed period under subsec. (a)(2)(A) any quarter any part of which was included in a period of disability, unless such quarter was a quarter of coverage.

Subsec. (a)(3), (4). Act Sept. 1, 1954, § 108(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b). Act Sept. 1, 1954, § 106(b)(2), inserted '', not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage.''

1952—Subsec. (a)(2)(B). Act July 18, 1952, § 3(b)(1), inserted ''not counting as an elapsed quarter for purposes of subparagraph (A) any quarter any part of which was included in a period of disability (as defined in section 416(i) of this title unless such quarter was a quarter of coverage''.

Subsec. (b). Act July 18, 1952, § 3(b)(2), inserted ''not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage'' after ''August 28, 1950''.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 104(j) of Pub. L. 92–603 provided that:

''(1) The amendments made by this section [amending this section and sections 415, 416, 423, and 427 of this title and provisions set out as a note under section 415 of this title] (except the amendment made by subsection (i), and the amendment made by subsection (g) to section 209(i) of the Social Security Act) shall apply only in the case of a man who attains (or would attain) age 62 after December 1974. The amendment made by subsection (i), and the amendment made by subsection (g) to section 209(i) of the Social Security Act [section 409(i) of this title and section 3121(a)(9) of Title 26, Internal Revenue Code], shall apply only with respect to payments after 1974.

''(2) In the case of a man who attains age 62 prior to 1975, the number of his elapsed years for purposes of section 215(b)(3) of the Social Security Act [section 415(b)(3) of this title] shall be equal to (A) the number determined under such section as in effect on September 1, 1972, or (B) if less, the number determined as though he attained age 65 in 1975, except that monthly

benefits under title II of the Social Security Act [this subchapter] for months prior to January 1973 payable on the basis of his wages and self-employment income shall be determined as though this section had not been enacted.

''(3)(A) In the case of a man who attains or will attain age 62 in 1973, the figure '65' in sections 214(a)(1), 223(c)(1)(A), and 216(i)(3)(A) of the Social Security Act [subsec. (a)(1) of this section and sections 423(c)(1)(A) and 416(i)(3)(A) of this title] shall be deemed to read '64'.

''(B) In the case of a man who attains or will attain age 62 in 1974, the figure '65' in sections 214(a)(1), 223(c)(1)(A), and 216(i)(3)(A) of the Social Security Act [subsec. (a)(1) of this section and sections 423(c)(1)(A) and 416(i)(3)(A) of this title] shall be deemed to read '63'.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 103(b) of Pub. L. 87–64 provided that: ''The amendment made by subsection (a) [amending this section] shall apply—

''(1) in the case of monthly benefits under title II of the Social Security Act [this subchapter] for months beginning on or after the effective date of this title [see note set out under section 402 of this title], based on applications filed in or after March 1961,

''(2) in the case of lump-sum death payments under such title with respect to deaths on or after the effective date of this title, and

''(3) in the case of an application for a disability determination (with respect to a period of disability, as defined in section 216(i) of such Act [section 416(i) of this title]) filed in or after March 1961.''

EFFECTIVE DATE OF 1960 AMENDMENT

Section 204(d)(1) of Pub. L. 86–778 provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section and provisions set out as a note under section 415 of this title] shall be applicable (A) in the case of monthly benefits under title II of the Social Security Act [this subchapter], for months after the month in which this Act is enacted [September 1960], on the basis of applications filed in or after such month, (B) in the case of lump-sum death payments under such title with respect to deaths occurring after such month, and (C) in the case of an application for a disability determination with respect to a period of disability (as defined in section 216(i) of the Social Security Act [section 416(i) of this title]) filed after such month.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 205(*l*) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 106(b) of act Sept. 1, 1954, applicable with respect to monthly benefits under subchapter II of this chapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955; but that no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 415(f) of this title, see section 106(h) of act Sept. 1, 1954, set out as a note under section 413 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

For effective and termination dates of amendment by act July 18, 1952, see section 3(f), (g) of act July 18, 1952, set out as a note under section 413 of this title.

EMPLOYEES OF NONPROFIT ORGANIZATIONS AS FULLY INSURED INDIVIDUALS

Pub. L. 98–21, title I, §102(e), Apr. 20, 1983, 97 Stat. 71, as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) If any individual—

''(A) on January 1, 1984, is age 55 or over, and is an employee of an organization described in section 210(a)(8)(B) of the Social Security Act [42 U.S.C. 410(a)(8)(B)] (A) which does not have in effect (on that date) a waiver certificate under section 3121(k) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(k)] and (B) to the employees of which social security coverage is extended on January 1, 1984, solely by reason of the enactment of this section [amending section 410 of this title and section 3121 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under section 3121 of Title 26], and

''(B) after December 31, 1983, acquires the number of quarters of coverage (within the meaning of section 213 of the Social Security Act [section 413 of this title]) which is required for purposes of this subparagraph under paragraph (2),

then such individual shall be deemed to be a fully insured individual (as defined in section 214 of the Social Security Act [this section]) for all of the purposes of title II of such Act [this subchapter].

''(2) The number of quarters of coverage which is required for purposes of subparagraph (B) of paragraph (1) shall be determined as follows:

"In the case of an individual who on January 1, 1984, is—	The number of quarters of coverage so required shall be—
age 60 or over	6
age 59 or over but less than age 60	8
age 58 or over but less than age 59	12
age 57 or over but less than age 58	16
age 55 or over but less than age 57	20.''

DETERMINATION OF ENTITLEMENT TO MONTHLY BENEFITS FOR SEPT. 1960 AND PRIOR MONTHS AND INDIVIDUAL'S CLOSING DATE PRIOR TO 1960

Section 204(d)(2) of Pub. L. 86–778 provided that the provisions of subsec. (a) of this section in effect prior to Sept. 13, 1960, and the provisions of section 109 of act Sept. 1, 1954, ch. 1206, 68 Stat. 1084, set out as a note under section 415 of this title, as in effect prior to such date were to apply for purposes of determining entitlement to monthly benefits under this subchapter for Sept. 1960 and prior months with respect to wages and self-employment income of an individual and for purposes of determining an individual's closing date prior to 1960 under section 415(b)(3)(B) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 413, 416, 423, 426–1, 427 of this title; title 5 sections 8349, 8421; title 38 section 1312; title 45 section 231.

§ 415. Computation of primary insurance amount

For the purposes of this subchapter—

(a) Primary insurance amount

(1)(A) The primary insurance amount of an individual shall (except as otherwise provided in this section) be equal to the sum of—

(i) 90 percent of the individual's average indexed monthly earnings (determined under subsection (b) of this section) to the extent that such earnings do not exceed the amount established for purposes of this clause by subparagraph (B),

(ii) 32 percent of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established

for purposes of clause (i) but do not exceed the amount established for purposes of this clause by subparagraph (B), and

(iii) 15 percent of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (ii),

rounded, if not a multiple of $0.10, to the next lower multiple of $0.10, and thereafter increased as provided in subsection (i) of this section.

(B)(i) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in the calendar year 1979, the amount established for purposes of clause (i) and (ii) of subparagraph (A) shall be $180 and $1,085, respectively.

(ii) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established with respect to the calendar year 1979 under clause (i) of this subparagraph and the quotient obtained by dividing—

(I) the national average wage index (as defined in section 409(k)(1) of this title) for the second calendar year preceding the calendar year for which the determination is made, by

(II) the national average wage index (as so defined) for 1977.

(iii) Each amount established under clause (ii) for any calendar year shall be rounded to the nearest $1, except that any amount so established which is a multiple of $0.50 but not of $1 shall be rounded to the next higher $1.

(C)(i) No primary insurance amount computed under subparagraph (A) may be less than an amount equal to $11.50 multiplied by the individual's years of coverage in excess of 10, or the increased amount determined for purposes of this clause under subsection (i) of this section.

(ii) For purposes of clause (i), the term ''years of coverage'' with respect to any individual means the number (not exceeding 30) equal to the sum of (I) the number (not exceeding 14 and disregarding any fraction) determined by dividing (a) the total of the wages credited to such individual (including wages deemed to be paid prior to 1951 to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] prior to 1951 which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid prior to 1951 to such individual under section 431 of this title) for years after 1936 and before 1951 by (b) $900, plus (II) the number equal to the number of years after 1950 each of which is a computation base year (within the meaning of subsection (b)(2)(B)(ii) of this section) and in each of which he is credited with wages (including wages deemed to be paid to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.] which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid to such individual under section 429 of this title) and self-employment income of not less than 25 percent (in the case of a year after 1950 and before 1978) of the maximum amount which (pursuant to subsection (e) of this section) may be counted for such year, or 25 percent (in the case of a year after 1977 and before 1991) or 15 percent (in the case of a year after 1990) of the maximum amount which (pursuant to subsection (e) of this section) could be counted for such year if section 430 of this title as in effect immediately prior to December 20, 1977, had remained in effect without change (except that, for purposes of subsection (b) of such section 430 of this title as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to an amount equal to $45,000, each reference in paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the national average wage index (as defined in section 409(k)(1) of this title), the reference to a preceding calendar year in paragraph (2)(A) of such subsection (b) shall be deemed a reference to the calendar year before the calendar year in which the determination under subsection (a) of such section 430 of this title is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1992).

(D) In each calendar year the Commissioner of Social Security shall publish in the Federal Register, on or before November 1, the formula for computing benefits under this paragraph and for adjusting wages and self-employment income under subsection (b)(3) of this section in the case of an individual who becomes eligible for an old-age insurance benefit, or (if earlier) becomes eligible for a disability insurance benefit or dies, in the following year, and the national average wage index (as defined in section 409(k)(1) of this title) on which that formula is based.

(2)(A) A year shall not be counted as the year of an individual's death or eligibility for purposes of this subsection or subsection (i) of this section in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit or benefits to which he was entitled during such 12 months).

(B) In the case of an individual who was entitled to a disability insurance benefit for any of the 12 months before the month in which he became entitled to an old-age insurance benefit, became reentitled to a disability insurance benefit, or died, the primary insurance amount for determining any benefit attributable to that entitlement, reentitlement, or death is the greater of—

(i) the primary insurance amount upon which such disability insurance benefit was based, increased by the amount of each general benefit increase (as defined in subsection (i)(3) of this section), and each increase provided under subsection (i)(2) of this section, that would have applied to such primary insurance amount had the individual remained entitled to such disability insurance benefit until the month in which he became so entitled or reentitled or died, or

(ii) the amount computed under paragraph (1)(C).

(C) In the case of an individual who was entitled to a disability insurance benefit for any month, and with respect to whom a primary insurance amount is required to be computed at any time after the close of the period of the individual's disability (whether because of such individual's subsequent entitlement to old-age insurance benefits or to a disability insurance benefit based upon a subsequent period of disability, or because of such individual's death), the primary insurance amount so computed may in no case be less than the primary insurance amount with respect to which such former disability insurance benefit was most recently determined.

(3)(A) Paragraph (1) applies only to an individual who was not eligible for an old-age insurance benefit prior to January 1979 and who in that or any succeeding month—

(i) becomes eligible for such a benefit,

(ii) becomes eligible for a disability insurance benefit, or

(iii) dies,

and (except for subparagraph (C)(i) thereof) it applies to every such individual except to the extent otherwise provided by paragraph (4).

(B) For purposes of this subchapter, an individual is deemed to be eligible—

(i) for old-age insurance benefits, for months beginning with the month in which he attains age 62, or

(ii) for disability insurance benefits, for months beginning with the month in which his period of disability began as provided under section 416(i)(2)(C) of this title,

except as provided in paragraph (2)(A) in cases where fewer than 12 months have elapsed since the termination of a prior period of disability.

(4) Paragraph (1) (except for subparagraph (C)(i) thereof) does not apply to the computation or recomputation of a primary insurance amount for—

(A) an individual who was eligible for a disability insurance benefit for a month prior to January 1979 unless, prior to the month in which occurs the event described in clause (i), (ii), or (iii) of paragraph (3)(A), there occurs a period of at least 12 consecutive months for which he was not entitled to a disability insurance benefit, or

(B) an individual who had wages or self-employment income credited for one or more years prior to 1979, and who was not eligible for an old-age or disability insurance benefit, and did not die, prior to January 1979, if in the year for which the computation or recomputation would be made the individual's primary insurance amount would be greater if computed or recomputed—

(i) under this subsection as in effect in December 1978, for purposes of old-age insurance benefits in the case of an individual who becomes eligible for such benefits prior to 1984, or

(ii) as provided by subsection (d) of this section, in the case of an individual to whom such section applies.

In determining whether an individual's primary insurance amount would be greater if computed or recomputed as provided in subparagraph (B), (I) the table of benefits in effect in December 1978, as modified by paragraph (6), shall be applied without regard to any increases in that table which may become effective (in accordance with subsection (i)(4) of this section) for years after 1978 (subject to clause (iii) of subsection (i)(2)(A) of this section) and (II) such individual's average monthly wage shall be computed as provided by subsection (b)(4) of this section.

(5)(A) Subject to subparagraphs (B), (C), (D) and (E), for purposes of computing the primary insurance amount (after December 1978) of an individual to whom paragraph (1) does not apply (other than an individual described in paragraph (4)(B)), this section as in effect in December 1978 shall remain in effect, except that, effective for January 1979, the dollar amount specified in paragraph (3) of this subsection shall be increased to $11.50.

(B)(i) Subject to clauses (ii), (iii), and (iv), and notwithstanding any other provision of law, the primary insurance amount of any individual described in subparagraph (C) shall be, in lieu of the primary insurance amount as computed pursuant to any of the provisions referred to in subparagraph (D), the primary insurance amount computed under subsection (a) of this section as in effect in December 1978, without regard to subsections (b)(4) and (c) of this section as so in effect.

(ii) The computation of a primary insurance amount under this subparagraph shall be subject to section 104(j)(2) of the Social Security Amendments of 1972 (relating to the number of elapsed years under subsection (b) of this section).

(iii) In computing a primary insurance amount under this subparagraph, the dollar amount specified in paragraph (3) of subsection (a) of this section (as in effect in December 1978) shall be increased to $11.50.

(iv) In the case of an individual to whom subsection (d) of this section applies, the primary insurance amount of such individual shall be the greater of—

(I) the primary insurance amount computed under the preceding clauses of this subparagraph, or

(II) the primary insurance amount computed under subsection (d) of this section.

(C) An individual is described in this subparagraph if—

(i) paragraph (1) does not apply to such individual by reason of such individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979, and

(ii) such individual's primary insurance amount computed under this section as in effect immediately before November 5, 1990, would have been computed under the provisions described in subparagraph (D).

(D) The provisions described in this subparagraph are—

(i) the provisions of this subsection as in effect prior to July 30, 1965, if such provisions would preclude the use of wages prior to 1951 in the computation of the primary insurance amount,

(ii) the provisions of section 409 of this title as in effect prior to August 28, 1950, and

(iii) the provisions of subsection (d) of this section as in effect prior to December 20, 1977.

(E) For purposes of this paragraph, the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) of this section for each year after 1978.

(6)(A) In applying the table of benefits in effect in December 1978 under this section for purposes of the last sentence of paragraph (4), such table, revised as provided by subsection (i) of this section, as applicable, shall be extended for average monthly wages of less than $76.00 and primary insurance benefits (as determined under subsection (d) of this section) of less than $16.20.

(B) The Commissioner of Social Security shall determine and promulgate in regulations the methodology for extending the table under subparagraph (A).

(7)(A) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection, who—

(i) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986 and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(ii) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subparagraph (C), but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937 [45 U.S.C. 231 et seq., 228a et seq.], (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title, and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)) which is based in whole or in part upon his or her earnings for service which did not constitute ''employment'' as defined in section 410 of this title for purposes of this subchapter (hereafter in this paragraph and in subsection (d)(3) of this section referred to as ''noncovered service''), the primary insurance amount of that individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be computed or recomputed under subparagraph (B).

(B)(i) If paragraph (1) of this subsection would apply to such an individual (except for subparagraph (A) of this paragraph), there shall first be computed an amount equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that for purposes of such computation the percentage of the individual's average indexed monthly earnings established by subparagraph (A)(i) of paragraph (1) shall be the percent specified in clause (ii). There shall then be computed (without regard to this paragraph) a second amount, which shall be equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that such second amount shall be reduced by an amount equal to one-half of the portion of the monthly periodic payment which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which the individual is entitled (or is deemed to be entitled) for the initial month of his or her concurrent entitlement to such monthly periodic payment and old-age or disability insurance benefits. The individual's primary insurance amount shall be the larger of the two amounts computed under this subparagraph (before the application of subsection (i) of this section) and shall be deemed to be computed under paragraph (1) of this subsection for the purpose of applying other provisions of this subchapter.

(ii) For purposes of clause (i), the percent specified in this clause is—

(I) 80.0 percent with respect to individuals who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62) in 1986;

(II) 70.0 percent with respect to individuals who so become eligible in 1987;

(III) 60.0 percent with respect to individuals who so become eligible in 1988;

(IV) 50.0 percent with respect to individuals who so become eligible in 1989; and

(V) 40.0 percent with respect to individuals who so become eligible in 1990 or thereafter.

(C)(i) Any periodic payment which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly payment (as determined by the Commissioner of Social Security), and such equivalent monthly payment shall constitute a monthly periodic payment for purposes of this paragraph.

(ii) In the case of an individual who has elected to receive a periodic payment that has been reduced so as to provide a survivor's benefit to any other individual, the payment shall be deemed to be increased (for purposes of any computation under this paragraph or subsection (d)(3) of this section) by the amount of such reduction.

(iii) For purposes of this paragraph, the term ''periodic payment'' includes a payment payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(D) This paragraph shall not apply in the case of an individual who has 30 years or more of coverage. In the case of an individual who has more than 20 years of coverage but less than 30 years of coverage (as so defined), the percent specified in the applicable subdivision of subparagraph (B)(ii) shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be the applicable percent specified in the following table:

If the number of such individual's years of coverage (as so defined) is:	The applicable percent is:
29	85 percent
28	80 percent
27	75 percent

26	70 percent
25	65 percent
24	60 percent
23	55 percent
22	50 percent
21	45 percent.

For purposes of this subparagraph, the term ''year of coverage'' shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to ''15 percent'' therein shall be deemed to be a reference to ''25 percent''.

(E) This paragraph shall not apply in the case of an individual whose eligibility for old-age or disability insurance benefits is based on an agreement concluded pursuant to section 433 of this title or an individual who on January 1, 1984—

(i) is an employee performing service to which social security coverage is extended on that date solely by reason of the amendments made by section 101 of the Social Security Amendments of 1983; or

(ii) is an employee of a nonprofit organization which (on December 31, 1983) did not have in effect a waiver certificate under section 3121(k) of the Internal Revenue Code of 1954 and to the employees of which social security coverage is extended on that date solely by reason of the amendments made by section 102 of that Act, unless social security coverage had previously extended to service performed by such individual as an employee of that organization under a waiver certificate which was subsequently (prior to December 31, 1983) terminated.

(b) Average indexed monthly earnings; average monthly wage

(1) An individual's average indexed monthly earnings shall be equal to the quotient obtained by dividing—

(A) the total (after adjustment under paragraph (3)) of his wages paid in and self-employment income credited to his benefit computation years (determined under paragraph (2)), by

(B) the number of months in those years.

(2)(A) The number of an individual's benefit computation years equals the number of elapsed years reduced—

(i) in the case of an individual who is entitled to old-age insurance benefits (except as provided in the second sentence of this subparagraph), or who has died, by 5 years, and

(ii) in the case of an individual who is entitled to disability insurance benefits, by the number of years equal to one-fifth of such individual's elapsed years (disregarding any resulting fractional part of a year), but not by more than 5 years.

Clause (ii), once applicable with respect to any individual, shall continue to apply for purposes of determining such individual's primary insurance amount for purposes of any subsequent eligibility for disability or old-age insurance benefits unless prior to the month in which such eligibility begins there occurs a period of at least 12 consecutive months for which he was not entitled to a disability or an old-age insurance benefit. If an individual described in clause (ii) is living with a child (of such individual or his or her spouse) under the age of 3 in any calendar year which is included in such individual's computation base years, but which is not disregarded pursuant to clause (ii) or to subparagraph (B) (in determining such individual's benefit computation years) by reason of the reduction in the number of such individual's elapsed years under clause (ii), the number by which such elapsed years are reduced under this subparagraph pursuant to clause (ii) shall be increased by one (up to a combined total not exceeding 3) for each such calendar year; except that (I) no calendar year shall be disregarded by reason of this sentence (in determining such individual's benefit computation years) unless the individual was living with such child substantially throughout the period in which the child was alive and under the age of 3 in such year and the individual had no earnings as described in section 403(f)(5) of this title in such year, (II) the particular calendar years to be disregarded under this sentence (in determining such benefit computation years) shall be those years (not otherwise disregarded under clause (ii)) which, before the application of subsection (f) of this section, meet the conditions of subclause (I), and (III) this sentence shall apply only to the extent that its application would not result in a lower primary insurance amount. The number of an individual's benefit computation years as determined under this subparagraph shall in no case be less than 2.

(B) For purposes of this subsection with respect to any individual—

(i) the term ''benefit computation years'' means those computation base years, equal in number to the number determined under subparagraph (A), for which the total of such individual's wages and self-employment income, after adjustment under paragraph (3), is the largest;

(ii) the term ''computation base years'' means the calendar years after 1950 and before—

(I) in the case of an individual entitled to old-age insurance benefits, the year in which occurred (whether by reason of section 402(j)(1) of this title or otherwise) the first month of that entitlement; or

(II) in the case of an individual who has died (without having become entitled to old-age insurance benefits), the year succeeding the year of his death;

except that such term excludes any calendar year entirely included in a period of disability; and

(iii) the term ''number of elapsed years'' means (except as otherwise provided by section 104(j)(2) of the Social Security Amendments of 1972) the number of calendar years after 1950 (or, if later, the year in which the individual attained age 21) and before the year in which the individual died, or, if it occurred earlier (but after 1960), the year in which he attained age 62; except that such term excludes any calendar year any part of which is included in a period of disability.

(3)(A) Except as provided by subparagraph (B), the wages paid in and self-employment income

credited to each of an individual's computation base years for purposes of the selection therefrom of benefit computation years under paragraph (2) shall be deemed to be equal to the product of—

(i) the wages and self-employment income paid in or credited to such year (as determined without regard to this subparagraph), and

(ii) the quotient obtained by dividing—

(I) the national average wage index (as defined in section 409(k)(1) of this title) for the second calendar year preceding the earliest of the year of the individual's death, eligibility for an old-age insurance benefit, or eligibility for a disability insurance benefit (except that the year in which the individual dies, or becomes eligible, shall not be considered as such year if the individual was entitled to disability insurance benefits for any month in the 12-month period immediately preceding such death or eligibility, but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit to which he was entitled in such 12-month period), by

(II) the national average wage index (as so defined) for the computation base year for which the determination is made.

(B) Wages paid in or self-employment income credited to an individual's computation base year which—

(i) occurs after the second calendar year specified in subparagraph (A)(ii)(I), or

(ii) is a year treated under subsection (f)(2)(C) of this section as though it were the last year of the period specified in paragraph (2)(B)(ii),

shall be available for use in determining an individual's benefit computation years, but without applying subparagraph (A) of this paragraph.

(4) For purposes of determining the average monthly wage of an individual whose primary insurance amount is computed (after 1978) under subsection (a) or (d) of this section as in effect (except with respect to the table contained therein) in December 1978, by reason of subsection (a)(4)(B) of this section, this subsection as in effect in December 1978 shall remain in effect, except that paragraph (2)(C) (as then in effect) shall be deemed to provide that ''computation base years'' include only calendar years in the period after 1950 (or 1936, if applicable) and prior to the year in which occurred the first month for which the individual was eligible (as defined in subsection (a)(3)(B) of this section as in effect in January 1979) for an old-age or disability insurance benefit, or, if earlier, the year in which he died. Any calendar year all of which is included in a period of disability shall not be included as a computation base year for such purposes.

(c) Application of prior provisions in certain cases

Subject to the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990, this subsection as in effect in December 1978 shall remain in effect with respect to an individual to whom subsection (a)(1) of this section does not apply by reason of the individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979.

(d) Primary insurance amount under 1939 Act

(1) For purposes of column I of the table appearing in subsection (a) of this section, as that subsection was in effect in December 1977, an individual's primary insurance benefit shall be computed as follows:

(A) The individual's average monthly wage shall be determined as provided in subsection (b) of this section, as in effect in December 1977 (but without regard to paragraph (4) thereof and subject to section 104(j)(2) of the Social Security Amendments of 1972), except that for purposes of paragraphs (2)(C) and (3) of that subsection (as so in effect) 1936 shall be used instead of 1950.

(B) For purposes of subparagraphs (B) and (C) of subsection (b)(2) of this section (as so in effect)—

(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual—

(I) shall, in the case of an individual who attained age 21 prior to 1950, be divided by the number of years (hereinafter in this subparagraph referred to as the ''divisor'') elapsing after the year in which the individual attained age 20, or 1936 if later, and prior to the earlier of the year of death or 1951, except that such divisor shall not include any calendar year entirely included in a period of disability, and in no case shall the divisor be less than one, and

(II) shall, in the case of an individual who died before 1950 and before attaining age 21, be divided by the number of years (hereinafter in this subparagraph referred to as the ''divisor'') elapsing after the second year prior to the year of death, or 1936 if later, and prior to the year of death, and in no case shall the divisor be less than one; and

(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who either attained age 21 after 1949 or died after 1949 before attaining age 21, shall be divided by the number of years (hereinafter in this subparagraph referred to as the ''divisor'') elapsing after 1949 and prior to 1951.

The quotient so obtained shall be deemed to be the individual's wages credited to each of the years which were used in computing the amount of the divisor, except that—

(iii) if the quotient exceeds $3,000, only $3,000 shall be deemed to be the individual's wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual's total wages prior to 1951 (I) if less than $3,000, shall be deemed credited to the computation base year (as defined in subsection (b)(2) of this section as in effect in December 1977) immediately preceding the earliest year used in computing the amount of the divisor, or (II) if $3,000 or more, shall be deemed credited, in $3,000 increments, to the computation base year (as so defined) immediately preceding

the earliest year used in computing the amount of the divisor and to each of the computation base years (as so defined) consecutively preceding that year, with any remainder less than $3,000 being credited to the computation base year (as so defined) immediately preceding the earliest year to which a full $3,000 increment was credited; and

(iv) no more than $42,000 may be taken into account, for purposes of this subparagraph, as total wages after 1936 and prior to 1951.

(C) For the purposes of subparagraph (B), ''total wages prior to 1951'' with respect to an individual means the sum of (i) remuneration credited to such individual prior to 1951 on the records of the Commissioner of Social Security, (ii) wages deemed paid prior to 1951 to such individual under section 417 of this title, (iii) compensation under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] prior to 1951 creditable to him pursuant to this subchapter, and (iv) wages deemed paid prior to 1951 to such individual under section 431 of this title.

(D) The individual's primary insurance benefit shall be 40 percent of the first $50 of his average monthly wage as computed under this subsection, plus 10 percent of the next $200 of his average monthly wage, increased by 1 percent for each increment year. The number of increment years is the number, not more than 14 nor less than 4, that is equal to the individual's total wages prior to 1951 divided by $1,650 (disregarding any fraction).

(2) The provisions of this subsection shall be applicable only in the case of an individual—

(A) with respect to whom at least one of the quarters elapsing prior to 1951 is a quarter of coverage;

(B) who attained age 22 after 1950 and with respect to whom less than six of the quarters elapsing after 1950 are quarters of coverage, or who attained such age before 1951; and

(C)(i) who becomes entitled to benefits under section 402(a) or 423 of this title or who dies, or

(ii) whose primary insurance amount is required to be recomputed under paragraph (2), (6), or (7) of subsection (f) of this section or under section 431 of this title.

(3) In the case of an individual whose primary insurance amount is not computed under paragraph (1) of subsection (a) of this section by reason of paragraph (4)(B)(ii) of that subsection, who—

(A) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986, and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(B) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subsection (a)(7)(C) of this section, but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937 [45 U.S.C. 231 et seq., 228a et seq.], (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title, and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)) which is based (in whole or in part) upon his or her earnings in noncovered service, the primary insurance amount of such individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be the primary insurance amount computed or recomputed under this subsection (without regard to this paragraph and before the application of subsection (i) of this section) reduced by an amount equal to the smaller of—

(i) one-half of the primary insurance amount (computed without regard to this paragraph and before the application of subsection (i) of this section), or

(ii) one-half of the portion of the monthly periodic payment (or payment determined under subsection (a)(7)(C) of this section) which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which that individual is entitled (or is deemed to be entitled) for the initial month of such concurrent entitlement.

This paragraph shall not apply in the case of any individual to whom subsection (a)(7) of this section would not apply by reason of subparagraph (E) or the first sentence of subparagraph (D) thereof.

(e) Certain wages and self-employment income not to be counted

For the purposes of subsections (b) and (d) of this section—

(1) in computing an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage, there shall not be counted the excess over $3,600 in the case of any calendar year after 1950 and before 1955, the excess over $4,200 in the case of any calendar year after 1954 and before 1959, the excess over $4,800 in the case of any calendar year after 1958 and before 1966, the excess over $6,600 in the case of any calendar year after 1965 and before 1968, the excess over $7,800 in the case of any calendar year after 1967 and before 1972, the excess over $9,000 in the case of any calendar year after 1971 and before 1973, the excess over $10,800 in the case of any calendar year after 1972 and before 1974, the excess over $13,200 in the case of any calendar year after 1973 and before 1975, and the excess over an amount equal to the contribution and benefit base (as determined under section 430 of this title) in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective, (before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A) of this section) of (A) the wages paid to him in such year, plus (B)

the self-employment income credited to such year (as determined under section 412 of this title); and

(2) if an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage, computed under subsection (b) of this section or for the purposes of subsection (d) of this section is not a multiple of $1, it shall be reduced to the next lower multiple of $1.

(f) Recomputation of benefits

(1) After an individual's primary insurance amount has been determined under this section, there shall be no recomputation of such individual's primary insurance amount except as provided in this subsection or, in the case of a World War II veteran who died prior to July 27, 1954, as provided in section 417(b) of this title.

(2)(A) If an individual has wages or self-employment income for a year after 1978 for any part of which he is entitled to old-age or disability insurance benefits, the Commissioner of Social Security shall, at such time or times and within such period as the Commissioner may by regulation prescribe, recompute the individual's primary insurance amount for that year.

(B) For the purpose of applying subparagraph (A) of subsection (a)(1) of this section to the average indexed monthly earnings of an individual to whom that subsection applies and who receives a recomputation under this paragraph, there shall be used, in lieu of the amounts established by subsection (a)(1)(B) of this section for purposes of clauses (i) and (ii) of subsection (a)(1)(A) of this section, the amounts so established that were (or, in the case of an individual described in subsection (a)(4)(B) of this section, would have been) used in the computation of such individual's primary insurance amount prior to the application of this subsection.

(C) A recomputation of any individual's primary insurance amount under this paragraph shall be made as provided in subsection (a)(1) of this section as though the year with respect to which it is made is the last year of the period specified in subsection (b)(2)(B)(ii) of this section; and subsection (b)(3)(A) of this section shall apply with respect to any such recomputation as it applied in the computation of such individual's primary insurance amount prior to the application of this subsection.

(D) A recomputation under this paragraph with respect to any year shall be effective—

(i) in the case of an individual who did not die in that year, for monthly benefits beginning with benefits for January of the following year; or

(ii) in the case of an individual who died in that year, for monthly benefits beginning with benefits for the month in which he died.

(3) Repealed. Pub. L. 95–216, title II, § 201(f)(2), Dec. 20, 1977, 91 Stat. 1521.

(4) A recomputation shall be effective under this subsection only if it increases the primary insurance amount by at least $1.

(5) In the case of a man who became entitled to old-age insurance benefits and died before the month in which he attained retirement age (as defined in section 416(*l*) of this title), the Commissioner of Social Security shall recompute his primary insurance amount as provided in subsection (a) of this section as though he became entitled to old-age insurance benefits in the month in which he died; except that (i) his computation base years referred to in subsection (b)(2) of this section shall include the year in which he died, and (ii) his elapsed years referred to in subsection (b)(3) of this section shall not include the year in which he died or any year thereafter. Such recomputation of such primary insurance amount shall be effective for and after the month in which he died.

(6) Upon the death after 1967 of an individual entitled to benefits under section 402(a) or section 423 of this title, if any person is entitled to monthly benefits or a lump-sum death payment, on the wages and self-employment income of such individual, the Commissioner of Social Security shall recompute the decedent's primary insurance amount, but only if the decedent during his lifetime was paid compensation which was treated under section 405(*o*) of this title as remuneration for employment.

(7) This subsection as in effect in December 1978 shall continue to apply to the recomputation of a primary insurance amount computed under subsection (a) or (d) of this section as in effect (without regard to the table in subsection (a) of this section) in that month, and, where appropriate, under subsection (d) as in effect in December 1977, including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990. For purposes of recomputing a primary insurance amount determined under subsection (a) or (d) of this section (as so in effect) in the case of an individual to whom those subsections apply by reason of subsection (a)(4)(B) of this section as in effect after December 1978, no remuneration shall be taken into account for the year in which the individual initially became eligible for an old-age or disability insurance benefit or died, or for any year thereafter, and (effective January 1982) the recomputation shall be modified by the application of subsection (a)(6) of this section where applicable.

(8) The Commissioner of Social Security shall recompute the primary insurance amounts applicable to beneficiaries whose benefits are based on a primary insurance amount which was computed under subsection (a)(3) of this section effective prior to January 1979, or would have been so computed if the dollar amount specified therein were $11.50. Such recomputation shall be effective January 1979, and shall include the effect of the increase in the dollar amount provided by subsection (a)(1)(C)(i) of this section. Such primary insurance amount shall be deemed to be provided under such section for purposes of subsection (i) of this section.

(9)(A) In the case of an individual who becomes entitled to a periodic payment determined under subsection (a)(7)(A) of this section (including a payment determined under subsection (a)(7)(C) of this section) in a month subsequent to the first month in which he or she becomes entitled to an old-age or disability insurance benefit, and

whose primary insurance amount has been computed without regard to either such subsection or subsection (d)(3) of this section, such individual's primary insurance amount shall be recomputed (notwithstanding paragraph (4) of this subsection), in accordance with either such subsection or subsection (d)(3) of this section, as may be applicable, effective with the first month of his or her concurrent entitlement to such benefit and such periodic payment.

(B) If an individual's primary insurance amount has been computed under subsection (a)(7) or (d)(3) of this section, and it becomes necessary to recompute that primary insurance amount under this subsection—

(i) so as to increase the monthly benefit amount payable with respect to such primary insurance amount (except in the case of the individual's death), such increase shall be determined as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(3) of this section, or

(ii) by reason of the individual's death, such primary insurance amount shall be recomputed without regard to (and as though it had never been computed with regard to) subsection (a)(7) or (d)(3) of this section.

(g) Rounding of benefits

The amount of any monthly benefit computed under section 402 or 423 of this title which (after any reduction under sections 403(a) and 424a of this title and any deduction under section 403(b) of this title, and after any deduction under section 1395s(a)(1) of this title) is not a multiple of $1 shall be rounded to the next lower multiple of $1.

(h) Service of certain Public Health Service Officers

(1) Notwithstanding the provisions of subchapter III of chapter 83 of title 5, remuneration paid for service to which the provisions of section 410(*l*)(1) of this title are applicable and which is performed by an individual as a commissioned officer of the Reserve Corps of the Public Health Service prior to July 1, 1960, shall not be included in computing entitlement to or the amount of any monthly benefit under this subchapter, on the basis of his wages and self-employment income, for any month after June 1960 and prior to the first month with respect to which the Director of the Office of Personnel Management certifies to the Commissioner of Social Security that, by reason of a waiver filed as provided in paragraph (2), no further annuity will be paid to him, his wife, and his children, or, if he has died, to his widow and children, under subchapter III of chapter 83 of title 5 on the basis of such service.

(2) In the case of a monthly benefit for a month prior to that in which the individual, on whose wages and self-employment income such benefit is based, dies, the waiver must be filed by such individual; and such waiver shall be irrevocable and shall constitute a waiver on behalf of himself, his wife, and his children. If such individual did not file such a waiver before he died, then in the case of a benefit for the month in which he died or any month thereafter, such waiver must be filed by his widow, if any, and by or on behalf of all his children, if any; and such waivers shall be irrevocable. Such a waiver by a child shall be filed by his legal guardian or guardians, or, in the absence thereof, by the person (or persons) who has the child in his care.

(i) Cost-of-living increases in benefits

(1) For purposes of this subsection—

(A) the term ''base quarter'' means (i) the calendar quarter ending on September 30 in each year after 1982, or (ii) any other calendar quarter in which occurs the effective month of a general benefit increase under this subchapter;

(B) the term ''cost-of-living computation quarter'' means a base quarter, as defined in subparagraph (A)(i), with respect to which the applicable increase percentage is greater than zero; except that there shall be no cost-of-living computation quarter in any calendar year if in the year prior to such year a law has been enacted providing a general benefit increase under this subchapter or if in such prior year such a general benefit increase becomes effective;

(C) the term ''applicable increase percentage'' means—

(i) with respect to a base quarter or cost-of-living computation quarter in any calendar year before 1984, or in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is 15.0 percent or more, or in any calendar year after 1988 for which the OASDI fund ratio is 20.0 percent or more, the CPI increase percentage; and

(ii) with respect to a base quarter or cost-of-living computation quarter in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is less than 15.0 percent, or in any calendar year after 1988 for which the OASDI fund ratio is less than 20.0 percent, the CPI increase percentage or the wage increase percentage, whichever (with respect to that quarter) is the lower;

(D) the term ''CPI increase percentage'', with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the Consumer Price Index for that quarter (as prepared by the Department of Labor) exceeds such index for the most recent prior calendar quarter which was a base quarter under subparagraph (A)(ii) or, if later, the most recent cost-of-living computation quarter under subparagraph (B);

(E) the term ''wage increase percentage'', with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the national average wage index (as defined in section 409(k)(1) of this title) for the year immediately preceding such calendar year exceeds such index for the year immediately preceding the most recent prior calendar year which included a base quarter under subparagraph (A)(ii) or, if later, which included a cost-of-living computation quarter;

(F) the term ''OASDI fund ratio'', with respect to any calendar year, means the ratio of—

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund as of the beginning of such year, including the taxes transferred under section 401(a) of this title on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Fund from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title, to

(ii) the total amount which (as estimated by the Commissioner of Social Security) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during such calendar year for all purposes authorized by section 401 of this title (other than payments of interest on, or repayments of, loans from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title), but excluding any transfer payments between such trust funds and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account;[1]

(G) the Consumer Price Index for a base quarter, a cost-of-living computation quarter, or any other calendar quarter shall be the arithmetical mean of such index for the 3 months in such quarter.

(2)(A)(i) The Commissioner of Social Security shall determine each year beginning with 1975 (subject to the limitation in paragraph (1)(B)) whether the base quarter (as defined in paragraph (1)(A)(i)) in such year is a cost-of-living computation quarter.

(ii) If the Commissioner of Social Security determines that the base quarter in any year is a cost-of-living computation quarter, the Commissioner shall, effective with the month of December of that year as provided in subparagraph (B), increase—

(I) the benefit amount to which individuals are entitled for that month under section 427 or 428 of this title,

(II) the primary insurance amount of each other individual on which benefit entitlement is based under this subchapter, and

(III) the amount of total monthly benefits based on any primary insurance amount which is permitted under section 403 of this title (and such total shall be increased, unless otherwise so increased under another provision of this subchapter, at the same time as such primary insurance amount) or, in the case of a primary insurance amount computed under subsection (a) of this section as in effect (without regard to the table contained therein) prior to January 1979, the amount to which the beneficiaries may be entitled under section 403 of this title as in effect in December 1978, except as provided by section 403(a)(7) and (8) of this title as in effect after December 1978.

The increase shall be derived by multiplying each of the amounts described in subdivisions (I), (II), and (III) (including each of those amounts as previously increased under this subparagraph) by the applicable increase percentage; and any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10. Any increase under this subsection in a primary insurance amount determined under subparagraph (C)(i) of subsection (a)(1) of this section shall be applied after the initial determination of such primary insurance amount under that subparagraph (with the amount of such increase, in the case of an individual who becomes eligible for old-age or disability insurance benefits or dies in a calendar year after 1979, being determined from the range of possible primary insurance amounts published by the Commissioner of Social Security under the last sentence of subparagraph (D)).

(iii) In the case of an individual who becomes eligible for an old-age or disability insurance benefit, or who dies prior to becoming so eligible, in a year in which there occurs an increase provided under clause (ii), the individual's primary insurance amount (without regard to the time of entitlement to that benefit) shall be increased (unless otherwise so increased under another provision of this subchapter and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section in the case of an individual to whom that subsection (as in effect in December 1981) applied, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph (as then in effect)) by the amount of that increase and subsequent applicable increases, but only with respect to benefits payable for months after November of that year.

(B) The increase provided by subparagraph (A) with respect to a particular cost-of-living computation quarter shall apply in the case of monthly benefits under this subchapter for months after November of the calendar year in which occurred such cost-of-living computation quarter, and in the case of lump-sum death payments with respect to deaths occurring after November of such calendar year.

(C)(i) Whenever the Commissioner of Social Security determines that a base quarter in a calendar year is also a cost-of-living computation quarter, the Commissioner shall notify the House Committee on Ways and Means and the Senate Committee on Finance of such determination within 30 days after the close of such quarter, indicating the amount of the benefit increase to be provided, the Commissioner's estimate of the extent to which the cost of such increase would be met by an increase in the contribution and benefit base under section 430 of this title and the estimated amount of the increase in such base, the actuarial estimates of the effect of such increase, and the actuarial assumptions and methodology used in preparing such estimates.

(ii) The Commissioner of Social Security shall determine and promulgate the OASDI fund ratio for the current calendar year on or before November 1 of the current calendar year, based upon the most recent data then available. The Commissioner of Social Security shall include a statement of the fund ratio and the national average wage index (as defined in section 409(k)(1) of this title) and a statement of the effect such

[1] So in original. Probably should be followed by ''and''.

ratio and the level of such index may have upon benefit increases under this subsection in any notification made under clause (i) and any determination published under subparagraph (D).

(D) If the Commissioner of Social Security determines that a base quarter in a calendar year is also a cost-of-living computation quarter, the Commissioner shall publish in the Federal Register within 45 days after the close of such quarter a determination that a benefit increase is resultantly required and the percentage thereof. The Commissioner shall also publish in the Federal Register at that time (i) a revision of the range of the primary insurance amounts which are possible after the application of this subsection based on the dollar amount specified in subparagraph (C)(i) of subsection (a)(1) of this section (with such revised primary insurance amounts constituting the increased amounts determined for purposes of such subparagraph (C)(i) under this subsection), or specified in subsection (a)(3) of this section as in effect prior to 1979, and (ii) a revision of the range of maximum family benefits which correspond to such primary insurance amounts (with such maximum benefits being effective notwithstanding section 403(a) of this title except for paragraph (3)(B) thereof (or paragraph (2) thereof as in effect prior to 1979)). Notwithstanding the preceding sentence, such revision of maximum family benefits shall be subject to paragraph (6) of section 403(a) of this title (as added by section 101(a)(3) of the Social Security Disability Amendments of 1980).

(3) As used in this subsection, the term ''general benefit increase under this subchapter'' means an increase (other than an increase under this subsection) in all primary insurance amounts on which monthly insurance benefits under this subchapter are based.

(4) This subsection as in effect in December 1978, and as amended by sections 111(a)(6), 111(b)(2), and 112 of the Social Security Amendments of 1983 and by section 9001 of the Omnibus Budget Reconciliation Act of 1986, shall continue to apply to subsections (a) and (d) of this section, as then in effect and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990, for purposes of computing the primary insurance amount of an individual to whom subsection (a) of this section, as in effect after December 1978, does not apply (including an individual to whom subsection (a) of this section does not apply in any year by reason of paragraph (4)(B) of that subsection (but the application of this subsection in such cases shall be modified by the application of subdivision (I) in the last sentence of paragraph (4) of that subsection)), except that for this purpose, in applying paragraphs (2)(A)(ii), (2)(D)(iv), and (2)(D)(v) of this subsection as in effect in December 1978, the phrase ''increased to the next higher multiple of $0.10'' shall be deemed to read ''decreased to the next lower multiple of $0.10''. For purposes of computing primary insurance amounts and maximum family benefits (other than primary insurance amounts and maximum family benefits for individuals to whom such paragraph (4)(B) applies), the Commissioner of Social Security shall revise the table of benefits contained in subsection (a) of this section, as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Commissioner of Social Security publish such revision of the table of benefits in the Federal Register shall not apply.

(5)(A) If—

(i) with respect to any calendar year the ''applicable increase percentage'' was determined under clause (ii) of paragraph (1)(C) rather than under clause (i) of such paragraph, and the increase becoming effective under paragraph (2) in such year was accordingly determined on the basis of the wage increase percentage rather than the CPI increase percentage (or there was no such increase becoming effective under paragraph (2) in that year because there was no wage increase percentage greater than zero), and

(ii) for any subsequent calendar year in which an increase under paragraph (2) becomes effective the OASDI fund ratio is greater than 32.0 percent,

then each of the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii), as increased under paragraph (2) effective with the month of December in such subsequent calendar year, shall be further increased (effective with such month) by an additional percentage, which shall be determined under subparagraph (B) and shall apply as provided in subparagraph (C). Any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

(B) The applicable additional percentage by which the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii) are to be further increased under subparagraph (A) in the subsequent calendar year involved shall be the amount derived by—

(i) subtracting (I) the compounded percentage benefit increases that were actually paid under paragraph (2) and this paragraph from (II) the compounded percentage benefit increases that would have been paid if all increases under paragraph (2) had been made on the basis of the CPI increase percentage,

(ii) dividing the difference by the sum of the compounded percentage in clause (i)(I) and 100 percent, and

(iii) multiplying such quotient by 100 so as to yield such applicable additional percentage (which shall be rounded to the nearest one-tenth of 1 percent),

with the compounded increases referred to in clause (i) being measured—

(iv) in the case of amounts described in subdivision (I) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which monthly benefits described in such subdivision were first increased on the basis of the wage increase percentage and ending with the year before such subsequent calendar year, and

(v) in the case of amounts described in subdivisions (II) and (III) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which the individual whose primary insurance amount is increased under such subdivision (II) became eligible (as defined in sub-

section (a)(3)(B) of this section) for the old-age or disability insurance benefit that is being increased under this subsection, or died before becoming so eligible, and ending with the year before such subsequent calendar year;

except that if the Commissioner of Social Security determines in any case that the application (in accordance with subparagraph (C)) of the additional percentage as computed under the preceding provisions of this subparagraph would cause the OASDI fund ratio to fall below 32.0 percent in the calendar year immediately following such subsequent year, the Commissioner shall reduce such applicable additional percentage to the extent necessary to ensure that the OASDI fund ratio will remain at or above 32.0 percent through the end of such following year.

(C) Any applicable additional percentage increase in an amount described in subdivision (I), (II), or (III) of paragraph (2)(A)(ii), made under this paragraph in any calendar year, shall thereafter be treated for all the purposes of this chapter as a part of the increase made in such amount under paragraph (2) for that year.

(Aug. 14, 1935, ch. 531, title II, § 215, as added Aug. 28, 1950, ch. 809, title I, § 104(a), 64 Stat. 492, 506; amended July 18, 1952, ch. 945, §§ 2(a), (b)(1), 3(c), 6(a), (b), 66 Stat. 767, 768, 770, 771, 776; Sept. 1, 1954, ch. 1206, title I, §§ 102(a)–(d), (e)(1)–(4), 104(d), 106(c), 68 Stat. 1062–1068, 1078, 1079; Aug. 1, 1956, ch. 836, title I, §§ 103(c)(4), (5), 109(a), 115(a)–(c), 70 Stat. 818, 830, 832, 833; Aug. 28, 1958, Pub. L. 85–840, title I, §§ 101(a)–(d), 102(d), title II, § 205(m), 72 Stat. 1013–1016, 1020, 1025; Apr. 8, 1960, Pub. L. 86–415, § 7, 74 Stat. 35; Sept. 13, 1960, Pub. L. 86–778, title I, § 103(j)(2)(C), title II, § 211(n), title III, §§ 303(a)–(e), 304(a), 74 Stat. 937, 958, 960–962, 966; June 30, 1961, Pub. L. 87–64, title I, §§ 101(a), 102(d), 75 Stat. 131, 135; July 30, 1965, Pub. L. 89–97, title III, §§ 301(a), (b), 302(a)–(d), 303(e), 304(k), 320(a)(4), 79 Stat. 361, 363–365, 367, 370, 393; Jan. 2, 1968, Pub. L. 90–248, title I, §§ 101(a), (c), (d), 108(a)(4), 155(a)(1)–(6), title IV, § 403(b), 81 Stat. 824, 827, 834, 864, 865, 931; Dec. 30, 1969, Pub. L. 91–172, title X, § 1002(a), (c), (d), 83 Stat. 737, 740; Mar. 17, 1971, Pub. L. 92–5, title II, §§ 201(a), (c), (d), 203(a)(4), 85 Stat. 6, 9, 10; July 1, 1972, Pub. L. 92–336, title II, §§ 201(a), (c)–(f), 202(a)(1), (3), 203(a)(4), 86 Stat. 406, 410–412, 416, 418; Oct. 30, 1972, Pub. L. 92–603, title I, §§ 101(a), (c)–(e), 104(b), 134, 142(b), (c), 144(a)(1), 86 Stat. 1333, 1334, 1340, 1362, 1368, 1369; July 9, 1973, Pub. L. 93–66, title II, § 203(a)(4), 87 Stat. 153; Dec. 31, 1973, Pub. L. 93–233, §§ 1(h)(1), 2(a), 3(a)–(h), 5(a)(4), 87 Stat. 948, 952, 953; Dec. 20, 1977, Pub. L. 95–216, title I, § 103(d), title II, § 201, 91 Stat. 1514, 1519; June 9, 1980, Pub. L. 96–265, title I, §§ 101(b)(3), (4), 102(a), 94 Stat. 442, 443; Oct. 19, 1980, Pub. L. 96–473, § 6(d), 94 Stat. 2265; Aug. 13, 1981, Pub. L. 97–35, title XXII, §§ 2201(a), (b)(1)–(9), (c)(1)–(5), 2206(a), (b)(5)–(7), 95 Stat. 830, 831, 838; Dec. 29, 1981, Pub. L. 97–123, § 2(a)–(d), 95 Stat. 1660; Apr. 20, 1983, Pub. L. 98–21, title I, §§ 111(a)(1)–(3), (6), (b)(1), (2), (c), 112(a)–(d), 113(a)–(c), title II, § 201(c)(1)(C), 97 Stat. 72–78, 109; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2661(k), 2663(a)(10), 98 Stat. 1157, 1164; Apr. 7, 1986, Pub. L. 99–272, title XII, § 12105, 100 Stat. 286; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9001(a), (b), 100 Stat. 1969, 1970; Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1883(a)(7), 100 Stat. 2916; Nov. 10, 1988, Pub. L. 100–647, title VIII, §§ 8003(a), 8011(a), (b), 102 Stat. 3780, 3789; Dec. 19, 1989, Pub. L. 101–239, title X, § 10208(b)(1), (2)(A), (B), (3), (4), (d)(2)(A)(i), 103 Stat. 2477, 2478, 2480; Nov. 5, 1990, Pub. L. 101–508, title V, §§ 5117(a)(1)–(3)(A), (C)–(E), 5122, 104 Stat. 1388–274 to 1388–277, 1388–283; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title III, §§ 307(a), (b), 308(b), 321(a)(16), (17), (e)(2)(B)–(G), (g)(1)(C), 108 Stat. 1478, 1522, 1536, 1539, 1540, 1543.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1937, referred to in subsecs. (a)(1)(C)(ii), (7)(A), and (d)(1)(C), (3), is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally. See par. for Railroad Retirement Act of 1974 below.

The Railroad Retirement Act of 1974, referred to in subsecs. (a)(1)(C)(ii), (7)(A) and (d)(3), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Pub. L. 93–445 completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45. For further details and complete classification of these Acts to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Section 104(j)(2) of the Social Security Amendments of 1972, referred to in subsecs. (a)(5)(B)(ii), (b)(2)(B)(iii), and (d)(1)(A), is section 104(j)(2) of Pub. L. 92–603, which is set out as a note under section 414 of this title.

Section 101 of the Social Security Amendments of 1983, referred to in subsec. (a)(7)(E)(i), is section 101 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 67, which amended sections 409 and 410 of this title and section 3121 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under section 410 of this title and section 3121 of Title 26.

Section 3121(k) of the Internal Revenue Code of 1954, referred to in subsec. (a)(7)(E)(ii), was classified to section 3121(k) of Title 26, and was repealed by Pub. L. 98–21, title I, § 102(b)(2), Apr. 20, 1983, 97 Stat. 71.

Section 102 of that Act, referred to in subsec. (a)(7)(E)(ii), is section 102 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 70, which amended section 410 of this title and section 3121 of Title 26 and enacted provisions set out as notes under section 414 of this title and section 3121 of Title 26.

Section 5117 of the Omnibus Budget Reconciliation Act of 1990, referred to in subsecs. (c), (f)(7), and (i)(4), is section 5117 of Pub. L. 101–508, title V, Nov. 5, 1990, 104 Stat. 1388–274, which amended this section and sections 403, 413, and 417 of this title, amended provisions set out as a note under section 413 of this title, and enacted provisions set out as notes under sections 403 and 413 of this title.

The 1939 Act, referred to in subsec. (d), probably means act Aug. 10, 1939, ch. 666, 53 Stat. 1360, known as the Social Security Act Amendments of 1939, which enacted sections 901a, 1306 and 1307 of this title, amended sections 302, 303, 306, 401, 402 to 409, 502, 503, 602, 603, 606, 701, 702, 703, 711, 712, 713, 714, 721, 801, 1011, 1202, 1203, 1206, 1301, of this title, section 642 of Title 7, Agriculture, section 1464 of Title 12, Banks and Banking,

section 1601 of former Title 26, Internal Revenue Code of 1939, section 45b of Title 29, Labor, and enacted provisions set out as notes under section 363 of Title 45, Railroads. For complete classification of this Act to the Code, see Tables.

Section 101(a)(3) of the Social Security Disability Amendments of 1980, referred to in subsec. (i)(2)(D), is section 101(a)(3) of Pub. L. 96–265, title I, June 9, 1980, 94 Stat. 442, which enacted section 403(a)(6) of this title.

Sections 111(a)(6), 111(b)(2), and 112 of the Social Security Amendments of 1983, referred to in subsec. (i)(4), are sections 111(a)(6), 111(b)(2), and 112 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 72, 73, which amended subsec. (i) of this section and enacted provisions set out as notes below. See 1983 Amendment notes below.

Section 9001 of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (i)(4), is section 9001 of Pub. L. 99–509, title IX, Oct. 21, 1986, 100 Stat. 1969, which amended sections 415 and 1395r of this title and enacted provisions set out as a note below.

AMENDMENTS

1994—Subsec. (a)(1)(B)(ii). Pub. L. 103–296, §321(e)(2)(B), in subcl. (I) substituted ''national average wage index'' for ''deemed average total wages'' and in subcl. (II) substituted ''the national average wage index (as so defined) for 1977.'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year 1977.''

Subsec. (a)(1)(C)(ii). Pub. L. 103–296, §321(g)(1)(C), substituted ''(except that, for purposes of subsection (b) of such section 430 of this title as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to an amount equal to $45,000, each reference in paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the national average wage index (as defined in section 409(k)(1) of this title), the reference to a preceding calendar year in paragraph (2)(A) of such subsection (b) shall be deemed a reference to the calendar year before the calendar year in which the determination under subsection (a) of such section 430 of this title is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1992).'' for ''(except that, for purposes of subsection (b)(2)(A) of such section 430 of this title as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the national average wage index (within the meaning of section 409(k)(1) of this title) for such calendar year).''

Pub. L. 103–296, §321(e)(2)(C), substituted ''national average wage index'' for ''deemed average total wages'' before ''(within the meaning''.

Subsec. (a)(1)(D). Pub. L. 103–296, §321(e)(2)(D), substituted ''In each calendar year'' for ''In each calendar year after 1978'' and ''the national average wage index (as defined in section 409(k)(1) of this title'' for ''the average of the total wages (as described in subparagraph (B)(ii)(I)'' and struck out at end ''With the initial publication required by this subparagraph, the Secretary shall also publish in the Federal Register the average of the total wages (as so described) for each calendar year after 1950.''

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(5)(B)(i). Pub. L. 103–296, §321(a)(16), substituted ''subsections'' for ''subsection'' before ''(b)(4) and (c)''.

Subsec. (a)(6)(B). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(7)(A). Pub. L. 103–296, §308(b), in closing provisions struck out ''and'' before ''(II)'' and inserted '', and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)'' after ''section 433 of this title''.

Pub. L. 103–296, §307(a)(1), in closing provisions substituted ''but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937, and (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title'' for ''but excluding a payment under the Railroad Retirement Act of 1974 or 1937''.

Subsec. (a)(7)(C)(i). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(7)(E). Pub. L. 103–296, §307(a)(2), in introductory provisions inserted ''whose eligibility for old-age or disability insurance benefits is based on an agreement concluded pursuant to section 433 of this title or an individual'' before ''who on January''.

Subsec. (b)(3)(A)(ii)(I), (II). Pub. L. 103–296, §321(e)(2)(E), substituted ''national average wage index'' for ''deemed average total wages''.

Subsec. (d)(1)(C). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(3). Pub. L. 103–296, §308(b), in closing provisions struck out ''and'' before ''(II)'' and inserted '', and (III) a payment based wholly on service as a member of a uniformed service (as defined in section 410(m) of this title)'' after ''section 433 of this title''.

Pub. L. 103–296, §307(b), in closing provisions substituted ''but excluding (I) a payment under the Railroad Retirement Act of 1974 or 1937, and (II) a payment by a social security system of a foreign country based on an agreement concluded between the United States and such foreign country pursuant to section 433 of this title'' for ''but excluding a payment under the Railroad Retirement Act of 1974 or 1937''.

Subsec. (f)(2)(A). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner may'' for ''he may''.

Subsec. (f)(5), (6). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (f)(7). Pub. L. 103–296, §321(a)(17), inserted a period after ''1990''.

Subsecs. (f)(8), (h)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (i)(1)(E). Pub. L. 103–296, §321(e)(2)(F)(i), substituted ''national average wage index (as defined in section 409(k)(1) of this title)'' for ''SSA average wage index''.

Subsec. (i)(1)(F)(ii). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (i)(1)(G), (H). Pub. L. 103–296, §321(e)(2)(F)(ii), redesignated subpar. (H) as (G) and struck out former subpar. (G) which read as follows: ''the term 'SSA average wage index', with respect to any calendar year, means the amount determined for such calendar year under subsection (b)(3)(A)(ii)(I) of this section; and''.

Subsec. (i)(2)(A)(i), (ii), (C)(i). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner shall'' for ''he shall'' in introductory provisions of par. (2)(A)(ii) and in par. (2)(C)(i), and ''the Commissioner's estimate'' for ''his estimate'' in par. (2)(C)(i).

Subsec. (i)(2)(C)(ii). Pub. L. 103–296, §321(e)(2)(G), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''The Secretary shall determine and promulgate the OASDI fund ratio for the current calendar year and the SSA wage index for the preceding calendar year before November 1 of the current calendar year, based upon the most recent data then available, and shall include a statement of such fund ratio and wage index (and of the effect such ratio and the level of such index may have upon benefit increases under this subsection) in any notification made under clause (i) and any determination published under subparagraph (D).''

Pub. L. 103–296, § 107(a)(4), in cl. (ii) as amended by Pub. L. 103–296, § 321(e)(2)(G), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (i)(2)(D). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner shall publish'' for ''he shall publish''.

Pub. L. 103–296, § 107(a)(4), which directed that this subchapter be amended by substituting ''the Commissioner'' for ''he'' wherever referring to the Secretary of Health and Human Services, was executed by substituting ''The Commissioner'' for ''He'' before ''shall also publish'', to reflect the probable intent of Congress.

Subsec. (i)(4), (5)(B). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner shall'' for ''he shall'' in closing provisions of par. (5)(B).

1990—Subsec. (a)(1)(C)(ii). Pub. L. 101–508, § 5122(a), substituted ''of not less than 25 percent (in the case of a year after 1950 and before 1978) of the maximum amount which (pursuant to subsection (e) of this section) may be counted for such year, or 25 percent (in the case of a year after 1977 and before 1991) or 15 percent (in the case of a year after 1990) of the maximum amount which (pursuant to subsection (e) of this section) could be counted for such year if'' for ''of not less than 25 percent of the maximum amount which, pursuant to subsection (e) of this section, may be counted for such year, or of not less than 25 percent of the maximum amount which could be so counted for such year (in the case of a year after 1977) if''.

Subsec. (a)(5). Pub. L. 101–508, § 5117(a)(1), designated existing provision as subpar. (A), substituted ''Subject to subparagraphs (B), (C), (D), and (E), for purposes of'' for ''For purposes of'', struck out at end ''The table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) of this section for each year after 1978.'', and added subpars. (B) to (E).

Subsec. (a)(7)(A), (C)(ii). Pub. L. 101–508, § 5117(a)(3)(E)(ii), substituted ''subsection (d)(3)'' for ''subsection (d)(5)''.

Subsec. (a)(7)(D). Pub. L. 101–508, § 5122(b), struck out ''(as defined in paragraph (1)(C)(ii))'' before period at end of first sentence and inserted at end ''For purposes of this subparagraph, the term 'year of coverage' shall have the meaning provided in paragraph (1)(C)(ii), except that the reference to '15 percent' therein shall be deemed to be a reference to '25 percent'.''

Subsec. (c). Pub. L. 101–508, § 5117(a)(3)(C), substituted ''Subject to the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990, this'' for ''This''.

Subsec. (d)(1)(A). Pub. L. 101–508, § 5117(a)(2)(A)(i), inserted ''and subject to section 104(j)(2) of the Social Security Amendments of 1972'' after ''thereof''.

Subsec. (d)(1)(B)(i), (ii). Pub. L. 101–508, § 5117(a)(2)(A)(ii), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who attained age 21 after 1936 and prior to 1950 shall be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after the year in which the individual attained age 20 and prior to 1951; and

''(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who attained age 21 after 1949 shall be divided by the number of years (hereinafter in this subparagraph referred to as the 'divisor') elapsing after 1949 and prior to 1951.''

Subsec. (d)(1)(B)(iii). Pub. L. 101–508, § 5117(a)(2)(B), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''if the quotient exceeds $3,000, only $3,000 shall be deemed to be the individual's wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual's total wages prior to 1951 (I) if less than $3,000, shall be deemed credited to the year immediately preceding the earliest year used in computing the amount of the divisor, or (II) if $3,000 or more, shall be deemed credited, in $3,000 increments, to the year immediately preceding the earliest year used in computing the amount of the divisor and to each year consecutively preceding that year, with any remainder less than $3,000 being credited to the year immediately preceding the earliest year to which a full $3,000 increment was credited; and''.

Subsec. (d)(2)(B). Pub. L. 101–508, § 5117(a)(2)(C)(i), struck out ''except as provided in paragraph (3),'' after ''(B)''.

Subsec. (d)(2)(C). Pub. L. 101–508, § 5117(a)(2)(C)(ii), added subpar. (C) and struck out former subpar. (C) which read as follows:

''(C)(i) who becomes entitled to benefits under section 402(a) or 423 of this title after January 2, 1968, or

''(ii) who dies after such date without being entitled to benefits under section 402(a) or 423 of this title, or

''(iii) whose primary insurance amount is required to be recomputed under subsection (f)(2) or (6) of this section or section 431 of this title.''

Subsec. (d)(3) to (5). Pub. L. 101–508, § 5117(a)(2)(C)(iii), (3)(E)(i), redesignated par. (5) as (3) and struck out former pars. (3) and (4) which read as follows:

''(3) The provisions of this subsection as in effect prior to January 2, 1968, shall be applicable in the case of an individual who had a period of disability which began prior to 1951, but only if the primary insurance amount resulting therefrom is higher than the primary insurance amount resulting from the application of this section (as amended by the Social Security Amendments of 1967) and section 420 of this title.

''(4) The provisions of this subsection as in effect in December 1977 shall be applicable to individuals who become eligible for old-age or disability insurance benefits or die prior to 1978.''

Subsec. (f)(7). Pub. L. 101–508, § 5117(a)(3)(D), substituted '', including a primary insurance amount computed under any such subsection whose operation is modified as a result of the amendments made by section 5117 of the Omnibus Budget Reconciliation Act of 1990'' for period at end of first sentence.

Subsec. (f)(9)(A). Pub. L. 101–508, § 5117(a)(3)(E)(ii), substituted ''subsection (d)(3)'' for ''subsection (d)(5)'' in two places.

Subsec. (f)(9)(B). Pub. L. 101–508, § 5117(a)(3)(E)(iii), substituted ''or (d)(3)'' for ''or (d)(5)'' wherever appearing.

Subsec. (i)(4). Pub. L. 101–508, § 5117(a)(3)(A), inserted ''and as amended by section 5117 of the Omnibus Budget Reconciliation Act of 1990'' after ''as then in effect'' in first sentence.

1989—Subsec. (a)(1)(B)(ii)(I). Pub. L. 101–239, § 10208(b)(2)(A), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, § 10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (a)(1)(B)(ii)(II). Pub. L. 101–239, § 10208(b)(2)(B), substituted ''(as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title)'' for ''(as so defined and computed)''.

Subsec. (a)(1)(C)(ii). Pub. L. 101–239, § 10208(b)(4), substituted ''change (except that, for purposes of subsection (b)(2)(A) of such section 430 of this title as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the deemed average total wages (within the meaning of section 409(k)(1) of this title) for such calendar year)'' for ''change''.

Subsec. (b)(3)(A)(ii)(I). Pub. L. 101–239, § 10208(b)(1)(C), struck out ''(after 1976)'' after ''calendar year''.

Pub. L. 101–239, §10208(b)(1)(A), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, §10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (b)(3)(A)(ii)(II). Pub. L. 101–239, §10208(b)(1)(B), substituted ''the deemed average total wages (as so defined)'' for ''the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate''.

Subsec. (i)(1)(G). Pub. L. 101–239, §10208(b)(3), substituted ''the amount determined for such calendar year under subsection (b)(3)(A)(ii)(I)'' for ''the average of the total wages reported to the Secretary of the Treasury or his delegate as determined for purposes of subsection (b)(3)(A)(ii)''.

1988—Subsec. (a)(7)(A). Pub. L. 100–647, §8011(a)(1), struck out ''with respect to the initial month in which the individual becomes eligible for such benefits'' before period at end.

Subsec. (a)(7)(B)(i). Pub. L. 100–647, §8011(a)(2), substituted ''concurrent entitlement to such monthly periodic payment and old-age or disability insurance benefits'' for ''eligibility for old-age or disability insurance benefits''.

Subsec. (a)(7)(C)(iii), (iv). Pub. L. 100–647, §8011(a)(3), redesignated cl. (iv) as (iii) and struck out former cl. (iii) which read as follows: ''If an individual to whom subparagraph (A) applies is eligible for a periodic payment beginning with a month that is subsequent to the month in which he or she becomes eligible for old-age or disability insurance benefits, the amount of that payment (for purposes of subparagraph (B)) shall be deemed to be the amount to which he or she is, or is deemed to be, entitled (subject to clauses (i), (ii), and (iv) of this subparagraph) in such subsequent month.''

Subsec. (a)(7)(D). Pub. L. 100–647, §8003(a), in introductory provisions, substituted ''20 years'' for ''25 years'' and ''shall (if such percent is smaller than the applicable percent specified in the following table) be deemed to be the applicable percent specified in the following table:'' for ''shall (if such percent is smaller than the percent specified in whichever of the following clauses applies) be deemed to be—'', and substituted table for former cls. (i) to (iv) which read as follows:

''(i) 80 percent, in the case of an individual who has 29 of such years of coverage;

''(ii) 70 percent, in the case of an individual who has 28 of such years;

''(iii) 60 percent, in the case of an individual who has 27 of such years; and

''(iv) 50 percent, in the case of an individual who has 26 of such years.''

Subsec. (d)(5)(ii). Pub. L. 100–647, §8011(b), substituted ''such concurrent entitlement'' for ''his or her eligibility for old-age or disability insurance benefits''.

1986—Subsec. (i)(1)(B). Pub. L. 99–509, §9001(a), substituted ''percentage is greater than zero'' for ''percentage is 3 percent or more''.

Pub. L. 99–509, §9001(b)(2)(A), amended subpar. (B), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out '', by not less than 3 per centum,'' after ''Department of Labor exceeds''.

Subsec. (i)(2)(C)(i). Pub. L. 99–509, §9001(b)(1)(A)(i), redesignated cl. (ii) as (i) and struck out former cl. (i) which read as follows: ''Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(A)(ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance.''

Pub. L. 99–509, §9001(b)(2)(B), amended subpar. (C), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out cl. (i) which read as follows: ''Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(A)(ii)) or, if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance.''

Subsec. (i)(2)(C)(ii). Pub. L. 99–509, §9001(b)(1)(A), redesignated cl. (iii) as (ii) and substituted ''under clause (i)'' for ''under clause (ii)''. Former cl. (ii) redesignated (i).

Pub. L. 99–509, §9001(b)(2)(B), amended subpar. (C), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by striking out cl. (ii) designation.

Subsec. (i)(2)(C)(iii). Pub. L. 99–509, §9001(b)(1)(A)(i), redesignated cl. (iii) as (ii).

Subsec. (i)(4). Pub. L. 99–509, §9001(b)(1)(B), inserted ''and by section 9001 of the Omnibus Budget Reconciliation Act of 1986''.

Pub. L. 99–272 substituted ''the Secretary shall revise the table of benefits contained in subsection (a) of this section, as in effect in December 1978, in accordance with the requirements of paragraph (2)(D) of this subsection as then in effect, except that the requirement in such paragraph (2)(D) that the Secretary publish such revision of the table of benefits in the Federal Register shall not apply'' for ''the Secretary shall publish in the Federal Register revisions of the table of benefits contained in subsection (a) of this section, as in effect in December 1978, as required by paragraph (2)(D) of this subsection as then in effect''.

Subsec. (i)(5)(A)(i). Pub. L. 99–509, §9001(b)(1)(C), substituted ''because there was no wage increase percentage greater than zero'' for ''because the wage increase percentage was less than 3 percent''.

Subsec. (i)(5)(B). Pub. L. 99–514, §1883(a)(7), substituted ''clause (i)(I)'' for ''subdivision (I)'' in cl. (ii) and ''clause (i)'' for ''subdivisions (I) and (II)'' in provisions between cls. (iii) and (iv).

1984—Subsec. (a)(1)(B)(i). Pub. L. 98–369, §2663(a)(10)(A)(i), substituted ''for such benefits'' for ''of such benefits''.

Subsec. (a)(1)(B)(iii). Pub. L. 98–369, §2663(a)(10)(A)(ii), substituted ''amount'' for ''amounts'' after ''except that any''.

Subsec. (a)(1)(C)(ii). Pub. L. 98–369, §2663(a)(10)(A)(iii), substituted ''section 217'' for ''scetion 217'' after ''deemed to be paid to such individual under''.

Subsec. (a)(4)(B). Pub. L. 98–369, §2663(a)(10)(B), realigned margins of subpar. (B).

Subsec. (a)(7)(B)(ii)(I). Pub. L. 98–369, §2661(k)(1), substituted ''who become eligible (as defined in paragraph (3)(B)) for old-age insurance benefits (or became eligible as so defined for disability insurance benefits before attaining age 62)'' for ''who initially become eligible for old-age or disability insurance benefits''.

Subsec. (a)(7)(C)(ii). Pub. L. 98–369, §2661(k)(2), substituted ''survivor's'' for ''survivors''.

Subsec. (f)(2)(A). Pub. L. 98–369, §2663(a)(10)(C), substituted ''primary insurance amount'' for ''primary insurance account''.

Subsec. (f)(9)(B)(i). Pub. L. 98–369, §2661(k)(3), substituted ''as though the recomputed primary insurance amount were being computed under subsection (a)(7) or (d)(5)'' for ''as though such primary insurance amount had initially been computed without regard to subsection (a)(7) or (d)(5)''.

Subsec. (h)(1). Pub. L. 98–369, §2663(a)(10)(D)(ii), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission''.

Subsec. (i)(5)(A). Pub. L. 98–369, §2661(k)(4), inserted provision that any amount so increased that is not a multiple of $0.10 shall be decreased to the next lower multiple of $0.10.

Subsec. (i)(5)(B)(iii). Pub. L. 98–369, §2661(k)(5)(A), substituted ''so as to yield such applicable additional

percentage (which shall be rounded to the nearest one-tenth of 1 percent)'' for ''and rounding to the nearest one-tenth of 1 percent''.

Subsec. (i)(5)(B)(iv), (v). Pub. L. 98–369, §2661(k)(5)(B), (C), substituted ''ending with the year before such subsequent calendar year'' for ''ending with such subsequent calendar year'' in cls. (iv) and (v) and ''became eligible (as defined in subsection (a)(3)(B) of this section) for the old-age or disability insurance benefit that is being increased under this subsection'' for ''initially became eligible for an old-age or disability insurance benefit'' in cl. (v).

1983—Subsec. (a)(7). Pub. L. 98–21, §113(a), added par. (7).

Subsec. (d)(5). Pub. L. 98–21, §113(b), added par. (5).

Subsec. (f)(5). Pub. L. 98–21, §201(c)(1)(C), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65''.

Subsec. (f)(9). Pub. L. 98–21, §113(c), added par. (9).

Subsec. (i)(1)(A). Pub. L. 98–21, §111(b)(1), substituted ''September 30'' for ''March 31'' and ''1982'' for ''1974''.

Pub. L. 98–21, §111(b)(2), amended subpar. (A), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting ''September 30'' for ''March 31'' and ''1982'' for ''1974''.

Subsec. (i)(1)(B). Pub. L. 98–21, §112(a)(1), substituted ''with respect to which the applicable increase percentage is 3 percent or more'' for ''in which the Consumer Price Index prepared by the Department of Labor exceeds, by not less than 3 per centum, such Index in the later of (i) the last prior cost-of-living computation quarter which was established under this subparagraph, or (ii) the most recent calendar quarter in which occurred the effective month of a general benefit increase under this subchapter''.

Subsec. (i)(1)(C) to (H). Pub. L. 98–21, §112(a)(3), (4), added subpars. (C) to (G) and redesignated former subpar. (C) as (H).

Subsec. (i)(2)(A)(ii). Pub. L. 98–21, §112(b), in provisions immediately following subcl. (iii), substituted ''by the applicable increase percentage'' for ''by the same percentage (rounded to the nearest one-tenth of 1 percent) as the percentage by which the Consumer Price Index for that cost-of-living computation quarter exceeds such index for the most recent prior calendar quarter which was a base quarter under paragraph (1)(A)(ii) or, if later, the most recent cost-of-living computation quarter under paragraph (1)(B)''.

Pub. L. 98–21, §111(a)(1), substituted ''December'' for ''June'' in provisions preceding subcl. (I).

Pub. L. 98–21, §111(a)(6), amended par. (2), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting in the provisions preceding subpar. (A)(ii)(I) ''December'' for ''June''.

Subsec. (i)(2)(A)(iii). Pub. L. 98–21, §111(a)(2), substituted ''November'' for ''May''.

Subsec. (i)(2)(B). Pub. L. 98–21, §111(a)(3), substituted ''November'' for ''May'' in two places.

Pub. L. 98–21, §111(a)(6), amended par. (2), as in effect in December 1978, and as applied in certain cases under the provisions of this chapter as in effect after December 1978, by substituting in subpar. (B) ''November'' for ''May'' in two places.

Subsec. (i)(2)(C)(iii). Pub. L. 98–21, §112(d)(1), added cl. (iii).

Subsec. (i)(4). Pub. L. 98–21, §112(d)(2), inserted reference to amendments made by section 112 of the Social Security Amendments of 1983.

Pub. L. 98–21, §111(c), inserted reference to amendments made by section 111(a)(6) and 111(b)(2) of the Social Security Amendments of 1983.

Subsec. (i)(5). Pub. L. 98–21, §112(c), added par. (5).

1981—Subsec. (a)(1)(A). Pub. L. 97–35, §2206(b)(5), substituted in provision following cl. (iii) ''rounded, if not a multiple of $0.10, to the next lower multiple of $0.10,'' for ''rounded in accordance with subsection (g) of this section''.

Subsec. (a)(1)(C)(i). Pub. L. 97–35, §2201(a), struck out provisions that primary insurance amount computed under subpar. (A) not be less than the dollar amount set forth on first line of column IV in table of benefits contained, or deemed to be contained in, this subsection as in effect in December 1978, rounded, if not a multiple of $1, to next higher multiple of $1 and that no increase under subsec. (i) of this section, except as provided in subsec. (i)(2)(A) of this section, apply to dollar amount so specified.

Subsec. (a)(1)(C)(ii). Pub. L. 97–35, §2201(b)(1), substituted ''For the purposes of clause (i)'' for ''For the purposes of clause (i)(II)''.

Subsec. (a)(3)(A). Pub. L. 97–35, §2201(b)(2), substituted ''subparagraph (C)(i)'' for ''subparagraph (C)(i)(II)''.

Subsec. (a)(4). Pub. L. 97–35, §2201(b)(3), (c)(2), substituted in provision preceding subpar. (A) ''subparagraph (C)(i)'' for ''subparagraph (C)(i)(II)'' and in provision following subpar. (B) '', as modified by paragraph (6)'' and struck out ''but without regard to clauses (iv) and (v) thereof'' after ''subsection (i)(2)(A) of this section''.

Subsec. (a)(5). Pub. L. 97–123, §2(a)(1), struck out '', and the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be modified as specified in paragraph (6)'', and substituted ''December 1978 shall be revised'' for ''December 1978, modified by the application of paragraph (6), shall be revised''.

Pub. L. 97–35, §2201(c)(3), inserted '', and the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be modified as specified in paragraph (6)'' and substituted ''December 1978, modified by the application of paragraph (6), shall be revised'' for ''December 1978 shall be revised''.

Subsec. (a)(6). Pub. L. 97–123, §2(a)(2), substituted in subpar. (A) ''In applying the table of benefits in effect in December 1978 under this section for purposes of the last sentence of paragraph (4), such table, revised as provided by subsection (i) of this section, as applicable, shall be extended'' for ''The table of benefits in effect in December 1978 under this section, referred to in paragraph (4) in the matter following subparagraph (B) and in paragraph (5), revised as provided by subsection (i) of this section, as applicable, shall be extended''.

Pub. L. 97–35, §2201(c)(1), added par. (6).

Subsec. (f)(7). Pub. L. 97–123, §2(b), inserted provisions that effective January 1982, the recomputation shall be modified by the application of subsec. (a)(6) of this section where applicable, and struck out provision that the recomputation shall be modified by the application of subsec. (a)(6) of this section, where applicable.

Pub. L. 97–35, §2201(c)(4), inserted provision that the recomputation be modified by the application of subsec. (a)(6) of this section, where applicable.

Subsec. (f)(8). Pub. L. 97–35, §2201(b)(4), substituted ''subsection (a)(1)(C)(i) of this section'' for ''subsection (a)(1)(C)(i)(II) of this section''.

Subsec. (g). Pub. L. 97–35, §2206(a), struck out ''any primary insurance amount and the amount of'' after ''The amount of'' and substituted ''(after any reduction under sections 403(a) and 424 of this title and any deduction under section 403(b) of this title, and after any deduction under section 1395s(a)(1) of this title) is not a multiple of $1 shall be rounded to the next lower multiple of $1'' for ''(after reduction under section 403(a) of this title and deductions under section 403(b) of this title) is not a multiple of $0.10 shall be raised to the next higher multiple of $0.10''.

Subsec. (i)(2)(A)(ii). Pub. L. 97–35, §2201(b)(5), (6), in subcl. (II) struck out ''(including a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, but subject to the provisions of such subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph)'' after ''under this subchapter'' and in provision following subcl. (III) substituted ''subparagraph (C)(i)'' for ''subparagraph (C)(i)(II)''.

Pub. L. 97–35, §2206(b)(6), substituted in provision following subcl. (III) ''decreased to the next lower'' for ''increased to the next higher''.

Subsec. (i)(2)(A)(iii). Pub. L. 97–123, § 2(c), inserted ''and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section in the case of an individual to whom that subsection (as in effect in December 1981) applied, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph (as then in effect)'' after ''provision of this subchapter''.

Pub. L. 97–35, § 2201(b)(7), struck out ''and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph'' after ''provision of this subchapter''.

Subsec. (i)(2)(A)(iv). Pub. L. 97–35, § 2201(b)(8), struck out cl. (iv) which related to increases in the primary insurance amount for individuals entitled to old-age insurance benefits, individuals entitled to insurance benefits under section 402(e) and (f) of this title, increases that would otherwise apply except for provisions of this clause, and increases occurring in a later year not applicable to the primary insurance amount on account of provisions of this clause.

Subsec. (i)(2)(A)(v). Pub. L. 97–35, § 2201(b)(8), struck out cl. (v) which provided, that notwithstanding cl. (iv), no primary insurance amount be less than that provided under subsec. (a)(1) of this section without regard to subpar. (C)(i)(I) thereof, as subsequently increased by applicable increases under this section.

Subsec. (i)(2)(D). Pub. L. 97–35, § 2201(b)(9), substituted ''subparagraph (C)(i)'' for ''subparagraph (C)(i)(II)'' in two places.

Subsec. (i)(4). Pub. L. 97–123, § 2(d), struck out '', modified by the application of subsec. (a)(6) of this section,''.

Pub. L. 97–35, § 2201(c)(5), inserted '', modified by the application of subsec. (a)(6) of this section,''.

Pub. L. 97–35, § 2206(b)(7), inserted ''except that for this purpose, in applying paragraphs (2)(A)(ii), (2)(D)(iv), and (2)(D)(v) of this subsection as in effect in December 1978, the phrase 'increased to the next higher multiple of $0.10' shall be deemed to read 'decreased to the next lower multiple of $0.10' ''.

1980—Subsec. (a)(4)(B). Pub. L. 96–473 substituted ''recomputation'' for ''recommendation''.

Subsec. (b)(2)(A). Pub. L. 96–265, § 102(a), designated existing provisions as cl. (i), inserted provision limiting its applicability to individuals who are entitled to old-age insurance benefits (except as provided in the second sentence of this subparagraph) or who have died, and added cl. (ii) and provisions following cl. (ii).

Subsec. (i)(2)(A)(ii)(III). Pub. L. 96–265, § 101(b)(3), substituted ''section 403(a)(7) and (8)'' for ''section 403(a)(6) and (7)''.

Subsec. (i)(2)(D). Pub. L. 96–265, § 101(b)(4), inserted sentence providing that revision of maximum family benefits shall be subject to paragraph (6) of section 403(a) of this title (as added by section 101(a)(3) of the Social Security Disability Amendments of 1980).

1977—Subsec. (a). Pub. L. 95–216, § 201(a), amended provisions under which primary insurance amount of an individual is determined by substituting provisions which employ a formula using percentages of different portions of the individual's average indexed monthly earnings for provisions under which the primary insurance amount of an insured individual was determined through references to a five-column table covering primary insurance amounts and maximum family benefits.

Subsec. (b). Pub. L. 95–216, § 201(b), substituted provisions setting up a formula for determining an individual's average indexed monthly earnings using benefit computation years, computation base years, and elapsed years as factors in the determination, for provisions that had set a formula for determining an individual's average monthly wage.

Subsec. (c). Pub. L. 95–216, § 201(c), substituted provisions that this subsection as in effect in Dec. 1978, will remain in effect with respect to an individual to whom subsec. (a)(1) of this section does not apply by reason of the individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979, for provisions under which, for the purposes of column II of the latest table that had appeared in (or was deemed to have appeared in) subsec. (a) of this section, an individual's primary insurance amount was to be computed on the basis of the law in effect prior to the month in which the latest such table had become effective, but with a limitation that this subsection was to be applicable only in the case of an individual who had become entitled to benefits under section 402(a) or section 423 of this title, or who had died, before such effective month.

Subsec. (d)(1)(A). Pub. L. 95–216, § 201(d)(1), inserted provisions in subsec. (d)(1)(A) and preceding introductory provision directing that existing references to subsecs. (a) and (b) of this section be deemed reference to such subsecs. (a) and (b) as they were in effect in Dec. 1977.

Subsec. (d)(1)(B). Pub. L. 95–216, § 201(d)(1), made a parenthetical insertion which limited the existing references to subpars. (B) and (C) of subsec. (b)(2) of this section to those provisions as they had been in effect in Dec. 1977, and introduced a simplified method, using the concept of a divisor and a quotient, for computing the primary insurance amounts of workers age 21 after 1936 and before 1951 when wages before 1951 are included in the computations.

Subsec. (d)(1)(D). Pub. L. 95–216, § 201(d)(2), substituted ''40 percent'' for ''45.6 per centum'' and ''plus 10 percent of the next $200 of his average monthly wage, increased by 1 percent for each increment year'' for ''plus 11.4 per centum of the next $200 of such average monthly wage'' in existing provisions and inserted provisions that the number of increment years in the number, not more than 14 nor less than 4, that is equal to the individual's total wages prior to 1951 divided by $1,650 (disregarding any fraction).

Subsec. (d)(3). Pub. L. 95–216, § 201(d)(3), struck out requirement that when wages prior to 1951 are included in computing the average monthly wages of an individual who attains age 21 after 1936 and prior to 1951, the present law computation provisions in effect before the Social Security Amendments of 1967 must be used.

Subsec. (d)(4). Pub. L. 95–216, § 201(d)(4), added par. (4).

Subsec. (e)(1). Pub. L. 95–216, § 201(e), substituted ''average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage'' for ''average monthly wage'' and ''(before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A) of this section) of (A) the wages paid to him in such year'' for ''of (A) the wages paid to him in such year''.

Subsec. (e)(2). Pub. L. 95–216, § 201(e), substituted ''average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage''.

Subsec. (f)(2). Pub. L. 95–216, § 201(f)(1), generally expanded provisions for recomputing primary insurance amounts for individuals with wages or self-employment income for years after 1978 for any part of which the individuals are entitled to old-age or disability insurance benefits.

Subsec. (f)(3). Pub. L. 95–216, § 201(f)(2), struck out par. (3) which had provided for the recomputation of primary insurance amounts for workers who had self-employment income in 1952 and who had applied for benefits or died prior to 1961.

Subsec. (f)(4). Pub. L. 95–216, § 201(f)(3), substituted ''A recomputation shall be effective under this subsection only if it increases the primary insurance amount by at least $1'' for ''Any recomputation under this subsection shall be effective only if such recomputation results in a higher primary insurance amount''.

Subsec. (f)(7), (8). Pub. L. 95–216, § 201(f)(4), added pars. (7) and (8).

Subsec. (i)(2)(A)(ii). Pub. L. 95–216, § 201(g)(1), specified that an automatic benefit increase effective for June of

a year in which the Secretary determines that a cost-of-living computation quarter, which triggers such an increase, has occurred will apply to benefits of those entitled to special payments under sections 427 and 428 of this title, to the primary insurance amounts on which beneficiaries are entitled including the frozen minimum primary insurance amounts and special minimum primary insurance amounts, and to the maximum family benefits at the same time as the primary insurance amounts on which they are based, where a primary insurance amount was computed under the law in effect in December 1978 will be increased at the same time as the primary insurance amounts, except as provided in section 403(a)(7) and (7) of this title.

Subsec. (i)(2)(A)(iii) to (v). Pub. L. 95–216, § 201(g)(2), added cls. (iii) to (v).

Subsec. (i)(2)(D). Pub. L. 95–216, § 201(g)(3), substituted provisions directing publication in the Federal Register of revisions of the range of primary insurance amounts and of the range of maximum family benefits for provisions that had directed publication of the revision of the table of benefits formerly set out in subsec. (a) and had set out the method of determining the revision of the table.

Subsec. (i)(2)(D)(v). Pub. L. 95–216, § 103(d), substituted in cl. (v) ''is equal to, or exceeds by less than $5, one-twelfth of the new contribution and benefit base'' for ''is equal to one-twelfth of the new contribution and benefit base'' and ''plus 20 percent of the excess of the second figure in the last line of column III as extended under the preceding sentence over such second figure for the calendar year in which the table of benefits is revised'' for ''plus 20 percent of one-twelfth of the excess of the new contribution and benefit base for the calendar year following the calendar year in which such table of benefits is revised (as determined under section 430 of this title) over such base for the calendar year in which the table of benefits is revised'' in third sentence.

Subsec. (i)(4). Pub. L. 95–216, § 201(g)(4), added par. (4).

1973—Subsec. (a). Pub. L. 93–233, § 2(a), in revising benefits table: in column II, substituted ''Primary insurance amount effective for September 1972'' for ''Primary insurance amount under 1971 Act'' and increased benefit amounts to $84.50–$404.50 from $70.40–$295.40; in column III, increased benefit amounts to $76 to $1,096–$1,100 from $76 to $996–$1,000; in column IV, increased benefit amounts to $93.80–$469.00 from $84.50–$404.50; and in column V, increased benefit amounts to $140.80–$820.80 from $126.80–$707.90.

Subsec. (a)(3). Pub. L. 93–233, § 1(h)(1), substituted ''$9.00'' for ''$8.50''.

Subsec. (e)(1). Pub. L. 93–233, § 5(a)(4), substituted ''$13,200'' for ''$12,600''.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000''.

Subsec. (i)(1)(A)(i). Pub. L. 93–233, § 3(a), substituted ''calendar quarter ending on March 31 in each year after 1974'' for ''calendar quarter ending on June 30 in each year after 1972''.

Subsec. (i)(1)(B)(ii). Pub. L. 93–233, § 3(b), substituted in exception provision ''if in the year prior to such year a law has been enacted providing a general benefit increase under this subchapter or if in such prior year such a general benefit increase becomes effective'' for ''in which a law has been enacted providing a general benefit increase under this subchapter or in which such a benefit increase becomes effective''.

Subsec. (i)(2)(A)(i). Pub. L. 93–233, § 3(c), substituted ''1975'' for ''1974'' and struck out ''and to subparagraph (E) of this paragraph'' after ''paragraph (1)(B)''.

Subsec. (i)(2)(A)(ii). Pub. L. 93–233, § 3(d)(1)–(3), substituted ''the base quarter in any year'' and ''June of such year'' for ''such base quarter'' and ''January of the next calendar year'' and struck out ''(subject to subparagraph (E))'' before ''as provided in subparagraph (B)'', respectively.

Subsec. (i)(2)(B). Pub. L. 93–233, § 3(e), substituted ''May'' for ''December'' in two places and struck out ''(subject to subparagraph (E))'' after ''shall apply''.

Subsec. (i)(2)(C)(ii). Pub. L. 93–233, § 3(f), substituted ''within 30 days after the close of such quarter'' for ''on or before August 15 of such calendar year''.

Subsec. (i)(2)(D). Pub. L. 93–233, § 3(g), substituted ''within 45 days after the close of such quarter'' for ''on or before November 1 of such calendar year''.

Subsec. (i)(2)(E). Pub. L. 93–233, § 3(h), struck out subpar. (E) providing that ''Notwithstanding a determination by the Secretary under subparagraph (A) that a base quarter in any calendar year is a cost-of-living computation quarter (and notwithstanding any notification or publication thereof under subparagraph (C) or (D)), no increase in benefits shall take effect pursuant thereto, and such quarter shall be deemed not to be a cost-of-living computation quarter, if during the calendar year in which such determination is made a law providing a general benefit increase under this subchapter is enacted or becomes effective.''

1972—Subsec. (a). Pub. L. 92–336, § 202(a)(3)(A), inserted ''(or, if larger, the amount in column IV of the latest table deemed to be such table under subsection (i)(2)(D))'' after ''the following table'' in par. (1)(A), and ''(whether enacted by another law or deemed to be such table under subsection (i)(2)(D))'' after ''effective month of a new table'' in par. (2).

Pub. L. 92–336, § 201(a), revised benefits table by substituting ''Primary insurance amount under 1971 Act'' for ''Primary insurance amount under 1969 Act'' and $70.40–$295.40 for $64.00 or less—$250.70 in column II, adding $751–$996 under minimum average monthly wage subcolumn of column III, adding $755–$1000 under maximum average monthly wage subcolumn of column III, substituting $84.50–$404.50 for $70.40–$295.40 in column IV, and $126.80–$707.90 for $105.60–$517.00 in column V.

Pub. L. 92–336, § 201(c), inserted ''The primary insurance amount of an insured individual shall be determined as follows:'' after ''(a)'', redesignated introductory material and pars. (1) to (3) as par. (1) and subpars. (A) to (C) respectively, and as so redesignated, in par. (1) inserted provision relating to exception in par. (2) and in subpars. (A) to (C) made changes in phraseology, and redesignated par. (4) as par. (2) and as so redesignated, inserted provisions relating to determination of primary insurance amount where individual was entitled to disability insurance benefits under section 423 of this title.

Subsec. (a)(1). Pub. L. 92–603, § 101(a)(1), inserted reference to paragraph (3) in provisions preceding subpar. (A).

Subsec. (a)(2). Pub. L. 92–603, § 101(c), designated existing provisions as subpar. (A), inserted ''(whether enacted by another law or deemed to be such table under subsection (i)(2)(D) of this section)'', and added subpar. (B).

Subsec. (a)(3). Pub. L. 92–603, § 101(a)(2), added par. (3) and provisions following such par. (3) covering the individual's ''years of coverage'' for purposes of par. (3).

Pub. L. 92–603, § 144(a)(1), substituted in column II ''254.40'' for ''251.40'' and in column III ''696'' for ''699''.

Subsec. (b)(3). Pub. L. 92–603, § 104(b), struck out provisions setting a separate age computation point for women and reduced from age 65 to age 62 the age computation point for men.

Subsec. (b)(4). Pub. L. 92–336, § 202(a)(3)(B), substituted provisions relating to an individual who becomes entitled to benefits in or after the month in which a new table that appears in (or is deemed by subsec. (i)(2)(D) to appear in) subsec. (a) becomes effective for provisions relating to an individual who becomes entitled to benefits after August 1972 in subpar. (A), substituted provisions relating to an individual who dies in or after the month in which such table becomes effective for provisions relating to an individual who dies after August 1972 in subpar. (B), and added subpar. (C).

Pub. L. 92–336, § 201(d), substituted ''August 1972'' for ''December 1970'' in two places.

Subsec. (c). Pub. L. 92–336, § 202(a)(3)(C), substituted provisions relating to the computation of an individual's primary insurance amount based on the law in effect prior to the month in which the latest table appearing in (or is deemed to be appearing in) subsec. (a) of this section becomes effective, for provisions relating to the computation of an individual's primary in-

surance amount based on the law in effect prior to September 1972 in subpar. (1), and substituted '', or who died, before such effective month'' for ''before September 1972, or who died before such month'' in subpar. (2).

Pub. L. 92–336, § 201(e), substituted ''September 1972'' for ''March 17, 1971'' in two places, and ''month'' for ''date''.

Subsec. (d)(1)(C)(iv). Pub. L. 92–603, § 142(b), added cl. (iv).

Subsec. (d)(2). Pub. L. 92–603, §§ 134(b), 142(c), inserted references to subsec. (f)(6) of this section and section 431 of this title.

Subsec. (e)(1). Pub. L. 92–336, § 203(a)(4), inserted provisions eliminating from the computation of an individual's average monthly wage excess amounts in calendar years after 1971 and before 1975, and excess over amounts equal to the contribution and benefit base in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective.

Subsec. (f)(2). Pub. L. 92–603, §§ 101(d), 134(a)(1), inserted reference to subsec. (a)(3) of this section in provisions preceding subpar. (A) and in subpar. (B) struck out provision relating to any individual whose increase in his primary insurance amount is attributable to compensation which, upon his death, is treated as remuneration for employment under section 405(*o*) of this title.

Pub. L. 92–336, § 201(f), substituted ''subsection (a)(1) (A) and (C) of this section'' for ''subsection (a) (1) and (3) of this section.''

Subsec. (f)(6). Pub. L. 92–603, § 134(a)(2), added par. (6).

Subsec. (i). Pub. L. 92–336, § 202(a)(1), added subsec. (i).

Subsec. (i)(2)(A)(ii). Pub. L. 92–603, § 101(e), inserted ''(but not including a primary insurance amount determined under subsection (a)(3) of this section)'' after ''under this subchapter''.

1971—Subsec. (a). Pub. L. 92–5, § 201(a), revised benefits table by: substituting ''Primary insurance amount under 1969 Act'' for ''Primary insurance amount under 1967 Act'' and $64.00 or less—$250.70 for $55.40 or less—$218.00 in column II, adding $653–$746 under minimum average monthly wage subcolumn of column III, striking out $650 and adding $652–$750 under maximum average monthly wage subcolumn of column III, substituting $70.40–$295.40 for $64.00–$250.70 in column IV, and $105.60–$517.00 for $96.00–$434.40 in column V.

Subsec. (b)(4). Pub. L. 92–5, § 201(c), substituted ''December 1970'' for ''December 1969'' in two places.

Subsec. (c). Pub. L. 92–5, § 201(d), substituted ''prior to March 17, 1971'' for ''prior to December 30, 1969'' in subpar. 1, and substituted ''before March 17, 1971, or who died before such date'' for ''before January 1970, or who died before such month'' in subpar. 2.

Subsec. (e)(1). Pub. L. 92–5, § 203(a)(4), substituted ''the excess over $7,800 in the case of any calendar year after 1967 and before 1972, and the excess over $9,000 in the case of any calendar year after 1971'' for ''and the excess over $7,800 in the case of any calendar year after 1967''.

1969—Subsec. (a). Pub. L. 91–172, § 1002(a), revised benefits table to increase: the primary insurance amount limits to $64.00–$250.70 for people whose average monthly wage is $76.00 or less for the minimum, and $650.00 for the maximum, the primary insurance amounts of retired workers on the benefit rolls from $48.00 or less to $55.40 at the minimum, and from $168.00 to $218.00 at the maximum, and the family benefits limits to $96.00–$434.40 from $82.50–$434.40.

Subsec. (b)(4). Pub. L. 91–172, § 1002(c), substituted references to December 1969 for references to January 1968.

Subsec. (c). Pub. L. 91–172, § 1002(d), substituted ''December 30, 1969'' for ''January 2, 1968'' in subpar. (1), and ''January 1970'' for ''February 1968'' in subpar. (2).

1968—Subsec. (a). Pub. L. 90–248, § 101(a), revised benefits table to increase: the primary insurance amount limits to $55.00—$218.00 for people whose average monthly wage is $74.00 or less for the minimum and $650.00 for the maximum, the primary insurance amounts of retired workers on the benefit rolls from $48.00 or less to $55.00 at the minimum and from $168.00 to $189.90 at the maximum, and the family benefit limits to $82.50–$434.40 from $66.00–$368.00.

Subsec. (b)(4). Pub. L. 90–248, § 101(c)(1), amended par. (4) generally, substituting ''January 1968'' for ''December 1965'' in subpars. (A) and (B), striking out '', as amended by the Social Security Amendments of 1965;'' at end of subpar. (C), and striking out provision that the subsection would not apply to any individual described therein for purposes of monthly benefits for months before January 1966.

Subsec. (b)(5). Pub. L. 90–248, § 101(c)(2), struck out par. (5) which preserved the method in effect before the enactment of the 1965 amendments of computing average monthly earnings for people who become entitled to benefits or a recomputation of benefits before 1966.

Subsec. (c). Pub. L. 90–248, § 101(d), substituted ''1965 Act'' for ''1958 Act, as modified'' in heading and ''on the basis of the law in effect prior to the enactment of the Social Security Amendments of 1967'' for ''as provided in, and subject to the limitations specified in, (A) this section as in effect prior to July 30, 1965 and (B) the applicable provisions of the Social Security Amendments of 1960'' in par. (1) and ''the month of February 1968, or who died before such month'' for ''July 30, 1965 or who died before such date'' in par. (2).

Subsec. (d)(1). Pub. L. 90–248, § 155(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''For the purposes of column I of the table appearing in subsection (a) of this section. An individual's primary insurance benefit shall be computed as provided in this subchapter as in effect prior to August 28, 1950, except that—

''(A) In the computation of such benefit, such individual's average monthly wage shall (in lieu of being determined under section 409(f) of this title as in effect prior to August 28, 1950) be determined as provided in subsection (b) of this section (but without regard to paragraphs (4) and (5) thereof), except that for the purposes of paragraphs (2)(C) and (3) of subsection (b) of this section, 1936, shall be used instead of 1950.

''(B) For purposes of such computation, the date he became entitled to old-age insurance benefits shall be deemed to be the date he became entitled to primary insurance benefits.

''(C) The 1 per centum addition provided for in section 409(e)(2) of this title as in effect prior to August 28, 1950 shall be applicable only with respect to calendar years prior to 1951, except that any wages paid in any year prior to such year all of which was included in a period of disability shall not be counted.

''(D) The provisions of subsection (e) of this section shall be applicable to such computation.''

Subsec. (d)(2)(B), (C). Pub. L. 90–248, § 155(a)(2), struck out subpar. (B), redesignated subpar. (C) as (B), inserted exception phrase at beginning of subpar. (B), and added subpar. (C).

Subsec. (d)(3). Pub. L. 90–248, § 155(a)(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The provisions of this subsection as in effect prior to September 13, 1960 shall be applicable in the case of an individual who meets the requirements of subsection (b)(5) of this section (as in effect after September 13, 1965).''

Subsec. (e)(1). Pub. L. 90–248, § 108(a)(4), substituted ''the excess over $6,600 in the case of any calendar year after 1965 and before 1968, and the excess over $7,800 in the case of any calendar year after 1967'' for ''and the excess over $6,600 in the case of any calendar year after 1965''.

Subsec. (f)(2). Pub. L. 90–248, § 155(a)(4), (5), struck out subpars. (A) to (D) and text preceding (A) by substituting provisions that if an individual has wages or self-employment income for a year after 1965 for any part of which he is entitled to old-age insurance benefits, the Secretary is to recompute his primary insurance amount with respect to each such year, and that such recomputation shall be made as provided in subsec. (a)(1) and (3) as though the year with respect to which such recomputation is made is the last year of the pe-

riod specified in subsec. (b)(2)(C) for former provisions for a recomputation with respect to each year after Dec. 31, 1964, and for any part of which an individual was entitled to old-age insurance benefits, that such recomputation was to be made as provided in subsec. (a)(1) and (3) if such year was either the year in which he became entitled to such old-age insurance benefits or the preceding year or as provided in subsec. (a)(1) in any other case, and that in all cases such recomputation was to be made as though the year with respect to which it was to be made was the last year of the period specified in subsec. (b)(2)(C); and redesignated subpars. (E) and (F) as (A) and (B).

Subsec. (f)(5). Pub. L. 90–248, § 155(a)(6), added par. (5).

Subsec. (h)(1). Pub. L. 90–248, § 403(b), substituted ''subchapter III of chapter 83 of title 5'' for ''the Civil Service Retirement Act'' in two places.

1965—Subsec. (a). Pub. L. 89–97, § 301(a), revised the benefits table to increase: the primary insurance amount limits to $44–$168 for people whose average monthly wage is $67 or less for the minimum and $550 for the maximum from $40–$127 for people whose average monthly wage is $67 or less for the minimum and $400 for the maximum (representing an increase of 7-percent for average monthly wages of $400 or less with minimum increase of $4); the primary insurance amounts of retired workers on the benefit rolls from $40 to $44 at the minimum and from $127 to $135.90 at the maximum; and the family benefit limits to $66–$368 from $60–$254 (determined on basis of new formula and representing minimum increase of $6).

Subsec. (a)(4). Pub. L. 89–97, § 304(k), substituted ''the primary insurance amount upon which such disability insurance benefit is based'' for ''such disability insurance benefit''.

Pub. L. 89–97, § 303(e), amended introductory provisions generally. Prior to amendment, introductory provisions read as follows: ''In the case of—

''(A) a woman who was entitled to a disability insurance benefit for the month before the month in which she died or became entitled to old-age insurance benefits, or

''(B) a man who was entitled to a disability insurance benefit for the month before the month in which he died or attained age 65,''.

Subsec. (b)(2)(C). Pub. L. 89–97, § 302(a)(1), excluded from an insured individual's computation base years the year in which he became entitled to benefits and included in his computation base years (for purposes of survivors' benefits) the year in which he died to make an individual's computation base years the calendar years occurring after 1950 and up to the year in which his first month of entitlement to a benefit occurred or the year after the year in which he died.

Subsec. (b)(3)(A) to (C). Pub. L. 89–97, § 302(a)(2), substituted in: cl. (A) '', if it occurred earlier but after 1960, the year in which she attained age 62,'' for ''(if earlier) the first year after 1960 in which she both was fully insured and had attained age 62.''; cl. (B) '', if it occurred earlier but after 1960, the year in which he attained age 65'' for ''(if earlier) the first year after 1960 in which he both was fully insured and had attained age 65''; and cl. (C) ''the year occurring after 1960 in which he attained (or would attain) age 65'' for ''the first year after 1960 in which he attained (or would attain) age 65 or (if later) the first year in which he was fully insured''.

Subsec. (b)(4), (5). Pub. L. 89–97, § 302(a)(3), amended pars. (4) and (5) generally. Prior to amendment, pars. (4) and (5) read as follows:

''(4) The provisions of this subsection shall be applicable only in the case of an individual with respect to whom not less than six of the quarters elapsing after 1950 are quarters of coverage, and—

''(A) who becomes entitled to benefits after December 1960 under section [section 402(a) or section 423 of this title]; or

''(B) who dies after December 1960 without being entitled to benefits under section [section 402(a) or section 423 of this title]; or

''(C) who files an application for a recomputation under subsection (f)(2)(A) of this section after December 1960 and is (or would, but for the provisions of subsection (f)(6) of this section, be) entitled to have his primary insurance amount recomputed under subsection (f)(2)(A) of this section; or

''(D) who dies after December 1960 and whose survivors are (or would, but for the provisions of subsection (f)(6) of this section, be) entitled to a recomputation of his primary insurance amount under subsection (f)(4) of this section.

''(5) In the case of any individual—

''(A) to whom the provisions of this subsection are not made applicable by paragraph (4), but

''(B)(i) prior to 1961, met the requirements of this paragraph (including subparagraph (E) thereof) as in effect prior to the enactment of the Social Security Amendments of 1960, or (ii) after 1960, meets the conditions of subparagraph (E) of this paragraph as in effect prior to such enactment,

then the provisions of this subsection as in effect prior to such enactment shall apply to such individual for the purposes of column III of the table appearing in subsection (a) of this section.''

Subsec. (c). Pub. L. 89–97, § 301(b), substituted in par. (1)(A) ''prior to the enactment of the Social Security Amendments of 1965'' and executed in the Code ''prior to July 30, 1965'' for ''prior to the enactment of the Social Security Amendments of 1958'' and executed in the Code ''prior to August 28, 1958''; in par. (1)(B) ''Social Security Amendments of 1960'' for ''Social Security Amendments of 1954''; in par. (2), formerly designated (2)(A), ''before July 30, 1965 or who died before such date'' for ''or died prior to January 1959''; and deleted par. (2)(B) making the provisions of the subsection applicable only in the case of an individual ''to whom the provisions of neither paragraph (4) nor paragraph (5) of subsection (b) of this section are applicable.''

Subsec. (d)(1)(A). Pub. L. 89–97, § 302(b)(1), substituted ''(2)(C) and (3)'' for ''(2)(C)(i) and (3)(A)(i)'', ''1936'' for ''December 31, 1936,'' and ''1950'' for ''December 31, 1950''.

Subsec. (d)(3). Pub. L. 89–97, § 302(b)(2), substituted ''1965'' for ''1960'' in two places and struck out at the end ''but without regard to whether such individual has six quarters of coverage after 1950''.

Subsec. (e)(1). Pub. L. 89–97, § 320(a)(4), substituted ''the excess over $4,800 in the case of any calendar year after 1958 and before 1966, and the excess over $6,600 in the case of any calendar year after 1965'' for ''and the excess over $4,800 in the case of any calendar year after 1958''.

Subsec. (e)(3). Pub. L. 89–97, § 302(c), struck out par. (3) which provided that for the purposes of subsecs. (b) and (d) of this section, if an individual had self-employment income in a taxable year which began prior to the calendar year in which he became entitled to old-age insurance benefits and ended after the last day of the month preceding the month in which he became so entitled, his self-employment income in such taxable year should not be counted in determining his benefit computation years, except as provided in subsection (f)(3)(C) of this section.

Subsec. (f)(2). Pub. L. 89–97, § 302(d)(1), substituted provisions for annual automatic recomputation of benefits, taking into account any earnings the person had in or after the year in which he became entitled to benefits, and effective in the case of a living beneficiary with January of the year following the year in which the earnings were received and in death cases for survivors' benefits beginning with the month of death for former provisions which required an application for the recomputation to include earnings in a year after entitlement and that the person have six quarters of coverage after 1950 to qualify for the recomputation and was not available unless the person had earnings of more than $1,200 for the year.

Subsec. (f)(3). Pub. L. 89–97, § 302(d)(2), redesignated par. (5) as (3) and repealed former par. (3) which provided for a recomputation of benefits to include earn-

ings in the year of entitlement to benefits or in the year in which an individual's benefits were recomputed on account of additional earnings and is now covered by the annual automatic recomputation of benefits provision of subsec. (f)(2) of this section.

Subsec. (f)(4). Pub. L. 89–97, §302(d)(2), redesignated par. (6) as (4) and repealed former par. (4) which provided for a recomputation of benefits for the purpose of paying benefits to survivors of an individual who died after 1960 and who had been entitled to old-age insurance benefits and is now covered by the annual automatic recomputation of benefits provision of subsec. (f)(2) of this section.

Subsec. (f)(5), (6). Pub. L. 89–97, §302(d)(2), redesignated pars. (5) and (6) as (3) and (4), respectively.

Subsec. (f)(7). Pub. L. 89–97, §302(d)(2), repealed par. (7) which provided for recomputation at age 65 of the benefits of an individual who became entitled to benefits before that age and is now covered by the annual automatic recomputation of benefits provision of subsec. (f)(2) of this section.

1961—Subsec. (a). Pub. L. 87–64, §§101(a), 102(d)(1), increased minimum primary insurance amount from $33 to $40, and minimum family benefit from $53 to $60, and in the case of a man, limited provisions which permit the primary insurance amount to be equal to the disability insurance benefit for the month before the month in which the man became entitled to old-age insurance benefits only if the man first became entitled to old-age insurance benefits at age 65.

Subsec. (b)(3). Pub. L. 87–64, §102(d)(2), substituted ''For purposes of paragraph (2), the number of an individual's elapsed years is the number of calendar years after 1950 (or, if later, the year in which he attained age 21) and before—

''(A) in the case of a woman, the year in which she died or (if earlier) the first year after 1960 in which she both was fully insured and had attained age 62,

''(B) in the case of a man who has died, the year in which he died or (if earlier) the first year after 1960 in which he both was fully insured and had attained age 65, or

''(C) in the case of a man who has not died, the first year after 1960 in which he attained (or would attain) age 65 or (if later) the first year in which he was fully insured''

for the following provisions: ''For the purposes of paragraph (2), an individual's 'elapsed years' shall be the number of calendar years—

''(A) after (i) December 31, 1950, or (ii) if later, December 31 of the year in which he attained the age of twenty-one, and

''(B) prior to (i) the year in which he died, or (ii) if earlier, the first year after December 31, 1960, in which he both was fully insured and had attained retirement age.''

Subsec. (f)(7). Pub. L. 87–64, §102(d)(3), added par. (7).

1960—Subsec. (b)(1). Pub. L. 86–778, §303(a), substituted provisions defining ''average monthly wage'' as the quotient obtained by dividing (A) the total of an individual's wages paid in and self-employment income credited to his benefit computation years, by (B) the number of months in such years, for provisions which defined the term as the quotient obtained by dividing the total of his wages and self-employment income after his starting date and prior to his closing date by the number of months elapsing after such starting date and prior to such closing date, excluding the months in any year prior to the year in which the individual attained the age of 22 if less than two quarters of such prior years were quarters of coverage and the months in any year any part of which was included in a period of disability except the months in the year in which such period of disability began if their inclusion will result in a higher primary insurance amount.

Subsec. (b)(2). Pub. L. 86–778, §303(a), substituted provisions relating to benefit computation years and to computation base years for provisions which defined an individual's starting date as December 31, 1950, or if later, the last day of the year in which he attains the age of 21, whichever results in the higher primary insurance amount.

Subsec. (b)(3). Pub. L. 86–778, §303(a), substituted provisions defining an individual's elapsed years for provisions which defined an individual's closing date as the first day of the year in which he died or became entitled to old-age insurance benefits, whichever first occurred, or the first day of the first year in which he both was fully insured and had attained retirement age, whichever results in the higher primary insurance amount.

Subsec. (b)(4). Pub. L. 86–778, §303(a), substituted provisions prescribing the applicability of subsec. (f) for provisions which required the Secretary to determine the five or fewer calendar years after an individual's starting date and prior to his closing date which, if the months of such years and his wages and self-employment income for such years were excluded in computing his average monthly wage, would produce the highest primary insurance amount, and which required exclusion of such months and such wages and self-employment income for purposes of computing an individual's average monthly wage.

Subsec. (b)(5). Pub. L. 86–778, §303(a), substituted provisions making subsec. (f) applicable in the case of an individual to whom the provisions of subsec. (f) are not made applicable by par. (4) but prior to 1961, met the requirements of this paragraph as in effect prior to Sept. 13, 1960, or, after 1960, meets the conditions of subpar. (E) of this paragraph as in effect prior to Sept. 13, 1960, for provisions which prescribed the applicability of subsec. (f) of this section. Former provisions of par. (5) were covered by par. (4) of this section.

Subsec. (c)(2)(B). Pub. L. 86–778, §303(b), substituted ''to whom the provisions of neither paragraph (4) nor paragraph (5) of subsection (b) of this section are applicable'' for ''to whom the provisions of paragraph (5) of subsection (b) of this section are not applicable''.

Subsec. (d)(1)(A). Pub. L. 86–778, §303(c)(1), substituted ''be determined as provided in subsection (b) of this section (but without regard to paragraphs (4) and (5) thereof), except that for the purposes of paragraphs (2)(C)(i) and (3)(A)(i) of subsection (b) of this section, December 31, 1936, shall be used instead of December 31, 1950'' for ''be determined as provided in subsection (b) of this section (but without regard to paragraph (5) thereof), except that his starting date shall be December 31, 1936''.

Subsec. (d)(1)(C). Pub. L. 86–778, §303(c)(2), substituted ''all of which was included'' for ''any part of which was included'', and struck out provisions which required the wages paid in the year in which the period of disability began to be counted if the counting of such wages would result in a higher primary insurance amount.

Subsec. (d)(2)(B). Pub. L. 86–778, §303(c)(3), substituted ''paragraph (4) of subsection (b) of this section'' for ''paragraph (5) of subsection (b) of this section''.

Subsec. (d)(3). Pub. L. 86–778, §303(c)(4), added par. (3).

Subsec. (e)(3). Pub. L. 86–778, §303(d)(1), substituted ''if an individual has self-employment income in a taxable year which begins prior to the calendar year in which he becomes entitled to old-age insurance benefits and ends after the last day of the month preceding the month in which he becomes so entitled, his self-employment income in such taxable year shall not be counted in determining his benefit computation years'' for ''if an individual's closing date is determined under paragraph (3)(A) of subsection (b) of this section and he has self-employment income in a taxable year which begins prior to such closing date and ends after the last day of the month preceding the month in which he becomes entitled to old-age insurance benefits, there shall not be counted, in determining his average monthly wage, his self-employment income in such taxable year''.

Subsec. (e)(4). Pub. L. 86–778, §303(d)(2), struck out par. (4) which prohibited, in computing an individual's average monthly wage, the counting of any wages paid such individual in any year any part of which was in-

cluded in a period of disability, or any self-employment income of such individual credited pursuant to section 412 of this title to any year any part of which was included in a period of disability, unless the months of such year are included as elapsed months pursuant to subsec. (b)(1)(B) of this section.

Subsec. (f)(2)(A). Pub. L. 86–778, §303(e)(1), substituted ''1960'' for ''1954'' in opening provisions, and ''filed such application after such calendar year'' for ''filed such application no earlier than six months after such calendar year'' in cl. (iii).

Subsec. (f)(2)(B). Pub. L. 86–778, §303(e)(2), substituted provisions requiring a recomputation pursuant to subpar. (A) to be made only as provided in subsec. (a)(1) of this section, if the provisions of subsec. (b) of this section, as amended by Pub. L. 86–778, were applicable to the last previous computation of the individual's primary insurance amount, or as provided in subsec. (a)(1) and (3) of this section in all other cases for provisions which required a recomputation to be made only as provided in subsec. (a) of this section, inserted provisions requiring the computation base years, if cl. (i) of this subparagraph is applicable to such recomputation, to include only calendar years occurring prior to the year in which he filed his application for such recomputation, and struck out provisions which prescribed the method of making the recomputation if subsec. (b)(4) of this section were applicable to the previous computation.

Subsec. (f)(3)(A). Pub. L. 86–778, §303(e)(3), substituted ''December 1960'' for ''August 1954'' in two places, struck out provisions which related to applications by individuals whose primary insurance amount was recomputed under section 102(e)(5) or 102(f)(2)(B) of the Social Security Amendments of 1954, and substituted ''except that such individual's computation base years referred to in subsection (b)(2) of this section shall include the calendar year referred to in the preceding sentence'' for ''except that his closing date for purposes of subsection (b) of this section shall be the first day of the year following the year in which he became entitled to old-age insurance benefits or in which he filed his application for the last recomputation (to which he was entitled) of his primary insurance amount under any provision of law referred to in clause (ii) or (iii) of the preceding sentence, whichever is later''.

Subsec. (f)(3)(B). Pub. L. 86–778, §303(e)(3), substituted ''December 1960'' for ''August 1954'' in three places, struck out provisions which related to individuals whose primary insurance amount was recomputed under section 102(e)(5) or section 102(f)(2) of the Social Security Amendments of 1954, and individuals with respect to whom the last previous computation or recomputation of their primary insurance amount was based upon a closing date determined under subpar. (A) or (B) of subsec. (b)(3) of this section, and substituted ''except that such individual's computation base years referred to in subsection (b)(2) of this section shall include the calendar year in which he died in the case of an individual who was not entitled to old-age insurance benefits at the time of death or whose primary insurance amount was recomputed under paragraph (4) of this subsection, or in all other cases, the calendar year in which he filed his application for the last previous computation of his primary insurance amount'' for ''except that his closing date for purposes of subsection (b) of this section shall be the day following the year of death in case he died without becoming entitled to old-age insurance benefits, or in case he was entitled to old-age insurance benefits, the day following the year in which was filed the application for the last previous computation of his primary insurance amount or in which the individual died, whichever first occurred''.

Subsec. (f)(3)(C). Pub. L. 86–778, §303(e)(3), substituted ''In the case of an individual who becomes entitled to old-age insurance benefits in a calendar year after 1960, if such individual has self-employment income in a taxable year which begins prior to such calendar year and ends after the last day of the month preceding the month in which he became so entitled, the Secretary shall recompute such individual's primary insurance amount after the close of such taxable year and shall take into account in determining the individual's benefit computation years only such self-employment income in such taxable year as is credited, pursuant to section 412 of this title, to the year preceding the year in which he became so entitled'' for ''If an individual's closing date is determined under paragraph (3)(A) of subsection (b) of this section and he has self-employment income in a taxable year which begins prior to such closing date and ends after the last day of the month preceding the month in which he became entitled to old-age insurance benefits, the Secretary shall recompute his primary insurance amount after the close of such taxable year, taking into account only such self-employment income in such taxable year as is, pursuant to section 412 of this title, allocated to calendar quarters prior to such closing date.''

Subsec. (f)(4). Pub. L. 86–778, §303(e)(4), struck out ''(without the application of clause (iii) thereof)'' after ''paragraph (2)(A)'' in cl. (A), struck out provisions from the second sentence which required, if the recomputation is permitted by subpar. (A), to include in such recomputation any compensation (described in section 405(*o*) of this title) paid to him prior to the closing date which would have been applicable under such paragraph, and substituted ''which were considered in the last previous computation of his primary insurance amount and the compensation (described in section 405(*o*) of this title) paid to him in the years in which such wages were paid or to which such self-employment income was credited'' for ''which were taken into account in the last previous computation of his primary insurance amount and the compensation (described in section 405(*o*) of this title) paid to him prior to the closing date applicable to such computation'' in third sentence.

Subsec. (f)(5). Pub. L. 86–778, §304(a), substituted ''then upon application filed by such individual after the close of such taxable year and prior to January 1961 or (if he died without filing such application and such death occurred prior to January 1961)'' for ''then upon application filed after the close of such taxable year by such individual (or if he died without filing such application)''.

Subsec. (g). Pub. L. 86–778, §211(n), inserted ''and deductions under section 403(b) of this title''.

Subsec. (h). Pub. L. 86–778, §103(j)(2)(C), substituted ''section 410(*l*)(1) of this title'' for ''section 410(m)(1) of this title'', in par. (1).

Pub. L. 86–415 added subsec. (h).

1958—Subsec. (a). Pub. L. 85–840, §101(a), amended subsec. (a) generally, and, among other changes, substituted a new method for computing the primary insurance amount of an individual for provisions which established the primary insurance amount as either 55% of the first $110 of an individual's average monthly wage, plus 20% of the next $240, or the amount determined by use of the conversion table under former subsec. (c) of this section, whichever was larger.

Subsec. (b)(1). Pub. L. 85–840, §101(b)(1), substituted ''for the purposes of column III of the table appearing in subsection (a) of this section, an'' for ''An''.

Subsec. (b)(5). Public L. 85–840, §101(b)(2), added par. (5).

Subsec. (c). Pub. L. 85–840, §101(c), amended subsec. (c) generally, and, among other changes, substituted provisions for computation of the primary insurance amount of an individual under the 1954 Act for provisions which related to determinations made by use of the conversion table.

Subsec. (d). Pub. L. 85–840, §101(d), substituted provisions for computation of the primary insurance benefit under the 1939 Act for provisions which related to determination of the primary insurance benefit and primary insurance amount for purposes of the conversion table in former subsec. (c) of this section.

Subsec. (e). Pub. L. 85–840, §102(d), substituted ''(d) of this section'' for ''(d)(4) of this section'' in opening provisions and in cl. (2), and inserted ''and before 1959, and

the excess over $4,800 in the case of any calendar year after 1958'' after ''after 1954'', in cl. (1).

Subsec. (g). Pub. L. 85–840, §205(m), struck out provisions which related to reduction under section 424 of this title.

1956—Subsec. (a)(3). Act Aug. 1, 1956, §103(c)(4), added par. (3).

Subsec. (b)(1). Act Aug. 1, 1956, §115(a), excluded from computation of an individual's average wage the months in any year any part of which was included in a period of disability, except the months in any year in which a period of disability began if their inclusion would result in a higher primary insurance amount.

Subsec. (b)(4). Act Aug. 1, 1956, §109(a), substituted ''five'' for ''four'', and struck out provisions which required the maximum number of calendar years determined under this clause to be five in the case of any individual who has not less than 20 quarters of coverage.

Subsec. (d)(5). Act Aug. 1, 1956, §115(b), excluded from the computation all quarters in any year prior to 1951 any part of which was included in a period of disability, except the quarters in the year in which a period of disability began if the inclusion of such quarters would result in a higher primary insurance amount.

Subsec. (e)(4). Act Aug. 1, 1956, §115(c), excluded any wages paid to an individual in any year any part of which was included in a period of disability, and any self-employment income credited to such year unless the months of such year are included as elapsed months.

Subsec. (g). Act Aug. 1, 1956, §103(c)(5), inserted references to sections 423 and 424 of this title.

1954—Subsec. (a). Act Sept. 1, 1954, §102(a), provided a new benefit formula, for computing primary insurance amount for certain individuals, of 55 percent of the first $110 of average monthly wage plus 20 percent of the next $240 and provided that other individuals have their primary insurance amount computed under subsection (c) of this section.

Subsec. (b). Act Sept. 1, 1954, §102(b), provided standard end-of-the-year starting and beginning-of-the-year closing dates, applicable to both wage earners and self-employed individuals, for computation of the average monthly wage, and provided for the exclusion of up to 5 years in which earnings were lowest (or non-existent) from the average monthly wage computation.

Subsec. (b)(1). Act Sept. 1, 1954, §106(c)(1), inserted ''and any month in any quarter any part of which was included in a period of disability (as defined in section 416(i) of this title) unless such quarter was a quarter of coverage'' after ''quarters of coverage''.

Subsec. (c). Act Sept. 1, 1954, §102(c), provided a new conversion table with increased benefits for individuals already on the rolls and computed the primary insurance amount of certain individuals who come on the rolls after the enactment of the act.

Subsec. (d). Act. Sept. 1, 1954, §102(d), inserted provisions for computation of a primary insurance amount for purposes of the conversion table.

Subsec. (d)(5). Act Sept. 1, 1954, §106(c)(2), added subsec. (d)(5). Former subsec. (d)(5), which was added by act July 18, 1952, §3(c)(3), ceased to be in effect at the close of June 30, 1953. See Termination Date of 1952 Amendment note set out under section 413 of this title.

Subsec. (d)(6). Act Sept. 1, 1954, §102(d)(4), added par. (6).

Subsec. (e). Act Sept. 1, 1954, §104(d), provided that earnings up to $4,200, in any calendar year after 1954, shall be used in the computation of an individual's average monthly wage.

Subsec. (e)(3). Act Sept. 1, 1954, §102(e)(1), added par. (3).

Subsec. (e)(4). Act Sept. 1, 1954, §106(c)(3), added par. (4).

Subsec. (f)(2). Act Sept. 1, 1954, §102(e)(2), substituted a new test for determining eligibility for a recomputation to take into account additional earnings after entitlement.

Subsec. (f)(3)(A), (B). Act Sept. 1, 1954, §102(e)(3)(A), amended provisions generally.

Subsec. (f)(3)(C). Act Sept. 1, 1954, §102(e)(3)(B), added subpar. (C).

Subsec. (f)(4). Act Sept. 1, 1954, §102(e)(4), provided for recomputation of the primary insurance on the death after 1954 of an old-age insurance beneficiary, if any person is entitled to monthly survivors benefits or to a lump-sum death payment on the basis of his wages and self-employment income.

1952—Subsec. (a)(1). Act July 18, 1952, §2(b)(1), provided a new benefit formula for the computation of benefits based entirely on wages paid and self-employment income derived after 1950 of 55 percent of the first $100 of average monthly wage and 15 percent of next $200 and increased the primary insurance amount.

Subsec. (b)(1). Act July 18, 1952, §3(c)(1), inserted ''and any month in any quarter any part of which was included in a period of disability (as defined in section 416(i) of this title) unless such quarter was quarter of coverage'' after ''not a quarter of coverage.''

Subsec. (b)(4). Act July 18, 1952, §3(c)(2), inserted provisions of subpars. (B) and (C).

Subsec. (c)(1). Act July 18, 1952, §2(a)(1), inserted a new conversion table and increased amounts.

Subsec. (c)(2). Act July 18, 1952, §2(a)(2), provided that individuals, whose primary insurance amounts are governed by regulations, shall have the same increase as is provided for individuals governed by the new conversion table.

Subsec. (c)(4). Act July 18, 1952, §2(a)(3), added par. (4).

Subsec. (d)(5). Act July 18, 1952, §3(c)(3), added par. (5).

Subsec. (f)(2). Act July 18, 1952, §6(a), provided that upon application an individual will have his benefit recomputed by the new formula prescribed in subsec. (a)(1) of this section under certain conditions.

Subsec. (f)(5), (6). Act July 18, 1952, §6(b), added par. (5) and redesignated former par. (5) as (6).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 307(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section] shall apply (notwithstanding section 215(f)(1) of the Social Security Act (42 U.S.C. 415(f)(1))) with respect to benefits payable for months after December 1994.''

Amendment by section 308(b) of Pub. L. 103–296 applicable (notwithstanding subsec. (f) of this section) with respect to benefits payable for months after Dec. 1994, see section 308(c) of Pub. L. 103–296, set out as a note under section 402 of this title.

Section 321(g)(3)(A) of Pub. L. 103–296 provided that: ''The amendments made by paragraph (1) [amending this section and section 430 of this title] shall be effective with respect to the determination of the contribution and benefit base for years after 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5117(a) of Pub. L. 101–508 applicable with respect to computation of primary insurance amount of any insured individual in any case in which a person becomes entitled to benefits under section 402 or 423 of this title on basis of such insured individual's wages and self-employment income for months after 18-month period following November 1990, but inapplicable if any person is entitled to benefits based on wages and self-employment income of such insured individual for month preceding initial month of such person's entitlement to such benefits under section 402 or 423, and amendment also applicable with respect to any primary insurance amount upon recomputation of such amount if recomputation is first effective for monthly benefits for months after 18-month period following November 1990, see section 5117(a)(4) of Pub. L. 101–508, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10208(b)(1), (2)(A), (B), (3), (4) of Pub. L. 101–239 applicable with respect to computa-

tion of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8003(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to benefits payable for months after December 1988.''

Section 8011(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to benefits based on applications filed after the month in which this Act is enacted [November 1988].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(a)(7) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Section 9001(d) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and section 1395r of this title] shall apply with respect to cost-of-living increases determined under section 215(i) of the Social Security Act [subsec. (i) of this section] (as currently in effect, and as in effect in December 1978 and applied in certain cases under the provisions of such Act [this chapter] in effect after December 1978) in 1986 and subsequent years.

''(2) The amendments made by paragraphs (1)(A) and (2)(B) of subsection (b) [amending this section] shall apply with respect to months after September 1986.

''(3) The amendment made by subsection (c) [amending section 1395r of this title] shall apply with respect to monthly premiums (under section 1839 of the Social Security Act [section 1395r of this title]) for months after December 1986.''

Section 12115 of Pub. L. 99–272 provided that: ''Except as otherwise specifically provided, the preceding provisions of this subtitle [subtitle A (§§ 12101–12115) of title XII of Pub. L. 99–272, amending this section and sections 402 to 404, 409, 418, 423, 424a, 907, 909, 910, 1310, and 1383 of this title and sections 86, 871, 932, and 3121 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 402 to 404, 409, 418, 424a, 907, and 909 of this title and section 932 of Title 26, amending provisions set out as notes under section 1310 of this title, and repealing provisions set out as a note under section 907 of this title], including the amendments made thereby, shall take effect on the first day of the month following the month in which this Act is enacted [April 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2661(k) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(10) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 111(a)(1)–(3), (6), (b)(1), (2), (c) of Pub. L. 98–21 applicable with respect to cost-of-living increases determined under subsec. (i) of this section for years after 1982, see section 111(a)(8) of Pub. L. 98–21, set out as a note under section 402 of this title.

Section 111(b)(3) of Pub. L. 98–21 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to cost-of-living increases determined under section 2151(i) of the Social Security Act [subsec. (i) of this section] for years after 1983.''

Section 112(e) of Pub. L. 98–21 provided that: ''The amendments made by the preceding provisions of this section [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1983.''

EFFECTIVE DATE OF 1981 AMENDMENTS

Section 2(j)(2)–(4) of Pub. L. 97–123, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided:

''(2) Except as provided in paragraphs (3) and (4), the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981 [enacting section 1382k of this title, amending this section and sections 402, 403, 417, and 433 of this title] (other than subsection (f) thereof [amending section 402 of this title]), together with the amendments made by the preceding subsections of this section [amending this section and sections 402, 403, and 417 of this title and repealing section 1382k of this title and a provision set out as a note under section 1382k of this title], shall apply with respect to benefits for months after December 1981; and the amendment made by subsection (f) of such section 2201 shall apply with respect to deaths occurring after December 1981.

''(3) Such amendments shall not apply—

''(A) in the case of an old-age insurance benefit, if the individual who is entitled to such benefit first became eligible (as defined in section 215(a)(3)(B) of the Social Security Act [subsec. (a)(3)(B) of this section]) for such benefit before January 1982,

''(B) in the case of a disability insurance benefit, if the individual who is entitled to such benefit first became eligible (as so defined) for such benefit before January 1982, or attained age sixty-two before January 1982,

''(C) in the case of a wife's or husband's insurance benefit, or a child's insurance benefit based on the wages and self-employment income of a living individual, if the individual on whose wages and self-employment income such benefit is based is entitled to an old-age or disability insurance benefit with respect to which such amendments do not apply, or

''(D) in the case of a survivors insurance benefit, if the individual on whose wages and self-employment income such benefit is based died before January 1982, or dies in or after January 1982 and at the time of his death is eligible (as so defined) for an old-age or disability insurance benefit with respect to which such amendments do not apply.

''(4) In the case of an individual who is a member of a religious order (within the meaning of section 3121(r)(2) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [section 3121(r)(2) of Title 26, Internal Revenue Code]), or an autonomous subdivision of such order, whose members are required to take a vow of poverty, and which order or subdivision elected coverage under title II of the Social Security Act [this subchapter] before the date of the enactment of this Act [Dec. 29, 1981], or who would be such a member except that such individual is considered retired because of old age or total disability, paragraphs (2) and (3) shall apply, except that each reference therein to 'December 1981' or 'January 1982' shall be considered a reference to 'December 1991' or 'January 1992', respectively.''

Amendment by section 2206(a), (b)(5)–(7) of Pub. L. 97–35 applicable only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981, see section 2206(c) of Pub. L. 97–35, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 102(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 423 of this title] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes entitled to disability insurance bene-

fits on or after July 1, 1980; except that the third sentence of section 215(b)(2)(A) of the Social Security Act [subsec. (b)(2)(A) of this section] (as added by such amendments) shall apply only with respect to monthly benefits payable for months beginning on or after July 1, 1981.''

For effective date of amendment by section 101(b)(3), (4) of Pub. L. 96–265, see section 101(c) of Pub. L. 96–265, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 103(d) of Pub. L. 95–216 applicable with respect to remuneration paid or received, and taxable years beginning after 1977, see section 104 of Pub. L. 95–216, set out as a note under section 1401 of Title 26, Internal Revenue Code.

Amendment by section 201 of Pub. L. 95–216 effective only with respect to monthly benefits under this subchapter payable for months after December 1978 and with respect to lump-sum death payments with respect to deaths occurring after December 1978, except that amendment by section 201(d) of Pub. L. 95–216 effective with respect to monthly benefits of an individual who becomes eligible for an old-age or disability insurance benefit, or dies after December 1977, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Section 1(h)(2) of Pub. L. 93–233 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to benefits payable for months after February 1974.''

Section 2(c) of Pub. L. 93–233 provided that: ''The amendment made by subsections (a) and (b) [amending this section and sections 427 and 428 of this title and repealing section 202(a)(4) of Pub. L. 92–336, title II, July 1, 1972, 86 Stat. 416] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after May 1974, and with respect to lump-sum death payments under section 202(i) of such Act [section 402(i) of this title] in the case of deaths occurring after such month.''

Amendment by section 5(a)(4) of Pub. L. 93–233 applicable with respect to calendar years after 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable with respect to calendar years after 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1972 AMENDMENTS

Section 101(g) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] for months after December 1972 (without regard to when the insured individual became entitled to such benefits or when he died) and with respect to lump-sum death payments under such title in the case of deaths occurring after such month.''

Amendment by section 104(b) of Pub. L. 92–603 applicable only in the case of a man who attains (or would attain) age 62 after Dec. 1974, with provision for the determination of the number of elapsed years for purposes of subsec. (b)(3) of this section in the case of a man who attains age 62 prior to 1975, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of this title.

Amendment by section 144(a)(1) of Pub. L. 92–603 effective in like manner as if such amendment had been included in title II of Pub. L. 92–336, see section 144(b) of Pub. L. 92–603, set out as a note under section 403 of this title.

Section 201(i) of Pub. L. 92–336 provided that: ''The amendments made by this section [amending this section and section 403 of this title] (other than the amendments made by subsections (g) and (h)) shall apply with respect to monthly benefits under title II of the Social Security Act [this chapter] for months after August 1972 and with respect to lump-sum death payments under such title in the case of deaths occurring after such month. The amendments made by subsection (g) [amending sections 427 and 428 of this title] shall apply with respect to monthly benefits under title II of such Act for months after August 1972. The amendments made by subsection (h)(1) [amending section 403 of this title] shall apply with respect to monthly benefits under title II of such Act for months after December 1971.''

Section 202(a)(3) of Pub. L. 92–336, as amended by Pub. L. 93–233, §2(d), Dec. 31, 1973, 87 Stat. 952, provided that the amendment made by that section is effective June 1, 1974.

Amendment by section 203(a)(4) of Pub. L. 92–336 applicable only with respect to calendar years after 1972, see section 203(c) of Pub. L. 92–336, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 201(e) of Pub. L. 92–5 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1970 and with respect to lump-sum death payments under such title in the case of deaths occurring in and after the month in which this Act is enacted [March 1971].''

Amendment by section 203(a)(4) of Pub. L. 92–5 applicable only with respect to calendar years after 1971, see section 203(c) of Pub. L. 92–5, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 1002(e) of Pub. L. 91–172 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1969 and with respect to lump-sum death payments under such title in the case of deaths occurring after December 1969.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 101(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and section 403 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968 and with respect to lump-sum death payments under such title in the case of deaths occurring after January 1968.''

Amendment by section 108(a)(4) of Pub. L. 90–248 applicable only with respect to calendar years after 1967, see section 108(c) of Pub. L. 90–248, set out as a note under section 409 of this title.

Section 155(a)(7), (9) of Pub. L. 90–248 provided that:

''(7)(A) The amendments made by paragraphs (4) and (5) [amending this section] shall apply with respect to recomputations made under section 215(f)(2) of the Social Security Act [subsec. (f)(2) of this section] after the date of the enactment of this Act [Jan. 2, 1968].

''(B) The amendments made by paragraph (6) [amending this section] shall apply with respect to individuals who die after the date of enactment of this Act [Jan. 2, 1968].

''(9) The amendment made by paragraphs (1) and (2) [amending this section] shall not apply with respect to monthly benefits for any month prior to January 1967.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 301(d) of Pub. L. 89–97 provided that: ''The amendments made by subsections (a), (b), and (c) of this section [amending this section and section 403 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this sub-

chapter] for months after December 1964 and with respect to lump-sum death payments under such title in the case of deaths occurring in or after the month in which this Act is enacted [July 1965].''

Section 302(d)(2) of Pub. L. 89–97 provided that the amendment made by that section is effective Jan. 2, 1966.

Section 302(f)(1)–(5) of Pub. L. 89–97 provided as follows:

''(1) The amendments made by subsection (c) [amending this section] shall apply only to individuals who become entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] after 1965.

''(2) Any individual who would, upon filing an application prior to January 2, 1966, be entitled to a recomputation of his monthly benefit amount for purposes of title II of the Social Security Act [this subchapter] shall be deemed to have filed such application on the earliest date on which such application could have been filed, or on the day on which this Act is enacted [July 30, 1965], whichever is the later.

''(3) In the case of an individual who died after 1960 and prior to 1966 and who was entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] at the time of his death, the provisions of sections 215(f)(3)(B) and 215(f)(4) of such Act [subsec. (f)(3)(B) and (f)(4) of this section] as in effect before the enactment of this Act [July 30, 1965] shall apply.

''(4) In the case of a man who attains age 65 prior to 1966, or dies before such year, the provisions of section 215(f)(7) of the Social Security Act as in effect before the enactment of this Act [July 30, 1965] shall apply.

''(5) The amendments made by subsection (e) of this section [amending section 423 of this title] shall apply in the case of individuals who become entitled to disability insurance benefits under section 223 of the Social Security Act [section 423 of this title] after December 1965.''

Section 303(f)(2) of Pub. L. 89–97 provided that: ''The amendment made by subsection (e) [amending this section] shall apply in the case of the primary insurance amounts of individuals who attain age 65 after the date of enactment of this Act [July 30, 1965].''

Amendment by section 304(k) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter for and after the second month following July 1965 but only on the basis of applications filed in or after July 1965, see section 304(*o*) of Pub. L. 89–97, set out as a note under section 402 of this title.

Amendment by section 320(a)(4) of Pub. L. 89–97 applicable with respect to calendar years after 1965, see section 320(c) of Pub. L. 89–97, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1961 AMENDMENT

Section 101(b) of Pub. L. 87–64 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only in the case of monthly insurance benefits under title II of the Social Security Act [this subchapter] for months beginning on or after the effective date of this title [see note set out under section 402 of this title], and in the case of lump-sum death payments under such title with respect to deaths on or after such effective date.''

Amendment by section 102(d)(1), (2) of Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after Aug. 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after Aug. 1, 1961, and amendment by section 102(d)(3) of Pub. L. 87–64 effective Aug. 1, 1961, see sections 102(f)(6), (7) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by section 103(j)(2)(C) of Pub. L. 86–778 effective on Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

Amendment by section 211(n) of Pub. L. 86–778 effective in the manner provided in section 211(p) and (q) of Pub. L. 86–778, see section 211(s) of Pub. L. 86–778, set out as a note under section 403 of this title.

Section 303(d)(1) of Pub. L. 86–778 provided that the amendment made by that section is effective with respect to individuals who become entitled to benefits under section 402(a) of this title after 1960.

Section 303(d)(2) of Pub. L. 86–778 provided that the amendment made by that section is effective with respect to individuals who meet any of the subparagraphs of paragraph (4) of subsec. (b) of this section, as amended by Pub. L. 86–778.

Section 303(e)(1) of Pub. L. 86–778 provided that the amendment made by that section is effective with respect to applications for recomputation under subsec. (f)(2) of this section filed after 1960.

Section 303(e)(4)(B) of Pub. L. 86–778 provided that the amendment made by that section is effective in the case of deaths occurring on or after Sept. 13, 1960.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 101(g) of Pub. L. 85–840 provided that: ''The amendments made by this section [amending this section and sections 402 and 403 of this title] shall be applicable in the case of monthly benefits under title II of the Social Security Act [this subchapter], for months after December 1958, and in the case of the lump-sum death payments under such title, with respect to deaths occurring after such month.''

Amendment by section 205(m) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for August 1958 and succeeding months, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 109(b) of act Aug. 1, 1956, provided that: ''The amendment made by subsection (a) [amending this section] shall apply in the case of monthly benefits under section 202 of the Social Security Act [section 402 of this title], and the lump-sum death payment under such section, based on the wages and self-employment income of an individual—

''(1) who becomes entitled to benefits under subsection (a) of such section on the basis of an application filed on or after the date of enactment of this Act [Aug. 1, 1956]; or

''(2) who is (but for the provisions of subsection (f)(6) of section 215 of the Social Security Act [subsec. (f)(6) of this section]) entitled to a recomputation of his primary insurance amount under subsection (f)(2)(A) of such section 215 based on an application filed on or after the date of enactment of this Act [Aug. 1, 1956]; or

''(3) who dies without becoming entitled to benefits under subsection (a) of such section 202 [section 402(a) of this title] and no individual was entitled to survivor's benefits and no lump-sum death payment was payable under such section 202 on the basis of an application filed prior to such date of enactment [Aug. 1, 1956]; or

''(4) who dies on or after such date of enactment [Aug. 1, 1956] and whose survivors are (but for the provisions of subsection (f)(6) of such section 215 [subsec. (f)(6) of this section]) entitled to a recomputation of his primary insurance amount under subsection (f)(4)(A) of such section 215; or

''(5) who dies prior to such date of enactment [Aug. 1, 1956] and (A) whose survivors are (but for the provisions of subsection (f)(6) of such section 215 [subsec. (f)(6) of this section]) entitled to a recomputation of his primary insurance amount under subsection (f)(4)(A) of such section 215, and (B) on the basis of whose wages and self-employment income no individual was entitled to survivor's benefits under such section 202 [section 402 of this title], and no lump-sum death payment was payable under such section, on the basis of an application filed prior to such date of

enactment and no individual was entitled to such a benefit, without the filing of an application for the month in which this Act is enacted [August 1956] or any month prior thereto.''

Section 115(d) of act Aug. 1, 1956, provided that: ''The amendments made by this section [amending this section] shall apply in the case of an individual (1) who becomes entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to benefits under section 202(a) of such Act [section 402(a) of this title] after the date of enactment of this Act [Aug. 1, 1956], or (2) who dies without becoming entitled to benefits under such section 202(a) and on the basis of whose wages and self-employment income an application for benefits or a lump-sum death payment under section 202 of such Act is filed after the date of enactment of this Act, or (3) who becomes entitled to benefits under section 223 of such Act [section 423 of this title], or (4) who files, after the date of enactment of this Act, an application for a disability determination which is accepted as an application for purposes of section 216(i) of such Act [section 416(i) of this title].''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 102(f) of act Sept. 1, 1954, as amended by Pub. L. 86–778, title II, §303(k), Sept. 13, 1960, 74 Stat. 966; Pub. L. 89–97, title III §302(f)(7), July 30, 1965, 79 Stat. 366, provided that:

''(1) The amendments made by the preceding subsections [amending this section and section 403 of this title], other than subsection (b) and paragraphs (1), (2), (3), and (4) of subsection (e), shall (subject to the provisions of paragraph (2) and notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsec. (f)(1) of this section]) apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after, and in the case of monthly benefits under such section for months after, August 1954.

''(2)(A) The amendment made by subsection (b)(2) [amending this section] shall be applicable only in the case of monthly benefits for months after August 1954, and the lump-sum death payment in the case of death after August 1954, based on the wages and self-employment income of an individual (i) who does not become eligible for benefits under section 202(a) of the Social Security Act [section 402(a) of this title] until after August 1954, or (ii) who dies after August 1954, and without becoming eligible for benefits under such section 202(a), or (iii) who is or has been entitled to have his primary insurance amount recomputed under section 215(f)(2) of the Social Security Act, as amended by subsection (e)(2) of this section, or under subsection (e)(5)(B) of this section [set out as a note under this section], or (iv) with respect to whom not less than six of the quarters elapsing after June 1953 are quarters of coverage (as defined in such Act), or (v) who files an application for a disability determination which is accepted as an application for purposes of section 216(i) of such Act [section 416(i) of this title], or (vi) who dies after August 1954, and whose survivors are (or would, but for the provisions of section 215(f)(6) of such Act, be) entitled to a recomputation of his primary insurance amount under section 215(f)(4)(A) of such Act, as amended by this Act. For purposes of the preceding sentence an individual shall be deemed eligible for benefits under section 202(a) of the Social Security Act for any month if he was, or would upon filing application therefor in such month have been, entitled to such benefits for such month.

''(B) [Repealed. Pub. L. 89–97, title III, §302(f)(7), July 30, 1965, 79 Stat. 366, eff. Jan. 2, 1966.]

''(3) The amendments made by subsections (b)(1), (e)(1), and (e)(3)(B) [amending this section] shall be applicable only in the case of monthly benefits based on the wages and self-employment income of an individual who does not become entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] until after August 1954, or who dies after August 1954 without becoming entitled to such benefits, or who files an application after August 1954 and is entitled to a recomputation under paragraph (2) or (4) of section 215(f) of the Social Security Act, as amended by this Act [subsec. (f)(2) or (4) of this section], or who is entitled to a recomputation under paragraph (2)(B) of this subsection, or who is entitled to a recomputation under paragraph (5) of subsection (e) [set out as a note under this section].

''(4) The amendments made by subsection (e)(2) [amending this section] shall be applicable only in the case of applications for recomputation filed after 1954. The amendment to subsec. (f)(4) made by subsection (e)(4) shall be applicable only in the case of deaths after 1954.

''(5) The amendments made by subparagraph (A) of subsection (e)(3) [amending this section] shall be applicable only in the case of applications for recomputation filed, or deaths occurring, after August 1954.

''(6) No increase in any benefit by reason of the amendments made by this section (other than subsection (e)) or by reason of subparagraph (B) of paragraph (2) of this subsection shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [subsec. (f) of this section].''

Amendment by section 106(c) of act Sept. 1, 1954, applicable with respect to monthly benefits under this subchapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955; but that no recomputation of benefits by reason of such amendments should be regarded as a recomputation for purposes of subsec. (f) of this section, see section 106(h) of act Sept. 1, 1954, set out as a note under section 413 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENTS

For effective and termination dates of amendment by act July 18, 1952, see section 3(f), (g) of act July 18, 1952, set out as a note under section 413 of this title.

Section 2(c)(1), (3) of act July 18, 1952, provided that:

''(1) The amendments made by subsection (a) [amending this section] shall, subject to the provisions of paragraph (2) of this subsection and notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsec. (f)(1) of this section], apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after, and in the case of monthly benefits under such section for any month after, August 1952.

''(3) The amendments made by subsection (b) [amending this section and section 403 of this title] shall (notwithstanding the provisions of section 215(f)(1) of the Social Security Act [subsec. (f)(1) of this section]) apply in the case of lump-sum death payments under section 202 of such Act [section 402 of this title] with respect to deaths occurring after August 1952, and in the case of monthly benefits under such section for months after August 1952.''

SAVINGS PROVISION

1960—Section 303(i) of Pub. L. 86–778 provided that in the case of an application for recomputation under subsec. (f)(2) of this section, the provisions of subsec. (f)(2) as in effect prior to Sept. 13, 1960, were to apply where the application was filed after 1954 and before 1961, and that in the case of an individual who died after 1954 and before 1961 and who was entitled to an old-age insurance benefit under section 402(a) of this title, the provisions of subsec. (f)(4) as in effect prior to Sept. 13, 1960 were to apply.

1958—Section 101(i) of Pub. L. 85–840 provided that: ''In the case of any individual to whom the provisions of subsection (b)(5) of section 215 of the Social Security Act [subsec. (b)(5) of this section], as amended by this Act, are applicable and on the basis of whose wages and self-employment income benefits are payable for months prior to January 1959, his primary insurance

amount for purposes of benefits for such prior months shall, if based on an application for such benefits or for a recomputation of such amount, as the case may be, filed after December 1958, be determined under such section 215 [this section], as in effect prior to the enactment of this Act [Aug. 28, 1958], and, if such individual's primary insurance amount as so determined is larger than the primary insurance amount determined for him under section 215 as amended by this Act, such larger primary insurance amount (increased to the next higher dollar if it is not a multiple of a dollar) shall, for months after December 1958, be his primary insurance amount for purposes of such section 215 (and of the other provisions) of the Social Security Act as amended by this Act in lieu of the amount determined without regard to this subsection.''

1952—Subsec. (d) of section 2 of act July 18, 1952, provided that:

''(1) Where—

''(A) an individual was entitled (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) to an old-age insurance benefit under title II of such Act [this subchapter] for August 1952;

''(B) two or more other persons were entitled (without the application of such section 202(j)(1) [section 402(j)(1) of this title]) to monthly benefits under such title for such month on the basis of the wages and self-employment income of such individual; and

''(C) the total of the benefits to which all persons are entitled under such title [this subchapter] on the basis of such individual's wages and self-employment income for any subsequent month for which he is entitled to an old-age insurance benefit under such title, would (but for the provisions of this paragraph) be reduced by reason of the application of section 203(a) of the Social Security Act, as amended by this Act [section 403(a) of this title],

then the total of benefits, referred to in clause (C), for such subsequent month shall be reduced to whichever of the following is the larger:

''(D) the amount determined pursuant to section 203(a) of the Social Security Act, as amended by this Act [section 403(a) of this title]; or

''(E) the amount determined pursuant to such section, as in effect prior to the enactment of this Act [July 18, 1952], for August 1952 plus the excess of (i) the amount of his old-age insurance benefit for August 1952 computed as if the amendments made by the preceding subsections of this section had been applicable in the case of such benefit for August 1952, over (ii) the amount of his old-age insurance benefit for August 1952.

''(2) No increase in any benefit by reason of the amendments made by this section or by reason of paragraph (2) of subsection (c) of this section shall be regarded as a recomputation for purposes of section 215(f) of the Social Security Act [subsec. (f) of this section].''

TRANSFER OF FUNCTIONS

Functions of Public Health Service, Surgeon General of Public Health Service, and all other officers and employees of Public Health Service, and functions of all agencies of or in Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, 31 F.R. 8855, 80 Stat. 1610, effective June 25, 1966, set out in the Appendix to Title 5, Government Organization and Employees. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

COMMISSION ON THE SOCIAL SECURITY ''NOTCH'' ISSUE

Pub. L. 102–393, title VI, § 635, Oct. 6, 1992, 106 Stat. 1777, as amended by Pub. L. 103–123, title VI, § 627, Oct. 28, 1993, 107 Stat. 1266, established a Commission on the Social Security ''Notch'' Issue, provided for its composition, directed Commission to conduct a comprehensive study of what had become known as the ''notch'' issue and transmit to Congress, not later than Dec. 31, 1994, a report with a detailed statement of its findings and conclusions, together with any recommendations, and provided the Commission terminate 30 days after transmittal of report.

COST-OF-LIVING INCREASES; COST-OF-LIVING COMPUTATION QUARTER DETERMINATIONS

Pub. L. 98–604, § 1, Oct. 30, 1984, 98 Stat. 3161, provided: ''That (a) in determining whether the base quarter ending on September 30, 1984, is a cost-of-living computation quarter for the purposes of the cost-of-living increases under sections 215(i) and 1617 of the Social Security Act [subsec. (i) of this section and section 1382f of this title], the phrase 'is 3 percent or more' appearing in section 215(i)(1)(B) of such Act shall be deemed to read 'is greater than zero' (and the phrase 'exceeds, by not less than 3 per centum, such Index' appearing in section 215(i)(1)(B) of such Act as in effect in December 1978 shall be deemed to read 'exceeds such Index').

''(b) For purposes of section 215(i) of such Act, the provisions of subsection (a) shall not constitute a 'general benefit increase'.''

''BASE QUARTER'' IN CALENDAR YEAR 1983

Section 111(d) of Pub. L. 98–21 provided that: ''Notwithstanding any provision to the contrary in section 215(i) of the Social Security Act [subsec. (i) of this section], the 'base quarter' (as defined in paragraph (1)(A)(i) of such section) in the calendar year 1983 shall be a 'cost-of-living computation quarter' within the meaning of paragraph (1)(B) of such section (and shall be deemed to have been determined by the Secretary of Health and Human Services to be a 'cost-of-living computation quarter' under paragraph (2)(A) of such section) for all of the purposes of such Act [this chapter] as amended by this section and by other provisions of this Act, without regard to the extent by which the Consumer Price Index has increased since the last prior cost-of-living computation quarter which was established under such paragraph (1)(B).''

COMBINED BALANCE IN TRUST FUNDS USED IN DETERMINING OASDI FUND RATIO WITH RESPECT TO CALENDAR YEAR 1984

Section 112(f) of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title VI, § 2662(b), July 18, 1984, 98 Stat. 1159, provided that: ''Notwithstanding anything to the contrary in section 215(i)(1)(F) of the Social Security Act [subsec. (i)(1)(F) of this section] (as added by subsection (a)(4) of this section), the combined balance in the Trust Funds which is to be used in determining the 'OASDI fund ratio' with respect to the calendar year 1984 under such section shall be the estimated combined balance in such Funds as of the close of that year (rather than as of its beginning), including the taxes transferred under section 201(a) of such Act [section 401(a) of this title] on the first day of the year following that year.''

RECALCULATION OF PRIMARY INSURANCE AMOUNTS APPLICABLE TO CERTAIN BENEFICIARIES

Section 2201(e) of Pub. L. 97–35, which provided for recalculation of primary insurance amounts for certain beneficiaries, was repealed by Pub. L. 97–123, § 2(i), Dec. 29, 1981, 95 Stat. 1661.

COST-OF-LIVING INCREASE IN BENEFITS

Section 3(i) of Pub. L. 93–233 provided that: ''For purposes of section 203(f)(8) [section 403(f)(8) of this title], so much of section 215(i)(1)(B) [subsec. (i)(1)(B) of this section] as follows the semicolon, and section 230(a) of the Social Security Act [section 430(a) of this title], the increase in benefits provided by section 2 of this Act [amending this section and sections 427 and 428 of this

title] shall be considered an increase under section 215(i) of the Social Security Act.''

INCREASE OF OLD-AGE OR DISABILITY INSURANCE BENEFITS FOLLOWING INCREASE IN PRIMARY INSURANCE AMOUNT OR ENTITLEMENT TO BENEFITS ON A HIGHER AMOUNT

Section 101(f) of Pub. L. 92–603 provided that: ''Whenever an insured individual is entitled to benefits for a month which are based on a primary insurance amount under paragraph (1) or paragraph (3) of section 215(a) of the Social Security Act [subsec. (a)(1) or (3) of this section] and for the following month such primary insurance amount is increased or such individual becomes entitled to benefits on a higher primary insurance amount under a different paragraph of such section 215(a), such individual's old-age or disability insurance benefit (beginning with the effective month of the increased primary insurance amount) shall be increased by an amount equal to the difference between the higher primary insurance amount and the primary insurance amount on which such benefit was based for the month prior to such effective month, after the application of section 202(q) of such Act [section 402(q) of this title] where applicable, to such difference.''

TABLE MODIFICATION AND EXTENSION; EFFECTIVE DATE; PUBLICATION IN FEDERAL REGISTER

Section 203(f) of Pub. L. 93–66 provided that effective June 1, 1974, the Secretary of Health, Education, and Welfare would prescribe and publish in the Federal Register all necessary modifications and extensions in the table formerly contained in subsec. (a) of this section.

CONVERSION OF DISABILITY INSURANCE BENEFITS TO OLD-AGE INSURANCE BENEFITS

Section 201(f) of Pub. L. 92–5 provided that: ''If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1970 on the basis of an application filed in or after the month in which this Act is enacted [March 1971], and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1971, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable), the amount in column IV of the table appearing in such section 215(c) [probably means section 215(a) which is subsec. (a) of this section] for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act [subsec. (c) of this section]) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based.''

Section 1002(f) of Pub. L. 91–172 provided that: ''If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1969 and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1970, or he died in such month, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable), the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based.''

Section 101(f) of Pub. L. 90–248 provided that: ''If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for the month of January 1968 and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for the month of February 1968, or who died in such month, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable) the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act) instead of the amount in column IV equal to the primary insurance amount on which his disability insurance benefit is based.''

Section 301(e) of Pub. L. 89–97 provided that: ''If an individual is entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1964 on the basis of an application filed after enactment of this Act [July 30, 1965] and is entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title] for January 1965, then, for purposes of section 215(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (if applicable) the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under section 215(c) of such Act) instead of the amount in column IV equal to his disability insurance benefit.''

Section 101(h) of Pub. L. 85–840 provided that: ''If an individual was entitled to a disability insurance benefit under section 223 of the Social Security Act [section 423 of this title] for December 1958, and became entitled to old-age insurance benefits under section 202(a) of such Act [section 402(a) of this title], or died, in January 1959, then, for purposes of paragraph (4) of section 215(a) of the Social Security Act [subsec. (a)(4) of this section], as amended by this Act, the amount in column IV of the table appearing in such section 215(a) for such individual shall be the amount in such column on the line on which in column II appears his primary insurance amount (as determined under subsection (c) of such section 215) instead of the amount in column IV equal to his disability insurance benefit.''

COMPUTATION OF PRIMARY INSURANCE AMOUNT FOR PERSONS ENTITLED TO BENEFITS AFTER JANUARY 2 AND BEFORE FEBRUARY 1968

Section 155(a)(8) of Pub. L. 90–248 provided that: ''In any case in which—

''(A) any person became entitled to a monthly benefit under section 202 or 223 of the Social Security Act [section 402 or 423 of this title] after the date of enactment of this Act [Jan. 2, 1968] and before February 1968, and

''(B) the primary insurance amount on which the amount of such benefit is based was determined by applying section 215(d) of the Social Security Act [subsec. (d) of this section] as amended by this Act,

such primary insurance amount shall, for purposes of section 215(c) of the Social Security Act [subsec. (c) of this section], as amended by this Act, be deemed to have been computed on the basis of the Social Security Act [this chapter] in effect prior to the enactment of this Act [Jan. 2, 1968].''

COMPUTATION OF PRIMARY INSURANCE AMOUNT FOR CERTAIN INDIVIDUALS WHO WERE FULLY INSURED AND HAD ATTAINED RETIREMENT AGE PRIOR TO 1961

Section 303(g)(1) of Pub. L. 86–778, as amended by Pub. L. 87–64, title I, §103(d), June 30, 1961, 75 Stat. 138; Pub. L. 89–97, title III, §302(f)(6), July 30, 1965, 79 Stat. 366; Pub. L. 90–248, title I, §155(c), Jan. 2, 1968, 81 Stat. 866; Pub. L. 92–603, title I, §104(h), Oct. 30, 1972, 86 Stat. 1341, provided that: ''In the case of any individual who both was fully insured and had attained retirement age prior to 1961 and (A) who becomes entitled to old-age insurance benefits after 1960, or (B) who dies after 1960 without being entitled to such benefits, then, notwithstanding the amendments made by the preceding subsections of this section [amending this section and section 423 of this title], or the amendments made by the Social Security Amendments of 1965, 1967, 1969, and 1972 (and by

Public Law 92–5) [see Tables for classification of Pub. L. 89–97, July 30, 1965, 79 Stat. 286, Pub. L. 90–248, Jan. 2, 1968, 81 Stat. 821, Pub. L. 91–172, title X, Dec. 30, 1969, 83 Stat. 737, Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, Pub. L. 92–5, Mar. 17, 1971, 85 Stat. 5] the Secretary shall also compute such individual's primary insurance amount on the basis of such individual's average monthly wage determined under the provisions of section 215 of the Social Security Act [this section] in effect prior to the enactment of this Act with a closing date determined under section 215(b)(3)(B) of such Act as then in effect, but only if such closing date would have been applicable to such computation had this section not been enacted. If the primary insurance amount resulting from the use of such an average monthly wage is higher than the primary insurance amount resulting from the use of an average monthly wage determined pursuant to the provisions of section 215 of the Social Security Act, as amended by the Social Security Amendments of 1960 [Pub. L. 86–778], or (if such individual becomes entitled to old-age insurance benefits after the date of enactment of the Social Security Amendments of 1972 [Oct. 30, 1972], or dies after such date without becoming so entitled) as amended by the Social Security Amendments of 1972 [Pub. L. 92–603], such higher primary insurance amount shall be the individual's primary insurance amount for purposes of such section 215. The terms used in this subsection shall have the meaning assigned to them by title II of the Social Security Act [this subchapter]; except that the terms 'fully insured' and 'retirement age' shall have the meaning assigned to them by such title II as in effect on September 13, 1960.''

DISREGARDING OF INCOME OF OASDI RECIPIENTS AND RAILROAD RETIREMENT RECIPIENTS IN DETERMINING NEED FOR PUBLIC ASSISTANCE

Section 1007 of Pub. L. 91–172, as amended by Pub. L. 91–306, § 2(b)(1), July 6, 1970, 84 Stat. 408; Pub. L. 91–669, Jan. 11, 1971, 84 Stat. 2038; Pub. L. 92–223, § 5, Dec. 28, 1971, 85 Stat. 810; Pub. L. 92–603, title III, § 304, Oct. 30, 1972, 86 Stat. 1484, eff. Oct. 30, 1972, provided a minimum aid requirement in addition to the requirements imposed by law as conditions of approval of State plans for aid to individuals under subchapters I, X, XIV, or XVI of this chapter, in the case of any individual found eligible for aid for any month after Mar. 1970 and before Jan. 1974 who also received a monthly insurance benefit under this subchapter, and in the case of such an individual who also received a monthly annuity or pension under the Railroad Retirement Acts of 1935 or 1937, set out in sections 215 et seq. and 228a et seq., respectively, of Title 45, Railroads.

DISREGARDING OF RETROACTIVE PAYMENT OF OASDI BENEFIT INCREASE AND OF RAILROAD RETIREMENT BENEFIT INCREASE

Section 201(g) of Pub. L. 92–5 provided that: ''Notwithstanding the provisions of sections 2(a)(10), 402(a)(7), 1002(a)(8), 1402(a)(8), and 1602(a)(13) and (14) of the Social Security Act [sections 302(a)(10), 602(a)(7), 1202(a)(8), 1352(a)(8), and 1382(a)(13) and (14) of this title] each State, in determining need for aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV, of such Act [subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter], may disregard (and the plan may be deemed to require the State to disregard), in addition to any other amounts which the State is required or permitted to disregard in determining such need, any amount paid to an individual under title II of such Act [subchapter II of this chapter] (or under the Railroad Retirement Act of 1937 [section 228a et seq. of Title 45, Railroads] by reason of the first proviso in section 3(e) thereof [section 228c(e) of Title 45]), in any month after the month in which this Act is enacted [March 1971], to the extent that (1) such payment is attributable to the increase in monthly benefits under the old-age, survivors, and disability insurance system for January, February, March, or April 1971 resulting from the enactment of this title, and (2) the amount of such increase is paid separately from the rest of the monthly benefit of such individual for January, February, March, or April 1971.''

Section 1006 of title X of Pub. L. 91–172, as amended by Pub. L. 91–306, § 2(a)(1), July 6, 1970, 84 Stat. 407, provided that: ''Notwithstanding the provisions of sections 2(a)(10), 402(a)(7), 1002(a)(8), 1402(a)(8), and 1602(a)(13) and (14) of the Social Security Act [sections 302(a)(10), 602(a)(7), 1202(a)(8), 1352(a)(8), and 1382(a)(13) and (14) of this title], each State, in determining need for aid or assistance under a State plan approved under title I, X, XIV, or XVI [subchapters I, X, XIV, or XVI of this chapter], or part A of title IV, of such Act [part A of subchapter IV of this chapter], shall disregard (and the plan shall be deemed to require the State to disregard), in addition to any other amounts which the State is required or permitted to disregard in determining such need, any amount paid to any individual (1) under title II of such Act [this subchapter] (or under the Railroad Retirement Act of 1937 [section 228a et seq. of Title 45, Railroads] by reason of the first proviso in section 3(e) thereof [section 228c(e) of Title 45]), in any month after December 1969, to the extent that (a) such payment is attributable to the increase in monthly benefits under the old-age, survivors, and disability insurance system for January or February 1970 resulting from the enactment of this title, and (b) the amount of such increase is paid separately from the rest of the monthly benefit of such individual for January or February 1970; or (2) as annuity or pension under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1935, if such amount is paid in a lump-sum to carry out any retroactive increase in annuities or pensions payable under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1935 [section 215 et seq. of Title 45] brought about by reason of the enactment (after May 30, 1970 and prior to December 31, 1970) of any Act which increases, retroactively, the amount of such annuities or pensions.''

DISREGARDING OASDI BENEFIT INCREASES AND CHILD'S INSURANCE BENEFIT PAYMENTS BEYOND AGE 18 TO THE EXTENT ATTRIBUTABLE TO RETROACTIVE EFFECTIVE DATE OF 1965 AMENDMENTS

Section 406 of Pub. L. 89–97 authorized a State to disregard, in determining the need for aid or assistance under State plans approved under subchapter I, IV, X, XIV, or XVI of this chapter, any amount paid to an individual under subchapter II of this chapter or the Railroad Retirement Act of 1937, section 228a et seq. of Title 45, Railroads, by reason of the amendments made by section 326(a) of Pub. L. 89–97 to sections 228a(q) and 228e(1)(9) of Title 45, for months occurring after December 1964 and before the third month following July 1965, in certain instances.

COMPUTATION OF AVERAGE MONTHLY WAGE FOR CERTAIN INDIVIDUALS ENTITLED TO DISABILITY INSURANCE BENEFITS PRIOR TO 1961

Section 303(g)(2) of Pub. L. 86–778 provided that: ''Notwithstanding the amendments made by the preceding subsections of this section [amending this section and section 423 of this title], in the case of any individual who was entitled (without regard to the provisions of section 223(b) of the Social Security Act [section 423(b) of this title]) to a disability insurance benefit under such section 223 for the month before the month in which he became entitled to an old-age insurance benefit under section 202(a) of such Act [section 402(a) of this title], or in which he died, and such disability insurance benefit was based upon a primary insurance amount determined under the provisions of section 215 of the Social Security Act [this section] in effect prior to the enactment of this Act, the Secretary shall, in applying the provisions of such section 215(a) (except paragraph (4) thereof), for purposes of determining benefits payable under section 202 of such Act on the basis

of such individual's wages and self-employment income, determine such individual's average monthly wage under the provisions of section 215 of the Social Security Act [this section] in effect prior to the enactment of this Act [Sept. 13, 1960]. The provisions of this paragraph shall not apply with respect to any such individual, entitled to such old-age insurance benefits, (i) who applies, after 1960, for a recomputation (to which he is entitled) of his primary insurance amount under section 215(f)(2) of such Act [subsec. (f)(2) of this section], or (ii) who dies after 1960 and meets the conditions for a recomputation of his primary insurance amount under section 215(f)(4) of such Act.''

AVERAGE MONTHLY WAGE FOR CERTAIN INDIVIDUALS ENTITLED TO MONTHLY BENEFITS OR TO RECOMPUTATION OF PRIMARY INSURANCE AMOUNT FOR MONTHS PRIOR TO JANUARY 1961

Section 303(j) of Pub. L. 86–778 provided that: ''In the case of an individual whose average monthly wage is computed under the provisions of section 215(b) of the Social Security Act [subsec. (b) of this section], as amended by this Act, and—

''(1) who is entitled, by reason of the provisions of section 202(j)(1) or section 223(b) of the Social Security Act [section 402(j)(1) or 423(b) of this title], to a monthly benefit for any month prior to January 1961, or

''(2) who is (or would, but for the fact that such recomputation would not result in a higher primary insurance amount for such individual, be) entitled, by reason of section 215(f) of the Social Security Act [subsec. (f) of this section], to have his primary insurance amount recomputed effective for a month prior to January 1961,

his average monthly wage as determined under the provisions of such section 215(b) [subsec. (b) of this section] shall be his average monthly wage for the purposes of determining his primary insurance amount for such prior month.''

LAG RECOMPUTATION PRESERVED FOR CERTAIN INDIVIDUALS ELIGIBLE OR DEAD PRIOR TO SEPTEMBER 1954

Section 102(e)(8) of act Sept. 1, 1954, as amended by Pub. L. 86–778, title III, §304(c), Sept. 13, 1960, 74 Stat. 966, provided that: ''In the case of an individual who became (without the application of section 202(j)(1) [section 402(j)(1) of this title]) entitled to old-age insurance benefits or died prior to September 1954, the provisions of section 215(f)(3) [subsec. (f)(3) of this section] as in effect prior to the enactment of this Act [Sept. 1, 1954] shall be applicable as though this Act had not been enacted but only if such individual files the application referred to in subparagraph (A) of such section prior to January 1961 or (if he dies without filing such application) his death occurred prior to January 1961.''

RIGHT TO RECOMPUTATION UNDER LAW PRIOR TO ENACTMENT OF ACT SEPTEMBER 1, 1954

Section 102(e)(5) of act Sept. 1, 1954, as amended by Pub. L. 86–778, title III, §304(b), Sept. 13, 1960, 74 Stat. 966, provided that:

''(A) In the case of any individual who, upon filing application therefor before September 1954, would (but for the provisions of section 215(f)(6) of the Social Security Act [subsec. (f)(6) of this section]) have been entitled to a recomputation under subparagraph (A) or (B) of section 215(f)(2) of such Act as in effect prior to the enactment of this Act [Sept. 1, 1954], the Secretary shall recompute such individual's primary insurance amount, but only if he files an application therefor or, in case he died before filing such application, an application for monthly benefits or a lump-sum death payment on the basis of his wages and self-employment income is filed. Such recomputation shall be made only as provided in subsection (a)(2) of section 215 of the Social Security Act, as amended by this Act, through the use of a primary insurance amount determined under subsection (d)(6) of such section in the same manner as for an individual to whom subsection (a)(1) of such section, as in effect prior to the enactment of this Act [Sept. 1, 1954], is applicable; and such recomputation shall take into account only such wages and self-employment income as would be taken into account under section 215(b) of the Social Security Act if the month in which the application for recomputation is filed, or if the individual died without filing the application for recomputation, the month in which he died, were deemed to be the month in which he became entitled to old-age insurance benefits. In the case of monthly benefits, such recomputation shall be effective for and after the month in which such application for recomputation is filed or, if the individual has died without filing the application, for and after the month in which the person filing the application for monthly survivor benefits becomes entitled to such benefits.

''(B) In the case of—

''(i) any individual who is entitled to a recomputation under subparagraph (A) of section 215(f)(2) of the Social Security Act [subsec. (f)(2)(A) of this section] as in effect prior to the enactment of this Act [Sept. 1, 1954] on the basis of an application filed after August 1954, or who died after such month leaving any survivors entitled to a recomputation under section 215(f)(4) of the Social Security Act as in effect prior to the enactment of this Act on the basis of his wages and self-employment income, and whose sixth quarter of coverage after 1950 was acquired after August 1954 or with respect to whom the twelfth month referred to in such subparagraph (A) occurred after such month, and

''(ii) any individual who is entitled to a recomputation under section 215(f)(2)(B) of the Social Security Act [subsec. (f)(2)(B) of this section] as is in effect prior to the enactment of this Act [Sept. 1, 1954] on the basis of an application filed after August 1954, or who died after August 1954 leaving any survivors entitled to a recomputation under section 215(f)(4) of the Social Security Act as in effect prior to the enactment of this Act on the basis of his wages and self-employment income, and whose sixth quarter of coverage after 1950 was acquired after August 1954 or who did not attain the age of seventy-five prior to September 1954, the recomputation of his primary insurance amount shall be made in the manner provided in section 215 of the Social Security Act [this section], as amended by this Act, for computation of such amount, except that his closing date, for purposes of subsection (b) of such section 215, shall be determined as though he became entitled to old-age insurance benefits in the month in which he filed such application for or, if he has died, in the month in which he died. In the case of monthly benefits, such recomputation shall be effective for and after the month in which such application for recomputation is filed or, if the individual has died without filing the application, for and after the month in which the person filing the application for monthly survivors benefits becomes entitled to such benefits.

''(C) An individual or, in case of his death, his survivors entitled to a lump-sum death payment or to monthly benefits under section 202 of the Social Security Act on the basis of his wages and self-employment income shall be entitled to a recomputation of his primary insurance amount under section 215(f)(2) or section 215(f)(4) of the Social Security Act [subsec. (f)(2) or (4) of this section] as in effect prior to the date of enactment of this Act [Sept. 1, 1954] only if (i) he had not less than six quarters of coverage in the period after 1950 and prior to January 1, 1955, and (ii) either the twelfth month referred to in subparagraph (A) of such section 215(f)(2) occurred prior to January 1, 1955, or he attained the age of 75 prior to 1955, and (iii) he meets the other conditions of entitlement to such a recomputation. No individual shall be entitled to a computation under subparagraph (A) or (B) of this paragraph if his primary insurance amount has previously been recomputed under either of such subparagraphs.

''(D) Notwithstanding the provisions of subparagraphs (A), (B), and (C), the primary insurance amount

of an individual shall not be recomputed under such provisions unless such individual files the application referred to in subparagraph (A) or (B) prior to January 1961 or, if he dies without filing such application, his death occurred prior to January 1961.''

RECOMPUTATION OF PRIMARY INSURANCE AMOUNT IN CERTAIN CASES WHERE APPLICATION FOR RECOMPUTATION IS FILED ON OR AFTER SEPTEMBER 13, 1960

Section 303(h) of Pub. L. 86–778 provided that: ''In any case where application for recomputation under section 215(f)(3) of the Social Security Act [subsec. (f)(3) of this section] is filed on or after the date of the enactment of this Act [Sept. 13, 1960] with respect to an individual for whom the last previous computation of the primary insurance amount was based on an application filed prior to 1961, or who died before 1961, the provisions of section 215 of such Act [this section] as in effect prior to the enactment of this Act shall apply except that—

''(1) such recomputation shall be made as provided in section 215(a) of the Social Security Act [subsec. (a) of this section] (as in effect prior to the enactment of this Act) and as though such individual first became entitled to old-age insurance benefits in the month in which he filed his application for such recomputation or died without filing such an application, and his closing date for such purposes shall be as specified in such section 215(f)(3); and

''(2) the provisions of section 215(b)(4) of the Social Security Act [subsec. (b)(4) of this section] (as in effect prior to the enactment of this Act) shall apply only if they were applicable to the last previous computation of such individual's primary insurance amount, or would have been applicable to such computation if there had been taken into account—

''(A) his wages and self-employment income in the year in which he became entitled to old-age insurance benefits or filed application for the last previous recomputation of his primary insurance amount, where he is living at the time of the application for recomputation under this subsection, or

''(B) his wages and self-employment income in the year in which he died without becoming entitled to old-age insurance benefits, or (if he was entitled to such benefits) the year in which application was filed for the last previous computation of his primary insurance amount or in which he died, whichever first occurred, where he has died at the time of the application for such recomputation.

If the primary insurance amount of an individual was recomputed under section 215(f)(3) of the Social Security Act [subsec. (f)(3) of this section] as in effect prior to the enactment of this Act, and such amount would have been larger if the recomputation had been made under such section as modified by this subsection, then the Secretary shall recompute such primary insurance amount under such section as so modified, but only if an application for such recomputation is filed on or after the date of the enactment of this Act [Sept. 13, 1960]. A recomputation under the preceding sentence shall be effective for and after the first month for which the last previous recomputation of such individual's primary insurance amount under such section 215 [this section] was effective, but in no event for any month prior to the twenty-fourth month before the month in which the application for a recomputation is filed under the preceding sentence.''

SPECIAL STARTING AND CLOSING DATES FOR CERTAIN INDIVIDUALS FOR COMPUTATION OF 1957 BENEFIT AMOUNTS

Section 110 of act Aug. 1, 1956, provided that: ''In the case of an individual who died or became (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) entitled to old-age insurance benefits in 1957 and with respect to whom not less than six of the quarters elapsing after 1955 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his primary insurance amount shall be computed under section 215(a)(1)(A) of such Act [subsec. (a)(1)(A) of this section], with a starting date of December 31, 1955, and a closing date of July 1, 1957, but only if it would result in a higher primary insurance amount. For the purposes of section 215(f)(3)(C) of such Act, the determination of an individual's closing date under the preceding sentence shall be considered as a determination of the individual's closing date under section 215(b)(3)(A) of such Act and the recomputation provided for by such section 215(f)(3)(C) shall be made using July 1, 1957, as the closing date, but only if it would result in a higher primary insurance amount. In any such computation on the basis of a July 1, 1957, closing date, the total of his wages and self-employment income after December 31, 1956, shall, if it is in excess of $2,100, be reduced to such amount.''

SPECIAL STARTING AND CLOSING DATES FOR CERTAIN INDIVIDUALS FOR COMPUTATION OF 1966 BENEFIT AMOUNTS

Section 102(e)(6) of act Sept. 1, 1954, provided that: ''In the case of an individual who died or became (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) entitled to old-age insurance benefits in 1956 and with respect to whom not less than six of the quarters elapsing after 1954 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his primary insurance amount shall be computed under section 215(a)(1)(A) of such Act, as amended by this Act [subsec. (a)(1)(A) of this section], with a starting date of December 31, 1954, and a closing date of July 1, 1956, but only if it would result in a higher primary insurance amount. For the purposes of section 215(f)(3)(C) of such Act, the determination of an individual's closing date under the preceding sentence shall be considered as a determination of the individual's closing date under section 215(b)(3)(A) of such Act, and the recomputation provided for by such section 215(f)(3)(C) shall be made using July 1, 1956, as the closing date, but only if it would result in a higher primary insurance amount. In any such computation on the basis of a July 1, 1956 closing date, the total of his wages and self-employment income after December 31, 1955, shall, if it is in excess of $2,100, be reduced to such amount.''

STUDY OF FEASIBILITY OF INCREASING BENEFITS

Section 404 of act Sept. 1, 1954, authorized the Secretary of Health, Education, and Welfare to conduct a feasibility study with a view toward increasing the minimum old-age insurance benefit under this subchapter to $55, $60, or $75 per month and required him to report the results of his study to the Congress at the earliest practicable date.

CHANGE OF WAGE CLOSING DATE OF CERTAIN INDIVIDUALS DEAD OR ELIGIBLE IN 1952 TO THE FIRST WAY OF THE QUARTER OF DEATH OR ENTITLEMENT

Section 6(c) of act July 18, 1952, provided that: ''In the case of an individual who died or became (without the application of section 202(j)(1) of the Social Security Act [section 402(j)(1) of this title]) entitled to old-age insurance benefits in 1952 and with respect to whom not less than six of the quarters elapsing after 1950 and prior to the quarter following the quarter in which he died or became entitled to old-age insurance benefits, whichever first occurred, are quarters of coverage, his wage closing date shall be the first day of such quarter of death or entitlement instead of the day specified in section 215(b)(3) of such Act [subsec. (b)(3) of this section], but only if it would result in a higher primary insurance amount for such individual. The terms used in this paragraph shall have the same meaning as when used in title II of the Social Security Act [this subchapter].''

COMPUTATION OF INCREASED BENEFITS TO INDIVIDUALS ENTITLED THERETO FOR AUGUST 1952

Section 6(e) of act July 18, 1952, provided that: ''In case the benefit of any individual for any month after August 1952 is computed under section 2(c)(2)(A) of this Act [set out as a note under this section] through use of a benefit (after the application of sections 203 and 215(g) of the Social Security Act [section 403 of this title and subsec. (g) of this section] as in effect prior to the enactment of this Act [July 18, 1952]) for August 1952 which could have been derived from either of two (and not more than two) primary insurance amounts, and such primary insurance amounts differ from each other by not more than $0.10, then the benefit of such individual for such month of August 1952 shall, for the purposes of the last sentence of such section 2(c)(2)(A) [set out as a note under this section], be deemed to have been derived from the larger of such two primary insurance amounts.''

COMPUTATION OF INCREASED BENEFITS FOR DEPENDENTS AND SURVIVORS ON BENEFIT ROLLS FOR AUGUST 1952

Section 2(c)(2) of act July 18, 1952, as amended by act Sept. 1, 1954, § 102(g), eff. Sept. 1, 1954, provided that:

''(A) In the case of any individual who is (without the application of section 202(j)(1) of the Social Security Act) [section 402(j)(1) of this title] entitled to a monthly benefit under subsection (b), (c), (d), (e), (f), (g), or (h) of such section 202 for August 1952, whose benefit for such month is computed through use of a primary insurance amount determined under paragraph (1) or (2) of section 215(c) of such Act [subsec. (c) of this section], and who is entitled to such benefit for any succeeding month on the basis of the same wages and self-employment income, the amendments made by this section shall not (subject to the provisions of subparagraph (B) of this paragraph) apply for purposes of computing the amount of such benefit for such succeeding month. The amount of such benefit for such succeeding month shall instead be equal to the larger of (i) 112½ per centum of the amount of such benefit (after the application of sections 203(a) and 215(g) of the Social Security Act [section 403(a) of this title and subsec. (g) of this section] as in effect prior to the enactment of this Act [July 18, 1952]) for August 1952, increased, if it is not a multiple of $0.10, to the next higher multiple of $0.10, or (ii) the amount of such benefit (after the application of sections 203(a) and 215(g) of the Social Security Act as in effect prior to the enactment of this Act [July 18, 1952]) for August 1952, increased by an amount equal to the product obtained by multiplying $5 by the fraction applied to the primary insurance amount which was used in determining such benefit, and further increased, if such product is not a multiple of $0.10, to the next higher multiple of $0.10. The provisions of section 203(a) of the Social Security Act, as amended by this section (and, for purposes of such section 203(a), the provisions of section 215(c)(4) of the Social Security Act, as amended by this section), shall apply to such benefit as computed under the preceding sentence of this subparagraph, and the resulting amount, if not a multiple of $0.10, shall be increased to the next higher multiple of $0.10.

''(B) The provisions of subparagraph (A) shall cease to apply to the benefit of any individual under title II of the Social Security Act [this subchapter] for any month after August 1954.''

DETERMINATION OF PRIMARY INSURANCE AMOUNT OF INDIVIDUALS WHO DIED AFTER 1939 AND PRIOR TO 1951

Section 204(b) of Pub. L. 86–778 provided that: ''The primary insurance amount (for purposes of title II of the Social Security Act [this subchapter]) of any individual who died after 1939 and prior to 1951 shall be determined as provided in section 215(a)(2) of such Act [subsec. (a)(2) of this section].''

BENEFITS IN CERTAIN CASES OF DEATHS BEFORE SEPTEMBER 1950

Section 109 of act Sept. 1, 1954, as amended by Pub. L. 86–778, title II, § 204(c), Sept. 13, 1960, 74 Stat. 948, provided that in the case of an individual who died prior to Sept. 1, 1950, and was not a fully insured individual when he died and who had at least six quarters of coverage under this subchapter, such individual was generally to be deemed to have died fully insured, his primary insurance amount was to be deemed to be computed under subsec. (a)(2) of this section, the proof of support requirement in section 402(h) of this title was not to be applicable where such proof was filed before Sept. 1956, and that the provisions of this section were to apply to monthly benefits under section 402 of this title for months after Aug. 1954 and in or prior to Sept. 1960.

COMPUTATION OF PRIMARY INSURANCE AMOUNT OF INDIVIDUALS WHO DIED PRIOR TO 1940

Section 205(c) of Pub. L. 86–778 provided that: ''The primary insurance amount (for purposes of title II of the Social Security Act [this subchapter]) of any individual who died prior to 1940, and who had not less than six quarters of coverage (as defined in section 213 of such Act [section 413 of this title]), shall be computed under section 215(a)(2) of such Act [subsec. (a)(2) of this section].''

[Section 205(c) of Pub. L. 86–778 as applicable only in the case of monthly benefits under this subchapter for months after September 1960, on the basis of applications filed in or after such month, see section 205(d) of Pub. L. 86–778, set out as an Effective Date of 1960 Amendment note under section 402 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 403, 406, 409, 413, 417, 418, 423, 424a, 427, 428, 430, 431, 909, 1382f, 1382g, 1382h, 1383, 1383c, 1395r, 1396d of this title; title 5 sections 8349, 8421, 8442; title 26 sections 415, 3121; title 38 section 5312; title 45 sections 231b, 231c.

§ 416. Additional definitions

For the purposes of this subchapter—

(a) Spouse; surviving spouse

(1) The term ''spouse'' means a wife as defined in subsection (b) of this section or a husband as defined in subsection (f) of this section.

(2) The term ''surviving spouse'' means a widow as defined in subsection (c) of this section or a widower as defined in subsection (g) of this section.

(b) Wife

The term ''wife'' means the wife of an individual, but only if she (1) is the mother of his son or daughter, (2) was married to him for a period of not less than one year immediately preceding the day on which her application is filed, or (3) in the month prior to the month of her marriage to him (A) was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 402 of this title, (B) had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (C) was entitled to, or upon application therefor and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45. For purposes of clause (2), a wife

shall be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of her marriage to such individual. For purposes of subparagraph (C) of section 402(b)(1) of this title, a divorced wife shall be deemed not to be married throughout the month in which she becomes divorced.

(c) Widow

The term ''widow'' (except when used in the first sentence of section 402(i) of this title) means the surviving wife of an individual, but only if (1) she is the mother of his son or daughter, (2) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (3) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (4) she was married to him at the time both of them legally adopted a child under the age of eighteen, (5) she was married to him for a period of not less than nine months immediately prior to the day on which he died, or (6) in the month prior to the month of her marriage to him (A) she was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 402 of this title, (B) she had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (C) she was entitled to, or upon application therefor and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45.

(d) Divorced spouses; divorce

(1) The term ''divorced wife'' means a woman divorced from an individual, but only if she had been married to such individual for a period of 10 years immediately before the date the divorce became effective.

(2) The term ''surviving divorced wife'' means a woman divorced from an individual who has died, but only if she had been married to the individual for a period of 10 years immediately before the date the divorce became effective.

(3) The term ''surviving divorced mother'' means a woman divorced from an individual who has died, but only if (A) she is the mother of his son or daughter, (B) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of 18, (C) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of 18, or (D) she was married to him at the time both of them legally adopted a child under the age of 18.

(4) The term ''divorced husband'' means a man divorced from an individual, but only if he had been married to such individual for a period of 10 years immediately before the date the divorce became effective.

(5) The term ''surviving divorced husband'' means a man divorced from an individual who has died, but only if he had been married to the individual for a period of 10 years immediately before the divorce became effective.

(6) The term ''surviving divorced father'' means a man divorced from an individual who has died, but only if (A) he is the father of her son or daughter, (B) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of 18, (C) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of 18, or (D) he was married to her at the time both of them legally adopted a child under the age of 18.

(7) The term ''surviving divorced parent'' means a surviving divorced mother as defined in paragraph (3) of this subsection or a surviving divorced father as defined in paragraph (6).

(8) The terms ''divorce'' and ''divorced'' refer to a divorce a vinculo matrimonii.

(e) Child

The term ''child'' means (1) the child or legally adopted child of an individual, (2) a stepchild who has been such stepchild for not less than one year immediately preceding the day on which application for child's insurance benefits is filed or (if the insured individual is deceased) not less than nine months immediately preceding the day on which such individual died, and (3) a person who is the grandchild or stepgrandchild of an individual or his spouse, but only if (A) there was no natural or adoptive parent (other than such a parent who was under a disability, as defined in section 423(d) of this title) of such person living at the time (i) such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (ii) if such individual had a period of disability which continued until such individual became entitled to old-age insurance benefits or disability insurance benefits, or died, at the time such period of disability began, or (B) such person was legally adopted after the death of such individual by such individual's surviving spouse in an adoption that was decreed by a court of competent jurisdiction within the United States and such person's natural or adopting parent or stepparent was not living in such individual's household and making regular contributions toward such person's support at the time such individual died. For purposes of clause (1), a person shall be deemed, as of the date of death of an individual, to be the legally adopted child of such individual if such person was either living with or receiving at least one-half of his support from such individual at the time of such individual's death and was legally adopted by such individual's surviving spouse after such individual's death but only if (A) proceedings for the adoption of the child had been instituted by such individual before his death, or (B) such child was adopted by such individual's surviving spouse before the end of two years after (i) the day on which such individual died or (ii) August 28, 1958. For purposes of clause (2), a person who is not the stepchild of an individual shall be deemed the stepchild of such individual if such individual was not the mother or adopting mother or the father or adopting father of such person and such individual and the mother or adopting mother, or the father or adopting father, as the case may be, of such person went through a marriage ceremony

resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of subsection (h)(1)(B) of this section, would have been a valid marriage. For purposes of clause (2), a child shall be deemed to have been the stepchild of an individual for a period of one year throughout the month in which occurs the expiration of such one year. For purposes of clause (3), a person shall be deemed to have no natural or adoptive parent living (other than a parent who was under a disability) throughout the most recent month in which a natural or adoptive parent (not under a disability) dies.

(f) Husband

The term ''husband'' means the husband of an individual, but only if (1) he is the father of her son or daughter, (2) he was married to her for a period of not less than one year immediately preceding the day on which his application is filed, or (3) in the month prior to the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c), (f) or (h) of section 402 of this title, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (C) he was entitled to, or upon application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45. For purposes of clause (2), a husband shall be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of his marriage to her. For purposes of subparagraph (C) of section 402(c)(1) of this title, a divorced husband shall be deemed not to be married throughout the month which he becomes divorced.

(g) Widower

The term ''widower'' (except when used in the first sentence of section 402(i) of this title) means the surviving husband of an individual, but only if (1) he is the father of her son or daughter, (2) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (3) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (4) he was married to her at the time both of them legally adopted a child under the age of eighteen, (5) he was married to her for a period of not less than nine months immediately prior to the day on which she died, or (6) in the month before the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c), (f) or (h) of section 402 of this title, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 402(s) of this title), or (C) he was entitled to, or on application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 231a of title 45.

(h) Determination of family status

(1)(A)(i) An applicant is the wife, husband, widow, or widower of a fully or currently insured individual for purposes of this subchapter if the courts of the State in which such insured individual is domiciled at the time such applicant files and application, or, if such insured individual is dead, the courts of the State in which he was domiciled at the time of death, or, if such insured individual is or was not so domiciled in any State, the courts of the District of Columbia, would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died.

(ii) If such courts would not find that such applicant and such insured individual were validly married at such time, such applicant shall, nevertheless be deemed to be the wife, husband, widow, or widower, as the case may be, of such insured individual if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.

(B)(i) In any case where under subparagraph (A) an applicant is not (and is not deemed to be) the wife, widow, husband, or widower of a fully or currently insured individual, or where under subsection (b), (c), (d), (f), or (g) of this section such applicant is not the wife, divorced wife, widow, surviving divorced wife, husband, divorced husband, widower, or surviving divorced husband of such individual, but it is established to the satisfaction of the Commissioner of Social Security that such applicant in good faith went through a marriage ceremony with such individual resulting in a purported marriage between them which, but for a legal impediment not known to the applicant at the time of such ceremony, would have been a valid marriage, then, for purposes of subparagraph (A) and subsections (b), (c), (d), (f), and (g) of this section, such purported marriage shall be deemed to be a valid marriage. Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife, widow, husband, or widower of the insured individual, such marriage shall not be deemed to be a valid marriage unless the applicant and the insured individual were living in the same household at the time of the death of the insured individual or (if the insured individual is living) at the time the applicant files the application. A marriage that is deemed to be a valid marriage by reason of the preceding sentence shall continue to be deemed a valid marriage if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of the death of such insured individual.

(ii) The provisions of clause (i) shall not apply if the Commissioner of Social Security determines, on the basis of information brought to

the Commissioner's attention, that such applicant entered into such purported marriage with such insured individual with knowledge that it would not be a valid marriage.

(iii) The entitlement to a monthly benefit under subsection (b) or (c) of section 402 of this title, based on the wages and self-employment income of such insured individual, of a person who would not be deemed to be a wife or husband of such insured individual but for this subparagraph, shall end with the month before the month in which such person enters into a marriage, valid without regard to this subparagraph, with a person other than such insured individual.

(iv) For purposes of this subparagraph, a legal impediment to the validity of a purported marriage includes only an impediment (I) resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or (II) resulting from a defect in the procedure followed in connection with such purported marriage.

(2)(A) In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this subchapter, the Commissioner of Social Security shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death, or, if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.

(B) If an applicant is a son or daughter of a fully or currently insured individual but is not (and is not deemed to be) the child of such insured individual under subparagraph (A), such applicant shall nevertheless be deemed to be the child of such insured individual if such insured individual and the mother or father, as the case may be, of such applicant went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of paragraph (1)(B), would have been a valid marriage.

(3) An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2) of this subsection, shall nevertheless be deemed to be the child of such insured individual if:

(A) in the case of an insured individual entitled to old-age insurance benefits (who was not, in the month preceding such entitlement, entitled to disability insurance benefits)—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her son or daughter,

(II) has been decreed by a court to be the mother or father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his or her son or daughter,

and such acknowledgment, court decree, or court order was made not less than one year before such insured individual became entitled to old-age insurance benefits or attained retirement age (as defined in subsection (*l*) of this section), whichever is earlier; or

(ii) such insured individual is shown by evidence satisfactory to the Commissioner of Social Security to be the mother or father of the applicant and was living with or contributing to the support of the applicant at the time such applicant's application for benefits was filed;

(B) in the case of an insured individual entitled to disability insurance benefits, or who was entitled to such benefits in the month preceding the first month for which he or she was entitled to old-age insurance benefits—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her son or daughter,

(II) has been decreed by a court to be the mother or father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his or her son or daughter,

and such acknowledgment, court decree, or court order was made before such insured individual's most recent period of disability began; or

(ii) such insured individual is shown by evidence satisfactory to the Commissioner of Social Security to be the mother or father of the applicant and was living with or contributing to the support of that applicant at the time such applicant's application for benefits was filed;

(C) in the case of a deceased individual—

(i) such insured individual—

(I) had acknowledged in writing that the applicant is his or her son or daughter,

(II) had been decreed by a court to be the mother or father of the applicant, or

(III) had been ordered by a court to contribute to the support of the applicant because the applicant was his or her son or daughter,

and such acknowledgment, court decree, or court order was made before the death of such insured individual, or

(ii) such insured individual is shown by evidence satisfactory to the Commissioner of Social Security to have been the mother or father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died.

For purposes of subparagraphs (A)(i) and (B)(i), an acknowledgement, court decree, or court order shall be deemed to have occurred on the first day of the month in which it actually occurred.

(i) Disability; period of disability

(1) Except for purposes of sections 402(d), 402(e), 402(f), 423, and 425 of this title, the term ''disability'' means (A) inability to engage in

any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term ''blindness'' means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), (2)(B), (3), (4), (5), and (6) of section 423(d) of this title shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this subchapter shall be construed as authorizing the Commissioner of Social Security or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2)(A) The term ''period of disability'' means a continuous period (beginning and ending as hereinafter provided in this subsection) during which an individual was under a disability (as defined in paragraph (1)), but only if such period is of not less than five full calendar months' duration or such individual was entitled to benefits under section 423 of this title for one or more months in such period.

(B) No period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period; and no such period shall begin as to any individual after such individual attains retirement age (as defined in subsection (*l*) of this section). In the case of a deceased individual, the requirement of an application under the preceding sentence may be satisfied by an application for a disability determination filed with respect to such individual within 3 months after the month in which he died.

(C) A period of disability shall begin—

(i) on the day the disability began, but only if the individual satisfies the requirements of paragraph (3) on such day; or

(ii) if such individual does not satisfy the requirements of paragraph (3) on such day, then on the first day of the first quarter thereafter in which he satisfies such requirements.

(D) A period of disability shall end with the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains retirement age (as defined in subsection (*l*) of this section), or (ii) the month preceding (I) the termination month (as defined in section 423(a)(1) of this title), or, if earlier (II) the first month for which no benefit is payable by reason of section 423(e) of this title, where no benefit is payable for any of the succeeding months during the 36-month period referred to in such section. The provisions set forth in section 423(f) of this title with respect to determinations of whether entitlement to benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling).

(E) Except as is otherwise provided in subparagraph (F), no application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph) shall be accepted as an application for purposes of this paragraph.

(F) An application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraphs (B) and (E)) shall be accepted as an application for purposes of this paragraph if—

(i) in the case of an application filed by or on behalf of an individual with respect to a disability which ends after January 1968, such application is filed not more than 36 months after the month in which such disability ended, such individual is alive at the time the application is filed, and the Commissioner of Social Security finds in accordance with regulations prescribed by the Commissioner that the failure of such individual to file an application for a disability determination within the time specified in subparagraph (E) was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application, and

(ii) in the case of an application filed by or on behalf of an individual with respect to a period of disability which ends in or before January 1968—

(I) such application is filed not more than 12 months after January 1968,

(II) a previous application for a disability determination has been filed by or on behalf of such individual (1) in or before January 1968, and (2) not more than 36 months after the month in which his disability ended, and

(III) the Commissioner of Social Security finds in accordance with regulations prescribed by the Commissioner, that the failure of such individual to file an application within the then specified time period was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application.

In making a determination under this subsection, with respect to the disability or period of disability of any individual whose application for a determination thereof is accepted solely by reason of the provisions of this subparagraph (F), the provisions of this subsection (other than the provisions of this subparagraph) shall be ap-

plied as such provisions are in effect at the time such determination is made.

(G) An application for a disability determination filed before the first day on which the applicant satisfies the requirements for a period of disability under this subsection shall be deemed a valid application (and shall be deemed to have been filed on such first day) only if the applicant satisfies the requirements for a period of disability before the Commissioner of Social Security makes a final decision on the application and no request under section 405(b) of this title for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Commissioner of Social Security).

(3) The requirements referred to in clauses (i) and (ii) of paragraph (2)(C) of this subsection are satisfied by an individual with respect to any quarter only if—

(A) he would have been a fully insured individual (as defined in section 414 of this title) had he attained age 62 and filed application for benefits under section 402(a) of this title on the first day of such quarter; and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with such quarter, or

(ii) if such quarter ends before he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with such quarter and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of clause (ii), had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with such quarter are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of ''blindness'' as defined in paragraph (1)). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage.

(j) Periods of limitation ending on nonwork days

Where this subchapter, any provision of another law of the United States (other than the Internal Revenue Code of 1986) relating to or changing the effect of this subchapter, or any regulation issued by the Commissioner of Social Security pursuant thereto provides for a period within which an act is required to be done which affects eligibility for or the amount of any benefit or payment under this subchapter or is necessary to establish or protect any rights under this subchapter, and such period ends on a Saturday, Sunday, or legal holiday, or on any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order, then such act shall be considered as done within such period if it is done on the first day thereafter which is not a Saturday, Sunday, or legal holiday or any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order. For purposes of this subsection, the day on which a period ends shall include the day on which an extension of such period, as authorized by law or by the Commissioner of Social Security pursuant to law, ends. The provisions of this subsection shall not extend the period during which benefits under this subchapter may (pursuant to section 402(j)(1) or 423(b) of this title) be paid for months prior to the day application for such benefits is filed, or during which an application for benefits under this subchapter may (pursuant to section 402(j)(2) or 423(b) of this title) be accepted as such.

(k) Waiver of nine-month requirement for widow, stepchild, or widower in case of accidental death or in case of serviceman dying in line of duty, or in case of remarriage to same individual

The requirement in clause (5) of subsection (c) of this section or clause (5) of subsection (g) of this section that the surviving spouse of an individual have been married to such individual for a period of not less than nine months immediately prior to the day on which such individual died in order to qualify as such individual's widow or widower, and the requirement in subsection (e) of this section that the stepchild of a deceased individual have been such stepchild for not less than nine months immediately preceding the day on which such individual died in order to qualify as such individual's child, shall be deemed to be satisfied, where such individual dies within the applicable nine-month period, if—

(1) his death—

(A) is accidental, or

(B) occurs in line of duty while he is a member of a uniformed service serving on active duty (as defined in section 410(*l*)(2) of this title),

unless the Commissioner of Social Security determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months, or

(2)(A) the widow or widower of such individual had been previously married to such individual and subsequently divorced and such requirement would have been satisfied at the time of such divorce if such previous marriage had been terminated by the death of such individual at such time instead of by divorce; or

(B) the stepchild of such individual had been the stepchild of such individual during a previous marriage of such stepchild's parent to such individual which ended in divorce and such requirement would have been satisfied at

the time of such divorce if such previous marriage had been terminated by the death of such individual at such time instead of by divorce;

except that paragraph (2) of this subsection shall not apply if the Commissioner of Social Security determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months. For purposes of paragraph (1)(A) of this subsection, the death of an individual is accidental if he receives bodily injuries solely through violent, external, and accidental means and, as a direct result of the bodily injuries and independently of all other causes, loses his life not later than three months after the day on which he receives such bodily injuries.

(*l*) Retirement age

(1) The term ''retirement age'' means—

(A) with respect to an individual who attains early retirement age (as defined in paragraph (2)) before January 1, 2000, 65 years of age;

(B) with respect to an individual who attains early retirement age after December 31, 1999, and before January 1, 2005, 65 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age;

(C) with respect to an individual who attains early retirement age after December 31, 2004, and before January 1, 2017, 66 years of age;

(D) with respect to an individual who attains early retirement age after December 31, 2016, and before January 1, 2022, 66 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age; and

(E) with respect to an individual who attains early retirement age after December 31, 2021, 67 years of age.

(2) The term ''early retirement age'' means age 62 in the case of an old-age, wife's, or husband's insurance benefit, and age 60 in the case of a widow's or widower's insurance benefit.

(3) The age increase factor for any individual who attains early retirement age in a calendar year within the period to which subparagraph (B) or (D) of paragraph (1) applies shall be determined as follows:

(A) With respect to an individual who attains early retirement age in the 5-year period consisting of the calendar years 2000 through 2004, the age increase factor shall be equal to two-twelfths of the number of months in the period beginning with January 2000 and ending with December of the year in which the individual attains early retirement age.

(B) With respect to an individual who attains early retirement age in the 5-year period consisting of the calendar years 2017 through 2021, the age increase factor shall be equal to two-twelfths of the number of months in the period beginning with January 2017 and ending with December of the year in which the individual attains early retirement age.

(Aug. 14, 1935, ch. 531, title II, §216, as added Aug. 28, 1950, ch. 809, title I, §104(a), 64 Stat. 492, 510; amended July 18, 1952, ch. 945, §3(d), 66 Stat. 771; Sept. 1, 1954, ch. 1206, title I, §106(d), 68 Stat. 1080; Aug. 1, 1956, ch. 836, title I, §§102(a), (d)(12), 103(c)(6), 70 Stat. 809, 815, 818; July 17, 1957, Pub. L. 85–109, §1, 71 Stat. 308; Aug. 30, 1957, Pub. L. 85–238, §3(h), 71 Stat. 519; Aug. 28, 1958, Pub. L. 85–840, title II, §§201, 203, 204(a), title III, §§301(a)(2), (b)(2), (c)(2), (d), (e), 302(a), 305(b), 72 Stat. 1020, 1021, 1026–1028, 1030; Sept. 13, 1960, Pub. L. 86–778, title II, §§207(a)–(c), 208(a)–(c), title IV, §§402(e), 403(c), title VII, §703, 74 Stat. 950–952, 968, 969, 994; June 30, 1961, Pub. L. 87–64, title I, §§102(b)(2)(D), (c)(1), (2)(B), (3)(C), 105, 75 Stat. 134, 135, 139; Oct. 13, 1964, Pub. L. 88–650, §1(a)–(c), 78 Stat. 1075; July 30, 1965, Pub. L. 89–97, title III, §§303(a)(1), (b)(1), (2), 304(*l*), 306(c)(13), 308(c), (d)(2)(B), 328(b), 334(a)–(d), 339(a), 344(a), 79 Stat. 366, 367, 370, 373, 377, 378, 400, 404, 405, 409, 412; Jan. 2, 1968, Pub. L. 90–248, title I, §§104(d)(2), 105(a), 111(a), 150(a), 156(a)–(d), 158(d), 172(a), (b), 81 Stat. 832, 833, 837, 860, 866, 869, 877; Oct. 30, 1972, Pub. L. 92–603, title I, §§104(g), 113(a), 115(b), 116(d), 117(a), 118(b), 145(a), 86 Stat. 1341, 1347, 1349–1351, 1370; Oct. 16, 1974, Pub. L. 93–445, title III, §304, 88 Stat. 1358; Dec. 20, 1977, Pub. L. 95–216, title III, §337(a), 91 Stat. 1548; June 9, 1980, Pub. L. 96–265, title III, §§303(b)(2)(B), 306(b), 94 Stat. 453, 457; Oct. 19, 1980, Pub. L. 96–473, §5(a)(2), 94 Stat. 2265; Aug. 13, 1981, Pub. L. 97–35, title XXII, §§2202(a)(2), 2203(b)(2), (c)(2), (d)(3), (4), 95 Stat. 835–837; Apr. 20, 1983, Pub. L. 98–21, title II, §201(a), (c)(1)(D), title III, §§301(c), 303, 304(c), 306(c), 309(j), (k), 332(a), 333(a), 97 Stat. 107, 109, 111, 112, 114, 117, 129; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§2661(*l*), 2662(c)(1), 2663(a)(11), 98 Stat. 1158, 1159, 1164; Oct. 9, 1984, Pub. L. 98–460, §§2(b), 4(a)(2), 98 Stat. 1796, 1800; Dec. 22, 1987, Pub. L. 100–203, title IX, §9010(e)(1), 101 Stat. 1330–294; Nov. 5, 1990, Pub. L. 101–508, title V, §§5103(b)(1), 5104(a), 5119(a), (b), 104 Stat. 1388–251, 1388–254, 1388–278, 1388–279; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), title III, §321(c)(6)(H), 108 Stat. 1478, 1538.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (j), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsecs. (h), (i). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''his'' in subsec. (h)(1)(B)(ii), and ''prescribed by the Commissioner'' for ''prescribed by him'' in subsec. (i)(2)(F)(i), (ii)(III).

Subsec. (j). Pub. L. 103–296, §321(c)(6)(H), substituted ''1986'' for ''1954'' after ''Code of''.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (k). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

1990—Subsec. (e). Pub. L. 101–508, §5104(a), substituted ''either living with or receiving at least one-half of his support from such individual at the time of such individual's death'' for ''at the time of such individual's death living in such individual's household'' and struck out before period at end of second sentence ''; except that this sentence shall not apply if at the time of such individual's death such person was receiving regular contributions toward his support from someone other than such individual or his spouse, or from any public

or private welfare organization which furnishes services or assistance for children''.

Subsec. (h)(1)(A). Pub. L. 101–508, §5119(a)(1), designated first and second sentences as cls. (i) and (ii), respectively.

Subsec. (h)(1)(B)(i). Pub. L. 101–508, §5119(b), substituted ''where under subsection (b), (c), (d), (f), or (g) of this section such applicant is not the wife, divorced wife, widow, surviving divorced wife, husband, divorced husband, widower, or surviving divorced husband of such individual'' for ''where under subsection (b), (c), (f), or (g) of this section such applicant is not the wife, widow, husband, or widower of such individual'', struck out ''and such applicant and the insured individual were living in the same household at the time of the death of such insured individual or (if such insured individual is living) at the time such applicant files the application,'' after ''valid marriage,'', substituted ''subsections (b), (c), (d), (f), and (g)'' for ''subsections (b), (c), (f), and (g)'', and inserted at end ''Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife, widow, husband, or widower of the insured individual, such marriage shall not be deemed to be a valid marriage unless the applicant and the insured individual were living in the same household at the time of the death of the insured individual or (if the insured individual is living) at the time the applicant files the application. A marriage that is deemed to be a valid marriage by reason of the preceding sentence shall continue to be deemed a valid marriage if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of the death of such insured individual.''

Pub. L. 101–508, §5119(a)(2)(A), inserted ''(i)'' after ''(B)''.

Subsec. (h)(1)(B)(ii). Pub. L. 101–508, §5119(a)(2)(B), (C), substituted ''(ii) The provisions of clause (i) shall not apply'' for ''The provisions of the preceding sentence shall not apply (i) if another person is or has been entitled to a benefit under subsection (b), (c), (e), (f), or (g) of section 402 of this title on the basis of the wages and self-employment income of such insured individual and such other person is (or is deemed to be) a wife, widow, husband, or widower of such insured individual under subparagraph (A) at the time such applicant files the application, or (ii)''.

Subsec. (h)(1)(B)(iii). Pub. L. 101–508, §5119(a)(2)(D)–(G), substituted ''(iii) The entitlement to a monthly benefit under subsection (b) or (c)'' for ''The entitlement to a monthly benefit under subsection (b), (c), (e), (f), or (g)'', ''a wife or husband'' for ''a wife, widow, husband, or widower'', and ''in which such person enters'' for ''(i) in which the Secretary certifies, pursuant to section 405(i) of this title, that another person is entitled to a benefit under subsection (b), (c), (e), (f), or (g) of section 402 of this title on the basis of the wages and self-employment income of such insured individual, if such other person is (or is deemed to be) the wife, widow, husband, or widower of such insured individual under subparagraph (A), or (ii) if the applicant is entitled to a monthly benefit under subsection (b) or (c) of section 402 of this title, in which such applicant entered''.

Subsec. (h)(1)(B)(iv). Pub. L. 101–508, §5119(a)(2)(H), (I), inserted ''(iv)'' before ''For purposes'' and substituted ''(I)'' and ''(II)'' for ''(i)'' and ''(ii)'', respectively.

Subsec. (i)(1). Pub. L. 101–508, §5103(b)(1), substituted ''(2)(B)'' for ''(2)(C)''.

1987—Subsec. (i)(2)(D)(ii)(II). Pub. L. 100–203 substituted ''36-month period'' for ''15-month period''.

1984—Subsec. (f). Pub. L. 98–369, §2661(*l*)(1), inserted provision that for purposes of subparagraph (C) of section 402(c)(1) of this title, a divorced husband shall be deemed not to be married throughout the month which he becomes divorced.

Subsec. (h)(3). Pub. L. 98–369, §2663(a)(11)(A), made technical amendment to directory language of Pub. L. 97–35, §2203(d)(4). See 1981 Amendment Note below.

Subsec. (h)(3)(A)(i). Pub. L. 98–369, §2661(*l*)(2), substituted ''subsection (*l*) of this section'' for ''section 416(*l*) of this title''.

Subsec. (i)(1). Pub. L. 98–460, §4(a)(2), inserted ''(2)(C),'' after ''(2)(A),''.

Subsec. (i)(2)(B). Pub. L. 98–369, §2661(*l*)(3), substituted ''subsection (*l*) of this section'' for ''section 416(*l*) of this title''.

Pub. L. 98–369, §2662(c)(1), made clarifying amendment to Pub. L. 98–21, §201(c)(1)(D). See 1983 Amendment note below.

Subsec. (i)(2)(D). Pub. L. 98–460, §2(b), inserted ''The provisions set forth in section 423(f) of this title with respect to determinations of whether entitlement to benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual is terminated (on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling) shall apply in the same manner and to the same extent with respect to determinations of whether a period of disability has ended (on the basis of a finding that the physical or mental impairment on the basis of which the finding of disability was made has ceased, does not exist, or is not disabling).''

Pub. L. 98–369, §2661(*l*)(3), substituted ''subsection (*l*) of this section'' for ''section 416(*l*) of this title''.

Subsec. (i)(2)(F)(ii). Pub. L. 98–369, §2663(a)(11)(B), substituted a dash for a comma after ''before January 1968'' in provisions preceding subcl. (I).

1983—Subsec. (a). Pub. L. 98–21, §304(c), added subsec. (a).

Subsec. (d)(4), (5). Pub. L. 98–21, §301(c)(1), added pars. (4) and (5). Former par. (4) redesignated (6).

Subsec. (d)(6). Pub. L. 98–21, §306(c), added par. (6) and redesignated former par. (6) as (8).

Pub. L. 98–21, §301(c)(1), redesignated former par. (4) as (6).

Subsec. (d)(7). Pub. L. 98–21, §306(c), added par. (7).

Subsec. (d)(8). Pub. L. 98–21, §306(c), redesignated former par. (6) as (8).

Subsecs. (f)(3)(A), (g)(6)(A). Pub. L. 98–21, §309(j), (k), inserted reference to subsec. (c) of section 402 of this title.

Subsec. (h)(3). Pub. L. 98–21, §333(a), substituted ''subparagraphs (A)(i) and (B)(i)'' for ''subparagraph (A)(i)'' in provisions following subpar. (C)(ii).

Subsec. (h)(3)(A)(i). Pub. L. 98–21, §201(c)(1)(D), substituted ''retirement age (as defined in subsection (*l*) of this section)'' for ''age 65''.

Subsec. (h)(3)(A)(i)(I). Pub. L. 98–21, §303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(A)(i)(II). Pub. L. 98–21, §303(a), inserted ''mother or'' before ''father''.

Subsec. (h)(3)(A)(i)(III). Pub. L. 98–21, §303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(A)(ii). Pub. L. 98–21, §303(a), (b), inserted ''mother or'' before ''father'' and substituted ''such applicant's application for benefits was filed'' for ''such insured individual became entitled to benefits or attained retirement age (as defined in subsection (*l*) of this section), whichever first occurred''.

Pub. L. 98–21, §201(c)(1)(D), substituted ''retirement age (as defined in subsection (*l*) of this section)'' for ''age 65''.

Subsec. (h)(3)(B). Pub. L. 98–21, §303(d)(2), substituted ''he or she'' for ''he'' in provisions preceding cl. (i).

Subsec. (h)(3)(B)(i)(I). Pub. L. 98–21, §303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(B)(i)(II). Pub. L. 98–21, §303(a), inserted ''mother or'' before ''father''.

Subsec. (h)(3)(B)(i)(III). Pub. L. 98–21, §303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(B)(ii). Pub. L. 98–21, §303(c), substituted ''such applicant's application for benefits was filed'' for ''such period of disability began''.

Pub. L. 98–21, §303(a), inserted ''mother or'' before ''father''.

Subsec. (h)(3)(C)(i)(I). Pub. L. 98–21, §303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(C)(i)(II). Pub. L. 98–21, § 303(a), inserted ''mother or'' before ''father''.

Subsec. (h)(3)(C)(i)(III). Pub. L. 98–21, § 303(d)(1), substituted ''his or her'' for ''his''.

Subsec. (h)(3)(C)(ii). Pub. L. 98–21, § 303(a), inserted ''mother or'' before ''father''.

Subsec. (i)(2)(B). Pub. L. 98–21, § 201(c)(1)(D), as amended by Pub. L. 98–369, § 2662(c)(1), substituted ''retirement age (as defined in subsection (*l*) of this section)'' for ''the age of 65''.

Subsec. (i)(2)(D). Pub. L. 98–21, § 201(c)(1)(D), substituted ''retirement age (as defined in subsection (*l*) of this section)'' for ''age 65''.

Subsec. (i)(3)(B)(iii). Pub. L. 98–21, § 332(a), added cl. (iii).

Subsec. (*l*). Pub. L. 98–21, § 201(a), added subsec. (*l*).

1981—Subsec. (b). Pub. L. 97–35, § 2203(b)(2), inserted provisions that for purposes of cl. (2), a wife be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of her marriage to such individual and for purposes of section 402(b)(1)(C) of this title, a divorced wife be deemed not to be married throughout the month in which she becomes divorced.

Subsec. (c). Pub. L. 97–35, § 2202(a)(2)(A), inserted ''the first sentence of'' before ''section 402(i) of this title''.

Subsec. (e). Pub. L. 97–35, § 2203(d)(3), inserted provisions that for purposes of cl. (2), a child be deemed to have been a stepchild of an individual for a period of one year throughout the month in which occurs the expiration of such one year and for purposes of cl. (3), a person be deemed to have no natural or adoptive parent living, other than a parent who is under a disability, throughout the most recent month in which a natural or adoptive parent, not under a disability, dies.

Subsec. (f). Pub. L. 97–35, § 2203(c)(2), inserted provision that for purposes of cl. (2), a husband be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of his marriage to her.

Subsec. (g). Pub. L. 97–35, § 2202(a)(2)(B), inserted ''the first sentence of'' before ''section 402(i) of this title''.

Subsec. (h)(3). Pub. L. 97–35, § 2203(d)(4), as amended by Pub. L. 98–369, § 2663(a)(11)(A), inserted provision that for purposes of subpar. (A)(i), an acknowledgement, court decree, or court order be deemed to have occurred on the first day of the month in which it actually occurred.

1980—Subsec. (i)(1). Pub. L. 96–473 inserted reference to section 423(d)(6) of this title.

Subsec. (i)(2)(D)(ii). Pub. L. 96–265, § 303(b)(2)(B), substituted ''(ii) the month preceding (I) the termination month (as defined in section 423(a)(1) of this title), or, if earlier (II) the first month for which no benefit is payable by reason of section 423(e) of this title, where no benefit is payable for any of the succeeding months during the 15-month period referred to in such section'' for ''(ii) the second month following the month in which the disability ceases''.

Subsec. (i)(2)(G). Pub. L. 96–265, § 306(b), inserted provisions placing limitations on the prospective effect of applications.

1977—Subsec. (d)(1), (2). Pub. L. 95–216 substituted ''10'' for ''20'' wherever appearing.

1974—Subsecs. (b), (c), (f), (g). Pub. L. 93–445 substituted ''section 231a of title 45'' for ''section 228e of title 45''.

1972—Subsec. (e). Pub. L. 92–603, § 113(a), extended definition of ''child'' to include grandchildren and stepgrandchildren of an individual or his spouse.

Subsec. (i)(2)(A). Pub. L. 92–603, § 116(d), substituted ''five'' for ''6''.

Subsec. (i)(2)(B). Pub. L. 92–603, § 118(b), provided for the filing of an application for a disability determination after the death of the insured individual.

Subsec. (i)(3). Pub. L. 92–603, §§ 104(g), 117(a), struck out ''(if a woman) or age 65 (if a man)'' after ''attained age 62'' in subpar. (A), and substituted provisions eliminating the disability insured status requirement of substantial recent covered work in the case of individuals who are blind for provisions excepting the provisions of subpar. (A) in the case of an individual with respect to whom a period of disability would, but for such subpar., begin before 1951 in the provisions following subpar. (B).

Subsec. (k). Pub. L. 92–603, §§ 115(b), 145(a), designated existing pars. (1) and (2) as subpars. (A) and (B) of par. (1), added par. (2), in par. (1), as so redesignated, substituted ''unless the Secretary determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months'' for ''and he would satisfy such requirement if a three-month period were substituted for the nine-month period'', and in material following par. (2) substituted ''except that paragraph (2) of this subsection shall not apply'' for ''except that this subsection shall not apply''.

1968—Subsec. (c)(5). Pub. L. 90–248, § 156(a), substituted ''not less than nine months'' for ''not less than one year''.

Subsec. (e). Pub. L. 90–248, §§ 150(a), 156(b), inserted in first sentence ''not less than nine months immediately preceding'' before ''the day on which such individual died'', and added, in second sentence, cl. (A) and incorporated existing provisions in cl. (B).

Subsec. (g)(5). Pub. L. 90–248, § 156(c), substituted ''not less than nine months'' for ''not less than one year''.

Subsec. (i)(1). Pub. L. 90–248, §§ 104(d)(2), 158(d), 172(a), (b), inserted ''402(e), 402(f),'' after ''402(d),'', redefined ''blindness'' to mean central visual acuity of 20/200 rather than 5/200 or less in the better eye and substituted provision deeming an eye accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees as having a central visual acuity of 20/200 or less for former provision deeming an eye in which visual field is reduced to five degrees or less concentric contraction as having a central visual acuity of 5/200 or less, respectively, and deleted former third sentence which provided that an individual was not deemed under a disability unless he furnished proof as required and added third sentence making section 423(d)(2)(A), (3), (4), and (5) of this title applicable to determine if an individual is under a disability.

Subsec. (i)(2)(E) to (G). Pub. L. 90–248, § 111(a), inserted introductory exception phrase, added subpar. (F), and redesignated former subpar. (F) as (G).

Subsec. (i)(3)(B)(ii). Pub. L. 90–248, § 105(a), struck out ''and he is under a disability by reason of blindness (as defined in paragraph (1) of this subsection)'' after ''age 31''.

Subsec. (k). Pub. L. 90–248, § 156(d), added subsec. (k).

1965—Subsec. (b). Pub. L. 89–97, §§ 306(c)(13), 308(d)(2)(B), 334(a), inserted ''(subject, however, to section 402(s) of this title)'', included reference to subsec. (b) of section 402 of this title, and added cl. (3)(C), respectively.

Subsec. (c). Pub. L. 89–97, §§ 306(c)(13), 308(d)(2)(B), 334(b), inserted ''(subject, however, to section 402(s) of this title)'', included reference to subsec. (b) of section 402 of this title, and added cl. (6)(C), respectively.

Subsec. (d). Pub. L. 89–97, § 308(c), added pars. (1), (2), and (4), defining ''divorced wife'', ''surviving divorced wife'', and ''divorce'' and ''divorced'', and incorporated definition of ''former wife divorced'' in par. (3), inserting ''who has died'' after ''individual'' and redesignating cls. (1) to (4) as (A) to (D), respectively.

Subsec. (f). Pub. L. 89–97, §§ 306(c)(13), 334(c), inserted ''(subject, however, to section 402(s) of this title)'' and added cl. (3)(C), respectively.

Subsec. (g). Pub. L. 89–97, §§ 306(c)(13), 334(d), inserted ''(subject, however, to section 402(s) of this title)'' and added cl. (6)(C), respectively.

Subsec. (h). Pub. L. 89–97, § 339(a), added par. (3).

Subsec. (i)(1)(A). Pub. L. 89–97, § 303(a)(1), substituted ''or has lasted or can be expected to last for a continuous period of not less than 12 months'' for ''or to be of long-continued and indefinite duration''.

Subsec. (i)(2). Pub. L. 89–97, § 303(b)(1), struck out sixth sentence providing that: ''Any application for a

disability determination which is filed within such three months' period or six months' period shall be deemed to have been filed on such first day or in such first month, as the case may be.''

Subsec. (i)(2)(A). Pub. L. 89–97, § 303(b)(1), designated first sentence as subpar. (A).

Subsec. (i)(2)(B). Pub. L. 89–97, § 303(b)(1), designated second sentence as subpar. (B), substituted therein ''No period of disability'' for ''No such disability'', and struck out '', while under such disability,'' after ''unless such individual''.

Subsec. (i)(2)(C). Pub. L. 89–97, §§ 303(b)(1), 304(*l*), designated third sentence as subpar. (C), struck out ''(subject to section 423(a)(3) of this title)'' before ''begin'', and redesignated cls. (A) and (B) thereof as (i) and (ii); and again struck out ''(subject to section 423(a)(3) of this title)'' before ''begin'', respectively.

Subsec. (i)(2)(D). Pub. L. 89–97, § 303(b)(1), designated fourth sentence as subpar. (D), substituted ''the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains age 65, or (ii) the second month following the month in which the disability ceases'' for ''the close of the last day of the month preceding which of the following months is the earlier: the month in which the individual attains age sixty-five or the third month following the month in which the disability ceases''.

Subsec. (i)(2)(E). Pub. L. 89–97, § 303(b)(1), designated fifth sentence as subpar. (E), substituted ''12 months'' for ''three months'' and ''after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph)'' for ''before the first day on which a period of disability can begin (as determined under this paragraph), or, in any case in which clause (ii) of section 423(a)(1) of this title is applicable, more than six months before the first month for which such applicant becomes entitled to benefits under section 423 of this title,'', and struck out '', and no such application which is filed prior to January 1, 1955, shall be accepted'' after ''for purposes of this paragraph''.

Subsec. (i)(2)(F). Pub. L. 89–97, § 328(b), added subpar. (F).

Subsec. (i)(3). Pub. L. 89–97, §§ 303(b)(2), 344(a), substituted ''clauses (i) and (ii) of paragraph (2)(C)'' for ''clauses (A) and (B) of paragraph (2)'', removed from existing subpar. (B) provision prohibiting the inclusion, as part of such 40-quarter period, of any quarter any part of which was included in a prior period of disability unless such quarter was a quarter of coverage, and designated such subpar., as so amended, as subpar. (B)(i), added subpar. (B)(ii), and, in the material following subpar. (B)(ii), inserted provision prohibiting inclusion of any quarter as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage and calling for reduction by one of the number of quarters in any period whenever such number of quarters is an odd number, respectively.

1964—Subsec. (i)(2). Pub. L. 88–650, § 1(a), struck out provisions which directed that a period of disability shall begin if the individual satisfies the requirements of par. (3) of this subsection on such day, on the first day of the eighteen-month period which ends with the day before the day on which the individual files such application.

Subsec. (i)(3). Pub. L. 88–650, § 1(b), substituted ''paragraph (2) of this subsection'' for ''paragraphs (2) and (4) of this subsection''.

Subsec. (i)(4). Pub. L. 88–650, § 1(c), repealed par. (4) which related to the beginning of the period of disability for individuals who filed an application for a disability determination after Dec. 1954, and before July 1962, with respect to a disability which began before January 1961.

1961—Subsec. (a). Pub. L. 87–64, § 102(c)(1), repealed subsec. (a) which defined retirement age.

Subsecs. (b), (c), (f), (g). Pub. L. 87–64, § 102(c)(2)(B), substituted ''attainment of age 62'' for ''attainment of retirement age''.

Subsec. (i)(2). Pub. L. 87–64, § 102(b)(2)(D), substituted ''a period of disability shall (subject to section 423(a)(3) of this title) begin'' for ''a period of disability shall begin'' in third sentence.

Subsec. (i)(3)(A). Pub. L. 87–64, § 102(c)(3)(C), substituted ''attainment age 62 (if a woman) or age 65 (if a man)'' for ''attained retirement age''.

Subsec. (i)(4). Pub. L. 87–64, § 105, substituted ''July 1962'' for ''July 1961'', and ''January 1961'' for ''July 1960''.

1960—Subsec. (b). Pub. L. 86–778, § 207(a), substituted ''one year'' for ''three years''.

Subsec. (e). Pub. L. 86–778, §§ 207(b), 208(c), in first sentence, reduced the period for eligibility of a stepchild of a living individual from three years immediately preceding the day on which application for child's benefits is filed to one year immediately preceding the day on which application for child's benefits is filed, and inserted the last sentence requiring, for purposes of clause (2), that a person who is not the stepchild of an individual shall be deemed the stepchild of such individual if such individual was not the mother or adopting mother or the father or adopting father of such person and such individual and the mother or adopting mother, or the father or adopting father, as the case may be, of such person went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in last sentence of subsec. (h)(1)(B) of this section, would have been a valid marriage.

Subsec. (f). Pub. L. 86–778, § 207(c), substituted ''one year'' for ''three years''.

Subsec. (h)(1). Pub. L. 86–778, § 208(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(2). Pub. L. 86–778, § 208(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (i)(2). Pub. L. 86–778, §§ 402(e), 403(c), redefined ''period of disability'' to include a period of less than six full calendar months' duration if the individual was entitled to benefits under section 423 of this title for one or more months in such period, prohibited acceptance of an application, in any case in which clause (ii) of section 423(a) of this title is applicable, filed more than six months before the first month for which the applicant becomes entitled to benefits under section 423 of this title, substituted provisions requiring a period of disability to end with the close of the last day of the month preceding whichever of the following months is the earlier: the month in which the individual attains age 65 or the third month following the month in which the disability ceases, for provisions which required a period of disability to end with the close of the last day of the first month in which either the disability ceases or the individual attains the age of 65, and inserted sentence providing that any application for a disability determination which is filed within such three months' period or six months' period shall be deemed to have been filed on such first day or in such first month, as the case may be.

Subsec. (j). Pub. L. 86–778, § 703, added subsec. (j).

1958—Subsec. (b). Pub. L. 85–840, § 301(d), included within definition of ''wife'' a woman who, in the month prior to the month of her marriage, was entitled to, or on application therefor and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (e) or (h) of section 402 of this title, or had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of section 402 of this title.

Subsec. (c). Pub. L. 85–840, § 301(b)(2) included within definition of ''widow'' a woman whose husband had legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen, and a woman who, in the month prior to the month of her marriage, was entitled to, or on application therefor and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (e) or (h) of section 402 of this title, or had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of section 402 of this title.

Subsec. (d). Pub. L. 85–840, §301(e), included within definition of ''former wife divorced'' a woman whose husband legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen.

Subsec. (e). Pub. L. 85–840, §302(a), struck out requirement that an adopted child of a living individual must have been adopted for not less than three years immediately preceding the day on which application for child's benefits is filed, and inserted provisions requiring a child to be deemed, as of the date of death of an individual, to be the legally adopted child of such individual if the child was living in the decedent's household at the time of his death and was legally adopted by the surviving spouse after the individual's death but before the end of two years after the day on which the individual died or Aug. 28, 1958, and the child was not receiving regular contributions toward his support from someone other than the individual or his spouse, or from any public or private welfare organization.

Subsec. (f). Pub. L. 85–840, §301(a)(2), included within definition of ''husband'' a person who in the month prior to the month of his marriage was entitled to, or on application therefor and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (f) or (h) of section 402 of this title, or who had attained age eighteen and was entitled to, or on application therefor would have been entitled to benefits under subsection (d) of section 402 of this title.

Subsec. (g). Pub. L. 85–840, §301(c)(2), included within definition of ''widower'' a person whose wife had legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of eighteen, and a person who, in the month before the month of his marriage, was entitled to, or on application therefor and attainment of retirement age in such prior month would have been entitled to, benefits under subsection (f) or (h) of section 402 of this title, or had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of section 402 of this title.

Subsec. (h)(3). Pub. L. 85–840, §305(b), repealed par. (3) which defined ''living with'' for purposes of section 402(i) of this title.

Subsec. (i)(2). Pub. L. 85–840, §201, substituted ''while under such disability'' for ''while under a disability'' in opening provisions, and ''eighteen-month period'' for ''one-year period'' in cl. (A)(ii).

Subsec. (i)(3). Pub. L. 85–840, §204(a), struck out provisions that required, for a period of disability to begin with respect to any quarter, an individual to have not less than six quarters of coverage during the thirteen-quarter period which ends with such quarter, and inserted provisions requiring an individual to be fully insured.

Subsec. (i)(4). Pub. L. 85–840, §203, substituted ''July 1961'' for ''July 1958'' and ''July 1960'' for ''July 1957'', and struck out provisions which required the applicant to be alive on July 1, 1955.

1957—Subsec. (h). Pub. L. 85–238 amended subsec. (h) generally to provide that the applicant is the wife, husband, widow, or widower if there is a finding that the applicant and the insured individual were validly married at the time the application for benefits is filed, or at the time the insured individual died, and to eliminate provisions which prescribed certain conditions under which a wife or husband would be deemed to have been living with his or her spouse, and which related to determination of status of parent.

Subsec. (i)(4). Pub. L. 85–109, substituted ''July 1958'' for ''July 1957'' and ''July 1957'' for ''July 1956''.

1956—Subsec. (a). Act Aug. 1, 1956, §102(a), reduced the retirement age in the case of a woman from age sixty-five to age sixty-two.

Subsec. (i)(1). Act Aug. 1, 1956, §103(c)(6), inserted ''Except for purposes of sections 402(d), 423, and 425 of this title''.

Subsec. (i)(2). Act Aug. 1, 1956, §102(d)(12), substituted ''the age of sixty-five'' for ''retirement age'' in two places.

1954—Subsec. (i). Act Sept. 1, 1954, §106(d), added subsec. (i). Former subsec. (i), which was added by act July 18, 1952, §3(d), ceased to be in effect at the close of June 30, 1953. See Effective and Termination Date of 1952 Amendment note set out under section 413 of this title.

1952—Subsec. (i). Act July 18, 1952, added subsec. (i).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5103(b)(1) of Pub. L. 101–508 applicable with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after Jan. 1, 1991, or are pending on such date, see section 5103(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

Section 5104(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply with respect to benefits payable for months after December 1990, but only on the basis of applications filed after December 31, 1990.''

Amendment by section 5119(a), (b) of Pub. L. 101–508 applicable with respect to benefits for months after December 1990, and applicable only with respect to benefits for which application is filed with Secretary of Health and Human Services after Dec. 31, 1990, with exception from application requirement, see section 5119(e) of Pub. L. 101–508, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective Jan. 1, 1988, and applicable with respect to individuals entitled to benefits under specific provisions of sections 402 and 423 of this title for any month after December 1987, and individuals entitled to benefits payable under specific provisions of sections 402 and 423 of this title for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by section 9010 of Pub. L. 100–203 has not elapsed as of Jan. 1, 1988, see section 9010(f) of Pub. L. 100–203, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 2(b) of Pub. L. 98–460 applicable to determinations made by the Secretary on or after Oct. 9, 1984, with certain enumerated exceptions and qualifications, see section 2(d) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 4(a)(2) of Pub. L. 98–460 applicable with respect to determinations made on or after the first day of the first month beginning after 30 days after Oct. 9, 1984, see section 4(c) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 2661(*l*) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(11) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 301(c), 303, 304(c), 306(c), and 309(j), (k) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Section 332(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and section 423 of this title] shall be effective with respect to applications for disability insurance benefits

under section 223 of the Social Security Act [section 423 of this title], and for disability determinations under section 216(i) of such Act [subsec. (i) of this section], filed after the date of the enactment of this Act [Apr. 20, 1983], except that no monthly benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by this section for months before the month following the month of enactment of this Act.''

Section 333(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective on the date of the enactment of this Act [Apr. 20, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2202(a)(2) of Pub. L. 97–35 applicable only with respect to deaths occurring after August 1981, see section 2202(b) of Pub. L. 97–35, set out as a note under section 402 of this title.

Amendment by section 2203(b)(2), (c)(2) of Pub. L. 97–35 applicable only to monthly insurance benefits payable to individuals who attain age 62 after August 1981, and amendment by section 2203(d)(3), (4) of Pub. L. 97–35 applicable to monthly insurance benefits for months after August 1981, and only in the case of individuals who were not entitled to such insurance benefits for August 1981 or any preceding month, see section 2203(f)(1), (2) of Pub. L. 97–35, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–473 effective with respect to benefits payable for months beginning on or after Oct. 1, 1980, see section 5(d) of Pub. L. 96–473, set out as a note under section 402 of this title.

Amendment by section 303(b)(2)(B) of Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, to apply with respect to any individual whose disability has not been determined to have ceased prior to such first day, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

Amendment by section 306(b) of Pub. L. 96–265 applicable to applications filed after June 1980, see section 306(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective with respect to monthly benefits after Dec., 1978, and applications filed on or after Jan. 1, 1979, see section 337(c) of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 104(g) of Pub. L. 92–603 applicable only in the case of a man who attains (or would attain) age 62 after December 1974, with the figure ''65'' in subsec. (i)(3)(A) of this section to be deemed to read ''64'' in the case of a man who attains age 62 in 1973, and deemed to read ''63'' in the case of a man who attains age 62 in 1974, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of this title.

Amendment by section 113(a) of Pub. L. 92–603 applicable with respect to monthly benefits payable under this subchapter for months after December 1972, but only on the basis of applications filed on or after October 30, 1972, see section 113(c) of Pub. L. 92–603, set out as a note under section 402 of this title.

Section 115(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972 on the basis of applications filed in or after the month in which this Act is enacted [October 1972].''

Amendment by section 116(d) of Pub. L. 92–603 effective with respect to applications for disability determinations under subsec. (i) of this section filed on or after October 1972 or before October 1972 under specified conditions, see section 116(e) of Pub. L. 92–603, set out as a note under section 423 of this title.

Amendment by section 117(a) of Pub. L. 92–603 effective with respect to applications for disability determinations under subsec. (i) of this section filed in or after October 1972 or before October 1972 under specified conditions, see section 117(c) of Pub. L. 92–603, set out as a note under section 423 of this title.

Section 118(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 423 of this title] shall apply in the case of deaths occurring after December 31, 1969. For purposes of such amendments (and for purposes of sections 202(j)(1) and 223(b) of the Social Security Act [sections 402(j)(1) and 423(b) of this title], any application with respect to an individual whose death occurred after December 31, 1969, but before the date of the enactment of this Act [Oct. 30, 1972] which is filed in, or within 3 months after the month in which this Act is enacted [October 1972] shall be deemed to have been filed in the month in which such death occurred.''

Section 145(b) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to benefits payable under title II of the Social Security Act [this subchapter] for months after December 1972 on the basis of applications filed in or after the month in which this Act is enacted [October 1972].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 104 of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90–248, set out as a note under section 402 of this title.

Section 105(c) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to applications for disability determinations filed under section 216(i) of the Social Security Act [subsec. (i) of this section] in or after the month in which this Act is enacted [January 1968]. The amendments made by subsection (b) [amending section 423 of this title] shall apply with respect to monthly benefits under title II of such Act [this subchapter] for months after January 1968, but only on the basis of applications for such benefits filed in or after the month in which this Act is enacted.''

Section 111(b) of Pub. L. 90–248 provided that: ''No monthly insurance benefits under title II of the Social Security Act [this subchapter] shall be payable or increased for any month before the month in which this Act is enacted [January 1968] by reason of amendments made by subsection (a) [amending this section].''

Section 150(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of an application filed in or after the month in which this Act is enacted [January 1968].''

Section 156(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968, but only on the basis of applications filed in or after the month in which this Act is enacted [January 1968].''

Amendment by section 158(d) of Pub. L. 90–248 applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under subsec. (i) of this section, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

Section 172(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to benefits under section 223 of the Social Security Act [section 423 of this title] for months after January 1968 based on applications filed after the date of enactment of this Act [Jan. 2, 1968] and with respect to disability determinations under section 216(i) of the Social Security Act [subsec. (i) of this section] based on applications filed after the date of enactment of this Act.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 308(c), (d)(2)(B) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter beginning with the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

Amendment by section 334(a)–(d) of Pub. L. 89–97 applicable only with respect to monthly insurance benefits under section 401 et seq. of this title beginning with September 1965 but only on the basis of applications filed in or after July 1965, see section 334(g) of Pub. L. 89–97, set out as a note under section 402 of this title.

Section 339(c) of Pub. L. 89–97 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 402 of this title] shall be applicable with respect to monthly insurance benefits under title II of the Social Security Act [this subchapter] beginning with the second month following the month in which this Act is enacted [July 1965] but only on the basis of an application filed in or after the month in which this Act is enacted.''

Amendment by section 303(a)(1), (b)(1), (2) of Pub. L. 89–97 effective with respect to applications for disability insurance benefits under section 423 of this title, and for disability determinations under subsec. (i) of this section, filed in or after July 1965 or before July 1965, if the applicant has not died before such month, and notice of final administrative decision has not been given to the applicant before such month, except that monthly insurance benefits under this subchapter shall not be payable or increased by reason of amendments to subsecs. (i)(1)(A), (2), (3) of this section for months before the second month following July 1965, see section 303(f)(1) of Pub. L. 89–97, set out as a note under section 423 of this title.

Amendment by section 304(*l*) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter for and after the second month following July 1965 but only on the basis of applications filed in or after July 1965, see section 304(*o*) of Pub. L. 89–97, set out as a note under section 402 of this title.

Section 328(d) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and sections 402 and 423 of this title] shall apply with respect to (1) applications filed on or after the date of enactment of this Act [July 30, 1965], (2) applications as to which the Secretary has not made a final decision before the date of enactment of this Act, and (3) if a civil action with respect to final decision by the Secretary has been commenced under section 205(g) of the Social Security Act [section 405(g) of this title] before the date of enactment of this Act, applications as to which there has been no final judicial decision before the date of enactment of this Act.''

Section 344(e) of Pub. L. 89–97 provided that: ''The amendments made by this section [amending this section and section 423 of this title] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after the first month following the month in which this Act is enacted [July 1965], on the basis of applications for such benefits filed in or after the month in which this Act is enacted.''

EFFECTIVE DATE OF 1964 AMENDMENT

Section 1(d) of Pub. L. 88–650 provided that:

''(1) The amendments made by subsections (a), (b), and (c) [amending this section] shall apply in the case of applications for disability determinations under section 216(i) of the Social Security Act [subsec. (i) of this section] filed after the month following the month in which this Act is enacted [October 1964].

''(2) Except as provided in the succeeding paragraphs, such amendments shall also apply, and as though such amendments had been enacted on July 1, 1962, in the case of applications for disability determinations filed under section 216(i) of the Social Security Act [subsec. (i) of this section] during the period beginning July 1, 1962, and ending with the close of the month following the month in which this Act is enacted [October 1964], by an individual who—

''(A) has been under a disability (as defined in such section 216(i)) continuously since he filed such application and up to (i) the first day of the second month following the month in which this Act is enacted or (ii) if earlier, the first day of the month in which he attained the age of 65, and

''(B) is living on the day specified in subparagraph (A)(i).

''(3) In the case of an individual to whom paragraph (2) applies and who filed an application for disability insurance benefits under section 223 of the Social Security Act [section 423 of this title] during the period specified in such paragraph—

''(A) if such individual was under a disability (as defined in section 223(c) of such Act) throughout such period and was not entitled to disability insurance benefits under such section 223 for any month in such period (except for the amendments made by this section), such application and any application filed during such period for benefits under section 202 of the Social Security Act [section 402 of this title] on the basis of the wages and self-employment income of such individual shall, notwithstanding section 202(j)(2) and the first sentence of section 223(b), be deemed an effective application, or

''(B) if such individual was entitled (without the application of this section) to disability insurance benefits under section 223 [section 423 of this title] for a continuous period of months immediately preceding—

''(i) the second month following the month in which this Act was enacted [October 1964], or

''(ii) if earlier, the month in which he became entitled to benefits under section 202(a) [section 402(a) of this title],

his primary insurance amount shall be recomputed, but only if such amount would be increased solely by reason of the enactment of this section.

''(4) No monthly insurance benefits, and no increase in monthly insurance benefits, may be paid under title II of the Social Security Act [this subchapter] by reason of the enactment of this section for any month before the eleventh month before the month in which this Act is enacted [October 1964].

''(5) In the case of an individual (A) who is entitled under section 202 of the Social Security Act [section 402 of this title] (but without the application of subsection (j)(1) of such section) to a widow's, widower's, or parent's insurance benefit, or to an old-age, wife's or husband's insurance benefit which is reduced under section 202(q) of such Act, for any month in the period referred to in paragraph (2) of this subsection, (B) who was under a disability (as defined in section 223(c) of the Social Security Act [section 423(c) of this title]) which began prior to the sixth month before the first month for which the benefits referred to in clause (A) are payable and which continued through the month following the month in which this Act is enacted [October 1964], and (C) who files an application for disability insurance benefits under section 223(a)(1) of the Social Security Act—

''(i) subsection (a)(3) of section 223 of the Social Security Act shall not prevent him from being entitled to such disability insurance benefits;

''(ii) the provisions of subsection (a)(1) of such section 223 terminating entitlement to disability insurance benefits by reason of entitlement to old-age insurance benefits shall not apply with respect to him unless and until he again becomes entitled to such old-age insurance benefits under the provisions of section 202 of such Act;

''(iii) such individual shall, for any month for which he is thereby entitled to both old-age insurance benefits and disability insurance benefits, be entitled only to such disability insurance benefits; and

''(iv) in case the benefits reduced under subsection (q) of section 202 of such Act are old-age insurance benefits (I) such old-age insurance benefits for the months in the period referred to in paragraph (2) of this subsection shall not be recomputed solely by reason of the enactment of this section, and, if otherwise recomputed, the provisions of and amendments made by this section shall not apply to such recomputation; and (II) the months for which he received such old-age insurance benefits before or during the period for which he becomes entitled, by reason of such enactment, to disability insurance benefits under such section 223 and the months for which he received such disability insurance benefits shall be excluded from the 'reduction period' and the 'adjusted reduction period', as defined in paragraphs (5) and (6), respectively, of such subsection (q) for purposes of determining the amount of the old-age insurance benefits to which he may subsequently become entitled.

''(6) The entitlement of any individual to benefits under section 202 of the Social Security Act [section 402 of this title] shall not be terminated solely by reason of the enactment of this section, except where such individual is entitled to benefits under section 202(a) or 223 of such Act [section 402(a) or 423 of this title] in an amount which (but for this subsection) would have required termination of such benefits under such section 202.''

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by section 102(b)(2)(D) of Pub. L. 87–64 effective Aug. 1, 1961, and amendment by section 102(c)(1), (2)(B), (3)(C) of Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after August 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after August 1, 1961, see sections 102(f)(4), (6) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

Section 105 of Pub. L. 87–64 provided that the amendment made by that section is effective with respect to applications for disability determinations filed on or after July 1, 1961.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 207(d) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months beginning with the month in which this Act is enacted [September 1960], on the basis of applications filed in or after such month.''

Section 208(f) of Pub. L. 86–778 provided that: ''The amendments made by the preceding provisions of this section [amending this section and section 402 of this title] shall be applicable (1) with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months beginning with the month in which this Act is enacted [September 1960] on the basis of an application filed in or after such month, and (2) in the case of a lump-sum death payment under such title based on an application filed in or after such month, but only if no person, other than the person filing such application, has filed an application for a lump-sum death payment under such title prior to the date of the enactment of this Act [Sept. 13, 1960] with respect to the death of the same individual.''

Amendment by section 402(e) of Pub. L. 86–778 applicable only in the case of individuals who become entitled to benefits under section 423 of this title in or after September 1960, see section 402(f) of Pub. L. 86–778, set out as a note under section 423 of this title.

Amendment by section 403(c) of Pub. L. 86–778 applicable only in the case of individuals who have a period of disability (as defined in subsec. (i) of this section) beginning on or after Sept. 13, 1960, or beginning before Sept. 13, 1960 and continuing, without regard to such amendment, beyond the end of September 1960, see section 403(e) of Pub. L. 86–778, set out as a note under section 422 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 207(a) of Pub. L. 85–840 provided that: ''The amendments made by section 201 [amending this section] shall apply with respect to applications for a disability determination under section 216(i) of the Social Security Act [subsec. (i) of this section] filed after June 1961. The amendments made by section 202 [amending section 423 of this title] shall apply with respect to applications for disability insurance benefits under section 223 of such Act filed after December 1957. The amendments made by section 203 [amending this section] shall apply with respect to applications for a disability determination under such section 216(i) filed after June 1958. The amendments made by section 204 [amending this section and section 423 of this title] shall apply with respect to (1) applications for disability insurance benefits under such section 223 or for a disability determination under such section 216(i) filed on or after the date of enactment of this Act [Aug. 28, 1958], and (2) applications for such benefits or for such a determination filed after 1957 and prior to such date of enactment if the applicant has not died prior to such date of enactment and if notice to the applicant of the Secretary's decision with respect thereto has not been given to him on or prior to such date, except that (A) no benefits under title II of the Social Security Act [this subchapter] for the month in which this Act is enacted [August 1958] or any prior month shall be payable or increased by reason of the amendments made by section 204 of this Act, and (B) the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title] shall not prevent recomputation of monthly benefits under section 202 of such Act [section 402 of this title] (but no such recomputation shall be regarded as a recomputation for purposes of section 215(f) of such Act). The amendments made by section 205 (other than by subsections (k) and (m)) [amending sections 401, 402, 403, 414, 422, and 425 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after the month in which this Act is enacted, but only if an application for such benefits is filed on or after the date of enactment of this Act. The amendments made by section 206 [repealing section 424 of this title] and by subsections (k) and (m) of section 205 [amending sections 403 and 415 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for the month in which this Act is enacted and succeeding months.''

Amendment by section 301(a)(2), (b)(2), (c)(2), (d), (e) of Pub. L. 85–840 applicable with respect to monthly benefits under section 402 of this title for months beginning after Aug. 28, 1958, but only if an application for such benefits is filed on or after such date, see section 301(f) of Pub. L. 85–840, set out as a note under section 402 of this title.

Section 302(b) of Pub. L. 85–840 provided that: ''The amendment made by this section [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months beginning after the date of enactment of this Act [Aug. 28, 1958], but only if an application for such benefits is filed on or after such date.''

Amendment by section 305(b) of Pub. L. 85–840 applicable in the case of lump-sum death payments under section 402(i) of this title on the basis of the wages and

self-employment income of any individual who dies after August 1958, see section 305(c) of Pub. L. 85–840, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1957 AMENDMENT

Amendment by Pub. L. 85–238 applicable to monthly benefits under section 402 of this title for months after August 1957, but not to operate to deprive any such parent of benefits to which he would otherwise be entitled under section 402(h) of this title, see section 3(i) of Pub. L. 85–238, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Section 102(b) of act Aug. 1, 1956, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply in the case of benefits under subsection (e) of section 202 of the Social Security Act [section 402(e) of this title] for months after October 1956, but only, except in the case of an individual who was entitled to wife's or mother's insurance benefits under such section 202 for October 1956, or any month thereafter, on the basis of applications filed after the date of enactment of this Act [Aug. 1, 1956]. The amendment made by subsection (a) shall apply in the case of benefits under subsection (h) of such section 202 for months after October 1956 on the basis of applications filed after the date of enactment of this Act.

''(2) Except as provided in paragraphs (1) and (4), the amendment made by subsection (a) shall apply in the case of lump-sum death payments under section 202(i) of the Social Security Act with respect to deaths after October 1956, and in the case of monthly benefits under title II of such Act [this subchapter] for months after October 1956 on the basis of applications filed after the date of enactment of this Act.

''(3) For purposes of section 215(b)(3)(B) of the Social Security Act [section 415(b)(3)(B) of this title] (but subject to paragraphs (1) and (2) of this subsection)—

''(A) a woman who attains the age of sixty-two prior to November 1956 and who was not eligible for old-age insurance benefits under section 202 of such Act (as in effect prior to the enactment of this Act) for any month prior to November 1956 shall be deemed to have attained the age of sixty-two in 1956 or, if earlier, the year in which she died;

''(B) a woman shall not, by reason of the amendment made by subsection (a), be deemed to be a fully insured individual before November 1956 or the month in which she died, whichever month is the earlier; and

''(C) the amendment made by subsection (a) shall not be applicable in the case of any woman who was eligible for old-age insurance benefits under such section 202 for any month prior to November 1956.

A woman shall, for purposes of this paragraph, be deemed eligible for old-age insurance benefits under section 202 of the Social Security Act for any month if she was or would have been, upon filing application therefor in such month, entitled to such benefits for such month.

''(4) For purposes of section 209(i) of such Act [section 409(i) of this title], the amendment made by subsection (a) shall apply only with respect to remuneration paid after October 1956.''

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 106(d) of act Sept. 1, 1954, applicable with respect to monthly benefits under subchapter II of this chapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955; but that no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 415(f) of this title, see section 106(h) of act Sept. 1, 1954, set out as a note under section 413 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

For effective and termination dates of amendment by Act July 18, 1952, see section 3(f), (g) of act July 18, 1952, set out as a note under section 413 of this title.

EFFECTIVE DATE

Section applicable (1) in case of monthly benefits for months after August 1950, and (2) in the case of lump-sum death payments with respect to deaths after August 1950, see section 104(b) of act Aug. 28, 1950, set out as an Effective Date of 1950 Amendment note under section 409 of this title.

RETROACTIVE BENEFITS

For provisions relating to entitlement to retroactive benefits under section 2 of Pub. L. 98–460 (which amended subsec. (i)(2)(D) of this section), see section 2(f) of Pub. L. 98–460, set out as a note under section 423 of this title.

PROMULGATION OF REGULATIONS

For provisions requiring the Secretary of Health and Human Services to prescribe regulations necessary to implement amendment to subsec. (i)(2)(D) of this section by section 2(b) of Pub. L. 98–460 not later than 180 days after Oct. 9, 1984, see section 2(g) of Pub. L. 98–460, set out as a note under section 423 of this title.

STUDY OF EFFECT OF RAISING RETIREMENT AGE ON THOSE UNLIKELY TO BENEFIT FROM IMPROVEMENTS IN LONGEVITY

Section 201(d) of Pub. L. 98–21 required the Secretary to conduct a comprehensive study and analysis of the implications of the changes made by this section (amending sections 402, 403, 415, 416, and 423 of this title) in retirement age in the case of certain individuals and submit to Congress no later than January 1, 1986, a full report on the study and analysis, including any recommendations for legislative changes.

SPECIAL INSURED STATUS TEST IN CERTAIN CASES FOR DISABILITY PURPOSES

Section 404 of Pub. L. 86–778 provided that:

''(a) In the case of any individual who does not meet the requirements of section 216(i)(3) of the Social Security Act [subsec. (i)(3) of this section] with respect to any quarter, or who is not insured for disability insurance benefits as determined under section 223(c)(1) of such Act [section 423(c)(1) of this title] with respect to any month in a quarter, such individual shall be deemed to have met such requirements with respect to such quarter or to be so insured with respect to such month of such quarter, as the case may be, if—

''(1) he had a total of not less than twenty quarters of coverage (as defined in section 213 of such Act [section 413 of this title]) during the period ending with the close of such quarter, and

''(2) all of the quarters elapsing after 1950 and up to but excluding such quarter were quarters of coverage with respect to him and there were not fewer than six such quarters of coverage.

''(b) Subsection (a) shall apply only in the case of applications for disability insurance benefits under section 223 of the Social Security Act, or for disability determinations under section 216(i) of such Act, filed in or after the month in which this Act is enacted [September 1960], and then only with respect to an individual who, but for such subsection (a), would not meet the requirements for a period of disability under section 216(i) with respect to the quarter in which this Act is enacted or any prior quarter and would not meet the requirements for benefits under section 223 with respect to the month in which this Act is enacted or any prior month. No benefits under title II of the Social Security Act [this subchapter] for the month in which this Act is enacted or any prior month shall be payable or increased by reason of the amendment made by such subsection.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 403, 413, 414, 415, 417, 421, 422, 423, 428, 429, 431, 1382c, 1395i–2a, 1395ii of this title; title 5 section 8311; title 26 section 415; title 30 section 902; title 45 sections 231a, 231b, 231c, 231d, 231e, 231q.

§ 417. Benefits for veterans

(a) Determination of benefits

(1) For purposes of determining entitlement to and the amount of any monthly benefit for any month after August 1950, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this subchapter on the basis of the wages and self-employment income of any World War II veteran, and for purposes of section 416(i)(3) of this title, such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States during World War II. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran during World War II is determined by any agency or wholly owned instrumentality of the United States (other than the Department of Veterans Affairs) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) of this paragraph shall not apply in the case of any monthly benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to section 415(f) of this title) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) of this paragraph shall also not apply for purposes of section 416(i)(3) of this title.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Commissioner of Social Security shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless the Commissioner has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran during World War II, a benefit described in clause (B) of paragraph (1) of this subsection has been determined by such agency or instrumentality to be payable by it. If the Commissioner has not been so notified, the Commissioner of Social Security shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service during World War II shall, at the request of the Commissioner of Social Security, certify to the Commissioner, with respect to any veteran, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (2) of this subsection.

(b) Determination of insurance status

(1) Subject to paragraph (3), any World War II veteran who died during the period of three years immediately following his separation from the active military or naval service of the United States shall be deemed to have died a fully insured individual whose primary insurance amount is the amount determined under section 415(c) of this title as in effect in December 1978. Notwithstanding section 415(d) of this title as in effect in December 1978, the primary insurance benefit (for purposes of section 415(c) of this title as in effect in December 1978) of such veteran shall be determined as provided in this subchapter as in effect prior to August 28, 1950, except that the 1 per centum addition provided for in section 409(a)(4)(B) of this title as in effect prior to August 28, 1950, shall be applicable only with respect to calendar years prior to 1951. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application;

(B) any pension or compensation is determined by the Secretary of Veterans Affairs to be payable by him on the basis of the death of such veteran;

(C) the death of the veteran occurred while he was in the active military or naval service of the United States; or

(D) such veteran has been discharged or released from the active military or naval service of the United States subsequent to July 26, 1951.

(2) Upon an application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Commissioner of Social Security shall make a decision without regard to paragraph (1)(B) of this subsection unless the Commissioner has been notified by the Secretary of Veterans Affairs that pension or compensation is determined to be payable by that Secretary by reason of the death of such veteran. The Commissioner of Social Security shall thereupon report such decision to the Secretary of Veterans Affairs. If the Secretary of Veterans

Affairs in any such case has made an adjudication or thereafter makes an adjudication that any pension or compensation is payable under any law administered by it, the Secretary of Veterans Affairs shall notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment, or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection. Any payments theretofore certified by the Commissioner of Social Security on the basis of paragraph (1) of this subsection to any individual, not exceeding the amount of any accrued pension or compensation payable to him by the Secretary of Veterans Affairs, shall (notwithstanding the provisions of section 5301 of title 38) be deemed to have been paid to him by that Secretary on account of such accrued pension or compensation. No such payment certified by the Commissioner of Social Security, and no payment certified by the Commissioner for any month prior to the first month for which any pension or compensation is paid by the Secretary of Veterans Affairs shall be deemed by reason of this subsection to have been an erroneous payment.

(3)(A) The preceding provisions of this subsection shall apply for purposes of determining the entitlement to benefits under section 402 of this title, based on the primary insurance amount of the deceased World War II veteran, of any surviving individual only if such surviving individual makes application for such benefits before the end of the 18-month period after November 1990.

(B) Subparagraph (A) shall not apply if any person is entitled to benefits under section 402 of this title based on the primary insurance amount of such veteran for the month preceding the month in which such application is made.

(c) Filing proof of support

In the case of any World War II veteran to whom subsection (a) of this section is applicable, proof of support required under section 402(h) of this title may be filed by a parent at any time prior to July 1951 or prior to the expiration of two years after the date of the death of such veteran, whichever is the later.

(d) Definitions

For the purposes of this section—

(1) The term ''World War II'' means the period beginning with September 16, 1940, and ending at the close of July 24, 1947.

(2) The term ''World War II veteran'' means any individual who served in the active military or naval service of the United States at any time during World War II and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

(e) Determination based on wages and self-employment

(1) For purposes of determining entitlement to and the amount of any monthly benefit or lump-sum death payment payable under this subchapter on the basis of wages and self-employment income of any veteran (as defined in paragraph (4) of this subsection), and for purposes of section 416(i)(3) of this title, such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States on or after July 25, 1947, and prior to January 1, 1957. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, is determined by any agency or wholly owned instrumentality of the United States (other than the Department of Veterans Affairs) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) of this paragraph shall not apply in the case of any monthly benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to subsection (f) of section 415 of this title) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) of this paragraph shall also not apply for purposes of section 416(i)(3) of this title. In the case of monthly benefits under this subchapter for months after December 1956 (and any lump-sum death payment under this subchapter with respect to a death occurring after December 1956) based on the wages and self-employment income of a veteran who performed service (as a member of a uniformed service) to which the provisions of section 410(*l*)(1) of this title are applicable, wages which would, but for the provisions of clause (B) of this paragraph, be deemed under this subsection to have been paid to such veteran with respect to his active military or naval service performed after December 1950 shall be deemed to have been paid to him with respect to such service notwithstanding the provisions of such clause, but only if the benefits referred to in such clause which are based (in whole or in part) on such service are payable solely by the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey, National Oceanic and Atmospheric Administration Corps, or Public Health Service.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any veteran, the Commissioner of Social Security shall make a

decision without regard to clause (B) of paragraph (1) of this subsection unless the Commissioner has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, a benefit described in clause (B) of paragraph (1) of this subsection has been determined by such agency or instrumentality to be payable by it. If the Commissioner has not been so notified, the Commissioner of Social Security shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) of this subsection is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service on or after July 25, 1947, and prior to January 1, 1957, shall, at the request of the Commissioner of Social Security, certify to the Commissioner, with respect to any veteran, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (2) of this subsection.

(4) For the purposes of this subsection, the term ''veteran'' means any individual who served in the active military or naval service of the United States at any time on or after July 25, 1947, and prior to January 1, 1957, and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

(f) Right to annuity; waiver

(1) In any case where a World War II veteran (as defined in subsection (d)(2) of this section) or a veteran (as defined in subsection (e)(4) of this section) has died or shall hereafter die, and his or her surviving spouse or child is entitled under subchapter III of chapter 83 of title 5 to an annuity in the computation of which his or her active military or naval service was included, clause (B) of subsection (a)(1) of this section or clause (B) of subsection (e)(1) of this section shall not operate (solely by reason of such annuity) to make such subsection inapplicable in the case of any monthly benefit under section 402 of this title which is based on his or her wages and self-employment income; except that no such surviving spouse or child shall be entitled under section 402 of this title to any monthly benefit in the computation of which such service is included by reason of this subsection (A) unless such surviving spouse or child after December 1956 waives his or her right to receive such annuity, or (B) for any month prior to the first month with respect to which the Director of the Office of Personnel Management certifies to the Commissioner of Social Security that (by reason of such waiver) no further annuity will be paid to such surviving spouse or child under such subchapter III on the basis of such veteran's military or civilian service. Any such waiver shall be irrevocable.

(2) Whenever a surviving spouse waives his or her right to receive such annuity such waiver shall constitute a waiver on his or her own behalf; a waiver by a legal guardian or guardians, or, in the absence of a legal guardian, the person (or persons) who has the child in his or her care, of the child's right to receive such annuity shall constitute a waiver on behalf of such child. Such a waiver with respect to an annuity based on a veteran's service shall be valid only if the surviving spouse and all children, or, if there is no surviving spouse, all the children, waive their rights to receive annuities under subchapter III of chapter 83 of title 5 based on such veteran's military or civilian service.

(g) Appropriation to trust funds

(1) Within thirty days after April 20, 1983, the Commissioner of Social Security shall determine the amount equal to the excess of—

(A) the actuarial present value as of April 20, 1983, of the past and future benefit payments from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund under this subchapter and subchapter XVIII of this chapter, together with associated administrative costs, resulting from the operation of this section (other than this subsection) and section 410 of this title as in effect before the enactment of the Social Security Amendments of 1950, over

(B) any amounts previously transferred from the general fund of the Treasury to such Trust Funds pursuant to the provisions of this subsection as in effect immediately before April 20, 1983.

Such actuarial present value shall be based on the relevant actuarial assumptions set forth in the report of the Board of Trustees of each such Trust Fund for 1983 under sections 401(c) and 1395i(b) of this title. Within thirty days after April 20, 1983, the Secretary of the Treasury shall transfer the amount determined under this paragraph with respect to each such Trust Fund to such Trust Fund from amounts in the general fund of the Treasury not otherwise appropriated.

(2) The Commissioner of Social Security shall revise the amount determined under paragraph (1) with respect to each such Trust Fund in 1985 and each fifth year thereafter, as determined appropriate by the Commissioner of Social Security from data which becomes available to the Commissioner after the date of the determination under paragraph (1) on the basis of the amount of benefits and administrative expenses actually paid from such Trust Fund under this subchapter or subchapter XVIII of this chapter

and the relevant actuarial assumptions set forth in the report of the Board of Trustees of such Trust Fund for such year under section 401(c) or 1395i(b) of this title. Within 30 days after any such revision, the Secretary of the Treasury, to the extent provided in advance in appropriation Acts, shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of the Treasury determines necessary to take into account such revision.

(h) Determination of veterans status

(1) For the purposes of this section, any individual who the Commissioner of Social Security finds—

(A) served during World War II (as defined in subsection (d)(1) of this section) in the active military or naval service of a country which was on September 16, 1940, at war with a country with which the United States was at war during World War II;

(B) entered into such active service on or before December 8, 1941;

(C) was a citizen of the United States throughout such period of service or lost his United States citizenship solely because of his entrance into such service;

(D) had resided in the United States for a period or periods aggregating four years during the five-year period ending on the day of, and was domiciled in the United States on the day of, such entrance into such active service; and

(E)(i) was discharged or released from such service under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty, or

(ii) died while in such service,

shall be considered a World War II veteran (as defined in subsection (d)(2) of this section) and such service shall be considered to have been performed in the active military or naval service of the United States.

(2) In the case of any individual to whom paragraph (1) applies, proof of support required under section 402(f) or (h) of this title may be filed at any time prior to the expiration of two years after the date of such individual's death or August 28, 1958, whichever is the later.

(Aug. 14, 1935, ch. 531, title II, §217, as added Aug. 28, 1950, ch. 809, title I, §105, 64 Stat. 512; amended July 18, 1952, ch. 945, §5(a), (d)(1), 66 Stat. 773, 775; Aug. 14, 1953, ch. 483, §1, 67 Stat. 580; Sept. 1, 1954, ch. 1206, title I, §106(e), 68 Stat. 1081; Aug. 9, 1955, ch. 685, §1, 69 Stat. 621; Aug. 1, 1956, ch. 837, title IV, §§404(a), (b), 406, 70 Stat. 872, 873, 875; Aug. 28, 1958, Pub. L. 85–840, title III, §314(a), (b), 72 Stat. 1036, 1037; Sept. 2, 1958, Pub. L. 85–857, §13(i)(2), 72 Stat. 1265; Sept. 13, 1960, Pub. L. 86–778, title I, §103(j)(2)(C), 74 Stat. 937; July 30, 1965, Pub. L. 89–97, title III, §322, 79 Stat. 396; Jan. 2, 1968, Pub. L. 90–248, title IV, §403(c), 81 Stat. 932; Apr. 21, 1976, Pub. L. 94–273, §§2(23), 16, 90 Stat. 376, 379; Dec. 20, 1977, Pub. L. 95–216, title II, §205(c), 91 Stat. 1529; Aug. 13, 1981, Pub. L. 97–35, title XXII, §2201(c)(7), 95 Stat. 832; Dec. 29, 1981, Pub. L. 97–123, §2(g), 95 Stat. 1661; Apr. 20, 1983, Pub. L. 98–21, title I, §151(a), title III, §308, 97 Stat. 103, 115; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(a)(12), (j)(3)(A)(ii), 98 Stat. 1164, 1170; Dec. 19, 1989, Pub. L. 101–239, title X, §10208(d)(2)(A)(iv), 103 Stat. 2481; Nov. 5, 1990, Pub. L. 101–508, title V, §5117(b), 104 Stat. 1388–277; May 7, 1991, Pub. L. 102–40, title IV, §402(d)(2), 105 Stat. 239; June 13, 1991, Pub. L. 102–54, §13(q)(3)(A)(i), (D), (E), 105 Stat. 279; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), 108 Stat. 1478.)

REFERENCES IN TEXT

The Social Security Act Amendments of 1950, referred to in subsec. (g)(1)(A), is act Aug. 28, 1950, ch. 809, 64 Stat. 477, as amended. For complete classification of this Act to the Code, see Short Title of 1950 Amendment note set out under section 1305 of this title and Tables.

AMENDMENTS

1994—Subsec. (a)(2), (3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''unless the Commissioner'' for ''unless he'' and ''If the Commissioner'' for ''If he'' in par. (2), and ''to the Commissioner'' for ''to him'' and ''the Commissioner's functions'' for ''his functions'' in par. (3).

Subsec. (b)(2). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing except where appearing before ''of Veterans Affairs'' or after ''that'' and substituted ''unless the Commissioner'' for ''unless he'' and ''certified by the Commissioner'' for ''certified by him''.

Subsec. (e)(2), (3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner has'' for ''he has'' in two places in par. (2), and ''certify to the Commissioner'' for ''certify to him'' and ''the Commissioner's'' for ''his'' in par. (3).

Subsec. (f)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (g). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, except where appearing before ''of the Treasury'' and substituted ''the Commissioner after'' for ''him after'' in par. (2).

Subsec. (h)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions.

1991—Subsec. (a)(1)(B). Pub. L. 102–54, §13(q)(3)(A)(i), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

Subsec. (b)(1)(B). Pub. L. 102–54, §13(q)(3)(D), substituted ''Secretary of Veterans Affairs to be payable by him'' for ''Veterans' Administration to be payable by it''.

Subsec. (b)(2). Pub. L. 102–54, §13(q)(3)(E), substituted references to Secretary of Veterans Affairs and Secretary for references to Veterans' Administration and Administration, wherever appearing.

Pub. L. 102–40 substituted ''section 5301 of title 38'' for ''section 3101 of title 38''.

Subsec. (e)(1)(B). Pub. L. 102–54, §13(q)(3)(A)(i), substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (b)(1). Pub. L. 101–508, §5117(b)(1), substituted ''Subject to paragraph (3), any'' for ''Any''.

Subsec. (b)(3). Pub. L. 101–508, §5117(b)(2), added par. (3).

1989—Subsec. (b)(1). Pub. L. 101–239 substituted ''409(a)(4)(B)'' for ''409(e)(2)'' in introductory provisions.

1984—Subsecs. (a)(2), (3), (b)(2). Pub. L. 98–369, §2663(j)(3)(A)(ii), struck out ''of Health, Education, and Welfare'' after ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 98–369, §2663(a)(12)(A), realigned margins of subsec. (d).

Subsec. (e)(1). Pub. L. 98–369, § 2663(a)(12)(B), inserted reference to National Oceanic and Atmospheric Administration.

Subsec. (e)(2), (3). Pub. L. 98–369, § 2663(j)(3)(A)(ii), struck out ''of Health, Education, and Welfare'' after ''Secretary'' wherever appearing.

Subsec. (f)(1). Pub. L. 98–369, § 2663(a)(12)(C), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission''.

Pub. L. 98–369, § 2663(j)(3)(A)(ii), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

1983—Subsec. (f). Pub. L. 98–21, § 308(2), substituted ''his or her'' for ''his'' and ''her'' wherever appearing, except in cl. (A) of par. (1).

Pub. L. 98–21, § 308(1), substituted ''surviving spouse'' for ''widow'' wherever appearing.

Subsec. (g). Pub. L. 98–21, § 151(a), amended subsec. generally, substituting provisions relating to determination of amounts to be appropriated to trust funds and to revisions of such amounts for provisions which had formerly required that, in September of 1965, 1970, and 1975, and in October 1980 and in every fifth October thereafter up to and including October 2010, the Secretary determine the amount which, if paid in equal installments at the beginning of each fiscal year in the period beginning (A) with July 1, 1965, in the case of the first such determination, and (B) with the beginning of the first fiscal year commencing after the determination in the case of all other such determinations, and ending with the close of September 30, 2015, would accumulate, with interest compounded annually, to an amount equal to the amount needed to place each of the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position at the close of September 30, 2015, as he estimated they would otherwise be in at the close of that date if section 410 of this title as in effect prior to the Social Security Act Amendments of 1950, and this section, had not been enacted, with the interest to be used in determining such amount to be the rate determined under section 401(d) of this title for public-debt obligations which were or could have been issued for purchase by the Trust Funds in the June preceding the September in which the determinations in 1965, 1970, and 1975 were made and in the September preceding the October in which all other determinations were made.

1981—Subsec. (b)(1). Pub. L. 97–123 struck out '', and as modified by the application of section 415(a)(6) of this title''.

Pub. L. 97–35 inserted '', and as modified by the application of section 415(a)(6) of this title''.

1977—Subsec. (b)(1). Pub. L. 95–216 substituted ''section 415(c) of this title as in effect in December 1978'' for ''section 415(c) of this title'' in two places and ''section 415(d) of this title as in effect in December 1978'' for ''section 415(d) of this title''.

1976—Subsec. (g)(1). Pub. L. 94–273, § 16, substituted provisions relating to determination of the required amount for payment in September of 1965, 1970, and 1975, and in October 1980 and in every fifth October thereafter up to and including October 2010, and ending with the close of September 30, 2015, for provisions relating to determination of the required amount for payment in September 1965, and in every fifth September thereafter up to and including September 2010, and ending with the close of June 30, 2015, and inserted provisions relating to the rate of interest for the determination of the required amount in the Septembers preceding the Octobers for all the other determinations subsequent to the 1975 determination.

Subsec. (g)(2)(B), (3), (4). Pub. L. 94–273, § 2(23), substituted ''September'' for ''June'' wherever appearing.

1968—Subsec. (f)(1). Pub. L. 90–248, § 403(c)(1), substituted ''subchapter III of chapter 83 of title 5'' and ''such subchapter III'' for ''the Civil Service Retirement Act of May 29, 1930, as amended,'' and ''such Act of May 29, 1930, as amended,'', respectively.

Subsec. (f)(2). Pub. L. 90–248, § 403(c)(2), substituted ''subchapter III of chapter 83 of title 5'' for ''the Civil Service Retirement Act of May 29, 1930, as amended''.

1965—Subsec. (g)(1). Pub. L. 89–97 substituted provisions requiring the Secretary to determine, in September 1965, and every fifth September thereafter, up to and including September 2010, the amount necessary to place each of the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position at the close of June 30, 2015, as they would otherwise have been in at the close of that date if section 410 of this title, as in effect prior to the Social Security Act Amendments of 1950, and this section had not been enacted and providing for determination of interest in accordance with section 401(d) of this title, for provisions authorizing the appropriation of sums necessary to meet additional costs resulting from payment of benefits after June 1956 under subsecs. (a), (b), and (e), including lump-sum death payments.

Subsec. (g)(2). Pub. L. 89–97 substituted provisions authorizing appropriation to the Trust Funds and the Federal Hospital Insurance Trust Fund in the fiscal years ending with the close of June 30, 2015, for provisions requiring the Secretary to determine before October 1, 1958, the amount necessary to place the Federal Old-Age and Survivors Insurance Trust Fund in the same position it would have been at the close of June 30, 1956, if section 410 of this title, as in effect prior to the Social Security Act Amendments of 1950, and this section had not been enacted and authorizing appropriations during the first ten years beginning after such determination had been made aggregating the sum so determined plus interest.

Subsec. (g)(3), (4). Pub. L. 89–97 added pars. (3) and (4).

1960—Subsec. (e)(1). Pub. L. 86–778 substituted ''section 410(*l*)(1) of this title'' for ''section 410(m)(1) of this title''.

1958—Subsec. (b)(2). Pub. L. 85–857 substituted ''section 3101 of title 38'' for ''section 454a of title 38''.

Subsec. (g). Pub. L. 85–840, § 314(b), substituted ''Trust Funds'' for ''Trust Fund'' in par. (1), and ''the Federal Old-Age and Survivors Insurance Trust Fund in'' for ''the Trust Fund in'', ''such Trust Fund annually'', for ''the Trust Fund annually'', and ''such Trust Fund during'' for ''the Trust Fund during'' in par. (2).

Subsec. (h). Pub. L. 85–840, § 314(a), added subsec. (h).

1956—Subsec. (e). Act Aug. 1, 1956, § 404(a), amended subsec. (e) generally, substituting ''January 1, 1957'' for ''April 1, 1956'' in five places, and inserting provisions in par. (1) relating to monthly benefits for months after December 1956 and any lump-sum death payment under this subchapter with respect to a death occurring after December 1956.

Subsecs. (f), (g). Act Aug. 1, 1956, §§ 404(b), 406, added subsecs. (f) and (g), respectively.

1955—Subsec. (e). Act Aug. 9, 1955, substituted ''April 1, 1956'' for ''July 1, 1955'' wherever appearing.

1954—Subsec. (a)(1). Act Sept. 1, 1954, § 106(e)(1), (3), inserted ''and for purposes of section 416(i)(3) of this title'' after ''World War II veteran'' in first sentence, and inserted sentence at end.

Subsec. (e)(1). Act Sept. 1, 1954, § 106(e)(2), (3), inserted ''and for purposes of section 416(i)(3) of this title'' after ''veteran (as defined in paragraph (4) of this subsection)'' and inserted sentence at end.

1953—Subsec. (e). Act Aug. 14, 1953, substituted ''July 1, 1955'' for ''January 1, 1954'' wherever appearing.

1952—Act July 18, 1952, § 5(a), struck out reference to World War II veterans in section catchline.

Subsec. (a)(1). Act July 5, 1952, § 5(d)(1), inserted provision following cl. (B) that cl. (B) not apply in the case of any monthly benefits or lump-sum death payments under this subchapter.

Subsec. (e). Act July 18, 1952, § 5(a), added subsec. (e).

CHANGE OF NAME

Coast and Geodetic Survey consolidated with Weather Bureau to form a new agency in Department of Commerce to be known as Environmental Science Services Administration, and commissioned officers of Survey transferred to ESSA, by Reorg. Plan No. 2 of 1965, eff. July 13, 1965, 30 F.R. 8819, 79 Stat. 1318, set out in the Appendix to Title 5, Government Organization and Em-

ployees. Reorg. Plan No. 4 of 1970, eff. Oct. 3, 1970, 35 F.R. 15627, 84 Stat. 2090, abolished Environmental Science Services Administration, established National Oceanic and Atmospheric Administration, and redesignated Commissioned Officer Corps of ESSA as Commissioned Officer Corps of NOAA. For further details, see Transfer of Functions note set out under section 851 of Title 33, Navigation and Navigable Waters.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 308 of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2201(c)(7) of Pub. L. 97–35 and by section 2(g) of Pub. L. 97–123 applicable with respect to benefits for months after December 1981 with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective with respect to monthly benefits and lump-sum death payments for deaths occurring after December 1978, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment by Pub. L. 85–857 effective Jan. 1, 1959, see section 2 of Pub. L. 85–857, set out as an Effective Date note preceding Part I of Title 38, Veterans' Benefits.

Section 314(c)(1) of Pub. L. 85–840 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to (A) monthly benefits under sections 202 and 223 of the Social Security Act [sections 402 and 423 of this title] for months after the month in which this Act is enacted [August 1958], (B) lump-sum death payments under such section 202 in the case of deaths occurring after the month in which this Act is enacted, and (C) periods of disability under section 216(i) [section 416(i) of this title] in the case of applications for a disability determination filed after the month in which this Act is enacted.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 404(d) of act Aug. 1, 1956, provided that: ''Except for the last sentence of section 217(e)(1) of the Social Security Act [subsec. (e)(1) of this section] as amended by subsection (a) of this section, the amendments made by such subsection (a) [amending this section] shall be effective as though they had been enacted on March 31, 1956. Such last sentence of section 217(e)(1) of the Social Security Act shall become effective January 1, 1957.''

Amendment by section 406 of act Aug. 1, 1956, effective Jan. 1, 1957, see section 603(a) of act Aug. 1, 1956.

EFFECTIVE DATE OF 1954 AMENDMENT

Amendment by section 106(e) of act Sept. 1, 1954, applicable with respect to monthly benefits under subchapter II of this chapter for months after June 1955, and with respect to lump-sum death payments under such subchapter in the case of deaths occurring after June 1955; but that no recomputation of benefits by reason of such amendments shall be regarded as a recomputation for purposes of section 415(f) of this title, see section 106(h) of act Sept. 1, 1954, set out as a note under section 413 of this title.

EFFECTIVE DATE OF 1952 AMENDMENT

Section 5(c) of act of July 18, 1952, as amended by Pub. L. 86–778, title III, § 304(d), Sept. 13, 1960, 74 Stat. 966, provided that:

''(1) The amendments made by subsections (a) and (b) [amending this section and section 405 of this title] shall apply with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months after August 1952, and with respect to lump-sum death payments in the case of deaths occurring after August 1952, except that, in the case of any individual who is entitled, on the basis of the wages and self-employment income of any individual to whom section 217(e) of the Social Security Act [subsec. (e) of this section] applies, to monthly benefits under such section 202 for August 1952, such amendments shall apply (A) only if an application for recomputation by reason of such amendments is filed by such individual, or any other individual, entitled to benefits under such section 202 on the basis of such wages and self-employment income, and (B) only with respect to such benefits for months after whichever of the following is the later: August 1952 of the seventh month before the month in which such application was filed. Recomputations of benefits as required to carry out the provisions of this paragraph shall be made notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title]; but no such recomputation shall be regarded as a recomputation for purposes of section 215(f) of such act. Notwithstanding the preceding provisions of this paragraph, the primary insurance amount of an individual shall not be recomputed under such provisions unless such individual files the application referred to in clause (A) of the first sentence of this paragraph prior to January 1961 or, if he dies without filing such application, his death occurred prior to January 1961.

''(2) In the case of any veteran (as defined in section 217(e)(4) of the Social Security Act [subsec. (e)(4) of this section]) who died prior to September 1952, the requirement in subsections (f) and (h) of section 202 of the Social Security Act that proof of support be filed within two years of the date of such death shall not apply if such proof is filed prior to September 1954.''

Section 5(d)(2) of act July 18, 1952, provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall apply only in the case of applications for benefits under section 202 of the Social Security Act [section 402 of this title] filed after August 1952.''

EFFECTIVE DATE

Section 105 of act Aug. 28, 1950, provided that this section is effective Sept. 1, 1950.

TRANSFER OF FUNCTIONS

Coast Guard transferred to Department of Transportation, and functions, powers, and duties relating to Coast Guard, of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89–670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938. Section 6(b)(2) of Pub. L. 89–670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

RECOMPUTATION OF PRIMARY INSURANCE AMOUNT OF CERTAIN INDIVIDUALS

Section 314(c)(2) of Pub. L. 85–840 provided that: ''In the case of any individual—

''(A) who is a World War II veteran (as defined in section 217(d)(2) of the Social Security Act [subsec. (d)(2) of this section]) wholly or partly by reason of service described in section 217(h)(1)(A) of such Act; and

''(B) who (i) became entitled to old-age insurance benefits under section 202(a) of the Social Security Act [section 402(a) of this title] or to disability insurance benefits under section 223 of such Act [section 423 of this title] prior to the first day of the month following the month in which this Act is enacted [August 1958], or (i) died prior to such first day, and whose widow, former wife divorced, widower, child, or parent is entitled for the month in which this Act is enacted, on the basis of his wages and self-employment income, to a monthly benefit under section 202 of such Act; and

''(C) any part of whose service described in section 217(h)(1)(A) of the Social Security Act was not included in the computation of his primary insurance amount under section 215 of such Act [section 415 of this title] but would have been included in such computation if the amendment made by subsection (a) of this section had been effective prior to the date of such computation,

the Secretary of Health, Education, and Welfare [now Health and Human Services] shall, notwithstanding the provisions of section 215(f)(1) of the Social Security Act, recompute the primary insurance amount of such individual upon the filing of an application, after the month in which this Act is enacted [August 1958], by him or (if he has died without filing such an application) by any person entitled to monthly benefits under section 202 of the Social Security Act on the basis of his wages and self-employment income. Such recomputation shall be made only in the manner provided in title II of the Social Security Act [this subchapter] as in effect at the time of the last previous computation or recomputation of such individual's primary insurance amount, and as though application therefor was filed in the month in which application for such last previous computation or recomputation was filed. No recomputation made under this subsection shall be regarded as a recomputation under section 215(f) of the Social Security Act. Any such recomputation shall be effective for and after the twelfth month before the month in which the application is filed, but in no case for the month in which this Act is enacted or any prior month.''

RECOMPUTATION OF SOCIAL SECURITY BENEFITS OF WIDOWS AND CHILDREN WHO WAIVE RIGHT TO ANNUITY UNDER CIVIL SERVICE RETIREMENT ACT

Section 404(c) of act Aug. 1, 1956, provided that: ''In the case of any deceased individual—

''(1) who is a World War II veteran (as defined in section 217(d)(2) of the Social Security Act [subsec. (d)(2) of this section]) or a veteran (as defined in section 217(e)(4) of such Act); and

''(2) whose widow or child is entitled under the Civil Service Retirement Act of May 29, 1930, as amended [see section 8301 et seq. of Title 5, Government Organization and Employees], to an annuity in the computation of which his active military or naval service after September 15, 1940, and before January 1, 1957, was included; and

''(3) whose widow or child is entitled under section 202 of the Social Security Act [section 402 of this title], on the basis of his wages and self-employment income, to a monthly benefit in the computation of which such active military or naval service was excluded (under clause (B) of subsection (a)(1) or (e)(1) of section 217 of such Act) solely by reason of the annuity described in the preceding paragraph; and

''(4) whose widow or child is entitled by reason of section 217(f) of the Social Security Act to have such active military or naval service included in the computation of such monthly benefit,

the Secretary of Health, Education, and Welfare [now Health and Human Services] shall, notwithstanding the provisions of section 215(f)(1) of the Social Security Act [section 415(f)(1) of this title], recompute the primary insurance amount of such individual upon the filing of an application, after December 1956, by or on behalf of such widow or child. Such recomputation shall be made only in the manner provided in title II of the Social Security Act [this subchapter] as in effect at the time of such individual's death, and as though application therefor was filed in the month in which he died. No recomputation made under this subsection shall be regarded as a recomputation under section 215(f) of the Social Security Act. Any such recomputation shall be effective for and after the twelfth month before the month in which the application is filed, but in no case for any month before the first month with respect to which such widow or child is entitled by reason of section 217(f) of the Social Security Act to have such active military or naval service included in the computation of such monthly benefits. The terms used in this subsection shall have the same meaning as when used in title II of the Social Security Act [this subchapter].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 213, 405, 415 of this title; title 33 section 857; title 45 section 231b.

§ 418. Voluntary agreements for coverage of State and local employees

(a) Purpose of agreement

(1) The Commissioner of Social Security shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this subchapter to services performed by individuals as employees of such State or any political subdivision thereof. Each such agreement shall contain such provisions, not inconsistent with the provisions of this section, as the State may request.

(2) Notwithstanding section 410(a) of this title, for the purposes of this subchapter the term ''employment'' includes any service included under an agreement entered into under this section.

(b) Definitions

For the purposes of this section—

(1) The term ''State'' does not include the District of Columbia, Guam, or American Samoa.

(2) The term ''political subdivision'' includes an instrumentality of (A) a State, (B) one or more political subdivisions of a State, or (C) a State and one or more of its political subdivisions.

(3) The term ''employee'' includes an officer of a State or political subdivision.

(4) The term ''retirement system'' means a pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof.

(5) The term ''coverage group'' means (A) employees of the State other than those engaged in performing service in connection with a proprietary function; (B) employees of a political subdivision of a State other than those engaged in performing service in connection with a proprietary function; (C) employees of a State engaged in performing service in connection with a single proprietary function;

or (D) employees of a political subdivision of a State engaged in performing service in connection with a single proprietary function. If under the preceding sentence an employee would be included in more than one coverage group by reason of the fact that he performs service in connection with two or more proprietary functions or in connection with both a proprietary function and a nonproprietary function, he shall be included in only one such coverage group. The determination of the coverage group in which such employee shall be included shall be made in such manner as may be specified in the agreement. Persons employed under section 709 of title 32, who elected under section 6 of the National Guard Technicians Act of 1968 to remain covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall, for the purposes of this chapter, be employees of the State or the Commonwealth of Puerto Rico and (notwithstanding the preceding provisions of this paragraph), shall be deemed to be a separate coverage group. For purposes of this section, individuals employed pursuant to an agreement, entered into pursuant to section 1624 of title 7 or section 499n of title 7, between a State and the United States Department of Agriculture to perform services as inspectors of agricultural products may be deemed, at the option of the State, to be employees of the State and (notwithstanding the preceding provisions of this paragraph) shall be deemed to be a separate coverage group.

(c) Services covered

(1) An agreement under this section shall be applicable to any one or more coverage groups designated by the State.

(2) In the case of each coverage group to which the agreement applies, the agreement must include all services (other than services excluded by or pursuant to subsection (d) or paragraph (3), (5), or (6) of this subsection) performed by individuals as members of such group.

(3) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any one or more of the following:

(A) All services in any class or classes of (i) elective positions, (ii) part-time positions, or (iii) positions the compensation for which is on a fee basis;

(B) All services performed by individuals as members of a coverage group in positions covered by a retirement system on the date such agreement is made applicable to such coverage group, but only in the case of individuals who, on such date (or, if later, the date on which they first occupy such positions), are not eligible to become members of such system and whose services in such positions have not already been included under such agreement pursuant to subsection (d)(3) of this section.

(4) The Commissioner of Social Security shall, at the request of any State, modify the agreement with such State so as to (A) include any coverage group to which the agreement did not previously apply, or (B) include, in the case of any coverage group to which the agreement applies, services previously excluded from the agreement; but the agreement as so modified may not be inconsistent with the provisions of this section applicable in the case of an original agreement with a State. A modification of an agreement pursuant to clause (B) of the preceding sentence may apply to individuals to whom paragraph (3)(B) of this subsection is applicable (whether or not the previous exclusion of the service of such individuals was pursuant to such paragraph), but only if such individuals are, on the effective date specified in such modification, ineligible to be members of any retirement system or if the modification with respect to such individuals is pursuant to subsection (d)(3) of this section.

(5) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any agricultural labor, or service performed by a student, designated by the State. This paragraph shall apply only with respect to service which is excluded from employment by any provision of section 410(a) of this title other than paragraph (7) of such section and service the remuneration for which is excluded from wages by subparagraph (B) of section 409(a)(7) of this title.

(6) Such agreement shall exclude—

(A) service performed by an individual who is employed to relieve him from unemployment,

(B) service performed in a hospital, home, or other institution by a patient or inmate thereof,

(C) covered transportation service (as determined under section 410(k) of this title),

(D) service (other than agricultural labor or service performed by a student) which is excluded from employment by any provision of section 410(a) of this title other than paragraph (7) of such section,

(E) service performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency, and

(F) service described in section 410(a)(7)(F) of this title which is included as ''employment'' under section 410(a) of this title.

(7) No agreement may be made applicable (either in the original agreement or by any modification thereof) to service performed by any individual to whom paragraph (3)(B) of this subsection is applicable unless such agreement provides (in the case of each coverage group involved) either that the service of any individual to whom such paragraph is applicable and who is a member of such coverage group shall continue to be covered by such agreement in case he thereafter becomes eligible to be a member of a retirement system, or that such service shall cease to be so covered when he becomes eligible to be a member of such a system (but only if the agreement is not already applicable to such system pursuant to subsection (d)(3) of this section), whichever may be desired by the State.

(8)(A) Notwithstanding any other provision of this section, the agreement with any State entered into under this section may at the option of the State be modified at any time to exclude service performed by election officials or election workers if the remuneration paid in a calendar year for such service is less than $1,000 with respect to service performed during any

calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under subparagraph (B) for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year. Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed in and after the calendar year in which the modification is mailed or delivered by other means to the Commissioner of Social Security.

(B) For each year after 1999, the Commissioner of Social Security shall adjust the amount referred to in subparagraph (A) at the same time and in the same manner as is provided under section 415(a)(1)(B)(ii) of this title with respect to the amounts referred to in section 415(a)(1)(B)(i) of this title, except that—

(i) for purposes of this subparagraph, 1997 shall be substituted for the calendar year referred to in section 415(a)(1)(B)(ii)(II) of this title, and

(ii) such amount as so adjusted, if not a multiple of $100, shall be rounded to the next higher multiple of $100 where such amount is a multiple of $50 and to the nearest multiple of $100 in any other case.

The Commissioner of Social Security shall determine and publish in the Federal Register each adjusted amount determined under this subparagraph not later than November 1 preceding the year for which the adjustment is made.

(d) Positions covered by retirement systems

(1) No agreement with any State may be made applicable (either in the original agreement or by any modification thereof) to any service performed by employees as members of any coverage group in positions covered by a retirement system either (A) on the date such agreement is made applicable to such coverage group, or (B) on September 1, 1954 (except in the case of positions which are, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to September 1, 1954, no longer covered by a retirement system on the date referred to in clause (A), and except in the case of positions excluded by paragraph (5)(A) of this subsection). The preceding sentence shall not be applicable to any service performed by an employee as a member of any coverage group in a position (other than a position excluded by paragraph (5)(A) of this subsection) covered by a retirement system on the date an agreement is made applicable to such coverage group if, on such date (or, if later, the date on which such individual first occupies such position), such individual is ineligible to be a member of such system.

(2) It is declared to be the policy of the Congress in enacting the succeeding paragraphs of this subsection that the protection afforded employees in positions covered by a retirement system on the date an agreement under this section is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

(3) Notwithstanding paragraph (1) of this subsection, an agreement with a State may be made applicable (either in the original agreement or by any modification thereof) to service performed by employees in positions covered by a retirement system (including positions specified in paragraph (4) of this subsection but not including positions excluded by or pursuant to paragraph (5)), if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Commissioner of Social Security that the following conditions have been met:

(A) A referendum by secret written ballot was held on the question of whether service in positions covered by such retirement system should be excluded from or included under an agreement under this section;

(B) An opportunity to vote in such referendum was given (and was limited) to eligible employees;

(C) Not less than ninety days' notice of such referendum was given to all such employees;

(D) Such referendum was conducted under the supervision of the governor or an agency or individual designated by him; and

(E) A majority of the eligible employees voted in favor of including service in such positions under an agreement under this section.

An employee shall be deemed an ''eligible employee'' for purposes of any referendum with respect to any retirement system if, at the time such referendum was held, he was in a position covered by such retirement system and was a member of such system, and if he was in such a position at the time notice of such referendum was given as required by clause (C) of the preceding sentence; except that he shall not be deemed an ''eligible employee'' if, at the time the referendum was held, he was in a position to which the State agreement already applied, or if he was in a position excluded by or pursuant to paragraph (5). No referendum with respect to a retirement system shall be valid for purposes of this paragraph unless held within the two-year period which ends on the date of execution of the agreement or modification which extends the insurance system established by this subchapter to such retirement system, nor shall any referendum with respect to a retirement system be valid for purposes of this paragraph if held less than one year after the last previous referendum held with respect to such retirement system.

(4) For the purposes of subsection (c) of this section, the following employees shall be deemed to be a separate coverage group—

(A) all employees in positions which were covered by the same retirement system on the date the agreement was made applicable to such system (other than employees to whose services the agreement already applied on such date);

(B) all employees in positions which became covered by such system at any time after such date; and

(C) all employees in positions which were covered by such system at any time before such date and to whose services the insurance system established by this subchapter has not been extended before such date because the po-

sitions were covered by such retirement system (including employees to whose services the agreement was not applicable on such date because such services were excluded pursuant to subsection (c)(3)(B) of this section).

(5)(A) Nothing in paragraph (3) of this subsection shall authorize the extension of the insurance system established by this subchapter to service in any policeman's or fireman's position.

(B) At the request of the State, any class or classes of positions covered by a retirement system which may be excluded from the agreement pursuant to paragraph (3) or (5) of subsection (c) of this section, and to which the agreement does not already apply, may be excluded from the agreement at the time it is made applicable to such retirement system; except that, notwithstanding the provisions of paragraph (3)(B) of such subsection, such exclusion may not include any services to which such paragraph (3)(B) is applicable. In the case of any such exclusion, each such class so excluded shall, for purposes of this subsection, constitute a separate retirement system in case of any modification of the agreement thereafter agreed to.

(6)(A) If a retirement system covers positions of employees of the State and positions of employees of one or more political subdivisions of the State, or covers positions of employees of two or more political subdivisions of the State, then, for purposes of the preceding paragraphs of this subsection, there shall, if the State so desires, be deemed to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned. Where a retirement system covering positions of employees of a State and positions of employees of one or more political subdivisions of the State, or covering positions of employees of two or more political subdivisions of the State, is not divided into separate retirement systems pursuant to the preceding sentence or pursuant to subparagraph (C), then the State may, for purposes of subsection (e) of this section only, deem the system to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned.

(B) If a retirement system covers positions of employees of one or more institutions of higher learning, then, for purposes of such preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of each such institution of higher learning. For the purposes of this subparagraph, the term ''institutions of higher learning'' includes junior colleges and teachers colleges. If a retirement system covers positions of employees of a hospital which is an integral part of a political subdivision, then, for purposes of the preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of such hospital.

(C) For the purposes of this subsection, any retirement system established by the State of Alaska, California, Connecticut, Florida, Georgia, Illinois, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin, or Hawaii, or any political subdivision of any such State, which, on, before, or after August 1, 1956, is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who do not desire such coverage, shall, if the State so desires and if it is provided that there shall be included in such division or part composed of members desiring such coverage the positions of individuals who become members of such system after such coverage is extended, be deemed to be a separate retirement system with respect to each such division or part. If, in the case of a separate retirement system which is deemed to exist by reason of subparagraph (A) and which has been divided into two divisions or parts pursuant to the first sentence of this subparagraph, individuals become members of such system by reason of action taken by a political subdivision after coverage under an agreement under this section has been extended to the division or part thereof composed of positions of individuals who desire such coverage, the positions of such individuals who become members of such retirement system by reason of the action so taken shall be included in the division or part of such system composed of positions of members who do not desire such coverage if (i) such individuals, on the day before becoming such members, were in the division or part of another separate retirement system (deemed to exist by reason of subparagraph (A)) composed of positions of members of such system who do not desire coverage under an agreement under this section, and (ii) all of the positions in the separate retirement system of which such individuals so become members and all of the positions in the separate retirement system referred to in clause (i) would have been covered by a single retirement system if the State had not taken action to provide for separate retirement systems under this paragraph.

(D)(i) The position of any individual which is covered by any retirement system to which subparagraph (C) is applicable shall, if such individual is ineligible to become a member of such system on August 1, 1956, or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this subchapter.

(ii) Notwithstanding clause (i), the State may, pursuant to subsection (c)(4)(B) of this section and subject to the conditions of continuation or termination of coverage provided for in subsection (c)(7) of this section, modify its agreement under this section to include services performed by all individuals described in clause (i)

other than those individuals to whose services the agreement already applies. Such individuals shall be deemed (on and after the effective date of the modification) to be in positions covered by the separate retirement system consisting of the positions of members of the division or part who desire coverage under the insurance system established under this subchapter.

(E) An individual who is in a position covered by a retirement system to which subparagraph (C) is applicable and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection (other than paragraph (8) of this subsection), be regarded as a member of such system; except that, in the case of any retirement system a division or part of which is covered under the agreement (either in the original agreement or by a modification thereof), which coverage is agreed to prior to 1960, the preceding provisions of this subparagraph shall apply only if the State so requests and any such individual referred to in such preceding provisions shall, if the State so requests, be treated, after division of the retirement system pursuant to such subparagraph (C), the same as individuals in positions referred to in subparagraph (F).

(F) In the case of any retirement system divided pursuant to subparagraph (C), the position of any member of the division or part composed of positions of members who do not desire coverage may be transferred to the separate retirement system composed of positions of members who desire such coverage if it is so provided in a modification of such agreement which is mailed, or delivered by other means, to the Commissioner of Social Security prior to 1970 or, if later, the expiration of two years after the date on which such agreement, or the modification thereof making the agreement applicable to such separate retirement system, as the case may be, is agreed to, but only if, prior to such modification or such later modification, as the case may be, the individual occupying such position files with the State a written request for such transfer. Notwithstanding subsection (e)(1) of this section, any such modification or later modification, providing for the transfer of additional positions within a retirement system previously divided pursuant to subparagraph (C) to the separate retirement system composed of positions of members who desire coverage, shall be effective with respect to services performed after the same effective date as that which was specified in the case of such previous division.

(G) For the purposes of this subsection, in the case of any retirement system of the State of Florida, Georgia, Minnesota, North Dakota, Pennsylvania, Washington, or Hawaii which covers positions of employees of such State who are compensated in whole or in part from grants made to such State under subchapter III of this chapter, there shall be deemed to be, if such State so desires, a separate retirement system with respect to any of the following:

(i) the positions of such employees;

(ii) the positions of all employees of such State covered by such retirement system who are employed in the department of such State in which the employees referred to in clause (i) are employed; or

(iii) employees of such State covered by such retirement system who are employed in such department of such State in positions others than those referred to in clause (i).

(7) The certification by the governor (or an official of the State designated by him for the purpose) required under paragraph (3) of this subsection shall be deemed to have been made, in the case of a division or part (created under subparagraph (C) of paragraph (6) of this subsection or the corresponding provision of prior law) consisting of the positions of members of a retirement system who desire coverage under the agreement under this section, if the governor (or the official so designated) certifies to the Commissioner of Social Security that—

(A) an opportunity to vote by written ballot on the question of whether they wish to be covered under an agreement under this section was given to all individuals who were members of such system at the time the vote was held;

(B) not less than ninety days' notice of such vote was given to all individuals who were members of such system on the date the notice was issued;

(C) the vote was conducted under the supervision of the governor or an agency or individual designated by him; and

(D) such system was divided into two parts or divisions in accordance with the provisions of subparagraphs (C) and (D) of paragraph (6) of this subsection or the corresponding provision of prior law.

For purposes of this paragraph, an individual in a position to which the State agreement already applied or in a position excluded by or pursuant to paragraph (5) of this subsection shall not be considered a member of the retirement system.

(8)(A) Notwithstanding paragraph (1) of this subsection, if under the provisions of this subsection an agreement is, after December 31, 1958, made applicable to service performed in positions covered by a retirement system, service performed by an individual in a position covered by such a system may not be excluded from the agreement because such position is also covered under another retirement system.

(B) Subparagraph (A) shall not apply to service performed by an individual in a position covered under a retirement system if such individual, on the day the agreement is made applicable to service performed in positions covered by such retirement system, is not a member of such system and is a member of another system.

(C) If an agreement is made applicable, prior to 1959, to service in positions covered by any retirement system, the preceding provisions of this paragraph shall be applicable in the case of such system if the agreement is modified to so provide.

(D) Except in the case of State agreements modified as provided in subsection (*l*) of this section and agreements with interstate instrumentalities, nothing in this paragraph shall authorize the application of an agreement to service in any policeman's or fireman's position.

(e) Effective date of agreement; retroactive coverage

(1) Any agreement or modification of an agreement under this section shall be effective with

respect to services performed after an effective date specified in such agreement or modification; except that such date may not be earlier than the last day of the sixth calendar year preceding the year in which such agreement or modification, as the case may be, is mailed or delivered by other means to the Commissioner of Social Security.

(2) In the case of service performed by members of any coverage group—

(A) to which an agreement under this section is made applicable, and

(B) with respect to which the agreement, or modification thereof making the agreement so applicable, specifies an effective date earlier than the date of execution of such agreement and such modification, respectively,

the agreement shall, if so requested by the State, be applicable to such services (to the extent the agreement was not already applicable) performed before such date of execution and after such effective date by any individual as a member of such coverage group if he is such a member on a date, specified by the State, which is earlier than such date of execution, except that in no case may the date so specified be earlier than the date such agreement or such modification, as the case may be, is mailed, or delivered by other means, to the Commissioner of Social Security.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, in the case of services performed by individuals as members of any coverage group to which an agreement under this section is made applicable, and with respect to which there were timely paid in good faith to the Secretary of the Treasury amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 had such services constituted employment for purposes of chapter 21 of such Code at the time they were performed, and with respect to which refunds were not obtained, such individuals may, if so requested by the State, be deemed to be members of such coverage group on the date designated pursuant to paragraph (2).

(f) Duration of agreement

No agreement under this section may be terminated, either in its entirety or with respect to any coverage group, on or after April 20, 1983.

(g) Instrumentalities of two or more States

(1) The Commissioner of Social Security may, at the request of any instrumentality of two or more States, enter into an agreement with such instrumentality for the purpose of extending the insurance system established by this subchapter to services performed by individuals as employees of such instrumentality. Such agreement, to the extent practicable, shall be governed by the provisions of this section applicable in the case of an agreement with a State.

(2) In the case of any instrumentality of two or more States, if—

(A) employees of such instrumentality are in positions covered by a retirement system of such instrumentality or of any of such States or any of the political subdivisions thereof, and

(B) such retirement system is (on, before, or after August 30, 1957) divided into two divisions or parts, one of which is composed of positions of members of such system who are employees of such instrumentality and who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who are employees of such instrumentality and who do not desire such coverage, and

(C) it is provided that there shall be included in such division or part composed of the positions of members desiring such coverage the positions of employees of such instrumentality who become members of such system after such coverage is extended,

then such retirement system shall, if such instrumentality so desires, be deemed to be a separate retirement system with respect to each such division or part. An individual who is in a position covered by a retirement system divided pursuant to the preceding sentence and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection, be regarded as a member of such system. Coverage under the agreement of any such individual shall be provided under the same conditions, to the extent practicable, as are applicable in the case of the States to which the provisions of subsection (d)(6)(C) of this section apply. The position of any employee of any such instrumentality which is covered by any retirement system to which the first sentence of this paragraph is applicable shall, if such individual is ineligible to become a member of such system on August 30, 1957, or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this subchapter. Services in positions covered by a separate retirement system created pursuant to this subsection (and consisting of the positions of members who desire coverage under an agreement under this section) shall be covered under such agreement on compliance, to the extent practicable, with the same conditions as are applicable to coverage under an agreement under this section of services in positions covered by a separate retirement system created pursuant to subparagraph (C) of subsection (d)(6) of this section or the corresponding provision of prior law (and consisting of the positions of members who desire coverage under such agreement).

(3) Any agreement with any instrumentality of two or more States entered into pursuant to this chapter may, notwithstanding the provisions of subsection (d)(5)(A) of this section and the references thereto in subsections (d)(1) and (d)(3) of this section, apply to service performed by employees of such instrumentality in any policeman's or fireman's position covered by a retirement system, but only upon compliance, to the extent practicable, with the requirements of subsection (d)(3) of this section. For the purpose of the preceding sentence, a retirement system which covers positions of policemen or firemen or both, and other positions shall, if the instrumentality concerned so desires, be deemed to be a separate retirement system with respect to

the positions of such policemen or firemen, or both, as the case may be.

(h) Delegation of functions

The Commissioner of Social Security is authorized, pursuant to agreement with the head of any Federal agency, to delegate any of the Commissioner's functions under this section to any officer or employee of such agency and otherwise to utilize the services and facilities of such agency in carrying out such functions, and payment therefor shall be in advance or by way of reimbursement, as may be provided in such agreement.

(i) Wisconsin Retirement Fund

(1) Notwithstanding paragraph (1) of subsection (d) of this section, the agreement with the State of Wisconsin may, subject to the provisions of this subsection, be modified so as to apply to service performed by employees in positions covered by the Wisconsin retirement fund or any successor system.

(2) All employees in positions covered by the Wisconsin retirement fund at any time on or after January 1, 1951, shall, for the purposes of subsection (c) only, be deemed to be a separate coverage group; except that there shall be excluded from such separate coverage group all employees in positions to which the agreement applies without regard to this subsection.

(3) The modification pursuant to this subsection shall exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) service performed by any individual during any period before he is included under the Wisconsin retirement fund.

(4) The modification pursuant to this subsection shall, if the State of Wisconsin requests it, exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) all service performed in policemen's positions, all service performed in firemen's positions, or both.

(j) Certain positions no longer covered by retirement systems

Notwithstanding subsection (d) of this section, an agreement with any State entered into under this section prior to September 1, 1954 may, prior to January 1, 1958, be modified pursuant to subsection (c)(4) of this section so as to apply to services performed by employees, as members of any coverage group to which such agreement already applies (and to which such agreement applied on September 1, 1954), in positions (1) to which such agreement does not already apply, (2) which were covered by a retirement system on the date such agreement was made applicable to such coverage group, and (3) which, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to September 1, 1954, are no longer covered by a retirement system on the date such agreement is made applicable to such services.

(k) Certain employees of State of Utah

Notwithstanding the provisions of subsection (d) of this section, the agreement with the State of Utah entered into pursuant to this section may be modified pursuant to subsection (c)(4) of this section so as to apply to services performed for any of the following, the employees performing services for each of which shall constitute a separate coverage group: Weber Junior College, Carbon Junior College, Dixie Junior College, Central Utah Vocational School, Salt Lake Area Vocational School, Center for the Adult Blind, Union High School (Roosevelt, Utah), Utah High School Activities Association, State Industrial School, State Training School, State Board of Education, and Utah School Employees Retirement Board. Any modification agreed to prior to January 1, 1955, may be made effective with respect to services performed by employees as members of any of such coverage groups after an effective date specified therein, except that in no case may any such date be earlier than December 31, 1950. Coverage provided for in this subsection shall not be affected by a subsequent change in the name of a group.

(*l*) Policemen and firemen in certain States

Any agreement with a State entered into pursuant to this section may, notwithstanding the provisions of subsection (d)(5)(A) of this section and the references thereto in subsections (d)(1) and (d)(3) of this section, be modified pursuant to subsection (c)(4) of this section to apply to service performed by employees of such State or any political subdivision thereof in any policeman's or fireman's position covered by a retirement system in effect on or after August 1, 1956, but only upon compliance with the requirements of subsection (d)(3) of this section. For the purposes of the preceding sentence, a retirement system which covers positions of policemen or firemen, or both, and other positions shall, if the State concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(m) Positions compensated solely on a fee basis

(1) Notwithstanding any other provision in this section, an agreement entered into under this section may be made applicable to service performed after 1967 in any class or classes of positions compensated solely on a fee basis to which such agreement did not apply prior to 1968 only if the State specifically requests that its agreement be made applicable to such service in such class or classes of positions.

(2) Notwithstanding any other provision in this section, an agreement entered into under this section may be modified, at the option of the State, at any time after 1967, so as to exclude services performed in any class or classes of positions compensation for which is solely on a fee basis.

(3) Any modification made under this subsection shall be effective with respect to services performed after the last day of the calendar year in which the modification is mailed or delivered by other means to the Commissioner of Social Security.

(4) If any class or classes of positions have been excluded from coverage under the State agreement by a modification agreed to under this subsection, the Commissioner of Social Security and the State may not thereafter modify such agreement so as to again make the agreement applicable with respect to such class or classes of positions.

(n) Optional medicare coverage of current employees

(1) The Commissioner of Social Security shall, at the request of any State, enter into or modify an agreement with such State under this section for the purpose of extending the provisions of subchapter XVIII of this chapter, and sections 426 and 426–1 of this title, to services performed by employees of such State or any political subdivision thereof who are described in paragraph (2).

(2) This subsection shall apply only with respect to employees—

(A) whose services are not treated as employment as that term applies under section 410(p) of this title by reason of paragraph (3) of such section; and

(B) who are not otherwise covered under the State's agreement under this section.

(3) For purposes of sections 426 and 426–1 of this title, services covered under an agreement pursuant to this subsection shall be treated as ''medicare qualified government employment''.

(4) Except as otherwise provided in this subsection, the provisions of this section shall apply with respect to services covered under the agreement pursuant to this subsection.

(Aug. 14, 1935, ch. 531, title II, §218, as added Aug. 28, 1950, ch. 809, title I, §106, 64 Stat. 514; amended June 28, 1952, ch. 483, 66 Stat. 285; Aug. 15, 1953, ch. 504, §1, 67 Stat. 587; Sept. 1, 1954, ch. 1206, title I, §101(a)(5), (6), (h)(1)–(8), (i)(1), (2), (j), 68 Stat. 1055–1059; Aug. 1, 1956, ch. 836, title I, §§103(f), (g), 104(e), (g), 70 Stat. 823, 825, 826; Aug. 30, 1957, Pub. L. 85–226, 71 Stat. 511; Aug. 30, 1957, Pub. L. 85–227, §1, 71 Stat. 512; Aug. 30, 1957, Pub. L. 85–229, 71 Stat. 513; Aug. 27, 1958, Pub. L. 85–787, §§1, 2, 72 Stat. 939; Aug. 28, 1958, Pub. L. 85–798, §§2, 3, 72 Stat. 964, 965; Aug. 28, 1958, Pub. L. 85–840, title III, §315(a)–(c)(1), 72 Stat. 1038–1040; Sept. 16, 1959, Pub. L. 86–284, §2, 73 Stat. 566; July 12, 1960, Pub. L. 86–624, §30(e), (f), 74 Stat. 420; Sept. 13, 1960, Pub. L. 86–778, title I, §§102(a), (b)(1), (c)(1), (2), (d), (e), (f)(1), (g), (*l*), 103(i), (j)(2)(G), 74 Stat. 928–930, 934, 936–938; June 30, 1961, Pub. L. 87–64, title I, §§106, 107, 75 Stat. 139, 140; Oct. 24, 1962, Pub. L. 87–878, §2, 76 Stat. 1202; July 2, 1964, Pub. L. 88–350, §2, 78 Stat. 240; July 23, 1964, Pub. L. 88–382, 78 Stat. 335; July 30, 1965, Pub. L. 89–97, title I, §108(b), title III, §§314, 315, 79 Stat. 338, 385; Jan. 2, 1968, Pub. L. 90–248, title I, §§116(a)–(b)(2), (c), (d), 117, 119(a), 120(a), 121, 122(d), 81 Stat. 840–844; Aug. 13, 1968, Pub. L. 90–486, §7, 82 Stat. 759; Oct. 30, 1972, Pub. L. 92–603, title I, §126, 86 Stat. 1358; Dec. 31, 1974, Priv. L. 93–107, §2, 88 Stat. 2386; Dec. 20, 1977, Pub. L. 95–216, title III, §§319–321, 353(b), 91 Stat. 1541, 1553; June 9, 1980, Pub. L. 96–265, title V, §503(a), 94 Stat. 470; Apr. 20, 1983, Pub. L. 98–21, title I, §103(a), title III, §§325(a), 342(a), 97 Stat. 71, 126, 136; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(a)(13), (j)(2)(A)(ii), (3)(A)(iii), 98 Stat. 1164, 1170; Apr. 7, 1986, Pub. L. 99–272, title XII, §12110(a), (b), title XIII, §13205(c), 100 Stat. 287, 317; Oct. 21, 1986, Pub. L. 99–509, title IX, §9002(c)(1), (2)(C)–(E), 100 Stat. 1971, 1972; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1883(a)(8), 100 Stat. 2916; Dec. 22, 1987, Pub. L. 100–203, title IV, §4009(j)(7), title IX, §9023(c), 101 Stat. 1330–59, 1330–296; Dec. 19, 1989, Pub. L. 101–239, title X, §10208(d)(2)(A)(v), 103 Stat. 2481; Nov. 5, 1990, Pub. L. 101–508, title XI, §11332(c), 104 Stat. 1388–470; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), title III, §§303(c), (d), 305(a), (b), 321(a)(18), (c)(6)(I), 108 Stat. 1478, 1519, 1521, 1537, 1538.)

REFERENCES IN TEXT

Section 6 of the National Guard Technicians Act of 1968, referred to in subsec. (b)(5), is section 6 of Pub. L. 90–486, which is set out as a note under section 709 of Title 32, National Guard.

The Internal Revenue Code of 1986, referred to in subsec. (e)(3), is classified to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsecs. (a)(1), (c)(4). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(6)(F). Pub. L. 103–296, §321(a)(18), realigned margin.

Subsec. (c)(8). Pub. L. 103–296, §303(c), (d), substituted ''at any time'' for ''on or after January 1, 1968,'', substituted ''$1,000 with respect to service performed during any calendar year commencing on or after January 1, 1995, ending on or before December 31, 1999, and the adjusted amount determined under subparagraph (B) for any calendar year commencing on or after January 1, 2000, with respect to service performed during such calendar year'' for ''$100'', substituted ''Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed in and after the calendar year in which the modification is mailed or delivered by other means to the Secretary.'' for ''Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed after an effective date, specified in such modification, which shall not be earlier than the last day of the calendar quarter in which the modification is mailed or delivered by other means to the Secretary.'', inserted subpar. (A) designation, and added subpar. (B).

Pub. L. 103–296, §107(a)(4), in par. (8) as amended by Pub. L. 103–296, §303(c), (d), substituted ''Commissioner of Social Security'' for ''Secretary'' in last sentence of subpar. (A) and in introductory and closing provisions of subpar. (B).

Subsec. (d)(3), (6)(F), (7). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(8)(D). Pub. L. 103–296, §305(b), substituted ''State agreements modified as provided in'' for ''agreements with the States named in''.

Subsec. (e)(1), (2). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (e)(3). Pub. L. 103–296, §321(c)(6)(I), substituted ''1986'' for ''1954'' after ''Code of''.

Subsecs. (g)(1), (h). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in subsecs. (g)(1) and (h) and ''the Commissioner's'' for ''his'' in subsec. (h).

Subsec. (*l*). Pub. L. 103–296, §305(a), struck out par. (1) designation before ''Any agreement with'', substituted ''a State entered into pursuant to this section'' for ''the State of Alabama, California, Florida, Georgia, Hawaii, Idaho, Kansas, Maine, Maryland, Mississippi, Montana, New York, North Carolina, North Dakota, Oregon, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, or Washington entered into pursuant to this section prior to August 1, 1956,'', and struck out par. (2) which read as follows: ''A State, not otherwise listed by name in paragraph (1), shall be deemed to be a State listed in such paragraph for the purpose of extending coverage under this subchapter to service in firemen's positions covered by a retirement system, if the governor of the State, or an official of the State designated by him for the purpose, certifies

to the Secretary that the overall benefit protection of the employees in such positions would be improved by reason of the extension of such coverage to such employees. Notwithstanding the provisions of the second sentence of such paragraph (1), such firemen's positions shall be deemed a separate retirement system and no other positions shall be included in such system.''

Subsecs. (m)(3), (4), (n)(1). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

1990—Subsec. (c)(6)(F). Pub. L. 101–508 added subpar. (F).

1989—Subsec. (c)(5). Pub. L. 101–239 substituted ''subparagraph (B) of section 409(a)(7)'' for ''paragraph (2) of section 409(h)''.

1987—Subsec. (n). Pub. L. 100–203, § 9023(c), redesignated subsec. (v) as (n), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which had previously been struck out of subsec. (v) by section 4009(j)(7) of Pub. L. 100–203 prior to its redesignation as subsec. (n) by Pub. L. 100–203, § 9023(c)(1). See below.

Subsec. (v). Pub. L. 100–203, § 9023(c)(1), redesignated subsec. (v) as (n).

Subsec. (v)(3). Pub. L. 100–203, § 4009(j)(7), struck out par. (3) which read as follows: ''Payments by the State required under subsection (e) of this section with respect to employees covered under this subsection shall be limited to amounts equivalent to the sum of the taxes which would be imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1954 if such services for which wages were paid to such employees constituted 'employment' as defined in section 3121 of such Code.''

1986—Subsec. (d)(6). Pub. L. 99–509, § 9002(c)(2)(C), substituted ''subsection (e)'' for ''subsection (f)'' in subpar. (A), and ''subsection (e)(1)'' for ''subsection (f)(1)'' in subpar. (F).

Subsec. (d)(8)(D). Pub. L. 99–509, § 9002(c)(2)(D), substituted ''subsection (*l*)'' for ''subsection (p)''.

Subsec. (e). Pub. L. 99–509, § 9002(c)(1), (2)(E), redesignated subsec. (f) as (e), substituted ''Any agreement'' for ''Except as provided in subsection (e)(2) of this section, any agreement'', and struck out former subsec. (e) which required that agreements under this section include certain provisions relating to payments and reports by States and allowed inclusion of certain provisions relating to employees employed by two or more political subdivisions of a State.

Subsec. (f). Pub. L. 99–509, § 9002(c)(1), redesignated subsec. (g) as (f). Former subsec. (f) redesignated (e).

Subsec. (f)(1). Pub. L. 99–272, § 12110(a), substituted ''is mailed or delivered by other means to the Secretary'' for ''is agreed to by the Secretary and the State''.

Subsec. (g). Pub. L. 99–509, § 9002(c)(1), redesignated subsec. (k) as (g). Former subsec. (g) redesignated (f).

Subsec. (h). Pub. L. 99–509, § 9002(c)(1), redesignated subsec. (*l*) as (h) and struck out former subsec. (h) which required that amounts received by the Secretary of the Treasury under an agreement made under this section be deposited in the Trust Funds and the Federal Hospital Insurance Trust Fund in certain ratio and provided for adjustment of amount due if more or less than correct amount due is paid.

Subsec. (i). Pub. L. 99–509, § 9002(c)(1), redesignated subsec. (m) as (i) and struck out former subsec. (i), relating to regulations of the Secretary.

Subsec. (j). Pub. L. 99–509, § 9002(c)(1), redesignated subsec. (n) as (j) and struck out former subsec. (j) which read as follows: ''In case any State does not make, at the time or times due, the payments provided for under an agreement pursuant to this section, there shall be added, as part of the amounts due, interest at the rate of 6 per centum per annum from the date due until paid, and the Secretary may, in his discretion, deduct such amounts plus interest from any amounts certified by him to the Secretary of the Treasury for payment to such State under any other provision of this chapter. Amounts so deducted shall be deemed to have been paid to the State under such other provision of this chapter. Amounts equal to the amounts deducted under this subsection are hereby appropriated to the Trust Funds in the ratio in which amounts are deposited in such Funds pursuant to subsection (h)(1) of this section.''

Subsec. (k). Pub. L. 99–509, § 9002(c)(1), redesignated subsec. (*o*) as (k). Former subsec. (k) redesignated (g).

Subsec. (*l*). Pub. L. 99–509, § 9002(c)(1), redesignated subsec. (p) as (*l*). Former subsec. (*l*) redesignated (h).

Subsec. (m). Pub. L. 99–509, § 9002(c)(1), redesignated subsec. (u) as (m). Former subsec. (m) redesignated (i).

Pub. L. 99–514 substituted ''Retirement Fund'' for ''retirement fund'' in heading.

Subsec. (n) to (p). Pub. L. 99–509, § 9002(c)(1), redesignated subsecs. (n) to (p) as (j) to (*l*), respectively.

Subsec. (q). Pub. L. 99–509, § 9002(c)(1), struck out subsec. (q) which provided time limitations on liability of States for amounts due under agreements under this section.

Subsec. (r). Pub. L. 99–509, § 9002(c)(1), struck out subsec. (r) which provided time limitations on credits and refunds of overpayments by States under agreements under this section.

Subsec. (s). Pub. L. 99–509, § 9002(c)(1), struck out subsec. (s) which related to review by Secretary.

Subsec. (t). Pub. L. 99–509, § 9002(c)(1), struck out subsec. (t) which provided for judicial review of decisions by Secretary of Health and Human Services under former subsec. (s) of this section.

Subsec. (u). Pub. L. 99–509, § 9002(c)(1), redesignated subsec. (u) as (m).

Subsec. (u)(3). Pub. L. 99–272, § 12110(b), substituted ''is mailed or delivered by other means to the Secretary'' for ''is agreed to by the Secretary and the State''.

Subsec. (v). Pub. L. 99–272, § 13205(c), added subsec. (v).

Subsec. (w). Pub. L. 99–509, § 9002(c)(1), struck out subsec. (w) which read as follows: ''Notwithstanding sections 3125(a), 6205(a)(5), 6413(a)(5), and 6413(c)(2)(G) of the Internal Revenue Code of 1954, any State shall make payments of the taxes imposed with respect to services of employees of such State and of a political subdivision thereof under sections 3101(b) and 3111(b) of such Code, and reports of such services, under the same procedures as apply to payments and reports under subsection (e) of this section, but only if any employees of such State or of such political subdivision thereof respectively are covered under an agreement pursuant to this section.''

Pub. L. 99–272, § 13205(c), added subsec. (w).

1984—Subsecs. (a)(1), (c)(4), (d)(3), (7), (h)(2), (3). Pub. L. 98–369, § 2663(j)(3)(A)(iii), struck out ''of Health, Education, and Welfare'' after ''Secretary'' wherever appearing.

Subsec. (i). Pub. L. 98–369, § 2663(j)(3)(A)(iii), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

Pub. L. 98–369, § 2663(a)(13), substituted ''chapter 21 and subtitle F of the Internal Revenue Code of 1954'' for ''subchapter A or E of chapter 9 of the Internal Revenue Code of 1939''.

Subsecs. (j), (k)(1), (*l*), (p)(2). Pub. L. 98–369, § 2663(j)(3)(A)(iii), struck out ''of Health, Education, and Welfare'' after ''Secretary'' wherever appearing.

Subsecs. (q)(4)(B), (6)(B), (r)(1). Pub. L. 98–369, § 2663(j)(2)(A)(ii), substituted ''Secretary of Health and Human Services'' for ''Secretary of Health, Education, and Welfare'' wherever appearing.

1983—Subsec. (e)(1)(A). Pub. L. 98–21, § 342(a), amended subpar. (A) generally, designating existing provisions as cl. (i), and in (i) as so designated, substituting ''on the last day of each calendar month'' for ''within the thirty-day period immediately following the last day of each calendar month'' and inserting ''with respect to the period which includes the first fifteen days of such calendar month'' before ''if the services'', and adding cl. (ii).

Subsec. (g). Pub. L. 98–21, § 103(a), amended subsec. (g) generally, substituting provision that no agreement under this section may be terminated on or after April 20, 1983, for provision that had authorized the termi-

nation of agreements of States with the Secretary conditioned upon the giving of advance notice.

Subsec. (*o*). Pub. L. 98–21, §325(a), inserted provision that coverage provided for in this subsection shall not be affected by a subsequent change in the name of a group.

1980—Subsec. (e)(1)(A). Pub. L. 96–265, §503(a), substituted ''(A) that the State will pay to the Secretary of the Treasury, within the thirty-day period immediately following the last day of each calendar month, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 if the services for which wages were paid in such month to employees covered by the agreement constituted employment as defined in section 3121 of such Code'' for ''(A) that the State will pay to the Secretary of the Treasury, at such time or times as the Secretary of Health, Education, and Welfare may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 1400 and 1410 of the Internal Revenue Code of 1939, if the services of employees covered by the agreement constituted employment as defined in section 1426 of the Internal Revenue Code of 1939''.

1977—Subsec. (c)(8). Pub. L. 95–216, §353(b)(1), substituted ''year'' for ''quarter'' and ''$100'' for ''$50''.

Subsec. (d)(6)(C). Pub. L. 95–216, §320, inserted reference to New Jersey.

Subsec. (g)(1). Pub. L. 95–216, §353(b)(2), substituted ''year'' for ''quarter''.

Subsec. (m)(1). Pub. L. 95–216, §321, inserted ''or any successor system'' after ''Wisconsin retirement fund''.

Subsec. (p)(1). Pub. L. 95–216, §319, inserted reference to Mississippi.

Subsec. (q)(4)(B). Pub. L. 95–216, §353(b)(3), substituted references to calendar years for references to calendar quarters wherever appearing.

Subsec. (q)(6)(B). Pub. L. 95–216, §353(b)(4), substituted ''period or periods designated by the State in such wage reports as the period or'' for ''calendar quarters designated by the State in such wage reports as the''.

Subsec. (r)(1). Pub. L. 95–216, §353(b)(5), in provisions preceding cl. (A) and in cl. (B) substituted ''year'' for ''quarter'', and in cl. (A) struck out ''in which occurred the calendar quarter'' after ''year''.

1974—Subsec. (p)(1). Priv. L. 93–107 inserted ''Montana,'' after ''Maryland,''.

1972—Subsec. (p)(1). Pub. L. 92–603 inserted ''Idaho,'' after ''Hawaii,''.

1968—Subsec. (b)(5). Pub. L. 90–486 substituted provisions pertaining to the coverage of persons employed under section 709 of title 32, who elected under section 6 of the National Guard Technicians Act of 1968 to remain covered by an employee retirement system of, or plan sponsored by, a state or the Commonwealth of Puerto Rico, such persons, for the purposes of this chapter, to be considered employees of the state or the Commonwealth of Puerto Rico, for provisions pertaining to the coverage of civilian employees of National Guard units of a state who are employed pursuant to section 42 of title 32, and who are paid from funds allotted to such units by the Department of the Defense, such persons, for the purposes of this section, to be deemed employees of the state.

Subsec. (c)(3). Pub. L. 90–248, §116(b)(1)(A), struck out subpar. (A) which provided for the exclusion of any service of an emergency nature and redesignated subpars. (B) and (C) as (A) and (B), respectively.

Subsec. (c)(4). Pub. L. 90–248, §116(b)(1)(B), substituted ''(3)(B)'' for ''(3)(C)''.

Subsec. (c)(6)(E). Pub. L. 90–248, §116(b)(2), added subpar. (E).

Subsec. (c)(7). Pub. L. 90–248, §116(b)(1)(B), substituted ''(3)(B)'' for ''(3)(C)''.

Subsec. (c)(8). Pub. L. 90–248, §116(c), added par. (8).

Subsec. (d)(4)(C). Pub. L. 90–248, §116(b)(1)(C), substituted ''(c)(3)(B)'' for ''(c)(3)(C)''.

Subsec. (d)(5)(B). Pub. L. 90–248, §116(b)(1)(B), substituted ''(3)(B)'' for ''(3)(C)'' wherever appearing.

Subsec. (d)(6)(C). Pub. L. 90–248, §117, inserted ''Illinois,'' after ''Georgia,''.

Subsec. (d)(6)(D). Pub. L. 90–248, §116(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (d)(6)(F). Pub. L. 90–248, §116(d), substituted ''1970'' for ''1967''.

Subsec. (f)(3). Pub. L. 90–248, §121, added par. (3).

Subsec. (p). Pub. L. 90–248, §§119(a), 120(a), designated existing provisions as par. (1), inserted ''Puerto Rico,'' after ''Oregon,'', and added par. (2).

Subsec. (u). Pub. L. 90–248, §122(d), added subsec. (u).

1965—Subsec. (d)(6)(C). Pub. L. 89–97, §314, inserted ''Alaska,'' before ''California''.

Subsec. (d)(6)(F). Pub. L. 89–97, §315, substituted ''1967'' for ''1963''.

Subsec. (h)(1). Pub. L. 89–97, §108(b), substituted ''Trust Funds and the Federal Hospital Insurance Trust Fund in the ratio in which amounts are appropriated to such Funds pursuant to subsection (a)(3) of section 401 of this title, subsection (b)(1) of such section, and subsection (a)(1) of section 1395i of this title, respectively'' for ''Trust Funds in the ratio in which amounts are appropriated to such Funds pursuant to subsections (a)(3) and (b)(1) of section 401 of this title''.

1964—Subsec. (d)(6)(C). Pub. L. 88–382 included retirement systems established by Nevada.

Subsec. (p). Pub. L. 88–350 inserted reference to Texas.

1962—Subsec. (p). Pub. L. 87–878 inserted reference to Maine.

1961—Subsec. (d)(6)(C). Pub. L. 87–64, §107, included retirement system established by the State of New Mexico.

Subsec. (d)(6)(F). Pub. L. 87–64, §106, substituted ''prior to 1963 or, if later, the expiration of two years after the date'' for ''prior to 1960 or, if later the expiration of one year after the date'', and inserted sentence providing that any such modification or later modification, providing for the transfer of additional positions within a retirement system previously divided pursuant to subpar. (C) to the separate retirement system composed of positions of members who desire coverage, shall be effective with respect to services performed after the same effective date as that which was specified in the case of such previous division.

1960—Subsec. (b)(1). Pub. L. 86–778, §103(i), excluded Guam and American Samoa from definition of ''State''.

Subsec. (c)(6)(C). Pub. L. 86–778, §103(j)(2)(G), substituted ''section 410(k)'' for ''section 410(*l*)''.

Subsec. (d)(3). Pub. L. 86–778, §102(a)(1), authorized certification by an official of the State designated by the Governor for that purpose.

Subsec. (d)(6). Pub. L. 86–624, §30(e), substituted ''Hawaii'' for ''the Territory of Hawaii'' in cl. (C) and (G), and struck out ''or Territory'' after ''State'' in two places in cl. (C) and in seven places in cl. (G).

Subsec. (d)(6)(A). Pub. L. 86–778, §102(c)(2), authorized a State, where a retirement system covering positions of employees of a State and positions of employees of one or more political subdivisions of the State, or covering positions of employees of two or more political subdivisions of the State, is not divided into separate retirement systems, to deem the system, for purposes of subsec. (f) of this section, to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or any one or more of the political subdivisions concerned.

Subsec. (d)(6)(B). Pub. L. 86–778, §102(g), inserted sentences providing that if a retirement system covers positions of employees of a hospital which is an integral part of a political subdivision, then, for purposes of preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of such hospital.

Subsec. (d)(6)(C). Pub. L. 86–778, §102(b)(1), (*l*), inserted sentence requiring the positions of individuals, who become members of a separate retirement system which has been divided into two divisions or parts by reason of action taken by a political subdivision after coverage under an agreement under this section has been

extended to the division or part thereof composed of positions of individuals who desire such coverage, to be included in the division or part of such system composed of positions of members who do not desire such coverage if such individuals, on the day before becoming such members, were in the division or part of another separate retirement system composed of positions of members who do not desire coverage under an agreement and all of the positions in the system of which such individuals so become members and all of the positions in the separate retirement system would have been covered by a single retirement system if the State had not taken action to provide for separate retirement systems, and included retirement systems established by the State of Texas.

Subsec. (d)(7). Pub. L. 86–778, § 102(a)(2), included certifications made by an official of the State designated by the Governor for that purpose.

Subsec. (e). Pub. L. 86–778, § 102(e)(1), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), and added par. (2).

Subsec. (f)(1). Pub. L. 86–778, § 102(c)(1), (e)(2), inserted exception to subsection (e)(2) of this section, and substituted provisions restricting the effective date of any agreement of modification to a date not earlier than the last day of the sixth calendar year preceding the year in which such agreement or modification is agreed to by the Secretary and the State for provisions which specified the effective date of agreements or modifications entered into prior to 1960 and which limited the effective date of agreements or modifications entered into after 1959 to a date not earlier than the last day of the calendar year preceding the year in which such agreement or modification is agreed to by the Secretary and the State.

Subsec. (p). Pub. L. 86–778, § 102(d), inserted reference to Virginia.

Pub. L. 86–624, § 30(f), substituted ''Hawaii'' for ''Territory of Hawaii''.

Subsecs. (q) to (t). Pub. L. 86–778, § 102(f)(1), added subsecs. (q) to (t).

1959—Subsec. (p). Pub. L. 86–284 inserted reference to California, Kansas, North Dakota, and Vermont.

1958—Subsec. (d)(6). Pub. L. 85–840, § 315(a)(1), designated first sentence as subpar. (A), second and third sentences as subpar. (B), fourth sentence as subpar. (C), fifth sentence as subpar. (D), and sixth sentence as subpar. (G), added subpars. (E) and (F), and amended subpar. (C) to include retirement systems established by the States of Massachusetts and Vermont.

Pub. L. 85–787 added Massachusetts and Vermont to States authorized to divide their retirement systems into two parts, and inserted sentence permitting transfer, in cases of divided retirement system, of members not desiring coverage to system of members desiring coverage.

Subsec. (d)(7). Pub. L. 85–840, § 315(a)(2), substituted ''(created under subparagraph (C) of paragraph (6) of this subsection or the corresponding provision of prior law)'' for ''(created under the fourth sentence of paragraph (6) of this subsection)'', and ''subparagraphs (C) and (D) of paragraph (6) of this subsection or the corresponding provision of prior law'' for ''the fourth and fifth sentences of paragraph (6) of this subsection''.

Subsec. (d)(8). Pub. L. 85–840, § 315(b), added par. (8).

Subsec. (f). Pub. L. 85–840, § 315(c)(1), designated existing provisions as par. (1), redesignated cls. (1) to (4) of par. (1) as cls. (A) to (D), and added par. (2).

Subsec. (k)(2). Pub. L. 85–840, § 315(a)(3), inserted provisions requiring an individual who is in a position covered by a retirement system divided pursuant to the preceding sentence and who is not a member of such system but is eligible to become a member thereof to be regarded, for the purposes of this subsection, as a member of such system, and providing for coverage under the agreement of any such individual.

Subsec. (k)(3). Pub. L. 85–798, § 2, added par. (3).

Subsec. (p). Pub. L. 85–798, § 3, included agreements with the State of Washington.

1957—Subsec. (d)(6). Pub. L. 85–227 authorized the States of California, Connecticut, Minnesota, and Rhode Island, or any political subdivisions thereof, to divide their retirement system into two divisions or parts.

Subsec. (d)(7). Pub. L. 85–229 added par. (7).

Subsec. (f)(3). Pub. L. 85–226, § 3, added par. (3). Former par. (3) redesignated (4).

Subsec. (f)(4). Pub. L. 85–226, § 3, redesignated former par. (3) as (4), and substituted ''1959'' for ''1957''.

Subsec. (k). Pub. L. 85–226, § 1, redesignated existing provisions as par. (1) and added par. (2).

Subsec. (p). Pub. L. 85–226, § 2, included agreements with the States of Alabama, Georgia, Maryland, New York, and Tennessee, or the Territory of Hawaii.

1956—Subsec. (d)(6). Act Aug. 1, 1956, § 104(e), authorized the State of Florida, Georgia, New York, North Dakota, Pennsylvania, Tennessee, Washington, Wisconsin, or the Territory of Hawaii, or any political subdivision thereof, to divide their retirement system into two divisions or parts, and provided for a separate retirement system with respect to employees of the States of Florida, Georgia, Minnesota, North Dakota, Pennsylvania, Washington, or the Territory of Hawaii who are compensated in whole or in part from grants under subchapter III of this chapter.

Subsec. (h)(1). Act Aug. 1, 1956, § 103(f), required amounts to be deposited in the Trust Funds in the ratio in which amounts are appropriated to such Funds pursuant to section 401(a)(3), (b)(1), of this title.

Subsec. (j). Act Aug. 1, 1956, § 103(g), substituted ''Secretary of Health, Education, and Welfare'' for ''Administrator'', and provided for appropriation of amounts in the ratio in which amounts are deposited in the Trust Funds pursuant to subsection (h)(1) of this section.

Subsec. (p). Act Aug. 1, 1956, § 104(g), added subsec. (p).

1954—Subsec. (b)(5). Act Sept. 1, 1954, § 101(i)(1), (2), inserted sentence at end relating to civilian employees of State National Guard units and a sentence relating to certain State inspectors of agricultural products.

Subsec. (c)(3). Act Sept. 1, 1954, § 101(h)(3), inserted an additional optional exclusion with respect to all services performed by individuals as members of any coverage group who are in positions covered by a retirement system on the date when the group is brought under the agreement if these individuals are not eligible to become members of the system on that date, or on any later date when they first occupy the positions, and if they have not already been included under the agreement by means of a referendum.

Subsec. (c)(4). Act Sept. 1, 1954, § 101(h)(4), inserted sentence at end.

Subsec. (c)(5). Act Sept. 1, 1954, § 101(a)(5), (6), substituted ''paragraph (7)'' for ''paragraph (8),'' and inserted at end ''and service the remuneration for which is excluded from wages by paragraph (2) of section 209(h)''.

Subsec. (c)(6)(D). Act Sept. 1, 1954, § 101(a)(5), substituted ''paragraph (7)'' for ''paragraph (8)''.

Subsec. (c)(7). Act Sept. 1, 1954, § 101(h)(5), added par. (7).

Subsec. (d). Act Sept. 1, 1954, § 101(h)(1)(A), struck out ''Exclusion of'' in heading, redesignated the subsection as (d)(1), and inserted sentence at end.

Subsec. (d)(1). Act Sept. 1, 1954, § 101(h)(1)(B), inserted provision in first sentence making the prohibition inapplicable to service in positions which though covered by a retirement system on the enactment date, were, by reason of action taken prior to the enactment date by the appropriate governmental unit, no longer covered by a retirement system when the coverage group which included employees in such positions was brought under an agreement.

Subsec. (d)(2) to (6). Act Sept. 1, 1954, § 101(h)(2), added pars. (2) to (6).

Subsec. (f). Act Sept. 1, 1954, § 101(h)(6), permitted agreements or modifications entered into during 1955, 1956, and 1957 to be made retroactive to a date not earlier than December 31, 1954.

Subsec. (m)(1). Act Sept. 1, 1954, § 101(h)(7), substituted ''paragraph (1) of subsection (d)'' for ''subsection (d)''.

Subsec. (n). Act Sept. 1, 1954, §101(h)(8), added subsec. (n).

Subsec. (*o*). Act Sept. 1, 1954, §101(j), added subsec. (*l*).

1953—Subsec. (m). Act Aug. 15, 1953, added subsec. (m).

1952—Subsec. (f). Act June 28, 1952, substituted ''January 1, 1954'' for ''January 1, 1953''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 303(c) of Pub. L. 103–296 applicable with respect to service performed on or after Jan. 1, 1995, see section 303(e) of Pub. L. 103–296, set out as a note under section 410 of this title.

Section 305(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section] shall apply with respect to modifications filed by States after the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to service performed after July 1, 1991, see section 11332(d) of Pub. L. 101–508, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(a)(8) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Section 9002(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [enacting section 3126 of Title 26, Internal Revenue Code, amending this section and sections 405 and 424a of this title and sections 1402, 3121, and 3306 of Title 26, and renumbering former section 3126 of Title 26 as section 3127] are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act [subsec. (e)(2) of this section] prior to the date of the enactment of this Act [Oct. 21, 1986]; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-monthly period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a 5-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 shall be determined separately from the deposit schedule for taxes withheld under section 3402 [26 U.S.C. 3402] if the taxes imposed under sections 3101 and 3111 are due with respect to service included under an agreement entered into pursuant to section 218 of the Social Security Act.''

Section 12110(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section] shall apply with respect to agreements and modifications of agreements which are mailed or delivered to the Secretary of Health and Human Services (under section 218 of the Social Security Act [this section]) on or after the date of the enactment of this Act [Apr. 7, 1986].''

Section 13205(d)(3) of Pub. L. 99–272 provided that: ''The amendment made by subsection (c) [amending this section] shall apply to services performed after March 31, 1986.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 103(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to any agreement in effect under section 218 of the Social Security Act [this section] on the date of the enactment of this Act [Apr. 20, 1983], without regard to whether a notice of termination is in effect on such date, and to any agreement or modification thereof which may become effective under such section 218 after that date.''

Section 325(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to name changes made before, on, or after the date of the enactment of this section [Apr. 20, 1983].''

Section 342(b) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section] shall apply to calendar months beginning after December 31, 1983.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 503(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to the payment of taxes (referred to in section 218(e)(1)(A) of the Social Security Act [subsec. (e)(1)(A) of this section], as amended by subsection (a)) on account of wages paid on or after July 1, 1980.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 353(g) of Pub. L. 95–216 provided that: ''The amendments made by subsection (b) of this section [amending this section] shall apply with respect to remuneration paid after December 31, 1977, except that the amendment made by subsection (b)(2) shall apply with respect to notices submitted by the States to the Secretary after the date of the enactment of this Act [Dec. 20, 1977]. The amendments made by subsections (d) and (f)(2) [amending sections 405 and 429 of this title] shall be effective January 1, 1978. Except as otherwise specifically provided, the remaining amendments made by this section [amending sections 403, 424a, and 430 of this title] shall be effective January 1, 1979.''

EFFECTIVE DATE OF 1968 AMENDMENTS

Amendment by Pub. L. 90–486 effective Jan. 1, 1968, except that no deductions or withholding from salary which result therefrom shall commence before first day of first pay period that begins on or after Jan. 1, 1968, see section 11 of Pub. L. 90–486, set out as a note under section 709 of Title 32, National Guard.

Section 116(b)(3) of Pub. L. 90–248 provided that: ''The amendments made by this subsection [amending this section] shall be effective with respect to services performed on or after January 1, 1968.''

Section 120(c) of Pub. L. 90–248 provided that: ''The amendment made by this section [amending this section] shall apply in the case of any State with respect to modifications of such State agreement under section 218 of the Social Security Act [this section] made after the date of enactment of this Act [Jan. 2, 1968].''

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 effective Aug. 1, 1961, see section 109 of Pub. L. 87–64, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 102(b)(2) of Pub. L. 86–778 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply in the case of transfers of positions (as described therein) which occur on or after the date of enactment of this Act [Sept. 13, 1960]. Such amendment shall also apply in the case of such transfers in any State which occurred prior to such date, but only upon

request of the Governor (or other official designated by him for the purpose) filed with the Secretary of Health, Education, and Welfare before July 1, 1961; and, in the case of any such request, such amendment shall apply only with respect to wages paid on and after the date on which such request is filed.''

Section 102(c)(3) of Pub. L. 86–778 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply in the case of any agreement or modification of an agreement under section 218 of the Social Security Act [this section] which is agreed to on or after January 1, 1960; except that in the case of any such agreement or modification agreed to before January 1, 1961, the effective date specified therein shall not be earlier than December 31, 1955. The amendment made by paragraph (2) [amending this section] shall apply in the case of any such agreement or modification which is agreed to on or after the date of the enactment of this Act [Sept. 13, 1960].''

Section 102(f)(3) of Pub. L. 86–778 provided that:

''(A) The amendments made by paragraphs (1) and (2) [amending this section and section 405 of this title] shall become effective on the first day of the second calendar year following the year in which this Act is enacted [1960].

''(B) In any case in which the Secretary of Health, Education, and Welfare has notified a State prior to the beginning of such second calendar year that there is an amount due by such State, that such State's claim for a credit or refund of an overpayment is disallowed, or that such State has been allowed a credit or refund of an overpayment, under an agreement pursuant to section 218 of the Social Security Act [this section], then the Secretary shall be deemed to have made an assessment of such amount due as provided in section 218(q) of such Act or notified the State of such allowance or disallowance, as the case may be, on the first day of such second calendar year. In such a case the 90-day limitation in section 218(s) of such Act shall not be applicable with respect to the assessment so deemed to have been made or the notification of allowance or disallowance so deemed to have been given the State. However, the preceding sentences of this subparagraph shall not apply if the Secretary makes an assessment of such amount due or notifies the State of such allowance or disallowance on or after the first day of the second calendar year following the year in which this Act is enacted [1960] and within the period specified in section 218(q) of the Social Security Act or the period specified in section 218(r) of such Act, as the case may be.''

Amendments by section 103(i) of Pub. L. 86–778 applicable only with respect to service performed after 1960, and amendment by section 103(j)(2)(G) of Pub. L. 86–778 effective on Sept. 13, 1960, see section 103(v)(1) of Pub. L. 86–778, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 315(c)(2) of Pub. L. 85–840 provided that: ''The amendment made by this subsection [amending this section] shall apply in the case of any agreement, or modification of an agreement, under section 218 of the Social Security Act [this section], which is executed after the date of enactment of this Act [Aug. 28, 1958].''

EFFECTIVE DATE OF 1954 AMENDMENT

Section 101(h)(9) of act Sept. 1, 1954, provided that: ''The amendments made by this subsection, other than paragraph (1)(B) [amending this section], shall take effect January 1, 1955.''

Section 101(i)(1) of act Sept. 1, 1954, provided that the amendment made by that section is effective as of January 1, 1951.

Section 101(i)(2) of act Sept. 1, 1954, provided that the amendment made by that section is effective January 1, 1955.

Section 101(i)(3) of act Sept. 1, 1954, provided that: ''In the case of any coverage group to which the amendment made by paragraph (1) [amending this section] is applicable, any agreement or modification of an agreement agreed to prior to January 1, 1956, may, notwithstanding section 218(f) of the Social Security Act [subsec. (f) of this section], be made effective with respect to services performed by employees as members of such coverage group after any effective date specified therein, but in no case may such effective date be earlier than December 31, 1950.''

Section 101(j) of act Sept. 1, 1954, provided that the amendment made by that section is effective as of January 1, 1951.

Amendment by section 101(a)(5), (6) of act Sept. 1, 1954, shall be applicable only with respect to services (whether performed after 1954 or prior to 1955) for which the remuneration is paid after 1954, see section 101(n) of act Sept. 1, 1954, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1953 AMENDMENT

Section 2 of act Aug. 15, 1953, provided that: ''For the purposes of section 418(f) of the Social Security Act (relating to effective date of agreements) [subsec. (f) of this section], the amendment made by the first section of this Act [amending this section] shall take effect as of January 1, 1951.''

TREATMENT OF CERTAIN CREDITS AS AMOUNTS DEPOSITED IN SOCIAL SECURITY TRUST FUNDS PURSUANT TO AGREEMENT

Section 123(b)(4) of Pub. L. 98–21, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''For purposes of subsection (h) of section 218 of the Social Security Act [subsec. (h) of this section] (relating to deposits in social security trust funds of amounts received under section 218 agreements), amounts allowed as a credit pursuant to subsection (d) of section 3510 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3510(d)] (relating to credit for remuneration paid during 1984 which is covered under an agreement under section 218 of the Social Security Act) shall be treated as amounts received under such an agreement.''

MODIFICATION OF AGREEMENT WITH STATE OF IOWA TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN

Section 9008 of Pub. L. 100–203 provided that:

''(a) IN GENERAL.—Notwithstanding subsection (d)(5)(A) of section 218 of the Social Security Act [subsec. (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of Iowa heretofore entered into pursuant to such section 218 may, at any time prior to January 1, 1989, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions required to be covered by a retirement system pursuant to section 410.1 of the Iowa Code as in effect on July 1, 1953, if the State of Iowa has at any time prior to the date of the enactment of this Act [Dec. 22, 1987] paid to the Secretary of the Treasury, with respect to any of the services performed in such positions, the sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date).

''(b) SERVICE TO BE COVERED.—Notwithstanding the provisions of subsection (e) of section 218 of the Social Security Act (as so redesignated by section 9002(c)(1) of the Omnibus Budget Reconciliation Act of 1986)), any modification in the agreement with the State of Iowa under subsection (a) shall be made effective with respect to—

''(1) all services performed in any policemen's or firemen's position to which the modification relates on or after January 1, 1987, and

''(2) all services performed in such a position before January 1, 1987, with respect to which the State of Iowa has paid to the Secretary of the Treasury the

sums prescribed pursuant to subsection (e)(1) of such section 218 (as in effect on December 31, 1986, with respect to payments due with respect to wages paid on or before such date) at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

''(A) no refund of the sums so paid has been obtained, or

''(B) a refund of part or all of the sums so paid has been obtained but the State of Iowa repays to the Secretary of the Treasury the amount of such refund within 90 days after the date on which the modification is agreed to by the State and the Secretary of Health and Human Services.''

MODIFICATION OF AGREEMENT WITH STATE OF CONNECTICUT TO PROVIDE COVERAGE FOR CONNECTICUT STATE POLICE

Section 12114 of Pub. L. 99–272 provided that: ''Notwithstanding any provision of section 218 of the Social Security Act [this section], the Secretary of Health and Human Services shall, upon the request of the Governor of Connecticut, modify the agreement under such section between the Secretary and the State of Connecticut to provide that service performed after the date of the enactment of this Act [Apr. 7, 1986] by members of the Division of the State Police within the Connecticut Department of Public Safety, who are hired on or after May 8, 1984, and who are members of the tier II plan of the Connecticut State Employees Retirement System, shall be covered under such agreement.''

MODIFICATION OF AGREEMENT WITH STATE OF ILLINOIS TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN

Section 318 of Pub. L. 95–216 provided that the agreement with the State of Illinois entered into pursuant to this section could, at any time prior to Jan. 1, 1979, be modified pursuant to subsec. (c)(4) of this section so as to apply to services performed in the policemen's or firemen's positions covered by the Illinois Municipal Retirement Fund on Dec. 20, 1977, if the State of Illinois had prior to such date paid to the Secretary of the Treasury, with respect to any of the services performed in such positions, the sums prescribed pursuant to subsec. (e)(1) of this section.

MODIFICATION OF REPORTING PROCEDURES IN EFFECT DECEMBER 1, 1975, UNDER FEDERAL-STATE AGREEMENTS

Pub. L. 94–202, §8(k), Jan. 2, 1976, 89 Stat. 1140, provided that: ''Notwithstanding the provisions of section 218(i) of the Social Security Act [subsec. (i) of this section], nothing contained in the amendments made by the preceding provisions of this section [enacting section 432 of this title and amending sections 401, 403, 424a, and 430 of this title and section 6103 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 401 and 432 of this title] shall be construed to authorize or require the Secretary, in promulgating regulations or amendments thereto under such section 218(i), substantially to modify the procedures, as in effect on December 1, 1975, for the reporting by States to the Secretary of the wages of individuals covered by social security pursuant to Federal-State agreements entered into pursuant to section 218 of the Social Security Act [this section].''

MODIFICATION OF AGREEMENT WITH STATE OF WEST VIRGINIA WITH RESPECT TO CERTAIN POLICEMEN AND FIREMEN

Pub. L. 94–202, §6, Jan. 2, 1976, 89 Stat. 1136, provided that:

''(a) Notwithstanding the provisions of subsection (d)(5)(A) of section 218 of the Social Security Act [subsec. (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of West Virginia heretofore entered into pursuant to such section 218 [this section] may, at any time prior to 1977, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions covered by a retirement system on the date of the enactment of this Act [Jan. 2, 1976] by individuals as employees of any class III or class IV municipal corporation (as defined in or under the laws of the State) if the State of West Virginia has at any time prior to the date of the enactment of this Act paid to the Secretary of the Treasury, with respect to any of the services performed in such positions by individuals as employees of such municipal corporation, the sums prescribed pursuant to subsection (e)(1) of such section 218. For purposes of this subsection, a retirement system which covers positions of policemen or firemen, or both, and other positions, shall, if the State of West Virginia so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

''(b) Notwithstanding the provisions of subsection (f) of section 218 of the Social Security Act, any modification in the agreement with the State of West Virginia under subsection (a) of this section, to the extent it involves services performed by individuals as employees of any class III or class IV municipal corporation, may be made effective with respect to—

''(1) all services performed by such individual, in any policemen's or firemen's position to which the modification relates, on or after the date of the enactment of this Act; and

''(2) all services performed by such individual in such a position before such date of enactment with respect to which the State of West Virginia has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 at the time or times established pursuant to such subsection (e)(1) if and to the extent that—

''(A) no refund of the sums so paid has been obtained, or

''(B) a refund of part or all of the sums so paid has been obtained but the State of West Virginia repays to the Secretary of the Treasury the amount of such refund within ninety days after the date that the modification is agreed to by the State and the Secretary of Health, Education, and Welfare.''

Section 143 of Pub. L. 92–603 provided that:

''(a) Notwithstanding the provisions of subsection (d)(5)(A) of section 218 of the Social Security Act [subsec. (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218 the agreement with the State of West Virginia heretofore entered into pursuant to such section 218 [this section] may, at any time prior to 1974, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed in policemen's or firemen's positions covered by a retirement system on the date of the enactment of this Act [Oct. 30, 1972] by individuals as employees of any class III or class IV municipal corporation (as defined in or under the laws of the State) if the State of West Virginia has at any time prior to the date of the enactment of this Act paid to the Secretary of the Treasury, with respect to any of the services performed in such positions by individuals as employees of such municipal corporation, the sums prescribed pursuant to subsection (e)(1) of such section 218. For purposes of this subsection, a retirement system which covers positions of policemen or firemen, or both, and other positions, shall, if the State of West Virginia so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

''(b) Notwithstanding the provisions of subsection (f) of section 218 of the Social Security Act, any modification in the agreement with the State of West Virginia under subsection (a) of this section, to the extent it involves services performed by individuals as employees of any class III or class IV municipal corporation, may be made effective with respect to—

''(1) all services performed by such individual, in any policeman's or fireman's position to which the modification relates, on or after the date of the enactment of this Act; and

''(2) all services performed by such individual in such a position before such date of enactment with respect to which the State of West Virginia has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

''(A) no refund of the sums so paid has been obtained, or

''(B) a refund of part or all of the sums so paid has been obtained but the State of West Virginia repays to the Secretary of the Treasury the amount of such refund within ninety days after the date that the modification is agreed to by the State and the Secretary of Health, Education, and Welfare.''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF NEW MEXICO TO COVER CERTAIN HOSPITAL EMPLOYEES

Section 127 of Pub. L. 92–603 provided that: ''Notwithstanding any provisions of section 218 of the Social Security Act [this section], the Agreement with the State of New Mexico heretofore entered into pursuant to such section may at the option of such State be modified at any time prior to the first day of the fourth month after the month in which this Act is enacted [October 1972], so as to apply to the services of employees of a hospital which is an integral part of a political subdivision to which an agreement under this section has not been made applicable, as a separate coverage group within the meaning of section 218(b)(5) of such Act [subsec. (b)(5) of this section], but only if such hospital has prior to 1966 withdrawn from a retirement system which had been applicable to the employees of such hospital.''

MODIFICATION OF AGREEMENT WITH STATE OF LOUISIANA WITH RESPECT TO VOTER REGISTRARS

Section 139 of Pub. L. 92–603 provided that:

''(a) Notwithstanding the provisions of section 218(g)(1) of the Social Security Act [subsec. (g)(1) of this section], the Secretary may, under such conditions as he deems appropriate, permit the State of Louisiana to modify its agreement entered into under section 218 of such Act [this section] so as to terminate the coverage of all employees who are in positions under the Registrars of Voters Employees' Retirement System, effective after December 1975, but only if such State files with him notice of termination on or before December 31, 1973.

''(b) If the coverage of such employees in positions under such retirement system is terminated pursuant to subsection (a), coverage cannot later be extended to employees in positions under such retirement system.''

MODIFICATION OF AGREEMENTS WITH STATES WITH RESPECT TO CERTAIN STUDENTS AND PART-TIME EMPLOYEES

Section 141 of Pub. L. 92–603 provided that:

''(a) Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreement with any State (or any modification thereof) entered into pursuant to such section may, at the option of such State, be modified at any time prior to January 1, 1974, so as to exclude either or both of the following;

''(1) service in any class or classes of part-time positions; or

''(2) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university.

''(b) Any modification of such agreement pursuant to this section shall be effective with respect to services performed after the end of the calendar quarter following the calendar quarter in which such agreement is modified.

''(c) If any such modification terminates coverage with respect to service in any class or classes of part-time positions in any coverage group, the Secretary of Health, Education, and Welfare and the State may not thereafter modify such agreement so as to again make the agreement applicable to service in such positions in such coverage group; if such modification terminates coverage with respect to service performed in the employ of a school, college, or university, by a student who is enrolled and regularly attending classes at such school, college, or university, the Secretary of Health, Education, and Welfare and the State may not thereafter modify such agreement so as to again make the agreement applicable to such service performed in the employ of such school, college, or university.''

MODIFICATION OF AGREEMENT WITH STATE OF MASSACHUSETTS WITH RESPECT TO EMPLOYEES OF THE MASSACHUSETTS TURNPIKE AUTHORITY

Section 124 of Pub. L. 90–248 provided that:

''(a) Notwithstanding the provisions of section 218(g)(1) of the Social Security Act [subsec. (g)(1) of this section] the Secretary may, under such conditions as he deems appropriate, permit the State of Massachusetts to modify its agreement entered into under section 218 of such Act [this section] so as to terminate the coverage of the employees of the Massachusetts Turnpike Authority effective at the end of any calendar quarter within the two years next following the date on which such agreement is so modified.

''(b) If the coverage of employees of the Massachusetts Turnpike Authority is terminated pursuant to subsection (a), coverage cannot later be extended to the employees of such Authority.''

MODIFICATION OF AGREEMENTS WITH STATES OF NORTH DAKOTA AND IOWA WITH RESPECT TO CERTAIN STUDENTS

Section 338 of Pub. L. 89–97 provided that: ''Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreements with the States of North Dakota and Iowa entered into pursuant to such section may, at the option of the State, be modified so as to exclude service performed in any calendar quarter in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university and if the remuneration for such service is less than $50. Any modification of either of such agreements pursuant to this Act shall be effective with respect to services performed after an effective date specified in such modification, except that such date shall not be earlier than the date of enactment of this Act [July 30, 1965].''

MODIFICATION OF AGREEMENT WITH STATE OF NEBRASKA FOR EXCLUSION OF SERVICES PERFORMED BY JUSTICES OF THE PEACE AND CONSTABLES

Section 102(i) of Pub. L. 86–778 provided that: ''Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreement with the State of Nebraska entered into pursuant to such section may, at the option of such State, be modified so as to exclude services performed within such State by individuals as justices of the peace or constables, if such individuals are compensated for such services on a fee basis. Any modification of such agreement pursuant to this subsection shall be effective with respect to services performed after an effective date specified in such modification, except that such date shall not be earlier than the date of enactment of this Act [Sept. 13, 1960].''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF CALIFORNIA PRIOR TO FEBRUARY 1966

Section 102(k) of Pub. L. 86–778, as amended by Pub. L. 89–97, title III, § 318, July 30, 1965, 79 Stat. 390; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Notwithstanding any provision of section 218 of the Social Security Act [this section], the agreement with the State of California heretofore entered into pursuant to such section may at the option of such State be modified, at any time prior to 1962, pursuant to subsection (c)(4) of such section 218 [subsec. (c)(4) of

this section], so as to apply to services performed by any individual who, on or after January 1, 1957, and on or before December 31, 1959, was employed by such State (or any political subdivision thereof) in any hospital employee's position which, on September 1, 1954, was covered by a retirement system, but which, prior to 1960, was removed from coverage by such retirement system if, prior to July 1, 1960, there have been paid in good faith to the Secretary of the Treasury, with respect to any of the services performed by such individual in any such position, amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [sections 3101 and 3111 of Title 26, Internal Revenue Code] if such services had constituted employment for purposes of chapter 21 of such Code [section 3101 et seq. of Title 26] at the time they were performed. Notwithstanding the provisions of subsection (f) of such section 218 such modification shall be effective with respect to (1) all services performed by such individual in any such position on or after January 1, 1960, and (2) all such services, performed before such date, with respect to which amounts equivalent to such taxes have, prior to the date of enactment of this subsection [Sept. 13, 1960], been paid.

''(2) Such agreement, as modified pursuant to paragraph (1), may at the option of such State be further modified, at any time prior to the seventh month after the month [July 1965] in which this paragraph is enacted, so as to apply to services performed for any hospital affected by such earlier modification by any individual who after December 31, 1959, is or was employed by such State (or any political subdivision thereof) in any position described in paragraph (1). Such modification shall be effective with respect to (A) all services performed by such individual in any such position on or after January 1, 1962, and (B) all such services, performed before such date, with respect to which amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 [sections 3101 and 3111 of Title 26] if such services had constituted employment for purposes of chapter 21 of such Code at the time they were performed have, prior to the date of the enactment of this paragraph [July 30, 1965], been paid.''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF OKLAHOMA PRIOR TO 1962

Section 3 of Pub. L. 86–284 provided that: ''Notwithstanding the provisions of subsection (d)(5)(A) of section 218 of the Social Security Act [subsec. (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218, the agreement with the State of Oklahoma heretofore entered into pursuant to such section 218 [this section] may, at any time prior to 1962, be modified pursuant to subsection (c)(4) of such section 218 so as to apply to services performed by any individual employed by such State (or any political subdivision thereof) in any policeman's position covered by a retirement system in effect on the date of enactment of this Act [Sept. 16, 1959] if (1) in the case of an individual performing such services on such date, such individual is ineligible to become a member of such retirement system, or, in the case of an individual who prior to such date has ceased to perform such services, such individual was, on the last day he did perform such services, ineligible to become a member of such retirement system, and (2) such State has, prior to 1959, paid to the Secretary of the Treasury, with respect to any of the services performed by such individual in any such position, the sums prescribed pursuant to subsection (e)(1) of such section 218. Notwithstanding the provisions of subsection (f) of such section 218, such modification shall be effective with respect to (i) all services performed by such individual in any such position on or after the date of enactment of this Act, and (ii) all such services, performed before such date, with respect to which such State has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e) of such section 218, at the time or times established pursuant to such subsection.''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF MAINE PRIOR TO JULY 1, 1967

Section 316 of Pub. L. 85–840, as amended by Pub. L. 86–778, title I, §102(j), Sept. 13, 1960, 74 Stat. 935; Pub. L. 88–350, §1, July 2, 1964, 78 Stat. 240; Pub. L. 89–97, title III, §337, July 30, 1965, 79 Stat. 409, eff. July 1, 1965, provided that: ''For the purposes of any modification which might be made after the date of enactment of this Act [Aug. 28, 1958] and prior to July 1, 1967, by the State of Maine of its existing agreement made under section 218 of the Social Security Act [this section], any retirement system of such State which covers positions of teachers and positions of other employees shall, if such State so desires, be deemed (notwithstanding the provisions of subsection (d) of such section) to consist of a separate retirement system with respect to the positions of such teachers and a separate retirement system with respect to the positions of such other employees; and for the purposes of this sentence, the term 'teacher' shall mean any teacher, principal, supervisor, school nurse, school dietitian, school secretary or superintendent employed in any public school, including teachers in unorganized territory.''

MODIFICATION OF EXISTING AGREEMENTS WITH STATES OF CALIFORNIA, CONNECTICUT, MINNESOTA, OR RHODE ISLAND PRIOR TO 1960

Section 2 of Pub. L. 85–227 provided that: ''Notwithstanding subsection (f) of section 218 of the Social Security Act [subsec. (f) of this section], any modification of the agreement with the State of California, Connecticut, Minnesota, or Rhode Island under such section which makes such agreement applicable to services performed in positions covered by a separate retirement system created pursuant to the fourth sentence of subsection (d)(6) of such section (and consisting of the positions of members who desire coverage under the agreement) may, if such modification is agreed to prior to 1960, be made effective with respect to services performed in such positions after an effective date specified in such modification, except that in no case may such date be earlier than December 31, 1955.''

MODIFICATION OF EXISTING AGREEMENTS WITH STATES OF FLORIDA, NEVADA, NEW MEXICO, MINNESOTA, OKLAHOMA, PENNSYLVANIA, TEXAS, WASHINGTON, OR HAWAII PRIOR TO JULY 1, 1962

Section 104(f) of act Aug. 1, 1956, as amended by Pub. L. 86–284, §1, provided that: ''Notwithstanding the provisions of subsection (d) of section 218 of the Social Security Act [subsection (d) of this section], any agreement under such section entered into prior to the date of enactment of this Act [Aug. 1, 1956] by the State of Florida, Nevada, New Mexico, Minnesota, Oklahoma, Pennsylvania, Texas, Washington, or the Territory of Hawaii shall if the State or Territory concerned so requests, be modified prior to July 1, 1962, so as to apply to services performed by employees of the respective public school districts of such State or Territory who, on the date such agreement is made applicable to such services, are not in positions the incumbents of which are required by State or Territorial law or regulation to have valid State or Territorial teachers' or administrators' certificates in order to receive pay for their services. The provisions of this subsection shall not apply to services of any such employees to which any such agreement applies without regard to this subsection.''

MODIFICATION OF EXISTING AGREEMENT WITH STATE OF ARIZONA PRIOR TO JANUARY 1, 1956

Section 101(k) of act Sept. 1, 1954, provided that: ''If, prior to January 1, 1956, the agreement with the State of Arizona entered into pursuant to section 218 of the Social Security Act [this section] is modified pursuant

to subsection (d)(3) of such section so as to apply to service performed by employees in positions covered by the Arizona Teachers' Retirement System the modification may, notwithstanding section 218(f) of the Social Security Act, be made effective with respect to service performed in such positions after an effective date specified in the modification, but in no case may such effective date be earlier than December 31, 1950. For the purposes of any such modification, all employees in positions covered by the Arizona Teachers' Retirement System shall be deemed, notwithstanding the provisions of section 218(d)(6) of such Act, to constitute a separate coverage group.''

EXTENSION OF COVERAGE TO SERVICE IN FIREMEN'S POSITION

Section 120(b) of Pub. L. 90–248 provided that: ''Nothing in the amendments made by subsection (a) [amending this section] shall authorize the extension of the insurance system established by title II of the Social Security Act [this subchapter] under the provisions of section 218(d)(6)(C) of such Act [subsec. (d)(6)(C) of this section] to service in any fireman's position.''

VALIDATION OF COVERAGE FOR CERTAIN FIREMEN IN THE STATE OF NEBRASKA

Section 119(b) of Pub. L. 90–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: ''In any case in which—

''(1) an individual has performed services prior to the enactment of this Act [Jan. 2, 1968] in the employ of a political subdivision of the State of Nebraska in a fireman's position, and

''(2) amounts, equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [sections 3101 and 3111 of Title 26, Internal Revenue Code] had such services constituted employment for purposes of section 21 of such Code [section 21 of Title 26] at the time they were performed, were timely paid in good faith to the Secretary of the Treasury, and

''(3) no refunds of such amounts paid in lieu of taxes have been obtained,

the amount of the remuneration for such services with respect to which such amounts have been paid shall be deemed to constitute remuneration for employment as defined in section 209 of the Social Security Act [section 409 of this title].''

VALIDATION OF COVERAGE FOR CERTAIN EMPLOYEES OF AN INTEGRAL UNIT OF A POLITICAL SUBDIVISION OF ALASKA

Section 342 of Pub. L. 89–97 provided that: ''For purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Alaska, or its predecessor the Territory of Alaska, where employees of an integral unit of a political subdivision of the State or Territory of Alaska have in good faith been included under the State or Territory's agreement as a coverage group on the basis that such integral unit of a political subdivision was a political subdivision, then such unit of the political subdivision shall, for purposes of section 218(b)(2) of such Act, be deemed to be a political subdivision, and employees performing services within such unit shall be deemed to be a coverage group, effective with the effective date specified in such agreement or modification of such agreement with respect to such coverage group and ending with the last day of the year in which this Act is enacted [1965].''

VALIDATION OF COVERAGE FOR DISTRICT ENGINEERING AIDES OF SOIL AND WATER CONSERVATION DISTRICTS OF OKLAHOMA

Pub. L. 88–650, § 3, Oct. 13, 1964, 78 Stat. 1077, provided that: ''For purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Oklahoma, remuneration paid to district engineering aides of soil and water conservation districts of the State of Oklahoma which was reported by the State as amounts paid to such aides as employees of the State for services performed by them during the period beginning January 1, 1951, and ending with the close of June 30, 1962, shall be deemed to have been paid to such aides for services performed by them in the employ of the State.''

VALIDATION OF COVERAGE FOR CERTAIN EMPLOYEES OF AN INTEGRAL UNIT OF A POLITICAL SUBDIVISION OF ARKANSAS

Section 1 of Pub. L. 87–878 provided: ''That, for purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Arkansas, where employees of an integral unit of a political subdivision of the State of Arkansas have in good faith been included under the State's agreement as a coverage group on the basis that such integral unit of a political subdivision was a political subdivision, then such unit of the political subdivision shall, for purposes of section 218(b)(2) of such Act, be deemed to be a political subdivision, and employees performing services within such unit shall be deemed to be a coverage group, effective with the effective date specified in such agreement or modification of such agreement with respect to such coverage group and ending with the last day of the year in which this Act is enacted [1962].''

VALIDATION OF COVERAGE FOR CERTAIN MISSISSIPPI TEACHERS

Section 102(h) of Pub. L. 86–778 provided that: ''For purposes of the agreement under section 218 of the Social Security Act [this section] entered into by the State of Mississippi, services of teachers in such State performed after February 28, 1951, and prior to October 1, 1959, shall be deemed to have been performed by such teachers as employees of the State. The term 'teacher' as used in the preceding sentence means—

''(1) any individual who is licensed to serve in the capacity of teacher, librarian, registrar, supervisor, principal, or superintendent and who is principally engaged in the public elementary or secondary school system of the State in any one or more of such capacities;

''(2) any employee in the office of the county superintendent of education or the county school supervisor, or in the office of the principal of any county or municipal public elementary or secondary school in the State; and

''(3) any individual licensed to serve in the capacity of teacher who is engaged in any educational capacity in any day or night school conducted under the supervision of the State department of education as a part of the adult education program provided for under the laws of Mississippi or under the laws of the United States.''

PRESUMPTION OF WORK DEDUCTIONS FOR SERVICES PERFORMED PRIOR TO 1955 IN CASE OF CERTAIN RETROACTIVE STATE AGREEMENTS; RECOMPUTATION

Section 101(*l*) of act Sept. 1, 1954, provided that:

''(1) In the case of any services performed prior to 1955 to which an agreement under section 218 of the Social Security Act [this section] was made applicable, deductions which—

''(A) were not imposed under section 203 of such Act [section 403 of this title] with respect to such services performed prior to the date the agreement was agreed to or, if the original agreement was not applicable to such services, performed prior to the date the modification making such agreement applicable to such services was agreed to, and

''(B) would have been imposed under such section 203 had such agreement, or modification, as the case may be, been agreed to on the date it became effective,

shall be deemed to have been imposed, but only for purposes of section 215(f)(2)(A) or section 215(f)(4)(A) of

such Act [section 415(f)(2)(A) or section 415(f)(4)(A) of this title] as in effect prior to the enactment of this Act [Sept. 1, 1954]. An individual with respect to whose services the preceding sentence is applicable, or in the case of his death, his survivors entitled to monthly benefits under section 202 of the Social Security Act [section 402 of this title] on the basis of his wages and self-employment income, shall be entitled to a recomputation of his primary insurance amount under such section 215(f)(2)(A) or section 215(f)(4)(A), as the case may be, if the conditions specified therein are met and if, with respect to a recomputation under such section 215(f)(2)(A), such individual files the application referred to in such section after August 1954 and prior to January 1956 or, with respect to a recomputation under such section 215(f)(4)(A), such individual died prior to January 1956 and any of such survivors entitled to monthly benefits files an application, in addition to the application filed for such monthly benefits, for a recomputation under such section 215(f)(4)(A).

''(2) For purposes of a recomputation made by reason of paragraph (1) of this subsection, the primary insurance amount of the individual who performed the services referred to in such paragraph shall be computed under subsection (a)(2) of section 215 of the Social Security Act, as amended by this Act (but, for such purposes, without application of subsection (d)(4) of such section, as in effect prior to the enactment of this Act or as amended by this Act) and as though he became entitled to old-age insurance benefits in whichever of the following months yields the highest primary insurance amount:

''(A) the month following the last month for which deductions are deemed, pursuant to paragraph (1) of this subsection, to have been made; or

''(B) the first month after the month determined under subparagraph (A) (and prior to September 1954) in which his benefits under section 202(a) of the Social Security Act [section 402(a) of this title] were no longer subject to deductions under section 203(b) of such Act [section 403(b) of this title]; or

''(C) the first month after the last month (and prior to September 1954) in which his benefits under section 202(a) of the Social Security Act were subject to deductions under section 203(b) of such Act; or

''(D) the month in which such individual filed his application for recomputation referred to in paragraph (1) of this subsection or, if he died without filing such application and prior to January 1, 1956, the month in which he died, and in any such case (but, if the individual is deceased, only if death occurred after August 1954) the amendments made by subsections (b)(1), (e)(1) and (e)(3)(B) of section 102 of this Act [amending section 415 of this title] shall be applicable.

Such recomputation shall be effective for and after the month in which the application required by paragraph (1) of this subsection is filed. The provisions of this subsection shall not be applicable in the case of any individual if his primary insurance amount has been recomputed under section 215(f)(2) of the Social Security Act on the basis of an application filed prior to September 1954.

''(3) If any recomputation under section 215(f) of the Social Security Act is made by reason of deductions deemed pursuant to paragraph (1) of this subsection to have been imposed with respect to benefits based on the wages and self-employment income of any individual, the total of the benefits based on such wages and self-employment income for months for which such deductions are so deemed to have been imposed shall be recovered by making, in addition to any other deductions under section 203 of such Act, deductions from any increase in benefits, based on such wages and self-employment income, resulting from such recomputation.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 405, 405a, 410, 411, 424a of this title; title 26 sections 1402, 3121, 6413, 6511.

§ 419. Repealed. Pub. L. 86–778, title I, § 103(j)(1), Sept. 13, 1960, 74 Stat. 937

Section, act Aug. 14, 1935, ch. 531, title II, § 219, as added Aug. 28, 1950, ch. 809, title I, § 107, 64 Stat. 517, prescribed the effective date of this subchapter in Puerto Rico as January 1 of the first calendar year which begins more than 90 days after the date on which the President received a certification from the Governor of Puerto Rico.

EFFECTIVE DATE OF REPEAL

Repeal effective Sept. 13, 1960, see section 103(v)(1), (3) of Pub. L. 86–778, set out as an Effective Date of 1960 Amendment note under section 402 of this title.

§ 420. Disability provisions inapplicable if benefit rights impaired

None of the provisions of this subchapter relating to periods of disability shall apply in any case in which their application would result in the denial of monthly benefits or a lump-sum death payment which would otherwise be payable under this subchapter; nor shall they apply in the case of any monthly benefit or lump-sum death payment under this subchapter if such benefit or payment would be greater without their application.

(Aug. 14, 1935, ch. 531, title II, § 220, as added Sept. 1, 1954, ch. 1206, title I, § 106(g), 68 Stat. 1081.)

PRIOR PROVISIONS

A prior section 420, act Aug. 14, 1935, ch. 531, title II, § 220, as added July 18, 1952, ch. 945, § 3(e), 66 Stat. 772, relating to inapplicability of disability provisions if benefits were reduced, ceased to be in effect at the close of June 30, 1953. See Effective and Termination Date of 1952 Amendment note set out under section 413 of this title.

§ 421. Disability determinations

(a) State agencies

(1) In the case of any individual, the determination of whether or not he is under a disability (as defined in section 416(i) or 423(d) of this title) and of the day such disability began, and the determination of the day on which such disability ceases, shall be made by a State agency, notwithstanding any other provision of law, in any State that notifies the Commissioner of Social Security in writing that it wishes to make such disability determinations commencing with such month as the Commissioner of Social Security and the State agree upon, but only if (A) the Commissioner of Social Security has not found, under subsection (b)(1) of this section, that the State agency has substantially failed to make disability determinations in accordance with the applicable provisions of this section or rules issued thereunder, and (B) the State has not notified the Commissioner of Social Security, under subsection (b)(2) of this section, that it does not wish to make such determinations. If the Commissioner of Social Security once makes the finding described in clause (A) of the preceding sentence, or the State gives the notice referred to in clause (B) of such sentence, the Commissioner of Social Security may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make disability determinations under this paragraph.

(2) The disability determinations described in paragraph (1) made by a State agency shall be made in accordance with the pertinent provisions of this subchapter and the standards and criteria contained in regulations or other written guidelines of the Commissioner of Social Security pertaining to matters such as disability determinations, the class or classes of individuals with respect to which a State may make disability determinations (if it does not wish to do so with respect to all individuals in the State), and the conditions under which it may choose not to make all such determinations. In addition, the Commissioner of Social Security shall promulgate regulations specifying, in such detail as the Commissioner deems appropriate, performance standards and administrative requirements and procedures to be followed in performing the disability determination function in order to assure effective and uniform administration of the disability insurance program throughout the United States. The regulations may, for example, specify matters such as—

(A) the administrative structure and the relationship between various units of the State agency responsible for disability determinations,

(B) the physical location of and relationship among agency staff units, and other individuals or organizations performing tasks for the State agency, and standards for the availability to applicants and beneficiaries of facilities for making disability determinations,

(C) State agency performance criteria, including the rate of accuracy of decisions, the time periods within which determinations must be made, the procedures for and the scope of review by the Commissioner of Social Security, and, as the Commissioner finds appropriate, by the State, of its performance in individual cases and in classes of cases, and rules governing access of appropriate Federal officials to State offices and to State records relating to its administration of the disability determination function,

(D) fiscal control procedures that the State agency may be required to adopt, and

(E) the submission of reports and other data, in such form and at such time as the Commissioner of Social Security may require, concerning the State agency's activities relating to the disability determination.

Nothing in this section shall be construed to authorize the Commissioner of Social Security to take any action except pursuant to law or to regulations promulgated pursuant to law.

(b) Determinations by Commissioner

(1) If the Commissioner of Social Security finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with the Commissioner's regulations and other written guidelines, the Commissioner of Social Security shall, not earlier than 180 days following the Commissioner's finding, and after the Commissioner has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1) of this section.

(2) If a State, having notified the Commissioner of Social Security of its intent to make disability determinations under subsection (a)(1) of this section, no longer wishes to make such determinations, it shall notify the Commissioner of Social Security in writing of that fact, and, if an agency of the State is making disability determinations at the time such notice is given, it shall continue to do so for not less than 180 days, or (if later) until the Commissioner of Social Security has complied with the requirements of paragraph (3). Thereafter, the Commissioner of Social Security shall make the disability determinations referred to in subsection (a)(1) of this section.

(3)(A) The Commissioner of Social Security shall develop and initiate all appropriate procedures to implement a plan with respect to any partial or complete assumption by the Commissioner of Social Security of the disability determination function from a State agency, as provided in this section, under which employees of the affected State agency who are capable of performing duties in the disability determination process for the Commissioner of Social Security shall, notwithstanding any other provision of law, have a preference over any other individual in filling an appropriate employment position with the Commissioner of Social Security (subject to any system established by the Commissioner of Social Security for determining hiring priority among such employees of the State agency) unless any such employee is the administrator, the deputy administrator, or assistant administrator (or his equivalent) of the State agency, in which case the Commissioner of Social Security may accord such priority to such employee.

(B) The Commissioner of Social Security shall not make such assumption of the disability determination function until such time as the Secretary of Labor determines that, with respect to employees of such State agency who will be displaced from their employment on account of such assumption by the Commissioner of Social Security and who will not be hired by the Commissioner of Social Security to perform duties in the disability determination process, the State has made fair and equitable arrangements to protect the interests of employees so displaced. Such protective arrangements shall include only those provisions which are provided under all applicable Federal, State and local statutes including, but not limited to, (i) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; (ii) the continuation of collective-bargaining rights; (iii) the assignment of affected employees to other jobs or to retraining programs; (iv) the protection of individual employees against a worsening of their positions with respect to their employment; (v) the protection of health benefits and other fringe benefits; and (vi) the provision of severance pay, as may be necessary.

(c) Review of determination by Commissioner

(1) The Commissioner of Social Security may on the Commissioner's own motion or as required under paragraphs (2) and (3) review a determination, made by a State agency under this section, that an individual is or is not under a

disability (as defined in section 416(i) or 423(d) of this title) and, as a result of such review, may modify such agency's determination and determine that such individual either is or is not under a disability (as so defined) or that such individual's disability began on a day earlier or later than that determined by such agency, or that such disability ceased on a day earlier or later than that determined by such agency. A review by the Commissioner of Social Security on the Commissioner's own motion of a State agency determination under this paragraph may be made before or after any action is taken to implement such determination.

(2) The Commissioner of Social Security (in accordance with paragraph (3)) shall review determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title). Any review by the Commissioner of Social Security of a State agency determination under this paragraph shall be made before any action is taken to implement such determination.

(3)(A) In carrying out the provisions of paragraph (2) with respect to the review of determinations made by State agencies pursuant to this section that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title), the Commissioner of Social Security shall review—

(i) at least 50 percent of all such determinations made by State agencies on applications for benefits under this subchapter, and

(ii) other determinations made by State agencies pursuant to this section to the extent necessary to assure a high level of accuracy in such other determinations.

(B) In conducting reviews pursuant to subparagraph (A), the Commissioner of Social Security shall, to the extent feasible, select for review those determinations which the Commissioner of Social Security identifies as being the most likely to be incorrect.

(C) Not later than April 1, 1992, and annually thereafter, the Commissioner of Social Security shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a written report setting forth the number of reviews conducted under subparagraph (A)(ii) during the preceding fiscal year and the findings of the Commissioner of Social Security based on such reviews of the accuracy of the determinations made by State agencies pursuant to this section.

(d) Hearings and judicial review

Any individual dissatisfied with any determination under subsection (a), (b), (c), or (g) of this section shall be entitled to a hearing thereon by the Commissioner of Social Security to the same extent as is provided in section 405(b) of this title with respect to decisions of the Commissioner of Social Security, and to judicial review of the Commissioner's final decision after such hearing as is provided in section 405(g) of this title.

(e) State's right to cost from Trust Funds

Each State which is making disability determinations under subsection (a)(1) of this section shall be entitled to receive from the Trust Funds, in advance or by way of reimbursement, as determined by the Commissioner of Social Security, the cost to the State of making disability determinations under subsection (a)(1) of this section. The Commissioner of Social Security shall from time to time certify such amount as is necessary for this purpose to the Managing Trustee, reduced or increased, as the case may be, by any sum (for which adjustment hereunder has not previously been made) by which the amount certified for any prior period was greater or less than the amount which should have been paid to the State under this subsection for such period; and the Managing Trustee, prior to audit or settlement by the General Accounting Office, shall make payment from the Trust Funds at the time or times fixed by the Commissioner of Social Security, in accordance with such certification. Appropriate adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to the payments made under this subsection shall be made in accordance with paragraph (1) of subsection (g) of section 401 of this title (but taking into account any refunds under subsection (f) of this section) to insure that the Federal Disability Insurance Trust Fund is charged with all expenses incurred which are attributable to the administration of section 423 of this title and the Federal Old-Age and Survivors Insurance Trust Fund is charged with all other expenses.

(f) Use of funds

All money paid to a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned to the Treasury of the United States for deposit in the Trust Funds.

(g) Regulations governing determinations in certain cases

In the case of individuals in a State which does not undertake to perform disability determinations under subsection (a)(1) of this section, or which has been found by the Commissioner of Social Security to have substantially failed to make disability determinations in a manner consistent with the Commissioner's regulations and guidelines, in the case of individuals outside the United States, and in the case of any class or classes of individuals for whom no State undertakes to make disability determinations, the determinations referred to in subsection (a) of this section shall be made by the Commissioner of Social Security in accordance with regulations prescribed by the Commissioner.

(h) Evaluation of mental impairments by qualified medical professionals

An initial determination under subsection (a), (c), (g), or (i) of this section that an individual is not under a disability, in any case where there is evidence which indicates the existence of a mental impairment, shall be made only if the Commissioner of Social Security has made every reasonable effort to ensure that a qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment.

(i) Review of disability cases to determine continuing eligibility; permanent disability cases; appropriate number of cases reviewed; reporting requirements

(1) In any case where an individual is or has been determined to be under a disability, the case shall be reviewed by the applicable State agency or the Commissioner of Social Security (as may be appropriate), for purposes of continuing eligibility, at least once every 3 years, subject to paragraph (2); except that where a finding has been made that such disability is permanent, such reviews shall be made at such times as the Commissioner of Social Security determines to be appropriate. Reviews of cases under the preceding sentence shall be in addition to, and shall not be considered as a substitute for, any other reviews which are required or provided for under or in the administration of this subchapter.

(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Commissioner of Social Security determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Commissioner of Social Security shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Commissioner of Social Security shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Commissioner of Social Security shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Commissioner of Social Security under the preceding sentence.

(3) The Commissioner of Social Security shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d) of this section, or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.

(4) In any case in which the Commissioner of Social Security initiates a review under this subsection of the case of an individual who has been determined to be under a disability, the Commissioner of Social Security shall notify such individual of the nature of the review to be carried out, the possibility that such review could result in the termination of benefits, and the right of the individual to provide medical evidence with respect to such review.

(j) Rules and regulations; consultative examinations

The Commissioner of Social Security shall prescribe regulations which set forth, in detail—

(1) the standards to be utilized by State disability determination services and Federal personnel in determining when a consultative examination should be obtained in connection with disability determinations;

(2) standards for the type of referral to be made; and

(3) procedures by which the Commissioner of Social Security will monitor both the referral processes used and the product of professionals to whom cases are referred.

Nothing in this subsection shall be construed to preclude the issuance, in accordance with section 553(b)(A) of title 5, of interpretive rules, general statements of policy, and rules of agency organization relating to consultative examinations if such rules and statements are consistent with such regulations.

(k) Establishment of uniform standards for determination of disability

(1) The Commissioner of Social Security shall establish by regulation uniform standards which shall be applied at all levels of determination, review, and adjudication in determining whether individuals are under disabilities as defined in section 416(i) or 423(d) of this title.

(2) Regulations promulgated under paragraph (1) shall be subject to the rulemaking procedures established under section 553 of title 5.

(*l*) Special notice to blind individuals with respect to hearings and other official actions

(1) In any case where an individual who is applying for or receiving benefits under this subchapter on the basis of disability by reason of blindness is entitled to receive notice from the Commissioner of Social Security of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this subchapter, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Commissioner of Social Security and agreed to by the individual.

(2) The election under paragraph (1) may be made at any time, but an opportunity to make such an election shall in any event be given, to every individual who is an applicant for benefits under this subchapter on the basis of disability by reason of blindness, at the time of his or her application. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this subchapter until such time as it is revoked or changed.

(Aug. 14, 1935, ch. 531, title II, § 221, as added Sept. 1, 1954, ch. 1206, title I, § 106(g), 68 Stat. 1081; amended Aug. 1, 1956, ch. 836, title I, § 103(c)(7), (8), (h), 70 Stat. 818, 823; Jan. 2, 1968,

Pub. L. 90–248, title I, §158(c)(3), (4), 81 Stat. 869; June 9, 1980, Pub. L. 96–265, title III, §§304(a)–(f), 311(a), 94 Stat. 453–456, 460; Jan. 12, 1983, Pub. L. 97–455, §§3(a), 6, 96 Stat. 2499, 2500; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(a)(14), 98 Stat. 1164; Oct. 9, 1984, Pub. L. 98–460, §§6(a), 8(a), 9(a)(1), 10(a), 17(a), 98 Stat. 1802, 1804, 1805, 1811; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1883(a)(9), 100 Stat. 2916; Nov. 10, 1988, Pub. L. 100–647, title VIII, §8012(a), 102 Stat. 3789; Dec. 19, 1989, Pub. L. 101–239, title X, §10306(a)(1), 103 Stat. 2484; Nov. 5, 1990, Pub. L. 101–508, title V, §5128(a), 104 Stat. 1388–286; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), 108 Stat. 1478.)

PRIOR PROVISIONS

A prior section 421, act Aug. 14, 1935, ch. 531, title II, §221, as added July 18, 1952, ch. 945, §3(e), 66 Stat. 772; amended by 1953 Reorg. Plan No. 1, §5, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631, relating to disability determinations, ceased to be in effect at the close of June 30, 1953. See section 3(g) of act July 18, 1952, set out as an Effective and Termination Date of 1952 Amendment note under section 413 of this title.

AMENDMENTS

1994—Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing except where appearing before ''of Labor'' in subsec. (b)(3)(B) and substituted ''the Commissioner deems'' for ''he deems'' and ''the Commissioner finds'' for ''he finds'' in subsec. (a)(2), ''the Commissioner's'' for ''his'' wherever appearing in subsecs. (b)(1), (c)(1), and (g), ''the Commissioner has complied'' for ''he has complied'' in subsec. (b)(1), ''Commissioner's'' for ''Secretary's'' in subsec. (d), and ''prescribed by the Commissioner'' for ''prescribed by him'' in subsec. (g).

1990—Subsec. (c)(3). Pub. L. 101–508 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''In carrying out the provisions of paragraph (2) with respect to the review of determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 416(i) or 423(d) of this title), the Secretary shall review—

''(A) at least 15 percent of all such determinations made by State agencies in the fiscal year 1981,

''(B) at least 35 percent of all such determinations made by State agencies in the fiscal year 1982, and

''(C) at least 65 percent of all such determinations made by State agencies in any fiscal year after the fiscal year 1982.''

1989—Subsec. (*l*). Pub. L. 101–239 added subsec. (*l*).

1988—Subsec. (i)(3). Pub. L. 100–647 substituted ''semi-annually'' for ''annually''.

1986—Subsec. (e). Pub. L. 99–514 struck out ''under this section'' before ''shall be entitled''.

1984—Subsec. (a)(1)(A). Pub. L. 98–460, §17(a)(2), (b), temporarily substituted ''subsection (b)(1)(C) of this section'' for ''subsection (b)(1) of this section''. See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(1). Pub. L. 98–460, §17(a)(1), (b), temporarily amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''If the Secretary finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with his regulations and other written guidelines, the Secretary shall, not earlier than 180 days following his finding, and after he has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1) of this section.'' See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(3). Pub. L. 98–460, §17(a)(3), (b), temporarily substituted ''Except as provided in subparagraph (D)(i) of paragraph (1), the Secretary'' for ''The Secretary'' in subpars. (A) and (B). See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (d). Pub. L. 98–460, §17(a)(4), (b), temporarily substituted ''Except as provided in subsection (b)(1)(D) of this section, any individual'' for ''Any individual''. See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (e). Pub. L. 98–369 substituted ''Federal Disability Insurance Trust Fund is charged'' for ''Federal Disability Trust Fund is charged''.

Subsec. (h). Pub. L. 98–460, §8(a), added subsec. (h).

Subsec. (i)(4). Pub. L. 98–460, §6(a), added par. (4).

Subsec. (j). Pub. L. 98–460, §9(a)(1), added subsec. (j).

Subsec. (k). Pub. L. 98–460, §10(a), added subsec. (k).

1983—Subsec. (i). Pub. L. 97–455 designated existing provisions as par. (1), inserted '', subject to paragraph (2)'' after ''at least once every 3 years'', and added pars. (2) and (3).

1980—Subsec. (a). Pub. L. 96–265, §304(a), completely revised provisions under which determinations are to be made by State agencies.

Subsec. (b). Pub. L. 96–265, §304(b), substituted provisions covering the making of disability determinations by the Secretary rather than by the State for provisions relating to agreements between the Secretary and the State under which the State would make disability determinations.

Subsec. (c). Pub. L. 96–265, §304(c), designated existing provisions as par. (1), inserted provision that a review by the Secretary on his own motion of a State agency determination may be made before or after any action is taken to implement that determination, and added pars. (2) and (3).

Subsec. (d). Pub. L. 96–265, §304(d), substituted ''subsection (a), (b), (c), or (g) of this section'' for ''subsection (a), (c), or (g) of this section''.

Subsec. (e). Pub. L. 96–265, §304(e), substituted ''which is making disability determinations under subsection (a)(1)'' for ''which has an agreement with the Secretary'', substituted ''as determined by the Secretary'' for ''as may be mutually agreed upon'', and substituted ''making disability determinations under subsection (a)(1)'' for ''carrying out the agreement under this section''.

Subsec. (g). Pub. L. 96–265, §304(f), substituted ''does not undertake to perform disability determinations under subsection (a)(1) of this section, or which has been found by the Secretary to have substantially failed to make disability determinations in a manner consistent with his regulations and guidelines'' for ''has no agreement under subsection (b) of this section'' and ''for whom no State undertakes to make disability determinations'' for ''not included in an agreement under subsection (b) of this section''.

Subsec. (i). Pub. L. 96–265, §311(a), added subsec. (i).

1968—Subsec. (a). Pub. L. 90–248, §158(c)(3), substituted in first sentence reference to ''423(d)'' for ''423(c)''.

Subsec. (c). Pub. L. 90–248, §158(c)(4), substituted reference to ''423(d)'' for ''423(c)''.

1956—Subsec. (a). Act Aug. 1, 1956, §103(c)(7), inserted reference to section 423(c) of this title.

Subsec. (c). Act Aug. 1, 1956, §103(c)(8), restricted disability to definition of such term contained in section 416(i) or 423(c) of this title.

Subsec. (e). Act Aug. 1, 1956, §103(h), substituted ''Trust Funds'' for ''Trust Fund'', and provided for adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to payments made under this subsection.

Subsec. (f). Act Aug. 1, 1956, §103(h), substituted ''Trust Funds'' for ''Trust Fund''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5128(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply with respect to determinations made by State agencies in fiscal years after fiscal year 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10306(a)(3) of Pub. L. 101–239 provided that: ''The amendment made by this section [amending this section] shall apply with respect to notices issued on or after July 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8012(b) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section] shall apply to reports required to be submitted after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Section 8(c) of Pub. L. 98–460 provided that: ''The amendments made by this section [amending this section and section 1382c of this title] shall apply to determinations made after 60 days after the date of the enactment of this Act [Oct. 9, 1984].''

Section 17(b) of Pub. L. 98–460 provided that: ''The amendments made by subsection (a) of this section [amending this section] shall become effective on the date of the enactment of this Act [Oct. 9, 1984] and shall expire on December 31, 1987. The provisions of the Social Security Act amended by subsection (a) of this section (as such provisions were in effect immediately before the date of the enactment of this Act) shall be effective after December 31, 1987.''

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 3(b) of Pub. L. 97–455 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Jan. 12, 1983].''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 304(h) of Pub. L. 96–265 provided that: ''The amendments made by subsections (a), (b), (d), (e), and (f) [amending this section] shall be effective beginning with the twelfth month following the month in which this Act is enacted [June 1980]. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under section 221(a) of the Social Security Act [subsec. (a) of this section] (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in section 221(a)(1) of such Act as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given.''

Section 311(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on January 1, 1982.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable with respect to application for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

ELECTION UNDER SUBSECTION (*l*)(1) BY CURRENT RECIPIENTS

Section 10306(a)(2) of Pub. L. 101–239 provided that: ''Not later than July 1, 1990, the Secretary of Health and Human Services shall provide every individual receiving benefits under title II of the Social Security Act [this subchapter] on the basis of disability by reason of blindness an opportunity to make an election under section 221(*l*)(1) of such Act [subsec. (*l*)(1) of this section] (as added by paragraph (1)).''

MORATORIUM ON MENTAL IMPAIRMENT REVIEWS

Section 5 of Pub. L. 98–460 provided that:

''(a) The Secretary of Health and Human Services (hereafter in this section referred to as the 'Secretary') shall revise the criteria embodied under the category 'Mental Disorders' in the 'Listing of Impairments' in effect on the date of the enactment of this Act [Oct. 9, 1984] under appendix 1 to subpart P of part 404 of title 20 of the Code of Federal Regulations. The revised criteria and listings, alone and in combination with assessments of the residual functional capacity of the individuals involved, shall be designed to realistically evaluate the ability of a mentally impaired individual to engage in substantial gainful activity in a competitive workplace environment. Regulations establishing such revised criteria and listings shall be published no later than 120 days after the date of the enactment of this Act.

''(b)(1) Until such time as revised criteria have been established by regulation in accordance with subsection (a), no continuing eligibility review shall be carried out under section 221(i) of the Social Security Act [subsec. (i) of this section], or under the corresponding requirements established for disability determinations and reviews under title XVI of such Act [subchapter XVI of this chapter], with respect to any individual previously determined to be under a disability by reason of a mental impairment, if—

''(A) no initial decision on such review has been rendered with respect to such individual prior to the date of the enactment of this Act, or

''(B) an initial decision on such review was rendered with respect to such individual prior to the date of the enactment of this Act but a timely appeal from such decision was filed or was pending on or after June 7, 1983.

For purposes of this paragraph and subsection (c)(1) the term 'continuing eligibility review', when used to refer to a review of a previous determination of disability, includes any reconsideration of or hearing on the initial decision rendered in such review as well as such initial decision itself, and any review by the Appeals Council of the hearing decision.

''(2) Paragraph (1) shall not apply in any case where the Secretary determines that fraud was involved in the prior determination, or where an individual (other than an individual eligible to receive benefits under section 1619 of the Social Security Act [section 1382h of this title]) is determined by the Secretary to be engaged in substantial gainful activity (or gainful activity, in the case of a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 202(e) and (f) of such Act [section 402(e), (f) of this title]).

''(c)(1) Any initial determination that an individual is not under a disability by reason of a mental impairment and any determination that an individual is not under a disability by reason of a mental impairment in a reconsideration of or hearing on an initial disability determination, made or held under title II or XVI of the Social Security Act [this subchapter or subchapter XVI of this chapter] after the date of the enactment of this Act [Oct. 9, 1984] and prior to the date on which revised criteria are established by regulation in accordance with subsection (a), and any determination that an individual is not under a disability by reason of a mental impairment made under or in accordance with title II or XVI of such Act in a reconsideration of, hearing on, review by the Appeals Council of, or judicial review of a decision rendered in any continuing eligibility review to which subsection (b)(1) applies, shall be redetermined by the Secretary as soon as feasible after the date on which such criteria are so established, applying such revised criteria.

''(2) In the case of a redetermination under paragraph (1) of a prior action which found that an individual was not under a disability, if such individual is found on redetermination to be under a disability, such redetermination shall be applied as though it had been made at the time of such prior action.

''(3) Any individual with a mental impairment who was found to be not disabled pursuant to an initial disability determination or a continuing eligibility review between March 1, 1981, and the date of the enactment of this Act [Oct. 9, 1984], and who reapplies for benefits under title II or XVI of the Social Security Act, may be determined to be under a disability during the period considered in the most recent prior determination. Any reapplication under this paragraph must be filed within one year after the date of the enactment of this Act, and benefits payable as a result of the preceding sentence shall be paid only on the basis of the reapplication.''

INSTITUTION OF NOTIFICATION SYSTEM

Section 6(c) of Pub. L. 98–460 provided that: ''The Secretary shall institute a system of notification required by the amendments made by subsections (a) and (b) [amending this section and section 1383b of this title] as soon as is practicable after the date of the enactment of this Act [Oct. 9, 1984].''

DEMONSTRATION PROJECTS; OPPORTUNITY FOR PERSONAL APPEARANCE PRIOR TO DISABILITY DETERMINATIONS; REPORT TO CONGRESSIONAL COMMITTEES

Section 6(d), (e) of Pub. L. 98–460 provided that:

''(d) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act [Oct. 9, 1984], implement demonstration projects in which the opportunity for a personal appearance prior to a determination of ineligibility for persons reviewed under section 221(i) of the Social Security Act [subsec. (i) of this section] is substituted for the face to face evidentiary hearing required by section 205(b)(2) of such Act [section 405(b)(2) of this title]. Such demonstration projects shall be conducted in not fewer than five States, and shall also include disability determinations with respect to individuals reviewed under title XVI of such Act [subchapter XVI of this chapter]. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.

''(e) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act, implement demonstration projects in which the opportunity for a personal appearance is provided the applicant prior to initial disability determinations under subsections (a), (c), and (g) of section 221 of the Social Security Act, and prior to initial disability determinations on applications for benefits under title XVI of such Act. Such demonstration projects shall be conducted in not fewer than five States. The Secretary shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate concerning such demonstration projects, together with any recommendations, not later than December 31, 1986.''

PROMULGATION OF REGULATIONS

Section 9(a)(2) of Pub. L. 98–460 provided that: ''The Secretary of Health and Human Services shall prescribe regulations required under section 221(j) of the Social Security Act [subsec. (j) of this section] not later than 180 days after the date of the enactment of this Act [Oct. 9, 1984].''

FREQUENCY OF CONTINUING ELIGIBILITY REVIEWS

Section 15 of Pub. L. 98–460 provided that: ''The Secretary of Health and Human Services shall promulgate final regulations, within 180 days after the date of the enactment of this Act [Oct. 9, 1984], which establish the standards to be used by the Secretary in determining the frequency of reviews under section 221(i) of the Social Security Act [subsec. (j) of this section]. Until such regulations have been issued as final regulations, no individual may be reviewed more than once under section 221(i) of the Social Security Act.''

TRAVEL EXPENSES FOR MEDICAL EXAMINATIONS, RECONSIDERATION INTERVIEWS, AND PROCEEDINGS BEFORE ADMINISTRATIVE LAW JUDGES

Provisions authorizing payment of travel expenses either on an actual cost or commuted basis, to an individual for travel incident to medical examinations, and to parties, their representatives and all reasonably necessary witnesses for travel within the United States, Puerto Rico, and the Virgin Islands, to reconsider interviews and to proceedings before administrative law judges under subchapters II, XVI, and XVIII of this chapter were contained in the following appropriation acts:

Oct. 18, 1978, Pub. L. 95–480, title II, 92 Stat. 1582.
Sept. 30, 1976, Pub. L. 94–439, title II, 90 Stat. 1432.
Jan. 28, 1976, Pub. L. 94–206, title II, 90 Stat. 17.
Dec. 7, 1974, Pub. L. 93–517, title II, 88 Stat. 1645.
Dec. 18, 1973, Pub. L. 93–192, title II, 87 Stat. 759.
Aug. 10, 1971, Pub. L. 92–80, title II, 85 Stat. 296.
Jan. 11, 1971, Pub. L. 91–667, title II, 84 Stat. 2013.
Mar. 5, 1970, Pub. L. 91–204, title II, 84 Stat. 41.
Oct. 11, 1968, Pub. L. 90–557, title II, 82 Stat. 988.
Nov. 8, 1967, Pub. L. 90–132, title II, 81 Stat. 402.
Nov. 7, 1966, Pub. L. 89–787, title II, 80 Stat. 1395.
Aug. 31, 1965, Pub. L. 89–156, title II, 79 Stat. 604.
Sept. 19, 1964, Pub. L. 88–605, title II, 78 Stat. 974.
Oct. 11, 1963, Pub. L. 88–136, title II, 77 Stat. 239.
Aug. 14, 1962, Pub. L. 87–582, title II, 76 Stat. 375.
Sept. 22, 1961, Pub. L. 87–290, title II, 75 Stat. 604.
Sept. 2, 1960, Pub. L. 86–703, title II, 74 Stat. 769.
Aug. 14, 1959, Pub. L. 86–158, title II, 73 Stat. 352.
Aug. 1, 1958, Pub. L. 85–580, title II, 72 Stat. 471.
June 29, 1957, Pub. L. 85–67, title II, 71 Stat. 221.
June 29, 1956, ch. 477, title II, 70 Stat. 434.
Aug. 1, 1955, ch. 437, title II, 69 Stat. 408.

REVIEW OF DECISIONS RENDERED BY ADMINISTRATIVE LAW JUDGES AS RESULT OF DISABILITY HEARINGS; REPORT TO CONGRESS

Section 304(g) of Pub. L. 96–265 provided that: ''The Secretary of Health and Human Services shall implement a program of reviewing, on his own motion, decisions rendered by administrative law judges as a result of hearings under section 221(d) of the Social Security Act [subsec. (d) of this section], and shall report to the Congress by January 1, 1982, on his progress.''

ASSUMPTION BY SECRETARY OF FUNCTIONS AND OPERATIONS OF STATE DISABILITY DETERMINATION UNITS

Section 304(i) of Pub. L. 96–265 directed Secretary of Health and Human Services to submit to Congress by July 1, 1980, a detailed plan on how he intended to assume functions and operations of a State disability determination unit when this became necessary under amendments made by this section [amending this section], and how he intended to meet requirements of section 221(b)(3) of Social Security Act [subsec. (b)(3) of this section]. Such plan was to assume the uninterrupted operation of disability determination function and utilization of best qualified personnel to carry out such function, and was to include recommendations for any amendment of Federal law or regulation required to carry out such plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 405, 423, 425, 1382c, 1383, 1383b of this title; title 7 section 2012; title 30 section 923.

§ 422. Rehabilitation services

(a) Referral for rehabilitation services

It is declared to be the policy of the Congress that disabled individuals applying for a deter-

mination of disability, and disabled individuals who are entitled to child's insurance benefits, widow's insurance benefits, or widower's insurance benefits, shall be promptly referred to the State agency or agencies administering or supervising the administration of the State plan approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.] for necessary vocational rehabilitation services, to the end that the maximum number of such individuals may be rehabilitated into productive activity.

(b) Deductions on account of refusal to accept rehabilitation services

(1) Deductions, in such amounts and at such time or times as the Commissioner of Social Security shall determine, shall be made from any payment or payments under this subchapter to which an individual is entitled, until the total of such deductions equals such individual's benefit or benefits under sections 402 and 423 of this title for any month in which such individual, if a child who has attained the age of eighteen and is entitled to child's insurance benefits, a widow, widower, surviving divorced wife, or surviving divorced husband who has not attained age 60, or an individual entitled to disability insurance benefits, refuses without good cause to accept rehabilitation services available to him under a State plan approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.]. Any individual who is a member or adherent of any recognized church or religious sect which teaches its members or adherents to rely solely, in the treatment and cure of any physical or mental impairment, upon prayer or spiritual means through the application and use of the tenets or teachings of such church or sect, and who, solely because of his adherence to the teachings or tenets of such church, or sect, refuses to accept rehabilitation services available to him under a State plan approved under title I of the Rehabilitation Act of 1973, shall, for the purposes of the first sentence of this subsection, be deemed to have done so with good cause.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled or from any mother's or father's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or such mother's or father's insurance benefit or benefits under section 402 of this title for any month in which such child or person entitled to mother's or father's insurance benefits is married to an individual who is entitled to disability insurance benefits and in which such individual refuses to accept rehabilitation services and a deduction, on account of such refusal, is imposed under paragraph (1) of this subsection. If both this paragraph and paragraph (3) of this subsection are applicable to a child's insurance benefit for any month, only an amount equal to such benefit shall be deducted.

(3) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to disability insurance benefits, to which a wife, divorced wife, husband, divorced husband, or child is entitled, until the total of such deductions equals such wife's, husband's, or child's insurance benefit or benefits under section 402 of this title for any month in which the individual, on the basis of whose wages and self-employment income such benefit was payable, refuses to accept rehabilitation services and deductions, on account of such refusal, are imposed under paragraph (1) of this subsection.

(4) The provisions of paragraph (1) shall not apply to any child entitled to benefits under section 402(d) of this title, if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time elementary or secondary school student (as defined and determined under section 402(d) of this title).

(c) "Period of trial work" defined

(1) The term ''period of trial work'', with respect to an individual entitled to benefits under section 423, 402(d), 402(e), or 402(f) of this title, means a period of months beginning and ending as provided in paragraphs (3) and (4).

(2) For purposes of sections 416(i) and 423 of this title, any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. For purposes of this subsection the term ''services'' means activity (whether legal or illegal) which is performed for remuneration or gain or is determined by the Commissioner of Social Security to be of a type normally performed for remuneration or gain.

(3) A period of trial work for any individual shall begin with the month in which he becomes entitled to disability insurance benefits, or, in the case of an individual entitled to benefits under section 402(d) of this title who has attained the age of eighteen, with the month in which he becomes entitled to such benefits or the month in which he attains the age of eighteen, whichever is later, or, in the case of an individual entitled to widow's or widower's insurance benefits under section 402(e) or (f) of this title who became entitled to such benefits prior to attaining age 60, with the month in which such individual becomes so entitled. Notwithstanding the preceding sentence, no period of trial work may begin for any individual prior to the beginning of the month following September 1960; and no such period may begin for an individual in a period of disability of such individual in which he had a previous period of trial work.

(4) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

(A) the ninth month, in any period of 60 consecutive months, in which the individual renders services (whether or not such nine months are consecutive); or

(B) the month in which his disability (as defined in section 423(d) of this title) ceases (as determined after application of paragraph (2) of this subsection).

(d) Cost of rehabilitation services from trust funds

(1) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

(A) entitled to disability insurance benefits under section 423 of this title,

(B) entitled to child's insurance benefits under section 402(d) of this title after having attained age 18 (and are under a disability),

(C) entitled to widow's insurance benefits under section 402(e) of this title prior to attaining age 60, or

(D) entitled to widower's insurance benefits under section 402(f) of this title prior to attaining age 60,

to the end that savings will accrue to the Trust Funds as a result of rehabilitating such individuals, there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year such sums as may be necessary to enable the Commissioner of Social Security to reimburse the State for the reasonable and necessary costs of vocational rehabilitation services furnished such individuals (including services during their waiting periods), under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.], (i) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (ii) in cases where such individuals receive benefits as a result of section 425(b) of this title (except that no reimbursement under this paragraph shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month in which his or her entitlement to such benefits ceases, whichever first occurs), and (iii) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation. The determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria formulated by the Commissioner.

(2) In the case of any State which is unwilling to participate or does not have a plan which meets the requirements of paragraph (1), the Commissioner of Social Security may provide such services in such State by agreement or contract with other public or private agencies, organizations, institutions, or individuals. The provision of such services shall be subject to the same conditions as otherwise apply under paragraph (1).

(3) Payments under this subsection shall be made in advance or by way of reimbursement, with necessary adjustments for overpayments and underpayments.

(4) Money paid from the Trust Funds under this subsection for the reimbursement of the costs of providing services to individuals who are entitled to benefits under section 423 of this title (including services during their waiting periods), or who are entitled to benefits under section 402(d) of this title on the basis of the wages and self-employment income of such individuals, shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid from the Trust Funds under this subsection shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund. The Commissioner of Social Security shall determine according to such methods and procedures as the Commissioner may deem appropriate—

(A) the total amount to be reimbursed for the cost of services under this subsection, and

(B) subject to the provisions of the preceding sentence, the amount which should be charged to each of the Trust Funds.

(5) For purposes of this subsection the term ''vocational rehabilitation services'' shall have the meaning assigned to it in title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.], except that such services may be limited in type, scope, or amount in accordance with regulations of the Commissioner of Social Security designed to achieve the purpose of this subsection.

(Aug. 14, 1935, ch. 531, title II, §222, as added Sept. 1, 1954, ch. 1206, title I, §106(g) 68 Stat. 1081; amended Aug. 1, 1956, ch. 836, title I, §103(b), 70 Stat. 817; Aug. 28, 1958, Pub. L. 85–840, title II, §205(n), title III, §307(g), 72 Stat. 1025, 1032; Sept. 13, 1960, Pub. L. 86–778, title IV, §403(a), 74 Stat. 968; July 30, 1965, Pub. L. 89–97, title III, §§306(c)(14), 308(d)(11), 336, 79 Stat. 373, 379, 408; Jan. 2, 1968, Pub. L. 90–248, title I, §§104(d)(3), (4), 158(c)(5), 81 Stat. 832, 869; Oct. 30, 1972, Pub. L. 92–603, title I, §§107(b)(3), (4), 131, 86 Stat. 1343, 1360; June 9, 1980, Pub. L. 96–265, title III, §303(a), 94 Stat. 451; Aug. 13, 1981, Pub. L. 97–35, title XXII, §2209(a), 95 Stat. 840; Apr. 20, 1983, Pub. L. 98–21, title III, §309(*l*)–(n), 97 Stat. 117; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(a)(15), 98 Stat. 1165; Oct. 9, 1984, Pub. L. 98–460, §11(a), 98 Stat. 1805; Nov. 5, 1990, Pub. L. 101–508, title V, §5112(a), 104 Stat. 1388–273; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), title II, §201(a)(4)(B), 108 Stat. 1478, 1499.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsecs. (a), (b)(1), and (d)(1), (5), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended. Title I of the Rehabilitation Act of 1973 is classified generally to subchapter I (§720 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(2). Pub. L. 103–296, §201(a)(4)(B), inserted ''(whether legal or illegal)'' after ''activity''.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d)(1). Pub. L. 103–296, §107(a)(4), in closing provisions substituted ''Commissioner of Social Security to reimburse'' for ''Secretary to reimburse''.

Pub. L. 103–296, §107(a)(4), which directed the amendment of this subchapter by substituting ''the Commissioner'' for ''him'' where such word referred to the Secretary of Health and Human Services, was executed in closing provisions by substituting ''the Commissioner'' for ''him'' where referring to the Commissioner of So-

cial Security, to reflect the probable intent of Congress.

Subsec. (d)(4). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner may'' for ''he may''.

Subsec. (d)(5). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

1990—Subsec. (c)(4)(A). Pub. L. 101–508, § 5112(a)(1), substituted ''in any period of 60 consecutive months'' for ''beginning on or after the first day of such period''.

Subsec. (c)(5). Pub. L. 101–508, § 5112(a)(2), struck out par. (5) which read as follows: ''In the case of an individual who becomes entitled to benefits under section 423 of this title for any month as provided in clause (ii) of subsection (a)(1) of such section, the preceding provisions of this subsection shall not apply with respect to services in any month beginning with the first month for which he is so entitled and ending with the first month thereafter for which he is not entitled to benefits under section 423 of this title.''

1984—Subsecs. (a), (b)(1). Pub. L. 98–369, § 2663(a)(15)(A), substituted ''title I of the Rehabilitation Act of 1973'' for ''the Vocational Rehabilitation Act''.

Subsec. (b)(3). Pub. L. 98–369, § 2663(a)(15)(B), substituted ''equals'' for ''equal''.

Subsec. (b)(4). Pub. L. 98–369, § 2663(a)(15)(C), substituted ''full-time elementary or secondary school student'' for ''full-time student''.

Subsec. (d)(1). Pub. L. 98–460, § 11(a), in provisions following subpar. (D) struck out ''into substantial gainful activity'' after ''rehabilitating such individuals'', designated existing provisions as cl. (i), added cls. (ii) and (iii), and substituted ''of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation,'' for ''of such individuals to substantial gainful activity'' after cl. (iii).

1983—Subsec. (b)(1). Pub. L. 98–21, § 309(*l*), substituted '', surviving divorced wife, or surviving divorced husband'' for ''or surviving divorced wife''.

Subsec. (b)(2). Pub. L. 98–21, § 309(m), inserted ''or father's'' after ''mother's'' wherever appearing.

Subsec. (b)(3). Pub. L. 98–21, § 309(n), inserted ''divorced husband,'' after ''husband,''.

1981—Subsec. (d). Pub. L. 97–35 substituted provisions authorizing the transfer of funds as may be necessary to enable the Secretary to reimburse the State for the reasonable and necessary costs of vocational rehabilitation, under a State plan approved under title I of the Rehabilitation Act of 1973, which results in performance of substantial gainful activity for a continuous period of nine months, with the determination that the vocational rehabilitation services contributed to the successful return to substantial gainful activity and the amount of costs to be reimbursed made by the Commissioner of Social Security for provisions authorizing the transfer of funds as may be necessary to enable the Secretary to pay the cost of vocational rehabilitation services, restricting the amount of such cost that may be expended in any one fiscal year, establishing specific criteria which a State plan must meet, and providing that the selection of individuals to receive services be made in conformance with criteria formulated by the Secretary.

1980—Subsec. (c)(1). Pub. L. 96–265, § 303(a)(1), inserted references to sections 402(e) and 402(f) of this title.

Subsec. (c)(3). Pub. L. 96–265, § 303(a)(2), inserted reference to individuals entitled to widow's or widower's insurance benefits under section 402(e) or (f) of this title who became entitled to such benefits prior to attaining age 60.

1972—Subsec. (b)(1). Pub. L. 92–603, § 107(b)(3), substituted ''a widow, widower or surviving divorced wife who has not attained age 60'' or ''a widow or surviving divorced wife who has not attained age 60, a widower who has not attained age 62''.

Subsec. (d)(1). Pub. L. 92–603, §§ 107(b)(4), 131, substituted ''age 60'' for ''age 62'', and inserted provisions increasing applicable percentages so that the total amount made available pursuant to subsec. (d) may not exceed 1.25 percent, in fiscal year ending June 30, 1973, and 1.5 percent, in fiscal year ending June 30, 1974, and thereafter, of the total of the benefits under section 402(d) of this title for children who have attained age 18 and are under a disability.

1968—Subsec. (a). Pub. L. 90–248, § 104(d)(3)(A), inserted ''widow's insurance benefits, or widower's insurance benefits,'' after ''benefits,''.

Subsec. (b)(1). Pub. L. 90–248, § 104(d)(3)(B), substituted ''child's insurance benefits, a widow or surviving divorced wife who has not attained age 60, a widower who has not attained age 62, or'' for ''child's insurance benefits or if''.

Subsec. (c)(4)(B). Pub. L. 90–248, § 158(c)(5), substituted reference to ''423(d)'' for ''423(c)(2)''.

Subsec. (d)(1). Pub. L. 90–248, § 104(d)(4), added subpars. (C) and (D), and inserted ''the benefits under section 402(e) of this title for widows and surviving divorced wives who have not attained age 60 and are under a disability, the benefits under section 402(f) of this title for widowers who have not attained age 62,'' after ''disability,'' in text following subpar. (D).

1965—Subsec. (b)(3). Pub. L. 89–97, § 308(d)(11), inserted ''divorced wife,'' after ''wife,''.

Subsec. (b)(4). Pub. L. 89–97, § 306(c)(14), added par. (4).

Subsec. (d). Pub. L. 89–97, § 336, added subsec. (d).

1960—Subsec. (c). Pub. L. 86–778 amended subsection generally by substituting provisions relating to period of trial work for provisions which related to services performed pursuant to a State-approved rehabilitation program.

1958—Subsec. (b). Pub. L. 85–840 designated existing provisions thereof as par. (1) and added pars. (2) and (3).

1956—Subsec. (a). Act Aug. 1, 1956, designated existing provisions as subsec. (a), authorized referral of disabled individuals who are entitled to child's insurance benefits, and substituted ''rehabilitated into productive activity'' for ''restored to productive activity''.

Subsecs. (b), (c). Act Aug. 1, 1956, added subsecs. (b) and (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(a)(4)(C) of Pub. L. 103–296 provided that: ''The amendments made by this paragraph [amending this section and section 423 of this title] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5112(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on January 1, 1992.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 11(c) of Pub. L. 98–460 provided that: ''The amendments made by this section [amending this section and section 1382d of this title] shall apply with respect to individuals who receive benefits as a result of section 225(b) or section 1631(a)(6) of the Social Security Act [section 425(b) or 1383(a)(6) of this title], or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following the month in which this Act is enacted [October 1984].''

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable only with respect to monthly payments payable under this sub-

chapter for months after April, 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2209(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services rendered on or after October 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, and applicable to any individual whose disability has not been determined to have ceased prior to such first day, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to monthly benefits under this subchapter for months after Dec. 1972, with specified exceptions, see section 107(c) of Pub. L. 92–603, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 104(d)(3), (4) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90–248, set out as a note under section 402 of this title.

Amendment by section 158(c)(5) of Pub. L. 90–248 applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 308(d)(11) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter beginning with the second month following July 1965, but, in the case of an individual who was not entitled to a monthly insurance benefit under section 402 of this title for the first month following July 1965, only on the basis of an application filed in or after July 1965, see section 308(e) of Pub. L. 89–97, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 403(e) of Pub. L. 86–778 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall be effective only with respect to months beginning after the month in which this Act is enacted [September 1960].

''(2) The amendments made by subsections (b) and (d) [amending sections 423 and 402 of this title] shall apply only with respect to benefits under section 223(a) or 202(d) of the Social Security Act [section 423(a) or 402(d) of this title] for months after the month in which this Act is enacted in the case of individuals who, without regard to such amendments, would have been entitled to such benefits for the month in which this Act is enacted or for any succeeding month.

''(3) The amendment made by subsection (c) [amending section 416 of this title] shall apply only in the case of individuals who have a period of disability (as defined in section 216(i) of the Social Security Act [section 416(i) of this title]) beginning on or after the date of the enactment of this Act [Sept. 13, 1960], or beginning before such date and continuing, without regard to such amendment, beyond the end of the month in which this Act is enacted.''

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 205(n) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after August 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

Section 307(h)(3) of Pub. L. 85–840 provided that: ''The amendments made by subsection (g) [amending this section] shall apply with respect to monthly benefits under section 202 of the Social Security Act [section 402 of this title] for months, occurring after the month in which this Act is enacted [August 1958], in which a deduction is incurred under paragraph (1) of section 222(b) of the Social Security Act [subsec. (b)(1) of this section].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 403, 423, 424a, 426, 1382d of this title; title 20 section 3441; title 26 sections 1402, 3127; title 29 section 762a.

§ 423. Disability insurance benefit payments

(a) Disability insurance benefits

(1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c)(1) of this section),

(B) has not attained retirement age (as defined in section 416(*l*) of this title),

(C) has filed application for disability insurance benefits, and

(D) is under a disability (as defined in subsection (d) of this section)

shall be entitled to a disability insurance benefit (i) for each month beginning with the first month after his waiting period (as defined in subsection (c)(2) of this section) in which he becomes so entitled to such insurance benefits, or (ii) for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability (as defined in section 416(i) of this title) which ceased, within the 60-month period preceding the first month in which he is under such disability, and ending with the month preceding whichever of the following months is the earliest: the month in which he dies, the month in which he attains retirement age (as defined in section 416(*l*) of this title), or, subject to subsection (e) of this section, the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 422(c)(4)(A) of this title, the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 36 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity. No payment under this paragraph may be made to an individual who would not meet the defini-

tion of disability in subsection (d) of this section except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity, and no payment may be made for such month under subsection (b), (c), or (d) of section 402 of this title to any person on the basis of the wages and self-employment income of such individual. In the case of a deceased individual, the requirement of subparagraph (C) may be satisfied by an application for benefits filed with respect to such individual within 3 months after the month in which he died.

(2) Except as provided in section 402(q) of this title and section 415(b)(2)(A)(ii) of this title, such individual's disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 415 of this title as though he had attained age 62 in—

(A) the first month of his waiting period, or

(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which he becomes entitled to such disability insurance benefits,

and as though he had become entitled to old-age insurance benefits in the month in which the application for disability insurance benefits was filed and he was entitled to an old-age insurance benefit for each month for which (pursuant to subsection (b) of this section) he was entitled to a disability insurance benefit. For the purposes of the preceding sentence, in the case of an individual who attained age 62 in or before the first month referred to in subparagraph (A) or (B) of such sentence, as the case may be, the elapsed years referred to in section 415(b)(3) of this title shall not include the year in which he attained age 62, or any year thereafter.

(b) Filing application

An application for disability insurance benefits filed before the first month in which the applicant satisfies the requirements for such benefits (as prescribed in subsection (a)(1) of this section) shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Commissioner of Social Security makes a final decision on the application and no request under section 405(b) of this title for notice and opportunity for a hearing thereon is made, or if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Commissioner of Social Security). An individual who would have been entitled to a disability insurance benefit for any month had he filed application therefor before the end of such month shall be entitled to such benefit for such month if such application is filed before the end of the 12th month immediately succeeding such month.

(c) Definitions; insured status; waiting period

For purposes of this section—

(1) An individual shall be insured for disability insurance benefits in any month if—

(A) he would have been a fully insured individual (as defined in section 414 of this title) had he attained age 62 and filed application for benefits under section 402(a) of this title on the first day of such month, and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which such month occurred, or

(ii) if such month ends before the quarter in which he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with the quarter in which such month occurred and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of section 416(i)(3)(B)(ii) of this title, had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with the quarter in which such month occurs are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of ''blindness'' as defined in section 416(i)(1) of this title). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a period of disability unless such quarter was a quarter of coverage.

(2) The term ''waiting period'' means, in the case of any application for disability insurance benefits, the earliest period of five consecutive calendar months—

(A) throughout which the individual with respect to whom such application is filed has been under a disability, and

(B)(i) which begins not earlier than with the first day of the seventeenth month before the month in which such application is filed if such individual is insured for disability insurance benefits in such seventeenth month, or (ii) if he is not so insured in such month, which begins not earlier than with the first day of the first month after such seventeenth month in which he is so insured.

Notwithstanding the preceding provisions of this paragraph, no waiting period may begin for any individual before January 1, 1957.

(d) "Disability" defined

(1) The term ''disability'' means—

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of ''blindness'' as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

(2) For purposes of paragraph (1)(A)—

(A) An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), ''work which exists in the national economy'' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Commissioner of Social Security shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Commissioner of Social Security does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.

(3) For purposes of this subsection, a ''physical or mental impairment'' is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(4)(A) The Commissioner of Social Security shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed the exempt amount under section 403(f)(8) of this title which is applicable to individuals described in subparagraph (D) thereof. Notwithstanding the provisions of paragraph (2), an individual whose services or earnings meet such criteria shall, except for purposes of section 422(c) of this title, be found not to be disabled. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Commissioner of Social Security in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Commissioner of Social Security may prescribe.

(B) In determining under subparagraph (A) when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity, the Commissioner of Social Security shall apply the criteria described in subparagraph (A) with respect to services performed by any individual without regard to the legality of such services.

(5)(A) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Commissioner of Social Security may require. An individual's statement as to pain or other symptoms shall not alone be conclusive evidence of disability as defined in this section; there must be medical signs and findings, established by medically acceptable clinical or laboratory diagnostic techniques, which show the existence of a medical impairment that results from anatomical, physiological, or psychological abnormalities which could reasonably be expected to produce the pain or other symptoms alleged and which, when considered with all evidence required to be furnished under this paragraph (including statements of the individual or his physician as to the intensity and persistence of such pain or other symptoms which may reasonably be accepted as consistent with the medical signs and findings), would lead to a conclusion that the individual is under a disability. Objective medical evidence of pain or other symptoms established by medically acceptable clinical or laboratory techniques (for example, deteriorating nerve or muscle tissue) must be considered in reaching a conclusion as to whether the individual is under a disability. Any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician not in the employ of the Federal Government, which supplies medical evidence required and requested by the Commissioner of Social Security under this paragraph shall be entitled to payment from the Commissioner of Social Security for the reasonable cost of providing such evidence.

(B) In making any determination with respect to whether an individual is under a disability or continues to be under a disability, the Commissioner of Social Security shall consider all evidence available in such individual's case record, and shall develop a complete medical history of at least the preceding twelve months for any case in which a determination is made that the individual is not under a disability. In making any determination the Commissioner of Social Security shall make every reasonable effort to

obtain from the individual's treating physician (or other treating health care provider) all medical evidence, including diagnostic tests, necessary in order to properly make such determination, prior to evaluating medical evidence obtained from any other source on a consultative basis.

(6)(A) Notwithstanding any other provision of this subchapter, any physical or mental impairment which arises in connection with the commission by an individual (after October 19, 1980) of an offense which constitutes a felony under applicable law and for which such individual is subsequently convicted, or which is aggravated in connection with such an offense (but only to the extent so aggravated), shall not be considered in determining whether an individual is under a disability.

(B) Notwithstanding any other provision of this subchapter, any physical or mental impairment which arises in connection with an individual's confinement in a jail, prison, or other penal institution or correctional facility pursuant to such individual's conviction of an offense (committed after October 19, 1980) constituting a felony under applicable law, or which is aggravated in connection with such a confinement (but only to the extent so aggravated), shall not be considered in determining whether such individual is under a disability for purposes of benefits payable for any month during which such individual is so confined.

(e) Engaging in substantial gainful activity

(1) No benefit shall be payable under subsection (d)(1)(B)(ii), (d)(6)(A)(ii), (d)(6)(B), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 402 of this title or under subsection (a)(1) of this section to an individual for any month, after the third month, in which he engages in substantial gainful activity during the 36-month period following the end of his trial work period determined by application of section 422(c)(4)(A) of this title.

(2) No benefit shall be payable under section 402 of this title on the basis of the wages and self-employment income of an individual entitled to a benefit under subsection (a)(1) of this section for any month for which the benefit of such individual under subsection (a)(1) of this section is not payable under paragraph (1).

(f) Standard of review for termination of disability benefits

A recipient of benefits under this subchapter or subchapter XVIII of this chapter based on the disability of any individual may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(1) substantial evidence which demonstrates that—

(A) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

(B) the individual is now able to engage in substantial gainful activity; or

(2) substantial evidence which—

(A) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

(i) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity, or

(B) demonstrates that—

(i) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity; or

(3) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

(4) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this subsection shall be construed to require a determination that a recipient of benefits under this subchapter or subchapter XVIII of this chapter based on an individual's disability is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of the entitlement to such benefits or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity. In making for purposes of the preceding sentence any determination relating to fraudulent behavior by any individual or failure by any individual without good cause to cooperate or to take any required action, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language). Any determination under this section shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Commissioner of Social Security. Any determination made under this section shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled. For purposes of

this subsection, a benefit under this subchapter is based on an individual's disability if it is a disability insurance benefit, a child's, widow's, or widower's insurance benefit based on disability, or a mother's or father's insurance benefit based on the disability of the mother's or father's child who has attained age 16.

(g) Continued payment of disability benefits during appeal

(1) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(C) a timely request for a hearing under section 421(d) of this title, or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Commissioner of Social Security shall by regulations prescribe) to have the payment of such benefits, the payment of any other benefits under this subchapter based on such individual's wages and self-employment income, the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, and the payment of benefits under subchapter XVIII of this chapter based on such individual's disability, continued for an additional period beginning with the first month beginning after January 12, 1983, for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, or (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending.

(2)(A) If an individual elects to have the payment of his benefits continued for an additional period under paragraph (1), and the final decision of the Commissioner of Social Security affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in subparagraph (B).

(B) If the Commissioner of Social Security determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under paragraph (1) shall be subject to waiver consideration under the provisions of section 404 of this title. In making for purposes of this subparagraph any determination of whether any individual's appeal is made in good faith, the Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).

(h) Interim benefits in cases of delayed final decisions

(1) In any case in which an administrative law judge has determined after a hearing as provided under section 405(b) of this title that an individual is entitled to disability insurance benefits or child's, widow's, or widower's insurance benefits based on disability and the Commissioner of Social Security has not issued the Commissioner's final decision in such case within 110 days after the date of the administrative law judge's determination, such benefits shall be currently paid for the months during the period beginning with the month preceding the month in which such 110-day period expires and ending with the month preceding the month in which such final decision is issued.

(2) For purposes of paragraph (1), in determining whether the 110-day period referred to in paragraph (1) has elapsed, any period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Commissioner's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

(3) Any benefits currently paid under this subchapter pursuant to this subsection (for the months described in paragraph (1)) shall not be considered overpayments for any purpose of this subchapter (unless payment of such benefits was fraudulently obtained), and such benefits shall not be treated as past-due benefits for purposes of section 406(b)(1) of this title.

(i) Limitation on payments to prisoners

For provisions relating to limitation on payments to prisoners, see section 402(x) of this title.

(Aug. 14, 1935, ch. 531, title II, § 223, as added Aug. 1, 1956, ch. 836, title I, § 103(a), 70 Stat. 815; amended Aug. 28, 1958, Pub. L. 85–840, title II, §§ 202, 204(b), 72 Stat. 1020, 1021; Sept. 13, 1960, Pub. L. 86–778, title III, § 303(f), title IV, §§ 401(a), (b), 402(a)–(d), 403(b), 74 Stat. 964, 967, 969; June 30, 1961, Pub. L. 87–64, title I, § 102(b)(2)(B), (C), (c)(2)(C), (3)(D), (E), 75 Stat. 134, 135; July 30, 1965, Pub. L. 89–97, title III, §§ 302(e), 303(a)(2), (b)(3), (4), (c), 304(m), (n), 328(c), 344(b)–(d), 79 Stat. 366, 367, 370, 400, 413; Jan. 2, 1968, Pub. L. 90–248, title I, §§ 105(b), 158(a), (b), (c)(6)–(8), 81 Stat. 833, 867–869; Oct. 30, 1972, Pub. L. 92–603, title I, §§ 104(c), (d), 116(a), 117(b), 118(a), 86 Stat. 1340, 1350, 1351; Dec. 20, 1977, Pub. L. 95–216, title III, § 335, 91 Stat. 1547; June 9, 1980, Pub. L. 96–265, title I, § 102(b), title III, §§ 302(a)(1), 303(b)(1)(A), (2)(A), 306(c), 309(a), 94 Stat. 443, 450, 451, 453, 458, 459; Oct. 19, 1980, Pub. L. 96–473, § 5(a)(1), (c), 94 Stat. 2264, 2265; Dec. 29, 1981, Pub. L. 97–123, § 6, 95 Stat. 1664; Jan. 12, 1983, Pub. L. 97–455, § 2, 96 Stat. 2498; Apr. 20, 1983, Pub. L. 98–21, title II, § 201(c)(1)(E), (3), title III, §§ 309(*o*), 332(b), 339(b), 97 Stat. 109, 117, 129, 134; Oct. 11, 1983, Pub. L. 98–118, § 2, 97 Stat. 803; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2661(m), 2662(c)(2), (i), 2663(a)(16), 98 Stat. 1158–1160, 1165; Oct. 9, 1984, Pub. L. 98–460, §§ 2(a), 3(a)(1), 4(a)(1), 7(a), 9(b)(1), 98 Stat. 1794, 1799, 1800, 1803, 1805;

Apr. 7, 1986, Pub. L. 99–272, title XII, § 12107(b), 100 Stat. 286; Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1883(a)(10), 100 Stat. 2916; Dec. 22, 1987, Pub. L. 100–203, title IX, §§ 9009, 9010(a), (e)(2), 101 Stat. 1330–293, 1330–294; Nov. 10, 1988, Pub. L. 100–647, title VIII, §§ 8001(a), 8006, 102 Stat. 3778, 3781; Dec. 19, 1989, Pub. L. 101–239, title X, §§ 10101, 10305(c), (d), 103 Stat. 2471, 2483; Nov. 5, 1990, Pub. L. 101–508, title V, §§ 5102, 5103(a), (b)(2)–(5), 5118(a), 104 Stat. 1388–250, 1388–251, 1388–278; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title II, § 201(a)(4)(A), title III, § 321(a)(19), (f)(1), 108 Stat. 1478, 1499, 1537, 1540.)

AMENDMENTS

1994—Subsecs. (b), (d)(2)(B). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (d)(4). Pub. L. 103–296, § 201(a)(4)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 103–296, § 107(a)(4), in par. (4) as amended by Pub. L. 103–296, § 201(a)(4)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (d)(5). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (f). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places in closing provisions.

Subsec. (f)(2)(A). Pub. L. 103–296, § 321(f)(1)(A), struck out ''(in a case to which clause (ii)(II) does not apply)'' after ''new medical evidence and'' in introductory provisions.

Subsec. (f)(2)(B)(ii). Pub. L. 103–296, § 321(f)(1)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: ''the requirements of subclause (I) or (II) of subparagraph (A)(ii) are met; or''.

Subsecs. (g), (h). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''his'' in subsec. (h)(1), and ''Commissioner's'' for ''Secretary's'' in subsec. (h)(2).

Subsec. (i). Pub. L. 103–296, § 321(a)(19), inserted heading.

1990—Subsec. (d)(2)(A). Pub. L. 101–508, § 5103(a)(1), struck out ''(except a widow, surviving divorced wife, widower, or surviving divorced husband for purposes of section 402(e) or (f) of this title)'' after ''An individual''.

Subsec. (d)(2)(B), (C). Pub. L. 101–508, § 5103(a)(2), (3), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''A widow, surviving divorced wife, widower, or surviving divorced husband shall not be determined to be under a disability (for purposes of section 402(e) or (f) of this title) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity.''

Subsec. (e). Pub. L. 101–508, § 5118(a), designated existing provision as par. (1) and added par. (2).

Subsec. (f). Pub. L. 101–508, § 5103(b)(5), struck out ''(or gainful activity in the case of a widow, surviving divorced wife, widower, or surviving divorced husband),'' after ''gainful activity'' in two places in first sentence following par. (4).

Subsec. (f)(1)(B). Pub. L. 101–508, § 5103(b)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows:

''(B)(i) the individual is now able to engage in substantial gainful activity, or

''(ii) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is no longer deemed, under regulations prescribed by the Secretary, sufficient to preclude the individual from engaging in gainful activity; or''.

Subsec. (f)(2)(A)(ii). Pub. L. 101–508, § 5103(b)(3), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows:

''(ii)(I) the individual is now able to engage in substantial gainful activity, or

''(II) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is no longer deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity, or''.

Subsec. (f)(3). Pub. L. 101–508, § 5103(b)(4), substituted ''therefore the individual is able to engage in substantial gainful activity; or'' for ''therefore—'' and subpars. (A) and (B) which read as follows:

''(A) the individual is able to engage in substantial gainful activity, or

''(B) if the individual is a widow or surviving divorced wife under section 402(e) of this title or a widower or surviving divorced husband under section 402(f) of this title, the severity of his or her impairment or impairments is not deemed under regulations prescribed by the Secretary sufficient to preclude the individual from engaging in gainful activity; or''.

Subsec. (g)(1). Pub. L. 101–508, § 5102(1), inserted ''or'' before ''(ii)'' and substituted ''pending'' for ''pending, or (iii) June 1991'' before period at end.

Subsec. (g)(3). Pub. L. 101–508, § 5102(2), struck out par. (3) which read as follows: ''The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

''(A) on or after January 12, 1983, or prior to such date but only on the basis of a timely request for a hearing under section 421(d) of this title, or for an administrative review prior to such hearing, and

''(B) prior to January 1, 1991.''

1989—Subsec. (f). Pub. L. 101–239, § 10305(c), inserted after first sentence of concluding provisions ''In making for purposes of the preceding sentence any determination relating to fraudulent behavior by any individual or failure by any individual without good cause to cooperate or to take any required action, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).''

Subsec. (g)(1)(iii). Pub. L. 101–239, § 10101(1), substituted ''1991'' for ''1990''.

Subsec. (g)(2)(B). Pub. L. 101–239, § 10305(d), inserted at end ''In making for purposes of this subparagraph any determination of whether any individual's appeal is made in good faith, the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation such individual may have (including any lack of facility with the English language).''

Subsec. (g)(3)(B). Pub. L. 101–239, § 10101(2), substituted ''1991'' for ''1990''.

1988—Subsec. (g)(1)(iii). Pub. L. 100–647, § 8006(1), substituted ''June 1990'' for ''June 1989''.

Subsec. (g)(3)(B). Pub. L. 100–647, § 8006(2), substituted ''January 1, 1990'' for ''January 1, 1989''.

Subsecs. (h), (i). Pub. L. 100–647, § 8001(a), added subsec. (h) and redesignated former subsec. (h) as (i).

1987—Subsec. (a)(1). Pub. L. 100–203, § 9010(a), substituted ''36 months'' for ''15 months''.

Subsec. (e). Pub. L. 100–203, § 9010(e)(2), substituted ''36-month period'' for ''15-month period''.

Subsec. (g)(1). Pub. L. 100–203, § 9009(1), substituted ''June 1989'' for ''June 1988'' in cl. (iii) at end.

Subsec. (g)(3)(B). Pub. L. 100–203, § 9009(2), substituted ''January 1, 1989'' for ''January 1, 1988''.

1986—Subsec. (e). Pub. L. 99–272 inserted ''(d)(6)(A)(ii), (d)(6)(B),'' after ''(d)(1)(B)(ii)''.

Subsec. (g)(1). Pub. L. 99–514 struck out second comma after ''payment of such benefits'' in provisions following subpar. (C).

1984—Subsec. (a)(1)(B). Pub. L. 98–369, §2662(c)(2), made a clarifying amendment to Pub. L. 98–21, §201(c)(3). See 1983 Amendment note below.

Subsec. (c)(1)(B). Pub. L. 98–369, §2661(m), realigned margins of subpar. (B).

Subsec. (d)(2)(A). Pub. L. 98–369, §2663(a)(16), substituted ''An individual'' for ''an individual''.

Subsec. (d)(2)(C). Pub. L. 98–460, §4(a)(1), added subpar. (C).

Subsec. (d)(5). Pub. L. 98–460, §9(b)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 98–460, §3(a)(1), inserted provisions requiring, in making determinations as to whether an individual is under a disability, that subjective statements as to pain or other symptoms alleged to be disabling be supplemented by, and considered together with, objective medical evidence of those symptoms showing the existence of a medical impairment resulting from anatomical, physiological, or psychological abnormalities.

Subsec. (f). Pub. L. 98–460, §2(a), amended subsec. (f) generally, substituting provisions relating to the standard of review for termination of disability benefits for provisions relating to suspension of benefits for inmates of penal institutions.

Subsec. (g)(1). Pub. L. 98–460, §7(a)(1), in provisions following subpar. (C) substituted reference to benefits under this subchapter for reference to benefits under this chapter, inserted references to the payment of mother's or father's insurance benefits to such individual's mother or father based on the disability of such individual as a child who has attained age 16, substituted reference to benefits under subchapter XVIII of this chapter based on such individual's disability for reference to benefits under subchapter XVIII of this chapter, and substituted ''June 1988'' for ''June 1984'' in cl. (iii).

Subsec. (g)(3)(B). Pub. L. 98–460, §7(a)(2), substituted ''January 1, 1988'' for ''December 7, 1983''.

Subsec. (h). Pub. L. 98–369, §2662(i), amended Pub. L. 98–21, §339(b), resulting in addition of subsec. (h) of this section. See 1983 Amendment note below.

1983—Subsec. (a)(1). Pub. L. 98–21, §201(c)(1)(E), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''age 65''.

Subsec. (a)(1)(B). Pub. L. 98–21, §201(c)(3), as amended by Pub. L. 98–369, §2662(c)(2), substituted ''retirement age (as defined in section 416(*l*) of this title)'' for ''the age of sixty-five''.

Subsec. (c)(1)(B)(iii). Pub. L. 98–21, §332(b), added cl. (iii).

Subsec. (d)(2). Pub. L. 98–21, §309(*o*), substituted ''widower, or surviving divorced husband'' for ''or widower'' wherever appearing.

Subsec. (f). Pub. L. 98–21, §339(b), before amendment by Pub. L. 98–369, §2662(i), struck out subsec. (f) relating to suspension of benefits for inmates of penal institutions. See note below for subsec. (h).

Subsec. (g). Pub. L. 97–455 added subsec. (g).

Subsec. (g)(3)(B). Pub. L. 98–118 substituted ''December 7, 1983'' for ''October 1, 1983''.

Subsec. (h). Pub. L. 98–21, §339(b), as amended by Pub. L. 98–369, §2662(i), added subsec. (h).

1981—Subsec. (f)(3). Pub. L. 97–123 added par. (3).

1980—Subsec. (a)(1). Pub. L. 96–265, §303(b)(1)(A), inserted reference to subsec. (e) of this section and provisions relating to an individual's termination month.

Subsec. (a)(2). Pub. L. 96–265, §102(b), substituted ''Except as provided in section 402(q) and section 415(b)(2)(A)(ii) of this title'' for ''Except as provided in section 402(q) of this title''.

Subsec. (b). Pub. L. 96–265, §306(c), inserted provisions relating to limitations on the prospective effect of applications.

Subsec. (d)(4). Pub. L. 96–265, §302(a)(1), inserted provisions relating to extraordinary work expenses due to severe disability.

Subsec. (d)(5). Pub. L. 96–265, §309(a), inserted provisions relating to payment for existing medical evidence.

Subsec. (d)(6). Pub. L. 96–473, §5(a)(1), added par. (6).

Subsec. (e). Pub. L. 96–265, §303(b)(2)(A), added subsec. (e).

Subsec. (f). Pub. L. 96–473, §5(c), added subsec. (f).

1977—Subsec. (d)(4). Pub. L. 95–216 inserted provisions relating to activities of blind individuals.

1972—Subsec. (a)(1). Pub. L. 92–603, §118(a)(1), inserted provision for filing of an application for disability insurance benefits after death of insured individual.

Subsec. (a)(2). Pub. L. 92–603, §§104(c), 118(a)(2). struck out ''(if a woman) or age 65 (if a man)'' after ''attained age 62'' and substituted ''an individual'' for ''a woman'', ''in which he attained age 62'' for ''in which she attained age 62'', and ''the application for disability insurance benefits was filed and he was'' for ''he filed his application for disability insurance benefits and was''.

Subsec. (b). Pub. L. 92–603, §118(a)(3), substituted ''if such application is filed'' for ''if he files such application''.

Subsec. (c)(1). Pub. L. 92–603, §§104(d), 117(b), struck out ''(if a woman) or age 65 (if a man)'' after ''attained age 62'' in subpar. (A) and in provisions following subpar. (B) inserted provisions eliminating the disability insured status requirement of substantial recent covered work in the case of individuals who are blind.

Subsec. (c)(2). Pub. L. 92–603, §§116(a), 118(a)(4), substituted ''five consecutive calendar months'' for ''six consecutive calendar months'' in provisions preceding subpar. (A), substituted ''with respect to whom such application is filed'' for ''who files such application'' in subpar. (A), and substituted ''seventeenth'' for ''eighteenth'' in subpar. (B).

1968—Subsec. (a)(1). Pub. L. 90–248, §158(c)(6)–(8), substituted in subpar. (D) reference to ''subsection (d)'' for ''subsection (c)(2)'', in text of first sentence following subpar. (D) reference to ''subsection (c)(2)'' for ''subsection (c)(3)'', and in last sentence following subpar. (D) reference to ''subsection (d) except for paragraph (1)(B) thereof'' for ''subsection (c)(2) except for subparagraph (B) thereof'', respectively.

Subsec. (c). Pub. L. 90–248, §158(a), restricted heading to definitions of ''insured status'' and ''waiting period'', struck out former par. (2) defining ''disability'' and requiring medical and other evidence of disability, now incorporated in subsec. (d)(1)(A), (5) of this section, and redesignated former par. (3) as (2).

Subsec. (c)(1)(B)(ii). Pub. L. 90–248, §105(b), substituted in cl. (ii) ''before the quarter in which he attains'' for ''before he attains'' and struck out ''and he is under a disability by reason of blindness (as defined in section 416(i)(1) of this title)'' after ''age 31''.

Subsec. (d). Pub. L. 90–248, §158(b), redesignated former first sentence of former subsec. (c)(2), comprising subpars. (A) and (B), as par. (1)(A), (B), added pars. (2) to (4), and redesignated former second sentence of former subsec. (c)(2) as par. (5).

1965—Subsec. (a)(1). Pub. L. 89–97, §§303(b)(3), 344(c), struck out from subpar. (D) ''at the time such application is filed,'' after parenthetical provision and from provisions following subpar. (D) ''the first month for which he is entitled to old-age insurance benefits'' after ''age 65,''; and prohibit payment to an individual who would not meet the definition of disability in subsec. (c)(2) except for subpar. (B) thereof for any month in which he engages in substantial gainful activity, and payment for such month under subsec. (b), (c), or (d) of section 402 of this title to any person on the basis of the wages and self-employment income of such individual, respectively.

Subsec. (a)(2). Pub. L. 89–97, §§302(e), 304(m), inserted in first sentence ''and was entitled to an old-age insurance benefit for each month for which (pursuant to subsection (b) of this section) he was entitled to a disability insurance benefit'' and ''Except as provided in section 402(q) of this title'' and in last sentence substituted ''shall not include the year'' for ''shall not include the first year'' and struck out ''both was fully insured and had'' before ''attained age 62'' in two places, respectively.

Subsec. (a)(3). Pub. L. 89–97, §304(n), repealed par. (3) which prohibited an individual from becoming entitled

to disability insurance benefits if he is entitled to a widow's, widower's, or parent's insurance benefit, or an old-age, wife's or husband's insurance benefit.

Subsec. (b). Pub. L. 89–97, §§ 303(c), 328(c), struck out from last sentence ''after June 1957'' after ''for any months'' and substituted ''before'' for ''prior to'' where first appearing and ''if he files such application before the end of the 12th month immediately succeeding such month'' for ''if he is continuously under a disability after such month and until he files application therefor and he files said application prior to the end of the twelfth month immediately succeeding such month''; and substituted provisions calling for an application for benefits filed before the first month in which the applicant satisfies the requirements for such benefits to be deemed a valid application only if the applicant satisfies the requirements before the Secretary makes a final decision on the application and calling for the application to be deemed filed in the first month if the applicant is found to satisfy the requirements for provisions placing an outer limit on the time prior to entitlement during which an application would be deemed filed during the first month prior to entitlement, respectively.

Subsec. (c)(1). Pub. L. 89–97, § 344(b), removed from existing subpar. (B) provision prohibiting the inclusion, as part of such 40-quarter period, of any quarter any part of which was included in a prior period of disability unless such quarter was a quarter of coverage, and designated such subpar., as so amended as subpar. (B)(i), added subpar. (B)(ii), and added the material following subpar. (B)(ii) prohibiting inclusion of any quarter as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage and calling for reduction by one of the number of quarters in any period whenever such number of quarters is an odd number.

Subsec. (c)(2)(A). Pub. L. 89–97, § 303(a)(2), designated existing provisions as subpar. (A) and substituted ''which has lasted or can be expected to last for a continuous period of not less than 12 months; or'' for ''to be of long-continued and indefinite duration''.

Subsec. (c)(2)(B). Pub. L. 89–97, § 344(d), added subpar. (B).

Subsec. (c)(3)(A). Pub. L. 89–97, § 303(b)(4), struck out ''which continues until such application is filed'' after ''disability''.

1961—Subsec. (a)(1). Pub. L. 87–64, § 102(b)(2)(C), substituted ''the month in which he attains age 65, the first month for which he is entitled to old-age insurance benefits'' for ''the month in which he attains the age of sixty-five''.

Subsec. (a)(2). Pub. L. 87–64, § 102(c)(2)(C), (3)(D), substituted ''as though he had attained age 62 (if a woman) or age 65 (if a man)'' for ''as though he had attained retirement age'', and ''fully insured and had attained age 62'' for ''fully insured and had attained retirement age'', in two places.

Subsec. (a)(3). Pub. L. 87–64, § 102(b)(2)(B), added par. (3).

Subsec. (c)(1)(A). Pub. L. 87–64, § 102(c)(3)(E), substituted ''attained age 62 (if a woman) or age 65 (if a man)'' for ''attained retirement age''.

1960—Subsec. (a)(1). Pub. L. 86–778, §§ 401(a), 402(a), 403(b), struck out provisions from cl. (B) which required an individual to have attained the age of 50, inserted provisions authorizing payment of benefits to an individual for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability which ceased, within the 60-month period preceding the first month in which he is under such disability, and substituted provisions requiring benefits to end with the month preceding whichever of the following is the earliest: the month in which he dies, the month in which he attains the age of 65, or the third month following the month in which his disability ceases for provisions which required the benefits to end with the month preceding the first month in which any of the following occurs: his disability ceases, he dies, or he attains the age of 65.

Subsec. (a)(2). Pub. L. 86–778, § 303(f), amended generally subsec. (a)(2), as amended by section 402(b) of Pub. L. 86–778 which read as follows: ''Such individual's disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 415 of this title as though he became entitled to old-age insurance benefits in—

''(A) the first month of his waiting period, or

''(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which he becomes so entitled to such disability insurance benefits.''

Pub. L. 86–778, § 402(b), amended subsec. (a)(2) generally. Prior to amendment, subsec. (a)(2) read as follows: ''Such individual's disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 415 of this title as though he became entitled to old-age insurance benefits in the first month of his waiting period.''

Subsec. (b). Pub. L. 86–778, § 402(c), (d), prohibited acceptance of an application, in any case in which cl. (ii) of par. (1) of subsec. (a) of this section is applicable, if it is filed more than six months before the first month for which the applicant becomes entitled to benefits, inserted provisions requiring any application filed within the nine months' period or six months' period, as the case may be, to be deemed to have been filed in such first month, and substituted ''if he is continuously under a disability after such month and until he files application therefor, and he files such application'' for ''if he files application therefor''.

Subsec. (c)(3). Pub. L. 86–778, § 401(b), struck out provisions which prohibited a waiting period for any individual from beginning before the first day of the sixth month before the month in which he attains the age of 50.

1958—Subsec. (b). Pub. L. 85–840, § 202(a), provided that individuals who would have been entitled to disability insurance benefits for any month after June 1957 had they filed application therefor prior to the end of such month shall be entitled to disability benefits for such month if they file application therefor prior to the end of the twelfth month immediately succeeding such month.

Subsec. (c)(1). Pub. L. 85–840, § 204(b), substituted ''fully insured'' for ''fully and currently insured'' in cl. (A).

Subsec. (c)(3). Pub. L. 85–840, § 202(b), inserted ''which continues until such application is filed'' after ''under a disability'' in cl. (A), and substituted ''eighteenth month'' for ''sixth month'' in three instances in cl. (B).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 321(f)(1) of Pub. L. 103–296 effective as if included in the provisions of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, to which such amendment relates, see section 321(f)(5) of Pub. L. 103–296, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5103(a), (b)(2)–(5) of Pub. L. 101–508 applicable with respect to monthly insurance benefits for months after December 1990 for which applications are filed on or after Jan. 1, 1991, or are pending on such date, see section 5103(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

Section 5118(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to benefits for months after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10305(c), (d) of Pub. L. 101–239 applicable with respect to determinations made on or

after July 1, 1990, see section 10305(f) of Pub. L. 101–239, set out as a note under section 403 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8001(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall apply to determinations by administrative law judges of entitlement to benefits made after 180 days after the date of the enactment of this Act [Nov. 10, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9010(a), (e)(2) of Pub. L. 100–203 effective Jan. 1, 1988, and applicable with respect to individuals entitled to benefits under specific provisions of this section and section 402 of this title for any month after December 1987, and individuals entitled to benefits payable under specific provisions of this section and section 402 of this title for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by section 9010 of Pub. L. 100–203 has not elapsed as of Jan. 1, 1988, see section 9010(f) of Pub. L. 100–203, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Dec. 1, 1980, and applicable with respect to any individual who is under a disability (as defined in subsection (d) of this section) on or after that date, see section 12107(c) of Pub. L. 99–272, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 2(d) of Pub. L. 98–460 provided that:

''(1) The amendments made by this section [amending this section and sections 416 and 1382c of this title and enacting provisions set out as notes under this section] shall apply only as provided in this subsection.

''(2) The amendments made by this section shall apply to—

''(A) determinations made by the Secretary on or after the date of the enactment of this Act [Oct. 9, 1984];

''(B) determinations with respect to which a final decision of the Secretary has not yet been made as of the date of the enactment of this Act [Oct. 9, 1984] and with respect to which a request for administrative review is made in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act [section 405 of this title] and regulations of the Secretary;

''(C) determinations with respect to which a request for judicial review was pending on September 19, 1984, and which involve an individual litigant or a member of a class in a class action who is identified by name in such pending action on such date; and

''(D) determinations with respect to which a timely request for judicial review is or has been made by an individual litigant of a final decision of the Secretary made within 60 days prior to the date of the enactment of this Act [Oct. 9, 1984].

In the case of determinations described in subparagraphs (C) and (D) in actions relating to medical improvement, the court shall remand such cases to the Secretary for review in accordance with the provisions of the Social Security Act as amended by this section.

''(3) In the case of a recipient of benefits under title II, XVI, or XVIII of the Social Security Act [this subchapter or subchapter XVI or XVIII of this chapter]—

''(A) who has been determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits were provided has ceased, does not exist, or is not disabling, and

''(B) who was a member of a class certified on or before September 19, 1984, in a class action relating to medical improvement pending on September 19, 1984, but was not identified by name as a member of the class on such date,

the court shall remand such case to the Secretary. The Secretary shall notify such individual by certified mail that he may request a review of the determination described in subparagraph (A) based on the provisions of this section and the provisions of the Social Security Act as amended by this section. Such notification shall specify that the individual must request such review within 120 days after the date on which such notification is received. If such request is made in a timely manner, the Secretary shall make a review of the determination described in subparagraph (A) in accordance with the provisions of this section and the provisions of the Social Security Act as amended by this section. The amendments made by this section shall apply with respect to such review, and the determination described in subparagraph (A) (and any redetermination resulting from such review) shall be subject to further administrative and judicial review, only if such request is made in a timely manner.

''(4) The decision by the Secretary on a case remanded by a court pursuant to this subsection shall be regarded as a new decision on the individual's claim for benefits, which supersedes the final decision of the Secretary. The new decision shall be subject to further administrative review and to judicial review only in conformity with the time limits, exhaustion requirements, and other provisions of section 205 of the Social Security Act [section 405 of this title] and regulations issued by the Secretary in conformity with such section.

''(5) No class in a class action relating to medical improvement may be certified after September 19, 1984, if the class action seeks judicial review of a decision terminating entitlement (or a period of disability) made by the Secretary of Health and Human Services prior to September 19, 1984.

''(6) For purposes of this subsection, the term 'action relating to medical improvement' means an action raising the issue of whether an individual who has had his entitlement to benefits under title II, XVI, or XVIII of the Social Security Act [this subchapter or subchapter XVI or XVIII of this chapter] based on disability terminated (or period of disability ended) should not have had such entitlement terminated (or period of disability ended) without consideration of whether there has been medical improvement in the condition of such individual (or another individual on whose disability such entitlement is based) since the time of a prior determination that the individual was under a disability.''

Section 3(a)(3) of Pub. L. 98–460 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1382c of this title] shall apply to determinations made prior to January 1, 1987.''

Section 4(c) of Pub. L. 98–460 provided that: ''The amendments made by this section [amending this section and sections 416 and 1382c of this title] shall apply with respect to determinations made on or after the first day of the first month beginning after 30 days after the date of the enactment of this Act [Oct. 9, 1984].''

Section 9(b)(2) of Pub. L. 98–460 provided that: ''The amendments made by this subsection [amending this section] shall apply to determinations made on or after the date of the enactment of this Act [Oct. 9, 1984].''

Amendment by sections 2661(m) and 2662(c)(2), (i) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(a)(16) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 309(*o*) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April, 1983, see

section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Amendment by section 332(b) of Pub. L. 98–21 effective with respect to applications for disability insurance benefits under this section filed after Apr. 20, 1983, except that no monthly benefits under this subchapter shall be payable or increased by reason of such amendment for months before the month following April, 1983, see section 332(c) of Pub. L. 98–21, set out as a note under section 416 of this title.

Amendment by section 339(b) of Pub. L. 98–21 applicable with respect to monthly benefits payable for months beginning on or after April 20, 1983, see section 339(c) of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–473 effective with respect to benefits payable for months beginning on or after Oct. 1, 1980, see section 5(d) of Pub. L. 96–473, set out as a note under section 402 of this title.

For effective date of amendment by section 102(b) of Pub. L. 96–265, see section 102(c) of Pub. L. 96–265, set out as a note under section 415 of this title.

Section 302(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and sections 1382a and 1382c of this title] shall apply with respect to expenses incurred on or after the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980].''

For effective date of amendment by section 303(b)(1)(A), (2)(A) of Pub. L. 96–265, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

Amendment by section 306(c) of Pub. L. 96–265 applicable to applications filed after June 1980, see section 306(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

Section 309(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to evidence requested on or after the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 104(c), (d) of Pub. L. 92–603 applicable only in the case of a man who attains (or would attain) age 62 after Dec. 1974, with the figure ''65'' in subsec. (c)(1)(A) of this section to be deemed to read ''64'' in the case of a man who attains age 62 in 1973, and deemed to read ''63'' in the case of a man who attains age 62 in 1974, see section 104(j) of Pub. L. 92–603, set out as an Effective Date of 1972 Amendment note under section 414 of this title.

Section 116(e) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 402 and 416 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [this section], applications for widow's and widower's insurance benefits based on disability under section 202 of such Act [section 402 of this title], and applications for disability determinations under section 216(i) of such Act [section 416(i) of this title], filed—

''(1) in or after the month in which this Act is enacted [October 1972], or

''(2) before the month in which this Act is enacted, if—

''(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month, or

''(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by this section for any month before January 1973.''

Section 117(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 416 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [this section], and for disability determinations under section 216(i) of such Act [section 416(i) of this title], filed—

''(1) in or after the month in which this Act is enacted, or

''(2) before the month in which this Act is enacted if—

''(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

''(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by this section for months before January 1973.''

Amendment by section 118(a) of Pub. L. 92–603 applicable in the case of deaths occurring after Dec. 31, 1969, with any applications with respect to an individual whose death occurred after Dec. 31, 1969, but before Oct. 30, 1972, to be deemed to have been filed in the month in which death occurred if filed in or within three months after Oct. 1972, see section 118(c) of Pub. L. 92–603, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 105(b) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for months after January 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 105(c) of Pub. L. 90–248, set out as a note under section 416 of this title.

Section 158(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and sections 402, 416, 421, 422, and 425 of this title] shall be effective with respect to applications for disability insurance benefits under section 223 of the Social Security Act [this section], and for disability determinations under section 216(i) of such Act [section 416(i) of this title], filed—

''(1) in or after the month in which this Act is enacted [January 1968], or

''(2) before the month in which this Act is enacted if the applicant has not died before such month and if—

''(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

''(B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 302(e) of Pub. L. 89–97 applicable in the case of individuals who become entitled to disability insurance benefits under this section after December 1965, see section 302(f)(5) of Pub. L. 89–97, set out as a note under section 415 of this title.

Section 303(f)(1) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) [amending this section and section 416 of this title], paragraphs (3) and (4) of subsection (b) [amending this section], and sub-

sections (c) and (d) [amending this section and section 402 of this title], and the provisions of subparagraphs (B) and (E) of section 216(i)(2) of the Social Security Act [section 416(i)(2) of this title] (as amended by subsection (b)(1) of this section), shall be effective with respect to applications for disability insurance benefits under section 223 [this section], and for disability determinations under section 216(i), of the Social Security Act filed—

''(A) in or after the month in which this Act is enacted [July 1965], or

''(B) before the month in which this Act is enacted, if the applicant has not died before such month and if—

''(i) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month; or

''(ii) the notice referred to in subparagraph (i) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Social Security Act [section 405(g) of this title] (whether before, in, or after such month) and the decision in such civil action has not become final before such month;

except that no monthly insurance benefits under title II of the Social Security Act [this subchapter] shall be payable or increased by reason of the amendments made by subsections (a) and (b) [amending this section and section 416 of this title] for months before the second month following the month in which this Act is enacted [July 1965]. The preceding sentence shall also be applicable in the case of applications for monthly insurance benefits under title II of the Social Security Act based on the wages and self-employment income of an applicant with respect to whose application for disability insurance benefits under section 223 of such Act [this section] such preceding sentence is applicable.''

Amendment by section 304(m), (n) of Pub. L. 89–97 applicable with respect to monthly insurance benefits under this subchapter for and after the second month following July 1965 but only on the basis of applications filed in or after July 1965, see section 304(*o*) of Pub. L. 89–97, set out as a note under section 402 of this title.

Amendment by section 328(c) of Pub. L. 89–97 applicable with respect to applications filed on or after July 30, 1965, applications as to which the Secretary has not made a final decision before July 30, 1965, and, if a civil action with respect to a final decision of the Secretary has been commenced under section 405(g) of this title before July 30, 1965, applications as to which there has been no final judicial decision before July 30, 1965, see section 328(d) of Pub. L. 89–97, set out as a note under section 416 of this title.

Amendment by section 344(b)–(d) of Pub. L. 89–97 applicable only with respect to monthly benefits under subchapter II of this chapter for months after August 1965 on the basis of applications for such benefits filed in or after July 1965, see section 344(e) of Pub. L. 89–97, set out as a note under section 416 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by section 102(b)(2)(B), (C) of Pub. L. 87–64 effective Aug. 1, 1961, and amendment by section 102(c)(2)(C), (3)(D), (E) of Pub. L. 87–64 applicable with respect to monthly benefits for months beginning on or after August 1, 1961, based on applications filed in or after March 1961, and with respect to lump-sum death payments under this subchapter in the case of deaths on or after August 1, 1961, see sections 102(f)(4), (6) and 109 of Pub. L. 87–64, set out as notes under section 402 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 303(f) of Pub. L. 86–778 provided that the amendment made by such section 303(f) is effective with respect to individuals who become entitled to benefits under this section after 1960.

Section 401(c) of Pub. L. 86–778 provided that: ''The amendments made by this section [amending this section] shall apply only with respect to monthly benefits under sections 202 and 223 of the Social Security Act [this section and section 402 of this title] for months after the month following the month in which this Act is enacted [September 1960] which are based on the wages and self-employment income of an individual who did not attain the age of fifty in or prior to the month following the month in which this Act is enacted, but only where applications for such benefits are filed in or after the month in which this Act is enacted.''

Section 402(f) of Pub. L. 86–778 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply only with respect to benefits under section 223 of the Social Security Act [this section] for the month in which this Act is enacted [September 1960] and subsequent months. The amendment made by subsection (c) [amending this section] shall apply only in the case of applications for benefits under such section 223 filed after the seventh month before the month in which this Act is enacted. The amendment made by subsection (d) [amending this section] shall apply only in the case of applications for benefits under such section 223 filed in or after the month in which this Act is enacted. The amendment made by subsection (e) [amending section 416 of this title] shall apply only in the case of individuals who become entitled to benefits under such section 223 in or after the month in which this Act is enacted.''

Amendment by section 403(b) of Pub. L. 86–778 applicable only with respect to benefits under this section for months after September 1960, in the case of individuals who, without regard to such amendment, would have been entitled to such benefits for September 1960, or for any succeeding month, see section 403(e) of Pub. L. 86–778, set out as a note under section 422 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 202 of Pub. L. 85–840 applicable with respect to applications for disability insurance benefits under this section filed after December 1957, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

For applicability of amendment by section 204(b) of Pub. L. 85–840, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE

Section 103(d) of act Aug. 1, 1956, provided that:

''(1) The amendment made by subsection (a) [enacting this section and sections 424 and 425 of this title] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after June 1957.

''(2) For purposes of determining entitlement to a disability insurance benefit for any month after June 1957 and before December 1957, an application for disability insurance benefits filed by any individual after July 1957 and before January 1958 shall be deemed to have been filed during the first month after June 1957 for which such individual would (without regard to this paragraph) have been entitled to a disability insurance benefit had he filed application before the end of such month.''

ELECTION OF PAYMENTS

Section 2(e) of Pub. L. 98–460 provided that: ''Any individual whose case is remanded to the Secretary pursuant to subsection (d) [set out as a note above] or whose request for a review is made in a timely manner pursuant to subsection (d), may elect, in accordance with section 223(g) or 1631(a)(7) of the Social Security Act [subsec. (g) of this section or section 1383(a)(7) of this title], to have payments made beginning with the month in which he makes such election, and ending as under such section 223(g) or 1631(a)(7). Notwithstanding such section 223(g) or 1631(a)(7), such payments (if elected)—

''(1) shall be made at least until an initial redetermination is made by the Secretary; and

''(2) shall begin with the payment for the month in which such individual makes such election.''

RETROACTIVE BENEFITS

Section 2(f) of Pub. L. 98–460 provided that: ''In the case of any individual who is found to be under a disability after a review required under this section, such individual shall be entitled to retroactive benefits beginning with benefits payable for the first month to which the most recent termination of benefits applied.''

PROMULGATION OF REGULATIONS

Section 2(g) of Pub. L. 98–460 provided that: ''The Secretary of Health and Human Services shall prescribe regulations necessary to implement the amendments made by this section [amending this section and sections 416 and 1382c of this title and enacting provisions set out as notes under this section] not later than 180 days after the date of the enactment of this Act [Oct. 9, 1984].''

COMMISSION ON EVALUATION OF PAIN

Section 3(b) of Pub. L. 98–460 provided that:

''(1) The Secretary of Health and Human Services shall appoint a Commission on the Evaluation of Pain (hereafter in this section referred to as the 'Commission') to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act [sections 401 et seq., 1381 et seq. of this title] whether an individual is under a disability. Such study shall be conducted in consultation with the National Academy of Sciences.

''(2) The Commission shall consist of at least twelve experts, including a significant representation from the field of medicine who are involved in the study of pain, and representation from the fields of law, administration of disability insurance programs, and other appropriate fields of expertise.

''(3) The Commission shall be appointed by the Secretary of Health and Human Services (without regard to the requirements of the Federal Advisory Committee Act [Pub. L. 92–463, set out in the Appendix to Title 5, Government Organization and Employees]) within 60 days after the date of the enactment of this Act [Oct. 9, 1984]. The Secretary shall from time to time appoint one of the members to serve as Chairman. The Commission shall meet as often as the Secretary deems necessary.

''(4) Members of the Commission shall be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. Members who are not employees of the United States, while attending meetings of the Commission or otherwise serving on the business of the Commission, shall be paid at a rate equal to the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day, including traveltime, during which they are engaged in the actual performance of duties vested in the Commission. While engaged in the performance of such duties away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

''(5) The Commission may engage such technical assistance from individuals skilled in medical and other aspects of pain as may be necessary to carry out its functions. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance and any pertinent data prepared by the Department of Health and Human Services as the Commission may require to carry out its functions.

''(6) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than December 31, 1985. The Commission shall terminate at the time such results are submitted.''

STUDY AND REPORT TO CONGRESSIONAL COMMITTEES ON EFFECT OF CONTINUED PAYMENT OF DISABILITY BENEFITS DURING APPEAL ON TRUST FUND EXPENDITURES AND THE RATE OF APPEALS

Section 7(c) of Pub. L. 98–460 provided that:

''(1) The Secretary of Health and Human Services shall, as soon as practicable after the date of the enactment of this Act [Oct. 9, 1984], conduct a study concerning the effect which the enactment and continued operation of section 223(g) of the Social Security Act [subsec. (g) of this section] is having on expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund, and the rate of appeals to administrative law judges of unfavorable determinations relating to disability or periods of disability.

''(2) The Secretary shall submit the results of the study under paragraph (1), together with any recommendations, to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

LUMP-SUM PAYMENT OF DISABILITY INSURANCE BENEFITS FOR PERIOD BEGINNING AFTER 1959 AND ENDING PRIOR TO 1964; FILING OF APPLICATION

Section 133 of Pub. L. 92–603 provided that:

''(a) If an individual would (upon the timely filing of an application for a disability determination under section 216(i) of the Social Security Act [section 416(i) of this title]) and of an application for disability insurance benefits under section 223 of such Act [this section]) have been entitled to disability insurance benefits under such section 223 for a period which began after 1959 and ended prior to 1964, such individual shall, upon filing application for disability insurance benefits under such section 223 with respect to such period not later than 6 months after the date of enactment of this section [Oct. 30, 1972], be entitled, notwithstanding any other provision of title II of the Social Security Act [this subchapter], to receive in a lump sum as disability insurance benefits payable under section 223, an amount equal to the total amounts of disability insurance benefits which would have been payable to him for such period if he had timely filed such an application for a disability determination and such an application for disability insurance benefits with respect to such period; but only if—

''(1) prior to the date of enactment of this section and after the date of enactment of the Social Security Amendments of 1967 [Jan. 2, 1968] such period was determined (under section 216(i) of the Social Security Act [section 416(i) of this title]) to be a period of disability as to such individual; and

''(2) the application giving rise to the determination (under such section 216(i)) that such period is a period of disability as to such individual would not have been accepted as an application for such a determination except for the provisions of section 216(i)(2)(F).

''(b) No payment shall be made to any individual by reason of the provisions of subsection (a) except upon the basis of an application filed after the date of enactment of this section.''

SPECIAL INSURED STATUS TEST IN CERTAIN CASES FOR DISABILITY PURPOSES

Individuals not insured for disability benefits as determined under subsec. (c)(1) of this section with respect to any month in a quarter deemed to have met such requirements in certain cases, see section 404 of Pub. L. 86–778, set out as a note under section 416 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 402, 403, 405, 406, 409, 415, 416, 421, 422, 424a, 425, 426, 1320b–1, 1382, 1382c, 1383, 1395i–2a, 1395p, 1395r, 1395s, 1437a, 6862, 11382 of this title; title 5 sections 8116, 8452; title 26 sections 401, 3121; title 30 sections 902, 922, 923; title 45 sections 231a, 231b, 231c, 231f.

§ 424. Repealed. Pub. L. 85–840, title II, § 206, Aug. 28, 1958, 72 Stat. 1025.

Section, act Aug. 14, 1935, ch. 531, title II, § 224, as added Aug. 1, 1956, ch. 836, title I, § 103(a), 70 Stat. 816; amended July 17, 1957, Pub. L. 85–109, § 2(a), 71 Stat. 308, related to reduction of benefits based on disability.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to monthly benefits under this subchapter for August 1958 and succeeding months, see section 207(a) of Pub. L. 85–840, set out as an Effective Date of 1958 Amendment note under section 416 of this title.

§ 424a. Reduction of disability benefits

(a) Conditions for reduction; computation

If for any month prior to the month in which an individual attains the age of 65—

(1) such individual is entitled to benefits under section 423 of this title, and

(2) such individual is entitled for such month to—

(A) periodic benefits on account of his or her total or partial disability (whether or not permanent) under a workmen's compensation law or plan of the United States or a State, or

(B) periodic benefits on account of his or her total or partial disability (whether or not permanent) under any other law or plan of the United States, a State, a political subdivision (as that term is used in section 418(b)(2) of this title), or an instrumentality of two or more States (as that term is used in section 418(g) of this title), other than (i) benefits payable under title 38, (ii) benefits payable under a program of assistance which is based on need, (iii) benefits based on service all or substantially all of which was included under an agreement entered into by a State and the Commissioner of Social Security under section 418 of this title, and (iv) benefits under a law or plan of the United States based on service all or substantially all of which is employment as defined in section 410 of this title,

the total of his benefits under section 423 of this title for such month and of any benefits under section 402 of this title for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of—

(3) such total of benefits under sections 423 and 402 of this title for such month, and

(4) such periodic benefits payable (and actually paid) for such month to such individual under such laws or plans,

exceeds the higher of—

(5) 80 per centum of his ''average current earnings'', or

(6) the total of such individual's disability insurance benefits under section 423 of this title for such month and of any monthly insurance benefits under section 402 of this title for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 423 and 402 of this title for a month (in a continuous period of months) reduce such total below the sum of—

(7) the total of the benefits under sections 423 and 402 of this title, after reduction under this section, with respect to all persons entitled to benefits on the basis of such individual's wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

(8) any increase in such benefits with respect to such individual and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made.

For purposes of clause (5), an individual's average current earnings means the largest of (A) the average monthly wage (determined under section 415(b) of this title as in effect prior to January 1979) used for purposes of computing his benefits under section 423 of this title, (B) one-sixtieth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409(a)(1) and 411(b)(1) of this title) for the five consecutive calendar years after 1950 for which such wages and self-employment income were highest, or (C) one-twelfth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409(a)(1) and 411(b)(1) of this title) for the calendar year in which he had the highest such wages and income during the period consisting of the calendar year in which he became disabled (as defined in section 423(d) of this title) and the five years preceding that year.

(b) Reduction where benefits payable on other than monthly basis

If any periodic benefit for a total or partial disability under a law or plan described in subsection (a)(2) of this section is payable on other than a monthly basis (excluding a benefit payable as a lump sum except to the extent that it is a commutation of, or a substitute for, periodic payments), the reduction under this section shall be made at such time or times and in such amounts as the Commissioner of Social Security finds will approximate as nearly as practicable the reduction prescribed by subsection (a) of this section.

(c) Reductions and deductions under other provisions

Reduction of benefits under this section shall be made after any reduction under subsection

(a) of section 403 of this title, but before deductions under such section and under section 422(b) of this title.

(d) Exception

The reduction of benefits required by this section shall not be made if the law or plan described in subsection (a)(2) of this section under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this subchapter on the basis of the wages and self-employment income of an individual entitled to benefits under section 423 of this title, and such law or plan so provided on February 18, 1981.

(e) Conditions for payment

If it appears to the Commissioner of Social Security that an individual may be eligible for periodic benefits under a law or plan which would give rise to reduction under this section, the Commissioner may require, as a condition of certification for payment of any benefits under section 423 of this title to any individual for any month and of any benefits under section 402 of this title for such month based on such individual's wages and self-employment income, that such individual certify (i) whether he has filed or intends to file any claim for such periodic benefits, and (ii) if he has so filed, whether there has been a decision on such claim. The Commissioner of Social Security may, in the absence of evidence to the contrary, rely upon such a certification by such individual that he has not filed and does not intend to file such a claim, or that he has so filed and no final decision thereon has been made, in certifying benefits for payment pursuant to section 405(i) of this title.

(f) Redetermination of reduction

(1) In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under section 423 of this title and any benefits under section 402 of this title based on his wages and self-employment income was first required (in a continuous period of months), and in each third year thereafter, the Commissioner of Social Security shall redetermine the amount of such benefits which are still subject to reduction under this section; but such redetermination shall not result in any decrease in the total amount of benefits payable under this subchapter on the basis of such individual's wages and self-employment income. Such redetermined benefit shall be determined as of, and shall become effective with, the January following the year in which such redetermination was made.

(2) In making the redetermination required by paragraph (1), the individual's average current earnings (as defined in subsection (a) of this section) shall be deemed to be the product of—

(A) his average current earnings as initially determined under subsection (a) of this section; and

(B) the ratio of (i) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the year in which such redetermination is made to (ii) the national average wage index (as so defined) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability).

Any amount determined under this paragraph which is not a multiple of $1 shall be reduced to the next lower multiple of $1.

(g) Proportionate reduction; application of excess

Whenever a reduction in the total of benefits for any month based on an individual's wages and self-employment income is made under this section, each benefit, except the disability insurance benefit, shall first be proportionately decreased, and any excess of such reduction over the sum of all such benefits other than the disability insurance benefits shall then be applied to such disability insurance benefit.

(h) Furnishing of information

(1) Notwithstanding any other provision of law, the head of any Federal agency shall provide such information within its possession as the Commissioner of Social Security may require for purposes of making a timely determination of the amount of the reduction, if any, required by this section in benefits payable under this subchapter, or verifying other information necessary in carrying out the provisions of this section.

(2) The Commissioner of Social Security is authorized to enter into agreements with States, political subdivisions, and other organizations that administer a law or plan subject to the provisions of this section, in order to obtain such information as the Commissioner may require to carry out the provisions of this section.

(Aug. 14, 1935, ch. 531, title II, § 224, as added July 30, 1965, Pub. L. 89–97, title III, § 335, 79 Stat. 406; amended Jan. 2, 1968, Pub. L. 90–248, title I, § 159(a), 81 Stat. 869; Oct. 30, 1972, Pub. L. 92–603, title I, § 119(a), (b), 86 Stat. 1352; Jan. 2, 1976, Pub. L. 94–202, § 8(j), 89 Stat. 1140; Dec. 20, 1977, Pub. L. 95–216, title II, § 205(d), title III, § 353(c), 91 Stat. 1529, 1553; Aug. 13, 1981, Pub. L. 97–35, title XXII, § 2208(a), 95 Stat. 839; Apr. 7, 1986, Pub. L. 99–272, title XII, § 12109(a), 100 Stat. 286; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9002(c)(2)(F), 100 Stat. 1972; Dec. 19, 1989, Pub. L. 101–239, title X, § 10208(b)(2)(A), (C), (d)(2)(A)(i), (iii), 103 Stat. 2477, 2478, 2480, 2481; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(e)(2)(H), 108 Stat. 1478, 1540.)

PRIOR PROVISIONS

A prior section 224 of act Aug. 14, 1935, was classified to section 424 of this title prior to repeal by Pub. L. 85–840, title II, § 206, Aug. 28, 1958, 72 Stat. 1025.

AMENDMENTS

1994—Subsecs. (a)(2)(B), (b), (e), (f)(1). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner may require'' for ''he may require'' in subsec. (e).

Subsec. (f)(2). Pub. L. 103–296, § 321(e)(2)(H), inserted ''and'' at end of subpar. (A), added subpar. (B), and struck out former subpars. (B) and (C) which read as follows:

''(B) the ratio of (i) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the year in which such redetermination is made to (ii)(I) the average of the total wages ((as defined in regulations of the Secretary and com-

puted without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is before 1991, or (II) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is after 1990; and

''(C) in any case in which the reduction was first computed before 1978, the ratio of (i) the average of the taxable wages reported to the Secretary for the first calendar quarter of 1977 to (ii) the average of the taxable wages reported to the Secretary for the first calendar quarter of the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability).''

Subsec. (h). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in pars. (1) and (2) and ''the Commissioner may'' for ''he may'' in par. (2).

1989—Subsec. (a). Pub. L. 101–239, §10208(d)(2)(A)(iii), substituted ''409(a)(1)'' for ''409(a)'' in cls. (B) and (C) of last sentence.

Subsec. (f)(2)(B)(i). Pub. L. 101–239, §10208(b)(2)(A), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, §10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (f)(2)(B)(ii). Pub. L. 101–239, §10208(b)(2)(C), inserted ''(I)'' after ''(ii)'', substituted ''(as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title)'' for ''as so defined and computed)'' and inserted '', if such calendar year is before 1991, or (II) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability), if such calendar year is after 1990'' before ''; and'' at end.

1986—Subsec. (a)(2). Pub. L. 99–272, §12109(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''such individual is entitled for such month to periodic benefits on account of such individual's total or partial disability (whether or not permanent) under—

''(A) a workmen's compensation law or plan of the United States or a State, or

''(B) any other law or plan of the United States, a State, a political subdivision (as that term is used in section 418(b)(2) of this title), or an instrumentality of two or more States (as that term is used in section 418(k) of this title),

other than benefits payable under title 38, benefits payable under a program of assistance which is based on need, benefits based on service all, or substantially all, of which was included under an agreement entered into by a State and the Secretary under section 418 of this title, and benefits under a law or plan of the United States based on service all or part of which is employment as defined in section 410 of this title,''.

Subsec. (a)(2)(B). Pub. L. 99–509 substituted ''section 418(g)'' for ''section 418(k)''.

Pub. L. 99–272, §12109(a)(2), substituted ''all or substantially all of which'' for ''all or part of which'' in cl. (iv).

1981—Subsec. (a). Pub. L. 97–35, §2208(a)(2)–(4), in provision preceding par. (1) substituted ''age of 65'' for ''age of 62'', in par. (2) inserted provisions including periodic benefits under any other law or plan of the United States, a State, a political subdivision, or an instrumentality of two or more States and excluding specified benefits and struck out provision requiring that the Secretary receive notice, in a prior month, of the entitlement for such month, and in par. (4) substituted ''such laws or plans'' for ''the workmen's compensation law or plan''.

Subsec. (b). Pub. L. 97–35, §2208(a)(5), substituted ''for a total or partial disability under a law or plan described in subsection (a)(2) of this section'' for ''under a workmen's compensation law or plan''.

Subsec. (d). Pub. L. 97–35, §2208(a)(6), substituted ''law or plan described in subsection (a)(2) of this section'' for ''workmen's compensation law or plan'' and ''section 423 of this title, and such law or plan so provided on February 18, 1981'' for ''section 423 of this title''.

Subsec. (e). Pub. L. 97–35, §2208(a)(7), struck out ''workmen's compensation'' after ''periodic benefits under a''.

Subsec. (h). Pub. L. 97–35, §2208(a)(8), added subsec. (h).

1977—Subsec. (a). Pub. L. 95–216, §§205(d), 353(c)(1), struck out provisions following par. (8) under which the Secretary, in cases where an individual's wages and self-employment income reported to the Secretary for a calendar year reached the limitations specified in sections 409(a) and 411(b)(1) of this title, was required to estimate the total of such wages and self-employment income on the basis of such information as might be available to him indicating the extent (if any) by which the wages and self-employment income exceeded limitations, and, effective with respect to monthly benefits under this subchapter payable for months after Dec. 1978, and with respect to lump-sum death payments with respect to death occurring after Dec. 1978, inserted ''(determined under section 415(b) of this title as in effect prior to January 1979)'' after ''(A) the average monthly wage'' in provisions following par. (8).

Subsec. (f)(2). Pub. L. 95–216, §353(c)(2), divided existing provisions into subpars. (A) and (B), added subpar. (C), and in subpar. (B) as so redesignated substituted ''(i) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which such redetermination is made to (ii) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year'' for ''(i) the average of the taxable wages of all persons for whom taxable wages were reported to the Secretary for the first calendar quarter of the calendar year before the calendar year in which the redetermination is made, to (ii) the average of the taxable wages of such persons reported to the Secretary for the first calendar quarter of the taxable year before the calendar year''.

1976—Subsec. (f)(2). Pub. L. 94–202 substituted ''calendar year before the calendar year'' for ''calendar year'' and ''taxable year before the calendar year'' for ''taxable year''.

1972—Subsec. (a). Pub. L. 92–603 added cl. (C) in provisions for the determination of an individual's average current earnings so as to introduce into the formula a factor of one-twelfth of the total wages and self-employment income for the calendar year in which he had the highest such wages and income during the year in which he became disabled and the five years preceding that year.

1968—Subsec. (a). Pub. L. 90–248 inserted in cl. (B) of first sentence following par. (8) ''(computed without regard to the limitations specified in sections 409(a) and 411(b)(1) of this title)'' before ''for the five'', and inserted last sentence authorizing the Secretary, in certain cases, to estimate the total of wages and self-employment income for purposes of cl. (B) indicating the extent such earnings exceed the limitations in sections 409(a) and 411(b)(1) of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 10208(b)(2)(A), (C) of Pub. L. 101–239 applicable with respect to computation of average total wage amounts (under amended provisions) for calendar years after 1990, see section 10208(c) of Pub. L. 101–239, set out as a note under section 430 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–509 effective with respect to payments due with respect to wages paid after Dec. 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to section 418(e)(2) of this title prior to Oct. 21, 1986, with certain exceptions, see section 9002(d) of Pub. L. 99–509 set out as a note under section 418 of this title.

Section 12109(b) of Pub. L. 99–272 provided that:

''(1) The amendment made by subsection (a)(1) [amending this section] shall be effective as though it had been included or reflected in the amendment made by section 2208(a)(3) of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35, amending this section].

''(2) The amendment made by subsection (a)(2) [amending this section] shall apply only with respect to monthly benefits payable on the basis of the wages and self-employment income of individuals who become disabled (within the meaning of section 223(d) of the Social Security Act [section 423(d) of this title]) after the month in which this Act is enacted [April 1986].''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2208(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to individuals who first become entitled to benefits under section 223(a) of the Social Security Act [section 423(a) of this title] for months beginning after the month in which this Act is enacted [August 1981], but only in the case of an individual who became disabled within the meaning of section 223(d) of such Act after the sixth month preceding the month in which this Act is enacted.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 205(d) of Pub. L. 95–216 effective with respect to monthly benefits under this subchapter payable for months after December 1978 and with respect to lump-sum death payments with respect to deaths occurring after December 1978, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

Section 353(c)(1) of Pub. L. 95–216 provided that the amendment made by that section is effective with respect to the estimates for calendar years beginning after Dec. 31, 1977.

Amendment by section 353(c)(2) of Pub. L. 95–216 effective Jan. 1, 1979, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 119(c) of Pub. L. 92–603 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972.''

EFFECTIVE DATE OF 1968 AMENDMENTS; DETERMINATION OF AVERAGE CURRENT EARNINGS UPON REDETERMINATION OF BENEFITS SUBJECT TO REDUCTION

Section 159(b) of Pub. L. 90–248 provided that:

''(1) The amendments made by subsection (a) [amending this section] shall apply only with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968.

''(2) For purposes of any redetermination which is made under section 224(f) of the Social Security Act [subsec. (f) of this section] in the case of benefits subject to reduction under section 224 of such Act, where such reduction as first computed was effective with respect to benefits for the month in which this Act is enacted [January 1968] or a prior month, the amendments made by subsection (a) of this section [amending subsec. (a) of this section] shall also be deemed to have applied in the initial determination of the 'average current earnings' of the individual whose wages and self-employment income are involved.''

EFFECTIVE DATE

Section 335 of Pub. L. 89–97 provided that this section is effective with respect to benefits under this subchapter for months after December 1965 based on the wages and self-employment income of individuals entitled to benefits under section 423 of this title whose period of disability (as defined in this subchapter) began after June 1, 1965.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403, 409, 415 of this title; title 5 sections 8116, 8349, 8452; title 26 sections 86, 6050F; title 30 section 922.

§ 425. Additional rules relating to benefits based on disability

(a) Suspension of benefits

If the Commissioner of Social Security, on the basis of information obtained by or submitted to the Commissioner, believes that an individual entitled to benefits under section 423 of this title, or that a child who has attained the age of eighteen and is entitled to benefits under section 402(d) of this title, or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 402(e) of this title, or that a widower or surviving divorced husband who has not attained age 60 and is entitled to benefits under section 402(f) of this title, may have ceased to be under a disability, the Commissioner of Social Security may suspend the payment of benefits under such section 402(d), 402(e), 402(f), or 423 of this title until it is determined (as provided in section 421 of this title) whether or not such individual's disability has ceased or until the Commissioner of Social Security believes that such disability has not ceased. In the case of any individual whose disability is subject to determination under an agreement with a State under section 421(b) of this title, the Commissioner of Social Security shall promptly notify the appropriate State of the Commissioner's action under this subsection and shall request a prompt determination of whether such individual's disability has ceased. For purposes of this subsection, the term ''disability'' has the meaning assigned to such term in section 423(d) of this title. Whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 402 of this title, on the basis of the wages and self-employment income of such individual, shall be suspended for such month. The first sentence of this subsection shall not apply to any child entitled to benefits under section 402(d) of this title, if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 402(d) of this title).

(b) Continued payments during rehabilitation program

Notwithstanding any other provision of this subchapter, payment to an individual of benefits based on disability (as described in the first sentence of subsection (a) of this section) shall not be terminated or suspended because the physical or mental impairment, on which the individual's entitlement to such benefits is based, has or may have ceased, if—

(1) such individual is participating in a program of vocational rehabilitation services approved by the Commissioner of Social Security, and

(2) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the disability benefit rolls.

(c) Nonpayment or termination of benefits where entitlement involves alcoholism or drug addiction

(1)(A) In the case of any individual entitled to benefits based on disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that such individual is under a disability, such individual shall comply with the provisions of this subsection. In any case in which an individual is required to comply with the provisions of this subsection, the Commissioner of Social Security shall include, in such individual's notification of entitlement, a notice informing such individual of such requirement.

(B) Notwithstanding any other provision of this subchapter, if an individual who is required under subparagraph (A) to comply with the provisions of this subsection is determined by the Commissioner of Social Security not to be in compliance with the provisions of this subsection, such individual's benefits based on disability shall be suspended for a period—

(i) commencing with the first month following the month in which such individual is notified by the Commissioner of Social Security of the determination of noncompliance and that the individual's benefits will be suspended, and

(ii) ending with the month preceding the first month, after the determination of noncompliance, in which such individual demonstrates that he or she has reestablished and maintained compliance with such provisions for the applicable period specified in paragraph (3).

(2)(A) An individual described in paragraph (1) is in compliance with the requirements of this subsection for a month if in such month—

(i) such individual undergoes substance abuse treatment which is appropriate for such individual's condition diagnosed as alcoholism or drug addiction and for the stage of such individual's rehabilitation and which is conducted at an institution or facility approved for purposes of this subsection by the Commissioner of Social Security, and

(ii) such individual complies in such month with the terms, conditions, and requirements of such treatment and with requirements imposed by the Commissioner of Social Security under paragraph (5).

(B) An individual described in paragraph (1) may be determined as failing to comply with the requirements of this subsection for a month only if treatment meeting the requirements of subparagraph (A)(i) is available for that month, as determined pursuant to regulations of the Commissioner of Social Security.

(3) The applicable period specified in this paragraph is—

(A) 2 consecutive months, in the case of a first determination that an individual is not in compliance with the requirements of this subsection,

(B) 3 consecutive months, in the case of the second such determination with respect to the individual, or

(C) 6 consecutive months, in the case of the third or subsequent such determination with respect to the individual.

(4) In any case in which an individual's benefit is suspended for a period of 12 consecutive months for failure to comply with treatment described in paragraph (2) of this subsection, the month following such period shall be deemed, for purposes of section 423(a)(1) of this title or subsection (d)(1)(G)(i), (e)(1), or (f)(1) of section 402 of this title (as applicable), the termination month with respect to such entitlement.

(5)(A) The Commissioner of Social Security shall provide for the monitoring and testing of individuals who are receiving benefits under this subchapter and who as a condition of payment of such benefits are required to be undergoing treatment under paragraph (1) and complying with the terms, conditions, and requirements thereof as described in paragraph (2)(A), in order to assure such compliance.

(B) The Commissioner of Social Security, in consultation with drug and alcohol treatment professionals, shall issue regulations—

(i) defining appropriate treatment for alcoholics and drug addicts who are subject to appropriate substance abuse treatment required under this subsection, and

(ii) establishing guidelines to be used to review and evaluate their compliance, including measures of the progress expected to be achieved by participants in such programs.

(C)(i) For purposes of carrying out the requirements of subparagraphs (A) and (B), the Commissioner of Social Security shall provide for the establishment of one or more referral and monitoring agencies for each State.

(ii) Each referral and monitoring agency for a State shall—

(I) identify appropriate placements, for individuals residing in such State who are entitled to benefits based on disability and with respect to whom alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that they are under a disability, where they may obtain treatment described in paragraph (2)(A),

(II) refer such individuals to such placements for such treatment, and

(III) monitor compliance with the requirements of paragraph (2)(A) by individuals who

are referred by the agency to such placements and promptly report failures to comply to the Commissioner of Social Security.

(D) There are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund such sums as are necessary to carry out the requirements of this paragraph for referral, monitoring, and testing.

(6)(A) In the case of any individual who is entitled to a benefit based on disability for any month, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is under a disability, payment of any past-due monthly insurance benefits under this subchapter to which such individual is entitled shall be made in any month only to the extent that the sum of—

(i) the amount of such past-due benefit paid in such month, and

(ii) the amount of any benefit for the preceding month under such current entitlement which is payable in such month,

does not exceed, subject to subparagraph (B), twice the amount of such individual's benefit for the preceding month (determined without applying any reductions or deductions under this subchapter).

(B)(i) In the case of an individual who is no longer currently entitled to monthly insurance benefits under this subchapter but to whom any amount of past-due benefits has not been paid, for purposes of subparagraph (A), such individual's monthly insurance benefit for such individual's last month of entitlement shall be treated as such individual's benefit for the preceding month.

(ii) For the first month in which an individual's past-due benefits referred to in subparagraph (A) are paid, the amount of the limitation provided in subparagraph (A) shall be increased by the amount of any debts of such individual related to housing which are outstanding as of the end of the preceding month and which are resulting in a high risk of homelessness for such individual.

(C) Upon the death of an individual to whom payment of past-due benefits has been limited under subparagraph (A), any amount of such past-due benefits remaining unpaid shall be treated as an underpayment for purposes of section 404 of this title.

(D) In the case of an individual who would be entitled to benefits based on disability but for termination of such benefits under paragraph (4) or (7), such individual shall be entitled to payment of past-due benefits under this paragraph as if such individual continued to be entitled to such terminated benefits.

(7)(A) Subject to subparagraph (B), in the case of any individual entitled to benefits based on disability, if—

(i) alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that such individual is under a disability, and

(ii) as of the end of the 36-month period beginning with such individual's first month of entitlement, such individual would not otherwise be disabled but for alcoholism or drug addiction,

the month following such 36-month period shall be deemed, for purposes of section 423(a)(1) of this title or subsection (d)(1)(G)(i), (e)(1), or (f)(1) of section 402 of this title (as applicable), the termination month with respect to such entitlement. Such individual whose entitlement is terminated under this paragraph may not be entitled to benefits based on disability for any month following such 36-month period if, in such following month, alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that such individual is under a disability.

(B) In determining whether the 36-month period referred to in subparagraph (A) has elapsed—

(i) a month shall not be taken into account unless the Commissioner of Social Security determines, under regulations of the Commissioner of Social Security, that treatment required under this subsection is available to the individual for the month, and

(ii) any month for which a suspension is in effect for the individual under paragraph (1)(B) shall not be taken into account.

(8) Monthly insurance benefits under this subchapter which would be payable to any individual (other than the disabled individual to whom benefits are not payable by reason of this subsection) on the basis of the wages and self-employment income of such disabled individual but for the provisions of paragraph (1), (4), or (7) shall be payable as though such paragraph did not apply.

(9) For purposes of this subsection, the term ''benefit based on disability'' of an individual means a disability insurance benefit of such individual under section 423 of this title or a child's, widow's, or widower's insurance benefit of such individual under section 402 of this title based on the disability of such individual.

(Aug. 14, 1935, ch. 531, title II, § 225, as added Aug. 1, 1956, ch. 836, title I, § 103(a), 70 Stat. 817; amended Aug. 28, 1958, Pub. L. 85–840, title II, § 205(*o*), 72 Stat. 1025; July 30, 1965, Pub. L. 89–97, title III, § 306(c)(15), 79 Stat. 373; Jan. 2, 1968, Pub. L. 90–248, title I, §§ 104(d)(5), 158(c)(9), 81 Stat. 833, 869; Oct. 30, 1972, Pub. L. 92–603, title I, § 107(b)(5), 86 Stat. 1343; June 9, 1980, Pub. L. 96–265, title III, § 301(a), 94 Stat. 449; Apr. 20, 1983, Pub. L. 98–21, title III, § 309(p), 97 Stat. 117; Nov. 5, 1990, Pub. L. 101–508, title V, § 5113(a), 104 Stat. 1388–273; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title II, § 201(a)(3)(A), 108 Stat. 1478, 1494.)

AMENDMENTS

1994—Pub. L. 103–296, § 201(a)(3)(A)(i), amended section catchline.

Subsec. (a). Pub. L. 103–296, § 201(a)(3)(A)(i), inserted heading.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''to the Commissioner'' for ''to him'', and ''the Commissioner's'' for ''his''.

Subsec. (b). Pub. L. 103–296, § 201(a)(3)(A)(ii), inserted heading.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in pars. (1) and (2).

Subsec. (c). Pub. L. 103–296, § 201(a)(3)(A)(iii), added subsec. (c).

Pub. L. 103–296, § 107(a)(4), in subsec. (c) as added by Pub. L. 103–296, § 201(a)(3)(A)(iii), substituted ''Commis-

sioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' wherever appearing.

1990—Subsec. (b)(1). Pub. L. 101–508, § 5113(a)(1), added par. (1) and struck out former par. (1) which read as follows: ''such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and''.

Subsec. (b)(2). Pub. L. 101–508, § 5113(a)(2), substituted ''Secretary'' for ''Commissioner of Social Security''.

1983—Subsec. (a). Pub. L. 98–21 inserted ''or surviving divorced husband'' after ''widower''.

1980—Pub. L. 96–265 designated existing provisions as subsec. (a), made conforming amendments in subsec. (a) as so designated, and added subsec. (b).

1972—Pub. L. 92–603 substituted ''age 60'' for ''age 62''.

1968—Pub. L. 90–248 in first sentence inserted ''or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 402(e) of this title, or that a widower who has not attained age 62 and is entitled to benefits under section 402(f) of this title,'' after ''section 402(d) of this title,'' and substituted ''402(d), 402(e), 402(f), or 423'' for ''423 or 402(d)'', and substituted in third sentence reference to ''423(d)'' for ''423(c)(2)''.

1965—Pub. L. 89–97 inserted ''The first sentence of this section shall not apply to any child entitled to benefits under section 402(d) of this title, if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 402(d) of this title).''

1958—Pub. L. 85–840 provided that whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 402 of this title, on the basis of the wages and self-employment income of such individual, shall be suspended for such month.

EFFECTIVE DATE OF 1994 AMENDMENT; SUNSET PROVISION

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(a)(3)(C), (E) of Pub. L. 103–296 provided that:

''(C) SUNSET OF 36-MONTH RULE.—Section 225(c)(7) of the Social Security Act [subsec. (c)(7) of this section] (added by subparagraph (A)) shall cease to be effective with respect to benefits for months after September 2004.

''(E) EFFECTIVE DATE.—

''(i) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by this paragraph [amending this section and sections 426 and 426–1 of this title] shall apply with respect to benefits based on disability (as defined in section 225(c)(9) of the Social Security Act [subsec. (c)(9) of this section], added by this section) which are otherwise payable in months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994]. The Secretary of Health and Human Services shall issue regulations necessary to carry out the amendments made by this paragraph not later than 180 days after the date of the enactment of this Act.

''(ii) REFERRAL AND MONITORING AGENCIES.—Section 225(c)(5) of the Social Security Act [subsec. (c)(5) of this section] (added by this subsection) shall take effect 180 days after the date of the enactment of this Act.

''(iii) TERMINATION AFTER 36 MONTHS.—Section 225(c)(7) of the Social Security Act [subsec. (c)(7) of this section] (added by this subsection) shall apply with respect to benefits based on disability (as so defined) for months beginning after 180 days after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5113(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall be effective with respect to benefits payable for months after the eleventh month following the month in which this Act is enacted [November 1990] and shall apply only with respect to individuals whose blindness or disability has or may have ceased after such eleventh month.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 301(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall become effective on the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980], and shall apply with respect to individuals whose disability has not been determined to have ceased prior to such first day.''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to monthly benefits under this subchapter for months after December 1972, with specified exceptions, see section 107(c) of Pub. L. 92–603, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 104(d)(5) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968, see section 104(e) of Pub. L. 90–248, set out as a note under section 402 of this title.

Amendment by section 158(c)(9) of Pub. L. 90–248 applicable with respect to applications for disability insurance benefits under section 423 of this title and to disability determinations under section 416(i) of this title, see section 158(e) of Pub. L. 90–248, set out as a note under section 423 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 205(*o*) of Pub. L. 85–840 applicable with respect to monthly benefits under this subchapter for months after August 1958, but only if an application for such benefits is filed on or after Aug. 28, 1958, see section 207(a) of Pub. L. 85–840, set out as a note under section 416 of this title.

EFFECTIVE DATE

Section applicable only with respect to monthly benefits under this subchapter for months after June 1957, see section 103(a) of act Aug. 1, 1956, set out as a note under section 423 of this title.

REPORT ON REFERRAL, MONITORING, TESTING AND TREATMENT OF INDIVIDUALS WHERE ENTITLEMENT TO OR TERMINATION OF BENEFITS INVOLVES ALCOHOLISM OR DRUG ADDICTION

Section 201(a)(3)(B) of Pub. L. 103–296 provided that: ''Not later than December 31, 1996, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a full and complete report on the Secretary's activities under paragraph (5) of section 225(c) of the Social Security Act [subsec. (c)(5) of this section] (as amended by subparagraph (A)). Such report shall include the number and percentage of individuals referred to in such paragraph who have not received regular drug testing since the effective date of such paragraph [see Effective Date of 1994 Amendment; Sunset Provision note above].''

TRANSITION RULES FOR CURRENT BENEFICIARIES

Section 201(a)(3)(F) of Pub. L. 103–296 provided that: ''In any case in which an individual is entitled to bene-

fits based on disability, the determination of disability was made by the Secretary of Health and Human Services during or before the 180-day period following the date of the enactment of this Act [Aug. 15, 1994], and alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is under a disability—

''(i) TREATMENT REQUIREMENT.—Paragraphs (1) through (4) of section 225(c) of the Social Security Act [subsec. (c)(1) to (4) of this section] (added by this subsection) shall apply only with respect to benefits paid in months after the month in which such individual is notified by the Secretary in writing that alcoholism or drug addiction is a contributing factor material to the Secretary's determination and that such individual is therefore required to comply with the provisions of section 225(c) of such Act.

''(ii) TERMINATION AFTER 36 MONTHS.—

''(I) IN GENERAL.—For purposes of section 225(c)(7) of the Social Security Act [subsec. (c)(7) of this section] (added by this subsection), the first month of entitlement beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994] shall be treated as the individual's first month of entitlement to such benefits.

''(II) CONCURRENT BENEFICIARIES CURRENTLY UNDER TREATMENT.—In any case in which the individual is also entitled to benefits under title XVI [subchapter XVI of this chapter] and, as of 180 days after the date of the enactment of this Act, such individual is undergoing treatment required under section 1611(e)(3) of the Social Security Act [section 1382(e)(3) of this title] (as in effect immediately before the date of the enactment of this Act), the Secretary of Health and Human Services shall notify such individual of the provisions of section 225(c)(7) of the Social Security Act (added by this subsection) not later than 180 days after the date of the enactment of this Act.

''(III) CONCURRENT BENEFICIARIES NOT CURRENTLY UNDER TREATMENT.—In any case in which the individual is also entitled to benefits under title XVI but, as of 180 days after the date of the enactment of this Act, such individual is not undergoing treatment described in subclause (II), section 225(c)(7) (added by this subsection) shall apply only with respect to benefits for months after the month in which treatment required under section 1611(e)(3) of the Social Security Act (as amended by subsection (b)) is available, as determined under regulations of the Secretary of Health and Human Services, and the Secretary notifies such individual of the availability of such treatment and describes in such notification the provisions of section 225(c)(7) of the Social Security Act (added by this subsection).''

DEMONSTRATION PROJECTS RELATING TO REFERRAL, MONITORING, AND TREATMENT FOR ALCOHOLICS OR DRUG ADDICTS

Section 201(c) of Pub. L. 103–296 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall develop and carry out demonstration projects designed to explore innovative referral, monitoring, and treatment approaches with respect to—

''(A) individuals who are entitled to disability insurance benefits or child's, widow's, or widower's insurance benefits based on disability under title II of the Social Security Act [this subchapter], and

''(B) individuals who are eligible for supplemental security income benefits under title XVI of such Act [subchapter XVI of this chapter] based solely on disability,

in cases in which alcoholism or drug addiction is a contributing factor material to the Secretary's determination that individuals are under a disability. The Secretary may include in such demonstration projects individuals who are not described in either subparagraph (A) or subparagraph (B) if the inclusion of such individuals is necessary to determine the efficacy of various monitoring, referral, and treatment approaches for individuals described in subparagraph (A) or (B).

''(2) SCOPE.—The demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative approaches under consideration while giving assurance that the results derived from the projects will obtain generally in the operation of the programs involved without committing such programs to the adoption of any particular system either locally or nationally.

''(3) FINAL REPORT.—The Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate no later than December 31, 1997, a final report on the demonstration projects carried out under this subsection, together with any related data and materials which the Secretary may consider appropriate. The authority under this section shall terminate upon the transmittal of such final report.''

PAYMENT OF COSTS OF REHABILITATION SERVICES

Amendment of sections 422 and 1382d of this title by section 11(a), (b) of Pub. L. 98–460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following October 1984, see section 11(c) of Pub. L. 98–460, set out as an Effective Date of 1984 Amendment note under section 422 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 422, 426, 426–1, 1382 of this title.

§ 426. Entitlement to hospital insurance benefits

(a) Individuals over 65 years

Every individual who—

(1) has attained age 65, and

(2)(A) is entitled to monthly insurance benefits under section 402 of this title, would be entitled to those benefits except that he has not filed an application therefor (or application has not been made for a benefit the entitlement to which for any individual is a condition of entitlement therefor), or would be entitled to such benefits but for the failure of another individual, who meets all the criteria of entitlement to monthly insurance benefits, to meet such criteria throughout a month, and, in conformity with regulations of the Secretary, files an application for hospital insurance benefits under part A of subchapter XVIII of this chapter,

(B) is a qualified railroad retirement beneficiary, or

(C)(i) would meet the requirements of subparagraph (A) upon filing application for the monthly insurance benefits involved if medicare qualified government employment (as defined in section 410(p) of this title) were treated as employment (as defined in section 410(a) of this title) for purposes of this subchapter, and (ii) files an application, in conformity with regulations of the Secretary, for hospital insurance benefits under part A of subchapter XVIII of this chapter,

shall be entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter for each month for which he meets the condition specified in paragraph (2), beginning with the

first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2).

(b) Individuals under 65 years

Every individual who—

(1) has not attained age 65, and

(2)(A) is entitled to, and has for 24 calendar months been entitled to, (i) disability insurance benefits under section 423 of this title or (ii) child's insurance benefits under section 402(d) of this title by reason of a disability (as defined in section 423(d) of this title) or (iii) widow's insurance benefits under section 402(e) of this title or widower's insurance benefits under section 402(f) of this title by reason of a disability (as defined in section 423(d) of this title), or

(B) is, and has been for not less than 24 months, a disabled qualified railroad retirement beneficiary, within the meaning of section 231f(d) of title 45, or

(C)(i) has filed an application, in conformity with regulations of the Secretary, for hospital insurance benefits under part A of subchapter XVIII of this chapter pursuant to this subparagraph, and

(ii) would meet the requirements of subparagraph (A) (as determined under the disability criteria, including reviews, applied under this subchapter), including the requirement that he has been entitled to the specified benefits for 24 months, if—

(I) medicare qualified government employment (as defined in section 410(p) of this title) were treated as employment (as defined in section 410(a) of this title) for purposes of this subchapter, and

(II) the filing of the application under clause (i) of this subparagraph were deemed to be the filing of an application for the disability-related benefits referred to in clause (i), (ii), or (iii) of subparagraph (A),

shall be entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter for each month beginning with the later of (I) July 1973 or (II) the twenty-fifth month of his entitlement or status as a qualified railroad retirement beneficiary described in paragraph (2), and ending (subject to the last sentence of this subsection) with the month following the month in which notice of termination of such entitlement to benefits or status as a qualified railroad retirement beneficiary described in paragraph (2) is mailed to him, or if earlier, with the month before the month in which he attains age 65. In applying the previous sentence in the case of an individual described in paragraph (2)(C), the ''twenty-fifth month of his entitlement'' refers to the first month after the twenty-fourth month of entitlement to specified benefits referred to in paragraph (2)(C) and ''notice of termination of such entitlement'' refers to a notice that the individual would no longer be determined to be entitled to such specified benefits under the conditions described in that paragraph. For purposes of this subsection, an individual who has had a period of trial work which ended as provided in section 422(c)(4)(A) of this title, and whose entitlement to benefits or status as a qualified railroad retirement beneficiary as described in paragraph (2) has subsequently terminated, shall be deemed to be entitled to such benefits or to occupy such status (notwithstanding the termination of such entitlement or status) for the period of consecutive months throughout all of which the physical or mental impairment, on which such entitlement or status was based, continues, and throughout all of which such individual would have been entitled to monthly insurance benefits under this subchapter or as a qualified railroad retirement beneficiary had such individual been unable to engage in substantial gainful activity, but not in excess of 24 such months. In determining when an individual's entitlement or status terminates for purposes of the preceding sentence, the term ''36 months'' in the second sentence of section 423(a)(1) of this title, in section 402(d)(1)(G)(i) of this title, in the last sentence of section 402(e)(1) of this title, and in the last sentence of section 402(f)(1) of this title shall be applied as though it read ''15 months''.

(c) Conditions

For purposes of subsection (a) of this section—

(1) entitlement of an individual to hospital insurance benefits for a month shall consist of entitlement to have payment made under, and subject to the limitations in, part A of subchapter XVIII of this chapter on his behalf for inpatient hospital services, post-hospital extended care services, and home health services (as such terms are defined in part C of subchapter XVIII of this chapter) furnished him in the United States (or outside the United States in the case of inpatient hospital services furnished under the conditions described in section 1395f(f) of this title) during such month; except that (A) no such payment may be made for post-hospital extended care services furnished before January 1967, and (B) no such payment may be made for post-hospital extended care services unless the discharge from the hospital required to qualify such services for payment under part A of subchapter XVIII of this chapter occurred (i) after June 30, 1966, or on or after the first day of the month in which he attains age 65, whichever is later, or (ii) if he was entitled to hospital insurance benefits pursuant to subsection (b) of this section, at a time when he was so entitled; and

(2) an individual shall be deemed entitled to monthly insurance benefits under section 402 or section 423 of this title, or to be a qualified railroad retirement beneficiary, for the month in which he died if he would have been entitled to such benefits, or would have been a qualified railroad retirement beneficiary, for such month had he died in the next month.

(d) "Qualified railroad retirement beneficiary" defined

For purposes of this section, the term ''qualified railroad retirement beneficiary'' means an individual whose name has been certified to the Secretary by the Railroad Retirement Board under section 231f(d) of title 45. An individual shall cease to be a qualified railroad retirement beneficiary at the close of the month preceding the month which is certified by the Railroad Retirement Board as the month in which he ceased

to meet the requirements of section 231f(d) of title 45.

(e) Benefits for widows and widowers

(1)(A) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of widows and widowers described in paragraph (2)(A)(iii) thereof—

(i) the term ''age 60'' in sections 402(e)(1)(B)(ii), 402(e)(4), 402(f)(1)(B)(ii), and 402(f)(5) of this title shall be deemed to read ''age 65''; and

(ii) the phrase ''before she attained age 60'' in the matter following subparagraph (F) of section 402(e)(1) of this title and the phrase ''before he attained age 60'' in the matter following subparagraph (F) of section 402(f)(1) of this title shall each be deemed to read ''based on a disability''.

(B) For purposes of subsection (b)(2)(A)(iii) of this section, each month in the period commencing with the first month for which an individual is first eligible for supplemental security income benefits under subchapter XVI of this chapter, or State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) which are paid by the Secretary under an agreement referred to in section 1382e(a) of this title (or in section 212(b) of Public Law 93–66), shall be included as one of the 24 months for which such individual must have been entitled to widow's or widower's insurance benefits on the basis of disability in order to become entitled to hospital insurance benefits on that basis.

(2) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of an individual under age 65 who is entitled to benefits under section 402 of this title, and who was entitled to widow's insurance benefits or widower's insurance benefits based on disability for the month before the first month in which such individual was so entitled to old-age insurance benefits (but ceased to be entitled to such widow's or widower's insurance benefits upon becoming entitled to such old-age insurance benefits), such individual shall be deemed to have continued to be entitled to such widow's insurance benefits or widower's insurance benefits for and after such first month.

(3) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section, any disabled widow aged 50 or older who is entitled to mother's insurance benefits (and who would have been entitled to widow's insurance benefits by reason of disability if she had filed for such widow's benefits), and any disabled widower aged 50 or older who is entitled to father's insurance benefits (and who would have been entitled to widower's insurance benefits by reason of disability if he had filed for such widower's benefits), shall, upon application for such hospital insurance benefits be deemed to have filed for such widow's or widower's insurance benefits.

(4) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of an individual described in clause (iii) of subsection (b)(2)(A) of this section, the entitlement of such individual to widow's or widower's insurance benefits under section 402(e) or (f) of this title by reason of a disability shall be deemed to be the entitlement to such benefits that would result if such entitlement were determined without regard to the provisions of section 402(j)(4) of this title.

(f) Medicare waiting period for recipients of disability benefits

For purposes of subsection (b) of this section (and for purposes of section 1395p(g)(1) of this title and section 231f(d)(2)(ii) of title 45), the 24 months for which an individual has to have been entitled to specified monthly benefits on the basis of disability in order to become entitled to hospital insurance benefits on such basis effective with any particular month (or to be deemed to have enrolled in the supplementary medical insurance program, on the basis of such entitlement, by reason of section 1395p(f) of this title), where such individual had been entitled to specified monthly benefits of the same type during a previous period which terminated—

(1) more than 60 months before the month in which his current disability began in any case where such monthly benefits were of the type specified in clause (A)(i) or (B) of subsection (b)(2) of this section, or

(2) more than 84 months before the month in which his current disability began in any case where such monthly benefits were of the type specified in clause (A)(ii) or (A)(iii) of such subsection,

shall not include any month which occurred during such previous period, unless the physical or mental impairment which is the basis for disability is the same as (or directly related to) the physical or mental impairment which served as the basis for disability in such previous period.

(g) Information regarding eligibility of Federal employees

The Secretary and Director of the Office of Personnel Management shall jointly prescribe and carry out procedures designed to assure that all individuals who perform medicare qualified government employment by virtue of service described in section 410(a)(5) of this title are fully informed with respect to (1) their eligibility or potential eligibility for hospital insurance benefits (based on such employment) under part A of subchapter XVIII of this chapter, (2) the requirements for and conditions of such eligibility, and (3) the necessity of timely application as a condition of entitlement under subsection (b)(2)(C) of this section, giving particular attention to individuals who apply for an annuity under chapter 83[1] of title 5 or under another similar Federal retirement program, and whose eligibility for such an annuity is or would be based on a disability.

(h) Certain uninsured individuals

For entitlement to hospital insurance benefits in the case of certain uninsured individuals, see section 426a of this title.

(i) Continuing eligibility of certain terminated individuals

For purposes of this section, each person whose monthly insurance benefit for any month

[1] So in original. Probably should be ''subchapter III of chapter 83''.

is terminated or is otherwise not payable solely by reason of paragraph (1) or (7) of section 425(c) of this title shall be treated as entitled to such benefit for such month.

(Aug. 14, 1935, ch. 531, title II, § 226, as added July 30, 1965, Pub. L. 89–97, title I, § 101, 79 Stat. 290; amended Jan. 2, 1968, Pub. L. 90–248, title I, § 129(c)(1), 81 Stat. 847; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 201(b), 299I, 86 Stat. 1371, 1463; July 6, 1973, Pub. L. 93–58, § 3, 87 Stat. 142; Dec. 31, 1973, Pub. L. 93–233, § 18(f), 87 Stat. 969; Oct. 16, 1974, Pub. L. 93–445, title III, § 305, 88 Stat. 1358; Dec. 20, 1977, Pub. L. 95–216, title III, §§ 332(a)(3), 334(d)(4)(B), 91 Stat. 1543, 1546; June 13, 1978, Pub. L. 95–292, §§ 1(b), 3, 92 Stat. 308, 315 ; June 9, 1980, Pub. L. 96–265, title I, §§ 103(a)(1), (b), 104(a), 94 Stat. 444; Oct. 19, 1980, Pub. L. 96–473, § 2(a), 94 Stat. 2263; Dec. 5, 1980, Pub. L. 96–499, title IX, § 930(q), 94 Stat. 2633; Aug. 13, 1981, Pub. L. 97–35, title XXII, § 2203(e), 95 Stat. 837; Sept. 3, 1982, Pub. L. 97–248, title II, § 278(b)(2)(A), (B), (4), 96 Stat. 560, 561; Apr. 20, 1983, Pub. L. 98–21, title I, § 131(a)(3)(H), (b)(3)(G), title III, § 309(q)(1), 97 Stat. 93, 117; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(a)(17), 98 Stat. 1165; Apr. 7, 1986, Pub. L. 99–272, title XIII, § 13205(b)(2)(A), (C)(ii), 100 Stat. 317; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4033(a), formerly § 4033(a)(1), title IX, § 9010(e)(3), 101 Stat. 1330–77, 1330–294, renumbered July 1, 1988, Pub. L. 100–360, title IV, § 411(e)(2), 102 Stat. 775; July 1, 1988, Pub. L. 100–360, title IV, § 411(n)(1), 102 Stat. 807; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(f)(5), 102 Stat. 2424; Nov. 5, 1990, Pub. L. 101–508, title V, § 5103(c)(2)(C), 104 Stat. 1388–252; Aug. 15, 1994, Pub. L. 103–296, title II, § 201(a)(3)(D)(i), 108 Stat. 1497.)

References in Text

Parts A and C of subchapter XVIII of this chapter, referred to in text, are classified to section 1395c et seq. and 1395x et seq., respectively, of this title.

Section 212 of Public Law 93–66, referred to in subsec. (e)(1)(B), is section 212 of Pub. L. 93–66 which is set out as a note under section 1382 of this title.

Amendments

1994—Subsec. (i). Pub. L. 103–296 added subsec. (i).

1990—Subsec. (e)(1). Pub. L. 101–508 designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

1988—Subsec. (a). Pub. L. 100–485 substituted ''condition specified in paragraph (2)'' for ''condition specified in paragraph (1)'' in concluding provisions.

Subsec. (b). Pub. L. 100–360, § 411(n)(1), amended last sentence generally. Prior to amendment, last sentence read as follows: ''In determining when an individual's entitlement or status terminates for purposes of the preceding sentence, the second sentence of section 423(a) of this title shall be applied as though the term '36 months' (in such second sentence) read '15 months'.''

1987—Subsec. (b). Pub. L. 100–203, § 9010(e)(3), inserted sentence at end which related to determining when an individual's entitlement or status terminates for purposes of preceding sentence.

Subsec. (f). Pub. L. 100–203, § 4033(a), inserted before period at end '', unless the physical or mental impairment which is the basis for disability is the same as (or directly related to) the physical or mental impairment which served as the basis for disability in such previous period''.

1986—Subsec. (a)(2)(C)(i). Pub. L. 99–272, § 13205(b)(2)(A) substituted ''medicare qualified government employment'' for ''medicare qualified Federal employment''.

Subsec. (b)(2)(C)(ii)(I). Pub. L. 99–272, § 13205(b)(2)(A), substituted ''medicare qualified government employment'' for ''medicare qualified Federal employment''.

Subsec. (g). Pub. L. 99–272, § 13205(b)(2)(C)(ii), substituted ''medicare qualified government employment by virtue of service described in section 410(a)(5) of this title'' for ''medicare qualified Federal employment''.

1984—Subsec. (b). Pub. L. 98–369 substituted ''part A'' for ''part (A)'' in provisions following par. (2)(C).

1983—Subsec. (e)(1)(A). Pub. L. 98–21, § 131(a)(3)(H), (b)(3)(G), substituted reference to section 402(e)(4), (f)(5) of this title for reference to section 405(e)(5), (f)(6) of this title.

Subsec. (e)(3). Pub. L. 98–21, § 309(q)(1), amended par. (3) generally, inserting provisions relating to any disabled widower and striking out provision that a disabled widow, upon furnishing proof of such disability prior to July 1, 1974, under such procedures as the Secretary prescribed, would be deemed to have been entitled to such widow's benefits as of the time she would have been entitled to such widow's benefits if she had filed a timely application therefor.

1982—Subsec. (a)(2). Pub. L. 97–248, § 278(b)(2)(A), redesignated existing provisions as subpar. (A), struck out ''or is a qualified railroad retirement beneficiary,'' after ''of this chapter,'', and added subpars. (B) and (C).

Subsec. (b). Pub. L. 97–248, § 278(b)(2)(B), in par. (2)(B) inserted a comma after ''24 months'' and ''or'' after ''title 45,'', added par. (2)(C), and in provisions following par. (2) inserted provision defining ''twenty-fifth month of his entitlement'' and ''notice of termination of such entitlement'' with regards to applying first sentence of this subsection to individuals described in par. (2)(C).

Subsecs. (g), (h). Pub. L. 97–248, § 278(b)(4), added subsec. (g) and redesignated former subsec. (g) as (h).

1981—Subsec. (a)(2). Pub. L. 97–35 substituted ''would be entitled'' for ''or would be entitled'' and inserted '', or would be entitled to such benefits but for the failure of another individual, who meets all the criteria of entitlement to monthly insurance benefits, to meet such criteria throughout a month,''.

1980—Subsec. (a)(2). Pub. L. 96–473 inserted provisions relating to persons who would be entitled to benefits but for enumerated exceptions.

Subsec. (b). Pub. L. 96–265, § 104(a), in provisions following par. (2), inserted ''(subject to the last sentence of this subsection)'', and inserted provision that, for purposes of this subsection, an individual who has had a period of trial work which ended as provided in section 422(c)(4)(A) of this title, and whose entitlement to benefits or status as a qualified railroad retirement beneficiary as described in paragraph (2) has subsequently terminated, shall be deemed to be entitled to such benefits or to occupy such status (notwithstanding the termination of such entitlement or status) for the period of consecutive months throughout all of which the physical or mental impairment, on which such entitlement or status was based, continues, and throughout all of which such individual would have been entitled to monthly insurance benefits under this subchapter.

Pub. L. 96–265, § 103(a)(1), substituted ''24 calendar months'' and ''24 months'' for ''24 consecutive calendar months'' and ''24 consecutive months'', respectively, in par. (2) and, in provisions following par. (2), substituted ''the twenty-fifth month'' for ''the twenty-fifth consecutive month''.

Subsec. (c)(1). Pub. L. 96–499 substituted ''and home health services'' for ''and post-hospital home health services'' and struck out ''or post-hospital home health services'' before ''unless the discharge''.

Subsecs. (f), (g). Pub. L. 96–265, § 103(b), added subsec. (f) and redesignated former subsec. (f) as (g).

1978—Subsec. (a). Pub. L. 95–292, § 3(a), substituted ''condition specified in paragraph (1), beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2)'' for ''conditions specified in subparagraph (B), beginning with

the first month after June 1966 for which he meets the conditions specified in subparagraphs (A) and (B)''.

Subsec. (e). Pub. L. 95–292, §§1(b)(1), (2), 3(b), redesignated subsec. (h) as (e) and, in subsec. (e) as so redesignated, corrected a technical error resulting from the 1973 amendment of pars. (2) and (3) by Pub. L. 93–233 under which a reference to subsec. (b) of this section had been inserted without the required parentheses. Former subsec. (e), relating to Medicare eligibility of persons medically determined to have chronic renal disease requiring hemodialysis or renal transplantation, was struck out. See section 426–1 of this title.

Subsec. (f). Pub. L. 95–292, §1(b)(1), (2), redesignated subsec. (i) as (f). Former subsec. (f), relating to the duration of Medicare coverage of persons medically determined to have chronic renal disease requiring hemodialysis or renal transplantation, was struck out. See section 426–1 of this title.

Subsec. (g). Pub. L. 95–292, §1(b)(1), struck out subsec. (g) which related to reimbursement for kidney transplant and kidney treatment. See section 1395rr of this title.

Subsecs. (h), (i). Pub. L. 95–292, §1(b)(2), redesignated subsecs. (h) and (i) as (e) and (f), respectively.

1977—Subsec. (h)(1)(B). Pub. L. 95–216, §334(d)(4)(B), substituted ''subparagraph (F) of section 402(f)(1)'' for ''subparagraph (G) of section 402(f)(1)''.

Subsec. (h)(4). Pub. L. 95–216, §332(a)(3), added par. (4).

1974—Subsec. (b)(2). Pub. L. 93–445, §305(a), substituted ''section 7(d) of the Railroad Retirement Act of 1974'' for ''section 22 of the Railroad Retirement Act of 1937''.

Subsec. (d). Pub. L. 93–445, §305(b), substituted ''section 7(d) of the Railroad Retirement Act of 1974'' for section 21 or 22 of the Railroad Retirement Act of 1937'', in two places.

Subsec. (e). Pub. L. 93–445, §305(c), substituted ''Railroad Retirement Act of 1974'' for ''Railroad Retirement Act of 1937'', wherever appearing.

1973—Subsec. (a). Pub. L. 93–233, §18(f)(1)(A), redesignated subsec. (a)(1) as subsec. (a).

Subsec. (a)(1), (2). Pub. L. 93–233, §18(f)(1)(B), redesignated cls. (A) and (B) as (1) and (2), respectively.

Subsec. (e)(2). Pub. L. 93–58, inserted in: item (2)(A) ''or would be fully or currently insured if his service as an employee (as defined in the Railroad Retirement Act of 1937) after December 31, 1936, were included in the term 'employment' as defined in this chapter'' after ''(as such terms are defined in section 414 of this title)''; item (2)(B) ''or an annuity under the Railroad Retirement Act of 1937'' after ''this subchapter''; item (2)(C) ''Or would be fully or currently insured if his service as an employee (as defined in the Railroad Retirement Act of 1937) after December 31, 1936, were included in the term 'employment' as defined in this chapter'' after ''fully or currently insured''; and item (2)(D) ''or annuity under the Railroad Retirement Act of 1937'' after ''this subchapter''.

Subsec. (h). Pub. L. 93–233, §18(f)(1)(C), (2)–(4), redesignated as subsec. (h) provisions originally enacted as subsec. (e) by section 201(b)(5) of Pub. L. 92–603 and redesignated as subsec. (f) by section 299I of Pub. L. 92–603, and in par. (1)(A) substituted '', 402(e)(5),'' for ''and 402(e)(5) of this title, and the term 'age 62' in sections'', in par. (1)(B) substituted ''and the phrase 'before he attained age 60' in the matter following subparagraph (G) of section 402(f)(1) of this title shall each'' for ''shall'', and in pars. (2) and (3) substituted ''(b)'' for ''(a)(2)'', respectively.

Subsec. (i). Pub. L. 93–233, §18(f)(1)(C), redesignated as subsec. (i) provisions originally enacted as subsec. (d) by section 101 of Pub. L. 89–97 and redesignated as subsec. (f) by section 201(b)(5) of Pub. L. 92–603.

1972—Subsec. (a). Pub. L. 92–603, §201(b)(1), incorporated provisions of former subsec. (a) and subsec. (a)(1), and redesignated pars. (1) and (2) as subpars. (A) and (B).

Subsec. (b). Pub. L. 92–603, §201(b)(1), added subsec. (b). Former subsec. (b) redesignated subsec. (c).

Subsec. (c)(1). Pub. L. 92–603, §201(b)(2), (5), redesignated subsec. (b)(1) as subsec. (c)(1) and, in subsec. (c)(1) as so redesignated, inserted reference to entitlement to hospital insurance benefits pursuant to subsec. (b) of this section. Former subsec. (c) redesignated subsec. (d).

Subsec. (c)(2). Pub. L. 92–603, §201(b)(3), (5), redesignated subsec. (b)(2) as subsec. (c)(2) and inserted reference to section 423 of this title. Former subsec. (c) redesignated subsec. (d).

Subsec. (d). Pub. L. 92–603, §201(b)(4), (5), redesignated former subsec. (c) as subsec. (d) and inserted reference to section 22 of the Railroad Retirement Act of 1937. Former subsec. (d) redesignated subsec. (i).

Subsecs. (e) to (h). Pub. L. 92–603, §§201(b)(5), 299I, added subsecs. (e) to (h). See 1973 Amendment note above.

Subsec. (i). Pub. L. 92–603, §201(b)(5), redesignated former subsec. (d) as subsec. (i). See 1973 Amendment note above.

1968—Subsec. (b)(1). Pub. L. 90–248 struck out outpatient hospital diagnostic services from services for which hospital insurance benefits are payable.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 applicable with respect to benefits based on disability (as defined in section 425(c)(9) of this title) which are otherwise payable in months beginning after 180 days after Aug. 15, 1994, with Secretary of Health and Human Services to issue regulations necessary to carry out such amendment not later than 180 days after Aug. 15, 1994, see section 201(a)(3)(E)(i) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment; Sunset Provision note under section 425 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to items and services furnished after December 1990, see section 5103(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 608(f)(5) of Pub. L. 100–485 provided that the amendment made by such section 608(f)(5) is effective as of the date of enactment of Pub. L. 95–292, which was approved June 13, 1978.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4033(b), formerly section 4033(a)(2) of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, §411(e)(2), July 1, 1988, 102 Stat. 775, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply to months beginning after the end of the 60-day period beginning on the date of enactment of this Act [Dec. 22, 1987].

''(2) The amendment made by subsection (a) shall not apply so as to include (for the purposes described in section 226(f) of the Social Security Act [subsec. (f) of this section]) monthly benefits paid for any month in a previous period (described in that section) that terminated before the end of the 60-day period described in paragraph (1).''

Amendment by section 9010(e)(3) of Pub. L. 100–203 effective Jan. 1, 1988, and applicable with respect to individuals entitled to benefits under specific provisions of sections 402 and 423 of this title for any month after December 1987, and individuals entitled to benefits payable under specific provisions of sections 402 and 423 of this title for any month before January 1988 and with respect to whom the 15-month period described in the applicable provision amended by section 9010 of Pub. L. 100–203 has not elapsed as of Jan. 1, 1988, see section

9010(f) of Pub. L. 100–203, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective after Mar. 31, 1986, with no individual to be considered under disability for any period beginning before Apr. 1, 1986, for purposes of hospital insurance benefits, see section 13205(d)(2) of Pub. L. 99–272, set out as a note under section 410 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 131(a)(3)(H), (b)(3)(G) of Pub. L. 98–21 effective with respect to monthly benefits payable under this subchapter for months after December 1983, and in the case of an individual who was not entitled to a monthly benefit of the type involved under this subchapter for December 1983, no benefit shall be paid under this subchapter by reason of such amendments unless proper application for such benefit is made, see section 131(d) of Pub. L. 98–21 set out as a note under section 402 of this title.

Amendment by section 309(q)(1) of Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

Pub. L. 97–448, title III, §309(c)(1), Jan. 12, 1983, 96 Stat. 2410, provided that: ''Any amendment to the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248, Sept. 3, 1982, 96 Stat. 324] made by this section [amending sections 1395x, 1395cc, and 1396a of this title and amending provisions set out as notes under this section and sections 1320c, 1395b–1, 1395f, 1395u, 1395ww, 1395xx, and 1396*o* of this title] shall be effective as if it had been originally included in the provision of such Act to which such amendment relates.''

EFFECTIVE DATE OF 1982 AMENDMENT; TRANSITIONAL PROVISIONS

Section 278(c)(2), (d) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, §309(a)(10), (11), Jan. 12, 1983, 96 Stat. 2408, provided that:

''(c) EFFECTIVE DATES.—

''(2) MEDICARE COVERAGE.—

''(A) IN GENERAL.—The amendments made by subsection (b) [amending this section and sections 410, 426–1, and 1395c of this title] are effective on and after January 1, 1983, and the amendments made by paragraph (2) of that subsection [amending this section and section 426–1 of this title] apply to remuneration (for medicare qualified Federal employment) paid after December 31, 1982.

''(B) TREATMENT OF CURRENT DISABILITIES.—For purposes of establishing entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act [section 1395c et seq. of this title] pursuant to the amendments made by subsection (b) or the provisions of subsection (d), no individual may be considered to be under a disability for any period before January 1, 1983.

''(d) TRANSITIONAL PROVISIONS.—

''(1) IN GENERAL.—For purposes of sections 226, 226A, and 1811 of the Social Security Act [this section and sections 426–1 and 1395c of this title], in the case of any individual who performs service both during January 1983, and before January 1, 1983, which constitutes medicare qualified Federal employment (as defined in section 210(p) of such Act [section 410(p) of this title]), the individual's medicare qualified Federal employment (as so defined) performed before January 1, 1983, for which remuneration was paid before such date, shall be considered to be 'employment' (as defined for purposes of title II of such Act [this subchapter]), but only for the purpose of providing the individual (or another person) with entitlement to hospital insurance benefits under part A of title XVIII of such Act [section 1395c et seq. of this title].

''(2) APPROPRIATIONS.—There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund from time to time such sums as the Secretary of Health and Human Services deems necessary for any fiscal year, on account of—

''(A) payments made or to be made during such fiscal year from such Trust Fund with respect to individuals who are entitled to benefits under title XVIII of the Social Security Act [section 1395 et seq. of this title] solely by reason of paragraph (1) of this subsection,

''(B) the additional administrative expenses resulting or expected to result therefrom, and

''(C) any loss in interest to such Trust Fund resulting from the payment of those amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if this subsection had not been enacted.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2203(f)(3) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, §128(c)(2), Sept. 3, 1982, 96 Stat. 367, provided that: ''The amendments made by subsection (e) of this section [amending this section] shall apply only to individuals aged 65 and over whose insured spouse attains age 62 after August 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 2(d) of Pub. L. 96–473 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395c of this title] shall be effective after the second month beginning after the date on which this Act is enacted [Oct. 19, 1980].''

Section 103(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and sections 1395c and 1395p of this title and section 231f of Title 45, Railroads] shall apply with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980].''

Section 104(b) of Pub. L. 96–265 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the first day of the sixth month which begins after the date of the enactment of this Act [June 9, 1980], and shall apply with respect to any individual whose disability has not been determined to have ceased prior to such first day.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 6 of Pub. L. 95–292 provided that: ''The amendments made by the preceding sections of this Act [enacting sections 426–1 and 1395rr of this title and amending this section and sections 1395c, 1395i, 1395*l*, 1395t, 1395x, 1395cc, and 1395mm of this title] shall become effective with respect to services, supplies, and equipment furnished after the third calendar month which begins after the date of the enactment of this Act [June 13, 1978], except that those amendments providing for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers shall become effective with respect to a facility's or provider's first accounting period which begins after the last day of the twelfth month following the month of the enactment of this Act [June 1978], and those amendments providing for reimbursement rates for home dialysis shall become effective on April 1, 1979.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 332(a)(3) of Pub. L. 95–216 effective with respect to monthly insurance benefits under this subchapter to which an individual becomes entitled on the basis of an application filed on or after Jan. 1, 1978, see section 332(b) of Pub. L. 95–216, set out as a note under section 402 of this title.

Amendment by section 334(d)(4)(B) of Pub. L. 95–216 applicable with respect to monthly insurance benefits payable under this subchapter for months beginning with December 1977, on the basis of applications filed in or after December 1977, see section 334(f) of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 4(a) of Pub. L. 93–58 provided that: ''The provisions of this Act [amending this section and sections 228c and 228e of Title 45, Railroads], except the provisions of section 1, shall be effective as of the date the corresponding provisions of Public Law 92–603 are effective as follows: clause (xi) [section 228c(e)(xi) of Title 45] effective with respect to services provided on and after July 1, 1973. The provisions of clauses (xi) and (xii), which are added by section 1 of this Act, shall be effective as follows: clause (xi) [section 228c(e)(xi) of Title 45] shall be effective with respect to calendar years after 1971 for annuities accruing after December 1972; and clause (xii) [section 228c(e)(xii) of Title 45 shall be effective as of the date the delayed retirement provision of Public Law 92–603 is effective [section 402(w) of this title applicable with respect to old-age insurance benefits payable under this subchapter for months beginning after 1972].''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 299I of Pub. L. 92–603 provided that the amendment made by that section is effective with respect to services provided on and after July 1, 1973.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 applicable with respect to services furnished after March 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

APPLICABILITY OF PUB. L. 96–473 TO APPLICATIONS FOR HOSPITAL INSURANCE BENEFITS

Section 2(c) of Pub. L. 96–473 provided that: ''For purposes of section 226 of such Act [this section] as amended by subsection (a) of this section, an individual who filed an application for monthly insurance benefits under section 202 of such Act [section 402 of this title] prior to the effective date of the amendment made by subsection (a) [see section 2(c) of Pub. L. 96–473, set out above as an Effective Date of 1980 Amendment note] shall be deemed to have filed an application for hospital insurance benefits under part A of title XVIII of such Act [part A of subchapter XVIII of this chapter] at the time he applied for such benefits under section 202 regardless of the continuing status or effect of the application for benefits under section 202, if he would have been entitled to benefits under that section had such application remained in effect.''

TIME IN WHICH TO FURNISH PROOF OF DISABILITY FOR HOSPITAL BENEFITS

Section 309(q)(2) of Pub. L. 98–21 provided that: ''For purposes of determining entitlement to hospital insurance benefits under section 226(e)(3) of such Act [subsec. (e)(3) of this section], as amended by paragraph (1), an individual becoming entitled to such hospital insurance benefits as a result of the amendment made by such paragraph shall, upon furnishing proof of his or her disability within twelve months after the month in which this Act is enacted [April 1983], under such procedures as the Secretary of Health and Human Services may prescribe, be deemed to have been entitled to the widow's or widower's benefits referred to in such section 226(e)(3), as so amended, as of the time such individual would have been entitled to such widow's or widower's benefits if he or she had filed a timely application therefor.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

ADOPTED CHILD'S REENLISTMENT TO ANNUITY

Section 4(b) of Pub. L. 93–58 provided that: ''Any child (1) whose entitlement to an annuity under section 5(c) of the Railroad Retirement Act [section 228e(c) of Title 45, Railroads] was terminated by reason of his adoption prior to the enactment of this Act [July 6, 1973], and (2) who, except for such adoption, would be entitled to an annuity under such section for a month after the month in which this Act is enacted [July 1973], may, upon filing application for an annuity under the Railroad Retirement Act [section 228a et seq. of Title 45] after the date of enactment of this Act [July 6, 1973], become reentitled to such annuity; except that no child shall, by reason of the enactment of this Act [amending this section and sections 228c, 228e of Title 45] become reentitled to such annuity for any month prior to the effective date of the relevant amendments made by this Act to section 5(*l*)(1)(ii) of the Railroad Retirement Act [section 228e(*l*)(1)(ii)].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 410, 418, 426–1, 426a, 433, 1320b–1, 1395c, 1395f, 1395h, 1395i–1, 1395i–2, 1395i–2a, 1395p, 1395u, 1395y, 1395ff of this title; title 10 section 1086; title 45 sections 231f, 231r.

§ 426–1. End stage renal disease program

(a) Entitlement to benefits

Notwithstanding any provision to the contrary in section 426 of this title or subchapter XVIII of this chapter, every individual who—

(1)(A) is fully or currently insured (as such terms are defined in section 414 of this title), or would be fully or currently insured if (i) his service as an employee (as defined in the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.]) after December 31, 1936, were included within the meaning of the term ''employment'' for purposes of this subchapter, and (ii) his medicare qualified government employment (as defined in section 410(p) of this title) were included within the meaning of the term ''employment'' for purposes of this subchapter;

(B)(i) is entitled to monthly insurance benefits under this subchapter, (ii) is entitled to an annuity under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], or (iii) would be entitled to a monthly insurance benefit under this subchapter if medicare qualified government employment (as defined in section 410(p) of this title) were included within the meaning of the term ''employment'' for purposes of this subchapter; or

(C) is the spouse or dependent child (as defined in regulations) of an individual described in subparagraph (A) or (B);

(2) is medically determined to have end stage renal disease; and

(3) has filed an application for benefits under this section;

shall, in accordance with the succeeding provisions of this section, be entitled to benefits under part A and eligible to enroll under part B of subchapter XVIII of this chapter, subject to the deductible, premium, and coinsurance provisions of that subchapter.

(b) Duration of period of entitlement

Subject to subsection (c) of this section, entitlement of an individual to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter by reasons of this section on the basis of end stage renal disease—

(1) shall begin with—

(A) the third month after the month in which a regular course of renal dialysis is initiated, or

(B) the month in which such individual receives a kidney transplant, or (if earlier) the first month in which such individual is admitted as an inpatient to an institution which is a hospital meeting the requirements of section 1395x(e) of this title (and such additional requirements as the Secretary may prescribe under section 1395rr(b) of this title for such institutions) in preparation for or anticipation of kidney transplantation, but only if such transplantation occurs in that month or in either of the next two months,

whichever first occurs (but no earlier than one year preceding the month of the filing of an application for benefits under this section); and

(2) shall end, in the case of an individual who receives a kidney transplant, with the thirty-sixth month after the month in which such individual receives such transplant or, in the case of an individual who has not received a kidney transplant and no longer requires a regular course of dialysis, with the twelfth month after the month in which such course of dialysis is terminated.

(c) Individuals participating in self-care dialysis training programs; kidney transplant failures; resumption of previously terminated regular course of dialysis

Notwithstanding the provisions of subsection (b) of this section—

(1) in the case of any individual who participates in a self-care dialysis training program prior to the third month after the month in which such individual initiates a regular course of renal dialysis in a renal dialysis facility or provider of services meeting the requirements of section 1395rr(b) of this title, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such regular course of renal dialysis is initiated;

(2) in any case in which a kidney transplant fails (whether during or after the thirty-six-month period specified in subsection (b)(2) of this section) and as a result the individual who received such transplant initiates or resumes a regular course of renal dialysis, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such course is initiated or resumed; and

(3) in any case in which a regular course of renal dialysis is resumed subsequent to the termination of an earlier course, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such regular course of renal dialysis is resumed.

(c)[1] Continuing eligibility of certain terminated individuals

For purposes of this section, each person whose monthly insurance benefit for any month is terminated or is otherwise not payable solely by reason of paragraph (1) or (7) of section 425(c) of this title shall be treated as entitled to such benefit for such month.

(Aug. 14, 1935, ch. 531, title II, § 226A, as added June 13, 1978, Pub. L. 95–292, § 1(a), 92 Stat. 307; amended Sept. 3, 1982, Pub. L. 97–248, title II, § 278(b)(2)(C), 96 Stat. 561; Jan. 12, 1983, Pub. L. 97–448, title III, § 309(b)(1), 96 Stat. 2408; Apr. 7, 1986, Pub. L. 99–272, title XIII, § 13205(b)(2)(B), 100 Stat. 317; Aug. 15, 1994, Pub. L. 103–296, title II, § 201(a)(3)(D)(ii), 108 Stat. 1497.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a)(1)(A), (B), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Parts A and B of subchapter XVIII of this chapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–296 added subsec. (c) relating to continuing eligibility of certain terminated individuals.

1986—Subsec. (a)(1)(A)(ii), (B)(iii). Pub. L. 99–272 substituted ''medicare qualified government employment'' for ''medicare qualified Federal employment''.

1983—Subsec. (a)(1)(B)(iii). Pub. L. 97–448 substituted ''section 410(p)'' for ''410(p)'' and struck out ''after December 31, 1982,''.

1982—Subsec. (a)(1)(A). Pub. L. 97–248 designated existing provisions as cl. (i), substituted ''within the meaning of the term 'employment' for purposes of this subchapter'' for ''in the term 'employment' as defined in this chapter'', and added cl. (ii).

Subsec. (a)(1)(B). Pub. L. 97–248 designated ''is entitled to monthly insurance benefits under this subchapter'' as cl. (i), substituted ''(ii) is entitled to an annuity under the Railroad Retirement Act of 1974'' for ''or an annuity under the Railroad Retirement Act of 1974'', and added cl. (iii).

Subsec. (a)(1)(C), (D). Pub. L. 97–248 combined former subpars. (C) and (D) into subpar. (C) and substituted a reference to individuals described in subpar. (A) or (B) for a more detailed definition of such individuals.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 applicable with respect to benefits based on disability (as defined in sec-

[1] So in original. Probably should be ''(d)''.

tion 425(c)(9) of this title) which are otherwise payable in months beginning after 180 days after Aug. 15, 1994, with Secretary of Health and Human Services to issue regulations necessary to carry out such amendment not later than 180 days after Aug. 15, 1994, see section 201(a)(3)(E)(i) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment; Sunset Provision note under section 425 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective after Mar. 31, 1986, with no individual to be considered under disability for any period beginning before Apr. 1, 1986, for purposes of hospital insurance benefits, see section 13205(d)(2) of Pub. L. 99–272, set out as a note under section 410 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 309(c)(2) of Pub. L. 97–448 provided that: ''Any amendment to the Social Security Act [this chapter] made by this section [amending this section and sections 410, 1320c–2, 1320c–3, 1395d, 1395f, 1395r, 1395y, 1395cc, 1395mm, 1395ww, 1396b, 1396n, 1396*o*, and 1396p of this title] shall be effective as if it had been originally included as a part of that provision of the Social Security Act to which it relates, as such provision of such Act was amended or added by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248, Sept. 3, 1982, 96 Stat. 324].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective on and after Jan. 1, 1983, see section 278(c)(2)(A) of Pub. L. 97–248, set out as a note under section 426 of this title.

EFFECTIVE DATE

Section effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 410, 418, 1395c, 1395i–2a, 1395y, 1395rr of this title; title 10 section 1086.

§ 426a. Transitional provision on eligibility of uninsured individuals for hospital insurance benefits

(a) Entitlement to benefits

Anyone who—

(1) has attained the age of 65,

(2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage (as defined in this subchapter or section 228e(*l*) of title 45), whenever acquired, for each calendar year elapsing after 1966 and before the year in which he attained such age,

(3) is not, and upon filing application for monthly insurance benefits under section 402 of this title would not be, entitled to hospital insurance benefits under section 426 of this title, and is not certifiable as a qualified railroad retirement beneficiary under section 228s–2 of title 45,

(4) is a resident of the United States (as defined in section 410(i) of this title), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as so defined) continuously during the 5 years immediately preceding the month in which he files application under this section, and

(5) has filed an application under this section in such manner and in accordance with such other requirements as may be prescribed in regulations of the Secretary,

shall (subject to the limitations in this section) be deemed, solely for purposes of section 426 of this title, to be entitled to monthly insurance benefits under such section 402 for each month, beginning with the first month in which he meets the requirements of this subsection and ending with the month in which he dies, or, if earlier, the month before the month in which he becomes (or upon filing application for monthly insurance benefits under section 402 of this title would become) entitled to hospital insurance benefits under section 426 of this title or becomes certifiable as a qualified railroad retirement beneficiary. An individual who would have met the preceding requirements of this subsection in any month had he filed application under paragraph (5) hereof before the end of such month shall be deemed to have met such requirements in such month if he files such application before the end of the twelfth month following such month. No application under this section which is filed by an individual more than 3 months before the first month in which he meets the requirements of paragraphs (1), (2), (3), and (4) shall be accepted as an application for purposes of this section.

(b) Persons ineligible

The provisions of subsection (a) of this section shall not apply to any individual who—

(1) is, at the beginning of the first month in which he meets the requirements of subsection (a), a member of any organization referred to in section 410(a)(17) of this title,

(2) has, prior to the beginning of such first month, been convicted of any offense listed in section 402(u) of this title, or

(3)(A) at the beginning of such first month is covered by an enrollment in a health benefits plan under chapter 89 of title 5,

(B) was so covered on February 16, 1965, or

(C) could have been so covered for such first month if he or some other person had availed himself of opportunities to enroll in a health benefits plan under such chapter and to continue such enrollment (but this subparagraph shall not apply unless he or such other person was a Federal employee at any time after February 15, 1965).

Paragraph (3) shall not apply in the case of any individual for the month (or any month thereafter) in which coverage under such a health benefits plan ceases (or would have ceased if he had had such coverage) by reason of his or some other person's separation from Federal service, if he or such other person was not (or would not have been) eligible to continue such coverage after such separation.

(c) Authorization of appropriations

There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (estab-

lished by section 1395i of this title) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

(1) payments made or to be made during such fiscal year from such Trust Fund under part A of subchapter XVIII of this chapter with respect to individuals who are entitled to hospital insurance benefits under section 426 of this title solely by reason of this section,

(2) the additional administrative expenses resulting or expected to result therefrom, and

(3) any loss in interest to such Trust Fund resulting from the payment of such amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the preceding subsections of this section had not been enacted.

(Pub. L. 89–97, title I, §103, July 30, 1965, 79 Stat. 333; Pub. L. 90–248, title I, §139, title IV, §403(h), Jan. 2, 1968, 81 Stat. 854, 932.)

REFERENCES IN TEXT

Sections 228e(*l*) and 228s–2 of title 45, referred to in subsec. (a)(2), (3), are references to sections 5(*l*) and 21 of the Railroad Retirement Act of 1937. That Act was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305. That Act, as thus amended and revised, was redesignated the Railroad Retirement Act of 1974, and is classified generally to subchapter IV (§231 et seq.) of chapter 9 of Title 45, Railroads. Sections 228e and 228s–2 of title 45 are covered by sections 231e and 231f of Title 45, respectively.

Part A of subchapter XVIII of this chapter, referred to in subsec. (c)(1), is classified to section 1395c et seq. of this title.

CODIFICATION

Section was not enacted as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1968—Subsec. (a)(2)(B). Pub. L. 90–248, §139, substituted ''1966'' for ''1965''.

Subsec. (b)(3)(A), (C). Pub. L. 90–248, §403(h)(1), (2), substituted ''chapter 89 of title 5'' and ''such chapter'' for ''the Federal Employees Health Benefits Act of 1959'' and ''such Act'' in subpars. (A) and (C), respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 426, 1395i–2, 1395ff of this title.

§ 427. Transitional insured status for purposes of old-age and survivors benefits

(a) Determination of entitlement to benefits under section 402(a) to (c) of this title

In the case of any individual who attains the age of 72 before 1969 but who does not meet the requirements of section 414(a) of this title, the 6 quarters of coverage referred to in paragraph (1) of section 414(a) of this title shall, instead, be 3 quarters of coverage for purposes of determining entitlement of such individual to benefits under section 402(a) of this title, and of the spouse to benefits under section 402(b) or section 402(c) of this title, but, in the case of such spouse, only if he or she attains the age of 72 before 1969 and only with respect to spouse's insurance benefits under section 402(b) or section 402(c) of this title for and after the month in which he or she attains such age. For each month before the month in which any such individual meets the requirements of section 414(a) of this title, the amount of the old-age insurance benefit shall, notwithstanding the provisions of section 402(a) of this title, be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title and the amount of the spouse's insurance benefit of the spouse shall, notwithstanding the provisions of section 402(b) or section 402(c) of this title, be the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

(b) Determination of entitlement to surviving spouse's benefits under section 402(e) or (f) of this title

In the case of any individual who has died, who does not meet the requirements of section 414(a) of this title, and whose surviving spouse attains age 72 before 1969, the 6 quarters of coverage referred to in paragraph (3) of section 414(a) of this title and in paragraph (1) thereof shall, for purposes of determining the entitlement to surviving spouse's insurance benefits under section 402(e) or section 402(f) of this title, instead be—

(1) 3 quarters of coverage if such surviving spouse attains the age of 72 in or before 1966,

(2) 4 quarters of coverage if such surviving spouse attains the age of 72 in 1967, or

(3) 5 quarters of coverage if such surviving spouse attains the age of 72 in 1968.

The amount of the surviving spouse's insurance benefit for each month shall, notwithstanding the provisions of section 402(e) or section 402(f) of this title (and section 402(m)[1] of this title), be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title.

(c) Deceased individual entitled to benefits by reason of subsection (a) deemed to meet requirements of subsection (b)

In the case of any individual who becomes, or upon filing application therefor would become, entitled to benefits under section 402(a) of this title by reason of the application of subsection (a) of this section, who dies, and whose surviving spouse attains the age of 72 before 1969, such deceased individual shall be deemed to meet the requirements of subsection (b) of this section for purposes of determining entitlement of such surviving spouse to surviving spouse's insurance benefits under section 402(e) or section 402(f) of this title.

(Aug. 14, 1935, ch. 531, title II, §227, as added July 30, 1965, Pub. L. 89–97, title III, §309(a), 79 Stat. 379; amended Jan. 2, 1968, Pub. L. 90–248, title I, §102(a), 81 Stat. 827; Dec. 30, 1969, Pub. L. 91–172, title X, §1003(a), 83 Stat. 740; Mar. 17, 1971, Pub. L. 92–5, title II, §202(a), 85 Stat. 10; July 1, 1972, Pub. L. 92–336, title II, §201(g)(1), 86 Stat. 411; Oct. 30, 1972, Pub. L. 92–603, title I, §104 (e), (f), 86 Stat. 1340; Dec. 31, 1973, Pub. L. 93–233, §2(b)(1), 87 Stat. 952; Apr. 20, 1983, Pub. L. 98–21, title III, §304(a), (b), 97 Stat. 112.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 402(m) of this title, referred to in subsec. (b), was repealed by Pub. L. 97–35, title XXII, § 2201(b)(10), Aug. 13, 1981, 95 Stat. 831.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–21, § 304(a), substituted ''spouse'' for ''wife'', ''spouse's'' for ''wife's'', and ''he or she'' for ''she'', wherever appearing, substituted ''the'' for ''his'' after ''402(a) of this title, and of'' and preceding ''spouse'' in two places and preceding ''old-age insurance'', and inserted ''or section 402(c)'' after ''section 402(b)'' wherever appearing.

Subsec. (b). Pub. L. 98–21, § 304(b), substituted ''surviving spouse'' for ''widow'' and ''surviving spouse's'' for ''widow's'' wherever appearing, substituted ''the'' for ''her'' after ''determining'' and ''The amount of'', and inserted ''or section 402(f)'' after ''section 402(e)'' wherever appearing.

Subsec. (c). Pub. L. 98–21, § 304(b)(1), (2), (4), substituted ''surviving spouse'' for ''widow'' wherever appearing and ''surviving spouse's'' for ''widow's'', and inserted ''or section 402(f)'' after ''section 402(e)''.

1973—Subsec. (a). Pub. L. 93–233, § 2(b)(1), substituted ''the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' and ''the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00''.

Subsec. (b). Pub. L. 93–233, § 2(b)(1), substituted ''the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00''.

1972—Subsec. (a). Pub. L. 92–336, § 201(g)(1)(A), substituted ''$58.00'' for ''$48.30'' and ''$29.00'' for ''$24.20''.

Subsec. (a)(1). Pub. L. 92–603, § 104(e), substituted ''paragraph (1) of section 414(a) of this title'' for ''so much of paragraph (1) of section 414(a) of this title as follows clause (C)''.

Subsec. (b). Pub. L. 92–336, § 201(g)(1)(B), substituted ''$58.00'' for ''$48.30''.

Subsec. (b)(1). Pub. L. 92–603, § 104(f), substituted ''paragraph (1) thereof'' for ''so much of paragraph (1) thereof as follows clause (C)''.

1971—Subsec. (a). Pub. L. 92–5, § 202(a)(1), substituted ''$48.30'' for ''$46'' and ''$24.20'' for ''$23''.

Subsec. (b). Pub. L. 92–5, § 202(a)(2), substituted ''$48.30'' for ''$46''.

1969—Subsec. (a). Pub. L. 91–172, § 1003(a)(1), substituted ''$46'' for ''$40'', and ''$23'' for ''$20''.

Subsec. (b). Pub. L. 91–172, § 1003(a)(2), substituted ''$46'' for ''$40''.

1968—Subsec. (a). Pub. L. 90–248, § 102(a)(1), substituted ''$40'' for ''$35'' and ''$20'' for ''$17.50''.

Subsec. (b). Pub. L. 90–248, § 102(a)(2), substituted ''$40'' for ''$35''.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21 set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 2(b)(1) of Pub. L. 93–233 provided that the amendment made by that section is effective June 1, 1974.

Amendment by Pub. L. 93–233 applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title, see section 2(c) of Pub. L. 93–233, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1972 AMENDMENTS

Amendment by Pub. L. 92–603 applicable only in the case of a man who attains (or would attain) age 62 after December 1974, see section 104(j) of Pub. L. 92–603, set out as a note under section 414 of this title.

Amendment by Pub. L. 92–336 applicable with respect to monthly benefits under subchapter II of this chapter for months after August 1972, see section 201(i) of Pub. L. 92–336, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 202(c) of Pub. L. 92–5 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 428 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1970.''

EFFECTIVE DATE OF 1969 AMENDMENT

Section 1003(c) of Pub. L. 91–172 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 428 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1969.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 102(c) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 428 of this title] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after January 1968.''

EFFECTIVE DATE

Section 309(b) of Pub. L. 89–97 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply in the case of monthly benefits under title II of the Social Security Act [this subchapter] for and after the second month following the month [July 1965] in which this Act is enacted on the basis of applications filed in or after the month in which this Act is enacted.''

REPEAL OF AMENDMENT OF SUBSECS. (a) AND (b) PRIOR TO EFFECTIVE DATE

Section 202(a)(4) of Pub. L. 92–336, title II, July 1, 1972, 86 Stat. 416, which, effective Jan. 1, 1975, substituted ''the larger of $58.00 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' and ''the larger of $29.00 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00'', was repealed prior to its effective date by Pub. L. 93–233, § 2(b)(2), Dec. 31, 1973, 87 Stat. 952, applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title. See section 2(c) of Pub. L. 93–233, set out as an Effective Date of 1973 Amendment note under section 415 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 415 of this title.

§ 428. Benefits at age 72 for certain uninsured individuals

(a) Eligibility

Every individual who—

(1) has attained the age of 72,

(2)(A) attained such age before 1968, or (B)(i) attained such age after 1967 and before 1972, and (ii) has not less than 3 quarters of coverage, whenever acquired, for each calendar year elapsing after 1966 and before the year in which he or she attained such age,

(3) is a resident of the United States (as defined in subsection (e) of this section), and is (A) a citizen of the United States or (B) an

alien lawfully admitted for permanent residence who has resided in the United States (as defined in section 410(i) of this title) continuously during the 5 years immediately preceding the month in which he or she files application under this section, and

(4) has filed application for benefits under this section,

shall (subject to the limitations in this section) be entitled to a benefit under this section for each month beginning with the first month after September 1966 in which he or she becomes so entitled to such benefits and ending with the month preceding the month in which he or she dies. No application under this section which is filed by an individual more than 3 months before the first month in which he or she meets the requirements of paragraphs (1), (2), and (3) shall be accepted as an application for purposes of this section.

(b) Amount of benefits

The benefit amount to which an individual is entitled under this section for any month shall be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title.

(c) Reduction for government pension system benefits

(1) The benefit amount of any individual under this section for any month shall be reduced (but not below zero) by the amount of any periodic benefit under a governmental pension system for which he or she is eligible for such month.

(2) In the case of a husband and wife only one of whom is entitled to benefits under this section for any month, the benefit amount, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the spouse who is not entitled to benefits under this section is eligible for such month, over (B) the benefit amount as determined without regard to this subsection.

(3) In the case of a husband or wife both of whom are entitled to benefits under this section for any month, the benefit amount of each spouse, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the other spouse is eligible for such month, over (B) the benefit amount of such other spouse as determined without regard to this subsection.

(4) For purposes of this subsection, in determining whether an individual is eligible for periodic benefits under a governmental pension system—

(A) such individual shall be deemed to have filed application for such benefits,

(B) to the extent that entitlement depends on an application by such individual's spouse, such spouse shall be deemed to have filed application, and

(C) to the extent that entitlement depends on such individual or his or her spouse having retired, such individual and his or her spouse shall be deemed to have retired before the month for which the determination of eligibility is being made.

(5) For purposes of this subsection, if any periodic benefit is payable on any basis other than a calendar month, the Commissioner of Social Security shall allocate the amount of such benefit to the appropriate calendar months.

(6) If, under the foregoing provisions of this section, the amount payable for any month would be less than $1, such amount shall be reduced to zero. In the case of a husband and wife both of whom are entitled to benefits under this section for the month, the preceding sentence shall be applied with respect to the aggregate amount so payable for such month.

(7) If any benefit amount computed under the foregoing provisions of this section is not a multiple of $0.10, it shall be raised to the next higher multiple of $0.10.

(8) Under regulations prescribed by the Commissioner of Social Security, benefit payments under this section to an individual (or aggregate benefit payments under this section in the case of a husband and wife) of less than $5 may be accumulated until they equal or exceed $5.

(d) Suspension for months in which cash payments are made under public assistance or in which supplemental security income benefits are payable

The benefit to which any individual is entitled under this section for any month shall not be paid for such month if—

(1) such individual receives aid or assistance in the form of money payments in such month under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, or

(2) such individual's husband or wife receives such aid or assistance in such month, and under the State plan the needs of such individual were taken into account in determining eligibility for (or amount of) such aid or assistance,

unless the State agency administering or supervising the administration of such plan notifies the Commissioner of Social Security, at such time and in such manner as may be prescribed in accordance with regulations of the Commissioner of Social Security, that such payments to such individual (or such individual's husband or wife) under such plan are being terminated with the payment or payments made in such month and such individual is not an individual with respect to whom supplemental security income benefits are payable pursuant to subchapter XVI of this chapter or section 211 of Public Law 93–66 for the following month, nor shall such benefit be paid for such month if such individual is an individual with respect to whom supplemental security income benefits are payable pursuant to subchapter XVI of this chapter or section 211 of Public Law 93–66 for such month, unless the Commissioner of Social Security determines that such benefits are not payable with respect to such individual for the month following such month.

(e) Suspension where individual is residing outside United States

The benefit to which any individual is entitled under this section for any month shall not be

paid if, during such month, such individual is not a resident of the United States. For purposes of this subsection, the term ''United States'' means the 50 States and the District of Columbia.

(f) Treatment as monthly insurance benefits

For purposes of subsections (t) and (u) of section 402 of this title, and of section 1395s of this title, a monthly benefit under this section shall be treated as a monthly insurance benefit payable under section 402 of this title.

(g) Annual reimbursement of Federal Old-Age and Survivors Insurance Trust Fund

There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1969, and for each fiscal year thereafter, such sums as the Commissioner of Social Security deems necessary on account of—

(1) payments made under this section during the second preceding fiscal year and all fiscal years prior thereto to individuals who, as of the beginning of the calendar year in which falls the month for which payment was made, had less than 3 quarters of coverage,

(2) the additional administrative expenses resulting from the payments described in paragraph (1), and

(3) any loss in interest to such Trust Fund resulting from such payments and expenses,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if such payments had not been made.

(h) Definitions

For purposes of this section—

(1) The term ''quarter of coverage'' includes a quarter of coverage as defined in section 228e(*l*) of title 45.

(2) The term ''governmental pension system'' means the insurance system established by this subchapter or any other system or fund established by the United States, a State, any political subdivision of a State, or any wholly owned instrumentality of any one or more of the foregoing which provides for payment of (A) pensions, (B) retirement or retired pay, or (C) annuities or similar amounts payable on account of personal services performed by any individual (not including any payment under any workmen's compensation law or any payment by the Secretary of Veterans Affairs as compensation for service-connected disability or death).

(3) The term ''periodic benefit'' includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(4) The determination of whether an individual is a husband or wife for any month shall be made under subsection (h) of section 416 of this title without regard to subsections (b) and (f) of section 416 of this title.

(Aug. 14, 1935, ch. 531, title II, § 228, as added Mar. 15, 1966, Pub. L. 89–368, title III, § 302(a), 80 Stat. 67; amended Jan. 2, 1968, Pub. L. 90–248, title I, § 102(b), title II, § 241(a) 81 Stat. 827, 916; Dec. 30, 1969, Pub. L. 91–172, title X, § 1003(b), 83 Stat. 740; Mar. 17, 1971, Pub. L. 92–5, title II, § 202(b), 85 Stat. 10; July 1, 1972, Pub. L. 92–336, title II, § 201(g)(2), 86 Stat. 411; Dec. 31, 1973, Pub. L. 93–233, §§ 2(b)(1), 18(c), 87 Stat. 952, 968; Apr. 20, 1983, Pub. L. 98–21, title III, § 305(a)–(d), 97 Stat. 113; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2662(e), 2663(j)(3)(A)(iv), 98 Stat. 1159, 1170; Nov. 5, 1990, Pub. L. 101–508, title V, § 5114(a), 104 Stat. 1388–273; June 13, 1991, Pub. L. 102–54, § 13(q)(3)(B)(i), 105 Stat. 279; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsec. (d)(1), is classified to section 601 et seq. of this title.

Section 211 of Pub. L. 93–66, referred to in subsec. (d), is set out as a note under section 1382 of this title.

Section 228e(*l*) of title 45, referred to in subsec. (h)(1), is a reference to section 5(*l*) of the Railroad Retirement Act of 1937. That Act was amended in its entirety and completely revised by Pub. L. 93–445, Oct. 16, 1974, 88 Stat. 1305. The Act, as thus amended and revised, was redesignated the Railroad Retirement Act of 1974, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Section 228e of title 45 is covered by section 231e of Title 45.

AMENDMENTS

1994—Subsecs. (c)(5), (8), (d), (g). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1991—Subsec. (h)(2). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (a)(2). Pub. L. 101–508 substituted ''(B)(i) attained such age after 1967 and before 1972, and (ii)'' for ''(B)''.

1984—Subsec. (c)(4)(C). Pub. L. 98–369, § 2662(e), amended directory language of Pub. L. 98–21, § 305(d)(2). See 1983 Amendment note below.

Subsec. (g). Pub. L. 98–369, § 2663(j)(3)(A)(iv), struck out ''of Health, Education, and Welfare'' after ''Secretary''.

1983—Subsec. (a). Pub. L. 98–21, § 305(d)(1), substituted ''he or she'' for ''he'' wherever appearing.

Subsec. (b). Pub. L. 98–21, § 305(a), substituted ''The'' for ''(1) Except as provided in paragraph (2), the'' and struck out par. (2), which had provided that if both husband and wife were entitled or would have been entitled upon application to benefits under this section for any month, the amount of the husband's benefit for such month would be the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title, and the amount of the wife's benefit for such month the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Subsec. (c)(1). Pub. L. 98–21, § 305(d)(1), substituted ''he or she'' for ''he''.

Subsec. (c)(2). Pub. L. 98–21, § 305(b), substituted ''(B) the benefit amount as determined without regard to this subsection'' for ''(B) the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title''.

Subsec. (c)(3). Pub. L. 98–21, § 305(c), amended par. (3) generally, substituting provisions relating to either a husband or wife for provision that the benefit amount of the wife, after any reduction under paragraph (1), would be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the husband was eligible for such month, over (ii) the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title, and that the benefit amount of the husband, after any reduction under paragraph (1), would be further reduced (but not below zero) by the excess (if any) of (i) the

total amount of any periodic benefits under governmental pension systems for which the wife was eligible for such month, over (ii) the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title.

Subsec. (c)(4)(C). Pub. L. 98–21, §305(d)(2), as amended by Pub. L. 98–369, §2662(e), substituted ''his or her'' for ''his'' wherever appearing.

1973—Subsec. (b). Pub. L. 93–233, §2(b)(1), substituted ''the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' in pars. (1) and (2) and ''the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00'' in par. (2).

Subsec. (c). Pub. L. 93–233, §2(b)(1), substituted ''the larger of $64.40 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' in par. (3), subpar. (A) and ''the larger of $32.20 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00'' in par. (2) and par. (3) subpar. (B).

Subsec. (d). Pub. L. 93–233, §18(c) provided for elimination of benefits at age 72 for uninsured individuals receiving supplemental security income benefits.

1972—Subsec. (b)(1). Pub. L. 92–336, §201(g)(2)(A), substituted ''$58.00'' for ''$48.30''.

Subsec. (b)(2). Pub. L. 92–336, §201(g)(2)(B), substituted ''$58.00'' for ''$48.30'' and ''$29.00'' for ''$24.20''.

Subsec. (c)(2). Pub. L. 92–336, §201(g)(2)(C), substituted ''$29.00'' for ''$24.20''.

Subsec. (c)(3)(A). Pub. L. 92–336, §201(g)(2)(D), substituted ''$58.00'' for ''$48.30''.

Subsec. (c)(3)(B). Pub. L. 92–336, §201(g)(2)(E), substituted ''$29.00'' for ''$24.20''.

1971—Subsec. (b)(1). Pub. L. 92–5, §202(b)(1), substituted ''$48.30'' for ''$46''.

Subsec. (b)(2). Pub. L. 92–5, §202(b)(2), substituted ''$48.30'' for ''$46'' and ''$24.20'' for ''$23''.

Subsec. (c)(2). Pub. L. 92–5, §202(b)(3), substituted ''$24.20'' for ''$23''.

Subsec. (c)(3)(A). Pub. L. 92–5, §202(b)(4), substituted ''$48.30'' for ''$46''.

Subsec. (c)(3)(B). Pub. L. 92–5, §202(b)(5), substituted ''$24.20'' for ''$23''.

1969—Subsec. (b)(1). Pub. L. 91–172, §1003(b)(1), substituted ''$46'' for ''$40''.

Subsec. (b)(2). Pub. L. 91–172, §1003(b)(2), substituted ''$46'' for ''$40'' and ''$23'' for ''$20''.

Subsec. (c)(2). Pub. L. 91–172, §1003(b)(3), substituted ''$23'' for ''$20''.

Subsec. (c)(3)(A). Pub. L. 91–172, §1003(b)(4), substituted ''$46'' for ''$40''.

Subsec. (c)(3)(B). Pub. L. 91–172, §1003(b)(5), substituted ''$23'' for ''$20''.

1968—Subsec. (b)(1). Pub. L. 90–248, §102(b)(1), substituted ''$40'' for ''$35''.

Subsec. (b)(2). Pub. L. 90–248, §102(b)(2), substituted ''$40'' for ''$35'' and ''$20'' for $17.50''.

Subsec. (c)(2). Pub. L. 90–248, §102(b)(3), substituted ''$20'' for ''$17.50''.

Subsec. (c)(3)(A). Pub. L. 90–248, §102(b)(4), substituted ''$40'' for ''$35''.

Subsec. (c)(3)(B). Pub. L. 90–248, §102(b)(5), substituted ''$20'' for ''$17.50''.

Subsec. (d)(1). Pub. L. 90–248, §241(a), struck out ''IV,'' after ''I,'' and inserted ''or part A of subchapter IV of this chapter,'' after ''XVI of this chapter,''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5114(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect [to] benefits payable on the basis of applications filed after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2662(e) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 2663(j)(3)(A)(iv) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable only with respect to monthly payments payable under this subchapter for months after April 1983, see section 310 of Pub. L. 98–21, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 2(b)(1) of Pub. L. 93–233 provided that the amendment made by that section is effective June 1, 1974.

Amendment by section 2(b)(1) of Pub. L. 93–233 applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title, see section 2(c) of Pub. L. 93–233, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–336 applicable with respect to monthly benefits under subchapter II of this chapter for months after August 1972, see section 201(i) of Pub. L. 92–336, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–5 applicable with respect to monthly benefits under subchapter II of this chapter for months after December 1970, see section 202(c) of Pub. L. 92–5, set out as a note under section 427 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91–172 applicable for months after December 1969, see section 1003(c) of Pub. L. 91–172, set out as a note under section 427 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 102(b) of Pub. L. 90–248 applicable with respect to monthly benefits under this subchapter for months after January 1968, see section 102(c) of Pub. L. 90–248, set out as a note under section 427 of this title.

REPEAL OF AMENDMENT OF SUBSECS. (b)(1), (2) AND (c)(3)(A), (B) PRIOR TO EFFECTIVE DATE

Section 202(a)(4) of Pub. L. 92–336, title II, July 1, 1972, 86 Stat. 416, which, effective Jan. 1, 1975, substituted ''the larger of $58.00 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$58.00'' and ''the larger of $29.00 or the amount most recently established in lieu thereof under section 415(i) of this title'' for ''$29.00'', was repealed prior to its effective date by Pub. L. 93–233, §2(b)(2), Dec. 31, 1973, 87 Stat. 952, applicable with respect to monthly benefits under this subchapter for months after May 1974, and with respect to lump-sum death payments under section 402(i) of this title. See section 2(c) of Pub. L. 93–233, set out as an Effective Date of 1973 Amendment note under section 415 of this title.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Es-

tablish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 56593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

INCREASES TO TAKE INTO ACCOUNT GENERAL BENEFIT INCREASES

Section 305(e) of Pub. L. 98–21 provided that: ''The Secretary shall increase the amounts specified in section 228 of the Social Security Act [this section], as amended by this section, to take into account any general benefit increases (as referred to in section 215(i)(3) of such Act [section 415(i)(3) of this title]), and any increases under section 215(i) of such Act, which have occurred after June 1974 or may hereafter occur.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by Secretary of the Treasury to each individual who, for month of March 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

APPLICATIONS FOR TRANSITIONAL COVERAGE OF UNINSURED INDIVIDUALS FOR HOSPITAL INSURANCE BENEFITS

Section 302(b) of Pub. L. 89–368 provided that: ''For purposes of paragraph (4) of section 228(a) of the Social Security Act [subsec. (a)(4) of this section] (added by subsection (a) of this section), an application filed under section 103 of the Social Security Amendments of 1965 [set out as a note under section 426 of this title] before July 1966 shall be regarded as an application under such section 228 [this section] and shall, for purposes of such paragraph and of the last sentence of such section 228(a), be deemed to have been filed in July 1966, unless the person by whom or on whose behalf such application was filed notifies the Secretary that he does not want such application so regarded.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 405, 415, 662, 1320b–1 of this title; title 48 section 1421q.

§ 429. Benefits in case of members of uniformed services

(a) For purposes of determining entitlement to and the amount of any monthly benefit for any month after December 1972, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this subchapter on the basis of the wages and self-employment income of any individual, and for purposes of section 416(i)(3) of this title, such individual, if he was paid wages for service as a member of a uniformed service (as defined in section 410(m) of this title) which was included in the term ''employment'' as defined in section 410(a) of this title as a result of the provisions of section 410(*l*)(1)(A) of this title, shall be deemed to have been paid—

(1) in each calendar quarter occurring after 1956 and before 1978 in which he was paid such wages, additional wages of $300, and

(2) in each calendar year occurring after 1977 in which he was paid such wages, additional wages of $100 for each $300 of such wages, up to a maximum of $1,200 of additional wages for any calendar year.

(b) There are authorized to be appropriated to each of the Trust Funds, consisting of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund, for transfer on July 1 of each calendar year to such Trust Fund from amounts in the general fund in the Treasury not otherwise appropriated, an amount equal to the total of the additional amounts which would be appropriated to such Trust Fund for the fiscal year ending September 30 of such calendar year under section 401 or 1395i of this title if the amounts of the additional wages deemed to have been paid for such calendar year by reason of subsection (a) of this section constituted remuneration for employment (as defined in section 3121(b) of the Internal Revenue Code of 1986) for purposes of the taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986. Amounts authorized to be appropriated under this subsection for transfer on July 1 of each calendar year shall be determined on the basis of estimates of the Commissioner of Social Security of the wages deemed to be paid for such calendar year under subsection (a) of this section; and proper adjustments shall be made in amounts authorized to be appropriated for subsequent transfer to the extent prior estimates were in excess of or were less than such wages so deemed to be paid. Additional adjustments may be made in the amounts so authorized to be appropriated to the extent that the amounts transferred in accordance with clauses (i) and (ii) of section 151(b)(3)(B) of the Social Security Amendments of 1983 with respect to wages deemed to have been paid in 1983 were in excess of or were less than the amount which the Commissioner of Social Security, on the basis of appropriate data, determines should have been so transferred.

(Aug. 14, 1935, ch. 531, title II, § 229, as added Jan. 2, 1968, Pub. L. 90–428, title I, § 106, 81 Stat. 833; amended Oct. 30, 1972, Pub. L. 92–603, title I, § 120(a), 86 Stat. 1352; Dec. 20, 1977, Pub. L. 95–216, title III, § 353(d), 91 Stat. 1554; Apr. 20, 1983, Pub. L. 98–21, title I, § 151(b)(1), 97 Stat. 104; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2661(n), 98 Stat. 1158; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9001(c), 101 Stat. 1330–286; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(c)(6)(J), 108 Stat. 1478, 1538.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b), is classified generally to Title 26, Internal Revenue Code.

Section 151(b)(3)(B) of the Social Security Amendments of 1983, referred to in subsec. (b), is section 151(b)(3)(B) of Pub. L. 98–21, which is set out as a note below.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–296, § 321(c)(6)(J), substituted ''1986'' for ''1954'' after ''Code of'' in two places.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

1987—Subsec. (a). Pub. L. 100–203 substituted ''section 410(*l*)(1)(A)'' for ''section 410(*l*)''.

1984—Subsec. (b). Pub. L. 98–369 inserted at end ''Additional adjustments may be made in the amounts so authorized to be appropriated to the extent that the amounts transferred in accordance with clauses (i) and (ii) of section 151(b)(3)(B) of the Social Security Amendments of 1983 with respect to wages deemed to have been paid in 1983 were in excess of or were less than the

amount which the Secretary, on the basis of appropriate data, determines should have been so transferred.''

1983—Subsec. (b). Pub. L. 98–21 amended subsec. (b) generally, substituting provisions relating to authorization of appropriations to each of the Trust Funds for transfer on July 1 of each calendar year for provision that had authorized appropriations to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund annually, as benefits under this subchapter and part A of subchapter XVIII of this chapter were paid after December 1967, such sums as the Secretary determined to be necessary to meet (1) the additional costs, resulting from subsec. (a), of such benefits (including lump-sum death payments), (2) the additional administrative expenses resulting therefrom, and (3) any loss in interest to such trust funds resulting from the payment of such amounts, and that such additional costs would be determined after any increases in such benefits arising from the application of section 417 of this title had been made.

1977—Subsec. (a). Pub. L. 95–216 substituted provisions relating to applicability of benefits for wages deemed to have been paid in each calendar quarter occurring after 1956 and before 1978 and provisions relating to applicability of benefits for wages deemed to have been paid in each calendar quarter occurring after 1977, for provisions relating to applicability of benefits for wages deemed to have been paid in each calendar quarter occurring after 1956.

1972—Subsec. (a). Pub. L. 92–603 substituted ''December 1972'' for ''December 1967'' and ''after 1956'' for ''after 1967'' and struck out provisions limiting the wages deemed to have been paid an individual in addition to the wages actually paid him for his service to $100 if the wages actually paid to him in a quarter were $100 or less or to $200 if the wages actually paid to him in a quarter were more than $100 but not more than $200.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to remuneration paid after Dec. 31, 1987, see section 9001(d) of Pub. L. 100–203, set out as a note under section 3121 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2664(a) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 151(b)(2) of Pub. L. 98–21 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to wages deemed to have been paid for calendar years after 1983.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective Jan. 1, 1978, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 120(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to monthly benefits under title II of the Social Security Act [this subchapter] for months after December 1972 and with respect to lump-sum death payments under such title in the case of deaths occurring after December 1972 except that, in the case of any individual who is entitled, on the basis of the wages and self-employment income of any individual to whom section 229 of such Act [this section] applies, to monthly benefits under title II of such Act for the month in which this Act is enacted [October 1972], such amendments shall apply (1) only if a written request for a recalculation of such benefits (by reason of such amendments) under the provisions of section 215(b) and (d) of such Act [section 415(b) and (d) of this title], as in effect at the time such request is filed, is filed by such individual, or any other individual, entitled to benefits under such title II on the basis of such wages and self-employment income, and (2) only with respect to such benefits for months beginning with whichever of the following is later: January 1973 or the twelfth month before the month in which such request was filed. Recalculations of benefits as required to carry out the provisions of this section shall be made notwithstanding the provisions of section 215(f)(1) of the Social Security Act, and no such recalculation shall be regarded as a recomputation for purposes of section 215(f) of such Act.''

COMPENSATORY PAYMENTS TO TRUST FUNDS

Section 151(b)(3) of Pub. L. 98–21, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(A) Within thirty days after the date of the enactment of this Act [Apr. 20, 1983], the Secretary of Health and Human Services shall determine the additional amounts which would have been appropriated to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund under sections 201 and 1817 of the Social Security Act [sections 401 and 1395i of this title] if the additional wages deemed to have been paid under section 229(a) of the Social Security Act [subsec. (a) of this section] prior to 1984 had constituted remuneration for employment (as defined in section 3121(b) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [26 U.S.C. 3121(b)]) for purposes of the taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1986 [26 U.S.C. 3101, 3111], and the amount of interest which would have been earned on such amounts if they had been so appropriated.

''(B)(i) Within thirty days after the date of the enactment of this Act [Apr. 20, 1983], the Secretary of the Treasury shall transfer to each such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount equal to the amount determined with respect to such Trust Fund under subparagraph (A), less any amount appropriated to such Trust Fund pursuant to the provisions of section 229(b) of the Social Security Act [subsec. (b) of this section] prior to the date of the determination made under subparagraph (A) with respect to wages deemed to have been paid for calendar years prior to 1984.

''(ii) The Secretary of Health and Human Services shall revise the amount determined under clause (i) with respect to each such Trust Fund within one year after the date of the transfer made to such Trust Fund under clause (i), as determined appropriate by such Secretary from data which becomes available to him after the date of the transfer under clause (i). Within 30 days after any such revision, the Secretary of the Treasury shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of Health and Human Services certifies as necessary to take into account such revision.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 415 of this title; title 38 section 5303A; title 45 section 231b; title 50 section 2082.

§ 430. Adjustment of contribution and benefit base

(a) Determination and publication by Commissioner in Federal Register subsequent to cost-of-living benefit increase; effective date

Whenever the Commissioner of Social Security pursuant to section 415(i) of this title increases benefits effective with the December following a cost-of-living computation quarter, the Commissioner shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the contribution and benefit base determined under subsection (b) or (c) of this section which shall be effective with respect to remuneration paid after the calendar year in which such quarter occurs and taxable years beginning after such year.

(b) Determination of amount

The amount of such contribution and benefit base shall (subject to subsection (c) of this section) be the amount of the contribution and benefit base in effect in the year in which the determination is made or, if larger, the product of—

(1) $60,600, and

(2) the ratio of (A) the national average wage index (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subsection (a) of this section is made to (B) the national average wage index (as so defined) for 1992,

with such product, if not a multiple of $300, being rounded to the next higher multiple of $300 where such product is a multiple of $150 but not of $300 and to the nearest multiple of $300 in any other case.

(c) Amount of base for period prior to initial cost-of-living benefit increase

For purposes of this section, and for purposes of determining wages and self-employment income under sections 409, 411, 413, and 415 of this title and sections 1402, 3121, 3122, 3125, 6413, and 6654 of the Internal Revenue Code of 1986, (1) the ''contribution and benefit base'' with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1973 and prior to the calendar year with the June of which the first increase in benefits pursuant to section 415(i) of this title becomes effective shall be $13,200 or (if applicable) such other amount as may be specified in a law enacted subsequent to the law which added this section, and (2) the ''contribution and benefit base'' with respect to remuneration paid (and taxable years beginning)—

(A) in 1978 shall be $17,700,

(B) in 1979 shall be $22,900,

(C) in 1980 shall be $25,900, and

(D) in 1981 shall be $29,700.

For purposes of determining under subsection (b) of this section the ''contribution and benefit base'' with respect to remuneration paid (and taxable years beginning) in 1982 and subsequent years, the dollar amounts specified in clause (2) of the preceding sentence shall be considered to have resulted from the application of such subsection (b) of this section and to be the amount determined (with respect to the years involved) under that subsection.

(d) Determinations for calendar years after 1976 for purposes of retirement benefit plans

Notwithstanding any other provision of law, the contribution and benefit base determined under this section for any calendar year after 1976 for purposes of section 1322(b)(3)(B) of title 29, with respect to any plan, shall be the contribution and benefit base that would have been determined for such year if this section as in effect immediately prior to the enactment of the Social Security Amendments of 1977 had remained in effect without change (except that, for purposes of subsection (b) of such section 430 of this title as so in effect, the reference to the contribution and benefit base in paragraph (1) of such subsection (b) shall be deemed a reference to an amount equal to $45,000, each reference in paragraph (2) of such subsection (b) to the average of the wages of all employees as reported to the Secretary of the Treasury shall be deemed a reference to the national average wage index (as defined in section 409(k)(1) of this title), the reference to a preceding calendar year in paragraph (2)(A) of such subsection (b) shall be deemed a reference to the calendar year before the calendar year in which the determination under subsection (a) of such section 430 of this title is made, and the reference to a calendar year in paragraph (2)(B) of such subsection (b) shall be deemed a reference to 1992).

(Aug. 14, 1935, ch. 531, title II, § 230, as added July 1, 1972, Pub. L. 92–336, title II, § 202(b)(1), 86 Stat. 416; amended Oct. 30, 1972, Pub. L. 92–603, title I, § 144(a)(4), 86 Stat. 1370; July 9, 1973, Pub. L. 93–66, title II, § 203(c), 87 Stat. 153; Dec. 31, 1973, Pub. L. 93–233, §§ 3(j), 5(c), 87 Stat. 952, 954; Jan. 2, 1976, Pub. L. 94–202, § 8(h), 89 Stat. 1139; Dec. 20, 1977, Pub. L. 95–216, title I, § 103(a)–(c)(1), title III, § 353(e), 91 Stat. 1513, 1514, 1554; Aug. 13, 1981, Pub. L. 97–34, title VII, § 741(d)(1), 95 Stat. 347; Apr. 20, 1983, Pub. L. 98–21, title I, § 111(a)(5), 97 Stat. 72; Aug. 12, 1983, Pub. L. 98–76, title II, §§ 211(d), 225(a)(4), 97 Stat. 419, 425; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(a)(18), 98 Stat. 1165; Dec. 19, 1989, Pub. L. 101–239, title X, § 10208(b)(1)(A), (B), (5), (d)(2)(A)(i), 103 Stat. 2477, 2478, 2480; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(b)(2), (c)(6)(K), (g)(1)(A), (B), 108 Stat. 1478, 1537, 1538, 1542.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (c), is classified generally to Title 26, Internal Revenue Code.

''Subsequent to the law which added this section'', referred to in subsec. (c), means subsequent to the enactment of Pub. L. 92–336, which was approved July 1, 1972.

The enactment of the Social Security Amendments of 1977, referred to in subsec. (d), means the enactment of Pub. L. 95–216, which was approved Dec. 20, 1977.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner shall'' for ''he shall''.

Subsec. (b)(1), (2). Pub. L. 103–296, § 321(g)(1)(A), added pars. (1) and (2) and struck out former pars. (1) and (2) which read as follows:

''(1) the contribution and benefit base which is in effect with respect to remuneration paid in (and taxable

years beginning in) the calendar year in which the determination under subsection (a) of this section is made, and

''(2) the ratio of (A) the deemed average total wages (as defined in section 409(k)(1) of this title) for the calendar year before the calendar year in which the determination under subsection (a) of this section is made to (B) the deemed average total wages (as so defined) for the calendar year before the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was made under subsection (a) of this section,''.

Subsec. (b)(2)(A), (B). Pub. L. 103–296, §321(b)(2), made technical correction to directory language of Pub. L. 101–239, §10208(b)(1). See 1989 Amendment note below.

Subsec. (c). Pub. L. 103–296, §321(c)(6)(K), substituted ''1986'' for ''1954'' after ''Code of''.

Subsec. (d). Pub. L. 103–296, §321(g)(1)(B), at end substituted parenthetical provisions beginning with ''(except that'' and ending with ''reference to 1992).'' for former parenthetical provisions which read as follows: ''(except that, for purposes of subsection (b)(2)(A) of this section as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the deemed average total wage (within the meaning of section 409(k)(1) of this title) for such calendar year).''

1989—Subsec. (b)(2)(A). Pub. L. 101–239, §10208(b)(1)(A), as amended by Pub. L. 103–296, §321(b)(2), substituted ''the deemed average total wages (as defined in section 409(k)(1) of this title)'' for ''the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a)(1) of this title) reported to the Secretary of the Treasury or his delegate''.

Pub. L. 101–239, §10208(d)(2)(A)(i), substituted ''409(a)(1)'' for ''409(a)''.

Subsec. (b)(2)(B). Pub. L. 101–239, §10208(b)(1)(B), as amended by Pub. L. 103–296, §321(b)(2), substituted ''the deemed average total wages (as so defined)'' for ''the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate''.

Subsec. (d). Pub. L. 101–239, §10208(b)(5), substituted ''change (except that, for purposes of subsection (b)(2)(A) of this section as so in effect, the reference therein to the average of the wages of all employees as reported to the Secretary of the Treasury for any calendar year shall be deemed a reference to the deemed average total wage (within the meaning of section 409(k)(1) of this title) for such calendar year)'' for ''change''.

1984—Subsec. (c). Pub. L. 98–369, in last sentence which was repealed by Pub. L. 98–76, substituted ''3(a) or 3(f)(3)'' for ''3(a) or (3)(f)(3)'' in the original, which had been translated as ''section 231b(a) or (f)(3) of title 45''.

1983—Subsec. (a). Pub. L. 98–21 substituted ''December'' for ''June''.

Subsec. (c). Pub. L. 98–76, §225(a)(4), struck out provision that for purposes of determining employee and employer tax liability under sections 3201(a) and 3221(a) of the Internal Revenue Code of 1954, for purposes of determining the portion of the employee representative tax liability under section 3211(a) of such Code which resulted from the application of the 12.75 percent rate specified therein, and for purposes of computing average monthly compensation under section 231b(j) of title 45, except with respect to annuity amounts determined under section 231b(a) or (f)(3) of title 45, clause (2) and the preceding sentence of this subsection shall be disregarded.

Pub. L. 98–76, §211(d), temporarily substituted ''12.75 percent'' for ''11.75 percent''. See Effective and Termination Dates of 1983 Amendments note below.

1981—Subsec. (c). Pub. L. 97–34 substituted in last sentence ''employee and employer'' for ''employer'', ''sections 3201(a) and 3221(a)'' for ''section 3221(a)'', and ''11.75'' for ''9.5''.

1977—Subsec. (a). Pub. L. 95–216, §103(a)(1), substituted ''determined under subsection (b) or (c) of this section'' for ''determined under subsection (b) of this section''.

Subsec. (b). Pub. L. 95–216, §103(a)(2), in provisions preceding par. (1), substituted ''shall (subject to subsection (c) of this section) be the amount'' for ''shall be the amount''.

Subsec. (b)(1). Pub. L. 95–216, §353(e)(2), substituted ''determination under subsection (a) of this section is made'' for ''determination under subsection (a) of this section with respect to such particular calendar year was made''.

Subsec. (b)(2). Pub. L. 95–216, §353(e)(3), substituted ''(A) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year in which the determination under subsection (a) of this section is made to (B) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before'' for ''(A) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year in which the determination under subsection (a) of this section with respect to such particular calendar years was made to (B) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973 or, if later, the calendar year preceding''.

Subsec. (b). Pub. L. 95–216, §353(e)(1), in provisions following par. (2), struck out directive that, for purposes of this subsection, the average of the wages for the calendar year 1978 (or any prior calendar year), in the case of determinations made under subsection (a) of this section prior to December 31, 1979, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar year.

Subsec. (c). Pub. L. 95–216, §103(b), designated existing provisions as introductory material and cl. (1) and added cl. (2) and closing material.

Subsec. (d). Pub. L. 95–216, §103(c)(1), added subsec. (d).

1976—Subsec. (b). Pub. L. 94–202 substituted ''wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year'' for ''taxable wages of all employees as reported to the Secretary for the first calendar quarter of the calendar year'' and ''made to'' for ''made to the latest of'' in cl. (A) of par. (2), substituted ''wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973 or, if later, the calendar year preceding'' for ''taxable wages of all employees as reported to the Secretary for the first calendar quarter of 1973 or the first calendar quarter of'' in cl. (B) of par. (2), and inserted, following par. (2), provision directing that the average wages for the calendar year 1978, or any prior calendar year, be deemed equal to 400% of the average wages reported for the first quarter of that calendar year.

1973—Subsec. (a). Pub. L. 93–233, §3(j)(1), substituted ''with the June'' for ''with the first month of the calendar year'' and struck out ''(along with the publication of such benefit increase as required by section 415(i)(2)(D) of this title)'' after ''such quarter occurs'' and ''(unless such increase in benefits is prevented from becoming effective by section 415(i)(2)(E) of this title)'' after ''shall be effective'', respectively.

Subsec. (c). Pub. L. 93–233, §§3(j)(2), 5(c), substituted ''the June'' for ''the first month'' and ''$13,200'' for ''$12,600'', respectively.

Pub. L. 93–66 substituted ''$12,600'' for ''$12,000''.

1972—Subsec. (b)(2)(A). Pub. L. 92–603 substituted ''of'' for ''or''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 321(b)(2) of Pub. L. 103–296 provided that the amendment made by that section is effective as if included in section 10208(b)(1) of Pub. L. 101–239.

Amendment by section 321(g)(1)(A), (B) of Pub. L. 103–296 effective with respect to the determination of the contribution and benefit base for years after 1994, see section 321(g)(3)(A) of Pub. L. 103–296, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10208(c) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The amendments made by subsections (a) and (b) [amending this section and sections 403, 409, 413, 415, and 424a of this title] shall apply with respect to the computation of average total wage amounts (under the amended provisions) for calendar years after 1990.

''(2) TRANSITIONAL RULE.—For purposes of determining the contribution and benefit base for 1990, 1991, and 1992 under section 230(b) of the Social Security Act [subsec. (b) of this section] (and section 230(b) of such Act as in effect immediately prior to enactment of the Social Security Amendments of 1977 [Pub. L. 95–216, approved Dec. 20, 1977])—

''(A) the average of total wages for 1988 shall be deemed to be equal to the amount which would have been determined without regard to this paragraph, plus 2 percent of the amount which has been determined to the average of total wages for 1987,

''(B) the average of total wages for 1989 shall be deemed to be equal to the amount which would have been determined without regard to this paragraph, plus 2 percent of the amount which would have been determined to be the average of total wages for 1988 without regard to subparagraph (A), and

''(C) the average of total wages reported to the Secretary of the Treasury for 1990 shall be deemed to be equal to the product of—

''(i) the SSA average wage index (as defined in section 215(i)(1)(G) of the Social Security Act [section 415(i)(1)(G) of this title] and promulgated by the Secretary) for 1989, and

''(ii) the quotient obtained by dividing—

''(I) the average of total wages (as defined in regulations of the Secretary and computed without regard to the limitations of section 209(a)(1) of the Social Security Act [section 409(a)(1) of this title] and by including deferred compensation amounts, within the meaning of section 209(k)(2) of such Act as added by this section) reported to the Secretary of the Treasury or his delegate for 1990, by

''(II) the average of total wages (as so defined and computed without regard to the limitations specified in such section 209(a)(1) and by excluding deferred compensation amounts within the meaning of such section 209(k)(2)) reported to the Secretary of the Treasury or his delegate for 1989.

''(3) DETERMINATION OF CONTRIBUTION AND BENEFIT BASE FOR 1993.—For purposes of determining the contribution and benefit base for 1993 under section 230(b) of the Social Security Act (and section 230(b) of such Act as in effect immediately prior to enactment of the Social Security Amendments of 1977), the average of total wages for 1990 shall be determined without regard to subparagraph (C) of paragraph (2).

''(4) REVISED DETERMINATION UNDER SECTION 230 OF THE SOCIAL SECURITY ACT.—As soon as possible after the enactment of this Act [Dec. 19, 1989], the Secretary of Health and Human Services shall revise and publish, in accordance with the provisions of this Act [Pub. L. 101–239, see Tables for classification] and the amendments made thereby, the contribution and benefit base under section 230 of the Social Security Act with respect to remuneration paid after 1989 and taxable years beginning after calendar year 1989.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS

Amendment by section 211(d) of Pub. L. 98–76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98–76, set out as a note under section 3201 of Title 26, Internal Revenue Code.

Amendment by section 225(a)(4) of Pub. L. 98–76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98–76, set out as a note under section 3201 of Title 26.

Amendment by Pub. L. 98–21 applicable with respect to cost-of-living increases determined under section 415(i) of this title for years after 1982, see section 111(a)(8) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 402 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–34 applicable to compensation paid for services rendered after Sept. 30, 1981, see section 741(e) of Pub. L. 97–34, set out as a note under section 3201 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 103(a), (b) of Pub. L. 95–216 applicable with respect to remunerations paid or received, and taxable years beginning after, 1977, see section 104 of Pub. L. 95–216, set out as a note under section 1401 of Title 26, Internal Revenue Code.

Section 103(c)(2) of Pub. L. 95–216 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to plan terminations occurring after the date of the enactment of this Act [Dec. 20, 1977].''

Amendment by section 353(e) of Pub. L. 95–216 effective Jan. 1, 1979, see section 353(g) of Pub. L. 95–216, set out as a note under section 418 of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by Pub. L. 93–233 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 5(e) of Pub. L. 93–233, set out as a note under section 409 of this title.

Amendment by Pub. L. 93–66 applicable only with respect to remuneration paid after, and taxable years beginning after, 1973, see section 203(e) of Pub. L. 93–66, set out as a note under section 409 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 effective in like manner as if such amendment had been included in title II of Pub. L. 92–336, see section 144(b) of Pub. L. 92–603, set out as a note under section 403 of this title.

SOCIAL SECURITY CONTRIBUTION AND BENEFIT BASE

1995—By notice of the Secretary of Health and Human Services, Oct. 25, 1994, 59 F.R. 54464, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1995 is $61,200.

1994—By notice of the Secretary of Health and Human Services, Oct. 28, 1993, 58 F.R. 58004, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1994 is $60,600.

1993—By notice of the Secretary of Health and Human Services, Oct. 20, 1992, 57 F.R. 48619, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit

base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1993 is $57,600.

1992—By notice of the Secretary of Health and Human Services, Oct. 21, 1991, 56 F.R. 55325, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1992 is $55,500.

1991—By notice of the Secretary of Health and Human Services, Oct. 25, 1990, 55 F.R. 45856, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1991 is $53,400.

1990—By notice of the Secretary of Health and Human Services, Oct. 26, 1989, 54 F.R. 45803, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1990 is $50,400.

1989—By notice of the Secretary of Health and Human Services, Oct. 27, 1988, 53 F.R. 43932, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1989 is $48,000.

1988—By notice of the Secretary of Health and Human Services, Oct. 19, 1987, 52 F.R. 41672, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1988 is $45,000.

1987—By notice of the Secretary of Health and Human Services, Oct. 31, 1986, 51 F.R. 40256, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1987 is $43,800.

1986—By notice of the Secretary of Health and Human Services, Oct. 29, 1985, 50 F.R. 45559, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1986 is $42,000.

1985—By notice of the Secretary of Health and Human Services, Oct. 29, 1984, 49 F.R. 43775, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base for remuneration paid in, and for self-employment income earned in taxable years beginning in, 1985 is $39,600.

1983—By notice of the Secretary of Health and Human Services, Nov. 4, 1982, 47 F.R. 51003, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1983 is $35,700.

1982—By notice of the Secretary of Health and Human Services, Oct. 30, 1981, 46 F.R. 53791, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1982 is $32,400.

1978—By notice of the Secretary of Health, Education, and Welfare, Oct. 31, 1977, 42 F.R. 57754, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1978 is $17,700.

1977—By notice of the Secretary of Health, Education, and Welfare, Oct. 7, 1976, 41 F.R. 44878, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1977 is $16,500.

1976—By notice of the Secretary of Health, Education, and Welfare, Oct. 22, 1975, 40 F.R. 50556, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1976 is $15,300.

COST-OF-LIVING INCREASE IN BENEFITS

For purposes of subsec. (a) of this section, the increase in benefits provided by section 2 of Pub. L. 93–233, revising benefits table of section 415(a) of this title and amending sections 427(a), (b) and 428(b)(1), (2), (c)(3)(A), (B) of this title considered an increase under section 415(i) of this title, see section 3(i) of Pub. L. 93–233, set out as a note under section 415 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403, 409, 411, 413, 415 of this title; title 5 section 8334; title 26 sections 401, 936, 1402, 3121, 3231, 6413; title 29 section 1322.

§ 431. Benefits for certain individuals interned by United States during World War II

(a) "Internee" defined

For the purposes of this section the term ''internee'' means an individual who was interned during any period of time from December 7, 1941, through December 31, 1946, at a place within the United States operated by the Government of the United States for the internment of United States citizens of Japanese ancestry.

(b) Applicability in determining entitlement to and amount of monthly benefits and lump-sum death payments, and period of disability; effect of payment of benefits by other agency or instrumentality of United States

(1) For purposes of determining entitlement to and the amount of any monthly benefit for any month after December 1972, or entitlement to and the amount of any lump-sum death payment in the case of a death after such month, payable under this subchapter on the basis of the wages and self-employment income of any individual, and for purposes of section 416(i)(3) of this title, such individual shall be deemed to have been paid during any period after he attained age 18 and for which he was an internee, wages (in addition to any wages actually paid to him) at a weekly rate of basic pay during such period as follows—

(A) in the case such individual was not employed prior to the beginning of such period, 40 multiplied by the minimum hourly rate or rates in effect at any such time under section 206(a)(1) of title 29, for each full week during such period; and

(B) in the case such individual who was employed prior to the beginning of such period, 40 multiplied by the greater of (i) the highest hourly rate received during any such employment, or (ii) the minimum hourly rate or rates in effect at any such time under section 206(a)(1) of title 29, for each full week during such period.

(2) This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump-sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon internment during any period from December 7, 1941, through December 31, 1946, at a place within the United States operated by the Government of the United States for the internment of United States citizens of Japanese ancestry, is determined by any agency or wholly owned instrumentality of the United States to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this subchapter if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 415 of this title prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 416(i)(3) of this title.

(3) Upon application for benefits, a recalculation of benefits (by reason of this section), or a lump-sum death payment on the basis of the wages and self-employment income of any individual who was an internee, the Commissioner of Social Security shall accept the certification of the Secretary of Defense or his designee concerning any period of time for which an internee is to receive credit under paragraph (1) and shall make a decision without regard to clause (B) of paragraph (2) of this subsection unless the Commissioner has been notified by some other agency or instrumentality of the United States that, on the basis of the period for which such individual was an internee, a benefit described in clause (B) of paragraph (2) has been determined by such agency or instrumentality to be payable by it. If the Commissioner of Social Security has not been so notified, the Commissioner shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (2) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Commissioner of Social Security, and the Commissioner of Social Security shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by this section.

(4) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on any period for which any individual was an internee shall, at the request of the Commissioner of Social Security, certify to the Commissioner, with respect to any individual who was an internee, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (3) of this subsection.

(c) Authorization of appropriations

There are authorized to be appropriated to the Trust Funds and the Federal Hospital Insurance Trust Fund for the fiscal year ending June 30, 1978, such sums as the Commissioner of Social Security and the Secretary jointly determine would place the Trust Funds and the Federal Hospital Insurance Trust Fund in the position in which they would have been if the preceding provisions of this section had not been enacted.

(Aug. 14, 1935, ch. 531, title II, § 231, as added Oct. 30, 1972, Pub. L. 92–603, title I, § 142(a), 86 Stat. 1367; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(A)(iii), 98 Stat. 1170; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(1), (4), (c), 108 Stat. 1477, 1478, 1481.)

AMENDMENTS

1994—Subsec. (b)(3). Pub. L. 103–296, § 107(a)(1), (4), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' after ''an internee, the'', after ''If the'', and after ''so notify the'', substituted ''the Commissioner'' for ''he'' before ''has been notified'' and before ''shall then ascertain'', and substituted ''Commissioner of Social Security'' for ''Secretary'' before ''shall certify no''.

Subsec. (b)(4). Pub. L. 103–296, § 107(a)(1), (4), substituted ''Commissioner of Social Security, certify to the Commissioner, with respect to any individual who was an internee, such information as the Commissioner of Social Security deems necessary to carry out the Commissioner's functions under paragraph (3) of this subsection'' for ''Secretary of Health and Human Services, certify to him, with respect to any individual who was an internee, such information as the Secretary deems necessary to carry out his functions under paragraph (3) of this subsection''.

Subsec. (c). Pub. L. 103–296, § 107(c), substituted ''Commissioner of Social Security and the Secretary jointly determine'' for ''Secretary determines''.

1984—Subsec. (b)(3), (4). Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March 1975, was entitled to a monthly insurance benefit payable under this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 415 of this title.

§ 432. Processing of tax data

The Secretary of the Treasury shall make available information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986, to the Commissioner of Social Security for the pur-

poses of this subchapter and subchapter XI of this chapter. The Commissioner of Social Security and the Secretary of the Treasury are authorized to enter into an agreement for the processing by the Commissioner of Social Security of information contained in returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986. Notwithstanding the provisions of section 6103(a) of the Internal Revenue Code of 1986, the Secretary of the Treasury shall make available to the Commissioner of Social Security such documents as may be agreed upon as being necessary for purposes of such processing. The Commissioner of Social Security shall process any withholding tax statements or other documents made available to the Commissioner by the Secretary of the Treasury pursuant to this section. Any agreement made pursuant to this section shall remain in full force and effect until modified or otherwise changed by mutual agreement of the Commissioner of Social Security and the Secretary of the Treasury.

(Aug. 14, 1935, ch. 531, title II, § 232, as added Jan. 2, 1976, Pub. L. 94–202, § 8(b), 89 Stat. 1137; amended Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(c)(6)(L), 108 Stat. 1478, 1538.)

REFERENCES IN TEXT

Part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1986, referred to in text, is classified to section 6031 et seq. of Title 26, Internal Revenue Code.

AMENDMENTS

1994—Pub. L. 103–296, § 321(c)(6)(L), substituted ''1986'' for ''1954'' after ''Code of'' wherever appearing.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, except where appearing before ''of the Treasury'' and substituted ''available to the Commissioner'' for ''available to him''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 8(c) of Pub. L. 94–202 provided that: ''Section 232 of the Social Security Act [this section], as added by subsection (b) of this section, shall be effective with respect to statements reporting income received after 1977.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 401 of this title; title 26 section 6103.

§ 433. International agreements

(a) Purpose of agreement

The President is authorized (subject to the succeeding provisions of this section) to enter into agreements establishing totalization arrangements between the social security system established by this subchapter and the social security system of any foreign country, for the purposes of establishing entitlement to and the amount of old-age, survivors, disability, or derivative benefits based on a combination of an individual's periods of coverage under the social security system established by this subchapter and the social security system of such foreign country.

(b) Definitions

For the purposes of this section—

(1) the term ''social security system'' means, with respect to a foreign country, a social insurance or pension system which is of general application in the country and under which periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, death, or disability; and

(2) the term ''period of coverage'' means a period of payment of contributions or a period of earnings based on wages for employment or on self-employment income, or any similar period recognized as equivalent thereto under this subchapter or under the social security system of a country which is a party to an agreement entered into under this section.

(c) Crediting periods of coverage; conditions of payment of benefits

(1) Any agreement establishing a totalization arrangement pursuant to this section shall provide—

(A) that in the case of an individual who has at least 6 quarters of coverage as defined in section 413 of this title and periods of coverage under the social security system of a foreign country which is a party to such agreement, periods of coverage of such individual under such social security system of such foreign country may be combined with periods of coverage under this subchapter and otherwise considered for the purposes of establishing entitlement to and the amount of old-age, survivors, and disability insurance benefits under this subchapter;

(B)(i) that employment or self-employment, or any service which is recognized as equivalent to employment or self-employment under this subchapter or the social security system of a foreign country which is a party to such agreement, shall, on or after the effective date of such agreement, result in a period of coverage under the system established under this subchapter or under the system established under the laws of such foreign country, but not under both, and (ii) the methods and conditions for determining under which system employment, self-employment, or other service shall result in a period of coverage; and

(C) that where an individual's periods of coverage are combined, the benefit amount payable under this subchapter shall be based on the proportion of such individual's periods of coverage which was completed under this subchapter.

(2) Any such agreement may provide that an individual who is entitled to cash benefits under this subchapter shall, notwithstanding the provisions of section 402(t) of this title, receive such benefits while he resides in a foreign country which is a party to such agreement.

(3) Section 426 of this title shall not apply in the case of any individual to whom it would not be applicable but for this section or any agreement or regulation under this section.

(4) Any such agreement may contain other provisions which are not inconsistent with the

other provisions of this subchapter and which the President deems appropriate to carry out the purposes of this section.

(d) Regulations

The Commissioner of Social Security shall make rules and regulations and establish procedures which are reasonable and necessary to implement and administer any agreement which has been entered into in accordance with this section.

(e) Reports to Congress; effective date of agreements

(1) Any agreement to establish a totalization arrangement entered into pursuant to this section shall be transmitted by the President to the Congress together with a report on the estimated number of individuals who will be affected by the agreement and the effect of the agreement on the estimated income and expenditures of the programs established by this chapter.

(2) Such an agreement shall become effective on any date, provided in the agreement, which occurs after the expiration of the period (following the date on which the agreement is transmitted in accordance with paragraph (1)) during which at least one House of the Congress has been in session on each of 60 days; except that such agreement shall not become effective if, during such period, either House of the Congress adopts a resolution of disapproval of the agreement.

(Aug. 14, 1935, ch. 531, title II, § 233, as added Dec. 20, 1977, Pub. L. 95–216, title III, § 317(a), 91 Stat. 1538; amended Aug. 13, 1981, Pub. L. 97–35, title XXII, § 2201(b)(12), 95 Stat. 831; Apr. 20, 1983, Pub. L. 98–21, title III, § 326(a), 97 Stat. 126; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(3)(A)(v), 98 Stat. 1170; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478.)

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

1984—Subsec. (d). Pub. L. 98–369 struck out ''of Health, Education, and Welfare'' after ''Secretary''.

1983—Subsec. (e)(2). Pub. L. 98–21 substituted ''during which at least one House of the Congress has been in session on each of 60 days'' for ''during which each House of the Congress has been in session on each of 90 days''.

1981—Subsec. (c)(2). Pub. L. 97–35 struck out provision permitting the agreement to provide that if the benefit paid by the United States to an individual who legally resides in the United States when added to the benefit paid by the foreign country is less than the benefit amount payable to such individual based on the first figure in, or deemed to be in, column IV of the table in section 415(a) of this title in the case of an individual becoming eligible before Jan. 1, 1979, or based on a primary insurance amount determined under section 415(a)(1)(C)(i)(I) of this title in the case of an individual becoming eligible for such benefit on or after such date, the benefit paid by the United States be increased so that the two benefits equal the benefit amount that would be payable.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 326(b) of Pub. L. 98–21 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective on the date of the enactment of this Act [Apr. 20, 1983].''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 applicable with respect to benefits for months after December 1981, with certain exceptions, see section 2(j)(2)–(4) of Pub. L. 97–123, set out as a note under section 415 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 410, 411, 415 of this title; title 26 sections 1401, 1402, 3101, 3111, 3121.

SUBCHAPTER III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 5 section 8505; title 29 section 1732.

§ 501. Use of available funds

The amounts made available pursuant to section 1101(c)(1)(A) of this title for the purpose of assisting the States in the administration of their unemployment compensation laws shall be used as hereinafter provided.

(Aug. 14, 1935, ch. 531, title III, § 301, 49 Stat. 626; Apr. 19, 1939, ch. 73, 53 Stat. 581; Sept. 13, 1960, Pub. L. 86–778, title V, § 524(a), 74 Stat. 982.)

AMENDMENTS

1960—Pub. L. 86–778 struck out provisions prescribing specific sums for fiscal years 1936–1939 and for each fiscal year thereafter and inserted provisions relating to amounts made available pursuant to section 1101(c)(1)(A) of this title.

1939—Act Apr. 19, 1939, provided increased appropriation for fiscal year ending June 30, 1939, and for each fiscal year thereafter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 45 section 363.

§ 502. Payments to States; computation of amounts

(a) Certification of amounts

The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act, such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made, including 100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title. The Secretary of Labor's determination shall be based on (1) the population of the State; (2) an estimate of the number of per-

sons covered by the State law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Secretary of Labor finds relevant. The Secretary of Labor shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Payment of amounts

Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a) of this section, pay, through the Fiscal Service of the Department of the Treasury and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

(c) Mailing costs

No portion of the cost of mailing a statement under section 6050B(b) of the Internal Revenue Code of 1986 (relating to unemployment compensation) shall be treated as not being a cost for the proper and efficient administration of the State unemployment compensation law by reason of including with such statement information about the earned income credit provided by section 32 of the Internal Revenue Code of 1986. The preceding sentence shall not apply if the inclusion of such information increases the postage required to mail such statement.

(Aug. 14, 1935, ch. 531, title III, § 302, 49 Stat. 626; Aug. 10, 1939, ch. 666, title III, § 301, 53 Stat. 1378; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(b)(1), 98 Stat. 1165; Nov. 6, 1986, Pub. L. 99–603, title I, § 121(b)(3), 100 Stat. 3390; July 3, 1992, Pub. L. 102–318, title III, § 302(a), 106 Stat. 297.)

REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsec. (a), comprised subchapter C (§§ 1600 to 1611) of chapter 9 of the Internal Revenue Code of 1939. Chapter 9 of the 1939 Code was repealed (subject to certain exceptions) by section 7851(a)(3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. The Federal Unemployment Tax Act also comprises chapter 23 (§ 3301 et seq.) of the Internal Revenue Code of 1986.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

AMENDMENTS

1992—Subsec. (c). Pub. L. 102–318 added subsec. (c).

1986—Subsec. (a). Pub. L. 99–603 inserted at end of first sentence ‘‘, including 100 percent of so much of the reasonable expenditures of the State as are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title’’.

1984—Subsec. (b). Pub. L. 98–369 substituted ‘‘the Fiscal Service of the Department of the Treasury’’ for ‘‘the Division of Disbursement of the Treasury Department’’.

1939—Subsec. (a). Act Aug. 10, 1939, substituted ‘‘Federal Unemployment Tax Act’’ for ‘‘sections 1101–1110 of this title,’’ and inserted ‘‘efficient’’ before ‘‘administration’’.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 302(b) of Pub. L. 102–318 provided that: ‘‘The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 3, 1992].’’

EFFECTIVE DATE OF 1986 AMENDMENT

Section 121(c)(2) of Pub. L. 99–603 provided that: ‘‘The amendments made by subsection (b) [enacting section 1437r of this title, amending this section and sections 303, 603, 1203, 1353, and 1396b of this title, section 2025 of Title 7, Agriculture, and section 1096 of Title 20, Education, and amending provisions set out as a Puerto Rico, Guam, and Virgin Islands note under section 1383 of this title] take effect on October 1, 1987.’’

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with power to delegate, see Reorg. Plan No. 6 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Federal Security Administrator with respect to unemployment compensation transferred to Secretary of Labor by Reorg. Plan No. 2 of 1949, set out in the Appendix to Title 5.

Section 1 of Reorg. Plan No. 2 of 1949, also provided that functions transferred by this section shall be performed by Secretary of Labor, or subject to his direction and control, by such officers, agencies, and employees of Department of Labor as he shall designate.

‘‘Administrator’’ substituted for ‘‘Board’’ by section 4 of Reorg. Plan No. 2 of 1946, set out in the Appendix to Title 5.

REPORT ON METHOD OF ALLOCATING ADMINISTRATIVE FUNDS AMONG STATES

Pub. L. 102–164, title III, § 304, Nov. 15, 1991, 105 Stat. 1061, as amended by Pub. L. 102–318, title V, § 533, July 3, 1992, 106 Stat. 317, provided that:

‘‘(a) IN GENERAL.—The Secretary of Labor shall submit to the Congress, before December 31, 1994, a comprehensive report setting forth a proposal for revising the method of allocating grants among the States under section 302 of the Social Security Act [this section].

‘‘(b) SPECIFIC REQUIREMENTS.—The report required by subsection (a) shall include an analysis of—

‘‘(1) the use of unemployment insurance workload levels as the primary factor in allocating grants among the States under section 302 of the Social Security Act [this section],

‘‘(2) ways to ensure that each State receive not less than a minimum grant amount for each fiscal year,

‘‘(3) the use of nationally available objective data to determine the unemployment compensation administrative costs of each State, with consideration of legitimate cost differences among the States,

‘‘(4) ways to simplify the method of allocating such grants among the States,

‘‘(5) ways to eliminate the disincentives to productivity and efficiency which exist in the current method of allocating such grants among the States,

‘‘(6) ways to promote innovation and cost-effective practices in the method of allocating such grants among the States, and

''(7) the effect of the proposal set forth in such report on the grant amounts allocated to each State.

''(c) CONGRESSIONAL REVIEW PERIOD.—The Secretary of Labor may not revise the method in effect on the date of the enactment of this Act [Nov. 15, 1991] for allocating grants among the States under section 302 of the Social Security Act [this section], until after the expiration of the 12-month period beginning on the date on which the report required by subsection (a) is submitted to the Congress.''

CROSS REFERENCES

Withholding amounts from certification for payment, see note set out under section 363 of Title 45, Railroads.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 504 of this title; title 45 section 363.

§ 503. State laws

(a) Provisions required

The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], includes provision for—

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary of Labor may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act [26 U.S.C. 3305(b)]), immediately upon such receipt, to the Secretary of the Treasury to the credit of the unemployment trust fund[1] established by section 1104 of this title; and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act [26 U.S.C. 3305(b)]: *Provided*, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further*, That the amounts specified by section 1103(c)(2) of this title may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices: *Provided further*, That nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor: *Provided further*, That amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g) of this section: *Provided further*, That amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor: *Provided further*, That amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t) of the Internal Revenue Code of 1986 [26 U.S.C. 3306(t)]); and

(6) The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law; and

(8) Effective July 1, 1941, the expenditure of all moneys received pursuant to section 502 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and

(9) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to section 502 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such State law; and

(10) A requirement that, as a condition of eligibility for regular compensation for any week, any claimant who has been referred to reemployment services pursuant to the profiling system under subsection (j)(1)(B) of this section participate in such services or in similar services unless the State agency charged with the administration of the State law determines—

(A) such claimant has completed such services; or

(B) there is justifiable cause for such claimant's failure to participate in such services.

[1] So in original. Probably should be ''Unemployment Trust Fund''.

(b) Failure to comply; payments stopped

Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a) of this section;

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State: *Provided,* That there shall be no finding under clause (1) until the question of entitlement shall have been decided by the highest judicial authority given jurisdiction under such State law: *Provided further,* That any costs may be paid with respect to any claimant by a State and included as costs of administration of its law.

(c) Denial of certification; availability of records to Railroad Retirement Board; cooperation with Federal agencies

The Secretary of Labor shall make no certification for payment to any State if he finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

(1) that such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes;

(2) that such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law; or

(3) that any interest required to be paid on advances under subchapter XII of this chapter has not been paid by the date on which such interest is required to be paid or has been paid directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund, until such interest is properly paid.

(d) Disclosure of unemployment compensation information; deduction and withholding of amounts owed to State food stamp agencies; reimbursement of administrative costs; noncompliance of State agency

(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, to officers and employees of the Department of Agriculture and to officers or employees of any State food stamp agency any of the following information contained in the records of such State agency—

(i) wage information,

(ii) whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual,

(iii) the current (or most recent) home address of such individual, and

(iv) whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used only for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.].

(2)(A) For purposes of this paragraph, the term ''unemployment compensation'' means any unemployment compensation payable under the State law (including amounts payable pursuant to an agreement under a Federal unemployment compensation law).

(B) The State agency charged with the administration of the State law—

(i) may require each new applicant for unemployment compensation to disclose whether the applicant owes an uncollected overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977 [7 U.S.C. 2022(c)(1)]) of food stamp coupons,

(ii) may notify the State food stamp agency to which the uncollected overissuance is owed that the applicant has been determined to be eligible for unemployment compensation if the applicant discloses under clause (i) that the applicant owes an uncollected overissuance and the applicant is determined to be so eligible,

(iii) may deduct and withhold from any unemployment compensation otherwise payable to an individual—

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977 [7 U.S.C. 2022(c)(3)(A)], or

(III) any amount otherwise required to be deducted and withheld from the unemployment compensation pursuant to section 13(c)(3)(B) of such Act [7 U.S.C. 2022(c)(3)(B)], and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State food stamp agency.

(C) Any amount deducted and withheld under subparagraph (B)(iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by the individual to the State food stamp agency to which the uncollected overissuance is owed as repayment of the individual's uncollected overissuance.

(D) A State food stamp agency to which an uncollected overissuance is owed shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by the State agency under this paragraph that are attributable to repayment of uncollected overissuance to the State food stamp agency to which the uncollected overissuance is owed.

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term ''State food stamp agency'' means any agency described in section 3(n)(1) of the Food Stamp Act of 1977 [7 U.S.C. 2012(n)(1)] which administers the food stamp program established under such Act.

(e) Disclosure of wage information; non-compliance of State agency

(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, directly to officers or employees of any State or local child support enforcement agency any wage information contained in the records of such State agency, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used only for purposes of establishing and collecting child support obligations from, and locating, individuals owing such obligations.

For purposes of this subsection, the term ''child support obligations'' only includes obligations which are being enforced pursuant to a plan described in section 654 of this title which has been approved by the Secretary of Health and Human Services under part D of subchapter IV of this chapter.

(2)(A) The State agency charged with the administration of the State law—

(i) shall require each new applicant for unemployment compensation to disclose whether or not such applicant owes child support obligations (as defined in the last sentence of paragraph (1)),

(ii) shall notify the State or local child support enforcement agency enforcing such obligations, if any applicant discloses under clause (i) that he owes child support obligations and he is determined to be eligible for unemployment compensation, that such applicant has been so determined to be eligible,

(iii) shall deduct and withhold from any unemployment compensation otherwise payable to an individual—

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State agency under section 654(19)(B)(i) of this title, or

(III) any amount otherwise required to be so deducted and withheld from such unemployment compensation through legal process (as defined in section 662(e) of this title), and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State or local child support enforcement agency.

Any amount deducted and withheld under clause (iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the State or local child support enforcement agency in satisfaction of his child support obligations.

(B) For purposes of this paragraph, the term ''unemployment compensation'' means any compensation payable under the State law (including amounts payable pursuant to agreements under any Federal unemployment compensation law).

(C) Each State or local child support enforcement agency shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by such State agency under this paragraph which are attributable to child support obligations being enforced by the State or local child support enforcement agency.

(3) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1) or (2), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(4) For purposes of this subsection, the term ''State or local child support enforcement agency'' means any agency of a State or political subdivision thereof operating pursuant to a plan described in the last sentence of paragraph (1).

(f) Income and eligibility verification system

The State agency charged with the administration of the State law shall provide that information shall be requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(g) Recovery of unemployment benefit payments

(1) A State may deduct from unemployment benefits otherwise payable to an individual an amount equal to any overpayment made to such individual under an unemployment benefit program of the United States or of any other State, and not previously recovered. The amount so deducted shall be paid to the jurisdiction under whose program such overpayment was made. Any such deduction shall be made only in accordance with the same procedures relating to

notice and opportunity for a hearing as apply to the recovery of overpayments of regular unemployment compensation paid by such State.

(2) Any State may enter into an agreement with the Secretary of Labor under which—

(A) the State agrees to recover from unemployment benefits otherwise payable to an individual by such State any overpayments made under an unemployment benefit program of the United States to such individual and not previously recovered, in accordance with paragraph (1), and to pay such amounts recovered to the United States for credit to the appropriate account, and

(B) the United States agrees to allow the State to recover from unemployment benefits otherwise payable to an individual under an unemployment benefit program of the United States any overpayments made by such State to such individual under a State unemployment benefit program and not previously recovered, in accordance with the same procedures as apply under paragraph (1).

(3) For purposes of this subsection, ''unemployment benefits'' means unemployment compensation, trade adjustment allowances, and other unemployment assistance.

(h) Access by Secretary of Health and Human Services to wage and unemployment compensation claims information; suspension by Secretary of Labor of payments to State for noncompliance

(1) The State agency charged with the administration of the State law shall take such actions (in such manner as may be provided in the agreement between the Secretary of Health and Human Services and the Secretary of Labor under section 653(e)(3) of this title) as may be necessary to enable the Secretary of Health and Human Services to obtain prompt access to any wage and unemployment compensation claims information (including any information that might be useful in locating an absent parent or such parent's employer) for use by the Secretary of Health and Human Services, for purposes of section 653 of this title, in carrying out the child support enforcement program under subchapter IV of this chapter.

(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirement of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until such Secretary is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, such Secretary shall make no further certification to the Secretary of the Treasury with respect to such State.

(i) Omitted

(j) Worker profiling

(1) The State agency charged with the administration of the State law shall establish and utilize a system of profiling all new claimants for regular compensation that—

(A) identifies which claimants will be likely to exhaust regular compensation and will need job search assistance services to make a successful transition to new employment;

(B) refers claimants identified pursuant to subparagraph (A) to reemployment services, such as job search assistance services, available under any State or Federal law;

(C) collects follow-up information relating to the services received by such claimants and the employment outcomes for such claimants subsequent to receiving such services and utilizes such information in making identifications pursuant to subparagraph (A); and

(D) meets such other requirements as the Secretary of Labor determines are appropriate.

(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(Aug. 14, 1935, ch. 531, title III, § 303, 49 Stat. 626; June 25, 1938, ch. 680, § 13(g), 52 Stat. 1112; June 20, 1939, ch. 227, § 18, 53 Stat. 848; Aug. 10, 1939, ch. 666, title III, § 302, 53 Stat. 1378; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, § 416(c), 60 Stat. 991; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065; Aug. 28, 1950, ch. 809, title IV, § 405(b), 64 Stat. 560; Aug. 5, 1954, ch. 657, § 5(a)(1), 68 Stat. 673; May 26, 1980, Pub. L. 96–249, title I, § 127(b)(1), 94 Stat. 366; June 9, 1980, Pub. L. 96–265, title IV, § 408(b)(1), 94 Stat. 468; Oct. 19, 1980, Pub. L. 96–473, § 6(e)(1), 94 Stat. 2265; Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2335(b), 95 Stat. 863; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 171(b)(3), 175(a)(2), 96 Stat. 401, 403; Apr. 20, 1983, Pub. L. 98–21, title V, §§ 515(a), 523(b), 97 Stat. 147, 148; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2651(d), 2663(b)(2)–(5), 98 Stat. 1149, 1165; Dec. 23, 1985, Pub. L. 99–198, title XV, § 1535(b)(3), 99 Stat. 1584; Apr. 7, 1986, Pub. L. 99–272, title XII, § 12401(a), 100 Stat. 297; Oct. 13, 1988, Pub. L. 100–485, title I, § 124(b)(1), 102 Stat. 2353; Nov. 7, 1988, Pub. L. 100–628, title IX, § 904(c)(1)(A), 102 Stat. 3260; July 3, 1992, Pub. L. 102–318, title IV, § 401(a)(3), 106 Stat. 298; Nov. 24, 1993, Pub. L. 103–152, § 4(a)(1), (b), 107 Stat. 1517; Dec. 8, 1993, Pub. L. 103–182, title V, § 507(b)(3), 107 Stat. 2154; Dec. 8, 1994, Pub. L. 103–465, title VII, § 702(c)(3), 108 Stat. 4997.)

AMENDMENT OF SECTION

For termination of amendment by section 507(e)(2) of Pub. L. 103–182, see Effective and Termination Dates of 1993 Amendments note below.

Pub. L. 103–465, title VII, § 702(c)(3), (d), Dec. 8, 1994, 108 Stat. 4997, provided that, applicable to payments made after Dec. 31, 1996, subsection (a)(5) of this section is amended by inserting after ''health insurance'' the following: '', or the withholding of Federal, State, or local individual income tax,''.

REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsec. (a), is act Aug. 16, 1954, ch. 736, §§3301–3311, 68A Stat. 439, as amended, which is classified generally to chapter 23 (§3301 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3311 of Title 26 and Tables.

The Food Stamp Act of 1977, referred to in subsec. (d)(1)(B), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

Part D of subchapter IV of this chapter, referred to in subsec. (e)(1), is classified to section 651 et seq. of this title.

CODIFICATION

Subsec. (i) of this section, which directed State agencies to disclose to the Department of Housing and Urban Development and to representatives of a public housing agency certain information from State employment records of individuals applying for or participating in any housing program administered by the Department of Housing and Urban Development, and further provided for establishment of safeguards to ensure that such information was used only for purpose of determining eligibility for, or amount of, benefits under a housing program of the Department, as well as penalties for failure to disclose or establish safeguards, was omitted pursuant to paragraph (5) of subsec. (i) which provided that the provisions of subsec. (i) would cease to be effective Oct. 1, 1994.

AMENDMENTS

1993—Subsec. (a)(5). Pub. L. 103–182, §507(b)(3), (e)(2), temporarily substituted '': *Provided further*, That amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in section 3306(t) of the Internal Revenue Code of 1986); and'' for ''; and'' at end. See Effective and Termination Dates of 1993 Amendments note below.

Subsec. (a)(10). Pub. L. 103–152, §4(b), added par. (10).

Subsec. (j). Pub. L. 103–152, §4(a)(1), added subsec. (j).

1992—Subsec. (a)(5). Pub. L. 102–318 inserted '': *Provided further*, That amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor'' before ''; and'' at end.

1988—Subsec. (h). Pub. L. 100–485 added subsec. (h).

Subsec. (i). Pub. L. 100–628 added subsec. (i).

1986—Subsec. (a)(5). Pub. L. 99–272, §12401(a)(1), inserted provision at end that amounts may be deducted from unemployment benefits and used to repay overpayments as provided in subsection (g) of this section.

Subsec. (g). Pub. L. 99–272, §12401(a)(2), added subsec. (g).

1985—Subsec. (d)(2) to (4). Pub. L. 99–198 added par. (2) and redesignated former pars. (2) and (3) as (3) and (4), respectively.

1984—Subsec. (a)(4). Pub. L. 98–369, §2663(b)(2), substituted ''section 3305(b)'' for ''section 1606(b)''.

Subsec. (a)(5). Pub. L. 98–369, §2663(b)(3), substituted ''section 3305(b)'' for ''section 1606(b)'' and before last proviso substituted a colon for erroneous punctuation.

Subsec. (c)(1), (2). Pub. L. 98–369, §2663(b)(4), substituted ''that'' for ''That''.

Subsec. (e)(2)(A)(i). Pub. L. 98–369, §2663(b)(5), substituted ''child support obligations'' for ''child support obligatons''.

Subsec. (f). Pub. L. 98–369, §2651(d), added subsec. (f).

1983—Subsec. (a)(5). Pub. L. 98–21, §523(b), inserted provision that nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor.

Subsec. (c)(3). Pub. L. 98–21, §515(a), added par. (3).

1982—Subsec. (e)(2)(A)(i). Pub. L. 97–248, §175(a)(2), substituted ''of paragraph (1)'' for ''of this subsection''.

Subsec. (e)(2)(A)(iii)(II). Pub. L. 97–248, §171(b)(3), substituted ''(19)'' for ''(20)''.

1981—Subsec. (e)(1). Pub. L. 97–35, §2335(b)(3), in provision following subpar. (B) substituted ''this subsection'' for ''the preceding sentence''.

Subsec. (e)(2). Pub. L. 97–35, §2335(b)(1), added par. (2) and redesignated former par. (2) as (3).

Subsec. (e)(3), (4). Pub. L. 97–35, §2335(b)(1), (2), redesignated former par. (2) as (3) and substituted ''paragraph (1) or (2)'' for ''paragraph (1)''. Former par. (3) redesignated (4).

1980—Subsec. (d). Pub. L. 96–249 added subsec. (d). Another subsec. (d), as added by Pub. L. 96–265, was redesignated (e) by Pub. L. 96–473.

Subsec. (e). Pub. L. 96–473 redesignated former subsec. (d) as added by Pub. L. 96–265 as subsec. (e).

1954—Subsec. (a)(5). Act Aug. 5, 1954, made it clear that the funds credited to the State account may, subject to certain restrictions, be used for administrative expenses of the State in connection with its unemployment compensation law.

1950—Subsec. (b). Act Aug. 28, 1950, inserted provisos.

1946—Subsec. (a)(5). Act Aug. 10, 1946, inserted proviso allowing payment of disability benefits.

1939—Subsec. (a). Act Aug. 10, 1939, substituted ''Federal Unemployment Tax Act'' for ''sections 1101–1110 of this title'', amended pars. (1), (4), and (5) generally, and added pars. (8) and (9).

Subsec. (c)(2). Act June 20, 1939, substituted ''unemployment'' for ''employment''.

1938—Subsec. (c). Act June 25, 1938, added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–465 applicable to payments made after Dec. 31, 1996, see section 702(d) of Pub. L. 103–465, set out as a note under section 3304 of Title 26, Internal Revenue Code.

EFFECTIVE AND TERMINATION DATES OF 1993 AMENDMENTS

Amendment by Pub. L. 103–182 effective Dec. 8, 1993, and to terminate 5 years after Dec. 8, 1993, see section 507(e) of Pub. L. 103–182, set out as a note under section 3306 of Title 26, Internal Revenue Code.

Section 4(f) of Pub. L. 103–152 provided that:

''(1) The amendments made by subsections (a) and (b) [amending this section and section 504 of this title] shall take effect on the date one year after the date of the enactment of this Act [Nov. 24, 1993].

''(2) The provisions of subsections (c), (d), and (e) [enacting provisions set out as notes below and repealing provisions set out as a note under section 3304 of Title 26, Internal Revenue Code] shall take effect on the date of enactment of this Act.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Sept. 30, 1989, with provision for optional early implementation and provision for States whose legislatures have not been in session for at least 30 days between Nov. 7, 1988, and Sept. 30, 1989, see section 3544(d) of this title.

Amendment by Pub. L. 100–485 effective on first day of first calendar quarter beginning one year or more after Oct. 13, 1988, see section 124(c)(1) of Pub. L. 100–485, set out as a note under section 653 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12401(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and sections 3304 and 3306 of Title 26, Internal Revenue Code] shall apply to recoveries made on or after the date of the enactment of this Act [Apr. 7, 1986] and shall apply with respect to overpayments made before, on, or after such date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2651(d) of Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see sec-

tion 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

Amendment by section 2663(b)(2)–(5) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 523(b) of Pub. L. 98–21 effective Apr. 20, 1983, see section 523(c) of Pub. L. 98–21 set out as a note under section 3304 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 171(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 653, 654, and 655 of this title] shall be effective on and after August 13, 1981.''

Section 175(b) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and section 652 of this title] shall be effective as of October 1, 1981.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2335(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 654 of this title] shall take effect on the date of the enactment of this Act [Aug. 13, 1981], except that such amendments shall not be requirements under section 454 or 303 of the Social Security Act [section 654 or 503 of this title] before October 1, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 408(b)(3) of Pub. L. 96–265 provided that: ''The amendments made by this subsection [amending this section and section 504 of this title] shall take effect July 1, 1980.''

Section 127(b)(3) of Pub. L. 96–249 provided that: ''The amendments made by this subsection [amending this section and section 504 of this title] shall take effect on January 1, 1983.''

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Labor under subsec. (a)(1) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(2)(B) of this title.

For transfer of functions of other officers, employees, and agencies of Department of Labor, with certain exceptions, to Secretary of Labor, with to delegate, see Reorg. Plan No. 6 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5, Government Organization and Employees.

Functions of Federal Security Administrator with respect to unemployment compensation transferred to Secretary of Labor by section 1 of Reorg. Plan No. 2 of 1949 set out in the Appendix to Title 5.

Section 1 of Reorg. Plan No. 2 of 1949 also provided that functions transferred by this section shall be performed by Secretary of Labor, or subject to his direction and control, by such officers, agencies, and employees of Department of Labor as he shall designate.

''Administrator'' substituted for ''Board'' by section 2 of Reorg. Plan No. 2 of 1946, set out in the Appendix to Title 5.

PROFILING SYSTEM TECHNICAL ASSISTANCE

Section 4(c) of Pub. L. 103–152 provided that: ''The Secretary of Labor shall provide technical assistance and advice to assist the States in implementing the profiling system required under the amendments made by subsection (a) [amending this section and section 504 of this title]. Such assistance shall include the development and identification of model profiling systems.''

PROFILING SYSTEM REPORT TO CONGRESS

Section 4(d) of Pub. L. 103–152 provided that: ''Not later than the date 3 years after the date of enactment of this Act [Nov. 24, 1993], the Secretary of Labor shall report to the Congress on the operation and effectiveness of the profiling system required under the amendments made by subsection (a) [amending this section and section 504 of this title] and the participation requirement provided by the amendments made under subsection (b) [amending this section]. Such report shall include such recommendations as the Secretary of Labor determines are appropriate.''

CROSS REFERENCES

Withdrawal as breach of conditions, see note set out under section 363 of Title 45, Railroads.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 504, 1103, 3544, 4728 of this title; title 5 section 8506; title 7 section 2020; title 26 section 3306; title 29 section 49d; title 45 section 363.

§ 504. Judicial review

(a) Finding by Secretary of Labor; petition for review; filing of record

Whenever the Secretary of Labor—

(1) finds that a State law does not include any provision specified in section 503(a) of this title, or

(2) makes a finding with respect to a State under subsection (b), (c), (d), (e), (h), (i), or (j) of section 503 of this title,

such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28.

(b) Findings of fact by Secretary of Labor; new or modified findings

The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) Affirmance or setting aside of Secretary's action; review by Supreme Court

The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(d) Stay of Secretary's action

(1) The Secretary of Labor shall not withhold any certification for payment to any State under section 502 of this title until the expiration of 60 days after the Governor of the State has been notified of the action referred to in

paragraph (1) or (2) of subsection (a) of this section or until the State has filed a petition for review of such action, whichever is earlier.

(2) The commencement of judicial proceedings under this section shall stay the Secretary's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary's action and including such other relief as may be necessary to preserve status or rights.

(Aug. 14, 1935, ch. 531, title III, § 304, as added Aug. 10, 1970, Pub. L. 91–373, title I, § 131(a), 84 Stat. 703; amended May 26, 1980, Pub. L. 96–249, title I, § 127(b)(2), 94 Stat. 367; June 9, 1980, Pub. L. 96–265, title IV, § 408(b)(2), 94 Stat. 469; Oct. 19, 1980, Pub. L. 96–473, § 6(e)(2), 94 Stat. 2265; Nov. 8, 1984, Pub. L. 98–620, title IV, § 402(39), 98 Stat. 3360; Oct. 13, 1988, Pub. L. 100–485, title I, § 124(b)(2), 102 Stat. 2353; Nov. 7, 1988, Pub. L. 100–628, title IX, § 904(c)(1)(B), 102 Stat. 3261; Nov. 24, 1993, Pub. L. 103–152, § 4(a)(2), 107 Stat. 1517.)

AMENDMENTS

1993—Subsec. (a)(2). Pub. L. 103–152 substituted ''(i), or (j)'' for ''or (i)''.

1988—Subsec. (a)(2). Pub. L. 100–628 substituted ''(e), (h), or (i)'' for ''(e), or (h)''.

Pub. L. 100–485 substituted ''(e), or (h)'' for ''or (e)''.

1984—Subsec. (e). Pub. L. 98–620 struck out subsec. (e) which provided that any judicial proceedings under this section were entitled to, and upon request of the Secretary or the State would receive, a preference and be heard and determined as expeditiously as possible.

1980—Subsec. (a)(2). Pub. L. 96–473 inserted reference to subsec. (e) of section 503 of this title.

Pub. L. 96–249 and Pub. L. 96–265 made identical amendments, substituting ''subsection (b), (c), or (d)'' for ''subsection (b) or (c)''.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–152 effective on the date one year after Nov. 24, 1993, see section 4(f)(1) of Pub. L. 103–152, set out as a note under section 503 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–628 effective Sept. 30, 1989, with provision for optional early implementation and provision for States whose legislatures have not been in session for at least 30 days between Nov. 7, 1988, and Sept. 30, 1989, see section 3544(d) of this title.

Amendment by Pub. L. 100–485 effective on first day of first calendar quarter beginning one year or more after Oct. 13, 1988, see section 124(c)(1) of Pub. L. 100–485, set out as a note under section 653 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–265 effective July 1, 1980, see section 408(b)(3) of Pub. L. 96–265, set out as a note under section 503 of this title.

Amendment by Pub. L. 96–249 effective Jan. 1, 1983, see section 127(b)(3) of Pub. L. 96–249, set out as a note under section 503 of this title.

SUBCHAPTER IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

AMENDMENTS

1968—Pub. L. 90–248, title II, § 240(a), Jan. 2, 1968, 81 Stat. 911, provided for grants for child-welfare services in subchapter heading.

1962—Pub. L. 87–543, title I, § 104(a)(1), July 25, 1962, 76 Stat. 185, substituted ''AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN'' for ''AID TO DEPENDENT CHILDREN'' in subchapter heading.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 280c–6, 503, 1301, 1306a, 1320b–2, 1320b–6, 1396b, 3020d, 6862, 9432, 9433, 9452 of this title; title 7 sections 2014, 2015, 2017, 2025, 2026, 2029; title 20 section 6333; title 26 sections 42, 6334; title 29 section 1532.

PART A—AID TO FAMILIES WITH DEPENDENT CHILDREN

AMENDMENTS

1968—Pub. L. 90–248, title II, § 240(b), Jan. 2, 1968, 81 Stat. 911, added part A heading.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 405, 428, 603a, 622, 651, 652, 653, 654, 657, 658, 666, 669, 670, 671, 672, 673, 674, 681, 682, 683, 686, 1306, 1309, 1311, 1314a, 1315, 1316, 1318, 1319, 1320b–3, 1320b–6, 1320b–7, 1382, 1395v, 1396a, 1396b, 1396d, 1396r–6, 1758, 1786, 8624, 9835, 9846 of this title; title 7 sections 2014, 2015, 2017, 2020, 2026, 2030, 2031; title 8 sections 1160, 1255a, 1522; title 12 section 1701z–11; title 20 sections 1070a–23, 1087vv, 2341, 2341a, 2471; title 26 sections 51, 3304, 6103; title 29 sections 49b, 1503, 1791, 1791e, 1791g, 2302; title 40 App. section 202.

§ 601. Authorization of appropriations

For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

(Aug. 14, 1935, ch. 531, title IV, § 401, 49 Stat. 627; 1946 Reorg. Plan No. 2, § 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, § 312(a), 70 Stat. 848; July 25, 1962, Pub. L. 87–543, title I, § 104(a)(4), (c)(2), 76 Stat. 185, 186; Jan. 2, 1968, Pub. L. 90–248, title II, § 241(b)(1), 81 Stat. 916.)

AMENDMENTS

1968—Pub. L. 90–248 substituted in first sentence ''part'' for ''subchapter''.

1962—Pub. L. 87–543 substituted in second sentence ''aid and services to needy families with children'' for ''aid to dependent children'', and inserted in first sentence ''and rehabilitation'' after ''financial assistance'' and ''or retain capability for'' after ''attain''.

1956—Act Aug. 1, 1956, amended first sentence generally, restating purpose to include encouragement of care of dependent children in their own homes or in the homes of relatives and authorizing services to needy dependent children and the parents or relatives to help

maintain and strengthen family life and to help such parents or relatives to attain the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

Social Security Board abolished and its functions transferred to Federal Security Administrator by section 4 of Reorg. Plan No. 2 of 1946, set out in the Appendix to Title 5, Government Organization and Employees.

STATE PLANS IN EFFECT JAN. 1, 1968; AUTOMATIC CONFORMITY TO AMENDMENTS

Section 240(h) of Pub. L. 90–248 provided that: ''Each State plan approved under title IV of the Social Security Act [this subchapter] as in effect on the day preceding the date of the enactment of this Act [Jan. 2, 1968] shall be deemed, without the necessity of any change in such plan, to have been conformed with the amendments made by subsections (a) and (b) of this section [amending subchapter IV and enacting part A heading].''

STATE PLANS IN EFFECT JULY 25, 1962; AUTOMATIC CONFORMITY TO AMENDMENTS

Section 104(b) of Pub. L. 87–543 provided that: ''Each State plan approved under title IV of the Social Security Act [this subchapter] and in effect on the date of the enactment of this Act [July 25, 1962] shall be deemed for purposes of such title, without the necessity of any change in such plan, to have been conformed with the amendments made by subsection (a) of this section [amending this section and sections 602–604, 606–608, 1202, and 1352 of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 603 of this title.

§ 602. State plans for aid and services to needy families with children; contents; approval by Secretary; records and reports; treatment of earned income advances

(a) Contents

A State plan for aid and services to needy families with children must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness;

(5) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) except as may be otherwise provided in paragraph (8) or (31) and section 615 of this title, provide that the State agency—

(A) shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid;

(B) shall determine ineligible for aid any family the combined value of whose resources (reduced by any obligations or debts with respect to such resources) exceeds $1,000 or such lower amount as the State may determine, but not including as a resource for purposes of this subparagraph (i) a home owned and occupied by such child, relative, or other individual and so much of the family member's ownership interest in one automobile as does not exceed such amount as the Secretary may prescribe, (ii) under regulations prescribed by the Secretary, burial plots (one for each such child, relative, and other individual), and funeral agreements[1] (iii) for such period or periods of time as the Secretary may prescribe, real property which the family is making a good-faith effort to dispose of, but any aid payable to the family for any such period shall be conditioned upon such disposal, and any payments of such aid for that period shall (at the time of the disposal) be considered overpayments to the extent that they would not have been made had the disposal occurred at the beginning of the period for which the payments of such aid were made, or (iv) for the month of receipt and the following month, any refund of Federal income taxes made to such family by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income credit), and any payment made to such family by an employer under section 3507 of such Code (relating to advance payment of earned income credit); and

(C) may, in the case of a family claiming or receiving aid under this part for any month, take into consideration as income (to the extent the State determines appropriate, as specified in such plan, and notwithstanding any other provision of law)—

(i) an amount not to exceed the value of the family's monthly allotment of food

[1] So in original. Probably should be followed by a comma.

stamp coupons, to the extent such value duplicates the amount for food included in the maximum amount that would be payable under the State plan to a family of the same composition with no other income; and

(ii) an amount not to exceed the value of any rent or housing subsidy provided to such family, to the extent such value duplicates the amount for housing included in the maximum amount that would be payable under the State plan to a family of the same composition with no other income;

(8)(A) provide that, with respect to any month, in making the determination under paragraph (7), the State agency—

(i) shall disregard all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or a part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment;

(ii) shall disregard from the earned income of any child or relative applying for or receiving aid to families with dependent children, or of any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, the first $90 of the total of such earned income for such month;

(iii) after applying the other clauses of this subparagraph, shall disregard from the earned income of any child, relative, or other individual specified in clause (ii), an amount equal to expenditures for care in such month for a dependent child, or an incapacitated individual living in the same home as the dependent child, receiving aid to families with dependent children and requiring such care for such month, to the extent that such amount (for each such dependent child or incapacitated individual) does not exceed $175 (or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in full-time employment or not employed throughout the month), or, in the case such child is under age 2, $200;

(iv) shall disregard from the earned income of any child or relative receiving aid to families with dependent children, or of any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, an amount equal to (I) the first $30 of the total of such earned income not disregarded under any other clause of this subparagraph plus (II) one-third of the remainder thereof;

(v) may disregard the income of any dependent child applying for or receiving aid to families with dependent children which is derived from a program carried out under the Job Training Partnership Act (as originally enacted) [29 U.S.C. 1501 et seq.], but only in such amounts, and for such period of time (not to exceed six months with respect to earned income) as the Secretary may provide in regulations;

(vi) shall disregard the first $50 of any child support payments for such month received in that month, and the first $50 of child support payments for each prior month received in that month if such payments were made by the absent parent in the month when due, with respect to the dependent child or children in any family applying for or receiving aid to families with dependent children (including support payments collected and paid to the family under section 657(b) of this title);

(vii) may disregard all or any part of the earned income of a dependent child who is a full-time student and who is applying for aid to families with dependent children, but only if the earned income of such child is excluded for such month in determining the family's total income under paragraph (18); and

(viii) shall disregard any refund of Federal income taxes made to a family receiving aid to families with dependent children by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit) and any payment made to such a family by an employer under section 3507 of such Code (relating to advance payment of earned income credit); and

(B) provide that (with respect to any month) the State agency—

(i) shall not disregard, under clause (ii), (iii), or (iv) of subparagraph (A), any earned income of any one of the persons specified in subparagraph (A)(ii) if such person—

(I) terminated his employment or reduced his earned income without good cause within such period (of not less than thirty days) preceding such month as may be prescribed by the Secretary;

(II) refused without good cause, within such period preceding such month as may be prescribed by the Secretary, to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by the employer, to be a bona fide offer of employment; or

(III) failed without good cause to make a timely report (as prescribed by the State plan pursuant to paragraph (14)) to the State agency of earned income received in such month; and

(ii)(I) shall not disregard—

(a) under subclause (II) of subparagraph (A)(iv), in a case where such subclause has already been applied to the income of the persons involved for four consecutive months while they were receiving aid under the plan, or

(b) under subclause (I) of subparagraph (A)(iv), in a case where such subclause has already been applied to the income of the persons involved for twelve consecutive

months while they were receiving aid under the plan,

any earned income of any of the persons specified in subparagraph (A)(ii), if, with respect to such month, the income of the persons so specified was in excess of their need, as determined by the State agency pursuant to paragraph (7) (without regard to subparagraph (A)(iv) of this paragraph), unless the persons received aid under the plan in one or more of the four months preceding such month; and

(II) in the case of the earned income of a person with respect to whom subparagraph (A)(iv) has been applied for four consecutive months, shall not apply the provisions of subclause (II) of such subparagraph to any month after such month, or apply the provisions of subclause (I) of such subparagraph to any month after the eighth month following such month, for so long as he continues to receive aid under the plan, and shall not apply the provisions of either such subclause to any month thereafter until the expiration of an additional period of twelve consecutive months during which he is not a recipient of such aid; and

(C) provide that in implementing this paragraph the term ''earned income'' shall mean gross earned income, prior to any deductions for taxes or for any other purposes;

(9) provide safeguards which restrict the use or disclosure of information concerning applicants or recipients to purposes directly connected with (A) the administration of the plan of the State approved under this part (including activities under part F of this subchapter), the plan or program of the State under part B, D, or E of this subchapter or under subchapter I, X, XIV, XVI, XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (16) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an entity referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; but such safeguards shall not prevent the State agency or the local agency responsible for the administration of the State plan in the locality (whether or not the State has enacted legislation allowing public access to Federal welfare records) from furnishing a State or local law enforcement officer, upon his request, with the current address of any recipient if the officer furnishes the agency with such recipient's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive felon, that the location or apprehension of such felon is within the officer's official duties, and that the request is made in the proper exercise of those duties;

(10)(A) provide that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall, subject to paragraphs (25) and (26), be furnished with reasonable promptness to all eligible individuals; and

(B) provide that an application for aid under the plan will be effective no earlier than the date such application is filed with the State agency or local agency responsible for the administration of the State plan, and the amount payable for the month in which the application becomes effective, if such application becomes effective after the first day of such month, shall bear the same ratio to the amount which would be payable if the application had been effective on the first day of such month as the number of days in the month including and following the effective date of the application bears to the total number of days in such month;

(11) provide for prompt notice (including the transmittal of all relevant information) to the State child support collection agency (established pursuant to part D of this subchapter) of the furnishing of aid to families with dependent children with respect to a child who has been deserted or abandoned by a parent (including a child born out of wedlock without regard to whether the paternity of such child has been established);

(12) provide, effective October 1, 1950, that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title;

(13) provide, at the option of the State and with respect to such category or categories as the State may select and identify in the State plan, that—

(A) except as provided in subparagraph (B), the State agency (i) will determine a family's eligibility for aid for a month on the basis of the family's income, composition, resources, and other similar relevant circumstances during such month, and (ii) will determine the amount of such aid on the basis of the income and other relevant circumstances in the first or, at the option of the State (but only where the Secretary determines it to be appropriate), second month preceding such month; and

(B) in the case of the first month, or at the option of the State (but only where the Secretary determines it to be appropriate), the first and second months, in a period of consecutive months for which aid is payable, the State agency will determine the amount of aid on the basis of the family's income and other relevant circumstances in such first or second month;

(14) at the option of the State and with respect to such category or categories as the State may select and identify in the plan, provide that—

(A) the State agency will require each family to which the State provides (or, but for paragraph (22) or (32), would provide) aid to families with dependent children, as a condition to the continued receipt of such aid (or to continuing to be deemed to be a recipient of such aid), to report to the State agency monthly (or less frequently in the case of such categories of recipients as the State may select) on—

(i) the income of the family, the composition of the family, and other relevant circumstances during the prior month; and

(ii) the income and resources the family expects to receive, or any changes in circumstances affecting continued eligibility for, or amount of benefits, the family expects to occur, in that month or in future months; and

(B) in addition to any action that may be appropriate based on other reports or information received by the State agency, the State agency will—

(i) take prompt action to adjust the amount of assistance payable, as may be appropriate, on the basis of the information contained in the report (or upon the failure of the family to submit a timely report); and

(ii) give the family an appropriate explanatory notice concurrent with any action taken under clause (i);

(15) provide (A) for the development of a program, for each appropriate relative and dependent child receiving aid under the plan and for each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into account in making the determination under paragraph (7), for preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life, and for implementing such program by assuring that in all appropriate cases (including minors who can be considered to be sexually active) family planning services are offered to them and are provided promptly (directly or under arrangements with others) to all individuals voluntarily requesting such services, but acceptance of family planning services provided under the plan shall be voluntary on the part of such members and individuals and shall not be a prerequisite to eligibility for or the receipt of any other service under the plan; and (B) to the extent that services provided under this paragraph are furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services;

(16) provide that the State agency will—

(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;

(17) provide that if a child or relative applying for or receiving aid to families with dependent children, or any other person whose need the State considers when determining the income of a family, receives in any month an amount of earned or unearned income which, together with all other income for that month not excluded under paragraph (8), exceeds the State's standard of need applicable to the family of which he is a member—

(A) such amount of income shall be considered income to such individual in the month received, and the family of which such person is a member shall be ineligible for aid under the plan for the whole number of months that equals (i) the sum of such amount and all other income received in such month, not excluded under paragraph (8), divided by (ii) the standard of need applicable to such family, and

(B) any income remaining (which amount is less than the applicable monthly standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A);

except that the State may at its option recalculate the period of ineligibility otherwise determined under subparagraph (A) (but only with respect to the remaining months in such period) in any one or more of the following cases: (i) an event occurs which, had the family been receiving aid under the State plan for the month of the occurrence, would result in a change in the amount of aid payable for such month under the plan, or (ii) the income received has become unavailable to the members of the family for reasons that were beyond the control of such members, or (iii) the family incurs, becomes responsible for, and pays medical expenses (as allowed by the State) in a month of ineligibility determined under subparagraph (A) (which expenses may be considered as an offset against the amount of income received in the first month of such ineligibility);

(18) provide that no family shall be eligible for aid under the plan for any month if, for that month, the total income of the family (other than payments under the plan), without application of paragraph (8), other than paragraph (8)(A)(v) or 8(A)(viii),[2] exceeds 185 percent of the State's standard of need for a family of the same composition, except that in determining the total income of the family the State may exclude any earned income of a dependent child who is a full-time student, in such amounts and for such period of time (not to exceed 6 months) as the State may determine;

(19) provide—

[2] So in original. Probably should be ''(8)(A)(viii),''.

(A) that the State has in effect and operation a job opportunities and basic skills training program which meets the requirements of part F of this subchapter;

(B) that—

(i) the State will (except as otherwise provided in this paragraph or part F of this subchapter), to the extent that the program is available in the political subdivision involved and State resources otherwise permit—

(I) require all recipients of aid to families with dependent children in such subdivision with respect to whom the State guarantees child care in accordance with subsection (g) of this section to participate in the program; and

(II) allow applicants for and recipients of aid to families with dependent children (and individuals who would be recipients of such aid if the State had not exercised the option under section 607(b)(2)(B)(i) of this title) who are not required under subclause (I) to participate in the program to do so on a voluntary basis;

(ii) in determining the priority of participation by individuals from among those groups described in clauses (i), (ii), (iii), and (iv) of section 603(*l*)(2)(B) of this title, the State will give first consideration to applicants for or recipients of aid to families with dependent children within any such group who volunteer to participate in the program;

(iii) if an exempt participant drops out of the program without good cause after having commenced participation in the program, he or she shall thereafter not be given priority so long as other individuals are actively seeking to participate; and

(iv) the State need not require or allow participation of an individual in the program if as a result of such participation the amount payable to the State for quarters in a fiscal year with respect to the program would be reduced pursuant to section 603(*l*)(2) of this title;

(C) that an individual may not be required to participate in the program if such individual—

(i) is ill, incapacitated, or of advanced age;

(ii) is needed in the home because of the illness or incapacity of another member of the household;

(iii) subject to subparagraph (D)—

(I) is the parent or other relative of a child under 3 years of age (or, if so provided in the State plan, under any age that is less than 3 years but not less than one year) who is personally providing care for the child, or

(II) is the parent or other relative personally providing care for a child under 6 years of age, unless the State assures that child care in accordance with subsection (g) of this section will be guaranteed and that participation in the program by the parent or relative will not be required for more than 20 hours a week;

(iv) works 30 or more hours a week;

(v) is a child who is under age 16 or attends, full-time, an elementary, secondary, or vocational (or technical) school;

(vi) is pregnant if it has been medically verified that the child is expected to be born in the month in which such participation would otherwise be required or within the 6-month period immediately following such month; or

(vii) resides in an area of the State where the program is not available;

(D) that, in the case of a family eligible for aid to families with dependent children by reason of the unemployment of the parent who is the principal earner, subparagraph (C)(iii) shall apply only to one parent, except that, in the case of such a family, the State may at its option make such subparagraph inapplicable to both of the parents (and require their participation in the program) if child care in accordance with subsection (g) of this section is guaranteed with respect to the family;

(E) that—

(i) to the extent that the program is available in the political subdivision involved and State resources otherwise permit, in the case of a custodial parent who has not attained 20 years of age, has not successfully completed a high-school education (or its equivalent), and is required to participate in the program (including an individual who would otherwise be exempt from participation in the program solely by reason of subparagraph (C)(iii)), the State agency (subject to clause (ii)) will require such parent to participate in an educational activity; and

(ii) the State agency may—

(I) require a parent described in clause (i) (notwithstanding the part-time requirement in subparagraph (C)(iii)(II)) to participate in educational activities directed toward the attainment of a high school diploma or its equivalent on a full-time (as defined by the educational provider) basis,

(II) establish criteria in accordance with regulations of the Secretary under which custodial parents described in clause (i) who have not attained 18 years of age may be exempted from the school attendance requirement under such clause, or

(III) require a parent described in clause (i) who is age 18 or 19 to participate in training or work activities (in lieu of the educational activities under such clause) if such parent fails to make good progress in successfully completing such educational activities or if it is determined (prior to any assignment of the individual to such educational activities) pursuant to an educational assessment that participation in such educational activities is inappropriate for such parent;

(F) that—

(i) if the parent or other caretaker relative or any dependent child in the family is attending (in good standing) an institution of higher education (as defined in section 1088(a) of title 20), or a school or course of vocational or technical training (not less than half time) consistent with the individual's employment goals, and is making satisfactory progress in such institution, school, or course, at the time he or she would otherwise commence participation in the program under this section, such attendance may constitute satisfactory participation in the program (by that caretaker or child) so long as it continues and is consistent with such goals;

(ii) any other activities in which an individual described in clause (i) participates may not be permitted to interfere with the school or training described in that clause;

(iii) the costs of such school or training shall not constitute federally reimbursable expenses for purposes of section 603 of this title; and

(iv) the costs of day care, transportation, and other services which are necessary (as determined by the State agency) for such attendance in accordance with subsection (g) of this section are eligible for Federal reimbursement;

(G) that—

(i) if an individual who is required by the provisions of this paragraph to participate in the program or who is so required by reason of the State's having exercised the option under subparagraph (D) fails without good cause to participate in the program or refuses without good cause to accept employment in which such individual is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined to be a bona fide offer of employment—

(I) the needs of such individual (whether or not section 607 of this title applies) shall not be taken into account in making the determination with respect to his or her family under paragraph (7) of this subsection, and if such individual is a parent or other caretaker relative, payments of aid for any dependent child in the family in the form of payments of the type described in section 606(b)(2) of this title (which in such a case shall be without regard to clauses (A) through (D) thereof) will be made unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made; and

(II) if such individual is a member of a family which is eligible for aid to families with dependent children by reason of section 607 of this title, and his or her spouse is not participating in the program, the needs of such spouse shall also not be taken into account in making such determination;

(ii) any sanction described in clause (i) shall continue—

(I) in the case of the individual's first failure to comply, until the failure to comply ceases;

(II) in the case of the individual's second failure to comply, until the failure to comply ceases or 3 months (whichever is longer); and

(III) in the case of any subsequent failure to comply, until the failure to comply ceases or 6 months (whichever is longer);

(iii) the State will promptly remind any individual whose failure to comply has continued for 3 months, in writing, of the individual's option to end the sanction by terminating such failure; and

(iv) no sanction shall be imposed under this subparagraph—

(I) on the basis of the refusal of an individual described in subparagraph (C)(iii)(II) to accept employment, if the employment would require such individual to work more than 20 hours a week, or

(II) on the basis of the refusal of an individual to participate in the program or accept employment, if child care (or day care for any incapacitated individual living in the same home as a dependent child) is necessary for an individual to participate in the program or accept employment, such care is not available, and the State agency fails to provide such care; and

(H) the State agency may require a participant in the program to accept a job only if such agency assures that the family of such participant will experience no net loss of cash income resulting from acceptance of the job; and any costs incurred by the State agency as a result of this subparagraph shall be treated as expenditures with respect to which section 603(a)(1) or 603(a)(2) of this title applies;

(20) provide that the State has in effect a State plan for foster care and adoption assistance approved under part E of this subchapter;

(21) provide—

(A) that, for purposes of this part, participation in a strike shall not constitute good cause to leave, or to refuse to seek or accept employment; and

(B)(i) that aid to families with dependent children is not payable to a family for any month in which any caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and (ii) that no individual's needs shall be included in determining the amount of aid payable for any month to a family under the plan if, on the last day of such month, such individual is participating in a strike;

(22) provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan, and, in the case of—

(A) an overpayment to an individual who is a current recipient of such aid (including

a current recipient whose overpayment occurred during a prior period of eligibility), recovery will be made by repayment by the individual or by reducing the amount of any future aid payable to the family of which he is a member, except that such recovery shall not result in the reduction of aid payable for any month, such that the aid, when added to such family's liquid resources and to its income (without application of paragraph (8)), is less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income (and, in the case of an individual to whom no payment is made for a month solely by reason of recovery of an overpayment, such individual shall be deemed to be a recipient of aid for such month);

(B) an overpayment to any individual who is no longer receiving aid under the plan, recovery shall be made by appropriate action under State law against the income or resources of the individual or the family; and

(C) an underpayment, the corrective payment shall be disregarded in determining the income of the family, and shall be disregarded in determining its resources in the month the corrective payment is made and in the following month;

except that no recovery need be attempted or carried out under subparagraph (B) in any case, other than a case involving fraud on the part of the recipient, where (as determined by the State agency in accordance with criteria for determining cost-effectiveness, and with dollar limitations, which shall be prescribed by the Secretary in regulations) the cost of recovery would equal or exceed the amount of the overpayment involved;

(23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted;

(24) provide that if an individual is receiving benefits under subchapter XVI of this chapter or his costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made to his or her minor parent as provided in section 675(4)(B) of this title, then, for the period for which such benefits are received or such costs are so covered, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this subchapter and his income and resources shall not be counted as income and resources of a family under this subchapter;

(25) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title;

(26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required—

(A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed;

(B) to cooperate with the State (i) in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child, unless (in either case) such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the child on whose behalf aid is claimed; and that, if the relative with whom a child is living is found to be ineligible because of failure to comply with the requirements of subparagraphs (A) and (B) of this paragraph, any aid for which such child is eligible will be provided in the form of protective payments as described in section 606(b)(2) of this title (without regard to clauses (A) through (D) of such section) unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made; and

(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the State's plan for medical assistance under subchapter XIX of this chapter, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; but the State shall not be subject to any financial penalty in the administration or enforcement of this subparagraph as a result of any monitoring, quality control, or auditing requirements;

(27) provide that the State has in effect a plan approved under part D of this subchapter and operates a child support program in substantial compliance with such plan;

(28) provide that, in determining the amount of aid to which an eligible family is entitled, any portion of the amounts collected in any particular month as child support pursuant to a plan approved under part D of this subchapter, and retained by the State under section 657 of this title, which (under the State plan approved under this part as in effect both during July 1975 and during that particular month) would not have caused a reduction in the amount of aid paid to the family if such amounts had been paid directly to the family, shall be added to the amount of aid otherwise payable to such family under the State plan approved under this part;

(29) Repealed. Pub. L. 98–369, div. B, title VI, § 2651(b)(2), July 18, 1984, 98 Stat. 1149

(30) at the option of the State, provide for the establishment and operation, in accord-

ance with an (initial and annually updated) advance automated data processing planning document approved under subsection (e) of this section, of an automated statewide management information system designed effectively and efficiently, to assist management in the administration of the State plan for aid to families with dependent children approved under this part, so as (A) to control and account for (i) all the factors in the total eligibility determination process under such plan for aid (including but not limited to (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses, and mailing addresses (including postal ZIP codes), of all applicants and recipients of such aid and the relative with whom any child who is such an applicant or recipient is living) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction, (II) checking records of applicants and recipients of such aid on a periodic basis with other agencies, both intra- and inter-State, for determination and verification of eligibility and payment pursuant to requirements imposed by other provisions of this chapter), (ii) the costs, quality, and delivery of funds and services furnished to applicants for and recipients of such aid, (B) to notify the appropriate officials of child support, food stamp, social service, and medical assistance programs approved under subchapter XIX of this chapter whenever the case becomes ineligible or the amount of aid or services is changed, and (C) to provide for security against unauthorized access to, or use of, the data in such system;

(31) provide that, in making the determination for any month under paragraph (7), the State agency shall take into consideration so much of the income of the dependent child's stepparent living in the same home as such child as exceeds the sum of (A) the first $90 of the total of such stepparent's earned income for such month, (B) the State's standard of need under such plan for a family of the same composition as the stepparent and those other individuals living in the same household as the dependent child and claimed by such stepparent as dependents for purposes of determining his Federal personal income tax liability but whose needs are not taken into account in making the determination under paragraph (7), (C) amounts paid by the stepparent to individuals not living in such household and claimed by him as dependents for purposes of determining his Federal personal income tax liability, and (D) payments by such stepparent of alimony or child support with respect to individuals not living in such household;

(32) provide that no payment of aid shall be made under the plan for any month if the amount of such payment, as determined in accordance with the applicable provisions of the plan and of this part, would be less than $10, but an individual with respect to whom a payment of aid under the plan is denied solely by reason of this paragraph is deemed to be a recipient of aid but shall not be eligible to participate in a community work experience program;

(33) provide that in order for any individual to be considered a dependent child, a caretaker relative whose needs are to be taken into account in making the determination under paragraph (7), or any other person whose needs should be taken into account in making such a determination with respect to the child or relative, such individual must be either (A) a citizen, or (B) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 1157(c) of title 8 (or of section 1153(a)(7) of title 8 prior to April 1, 1980), or as a result of the application of the provisions of section 1158 or 1182(d)(5) of title 8);

(34) provide that both the standard of need applied to a family and the amount of aid determined to be payable, when not a whole dollar amount, shall be rounded to the next lower whole dollar amount;

(35) Repealed. Pub. L. 100–485, title II, § 202(b)(3), Oct. 13, 1988, 102 Stat. 2377;

(36) provide, at the option of the State, that in making the determination for any month under paragraph (7), the State agency shall not include as income any support or maintenance assistance furnished to or on behalf of the family which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support and maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which is (A) assistance furnished in kind by a private nonprofit agency, or (B) assistance furnished by a supplier of home heating oil or gas, by an entity whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy;

(37) provide that if any family becomes ineligible to receive aid to families with dependent children because of hours of or income from employment of the caretaker relative or because of paragraph (8)(B)(ii)(II), having received such aid in at least 3 of the 6 months immediately preceding the month in which such ineligibility begins, the family shall remain eligible for medical assistance under the State's plan approved under subchapter XIX of this chapter for an extended period or periods as provided in section 1396r–6 of this title, and that the family will be appropriately notified of such extension (in the State agency's notice to the family of the termination of its eligibility for such aid) as required by section 1396r–6(a)(2) of this title;

(38) provide that in making the determination under paragraph (7) with respect to a dependent child and applying paragraph (8), the State agency shall (except as otherwise provided in this part) include—

(A) any parent of such child, and

(B) any brother or sister of such child, if such brother or sister meets the conditions

described in clauses (1) and (2) of section 606(a) of this title or in section 607(a) of this title,

if such parent, brother, or sister is living in the same home as the dependent child, and any income of or available for such parent, brother, or sister shall be included in making such determination and applying such paragraph with respect to the family (notwithstanding section 405(j) of this title, in the case of benefits provided under subchapter II of this chapter);

(39) provide that in making the determination under paragraph (7) with respect to a dependent child whose parent is under the age of 18, the State agency shall (except as otherwise provided in this part) include any income of such minor's own parents who are living in the same home as such minor and dependent child, to the same extent that income of a stepparent is included under paragraph (31);

(40) provide, if the State has elected to establish and operate a fraud control program under section 616 of this title, that the State will submit to the Secretary (with such revisions as may from time to time be necessary) a description of and budget for such program, and will operate such program in full compliance with that section;

(41) provide that aid to families with dependent children will be provided under the plan with respect to dependent children of unemployed parents in accordance with section 607 of this title;

(42) provide that if, under section 607(b)(2)(B)(i) of this title, the State limits the number of months for which a family may receive aid to families with dependent children, the State shall provide medical assistance to all members of the family under the State's plan approved under subchapter XIX of this chapter, without time limitation;

(43) at the option of the State, provide that—

(A) subject to subparagraph (B), in the case of any individual who is under the age of 18 and has never married, and who has a dependent child in his or her care (or is pregnant and is eligible for aid to families with dependent children under the State plan)—

(i) such individual may receive aid to families with dependent children under the plan for the individual and such child (or for herself in the case of a pregnant woman) only if such individual and child (or such pregnant woman) reside in a place of residence maintained by a parent, legal guardian, or other adult relative of such individual as such parent's, guardian's, or adult relative's own home, or reside in a foster home, maternity home, or other adult-supervised supportive living arrangement; and

(ii) such aid (where possible) shall be provided to the parent, legal guardian, or other adult relative on behalf of such individual and child; and

(B) subparagraph (A) does not apply in the case where—

(i) such individual has no parent or legal guardian of his or her own who is living and whose whereabouts are known;

(ii) no living parent or legal guardian of such individual allows the individual to live in the home of such parent or guardian;

(iii) the State agency determines that the physical or emotional health or safety of such individual or such dependent child would be jeopardized if such individual and such dependent child lived in the same residence with such individual's own parent or legal guardian;

(iv) such individual lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of any such dependent child or the individual having made application for aid to families with dependent children under the plan; or

(v) the State agency otherwise determines (in accordance with regulations issued by the Secretary) that there is good cause for waiving such subparagraph;

(44) provide that the State agency shall—

(A) be responsible for assuring that the benefits and services under the programs under this part, part D of this subchapter, and part F of this subchapter are furnished in an integrated manner, and

(B) consistent with the provisions of this subchapter, ensure that all applicants for and recipients of aid to families with dependent children are encouraged, assisted, and required to cooperate in the establishment of paternity and the enforcement of child support obligations, and are notified of the paternity establishment and child support services for which they may be eligible; and

(45) provide (in accordance with regulations issued by the Secretary) for appropriate measures to detect fraudulent applications for aid to families with dependent children prior to the establishment of eligibility for such aid.

The Secretary may waive any of the requirements imposed under or in connection with paragraphs (13) and (14) of this subsection to the extent necessary to make such requirements compatible with the corresponding reporting and budgeting requirements by the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.].

(b) Approval by Secretary

The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes as a condition of eligibility for aid to families with dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth.

(c) Compilation of data; publishing of findings; reports to Congress

The Secretary shall, on the basis of his review of the reports received from the States under

paragraph (15) of subsection (a) of this section, compile such data as he believes necessary and from time to time publish his findings as to the effectiveness of the programs developed and administered by the States under such paragraph. The Secretary shall annually report to the Congress (with the first such report being made on or before July 1, 1970) on the programs developed and administered by each State under such paragraph (15).

(d) Repealed. Pub. L. 100–485, title IV, § 402(c)(2)(A), Oct. 13, 1988, 102 Stat. 2397

(e) Approval of automated data processing planning document; review of management information systems; failure to comply; reduction of payments

(1) The Secretary shall not approve the initial and annually updated advance automated data processing planning document, referred to in subsection (a)(30) of this section, unless he finds that such document, when implemented, will generally carry out the objectives of the statewide management system referred to in such subsection, and such document—

(A) provides for the conduct of, and reflects the results of, requirements analysis studies, which include consideration of the program mission, functions, organization, services, constraints, and current support, of, in, or relating to, such system,

(B) contains a description of the proposed statewide management system, including a description of information flows, input data, and output reports and uses,

(C) sets forth the security and interface requirements to be employed in such statewide management system,

(D) describes the projected resource requirements for staff and other needs, and the resources available or expected to be available to meet such requirements,

(E) includes cost-benefit analyses of each alternative management system, data processing services and equipment, and a cost allocation plan containing the basis for rates, both direct and indirect, to be in effect under such statewide management system,

(F) contains an implementation plan with charts of development events, testing descriptions, proposed acceptance criteria, and backup and fallback procedures to handle possible failure of contingencies, and

(G) contains a summary of proposed improvement of such statewide management system in terms of qualitative and quantitative benefits.

(2)(A) The Secretary shall, on a continuing basis, review, assess, and inspect the planning, design, and operation of, statewide management information systems referred to in section 603(a)(3)(B)[3] of this title, with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under such section and the conditions specified under subsection (a)(30) of this section.

(B) If the Secretary finds with respect to any statewide management information system referred to in section 603(a)(3)(B)[3] of this title that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automated data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.

(C) If the Secretary determines that such a system has not been implemented by the State by the date specified for implementation in the State's advance automated data processing planning document, then the Secretary shall reduce payments to such State, in accordance with section 603(b) of this title, in an amount equal to 40 percent of the expenditures referred to in section 603(a)(3)(B)[3] of this title with respect to which payments were made to the State under section 603(a)(3)(B)[3] of this title. The Secretary may extend the deadline for implementation if the State demonstrates to the satisfaction of the Secretary that the State cannot implement such system by the date specified in such planning document due to circumstances beyond the State's control.

(f) Temporary disqualification of certain newly legalized aliens; exception for certain dependent children

(1) For temporary disqualification of certain newly legalized aliens from receiving aid to families with dependent children, see subsection (h) of section 1255a of title 8, subsection (f) of section 1160 of title 8, and subsection (d)(7) of section 1161[4] of title 8.

(2) In any case where an alien disqualified from receiving aid under such subsection (h), (f), or (d)(7) is the parent of a child who is not so disqualified and who (without any adjustment of status under such section 1255a, 1160, or 1161)[4] is considered a dependent child under subsection (a)(33) of this section, or is the brother or sister of such a child, subsection (a)(38) of this section shall not apply, and the needs of such alien shall not be taken into account in making the determination under subsection (a)(7) of this section with respect to such child, but the income of such alien (if he or she is the parent of such child) shall be included in making such determination to the same extent that income of a stepparent is included under subsection (a)(31) of this section.

(g) Child care during participation in employment, education, and training; extended eligibility

(1)(A)(i) Each State agency must guarantee child care in accordance with subparagraph (B)—

(I) for each family with a dependent child requiring such care, to the extent that such care is determined by the State agency to be necessary for an individual in the family to accept employment or remain employed; and

(II) for each individual participating in an education and training activity (including participation in a program that meets the re-

[3] See References in Text note below.

[4] See References in Text note below.

quirements of subsection (a)(19) of this section and part F of this subchapter) if the State agency approves the activity and determines that the individual is satisfactorily participating in the activity.

(ii) Each State agency must guarantee child care, subject to the limitations described in this section, to the extent that such care is determined by the State agency to be necessary for an individual's employment in any case where a family has ceased to receive aid to families with dependent children as a result of increased hours of, or increased income from, such employment or by reason of subsection (a)(8)(B)(ii)(II) of this section.

(iii) A family shall only be eligible for child care provided under clause (ii) for a period of 12 months after the last month for which the family received aid to families with dependent children under this part.

(iv) A family shall not be eligible for child care provided under clause (ii) unless the family received aid to families with dependent children in at least 3 of the 6 months immediately preceding the month in which the family became ineligible for such aid.

(v) A family shall not be eligible for child care provided under clause (ii) unless the family includes a child who is (or, if needy, would be) a dependent child.

(vi) A family shall not be eligible for child care provided under clause (ii) for any month beginning after the caretaker relative who is a member of the family has—

(I) without good cause, terminated his or her employment; or

(II) refused to cooperate with the State in establishing and enforcing his or her child support obligations, without good cause as determined by the State agency in accordance with standards prescribed by the Secretary which shall take into consideration the best interests of the child for whom child care is to be provided.

(vii) A family shall contribute to child care provided under clause (ii) in accordance with a sliding scale formula which shall be established by the State agency based on the family's ability to pay.

(B) The State agency may guarantee child care by—

(i) providing such care directly;

(ii) arranging the care through providers by use of purchase of service contracts, or vouchers;

(iii) providing cash or vouchers in advance to the caretaker relative in the family;

(iv) reimbursing the caretaker relative in the family; or

(v) adopting such other arrangements as the agency deems appropriate.

When the State agency arranges for child care, the agency shall take into account the individual needs of the child.

(C)(i) Subject to clause (ii), the State agency shall make payment for the cost of child care provided with respect to a family in an amount that is the lesser of—

(I) the actual cost of such care; and

(II) the dollar amount of the child care disregard for which the family is otherwise eligible under subsection (a)(8)(A)(iii) of this section, or (if higher) an amount established by the State.

(ii) The State agency may not reimburse the cost of child care provided with respect to a family in an amount that is greater than the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary).

(D) The State may not make any change in its method of reimbursing child care costs which has the effect of disadvantaging families receiving aid under the State plan on October 13, 1988, by reducing their income or otherwise.

(E) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for the care) under this paragraph—

(i) shall not be treated as income for purposes of any other Federal or federally-assisted program that bases eligibility for or the amount of benefits upon need, and

(ii) may not be claimed as an employment-related expense for purposes of the credit under section 21 of the Internal Revenue Code of 1986.

(2) In the case of any individual participating in the program under part F of this subchapter, each State agency (in addition to guaranteeing child care under paragraph (1)) shall provide payment or reimbursement for such transportation and other work-related expenses (including other work-related supportive services), as the State determines are necessary to enable such individual to participate in such program.

(3)(A)(i) In the case of amounts expended for child care pursuant to paragraph (1)(A) by any State to which section 1308 of this title does not apply, the applicable rate for purposes of section 603(a) of this title shall be the Federal medical assistance percentage (as defined in section 1396d(b) of this title).

(ii) In the case of amounts expended for child care pursuant to paragraph (1)(A)(ii) (relating to the provision of child care for certain families which cease to receive aid under this part) by any State to which section 1308 of this title applies, the applicable rate for purposes of section 603(a) of this title shall be the Federal medical assistance percentage (as defined in section 1318 of this title).

(B) In the case of any amounts expended by the State agency for child care under this subsection, only such amounts as are within such limits as the State may prescribe (subject to the limitations of paragraph (1)(C)) shall be treated as amounts for which payment may be made to a State under this part and they may be so treated only to the extent that—

(i) such amounts do not exceed the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary);

(ii) the child care involved meets applicable standards of State and local law; and

(iii) in the case of child care, the entity providing such care allows parental access.

(4) The State must establish procedures to ensure that center-based child care will be subject to State and local requirements designed to en-

sure basic health and safety, including fire safety, protections. The State must also endeavor to develop guidelines for family day care. The State must provide the Secretary with a description of such State and local requirements and guidelines.

(5) By October 1, 1992, the Secretary shall report to the Congress on the nature and content of State and local standards for health and safety.

(6)(A) The Secretary shall make grants to States to improve their child care licensing and registration requirements and procedures, to enforce standards with respect to child care provided to children under this part, and to provide for the training of child care providers.

(B) Subject to subparagraph (C), the Secretary shall make grants to each State under subparagraph (A) in proportion to the number of children in the State receiving aid under the State plan approved under subsection (a) of this section.

(C) The Secretary may not make grants to a State under subparagraph (A) unless the State provides matching funds in an amount that is not less than 10 percent of the amount of the grant.

(D) For grants under this paragraph, there is authorized to be appropriated to the Secretary $13,000,000 for each of the fiscal years 1990 and 1991, and $50,000,000 for each of fiscal years 1992, 1993, and 1994.

(E) Each State to which the Secretary makes a grant under this paragraph shall expend not less than 50 percent of the amount of the grant to provide for the training of child care providers.

(7) Activities under this subsection and subsection (i) of this section shall be coordinated in each State with existing early childhood education programs in that State, including Head Start programs, preschool programs funded under title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.], and school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for handicapped children).

(h) Periodic reevaluation of need and payment standards

(1) Each State shall reevaluate the need standard and payment standard under its plan at least once every 3 years, in accordance with a schedule established by the Secretary, and report the results of the reevaluation to the Secretary and the public at such time and in such form and manner as the Secretary may require.

(2) The report required by paragraph (1) shall include a statement of—

(A) the manner in which the need standard of the State is determined,

(B) the relationship between the need standard and the payment standard (expressed as a percentage or in any other manner determined by the Secretary to be appropriate), and

(C) any changes in the need standard or the payment standard in the preceding 3-year period.

(3) The Secretary shall report promptly to the Congress the results of the reevaluations required by paragraph (1).

(i) Rules governing providing of child care to eligible families

(1) Each State agency may, to the extent that it determines that resources are available, provide child care in accordance with paragraph (2) to any low income family that the State determines—

(A) is not receiving aid under the State plan approved under this part;

(B) needs such care in order to work; and

(C) would be at risk of becoming eligible for aid under the State plan approved under this part if such care were not provided.

(2) The State agency may provide child care pursuant to paragraph (1) by—

(A) providing such care directly;

(B) arranging such care through providers by use of purchase of service contracts or vouchers;

(C) providing cash or vouchers in advance to the family;

(D) reimbursing the family; or

(E) adopting such other arrangements as the agency deems appropriate.

(3)(A) A family provided with child care under paragraph (1) shall contribute to such care in accordance with a sliding scale formula established by the State agency based on the family's ability to pay.

(B) The State agency shall make payment for the cost of child care provided under paragraph (1) with respect to a family in an amount that is the lesser of—

(i) the actual cost of such care; and

(ii) the applicable local market rate (as determined by the State in accordance with regulations issued by the Secretary).

(4) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for the care) under this subsection—

(A) shall not be treated as income or as a deductible expense for purposes of any other Federal or federally assisted program that bases eligibility for or amount of benefits upon need; and

(B) may not be claimed as an employment-related expense for purposes of the credit under section 21 of the Internal Revenue Code of 1986.

(5) Amounts expended by the State agency for child care under paragraph (1) shall be treated as amounts for which payment may be made to a State under section 603(n) of this title only to the extent that—

(A) such amounts are paid in accordance with paragraph (3)(B);

(B) the care involved meets applicable standards of State and local law;

(C) the provider of the care—

(i) in the case of a provider who is not an individual that provides such care solely to members of the family of the individual, is licensed, regulated, or registered by the State or locality in which the care is provided; and

(ii) allows parental access; and

(D) such amounts are not used to supplant any other Federal or State funds used for child care services.

(6)(A)(i) Each State shall prepare reports annually, beginning with fiscal year 1993, on the activities of the State carried out with funds made available under section 603(n) of this title.

(ii) The State shall make available for public inspection within the State copies of each report required by this paragraph, shall transmit a copy of each such report to the Secretary, and shall provide a copy of each such report, on request, to any interested public agency.

(iii) The Secretary shall annually compile, and submit to the Congress, the State reports transmitted to the Secretary pursuant to clause (ii).

(B) Each report prepared and transmitted by a State under subparagraph (A) shall set forth with respect to child care services provided under this subsection—

(i) showing separately for center-based child care services, group home child care services, family child care services, and relative care services, the number of children who received such services and the average cost of such services;

(ii) the criteria applied in determining eligibility or priority for receiving services, and sliding fee schedules;

(iii) the child care licensing and regulatory (including registration) requirements in effect in the State with respect to each type of service specified in clause (i); and

(iv) the enforcement policies and practices in effect in the State which apply to licensed and regulated child care providers (including providers required to register).

(C) Within 12 months after November 5, 1990, the Secretary shall establish uniform reporting requirements for use by the States in preparing the information required by this paragraph, and make such other provision as may be necessary or appropriate to ensure that compliance with this subsection will not be unduly burdensome on the States.

(D) Not later than July 1, 1992, the Secretary shall issue a report on the implementation of this subsection, based on such information as as[5] has been made available to the Secretary by the States.

(Aug. 14, 1935, ch. 531, title IV, §402, 49 Stat. 627; Aug. 10, 1939, ch. 666, title IV, §401, 53 Stat. 1379; Aug. 28, 1950, ch. 809, title III, pt. 2, §321, pt. 6, §361(c), (d), 64 Stat. 549, 558; Aug. 1, 1956, ch. 836, title III, §312(b), 70 Stat. 849; July 25, 1962, Pub. L. 87–543, title I, §§103, 104(a)(2), (3)(A), (B), (5)(A), 106(b), 76 Stat. 185, 188; July 30, 1965, Pub. L. 89–97, title IV, §§403(b), 410, 79 Stat. 418, 423; Jan. 2, 1968, Pub. L. 90–248, title II, §§201(a), (b), 202(a), (b), 204(b), (e), 205(a), 210(a)(2), 211(a), 213(b), 81 Stat. 877, 879, 881, 890, 892, 895, 896, 898; Dec. 28, 1971, Pub. L. 92–223, §3(a)(1)–(7), 85 Stat. 803, 804; Oct. 30, 1972, Pub. L. 92–603, title II, §299E(c), title IV, §414(a), 86 Stat. 1462, 1492; Jan. 4, 1975, Pub. L. 93–647, §§3(a)(1), (2), (8), 101(c)(2)–(5), (8), 88 Stat. 2348, 2349, 2359, 2360; Aug. 9, 1975, Pub. L. 94–88, title II, §§202, 207, 208(a), 209, 89 Stat. 434, 436, 437; Dec. 20, 1977, Pub. L. 95–216, title IV, §403(c), 91 Stat. 1561; Apr. 1, 1980, Pub. L. 96–222, title I, §101(a)(2)(A), 94 Stat. 195; June 9, 1980, Pub. L. 96–265, title IV, §§401(a)–(f), 403(a), 406(b), 94 Stat. 460–462, 465, 466; June 17, 1980, Pub. L. 96–272, title I, §101(a)(3)(A), title III, §302(a), 94 Stat. 512, 528; Oct. 19, 1980, Pub. L. 96–473, §6(f), 94 Stat. 2266; Aug. 13, 1981, Pub. L. 97–35, title XXIII, §§2301–2306(a), 2310, 2313(b), (c)(1), 2314, 2315(a), 2316, 2318, 2320(a), (b)(1), 2353(b)(1), (c), 95 Stat. 843–846, 852, 854–857, 872; Sept. 3, 1982, Pub. L. 97–248, title I, §§151(a), 152(a), 154(a), 96 Stat. 395, 396; Oct. 13, 1982, Pub. L. 97–300, title VI, §603, formerly title V, §503, 96 Stat. 1398, renumbered title VI, §603, Nov. 7, 1988, Pub. L. 100–628, title VII, §712(a)(1), (2), 102 Stat. 3248; Jan. 6, 1983, Pub. L. 97–424, title V, §545(b), 96 Stat. 2198; Apr. 20, 1983, Pub. L. 98–21, title IV, §404(b), 97 Stat. 140; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§2621–2624(a), 2625(a), 2626, 2628, 2629, 2631–2634, 2636, 2639(a), (c), 2640(a), (c), 2642(a), (b), 2651(b)(1), (2), 2663(c)(1), (3)(B), (*l*)(1), 98 Stat. 1134–1137, 1141, 1142, 1144–1146, 1149, 1165, 1166, 1171; Aug. 16, 1984, Pub. L. 98–378, §9(a)(2), 98 Stat. 1316; Apr. 7, 1986, Pub. L. 99–272, title XII, §§12303(a), 12304(a), 100 Stat. 292; Oct. 22, 1986, Pub. L. 99–514, §2, title XVIII, §1883(a)(5)(B), (b)(1)(A), (2)(A), (B), (3)(A), (4), (5), 100 Stat. 2095, 2916, 2917; Nov. 6, 1986, Pub. L. 99–603, title II, §201(b)(1), title III, §§302(b)(1), 303(e)(1), 100 Stat. 3403, 3422, 3431; Dec. 22, 1987, Pub. L. 100–203, title IX, §§9102(b), 9133(b)(1), 101 Stat. 1330–300, 1330–314; Oct. 13, 1988, Pub. L. 100–485, title I, §§102(a), 123(d), title II, §§201(a), 202(b)(1)–(3), title III, §§301, 302(a), (b)(1), (c), 303(b)(3), (f)(2)(B), (C), 304(b)(2), title IV, §§401(a)(1), (2)(A), (b)(2), (f), (h), 402(a)–(c), 403(a), 404(a), title VI, §§604(a), 605(a), 102 Stat. 2346, 2353, 2356, 2377, 2382–2384, 2392, 2393, 2395–2398, 2409; Dec. 19, 1989, Pub. L. 101–239, title X, §10403(a)(1)(B)(i), (C)(i), 103 Stat. 2487; Nov. 5, 1990, Pub. L. 101–508, title V, §§5051(a), (b), 5053(a), 5054(a), 5055(a), 5060(a), 5081(a), (c), (d), title XI, §11115(a), 104 Stat. 1388–227 to 1388–229, 1388–231, 1388–233, 1388–236, 1388–414; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13742(a), 107 Stat. 663; Oct. 20, 1994, Pub. L. 103–382, title III, §394(k), 108 Stat. 4029; Oct. 31, 1994, Pub. L. 103–432, title II, §§235(a), 264(c), 108 Stat. 4466, 4468.)

[5] So in original.

AMENDMENT OF SECTION

For repeal of amendment by sections 303(f)(2)(B), (C), 304(b)(2), and 401(h) of Pub. L. 100–485, see Effective and Termination Dates of 1988 Amendment note below.

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsec. (a)(8)(A)(v), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

Parts B, D, E, and F of this subchapter, referred to in subsecs. (a)(9), (11), (19)(A), (B)(i), (20), (27), (28), (44)(A) and (g)(1)(A)(i)(II), (2), are classified to sections 620 et seq., 651 et seq., 670 et seq., and 681 et seq., respectively, of this title.

The Food Stamp Act of 1977, referred to in subsec. (a), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Internal Revenue Code of 1986, referred to in subsecs. (a)(7)(B)(iv), (8)(A)(viii), (g)(1)(E)(ii), and (i)(4)(B), is classified to Title 26, Internal Revenue Code.

Section 603(a)(3) of this title, referred to in subsec. (e)(2), was amended generally by Pub. L. 103–66, title XIII, §13741(a), Aug. 10, 1993, 107 Stat. 663, and, as so amended, no longer contains subpars.

Section 1161 of title 8, referred to in subsec. (f)(1), (2), was repealed by Pub. L. 103–416, title II, §219(ee)(1), Oct. 25, 1994, 108 Stat. 4319.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (g)(7), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat. 3519. Title I of the Act is classified generally to subchapter I (§6301 et seq.) of chapter 70 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

CODIFICATION

October 13, 1988, referred to in subsec. (g)(1)(D), was in the original ''the date of the enactment of this section'', which was translated as meaning the date of enactment of Pub. L. 100–485, which enacted subsec. (g) of this section, to reflect the probable intent of Congress.

AMENDMENTS

1994—Subsec. (a)(13). Pub. L. 103–432, §235(a)(1), in introductory provisions substituted ''provide, at the option of the State and with respect to such category or categories as the State may select and identify in the State plan, that—'' for ''at the option of the State, but only with respect to any one or more categories of families required to report monthly to the State agency pursuant to paragraph (14), provide that—''.

Subsec. (a)(13)(A), (B). Pub. L. 103–432, §235(a)(2), struck out '', in the case of families who are required to report monthly to the State agency pursuant to paragraph (14)'' after ''to be appropriate''.

Subsec. (a)(14). Pub. L. 103–432, §264(c) amended par. (14) generally. Prior to amendment, par. (14) read as follows: ''provide, at the option of the State and with respect to such category or categories as the State may select and identify in its State plan (A) that the State agency will require each family to which it furnishes aid to families with dependent children (or to which it would provide such aid but for paragraph (22) or (32)) to report, as a condition to the continued receipt of such aid (or to continuing to be deemed to be a recipient of such aid), each month to the State agency on—

''(i) the income received, family composition, and other relevant circumstances during the prior month; and

''(ii) the income and resources it expects to receive, or any changes in circumstances affecting continued eligibility or benefit amount, that it expects to occur, in that month (or in future months);

except that the State may select categories of recipients who may report at specified less frequent intervals; and

''(B) that, in addition to whatever action may be appropriate based on other reports or information received by the State agency, the State agency will take prompt action to adjust the amount of assistance payable, as may be appropriate, on the basis of the information contained in the report (or upon the failure of the family to furnish a timely report), and will give an appropriate explanatory notice, concurrent with its action, to the family;''.

Subsec. (g)(7). Pub. L. 103–382 substituted ''title I of the Elementary and Secondary Education Act of 1965'' for ''chapter 1 of the Education Consolidation and Improvement Act of 1981''.

1993—Subsec. (a)(31). Pub. L. 103–66 substituted ''$90'' for ''$75''.

1990—Subsec. (a)(7)(B)(iv). Pub. L. 101–508, §11115(a)(1), added cl. (iv).

Subsec. (a)(9)(A). Pub. L. 101–508, §5055(a), substituted '', D, or E'' for ''or D''.

Subsec. (a)(9)(E). Pub. L. 101–508, §5054(a)(2), added cl. (E).

Subsec. (a)(13). Pub. L. 101–508, §5051(b), inserted introductory provision and struck out former introductory provision which read as follows: ''with respect to families who are required to report monthly to the State agency pursuant to paragraph (14) (and at the option of the State with respect to other families), provide that—''.

Subsec. (a)(14). Pub. L. 101–508, §5051(a)(1), which directed amendment of par. (14) by substituting ''provide, at the option of the State and with respect to such category or categories as the State may select and identify in its State plan (A)'' for ''with respect to'' and all that follows through ''(A) provide'', was executed by substituting the new language for ''with respect to families in the category of recent work history or earned income cases (and at the option of the State with respect to families in other categories), provide (A)'' in introductory provisions to reflect the probable intent of Congress.

Subsec. (a)(14)(A). Pub. L. 101–508, §5051(a)(2), in concluding provisions, struck out ''(with the prior approval of the Secretary in recent work history and earned income cases)'' after ''except that'' and ''upon a determination that to require individuals in such categories to report monthly would result in unwarranted expenditures for administration of this paragraph'' after ''frequent intervals''.

Subsec. (a)(16). Pub. L. 101–508, §5054(a)(1), amended par. (16) generally. Prior to amendment, par. (16) read as follows: ''provide that where the State agency has reason to believe that the home in which a relative and child receiving aid reside is unsuitable for the child because of the neglect, abuse, or exploitation of such child it shall bring such condition to the attention of the appropriate court or law enforcement agencies in the State, providing such data with respect to the situation it may have;''.

Subsec. (a)(18). Pub. L. 101–508, §11115(a)(2), which directed insertion of ''or 8(A)(viii)'' after ''other than paragraph 8(A)(v)'', was executed by making the insertion after ''other than paragraph (8)(A)(v)'' to reflect the probable intent of Congress.

Subsec. (a)(39). Pub. L. 101–508, §5053(a), struck out ''or legal guardian'' after ''parent'' and ''or legal guardians'' after ''parents''.

Subsec. (g)(1)(A)(vi)(II). Pub. L. 101–508, §5060(a), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''failed to cooperate with the State in establishing and enforcing his or her child support obligations.''

Subsec. (g)(6)(A). Pub. L. 101–508, §5081(c)(2), substituted ''to enforce standards with respect to child care provided to children under this part, and to provide for the training of child care providers'' for ''and to monitor child care provided to children receiving aid under the State plan approved under subsection (a) of this section''.

Subsec. (g)(6)(D). Pub. L. 101–508, §5081(c)(1), inserted before period at end '', and $50,000,000 for each of fiscal years 1992, 1993, and 1994''.

Subsec. (g)(6)(E). Pub. L. 101–508, §5081(c)(3), added subpar. (E).

Subsec. (g)(7). Pub. L. 101–508, §5081(d), inserted ''and subsection (i) of this section'' after ''this subsection''.

Subsec. (i). Pub. L. 101–508, §5081(a), added subsec. (i).

1989—Subsec. (a)(30). Pub. L. 101–239, §10403(a)(1)(B)(i), substituted ''automated data'' for ''automatic data'' in introductory provisions.

Subsec. (g)(1)(A). Pub. L. 101–239, §10403(a)(1)(C), substituted ''received aid to families with dependent'' for ''includes a child who is (or, if needy,'' in cl. (iv) and struck out comma after ''who is'' in cl. (v).

1988—Subsec. (a)(8)(A)(ii). Pub. L. 100–485, §402(b), substituted ''$90'' for ''$75''.

Subsec. (a)(8)(A)(iii). Pub. L. 100–485, §402(a), inserted ''after applying the other clauses of this subparagraph,'' before ''shall disregard'', substituted ''$175'' for ''$160'', and inserted '', or, in the case such child is under age 2, $200'' before semicolon at end.

Subsec. (a)(8)(A)(iv). Pub. L. 100–485, §202(b)(1), struck out ''(but excluding, for purposes of this subparagraph,

earned income derived from participation on a project maintained under the programs established by section 632(b)(2) and (3) of this title)'' after ''the remainder thereof''.

Subsec. (a)(8)(A)(vi). Pub. L. 100–485, §102(a), substituted ''of any child support payments for such month received in that month, and the first $50 of child support payments for each prior month received in that month if such payments were made by the absent parent in the month when due,'' for ''of any child support payments received in such month''.

Subsec. (a)(8)(A)(viii). Pub. L. 100–485, §402(c)(1), added cl. (viii).

Subsec. (a)(9)(A). Pub. L. 100–485, §202(b)(2), inserted ''(including activities under part F of this subchapter)'' after ''this part'' and substituted ''part B or D of this subchapter'' for ''part B, C, or D of this subchapter''.

Subsec. (a)(19). Pub. L. 100–485, §201(a), amended par. (19) generally, substituting subpars. (A) to (H) for former subpars. (A) to (D) and (F) to (H).

Subsec. (a)(19)(B)(i)(II). Pub. L. 100–485, §401(b)(2), (h), temporarily inserted ''(and individuals who would be recipients of such aid if the State had not exercised the option under section 607(b)(2)(B)(i) of this title)'' after ''children''. See Effective and Termination Dates of 1988 Amendment note below.

Subsec. (a)(30). Pub. L. 100–485, §402(c)(2)(B), substituted ''subsection (e)'' for ''subsection (d)''.

Subsec. (a)(35). Pub. L. 100–485, §202(b)(3), struck out par. (35) which permitted States to require participation in an employment search plan as a condition of eligibility for aid under the State plan, provided for reimbursement for related transportation and other costs, and permitted application of the sanctions imposed by par. (19)(F) for noncompliance.

Subsec. (a)(37). Pub. L. 100–485, §303(b)(3), (f)(2)(B), temporarily amended par. (37) generally. Prior to amendment par. (37) read as follows: ''provide that, in any case where a family has ceased to receive aid under the plan because (by reason of paragraph (8)(B)(ii)(II)) the provisions of paragraph (8)(A)(iv) no longer apply, such family shall be considered for purposes of subchapter XIX of this chapter to be receiving aid to families with dependent children under such plan for a period of 9 months after the last month for which the family actually received such aid; and the State may at its option extend such period by an additional period of up to 6 months in the case of a family that would be eligible during such additional period to receive aid under the plan (without regard to this paragraph) if such paragraph (8)(A)(iv) applied;''. See Effective and Termination Dates of 1988 Amendment note below.

Subsec. (a)(38)(B). Pub. L. 100–485, §401(a)(2)(A), (h), temporarily struck out ''(if such section is applicable to the State)'' after ''section 607(a) of this title''. See Effective and Termination Dates of 1988 Amendment note below.

Subsec. (a)(41), (42). Pub. L. 100–485, §401(a)(1), (f), (h), temporarily added pars. (41) and (42). See Effective and Termination Dates of 1988 Amendment note below.

Subsec. (a)(43). Pub. L. 100–485, §403(a), added par. (43).

Subsec. (a)(44). Pub. L. 100–485, §604(a), added par. (44).

Subsec. (a)(45). Pub. L. 100–485, §605(a), added par. (45).

Subsec. (d). Pub. L. 100–485, §402(c)(2)(A), struck out subsec. (d) which read as follows:

''(1) For purposes of paragraphs (7) and (8) of subsection (a) of this section, any refund of Federal income taxes made by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income credit) and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit) shall be considered earned income.

''(2) In any case in which such advance payments for a taxable year made by all employers to an individual under section 3507 of such Code exceed the amount of such individual's earned income credit allowable under section 32 of such Code for such year, so that such individual is liable under section 32(g) of such Code for a tax equal to such excess, such individual's benefit amount must be appropriately adjusted so as to provide payment to such individual of an amount equal to the amount of the benefits lost by such individual on account of such excess advance payments.''

Subsec. (e). Pub. L. 100–485, §123(d), substituted ''automated'' for ''automatic'' in introductory provisions of par. (1) and par. (2)(B) and (C).

Subsec. (g). Pub. L. 100–485, §301, added subsec. (g).

Subsec. (g)(1)(A). Pub. L. 100–485, §§302(a), (c), 304(b)(2), temporarily designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cls. (ii) to (vii). See Effective and Termination Dates of 1988 Amendment note below.

Subsec. (g)(3)(A). Pub. L. 100–485, §§302(b)(1), 304(b)(2), temporarily designated existing provisions as cl. (i) and added cl. (ii). See Effective and Termination Dates of 1988 Amendment note below.

Subsec. (h). Pub. L. 100–485, §404(a), added subsec. (h).

1987—Subsec. (a)(24). Pub. L. 100–203, §9133(b)(1), substituted ''if an individual is receiving benefits under subchapter XVI of this chapter or his costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made to his or her minor parent as provided in section 675(4)(B) of this title, then, for the period for which such benefits are received or such costs are so covered,'' for ''if an individual is receiving benefits under subchapter XVI of this chapter, then, for the period for which such benefits are received,''.

Subsec. (a)(40). Pub. L. 100–203, §9102(b), added par. (40).

1986—Subsec. (a). Pub. L. 99–514, §1883(b)(5), realigned margins in concluding provisions.

Pub. L. 99–514, §1883(b)(4)(A), provided for technical corrections relating to closing punctuation in pars. (34) through (39).

Subsec. (a)(14). Pub. L. 99–514, §1883(a)(5)(B), repealed Pub. L. 98–369, §2663(c)(1)(B). See 1984 Amendment note below.

Subsec. (a)(26)(C). Pub. L. 99–272, §12304(a), added subpar. (C).

Subsec. (a)(31)(A). Pub. L. 99–514, §1883(b)(1)(A), struck out ''(or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in fulltime employment or not employed throughout the month)'' after ''such month''.

Subsec. (a)(36). Pub. L. 99–514, §1883(b)(4)(B), substituted a semicolon for a period, which amendment was previously made by Pub. L. 98–369, §2624(a)(2).

Subsec. (a)(37). Pub. L. 99–514, §1883(b)(4)(A), struck out ''and'' after ''applied;''.

Subsec. (a)(38). Pub. L. 99–514, §1883(b)(2)(A), (B), substituted ''section 606(a) of this title or in section 607(a) of this title (if such section is applicable to the State),'' for ''section 606(a) of this title,'' in subpar. (B) and realigned margins so as to remove concluding provisions beginning with ''if such parent, brother, or sister is living'' from subpar. (B), and relocate such provisions after and below subpar. (B).

Subsec. (a)(39). Pub. L. 99–514, §1883(b)(3)(A), substituted ''of 18'' for ''selected by the State pursuant to section 606(a)(2) of this title''.

Subsec. (d)(1). Pub. L. 99–514, §2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (e)(2)(C). Pub. L. 99–272, §12303(a), added subpar. (C).

Subsec. (f). Pub. L. 99–603, §201(b)(1), added subsec. (f).

Subsec. (f)(1). Pub. L. 99–603, §303(e)(1)(A), inserted reference to subsection (d)(7) of section 1161 of title 8.

Pub. L. 99–603, §302(b)(1)(A), inserted reference to subsection (f) of section 1160 of title 8.

Subsec. (f)(2). Pub. L. 99–603, §303(e)(1)(B), (C), inserted reference to aliens disqualified from receiving aid under subsection (d)(7) of section 1161 of title 8 and reference to adjustment of status under section 1161 of title 8.

Pub. L. 99–603, §302(b)(1)(B), (C), inserted reference to aliens disqualified from receiving aid under subsection

(f) of section 1160 of title 8 and reference to adjustment of status under section 1160 of title 8.

1984—Subsec. (a). Pub. L. 98–369, § 2663(c)(1)(E)(i), (ii), substituted ''must—'' for ''must'' preceding par. (1) and restructured and realigned the margins of all subdivisions of subsec. (a).

Pub. L. 98–369, § 2628(c), inserted ''The Secretary may waive any of the requirements imposed under or in connection with paragraphs (13) and (14) of this subsection to the extent necessary to make such requirements compatible with the corresponding reporting and budgeting requirements by the Food Stamp Act of 1977.'' at end of subsec. (a).

Subsec. (a)(5). Pub. L. 98–369, § 2663(*l*)(1), substituted ''Secretary'' for ''Administrator'' in two places.

Pub. L. 98–369, § 2663(c)(1)(E)(iii), struck out ''and'' after the semicolon.

Subsec. (a)(6). Pub. L. 98–369, § 2663(*l*)(1), substituted ''Secretary'' for ''Administrator'' in two places.

Subsec. (a)(7)(B). Pub. L. 98–369, § 2626, designated existing provisions after ''for purposes of this subparagraph'' as cl. (i) and added cls. (ii) and (iii).

Subsec. (a)(8)(A)(ii). Pub. L. 98–369, § 2622, struck out ''(or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in full-time employment or not employed throughout the month)'' after ''for such month''.

Subsec. (a)(8)(A)(iv). Pub. L. 98–369, § 2623(a), inserted ''(I)'' after ''equal to'' and ''(II)'' after ''plus''.

Subsec. (a)(8)(A)(vi). Pub. L. 98–369, § 2640(c), added cl. (vi).

Subsec. (a)(8)(A)(vii). Pub. L. 98–369, § 2642(b), added cl. (vii).

Subsec. (a)(8)(B)(ii)(I). Pub. L. 98–369, § 2623(b), substituted two lettered subdivisions (a) and (b) in subcl. (I) for '', under subparagraph (A)(iv),'' after ''shall not disregard'' and struck out ''and subparagraph (A)(iv) has not already been applied to their income for four consecutive months while they were receiving aid under the plan'' after ''four months preceding such month''.

Subsec. (a)(8)(B)(ii)(II). Pub. L. 98–369, § 2623(c), substituted ''shall not apply the provisions of subclause (II) of such subparagraph to any month after such month, or apply the provisions of subclause (I) of such subparagraph to any month after the eighth month following such month, for so long as he continues to receive aid under the plan, and shall not apply the provisions of either such subclause to any month thereafter'' for ''shall not apply the provisions of subparagraph (A)(iv) for so long as he continues to receive aid under the plan and shall not apply such provisions to any month thereafter''.

Subsec. (a)(8)(C). Pub. L. 98–369, § 2625(a), added subpar. (C).

Subsec. (a)(9). Pub. L. 98–369, § 2663(c)(1)(A), substituted ''use or disclosure'' for ''use of disclosure''.

Pub. L. 98–369, § 2636, inserted ''; but such safeguards shall not prevent the State agency or the local agency responsible for the administration of the State plan in the locality (whether or not the State has enacted legislation allowing public access to Federal welfare records) from furnishing a State or local law enforcement officer, upon his request, with the current address of any recipient if the officer furnishes the agency with such recipient's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive felon, that the location or apprehension of such felon is within the officer's official duties, and that the request is made in the proper exercise of those duties''.

Subsec. (a)(13). Pub. L. 98–369, § 2628(a), substituted ''with respect to families who are required to report monthly to the State agency pursuant to paragraph (14) (and at the option of the State with respect to other families), provide that—'' for ''provide that—'' in provisions preceding subpar. (A) and ''(but only where the Secretary determines it to be appropriate, in the case of families who are required to report monthly to the State agency pursuant to paragraph (14))'' for ''but only where the Secretary determines it to be appropriate'' in subpars. (A) and (B).

Subsec. (a)(14)(A). Pub. L. 98–369, § 2628(b), substituted ''with respect to families in the category of recent work history or earned income cases (and at the option of the State with respect to families in other categories), provide (A) that'' for ''(A) provide that'', ''(with the prior approval of the Secretary in recent work history and earned income cases)'' for ''with the prior approval of the Secretary'', and ''upon a determination that'' for ''upon the State's showing to the satisfaction of the Secretary that''.

Pub. L. 98–369, § 2663(c)(1)(B), which made amendment identical to Pub. L. 98–369, § 2628(b)(1), substituting ''provide (A) that'' for ''(A) provide that'' was repealed by Pub. L. 99–514, § 1883(a)(5)(B).

Subsec. (a)(15). Pub. L. 98–369, § 2663(c)(1)(E)(iv), substituted ''paragraph'' for ''clause'' in subpars. (A) and (B).

Subsec. (a)(17). Pub. L. 98–369, § 2632(b)(1), substituted ''a child or relative applying for or receiving aid to families with dependent children, or any other person whose need the State considers when determining the income of a family,'' for ''a person specified in paragraph (8)(A)(i) or (ii)'' in provisions preceding subpar. (A).

Pub. L. 98–369, § 2632(b)(2), substituted ''an amount of earned or unearned income'' for ''an amount of income'' in provisions preceding subpar. (A).

Pub. L. 98–369, § 2632(a), inserted provisions following subpar. (B) relating to instances in which the State may recalculate the period of ineligibility for remaining months in the period.

Subsec. (a)(18). Pub. L. 98–369, § 2621, substituted ''185 percent'' for ''150 percent''.

Pub. L. 98–369, § 2642(a), inserted '', except that in determining the total income of the family the State may exclude any earned income of a dependent child who is a full-time student, in such amounts and for such period of time (not to exceed 6 months) as the State may determine''.

Subsec. (a)(19)(A)(ix). Pub. L. 98–369, § 2631, added cl. (ix).

Subsec. (a)(19)(D). Pub. L. 98–369, § 2663(c)(1)(E)(v), substituted ''paragraph (7)'' for ''section 602(a)(7) of this title''.

Subsec. (a)(19)(F)(i). Pub. L. 98–369, § 2663(c)(1)(E)(iv), substituted ''paragraph'' for ''clause''.

Pub. L. 98–369, § 2663(c)(3)(B)(i), substituted ''clauses (A) through (D)'' for ''clauses (A) through (E)''.

Pub. L. 98–369, § 2663(c)(1)(C), substituted ''or section 672'' for ''or section 608''.

Pub. L. 98–369, § 2634(a), substituted ''will be made unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made'' for ''will be made''.

Subsec. (a)(19)(F)(iv), (v). Pub. L. 98–369, § 2663(c)(1)(E)(iv), substituted ''paragraph'' for ''clause''.

Subsec. (a)(19)(G)(iv). Pub. L. 98–369, § 2663(c)(1)(D), struck out the comma before ''that''.

Subsec. (a)(22). Pub. L. 98–369, § 2633, inserted ''(including a current recipient whose overpayment occurred during a prior period of eligibility)'' after ''current recipient of such aid'' in subpar. (A) and ''except that no recovery need be attempted or carried out under subparagraph (B) in any case, other than a case involving fraud on the part of the recipient, where (as determined by the State agency in accordance with criteria for determining cost-effectiveness, and with dollar limitations, which shall be prescribed by the Secretary in regulations) the cost of recovery would equal or exceed the amount of the overpayment involved;'' after subpar. (C).

Subsec. (a)(25). Pub. L. 98–369, § 2651(b)(1), in amending par. (25) generally, substituted ''provide that information is requested and exchanged for purposes of income an eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title'' for ''provide (A) that, as a condition of eligibility under the plan, each applicant for or recipient

of aid shall furnish to the State agency his social security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan''.

Subsec. (a)(26)(B). Pub. L. 98–369, §2663(c)(3)(B)(ii), substituted ''clauses (A) through (D)'' for ''subparagraphs (A) through (E)''.

Pub. L. 98–369, §2634(b), inserted ''unless the State agency, after making reasonable efforts, is unable to locate an appropriate individual to whom such payments can be made''.

Subsec. (a)(27). Pub. L. 98–378, §9(a)(2), substituted ''operates a child support program in substantial compliance with such plan'' for ''operate a child support program in conformity with such plan''.

Subsec. (a)(29). Pub. L. 98–369, §2651(b)(2), struck out par. (29) which provided that, effective Oct. 1, 1979, certain wage information would be requested and utilized.

Subsec. (a)(36). Pub. L. 98–369, §2639(a), (c), temporarily added par. (36). Former pars. (36) were struck out. See Effective and Termination Dates of 1983 and 1984 Amendment notes below.

Subsec. (a)(37). Pub. L. 98–369, §2624(a), added par. (37).

Subsec. (a)(38), (39). Pub. L. 98–369, §2640(a), added pars. (38) and (39).

Subsec. (c). Pub. L. 98–369, §2663(c)(1)(F), substituted ''paragraph'' for ''clause'' in three places.

Subsec. (d)(1). Pub. L. 98–369, §2629, substituted ''For purposes of paragraphs (7) and (8) of subsection (a) of this section, any refund of Federal income taxes made by reason of section 32 of the Internal Revenue Code of 1954 (relating to earned income credit) and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit) shall be considered earned income'' for ''For purposes of this part, an individual's 'income' shall also include, to the extent and under the circumstances prescribed by the Secretary, an amount (which shall be treated as earned income for purposes of this part) equal to the earned income advance amount (under section 3507(a) of the Internal Revenue Code of 1954) that is (or, upon the filing of an earned income eligibility certificate, would be) payable to such individual.''.

Subsec. (d)(2). Pub. L. 98–369, §2663(c)(1)(G), substituted ''section 32'' and ''section 32(g)'' for ''section 43'' and ''section 43(g)'', respectively.

1983—Subsec. (a)(36). Pub. L. 98–21 temporarily amended par. (36) by substituting ''shall not include as income any support or maintenance assistance furnished to or on behalf of the family which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support and maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which'' for ''shall not include as income any assistance received to assist in meeting the costs of home energy, including both heating and cooling, which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) (A) is based on need for such assistance, and (B)'' after ''the State agency''. See Effective and Termination Dates of 1983 Amendments note below.

Pub. L. 97–424 temporarily added par. (36). See Effective and Termination Dates of 1983 Amendments note below.

1982—Subsec. (a)(8)(A)(iii). Pub. L. 97–300, §503(a)(1), struck out ''and'' at end of cl. (iii).

Subsec. (a)(8)(A)(iv). Pub. L. 97–300, §503(a)(2), substituted ''disregarded under any other clause of this subparagraph'' for ''already disregarded under the preceding provisions of this paragraph''.

Subsec. (a)(8)(A)(v). Pub. L. 97–300, §503(a)(1), (3), added cl. (v).

Subsec. (a)(10). Pub. L. 97–248, §152(a), designated existing provisions as subpar. (A), struck out '', effective July 1, 1951,'' after ''provide'', and added subpar. (B).

Subsec. (a)(18). Pub. L. 97–300, §503(b), inserted '', other than paragraph (8)(A)(v)'' after ''without application of paragraph (8)''.

Subsec. (a)(34). Pub. L. 97–248, §151(a), added par. (34).

Subsec. (a)(35). Pub. L. 97–248, §154(a), added par. (35).

1981—Subsec. (a)(5). Pub. L. 97–35, §2353(b)(1), struck out par. (5) as in effect in Puerto Rico, Guam, and the Virgin Islands, which required the State plan to provide methods of administration, including after Jan. 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, with limitations on the authority of the Secretary, as are necessary for the proper and efficient operation of the plan and for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community services aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency.

Subsec. (a)(7). Pub. L. 97–35, §§2302, 2320(b)(1), inserted provisions requiring the State, in determining eligibility for aid to families with dependent children, to limit allowable resources to $1,000, equity value, per family, excluding the home and one automobile, and permitting the State to take into account the value of benefits received from food stamps or housing subsidies, by treating the value of the food stamp coupons or housing subsidy as income, up to the value for food or shelter that is included in the State payment standard, and inserted reference to par. (31) and section 615 of this title.

Subsec. (a)(8). Pub. L. 97–35, §2301, substituted provisions that applied the disregards for recipients in the order of the first $75 of the family's earned income, then, the cost of care for a child or incapacitated adult, up to $160 per child monthly, and finally $30, plus one-third of the remainder of earned income, not already disregarded, and provided for limitations on the payment of the $30 and one-third disregard, for provisions that in determining AFDC benefits, States are required to disregard from the recipient's total income the first $30 earned monthly, plus one-third of additional earnings, and any expenses, including child care, reasonably attributable to the earning of any such income, with the work expense disregard available to both recipients and new applicants, and the $30 and one-third applicable only to those already on the rolls, with no limitation on the length of time these amounts must be continued to be disregarded.

Subsec. (a)(13). Pub. L. 97–35, §2315(a), added par. (13).

Pub. L. 97–35, §2353(b)(1), struck out par. (13) as in effect to Puerto Rico, Guam, and the Virgin Islands, which required the State plan to provide a description of the services which the State agency makes available to maintain and strengthen family life for children, including a description of the steps taken to assure maximum utilization of other agencies providing other or similar services.

Subsec. (a)(14). Pub. L. 97–35, §2315(a), added par. (14).

Pub. L. 97–35, §2353(b)(1), struck out par. (14) as in effect in Puerto Rico, Guam, and the Virgin Islands, which required the State plan to provide for the development and application of a program of such family services and child-welfare services for each child and relative who receives aid to families with dependent children and each appropriate individual living in the same home as a relative or child receiving such aid whose needs are taken into account in making the determination under cl. (7), as may be necessary in light of the particular home conditions and other needs of such child, relative, and individual in order to assist such child, relative, and individual to attain or retain capability for self-support and care to maintain and strengthen family life and to foster child development.

Subsec. (a)(15). Pub. L. 97–35, §2353(c), struck out ''as part of the program of the State for the provision of services under subchapter XX of this chapter'' after

''(15) provide'' and ''or clause (14)'' after ''provided under this clause''.

Pub. L. 97–35, § 2353(b)(1), struck out par. (15) as in effect in Puerto Rico, Guam, and the Virgin Islands, which required the State plan to provide for the development of a program for preventing births out of wedlock and otherwise strengthening family life, to implement such program by assuring that in all appropriate cases family planning services are offered and provided promptly to all individuals voluntarily requesting such services, with acceptance of such services not a prerequisite to eligibility for or receipt of any other services under the plan, and to the extent that services provided under this clause and cl. (14) are furnished by the staff of the State agency or local agency administering the State plan, to establish a single organizational unit in each State or local agency responsible for furnishing such services.

Subsec. (a)(17). Pub. L. 97–35, § 2304, added par. (17).

Subsec. (a)(18). Pub. L. 97–35, § 2303, added par. (18).

Subsec. (a)(19)(A). Pub. L. 97–35, §§ 2313(b), 2314, in cl. (1) substituted ''attending, full-time, an elementary, secondary, or vocational (or technical) school'' for ''attending school full time'', in cl. (v) ''the parent'' for ''a mother'' and ''personally providing care for the child with only very brief and infrequent absences from the child'' for ''caring for the child'', in cl. (vi) ''parent or other caretaker of a child who is deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, if another adult relative'' for ''mother or other female caretaker of a child, if the father or another adult male relative'', added cl. (viii), and in provision following cl. (viii) substituted ''his or her option'' for ''her option'', ''if he or she so desires'' for ''if she so desires'', ''to him or her'' for ''to her'', and ''he or she should decide'' for ''she should decide''.

Subsec. (a)(19)(F). Pub. L. 97–35, § 2313(c)(1), added cl. (ii) and redesignated former cls. (ii) to (iv) as (iii) to (v), respectively.

Subsec. (a)(21). Pub. L. 97–35, § 2310, added par. (21).

Subsec. (a)(22). Pub. L. 97–35, § 2318, added par. (22).

Subsec. (a)(31) to (33). Pub. L. 97–35, §§ 2306(a), 2316, 2320(a), added pars. (31) to (33), respectively.

Subsec. (d)(1). Pub. L. 97–35, § 2305, substituted provision that for purposes of this part ''income'' include, as prescribed by the Secretary, an amount equal to the earned income advance amount under section 3507(a) of title 26 that is or would be payable to such individual, for provision that for purposes of subsec. (a)(7) and (8), any refund of Federal income taxes under section 43 of title 26 and any employer payment under section 3507 of title 26 be considered earned income.

1980—Subsec. (a)(8)(E). Pub. L. 96–272, § 302(a), added subpar. (E).

Subsec. (a)(9). Pub. L. 96–265, § 403(a), added cl. (D) and reference to cl. (D) in existing provisions.

Subsec. (a)(19). Pub. L. 96–265, § 401(a)–(f), inserted provisions relating to the work requirement of the AFDC program, including addition of cl. (vii) of subpar. (A) and subpar. (H), and struck out the ''except'' clause at end of subpar. (F).

Subsec. (a)(20). Pub. L. 96–272, § 101(a)(3)(A), substituted provisions requiring State agencies to provide that the States have in effect plans for foster care and adoption assistance approved under part E of this subchapter for provisions requiring such agencies to provide for aid to families with dependent children in the form of foster care.

Subsec. (a)(27). Pub. L. 96–473, § 6(f)(1), substituted ''provide that'' for ''provide, that''.

Subsec. (a)(29). Pub. L. 96–473, § 6(f)(2), substituted ''provide'' for ''provided''.

Subsec. (a)(30). Pub. L. 96–265, § 406(b)(1), added cl. (30).

Subsec. (d). Pub. L. 96–473 redesignated subsec. (d), as added by Pub. L. 96–265, as (e).

Pub. L. 96–265, § 406(b)(2), added subsec. (d).

Pub. L. 96–222 added subsec. (d).

Subsec. (e). Pub. L. 96–473 redesignated subsec. (d), as added by Pub. L. 96–265, as (e).

1977—Subsec. (a)(29). Pub. L. 95–216 added cl. (29).

1975—Subsec. (a)(5). Pub. L. 93–647, § 3(a)(1), except with respect to Puerto Rico, Guam, and the Virgin Islands, struck out designation of provisions as ''(A)'' before ''such methods of administration'', and provisions of former subpar. (B) relating to training and use of paid subprofessional staff, with emphasis in full or part time employment of low income recipients, and use of nonpaid or partially paid volunteers in providing services to applicants and in assisting advisory committees.

Subsec. (a)(9). Pub. L. 94–88, § 207, substituted requirement that the State plan provide safeguards restricting the use or disclosure of information concerning applicants or recipients to purposes directly connected with the administration of State plan approved under this part, any plan or program under other parts of this subchapter, or subchapters I, X, XIV, XVI, XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of such plan or program, and the administration of any other Federal or federally assisted program which provides assistance directly to individuals on the basis of need, and that the safeguards so provided shall prohibit disclosure to any committee or a legislative body, of any information which identifies by name or address any such applicant or recipient, for requirement that the State plan provide safeguards which permit the use or disclosure of information concerning applicants or recipients only to public officials who require such information in connection with their official duties, or other persons for purposes directly connected with the administration of aid to families with dependent children.

Pub. L. 93–647, § 101(c)(2), substituted provisions permitting disclosure to public officials requiring such information in connection with their duties and other persons for purposes directly connected with the administration of aid to families with dependent children, for provisions restricting disclosure to purposes directly connected with the administration of aid to such families.

Subsec. (a)(10). Pub. L. 93–647, § 101(c)(3), inserted '', subject to paragraphs (25) and (26),'' before ''be furnished''.

Subsec. (a)(11). Pub. L. 93–647, § 101(c)(4), substituted provisions relating to prompt notice to the State child support collection agency with respect to an abandoned or deserted child, for provisions relating to prompt notice to the appropriate law-enforcement officials.

Subsec. (a)(13), (14). Pub. L. 93–647, § 3(a)(2), except with respect to Puerto Rico, Guam, and the Virgin Islands, repealed pars. (13) and (14) relating to a description of services made available by State agency to strengthen family life, including steps taken to utilize other services, and relating to development and application of program for such family services and child welfare services for prevention of abuse, neglect, etc., of children, respectively.

Subsec. (a)(15). Pub. L. 93–647, § 3(a)(8), except with respect to Puerto Rico, Guam, and the Virgin Islands, inserted ''as part of the program of the State for the provision of services under subchapter XX of this chapter'' after ''provide''.

Subsec. (a)(17), (18). Pub. L. 93–647, § 101(c)(8), repealed pars. (17) and (18) which provided for the development and implementation of a state agency program for support and establishment of paternity of children born out of wedlock or abandoned by their parents, a single organizational unit in the local agency to be responsible for administration of such program, and cooperative arrangements with courts and law enforcement officials to assist in the administration of the program.

Subsec. (a)(21), (22). Pub. L. 93–647, § 101(c)(8), repealed pars. (21) and (22) which provided for report by State agency to Secretary of names and social security numbers of unlocated parents with dependent children against whom an order of support has been issued, and

for cooperation with State agency in administration of the plan of another State in locating and securing compliance with parents in another State with such support order.

Subsec. (a)(24). Pub. L. 93–647, §101(c)(5)(B), inserted ''provide that'' after ''(24)''.

Subsec. (a)(25) to (27). Pub. L. 93–647, §101(c)(5)(C), added pars. (25) to (27).

Subsec. (a)(26). Pub. L. 94–88, §208(a), substituted in subpar. (B), ''payments or property due such applicant or such child, unless (in either case) such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the child on whose behalf aid is claimed;'' for ''payments or property due such applicant or such child''.

Subsec. (a)(27). Pub. L. 94–88, §§202(2), 209, substituted ''the State has in effect'' for ''the States have in effect'', and inserted ''and'' at end.

Subsec. (a)(28). Pub. L. 94–88, §202(3), added par. (28).

1972—Subsec. (a)(15)(A). Pub. L. 92–603, §299E(c), inserted ''(including minors who can be considered sexually active)'' after ''in all appropriate cases,'' and ''and are provided promptly (directly or under arrangements with others) to all individuals voluntarily requesting such services'' after ''family planning services are offered to them''. Notwithstanding the directory language that amendment be made to subsec. (a)(15)(B), the amendment was executed to subsec. (a)(15)(A) as the probable intent of Congress.

Subsec. (a)(24). Pub. L. 92–603, §414(a), added par. (24).

1971—Subsec. (a)(15). Pub. L. 92–223, §3(a)(1), incorporated in subpar. (A) existing provisions of former subpars. (A)–(C), less cl. (i) of former subpar. (A) respecting assurance, to maximum extent possible, that relative, child, and individual will enter the labor force and accept employment so as to become self-sufficient and cl. (i) of former subpar. (B) respecting assurances that the relative, child, or individual who is referred to the Secretary of Labor pursuant to cl. (19) is furnished child-care services, struck out former subpar. (D) provisions for review of each program as may be necessary (as frequently as may be necessary, but at least once a year) to insure that it is being effectively implemented and former subpar. (E) provisions for furnishing the Secretary with such reports as he may specify showing the results of such programs, and redesignated as subpar. (B) provisions of former subpar. (F), substituting ''services provided'' and ''are furnished by the staff'' for ''such programs'' and ''are developed and implemented by services furnished by the staff''.

Subsec. (a)(19)(A). Pub. L. 92–223, §3(a)(2), in revising subpar. (A), substituted provisions for registration for manpower services, training, and employment, as a condition of eligibility for aid under this part, for former provisions respecting prompt referral to the Secretary of Labor or his representative for participation under a work incentive program established by part C; incorporated in: cl. (i), provisions of former cl. (i) respecting ''each appropriate child and relative who has attained age sixteen and is receiving aid to families with dependent children'' and former cl. (vi); cl. (ii), provisions of former cl. (iv); cl. (iii), provisions of former cl. (v); cl. (iv), provisions of former cl. (vii) less requirement of presence in home on substantially continuous basis; added cls. (v) and (vi) and concluding sentence respecting advice of option to register and of availability of child care services; and struck out former cl. (ii) for referral to Secretary of each appropriate individual (living in the same home as a relative and child receiving such aid) who has attained such age (16) and whose needs are taken into account in making the determination under subsec. (a)(7) of this section and former cl. (iii) for such referral of any other person claiming aid under the plan (not included in cls. (i) and (ii)), who, after being informed of the work incentive program, requests such referral unless the State agency determines that participation in any of such programs would be inimical to the welfare of such person or the family.

Subsec. (a)(19)(B). Pub. L. 92–223, §3(a)(3), substituted ''by reason of such registration or the individual's certification to the Secretary of Labor under subparagraph (G) of this paragraph,'' for ''by reason of such referral''.

Subsec. (a)(19)(C). Pub. L. 92–223, §3(a)(4), substituted ''10 per centum'' for ''20 per centum''.

Subsec. (a)(19)(E). Pub. L. 92–223, §3(a)(5), struck out subpar. (E) provisions respecting participation in special work projects and State agency payments and supplementation of earnings, plus 20 per centum of individual's earnings from special work projects.

Subsec. (a)(19)(F). Pub. L. 92–223, §3(a)(6), substituted ''(certified to the Secretary of Labor pursuant to subparagraph (G)'' for ''(referred to the Secretary of Labor pursuant to subparagraph (A)(i) and (ii) and section 607(b)(2) of this title)'' in text preceding cl. (i).

Subsec. (a)(19)(G). Pub. L. 92–223, §3(a)(7), added subpar. (G).

1968—Subsec. (a)(5). Pub. L. 90–248, §210(a)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(7). Pub. L. 90–248, §202(b), substituted introductory phrase ''except as may be otherwise provided in clause (8)'' for former concluding text that ''except that, in making such determination, (A) the State agency may disregard not more than $50 per month of earned income of each dependent child under the age of 18 but not in excess of $150 per month of earned income of such dependent children in the same home, (B) the State agency may, subject to limitations prescribed by the Secretary, permit all or any portion of the earned or other income to be set aside for future identifiable needs of a dependent child, and (C) the State agency may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than $5 of any income'' and required the consideration of other income and resources of any other individual (living in the same home as the child and relative) whose needs the State determined should be considered in determining the need of the child or relative claiming aid.

Subsec. (a)(8). Pub. L. 90–248, §202(b), added par. (8). Former par. (8) redesignated (9).

Subsec. (a)(8)(A). Pub. L. 90–248, §204(e), provided that cl. (ii) shall not apply to earned income derived from participation on a project maintained under programs established by section 632(b)(2) and (3) of this title.

Subsec. (a)(9) to (12). Pub. L. 90–248, §202(a), redesignated former pars. (8) to (11) as (9) to (12), respectively. Former par. (12) redesignated (13).

Subsec. (a)(13). Pub. L. 90–248, §§201(a)(2), 202(a), redesignated former par. (12) as (13), and struck out ''(if any)'' after ''description of the services''. Former par. (13) redesignated (14).

Subsec. (a)(14). Pub. L. 90–248, §§201(a)(1), 202(a), redesignated former par. (13) as (14), substituted ''family services, as defined in section 606(d) of this title, and child-welfare services, as defined in section 625 of this title,'' for ''welfare and related services'' and ''other needs of such child, relative, and individual to attain or retain capability for self-support and care and in order to maintain and strengthen family life and to foster child development'' for ''other needs of such child, and provided for coordination of such programs, and any other services provided for children under the State plan, with the child-welfare services plan developed as provided in sections 721–728 of this title, with a view toward providing welfare and related services which will best promote the welfare of such child and his family'', and extended the program to each relative and each appropriate individual (living in the same home as a relative and child receiving such aid whose needs are taken into account in making the determination under cl. (7)).

Subsec. (a)(15) to (23). Pub. L. 90–248, §§201(a)(1)(C), 204(b), 205(a), 211(a), 213(b), added pars. (15) to (18), (19), (20), (21) and (22), and (23), respectively.

Subsec. (c). Pub. L. 90–248, § 201(b), added subsec. (c).

1965—Subsec. (a)(7). Pub. L. 89–97, §§ 403(b), 410, added cl. (C) placing a ceiling of $5 upon the amount of any income which the state may disregard before disregarding the amounts referred to in (A) and (B); and designated as cl. (B) the existing provision following the first semicolon which authorized the state agency, in making its determination, to permit all or any portion of the earned or other income to be set aside for future identifiable needs of a dependent child, and inserted, before such provision, cl. (A) which authorized the state agency to disregard not more than $50 per month of earned income of each dependent child under the age of 18 but not in excess of $150 per month of earned income of such dependent children in the same home, respectively.

1962—Pub. L. 87–543, § 104(a)(2), substituted ''aid and services to needy families with children'' for ''aid to dependent children'' in section catchline.

Subsec. (a). Pub. L. 87–543, §§ 103, 104(a)(3)(A), (5)(A), 106(b), substituted ''aid and services to needy families with children'' for ''aid to dependent children'', in opening provisions, and ''aid to families with dependent children'' for ''aid to dependent children'' wherever appearing in pars. (4), (7) to (10), inserted provision respecting the consideration of expenses reasonably attributable to the earning of income and the exception provision in par. (7), and added par. (13).

Subsec. (b). Pub. L. 87–543, § 104(a)(3)(B), substituted ''aid to families with dependent children'' for ''aid to dependent children''.

1956—Subsec. (a)(12). Act Aug. 1, 1956, added par. (12).

1950—Subsec. (a). Act Aug. 28, 1950, §§ 321(a), (b), 361(c), substituted in par. (4) ''provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to dependent children is or is not acted upon with reasonable promptness'' for ''provide for granting to any individual, whose claim with respect to aid to a dependent child is denied,'', substituted ''Administrator'' for ''Board'' in pars. (5) and (6), struck out ''and'' preceding par. (8) and a semicolon after it, and added pars. (9) to (11).

Subsec. (b). Act Aug. 28, 1950, §§ 321(c), 361(c), (d), substituted ''Administrator'' for ''Board'', and ''he'', ''him'', or ''his'' for ''it'', or ''its'' wherever appearing, and prevented denial of aid in cases where the child of parents normally resident of a State happens to be born across the State line.

1939—Subsec. (a). Act Aug. 10, 1939, amended par. (5) generally and added pars. (7) and (8).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 235(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1994, and shall apply to payments under part A of title IV of the Social Security Act [this part] for fiscal year 1994 and such payments for succeeding fiscal years.''

Section 264(h) of Pub. L. 103–432 provided that: ''Each amendment made by this section [amending this section and sections 1320b–9, 1382a, and 1383 of this title] shall take effect as if included in the provision of OBRA–1990 [Pub. L. 101–508] to which the amendment relates at the time such provision became law.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13742(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1993, and shall apply to payments under part A of title IV of the Social Security Act [this part] for fiscal year 1994 and such payments for succeeding fiscal years.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5051(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall take effect with respect to reports pertaining to, or aid payable for, months beginning in or after October 1990.''

Section 5053(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 5054(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 671 of this title] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

Section 5055(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 5060(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 5081(e) of Pub. L. 101–508 provided that: ''Except as otherwise expressly provided, the amendments made by this section [amending this section and section 603 of this title] shall take effect on October 1, 1990.''

Section 11115(e) of Pub. L. 101–508 provided that: ''The amendments made by subsections (a) though [sic] (c) [amending this section and sections 1382a and 1382b of this title] shall apply to determinations of income or resources made for any period after December 31, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10403(a)(1)(B)(ii) of Pub. L. 101–239 provided that: ''The amendments made by clause (i) [amending this section and section 652 of this title] shall take effect as if such amendments had been included in section 123(d) of the Family Support Act of 1988 [Pub. L. 100–485] on the date of the enactment of such Act [Oct. 13, 1988].''

Section 10403(a)(1)(C)(ii) of Pub. L. 101–239 provided that: ''The amendments made by clause (i) [amending this section] shall take effect as if such amendments had been included in section 302(c) of the Family Support Act of 1988 [Pub. L. 100–485] on the date of the enactment of such Act [Oct. 13, 1988].''

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Section 102(c) of Pub. L. 100–485 provided that: ''The amendments made by this section [amending this section and section 657 of this title] shall become effective on the first day of the first calendar quarter which begins after the date of the enactment of this Act [Oct. 13, 1988].''

Amendment by sections 201(a) and 202(b)(1)–(3) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485 at such earlier effective dates, see section 204(a), (b)(1) of Pub. L. 100–485, set out as an Effective Date note under section 681 of this title.

Section 303(f) of Pub. L. 100–485, as amended by Pub. L. 101–239, title VI, § 6411(i)(2), Dec. 19, 1989, 103 Stat. 2273, provided that:

''(1) The amendments made by this section [enacting section 1396r–6 of this title, amending sections 1396a and 1396d of this title] (other than subsections (b)(3), (d), and (e) [amending this section and section 1396a of this title and provisions set out as a note under section 606 of this title]) shall apply to payments under title XIX of the Social Security Act [section 1396 et seq. of this title] for calendar quarters beginning on or after April 1, 1990 (or, in the case of the Commonwealth of Kentucky, October 1, 1990) (without regard to whether regulations to implement such amendments are promulgated by such date), with respect to families that cease to be eligible for aid under part A of title IV of the Social Security Act [this part] on or after such date.

''(2)(A) The amendment made by subsection (b)(3) [amending this section] shall become effective on April 1, 1990, but such amendment shall not apply with respect to families that cease to be eligible for aid under part A of title IV of the Social Security Act before such date.

''(B) Effective September 30, 1998, the amendment made by subsection (b)(3) is repealed.

''(C) Section 402(a)(37) of the Social Security Act [subsec. (a)(37) of this section], as in effect immediately before April 1, 1990, shall become effective on September 30, 1998.

''(3) The amendment made by subsection (d) [amending section 1396a of this title] shall become effective on the effective date of section 402(a)(43) of the Social Security Act, as inserted by section 403(a) of this Act [see section 403(b) of Pub. L. 100–485 set out below].

''(4) The amendment made by subsection (e) [amending provisions set out as a note under section 606 of this title] shall take effect on October 1, 1988.''

Section 304 of Pub. L. 100–485 provided that:

''(a) CHILD CARE FOR PARTICIPANTS IN EMPLOYMENT, EDUCATION, AND TRAINING.—The amendment made by section 301 [amending this section] shall become effective with respect to a State on the date the amendments made by title II become effective [see section 204 of Pub. L. 100–485, set out as an Effective Date note under section 681 of this title] with respect to the State.

''(b) TRANSITIONAL CHILD CARE.—(1) The amendments made by section 302 [amending this section and section 603 of this title] shall become effective on April 1, 1990.

''(2) Effective September 30, 1998, the amendments made by section 302 are repealed.''

Section 401(g) of Pub. L. 100–485, as amended by Pub. L. 103–432, title II, §234(a), Oct. 31, 1994, 108 Stat. 4466, provided that:

''(1) Except as provided in paragraph (2), and in section 1905(m)(2) of the Social Security Act [section 1396d(m)(2) of this title] (as added by subsection (d)(2) of this section), the amendments made by this section [amending this section and sections 607, 1396a, and 1396d of this title] shall become effective on October 1, 1990.

''(2) The amendments made by this section shall not become effective with respect to Puerto Rico, American Samoa, Guam, or the Virgin Islands, until the date of the repeal of the limitations contained in section 1108(a) of the Social Security Act [section 1308(a) of this title] on payments to such jurisdictions for purposes of making maintenance payments under parts A and E of title IV of such Act [this part and part E of this subchapter].''

[Section 234(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending section 401(g)(2) of Pub. L. 100–485, set out above] shall take effect as if included in the provision of the Family Support Act of 1988 [Pub. L. 100–485] to which the amendment relates at the time such provision became law.'']

Section 401(h) of Pub. L. 100–485 provided that: ''Effective September 30, 1998, the amendments made by this section [amending this section and sections 607, 1396a, and 1396d of this title] (other than by subsection (d) [amending sections 1396a and 1396d of this title]) are repealed, and the provisions of law so amended (as in effect immediately before the effective date of such amendments [see section 401(g) of Pub. L. 100–485, set out above]) shall apply as if such amendments had never been made.''

Section 402(d) of Pub. L. 100–485 provided that: ''The amendments made by this section [amending this section] shall become effective on October 1, 1989.''

Section 403(b) of Pub. L. 100–485 provided that: ''The amendments made by this section [amending this section] shall become effective on the first day of the first calendar quarter to begin one year or more after the date of the enactment of this Act [Oct. 13, 1988].''

Section 404(b) of Pub. L. 100–485 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Oct. 13, 1988].''

Section 604(b) of Pub. L. 100–485 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on July 1, 1989.''

Section 605(b)(1) of Pub. L. 100–485 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on October 1, 1989.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9102(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting section 616 of this title and amending this section and section 603 of this title] shall become effective April 1, 1988.''

Section 9133(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 672, 673, and 675 of this title] shall become effective April 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1883(a)(5) of Pub. L. 99–514 provided that the amendment made by that section is effective July 18, 1984.

Section 1883(b)(1)(B) of Pub. L. 99–514 provided that: ''The amendment made by this paragraph [amending this section] shall be effective beginning October 1, 1984.''

Section 1883(b)(2)(C) of Pub. L. 99–514 provided that: ''The amendments made by this paragraph [amending this section] shall be effective beginning October 1, 1984.''

Section 1883(b)(3)(B) of Pub. L. 99–514 provided that: ''The amendment made by subparagraph (A) [amending this section] shall be effective beginning October 1, 1984.''

Section 1883(b)(4)(B) of Pub. L. 99–514 provided that the amendment made by that section is effective July 18, 1984.

Amendment by section 1883(b)(5) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Section 12303(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986], but shall apply only with respect to sums expended by the States for the purposes described in section 403(a)(3)(B) of the Social Security Act [section 603(a)(3)(B) of this title] on or after the date of the enactment of this Act.''

Section 12304(b) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to calendar quarters beginning on or after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 9(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section and sections 603 and 652 of this title] shall be effective on and after October 1, 1983.''

Section 2624(b) of Pub. L. 98–369 provided that:

''(1) The amendments made by this section [amending this section] shall apply with respect to months beginning on or after October 1, 1984.

''(2) Such amendments shall apply with respect to families which ceased to receive aid under the applicable State plan (for the reason stated in section 402(a)(37) of the Social Security Act [subsec. (a)(37) of this section] as added by subsection (a) of this section) before October 1, 1984, as well as with respect to families which cease to receive aid (for that reason) on or after that date; but any family which ceased to receive such aid before that date, in order to be eligible to be treated as receiving aid under the plan for any period after ceasing to receive such aid (as provided for in such section 402(a)(37))—

''(A) must make its application for such treatment no later than the end of the sixth month after the month in which final regulations governing the application of such section 402(a)(37) are promulgated by the Secretary of Health and Human Services (and in

the case of any such family the term 'last month for which the family actually received such aid' as used in such section 402(a)(37) means the month before the month in which the family makes such application);

''(B) must be a family that would have been continuously eligible for aid under the State plan (without regard to the amendments made by this section), from the time it ceased to receive such aid to the time of its application under subparagraph (A), if section 402(a)(8)(A)(iv) of such Act applied; and

''(C) must fully disclose, in its application under subparagraph (A), any health insurance coverage which its members may have in effect.''

Section 2625(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Section 2632(b)(2) of Pub. L. 98–369 provided that the amendment made by such section 2632(b)(2) is effective July 18, 1984.

Section 2639(d) of Pub. L. 98–369, as amended by Pub. L. 100–203, title IX, § 9101, Dec. 22, 1987, 101 Stat. 1330–299, provided that: ''The amendments made by this section [amending this section and section 1382a of this title and repealing section 545(a)–(c) of Pub. L. 97–424 and section 404 of Pub. L. 98–21, which had previously amended this section and section 1382a(b)(13) of this title and had provided effective dates for those prior amendments] shall be effective with respect to months which begin after September 30, 1984.''

[Section 9101 of Pub. L. 100–203 provided that the amendment made by that section (section 2639(d) of Pub. L. 98–369, set out as a note above) is effective as of Oct. 1, 1987.]

Section 2642(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall become effective June 1, 1984.''

Section 2646 of Pub. L. 98–369 provided that: ''Except as otherwise specifically provided in this subtitle [subtitle B (§§ 2611–2646) of Pub. L. 98–369], the provisions of parts 1 and 2 [sections 2611 to 2642 of Pub. L. 98–369, enacting section 1320b–6 of this title, amending this section and sections 609, 614, 615, 657, 1320a–6, 1382 to 1382b, 1382j, and 1383 of this title and section 51 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under this section and sections 609, 614, 1320a–6, 1382a, and 1383 of this title and section 51 of Title 26] and the amendments made thereby shall take effect on October 1, 1984.''

Amendment by section 2651(b)(1), (2) of Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

Amendment by section 2663(c)(1) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 401 of this title.

Effective and Termination Dates of 1983 Amendments

Section 404(c) of Pub. L. 98–21, which provided that the amendments made by section 404 [amending this section and section 1382a of this title] were effective with respect to months which began after April 1983 and ended before Oct. 1, 1984, was repealed by section 2369(c)(2), (d) of Pub. L. 98–369, effective with respect to months which begin after Sept. 30, 1984.

Section 545(c) of Pub. L. 97–424, which provided that the amendments made by subsections (a) and (b) of section 545 [amending this section and section 1382a of this title] were effective with respect to home energy assistance received in months beginning on or after Jan. 6, 1983, and prior to July 1, 1985, was repealed by section 2639(c)(1), (d) of Pub. L. 98–369, effective with respect to months which begin after Sept. 30, 1984.

Effective Date of 1982 Amendment

Section 151(b) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall become effective on October 1, 1982.''

Section 152(b) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section] shall become effective on October 1, 1982.''

Section 154(d) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 603 and 609 of this title] shall become effective on October 1, 1982.''

Effective Date of 1981 Amendment

Amendment by section 2320(a) of Pub. L. 97–35 effective Aug. 13, 1981, and amendment by section 2320(b)(1) of Pub. L. 97–35 effective with respect to individuals applying for aid to families with dependent children under any approved State plan for the first time after September 30, 1981, see section 2320(c) of Pub. L. 97–35, set out as an Effective Date note under section 615 of this title.

Section 2321 of Pub. L. 97–35 provided that:

''(a) Except as otherwise specifically provided in the preceding sections of this chapter [sections 2301–2320 of Pub. L. 97–35] or in subsection (b), the provisions of this chapter and the amendments and repeals made by this chapter [enacting sections 614 and 645 of this title, amending this section and sections 603, 606, 607, 609, and 612 of this title, and repealing a provision set out as a note under section 609 of this title] shall become effective on October 1, 1981.

''(b) If a State agency administering a plan approved under part A of title IV of the Social Security Act [part A of this subchapter] demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by this chapter to which the effective date specified in subsection (a) applies, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or after October 1, 1981. For purposes of the preceding sentence, the term 'session of a State's legislature' includes any regular, special, budget, or other session of a State legislature.''

Amendment by section 2353(b)(1), (c) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

Effective Date of 1980 Amendments

Section 101(a)(3)(B) of Pub. L. 96–272 provided that: ''The amendment made by subparagraph (A) [amending this section] shall become effective with respect to any State at the same time as the repeal of section 408 [section 608 of this title] becomes effective with respect to such State under the provisions of paragraph (2) of this subsection [set out as a Repeal of Section note under section 608 of this title].''

Section 302(b) of Pub. L. 96–272 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [June 17, 1980].''

Section 401(i) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 603 of this title] (other than those made by subsections (c) and (d) [amending this section]) shall take effect on September 30, 1980, and the joint regulations referred to in section 402(a)(19)(F) of the Social Security Act [subsec. (a)(19)(F) of this section] (as amended by this section) shall be promulgated on or before such date, and take effect on such date.''

Section 403(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 1397b of this title] shall take effect on September 1, 1980.''

Amendment by section 406(b) of Pub. L. 96–265 effective with respect to expenditures made during calendar

quarters beginning on or after July 1, 1981, see section 406(d) of Pub. L. 96–265, set out as an Effective Date note under section 613 of this title.

Section 101(b)(1)(B) of Pub. L. 96–222 provided that: ''The amendments made by subparagraphs (A) and (B) of subsection (a)(2) [amending this section and section 1382a of this title] shall apply to payments for months beginning after December 31, 1979.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 403(d) of Pub. L. 95–216 provided that: ''The amendments made by this section [enacting section 611 of this title and amending this section and section 3304 of Title 26, Internal Revenue Code] shall be effective on the date of the enactment of this Act [Dec. 20, 1977].''

EFFECTIVE DATE OF 1975 AMENDMENTS

Section 210 of Pub. L. 94–88 provided that: ''The amendments made by this title [amending this section and sections 603, 654, and 655 of this title and enacting provisions set out as notes under this section and section 655 of this title] shall, unless otherwise specified therein, become effective August 1, 1975.''

Amendment by section 3(a)(1), (2), (8) of Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, but not effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands, or Guam, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

Amendment by section 101(c)(2)–(5), (8) of Pub. L. 93–647 effective August 1, 1975, see section 101(f) of Pub. L. 93–647, set out as an Effective Date note under section 651 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 299E(c) of Pub. L. 92–603 provided that the amendment made by that section is effective Jan. 1, 1973.

Section 414(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective on and after January 1, 1973.''

EFFECTIVE DATE OF 1971 AMENDMENT

Section 3(c) of Pub. L. 92–223 provided that: ''The amendments made by this section [amending this section and sections 603, 607, 630 to 636, 638, 639, 641 to 644 of this title] shall, except as otherwise specified herein, take effect on July 1, 1972.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 201(g) of Pub. L. 90–248 provided that:

''(1) The amendments made by subsections (a), (b), (d), (e), and (f) of this section [amending this section and sections 603, 606, and 608 of this title] shall be effective July 1, 1968 (or earlier if the State plan so provides); except that (A) if on the date of enactment of this Act [Jan. 2, 1968] the agency of a State referred to in section 402(a)(3) of the Social Security Act [subsec. (a)(3) of this section] is different from the agency of such State responsible for administering the plan for child-welfare services developed pursuant to part B of title IV of the Social Security Act [part B of this subchapter] the provisions of section 402(a)(15)(F) of such Act (added thereto by subsection (a) of this section) shall not apply with respect to such agencies but only so long as such agencies of the State are different, and (B) if on such date the local agency administering the plan of a State under part A of title IV of such Act [part A of this subchapter] in a political subdivision is different from the local agency in such subdivision administering the State's plan for child-welfare services developed pursuant to part B of title IV of such Act the provisions of such section 402(a)(15)(F) shall not apply with respect to such agencies but only so long as such local agencies are different.

''(2) The amendment made by subsection (c) [amending section 603 of this title], shall apply with respect to services furnished after June 30, 1968, or furnished after such earlier date as the State plan may provide with respect to the amendment made by paragraph (1) of this subsection.''

Section 202(b) of Pub. L. 90–248 provided that the amendment made by such section 202(b) is effective July 1, 1969.

Section 204(c)(1) of Pub. L. 90–248 provided that: ''The amendment made by subsection (b) [amending this section] shall in the case of any State be effective on July 1, 1968, or if a statue of such State prevents it from complying with the requirements of such amendment on such date, such amendment shall with respect to such State be effective on July 1, 1969; except such amendment shall be effective earlier (in the case of any State), but not before April 1, 1968, if a modification of the State plan to comply with such amendment is approved on an earlier date.''

Amendment by section 210(a)(2) of Pub. L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under part A of this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub. L. 90–248, set out as a note under section 302 of this title.

Section 211(a) of Pub. L. 90–248 provided that the amendment made by that section is effective Jan. 1, 1969.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 403(b) of Pub. L. 89–97 provided that the amendment made by that section is effective Oct. 1, 1965.

Section 410 of Pub. L. 89–97 provided that the amendment made by that section is effective July 1, 1965.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by sections 103 and 106(b) of Pub. L. 87–543 effective July 1, 1963, see section 202(a) of Pub. L. 87–543, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, effective July 1, 1957, see section 314 [315] of act Aug. 1, 1956, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 321(a), (c) of act Aug. 28, 1950, provided that the amendments made by that section are effective July 1, 1951, and July 1, 1952, respectively.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 401(b) of act Aug. 10, 1939, provided that the amendment made by that section is effective July 1, 1941.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary under subsec. (a)(5) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(D) of this title.

NEW HOPE DEMONSTRATION PROJECT

Section 233 of Pub. L. 103–432 provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall provide for a demonstration project for a qualified program to be conducted in Milwaukee, Wisconsin, in accordance with this section.

''(b) PAYMENTS.—For each calendar quarter in which there is a qualified program approved under this subsection, the Secretary shall pay to the operator of the qualified program, for no more than 20 calendar quarters, an amount equal to the aggregate amount that would otherwise have been payable to the State with respect to participants in the program for such calendar quarter, in the absence of the program, for cash assistance and child care under part A of title IV of the

Social Security Act [this part], for medical assistance under title XIX of such Act [subchapter XIX of this chapter], and for administrative expenses related to such assistance. The amount payable to the operator of the program under this section shall not include the costs of evaluating the effects of the program.

''(c) DEMONSTRATION PROJECT DESCRIBED.—For purposes of this section, the term 'qualified program' means a program operated—

''(1) by The New Hope Project, Inc., a private, not-for-profit corporation incorporated under the laws of the State of Wisconsin (in this section referred to as the 'operator'), which offers low-income residents of Milwaukee, Wisconsin, employment, wage supplements, child care, health care, and counseling and training for job retention or advancement; and

''(2) in accordance with an application submitted by the operator of the program and approved by the Secretary based on the Secretary's determination that the application satisfies the requirements of subsection (d).

''(d) CONTENTS OF APPLICATION.—The operator of the qualified program shall provide, in its application to conduct a demonstration project for the program, that the following terms and conditions will be met:

''(1) The operator will develop and implement an evaluation plan designed to provide valid and reliable information on the impact and implementation of the program. The evaluation plan will include adequately sized groups of project participants and control groups assigned at random.

''(2) The operator will develop and implement a plan addressing the services and assistance to be provided by the program, the timing and determination of payments from the Secretary to the operator of the program, and the roles and responsibilities of the Secretary and the operator with respect to meeting the requirements of this paragraph.

''(3) The operator will specify a reliable methodology for determining expenditures to be paid to the operator by the Secretary, with assistance from the Secretary in calculating the amount that would otherwise have been payable to the State in the absence of the program, pursuant to subsection (b).

''(4) The operator will issue an interim and final report on the results of the evaluation described in paragraph (1) to the Secretary at such times as required by the Secretary.

''(e) EFFECTIVE DATE.—This section shall take effect on the first day of the first calendar quarter that begins after the date of the enactment of this Act [Oct. 31, 1994].''

AFDC WAIVER OF OVERPAYMENT

Section 11115(d) of Pub. L. 101–508 provided that: ''For the purposes of section 402(a)(18) of the Social Security Act (42 U.S.C. 602(a)(18)), a State agency designated under a State plan under section 402(a)(3) of such Act may waive any overpayment of aid that resulted from the receipt by a family of a refund of Federal income taxes by reason of section 32 of the Internal Revenue Code of 1986 [26 U.S.C. 32] (relating to earned income tax credit) or any payment made to such family by an employer under section 3507 of such Code [26 U.S.C. 3507] (relating to advance payment of earned income credit) during the period beginning on January 1, 1990, and ending on December 31, 1990.''

DEMONSTRATION OF EFFECTIVENESS OF MINNESOTA FAMILY INVESTMENT PLAN

Section 8015 of Pub. L. 101–239, as amended by Pub. L. 101–508, title V, § 5059, Nov. 5, 1990, 104 Stat. 1388–230, provided that:

''(a) IN GENERAL.—Upon written application of the State of Minnesota (in this section referred to as the 'State') within 24 months after the date of the enactment of this Act [Dec. 19, 1989], and after the Secretary of Health and Human Services approves the application as meeting the requirements set forth in subsection (b), the State may conduct a demonstration project to determine whether the State family investment plan helps families to become self-supporting and enhances the ability of families to care for their children more effectively than does the State program of aid to families with dependent children under parts A and F of title IV of the Social Security Act [this part and part F of this subchapter].

''(b) PROJECT REQUIREMENTS.—In an application submitted under subsection (a), the State shall provide that the following terms and conditions shall be in effect under the demonstration project:

''(1) FIELD TRIALS.—The project will consist of 2 field trials, conducted as follows:

''(A) URBAN FIELD TRIAL.—1 field trial will be conducted in 1 or more of the following counties in the State:

''(i) Anoka.
''(ii) Carver.
''(iii) Dakota.
''(iv) Hennepin.
''(v) Scott.
''(vi) Washington.

''(B) RURAL FIELD TRIAL.—1 field trial will be conducted in 1 or more counties in the State not specified in subparagraph (A).

''(C) NUMBER OF FAMILIES INVOLVED.—The field trials will not involve more than a total of 6,000 families at any one time, excluding families whose sole involvement is as members of control groups needed to evaluate the project.

''(2) AUTHORITY TO IMPLEMENT FIELD TRIALS DIFFERENTLY.—The implementation of the family investment plan in 1 field trial may be different from the implementation of such plan in the other field trial.

''(3) WAIVERS REQUIRED BEFORE PROJECT BEGINS.—The project will not begin before all waivers required as described in subsection (d) have been granted.

''(4) BEGINNING OF PROJECT.—

''(A) IN GENERAL.—The project will begin during the first month of a calendar quarter.

''(B) BEGIN DEFINED.—For purposes of this section, the project begins when the first family receives assistance under the project.

''(5) PROJECT TO BE OPERATED IN ACCORDANCE WITH CERTAIN MINNESOTA LAWS.—The project will be operated in accordance with the 1989 Minnesota Laws, sections 6 through 11, 13, 130, and 132 of article 5 of chapter 282, and all amendments to the Laws of Minnesota, to the extent that such laws and amendments are consistent with the goals of the project and this subsection.

''(6) PROJECT PARTICIPANTS INELIGIBLE FOR AFDC.—Each family which participates in the project or that is assigned to and found eligible for the project will not be eligible for aid under the State plan approved under section 402(a) of the Social Security Act [subsec. (a) of this section].

''(7) MEDICAID ELIGIBILITY RULES APPLICABLE TO PROJECT.—

''(A) ELIGIBILITY OF PARTICIPANTS.—

''(i) IN GENERAL.—Each family which participates in the project and would (but for such participation) be eligible for aid under the State plan approved under section 402(a) of the Social Security Act will be treated as receiving such aid for purposes of the State plan approved under section 1902(a) of such Act [section 1396a(a) of this title].

''(ii) ELIGIBILITY EXTENDED FOR PROJECT PARTICIPANTS WITH INCREASED EMPLOYMENT INCOME.—Each family which participates in the project and, during such participation, would (but for such participation) become ineligible for aid under the State plan approved under section 402(a) of the Social Security Act by reason of increased income from employment will, for purposes of section 1925 of such Act [section 1396r–6 of this title], be treated as a family that has become ineligible for such aid.

''(B) ELIGIBILITY EXTENDED FOR PERSONS LEAVING PROJECT BECAUSE OF INCREASED RECEIPT OF CHILD

SUPPORT.—Each family whose participation in the project is terminated by reason of the collection or increased collection of child support under part D of title IV of the Social Security Act [part D of this subchapter] will be treated as a recipient of aid to families with dependent children for purposes of title XIX of such Act [subchapter XIX of this chapter] for an additional 4 calendar months beginning with the month in which the termination occurs.

''(8) AFDC RULES TO APPLY GENERALLY.—

''(A) IN GENERAL.—Except where inconsistent with this subsection, the requirements of the State plan approved under section 402(a) of the Social Security Act will apply to the project, unless waived by the Secretary of Health and Human Services in accordance with subsection (d).

''(B) RULES RELATING TO PARTICIPATION IN EDUCATION, EMPLOYMENT, AND TRAINING ACTIVITIES.—

''(i) PARTICIPATION GENERALLY NOT REQUIRED.—Except as provided in clause (ii), the State will not require any individual who applies for or receives assistance under the project to comply with any education, employment, or training requirement of title IV of the Social Security Act [this subchapter], unless required to do so under a contract entered into under the project.

''(ii) AUTHORITY TO REQUIRE PARTICIPATION OF PARENT OF CHILD AGE 1 OR OLDER.—The State may require any individual to comply with any education, employment, or training requirement imposed under the project if the State plan approved under section 402(a) of the Social Security Act does not prohibit the State from requiring such compliance (except that the age of the youngest child may be age 1 under the project even if the State plan specifies age 3), and the individual—

''(I) receives assistance under the project; and

''(II) is the parent or relative of a child who has attained the age of 1 year (except that, in a 2-parent family, this clause applies only to 1 parent).

''(9) AVAILABILITY OF EDUCATION, EMPLOYMENT, AND TRAINING SERVICES.—The State will make available education, employment, and training services equivalent to those services available under the State plan approved under part F of title IV of the Social Security Act [part F of this subchapter] to families required to enter into and comply with a contract with a county agency under the 1989 Minnesota Laws, section 10 of article 5 of chapter 282.

''(10) ASSISTANCE UNDER PROJECT NOT LESS THAN UNDER AFDC AND FOOD STAMP PROGRAM.—

''(A) ESTABLISHMENT OF POLICIES AND STANDARDS.—The State will establish policies and standards to ensure that, except when a sanction is implemented under the 1989 Minnesota Laws, subdivision 3 of section 10 of article 5 of chapter 282, families participating in the project receive assistance under the project in an amount not less than the aggregate value of the assistance that such families would have received under the State plan approved under section 402(a) of such Act and under the food stamp program established under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.] in the absence of the project.

''(B) IDENTIFICATION OF CHARACTERISTICS OF PARTICIPANTS WHO MIGHT RECEIVE LESS BENEFITS THAN UNDER AFDC AND FOOD STAMP PROGRAM.—The State will identify the set or sets of characteristics of families that (but for this paragraph) might receive benefits under the project in an amount less than the amount required under subparagraph (A) to be provided to such family.

''(C) DETERMINATION OF BENEFIT LEVEL FOR PARTICIPANTS WITH IDENTIFIED CHARACTERISTICS.—The State will establish a mechanism to determine, for each family with any set of characteristics identified under subparagraph (B), whether the family would (but for this paragraph) receive benefits under the project in an amount less than the amount required under subparagraph (A) to be provided to such family.

''(D) ASSISTANCE UNDER PROJECT INCREASED WHERE NECESSARY.—The State will, for each family which would (but for this paragraph) receive benefits under the project in an amount less than the amount required under subparagraph (A) to be provided to such family, increase the amount of such benefits to such family to the amount so required.

''(11) TERMINATION OF PROJECT.—The project will terminate at the end of the 5-year period beginning on the first day of the month during which the project begins, or, if earlier—

''(A) 180 days after the State notifies the Secretary of Health and Human Services that the State intends to terminate the project;

''(B) 180 days after the Secretary of Health and Human Services, after 30 days written notice to the State and opportunity for a hearing, determines that the State has materially failed to comply with this section; or

''(C) on agreement by the State and the Secretary of Health and Human Services.

''(12) LIABILITY FOR COSTS.—For each fiscal year, the Secretary shall not be liable for any costs related to carrying out the project in excess of those that the Secretary would have been liable for had the project not been implemented, except for costs for evaluating the project.

''(c) FUNDING.—

''(1) IN GENERAL.—If an application submitted under subsection (a) by the State complies with the requirements specified in subsection (b) and contains an evaluation plan which meets the requirements of subsection (g), and the Secretary of Health and Human Services approves the application, then the Secretary shall, from amounts made available under parts A and F of title IV of the Social Security Act [this part and part F of this subchapter]—

''(A) pay the State for each calendar quarter, pursuant to section 403 of such Act [section 603 of this title], the amounts that would have been payable to the State during such calendar quarter, in the absence of the demonstration project, for cash assistance, child care, education, employment and training, and administrative expenses under the State plan approved under section 402(a) [subsec. (a) of this section] of such Act;

''(B) reimburse the State at the rate of 25 percent, for expenses of evaluating the effects of the project.

''(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed to prevent the State from claiming and receiving reimbursement for additional persons who would qualify for assistance under the State plan approved under section 402(a) of the Social Security Act, for costs attributable to increases in the State's payment standard under such plan, or for any other benefits and services for which Federal matching funds are available under parts A and F of title IV of such Act.

''(d) WAIVER AUTHORITY.—

''(1) AFDC WAIVERS.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary of Health and Human Services shall, with respect to the demonstration project under this section, waive any requirement of part A or F of title IV of the Social Security Act [this part or part F of this subchapter] that, if applied, would prevent the State from (i) carrying out the project in accordance with subsection (b), or (ii) effectively achieving its purposes, but only to the extent necessary to enable the State to carry out the project.

''(B) LIMITATIONS.—The Secretary of Health and Human Services may not, with respect to the demonstration project under this section—

''(i) waive any requirement of section 402(a)(4) [subsec. (a)(4) of this section] or 482(h) of the Social Security Act [section 682(h) of this title];

''(ii) except when a sanction is implemented under the 1989 Minnesota Laws, subdivision 3 of

section 10 of article 5 of chapter 282, permit the State to provide assistance to any family under the project in an amount less than the aggregate value of the assistance that would have been provided to such family under the State plan approved under section 402(a) of such Act and under the food stamp program established under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.] in the absence of the project; or

''(iii) waive any requirement of subparagraph (C), (D), or (E) of section 402(a)(19) of such Act (except that the exemption for a parent with a child under 1 year of age need not be specified in the State plan).

''(2) OTHER WAIVERS.—If, under this section, the Secretary of Health and Human Services approves an application by the State to conduct a demonstration project relating to the State family investment plan, the Secretary of Health and Human Services shall, in order to enable the State to implement the demonstration project—

''(A)(i) require that the State treat each family participating in the project as individuals eligible for medical assistance under section 1902(a)(10)(A) of the Social Security Act [section 1396a(a)(10)(A) of this title],

''(ii) require that the State treat, for purposes of section 1925 of such Act [section 1396r–6 of this title], each family whose participation in the project is terminated by reason of increased income from employment as a family that has become ineligible for aid under the State plan approved under part A of title IV of such Act, and

''(iii) require that the State treat each family whose participation in the project is terminated by reason of the collection or increased collection of child support under part D of title IV of the Social Security Act [part D of this subchapter] as a recipient of aid to families with dependent children for purposes of title XIX of such Act [subchapter XIX of this chapter] for an additional 4 calendar months beginning with the month in which such termination occurs; and

''(B) make payment, under section 1903 of such Act [section 1396b of this title], for medical assistance and administrative expenses for families participating in the project in the same manner as such payments may be made for medical assistance and administrative expenses for individuals entitled to benefits under title XIX of such Act, except that the aggregate amount of such payments may not exceed the aggregate amount of payments that would have been made for those families in the absence of such project.

''(e) DEFINITIONS OF CERTAIN TERMS.—As used in this section, the terms 'family' and 'contract' shall have the meaning given such terms by the 1989 Minnesota Laws, sections 6 through 11, 13, 130, and 132 of article 5 of chapter 282.

''(f) QUALITY CONTROL.—Cases participating in the demonstration project under this section during a fiscal year shall be excluded from any sample taken for purposes of determining under section 403(i) or 408 of the Social Security Act [sections 603(i), 608 of this title], whichever is applicable, the rate at which the State made overpayments under part A of title IV of such Act [this part] for the fiscal year. For purposes of such sections 403(i) and 408, payments made by the State under the project shall be treated as payments made under the State plan approved under section 402(a) of such Act [subsec. (a) of this section].

''(g) EVALUATION OF PROJECT.—

''(1) EVALUATION PLAN.—The State shall develop and implement an evaluation plan designed to provide reliable information on the impact and implementation of the demonstration project. The evaluation plan shall include groups of project participants and control groups assigned at random in the field trial conducted in accordance with subsection (b)(1)(A).

''(2) EVALUATION.—The evaluation conducted under the evaluation plan shall measure the extent to which the project increases family employment and income, prevents long-term dependency, moves families toward self-support, reduces total assistance payments, and simplifies the welfare system.

''(3) REPORTS.—The State shall issue an interim report and a final report on the results of the evaluation described in paragraph (2) to the Secretary of Health and Human Services at such times as the Secretary shall require.

''(h) REPORT TO CONGRESS.—Within 3 months after receipt of the final report issued pursuant to subsection (g)(3), the Secretary of Health and Human Services shall report to the Congress the results of the evaluation described in subsection (g)(2).

''(i) CONSTRUCTION.—For purposes of any Federal, State, or local law other than part A of title IV of the Social Security Act [this part], the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.], or this section—

''(1) families participating in the project shall be considered to be recipients of aid under such part; and

''(2) cash assistance provided under the project to any such family and not designated by the State as food assistance shall be treated as if such assistance were aid received under such part.''

STUDY OF WELFARE REQUALIFICATION AND PROMULGATION OF REGULATIONS

Section 302(d) of Pub. L. 100–485 provided that: ''The Secretary of Health and Human Services shall conduct a study to determine whether individuals who ceased receiving aid under the State program of aid to families with dependent children approved under this part [probably means part A of subchapter IV of this chapter] have begun again to receive such aid in order to requalify for additional months of transition benefits, and if the study reveals that such is the case, the Secretary shall, not earlier than October 1, 1991, issue regulations which restrict such requalification.''

STUDY ON EFFECTS OF EXTENDING ELIGIBILITY FOR CHILD CARE

Section 302(e) of Pub. L. 100–485 provided that: ''The Secretary of Health and Human Services shall conduct a study on the effectiveness of the amendments made by this section [amending this section and section 603 of this title] in reducing welfare dependence and assisting families in making the transition from welfare to employment, and such other effects of such amendments as the Secretary may find appropriate, and shall report the results of such study not later than September 30, 1997.''

CONGRESSIONAL BUDGET OFFICE STUDY ON IMPLEMENTATION OF NATIONAL MINIMUM PAYMENT STANDARD

Section 405 of Pub. L. 100–485 provided that:

''(a) IN GENERAL.—The Congressional Budget Office shall conduct a study on the implementation of the amendments proposed by section 101 of the bill introduced in the Senate of the United States during the 100th Congress and designated S. 862 (relating to the requirement of a minimum payment standard under part A of title IV of the Social Security Act [this part] with a Federal matching rate of 90 percent).

''(b) DESCRIPTION OF STUDY.—The study conducted under subsection (a) shall assess the extent to which—

''(1) the goal of budget neutrality may be preserved by repealing the programs included in, but not limited to, the programs described in the amendments proposed by section 301 of the bill described in subsection (a) over a more gradual period of time in conjunction with corresponding increases (up to 90 percent) in the Federal matching rates under part A of title IV [this part], and title XIX [subchapter XIX of this chapter], of the Social Security Act; and

''(2) the effects on local governments of repealing Federal programs could be mitigated by providing, over a period of time that corresponds with more gradual increases in the Federal matching rates

under such part A and title XIX, general revenue supplements to those localities with the lowest levels of fiscal capacity and pass-throughs to units of local government.

''(c) REPORT TO CONGRESS.—The Congressional Budget Office shall report on the results of the study conducted under this section not later than 12 months after the date of the enactment of this Act [Oct. 13, 1988].

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.''

STUDY OF NEW NATIONAL APPROACHES TO WELFARE BENEFITS FOR LOW-INCOME FAMILIES WITH CHILDREN

Section 406 of Pub. L. 100–485 provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall enter into a contract or arrangement with the National Academy of Sciences for the study of a new national system of welfare benefits for low-income families with children, giving particular attention to what an appropriate national minimum benefit might be and how it should be calculated. The study shall give consideration to alternative minimum benefit proposals including proposals for benefits based on a family living standard, on weighted national median income, on State median income, and on the poverty level, and shall take into account the probable impact of a national minimum benefit on individuals and on State and local governments.

''(b) METHODOLOGY.—(1) The study under this section shall include the development of a uniform national methodology which could be used to calculate State-specific family living standards and benefits based on other minimum benefit proposals.

''(2) The methodology so developed shall be designed to identify a single uniform measure suitable for application in each State, and shall—

''(A) take into account actual living costs in each State while permitting variances in such costs as between the different geographic areas of the State;

''(B) take into account variations in actual living costs in each State for families of different sizes and composition; and

''(C) specify an effective process for reassessing and updating both the methodology and the resulting family living standards and benefits based on other minimum benefit policies at least once every 4 years.

''(3) The methodology so developed shall reflect the costs of basic necessities including housing, furnishings, food, clothing, transportation, utilities, and other maintenance items; and the study shall take into account variations in costs for different geographic areas of the State where such costs may be substantially different, and variations in costs for families of different sizes and composition.

''(c) OTHER CONSIDERATIONS; PROGRESSION TO PROPOSED MINIMUM BENEFIT LEVELS.—In order to assess the implications of States moving to a new system of welfare benefits, the study shall include an analysis of the relationship between a State's fiscal capacity and other circumstances and constraints and the application of a full family living standard or other minimum benefit policy. The study shall propose a formula designed to achieve a uniform progression from the level of assistance currently being provided for low-income families with children under the AFDC program, the food stamp program, and the low-income energy assistance program, by each State, to a level based on the full family living standard or other minimum benefit policy for that State. For this purpose the Secretary shall define the term 'low-income families with children' in a manner which reflects all families that include dependent children as defined for purposes of the AFDC program.

''(d) REPORT AND RECOMMENDATIONS.—The Academy shall report its recommendations resulting from the study under this section to the Secretary no later than 24 months after the date of the enactment of this Act [Oct. 13, 1988]; and the Secretary shall promptly transmit such recommendations to the Congress.

''(e) AUTHORIZATION OF FUNDS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.''

PROMULGATION OF REGULATIONS

Section 605(b)(2) of Pub. L. 100–485 provided that: ''The Secretary of Health and Human Services shall issue final regulations with respect to the requirement added by the amendment made by subsection (a) [amending this section] not later than 6 months after the date of the enactment of this Act [Oct. 13, 1988].''

DEMONSTRATION OF FAMILY INDEPENDENCE PROGRAM

Section 9121 of Pub. L. 100–203 authorized the State of Washington, upon application of the State and approval by the Secretary of Health and Human Services, to conduct a demonstration project for the purpose of testing whether operation of its Family Independence Program enacted in May 1987, as an alternative to the AFDC program under title IV of the Social Security Act (this subchapter), would more effectively break the cycle of poverty and provide families with opportunities for economic independence and strengthened family functioning, which project was to begin on date first individual is enrolled in Program and end five years after that date, unless terminated earlier on notice by the State or the Secretary.

CHILD SUPPORT DEMONSTRATION PROGRAM IN NEW YORK STATE

Section 9122 of Pub. L. 100–203 authorized the State of New York, upon application by the State and approval by the Secretary of Health and Human Services, to conduct a demonstration program in accordance with this section for the purpose of testing the State's Child Support Supplemental Program as an alternative to the program of Aid to Families with Dependent Children under title IV of the Social Security Act (this subchapter), which program was to be conducted for not to exceed five years.

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

WAIVER FOR NONCOMPLIANCE WITH RETROACTIVE AMENDMENTS

Section 1883(b)(11) of Pub. L. 99–514 provided that:

''(A) The failure by a State to comply with the provisions of any amendment made by paragraph (1), (2), (3), or (10) [enacting section 678 of this title and amending this section] or the imposition by a State of any requirement inconsistent with such provisions, in the administration of its plan approved under section 402(a) of the Social Security Act [subsec. (a) of this section] during the period beginning October 1, 1984, and ending on the day preceding the date of the enactment of this Act [Oct. 22, 1986], shall not be considered to be failure to comply substantially with a provision required to be included in the State's plan, or to constitute (solely by reason of such inconsistency) the imposition of a prohibited requirement in the administration of the plan, for purposes of section 404(a) of such Act [section 604(a) of this title].

''(B) No State shall be considered to have made any overpayment or underpayment of aid, under its plan approved under section 402(a) of the Social Security Act, by reason of its compliance or noncompliance with the provisions of any amendment made by paragraph (1), (2), (3), or (10) (or solely because of the extent to which its requirements are consistent or inconsistent

with such provisions) in the administration of the plan during the period specified in subparagraph (A).''

AFDC GUIDELINES

Pub. L. 99–570, title XI, § 11005(d), Oct. 27, 1986, 100 Stat. 3207–169, provided that: ''No later than six months after the date of enactment of this act [Oct. 27, 1986] and after consultation with the States administering plans under title IV of the Social Security Act [this subchapter], the Secretary of Health and Human Services shall issue guidelines to the States for providing benefits under title IV to a dependent child who does not reside in a permanent dwelling or does not have a fixed home or mailing address.''

WISCONSIN CHILD SUPPORT INITIATIVE

Section 22 of Pub. L. 98–378 authorized Secretary of Health and Human Services to waive certain requirements of Social Security Act (this chapter), relating to the provision of aid to dependent children to permit the State of Wisconsin to make an adequate test in any county or counties, or throughout the State, of its Child Support Initiative, which authority was effective for quarters beginning after Sept. 30, 1986, and ending before Oct. 1, 1994.

UTILITY PAYMENTS MADE BY TENANTS IN ASSISTED HOUSING

Pub. L. 98–181, title II, § 221, Nov. 30, 1983, 97 Stat. 1188, as amended by Pub. L. 98–479, title I, § 102(g)(3), Oct. 17, 1984, 98 Stat. 2222, provided that: ''Notwithstanding any other provision of law, for purposes of determining eligibility, or the amount of benefits payable, under part A of title IV of the Social Security Act [this part], any utility payment made in lieu of any rental payment by a person living in a dwelling unit in a lower income housing project assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] or section 236 of the National Housing Act [12 U.S.C. 1715z–1] shall be considered to be a shelter payment.''

REPORT TO CONGRESS ON EXCLUSION OF HOME ENERGY ASSISTANCE FROM INCOME

Section 545(d) of Pub. L. 97–424 directed Secretary of Health and Human Services to submit a report to Congress, prior to Apr. 1, 1985, on the implementation and results of the provisions of sections 1382a(b)(13) and 602(a)(36) of this title, including any recommendations with respect to whether such provisions should be extended in the same or modified form or allowed to expire.

AMENDMENTS BY PUB. L. 97–404 NOT TO AFFECT THE TERM ''ORIGINALLY ENACTED'' AS SET OUT IN AMENDMENT OF SUBSEC. (a)(8)(A)(v) BY PUB. L. 97–300

Pub. L. 97–404, § 6, Dec. 31, 1982, 96 Stat. 2027, provided that: ''The amendments made by this Act [amending sections 49*l*, 1513, 1516, 1518, 1532, 1535, 1551 to 1553, 1591, 1603, 1658, 1671, 1672, 1734, 1753, and 1754 of Title 29, Labor] shall not be construed as affecting the term 'originally enacted' as applied to the Job Training Partnership Act [29 U.S.C. 1501 et seq.] in section 402(a)(8)(A)(v) of the Social Security Act as amended by section 503(a) of the Act [subsec. (a)(8)(A)(v) of this section].''

EXCLUSION FROM INCOME

Section 159 of Pub. L. 97–248 provided that: ''Notwithstanding any other provision of law, payments which are made, under a statutorily established State program, to meet certain needs of children receiving aid under the State's plan approved under part A of title IV of the Social Security Act [this part], if—

''(1) the payments are made to such children by the State agency administering such plan, but are made without Federal financial participation (under section 403(a) of such Act [section 603(a) of this title] or otherwise), and

''(2) the State program has been continuously in effect since before January 1, 1979,

shall be excluded from the income of such children and their families for purposes of section 402(a)(17) of such Act [subsec. (a)(17) of this section], and for all the other purposes of such part A and of such plan, effective on the date of the enactment of this Act [Sept. 3, 1982].''

DELAYED EFFECTIVE DATE IN CASES REQUIRING CONFORMING STATE LEGISLATION

Section 161 of Pub. L. 97–248 provided that: ''In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part A of title IV of the Social Security Act [this part] to the requirements imposed by any amendment made by this subtitle [subtitle D (§§ 151–161) of title I of Pub. L. 97–248, see Tables for classification], the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the end of the first session of the State legislature which begins after October 1, 1982, or which began prior to October 1, 1982, and remained in session for at least twenty-five calendar days after such date. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature.''

APPLICABILITY OF CERTAIN PROVISIONS TO PUERTO RICO, GUAM, AND THE VIRGIN ISLANDS

Section 2353(b)(2) of Pub. L. 97–35 provided that: ''Sections 402(a)(5) [subsec. (a)(5) of this section], 402(a)(15) [subsec. (a)(15) of this section], and 403(a)(3) [section 603(a)(3) of this title] of such Act [the Social Security Act] as they apply to the fifty States and the District of Columbia shall be applicable to Puerto Rico, Guam, and the Virgin Islands.'' [See 1981 Amendment notes set out above for subsec. (a)(5) and (15)].

DISREGARD OF MATCHING FUNDS REQUIREMENTS IN USE OF FUNDS APPROPRIATED PURSUANT TO TAX REDUCTION AND SIMPLIFICATION ACT OF 1977

Pub. L. 95–30, title IV, § 401(a), May 23, 1977, 91 Stat. 154, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''The Secretary of Health and Human Services and the Secretary of Labor are authorized to carry out the work incentive program under title IV of the Social Security Act [this subchapter] from the sums appropriated pursuant to this Act [Pub. L. 95–30] without regard to the requirements for non-Federal matching funds contained in sections 402(a)(19)(C) [subsec. (a)(19)(C) of this section], 402(a)(19)(G) [subsec. (a)(19)(G) of this section], 403(a)(3)(A) [section 603(a)(3)(A) of this title], 403(d) [section 603(d) of this title], and 435 [section 635 of this title] of the Social Security Act.''

TEMPORARY WAIVERS OF CERTAIN REQUIREMENTS FOR CERTAIN STATES

Section 201(a), (b) of Pub. L. 94–88 provided that:

''(a) If the Governor of any State, which has an approved State plan under part A of title IV of the Social Security Act [this part], submits to the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter in this section referred to as the 'Secretary'), a request that any provision of section 402(a)(26) of the Social Security Act or section 402(a)(27) of such Act [subsec. (a)(26) or (a)(27) of this section] not be made applicable to such State prior to a date specified in the request (which shall not be later than June 30, 1976) and—

''(1) such request is accompanied by a certification, with respect to such provision, of the Governor that the State cannot implement such provision because of the lack of authority to do so under State law, and

''(2) such request fully explains the reasons why such provision cannot be implemented, and sets forth any provision of State law which impedes the implementation thereof,

the Secretary shall, if he is satisfied that such a waiver is justified, grant the waiver so requested.

''(b) During any period with respect to which a waiver, obtained under subsection (a) with respect to section 402(a)(26)(A) of the Social Security Act [subsec. (a)(26)(A) of this section], is in effect with respect to any State, the provisions of section 454(4) and (5) of such Act [section 654(4) and (5) of this title] shall be applied to such State in like manner as if the phrase 'with respect to whom an assignment under section 402(a)(26) of this title is effective' did not appear therein, and the provisions of section 458 of such Act [section 658 of this title] shall be applied to such State in like manner as if the phrase 'support rights assigned under section 402(a)(26)' read 'child support obligation'.''

REPORTS TO CONGRESSIONAL COMMITTEES

Section 201(d) of Pub. L. 94–88 provided that: ''The Secretary shall from time to time, submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, full and complete reports (the first of which shall not be later than September 15, 1975) regarding any requests which he has received for waivers under subsection (a) [set out as a note herein] and any waivers granted by him under such subsection, and such reports shall include copies of all such requests for such waivers and any supporting documents submitted with or in connection with any such requests.''

SUPPORT ASSIGNMENTS BY RECIPIENTS DURING TRANSMITTAL PERIOD

Section 203 of Pub. L. 94–88 provided that, in the case of any State the law of which on Aug. 1, 1975 met the requirements of subsec. (a)(26)(A) of this section, those requirements were to be effective with respect to individuals who were recipients on Aug. 1, 1975, at such time as may be determined by the State agency, but not later than the first redetermination of eligibility required after Aug. 1, 1975, and in any event not later than Feb. 1, 1976, and for such States, the provisions of section 654(4) and (5) of this title were to be applied during the period beginning Aug. 1, 1975 and ending Dec. 31, 1975, with respect to all recipients of aid who have not made an assignment pursuant to subsec. (a)(26)(A) of this section and the provisions of section 658 of this title, during such period, were to be applied in the case of such State as if the phrase ''support rights assigned under section 602(a)(26) read ''child support obligations''.

SUBMITTAL OF PROPOSED STANDARDS TO CONGRESS; EFFECTIVE DATE; DISAPPROVAL BY CONGRESS

Section 208(d) of Pub. L. 94–88 provided that:

''(1) The Secretary of Health, Education, and Welfare [now Health and Human Services] shall submit to the Congress any proposed standards authorized to be prescribed by him under section 402(a)(26)(B) of the Social Security Act [subsec. (a)(26)(B) of this section] (as added by the Social Services Amendments of 1974 and as amended by subsection (a) of this section). Such standards shall take effect at the end of the period which ends 60 days after such proposed standards are so submitted to such committees unless, within such period, either House of the Congress, adopts a resolution of disapproval.

''(2) For purposes of this subsection, the term 'resolution' means only—

''(A) a concurrent resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: 'That the Congress does not approve the standards (as authorized under section 402(a)(26)(B) of the Social Security Act) [subsec. (a)(26)(B) of this section] transmitted to the Congress on .', the blank space being filled with the appropriate date; and

''(B) a resolution of either House of the Congress, the matter after the resolving clause of which is as follows: 'That the does not approve the standards (as authorized under section 402(a)(26)(B) of the Social Security Act) [subsec. (a)(26)(B) of this section] transmitted to the Congress on .', with the first blank space being filled with the name of the resolving House, and the second blank space being filled with the appropriate date.

''(3) The provisions of subsection (b), (c), (d), (e), and (f) of section 152 of the Trade Act of 1974 [subsec. (b), (c), (d), (e), and (f) of section 1922 of Title 19, Customs Duties] shall be applicable to resolutions under this subsection, except that the '20 hours' referred to in subsections (d)(2) and (e)(2) of such section shall be deemed to read '4 hours'.''

STATE PLANS TO DISREGARD CHILD SUPPORT PAYMENTS BEGINNING JULY 1, 1975

Section 101(c)(1) of Pub. L. 93–647 provided that notwithstanding the provisions of subsec. (a) of this section in addition to the amounts required to be disregarded under cl. (8)(A) of subsec. (a) of this section, a requirement was imposed that for the 15 months beginning July 1, 1975, in making determinations under cl. (7) of subsec. (a) of this section, the State agency was with respect to any month in such year and in addition to the amounts disregarded under cl. (8)(A) of subsec. (a) of this section, to disregard amounts payable under section 657(a)(1) of this title.

STATE PLANS COMPLIANCE WITH SUBSEC. (a)(7) REQUIREMENTS DURING PERIOD AFTER DEC. 31, 1967, AND PRIOR TO JULY 1, 1969

Section 202(c) of Pub. L. 90–248 provided that a State whose plan had been approved by the Secretary under this section was deemed to have substantially complied with the requirements of subsec. (a)(7) of this section, as in effect prior to July 1, 1969, for any period beginning after Dec. 31, 1967 and ending prior to July 1, 1969, if for this period the State agency disregarded earned income of the individuals involved in accordance with the requirements of subsec. (a)(7), (8) of this section as amended by Pub. L. 90–248.

STATE PLANS TO DISREGARD EARNED INCOME OF INDIVIDUALS IN DETERMINATION OF NEED FOR AID; EFFECTIVE DATE

Section 202(d) of Pub. L. 90–248 provided that: ''Effective with respect to quarters beginning after June 30, 1968, in determining the need of individuals claiming aid under a State plan approved under part A of title IV of the Social Security Act [this part], the State shall apply the provisions of such part notwithstanding any provisions of law (other than such Act [this chapter]) requiring the State to disregard earned income of such individuals in determining need under such State plan.''

DISREGARDING INCOME IN DETERMINATION OF NEED IN PUERTO RICO, THE VIRGIN ISLANDS, AND GUAM

Section 248(c) of Pub. L. 90–248 provided that: ''Effective July 1, 1969, neither the provisions of clauses (A) through (C) of section 402(a)(7) of such Act [subsec. (a)(7) of this section] as in effect before the enactment of this Act [Jan. 2, 1968] nor the provisions of section 402(a)(8) of such Act [subsec. (a)(8) of this section] as amended by section 202(b) of this Act shall apply in the case of Puerto Rico, the Virgin Islands, or Guam. Effective no later than July 1, 1972, the State plans of Puerto Rico, the Virgin Islands, and Guam approved under section 402 of such Act [this section] shall provide for the disregarding of income in making the determination under section 402(a)(7) of such Act [subsec. (a)(7) of this section] in amounts (agreed to between the Secretary and the State agencies involved) sufficiently lower than the amounts specified in section 402(a)(8) of such Act [subsec. (a)(8) of this section] to reflect appropriately the applicable differences in income levels.''

PUBLIC ACCESS TO STATE DISBURSEMENT RECORDS

Public access to State records of disbursements of funds and payments under this subchapter, see note under section 302 of this title.

STATE PLANS IN EFFECT JULY 25, 1962; AUTOMATIC CONFORMITY TO AMENDMENTS

State plans in effect July 25, 1962 deemed to have been conformed to amendment of opening provisions and clauses (4), (7) to (10) of subsec. (a) of this section by section 104(a) of Pub. L. 87–543, see section 104(b) of Pub. L. 87–543, set out as a note under section 601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 604, 606, 607, 608, 615, 616, 652, 654, 656, 658, 664, 666, 672, 673, 677, 682, 685, 686, 1202, 1315, 1320b–7, 1352, 1396a, 1396b, 1396r–6, 1396v, 4728, 9837 of this title; title 2 section 906; title 7 sections 2014, 2015, 2026, 2031; title 11 section 523; title 20 section 2325; title 25 sections 683, 686, 689, 996; title 26 section 6402; title 29 section 1699; title 31 section 3803.

§ 603. Payments to States

(a) Computation of amounts

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, Guam, and American Samoa, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to families with dependent children under the State plan—

(A) five-sixths of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $18 multiplied by the total number of recipients of aid to families with dependent children for such month (which total number, for purposes of this subsection, means (i) the number of individuals with respect to whom such aid in the form of money payments is paid for such month, plus (ii) the number of individuals, not counted under clause (i), with respect to whom payments described in section 606(b)(2) of this title are made in such month and included as expenditures for purposes of this paragraph or paragraph (2)); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (i) the product of $32 multiplied by the total number of recipients of aid to families with dependent children (other than such aid in the form of foster care) for such month, plus (ii) the product of $100 multiplied by the total number of recipients of aid to families with dependent children in the form of foster care for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa, an amount equal to one-half of the total of the sums expended during such quarter as aid to families with dependent children under the State plan, not counting so much of any expenditure with respect to any month as exceeds $18 multiplied by the total number of recipients of such aid for such month; and

(3) in the case of any State, 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, except that no payment shall be made with respect to amounts expended in connection with the provision of any service described in section 1397a(a) of this title other than services furnished pursuant to section 602(g) of this title; and

(4) Repealed. Pub. L. 90–248, title II, § 201(e)(3), Jan. 2, 1968, 81 Stat. 880.

(5) in the case of any State, an amount equal to 50 per centum of the total amount expended under the State plan during such quarter as emergency assistance to needy families with children.

No payment shall be made under this subsection with respect to amounts paid to supplement or otherwise increase the amount of aid to families with dependent children found payable in accordance with section 602(a)(13) of this title if such amount is determined to have been paid by the State in recognition of the current or anticipated needs of a family (other than with respect to the first or first and second months of eligibility), but any such amount, if determined to have been paid by the State in recognition of the difference between the current or anticipated needs of a family for a month based upon actual income or other relevant circumstances for such month, and the needs of such family for such month based upon income and other relevant circumstances as retrospectively determined under section 602(a)(13)(A)(ii) of this title, shall not be considered income within the meaning of section 602(a)(13) of this title for the purpose of determining the amount of aid in the succeeding months.

(b) Method of computation and payment

The method of computing and paying such amounts shall be as follows:

(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of dependent children in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, (B) reduced by a

sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to aid to families with dependent children furnished under the State plan, and (C) reduced by such amount as is necessary to provide the ''appropriate reimbursement of the Federal Government'' that the State is required to make under section 657 of this title out of that portion of child support collections retained by it pursuant to such section; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health and Human Services for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Department of the Treasury and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

(c), (d) Repealed. Pub. L. 100–485, title II, § 202(b)(5), (6), Oct. 13, 1988, 102 Stat. 2377

(e) Uniform reporting requirements

In order to assist in obtaining the information needed to carry out subsection (b)(1) of this section and otherwise to perform his duties under this part, the Secretary shall establish uniform reporting requirements under which each State will be required periodically to furnish such information and data as the Secretary may determine to be necessary to ensure that sections 602(a)(37), 602(a)(43), and 602(g)(1)(A) of this title, are being effectively implemented, including at a minimum the average monthly number of families assisted under each such section, the types of such families, the amounts expended with respect to such families, and the length of time for which such families are assisted. The information and data so furnished with respect to families assisted under section 602(g) of this title shall be separately stated with respect to families who have earnings and those who do not, and with respect to families who are receiving aid under the State plan and those who are not.

(f) Reduction in amount; family planning services; aid to families with dependent children

Notwithstanding any other provision of this section, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters in fiscal years beginning after June 30, 1973, be reduced by 1 per centum (calculated without regard to any reduction under subsection (g) of this section) of such amount if such State—

(1) in the immediately preceding fiscal year failed to carry out the provisions of section 602(a)(15)(B) of this title as pertain to requiring the offering and arrangement for provision of family planning services; or

(2) in the immediately preceding fiscal year (but, in the case of the fiscal year beginning July 1, 1972, only considering the third and fourth quarters thereof), failed to carry out the provisions of section 602(a)(15)(B) of this title with respect to any individual who, within such period or periods as the Secretary may prescribe, has been an applicant for or recipient of aid to families with dependent children under the plan of the State approved under this part.

(g) Repealed. Pub. L. 97–35, title XXI, § 2181(a)(1), Aug. 13, 1981, 95 Stat. 815

(h) Reduction in amount; suspension; continuation; determination of substantial compliance by State

(1) Notwithstanding any other provision of this chapter, if a State's program operated under part D of this subchapter is found as a result of a review conducted under section 652(a)(4) of this title not to have complied substantially with the requirements of such part for any quarter beginning after September 30, 1983, and the Secretary determines that the State's program is not complying substantially with such requirements at the time such finding is made, the amounts otherwise payable to the State under this part for such quarter and each subsequent quarter, prior to the first quarter throughout which the State program is found to be in substantial compliance with such requirements, shall be reduced (subject to paragraph (2)) by—

(A) not less than one nor more than two percent, or

(B) not less than two nor more than three percent, if the finding is the second consecutive such finding made as a result of such a review, or

(C) not less than three nor more than five percent, if the finding is the third or a subsequent consecutive such finding made as a result of such a review.

(2)(A) The reductions required under paragraph (1) shall be suspended for any quarter if—

(i) the State submits a corrective action plan, within a period prescribed by the Secretary following notice of the finding under paragraph (1), which contains steps necessary to achieve substantial compliance within a time period which the Secretary finds to be appropriate;

(ii) the Secretary approves such corrective action plan (and any amendments thereto) as being sufficient to achieve substantial compliance; and

(iii) the Secretary finds that the corrective action plan (and any amendment thereto approved by the Secretary under clause (ii)), is being fully implemented by the State and that the State is progressing in accordance with the timetable contained in the plan to achieve substantial compliance with such requirements.

(B) A suspension of the penalty under subparagraph (A) shall continue until such time as the Secretary determines that—

(i) the State has achieved substantial compliance,

(ii) the State is no longer implementing its corrective action plan, or

(iii) the State is implementing or has implemented its corrective action plan but has

failed to achieve substantial compliance within the appropriate time period (as specified in subparagraph (A)(i)).

(C)(i) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(i), the penalty shall not be applied.

(ii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(ii), the penalty shall be applied as if the suspension had not occurred.

(iii) In the case of a State whose penalty suspension ends pursuant to subparagraph (B)(iii), the penalty shall be applied to all quarters ending after the expiration of the time period specified in such subparagraph (and prior to the first quarter throughout which the State program is found to be in substantial compliance).

(3) For purposes of this subsection, section 602(a)(27) of this title, and section 652(a)(4) of this title, a State which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance with such requirements only if the Secretary determines that any noncompliance with such requirements is of a technical nature which does not adversely affect the performance of the child support enforcement program.

(i), (j) Repealed. Pub. L. 101–239, title VIII, § 8004(b), Dec. 19, 1989, 103 Stat. 2460

(k) Payments to States for job opportunities and basic skills training program; fiscal year limitations; "adult recipient" defined; construction uses prohibited

(1) Each State with a plan approved under part F of this subchapter shall be entitled to payments under subsection (*l*) of this section for any fiscal year in an amount equal to the sum of the applicable percentages (specified in such subsection) of its expenditures to carry out the program under part F of this subchapter (subject to limitations prescribed by or pursuant to such part or this section on expenditures that may be included for purposes of determining payment under subsection (*l*) of this section), but such payments for any fiscal year in the case of any State may not exceed the limitation determined under paragraph (2) with respect to the State.

(2) The limitation determined under this paragraph with respect to a State for any fiscal year is—

(A) the amount allotted to the State for fiscal year 1987 under part C of this subchapter as then in effect, plus

(B) the amount that bears the same ratio to the amount specified in paragraph (3) for such fiscal year as the average monthly number of adult recipients (as defined in paragraph (4)) in the State in the preceding fiscal year bears to the average monthly number of such recipients in all the States for such preceding year.

(3) The amount specified in this paragraph is—

(A) $600,000,000 in the case of the fiscal year 1989,

(B) $800,000,000 in the case of the fiscal year 1990,

(C) $1,000,000,000 in the case of each of the fiscal years 1991, 1992, and 1993,

(D) $1,100,000,000 in the case of the fiscal year 1994,

(E) $1,300,000,000 in the case of the fiscal year 1995, and

(F) $1,000,000,000 in the case of the fiscal year 1996 and each succeeding fiscal year,

reduced by the aggregate amount allotted to all the States for fiscal year 1987 pursuant to part C of this subchapter as then in effect.

(4) For purposes of this subsection, the term ''adult recipient'' in the case of any State means an individual other than a dependent child (unless such child is the custodial parent of another dependent child) whose needs are met (in whole or in part) with payments of aid to families with dependent children.

(5) None of the funds available to a State for purposes of the programs or activities conducted under part F of this subchapter shall be used for construction.

(*l*) Federal financial participation in job opportunities and basic skills training program; computation of amounts

(1)(A) In lieu of any payment under subsection (a) of this section, the Secretary shall pay to each State with a plan approved under section 682(a) of this title (subject to the limitation determined under section 682(i)(2) of this title) with respect to expenditures by the State to carry out a program under part F of this subchapter (including expenditures for child care under section 602(g)(1)(A)(i) of this title, but only in the case of a State with respect to which section 1308 of this title applies), an amount equal to—

(i) with respect to so much of such expenditures in a fiscal year as do not exceed the State's expenditures in the fiscal year 1987 with respect to which payments were made to such State from its allotment for such fiscal year pursuant to part C of this subchapter as then in effect, 90 percent; and

(ii) with respect to so much of such expenditures in a fiscal year as exceed the amount described in clause (i)—

(I) 50 percent, in the case of expenditures for administrative costs made by a State in operating such a program for such fiscal year (other than the personnel costs for staff employed full-time in the operation of such program) and the costs of transportation and other work-related supportive services under section 602(g)(2) of this title, and

(II) the greater of 60 percent or the Federal medical assistance percentage (as defined in section 1318 of this title in the case of any State to which section 1308 of this title applies, or as defined in section 1396d(b) of this title in the case of any other State), in the case of expenditures made by a State in operating such a program for such fiscal year (other than for costs described in subclause (I)).

(B) With respect to the amount for which payment is made to a State under subparagraph (A)(i), the State's expenditures for the costs of operating a program established under part F of this subchapter may be in cash or in kind, fairly evaluated.

(2)(A) Notwithstanding paragraph (1), the Secretary shall pay to a State an amount equal to

50 percent of the expenditures made by such State in operating its program established under part F of this subchapter (in lieu of any different percentage specified in paragraph (1)(A)) if less than 55 percent of such expenditures are made with respect to individuals who are described in subparagraph (B).

(B) An individual is described in this paragraph if the individual—

(i)(I) is receiving aid to families with dependent children, and

(II) has received such aid for any 36 of the preceding 60 months;

(ii)(I) makes application for aid to families with dependent children, and

(II) has received such aid for any 36 of the 60 months immediately preceding the most recent month for which application has been made;

(iii) is a custodial parent under the age of 24 who (I) has not completed a high school education and, at the time of application for aid to families with dependent children, is not enrolled in high school (or a high school equivalency course of instruction), or (II) had little or no work experience in the preceding year; or

(iv) is a member of a family in which the youngest child is within 2 years of being ineligible for aid to families with dependent children because of age.

(C) This paragraph may be waived by the Secretary with respect to any State which demonstrates to the satisfaction of the Secretary that the characteristics of the caseload in that State make it infeasible to meet the requirements of this paragraph, and that the State is targeting other long-term or potential long-term recipients.

(D) The Secretary shall biennially submit to the Congress any recommendations for modifications or additions to the groups of individuals described in subparagraph (B) that the Secretary determines would further the goal of assisting long-term or potential long-term recipients of aid to families with dependent children to achieve self-sufficiency, which recommendations shall take into account the particular characteristics of the populations of individual States.

(3)(A) Notwithstanding paragraph (1), the Secretary shall pay to a State an amount equal to 50 percent of the expenditures made by such State in a fiscal year in operating its program established under part F of this subchapter (in lieu of any different percentage specified in paragraph (1)(A)) if the State's participation rate (determined under subparagraph (B)) for the preceding fiscal year does not exceed or equal—

(i) 7 percent if the preceding fiscal year is 1990;

(ii) 7 percent if such year is 1991;

(iii) 11 percent if such year is 1992;

(iv) 11 percent if such year is 1993;

(v) 15 percent if such year is 1994; and

(vi) 20 percent if such year is 1995.

(B)(i) The State's participation rate for a fiscal year shall be the average of its participation rates for computation periods (as defined in clause (ii)) in such fiscal year.

(ii) The computation periods shall be—

(I) the fiscal year, in the case of fiscal year 1990,

(II) the first six months, and the seventh through twelfth months, in the case of fiscal year 1991,

(III) the first three months, the fourth through sixth months, the seventh through ninth months, and the tenth through twelfth months, in the case of fiscal years 1992 and 1993, and

(IV) each month, in the case of fiscal years 1994 and 1995.

(iii) The State's participation rate for a computation period shall be the number, expressed as a percentage, equal to—

(I) the average monthly number of individuals required or allowed by the State to participate in the program under part F of this subchapter who have participated in such program in months in the computation period, plus the number of individuals required or allowed by the State to participate in such program who have so participated in that month in such period for which the number of such participants is the greatest, divided by

(II) twice the average monthly number of individuals required to participate in such period (other than individuals described in subparagraph (C)(iii)(I) or (D) of section 602(a)(19) of this title with respect to whom the State has exercised its option to require their participation).

For purposes of this subparagraph, an individual shall not be considered to have satisfactorily participated in the program under part F of this subchapter solely by reason of such individual being registered to participate in such program.

(C) Notwithstanding any other provision of this paragraph, no State shall be subject to payment under this paragraph (in lieu of paragraph (1)(A)) for failing to meet any participation rate required under this paragraph with respect to any fiscal year before 1991.

(D) For purposes of this paragraph, an individual shall be determined to have participated in the program under part F of this subchapter, if such individual has participated in accordance with such requirements, consistent with regulations of the Secretary, as the State shall establish.

(E) If the Secretary determines that the State has failed to achieve the participation rate for any fiscal year specified in the numbered clauses of subparagraph (A), he may waive, in whole or in part, the reduction in the payment rate otherwise required by such subparagraph if he finds that—

(i) the State is in conformity with section 602(a)(19) of this title and part F of this subchapter;

(ii) the State has made a good faith effort to achieve the applicable participation rate for such fiscal year; and

(iii) the State has submitted a proposal which is likely to achieve the applicable participation rate for the current fiscal year and the subsequent fiscal years (if any) specified therein.

(4)(A)(i) Subject to subparagraph (B), in the case of any family eligible for aid to families

with dependent children by reason of the unemployment of the parent who is the principal earner, the State agency shall require that at least one parent in any such family participate, for a total of at least 16 hours a week during any period in which either parent is required to participate in the program, in a work supplementation program, a community work experience or other work experience program, on-the-job training, or a State designed work program approved by the Secretary, as such programs are described in section 682(d)(1) of this title. In the case of a parent under age 25 who has not completed high school or an equivalent course of education, the State may require such parent to participate in educational activities directed at the attainment of a high school diploma (or equivalent) or another basic education program in lieu of one or more of the programs specified in the preceding sentence.

(ii) For purposes of clause (i), an individual participating in a community work experience program under section 682 of this title shall be considered to have met the requirement of such clause if he participates for the number of hours in any month equal to the monthly payment of aid to families with dependent children to the family of which he is a member, divided by the greater of the Federal or the applicable State minimum wage (and the portion of such monthly payment for which the State is reimbursed by a child support collection shall not be taken into account in determining the number of hours that such individual may be required to work).

(B) The requirement under subparagraph (A) shall not be considered to have been met by any State if the requirement is not met with respect to the following percentages of all families in the State eligible for aid to families with dependent children by reason of the unemployment of the parent who is the principal earner:

(i) 40 percent, in the case of the average of each month in fiscal year 1994,

(ii) 50 percent, in the case of the average of each month in fiscal year 1995,

(iii) 60 percent, in the case of the average of each month in fiscal year 1996, and

(iv) 75 percent in the case of the average of each month in each of the fiscal years 1997 and 1998.

(C) The percentage of participants for any month in a fiscal year for purposes of the preceding sentence shall equal the average of—

(i) the number of individuals described in subparagraph (A)(i) who have met the requirement prescribed therein, divided by

(ii) the total number of principal earners described in such subparagraph (but excluding those in families who have been recipients of aid for 2 months or less if, during the period that the family received aid, at least one parent engaged in intensive job search).

(D) If the Secretary determines that the State has failed to meet the requirement under subparagraph (A) (determined with respect to the percentages prescribed in subparagraph (B)), he may waive, in whole or in part, any penalty if he finds that—

(i) the State is operating a program in conformity with section 602(a)(19) of this title and part F of this subchapter,

(ii) the State has made a good faith effort to meet the requirement of subparagraph (A) but has been unable to do so because of economic conditions in the State (including significant numbers of recipients living in remote locations or isolated rural areas where the availability of work sites is severely limited), or because of rapid and substantial increases in the caseload that cannot reasonably be planned for, and

(iii) the State has submitted a proposal which is likely to achieve the required percentage of participants for the subsequent fiscal years.

(m) Extension of quality control penalty moratorium

(1) During the 12-month period beginning on July 1, 1988 (in this subsection referred to as the ''moratorium period''), the Secretary shall not impose any reductions in payments to States pursuant to subsection (i) of this section (or prior regulations), or pursuant to any comparable provision of law relating to the programs under this part in Puerto Rico, Guam, the Virgin Islands, American Samoa, or the Northern Mariana Islands.

(2) During the moratorium period—

(A) the Secretary and the States shall continue to operate the quality control systems in effect under this part, and to calculate the error rates under the provisions referred to in paragraph (1), including the process of requesting and reviewing waivers; and

(B) the Departmental Grant Appeals Board shall, notwithstanding paragraph (1), review disallowances for fiscal year 1981 and thereafter and hear appeals with respect thereto (but collection of disallowances owed as a result of Departmental Grant Appeals Board decisions shall not occur).

(n) Additional payments to States

(1) In addition to any payment under subsection (a) or (*l*) of this section, each State shall be entitled to payment from the Secretary of an amount equal to the lesser of—

(A) the Federal medical assistance percentage (as defined in section 1396d(b) of this title) of the expenditures by the State in providing child care services pursuant to section 602(i) of this title, and in administering the provision of such child care services, for any fiscal year; and

(B) the limitation determined under paragraph (2) with respect to the State for the fiscal year.

(2)(A) The limitation determined under this paragraph with respect to a State for any fiscal year is the amount that bears the same ratio to the amount specified in subparagraph (B) for such fiscal year as the number of children residing in the State in the second preceding fiscal year bears to the number of children residing in the United States in the second preceding fiscal year.

(B) The amount specified in this subparagraph is—

(i) $300,000,000 for fiscal year 1991;
(ii) $300,000,000 for fiscal year 1992;
(iii) $300,000,000 for fiscal year 1993;
(iv) $300,000,000 for fiscal year 1994; and
(v) $300,000,000 for fiscal year 1995, and for each fiscal year thereafter.

(C) If the limitation determined under subparagraph (A) with respect to a State for a fiscal year exceeds the amount paid to the State under this subsection for the fiscal year, the limitation determined under this paragraph with respect to the State for the immediately succeeding fiscal year shall be increased by the amount of such excess.

(3) Amounts appropriated for a fiscal year to carry out this part shall be made available for payments under this subsection for such fiscal year.

(Aug. 14, 1935, ch. 531, title IV, § 403, 49 Stat. 628; Aug. 10, 1939, ch. 666, title IV, § 402, 53 Stat. 1380; Aug. 10, 1946, ch. 951, title V, § 502, 60 Stat. 992; June 14, 1948, ch. 468, § 3(b), 62 Stat. 439; Aug. 28, 1950, ch. 809, title III, pt. 2, § 322(a), pt. 6, § 361(c), (d), 64 Stat. 550, 558; July 18, 1952, ch. 945, § 8(b), 66 Stat. 778; Sept. 1, 1954, ch. 1206, title III, § 303(a), 68 Stat. 1097; Aug. 1, 1956, ch. 836, title III, §§ 302, 312(c), 342, 351(a), 70 Stat. 847, 849, 852, 854; Aug. 28, 1958, Pub. L. 85–840, title V, § 502, 72 Stat. 1048; July 25, 1962, Pub. L. 87–543, title I, §§ 101(a)(2), (b)(2)(A)–(C), 104(a)(3)(C), 108(b), (c), 76 Stat. 174, 180, 185, 190; July 30, 1965, Pub. L. 89–97, title I, § 122, title IV, § 401(c), 79 Stat. 353, 415; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 201(c)–(e)(3), 205(b), 206(a), 207(b), 208, 241(b)(2), (3), 81 Stat. 879, 880, 892–894, 916; June 28, 1968, Pub. L. 90–364, title III, § 301, 82 Stat. 273; July 9, 1969, Pub. L. 91–41, § 3, 83 Stat. 45; Dec. 28, 1971, Pub. L. 92–223, § 3(a)(8), (9), 85 Stat. 805; Oct. 20, 1972, Pub. L. 92–512, title III, § 301(b)–(d), 86 Stat. 946, 947; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 299E(d), 299F, 86 Stat. 1462, 1463; Jan. 4, 1975, Pub. L. 93–647, §§ 3(a)(3), (4), (e)(2), 5(b), 101(c)(6)(A), 88 Stat. 2348–2350, 2360; Aug. 9, 1975, Pub. L. 94–88, title II, § 204, 89 Stat. 435; Nov. 12, 1977, Pub. L. 95–171, § 3(a)(1), 91 Stat. 1354; Dec. 20, 1977, Pub. L. 95–216, title IV, §§ 401, 402(a), 91 Stat. 1559, 1560; June 9, 1980, Pub. L. 96–265, title IV, §§ 401(g), (h), 406(a), 407(c), 94 Stat. 462, 465, 467; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2181(a)(1), 2184(b)(1), title XXIII, §§ 2307(b), 2315(b), 2317(a), 2319(a)–(c), 2353(b)(1), (d), 95 Stat. 815, 817, 848, 855–857, 872; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 154(b), 156(a)–(c), 157(a), 96 Stat. 397–399; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(2), (j)(2)(B)(i), (3)(B)(i), 98 Stat. 1166, 1170, 1171; Aug. 16, 1984, Pub. L. 98–378, § 9(b), 98 Stat. 1316; Nov. 6, 1986, Pub. L. 99–603, title I, § 121(b)(1), 100 Stat. 3390; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9102(c), 101 Stat. 1330–300; Oct. 13, 1988, Pub. L. 100–485, title II, §§ 201(c), (d), 202(b)(4)–(6), 204(b)(2), title III, §§ 302(b)(2), 304(b)(2), title VI, §§ 601(c)(1), 606, 609(a), 102 Stat. 2372, 2377, 2381, 2384, 2393, 2407, 2410, 2424; Dec. 19, 1989, Pub. L. 101–239, title VIII, § 8004(b), 103 Stat. 2460; Nov. 5, 1990, Pub. L. 101–508, title V, § 5081(b), 104 Stat. 1388–235; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13741(a), 107 Stat. 663.)

AMENDMENT OF SECTION

Pub. L. 100–485, title II, § 204(b)(2), Oct. 13, 1988, 102 Stat. 2381, provided that, effective Oct. 1, 1995 (except as otherwise provided in section 204(b)(2) of Pub. L. 100–485, set out as a note below), subsection (l)(3) of this section is repealed and, effective Oct. 1, 1998, subsection (l)(4) of this section is repealed.

For repeal of amendments by section 304(b)(2) of Pub. L. 100–485, see Effective and Termination Dates of 1988 Amendment note below.

REFERENCES IN TEXT

Parts D and F of this subchapter, referred to in subsecs. (h)(1), (k), and (*l*), are classified to sections 651 et seq. and 681 et seq., respectively, of this title.

Part C of this subchapter, referred to in subsecs. (k)(2)(A), (3) and (*l*)(1)(A)(i), which was classified to section 630 et seq. of this title, was repealed by Pub. L. 100–485, title II, § 202(a), Oct. 13, 1988, 102 Stat. 2377.

AMENDMENTS

1993—Subsec. (a)(3). Pub. L. 103–66 amended par. (3) generally, substituting present provisions for provisions authorizing payments equal to sum of specified proportions of total amounts expended by Secretary for proper and efficient administration of State plan, such proportions being: (1) 100 percent of amounts expended to implement and operate an immigration status verification system; (2) 90 percent of amounts expended to implement and operate statewide mechanized claims processing and information retrieval systems; (3) 75 percent of amounts expended to carry out a fraud control program; and (4) one-half of remainder of such expenditures, including amounts expended to carry out initial evaluations.

1990—Subsec. (n). Pub. L. 101–508 added subsec. (n).

1989—Subsecs. (i), (j). Pub. L. 101–239 struck out subsec. (i) which related to reductions in payments to States with excessive erroneous excess payments, and subsec. (j) which related to incentive adjustments in payments to Puerto Rico, Guam, the Virgin Islands, and American Samoa.

1988—Subsec. (a)(1), (2). Pub. L. 100–485, § 601(c)(1)(A), substituted ''Guam, and American Samoa,'' for ''and Guam,''.

Subsec. (a)(3). Pub. L. 100–485, §§ 201(d), 202(b)(4), substituted ''any amounts expended by the State to carry out initial evaluations under section 686(a) of this title); and'' for ''as expenditures under this subparagraph the value of any services furnished, and the amount of any payments made (to cover expenses incurred by individuals under a program of employment search), under section 602(a)(35)(B) of this title).'' in subpar. (D) and substituted ''pursuant to section 602(g) of this title'' for ''under section 602(a)(35)(B) of this title (as described in the parenthetical phrase in subparagraph (D)), and other than services the provision of which is required by section 602(a)(19) of this title to be included in the plan of the State, or which is a service provided in connection with a community work experience program or work supplementation program under section 609 or 614 of this title'' in concluding provisions.

Subsec. (c). Pub. L. 100–485, § 202(b)(5), struck out subsec. (c) which read as follows: ''Notwithstanding any other provision of this chapter, the Federal share of assistance payments under this part shall be reduced with respect to any State for any fiscal year after June 30, 1973, by one percentage point for each percentage point by which the number of individuals certified, under the program of such State established pursuant to section 602(a)(19)(G) of this title, to the local employment office of the State as being ready for employment or training under section 632(b)(1), (2) or (3) of this title, is less than 15 per centum of the average number of individuals in such State who, during such year, are required to be registered pursuant to section 602(a)(19)(A) of this title.''

Subsec. (d). Pub. L. 100–485, § 202(b)(6), struck out subsec. (d) which read as follows:

''(1) Notwithstanding any provision of subsection (a)(3) of this section, the applicable rate under such

subsection shall be 90 per centum with respect to social and supportive services provided pursuant to section 602(a)(19)(G) of this title. In determining the amount of the expenditures made under a State plan for any quarter with respect to social and supportive services pursuant to section 602(a)(19)(G) of this title, there shall be included the fair and reasonable value of goods and services furnished in kind from the State or any political subdivision thereof.

''(2) Of the sums authorized by section 601 of this title to be appropriated for the fiscal year ending June 30, 1973, not more than $750,000,000 shall be appropriated to the Secretary for payments with respect to services to which paragraph (1) applies.''

Subsec. (e). Pub. L. 100–485, § 606, added subsec. (e).

Subsecs. (i)(4), (j). Pub. L. 100–485, § 601(c)(1)(B), substituted ''the Virgin Islands, or American Samoa'' for ''or the Virgin Islands''.

Subsec. (k). Pub. L. 100–485, § 201(c)(1), added subsec. (k).

Subsec. (*l*). Pub. L. 100–485, § 201(c)(2), added subsec. (*l*).

Subsec. (*l*)(1)(A). Pub. L. 100–485, §§ 302(b)(2), 304(b)(2), temporarily substituted ''602(g)(1)(A)(i) of this title'' for ''602(g)(1)(A) of this title'' in introductory provisions. See Effective and Termination Dates of 1988 Amendment note below.

Subsec. (m). Pub. L. 100–485, § 609(a), added subsec. (m).

1987—Subsec. (a)(3). Pub. L. 100–203 added subpar. (C), redesignated former subpar. (C) as (D), and in closing provisions substituted ''(D)'' for ''(C)''.

1986—Subsec. (a)(3)(A). Pub. L. 99–603 added subpar. (A).

1984—Subsec. (a)(3). Pub. L. 98–369, § 2663(j)(3)(B)(i), struck out ''of Health, Education, and Welfare'' after ''Secretary'' in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 98–369, § 2663(j)(2)(B)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' wherever appearing.

Subsec. (b)(3). Pub. L. 98–369, § 2663(c)(2)(A), substituted ''the Fiscal Service of the Department of the Treasury'' for ''the Division of Disbursement of the Treasury Department''.

Pub. L. 98–369, § 2663(j)(2)(B)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (h). Pub. L. 98–375 amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows: ''Notwithstanding any other provision of this chapter, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters beginning after December 31, 1976, be reduced by 5 per centum of such amount if such State is found by the Secretary as the result of the annual audit to have failed to have an effective program meeting the requirements of section 602(a)(27) of this title in any fiscal year beginning after September 30, 1976 (but, in the case of the fiscal year beginning October 1, 1976, only considering the second, third, and fourth quarters thereof).''

Subsec. (j). Pub. L. 98–369, § 2663(c)(2)(B), struck out the comma after ''excess payments'' in cl. (ii) of last sentence.

1982—Subsec. (a). Pub. L. 97–248, §§ 156(b), 157(a), in provision following par. (5), struck out provision respecting increases according to subsec. (i) of this section in the amount paid to each State for calendar quarters beginning after Sept. 30, 1977, and prior to Apr. 1, 1978, and inserted provision relating to exclusions of amounts from income within the meaning of section 602(a)(13) of this title for purposes of determining amount of aid in succeeding months.

Subsec. (a)(3). Pub. L. 97–248, § 154(b), inserted ''(including as expenditures under this subparagraph the value of any services furnished, and the amount of any payments made (to cover expenses incurred by individuals under a program of employment search), under section 602(a)(35)(B) of this title)'' in subpar. (C) and substituted ''other than services furnished under section 602(a)(35)(B) of this title (as described in the parenthetical phrase in subparagraph (C)), and other than services'' for ''other than services'' in provisions following subpar. (C).

Subsec. (i). Pub. L. 97–248, § 156(a), substituted provisions setting forth computation, definition, etc., respecting limitation on Federal financial participation in erroneous assistance expenditures for provisions setting forth computations, limitations, etc., respecting increases in the amount payable, as determined under subsec. (a) of this section, or section 1318 of this title, to each State which has a State approved plan for any calendar quarter which begins after Sept. 30, 1977, and prior to Apr. 1, 1978.

Subsec. (j). Pub. L. 97–248, § 156(c), substituted ''In the case of Puerto Rico, Guam, or the Virgin Islands, if the dollar error rate of aid furnished by such State'' for ''If the dollar error rate of aid furnished by a State''.

1981—Subsec. (a). Pub. L. 97–35, §§ 2315(b), 2317(a), in provision following par. (5), inserted provision prohibiting payment with respect to amounts paid to supplement or otherwise increase the amount of aid payable in accordance with section 602(a)(13) of this title if such amount is determined to have been paid by the State in recognition of the current or anticipated needs of a family, other than with respect to the first and second months of eligibility, and struck out provision restricting the number of cases in which payments may be made by a State.

Subsec. (a)(1). Pub. L. 97–35, § 2184(b)(1)(A), (B), struck out ''(including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)'' after ''under the State plan'' and in subpar. (A) substituted ''plus (ii) the number of individuals, not counted under clause (i)'' for ''plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to families with dependent children in the form of medical or any other type of remedial care, plus (iii) the number of individuals, not counted under clause (i) or (ii)''.

Subsec. (a)(2). Pub. L. 97–35, § 2184(b)(1)(C), struck out ''(including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)'' after ''under the State plan''.

Subsec. (a)(3). Pub. L. 97–35, §§ 2307(b), 2319(a), 2353(d), struck out subpar. (A), as in effect in the fifty States and the District of Columbia, which provided for payment of 75 per centum of so much of such expenditures as are for training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision and in provision following subpar. (C) inserted '', or which is service provided in connection with a community work experience program or work supplementation program under section 609 or 614 of this title'' and substituted ''section 1397a(a) of this title'' for ''section 1397a(a)(1) of this title''.

Pub. L. 97–35, § 2319(b), struck out cl. (iii) of subpar. (A) as in effect in Puerto Rico, Guam, and the Virgin Islands, which provided for payment of 75 per centum of so much of such expenditures as are for the training, including short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled at such institutions, of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision.

Pub. L. 97–35, § 2353(b)(1), struck out par. (3) as in effect in Puerto Rico, Guam, and the Virgin Islands, which required a payment to each State, beginning with the quarter commencing Oct. 1, 1958, of an amount equal to the sum of 75 per centum of so much of such expenditures as are for any services described in section 602(a)(14) and (15) of this title provided to any child

or relative receiving aid under the plan or other individual, living in the same house as the child or relative, whose needs must be taken into account in making the determination under section 602(a)(7) of this title, for any services described in section 602(a)(14) and (15) of this title provided to any child or relative who is applying for aid or who, within periods prescribed by the Secretary, has been or is likely to become an applicant for or recipient of such aid, and for the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision plus one-half of the remainder of such expenditures and which defined what services were to be included.

Subsec. (d)(1). Pub. L. 97–35, § 2319(c), substituted ''Notwithstanding any provision of subsection (a)(3) of this section, the applicable rate under such subsection shall be 90 per centum'' for ''Notwithstanding subparagraph (A) of subsection (a)(3) of this section the rate specified in such subparagraph shall be 90 per centum (rather than 75 per centum)''.

Subsec. (e). Pub. L. 97–35, § 2353(b)(1), struck out subsec. (e) as in effect in Puerto Rico, Guam, and the Virgin Islands, which provided for payment to States of 90 per centum of amounts attributable to offering, arranging, and furnishing of family planning services and supplies, directly or on a contract basis.

Subsec. (g). Pub. L. 97–35, § 2181(a)(1), struck out subsec. (g) which provided for reduction of the amount payable to any State if such State fails to inform all families in the State receiving aid to families with dependent children of the availability of child health screening services, arrange for such services where requested, and arrange for corrective treatment the need for which is disclosed by such child health screening services.

1980—Subsec. (a)(3)(B), (C). Pub. L. 96–265, § 406(a), added subpar. (B) and redesignated existing subpar. (B) as (C).

Subsec. (b)(2)(C). Pub. L. 96–265, § 407(c), added subpar. (C).

Subsec. (c). Pub. L. 96–265, § 401(g), substituted ''section 632(b)(1), (2), or (3) of this title'' for ''part C''.

Subsec. (d)(1). Pub. L. 96–265, § 401(h), inserted provision that in determining the amount of the expenditures made under a State plan for any quarter with respect to social and supportive services pursuant to section 602(a)(19)(G) of this title, there shall be included the fair and reasonable value of goods and services furnished in kind from the State or any political subdivision thereof.

1977—Subsec. (a). Pub. L. 95–216, § 401(1), added last par. relating to calendar quarters beginning after Sept. 30, 1977, and before Apr. 1, 1978.

Pub. L. 95–171, § 3(a)(1), in provisions following par. (5), substituted ''20'' for ''10'' percent.

Subsec. (i). Pub. L. 95–216, § 401(2), added subsec. (i).

Subsec. (j). Pub. L. 95–216, § 402(a), added subsec. (j).

1975—Subsec. (a). Pub. L. 94–88, in provisions following par. (5), substituted ''section 602(a)(19)(F) or section 602(a)(26) of this title'' for ''section 602(a)(19)(F) of this title''.

Pub. L. 93–647, § 3(e)(2), struck out ''(subject to section 1320b of this title)'' after ''the Secretary of the Treasury shall''.

Subsec. (a)(3). Pub. L. 93–647, § 3(a)(3), except with respect to Puerto Rico, Guam, and the Virgin Islands, amended provisions generally.

Subsec. (a)(3)(A)(iii). Pub. L. 93–647, § 5(b), inserted, as in effect in Puerto Rico, Guam, and the Virgin Islands, ''(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)'' after ''training''.

Subsec. (e). Pub. L. 93–647, § 3(a)(4), except as in effect in Puerto Rico, Guam, and the Virgin Islands, struck out subsec. (e), which provided for payment to States of 90 per centum of amounts attributable to offering, arranging and furnishing of family planning services and supplies, directly or on contract basis.

Subsec. (h). Pub. L. 93–647, § 101(c)(6)(A), added subsec. (h).

1972—Subsec. (a). Pub. L. 92–512, § 301(d), substituted ''shall (subject to section 1320b of this title) pay'' for ''shall pay'' in provisions preceding par. (1).

Subsec. (a)(3)(D). Pub. L. 92–512, § 301(b), substituted ''under conditions which shall be'' for ''subject to limitations''.

Subsec. (a)(5). Pub. L. 92–512, § 301(c), incorporated former subpar. (A) provisions in provisions designated as par. (5), and struck out at end ''in the form of payments or care specified in paragraph (1) of section 606(e) of this title'' and former subpar. (B) provision which provided for inclusion in the amount 75 per centum of the total amount expended under the State plan during the quarter as emergency assistance to needy families with children in the form of services specified in par. (1) of section 606(e) of this title.

Subsecs. (e) to (g). Pub. L. 92–603 added subsecs. (e) to (g).

1971—Subsecs. (c), (d). Pub. L. 92–223, § 3(a)(8), (9), added subsecs. (c) and (d).

1969—Subsec. (a). Pub. L. 91–41, § 3(b), struck out from introductory text ''(subject to subsection (d))'' after ''Secretary of the Treasury shall''.

Subsec. (d). Pub. L. 91–41, § 3(a), struck out subsec. (d) which imposed, for any quarter after June 1969, certain limitations on the number of dependent children under eighteen who, because of a parent's absence, may receive aid to families with dependent children with Federal financial participation.

1968—Subsec. (a). Pub. L. 90–248, §§ 207(b), 208(a), increased the percentage limitation from 5 to 10 and provided for the computation of such 10 per centum without taking into account individuals with respect to whom payments are made for any month in accordance with section 602(a)(19)(F) of this title, and substituted ''shall (subject to subsection (d) of this section) pay'' for ''shall pay'' in text preceding par. (1).

Subsec. (a)(1)(B). Pub. L. 90–248, § 205(b), designated existing provisions as cl. (i), inserted ''(other than such aid in the form of foster care)'', and added cl. (ii).

Subsec. (a)(3). Pub. L. 90–248, § 201(d)(4), (e)(2), struck out in last sentence reference to subpar. (C) and from the introduction ''whose State plan approved under section 602 of this title meets the requirements of subsection (c)(1) of this section'' after ''in the case of any State plan'', respectively.

Subsec. (a)(3)(A). Pub. L. 90–248, § 201(c), substituted provisions of cls. (i) and (ii) for Federal payments for services described in section 602(a)(14) and (15) of this title to any child or relative who is receiving aid under the State plan, or to any other individual (living in the same home as such relative and child) or for such services to any child or relative who is applying for aid to families with dependent children or who has been or is likely to become an applicant for or recipient of such aid for former cls. (i)–(3) respecting such Federal payments for subsec. (c)(1) services to any relative with whom any dependent child (applying for or receiving aid) is living to help the relative attain or retain capability for self-support or self-care, or services to maintain and strengthen family life for such child; other services to prevent or reduce dependency; and such cl. (ii) and subsec. (c)(1) services as are appropriate for any relative with whom any child (who has been or is likely to become an applicant for or recipient of aid) is living, or as appropriate for such a child, if such services are requested by such relative, and redesignated former cl. (iv) as (3).

Subsec. (a)(3)(B). Pub. L. 90–248, § 201(c), (d)(1)(A), struck out subpar. (B) provisions for Federal payments of one-half of expenditures (not included under subpar. (A)) for services provided any relative, with whom any child (who has been or is likely to become an applicant for or recipient of aid) is living, or to such child, if such services are requested by such relative or for services provided to any child who is an applicant for or recipient of such aid, or to any relative with whom such a child is living, and redesignated subpar. (C) as (B), respectively.

Subsec. (a)(3)(C). Pub. L. 90–248, § 201(d)(1)(A), (B), (2), redesignated subpar. (D) as (C), substituted reference to subpar. ''(D)'' for ''(E)'', and struck out in introductory text to subpar. (C) reference to subpar. ''(B)'', respectively. Former subpar. (C) redesignated (B).

Subsec. (a)(3)(D), (E). Pub. L. 90–248, §§ 201(d)(1)(A), (C), (3), 241(b)(2), redesignated subpar. (E) as (D), substituted in the exception provision following subpar. (D) reference to subpar. ''(C)'' for ''(D)'', and inserted following subpar. (D) ''; and except that, to the extent specified by the Secretary, child-welfare services, family planning services, and family services may be provided from sources other than those referred to in subparagraphs (C) and (D)'', respectively. Former subpar. (D) redesignated (C), and substituted in proviso ''part'' for ''subchapter''.

Subsec. (a)(4). Pub. L. 90–248, § 201(e)(3), 81 Stat. 880, repealed par. (4) provisions respecting payments when approved State plan did not meet subsec. (c)(1) requirements in an amount equal to one-half of the total of sums expended during the quarter as found necessary by the Secretary for proper and efficient administration of the State plan.

Subsec. (a)(5). Pub. L. 90–248, § 206(a), added par. (5)

Subsec. (c). Pub. L. 90–248, § 201(e)(1), repealed subsec. (c) which set forth provisions respecting State qualification for subsec. (a)(3) payments when State plan required State agencies to provide services to maintain and strengthen family life for children and to help relatives with whom children (who are applicants for or recipients of aid) are living to attain capability for self-support or self-care and for stopping such subsec. (a)(3) payments after notice and hearing for noncompliance with such requirements in the administration and supervision of the State plan but providing subsec. (a)(4) payments instead.

Subsec. (c)(2). Pub. L. 90–248, § 241(b)(3), substituted in last sentence ''part'' for ''subchapter''.

Subsec. (d). Pub. L. 90–364 designated existing provisions as par. (1), inserted ''(except the succeeding paragraphs of this subsection)'' after ''chapter'' and substituted ''June 30, 1969'' for ''June 30, 1968'', and added pars. (2) and (3).

Pub. L. 90–248, § 208(b), added subsec. (d).

1965—Subsec. (a)(1). Pub. L. 89–97, §§ 122, 401(c), inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase appearing in so much of par. (1) as precedes clause (A); and changed the formula by which the federal share of aid to families with dependent children is determined by increasing the share of the average monthly assistance payment from 14/17ths of the first $17 to 5/6ths of the first $18 of such payment and raised the ceiling for federal participation from $30 to $32 a month per recipient, respectively.

Subsec. (a)(2). Pub. L. 89–97, § 122, inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase.

1962—Subsec. (a). Pub. L. 87–543, § 101(a)(2), substituted ''aid and services to needy families with children'' for ''aid to dependent children'', in opening provision.

Subsec. (a)(1). Pub. L. 87–543, §§ 101(a)(2), 108(c), substituted ''aid to families with dependent children'', in four places, and ''such aid'' in subpar. (A)(i) for ''aid to dependent children'', and added subpar. (A)(iii).

Subsec. (a)(2). Pub. L. 87–543, § 101(a)(2), substituted ''aid to families with dependent children'' and ''such aid'' for ''aid to dependent children''.

Subsec. (a)(3). Pub. L. 87–543, § 101(a)(2), (b)(2)(A), inserted in opening provisions ''whose State plan approved under section 602 of this title meets the requirements of subsection (c)(1) of this section'' after ''any State'', and substituted provisions which increased the Federal share of expenses of administration of State public assistance plans by providing quarterly payments of the sum of 75 per centum of the quarterly expenses for certain prescribed services to help relatives attain and retain capability for self-support or self-care and to maintain and strengthen family life for dependent children, services likely to prevent or reduce dependency, and services appropriate for relatives and dependent children where such relatives request such services, and training of State or local public assistance personnel administering such plans and one-half of other administrative expenses for other services, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and required the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary for former provisions requiring quarterly payments of one-half of the quarterly expenses of administration of State plans, including staff services of State or local public assistance agencies to help relatives attain self-support or self-care and to maintain and strengthen family life for dependent children.

Subsec. (a)(4). Pub. L. 87–543, § 101(b)(2)(B), added par. (4).

Subsec. (a), closing provisions. Pub. L. 87–543, § 108(b), limited to the number of individuals with respect to whom protective payments are made in any month who may be included as recipients of aid to families with dependent children to 5 per centum of the number of other recipients of such aid during the month.

Subsec. (b)(2)(B). Pub. L. 87–543, § 104(a)(3)(C), substituted ''aid to families with dependent children'' for ''aid to dependent children''.

Subsec. (c). Pub. L. 87–543, § 101(b)(2)(C), added subsec. (c).

1958—Subsec. (a). Pub. L. 85–840 substituted provisions authorizing the counting of the first $30 of expenditures multiplied by the total number of recipients for provisions which authorized the counting of the first $32 with respect to the first dependent child and the adult relative with whom the child is living and $23 with respect to each of the other dependent children in the home, inserted provisions permitting sums spent for insurance premiums for medical or any other type of remedial care or the cost thereof to be included within the expenditures, excluded Guam from the provisions which allow an average monthly payment of $30 and included Guam within the provisions which authorize an average monthly payment of $18, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any type of remedial care in determining the total number of recipients.

1956—Subsec. (a). Act Aug. 1, 1956, § 302, substituted ''during such quarter as aid to dependent children in the form of money payments under the State plan'' for ''during such quarter as aid to dependent children under the State plan'' in cls. (1) and (2), ''with respect to whom aid to dependent children in the form of money payments is paid for such month'' for ''with respect to whom aid to dependent children is paid for such month'' in par. (a) of cl. (1), and inserted cl. (4).

Act Aug. 1, 1956, § 312(c), struck out '', which shall be used exclusively as aid to dependent children,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), and substituted ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision), to relatives with whom such children (applying for or receiving such aid) are living, in order to help such relatives attain self-support or self-care, or which are provided to maintain and strengthen family life for such children'' for ''which amount shall be used for paying the costs of administering the State plan or for aid to dependent children, or both, and for no other purpose'' in cl. (3).

Act Aug. 1, 1956, § 342, substituted ''October 1, 1956'' for ''October 1, 1952'', struck out '', which shall be used exclusively as aid to dependent children,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), sub-

stituted ''$32'' for ''$30'' in three places, ''$23'' for ''$21'', ''$17'' for ''$15'', and ''fourteen-seventeenths'' for ''four-fifths'', inserted ''and not counting so much of such expenditure for any month with respect to a relative with whom any dependent child is living as exceeds $18'' in cl. (2), and substituted ''Secretary of Health, Education, and Welfare'' for ''Secretary'', and ''including services which are provided by the staff of the State plan, including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to relatives with whom such children (applying for or receiving such aid) are living, in order the help such relatives attain self-support or self-care, or which are provided to maintain and strengthen family life for such children'' for ''which amount shall be used for paying the costs of administering the State plan or for aid to dependent children, or both, and for no other purpose'' in cl. (3).

Act Aug. 1, 1956, §351(a), inserted '', and not counting so much of such expenditure for any month with respect to a relative with whom any dependent child is living as exceeds $18'' in cl. (2).

1954—Subsec. (b)(1). Act Sept. 1, 1954, substituted ''the State's proportionate share'' for ''one-half''.

1952—Subsec. (a). Act July 18, 1952, increased the Federal share of the State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and to change formulas for computing the Federal share of public assistance for Puerto Rico and the Virgin Islands.

1950—Subsec. (a). Act Aug. 28, 1950, §322(a), changed the basis of computation of the Federal portion of aid to dependent children.

Subsec. (b). Act Aug. 28, 1950, §361(c), (d), substituted ''Administrator'' for ''Board'' and ''he'', ''him'', or ''his'' for ''it'', or ''its'' wherever appearing.

1948—Subsec. (a). Act June 14, 1948, inserted $27 for $24 wherever appearing, $18 for $15, and $12 for $9.

1946—Subsec. (a). Act Aug. 10, 1946, §502(a), temporarily increased the maximum monthly State expenditure to which the Federal Government will contribute from $18 for one dependent child and $12 each for other dependent children in the same family to $24 and $15, respectively, and increased the Federal contribution from one-half the State's expenditure for carrying out the State plan to a contribution to be used exclusively as aid to dependent children of two-thirds the State's expenditure up to $9 monthly per child plus one-half the State's expenditure over $9, and a contribution of one-half the State's expenditure for administration. See Effective and Termination Date of 1946 Amendment note below.

Subsec. (b). Act Aug. 10, 1946, §502(b), temporarily substituted ''the State's proportionate share'' for ''one-half''. See Effective and Termination Date of 1946 Amendment note below.

1939—Subsec. (a). Act Aug. 10, 1939, substituted ''one-half'' for ''one-third''.

Subsec. (b). Act Aug. 10, 1939, substituted ''one half'' for ''two thirds'' in par. (1) and inserted in par. (2) provision reading: ''(B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Board, of the net amount recovered during and prior quarter by the State or any political subdivision thereof with respect to aid to dependent children furnished under the state plan.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Apr. 1, 1994, with special rule for States whose legislature meets biennially, and does not have regular session scheduled in calendar year 1994, see section 13741(c) of Pub. L. 103–66, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective Oct. 1, 1990, see section 5081(e) of Pub. L. 101–508, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8004(b) of Pub. L. 101–239 provided that the amendment made by that section is effective Oct. 1, 1990.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENT

Amendment by sections 201(c), (d) and 202(b)(4)–(6) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485 at such earlier effective dates, and with certain changes in the limitations applicable to the State for the fiscal year under subsec. (k)(2) of this section in the event such amendment becomes effective before Oct. 1, 1990, see section 204(a), (b)(1) of Pub. L. 100–485, set out as an Effective Date note under section 681 of this title.

Section 204(b)(2) of Pub. L. 100–485 provided that: ''Section 403(*l*)(3) of the Social Security Act [subsec. (*l*) of this section] (as added by section 201(c)(2) of this Act) is repealed effective October 1, 1995 (except that subparagraph (A) of such section 403(*l*)(3) shall remain in effect for purposes of applying any reduction in payment rates required by such subparagraph for any of the fiscal years specified therein); and section 403(*l*)(4) of such Act (as so added) is repealed effective October 1, 1998.''

Amendment by section 302(b)(2) of Pub. L. 100–485 effective Apr. 1, 1990, and repealed effective Sept. 30, 1998, see section 304(b) of Pub. L. 100–485, set out as a note under section 602 of this title.

Section 601(d) of Pub. L. 100–485 provided that: ''The amendments made by this section [amending this section and sections 1301, 1308, and 1318 of this title] shall become effective on October 1, 1988.''

Section 609(c) of Pub. L. 100–485 provided that: ''The amendments made by subsections (a) and (b) [amending this section and provisions set out as a note below] shall take effect on July 1, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective Apr. 1, 1988, see section 9102(d) of Pub. L. 100–203, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–378 effective Oct. 1, 1983, see section 9(c) of Pub. L. 98–378, set out as a note under section 602 of this title.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 154(b) of Pub. L. 97–248 effective Oct. 1, 1982, see section 154(d) of Pub. L. 97–248, set out as a note under section 602 of this title.

Section 156(d) of Pub. L. 97–248 provided that:

''(1) The amendments made by subsections (a) and (b) [amending this section] shall become effective on October 1, 1982.

''(2) The inapplicability of section 403(j) of the Social Security Act [subsec. (j) of this section] to States other than Puerto Rico, Guam, and the Virgin Islands by reason of the amendment made by subsection (c) [amending this section] shall be effective with respect to six-month periods beginning after April 1983.''

Section 157(b) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall become effective on October 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2181(b) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, §137(a)(4), Sept. 3, 1982, 96 Stat. 376, provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply to reductions for calendar quarters beginning on or after June 30, 1974, and the amendments made by subsection (a)(2) [amending section 1396a of this title] shall take effect on October 1, 1981, except that, in the case of a State plan under title XIX of the Social Security Act [subchapter XIX of this chapter] which the Secretary determines requires State legislation in order to incorporate the provisions required to be included by this section into such State plan, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to include the provisions required to be included in such State plan by subsection (a)(2) of this section before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 13, 1981], but the requirements previously set forth in paragraphs (1) through (3) of section 403(g) of the Social Security Act [pars. (1) through (3) of subsec. (g) of this section] (prior to its repeal by this section) shall apply under title XIX of such Act to such State on and after October 1, 1981, whether or not the provisions required to be included by this section in the State plan under title XIX have been incorporated into such State plan.''

Amendments by sections 2307(b), 2315(b), 2317(a), and 2319(c) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2321 of Pub. L. 97–35, set out as a note under section 602 of this title.

Section 2319(d) of Pub. L. 97–35 provided that: ''The repeals made by this section [repealing subsec. (a)(3)(A) of this section as in effect in the fifty States and the District of Columbia, and repealing subsec. (a)(3)(A)(iii) of this section as in effect in Puerto Rico, Guam, and the Virgin Islands] shall apply to expenditures made after September 30, 1981.''

Amendment by section 2353(b)(1), (d) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 401(g), (h) of Pub. L. 96–265 effective Sept. 30, 1980, see section 401(i) of Pub. L. 96–265, set out as a note under section 602 of this title.

Amendment by section 406(a) of Pub. L. 96–265 effective with respect to expenditures made during calendar quarters beginning on or after July 1, 1981, see section 406(d) of Pub. L. 96–265, set out as an Effective Date note under section 613 of this title.

Section 407(d) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and section 655 of this title] shall be effective in the case of calendar quarters commencing on or after January 1, 1981.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Section 402(b) of Pub. L. 95–216 provided that: ''Payments may be made under the amendment made by subsection (a) [amending this section] only in the case of periods commencing on or after January 1, 1978.''

Section 3(a)(3) of Pub. L. 95–171 provided that: ''The amendments made by this subsection [amending this section and section 606 of this title] shall apply with respect to payments of aid to families with dependent children made for months beginning on or after October 1, 1977.''

EFFECTIVE DATE OF 1975 AMENDMENTS

Amendment by Pub. L. 94–88 effective Aug. 1, 1975, unless otherwise provided, see section 210 of Pub. L. 94–88, set out as a note under section 602 of this title.

Amendment by section 3 of Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, except that amendment by section 3(a) of Pub. L. 93–647 not effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands, or Guam, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

Amendment by section 5(b) of Pub. L. 93–647 effective with respect to payments for quarters commencing after Sept. 30, 1975, see section 7(a) of Pub. L. 93–647, set out as a note under section 303 of this title.

Amendment by section 101(c)(6)(A) of Pub. L. 93–647 effective Aug. 1, 1975, see section 101(f) of Pub. L. 93–647, set out as an Effective Date note under section 651 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 301(b) of Pub. L. 92–512 effective Jan. 1, 1973, and amendment by section 301(c), (d) of Pub. L. 92–512 effective July 1, 1972, see section 301(e) of Pub. L. 92–512, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Enactment by Pub. L. 92–223 effective July 1, 1972, except as otherwise specified therein, see section 3(c) of Pub. L. 92–223, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 205(e) of Pub. L. 90–248 provided that: ''The amendments made by subsections (b) and (c) [amending this section and section 608 of this title] shall apply only with respect to foster care provided after December 1967.''

Amendment by section 201(c) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, or furnished after such earlier date as the State plan may provide, and amendment by section 201(d), (e) of Pub. L. 90–248 effective July 1, 1968 (or earlier if the State plan so provides) and provision for nonapplication of section 602(a)(15)(F) of this title when there are different State agencies for administration of services, see section 201(g) of Pub. L. 90–248, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 401(c) of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter, see section 401(f) of Pub. L. 89–97, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 101(a)(2) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Aug. 31, 1962, and amendment by section 101(b)(2)(A)–(C) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after June 30, 1963, see section 202(f) of Pub. L. 87–543, set out as a note under section 303 of this title.

Section 202(e) of Pub. L. 87–543, as amended by Pub. L. 90–36, §2, June 29, 1967, 81 Stat. 94; Pub. L. 90–248, title II, §207(c), Jan. 2, 1968, 81 Stat. 894, provided that: ''The amendments made by sections 105 (other than subsection (c)) and 108 [amending this section and sections 606 and 609 of this title and enacting provisions set out as notes under this section and section 609 of this title] shall be applicable in the case of expenditures under a State plan approved under title IV of the Social Security Act [this subchapter], made during the period beginning October 1, 1962.''

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1956 AMENDMENT

Amendment by section 302 of act Aug. 1, 1956, effective July 1, 1957, see section 305 of act Aug. 1, 1956, set out as a note under section 303 of this title.

Amendment by section 342 of act Aug. 1, 1956, effective only for period beginning Oct. 1, 1956, and ending with close of June 30, 1959, see section 345 of act Aug. 1, 1956, set out as a note under section 303 of this title.

Section 351(d) of act Aug. 1, 1956, provided that: ''The amendments made by this section [amending this section and sections 606 and 1308 of this title] shall be effective with respect to the fiscal year ending June 30, 1957, and all succeeding fiscal years.''

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

Amendment by act July 18, 1952, effective for period beginning Oct. 1, 1952, and ending Sept. 30, 1956, see section 8(e) of act July 18, 1952, set out as an Effective and Termination Date note under section 303 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 322(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950.''

EFFECTIVE DATE OF 1948 AMENDMENT

Amendment by act June 14, 1948, effective Oct. 1, 1948, see section 3(d) of act June 14, 1948, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1946 AMENDMENT

Amendment by section 502 of act Aug. 10, 1946, effective only for period beginning Oct. 1, 1946, and ending with close of June 30, 1950, see section 504 of act Aug. 10, 1946, as amended, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 402 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

NO SANCTIONS WITH RESPECT TO DISALLOWANCES BEFORE FISCAL YEAR 1991

Section 8004(d) of Pub. L. 101–239 provided that: ''No disallowance or other similar sanction shall be applied to a State for any fiscal year before fiscal year 1991 under section 403(i) of the Social Security Act [subsec. (i) of this section] or any predecessor statutory or regulatory provision relating to disallowances for erroneous payments made in carrying out a State plan approved under part A of title IV of such Act [this part].''

IMPLEMENTATION OF AMENDMENT BY PUB. L. 101–239

For provisions requiring Secretary of Health and Human Services to take all actions necessary to assure that adequate numbers of staff are available to perform functions required by amendments made by section 8004 of Pub. L. 101–239, see section 8004(e) of Pub. L. 101–239, set out as a note under section 608 of this title.

QUALITY CONTROL STUDIES AND PENALTY MORATORIUM

Pub. L. 99–272, title XII, §12301, Apr. 7, 1986, 100 Stat. 291, as amended by Pub. L. 99–514, title XVII, §1710, Oct. 22, 1986, 100 Stat. 2783; Pub. L. 100–485, title VI, §609(b), Oct. 13, 1988, 102 Stat. 2425, provided that:

''(a) STUDIES.—(1) The Secretary of Health and Human Services (hereafter referred to in this section as the 'Secretary') shall conduct a study of quality control systems for the Aid to Families with Dependent Children Program under title IV–A of the Social Security Act [this part] and for the Medicaid Program under title XIX of such Act [subchapter XIX of this chapter]. The study shall examine how best to operate such systems in order to obtain information which will allow program managers to improve the quality of administration, and provide reasonable data on the basis of which Federal funding may be withheld for States with excessive levels of erroneous payments.

''(2) The Secretary shall also contract with the National Academy of Sciences to conduct a concurrent independent study for the purpose described in paragraph (1). For purposes of such study, the Secretary shall provide to the National Academy of Sciences any relevant data available to the Secretary at the onset of the study and on an ongoing basis.

''(3) The Secretary and the National Academy of Sciences shall report the results of their respective studies to the Congress within one year after the date the Secretary and the National Academy of Sciences enter into the contract required under paragraph (2).

''(b) MORATORIUM ON PENALTIES.—(1) During the 24-month period beginning with the first calendar quarter which begins after the date of the enactment of this Act [Apr. 7, 1986] (hereafter in this section referred to as the 'moratorium period'), the Secretary shall not impose any reductions in payments to States pursuant to section 403(i) of the Social Security Act [subsec. (i) of this section] (or prior regulations), or pursuant to any comparable provision of law relating to the programs under title IV–A of such Act [this part] in Puerto Rico, Guam, the Virgin Islands, American Samoa, or the Northern Mariana Islands.

''(2) During the moratorium period, the Secretary and the States shall continue to operate the quality control systems in effect under title IV–A of the Social Security Act, and to calculate the error rates under the provisions referred to in paragraph (1).

''(c) RESTRUCTURED QUALITY CONTROL SYSTEMS.—(1) Not later than 6 months after the date on which the results of both studies required under subsection (a)(3) have been reported, the Secretary shall publish regulations which shall—

''(A) restructure the quality control systems under title XIX of the Social Security Act [subchapter XIX of this chapter] to the extent the Secretary determines to be appropriate, taking into account the studies conducted under subsection (a); and

''(B) establish, taking into account the studies conducted under subsection (a), criteria for adjusting the reductions which shall be made for quarters prior to the implementation of the restructured quality control systems so as to eliminate reductions for those quarters which would not be required if the restructured quality control systems had been in effect during those quarters.

''(2) Beginning with the first calendar quarter after the moratorium period, the Secretary shall implement the revised quality control systems under title XIX, and shall reduce payments to States—

''(A) for quarters after the moratorium period in accordance with the restructured quality control systems; and

''(B) for quarters in and before the moratorium period, as provided under the regulations described in paragraph (1)(B).

''(d) EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

REDUCTION OF PAYMENTS TO STATES NOT HAVING AN EFFECTIVE CHILD SUPPORT PLAN

Pub. L. 97–377, title I, §113, Dec. 21, 1982, 96 Stat. 1912, provided that: ''No reduction in the amount payable to any State under title IV of the Social Security Act [this subchapter] with respect to any of the fiscal years 1977 through 1983 shall be made prior to the date on which this resolution expires [not later than Sept. 30, 1983] on account of the provisions of section 403(h) of such Act [subsec. (h) of this section].''

Pub. L. 97–276, §127, Oct. 2, 1982, 96 Stat. 1196, provided that: ''No reduction in the amount payable to any State under title IV of the Social Security Act [this subchapter] with respect to any of the fiscal years 1977

through 1982 shall be made prior to the date on which this resolution expires [not later than Dec. 17, 1982] on account of the provisions of section 403(h) of such Act [subsec. (h) of this section].''

Pub. L. 96–272, title III, § 309, June 17, 1980, 94 Stat. 532, as amended by Pub. L. 96–611, § 11(b)(1), Dec. 28, 1980, 94 Stat. 3574, provided that: ''No reduction in the amount payable to any State under title IV of the Social Security Act [this subchapter] with respect to any of the fiscal years 1977 through 1980 shall be made prior to October 1, 1980, on account of the provisions of section 403(h) of such Act [subsec. (h) of this section].''

CONTINUING EFFECT OF CURRENT REGULATIONS WITH RESPECT TO ERRONEOUS PAYMENTS MADE BY STATES UNDER A STATE PLAN APPROVED UNDER THIS PART

Section 156(e) of Pub. L. 97–248 provided that: ''The regulations currently in effect for fiscal year 1982 with respect to erroneous payments made by States under a State plan approved under part A of title IV of the Social Security Act [this part] (45 CFR 205.42) shall remain in effect with respect to erroneous payments made by States until new regulations reflecting the changes made by subsection (a) [amending this section] are promulgated and placed in effect.''

DISREGARD OF MATCHING FUNDS REQUIREMENTS IN USE OF FUNDS APPROPRIATED PURSUANT TO TAX REDUCTION AND SIMPLIFICATION ACT OF 1977

Secretary of Health and Human Services and Secretary of Labor authorized to carry out the work incentive program under this subchapter from the sums appropriated pursuant to the Tax Reduction and Simplification Act of 1977 (Pub. L. 95–30, May 23, 1977, 91 Stat. 126) without regard to the requirements for non-Federal matching funds contained in subsecs. (a)(3)(A) and (d) of this section, see section 401(a) of Pub. L. 95–30, set out as a note under section 602 of this title.

FEDERAL PERCENTAGE OF STATE EXPENDITURES FOR SECTION 602(a)(14), (15) SERVICES FROM JAN. 2, 1968, AND BEFORE JULY 1, 1969

Section 201(h) of Pub. L. 90–248 provided that notwithstanding subsec. (a)(3)(A) of this section, as amended by section 201(c) of Pub. L. 90–248, the rate specified in subsec. (a)(3)(A) of this section was to be 85 per centum, rather than 75 per centum, with respect to expenditures for services furnished pursuant to section 602(a)(14) and (15) of this title, made on or after Jan. 2, 1968, and prior to July 1, 1969.

APPLICABILITY OF CERTAIN PROVISIONS TO PUERTO RICO, GUAM, AND THE VIRGIN ISLANDS

For applicability of subsec. (a)(3) of this section to Puerto Rico, Guam, and the Virgin Islands as it applies to the fifty States and the District of Columbia, see section 2353(b)(2) of Pub. L. 97–35, set out as a note under section 602 of this title.

Section 248(b) of Pub. L. 90–248, which designated the rate of payments for Puerto Rico, the Virgin Islands, and Guam, was repealed by Pub. L. 97–35, title XXIII, § 2353(b)(3), Aug. 13, 1981, 95 Stat. 872.

NONDUPLICATION OF PAYMENTS TO STATES: PROHIBITION OF PAYMENTS AFTER DECEMBER 31, 1969

Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub. L. 89–97, set out as a note under section 1396b of this title.

REPORT TO PRESIDENT AND CONGRESS: RECOMMENDATIONS AS TO CONTINUATION AND MODIFICATION OF AMENDMENT

Section 108(d) of Pub. L. 87–543 provided that the Secretary submit to the President, for transmission to Congress prior to Jan. 1, 1967, a full report of the administration of the provisions of the amendments made by section 108 of Pub. L. 87–543 to this section and section 606 of this title, including the experiences of each of the States in making protective payments under the provisions of their respective State plans which are in accord with amendments to this section and section 606 of this title by section 108 of Pub. L. 87–543, together with his recommendations as to continuation and modification in these amendments.

Provision applicable in the case of expenditures under a State plan approved under this subchapter, made during the period beginning Oct. 1, 1962, and ending with the close of June 30, 1967, see section 202(e) of Pub. L. 87–543, set out as an Effective Date of 1962 Amendment note above.

STATE PLANS IN EFFECT JULY 25, 1962: AUTOMATIC CONFORMITY TO AMENDMENTS

State plans in effect July 25, 1962, deemed to have been conformed to amendment of subsec. (b)(2)(B) of this section by section 104(a) of Pub. L. 87–543, see section 104(b) of Pub. L. 87–543, set out as a note under section 601 of this title.

CROSS REFERENCES

Navajo and Hopi Indians, additional Federal contributions in connection with rehabilitation program, see section 639 of Title 25, Indians.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 603a, 604, 608, 613, 652, 673, 682, 686, 1308, 1315, 1318, 1319 of this title; title 2 section 906; title 25 section 639.

§ 603a. Reimbursement of expenses

For purposes of section 603 of this title, expenses incurred to reimburse State employment offices for furnishing information requested of such offices pursuant to the third sentence of section 49b(a) of title 29, by a State or local agency administering a State plan approved under part A of this subchapter shall be considered to constitute expenses incurred in the administration of such State plan; and for purposes of section 655 of this title, expenses incurred to reimburse State employment offices for furnishing information so requested by a State or local agency charged with the duty of carrying out a State plan for child support approved under part D of this subchapter shall be considered to constitute expenses incurred in the administration of such State plan.

(Pub. L. 94–566, title V, § 508(b), Oct. 20, 1976, 90 Stat. 2689.)

REFERENCES IN TEXT

Parts A and D of this subchapter, referred to in text, are classified to sections 601 et seq. and 651 et seq. of this title.

CODIFICATION

Section was not enacted as part of the Social Security Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 654 of this title.

§ 604. Deviation from plan

(a) Stoppage of payments

In the case of any State plan for aid and services to needy families with children which has been approved by the Secretary, if the Sec-

retary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence requirement prohibited by section 602(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 602(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(b) Compliance with State statute

No payment to which a State is otherwise entitled under this part for any period before September 1, 1962, shall be withheld by reason of any action taken pursuant to a State statute which requires that aid be denied under the State plan approved under this part with respect to a child because of the conditions in the home in which the child resides; nor shall any such payment be withheld for any period beginning on or after such date by reason of any action taken pursuant to such a statute if provision is otherwise made pursuant to a State statute for adequate care and assistance with respect to such child.

(c) Good faith effort to comply

No State shall be found, prior to January 1, 1977, to have failed substantially to comply with the requirements of section 602(a)(27) of this title if, in the judgment of the Secretary, such State is making a good faith effort to implement the program required by such section.

(d) Reduction in amount payable

After December 31, 1976, in the case of any State which is found to have failed substantially to comply with the requirements of section 602(a)(27) of this title, the reduction in any amount payable to such State required to be imposed under section 603(h) of this title shall be imposed in lieu of any reduction, with respect to such failure, which would otherwise be required to be imposed under this section.

(Aug. 14, 1935, ch. 531, title IV, § 404, 49 Stat. 628; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; May 8, 1961, Pub. L. 87–31, § 4, 75 Stat. 77; July 25, 1962, Pub. L. 87–543, title I, §§ 104(a)(5)(B), 107(b), 76 Stat. 185, 189; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 241(b)(4), 245, 81 Stat. 916, 918; Jan. 4, 1975, Pub. L. 93–647, § 101(c)(6)(B), 88 Stat. 2360; July 18, 1984, Pub. L. 98–369, title VI, § 2663(*l*)(1), 98 Stat. 1171.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 substituted ''Secretary'' for ''Administrator'', wherever appearing.

1975—Subsecs. (c), (d). Pub. L. 93–647 added subsecs. (c) and (d).

1968—Subsec. (a). Pub. L. 90–248, § 245, inserted ''(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)'' after ''further payments will not be made to the State'' and substituted in last sentence ''further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)'' for ''further certification to the Secretary of the Treasury with respect to such State''.

Subsec. (b). Pub. L. 90–248, § 241(b)(4), substituted ''part'' for ''subchapter'' in two places.

1962—Subsec. (a). Pub. L. 87–543, § 104(a)(5)(B), substituted ''aid and services to needy families with children'' for ''aid to dependent children''.

Subsec. (b). Pub. L. 87–543, § 107(b), prohibited withholding of payments from a State on and after Sept. 1, 1962, by reason of any action taken pursuant to a State statute where provision is made pursuant to a State statute for adequate care and assistance of the child.

1961—Pub. L. 87–31 designated existing provisions as subsec. (a) and added subsec. (b).

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' and ''he'', ''him'', or ''his'' for ''it'' or ''its'' wherever appearing.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective Aug. 1, 1975, see section 101(f) of Pub. L. 93–647, set out as an Effective Date note under section 651 of this title.

STATE PLANS IN EFFECT JULY 25, 1962: AUTOMATIC CONFORMITY TO AMENDMENTS

State plans in effect July 25, 1962 deemed to have been conformed to amendment of subsec. (a) of this section by section 104(a) of Pub. L. 87–543, see section 104(b) of Pub. L. 87–543, set out as a note under section 601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 605, 1316 of this title.

§ 605. Use of payments for benefit of children

Whenever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child, the State agency may provide for such counseling and guidance services with respect to the use of such payments and the management of other funds by the relative receiving such payments as it deems advisable in order to assure use of such payments in the best interests of such child, and may provide for advising such relative that continued failure to so use such payments will result in substitution therefor of protective payments as provided under section 606(b)(2) of this title, or in seeking appointment of a guardian or legal representative as provided in section 1311 of this title, or in the imposition of criminal or civil penalties authorized under State law if it is determined by a court of competent jurisdiction that such relative is not using or has not used for the benefit of the child any such payments made for that purpose; and the provision of such services or advice by the State agency (or the taking of the action specified in such advice) shall not serve as a basis for withholding funds from such State under section 604 of this title and shall not

prevent such payments with respect to such child from being considered aid to families with dependent children.

(Aug. 14, 1935, ch. 531, title IV, § 405, 49 Stat. 629; July 25, 1962, Pub. L. 87–543, title I, § 107(a), 76 Stat. 188.)

AMENDMENTS

1962—Pub. L. 87–543 substituted provisions relating to use of payments for benefit of children for former provision appropriating $250,000 for fiscal year ending June 30, 1936, to defray expenses of former Social Security Board under sections 601 to 605 of this title.

§ 606. Definitions

When used in this part—

(a) The term ''dependent child'' means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home (other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States), or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) at the option of the State, under the age of nineteen and a full-time student in a secondary school (or in the equivalent level of vocational or technical training), if, before he attains age nineteen, he may reasonably be expected to complete the program of such secondary school (or such training);

(b) The term ''aid to families with dependent children'' means money payments with respect to a dependent child or dependent children, or, at the option of the State, a pregnant woman but only if it has been medically verified that the child is expected to be born in the month such payments are made or within the three-month period following such month of payment, and who, if such child had been born and was living with her in the month of payment, would be eligible for aid to families with dependent children, and includes (1) money payments to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 607 of this title), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 602(a)(7) of this title) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approved under section 602 of this title includes provision for—

(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

(B) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary; and

(D) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made.

Payments with respect to a dependent child which are intended to enable the recipient to pay for specific goods, services, or items recognized by the State agency as a part of the child's need under the State plan may (in the discretion of the State or local agency administering the plan in the political subdivision) be made, pursuant to a determination referred to in clause (2)(A), in the form of checks drawn jointly to the order of the recipient and the person furnishing such goods, services, or items and negotiable only upon endorsement by both such recipient and such person; and payments so made shall be considered for all of the purposes of this part to be payments described in clause (2). Whenever payments with respect to a dependent child are made in the manner described in clause (2) (including payments described in the preceding sentence), a statement of the specific reasons for making such payments in that manner (on which the determination under clause (2)(A) was based) shall be placed in the file maintained with respect to such child by the State or local agency administering the State plan in the political subdivision. Payments of the type described in clause (2) shall not be subject to the requirements of clauses (A) through (D) of such clause (2), when they are made in the manner described in clause (2) at the request of the family member to whom payment would otherwise be made in an unrestricted manner.

(c) The term ''relative with whom any dependent child is living'' means the individual who is one of the relatives specified in subsection (a) of this section and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home.

(d) Repealed. Pub. L. 93–647, §3(a)(5), Jan. 4, 1975, 88 Stat. 2348.

(e)(1) The term ''emergency assistance to needy families with children'' means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) of this section in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment—

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law (for which such individual is not entitled to medical assistance under the State plan under subchapter XIX of this chapter) on behalf of, such child or any other member of the household in which he is living, and

(B) such services as may be specified by the Secretary;

but only with respect to a State whose State plan approved under section 602 of this title includes provision for such assistance.

(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate.

(f) Notwithstanding the provisions of subsection (b) of this section, the term ''aid to families with dependent children'' does not mean payments with respect to a parent (or other individual whose needs such State determines should be considered in determining the need of the child or relative claiming aid under the plan of such State approved under this part) of a child who fails to cooperate with any agency or official of the State in obtaining such support payments for such child. Nothing in this subsection shall be construed to make an otherwise eligible child ineligible for protective payments because of the failure of such parent (or such other individual) to so cooperate.

(g) Notwithstanding the provisions of subsection (b) of this section, the term ''aid to families with dependent children'' does not mean any—

(1) amount paid to meet the needs of an unborn child; or

(2) amount paid (or by which a payment is increased) to meet the needs of a woman occasioned by or resulting from her pregnancy, unless, as has been medically verified, the woman's child is expected to be born in the month such payments are made (or increased) or within the three-month period following such month of payment.

(h) Each dependent child, and each relative with whom such a child is living (including the spouse of such relative as described in subsection (b) of this section), who becomes ineligible for aid to families with dependent children as a result (wholly or partly) of the collection or increased collection of child or spousal support under part D of this subchapter, and who has received such aid in at least three of the six months immediately preceding the month in which such ineligibility begins, shall be deemed to be a recipient of aid to families with dependent children for purposes of subchapter XIX of this chapter for an additional four calendar months beginning with the month in which such ineligibility begins.

(Aug. 14, 1935, ch. 531, title IV, §406, 49 Stat. 629; Aug. 10, 1939, ch. 666, title IV, §403, 53 Stat. 1380; Aug. 28, 1950, ch. 809, title III, pt. 2, §323(a), 64 Stat. 551; Aug. 1, 1956, ch. 836, title III, §§321, 322, 351(b), 70 Stat. 850, 855; July 25, 1962, Pub. L. 87–543, title I, §§104(a)(3)(D), 108(a), 109, 152, 156(b), 76 Stat. 185, 189, 190, 206, 207; Oct. 13, 1964, Pub. L. 88–641, §2(a), 78 Stat. 1042; July 30, 1965, Pub. L. 89–97, title IV, §409, 79 Stat. 422; Jan. 2, 1968, Pub. L. 90–248, title II, §§201(f), 206(b), 207(a), 241(b)(5), 81 Stat. 880, 893, 916; Jan. 4, 1975, Pub. L. 93–647, §§3(a)(5), 101(c)(7), 88 Stat. 2348, 2360; Nov. 12, 1977, Pub. L. 95–171, §3(a)(2), 91 Stat. 1354; Dec. 28, 1980, Pub. L. 96–611, §4, 94 Stat. 3567; Aug. 13, 1981, Pub. L. 97–35, title XXI, §2184(b)(2), title XXIII, §§2311, 2312, 2317(b), 2353(b)(1), 95 Stat. 817, 852, 853, 856, 872; Sept. 3, 1982, Pub. L. 97–248, title I, §153(a), 96 Stat. 396; July 18, 1984, Pub. L. 98–369, div. B, title III, §2361(c), title VI, §2663(c)(3)(A), (B)(i), 98 Stat. 1104, 1166; Aug. 16, 1984, Pub. L. 98–378, §20(a), 98 Stat. 1322.)

REFERENCES IN TEXT

Part D of this subchapter, referred to in subsec. (h), is classified to section 651 et seq. of this title.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369, §2663(c)(3)(B)(i), substituted ''clauses (A) through (D)'' for ''clauses (A) through (E)'' in last sentence.

Subsec. (b)(2)(D), (E). Pub. L. 98–369, §2663(c)(3)(A), struck out subpar. (D) which read as follows: ''aid in the form of foster home care in behalf of children described in section 608(a) of this title; and'', and redesignated subpar. (E) as (D).

Subsec. (g). Pub. L. 98–369, §2361(c), struck out par. (1) designation, substituted ''(1)'' and ''(2)'' for ''(A)'' and ''(B)'', respectively, and struck out par. (2) which related to pregnant women.

Subsec. (h). Pub. L. 98–378 added subsec. (h).

1982—Subsec. (a)(1). Pub. L. 97–248 inserted reference to absence occasioned solely by reason of performance of active duty in uniformed services of United States.

1981—Subsec. (a)(2). Pub. L. 97–35, §2311, substituted ''at the option of the State, under the age of nineteen and a full-time student in a secondary school (or in the equivalent level of vocational or technical training), if, before he attains age nineteen, he may reasonably be expected to complete the program of such secondary school (or such training)'' for ''under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment''.

Subsec. (b). Pub. L. 97–35, §§2184(b)(2)(A), 2312(a), 2317(b), in provision preceding subpar. (A) substituted ''a dependent child or dependent children, or, at the option of the State, a pregnant woman but only if it has

been medically verified that the child is expected to be born in the month such payments are made or within the three-month period following such month of payment, and who, if such child had been born and was living with her in the month of payment, would be eligible for aid to families with dependent children'' for '', or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, a dependent child or dependent children'', struck out ''or medical care or any type of remedial care recognized under State law'' in par. (1) following ''money payments'', and in provision following subpar. (E) inserted provision that payments of the type described in cl. (2) not be subject to the requirements of cls. (A) through (E) of cl. (2), when made in the manner described in cl. (2) at the request of the family member to whom payment would otherwise be made in an unrestricted manner''.

Subsec. (d). Pub. L. 97–35, § 2353(b)(1), struck out subsec. (d) as in effect in Puerto Rico, Guam, and the Virgin Islands, which defined ''family services'' to mean services to a family or any member thereof for the purpose of preserving, rehabilitating, reuniting, or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum self-support and personal independence.

Subsec. (e)(1)(A). Pub. L. 97–35, § 2184(b)(2)(B), inserted ''(for which such individual is not entitled to medical assistance under the State plan under subchapter XIX of this chapter)''.

Subsec. (g). Pub. L. 97–35, § 2312(b), added subsec. (g).

1980—Subsec. (a). Pub. L. 96–611 inserted ''at the option of the State,'' before ''under the age of twenty-one'' at beginning of cl. (2)(B), and added cl. (2)(C).

1977—Subsec. (b). Pub. L. 95–171 substituted a period for semicolon at end of cl. (2)(E) and inserted provisions after such cl. (2)(E) authorizing payments in form of checks drawn jointly to order of recipient and the person furnishing goods, services, or items to needy child and negotiable only upon endorsement by both and requiring placement of statement of specific reasons for payments in file of child maintained by State or local agency administering State plan.

1975—Subsec. (d). Pub. L. 93–647, § 3(a)(5), repealed subsec. (d) which defined ''family services''.

Subsec. (f). Pub. L. 93–647, § 101(c)(7), added subsec. (f).

1968—Pub. L. 90–248, § 241(b)(5), substituted in text preceding subsec. (a) ''part'' for ''subchapter''.

Subsec. (b)(2). Pub. L. 90–248, § 207(a)(1), inserted '', and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 602(a)(7) of this title'' and ''or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual''.

Subsec. (b)(2)(B) to (F). Pub. L. 90–248, § 207(a)(2), struck out cl. (B) requiring that State plan include provision for making payments only when such payments will meet all the need of the individuals with respect to whom the payments are made, and redesignated cls. (C) to (F) as (B) to (E), respectively.

Subsec. (d). Pub. L. 90–248, § 201(f), added subsec. (d).

Subsec. (e). Pub. L. 90–248, § 206(b), added subsec. (e).

1965—Subsec. (a). Pub. L. 89–97 substituted ''(as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university,'' for ''(as determined in accordance with standards prescribed by the Secretary) a student regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent,'' in cl. (2)(B).

1964—Subsec. (a). Pub. L. 88–641 included within definition of ''dependent child'' one who is under the age of 21 and a student regularly attending a high school in pursuance of a course of study leading to a high school diploma or its equivalent, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.

1962—Subsec. (b). Pub. L. 87–543, §§ 104(a)(3)(D), 156(b), substituted ''aid to families with dependent children'' for ''aid to dependent children'' and inserted ''(if provided in or after the third month before the month in which the recipient makes application for aid)'' before ''medical care''.

Pub. L. 87–543, §§ 108(a), 109, 152, designated existing provisions as par. (1), inserted ''(and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 607 of this title)'' after ''relative with whom any dependent child is living'', struck out ''for any month'' and ''if money payments have been made under the State plan with respect to such child for such month'' before and after ''to meet the needs of the relative with whom any dependent child is living'', and added par. (2).

1956—Subsec. (a). Act Aug. 1, 1956, §§ 321, 322, included first cousins, nephews, and nieces, as persons with whom a needy child may be living, and struck out requirement of school attendance for children between the ages of 16 and 18.

Subsec. (b). Act Aug. 1, 1956, § 351(b), struck out ''(except when used in clause (2) of section 603(a) of this title)'' before ''includes money payments or medical care''.

1950—Subsec. (b). Act Aug. 28, 1950, redefined ''aid to dependent children''.

Subsec. (c). Act Aug. 28, 1950, added subsec. (c).

1939—Subsec. (a). Act Aug. 10, 1939, redefined ''dependent child''.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 20(b) of Pub. L. 98–378, as amended by Pub. L. 100–485, title III, § 303(e), Oct. 13, 1988, 102 Stat. 2393; Pub. L. 101–239, title VIII, § 8003(a), Dec. 19, 1989, 103 Stat. 2453, provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to individuals becoming ineligible for aid to families with dependent children (as described in section 406(h) of the Social Security Act [subsec. (h) of this section] as added by such subsection) on or after the date of the enactment of this Act [Aug. 16, 1984].''

[Section 8003(b) of Pub. L. 101–239 provided that the amendment of section 20(b) of Pub. L. 98–378, set out above, by section 8003(a) of Pub. L. 101–239 is effective Oct. 1, 1989.]

[Section 303(f)(4) of Pub. L. 100–485 provided that the amendment of section 20(b) of Pub. L. 98–378, set out above, by section 303(e) of Pub. L. 100–485 is effective Oct. 1, 1988.]

Amendment by section 2361(c) of Pub. L. 98–369 applicable to calendar quarters beginning on or after Oct. 1, 1984, without regard to whether or not final regulations to carry out the amendment have been promulgated by such date, except as otherwise provided, see section 2361(d) of Pub. L. 98–369, set out as a note under section 1396a of this title.

Amendment by section 2663(c)(3)(A), (B)(i) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 153(b) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall become effective on October 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 2311, 2312, and 2317(b) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2321 of Pub. L. 97–35, set out as a note under section 602 of this title.

Amendment by section 2353(b)(1) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–171 applicable with respect to payments of aid to families with dependent children made for months beginning on or after Oct. 1, 1977, see section 3(a)(3) of Pub. L. 95–171, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 3(a)(5) of Pub. L. 93–647 effective with the respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, but not effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands, or Guam, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

Amendment by section 101(c)(7) of Pub. L. 93–647 effective Aug. 1, 1975, see section 101(f) of Pub. L. 93–647, set out as an Effective Date note under section 651 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT; DIFFERENT STATE AGENCIES FOR ADMINISTRATION OF SERVICES

Enactment by section 201(f) of Pub. L. 90–248 effective July 1, 1968 (or earlier if the State plan so provides) and provision for nonapplication of section 602(a)(15)(F) of this title when there are different State agencies for administration of services, see section 201(g)(1) of Pub. L. 90–248, set out as an Effective Date of 1968 Amendment note under section 602 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 108(a) of Pub. L. 87–543 applicable in the case of expenditures under a State plan approved under this subchapter, made during the period beginning Oct. 1, 1962, and ending with the close of June 30, 1967, see section 202(e) of Pub. L. 87–543, set out as a note under section 603 of this title.

Amendment by section 109 of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Sept. 30, 1962, see section 202(d) of Pub. L. 87–543, set out as a note under section 303 of this title.

Amendment by section 156(b) of Pub. L. 87–543 applicable in the case of applications made after Sept. 30, 1962, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, see section 156(e) of Pub. L. 87–543, set out as a note under section 306 of this title.

Section 202(c) of Pub. L. 87–543 provided that: ''The amendments made by sections 102(b)(2) and (d), and 152 [enacting section 728 of this title and amending this section and sections 721 and 723 of this title] shall be applicable in the case of expenditures, under a State plan approved under title I, IV, X, or XIV of the Social Security Act [subchapter I, IV, X, or XIV of this chapter] or developed as provided in part 3 of title V of such Act [sections 721 to 728 of this title], as the case may be, made after June 30, 1962.''

EFFECTIVE DATE OF 1956 AMENDMENT

Section 323 of act Aug. 1, 1956, provided that: ''The amendments made by this part [part III (§§ 321, 322 of title III of act Aug. 1, 1956, amending this section] shall become effective July 1, 1957.''

Amendment by section 351(b) of act Aug. 1, 1956, effective with respect to the fiscal year ending June 30, 1957, and all succeeding fiscal years, see section 351(d) of act Aug. 1, 1956, set out as a note under section 603 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 323(b) of act Aug. 28, 1950, provided that the amendment made by such section 323(b) is effective Oct. 1, 1950.

EMERGENCY ASSISTANCE AND AFDC SPECIAL NEEDS

Pub. L. 101–239, title VIII, § 8005, Dec. 19, 1989, 103 Stat. 2461, as amended by Pub. L. 101–508, title V, § 5058, Nov. 5, 1990, 104 Stat. 1388–230, provided that:

''(a) IMPLEMENTATION OF PROPOSED REGULATIONS PROHIBITED.—Except as provided in subsection (b), the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall not—

''(1) implement in whole or in part the proposed regulation published in the Federal Register on December 14, 1987, (52 F.R. 47420) with respect to emergency assistance and the need for and amount of assistance under the program of aid to families with dependent children; or

''(2) before October 1, 1991, change any policy in effect immediately before the date of the enactment of this Act [Dec. 19, 1989] with respect to any of the matters addressed in the proposed regulation.

''(b) REVISED PROPOSED REGULATION.—Notwithstanding subsection (a), the Secretary may issue a revised proposed regulation concerning the use of emergency assistance under the program of aid to families with dependent children under title IV of the Social Security Act [this subchapter] that incorporates the recommendations included in the report entitled 'Use of the Emergency Assistance and AFDC Programs to Provide Shelter to Families' that the Secretary submitted to the Congress on July 3, 1989.

''(c) ESTABLISHMENT OF EFFECTIVE DATES FOR PROPOSED RULES.—Any final regulation which would change any policy in effect immediately before the date of the enactment of this Act [Dec. 19, 1989] with respect to the use of emergency assistance or special needs funds under the program of aid to families with dependent children under part A of title IV of the Social Security Act [this part] shall not take effect before October 1, 1991.

''(d) REPORTING REQUIREMENTS.—With respect to any calendar quarter beginning on or after January 1, 1990, a financial report by a State submitted to the Secretary to fulfill reporting requirements under the program of aid to families with dependent children under part A of title IV of the Social Security Act [this part] shall identify any emergency assistance and special needs funds expended by the State under the program and used to pay for housing in hotels or similar temporary living arrangements (as defined by the Secretary) that house recipients of such aid.''

FEDERAL FINANCIAL PARTICIPATION IN STATE AID PLANS

Section 3(b) of Pub. L. 95–171 provided that: ''Notwithstanding any other provision of law, Federal financial participation in aid to families with dependent children under a State plan approved under section 402 of the Social Security Act [section 602 of this title], for quarters (with respect to which expenditure reports were timely filed by the State) during the period beginning with the calendar quarter in which Public Law 90–248 was enacted [Jan. 2, 1968] and ending with the first calendar quarter of 1977, shall not be denied, on or after October 1, 1977, by reason of the provision of goods, services, or items in the form of a check which is drawn jointly to the order of the recipient and the person furnishing such goods, services, or items and which shows the purpose for which the check is drawn, or by reason of the failure of the State to meet the requirement of the last two sentences of section 403(a) of such Act [section 603(a) of this title] or the failure of the State (or any political subdivision thereof) to carry out the functions and duties prescribed in clauses (A), (B), (C), and (E) of section 406(b)(2) of such Act [subsec. (b)(2) of this section], regardless of the form in which the aid involved was paid, if (and to the extent that) the amount of such aid was correct and the payment of the aid in that form did not result in assistance in cases or in amounts not authorized by or under part A of title IV of such Act [this part].''

STATE PLANS IN EFFECT JULY 25, 1962: AUTOMATIC CONFORMITY TO AMENDMENTS

State plans in effect July 25, 1962, deemed to have been conformed to amendment of subsec. (b) of this sec-

tion by section 104(a) of Pub. L. 87–543, see section 104(b) of Pub. L. 87–543, set out as a note under section 601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 603, 605, 607, 610, 672, 673, 682, 1396a, 1396d, 1396v of this title.

§ 607. Dependent children of unemployed parents

(a) "Dependent child" defined

The term ''dependent child'' shall, notwithstanding section 606(a) of this title, include a needy child who meets the requirements of section 606(a)(2) of this title, who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of the parent who is the principal earner, and who is living with any of the relatives specified in section 606(a)(1) of this title in a place of residence maintained by one or more of such relatives as his (or their) own home.

(b) Requirements of State plan

(1) In providing for the provision of aid to families with dependent children under the State's plan approved under section 602 of this title, in the case of families that include dependent children within the meaning of subsection (a) of this section, as required by section 602(a)(41) of this title, the State's plan—

(A) subject to paragraph (2), shall require the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) of this section when—

(i) whichever of such child's parents is the principal earner has not been employed (as determined in accordance with standards prescribed by the Secretary) for at least 30 days prior to the receipt of such aid,

(ii) such parent has not without good cause, within such period (of not less than 30 days) as may be prescribed by the Secretary, refused a bona fide offer of employment or training for employment, and

(iii)(I) such parent has 6 or more quarters of work (as defined in subsection (d)(1) of this section), no more than 4 of which may be quarters of work defined in subsection (d)(1)(B) of this section, in any 13-calendar-quarter period ending within one year prior to the application for such aid or (II) such parent received unemployment compensation under an unemployment compensation law of a State or of the United States, or such parent was qualified (within the meaning of subsection (d)(3) of this section) for unemployment compensation under the unemployment compensation law of the State, within one year prior to the application for such aid; and

(B) shall provide—

(i) for such assurances as will satisfy the Secretary that unemployed parents of dependent children as defined in subsection (a) of this section will participate or apply for participation in a program under part F of this subchapter (unless the program is not available in the area where the parent is living) within 30 days after receipt of aid with respect to such children;

(ii) for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education in the State, designed to assure maximum utilization of available public vocational education services and facilities in the State in order to encourage the retraining of individuals capable of being retrained;

(iii) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) of this section with respect to any week for which such child's parent described in subparagraph (A)(i) qualifies for unemployment compensation under an unemployment compensation law of a State or of the United States, but refuses to apply for or accept such unemployment compensation;

(iv) for the reduction of the aid to families with dependent children otherwise payable to any child or relative specified in subsection (a) of this section by the amount of any unemployment compensation that such child's parent described in subparagraph (A)(i) receives under an unemployment compensation law of a State or of the United States; and

(v) that, if and for so long as the child's parent described in subparagraph (A)(i), unless meeting a condition of section 602(a)(19)(C) of this title, is, without good cause, not participating (or available for participation) in a program under part F of this subchapter, or if exempt under such section by reason of clause (vii) thereof or because there has not been established or provided under part F of this subchapter a program in which such parent can effectively participate, is not registered with the public employment offices in the State, the needs of such parent shall not be taken into account in determining the need of such parent's family under section 602(a)(7) of this title, and the needs of such parent's spouse shall not be so taken into account unless such spouse is participating in such a program, or if not participating solely by reason of section 602(a)(19)(C)(vii) of this title or because there has not been established or provided under part F of this subchapter a program in which such spouse can effectively participate, is registered with the public employment offices of the State; and if neither parents'[1] needs are so taken into account, the payment provisions of section 602(a)(19)(G)(i)(I) of this title shall apply.

(2)(A) In carrying out the program under this section, a State may design its program to reflect the individual needs of the State and to emphasize education, training, and employment services for unemployed parents and their spouses who are eligible for aid to families with dependent children by reason of this section, to the extent provided under this paragraph.

(B)(i) Subject to clauses (ii) and (iii), with respect to the requirement under section 602(a)(41) of this title, a State may, at its option, limit

[1] So in original. Probably should be ''parent's''.

the number of months with respect to which a family receives aid to families with dependent children to the extent determined appropriate by the State for the operation of its program under this section.

(ii)(I) A State may not limit the number of months under clause (i) for which a family may receive aid to families with dependent children unless it provides in its plan assurances to the Secretary that it has a program (that meets such requirements as the Secretary may in regulation prescribe) for providing education, training, and employment services (including any activity authorized under section 602(a)(19) of this title or under part F of this subchapter) in order to assist parents of children described in subsection (a) of this section in preparing for and obtaining employment.

(II) In exercising the option under clause (i), a State plan may not provide for the denial of aid to families with dependent children to a family otherwise eligible for such aid for any month unless the family has received such aid (on the basis of the unemployment of the parent who is the principal earner) in at least 6 of the preceding 12 months.

(III) Any family that is otherwise eligible for aid to families with dependent children that does not receive such aid in any month solely by reason of the State exercising the option under clause (i) shall be deemed, for purposes of determining the period under paragraph (1)(A)(iii)(I), to be receiving such aid in such month.

(iii) Each State which, on September 26, 1988, has a program in effect under this section shall continue to operate such program without a time limitation.

(C) With respect to the participation in the program under section 602(a)(19) of this title and part F of this subchapter of a family eligible for aid to families with dependent children by reason of this section, a State may, at its option—

(i) except as otherwise provided in such section and such part, require that any parent participating in such program engage in program activities for up to 40 hours per week; and

(ii) provide for the payment of aid to families with dependent children at regular intervals of no greater than one month but after the performance of assigned program activities.

(c) Exclusion of expenditures under this section from aid to families with dependent children

Notwithstanding any other provisions of this section, expenditures pursuant to this section shall be excluded from aid to families with dependent children (A) where such expenditures are made under the plan with respect to any dependent child as defined in subsection (a) of this section, (i) for any part of the 30-day period referred to in subsection (b)(1)(A)(i) of this section, or (ii) for any period prior to the time when the parent satisfies subsection (b)(1)(A)(ii) of this section, and (B) if, and for as long as, no action is taken (after the 30-day period referred to in subsection (b)(1)(B)(i) of this section), under the program therein specified, to undertake appropriate steps directed toward the participation of such parent in a program under part F of this subchapter.

(d) Quarter of work; calendar quarter; eligibility for State unemployment compensation

For purposes of this section—

(1) the term ''quarter of work'' with respect to any individual means (A) a calendar quarter in which such individual received earned income of not less than $50 (or which is a ''quarter of coverage'' as defined in section 413(a)(2) of this title), or in which such individual participated in the program under section 602(a)(19) of this title and part F of this subchapter, (B) at the option of the State, a calendar quarter in which such individual attended, full-time, an elementary school, a secondary school, or a vocational or technical training course (approved by the Secretary) that is designed to prepare the individual for gainful employment, or in which such individual participated in an education or training program established under the Job Training Partnership Act [29 U.S.C. 1501 et seq.], and (C) a calendar quarter ending before October 1990 in which such individual participated in a community work experience program under section 609 of this title (as in effect for a State immediately before the effective date for that State of the amendments made by title II of the Family Support Act of 1988) or the work incentive program established under part C of this subchapter (as in effect for a State immediately before such effective date);

(2) the term ''calendar quarter'' means a period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31;

(3) an individual shall, for purposes of subsection (b)(1)(A)(iii) of this section, be deemed qualified for unemployment compensation under the State's unemployment compensation law if—

(A) he would have been eligible to receive such unemployment compensation upon filing application, or

(B) he performed work not covered under such law and such work, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such unemployment compensation upon filing application; and

(4) the phrase ''whichever of such child's parents is the principal earner'', in the case of any child, means whichever parent, in a home in which both parents of such child are living, earned the greater amount of income in the 24-month period the last month of which immediately precedes the month in which an application is filed for aid under this part on the basis of the unemployment of a parent, for each consecutive month for which the family receives such aid on that basis.

Notwithstanding section 602(a)(1) of this title, a State that chooses to exercise the option provided under paragraph (1)(B) may provide that the definition of calendar quarter under such option apply in one or more political subdivisions of the State.

(e) Agreement with States for simplification of procedures

The Secretary and the Secretary of Labor shall jointly enter into an agreement with each

State which is able and willing to do so for the purpose of (1) simplifying the procedures to be followed by unemployed parents and other unemployed persons in such State in participating in a program under part F of this subchapter and in registering with public employment offices (under this section and otherwise) or in connection with applications for unemployment compensation, by reducing the number of locations or agencies where such persons must go in order to participate in or register for such programs and in connection with such applications, and (2) providing where possible for a single registration satisfying this section and the requirements of both part F of this subchapter and the applicable unemployment compensation laws.

(Aug. 14, 1935, ch. 531, title IV, § 407, as added May 8, 1961, Pub. L. 87–31, § 1, 75 Stat. 75; amended July 25, 1962, Pub. L. 87–543, title I, §§ 104(a)(3)(E), 131(a), 134, 76 Stat. 185, 193, 196; Oct. 13, 1964, Pub. L. 88–641, § 2(b), 78 Stat. 1042; June 29, 1967, Pub. L. 90–36, § 2, 81 Stat. 94; Jan. 2, 1968, Pub. L. 90–248, title II, § 203(a), 81 Stat. 882; June 28, 1968, Pub. L. 90–364, title III, § 302, 82 Stat. 273; Dec. 28, 1971, Pub. L. 92–223, § 3(a)(10), (11), 85 Stat. 805; Oct. 20, 1976, Pub. L. 94–566, title V, § 507(a), (b), (d), 90 Stat. 2688; Aug. 13, 1981, Pub. L. 97–35, title XXIII, §§ 2313(a), (c)(2), 2353(q), 95 Stat. 853, 854, 874; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(4), (j)(3)(B)(ii), 98 Stat. 1166, 1171; Oct. 13, 1988, Pub. L. 100–485, title II, § 202(b)(7)–(11), title IV, § 401(a)(2)(B), (C), (b)(1), (3), (c), (h), 102 Stat. 2377, 2378, 2394–2396; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8105(1)–(3), (5), 102 Stat. 3797; Dec. 19, 1989, Pub. L. 101–239, title X, § 10403(a)(1)(A)(i), (2), 103 Stat. 2487, 2488; Nov. 5, 1990, Pub. L. 101–508, title V, §§ 5061(a), 5062(a), 104 Stat. 1388–231, 1388–232.)

AMENDMENT OF SECTION

Pub. L. 101–239, title X, § 10403(a)(2), Dec. 19, 1989, 103 Stat. 2488, provided that, effective Sept. 30, 1998, subsec. (d)(1) of this section is amended by striking ''participated'' and all that follows and inserting ''participated in a program under part F of this subchapter''.

For repeal of amendments by section 401(h) of Pub. L. 100–485, see Effective and Termination Dates of 1988 Amendments note below.

REFERENCES IN TEXT

Part F of this subchapter, referred to in text, is classified to section 681 et seq. of this title.

The Job Training Partnership Act, referred to in subsec. (d)(1)(B), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

For the effective date of the amendments made by title II of the Family Support Act of 1988 [Pub. L. 100–485], referred to in subsec. (d)(1)(C), see section 204 of Pub. L. 100–485, set out as an Effective Date note under section 681 of this title.

AMENDMENTS

1990—Subsec. (b)(1)(B)(iii). Pub. L. 101–508, § 5061(a)(1), struck out ''—'' after ''specified in subsection (a) of this section'', the text of subcl. (I) which provided for denial of aid to a child whose parent is not currently registered with the public employment offices in the State, ''(II)'' before ''with respect to any week'', and ''and'' after ''such unemployment compensation;''.

Subsec. (b)(1)(B)(iv). Pub. L. 101–508, § 5061(a)(2), substituted ''; and'' for period at end.

Subsec. (b)(1)(B)(v). Pub. L. 101–508, § 5061(a)(3), added cl. (v).

Subsec. (d)(1). Pub. L. 101–508, § 5062(a), substituted ''(A) a calendar quarter'' for ''a calendar quarter (A)'', struck out ''or'' after ''part F of this subchapter,'', and added subpar. (C).

1989—Subsec. (b)(1)(B)(iii)(I). Pub. L. 101–239, § 10403(a)(1)(A)(i), substituted ''section 602(a)(19)(C) of this title'' for ''section 609(a)(19)(C) of this title''.

1988—Subsec. (b). Pub. L. 100–485, § 401(b)(1)(A), (h), temporarily inserted ''(1)'', redesignated former par. (1) as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, redesignated former subpar. (C) as cl. (iii), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, redesignated former par. (2) as subpar. (B), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, redesignated former subpar. (C) as cl. (iii), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and redesignated former subpar. (D) as cl. (iv). See Effective and Termination Dates of 1988 Amendments note below.

Pub. L. 100–485, § 401(a)(2)(B), (h), temporarily substituted ''In providing for the provision of aid to families with dependent children under the State's plan approved under section 602 of this title, in the case of families that include dependent children within the meaning of subsection (a) of this section, as required by section 602(a)(41) of this title, the State's plan—

''(1) shall require''

for ''The provisions of subsection (a) of this section shall be applicable to a State if the State's plan approved under section 602 of this title—

''(1) requires''.

See Effective and Termination Dates of 1988 Amendments note below.

Subsec. (b)(1)(A). Pub. L. 100–485, § 401(b)(1)(B), (h), temporarily inserted ''subject to paragraph (2),''. See Effective and Termination Dates of 1988 Amendments note below.

Subsec. (b)(1)(A)(iii)(I). Pub. L. 100–485, § 401(c)(3), (h), temporarily inserted '', no more than 4 of which may be quarters of work defined in subsection (d)(1)(B) of this section,''. See Effective and Termination Dates of 1988 Amendments note below.

Subsec. (b)(1)(B)(iii)(I). Pub. L. 100–647, § 8105(5), which directed that subcl. (I) be amended by substituting ''602(a)(19)(A)'' for ''609(a)(19)(A)'', could not be executed, because ''609(a)(19)(A)'' did not appear in text.

Subsec. (b)(1)(B)(iii)(I), (II), (iv). Pub. L. 100–485, § 401(b)(3)(A), (h), temporarily substituted ''subparagraph (A)(i)'' for ''paragraph (1)(A)''. See Effective and Termination Dates of 1988 Amendments note below.

Subsec. (b)(2). Pub. L. 100–485, § 401(b)(1)(C), (h), temporarily added par. (2). Former par. (2) redesignated (1)(B). See Effective and Termination Dates of 1988 Amendments note below.

Pub. L. 100–485, § 401(a)(2)(C), (h), temporarily substituted ''shall provide'' for ''provides'' in introductory provisions. See Effective and Termination Dates of 1988 Amendments note below.

Subsec. (b)(2)(A). Pub. L. 100–485, § 202(b)(7), substituted ''will participate or apply for participation in a program under part F of this subchapter (unless the program is not available in the area where the parent is living) within 30 days'' for ''will be certified to the Secretary of Labor as provided in section 602(a)(19) of this title within thirty days''.

Subsec. (b)(2)(B)(ii)(III). Pub. L. 100–485, § 401(c)(4)(A), (h), temporarily added subcl. (III). See Effective and Termination Dates of 1988 Amendments note below.

Subsec. (b)(2)(C)(i). Pub. L. 100–485, § 202(b)(8), substituted ''section 609(a)(19)(C) of this title, is not currently participating (or available for participation) in a program under part F of this subchapter'' for ''section 602(a)(19)(A) of this title, is not currently registered pursuant to such section for the work incentive program established under part C of this subchapter'',

''clause (vii)'' for ''clause (iii)'', and ''part F of this subchapter'' for ''section 632(a) of this title''.

Subsec. (c). Pub. L. 100–485, §401(b)(3)(B), (h), temporarily substituted ''subsection (b)(1)(A)(i)'' for ''subparagraph (A) of subsection (b)(1)'', ''subsection (b)(1)(A)(ii) of this section'' for ''subparagraph (B) of such subsection'', and ''subsection (b)(1)(B)(i)'' for ''subparagraph (A) of subsection (b)(2)''. See Effective and Termination Dates of 1988 Amendments note below.

Pub. L. 100–485, §202(b)(9), substituted ''to undertake appropriate steps directed toward the participation of such parent in a program under part F of this subchapter'' for ''to certify such parent to the Secretary of Labor pursuant to section 602(a)(19) of this title''.

Subsec. (d). Pub. L. 100–485, §401(c)(2), (h), temporarily inserted at end ''Notwithstanding section 602(a)(1) of this title, a State that chooses to exercise the option provided under paragraph (1)(B) may provide that the definition of calendar quarter under such option apply in one or more political subdivisions of the State.'' See Effective and Termination Dates of 1988 Amendments note below.

Subsec. (d)(1). Pub. L. 100–485, §401(c)(1)(A), (h), as amended by Pub. L. 100–647, §8105(1), temporarily inserted ''(A)'' after ''a calendar quarter''. See Effective and Termination Dates of 1988 Amendments note below.

Pub. L. 100–485, §202(b)(10), which directed substitution of ''participated in a program under part F of this subchapter'' for ''participated in a community work experience program under section 609 of this title, or the work incentive program established under part C of this subchapter;'' was repealed by Pub. L. 100–647, §8105(3), effective on the date of enactment of Pub. L. 100–485.

Subsec. (d)(1)(A). Pub. L. 100–485, §401(c)(4)(B), (h), as amended by Pub. L. 100–647, §8105(2), temporarily substituted ''the program under section 602(a)(19) of this title and part F of this subchapter;'' for ''a community work experience program under section 609 of this title, or the work incentive program established under part C of this subchapter;''. See Effective and Termination Dates of 1988 Amendments note below.

Subsec. (d)(1)(B). Pub. L. 100–485, §401(c)(1)(B), (h), as amended by Pub. L. 100–647, §8105(1), temporarily added subpar. (B). See Effective and Termination Dates of 1988 Amendments note below.

Subsec. (d)(3). Pub. L. 100–485, §401(b)(3)(C), (h), temporarily substituted ''subsection (b)(1)(A)(iii)'' for ''subsection (b)(1)(C)'' in introductory provisions. See Effective and Termination Dates of 1988 Amendments note below.

Subsec. (e). Pub. L. 100–485, §202(b)(11), in cl. (1), substituted ''participating in a program under part F of this subchapter'' for ''registering pursuant to section 602(a)(19) of this title for the work incentive program established by part C of this subchapter'' and inserted ''participate in or'', and in cl. (2), substituted ''part F of this subchapter'' for ''the work incentive program''.

1984—Subsec. (b)(1)(C). Pub. L. 98–369, §2663(c)(4)(A), substituted ''such parent'' for ''such father'' and ''he'' wherever appearing.

Subsec. (b)(2)(A). Pub. L. 98–369, §2663(c)(4)(B), substituted ''30 days'' for ''thirty days''.

Subsec. (e). Pub. L. 98–369, §2663(j)(3)(B)(ii), struck out ''of Health, Education, and Welfare'' after ''The Secretary''.

1981—Subsec. (a). Pub. L. 97–35, §2313(a)(2), substituted ''the parent who is the principal earner'' for ''his father''.

Subsec. (b)(1). Pub. L. 97–35, §2313(a)(3), substituted in subpar. (A) ''whichever of such child's parents is the principal earner'' for ''such child's father'' and in subpar. (B) ''parent'' for ''father''.

Subsec. (b)(2). Pub. L. 97–35, §2313(a)(4), (c)(2), substituted in subpar. (A) ''unemployed parents'' for ''fathers'', in subpars. (C)(i), (ii), and (D) ''parent described in paragraph (1)(A)'' for ''father'', and in subpar. (C)(i) ''not currently registered'' for ''not registered'' in two places.

Subsec. (c). Pub. L. 97–35, §2313(a)(5), substituted ''parent'' for ''father'' in two places.

Subsec. (d)(1). Pub. L. 97–35, §2353(q), substituted ''a community work experience program under section 609 of this title'' for ''a community work and training program under section 609 of this title or any other work or training program subject to the limitations in section 609 of this title''.

Subsec. (d)(4). Pub. L. 97–35, §2313(a)(6), added par. (4).

Subsec. (e). Pub. L. 97–35, §2313(a)(7), substituted ''parents'' for ''fathers''.

1976—Subsec. (b)(2)(B). Pub. L. 94–566, §507(a)(1), struck out ''and'' at end.

Subsec. (b)(2)(C)(i). Pub. L. 94–566, §507(a)(2), substituted ''such child's father, unless exempt under section 602(a)(19)(A) of this title, is not registered pursuant to such section for the work incentive program established under part C of this subchapter, or, if he is exempt under such section by reason of clause (iii) thereof or no such program in which he can effectively participate has been established or provided under section 632(a) of this title, is not registered with the public employment offices in the State, and'' for ''such child's father is not currently registered with the public employment offices in the State, and''.

Subsec. (b)(2)(C)(ii). Pub. L. 94–566, §507(a)(2), substituted ''qualifies for unemployment compensation under an unemployment compensation law of a State or of the United States, but refuses to apply for or accept such unemployment compensation; and'' for ''receives unemployment compensation under an unemployment compensation law of a State or of the United States''.

Subsec. (b)(2)(D). Pub. L. 94–566, §507(a)(2), added subpar. (D).

Subsec. (d)(3). Pub. L. 94–566, §507(b), inserted '', for purposes of subsection (b)(1)(C) of this section,'' before ''be deemed''.

Subsec. (e). Pub. L. 94–566, §507(d), added subsec. (e).

1971—Subsec. (b)(2)(A). Pub. L. 92–223, §3(a)(10), substituted ''certified'' for ''referred''.

Subsec. (c). Pub. L. 92–223, §3(a)(11), substituted ''certify such father'' for ''refer such father''.

1968—Subsec. (a). Pub. L. 90–248, §203(a), in provisions designated as subsec. (a), redefined definition of ''dependent child'' to provide for a definition of unemployment of a father under standards prescribed by the Secretary rather than unemployment of a parent as defined by the State.

Subsec. (b). Pub. L. 90–248, §203(a), in provisions designated as subsec. (b), provided for requirements and contents of State plans, inserting introductory text preceding subpar. (A) of par. (1), pars. (1)(A), (2)(A), and (2)(C)(i), and incorporating existing cl. (1) provision for inclusion of aid for any needy child in par. (1), existing cl. (3)(B) in par. (1)(B), existing cl. (3)(A) in par. (2)(B) (substituting ''designed to assure maximum utilization'' for ''looking toward maximum utilization''), existing second sentence in par. (2)(C)(ii), and struck out former cl. (2)(B) respecting assurance of prohibition of aid as long as the unemployed parent refuses without good cause to accept employment offered through public employment offices or by an employer in good faith, now covered in section 602(a)(19)(F) of this title.

Subsec. (b)(2)(C). Pub. L. 90–364 inserted provisions prohibiting payment to a family on the basis of the father's unemployment with respect to any week for which the father receives unemployment compensation under State or Federal law.

Pub. L. 90–248, §203(a), provided for application of provisions to unemployed fathers rather than unemployed parents and struck out effective period provision beginning May 1, 1961, and ending with the close of June 30, 1968.

Subsecs. (c), (d). Pub. L. 90–248, §203(a), added subsecs. (c) and (d).

1967—Pub. L. 90–36 extended termination date from June 30, 1967, to June 30, 1968.

1964—Pub. L. 88–641 substituted ''needy child who meets the requirements of section 606(a)(2) of this title, who'' for ''needy child under the age of eighteen who'' and ''section 606(a)(1) of this title'' for ''section 606(a) of this title''.

1962—Pub. L. 87–543 extended termination date from June 30, 1962, to June 30, 1967, substituted ''aid to families with dependent children'' for ''aid to dependent children'' in cl. (2)(B), designated existing provisions as cl. (3)(A), and added cl. (3)(B).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5061(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect at the same time and in the same manner as the amendments made by title II of the Family Support Act of 1988 [Pub. L. 100–485, see section 204 of Pub. L. 100–485, set out as an Effective Date note under section 681 of this title] take effect.''

Section 5062(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10403(a)(1)(A)(ii) of Pub. L. 101–239 provided that: ''The amendment made by clause (i) [amending this section] shall take effect as if such amendment had been included in section 202(b)(8)(A) of the Family Support Act of 1988 [Pub. L. 100–485] on the date of the enactment of such Act [Oct. 13, 1988].''

Section 10403(a)(2) of Pub. L. 101–239 provided that the amendment made by that section is effective Sept. 30, 1998.

EFFECTIVE AND TERMINATION DATES OF 1988 AMENDMENTS

Section 8105 of Pub. L. 100–647 provided that amendments made by that section, amending sections 607 and 669 of this title and amending provisions of Pub. L. 100–485 which are classified to sections 607 and 666 of this title, are effective on date of enactment of Family Support Act of 1988, Pub. L. 100–485, which was approved Oct. 13, 1988.

Amendment by section 202(b)(7)–(11) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485 at such earlier effective dates, see section 204(a), (b)(1)(A), of Pub. L. 100–485, set out as an Effective Date note under section 681 of this title.

Amendment by section 401(a)(2)(B), (C), (b)(1), (3), (c) of Pub. L. 100–485 effective Oct. 1, 1990, except as provided in section 1396d(m)(2) of this title and not effective for Puerto Rico, Guam, American Samoa, and the Virgin Islands, until date of repeal of limitations contained in section 1308(a) of this title on payments to such jurisdictions for purposes of making maintenance payments under parts A and E of subchapter IV of this chapter, and repealed effective Sept. 30, 1998, with the provisions so amended (as in effect immediately before the effective date of the amendment) applicable as if the amendment had never been made, see section 401(g) and (h) of Pub. L. 100–485, as amended, set out as notes under section 602 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2313(a)(2)–(7), (c)(2) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2321 of Pub. L. 97–35, set out as a note under section 602 of this title.

Amendment by section 2353(q) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 507(c) of Pub. L. 94–566 provided that: ''The amendments made by the preceding provisions of this section [amending this section] shall be effective with respect to months after (and weeks beginning in months after) the date of the enactment of this Act [Oct. 20, 1976].''

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–223 effective July 1, 1972, except as otherwise specified therein, see section 3(c) of Pub. L. 92–223, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 203(c) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective January 1, 1968; except that no State which had in operation a program of aid with respect to children of unemployed parents under section 407 of the Social Security Act [this section] (as in effect prior to such amendment) in the calendar quarter commencing October 1, 1967, shall be required to include any additional child or family under its State plan approved under section 402 of such Act [section 602 of this title], by reason of the enactment of such amendment, prior to July 1, 1969.''

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 134 of Pub. L. 87–543 effective July 1, 1963, see section 202(a) of Pub. L. 87–543, set out as a note under section 302 of this title.

EVALUATION OF TIME-LIMITED AND CONVENTIONAL STATE PROGRAMS; REPORT TO CONGRESS

Section 401(e) of Pub. L. 100–485 provided that:

''(1) The Secretary of Health and Human Services shall evaluate the time-limited and conventional State programs conducted under section 407 of the Social Security Act [this section] (as amended by this section), including the effects of the work requirement applicable to families receiving benefits under such section.

''(2) The Secretary shall, not later than July 1, 1996, submit to the Congress an interim report containing the findings of such evaluation together with recommendations for any changes in such program, and shall, not later than July 1, 1998, submit to the Congress a final report containing such findings and recommendations.''

FATHER AS MEETING CERTAIN SUBSEC. (b)(1)(C) REQUIREMENTS OF MINIMUM QUARTERS OF WORK AND RECEIPT OF OR QUALIFICATION FOR UNEMPLOYMENT COMPENSATION

Section 203(b) of Pub. L. 90–248 provided that: ''In the case of an application for aid to families with dependent children under a State plan approved under section 402 of such Act [section 602 of this title] with respect to a dependent child as defined in section 407(a) of such Act [subsec. (a) of this section] (as amended by this section) within 6 months after the effective date of the modification of such State plan which provides for payments in accordance with section 407 of such Act [this section] as so amended, the father of such child shall be deemed to meet the requirements of subparagraph (C) of section 407(b)(1) of such Act [subsec. (b)(1)(C) of this section] (as so amended) if at any time after April 1961 and prior to the date of application such father met the requirements of such subparagraph (C). For purposes of the preceding sentence, an individual receiving aid to families with dependent children (under section 407 of the Social Security Act as in effect before the enactment of this Act [Jan. 2, 1968]) for the last month ending before the effective date of the modification referred to in such sentence shall be deemed to have filed application for such aid under such section 407 (as amended by this section) on the day after such effective date.''

STATE PLANS IN EFFECT JULY 25, 1962: AUTOMATIC CONFORMITY TO AMENDMENTS

State plans in effect July 25, 1962, deemed to have been conformed to amendment of clause (2)(B) of this section by section 104(a) of Pub. L. 87–543, see section 104(b) of Pub. L. 87–543, set out as a note under section 601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 606, 672, 673, 1315, 1396d of this title.

§ 608. AFDC quality control system

(a) In general

In order to improve the accuracy of payments of aid to families with dependent children, the Secretary shall establish and operate a quality control system under which the Secretary shall determine, with respect to each State, the amount (if any) of the disallowance required to be repaid to the Secretary due to erroneous payments made by the State in carrying out the State plan approved under this part.

(b) Review of cases

(1) State review

(A) In general

Each State with a plan approved under this part shall for each fiscal year, in accordance with the time schedule and methodology prescribed in regulations issued under paragraphs (1) and (2) of subsection (h) of this section—

(i) review a sample of cases in the State with respect to which a payment has been made under such plan during the fiscal year; and

(ii) determine the level of erroneous payments for the State for the fiscal year.

(B) Effects of failure to complete review in a timely manner

(i) Secretary conducts review

If a State fails to conduct and complete, on a timely basis, a review required by subparagraph (A), or otherwise fails to cooperate with the Secretary in implementing this subsection, the Secretary, directly or through contractual or such other arrangements as the Secretary may find appropriate, shall conduct the review and establish the error rate for the State for the fiscal year on the basis of the best data reasonably available to the Secretary, in accordance with the statistical methods that would apply if the review were conducted by the State.

(ii) State incurs costs of review

The amount that would otherwise be payable under this part to a State for which the Secretary conducts a review under clause (i) shall be reduced by the costs incurred by the Secretary in conducting the review.

(2) Review by the Secretary

The Secretary shall review a subsample of the cases reviewed by the State, or by the Secretary with respect to the State, under paragraph (1).

(3) Notification of difference cases

Upon completion of the review under paragraph (2), the Secretary shall notify the State of any case in the subsample which the Secretary finds involves erroneous payments, and which the State's review determined to be correct (in this section referred to as a ''difference case'').

(4) Establishment of Quality Control Review Panel

The Secretary shall by regulation establish a Quality Control Review Panel to review difference cases.

(5) Resolution of difference cases

(A) In general

The State may seek review by the Panel of any difference case, within the time period prescribed in regulations issued under subsection (h)(3) of this section.

(B) Procedural rules

The State and the Secretary may submit such documentation to the Panel as the State or the Secretary finds appropriate to substantiate its position. The findings of the Panel shall be made on the record, within the time period prescribed in regulations issued under subsection (h)(4) of this section.

(C) Status of decisions of the Quality Control Review Panel

The decisions of the Panel shall constitute the decisions of the Secretary for purposes of establishing the State's error rate for the fiscal year.

(D) Appealability of decisions of the Quality Control Review Panel

The decisions of the Panel shall not be appealable, except as provided in subsection (k) of this section.

(c) Identification of erroneous payments

(1) Apply provisions of State plan

Except as provided in paragraph (2), in determining whether a payment is an erroneous payment, the State and the Secretary shall apply all relevant provisions of the State plan approved under this part.

(2) Treatment of provisions of State plan that are inconsistent with Federal law

(A) In general

If a provision of a State plan approved under this part is inconsistent with a provision of Federal law or regulations, and the Secretary has notified the State of the inconsistency, the provision of Federal law or regulations shall control.

(B) Exception

Subparagraph (A) shall not apply with respect to a payment of the State if—

(i) it is necessary for the State to enact a law in order to remove an inconsistency described in subparagraph (A), the Secretary has advised the State that the State will be allowed a reasonable period in which to enact such a law, and the payment was made during such period; or

(ii) the State agency made the payment in compliance with a court order.

(3) Certain payments not considered erroneous

For purposes of this section, a payment by a State shall not be considered an erroneous payment if the payment is in error solely by reason of—

(A) the State's failure to implement properly changes in Federal statute within 6 months after the effective date of such changes or, if later, 6 months after the issuance of final regulations (including regulations in interim final form) if such regulations are reasonably necessary to construe or apply the Federal statutory change;

(B) the State's reliance upon and correct use of erroneous information provided by the Secretary about matters of fact;

(C) the State's reliance upon and correct use of written statements of Federal policy provided to the State by the Secretary;

(D) the occurrence of an event in the State that—

(i) results in the declaration by the President or the Governor of the State of a state of emergency or major disaster; and

(ii) directly affects the State agency's ability to make correct payments under the State plan approved under this part; or

(E) the failure of a family to submit monthly reports to the State pursuant to section 602(a)(14) of this title, if the failure did not affect the amount of the payment.

(4) Certain payments considered erroneous

Notwithstanding any other provision of this section, a payment shall be considered an erroneous payment if the payment is made to a family—

(A) which has failed without good cause to assign support rights as required by section 602(a)(26) of this title; or

(B) any member of which is a recipient of aid under a State plan approved under this part and does not have a social security account number (unless an application for a social security account number for the family member has been filed within 30 days after the date of application for such aid).

(d) Determination of error rates

(1) In general

The Secretary shall, in accordance with this subsection, determine an error rate for each State for the fiscal year involved, based on the reviews under paragraphs (1) and (2) of subsection (b) of this section and the decisions of the Quality Control Review Panel under subsection (b)(5) of this section.

(2) Error rate formula

Except as provided in paragraph (3), the State's error rate for a fiscal year is—

(A) the ratio of—

(i) the erroneous payments of the State for the fiscal year; to

(ii) the total payments of aid under the State plan approved under this part for the fiscal year; reduced by

(B) the amount by which—

(i) the national average underpayment rate for the fiscal year; exceeds

(ii) the underpayment rate of the State for the fiscal year.

(3) Application of reduction to subsequent fiscal year

At the request of a State, the Secretary shall apply the reduction described in paragraph (2)(B) in determining the State's error rate for either of the 2 following fiscal years instead of in determining the State's error rate for the fiscal year to which the reduction would otherwise apply.

(e) Notification to States of error rates

The Secretary shall notify each State of the error rate of the State determined under subsection (d) of this section, within the time period prescribed in regulations issued under subsection (h)(5) of this section.

(f) Imposition of disallowances

If a State's error rate for a fiscal year exceeds the national average error rate for the fiscal year, the Secretary shall impose a disallowance on the State for the fiscal year in an amount equal to—

(1) the product of—

(A) the State's total payments of aid to families with dependent children for the fiscal year;

(B) the Federal medical assistance percentage applicable to the State for purposes of section 1318 of this title;

(C) the lesser of—

(i) the ratio of—

(I) the amount by which the State's error rate for the fiscal year exceeds the national average error rate for the fiscal year; to

(II) the national average error rate for the fiscal year; or

(ii) 1; and

(D) the amount by which the State's error rate for the fiscal year exceeds the national average error rate for the fiscal year;

reduced by

(2) the product of—

(A) the ratio of—

(i) the amount by which the State's error rate for the fiscal year exceeds the national average error rate for the fiscal year; and

(ii) the State's error rate for the fiscal year;

(B) the overpayments recovered by the State in the fiscal year; and

(C) the Federal medical assistance percentage applicable to the State for purposes of section 1318 of this title;

and further reduced by

(3) the product of—

(A) the calculation described in paragraphs (1) and (2); and

(B) the percentage by which—

(i) the State's rate of child support collections for the fiscal year; exceeds

(ii) the lesser of—

(I) the national average rate of child support collections for the fiscal year; or

(II) the average of the State's child support collection rates for each of the 3 fiscal years preceding the fiscal year.

(g) Notification to States of amounts of disallowances

The Secretary shall notify each State on which the Secretary imposes a disallowance the amount of the disallowance, within the time period prescribed in regulations issued under subsection (h)(6) of this section.

(h) Regulations

The Secretary, after consultation with the chief executives of the States, shall by regulation prescribe—

(1) the periods within which—

(A) the reviews required by paragraphs (1) and (2) of subsection (b) of this section are to begin and be completed; and

(B) the results of the review required by subsection (b)(1) of this section are to be reported to the Secretary;

(2) matters relating to the selection and size of the samples to be reviewed under paragraphs (1) and (2) of subsection (b) of this section, and the methodology for making statistically valid estimates of each State's error rate;

(3) the period within which a State may seek review by the Quality Control Review Panel of a difference case;

(4) the period within which a difference case appealed by a State is to be resolved by the Quality Control Review Panel;

(5) the period, after the completion of the reviews required by paragraphs (1) and (2) of subsection (b) of this section and the resolution by the Quality Control Review Panel of any difference cases appealed by a State, within which the Secretary is to notify the State of the error rate of the State for the fiscal year involved; and

(6) the period within which the Secretary is to notify a State of any disallowance.

(i) Payment of disallowances

(1) Payment options

Within 45 days after the date a State is notified of a disallowance pursuant to subsection (g) of this section, the State shall, at the option of the State—

(A) pay the Secretary the amount of the disallowance; or

(B) enter into an agreement with the Secretary under which the State will make quarterly payments to the Secretary over a period not to exceed 30 months beginning not later than the first quarter beginning after the date the State receives the notice, in amounts sufficient to repay the disallowance with interest by the end of such period.

(2) Authority to adjust State matching payments

If a State fails to pay the amount of a disallowance imposed on the State, in the manner required by the applicable subparagraph of paragraph (1), the Secretary shall reduce the amount to be paid to the State under section 603(a) of this title by amounts sufficient to recover the amount of the disallowance with interest.

(3) Interest on unpaid disallowances

(A) Rate of interest

Interest on the unpaid amount of a disallowance shall accrue at the overpayment rate established under section 6621(a)(1) of the Internal Revenue Code of 1986.

(B) Accrual of interest

(i) In general

Except as provided in clause (ii), interest on the unpaid amount of a State's disallowance shall accrue beginning 45 days after the date the State receives notice of the disallowance.

(ii) Exception

If the State appeals the imposition of a disallowance under this section to the Departmental Appeals Board and the Board does not decide the appeal within 90 days after the date of the State's notice of appeal, interest shall not accrue on the unpaid amount of the disallowance during the period beginning on such 90th day and ending on the date of the Board's final decision on the appeal, except to the extent that the Board finds that the State caused or requested the delay.

(j) Administrative review of disallowances

(1) In general

Within 60 days after the date a State receives notice of a disallowance imposed under this section, the State may appeal the imposition of the disallowance, in whole or in part, to the Departmental Appeals Board established in the Department of Health and Human Services, by filing an appeal with the Board.

(2) Procedural rules

The Board shall consider a State's appeal on the basis of such documentation as the State may submit and as the Board may require to support the final decision of the Board. In deciding whether to uphold a disallowance or any portion thereof, the Board shall conduct a thorough review of the issues and take into account all relevant evidence. In rendering its final decision, the Board shall incorporate by reference any findings of the Quality Control Review Panel that were made in connection with the determination of the error rate and the amount of the disallowance, and such findings shall not be reviewable by the Board.

(k) Judicial review of disallowances

(1) In general

Within 90 days after the date of a final decision by the Departmental Appeals Board with respect to the imposition of a disallowance on a State under this section, the State may obtain judicial review of the final decision (and the findings of the Quality Control Review Panel incorporated into the final decision) by filing an action in—

(A) the district court of the United States for the judicial district in which the principal or headquarters office of the State agency is located; or

(B) the United States District Court for the District of Columbia.

(2) Procedural rules

The district court in which an action is filed shall review the final decision of the Board on the record established in the administrative proceeding, in accordance with the standards of review prescribed by subparagraphs (A) through (E) of section 706(2) of title 5. The review shall be on the basis of the documents and supporting data submitted to the Board (or to the Quality Control Review Panel, in the case of any finding by the Panel which is at issue in the appeal).

(*l*) Refund of disallowances imposed in error

If the Secretary, directly or indirectly, receives from a State part or all of the amount of a disallowance imposed on the State under this section, and part or all of the disallowance is finally determined to have been imposed in error, the Secretary shall refund to the State the amount received by reason of the error, with interest which shall accrue from the date of receipt at the rate described in subsection (i)(3)(A) of this section.

(m) Definitions

As used in this section:

(1) National average error rate

The term ''national average error rate'' for a fiscal year means the greater of—

(A) the ratio of—

(i) the total amount of erroneous payments made by all States for the fiscal year; to

(ii) the total amount of aid paid by all the States for the fiscal year under plans approved under this part; or

(B) 4 percent.

(2) Underpayment rate

The term ''underpayment rate'', with respect to a State for a fiscal year, means the ratio of—

(A) the total amounts of aid that should have been but were erroneously not paid for the fiscal year to recipients of aid under the State plan approved under this part; to

(B) the total amount of aid paid under such plan for the fiscal year.

(3) National average underpayment rate

The term ''national average underpayment rate'' for a fiscal year means the ratio of—

(A) the total amounts of aid that should have been but were erroneously not paid for a fiscal year to all recipients of aid under State plans approved under this part; to

(B) the total amount of aid paid for the fiscal year under all State plans approved under this part.

(4) Child support collection rate

The term ''child support collection rate'', with respect to a State for a fiscal year, means the ratio of—

(A) the sum of the number of cases reported by the agency administering the State plan approved under part D of this subchapter for each quarter in the fiscal year for which—

(i) an assignment was made under section 602(a)(26) of this title; and

(ii) a collection was made under the State's plan approved under part D of this subchapter; to

(B) the sum of the number of cases reported by such agency for each quarter in the fiscal year under which an assignment was made under section 602(a)(26) of this title.

(5) National child support collection rate

The term ''national child support collection rate'' for a fiscal year means the ratio of—

(A) the sum of the number of cases described in paragraph (4)(A) reported by all States for quarters in the fiscal year; to

(B) the sum of the number of cases described in paragraph (4)(B) reported by all States for quarters in the fiscal year.

(6) Erroneous payments

The term ''erroneous payments'' means the sum of overpayments to eligible families and payments to ineligible families made in carrying out a plan approved under this part.

(Aug. 14, 1935, ch. 531, title IV, § 408, as added Dec. 19, 1989, Pub. L. 101–239, title VIII, § 8004(a), 103 Stat. 2454; amended Oct. 31, 1994, Pub. L. 103–432, title II, § 265(a), 108 Stat. 4469.)

REFERENCES IN TEXT

Section 6621(a)(1) of the Internal Revenue Code of 1986, referred to in subsec. (i)(3)(A), is classified to section 6621(a)(1) of Title 26, Internal Revenue Code.

Part D of this subchapter, referred to in subsec. (m)(4)(A), is classified to section 651 et seq. of this title.

PRIOR PROVISIONS

A prior section 608, act Aug. 14, 1935, ch. 531, title IV, § 408, as added May 8, 1961, Pub. L. 87–31, § 2, 75 Stat. 76; amended July 25, 1962, Pub. L. 87–543, title I, §§ 101(b)(2)(D), 104(a)(3)(F), (G), 131(b), 135(a)–(d), 155(a), 76 Stat. 180, 185, 193, 196, 197, 207; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 201(e)(4), 205(c), 81 Stat. 880, 892; June 17, 1980, Pub. L. 96–272, title I, §§ 101(a)(5)(A), 102(b), 94 Stat. 513, 515, related to payment to States for foster home care of dependent children, prior to repeal by Pub. L. 96–272, title I, § 101(a)(2), June 17, 1980, 94 Stat. 512, effective, with certain exceptions, to expenditures made after Sept. 30, 1980.

AMENDMENTS

1994—Subsec. (m)(2)(A). Pub. L. 103–432 substituted ''the fiscal'' for ''a fiscal''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 265(d) of Pub. L. 103–432 provided that: ''Each amendment made by this section [amending this section and sections 673 and 675 of this title] shall take effect as if the amendment had been included in the provision of OBRA–1989 [Pub. L. 101–239] to which the amendment relates, at the time the provision became law.''

EFFECTIVE DATE

Section 8004(c) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to erroneous payments made in any fiscal year after fiscal year 1990.''

IMPLEMENTATION OF AMENDMENT BY PUB. L. 101–239

Section 8004(e) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall take all actions necessary to assure that adequate numbers of staff are available to perform the functions required by the amendments made by this section [enacting this section and amending section 603 of this title].''

ANNUAL REPORTS TO CONGRESS

Section 8004(f) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall annually submit to the Committee on Finance of the Senate, and to the Committee on Ways and Means of the House of Representatives a report on whether the time periods contained in the regulations prescribed pursuant to section 408 of the Social Security Act [this section] (as added by subsection (a)) have been or will be met. The first such report shall be submitted not later than January 1, 1992.''

STUDY OF NEGATIVE CASE ACTIONS

Section 8004(g) of Pub. L. 101–239 directed Secretary of Health and Human Services, not later than Oct. 1, 1992, to report and make recommendations to Congress on results of a study of negative case actions under the program of aid to families with dependent children under State plans approved under part A of title IV of the Social Security Act (this part).

§ 609. Exclusion from AFDC unit of child for whom Federal, State, or local foster care maintenance or adoption assistance payments are made

(a) Notwithstanding any other provision of this subchapter (other than subsection (b) of this section)—

(1) a child with respect to whom foster care maintenance payments or adoption assistance payments are made under part E of this subchapter or under State or local law shall not, for the period for which such payments are made, be regarded as a member of a family for purposes of determining the amount of benefits of the family under this part; and

(2) the income and resources of such child shall be excluded from the income and resources of a family under this part.

(b) Subsection (a) of this section shall not apply in the case of a child with respect to whom adoption assistance payments are made under part E of this subchapter or under State or local law, if application of such subsection would reduce the benefits under this part of the family of which the child would otherwise be regarded as a member.

(Aug. 14, 1935, ch. 531, title IV, § 409, as added Nov. 5, 1990, Pub. L. 101–508, title V, § 5052(a), 104 Stat. 1388–228.)

REFERENCES IN TEXT

Part E of this subchapter, referred to in text, is classified to section 670 et seq. of this title.

PRIOR PROVISIONS

A prior section 609, act Aug. 14, 1935, ch. 531, title IV, § 409, as added and amended July 25, 1962, Pub. L. 87–543, title I, §§ 101(b)(2)(E), 105(a), 76 Stat. 180, 186; Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2307(a), 95 Stat. 846; Sept. 3, 1982, Pub. L. 97–248, title I, § 154(c), 96 Stat. 397; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2627, 2641(a), 2663(c)(5), 98 Stat. 1136, 1146, 1166, related to community work experience programs, prior to repeal by Pub. L. 100–485, title II, §§ 202(b)(12), 204(a), (b)(1)(A), Oct. 13, 1988, 102 Stat. 2378, 2381, effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485 at such earlier effective dates.

EFFECTIVE DATE

Section 5052(c) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [enacting this section] and the repeal made by subsection (b) [repealing section 678 of this title] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

§ 610. Food stamp program coupons

(a) Option to deduct charges from aid

Any State plan for aid and services to needy families with children may (but is not required under this subchapter or any other provision of Federal law to) provide for the institution of procedures, in any or all areas of the State, by the State agency administering or supervising the administration of such plan under which any household participating in the food stamp program established by the Food Stamp Act of 1977, as amended [7 U.S.C. 2011 et seq.], will be entitled, if it so elects, to have the charges, if any, for its coupon allotment under such program deducted from any aid, in the form of money payments, which is (or, except for the deduction of such charge, would be) payable to or with respect to such household (or any member or members thereof) under such plan and have its coupon allotment distributed to it with such aid.

(b) Deductions not considered payment

Any deduction made pursuant to an option provided in accordance with subsection (a) of this section shall not be considered to be a payment described in section 606(b)(2) of this title.

(c) Failure to adopt procedures

Notwithstanding any other provision of law, no agency which is designated as a State agency for any State under or pursuant to the Food Stamp Act of 1977, as amended [7 U.S.C. 2011 et seq.], shall be regarded as having failed to comply with any requirement imposed by or pursuant to such Act solely because of the failure, of the State agency administering or supervising the administration of the State plan (approved under this part) of such State, to institute or carry out a procedure, described in subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title IV, § 410, as added Oct. 21, 1976, Pub. L. 94–585, § 1(a), 90 Stat. 2901; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(6), 98 Stat. 1166.)

REFERENCES IN TEXT

The Food Stamp Act of 1977, as amended, referred to in subsecs. (a) and (c), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 610, act Aug. 14, 1935, ch. 531, title IV, § 410, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 211(b), 81 Stat. 897, provided for furnishing by Secretary to Secretary of the Treasury the names of parents contained in reports from State agencies, for ascertainment of addresses, and authorization for appropriations for such purpose, prior to repeal by Pub. L. 93–647, § 101(c)(8), Jan. 4, 1975, 88 Stat. 2360, eff. July 1, 1975.

AMENDMENTS

1984—Subsecs. (a), (c). Pub. L. 98–369 substituted ''Food Stamp Act of 1977'' for ''Food Stamp Act of 1964''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

FUNDS FOR ADMINISTRATIVE COSTS FOR DEDUCTION OF FOOD STAMP COUPONS FROM AMOUNT OF AID

Section 1(b) of Pub. L. 94–585 provided that: ''Administrative costs incurred by a State plan for aid and services to needy families with children, approved under Part A of title IV of the Social Security Act [this part], in conducting procedures (described in section 410 of such Act [this section], as added by subsection (a) of this section) in connection with the food stamp program shall be paid from funds appropriated to carry out the Food Stamp Act of 1964, as amended [section 2011 et seq. of Title 7, Agriculture].''

§ 611. Repealed. Pub. L. 98–369, div. B, title VI, § 2651(b)(3), July 18, 1984, 98 Stat. 1149

Section, act Aug. 14, 1935, ch. 531, title IV, § 411, as added Dec. 20, 1977, Pub. L. 95–216, title IV, § 403(a), 91 Stat. 1561, related to availability of wage information to States and political subdivisions. See section 1320b–7 of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

§ 612. Prorating shelter allowance of AFDC family living with another household

A State plan for aid and services to needy families with children may provide that, in determining the need of any dependent child or relative claiming aid who is living with other individuals (not claiming aid together with such child or relative) as a household (as defined, for purposes of this section, by the Secretary), the amount included in the standard of need, and the payment standard, applied to such child or relative for shelter, utilities, and similar needs may be prorated on a reasonable basis, in such manner and under such circumstances as the State may determine to be appropriate. For purposes of any method of proration used by a State under this section, there shall not be included as a member of a household an individual receiving benefits under subchapter XVI of this chapter in any month to whom the one-third reduction prescribed by section 1382a(a)(2)(A)(i) of this title is applied.

(Aug. 14, 1935, ch. 531, title IV, § 412, as added June 17, 1980, Pub. L. 96–272, title III, § 303, 94 Stat. 528; amended Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2306(b), 95 Stat. 846; Sept. 3, 1982, Pub. L. 97–248, title I, § 155(a), 96 Stat. 397.)

AMENDMENTS

1982—Pub. L. 97–248 substituted provisions relating to prorating shelter allowance of AFDC family living with another household, for provisions relating to eligible children, definition of ''closely related family members'', amount of aid, and determination of total income with respect to prorating of shelter allowance in certain cases where child lives with relative not responsible for his support.

1981—Subsec. (b). Pub. L. 97–35 substituted ''does not include a stepparent whose income is taken into consideration under section 602(a)(31) of this title (regardless of whether such income exceeds the sum specified in such section) or any other such relative'' for ''does not include any such relative''.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 155(b) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall become effective on October 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2321 of Pub. L. 97–35, set out as a note under section 602 of this title.

§ 613. Technical assistance for developing management information systems

The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 603(a)(3)(B)[1] of this title.

(Aug. 14, 1935, ch. 531, title IV, § 413, as added June 9, 1980, Pub. L. 96–265, title IV, § 406(c), 94 Stat. 467.)

REFERENCES IN TEXT

Section 603(a)(3) of this title, referred to in text, was amended generally by Pub. L. 103–66, title XIII, § 13741(a), Aug. 10, 1993, 107 Stat. 663, and, as so amended, no longer contains subpars.

EFFECTIVE DATE

Section 406(d) of Pub. L. 96–265 provided that: ''The amendments made by this section [enacting this section and amending sections 602 and 603 of this title] shall be effective with respect to expenditures made during calendar quarters beginning on or after July 1, 1981.''

§ 614. Repealed. Pub. L. 100–485, title II, § 202(b)(13), Oct. 13, 1988, 102 Stat. 2378

Section, act Aug. 14, 1935, ch. 531, title IV, § 414, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2308, 95 Stat. 848; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2638(a), 2663(c)(7)(A), 98 Stat. 1143, 1166, related to work supplementation program.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204(a), (b)(1)(A), of Pub. L. 100–485, set out as an Effective Date note under section 681 of this title.

§ 615. Attribution of income and resources of sponsor and spouse to alien

(a) Applicability; time period

For purposes of determining eligibility for and the amount of benefits under a State plan ap-

[1] See References in Text note below.

proved under this part for an individual who is an alien described in clause (B) of section 602(a)(33) of this title, the income and resources of any person who (as a sponsor of such individual's entry into the United States) executed an affidavit of support or similar agreement with respect to such individual, and the income and resources of the sponsor's spouse, shall be deemed to be the unearned income and resources of such individual (in accordance with subsections (b) and (c) of this section) for a period of three years after the individual's entry into the United States, except that this section is not applicable if such individual is a dependent child and such sponsor (or such sponsor's spouse) is the parent of such child.

(b) Computation

(1) The amount of income of a sponsor (and his spouse) which shall be deemed to be the unearned income of an alien for any month shall be determined as follows:

(A) the total amount of earned and unearned income of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined for such month;

(B) the amount determined under subparagraph (A) shall be reduced by an amount equal to the sum of—

(i) the lesser of (I) 20 percent of the total of any amounts received by the sponsor and his spouse in such month as wages or salary or as net earnings from self-employment, plus the full amount of any costs incurred by them in producing self-employment income in such month, or (II) $175;

(ii) the cash needs standard established by the State under its plan for a family of the same size and composition as the sponsor and those other individuals living in the same household as the sponsor who are claimed by him as dependents for purposes of determining his Federal personal income tax liability but whose needs are not taken into account in making a determination under section 602(a)(7) of this title;

(iii) any amounts paid by the sponsor (or his spouse) to individuals not living in such household who are claimed by him as dependents for purposes of determining his Federal personal income tax liability; and

(iv) any payments of alimony or child support with respect to individuals not living in such household.

(2) The amount of resources of a sponsor (and his spouse) which shall be deemed to be the resources of an alien for any month shall be determined as follows:

(A) the total amount of the resources (determined as if the sponsor were applying for aid under the State plan approved under this part) of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined; and

(B) the amount determined under subparagraph (A) shall be reduced by $1,500.

(c) Provision of information by alien concerning his sponsor; receipt of information from Departments of State and Justice

(1) Any individual who is an alien and whose sponsor was a public or private agency shall be ineligible for aid under a State plan approved under this part during the period of three years after his or her entry into the United States, unless the State agency administering such plan determines that such sponsor either no longer exists or has become unable to meet such individual's needs; and such determination shall be made by the State agency based upon such criteria as it may specify in the State plan, and upon such documentary evidence as it may therein require. Any such individual, and any other individual who is an alien (as a condition of his or her eligibility for aid under a State plan approved under this part during the period of three years after his or her entry into the United States), shall be required to provide to the State agency administering such plan such information and documentation with respect to his sponsor as may be necessary in order for the State agency to make any determination required under this section, and to obtain any cooperation from such sponsor necessary for any such determination. Such alien shall also be required to provide to the State agency such information and documentation as it may request and which such alien or his sponsor provided in support of such alien's immigration application.

(2) The Secretary shall enter into agreements with the Secretary of State and the Attorney General whereby any information available to them and required in order to make any determination under this section will be provided by them to the Secretary (who may, in turn, make such information available, upon request, to a concerned State agency), and whereby the Secretary of State and Attorney General will inform any sponsor of an alien, at the time such sponsor executes an affidavit of support or similar agreement, of the requirements imposed by this section.

(d) Joint and several liability of alien and sponsor for overpayment of aid during specified period following entry

Any sponsor of an alien, and such alien, shall be jointly and severally liable for an amount equal to any overpayment of aid under the State plan made to such alien during the period of three years after such alien's entry into the United States, on account of such sponsor's failure to provide correct information under the provisions of this section, except where such sponsor was without fault, or where good cause of such failure existed. Any such overpayment which is not repaid to the State or recovered in accordance with the procedures generally applicable under the State plan to the recoupment of overpayments shall be withheld from any subsequent payment to which such alien or such sponsor is entitled under any provision of this chapter.

(e) Division of income and resources of individual sponsoring two or more aliens living in same home

(1) In any case where a person is the sponsor of two or more alien individuals who are living in the same home, the income and resources of such sponsor (and his spouse), to the extent they would be deemed the income and resources of any one of such individuals under the preceding provisions of this section, shall be divided into

two or more equal shares (the number of shares being the same as the number of such alien individuals) and the income and resources of each such individual shall be deemed to include one such share.

(2) Income and resources of a sponsor (and his spouse) which are deemed under this section to be the income and resources of any alien individual in a family shall not be considered in determining the need of other family members except to the extent such income or resources are actually available to such other members.

(f) Aliens not covered

The provisions of this section shall not apply with respect to any alien who is—

(1) admitted to the United States as a result of the application, prior to April 1, 1980, of the provisions of section 1153(a)(7) of title 8;

(2) admitted to the United States as a result of the application, after March 31, 1980, of the provisions of section 1157(c) of title 8;

(3) paroled into the United States as a refugee under section 1182(d)(5) of title 8;

(4) granted political asylum by the Attorney General under section 1158 of title 8; or

(5) a Cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96–422).

(Aug. 14, 1935, ch. 531, title IV, § 415, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2320(b)(2), 95 Stat. 857; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2635, 2663(c)(7)(B), 98 Stat. 1142, 1166.)

REFERENCES IN TEXT

Section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96–422), referred to in subsec. (f)(5), is section 501(e) of Pub. L. 96–422, Oct. 10, 1980, 94 Stat. 1799, which is set out as a note under section 1522 of Title 8, Aliens and Nationality.

AMENDMENTS

1984—Subsec. (b)(1)(B)(ii). Pub. L. 98–369, § 2663(c)(7)(B), substituted ''determining'' for ''determinig''.

Subsec. (c)(1). Pub. L. 98–369, § 2635, substituted ''Any individual who is an alien and whose sponsor was a public or private agency shall be ineligible for aid under a State plan approved under this part during the period of three years after his or her entry into the United States, unless the State agency administering such plan determines that such sponsor either no longer exists or has become unable to meet such individual's needs; and such determination shall be made by the State agency based upon such criteria as it may specify in the State plan, and upon such documentary evidence as it may therein require. Any such individual, and any other individual who is an alien (as a condition of his or her eligibility for aid under a State plan approved under this part during the period of three years after his or her entry into the United States), shall be required to provide'' for ''Any individual who is an alien shall, during the period of three years after entry into the United States, in order to be eligible for aid under a State plan approved under this part, be required to provide''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2635 of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 602 of this title.

Amendment by section 2663(c)(7)(B) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 2320(c) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending section 602 of this title] shall be effective on the date of the enactment of this Act [Aug. 13, 1981]. The amendments made by subsection (b) [enacting this section and amending section 602 of this title] shall be effective with respect to individuals applying for aid to families with dependent children under any approved State plan for the first time after September 30, 1981.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 602 of this title.

§ 616. Fraud control

(a) Election for fraud control program

Any State, in the administration of its State plan approved under section 602 of this title, may elect to establish and operate a fraud control program in accordance with this section.

(b) Penalty for false or misleading statement or misrepresentation of fact

Under any such program, if an individual who is a member of a family applying for or receiving aid under the State plan approved under section 602 of this title is found by a Federal or State court or pursuant to an administrative hearing meeting requirements determined in regulations of the Secretary, on the basis of a plea of guilty or nolo contendere or otherwise, to have intentionally—

(1) made a false or misleading statement or misrepresented, concealed, or withheld facts, or

(2) committed any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity,

for the purpose of establishing or maintaining the family's eligibility for aid under such State plan or of increasing (or preventing a reduction in) the amount of such aid, then the needs of such individual shall not be taken into account in making the determination under section 602(a)(7) of this title with respect to his or her family (A) for a period of 6 months upon the first occasion of any such offense, (B) for a period of 12 months upon the second occasion of any such offense, and (C) permanently upon the third or a subsequent occasion of any such offense.

(c) Proceedings against violators by State agency

The State agency involved shall proceed against any individual alleged to have committed an offense described in subsection (b) of this section either by way of administrative hearing or by referring the matter to the appropriate authorities for civil or criminal action in a court of law. The State agency shall coordinate its actions under this section with any corresponding actions being taken under the food stamp program in any case where the factual issues involved arise from the same or related circumstances.

(d) Duration of period of sanctions; review

Any period for which sanctions are imposed under subsection (b) of this section shall remain

in effect, without possibility of administrative stay, unless and until the finding upon which the sanctions were imposed is subsequently reversed by a court of appropriate jurisdiction; but in no event shall the duration of the period for which such sanctions are imposed be subject to review.

(e) Additional sanctions provided by law

The sanctions provided under subsection (b) of this section shall be in addition to, and not in substitution for, any other sanctions which may be provided for by law with respect to the offenses involved.

(f) Written notice of penalties for fraud

Each State which has elected to establish and operate a fraud control program under this section must provide all applicants for aid to families with dependent children under its approved State plan, at the time of their application for such aid, with a written notice of the penalties for fraud which are provided for under this section.

(Aug. 14, 1935, ch. 531, title IV, § 416, as added Dec. 22, 1987, Pub. L. 100–203, title IX, § 9102(a), 101 Stat. 1330–299.)

EFFECTIVE DATE

Section effective Apr. 1, 1988, see section 9102(d) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 602 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 602 of this title.

§ 617. Assistant Secretary for Family Support

The programs under this part, part D of this subchapter, and part F of this subchapter shall be administered by an Assistant Secretary for Family Support within the Department of Health and Human Services, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be in addition to any other Assistant Secretary of Health and Human Services provided for by law.

(Aug. 14, 1935, ch. 531, title IV, § 417, formerly § 418, as added Oct. 13, 1988, Pub. L. 100–485, title VI, § 603(a), 102 Stat. 2408; renumbered § 417, Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8105(7), 102 Stat. 3798.)

REFERENCES IN TEXT

Parts D and F of this subchapter, referred to in text, are classified to sections 651 et seq. and 681 et seq., respectively, of this title.

EFFECTIVE DATE

Section 603(c) of Pub. L. 100–485 provided that: ''The amendments made by this section [enacting this section and amending section 5315 of Title 5, Government Organization and Employees] shall become effective on February 1, 1989.''

PART B—CHILD AND FAMILY SERVICES

AMENDMENTS

1993—Pub. L. 103–66, title XIII, § 13711(a)(1), Aug. 10, 1993, 107 Stat. 649, substituted ''Child and Family Services'' for ''Child Welfare Services'' in part B heading.

1968—Pub. L. 90–248, title II, § 240(c), Jan. 2, 1968, 81 Stat. 911, added part B heading.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300z–5, 602, 671, 672, 674, 675, 676, 1302, 1320a–1a, 1320a–9, 5106a of this title; title 8 sections 1255a, 1522; title 25 section 1931; title 40 App. section 202.

SUBPART 1—CHILD WELFARE SERVICES

AMENDMENTS

1993—Pub. L. 103–66, title XIII, § 13711(a)(1), Aug. 10, 1993, 107 Stat. 649, added subpart 1 heading.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 629a, 671, 1320a–9 of this title.

§ 620. Authorization of appropriations

(a) For the purpose of enabling the United States, through the Secretary, to cooperate with State public welfare agencies in establishing, extending, and strengthening child welfare services, there is authorized to be appropriated for each fiscal year the sum of $325,000,000.

(b) Funds appropriated for any fiscal year pursuant to the authorization contained in subsection (a) of this section shall be included in the appropriation Act (or supplemental appropriation Act) for the fiscal year preceding the fiscal year for which such funds are available for obligation. In order to effect a transition to this method of timing appropriation action, the preceding sentence shall apply notwithstanding the fact that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

(Aug. 14, 1935, ch. 531, title IV, § 420, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 240(c), 81 Stat. 911; amended Oct. 30, 1972, Pub. L. 92–603, title IV, § 412, 86 Stat. 1492; June 17, 1980, Pub. L. 96–272, title I, § 103(a), 94 Stat. 516; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(8), 98 Stat. 1166; Dec. 19, 1989, Pub. L. 101–239, title X, § 10401(a), 103 Stat. 2487.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239 substituted ''$325,000,000'' for ''$266,000,000''.

1984—Subsec. (b). Pub. L. 98–369 struck out the comma after ''preceding sentence''.

1980—Pub. L. 96–272 designated existing provisions as subsec. (a), struck out provisions that had made specific authorization of appropriations for fiscal years 1973, 1974, 1975, and 1976, and added subsec. (b).

1972—Pub. L. 92–603 substituted ''$196,000,000 for the fiscal year ending June 30, 1973, $211,000,000 for the fiscal year ending June 30, 1974, $226,000,000 for the fiscal year ending June 30, 1975, $246,000,000 for the fiscal year ending June 30, 1976, and $266,000,000'' for ''$55,000,000 for the fiscal year ending June 30, 1968, $100,000,000 for the fiscal year ending June 30, 1969, and $110,000,000''.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10401(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section and sections 627 and 674 of this title] shall take effect on October 1, 1989.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 412 of Pub. L. 92–603 provided that the amendment made by that section is effective with respect to fiscal years beginning after June 30, 1972.

EFFECTIVE DATE

Section 240(e)(2) of Pub. L. 90–248 provided that: ''Part B of title IV of the Social Security Act (as added by subsection (c) of this section) [this part], and the amendments made by subsections (a) and (b) of this section [amending subchapter IV and enacting Part A heading] shall become effective on the date this Act is enacted [Jan. 2, 1968].''

APPROPRIATION OF FUNDS

Section 103(f) of Pub. L. 96–272 provided that:

''(1) Notwithstanding any other provision of law, funds which are appropriated for fiscal year 1980 pursuant to section 420 of the Social Security Act [this section], and for which States are eligible for payment under part B of title IV of that Act [this part], shall remain available, to the extent so provided in an appropriation Act hereafter enacted, for payment with respect to expenditures for child welfare services under part B of title IV of that Act until September 30, 1981.

''(2) Section 420(b) of the Social Security Act (as added by subsection (a) of this section) shall apply only with respect to appropriation Acts, which appropriate funds for fiscal years after fiscal year 1981 pursuant to the authorization contained in section 420 of the Social Security Act, enacted after the date of enactment of this Act [June 17, 1980].''

STATE PLANS; DATE OF DEVELOPMENT; APPROPRIATIONS, ALLOTMENTS, AND REALLOTMENTS

Section 240(f)(1), (2) of Pub. L. 90–248 provided that: ''In the case of any State which has a plan developed as provided in part 3 of title V of the Social Security Act [part 3 of subchapter V of this chapter] as in effect prior to the enactment of this Act [Jan. 2, 1968]—

''(1) such plan shall be treated as a plan developed, as provided in part B of title IV of such Act [this part], on the date this Act is enacted [Jan. 2, 1968];

''(2) any sums appropriated, allotted, or reallotted pursuant to part 3 of title V; for the fiscal year ending June 30, 1968, shall be deemed appropriated, allotted, or reallotted (as the case may be) under part B of title IV of such Act [this part] for such fiscal year;''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 621, 627 of this title.

§ 621. Allotments to States

(a) Allotment formula

The sum appropriated pursuant to section 620 of this title for each fiscal year shall be allotted by the Secretary for use by cooperating State public welfare agencies which have plans developed jointly by the State agency and the Secretary as follows: He shall first allot $70,000 to each State, and shall then allot to each State an amount which bears the same ratio to the remainder of such sum as the product of (1) the population of the State under the age of twenty-one and (2) the allotment percentage of the State (as determined under this section) bears to the sum of the corresponding products of all the States.

(b) Allotment percentage

The ''allotment percentage'' for any State shall be 100 per centum less the State percentage; and the State percentage shall be the percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States; except that (1) the allotment percentage shall in no case be less than 30 per centum or more than 70 per centum, and (2) the allotment percentage shall be 70 per centum in the case of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(c) Promulgation of allotment percentage

The allotment percentage for each State shall be promulgated by the Secretary between October 1 and November 30 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning October 1 next succeeding such promulgation.

(d) "United States" defined

For purposes of this section, the term ''United States'' means the fifty States and the District of Columbia.

(Aug. 14, 1935, ch. 531, title IV, § 421, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 240(c), 81 Stat. 912; amended June 17, 1980, Pub. L. 96–272, title I, § 103(a), 94 Stat. 516; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9135(b)(2), 101 Stat. 1330–315.)

AMENDMENTS

1987—Subsec. (b). Pub. L. 100–203 substituted ''Guam, and American Samoa'' for ''and Guam''.

1980—Pub. L. 96–272 designated existing provisions as subsec. (a) and added subsecs. (b) to (d).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9135(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1301 and 1397b of this title] shall apply with respect to fiscal years beginning on or after October 1, 1988.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 624, 628, 629c, 1308 of this title.

§ 622. State plans for child welfare services

(a) Joint development

In order to be eligible for payment under this subpart, a State must have a plan for child welfare services which has been developed jointly by the Secretary and the State agency designated pursuant to subsection (b)(1) of this section, and which meets the requirements of subsection (b) of this section.

(b) Requisite features of State plans

Each plan for child welfare services under this subpart shall—

(1) provide that (A) the individual or agency that administers or supervises the administration of the State's services program under subchapter XX of this chapter will administer or supervise the administration of the plan (except as otherwise provided in section 103(d) of the Adoption Assistance and Child Welfare Act of 1980), and (B) to the extent that child welfare services are furnished by the staff of the

State agency or local agency administering the plan, a single organizational unit in such State or local agency, as the case may be, will be responsible for furnishing such child welfare services;

(2) provide for coordination between the services provided for children under the plan and the services and assistance provided under subchapter XX of this chapter, under the State plan approved under part A of this subchapter, under the State plan approved under subpart 2 of this part, under the State plan approved under part E of this subchapter, and under other State programs having a relationship to the program under this subpart, with a view to provision of welfare and related services which will best promote the welfare of such children and their families;

(3) provide that the standards and requirements imposed with respect to child day care under subchapter XX of this chapter shall apply with respect to day care services under this subpart, except insofar as eligibility for such services is involved;

(4) provide for the training and effective use of paid paraprofessional staff, with particular emphasis on the full-time or part-time employment of persons of low income, as community service aides, in the administration of the plan, and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency;

(5) contain a description of the services to be provided and specify the geographic areas where such services will be available;

(6) contain a description of the steps which the State will take to provide child welfare services and to make progress in—

(A) covering additional political subdivisions,

(B) reaching additional children in need of services, and

(C) expanding and strengthening the range of existing services and developing new types of services,

along with a description of the State's child welfare services staff development and training plans;

(7) provide, in the development of services for children, for utilization of the facilities and experience of voluntary agencies in accordance with State and local programs and arrangements, as authorized by the State;

(8) provide that the agency administering or supervising the administration of the plan will furnish such reports, containing such information, and participate in such evaluations, as the Secretary may require;

(9)[1] provide for the diligent recruitment of potential foster and adoptive families that reflect the ethnic and racial diversity of children in the State for whom foster and adoptive homes are needed.[2]

(9)[1] provide assurances that the State—

(A) since June 17, 1980, has completed an inventory of all children who, before the inventory, had been in foster care under the responsibility of the State for 6 months or more, which determined—

(i) the appropriateness of, and necessity for, the foster care placement;

(ii) whether the child could or should be returned to the parents of the child or should be freed for adoption or other permanent placement; and

(iii) the services necessary to facilitate the return of the child or the placement of the child for adoption or legal guardianship;

(B) is operating, to the satisfaction of the Secretary—

(i) a statewide information system from which can be readily determined the status, demographic characteristics, location, and goals for the placement of every child who is (or, within the immediately preceding 12 months, has been) in foster care;

(ii) a case review system (as defined in section 675(5) of this title) for each child receiving foster care under the supervision of the State;

(iii) a service program designed to help children—

(I) where appropriate, return to families from which they have been removed; or

(II) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement; and

(iv) a preplacement preventive services program designed to help children at risk of foster care placement remain with their families; and

(C)(i) has reviewed (or within 12 months after October 31, 1994, will review) State policies and administrative and judicial procedures in effect for children abandoned at or shortly after birth (including policies and procedures providing for legal representation of such children); and

(ii) is implementing (or within 24 months after October 31, 1994, will implement) such policies and procedures as the State determines, on the basis of the review described in clause (i), to be necessary to enable permanent decisions to be made expeditiously with respect to the placement of such children; and

(10) contain a description, developed after consultation with tribal organizations (as defined in section 450b of title 25) in the State, of the specific measures taken by the State to comply with the Indian Child Welfare Act [25 U.S.C. 1901 et seq.].

(Aug. 14, 1935, ch. 531, title IV, § 422, as added and amended Jan. 2, 1968, Pub. L. 90–248, title II, § 240(c), (d), 81 Stat. 912, 915; Jan. 4, 1975, Pub. L. 93–647, § 3(a)(6), (7), (h), 88 Stat. 2348, 2349; June 17, 1980, Pub. L. 96–272, title I, § 103(a), 94 Stat. 517; Dec. 19, 1989, Pub. L. 101–239, title X, § 10403(b)(1), 103 Stat. 2488; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13711(b)(1), 107 Stat. 655; Oct. 20, 1994, Pub. L. 103–382, title V, § 554, 108 Stat.

[1] So in original. Two pars. (9) have been enacted.

[2] So in original. The period probably should be a semicolon.

4057; Oct. 31, 1994, Pub. L. 103–432, title II, §§ 202(a), 204(a), 108 Stat. 4453, 4456.)

REFERENCES IN TEXT

Section 103(d) of the Adoption Assistance and Child Welfare Act of 1980, referred to in subsec. (b)(1), is section 103(d) of Pub. L. 96–272, which is set out as a note below.

Parts A and E of this subchapter, referred to in subsec. (b)(2), are classified to sections 601 et seq. and 670 et seq. of this title.

The Indian Child Welfare Act, referred to in subsec. (b)(10), probably means the Indian Child Welfare Act of 1978, Pub. L. 95–608, Nov. 8, 1978, 92 Stat. 3069, as amended, which is classified principally to chapter 21 (§ 1901 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 25 and Tables.

AMENDMENTS

1994—Subsec. (b)(7). Pub. L. 103–432, § 202(a)(1), which directed amendment of par. (7) by striking out ''and'' at end, could not be executed because ''and'' did not appear at end subsequent to amendment by Pub. L. 103–382, § 554(1). See below.

Pub. L. 103–382, § 554(1), struck out ''and'' at end.

Subsec. (b)(8). Pub. L. 103–432, § 204(a)(1), struck out ''and'' at end.

Pub. L. 103–432, § 202(a)(2), which directed amendment of par. (8) by substituting ''; and'' for period at end, could not be executed because there was no period at end subsequent to amendment by Pub. L. 103–382, § 554(2). See below.

Pub. L. 103–382, § 554(2), substituted ''; and'' for period at end.

Subsec. (b)(9). Pub. L. 103–432, § 204(a)(2), substituted ''; and'' for period at end of par. (9) relating to providing assurances that the State has met certain requirements to protect foster children.

Pub. L. 103–432, § 202(a)(3), added par. (9) relating to providing assurances that the State has met certain requirements to protect foster children.

Pub. L. 103–382, § 554(3), added par. (9) relating to diligent recruitment of potential foster and adoptive families.

Subsec. (b)(10). Pub. L. 103–432, § 204(a)(3), added par. (10).

1993—Subsec. (a). Pub. L. 103–66, § 13711(b)(1)(A), substituted ''under this subpart'' for ''under this part''.

Subsec. (b). Pub. L. 103–66, § 13711(b)(1)(B), substituted ''this subpart'' for ''this part'' in introductory provisions.

Subsec. (b)(2). Pub. L. 103–66, § 13711(b)(1)(B), (C), inserted ''under the State plan approved under subpart 2 of this part,'' after ''part A of this subchapter,'' and substituted ''under this subpart'' for ''under this part''.

Subsec. (b)(3). Pub. L. 103–66, § 13711(b)(1)(B), substituted ''under this subpart'' for ''under this part''.

1989—Subsec. (b)(1)(A). Pub. L. 101–239 substituted ''the individual or agency that administers or supervises the administration of the State's services program under subchapter XX of this chapter'' for ''the individual or agency designated pursuant to section 1397b(d)(1)(C) of this title to administer or supervise the administration of the State's services program''.

1980—Pub. L. 96–272 substituted provisions relating to State plans covering child welfare services for provisions relating to the payments to States and the computation of amounts. See section 623 of this title.

1975—Subsec. (a)(1)(A)(i). Pub. L. 93–647, § 3(a)(6), substituted ''the individual or agency designated pursuant to section 1397b(d)(1)(C) of this title to administer or supervise the administration of the State's services program'' for ''the State agency designated pursuant to section 602(a)(3) of this title to administer or supervise the administration of the plan of the State approved under part A of this subchapter''.

Subsec. (a)(i)(A)(ii). Pub. L. 93–647, § 3(a)(7), substituted ''a single organizational unit in such State or local agency, as the case may be,'' for ''the organizational unit in such State or local agency established pursuant to section 602(a)(15) of this title''.

Subsec. (c). Pub. L. 93–647, § 3(h), added subsec. (c).

1968—Subsec. (a)(1). Pub. L. 90–248, § 240(d), added subpar. (A) and redesignated former subpars. (A) and (B) as (B) and (C), respectively.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 202(e) of Pub. L. 103–432 provided that: ''The amendments and repeal made by this section [amending this section and sections 623 to 625 and 672 of this title and repealing section 627 of this title] shall be effective with respect to fiscal years beginning on or after April 1, 1996.''

Section 204(b) of Pub. L. 103–432 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to fiscal years beginning on or after October 1, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13711(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [enacting sections 629 to 629e of this title and amending this section and sections 623, 628, and 671 of this title] shall be effective with respect to calendar quarters beginning on or after October 1, 1993.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10403(b)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if such amendment had been included in section 1883(e)(1) of the Tax Reform Act of 1986 [Pub. L. 99–514, amending section 1397b of this title] on the date of the enactment of such Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 3 of Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, except that amendment by section 3(a) of Pub. L. 93–647 not effective with respect to the Commonwealth of Puerto Rico, the Virgin Islands, or Guam, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT; DIFFERENT STATE AGENCIES FOR ADMINISTRATION OF STATE PLANS UNDER PARTS A AND B

Section 240(e)(3) of Pub. L. 90–248 provided that: ''The amendments made by paragraphs (1) and (2) of subsection (d) [amending this section] shall become effective July 1, 1969, except that (A) if on the date of enactment of this Act [Jan. 2, 1968] the agency of a State administering its plan for child-welfare services developed under part B of title IV of the Social Security Act [this part] is different from the agency of the State designated pursuant to section 402(a)(3) of such Act [section 602(a)(3) of this title], so much of paragraph (1) of section 422(a) of such Act [subsec. (a) of this section] as precedes subparagraph (B) (as added by paragraph (2) of such subsection (d)) shall not apply with respect to such agencies but only so long as such agencies of the State are different, and (B) if on such date the local agency administering the plan of a State for child-welfare services developed under part B of title IV of the Social Security Act [this part] is different from the local agency in such subdivision administering the plan of such State under part A of title IV of such Act [part A of this subchapter], so much of such paragraph (1) as precedes such subparagraph (B) shall not apply with respect to such local agencies but only so long as such local agencies are different.''

GUAM, PUERTO RICO, VIRGIN ISLANDS, AND COMMONWEALTH OF NORTHERN MARIANA ISLANDS

Section 103(c) of Pub. L. 96–272 provided that in the case of Guam, Puerto Rico, the Virgin Islands, and the

Commonwealth of the Northern Mariana Islands, subsec. (b)(1) of this section (as otherwise amended by section 103(a) of Pub. L. 96–272), is deemed to read as follows:

''(1) provide that (A) the State agency designated pursuant to section 602(a)(3) of this title to administer or supervise the administration of the plan of the State approved under part A of this subchapter will administer or supervise the administration of such plan for child welfare services, and (B) to the extent that child welfare services are furnished by the staff of the State agency or local agency administering such plan for child welfare services, the organizational unit in such State or local agency established pursuant to section 602(a)(15) of this title will be responsible for furnishing such child welfare services;''.

ADMINISTRATION OF STATE PLAN FOR CHILD WELFARE SERVICES BY NON-DESIGNATED AGENCY

Section 103(d) of Pub. L. 96–272 provided that: ''Notwithstanding section 422(b)(1) of the Social Security Act (as amended by subsection (a) of this section) [subsec. (b)(1) of this section] if on December 1, 1974, the agency of a State administering its plan for child welfare services under part B of title IV of that Act [this part] was not the agency designated pursuant to section 402(a)(3) of that Act [section 602(a)(3) of this title], such section 422(b)(1) shall not apply with respect to such agency, but only so long as such agency is not the agency designated under section 2003(d)(1)(C) of that Act [section 1397b(d)(1)(C) of this title]; and if on December 1, 1974, the local agency administering the plan of a State under part B of title IV of that Act in a subdivision of the State was not the local agency in such subdivision administering the plan of such State under part A of that title [part A of this subchapter], such section 422(b)(1) shall not apply with respect to such local agency, but only so long as such local agency is not the local agency administering the program of the State for the provision of services under title XX of that Act [subchapter XX of this chapter].''

OVERPAYMENTS OR UNDERPAYMENTS

Section 240(f)(3) of Pub. L. 90–248 provided that in the case of any State which has a plan developed as provided in part 3 of this subchapter as in effect prior to Jan. 2, 1968, sections 721 to 728 of this title, ''any overpayment or underpayment which the Secretary determines was made to the State under section 523 of the Social Security Act [section 723 of this title] and with respect to which adjustment has not then already been made under subsection (b) of such section shall, for purposes of section 422 of such Act [this section], be considered an overpayment or underpayment (as the case may be) made under section 422 of such Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 623, 624, 625, 672, 1320a–9 of this title.

§ 623. Payment to States

(a) Payment schedule

From the sums appropriated therefor and the allotment under this subpart, subject to the conditions set forth in this section and in section 627 of this title, the Secretary shall from time to time pay to each State that has a plan developed in accordance with section 622 of this title an amount equal to 75 per centum of the total sum expended under the plan (including the cost of administration of the plan) in meeting the costs of State, district, county, or other local child welfare services.

(b) Computation and method of payment

The method of computing and making payments under this section shall be as follows:

(1) The Secretary shall, prior to the beginning of each period for which a payment is to be made, estimate the amount to be paid to the State for such period under the provisions of this section.

(2) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that his estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such prior period under this section.

(c) Prohibited payments; exceptions

(1) No payment may be made to a State under this part, for any fiscal year beginning after September 30, 1979, with respect to State expenditures made for (A) child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, (B) foster care maintenance payments, and (C) adoption assistance payments, to the extent that the Federal payment with respect to those expenditures would exceed the total amount of the Federal payment under this part for fiscal year 1979.

(2) Expenditures made by a State for any fiscal year which begins after September 30, 1979, for foster care maintenance payments shall be treated for purposes of making Federal payments under this part with respect to expenditures for child welfare services, as if such foster care maintenance payments constituted child welfare services of a type to which the limitation imposed by paragraph (1) does not apply; except that the amount payable to the State with respect to expenditures made for other child welfare services and for foster care maintenance payments during any such year shall not exceed 100 per centum of the amount of the expenditures made for child welfare services for which payment may be made under the limitation imposed by paragraph (1) as in effect without regard to this paragraph.

(d) Minimum State expenditures

No payment may be made to a State under this part in excess of the payment made under this part for fiscal year 1979, for any fiscal year beginning after September 30, 1979, if for the latter fiscal year the total of the State's expenditures for child welfare services under this part (excluding expenditures for activities specified in subsection (c)(1) of this section) is less than the total of the State's expenditures under this part (excluding expenditures for such activities) for fiscal year 1979.

(Aug. 14, 1935, ch. 531, title IV, § 423, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 240(c), 81 Stat. 913; amended Apr. 21, 1976, Pub. L. 94–273, § 22, 90 Stat. 379; June 17, 1980, Pub. L. 96–272, title I, § 103(a), 94 Stat. 518; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13711(b)(2), 107 Stat. 655; Oct. 31, 1994, Pub. L. 103–432, title II, § 202(d)(1), 108 Stat. 4454.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 103–432, title II, § 202(d)(1), (e), Oct. 31, 1994, 108 Stat. 4454, provided that, effective

with respect to fiscal years beginning on or after Apr. 1, 1996, subsection (a) of this section is amended by striking out ''and in section 627 of this title''.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–66 substituted ''under this subpart'' for ''under this part''.

1980—Pub. L. 96–272 substituted provisions covering payments to States for provisions relating to allotment percentages and Federal share.

1976—Subsec. (c). Pub. L. 94–273 substituted ''October'' for ''July'' wherever appearing and ''November 30'' for ''August 31''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Apr. 1, 1996, see section 202(e) of Pub. L. 103–432, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as a note under section 622 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 621 of this title.

§ 624. Reallotment

(a) In general

Subject to subsection (b) of this section, the amount of any allotment to a State under section 621 of this title for any fiscal year which the State certifies to the Secretary will not be required for carrying out the State plan developed as provided in section 622 of this title shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines (1) have need in carrying out their State plans so developed for sums in excess of those previously allotted to them under section 621 of this title and (2) will be able to use such excess amounts during such fiscal year. Such reallotments shall be made on the basis of the State plans so developed, after taking into consideration the population under the age of twenty-one, and the per capita income of each such State as compared with the population under the age of twenty-one, and the per capita income of all such States with respect to which such a determination by the Secretary has been made. Any amount so reallotted to a State shall be deemed part of its allotment under section 621 of this title.

(b) Exception relating to foster child protections

The Secretary shall not reallot under subsection (a) of this section any amount that is withheld or recovered from a State due to the failure of the State to meet the requirements of section 622(b)(9)[1] of this title.

(Aug. 14, 1935, ch. 531, title IV, § 424, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 240(c), 81 Stat. 914; amended June 17, 1980, Pub. L. 96–272, title I, § 103(a), 94 Stat. 519; Oct. 31, 1994, Pub. L. 103–432, title II, § 202(b), 108 Stat. 4454.)

REFERENCES IN TEXT

Section 622(b)(9) of this title, referred to in subsec. (b), probably means the par. (9) of section 622(b) added by section 202(a) of Pub. L. 103–432, title II, Oct. 31, 1994, 108 Stat. 4453.

AMENDMENTS

1994—Pub. L. 103–432 designated existing provisions as subsec. (a), inserted heading, substituted ''Subject to subsection (b) of this section, the amount'' for ''The amount'', and added subsec. (b).

1980—Pub. L. 96–272 reenacted section without substantial change.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Apr. 1, 1996, see section 202(e) of Pub. L. 103–432, set out as a note under section 622 of this title.

§ 625. Definitions

(a)(1) For purposes of this subchapter, the term ''child welfare services'' means public social services which are directed toward the accomplishment of the following purposes: (A) protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; (B) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children; (C) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; (D) restoring to their families children who have been removed, by the provision of services to the child and the families; (E) placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and (F) assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption.

(2) Funds expended by a State for any calendar quarter to comply with the statistical report required by section 676(b) of this title, and funds expended with respect to nonrecurring costs of adoption proceedings in the case of children placed for adoption with respect to whom assistance is provided under a State plan for adoption assistance approved under part E of this subchapter, shall be deemed to have been expended for child welfare services.

(b) For other definitions relating to this part and to part E of this subchapter, see section 675 of this title.

(Aug. 14, 1935, ch. 531, title IV, § 425, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 240(c), 81 Stat. 914; amended June 17, 1980, Pub. L. 96–272, title I, § 103(a), 94 Stat. 519; Oct. 31, 1994, Pub. L. 103–432, title II, § 202(d)(2), 108 Stat. 4454.)

AMENDMENT OF SUBSECTION (a)(2)

Pub. L. 103–432, title II, § 202(d)(2), (e), Oct. 31, 1994, 108 Stat. 4454, provided that, effective with respect to fiscal years beginning on or after Apr. 1, 1996, subsection (a)(2) of this section is amended by striking ''the statistical report required by section'' and inserting ''section 622(b)(9) of this title or''.

REFERENCES IN TEXT

Part E of this subchapter, referred to in text, is classified to section 670 et seq. of this title.

[1] See References in Text note below.

AMENDMENTS

1980—Pub. L. 96–272 revised definition of ''child-welfare services'', designated that definition as subsec. (a)(1), and added subsecs. (a)(2) and (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Apr. 1, 1996, see section 202(e) of Pub. L. 103–432, set out as a note under section 622 of this title.

§ 626. Research, training, or demonstration projects

(a) Authorization of appropriations

There are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine—

(1) for grants by the Secretary—

(A) to public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or child-welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare;

(B) to State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of child welfare in order to encourage experimental and special types of welfare services; and

(C) to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships described in section 628a of this title with such stipends and allowances as may be permitted by the Secretary; and

(2) for contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research, special projects, or demonstration projects relating to such matters.

(b) Appropriations for demonstration projects for development of alternate care arrangements for infants not requiring hospitalization

(1) There are authorized to be appropriated $4,000,000 for each of the fiscal years 1988, 1989, and 1990 for grants by the Secretary to public or private nonprofit entities submitting applications under this subsection for the purpose of conducting demonstration projects under this subsection to develop alternative care arrangements for infants who do not have health conditions that require hospitalization and who would otherwise remain in inappropriate hospital settings.

(2) The demonstration projects conducted under this section may include—

(A) multidisciplinary projects designed to prevent the inappropriate hospitalization of infants and to allow infants described in paragraph (1) to remain with or return to a parent in a residential setting, where appropriate care for the infant and suitable treatment for the parent (including treatment for drug or alcohol addiction) may be assured, with the goal (where possible) of rehabilitating the parent and eliminating the need for such care for the infant;

(B) multidisciplinary projects that assure appropriate, individualized care for such infants in a foster home or other non-medical residential setting in cases where such infant does not require hospitalization and would otherwise remain in inappropriate hospital settings, including projects to demonstrate methods to recruit, train, and retain foster care families; and

(C) such other projects as the Secretary determines will best serve the interests of such infants and will serve as models for projects that agencies or organizations in other communities may wish to develop.

(3) In the case of any project which includes the use of funds authorized under this subsection for the care of infants in foster homes or other non-medical residential settings away from their parents, there shall be developed for each such infant a case plan of the type described in section 675(1) of this title (to the extent that such infant is not otherwise covered by such a plan), and each such project shall include a case review system of the type described in section 675(5) of this title (covering each such infant who is not otherwise subject to such a system).

(4) In evaluating applications from entities proposing to conduct demonstration projects under this subsection, the Secretary shall give priority to those projects that serve areas most in need of alternative care arrangements for infants described in paragraph (1).

(5) No project may be funded unless the application therefor contains assurances that it will—

(A) provide for adequate evaluation;

(B) provide for coordination with local governments;

(C) provide for community education regarding the inappropriate hospitalization of infants;

(D) use, to the extent practical, other available private, local, State, and Federal sources for the provision of direct services; and

(E) meet such other criteria as the Secretary may prescribe.

(6) Grants may be used to pay the costs of maintenance and of necessary medical and social services (to the extent that these costs are not otherwise paid for under other subchapters of this chapter), and for such other purposes as the Secretary may allow.

(7) The Secretary shall provide training and technical assistance to grantees, as requested.

(c) Payments; advances or reimbursements; installments; conditions

Payments of grants or under contracts or cooperative arrangements under this section may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions

as the Secretary finds necessary to carry out the purposes of the grants, contracts, or other arrangements.

(Aug. 14, 1935, ch. 531, title IV, § 426, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 240(c), 81 Stat. 915; amended Dec. 22, 1987, Pub. L. 100–203, title IX, § 9137, 101 Stat. 1330–319; Oct. 31, 1994, Pub. L. 103–432, title II, § 205(b), 108 Stat. 4457.)

AMENDMENTS

1994—Subsec. (a)(1)(C). Pub. L. 103–432 inserted ''described in section 628a of this title'' after ''including traineeships''.

1987—Subsecs. (b), (c). Pub. L. 100–203 added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 205(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [enacting section 628a of this title and amending this section] shall apply to grants awarded on or after October 1, 1995.''

APPROPRIATIONS OR GRANTS

Section 240(g) of Pub. L. 90–248 provided that any appropriations or grants made pursuant to section 726 of this title, as in effect prior to Jan. 2, 1968, were to be deemed to have been appropriated or made under this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 628a, 11471 of this title.

§ 627. Foster care protection required for additional payments

(a) Requisite additional steps to qualify

If, for any fiscal year after fiscal year 1979, there is appropriated under section 620 of this title a sum in excess of $141,000,000, a State shall not be eligible for payment from its allotment in an amount greater than the amount for which it would be eligible if such appropriation were equal to $141,000,000, unless such State—

(1) has conducted an inventory of all children who have been in foster care under the responsibility of the State for a period of six months preceding the inventory, and determined the appropriateness of, and necessity for, the current foster placement, whether the child can be or should be returned to his parents or should be freed for adoption, and the services necessary to facilitate either the return of the child or the placement of the child for adoption or legal guardianship; and

(2) has implemented and is operating to the satisfaction of the Secretary—

(A) a statewide information system from which the status, demographic characteristics, location, and goals for the placement of every child in foster care or who has been in such care within the preceding twelve months can readily be determined;

(B) a case review system (as defined in section 675(5) of this title) for each child receiving foster care under the supervision of the State; and

(C) a service program designed to help children, where appropriate, return to families from which they have been removed or be placed for adoption or legal guardianship.

(b) Reduction of allotment

If, for each of any two consecutive fiscal years after the fiscal year 1979, there is appropriated under section 620 of this title a sum equal to $325,000,000, each State's allotment amount for any fiscal year after such two consecutive fiscal years shall be reduced to an amount equal to its allotment amount for the fiscal year 1979, unless such State—

(1) has completed an inventory of the type specified in subsection (a)(1) of this section;

(2) has implemented and is operating the program and systems specified in subsection (a)(2) of this section; and

(3) has implemented a preplacement preventive service program designed to help children remain with their families.

(c) Presumption

Any amounts expended by a State for the purpose of complying with the requirements of subsection (a) or (b) of this section shall be conclusively presumed to have been expended for child welfare services.

(Aug. 14, 1935, ch. 531, title IV, § 427, as added June 17, 1980, Pub. L. 96–272, title I, § 103(b), 94 Stat. 519; amended Dec. 19, 1989, Pub. L. 101–239, title X, § 10401(a), 103 Stat. 2487.)

REPEAL OF SECTION

Pub. L. 103–432, title II, § 202(c), (e), Oct. 31, 1994, 108 Stat. 4454, provided that, effective with respect to fiscal years beginning on or after Apr. 1, 1996, this section is repealed.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 substituted ''$325,000,000'' for ''$266,000,000''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective Oct. 1, 1989, see section 10401(b) of Pub. L. 101–239, set out as a note under section 620 of this title.

MORATORIUM ON COLLECTION OF DISALLOWANCES

Pub. L. 103–66, title XIII, § 13716, Aug. 10, 1993, 107 Stat. 657, provided that: ''The Secretary of Health and Human Services shall not, before October 1, 1994—

''(1) reduce any payment to, withhold any payment from, or seek any repayment from any State under part B or E of title IV of the Social Security Act [this part and part E of this subchapter] by reason of a determination made in connection with a review of State compliance with section 427 of such Act [this section] for any Federal fiscal year before fiscal year 1995; or

''(2) reduce any payment to, withhold any payment from, or seek any repayment from any State under such part E by reason of a determination made in connection with any on-site Federal financial review, or any audit conducted by the Inspector General using similar methodologies.''

TREATMENT OF TRIENNIAL REVIEWS OF STATE FOSTER CARE PROTECTIONS FOR FISCAL YEARS BEFORE OCTOBER 1, 1991

Section 10406 of Pub. L. 101–239, as amended by Pub. L. 101–508, title V, § 5072(a), Nov. 5, 1990, 104 Stat. 1388–233, provided that: ''The Secretary of Health and Human Services shall not, before October 1, 1991, reduce any payment to, withhold any payment from, or seek any repayment from, any State under part B or E of title IV of the Social Security Act [this part and part E of this subchapter], by reason of a determination made in connection with any triennial review of State compliance with the foster care protections of section 427 of such Act [this section] for any Federal fiscal year preceding fiscal year 1992.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 623, 672, 1320a–9 of this title.

§ 628. Payments to Indian tribal organizations

(a) Amounts

The Secretary may, in appropriate cases (as determined by the Secretary) make payments under this subpart directly to an Indian tribal organization within any State which has a plan for child welfare services approved under this subpart. Such payments shall be made in such manner and in such amounts as the Secretary determines to be appropriate.

(b) Inclusion in State allotment

Amounts paid under subsection (a) of this section shall be deemed to be a part of the allotment (as determined under section 621 of this title) for the State in which such Indian tribal organization is located.

(c) "Tribal organization" and "Indian tribe" defined

For purposes of this section—

(1) the term ''tribal organization'' means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body; and

(2) the term ''Indian tribe'' means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Public Law 92–203; 85 Stat. 688) [43 U.S.C. 1601 et seq.]) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or (B) is located on, or in proximity to, a Federal or State reservation or rancheria.

(Aug. 14, 1935, ch. 531, title IV, § 428, as added June 17, 1980, Pub. L. 96–272, title I, § 103(b), 94 Stat. 520; amended Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13711(b)(3), 107 Stat. 655.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act (Public Law 92–203; 85 Stat. 688), referred to in subsec. (c)(2), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–66 substituted ''under this subpart'' for ''under this part'' in two places.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as a note under section 622 of this title.

§ 628a. Child welfare traineeships

The Secretary may approve an application for a grant to a public or nonprofit institution for higher learning to provide traineeships with stipends under section 626(a)(1)(C) of this title only if the application—

(1) provides assurances that each individual who receives a stipend with such traineeship (in this section referred to as a ''recipient'') will enter into an agreement with the institution under which the recipient agrees—

(A) to participate in training at a public or private nonprofit child welfare agency on a regular basis (as determined by the Secretary) for the period of the traineeship;

(B) to be employed for a period of years equivalent to the period of the traineeship, in a public or private nonprofit child welfare agency in any State, within a period of time (determined by the Secretary in accordance with regulations) after completing the post-secondary education for which the traineeship was awarded;

(C) to furnish to the institution and the Secretary evidence of compliance with subparagraphs (A) and (B); and

(D) if the recipient fails to comply with subparagraph (A) or (B) and does not qualify for any exception to this subparagraph which the Secretary may prescribe in regulations, to repay to the Secretary all (or an appropriately prorated part) of the amount of the stipend, plus interest, and, if applicable, reasonable collection fees (in accordance with regulations promulgated by the Secretary);

(2) provides assurances that the institution will—

(A) enter into agreements with child welfare agencies for onsite training of recipients;

(B) permit an individual who is employed in the field of child welfare services to apply for a traineeship with a stipend if the traineeship furthers the progress of the individual toward the completion of degree requirements; and

(C) develop and implement a system that, for the 3-year period that begins on the date any recipient completes a child welfare services program of study, tracks the employment record of the recipient, for the purpose of determining the percentage of recipients who secure employment in the field of child welfare services and remain employed in the field.

(Aug. 14, 1935, ch. 531, title IV, § 429, as added Oct. 31, 1994, Pub. L. 103–432, title II, § 205(a), 108 Stat. 4456.)

EFFECTIVE DATE

Section applicable to grants awarded on or after Oct. 1, 1995, see section 205(c) of Pub. L. 103–432, set out as an Effective Date of 1994 Amendment note under section 626 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 626 of this title.

SUBPART 2—FAMILY PRESERVATION AND SUPPORT SERVICES

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 622, 1320a–9 of this title.

§ 629. Purposes; limitations on authorizations of appropriations; reservation of certain amounts

(a) Purposes; limitations on authorization of appropriations

For the purpose of encouraging and enabling each State to develop and establish, or expand, and to operate a program of family preservation services and community-based family support services, there are authorized to be appropriated to the Secretary the amounts described in subsection (b) of this section for the fiscal years specified in subsection (b) of this section.

(b) Description of amounts

The amount described in this subsection is—

(1) for fiscal year 1994, $60,000,000;

(2) for fiscal year 1995, $150,000,000;

(3) for fiscal year 1996, $225,000,000;

(4) for fiscal year 1997, $240,000,000; or

(5) for fiscal year 1998, the greater of—

(A) $255,000,000; or

(B) the amount described in this subsection for fiscal year 1997, increased by the inflation percentage applicable to fiscal year 1998.

(c) Inflation percentage

For purposes of subsection (b)(5)(B) of this section, the inflation percentage applicable to any fiscal year is the percentage (if any) by which—

(1) the average of the Consumer Price Index (as defined in section 1(f)(5) of the Internal Revenue Code of 1986) for the 12-month period ending on December 31 of the immediately preceding fiscal year; exceeds

(2) the average of the Consumer Price Index (as so defined) for the 12-month period ending on December 31 of the 2nd preceding fiscal year.

(d) Reservation of certain amounts

(1) Evaluation, research, training, and technical assistance

The Secretary shall reserve $2,000,000 of the amount described in subsection (b) of this section for fiscal year 1994, and $6,000,000 of the amounts so described for each of fiscal years 1995, 1996, 1997, and 1998, for expenditure by the Secretary—

(A) for research, training, and technical assistance related to the program under this subpart; and

(B) for evaluation of State programs funded under this subpart and any other Federal, State, or local program, regardless of whether federally assisted, that is designed to achieve the same purposes as the program under this subpart.

(2) State court assessments

The Secretary shall reserve $5,000,000 of the amount described in subsection (b) of this section for fiscal year 1995, and $10,000,000 of the amounts so described for each of fiscal years 1996, 1997, and 1998, for grants under section 13712 of the Omnibus Budget Reconciliation Act of 1993.

(3) Indian tribes

The Secretary shall reserve 1 percent of the amounts described in subsection (b) of this section for each fiscal year, for allotment to Indian tribes in accordance with section 629c(a) of this title.

(Aug. 14, 1935, ch. 531, title IV, § 430, as added Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13711(a)(2), 107 Stat. 649.)

REFERENCES IN TEXT

The Internal Revenue Code, referred to in subsec. (c)(1), is classified generally to Title 26, Internal Revenue Code.

Section 13712 of the Omnibus Budget Reconciliation Act of 1993, referred to in subsec. (d)(2), is section 13712 of Pub. L. 103–66, which is set out as a note under section 670 of this title.

PRIOR PROVISIONS

A prior section 430 of act Aug. 14, 1935, was classified to section 630 of this title prior to repeal by Pub. L. 100–485, title II, § 202(a), Oct. 13, 1988, 102 Stat. 2377.

EFFECTIVE DATE

Subpart effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 622 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 629c of this title.

§ 629a. Definitions

(a) In general

As used in this subpart:

(1) Family preservation services

The term ''family preservation services'' means services for children and families designed to help families (including adoptive and extended families) at risk or in crisis, including—

(A) service programs designed to help children—

(i) where appropriate, return to families from which they have been removed; or

(ii) be placed for adoption, with a legal guardian, or, if adoption or legal guardianship is determined not to be appropriate for a child, in some other planned, permanent living arrangement;

(B) preplacement preventive services programs, such as intensive family preservation programs, designed to help children at risk of foster care placement remain with their families;

(C) service programs designed to provide followup care to families to whom a child has been returned after a foster care placement;

(D) respite care of children to provide temporary relief for parents and other caregivers (including foster parents); and

(E) services designed to improve parenting skills (by reinforcing parents' confidence in their strengths, and helping them to identify where improvement is needed and to obtain assistance in improving those skills) with respect to matters such as child development, family budgeting, coping with stress, health, and nutrition.

(2) Family support services

The term ''family support services'' means community-based services to promote the

well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a stable and supportive family environment, and otherwise to enhance child development.

(3) State agency

The term ''State agency'' means the State agency responsible for administering the program under subpart 1.

(4) State

The term ''State'' includes an Indian tribe or tribal organization, in addition to the meaning given such term for purposes of subpart 1.

(5) Tribal organization

The term ''tribal organization'' means the recognized governing body of any Indian tribe.

(6) Indian tribe

The term ''Indian tribe'' means any Indian tribe (as defined in section 682(i)(5) of this title) and any Alaska Native organization (as defined in section 682(i)(7)(A) of this title).

(b) Other terms

For other definitions of other terms used in this subpart, see section 675 of this title.

(Aug. 14, 1935, ch. 531, title IV, § 431, as added Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13711(a)(2), 107 Stat. 650.)

PRIOR PROVISIONS

A prior section 431 of act Aug. 14, 1935, was classified to section 631 of this title prior to repeal by Pub. L. 100–485.

§ 629b. State plans

(a) Plan requirements

A State plan meets the requirements of this subsection if the plan—

(1) provides that the State agency shall administer, or supervise the administration of, the State program under this subpart;

(2)(A)(i) sets forth the goals intended to be accomplished under the plan by the end of the 5th fiscal year in which the plan is in operation in the State, and (ii) is updated periodically to set forth the goals intended to be accomplished under the plan by the end of each 5th fiscal year thereafter;

(B) describes the methods to be used in measuring progress toward accomplishment of the goals;

(C) contains assurances that the State—

(i) after the end of each of the 1st 4 fiscal years covered by a set of goals, will perform an interim review of progress toward accomplishment of the goals, and on the basis of the interim review will revise the statement of goals in the plan, if necessary, to reflect changed circumstances; and

(ii) after the end of the last fiscal year covered by a set of goals, will perform a final review of progress toward accomplishment of the goals, and on the basis of the final review (I) will prepare, transmit to the Secretary, and make available to the public a final report on progress toward accomplishment of the goals, and (II) will develop (in consultation with the entities required to be consulted pursuant to subsection (b) of this section) and add to the plan a statement of the goals intended to be accomplished by the end of the 5th succeeding fiscal year;

(3) provides for coordination, to the extent feasible and appropriate, of the provision of services under the plan and the provision of services or benefits under other Federal or federally assisted programs serving the same populations;

(4) contains assurances that not more than 10 percent of expenditures under the plan for any fiscal year with respect to which the State is eligible for payment under section 629d of this title for the fiscal year shall be for administrative costs, and that the remaining expenditures shall be for programs of family preservation services and community-based family support services with significant portions of such expenditures for each such program;

(5) contains assurances that the State will—

(A) annually prepare, furnish to the Secretary, and make available to the public a description (including separate descriptions with respect to family preservation services and community-based family support services) of—

(i) the service programs to be made available under the plan in the immediately succeeding fiscal year;

(ii) the populations which the programs will serve; and

(iii) the geographic areas in the State in which the services will be available; and

(B) perform the activities described in subparagraph (A)—

(i) in the case of the 1st fiscal year under the plan, at the time the State submits its initial plan; and

(ii) in the case of each succeeding fiscal year, by the end of the 3rd quarter of the immediately preceding fiscal year;

(6) provides for such methods of administration as the Secretary finds to be necessary for the proper and efficient operation of the plan;

(7)(A) contains assurances that Federal funds provided to the State under this subpart will not be used to supplant Federal or non-Federal funds for existing services and activities which promote the purposes of this subpart; and

(B) provides that the State will furnish reports to the Secretary, at such times, in such format, and containing such information as the Secretary may require, that demonstrate the State's compliance with the prohibition contained in subparagraph (A); and

(8) provides that the State agency will furnish such reports, containing such information, and participate in such evaluations, as the Secretary may require.

(b) Approval of plans

(1) In general

The Secretary shall approve a plan that meets the requirements of subsection (a) of

this section only if the plan was developed jointly by the Secretary and the State, after consultation by the State agency with appropriate public and nonprofit private agencies and community-based organizations with experience in administering programs of services for children and families (including family preservation and family support services).

(2) Plans of Indian tribes

(A) Exemption from inappropriate requirements

The Secretary may exempt a plan submitted by an Indian tribe from any requirement of this section that the Secretary determines would be inappropriate to apply to the Indian tribe, taking into account the resources, needs, and other circumstances of the Indian tribe.

(B) Special rule

Notwithstanding subparagraph (A) of this paragraph, the Secretary may not approve a plan of an Indian tribe under this subpart to which (but for this subparagraph) an allotment of less than $10,000 would be made under section 629c(a) of this title if allotments were made under section 629c(a) of this title to all Indian tribes with plans approved under this subpart with the same or larger numbers of children.

(Aug. 14, 1935, ch. 531, title IV, § 432, as added Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13711(a)(2), 107 Stat. 651.)

PRIOR PROVISIONS

A prior section 432 of act Aug. 14, 1935, was classified to section 632 of this title prior to repeal by Pub. L. 100–485.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 629d of this title.

§ 629c. Allotments to States

(a) Indian tribes

From the amount reserved pursuant to section 629(d)(3) of this title for any fiscal year, the Secretary shall allot to each Indian tribe with a plan approved under this subpart an amount that bears the same ratio to such reserved amount as the number of children in the Indian tribe bears to the total number of children in all Indian tribes with State plans so approved, as determined by the Secretary on the basis of the most current and reliable information available to the Secretary.

(b) Territories

From the amount described in section 629(b) of this title for any fiscal year that remains after applying section 629(d) of this title for the fiscal year, the Secretary shall allot to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, and American Samoa an amount determined in the same manner as the allotment to each of such jurisdictions is determined under section 621 of this title.

(c) Other States

(1) In general

From the amount described in section 629(b) of this title for any fiscal year that remains after applying section 629(d) of this title and subsection (b) of this section for the fiscal year, the Secretary shall allot to each State (other than an Indian tribe) which is not specified in subsection (b) of this section an amount equal to such remaining amount multiplied by the food stamp percentage of the State for the fiscal year.

(2) "Food stamp percentage" defined

(A) In general

As used in paragraph (1) of this subsection, the term ''food stamp percentage'' means, with respect to a State and a fiscal year, the average monthly number of children receiving food stamp benefits in the State for months in the 3 fiscal years referred to in subparagraph (B) of this paragraph, as determined from sample surveys made under section 2025(c) of title 7, expressed as a percentage of the average monthly number of children receiving food stamp benefits in the States described in such paragraph (1) for months in such 3 fiscal years, as so determined.

(B) Fiscal years used in calculation

For purposes of the calculation pursuant to subparagraph (A), the Secretary shall use data for the 3 most recent fiscal years, preceding the fiscal year for which the State's allotment is calculated under this subsection, for which such data are available to the Secretary.

(Aug. 14, 1935, ch. 531, title IV, § 433, as added Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13711(a)(2), 107 Stat. 653.)

PRIOR PROVISIONS

A prior section 433 of act Aug. 14, 1935, was classified to section 633 of this title prior to repeal by Pub. L. 100–485.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 629, 629b, 629d of this title.

§ 629d. Payments to States

(a) Entitlement

(1) General rule

Except as provided in paragraph (2) of this subsection, each State which has a plan approved under this subpart shall be entitled to payment of the lesser of—

(A) 75 percent of the total expenditures by the State for activities under the plan during the fiscal year or the immediately succeeding fiscal year; or

(B) the allotment of the State under section 629c of this title for the fiscal year.

(2) Special rule

Upon submission by a State to the Secretary during fiscal year 1994 of an application in such form and containing such information as the Secretary may require (including, if the State is seeking payment of an amount pursuant to subparagraph (B) of this paragraph, a description of the services to be provided with the amount), the State shall be entitled to payment of an amount equal to the sum of—

(A) such amount, not exceeding $1,000,000, from the allotment of the State under section 629c of this title for fiscal year 1994, as the State may require to develop and submit a plan for approval under section 629b of this title; and

(B) an amount equal to the lesser of—

(i) 75 percent of the expenditures by the State for services to children and families in accordance with the application and the expenditure rules of section 629b(a)(4) of this title; or

(ii) the allotment of the State under section 629c of this title for fiscal year 1994, reduced by any amount paid to the State pursuant to subparagraph (A) of this paragraph.

(b) Prohibitions

(1) No use of other Federal funds for State match

Each State receiving an amount paid under paragraph (1) or (2)(B) of subsection (a) of this section may not expend any Federal funds to meet the costs of services described in this subpart not covered by the amount so paid.

(2) Availability of funds

A State may not expend any amount paid under subsection (a)(1) of this section for any fiscal year after the end of the immediately succeeding fiscal year.

(c) Direct payments to tribal organizations of Indian tribes

The Secretary shall pay any amount to which an Indian tribe is entitled under this section directly to the tribal organization of the Indian tribe.

(Aug. 14, 1935, ch. 531, title IV, § 434, as added Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13711(a)(2), 107 Stat. 653.)

PRIOR PROVISIONS

A prior section 434 of act Aug. 14, 1935, was classified to section 634 of this title prior to repeal by Pub. L. 100–485.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 629b of this title.

§ 629e. Evaluations

(a) Evaluations

(1) In general

The Secretary shall evaluate the effectiveness of the programs carried out pursuant to this subpart in accomplishing the purposes of this subpart, and may evaluate any other Federal, State, or local program, regardless of whether federally assisted, that is designed to achieve the same purposes as the program under this subpart, in accordance with criteria established in accordance with paragraph (2).

(2) Criteria to be used

In developing the criteria to be used in evaluations under paragraph (1), the Secretary shall consult with appropriate parties, such as—

(A) State agencies administering programs under this part and part E of this subchapter;

(B) persons administering child and family services programs (including family preservation and family support programs) for private, nonprofit organizations with an interest in child welfare; and

(C) other persons with recognized expertise in the evaluation of child and family services programs (including family preservation and family support programs) or other related programs.

(b) Coordination of evaluations

The Secretary shall develop procedures to coordinate evaluations under this section, to the extent feasible, with evaluations by the States of the effectiveness of programs under this subpart.

(Aug. 14, 1935, ch. 531, title IV, § 435, as added Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13711(a)(2), 107 Stat. 654.)

REFERENCES IN TEXT

Part E of this subchapter, referred to in subsec. (a)(2)(A), is classified to section 670 et seq. of this title.

PRIOR PROVISIONS

A prior section 435 of act Aug. 14, 1935, was classified to section 635 of this title prior to repeal by Pub. L. 100–485.

PART C—WORK INCENTIVE PROGRAM FOR RECIPIENTS OF AID UNDER STATE PLAN APPROVED UNDER PART A

§§ 630 to 632. Repealed. Pub. L. 100–485, title II, § 202(a), Oct. 13, 1988, 102 Stat. 2377

Section 630, act Aug. 14, 1935, ch. 531, title IV, § 430, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 884; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(1), 85 Stat. 805, provided statement of purpose for work incentive program for recipients of aid under State plan approved under part A.

Section 631, act Aug. 14, 1935, ch. 531, title IV, § 431, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 884; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(2), 85 Stat. 805; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(B)(ii), 98 Stat. 1170, authorized appropriations.

Section 632, act Aug. 14, 1935, ch. 531, title IV, § 432, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 884; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(3), 85 Stat. 806; Oct. 13, 1982, Pub. L. 97–300, title V, § 502(a), (b)(1), (c)(1), 96 Stat. 1397, 1398; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(k), 98 Stat. 1171, established work incentive programs.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204(a), (b)(1)(A), of Pub. L. 100–485, set out as an Effective Date note under section 681 of this title.

§ 632a. Omitted

CODIFICATION

Section, Pub. L. 96–499, title IX, § 966, Dec. 5, 1980, 94 Stat. 2652; Pub. L. 97–35, title XXI, § 2156, Aug. 13, 1981, 95 Stat. 802; Pub. L. 97–123, § 5, Dec. 29, 1981, 95 Stat. 1664; Pub. L. 102–54, § 13(q)(4), June 13, 1991, 105 Stat. 280, required Secretary of Health and Human Services to enter into agreements with 7 to 12 States for the pur-

pose of conducting demonstration projects of up to 4 years duration for the training and employment of eligible participants as homemakers or home health aides and required Secretary to submit to Congress annual reports and a final report 6 months after receiving final reports from all States.

§§ 633 to 645. Repealed. Pub. L. 100–485, title II, § 202(a), Oct. 13, 1988, 102 Stat. 2377

Section 633, act Aug. 14, 1935, ch. 531, title IV, § 433, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 885; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(4)(A)–(F), 85 Stat. 806, 807; Oct. 13, 1982, Pub. L. 97–300, title V, § 502(b)(2), (c)(2), (3), 96 Stat. 1398; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(k), 98 Stat. 1171, related to operation of programs.

Section 634, act Aug. 14, 1935, ch. 531, title IV, § 434, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 887; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(4)(G), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(k), 98 Stat. 1171, related to incentive payments and allowances for transportation and other costs.

Section 635, act Aug. 14, 1935, ch. 531, title IV, § 435, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 887; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(5), 85 Stat. 808, limited Federal assistance.

Section 636, act Aug. 14, 1935, ch. 531, title IV, § 436, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 887; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(6), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(B)(iii), 98 Stat. 1170, related to period of enrollment.

Section 637, act Aug. 14, 1935, ch. 531, title IV, § 437, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 887, related to relocation of participants.

Section 638, act Aug. 14, 1935, ch. 531, title IV, § 438, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 887; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(7), 85 Stat. 808, provided that participants in programs were not Federal employees.

Section 639, act Aug. 14, 1935, ch. 531, title IV, § 439, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 888; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(8), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(B)(iv), 98 Stat. 1170, related to rules and regulations.

Section 640, act Aug. 14, 1935, ch. 531, title IV, § 440, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 888, required annual report.

Section 641, act Aug. 14, 1935, ch. 531, title IV, § 441, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 888; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(9), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(9), (j)(2)(B)(v), 98 Stat. 1166, 1170, related to evaluation and research.

Section 642, act Aug. 14, 1935, ch. 531, title IV, § 442, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 888; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(10), 85 Stat. 808, related to technical assistance for providers of employment or training.

Section 643, act Aug. 14, 1935, ch. 531, title IV, § 443, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 888; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(11), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(B)(vi), 98 Stat. 1170, related to collection of State share.

Section 644, act Aug. 14, 1935, ch. 531, title IV, § 444, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 204(a), 81 Stat. 889; amended Dec. 28, 1971, Pub. L. 92–223, § 3(b)(12), 85 Stat. 808; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(10), (j)(2)(B)(vii), 98 Stat. 1166, 1170, related to agreements with other agencies providing assistance to families of unemployed parents.

Section 645, act Aug. 14, 1935, ch. 531, title IV, § 445, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2309, 95 Stat. 850; amended Sept. 3, 1982, Pub. L. 97–248, title I, § 158(a), (b), 96 Stat. 399; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(11), 98 Stat. 1166; Aug. 22, 1984, Pub. L. 98–396, title I, 98 Stat. 1392, 1393; Oct. 18, 1986, Pub. L. 99–500, § 150, 100 Stat. 1783–352, and Oct. 30, 1986, Pub. L. 99–591, § 150, 100 Stat. 3341–355; July 11, 1988, Pub. L. 100–364, § 2, 102 Stat. 822, related to work incentive demonstration program.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204(a), (b)(1)(A), of Pub. L. 100–485, set out as an Effective Date note under section 681 of this title.

PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 405, 503, 602, 603, 603a, 606, 608, 617, 671, 1306, 1315, 1320b–7, 1396a, 1396g–1, 1786 of this title; title 8 section 1255a; title 26 section 6103; title 29 section 49b.

§ 651. Authorization of appropriations

For the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A of this subchapter) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

(Aug. 14, 1935, ch. 531, title IV, § 451, as added Jan. 4, 1975, Pub. L. 93–647, § 101(a), 88 Stat. 2351; amended Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2332(a), 95 Stat. 861; Aug. 16, 1984, Pub. L. 98–378, § 2, 98 Stat. 1305.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in text, is classified to section 601 et seq. of this title.

AMENDMENTS

1984—Pub. L. 98–378 substituted ''obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for aid under part A of this subchapter) for whom such assistance is requested,'' for ''and obtaining child and spousal support,''.

1981—Pub. L. 97–35 substituted ''children and the spouse (or former spouse) with whom such children are living'' for ''children'' and ''child and spousal support'' for ''child support''.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2336 of Pub. L. 97–35 provided that:

''(a) Except as otherwise specifically provided in the preceding sections of this chapter [sections 2331–2335 of Pub. L. 97–35] or in subsection (b), the provisions of this chapter and the amendments and repeals made by this chapter [amending this section, sections 652, 653, 654, 657, and 664 of this title, and sections 6305 and 6402 of Title 26, Internal Revenue Code] shall become effective on October 1, 1981.

''(b) If a State agency administering a plan approved under part D of title IV of the Social Security Act [this part] demonstrates, to the satisfaction of the Secretary

of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by this chapter to which the effective date specified in subsection (a) applies, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or after October 1, 1981. For purposes of the preceding sentence, the term 'session of a State's legislature' includes any regular, special, budget, or other session of a State legislature.''

EFFECTIVE DATE

Section 101(f) of Pub. L. 93–647, as amended by Pub. L. 94–46, §2, June 30, 1975, 89 Stat. 245, provided that: ''The amendments made by this section [enacting this part and section 6305 of Title 26, Internal Revenue Code, amending sections 602, 603, 604, 606, and 1306 of this title, repealing section 610 of this title, and enacting provisions set out as notes under this section and section 602 of this title] shall become effective on August 1, 1975, except that section 459 of the Social Security Act [section 659 of this title], as added by subsection (a) of this section shall become effective on January 1, 1975, and subsection (e) of this section [enacting provisions set out as a note under this section] shall become effective upon the date of the enactment of this Act [Jan. 4, 1975].''

SHORT TITLE

This part is popularly known as the ''Child Support Enforcement Act''.

AUTHORIZATION OF APPROPRIATIONS

Subsec. 101(e) of Pub. L. 93–647 provided that: ''There are authorized to be appropriated to the Secretary of Health, Education, and Welfare such sums as may be necessary to plan and prepare for the implementation of the program established by this section [this part and section 6305 of Title 26, Internal Revenue Code].''

§ 652. Duties of Secretary

(a) Establishment of separate organizational unit; duties

The Secretary shall establish, within the Department of Health and Human Services a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

(1) establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse) with whom the absent parent's child is living as he determines to be necessary to assure that such programs will be effective;

(2) establish minimum organizational and staffing requirements for State units engaged in carrying out such programs under plans approved under this part;

(3) review and approve State plans for such programs;

(4) evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved under this part as may be necessary to assure their conformity with the requirements of this part, and, not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 603(h)(1) of this title, or which is operating under a corrective action plan in accordance with section 603(h)(2) of this title), conduct a complete audit of the programs established under such plan in each State and determine for the purposes of the penalty provision of section 603(h) of this title whether the actual operation of such programs in each State conforms to the requirements of this part;

(5) assist States in establishing adequate reporting procedures and maintain records of the operations of programs established pursuant to this part in each State;

(6) maintain records of all amounts collected and disbursed under programs established pursuant to the provisions of this part and of the costs incurred in collecting such amounts;

(7) provide technical assistance to the States to help them establish effective systems for collecting child and spousal support and establishing paternity;

(8) receive applications from States for permission to utilize the courts of the United States to enforce court orders for support against absent parents and, upon a finding that (A) another State has not undertaken to enforce the court order of the originating State against the absent parent within a reasonable time, and (B) that utilization of the Federal courts is the only reasonable method of enforcing such order, approve such applications;

(9) operate the Parent Locator Service established by section 653 of this title; and

(10) not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following:

(A) total program costs and collections set forth in sufficient detail to show the cost to the States and the Federal Government, the distribution of collections to families, State and local governmental units, and the Federal Government; and an identification of the financial impact of the provisions of this part;

(B) costs and staff associated with the Office of Child Support Enforcement;

(C) the following data, with the data required under each clause being separately stated for cases where the child is receiving aid to families with dependent children (or foster care maintenance payments under part E of this subchapter), cases where the child was formerly receiving such aid or payments and the State is continuing to collect support assigned to it under section 602(a)(26) or 671(a)(17) of this title, and all other cases under this part:

(i) the total number of cases in which a support obligation has been established in the fiscal year for which the report is submitted, and the total amount of such obligations;

(ii) the total number of cases in which a support obligation has been established, and the total amount of such obligations;

(iii) the number of cases described in clause (i) in which support was collected

during such fiscal year, and the total amount of such collections;

(iv) the number of cases described in clause (ii) in which support was collected during such fiscal year, and the total amount of such collections; and

(v) the number of child support cases filed in each State in such fiscal year, and the amount of the collections made in each State in such fiscal year, on behalf of children residing in another State or against parents residing in another State;

(D) the status of all State plans under this part as of the end of the fiscal year last ending before the report is submitted, together with an explanation of any problems which are delaying or preventing approval of State plans under this part;

(E) data, by State, on the use of the Federal Parent Locator Service, and the number of locate requests submitted without the absent parent's social security account number;

(F) the number of cases, by State, in which an applicant for or recipient of aid under a State plan approved under part A of this subchapter has refused to cooperate in identifying and locating the absent parent and the number of cases in which refusal so to cooperate is based on good cause (as determined in accordance with the standards referred to in section 602(a)(26)(B)(ii) of this title);

(G) data, by State, on the use of Federal courts and on use of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government;

(H) the major problems encountered which have delayed or prevented implementation of the provisions of this part during the fiscal year last ending prior to the submission of such report; and

(I) the amount of administrative costs which are expended in each functional category of expenditures, including establishment of paternity.

The information contained in any such report under subparagraph (A) shall specifically include (i) the total amount of child support payments collected as a result of services furnished during the fiscal year involved to individuals under section 654(6) of this title, (ii) the cost to the States and to the Federal Government of furnishing such services to those individuals, and (iii) the extent to which the furnishing of such services was successful in providing sufficient support to those individuals to assure that they did not require assistance under the State plan approved under part A of this subchapter.

(b) Certification of child support obligations to Secretary of the Treasury for collection

The Secretary shall, upon the request of any State having in effect a State plan approved under this part, certify to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1986 the amount of any child support obligation (including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A of this subchapter) which is assigned to such State or is undertaken to be collected by such State pursuant to section 654(6) of this title. No amount may be certified for collection under this subsection except the amount of the delinquency under a court or administrative order for support and upon a showing by the State that such State has made diligent and reasonable efforts to collect such amounts utilizing its own collection mechanisms, and upon an agreement that the State will reimburse the Secretary of the Treasury for any costs involved in making the collection. All reimbursements shall be credited to the appropriation accounts which bore all or part of the costs involved in making the collections. The Secretary after consultation with the Secretary of the Treasury may, by regulation, establish criteria for accepting amounts for collection and for making certification under this subsection including imposing such limitations on the frequency of making such certifications under this subsection.

(c) Payment of child support collections to States

The Secretary of the Treasury shall from time to time pay to each State for distribution in accordance with the provisions of section 657 of this title the amount of each collection made on behalf of such State pursuant to subsection (b) of this section.

(d) Child support management information system

(1) Except as provided in paragraph (3), the Secretary shall not approve the initial and annually updated advance automated data processing planning document, referred to in section 654(16) of this title, unless he finds that such document, when implemented, will generally carry out the objectives of the management system referred to in such subsection, and such document—

(A) provides for the conduct of, and reflects the results of, requirements analysis studies, which include consideration of the program mission, functions, organization, services, constraints, and current support, of, in, or relating to, such system,

(B) contains a description of the proposed management system referred to in section 655(a)(1)(B) of this title, including a description of information flows, input data, and output reports and uses,

(C) sets forth the security and interface requirements to be employed in such management system,

(D) describes the projected resource requirements for staff and other needs, and the resources available or expected to be available to meet such requirements,

(E) contains an implementation plan and backup procedures to handle possible failures,

(F) contains a summary of proposed improvement of such management system in terms of qualitative and quantitative benefits, and

(G) provides such other information as the Secretary determines under regulation is necessary.

(2)(A) The Secretary shall through the separate organizational unit established pursuant to subsection (a) of this section, on a continuing basis, review, assess, and inspect the planning, design, and operation of, management information systems referred to in section 655(a)(1)(B) of this title, with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under paragraph (1) and the conditions specified under section 654(16) of this title.

(B) If the Secretary finds with respect to any statewide management information system referred to in section 655(a)(1)(B) of this title that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automated data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.

(3) The Secretary may waive any requirement of paragraph (1) or any condition specified under section 654(16) of this title with respect to a State if—

(A) the State demonstrates to the satisfaction of the Secretary that the State has an alternative system or systems that enable the State, for purposes of section 603(h) of this title, to be in substantial compliance with other requirements of this part; and

(B)(i) the waiver meets the criteria of paragraphs (1), (2), and (3) of section 1315(c) of this title, or

(ii) the State provides assurances to the Secretary that steps will be taken to otherwise improve the State's child support enforcement program.

(e) Technical assistance to States

The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 655(a)(1)(B) of this title.

(f) Regulations

The Secretary shall issue regulations to require that State agencies administering the child support enforcement program under this part petition for the inclusion of medical support as part of any child support order whenever health care coverage is available to the absent parent at a reasonable cost. Such regulation shall also provide for improved information exchange between such State agencies and the State agencies administering the State medicaid programs under subchapter XIX of this chapter with respect to the availability of health insurance coverage.

(g) Performance standards for State paternity establishment programs

(1) A State's program under this part shall be found, for purposes of section 603(h) of this title, not to have complied substantially with the requirements of this part unless, for any fiscal year beginning on or after October 1, 1994, its paternity establishment percentage for such fiscal year is based on reliable data and (rounded to the nearest whole percentage point) equals or exceeds—

(A) 75 percent;

(B) for a State with a paternity establishment percentage of not less than 50 percent but less than 75 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 3 percentage points;

(C) for a State with a paternity establishment percentage of not less than 45 percent but less than 50 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 4 percentage points;

(D) for a State with a paternity establishment percentage of not less than 40 percent but less than 45 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 5 percentage points; or

(E) for a State with a paternity establishment percentage of less than 40 percent for such fiscal year, the paternity establishment percentage of the State for the immediately preceding fiscal year plus 6 percentage points.

(2) For purposes of this section—

(A) the term ''paternity establishment percentage'' means, with respect to a State (or all States, as the case may be) for a fiscal year, the ratio (expressed as a percentage) that the total number of children—

(i) who have been born out of wedlock,

(ii)(I) except as provided in the last sentence of this paragraph, with respect to whom aid is being paid under the State's plan approved under part A or E of this subchapter in the fiscal year or, at the option of the State, as of the end of such year, or (II) with respect to whom services are being provided under the State's plan approved under this part in the fiscal year or, at the option of the State, as of the end of such year pursuant to an application submitted under section 654(6) of this title, and

(iii) the paternity of whom has been established or acknowledged,

bears to the total number of children born out of wedlock and (except as provided in such last sentence) with respect to whom aid was being paid under the State's plan approved under part A or E of this subchapter as of the end of the preceding fiscal year or with respect to whom services were being provided under the State's plan approved under this part as of the end of the preceding fiscal year pursuant to an application submitted under section 654(6) of this title; and

(B) the term ''reliable data'' means the most recent data available which are found by the Secretary to be reliable for purposes of this section.

For purposes of subparagraph (A), the total number of children shall not include any child who is a dependent child by reason of the death

of a parent unless paternity is established for such child or any child with respect to whom an applicant or recipient is found to have good cause for refusing to cooperate under section 602(a)(26) of this title or any child with respect to whom the State agency administering the plan under part E of this subchapter determines (as provided in section 654(4)(B) of this title) that it is against the best interests of such child to do so.

(3)(A) The requirements of this subsection are in addition to and shall not supplant any other requirement (that is not inconsistent with such requirements) established in regulations by the Secretary for the purpose of determining (for purposes of section 603(h) of this title) whether the program of a State operated under this part shall be treated as complying substantially with the requirements of this part.

(B) The Secretary may modify the requirements of this subsection to take into account such additional variables as the Secretary identifies (including the percentage of children born out-of-wedlock in a State) that affect the ability of a State to meet the requirements of this subsection.

(C) The Secretary shall submit an annual report to the Congress that sets forth the data upon which the paternity establishment percentages for States for a fiscal year are based, lists any additional variables the Secretary has identified under subparagraph (A), and describes State performance in establishing paternity.

(h) Prompt State response to requests for child support assistance

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must accept and respond to requests (from States, jurisdictions thereof, or individuals who apply for services furnished by the State agency under this part or with respect to whom an assignment under section 602(a)(26) of this title is in effect) for assistance in establishing and enforcing support orders, including requests to locate absent parents, establish paternity, and initiate proceedings to establish and collect child support awards.

(i) Prompt State distribution of amounts collected as child support

The standards required by subsection (a)(1) of this section shall include standards establishing time limits governing the period or periods within which a State must distribute, in accordance with section 657 of this title, amounts collected as child support pursuant to the State's plan approved under this part.

(Aug. 14, 1935, ch. 531, title IV, § 452, as added Jan. 4, 1975, Pub. L. 93–647, § 101(a), 88 Stat. 2351; amended May 23, 1977, Pub. L. 95–30, title V, § 504(a), 91 Stat. 163; June 9, 1980, Pub. L. 96–265, title IV, §§ 402(a), 405(c), (d), 94 Stat. 462, 464, 465; June 17, 1980, Pub. L. 96–272, title III, § 301(b), 94 Stat. 527; Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2332(b), 95 Stat. 861; Sept. 3, 1982, Pub. L. 97–248, title I, § 175(a)(1), 96 Stat. 403; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(12), (j)(2)(B)(viii), 98 Stat. 1166, 1170; Aug. 16, 1984, Pub. L. 98–378, §§ 4(b), 9(a)(1), 13(a), (b), 16, 98 Stat. 1312, 1316, 1319, 1321; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9143(a), 101 Stat. 1330–322; Oct. 13, 1988, Pub. L. 100–485, title I, §§ 111(a), 121(a), 122(a), 123(b), (d), 102 Stat. 2348, 2351–2353; Dec. 19, 1989, Pub. L. 101–239, title X, § 10403(a)(1)(B)(i), 103 Stat. 2487; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13721(a), 107 Stat. 658; Oct. 31, 1994, Pub. L. 103–432, title II, § 213, 108 Stat. 4461.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in subsecs. (a)(10), (b), and (g)(2), are classified to sections 601 et seq. and 670 et seq. of this title.

The Internal Revenue Code of 1986, referred to in subsec. (b), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (g)(2)(A). Pub. L. 103–432, § 213(5), in closing provisions, substituted ''born out of wedlock'' for ''who were born out of wedlock during the immediately preceding fiscal year'', substituted ''the preceding fiscal year'' for ''such preceding fiscal year'' in two places, and struck out ''or E'' after ''under this part''.

Subsec. (g)(2)(A)(i). Pub. L. 103–432, § 213(1), struck out ''during the fiscal year'' after ''wedlock''.

Subsec. (g)(2)(A)(ii)(I). Pub. L. 103–432, § 213(2), substituted ''in the fiscal year or, at the option of the State, as of the end of such year'' for ''as of the end of the fiscal year''.

Subsec. (g)(2)(A)(ii)(II). Pub. L. 103–432, § 213(3), substituted ''in the fiscal year or, at the option of the State, as of the end of such year'' for ''or E as of the end of the fiscal year''.

Subsec. (g)(2)(A)(iii). Pub. L. 103–432, § 213(4), struck out ''during the fiscal year'' after ''acknowledged''.

1993—Subsec. (g)(1). Pub. L. 103–66, § 13721(a)(1)(A)–(C), substituted ''1994'' for ''1991'' and inserted ''is based on reliable data and (rounded to the nearest whole percentage point)'' before ''equals''.

Subsec. (g)(1)(A) to (E). Pub. L. 103–66, § 13721(a)(1)(D), added subpars. (A) to (E) and struck out former subpars. (A) to (C) which read as follows:

''(A) 50 percent;

''(B) the paternity establishment percentage of the State for the fiscal year 1988, increased by the applicable number of percentage points; or

''(C) the paternity establishment percentage determined with respect to all States for such fiscal year.''

Subsec. (g)(2). Pub. L. 103–66, § 13721(a)(2)(C), (D), in concluding provisions, inserted ''unless paternity is established for such child'' after ''the death of a parent'' and ''or any child with respect to whom the State agency administering the plan under part E of this subchapter determines (as provided in section 654(4)(B) of this title) that it is against the best interests of such child to do so'' after ''cooperate under section 602(a)(26) of this title''.

Subsec. (g)(2)(A). Pub. L. 103–66, § 13721(a)(2)(A), in cl. (i), inserted before comma ''during the fiscal year'', in cl. (ii)(I), substituted ''part A or E of this subchapter as of the end of the'' for ''part A of this subchapter (or under all such plans) for such'', in cl. (ii)(II), substituted ''this part or E as of the end of the'' for ''this part (or under all such plans) for the'', in cl. (iii), inserted before comma ''or acknowledged during the fiscal year'', and in concluding provisions, substituted ''children who were born out of wedlock during the immediately preceding fiscal year and'' for ''children who have been born out of wedlock and'', ''aid was being paid'' for ''aid is being paid'', ''part A or E of this subchapter as of the end of such preceding fiscal'' for ''part A of this subchapter (or under all such plans) for such fiscal'', ''services were being'' for ''services are being'', and ''this part or E as of the end of such preceding fiscal'' for ''this part (or under all such plans) for the fiscal''.

Subsec. (g)(2)(B). Pub. L. 103–66, §13721(a)(2)(B), added subpar. (B) and struck out former subpar. (B) which read as follows: ''the applicable number of percentage points means, with respect to a fiscal year (beginning with the fiscal year 1991), 3 percentage points multiplied by the number of fiscal years after the fiscal year 1989 and before the beginning of such fiscal year.''

1989—Subsec. (d)(2)(B). Pub. L. 101–239 substituted ''automated data'' for ''automatic data''.

1988—Subsec. (d)(1). Pub. L. 100–485, §123(b)(1), substituted ''Except as provided in paragraph (3), the'' for ''The''.

Pub. L. 100–485, §123(d), substituted ''automated'' for ''automatic''.

Subsec. (d)(3). Pub. L. 100–485, §123(b)(2), added par. (3).

Subsec. (g). Pub. L. 100–485, §111(a), added subsec. (g).

Subsec. (h). Pub. L. 100–485, §121(a), added subsec. (h).

Subsec. (i). Pub. L. 100–485, §122(a), added subsec. (i).

1987—Subsec. (c). Pub. L. 100–203 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

''(1) There is hereby established in the Treasury a revolving fund which shall be available to the Secretary without fiscal year limitation, to enable him to pay to the States for distribution in accordance with the provisions of section 657 of this title such amounts as may be collected and paid (subject to paragraph (2)) into such fund under section 6305 of the Internal Revenue Code of 1986.

''(2) There is hereby appropriated to the fund, out of any moneys in the Treasury not otherwise appropriated, amounts equal to the amounts collected under section 6305 the Internal Revenue Code of 1986, reduced by the amounts credited or refunded as overpayments of the amounts so collected. The amounts appropriated by the preceding sentence shall be transferred at least quarterly from the general fund of the Treasury to the fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.''

1986—Subsecs. (b), (c). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing.

1984—Subsec. (a). Pub. L. 98–369, §2663(j)(2)(B)(viii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' in provisions preceding par. (1).

Subsec. (a)(4). Pub. L. 98–378, §9(a)(1), substituted ''not less often than once every three years (or not less often than annually in the case of any State to which a reduction is being applied under section 603(h)(1) of this title, or which is operating under a corrective action plan in accordance with section 603(h)(2) of this title)'' for ''not less often than annually''.

Subsec. (a)(10)(C). Pub. L. 98–378, §13(a), amended subpar. (C) generally to include the reporting of additional aspects of child support enforcement. Prior to amendment, subpar. (C) read as follows: ''the number of child support cases (with separate identification of the number in which collection of spousal support was involved) in each State during each quarter of the fiscal year last ending before the report is submitted and during each quarter of the preceding fiscal year (including the transitional period beginning July 1, 1976, and ending September 30, 1976, in the case of the first report to which this subparagraph applies), and the disposition of such cases;''.

Subsec. (a)(10)(I). Pub. L. 98–378, §13(b), added subpar. (I).

Subsec. (c)(2). Pub. L. 98–369, §2663(c)(12), substituted ''preceding sentence'' for ''preceding section''.

Subsecs. (d)(1)(B), (2)(A), (B), (e). Pub. L. 98–378, §4(b), substituted ''655(a)(1)(B) of this title'' for ''655(a)(3) of this title''.

Subsec. (f). Pub. L. 98–378, §16, added subsec. (f).

1982—Subsec. (b). Pub. L. 97–248 substituted provisions that the Secretary shall, upon the request of a State having in effect a State plan approved under this part, certify to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1954 the amount of any child support obligation (including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A of this subchapter) which is assigned to such State or is undertaken to be collected by such State pursuant to section 654(6) of this title for provisions that the Secretary would, upon the request of any State having in effect a State plan approved under this part, certify the amount of any child support obligation assigned to such State, including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A of this subchapter (or undertaken to be collected by such State pursuant to section 654(6) of this title) to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1954.

1981—Subsec. (a)(1). Pub. L. 97–35, §2332(b)(1)(A), inserted ''and support for the spouse (or former spouse) with whom the absent parent's child is living''.

Subsec. (a)(7). Pub. L. 97–35, §2332(b)(1)(B), substituted ''child and spousal support'' for ''child support''.

Subsec. (a)(10)(C). Pub. L. 97–35, §2332(b)(1)(C), inserted ''(with separate identification of the number in which collection of spousal support was involved)''.

Subsec. (b). Pub. L. 97–35, §2332(b)(2), inserted '', including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A of this subchapter,'' and provision that all reimbursements be credited to the appropriation accounts which bore all or part of the costs involved in making the collections and substituting ''court or administrative order'' for ''court order'' and ''reimburse the Secretary of the Treasury'' for ''reimburse the United States''.

1980—Subsec. (a)(10). Pub. L. 96–272 inserted provisions following subpar. (H) setting out certain required information to be contained in reports under subpar. (A).

Subsec. (b). Pub. L. 96–265, §402(a), inserted ''(or undertaken to be collected by such State pursuant to section 654(6) of this title)'' after ''assigned to such State''.

Subsecs. (d), (e). Pub. L. 96–265, §405(c), (d), added subsecs. (d) and (e).

1977—Subsec. (a)(10). Pub. L. 95–30 substituted ''not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following'' for ''not later than June 30 of each year beginning after December 31, 1975, submit to the Congress a report on all activities undertaken pursuant to the provisions of this part'', substituted a colon for a period at end of provisions thus substituted, and added subpars. (A) to (H).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13721(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 666 of this title] shall become effective with respect to a State on the later of—

''(1) October 1, 1993 or,

''(2) the date of enactment by the legislature of such State of all laws required by such amendments, but in no event later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 10, 1993]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in section 123(d) of Pub. L. 100–485 on Oct. 13, 1988, see

section 10403(a)(1)(B)(ii) of Pub. L. 101–239, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 111(f)(1) of Pub. L. 100–485 provided that: ''The amendments made by subsections (a), (d), and (e) [enacting section 668 of this title and amending this section and section 666 of this title] shall become effective on the date of the enactment of this Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9143(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to amounts collected after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 4(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section and section 655 of this title] shall apply to fiscal years after fiscal year 1983.''

Amendment by section 9(a)(1) of Pub. L. 98–378 effective Oct. 1, 1983, see section 9(c) of Pub. L. 98–378, set out as a note under section 602 of this title.

Section 13(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section] shall be effective for reports for fiscal year 1986 and each fiscal year thereafter.''

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Oct. 1, 1981, see section 175(b) of Pub. L. 97–248, set out as a note under section 503 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 402(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect July 1, 1980.''

Section 405(e) of Pub. L. 96–265 provided that: ''The amendments made by this section [amending this section and sections 654 and 655 of this title] shall take effect on July 1, 1981, and shall be effective only with respect to expenditures, referred to in section 455(a)(3) of the Social Security Act [section 655(a)(3) of this title] (as amended by this Act), made on or after such date.''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 504(b) of Pub. L. 95–30 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective in the case of reports, submitted by the Secretary of Health, Education, and Welfare [now Health and Human Services] after 1976.''

REGULATIONS

Section 122(b) of Pub. L. 100–485 provided that: ''Not later than 180 days after the date of the enactment of this Act [Oct. 13, 1988], the Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to the standards required by the amendment made by subsection (a) [amending this section], and, after allowing not less than 60 days for public comment, shall issue final regulations not later than the first day of the 10th month to begin after such date of enactment.''

IMPLEMENTATION OF PERFORMANCE STANDARDS FOR STATE PATERNITY ESTABLISHMENT PROGRAMS

Section 111(f)(3) of Pub. L. 100–485 provided that: ''The Secretary of Health and Human Services shall collect the data necessary to implement the requirements of section 452(g) of the Social Security Act [subsec. (g) of this section] (as added by subsection (a) of this section) and may, in carrying out the requirement of determining a State's paternity establishment percentage for the fiscal year 1988, compute such percentage on the basis of data collected with respect to the last quarter of such fiscal year (or, if such data are not available, the first quarter of the fiscal year 1989) if the Secretary determines that data for the full year are not available.''

REQUESTS FOR CHILD SUPPORT ASSISTANCE; ADVISORY COMMITTEE; PROMULGATION OF REGULATIONS

Section 121(b) of Pub. L. 100–485 provided that:

''(1) Not later than 60 days after the date of the enactment of this Act [Oct. 13, 1988], the Secretary of Health and Human Services shall establish an advisory committee. The committee shall include representatives of organizations representing State governors, State welfare administrators, and State directors of programs under part D of title IV of the Social Security Act [this part]. The Secretary shall consult with the advisory committee before issuing any regulations with respect to the standards required by the amendment made by subsection (a) [amending this section] (including regulations regarding what constitutes an adequate response on the part of a State to the request of an individual, State, or jurisdiction).

''(2) Not later than 180 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to the standards required by the amendment made by subsection (a), and, after allowing not less than 60 days for public comment, shall issue final regulations not later than the first day of the 10th month beginning after such date of enactment.''

SUPPLEMENTAL REPORT TO BE SUBMITTED TO CONGRESS NOT LATER THAN JUNE 30, 1977

Section 504(c) of Pub. L. 95–30 directed Secretary of Health, Education, and Welfare to submit to Congress, not later than June 30, 1977, a special supplementary report with respect to activities undertaken pursuant to this part.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 653, 654, 660 of this title; title 26 section 6305.

§ 653. Parent Locator Service

(a) Establishment; purpose

The Secretary shall establish and conduct a Parent Locator Service, under the direction of the designee of the Secretary referred to in section 652(a) of this title, which shall be used to obtain and transmit to any authorized person (as defined in subsection (c) of this section) information as to the whereabouts of any absent parent when such information is to be used to locate such parent for the purpose of enforcing support obligations against such parent.

(b) Disclosure of information to authorized persons

Upon request, filed in accordance with subsection (d) of this section of any authorized person (as defined in subsection (c) of this section) for the social security account number (or numbers, if the individual involved has more than one such number) and the most recent address

and place of employment of any absent parent, the Secretary shall, notwithstanding any other provision of law, provide through the Parent Locator Service such information to such person, if such information—

(1) is contained in any files or records maintained by the Secretary or by the Department of Health and Human Services; or

(2) is not contained in such files or records, but can be obtained by the Secretary, under the authority conferred by subsection (e) of this section, from any other department, agency, or instrumentality of the United States or of any State.

No information shall be disclosed to any person if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data. The Secretary shall give priority to requests made by any authorized person described in subsection (c)(1) of this section.

(c) "Authorized person" defined

As used in subsection (a) of this section, the term ''authorized person'' means—

(1) any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under such plans to seek to recover any amounts owed as child and spousal support (including, when authorized under the State plan, any official of a political subdivision);

(2) the court which has authority to issue an order against an absent parent for the support and maintenance of a child, or any agent of such court; and

(3) the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving aid under part A of this subchapter) (as determined by regulations prescribed by the Secretary) without regard to the existence of a court order against an absent parent who has a duty to support and maintain any such child.

(d) Form and manner of request for information

A request for information under this section shall be filed in such manner and form as the Secretary shall by regulation prescribe and shall be accompanied or supported by such documents as the Secretary may determine to be necessary.

(e) Compliance with request; search of files and records by head of any department, etc., of United States; transmittal of information to Secretary; reimbursement for cost of search; fees

(1) Whenever the Secretary receives a request submitted under subsection (b) of this section which he is reasonably satisfied meets the criteria established by subsections (a), (b), and (c) of this section, he shall promptly undertake to provide the information requested from the files and records maintained by any of the departments, agencies, or instrumentalities of the United States or of any State.

(2) Notwithstanding any other provision of law, whenever the individual who is the head of any department, agency, or instrumentality of the United States receives a request from the Secretary for information authorized to be provided by the Secretary under this section, such individual shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality with a view to determining whether the information requested is contained in any such files or records. If such search discloses the information requested, such individual shall immediately transmit such information to the Secretary, except that if any information is obtained the disclosure of which would contravene national policy or security interests of the United States or the confidentiality of census data, such information shall not be transmitted and such individual shall immediately notify the Secretary. If such search fails to disclose the information requested, such individual shall immediately so notify the Secretary. The costs incurred by any such department, agency, or instrumentality of the United States or of any State in providing such information to the Secretary shall be reimbursed by him. Whenever such services are furnished to an individual specified in subsection (c)(3) of this section, a fee shall be charged such individual. The fee so charged shall be used to reimburse the Secretary or his delegate for the expense of providing such services.

(3) The Secretary of Labor shall enter into an agreement with the Secretary to provide prompt access for the Secretary (in accordance with this subsection) to the wage and unemployment compensation claims information and data maintained by or for the Department of Labor or State employment security agencies.

(f) Arrangements and cooperation with State agencies

The Secretary, in carrying out his duties and functions under this section, shall enter into arrangements with State agencies administering State plans approved under this part for such State agencies to accept from resident parents, legal guardians, or agents of a child described in subsection (c)(3) of this section and to transmit to the Secretary requests for information with regard to the whereabouts of absent parents and otherwise to cooperate with the Secretary in carrying out the purposes of this section.

(Aug. 14, 1935, ch. 531, title IV, §453, as added Jan. 4, 1975, Pub. L. 93–647, §101(a), 88 Stat. 2353; amended Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2332(c), 95 Stat. 862; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(c)(13), (j)(2)(B)(ix), 98 Stat. 1166, 1170; Aug. 16, 1984, Pub. L. 98–378, §§17, 19(a), 98 Stat. 1321, 1322; Oct. 13, 1988, Pub. L. 100–485, title I, §124(a), 102 Stat. 2353.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (c)(3), is classified to section 601 et seq. of this title.

AMENDMENTS

1988—Subsec. (e)(3). Pub. L. 100–485 added par. (3).

1984—Subsec. (b). Pub. L. 98–378, §19(a), inserted ''the social security account number (or numbers, if the individual involved has more than one such number) and''.

Subsec. (b)(1). Pub. L. 98–369, §2663(j)(2)(B)(ix), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (b)(2). Pub. L. 98–369, §2663(c)(13), substituted ''of the United States'' for '', or the United States''.

Subsec. (f). Pub. L. 98–378, § 17, struck out '', after determining that the absent parent cannot be located through the procedures under the control of such State agencies,'' before ''to transmit to the Secretary''.

1981—Subsec. (c)(1). Pub. L. 97–35 substituted ''child and spousal support'' for ''child support''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 124(c) of Pub. L. 100–485 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending this section and sections 503 and 504 of this title] shall become effective on the first day of the first calendar quarter which begins one year or more after the date of the enactment of this Act [Oct. 13, 1988].

''(2) The Secretary of Health and Human Services and the Secretary of Labor shall enter into the agreement required by the amendment made by subsection (a) [amending this section] not later than 90 days after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 652, 654, 663, 11602 of this title.

§ 654. State plan for child and spousal support

A State plan for child and spousal support must—

(1) provide that it shall be in effect in all political subdivisions of the State;

(2) provide for financial participation by the State;

(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

(4) provide that such State will undertake—

(A) in the case of a child born out of wedlock with respect to whom an assignment under section 602(a)(26) of this title or section 1396k of this title is effective, to establish the paternity of such child, unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so, or, in the case of such a child with respect to whom an assignment under section 1396k of this title is in effect, the State agency administering the plan approved under subchapter XIX of this chapter determines pursuant to section 1396k(a)(1)(B) of this title that it is against the best interests of the child to do so, and

(B) in the case of any child with respect to whom such assignment is effective, including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E of this subchapter, to secure support for such child from his parent (or from any other person legally liable for such support), and from such parent for his spouse (or former spouse) receiving aid to families with dependent children or medical assistance under a State plan approved under subchapter XIX of this chapter (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being enforced under the plan), utilizing any reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A or E of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so), except that when such arrangements and other means have proven ineffective, the State may utilize the Federal courts to obtain or enforce court orders for support;

(5) provide that (A) in any case in which support payments are collected for an individual with respect to whom an assignment under section 602(a)(26) of this title is effective, such payments shall be made to the State for distribution pursuant to section 657 of this title and shall not be paid directly to the family, and the individual will be notified on a monthly basis (or on a quarterly basis for so long as the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden) of the amount of the support payments collected;[1] except that this paragraph shall not apply to such payments for any month following the first month in which the amount collected is sufficient to make such family ineligible for assistance under the State plan approved under part A of this subchapter; and (B) in any case in which support payments are collected for an individual pursuant to the assignment made under section 1396k of this title, such payments shall be made to the State for distribution pursuant to section 1396k of this title, except that this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance;

(6) provide that (A) the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, including support collection services for the spouse (or former spouse) with whom the absent parent's child is living (but only if a support obligation has been established with respect to such spouse, and only if the support obligation established with respect to the child is being en-

[1] So in original. The semicolon probably should be a comma.

forced under the plan), (B) an application fee for furnishing such services shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed $25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), (C) a fee of not more than $25 may be imposed in any case where the State requests the Secretary of the Treasury to withhold past-due support owed to or on behalf of such individual from a tax refund pursuant to section 664(a)(2) of this title, (D) a fee (in accordance with regulations of the Secretary) for performing genetic tests may be imposed on any individual who is not a recipient of aid under a State plan approved under part A of this subchapter, and (E) any costs in excess of the fees so imposed may be collected—

(i) from the parent who owes the child or spousal support obligation involved, or

(ii) at the option of the State, from the individual to whom such services are made available, but only if such State has in effect a procedure whereby all persons in such State having authority to order child or spousal support are informed that such costs are to be collected from the individual to whom such services were made available;

(7) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan;

(8) provide that the agency administering the plan will establish a service to locate absent parents utilizing—

(A) all sources of information and available records, and

(B) the Parent Locator Service in the Department of Health and Human Services;

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

(A) in establishing paternity, if necessary,

(B) in locating an absent parent residing in the State (whether or not permanently) against whom any action is being taken under a program established under a plan approved under this part in another State,

(C) in securing compliance by an absent parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such child or children with respect to whom aid is being provided under the plan of such other State, and

(D) in carrying out other functions required under a plan approved under this part;

(10) provide that the State will maintain a full record of collections and disbursements made under the plan and have an adequate reporting system;

(11) provide that amounts collected as support shall be distributed as provided in section 657 of this title;

(12) provide that any payment required to be made under section 656 or 657 of this title to a family shall be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children;

(13) provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating absent parents, establishing paternity, obtaining support orders, and collecting support payments;

(14) comply with such bonding requirements, for employees who receive, disburse, handle, or have access to, cash, as the Secretary shall by regulations prescribe;

(15) maintain methods of administration which are designed to assure that persons responsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts (except that the Secretary shall by regulations provide for exceptions to this requirement in the case of sparsely populated areas where the hiring of unreasonable additional staff would otherwise be necessary);

(16) provide, at the option of the State, for the establishment, in accordance with an (initial and annually updated) advance automated data processing planning document approved under section 652(d) of this title, of a statewide automated data processing and information retrieval system designed effectively and efficiently to assist management in the administration of the State plan, in the State and localities thereof, so as (A) to control, account for, and monitor (i) all the factors in the support enforcement collection and paternity determination process under such plan (including, but not limited to, (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses (including postal ZIP codes) of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction, (II) checking of records of such individuals on a periodic basis with Federal, intra- and inter-State, and local agencies, (III) maintaining the data necessary

to meet the Federal reporting requirements on a timely basis, and (IV) delinquency and enforcement activities), (ii) the collection and distribution of support payments (both intra- and inter-State), the determination, collection, and distribution of incentive payments both inter- and intra-State, and the maintenance of accounts receivable on all amounts owed, collected and distributed, and (iii) the costs of all services rendered, either directly or by interfacing with State financial management and expenditure information, (B) to provide interface with records of the State's aid to families with dependent children program in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program, (C) to provide for security against unauthorized access to, or use of, the data in such system, (D) to facilitate the development and improvement of the income withholding and other procedures required under section 666(a) of this title through the monitoring of support payments, the maintenance of accurate records regarding the payment of support, and the prompt provision of notice to appropriate officials with respect to any arrearages in support payments which may occur, and (E) to provide management information on all cases under the State plan from initial referral or application through collection and enforcement;

(17) in the case of a State which has in effect an agreement with the Secretary entered into pursuant to section 663 of this title for the use of the Parent Locator Service established under section 653 of this title, provide that the State will accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, will impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, will transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect will otherwise comply with such agreement and regulations of the Secretary with respect thereto;

(18) provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury as set forth in section 664 of this title, and take all steps necessary to implement and utilize such procedures;

(19) provide that the agency administering the plan—

(A) shall determine on a periodic basis, from information supplied pursuant to section 508 of the Unemployment Compensation Amendments of 1976, whether any individuals receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to any agreement under any Federal unemployment compensation law) owe child support obligations which are being enforced by such agency, and

(B) shall enforce any such child support obligations which are owed by such an individual but are not being met—

(i) through an agreement with such individual to have specified amounts withheld from compensation otherwise payable to such individual and by submitting a copy of any such agreement to the State agency administering the unemployment compensation law, or

(ii) in the absence of such an agreement, by bringing legal process (as defined in section 662(e) of this title) to require the withholding of amounts from such compensation;

(20) provide, to the extent required by section 666 of this title, that the State (A) shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and (B) shall implement the procedures which are prescribed in or pursuant to such laws;

(21)(A) at the option of the State, impose a late payment fee on all overdue support (as defined in section 666(e) of this title) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the absent parent owing the overdue support; and

(B) assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed;

(22) in order for the State to be eligible to receive any incentive payments under section 658 of this title, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision;

(23) provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained; and

(24) provide that if the State, as of October 13, 1988, does not have in effect an automated data processing and information retrieval system meeting all of the requirements of paragraph (16), the State—

(A) will submit to the Secretary by October 1, 1991, for review and approval by the Secretary within 9 months after submittal an advance automated data processing plan-

ning document of the type referred to in such paragraph; and

(B) will have in effect by October 1, 1995, an operational automated data processing and information retrieval system, meeting all the requirements of that paragraph, which has been approved by the Secretary.

The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21).

(Aug. 14, 1935, ch. 531, title IV, § 454, as added Jan. 4, 1975, Pub. L. 93–647, § 101(a), 88 Stat. 2354; amended Aug. 9, 1975, Pub. L. 94–88, title II, § 208(b), (c), 89 Stat. 436; May 23, 1977, Pub. L. 95–30, title V, § 502(a), 91 Stat. 162; June 9, 1980, Pub. L. 96–265, title IV, § 405(b), 94 Stat. 463; Dec. 28, 1980, Pub. L. 96–611, § 9(a), 94 Stat. 3571; Aug. 13, 1981, Pub. L. 97–35, title XXIII, §§ 2331(b), 2332(d), 2333(a), (b), 2335(a), 95 Stat. 860, 862, 863; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 171(a), (b)(1), 173(a), 96 Stat. 401, 403; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(14), (j)(2)(B)(x), 98 Stat. 1166, 1170; Aug. 16, 1984, Pub. L. 98–378, §§ 3(a), (c)–(f), 5(b), 6(a), 11(b)(1), 12(a), (b), 14(a), 21(d), 98 Stat. 1306, 1310, 1311, 1314, 1318, 1319, 1320, 1324; Dec. 22, 1987, Pub. L. 100–203, title IX, §§ 9141(a)(2), 9142(a), 101 Stat. 1330–321; Oct. 13, 1988, Pub. L. 100–485, title I, §§ 104(a), 111(c), 123(a), (d), 102 Stat. 2348, 2349, 2352, 2353.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in pars. (4), (5), and (6)(D), are classified to section 601 et seq. and 670 et seq., respectively, of this title.

Section 508 of the Unemployment Compensation Amendments of 1976, referred to in par. (19), is section 508 of Pub. L. 94–566, Oct. 20, 1976, 90 Stat. 2689, which enacted section 603a of this title and amended section 49b of Title 29, Labor.

AMENDMENTS

1988—Par. (5)(A). Pub. L. 100–485, § 104(a), substituted ''on a monthly basis (or on a quarterly basis for so long as the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden)'' for ''at least annually''.

Par. (6)(D), (E). Pub. L. 100–485, § 111(c), added cl. (D) and redesignated former cl. (D) as (E).

Par. (16). Pub. L. 100–485, § 123(d), substituted ''advance automated'' for ''advance automatic'' in introductory provisions.

Pub. L. 100–485, § 123(a)(2), substituted ''a statewide automated'' for ''an automatic''.

Par. (24). Pub. L. 100–485, § 123(a)(1), added par. (24).

1987—Par. (4)(A). Pub. L. 100–203, § 9142(a)(1)(A), (B), substituted ''an assignment under section 602(a)(26) of this title or section 1396k of this title'' for ''an assignment under section 602(a)(26) of this title'' and '', or, in the case of such a child with respect to whom an assignment under section 1396k of this title is in effect, the State agency administering the plan approved under subchapter XIX of this chapter determines pursuant to section 1396k(a)(1)(B) of this title that it is against the best interests of the child to do so, and'' for '', and''.

Par. (4)(B). Pub. L. 100–203, § 9142(a)(1)(C), inserted ''or medical assistance under a State plan approved under subchapter XIX of this chapter'' after ''children''.

Par. (5). Pub. L. 100–203, § 9142(a)(2), substituted ''provide that (A)'' for ''provide that,'' and added cl. (B).

Pub. L. 100–203, § 9141(a)(2), struck out ''(except as provided in section 657(c) of this title)'' after ''apply to such payments''.

1984—Par. (4)(B). Pub. L. 98–378, § 11(b)(1), inserted ''including an assignment with respect to a child on whose behalf a State agency is making foster care maintenance payments under part E of this subchapter,'' after ''such assignment is effective,'' and inserted ''or E'' after ''part A''.

Par. (4)(B). Pub. L. 98–378, § 12(a), substituted '', and'' for ''and, at the option of the State,'' before ''from such parent'' and inserted '', and only if the support obligation established with respect to the child is being enforced under the plan''.

Par. (5). Pub. L. 98–378, § 3(e), inserted '', and the individual will be notified at least annually of the amount of the support payments collected;''.

Par. (6)(A). Pub. L. 98–378, § 12(b), struck out '', at the option of the State,'' before ''support collection services'' and inserted '', and only if the support obligation established with respect to the child is being enforced under the plan''.

Par. (6)(B). Pub. L. 98–378, § 3(c), substituted ''shall be imposed, which shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which (i) will not exceed $25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and (ii) may vary among such individuals on the basis of ability to pay (as determined by the State), and'' for ''may be imposed, except that the amount of any such application fee shall be reasonable, as determined under regulations of the Secretary,''.

Par. (6)(C). Pub. L. 98–378, § 21(d)(1), (3), added cl. (C). Former cl. (C) redesignated (D).

Par. (6)(D). Pub. L. 98–378, § 21(d)(1), (2), redesignated former cl. (C) as (D) and substituted ''fees'' for ''fee'' before ''so imposed''.

Par. (8)(B). Pub. L. 98–369, § 2663(j)(2)(B)(x), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Par. (9)(C). Pub. L. 98–369, § 2663(c)(14)(A), struck out ''of such parent'' before ''with respect to whom aid''.

Par. (16)(A)(ii). Pub. L. 98–369, § 2663(c)(14)(B), substituted ''collection, and distribution'' for ''collection and distribution,'' before ''of incentive payments''.

Par. (16)(D), (E). Pub. L. 98–378, § 6(a), added cl. (D) and redesignated former cl. (D) as (E).

Par. (17). Pub. L. 98–378, § 2663(c)(14)(C), realigned margin, substituted ''provide that the State will accept'' for ''to accept'', ''will impose'' for ''and to impose'', ''will transmit'' for ''to transmit'', and ''will otherwise comply'' for '', otherwise to comply''.

Par. (20). Pub. L. 98–378, § 3(a), added par. (20).

Par. (21). Pub. L. 98–378, § 3(d), added par. (21).

Par. (22). Pub. L. 98–378, § 5(b), added par. (22).

Par. (23). Pub. L. 98–378, § 14(a), added par. (23).

Pub. L. 98–378, § 3(f), inserted after numbered paragraphs provision that the State may allow the jurisdiction which makes the collection involved to retain any application fee under par. (6)(B) or any late payment fee under par. (21).

1982—Par. (5). Pub. L. 97–248, § 173(a), inserted ''following the first month'' after ''for any month''.

Par. (6). Pub. L. 97–248, § 171(a), in cl. (A) inserted provisions relating to inclusion of, at the option of the State, support collection services for the spouse or former spouse, in cl. (B) substituted ''such services'' for ''services under the State plan (other than collection of support)'', and in cl. (C) substituted provisions relating to collection of any costs in excess of the fee imposed, for provisions relating to the State retaining any fee imposed under State law as required under former par. (19).

Pars. (18) to (20). Pub. L. 97–248, § 171(b)(1), inserted ''and'' at end of par. (18), struck out par. (19) relating to imposition of a fee on an individual who owes child

or spousal support obligation, and redesignated par. (20) as (19).

1981—Pub. L. 97–35, §2332(d)(2), substituted in provision preceding par. (1) ''child and spousal support'' for ''child support''.

Par. (4)(B). Pub. L. 97–35, §2332(d)(3), substituted ''such support) and, at the option of the State, from such parent for his spouse (or former spouse) receiving aid to families with dependent children (but only if a support obligation has been established with respect to such spouse), utilizing'' for ''such support), utilizing''.

Par. (5). Pub. L. 97–35, §2332(d)(4), substituted ''support payments'' for ''child support payments'' and ''collected for an individual'' for ''collected for a child''.

Par. (6)(B). Pub. L. 97–35, §2333(a)(1), substituted ''services under the State plan (other than collection of support)'' for ''such services''.

Par. (6)(C). Pub. L. 97–35, §2333(a)(2), substituted ''the State will retain, but only if it is the State which makes the collection, the fee imposed under State law as required under paragraph (19)'' for ''any costs in excess of the fee so imposed may be collected from such individual by deducting such costs from the amount of any recovery made''.

Par. (9)(C). Pub. L. 97–35, §2332(d)(5), substituted ''of the child or children or the parent of such child or children'' for ''of a child or children''.

Par. (11). Pub. L. 97–35, §2332(d)(6), substituted ''collected as support'' for ''collected as child support''.

Par. (16). Pub. L. 97–35, §2332(d)(7), substituted ''support enforcement'' for ''child support enforcement'', ''whom support obligations'' for ''whom child support obligations'', and ''obligated to pay support'' for ''obligated to pay child support''.

Par. (18). Pub. L. 97–35, §2331(b), added par. (18).

Par. (19). Pub. L. 97–35, §2333(b), added par. (19).

Par. (20). Pub. L. 97–35, §2335(a), added par. (20).

1980—Par. (16). Pub. L. 96–265 added par. (16).

Par. (17). Pub. L. 96–611 added par. (17).

1977—Pars. (14), (15). Pub. L. 95–30 added pars. (14) and (15).

1975—Par. (4)(A). Pub. L. 94–88, §208(b), substituted ''to establish the paternity of such child, unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so'' for ''to establish the paternity of such child''.

Par. (4)(B). Pub. L. 94–88, §208(c), substituted ''reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A of this subchapter determines in accordance with the standards prescribed by the Secretary pursuant to section 602(a)(26)(B) of this title that it is against the best interests of the child to do so)'' for ''reciprocal arrangements adopted with other States''.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 104(b) of Pub. L. 100–485 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the first day of the first calendar quarter which begins 4 or more years after the date of the enactment of this Act [Oct. 13, 1988].''

Section 111(f)(2) of Pub. L. 100–485 provided that: ''The amendments made by subsections (b) and (c) [amending this section and section 666 of this title] shall become effective on the first day of the first month beginning one year or more after the date of the enactment of this Act [Oct. 13, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9141(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section and section 657 of this title] shall become effective upon enactment [Dec. 22, 1987].''

Section 9142(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on July 1, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 3(g) of Pub. L. 98–378 provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [enacting section 666 of this title and amending this section] shall become effective on October 1, 1985.

''(2) Section 454(21) of the Social Security Act [par. 21 of this section] (as added by subsection (d) of this section), and section 466(e) of such Act [section 666(e) of this title] (as added by subsection (b) of this section), shall be effective with respect to support owed for any month beginning after the date of the enactment of this Act [Aug. 16, 1984].

''(3) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act [this part] to the requirements imposed by any amendment made by this section, the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after October 1, 1985. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature.''

Amendment by section 5(b) of Pub. L. 98–378 effective Oct. 1, 1985, see section 5(c)(1) of Pub. L. 98–378, set out as a note under section 658 of this title.

Section 6(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section and section 655 of this title] shall apply with respect to quarters beginning on or after October 1, 1984.''

Section 11(e) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section and sections 656, 657, 664, and 671 of this title] shall become effective October 1, 1984, and shall apply to collections made on or after that date.''

Section 12(c) of Pub. L. 98–378 provided that: ''The amendments made by this section [amending this section] shall become effective October 1, 1985.''

Section 14(b) of Pub. L. 98–378 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective October 1, 1985.''

Amendment by section 21(d) of Pub. L. 98–378 applicable with respect to refunds payable under section 6402 of Title 26, Internal Revenue Code, after Dec. 31, 1985, see section 21(g) of Pub. L. 98–378, set out as a note under section 6103 of Title 26.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 171(a), (b)(1) of Pub. L. 97–248 effective on and after Aug. 13, 1981, see section 171(c) of Pub. L. 97–248, set out as a note under section 503 of this title.

Section 173(b) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall become effective on October 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendments by sections 2331(b), 2332(d)(2)–(7), and 2333(a), (b) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

Amendment by section 2335(a) of Pub. L. 97–35 effective Aug. 13, 1981, except that such amendment shall not be requirements under this section or section 503 of this title before Oct. 1, 1982, see section 2335(c) of Pub. L. 97–35, set out as a note under section 503 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 effective July 1, 1981, and to be effective only with respect to expenditures, referred to in section 655(a)(3) of this title, made on or after such date, see section 405(e) of Pub. L. 96–265, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 502(b) of Pub. L. 95–30 provided that: ''The amendments made by this section [amending this section] shall take effect on the first day of the first calendar month which begins after the date of enactment of this Act [May 23, 1977].''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–88 effective Aug. 1, 1975, unless otherwise provided, see section 210 of Pub. L. 94–88, set out as a note under section 602 of this title.

STATE COMMISSIONS ON CHILD SUPPORT

Section 15 of Pub. L. 98–378 provided that:

''(a) As a condition of the State's eligibility for Federal payments under part A or D of title IV of the Social Security Act [part A of this subchapter or this part] for quarters beginning more than 30 days after the date of the enactment of this Act [Aug. 16, 1984] and ending prior to October 1, 1985, the Governor of each State, on or before December 1, 1984, shall (subject to subsection (f)) appoint a State Commission on Child Support.

''(b) Each State Commission appointed under subsection (a) shall be composed of members appropriately representing all aspects of the child support system, including custodial and non-custodial parents, the agency or organizational unit administering the State's plan under part D of such title IV [this part], the State judiciary, the executive and legislative branches of the State government, child welfare and social services agencies, and others.

''(c) It shall be the function of each State Commission to examine, investigate, and study the operation of the State's child support system for the primary purpose of determining the extent to which such system has been successful in securing support and parental involvement both for children who are eligible for aid under a State plan approved under part A of title IV of such Act [part A of this subchapter] and for children who are not eligible for such aid, giving particular attention to such specific problems (among others) as visitation, the establishment of appropriate objective standards for support, the enforcement of interstate obligations, the availability, cost, and effectiveness of services both to children who are eligible for such aid and to children who are not, and the need for additional State or Federal legislation to obtain support for all children.

''(d) Each State Commission shall submit to the Governor of the State and make available to the public, no later than October 1, 1985, a full and complete report of its findings and recommendations resulting from the examination, investigation, and study under this section. The Governor shall transmit such report to the Secretary of Health and Human Services along with the Governor's comments thereon.

''(e) None of the costs incurred in the establishment and operation of a State Commission under this section, or incurred by such a Commission in carrying out its functions under subsections (c) and (d), shall be considered as expenditures qualifying for Federal payments under part A or D of title IV of the Social Security Act [part A of this subchapter or this part] or be otherwise payable or reimbursable by the United States or any agency thereof.

''(f) If the Secretary determines, at the request of any State on the basis of information submitted by the State and such other information as may be available to the Secretary, that such State—

''(1) has placed in effect and is implementing objective standards for the determination and enforcement of child support obligations,

''(2) has established within the five years prior to the enactment of this Act [Aug. 16, 1984] a commission or council with substantially the same functions as the State Commissions provided for under this section, or

''(3) is making satisfactory progress toward fully effective child support enforcement and will continue to do so,

then such State shall not be required to establish a State Commission under this section and the preceding provisions of this section shall not apply.''

DELAYED EFFECTIVE DATE IN CASES REQUIRING STATE LEGISLATION

Section 176 of Pub. L. 97–248 provided that: ''In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act [this part] to the requirements imposed by any amendment made by this subtitle [subtitle E (§§171–176) of title I of Pub. L. 97–248, see Tables for classification], the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the end of the first session of the State legislature which begins after October 1, 1982, or which began prior to October 1, 1982, and remained in session for at least twenty-five calendar days after such date. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 652, 655, 657, 658, 663, 664, 666, 1315, 1396k of this title; title 26 section 6103.

§ 655. Payments to States

(a) Amounts payable each quarter

(1) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter an amount—

(A) equal to the percent specified in paragraph (2) of the total amounts expended by such State during such quarter for the operation of the plan approved under section 654 of this title,

(B) equal to 90 percent (rather than the percent specified in subparagraph (A)) of so much of the sums expended during such quarter as are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system (including in such sums the full cost of the hardware components of such system) which the Secretary finds meets the requirements specified in section 654(16) of this title, or meets such requirements without regard to clause (D) thereof, and

(C) equal to 90 percent (rather than the percentage specified in subparagraph (A)) of so much of the sums expended during such quarter as are attributable to laboratory costs incurred in determining paternity;

except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 663 of this title. In determining the total amounts expended by any State during a quarter, for purposes of this subsection, there shall be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.

(2) The percent applicable to quarters in a fiscal year for purposes of paragraph (1)(A) is—

(A) 70 percent for fiscal years 1984, 1985, 1986, and 1987,

(B) 68 percent for fiscal years 1988 and 1989, and

(C) 66 percent for fiscal year 1990 and each fiscal year thereafter.

(b) Estimate of amounts payable; installment payments

(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) Subject to subsection (d) of this section, the Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(c) Repealed. Pub. L. 97–248, title I, § 174(b), Sept. 3, 1982, 96 Stat. 403

(d) State reports

Notwithstanding any other provision of law, no amount shall be paid to any State under this section for any quarter, prior to the close of such quarter, unless for the period consisting of all prior quarters for which payment is authorized to be made to such State under subsection (a) of this section, there shall have been submitted by the State to the Secretary, with respect to each quarter in such period (other than the last two quarters in such period), a full and complete report (in such form and manner and containing such information as the Secretary shall prescribe or require) as to the amount of child support collected and disbursed and all expenditures with respect to which payment is authorized under subsection (a) of this section.

(e) Special project grants for interstate enforcement; appropriations

(1) In order to encourage and promote the development and use of more effective methods of enforcing support obligations under this part in cases where either the children on whose behalf the support is sought or their absent parents do not reside in the State where such cases are filed, the Secretary is authorized to make grants, in such amounts and on such terms and conditions as the Secretary determines to be appropriate, to States which propose to undertake new or innovative methods of support collection in such cases and which will use the proceeds of such grants to carry out special projects designed to demonstrate and test such methods.

(2) A grant under this subsection shall be made only upon a finding by the Secretary that the project involved is likely to be of significant assistance in carrying out the purpose of this subsection; and with respect to such project the Secretary may waive any of the requirements of this part which would otherwise be applicable, to such extent and for such period as the Secretary determines is necessary or desirable in order to enable the State to carry out the project.

(3) At the time of its application for a grant under this subsection the State shall submit to the Secretary a statement describing in reasonable detail the project for which the proceeds of the grant are to be used, and the State shall from time to time thereafter submit to the Secretary such reports with respect to the project as the Secretary may specify.

(4) Amounts expended by a State in carrying out a special project assisted under this section shall be considered, for purposes of section 658(b) of this title (as amended by section 5(a) of the Child Support Enforcement Amendments of 1984), to have been expended for the operation of the State's plan approved under section 654 of this title.

(5) There is authorized to be appropriated the sum of $7,000,000 for fiscal year 1985, $12,000,000 for fiscal year 1986, and $15,000,000 for each fiscal year thereafter, to be used by the Secretary in making grants under this subsection.

(Aug. 14, 1935, ch. 531, title IV, § 455, as added Jan. 4, 1975, Pub. L. 93–647, § 101(a), 88 Stat. 2355; amended Aug. 9, 1975, Pub. L. 94–88, title II, §§ 201(c), 205, 89 Stat. 433, 435; July 14, 1976, Pub. L. 94–365, § 3, 90 Stat. 990; June 30, 1977, Pub. L. 95–59, § 4, 91 Stat. 255; Jan. 2, 1980, Pub. L. 96–178, § 2(a), 93 Stat. 1295; June 9, 1980, Pub. L. 96–265, title IV, §§ 404(a), 405(a), 407(a), (b), 94 Stat. 463, 467; Dec. 28, 1980, Pub. L. 96–611, §§ 9(c), 11(c), 94 Stat. 3573, 3574; Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2333(c), 95 Stat. 863; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 171(b)(2), 174(a), (b), 96 Stat. 401, 403; Aug. 16, 1984, Pub. L. 98–378, §§ 4(a), 6(b), 8, 98 Stat. 1311, 1314, 1315; Oct. 13, 1988, Pub. L. 100–485, title I, §§ 112(a), 123(c), 102 Stat. 2350, 2352.)

AMENDMENT OF SUBSECTION (a)(1)

Pub. L. 100–485, title I, § 123(c), Oct. 13, 1988, 102 Stat. 2352, provided that, effective Sept. 30, 1995, subsec. (a)(1) of this section is amended—

(1) by striking subparagraphs (A) and (B);

(2) by redesignating subparagraph (C) as subparagraph (A);

(3) in subparagraph (A) (as so redesignated)—

(A) by striking ''(rather than the percentage specified in subparagraph (A))''; and

(B) by inserting ''and'' after the semicolon; and

(4) by inserting after subparagraph (A) (as so redesignated) the following new subparagraph:

''(B) equal to the percent specified in paragraph (2) of the total amounts expended by such State

during such quarter for the operation of the plan approved under section 654 of this title;''.

REFERENCES IN TEXT

Section 5(a) of the Child Support Enforcement Amendments of 1984, referred to in subsec. (e)(4), is section 5(a) of Pub. L. 98–378, which amended section 658 of this title.

AMENDMENTS

1988—Subsec. (a)(1)(C). Pub. L. 100–485, §112(a), added subpar. (C).

1984—Subsec. (a)(1). Pub. L. 98–378, §4(a)(1)–(5), designated existing provisions as par. (1) and in par. (1) as so designated, struck out '', beginning with the quarter commencing July 1, 1975,'' after ''for each quarter'', substituted subpar. (A) for former par. (1) which provided for an amount equal to 70 percent of the total amounts expended by the State during the quarter for the operation of the plan approved under section 654 of this title, struck out former par. (2) which provided for an amount equal to 50 percent of the total amounts expended by the State during the quarter for the operation of a plan which met the conditions of section 654 of this title except as was provided by a waiver by the Secretary which was granted pursuant to specific authority set forth in the law, redesignated former par. (3) as subpar. (B) of par. (1), and in subpar. (B) as so redesignated, substituted ''subparagraph (A)'' for ''clause (1) or (2)'', and inserted ''(including in such sums the full cost of the hardware components of such system)'' and '', or meets such requirements without regard to clause (D) thereof''.

Subsec. (a)(2). Pub. L. 98–378, §4(a)(6), added par. (2). Former par. (2) was struck out.

Subsec. (a)(3). Pub. L. 98–378, §4(a)(3), redesignated par. (3) of subsec. (a) as subpar. (B) of subsec. (a)(1).

Subsec. (e). Pub. L. 98–378, §8, added subsec. (e).

1982—Subsec. (a)(1). Pub. L. 97–248, §174(a), substituted ''70 percent'' for ''75 percent''.

Subsec. (c). Pub. L. 97–248, §174(b), struck out subsec. (c) which had provided that expenditures of courts of a State or its political subdivisions in connection with performance of services related to the operation of a plan approved under section 654 of this title, would be included in determining the amounts expended by a State during any quarter for the operation of such plan, that the aggregate amount of such expenditures would be reduced by the total amount of those expenditures made by a State for the 12-month period beginning on Jan. 1, 1978, and that a State agency could, under State law, pay the courts of the State from amounts received under subsec. (a) of this section.

1981—Subsec. (a). Pub. L. 97–35, as amended by Pub. L. 97–248, §171(b)(2), inserted provision that in determining the total amounts expended by any State during a quarter, for purposes of this subsection, there be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.

1980—Subsec. (a). Pub. L. 96–611, §9(c), inserted provision following par. (3) that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 663 of this title.

Pub. L. 96–611, §11(c), which was intended to make a technical correction in par. (3) by substituting a period for the semicolon at the end thereof, was not executed in view of the amendment by section 9(c) of Pub. L. 96–611 inserting provision following par. (3).

Pub. L. 96–265, §405(a), added par. (3).

Pub. L. 96–178 struck out provisions following par. (2) prohibiting payment to any State on account of furnishing child support collection or paternity determination services (other than the parent locator services) to individuals under section 654(6) of this title during any period beginning after Sept. 30, 1978.

Subsec. (b)(2). Pub. L. 96–265, §407(a), substituted ''Subject to subsection (d) of this section, the Secretary'' for ''The Secretary''.

Subsecs. (c), (d). Pub. L. 96–265, §§404(a), 407(b), added subsecs. (c) and (d).

1977—Subsec. (a). Pub. L. 95–59 substituted ''September 30, 1978'' for ''June 30, 1977'' in provisions following par. (2).

1976—Subsec. (a). Pub. L. 94–365 substituted ''June 30, 1977'' for ''June 30, 1976''.

1975—Subsec. (a). Pub. L. 94–88, §§201(c), 205, designated existing provisions as subsec. (a), and inserted provisions authorizing Secretary to pay to each State for each quarter beginning with the quarter commencing July 1, 1975, an amount equal to 50 per cent of the total amounts expended by such State during such quarter for the operation of a plan which meets the conditions of section 654 of this title except as is provided by a waiver by the Secretary which is granted pursuant to specific authority set forth in the law.

Subsec. (b). Pub. L. 94–88, §205, added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 112(b) of Pub. L. 100–485 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to laboratory costs incurred on or after October 1, 1988.''

Section 123(c) of Pub. L. 100–485 provided that the amendment made by that section is effective Sept. 30, 1995.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 4(a) of Pub. L. 98–378 applicable to fiscal years after fiscal year 1983, see section 4(c) of Pub. L. 98–378, set out as a note under section 652 of this title.

Amendment by section 6(b) of Pub. L. 98–378 applicable with respect to quarters beginning on or after Oct. 1, 1984, see section 6(c) of Pub. L. 98–378, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 171(b)(2) of Pub. L. 97–248 effective on and after Aug. 13, 1981, see section 171(c) of Pub. L. 97–248, set out as a note under section 503 of this title.

Section 174(d) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to quarters beginning on or after October 1, 1982. Subsection (b) [amending this section] shall apply with respect to quarters beginning on or after October 1, 1983; and the amendment made by subsection (c) [amending section 658 of this title] shall apply with respect to amounts collected on or after October 1, 1983.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 404(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to expenditures made by States on or after July 1, 1980.''

Amendment by section 405(a) of Pub. L. 96–265 effective July 1, 1981, and to be effective only with respect to expenditures, referred to in subsec. (a)(3) of this section, made on or after such date, see section 405(e) of Pub. L. 96–265, set out as a note under section 652 of this title.

Amendment by section 407(a), (b) of Pub. L. 96–265 effective in the case of calendar quarters commencing on or after Jan. 1, 1981, see section 407(d) of Pub. L. 96–265, set out as a note under section 603 of this title.

Section 2(b) of Pub. L. 96–178, as amended Pub. L. 96–272, title III, §301(a), June 17, 1980, 94 Stat. 527, provided that: ''This section [amending this section] shall become effective on the date of the enactment of this Act [Jan. 2, 1980], and shall apply with respect to services furnished on or after October 1, 1978.''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–88 effective Aug. 1, 1975, unless otherwise provided, see section 210 of Pub. L. 94–88, set out as a note under section 602 of this title.

PAYMENTS TO STATES FOR CERTAIN EXPENSES INCURRED DURING JULY 1975

Section 206 of Pub. L. 94–88 provided that amounts expended in good faith by any State during July 1975 in certain ways in preparation for or implementation of the child support program under this part were to be considered for purposes of this section, to the extent that payment for the expenses incurred would have been made under the terms of this section, had the amendment by section 101 of Pub. L. 93–647 been effective on July 1, 1975, to have been expended by the State for the operation of the State plan or for the conduct of activities specified in this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603a, 652, 658, 1315 of this title; title 2 section 906.

§ 656. Support obligation as obligation to State; amount; discharge in bankruptcy

(a)(1) The support rights assigned to the State under section 602(a)(26) of this title or secured on behalf of a child receiving foster care maintenance payments shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(2) The amount of such obligation shall be—

(A) the amount specified in a court order which covers the assigned support rights, or

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary, and

(3) Any amounts collected from an absent parent under the plan shall reduce, dollar for dollar, the amount of his obligation under subparagraphs (A) and (B) of paragraph (2).

(b) A debt which is a child support obligation assigned to a State under section 602(a)(26) of this title is not released by a discharge in bankruptcy under title 11.

(Aug. 14, 1935, ch. 531, title IV, § 456, as added Jan. 4, 1975, Pub. L. 93–647, § 101(a), 88 Stat. 2356; amended Nov. 6, 1978, Pub. L. 95–598, title III, § 328, 92 Stat. 2679; Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2334(a), 95 Stat. 863; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(15), 98 Stat. 1167; Aug. 16, 1984, Pub. L. 98–378, § 11(b)(2), 98 Stat. 1318.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–378, § 11(b)(2), inserted ''or secured on behalf of a child receiving foster care maintenance payments'' after ''section 602(a)(26) of this title''.

Pub. L. 98–369, § 2663(c)(15)(A), designated existing unenumerated provisions as par. (1). Former par. (1) redesignated (2).

Subsec. (a)(2). Pub. L. 98–369, § 2663(c)(15)(B), redesignated former par. (1) as (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 98–369, § 2663(c)(15)(C), (D), redesignated former par. (2) as (3) and substituted ''subparagraphs (A) and (B) of paragraph (2)'' for ''paragraphs (1)(A) and (B)''.

1981—Subsec. (b). Pub. L. 97–35 added subsec. (b).

1978—Subsec. (b). Pub. L. 95–598 repealed provision declaring a debt which is a child support obligation assigned to a State under section 602(a)(26) of this title as not released by a discharge in bankruptcy under the Bankruptcy Act.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98–378, set out as a note under section 654 of this title.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2334(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 523 of Title 11, Bankruptcy] shall become effective on the date of the enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95–598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 654 of this title.

§ 657. Distribution of proceeds

(a) Amount collected during fifteen month period beginning July 1, 1975

The amounts collected as child support by a State pursuant to a plan approved under this part during the 15 months beginning July 1, 1975, shall be distributed as follows:

(1) 40 per centum of the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without any decrease in the amount paid as assistance to such family during such month;

(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

(b) Amount collected during any fiscal year beginning after September 30, 1976

The amounts collected as support by a State pursuant to a plan approved under this part during any fiscal year beginning after September 30, 1976, shall (subject to subsection (d) of this section) be distributed as follows:

(1) of such amounts as are collected periodically which represent monthly support payments, the first $50 of any payments for a month received in that month, and the first $50 of payments for each prior month received in that month which were made by the absent parent in the month when due, shall be paid to the family without affecting its eligibility for assistance or decreasing any amount otherwise payable as assistance to such family during such month;

(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) and which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court or administrative order shall be paid to the family; and

(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

(c) Collection after termination of assistance; distribution of support proceeds

Whenever a family with respect to which child support enforcement services have been provided pursuant to section 654(4) of this title ceases to receive assistance under part A of this subchapter, the State shall provide appropriate notice to the family and continue to provide such services, and pay any amount of support collected, subject to the same conditions and on the same basis as in the case of the individuals to whom services are furnished pursuant to section 654(6) of this title, except that no application or other request to continue services shall be required of a family to which this subsection applies, and the provisions of section 654(6)(B) of this title may not be applied.

(d) Disposition of amounts collected by State as child support on behalf of children for whom public agencies make foster care payments

Notwithstanding the preceding provisions of this section, amounts collected by a State as child support for months in any period on behalf of a child for whom a public agency is making foster care maintenance payments under part E of this subchapter—

(1) shall be retained by the State to the extent necessary to reimburse it for the foster care maintenance payments made with respect to the child during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(2) shall be paid to the public agency responsible for supervising the placement of the child to the extent that the amounts collected exceed the foster care maintenance payments made with respect to the child during such period but not the amounts required by a court or administrative order to be paid as support on behalf of the child during such period; and the responsible agency may use the payments in the manner it determines will serve the best interests of the child, including setting such payments aside for the child's future needs or making all or a part thereof available to the person responsible for meeting the child's day-to-day needs; and

(3) shall be retained by the State, if any portion of the amounts collected remains after making the payments required under paragraphs (1) and (2), to the extent that such portion is necessary to reimburse the State (with appropriate reimbursement to the Federal Government to the extent of its participation in the financing) for any past foster care maintenance payments (or payments of aid to families with dependent children) which were made with respect to the child (and with respect to which past collections have not previously been retained);

and any balance shall be paid to the State agency responsible for supervising the placement of the child, for use by such agency in accordance with paragraph (2).

(Aug. 14, 1935, ch. 531, title IV, § 457, as added Jan. 4, 1975, Pub. L. 93–647, § 101(a), 88 Stat. 2356; amended Nov. 12, 1977, Pub. L. 95–171, § 11, 91 Stat. 1357; Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2332(e), 95 Stat. 862; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2640(b), 98 Stat. 1145; Aug. 16, 1984, Pub. L. 98–378, §§ 7(a), 11(a), 98 Stat. 1315, 1317; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §§ 1883(b)(6), 1899(a), 100 Stat. 2917, 2957; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9141(a)(1), 101 Stat. 1330–321; Oct. 13, 1988, Pub. L. 100–485, title I, § 102(b), 102 Stat. 2346.)

REFERENCES IN TEXT

Parts A and E of this subchapter, referred to in subsecs. (c) and (d), are classified to sections 601 et seq. and 670 et seq., respectively, of this title.

AMENDMENTS

1988—Subsec. (b)(1). Pub. L. 100–485 substituted ''of such amounts as are collected periodically which represent monthly support payments, the first $50 of any payments for a month received in that month, and the first $50 of payments for each prior month received in that month which were made by the absent parent in the month when due,'' for ''the first $50 of such amounts as are collected periodically which represent monthly support payments''.

1987—Subsec. (c). Pub. L. 100–203 amended subsec. (c) generally, revising and restating as single unnumbered subsection provisions of former pars. (1) and (2).

1986—Subsec. (b)(3). Pub. L. 99–514, § 1899(a), inserted ''or administrative'' after ''court''.

Subsec. (c). Pub. L. 99–514, § 1883(b)(6), substituted ''subsection (b)(4)(A) and (B)'' for ''subsection (b)(3)(A) and (B)''.

1984—Subsec. (b). Pub. L. 98–378, § 11(a)(2), inserted ''(subject to subsection (d) of this section)'' after ''shall'' in provisions preceding par. (1).

Subsec. (b)(1). Pub. L. 98–369, § 2640(b)(1), added par. (1). Former par. (1) redesignated (2).

Subsec. (b)(2). Pub. L. 98–369, § 2640(b)(1), (2)(A), redesignated former par. (1) as (2), and inserted ''which are in excess of any amount paid to the family under paragraph (1) and''. Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 98–369, § 2640(b)(1), (2)(B), redesignated former par. (2) as (3), and substituted ''paragraph (2)'' for ''paragraph (1)''. Former par. (3) redesignated (4).

Subsec. (b)(4). Pub. L. 98–369, § 2640(b)(1), (2)(C), redesignated former par. (3) as (4), and substituted ''paragraphs (1), (2), and (3)'' for ''paragraphs (1) and (2)''.

Subsec. (c). Pub. L. 98–378, § 7(a)(1), substituted ''shall'' for ''may'' in provisions preceding par. (1).

Subsec. (c)(2). Pub. L. 98–378, § 7(a)(2), substituted ''any amount so collected, which represents monthly support payments, to the family (without requiring any formal reapplication and without the imposition of any application fee) on the same basis as in the case of other individuals who are not receiving assistance under part A of this subchapter,'' for ''the net amount of any amount so collected, which represents monthly support payments, to the family after deducting any costs incurred in making the collection from the amount of any recovery made,''.

Subsec. (d). Pub. L. 98–378, § 11(a)(1), added subsec. (d).

1981—Subsec. (b). Pub. L. 97–35, § 2332(e)(1), substituted in provision preceding par. (1) ''as support'' for ''as child support''.

Subsec. (c). Pub. L. 97–35, § 2332(e)(2), substituted in provision preceding par. (1) ''whom support payments'' for ''whom child support payments'' and in pars. (1) and (2) ''amounts of support payments'' for ''amounts of child support payments'' in two places and ''amounts of support so'' for ''amounts of child support so''.

1977—Subsec. (c). Pub. L. 95–171, § 11(a)–(c), in par. (1), substituted ''amounts of child support payments which represent monthly support payments'' for ''such support payments'' and inserted '', which represent monthly support payments,'' after ''amounts so collected''; in par. (2), substituted ''amounts of child support payments which represent monthly support payments'' for ''such support payments'' and inserted '', which represents monthly support payments,'' after ''amount so collected''; changed to a comma the period at end of par. (2); and inserted provision for distribution of child support proceeds.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective on first day of first calendar quarter beginning after Oct. 13, 1988, see section 102(c) of Pub. L. 100–485, set out as an Effective and Termination Dates of 1988 Amendment note under section 602 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1883(b)(6) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Section 1899(b) of Pub. L. 99–514 provided that: ''The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Oct. 22, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 7(b) of Pub. L. 98–378 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective October 1, 1984.''

Amendment by section 11(a) of Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98–378, set out as a note under section 654 of this title.

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as a note under section 651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 603, 652, 654, 664, 666 of this title.

§ 658. Incentive payments to States

(a) Purpose; requirement; quarterly payments

In order to encourage and reward State child support enforcement programs which perform in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support, whether such children reside within the State or elsewhere and whether or not they are eligible for aid to families with dependent children under a State plan approved under part A of this subchapter, and regardless of the economic circumstances of their parents, the Secretary shall, from support collected which would otherwise represent the Federal share of assistance to families of absent parents, pay to each State for each fiscal year, on a quarterly basis (as described in subsection (e) of this section) beginning with the quarter commencing October 1, 1985, an incentive payment in an amount determined under subsection (b) of this section.

(b) Incentive formula

(1) Except as provided in paragraphs (2), (3), and (4), the incentive payment shall be equal to—

(A) 6 percent of the total amount of support collected under the plan during the fiscal year in cases in which the support obligation involved is assigned to the State pursuant to section 602(a)(26) or section 671(a)(17) of this title (with such total amount for any fiscal year being hereafter referred to in this section as the State's ''AFDC collections'' for that year), plus

(B) 6 percent of the total amount of support collected during the fiscal year in all other cases under this part (with such total amount for any fiscal year being hereafter referred to in this section as the State's ''non-AFDC collections'' for that year).

(2) If subsection (c) of this section applies with respect to a State's AFDC collections or non-AFDC collections for any fiscal year, the percent specified in paragraph (1)(A) or (B) (with respect to such collections) shall be increased to the higher percent determined under such subsection (with respect to such collections) in determining the State's incentive payment under this subsection for that year.

(3) The dollar amount of the portion of the State's incentive payment for any fiscal year which is determined on the basis of its non-AFDC collections under paragraph (1)(B) (after adjustment under subsection (c) of this section if applicable) shall in no case exceed—

(A) the dollar amount of the portion of such payment which is determined on the basis of its AFDC collections under paragraph (1)(A) (after adjustment under subsection (c) of this section if applicable) in the case of fiscal year 1986 or 1987;

(B) 105 percent of such dollar amount in the case of fiscal year 1988;

(C) 110 percent of such dollar amount in the case of fiscal year 1989; or

(D) 115 percent of such dollar amount in the case of fiscal year 1990 or any fiscal year thereafter.

(4) The Secretary shall make such additional payments to the State under this part, for fiscal year 1986 or 1987, as may be necessary to assure that the total amount of payments under this section and section 655(a)(1)(A) of this title for such fiscal year is no less than 80 percent of the amount that would have been payable to that State and its political subdivisions for such fiscal year under this section and section 655(a)(1)(A) of this title if those sections (including the amendment made by section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984) had remained in effect as they were in effect for fiscal year 1985.

(c) Increase in percentage; laboratory costs

If the total amount of a State's AFDC collections or non-AFDC collections for any fiscal year bears a ratio to the total amount expended by the State in that year for the operation of its plan approved under section 654 of this title for which payment may be made under section 655 of this title (with the total amount so expended in any fiscal year being hereafter referred to in this section as the State's ''combined AFDC/non-AFDC administrative costs'' for that year) which is equal to or greater than 1.4, the relevant percent specified in subparagraph (A) or (B) of subsection (b)(1) of this section (with respect to such collections) shall be increased to—

(1) 6.5 percent, plus

(2) one-half of 1 percent for each full two-tenths by which such ratio exceeds 1.4;

except that the percent so specified shall in no event be increased (for either AFDC collections or non-AFDC collections) to more than 10 percent. For purposes of the preceding sentence, laboratory costs incurred in determining paternity in any fiscal year may at the option of the State be excluded from the State's combined AFDC/non-AFDC administrative costs for that year.

(d) Support collected on behalf of individuals residing in another State

In computing incentive payments under this section, support which is collected by one State at the request of another State shall be treated as having been collected in full by each such State, and any amounts expended by the State in carrying out a special project assisted under section 655(e) of this title shall be excluded.

(e) Estimates by Secretary; quarterly payments

The amounts of the incentive payments to be made to the various States under this section for any fiscal year shall be estimated by the Secretary at or before the beginning of such year on the basis of the best information available. The Secretary shall make such payments for such year, on a quarterly basis (with each quarterly payment being made no later than the beginning of the quarter involved), in the amounts so estimated, reduced or increased to the extent of any overpayments or underpayments which the Secretary determines were made under this section to the States involved for prior periods and with respect to which adjustment has not already been made under this subsection. Upon the making of any estimate by the Secretary under the preceding sentence, any appropriations available for payments under this section shall be deemed obligated.

(Aug. 14, 1935, ch. 531, title IV, §458, as added Jan. 4, 1975, Pub. L. 93–647, §101(a), 88 Stat. 2357; amended May 23, 1977, Pub. L. 95–30, title V, §503(a), 91 Stat. 162; June 17, 1980, Pub. L. 96–272, title III, §307, 94 Stat. 531; Sept. 3, 1982, Pub. L. 97–248, title I, §174(c), 96 Stat. 403; Aug. 16, 1984, Pub. L. 98–378, §5(a), (c)(2)(A), 98 Stat. 1312, 1314; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1883(b)(7), 100 Stat. 2917; Oct. 13, 1988, Pub. L. 100–485, title I, §127, 102 Stat. 2355.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (a), is classified to section 601 et seq. of this title.

Section 5(c)(2)(A) of the Child Support Enforcement Amendments of 1984, referred to in subsec. (b)(4), is section 5(c)(2)(A) of Pub. L. 98–378, which amended subsec. (a) of this section. See 1984 Amendment note below.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–485 inserted provision that any amounts expended by the State in carrying out a special project assisted under section 655(e) of this title shall be excluded.

1986—Subsec. (d). Pub. L. 99–514 substituted ''at the request of'' for ''on behalf of individuals residing in''.

1984—Subsec. (a). Pub. L. 98–378, §5(a), in amending subsec. (a) generally, substituted general provisions relating to payments to States to encourage and reward State child support enforcement programs which perform in a cost-effective and efficient manner for provisions which required payment to States and localities making enforcement and collection of support rights assigned under section 602(a)(26) of this title.

Pub. L. 98–378, §5(c)(2)(A), temporarily substituted ''distributed as provided in paragraphs (1), (2), and (4)(A) of section 657(b) of this title'' for ''distributed as provided in section 657 of this title to reduce or repay assistance payments''. See Effective and Termination Dates of 1984 Amendment note below.

Subsec. (b). Pub. L. 98–378, §5(a), in amending subsec. (b) generally, substituted provisions relating to an incentive formula for payments under this section for provisions relating to the allocation of payments among jurisdictions involved in enforcement or collection under this section.

Subsec. (c). Pub. L. 98–378, §5(a), in amending subsec. (c) generally, substituted provisions relating to an increase in percentages of payments under this section and relating to laboratory costs for provisions relating to collection and distribution in accordance with a State plan approved under section 654 of this title.

Subsecs. (d), (e). Pub. L. 98–378, §5(a), in amending section generally, added subsecs. (d) and (e).

1982—Subsec. (a). Pub. L. 97–248 substituted ''12 percent'' for ''15 per centum''.

1980—Subsec. (a). Pub. L. 96–272, §307(b), inserted provisions for a State to make enforcement and collection of support rights on its own behalf.

Subsec. (c). Pub. L. 96–272, §307(c), added subsec. (c).

1977—Subsec. (a). Pub. L. 95–30, §503(a)(1), altered formula for arriving at amount to be paid for enforcement

and collection of assigned support rights by substituting a formula calling for an amount equal to 15 per centum of any amount collected and required to be distributed as provided in section 657 of this title to reduce or repay assistance payments for a formula calling for an amount equal to 25 per centum of any amount collected (and required to be distributed as provided in section 657 of this title to reduce or repay assistance payments) attributable to the support obligation owed for 12 months and an amount equal to 10 per centum of any amount collected (and required to be distributed as provided in section 657 of this title to reduce or repay assistance payments) attributable to the support obligation owed for any month after the first twelve months for which such collections were made.

Subsec. (b). Pub. L. 95–30, § 503(a)(2), substituted ''determined under subsection (a) of this section'' for ''determined under paragraphs (1) and (2) of subsection (a) of this section''.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENT

Section 5(c)(1) of Pub. L. 98–378 provided that: ''The amendments made by the preceding provisions of this section [amending this section and section 654 of this title] shall become effective on October 1, 1985.''

Section 5(c)(2)(A) of Pub. L. 98–378 provided that the amendment made by such section 5(c)(2)(A) is effective until Sept. 30, 1985.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–248 applicable with respect to amounts collected on or after Oct. 1, 1983, see section 174(d) of Pub. L. 97–248, set out as a note under section 655 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 503(b) of Pub. L. 95–30 provided that: ''The amendments made by subsection (a) [amending this section] shall be applicable with respect to amounts collected on and after October 1, 1977.''

CONSTRUCTION OF REFERENCE TO SECTION 657(b) OF THIS TITLE

Section 5(c)(2)(B) of Pub. L. 98–378 provided that: ''The reference to provisions of section 457(b) of the Social Security Act [section 657(b) of this title] in the amendment made by subparagraph (A) of this paragraph [amending this section] is a reference to such provisions as in effect after the effective date of section 2640(b) of the Deficit Reduction Act of 1984 [effective date of section 2640(b) of Pub. L. 98–369, Oct. 1, 1984].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 654, 655 of this title; title 2 section 906.

§ 659. Enforcement of individual's legal obligations to provide child support or make alimony payments

(a) United States and District of Columbia to be subject to legal process

Notwithstanding any other provision of law (including section 407 of this title), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments.

(b) Methods of service of legal process

Service of legal process brought for the enforcement of an individual's obligation to provide child support or make alimony payments shall be accomplished by certified or registered mail, return receipt requested, or by personal service, upon the appropriate agent designated for receipt of such service of process pursuant to regulations promulgated pursuant to section 661 of this title (or, if no agent has been designated for the governmental entity having payment responsibility for the moneys involved, then upon the head of such governmental entity). Such process shall be accompanied by sufficient data to permit prompt identification of the individual and the moneys involved.

(c) Disclosure of information in answering interrogatories; disciplinary action or civil or criminal liability or penalty prohibited

No Federal employee whose duties include responding to interrogatories pursuant to requirements imposed by section 661(b)(3) of this title shall be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by him in connection with the carrying out of any of his duties which pertain (directly or indirectly) to the answering of any such interrogatory.

(d) Notice

Whenever any person, who is designated by law or regulation to accept service of process to which the United States is subject under this section, is effectively served with any such process or with interrogatories relating to an individual's child support or alimony payment obligations, such person shall respond thereto within thirty days (or within such longer period as may be prescribed by applicable State law) after the date effective service thereof is made, and shall, as soon as possible but not later than fifteen days after the date effective service is so made of any such process, send written notice that such process has been so served (together with a copy thereof) to the individual whose moneys are affected thereby at his duty station or last-known home address.

(e) Variance in normal pay and disbursement cycles not required

Governmental entities affected by legal processes served for the enforcement of an individual's child support or alimony payment obligations shall not be required to vary their normal pay and disbursement cycles in order to comply with any such legal process.

(f) Non-liability of United States, disbursing officers, and governmental entities with respect to payments

Neither the United States, any disbursing officer, nor governmental entity shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section.

(Aug. 14, 1935, ch. 531, title IV, § 459, as added Jan. 4, 1975, Pub. L. 93–647, § 101(a), 88 Stat. 2357; amended May 23, 1977, Pub. L. 95–30, title V, § 501(a), (b), 91 Stat. 157; Apr. 20, 1983, Pub. L. 98–21, title III, § 335(b)(1), 97 Stat. 130.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–21 inserted reference to section 407 of this title.

1977—Subsec. (a). Pub. L. 95–30, § 501(a), (b)(1), designated existing provisions as subsec. (a) and substituted ''or the District of Columbia (including any agency, subdivision, or instrumentality thereof)'' for ''(including any agency or instrumentality thereof and any wholly owned Federal Corporation)'' and ''as if the United States or the District of Columbia were a private person'' for ''as if the United States were a private person''.

Subsecs. (b) to (f). Pub. L. 95–30, § 501(b)(2), added subsecs. (b) to (f).

DELEGATION OF AUTHORITY TO PROMULGATE REGULATIONS FOR IMPLEMENTATION OF SECTION

For provisions relating to the delegation of authority to promulgate regulations for the implementation of the provisions of this section, see Ex. Ord. No. 12105, Dec. 19, 1978, 43 F.R. 59465, set out as a note under section 661 of this title.

EXECUTIVE ORDER NO. 11881

Ex. Ord. No. 11881, Oct. 3, 1975, 40 F.R. 46291, which related to the delegation of authority to issue regulations for the implementation of the provisions of this section, was revoked by Ex. Ord. No. 12105, Dec. 19, 1978, 43 F.R. 59465, set out as a note under section 661 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 661, 662 of this title; title 5 sections 5520a, 8437; title 10 section 1408.

§ 660. Civil action to enforce child support obligations; jurisdiction of district courts

The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of Health and Human Services under section 652(a)(8) of this title. A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides.

(Aug. 14, 1935, ch. 531, title IV, § 460, as added Jan. 4, 1975, Pub. L. 93–647, § 101(a), 88 Stat. 2358; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(B)(xi), 98 Stat. 1170.)

AMENDMENTS

1984—Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 661. Regulations pertaining to garnishments

(a) Authority to promulgate

Authority to promulgate regulations for the implementation of the provisions of section 659 of this title shall, insofar as the provisions of such section are applicable to moneys due from (or payable by)—

(1) the executive branch of the Government (including in such branch, for the purposes of this subsection, the territories and possessions of the United States, the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the government of the District of Columbia), be vested in the President (or his designee),

(2) the legislative branch of the Government, be vested jointly in the President pro tempore of the Senate and the Speaker of the House of Representatives (or their designees), and

(3) the judicial branch of the Government, be vested in the Chief Justice of the United States (or his designee).

(b) Requisite content of promulgated regulations

Regulations promulgated pursuant to this section shall—

(1) in the case of those promulgated by the executive branch of the Government, include a requirement that the head of each agency thereof shall cause to be published, in the appendix of the regulations so promulgated, (A) his designation of an agent or agents to accept service of process, identified by title of position, mailing address, and telephone number, and (B) an indication of the data reasonably required in order for the agency promptly to identify the individual with respect to whose moneys the legal process is brought,

(2) in the case of regulations promulgated for the legislative and judicial branches of the Government set forth, in the appendix to the regulations so promulgated, (A) the name, position, address, and telephone number of the agent or agents who have been designated for service of process, and (B) an indication of the data reasonably required in order for such entity promptly to identify the individual with respect to whose moneys the legal process is brought, and

(3) provide that (A) in the case of regulations promulgated by the executive branch of the Government, each head of a governmental entity (or his designee) shall respond to relevant interrogatories, if authorized by the law of the State in which legal process will issue, prior to formal issuance of such process, upon a showing of the applicant's entitlement to child support or alimony payments, and (B) in the case of regulations promulgated for the legislative and judicial branches of the Government, the person or persons designated as agents for service of process in accordance with paragraph (2) shall respond to relevant interrogatories if authorized by the law of the State in which legal process will issue, prior to formal issuance of legal process, upon a showing of the applicant's entitlement to child support or alimony payments.

(c) Priority of processes

In the event that a governmental entity, which is authorized under this section or regulations issued to carry out this section to accept service of process, pursuant to the provisions of subsection (a) of this section, is served with

more than one legal process with respect to the same moneys due or payable to any individual, then such moneys shall be available to satisfy such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

(Aug. 14, 1935, ch. 531, title IV, § 461, as added May 23, 1977, Pub. L. 95–30, title V, § 501(c), 91 Stat. 158.)

EX. ORD. NO. 12105. DELEGATION OF AUTHORITY TO PROMULGATE REGULATIONS

Ex. Ord. No. 12105, Dec. 19, 1978, 43 F.R. 59465, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by Section 461(a)(1) of the Social Security Act, as added by Section 501(c) of the Tax Reduction and Simplification Act of 1977 (Public Law 95–30, 91 Stat. 158, 42 U.S.C. 661(a)(1)), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, in order to provide for the enforcement of legal obligations to provide child support or make alimony payments incurred by employees of the Executive branch, it is hereby ordered as follows:

1–1. DELEGATION OF AUTHORITY

1–101. The Office of Personnel Management, in consultation with the Attorney General, the Secretary of Defense with respect to members of the armed forces, and the Mayor of the District of Columbia with respect to employees of the Government thereof, is authorized to promulgate regulations for the uniform implementation of Section 459 of the Social Security Act, as amended (42 U.S.C. 659), hereinafter referred to as the Act.

1–102. The regulations promulgated by the Office of Personnel Management pursuant to this Order shall:

(a) Be applicable to the Executive branch of the Government as defined in Section 461(a)(1) of the Act (42 U.S.C. 661(a)(1)).

(b) Require the appropriate officials of the Executive branch of the Government to take the actions prescribed by Sections 461(b)(1), 461(b)(3)(A) and 461(c) of the Act (42 U.S.C. 661(b)(1), 661(b)(3)(A) and 661(c)).

(c) Require the appropriate officials of the Executive branch of the Government to issue such rules, regulations and directives as are necessary to implement the regulations of the Office of Personnel Management.

1–2. REVOCATIONS

1–201. Executive Order No. 11881 of October 3, 1975 is revoked.

1–202. All regulations, directives, or actions taken by the Office of Personnel Management pursuant to Executive Order No. 11881 of October 3, 1975 shall remain in effect until modified, superseded or revoked by the Office of Personnel Management pursuant to this Order.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 659 of this title; title 5 section 5520a.

§ 662. Definitions

For purposes of section 659 of this title—

(a) The term ''United States'' means the Federal Government of the United States, consisting of the legislative branch, the judicial branch, and the executive branch thereof, and each and every department, agency, or instrumentality of any such branch, including the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, any office, commission, bureau, or other administrative subdivision or creature thereof, and the governments of the territories and possessions of the United States.

(b) The term ''child support'', when used in reference to the legal obligations of an individual to provide such support, means periodic payments of funds for the support and maintenance of a child or children with respect to which such individual has such an obligation, and (subject to and in accordance with State law) includes but is not limited to, payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children; such term also includes attorney's fees, interest, and court costs, when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction.

(c) The term ''alimony'', when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse (or former spouse) of such individual, and (subject to and in accordance with State law) includes but is not limited to, separate maintenance, alimony pendente lite, maintenance, and spousal support; such term also includes attorney's fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction. Such term does not include any payment or transfer of property or its value by an individual to his spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

(d) The term ''private person'' means a person who does not have sovereign or other special immunity or privilege which causes such person not to be subject to legal process.

(e) The term ''legal process'' means any writ, order, summons, or other similar process in the nature of garnishment, which—

(1) is issued by (A) a court of competent jurisdiction within any State, territory, or possession of the United States, (B) a court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor such process, or (C) an authorized official pursuant to an order of such a court of competent jurisdiction or pursuant to State or local law, and

(2) is directed to, and the purpose of which is to compel, a governmental entity, which holds moneys which are otherwise payable to an individual, to make a payment from such moneys to another party in order to satisfy a legal obligation of such individual to provide child support or make alimony payments.

(f) Entitlement of an individual to any money shall be deemed to be ''based upon remuneration for employment'', if such money consists of—

(1) compensation paid or payable for personal services of such individual, whether such

compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes but is not limited to, severance pay, sick pay, and incentive pay, but does not include awards for making suggestions, or

(2) periodic benefits (including a periodic benefit as defined in section 428(h)(3) of this title) or other payments to such individual under the insurance system established by subchapter II of this chapter or any other system or fund established by the United States (as defined in subsection (a) of this section) which provides for the payment of pensions, retirement or retired pay, annuities, dependents' or survivors' benefits, or similar amounts payable on account of personal services performed by himself or any other individual (not including any payment as compensation for death under any Federal program, any payment under any Federal program established to provide ''black lung'' benefits, any payment by the Secretary of Veterans Affairs as pension, or any payments by the Secretary of Veterans Affairs as compensation for a service-connected disability or death, except any compensation paid by the Secretary of Veterans Affairs to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former member has waived a portion of his retired pay in order to receive such compensation), and does not consist of amounts paid, by way of reimbursement or otherwise, to such individual by his employer to defray expenses incurred by such individual in carrying out duties associated with his employment.

(g) In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—

(1) are owed by such individual to the United States,

(2) are required by law to be, and are, deducted from the remuneration or other payment involved, including but not limited to, Federal employment taxes, and fines and forfeitures ordered by court-martial,

(3) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and if amounts withheld are not greater than would be the case if such individual claimed all dependents to which he was entitled (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1986 may be permitted only when such individual presents evidence of a tax obligation which supports the additional withholding),

(4) are deducted as health insurance premiums,

(5) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage), or

(6) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage).

(Aug. 14, 1935, ch. 531, title IV, §462, as added May 23, 1977, Pub. L. 95–30, title V, §501(d), 91 Stat. 159; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(c)(17), 98 Stat. 1167; Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095; June 13, 1991, Pub. L. 102–54, §13(q)(3)(B)(ii), 105 Stat. 279.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (g)(3), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1991—Subsec. (f)(2). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration'', wherever appearing.

1986—Subsec. (g)(3). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (f)(2). Pub. L. 98–369 substituted ''dependents' or survivors' benefits'' for ''dependents or survivors' benefits''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 654 of this title; title 5 section 5520a; title 10 section 1408; title 15 section 633.

§ 663. Use of Parent Locator Service in connection with enforcement or determination of child custody in cases of parental kidnaping of child

(a) Agreements with States for use of Parent Locator Service

The Secretary shall enter into an agreement with any State which is able and willing to do so, under which the services of the Parent Locator Service established under section 653 of this title shall be made available to such State for the purpose of determining the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody determination.

(b) Requests from authorized persons for information

An agreement entered into under subsection (a) of this section shall provide that the State agency described in section 654 of this title will, under procedures prescribed by the Secretary in regulations, receive and transmit to the Secretary requests from authorized persons for information as to (or useful in determining) the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody determination.

(c) Information which may be disclosed

Information authorized to be provided by the Secretary under subsection (a), (b), (e), or (f) of

this section shall be subject to the same conditions with respect to disclosure as information authorized to be provided under section 653 of this title, and a request for information by the Secretary under this section shall be considered to be a request for information under section 653 of this title which is authorized to be provided under such section. Only information as to the most recent address and place of employment of any absent parent or child shall be provided under this section.

(d) "Custody determination" and "authorized person" defined

For purposes of this section—

(1) the term ''custody determination'' means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modification;

(2) the term ''authorized person'' means—

(A) any agent or attorney of any State having an agreement under this section, who has the duty or authority under the law of such State to enforce a child custody determination;

(B) any court having jurisdiction to make or enforce such a child custody determination, or any agent of such court; and

(C) any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

(e) Agreement on use of Parent Locator Service with United States Central Authority under Convention on the Civil Aspects of International Child Abduction

The Secretary shall enter into an agreement with the Central Authority designated by the President in accordance with section 11606 of this title, under which the services of the Parent Locator Service established under section 653 of this title shall be made available to such Central Authority upon its request for the purpose of locating any parent or child on behalf of an applicant to such Central Authority within the meaning of section 11602(1) of this title. The Parent Locator Service shall charge no fees for services requested pursuant to this subsection.

(f) Agreement to assist in locating missing children under Parent Locator Service

The Secretary shall enter into an agreement with the Attorney General of the United States, under which the services of the Parent Locator Service established under section 653 of this title shall be made available to the Office of Juvenile Justice and Delinquency Prevention upon its request to locate any parent or child on behalf of such Office for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child, or

(2) making or enforcing a child custody determination.

The Parent Locator Service shall charge no fees for services requested pursuant to this subsection.

(Aug. 14, 1935, ch. 531, title IV, § 463, as added Dec. 28, 1980, Pub. L. 96–611, § 9(b), 94 Stat. 3572; amended Apr. 29, 1988, Pub. L. 100–300, § 11, 102 Stat. 441; Oct. 31, 1994, Pub. L. 103–432, title II, § 214(a), (b), 108 Stat. 4461.)

AMENDMENTS

1994—Subsec. (c). Pub. L. 103–432, § 214(b), substituted ''subsection (a), (b), (e), or (f) of this section'' for ''subsection (a), (b), or (e) of this section''.

Subsec. (f). Pub. L. 103–432, § 214(a), added subsec. (f).

1988—Subsec. (b). Pub. L. 100–300, § 11(1), substituted ''under subsection (a) of this section'' for ''under this section''.

Subsec. (c). Pub. L. 100–300, § 11(2), substituted ''under subsection (a), (b), or (e) of this section'' for ''under this section''.

Subsec. (e). Pub. L. 100–300, § 11(3), added subsec. (e).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 214(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1995.''

EFFECTIVE DATE

Section 9(d) of Pub. L. 96–611 provided that: ''No agreement entered into under section 463 of the Social Security Act [this section] shall become effective before the date on which section 1738A of title 28, United States Code (as added by this title [probably should be ''as added by section 8(a) of this Act'']) becomes effective.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 654, 655 of this title.

§ 664. Collection of past-due support from Federal tax refunds

(a) Procedures applicable; distribution

(1) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support which has been assigned to such State pursuant to section 602(a)(26) or section 671(a)(17) of this title, the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to the past-due support, shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay such amount to the State agency (together with notice of the individual's home address) for distribution in accordance with section 657(b)(4) or (d)(3) of this title.

(2)(A) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support (as that term is defined for purposes of this paragraph under subsection (c) of this section) which such State has agreed to collect under section 654(6) of this title, and that the State agency has sent notice to such individual in accordance with paragraph (3)(A), the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are

payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to such past-due support, and shall concurrently send notice to such individual that the withholding has been made, including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund. The Secretary of the Treasury shall pay the amount withheld to the State agency, and the State shall pay to the Secretary of the Treasury any fee imposed by the Secretary of the Treasury to cover the costs of the withholding and any required notification. The State agency shall, subject to paragraph (3)(B), distribute such amount to or on behalf of the child to whom the support was owed.

(B) This paragraph shall apply only with respect to refunds payable under section 6402 of the Internal Revenue Code of 1986 after December 31, 1985.

(3)(A) Prior to notifying the Secretary of the Treasury under paragraph (1) or (2) that an individual owes past-due support, the State shall send notice to such individual that a withholding will be made from any refund otherwise payable to such individual. The notice shall also (i) instruct the individual owing the past-due support of the steps which may be taken to contest the State's determination that past-due support is owed or the amount of the past-due support, and (ii) provide information, as may be prescribed by the Secretary of Health and Human Services by regulation in consultation with the Secretary of the Treasury, with respect to procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(B) If the Secretary of the Treasury determines that an amount should be withheld under paragraph (1) or (2), and that the refund from which it should be withheld is based upon a joint return, the Secretary of the Treasury shall notify the State that the withholding is being made from a refund based upon a joint return, and shall furnish to the State the names and addresses of each taxpayer filing such joint return. In the case of a withholding under paragraph (2), the State may delay distribution of the amount withheld until the State has been notified by the Secretary of the Treasury that the other person filing the joint return has received his or her proper share of the refund, but such delay may not exceed six months.

(C) If the other person filing the joint return with the named individual owing the past-due support takes appropriate action to secure his or her proper share of a refund from which a withholding was made under paragraph (1) or (2), the Secretary of the Treasury shall pay such share to such other person. The Secretary of the Treasury shall deduct the amount of such payment from amounts subsequently payable to the State agency to which the amount originally withheld from such refund was paid.

(D) In any case in which an amount was withheld under paragraph (1) or (2) and paid to a State, and the State subsequently determines that the amount certified as past-due support was in excess of the amount actually owed at the time the amount withheld is to be distributed to or on behalf of the child, the State shall pay the excess amount withheld to the named individual thought to have owed the past-due support (or, in the case of amounts withheld on the basis of a joint return, jointly to the parties filing such return).

(b) Regulations; contents, etc.

(1) The Secretary of the Treasury shall issue regulations, approved by the Secretary of Health and Human Services, prescribing the time or times at which States must submit notices of past-due support, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify the minimum amount of past-due support to which the offset procedure established by subsection (a) of this section may be applied, and the fee that a State must pay to reimburse the Secretary of the Treasury for the full cost of applying the offset procedure, and shall provide that the Secretary of the Treasury will advise the Secretary of Health and Human Services, not less frequently than annually, of the States which have furnished notices of past-due support under subsection (a) of this section, the number of cases in each State with respect to which such notices have been furnished, the amount of support sought to be collected under this subsection by each State, and the amount of such collections actually made in the case of each State. Any fee paid to the Secretary of the Treasury pursuant to this subsection may be used to reimburse appropriations which bore all or part of the cost of applying such procedure.

(2) In the case of withholdings made under subsection (a)(2) of this section, the regulations promulgated pursuant to this subsection shall include the following requirements:

(A) The withholding shall apply only in the case where the State determines that the amount of the past-due support which will be owed at the time the withholding is to be made, based upon the pattern of payment of support and other enforcement actions being pursued to collect the past-due support, is equal to or greater than $500. The State may limit the $500 threshold amount to amounts of past-due support accrued since the time that the State first began to enforce the child support order involved under the State plan, and may limit the application of the withholding to past-due support accrued since such time.

(B) The fee which the Secretary of the Treasury may impose to cover the costs of the withholding and notification may not exceed $25 per case submitted.

(c) "Past-due support" defined

(1) Except as provided in paragraph (2), as used in this part the term ''past-due support'' means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living.

(2) For purposes of subsection (a)(2) of this section, the term ''past-due support'' means only past-due support owed to or on behalf of a qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent).

(3) For purposes of paragraph (2), the term ''qualified child'' means a child—

(A) who is a minor; or

(B)(i) who, while a minor, was determined to be disabled under subchapter II or XVI of this chapter; and

(ii) for whom an order of support is in force.

(Aug. 14, 1935, ch. 531, title IV, § 464, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2331(a), 95 Stat. 860; amended Aug. 16, 1984, Pub. L. 98–378, §§ 11(d), 21(a)–(c), 98 Stat. 1318, 1322–1324; Oct. 22, 1986, Pub. L. 99–514, § 2, title XVIII, § 1883(b)(8), 100 Stat. 2095, 2917; Nov. 5, 1990, Pub. L. 101–508, title V, § 5011(a), (b), 104 Stat. 1388–220.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(2)(B), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1990—Subsec. (a)(2)(B). Pub. L. 101–508, § 5011(a), struck out '', and before January 1, 1991'' after ''1985''.

Subsec. (c)(2). Pub. L. 101–508, § 5011(b)(1), substituted ''qualified child (or a qualified child and the parent with whom the child is living if the same support order includes support for the child and the parent)'' for ''minor child''.

Subsec. (c)(3). Pub. L. 101–508, § 5011(b)(2), added par. (3).

1986—Subsec. (a)(2)(B). Pub. L. 99–514, § 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(2)(A). Pub. L. 99–514, § 1883(b)(8), substituted ''threshold'' for ''threshhold''.

1984—Subsec. (a). Pub. L. 98–378, § 21(a), (b)(1), designated existing provisions as par. (1), substituted ''shall concurrently send notice to such individual that the withholding has been made (including in or with such notice a notification to any other person who may have filed a joint return with such individual of the steps which such other person may take in order to secure his or her proper share of the refund), and shall pay'' for ''and pay'', and added pars. (2) and (3).

Pub. L. 98–378, § 11(d), inserted ''or section 671(a)(17)'' and substituted ''section 657(b)(4) or (d)(3)'' for ''section 657(b)(3)''.

Subsec. (b)(1). Pub. L. 98–378, § 21(b)(2), designated existing provisions as par. (1), substituted ''The regulations shall be consistent with the provisions of subsection (a)(3) of this section, shall specify'' for ''The regulations shall specify'', substituted ''and shall provide'' for ''and provide'', inserted provision that any fee paid to the Secretary of the Treasury pursuant to subsec. (b) may be used to reimburse appropriations which bore all or part of the cost of applying such procedure, and added par. (2).

Subsec. (c)(1). Pub. L. 98–378, § 21(c), designated existing provisions as par. (1), inserted reference to par. (2), and added par. (2).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5011(c) of Pub. L. 101–508 provided that: ''The amendments made by subsection (b) [amending this section] shall take effect on January 1, 1991.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 11(d) of Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98–378, set out as a note under section 654 of this title.

Amendment by section 21(a)–(c) of Pub. L. 98–378 applicable with respect to refunds payable under section 6402 of Title 26, Internal Revenue Code, after Dec. 31, 1985, see section 21(g) of Pub. L. 98–378, set out as a note under section 6103 of Title 26.

EFFECTIVE DATE

Section effective Oct. 1, 1981, except as otherwise specifically provided, see section 2336 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 654 of this title; title 5 section 552a; title 26 section 6402; title 31 section 3720A.

§ 665. Allotments from pay for child and spousal support owed by members of uniformed services on active duty

(a) Mandatory allotment; notice upon failure to make; amount of allotment; adjustment or discontinuance; consultation

(1) In any case in which child support payments or child and spousal support payments are owed by a member of one of the uniformed services (as defined in section 101(3) of title 37) on active duty, such member shall be required to make allotments from his pay and allowances (under chapter 13 of title 37) as payment of such support, when he has failed to make periodic payments under a support order that meets the criteria specified in section 1673(b)(1)(A) of title 15 and the resulting delinquency in such payments is in a total amount equal to the support payable for two months or longer. Failure to make such payments shall be established by notice from an authorized person (as defined in subsection (b) of this section) to the designated official in the appropriate uniformed service. Such notice (which shall in turn be given to the affected member) shall also specify the person to whom the allotment is to be payable. The amount of the allotment shall be the amount necessary to comply with the order (which, if the order so provides, may include arrearages as well as amounts for current support), except that the amount of the allotment, together with any other amounts withheld for support from the wages of the member, as a percentage of his pay from the uniformed service, shall not exceed the limits prescribed in sections[1] 1673(b) and (c) of title 15. An allotment under this subsection shall be adjusted or discontinued upon notice from the authorized person.

(2) Notwithstanding the preceding provisions of this subsection, no action shall be taken to require an allotment from the pay and allowances of any member of one of the uniformed services under such provisions (A) until such member has had a consultation with a judge advocate of the service involved (as defined in section 801(13) of title 10), or with a law specialist (as defined in section 801(11) of such title) in the case of the Coast Guard, or with a legal officer designated by the Secretary concerned (as defined in section 101(5) of title 37) in any other case, in person, to discuss the legal and other

[1] So in original. Probably should be ''section''.

factors involved with respect to the member's support obligation and his failure to make payments thereon, or (B) until 30 days have elapsed after the notice described in the second sentence of paragraph (1) is given to the affected member in any case where it has not been possible, despite continuing good faith efforts, to arrange such a consultation.

(b) "Authorized person" defined

For purposes of this section the term ''authorized person'' with respect to any member of the uniformed services means—

(1) any agent or attorney of a State having in effect a plan approved under this part who has the duty or authority under such plan to seek to recover any amounts owed by such member as child or child and spousal support (including, when authorized under the State plan, any official of a political subdivision); and

(2) the court which has authority to issue an order against such member for the support and maintenance of a child, or any agent of such court.

(c) Regulations

The Secretary of Defense, in the case of the Army, Navy, Air Force, and Marine Corps, and the Secretary concerned (as defined in section 101(5) of title 37) in the case of each of the other uniformed services, shall each issue regulations applicable to allotments to be made under this section, designating the officials to whom notice of failure to make support payments, or notice to discontinue or adjust an allotment, should be given, prescribing the form and content of the notice and specifying any other rules necessary for such Secretary to implement this section.

(Aug. 14, 1935, ch. 531, title IV, §465, as added Sept. 3, 1982, Pub. L. 97–248, title I, §172(a), 96 Stat. 401.)

EFFECTIVE DATE

Section 172(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [enacting this section] shall become effective on October 1, 1982.''

§ 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

(a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

(1) Procedures described in subsection (b) of this section for the withholding from income of amounts payable as support.

(2) Procedures under which expedited processes (determined in accordance with regulations of the Secretary) are in effect under the State judicial system or under State administrative processes (A) for obtaining and enforcing support orders, and (B) for establishing paternity. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement or paternity establishment within the political subdivision (in accordance with the general rule for exemptions under subsection (d) of this section).

(3) Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part—

(A) any refund of State income tax which would otherwise be payable to an absent parent will be reduced, after notice has been sent to that absent parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such absent parent;

(B) the amount by which such refund is reduced shall be distributed in accordance with section 657(b)(4) or (d)(3) of this title in the case of overdue support assigned to a State pursuant to section 602(a)(26) or 671(a)(17) of this title, or, in the case of overdue support which a State has agreed to collect under section 654(6) of this title, shall be distributed, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

(C) notice of the absent parent's social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

(4) Procedures under which liens are imposed against real and personal property for amounts of overdue support owed by an absent parent who resides or owns property in the State.

(5)(A)(i) Procedures which permit the establishment of the paternity of any child at any time prior to such child's eighteenth birthday.

(ii) As of August 16, 1984, the requirement of clause (i) shall also apply to any child for whom paternity has not yet been established and any child for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

(B) Procedures under which the State is required (except in cases where the individual involved has been found under section 602(a)(26)(B) of this title to have good cause for refusing to cooperate) to require the child and all other parties, in a contested paternity case, to submit to genetic tests upon the request of any such party.

(C) Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that the rights and responsibilities of acknowledging paternity are explained and ensure that due process safeguards are afforded. Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity during the period immediately before or after the birth of a child.

(D) Procedures under which the voluntary acknowledgment of paternity creates a rebuttable, or at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity.

(E) Procedures under which the voluntary acknowledgment of paternity must be recognized as a basis for seeking a support order without requiring any further proceedings to establish paternity.

(F) Procedures which provide that (i) any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence, and (ii) if no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

(G) Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

(H) Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendent[1] and any additional showing required by State law.

(6) Procedures which require that an absent parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such absent parent of the proposed action and of the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

(7) Procedures which require the State to periodically report to consumer reporting agencies (as defined in section 1681a(f) of title 15) the name of any parent who owes overdue support and is at least 2 months delinquent in the payment of such support and the amount of such delinquency; except that (A) if the amount of the overdue support involved in any case is less than $1,000, information regarding such amount shall be made available only at the option of the State, (B) any information with respect to an absent parent shall be made available under such procedures only after notice has been sent to such absent parent of the proposed action, and such absent parent has been given a reasonable opportunity to contest the accuracy of such information (and after full compliance with all procedural due process requirements of the State), and (C) such information shall not be made available to (i) a consumer reporting agency which the State determines does not have sufficient capability to systematically and timely make accurate use of such information, or (ii) an entity which has not furnished evidence satisfactory to the State that the entity is a consumer reporting agency.

(8)(A) Procedures under which all child support orders not described in subparagraph (B) will include provision for withholding from wages, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

(B) Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

(i) The wages of an absent parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such wages shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

(ii) The requirements of subsection (b)(1) of this section (which shall apply in the case of each absent parent against whom a support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b) of this section, where applicable.

(iv) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.

(9) Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)—

(A) a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

(B) entitled as a judgment to full faith and credit in such State and in any other State, and

(C) not subject to retroactive modification by such State or by any other State;

except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

(10)(A) Procedures to ensure that, beginning 2 years after October 13, 1988, if the State determines (pursuant to a plan indicating how and when child support orders in effect in the State are to be periodically reviewed and adjusted) that a child support order being enforced under this part should be reviewed, the State must, at the request of either parent subject to the order, or of a State child support enforcement agency, initiate a review of such order, and adjust such order, as appropriate, in accordance with the guidelines es-

[1] So in original. Probably should be ''defendant''.

tablished pursuant to section 667(a) of this title.

(B) Procedures to ensure that, beginning 5 years after October 13, 1988, or such earlier date as the State may select, the State must implement a process for the periodic review and adjustment of child support orders being enforced under this part under which the order is to be reviewed not later than 36 months after the establishment of the order or the most recent review, and adjusted, as appropriate, in accordance with the guidelines established pursuant to section 667(a) of this title, unless—

(i) in the case of an order with respect to an individual with respect to whom an assignment under section 602(a)(26) of this title is in effect, the State has determined, in accordance with regulations of the Secretary, that such a review would not be in the best interests of the child and neither parent has requested review; and

(ii) in the case of any other order being enforced under this part, neither parent has requested review.

(C) Procedures to ensure that the State notifies each parent subject to a child support order in effect in the State that is being enforced under this part—

(i) of any review of such order, at least 30 days before the commencement of such review; and

(ii) of the right of such parent under subparagraph (B) to request the State to review such order; and

(iii) of a proposed adjustment (or determination that there should be no change) in the child support award amount, and such parent is afforded not less than 30 days after such notification to initiate proceedings to challenge such adjustment (or determination).

(11) Procedures under which a State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.

Notwithstanding section 654(20)(B) of this title, the procedures which are required under paragraphs (3), (4), (6), and (7) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the absent parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

(b) Withholding from income of amounts payable as support

The procedures referred to in subsection (a)(1) of this section (relating to the withholding from income of amounts payable as support) must provide for the following:

(1) In the case of each absent parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent's wages (as defined by the State for purposes of this section) must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 1673(b) of title 15. If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 1673(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for aid under part A of this subchapter) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part) by the court or other entity which issued such order.

(3)(A) The wages of an absent parent shall be subject to such withholding, regardless of whether support payments by such parent are in arrears, in the case of a support order being enforced under this part that is issued or modified on or after the first day of the 25th month beginning after October 13, 1988, on the effective date of the order; except that such wages shall not be subject to such withholding under this subparagraph in any case where (i) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (ii) a written agreement is reached between both parties which provides for an alternative arrangement.

(B) The wages of an absent parent shall become subject to such withholding, in the case of wages not subject to withholding under subparagraph (A), on the date on which the payments which the absent parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of—

(i) the date as of which the absent parent requests that such withholding begin,

(ii) the date as of which the custodial parent requests that such withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved, or

(iii) such earlier date as the State may select.

(4)(A) Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and (sub-

ject to subparagraph (B)) the State must send advance notice to each absent parent to whom paragraph (1) applies regarding the proposed withholding and the procedures such absent parent should follow if he or she desires to contest such withholding on the grounds that withholding (including the amount to be withheld) is not proper in the case involved because of mistakes of fact. If the absent parent contests such withholding on those grounds, the State shall determine whether such withholding will actually occur, shall (within no more than 45 days after the provision of such advance notice) inform such parent of whether or not withholding will occur and (if so) of the date on which it is to begin, and shall furnish such parent with the information contained in any notice given to the employer under paragraph (6)(A) with respect to such withholding.

(B) The requirement of advance notice set forth in the first sentence of subparagraph (A) shall not apply in the case of any State which has a system of income withholding for child support purposes in effect on August 16, 1984, if such system provides on that date, and continues to provide, such procedures as may be necessary to meet the procedural due process requirements of State law.

(5) Such withholding must be administered by a public agency designated by the State, and the amounts withheld must be expeditiously distributed by the State or such agency in accordance with section 657 of this title under procedures (specified by the State) adequate to document payments of support and to track and monitor such payments, except that the State may establish or permit the establishment of alternative procedures for the collection and distribution of such amounts (under the supervision of such public agency) otherwise than through such public agency so long as the entity making such collection and distribution is publicly accountable for its actions taken in carrying out such procedures, and so long as such procedures will assure prompt distribution, provide for the keeping of adequate records to document payments of support, and permit the tracking and monitoring of such payments.

(6)(A)(i) The employer of any absent parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such absent parent's wages the amount specified by such notice (which may include a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the appropriate agency (or other entity authorized to collect the amounts withheld under the alternative procedures described in paragraph (5)) for distribution in accordance with section 657 of this title.

(ii) The notice given to the employer shall contain only such information as may be necessary for the employer to comply with the withholding order.

(B) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

(C) The employer must be held liable to the State for any amount which such employer fails to withhold from wages due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

(D) Provision must be made for the imposition of a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any absent parent subject to wage withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer.

(7) Support collection under this subsection must be given priority over any other legal process under State law against the same wages.

(8) The State may take such actions as may be necessary to extend its system of withholding under this subsection so that such system will include withholding from forms of income other than wages, in order to assure that child support owed by absent parents in the State will be collected without regard to the types of such absent parents' income or the nature of their income-producing activities.

(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by absent parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent.

(10) Provision must be made for terminating withholding.

(c) Administration of support payments through State agency or other entity

Any State may at its option, under its plan approved under section 654 of this title, establish procedures under which support payments under this part will be made through the State agency or other entity which administers the State's income withholding system in any case where either the absent parent or the custodial parent requests it, even though no arrearages in child support payments are involved and no income withholding procedures have been instituted; but in any such case an annual fee for handling and processing such payments, in an amount not exceeding the actual costs incurred by the State in connection therewith or $25, whichever is less, shall be imposed on the requesting parent by the State.

(d) Exemption of States

If a State demonstrates to the satisfaction of the Secretary, through the presentation to the

Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary's continuing review and to termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

(e) "Overdue support" defined

For purposes of this section, the term ''overdue support'' means the amount of a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the absent parent's spouse (or former spouse) with whom the child is living if and to the extent that spousal support (with respect to such spouse or former spouse) would be included for purposes of paragraph (4) or (6) of section 654 of this title. At the option of the State, overdue support may include amounts which otherwise meet the definition in the first sentence of this subsection but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors shall apply independently to each procedure specified under this section.

(Aug. 14, 1935, ch. 531, title IV, §466, as added Aug. 16, 1984, Pub. L. 98–378, §3(b), 98 Stat. 1306; amended Oct. 21, 1986, Pub. L. 99–509, title IX, §9103(a), 100 Stat. 1973; Oct. 13, 1988, Pub. L. 100–485, title I, §§101(a), (b), 103(c), 111(b), (e), 102 Stat. 2344–2346, 2349, 2350; Nov. 10, 1988, Pub. L. 100–647, title VIII, §8105(4), 102 Stat. 3797; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13721(b), 107 Stat. 659; Oct. 31, 1994, Pub. L. 103–432, title II, §212(a), 108 Stat. 4460.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (b)(2), is classified to section 601 et seq. of this title.

CODIFICATION

October 13, 1988, referred to in subsec. (b)(3)(A), was in the original ''the date of enactment of this paragraph'', which was translated as meaning the date of enactment of Pub. L. 100–485, which amended par. (3) of this section generally, to reflect the probable intent of Congress.

AMENDMENTS

1994—Subsec. (a)(7). Pub. L. 103–432, §212(a)(1), substituted ''Procedures which require the State to periodically report to consumer reporting agencies (as defined in section 1681a(f) of title 15) the name of any parent who owes overdue support and is at least 2 months delinquent in the payment of such support and the amount of such delinquency'' for ''Procedures by which information regarding the amount of overdue support owed by an absent parent residing in the State will be made available to any consumer reporting agency (as defined in section 1681a(f) of title 15) upon the request of such agency''.

Subsec. (a)(7)(C). Pub. L. 103–432, §212(a)(2), substituted ''(C) such information shall not be made available to (i) a consumer reporting agency which the State determines does not have sufficient capability to systematically and timely make accurate use of such information, or (ii) an entity which has not furnished evidence satisfactory to the State that the entity is a consumer reporting agency'' for ''(C) a fee for furnishing such information, in an amount not exceeding the actual cost thereof, may be imposed on the requesting agency by the State''.

1993—Subsec. (a)(2). Pub. L. 103–66, §13721(b)(1), struck out ''at the option of the State,'' after ''and (B)'' and inserted ''or paternity establishment'' after ''support order issuance and enforcement''.

Subsec. (a)(5)(C) to (H). Pub. L. 103–66, §13721(b)(2), added subpars. (C) to (H).

Subsec. (a)(11). Pub. L. 103–66, §13721(b)(3), added par. (11).

1988—Subsec. (a)(5). Pub. L. 100–485, §111(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(5)(A). Pub. L. 100–485, §111(e), as amended by Pub. L. 100–647, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(8). Pub. L. 100–485, §101(b), designated existing provisions as subpar. (A), substituted ''not described in subparagraph (B)'' for ''which are issued or modified in the State'', and added subpar. (B).

Subsec. (a)(10). Pub. L. 100–485, §103(c), added par. (10).

Subsec. (b)(3). Pub. L. 100–485, §101(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''An absent parent shall become subject to such withholding, and the advance notice required under paragraph (4) shall be given, on the earliest of—

''(A) the date on which the payments which the absent parent has failed to make under such order are at least equal to the support payable for one month,

''(B) the date as of which the absent parent requests that such withholding begin, or

''(C) such earlier date as the State may select.''

1986—Subsec. (a)(9). Pub. L. 99–509 added par. (9).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 212(b) of Pub. L. 103–432 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to a State on later of Oct. 1, 1993, or date of enactment by legislature of such State of all laws required by such amendments made by section 13721 of Pub. L. 103–66, but in no event later than first day of first calendar quarter beginning after close of first regular session of State legislature that begins after Aug. 10, 1993, and, in case of State that has 2-year legislative session, each year of such session deemed to be separate regular session of State legislature, see section 13721(c) of Pub. L. 103–66, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8105 of Pub. L. 100–647 provided that the amendment made by that section is effective on date of enactment of Family Support Act of 1988, Pub. L. 100–485, which was approved Oct. 13, 1988.

Section 101(d) of Pub. L. 100–485 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall become effective on the first day of the 25th month beginning after the date of the enactment of this Act [Oct. 13, 1988].

''(2) The amendments made by subsection (b) [amending this section] shall become effective on January 1, 1994.

''(3) Subsection (c) [set out below] shall become effective on the date of the enactment of this Act.''

Section 103(f) of Pub. L. 100–485 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and section 667 of this title]

shall become effective one year after the date of the enactment of this Act [Oct. 13, 1988].''

Amendment by section 111(b) of Pub. L. 100–485 effective on first day of first month beginning one year or more after Oct. 13, 1988, see section 111(f)(2) of Pub. L. 100–485, set out as a note under section 654 of this title.

Amendment by section 111(e) of Pub. L. 100–485 effective Oct. 13, 1988, see section 111(f)(1) of Pub. L. 100–485, set out as a note under section 652 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9103(b) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Oct. 21, 1986].

''(2) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act [this part] to the requirements imposed by the amendment made by subsection (a) [amending this section], the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after the date of the enactment of this Act [Oct. 21, 1986]. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature.''

EFFECTIVE DATE

Section effective Oct. 1, 1985, except that subsec. (e) effective with respect to support owed for any month beginning after Aug. 16, 1984, see section 3(g) of Pub. L. 98–378, set out as an Effective Date of 1984 Amendment note under section 654 of this title.

STUDY ON MAKING IMMEDIATE INCOME WITHHOLDING MANDATORY IN ALL CASES

Section 101(c) of Pub. L. 100–485 directed Secretary of Health and Human Services to conduct a study of administrative feasibility, cost implications, and other effects of requiring immediate income withholding with respect to all child support awards in a State and report on results of such study not later than 3 years after Oct. 13, 1988.

STUDY OF IMPACT OF EXTENDING PERIODIC REVIEW REQUIREMENTS TO ALL OTHER CASES

Section 103(d) of Pub. L. 100–485 directed Secretary of Health and Human Resources, within 2 years after Oct. 13, 1988, to conduct and complete a study to determine impact on child support awards and the courts of requiring each State to periodically review all child support orders in effect in the State.

DEMONSTRATION PROJECTS FOR EVALUATING MODEL PROCEDURES FOR REVIEWING CHILD SUPPORT AWARDS

Section 103(e) of Pub. L. 100–485 authorized an agreement between Secretary of Health and Human Services and each State submitting an application for purpose of conducting a demonstration project to test and evaluate model procedures for reviewing child support award amounts, directed that such projects be commenced not later than Sept. 30, 1989, and be conducted for a 2-year period, and directed Secretary to report results of such projects to Congress not later than 6 months after all projects are completed.

COMMISSION ON INTERSTATE CHILD SUPPORT

Section 126 of Pub. L. 100–485, as amended by Pub. L. 101–508, title V, § 5012(a), Nov. 5, 1990, 104 Stat. 1388–221; Pub. L. 102–318, title V, § 534(a), July 3, 1992, 106 Stat. 317, established Commission on Interstate Child Support to hold national conferences on interstate child support reform and prepare report to Congress containing recommendations for improving interstate establishment and enforcement of child support awards and for revising Uniform Reciprocal Enforcement of Support Act and provided for powers of the Commission, appropriations, and termination of the Commission on Sept. 30, 1992.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 654 of this title; title 15 section 1681a.

§ 667. State guidelines for child support awards

(a) Establishment of guidelines; method

Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State. The guidelines may be established by law or by judicial or administrative action, and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts.

(b) Availability of guidelines; rebuttable presumption

(1) The guidelines established pursuant to subsection (a) of this section shall be made available to all judges and other officials who have the power to determine child support awards within such State.

(2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.

(c) Technical assistance to States; State to furnish Secretary with copies

The Secretary shall furnish technical assistance to the States for establishing the guidelines, and each State shall furnish the Secretary with copies of its guidelines.

(Aug. 14, 1935, ch. 531, title IV, § 467, as added Aug. 16, 1984, Pub. L. 98–378, § 18(a), 98 Stat. 1321; amended Oct. 13, 1988, Pub. L. 100–485, title I, § 103(a), (b), 102 Stat. 2346.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–485, § 103(b), inserted '', and shall be reviewed at least once every 4 years to ensure that their application results in the determination of appropriate child support award amounts'' before period at end.

Subsec. (b). Pub. L. 100–485, § 103(a), designated existing provisions as par. (1), struck out '', but need not be binding upon such judges or other officials'' after ''within such State'', and added par. (2).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective one year after Oct. 13, 1988, see section 103(f) of Pub. L. 100–485, set out as a note under section 666 of this title.

EFFECTIVE DATE

Section 18(b) of Pub. L. 98–378 provided that: ''The amendment made by subsection (a) [enacting this section] shall become effective on October 1, 1987.''

STUDY OF CHILD-REARING COSTS

Section 128 of Pub. L. 100–485 directed Secretary of Health and Human Services, by grant or contract, to conduct a study of patterns of expenditures on children in 2-parent families, in single-parent families following divorce or separation, and in single-parent families in which parents were never married, giving particular attention to the relative standards of living in households in which both parents and all of the children do not live together, and submit to Congress no later than 2 years after Oct. 13, 1988, a full and complete report of results of such study, including recommendations for legislative, administrative, and other actions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 666 of this title.

§ 668. Encouragement of States to adopt simple civil process for voluntarily acknowledging paternity and a civil procedure for establishing paternity in contested cases

In the administration of the child support enforcement program under this part, each State is encouraged to establish and implement a simple civil process for voluntarily acknowledging paternity and a civil procedure for establishing paternity in contested cases.

(Aug. 14, 1935, ch. 531, title IV, § 468, as added Oct. 13, 1988, Pub. L. 100–485, title I, § 111(d), 102 Stat. 2350.)

§ 669. Collection and reporting of child support enforcement data

(a) Statistics on need for and actual provision of services

The Secretary of Health and Human Services shall collect and maintain, on a fiscal year basis, up-to-date statistics, by State, with respect to each of the services specified in subsection (b) of this section (separately stated in the case of each such service for families receiving aid under plans approved under part A of this subchapter and for families not receiving such aid), on—

(1) the number of cases in the child support enforcement agency caseload under this part which need the service involved; and

(2) the number of such cases in which the service has actually been provided.

(b) Types of services

The services referred to in subsection (a) of this section are—

(1) paternity determination;

(2) location of an absent parent for the purpose of establishing a child support obligation;

(3) establishment of a child support obligation; and

(4) location of an absent parent for the purpose of enforcing or modifying an established child support obligation.

(c) Actual provision of services

For purposes of subsection (a)(2) of this section, a service has actually been provided when the task described by the service has been accomplished.

(Aug. 14, 1935, ch. 531, title IV, § 469, as added Oct. 13, 1988, Pub. L. 100–485, title I, § 129, 102 Stat. 2356; amended Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8105(6), 102 Stat. 3797.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647 made technical amendment to references to part A of this subchapter and to this part involving underlying provisions of original act and requiring no change in text.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8105 of Pub. L. 100–647 provided that the amendment made by that section is effective on date of enactment of Family Support Act of 1988, Pub. L. 100–485, which was approved Oct. 13, 1988.

PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300z–5, 602, 609, 622, 625, 629e, 652, 654, 657, 1308, 1320a–1a, 1320a–9, 1396a, 1396n of this title; title 2 section 906; title 8 section 1255a; title 20 section 1087vv.

§ 670. Congressional declaration of purpose; authorization of appropriations

For the purpose of enabling each State to provide, in appropriate cases, foster care and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A of this subchapter and adoption assistance for children with special needs, there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1980) such sums as may be necessary to carry out the provisions of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans under this part.

(Aug. 14, 1935, ch. 531, title IV, § 470, as added June 17, 1980, Pub. L. 96–272, title I, § 101(a)(1), 94 Stat. 501; amended Apr. 7, 1986, Pub. L. 99–272, title XII, § 12307(d), 100 Stat. 297; Oct. 22, 1986, Pub. L. 99–514, title XVII, § 1711(c)(1), 100 Stat. 2784.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in text, is classified to section 601 et seq. of this title.

AMENDMENTS

1986—Pub. L. 99–514 substituted ''foster care and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A of this subchapter and adoption assistance for children with special needs'' for ''foster care, adoption assistance, and transitional independent living programs for children who otherwise would be eligible for assistance under the State's plan approved under part A of this subchapter (or, in the case of adoption assistance, would be eligible for benefits under subchapter XVI of this chapter)''.

Pub. L. 99–272 substituted ''foster care, adoption assistance, and transitional independent living programs'' for ''foster care and adoption assistance''.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1711(d) of Pub. L. 99–514 provided that: ''The amendments made by this section [amending this section and sections 671, 673, and 675 of this title] shall apply only with respect to expenditures made after December 31, 1986.''

ENTITLEMENT FUNDING FOR STATE COURTS TO ASSESS AND IMPROVE HANDLING OF PROCEEDINGS RELATING TO FOSTER CARE AND ADOPTION

Pub. L. 103–66, title XIII, § 13712, Aug. 10, 1993, 107 Stat. 655, provided that:

''(a) IN GENERAL.—The Secretary shall make grants, in accordance with this section, to the highest State courts in States participating in the program under part E of title IV of the Social Security Act [this part], for the purpose of enabling such courts—

''(1) to conduct assessments, in accordance with such requirements as the Secretary shall publish, of the role, responsibilities, and effectiveness of State courts in carrying out State laws requiring proceedings (conducted by or under the supervision of the courts)—

''(A) that implement parts B and E of title IV of such Act [part B of this subchapter and this part];

''(B) that determine the advisability or appropriateness of foster care placement;

''(C) that determine whether to terminate parental rights; and

''(D) that determine whether to approve the adoption or other permanent placement of a child; and

''(2) to implement changes deemed necessary as a result of the assessments.

''(b) APPLICATIONS.—In order to be eligible for a grant under this section, a highest State court shall submit to the Secretary an application at such time, in such form, and including such information and assurances as the Secretary shall require.

''(c) ALLOTMENTS.—

''(1) IN GENERAL.—Each highest State court which has an application approved under subsection (b), and is conducting assessment activities in accordance with this section, shall be entitled to payment, for each of fiscal years 1995 through 1998, from amounts reserved pursuant to section 430(d)(2) of the Social Security Act [section 629(d)(2) of this title], of an amount equal to the sum of—

''(A) for fiscal year 1995, $75,000 plus the amount described in paragraph (2) for fiscal year 1995; and

''(B) for each of fiscal years 1996 through 1998, $85,000 plus the amount described in paragraph (2) for each of such fiscal years.

''(2) FORMULA.—The amount described in this paragraph for any fiscal year is the amount that bears the same ratio to the amount reserved pursuant to section 430(d)(2) of the Social Security Act for the fiscal year (reduced by the dollar amount specified in paragraph (1) of this subsection for the fiscal year) as the number of individuals in the State who have not attained 21 years of age bears to the total number of such individuals in all States the highest State courts of which have approved applications under subsection (b).

''(d) USE OF GRANT FUNDS.—Each highest State court which receives funds paid under this section may use such funds to pay—

''(1) any or all costs of activities under this section in fiscal year 1995; and

''(2) not more than 75 percent of the cost of activities under this section in each of fiscal years 1996, 1997, and 1998.''

ABANDONED INFANTS ASSISTANCE

Pub. L. 100–505, Oct. 18, 1988, 102 Stat. 2533, as amended by Pub. L. 102–236, §§2–8, Dec. 12, 1991, 105 Stat. 1812–1816, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Abandoned Infants Assistance Act of 1988'.

''SEC. 2. FINDINGS.

''The Congress finds that—

''(1) throughout the Nation, the number of infants and young children who have been exposed to drugs taken by their mothers during pregnancy has increased dramatically;

''(2) the inability of parents who abuse drugs to provide adequate care for such infants and young children and a lack of suitable shelter homes for such infants and young children have led to the abandonment of such infants and young children in hospitals for extended periods;

''(3) an unacceptable number of these infants and young children will be medically cleared for discharge, yet remain in hospitals as boarder babies;

''(4) hospital-based child care for these infants and young children is extremely costly and deprives them of an adequate nurturing environment;

''(5) training is inadequate for foster care personnel working with medically fragile infants and young children and infants and young children exposed to drugs;

''(6) a particularly devastating development is the increase in the number of infants and young children who are infected with the human immunodeficiency virus (which is believed to cause acquired immune deficiency syndrome and which is commonly known as HIV) or who have been perinatally exposed to the virus or to a dangerous drug;

''(7) many such infants and young children have at least one parent who is an intravenous drug abuser;

''(8) such infants and young children are particularly difficult to place in foster homes, and are being abandoned in hospitals in increasing numbers by mothers dying of acquired immune deficiency syndrome, or by parents incapable of providing adequate care;

''(9) there is a need for comprehensive services for such infants and young children, including foster family care services, case management services, family support services, respite and crisis intervention services, counseling services, and group residential home services;

''(10) there is a need to support the families of such infants and young children through the provision of services that will prevent the abandonment of the infants and children; and

''(11) there is a need for the development of funding strategies that coordinate and make the optimal use of all private resources, and Federal, State, and local resources, to establish and maintain such services.

''TITLE I—PROJECTS REGARDING ABANDONMENT OF INFANTS AND YOUNG CHILDREN IN HOSPITALS

''SEC. 101. ESTABLISHMENT OF PROGRAM OF DEMONSTRATION PROJECTS.

''(a) IN GENERAL.—The Secretary of Health and Human Services may make grants to public and nonprofit private entities for the purpose of developing, implementing, and operating projects to demonstrate methods—

''(1) to prevent the abandonment of infants and young children, including the provision of services to members of the natural family for any condition that increases the probability of abandonment of an infant or young child;

''(2) to identify and address the needs of abandoned infants and young children;

''(3) to assist abandoned infants and young children to reside with their natural families or in foster care, as appropriate;

''(4) to recruit, train, and retain foster families for abandoned infants and young children;

''(5) to carry out residential care programs for abandoned infants and young children who are unable to reside with their families or to be placed in foster care;

''(6) to carry out programs of respite care for families and foster families of infants and young children described in subsection (b);

''(7) to recruit and train health and social services personnel to work with families, foster care families, and residential care programs for abandoned infants and young children; and

''(8) to prevent the abandonment of infants and young children, and to care for the infants and young children who have been abandoned, through model programs providing health, educational, and social services at a single site in a geographic area in which a significant number of infants and young children

described in subsection (b) reside (with special consideration given to applications from entities that will provide the services of the project through community-based organizations).

''(b) PRIORITY IN PROVISION OF SERVICES.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, in carrying out the purpose described in subsection (a) (other than with respect to paragraph (6) of such subsection), the applicant will give priority to abandoned infants and young children—

''(1) who are infected with the human immunodeficiency virus or who have been perinatally exposed to the virus; or

''(2) who have been perinatally exposed to a dangerous drug.

''(c) CASE PLAN WITH RESPECT TO FOSTER CARE.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees that, if the applicant expends the grant to carry out any program of providing care to infants and young children in foster homes or in other nonmedical residential settings away from their parents, the applicant will ensure that—

''(1) a case plan of the type described in paragraph (1) of section 475 of the Social Security Act [section 675 of this title] is developed for each such infant and young child (to the extent that such infant and young child is not otherwise covered by such a plan); and

''(2) the program includes a case review system of the type described in paragraph (5) of such section (covering each such infant and young child who is not otherwise subject to such a system).

''(d) ADMINISTRATION OF GRANT.—

''(1) The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees—

''(A) to use the funds provided under this section only for the purposes specified in the application submitted to, and approved by, the Secretary pursuant to subsection (e);

''(B) to establish such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement and accounting of Federal funds paid to the applicant under this section;

''(C) to report to the Secretary annually on the utilization, cost, and outcome of activities conducted, and services furnished, under this section; and

''(D) that if, during the majority of the 180-day period preceding the date of the enactment of this Act [Oct. 18, 1988], the applicant has carried out any program with respect to the care of abandoned infants and young children, the applicant will expend the grant only for the purpose of significantly expanding, in accordance with subsection (a), activities under such program above the level provided under such program during the majority of such period.

''(2) Subject to the availability of amounts made available in appropriations Acts for the fiscal year involved, the duration of a grant under subsection (a) shall be for a period of 3 years, except that the Secretary—

''(A) may terminate the grant if the Secretary determines that the entity involved has substantially failed to comply with the agreements required as a condition of the provision of the grant; and

''(B) shall continue the grant for one additional year if the Secretary determines that the entity has satisfactorily complied with such agreements.

''(e) REQUIREMENT OF APPLICATION.—The Secretary may not make a grant under subsection (a) unless—

''(1) an application for the grant is submitted to the Secretary;

''(2) with respect to carrying out the purpose for which the grant is to be made, the application provides assurances of compliance satisfactory to the Secretary; and

''(3) the application otherwise is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this section.

''(f) TECHNICAL ASSISTANCE TO GRANTEES.—The Secretary may, without charge to any grantee under subsection (a), provide technical assistance (including training) with respect to the planning, development, and operation of projects described in such subsection. The Secretary may provide such technical assistance directly, through contracts, or through grants.

''(g) TECHNICAL ASSISTANCE WITH RESPECT TO PROCESS OF APPLYING FOR GRANT.—The Secretary may provide technical assistance (including training) to public and nonprofit private entities with respect to the process of applying to the Secretary for a grant under subsection (a). The Secretary may provide such technical assistance directly, through contracts, or through grants.

''SEC. 102. EVALUATIONS, STUDIES, AND REPORTS BY SECRETARY.

''(a) EVALUATIONS OF DEMONSTRATION PROJECTS.—The Secretary shall, directly or through contracts with public and nonprofit private entities, provide for evaluations of projects carried out under section 101 and for the dissemination of information developed as result of such projects.

''(b) DISSEMINATION OF INFORMATION TO INDIVIDUALS WITH SPECIAL NEEDS.—

''(1)(A) The Secretary may enter into contracts or cooperative agreements with public or nonprofit private entities for the development and operation of model projects to disseminate the information described in subparagraph (B) to individuals who are disproportionately at risk of dysfunctional behaviors that lead to the abandonment of infants or young children.

''(B) The information referred to in subparagraph (A) is information on the availability to individuals described in such subparagraph, and the families of the individuals, of financial assistance and services under Federal, State, local, and private programs providing health services, mental health services, educational services, housing services, social services, or other appropriate services.

''(2) The Secretary may not provide a contract or cooperative agreement under paragraph (1) to an entity unless—

''(A) the entity has demonstrated expertise in the functions with respect to which such financial assistance is to be provided; and

''(B) the entity agrees that in disseminating information on programs described in such paragraph, the entity will give priority—

''(i) to providing the information to individuals described in such paragraph who—

''(I) engage in the abuse of alcohol or drugs, who are infected with the human immunodeficiency virus, or who have limited proficiency in speaking the English language; or

''(II) have been historically underserved in the provision of the information; and

''(ii) to providing information on programs that are operated in the geographic area in which the individuals involved reside and that will assist in eliminating or reducing the extent of behaviors described in such paragraph.

''(3) In providing contracts and cooperative agreements under paragraph (1), the Secretary may not provide more than 1 such contract or agreement with respect to any geographic area.

''(4) Subject to the availability of amounts made available in appropriations Acts for the fiscal year involved, the duration of a contract or cooperative agreement under paragraph (1) shall be for a period of 3 years, except that the Secretary may terminate such financial assistance if the Secretary determines that the entity involved has substantially failed to comply with the agreements required as a condition of the provision of the assistance.

''(c) STUDY AND REPORT ON NUMBER OF ABANDONED INFANTS AND YOUNG CHILDREN.—

''(1) The Secretary shall conduct a study for the purpose of determining—

''(A) an estimate of the number of infants and young children abandoned in hospitals in the United States and the number of such infants and young children who are infants and young children described in section 101(b); and

''(B) an estimate of the annual costs incurred by the Federal Government and by State and local governments in providing housing and care for such infants and young children.

''(2) Not later than April 1, 1992, the Secretary shall complete the study required in paragraph (1) and submit to the Congress a report describing the findings made as a result of the study.

''(d) STUDY AND REPORT ON EFFECTIVE CARE METHODS.—

''(1) The Secretary shall conduct a study for the purpose of determining the most effective methods for responding to the needs of abandoned infants and young children.

''(2) The Secretary shall, not later than April 1, 1991, complete the study required in paragraph (1) and submit to the Congress a report describing the findings made as a result of the study.

''SEC. 103. DEFINITIONS.

''For purposes of this title:

''(1) The terms 'abandoned' and 'abandonment', with respect to infants and young children, mean that the infants and young children are medically cleared for discharge from acute-care hospital settings, but remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives.

''(2) The term 'dangerous drug' means a controlled substance, as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802].

''(3) The term 'natural family' shall be broadly interpreted to include natural parents, grandparents, family members, guardians, children residing in the household, and individuals residing in the household on a continuing basis who are in a care-giving situation with respect to infants and young children covered under this Act.

''SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—

''(1) For the purpose of carrying out this title (other than section 102(b)), there are authorized to be appropriated $20,000,000 for fiscal year 1992, $25,000,000 for fiscal year 1993, $30,000,000 for fiscal year 1994, and $35,000,000 for fiscal year 1995.

''(2)(A) Of the amounts appropriated under paragraph (1) for any fiscal year in excess of the amount appropriated under this subsection for fiscal year 1991, as adjusted in accordance with subparagraph (B), the Secretary shall make available not less than 50 percent for grants under section 101(a) to carry out projects described in paragraph (8) of such section.

''(B) For purposes of subparagraph (A), the amount relating to fiscal year 1991 shall be adjusted for a fiscal year to a greater amount to the extent necessary to reflect the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with March of the preceding fiscal year.

''(3) Not more than 5 percent of the amounts appropriate under paragraph (1) for any fiscal year may be obligated for carrying out section 102(a).

''(b) DISSEMINATION OF INFORMATION FOR INDIVIDUALS WITH SPECIAL NEEDS.—For the purpose of carrying out section 102(b), there is authorized to be appropriated $5,000,000 for each of the fiscal years 1992 through 1995.

''(c) ADMINISTRATIVE EXPENSES.—

''(1) For the purpose of the administration of this title by the Secretary, there is authorized to be appropriated for each fiscal year specified in subsection (a)(1) an amount equal to 5 percent of the amount authorized in such subsection to be appropriated for the fiscal year. With respect to the amounts appropriated under such subsection, the preceding sentence may not be construed to prohibit the expenditure of the amounts for the purpose described in such sentence.

''(2) The Secretary may not obligate any of the amounts appropriated under paragraph (1) for a fiscal year unless, from the amounts appropriated under subsection (a)(1) for the fiscal year, the Secretary has obligated for the purpose described in such paragraph an amount equal to the amounts obligated by the Secretary for such purpose in fiscal year 1991.

''(d) AVAILABILITY OF FUNDS.—Amounts appropriated under this section shall remain available until expended.

''TITLE II—MEDICAL COSTS OF TREATMENT WITH RESPECT TO ACQUIRED IMMUNE DEFICIENCY SYNDROME

''SEC. 201. STUDY AND REPORT ON ASSISTANCE.

''(a) STUDY.—The Secretary shall conduct a study for the purpose of—

''(1) determining cost-effective methods for providing assistance to individuals for the medical costs of treatment of conditions arising from infection with the etiologic agent for acquired immune deficiency syndrome, including determining the feasibility of risk-pool health insurance for individuals at risk of such infection;

''(2) determining the extent to which Federal payments under title XIX of the Social Security Act [subchapter XIX of this chapter] are being expended for medical costs described in paragraph (1); and

''(3) providing an estimate of the extent to which such Federal payments will be expended for such medical costs during the 5-year period beginning on the date of the enactment of this Act [Oct. 18, 1988].

''(b) REPORT.—The Secretary shall, not later than 12 months after the date of the enactment of this Act, complete the study required in subsection (a) and submit to the Committee on Energy and Commerce of the House of Representatives, and to the Committee on Labor and Human Resources of the Senate, a report describing the findings made as a result of the study.

''TITLE III—GENERAL PROVISIONS

''SEC. 301. DEFINITIONS.

''For purposes of this Act:

''(1) The term 'acquired immune deficiency syndrome' includes infection with the etiologic agent for such syndrome, any condition indicating that an individual is infected with such etiologic agent, and any condition arising from such etiologic agent.

''(2) The term 'Secretary' means the Secretary of Health and Human Services.''

[Pub. L. 102–236, §1, Dec. 12, 1991, 105 Stat. 1812, provided that: ''This Act [amending Pub. L. 100–505 set out above and provisions set out as a note under section 623 of Title 29, Labor] may be cited as the 'Abandoned Infants Assistance Act Amendments of 1991'.'']

STUDY OF FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS; REPORT TO CONGRESS NOT LATER THAN OCTOBER 1, 1983

Section 101(b) of Pub. L. 96–272 directed Secretary of Health, Education, and Welfare to conduct a study of programs of foster care and adoption assistance established under part IV–E of the Social Security Act (this part) and submit to Congress, not later than Oct. 1, 1983, a full and complete report thereon, together with his recommendations as to (A) whether such part IV–E should be continued, and if so, (B) the changes (if any) which should be made in such part IV–E.

§ 671. State plan for foster care and adoption assistance

(a) Requisite features of State plan

In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(1) provides for foster care maintenance payments in accordance with section 672 of this title and for adoption assistance in accordance with section 673 of this title;

(2) provides that the State agency responsible for administering the program authorized by subpart 1 of part B of this subchapter shall administer, or supervise the administration of, the program authorized by this part;

(3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(4) provides that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this subchapter, under subchapter XX of this chapter, and under any other appropriate provision of Federal law;

(5) provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

(6) provides that the State agency referred to in paragraph (2) (hereinafter in this part referred to as the ''State agency'') will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

(8) provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this subchapter (including activities under part F of this subchapter) or under subchapter I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity, and (E) reporting and providing information pursuant to paragraph (9) to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

(9) provides that the State agency will—

(A) report to an appropriate agency or official, known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment of a child receiving aid under part B of this subchapter or this part under circumstances which indicate that the child's health or welfare is threatened thereby; and

(B) provide such information with respect to a situation described in subparagraph (A) as the State agency may have;

(10) provides for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, and provides that the standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this subchapter;

(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance to assure their continuing appropriateness;

(12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness;

(13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this subchapter, which shall be conducted no less frequently than once every three years;

(14) provides (A) specific goals (which shall be established by State law on or before October 1, 1982) for each fiscal year (commencing with the fiscal year which begins on October 1, 1983) as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care with respect to whom assistance under the plan is provided during such year) who, at any time during such year, will remain in foster care after having been in such care for a period in excess of twenty-four months, and (B) a description of the steps which will be taken by the State to achieve such goals;

(15) effective October 1, 1983, provides that, in each case, reasonable efforts will be made

(A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home;

(16) provides for the development of a case plan (as defined in section 675(1) of this title) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 675(5)(B) of this title with respect to each such child; and

(17) provides that, where appropriate, all steps will be taken, including cooperative efforts with the State agencies administering the plans approved under parts A and D of this subchapter, to secure an assignment to the State of any rights to support on behalf of each child receiving foster care maintenance payments under this part.

(b) Approval of plan by Secretary

The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title IV, § 471, as added June 17, 1980, Pub. L. 96–272, title I, § 101(a)(1), 94 Stat. 501; amended Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2353(r), 95 Stat. 874; Sept. 3, 1982, Pub. L. 97–248, title I, § 160(d), 96 Stat. 400; Aug. 16, 1984, Pub. L. 98–378, § 11(c), 98 Stat. 1318; Oct. 22, 1986, Pub. L. 99–514, title XVII, § 1711(c)(2), 100 Stat. 2784; Oct. 13, 1988, Pub. L. 100–485, title II, § 202(c)(1), 102 Stat. 2378; Nov. 5, 1990, Pub. L. 101–508, title V, § 5054(b), 104 Stat. 1388–229; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13711(b)(4), 107 Stat. 655; Oct. 31, 1994, Pub. L. 103–432, title II, § 203(b), 108 Stat. 4456.)

REFERENCES IN TEXT

Parts A, B, D, and F of this subchapter, referred to in subsec. (a)(2), (4), (8)–(10), (13), and (17), are classified to sections 601 et seq., 620 et seq., 651 et seq., and 681 et seq., respectively, of this title.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–432 struck out after first sentence ''However, in any case in which the Secretary finds, after reasonable notice and opportunity for a hearing, that a State plan which has been approved by the Secretary no longer complies with the provisions of subsection (a) of this section, or that in the administration of the plan there is a substantial failure to comply with the provisions of the plan, the Secretary shall notify the State that further payments will not be made to the State under this part, or that such payments will be made to the State but reduced by an amount which the Secretary determines appropriate, until the Secretary is satisfied that there is no longer any such failure to comply, and until he is so satisfied he shall make no further payments to the State, or shall reduce such payments by the amount specified in his notification to the State.''

1993—Subsec. (a)(2). Pub. L. 103–66 substituted ''subpart 1 of part B'' for ''part B''.

1990—Subsec. (a)(8)(E). Pub. L. 101–508, § 5054(b)(2), added cl. (E).

Subsec. (a)(9). Pub. L. 101–508, § 5054(b)(1), amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''provides that where any agency of the State has reason to believe that the home or institution in which a child resides whose care is being paid for in whole or in part with funds provided under this part or part B of this subchapter is unsuitable for the child because of the neglect, abuse, or exploitation of such child, it shall bring such condition to the attention of the appropriate court or law enforcement agency;''.

1988—Subsec. (a)(8)(A). Pub. L. 100–485 substituted ''part A, B, or D of this subchapter (including activities under part F of this subchapter)'' for ''part A, B, C, or D of this subchapter''.

1986—Subsec. (a)(1), (11). Pub. L. 99–514 substituted ''adoption assistance'' for ''adoption assistance payments''.

1984—Subsec. (a)(17). Pub. L. 98–378 added par. (17).

1982—Subsec. (a)(10). Pub. L. 97–248 amended Pub. L. 97–35, § 2353(r), generally. See 1981 Amendment note below.

1981—Subsec. (a)(10). Pub. L. 97–35, § 2353(r), as amended by Pub. L. 97–248, § 160(d), substituted provisions that in order for a State to be eligible for payments under this part a State plan must provide for establishment or designation of a State authority or authorities responsible for standards for foster family homes and child care institutions, such standards to be reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, for provisions that such State plan provide for the application of standards referred to in section 1397b(d)(1) of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 203(c)(2) of Pub. L. 103–432 provided that: ''The amendment made by subsection (b) [amending this section] shall take effect on October 1, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Oct. 1, 1993, see section 13711(c) of Pub. L. 103–66, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to benefits for months beginning on or after the first day of the 6th calendar month following November 1990, see section 5054(c) of Pub. L. 101–508, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204 of Pub. L. 100–485, set out as an Effective Date note under section 681 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 applicable only with respect to expenditures made after Dec. 31, 1986, see section 1711(d) of Pub. L. 99–514, set out as a note under section 670 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–378 effective Oct. 1, 1984, and applicable to collections made on or after that date, see section 11(e) of Pub. L. 98–378, set out as a note under section 654 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Oct. 1, 1981, see section 160(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of

Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 652, 658, 664, 666, 672, 677, 1320a–2, 1320a–10 of this title; title 26 section 6402.

§ 672. Foster care maintenance payments program

(a) Qualifying children

Each State with a plan approved under this part shall make foster care maintenance payments (as defined in section 675(4) of this title) under this part with respect to a child who would meet the requirements of section 606(a) of this title or of section 607 of this title but for his removal from the home of a relative (specified in section 606(a) of this title), if—

(1) the removal from the home occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or was the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 671(a)(15) of this title have been made;

(2) such child's placement and care are the responsibility of (A) the State agency administering the State plan approved under section 671 of this title, or (B) any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 671 of this title has made an agreement which is still in effect;

(3) such child has been placed in a foster family home or child-care institution as a result of the voluntary placement agreement or judicial determination referred to in paragraph (1); and

(4) such child—

(A) received aid under the State plan approved under section 602 of this title in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated, or

(B)(i) would have received such aid in or for such month if application had been made therefor, or (ii) had been living with a relative specified in section 606(a) of this title within six months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made.

In any case where the child is an alien disqualified under section 1255a(h), 1160(f), or 1161(d)(7)[1] of title 8 from receiving aid under the State plan approved under section 602 of this title in or for the month in which such agreement was entered into or court proceedings leading to the removal of the child from the home were instituted, such child shall be considered to satisfy the requirements of paragraph (4) (and the corresponding requirements of section 673(a)(2)(B) of this title), with respect to that month, if he or she would have satisfied such requirements but for such disqualification.

(b) Additional qualifications

Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is—

(1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or nonprofit private child-placement or child-care agency, or

(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or nonprofit private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term ''foster care maintenance payments'' (as defined in section 675(4) of this title).

(c) "Foster family home" and "child-care institution" defined

For the purposes of this part, (1) the term ''foster family home'' means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and (2) the term ''child-care institution'' means a nonprofit private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.

(d) Children removed from their homes pursuant to voluntary placement agreements

Notwithstanding any other provision of this subchapter, Federal payments may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a) of this section, only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section 627(b) of this title.

(e) Placements in best interest of child

No Federal payment may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of any child who was removed from his or her home pursuant to a voluntary placement agreement as described in subsection (a) of this section and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judi-

[1] See References in Text note below.

cial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.

(f) "Voluntary placement" and "voluntary placement agreement" defined

For the purposes of this part and part B of this subchapter, (1) the term ''voluntary placement'' means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency and signed a voluntary placement agreement; and (2) the term ''voluntary placement agreement'' means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.

(g) Revocation of voluntary placement agreement

In any case where—

(1) the placement of a minor child in foster care occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of such child as provided in subsection (a) of this section, and

(2) such parents or guardians request (in such manner and form as the Secretary may prescribe) that the child be returned to their home or to the home of a relative,

the voluntary placement agreement shall be deemed to be revoked unless the State agency opposes such request and obtains a judicial determination, by a court of competent jurisdiction, that the return of the child to such home would be contrary to the child's best interests.

(h) Aid to families with dependent children

For purposes of subchapters XIX and XX of this chapter, any child with respect to whom foster care maintenance payments are made under this section shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this subchapter. For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 675(4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are made under this section.

(Aug. 14, 1935, ch. 531, title IV, § 472, as added and amended June 17, 1980, Pub. L. 96–272, title I, §§ 101(a)(1), 102(a)(1), (2), 94 Stat. 503, 513, 514; Nov. 6, 1986, Pub. L. 99–603, title II, § 201(b)(2)(A), title III, §§ 302(b)(2), 303(e)(2), 100 Stat. 3403, 3422, 3431; Dec. 22, 1987, Pub. L. 100–203, title IX, §§ 9133(b)(2), 9139(a), 101 Stat. 1330–314, 1330–321; Oct. 31, 1994, Pub. L. 103–432, title II, § 202(d)(3), 108 Stat. 4454.)

AMENDMENT OF SUBSECTION (d)

Pub. L. 103–432, title II, § 202(d)(3), (e), Oct. 31, 1994, 108 Stat. 4454, provided that, effective with respect to fiscal years beginning on or after Apr. 1, 1996, subsection (d) of this section is amended by striking out ''section 627(b) of this title'' and inserting ''section 622(b)(9) of this title''.

REFERENCES IN TEXT

Section 1161 of title 8, referred to in subsec. (a), was repealed by Pub. L. 103–416, title II, § 219(ee)(1), Oct. 25, 1994, 108 Stat. 4319.

Parts A and B of this subchapter, referred to in subsecs. (f) and (h), are classified to sections 601 et seq. and 620 et seq., respectively, of this title.

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–203, § 9139(a), substituted ''section 673(a)(2)(B) of this title'' for ''section 673(a)(1)(B) of this title''.

Subsec. (h). Pub. L. 100–203, § 9133(b)(2), inserted sentence at end.

1986—Subsec. (a). Pub. L. 99–603, § 303(e)(2), inserted in closing provisions reference to cases in which a child is an alien disqualified under section 1161(d)(7) of title 8.

Pub. L. 99–603, § 302(b)(2), inserted in closing provisions reference to cases in which a child is an alien disqualified under section 1160(f) of title 8.

Pub. L. 99–603, § 201(b)(2)(A), inserted closing provisions: ''In any case where the child is an alien disqualified under section 1255a(h) of title 8 from receiving aid under the State plan approved under section 602 of this title in or for the month in which such agreement was entered into or court proceedings leading to the removal of the child from the home were instituted, such child shall be considered to satisfy the requirements of paragraph (4) (and the corresponding requirements of section 673(a)(1)(B) of this title), with respect to that month, if he or she would have satisfied such requirements but for such disqualification.''

1980—Subsec. (a). Pub. L. 96–272, § 102(a)(1), inserted provisions relating to voluntary placement agreements entered into by a child's parent or legal guardian.

Subsecs. (d) to (h). Pub. L. 96–272, § 102(a)(2), added subsecs. (d) to (g). Former subsec. (d) was redesignated (h).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Apr. 1, 1996, see section 202(e) of Pub. L. 103–432, set out as a note under section 622 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9133(b)(2) of Pub. L. 100–203 effective Apr. 1, 1988, see section 9133(c) of Pub. L. 100–203, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 102(a)(1) of Pub. L. 96–272, as amended by Pub. L. 98–118, § 3(a), Oct. 11, 1983, 97 Stat. 803; Pub. L. 98–617, § 4(c)(1), Nov. 8, 1984, 98 Stat. 3297; Pub. L. 99–272, title XII, 12306(c)(1), Apr. 7, 1986, 100 Stat. 294; Pub. L. 100–203, title IX, § 9131(a)(1), Dec. 22, 1987, 101 Stat. 1330–313, provided that the amendment made by that section is effective with respect to expenditures made after Sept. 30, 1980.

Section 102(c) of Pub. L. 96–272, as amended by Pub. L. 98–118, § 3(b), Oct. 11, 1983, 97 Stat. 803; Pub. L. 98–617, § 4(c)(2), Nov. 8, 1984, 98 Stat. 3297; Pub. L. 99–272, title XII, § 12306(c)(2), Apr. 7, 1986, 100 Stat. 294; Pub. L. 100–203, title IX, § 9131(a)(2), Dec. 22, 1987, 101 Stat. 1330–313, provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 608, 673, and 675 of this title] shall be effective only with respect to expenditures made after September 30, 1979.''

[Section 9131(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending section 102(a)(1), (c), and (e) of Pub. L. 96–272, set out as notes under this section] shall become effective October 1, 1987.'']

CHILDREN VOLUNTARILY REMOVED FROM HOME OF RELATIVE

Section 102(d)(1) of Pub. L. 96–272 provided that: ''For purposes of section 472 of the Social Security Act [this section], a child who was voluntarily removed from the home of a relative and who had a judicial determination prior to October 1, 1978, to the effect that continuation therein would be contrary to the welfare of such child, shall be deemed to have been so removed as a result of such judicial determination if, and from the date that, a case plan and a review meeting the requirements of section 471(a)(16) of such Act [section 671(a)(16) of this title] have been made with respect to such child and such child is determined to be in need of foster care as a result of such review. In the case of any child described in the preceding sentence, for purposes of section 472(a)(4) of such Act [subsec. (a)(4) of this section], the date of the voluntary removal shall be deemed to be the date on which court proceedings are initiated which led to such removal.''

ANNUAL REPORT TO CONGRESS OF NUMBER OF CHILDREN PLACED IN FOSTER CARE PURSUANT TO VOLUNTARY PLACEMENT AGREEMENTS

Section 102(e) of Pub. L. 96–272, as amended by Pub. L. 100–203, title IX, §9131(a)(3), Dec. 22, 1987, 101 Stat. 1330–313, provided that: ''The Secretary of Health, Education, and Welfare [now Health and Human Services], within three months after the close of each fiscal year, shall submit to the Congress a full and complete report on the number of children placed in foster care pursuant to voluntary placement agreements under sections 408 and 472 of the Social Security Act [this section and section 608 of this title] and on the reasons for such placements together with a description of the extent to which such placements have contributed to the achievement of the objectives of this title [title I of Pub. L. 96–272], including such recommendations as he may deem appropriate with respect to the continuation (in such section 472) of authority to make Federal payments for dependent children voluntarily placed in foster care.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 671, 673, 674, 675, 1382, 1396v of this title.

§ 673. Adoption assistance program

(a) Agreements with adoptive parents of children with special needs; State payments; qualifying children; amount of payments; changes in circumstances; placement period prior to adoption; nonrecurring adoption expenses

(1)(A) Each State having a plan approved under this part shall enter into adoption assistance agreements (as defined in section 675(3) of this title) with the adoptive parents of children with special needs.

(B) Under any adoption assistance agreement entered into by a State with parents who adopt a child with special needs, the State—

(i) shall make payments of nonrecurring adoption expenses incurred by or on behalf of such parents in connection with the adoption of such child, directly through the State agency or through another public or nonprofit private agency, in amounts determined under paragraph (3), and

(ii) in any case where the child meets the requirements of paragraph (2), may make adoption assistance payments to such parents, directly through the State agency or through another public or nonprofit private agency, in amounts so determined.

(2) For purposes of paragraph (1)(B)(ii), a child meets the requirements of this paragraph if such child—

(A)(i) at the time adoption proceedings were initiated, met the requirements of section 606(a) of this title or section 607 of this title or would have met such requirements except for his removal from the home of a relative (specified in section 606(a) of this title), either pursuant to a voluntary placement agreement with respect to which Federal payments are provided under section 674 (or 603) of this title or as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child,

(ii) meets all of the requirements of subchapter XVI of this chapter with respect to eligibility for supplemental security income benefits, or

(iii) is a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent as provided in section 675(4)(B) of this title,

(B)(i) received aid under the State plan approved under section 602 of this title in or for the month in which such agreement was entered into or court proceedings leading to the removal of such child from the home were initiated, or

(ii)(I) would have received such aid in or for such month if application had been made therefor, or (II) had been living with a relative specified in section 606(a) of this title within six months prior to the month in which such agreement was entered into or such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made, or

(iii) is a child described in subparagraph (A)(ii) or (A)(iii), and

(C) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

The last sentence of section 672(a) of this title shall apply, for purposes of subparagraph (B), in any case where the child is an alien described in that sentence.

(3) The amount of the payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B) shall be determined through agreement between the adoptive parents and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment made under clause (ii) of paragraph (1)(B) exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

(4) Notwithstanding the preceding paragraph, (A) no payment may be made to parents with respect to any child who has attained the age of

eighteen (or, where the State determines that the child has a mental or physical handicap which warrants the continuation of assistance, the age of twenty-one), and (B) no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents. Parents who have been receiving adoption assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.

(5) For purposes of this part, individuals with whom a child (who has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs) is placed for adoption in accordance with applicable State and local law shall be eligible for such payments, during the period of the placement, on the same terms and subject to the same conditions as if such individuals had adopted such child.

(6)(A) For purposes of paragraph (1)(B)(i), the term ''nonrecurring adoption expenses'' means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of State or Federal law.

(B) A State's payment of nonrecurring adoption expenses under an adoption assistance agreement shall be treated as an expenditure made for the proper and efficient administration of the State plan for purposes of section 674(a)(3)(E) of this title.

(b) Aid to families with dependent children

For purposes of subchapters XIX and XX of this chapter, any child—

(1)(A) who is a child described in subsection (a)(2) of this section, and

(B) with respect to whom an adoption assistance agreement is in effect under this section (whether or not adoption assistance payments are provided under the agreement or are being made under this section), including any such child who has been placed for adoption in accordance with applicable State and local law (whether or not an interlocutory or other judicial decree of adoption has been issued), or

(2) with respect to whom foster care maintenance payments are being made under section 672 of this title,

shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this subchapter in the State where such child resides. For purposes of the preceding sentence, a child whose costs in a foster family home or child-care institution are covered by the foster care maintenance payments being made with respect to his or her minor parent, as provided in section 675(4)(B) of this title, shall be considered a child with respect to whom foster care maintenance payments are being made under section 672 of this title.

(c) Children with special needs

For purposes of this section, a child shall not be considered a child with special needs unless—

(1) the State has determined that the child cannot or should not be returned to the home of his parents; and

(2) the State had first determined (A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter, and (B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter.

(Aug. 14, 1935, ch. 531, title IV, § 473, as added and amended June 17, 1980, Pub. L. 96–272, title I, §§ 101(a)(1), 102(a)(3), 94 Stat. 504, 514; Apr. 7, 1986, Pub. L. 99–272, title XII, § 12305(a), (b)(1), 100 Stat. 293; Oct. 22, 1986, Pub. L. 99–514, title XVII, § 1711(a), (b), (c)(3)–(5), 100 Stat. 2783, 2784; Nov. 6, 1986, Pub. L. 99–603, title II, § 201(b)(2)(B), 100 Stat. 3403; Dec. 22, 1987, Pub. L. 100–203, title IX, §§ 9133(b)(3), (4), 9139(b), 101 Stat. 1330–314, 1330–321; Oct. 31, 1994, Pub. L. 103–432, title II, §§ 265(b), 266(a), 108 Stat. 4469.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (b), is classified to section 601 et seq. of this title.

AMENDMENTS

1994—Subsec. (a)(6)(B). Pub. L. 103–432, § 266(a), substituted ''section 674(a)(3)(E) of this title'' for ''section 674(a)(3)(C) of this title''.

Pub. L. 103–432, § 265(b), substituted ''section 674(a)(3)(C) of this title'' for ''section 674(a)(3)(B) of this title''.

1987—Subsec. (a)(2). Pub. L. 100–203, § 9139(b), made technical amendment to Pub. L. 99–603. See 1986 Amendment note below.

Subsec. (a)(2)(A)(iii). Pub. L. 100–203, § 9133(b)(3)(A), added cl. (iii).

Subsec. (a)(2)(B)(iii). Pub. L. 100–203, § 9133(b)(3)(B), inserted ''or (A)(iii)'' after ''(A)(ii)''.

Subsec. (b). Pub. L. 100–203, § 9133(b)(4), inserted sentence at end.

1986—Subsec. (a)(2). Pub. L. 99–603, as amended Pub. L. 100–203, § 9139(b), inserted at end ''The last sentence of section 672(a) of this title shall apply, for purposes of subparagraph (B), in any case where the child is an alien described in that sentence.''

Pub. L. 99–514, § 1711(a), substituted par. (1) and introductory text of par. (2) for former introductory text of par. (1) which read as follows: ''Each State with a plan approved under this part shall, directly through the State agency or through another public or nonprofit private agency, make adoption assistance payments pursuant to an adoption assistance agreement in amounts determined under paragraph (2) of this subsection to parents who, after June 17, 1980, adopt a child who—''. Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 99–514, §1711(a)(1), (c)(3), redesignated par. (2) as (3), substituted ''payments to be made in any case under clauses (i) and (ii) of paragraph (1)(B)'' for ''adoption assistance payments'', and inserted ''made under clause (ii) of paragraph (1)(B)''. Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 99–514, §1711(a)(1), redesignated par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 99–514, §1711(a)(1), (c)(4), redesignated par. (4) as (5) and substituted ''in accordance with applicable State and local law shall be eligible for such payments'' for '', pursuant to an interlocutory decree, shall be eligible for adoption assistance payments under this subsection''.

Subsec. (a)(6). Pub. L. 99–514, §1711(b), added par. (6).

Subsec. (b). Pub. L. 99–272, §12305(a), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''For purposes of subchapters XIX and XX of this chapter, any child with respect to whom adoption assistance payments are made under this section shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of this subchapter.''

Subsec. (b)(1)(A). Pub. L. 99–514, §1711(c)(5), substituted ''subsection (a)(2)'' for ''subsection (a)(1)''.

Subsec. (c)(2). Pub. L. 99–272, §12305(b)(1), substituted ''without providing adoption assistance under this section or medical assistance under subchapter XIX of this chapter'' for ''without providing adoption assistance'', and inserted ''or medical assistance under subchapter XIX of this chapter'' after ''appropriate adoptive parents without providing adoption assistance under this section''.

1980—Subsec. (a)(1). Pub. L. 96–272, §102(a)(3), inserted references to voluntary placement agreements in subpars. (A)(i) and (B)(i), (ii).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 265(b) of Pub. L. 103–432 effective as if included in the provision of Pub. L. 101–239 to which the amendment relates, at the time the provision became law, see section 265(d) of Pub. L. 103–432, set out as a note under section 608 of this title.

Section 266(b) of Pub. L. 103–432 provided that: ''The amendment made by this section [amending this section] shall take effect as if the amendment had been included in the provision of OBRA–1993 [Pub. L. 103–66] to which the amendment relates, at the time the provision became law.''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9133(b)(3), (4) of Pub. L. 100–203 effective Apr. 1, 1988, see section 9133(c) of Pub. L. 100–203, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 applicable only with respect to expenditures made after Dec. 31, 1986, see section 1711(d) of Pub. L. 99–514, set out as a note under section 670 of this title.

Section 12305(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and sections 675 and 1396a of this title] shall apply to medical assistance furnished in or after the first calendar quarter beginning more than 90 days after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 102(a)(3) of Pub. L. 96–272 effective only with respect to expenditures made after Sept. 30, 1979, see section 102(c) of Pub. L. 96–272, as amended, set out as a note under section 672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 671, 672, 673a, 674, 1396a, 1396v of this title; title 10 section 1052; title 14 section 514.

§ 673a. Interstate compacts

The Secretary of Health and Human Services shall take all possible steps to encourage and assist the various States to enter into interstate compacts (which are hereby approved by the Congress) under which the interests of any adopted child with respect to whom an adoption assistance agreement has been entered into by a State under section 673 of this title will be adequately protected, on a reasonable and equitable basis which is approved by the Secretary, if and when the child and his or her adoptive parent (or parents) move to another State.

(Pub. L. 96–272, title I, §101(a)(4)(B), June 17, 1980, 94 Stat. 512.)

CODIFICATION

Section was enacted as part of the Adoption Assistance and Child Welfare Act of 1980, and not as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

''Secretary of Health and Human Services'' was substituted for ''Secretary of Health, Education, and Welfare'' in text, pursuant to Pub. L. 96–88, title V, §509(b), Oct. 17, 1979, 93 Stat. 695, which is classified to section 3508(b) of Title 20, Education.

§ 674. Payments to States

(a) Amounts

For each quarter beginning after September 30, 1980, each State which has a plan approved under this part (subject to the limitations imposed by subsection (b)[1] of this section) shall be entitled to a payment equal to the sum of—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1396d(b) of this title) of the total amount expended during such quarter as foster care maintenance payments under section 672 of this title for children in foster family homes or child-care institutions; plus

(2) an amount equal to the Federal medical assistance percentage (as defined in section 1396d(b) of this title) of the total amount expended during such quarter as adoption assistance payments under section 673 of this title pursuant to adoption assistance agreements; plus

(3) an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the provision of child placement services and for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision,

(B) 75 percent of so much of such expenditures (including travel and per diem expenses) as are for the short-term training of

[1] See References in Text note below.

current or prospective foster or adoptive parents and the members of the staff of State-licensed or State-approved child care institutions providing care to foster and adopted children receiving assistance under this part, in ways that increase the ability of such current or prospective parents, staff members, and institutions to provide support and assistance to foster and adopted children, whether incurred directly by the State or by contract,

(C) 75 percent of so much of such expenditures as are for the planning, design, development, or installation of statewide mechanized data collection and information retrieval systems (including 75 percent of the full amount of expenditures for hardware components for such systems) but only to the extent that such systems—

(i) meet the requirements imposed by regulations promulgated pursuant to section 679(b)(2) of this title;

(ii) to the extent practicable, are capable of interfacing with the State data collection system that collects information relating to child abuse and neglect;

(iii) to the extent practicable, have the capability of interfacing with, and retrieving information from, the State data collection system that collects information relating to the eligibility of individuals under part A of this subchapter (for the purposes of facilitating verification of eligibility of foster children); and

(iv) are determined by the Secretary to be likely to provide more efficient, economical, and effective administration of the programs carried out under a State plan approved under part B of this subchapter or this part; and

(D) 50 percent of so much of such expenditures as are for the operation of the statewide mechanized data collection and information retrieval systems referred to in subparagraph (C); and

(E) one-half of the remainder of such expenditures; plus

(4) an amount equal to the sum of—

(A) so much of the amounts expended by such State to carry out programs under section 677 of this title as do not exceed the basic amount for such State determined under section 677(e)(1) of this title; and

(B) the lesser of—

(i) one-half of any additional amounts expended by such State for such programs; or

(ii) the maximum additional amount for such State under such section 677(e)(1) of this title.

(b) Quarterly estimates of State's entitlement for next quarter; payments; United States' pro rata share of amounts recovered as overpayment; allowance, disallowance, or deferral of claim

(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with subsection (a) of this section, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of children in the State receiving assistance under this part, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amounts so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to foster care and adoption assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4)(A) Within 60 days after receipt of a State claim for expenditures pursuant to subsection (a) of this section, the Secretary shall allow, disallow, or defer such claim.

(B) Within 15 days after a decision to defer such a State claim, the Secretary shall notify the State of the reasons for the deferral and of the additional information necessary to determine the allowability of the claim.

(C) Within 90 days after receiving such necessary information (in readily reviewable form), the Secretary shall—

(i) disallow the claim, if able to complete the review and determine that the claim is not allowable, or

(ii) in any other case, allow the claim, subject to disallowance (as necessary)—

(I) upon completion of the review, if it is determined that the claim is not allowable; or

(II) on the basis of findings of an audit or financial management review.

(c) Automated data collection expenditures

The Secretary shall treat as necessary for the proper and efficient administration of the State plan all expenditures of a State necessary in order for the State to plan, design, develop, install, and operate data collection and information retrieval systems described in subsection (a)(3)(C) of this section, without regard to whether the systems may be used with respect to foster or adoptive children other than those on behalf of whom foster care maintenance payments or adoption assistance payments may be made under this part.

(Aug. 14, 1935, ch. 531, title IV, § 474, as added June 17, 1980, Pub. L. 96–272, title I, § 101(a)(1), 94 Stat. 506; amended Dec. 28, 1980, Pub. L. 96–611, § 3, 94 Stat. 3567; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(c)(18), 98 Stat. 1167; Nov. 8, 1984,

Pub. L. 98–617, § 4(a), (b), 98 Stat. 3296, 3297; Apr. 7, 1986, Pub. L. 99–272, title XII, §§ 12306(a), (b), 12307(c), 100 Stat. 294, 296; Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1883(b)(9), 100 Stat. 2917; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9132(a), 101 Stat. 1330–313; Dec. 19, 1989, Pub. L. 101–239, title VIII, §§ 8001(a), 8002(c), 8006(a), title X, §§ 10401(a), 10402(a), 10403(c)(1), 103 Stat. 2452, 2453, 2461, 2487, 2488; Nov. 5, 1990, Pub. L. 101–508, title V, § 5071(a), 104 Stat. 1388–233; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13713(a)(1), (2), (b)(1), 107 Stat. 656, 657; Oct. 31, 1994, Pub. L. 103–432, title II, §§ 207(a), (b), 210(a), 108 Stat. 4457, 4460.)

AMENDMENT OF SUBSECTION (a)(3)(C)

Pub. L. 103–66, title XIII, § 13713(b), Aug. 10, 1993, 107 Stat. 657, provided that, applicable to expenditures during fiscal years beginning on or after Oct. 1, 1996, subsection (a)(3)(C) of this section is amended by substituting ''50 percent'' for ''75 percent'' wherever appearing.

REFERENCES IN TEXT

Subsection (b) of this section, referred to in subsec. (a), was repealed by Pub. L. 103–432, title II, § 207(a), Oct. 31, 1994, 108 Stat. 4457, and former subsec. (d) of this section was redesignated subsec. (b).

Parts A and B of this subchapter, referred to in subsec. (a)(3)(C)(iii), (iv), are classified to sections 601 et seq. and 620 et seq., respectively, of this title.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–432, § 207(a), (b)(2), redesignated subsec. (d) as (b) and struck out former subsec. (b) which related to maximum aggregate sums payable to any State and State allotments for fiscal years 1981 to 1992.

Subsec. (b)(4). Pub. L. 103–432, § 210(a), added par. (4).

Subsec. (c). Pub. L. 103–432, § 207(a), (b)(2), redesignated subsec. (e) as (c) and struck out former subsec. (c) which related to reimbursement for expenditures.

Subsec. (d). Pub. L. 103–432, § 207(b)(2), redesignated subsec. (d) as (b).

Subsec. (d)(1). Pub. L. 103–432, § 207(b)(1), substituted ''subsection (a) of this section for such quarter'' for ''subsections (a), (b), and (c) of this section for such quarter'' and ''subsection (a) of this section'' for ''the provisions of such subsections''.

Subsec. (e). Pub. L. 103–432, § 207(b)(2), redesignated subsec. (e) as (c).

1993—Subsec. (a)(3)(C) to (E). Pub. L. 103–66, § 13713(a)(1), added subpars. (C) and (D) and redesignated former subpar. (C) as (E).

Subsec. (e). Pub. L. 103–66, § 13713(a)(2), added subsec. (e).

1990—Subsec. (a)(3). Pub. L. 101–508 inserted ''provision of child placement services and for the'' before ''proper and efficient''.

1989—Subsec. (a)(3)(B), (C). Pub. L. 101–239, § 8006(a), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(4). Pub. L. 101–239, § 8002(c), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''an amount for transitional independent living programs as provided in section 677 of this title.''

Subsec. (b)(1). Pub. L. 101–239, § 10403(c)(1), amended Pub. L. 98–617, § 4(a)(1), see 1984 Amendment note below.

Pub. L. 101–239, § 8001(a), substituted ''through 1992'' for ''through 1989''.

Subsec. (b)(2)(A)(iv). Pub. L. 101–239, § 10402(a), added cl. (iv).

Subsec. (b)(2)(B). Pub. L. 101–239, § 10403(c)(1), amended Pub. L. 98–617, § 4(a)(1), see 1984 Amendment note below.

Pub. L. 101–239, § 8001(a), substituted ''through 1992'' for ''through 1989''.

Subsec. (b)(4)(B). Pub. L. 101–239, § 10403(c)(1), amended Pub. L. 98–617, § 4(a)(1), see 1984 Amendment note below.

Pub. L. 101–239, § 8001(a), substituted ''through 1992'' for ''through 1989''.

Subsec. (b)(5)(A). Pub. L. 101–239, § 8001(a), substituted ''1992'' for ''1989'' in introductory provisions and in cl. (ii).

Subsec. (c)(1), (2). Pub. L. 101–239, § 8001(a), substituted ''through 1992'' for ''through 1989''.

Subsec. (c)(4)(B), (C). Pub. L. 101–239, § 10401(a), substituted ''$325,000,000'' for ''$266,000,000''.

1987—Subsec. (b)(1), (2)(A)(iii), (B), (4)(B). Pub. L. 100–203, § 9132(a)(1), substituted ''through 1989'' for ''through 1987''.

Subsec. (b)(5)(A). Pub. L. 100–203, § 9132(a)(1), (2), substituted ''October 1, 1989'' for ''October 1, 1987'' in introductory provisions and ''through 1989'' for ''through 1987'' in cl. (ii).

Subsec. (c)(1), (2). Pub. L. 100–203, § 9132(a)(3), substituted ''through 1989'' for ''through 1987''.

1986—Subsec. (a)(3). Pub. L. 99–272, § 12307(c)(1), substituted ''; plus'' for period at end.

Subsec. (a)(4). Pub. L. 99–514 realigned margins of par. (4).

Pub. L. 99–272, § 12307(c)(2), added par. (4).

Subsec. (b)(1). Pub. L. 99–272, § 12306(a)(1), substituted ''1987'' for ''1985''.

Subsec. (b)(2)(A). Pub. L. 99–272, § 12306(a)(2), substituted in cl. (iii) ''each of the fiscal years 1983 through 1987'' for ''fiscal year 1983'', and struck out cls. (iv) and (v) relating to limitations with respect to fiscal years 1984 and 1985, respectively, if the appropriation for each of those years is equal to $266,000,000.

Subsec. (b)(2)(B), (4)(B). Pub. L. 99–272, § 12306(a)(1), substituted ''1987'' for ''1985''.

Subsec. (b)(5)(A). Pub. L. 99–272, § 12306(a)(3), substituted ''October 1, 1987'' for ''October 1, 1985'' in introductory provision, and in cl. (ii) substituted ''1984 through 1987'' for ''1984 and 1985''.

Subsec. (c)(1), (2). Pub. L. 99–272, § 12306(b), substituted ''1987'' for ''1985''.

1984—Subsec. (b)(1). Pub. L. 98–617, § 4(a)(1)(A), formerly § 4(a)(1), as redesignated and amended by Pub. L. 101–239, § 10403(c)(1), substituted ''1985'' for ''1984'' after ''1981 through''.

Subsec. (b)(2)(A)(v). Pub. L. 98–617, § 4(a)(2), added cl. (v).

Subsec. (b)(2)(B). Pub. L. 98–617, § 4(a)(1)(B), formerly § 4(a)(1), as redesignated and amended by Pub. L. 101–239, § 10403(c)(1), substituted ''1981 through 1985'' for ''1982 through 1984''.

Subsec. (b)(4)(A). Pub. L. 98–369, § 2663(c)(18)(A), substituted ''subparagraph (C)'' for ''subparagraph (c)''.

Subsec. (b)(4)(B). Pub. L. 98–617, § 4(a)(1)(A), formerly § 4(a)(1), as redesignated and amended by Pub. L. 101–239, § 10403(c)(1), substituted ''1985'' for ''1984'' after ''1981 through''.

Subsec. (b)(5)(A). Pub. L. 98–617, § 4(a)(3)(A), substituted ''October 1, 1985'' for ''October 1, 1984''.

Subsec. (b)(5)(A)(ii). Pub. L. 98–617, § 4(a)(3)(B), substituted ''each of fiscal years 1984 and 1985'' for ''fiscal year 1984''.

Subsec. (c)(1), (2). Pub. L. 98–617, § 4(b), substituted ''1985'' for ''1984'' after ''1981 through''.

Pub. L. 98–369, § 2663(c)(18)(B), substituted ''relevant'' for ''relvant''.

Subsec. (d)(1). Pub. L. 98–369, § 2663(c)(18)(C), substituted ''and (C) such'' for ''and (c) such'' and ''Secretary may find'' for ''secretary may find''.

1980—Subsec. (d). Pub. L. 96–611 added subsec. (d).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 207(c) of Pub. L. 103–432 provided that: ''The amendments and repeals made by this section [amending this section] shall apply to payments for calendar quarters beginning on or after October 1, 1993.''

Section 210(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to claims made on or after the date of the enactment of this Act [Oct. 31, 1994].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13713(a)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section] shall take effect on October 1, 1993.''

Section 13713(b)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to expenditures during fiscal years beginning on or after October 1, 1996.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5071(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8001(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1989.''

Section 8002(e) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a), (b) and (c) [amending this section and section 677 of this title] shall take effect October 1, 1989.''

Section 8006(b) of Pub. L. 101–239, as amended by Pub. L. 103–66, title XIII, § 13715, Aug. 10, 1993, 107 Stat. 657, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to expenditures made on or after October 1, 1989, and before October 1, 1992, and to expenditures made on or after October 1, 1993.''

Amendment by section 10401(a) of Pub. L. 101–239 effective Oct. 1, 1989, see section 10401(b) of Pub. L. 101–239, set out as a note under section 620 of this title.

Section 10402(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on October 1, 1989.''

Section 10403(c)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall take effect as if included in section 4 of Public Law 98-617 at the time such section became law [enacted Nov. 8, 1974].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9132(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective October 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 673, 677 of this title; title 2 section 906.

§ 675. Definitions

As used in this part or part B of this subchapter:

(1) The term ''case plan'' means a written document which includes at least the following:

(A) A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or judicial determination made with respect to the child in accordance with section 672(a)(1) of this title.

(B) A plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(C) To the extent available and accessible, the health and education records of the child, including—

(i) the names and addresses of the child's health and educational providers;

(ii) the child's grade level performance;

(iii) the child's school record;

(iv) assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement;

(v) a record of the child's immunizations;

(vi) the child's known medical problems;

(vii) the child's medications; and

(viii) any other relevant health and education information concerning the child determined to be appropriate by the State agency.

Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.

(2) The term ''parents'' means biological or adoptive parents or legal guardians, as determined by applicable State law.

(3) The term ''adoption assistance agreement'' means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adoptive parents of a minor child which at a minimum (A) specifies the nature and amount of any payments, services, and assistance to be provided under such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time. The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

(4)(A) The term ''foster care maintenance payments'' means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(B) In cases where—

(i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and

(ii) payments described in subparagraph (A) are being made under this part with respect to such child,

the foster care maintenance payments made with respect to such child as otherwise determined under subparagraph (A) shall also include such amounts as may be necessary to cover the cost of the items described in that subparagraph with respect to such son or daughter.

(5) The term ''case review system'' means a procedure for assuring that—

(A) each child has a case plan designed to achieve placement in the least restrictive (most family like) and most appropriate setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child, which—

(i) if the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a State different from the State in which such home is located, sets forth the reasons why such placement is in the best interests of the child, and

(ii) if the child has been placed in foster care outside the State in which the home of the parents of the child is located, requires that, periodically, but not less frequently than every 12 months, a caseworker on the staff of the State agency of the State in which the home of the parents of the child is located, or of the State in which the child has been placed, visit such child in such home or institution and submit a report on such visit to the State agency of the State in which the home of the parents of the child is located,

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by administrative review (as defined in paragraph (6)) in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship,

(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months after the original placement (and not less frequently than every 12 months thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis) and, in the case of a child described in subparagraph (A)(ii), whether the out-of-State placement continues to be appropriate and in the best interests of the child, and, in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living; and procedural safeguards shall also be applied with respect to parental rights pertaining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents;[1] and

(D) a child's health and education record (as described in paragraph (1)(A)) is reviewed and updated, and supplied to the foster parent or foster care provider with whom the child is placed, at the time of each placement of the child in foster care.

(6) The term ''administrative review'' means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

(Aug. 14, 1935, ch. 531, title IV, § 475, as added and amended June 17, 1980, Pub. L. 96–272, title I, §§ 101(a)(1), 102(a)(4), 94 Stat. 510, 514; Apr. 7, 1986, Pub. L. 99–272, title XII, §§ 12305(b)(2), 12307(b), 100 Stat. 293, 296; Oct. 22, 1986, Pub. L. 99–514, title XVII, § 1711(c)(6), 100 Stat. 2784; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9133(a), 101 Stat. 1330–314; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8104(e), 102 Stat. 3797; Dec. 19, 1989, Pub. L. 101–239, title VIII, § 8007(a), (b), 103 Stat. 2462; Oct. 31, 1994, Pub. L. 103–432, title II, §§ 206(a), (b), 209(a), (b), 265(c), 108 Stat. 4457, 4459, 4469.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in text, is classified to section 620 et seq. of this title.

AMENDMENTS

1994—Par. (5)(A). Pub. L. 103–432, § 209(a), inserted ''which—'' after ''needs of the child,'' and added cls. (i) and (ii).

Pub. L. 103–432, § 206(a), inserted ''and most appropriate'' after ''(most family like)''.

Par. (5)(C). Pub. L. 103–432, § 209(b), inserted ''and, in the case of a child described in subparagraph (A)(ii), whether the out-of-State placement continues to be appropriate and in the best interests of the child,'' after ''permanent or long-term basis)''.

Pub. L. 103–432, § 206(b), substituted ''(and not less frequently than every 12 months'' for ''(and periodically''.

Par. (5)(D). Pub. L. 103–432, § 265(c), realigned margins.

1989—Par. (1). Pub. L. 101–239, § 8007(a), inserted ''(A)'' before ''A description'', substituted ''section 672(a)(1) of this title. (B) A plan'' for ''section 672(a)(1) of this title; and a plan'', realigned margins of subpars. (A) and (B), added subpar. (C), and set the last sentence flush with the left margin of par. (1).

Par. (5)(D). Pub. L. 101–239, § 8007(b), added subpar. (D).

1988—Par. (5)(C). Pub. L. 100–647 inserted ''and, in the case of a child who has attained age 16, the services

[1] So in original. The semicolon probably should be a comma.

needed to assist the child to make the transition from foster care to independent living'' after ''long-term basis)''.

1987—Par. (4). Pub. L. 100–203 designated existing provisions as subpar. (A) and added subpar. (B).

1986—Par. (1). Pub. L. 99–272, § 12307(b), inserted at end ''Where appropriate, for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.''

Par. (3). Pub. L. 99–514 added cl. (A) and struck out former cl. (A) which read as follows: ''specifies the amounts of any adoption assistance payments and any other services and assistance which are to be provided as part of such agreement, and''.

Pub. L. 99–272, § 12305(b)(2), substituted in cl. (A) ''any adoption assistance payments and any other services and assistance'' for ''the adoption assistance payments and any additional services and assistance''.

1980—Par. (1). Pub. L. 96–272, § 102(a)(4), inserted reference to voluntary placement agreements.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 206(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section] shall take effect on October 1, 1995.''

Section 209(d) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and section 679 of this title] shall be effective with respect to fiscal years beginning on or after October 1, 1995.''

Amendment by section 265(c) of Pub. L. 103–432 effective as if included in the provision of Pub. L. 101–239 to which the amendment relates, at the time the provision became law, see section 265(d) of Pub. L. 103–432, set out as a note under section 608 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8007(c) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall take effect on April 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective Oct. 1, 1988, see section 8104(g)(1) of Pub. L. 100–647, set out as a note under section 677 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective Apr. 1, 1988, see section 9133(c) of Pub. L. 100–203, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 applicable only with respect to expenditures made after Dec. 31, 1986, see section 1711(d) of Pub. L. 99–514, set out as a note under section 670 of this title.

Amendment by section 12305(b)(2) of Pub. L. 99–272 applicable to medical assistance furnished in or after the first calendar quarter beginning more than 90 days after Apr. 7, 1986, see section 12305(c) of Pub. L. 99–272, set out as a note under section 673 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 101(a)(4)(A) of Pub. L. 96–272 provided that: ''Clause (B) of the first sentence of section 475(3) of the Social Security Act [par. (3)(B) of this section] (as added by subsection (a) of this section) shall be effective with respect to adoption assistance agreements entered into on or after October 1, 1983.''

Amendment by section 102(a)(4) of Pub. L. 96–272 effective only with respect to expenditures made after Sept. 30, 1979, see section 102(c) of Pub. L. 96–272, as amended, set out as a note under section 672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 622, 625, 626, 627, 629a, 671, 672, 673, 677 of this title.

§ 676. Administration

(a) Technical assistance to States

The Secretary may provide technical assistance to the States to assist them to develop the programs authorized under this part and shall periodically (1) evaluate the programs authorized under this part and part B of this subchapter and (2) collect and publish data pertaining to the incidence and characteristics of foster care and adoptions in this country.

(b) Data collection and evaluation

Each State shall submit statistical reports as the Secretary may require with respect to children for whom payments are made under this part containing information with respect to such children including legal status, demographic characteristics, location, and length of any stay in foster care.

(Aug. 14, 1935, ch. 531, title IV, § 476, as added June 17, 1980, Pub. L. 96–272, title I, § 101(a)(1), 94 Stat. 511.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsec. (a), is classified to section 620 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 625 of this title.

§ 677. Independent living initiatives

(a) Payments; purpose; entitlement of States

(1) Payments shall be made in accordance with this section for the purpose of assisting States and localities in establishing and carrying out programs designed to assist children described in paragraph (2) who have attained age 16 in making the transition from foster care to independent living. Any State which provides for the establishment and carrying out of one or more such programs in accordance with this section for a fiscal year shall be entitled to receive payments under this section for such fiscal year, in an amount determined under subsection (e) of this section.

(2) A program established and carried out under paragraph (1)—

(A) shall be designed to assist children with respect to whom foster care maintenance payments are being made by the State under this part,

(B) may at the option of the State also include any or all other children in foster care under the responsibility of the State, and

(C) may at the option of the State also include any child who has not attained age 21 to whom foster care maintenance payments were previously made by a State under this part and whose payments were discontinued on or after the date such child attained age 16, and any child who previously was in foster care described in subparagraph (B) and for whom such care was discontinued on or after the date such child attained age 16; and a written transitional independent living plan of the type described in subsection (d)(6) of this section shall be developed for such child as a part of such program.

(b) Administration or supervision of programs by State agency; payments to State to conduct and provide activities and services

The State agency administering or supervising the administration of the State's programs under this part shall be responsible for administering or supervising the administration of the State's programs described in subsection (a) of this section. Payment under this section shall be made to the State, and shall be used for the purpose of conducting and providing in accordance with this section (directly or under contracts with local governmental entities or private nonprofit organizations) the activities and services required to carry out the program or programs involved.

(c) Description of program; assurances of effective and efficient operation of program and of compliance; time for submission to Secretary

In order for a State to receive payments under this section for any fiscal year, the State agency must submit to the Secretary, in such manner and form as the Secretary may prescribe, a description of the program together with satisfactory assurances that the program will be operated in an effective and efficient manner and will otherwise meet the requirements of this section. In the case of payments for fiscal year 1987, such description and assurances must be submitted within 90 days after the Secretary promulgates regulations as required under subsection (i) of this section, and in the case of payments for any succeeding fiscal year, such description and assurances must be submitted prior to February 1 of such fiscal year.

(d) Objective of programs; programs to help participating individuals live independently upon leaving foster care; types of programs

In carrying out the purpose described in subsection (a) of this section, it shall be the objective of each program established under this section to help the individuals participating in such program to prepare to live independently upon leaving foster care. Such programs may include (subject to the availability of funds) programs to—

(1) enable participants to seek a high school diploma or its equivalent or to take part in appropriate vocational training;

(2) provide training in daily living skills, budgeting, locating and maintaining housing, and career planning;

(3) provide for individual and group counseling;

(4) integrate and coordinate services otherwise available to participants;

(5) provide for the establishment of outreach programs designed to attract individuals who are eligible to participate in the program;

(6) provide each participant a written transitional independent living plan which shall be based on an assessment of his needs, and which shall be incorporated into his case plan, as described in section 675(1) of this title; and

(7) provide participants with other services and assistance designed to improve their transition to independent living.

(e) Formula for determination of State entitlement for fiscal year 1987 and any succeeding fiscal year for transitional independent living programs; reallocation of amounts to other States; amounts in addition to amounts under other law

(1)(A) The basic amount to which a State shall be entitled under section 674(a)(4) of this title for fiscal year 1987 and any succeeding fiscal year shall be an amount which bears the same ratio to the basic ceiling for such fiscal year as such State's average number of children receiving foster care maintenance payments under this part in fiscal year 1984 bears to the total of the average number of children receiving such payments under this part for all States for fiscal year 1984.

(B) The maximum additional amount to which a State shall be entitled under section 674(a)(4) of this title for fiscal year 1991 and any succeeding fiscal year shall be an amount which bears the same ratio to the additional ceiling for such fiscal year as the basic amount of such State bears to $45,000,000.

(C) As used in this section:

(i) The term ''basic ceiling'' means—

(I) for fiscal year 1990, $50,000,000; and

(II) for each fiscal year other than fiscal year 1990, $45,000,000.

(ii) The term ''additional ceiling'' means—

(I) for fiscal year 1991, $15,000,000; and

(II) for any succeeding fiscal year, $25,000,000.

(2) If any State does not apply for funds under this section for any fiscal year within the time provided in subsection (c) of this section, the funds to which such State would have been entitled for such fiscal year shall be reallocated to one or more other States on the basis of their relative need for additional payments under this section (as determined by the Secretary).

(3) Any amounts payable to States under this section shall be in addition to amounts payable to States under subsections (a)(1), (a)(2), and (a)(3) of section 674 of this title, and shall supplement and not replace any other funds which may be available for the same general purposes in the localities involved. Amounts payable under this section may not be used for the provision of room or board.

(f) Payments; restrictions; estimation and adjustment; time of expenditure

Payments made to a State under this section for any fiscal year—

(1) shall be used only for the specific purposes described in this section;

(2) may be made on an estimated basis in advance of the determination of the exact amount, with appropriate subsequent adjustments to take account of any error in the estimates; and

(3) shall be expended by such State in such fiscal year or in the succeeding fiscal year.

Notwithstanding paragraph (3), payments made to a State under this section for the fiscal year 1987 and unobligated may be expended by such State in the fiscal year 1989.

(g) Report by States to Secretary; evaluation by Secretary and report to Congress

(1) Not later than the first January 1 following the end of each fiscal year, each State shall submit to the Secretary a report on the programs carried out during such fiscal year with the amounts received under this section. Such report—

(A) shall be in such form and contain such information as may be necessary to provide an accurate description of such activities, to provide a complete record of the purposes for which the funds were spent, and to indicate the extent to which the expenditure of such funds succeeded in accomplishing the purpose described in subsection (a) of this section; and

(B) shall specifically contain such information as the Secretary may require in order to carry out the evaluation under paragraph (2).

(2)(A) Not later than July 1, 1988, the Secretary shall submit an interim report on the activities carried out under this section.

(B) Not later than March 1, 1989, the Secretary, on the basis of the reports submitted by States under paragraph (1) for the fiscal years 1987 and 1988, and on the basis of such additional information as the Secretary may obtain or develop, shall evaluate the use by States of the payments made available under this section for such fiscal year with respect to the purpose of this section, with the objective of appraising the achievements of the programs for which such payments were made available, and developing comprehensive information and data on the basis of which decisions can be made with respect to the improvement of such programs and the necessity for providing further payments in subsequent years. The Secretary shall report such evaluation to the Congress. As a part of such evaluation, the Secretary shall include, at a minimum, a detailed overall description of the number and characteristics of the individuals served by the programs, the various kinds of activities conducted and services provided and the results achieved, and shall set forth in detail findings and comments with respect to the various State programs and a statement of plans and recommendations for the future.

(h) Payments and services not considered income or resources in determining eligibility for aid and services to needy families with children or for foster care and adoption assistance

Notwithstanding any other provision of this subchapter, payments made and services provided to participants in a program under this section, as a direct consequence of their participation in such program, shall not be considered as income or resources for purposes of determining eligibility (or the eligibility of any other persons) for aid under the State's plan approved under section 602 or 671 of this title, or for purposes of determining the level of such aid.

(i) Promulgation of regulations

The Secretary shall promulgate final regulations for implementing this section within 60 days after April 7, 1986.

(Aug. 14, 1935, ch. 531, title IV, §477, as added Apr. 7, 1986, Pub. L. 99–272, title XII, §12307(a), 100 Stat. 294; amended Nov. 10, 1988, Pub. L. 100–647, title VIII, §8104(a)–(d), (f), 102 Stat. 3796, 3797; Dec. 19, 1989, Pub. L. 101–239, title VIII, §8002(a), (b), 103 Stat. 2452; Nov. 5, 1990, Pub. L. 101–508, title V, §5073(a), 104 Stat. 1388–233; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13714(a), 107 Stat. 657.)

AMENDMENTS

1993—Subsec. (a)(1). Pub. L. 103–66, §13714(a)(1), struck out at end ''Such payments shall be made only for the fiscal years 1987 through 1992.''

Subsec. (c). Pub. L. 103–66, §13714(a)(2), substituted ''any succeeding fiscal year'' for ''any of the fiscal years 1988 through 1992''.

Subsec. (e)(1)(A). Pub. L. 103–66, §13714(a)(3), substituted ''fiscal year 1987 and any succeeding fiscal year'' for ''each of the fiscal years 1987 through 1992''.

Subsec. (e)(1)(B). Pub. L. 103–66, §13714(a)(4), substituted ''fiscal year 1991 and any succeeding fiscal year'' for ''fiscal years 1991 and 1992''.

Subsec. (e)(1)(C)(ii)(II). Pub. L. 103–66, §13714(a)(5), substituted ''any succeeding fiscal year'' for ''fiscal year 1992''.

1990—Subsec. (a)(2)(C). Pub. L. 101–508 inserted ''who has not attained age 21'' after ''also include any child'' and struck out before semicolon '', but such child may not be so included after the end of the 6-month period beginning on the date of discontinuance of such payments or care''.

1989—Subsec. (a)(1). Pub. L. 101–239, §8002(a)(1), substituted ''through 1992'' for '', 1988, and 1989''.

Subsec. (c). Pub. L. 101–239, §8002(a)(2), substituted ''any of the fiscal years 1988 through 1992'' for ''the fiscal year 1988 or 1989''.

Subsec. (e)(1). Pub. L. 101–239, §8002(b)(1), (2), (4), (5), designated existing provisions as subpar. (A), substituted ''The basic amount'' for ''The amount'' and ''the basic ceiling for such fiscal year'' for ''$45,000,000'', and added subpars. (B) and (C).

Pub. L. 101–239, §8002(b)(3), which directed amendment of subpar. (A) by substituting ''1989, 1990, 1991, and 1992'' for ''and 1989'' could not be executed because the words ''and 1989'' did not appear after execution of amendment by Pub. L. 101–239, §8002(a)(1), see below.

Pub. L. 101–239, §8002(a)(1), substituted ''through 1992'' for '', 1988, and 1989''.

1988—Subsec. (a). Pub. L. 100–647, §8104(a)(1), substituted ''1987, 1988, and 1989'' for ''1987 and 1988''.

Subsec. (a)(1). Pub. L. 100–647, §8104(c), designated existing provisions as par. (1), substituted ''children described in paragraph (2) who have attained age 16'' for ''children, with respect to whom foster care maintenance payments are being made by the State under this part and who have attained age 16,'' and added par. (2).

Subsec. (a)(2)(C). Pub. L. 100–647, §8104(d), added subpar. (C).

Subsec. (c). Pub. L. 100–647, §8104(a)(2), substituted ''for the fiscal year 1988 or 1989, such description and assurances must be submitted prior to February 1 of such fiscal year'' for ''for fiscal year 1988, such description and assurances must be submitted prior to January 1, 1988''.

Subsec. (e)(1). Pub. L. 100–647, §8104(a)(1), substituted ''1987, 1988, and 1989'' for ''1987 and 1988''.

Subsec. (e)(3). Pub. L. 100–647, §8104(f), inserted at end ''Amounts payable under this section may not be used for the provision of room or board.''

Subsec. (f). Pub. L. 100–647, §8104(b), inserted at end ''Notwithstanding paragraph (3), payments made to a State under this section for the fiscal year 1987 and unobligated may be expended by such State in the fiscal year 1989.''

Subsec. (g)(1). Pub. L. 100–647, §8104(a)(3), (4), substituted ''Not later than the first January 1 following the end of each fiscal year, each State shall submit to the Secretary a report on the programs carried out during such fiscal year'' for ''Not later than March 1, 1988, each State shall submit to the Secretary a report on the programs carried out''.

Subsec. (g)(2). Pub. L. 100–647, §8104(a)(5), (6), substituted:

''(A) Not later than July 1, 1988, the Secretary shall submit an interim report on the activities carried out under this section.

''(B) Not later than March 1, 1989,''

for ''Not later than July 1, 1988,'' and substituted ''fiscal years 1987 and 1988'' for ''fiscal year 1987'' in subpar. (B).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13714(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to activities engaged in, on, or after October 1, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5073(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments made under part E of title IV of the Social Security Act [part E of this subchapter] for fiscal years beginning in or after fiscal year 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective Oct. 1, 1989, see section 8002(e) of Pub. L. 101–239, set out as a note under section 674 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8104(g) of Pub. L. 100–647 provided that:

''(1) The amendments made by subsections (a), (b), and (e) [amending this section and section 675 of this title] shall take effect on October 1, 1988.

''(2) The amendments made by subsections (c), (d), and (f) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988].''

STUDY AND REPORT EVALUATING EFFECTIVENESS OF PROGRAMS

Section 8002(d) of Pub. L. 101–239 provided that:

''(1) STUDY.—The Secretary of Health and Human Services shall study the programs authorized under section 477 of the Social Security Act [this section] for the purposes of evaluating the effectiveness of the programs. The study shall include a comparison of outcomes of children who participated in the programs and a comparable group of children who did not participate in the programs.

''(2) REPORT.—Upon completion of the study, the Secretary shall issue a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 674 of this title.

§ 678. Repealed. Pub. L. 101–508, title V, § 5052(b), Nov. 5, 1990, 104 Stat. 1388–228

Section, act Aug. 14, 1935, ch. 531, title IV, §478, as added Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1883(b)(10)(A), 100 Stat. 2917, excluded from AFDC unit child for whom foster care maintenance payments are made.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to benefits for months beginning on or after the first day of the sixth calendar month following November 1990, see section 5052(c) of Pub. L. 101–508, set out as an Effective Date note under section 609 of this title.

§ 679. Collection of data relating to adoption and foster care

(a) Advisory Committee on Adoption and Foster Care Information

(1) Not later than 90 days after October 21, 1986, the Secretary shall establish an Advisory Committee on Adoption and Foster Care Information (in this section referred to as the ''Advisory Committee'') to study the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

(2) The study required by paragraph (1) shall—

(A) identify the types of data necessary to—

(i) assess (on a continuing basis) the incidence, characteristics, and status of adoption and foster care in the United States, and

(ii) develop appropriate national policies with respect to adoption and foster care;

(B) evaluate the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies;

(C) assess the validity of various methods of collecting data with respect to adoption and foster care; and

(D) evaluate the financial and administrative impact of implementing each such method.

(3) Not later than October 1, 1987, the Advisory Committee shall submit to the Secretary and the Congress a report setting forth the results of the study required by paragraph (1) and evaluating and making recommendations with respect to the various methods of establishing, administering, and financing a system for the collection of data with respect to adoption and foster care in the United States.

(4)(A) Subject to subparagraph (B), the membership and organization of the Advisory Committee shall be determined by the Secretary.

(B) The membership of the Advisory Committee shall include representatives of—

(i) private, nonprofit organizations with an interest in child welfare (including organizations that provide foster care and adoption services),

(ii) organizations representing State and local governmental agencies with responsibility for foster care and adoption services,

(iii) organizations representing State and local governmental agencies with responsibility for the collection of health and social statistics,

(iv) organizations representing State and local judicial bodies with jurisdiction over family law,

(v) Federal agencies responsible for the collection of health and social statistics, and

(vi) organizations and agencies involved with privately arranged or international adoptions.

(5) After the date of the submission of the report required by paragraph (3), the Advisory Committee shall cease to exist.

(b) Report to Congress; regulations

(1)(A) Not later than July 1, 1988, the Secretary shall submit to the Congress a report that—

(i) proposes a method of establishing, administering, and financing a system for the collection of data relating to adoption and foster care in the United States,

(ii) evaluates the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies, and

(iii) evaluates the impact of the system proposed under clause (i) on the agencies with responsibility for implementing it.

(B) The report required by subparagraph (A) shall—

(i) specify any changes in law that will be necessary to implement the system proposed under subparagraph (A)(i), and

(ii) describe the type of system that will be implemented under paragraph (2) in the absence of such changes.

(2) Not later than December 31, 1988, the Secretary shall promulgate final regulations providing for the implementation of—

(A) the system proposed under paragraph (1)(A)(i), or

(B) if the changes in law specified pursuant to paragraph (1)(B)(i) have not been enacted, the system described in paragraph (1)(B)(ii).

Such regulations shall provide for the full implementation of the system not later than October 1, 1991.

(c) Data collection system

Any data collection system developed and implemented under this section shall—

(1) avoid unnecessary diversion of resources from agencies responsible for adoption and foster care;

(2) assure that any data that is collected is reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies;

(3) provide comprehensive national information with respect to—

(A) the demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents,

(B) the status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care),

(C) the number and characteristics of—

(i) children placed in or removed from foster care,

(ii) children adopted or with respect to whom adoptions have been terminated, and

(iii) children placed in foster care outside the State which has placement and care responsibility, and

(D) the extent and nature of assistance provided by Federal, State, and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided; and

(4) utilize appropriate requirements and incentives to ensure that the system functions reliably throughout the United States.

(Aug. 14, 1935, ch. 531, title IV, § 479, as added Oct. 21, 1986, Pub. L. 99–509, title IX, § 9443, 100 Stat. 2073; amended Oct. 31, 1994, Pub. L. 103–432, title II, § 209(c), 108 Stat. 4459.)

AMENDMENTS

1994—Subsec. (c)(3)(C)(iii). Pub. L. 103–432 added cl. (iii).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective with respect to fiscal years beginning on or after Oct. 1, 1995, see section 209(d) of Pub. L. 103–432, set out as a note under section 675 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 674, 679a, 1320a–9, 5106f–1 of this title.

§ 679a. National Adoption Information Clearinghouse

The Secretary of Health and Human Services shall establish, either directly or by grant or contract, a National Adoption Information Clearinghouse. The Clearinghouse shall—

(1) collect, compile, and maintain information obtained from available research, studies, and reports by public and private agencies, institutions, or individuals concerning all aspects of infant adoption and adoption of children with special needs;

(2) compile, maintain, and periodically revise directories of information concerning—

(A) crisis pregnancy centers,

(B) shelters and residences for pregnant women,

(C) training programs on adoption,

(D) educational programs on adoption,

(E) licensed adoption agencies,

(F) State laws relating to adoption,

(G) intercountry adoption, and

(H) any other information relating to adoption for pregnant women, infertile couples, adoptive parents, unmarried individuals who want to adopt children, individuals who have been adopted, birth parents who have placed a child for adoption, adoption agencies, social workers, counselors, or other individuals who work in the adoption field;

(3) disseminate the information compiled and maintained pursuant to paragraph (1) and the directories compiled and maintained pursuant to paragraph (2); and

(4) upon the establishment of an adoption and foster care data collection system pursuant to section 679 of this title, disseminate the data and information made available through that system.

(Pub. L. 99–509, title IX, § 9442, Oct. 21, 1986, 100 Stat. 2073.)

CODIFICATION

Section was enacted as part of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and

also as part of the Omnibus Budget Reconciliation Act of 1986, and not as part of the Social Security Act which comprises this chapter.

PART F—JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 602, 603, 607, 617, 671, 1437u, 11421 of this title; title 2 section 906; title 7 sections 2015, 2026, 2031; title 20 section 6143; title 29 sections 1503, 1605, 1645, 1792.

§ 681. Purpose and definitions

(a) Purpose

It is the purpose of this part to assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence.

(b) Meaning of terms

Except to the extent otherwise specifically indicated, terms used in this part shall have the meanings given them in or under part A of this subchapter.

(Aug. 14, 1935, ch. 531, title IV, § 481, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2360.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (b), is classified to section 601 et seq. of this title.

EFFECTIVE DATE

Section 204 of title II of Pub. L. 100–485 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this title [enacting this section and sections 682 to 687 of this title, amending sections 602, 603, 607, 671, 1308, 1396a, and 1396s of this title and section 51 of Title 26, Internal Revenue Code, repealing sections 609, 614, 630 to 632, and 633 to 645 of this title, and enacting provisions set out as notes under this section] shall become effective on October 1, 1990.

''(b) SPECIAL RULES.—(1)(A) If any State makes the changes in its State plan approved under section 402 of the Social Security Act [section 602 of this title] that are required in order to carry out the amendments made by this title and formally notifies the Secretary of Health and Human Services of its desire to become subject to such amendments as of the first day of any calendar quarter beginning on or after the date on which the proposed regulations of the Secretary of Health and Human Services are published under section 203(a) [42 U.S.C. 681 note] (or, if earlier, the date on which such regulations are required to be published under such section) and before October 1, 1990, such amendments shall become effective with respect to that State as of such first day.

''(B) In the case of any State in which the amendments made by this title become effective (in accordance with subparagraph (A)) with respect to any quarter of a fiscal year beginning before October 1, 1990, the limitation applicable to the State for the fiscal year under section 403(k)(2) of the Social Security Act [section 603(k)(2) of this title] (as added by section 201(c)(1) of this Act) shall be an amount that bears the same ratio to such limitation (as otherwise determined with respect to the State for the fiscal year) as the number of quarters in the fiscal year throughout which such amendments apply to the State bears to 4.

''(2) Section 403(*l*)(3) of the Social Security Act [section 603(*l*)(3) of this title] (as added by section 201(c)(2) of this Act) is repealed effective October 1, 1995 (except that subparagraph (A) of such section 403(*l*)(3) shall remain in effect for purposes of applying any reduction in payment rates required by such subparagraph for any of the fiscal years specified therein); and section 403(*l*)(4) of such Act (as so added) is repealed effective October 1, 1998.

''(3) Subsections (a), (c), and (d) of section 203 of this Act [42 U.S.C. 681 notes], and section 486 of the Social Security Act [section 686 of this title] (as added by section 201(b) of this Act), shall become effective on the date of the enactment of this Act [Oct. 13, 1988].''

REGULATIONS

Section 203(a) of title II of Pub. L. 100–485 provided that: ''Not later than 6 months after the date of the enactment of this Act [Oct. 13, 1988], the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall issue proposed regulations for the purpose of implementing the amendments made by this title [see Effective Date note above], including regulations establishing uniform data collection requirements. The Secretary shall publish final regulations for such purpose not later than one year after the date of the enactment of this Act. Regulations issued under this subsection shall be developed by the Secretary in consultation with the Secretary of Labor and with the responsible State agencies described in section 482(a)(2) of the Social Security Act [section 682(a)(2) of this title].''

IMPLEMENTATION AND EFFECTIVENESS STUDIES

Section 203(c) of Pub. L. 100–485 directed Secretary to conduct an implementation study based on a representative sample of States and localities to document with respect to programs established under this part types, mix, and costs of services offered, participation rates or activity levels, characteristics of individuals in different type of activities, provisions made for child and day care and extent to which limitations exist with respect to availability of such care, institutional arrangements and operating procedures under which activities are offered in different locations, and such other factors as deemed appropriate, with appropriations for this study authorized for fiscal years 1989, 1990, and 1991, and directed Secretary to conduct a study to determine relative effectiveness of different approaches for assisting long-term and potentially long-term recipients developed by States pursuant to programs established under this part, which study was to be based on data gathered from demonstration projects conducted in 5 States chosen by Secretary for a period of not less than 3 years, with specific requirements for these demonstration projects, reporting by States of interim data to Secretary, an annual report by Secretary to Congress and project progress and, not later than 1 year after date of final data collection, a report to Congress on results of this study, appropriations authorized for fiscal years 1990 and 1991, and establishment of an advisory panel to meet periodically to design, implement, and monitor a series of implementation and evaluation studies to assess the methods and effects of the programs initiated under Pub. L. 100–485.

STUDY OF APPLICATION OF JOBS PROGRAM TO INDIANS

Section 203(d) of Pub. L. 100–485 directed Secretary of Health and Human Services, in cooperation with Secretary of the Interior to conduct a study of effectiveness of such employment, training, and education programs for low-income individuals as are specifically directed toward Indians in responding to the needs of Indians on reservations, effectiveness of such programs as are not specifically directed toward Indians in responding to such needs, extent to which such needs are not met by such programs, how programs could be better coordinated, improved, or restructured to meet such needs, what sustainable job markets exist in Indian communities, and availability of such support services as are necessary to assist Indians on reservations in participating in such programs and obtaining permanent employment, with a report to Congress on results

of such study not later than Oct, 1, 1989, or, if later, 1 year after Oct. 13, 1988.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2026.

§ 682. Establishment and operation of State programs

(a) State plans for job opportunities and basic skills training programs

(1)(A) As a condition of its participation in the program of aid to families with dependent children under part A of this subchapter, each State shall establish and operate a job opportunities and basic skills training program (in this part referred to as the ''program'') under a plan approved by the Secretary as meeting all of the requirements of this part and section 602(a)(19) of this title, and shall, in accordance with regulations prescribed by the Secretary, periodically (but not less frequently than every 2 years) review and update its plan and submit the updated plan for approval by the Secretary.

(B) A State plan for establishing and operating the program must describe how the State intends to implement the program during the period covered by the plan, and must indicate, through cross-references to the appropriate provisions of this part and part A of this subchapter, that the program will be operated in accordance with such provisions of law. In addition, such plan must contain (i) an estimate of the number of persons to be served by the program, (ii) a description of the services to be provided within the State and the political subdivisions thereof, the needs to be addressed through the provision of such services, the extent to which such services are expected to be made available by other agencies on a nonreimbursable basis, and the extent to which such services are to be provided or funded by the program, and (iii) such additional information as the Secretary may require by regulation to enable the Secretary to determine that the State program will meet all of the requirements of this part and part A of this subchapter.

(C) The Secretary shall consult with the Secretary of Labor on general plan requirements and on criteria to be used in approving State plans under this section.

(D)(i) Not later than October 1, 1992, each State shall make the program available in each political subdivision of such State where it is feasible to do so, after taking into account the number of prospective participants, the local economy, and other relevant factors.

(ii) If a State determines that it is not feasible to make the program available in each such subdivision, the State plan must provide appropriate justification to the Secretary.

(2) The State agency that administers or supervises the administration of the State's plan approved under section 602 of this title shall be responsible for the administration or supervision of the administration of the State's program.

(3) Federal funds made available to a State for purposes of the program shall not be used to supplant non-Federal funds for existing services and activities which promote the purpose of this part. State or local funds expended for such purpose shall be maintained at least at the level of such expenditures for the fiscal year 1986.

(b) Assessment and review of needs and skills of participants; employability plan

(1)(A) The State agency must make an initial assessment of the educational, child care, and other supportive services needs as well as the skills, prior work experience, and employability of each participant in the program under this part, including a review of the family circumstances. The agency may also review the needs of any child of the participant.

(B) On the basis of such assessment, the State agency, in consultation with the participant, shall develop an employability plan for the participant. The employability plan shall explain the services that will be provided by the State agency and the activities in which the participant will take part under the program, including child care and other supportive services, shall set forth an employment goal for the participant, and shall, to the maximum extent possible and consistent with this section, reflect the respective preferences of such participant. The plan must take into account the participant's supportive services needs, available program resources, and local employment opportunities. The employability plan shall not be considered a contract.

(2) Following the initial assessment and review and the development of the employability plan with respect to any participant in the program, the State agency may require the participant (or the adult caretaker in the family of which the participant is a member) to negotiate and enter into an agreement with the State agency that specifies such matters as the participant's obligations under the program, the duration of participation in the program, and the activities to be conducted and the services to be provided in the course of such participation. If the State agency exercises the option under the preceding sentence, the State agency must give the participant such assistance as he or she may require in reviewing and understanding the agreement.

(3) The State agency may assign a case manager to each participant and the participant's family. The case manager so assigned must be responsible for assisting the family to obtain any services which may be needed to assure effective participation in the program.

(c) Provision of program and employment information

(1) The State agency must ensure that all applicants for and recipients of aid to families with dependent children are encouraged, assisted, and required to fulfill their responsibilities to support their children by preparing for, accepting, and retaining such employment as they are capable of performing.

(2) The State agency must inform all applicants for and recipients of aid to families with dependent children of the education, employment, and training opportunities, and the support services (including child care and health coverage transition options), for which they are eligible, the obligations of the State agency, and the rights, responsibilities, and obligations of participants in the program.

(3) The State agency must—

(A) provide (directly or through arrangements with others) information on the types and locations of child care services reasonably accessible to participants in the program,

(B) inform participants that assistance is available to help them select appropriate child care services, and

(C) on request, provide assistance to participants in obtaining child care services.

(4) The State agency must inform applicants for and recipients of aid to families with dependent children of the grounds for exemption from participation in the program and the consequences of refusal to participate if not exempt, and provide other appropriate information with respect to such participation.

(5) Within one month after the State agency gives a recipient of aid to families with dependent children the information described in the preceding provisions of this paragraph, the State agency must notify such recipient of the opportunity to indicate his or her desire to participate in the program, including a clear description of how to enter the program.

(d) Services and activities under program

(1)(A) In carrying out the program, each State shall make available a broad range of services and activities to aid in carrying out the purpose of this part. Such services and activities—

(i) shall include—

(I) educational activities (as appropriate), including high school or equivalent education (combined with training as needed), basic and remedial education to achieve a basic literacy level, and education for individuals with limited English proficiency;

(II) job skills training;

(III) job readiness activities to help prepare participants for work; and

(IV) job development and job placement; and

(ii) must also include at least 2 of the following:

(I) group and individual job search as described in subsection (g) of this section;

(II) on-the-job training;

(III) work supplementation programs as described in subsection (e) of this section; and

(IV) community work experience programs as described in subsection (f) of this section or any other work experience program approved by the Secretary.

(B) The State may also offer to participants under the program (i) postsecondary education in appropriate cases, and (ii) such other education, training, and employment activities as may be determined by the State and allowed by regulations of the Secretary.

(2) If the State requires an individual who has attained the age of 20 years and has not earned a high school diploma (or equivalent) to participate in the program, the State agency shall include educational activities consistent with his or her employment goals as a component of the individual's participation in the program, unless the individual demonstrates a basic literacy level, or the employability plan for the individual identifies a long-term employment goal that does not require a high school diploma (or equivalent). Any other services or activities to which such a participant is assigned may not be permitted to interfere with his or her participation in an appropriate educational activity under this subparagraph.

(3) Notwithstanding any other provision of this section, the Secretary shall permit up to 5 States to provide services under the program, on a voluntary or mandatory basis, to non-custodial parents who are unemployed and unable to meet their child support obligations. Any State providing services to non-custodial parents pursuant to this paragraph shall evaluate the provision of such services, giving particular attention to the extent to which the provision of such services to those parents is contributing to the achievement of the purpose of this part, and shall report the results of such evaluation to the Secretary.

(e) Work supplementation program

(1) Any State may institute a work supplementation program under which such State, to the extent it considers appropriate, may reserve the sums that would otherwise be payable to participants in the program as aid to families with dependent children and use such sums instead for the purpose of providing and subsidizing jobs for such participants (as described in paragraph (3)(C)(i) and (ii)), as an alternative to the aid to families with dependent children that would otherwise be so payable to them.

(2)(A) Notwithstanding section 606 of this title or any other provision of law, Federal funds may be paid to a State under part A of this subchapter, subject to this subsection, with respect to expenditures incurred in operating a work supplementation program under this subsection.

(B) Nothing in this part, or in any State plan approved under part A of this subchapter, shall be construed to prevent a State from operating (on such terms and conditions and in such cases as the State may find to be necessary or appropriate) a work supplementation program in accordance with this subsection and section 684 of this title.

(C) Notwithstanding section 602(a)(23) of this title or any other provision of law, a State may adjust the levels of the standards of need under the State plan as the State determines to be necessary and appropriate for carrying out a work supplementation program under this subsection.

(D) Notwithstanding section 602(a)(1) of this title or any other provision of law, a State operating a work supplementation program under this subsection may provide that the need standards in effect in those areas of the State in which such program is in operation may be different from the need standards in effect in the areas in which such program is not in operation, and such State may provide that the need standards for categories of recipients may vary among such categories to the extent the State determines to be appropriate on the basis of ability to participate in the work supplementation program.

(E) Notwithstanding any other provision of law, a State may make such further adjust-

ments in the amounts of the aid to families with dependent children paid under the plan to different categories of recipients (as determined under subparagraph (D)) in order to offset increases in benefits from needs-related programs (other than the State plan approved under part A of this subchapter) as the State determines to be necessary and appropriate to further the purposes of the work supplementation program.

(F) In determining the amounts to be reserved and used for providing and subsidizing jobs under this subsection as described in paragraph (1), the State may use a sampling methodology.

(G) Notwithstanding section 602(a)(8) of this title or any other provision of law, a State operating a work supplementation program under this subsection (i) may reduce or eliminate the amount of earned income to be disregarded under the State plan as the State determines to be necessary and appropriate to further the purposes of the work supplementation program, and (ii) during one or more of the first 9 months of an individual's employment pursuant to a program under this section, may apply to the wages of the individual the provisions of subparagraph (A)(iv) of section 602(a)(8) of this title without regard to the provisions of subparagraph (B)(ii)(II) of such section.

(3)(A) A work supplementation program operated by a State under this subsection may provide that any individual who is an eligible individual (as determined under subparagraph (B)) shall take a supplemented job (as defined in subparagraph (C)) to the extent that supplemented jobs are available under the program. Payments by the State to individuals or to employers under the work supplementation program shall be treated as expenditures incurred by the State for aid to families with dependent children except as limited by paragraph (4).

(B) For purposes of this subsection, an eligible individual is an individual who is in a category which the State determines should be eligible to participate in the work supplementation program, and who would, at the time of placement in the job involved, be eligible for aid to families with dependent children under an approved State plan if such State did not have a work supplementation program in effect.

(C) For purposes of this section, a supplemented job is—

(i) a job provided to an eligible individual by the State or local agency administering the State plan under part A of this subchapter; or

(ii) a job provided to an eligible individual by any other employer for which all or part of the wages are paid by such State or local agency.

A State may provide or subsidize under the program any job which such State determines to be appropriate.

(D) At the option of the State, individuals who hold supplemented jobs under a State's work supplementation program shall be exempt from the retrospective budgeting requirements imposed pursuant to section 602(a)(13)(A)(ii) of this title (and the amount of the aid which is payable to the family of any such individual for any month, or which would be so payable but for the individual's participation in the work supplementation program, shall be determined on the basis of the income and other relevant circumstances in that month).

(4) The amount of the Federal payment to a State under section 603 of this title for expenditures incurred in making payments to individuals and employers under a work supplementation program under this subsection shall not exceed an amount equal to the amount which would otherwise be payable under such section if the family of each individual employed in the program established in such State under this subsection had received the maximum amount of aid to families with dependent children payable under the State plan to such a family with no income (without regard to adjustments under paragraph (2)) for the lesser of (A) 9 months, or (B) the number of months in which such individual was employed in such program.

(5)(A) Nothing in this subsection shall be construed as requiring the State or local agency administering the State plan to provide employee status to an eligible individual to whom it provides a job under the work supplementation program (or with respect to whom it provides all or part of the wages paid to the individual by another entity under such program), or as requiring any State or local agency to provide that an eligible individual filling a job position provided by another entity under such program be provided employee status by such entity during the first 13 weeks such individual fills that position.

(B) Wages paid under a work supplementation program shall be considered to be earned income for purposes of any provision of law.

(6) Any State that chooses to operate a work supplementation program under this subsection shall provide that any individual who participates in such program, and any child or relative of such individual (or other individual living in the same household as such individual) who would be eligible for aid to families with dependent children under the State plan approved under part A of this subchapter if such State did not have a work supplementation program, shall be considered individuals receiving aid to families with dependent children under the State plan approved under part A of this subchapter for purposes of eligibility for medical assistance under the State plan approved under subchapter XIX of this chapter.

(7) No individual receiving aid to families with dependent children under a State plan shall be excused by reason of the fact that such State has a work supplementation program from any requirement of this part relating to work requirements, except during periods in which such individual is employed under such work supplementation program.

(f) Community work experience program

(1)(A) Any State may establish a community work experience program in accordance with this subsection. The purpose of the community work experience program is to provide experience and training for individuals not otherwise able to obtain employment, in order to assist them to move into regular employment. Community work experience programs shall be designed to improve the employability of participants through actual work experience and train-

ing and to enable individuals employed under community work experience programs to move promptly into regular public or private employment. The facilities of the State public employment offices may be utilized to find employment opportunities for recipients under this program. Community work experience programs shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care. To the extent possible, the prior training, experience, and skills of a recipient shall be used in making appropriate work experience assignments.

(B)(i) A State that elects to establish a community work experience program under this subsection shall operate such program so that each participant (as determined by the State) either works or undergoes training (or both) with the maximum number of hours that any such individual may be required to work in any month being a number equal to the amount of the aid to families with dependent children payable with respect to the family of which such individual is a member under the State plan approved under this part, divided by the greater of the Federal minimum wage or the applicable State minimum wage (and the portion of a recipient's aid for which the State is reimbursed by a child support collection shall not be taken into account in determining the number of hours that such individual may be required to work).

(ii) After an individual has been assigned to a position in a community work experience program under this subsection for 9 months, such individual may not be required to continue in that assignment unless the maximum number of hours of participation is no greater than (I) the amount of the aid to families with dependent children payable with respect to the family of which such individual is a member under the State plan approved under this part (excluding any portion of such aid for which the State is reimbursed by a child support payment), divided by (II) the higher of (a) the Federal minimum wage or the applicable State minimum wage, whichever is greater, or (b) the rate of pay for individuals employed in the same or similar occupations by the same employer at the same site.

(C) Nothing contained in this subsection shall be construed as authorizing the payment of aid to families with dependent children as compensation for work performed, nor shall a participant be entitled to a salary or to any other work or training expense provided under any other provision of law by reason of his participation in a program under this subsection.

(D) Nothing in this part or in any State plan approved under this part shall be construed to prevent a State from operating (on such terms and conditions and in such cases as the State may find to be necessary or appropriate) a community work experience program in accordance with this subsection and subsection (d) of this section.

(E) Participants in community work experience programs under this subsection may perform work in the public interest (which otherwise meets the requirements of this subsection) for a Federal office or agency with its consent, and, notwithstanding section 1342 of title 31 or any other provision of law, such agency may accept such services, but such participants shall not be considered to be Federal employees for any purpose.

(2) After each 6 months of an individual's participation in a community work experience program under this subsection, and at the conclusion of each assignment of the individual under such program, the State agency must provide a reassessment and revision, as appropriate, of the individual's employability plan.

(3) The State agency shall provide coordination among a community work experience program operated pursuant to this subsection, any program of job search under subsection (g) of this section, and the other employment-related activities under the program established by this section so as to insure that job placement will have priority over participation in the community work experience program, and that individuals eligible to participate in more than one such program are not denied aid to families with dependent children on the grounds of failure to participate in one such program if they are actively and satisfactorily participating in another. The State agency may provide that part-time participation in more than one such program may be required where appropriate.

(4) In the case of any State that makes expenditures in the form described in paragraph (1) under its State plan approved under subsection (a)(1) of this section, expenditures for the operation and administration of the program under this section may not include, for purposes of section 603 of this title, the cost of making or acquiring materials or equipment in connection with the work performed under a program referred to in paragraph (1) or the cost of supervision of work under such program, and may include only such other costs attributable to such programs as are permitted by the Secretary.

(g) Job search program

(1) The State agency may establish and carry out a program of job search for individuals participating in the program under this part.

(2) Notwithstanding section 602(a)(19)(B)(i) of this title, the State agency may require job search by an individual applying for or receiving aid to families with dependent children (other than an individual described in section 602(a)(19)(C) of this title who is not an individual with respect to whom section 602(a)(19)(D) of this title applies)—

(A) subject to the next to last sentence of this paragraph, beginning at the time such individual applies for aid to families with dependent children and continuing for a period (prescribed by the State) of not more than 8 weeks (but this requirement may not be used as a reason for any delay in making a determination of an individual's eligibility for such aid or in issuing a payment to or on behalf of any individual who is otherwise eligible for such aid); and

(B) at such time or times after the close of the period prescribed under subparagraph (A) as the State agency may determine but not to

exceed a total of 8 weeks in any period of 12 consecutive months.

In no event may an individual be required to participate in job search for more than 3 weeks before the State agency conducts the assessment and review with respect to such individual under subsection (b)(1)(A) of this section. Job search activities in addition to those required under the preceding provisions of this paragraph may be required only in combination with some other education, training, or employment activity which is designed to improve the individual's prospects for employment.

(3) Job search by an individual under this subsection shall in no event be treated, for any purpose, as an activity under the program if the individual has participated in such job search for 4 months out of the preceding 12 months.

(h) Dispute resolution procedures

Each State shall establish a conciliation procedure for the resolution of disputes involving an individual's participation in the program and (if the dispute involved is not resolved through conciliation) shall provide an opportunity for a hearing with respect to the dispute, which hearing may be provided through a hearing process established for purposes of resolving disputes with respect to the program or through the provision of a hearing pursuant to section 602(a)(4) of this title; but in no event shall aid to families with dependent children be suspended, reduced, discontinued, or terminated as a result of a dispute involving an individual's participation in the program until such individual has an opportunity for a hearing that meets the standards set forth by the United States Supreme Court in Goldberg v. Kelly, 397 U.S. 254 (1970).

(i) Special provisions relating to Indian tribes

(1) Within 6 months after October 13, 1988, an Indian tribe or Alaska Native organization may apply to the Secretary to conduct a job opportunities and basic skills training program to carry out the purpose of this subsection. If the Secretary approves such tribe's or organization's application, the maximum amount that may be paid to the State under section 603(*l*) of this title in which such tribe or organization is located shall be reduced by the Secretary in accordance with paragraph (2) and an amount equal to the amount of such reduction shall be paid directly to such tribe or organization (without the requirement of any nonfederal share) for the operation of such program. In determining whether to approve an application from an Alaska Native organization, the Secretary shall consider whether approval of the application would promote the efficient and nonduplicative administration of job opportunities and basic skills training programs in the State.

(2) The amount of the reduction under paragraph (1) with respect to any State in which is located an Indian tribe or Alaska Native organization with an application approved under such paragraph shall be an amount equal to the amount that bears the same ratio to the maximum amount that could be paid under section 603(*l*) of this title to the State as—

(A) the number of adult Indians receiving aid to families with dependent children who reside on the reservation or within the designated service area bears to the number of all such adult recipients in the State, or

(B) the number of adult Alaska Natives receiving aid to families with dependent children who reside within the boundaries of such Alaska Native organization bears to the number of all such adult recipients in the State of Alaska.

(3) The job opportunities and basic skills training program set forth in the application of an Indian tribe or Alaska Native organization under paragraph (1) need not meet any requirement of the program under this part or under section 602(a)(19) of this title that the Secretary determines is inappropriate with respect to such job opportunities and basic skills training program.

(4) The job opportunities and basic skills training program of any Indian tribe or Alaska Native organization may be terminated voluntarily by such tribe or Alaska Native organization or may be terminated by the Secretary upon a finding that the tribe or Alaska Native organization is not conducting such program in substantial conformity with the terms of the application approved by the Secretary, and the maximum amount that may be paid under section 603(*l*) of this title to the State within which the tribe or Alaska Native organization is located (as reduced pursuant to paragraph (1)) shall be increased by any portion of the amount retained by the Secretary with respect to such program (and not payable to such tribe or Alaska Native organization for obligations already incurred). The reduction under paragraph (1) shall in no event apply to a State for any fiscal year beginning after such program is terminated if no other such program remains in operation in the State.

(5) For purposes of this subsection, an Indian tribe is any tribe, band, nation, or other organized group or community of Indians that—

(A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(B) for which a reservation (as defined in paragraph (6)) exists.

(6) For purposes of this subsection, a reservation includes Indian reservations, public domain Indian allotments, and former Indian reservations in Oklahoma.

(7) For purposes of this subsection—

(A) an Alaska Native organization is any organized group of Alaska Natives eligible to operate a Federal program under Public Law 93–638 [25 U.S.C. 450 et seq.] or such group's designee;

(B) the boundaries of an Alaska Native organization shall be those of the geographical region, established pursuant to section 1606(a) of title 43, within which the Alaska Native organization is located (without regard to the ownership of the land within the boundaries);

(C) the Secretary may approve only one application from an Alaska Native organization for each of the 12 geographical regions established pursuant to section 1606(a) of title 43; and

(D) any Alaska Native, otherwise eligible or required to participate in a job opportunities and basic skills training program, residing within the boundaries of an Alaska Native organization whose application has been approved by the Secretary, shall be eligible to participate in the job opportunities and basic skills training program administered by such Alaska Native organization.

(8) Nothing in this subsection shall be construed to grant or defer any status or powers other than those expressly granted in this subsection or to validate or invalidate any claim by Alaska Natives of sovereign authority over lands or people.

(Aug. 14, 1935, ch. 531, title IV, § 482, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2360; amended Oct. 31, 1994, Pub. L. 103–432, title II, § 241(a), 108 Stat. 4466.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsecs. (a)(1)(A), (B) and (e)(2)(A), (B), (E), (3)(C)(i), (6), is classified to section 601 et seq. of this title.

Public Law 93–638, referred to in subsec. (i)(7)(A), is Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2203, as amended, known as the Indian Self-Determination and Education Assistance Act, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

AMENDMENTS

1994—Subsec. (i)(2)(A). Pub. L. 103–432 substituted ''Indians receiving aid to families with dependent children who reside on the reservation or within the designated service area'' for ''members of such Indian tribe receiving aid to families with dependent children''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 241(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1995.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 629a, 683, 684, 685, 1396a, 1396v of this title; title 7 sections 2026, 2031; title 26 section 51.

§ 683. Coordination requirements

(a) Coordination with Job Training Partnership Act and other programs; submission of State plan to State job training coordinating council; submission to Secretary; publication of plan; report to Governor of State

(1) The Governor of each State shall assure that program activities under this part are coordinated in that State with programs operated under the Job Training Partnership Act [29 U.S.C. 1501 et seq.] and with any other relevant employment, training, and education programs available in that State. Appropriate components of the State's plan developed under section 682(a)(1) of this title which relate to job training and work preparation shall be consistent with the coordination criteria specified in the Governor's coordination and special services plan required under section 121 of the Job Training Partnership Act [29 U.S.C. 1531].

(2) The State plan so developed shall be submitted to the State job training coordinating council not less than 60 days before its submission to the Secretary, for the purpose of review and comment by the council. Concurrent with submission of the plan to the State job training coordinating council, the proposed State plan shall be published and made reasonably available to the general public through local news facilities and public announcements, in order to provide the opportunity for review and comment.

(3) The comments and recommendations of the State job training coordinating council under paragraph (2) shall be transmitted to the Governor of the State.

(b) Consultation by Secretary of Health and Human Services with Secretaries of Education and Labor

The Secretary of Health and Human Services shall consult with the Secretaries of Education and Labor on a continuing basis for the purpose of assuring the maximum coordination of education and training services in the development and implementation of the program under this part.

(c) Consultation between and among State agencies; job training, adult education, and vocational education programs

The State agency responsible for administering or supervising the administration of the State plan approved under part A of this subchapter shall consult with the State education agency and the agency responsible for administering job training programs in the State in order to promote coordination of the planning and delivery of services under the program with programs operated under the Job Training Partnership Act [29 U.S.C. 1501 et seq.] and with education programs available in the State (including any program under the Adult Education Act [20 U.S.C. 1201 et seq.] or Carl D. Perkins Vocational Education Act [20 U.S.C. 2301 et seq.]).

(Aug. 14, 1935, ch. 531, title IV, § 483, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2369.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsecs. (a)(1) and (c), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

Part A of this subchapter, referred to in subsec. (c), is classified to section 601 et seq. of this title.

The Adult Education Act, referred to in subsec. (c), is title III of Pub. L. 89–750, Nov. 3, 1966, 80 Stat. 1216, as amended, which is classified generally to chapter 30 (§ 1201 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 20 and Tables.

The Carl D. Perkins Vocational Education Act, referred to in subsec. (c), is Pub. L. 88–210, Dec. 18, 1963, 77 Stat. 403, as amended, known as the Carl D. Perkins Vocational and Applied Technology Education Act, which is classified generally to chapter 44 (§ 2301 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of Title 20 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2026.

§ 684. Provisions generally applicable to provision of services

(a) Assignment of participants; assurances by State agency

In assigning participants in the program under this part to any program activity, the State agency shall assure that—

(1) each assignment takes into account the physical capacity, skills, experience, health and safety, family responsibilities, and place of residence of the participant;

(2) no participant will be required, without his or her consent, to travel an unreasonable distance from his or her home or remain away from such home overnight;

(3) individuals are not discriminated against on the basis of race, sex, national origin, religion, age, or handicapping condition, and all participants will have such rights as are available under any applicable Federal, State, or local law prohibiting discrimination;

(4) the conditions of participation are reasonable, taking into account in each case the proficiency of the participant and the child care and other supportive services needs of the participant; and

(5) each assignment is based on available resources, the participant's circumstances, and local employment opportunities.

(b) Workers' compensation; tort claims protection; availability of benefits to participants on same basis as other similarly employed individuals in State

Appropriate workers' compensation and tort claims protection must be provided to participants on the same basis as they are provided to other individuals in the State in similar employment (as determined under regulations of the Secretary).

(c) Displacement of workers or positions; impairment of contracts for services or collective bargaining agreements; reduction of workforce; infringement of promotional opportunities; union organizing; unfilled vacancies

No work assignment under the program shall result in—

(1) the displacement of any currently employed worker or position (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits), or result in the impairment of existing contracts for services or collective bargaining agreements;

(2) the employment or assignment of a participant or the filling of a position when (A) any other individual is on layoff from the same or any equivalent position, or (B) the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the effect of filling the vacancy so created with a participant subsidized under the program; or

(3) any infringement of the promotional opportunities of any currently employed individual.

Funds available to carry out the program under this part may not be used to assist, promote, or deter union organizing. No participant may be assigned under section 682(e) or (f) of this title to fill any established unfilled position vacancy.

(d) Grievance procedures

(1) The State shall establish and maintain (pursuant to regulations jointly issued by the Secretary and the Secretary of Labor) a grievance procedure for resolving complaints by regular employees or their representatives that the work assignment of an individual under the program violates any of the prohibitions described in subsection (c) of this section. A decision of the State under such procedure may be appealed to the Secretary of Labor for investigation and such action as such Secretary may find necessary.

(2) The State shall hear complaints with respect to working conditions and workers' compensation, and wage rates in the case of individuals participating in community work experience programs described in section 682(f) of this title, under the State's fair hearing process. A decision of the State under such process may be appealed to the Secretary of Labor under such conditions as the joint regulations issued under subsection (f) of this section may provide.

(e) Covered programs and activities

The provisions of this section apply to any work-related programs and activities under this part, and under any other work-related programs and activities authorized (in connection with the AFDC program) under section 1315 of this title.

(f) Promulgation of regulations

The Secretary of Health and Human Services and the Secretary of Labor shall jointly prescribe and issue regulations for the purpose of implementing and carrying out the provisions of this section, in accordance with the timetable established in section 203(a) of the Family Support Act of 1988.

(Aug. 14, 1935, ch. 531, title IV, § 484, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2370.)

REFERENCES IN TEXT

Section 203(a) of the Family Support Act of 1988, referred to in subsec. (f), is section 203(a) of Pub. L. 100–485, which is set out as a note under section 681 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 682 of this title; title 7 section 2026.

§ 685. Contract authority

(a) Administration of programs directly, through arrangement, or under contract

The State agency that administers or supervises the administration of the State's plan approved under section 602 of this title shall carry out the programs under this part directly or through arrangements or under contracts with administrative entities under section 4(2) of the Job Training Partnership Act [29 U.S.C. 1503(2)], with State and local educational agencies, and with other public agencies or private organizations (including community-based organizations as defined in section 4(5) of such Act [29 U.S.C. 1503(5)]).

(b) Services and activities which may be covered

Arrangements and contracts entered into under subsection (a) of this section may cover any service or activity (including outreach) to be made available under the program to the extent that the service or activity is not otherwise available on a nonreimbursable basis.

(c) Development of arrangements and contracts; consultation between State agencies and private industry councils

The State agency and private industry councils (as established under section 102 of the Job Training Partnership Act [29 U.S.C. 1512]) shall consult on the development of arrangements and contracts under the program established under a plan approved under section 682(a)(1) of this title, and under programs established under such Act [29 U.S.C. 1501 et seq.].

(d) Selection of service providers; factors considered

In selecting service providers, the State agency shall take into account appropriate factors which may include past performance in providing similar services, demonstrated effectiveness, fiscal accountability, ability to meet performance standards, and such other factors as the State may determine to be appropriate.

(e) Identification of available and potentially available jobs; training to be provided

The State agency shall use the services of each private industry council to identify and provide advice on the types of jobs available or likely to become available in the service delivery area (as defined in the Job Training Partnership Act [29 U.S.C. 1501 et seq.]) of the council, and shall ensure that the State program provides training in any area for jobs of a type which are, or are likely to become, available in the area.

(Aug. 14, 1935, ch. 531, title IV, § 485, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2371.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsecs. (c) and (e), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2026.

§ 686. Initial State evaluations

(a) Demographic characteristics of potential participants; objectives

With the objective of—

(1) providing an in-depth assessment of potential participants in the program under this part in each State, so as to furnish an accurate picture on which to base estimates of future demands for services in conducting such program and to improve the efficiency of targeting under such program,

(2) assuring that training for recipients of aid under such program will be realistically geared to labor market demands and that the program will produce individuals with marketable skills, while avoiding duplication and redundancy in the delivery of services, and

(3) otherwise assuring that States will have the information needed to carry out the purposes of the program,

each State may undertake and carry out an evaluation of demographic characteristics of potential participants in the program under this part within the 12-month period beginning on October 13, 1988. Such evaluation shall be carried out in each State by the agency which administers the State's program approved under section 602 of this title.

(b) Factors considered

In carrying out the evaluation under subsection (a) of this section the State shall give particular attention to the current and anticipated demands of the labor market or markets within the State, the types of training which are needed to meet those demands, and any changes in the current service delivery systems which may be needed to satisfy the requirements of the program under this part.

(c) Information included in report

The evaluation shall be structured so as to produce accurate and usable information on the age, family status, educational and literacy levels, duration of eligibility for aid to families with dependent children, and work experience of the individuals and families who are potential participants in the program under this part, including the actual numbers of such individuals and families in each such category.

(d) Technical assistance and data for States; transmission of evaluation to Secretary; development of performance standards

The Secretary of Health and Human Services, in consultation with the Secretary of Labor, shall provide each State with such technical assistance and data as it may need in order to carry out its evaluation under subsection (a) of this section; and each State shall transmit its evaluation to the Secretary by the close of the 12-month period specified in such subsection. The Secretary of Health and Human Services shall take such evaluations into account in developing performance standards.

(e) "Potential participants" defined

As used in this section, the term ''potential participants'' with respect to any State's program under this part means collectively all individuals in such State who are recipients of aid to families with dependent children under part A of this subchapter and who are members of the target populations identified in section 603(*l*)(2) of this title.

(Aug. 14, 1935, ch. 531, title IV, § 486, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 201(b), 102 Stat. 2372.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (e), is classified to section 601 et seq. of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 687 of this title; title 7 section 2026.

§ 687. Performance standards

(a) Development of standards; recommendations; periodic review and modification

Not later than 4 years after the effective date specified in section 204(a) of the Family Support Act of 1988, the Secretary shall—

(1) in consultation with the Secretary of Labor, representatives of organizations representing Governors, State and local program administrators, educators, State job training coordinating councils, community-based organizations, recipients, and other interested persons, develop criteria for performance standards with respect to the programs established pursuant to this part that are based, in part, on the results of the studies conducted under section 203(c) of such Act, and the initial State evaluations (if any) performed under section 686 of this title; and

(2) submit his recommendations with respect to performance standards developed under paragraph (1) to the appropriate committees of jurisdiction of the Congress, which recommendations shall be made with respect to specific measurements of outcomes and be based on the degree of success which may reasonably be expected of States in helping individuals to increase earnings, achieve self-sufficiency, and reduce welfare dependency, and shall not be measured solely by levels of activity or participation.

Performance standards developed with respect to the program under this part shall be reviewed periodically by the Secretary and modified to the extent necessary.

(b) Collection of information; uniform reporting requirements

The Secretary may collect information from the States to assist in the development of performance standards under subsection (a) of this section, and shall include in his regulations (issued pursuant to section 203(a) of the Family Support Act of 1988 with respect to the program under this part) provisions establishing uniform reporting requirements under which States must furnish periodically information and data, including information and data (for each program activity) on the average monthly number of families assisted, the types of such families, the amounts spent per family, the length of their participation, and such other matters as the Secretary may determine.

(c) Proposal to Congress for measuring State progress, provision of technical assistance, and modification of Federal matching rates

The Secretary shall develop and transmit to the Congress, for appropriate legislative action, a proposal for measuring State progress, providing technical assistance to enable States to meet performance standards, and modifying the Federal matching rate to reflect the relative effectiveness of the various States in carrying out the program.

(Aug. 14, 1935, ch. 531, title IV, § 487, as added Oct. 13, 1988, Pub. L. 100–485, title II, § 203(b), 102 Stat. 2378; amended Oct. 31, 1994, Pub. L. 103–432, title II, § 242, 108 Stat. 4466.)

REFERENCES IN TEXT

Sections 203(a), (c) and 204(a) of the Family Support Act of 1988, referred to in subsecs. (a) and (b), are sections 203(a), (c) and 204(a) of Pub. L. 100–485, which are set out as notes under section 681 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–432, § 242(1), substituted ''4'' for ''3'' in introductory provisions and ''with respect to the program under this part'' for ''under this subsection'' in closing provisions.

Subsec. (a)(1). Pub. L. 103–432, § 242(2), substituted ''develop criteria for performance standards'' for ''develop performance standards''.

Subsec. (a)(2). Pub. L. 103–432, § 242(3), substituted ''recommendations with respect to performance standards'' for ''recommendations for performance standards''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2026.

SUBCHAPTER V—MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT

AMENDMENTS

1981—Pub. L. 97–35, title XXI, § 2192(a), Aug. 13, 1981, 95 Stat. 818, substituted ''MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT'' for ''MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES'' as the heading of title V of the Social Security Act [this subchapter] as part of the general revision of this subchapter.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 247b–1, 280c–6, 300w–3, 300z–5, 671, 1301, 1320a–3, 1320a–7, 1320a–7a, 1382d, 1396a, 1396b, 1396n, 1396r–1, 1396r–4, 1397d, 8623 of this title; title 7 section 3178; title 8 section 1255a; title 20 sections 1413, 1481; title 29 section 2231.

§ 701. Authorization of appropriations; purposes; definitions

(a) To improve the health of all mothers and children consistent with the applicable health status goals and national health objectives established by the Secretary under the Public Health Service Act [42 U.S.C. 201 et seq.] for the year 2000, there are authorized to be appropriated $705,000,000 for fiscal year 1994 and each fiscal year thereafter—

(1) for the purpose of enabling each State—

(A) to provide and to assure mothers and children (in particular those with low income or with limited availability of health services) access to quality maternal and child health services;

(B) to reduce infant mortality and the incidence of preventable diseases and handicapping conditions among children, to reduce the need for inpatient and long-term care services, to increase the number of children (especially preschool children) appropriately immunized against disease and the number of low income children receiving health assessments and follow-up diagnostic and treatment services, and otherwise to promote the health of mothers and infants by providing prenatal, delivery, and postpartum care for low income, at-risk pregnant women, and to promote the health of children by providing preventive and primary care services for low income children;

(C) to provide rehabilitation services for blind and disabled individuals under the age

of 16 receiving benefits under subchapter XVI of this chapter, to the extent medical assistance for such services is not provided under subchapter XIX of this chapter; and

(D) to provide and to promote family-centered, community-based, coordinated care (including care coordination services, as defined in subsection (b)(3) of this section) for children with special health care needs and to facilitate the development of community-based systems of services for such children and their families;

(2) for the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for special projects of regional and national significance, research, and training with respect to maternal and child health and children with special health care needs (including early intervention training and services development), for genetic disease testing, counseling, and information development and dissemination programs, for grants (including funding for comprehensive hemophilia diagnostic treatment centers) relating to hemophilia without regard to age, and for the screening of newborns for sickle cell anemia, and other genetic disorders and follow-up services; and

(3) subject to section 702(b) of this title for the purpose of enabling the Secretary (through grants, contracts, or otherwise) to provide for developing and expanding the following—

(A) maternal and infant health home visiting programs in which case management services as defined in subparagraphs (A) and (B) of subsection (b)(4) of this section, health education services, and related social support services are provided in the home to pregnant women or families with an infant up to the age one by an appropriate health professional or by a qualified nonprofessional acting under the supervision of a health care professional,

(B) projects designed to increase the participation of obstetricians and pediatricians under the program under this subchapter and under state[1] plans approved under subchapter XIX of this chapter,

(C) integrated maternal and child health service delivery systems (of the type described in section 1320b–6 of this title and using, once developed, the model application form developed under section 6506(a) of the Omnibus Budget Reconciliation Act of 1989),

(D) maternal and child health centers which (i) provide prenatal, delivery, and postpartum care for pregnant women and preventive and primary care services for infants up to age one, and (ii) operate under the direction of a not-for-profit hospital,

(E) maternal and child health projects to serve rural populations, and

(F) outpatient and community based services programs (including day care services) for children with special health care needs whose medical services are provided primarily through inpatient institutional care.

[1] So in original. Probably should be capitalized.

(b) For purposes of this subchapter:

(1) The term ''consolidated health programs'' means the programs administered under the provisions of—

(A) this subchapter (relating to maternal and child health and services for children with special health care needs),

(B) section 1382d(c) of this title (relating to supplemental security income for disabled children),

(C) sections 247a of this title (relating to lead-based paint poisoning prevention programs), 300b of this title (relating to genetic disease programs), 300c–11 of this title (relating to sudden infant death syndrome programs) and 300c–21 of this title (relating to hemophilia treatment centers), and

(D) title VI of the Health Services and Centers Amendments of 1978 (Public Law 95–626; relating to adolescent pregnancy grants),

as such provisions were in effect before August 13, 1981.

(2) The term ''low income'' means, with respect to an individual or family, such an individual or family with an income determined to be below the income official poverty line defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title.

(3) The term ''care coordination services'' means services to promote the effective and efficient organization and utilization of resources to assure access to necessary comprehensive services for children with special health care needs and their families.

(4) The term ''case management services'' means—

(A) with respect to pregnant women, services to assure access to quality prenatal, delivery, and postpartum care; and

(B) with respect to infants up to age one, services to assure access to quality preventive and primary care services.

(Aug. 14, 1935, ch. 531, title V, § 501, as added Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2192(a), 95 Stat. 818; amended Sept. 3, 1982, Pub. L. 97–248, title I, § 137(b)(1), (2), 96 Stat. 376; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2372(a), 98 Stat. 1110; Apr. 7, 1986, Pub. L. 99–272, title IX, § 9527(a)–(c), 100 Stat. 219; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9441(a), 100 Stat. 2071; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4118(p)(8), 101 Stat. 1330–159; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6501(a), 103 Stat. 2273; Oct. 31, 1994, Pub. L. 103–432, title II, § 201, 108 Stat. 4453.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (a), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Section 6506(a) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (a)(3)(C), is section 6506(a) of Pub. L. 101–239 which is set out below.

Sections 247a, 300b, 300c–11, and 300c–21 of this title, referred to in subsec. (b)(1)(C), were repealed by Pub. L. 97–35, § 2193(b)(1), Aug. 13, 1981, 95 Stat. 827. See Effective Date, Savings, and Transitional Provisions note set out below.

The Health Services and Centers Amendments of 1978, referred to in subsec. (b)(1)(D), is Pub. L. 95–626, Nov. 10, 1978, 92 Stat. 3551. Title VI of the Health Services and Centers Amendments of 1978 was classified generally to part A (§ 300a–21 et seq.) of subchapter VIII–A of this chapter prior to its repeal by Pub. L. 97–35, title IX, § 955(b), title XXI, § 2193(f), Aug. 13, 1981, 95 Stat. 592, 828. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 201 of this title and Tables.

PRIOR PROVISIONS

A prior section 701, act Aug. 14, 1935, ch. 531, title V, § 501, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 921; amended Aug. 1, 1977, Pub. L. 95–83, title III, § 309(a), 91 Stat. 396; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(3), 95 Stat. 827, provided for authorization of appropriations, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out below.

Another prior section 701, acts Aug. 14, 1935, ch. 531, title V, § 501, 49 Stat. 629; Aug. 10, 1939, ch. 666, title V, § 501, 53 Stat. 1380; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, § 401(b)(1), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, § 331(a), pt. 6, § 361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub. L. 85–840, title VI, § 602(a), 72 Stat. 1054; Sept. 13, 1960, Pub. L. 86–778, title VII, § 707(a)(1)(A), 74 Stat. 995; Oct. 24, 1963, Pub. L. 88–156, § 2(a), 77 Stat. 273; July 30, 1965, Pub. L. 89–97, title II, § 201(a), 79 Stat. 353, authorized appropriations, for maternal and child health services, of $25,000,000; $30,000,000; $35,000,000; $45,000,000; $50,000,000; $55,000,000; $55,000,000; and $60,000,000 for fiscal years ending June 30, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970 and each fiscal year thereafter, respectively, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301.

Provisions similar to those comprising former section 701 were contained in section 511 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 631, as amended (formerly classified to section 711 of this title, and sections 531(a), 532(a), and 533(a) (formerly 532(a)) of act Aug. 14, 1935, ch. 531, title V, as added Oct. 24, 1963, Pub. L. 88–156, § 4, 77 Stat. 274; amended July 30, 1965, Pub. L. 89–97, title II, § 205(3), 79 Stat. 354; Oct. 24, 1963, Pub. L. 88–156, § 4, 77 Stat. 274; renumbered July 30, 1965, Pub. L. 89–97, title II, § 205(2), 79 Stat. 354 (formerly classified to sections 729(a), 729–1(a), and 729a(a) of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–432 substituted ''$705,000,000 for fiscal year 1994'' for ''$686,000,000 for fiscal year 1990'' in introductory provisions.

1989—Subsec. (a). Pub. L. 101–239, § 6501(a)(1), amended subsec. (a) generally, substituting pars. (1) to (3) for former pars. (1) to (4) and concluding provisions.

Subsec. (b)(3), (4). Pub. L. 101–239, § 6501(a)(2), added pars. (3) and (4).

1987—Subsec. (b)(2). Pub. L. 100–203 struck out ''nonform'' after ''below the''.

1986—Subsec. (a). Pub. L. 99–509 substituted ''$553,000,000 for fiscal year 1987, $557,000,000 for fiscal year 1988, and $561,000,000 for fiscal year 1989'' for ''$478,000,000 for fiscal year 1984'' in concluding provisions.

Pub. L. 99–272, § 9527(b), substituted ''children with special health care needs'' for ''crippled children'' in concluding provisions.

Subsec. (a)(4). Pub. L. 99–272, § 9527(a), substituted ''children who are 'children with special health care needs' or who are suffering from conditions leading to such status'' for ''children who are crippled or who are suffering from conditions leading to crippling''.

Subsec. (b)(1)(A). Pub. L. 99–272, § 9527(c), substituted ''services for children with special health care needs'' for ''crippled children's services''.

1984—Subsec. (a). Pub. L. 98–369 substituted ''$478,000,000 for fiscal year 1984 and each fiscal year thereafter'' for ''$373,000,000 for fiscal year 1982 and for each fiscal year thereafter''.

1982—Subsec. (b)(1)(D). Pub. L. 97–248, § 137(b)(1), substituted ''title VI'' for ''title IV''.

Subsec. (b)(2). Pub. L. 97–248, § 137(b)(2), substituted ''section 9902(2)'' for ''section 2971d''.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6510 of Pub. L. 101–239 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle C (§§ 6501–6510) of title VI of Pub. L. 101–239, amending this section and sections 702 to 706, 708, and 709 of this title] shall apply to appropriations for fiscal years beginning with fiscal year 1990.

''(b) APPLICATION AND REPORT.—The amendments made—

''(1) by subsections (b) and (c) of section 6503 [amending sections 702, 704 to 706, and 709 of this title] shall apply to payments for allotments for fiscal years beginning with fiscal year 1991, and

''(2) by section 6504 [amending section 706 of this title] shall apply to annual reports for fiscal years beginning with fiscal year 1991.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2372(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective for fiscal years beginning on or after October 1, 1983.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE, SAVINGS, AND TRANSITIONAL PROVISIONS

Section 2194 of Pub. L. 97–35 provided that:

''(a) Except as otherwise provided in this section, the amendments made by sections 2192 [enacting this subchapter and enacting provisions set out as a note under section 706 of this title] and 2193 [amending this section and sections 247a, 300a–27, 300b, 300c–11, and 300c–21 of this title with respect to fiscal year ending Sept. 30, 1982, amending sections 300b–3, 300b–6, 1301, 1308, 1320a–1, 1320a–8, 1320b–2, 1320b–4, 1320c–21, 1382d, 1395b–1, 1395x, and 1396a of this title, repealing sections 236, 247a, 300a–21 to 300a–28, 300a–41, 300b, 300b–5, 300c–11, and 300c–21 of this title, enacting provisions set out as a note under section 1382d of this title, and amending provisions set out as notes under sections 1320a–8 and 1395b–1 of this title] of this subtitle do not apply to any grant made, or contract entered into, or amounts payable to States under State plans before the earlier of—

''(1) October 1, 1982, or

''(2)(A) in the case of such grants, contracts, or payments under consolidated State programs (as defined in subsection (c)(2)(C)) to a State (or entities in the State), the date the State is first entitled to an allotment under title V of the Social Security Act [this subchapter] (as amended by this subtitle), or

''(B) in the case of grants and contracts under consolidated Federal programs (as defined in subsection (c)(2)(B)), October 1, 1981, or such later date (before October 1, 1982) as the Secretary determines to be appropriate.

''(b)(1) The Secretary of Health and Human Services (hereinafter in this section referred to as the 'Secretary') may not provide for any allotment to a State under title V of the Social Security Act [this subchapter] (as amended by this subtitle) for a calendar quarter in fiscal year 1982 unless the State has notified the Secretary, at least 30 days (or 15 days in the case of the first calendar quarter of the fiscal year) before

the beginning of the calendar quarter, that the State requests an allotment for that calendar quarter (and subsequent calendar quarters).

''(2)(A) Any grants or contracts entered into under the authorities of the consolidated State programs (as defined in subsection (c)(2)(C)) after the date of the enactment of this subtitle [Aug. 13, 1981] shall permit the termination of such grant or contract upon three months notice by the State in which the grantee or contractor is located.

''(B) The Secretary shall not make or renew any grants or contracts under the provisions of the consolidated State programs (as defined in subsection (c)(2)(C)) to a State (or an entity in the State) after the date the State becomes entitled to an allotment of funds under title V of the Social Security Act [this subchapter] (as amended by this subtitle).

''(3)(A) In the case of funds appropriated for fiscal year 1982 for consolidated health programs (as defined in subsection (c)(2)(A)), such funds shall (notwithstanding any other provision of law) be available for use under title V of the Social Security Act (as amended by this subtitle) [this subchapter], subject to subparagraphs (B) and (C).

''(B) Notwithstanding any other provision of law—

''(i) the amount that may be made available for expenditures for the consolidated Federal programs for fiscal year 1982 and for projects and programs under section 502(a) of the Social Security Act [section 702(a) of this title] (as amended by this subtitle) may not exceed the amount provided for projects and programs under such section 502(a) for that fiscal year, and

''(ii) the amount that may be made available to a State (or entities in the State) for carrying out the consolidated State programs for fiscal year 1982 and for allotments to the State under section 502(b) of the Social Security Act [section 702(b) of this title] (as amended by this subtitle) may not exceed the amount which is allotted to the State for that fiscal year under such section (without regard to paragraphs (3) and (4) thereof).

''(C) For fiscal year 1982, the Secretary shall reduce the amount which would otherwise be available—

''(i) for expenditures by the Secretary under section 502(a) of the Social Security Act [section 702(a) of this title] (as amended by this subtitle) by the amounts which the Secretary determines or estimates are payable for consolidated Federal programs (as defined in subsection (c)(2)(B)) from funds for fiscal year 1982, and

''(ii) for allotment to each of the States under section 502(b) of such Act [section 702(b) of this title] (as so amended) by the amounts which the Secretary determines or estimates are payable to that State (or entities in the State) under the consolidated State programs (as defined in subsection (c)(2)(C)) from funds for fiscal year 1982.

''(c) For purposes of this section:

''(1) The term 'State' has the meaning given such term for purposes of title V of the Social Security Act [this subchapter].

''(2)(A) The term 'consolidated health programs' has the meaning given such term in section 501(b) of the Social Security Act [subsec. (b) of this section] (as amended by this subtitle).

''(B) The term 'consolidated Federal programs' means the consolidated health programs—

''(i) of special projects grants under sections 503 and 504 [sections 703 and 704 of this title], and training grants under section 511 [section 711 of this title], of the Social Security Act,

''(ii) of grants and contracts for genetic disease projects and programs under section 1101 of the Public Health Service Act [section 300b of this title], and

''(iii) of grants or contracts for comprehensive hemophilia diagnostic and treatment centers under section 1131 of the Public Health Service Act [section 300c–21 of this title],

as such sections are in effect before the date of the enactment of this subtitle [Aug. 13, 1981].

''(C) The term 'consolidated State programs' means the consolidated health programs, other than the consolidated Federal programs.

''(d) The provisions of chapter 2 of subtitle C of title XVII of this Act [sections 1741–1745 of Pub. L. 97–35, which were repealed and reenacted as section 7301–7305 of Title 31, Money and Finance, by Pub. L. 97–258, Sept. 13, 1982, 96 Stat. 877] shall not apply to this subtitle (or the programs under the amendments made by this title [probably should be subtitle]) and, specifically, section 1745 of this Act [set out as a note under section 1243 of Title 31] shall not apply to financial and compliance audits conducted under section 506(b) of the Social Security Act [section 706(b) of this title] (as amended by this subtitle).''

DEVELOPMENT OF MODEL APPLICATIONS FOR MATERNAL AND CHILD ASSISTANCE PROGRAMS

Section 6506(a) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall develop, by not later than one year after the date of the enactment of this Act [Dec. 19, 1989] and in consultation with the Secretary of Agriculture, a model application form for use in applying, simultaneously, for assistance for a pregnant woman or a child less than 6 years of age under maternal and child assistance programs (as defined in paragraph (3)). In developing such form, the Secretary is not authorized to change any requirement with respect to eligibility under any maternal and child assistance program.

''(2) DISSEMINATION OF MODEL FORM.—The Secretary shall provide for publication in the Federal Register of the model application form developed under paragraph (1) and shall send a copy of such form to each State agency responsible for administering a maternal and child assistance program.

''(3) MATERNAL AND CHILD ASSISTANCE PROGRAM DEFINED.—In this subsection, the term 'maternal and child assistance program' means any of the following programs:

''(A) The maternal and child health services block grant program under title V of the Social Security Act [this subchapter].

''(B) The medicaid program under title XIX of the Social Security Act [subchapter XIX of this chapter].

''(C) The migrant and community health centers programs under sections 329 and 330 of the Public Health Service Act [sections 254b and 254c of this title].

''(D) The grant program for the homeless under section 340 of the Public Health Service Act [section 256 of this title].

''(E) The 'WIC' program under section 17 of the Child Nutrition Act of 1966 [section 1786 of this title].

''(F) The head start program under the Head Start Act [section 9831 et seq. of this title].''

RESEARCH ON INFANT MORTALITY AND MEDICAID SERVICES

Section 6507 of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall develop a national data system for linking, for any infant up to age one—

''(1) the infant's birth record,

''(2) any death record for the infant, and

''(3) information on any claims submitted under title XIX of the Social Security Act [subchapter XIX of this chapter] for health care furnished to the infant or with respect to the birth of the infant.''

DEMONSTRATION PROJECT ON HEALTH INSURANCE FOR MEDICALLY UNINSURABLE CHILDREN

Section 6508 of Pub. L. 101–239 authorized Secretary of Health and Human Services to conduct not more than 4 demonstration projects to provide health insurance coverage through eligible plans to medically uninsur-

able children under 19 years of age, further provided for definition of eligible plan, requirements for demonstration projects, including guarantee of insurance coverage for at least two years, provision of non-Federal funds, as well as further restrictions on insurance plans, and further provided for applications for projects, evaluation of projects by Secretary and report to Congress, and authorization of appropriations for each of fiscal years 1991, 1992, and 1993.

MATERNAL AND CHILD HEALTH HANDBOOK

Section 6509 of Pub. L. 101–239 provided that:

''(a) IN GENERAL.—

''(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a maternal and child health handbook in consultation with the National Commission to Prevent Infant Mortality and public and private organizations interested in the health and welfare of mothers and children.

''(2) FIELD TESTING AND EVALUATION.—The Secretary shall complete publication of the handbook for field testing by July 1, 1990, and shall complete field testing and evaluation by June 1, 1991.

''(3) AVAILABILITY AND DISTRIBUTION.—The Secretary shall make the handbook available to pregnant women and families with young children, and shall provide copies of the handbook to maternal and child health programs (including maternal and child health clinics supported through either title V or title XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter], community and migrant health centers under sections 329 and 330 of the Public Health Service Act [sections 254b and 254c of this title], the grant program for the homeless under section 340 of the Public Health Service Act [section 256 of this title], the 'WIC' program under section 17 of the Child Nutrition Act of 1966 [section 1786 of this title], and the head start program under the Head Start Act [section 9831 et seq. of this title]) that serve high-risk women. The Secretary shall coordinate the distribution of the handbook with State maternal and child health departments, State and local public health clinics, private providers of obstetric and pediatric care, and community groups where applicable. The Secretary shall make efforts to involve private entities in the distribution of the handbook under this paragraph.

''(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $1,000,000 for each of fiscal years 1991, 1992, and 1993, for carrying out the purposes of this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 256b, 702, 705, 706, 709 of this title.

§ 702. Allotment to States and Federal set-aside

(a) Special projects

(1) Of the amounts appropriated under section 701(a) of this title for a fiscal year that are not in excess of $600,000,000, the Secretary shall retain an amount equal to 15 percent for the purpose of carrying out activities described in section 701(a)(2) of this title. The authority of the Secretary to enter into any contracts under this subchapter is effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

(2) For purposes of paragraph (1)—

(A) amounts retained by the Secretary for training shall be used to make grants to public or nonprofit private institutions of higher learning for training personnel for health care and related services for mothers and children; and

(B) amounts retained by the Secretary for research shall be used to make grants to, contracts with, or jointly financed cooperative agreements with, public or nonprofit institutions of higher learning and public or nonprofit private agencies and organizations engaged in research or in maternal and child health or programs for children with special health care needs for research projects relating to maternal and child health services or services for children with special health care needs which show promise of substantial contribution to the advancement thereof.

(3) No funds may be made available by the Secretary under this subsection or subsection (b) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, be submitted in such manner, and contain and be accompanied by such information as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under this subchapter.

(b) Excess funds; preference

(1)(A) Of the amounts appropriated under section 701(a) of this title for a fiscal year in excess of $600,000,000 the Secretary shall retain an amount equal to 12¾ percent thereof for the projects described in subparagraphs (A) through (F) of section 701(a)(3) of this title.

(B) Any amount appropriated under section 701(a) of this title for a fiscal year in excess of $600,000,000 that remains after the Secretary has retained the applicable amount (if any) under subparagraph (A) shall be retained by the Secretary in accordance with subsection (a) of this section and allocated to the States in accordance with subsection (c) of this section.

(2)(A) Of the amounts retained for the purpose of carrying out activities described in section 701(a)(3)(A), (B), (C), (D) and (E) of this title, the Secretary shall provide preference to qualified applicants which demonstrate that the activities to be carried out with such amounts shall be in areas with a high infant mortality rate (relative to the average infant mortality rate in the United States or in the State in which the area is located).

(B) In carrying out activities described in section 701(a)(3)(D) of this title, the Secretary shall not provide for developing or expanding a maternal and child health center unless the Secretary has received satisfactory assurances that there will be applied, towards the costs of such development or expansion, non-Federal funds in an amount at least equal to the amount of funds provided under this subchapter toward such development or expansion.

(c) Allotments to States

From the remaining amounts appropriated under section 701(a) of this title for any fiscal year that are not in excess of $600,000,000, the Secretary shall allot to each State which has transmitted an application for the fiscal year under section 705(a) of this title, an amount determined as follows:

(1) The Secretary shall determine, for each State—

(A)(i) the amount provided or allotted by the Secretary to the State and to entities in the State under the provisions of the consolidated health programs (as defined in section 701(b)(1) of this title), other than for any of the projects or programs described in subsection (a) of this section, from appropriations for fiscal year 1981,

(ii) the proportion that such amount for that State bears to the total of such amounts for all the States, and

(B)(i) the number of low income children in the State, and

(ii) the proportion that such number of children for that State bears to the total of such numbers of children for all the States.

(2) Each such State shall be allotted for each fiscal year an amount equal to the sum of—

(A) the amount of the allotment to the State under this subsection in fiscal year 1983, and

(B) the State's proportion (determined under paragraph (1)(B)(ii)) of the amount by which the allotment available under this subsection for all the States for that fiscal year exceeds the amount that was available under this subsection for allotment for all the States for fiscal year 1983.

(d) Re-allotment of unallotted funds

(1) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 705(a) of this title for the fiscal year or because some States have indicated in their descriptions of activities under section 705(a) of this title that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

(2) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States because some State allotments are offset under section 706(b)(2) of this title, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this paragraph.

(Aug. 14, 1935, ch. 531, title V, § 502, as added Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2192(a), 95 Stat. 819; amended Apr. 7, 1986, Pub. L. 99–272, title IX, § 9527(d), 100 Stat. 219; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9441(b), 100 Stat. 2071; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6502(a), 6503(c)(1), (4), 103 Stat. 2275, 2278.)

PRIOR PROVISIONS

A prior section 702, act Aug. 14, 1935, ch. 531, title V, § 502, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 921; amended July 10, 1972, Pub. L. 92–345, § 1, 86 Stat. 456; July 1, 1973, Pub. L. 93–53, § 4(a)(1), (2), 87 Stat. 135, prescribed purposes for which funds were available, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Another prior section 702, acts Aug. 14, 1935, ch. 531, title V, § 502, 49 Stat. 629; Aug. 10, 1939, ch. 666, title V, § 502, 53 Stat. 1380; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, § 401(b)(2), (3), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, § 331(b), pt. 6, § 361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub. L. 85–840, title VI, § 602(b), (c), 72 Stat. 1055; Sept. 13, 1960, Pub. L. 86–778, title VII, § 707(a)(1)(B), (C), (b)(1)(A), 74 Stat. 995, 996; Oct. 24, 1963, Pub. L. 88–156, § 2(b), (c), 77 Stat. 273, provided for allotment to States for maternal and child health services, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 703 of this title.

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–239, § 6502(a)(1), amended first sentence generally. Prior to amendment, first sentence read as follows: ''Of the amounts appropriated under section 701(a) of this title for a fiscal year that are not in excess of $478,000,000, the Secretary shall retain an amount equal to 15 percent thereof in the case of fiscal year 1982, and an amount equal to not less than 10, nor more than 15, percent thereof in the case of each fiscal year thereafter, for the purpose of carrying out (through grants, contracts, or otherwise) special projects of regional and national significance, training, and research and for the funding of genetic disease testing, counseling, and information development and dissemination programs and of comprehensive hemophilia diagnostic and treatment centers.''

Subsec. (a)(3). Pub. L. 101–239, § 6502(a)(2), inserted ''or subsection (b) of this section'' after ''this subsection''.

Subsec. (b). Pub. L. 101–239, § 6502(a)(3), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 101–239, § 6503(c)(4), which directed amendment of subsec. (b) by substituting ''705(a)'' for ''705'', was executed to subsec. (c) to reflect the probable intent of Congress and the intervening redesignation of former subsec. (b) as (c) by Pub. L. 101–239, § 6502(a)(3), see below.

Pub. L. 101–239, § 6503(c)(1), substituted ''an application'' for ''a description of intended activities and statement of assurances'' in introductory provisions.

Pub. L. 101–239, § 6502(a)(4)(A), substituted ''$600,000,000'' for ''$478,000,000'' in introductory provisions.

Pub. L. 101–239, § 6502(a)(3), redesignated subsec. (b) as (c) and struck out former subsec. (c) which related to special projects for children.

Subsec. (c)(2). Pub. L. 101–239, § 6502(a)(4)(B), amended par. (2) generally, substituting provisions basing each State's allotment for each fiscal year upon 1983 amounts for former provisions setting forth formulas for allotments for fiscal years 1982 and 1983 and for each year beginning with fiscal year 1984.

Subsec. (d)(1). Pub. L. 101–239, § 6503(c)(4), substituted ''705(a)'' for ''705'' in two places.

1986—Subsec. (a)(1). Pub. L. 99–509, § 9441(b)(1), substituted ''amounts appropriated under section 701(a) of this title for a fiscal year that are not in excess of $478,000,000'' for ''amount appropriated under section 701(a) of this title''.

Subsec. (a)(2)(B). Pub. L. 99–272 substituted ''programs for children with special health care needs'' for ''crippled children's programs'' and ''services for children with special health care needs'' for ''crippled children's services''.

Subsec. (b). Pub. L. 99–509, § 9441(b)(2), inserted ''that are not in excess of $478,000,000'' in introductory provisions and struck out par. (3) which read as follows:

''(A) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 705 of this title for the fiscal year or because some States have indicated in their descriptions of activities under section 705 of this title that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to

the amount otherwise allotted to such States for the fiscal year without regard to this subparagraph.

''(B) To the extent that all the funds appropriated under this subchapter for a fiscal year are not otherwise allotted to States because some State allotments are offset under section 706(b)(2) of this title, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subparagraph.''

Subsecs. (c), (d). Pub. L. 99–509, § 9441(b)(3), added subsecs. (c) and (d).

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6502(a) of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, and amendment by section 6503(c)(1), (4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300b–6, 701, 703, 704, 706, 708, 709 of this title.

§ 703. Payments to States

(a) Statutory provisions applicable

From the sums appropriated therefor and the allotments available under section 702(c) of this title, the Secretary shall make payments as provided by section 6503(a) of title 31 to each State provided such an allotment under section 702(c) of this title, for each quarter, of an amount equal to four-sevenths of the total of the sums expended by the State during such quarter in carrying out the provisions of this subchapter.

(b) Unobligated allotments

Any amount payable to a State under this subchapter from allotments for a fiscal year which remains unobligated at the end of such year shall remain available to such State for obligation during the next fiscal year. No payment may be made to a State under this subchapter from allotments for a fiscal year for expenditures made after the following fiscal year.

(c) Reduction of payments; fair market value of supplies or equipment, value of salaries, travel expenses, etc.

The Secretary, at the request of a State, may reduce the amount of payments under subsection (a) of this section by—

(1) the fair market value of any supplies or equipment furnished the State, and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the State and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of supplies or equipment or the detail of an officer or employee is for the convenience of and at the request of the State and for the purpose of conducting activities described in section 705(a) of this title on a temporary basis. The amount by which any payment is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which the reduction of the payment is based, and the amount shall be deemed to be part of the payment and shall be deemed to have been paid to the State.

(Aug. 14, 1935, ch. 531, title V, § 503, as added Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2192(a), 95 Stat. 821; amended July 18, 1984, Pub. L. 98–369, div. B, title III, § 2373(a)(1), 98 Stat. 1111; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6502(b), 6503(c)(4), 103 Stat. 2276, 2278.)

PRIOR PROVISIONS

A prior section 703, act Aug. 14, 1935, ch. 531, title V, § 503, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 922, related to allotments to States for maternal and child health services, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. See section 702 of this title. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Another prior section 703, acts Aug. 14, 1935, ch. 531, title V, § 503, 49 Stat. 630; Aug. 10, 1939, ch. 666, title V, § 503, 53 Stat. 1380; 1946 Reorg. Plan No. 2, §§ 1, 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809 title III, pt. 6, § 361(e), 64 Stat. 558; July 30, 1965, Pub. L. 89–97, title II, § 204(a), 79 Stat. 354, related to contents of State plans for maternal and child health services and their approval by the Administrator, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 705 of this title.

Provisions similar to those comprising former section 703 were contained in section 502 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 629, as amended (formerly classified to section 702 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 6502(b), substituted ''702(c)'' for ''702(b)'' in two places.

Subsec. (c). Pub. L. 101–239, § 6503(c)(4), substituted ''705(a)'' for ''705'' in penultimate sentence.

1984—Subsec. (a). Pub. L. 98–369 substituted ''section 6503(a) of title 31'' for ''section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6502(b) of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, and amendment by section 6503(c)(4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 704, 705 of this title.

§ 703a. Omitted

CODIFICATION

Section, Pub. L. 90–132, title II, Nov. 8, 1967, 81 Stat. 404, which provided for approval by Secretary of any State plan which provided standards for professional obstetrical services in accordance with the laws of the State, was not repeated in the Department of Health, Education, and Welfare Appropriation Act, 1969. Similar provisions were contained in the following prior appropriation acts:

Nov. 7, 1966, Pub. L. 87–787, title II, 80 Stat. 1397.
Aug. 31, 1965, Pub. L. 89–156, title II, 79 Stat. 605.
Sept. 19, 1964, Pub. L. 88–605, title II, 78 Stat. 976.
Oct. 11, 1963, Pub. L. 88–136, title II, 77 Stat. 240.
Aug. 14, 1962, Pub. L. 87–582, title II, 76 Stat. 376.
Sept. 22, 1961, Pub. L. 87–290, title II, 75 Stat. 605.
Sept. 2, 1960, Pub. L. 86–703, title II, 74 Stat. 770.

Aug. 14, 1959, Pub. L. 86–158, title II, 73 Stat. 353.
Aug. 1, 1958, Pub. L. 85–580, title II, 72 Stat. 472.
June 29, 1957, Pub. L. 85–67, title II, 71 Stat. 222.
June 29, 1956, ch. 477, title II, 70 Stat. 434.
Aug. 1, 1955, ch. 437, title II, 69 Stat. 408.
July 2, 1954, ch. 457, title II, 68 Stat. 444.
July 31, 1953, ch. 296, title II, 67 Stat. 255.
July 5, 1952, ch. 575, title II, 66 Stat. 368.
Aug. 31, 1951, ch. 373, title II, 65 Stat. 219.
Sept. 6, 1950, ch. 896, ch. V, title II, 64 Stat. 653.
June 29, 1949, ch. 275, title II, 63 Stat. 284.
June 16, 1948, ch. 472, title I, 62 Stat. 447.
July 8, 1947, ch. 210, title II, 61 Stat. 273.
July 26, 1946, title I, 60 Stat. 681.
July 3, 1945, ch. 263, title I, 59 Stat. 363.

§ 704. Use of allotment funds

(a) Covered services

Except as otherwise provided under this section, a State may use amounts paid to it under section 703 of this title for the provision of health services and related activities (including planning, administration, education, and evaluation and including payment of salaries and other related expenses of National Health Service Corps personnel) consistent with its application transmitted under section 705(a) of this title.

(b) Restrictions

Amounts described in subsection (a) of this section may not be used for—

(1) inpatient services, other than inpatient services provided to children with special health care needs or to high-risk pregnant women and infants and such other inpatient services as the Secretary may approve;

(2) cash payments to intended recipients of health services;

(3) the purchase or improvement of land, the purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility, or the purchase of major medical equipment;

(4) satisfying any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds;

(5) providing funds for research or training to any entity other than a public or nonprofit private entity; or

(6) payment for any item or service (other than an emergency item or service) furnished—

(A) by an individual or entity during the period when such individual or entity is excluded under this subchapter or subchapter XVIII, XIX, or XX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title, or

(B) at the medical direction or on the prescription of a physician during the period when the physician is excluded under this subchapter or subchapter XVIII, XIX, or XX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).

The Secretary may waive the limitation contained in paragraph (3) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this subchapter.

(c) Use of portion of funds

A State may use a portion of the amounts described in subsection (a) of this section for the purpose of purchasing technical assistance from public or private entities if the State determines that such assistance is required in developing, implementing, and administering programs funded under this subchapter.

(d) Limitation on use of funds for administrative costs

Of the amounts paid to a State under section 703 of this title from an allotment for a fiscal year under section 702(c) of this title, not more than 10 percent may be used for administering the funds paid under such section.

(Aug. 14, 1935, ch. 531, title V, § 504, as added Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2192(a), 95 Stat. 821; amended Apr. 7, 1986, Pub. L. 99–272, title IX, § 9527(e), 100 Stat. 219; Aug. 18, 1987, Pub. L. 100–93, § 8(a), 101 Stat. 692; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4118(e)(12), as added July 1, 1988, Pub. L. 100–360, title IV, § 411(k)(10)(D), 102 Stat. 796, and amended Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(26)(K)(ii), 102 Stat. 2422; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6503(a), (c)(2), (4), 103 Stat. 2276, 2278.)

PRIOR PROVISIONS

A prior section 704, act Aug. 14, 1935, ch. 531, title V, § 504, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 922, related to allotments to States for crippled children's services, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. See section 702 of this title. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Another prior section 704, acts Aug. 14, 1935, ch. 531, title V, § 504, 49 Stat. 630; 1940 Reorg. Plan No. III, § 1(a), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(e), 64 Stat. 558; Sept. 13, 1960, Pub. L. 86–778, title VII, § 707(b)(1)(B), 74 Stat. 996; July 30, 1965, Pub. L. 89–97, title II, § 201(b), 79 Stat. 353, provided for payment to States with an approved plan for maternal and child-health services and computation of amounts, and prescribed general availability of services by July 1, 1975, as requisite for payments for any period after June 30, 1966, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 706 of this title.

Provisions similar to those comprising former section 704 were contained in section 512 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 631, as amended (formerly classified to section 712 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 6503(c)(2), (4), substituted ''its application'' for ''its description of intended expenditures and statement of assurances'' and ''705(a)'' for ''705''.

Pub. L. 101–239, § 6503(a)(1), inserted ''and including payment of salaries and other related expenses of National Health Service Corps personnel'' after ''education, and evaluation''.

Subsec. (d). Pub. L. 101–239, § 6503(a)(2), added subsec. (d).

1988—Subsec. (b)(6). Pub. L. 100–360, as amended by Pub. L. 100–485, added Pub. L. 100–203, § 4118(e)(12), see 1987 Amendment note below.

1987—Subsec. (b)(6). Pub. L. 100–203, § 4118(e)(12), as added by Pub. L. 100–360 and amended by Pub. L. 100–485, substituted ''under this subchapter or subchapter XVIII, XIX, or XX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title'' for ''pursuant to section 1320a–7 of this title or section 1320a–7a of this title from participation in the program under this subchapter'' in subpars. (A) and (B).

Pub. L. 100–93 added par. (6).

1986—Subsec. (b)(1). Pub. L. 99–272 substituted ''children with special health care needs'' for ''crippled children''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6503(a) of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, and amendment by section 6503(c)(2), (4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 608(g) of Pub. L. 100–485 provided that:

''(1) The amendments made by subsections (a), (b), and (d) [amending this section and sections 1320a–7, 1320a–7a, 1320b–10, 1320c–3, 1395i–2, 1395i–3, 1395*l*, 1395m, 1395r, 1395s, 1395t–1, 1395t–2, 1395u, 1395v, 1395w–2, 1395w–3, 1395x, 1395y, 1395aa to 1395dd, 1395mm, 1395tt, 1395ww, 1395aaa to 1395ccc, 1396a, 1396b, 1396d, 1396i, 1396n, 1396p, 1396r, 1396r–1, 1396r–4, 1396r–5, 1396s, and 1397d of this title, repealing section 1320a–2 of this title, enacting provisions set out as a note under section 1320a–2 of this title, and amending provisions set out as notes under sections 1320c–5, 1395b, 1395d, 1395e, 1395i–3, 1395u, 1395*ll*, 1395mm, 1395ss, 1395tt, 1395ww, 1396a, 1396d, and 1396r–5 of this title] shall be effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].

''(2) The amendments made by subsection (c) and subsection (f) (other than paragraph (5)) [amending sections 1395cc, 1396b, 1396d, and 1396n of this title, enacting provisions set out as a note under section 1395k of this title, and amending provisions set out as a note under section 1395k of this title] shall take effect on the date of the enactment of this Act [Oct. 13, 1988].''

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

§ 704a. Omitted

CODIFICATION

Section, Pub. L. 92–80, title II, Aug. 10, 1971, 85 Stat. 290, which provided that certain allotments to States were not to be included in computing amounts expended or estimated to be expended by the State under subsecs. (a) and (b) of section 706 of this title, was not repeated in the Department of Health, Education, and Welfare Appropriation Act, 1973. Similar provisions were contained in the following prior appropriation acts:

Jan. 11, 1971, Pub. L. 91–667, 84 Stat. 2006.
Mar. 5, 1970, Pub. L. 91–204, title II, 84 Stat. 39.
Oct. 11, 1968, Pub. L. 90–557, title II, 82 Stat. 987.
Nov. 8, 1967, Pub. L. 90–132, title II, 81 Stat. 403.
Nov. 7, 1966, Pub. L. 89–787, title II, 80 Stat. 1396.
Aug. 31, 1965, Pub. L. 89–156, title II, 79 Stat. 605.
Sept. 10, 1964, Pub. L. 88–605, title II, 78 Stat. 975.
Oct. 11, 1963, Pub. L. 88–136, title II, 77 Stat. 240.
Aug. 14, 1962, Pub. L. 87–582, title II, 76 Stat. 376.
Sept. 22, 1961, Pub. L. 87–290, title II, 75 Stat. 605.
Sept. 2, 1960, Pub. L. 86–703, title II, 74 Stat. 770.
Aug. 14, 1959, Pub. L. 86–158, title II, 73 Stat. 353.
Aug. 1, 1958, Pub. L. 85–580, title II, 72 Stat. 472.
June 29, 1957, Pub. L. 85–67, title II, 71 Stat. 222.
June 29, 1956, ch. 477, title II, 70 Stat. 434.
Aug. 1, 1955, ch. 437, title II, 69 Stat. 409.
July 2, 1954, ch. 457, title II, 68 Stat. 444.
July 31, 1953, ch. 296, title II, 67 Stat. 255.
July 5, 1952, ch. 575, title II, 66 Stat. 368.
Aug. 31, 1951, ch. 373, title II, 65 Stat. 219.
Sept. 6, 1950, ch. 896, ch. V, title II, 64 Stat. 653.
June 29, 1949, ch. 275, title II, 63 Stat. 284.
June 16, 1948, ch. 472, title I, 62 Stat. 447.
July 8, 1947, ch. 210, title II, 61 Stat. 273.
July 26, 1946, ch. 672, title I, 60 Stat. 681.
July 3, 1945, ch. 263, title I, 59 Stat. 364.
June 28, 1944, ch. 302, title I, 58 Stat. 550.
July 12, 1943, ch. 221, title I, 57 Stat. 497.
July 2, 1942, ch. 475, title I, 56 Stat. 565.
July 1, 1941, ch. 269, title I, 55 Stat. 469.
June 26, 1940, ch. 428, title I, 54 Stat. 578.
June 29, 1939, ch. 249, 53 Stat. 924.
Aug. 9, 1939, ch. 633, title I, 53 Stat. 1320.
Apr. 27, 1938, ch. 180, title IV, 52 Stat. 288.
June 16, 1937, ch. 359, title IV, 50 Stat. 301.
May 15, 1936, ch. 405, 49 Stat. 1350.

§ 704b. Nonavailability of allotments after close of fiscal year

No allotment for this or any succeeding fiscal year under this subchapter shall be available after the close of such fiscal year except as may be necessary to liquidate obligations incurred during such year.

(July 5, 1952, ch. 575, title II, § 201, 66 Stat. 368.)

CODIFICATION

Section is from act July 5, 1952, popularly known as the Federal Security Agency Appropriation Act, 1953, and is not a part of the Social Security Act which comprises this chapter.

§ 705. Application for block grant funds

(a) In order to be entitled to payments for allotments under section 702 of this title for a fiscal year, a State must prepare and transmit to the Secretary an application (in a standardized form specified by the Secretary) that—

(1) contains a statewide needs assessment (to be conducted every 5 years) that shall identify (consistent with the health status goals and national health objectives referred to in section 701(a) of this title) the need for—

(A) preventive and primary care services for pregnant women, mothers, and infants up to age one;

(B) preventive and primary care services for children; and

(C) services for children with special health care needs (as specified in section 701(a)(1)(D) of this title);

(2) includes for each fiscal year—

(A) a plan for meeting the needs identified by the statewide needs assessment under paragraph (1); and

(B) a description of how the funds allotted to the State under section 702(c) of this title will be used for the provision and coordina-

tion of services to carry out such plan that shall include—

(i) subject to paragraph (3), a statement of the goals and objectives consistent with the health status goals and national health objectives referred to in section 701(a) of this title for meeting the needs specified in the State plan described in subparagraph (A);

(ii) an identification of the areas and localities in the State in which services are to be provided and coordinated;

(iii) an identification of the types of services to be provided and the categories or characteristics of individuals to be served; and

(iv) information the State will collect in order to prepare reports required under section 706(a) of this title;

(3) except as provided under subsection (b) of this section, provides that the State will use—

(A) at least 30 percent of such payment amounts for preventive and primary care services for children, and

(B) at least 30 percent of such payment amounts for services for children with special health care needs (as specified in section 701(a)(1)(D) of this title);

(4) provides that a State receiving funds for maternal and child health services under this subchapter shall maintain the level of funds being provided solely by such State for maternal and child health programs at a level at least equal to the level that such State provided for such programs in fiscal year 1989; and

(5) provides that—

(A) the State will establish a fair method (as determined by the State) for allocating funds allotted to the State under this subchapter among such individuals, areas, and localities identified under paragraph (1)(A) as needing maternal and child health services, and the State will identify and apply guidelines for the appropriate frequency and content of, and appropriate referral and followup with respect to, health care assessments and services financially assisted by the State under this subchapter and methods for assuring quality assessments and services;

(B) funds allotted to the State under this subchapter will only be used, consistent with section 708 of this title, to carry out the purposes of this subchapter or to continue activities previously conducted under the consolidated health programs (described in section 701(b)(1) of this title);

(C) the State will use—

(i) special consideration (where appropriate) for the continuation of the funding of special projects in the State previously funded under this subchapter (as in effect before August 31, 1981), and

(ii) a reasonable proportion (based upon the State's previous use of funds under this subchapter) of such sums to carry out the purposes described in subparagraphs (A) through (D) of section 701(a)(1) of this title;

(D) if any charges are imposed for the provision of health services assisted by the State under this subchapter, such charges (i) will be pursuant to a public schedule of charges, (ii) will not be imposed with respect to services provided to low income mothers or children, and (iii) will be adjusted to reflect the income, resources, and family size of the individual provided the services;

(E) the State agency (or agencies) administering the State's program under this subchapter will provide for a toll-free telephone number (and other appropriate methods) for the use of parents to access information about health care providers and practitioners who provide health care services under this subchapter and subchapter XIX of this chapter and about other relevant health and health-related providers and practitioners; and

(F) the State agency (or agencies) administering the State's program under this subchapter will—

(i) participate in the coordination of activities between such program and the early and periodic screening, diagnostic, and treatment program under section 1396d(a)(4)(B) of this title (including the establishment of periodicity and content standards for early and periodic screening, diagnostic, and treatment services), to ensure that such programs are carried out without duplication of effort,

(ii) participate in the arrangement and carrying out of coordination agreements described in section 1396a(a)(11) of this title (relating to coordination of care and services available under this subchapter and subchapter XIX of this chapter),

(iii) participate in the coordination of activities within the State with programs carried out under this subchapter and related Federal grant programs (including supplemental food programs for mothers, infants, and children, related education programs, and other health, developmental disability, and family planning programs), and

(iv) provide, directly and through their providers and institutional contractors, for services to identify pregnant women and infants who are eligible for medical assistance under subparagraph (A) or (B) of section 1396a(*l*)(1) of this title and, once identified, to assist them in applying for such assistance.

The application shall be developed by, or in consultation with, the State maternal and child health agency and shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during its development and after its transmittal.

(b) The Secretary may waive the requirements under subsection (a)(3) of this section that a State's application for a fiscal year provide for the use of funds for specific activities if for that fiscal year—

(1) the Secretary determines—

(A) on the basis of information provided in the State's most recent annual report submitted under section 706(a)(1) of this title, that the State has demonstrated an extraor-

dinary unmet need for one of the activities described in subsection (a)(3) of this section, and

(B) that the granting of the waiver is justified and will assist in carrying out the purposes of this subchapter; and

(2) the State provides assurances to the Secretary that the State will provide for the use of some amounts paid to it under section 703 of this title for the activities described in subparagraphs (A) and (B) of subsection (a)(3) of this section and specifies the percentages to be substituted in each of such subparagraphs.

(Aug. 14, 1935, ch. 531, title V, § 505, as added Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2192(a), 95 Stat. 822; amended Sept. 3, 1982, Pub. L. 97–248, title I, § 137(b)(3), (4), 96 Stat. 377; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6501(b), 6503(b), 103 Stat. 2275, 2276; Nov. 5, 1990, Pub. L. 101–508, title IV, § 4755(c)(3), 104 Stat. 1388–210.)

PRIOR PROVISIONS

A prior section 705, act Aug. 14, 1935, ch. 531, title V, § 505, as added and amended Jan. 2, 1968, Pub. L. 90–248, title III, §§ 301, 304(a), 81 Stat. 923, 929; July 10, 1972, Pub. L. 92–345, § 2(a)–(c), 86 Stat. 456, 457; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 221(c)(1), 232(b), 239(c), 86 Stat. 1389, 1411, 1417; July 1, 1973, Pub. L. 93–53, § 4(a)(3)–(5), 87 Stat. 135; Dec. 5, 1980, Pub. L. 96–499, title IX, § 914(c)(1), 94 Stat. 2622, related to contents of State plans, approval by Secretary, etc., prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title. For effective dates of prior amendments, see section 304(b) of Pub. L. 90–248, sections 232(c) and 239(d) of Pub. L. 92–603, and section 914(c)(2) of Pub. L. 96–499 as amended by section 137(c)(2) of Pub. L. 97–248.

Another prior section 705, acts Aug. 14, 1935, ch. 531, title V, § 505, 49 Stat. 631; 1946 Reorg. Plan No. 2, § 1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(e), 64 Stat. 558, provided for stopping payment on failure to comply with plan for maternal and child health services, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, § 301, and was covered by former section 707 of this title.

Provisions similar to those comprising former section 705 were contained in sections 503 and 513 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 630, 632, as amended (formerly classified to sections 703 and 713 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–508 substituted ''requirements'' for ''requirement'' in introductory provisions.

1989—Pub. L. 101–239, § 6503(b)(1), substituted ''Application for block grant funds'' for ''Description of intended expenditures and statement of assurances'' in section catchline.

Subsec. (a). Pub. L. 101–239, § 6503(b)(2), (3), inserted ''(a)'' before ''In order to be entitled'' and ''an application (in a standardized form specified by the Secretary) that'' after ''must prepare and transmit to the Secretary''.

Subsec. (a)(1). Pub. L. 101–239, § 6503(b)(4), added par. (1) and struck out former par. (1) which read as follows: ''a report describing the intended use of payments the State is to receive under this subchapter for the fiscal year, including (A) a description of those populations, areas, and localities in the State which the State has identified as needing maternal and child health services, (B) a statement of goals and objectives for meeting those needs, (C) information on the types of services to be provided and the categories or characteristics of individuals to be served, and (D) data the State intends to collect respecting activities conducted with such payments; and''.

Subsec. (a)(2) to (4). Pub. L. 101–239, § 6503(b)(4), added pars. (2) to (4) and redesignated former par. (2) as (5).

Subsec. (a)(5). Pub. L. 101–239, § 6503(b)(5)(A), (6), in introductory provisions, substituted ''provides'' for ''a statement of assurances that represents to the Secretary'', and in concluding provisions, substituted ''The application shall be developed by, or in consultation with, the State maternal and child health agency and shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during its development and after its transmittal.'' for ''The description and statement shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and statement and after its transmittal. The description and statement shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in any element of such description or statement, and any revision shall be subject to the requirements of the preceding sentence.''

Pub. L. 101–239, § 6503(b)(4), redesignated former par. (2) as (5).

Subsec. (a)(5)(A). Pub. L. 101–239, § 6503(b)(5)(B), substituted ''will establish'' for ''will provide''.

Subsec. (a)(5)(C)(i). Pub. L. 101–239, § 6503(b)(5)(C), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''a substantial proportion of the sums expended by the State for carrying out this subchapter for the provision of health services to mothers and children, with special consideration given (where appropriate) to the continuation of the funding of special projects in the State previously funded under this subchapter (as in effect before August 13, 1981), and''.

Subsec. (a)(5)(C)(ii). Pub. L. 101–239, § 6501(b), substituted ''subparagraphs (A) through (D) of section 701(a)(1) of this title'' for ''paragraphs (1) through (3) of section 701(a) of this title''.

Subsec. (a)(5)(E). Pub. L. 101–239, § 6503(b)(5)(D), (E), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (a)(5)(F). Pub. L. 101–239, § 6503(b)(5)(F)(i), struck out ''participate'' after ''under this subchapter will'' in introductory provisions.

Pub. L. 101–239, § 6503(b)(5)(E), redesignated subpar. (E) as (F).

Subsec. (a)(5)(F)(i). Pub. L. 101–239, § 6503(b)(5)(F)(ii)–(iv), inserted ''participate'' before ''in the coordination'' and substituted ''diagnostic'' for ''diagnosis'' and ''section 1396d(a)(4)(B) of this title (including the establishment of periodicity and content standards for early and periodic screening, diagnostic, and treatment services)'' for ''subchapter XIX of this chapter''.

Subsec. (a)(5)(F)(ii). Pub. L. 101–239, § 6503(b)(5)(F)(iv), inserted ''participate'' before ''in the arrangement''.

Subsec. (a)(5)(F)(iii). Pub. L. 101–239, § 6503(b)(5)(F)(iv), inserted ''participate'' before ''in the coordination''.

Subsec. (a)(5)(F)(iv). Pub. L. 101–239, § 6503(b)(5)(F)(v)–(vii), added cl. (iv).

Subsec. (b). Pub. L. 101–239, § 6503(b)(7), added subsec. (b).

1982—Par. (2)(B). Pub. L. 97–248, § 137(b)(3), substituted ''section 701(b)(1)'' for ''section 702(b)(1)''.

Subsec. (2)(D). Pub. L. 97–248, § 137(b)(4), substituted ''any charges are imposed'' for ''the State imposes any charges''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6501(b) of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, and amendment by section 6503(b) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 137 of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 703, 704, 706, 709, 4728 of this title.

§ 706. Administrative and fiscal accountability

(a) Annual reporting requirements; form, etc.

(1) Each State shall prepare and submit to the Secretary annual reports on its activities under this subchapter. Each such report shall be prepared by, or in consultation with, the State maternal and child health agency. In order properly to evaluate and to compare the performance of different States assisted under this subchapter and to assure the proper expenditure of funds under this subchapter, such reports shall be in such standardized form and contain such information (including information described in paragraph (2)) as the Secretary determines (after consultation with the States and the Comptroller General) to be necessary (A) to secure an accurate description of those activities, (B) to secure a complete record of the purposes for which funds were spent, of the recipients of such funds, (C) to describe the extent to which the State has met the goals and objectives it set forth under section 705(a)(2)(B)(i) of this title and the national health objectives referred to in section 701(a) of this title, and (D) to determine the extent to which funds were expended consistent with the State's application transmitted under section 705(a) of this title. Copies of the report shall be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(2) Each annual report under paragraph (1) shall include the following information:

(A)(i) The number of individuals served by the State under this subchapter (by class of individuals).

(ii) The proportion of each class of such individuals which has health coverage.

(iii) The types (as defined by the Secretary) of services provided under this subchapter to individuals within each such class.

(iv) The amounts spent under this subchapter on each type of services, by class of individuals served.

(B) Information on the status of maternal and child health in the State, including—

(i) information (by county and by racial and ethnic group) on—

(I) the rate of infant mortality, and

(II) the rate of low-birth-weight births;

(ii) information (on a State-wide basis) on—

(I) the rate of maternal mortality,

(II) the rate of neonatal death,

(III) the rate of perinatal death,

(IV) the number of children with chronic illness and the type of illness,

(V) the proportion of infants born with fetal alcohol syndrome,

(VI) the proportion of infants born with drug dependency,

(VII) the proportion of women who deliver who do not receive prenatal care during the first trimester of pregnancy, and

(VIII) the proportion of children, who at their second birthday, have been vaccinated against each of measles, mumps, rubella, polio, diphtheria, tetanus, pertussis, Hib meningitis, and hepatitis B; and

(iii) information on such other indicators of maternal, infant, and child health care status as the Secretary may specify.

(C) Information (by racial and ethnic group) on—

(i) the number of deliveries in the State in the year, and

(ii) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this subchapter or were entitled to benefits with respect to such deliveries under the State plan under subchapter XIX of this chapter in the year.

(D) Information (by racial and ethnic group) on—

(i) the number of infants under one year of age who were in the State in the year, and

(ii) the number of such infants who were provided services under this subchapter or were entitled to benefits under the State plan under subchapter XIX of this chapter at any time during the year.

(E) Information on the number of—

(i) obstetricians,

(ii) family practitioners,

(iii) certified family nurse practitioners,

(iv) certified nurse midwives,

(v) pediatricians, and

(vi) certified pediatric nurse practitioners,

who were licensed in the State in the year.

For purposes of subparagraph (A), each of the following shall be considered to be a separate class of individuals: pregnant women, infants up to age one, children with special health care needs, other children under age 22, and other individuals.

(3) The Secretary shall annually transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate a report that includes—

(A) a description of each project receiving funding under paragraph (2) or (3) of section 702(a) of this title, including the amount of Federal funds provided, the number of individuals served or trained, as appropriate, under the project, and a summary of any formal evaluation conducted with respect to the project;

(B) a summary of the information described in paragraph (2)(A) reported by States;

(C) based on information described in paragraph (2)(B) supplied by the States under paragraph (1), a compilation of the following measures of maternal and child health in the United States and in each State:

(i) Information on—

(I) the rate of infant mortality, and

(II) the rate of low-birth-weight births.

Information under this clause shall also be compiled by racial and ethnic group.

(ii) Information on—

(I) the rate of maternal mortality,

(II) the rate of neonatal death,

(III) the rate of perinatal death,

(IV) the proportion of infants born with fetal alcohol syndrome,

(V) the proportion of infants born with drug dependency,

(VI) the proportion of women who deliver who do not receive prenatal care during the first trimester of pregnancy, and

(VII) the proportion of children, who at their second birthday, have been vaccinated against each of measles, mumps, rubella, polio, diphtheria, tetanus, pertussis, Hib meningitis, and hepatitis B.

(iii) Information on such other indicators of maternal, infant, and child health care status as the Secretary has specified under paragraph (2)(B)(iii).

(iv) Information (by racial and ethnic group) on—

(I) the number of deliveries in the State in the year, and

(II) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this subchapter or were entitled to benefits with respect to such deliveries under the State plan under subchapter XIX of this chapter in the year;

(D) based on information described in subparagraphs (C), (D), and (E) of paragraph (2) supplied by the States under paragraph (1), a compilation of the following information in the United States and in each State:

(i) Information on—

(I) the number of deliveries in the year, and

(II) the number of such deliveries to pregnant women who were provided prenatal, delivery, or postpartum care under this subchapter or were entitled to benefits with respect to such deliveries under a State plan under subchapter XIX of this chapter in the year.

Information under this clause shall also be compiled by racial and ethnic group.

(ii) Information on—

(I) the number of infants under one year of age in the year, and

(II) the number of such infants who were provided services under this subchapter or were entitled to benefits under a State plan under subchapter XIX of this chapter at any time during the year.

Information under this clause shall also be compiled by racial and ethnic group.

(iii) Information on the number of—

(I) obstetricians,

(II) family practitioners,

(III) certified family nurse practitioners,

(IV) certified nurse midwives,

(V) pediatricians, and

(VI) certified pediatric nurse practitioners,

who were licensed in a State in the year; and

(E) an assessment of the progress being made to meet the health status goals and national health objectives referred to in section 701(a) of this title.

(b) Audits; implementation, standards, etc.

(1) Each State shall, not less often than once every two years, audit its expenditures from amounts received under this subchapter. Such State audits shall be conducted by an entity independent of the State agency administering a program funded under this subchapter in accordance with the Comptroller General's standards for auditing governmental organizations, programs, activities, and functions and generally accepted auditing standards. Within 30 days following the completion of each audit report, the State shall submit a copy of that audit report to the Secretary.

(2) Each State shall repay to the United States amounts found by the Secretary, after notice and opportunity for a hearing to the State, not to have been expended in accordance with this subchapter and, if such repayment is not made, the Secretary may offset such amounts against the amount of any allotment to which the State is or may become entitled under this subchapter or may otherwise recover such amounts.

(3) The Secretary may, after notice and opportunity for a hearing, withhold payment of funds to any State which is not using its allotment under this subchapter in accordance with this subchapter. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(c) Public inspection of reports and audits

The State shall make copies of the reports and audits required by this section available for public inspection within the State.

(d) Access to books, records, etc.; creation of new records

(1) For the purpose of evaluating and reviewing the block grant established under this subchapter, the Secretary and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that are related to such block grant, and that are in the possession, custody, or control of States, political subdivisions thereof, or any of their grantees.

(2) In conjunction with an evaluation or review under paragraph (1), no State or political subdivision thereof (or grantee of either) shall be required to create or prepare new records to comply with paragraph (1).

(3) For other provisions relating to deposit, accounting, reports, and auditing with respect to Federal grants to States, see section 6503(b)[1] of title 31.

(Aug. 14, 1935, ch. 531, title V, § 506, as added Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2192(a), 95 Stat. 823; amended July 18, 1984, Pub. L. 98–369, div. B, title III, § 2373(a)(2), 98 Stat. 1111; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6503(c)(3), (4), 6504, 103 Stat. 2278.)

[1] See References in Text note below.

REFERENCES IN TEXT

Section 6503 of title 31, referred to in subsec. (d)(3), was amended generally by Pub. L. 101–453, § 5(b), Oct. 24, 1990, 104 Stat. 1059, and, as so amended, provisions formerly appearing in subsec. (b) are now contained in subsec. (h).

PRIOR PROVISIONS

A prior section 706, act Aug. 14, 1935, ch. 531, title V, § 506, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 924; amended Oct. 30, 1972, Pub. L. 92–603, title II, §§ 221(c)(2), 224(d), 229(d), 233(d), 237(b), 86 Stat. 1389, 1395, 1410, 1412, 1416, related to computation of amount of payments to States, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. See section 703 of this title. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Provisions similar to those comprising former section 706 were contained in sections 504 and 514 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 630, 632, as amended (formerly classified to sections 704 and 714 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1989—Subsec. (a)(1). Pub. L. 101–239, § 6504(a)(1), inserted after first sentence ''Each such report shall be prepared by, or in consultation with, the State maternal and child health agency.'', substituted ''be in such standardized form and contain such information (including information described in paragraph (2))'' for ''be in such form and contain such information'', and substituted '', (C) to describe the extent to which the State has met the goals and objectives it set forth under section 705(a)(2)(B)(i) of this title and the national health objectives referred to in section 701(a) of this title, and (D)'' for ''and of the progress made toward achieving the purposes of this subchapter, and (C)''.

Pub. L. 101–239, § 6503(c)(3), (4), substituted ''application transmitted under section 705(a) of this title'' for ''description and statement transmitted under section 705 of this title'' in subpar. (C).

Subsec. (a)(2). Pub. L. 101–239, § 6504(a)(3), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 101–239, § 6504(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The Secretary shall annually report to the Congress on activities funded under section 702(a) of this title and shall provide for transmittal of a copy of such report to each State.''

Pub. L. 101–239, § 6504(a)(2), redesignated former par. (2) as (3).

1984—Subsec. (d)(3). Pub. L. 98–369 substituted ''section 6503(b) of title 31'' for ''section 202 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212)''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6503(c)(3), (4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, and amendment by section 6504 of Pub. L. 101–239 applicable to annual reports for fiscal years beginning with fiscal year 1991, see section 6510(b) of Pub. L. 101–239, set out as a note under section 701 of this title.

REPORTS TO CONGRESS; ACTIVITIES OF STATES RECEIVING ALLOTMENTS AND STUDY OF ALTERNATIVE FORMULAS FOR ALLOTMENT

Section 2192(b) of Pub. L. 97–35 provided that:

''(1) The Secretary of Health and Human Services shall, no later than October 1, 1984, report to the Congress on the activities of States receiving allotments under title V of the Social Security Act [this subchapter] (as amended by this section) and include in such report any recommendations for appropriate changes in legislation.

''(2) The Secretary of Health and Human Services, in consultation with the Comptroller General, shall examine alternative formulas, for the allotment of funds to States under section 502(b) of the Social Security Act [section 702(b) of this title] (as amended by this section) which might be used as a substitute for the method of allotting funds described in such section, which provide for the equitable distribution of such funds to States (as defined for purposes of such section), and which take into account—

''(A) the populations of the States,

''(B) the number of live births in the States,

''(C) the number of crippled children in the States,

''(D) the number of low income mothers and children in the States,

''(E) the financial resources of the various States, and

''(F) such other factors as the Secretary deems appropriate, and shall report to the Congress thereon not later than June 30, 1982.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 702, 705, 709 of this title.

§ 707. Criminal penalty for false statements

(a) Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payment may be made by a State from funds allotted to the State under this subchapter, or

(2) having knowledge of the occurrence of any event affecting his initial or continued right to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(b) For civil monetary penalties for certain submissions of false claims, see section 1320a–7a of this title.

(Aug. 14, 1935, ch. 531, title V, § 507, as added Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2192(a), 95 Stat. 824.)

PRIOR PROVISIONS

A prior section 707, act Aug. 14, 1935, ch. 531, title V, § 507, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 925, related to failure of State plan to comply with provisions of this subchapter, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. See section 706 of this title. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Provisions similar to those comprising former section 707 were contained in sections 505 and 515 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 631, 633, as amended (formerly classified to sections 705 and 715 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

§ 708. Nondiscrimination provisions

(a) Federally funded activities

(1) For the purpose of applying the prohibitions against discrimination on the basis of age

under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], on the basis of handicap under section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], on the basis of sex under title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], programs and activities funded in whole or in part with funds made available under this subchapter are considered to be programs and activities receiving Federal financial assistance.

(2) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this subchapter.

(b) Compliance

Whenever the Secretary finds that a State, or an entity that has received a payment from an allotment to a State under section 702(c) of this title, has failed to comply with a provision of law referred to in subsection (a)(1) of this section, with subsection (a)(2) of this section, or with an applicable regulation (including one prescribed to carry out subsection (a)(2) of this section), he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], or section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], as may be applicable, or

(3) take such other action as may be provided by law.

(c) Authority of Attorney General; civil actions

When a matter is referred to the Attorney General pursuant to subsection (b)(1) of this section, or whenever he has reason to believe that the entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) of this section or in violation of subsection (a)(2) of this section, the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

(Aug. 14, 1935, ch. 531, title V, § 508, as added Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2192(a), 95 Stat. 825; amended Dec. 19, 1989, Pub. L. 101–239, title VI, § 6502(b), 103 Stat. 2276.)

REFERENCES IN TEXT

The Age Discrimination Act of 1975, referred to in subsecs. (a)(1) and (b)(2), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Education Amendments of 1972 is classified principally to chapter 38 (§ 1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Civil Rights Act of 1964, referred to in subsecs. (a)(1) and (b)(2), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

PRIOR PROVISIONS

A prior section 708, act Aug. 14, 1935, ch. 531, title V, § 508, as added Jan. 2, 1968, Pub. L. 90–248, title III, § 301, 81 Stat. 926; amended July 10, 1972, Pub. L. 92–345, § 2(d), 86 Stat. 457; July 1, 1973, Pub. L. 93–53, § 4(a)(6), 87 Stat. 135, related to special project grants for maturity and infant care, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Provisions similar to those comprising former section 708 were contained in section 531 of act Aug. 14, 1935, ch. 531, title V, as added Oct. 24, 1963, Pub. L. 88–156, § 4, 77 Stat. 274 (formerly classified to section 729 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, § 301.

AMENDMENTS

1989—Subsec. (b). Pub. L. 101–239 substituted ''702(c) of this title'' for ''702(b) of this title'' in introductory provisions.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, see section 6510(a) of Pub. L. 101–239, set out as a note under section 701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 705 of this title.

§ 709. Administration of Federal and State programs

(a) The Secretary shall designate an identifiable administrative unit with expertise in maternal and child health within the Department of Health and Human Services, which unit shall be responsible for—

(1) the Federal program described in section 702(a) of this title;

(2) promoting coordination at the Federal level of the activities authorized under this subchapter and under subchapter XIX of this chapter, especially early and periodic screening, diagnosis and treatment, related activities funded by the Departments of Agriculture and Education, and under health block grants and categorical health programs, such as immunizations, administered by the Secretary;

(3) disseminating information to the States in such areas as preventive health services and advances in the care and treatment of mothers and children;

(4) providing technical assistance, upon request, to the States in such areas as program planning, establishment of goals and objectives, standards of care, and evaluation and in developing consistent and accurate data collection mechanisms in order to report the information required under section 706(a)(2) of this title;

(5) in cooperation with the National Center for Health Statistics and in a manner that avoids duplication of data collection, collection, maintenance, and dissemination of information relating to the health status and health service needs of mothers and children in the United States;

(6) assisting in the preparation of reports to the Congress on the activities funded and accomplishments achieved under this subchapter from the information required to be reported by the States under sections 705(a) and 706 of this title; and[1]

(7) assisting States in the development of care coordination services (as defined in section 701(b)(3) of this title); and

(8) developing and making available to the State agency (or agencies) administering the State's program under this subchapter a national directory listing by State the toll-free numbers described in section 705(a)(5)(E) of this title.

(b) The State health agency of each State shall be responsible for the administration (or supervision of the administration) of programs carried out with allotments made to the State under this subchapter, except that, in the case of a State which on July 1, 1967, provided for administration (or supervision thereof) of the State plan under this subchapter (as in effect on such date) by a State agency other than the State health agency, that State shall be considered to comply[2] the requirement of this subsection if it would otherwise comply but for the fact that such other State agency administers (or supervises the administration of) any such program providing services for children with special health care needs.

(Aug. 14, 1935, ch. 531, title V, §509, as added Aug. 13, 1981, Pub. L. 97–35, title XXI, §2192(a), 95 Stat. 825; amended Apr. 7, 1986, Pub. L. 99–272, title IX, §9527(e), 100 Stat. 219; Dec. 19, 1989, Pub. L. 101–239, title VI, §§6503(c)(4), 6505, 103 Stat. 2278, 2281.)

PRIOR PROVISIONS

A prior section 709, act Aug. 14, 1935, ch. 531, title V, §509, as added Jan. 2, 1968, Pub. L. 90–248, title III, §301, 81 Stat. 926; amended July 10, 1972, Pub. L. 92–345, §2(e), 86 Stat. 457; Oct. 30, 1972, Pub. L. 92–603, title II, §§221(c)(3), 233(e), 86 Stat. 1389, 1412; July 1, 1973, Pub. L. 93–53, §4(a)(7), 87 Stat. 135, related to special project grants for health of school and preschool children, prior to the general revision of this subchapter by section 2192(a) of Pub. L. 97–35. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Provisions similar to those comprising former section 709, were contained in section 532 of act Aug. 14, 1935, ch. 531, title V, as added July 30, 1965, Pub. L. 89–97, title II, §205(3), 79 Stat. 354 (formerly classified to section 729–1 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, §301.

AMENDMENTS

1989—Subsec. (a)(4). Pub. L. 101–239, §6505(1), inserted before semicolon at end ''and in developing consistent and accurate data collection mechanisms in order to report the information required under section 706(a)(2) of this title''.

Subsec. (a)(6). Pub. L. 101–239, §6503(c)(4), substituted ''705(a)'' for ''705''.

Subsec. (a)(7), (8). Pub. L. 101–239, §6505(2)–(4), added pars. (7) and (8).

1986—Subsec. (b). Pub. L. 99–272 substituted ''children with special health care needs'' for ''crippled children''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6503(c)(4) of Pub. L. 101–239 applicable to payments for allotments for fiscal years beginning with fiscal year 1991, and amendment by section 6505 of Pub. L. 101–239 applicable to appropriations for fiscal years beginning with fiscal year 1990, see section 6510(a), (b)(1) of Pub. L. 101–239, set out as a note under section 701 of this title.

REPORT TO CONGRESS; EVALUATION OF PROGRAM

Pub. L. 89–97, title II, §206, July 30, 1965, 79 Stat. 354, authorized Secretary to submit to President for transmission to Congress before July 1, 1969, a full report of administration of provisions of section 729–1 of this title, which was covered by former sections 701, 702(1)(B), and 709 of this title, together with an evaluation of program established thereby and his recommendations as to continuation of and modifications in that program.

§§ 710 to 716. Omitted

CODIFICATION

Sections 710 to 716 were omitted in the general revision of this subchapter by Pub. L. 97–35, title XXI, §2192(a), Aug. 13, 1981, 95 Stat. 818. For effective date, savings, and transitional provisions, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Section 710, act Aug. 14, 1935, ch. 531, title V, §510, as added Jan. 2, 1968, Pub. L. 90–248, title III, §301, 81 Stat. 927; amended July 10, 1972, Pub. L. 92–345, §2(f), 86 Stat. 457; July 1, 1973, Pub. L. 93–53, §4(a)(8), 87 Stat. 136, provided for special project grants for dental health of children.

Section 711, act Aug. 14, 1935, ch. 531, title V, §511, as added Jan. 2, 1968, Pub. L. 90–248, title III, §301, 81 Stat. 927, related to training of personnel for health care and related services for mothers and children.

Another prior section 711, acts Aug. 14, 1935, ch. 531, title V, §511, 49 Stat. 631; Aug. 10, 1939, ch. 666, title V, §504, 53 Stat. 1380; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, §401(b)(4), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, §331(c), pt. 6, §361(e), 64 Stat. 551, 558; Aug. 28, 1958, Pub. L. 85–840, title VI, §603(a), 72 Stat. 1055; Sept. 13, 1960, Pub. L. 86–778, title VII, §707(a)(2)(A), 74 Stat. 995; Oct. 24, 1963, Pub. L. 88–156, §3(a), 77 Stat. 273; July 30, 1965, Pub. L. 89–97, title II, §202(a), 79 Stat. 353, authorized appropriations, for services for crippled children, of $25,000,000; $30,000,000; $35,000,000; $45,000,000; $50,000,000; $55,000,000; and $60,000,000, for fiscal years ending June 30, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970 and thereafter respectively, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301, and was covered by former section 701 of this title.

Provisions similar to those comprising former section 711 were contained in section 516 of act Aug. 14, 1935, ch. 531, title V, as added July 30, 1965, Pub. L. 89–97, title II, §203(a), 79 Stat. 353 (formerly classified to section 716 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, §301.

Section 712, act Aug. 14, 1935, ch. 531, title V, §512, as added Jan. 2, 1968, Pub. L. 90–248, title III, §301, 81 Stat. 927, provided for research projects relating to maternal and child health services and crippled children's services. See section 702(a) of this title.

Another prior section 712, acts Aug. 14, 1935, ch. 531, title V, §512, 49 Stat. 631; Aug. 10, 1939, ch. 666, title V,

[1] So in original. The word ''and'' probably should not appear.

[2] So in original. Probably should be ''comply with''.

§505, 53 Stat. 1380; 1946 Reorg. Plan. No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, §401(b)(5), (6), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, §331(d), pt. 6, §361(e), 64 Stat. 552, 558; Aug. 28, 1958, Pub. L. 85–840, title VI, §603(b), (c), 72 Stat. 1055; Sept. 13, 1960, Pub. L. 86–778, title VII, §707(a)(2)(B), (C), (b)(2)(A), 74 Stat. 996; Oct. 24, 1963, Pub. L. 88–156, §3(b), (c), 77 Stat. 274, provided for allotment to States for services for crippled children, and was covered by former section 704 of this title.

Provisions similar to those comprising former section 712 were contained in section 533, formerly section 532, of act Aug. 14, 1935, ch. 531, title V, as added Oct. 24, 1963, Pub. L. 88–156, §4, 77 Stat. 274, and renumbered July 30, 1965, Pub. L. 89–97, title II, §205(2), 79 Stat. 354 (formerly classified to section 729a of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, §301.

Section 713, act Aug. 14, 1935, ch. 531, title V, §513, as added Jan. 2, 1968, Pub. L. 90–248, title III, §301, 81 Stat. 928, related to administration. See section 709 of this title.

Another prior section 713, acts Aug. 14, 1935, ch. 531, title V, §513, 49 Stat. 632; Aug. 10, 1939, ch. 666, title V, §506, 53 Stat. 1381; 1946 Reorg. Plan No. 2, §§1, 4, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(e), 64 Stat. 558; July 30, 1965, Pub. L. 89–97, title II, §204(b), 79 Stat. 354, related to contents of State plans for services for crippled children and their approval by the Administrator prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301, and was covered by former section 705 of this title.

Provisions similar to those comprising former section 713 were contained in section 541 of act Aug. 14, 1935, ch. 531, title V, 49 Stat. 634, as amended (formerly classified to section 731 of this title), prior to the general amendment and renumbering of title V of act Aug. 14, 1935, by Pub. L. 90–248, §301.

Section 714, act Aug. 14, 1935, ch. 531, title V, §514, as added Jan. 2, 1968, Pub. L. 90–248, title III, §301, 81 Stat. 928, defined ''crippled child''.

Another prior section 714, acts Aug. 14, 1935, ch. 531, title V, §514, 49 Stat. 632; Aug. 10, 1939, ch. 666, title V, §507(a), (b), 53 Stat. 1381; 1940 Reorg. Plan No. III, §1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(e), 64 Stat. 558; Sept. 13, 1960, Pub. L. 86–778, title VII, §707(b)(2)(B), 74 Stat. 996; July 30, 1965, Pub. L. 89–97, title II, §§202(b), 203(b), 79 Stat. 353, 354, provided for payment to States with an approved plan for services for crippled children, computation of amounts, and prescribed general availability of services by July 1, 1975, as requisite for payments for any period after June 30, 1966 prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301, and was covered by former section 706 of this title.

Section 715, act Aug. 14, 1935, ch. 531, title V, §515, as added Jan. 2, 1968, Pub. L. 90–248, title III, §301, 81 Stat. 928, related to observance of religious beliefs.

Another prior section 715, acts Aug. 14, 1935, ch. 531, title V, §515, 49 Stat. 633; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(e), 64 Stat. 558, provided for stopping payment on failure to comply with State plan for services for crippled children prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301, and was covered by former section 707 of this title.

Section 716, act Aug. 14, 1935, ch. 531, title V, §516, as added July 1, 1973, Pub. L. 93–53, §4(b), 87 Stat. 136, related to supplemental allotments.

Another prior section 716, act Aug. 14, 1935, ch. 531, title V, §516, as added July 30, 1965, Pub. L. 89–97, title II, §203(a), 79 Stat. 353, authorized appropriations for training of professional personnel for health and related care of crippled and mentally retarded children of $5,000,000, $10,000,000, and $17,500,000 for fiscal years ending June 30, 1967, 1968, 1969, and thereafter, respectively, and was omitted in the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301, and was covered by former sections 702 and 711 of this title.

SUPPLEMENTAL ALLOTMENTS FOR FISCAL YEAR ENDING JUNE 30, 1974

Section 4(c) of Pub. L. 93–53 authorized a State, for fiscal year ending June 30, 1974, to receive an additional supplemental allotment to match excess of amount of allotments which such State would have received under sections 703 and 704 of this title for such year if section 4(a) of Pub. L. 93–53 had not been enacted over aggregate of allotments which such State actually received under such sections plus aggregate of grants received under sections 708, 709, and 710 of this title for fiscal year ending June 30, 1973, and authorized appropriations necessary for supplemental allotments.

§§ 721 to 728. Repealed. Pub. L. 90–248, title II, §240(e)(1), Jan. 2, 1968, 81 Stat. 915

Section 721, acts Aug. 14, 1935, ch. 531, title V, §521, 49 Stat. 633; Aug. 10, 1939, ch. 666, title V, §507(c), 53 Stat. 1381; 1940 Reorg. Plan No. III, §1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg. Plan. No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, §401(b)(7), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 3, §331(e), pt. 6, §361(e), 64 Stat. 552, 558; Aug. 1, 1956, ch. 836, title IV, §402, 70 Stat. 856; Aug. 28, 1958, Pub. L. 85–840, title VI, §601, 72 Stat. 1052; Sept. 13, 1960, Pub. L. 86–778, title VII, §707(a)(3)(A), 74 Stat. 996; July 25, 1962, Pub. L. 87–543, title I, §102(a), (d)(1), 76 Stat. 182, 184; July 30, 1965, Pub. L. 89–97, title II, §207, 79 Stat. 355, authorized appropriations for child-welfare services. See section 620 of this title.

Section 722, act Aug. 14, 1935, ch. 531, title V, §522, as added Aug. 28, 1958, Pub. L. 85–840, title VI, §601, 72 Stat. 1053; amended Sept. 13, 1960, Pub. L. 86–778, title VII, §707(a)(3)(B), 74 Stat. 996; July 25, 1962, Pub. L. 87–543, title I, §102(c)(1), 76 Stat. 183; July 30, 1965, Pub. L. 89–97, title II, §208(b), 79 Stat. 355, provided for allotments to States. See section 621 of this title.

Section 723, act Aug. 14, 1935, ch. 531, title V, §523, as added Aug. 28, 1958, Pub. L. 85–840, title VI, §601, 72 Stat. 1053; amended July 25, 1962, Pub. L. 87–543, title I, §102(b), 76 Stat. 182; July 30, 1965, Pub. L. 89–97, title II, §208(c), 79 Stat. 356, provided for payment to States and computation of amounts. See section 622 of this title.

Section 724, act Aug. 14, 1935, ch. 531, title V, §524, as added Aug. 28, 1958, Pub. L. 85–840, title VI, §601, 72 Stat. 1054; amended June 25, 1959, Pub. L. 86–70, §32(b), 73 Stat. 149; July 12, 1960, Pub. L. 86–624, §30(b), 74 Stat. 420, provided for allotment percentage and Federal share. See section 623 of this title.

Section 725, act Aug. 14, 1935, ch. 531, title V, §525, as added Aug. 28, 1958, Pub. L. 85–840, title VI, §601, 72 Stat. 1054, provided for reallotment of allotments to States. See section 624 of this title.

Section 726, act Aug. 14, 1935, ch. 531, title V, §526, as added Sept. 13, 1960, Pub. L. 86–778, title VII, §707(b)(3), 74 Stat. 997; amended July 25, 1962, Pub. L. 87–543, title I, §123(d), 76 Stat. 193, provided for research, training, or demonstration projects. See section 626 of this title.

Section 727, act Aug. 14, 1935, ch. 531, title V, §527, as added July 25, 1962, Pub. L. 87–543, title I, §102(c)(2), 76 Stat. 183, provided for allotments and reallotment of allotments to States for day care services. Section had been previously repealed by Pub. L. 89–97, title II, §208(a)(1), July 30, 1965, 79 Stat. 355, effective Jan. 1, 1966, under section 208(d) of Pub. L. 89–97.

Section 728, act Aug. 14, 1935, ch. 531, title V, §528, as added July 25, 1962, Pub. L. 87–543, title I, §102(d)(2), 76 Stat. 184, defined, child-welfare ''services''. See section 625 of this title.

§§ 729 to 729a, 731. Omitted

CODIFICATION

Section 729, act Aug. 14, 1935, ch. 531, title V, §531, as added Oct. 24, 1963, Pub. L. 88–156, §4, 77 Stat. 274;

amended Jan. 2, 1968, Pub. L. 90–248, title III, §303, 81 Stat. 929, related to maternity and infant care projects, authorized appropriations of $5,000,000; $15,000,000; $30,000,000; and $35,000,000 for fiscal years ending June 30, 1964, 1965, 1966 and 1967, and 1968, respectively; provided for grants to State health agencies, limitations on payments, scope of projects, health hazards, low-income families, other reasons for lack of health care; and provided for payments to States, adjustments, advances or reimbursement, installments, and conditions, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301. See sections 701 and 702 of this title. Section 531 of act Aug. 14, 1935, as originally enacted, appropriated funds for vocational rehabilitation, and was classified to section 45b of Title 29, Labor. It was omitted as superseded by section 31 of Title 29.

Section 729–1, act Aug. 14, 1935, ch. 531, title V, §532, as added July 30, 1965, Pub. L. 89–97, title II, §205(3), 79 Stat. 354, provided for projects for health of school and preschool children, authorized appropriations of $15,000,000; $35,000,000; $40,000,000; $45,000,000; and $50,000,000 for fiscal years ending June 30, 1966, 1967, 1968, 1969, and 1970, respectively; provided for grants to State health agencies, medical and dental schools, and teaching hospitals, limitations on payments, eligibility for grants, comprehensive care and services; and provided for payments to States, adjustments, advances or reimbursement, installments, and conditions, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301. See sections 701 and 702 of this title.

Section 729a, act Aug. 14, 1935, ch. 531, title V, §533, formerly §532, as added Oct. 24, 1963, Pub. L. 88–156, §4, 77 Stat. 274; renumbered July 30, 1965, Pub. L. 89–97, title II, §205(2), 79 Stat. 354, provided for research projects relating to maternal and child health services and crippled children's services, authorized appropriations of $8,000,000 for fiscal year ending June 30, 1964, and each subsequent fiscal year; and provided for payments to eligible institutions, agencies, and organizations, adjustments, advances or reimbursements, installments, and conditions, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301. See sections 701 and 702 of this title.

Section 731, acts Aug. 14, 1935, ch. 531, title V, §541, 49 Stat. 634; 1946 Reorg. Plan No. 2, §1, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; Aug. 10, 1946, ch. 951, title IV, §401(b)(8), 60 Stat. 986; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(e), title IV, §402(a), 64 Stat. 558, required the Administrator to make studies and investigations to promote efficient administration of sections 701 to 703, 704, 705, 711 to 715, 721 to 729a, and 731 of this title, prior to the general amendment of title V of the Social Security Act by Pub. L. 90–248, §301. See section 713 of this title.

SUBCHAPTER VI—GRANTS TO STATES FOR SERVICES TO AGED, BLIND, OR DISABLED

§§ 801 to 805. Repealed. Pub. L. 93–647, §3(b), Jan. 4, 1975, 88 Stat. 2349

Section 801, act Aug. 14, 1935, ch. 531, title VI, §601, as added Oct. 30, 1972, Pub. L. 92–603, title III, §302, 86 Stat. 1478, authorized appropriations for encouraging States to furnish rehabilitation to needy individuals 65 years of age or older, and the blind or disabled.

Another prior section 801, acts Aug. 14, 1935, ch. 531, title VI, §601, 49 Stat. 634; Aug. 10, 1939, ch. 666, title V, §509, 53 Stat. 1381, which provided appropriations for the purpose of assisting States and subdivisions in maintaining adequate public health services, was repealed by act July 1, 1944, ch. 373, title XI, §1113, 58 Stat. 714. See section 246 of this title.

Section 802, act Aug. 14, 1935, ch. 531, title VI, §602, as added Oct. 30, 1972, Pub. L. 92–603, title III, §302, 86 Stat. 1479, set out the necessary provisions for State plans for services to the aged, blind, or disabled.

Another prior section 802, act Aug. 14, 1935, ch. 531, title VI, §602, 49 Stat. 634, which provided for allotments to States by Surgeon General, was repealed by act July 1, 1944, ch. 373, title XI, §1113, 58 Stat. 714. See section 246 of this title.

Section 803, act Aug. 14, 1935, ch. 531, title VI, §603, as added Oct. 30, 1972, Pub. L. 92–603, title III, §302, 86 Stat. 1481, provided for payments to States under approved plans for services to the aged, blind, or disabled.

Another prior section 803, act Aug. 14, 1935, ch. 531, title VI, §603, 49 Stat. 635, which provided for allotments to States by appropriations for investigation of diseases by Public Health Service, was repealed by act July 1, 1944, ch. 373, title XI, §1113, 58 Stat. 714. See section 246 of this title.

Section 804, act Aug. 14, 1935, ch. 531, title VI, §604, as added Oct. 30, 1972, Pub. L. 92–603, title III, §302, 86 Stat. 1484, provided for notification to States and termination of payments in case of noncompliance with laws or State plan.

Section 805, act Aug. 14, 1935, ch. 531, title VI, §605, as added Oct. 30, 1972, Pub. L. 92–603, title III, §302, 86 Stat. 1484, defined ''services to the aged, blind or disabled''.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to payments under section 803 for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as an Effective Date of 1975 Amendment note under section 303 of this title.

RENUMBERING OF REPEALING ACT

Section 611 of act July 1, 1944, which repealed these prior sections 801, 802 and 803, was renumbered §711 by act Aug. 13, 1946, ch. 958, §5, 60 Stat. 1049, §713 by act Feb. 28, 1948, ch. 83, §9(b), 62 Stat. 47, §813 by act July 30, 1956, ch. 779, §3(b), 70 Stat. 720, §913 by Pub. L. 88–581, §4(b), Sept. 4, 1964, 78 Stat. 919, §1013 by Pub. L. 89–239, §3(b), Oct. 6, 1965, 79 Stat. 931, and §1113 by Pub. L. 91–572, §6(b), Dec. 24, 1970, 84 Stat. 1506.

SUBCHAPTER VII—ADMINISTRATION

AMENDMENTS

1950—Act Aug. 28, 1950, ch. 809, title III, pt. 6, §361(f), 64 Stat. 558, substituted ''ADMINISTRATION'' for ''SOCIAL SECURITY BOARD'' as subchapter heading.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1301 of this title.

§901. Social Security Administration

(a) There is hereby established, as an independent agency in the executive branch of the Government, a Social Security Administration (in this subchapter referred to as the ''Administration'').

(b) It shall be the duty of the Administration to administer the old-age, survivors, and disability insurance program under subchapter II of this chapter and the supplemental security income program under subchapter XVI of this chapter.

(Aug. 14, 1935, ch. 531, title VII, §701, 49 Stat. 635; Aug. 28, 1950, ch. 809, title IV, §401(a), 64 Stat. 558; Aug. 15, 1994, Pub. L. 103–296, title I, §101, 108 Stat. 1465.)

AMENDMENTS

1994—Pub. L. 103–296 amended section generally, substituting present provisions for former provisions relating to a Commissioner for Social Security in the Federal Security Agency.

1950—Act Aug. 28, 1950, amended section generally to provide for the appointment of a Commissioner of Social Security.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

TRANSFERS TO NEW SOCIAL SECURITY ADMINISTRATION

Section 105 of title I of Pub. L. 103–296 provided that:

''(a) FUNCTIONS.—

''(1) IN GENERAL.—There are transferred to the Social Security Administration all functions of the Secretary of Health and Human Services with respect to or in support of the programs and activities the administration of which is vested in the Social Security Administration by reason of this title [see Tables for classification] and the amendments made thereby. The Commissioner of Social Security shall allocate such functions in accordance with sections 701, 702, 703, and 704 of the Social Security Act [this section and sections 902 to 904 of this title] (as amended by this title).

''(2) FUNCTIONS OF OTHER AGENCIES.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Social Security Administration shall also perform—

''(i) the functions of the Department of Health and Human Services, including functions relating to titles XVIII and XIX of the Social Security Act [subchapters XVIII and IX of this chapter] (including adjudications, subject to final decisions by the Secretary of Health and Human Services), that the Social Security Administration in such Department performed as of immediately before the date of the enactment of this Act [Aug. 15, 1994], and

''(ii) the functions of any other agency for which administrative responsibility was vested in the Social Security Administration in the Department of Health and Human Services as of immediately before the date of the enactment of this Act.

''(B) RULES GOVERNING CONTINUATION OF FUNCTIONS IN THE ADMINISTRATION.—The Social Security Administration shall perform, on behalf of the Secretary of Health and Human Services (or the head of any other agency, as applicable), the functions described in subparagraph (A) in accordance with the same financial and other terms in effect on the day before the date of the enactment of this Act, except to the extent that the Commissioner and the Secretary (or other agency head, as applicable) agree to alter such terms pertaining to any such function or to terminate the performance by the Social Security Administration of any such function.

''(b) PERSONNEL, ASSETS, ETC.—

''(1) IN GENERAL.—There are transferred from the Department of Health and Human Services to the Social Security Administration, for appropriate allocation by the Commissioner of Social Security in the Social Security Administration—

''(A) the personnel employed in connection with the functions transferred by this title and the amendments made thereby; and

''(B) the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, allocations, and other funds employed, held, or used in connection with such functions, arising from such functions, or available, or to be made available, in connection with such functions.

''(2) UNEXPENDED FUNDS.—Unexpended funds transferred pursuant to this subsection shall be used only for the purposes for which the funds were originally appropriated.

''(3) EMPLOYMENT PROTECTIONS.—

''(A) IN GENERAL.—During the 1-year period beginning March 31, 1995—

''(i) the transfer pursuant to this section of any full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such personnel to be separated or reduced in grade or compensation solely as a result of such transfer, and

''(ii) except as provided in subparagraph (B), any such personnel who were not employed in the Social Security Administration in the Department of Health and Human Services immediately before the date of the enactment of this Act [Aug. 15, 1994] shall not be subject to directed reassignment to a duty station outside their commuting area.

''(B) SPECIAL RULES.—

''(i) In the case of personnel whose duty station is in the Washington, District of Columbia, commuting area immediately before March 31, 1995, subparagraph (A)(ii) shall not apply with respect to directed reassignment to a duty station in the Baltimore, Maryland, commuting area after September 30, 1995.

''(ii) In the case of personnel whose duty station is in the Baltimore, Maryland, commuting area immediately before March 31, 1995, subparagraph (A)(ii) shall not apply with respect to directed reassignment to a duty station in the Washington, District of Columbia, commuting area after September 30, 1995.

''(4) OFFICE SPACE.—Notwithstanding section 7 of the Public Buildings Act of 1959 (40 U.S.C. 606), and subject to available appropriations, the Administrator of General Services may, after consultation with the Commissioner of Social Security and under such terms and conditions as the Administrator finds to be in the interests of the United States—

''(A) acquire occupiable space in the metropolitan area of Washington, District of Columbia, for housing the Social Security Administration, and

''(B) renovate such space as necessary.

''(c) INTER-AGENCY TRANSFER ARRANGEMENT.—The Secretary of Health and Human Services and the Commissioner of Social Security shall enter into a written inter-agency transfer arrangement (in this subsection referred to as the 'arrangement'), which shall be effective March 31, 1995. Transfers made pursuant to this section shall be in accordance with the arrangement, which shall specify the personnel and resources to be transferred as provided under this section. The terms of such arrangement shall be transmitted not later than January 1, 1995, to the Committee on Ways and Means of the House of Representatives, to the Committee on Finance of the Senate, and to the Comptroller General of the United States. Not later than February 15, 1995, the Comptroller General shall submit a report to each such Committee setting forth an evaluation of such arrangement.''

[Section 105(a)–(b)(3) of Pub. L. 103–296, set out above, effective Mar. 31, 1995, and section 105(b)(4), (c) of Pub. L. 103–296, set out above, effective Aug. 15, 1994, see section 110(a), (c) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

TRANSITION RULES

Section 106 of title I of Pub. L. 103–296 provided that:

''(a) TRANSITION RULES RELATING TO OFFICERS OF THE SOCIAL SECURITY ADMINISTRATION.—

''(1) APPOINTMENT OF INITIAL COMMISSIONER OF SOCIAL SECURITY.—The President shall nominate for appointment the initial Commissioner of Social Security to serve as head of the Social Security Administration established under section 701 of the Social Security Act [this section] (as amended by this Act) not later than 60 days after the date of the enactment of this Act [Aug. 15, 1994].

''(2) ASSUMPTION OF OFFICE OF INITIAL COMMISSIONER BEFORE EFFECTIVE DATE OF NEW AGENCY.—If the appointment of the initial Commissioner of Social Security pursuant to section 702 of the Social Security Act [section 902 of this title] (as amended by this Act)

is confirmed by the Senate pursuant to such section 702 before March 31, 1995, the individual shall take office as Commissioner immediately upon confirmation, and, until March 31, 1995, such Commissioner shall perform the functions of the Commissioner of Social Security in the Department of Health and Human Services.

''(3) TREATMENT OF INSPECTOR GENERAL AND OTHER APPOINTMENTS.—At any time on or after the date of the enactment of this Act [Aug. 15, 1994], any of the officers provided for in section 702 of the Social Security Act (as amended by this title) and any of the members of the Social Security Advisory Board provided for in section 703 of such Act [section 903 of this title] (as so amended) may be nominated and take office, under the terms and conditions set out in such sections.

''(4) COMPENSATION FOR INITIAL OFFICERS AND BOARD MEMBERS BEFORE EFFECTIVE DATE OF NEW AGENCY.—Funds available to any official or component of the Department of Health and Human Services, functions of which are transferred to the Commissioner of Social Security or the Social Security Administration by this title [see Tables for classification], may, with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer or employee of the new Social Security Administration and of any member or staff of the Social Security Advisory Board who takes office pursuant to this subsection before March 31, 1995, until such time as funds for that purpose are otherwise available.

''(5) INTERIM ROLE OF CURRENT COMMISSIONER AFTER EFFECTIVE DATE OF NEW AGENCY.—In the event that, as of March 31, 1995, an individual appointed to serve as the initial Commissioner of Social Security has not taken office, until such initial Commissioner has taken office, the officer serving on March 31, 1995, as Commissioner of Social Security (or Acting Commissioner of Social Security, if applicable) in the Department of Health and Human Services shall, while continuing to serve as such Commissioner of Social Security (or Acting Commissioner of Social Security), serve as Commissioner of Social Security (or Acting Commissioner of Social Security, respectively) in the Social Security Administration established under such section 701 and shall assume the powers and duties under such Act [this chapter] (as amended by this Act) of the Commissioner of Social Security in the Social Security Administration as so established under such section 701. In the event that, as of March 31, 1995, the President has not nominated an individual for appointment to the office of Commissioner of Social Security in the Social Security Administration established under such section 701, then the individual serving as Commissioner of Social Security (or Acting Commissioner of Social Security, if applicable) in the Department of Health and Human Services shall become the Acting Commissioner of Social Security in the Social Security Administration as so established under such section 701.

''(6) INTERIM INSPECTOR GENERAL.—The Commissioner of Social Security may appoint an individual to assume the powers and duties under the Inspector General Act of 1978 [Pub. L. 95–452, set out in the Appendix to Title 5, Government Organization and Employees] of Inspector General of the Social Security Administration as established under section 701 of the Social Security Act for a period not to exceed 60 days. The Inspector General of the Department of Health and Human Services may, when so requested by the Commissioner, while continuing to serve as Inspector General in such Department, serve as Inspector General of the Social Security Administration established under such section 701 and shall assume the powers and duties under the Inspector General Act of 1978 of Inspector General of the Social Security Administration as established under such section 701. The Social Security Administration shall reimburse the Office of Inspector General of the Department of Health and Human Services for costs of any functions performed pursuant to this subsection, from funds available to the Administration at the time the functions are performed. The authority under this paragraph to exercise the powers and duties of the Inspector General shall terminate upon the entry upon office of an Inspector General for the Social Security Administration under the Inspector General Act of 1978.

''(7) ABOLISHMENT OF OFFICE OF COMMISSIONER OF SOCIAL SECURITY IN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—Effective when the initial Commissioner of Social Security of the Social Security Administration established under section 701 of the Social Security Act (as amended by this title) takes office pursuant to section 702 of such Act (as so amended)—

''(A) the position of Commissioner of Social Security in the Department of Health and Human Services is abolished; and

''(B) [Amended section 5315 of Title 5, Government Organization and Employees.]

''(b) CONTINUATION OF ORDERS, DETERMINATIONS, RULES, REGULATIONS, ETC.—All orders, determinations, rules, regulations, permits, contracts, collective bargaining agreements (and ongoing negotiations relating to such collective bargaining agreements), recognitions of labor organizations, certificates, licenses, and privileges—

''(1) which have been issued, made, promulgated, granted, or allowed to become effective, in the exercise of functions (A) which were exercised by the Secretary of Health and Human Services (or the Secretary's delegate), and (B) which relate to functions which, by reason of this title, the amendments made thereby, and regulations prescribed thereunder, are vested in the Commissioner of Social Security; and

''(2) which are in effect immediately before March 31, 1995,

shall (to the extent that they relate to functions described in paragraph (1)(B)) continue in effect according to their terms until modified, terminated, suspended, set aside, or repealed by such Commissioner, except that any collective bargaining agreement shall remain in effect until the date of termination specified in such agreement.

''(c) CONTINUATION OF PROCEEDINGS.—The provisions of this title (including the amendments made thereby) shall not affect any proceeding pending before the Secretary of Health and Human Services immediately before March 31, 1995, with respect to functions vested (by reason of this title, the amendments made thereby, and regulations prescribed thereunder) in the Commissioner of Social Security, except that such proceedings, to the extent that such proceedings relate to such functions, shall continue before such Commissioner. Orders shall be issued under any such proceeding, appeals taken therefrom, and payments shall be made pursuant to such orders, in like manner as if this title had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or repealed by such Commissioner, by a court of competent jurisdiction, or by operation of law.

''(d) CONTINUATION OF SUITS.—Except as provided in this subsection—

''(1) the provisions of this title shall not affect suits commenced before March 31, 1995; and

''(2) in all such suits proceedings shall be had, appeals taken, and judgments rendered, in the same manner and effect as if this title had not been enacted.

No cause of action, and no suit, action, or other proceeding commenced by or against any officer in such officer's official capacity as an officer of the Department of Health and Human Services, shall abate by reason of the enactment of this title. In any suit, action, or other proceeding pending immediately before March 31, 1995, the court or hearing officer may at any time, on the motion of the court or hearing officer or that of a party, enter an order which will give effect to the

provisions of this subsection (including, where appropriate, an order for substitution of parties).

''(e) CONTINUATION OF PENALTIES.—This title shall not have the effect of releasing or extinguishing any civil or criminal prosecution, penalty, forfeiture, or liability incurred as a result of any function which (by reason of this title, the amendments made thereby, and regulations prescribed thereunder) is vested in the Commissioner of Social Security.

''(f) JUDICIAL REVIEW.—Orders and actions of the Commissioner of Social Security in the exercise of functions vested in such Commissioner under this title and the amendments made thereby (other than functions performed pursuant to 105(a)(2) [set out above]) shall be subject to judicial review to the same extent and in the same manner as if such orders had been made and such actions had been taken by the Secretary of Health and Human Services in the exercise of such functions immediately before March 31, 1995. Any statutory requirements relating to notice, hearings, action upon the record, or administrative review that apply to any function so vested in such Commissioner shall continue to apply to the exercise of such function by such Commissioner.

''(g) EXERCISE OF FUNCTIONS.—In the exercise of the functions vested in the Commissioner of Social Security under this title, the amendments made thereby, and regulations prescribed thereunder, such Commissioner shall have the same authority as that vested in the Secretary of Health and Human Services with respect to the exercise of such functions immediately preceding the vesting of such functions in such Commissioner, and actions of such Commissioner shall have the same force and effect as when exercised by such Secretary.''

RULES OF CONSTRUCTION

Section 109 of title I of Pub. L. 103–296 provided that:

''(a) REFERENCES TO THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—Whenever any reference is made in any provision of law (other than this title [see Tables for classification] or a provision of law amended by this title), regulation, rule, record, or document to the Department of Health and Human Services with respect to such Department's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act [subchapter II of this chapter] or the supplemental security income program under title XVI of such Act [subchapter XVI of this chapter] or other functions performed by the Social Security Administration pursuant to section 105(a)(2) of this Act [set out above], such reference shall be considered a reference to the Social Security Administration.

''(b) REFERENCES TO THE SECRETARY OF HEALTH AND HUMAN SERVICES.—Whenever any reference is made in any provision of law (other than this title or a provision of law amended by this title), regulation, rule, record, or document to the Secretary of Health and Human Services with respect to such Secretary's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act or other functions performed by the Commissioner of Social Security pursuant to section 105(a)(2) of this Act, such reference shall be considered a reference to the Commissioner of Social Security.

''(c) REFERENCES TO OTHER OFFICERS AND EMPLOYEES.—Whenever any reference is made in any provision of law (other than this title or a provision of law amended by this title), regulation, rule, record, or document to any other officer or employee of the Department of Health and Human Services with respect to such officer or employee's functions under the old-age, survivors, and disability insurance program under title II of the Social Security Act or the supplemental security income program under title XVI of such Act or other functions performed by the officer or employee of the Social Security Administration pursuant to section 105(a)(2) of this Act, such reference shall be considered a reference to the appropriate officer or employee of the Social Security Administration.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 902 of this title.

§ 901a. Repealed. Aug. 28, 1950, ch. 809, title IV, § 401(b), 64 Stat. 558

Section, act Aug. 10, 1939, ch. 666, title IX, § 908, 53 Stat. 1402, placed Social Security Board under direction and supervision of Federal Security Administrator.

§ 902. Commissioner; Deputy Commissioner; other officers

(a) Commissioner of Social Security

(1) There shall be in the Administration a Commissioner of Social Security (in this subchapter referred to as the ''Commissioner'') who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Commissioner shall be compensated at the rate provided for level I of the Executive Schedule.

(3) The Commissioner shall be appointed for a term of 6 years, except that the initial term of office for Commissioner shall terminate January 19, 2001. In any case in which a successor does not take office at the end of a Commissioner's term of office, such Commissioner may continue in office until the entry upon office of such a successor. A Commissioner appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term. An individual serving in the office of Commissioner may be removed from office only pursuant to a finding by the President of neglect of duty or malfeasance in office.

(4) The Commissioner shall be responsible for the exercise of all powers and the discharge of all duties of the Administration, and shall have authority and control over all personnel and activities thereof.

(5) The Commissioner may prescribe such rules and regulations as the Commissioner determines necessary or appropriate to carry out the functions of the Administration. The regulations prescribed by the Commissioner shall be subject to the rulemaking procedures established under section 553 of title 5.

(6) The Commissioner may establish, alter, consolidate, or discontinue such organizational units or components within the Administration as the Commissioner considers necessary or appropriate, except that this paragraph shall not apply with respect to any unit, component, or provision provided for by this chapter.

(7) The Commissioner may assign duties, and delegate, or authorize successive redelegations of, authority to act and to render decisions, to such officers and employees of the Administration as the Commissioner may find necessary. Within the limitations of such delegations, redelegations, or assignments, all official acts and decisions of such officers and employees shall have the same force and effect as though performed or rendered by the Commissioner.

(8) The Commissioner and the Secretary of Health and Human Services (in this subchapter referred to as the ''Secretary'') shall consult, on an ongoing basis, to ensure—

(A) the coordination of the programs administered by the Commissioner, as described in section 901 of this title, with the programs administered by the Secretary under subchapters XVIII and XIX of this chapter; and

(B) that adequate information concerning benefits under such subchapters XVIII and XIX of this chapter is available to the public.

(b) Deputy Commissioner of Social Security

(1) There shall be in the Administration a Deputy Commissioner of Social Security (in this subchapter referred to as the ''Deputy Commissioner'') who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Deputy Commissioner shall be appointed for a term of 6 years, except that the initial term of office for the Deputy Commissioner shall terminate January 19, 2001. In any case in which a successor does not take office at the end of a Deputy Commissioner's term of office, such Deputy Commissioner may continue in office until the entry upon office of such a successor. A Deputy Commissioner appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term.

(3) The Deputy Commissioner shall be compensated at the rate provided for level II of the Executive Schedule.

(4) The Deputy Commissioner shall perform such duties and exercise such powers as the Commissioner shall from time to time assign or delegate. The Deputy Commissioner shall be Acting Commissioner of the Administration during the absence or disability of the Commissioner and, unless the President designates another officer of the Government as Acting Commissioner, in the event of a vacancy in the office of the Commissioner.

(c) Chief Financial Officer

There shall be in the Administration a Chief Financial Officer appointed by the Commissioner in accordance with section 901(a)(2) of title 31.

(d) Inspector General

There shall be in the Administration an Inspector General appointed by the President, by and with the advice and consent of the Senate, in accordance with section 3(a) of the Inspector General Act of 1978.

(Aug. 14, 1935, ch. 531, title VII, §702, 49 Stat. 636; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(c), (d), 64 Stat. 558; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(j)(2)(C)(i), (*l*)(1), 98 Stat. 1170, 1171; Aug. 15, 1994, Pub. L. 103–296, title I, §102, 108 Stat. 1465.)

REFERENCES IN TEXT

Levels I and II of the Executive Schedule, referred to in subsecs. (a)(2) and (b)(3), are set out in sections 5312 and 5313, respectively, of Title 5, Government Organization and Employees.

Section 3(a) of the Inspector General Act of 1978, referred to in subsec. (d), is section 3(a) of Pub. L. 95–452, which is set out in the Appendix to Title 5.

AMENDMENTS

1994—Pub. L. 103–296 amended section generally. Prior to amendment, section read as follows: ''The Secretary shall perform the duties imposed upon him by this chapter and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.''

1984—Pub. L. 98–369, §2663(*l*)(1), substituted ''Secretary'' for ''Administrator''.

Pub. L. 98–369, §2663(j)(2)(C)(i), which directed the substitution of ''Health and Human Services'' for ''Health, Education, and Welfare'', could not be executed because ''Health, Education, and Welfare'' did not appear in text.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' and ''him'' for ''it''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

DEMONSTRATION PROJECTS RELATING TO ACCOUNTABILITY FOR TELEPHONE SERVICE CENTER COMMUNICATIONS

Pub. L. 101–508, title V, §5108, Nov. 5, 1990, 104 Stat. 1388–269, directed Secretary of Health and Human Services to develop and carry out demonstration projects designed to implement certain accountability procedures in not fewer than 3 telephone service centers operated by the Social Security Administration, provided that such projects commence not later than 180 days after Nov. 5, 1990, and remain in operation for not less than 1 year and not more than 3 years, and directed Secretary to submit to Congress a written report on the progress of the demonstration projects not later than 90 days after the termination of the project.

TELEPHONE ACCESS TO SOCIAL SECURITY ADMINISTRATION

Section 302 of Pub. L. 103–296 provided that:

''(a) STUDY.—The Comptroller General of the United States shall conduct a study of telephone access to local offices of the Social Security Administration.

''(b) MATTERS TO BE STUDIED.—In conducting the study under this section, the Comptroller General shall make an independent assessment of the Social Security Administration's use of innovative technology (including attendant call and voice mail) to increase public telephone access to local offices of the Administration. Such study shall include—

''(1) an assessment of the aggregate impact of such technology on public access to the local offices, and

''(2) a separate assessment of the impact of such technology on public access to those local offices to which access was restricted on October 1, 1989.

''(c) REPORT.—Not later than January 31, 1996, the Comptroller General shall submit a report on the results of the study conducted pursuant to this section to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

Pub. L. 101–508, title V, §5110, Nov. 5, 1990, 104 Stat. 1388–272, provided that:

''(a) REQUIRED MINIMUM LEVEL OF ACCESS TO LOCAL OFFICES.—In addition to such other access by telephone to offices of the Social Security Administration as the Secretary of Health and Human Services may consider appropriate, the Secretary shall maintain access by telephone to local offices of the Social Security Admin-

istration at the level of access generally available as of September 30, 1989.

''(b) TELEPHONE LISTINGS.—The Secretary shall make such requests of local telephone utilities in the United States as are necessary to ensure that the listings subsequently maintained and published by such utilities for each locality include the address and telephone number for each local office of the Social Security Administration to which direct telephone access is maintained under subsection (a) in such locality. Such listing may also include information concerning the availability of a toll-free number which may be called for general information.

''(c) REPORT BY SECRETARY.—Not later than January 1, 1993, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report which—

''(1) assesses the impact of the requirements established by this section on the Social Security Administration's allocation of resources, workload levels, and service to the public, and

''(2) presents a plan for using new, innovative technologies to enhance access to the Social Security Administration, including access to local offices.

''(d) GAO REPORT.—The Comptroller General of the United States shall review the level of telephone access by the public to the local offices of the Social Security Administration. The Comptroller General shall file an interim report with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate describing such level of telephone access not later than 120 days after the date of the enactment of this Act [Nov. 5, 1990] and shall file a final report with such Committees describing such level of access not later than 210 days after such date.

''(e) EFFECTIVE DATE.—The Secretary of Health and Human Services shall meet the requirements of subsections (a) and (b) as soon as possible after the date of the enactment of this Act but not later [than] 180 days after such date.''

REPORT REGARDING NOTICES IN LANGUAGES OTHER THAN ENGLISH

Pub. L. 101–239, title X, § 10306(b), Dec. 19, 1989, 103 Stat. 2484, directed Secretary of Health and Human Resources, not later than Jan. 1, 1991, to submit a report to Congress relating to procedures of Social Security Administration for issuing notices in languages other than English.

STUDY CONCERNING ESTABLISHMENT OF SOCIAL SECURITY ADMINISTRATION AS AN INDEPENDENT AGENCY

Pub. L. 98–21, title III, § 338, Apr. 20, 1983, 97 Stat. 132, as amended by Pub. L. 98–369, div. B, title VI, § 2662(h)(1), July 18, 1984, 98 Stat. 1160, established, under authority of Committee on Ways and Means of the House of Representatives and Committee on Finance of the Senate, a Joint Study Panel on the Social Security Administration to undertake a study of removing Social Security Administration from Department of Health and Human Services and establishing it as an independent agency in the executive branch with its own independent administrative structure, including possibility of such a structure headed by a board appointed by the President, by and with the advice and consent of the Senate, and to submit, not later than Apr. 1, 1984, a report of the findings of the study, and provided that the Panel would expire 30 days after the date of the submission of the report.

EARNINGS SHARING IMPLEMENTATION REPORT

Pub. L. 98–21, title III, § 343, Apr. 20, 1983, 97 Stat. 136, directed Secretary of Health and Human Services to develop, in consultation with Committee on Finance of the Senate and Committee on Ways and Means of the House of Representatives, proposals for earnings sharing legislation (i.e., proposals that combined earnings of a husband and wife during period of their marriage be divided equally and shared between them for social security benefit purposes) and report such proposals to such committees not later than July 1, 1984.

UNIVERSAL COVERAGE OF SOCIAL SECURITY PROGRAMS; STUDY AND REPORT TO PRESIDENT AND CONGRESS RESPECTING SCOPE, ALTERNATIVES, ETC.; CONSULTATION BY SECRETARY

Pub. L. 95–216, title III, § 311, Dec. 20, 1977, 91 Stat. 1531, as amended by 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783, directed Secretary of Health, Education, and Welfare to undertake as soon as possible after Dec. 20, 1977, a thorough study with respect to extent of coverage under old-age, survivors, and disability insurance programs and under programs established by subchapter XVIII of this chapter and submit a report on findings of such study not later than 2 years after Dec. 20, 1977.

PROPOSALS FOR ELIMINATION OF DEPENDENCY AND SEX DISCRIMINATION UNDER SOCIAL SECURITY PROGRAM; STUDY AND REPORT TO CONGRESS

Pub. L. 95–216, title III, § 341, Dec. 20, 1977, 91 Stat. 1548, directed Secretary of Health, Education, and Welfare, in consultation with the Task Force on Sex Discrimination, to make a detailed study of proposals to eliminate dependency as a factor in the determination of entitlement to spouse's benefits under the program established under subchapter II of this chapter and of proposals to bring about equal treatment for men and women in any and all respects under such program and submit a report to Congress within 6 months of Dec. 20, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 904 of this title.

§ 903. Social Security Advisory Board

(a) Establishment of Board

There shall be established a Social Security Advisory Board (in this section referred to as the ''Board'').

(b) Functions of Board

On and after the date the Commissioner takes office, the Board shall advise the Commissioner on policies related to the old-age, survivors, and disability insurance program under subchapter II of this chapter and the supplemental security income program under subchapter XVI of this chapter. Specific functions of the Board shall include—

(1) analyzing the Nation's retirement and disability systems and making recommendations with respect to how the old-age, survivors, and disability insurance program and the supplemental security income program, supported by other public and private systems, can most effectively assure economic security;

(2) studying and making recommendations relating to the coordination of programs that provide health security with programs described in paragraph (1);

(3) making recommendations to the President and to the Congress with respect to policies that will ensure the solvency of the old-age, survivors, and disability insurance program, both in the short-term and the long-term;

(4) making recommendations with respect to the quality of service that the Administration provides to the public;

(5) making recommendations with respect to policies and regulations regarding the old-age,

survivors, and disability insurance program and the supplemental security income program;

(6) increasing public understanding of the social security system;

(7) making recommendations with respect to a long-range research and program evaluation plan for the Administration;

(8) reviewing and assessing any major studies of social security as may come to the attention of the Board; and

(9) making recommendations with respect to such other matters as the Board determines to be appropriate.

(c) Structure and membership of Board

(1) The Board shall be composed of 7 members who shall be appointed as follows:

(A) 3 members shall be appointed by the President, by and with the advice and consent of the Senate. Not more than 2 of such members shall be from the same political party.

(B) 2 members (each member from a different political party) shall be appointed by the President pro tempore of the Senate with the advice of the Chairman and the Ranking Minority Member of the Senate Committee on Finance.

(C) 2 members (each member from a different political party) shall be appointed by the Speaker of the House of Representatives, with the advice of the Chairman and the Ranking Minority Member of the House Committee on Ways and Means.

(2) The members shall be chosen on the basis of their integrity, impartiality, and good judgment, and shall be individuals who are, by reason of their education, experience, and attainments, exceptionally qualified to perform the duties of members of the Board.

(d) Terms of appointment

Each member of the Board shall serve for a term of 6 years, except that—

(1) a member appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term; and

(2) the terms of service of the members initially appointed under this section shall begin on October 1, 1994, and expire as follows:

(A) The terms of service of the members initially appointed by the President shall expire as designated by the President at the time of nomination, 1 each at the end of—

(i) 2 years;

(ii) 4 years; and

(iii) 6 years.

(B) The terms of service of members initially appointed by the President pro tempore of the Senate shall expire as designated by the President pro tempore of the Senate at the time of nomination, 1 each at the end of—

(i) 3 years; and

(ii) 6 years.

(C) The terms of service of members initially appointed by the Speaker of the House of Representatives shall expire as designated by the Speaker of the House of Representatives at the time of nomination, 1 each at the end of—

(i) 4 years; and

(ii) 5 years.

(e) Chairman

A member of the Board shall be designated by the President to serve as Chairman for a term of 4 years, coincident with the term of the President, or until the designation of a successor.

(f) Expenses and per diem

Members of the Board shall serve without compensation, except that, while serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government employed intermittently.

(g) Meetings

(1) The Board shall meet at the call of the Chairman (in consultation with the other members of the Board) not less than 4 times each year to consider a specific agenda of issues, as determined by the Chairman in consultation with the other members of the Board.

(2) Four members of the Board (not more than 3 of whom may be of the same political party) shall constitute a quorum for purposes of conducting business.

(h) Federal Advisory Committee Act

The Board shall be exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(i) Personnel

The Board shall, without regard to the provisions of title 5 relating to the competitive service, appoint a Staff Director who shall be paid at a rate equivalent to a rate established for the Senior Executive Service under section 5382 of title 5. The Board shall appoint such additional personnel as the Board determines to be necessary to provide adequate clerical support for the Board, and may compensate such additional personnel without regard to the provisions of title 5 relating to the competitive service.

(j) Authorization of appropriations

There are authorized to be appropriated, out of the Federal Disability Insurance Trust Fund, the Federal Old-Age and Survivors Insurance Trust Fund, and the general fund of the Treasury, such sums as are necessary to carry out the purposes of this section.

(Aug. 14, 1935, ch. 531, title VII, §703, 49 Stat. 636; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(c), (d), 64 Stat. 558; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(*l*)(1), 98 Stat. 1171; Aug. 15, 1994, Pub. L. 103–296, title I, §103, 108 Stat. 1467.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (h), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

The provisions of title 5 relating to the competitive service, referred to in subsec. (i), are classified generally to section 3301 et seq. of Title 5.

AMENDMENTS

1994—Pub. L. 103–296 amended section generally. Prior to amendment, section read as follows: ''The Secretary

is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out his functions under this chapter. Appointments of attorneys and experts may be made without regard to the civil-service laws.''

1984—Pub. L. 98–369 substituted ''Secretary'' for ''Administrator''.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' and ''his'' for ''its''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 904. Administrative duties of Commissioner

(a) Personnel

(1) The Commissioner shall appoint such additional officers and employees as the Commissioner considers necessary to carry out the functions of the Administration under this chapter, and attorneys and experts may be appointed without regard to the civil service laws. Except as otherwise provided in the preceding sentence or in any other provision of law, such officers and employees shall be appointed, and their compensation shall be fixed, in accordance with title 5.

(2) The Commissioner may procure the services of experts and consultants in accordance with the provisions of section 3109 of title 5.

(3) Notwithstanding any requirements of section 3133 of title 5, the Director of the Office of Personnel Management shall authorize for the Administration a total number of Senior Executive Service positions which is substantially greater than the number of such positions authorized in the Social Security Administration in the Department of Health and Human Services as of immediately before August 15, 1994, to the extent that the greater number of such authorized positions is specified in the comprehensive work force plan as established and revised by the Commissioner under subsection (b)(2) of this section. The total number of such positions authorized for the Administration shall not at any time be less than the number of such authorized positions as of immediately before such date.

(b) Budgetary matters

(1) The Commissioner shall prepare an annual budget for the Administration, which shall be submitted by the President to the Congress without revision, together with the President's annual budget for the Administration.

(2)(A) Appropriations requests for staffing and personnel of the Administration shall be based upon a comprehensive work force plan, which shall be established and revised from time to time by the Commissioner.

(B) Appropriations for administrative expenses of the Administration are authorized to be provided on a biennial basis.

(c) Employment restriction

The total number of positions in the Administration (other than positions established under section 902 of this title) which—

(1) are held by noncareer appointees (within the meaning of section 3132(a)(7) of title 5) in the Senior Executive Service, or

(2) have been determined by the President or the Office of Personnel Management to be of a confidential, policy-determining, policy-making, or policy-advocating character and have been excepted from the competitive service thereby,

may not exceed at any time the equivalent of 20 full-time positions.

(d) Seal of office

The Commissioner shall cause a seal of office to be made for the Administration of such design as the Commissioner shall approve. Judicial notice shall be taken of such seal.

(e) Data exchanges

(1) Notwithstanding any other provision of law (including subsections (b), (*o*), (p), (q), (r), and (u) of section 552a of title 5—

(A) the Secretary shall disclose to the Commissioner any record or information requested in writing by the Commissioner for the purpose of administering any program administered by the Commissioner, if records or information of such type were disclosed to the Commissioner of Social Security in the Department of Health and Human Services under applicable rules, regulations, and procedures in effect before August 15, 1994; and

(B) the Commissioner shall disclose to the Secretary or to any State any record or information requested in writing by the Secretary to be so disclosed for the purpose of administering any program administered by the Secretary, if records or information of such type were so disclosed under applicable rules, regulations, and procedures in effect before August 15, 1994.

(2) The Commissioner and the Secretary shall enter into an agreement under which the Commissioner provides the Secretary data concerning the quality of the services and information provided to beneficiaries of the programs under subchapters XVIII and XIX of this chapter and the administrative services provided by the Social Security Administration in support of such programs. Such agreement shall stipulate the type of data to be provided and the terms and conditions under which the data are to be provided.

(3) The Commissioner and the Secretary shall periodically review the need for exchanges of information not referred to in paragraph (1) or (2) and shall enter into such agreements as may be necessary and appropriate to provide information to each other or to States in order to meet the programmatic needs of the requesting agencies.

(4)(A) Any disclosure from a system of records (as defined in section 552a(a)(5) of title 5) pursuant to this subsection shall be made as a routine use under subsection (b)(3) of section 552a of such title (unless otherwise authorized under such section 552a).

(B) Any computerized comparison of records, including matching programs, between the Commissioner and the Secretary shall be conducted in accordance with subsections (*o*), (p), (q), (r), and (u) of section 552a of title 5.

(5) The Commissioner and the Secretary shall each ensure that timely action is taken to establish any necessary routine uses for disclosures required under paragraph (1) or agreed to pursuant to paragraph (3).

(Aug. 14, 1935, ch. 531, title VII, §704, 49 Stat. 636; Aug. 28, 1950, ch. 809, title IV, §402(b), 64 Stat. 558; Apr. 21, 1976, Pub. L. 94–273, §33, 90 Stat. 380; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(*l*)(1), 98 Stat. 1171; Aug. 15, 1994, Pub. L. 103–296, title I, §104(a), 108 Stat. 1470.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(1), are classified generally to Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

AMENDMENTS

1994—Pub. L. 103–296 amended section generally. Prior to amendment, section read as follows: ''The Secretary shall make a full report to Congress, within one hundred and twenty days after the beginning of each regular session, of the administration of the functions with which he is charged under this chapter. In addition to the number of copies of such report authorized by other law to be printed, there is hereby authorized to be printed not more than five thousand copies of such report for use by the Secretary for distribution to Members of Congress and to State and other public or private agencies or organizations participating in or concerned with the social security program.''

1984—Pub. L. 98–369 substituted ''Secretary'' for ''Administrator''.

1976—Pub. L. 94–273 substituted ''within one hundred and twenty days after the beginning'' for ''at the beginning''.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' in first sentence and added second sentence.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 104(c) of Pub. L. 103–296 provided that:

''(1) EFFECTIVE DATE.—Section 704(e)(4) of the Social Security Act [subsec. (e)(4) of this section] (as amended by subsection (a)) shall take effect March 31, 1996.

''(2) TRANSITION RULE.—Notwithstanding any other provision of law (including subsections (b), (*o*), (p), (q), (r), and (u) of section 552a of title 5, United States Code), arrangements for disclosure of records or other information, and arrangements for computer matching of records, which were in effect immediately before the date of the enactment of this Act [Aug. 15, 1994] between the Social Security Administration in the Department of Health and Human Services and other components of such Department may continue between the Social Security Administration established under section 701 of the Social Security Act [section 901 of this title] (as amended by this Act) and such Department during the period beginning on the date of the enactment of this Act and ending March 31, 1996.''

Amendment by section 104(a) of Pub. L. 103–296 effective Mar. 31, 1995, except as otherwise provided, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

REPORT ON SES POSITIONS UNDER COMPREHENSIVE WORK FORCE PLAN

Section 104(b) of Pub. L. 103–296 provided that: ''Within 60 days after the establishment by the Commissioner of Social Security of the comprehensive work force plan required under section 704(b)(2) of the Social Security Act [subsec. (b)(2) of this section] (as amended by this Act), the Director of the Office of Personnel Management shall transmit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report specifying the total number of Senior Executive Services positions authorized for the Social Security Administration in connection with such work force plan.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 405, 1383 of this title.

§§ 905, 905a. Transferred

CODIFICATION

Section 905, act July 5, 1952, ch. 575, title II, §201, 66 Stat. 369, as amended, which related to the working capital fund, was transferred to section 3513 of this title.

Section 905a, act Aug. 10, 1971, Pub. L. 92–80, title II, §200, 85 Stat. 297, which related to additional use of the working capital fund, was transferred to section 3513b of this title.

§ 906. Training grants for public welfare personnel

(a) Authorization of appropriations

In order to assist in increasing the effectiveness and efficiency of administration of public assistance programs by increasing the number of adequately trained public welfare personnel available for work in public assistance programs, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1963, the sum of $3,500,000, and for each fiscal year thereafter the sum of $5,000,000.

(b) Allocation for carrying out direct grant programs

Such portion of the sums appropriated pursuant to subsection (a) of this section for any fiscal year as the Secretary may determine, but not in excess of $1,000,000 in the case of the fiscal year ending June 30, 1963, and $2,000,000 in the case of any fiscal year thereafter, shall be available for carrying out subsection (f) of this section. From the remainder of the sums so appropriated for any fiscal year, the Secretary shall make allotments to the States on the basis of (1) population, (2) relative need for trained public welfare personnel, particularly for personnel to provide self-support and self-care services, and (3) financial need.

(c) Payments to States for cost of grant programs to certain agencies and institutions

From each State's allotment under subsection (b) of this section, the Secretary shall from time to time pay to such State its costs of carrying out the purposes of this section through (1) grants to public or other nonprofit institutions of higher learning for training personnel employed or preparing for employment in public assistance programs, (2) special courses of study or seminars of short duration conducted for such personnel by experts hired on a temporary basis for the purpose, and (3) establishing and maintaining, directly or through grants to such institutions, fellowships or traineeships for such personnel at such institutions, with such stipends

and allowances as may be permitted under regulations of the Secretary.

(d) Advance payments to States

Payments pursuant to subsection (c) of this section shall be made in advance on the basis of estimates by the Secretary and adjustments may be made in future payments under this section to take account of overpayments or underpayments in amounts previously paid.

(e) Reallotments

The amount of any allotment to a State under subsection (b) of this section for any fiscal year which the State certifies to the Secretary will not be required for carrying out the purposes of this section in such State shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines have need in carrying out such purposes for sums in excess of those previously allotted to them under this section and will be able to use such excess amounts during such fiscal year; such reallotments to be made on the basis provided in subsection (b) of this section for the initial allotments to the States. Any amount so reallotted to a State shall be deemed part of its allotment under such subsection.

(f) Direct grants to certain agencies and institutions

(1) The portion of the sums appropriated for any fiscal year which is determined by the Secretary under the first sentence of subsection (b) of this section to be available for carrying out this subsection shall be available to enable him to provide (A) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for training personnel who are employed or preparing for employment in the administration of public assistance programs, (B) directly or through grants to or contracts with public or nonprofit private agencies or institutions, for special courses of study or seminars of short duration (not in excess of one year) for training of such personnel, and (C) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for establishing and maintaining fellowships or traineeships for such personnel at such institutions, with such stipends and allowances as may be permitted by the Secretary.

(2) Payments under paragraph (1) may be made in advance on the basis of estimates by the Secretary, or may be made by way of reimbursement, and adjustments may be made in future payments under this subsection to take account of overpayments or underpayments in amounts previously paid.

(3) The Secretary may, to the extent he finds such action to be necessary, prescribe requirements to assure that any individual will repay the amount of his fellowship or traineeship received under this subsection to the extent such individual fails to serve, for the period prescribed by the Secretary, with a State or political subdivision thereof, or with the Federal Government, in connection with administration of any State or local public assistance program. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that requirement of such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the public welfare programs established by this chapter.

(Aug. 14, 1935, ch. 531, title VII, §705, as added Aug. 1, 1956, ch. 836, title III, §332, 70 Stat. 851; amended May 8, 1961, Pub. L. 87–31, §3, 75 Stat. 77; July 25, 1962, Pub. L. 87–543, title I, §123 (a)–(c), 76 Stat. 192.)

AMENDMENTS

1962—Subsec. (a). Pub. L. 87–543, §123(a), substituted ''for the fiscal year ending June 30, 1963, the sum of $3,500,000, and for each fiscal year thereafter the sum of $5,000,000'' for ''for the fiscal year ending June 30, 1958, the sum of $5,000,000, and for each of the five succeeding fiscal years such sums as the Congress may determine''.

Subsec. (b). Pub. L. 87–543, §123(b), required appropriated moneys to be made available for carrying out subsec. (f) of this section.

Subsec. (f). Pub. L. 87–543, §123(c), added subsec. (f).

1961—Subsec. (a). Pub. L. 87–31, §3(a), substituted ''five'' for ''four''.

Subsec. (c). Pub. L. 87–31, §3(b), substituted ''its costs of carrying out the purposes of this section'' for ''80 per centum of the total of its expenditures in carrying out the purposes of this section''.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 202(b) of Pub. L. 87–543 provided that: ''The amendments made by sections 102(c), 123, and 132(d) [enacting section 727 of this title, amending this section and sections 722 and 726 of this title, and repealing credits to section 1308 of this title and provisions set out as notes under section 1308 of this title] shall be applicable in the case of fiscal years beginning after June 30, 1962.''

EFFECTIVE DATE OF 1961 AMENDMENT

Section 3(b) of Pub. L. 87–31 provided that the amendment made by that section is effective with respect to payments from allotments from appropriations made for fiscal years beginning after June 30, 1961.

§ 907. Repealed. Pub. L. 103–296, title I, § 108(a)(2), Aug. 15, 1994, 108 Stat. 1481

Section, act Aug. 14, 1935, ch. 531, title VII, §706, as added July 30, 1965, Pub. L. 89–97, title I, §109(a), 79 Stat. 339; amended Jan. 2, 1968, Pub. L. 90–248, title I, §165, title IV, §403(d), 81 Stat. 874, 932; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(j)(2)(C)(ii), 98 Stat. 1170; Apr. 7, 1986, Pub. L. 99–272, title XII, §12102(g)(1), 100 Stat. 285; Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095, provided for appointment by Secretary every four years of an Advisory Council on Social Security and functions of Council.

EFFECTIVE DATE OF REPEAL

Repeal effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.

APPLICABILITY OF REPEAL TO 1994 COUNCIL

Section 108(a)(2) of Pub. L. 103–296 provided in part that: ''This paragraph [repealing this section] shall not apply with respect to the Advisory Council for Social Security appointed in 1994.''

§ 907a. National Commission on Social Security

(a) Establishment; membership; Chairman and Vice Chairman; quorum; terms of office; vacancies; per diem and expense reimbursement; meetings

(1) There is established a commission to be known as the National Commission on Social

Security (hereinafter referred to as the ''Commission'').

(2)(A) The Commission shall consist of—

(i) five members to be appointed by the President, by and with the advice and consent of the Senate, one of whom shall, at the time of appointment, be designated as Chairman of the Commission;

(ii) two members to be appointed by the Speaker of the House of Representatives; and

(iii) two members to be appointed by the President pro tempore of the Senate.

(B) At no time shall more than three of the members appointed by the President, one of the members appointed by the Speaker of the House of Representatives, or one of the members appointed by the President pro tempore of the Senate be members of the same political party.

(C) The membership of the Commission shall consist of individuals who are of recognized standing and distinction and who possess the demonstrated capacity to discharge the duties imposed on the Commission, and shall include representatives of the private insurance industry and of recipients and potential recipients of benefits under the programs involved as well as individuals whose capacity is based on a special knowledge or expertise in those programs. No individual who is otherwise an officer or full-time employee of the United States shall serve as a member of the Commission.

(D) The Chairman of the Commission shall designate a member of the Commission to act as Vice Chairman of the Commission.

(E) A majority of the members of the Commission shall constitute a quorum, but a lesser number may conduct hearings.

(F) Members of the Commission shall be appointed for a term which shall end on April 1, 1981.

(G) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as that herein provided for the appointment of the member first appointed to the vacant position.

(3) Members of the Commission shall receive $138 per diem while engaged in the actual performance of the duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(4) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission; but meetings of the Commission shall be held not less frequently than once in each calendar month which begins after a majority of the authorized membership of the Commission has first been appointed.

(b) Continuing study, investigation, and review of social security program; scope of study, etc., and public participation

(1) It shall be the duty and function of the Commission to conduct a continuing study, investigation, and review of—

(A) the Federal old-age, survivors, and disability insurance program established by subchapter II of this chapter; and

(B) the health insurance programs established by subchapter XVIII of this chapter.

(2) Such study, investigation, and review of such programs shall include (but not be limited to)—

(A) the fiscal status of the trust funds established for the financing of such programs and the adequacy of such trust funds to meet the immediate and long-range financing needs of such programs;

(B) the scope of coverage, the adequacy of benefits including the measurement of an adequate retirement income, and the conditions of qualification for benefits provided by such programs including the application of the retirement income test to unearned as well as earned income;

(C) the impact of such programs on, and their relation to, public assistance programs, nongovernmental retirement and annuity programs, medical service delivery systems, and national employment practices;

(D) any inequities (whether attributable to provisions of law relating to the establishment and operation of such programs, to rules and regulations promulgated in connection with the administration of such programs, or to administrative practices and procedures employed in the carrying out of such programs) which affect substantial numbers of individuals who are insured or otherwise eligible for benefits under such programs, including inequities and inequalities arising out of marital status, sex, or similar classifications or categories;

(E) possible alternatives to the current Federal programs or particular aspects thereof, including but not limited to (i) a phasing out of the payroll tax with the financing of such programs being accomplished in some other manner (including general revenue funding and the retirement bond), (ii) the establishment of a system providing for mandatory participation in any or all of the Federal programs, (iii) the integration of such current Federal programs with private retirement programs, and (iv) the establishment of a system permitting covered individuals a choice of public or private programs or both;

(F) the need to develop a special Consumer Price Index for the elderly, including the financial impact that such an index would have on the costs of the programs established under this chapter; and

(G) methods for effectively implementing the recommendations of the Commission.

(3) In order to provide an effective opportunity for the general public to participate fully in the study, investigation, and review under this section, the Commission, in conducting such study, investigation, and review, shall hold public hearings in as many different geographical areas of the country as possible. The residents of each area where such a hearing is to be held shall be given reasonable advance notice of the hearing and an adequate opportunity to appear and express their views on the matters under consideration.

(c) Special, annual, and final reports to President and Congress concerning implementation, etc., of study, investigation, and review responsibilities; termination of Commission

(1) No later than four months after the date on which a majority of the authorized membership of the Commission is initially appointed, the Commission shall submit to the President and the Congress a special report describing the Commission's plans for conducting the study, investigation, and review under subsection (b) of this section, with particular reference to the scope of such study, investigation, and review and the methods proposed to be used in conducting it.

(2) At or before the close of each of the first two years after the date on which a majority of the authorized membership of the Commission is initially appointed, the Commission shall submit to the President and the Congress an annual report on the study, investigation, and review under subsection (b) of this section, together with its recommendations with respect to the programs involved. The second such report shall constitute the final report of the Commission on such study, investigation, and review, and shall include its final recommendations; and the Commission shall cease to exist on April 1, 1981.

(d) Executive Director and additional personnel; appointment and compensation

(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule by title 5.

(2) In addition to the Executive Director, the Commission shall have the power to appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5 governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(e) Administrative procedures

In carrying out its duties under this section, the Commission, or any duly authorized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters with respect to which it has a responsibility under this section, as the Commission or such committee may deem advisable. The Chairman of the Commission or any member authorized by him may administer oaths or affirmations to witnesses appearing before the Commission or before any committee thereof.

(f) Data and information from other Federal departments and agencies

The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Commission, any such department or agency shall furnish any such data or information to the Commission.

(g) Administrative support services from General Services Administration; reimbursement

The General Services Administration shall provide to the Commission, on a reimbursable basis such administrative support services as the Commission may request.

(h) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(Pub. L. 95–216, title III, § 361, Dec. 20, 1977, 91 Stat. 1556; Pub. L. 96–265, title V, § 502, June 9, 1980, 94 Stat. 470; Pub. L. 98–369, div. B, title III, § 2349(b)(3), July 18, 1984, 98 Stat. 1097.)

REFERENCES IN TEXT

Level V of the Executive Schedule, referred to in subsec. (d)(1), is set out in section 5316 of Title 5, Government Officers and Employees.

The provisions of title 5 governing appointments to the competitive service, referred to in subsec. (d)(2), are classified to section 3301 et seq. of Title 5.

CODIFICATION

Section was enacted as part of the Social Security Amendments of 1977, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1984—Subsec. (i). Pub. L. 98–369 struck out subsec. (i) which provided for notice of and attendance at meetings of the Health Insurance Benefits Advisory Council.

1980—Subsec. (a)(2)(F). Pub. L. 96–265, § 502(a), substituted ''a term which shall end on April 1, 1981'' for ''a term of two years''.

Subsec. (c)(2). Pub. L. 96–265, § 502(b), substituted ''and the Commission shall cease to exist on April 1, 1981'' for ''and upon the submission of such final report the Commission shall cease to exist''.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2349(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395z of this title and section 231f of Title 45, Railroads, and repealing section 1395dd of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

§ 908. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title VII, § 707, as added Jan. 2, 1968, Pub. L. 90–248, title IV, § 401, 81 Stat. 930, related to grants for expansion and development of undergraduate and graduate programs in the fiscal year ending June 30, 1969, and each of the three succeeding fiscal years.

§ 909. Delivery of benefit checks

(a) Saturdays, Sundays, and holidays

If the day regularly designated for the delivery of benefit checks under subchapter II or XVI of this chapter falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103 of title 5) in any month, the benefit checks which would otherwise be delivered on such day shall be mailed for delivery on the first day preceding such day which is not a Saturday, Sunday, or legal public holiday (as so defined), without regard to whether the delivery of such checks would as a result have to be made before the end of the month for which such checks are issued.

(b) Recovery of overpayments

If more than the correct amount of payment under subchapter II or XVI of this chapter is

made to any individual as a result of the receipt of a benefit check pursuant to subsection (a) of this section before the end of the month for which such check is issued, no action shall be taken (under section 404 or 1383(b) of this title or otherwise) to recover such payment or the incorrect portion thereof.

(c) Early delivery

For purposes of computing the ''OASDI trust fund ratio'' under section 401(*l*) of this title, the ''OASDI fund ratio'' under section 415(i) of this title, and the ''balance ratio'' under section 910(b) of this title, benefit checks delivered before the end of the month for which they are issued by reason of subsection (a) of this section shall be deemed to have been delivered on the regularly designated delivery date.

(Aug. 14, 1935, ch. 531, title VII, §708, as added Dec. 20, 1977, Pub. L. 95–216, title III, §333(a), 91 Stat. 1543; amended Apr. 7, 1986, Pub. L. 99–272, title XII, §12111(a), 100 Stat. 287.)

EFFECTIVE DATE

Section 333(b) of Pub. L. 95–216 provided that: ''The amendment made by subsection (a) of this section [enacting this section] shall apply with respect to benefit checks the regularly designated day for delivery of which occurs on or after the thirtieth day after the date of the enactment of this Act [Dec. 20, 1977].''

AMENDMENTS

1986—Subsec. (c). Pub. L. 99–272 added subsec. (c).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 12111(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 86 of Title 26, Internal Revenue Code] shall apply with respect to benefit checks issued for months ending after the date of the enactment of this Act [Apr. 7, 1986].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 86.

§ 910. Recommendations by Board of Trustees to remedy inadequate balances in Social Security trust funds

(a) Terms and conditions of recommendations

If the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund determines at any time that the balance ratio of any such Trust Fund for any calendar year may become less than 20 percent, the Board shall promptly submit to each House of the Congress a report setting forth its recommendations for statutory adjustments affecting the receipts and disbursements of such Trust Fund necessary to maintain the balance ratio of such Trust Fund at not less than 20 percent, with due regard to the economic conditions which created such inadequacy in the balance ratio and the amount of time necessary to alleviate such inadequacy in a prudent manner. The report shall set forth specifically the extent to which benefits would have to be reduced, taxes under section 1401, 3101, or 3111 of the Internal Revenue Code of 1986 would have to be increased, or a combination thereof, in order to obtain the objectives referred to in the preceding sentence.

(b) "Balance ratio" defined

For purposes of this section, the term ''balance ratio'' means, with respect to any calendar year in connection with any Trust Fund referred to in subsection (a) of this section, the ratio of—

(1) the balance in such Trust Fund as of the beginning of such year, including the taxes transferred under section 401(a) of this title on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 401(*l*) or 1395i(j) of this title, to

(2) the total amount which (for amounts which will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as estimated by the Commissioner, and for amounts which will be paid from the Federal Hospital Insurance Trust and the Federal Supplementary Medical Insurance Trust Fund, as estimated by the Secretary) will be paid from such Trust Fund during such calendar year for all purposes authorized by section 401, 1395i, or 1395t of this title (as applicable), other than payments of interest on, or repayments of, loans under section 401(*l*) or 1395i(j) of this title, but excluding any transfer payments between such Trust Fund and any other Trust Fund referred to in subsection (a) of this section and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into such Trust Fund from that Account.

(Aug. 14, 1935, ch. 531, title VII, §709, as added Apr. 20, 1983, Pub. L. 98–21, title I, §143, 97 Stat. 102; amended Apr. 7, 1986, Pub. L. 99–272, title XII, §12106, 100 Stat. 286; Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095; Aug. 15, 1994, Pub. L. 103–296, title I, §108(a)(3), 108 Stat. 1481.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–296 substituted ''(for amounts which will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as estimated by the Commissioner, and for amounts which will be paid from the Federal Hospital Insurance Trust and the Federal Supplementary Medical Insurance Trust Fund, as estimated by the Secretary)'' for ''(as estimated by the Secretary)''.

1986—Subsec. (a). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(1). Pub. L. 99–272 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''the balance in such Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 401(*l*) or 1395i(j) of this title, as of the beginning of such year, to''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective on first day of month following April 1986, see section 12115 of Pub. L. 99–272, set out as a note under section 415 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 909 of this title.

§ 911. Budgetary treatment of trust fund operations

(a)(1) The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund and the taxes imposed under sections 1401, 3101, and 3111 of the Internal Revenue Code of 1986 shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

(2) No provision of law enacted after December 12, 1985 (other than a provision of an appropriation Act that appropriates funds authorized under this chapter as in effect on December 12, 1985) may provide for payments from the general fund of the Treasury to any Trust Fund specified in paragraph (1) or for payments from any such Trust Fund to the general fund of the Treasury.

(b) The disbursements of the Federal Supplementary Medical Insurance Trust Fund shall be treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust Fund shall be set forth separately in such budgets.

(Aug. 14, 1935, ch. 531, title VII, § 710, as added and amended Apr. 20, 1983, Pub. L. 98–21, title III, § 346(a)(1), (b), 97 Stat. 137, 138; Dec. 12, 1985, Pub. L. 99–177, title II, § 261(a)(1), (b), 99 Stat. 1093, 1094; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(1), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1986—Subsecs. (a), (b). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1985—Subsec. (a). Pub. L. 99–177, § 261(b), designated existing provisions as par. (1) and added par. (2).

Pub. L. 99–177, § 261(a)(1)(E), temporarily added subsec. (a). See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (b). Pub. L. 99–177, § 261(a)(1)(A)–(D), temporarily designated existing provisions as subsec. (b), struck out references to the Federal Old-Age and Survivors Insurance Trust Fund and to the Federal Disability Insurance Trust Fund, and substituted ''sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954'' for ''sections 1401, 3101, and 3111 of the Internal Revenue Code of 1954''. See Effective and Termination Dates of 1985 Amendment note below.

Subsec. (c). Pub. L. 99–177, § 261(a)(1)(F), temporarily added subsec. (c). See Effective and Termination Dates of 1985 Amendment note below.

1983—Pub. L. 98–21, § 346(b), amended section generally, adding subsec. (a) and designating existing provisions as subsec. (b) and striking out ''Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the'' after ''The disbursements of the'' and substituting ''such Trust Fund'' for ''such Trust Funds'', including the taxes imposed under sections 1401, 3101, and 3111 of the Internal Revenue Code of 1954,'' after ''receipts of such Trust Fund''.

EFFECTIVE AND TERMINATION DATES OF 1985 AMENDMENT

Section 261(a)(2) of Pub. L. 99–177 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to fiscal years beginning after September 30, 1985, and ending before October 1, 1992.''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 346(b) of Pub. L. 98–21 provided that the amendment made by that section is effective for fiscal years beginning on or after Oct. 1, 1992.

EFFECTIVE AND TERMINATION DATES

Section 346(a)(2) of Pub. L. 98–21 provided that: ''The amendment made by paragraph (1) [enacting this section] shall apply with respect to fiscal years beginning on or after October 1, 1984, and ending on or before September 30, 1992, except that such amendment shall apply with respect to the fiscal year beginning on October 1, 1983, to the extent it relates to the congressional budget.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 906.

§ 912. Office of Rural Health Policy

(a) There shall be established in the Department of Health and Human Services (in this section referred to as the ''Department'') an Office of Rural Health Policy (in this section referred to as the ''Office''). The Office shall be headed by a Director, who shall advise the Secretary on the effects of current policies and proposed statutory, regulatory, administrative, and budgetary changes in the programs established under subchapters XVIII and XIX of this chapter on the financial viability of small rural hospitals, the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, and access to (and the quality of) health care in rural areas.

(b) In addition to advising the Secretary with respect to the matters specified in subsection (a) of this section, the Director, through the Office, shall—

(1) oversee compliance with the requirements of section 1302(b) of this title and section 4403 of the Omnibus Budget Reconciliation Act of 1987 (as such section pertains to rural health issues),

(2) establish and maintain a clearinghouse for collecting and disseminating information on—

(A) rural health care issues, including rural mental health, rural infant mortality prevention, and rural occupational safety and preventive health promotion,

(B) research findings relating to rural health care, and

(C) innovative approaches to the delivery of health care in rural areas, including programs providing community-based mental health services, pre-natal and infant care services, and rural occupational safety and preventive health education and promotion,

(3) coordinate the activities within the Department that relate to rural health care, and

(4) provide information to the Secretary and others in the Department with respect to the activities, of other Federal departments and agencies, that relate to rural health care, including activities relating to rural mental health, rural infant mortality, and rural occupational safety and preventive health promotion.

(Aug. 14, 1935, ch. 531, title VII, § 711, as added Dec. 22, 1987, Pub. L. 100–203, title IV, § 4401, 101 Stat. 1330–225; amended July 1, 1988, Pub. L. 100–360, title IV, § 411(m)(1), 102 Stat. 806; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6213(g), 103 Stat. 2251.)

REFERENCES IN TEXT

Section 4403 of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (b)(1), is section 4403 of Pub. L. 100–203, which is set out as a note under section 1395b–1 of this title.

AMENDMENTS

1989—Subsec. (b)(2)(A). Pub. L. 101–239, § 6213(g)(1), substituted ''health care issues, including rural mental health, rural infant mortality prevention, and rural occupational safety and preventive health promotion'' for ''health care issues''.

Subsec. (b)(2)(C). Pub. L. 101–239, § 6213(g)(2), substituted ''health care in rural areas, including programs providing community-based mental health services, pre-natal and infant care services, and rural occupational safety and preventive health education and promotion'' for ''health care in rural areas''.

Subsec. (b)(4). Pub. L. 101–239, § 6213(g)(3), substituted ''rural health care, including activities relating to rural mental health, rural infant mortality, and rural occupational safety and preventive health promotion'' for ''rural health care''.

1988—Subsec. (b)(1). Pub. L. 100–360 substituted ''section 4403 of the Omnibus Budget Reconciliation Act of 1987 (as such section pertains to rural health issues)'' for ''section 4083 of the Omnibus Budget Reconciliation Act of 1987''.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254r of this title.

§ 913. Duties and authority of Secretary

The Secretary shall perform the duties imposed upon the Secretary by this chapter. The Secretary is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures as may be necessary for carrying out the functions of the Secretary under this chapter. The Secretary may appoint attorneys and experts without regard to the civil service laws.

(Aug. 14, 1935, ch. 531, title VII, § 712, as added Aug. 15, 1994, Pub. L. 103–296, title I, § 108(a)(1), 108 Stat. 1481.)

REFERENCES IN TEXT

The civil service laws, referred to in text, are classified generally to Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

SUBCHAPTER VIII—TAXES WITH RESPECT TO EMPLOYMENT

§§ 1001 to 1011. Omitted

CODIFICATION

Sections, act Aug. 14, 1935, ch. 531, title VIII, §§ 801–811, 49 Stat. 636–639, related to taxes with respect to employment. Section 4 of act Feb. 10, 1939, ch. 2, 53 Stat. 1, which act enacted Title 26, Internal Revenue Code of 1939, provided that all laws and parts of laws codified into the I.R.C. 1939, to the extent that they related exclusively to internal revenue laws, were repealed. Provisions of I.R.C. 1939 were generally repealed by section 7851 of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). See, also, section 7807 of said Title 26, I.R.C. 1954, respecting rules in effect upon enactment of I.R.C. 1954. The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. The omitted sections were formerly and are now covered by certain sections in Title 26, I.R.C. 1939 and I.R.C. 1986, respectively, as follows:

Omitted sections	I.R.C. 1939	I.R.C. 1986
1001	1400	3101.
1002	1402	3102.
1003	1401	3502.
1004	1410	3111.
1005	1411	6205(a), 6413(a).
1006	1421	6205(b), 6413(b).
1007	1420, 1430	3501.
1008	1429	7805(a), (c).
1009	1423, 1424	6801 et seq.
1010	1425	7208(1), 7209.
1011 (as amended Aug. 10, 1939, ch. 666, title IX, § 905(a), 53 Stat. 1400).	1426	3121, 7701(a)(1).

Section 1001 related to income tax on employees.

Section 1002 related to deduction of tax from wages.

Section 1003 related to deductibility from income taxes.

Section 1004 related to excise tax on employers.

Section 1005 related to adjustment of employers' tax.

Section 1006 related to refunds and deficiencies.

Section 1007 related to collection and payment of taxes.

Section 1008 related to rules and regulations.

Section 1009 related to sale by postmasters of stamps or other devices for collection or payment of tax.

Section 1010 related to penalties.

Section 1011 related to definitions.

SUBCHAPTER IX—EMPLOYMENT SECURITY ADMINISTRATIVE FINANCING

AMENDMENTS

1954—Act Aug. 5, 1954, ch. 657, § 2, 68 Stat. 668, in amending subchapter generally substituted subchapter heading ''EMPLOYMENT SECURITY ADMINISTRATIVE FINANCING'' for ''TAX ON EMPLOYMENT OF EIGHT OR MORE''.

PRIOR LAW; TAX ON EMPLOYERS OF EIGHT OR MORE

Former subchapter IX, sections 1101–1103, 1105–1110, act Aug. 14, 1935, ch. 531, title IX, §§ 901–903, 905–910, 49 Stat. 639–644, related to taxes on employers of eight or more. Section 4 of act Feb. 10, 1939, ch. 2, 53 Stat. 1, which act enacted Title 26, Internal Revenue Code of 1939, provided that all laws and parts of laws codified into the I.R.C. 1939, to the extent that they related exclusively to internal revenue laws, were repealed. Provisions of I.R.C. 1939 were generally repealed by section 7851 of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). See, also, section 7807 of said Title 26, I.R.C. 1954, respecting rules in effect upon enactment of I.R.C. 1954. The I.R.C. 1954 was redesig-

nated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. Said prior law sections were formerly and are now covered by certain sections in Title 26, I.R.C. 1939 and I.R.C. 1986, respectively, as follows:

Former sections	I.R.C. 1939	I.R.C. 1986
1101	1600	3301.
1102	1601(a)	3302.
1103	1603	3304.
1105	1604, 1605, 1610	3501, 6011(a), 6065, 6071, 6081(a), 6091(b)(1), (2), 6106, 6152(a)(3), (b), 6161(a)(1), 6313, 6601(a), (f)(1).
1106	1606	3305.
1107 (as amended act June 25, 1938, ch. 680, § 13(a), 52 Stat. 1110).	1607	3306, 7701(a)(1).
1108	1609	7805(a), (c).
1109	1601(b), (c)	3302.
1110	1602	3303.

REPAIR OF 1938 HURRICANE DAMAGE

Act Aug. 11, 1939, ch. 719, § 1, 53 Stat. 1420, provided that no special security taxes should be collected for work done prior to Jan. 1, 1940, in cleaning up debris and damage caused by the 1938 hurricane.

CREDITS AGAINST SOCIAL SECURITY TAX

Act Aug. 10, 1939, ch. 666, title IX, § 902(a)–(d), (h), 53 Stat. 1399, provided for a credit against the social security tax of certain contributions made with respect to employment during calendar years 1936, 1937, or 1938. Said act Aug. 10, 1939, was affected by act Sept. 20, 1941, ch. 412, title VII, § 701(c), 55 Stat. 728.

Act May 28, 1938, ch. 289, § 810, 52 Stat. 576, related to credits against Social Security Tax for 1936. It was affected by act Sept. 20, 1941, ch. 412, title VII, § 701(c), 55 Stat. 728, relating to credit against Federal unemployment taxes.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 29 section 1732.

§ 1101. Employment Security Administration Account

(a) Establishment

There is hereby established in the Unemployment Trust Fund an employment security administration account.

(b) Amount credited to Account; transfer of funds; adjustments; repayment of internal revenue refunds

(1) There is hereby appropriated to the Unemployment Trust Fund for credit to the employment security administration account, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1961, and for each fiscal year thereafter, an amount equal to 100 per centum of the tax (including interest, penalties, and additions to the tax) received during the fiscal year under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] and covered into the Treasury.

(2) The amount appropriated by paragraph (1) shall be transferred at least monthly from the general fund of the Treasury to the Unemployment Trust Fund and credited to the employment security administration account. Each such transfer shall be based on estimates made by the Secretary of the Treasury of the amounts received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred, to the extent prior estimates (including estimates for the fiscal year ending June 30, 1960) were in excess of or were less than the amounts required to be transferred.

(3) The Secretary of the Treasury is directed to pay from time to time from the employment security administration account into the Treasury, as repayments to the account for refunding internal revenue collections, amounts equal to all refunds made after June 30, 1960, of amounts received as tax under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] (including interest on such refunds).

(c) Administrative expenditures; necessary expenses; quarterly transfer of funds; adjustments; limitation; estimate of net receipts

(1) There are hereby authorized to be made available for expenditure out of the employment security administration account for the fiscal year ending June 30, 1971, and for each fiscal year thereafter—

(A) such amounts (not in excess of the applicable limit provided by paragraph (3) and, with respect to clause (ii), not in excess of the limit provided by paragraph (4)) as the Congress may deem appropriate for the purpose of—

(i) assisting the States in the administration of their unemployment compensation laws as provided in subchapter III of this chapter (including administration pursuant to agreements under any Federal unemployment compensation law),

(ii) the establishment and maintenance of systems of public employment offices in accordance with the Act of June 6, 1933, as amended (29 U.S.C., secs. 49–49n), and

(iii) carrying into effect section 4103 of title 38;

(B) such amounts (not in excess of the limit provided by paragraph (4) with respect to clause (iii)) as the Congress may deem appropriate for the necessary expenses of the Department of Labor for the performance of its functions under—

(i) this subchapter and subchapters III and XII of this chapter,

(ii) the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.],

(iii) the provisions of the Act of June 6, 1933, as amended [29 U.S.C. 49 et seq.],

(iv) chapter 41 (except section 4103) of title 38, and

(v) any Federal unemployment compensation law.

The term ''necessary expenses'' as used in this subparagraph (B) shall include the expense of reimbursing a State for salaries and other expenses of employees of such State temporarily assigned or detailed to duty with the Department of Labor and of paying such employees for travel expenses, transportation of household goods, and per diem in lieu of subsistence while away from their regular duty stations in the State, at rates authorized by law for civilian employees of the Federal Government.

(2) The Secretary of the Treasury is directed to pay from the employment security administration account into the Treasury as miscellane-

ous receipts the amount estimated by him which will be expended during a three-month period by the Treasury Department for the performance of its functions under—

(A) this subchapter and subchapters III and XII of this chapter, including the expenses of banks for servicing unemployment benefit payment and clearing accounts which are offset by the maintenance of balances of Treasury funds with such banks,

(B) the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.], and

(C) any Federal unemployment compensation law with respect to which responsibility for administration is vested in the Secretary of Labor.

If it subsequently appears that the estimates under this paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Secretary of the Treasury in future payments.

(3)(A) For purposes of paragraph (1)(A), the limitation on the amount authorized to be made available for any fiscal year after June 30, 1970, is, except as provided in subparagraph (B) and in the second sentence of subsection (f)(3)(A) of this section, an amount equal to 95 percent of the amount estimated and set forth in the budget of the United States Government for such fiscal year as the amount by which the net receipts during such year under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] will exceed the amount transferred under section 1105(b) of this title during such year to the extended unemployment compensation account.

(B) The limitation established by subparagraph (A) is increased by any unexpended amount retained in the employment security administration account in accordance with subsection (f)(2)(B) of this section.

(C) Each estimate of net receipts under this paragraph shall be based upon a tax rate of 0.6 percent.

(4) For purposes of paragraphs (1)(A)(ii) and (1)(B)(iii) the amount authorized to be made available out of the employment security administration account for any fiscal year after June 30, 1972, shall reflect the proportion of the total cost of administering the system of public employment offices in accordance with the Act of June 6, 1933, as amended [29 U.S.C. 49 et seq.], and of the necessary expenses of the Department of Labor for the performance of its functions under the provisions of such Act, as the President determines is an appropriate charge to the employment security administration account, and reflects in his annual budget for such year. The President's determination, after consultation with the Secretary, shall take into account such factors as the relationship between employment subject to State laws and the total labor force in the United States, the number of claimants and the number of job applicants, and such other factors as he finds relevant.

(d) Additional tax attributable to reduced credits; transfer of funds

(1) The Secretary of the Treasury is directed to transfer from the employment security administration account—

(A) To the Federal unemployment account, an amount equal to the amount by which—

(i) 100 per centum of the additional tax received under the Federal Unemployment Tax Act [26 U.S.C. 3301 et seq.] with respect to any State by reason of the reduced credits provisions of section 3302(c)(3) of such Act [26 U.S.C. 3302(c)(3)] and covered into the Treasury for the repayment of advances made to the State under section 1321 of this title, exceeds

(ii) the amount transferred to the account of such State pursuant to subparagraph (B) of this paragraph.

Any amount transferred pursuant to this subparagraph shall be credited against, and shall operate to reduce, that balance of advances, made under section 1321 of this title to the State, with respect to which employers paid such additional tax.

(B) To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax, an amount equal to the amount by which such additional tax received and covered into the Treasury exceeds that balance of advances, made under section 1321 of this title to the State, with respect to which employers paid such additional tax.

(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) of this section.

(e) Revolving fund; appropriations; advances to Account; repayment; interest

(1) There is hereby established in the Treasury a revolving fund which shall be available to make the advances authorized by this subsection. There are hereby authorized to be appropriated, without fiscal year limitation, to such revolving fund such amounts as may be necessary for the purposes of this section.

(2) The Secretary of the Treasury is directed to advance from time to time from the revolving fund to the employment security administration account such amounts as may be necessary for the purposes of this section. If the net balance in the employment security administration account as of the beginning of any fiscal year equals 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the preceding fiscal year, no advance may be made under this subsection during such fiscal year.

(3) Advances to the employment security administration account made under this subsection shall bear interest until repaid at a rate equal to the average rate of interest (computed as of the end of the calendar month next preceding the date of such advance) borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(4) Advances to the employment security administration account made under this subsection, plus interest accrued thereon, shall be repaid by the transfer from time to time, from

the employment security administration account to the revolving fund, of such amounts as the Secretary of the Treasury, in consultation with the Secretary of Labor, determines to be available in the employment security administration account for such repayment. Any amount transferred as a repayment under this paragraph shall be credited against, and shall operate to reduce, any balance of advances (plus accrued interest) repayable under this subsection.

(f) Determination of excess in Account; limitation on amount to be retained; use of balance in Account during certain fiscal years; net balance

(1) The Secretary of the Treasury shall determine as of the close of each fiscal year (beginning with the fiscal year ending June 30, 1961) the excess in the employment security administration account.

(2) The excess in the employment security administration account as of the close of any fiscal year is the amount by which the net balance in such account as of such time (after the application of section 1102(b) of this title and paragraph (3)(C) of this subsection) exceeds the net balance in the employment security administration account as of the beginning of that fiscal year (including the fiscal year for which the excess is being computed) for which the net balance was higher than as of the beginning of any other such fiscal year.

(3)(A) The excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, shall be retained (as of the beginning of the succeeding fiscal year) in the employment security administration account until the amount in such account is equal to 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the fiscal year for which the excess is determined. Three-eighths of the amount in the employment security administration account as of the beginning of any fiscal year after June 30, 1972, or $150 million, whichever is the lesser, is authorized to be made available for such fiscal year pursuant to subsection (c)(1) of this section for additional costs of administration due to an increase in the rate of insured unemployment for a calendar quarter of at least 15 percent over the rate of insured unemployment for the corresponding calendar quarter in the immediately preceding year.

(B) If the entire amount of the excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, is not retained in the employment security administration account, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the balance of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to the limit provided in section 1105(b)(2) of this title.

(C) If as of the close of any fiscal year after June 30, 1972, the amount in the extended unemployment compensation account exceeds the limit provided in section 1105(b)(2) of this title, such excess shall be transferred to the employment security administration account as of the close of such fiscal year.

(4) For the purposes of this section, the net balance in the employment security administration account as of any time is the amount in such account as of such time reduced by the sum of—

(A) the amounts then subject to transfer pursuant to subsection (d) of this section, and

(B) the balance of advances (plus interest accrued thereon) then repayable to the revolving fund established by subsection (e) of this section.

The net balance in the employment security administration account as of the beginning of any fiscal year shall be determined after the disposition of the excess in such account as of the close of the preceding fiscal year.

(Aug. 14, 1935, ch. 531, title IX, § 901, as added Aug. 5, 1954, ch. 657, § 2, 68 Stat. 668; amended Sept. 13, 1960, Pub. L. 86–778, title V, § 521, 74 Stat. 970; May 8, 1961, Pub. L. 87–31, § 7, 75 Stat. 78; May 29, 1963, Pub. L. 88–31, § 1, 77 Stat. 51; Aug. 7, 1969, Pub. L. 91–53, § 3, 83 Stat. 93; Aug. 10, 1970, Pub. L. 91–373, title III, § 303, 84 Stat. 713; Apr. 21, 1976, Pub. L. 94–273, § 39, 90 Stat. 381; Oct. 20, 1976, Pub. L. 94–566, title II, § 211(e)(1) [(c)(1)], 90 Stat. 2676; Sept. 3, 1982, Pub. L. 97–248, title II, § 271(b)(2)(A), (c)(3)(D), 96 Stat. 554, 555; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(d)(1), (2), 98 Stat. 1167; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9154(a), (c)(2), 101 Stat. 1330–326; Aug. 6, 1991, Pub. L. 102–83, § 5(c)(2), 105 Stat. 406; July 3, 1992, Pub. L. 102–318, title V, § 531(d)(1), (2), 106 Stat. 316, 317.)

REFERENCES IN TEXT

The Federal Unemployment Tax Act, referred to in subsecs. (b)(1), (3), (c)(1)(B)(ii), (2)(B), (3)(A), and (d)(1)(A)(i), is act Aug. 16, 1954, ch. 736, §§ 3301 to 3311, 68A Stat. 439, as amended, which is classified generally to chapter 23 (§ 3301 et seq.) of Title 26, Internal Revenue Code. For complete classification of this Act to the Code, see section 3311 of Title 26 and Tables.

Act of June 6, 1933, as amended (29 U.S.C. 49–49n), referred to in subsec. (c)(1)(A)(ii), (B)(iii), and (4), probably means act June 6, 1933, ch. 49, 48 Stat. 113, as amended, known as the Wagner-Peyser Act, which is classified generally to chapter 4B (§ 49 et seq.) of Title 29, Labor. Sections 49m and 49n were not part of act June 6, 1933. For complete classification of this Act to the Code, see Short Title note set out under section 49 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 1101, act Aug. 14, 1935, ch. 531, title IX, § 901, 49 Stat. 639, related to imposition of tax. For further details, see Prior Law note set out preceding this section.

AMENDMENTS

1992—Subsec. (f)(2). Pub. L. 102–318, § 531(d)(1), struck out designation for subpar. (A), substituted ''The'' for ''Except as provided in subparagraph (B), the'', and struck out subpar. (B) which read as follows: ''With respect to the fiscal years ending June 30, 1970, June 30, 1971, and June 30, 1972, the balance in the employment security administration account at the close of each such fiscal year shall not be considered excess but shall be retained in the account for use as provided in paragraph (1) of subsection (c) of this section.''

Subsec. (g). Pub. L. 102–318, § 531(d)(2), struck out subsec. (g) which read as follows:

''(1) With respect to calendar years 1988, 1989, and 1990, the Secretary of the Treasury shall transfer from the employment security administration account—

''(A) to the Federal unemployment account an amount equal to 50 percent of the amount of tax received under section 3301(1) of the Federal Unemployment Tax Act which is attributable to the difference in the tax rates between paragraphs (1) and (2) of such section; and

''(B) to the extended unemployment compensation account an amount equal to 50 percent of such amount of tax received.

''(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2) of this section with respect to wages paid during such calendar years.''

1991—Subsec. (c)(1)(A)(iii), (B)(iv). Pub. L. 102–83 substituted reference to section 4103 of title 38 for reference to section 2003 of title 38.

1987—Subsec. (c)(3)(C). Pub. L. 100–203, §9154(c)(2), substituted ''a tax rate of 0.6 percent'' for ''(i) a tax rate of 0.6 percent in the case of any calendar year for which the rate of tax under section 3301 of the Federal Unemployment Tax Act is 6.0 percent, and (ii) a tax rate of 0.8 percent in the case of any calendar year for which the rate of tax under such section is 6.2 percent''.

Subsec. (g). Pub. L. 100–203, §9154(a), added subsec. (g).

1984—Subsec. (c). Pub. L. 98–369, §2663(d)(1), realigned margins of subsec. (c).

Subsec. (f). Pub. L. 98–369, §2663(d)(2), realigned margins of par. (3).

1982—Subsec. (c)(3)(C). Pub. L. 97–248, §271(c)(3)(D), substituted ''0.6'' for ''0.5'', ''6.0'' for ''3.2'', and ''6.2'' for ''3.5''.

Subsec. (c)(3)(C)(ii). Pub. L. 97–248, §271(b)(2)(A), substituted ''0.8'' for ''0.7'', struck out ''3301'' after ''tax under such section'', and substituted ''3.5'' for ''3.4''.

1976—Subsec. (c)(3)(C). Pub. L. 94–566 limited existing provisions by making them applicable only in the case of calendar years for which the rate of tax under section 3301 of the Federal Unemployment Tax Act is 3.2 percent, designated the existing provisions as so amended as cl. (i) and added cl. (ii).

Subsec. (f)(3)(A). Pub. L. 94–273 struck out ''fiscal'' after ''immediately preceding''.

1970—Subsec. (c)(1). Pub. L. 91–373, §303(a)(1), substituted ''fiscal year ending June 30, 1971'' for ''fiscal year ending June 30, 1964'', inserted reference to par. (4), struck out reference to the Temporary Unemployment Compensation Act of 1958, as amended, and substituted ''section 2003 of title 38'' for ''section 2012 of title 38''.

Subsec. (c)(2). Pub. L. 91–373, §303(a)(2), struck out provision for the exclusion of amounts attributable to the Temporary Unemployment Compensation Act of 1958, as amended.

Subsec. (c)(3). Pub. L. 91–373, §303(a)(3), changed the ceiling on the amount in the employment security administration account authorized for appropriation for State grants by making it 95 percent of the amount set forth in the budget of the United States Government as the amount by which the net receipts during the fiscal year are estimated to exceed the amount transferred to the extended unemployment compensation account under section 1105(b) of this title.

Subsec. (c)(4). Pub. L. 91–373, §303(a)(4), added par. (4).

Subsec. (d). Pub. L. 91–373, §303(b), struck out reference to section 3302(c)(2) of the Federal Unemployment Tax Act in par. (1)(A)(i), struck out provision for separate application of par. (1) in years in which there was both a balance described in sections 3302(c)(2) and 3302(c)(3) of the Federal Unemployment Tax Act, redesignated par. (3) as par. (2), and struck out former par. (2) covering the transfer of funds from the employment security administration account to the general fund of the Treasury and to the State account, with respect to which employers paid additional tax, received by reason of the reduced credit provisions of section 1400c of this title.

Subsec. (e)(2). Pub. L. 91–373, §303(c), substituted ''equals 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account of the preceding fiscal year'' for ''is $250,000,000''.

Subsec. (f)(2)(A). Pub. L. 91–373, §303(d)(1), inserted reference to par. (3)(C) of this subsection.

Subsec. (f)(3). Pub. L. 91–373, §303(d)(2), revised provisions for the distribution of any excess in the employment security administration account at the end of any fiscal year after June 30, 1972.

1969—Subsec. (c)(3). Pub. L. 91–53, §3(a), struck out subpar. (A) provisions limiting expenditures for fiscal year ending June 30, 1964, to 95 percent of amount estimated by the Secretary of Treasury as the net receipts during such fiscal year under the Federal Unemployment Tax Act, redesignated subpar. (B) provisions as par. (3) without restricting their application to fiscal years ending after June 30, 1964, increased expenditure limitation by unexpended amount retained in the employment security administration account in accordance with subsec. (f)(2)(B) of this section, reenacted provision for estimate of net receipts, and struck out dated provisions requiring the Secretary of Treasury to report to Congress his estimate under subpar. (A) within thirty days after May 29, 1963, the date of enactment of Pub. L. 88–31, and providing for its printing as a House document.

Subsec. (f)(2). Pub. L. 91–53, §3(b), designated existing provisions as subpar. (A), inserted introductory text ''Except as provided in subparagraph (B)'', and added subpar. (B).

1963—Subsec. (c). Pub. L. 88–31 substituted ''June 30, 1964'' for ''June 30, 1961'' in par. (1), ''(not in excess of the limit provided by paragraph (3))'' for ''(not in excess of $350,000,000 for any fiscal year)'' in par. (1)(A), and added par. (3).

1961—Subsec. (c)(1)(B). Pub. L. 87–31 inserted provision relating to necessary expenses.

1960—Subsec. (a). Pub. L. 86–778 substituted provision establishing the employment security administration account for former provision making an appropriation to the Unemployment Trust Fund for fiscal year ending June 30, 1954, and for each fiscal year thereafter, providing for transfer of funds from the general fund in the Treasury to the Unemployment Trust Fund at the close of the fiscal year, and adjustments in the transfers, and requiring the Secretary of the Treasury to consult with the Secretary of Labor with respect to estimates of employment security administrative expenditures.

Subsec. (b). Pub. L. 86–778 substituted provisions crediting the employment security administration with funds, and requiring transfer of funds, adjustments and repayment of internal revenue refunds for former provisions defining ''employment security administrative expenditures'', now incorporated in subsec. (c)(1)(A), (B), (2)(A) of this section.

Subsecs. (c) to (f). Pub. L. 86–778 added subsecs. (c) to (f).

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9154(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1102 and 1105 of this title] shall become effective on the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 271(b)(2)(A) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, and amendment by section 271(c)(3)(D) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1984, see section 271(d)(1), (2) of Pub. L. 97–248, as amended, set

out as a note under section 3301 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 211(d)(3) of Pub. L. 94–566 provided that: ''The amendments made by subsection (c) [amending this section, section 1105 of this title, and section 6157 of Title 26, Internal Revenue Code] shall take effect on the date of enactment of this Act [Oct. 20, 1976].''

EFFECTIVE DATE OF 1970 AMENDMENT

Section 303(a) of Pub. L. 91–373 provided that the amendment made by that section is effective with respect to fiscal years after June 30, 1970.

Section 303(c) of Pub. L. 91–373 provided that the amendment made by that section is effective July 1, 1972.

Section 303(d) of Pub. L. 91–373 provided that the amendment made by that section is effective with respect to fiscal years after June 30, 1972.

EFFECTIVE DATE OF 1969 AMENDMENT

Section 4(b) of Pub. L. 91–53 provided that: ''The amendments made by section 3 [amending this section] shall take effect upon enactment of this Act [Aug. 7, 1969].''

INCREASE IN ADMINISTRATIVE EXPENDITURES LIMITATION FOR FISCAL YEAR 1963

Section 4 of Pub. L. 88–31 provided that notwithstanding subsec. (c)(1)(A) of this section, the limitation on the amount authorized to be available for the fiscal year ending June 30, 1963, for the purposes specified in subsec. (c)(1)(A), was increased to $407,148,000.

Pub. L. 87–582, title I, § 101, Aug. 14, 1962, 76 Stat. 363, provided that notwithstanding subsec. (c)(1)(A) of this section, the limitation on the amount authorized to be available for the fiscal year ending June 30, 1963, for the purposes specified in subsec. (c)(1)(A), was increased to $400,000,000.

INCREASE IN ADMINISTRATIVE EXPENDITURES LIMITATION FOR FISCAL YEARS 1961 AND 1962

Pub. L. 87–6, § 15, Mar. 24, 1961, 75 Stat. 16, provided that notwithstanding subsec. (c)(1)(A) of this section, the limitation on the amount authorized to be available for the fiscal years ending June 30, 1961 and June 30, 1962, for the purposes specified in subsec. (c)(1)(A), was increased to $385,000,000 and $415,000,000, respectively.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 1102, 1103, 1105, 1110, 1321, 1323 of this title; title 26 section 3302.

§ 1102. Transfers between Federal Unemployment Account and Employment Security Administration Account

(a) Determination of excess; amount transferred

Whenever the Secretary of the Treasury determines pursuant to section 1101(f) of this title that there is an excess in the employment security administration account as of the close of any fiscal year and the entire amount of such excess is not retained in the employment security administration account or transferred to the extended unemployment compensation account as provided in section 1101(f)(3) of this title, there shall be transferred (as of the beginning of the succeeding fiscal year) to the Federal unemployment account the balance of such excess or so much thereof as is required to increase the amount in the Federal unemployment account to whichever of the following is the greater:

(1) $550 million, or

(2) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to 0.25 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

(b) Unemployment account excesses

The amount, if any, by which the amount in the Federal unemployment account as of the close of any fiscal year exceeds the greater of the amounts specified in paragraphs (1) and (2) of subsection (a) of this section shall be transferred to the employment security administration account as of the close of such fiscal year.

(c) Report to Congress

Whenever the Secretary of Labor has reason to believe that in the next fiscal year the employment security administration account will reach the limit provided for such account in section 1101(f)(3)(A) of this title, and the Federal unemployment account will reach the limit provided for such account in subsection (a) of this section, and the extended unemployment compensation account will reach the limit provided for such account in section 1105(b)(2) of this title, he shall, after consultation with the Secretary of the Treasury, so report to the Congress with a recommendation for appropriate action by the Congress.

(Aug. 14, 1935, ch. 531, title IX, § 902, as added Aug. 5, 1954, ch. 657, § 2, 68 Stat. 669; amended Sept. 13, 1960, Pub. L. 86–778, title V, § 521, 74 Stat. 974; Aug. 10, 1970, Pub. L. 91–373, title III, § 304(a), (b), 84 Stat. 715, 716; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9154(b)(1), 101 Stat. 1330–326; July 3, 1992, Pub. L. 102–318, title V, § 531(b), 106 Stat. 316.)

PRIOR PROVISIONS

A prior section 1102, act Aug. 14, 1935, ch. 531, title IX, § 902, 49 Stat. 639, related to credit against tax. For further details, see Prior Law note set out preceding section 1101 of this title.

AMENDMENTS

1992—Subsec. (a)(2). Pub. L. 102–318 substituted ''0.25 percent'' for ''five-eighths of 1 percent''.

1987—Subsec. (a)(2). Pub. L. 100–203 substituted ''five-eighths'' for ''one-eighth''.

1970—Subsec. (a). Pub. L. 91–373, § 304(a), inserted, in provisions preceding par. (1), reference to the retention of the entire amount of the excess in the employment security administration account or the transfer to the extended unemployment compensation account as provided in section 1101(f)(3) of this title and, in par. (2), substituted ''one-eighth of 1 percent'' for ''four-tenths of 1 per centum''.

Subsec. (c). Pub. L. 91–373, § 304(b), added subsec. (c).

1960—Pub. L. 86–778 substituted provisions for transfers between Federal unemployment account and employment security administration account for former provisions crediting the Federal unemployment account with funds and defining ''adjusted balance''.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 531(e) of Pub. L. 102–318 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 1110 of this title and amending this section and sections

1101, 1104, and 1105 of this title] shall take effect on the date of the enactment of this Act [July 3, 1992].

''(2) CHANGES IN CEILING AMOUNTS.—The amendments made by subsection[s] (a)(2) and (b) [amending this section and section 1105 of this title] shall apply to fiscal years beginning after September 30, 1993.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1103, 1110, 1323 of this title.

§ 1103. Amounts transferred to State accounts

(a) Determination and certification by Secretary of Labor

(1) If as of the close of any fiscal year after the fiscal year ending June 30, 1972, the amount in the extended unemployment compensation account has reached the limit provided in section 1105(b)(2) of this title and the amount in the Federal unemployment account has reached the limit provided in section 1102(a) of this title and all advances and interest pursuant to section 1105(d) of this title and section 1323 of this title have been repaid, and there remains in the employment security administration account any amount over the amount provided in section 1101(f)(3)(A) of this title, such excess amount, except as provided in subsection (b) of this section, shall be transferred (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund.

(2) Each State's share of the funds to be transferred under this subsection as of any October 1—

(A) shall be determined by the Secretary of Labor and certified by such Secretary to the Secretary of the Treasury before such date, and

(B) shall bear the same ratio to the total amount to be so transferred as—

(i) the amount of wages subject to tax under section 3301 of the Internal Revenue Code of 1986 during the preceding calendar year which are determined by the Secretary of Labor to be attributable to the State, bears to

(ii) the total amount of wages subject to such tax during such year.

(b) Transfer of funds where State is ineligible

(1) If the Secretary of Labor finds that on October 1 of any fiscal year—

(A) a State is not eligible for certification under section 503 of this title, or

(B) the law of a State is not approvable under section 3304 of the Federal Unemployment Tax Act [26 U.S.C. 3304],

then the amount available for transfer to such State's account shall, in lieu of being so transferred, be transferred to the Federal unemployment account as of the beginning of such October 1. If, during the fiscal year beginning on such October 1, the Secretary of Labor finds and certifies to the Secretary of the Treasury that such State is eligible for certification under section 503 of this title, that the law of such State is approvable under such section 3304, or both, the Secretary of the Treasury shall transfer such amount from the Federal unemployment account to the account of such State. If the Secretary of Labor does not so find and certify to the Secretary of the Treasury before the close of such fiscal year then the amount which was available for transfer to such State's account as of October 1 of such fiscal year shall (as of the close of such fiscal year) become unrestricted as to use as part of the Federal unemployment account.

(2) The amount which, but for this paragraph, would be transferred to the account of a State under subsection (a) of this section or paragraph (1) of this subsection shall be reduced (but not below zero) by the balance of advances made to the State under section 1321 of this title. The sum by which such amount is reduced shall—

(A) be transferred to or retained in (as the case may be) the Federal unemployment account, and

(B) be credited against, and operate to reduce—

(i) first, any balance of advances made before September 13, 1960, to the State under section 1321 of this title, and

(ii) second, any balance of advances made on or after September 13, 1960, to the State under section 1321 of this title.

(c) Use of funds

(1) Except as provided in paragraph (2), amounts transferred to the account of a State pursuant to subsections (a) and (b) of this section shall be used only in the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.

(2) A State may, pursuant to a specific appropriation made by the legislative body of the State, use money withdrawn from its account in the payment of expenses incurred by it for the administration of its unemployment compensation law and public employment offices if and only if—

(A) the purposes and amounts were specified in the law making the appropriation,

(B) the appropriation law did not authorize the obligation of such money after the close of the two-year period which began on the date of enactment of the appropriation law,

(C) the money is withdrawn and the expenses are incurred after such date of enactment,

(D)(i) the appropriation law limits the total amount which may be obligated under such appropriation at any time to an amount which does not exceed, at any such time, the amount by which—

(I) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b) of this section, exceeds

(II) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State, and

(ii) for purposes of clause (i), amounts used by a State for administration shall be chargeable against transferred amounts at the exact time the obligation is entered into, and

(E) the use of the money is accounted for in accordance with standards established by the Secretary of Labor.

(3)(A) If—

(i) amounts transferred to the account of a State pursuant to subsections (a) and (b) of this section were used in payment of unemployment benefits to individuals; and

(ii) the Governor of such State submits a request to the Secretary of Labor that such amounts be restored under this paragraph,

then the amounts described in clause (i) shall be restored to the status of funds transferred under subsections (a) and (b) of this section which have not been used by eliminating any charge against amounts so transferred for the use of such amounts in the payment of unemployment benefits.

(B) Subparagraph (A) shall apply only to the extent that the amounts described in clause (i) of such subparagraph do not exceed the amount then in the State's account.

(C) Subparagraph (A) shall not apply if the State has a balance of advances made to its account under subchapter XII of this chapter.

(D) If the Secretary of Labor determines that the requirements of this paragraph are met with respect to any request, the Secretary shall notify the Governor of the State that such requirements are met with respect to such request and the amount restored under this paragraph. Such restoration shall be as of the first day of the first month following the month in which the notification is made.

(Aug. 14, 1935, ch. 531, title IX, § 903, as added Aug. 5, 1954, ch. 657, § 2, 68 Stat. 670; amended Sept. 13, 1960, Pub. L. 86–778, title V, § 521, 74 Stat. 974; May 29, 1963, Pub. L. 88–31, § 3, 77 Stat. 51; July 26, 1968, Pub. L. 90–430, 82 Stat. 447; Aug. 10, 1970, Pub. L. 91–373, title III, § 305(b), 84 Stat. 717; Dec. 29, 1971, Pub. L. 92–224, § 1, title II, § 204(c), 85 Stat. 810, 814; June 30, 1972, Pub. L. 92–329, § 2(d), 86 Stat. 398; Aug. 7, 1974, Pub. L. 93–368, § 4(b), 88 Stat. 420; Apr. 21, 1976, Pub. L. 94–273, §§ 2(20), 3(23), 23, 41, 90 Stat. 375, 377, 379, 381; Sept. 3, 1982, Pub. L. 97–248, title I, § 192, 96 Stat. 408; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9155(c), 101 Stat. 1330–327; Nov. 5, 1990, Pub. L. 101–508, title V, § 5021(a), (b), 104 Stat. 1388–223.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (a)(2)(B)(i), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 1103, act Aug. 14, 1935, ch. 531, title IX, § 903, 49 Stat. 640, related to approval and certification of State laws. For further details, see Prior Law note set out preceding section 1101 of this title.

AMENDMENTS

1990—Subsec. (a)(2). Pub. L. 101–508, § 5021(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Each State's share of the funds to be transferred under this subsection as of any October 1—

''(A) shall be determined by the Secretary of Labor and certified by him to the Secretary of the Treasury before that date on the basis of reports furnished by the States to the Secretary of Labor before September 1, and

''(B) shall bear the same ratio to the total amount to be so transferred as the amount of wages subject to contributions under such State's unemployment compensation law during the preceding calendar year which have been reported to the State before August 1 bears to the total of wages subject to contributions under all State unemployment compensation laws during such calendar year which have been reported to the States before August 1.''

Subsec. (c)(2). Pub. L. 101–508, § 5021(b), added subpars. (D) and (E) and struck out former subpar. (D) and last sentence which required a State's appropriation law to limit the total amount which may be obligated during a twelve-month or transitional period from its account.

1987—Subsec. (a)(1). Pub. L. 100–203 inserted ''and interest'' after ''all advances''.

1982—Subsec. (c)(2). Pub. L. 97–248, § 192(a), substituted ''thirty-four'' for ''twenty-four'' wherever appearing, and ''thirty-fourth'' for ''twenty-fourth'' in provisions following subpar. (D).

Subsec. (c)(3). Pub. L. 97–248, § 192(b), added par. (3).

1976—Subsec. (a)(2). Pub. L. 94–273, § 3(23) substituted ''October'' for ''July''.

Subsec. (a)(2)(A). Pub. L. 94–273, § 2(20), substituted ''September'' for ''June''.

Subsec. (a)(2)(B). Pub. L. 94–273, § 23, substituted ''August'' for ''May'' wherever appearing.

Subsec. (b)(1). Pub. L. 94–273, § 3(23), substituted ''October'' for ''July''.

Subsec. (c)(2). Pub. L. 94–273, § 41, in subpar. (D) and provisions following subpar. (D) substituted provisions relating to determination based on a twelve-month period (as prescribed in the law of the State), or during a transitional period of less than twelve months caused by a change in the twelve-month period (as prescribed in the law of the State), for provisions relating to determination based on a fiscal year period.

1974—Subsec. (b)(3). Pub. L. 93–368 struck out par. (3) which related to reductions in the amount transferable to the account of any State by reason of emergency compensation paid to any individual for a week of unemployment ending after June 30, 1972.

1972—Subsec. (b)(3). Pub. L. 92–329 inserted provisions relating to reductions in the amount transferable to the account of any State by reason of emergency compensation paid to any individual for a week of unemployment ending after June 30, 1972.

1971—Subsec. (b)(3). Pub. L. 92–224, § 204(c), added par. (3).

Subsec. (c)(2). Pub. L. 92–224, § 1, substituted ''twenty-four preceding fiscal years'' and ''such twenty-five fiscal years'' for ''fourteen preceding fiscal years'' and ''such fifteen fiscal years'' in subpar. (D) of first sentence and ''twenty-fourth preceding fiscal year'' for ''fourteenth preceding fiscal year'' in second sentence.

1970—Subsec. (a)(1). Pub. L. 91–373 inserted references to the limits provided in sections 1102(a) and 1105(b)(2) of this title, advances pursuant to section 1105(d) of this title, and the amount provided in section 1101(f)(3)(A) of this title.

1968—Subsec. (c). Pub. L. 90–430 substituted in par. (2)(D)(i) ''fourteen'' for ''nine'', in par. (2)(D)(ii) ''fifteen'' for ''ten'', and in provisions following par. (2)(D) ''fourteenth'' for ''ninth''.

1963—Subsec. (c)(2). Pub. L. 88–31 substituted ''nine preceding fiscal years'' for ''four preceding fiscal years'', ''ten fiscal years'' for ''five fiscal years'' in cl. (D), and ''ninth preceding fiscal year'' for ''fourth preceding fiscal year'' in last sentence.

1960—Subsec. (a). Pub. L. 86–778 substituted provisions of par. (1) for first sentence of the section which read ''So much of any amount transferred to the Unemployment Trust Fund at the close of any fiscal year under section 1101(a) of this title as is not credited to the Federal unemployment account under section 1102 of this title shall be credited (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund'' and designated existing provisions of second sentence as part (2), substituting ''transferred'' for ''credited'', and striking out ''on or'' before ''before'' in subpar. (A).

Subsec. (b). Pub. L. 86–778 redesignated existing provisions as par. (1) and cls. (1) and (2) thereof as subpars. (A) and (B), substituted ''section 3304 of title 26'' for ''section 1603 of title 26'', in two places, and ''transfer

to such States' account'', ''transferred'', and ''transfer'' for ''crediting to such States' account'', ''credited'' and ''credit'', respectively, except where already reading ''shall transfer'', and added par. (2).

Subsec. (c). Pub. L. 86–778 substituted ''transferred'' for ''credited'', wherever appearing, ''obligation'' for ''expenditure'' in par. (2)(B), ''obligated'' for ''so used'' in par. (2)(D), and ''obligated for administration'' for ''used'' in concluding par., inserted references to subsection (b) in pars. (1) and (2)(D), and struck out ''any of'' before ''such five fiscal years'' in par. (2)(D).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5021(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to fiscal years beginning after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9155(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1105 and 1323 of this title] shall apply to advances made on or after the date of the enactment of this Act [Dec. 22, 1987].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 1321 of this title; title 26 sections 3304, 3306.

§ 1104. Unemployment Trust Fund

(a) Establishment

There is hereby established in the Treasury of the United States a trust fund to be known as the ''Unemployment Trust Fund'', hereinafter in this subchapter called the ''Fund''. The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund, or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account or the railroad unemployment insurance administration fund, or otherwise deposited in or credited to the Fund or any account therein. Such deposit may be made directly with the Secretary of the Treasury, with any depositary[1] designated by him for such purpose, or with any Federal Reserve Bank.

(b) Investments

It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition. Advances made to the Federal unemployment account pursuant to section 1323 of this title shall not be invested.

(c) Sale or redemption of obligations

Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

(d) Treatment of interest and proceeds

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

(e) Separate book accounts

The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency, the employment security administration account, the Federal unemployment account, the railroad unemployment insurance account, and the railroad unemployment insurance administration fund and shall credit quarterly (on March 31, June 30, September 30, and December 31, of each year) to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date. For the purpose of this subsection, the average daily balance shall be computed—

(1) in the case of any State account, by reducing (but not below zero) the amount in the account by the balance of advances made to the State under section 1321 of this title, and

(2) in the case of the Federal unemployment account—

(A) by adding to the amount in the account the aggregate of the reductions under paragraph (1), and

(B) by subtracting from the sum so obtained the balance of advances made under section 1323 of this title to the account.

(f) Payment to State agencies and Railroad Retirement Board

The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment. The Secretary of the Treasury is authorized and directed to make such payments out of the railroad unemployment insurance account for the payment of benefits, and out of the railroad unemployment insurance administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment.

[1] So in original. Probably should be ''depository''.

(g) Federal unemployment account; establishment

There is hereby established in the Unemployment Trust Fund a Federal unemployment account.

(Aug. 14, 1935, ch. 531, title IX, §904, 49 Stat. 640; June 25, 1938, ch. 680, §10(e)–(g), 52 Stat. 1104, 1105; Oct. 3, 1944, ch. 480, title IV, §401, 58 Stat. 789; Aug. 6, 1947, ch. 510, §5(a), 61 Stat. 794; Aug. 28, 1950, ch. 809, title IV, §404(b), 64 Stat. 560; Aug. 5, 1954, ch. 657, §5(b)–(f), 68 Stat. 673; Sept. 6, 1958, Pub. L. 85–927, pt. II, §204, 72 Stat. 1782; Sept. 22, 1959, Pub. L. 86–346, title I, §104(3), 73 Stat. 622; Sept. 13, 1960, Pub. L. 86–778, title V, §521, 74 Stat. 976; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(d)(3), 98 Stat. 1167; July 3, 1992, Pub. L. 102–318, title V, §531(d)(3), 106 Stat. 317.)

AMENDMENTS

1992—Subsec. (g). Pub. L. 102–318 struck out after the first sentence the following: ''There is hereby authorized to be appropriated to such Federal unemployment account a sum equal to (1) the excess of taxes collected prior to July 1, 1946, under title IX of this Act or under the Federal Unemployment Tax Act, over the total unemployment administrative expenditures made prior to July 1, 1946, plus (2) the excess of taxes collected under the Federal Unemployment Tax Act after June 30, 1946, and prior to July 1, 1953, over the unemployment administrative expenditures made after June 30, 1946, and prior to July 1, 1953. As used in this subsection, the term 'unemployment administrative expenditures' means expenditures for grants under subchapter III of this chapter, expenditures for the administration of that subchapter by the Secretary of Health and Human Services, or the Secretary of Labor, and expenditures for the administration of title IX of this Act, or of the Federal Unemployment Tax Act, by the Department of the Treasury, the Secretary of Health and Human Services, or the Secretary of Labor. For the purposes of this subsection, there shall be deducted from the total amount of taxes collected prior to July 1, 1943, under title IX of this Act, the sum of $40,561,886.43 which was authorized to be appropriated by the Act of August 24, 1937 (50 Stat. 754), and the sum of $18,451,846 which was authorized to be appropriated by section 361(b) of title 45.''

1984—Subsec. (b). Pub. L. 98–369 substituted ''chapter 31 of title 31'' for ''the Second Liberty Bond Act, as amended''.

1960—Subsec. (a). Pub. L. 86–778 substituted ''with any depositary designated by him for such purpose, or with any Federal Reserve Bank'' for ''or with any Federal Reserve bank or member bank of the Federal Reserve System designated by him for such purpose''.

Subsec. (b). Pub. L. 86–778 substituted ''Second Liberty Bond Act, as amended'' and ''section 1323'' for ''section 752 of title 31'' and ''section 1322(c)'', respectively, and inserted ''made'' after ''Advances''.

Subsec. (e). Pub. L. 86–778 provided for the maintenance of a separate book account for the employment security administration account and substituted ''balance of advances made to the State under section 1321 of this title'' for ''aggregate of the outstanding advances under section 1321 of this title from the Federal unemployment account'' in par. (1) and ''balance of advances made under section 1323 of this title to the account'' for ''aggregate of the outstanding advances from the Treasury to the account pursuant to section 1322(c) of this title''.

Subsec. (g). Pub. L. 86–778 redesignated former subsec. (h) as (g).

1959—Subsec. (b). Pub. L. 86–346 substituted ''on original issue at the issue price'' for ''on original issue at par''.

1958—Subsec. (a). Pub. L. 85–927, §204(a), inserted ''or the railroad unemployment insurance administration fund''.

Subsec. (e). Pub. L. 85–927, §204(b), substituted ''the railroad unemployment insurance account, and the railroad unemployment insurance administration fund'' for ''and the railroad unemployment insurance account''.

Subsec. (f). Pub. L. 85–927, §204(c), substituted ''railroad unemployment insurance account for the payment of benefits, and out of the railroad unemployment insurance administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment'' for ''fund as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the railroad unemployment insurance account at the time of such payment''.

1954—Subsec. (a). Act Aug. 5, 1954, §5(b), substituted ''or otherwise deposited in or credited to the Fund or any account therein'' for ''or deposited pursuant to appropriations to the Federal unemployment account''.

Subsec. (b). Act Aug. 5, 1954, §5(c), inserted provision that advances to the Federal unemployment account pursuant to section 1323 of this title shall not be invested.

Subsec. (e). Act Aug. 5, 1954, §5(d), inserted ''For the purposes of this subsection, the average daily balance shall be computed—

''(1) in the case of any State account, by reducing (but not below zero) the amount in the account by the aggregate of the outstanding advances under section 1201 from the Federal unemployment account, and

''(2) in the case of the Federal unemployment account, (A) by adding to the amount in the account the aggregate of the reductions under paragraph (1), and (B) by subtracting from the sum so obtained the aggregate of the outstanding advances from the Treasury to the account pursuant to section 1202(c).''

Subsec. (g). Act Aug. 5, 1954, §5(e), repealed subsec. (g) which authorized Secretary of Treasury to make transfers from Federal unemployment account to account of any State in Unemployment Trust Fund.

Subsec. (h). Act Aug. 5, 1954, §5(f), substituted a new cl. (2) in second sentence and repealed the third sentence: ''Any amounts in the Federal unemployment account on April 1952, and any amounts repaid to such account after such date, shall be covered into the general fund of the Treasury.''

1950—Subsec. (h). Act Aug. 28, 1950, substituted ''prior to July 1, 1951'' for ''prior to July 1, 1949'', ''on July 1, 1951, and ending on December 31, 1951'' for ''on July 1, 1949, and ending on December 31, 1949'' in cl. (2) of second sentence, and ''April 1, 1952'' for ''April 1, 1950'' in third sentence.

1947—Subsec. (h). Act Aug. 6, 1947, amended subsec. (h) generally, and, among other changes, changed the periods for which excess of tax collections over administrative expenditures could be appropriated to the unemployment account, limited authorized appropriations for the unemployment account to the excess collections for the period ending Dec. 31, 1949, provided for amounts in such account on Apr. 1, 1950, and any repayments to the account after such date be covered into the general fund of the Treasury, and provided for an additional deduction of $18,451,846 from the total amount of taxes collected prior to July 1, 1943.

1944—Subsec. (a). Act Oct. 3, 1944, §401(a), inserted '', or deposited pursuant to appropriations to the Federal unemployment account'' after ''unemployment insurance account'' in second sentence.

Subsec. (e). Act Oct. 3, 1944, §401(b), inserted '', the Federal unemployment account'' after ''a separate book account for each State agency''.

Subsecs. (g), (h). Act Oct. 3, 1944, §401(c), added subsecs. (g) and (h).

1938—Subsec. (a). Act June 25, 1938, §10(e), inserted ''or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account''.

Subsec. (e). Act June 25, 1938, § 10(f), inserted ''and the railroad unemployment insurance account''.

Subsec. (f). Act June 25, 1938, § 10(g), inserted second sentence.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85–927 effective Sept. 6, 1958, except as otherwise indicated, see section 207(c) of Pub. L. 85–927, set out as a note under section 351 of Title 45, Railroads.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 404(c) of act Aug. 28, 1950, provided that: ''The amendments made by subsections (a) and (b) of this section [amending this section and section 1321 of this title] shall be effective January 1, 1950.''

TERMINATION DATE

Section 4 of act Aug. 6, 1947, provided: ''Section 603 of the War Mobilization and Reconversion Act of 1944 [formerly set out as a note under section 1651 of Appendix to Title 50, War and National Defense] (terminating the provisions of such Act [sections 1651 to 1678 of Appendix to title 50] on June 30, 1947) shall not be applicable in the case of the amendments made by title IV of such Act [amending sections 1666 and 1667 of Appendix to Title 50] to the Social Security Act [this section and section 1321 of this title].''

PAYMENTS TO STATES

Act Aug. 24, 1937, ch. 755, 50 Stat. 754, provided for payments to States of 90 per cent of proceeds of the unemployment tax collected prior to Jan. 31, 1938, where State had enacted an approved unemployment-compensation law during 1937.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 503, 1105, 1109, 1322 of this title; title 2 section 906; title 5 section 8509; title 26 sections 3304, 3306; title 45 sections 360, 361, 363a, 366a.

§ 1105. Extended Unemployment Compensation Account

(a) Establishment

There is hereby established in the Unemployment Trust Fund an extended unemployment compensation account. For the purposes provided for in section 1104(e) of this title, such account shall be maintained as a separate book account.

(b) Transfers to account

(1) Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of each month) from the employment security administration account to the extended unemployment compensation account established by subsection (a) of this section, an amount (determined by such Secretary) equal to 20 percent of the amount by which—

(A) the transfers to the employment security administration account pursuant to section 1101(b)(2) of this title during such month, exceed

(B) the payments during such month from the employment security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred.

(2) Whenever the Secretary of the Treasury determines pursuant to section 1101(f) of this title that there is an excess in the employment security administration account as of the close of any fiscal year beginning after June 30, 1972, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the total amount of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to whichever of the following is the greater:

(A) $750,000,000, or

(B) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to 0.5 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

(3) The Secretary of the Treasury shall make no transfer pursuant to paragraph (1) as of the close of any month if he determines that the amount in the extended unemployment compensation account is equal to (or in excess of) the limitation provided in paragraph (2).

(c) Transfers to State accounts

Amounts in the extended unemployment compensation account shall be available for transfer to the accounts of the States in the Unemployment Trust Fund as provided in section 204(e) of the Federal-State Extended Unemployment Compensation Act of 1970.

(d) Advances to account; repayment

There are hereby authorized to be appropriated, without fiscal year limitation, to the extended unemployment compensation account, as repayable advances, such sums as may be necessary to carry out the purposes of the Federal-State Extended Unemployment Compensation Act of 1970. Amounts appropriated as repayable advances shall be repaid by transfers from the extended unemployment compensation account to the general fund of the Treasury, at such times as the amount in the extended unemployment compensation account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Repayments under the preceding sentence shall be made whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that the amount then in the account exceeds the amount necessary to meet the anticipated payments from the account during the next 3 months. Any amount transferred as a repayment under this subsection shall be credited against, and shall operate to reduce, any balance of advances repayable under this subsection. Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate

equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.

(Aug. 14, 1935, ch. 531, title IX, § 905, as added Mar. 24, 1961, Pub. L. 87–6, § 13, 75 Stat. 14; amended May 29, 1963, Pub. L. 88–31, § 2(c), 77 Stat. 51; Aug. 10, 1970, Pub. L. 91–373, title III, § 305(a), 84 Stat. 716; June 30, 1972, Pub. L. 92–329, § 2(c), 86 Stat. 398; Oct. 20, 1976, Pub. L. 94–566, title II, § 211(e)(2) [(c)(2)], 90 Stat. 2677; Sept. 3, 1982, Pub. L. 97–248, title II, §§ 271(b)(2)(B), 275, 96 Stat. 555, 558; Dec. 22, 1987, Pub. L. 100–203, title IX, §§ 9154(b)(2), (c)(1), 9155(a), 101 Stat. 1330–326; July 3, 1992, Pub. L. 102–318, title V, § 531(a), 106 Stat. 315; Nov. 24, 1993, Pub. L. 103–152, § 5, 107 Stat. 1518.)

REFERENCES IN TEXT

The Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsecs. (c) and (d), is Pub. L. 91–373, title II, Aug. 10, 1970, 84 Stat. 708, as amended, which is set out as a note under section 3304 of Title 26, Internal Revenue Code. Section 204(e) of that Act is part of that note. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 1105, act Aug. 14, 1935, ch. 531, title IX, § 905, 49 Stat. 641, related to administration, refunds and penalties. For further details, see Prior Law note set out preceding section 1101 of this title.

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–152 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided in paragraph (3), the Secretary of the Treasury shall transfer (as of the close of each month), from the employment security administration account to the extended unemployment compensation account established by subsection (a) of this section, an amount determined by him to be equal to the sum of—

''(A) 100 percent of the transfers to the employment security administration account pursuant to section 1101(b)(2) of this title during such month on account of liabilities referred to in section 1101(b)(1)(B) of this title, plus

''(B) 20 percent of the excess of the transfers to such account pursuant to section 1101(b)(2) of this title during such month on account of amounts referred to in section 1101(b)(1)(A) of this title over the payments during such month from the employment security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (B), proper adjustments shall be made in the amounts subsequently transferred.''

1992—Subsec. (b)(1). Pub. L. 102–318, § 531(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Except as provided by paragraph (3), the Secretary of the Treasury shall transfer (as of the close of July 1970, and each month thereafter), from the employment security administration account to the extended unemployment compensation account established by subsection (a) of this section, an amount determined by him to be equal, in the case of any month before April 1972, to one-fifth, and in the case of any month after March 1972, to one-tenth, of the amount by which—

''(A) transfers to the employment security administration account pursuant to section 1101(b)(2) of this title during such month, exceed

''(B) payments during such month from the employment security administration account pursuant to section 1101(b)(3) and (d) of this title.

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred.''

Subsec. (b)(2)(B). Pub. L. 102–318, § 531(a)(2), substituted ''0.5 percent'' for ''three-eighths of 1 percent''.

1987—Subsec. (b)(1). Pub. L. 100–203, § 9154(c)(1), struck out at end ''In the case of any month after March 1983 and before April 1 of the first calendar year to which paragraph (2) of section 3301 of the Federal Unemployment Tax Act applies, the first sentence of this paragraph shall be applied by substituting '40 percent' for 'one-tenth'.''

Subsec. (b)(2)(B). Pub. L. 100–203, § 9154(b)(2), substituted ''three-eighths'' for ''one-eighth''.

Subsec. (d). Pub. L. 100–203, § 9155(a), struck out ''(without interest)'' after ''account, as repayable advances'' and '', without interest,'' after ''shall be repaid'' and inserted sentence at end providing that amounts appropriated as repayable advances for purposes of this subsection shall bear interest.

1982—Subsec. (b)(1). Pub. L. 97–248, § 271(b)(2)(B), substituted ''1983'' for ''1977'', inserted ''1'' after ''April'', and substituted ''40 percent'' for ''five-fourteenths'' in provisions following subpar. (B).

Subsec. (d). Pub. L. 97–248, § 275, inserted provision that repayment shall be made whenever the Secretary of the Treasury determines that the amount then in the account exceeds the amount necessary to meet the anticipated payments from the account during the next 3 months.

1976—Subsec. (b)(1). Pub. L. 94–566 substituted ''In the case of any month after March 1977 and before April of the first calendar year to which paragraph (2) of section 3301 of the Federal Unemployment Tax Act applies, the first sentence of this paragraph shall be applied by substituting 'five-fourteenths' for 'one-tenth' '' for ''In the case of any month after March 1973 and before April 1974, the first sentence of this paragraph shall be applied by substituting 'thirteen fifty-eighths' for 'one-tenth' ''.

1972—Subsec. (b)(1). Pub. L. 92–329 inserted provisions for transfers in the case of any month after March 1973 and before April 1974.

1970—Pub. L. 91–373 substituted provisions for an extended unemployment compensation account for provisions for a Federal extended compensation account.

1963—Subsec. (b). Pub. L. 88–31 inserted ''(with respect to the calendar year 1963), or 5/13 (with respect to the calendar year 1964),''.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by section 531(a) of Pub. L. 102–318 effective July 3, 1992, except that amendment by section 531(a)(2) of Pub. L. 102–318 applicable to fiscal years beginning after Sept. 30, 1993, see section 531(e) of Pub. L. 102–318, set out as a note under section 1102 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9155(a) of Pub. L. 100–203 applicable to advances made on or after Dec. 22, 1987, see section 9155(d) of Pub. L. 100–203, set out as a note under section 1103 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 271(b)(2)(B) of Pub. L. 97–248 applicable to remuneration paid after Dec. 31, 1982, see section 271(d)(1) of Pub. L. 97–248, as amended, set out as a note under section 3301 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–566 effective Oct. 20, 1976, see section 211(d)(3) of Pub. L. 94–566, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1102, 1103, 1110 of this title.

§ 1106. Unemployment compensation research program

(a) The Secretary of Labor shall—

(1) establish a continuing and comprehensive program of research to evaluate the unemployment compensation system. Such research shall include, but not be limited to, a program of factual studies covering the role of unemployment compensation under varying patterns of unemployment including those in seasonal industries, the relationship between the unemployment compensation and other social insurance programs, the effect of State eligibility and disqualification provisions, the personal characteristics, family situations, employment background and experience of claimants, with the results of such studies to be made public; and

(2) establish a program of research to develop information (which shall be made public) as to the effect and impact of extending coverage to excluded groups with first attention to agricultural labor.

(b) To assist in the establishment and provide for the continuation of the comprehensive research program relating to the unemployment compensation system, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter, such sums, not to exceed $8,000,000, as may be necessary to carry out the purposes of this section. From the sums authorized to be appropriated by this subsection the Secretary may provide for the conduct of such research through grants or contracts.

(Aug. 14, 1935, ch. 531, title IX, § 906, as added Aug. 10, 1970, Pub. L. 91–373, title I, § 141, 84 Stat. 705.)

PRIOR PROVISIONS

A prior section 1106, act Aug. 14, 1935, ch. 531, title IX, § 906, 49 Stat. 642, related to excusing payment of tax by engaging in interstate commerce. For further details, see Prior Law note set out preceding section 1101 of this title.

§ 1107. Personnel training

(a) Creation of program

In order to assist in increasing the effectiveness and efficiency of administration of the unemployment compensation program by increasing the number of adequately trained personnel, the Secretary of Labor shall—

(1) provide directly, through State agencies, or through contracts with institutions of higher education or other qualified agencies, organizations, or institutions, programs and courses designed to train individuals to prepare them, or improve their qualifications, for service in the administration of the unemployment compensation program, including claims determinations and adjudication, with such stipends and allowances as may be permitted under regulations of the Secretary;

(2) develop training materials for and provide technical assistance to the State agencies in the operation of their training programs;

(3) under such regulations as he may prescribe, award fellowships and traineeships to persons in the Federal-State employment security agencies, in order to prepare them or improve their qualifications for service in the administration of the unemployment compensation program.

(b) Repayment of costs

The Secretary may, to the extent that he finds such action to be necessary, prescribe requirements to assure that any person receiving a fellowship, traineeship, stipend or allowance shall repay the costs thereof to the extent that such person fails to serve in the Federal-State employment security program for the period prescribed by the Secretary. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the programs established by this section.

(c) Detail of Federal and State employees

The Secretary, with the concurrence of the State, may detail Federal employees to State unemployment compensation administration and the Secretary may concur in the detailing of State employees to the United States Department of Labor for temporary periods for training or for purposes of unemployment compensation administration, and the provisions of section 869b[1] of title 20 or any more general program of interchange enacted by a law amending, supplementing, or replacing section 869b[1] of title 20 shall apply to any such assignment.

(d) Authorization of appropriations

There are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter such sums, not to exceed $5,000,000, as may be necessary to carry out the purposes of this section.

(Aug. 14, 1935, ch. 531, title IX, § 907, as added Aug. 10, 1970, Pub. L. 91–373, title I, § 141, 84 Stat. 705.)

REFERENCES IN TEXT

Section 869b of title 20, referred to in subsec. (c), was repealed by Pub. L. 91–648, title IV, § 403, Jan. 5, 1971, 84 Stat. 1925. Provisions relating to assignment of personnel to and from State and local governments are covered by section 3371 et seq. of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 1107, acts Aug. 14, 1935, ch. 531, title IX, § 907, 49 Stat. 642; June 25, 1938, ch. 680, § 13(a), 52 Stat. 1110, related to definitions. For further details, see Prior Law note set out preceding section 1101 of this title.

§ 1108. Advisory Council on Unemployment Compensation

(a) Establishment

Not later than February 1, 1992, and every 4th year thereafter, the Secretary of Labor shall establish an advisory council to be known as the Advisory Council on Unemployment Compensation (referred to in this section as the ''Council'').

[1] See References in Text note below.

(b) Function

It shall be the function of each Council to evaluate the unemployment compensation program, including the purpose, goals, countercyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and any other aspects of the program and to make recommendations for improvement.

(c) Members

(1) In general

Each Council shall consist of 11 members as follows:

(A) 5 members appointed by the President, to include representatives of business, labor, State government, and the public.

(B) 3 members appointed by the President pro tempore of the Senate, in consultation with the Chairman and ranking member of the Committee on Finance of the Senate.

(C) 3 members appointed by the Speaker of the House of Representatives, in consultation with the Chairman and ranking member of the Committee on Ways and Means of the House of Representatives.

(2) Qualifications

In appointing members under subparagraphs (B) and (C) of paragraph (1), the President pro tempore of the Senate and the Speaker of the House of Representatives shall each appoint—

(A) 1 representative of the interests of business,

(B) 1 representative of the interests of labor, and

(C) 1 representative of the interests of State governments.

(3) Vacancies

A vacancy in any Council shall be filled in the manner in which the original appointment was made.

(4) Chairman

The President shall appoint the Chairman of the Council from among its members.

(d) Staff and other assistance

(1) In general

Each Council may engage any technical assistance (including actuarial services) required by the Council to carry out its functions under this section.

(2) Assistance from Secretary of Labor

The Secretary of Labor shall provide each Council with any staff, office facilities, and other assistance, and any data prepared by the Department of Labor, required by the Council to carry out its functions under this section.

(e) Compensation

Each member of any Council—

(1) shall be entitled to receive compensation at the rate of pay for level V of the Executive Schedule under section 5316 of title 5 for each day (including travel time) during which such member is engaged in the actual performance of duties vested in the Council, and

(2) while engaged in the performance of such duties away from such member's home or regular place of business, shall be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for persons in the Government employed intermittently.

(f) Report

(1) In general

Not later than February 1 of the third year following the year in which any Council is required to be established under subsection (a) of this section, the Council shall submit to the President and the Congress a report setting forth the findings and recommendations of the Council as a result of its evaluation of the unemployment compensation program under this section.

(2) Report of first Council

The Council shall include in its report required to be submitted by February 1, 1995, the Council's findings and recommendations with respect to determining eligibility for extended unemployment benefits on the basis of unemployment statistics for regions, States, or subdivisions of States.

(Aug. 14, 1935, ch. 531, title IX, § 908, as added Aug. 10, 1970, Pub. L. 91–373, title I, § 141, 84 Stat. 706; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(d)(4), 98 Stat. 1167; Nov. 15, 1991, Pub. L. 102–164, title III, § 303, 105 Stat. 1059; Nov. 24, 1993, Pub. L. 103–152, § 6, 107 Stat. 1518.)

CODIFICATION

Section 9 of Pub. L. 102–107, Aug. 17, 1991, 105 Stat. 547, which contained provisions substantially identical to those of section 303 of Pub. L. 102–164, amending this section, did not become effective pursuant to section 10(b) of Pub. L. 102–107, because the President did not take the action required by that section by Aug. 17, 1991.

PRIOR PROVISIONS

A prior section 1108, act Aug. 14, 1935, ch. 531, title IX, § 908, 49 Stat. 643, related to rules and regulations. For further details, see Prior Law note set out preceding section 1101 of this title.

A prior section 1109, act Aug. 14, 1935, ch. 531, title IX, § 909, 49 Stat. 643, related to an additional credit against tax. For further details, see Prior Law note set out preceding section 1101 of this title.

A prior section 1110, act Aug. 14, 1935, ch. 531, title IX, § 910, 49 Stat. 644, related to conditions of additional credit allowance. For further details, see Prior Law note set out preceding section 1101 of this title.

AMENDMENTS

1993—Subsec. (f). Pub. L. 103–152 substituted ''third year'' for ''2d year'' in par. (1) and ''1995'' for ''1994'' in par. (2).

1991—Pub. L. 102–164 amended section generally, substituting present provisions for provisions which in subsec. (a) established the Federal Advisory Council and its membership, in subsec. (b) prescribed the appointment of its members, in subsec. (c) required that secretarial, clerical, and other assistance be made available to the Council, in subsec. (d) provided for compensation of members, in subsec. (e) encouraged the organization of State advisory councils, and in subsec. (f) authorized certain appropriations for the work of the Council.

1984—Subsec. (d). Pub. L. 98–369 substituted ''5703'' for ''5703(b)''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any

right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

REPORT ON AGRICULTURAL LABOR PERFORMED BY ALIENS

Pub. L. 102–318, title III, §303(b), July 3, 1992, 106 Stat. 297, directed Advisory Council on Unemployment Compensation to submit a report to Congress, not later than Feb. 1, 1994, on its recommendations with respect to the treatment of agricultural labor performed by aliens.

§ 1109. Federal Employees Compensation Account

There is hereby established in the Unemployment Trust Fund a Federal Employees Compensation Account which shall be used for the purposes specified in section 8509 of title 5. For the purposes provided for in section 1104(e) of this title, such account shall be maintained as a separate book account.

(Aug. 14, 1935, ch. 531, title IX, §909, as added Dec. 5, 1980, Pub. L. 96–499, title X, §1023(a), 94 Stat. 2657.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 906; title 5 section 8509.

§ 1110. Borrowing between Federal accounts

(a) In general

Whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that—

(1) the amount in the employment security administration account, Federal unemployment account, or extended unemployment compensation account, is insufficient to meet the anticipated payments from the account,

(2) such insufficiency may cause such account to borrow from the general fund of the Treasury, and

(3) the amount in any other such account exceeds the amount necessary to meet the anticipated payments from such other account,

the Secretary shall transfer to the account referred to in paragraph (1) from the account referred to[1] paragraph (3) an amount equal to the insufficiency determined under paragraph (1) (or, if less, the excess determined under paragraph (3)).

(b) Treatment of advance

Any amount transferred under subsection (a) of this section—

(1) shall be treated as a noninterest-bearing repayable advance, and

(2) shall not be considered in computing the amount in any account for purposes of the application of sections 1101(f)(2), 1102(b), and 1105(b) of this title.

(c) Repayment

Whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that the amount in the account to which an advance is made under subsection (a) of this section exceeds the amount necessary to meet the anticipated payments from the account, the Secretary shall transfer from the account to the account from which the advance was made an amount equal to the lesser of the amount so advanced or such excess.

(Aug. 14, 1935, ch. 531, title IX, §910, as added July 3, 1992, Pub. L. 102–318, title V, §531(c), 106 Stat. 316.)

SUBCHAPTER X—GRANTS TO STATES FOR AID TO BLIND

REPEAL OF SUBCHAPTER X OF THIS CHAPTER; INAPPLICABILITY OF REPEAL TO PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this subchapter is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 428, 602, 671, 1301, 1306a, 1308, 1309, 1311, 1315, 1316, 1318, 1319, 1320b–2, 1320b–3, 1320b–7, 1382, 1382c, 1395v, 1396a, 1396b, 1396d of this title; title 7 sections 2012, 2014; title 8 section 1255a; title 26 section 6103; title 29 section 802.

§ 1201. Authorization of appropriations

For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals who are blind, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health and Human Services, State plans for aid to the blind.

(Aug. 14, 1935, ch. 531, title X, §1001, 49 Stat. 645; Aug. 28, 1950, ch. 809, title III, pt. 6, §361(b), 64 Stat. 558; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, §313(a), 70 Stat. 849; July 25, 1962, Pub. L. 87–543, title I, §104(c)(3), 76 Stat. 186; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title XXI, §2184(c)(1), 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 struck out ''and of encouraging each State, as far as practicable under such conditions,

[1] So in original. Probably should be ''to in''.

to furnish rehabilitation and other services to help such individuals attain or retain capability for self-support and self-care'' after ''who are blind''.

1962—Pub. L. 87–543 inserted ''to furnish rehabilitation and other services'' before ''to help such individuals'' and ''or retain capability for'' after ''attain''.

1956—Act Aug. 1, 1956, restated purpose to include assistance to individuals to attain self-support or self-care.

1950—Act Aug. 28, 1950, substituted ''Federal Security Administrator'' for ''Social Security Board''.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 1202. State plans for aid to blind

(a) A State plan for aid to the blind must (1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low-income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; and[1] (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title or aid to families with dependent children under the State plan approved under section 602 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind, as well as any expenses reasonably attributable to the earning of any such income, except that, in making such determination, the State agency (A) shall disregard the first $85 per month of earned income, plus one-half of earned income in excess of $85 per month, (B) shall, for a period not in excess of twelve months, and may, for a period not in excess of thirty-six months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, and (C) may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than $7.50 of any income; (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan; (10) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (11) effective July 1, 1951, provide that all individuals wishing to make application for aid to the blind shall have opportunity to do so, and that aid to the blind shall be furnished with reasonable promptness to all eligible individuals; (12) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; (13) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the blind to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and (14) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condi-

[1] So in original. The word ''and'' probably should not appear.

tion of eligibility for aid to the blind under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

(2) Any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this subchapter. In the case of any State (other than Puerto Rico and the Virgin Islands) which did not have on January 1, 1949, a State plan for aid to the blind approved under this subchapter, the Secretary shall approve a plan of such State for aid to the blind for purposes of this subchapter, even though it does not meet the requirements of clause (8) of subsection (a) of this section, if it meets all other requirements of this subchapter for an approved plan for aid to the blind; but payments under section 1203 of this title shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1203 of this title under a plan approved under this section without regard to the provisions of this sentence.

(Aug. 14, 1935, ch. 531, title X, §1002, 49 Stat. 645; Aug. 10, 1939, ch. 666, title VII, §701, 53 Stat. 1397; Aug. 28, 1950, ch. 809, title III, pt. 4, §341(a)–(e), pt. 6, §361(c), (d), 64 Stat. 553, 558; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, §313(b), 70 Stat. 849; Sept. 13, 1960, Pub. L. 86–778, title VII, §710, 74 Stat. 997; July 25, 1962, Pub. L. 87–543, title I, §§104(a)(3)(H), 106(a)(2), 136(a), 154, 76 Stat. 185, 188, 197, 206; Oct. 13, 1964, Pub. L. 88–650, §5(a), 78 Stat. 1078; July 30, 1965, Pub. L. 89–97, title IV, §403(c), 79 Stat. 418; Jan. 2, 1968, Pub. L. 90–248, title II, §§210(a)(3), 213(a)(2), 81 Stat. 895, 898; Oct. 30, 1972, Pub. L. 92–603, title IV, §§405(b), 406(b), 407(b), 410(b), 413(b), 86 Stat. 1488, 1489, 1491, 1492; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2651(f), 98 Stat. 1149.)

REPEAL OF SECTION

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1984—Subsec. (a)(14). Pub. L. 98–369 added cl. (14).

1972—Subsec. (a)(1). Pub. L. 92–603, §410(b), inserted ''except to the extent permitted by the Secretary with respect to services,'' before ''provide''.

Subsec. (a)(4). Pub. L. 92–603, §407(b), designated existing provisions as subcl. (A) and added subcl. (B).

Subsec. (a)(9). Pub. L. 92–603, §413(b), substituted provisions permitting the use or disclosure of information concerning applicants or recipients to public officials requiring such information in connection with their official duties and to other persons for purposes directly connected with the administration of the State plan, for provisions restricting the use or disclosure of such information to purposes directly connected with the administration of aid to the blind.

Subsec. (a)(13). Pub. L. 92–603, §405(b), inserted provision relating to the use of whatever internal organizational arrangement found appropriate.

Subsec. (b). Pub. L. 92–603, §406(b), inserted provision relating to the furnishing of manuals and other policy issuances to persons without charge and at the option of the State.

1968—Subsec. (a)(5). Pub. L. 90–248, §210(a)(3), designated existing provisions as subcl. (A) and added subcl. (B).

Subsec. (a)(8)(C). Pub. L. 90–248, §213(a)(2), increased from $5 to $7.50 limitation on amount of any income which the State may disregard in making its determination of need.

1965—Subsec. (a)(8)(C). Pub. L. 89–97 added subcl. (C).

1964—Subsec. (a)(8). Pub. L. 88–650 permitted the State agency, for a period not in excess of thirty-six months to disregard such additional amounts of other income and resources.

1962—Subsec. (a)(7). Pub. L. 87–543, §104(a)(3)(H), substituted ''aid to families with dependent children'' for ''aid to dependent children''.

Subsec. (a)(8). Pub. L. 87–543, §§106(a)(2), 154, inserted '', as well as any expenses reasonably attributable to the earning of any such income'', and amended the exception provision by striking out ''either (i) the first $50 per month of earned income, or'' after ''disregard'', redesignating subcl. (ii) as (A) and adding subcl. (B).

Subsec. (b). Pub. L. 87–543, §136(a), provided for approval of certain plans of States, without an approved plan on Jan. 1, 1949, meeting all but income and resources requirements, and payment of certain expenditures under such plans.

1960—Subsec. (a)(8). Pub. L. 86–778, §710(b), struck out provision that required the State agency to disregard, alternatively, the first $50 per month of earned income in considering claimant's income and resources in determining need.

Pub. L. 86–778, §710(a), inserted provision that required the State agency to disregard, alternatively, the first $85 per month of earned income plus one-half of earned income in excess of $85 per month in considering claimant's income and resources in determining need.

1956—Subsec. (a)(13). Act Aug. 1, 1956, added cl. (13).

1950—Subsec. (a)(4). Act Aug. 28, 1950, §341(a), substituted ''provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness'' for ''provide for granting to any individual, whose claim for aid is denied, an opportunity for a fair hearing before such State agency''.

Subsec. (a)(7). Act Aug. 28, 1950, §341(b), inserted ''or aid to dependent children under the State plan approved under section 302 of this title''.

Subsec. (a)(8). Act Aug. 28, 1950, §341(c)(2), (d), amended cl. (8) generally, effective July 1, 1952, and struck out ''and'' preceding cl. (9).

Act Aug. 28, 1950, §341(c)(1), amended cl. (8) generally for period beginning Oct. 1, 1950, and ending June 30, 1952.

Subsec. (a)(9). Act Aug. 28, 1950, §341(d), substituted comma for period at end.

Subsec. (a)(10). Act Aug. 28, 1950, §341(e), amended cl. (10) generally. Prior to amendment, cl. (10) read as follows: ''provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist;''.

Act Aug. 28, 1950, §341(d), added cl. (10).

Subsec. (a)(11), (12). Act Aug. 28, 1950, §341(d), added cls. (11) and (12).

Subsec. (b). Act Aug. 28, 1950, §361(c), (d), substituted ''Administrator'' for ''Board'' and ''he'' for ''it''.

1939—Subsec. (a)(5). Act Aug. 10, 1939, §701(a), inserted ''(including after January 1, 1940, methods relating to

the establishment and maintenance of personnel standards on a merit basis, except that the Board shall exercise no authority with respect)'' after ''methods of administration'' and ''proper'' before ''and efficient operation of the plan''.

Subsec. (a)(8), (9). Act Aug. 10, 1939, § 701(b), added cls. (8) and (9).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 210(a)(3) of Pub. L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub. L. 90–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 403(c) of Pub. L. 89–97 provided that the amendment made by that section is effective Oct. 1, 1965.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 106(a)(2) of Pub. L. 87–543 effective July 1, 1963, see section 202(a) of Pub. L. 87–543, set out as a note under section 302 of this title.

Section 154 of Pub. L. 87–543 provided that the amendment made by that section is effective July 1, 1963.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 710(a) of Pub. L. 86–778 provided that the amendment made by that section is effective for the period beginning with first day of calendar quarter which begins after Sept. 13, 1960, and ending with close of June 30, 1962.

Section 710(b) of Pub. L. 86–778 provided that the amendment made by that section is effective July 1, 1962.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, effective July 1, 1957, see section 314 [315] of act Aug. 1, 1956, set out as a note under section 302 of this title.

EFFECTIVE AND TERMINATION DATES OF 1950 AMENDMENT

Section 341(c)(1) of act Aug. 28, 1950, provided that the amendment made by that section is effective for the period beginning Oct. 1, 1950, and ending June 30, 1952.

Section 341(c)(2) of act Aug. 28, 1950, provided that the amendment made by that section is effective July 1, 1952.

Section 341(e) of act Aug. 28, 1950, provided that the amendment made by that section is effective July 1, 1952.

Section 341(f) of act Aug. 28, 1950, provided that: ''The amendments made by subsections (b) and (d) [amending this section] shall take effect October 1, 1950; and the amendment made by subsection (a) [amending this section] shall take effect July 1, 1951.''

EFFECTIVE DATE OF 1939 AMENDMENT

Section 701(b) of act Aug. 10, 1939, provided that the amendment made by that section is effective July 1, 1941.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary under subsec. (a)(5)(A) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(D) of this title.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

STATE PLANS IN EFFECT JULY 25, 1962: AUTOMATIC CONFORMITY TO AMENDMENTS

State plans in effect July 25, 1962, deemed to have been conformed to amendment of subsec. (a)(7) of this section by section 104(a) of Pub. L. 87–543, see section 104(b) of Pub. L. 87–543, set out as a note under section 601 of this title.

PUBLIC ACCESS TO STATE DISBURSEMENT RECORDS

Public access to State records of disbursements of funds and payments under this subchapter, see note set out under section 302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1204, 1206, 1315, 1352, 1382a, 4728 of this title; title 25 sections 683, 686, 689, 996.

§ 1202a. Repealed. Pub. L. 87–543, title I, § 136(b), July 25, 1962, 76 Stat. 197

Section, act Aug. 28, 1950, ch. 809, title III, pt. 4, § 344(a), 64 Stat. 554, provided, in the case of any State without a plan for aid to the blind approved on Jan. 1, 1949, for approval of the plan of such a State conforming to all requirements except those relating to determination of need and consideration of resources but conditioned payments to the State meeting the excepted requirement.

EFFECTIVE AND TERMINATION DATES

Section 136(b) of Pub. L. 87–543 also repealed section 344(b) of act Aug. 28, 1950, as amended Sept. 1, 1954, ch. 1206, title III, § 302, 68 Stat. 1097; Apr. 25, 1957, Pub. L. 85–26, 71 Stat. 27; Aug. 28, 1958, Pub. L. 85–840, title V, § 509, 72 Stat. 1051; Sept. 13, 1960, Pub. L. 86–778, title VII, § 706, 74 Stat. 995, which provided that this section should become effective Oct. 1, 1950 and terminate June 30, 1964.

§ 1203. Payment to States

(a) Authorization of payments

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) Repealed. Pub. L. 97–35, title XXI, § 2184(c)(2)(A), Aug. 13, 1981, 95 Stat. 817.

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the blind under the State plan, not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the blind for such month; and

(3) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) Computation of amounts

The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health and Human Services shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of blind individuals in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this section for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the blind furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health and Human Services for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

(Aug. 14, 1935, ch. 531, title X, §1003, 49 Stat. 646; Aug. 10, 1939, ch. 666, title VII, §702, 53 Stat. 1397; 1940 Reorg. Plan No. III, §1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; Aug. 10, 1946, ch. 951, title V, §503, 60 Stat. 992; June 14, 1948, ch. 468, §3(c), 62 Stat. 439; Aug. 28, 1950, ch. 809, title III, pt. 4, §342(a), pt. 6, §361(c), (d), 64 Stat. 553, 558; July 18, 1952, ch. 945, §8(c), 66 Stat. 779; 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 1, 1954, ch. 1206, title III, §303(a), 68 Stat. 1097; Aug. 1, 1956, ch. 836, title III, §§303, 313(c), 343, 70 Stat. 847, 849, 853; Aug. 28, 1958, Pub. L. 85–840, title V, §503, 72 Stat. 1049; June 30, 1961, Pub. L. 87–64, title III, §303(b), 75 Stat. 143; July 25, 1962, Pub. L. 87–543, title I, §§101(a)(3), (b)(3), 132(b), 76 Stat. 176, 180, 195; July 30, 1965, Pub. L. 89–97, title I, §122, title IV, §401(d), 79 Stat. 353, 415; Jan. 2, 1968, Pub. L. 90–248, title II, §212(b), 81 Stat. 897; Oct. 20, 1972, Pub. L. 92–512, title III, §301(b), (d), 86 Stat. 946, 947; Jan. 4, 1975, Pub. L. 93–647, §§3(e)(2), 5(c), 88 Stat. 2349, 2350; Oct. 17, 1979, Pub. L. 96–88, title V, §509(b), 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title XXI, §2184(c)(2), title XXIII, §2353(e), 95 Stat. 817, 872; Nov. 6, 1986, Pub. L. 99–603, title I, §121(b)(4), 100 Stat. 3391; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13741(b), 107 Stat. 663.)

REPEAL OF SECTION

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1993—Subsec. (a)(3). Pub. L. 103–66 substituted ''50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.'' for ''the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

''(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

''(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title; plus

''(C) one-half of the remainder of such expenditures.''

1986—Subsec. (a)(3)(B), (C). Pub. L. 99–603 added subpar. (B) and redesignated former subpar. (B) as (C).

1981—Subsec. (a)(1). Pub. L. 97–35, §2184(c)(2)(A), struck out par. (1) which provided for computation of amounts payable in the case of any State other than Puerto Rico, the Virgin Islands, and Guam.

Subsec. (a)(2). Pub. L. 97–35, §2184(c)(2)(B), struck out ''(including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)'' after ''under the State plan''.

Subsec. (a)(3). Pub. L. 97–35, §2353(e)(1)(A), redesignated subpar. (A)(iv) as subpar. (A), struck out former subpars. (A)(i), which included services prescribed pursuant to subsec. (c)(1) of this section and provided to applicants for or recipients of aid to the blind to help them attain self-support, (A)(ii), which included other services, specified by the Secretary as likely to prevent or reduce dependency, and (A)(iii), which included any of the services in subpars. (A)(i) and (ii) deemed appropriate for individuals likely to become applicants for or recipients of aid to the blind, redesignated former subpar. (C) as (B), and struck out former subpar. (B), which included one-half of so much of the expenditures, not included in subpar. (A), as are for services for applicants for or recipients of aid to the blind or individuals likely to become such applicants or recipients, and sub-

pars. (D) and (E) and provision following subpar. (E), which specified what services were includible.

Subsec. (a)(4). Pub. L. 97–35, § 2353(e)(1)(B), struck out par. (4) which provided payment, in the case of any State whose plan approved under section 1202 of this title did not meet the requirements of subsec. (c)(1) of this section, of an amount equal to one-half of the total of the sums expended during the quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

Subsec. (c). Pub. L. 97–35, § 2353(e)(2), struck out subsec. (c) which prescribed eligibility requirements for payments.

1975—Subsec. (a). Pub. L. 93–647, § 3(e)(2), struck out ''(subject to section 1320b of this title)'' after ''the Secretary of the Treasury shall''.

Subsec. (a)(3)(A)(iv). Pub. L. 93–647, § 5(c), inserted ''(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)'' after ''training''.

1972—Subsec. (a). Pub. L. 92–512, § 301(d), substituted ''shall (subject to section 1320b of this title) pay'' for ''shall pay'' in provisions preceding par. (1).

Subsec. (a)(3)(E). Pub. L. 92–512, § 301(b), substituted ''under conditions which shall be'' for ''subject to limitations''.

1968—Subsec. (a)(3)(D). Pub. L. 90–248 inserted '', except to the extent specified by the Secretary'' after ''shall'' in introductory text to subpar. (D).

1965—Subsec. (a)(1). Pub. L. 89–97, §§ 122, 401(d), inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase appearing in so much of par. (1) as precedes cl. (A); and substituted ''31/37'' and ''$37'' for ''29/35'' and ''$35'' in subpar. (A) and ''$75'' for ''$70'' in subpar. (B), respectively.

Subsec. (a)(2). Pub. L. 89–97, § 122, inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase.

1962—Subsec. (a)(1). Pub. L. 87–543, § 132(b), substituted ''29/35'' and ''$35'' for ''four-fifths'' and ''$31'', respectively, in subpar. (A) and ''$70'' for ''$66'' in subpar. (B).

Subsec. (a)(2). Pub. L. 87–543, § 132(b), substituted ''$37.50'' for ''$35.50''.

Subsec. (a)(3). Pub. L. 87–543, § 101(a)(3), (b)(3)(A), inserted in opening provisions ''whose State plan approved under section 1202 of this title meets the requirements of subsection (c)(1) of this section'' after ''any State'', and substituted provisions which increased the Federal share of expenses of administration of State public assistance plans by providing quarterly payments of the sum of 75 per centum of the quarterly expenses for certain prescribed services to help attain and retain capability for self-support or self-care, services likely to prevent or reduce dependency, and services appropriate for individuals who were or are likely to become applicants for or recipients of aid to the blind and request such services, and training of State or local public assistance personnel administering such plans and one-half of other administrative expenses for other services, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and required the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary for former provisions requiring quarterly payments of one-half of quarterly expenses of administration of State plans, including staff service of State or local public assistance agencies to applicants for and recipients of aid to the blind to help them attain self-support or self-care.

Subsec. (a)(4). Pub. L. 87–543, § 101(b)(3)(B), added par. (4).

Subsec. (c). Pub. L. 87–543, § 101(b)(3)(C), added subsec. (c).

1961—Subsec. (a). Pub. L. 87–64 substituted ''$31'' for ''$30'' and ''$66'' for ''$65'' in cl. (1), and ''$35.50'' for ''$35'' in cl. (2).

1958—Subsec. (a). Pub. L. 85–840 increased the payments to the States to four-fifths of the first $30 of the average monthly payment per recipient including assistance in the form of money payments and in the form of medical or any other type of remedial care, plus the Federal percentage of the amount by which the expenditures exceed the maximum which may be counted under cl. (A), but excluding that part of the average monthly payment per recipient in excess of $65, increased the average monthly payment to Puerto Rico and the Virgin Islands from $30 to $35, excluded Guam from the provisions which authorize an average monthly payment of $65 and included Guam within the provisions which authorize an average monthly payment of $35, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1956—Subsec. (a). Act Aug. 1, 1956, § 303, substituted ''during such quarter as aid to the blind in the form of money payments under the State plan'' for ''during such quarter as aid to the blind under the State plan'' in cls. (1) and (2), ''who received aid to the blind in the form of money payments for such month'' for ''who received aid to the blind for such month'' in par. (a) of cl. (1), and inserted cl. (4).

Act Aug. 1, 1956, § 313(c), struck out '', which shall be used exclusively as aid to the blind,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), and substituted ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of aid to the blind to help them attain self-support or self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for aid to the blind, or both, and for no other purpose'' in cl. (3).

Act Aug. 1, 1956, § 343, substituted ''October 1, 1956'' for ''October 1, 1952'', struck out '', which shall be used exclusively as aid to the blind,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), substituted ''$60'' for ''$55,'' ''the product of $30'' for ''the product of $25'', ''Secretary of Health, Education, and Welfare'' for ''Secretary'', and ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of aid to the blind to help them attain self-support or self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for aid to the blind, or both, and for no other purpose''.

1954—Subsec. (b)(1). Act Sept. 1, 1954, substituted ''the State's proportionate share'' for ''one-half''.

1952—Subsec. (a). Act July 18, 1952, increased the Federal share of the State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed formulas for computing the Federal share of public assistance for Puerto Rico and the Virgin Islands.

1950—Subsec. (a). Act Aug. 28, 1950, § 342(a), provided a new method of computation of the Federal portion of aid to the blind.

Subsec. (b). Act Aug. 28, 1950, § 361(c), (d), substituted ''Administrator'' for ''Board''.

1948—Subsec. (a). Act June 14, 1948, substituted ''$50'' for ''$45'' and ''$20'' for ''$15''.

1946—Subsec. (a). Act Aug. 10, 1946, § 503(a), temporarily increased the maximum monthly State expenditure to which the Federal government will contribute from $40 to $45 and increased the Federal contribution for aid to the blind from one-half the State's expenditure to two-thirds such expenditure up to $15 monthly per individual plus one-half the State's expenditure over $15. See Effective and Termination Date of 1946 Amendment note below.

Subsec. (b). Act Aug. 10, 1946, § 503(b), temporarily substituted ''the State's proportionate share'' for ''one-

half'' in par. (1). See Effective and Termination Date of 1946 Amendment note below.

1939—Act Aug. 10. 1939, amended section generally.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Apr. 1, 1994, with special rule for States whose legislature meets biennially, and does not have regular session scheduled in calendar year 1994, see section 13741(c) of Pub. L. 103–66, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2353(e) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 3(e)(2) of Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

Amendment by section 5(c) of Pub. L. 93–647 effective with respect to payments for quarters commencing after Sept. 30, 1975, see section 7(a) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 301(b) of Pub. L. 92–512 effective Jan. 1, 1973, and amendment by section 301(d) of Pub. L. 92–512 effective July 1, 1972, see section 301(e) of Pub. L. 92–512, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 effective Jan. 1, 1968, see section 212(e) of Pub. L. 90–248, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 401(d) of Pub. L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter, see section 401(f) of Pub. L. 89–97, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 101(a)(3) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be made after Aug. 31, 1962, and amendment by section 101(b)(3) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after June 30, 1963, see section 202(f) of Pub. L. 87–543, set out as a note under section 303 of this title.

Amendment by section 132(b) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Sept. 30, 1962, see section 202(d) of Pub. L. 87–543, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 applicable only in the case of expenditures made after Sept. 30, 1961, and before July 1, 1962, under a State plan approved under subchapters I, X, or XIV of this chapter, see section 303(e) of Pub. L. 87–64, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1956 AMENDMENT

Amendment by section 303 of act Aug. 1, 1956, effective July 1, 1957, see section 305 of act Aug. 1, 1956, set out as a note under section 303 of this title.

Amendment by section 343 of act Aug. 1, 1956, effective only for period beginning Oct. 1, 1956, and ending with close of June 30, 1959, see section 345 of act Aug. 1, 1956, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

Amendment by act July 18, 1952, effective for the period beginning Oct. 1, 1952, and ending Sept. 30, 1956, see section 8(e) of act July 18, 1952, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 342(b) of act Aug. 28, 1950, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950.''

EFFECTIVE DATE OF 1948 AMENDMENT

Amendment by act June 14, 1948, effective Oct. 1, 1948, see section 3(d) of act June 14, 1948, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1946 AMENDMENT

Amendment by section 503 of act Aug. 10, 1946, effective only for period beginning Oct. 1, 1946, and ending with close of June 30, 1950, see section 504 of act Aug. 10, 1946, as amended, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 702 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

''Fiscal Service'' substituted for ''Division of Disbursement'' in subsec. (b)(3), on authority of section 1(a)(1) of Reorg. Plan No. III of 1940, eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees, which consolidated such division into the Fiscal Service of the Treasury Department. See section 306 of Title 31, Money and Finance.

NONDUPLICATION OF PAYMENTS TO STATES, PROHIBITION OF PAYMENTS AFTER DECEMBER 31, 1969

Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub. L. 89–97, set out as a note under section 1396b of this title.

ELECTION OF PAYMENTS UNDER COMBINED STATE PLAN RATHER THAN SEPARATE PLANS

Payments to States under combined State plan under subchapter XVI of this chapter as precluding payment under State plan conforming to this subchapter, see section 141(b) of Pub. L. 87–543.

CROSS REFERENCES

Navajo and Hopi Indians, additional Federal contributions in connection with rehabilitation program, see section 639 of Title 25, Indians.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1202, 1315, 1318, 1319 of this title.

§ 1204. Operation of State plans

In the case of any State plan for aid to the blind which has been approved by the Secretary of Health and Human Services, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1202(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1202(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title X, § 1004, 49 Stat. 646; Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(c), (d), 64 Stat. 558; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Jan. 2, 1968, Pub. L. 90–248, title II, § 245, 81 Stat. 918; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1968—Pub. L. 90–248 inserted ''(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)'' after ''further payments will not be made to the State'' and substituted in last sentence ''further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)'' for ''further certification to the Secretary of the Treasury with respect to such State''.

1950—Act Aug. 28, 1950, substituted ''Administrator'' for ''Board'' and ''his'' for ''its''.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1316 of this title.

§ 1205. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title X, § 1005, 49 Stat. 647, made available $30,000 for the fiscal year ending June 30, 1936, for expenses in administering sections 1201 to 1204 of this title.

REPEALS

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section was repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

§ 1206. "Aid to the blind" defined

For the purposes of this subchapter, the term ''aid to the blind'' means money payments to blind individuals who are needy, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1202 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the blind to be paid (and in conjunction with other income and resources), meet all the need[1] of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual

[1] So in original. Probably should be ''needs''.

and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) of this subsection for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this subchapter so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of 90 consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for 30 consecutive days in the case of such an individual who has maintained his residence in such State during such period or 90 consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.

(Aug. 14, 1935, ch. 531, title X, §1006, 49 Stat. 647; Aug. 10, 1939, ch. 666, title VII, §703, 53 Stat. 1398; Aug. 28, 1950, ch. 809, title III, pt. 4, §343(a), 64 Stat. 554; July 25, 1962, Pub. L. 87–543, title I, §156(c), 76 Stat. 207; July 30, 1965, Pub. L. 89–97, title II, §221(b), title IV, §402(c), 79 Stat. 358, 416; Oct. 30, 1972, Pub. L. 92–603, title IV, §§ 408(b), 409(b), 86 Stat. 1490; Aug. 13, 1981, Pub. L. 97–35, title XXI, §2184(c)(3), 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 struck out in provision preceding par. (1) ", or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of," after "money payments to".

1972—Pub. L. 92–603 authorized the State, at its option, to include within term "aid to the blind" provisions relating to money payments to an individual absent from such State for more than 90 consecutive days, and provisions relating to rent payments made directly to a public housing agency.

1965—Pub. L. 89–97 struck out from definition of "aid to the blind" the exclusion of payments to or medical care in behalf of any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof; and extended definition of "aid to the blind" to include payments made on behalf of the needy individual to another individual who (as determined in accordance with standards determined by the Secretary) is interested in or concerned with the welfare of such needy individual and enumerated the five characteristics required of State plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs of the individual, special efforts to protect welfare, periodic review, and opportunity for fair hearing, respectively.

1962—Pub. L. 87–543 inserted "(if provided in or after the third month before the month in which the recipient makes application for aid)" before "medical care".

1950—Act Aug. 28, 1950, redefined "aid to the blind".

1939—Act Aug. 10, 1939, redefined "aid to the blind" to include those individuals who are needy.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221(b) of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 302 of this title.

Amendment by section 402(c) of Pub. L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a State plan approved under subchapters I, X, XIV, or XVI of this chapter, see section 402(e) of Pub. L. 89–97, set out as a note under section 306 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 156(c) of Pub. L. 87–543 applicable in the case of applications made after Sept. 30, 1962, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, see section 156(e) of Pub. L. 87–543, set out as a note under section 306 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 343(b) of act Aug. 28, 1950, provided that: "The amendment made by subsection (a) [amending this section] shall take effect October 1, 1950, except that the exclusion of money payments to needy individuals described in clause (a) or (b) of section 1006 of the Social Security Act [this section] as so amended shall, in the case of any of such individuals who are not patients in a public institution, be effective July 1, 1952."

SUBCHAPTER XI—GENERAL PROVISIONS AND PEER REVIEW

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 432, 901, 1395x, 3012 of this title.

PART A—GENERAL PROVISIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1395mm, 1396a of this title.

§ 1301. Definitions

(a) When used in this chapter—

(1) The term "State", except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico, and when used in subchapters IV, V, VII, XI, and XIX of this chapter includes the Virgin Islands and Guam. Such term when used in subchapters III, IX, and XII of this chapter also includes the Virgin Islands. Such term when used in subchapter V and in part B of this subchapter of this chapter also includes American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. Such term when used in subchapter XIX of this chapter also includes the Northern Mariana Islands and American Samoa. In the case of Puerto Rico, the Virgin Islands, and Guam, subchapters I, X, and XIV, and subchapter XVI of this chapter (as in effect without regard to

the amendment made by section 301 of the Social Security Amendments of 1972) shall continue to apply, and the term ''State'' when used in such subchapters (but not in subchapter XVI of this chapter as in effect pursuant to such amendment after December 31, 1973) includes Puerto Rico, the Virgin Islands, and Guam. Such term when used in subchapter XX of this chapter also includes the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands. Such term when used in subchapter IV of this chapter also includes American Samoa.

(2) The term ''United States'' when used in a geographical sense means, except where otherwise provided, the States.

(3) The term ''person'' means an individual, a trust or estate, a partnership, or a corporation.

(4) The term ''corporation'' includes associations, joint-stock companies, and insurance companies.

(5) The term ''shareholder'' includes a member in an association, joint-stock company, or insurance company.

(6) The term ''Secretary'', except when the context otherwise requires, means the Secretary of Health and Human Services.

(7) The terms ''physician'' and ''medical care'' and ''hospitalization'' include osteopathic practitioners or the services of osteopathic practitioners and hospitals within the scope of their practice as defined by State law.

(8)(A) The ''Federal percentage'' for any State (other than Puerto Rico, the Virgin Islands, and Guam) shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the square of the per capita income of such State bears to the square of the per capita income of the United States; except that the Federal percentage shall in no case be less than 50 per centum or more than 65 per centum.

(B) The Federal percentage for each State (other than Puerto Rico, the Virgin Islands, and Guam) shall be promulgated by the Secretary between October 1 and November 30 of each year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the four quarters in the period beginning October 1 next succeeding such promulgation: *Provided*, That the Secretary shall promulgate such percentages as soon as possible after August 28, 1958, which promulgation shall be conclusive for each of the eleven quarters in the period beginning October 1, 1958, and ending with the close of June 30, 1961.

(C) The term ''United States'' means (but only for purposes of subparagraphs (A) and (B) of this paragraph) the fifty States and the District of Columbia.

(D) Promulgations made before satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska shall prescribe a Federal percentage for Alaska of 50 per centum and, for purposes of such promulgations, Alaska shall not be included as part of the ''United States''. Promulgations made thereafter but before per capita income data for Alaska for a full three-year period are available from the Department of Commerce shall be based on satisfactory data available therefrom for Alaska for such one full year or, when such data are available for a two-year period, for such two years.

(9) The term ''shared health facility'' means any arrangement whereby—

(A) two or more health care practitioners practice their professions at a common physical location;

(B) such practitioners share (i) common waiting areas, examining rooms, treatment rooms, or other space, (ii) the services of supporting staff, or (iii) equipment;

(C) such practitioners have a person (who may himself be a practitioner)—

(i) who is in charge of, controls, manages, or supervises substantial aspects of the arrangement or operation for the delivery of health or medical services at such common physical location, other than the direct furnishing of professional health care services by the practitioners to their patients; or

(ii) who makes available to such practitioners the services of supporting staff who are not employees of such practitioners;

and who is compensated in whole or in part, for the use of such common physical location or support services pertaining thereto, on a basis related to amounts charged or collected for the services rendered or ordered at such location or on any basis clearly unrelated to the value of the services provided by the person; and

(D) at least one of such practitioners received payments on a fee-for-service basis under subchapters XVIII and XIX of this chapter in an amount exceeding $5,000 for any one month during the preceding 12 months or in an aggregate amount exceeding $40,000 during the preceding 12 months;

except that such term does not include a provider of services (as defined in section 1395x(u) of this title), a health maintenance organization (as defined in section 300e(a) of this title), a hospital cooperative shared services organization meeting the requirements of section 501(e) of the Internal Revenue Code of 1986, or any public entity.

(10) The term ''Administration'' means the Social Security Administration, except where the context requires otherwise.

(b) The terms ''includes'' and ''including'' when used in a definition contained in this chapter shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Whenever under this chapter or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this chapter the amount so deducted shall be considered to have

been paid to the employee at the time of such deduction.

(d) Nothing in this chapter shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this chapter, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.

(Aug. 14, 1935, ch. 531, title XI, § 1101, 49 Stat. 647; Aug. 10, 1939, ch. 666, title VIII, § 801, 53 Stat. 1398; Aug. 10, 1946, ch. 951, title IV, § 401(a), 60 Stat. 986; June 14, 1948, ch. 468, § 2(a), 62 Stat. 438; Aug. 28, 1950, ch. 809, title IV, § 403(a)(1), (2), (b), 64 Stat. 559; Aug. 16, 1956, ch. 836, title III, § 333, 70 Stat. 852; Aug. 28, 1958, Pub. L. 85–840, title V, §§ 505, 506, 72 Stat. 1050, 1051; June 25, 1959, Pub. L. 86–70, § 32(a), (d), 73 Stat. 149; July 12, 1960, Pub. L. 86–624, § 30(a), (d), 74 Stat. 419, 420; Sept. 13, 1960, Pub. L. 86–778, title V, § 541, 74 Stat. 985; July 25, 1962, Pub. L. 87–543, title I, § 153, 76 Stat. 206; July 30, 1965, Pub. L. 89–97, title I, § 121(c)(1), 79 Stat. 352; Oct. 30, 1972, Pub. L. 92–603, title II, § 272(a), 86 Stat. 1451; Dec. 31, 1973, Pub. L. 93–233, § 18(z–2)(1)(A), 87 Stat. 973; Apr. 21, 1976, Pub. L. 94–273, § 22, 90 Stat. 379; Oct. 20, 1976, Pub. L. 94–566, title I, § 116(a), 90 Stat. 2672; Oct. 25, 1977, Pub. L. 95–142, § 5(c)(2), (*l*)(2), 91 Stat. 1184, 1191; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2162(a)(1), 2193(c)(2), title XXIII, § 2352(b), 95 Stat. 806, 827, 871; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 136(a), 160(c), 96 Stat. 375, 400; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(e)(1), (j)(1), 98 Stat. 1167, 1170; Apr. 7, 1986, Pub. L. 99–272, title IX, § 9528(a), 100 Stat. 219; Oct. 22, 1986, Pub. L. 99–514, § 2, title XVIII, §§ 1883(c)(1), 1895(c)(6), 100 Stat. 2095, 2918, 2936; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9135(a)(1), (b)(1), 101 Stat. 1330–315; Oct. 13, 1988, Pub. L. 100–485, title VI, § 601(a), 102 Stat. 2407; Aug. 15, 1994, Pub. L. 103–296, title I, § 108(b)(1), 108 Stat. 1481.)

REFERENCES IN TEXT

Part B of subchapter IV of this chapter, referred to in subsec. (a)(1), is classified to section 620 et seq. of this title.

Section 301 of the Social Security Amendments of 1972, referred to in subsec. (a)(1), is section 301 of Pub. L. 92–603, title III, Oct. 30, 1972, 86 Stat. 1465, which enacted sections 1381 to 1382e and 1383 to 1383c of this title.

The Internal Revenue Code of 1986, referred to in subsec. (a)(9), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (a)(10). Pub. L. 103–296 added par. (10).

1988—Subsec. (a)(1). Pub. L. 100–485 amended last sentence generally. Prior to amendment, last sentence read as follows: ''Such term when used in part B of subchapter IV of this chapter also includes American Samoa.''

1987—Subsec. (a)(1). Pub. L. 100–203, § 9135(a)(1), inserted ''American Samoa,'' after ''Guam,''.

Pub. L. 100–203, § 9135(b)(1), inserted at end ''Such term when used in part B of subchapter IV of this chapter also includes American Samoa.''

1986—Subsec. (a)(3) to (5). Pub. L. 99–514, § 1883(c)(1), realigned margins of pars. (3) to (5).

Subsec. (a)(8)(B). Pub. L. 99–514, § 1895(c)(6), amended directory language of Pub. L. 99–272, § 9528(a), and did not involve any change in text. See note below.

Pub. L. 99–272, § 9528(a), as amended by Pub. L. 99–514, § 1895(c)(6), struck out ''even-numbered'' after ''November 30 of each'' and substituted ''for each of the four quarters'' for ''for each of the eight quarters''.

Subsec. (a)(9). Pub. L. 99–514, § 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' in closing provisions.

1984—Subsec. (a)(6). Pub. L. 98–369, § 2663(j)(1), substituted ''means the Secretary of Health and Human Services'' for ''means the Secretary of Health, Education, and Welfare''.

Subsec. (a)(8), (9). Pub. L. 98–369, § 2663(e)(1), realigned margins of pars. (8) and (9).

1982—Subsec. (a)(1). Pub. L. 97–248, § 136(a), inserted ''and American Samoa'' after ''includes the Northern Mariana Islands''.

Pub. L. 97–248, § 160(c), substituted ''Guam, and the Northern Mariana Islands'' for ''American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands''.

1981—Subsec. (a)(1). Pub. L. 97–35, §§ 2162(a)(1), 2352(b), substituted ''American Samoa, the Northern Mariana Islands, and'' for ''American Samoa and'' and inserted provisions that ''State'' when used in subchapter XIX of this chapter also includes the Northern Mariana Islands and when used in subchapter XX of this chapter also includes the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Subsec. (a)(9)(D). Pub. L. 97–35, § 2193(c)(2), substituted ''subchapters XVIII, and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter''.

1977—Subsec. (a)(1). Pub. L. 95–142, § 5(*l*)(2), which directed that second sentence of par. (1) be amended by inserting provision that ''State'' when used in part B of this subchapter also includes American Samoa and the Trust Territory of the Pacific Islands, was executed by inserting that provision to third sentence.

Subsec. (a)(9). Pub. L. 95–142, § 5(c)(2), added par. (9).

1976—Subsec. (a)(1). Pub. L. 94–566 inserted provision that ''State'', when used in subchapters III, IX, and XII of this chapter, also includes the Virgin Islands.

Subsec. (a)(8)(B). Pub. L. 94–273 substituted ''October'' for ''July'' in two places and ''November 30'' for ''August 31''.

1973—Subsec. (a)(1). Pub. L. 93–233 struck out in first sentence references to subchapters I, X, XIV, and XVI of this chapter and inserted third sentence respecting the case of Puerto Rico, the Virgin Islands, and Guam.

1972—Subsec. (a)(1). Pub. L. 92–603 extended benefits of subchapter V of this chapter to American Samoa and the Trust Territory of the Pacific Islands.

1965—Subsec. (a)(1). Pub. L. 89–97 included subchapter XIX of this chapter.

1962—Subsec. (a)(1). Pub. L. 87–543, § 153(a), included in enumeration subchapters XI and XVI of this chapter.

Subsec. (a)(2). Pub. L. 87–543, § 153(b), struck out '', the District of Columbia, and the Commonwealth of Puerto Rico'' after ''the States,''.

1960—Subsec. (a)(1). Pub. L. 86–778 substituted ''The term 'State', except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico'' for ''The term 'State' includes Hawaii, and the District of Columbia'', and ''includes the Virgin Islands and Guam'' for ''includes Puerto Rico, the Virgin Islands, and Guam''.

Pub. L. 86–624, § 30(d)(1), struck out ''Hawaii, and'' before ''the District of Columbia''.

Subsec. (a)(2). Pub. L. 86–778 substituted ''means, except where otherwise provided, the States, the District of Columbia, and the Commonwealth of Puerto Rico'' for ''means the States, Hawaii, and the District of Columbia''.

Pub. L. 86–624, § 30(d)(2), struck out '', Hawaii,'' before ''and the District of Columbia''.

Subsec. (a)(8)(A). Pub. L. 86–624, § 30(a)(1), (2), substituted ''per capita income of the United States'' for ''per capita income of the continental United States (including Alaska)'', and struck out provisions which prescribed the Federal percentage for Hawaii as 50 per centum.

Subsec. (a)(8)(B). Pub. L. 86–624, § 30(a)(1), substituted ''United States'' for ''continental United States (including Alaska)''.

Subsec. (a)(8)(C), (D). Pub. L. 86–624, §30(a)(3), added subpars. (C) and (D).

1959—Subsec. (a)(1). Pub. L. 86–70, §32(d)(1), substituted ''Hawaii and'' for ''Alaska, Hawaii, and''.

Subsec. (a)(2). Pub. L. 86–70, §32(d)(2), struck out ''Alaska,'' before ''Hawaii''.

Subsec. (a)(8). Pub. L. 86–70, §32(a), substituted ''(including Alaska)'' for ''(excluding Alaska)'' in two places, and ''50 per centum for Hawaii'' for ''50 per centum for Alaska and Hawaii''.

1958—Subsec. (a)(1). Pub. L. 85–840, §506, included Guam within definition of ''State'' when used in subchapters I, IV, V, VII, X, and XIV of this chapter.

Subsec. (a)(8). Pub. L. 85–840, §505, added par. (8).

1956—Subsec. (a)(1). Act Aug. 1, 1956, inserted reference to subchapter VII of this chapter.

1950—Subsec. (a)(1). Act Aug. 28, 1950, §403(a)(1), redefined ''State''.

Subsec. (a)(6). Act Aug. 28, 1950, §403(a)(2), defined ''Administrator''.

Subsec. (a)(7). Act Aug. 28, 1950, §403(b), added par. (7).

1948—Subsec. (a)(6). Act June 14, 1948, provided for application of usual common-law rules in determining whether a person is an employee.

1946—Subsec. (a)(1). Act Aug. 10, 1946, struck out exception of section 45b of title 29 and inserted reference to Virgin Islands.

1939—Subsec. (a)(1). Act Aug. 10, 1939, redefined ''State''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective Oct. 1, 1988, see section 601(d) of Pub. L. 100–485, set out as an Effective and Termination Dates of 1988 Amendment note under section 603 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable with respect to fiscal years beginning on or after Oct. 1, 1988, see section 9135(c) of Pub. L. 100–203, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 1883(c)(1) of Pub. L. 99–514 effective Oct. 22, 1986, see section 1883(f) of Pub. L. 99–514, set out as a note under section 402 of this title.

Amendment by section 1895(c)(6) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 9528(b), (c) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §§9102, 9421(a), Oct. 21, 1986, 100 Stat. 1972, 2065, provided that:

''(b) EFFECTIVE DATE.—The amendments made by this section [amending this section] shall apply to the Federal percentage (and Federal medical assistance percentage) for fiscal years 1987 and thereafter. Such amendments shall apply without regard to the requirement of section 1101(a)(8)(B) of the Social Security Act [subsec. (a)(8)(B) of this section] relating to the promulgation of the Federal percentage prior to November 30 of the year preceding the year in which the new Federal percentage becomes applicable. The Secretary of Health and Human Services shall promulgate such new percentage for fiscal year 1987 as soon as practicable after the date of the enactment of this Act [Apr. 7, 1986].

''(c) HOLD HARMLESS PROVISION.—Notwithstanding subsection (b), for calendar quarters occurring during fiscal year 1987 and only for purposes of making payments to States under sections 403 and 1903 of the Social Security Act [sections 603 and 1396b of this title], the amendments made by subsection (a) [amending this section] shall not apply to a State with respect to either such section if the effect of the [sic] applying the amendments would be to reduce the amount of payment made to the State under that section.''

[Section 9102 of Pub. L. 99–509 provided that the amendment made by that section [amending section 9528(c) of Pub. L. 99–272, set out above] is effective as provided in section 9421(b) of Pub. L. 99–509. See below.]

[Section 9421(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [enacting section 9528(c) of Pub. L. 99–272, set out above] shall be effective as though it had been included in the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272] at the time of its enactment.'']

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 136(e) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 1308, 1396a, and 1396d of this title] shall become effective on October 1, 1982.''

Section 160(e) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section and sections 671, 1308, and 1397b of this title] shall be effective as of October 1, 1981.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2352(a) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

For effective date, savings, and transitional provisions relating to amendment by section 2193(c)(2) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94–566 effective on the later of Oct. 1, 1976, or the day after the day on which the Secretary of Labor approves under section 3304(a) of Title 26, Internal Revenue Code, an unemployment compensation law submitted to him by the Virgin Islands for approval, see section 116(f)(1) of Pub. L. 94–566, set out as a note under section 3304 of Title 26.

EFFECTIVE DATE OF 1973 AMENDMENT

Section 18(z–2)(2) of Pub. L. 93–233 provided that: ''The amendments made by this subsection [amending this section and sections 1315 and 1316 of this title] shall be effective on and after January 1, 1974.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 272(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1308 of this title] shall apply with respect to fiscal years beginning after June 30, 1971.''

EFFECTIVE DATE OF 1965 AMENDMENT

Section 121(c)(1) of Pub. L. 89–97 provided that the amendment made by that section is effective Jan. 1, 1966.

EFFECTIVE DATE OF 1960 AMENDMENTS

Section 541 of Pub. L. 86–778 provided that the amendment made by that section is effective on and after Jan. 1, 1961.

Amendment by section 30(d) of Pub. L. 86–624 effective Aug. 21, 1959, see section 47(f) of Pub. L. 86–624, set out as a note under section 201 of this title.

Amendment by section 30(a)(1) of Pub. L. 86–624 applicable in the case of promulgations or computations of

Federal shares, allotment percentages, allotment ratios, and Federal percentages, as the case may be, made after Aug. 21, 1959, see section 47(a) of Pub. L. 86–624.

Section 47(b) of Pub. L. 86–624 provided that: ''The amendments made by paragraph (2) of section 30(a) [amending this section] shall be effective with the beginning of the calendar quarter in which this Act is enacted. The Secretary of Health, Education, and Welfare shall, as soon as possible after enactment of this Act [July 12, 1960], promulgate a Federal percentage for Hawaii determined in accordance with the provisions of subparagraph (B) of section 1101(a)(8) of the Social Security Act [subsec. (a)(8)(B) of this section], such promulgation to be effective for the period beginning with the beginning of the calendar quarter in which this Act is enacted and ending with the close of June 30, 1961.''

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by section 32(a) of Pub. L. 86–70 applicable in the case of promulgations of Federal shares, allotment percentages, allotment ratios, and Federal percentages, as the case may be, made after satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska, and amendment by section 32(d) of Pub. L. 86–70 effective Jan. 3, 1959, see section 47(a), (d) of Pub. L. 86–70.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendments by Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 403(a)(3) of act Aug. 28, 1950, provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall take effect October 1, 1950, and the amendment made by paragraph (2) of this subsection [amending this section], insofar as it repeals the definition of 'employee', shall be effective only with respect to services performed after 1950.''

Section 403(b) of act Aug. 28, 1950, provided that the amendment made by that section is effective Oct. 1, 1950.

EFFECTIVE DATE OF 1948 AMENDMENT

Section 2(b) of act June 14, 1948, provided that: ''The amendment made by subsection (a) [amending this section] shall have the same effect as if included in the Social Security Act [this chapter] on August 14, 1935, the date of its enactment, but shall not have the effect of voiding any (1) wage credits reported to the Bureau of Internal Revenue [now Internal Revenue Service] with respect to services performed prior to the enactment of this Act [June 14, 1948] or (2) wage credits with respect to services performed prior to the close of the first calendar quarter which begins after the date of the enactment of this Act in the case of individuals who have attained age sixty-five or who have died, prior to the close of such quarter, and with respect to whom prior to the date of enactment of this Act wage credits were established which would not have been established had the amendment made by subsection (a) been in effect on and after August 14, 1935.''

EFFECTIVE DATE OF 1946 AMENDMENT

Section 401(a) of act Aug. 10, 1946, provided that the amendment made by that section is effective Jan. 1, 1947.

EFFECTIVE DATE OF 1939 AMENDMENT

Section 801 of act Aug. 10, 1939, provided that the amendment made by that section is effective Jan. 1, 1940.

REPEALS

The provisions of subsecs. (a)(1), (3), (6), (c) of this section were incorporated into sections 1426(d) to (f), 1427, 1607(i) to (k), and 1608 of former Title 26, Internal Revenue Code of 1939, by act Feb. 10, 1939, ch. 2, 53 Stat. 1. Section 4 of the act of Feb. 10, 1939, provided that all laws and parts of laws codified into the Internal Revenue Code of 1939, to the extent that they related exclusively to internal revenue, were repealed. See enacting sections preceding section 1 of former Title 26.

Provisions of the Internal Revenue Code of 1939 were generally repealed by section 7851 of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). See, also, section 7807 of said Title 26, I.R.C. 1954, respecting rules in effect upon enactment of I.R.C. 1954. The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. Said repealed sections are covered by sections 3121, 3123, 3306, 3307, 7701 of Title 26.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and Office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

PROVISIONS RELATING TO FEDERAL SECURITY ADMINISTRATOR

Section 2663(*l*) of Pub. L. 98–369 provided that: ''Any reference to the Federal Security Administrator which may remain in the provisions of title II, IV, VII, or XI of the Social Security Act [subchapter II, IV, VII, or XI of this chapter] (other than section 1101(a)(6) of such Act [subsec. (a)(6) of this section]) is amended—

''(1) by substituting 'Secretary' or 'Secretary's' for the term 'Administrator' or 'Administrator's', where the reference is to that term alone;

''(2) by substituting 'Secretary of Health, Education, and Welfare' for the term 'Federal Security Administrator', where the reference is to that term, if the provision containing such reference is amended by paragraph (2) or (3) of subsection (j) [Pub. L. 98–369, § 2663(j)(2), (3), see Tables for classification] (in which case the amendment of such provision under this paragraph shall be deemed to have taken effect immediately prior to the amendment of such provision under such paragraph (2) or (3)); and

''(3) by substituting 'Secretary of Health and Human Services' for the term 'Federal Security Administrator' in any other case where the reference is to that term;

and any reference to the Federal Security Agency which may remain in such provisions is amended by substituting 'Department of Health and Human Services' for the term 'Federal Security Agency'; but nothing in this subsection shall affect the exercise under section 402(a)(5) of such Act [section 602(a)(5) of this title] of the functions, powers, and duties relating to the prescription of personnel standards on a merit basis which were transferred from the Secretary of Health, Education, and Welfare by section 208(a)(3)(D) of Public Law 91–648 [42 U.S.C. 4728(a)(3)(D)].''

DEFINITION OF ''SECRETARY''

Pub. L. 90–248, title IV, § 404, Jan. 2, 1968, 81 Stat. 933, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the amendments made by this Act [see Short Title of 1968 Amendment note set out under section 1305 of this title] (un-

less the context otherwise requires), the term 'Secretary' means the Secretary of Health and Human Services.''

Section 110 of Pub. L. 89–97, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this Act, and in the provisions of the Social Security Act amended by this Act [see Short Title of 1965 Amendment note set out under section 1305 of this title], the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 6 of Pub. L. 88–156, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the amendments to the Social Security Act made by this Act [see Short Title of 1963 Amendment note set out under section 1305 of this title], the term 'Secretary' means the Secretary of Health and Human Services.''

Section 201 of Pub. L. 87–543, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this Act and in the provisions of the Social Security Act amended by this Act [see Short Title of 1962 Amendment note set out under section 1305 of this title], the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 304 of title III of Pub. L. 87–64, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this title and title I, and in the provisions of the Social Security Act amended thereby [see Short Title of 1961 Amendment note set out under section 1305 of this title], the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 709 of Pub. L. 86–778, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in this Act and the provisions of the Social Security Act amended by this Act [see Short Title of 1960 Amendment note set out under section 1305 of this title] the term 'Secretary', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 702 of Pub. L. 85–840, as amended by Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, provided that: ''As used in the provisions of the Social Security Act amended by this Act [see Short Title of 1958 Amendment note set out under section 1305 of this title], the term ''Secretary'', unless the context otherwise requires, means the Secretary of Health and Human Services.''

Section 119 of act Aug. 1, 1956, ch. 836, as amended Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided that: ''As used in this Act and in the provisions of the Social Security Act set forth in this Act [see Short Title of 1956 Amendment note set out under section 1305 of this title], the term 'Secretary' means the Secretary of Health and Human Services.''

Section 114 of title I of act Sept. 1, 1954, as amended Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695, provided that: ''As used in the provisions of the Social Security Act amended by this title [sections 402, 403, 415, and 421 of this title], the term 'Secretary' means the Secretary of Health and Human Services.''

CROSS REFERENCES

Aid to the blind, see section 1206 of this title.

Aid to the permanently and totally disabled, see section 1355 of this title.

Employment security administrative expenses, see section 1101 of this title.

Governor, see section 1324 of this title.

Unemployment administrative expenses, see section 1104 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395x, 1396d of this title.

§ 1301–1. Omitted

CODIFICATION

Section, act Aug. 10, 1946, ch. 951, title II, § 202, 60 Stat. 981, defined the term ''Administrator'' as used in certain sections of this chapter. See section 1301 of this title.

§ 1301a. Omitted

CODIFICATION

Section, act June 26, 1940, ch. 428, title II, 54 Stat. 588, provided for reimbursement for official travel performed by employees of the Bureau of Old-Age Insurance, was from the Federal Security Agency Appropriation Act, 1941, and was not repeated in subsequent appropriations acts.

§ 1302. Rules and regulations; impact analyses of Medicare and Medicaid rules and regulations on small rural hospitals

(a) The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, respectively, shall make and publish such rules and regulations, not inconsistent with this chapter, as may be necessary to the efficient administration of the functions with which each is charged under this chapter.

(b)(1) Whenever the Secretary publishes a general notice of proposed rulemaking for any rule or regulation proposed under subchapter XVIII of this chapter, subchapter XIX of this chapter, or part B of this subchapter that may have a significant impact on the operations of a substantial number of small rural hospitals, the Secretary shall prepare and make available for public comment an initial regulatory impact analysis. Such analysis shall describe the impact of the proposed rule or regulation on such hospitals and shall set forth, with respect to small rural hospitals, the matters required under section 603 of title 5 to be set forth with respect to small entities. The initial regulatory impact analysis (or a summary) shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule or regulation.

(2) Whenever the Secretary promulgates a final version of a rule or regulation with respect to which an initial regulatory impact analysis is required by paragraph (1), the Secretary shall prepare a final regulatory impact analysis with respect to the final version of such rule or regulation. Such analysis shall set forth, with respect to small rural hospitals, the matters required under section 604 of title 5 to be set forth with respect to small entities. The Secretary shall make copies of the final regulatory impact analysis available to the public and shall publish, in the Federal Register at the time of publication of the final version of the rule or regulation, a statement describing how a member of the public may obtain a copy of such analysis.

(3) If a regulatory flexibility analysis is required by chapter 6 of title 5 for a rule or regulation to which this subsection applies, such analysis shall specifically address the impact of the rule or regulation on small rural hospitals.

(Aug. 14, 1935, ch. 531, title XI, § 1102, 49 Stat. 647; Aug. 28, 1950, ch. 809, title IV, § 403(c), 64 Stat. 559; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(D)(i), (*l*)(2), 98 Stat. 1170, 1171; Dec. 22,

1987, Pub. L. 100–203, title IV, § 4402(a), 101 Stat. 1330–226.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsec. (b)(1), is classified to section 1320c et seq. of this title.

AMENDMENTS

1987—Pub. L. 100–203 designated existing provision as subsec. (a) and added subsec. (b).

1984—Pub. L. 98–369, § 2663(*l*)(2), substituted ''Secretary of Health, Education, and Welfare'' for ''Federal Security Administrator'' immediately prior to the substitution of ''Health and Human Services'' for ''Health, Education, and Welfare'' by Pub. L. 98–369, § 2663(j)(2)(D)(i).

1950—Act Aug. 28, 1950, substituted ''Federal Security Administrator'' for ''Social Security Board''.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4402(b) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [probably means subsec. (a), amending this section] shall apply to regulations proposed more than 30 days after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

REPEALS

The provisions of this section were incorporated into sections 1429 and 1609 of former Title 26, Internal Revenue Code of 1939, by act Feb. 10, 1939, ch. 2, 53 Stat. 1. Section 4 of the act of Feb. 10, 1939, which enacted Title 26, I.R.C. 1939, provided that all laws and parts of laws codified into the I.R.C. 1939, to the extent that they related exclusively to internal revenue, were repealed. Provisions of I.R.C. 1939 were generally repealed by section 7851 of Title 26, Internal Revenue Code of 1954. See also, section 7807 of said Title 26, I.R.C. 1954, respecting rules in effect upon enactment of I.R.C. 1954. The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095. The repealed sections are covered by section 7805(a), (c) of Title 26.

ABORTION SERVICES; PROHIBITION ON CERTAIN POLICY CHANGES

Pub. L. 100–517, § 9, Oct. 24, 1988, 102 Stat. 2583, provided that: ''With respect to abortion services, the Secretary of Health and Human Services shall not promulgate or issue any regulations, policy statements, or interpretations or develop any practices concerning the performance of medically necessary procedures if such regulations, policy statements, interpretations, or practices would be inconsistent with regulations, policy statements, interpretations, or practices in effect on the date of the enactment of this Act [Oct. 24, 1988].''

NOTICE ON SOCIAL SECURITY CHECKS

Pub. L. 98–473, title II, § 1212, Oct. 12, 1984, 98 Stat. 2165, provided that:

''(a) The Secretary of the Treasury shall take such steps as may be necessary to provide that all checks issued for payment of benefits under title II of the Social Security Act [subchapter II of this chapter], and the envelopes in which such checks are mailed, contain a printed notice that the commission of forgery in conjunction with the cashing or attempted cashing of such checks constitutes a violation of Federal law. Such notice shall also state the maximum penalties for forgery under the applicable provisions of title 18 of the United States Code.

''(b) Subsection (a) shall apply with respect to checks issued for months after the ninth month after the date of the enactment of this Act [Oct. 12, 1984].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 912, 1395ff of this title.

§ 1303. Separability

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provision to other persons or circumstances shall not be affected thereby.

(Aug. 14, 1935, ch. 531, title XI, § 1103, 49 Stat. 648.)

SEPARABILITY

Pub. L. 98–460, § 18, Oct. 9, 1984, 98 Stat. 1813, provided that: ''If any provision of this Act [amending sections 405, 408, 416, 421 to 423, 1382c, 1382d, 1382h, and 1383 to 1383b of this title, enacting provisions set out as notes under sections 405, 421 to 423, 907, and 1305 of this title, and amending provisions set out as a note under section 1382h of this title], or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.''

§ 1304. Reservation of right to amend or repeal

The right to alter, amend, or repeal any provision of this chapter is hereby reserved to the Congress.

(Aug. 14, 1935, ch. 531, title XI, § 1104, 49 Stat. 648.)

§ 1305. Short title of chapter

This chapter may be cited as the ''Social Security Act''.

(Aug. 14, 1935, ch. 531, title XI, § 1105, 49 Stat. 648.)

SHORT TITLE OF 1994 AMENDMENTS

Pub. L. 103–432, § 1, Oct. 31, 1994, 108 Stat. 4398, provided that: ''This Act [see Tables for classification] may be cited as the 'Social Security Act Amendments of 1994'.''

Pub. L. 103–296, § 1(a), Aug. 15, 1994, 108 Stat. 1464, provided that: ''This Act [see Tables for classification] may be cited as the 'Social Security Independence and Program Improvements Act of 1994'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–234, § 1, Dec. 12, 1991, 105 Stat. 1793, provided that: ''This Act [amending sections 1396a, 1396b, and 1396r–4 of this title and enacting provisions set out as notes under sections 1396a, 1396b, and 1396r–4 of this title] may be cited as the 'Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991'.''

SHORT TITLE OF 1989 AMENDMENTS

Pub. L. 101–239, title X, § 10000, Dec. 19, 1989, 103 Stat. 2470, provided that: ''This title [see Tables for classification] may be cited as the 'Miscellaneous and Technical Social Security Act Amendments of 1989'.''

Pub. L. 101–234, § 1, Dec. 13, 1989, 103 Stat. 1979, provided that: ''This Act [see Tables for classification] may be cited as the 'Medicare Catastrophic Coverage Repeal Act of 1989'.''

SHORT TITLE OF 1988 AMENDMENTS

Pub. L. 100–485, § 1(a), Oct. 13, 1988, 102 Stat. 2343, provided that: ''This Act [enacting sections 617, 668, 669, 681 to 687, and 1396r–6 of this title, amending sections 405,

426, 503, 504, 602, 603, 607, 652 to 655, 657, 658, 666, 667, 671, 704, 1301, 1308, 1315, 1318, 1320a–7, 1320a–7a, 1320b–10, 1320c–3, 1395i–2, 1395i–3, 1395*l*, 1395m, 1395r, 1395s, 1395t–1, 1395t–2, 1395u, 1395v, 1395w–2, 1395w–3, 1395x, 1395y, 1395aa to 1395dd, 1395mm, 1395tt, 1395ww, 1395aaa to 1395ccc, 1396a, 1396b, 1396d, 1396i, 1396n, 1396p, 1396r, 1396r–1, 1396r–4, 1396r–5, 1396s, 1397d, and 1397e of this title, section 5315 of Title 5, Government Organization and Employees, and sections 21, 51, 62, 129, 6103, 6109, and 7213 of Title 26, Internal Revenue Code, repealing sections 609, 614, 630 to 632, 633 to 645, and 1320a–2 of this title, enacting provisions set out as notes under sections 405, 426, 602, 603, 607, 618, 652 to 655, 666, 667, 681, 704, 1308, 1315, 1320a–2, 1395k, 1396b, and 1396r–6 of this title and sections 21, 62, 6103, and 6109 of Title 26, and amending provisions set out as notes under sections 603, 606, 1320c–5, 1395b, 1395d, 1395e, 1395i–3, 1395k, 1395u, 1395*ll*, 1395mm, 1395ss, 1395tt, 1395ww, 1396a, 1396d, and 1396r–5 of this title and sections 6402 of Title 26] may be cited as the 'Family Support Act of 1988'.''

Pub. L. 100–364, §1, July 11, 1988, 102 Stat. 822, provided: ''That this Act [amending section 645 of this title] may be cited as the 'WIN Demonstration Program Extension Act of 1988'.''

Pub. L. 100–360, §1(a), July 1, 1988, 102 Stat. 683, provided that: ''This Act [enacting sections 1320b–10, 1395b–2, 1395i–1a, 1395t–1, 1395t–2, 1395w–3, 1396r–4, and 1396r–5 of this title and section 59B of Title 26, Internal Revenue Code, amending sections 254*o*, 294f, 300aa–12, 300aa–15, 300aa–21, 401, 426, 704, 912, 1320a–7, 1320a–7a, 1320a–7b, 1320b–5, 1320b–7, 1320b–8, 1320c–3, 1320c–5, 1320c–9, 1382, 1382b, 1395c to 1395f, 1395h, 1395i, 1395i–2, 1395i–3, 1395k to 1395n, 1395r to 1395t, 1395u to 1395w–2, 1395x to 1395z, 1395aa to 1395dd, 1395gg, 1395mm, 1395ss, 1395tt, 1395ww, 1395aaa to 1395ccc, 1396a, 1396b, 1396d, 1396j, 1396n to 1396p, 1396r, 1396r–1, 1396r–3, 1396r–4, 1396s, and 1397d of this title and section 6050F of Title 26, enacting provisions set out as notes under this section and sections 294f, 1320b–7, 1320b–10, 1320c–3, 1395b, 1395b–1, 1395b–2, 1395d, 1395e, 1395h, 1395i–1a, 1395k, 1395*l*, 1395m, 1395r, 1395u, 1395v, 1395x, 1395y, 1395cc, 1395*ll*, 1395mm, 1395ss, 1395ww, 1396a, 1396b, 1396d, 1396r–1, and 1396r–5 of this title, section 106 of Title 1, General Provisions, section 8902 of Title 5, Government Organization and Employees, and section 59B of Title 26, amending provisions set out as notes under sections 426, 1320a–7a, 1320c–2, 1320c–3, 1395b–1, 1395h, 1395i–3, 1395k, 1395*l*, 1395m, 1395n, 1395u, 1395w–1, 1395x, 1395y, 1395aa, 1395dd, 1395mm, 1395pp, 1395ss, 1395ww, 1395bbb, 1396a, 1396b, and 1396r of this title, and repealing provisions set out as a note under section 1395*l* of this title] may be cited as the 'Medicare Catastrophic Coverage Act of 1988'.''

SHORT TITLE OF 1987 AMENDMENT

Pub. L. 100–93, §1(a), Aug. 18, 1987, 101 Stat. 680, provided that: ''This Act [enacting sections 1395aaa and 1396r–2 of this title, amending sections 704, 1320a–3, 1320a–5, 1320a–7, 1320a–7a, 1320a–7b, 1320c–5, 1395u, 1395y, 1395cc, 1395ff, 1395nn, 1395rr, 1395ss, 1395ww, 1396a, 1396b, 1396h, 1396n, 1396s, and 1397d of this title and section 824 of Title 21, Food and Drugs, transferring section 1396h of this title to section 1320a–7b of this title, repealing section 1395nn of this title, enacting provisions set out as notes under sections 1320a–7 and 1320a–7b of this title, and amending provisions set out as a note under section 1396a of this title] may be cited as the 'Medicare and Medicaid Patient and Program Protection Act of 1987'.''

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99–643, §1, Nov. 10, 1986, 100 Stat. 3574, provided that: ''This Act [amending sections 1382, 1382c, 1382h, 1383, 1383c, 1396a, and 1396s of this title, enacting provisions set out as notes under sections 1382, 1382h, 1383, 1383c, and 1396a of this title, and amending provisions set out as a note under section 1382h of this title] may be cited as the 'Employment Opportunities for Disabled Americans Act'.''

Pub. L. 99–272, title IX, §9000, Apr. 7, 1986, 100 Stat. 151, provided that: ''This title [enacting sections 1320c–13, 1395w–1, 1395dd, 1396r, and 1396s of this title, amending sections 401, 701, 702, 704, 709, 1301, 1320a–2, 1320c–2, 1320c–3, 1395e, 1395f, 1395i, 1395i–2, 1395*l*, 1395p to 1395r, 1395t, 1395u, 1395x, 1395y, 1395cc, 1395mm, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396k, 1396n, and 1396*o* of this title and sections 623, 631, and 1144 of Title 29, Labor, enacting provisions set out as notes under sections 401, 1301, 1320a–2, 1320c–2, 1320c–3, 1320c–13, 1395b, 1395b–1, 1395e, 1395h, 1395i–2, 1395*l*, 1395p, 1395r, 1395u, 1395x, 1395y, 1395cc, 1395dd, 1395mm, 1395rr, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396n, and 1396r of this title and section 1144 of Title 29, and amending provisions set out as notes under sections 1395c, 1395h, 1395y, and 1395ww of this title] may be cited as the 'Medicare and Medicaid Budget Reconciliation Amendments of 1985'.''

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98–460, §1, Oct. 9, 1984, 98 Stat. 1794, provided that: ''This Act [amending sections 405, 408, 416, 421 to 423, 1382c, 1382d, 1382h, and 1383 to 1383b of this title, enacting provisions set out as notes under sections 405, 421 to 423, 907, and 1303 of this title, and amending provisions set out as a note under section 1382h of this title] may be cited as the 'Social Security Disability Benefits Reform Act of 1984'.''

Pub. L. 98–378, §1, Aug. 16, 1984, 98 Stat. 1305, provided that: ''This Act [enacting sections 666 and 667 of this title, amending sections 602, 603, 606, 651 to 658, 664, 671, 1315, and 1396a of this title and sections 6103, 6402, and 7213 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 602, 606, 652, 654, 657, 658, and 667 of this title and section 6103 of Title 26] may be cited as the 'Child Support Enforcement Amendments of 1984'.''

Pub. L. 98–369, div. B, title III, §2300, July 18, 1984, 98 Stat. 1061, provided that: ''This title [enacting sections 1317, 1395yy, 1395zz, and 1396q of this title, amending sections 291i, 300s–1a, 606, 701, 703, 706, 907a, 1308, 1310, 1316, 1320a–1, 1320a–7 to 1320a–8, 1320c–2, 1395b–1, 1395f, 1395h, 1395i, 1395i–2, 1395k, 1395*l*, 1395n, 1395p to 1395cc, 1395ff, 1395ii, 1395*ll*, 1395mm to 1395*oo*, 1395rr, 1395ww, 1396a, 1396b, 1396d, 1396k, 1396*l*, and 1396n of this title, section 5315 of Title 5, Government Organization and Employees, section 162 of Title 26, Internal Revenue Code, section 623 of Title 29, Labor, and section 231f of Title 45, Railroads, repealing section 1395dd of this title, enacting provisions set out as notes under sections 291i, 701, 907a, 1308, 1310, 1317, 1320a–1, 1320a–7, 1320c–2, 1395b–1, 1395f, 1395h, 1395i, 1395k, 1395*l*, 1395n, 1395p, 1395r, 1395u, 1395x, 1395y, 1395bb, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395uu, 1395ww, 1395yy, 1396a, 1396b, 1396d, 1396*l*, and 1396q of this title and section 623 of Title 29, and amending provisions set out as notes under sections 1320c, 1395x, 1395mm, and 1395ww of this title] may be cited as the 'Medicare and Medicaid Budget Reconciliation Amendments of 1984'.''

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98–21, §1, Apr. 20, 1983, 97 Stat. 65, provided in part that Pub. L. 98–21 [enacting sections 910 and 911 of this title and sections 86, 3510, and 6050F of Title 26, Internal Revenue Code, amending sections 401, 402, 403, 405, 407, 409, 410, 411, 415, 416, 417, 418, 422, 423, 425, 426, 427, 428, 429, 430, 433, 503, 602, 659, 1320a–1, 1320c–2, 1322, 1382, 1382a, 1382f, 1382*g*, 1395f, 1395i, 1395i–2, 1395n, 1395r, 1395t, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395ww, and 1395xx of this title, section 3413 of Title 12, Banks and Banking, and sections 37, 41, 43, 44A, 46, 53, 85, 86, 87, 105, 128, 164, 275, 401, 403, 406, 407, 415, 861, 871, 904, 1401, 1402, 1441, 3101, 3111, 3121, 3302, 3304, 3306, 6103, 6413, and 7871 of Title 26, and enacting provisions set out as notes under sections 401, 402, 403, 405, 407, 410, 411, 414, 415, 416, 418, 426, 428, 429, 433, 602, 902, 911, 1382, 1395b–1, 1395i, 1395r, 1395x, 1395y, 1395cc, and 1395ww of this title, sections 37, 86, 406, 1401, 1402, 3101, 3121, 3302, 3303, 3304, 3306, and 3510 of Title 26, section 5123 of Title 38, Veterans' Benefits, and section

231n of Title 45, Railroads] may be cited as the ''Social Security Amendments of 1983''.

SHORT TITLE OF 1982 AMENDMENT

Pub. L. 97–248, title I, §141, Sept. 3, 1982, 96 Stat. 381, provided that: ''This subtitle [subtitle C (§§141–150) of Pub. L. 97–248, enacting part B of this subchapter, amending sections 1395b–1, 1395g, 1395k, 1395*l*, 1395x, 1395y, 1395cc, 1395pp, 1396a, and 1396b of this title, and enacting provisions set out as notes under section 1320c of this title] may be cited as the 'Peer Review Improvement Act of 1982'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–35, title XXI, §2100, Aug. 13, 1981, 95 Stat. 783, provided that: ''Subtitles A [sections 2101–2114 of Pub. L. 97–35, enacting sections 1320a–7a, 1395uu, and 1395vv of this title, amending sections, 1320a–7, 1320c, 1320c–1, 1320c–3, 1320c–4, 1320c–7, 1320c–8, 1320c–9, 1320c–11, 1320c–17, 1320c–21, 1395*l*, 1395n, 1395q, 1395x, 1395y, 1396a, and 1396b of this title, repealing sections 1320c–13 and 1320c–20 of this title, and enacting provisions set out as notes under sections 1320c, 1320c–1, 1320c–3, 1395*l*, 1395x, 1395y, 1395uu, and 1396b of this title], B [sections 2121–2156 of Pub. L. 97–35, amending sections 632a, 1320c–3, 1320c–4, 1320c–7, 1395d, 1395e, 1395f, 1395*l*, 1395n, 1395p, 1395q, 1395r, 1395u, 1395x, 1395y, 1395cc, and 1395rr of this title and section 162 of Title 26, Internal Revenue Code, enacting provisions set out as notes under sections 1320c–3, 1395e, 1395f, 1395*l*, 1395p, 1395x, 1395y and 1395rr of this title and section 162 of Title 26, and repealing provisions set out as notes under sections 1395b–1, 1395g, and 1395*ll* of this title], and C [sections 2161–2184 of Pub. L. 97–35, enacting sections 1320b–5 and 1396n of this title, amending sections 301, 302, 303, 306, 603, 606, 1201, 1203, 1206, 1301, 1308, 1351, 1353, 1355, 1396a, 1396b, 1396d, and 1396n of this title, and enacting provisions set out as notes under sections 603, 1308, 1381, 1382, 1383, 1385, 1396a, 1396b, 1396d, and 1396n of this title] of this title may be cited as the 'Medicare and Medicaid Amendments of 1981'.''

Pub. L. 97–35, title XXI, §2191, Aug. 13, 1981, 95 Stat. 818, provided that: ''This subtitle [subtitle D (sections 2191–2194) of title XXI of Pub. L. 97–35, enacting sections 701 to 709 of this title, amending sections 247a, 300a–27, 300b, 300b–3, 300b–6, 300c–11, 300c–21, 701, 1301, 1308, 1320a–1, 1320a–8, 1320b–2, 1320b–4, 1320c–21, 1382d, 1395b–1, 1395x, and 1396a of this title, repealing sections 236, 247a, 300a–21 to 300a–28, 300a–41, 300b, 300b–5, 300c–11, and 300c–21 of this title, enacting provisions set out as notes under sections 701, 706, and 1382d of this title, and amending provisions set out as notes under sections 1320a–8 and 1395b–1 of this title] may be cited as the 'Maternal and Child Health Services Block Grant Act'.''

Pub. L. 97–35, title XXIII, §2351, Aug. 13, 1981, 95 Stat. 867, provided that: ''This subtitle [subtitle C (§§2351–2355) of title XXIII of Pub. L. 97–35, enacting sections 1397 to 1397f of this title, amending sections 303, 602, 603, 607, 671, 1203, 1301, 1308, 1315, 1316, 1320a–3, 1320a–5, 1320a–7, 1353, 1382e, 1382h, and 1382i of this title, enacting provisions set out as notes under sections 602, 603, 1381, 1383, and 1397 of this title, and repealing a provision set out as a note under section 1397a of this title] may be cited as the 'Social Services Block Grant Act'.''

SHORT TITLE OF 1980 AMENDMENTS

Pub. L. 96–611, §6, Dec. 28, 1980, 94 Stat. 3568, provided that: ''Sections 6 to 10 of this Act [enacting section 663 of this title, and section 1738A of Title 28, Judiciary and Judicial Procedure, amending sections 654 and 655 of this title, and enacting provisions set out as notes under section 1073 of Title 18, Crimes and Criminal Procedure, section 1738A of Title 28, and section 663 of this title] may be cited as the 'Parental Kidnapping Prevention Act of 1980'.''

Pub. L. 96–499, title IX, §900, Dec. 5, 1980, 94 Stat. 2609, provided that: ''This title [enacting sections 632a, 1320a–7, 1320a–8, 1320b–4, 1395tt, 1396*l*, and 1396m of this title, amending sections 426, 705, 1320a–2, 1320a–3, 1320c–1, 1320c–3, 1320c–4, 1320c–7, 1320c–11, 1320c–12, 1320c–22, 1395c, 1395d, 1395f, 1395h, 1395k, 1395*l*, 1395n, 1395p, 1395q, 1395r, 1395u, 1395v, 1395x, 1395y, 1395z, 1395aa, 1395cc, 1395gg, 1395nn, 1395*oo*, 1395pp, 1395rr, 1396a, 1396b, 1396d, 1396h, 1396i, and 1397b of this title, and section 231f of Title 45, Railroads, repealing section 1395m of this title, and enacting provisions set out as notes under sections 705, 1320a–8, 1320b–4, 1320c, 1320c–4, 1320c–7, 1320c–11, 1320c–12, 1320c–15, 1395b–1, 1395d, 1395f, 1395g, 1395k, 1395*l*, 1395n, 1395p, 1395u, 1395v, 1395x, 1395y, 1395gg, 1395*ll*, 1395pp, 1395tt, 1396a, and 1396b of this title] may be cited as the 'Medicare and Medicaid Amendments of 1980'.''

Pub. L. 96–272, §1, June 17, 1980, 94 Stat. 500, provided that: ''This Act [enacting sections 612, 627, 628, 670 to 673a, 674 to 676, 1320b–2, and 1320b–3 of this title, amending sections 602, 608, 620–625, 652, 658, 672, 673, 675, 1308, 1318, 1382d, 1395y, 1395cc, 1396a, 1397, 1397a, 1397b, 1397c, and 1397d of this title and section 50B of Title 26, Internal Revenue Code, repealing section 608 of this title, enacting provisions set out as notes under sections 602, 603, 608, 620, 622, 670, 672, 675, 1320b–2, 1320b–3, 1396a, and 1397a of this title and section 50B of Title 26, and amending provisions set out as notes under sections 655, 1397a, and 1397e–1 of this title] may be cited as the 'Adoption Assistance and Child Welfare Act of 1980'.''

Pub. L. 96–265, §1, June 9, 1980, 94 Stat. 441, provided: ''That this Act [enacting sections 613, 1320a–6, 1382h, 1382i, 1382j, and 1395ss of this title, amending sections 401, 402, 403, 404, 405, 415, 416, 418, 421, 422, 423, 425, 426, 503, 504, 602, 603, 652, 654, 655, 907a, 1310, 1382, 1382a, 1382c, 1382e, 1383, 1395c, 1395i, 1395p, and 1397b of this title, sections 6103 and 7213 of Title 26, Internal Revenue Code, and section 231f of Title 45, Railroads, and enacting provisions set out as notes under sections 401, 402, 403, 405, 405a, 415, 418, 421, 423, 425, 426, 503, 602, 603, 613, 652, 655, 1310, 1320a–6, 1382, 1382a, 1382c, 1382h, 1382j, 1395*ll*, and 1395ss of this title and under section 6103 of Title 26] may be cited as the 'Social Security Disability Amendments of 1980'.''

SHORT TITLE OF 1977 AMENDMENTS

Pub. L. 95–216, §1, Dec. 20, 1977, 91 Stat. 1509, provided in part that Pub. L. 95–216 [enacting sections 433, 611, 907a, and 909 of this title, amending sections 401, 402, 403, 405, 409, 410, 411 to 413, 415 to 418, 423, 424a, 426, 429, 430, 602, 603, 1315, 1395r, 1395u, and 1395x of this title, section 441i of Title 2, The Congress, sections 1401, 1402, 3101, 3102, 3111, 3121, 3304, 3306, and 6051 of Title 26, Internal Revenue Code, and section 231b of Title 45, Railroads, and enacting provisions set out as notes under sections 402, 403, 409, 411, 413, 418, 424a, 430, 602, 603, 902, 907, 909, 1383, and 1395x of this title, section 441i of Title 2, sections 1401, 1402, 3102, 3111, and 3121 of Title 26, and section 231b of Title 45] may be cited as the ''Social Security Amendments of 1977''.

Pub. L. 95–142, §1, Oct. 25, 1977, 91 Stat. 1175, provided that: ''This Act [enacting sections 1320a, 1320a–3 to 1320a–5, 1320c–20 to 1320c–22, and 1396k of this title, amending sections 254e, 1301, 1320c–1, 1320c–3, 1320c–4, 1320c–6, 1320c–7, 1320c–9, 1320c–12, 1320c–15 to 1320c–17, 1395b–1, 1395f, 1395g, 1395h, 1395*l*, 1395u, 1395x, 1395y, 1395cc, 1395nn, 1396a, 1396b, 1396h, 1397a, 1397b, and 3524 of this title, and enacting provisions set out as notes under sections 254e, 1320a, 1320a–3, 1320a–5, 1320c–6, 1320c–7, 1395f, 1395g, 1395h, 1395*l*, 1395x, 1395cc, 1395*ll*, 1395nn, 1396a, and 1396b of this title] may be cited as the 'Medicare-Medicaid Anti-Fraud and Abuse Amendments'.''

SHORT TITLE OF 1976 AMENDMENT

Pub. L. 94–202, §8(a), Jan. 2, 1976, 89 Stat. 1137, provided that: ''This section [enacting section 432 of this title, amending sections 401, 403, 424a, and 430 of this title and section 6103 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 401, 418, and 432 of this title] may be cited as the 'Combined Old-Age, Survivors, and Disability Insurance-Income Tax Reporting Amendments of 1975'.''

SHORT TITLE OF 1975 AMENDMENT

Pub. L. 93–647, §1, Jan. 4, 1975, 88 Stat. 2337, provided: ''That this Act [enacting subchapter XX of this chapter, sections 651 to 660 of this title, and section 6305 of Title 26, Internal Revenue Code, amending sections 303, 602, 603, 604, 606, 622, 1203, 1306, 1308, 1315, 1316, 1353, and 1383 note of this title, repealing sections 610, 801 to 805, and 1320b of this title, and enacting provisions set out as notes under sections 602, 651, 1320b, 1397, and 1397a of this title] may be cited as the 'Social Services Amendments of 1974'.''

SHORT TITLE OF 1972 AMENDMENT

Pub. L. 92–603, §1, Oct. 30, 1972, 86 Stat. 1329, provided in part that Pub. L. 92–603 [enacting sections 431, 801 to 805, 1320a–1, 1320a–2, 1320c to 1320c–19, 1381a, 1382a to 1382e, 1383a to 1383c, 1395i–2, 1395mm, 1395nn, 1395*oo*, 1395pp, 1396h, 1396i, and 3502a of this title, and section 228s–3 of Title 45, Railroads, amending sections 302, 306, 401, 402, 403, 405, 408, 409, 410, 410 note, 411, 414, 415, 416, 418, 422, 423, 424a, 425, 426, 427, 429, 430, 602, 603, 620, 705, 706, 709, 1202, 1206, 1301, 1306, 1308, 1352, 1355, 1381, 1382, 1383, 1385, 1395b–1, 1395c, 1395f, 1395h, 1395i, 1395j, 1395k, 1395*l*, 1395n, 1395*o*, 1395p, 1395q, 1395r, 1395s, 1395t, 1395u, 1395w, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395dd, 1395ff, 1395gg, 1395ii, 1395kk, 1395*ll*, 1395mm, 1395nn, 1396a, 1396b, 1396b–1, 1396d, 1396g, 1396h, and 1396i of this title, sections 5315 and 5316 of Title 5, Government Organization and Employees, sections 1431, 2012, 2019, and 2023 of Title 7, Agriculture, and sections 1401, 1402, 3101, 3111, 3121, 6051, and 6413 of Title 26, Internal Revenue Code, repealing sections 301 to 306, 1201 to 1206, 1351, 1352, 1353, 1354, 1355, and 1396e of this title and section 639 of Title 25, Indians, and enacting provisions set out as notes under sections 301, 302, 401, 402, 403, 408, 409, 410, 411, 414, 415, 416, 418, 423, 424a, 426, 429, 602, 620, 705, 801, 1301, 1306, 1308, 1320a–1, 1320b, 1381, 1382e, 1395f, 1395*l*, 1395n, 1395p, 1395q, 1395s, 1395u, 1395w, 1395x, 1395aa, 1395cc, 1395ff, 1395gg, 1395mm, 1395nn, 1395*oo*, 1395pp, 1396a, 1396b, 2396d, and 1396e of this title, section 5315 of Title 5, sections 1431 and 2012 of Title 7, section 639 of Title 25, and sections 1401, 6051, and 6413 of Title 26,] may be cited as the ''Social Security Amendments of 1972''.

SHORT TITLE OF 1969 AMENDMENT

Pub. L. 91–172, title X, §1001, Dec. 30, 1969, 83 Stat. 737, provided that: ''This title [amending sections 401 to 403, 415, 427, and 428 of this title, and enacting provisions set out as notes under sections 401 to 403, 415 and 427 of this title] may be cited as the 'Social Security Amendments of 1969'.''

SHORT TITLE OF 1968 AMENDMENT

Pub. L. 90–248, §1, Jan. 2, 1968, 81 Stat. 821, provided that this Act [enacting sections 429, 610, 620 to 626, 630 to 644, 908, 1319–1320a, 1395b–1, and 1396e to 1396g of this title, amending sections 302 to 304, 401 to 406, 409 to 411, 413, 415 to 418, 421 to 423, 424a, 425, 426, 426a, 427, 428, 601 to 604, 606 to 608, 622, 701 to 715, 729, 907, 1202 to 1204, 1306, 1308 to 1311, 1313 to 1318, 1352 to 1354, 1361, 1382, 1383, 1395d to 1395f, 1395i, 1395k, 1395*l*, 1395n, 1395p to 1395y, 1395aa, 1395cc, 1395dd, 1395gg, 1395*ll*, 1396a, 1396b, and 1396d of this title, sections 1401, 1402, 3101, 3111, 3121, 3122, 3125, 3306, 6051, and 6413 of Title 26, Internal Revenue Code, and sections 228e and 228s–2 of Title 45, Railroads, repealing sections 721 to 728, 1317, and 1395ee of this title, enacting provisions set out as notes under sections 242b, 302, 303, 402 to 405, 409, 410, 413, 415, 416, 418, 423, 424a, 427, 601 to 603, 607, 609, 620, 622, 626, 633, 701, 705, 1301, 1308, 1319, 1395c to 1395f, 1395j to 1395*l*, 1395n, 1395p, 1395u, 1395x, 1395aa, 1395dd, 1396a, 1396b, 1396d, and 1396g of this title, and amending provisions set out as notes under sections 603 and 608 of this title and sections 1401, 1402, 3121, and 6051 of Title 26] may be cited as the ''Social Security Amendments of 1967.''

Pub. L. 90–248, title III, §306, Jan. 2, 1968, 81 Stat. 930, provided that: ''This title [enacting subchapter V of this chapter, amending sections 705, 729, 1396a, and 1396d of this title, enacting provisions set out as notes under section 705 of this title, and amending provisions set out as notes under section 242b of this title] may be cited as the 'Child Health Act of 1967'.''

SHORT TITLE OF 1965 AMENDMENT

Pub. L. 89–97, §1, July 30, 1965, 79 Stat. 286, provided that this Act [enacting sections 424a, 426, 427, 716, 729–1, 907, 1316, 1317, 1318, 1395 to 1395dd, 1395ee, 1395gg to 1395*ll* and 1396 to 1396d of this title, section 6053 of Title 26, Internal Revenue Code, and section 228s–2 of Title 45, Railroads; amending sections 302, 303, 306, 401 to 406, 409 to 411, 413, 415 to 418, 422, 423, 425, 602, 603, 606, 701, 703, 704, 711, 713, 714, 721 to 723, 1202, 1203, 1206, 1301, 1306, 1308, 1309, 1312, 1315, 1352, 1353, 1355, 1382, 1383, 1385, 1391, 1392, and 1395kk of this title, sections 72, 79, 213, 401, 451, 1401, 1402, 3101, 3102, 3111, 3121, 3122, 3125, 3201, 3211, 3221, 3401, 3402, 6051, 6205, 6413, 6652, and 6674 of Title 26, and sections 228a, 228e, and 228s–2 of title 45, repealing section 727 of this title, enacting provisions set out as notes under sections 242b, 302, 303, 306, 402, 403, 405, 410, 411, 415, 416, 418, 423, 424a, 426, 427, 602, 722, 729–1, 1202, 1301, 1308, 1309, 1315, 1316, 1352, 1382, 1395*l*, 1395*o*, 1395p, 1396b, and 2981 of this title, sections 213, 1401, 1402, 3121, 3201, and 6053 of Title 26, and section 228s–2 of Title 45, and amending provisions set out as notes under sections 415 and 418 of this title and section 3121 of Title 26] may be cited as the ''Social Security Amendments of 1965''.

Pub. L. 89–97, title I, July 30, 1965, 79 Stat. 290, provided that: ''This title [enacting subchapter XVIII of this chapter, sections 426, 907, and 1396 to 1396d of this title, and section 228s–2 of Title 45, Railroads, amending sections 303, 401, 401a, 402, 418, 603, 1203, 1301, 1306, 1309, 1315, 1353, 1383, and 1395kk of this title, sections 72, 79, 213, 401, 405, 1401, 3101, 3111, 3201, 3211, 3221, and 6051 of Title 26, Internal Revenue Code, and sections 228e and 228s–2 of Title 45, and enacting provisions set out as notes under sections 426, 1301, 1309, 1315, 1395*l*, 1395*o*, 1395p, and 1396b of this title, sections 213 and 3201 of Title 26, and section 228s–2 of Title 45] may be cited as the 'Health Insurance for the Aged Act'.''

Pub. L. 89–97, title III, July 30, 1965, 79 Stat. 361, provided that: ''This title [enacting sections 424a and 427 of this title and section 6053 of Title 26, Internal Revenue Code, amending sections 401 to 406, 409 to 411, 413, 415 to 418, 422, 423, 425, and 1306 of this title, sections 451, 1401, 1402, 3101, 3102, 3111, 3121, 3122, 3125, 3401, 3402, 6051, 6205, 6413, 6652, and 6674 of Title 26, and sections 228a and 228e of Title 45, Railroads, enacting provisions set out as notes under sections 402, 403, 405, 410, 411, 415, 416, 418, 424, 424a, and 427 of this title and sections 1401, 1402, 3121, and 6053 of Title 26, and amending provisions set out as notes under sections 415 and 418 of this title and section 3121 of Title 26] may be cited as the 'Old-Age, Survivors, and Disability Insurance Amendments of 1965'.''

SHORT TITLE OF 1963 AMENDMENT

Pub. L. 88–156, §1, Oct. 24, 1963, 77 Stat. 273, provided: ''That this Act [enacting subchapter XVII of this chapter and sections 729 and 729a of this title, amending sections 701, 702, 711, and 712 of this title, and enacting provisions set out as a note under section 1301 of this title] may be cited as the 'Maternal and Child Health and Mental Retardation Planning Amendments of 1963'.''

SHORT TITLE OF 1962 AMENDMENT

Pub. L. 87–543, §1, July 25, 1962, 76 Stat. 172, provided in part that this Act [enacting sections 609, 727, 728, 1314, 1315, and 1381 to 1385 of this title, amending sections 301 to 303, 306, 601 to 609, 721 to 723, 726, 906, 1201 to 1203, 1206, 1301, 1308, 1309, 1311, 1313, 1351 to 1353, and 1355 of this title, repealing section 1202a of this title and provisions set out as notes under sections 1202a and 1308 of this title, and enacting provisions set out as notes under sections 302, 303, 306, 601, 603, 606, 608, 609, 722, 1202, 1301, 1308, and 1383 of this title], may be cited as the ''Public Welfare Amendments of 1962.''

SHORT TITLE OF 1961 AMENDMENT

Pub. L. 87–64, §1, June 30, 1961, 75 Stat. 131, provided: ''That this Act [enacting section 1313 of this title, amending sections 303, 402, 403, 409, 413, 414, 415, 416, 418, 423, 1203, 1308, and 1353 of this title, sections 1401, 1402, 3101 and 3111 of Title 26, Internal Revenue Code, and section 228a of Title 45, Railroads, and enacting provisions set out as notes under sections 303, 402, 403, 414, 415, 416, 1301, and 1308 of this title and under sections 1401 and 1402 of Title 26] may be cited as the 'Social Security Amendments of 1961.' ''

SHORT TITLE OF 1960 AMENDMENT

Pub. L. 86–778, §1, Sept. 13, 1960, 74 Stat. 924, provided that this Act [enacting sections 726 and 1312 of this title and sections 3125 and 3308 of Title 26, Internal Revenue Code, amending sections 301 to 304, 306, 401, 401a, 402, 403, 405, 408 to 411, 413 to 416, 418, 422, 423, 501, 701, 702, 704, 711, 712, 714, 721, 722, 1101 to 1104, 1202, 1301, 1308, 1321 to 1324, 1361, 1363, 1364, 1367, 1371, and 1400c of this title, sections 1402, 1403, 3121, 3301, 3302, 3305, 3306, 6205, 6413, 7213, and 7701 of Title 26, section 49d of Title 29, Labor, sections 228a, 228c, and 228e of Title 45, Railroads, and section 1421h of Title 48, Territories and Insular Possessions, repealing section 419 of this title, and enacting provisions set out as notes under sections 301, 302, 401, 402, 403, 405, 410, 411, 413 to 418, 422, 423, 701, 1101, 1202, 1202a, 1301, 1321, 1362, 1363, and 1364 of this title, sections 1402, 3121, 3301, 3304, 3305, and 3306 of Title 26, and section 49d of Title 29] may be cited as the ''Social Security Amendments of 1960.''

Pub. L. 86–778, title V, §501, 74 Stat. 970, provided that: ''This title [enacting section 3308 of Title 26, Internal Revenue Code, amending sections 501, 1101 to 1104, 1301, 1321 to 1324, 1361 to 1364, 1367, 1371, and 1400c of this title, sections 3301, 3302, 3305, 3306, and 3309 of Title 26, and section 49d of Title 29, Labor, and enacting provisions set out as notes under sections 1301, 1321, and 1362 to 1364 of this title, sections 3301, 3304, and 3305 of Title 26, and section 49d of Title 29] may be cited as the 'Employment Security Act of 1960'.''

SHORT TITLE OF 1958 AMENDMENT

Pub. L. 85–840, §1, Aug. 28, 1958, 72 Stat. 1013, provided that this Act [enacting sections 722 to 725 and 1311 of this title, amending sections 302, 303, 401, 402, 403, 406, 408, 409 to 411, 413 to 418, 422, 423, 425, 603, 701, 702, 711, 712, 1203, 1301, 1306, 1308, and 1353 of this title, sections 1401, 1402, 3101, 3111, 3121, 3122, 6334, and 6413 of Title 26, Internal Revenue Code, and section 228a of Title 45, Railroads, repealing section 424 of this title, and enacting provisions set out as notes under sections 303, 402, 403, 410, 411, 415, 416, 417, 418, 422, 721, 1202a, 1301 of this title and sections 1401, 1402, and 3121 of Title 26] should be popularly known as the ''Social Security Amendments of 1958''.

SHORT TITLE OF 1956 AMENDMENT

Act Aug. 1, 1956, ch. 836, §1, 70 Stat. 807, provided: ''That this Act [enacting sections 401a, 423, 424, 425, 906, and 1310 of this title and section 3113 of Title 26, Internal Revenue Code, amending sections 301 to 303, 401, 402, 403, 405, 409 to 411, 413 to 416, 418, 421, 422, 601 to 603, 606, 721, 1201 to 1203, 1301, 1308, and 1351 to 1353 of this title, sections 1401, 1402, 3101, 3102, 3111, and 3121 of Title 26, and sections 228 and 228e of Title 45, Railroads, and amending provisions set out as a note under section 3121 of Title 26] may be cited as the 'Social Security Amendments of 1956'.''

SHORT TITLE OF 1954 AMENDMENT

Act Aug. 5, 1954, ch. 657, §1, 68 Stat. 668, provided that: ''This Act [enacting sections 1101 to 1103, 1322, and 1323 of this title and amending sections 503, 1104, and 1321 of this title and sections 1601, 1603, and 1607 of former Title 26, Internal Revenue Code of 1939] may be cited as the 'Employment Security Administration Financing Act of 1954'.''

SHORT TITLE OF 1952 AMENDMENT

Act July 18, 1952, ch. 945, §1, 66 Stat. 767, provided that: ''This Act [enacting sections 420, 421, and 1309 of this title, amending sections 303, 403, 405, 413, 414, 415, 416, 417, 603, 1203, and 1353 of this title and sections 228a, 228e of Title 45, Railroads, and enacting provisions set out as notes under sections 303, 402, 403, 413, 415, and 417 of this title] may be cited as the 'Social Security Act Amendments of 1952'.''

SHORT TITLE OF 1950 AMENDMENT

Act Aug. 28, 1950, ch. 809, §1, 64 Stat. 477, provided in part that act Aug. 28, 1950, may be cited as the ''Social Security Act Amendments of 1950''. For complete classification of this Act to the Code, see Tables.

§ 1306. Disclosure of information in possession of Social Security Administration or Department of Health and Human Services

(a) Disclosure prohibited; exceptions

(1) No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act [42 U.S.C. 1001 et seq.] or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code [of 1939], or under regulations made under authority thereof, which has been transmitted to the head of the applicable agency by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the head of the applicable agency or by any officer or employee of the applicable agency in the course of discharging the duties of the head of the applicable agency under this chapter, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the head of the applicable agency or from any officer or employee of the applicable agency, shall be made except as the head of the applicable agency may by regulations prescribe and except as otherwise provided by Federal law. Any person who shall violate any provision of this section shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not exceeding $10,000 for each occurrence of a violation, or by imprisonment not exceeding 5 years, or both.

(2) For purposes of this subsection and subsection (b) of this section, the term ''applicable agency'' means—

(A) the Social Security Administration, with respect to matter transmitted to or obtained by such Administration or matter disclosed by such Administration, or

(B) the Department of Health and Human Services, with respect to matter transmitted to or obtained by such Department or matter disclosed by such Department.

(b) Requests for information and services

Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the head of the applicable agency to avoid undue interference with his functions under this chapter, be complied with if the agency, person, or organization making the request agrees to pay for the information or

services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the head of the applicable agency. Payments for information or services furnished pursuant to this section shall be made in advance or by way of reimbursement, as may be requested by the head of the applicable agency, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund) for the unit or units of the applicable agency which furnished the information or services. Notwithstanding the preceding provisions of this subsection, requests for information made pursuant to the provisions of part D of subchapter IV of this chapter for the purpose of using Federal records for locating parents shall be complied with and the cost incurred in providing such information shall be paid for as provided in such part D of subchapter IV of this chapter.

(c) Cost reimbursement

Notwithstanding sections 552 and 552a of title 5 or any other provision of law, whenever the Commissioner of Social Security or the Secretary determines that a request for information is made in order to assist a party in interest (as defined in section 1002 of title 29) with respect to the administration of an employee benefit plan (as so defined), or is made for any other purpose not directly related to the administration of the program or programs under this chapter to which such information relates, such Commissioner or Secretary may require the requester to pay the full cost, as determined by such Commissioner or Secretary, of providing such information.

(d) Compliance with requests

Notwithstanding any other provision of this section, in any case in which—

(1) information regarding whether an individual is shown on the records of the Commissioner of Social Security as being alive or deceased is requested from the Commissioner for purposes of epidemiological or similar research which the Commissioner in consultation with the Secretary of Health and Human Services finds may reasonably be expected to contribute to a national health interest, and

(2) the requester agrees to reimburse the Commissioner for providing such information and to comply with limitations on safeguarding and rerelease or redisclosure of such information as may be specified by the Commissioner,

the Commissioner shall comply with such request, except to the extent that compliance with such request would constitute a violation of the terms of any contract entered into under section 405(r) of this title.

(e) Public inspection

Notwithstanding any other provision of this section the Secretary shall make available to each State agency operating a program under subchapter XIX of this chapter and shall, subject to the limitations contained in subsection (e)[1] of this section, make available for public inspection in readily accessible form and fashion, the following official reports (not including, however, references to any internal tolerance rules and practices that may be contained therein, internal working papers or other informal memoranda) dealing with the operation of the health programs established by subchapters XVIII and XIX of this chapter—

(1) individual contractor performance reviews and other formal evaluations of the performance of carriers, intermediaries, and State agencies, including the reports of follow-up reviews;

(2) comparative evaluations of the performance of such contractors, including comparisons of either overall performance or of any particular aspect of contractor operation; and

(3) program validation survey reports and other formal evaluations of the performance of providers of services, including the reports of follow-up reviews, except that such reports shall not identify individual patients, individual health care practitioners, or other individuals.

(f) Opportunity for review

No report described in subsection (e) of this section shall be made public by the Secretary or the State subchapter XIX agency until the contractor or provider of services whose performance is being evaluated has had a reasonable opportunity (not exceeding 60 days) to review such report and to offer comments pertinent parts of which may be incorporated in the public report; nor shall the Secretary be required to include in any such report information with respect to any deficiency (or improper practice or procedures) which is known by the Secretary to have been fully corrected, within 60 days of the date such deficiency was first brought to the attention of such contractor or provider of services, as the case may be.

(Aug. 14, 1935, ch. 531, title XI, § 1106, as added Aug. 10, 1939, ch. 666, title VIII, § 802, 53 Stat. 1398; amended Aug. 28, 1950, ch. 809, title IV, § 403(d), 64 Stat. 559; Aug. 28, 1958, Pub. L. 85–840, title VII, § 701, 72 Stat. 1055; July 30, 1965, Pub. L. 89–97, title I, § 108(c), title III, § 340, 79 Stat. 339, 411; Jan. 2, 1968, Pub. L. 90–248, title I, § 168, title II, § 241(c)(1), 81 Stat. 875, 917; Oct. 30, 1972, Pub. L. 92–603, title II, § 249C(a), 86 Stat. 1428; Jan. 4, 1975, Pub. L. 93–647, § 101(d), 88 Stat. 2360; Aug. 13, 1981, Pub. L. 97–35, title XXII, § 2207, 95 Stat. 838; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(D)(ii), (*l*), 98 Stat. 1170, 1171; Aug. 15, 1994, Pub. L. 103–296, title I, § 108(b)(2)–(5), title III, §§ 311(a), 313(a), 108 Stat. 1481, 1482, 1525, 1530.)

REFERENCES IN TEXT

Title VIII of the Social Security Act, referred to in subsec. (a), was classified to subchapter VIII (§ 1001 et seq.) of this chapter, and has been omitted from the Code as superseded by the provisions of the Internal Revenue Code of 1939 and the Internal Revenue Code of 1986.

Subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939, referred to

[1] So in original. Probably should be subsection ''(f)''.

in subsec. (a), were comprised of sections 480 to 482 and 1400 to 1432, respectively, and were repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

Part D of subchapter IV of this chapter, referred to in subsec. (b), is classified to section 651 et seq. of this title.

Subchapter XVIII of this chapter, referred to in subsec. (e), is classified to section 1395 et seq. of this title.

Subchapter XIX of this chapter, referred to in subsecs. (e) and (f), is classified to section 1396 et seq. of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, §313(a), in par. (1), substituted ''felony'' for ''misdemeanor'', ''$10,000 for each occurrence of a violation'' for ''$1,000'', and ''5 years'' for ''one year''.

Pub. L. 103–296, §108(b)(2), designated existing provisions as par. (1), substituted ''head of the applicable agency'' for ''Secretary'' wherever appearing and ''employee of the applicable agency'' for ''employee of the Department of Health and Human Services'' in two places, and added par. (2).

Subsec. (b). Pub. L. 103–296, §108(b)(3), substituted ''head of the applicable agency'' for ''Secretary'' wherever appearing and ''applicable agency which'' for ''Department of Health and Human Services which''.

Subsec. (c). Pub. L. 103–296, §108(b)(4), substituted ''the Commissioner of Social Security or the Secretary'' for ''the Secretary'' where first appearing and ''such Commissioner or Secretary'' for ''the Secretary'' where appearing subsequently in two places.

Subsec. (d). Pub. L. 103–296, §311(a)(3), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 103–296, §108(b)(5) in subsec. (d) as added by Pub. L. 103–296, §311(a)(3), in par. (1) substituted ''Commissioner of Social Security'' for ''Secretary'' after ''records of the'', ''Commissioner'' for ''Secretary'' after ''from the'', ''Commissioner in consultation with the Secretary of Health and Human Services'' for ''Secretary'' after ''which the'', and in par. (2) and closing provisions substituted ''Commissioner'' for ''Secretary'' wherever appearing.

Subsec. (e). Pub. L. 103–296, §311(a)(1), redesignated subsec. (d) as (e). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 103–296, §311(a)(1), (2), redesignated subsec. (e) as (f) and substituted ''subsection (e)'' for ''subsection (d)''.

1984—Subsec. (a). Pub. L. 98–369, §2663(*l*), substituted ''Secretary'' and ''Department of Health and Human Services'' for ''Administrator'' and ''Federal Security Agency'', respectively, wherever appearing.

Subsec. (b). Pub. L. 98–369, §2663(j)(2)(D)(ii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1981—Subsec. (a). Pub. L. 97–35, §2207(1), substituted ''as otherwise provided by Federal law'' for ''as provided in part D of subchapter IV of this chapter''.

Subsec. (c). Pub. L. 97–35, §2207(2), added subsec. (c).

1975—Subsec. (a). Pub. L. 93–647, §101(d)(1), inserted ''and except as provided in part D of subchapter IV of this chapter'' after ''may by regulations prescribe''.

Subsec. (b). Pub. L. 93–647, §101(d)(2), inserted provision relating to compliance with requests for information made pursuant to part D of subchapter IV of this chapter for purpose of using Federal records to locate parents.

Subsec. (c). Pub. L. 93–647, §101(d)(3), repealed subsec. (c) relating to requests by State or local agencies for most recent address of any individual maintained pursuant to section 405 of this title and requirements for release of such information.

1972—Subsecs. (d), (e). Pub. L. 92–603 added subsecs. (d) and (e).

1968—Subsec. (c)(1). Pub. L. 90–248, §241(c)(1), struck out ''IV,'' after ''I,'' and inserted ''or part A of subchapter IV of this chapter,'' after ''XIX of this chapter,''.

Subsec. (c)(1)(A), (B). Pub. L. 90–248, §168(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) to (D) as cls. (i) to (iv) thereof, and added subpar. (B).

Subsec. (c)(2). Pub. L. 90–248, §168(b)(1), substituted ''(and, in the case of a request under paragraph (1)(A), shall be accompanied by a certified copy of the order referred to in clauses (i) and (iv) thereof)'' for '', and shall be accompanied by a certified copy of the order referred to in paragraph (1)(A) of this subsection''.

Subsec. (c)(3). Pub. L. 90–248, §168(b)(2), substituted ''authorized by subparagraph (A)(iv) or (B)'' for ''authorized by subparagraph (D)''.

1965—Subsec. (b). Pub. L. 89–97, §108(c), provided for use of special deposit in the Treasury (made up of payments for information and services furnished) to reimburse authorizations to make expenditures from the Federal Hospital Insurance Trust Fund and the Supplementary Medical Insurance Trust Fund.

Subsec. (c). Pub. L. 89–97, §340, added subsec. (c).

1958—Subsec. (b). Pub. L. 85–840 amended subsec. (b) generally, authorizing compliance with requests for services if the agency, person, or organization making the request agrees to pay for the services.

1950—Act Aug. 28, 1950, amended section generally, designating existing provisions as subsec. (a), substituting ''under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939'' for ''the Federal Insurance Contributions Act,'' reflecting the transfer of functions from the Social Security Board to the Federal Security Administrator and the Federal Security Agency, and adding subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(2)–(5) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 311(a) of Pub. L. 103–296, applicable with respect to requests for information made after Aug. 15, 1994, see section 311(c) of Pub. L. 103–296, set out as a note under section 6103 of Title 26, Internal Revenue Code.

Section 313(c) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending this section and section 1307 of this title] shall apply to violations occurring on or after the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective Aug. 1, 1975, see section 101(f) of Pub. L. 93–647, set out as an Effective Date note under section 651 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 249C(b) of Pub. L. 92–603 provided that: ''The provisions of subsection (a) [amending this section] shall apply with respect to reports which are completed by the Secretary after the third calendar month following the enactment of this Act [Oct. 30, 1972].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 6103.

§ 1306a. Public access to State disbursement records

No State or any agency or political subdivision thereof shall be deprived of any grant-in-aid or other payment to which it otherwise is or has become entitled pursuant to subchapter I (other than section 303(a)(3) thereof), IV, X, XIV, or XVI (other than section 1383(a)(3) thereof) of this chapter, by reason of the enactment or enforcement by such State of any legislation prescribing any conditions under which public access may be had to records of the disbursement of any such funds or payments within such State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.

(Oct. 20, 1951, ch. 521, title VI, § 618, 65 Stat. 569; Sept. 13, 1960, Pub. L. 86–778, title VI, § 603(a), 74 Stat. 992; July 25, 1962, Pub. L. 87–543, title I, § 141(e), 76 Stat. 205.)

REFERENCES IN TEXT

Section 303(a)(3), referred to in text, was repealed by Pub. L. 97–35, title XXI, § 2184(a)(4)(A), Aug. 13, 1981, 95 Stat. 816.

Section 1383(a)(3), referred to in text, was in the original a reference to section 1603(a)(3) of the Social Security Act as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 200, and amended. That section was amended generally by Pub. L. 92–603, § 301, Oct. 30, 1972, 86 Stat. 1478. However, the amendment by Pub. L. 92–603 was inapplicable to Puerto Rico, Guam, and the Virgin Islands, so that the prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

CODIFICATION

Section was enacted as part of act Oct. 20, 1951, popularly known as the Revenue Act of 1951, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1962—Pub. L. 87–543 substituted ''XIV, or XVI (other than section 1383(a)(3) thereof)'' for ''or XIV''.

1960—Pub. L. 86–778 inserted ''(other than section 303(a)(3) thereof)'' after ''pursuant to subchapter I''.

EFFECTIVE DATE OF 1960 AMENDMENT

Section 603(b) of Pub. L. 86–778 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect October 1, 1960.''

§ 1307. Penalty for fraud

(a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of this chapter, of chapter 2, 21, or 23 of the Internal Revenue Code of 1986, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of 1939, or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Whoever, with the intent to elicit information as to the social security account number, date of birth, employment, wages, or benefits of any individual (1) falsely represents to the Commissioner of Social Security or the Secretary that he is such individual, or the wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent of such individual, or the duly authorized agent of such individual, or of the wife, husband, widow, widower, divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father, child, or parent of such individual, or (2) falsely represents to any person that he is an employee or agent of the United States, shall be deemed guilty of a felony, and, upon conviction thereof, shall be punished by a fine not exceeding $10,000 for each occurrence of a violation, or by imprisonment not exceeding 5 years, or both.

(Aug. 14, 1935, ch. 531, title XI, § 1107, as added Aug. 10, 1939, ch. 666, title VIII, § 802, 53 Stat. 1398; amended Aug. 28, 1950, ch. 809, title IV, § 403(e), (f), 64 Stat. 560; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(e)(2)(A), (3), (j)(2)(D)(iii), (*l*)(1), 98 Stat. 1168, 1170, 1171; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095; Aug. 15, 1994, Pub. L. 103–296, title I, § 108(b)(6), title III, § 313(b), 108 Stat. 1482, 1530.)

REFERENCES IN TEXT

Subchapter E of chapter 9 of the Internal Revenue Code of 1939, referred to in subsec. (a), was comprised of sections 1631 to 1636 of the 1939 Code, and was repealed (subject to certain exceptions) by section 7851(a)(1)(A), (3) of Title 26, Internal Revenue Code of 1954 (act Aug. 16, 1954, ch. 736, 68A Stat. 3). The I.R.C. 1954 was redesignated I.R.C. 1986 by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.

For provision deeming a reference in other laws to a provision of the 1939 Code as a reference to the corresponding provisions of the 1986 Code, see section 7852(b) of the 1986 Code. For table of comparisons of the 1939 Code to the 1986 Code, see table preceding section 1 of Title 26, Internal Revenue Code. The Internal Revenue Code of 1986 is classified generally to Title 26.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–296, § 313(b), inserted ''social security account number,'' after ''information as to the'' and substituted ''felony'' for ''misdemeanor'', ''$10,000 for each occurrence of a violation'' for ''$1,000'', and ''5 years'' for ''one year''.

Pub. L. 103–296, § 108(b)(6), which directed that subsec. (b) be amended by substituting ''the Commissioner of Social Security or the Secretary'' for ''the Secretary of Health and Human Services'', was executed by making the substitution for ''the Secretary'' to reflect the probable intent of Congress.

1986—Subsec. (a). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (a). Pub. L. 98–369, § 2663(e)(2)(A), substituted ''of chapter 2, 21, or 23 of the Internal Revenue Code of 1954, or of any provision of subtitle F of such Code which corresponds (within the meaning of section 7852(b) of such Code) to a provision contained in subchapter E of chapter 9 of the Internal Revenue Code of 1939,'' for ''subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code [of 1939]''.

Subsec. (b). Pub. L. 98–369, § 2663(*l*)(1), substituted ''Secretary'' for ''Administrator''.

Pub. L. 98–369, § 2663(j)(2)(D)(iii), which directed the substitution of ''Health and Human Services'' for

''Health, Education, and Welfare'' could not be executed because ''Health, Education, and Welfare'' did not appear in text.

Pub. L. 98–369, § 2663(e)(3), substituted ''divorced wife, divorced husband, surviving divorced wife, surviving divorced husband, surviving divorced mother, surviving divorced father,'' for ''former wife divorced,'' in two places.

1950—Subsec. (a). Act Aug. 28, 1950, § 403(e), substituted ''subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code of 1939,'' for ''the Federal Insurance Contributions Act, or the Federal Unemployment Tax Act,''.

Subsec. (b). Act Aug. 28, 1950, § 403(f), substituted ''Administrator'' for ''Board'' and ''wife, husband, widow, widower, former wife divorced, child, or parent'' for ''wife, parent, or child'' wherever appearing.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(6) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 313(b) of Pub. L. 103–296 applicable to violations occurring on or after Aug. 15, 1994, see section 313(c) of Pub. L. 103–296, set out as a note under section 1306 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section § 2663(e)(2)(B) of Pub. L. 98–369 provided that: ''The amendment made by subparagraph (A) [amending this section] shall not apply to returns filed or representations made on or before the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2663(e)(3), (j)(2)(D)(iii), (*l*)(1) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 1308. Limitation on payments to Puerto Rico, Virgin Islands, Guam, and American Samoa

(a) Total amount certified under subchapters I, X, XIV, XVI and parts A and E of subchapter IV

The total amount certified by the Secretary of Health and Human Services under subchapters I, X, XIV, and XVI of this chapter, and under parts A and E of subchapter IV of this chapter (exclusive of any amounts on account of services and items to which subsection (b) of this section or, in the case of part A of subchapter IV of this chapter, section 603(k) of this title applies)—

(1) for payment to Puerto Rico shall not exceed—

(A) $12,500,000 with respect to the fiscal year 1968,

(B) $15,000,000 with respect to the fiscal year 1969,

(C) $18,000,000 with respect to the fiscal year 1970,

(D) $21,000,000 with respect to the fiscal year 1971,

(E) $24,000,000 with respect to each of the fiscal years 1972 through 1978,

(F) $72,000,000 with respect to each of the fiscal years 1979 through 1988, or

(G) $82,000,000 with respect to the fiscal year 1989 and each fiscal year thereafter;

(2) for payment to the Virgin Islands shall not exceed—

(A) $425,000 with respect to the fiscal year 1968,

(B) $500,000 with respect to the fiscal year 1969,

(C) $600,000 with respect to the fiscal year 1970,

(D) $700,000 with respect to the fiscal year 1971,

(E) $800,000 with respect to each of the fiscal years 1972 through 1978,

(F) $2,400,000 with respect to each of the fiscal years 1979 through 1988, or

(G) $2,800,000 with respect to the fiscal year 1989 and each fiscal year thereafter;

(3) for payment to Guam shall not exceed—

(A) $575,000 with respect to the fiscal year 1968,

(B) $690,000 with respect to the fiscal year 1969,

(C) $825,000 with respect to the fiscal year 1970,

(D) $960,000 with respect to the fiscal year 1971,

(E) $1,100,000 with respect to each of the fiscal years 1972 through 1978,

(F) $3,300,000 with respect to each of the fiscal years 1979 through 1988, or

(G) $3,800,000 with respect to the fiscal year 1989 and each fiscal year thereafter.

Each jurisdiction specified in this subsection may use in its program under subchapter XX of this chapter any sums available to it under this subsection which are not needed to carry out the programs specified in this subsection.

(b) Total amount certified for family planning services and manpower services

The total amount certified by the Secretary under part A of subchapter IV of this chapter, on account of family planning services with respect to any fiscal year—

(1) for payment to Puerto Rico shall not exceed $2,000,000,

(2) for payment to the Virgin Islands shall not exceed $65,000, and

(3) for payment to Guam shall not exceed $90,000.

(c) Total amount certified under subchapter XIX

The total amount certified by the Secretary under subchapter XIX of this chapter with respect to a fiscal year for payment to—

(1) Puerto Rico shall not exceed (A) $116,500,000 for fiscal year 1994 and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase in the medical care component of the consumer price index for all urban consumers (as published by the Bureau of Labor Statistics) for the twelve-month period ending in March preceding the beginning of the fiscal year, rounded to the nearest $100,000;

(2) the Virgin Islands shall not exceed (A) $3,837,500 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000;

(3) Guam shall not exceed (A) $3,685,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this para-

graph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000;

(4) Northern Mariana Islands shall not exceed (A) $1,110,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000; and

(5) American Samoa shall not exceed (A) $2,140,000 for fiscal year 1994, and (B) for each succeeding fiscal year the amount provided in this paragraph for the preceding fiscal year increased by the percentage increase referred to in paragraph (1)(B), rounded to the nearest $10,000.

(d) Limitation on payments to American Samoa

The total amount certified by the Secretary under parts A and E of subchapter IV of this chapter with respect to a fiscal year for payment to American Samoa (exclusive of any amounts on account of services and items to which, in the case of part A of such subchapter, section 603(k) of this title applies) shall not exceed $1,000,000.

(e) Allotment of smaller amounts

Notwithstanding the provisions of section 621 of this title, and until such time as the Congress may by appropriation or other law otherwise provide, the Secretary shall, in lieu of the initial allotment specified in such sections, allot such smaller amounts to Guam, American Samoa, and the Trust Territory of the Pacific Islands as he may deem appropriate.

(Aug. 14, 1935, ch. 531, title XI, § 1108, as added Aug. 28, 1950, ch. 809, title III, pt. 6, § 361(g), 64 Stat. 558; amended Aug. 1, 1956, ch. 836, title III, § 351(c), 70 Stat. 855; Aug. 28, 1958, Pub. L. 85–840, title V, §§ 507, 508, 72 Stat. 1051; Sept. 13, 1960, Pub. L. 86–778, title VI, § 602, 74 Stat. 992; May 8, 1961, Pub. L. 87–31, § 6(a)(1), (2), (b), 75 Stat. 78; June 30, 1961, Pub. L. 87–64, title III, § 303(d), 75 Stat. 143; July 25, 1962, Pub. L. 87–543, title I, § 151, 76 Stat. 206; July 30, 1965, Pub. L. 89–97, title II, § 208(a)(2), title IV, § 408(a), 79 Stat. 355, 422; Jan. 2, 1968, Pub. L. 90–248, title II, § 248(a)(1), 81 Stat. 918; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 271(a), (b), 272(b), 86 Stat. 1451; Jan. 4, 1975, Pub. L. 93–647, § 3(i), 88 Stat. 2350; Nov. 6, 1978, Pub. L. 95–600, title VIII, § 802(b), 92 Stat. 2945; June 17, 1980, Pub. L. 96–272, title II, § 207(c), title III, §§ 305(a), (b), 94 Stat. 526, 529, 530; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2162(b)(1), 2193(c)(1), title XXIII, § 2353(f), 95 Stat. 806, 827, 872; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 136(b), 160(a), 96 Stat. 375, 400; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2365(a), 98 Stat. 1108; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4111(a), 101 Stat. 1330–148; Oct. 13, 1988, Pub. L. 100–485, title II, § 202(c)(2), (3), title VI, §§ 601(b), (c)(2), 602(a), 102 Stat. 2378, 2407, 2408; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13641(a), 107 Stat. 646.)

REFERENCES IN TEXT

Parts A and E of subchapter IV of this chapter, referred to in subsecs. (a), (b), and (d), are classified to sections 601 et seq. and 670 et seq., respectively, of this title.

AMENDMENTS

1993—Subsec. (c)(1) to (5). Pub. L. 103–66 amended pars. (1) to (5) generally. Prior to amendment, pars. (1) to (5) read as follows:

''(1) Puerto Rico shall not exceed (A) $73,400,000 for fiscal year 1988, (B) $76,200,000 for fiscal year 1989, and (C) $79,000,000 for fiscal year 1990 (and each succeeding fiscal year);

''(2) the Virgin Islands shall not exceed (A) $2,430,000 for fiscal year 1988, (B) $2,515,000 for fiscal year 1989, and (C) $2,600,000 for fiscal year 1990 (and each succeeding fiscal year);

''(3) Guam shall not exceed (A) $2,320,000 for fiscal year 1988, (B) $2,410,000 for fiscal year 1989, and (C) $2,500,000 for fiscal year 1990 (and each succeeding fiscal year);

''(4) the Northern Mariana Islands shall not exceed (A) $636,700 for fiscal year 1988, (B) $693,350 for fiscal year 1989, and (C) $750,000 for fiscal year 1990 (and each succeeding fiscal year); and

''(5) American Samoa shall not exceed (A) $1,330,000 for fiscal year 1988, (B) $1,390,000 for fiscal year 1989, and (C) $1,450,000 for fiscal year 1990 (and each succeeding fiscal year).''

1988—Pub. L. 100–485, § 601(c)(2), amended section catchline generally.

Subsec. (a). Pub. L. 100–485, § 202(c)(2), inserted ''or, in the case of part A of subchapter IV of this chapter, section 603(k) of this title'' before ''applies'' in introductory provisions.

Subsec. (a)(1)(F), (G). Pub. L. 100–485, § 602(a)(1), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: ''$72,000,000 with respect to the fiscal year 1979 and each fiscal year thereafter;''.

Subsec. (a)(2)(F), (G). Pub. L. 100–485, § 602(a)(2), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: ''$2,400,000 with respect to the fiscal year 1979 and each fiscal year thereafter;''.

Subsec. (a)(3)(F), (G). Pub. L. 100–485, § 602(a)(3), added subpars. (F) and (G) and struck out former subpar. (F) which read as follows: ''$3,300,000 with respect to the fiscal year 1979 and each fiscal year thereafter.''

Subsec. (b). Pub. L. 100–485, § 202(c)(3), struck out ''and services provided under section 602(a)(19) of this title'' after ''family planning services'' in introductory provisions.

Subsecs. (d), (e). Pub. L. 100–485, § 601(b), added subsec. (d) and redesignated former subsec. (d) as (e).

1987—Subsec. (c). Pub. L. 100–203 amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The total amount certified by the Secretary under subchapter XIX of this chapter with respect to a fiscal year for payment to—

''(1) Puerto Rico shall not exceed $63,400,000;

''(2) the Virgin Islands shall not exceed $2,100,000;

''(3) Guam shall not exceed $2,000,000;

''(4) the Northern Mariana Islands shall not exceed $550,000; and

''(5) American Samoa shall not exceed $1,150,000.''

1984—Subsec. (c). Pub. L. 98–369 substituted ''$63,400,000'' for ''$45,000,000'' in par. (1), ''$2,100,000'' for ''$1,500,000'' in par. (2), ''$2,000,000'' for ''$1,400,000'' in par. (3), ''$550,000'' for ''$350,000'' in par. (4), and ''$1,150,000'' for ''$750,000'' in par. (5).

1982—Subsec. (a). Pub. L. 97–248, § 160(a), inserted provisions following par. (3)(F) that each jurisdiction specified in this subsection may use in its program under subchapter XX of this chapter any sums available to it under this subsection which are not needed to carry out the programs specified in this subsection.

Subsec. (c)(5). Pub. L. 97–248, § 136(b), added par. (5).

1981—Subsec. (a). Pub. L. 97–35, § 2353(f), substituted in provision preceding par. (1) ''The total amount certified by the Secretary of Health and Human Services'' for ''Except as provided in section 1397a(a)(2)(C) of this title, the total amount certified by the Secretary of Health, Education, and Welfare''.

Subsec. (c). Pub. L. 97–35, § 2162(b)(1), in par. (1) increased the amount from not to exceed $2,000,000 to not

to exceed $45,000,000, in par. (2) increased the amount from not to exceed $65,000 to not to exceed $1,500,000, in par. (3) increased the amount from not to exceed $90,000 to not to exceed $1,400,000, and added par. (4).

Subsec. (d). Pub. L. 97–35, §2193(c)(1), substituted ''section 621 of this title'' for ''sections 702(a) and 712(a) of this title, and the provisions of sections 621, 703(1), and 704(1) of this title as amended by the Social Security Amendments of 1967''.

1980—Subsec. (a). Pub. L. 96–272 substituted ''section 1397a(a)(2)(C) of this title'' for ''section 1397a(a)(2)(D) of this title'' and ''under parts A and E'' for ''under part A'' in provisions preceding par. (1), substituted ''with respect to each of the fiscal years 1972 through 1978'' for ''with respect to the fiscal year 1972 and each fiscal year thereafter other than the fiscal year 1979'' in pars. (1)(E), (2)(E), and (3)(E), and substituted ''with respect to the fiscal year 1979 and each fiscal year thereafter'' for ''with respect to the fiscal year 1979'' in pars. (1)(F), (2)(F), and (3)(F).

1978—Subsec. (a)(1)(E). Pub. L. 95–600, §802(b)(1)(B), inserted ''other than the fiscal year 1979, or''.

Subsec. (a)(1)(F). Pub. L. 95–600, §802(b)(1)(C), added subpar. (F).

Subsec. (a)(2)(E). Pub. L. 95–600, §802(b)(2)(B), substituted ''other than the fiscal year 1979, or'' for ''; and''.

Subsec. (a)(2)(F). Pub. L. 95–600, §802(b)(2)(C), added subpar. (F).

Subsec. (a)(3)(E). Pub. L. 95–600, §802(b)(3)(B), inserted ''other than the fiscal year 1979, or''.

Subsec. (a)(3)(F). Pub. L. 95–600, §802(b)(3)(C), added subpar. (F).

1975—Subsec. (a). Pub. L. 93–647 substituted ''Except as provided in section 1397a(a)(2)(D) of this title, the total amount'' for ''The total amount''.

1972—Subsec. (c)(1). Pub. L. 92–603, §271(a), substituted ''$30,000,000'' for ''$20,000,000''.

Subsec. (c)(2). Pub. L. 92–603, §271(b), substituted ''$1,000,000'' for ''$650,000''.

Subsec. (d). Pub. L. 92–603, §272(b), inserted '', American Samoa, and the Trust Territory of the Pacific Islands'' after ''allot such smaller amounts to Guam''.

1968—Pub. L. 90–248 amended section generally and, among other changes, raised the present $9.8 million limit for Federal financial participation in the public assistance programs of Puerto Rico to $12.5 million for fiscal 1968 with further increases in succeeding fiscal years to a maximum of $24 million for fiscal 1972 and each fiscal year thereafter, increased the dollar maximums for the Virgin Islands from $330,000 to $800,000 for fiscal 1972 and thereafter and for Guam from $450,000 to $1.1 million for fiscal 1972 and thereafter, authorized payments for family planning services and services referred to in section 602(a)(19) of this title, with respect to any fiscal year, of not more than $2 million for Puerto Rico, $65,000 for the Virgin Islands, and $90,000 for Guam, imposed a maximum on Federal payments for the medical assistance program under subchapter XIX of this chapter, with respect to any fiscal year, of $20 million for Puerto Rico, $650,000 for the Virgin Islands, and $900,000 for Guam, and provided that notwithstanding sections 702(a) and 712(a) of this title and sections 621, 703(1), and 704(1) of this title, as amended by the Social Security Amendments of 1967, and until Congress otherwise provides, the Secretary shall, in lieu of the initial allotments specified in such sections, allot smaller amounts to Guam as he deems appropriate.

1965—Pub. L. 89–97 substituted ''and 722(a)'' for ''722(a) and 727(a)'' and struck out ''(or, in the case of section 727(a) of this title'' after ''in lieu of the initial'', and removed the litigation requiring that, with respect to any fiscal year, $625,000 of the $9,800,000 certified for payments to Puerto Rico, $18,750 of the $330,000 certified for payments to the Virgin Islands, and $25,000 of the $450,000 certified for payments to Guam, be used only for payments with respect to section 303(a)(2)(B) or 1383(a)(2)(B) of this title.

1962—Pub. L. 87–543 substituted ''$9,800,000'', ''$330,000'', ''$450,000'', and ''initial (or, in the case of section 727(a) of this title, the minimum) allotment'' for ''$9,500,000'', ''$320,000'', $430,000'', and ''$60,000, $60,000 $60,000, respectively,'' and inserted references to subchapter ''XVI (other than section 1383(a)(3) thereof)'' of this chapter, section 1383(a)(2) in three places and section 727(a) after section 722(a).

1961—Pub. L. 87–64, substituted ''$9,500,000'', ''$320,000'', and ''$430,000'' for ''$9,425,000'', ''$318,750'', and ''$425,000'', respectively. See Repeals note below.

Pub. L. 87–31 increased the grant to Puerto Rico for fiscal year ending June 30, 1961, from $9,000,000 to $9,075,000 and for fiscal year ending June 30, 1962, to $9,425,000; the grants to Virgin Islands and Guam from $315,000 and $420,000 to $318,750 and $425,000, respectively; and payments under section 303(a)(2)(B) of this title to Puerto Rico, Virgin Islands and Guam from $500,000, $15,000 and $20,000 to $625,000, $18,750 and $25,000, respectively. See also Limitation on Payments note below.

1960—Pub. L. 86–778 substituted ''$9,000,000, of which $500,000 may be used only for payments certified with respect to section 303(a)(2)(B) of this title'' for ''$8,500,000'', ''$315,000, of which $15,000 may be used only for payments certified in respect to section 303(a)(2)(B) of this title'' for ''$300,000'', ''$420,000, of which $20,000 may be used only for payments certified in respect to section 303(a)(2)(B) of this title'' for ''$400,000'', and ''subchapters I (other than section 303(a)(3) thereof)'' for ''subchapters I''.

1958—Pub. L. 85–840, §§507, 508, amended section. Section 507(a) substituted ''$8,500,000'' for ''$5,312,500'' and ''$300,000'' for ''$200,000'', and limited the total amount certified for payment to Guam with respect to any fiscal year to not more than $400,000. Section 507(b) amended catchline to include Guam. Section 508 inserted provisions requiring the Secretary, in lieu of the allotments specified in sections 702(a)(2), 712(a)(2) and 722(a) of this title, to allot such smaller amounts as he may deem appropriate to Guam, notwithstanding provisions of such sections and until such time as the Congress may by appropriation or other law otherwise provide.

1956—Act Aug. 1, 1956, substituted ''$5,312,500'' for ''$4,250,000'', and ''$200,000'' for ''$160,000''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13641(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply beginning with fiscal year 1994.''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 202(c)(2), (3) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204 of Pub. L. 100–485, set out as an Effective Date note under section 681 of this title.

Amendment by section 601(b), (c)(2) of Pub. L. 100–485 effective Oct. 1, 1988, see section 601(d) of Pub. L. 100–485, set out as an Effective and Termination Dates of 1988 Amendment note under section 603 of this title.

Section 602(b) of Pub. L. 100–485 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on October 1, 1988.''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4111(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments for fiscal years beginning with fiscal year 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2365(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective for fiscal years beginning on or after October 1, 1983.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 136(b) of Pub. L. 97–248 effective Oct. 1, 1982, see section 136(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

Amendment by section 160(a) of Pub. L. 97–248 effective Oct. 1, 1981, see section 160(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2162(b)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to fiscal years beginning with fiscal year 1982.''

For effective date, savings, and transitional provisions relating to amendment by section 2193(c)(1) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Amendment by section 2353(f) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 271(c) of Pub. L. 92–603 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to fiscal years beginning after June 30, 1971.''

Amendment by section 272(b) of Pub. L. 92–603 applicable with respect to fiscal years beginning after June 30, 1971, see section 272(c) of Pub. L. 92–603, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 248(a)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to fiscal years beginning after June 30, 1967.''

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 208(a)(2) Pub. L. 89–97 effective Jan. 1, 1966, see section 208(d) of Pub. L. 89–97.

Section 408(b) of Pub. L. 89–97 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective in the case of Puerto Rico, the Virgin Islands, or Guam with respect to fiscal years beginning on or after the date on which its plan under title XIX of the Social Security Act [section 1396 et seq. of this title] is approved.''

EFFECTIVE DATE OF 1962 AMENDMENT

Section 151 of Pub. L. 87–543 provided that the amendment made by that section is effective for fiscal years ending after June 30, 1962.

EFFECTIVE AND TERMINATION DATES OF 1961 AMENDMENTS

Section 132(d) of Pub. L. 87–543 repealed section 303(d) of Pub. L. 87–64, which had provided that the amendment by section 303(d) of Pub. L. 87–64 shall be effective only for fiscal year ending June 30, 1962, and section 6 of Pub. L. 87–31, which had provided that the amendment by section 6(b) of Pub. L. 87–31 shall be effective for fiscal years ending after June 30, 1961. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87–543, set out as an Effective Date of 1962 Amendment note under section 906 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–778 effective with respect to fiscal years ending after 1960, see section 604 of Pub. L. 86–778, set out as a note under section 301 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendments made by sections 507 and 508 of Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, effective with respect to the fiscal year ending June 30, 1957, and all succeeding fiscal years, see section 351(d) of act Aug. 1, 1956, set out as a note under section 603 of this title.

REPEALS: EFFECTIVE DATE

Section 132(d) of Pub. L. 87–543 repealed section 6 of Pub. L. 87–31, May 8, 1961, 75 Stat. 78, and section 303(d) of Pub. L. 87–64, title III, June 30, 1961, 75 Stat. 143, formerly cited as a credit to this section. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87–543, set out as an Effective Date of 1962 Amendment note under section 906 of this title.

LIMITATION ON PAYMENTS: EFFECTIVE DATE

Section 132(d) of Pub. L. 87–543 repealed section 6(a) of Pub. L. 87–31, May 8, 1961, 75 Stat. 78, which had limited payments to Puerto Rico not to exceed $9,075,000 for fiscal year ending June 30, 1961, $9,425,000 for fiscal year ending June 30, 1962; and $9,125,000 for fiscal years ending after June 30, 1962. Such repeal applicable in the case of fiscal years beginning after June 30, 1962, see section 202(b) of Pub. L. 87–543, set out as an Effective Date of 1962 Amendment note under section 906 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 603, 1396a of this title.

§ 1309. Amounts disregarded not to be taken into account in determining eligibility of other individuals

Any amount which is disregarded (or set aside for future needs) in determining the eligibility of and amount of the aid or assistance for any individual under a State plan approved under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, shall not be taken into consideration in determining the eligibility of and amount of aid or assistance for any other individual under a State plan approved under any other of such subchapters.

(Aug. 14, 1935, ch. 531, title XI, § 1109, as added July 18, 1952, ch. 945, § 7, 66 Stat. 778; amended July 25, 1962, Pub. L. 87–543, title I, § 141(c), 76 Stat. 205; July 30, 1965, Pub. L. 89–97, title I, § 121(c)(2), 79 Stat. 352; Jan. 2, 1968, Pub. L. 90–248, title II, § 241(c)(2), 81 Stat. 917.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in text, is classified to section 601 et seq. of this title.

AMENDMENTS

1968—Pub. L. 90–248 struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter,'' after ''XIX of this chapter''.

1965—Pub. L. 89–97 substituted requirement that amounts disregarded be not taken into account in determining eligibility of other individuals, for former provisions which had provided that: ''Notwithstanding the provisions of sections 302(a)(10)(A), 602(a)(7), 1202(a)(8), 1352(a)(8), and 1382(a)(14) of this title, a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter may until June 30, 1954, and thereafter shall provide that where earned income has been disregarded in determining the need of an individual receiving aid to the blind under a State plan approved under subchapter X of this chapter, the earned income so disregarded (but not in excess of the amount specified in section 1202(a)(8) of this title) shall not be taken into consideration in determining the need of any other individual for assistance under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter''.

1962—Pub. L. 87–543 substituted reference to section 302(a)(10)(A) for 302(a)(7) and inserted references to section 1382(a)(14) and subchapter XVI.

§ 1310. Cooperative research or demonstration projects

(a)(1) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1957, $5,000,000 and for each fiscal year thereafter such sums as the Congress may determine for (A) making grants to States and public and other organizations and agencies for paying part of the cost of research or demonstration projects such as those relating to the prevention and reduction of dependency, or which will aid in effecting coordination of planning between private and public welfare agencies or which will help improve the administration and effectiveness of programs carried on or assisted under this chapter and programs related thereto, and (B) making contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research or demonstration projects relating to such matters.

(2) No contract or jointly financed cooperative arrangement shall be entered into, and no grant shall be made, under paragraph (1), until the Secretary (or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning subchapters II or XVI of this chapter) obtains the advice and recommendations of specialists who are competent to evaluate the proposed projects as to soundness of their design, the possibilities of securing productive results, the adequacy of resources to conduct the proposed research or demonstrations, and their relationship to other similar research or demonstrations already completed or in process.

(3) Grants and payments under contracts or cooperative arrangements under paragraph (1) may be made either in advance or by way of reimbursement, as may be determined by the Secretary; and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purposes of this subsection.

(b)(1) The Commissioner is authorized to waive any of the requirements, conditions, or limitations of subchapter XVI of this chapter (or to waive them only for specified purposes, or to impose additional requirements, conditions, or limitations) to such extent and for such period as the Commissioner finds necessary to carry out one or more experimental, pilot, or demonstration projects which, in the Commissioner's judgment, are likely to assist in promoting the objectives or facilitate the administration of such subchapter. Any costs for benefits under or administration of any such project (including planning for the project and the review and evaluation of the project and its results), in excess of those that would have been incurred without regard to the project, shall be met by the Commissioner from amounts available to the Commissioner for this purpose from appropriations made to carry out such subchapter. The costs of any such project which is carried out in coordination with one or more related projects under other subchapters of this chapter shall be allocated among the appropriations available for such projects and any Trust Funds involved, in a manner determined by the Commissioner with respect to the old-age, survivors, and disability insurance programs under subchapter II of this chapter and the supplemental security income program under subchapter XVI of this chapter, and by the Secretary with respect to other subchapters of this chapter, taking into consideration the programs (or types of benefit) to which the project (or part of a project) is most closely related or which the project (or part of a project) is intended to benefit. If, in order to carry out a project under this subsection, the Commissioner requests a State to make supplementary payments (or the Commissioner makes them pursuant to an agreement under section 1382e of this title) to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not make such payments, the Commissioner shall reimburse such State for the non-Federal share of such payments from amounts appropriated to carry out subchapter XVI of this chapter. If, in order to carry out a project under this subsection, the Secretary requests a State to provide medical assistance under its plan approved under subchapter XIX of this chapter to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not provide such medical assistance, the Secretary shall reimburse such State for the non-Federal share of such assistance from amounts appropriated to carry out subchapter XVI of this chapter, which shall be provided by the Commissioner to the Secretary for this purpose.

(2) With respect to the participation of recipients of supplemental security income benefits in experimental, pilot, or demonstration projects under this subsection—

(A) the Commissioner is not authorized to carry out any project that would result in a substantial reduction in any individual's total income and resources as a result of his or her participation in the project;

(B) the Commissioner may not require any individual to participate in a project; and the Commissioner shall assure (i) that the voluntary participation of individuals in any project is obtained through informed written consent which satisfies the requirements for informed consent established by the Commissioner for use in any experimental, pilot, or demonstration project in which human subjects are at risk, and (ii) that any individual's

voluntary agreement to participate in any project may be revoked by such individual at any time;

(C) the Commissioner shall, to the extent feasible and appropriate, include recipients who are under age 18 as well as adult recipients; and

(D) the Commissioner shall include in the projects carried out under this section such experimental, pilot, or demonstration projects as may be necessary to ascertain the feasibility of treating alcoholics and drug addicts to prevent the onset of irreversible medical conditions which may result in permanent disability, including programs in residential care treatment centers.

(Aug. 14, 1935, ch. 531, title XI, § 1110, as added Aug. 1, 1956, ch. 836, title III, § 331, 70 Stat. 850; amended Jan. 2, 1968, Pub. L. 90–248, title II, § 246, 81 Stat. 918; June 9, 1980, Pub. L. 96–265, title V, § 505(b), 94 Stat. 474; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2331(a), 98 Stat. 1088; Apr. 7, 1986, Pub. L. 99–272, title XII, § 12101(d), 100 Stat. 283; Aug. 15, 1994, Pub. L. 103–296, title I, § 108(b)(7), 108 Stat. 1482.)

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–296, § 108(b)(7)(B), inserted ''(or the Commissioner, with respect to any jointly financed cooperative agreement or grant concerning subchapters II or XVI of this chapter)'' after ''Secretary''.

Subsec. (b)(1). Pub. L. 103–296, § 108(b)(7)(A), (C), in first sentence substituted ''The Commissioner'' for ''The Secretary'', ''as the Commissioner'' for ''as he'', and ''in the Commissioner's judgment'' for ''in his judgment'', in second sentence substituted ''by the Commissioner'' for ''by the Secretary'' and ''available to the Commissioner'' for ''available to him'', in third sentence substituted ''determined by the Commissioner with respect to the old-age, survivors, and disability insurance programs under subchapter II of this chapter and the supplemental security income program under subchapter XVI of this chapter, and by the Secretary with respect to other subchapters of this chapter,'' for ''determined by the Secretary,'', and substituted fourth and fifth sentences for former fourth sentence which read as follows: ''If, in order to carry out a project under this subsection, the Secretary requests a State to make supplementary payments (or makes them himself pursuant to an agreement under section 1382e of this title), or to provide medical assistance under its plan approved under subchapter XIX of this chapter, to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not make such payments or provide such medical assistance, the Secretary shall reimburse such State for the non-Federal share of such payments or assistance from amounts appropriated to carry out subchapter XVI of this chapter.''

Subsec. (b)(2). Pub. L. 103–296, § 108(b)(7)(A), (D), substituted ''the Commissioner'' for ''the Secretary'' wherever appearing and ''the Commissioner shall'' for ''he shall'' in subpar. (B).

Subsec. (b)(3). Pub. L. 103–296, § 108(b)(7)(E), struck out par. (3) which read as follows: ''All reports of the Secretary with respect to projects carried out under this subsection shall be incorporated into the Secretary's annual report to the Congress required by section 904 of this title.''

1986—Subsec. (b)(3). Pub. L. 99–272 added par. (3).

1984—Subsec. (a)(1)(A). Pub. L. 98–369 struck out ''nonprofit'' before first reference to ''organizations and agencies''.

1980—Pub. L. 96–265 redesignated provisions of subsec. (a) and cls. (1) and (2) thereof as subsec. (a)(1) and cls. (A) and (B) thereof, respectively, redesignated provisions of subsecs. (b) and (c) as subsec. (a)(2) and (3), respectively, added subsec. (b), and made conforming amendments to subsec. (a)(2) and (3) as redesignated.

1968—Subsec. (a). Pub. L. 90–248 struck out ''nonprofit'' before ''organizations'' in cl. (2).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective on first day of month following April 1986, see section 12115 of Pub. L. 99–272, set out as a note under section 415 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2331(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395b–1 of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

VOCATIONAL REHABILITATION DEMONSTRATION PROJECTS

Pub. L. 101–508, title V, § 5120(a)–(e), Nov. 5, 1990, 104 Stat. 1388–280, directed Secretary of Health and Human Services to develop and carry out under this section demonstration projects in each of not fewer than three States, with such demonstration projects to be designed to assess the advantages and disadvantages of permitting disabled beneficiaries to select from among both public and private qualified vocational rehabilitation providers, providers of vocational rehabilitation services directed at enabling such beneficiaries to engage in substantial gainful activities, with each such demonstration project to commence as soon as practicable after Nov. 5, 1990, and to remain in operation until the end of fiscal year 1993, and with a final written report to be submitted to Congress not later than Apr. 1, 1994.

FINAL REPORT COVERING ALL EXPERIMENTS AND DEMONSTRATION PROJECTS

Section 505(c) of Pub. L. 96–265, as amended by Pub. L. 99–272, title XII, § 12101(c), Apr. 7, 1986, 100 Stat. 283; Pub. L. 101–239, title X, § 10103(a)(3), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 101–508, title V, § 5120(f), Nov. 5, 1990, 104 Stat. 1388–282; Pub. L. 103–296, title I, § 108(m)(3), title III, § 315(a)(3), Aug. 15, 1994, 108 Stat. 1489, 1531, provided that: ''The Commissioner shall submit to the Congress a final report with respect to all experiments and demonstration projects carried out under this section [amending this section and section 401 of this title and enacting provisions set out below] (other than demonstration projects conducted under section 5120 of the Omnibus Budget Reconciliation of 1990 [Pub. L. 101–508, set out above]) no later than October 1, 1996.''

[Section 315(b) of Pub. L. 103–296 provided that: ''The amendments made by this section [amending section 505(a)(1)–(4), (c) of Pub. L. 96–265 set out above and below] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].'']

[Section 10103(b) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending section 505(a)(1)–(4), (c) of Pub. L. 96–265 set out above and below] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].'']

AUTHORITY FOR DEMONSTRATION PROJECTS; REPORT TO CONGRESS

Section 505(a)(1)–(4) of Pub. L. 96–265, as amended by Pub. L. 99–272, title XII, § 12101(a), (b), Apr. 7, 1986, 100 Stat. 282; Pub. L. 101–239, title X, § 10103(a)(1), (2), Dec. 19, 1989, 103 Stat. 2472; Pub. L. 103–296, title I, § 108(m), title III, § 315(a)(1), (2), Aug. 15, 1994, 108 Stat. 1489, 1531, provided that:

''(1) The Commissioner of Social Security shall develop and carry out experiments and demonstration

projects designed to determine the relative advantages and disadvantages of (A) various alternative methods of treating the work activity of disabled beneficiaries under the old-age, survivors, and disability insurance program, including such methods as a reduction in benefits based on earnings, designed to encourage the return to work of disabled beneficiaries and (B) altering other limitations and conditions applicable to such disabled beneficiaries (including, but not limited to, lengthening the trial work period, altering the 24-month waiting period for medicare benefits, altering the manner in which such program is administered, earlier referral of beneficiaries for rehabilitation, and greater use of employers and others to develop, perform, and otherwise stimulate new forms of rehabilitation), to the end that savings will accrue to the Trust Funds, or to otherwise promote the objectives or facilitate the administration of title II of the Social Security Act [subchapter II of this chapter].

''(2) The experiments and demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the disability insurance program without committing such program to the adoption of any particular system either locally or nationally.

''(3) In the case of any experiment or demonstration project under paragraph (1) which is initiated before June 10, 1996, the Commissioner may waive compliance with the benefit requirements of title II of the Social Security Act [subchapter II of this chapter], and the Secretary of Health and Human Services may (upon the request of the Commissioner) waive compliance with the benefits requirements of title XVIII of such Act [subchapter XVIII of this chapter], insofar as is necessary for a thorough evaluation of the alternative methods under consideration. No such experiment or project shall be actually placed in operation unless at least ninety days prior thereto a written report, prepared for purposes of notification and information only and containing a full and complete description thereof, has been transmitted by the Commissioner to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate. Periodic reports on the progress of such experiments and demonstration projects shall be submitted by the Commissioner to such committees. When appropriate, such reports shall include detailed recommendations for changes in administration or law, or both, to carry out the objectives stated in paragraph (1).

''(4) On or before June 9 in 1986 and each of the succeeding years through 1995, the Commissioner shall submit to the Congress an interim report on the progress of the experiments and demonstration projects carried out under this subsection together with any related data and materials which the Commissioner may consider appropriate.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1315 of this title.

§ 1311. Public assistance payments to legal representatives

For purposes of subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter, payments on behalf of an individual, made to another person who has been judicially appointed, under the law of the State in which such individual resides, as legal representative of such individual for the purpose of receiving and managing such payments (whether or not he is such individual's legal representative for other purposes), shall be regarded as money payments to such individual.

(Aug. 14, 1935, ch. 531, title XI, § 1111, as added Aug. 28, 1958, Pub. L. 85–840, title V, § 511(a) 72 Stat. 1051; amended July 25, 1962, Pub. L. 87–543, title I, § 141(d), 76 Stat. 205; Jan. 2, 1968, Pub. L. 90–248, title II, § 241(c)(3), 81 Stat. 917.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in text, is classified to section 601 et seq. of this title.

AMENDMENTS

1968—Pub. L. 90–248 struck out ''IV,'' after ''I,'' and inserted ''and part A of subchapter IV of this chapter,'' after ''XVI of this chapter,''.

1962—Pub. L. 87–543 inserted reference to subchapter XVI.

EFFECTIVE DATE

Section 511(b) of Pub. L. 85–840 provided that: ''The amendment made by subsection (a) [enacting this section] shall be applicable in the case of payments to legal representatives by any State made after June 30, 1958; and to such payments by any State made after December 31, 1955, and prior to July 1, 1958, if certifications for payment to such State have been made by the Secretary of Health, Education, and Welfare with respect thereto, or such State has presented to the Secretary a claim (and such other data as the Secretary may require) with respect thereto, prior to July 1, 1959.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 306, 605, 606, 1206, 1385 of this title.

§ 1312. Medical care guides and reports for public assistance and medical assistance

In order to assist the States to extend the scope and content, and improve the quality, of medical care and medical services for which payments are made to or on behalf of needy and low-income individuals under this chapter and in order to promote better public understanding about medical care and medical assistance for needy and low-income individuals, the Secretary shall develop and revise from time to time guides or recommended standards as to the level, content, and quality of medical care and medical services for the use of the States in evaluating and improving their public assistance medical care programs and their programs of medical assistance; shall secure periodic reports from the States on items included in, and the quantity of, medical care and medical services for which expenditures under such programs are made; and shall from time to time publish data secured from these reports and other information necessary to carry out the purposes of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1112, as added Sept. 13, 1960, Pub. L. 86–778, title VII, § 705, 74 Stat. 995; amended July 30, 1965, Pub. L. 89–97, title IV, § 408(c), 79 Stat. 422.)

AMENDMENTS

1965—Pub. L. 89–97 struck out ''for the aged'' after ''medical assistance''.

§ 1313. Assistance for United States citizens returned from foreign countries

(a) Authorization; reimbursement; utilization of facilities of public or private agencies and organizations

(1) The Secretary is authorized to provide temporary assistance to citizens of the United

States and to dependents of citizens of the United States, if they (A) are identified by the Department of State as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizen of the United States or the illness of such citizen or any of his dependents or because of war, threat of war, invasion, or similar crisis, and (B) are without available resources.

(2) Except in such cases or classes of cases as are set forth in regulations of the Secretary, provision shall be made for reimbursement to the United States by the recipients of the temporary assistance to cover the cost thereof.

(3) The Secretary may provide assistance under paragraph (1) directly or through utilization of the services and facilities of appropriate public or private agencies and organizations, in accordance with agreements providing for payment, in advance or by way of reimbursement, as may be determined by the Secretary, of the cost thereof. Such cost shall be determined by such statistical, sampling, or other method as may be provided in the agreement.

(b) Plans and arrangements for assistance; consultations

The Secretary is authorized to develop plans and make arrangements for provision of temporary assistance within the United States to individuals specified in subsection (a)(1) of this section. Such plans shall be developed and such arrangements shall be made after consultation with the Secretary of State, the Attorney General, and the Secretary of Defense. To the extent feasible, assistance provided under subsection (a) of this section shall be provided in accordance with the plans developed pursuant to this subsection, as modified from time to time by the Secretary.

(c) "Temporary assistance" defined

For purposes of this section, the term ''temporary assistance'' means money payments, medical care, temporary billeting, transportation, and other goods and services necessary for the health or welfare of individuals (including guidance, counseling, and other welfare services) furnished to them within the United States upon their arrival in the United States and for such period after their arrival, not exceeding ninety days, as may be provided in regulations of the Secretary; except that assistance under this section may be furnished beyond such ninety-day period in the case of any citizen or dependent upon a finding by the Secretary that the circumstances involved necessitate or justify the furnishing of assistance beyond such period in that particular case.

(d) Maximum total amount of temporary assistance

The total amount of temporary assistance provided under this section shall not exceed $1,000,000 during any fiscal year beginning after September 30, 1991.

(e) Authority of Secretary to accept gifts

(1) The Secretary may accept on behalf of the United States gifts, in cash or in kind, for use in carrying out the program established under this section. Gifts in the form of cash shall be credited to the appropriation account from which this program is funded, in addition to amounts otherwise appropriated, and shall remain available until expended.

(2) Gifts accepted under paragraph (1) shall be available for obligation or other use by the United States only to the extent and in the amounts provided in appropriation Acts.

(Aug. 14, 1935, ch. 531, title XI, § 1113, as added June 30, 1961, Pub. L. 87–64, title III, § 302, 75 Stat. 142; amended July 25, 1962, Pub. L. 87–543, title I, § 133, 76 Stat. 196; June 30, 1964, Pub. L. 88–347, 78 Stat. 236; June 29, 1967, Pub. L. 90–36, § 2, 81 Stat. 94; Jan. 2, 1968, Pub. L. 90–248, title V, § 503, 81 Stat. 934; July 9, 1969, Pub. L. 91–41, § 4, 83 Stat. 45; July 1, 1971, Pub. L. 92–40, 85 Stat. 96; June 28, 1975, Pub. L. 94–44, §§ 1, 2, 89 Stat. 235; Aug. 20, 1990, Pub. L. 101–382, title I, § 140, 104 Stat. 654; Nov. 5, 1990, Pub. L. 101–508, title V, § 5056(a), 104 Stat. 1388–229.)

AMENDMENTS

1990—Subsec. (d). Pub. L. 101–508, § 5056(a)(1), substituted ''after September 30, 1991'' for ''on or after October 1, 1989''.

Pub. L. 101–382 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''The total amount of temporary assistance provided under this section shall not exceed—

''(1) $8,000,000 during the fiscal years ending June 30, 1975, and June 30, 1976, and the succeeding calendar quarter, or

''(2) $300,000 during any fiscal year beginning on or after October 1, 1976.''

Subsec. (e). Pub. L. 101–508, § 5056(a)(2), added subsec. (e).

1975—Subsec. (c). Pub. L. 94–44, § 2, set a 90-day limit for assistance following arrival in the United States with provision for furnishing of assistance beyond the 90-day limit upon a finding by the Secretary that the circumstances involved necessitate or justify the furnishing of assistance in that particular case.

Subsec. (d). Pub. L. 94–44, § 1, substituted provisions setting the maximum total amount of temporary assistance provided under this section for provisions prohibiting temporary assistance after June 30, 1973.

1971—Subsec. (d). Pub. L. 92–40 extended termination date from June 30, 1971, to June 30, 1973.

1969—Subsec. (d). Pub. L. 91–41 extended termination date from June 30, 1969, to June 30, 1971.

1968—Subsec. (d). Pub. L. 90–248 extended termination date from June 30, 1968, to June 30, 1969.

1967—Subsec. (d). Pub. L. 90–36 extended termination date from June 30, 1967, to June 30, 1968.

1964—Subsec. (d). Pub. L. 88–347 extended termination date from June 30, 1964, to June 30, 1967.

1962—Subsec. (d). Pub. L. 87–543 extended termination date from June 30, 1962, to June 30, 1964.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5056(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective for fiscal years beginning after September 30, 1989.''

§ 1314. Public advisory groups

(a) Advisory Council on Public Welfare; appointment and functions of initial Council

The Secretary shall, during 1964, appoint an Advisory Council on Public Welfare for the purpose of reviewing the administration of the public assistance and child welfare services programs for which funds are appropriated pursuant to this chapter and making recommendations

for improvement of such administration, and reviewing the status of and making recommendations with respect to the public assistance programs for which funds are so appropriated, especially in relation to the old-age, survivors, and disability insurance program, with respect to the fiscal capacities of the States and the Federal Government, and with respect to any other matters bearing on the amount and proportion of the Federal and State shares in the public assistance and child welfare services programs.

(b) Membership and representation of interests on initial Council

The Council shall be appointed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive service and shall consist of twelve persons who shall, to the extent possible, be representatives of employers and employees in equal numbers, representatives of State or Federal agencies concerned with the administration or financing of the public assistance and child welfare services programs, representatives of nonprofit private organizations concerned with social welfare programs, other persons with special knowledge, experience, or qualifications with respect to such programs, and members of the public.

(c) Technical and other assistance for initial Council; availability of data

The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of Health and Human Services as it may require to carry out such functions.

(d) Termination of initial Council's existence on submission of report

The Council shall make a report of its findings and recommendations (including recommendations for changes in the provisions of this chapter) to the Secretary, such report to be submitted not later than July 1, 1966, after which date such Council shall cease to exist.

(e) Succeeding Councils; appointment; functions; membership; representation of interests; assistance and data; termination

The Secretary shall also from time to time thereafter appoint an Advisory Council on Public Welfare, with the same functions and constituted in the same manner as prescribed for the Advisory Council in the preceding subsections of this section. Each Council so appointed shall report its findings and recommendations, as prescribed in subsection (d) of this section, not later than July 1 of the second year after the year in which it is appointed, after which date such Council shall cease to exist.

(f) Advisory committees; functions; reports by Secretary

The Secretary may also appoint, without regard to the provisions of title 5 governing appointments in the competitive service, such advisory committees as he may deem advisable to advise and consult with him in carrying out any of his functions under this chapter. The Secretary shall report to the Congress annually on the number of such committees and on the membership and activities of each such committee.

(g) Compensation and travel expenses

Members of the Council or of any advisory committee appointed under this section who are not regular full-time employees of the United States shall, while serving on business of the Council or any such committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $75 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(h) Exemption from conflict of interest laws of members of Council or advisory committees; exceptions

(1) Any member of the Council or any advisory committee appointed under this chapter, who is not a regular full-time employee of the United States, is hereby exempted, with respect to such appointment, from the operation of sections 203, 205, and 209 of title 18, except as otherwise specified in paragraph (2) of this subsection.

(2) The exemption granted by paragraph (1) shall not extend—

(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

(Aug. 14, 1935, ch. 531, title XI, §1114, as added July 25, 1962, Pub. L. 87–543, title I, §121, 76 Stat. 190; amended Jan. 2, 1968, Pub. L. 90–248, title IV, §403(e), 81 Stat. 932; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(e)(4), (j)(2)(D)(iv), 98 Stat. 1168, 1170.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsecs. (b) and (f), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98–369, §2663(j)(2)(D)(iv), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (g). Pub. L. 98–369, §2663(e)(4)(A), made technical correction of typographical error resulting in no change in text.

Subsec. (h)(1). Pub. L. 98–369, §2663(e)(4)(B), substituted ''sections 203, 205, and 209 of title 18'' for ''sections 281, 283, and 1914 of title 18 and section 190 of the Revised Statutes (5 U.S.C. 99)''.

1968—Subsecs. (b), (f). Pub. L. 90–248, §403(e)(1), (2), substituted ''provisions of title 5, governing appointments in the competitive service'' for ''civil-service laws''.

Subsec. (g). Pub. L. 90–248, §403(e)(3), substituted ''section 5703 of title 5'' for ''section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b–2)''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1314a. Measurement and reporting of welfare receipt

(a) Congressional policy

The Congress hereby declares that—

(1) it is the policy and responsibility of the Federal Government to reduce the rate at which and the degree to which families depend on income from welfare programs and the duration of welfare receipt, consistent with other essential national goals;

(2) it is the policy of the United States to strengthen families, to ensure that children grow up in families that are economically self-sufficient and that the life prospects of children are improved, and to underscore the responsibility of parents to support their children;

(3) the Federal Government should help welfare recipients as well as individuals at risk of welfare receipt to improve their education and job skills, to obtain child care and other necessary support services, and to take such other steps as may be necessary to assist them to become financially independent; and

(4) it is the purpose of this section to provide the public with generally accepted measures of welfare receipt so that it can track such receipt over time and determine whether progress is being made in reducing the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt.

(b) Development of welfare indicators and predictors

The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') in consultation with the Secretary of Agriculture shall—

(1) develop—

(A) indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt; and

(B) predictors of welfare receipt;

(2) assess the data needed to report annually on the indicators and predictors, including the ability of existing data collection efforts to provide such data and any additional data collection needs; and

(3) not later than 2 years after October 31, 1994, provide an interim report containing conclusions resulting from the development and assessment described in paragraphs (1) and (2), to—

(A) the Committee on Ways and Means of the House of Representatives;

(B) the Committee on Education and Labor of the House of Representatives;

(C) the Committee on Agriculture of the House of Representatives;

(D) the Committee on Energy and Commerce of the House of Representatives;

(E) the Committee on Finance of the Senate;

(F) the Committee on Labor and Human Resources of the Senate; and

(G) the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(c) Advisory Board on Welfare Indicators

(1) Establishment

There is established an Advisory Board on Welfare Indicators (in this subsection referred to as the ''Board'').

(2) Composition

The Board shall be composed of 12 members with equal numbers to be appointed by the House of Representatives, the Senate, and the President. The Board shall be composed of experts in the fields of welfare research and welfare statistical methodology, representatives of State and local welfare agencies, and organizations concerned with welfare issues.

(3) Vacancies

Any vacancy occurring in the membership of the Board shall be filled in the same manner as the original appointment for the position being vacated. The vacancy shall not affect the power of the remaining members to execute the duties of the Board.

(4) Duties

Duties of the Board shall include—

(A) providing advice and recommendations to the Secretary on the development of indicators of the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs and the duration of welfare receipt; and

(B) providing advice on the development and presentation of annual reports required under subsection (d) of this section.

(5) Travel expenses

Members of the Board shall not be compensated, but shall receive travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 for each day the member is engaged in the performance of duties away from the home or regular place of business of the member.

(6) Detail of Federal employees

The Secretary shall detail, without reimbursement, any of the personnel of the Department of Health and Human Services to the Board to assist the Board in carrying out its duties. Any detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

(7) Voluntary service

Notwithstanding section 1342 of title 31, the Board may accept the voluntary services provided by a member of the Board.

(8) Termination of Board

The Board shall be terminated at such time as the Secretary determines the duties described in paragraph (4) have been completed, but in any case prior to the submission of the first report required under subsection (d) of this section.

(d) Annual welfare indicators report

(1) Preparation

The Secretary shall prepare annual reports on welfare receipt in the United States.

(2) Coverage

The report shall include analysis of families and individuals receiving assistance under means-tested benefit programs, including the program of aid to families with dependent children under part A of subchapter IV of this chapter, the food stamp program under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.), and the Supplemental Security Income program under subchapter XVI of this chapter, or as general assistance under programs administered by State and local governments.

(3) Contents

Each report shall set forth for each of the means-tested benefit programs described in paragraph (2)—

(A) indicators of—

(i) the rate at which and, to the extent feasible, the degree to which, families depend on income from welfare programs, and

(ii) the duration of welfare receipt;

(B) trends in indicators;

(C) predictors of welfare receipt;

(D) the causes of welfare receipt;

(E) patterns of multiple program receipt;

(F) such other information as the Secretary deems relevant; and

(G) such recommendations for legislation, which shall not include proposals to reduce eligibility levels or impose barriers to program access, as the Secretary may determine to be necessary or desirable to reduce—

(i) the rate at which and the degree to which families depend on income from welfare programs, and

(ii) the duration of welfare receipt.

(4) Submission

The Secretary shall submit such a report not later than 3 years after October 31, 1994, and annually thereafter, to the committees specified in subsection (b)(3)(C) of this section. Each such report shall be transmitted during the first 60 days of each regular session of Congress.

(e) Short title

This section may be cited as the ''Welfare Indicators Act of 1994''.

(Pub. L. 103–432, title II, §232, Oct. 31, 1994, 108 Stat. 4462.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter and subchapter XVI of this chapter, referred to in subsec. (d)(2), are classified to section 601 et seq. and section 1381 et seq., respectively, of this title.

The Food Stamp Act of 1977, referred to in subsec. (d)(2), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

CODIFICATION

Section was enacted as part of the Social Security Act Amendments of 1994, and not as part of the Social Security Act which comprises this chapter.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Economic and Educational Opportunities of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

§ 1315. Demonstration projects

(a) Waiver of State plan requirements; costs regarded as State plan expenditures; availability of appropriations

In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of subchapter I, X, XIV, XVI, or XIX of this chapter, or part A or D of subchapter IV of this chapter, in a State or States—

(1) the Secretary may waive compliance with any of the requirements of section 302, 602, 654, 1202, 1352, 1382, or 1396a of this title, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(2) costs of such project which would not otherwise be included as expenditures under section 303, 603, 655, 1203, 1353, 1383, or 1396b of this title, as the case may be, and which are not included as part of the costs of projects under section 1310 of this title, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such subchapter, or for administration of such State plan or plans, as may be appropriate.

In addition, not to exceed $4,000,000 of the aggregate amount appropriated for payments to States under such subchapters for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such sub-

chapters and is not included as part of the cost of projects for purposes of section 1310 of this title.

(b) Purposes, criteria and procedures applicable to establishment; participatory effect; duration and termination

(1) In order to permit the States to achieve more efficient and effective use of funds for public assistance, to reduce dependency, and to improve the living conditions and increase the incomes of individuals who are recipients of public assistance, any State having an approved plan under part A of subchapter IV of this chapter may, subject to the provisions of this subsection, establish and conduct not more than three demonstration projects. In establishing and conducting any such project the State shall—

(A) provide that not more than one such project be conducted on a statewide basis;

(B) provide that in making arrangements for public service employment—

(i) appropriate standards for the health, safety, and other conditions applicable to the performance of work and training on such project are established and will be maintained,

(ii) such project will not result in the displacement of employed workers,

(iii) each participant in such project shall be compensated for work performed by him at an hourly rate equal to the prevailing hourly wage for similar work in the locality where the participant performs such work (and, for purposes of this clause, benefits payable under the State's plan approved under part A of subchapter IV of this chapter of the family of which such participant is a member shall be regarded as compensation for work performed by such participant),

(iv) with respect to such project the conditions of work, training, education, and employment are reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant, and

(v) appropriate workmen's compensation protection is provided to all participants; and

(C) provide that participation in such project by any individual receiving aid to families with dependent children be voluntary.

(2) Any State which establishes and conducts demonstration projects under this subsection may, subject to paragraph (3), with respect to any such project—

(A) waive, subject to paragraph (3), any or all of the requirements of sections 602(a)(1) of this title (relating to statewide operation), 602(a)(3) of this title (relating to administration by a single State agency), 602(a)(8) of this title (relating to disregard of earned income), except that no such waiver of 602(a)(8) of this title shall operate to waive any amount in excess of one-half of the earned income of any individual, and 602(a)(19) of this title (relating to the work incentive program); and

(B) subject to paragraph (4), use to cover the costs of the project such funds as are appropriated for payment to such State with respect to the assistance which is or would, except for participation in a project under this subsection, be payable to individuals participating in such projects under part A of subchapter IV of this chapter for any fiscal year in which such projects are conducted.

(3)(A) Any State which wishes to establish and conduct demonstration projects under the provisions of this subsection shall submit an application to the Secretary in such form and containing such information as the Secretary may require. Whenever any State submits such an application to the Secretary, it shall at the same time issue public notice of that fact together with a general description of the project with respect to which the application is submitted, and shall invite comment thereon from interested parties and comments thereon may be submitted, within the 30-day period beginning with the date the application is submitted to the Secretary, to the State or the Secretary by such parties. The State shall also make copies of the application available for public inspection. The Secretary shall also immediately publish a summary of the proposed project, make copies of the application available for public inspection, and receive and consider comments submitted with respect to the application. A State shall be authorized to proceed with a project submitted under this subsection—

(i) when such application has been approved by the Secretary (which shall be no earlier than 30 days following the date the application is submitted to him), or

(ii) 60 days after the date on which such application is submitted to the Secretary unless, during such 60 day period, he denies the application.

(B) Notwithstanding the provisions of paragraph (2)(A), the Secretary may review any waiver made by a State under such paragraph. Upon a finding that any such waiver is inconsistent with the purposes of this subsection and the purposes of part A of subchapter IV of this chapter, the Secretary may disapprove such waiver. The project with respect to which any such disapproved waiver was made shall be terminated by such State not later than the last day of the month following the month in which such waiver was disapproved.

(4) Any amount payable to a State under section 603(a) of this title on behalf of an individual participating in a project under this section shall not be increased by reason of the participation of such individual in any demonstration project conducted under this subsection over the amount which would be payable if such individual were receiving aid to families with dependent children and not participating in such project.

(5) Participation in a project established under this section shall not be considered to constitute employment for purposes of any finding with respect to ''unemployment'' as that term is used in section 607 of this title.

(6) Any demonstration project established and conducted pursuant to the provisions of this subsection shall be conducted for not longer than two years. All demonstration projects established and conducted pursuant to the provi-

sions of this subsection shall be terminated not later than September 30, 1980.

(c) Child support enforcement programs

In the case of any experimental, pilot, or demonstration project undertaken under subsection (a) of this section to assist in promoting the objectives of part D of subchapter IV of this chapter, the project—

(1) must be designed to improve the financial well-being of children or otherwise improve the operation of the child support program;

(2) may not permit modifications in the child support program which would have the effect of disadvantaging children in need of support; and

(3) must not result in increased cost to the Federal Government under the program of aid to families with dependent children.

(d) Demonstration projects to test alternative definitions of unemployment

(1)(A) The Secretary shall enter into agreements with up to 8 States submitting applications under this subsection for the purpose of conducting demonstration projects in such States to test and evaluate the use, with respect to individuals who received aid under part A of subchapter IV of this chapter in the preceding month (on the basis of the unemployment of the parent who is the principal earner), of a number greater than 100 for the number of hours per month that such individuals may work and still be considered to be unemployed for purposes of section 607 of this title. If any State submits an application under this subsection for the purpose of conducting a demonstration project to test and evaluate the total elimination of the 100-hour rule, the Secretary shall approve at least one such application.

(B) If any State with an agreement under this subsection so requests, the demonstration project conducted pursuant to such agreement may test and evaluate the complete elimination of the 100-hour rule and of any other durational standard that might be applied in defining unemployment for purposes of determining eligibility under section 607 of this title.

(2) Notwithstanding section 602(a)(1) of this title, a demonstration project conducted under this subsection may be conducted in one or more political subdivisions of the State.

(3) An agreement under this subsection shall be entered into between the Secretary and the State agency designated under section 602(a)(3) of this title. Such agreement shall provide for the payment of aid under the applicable State plan under part A of subchapter IV of this chapter as though section 607 of this title had been modified to reflect the definition of unemployment used in the demonstration project but shall also provide that such project shall otherwise be carried out in accordance with all of the requirements and conditions of section 607 of this title (and, except as provided in paragraph (2), any related requirements and conditions under part A of subchapter IV of this chapter).

(4) A demonstration project under this subsection may be commenced any time after September 30, 1990, and shall be conducted for such period of time as the agreement with the Secretary may provide; except that, in no event may a demonstration project under this section be conducted after September 30, 1995.

(5)(A) Any State with an agreement under this subsection shall evaluate the comparative cost and employment effects of the use of the definition of unemployment in its demonstration project under this section by use of experimental and control groups comprised of a random sample of individuals receiving aid under section 607 of this title and shall furnish the Secretary with such information as the Secretary determines to be necessary to evaluate the results of the project conducted by the State.

(B) The Secretary shall report the results of the demonstration projects conducted under this subsection to the Congress not later than 6 months after all such projects are completed.

(Aug. 14, 1935, ch. 531, title XI, §1115, as added July 25, 1962, Pub. L. 87–543, title I, §122, 76 Stat. 192; amended July 30, 1965, Pub. L. 89–97, title I, §121(c)(3), 79 Stat. 352; June 29, 1967, Pub. L. 90–36, §2, 81 Stat. 94; Jan. 2, 1968, Pub. L. 90–248, title II, §§241(c)(4), 247, 81 Stat. 917, 918; Dec. 31, 1973, Pub. L. 93–233, §18(z–2)(1)(B), 87 Stat. 973; Jan. 4, 1975, Pub. L. 93–647, §3(c), 88 Stat. 2349; Dec. 20, 1977, Pub. L. 95–216, title IV, §404, 91 Stat. 1562; Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2353(g), 95 Stat. 872; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2663(e)(5), 98 Stat. 1168; Aug. 16, 1984, Pub. L. 98–378, §10, 98 Stat. 1317; Apr. 7, 1986, Pub. L. 99–272, title XIV, §14001(b)(2), 100 Stat. 328; Oct. 13, 1988, Pub. L. 100–485, title V, §503, 102 Stat. 2402.)

REFERENCES IN TEXT

Parts A and D of subchapter IV of this chapter, referred to in text, are classified to sections 601 et seq. and 651 et seq., respectively, of this title.

Sections 1382 and 1383 of this title, referred to in subsec. (a)(1), (2), respectively, are references to sections 1382 and 1383 of this title as they existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, §301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior sections (which are set out as notes under sections 1382 and 1383, respectively, of this title) continue in effect for Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1988—Subsec. (d). Pub. L. 100–485 added subsec. (d).

1986—Subsec. (b)(2)(C). Pub. L. 99–272 struck out subpar. (C) relating to use of funds as are appropriated for payments to States under chapter 67 of title 31 to cover costs of salaries for individuals in public service employment.

1984—Subsec. (a). Pub. L. 98–378, §10(a)(1), substituted ''part A or D of subchapter IV'' for ''part A of subchapter IV'' in provisions preceding par. (1).

Pub. L. 98–369, §2663(e)(5), struck out ''VI,'' after ''I,'' in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 98–378, §10(a)(2), inserted ''654,''.

Pub. L. 98–369, §2663(e)(5), struck out ''802,'' after ''602,''.

Subsec. (a)(2). Pub. L. 98–378, §10(a)(3), inserted ''655,''.

Pub. L. 98–369, §2663(e)(5), struck out ''803,'' after ''603,''.

Subsec. (c). Pub. L. 98–378, §10(b), added subsec. (c).

1981—Subsec. (a). Pub. L. 97–35 substituted in provision preceding par. (1) ''or XIX of this chapter'' for ''XIX, or XX of this chapter'', in par. (1) ''or 1396a of this title'' for ''1396a, 1397a, 1397b, or 1397c of this title'', and in par. (2) ''or 1396b of this title'' for ''1396b, or

1397a of this title'' and in par. (2) struck out ''or expenditures with respect to which payment shall be made under section 1397a of this title,'' before ''as may be appropriate''.

1977—Pub. L. 95–216 designated existing provisions as subsec. (a) and existing pars. (a) and (b) thereof as pars. (1) and (2), respectively, and added subsec. (b).

1975—Pub. L. 93–647, §3(c)(1), substituted ''XIX, or XX'' for ''or XIX''.

Subsec. (a). Pub. L. 93–647, §3(c)(2), inserted references to sections 1397a, 1397b, and 1397c.

Subsec. (b). Pub. L. 93–647, §3(c)(3), (4), substituted ''1396b, or 1397a'' for ''1396b'', and inserted ''or expenditures with respect to which payment shall be made under section 1397a of this title'' after ''administration of such State plan or plans,''.

1973—Pub. L. 93–233 inserted references in text preceding subsec. (a) to subchapter VI of this chapter, in subsec. (a) to section 802 of this title, and in subsec. (b) to section 803 of this title.

1968—Pub. L. 90–248, §241(c)(4), in opening phrase struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter,'' after ''XIX of this chapter''.

Pub. L. 90–248, §247, substituted in second sentence ''$4,000,000'' for ''$2,000,000'' and ''beginning after June 30, 1967'' for ''ending prior to July 1, 1968''.

1967—Pub. L. 90–36 substituted ''July 1, 1968'' for ''July 1, 1967''.

1965—Pub. L. 89–97 included in enumeration in opening phrase, and cls. (a) and (b), subchapter XIX of this chapter, and sections 1396a and 1396b of this title, respectively.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective Oct. 18, 1986, see section 14001(e) of Pub. L. 99–272.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective on and after Jan. 1, 1974, see section 18(z–2)(2) of Pub. L. 93–233, set out as a note under section 1301 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 121(c)(3) of Pub. L. 89–97 provided that the amendment made by that section is effective Jan. 1, 1966.

FAMILY SUPPORT DEMONSTRATION PROJECTS

Section 501 of Pub. L. 100–485, as amended by Pub. L. 103–432, title II, §262, Oct. 31, 1994, 108 Stat. 4467, provided that:

''(a) DEMONSTRATION PROJECTS TO TEST THE EFFECT OF EARLY CHILDHOOD DEVELOPMENT PROGRAMS.—(1) In order to test the effect of in-home early childhood development programs and pre-school center-based development programs (emphasizing the use of volunteers and including academic credit for student volunteers) on families receiving aid under State plans approved under section 402 of the Social Security Act [section 602 of this title] and participating in the job opportunities and basic skills training program under part F of title IV of such Act [part F of subchapter IV of this chapter], up to 10 States may undertake and carry out demonstration projects utilizing such development programs to enhance the cognitive skills and linguistic ability of children under the age of 5, to improve the communications skills of such children, and to develop their ability to read, write, and speak the English language effectively. Such projects may include parents along with their eligible children in family-centered education programs that assist children directly in achieving the goals stated in the preceding sentence and also help parents contribute to the proper development and education of their young children. Demonstration projects under this subsection shall meet such conditions and requirements as the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall prescribe, and no such project shall be conducted for a period of more than 3 years.

''(2) The Secretary shall consider all applications received from States desiring to conduct demonstration projects under this subsection, shall approve up to 10 applications involving projects which appear likely to contribute significantly to the achievement of the purpose of this subsection, and shall make grants to the States whose applications are approved to assist them in carrying out such projects.

''(3) The Secretary shall submit to the Congress with respect to each project undertaken by a State under this subsection, after such project has been carried out for one year and again when such project is completed, a detailed evaluation of the project and of its contribution to the achievement of the purpose of this subsection.

''(4) For grants to States to conduct demonstration projects under this subsection, there are authorized to be appropriated not to exceed $3,000,000 for each of the fiscal years 1995 through 1999.

''(b) STATE DEMONSTRATION PROJECTS TO ENCOURAGE INNOVATIVE EDUCATION AND TRAINING PROGRAMS FOR CHILDREN.—In order to encourage States to develop innovative education and training programs for children receiving aid under State plans approved under section 402 of the Social Security Act [section 602 of this title], any State may establish and conduct one or more demonstration projects, targeted to such children, designed to test financial incentives and interdisciplinary approaches to reducing school dropouts, encouraging skill development, and avoiding welfare dependence; and the Secretary may make grants to States to assist in financing such projects. Demonstration projects under this subsection shall meet such conditions and requirements as the Secretary shall prescribe, and no such project shall be conducted for a period of less than one year or more than 5 years.

''(c) DEMONSTRATIONS TO ENSURE LONG TERM FAMILY SELF-SUFFICIENCY THROUGH COMMUNITY-BASED SERVICES.—Any State, using funds made available to it from appropriations made pursuant to subsection (d) in conjunction with its other resources, may conduct demonstrations to test more effective methods of providing coordination and services to ensure long term family self-sufficiency through community-based comprehensive family support services involving a partnership between the State agency administering or supervising the administrating of the State's plan under section 402 of the Social Security Act [section 602 of this title] and community-based organizations having experience and demonstrated effectiveness in providing services.

''(d) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants to States to conduct demonstration projects under this section, there is author-

ized to be appropriated not to exceed $6,000,000 for each of the fiscal years 1990, 1991, and 1992.''

DEMONSTRATION PROJECTS TO ENCOURAGE STATES TO EMPLOY PARENTS RECEIVING AFDC AS PAID CHILD CARE PROVIDERS

Section 502 of Pub. L. 100–485 authorized Secretary of Health and Human Services to permit up to 5 States to undertake and carry out demonstration projects designed to test whether employment of parents of dependent children receiving AFDC as providers of child care for other children receiving AFDC would effectively facilitate the conduct of the job opportunities and basic skills training program under part F of title IV of this chapter by making additional child care services available to meet the requirements of section 602(g)(1)(A) of this title while affording significant numbers of families receiving such aid a realistic opportunity to avoid welfare dependence through employment as a child care provider, and authorized to be appropriated not to exceed $1,000,000 for each of the fiscal years 1990, 1991, and 1992 for grants to States to carry out such demonstration projects.

DEMONSTRATION PROJECTS TO ADDRESS CHILD ACCESS PROBLEMS

Section 504 of Pub. L. 100–485 provided that any State could establish and conduct one or more demonstration projects (in accordance with such terms, conditions, and requirements prescribed by the Secretary of Health and Human Services, except that no such project could include the withholding of aid to families with dependent children pending visitation) to develop, improve, or expand activities designed to increase compliance with child access provisions of court orders, specified activities that could be funded by a grant under this section, authorized to be appropriated not to exceed $4,000,000 for each of the fiscal years 1990 and 1991, and directed Secretary of Health and Human Services, not later than July 1, 1992, to submit to Congress a report on the effectiveness of the demonstration projects established under this section.

DEMONSTRATION PROJECTS TO EXPAND NUMBER OF JOB OPPORTUNITIES AVAILABLE TO CERTAIN LOW-INCOME INDIVIDUALS

Section 505 of Pub. L. 100–485, as amended by Pub. L. 101–508, title V, §5063, Nov. 5, 1990, 104 Stat. 1388–232; Pub. L. 103–432, title II, §261(a), Oct. 31, 1994, 108 Stat. 4467, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') in each of the fiscal years 1990, 1991, and 1992, shall enter into agreements with not less than 5 nor more than 10 nonprofit organizations (including community development corporations) submitting applications under this section for the purpose of conducting demonstration projects in accordance with subsection (b) to create employment opportunities for certain low-income individuals.

''(b) NATURE OF PROJECT.—(1) Each nonprofit organization conducting a demonstration project under this section shall provide technical and financial assistance to private employers in the community to assist them in creating employment and business opportunities for those individuals eligible to participate in the projects as described in this subsection.

''(2) For purposes of this section, a nonprofit organization is any organization (including a community development corporation) exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 [26 U.S.C. 501(a)] by reason of paragraph (3) or (4) of section 501(c) of such Code.

''(3) A low-income individual eligible to participate in a project conducted under this section is any individual eligible to receive aid to families with dependent children under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter] and any other individual whose income level does not exceed 100 percent of the official poverty line as defined by the Office of Management and Budget and revised in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. 9902(2)].

''(c) CONTENT OF APPLICATIONS; SELECTION PRIORITY.—(1) Each nonprofit organization submitting an application under this section shall, as part of such application, describe—

''(A) the technical and financial assistance that will be made available under the project conducted under this section;

''(B) the geographic area to be served by the project;

''(C) the percentage of low-income individuals (as described in subsection (b)) and individuals receiving aid to families with dependent children under title IV of the Social Security Act [subchapter IV of this chapter] in the area to be served by the project; and

''(D) unemployment rates in the geographic areas to be served and (to the extent practicable) the jobs available and skills necessary to fill those vacancies in such areas.

''(2) In approving applications under this section, the Secretary shall give priority to applications proposing to serve those areas containing the highest percentage of individuals receiving aid to families with dependent children under title IV of such Act [subchapter IV of this chapter].

''(d) ADMINISTRATION.—Each nonprofit organization participating in a demonstration project conducted under this section shall provide assurances in its agreement with the Secretary that it has or will have a cooperative relationship with the agency responsible for administering the job opportunities and basic skills training program (as provided for under title IV of the Social Security Act [subchapter IV of this chapter]) in the area served by the project.

''(e) DURATION.—Each demonstration project conducted under this section shall be commenced not later than September 30 of the fiscal year specified in the agreement described in subsection (a), and shall be conducted for a 6-year period; except that the Secretary may terminate a project before the end of such period if he determines that the nonprofit organization conducting the project is not in substantial compliance with the terms of the agreement entered into with the Secretary under this section.

''(f) EVALUATION AND REPORT.—(1) The Secretary shall conduct an evaluation of the success of each demonstration project conducted under this section in creating job opportunities and may require each nonprofit organization conducting such a project to provide the Secretary with such information as the Secretary determines is necessary to prepare the report described in paragraph (2).

''(2) Not later than January 1, 1995, the Secretary shall submit to the Congress a report containing a summary of the evaluations conducted under paragraph (1), together with such recommendations as the Secretary determines are appropriate.

''(g) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of making grants to conduct demonstration projects under this section, there is authorized to be appropriated not to exceed $6,500,000 for each of the fiscal years 1990, 1991, 1992, 1993, 1994, 1995, and 1996.''

[Pub. L. 103–432, title II, §261(b), Oct. 31, 1994, 108 Stat. 4467, provided that: ''The amendments made by subsection (a) [amending section 505 of Pub. L. 100–485, set out above] shall take effect on October 1, 1993.'']

DEMONSTRATION PROJECTS TO PROVIDE COUNSELING AND SERVICES TO HIGH-RISK TEENAGERS

Section 506 of Pub. L. 100–485 provided that:

''(a) FINDINGS AND PURPOSE.—(1) The Congress finds that—

''(A) the incidences of teenage pregnancy, suicide, substance abuse, and school dropout are increasing;

''(B) research to date has established a link between low self-esteem, perceived limited life options and the risk of teenage pregnancy, suicide, substance abuse, and school dropout;

''(C) little data currently exists on how to improve the self-image of and expand the life options available to high-risk teenagers; and

''(D) there currently is no Federal program in place to address the unique and significant problems faced by today's teenagers.

''(2) It is the purpose of the demonstration projects conducted under this section to provide programs in which a range of non-academic services (sports, recreation, the arts) and self-image counseling are provided to high-risk teenagers in order to reduce the rates of pregnancy, suicide, substance abuse, and school dropout among such teenagers.

''(b) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall enter into an agreement with each of 4 States submitting applications under this section for the purpose of conducting demonstration projects in accordance with this section to provide counseling and services to certain high-risk teenagers.

''(c) NATURE OF PROJECT.—Under each demonstration project conducted under this section—

''(1) The State shall establish a 'Teen Care Plan' that shall consist of the following:

''(A) A clearing house where high-risk teenagers will be referred to and encouraged to participate in non-academic activities (arts, recreation, sports) which are already in place in the community.

''(B) A survey of the area to be targeted by the project to determine the need to fund and create new non-academic activities in the area.

''(C) Counseling services utilizing qualified, locally licensed psychologists, social psychologists, or other mental health professionals or related experts to provide individual and group counseling to participating high-risk teenagers.

''(D) A program to provide participants in the project (to the extent practicable) with such transportation, child care, and equipment as is necessary to carry out the purposes of the project.

''(2) The State shall designate two geographical areas within the State to be targeted by the project. One area will serve as the 'home base' for the project, where services will be concentrated and in which a local school system will be selected to receive services and provide facilities for resource referral and counseling. The second geographical area will serve as a 'peripheral' participant, receiving assistance and services from the home base.

''(3) A high-risk teenager is any male or female who has reached the age of 10 years and whose age does not exceed 20 years, and who—

''(A) has a history of academic problems;

''(B) has a history of behavioral problems both in and out of school;

''(C) comes from a one-parent household; or

''(D) is pregnant or is a mother of a child.

''(d) APPLICATIONS; SELECTION CRITERIA.—(1) In selecting States to conduct demonstration projects under this section, the Secretary—

''(A) shall consult with the Consortium on Adolescent Pregnancy;

''(B) shall consider—

''(i) the rate of teenage pregnancy in each State,

''(ii) the teenage school dropout rate in each State,

''(iii) the incidence of teenage substance abuse in each State, and

''(iv) the incidence of teenage suicide in each State; and

''(C) shall give priority to States whose applications—

''(i) demonstrate a current strong State commitment aimed at reducing teenage pregnancy, suicide, drug abuse, and school dropout;

''(ii) contain a 'State support agreement' signed by the Governor, the State School Commissioner, the State Department of Human Services, and the State Department of Education, pledging their commitment to the project;

''(iii) describe facilities and services to be made available by the State to assist in carrying out the project; and

''(iv) indicate a demonstrably high rate of alcoholism among its residents.

''(2) Of the States selected to participate in the demonstration projects conducted under this section—

''(A) one shall be a geographically small State with a population of less than 1,250,000;

''(B) one shall be a State with a population of over 20,000,000; and

''(C) two shall be States with populations of more than 1,000,000 but less than 20,000,000.

''(e) EVALUATION AND REPORT.—(1) Each State conducting a demonstration project under this section shall submit to the Secretary for his approval an evaluation plan that provides for examining the effectiveness of the project in both the home base and peripheral area of the State.

''(2) Not later than October 1, 1992, the Secretary shall submit to the Congress a report containing a summary of the evaluations conducted by States pursuant to the plans described in paragraph (1).

''(f) FUNDING.—(1) Three-fifths of the total amount appropriated pursuant to this section for any fiscal year for each State conducting a demonstration project shall be expended by such State for the provision of services and facilities within the State's designated project home base, and 5 percent of such three-fifths shall be set aside for the conduct of the State's evaluation as provided for in subsection (e).

''(2) Two-fifths of the total amounts appropriated pursuant to this section for any fiscal year for each State conducting a demonstration project shall be expended by such State for the provision of services and facilities within the State's designated peripheral area, and 5 percent of such two-fifths shall be set aside for the conduct of the State's evaluation as provided for in subsection (e).

''(g) DURATION.—A demonstration project conducted under this section shall be commenced not later than September 30, 1989, and shall be conducted for a 3-year period; except that the Secretary may terminate a project before the end of such period if he determines that the State conducting the project is not in substantial compliance with the terms of the agreement entered into with the Secretary under this section.

''(h) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of funding in equal amounts each State demonstration project conducted under this section, there is authorized to be appropriated not to exceed $1,500,000 for each of the fiscal years 1990, 1991, and 1992.''

CONTINUATION OF FEDERAL FINANCIAL PARTICIPATION IN EXPERIMENTAL, PILOT, OR DEMONSTRATION PROJECTS APPROVED BEFORE OCTOBER 1, 1973, FOR PERIOD ON-AND-AFTER DECEMBER 31, 1973, WITHOUT DENIAL OR REDUCTION ON ACCOUNT OF SUBCHAPTER XVI PROVISIONS FOR SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED; WAIVER OF SUBCHAPTER XVI RESTRICTIONS FOR INDIVIDUALS; FEDERAL PAYMENTS OF NON-FEDERAL SHARE AS SUPPLEMENTARY PAYMENTS

Section 11 of Pub. L. 93–233 provided that:

''(a) If any State (other than the Commonwealth of Puerto Rico, the Virgin Islands, or Guam) has any experimental, pilot, or demonstration project (referred to in section 1115 of the Social Security Act [this section])—

''(1) which (prior to October 1, 1973) has been approved by the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter in this section referred to as the 'Secretary'), for a period which ends on or after December 31, 1973, as being a project with respect to which the authority conferred upon him by subsection (a) or (b) of such section 1115 [subsec. (a) or (b) of this section] will be exercised, and

''(2) with respect to the costs of which Federal financial participation would (except for the provisions

of this section) be denied or reduced on account of the enactment of section 301 of the Social Security Amendments of 1972 [enacting subchapter XVI of this chapter],

then, for any period (after December 31, 1973) with respect to which such project is approved by the Secretary, Federal financial participation in the costs of such project shall be continued in like manner as if—

''(3) such section 301 [enacting subchapter XVI of this chapter] had not been enacted, and

''(4) such State (for the month of January 1974 and any month thereafter) continued to have in effect the State plan (approved under title XVI [subchapter XVI of this chapter]) which was in effect for the month of October 1973, or the State plans (approved under titles I, X, and XIV of the Social Security Act [subchapters I, X, and XIV of this chapter]) which were in effect for such month, as the case may be.

''(b) With respect to individuals—

''(1) who are participants in any project to which the provisions of subsection (a) are applicable, and

''(2) with respect to whom supplemental security income benefits are (or would, except for their participation in such project, be) payable under title XVI of the Social Security Act, or who meet the requirements for aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act of the State in which such project is conducted (as such State plan was in effect for July 1973),

the Secretary may waive such requirements of title XVI of such Act (as enacted by section 301 of the Social Security Amendments of 1972) to such extent as he determines to be necessary to the successful operation of such project.

''(c) In the case of any State which has entered into an agreement with the Secretary under section 1616 of the Social Security Act [section 1382e of this title] (or which is deemed, under section 212(d) of Public Law 93–66 [set out as a note under section 1382 of this title], to have entered into such an agreement), then, of the costs of any project of such State with respect to which there is (solely by reason of the provisions of subsection (a)) Federal financial participation, the non-Federal share thereof shall—

''(1) be paid, from time to time, to such State by the Secretary, and

''(2) shall, for purposes of section 1616(d) of the Social Security Act [section 1382e(d) of this title] and section 401 of the Social Security Amendments of 1972 [set out as a note under section 1382e of this title] be treated in like manner as if such non-Federal share were supplementary payments made by the Secretary on behalf of such State pursuant to such agreement.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 652, 684, 1320b–14, 1396a, 1396b, 1396d, 1396e, 1396r–4, 1396r–5, 1396r–6, 1396t of this title.

§ 1316. Administrative and judicial review of public assistance determinations

(a) Determination of conformity with requirements for approval; petition for reconsideration; hearing; time limitations; review by court of appeals

(1) Whenever a State plan is submitted to the Secretary by a State for approval under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, he shall, not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such subchapter. The 90-day period provided herein may be extended by written agreement of the Secretary and the affected State.

(2) Any State dissatisfied with a determination of the Secretary under paragraph (1) of this subsection with respect to any plan may, within 60 days after it has been notified of such determination, file a petition with the Secretary for reconsideration of the issue of whether such plan conforms to the requirements for approval under such subchapter. Within 30 days after receipt of such a petition, the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering such issue. Such hearing shall be held not less than 20 days nor more than 60 days after the date notice of such hearing is furnished to such State, unless the Secretary and such State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse his original determination within 60 days of the conclusion of the hearing.

(3) Any State which is dissatisfied with a final determination made by the Secretary on such a reconsideration or a final determination of the Secretary under section 304, 604, 1204, 1354, 1384, or 1396c of this title may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in section 2112 of title 28.

(4) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(5) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(b) Amendment of plans

For the purposes of subsection (a) of this section, any amendment of a State plan approved under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, may, at the option of the State, be treated as the submission of a new State plan.

(c) Restitution when Secretary reverses his determination

Action pursuant to an initial determination of the Secretary described in subsection (a) of this section shall not be stayed pending reconsideration, but in the event that the Secretary subsequently determines that his initial determination was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

(d) Items covered under other subchapters; disallowance

Whenever the Secretary determines that any item or class of items on account of which Fed-

eral financial participation is claimed under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

(Aug. 14, 1935, ch. 531, title XI, § 1116, as added July 30, 1965, Pub. L. 89–97, title IV, § 404(a), 79 Stat. 419; amended Jan. 2, 1968, Pub. L. 90–248, title II, § 241(c)(5), 81 Stat. 917; Dec. 31, 1973, Pub. L. 93–233, § 18(z–2)(1)(C), 87 Stat. 974; Jan. 4, 1975, Pub. L. 93–647, § 3(d), 88 Stat. 2349; Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2353(h), 95 Stat. 872; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2354(c)(2), title VI, § 2663(e)(6), 98 Stat. 1102, 1168.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsecs. (a)(1), (b), and (d), is classified to section 601 et seq. of this title.

Section 1384 of this title, referred to in subsec. (a)(3), is a reference to section 1384 of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1384 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–369, § 2663(e)(6)(A), struck out ''VI,'' after ''I,''.

Pub. L. 98–369, § 2354(c)(2), corrected typographical error in directory language of Pub. L. 97–35, § 2353(h)(1). See 1982 Amendment note below.

Subsec. (a)(3). Pub. L. 98–369, § 2663(e)(6)(B), struck out ''804,'' after ''604,''.

Subsec. (b). Pub. L. 98–369, § 2663(e)(6)(A), struck out ''VI,'' after ''I,''.

Pub. L. 98–369, § 2354(c)(2), corrected typographical error in directory language of Pub. L. 97–35, § 2353(h)(1). See 1982 Amendment note below.

Subsec. (d). Pub. L. 98–369, § 2663(e)(6)(A), struck out ''VI,'' after ''I,''.

Pub. L. 98–369, § 2663(e)(6)(C), substituted ''XVI, or XIX of this chapter, or part A'' for ''XVI, or or XIX of this chapter, or part A''.

1981—Subsec. (a)(1). Pub. L. 97–35, § 2353(h)(1), as amended by Pub. L. 98–369, § 2354(c)(2), substituted ''or XIX of this chapter'' for ''XIX or XX of this chapter''.

Subsec. (a)(3). Pub. L. 97–35, § 2353(h)(2), substituted ''or 1396c of this title'' for ''1396c, or 1397b of this title''.

Subsec. (b). Pub. L. 97–35, § 2353(h)(1), as amended by Pub. L. 98–369, § 2354(c)(2), substituted ''or XIX of this chapter'' for ''XIX or XX of this chapter''.

Subsec. (d). Pub. L. 97–35, § 2353(h)(3), substituted ''or XIX of this chapter'' for ''XIX, or XX of this chapter''.

1975—Subsec. (a)(1). Pub. L. 93–647, § 3(d)(1), substituted ''XIX or XX'' for ''or XIX''.

Subsec. (a)(3). Pub. L. 93–647, § 3(d)(2), substituted ''1396c, or 1397b'' for ''or 1396c''.

Subsec. (b). Pub. L. 93–647, § 3(d)(1), substituted ''XIX or XX'' for ''or XIX''.

Subsec. (d). Pub. L. 93–647, § 3(d)(3), inserted ''XX,'' after ''XIX,''.

1973—Subsec. (a). Pub. L. 93–233, § 18(z–2)(1)(C)(i), (ii), inserted references in par. (1) to subchapter VI of this chapter and in par. (3) to section 804 of this title.

Subsecs. (b), (d). Pub. L. 93–233, § 18(z–2)(1)(C)(iii), (iv), inserted reference to subchapter VI of this chapter.

1968—Subsec. (a)(1). Pub. L. 90–248, § 241(c)(5)(A), struck out ''IV,'' after ''I,'' and inserted ''or part A of subchapter IV of this chapter,'' after ''XIX of this chapter,''.

Subsecs. (b), (d). Pub. L. 90–248, § 241(c)(5)(B), struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter,'' after ''XIX of this chapter''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(c)(2) of Pub. L. 98–369 effective as if originally included in Pub. L. 97–35, see section 2354(e)(2) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(e)(6) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective on and after Jan. 1, 1974, see section 18(z–2)(2) of Pub. L. 93–233, set out as a note under section 1301 of this title.

EFFECTIVE DATE

Section 404(b) of Pub. L. 89–97 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply only with respect to determinations made after December 31, 1965.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396b, 1396n, 1396r of this title.

§ 1317. Appointment of Administrator of Health Care Financing Administration

The Administrator of the Health Care Financing Administration shall be appointed by the President by and with the advice and consent of the Senate.

(Aug. 14, 1935, ch. 531, title XI, § 1117, as added July 18, 1984, Pub. L. 98–369, div. B, title III, § 2332(a), 98 Stat. 1088.)

PRIOR PROVISIONS

A prior section 1317, act Aug. 14, 1935, ch. 531, title XI, § 1117, as added July 30, 1965, Pub. L. 89–97, title IV, § 405, 79 Stat. 420; amended Jan. 2, 1968, Pub. L. 90–248, title II, §§ 221(a)–(c), 241(c)(6), 81 Stat. 899, 917, related to maintenance of State public assistance expenditures, prior to repeal by Pub. L. 90–248, title II, § 221(d), Jan. 2, 1968, 81 Stat. 900, eff. July 1, 1968.

EFFECTIVE DATE

Section 2332(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [enacting this section and amending section 5315 of Title 5, Government Organization and Employees] shall apply to appointments made after the date of the enactment of this Act [July 18, 1984].''

§ 1318. Alternative Federal payment with respect to public assistance expenditures

In the case of any State which has in effect a plan approved under subchapter XIX of this chapter for any calendar quarter, the total of the payments to which such State is entitled for such quarter, and for each succeeding quarter in

the same fiscal year (which for purposes of this section means the 4 calendar quarters ending with September 30), under paragraphs (1) and (2) of sections 303(a),[1] 603(a), 1203(a),[1] 1353(a),[1] and 1383(a)[1] of this title shall, at the option of the State, be determined by application of the Federal medical assistance percentage (as defined in section 1396d of this title), instead of the percentages provided under each such section, to the expenditures under its State plans approved under subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter, which would be included in determining the amounts of the Federal payments to which such State is entitled under such sections, but without regard to any maximum on the dollar amounts per recipient which may be counted under such sections. For purposes of the preceding sentence, the term ''Federal medical assistance percentage'' shall, in the case of Puerto Rico, the Virgin Islands, and Guam, mean 75 per centum, and shall, in the case of American Samoa, mean 75 per centum with respect to part A of subchapter IV of this chapter.

(Aug. 14, 1935, ch. 531, title XI, §1118, as added July 30, 1965, Pub. L. 89–97, title IV, §411, 79 Stat. 423; amended Jan. 2, 1968, Pub. L. 90–248, title II, §241(c)(7), 81 Stat. 917; Apr. 21, 1976, Pub. L. 94–273, §2(23), 90 Stat. 376; Nov. 6, 1978, Pub. L. 95–600, title VIII, §802(a), 92 Stat. 2945; June 17, 1980, Pub. L. 96–272, title III, §305(c), 94 Stat. 530; Oct. 13, 1988, Pub. L. 100–485, title VI, §601(c)(3), 102 Stat. 2408.)

REFERENCES IN TEXT

Paragraph (1) of sections 303(a), 1203(a), and 1353(a) of this title, referred to in text, were repealed by Pub. L. 97–35, title XXI, §2184(a)(4)(A), (c)(2)(A), Aug. 13, 1981, 95 Stat. 816, 817.

Section 1383(a) of this title, referred to in text, is a reference to section 1383(a) of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, §301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

Part A of subchapter IV of this chapter, referred to in text, is classified to section 601 et seq. of this title.

AMENDMENTS

1988—Pub. L. 100–485 inserted before period at end '', and shall, in the case of American Samoa, mean 75 per centum with respect to part A of subchapter IV of this chapter''.

1980—Pub. L. 96–272 struck out ''when applied to quarters in the fiscal year ending September 30, 1979'' after ''means 75 per centum''.

1978—Pub. L. 95–600, inserted provision relating to definition of ''Federal medical assistance percentage'' in the case of Puerto Rico, the Virgin Islands, and Guam.

1976—Pub. L. 94–273 substituted ''September'' for ''June''.

1968—Pub. L. 90–248 struck out ''IV,'' after ''I,'' and inserted ''and part A of subchapter IV of this chapter,'' after ''XVI of this chapter''.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective Oct. 1, 1988, see section 601(d) of Pub. L. 100–485, set out as an Effective and Termination Dates of 1988 Amendment note under section 603 of this title.

[1] See References in Text note below.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 603, 608 of this title.

§ 1319. Federal participation in payments for repairs to home owned by recipient of aid or assistance

In the case of an expenditure for repairing the home owned by an individual who is receiving aid or assistance, other than medical assistance to the aged, under a State plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter if—

(1) the State agency or local agency administering the plan approved under such subchapter has made a finding (prior to making such expenditure) that (A) such home is so defective that continued occupancy is unwarranted, (B) unless repairs are made to such home, rental quarters will be necessary for such individual, and (C) the cost of rental quarters to take care of the needs of such individual (including his spouse living with him in such home and any other individual whose needs were taken into account in determining the need of such individual) would exceed (over such time as the Secretary may specify) the cost of repairs needed to make such home habitable together with other costs attributable to continued occupancy of such home, and

(2) no such expenditures were made for repairing such home pursuant to any prior finding under this section,

the amount paid to any such State for any quarter under section 303(a), 603(a), 1203(a), 1353(a), or 1383(a) of this title shall be increased by 50 per centum of such expenditures, except that the excess above $500 expended with respect to any one home shall not be included in determining such expenditures.

(Aug. 14, 1935, ch. 531, title XI, §1119, as added Jan. 2, 1968, Pub. L. 90–248, title II, §209(a), 81 Stat. 894.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in text, is classified to section 601 et seq. of this title.

Section 1383(a) of this title, referred to in text, is a reference to section 1383(a) of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, §301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

EFFECTIVE DATE

Section 209(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply with respect to expenditures made after December 31, 1967.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 40 App. section 214.

§ 1320. Approval of certain projects

No payment shall be made under this chapter with respect to any experimental, pilot, demonstration, or other project all or any part of which is wholly financed with Federal funds made available under this chapter (without any

State, local, or other non-Federal financial participation) unless such project shall have been personally approved by the Secretary or Deputy Secretary of Health and Human Services.

(Aug. 14, 1935, ch. 531, title XI, § 1120, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 249, 81 Stat. 919; amended Jan. 2, 1975, Pub. L. 93–608, § 2(5), 88 Stat. 1971; Dec. 21, 1982, Pub. L. 97–375, title I, § 107(a), 96 Stat. 1820; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(D)(v), 98 Stat. 1170; Nov. 5, 1990, Pub. L. 101–509, title V, § 529 [title I, § 112(c)], 104 Stat. 1427, 1454.)

AMENDMENTS

1990—Pub. L. 101–509 substituted ''Deputy Secretary of Health and Human Services'' for ''Under Secretary of Health and Human Services''.

1984—Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1982—Pub. L. 97–375 struck out subsec. (b) which directed the Secretary to submit an annual report to Congress describing each project approved under former subsec. (a) of this section during the preceding year, including the purpose, probable cost, and expected duration of each project, and struck out ''(a)'' before ''No payment''.

1975—Subsec. (b). Pub. L. 93–608 substituted provisions relating to an annual submission of the required report to the Congress by the Secretary for each approved project, for provisions relating to submission of the report as soon as possible after approval.

EFFECTIVE DATE OF 1990 AMENDMENT; CONTINUED SERVICE BY INCUMBENTS

Amendment by Pub. L. 101–509 effective on the first day of the first pay period that begins on or after Nov. 5, 1990, with continued service by incumbent Under Secretary of Health and Human Services, see section 529 [title I, § 112(e)] of Pub. L. 101–509, set out as a note under section 3404 of Title 20, Education.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 1320a. Uniform reporting systems for health services facilities and organizations

(a) Establishment; criteria for regulations; requirements for hospitals

For the purposes of reporting the cost of services provided by, of planning, and of measuring and comparing the efficiency of and effective use of services in, hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, health maintenance organizations, and other types of health services facilities and organizations to which payment may be made under this chapter, the Secretary shall establish by regulation, for each such type of health services facility or organization, a uniform system for the reporting by a facility or organization of that type of the following information:

(1) The aggregate cost of operation and the aggregate volume of services.

(2) The costs and volume of services for various functional accounts and subaccounts.

(3) Rates, by category of patient and class of purchaser.

(4) Capital assets, as defined by the Secretary, including (as appropriate) capital funds, debt service, lease agreements used in lieu of capital funds, and the value of land, facilities, and equipment.

(5) Discharge and bill data.

The uniform reporting system for a type of health services facility or organization shall provide for appropriate variation in the application of the system to different classes of facilities or organizations within that type and shall be established, to the extent practicable, consistent with the cooperative system for producing comparable and uniform health information and statistics described in section 242k(e)(1) of this title. In reporting under such a system, hospitals shall employ such chart of accounts, definitions, principles, and statistics as the Secretary may prescribe in order to reach a uniform reconciliation of financial and statistical data for specified uniform reports to be provided to the Secretary.

(b) Monitoring, etc., of systems by Secretary

The Secretary shall—

(1) monitor the operation of the systems established under subsection (a) of this section;

(2) assist with and support demonstrations and evaluations of the effectiveness and cost of the operation of such systems and encourage State adoption of such systems; and

(3) periodically revise such systems to improve their effectiveness and diminish their cost.

(c) Availability of information to appropriate agencies and organizations

The Secretary shall provide information obtained through use of the uniform reporting systems described in subsection (a) of this section in a useful manner and format to appropriate agencies and organizations, including health systems agencies (designated under section 300*l*–4[1] of this title) and State health planning and development agencies (designated under section 300m[1] of this title), as may be necessary to carry out such agencies' and organizations' functions.

(Aug. 14, 1935, ch. 531, title XI, § 1121, as added Oct. 25, 1977, Pub. L. 95–142, § 19(a), 91 Stat. 1203.)

REFERENCES IN TEXT

Section 300*l*–4 of this title, referred to in subsec. (c), was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799.

Section 300m of this title, referred to in subsec. (c), was in the original a reference to section 1521 of act July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, § 701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 101–354, § 2, Aug. 10, 1990, 104 Stat. 410, enacted section 1503 of act July 1, 1944, which is classified to section 300m of this title.

PRIOR PROVISIONS

A prior section 1320a, act Aug. 14, 1935, ch. 531, title XI, § 1121, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 250(a), 81 Stat. 920, provided for assistance in the form of institutional services in intermediate care facilities, the subsecs. providing as follows: subsec. (a), modification of certain plans to include such benefit; subsec.

[1] See References in Text note below.

(b), eligible individuals; subsec. (c), payments and Federal medical assistance percentage; subsec. (d), conditions, limitations, rights, and obligations applicable to modified plans; and subsec. (e), definition of ''intermediate care facility'', which is covered in section 1396d(c) of this title, prior to repeal by Pub. L. 92–223, § 4(c), Dec. 28, 1971, 85 Stat. 810.

Section was additionally amended by Pub. L. 92–603, title II, § 278(a)(24), Oct. 30, 1972, 86 Stat. 1453, without reference to the earlier repeal of this section by Pub. L. 92–223.

TIME PERIODS FOR ESTABLISHMENT OF UNIFORM REPORTING SYSTEMS; CONSULTATIONS WITH INTERESTED PARTIES

Section 19(c)(1) of Pub. L. 95–142 directed Secretary of Health, Education, and Welfare to establish the systems described in subsec. (a) of this section only after consultation with interested parties and for hospitals, skilled nursing facilities, and intermediate care facilities, not later than the end of the one year period beginning on Oct. 25, 1977, and for other types of health services facilities and organizations, not later than the end of the two-year period beginning on Oct. 25, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395x, 1396a of this title.

§ 1320a–1. Limitation on use of Federal funds for capital expenditures

(a) Use of reimbursement for planning activities for health services and facilities

The purpose of this section is to assure that Federal funds appropriated under subchapters XVIII and XIX of this chapter are not used to support unnecessary capital expenditures made by or on behalf of health care facilities which are reimbursed under any of such subchapters and that, to the extent possible, reimbursement under such subchapters shall support planning activities with respect to health services and facilities in the various States.

(b) Agreement between Secretary and State for submission of proposed capital expenditures related to health care facilities and procedures for appeal from recommendations

The Secretary, after consultation with the Governor (or other chief executive officer) and with appropriate local public officials, shall make an agreement with any State which is able and willing to do so under which a designated planning agency (which shall be an agency described in clause (ii) of subsection (d)(1)(B) of this section that has a governing body or advisory board at least half of whose members represent consumer interests) will—

(1) make, and submit to the Secretary together with such supporting materials as he may find necessary, findings and recommendations with respect to capital expenditures proposed by or on behalf of any health care facility in such State within the field of its responsibilities,

(2) receive from other agencies described in clause (ii) of subsection (d)(1)(B) of this section, and submit to the Secretary together with such supporting material as he may find necessary, the findings and recommendations of such other agencies with respect to capital expenditures proposed by or on behalf of health care facilities in such State within the fields of their respective responsibilities, and

(3) establish and maintain procedures pursuant to which a person proposing any such capital expenditure may appeal a recommendation by the designated agency and will be granted an opportunity for a fair hearing by such agency or person other than the designated agency as the Governor (or other chief executive officer) may designate to hold such hearings,

whenever and to the extent that the findings of such designated agency or any such other agency indicate that any such expenditure is not consistent with the standards, criteria, or plans developed pursuant to the Public Health Service Act [42 U.S.C. 201 et seq.] to meet the need for adequate health care facilities in the area covered by the plan or plans so developed.

(c) Manner of payment to States for carrying out agreement

The Secretary shall pay any such State from the general fund in the Treasury, in advance or by way of reimbursement as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (b) of this section.

(d) Determination of amount of exclusions from Federal payments

(1) Except as provided in paragraph (2), if the Secretary determines that—

(A) neither the planning agency designated in the agreement described in subsection (b) of this section nor an agency described in clause (ii) of subparagraph (B) of this paragraph had been given notice of any proposed capital expenditure (in accordance with such procedure or in such detail as may be required by such agency) at least 60 days prior to obligation for such expenditure; or

(B)(i) the planning agency so designated or an agency so described had received such timely notice of the intention to make such capital expenditure and had, within a reasonable period after receiving such notice and prior to obligation for such expenditure, notified the person proposing such expenditure that the expenditure would not be in conformity with the standards, criteria, or plans developed by such agency or any other agency described in clause (ii) for adequate health care facilities in such State or in the area for which such other agency has responsibility, and

(ii) the planning agency so designated had, prior to submitting to the Secretary the findings referred to in subsection (b) of this section—

(I) consulted with, and taken into consideration the findings and recommendations of, the State planning agencies established pursuant to sections 314(a) and 604(a) of the Public Health Service Act [42 U.S.C. 246(a), 291d(a)] (to the extent that either such agency is not the agency so designated) as well as the public or nonprofit private agency or organization responsible for the comprehensive regional, metropolitan area, or other local area plan or plans referred to in section 314(b) of the Public Health Service Act

[42 U.S.C. 246(b)] and covering the area in which the health care facility proposing such capital expenditure is located (where such agency is not the agency designated in the agreement), or, if there is no such agency, such other public or nonprofit private agency or organization (if any) as performs, as determined in accordance with criteria included in regulations, similar functions, and

(II) granted to the person proposing such capital expenditure an opportunity for a fair hearing with respect to such findings;

then, for such period as he finds necessary in any case to effectuate the purpose of this section, he shall, in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter with respect to services furnished in the health care facility for which such capital expenditure is made, not include any amount which is attributable to depreciation, interest on borrowed funds, a return on equity capital (in the case of proprietary facilities), or other expenses related to such capital expenditure. With respect to any organization which is reimbursed on a per capita or a fixed fee or negotiated rate basis, in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter, the Secretary shall exclude an amount which in his judgment is a reasonable equivalent to the amount which would otherwise be excluded under this subsection if payment were to be made on other than a per capita or a fixed fee or negotiated rate basis.

(2) If the Secretary, after submitting the matters involved to the advisory council established or designated under subsection (i) of this section, determines that an exclusion of expenses related to any capital expenditure of any health care facility would discourage the operation or expansion of such facility which has demonstrated to his satisfaction proof of capability to provide comprehensive health care services (including institutional services) efficiently, effectively, and economically, or would otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of subchapter XVIII or XIX of this chapter, he shall not exclude such expenses pursuant to paragraph (1).

(e) Treatment of lease or comparable arrangement of any facility or equipment for a facility in determining amount of exclusions from Federal payments

Where a person obtains under lease or comparable arrangement any facility or part thereof, or equipment for a facility, which would have been subject to an exclusion under subsection (d) of this section if the person had acquired it by purchase, the Secretary shall (1) in computing such person's rental expense in determining the Federal payments to be made under subchapters XVIII and XIX of this chapter with respect to services furnished in such facility, deduct the amount which in his judgment is a reasonable equivalent of the amount that would have been excluded if the person had acquired such facility or such equipment by purchase, and (2) in computing such person's return on equity capital deduct any amount deposited under the terms of the lease or comparable arrangement.

(f) Reconsideration by Secretary of determinations

Any person dissatisfied with a determination by the Secretary under this section may within six months following notification of such determination request the Secretary to reconsider such determination. A determination by the Secretary under this section shall not be subject to administrative or judicial review.

(g) "Capital expenditure" defined

For the purposes of this section, a ''capital expenditure'' is an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which (1) exceeds $600,000 (or such lesser amount as the State may establish), (2) changes the bed capacity of the facility with respect to which such expenditure is made, or (3) substantially changes the services of the facility with respect to which such expenditure is made. For purposes of clause (1) of the preceding sentence, the cost of the studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment with respect to which such expenditure is made shall be included in determining whether such expenditure exceeds the dollar amount specified in clause (1).

(h) Applicability to Christian Science sanatoriums

The provisions of this section shall not apply to Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

(i) National advisory council; establishment or designation of existing council; functions; consultations with other appropriate national advisory councils; composition; compensation and travel expenses

(1) The Secretary shall establish a national advisory council, or designate an appropriate existing national advisory council, to advise and assist him in the preparation of general regulations to carry out the purposes of this section and on policy matters arising in the administration of this section, including the coordination of activities under this section with those under other parts of this chapter or under other Federal or federally assisted health programs.

(2) The Secretary shall make appropriate provision for consultation between and coordination of the work of the advisory council established or designated under paragraph (1) and the Federal Hospital Council, the National Advisory Health Council, the Health Insurance Benefits Advisory Council, and other appropriate national advisory councils with respect to matters bearing on the purposes and administration of this section and the coordination of activities under this section with related Federal health programs.

(3) If an advisory council is established by the Secretary under paragraph (1), it shall be composed of members who are not otherwise in the regular full-time employ of the United States,

and who shall be appointed by the Secretary without regard to the civil service laws from among leaders in the fields of the fundamental sciences, the medical sciences, and the organization, delivery, and financing of health care, and persons who are State or local officials or are active in community affairs or public or civic affairs or who are representative of minority groups. Members of such advisory council, while attending meetings of the council or otherwise serving on business of the council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the maximum rate specified at the time of such service for grade GS–18 in section 5332 of title 5, including traveltime, and while away from their homes or regular places of business they may also be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

(j) Capital expenditure review exception for eligible organization health care facilities

A capital expenditure made by or on behalf of a health care facility shall not be subject to review pursuant to this section if 75 percent of the patients who can reasonably be expected to use the service with respect to which the capital expenditure is made will be individuals enrolled in an eligible organization as defined in section 1395mm(b) of this title, and if the Secretary determines that such capital expenditure is for services and facilities which are needed by such organization in order to operate efficiently and economically and which are not otherwise readily accessible to such organization because—

(1) the facilities do not provide common services at the same site (as usually provided by the organization),

(2) the facilities are not available under a contract of reasonable duration,

(3) full and equal medical staff privileges in the facilities are not available,

(4) arrangements with such facilities are not administratively feasible, or

(5) the purchase of such services is more costly than if the organization provided the services directly.

(Aug. 14, 1935, ch. 531, title XI, §1122, as added Oct. 30, 1972, Pub. L. 92–603, title II, §221(a), 86 Stat. 1386; amended Dec. 31, 1973, Pub. L. 93–233, §18(z), (z–1), 87 Stat. 973; Nov. 1, 1978, Pub. L. 95–559, §14(b), 92 Stat. 2141; July 10, 1979, Pub. L. 96–32, §2(c), 93 Stat. 82; Aug. 13, 1981, Pub. L. 97–35, title XXI, §2193(c)(3), 95 Stat. 827; Sept. 3, 1982, Pub. L. 97–248, title I, §137(a)(5), 96 Stat. 376; Apr. 20, 1983, Pub. L. 98–21, title VI, §607(a), (b)(1), (c), 97 Stat. 171, 172; July 18, 1984, Pub. L. 98–369, div. B, title III, §2354(a)(1), (2), 98 Stat. 1100.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (b), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The civil service laws, referred to in subsec. (i)(3), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369, §2354(a)(1), substituted a comma for the period at end of par. (1), and struck out ''(or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963)'' before ''to meet the need'' in provisions following par. (3).

Subsec. (i)(3). Pub. L. 98–369, §2354(a)(2), substituted ''5703'' for ''5703(b)''.

1983—Subsec. (c). Pub. L. 98–21, §607(a), substituted ''the general fund in the Treasury'' for ''the Federal Hospital Insurance Trust Fund''.

Subsec. (g). Pub. L. 98–21, §607(b)(1), substituted ''$600,000 (or such lesser amount as the State may establish)'' for ''$100,000'' and Pub. L. 98–21, §607(b)(1)(B), substituted ''the dollar amount specified in clause (1)'' for ''$100,000'' the second time it appeared.

Subsec. (j). Pub. L. 98–21, §607(c), added subsec. (j).

1982—Subsec. (d)(2). Pub. L. 97–248 amended directory language of Pub. L. 97–35, §2193(c)(3)(B), to correct typographical error, and did not involve any change in text. See 1981 Amendment note below.

1981—Subsec. (a). Pub. L. 97–35, §2193(c)(3)(A), substituted ''subchapters XVIII and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter''.

Subsec. (d)(1). Pub. L. 97–35, §2193(c)(3)(A), substituted in provision following subpar. (B)(ii)(II) ''subchapters XVIII and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter'' in two places.

Subsec. (d)(2). Pub. L. 97–35, §2193(c)(3)(B), as amended by Pub. L. 97–248, §137(a)(5), substituted ''subchapter XVIII or XIX of this chapter'' for ''subchapter V, XVIII, or XIX of this chapter''.

Subsec. (e). Pub. L. 97–35, §2193(c)(3)(A), substituted ''subchapters XVIII and XIX of this chapter'' for ''subchapters V, XVIII, and XIX of this chapter''.

1979—Pub. L. 96–32 amended directory language of Pub. L. 95–559 and required no change in text of section. See 1978 Amendment notes below.

1978—Subsecs. (a), (b). Pub. L. 95–559, §14(b)(1), (2), as amended by Pub. L. 96–32, struck out references to health maintenance organizations wherever appearing.

Subsec. (d). Pub. L. 95–559, §14(b)(1), (3), as amended by Pub. L. 96–32, struck out references to health maintenance organizations wherever appearing and in par. (2) ''or organization, or of any facility of such organization,'' after ''expansion of such facility''.

1973—Subsec. (d)(1). Pub. L. 93–233, §18(z), inserted ''or a fixed fee or negotiated rate'' after ''per capita'' wherever appearing in last sentence.

Subsec. (d)(2). Pub. L. 93–233, §18(z–1), substituted ''exclude'' for ''include'' where last appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2354(e) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1316, 1320a–7a, 1320a–8, 1395f, 1395i, 1395i–2, 1395k, 1395*l*, 1395n, 1395p, 1395s to 1395z, 1395aa, 1395cc, 1395ff, 1395ii, 1395*ll*, 1395mm, 1395*oo*, 1395rr, and 1395ww of this title and section 162 of Title 26, Internal Revenue Code, and amending provisions set out as notes under sections 1320c, 1395x, and 1395mm of this title] shall be effective on the date of the enactment of this Act [July 18, 1984]; but none of such amendments shall be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date.

''(2) The amendments made by paragraphs (1) [amending section 1395f of this title and provisions set out as a note under section 1395x of this title], (2) [amending section 1316 of this title], and (3) [amending provisions set out as notes under sections 1320c and 1395mm of this title] of subsection (c) shall be effective as if they had been originally included in Public Laws 96–499, 97–35, and 97–248, respectively.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was

amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE

Section 221(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply only with respect to a capital expenditure the obligation for which is incurred by or on behalf of a health care facility or health maintenance organization subsequent to whichever of the following is earlier: (A) December 31, 1972, or (B) with respect to any State or any part thereof specified by such State, the last day of the calendar quarter in which the State requests that the amendment made by subsection (a) of this section [enacting this section] apply in such State or such part thereof.''

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

EXPENDITURES OR OBLIGATIONS OF HEALTH CARE FACILITIES PROVIDING HEALTH CARE SERVICES PRIOR TO DECEMBER 18, 1970; LIMITATIONS ON FEDERAL PARTICIPATION

Section 221(d) of Pub. L. 92–603 provided that: ''In the case of a health care facility providing health care services as of December 18, 1970, which on such date is committed to a formal plan of expansion or replacement, the amendments made by the preceding provisions of this section [enacting this section and amending sections 705, 706, 709, 1395x, 1396a, and 1396b of this title] shall not apply with respect to such expenditures as may be made or obligations incurred for capital items included in such plan where preliminary expenditures toward the plan of expansion or replacement (including payments for studies, surveys, designs, plans, working drawings, specifications, and site acquisition, essential to the acquisition, improvement, expansion, or replacement of the health care facility or equipment concerned) of $100,000 or more, had been made during the three-year period ended December 17, 1970.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395x, 1396b, 6371d of this title.

§ 1320a–1a. Reviews of child and family services programs, and of foster care and adoption assistance programs, for conformity with State plan requirements

(a) In general

The Secretary, in consultation with the State agencies administering the State programs under parts B and E of subchapter IV of this chapter, shall promulgate regulations for the review of such programs to determine whether such programs are in substantial conformity with—

(1) State plan requirements under such parts B and E,

(2) implementing regulations promulgated by the Secretary, and

(3) the relevant approved State plans.

(b) Elements of review system

The regulations referred to in subsection (a) of this section shall—

(1) specify the timetable for conformity reviews of State programs, including—

(A) an initial review of each State program;

(B) a timely review of a State program following a review in which such program was found not to be in substantial conformity; and

(C) less frequent reviews of State programs which have been found to be in substantial conformity, but such regulations shall permit the Secretary to reinstate more frequent reviews based on information which indicates that a State program may not be in conformity;

(2) specify the requirements subject to review, and the criteria to be used to measure conformity with such requirements and to determine whether there is a substantial failure to so conform;

(3) specify the method to be used to determine the amount of any Federal matching funds to be withheld (subject to paragraph (4)) due to the State program's failure to so conform, which ensures that—

(A) such funds will not be withheld with respect to a program, unless it is determined that the program fails substantially to so conform;

(B) such funds will not be withheld for a failure to so conform resulting from the State's reliance upon and correct use of formal written statements of Federal law or policy provided to the State by the Secretary; and

(C) the amount of such funds withheld is related to the extent of the failure to so conform; and

(4) require the Secretary, with respect to any State program found to have failed substantially to so conform—

(A) to afford the State an opportunity to adopt and implement a corrective action plan, approved by the Secretary, designed to end the failure to so conform;

(B) to make technical assistance available to the State to the extent feasible to enable the State to develop and implement such a corrective action plan;

(C) to suspend the withholding of any Federal matching funds under this section while such a corrective action plan is in effect; and

(D) to rescind any such withholding if the failure to so conform is ended by successful completion of such a corrective action plan.

(c) Provisions for administrative and judicial review

The regulations referred to in subsection (a) of this section shall—

(1) require the Secretary, not later than 10 days after a final determination that a program of the State is not in conformity, to notify the State of—

(A) the basis for the determination; and

(B) the amount of the Federal matching funds (if any) to be withheld from the State;

(2) afford the State an opportunity to appeal the determination to the Departmental Appeals Board within 60 days after receipt of the notice described in paragraph (1) (or, if later, after failure to continue or to complete a corrective action plan); and

(3) afford the State an opportunity to obtain judicial review of an adverse decision of the Board, within 60 days after the State receives notice of the decision of the Board, by appeal to the district court of the United States for the judicial district in which the principal or headquarters office of the agency responsible for administering the program is located.

(Aug. 14, 1935, ch. 531, title XI, §1123, as added Oct. 31, 1994, Pub. L. 103–432, title II, §203(a), 108 Stat. 4454.)

REFERENCES IN TEXT

Parts B and E of subchapter IV of this chapter, referred to in subsec. (a), are classified to sections 620 et seq. and 670 et seq., respectively, of this title.

CODIFICATION

Another section 1123 of act Aug. 14, 1935, is classified to section 1320a–2 of this title.

PRIOR PROVISIONS

A prior section 1123 of act Aug. 14, 1935, was classified to section 1320a–2 of this title prior to repeal by Pub. L. 100–360.

EFFECTIVE DATE

Section 203(c)(1) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect on the date of the enactment of this Act [Oct. 31, 1994].''

REGULATIONS

Section 203(c)(3) of Pub. L. 103–432 provided that: ''The Secretary shall promulgate the regulations referred to in section 1123(a) of the Social Security Act [subsec. (a) of this section] (as added by this section) not later than July 1, 1995, to take effect on April 1, 1996.''

§ 1320a–2. Effect of failure to carry out State plan

In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 671(a)(15) of this title is not enforceable in a private right of action.

(Aug. 14, 1935, ch. 531, title XI, §1123, as added Oct. 20, 1994, Pub. L. 103–382, title V, §555(a), 108 Stat. 4057.)

CODIFICATION

Another section 1123 of act Aug. 14, 1935, is classified to section 1320a–1a of this title.

PRIOR PROVISIONS

A prior section 1320a–2, act Aug. 14, 1935, ch. 531, title XI, §1123, as added Oct. 30, 1972, Pub. L. 92–603, title II, §241, 86 Stat. 1418; amended Dec. 5, 1980, Pub. L. 96–499, title IX, §911, 94 Stat. 2619; Sept. 3, 1982, Pub. L. 97–248, title I, §126, 96 Stat. 366; Apr. 7, 1986, Pub. L. 99–272, title IX, §9303(b)(4), 100 Stat. 189, related to qualifications for health care personnel, prior to repeal by Pub. L. 100–360, title IV, §430(a), as added Pub. L. 100–485, title VI, §608(b), (g)(1), Oct. 13, 1988, 102 Stat. 2412, 2424, effective as if included in the enactment of Pub. L. 100–360.

EFFECTIVE DATE

Section 555(b) of Pub. L. 103–382 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to actions pending on the date of the enactment of this Act [Oct. 20, 1994] and to actions brought on or after such date of enactment.''

§ 1320a–3. Disclosure of ownership and related information; procedure; definitions; scope of requirements

(a)(1) The Secretary shall by regulation or by contract provision provide that each disclosing entity (as defined in paragraph (2)) shall—

(A) as a condition of the disclosing entity's participation in, or certification or recertification under, any of the programs established by subchapters V, XVIII, and XIX of this chapter, or

(B) as a condition for the approval or renewal of a contract or agreement between the disclosing entity and the Secretary or the appropriate State agency under any of the programs established under subchapters V, XVIII, and XIX of this chapter,

supply the Secretary or the appropriate State agency with full and complete information as to the identity of each person with an ownership or control interest (as defined in paragraph (3)) in the entity or in any subcontractor (as defined by the Secretary in regulations) in which the entity directly or indirectly has a 5 per centum or more ownership interest.

(2) As used in this section, the term ''disclosing entity'' means an entity which is—

(A) a provider of services (as defined in section 1395x(u) of this title, other than a fund), an independent clinical laboratory, a renal disease facility, or a health maintenance organization (as defined in section 300e(a) of this title);

(B) an entity (other than an individual practitioner or group of practitioners) that fur-

nishes, or arranges for the furnishing of, items or services with respect to which payment may be claimed by the entity under any plan or program established pursuant to subchapter V of this chapter or under a State plan approved under subchapter XIX of this chapter; or

(C) a carrier or other agency or organization that is acting as a fiscal intermediary or agent with respect to one or more providers of services (for purposes of part A or part B of subchapter XVIII of this chapter, or both, or for purposes of a State plan approved under subchapter XIX of this chapter) pursuant to (i) an agreement under section 1395h of this title, (ii) a contract under section 1395u of this title, or (iii) an agreement with a single State agency administering or supervising the administration of a State plan approved under subchapter XIX of this chapter.

(3) As used in this section, the term ''person with an ownership or control interest'' means, with respect to an entity, a person who—

(A)(i) has directly or indirectly (as determined by the Secretary in regulations) an ownership interest of 5 per centum or more in the entity; or

(ii) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 per centum of the total property and assets of the entity; or

(B) is an officer or director of the entity, if the entity is organized as a corporation; or

(C) is a partner in the entity, if the entity is organized as a partnership.

(b) To the extent determined to be feasible under regulations of the Secretary, a disclosing entity shall also include in the information supplied under subsection (a)(1) of this section, with respect to each person with an ownership or control interest in the entity, the name of any other disclosing entity with respect to which the person is a person with an ownership or control interest.

(Aug. 14, 1935, ch. 531, title XI, §1124, as added Oct. 25, 1977, Pub. L. 95–142, §3(a)(1), 91 Stat. 1177; amended Dec. 5, 1980, Pub. L. 96–499, title IX, §912(a), 94 Stat. 2619; Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2353(i), 95 Stat. 872; Aug. 18, 1987, Pub. L. 100–93, §11, 101 Stat. 697.)

REFERENCES IN TEXT

Parts A and B of subchapter XVIII of this chapter, referred to in subsec. (a)(2)(C), are classified to sections 1395c et seq. and 1395j et seq. of this title.

AMENDMENTS

1987—Subsec. (a)(3)(A)(ii). Pub. L. 100–93 struck out ''$25,000 or'' after ''exceeds''.

1981—Subsec. (a)(1). Pub. L. 97–35, §2353(i)(1), substituted in subpars. (A) and (B) ''and XIX of this chapter'' for ''XIX, and XX of this chapter''.

Subsec. (a)(2)(D). Pub. L. 97–35, §2353(i)(2)(C), struck out subpar. (D) which included within term ''disclosing entity'' an entity, other than an individual practitioner or group of practitioners, that furnishes, or arranges for the furnishing of, health related services with respect to which payment may be claimed by the entity under a State plan or program approved under subchapter XX of this chapter.

1980—Subsec. (a)(3)(A)(ii). Pub. L. 96–499 substituted ''of a whole or part interest'' for ''(in whole or in part) of an interest of 5 per centum or more'' and inserted '', which whole or part interest is equal to or exceeds $25,000 or 5 per centum of the total property and assets of the entity''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE

Section 3(e) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a)(1) [enacting this section] shall apply with respect to certifications and recertifications made (and participation in the programs established by titles V, XVIII, XIX, and XX of the Social Security Act [subchapters V, XVIII, XIX, and XX of this chapter] pursuant to certifications and recertifications made), and fiscal intermediary or agent agreements or contracts entered into or renewed, on and after the date of the enactment of this Act [Oct. 25, 1977]. The remaining amendments made by this section [amending sections 1395x and 1395cc of this title] shall take effect on the date of the enactment of this Act [Oct. 25, 1977]; except that the amendments made by subsections (c) and (d) [amending sections 1396a, 1396b, 1397a, and 1397b of this title] shall become effective January 1, 1978.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e–17, 1320a–3a, 1320a–7, 1395i–3, 1395bbb, 1396a, 1396b, 1396r, 1396t of this title.

§ 1320a–3a. Disclosure requirements for other providers under part B of Medicare

(a) Disclosure required to receive payment

No payment may be made under part B of subchapter XVIII of this chapter for items or services furnished by any disclosing part B provider unless such provider has provided the Secretary with full and complete information—

(1) on the identity of each person with an ownership or control interest in the provider or in any subcontractor (as defined by the Secretary in regulations) in which the provider directly or indirectly has a 5 percent or more ownership interest; and

(2) with respect to any person identified under paragraph (1) or any managing employee of the provider—

(A) on the identity of any other entities providing items or services for which payment may be made under subchapter XVIII of this chapter with respect to which such person or managing employee is a person with an ownership or control interest at the time such information is supplied or at any time during the 3-year period ending on the date such information is supplied, and

(B) as to whether any penalties, assessments, or exclusions have been assessed

against such person or managing employee under section 1320a–7, 1320a–7a, or 1320a–7b of this title.

(b) Updates to information supplied

A disclosing part B provider shall notify the Secretary of any changes or updates to the information supplied under subsection (a) of this section not later than 180 days after such changes or updates take effect.

(c) Definitions

For purposes of this section—

(1) the term ''disclosing part B provider'' means any entity receiving payment on an assignment-related basis for furnishing items or services for which payment may be made under part B of subchapter XVIII of this chapter, except that such term does not include an entity described in section 1320a–3(a)(2) of this title;

(2) the term ''managing employee'' means, with respect to a provider, a person described in section 1320a–5(b) of this title; and

(3) the term ''person with an ownership or control interest'' means, with respect to a provider—

(A) a person described in section 1320a–3(a)(3) of this title, or

(B) a person who has one of the 5 largest direct or indirect ownership or control interests in the provider.

(Aug. 14, 1935, ch. 531, title XI, § 1124A, as added Nov. 5, 1990, Pub. L. 101–508, title IV, § 4164(b)(1), 104 Stat. 1388–101; amended Oct. 31, 1994, Pub. L. 103–432, title I, § 147(f)(7)(A)(i), 108 Stat. 4432.)

REFERENCES IN TEXT

Part B of subchapter XVIII of this chapter, referred to in subsecs. (a) and (c)(1), is classified to section 1395j et seq. of this title.

AMENDMENTS

1994—Subsec. (a)(2)(A). Pub. L. 103–432 made technical amendment to reference to subchapter XVIII of this chapter to correct reference to corresponding provision of original act.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 147(g) of Pub. L. 103–432 provided that: ''Except as otherwise provided in this section [amending this section and sections 1320b–5, 1395*l*, 1395p, 1395q, 1395x, 1395y, and 1395cc of this title, enacting provisions set out as notes under sections 1395*l*, 1395p, and 1395y of this title, amending provisions set out as notes under this section and sections 254b, 1395*l*, and 1395u of this title, and repealing provisions set out as a note under section 1395*l* of this title], the amendments made by this section shall take effect as if included in the enactment of OBRA–1990 [Pub L. 101–508].''

EFFECTIVE DATE

Section 4164(b)(4) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 147(f)(7)(A)(ii), Oct. 31, 1994, 108 Stat. 4432, provided that: ''The amendments made by paragraphs (1), (2), and (3) [enacting this section and amending sections 1320a–7 and 1320a–7b of this title] shall apply with respect to items or services furnished on or after—

''(A) January 1, 1993, in the case of items or services furnished by a provider who, on or before the date of the enactment of this Act [Nov. 5, 1990], has furnished items or services for which payment may be made under part B of title XVIII of the Social Security Act [part B of subchapter XVIII of this chapter]; or

''(B) January 1, 1992, in the case of items or services furnished by any other provider.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a–7, 1320a–7b of this title.

§ 1320a–4. Issuance of subpenas by Comptroller General

(a) Authorization; scope; service and proof of service

For the purpose of any audit, investigation, examination, analysis, review, evaluation, or other function authorized by law with respect to any program authorized under this chapter, the Comptroller General of the United States shall have power to sign and issue subpenas to any person requiring the production of any pertinent books, records, documents, or other information. Subpenas so issued by the Comptroller General shall be served by anyone authorized by him (1) by delivering a copy thereof to the person named therein, or (2) by registered mail or by certified mail addressed to such person at his last dwelling place or principal place of business. A verified return by the person so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post office receipt therefor signed by the person so served, shall be proof of service.

(b) Contumacy or refusal to obey subpena; contempt proceedings

In case of contumacy by, or refusal to obey a subpena issued pursuant to subsection (a) of this section and duly served upon, any person, any district court of the United States for the judicial district in which such person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Comptroller General, shall have jurisdiction to issue an order requiring such person to produce the books, records, documents, or other information sought by the subpena; and any failure to obey such order of the court may be punished by the court as a contempt thereof. In proceedings brought under this subsection, the Comptroller General shall be represented by attorneys employed in the General Accounting Office or by counsel whom he may employ without regard to the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapters III and VI of chapter 53 of such title, relating to classification and General Schedule pay rates.

(c) Nondisclosure of personal medical records by General Accounting Office

No personal medical record in the possession of the General Accounting Office shall be subject to subpena or discovery proceedings in a civil action.

(Aug. 14, 1935, ch. 531, title XI, § 1125, as added Oct. 25, 1977, Pub. L. 95–142, § 6, 91 Stat. 1192.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

§ 1320a–5. Disclosure by institutions, organizations, and agencies of owners, officers, etc., convicted of offenses related to programs; notification requirements; "managing employee" defined

(a) As a condition of participation in or certification or recertification under the programs established by subchapters XVIII,[1] and XIX of this chapter, any hospital, nursing facility, or other entity (other than an individual practitioner or group of practitioners) shall be required to disclose to the Secretary or to the appropriate State agency the name of any person that is a person described in subparagraphs (A) and (B) of section 1320a–7(b)(8) of this title. The Secretary or the appropriate State agency shall promptly notify the Inspector General in the Department of Health and Human Services of the receipt from any entity of any application or request for such participation, certification, or recertification which discloses the name of any such person, and shall notify the Inspector General of the action taken with respect to such application or request.

(b) For the purposes of this section, the term ''managing employee'' means, with respect to an entity, an individual, including a general manager, business manager, administrator, and director, who exercises operational or managerial control over the entity, or who directly or indirectly conducts the day-to-day operations of the entity.

(Aug. 14, 1935, ch. 531, title XI, § 1126, as added Oct. 25, 1977, Pub. L. 95–142, § 8(a), 91 Stat. 1194; amended Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2353(j), 95 Stat. 873; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(D)(vi), 98 Stat. 1170; Aug. 18, 1987, Pub. L. 100–93, § 8(b), 101 Stat. 692.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–93, § 8(b)(1), in first sentence substituted ''or other entity (other than an individual practitioner or group of practitioners) shall be required to disclose to the Secretary or to the appropriate State agency the name of any person that is a person described in subparagraphs (A) and (B) of section 1320a–7(b)(8) of this title.'' for ''or other institution, organization, or agency shall be required to disclose to the Secretary or to the appropriate State agency the name of any person who—

''(1) has a direct or indirect ownership or control interest of 5 percent or more in such institution, organization, or agency or is an officer, director, agent, or managing employee (as defined in subsection (b) of this section) of such institution, organization, or agency, and

''(2) has been convicted (on or after October 25, 1977, or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to the involvement of such person in any of such programs.'',

and in second sentence substituted ''entity'' for ''institution, organization, or agency''.

Subsec. (b). Pub. L. 100–93, § 8(b)(2), substituted ''entity'' for ''institution, organization, or agency'' in three places.

1984—Subsec. (a). Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' in provisions following par. (2).

1981—Subsec. (a). Pub. L. 97–35 substituted in provision preceding par. (1) ''and XIX of this chapter'' for ''XIX, and XX of this chapter''.

[1] So in original. The comma probably should not appear.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE

Section 8(e) of Pub. L. 95–142 provided that: ''The amendments made by this section [enacting this section and amending sections 1395cc, 1396b, and 1397a of this title] shall apply with respect to contracts, agreements, and arrangements entered into and approvals given pursuant to applications or requests made on and after the first day of the fourth month beginning after the date of the enactment of this Act [Oct. 25, 1977].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a–3a, 1320a–7, 1395i–3, 1395bbb, 1396r, 1396t, 6024 of this title.

§ 1320a–6. Adjustments in SSI benefits on account of retroactive benefits under subchapter II

(a) Reduction in benefits

Notwithstanding any other provision of this chapter, in any case where an individual—

(1) is entitled to benefits under subchapter II of this chapter that were not paid in the months in which they were regularly due; and

(2) is an individual or eligible spouse eligible for supplemental security income benefits for one or more months in which the benefits referred to in clause (1) were regularly due,

then any benefits under subchapter II of this chapter that were regularly due in such month or months, or supplemental security income benefits for such month or months, which are due but have not been paid to such individual or eligible spouse shall be reduced by an amount equal to so much of the supplemental security income benefits, whether or not paid retroactively, as would not have been paid or would not be paid with respect to such individual or spouse if he had received such benefits under subchapter II of this chapter in the month or months in which they were regularly due. A benefit under subchapter II of this chapter shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the maximum fee which may be recovered from such benefit by an attorney pursuant to subsection (a)(4) or (b) of section 406 of this title.

(b) "Supplemental security income benefits" defined

For purposes of this section, the term ''supplemental security income benefits'' means benefits paid or payable by the Commissioner of So-

cial Security under subchapter XVI of this chapter, including State supplementary payments under an agreement pursuant to section 1382e(a) of this title or an administration agreement under section 212(b) of Public Law 93–66.

(c) Reimbursement of the State

From the amount of the reduction made under subsection (a) of this section, the Commissioner of Social Security shall reimburse the State on behalf of which supplementary payments were made for the amount (if any) by which such State's expenditures on account of such supplementary payments for the month or months involved exceeded the expenditures which the State would have made (for such month or months) if the individual had received the benefits under subchapter II of this chapter at the times they were regularly due. An amount equal to the portion of such reduction remaining after reimbursement of the State under the preceding sentence shall be covered into the general fund of the Treasury.

(Aug. 14, 1935, ch. 531, title XI, §1127, as added June 9, 1980, Pub. L. 96–265, title V, §501(a), 94 Stat. 469; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, §2615(a), 98 Stat. 1132; Nov. 5, 1990, Pub. L. 101–508, title V, §5106(b), 104 Stat. 1388–268; Aug. 15, 1994, Pub. L. 103–296, title I, §108(b)(8), title III, §321(f)(3)(B)(ii), 108 Stat. 1483, 1542.)

REFERENCES IN TEXT

Section 212(b) of Pub. L. 93–66, referred to in subsec. (b), is set out as a note under section 1382 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, §321(f)(3)(B)(ii), in last sentence substituted ''subsection (a)(4) or (b) of section 406 of this title'' for ''section 406(a)(4) of this title''.

Subsecs. (b), (c). Pub. L. 103–296, §108(b)(8), substituted ''Commissioner of Social Security'' for ''Secretary''.

1990—Subsec. (a). Pub. L. 101–508 inserted at end ''A benefit under subchapter II of this chapter shall not be reduced pursuant to the preceding sentence to the extent that any amount of such benefit would not otherwise be available for payment in full of the maximum fee which may be recovered from such benefit by an attorney pursuant to section 406(a)(4) of this title.''

1984—Pub. L. 98–369 substituted provisions relating to adjustment in supplemental security income benefits on account of retroactive benefits under subchapter II of this chapter for provisions which related to adjustment of retroactive benefits under subchapter II of this chapter on account of supplemental security income benefits.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(8) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 321(f)(3)(B)(ii) of Pub. L. 103–296 effective as if included in the provisions of the Omnibus Reconciliation Act of 1990, Pub. L. 101–508, to which such amendment relates, except that such amendment applicable with respect to favorable judgments made after 180 days after Aug. 15, 1994, see section 321(f)(5) of Pub. L. 103–296, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d), of Pub. L. 101–508, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2615(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section] shall apply for purposes of reducing retroactive benefits under title II of the Social Security Act [subchapter II of this chapter] or retroactive supplemental security income benefits payable beginning with the seventh month following the month in which this Act is enacted [July 1984]; except that in the case of retroactive title II benefits other than those which result from a determination of entitlement following an application for benefits under title II or from a reinstatement of benefits under title II following a period of suspension or termination of such benefits, it shall apply when the Secretary of Health and Human Services determines that it is administratively feasible.''

EFFECTIVE DATE

Section 501(d) of Pub. L. 96–265 provided that: ''The amendments made by this section [enacting this section and amending sections 404 and 1383 of this title] shall be applicable in the case of payments of monthly insurance benefits under title II of the Social Security Act [subchapter II of this chapter] entitlement for which is determined on or after the first day of the thirteenth month which begins after the date of the enactment of this Act [June 9, 1980].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 404, 406, 1383 of this title.

§1320a–7. Exclusion of certain individuals and entities from participation in Medicare and State health care programs

(a) Mandatory exclusion

The Secretary shall exclude the following individuals and entities from participation in any program under subchapter XVIII of this chapter and shall direct that the following individuals and entities be excluded from participation in any State health care program (as defined in subsection (h) of this section):

(1) Conviction of program-related crimes

Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under subchapter XVIII of this chapter or under any State health care program.

(2) Conviction relating to patient abuse

Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

(b) Permissive exclusion

The Secretary may exclude the following individuals and entities from participation in any program under subchapter XVIII of this chapter and may direct that the following individuals and entities be excluded from participation in any State health care program:

(1) Conviction relating to fraud

Any individual or entity that has been convicted, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission

in a program operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

(2) Conviction relating to obstruction of an investigation

Any individual or entity that has been convicted, under Federal or State law, in connection with the interference with or obstruction of any investigation into any criminal offense described in paragraph (1) or in subsection (a) of this section.

(3) Conviction relating to controlled substance

Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(4) License revocation or suspension

Any individual or entity—

(A) whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such a license or the right to apply for or renew such a license, for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity, or

(B) who surrendered such a license while a formal disciplinary proceeding was pending before such an authority and the proceeding concerned the individual's or entity's professional competence, professional performance, or financial integrity.

(5) Exclusion or suspension under Federal or State health care program

Any individual or entity which has been suspended or excluded from participation, or otherwise sanctioned, under—

(A) any Federal program, including programs of the Department of Defense or the Department of Veterans Affairs, involving the provision of health care, or

(B) a State health care program,

for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity.

(6) Claims for excessive charges or unnecessary services and failure of certain organizations to furnish medically necessary services

Any individual or entity that the Secretary determines—

(A) has submitted or caused to be submitted bills or requests for payment (where such bills or requests are based on charges or cost) under subchapter XVIII of this chapter or a State health care program containing charges (or, in applicable cases, requests for payment of costs) for items or services furnished substantially in excess of such individual's or entity's usual charges (or, in applicable cases, substantially in excess of such individual's or entity's costs) for such items or services, unless the Secretary finds there is good cause for such bills or requests containing such charges or costs;

(B) has furnished or caused to be furnished items or services to patients (whether or not eligible for benefits under subchapter XVIII of this chapter or under a State health care program) substantially in excess of the needs of such patients or of a quality which fails to meet professionally recognized standards of health care;

(C) is—

(i) a health maintenance organization (as defined in section 1396b(m) of this title) providing items and services under a State plan approved under subchapter XIX of this chapter, or

(ii) an entity furnishing services under a waiver approved under section 1396n(b)(1) of this title,

and has failed substantially to provide medically necessary items and services that are required (under law or the contract with the State under subchapter XIX of this chapter) to be provided to individuals covered under that plan or waiver, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals; or

(D) is an entity providing items and services as an eligible organization under a risk-sharing contract under section 1395mm of this title and has failed substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under the risk-sharing contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals.

(7) Fraud, kickbacks, and other prohibited activities

Any individual or entity that the Secretary determines has committed an act which is described in section 1320a–7a, 1320a–7b, or 1320a–8 of this title.

(8) Entities controlled by a sanctioned individual

Any entity with respect to which the Secretary determines that a person—

(A)(i) who has a direct or indirect ownership or control interest of 5 percent or more in the entity or with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in that entity, or

(ii) who is an officer, director, agent, or managing employee (as defined in section 1320a–5(b) of this title) of that entity—

is a person—

(B)(i) who has been convicted of any offense described in subsection (a) of this section or in paragraph (1), (2), or (3) of this subsection;

(ii) against whom a civil monetary penalty has been assessed under section 1320a–7a or 1320a–8 of this title; or

(iii) who has been excluded from participation under a program under subchapter XVIII of this chapter or under a State health care program.

(9) Failure to disclose required information

Any entity that did not fully and accurately make any disclosure required by section 1320a–3 of this title, section 1320a–3a of this title, or section 1320a–5 of this title.

(10) Failure to supply requested information on subcontractors and suppliers

Any disclosing entity (as defined in section 1320a–3(a)(2) of this title) that fails to supply (within such period as may be specified by the Secretary in regulations) upon request specifically addressed to the entity by the Secretary or by the State agency administering or supervising the administration of a State health care program—

(A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom the entity has had, during the previous 12 months, business transactions in an aggregate amount in excess of $25,000, or

(B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between the entity and any wholly owned supplier or between the entity and any subcontractor.

(11) Failure to supply payment information

Any individual or entity furnishing items or services for which payment may be made under subchapter XVIII of this chapter or a State health care program that fails to provide such information as the Secretary or the appropriate State agency finds necessary to determine whether such payments are or were due and the amounts thereof, or has refused to permit such examination of its records by or on behalf of the Secretary or that agency as may be necessary to verify such information.

(12) Failure to grant immediate access

Any individual or entity that fails to grant immediate access, upon reasonable request (as defined by the Secretary in regulations) to any of the following:

(A) To the Secretary, or to the agency used by the Secretary, for the purpose specified in the first sentence of section 1395aa(a) of this title (relating to compliance with conditions of participation or payment).

(B) To the Secretary or the State agency, to perform the reviews and surveys required under State plans under paragraphs (26), (31), and (33) of section 1396a(a) of this title and under section 1396b(g) of this title.

(C) To the Inspector General of the Department of Health and Human Services, for the purpose of reviewing records, documents, and other data necessary to the performance of the statutory functions of the Inspector General.

(D) To a State medicaid fraud control unit (as defined in section 1396b(q) of this title), for the purpose of conducting activities described in that section.

(13) Failure to take corrective action

Any hospital that fails to comply substantially with a corrective action required under section 1395ww(f)(2)(B) of this title.

(14) Default on health education loan or scholarship obligations

Any individual who the Secretary determines is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans, except that (A) the Secretary shall not exclude pursuant to this paragraph a physician who is the sole community physician or sole source of essential specialized services in a community if a State requests that the physician not be excluded, and (B) the Secretary shall take into account, in determining whether to exclude any other physician pursuant to this paragraph, access of beneficiaries to physician services for which payment may be made under subchapter XVIII or XIX of this chapter.

(c) Notice, effective date, and period of exclusion

(1) An exclusion under this section or under section 1320a–7a of this title shall be effective at such time and upon such reasonable notice to the public and to the individual or entity excluded as may be specified in regulations consistent with paragraph (2).

(2)(A) Except as provided in subparagraph (B), such an exclusion shall be effective with respect to services furnished to an individual on or after the effective date of the exclusion.

(B) Unless the Secretary determines that the health and safety of individuals receiving services warrants the exclusion taking effect earlier, an exclusion shall not apply to payments made under subchapter XVIII of this chapter or under a State health care program for—

(i) inpatient institutional services furnished to an individual who was admitted to such institution before the date of the exclusion, or

(ii) home health services and hospice care furnished to an individual under a plan of care established before the date of the exclusion,

until the passage of 30 days after the effective date of the exclusion.

(3)(A) The Secretary shall specify, in the notice of exclusion under paragraph (1) and the written notice under section 1320a–7a of this title, the minimum period (or, in the case of an exclusion of an individual under subsection (b)(12) of this section, the period) of the exclusion.

(B) In the case of an exclusion under subsection (a) of this section, the minimum period of exclusion shall be not less than five years, except that, upon the request of a State, the Secretary may waive the exclusion under subsection (a)(1) of this section in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community. The Secretary's decision whether to waive the exclusion shall not be reviewable.

(C) In the case of an exclusion of an individual under subsection (b)(12) of this section, the period of the exclusion shall be equal to the sum of—

(i) the length of the period in which the individual failed to grant the immediate access described in that subsection, and

(ii) an additional period, not to exceed 90 days, set by the Secretary.

(d) Notice to State agencies and exclusion under State health care programs

(1) Subject to paragraph (3), the Secretary shall exercise the authority under this section and section 1320a–7a of this title in a manner that results in an individual's or entity's exclusion from all the programs under subchapter XVIII of this chapter and all the State health care programs in which the individual or entity may otherwise participate.

(2) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) of this section and to which section 824(a)(5) of title 21 may apply, the Attorney General)—

(A) of the fact and circumstances of each exclusion effected against an individual or entity under this section or section 1320a–7a of this title, and

(B) of the period (described in paragraph (3)) for which the State agency is directed to exclude the individual or entity from participation in the State health care program.

(3)(A) Except as provided in subparagraph (B), the period of the exclusion under a State health care program under paragraph (2) shall be the same as any period of exclusion under subchapter XVIII of this chapter.

(B)(i) The Secretary may waive an individual's or entity's exclusion under a State health care program under paragraph (2) if the Secretary receives and approves a request for the waiver with respect to the individual or entity from the State agency administering or supervising the administration of the program.

(ii) A State health care program may provide for a period of exclusion which is longer than the period of exclusion under subchapter XVIII of this chapter.

(e) Notice to State licensing agencies

The Secretary shall—

(1) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual or entity excluded (or directed to be excluded) from participation under this section or section 1320a–7a of this title, of the fact and circumstances of the exclusion,

(2) request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and

(3) request that the State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to the request.

(f) Notice, hearing, and judicial review

(1) Subject to paragraph (2), any individual or entity that is excluded (or directed to be excluded) from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(2) Unless the Secretary determines that the health or safety of individuals receiving services warrants the exclusion taking effect earlier, any individual or entity that is the subject of an adverse determination under subsection (b)(7) of this section shall be entitled to a hearing by an administrative law judge (as provided under section 405(b) of this title) on the determination under subsection (b)(7) of this section before any exclusion based upon the determination takes effect.

(3) The provisions of section 405(h) of this title shall apply with respect to this section and sections 1320a–7a, 1320a–8, and 1320c–5 of this title to the same extent as it is applicable with respect to subchapter II of this chapter, except that, in so applying such section and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security shall be considered a reference to the Secretary.

(g) Application for termination of exclusion

(1) An individual or entity excluded (or directed to be excluded) from participation under this section or section 1320a–7a of this title may apply to the Secretary, in the manner specified by the Secretary in regulations and at the end of the minimum period of exclusion provided under subsection (c)(3) of this section and at such other times as the Secretary may provide, for termination of the exclusion effected under this section or section 1320a–7a of this title.

(2) The Secretary may terminate the exclusion if the Secretary determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or which was unknown to the Secretary at the time of the exclusion, that—

(A) there is no basis under subsection (a) or (b) of this section or section 1320a–7a(a) of this title for a continuation of the exclusion, and

(B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur.

(3) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) of this section and to which section 824(a)(5) of title 21 may apply, the Attorney General) of the fact and circumstances of each termination of exclusion made under this subsection.

(h) "State health care program" defined

For purposes of this section and sections 1320a–7a and 1320a–7b of this title, the term ''State health care program'' means—

(1) a State plan approved under subchapter XIX of this chapter,

(2) any program receiving funds under subchapter V of this chapter or from an allotment to a State under such subchapter, or

(3) any program receiving funds under subchapter XX of this chapter or from an allotment to a State under such subchapter.

(i) "Convicted" defined

For purposes of subsections (a) and (b) of this section, an individual or entity is considered to have been ''convicted'' of a criminal offense—

(1) when a judgment of conviction has been entered against the individual or entity by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

(2) when there has been a finding of guilt against the individual or entity by a Federal, State, or local court;

(3) when a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court; or

(4) when the individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

(Aug. 14, 1935, ch. 531, title XI, §1128, as added Dec. 5, 1980, Pub. L. 96–499, title IX, §913(a), 94 Stat. 2619; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, §2105(b), title XXIII, §2353(k), 95 Stat. 791, 873; July 18, 1984, Pub. L. 98–369, div. B, title III, §2333(a), (b), 98 Stat. 1089; Oct. 21, 1986, Pub. L. 99–509, title IX, §9317(c), 100 Stat. 2008; Aug. 18, 1987, Pub. L. 100–93, §2, 101 Stat. 680; Dec. 22, 1987, Pub. L. 100–203, title IV, §4118(e)(2)–(5), 101 Stat. 1330–155, as amended July 1, 1988, Pub. L. 100–360, title IV, §411(k)(10)(D), 102 Stat. 795; July 1, 1988, Pub. L. 100–360, title IV, §411(k)(10)(C), 102 Stat. 795; Dec. 19, 1989, Pub. L. 101–239, title VI, §6411(d)(1), 103 Stat. 2270; Nov. 5, 1990, Pub. L. 101–508, title IV, §4164(b)(3), 104 Stat. 1388–102; June 13, 1991, Pub. L. 102–54, §13(q)(3)(A)(ii), 105 Stat. 279; Aug. 15, 1994, Pub. L. 103–296, title I, §108(b)(9), title II, §206(b)(2), 108 Stat. 1483, 1513.)

AMENDMENTS

1994—Subsec. (b)(7). Pub. L. 103–296, §206(b)(2)(A), substituted ''section 1320a–7a, 1320a–7b, or 1230a–8 of this title'' for ''section 1320a–7a of this title or section 1320a–7b of this title''.

Subsec. (b)(8)(B)(ii). Pub. L. 103–296, §206(b)(2)(B), inserted ''or 1320a–8'' after ''section 1320a–7a''.

Subsec. (f)(1). Pub. L. 103–296, §108(b)(9)(A), inserted before period at end '', except that, in so applying such sections and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

Subsec. (f)(3). Pub. L. 103–296, §206(b)(2)(C), inserted '', 1320a–8,'' after ''sections 1320a–7a''.

Pub. L. 103–296, §108(b)(9)(B), inserted before period at end '', except that, in so applying such section and section 405(*l*) of this title, any reference therein to the Commissioner of Social Security shall be considered a reference to the Secretary''.

1991—Subsec. (b)(5)(A). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1990—Subsec. (b)(9). Pub. L. 101–508 substituted ''section 1320a–3 of this title, section 1320a–3a of this title,'' for ''section 1320a–3 of this title''.

1989—Subsec. (b)(4)(A). Pub. L. 101–239 inserted ''or the right to apply for or renew such a license'' after ''lost such a license''.

1988—Pub. L. 100–360, §411(k)(10)(D), added Pub. L. 100–203, §4118(e)(3)–(5), which amended subsec. (b)(8)(A)(i), (d)(1), (3)(A), and (i). See 1987 Amendment notes below.

Subsec. (d)(3)(B)(ii). Pub. L. 100–360, §411(k)(10)(C), struck out ''under a program'' after ''longer than the period of exclusion''.

1987—Pub. L. 100–93 amended section generally, substituting subsecs. (a) to (i) for former subsecs. (a) to (f).

Subsec. (b)(8)(A)(i). Pub. L. 100–203, §4118(e)(3), as added by Pub. L. 100–360, §411(k)(10)(D), inserted at beginning ''who has a direct or indirect ownership or control interest of 5 percent or more in the entity or''.

Subsec. (d)(1). Pub. L. 100–203, §4118(e)(4)(A), as added by Pub. L. 100–360, §411(k)(10)(D), substituted ''this section and section 1320a–7a of this title'' for ''subsection (b) of this section''.

Subsec. (d)(3)(A). Pub. L. 100–203, §4118(e)(4)(B), as added by Pub. L. 100–360, §411(k)(10)(D), struck out ''under a program'' after ''any period of exclusion''.

Subsec. (d)(3)(B). Pub. L. 100–203, §4118(e)(2), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (i). Pub. L. 100–203, §4118(e)(5)(A), as added by Pub. L. 100–360, §411(k)(10)(D), substituted ''an individual or entity'' for ''a physician or other individual'' in introductory provisions.

Pub. L. 100–203, §4118(e)(5)(B), as added by Pub. L. 100–360, §411(k)(10)(D), which directed amendment of pars. (1) to (4) by substituting ''individual or entity'' for ''physician or other individual'' each place it appears, was executed by substituting ''individual or entity'' for ''physician or individual'' in pars. (1) to (4) as the probable intent of Congress.

Subsec. (i)(4). Pub. L. 100–203, §4118(e)(5)(C), as added by Pub. L. 100–360, §411(k)(10)(D), substituted ''first offender, deferred adjudication, or other arrangement or program'' for ''first offender or other program''.

1986—Subsec. (f). Pub. L. 99–509 added subsec. (f).

1984—Subsecs. (b) to (e). Pub. L. 98–369 added subsec. (b), redesignated former subsecs. (b) to (d) as (c) to (e), respectively, and in subsec. (e) substituted ''Any person or entity'' for ''Any person'' and ''(a), (b), or (c)'' for ''(a) or (b)''.

1981—Subsec. (a)(1). Pub. L. 97–35, §2105(b)(1), struck out '', for such period as he may deem appropriate,'' after ''subchapter XVIII of this chapter''.

Subsec. (a)(2). Pub. L. 97–35, §2353(k), substituted in subpar. (A) ''subchapter XIX of this chapter'' for ''subchapter XIX or subchapter XX of this chapter,'' and in subpar. (B) ''subchapter XIX of this chapter'' for ''subchapter XIX or subchapter XX of this chapter''.

Subsecs. (b) to (d). Pub. L. 97–35, §2105(b)(2)–(4), added subsec. (b), redesignated former subsecs. (b) and (c) as (c) and (d), respectively, and in subsec. (d) as so redesignated substituted ''subsection (a) or (b)'' for ''subsection (a)''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(9) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 206(b)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [enacting section 1320a–8 of this title and amending this section] shall apply to conduct occurring on or after October 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to items or services furnished on or after Jan. 1, 1993, in the case of items or services furnished by a provider who, on or before Nov. 5, 1990, has furnished items or services for which payment may be made under part B of subchapter XVIII of this chapter, or Jan. 1, 1992, in the case of items or services furnished by any other provider, see section 4164(b)(4) of Pub. L. 101–508, set out

as an Effective Date note under section 1320a–3a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6411(d)(4)[(A)] of Pub. L. 101–239 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and sections 1395y and 1396b of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360 set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 15 of Pub. L. 100–93 provided that:

''(a) IN GENERAL.—Except as provided in subsections (b), (c), (d), and (e), the amendments made by this Act [enacting sections 1395aaa and 1396r–2 of this title, amending this section, sections 704, 1320a–3, 1320a–5, 1320a–7a, 1320a–7b, 1320c–5, 1395u, 1395y, 1395cc, 1395ff, 1395nn, 1395rr, 1395ss, 1395ww, 1396a, 1396b, 1396h, 1396n, 1396s, and 1397d of this title, and section 824 of Title 21, Food and Drugs, transferring section 1396h of this title to section 1320a–7b of this title, repealing section 1395nn of this title, enacting provisions set out as a note under section 1320a–7b of this title, and amending provisions set out as a note under section 1396a of this title] shall become effective at the end of the fourteen-day period beginning on the date of the enactment of this Act [Aug. 18, 1987] and shall not apply to administrative proceedings commenced before the end of such period.

''(b) MANDATORY MINIMUM EXCLUSIONS APPLY PROSPECTIVELY.—Section 1128(c)(3)(B) of the Social Security Act [subsec. (c)(3)(B) of this section] (as amended by this Act), which requires an exclusion of not less than five years in the case of certain exclusions, shall not apply to exclusions based on convictions occurring before the date of the enactment of this Act [Aug. 18, 1987].

''(c) EFFECTIVE DATE FOR CHANGES IN MEDICAID LAW.—(1) The amendments made by sections 5 and 8(f) [enacting section 1396r–2 of this title and amending sections 1396a and 1396s of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [subchapter XIX of this chapter] for calendar quarters beginning more than thirty days after the date of the enactment of this Act [Aug. 18, 1987], without regard to whether or not final regulations to carry out such amendment have been published by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this Act, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

''(3) Subsection (j) of section 1128A of the Social Security Act [section 1320a–7a(j) of this title] (as added by section 3(f) of this Act) takes effect on the date of the enactment of this Act.

''(d) PHYSICIAN MISREPRESENTATIONS.—Clauses (ii) and (iii) of section 1128A(a)(1)(C) of the Social Security Act [section 1320a–7a(a)(1)(C)(ii), (iii) of this title], as amended by section 3(a)(1) of this Act, apply to claims presented for services performed on or after the effective date specified in subsection (a), without regard to the date the misrepresentation of fact was made.

''(e) CLARIFICATION OF MEDICAID MORATORIUM.—The amendments made by section 9 of this Act [amending provisions set out as a note under section 1396a of this title] shall apply as though they were originally included in the enactment of section 2373(c) of the Deficit Reduction Act of 1984 [set out as a note under section 1396a of this title].

''(f) TREATMENT OF CERTAIN DENIALS OF PAYMENT.—For purposes of section 1128(b)(8)(B)(iii) of the Social Security Act [subsec. (b)(8)(B)(iii) of this section] (as amended by section 2 of this Act), a person shall be considered to have been excluded from participation under a program under title XVIII [subchapter XVIII of this chapter] if payment to the person has been denied under section 1862(d) of the Social Security Act [section 1395y(d) of this title], as in effect before the effective date specified in subsection (a).''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9317(d)(3) of Pub. L. 99–509 provided that: ''The provisions—

''(A) of paragraphs (1), (2), and (3) of section 1128(f) of the Social Security Act [subsec. (f)(1)–(3) of this section] (as added by the amendment made by subsection (c)) shall apply to judgments entered, findings made, and pleas entered, before, on, or after the date of the enactment of this Act [Oct. 21, 1986], and

''(B) of paragraph (4) of such section [subsec. (f)(4) of this section] shall apply to participation in a program entered into on or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2333(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] become effective on the date of the enactment of this Act [July 18, 1984] and shall apply to convictions of persons occurring after such date.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2353(k) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 704, 1320a–3a, 1320a–5, 1320a–7b, 1320a–8, 1320c–5, 1395*l*, 1395m, 1395u, 1395y, 1395cc, 1395mm, 1395ww, 1395aaa, 1396a, 1396b, 1396r–2, 1396r–6, 1397d of this title; title 21 section 824.

§ 1320a–7a. Civil monetary penalties

(a) Improperly filed claims

Any person (including an organization, agency, or other entity, but excluding a beneficiary, as defined in subsection (i)(5) of this section) that—

(1) presents or causes to be presented to an officer, employee, or agent of the United States, or of any department or agency thereof, or of any State agency (as defined in subsection (i)(1) of this section), a claim (as defined in subsection (i)(2) of this section) that the Secretary determines—

(A) is for a medical or other item or service that the person knows or should know was not provided as claimed,

(B) is for a medical or other item or service and the person knows or should know the claim is false or fraudulent,

(C) is presented for a physician's service (or an item or service incident to a physi-

cian's service) by a person who knows or should know that the individual who furnished (or supervised the furnishing of) the service—

(i) was not licensed as a physician,

(ii) was licensed as a physician, but such license had been obtained through a misrepresentation of material fact (including cheating on an examination required for licensing), or

(iii) represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board when the individual was not so certified, or

(D) is for a medical or other item or service furnished during a period in which the person was excluded from the program under which the claim was made pursuant to a determination by the Secretary under this section or under section 1320a–7, 1320c–5, 1320c–9(b) (as in effect on September 2, 1982), 1395y(d) (as in effect on August 18, 1987), or 1395cc(b) of this title or as a result of the application of the provisions of section 1395u(j)(2) of this title; or

(2) presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1395u(b)(3)(B)(ii) of this title, or (B) an agreement with a State agency (or other requirement of a State plan under subchapter XIX of this chapter) not to charge a person for an item or service in excess of the amount permitted to be charged, or (C) an agreement to be a participating physician or supplier under section 1395u(h)(1) of this title, or (D) an agreement pursuant to section 1395cc(a)(1)(G) of this title,[1] or

(3) gives to any person, with respect to coverage under subchapter XVIII of this chapter of inpatient hospital services subject to the provisions of section 1395ww of this title, information that he knows or should know is false or misleading, and that could reasonably be expected to influence the decision when to discharge such person or another individual from the hospital;[2]

shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each item or service (or, in cases under paragraph (3), $15,000 for each individual with respect to whom false or misleading information was given). In addition, such a person shall be subject to an assessment of not more than twice the amount claimed for each such item or service in lieu of damages sustained by the United States or a State agency because of such claim. In addition the Secretary may make a determination in the same proceeding to exclude the person from participation in the programs under subchapter XVIII of this chapter and to direct the appropriate State agency to exclude the person from participation in any State health care program.

[1] So in original. The comma probably should be a semicolon.

[2] So in original. The semicolon probably should be a comma.

(b) Payments to induce reduction or limitation of services

(1) If a hospital or a rural primary care hospital knowingly makes a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided with respect to individuals who—

(A) are entitled to benefits under part A or part B of subchapter XVIII of this chapter or to medical assistance under a State plan approved under subchapter XIX of this chapter, and

(B) are under the direct care of the physician,

the hospital or a rural primary care hospital shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each such individual with respect to whom the payment is made.

(2) Any physician who knowingly accepts receipt of a payment described in paragraph (1) shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each individual described in such paragraph with respect to whom the payment is made.

(c) Initiation of proceeding; authorization by Attorney General, notice, etc., estoppel, failure to comply with order or procedure

(1) The Secretary may initiate a proceeding to determine whether to impose a civil money penalty, assessment, or exclusion under subsection (a) or (b) of this section only as authorized by the Attorney General pursuant to procedures agreed upon by them. The Secretary may not initiate an action under this section with respect to any claim, request for payment, or other occurrence described in this section later than six years after the date the claim was presented, the request for payment was made, or the occurrence took place. The Secretary may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

(2) The Secretary shall not make a determination adverse to any person under subsection (a) or (b) of this section until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(3) In a proceeding under subsection (a) or (b) of this section which—

(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal crime charging fraud or false statements, and

(B) involves the same transaction as in the criminal action,

the person is estopped from denying the essential elements of the criminal offense.

(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply

with an order or procedure, failing to defend an action, or other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(A) in the case of refusal to provide or permit discovery, drawing negative factual inferences or treating such refusal as an admission by deeming the matter, or certain facts, to be established,

(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense,

(C) striking pleadings, in whole or in part,

(D) staying the proceedings,

(E) dismissal of the action,

(F) entering a default judgment,

(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct, and

(H) refusing to consider any motion or other action which is not filed in a timely manner.

(d) Amount or scope of penalty, assessment, or exclusion

In determining the amount or scope of any penalty, assessment, or exclusion imposed pursuant to subsection (a) or (b) of this section, the Secretary shall take into account—

(1) the nature of claims and the circumstances under which they were presented,

(2) the degree of culpability, history of prior offenses, and financial condition of the person presenting the claims, and

(3) such other matters as justice may require.

(e) Review by courts of appeals

Any person adversely affected by a determination of the Secretary under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the claim was presented, by filing in such court (within sixty days following the date the person is notified of the Secretary's determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the Court[3] the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Secretary and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Secretary shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be made a part of the record. The Secretary may modify his findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and he shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and his recommendations, if any, for the modification or setting aside of his original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(f) Compromise of penalties and assessments; recovery; use of funds recovered

Civil money penalties and assessments imposed under this section may be compromised by the Secretary and may be recovered in a civil action in the name of the United States brought in United States district court for the district where the claim was presented, or where the claimant resides, as determined by the Secretary. Amounts recovered under this section shall be paid to the Secretary and disposed of as follows:

(1)(A) In the case of amounts recovered arising out of a claim under subchapter XIX of this chapter, there shall be paid to the State agency an amount bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid for such claim.

(B) In the case of amounts recovered arising out of a claim under an allotment to a State under subchapter V of this chapter, there shall be paid to the State agency an amount equal to three-sevenths of the amount recovered.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1395i and 1395t of this title shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

The amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States or a State agency to the person against whom the penalty or assessment has been assessed.

(g) Finality of determination respecting penalty, assessment, or exclusion

A determination by the Secretary to impose a penalty, assessment, or exclusion under subsection (a) or (b) of this section shall be final upon the expiration of the sixty-day period referred to in subsection (e) of this section. Mat-

[3] So in original. Probably should not be capitalized.

ters that were raised or that could have been raised in a hearing before the Secretary or in an appeal pursuant to subsection (e) of this section may not be raised as a defense to a civil action by the United States to collect a penalty, assessment, or exclusion assessed under this section.

(h) Notification of appropriate entities of finality of determination

Whenever the Secretary's determination to impose a penalty, assessment, or exclusion under subsection (a) or (b) of this section becomes final, he shall notify the appropriate State or local medical or professional organization, the appropriate State agency or agencies administering or supervising the administration of State health care programs (as defined in section 1320a–7(h) of this title), and the appropriate utilization and quality control peer review organization, and the appropriate State or local licensing agency or organization (including the agency specified in section 1395aa(a) and 1396a(a)(33) of this title) that such a penalty, assessment, or exclusion has become final and the reasons therefor.

(i) Definitions

For the purposes of this section:

(1) The term ''State agency'' means the agency established or designated to administer or supervise the administration of the State plan under subchapter XIX of this chapter or designated to administer the State's program under subchapter V of this chapter or subchapter XX of this chapter.

(2) The term ''claim'' means an application for payments for items and services under subchapter V, XVIII, XIX, or XX of this chapter.

(3) The term ''item or service'' includes (A) any particular item, device, medical supply, or service claimed to have been provided to a patient and listed in an itemized claim for payment, and (B) in the case of a claim based on costs, any entry in the cost report, books of account or other documents supporting such claim.

(4) The term ''agency of the United States'' includes any contractor acting as a fiscal intermediary, carrier, or fiscal agent or any other claims processing agent for a health insurance or medical services program under subchapter XVIII or XIX of this chapter.

(5) The term ''beneficiary'' means an individual who is eligible to receive items or services for which payment may be made under subchapter V, XVIII, XIX, or XX of this chapter but does not include a provider, supplier, or practitioner.

(j) Subpoenas

(1) The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this section to the same extent as they are applicable with respect to subchapter II of this chapter. The Secretary may delegate the authority granted by section 405(d) of this title (as made applicable to this section) to the Inspector General of the Department of Health and Human Services for purposes of any investigation under this section.

(2) The Secretary may delegate authority granted under this section and under section 1320a–7 of this title to the Inspector General of the Department of Health and Human Services.

(k) Injunctions

Whenever the Secretary has reason to believe that any person has engaged, is engaging, or is about to engage in any activity which makes the person subject to a civil monetary penalty under this section, the Secretary may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the person from concealing, removing, encumbering, or disposing of assets which may be required in order to pay a civil monetary penalty if any such penalty were to be imposed or to seek other appropriate relief.

(*l*) Liability of principal for acts of agent

A principal is liable for penalties, assessments, and an exclusion under this section for the actions of the principal's agent acting within the scope of the agency.

(Aug. 14, 1935, ch. 531, title XI, § 1128A, as added Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2105(a), 95 Stat. 789; amended Sept. 3, 1982, Pub. L. 97–248, title I, § 137(b)(26), 96 Stat. 380; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2306(f)(1), 2354(a)(3), 98 Stat. 1073, 1100; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9313(c)(1), 9317(a), (b), 100 Stat. 2003, 2008; Aug. 18, 1987, Pub. L. 100–93, § 3, 101 Stat. 686; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4039(h)(1), 4118(e)(1), (6)–(10), 101 Stat. 1330–155, as amended July 1, 1988, Pub. L. 100–360, title IV, § 411(e)(3), (k)(10)(B)(ii), (D), 102 Stat. 775, 794, 795; July 1, 1988, Pub. L. 100–360, title II, § 202(c)(2), 102 Stat. 715; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(26)(H)–(K)(i), 102 Stat. 2422; Dec. 13, 1989, Pub. L. 101–234, title II, § 201(a), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6003(g)(3)(D)(i), 103 Stat. 2153; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4204(a)(3), 4207(h), formerly 4027(h), 4731(b)(1), 4753, 104 Stat. 1388–109, 1388–123, 1388–195, 1388–208, renumbered § 4207(h), Oct. 31, 1994, Pub. L. 103–432, title I, § 160(d)(4), 108 Stat. 4444.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (c)(1), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1990—Subsec. (b)(1). Pub. L. 101–508, § 4731(b)(1), struck out ''or an entity with a contract under section 1396b(m) of this title'' before ''knowingly makes a payment'' in introductory provisions.

Pub. L. 101–508, § 4204(a)(3), struck out '', an eligible organization with a risk-sharing contract under section 1395mm of this title,'' after ''primary care hospital'' in introductory provisions, struck out ''or organization'' after ''primary care hospital'' in concluding provisions, redesignated subpar. (C) as (B), and struck out former subpar. (B) which read as follows: ''in the case of an eligible organization or an entity, are enrolled with the organization or entity, and''.

Subsec. (j). Pub. L. 101–508, § 4753, made an amendment to subsec. (j) identically to that of Pub. L. 101–508, § 4207(h). See below.

Pub. L. 101–508, § 4207(h), formerly § 4027(h), as renumbered by Pub. L. 103–432, designated existing provisions as par. (1) and added par. (2).

1989—Subsec. (a)(1)(D), (2)(C), (4). Pub. L. 101–234 repealed Pub. L. 100–360, § 202(c), and provided that the

provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(1). Pub. L. 101–239 substituted ''hospital or a rural primary care hospital'' for ''hospital'' in introductory and concluding provisions.

1988—Subsec. (a). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(10)(A), see 1987 Amendment note below.

Subsec. (a)(1). Pub. L. 100–360, § 411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, § 608(d)(26)(H), amended directory language of Pub. L. 100–203, § 4118(e)(1), see 1987 Amendment note below.

Subsec. (a)(1)(D). Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(i), added Pub. L. 100–203, § 4118(e)(6), see 1987 Amendment note below.

Pub. L. 100–360, § 202(c)(2)(A), struck out ''or'' after semicolon.

Subsec. (a)(2)(C). Pub. L. 100–360, § 202(c)(2)(B), inserted ''or to be a participating pharmacy under section 1395u(*o*) of this title'' after ''section 1395u(h)(1) of this title''.

Subsec. (a)(3). Pub. L. 100–360, § 411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, § 608(d)(26)(H), made technical amendment to directory language of Pub. L. 100–203, § 4118(e)(1)(A), see 1987 Amendment note below.

Subsec. (a)(4). Pub. L. 100–360, § 202(c)(2)(C)–(E), added par. (4) relating to participating or nonparticipating pharmacies.

Subsec. (b)(1)(A). Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(1)(A), see 1987 Amendment note below.

Subsec. (b)(2). Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(1)(B), see 1987 Amendment note below.

Subsec. (c)(1). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(7), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(8), see 1987 Amendment note below.

Subsec. (i)(1). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(9), see 1987 Amendment note below.

Subsec. (i)(2). Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(10)(B), see 1987 Amendment note below.

Subsec. (i)(5). Pub. L. 100–485, § 608(d)(26)(J), amended directory language of Pub. L. 100–203, § 4118(e)(10)(C), see 1987 Amendment note below.

Pub. L. 100–360, § 411(k)(10)(D), added Pub. L. 100–203, § 4118(e)(10)(C), see 1987 Amendment note below.

Subsec. (*l*). Pub. L. 100–485, § 608(d)(26)(I), inserted ''for penalties, assessments, and an exclusion'' after ''liable''.

Pub. L. 100–360, § 411(k)(10)(B)(ii)(III), added Pub. L. 100–203, § 4118(e)(1)(B), see 1987 Amendment note below.

1987—Subsec. (a). Pub. L. 100–203, § 4118(e)(10)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted '', but excluding a beneficiary, as defined in subsection (i)(5) of this section'' in introductory provisions.

Pub. L. 100–93, § 3(a)(3)(B), in concluding provisions, inserted ''(or, in cases under paragraph (3), $15,000 for each individual with respect to whom false or misleading information was given)'' before period at end of first sentence, and inserted at end ''In addition the Secretary may make a determination in the same proceeding to exclude the person from participation in the programs under subchapter XVIII of this chapter and to direct the appropriate State agency to exclude the person from participation in any State health care program.''

Subsec. (a)(1). Pub. L. 100–203, § 4118(e)(1)(A), formerly § 4118(e)(1), as amended by Pub. L. 100–360, § 411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, § 608(d)(26)(H), substituted ''or should know'' for ''or has reason to know'' in subpars. (A) to (C).

Pub. L. 100–93, § 3(a)(1), substituted ''the Secretary determines'' for ''the Secretary determines is for a medical or other item or service'' in introductory provisions and substituted subpars. (A) to (D) for former subpars. (A) and (B) which read as follows:

''(A) that the person knows or has reason to know was not provided as claimed, or

''(B) payment for which may not be made under the program under which such claim was made, pursuant to a determination by the Secretary under section 1320a–7, 1320c–9(b), or 1395y(d) of this title, or pursuant to a determination by the Secretary under section 1395cc(b)(2) of this title with respect to which the Secretary has initiated termination proceedings; or''.

Subsec. (a)(1)(D). Pub. L. 100–203, § 4118(e)(6), as added by Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(i), substituted ''excluded from'' for ''excluded under'' and inserted ''or as a result of the application of the provisions of section 1395u(j)(2) of this title''.

Subsec. (a)(2). Pub. L. 100–93, § 3(a)(2), inserted ''(or other requirement of a State plan under subchapter XIX of this chapter)'' after ''State agency'' in subpar. (B) and added subpar. (D).

Subsec. (a)(3). Pub. L. 100–203, § 4118(e)(1)(A), as amended by Pub. L. 100–360, § 411(k)(10)(B)(ii)(I), (II), as amended by Pub. L. 100–485, § 608(d)(26)(H), substituted ''or should know'' for ''or has reason to know''.

Pub. L. 100–93, § 3(a)(3)(A), added par. (3).

Subsec. (b)(1)(A). Pub. L. 100–203, § 4039(h)(1)(A), as added by Pub. L. 100–360, § 411(e)(3), substituted ''subchapter XVIII'' for ''subchapter XVII''.

Subsec. (b)(2). Pub. L. 100–203, § 4039(h)(1)(B), as added by Pub. L. 100–360, § 411(e)(3), substituted ''$2,000 for each'' for ''$2,000 for''.

Subsec. (c)(1). Pub. L. 100–203, § 4118(e)(7), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted '', request for payment, or other occurrence described in this section'' and '', the request for payment was made, or the occurrence took place''.

Pub. L. 100–93, § 3(b), (c), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' and inserted provision that the Secretary not initiate an action under this section with respect to a claim later than six years after the claim was presented and that the Secretary initiate an action in the manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

Subsec. (d). Pub. L. 100–93, § 3(c), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' in introductory provisions.

Subsec. (f)(1)(A). Pub. L. 100–93, § 3(d), substituted ''bearing the same proportion to the total amount recovered as the State's share of the amount paid by the State agency for such claim bears to the total amount paid'' for ''equal to the State's share of the amount paid by the State agency''.

Subsec. (g). Pub. L. 100–93, § 3(c), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' in two places.

Subsec. (h). Pub. L. 100–93, § 3(c), (e), substituted ''penalty, assessment, or exclusion'' for ''penalty or assessment'' in two places and inserted ''the appropriate State agency or agencies administering or supervising the administration of State health care programs (as defined in section 1320a–7(h) of this title),'' after ''professional organization,''.

Subsec. (i). Pub. L. 100–203, § 4118(e)(8), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''this section'' for ''this subsection'' in introductory provisions.

Subsec. (i)(1). Pub. L. 100–203, § 4118(e)(9), as added by Pub. L. 100–360, § 411(k)(10)(D), inserted ''or subchapter XX of this chapter''.

Subsec. (i)(2). Pub. L. 100–203, § 4118(e)(10)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), substituted ''for payments for items and services under subchapter V, XVIII, XIX, or XX of this chapter'' for ''submitted by—

''(A) a provider of services or other person, agency, or organization that furnishes an item or service under subchapter XVIII of this chapter, or

''(B) a person, agency, or organization that furnishes an item or service for which medical assistance is provided under subchapter XIX of this chapter, or

''(C) a person, agency, or organization that provides an item or service for which payment is made under

subchapter V of this chapter or from an allotment to a State under such subchapter,

to the United States or a State agency, or agent thereof, for payment for health care services under subchapter XVIII or XIX of this chapter or for any item or service under subchapter V of this chapter''.

Subsec. (i)(5). Pub. L. 100–203, §4118(e)(10)(C), as added by Pub. L. 100–360, §411(k)(10)(D), and amended by Pub. L. 100–485, §608(d)(26)(J), added par. (5).

Subsecs. (j), (k). Pub. L. 100–93, §3(f), added subsecs. (j) and (k).

Subsec. (*l*). Pub. L. 100–203, §4118(e)(1)(B), as added by Pub. L. 100–360, §411(k)(10)(B)(ii)(III), added subsec. (*l*).

1986—Subsec. (a)(1). Pub. L. 99–509, §9313(c)(1)(B), substituted ''(i)(1)'' and ''(i)(2)'' for ''(h)(1)'' and ''(h)(2)'', respectively.

Subsec. (b). Pub. L. 99–509, §9313(c)(1)(D), (E), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 99–509, §9313(c)(1)(A), (D), redesignated subsec. (b) as (c) and substituted ''subsection (a) or (b)'' for ''subsection (a)'' in pars. (1) and (2). Former subsec. (c) redesignated (d).

Subsec. (c)(3). Pub. L. 99–509, §9317(a), added par. (3).

Subsec. (c)(4). Pub. L. 99–509, §9317(b), added par. (4).

Subsec. (d). Pub. L. 99–509, §9313(c)(1)(A), (D), redesignated subsec. (c) as (d) and substituted ''subsection (a) or (b)'' for ''subsection (a)'' in introductory provisions. Former subsec. (d) redesignated (e).

Subsecs. (e), (f). Pub. L. 99–509, §9313(c)(1)(D), redesignated subsecs. (d) and (e) as (e) and (f), respectively. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 99–509, §9313(c)(1)(A), (C), (D), redesignated subsec. (f) as (g) and substituted ''subsection (a) or (b)'' for ''subsection (a)'' and ''subsection (e)'' for ''subsection (d)''. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 99–509, §9313(c)(1)(A), (D), redesignated subsec. (g) as (h) and substituted ''subsection (a) or (b)'' for ''subsection (a)''. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 99–509, §9313(c)(1)(D), redesignated subsec. (h) as (i).

1984—Subsec. (a)(2)(C). Pub. L. 98–369, §2306(f)(1), added cl. (C).

Subsec. (g). Pub. L. 98–369, §2354(a)(3), substituted ''utilization and quality control peer review organization'' for ''Professional Standards Review Organization''.

1982—Subsec. (a). Pub. L. 97–248 redesignated as part of par. (1) preceding subpar. (A) provisions formerly preceding par. (1), in subpar. (B) substituted ''or pursuant to a determination by the Secretary under section 1395cc(b)(2) of this title with respect to which the Secretary has initiated termination proceedings;'' for ''or 1395cc(b)(2) of this title,'', and in par. (2) substituted ''presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1842(b)(3)(B)(ii), or (B) an agreement with a State agency not to charge a person for an item or service in excess of the amount permitted to be charged'' for ''is submitted in violation of an agreement between the person and the United States or a State agency''.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 201(c) of Pub. L. 101–234 provided that: ''The provisions of this section [amending this section and sections 1320c–3, 1395h, 1395k, 1395*l*, 1395m, 1395n, 1395u, 1395w–2, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395mm, 1396a, 1396b, 1396d, and 1396n of this title, repealing section 1395w–3 of this title, and amending or repealing provisions set out as notes under sections 1320c–3, 1395b–1, 1395k, 1395m, 1395u, 1395x, 1395*ll*, and 1395ww of this title] shall take effect January 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(c)(2) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(e)(3), (k)(10)(B)(ii), (D) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4118(e)(14), formerly section 4118(e)(3), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, §411(k)(10)(B)(i), (D), July 1, 1988, 102 Stat. 794, 795, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to activities occurring before, on, or after the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, except that amendment by section 3(a)(1) of Pub. L. 100–93 applicable to claims presented for services performed on or after date at end of fourteen-day period beginning Aug. 18, 1987, without regard to the date the physician's misrepresentation of fact was made, and amendment by section 3(f) of Pub. L. 100–93 effective Aug. 18, 1987, see section 15(a), (c)(3), and (d) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9313(c)(2) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4016, Dec. 22, 1987, 101 Stat. 1330–64; Pub. L. 101–239, title VI, §6207(a), Dec. 19, 1989, 103 Stat. 2245, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to—

''(A) payments by hospitals occurring more than 6 months after the date of the enactment of this Act [Oct. 21, 1986], and

''(B) payments by eligible organizations or entities occurring on or after April 1, 1991.''

Section 9317(d)(1), (2) of Pub. L. 99–509 provided that: ''(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 21, 1986], without regard to when the criminal conviction was obtained, but shall only apply to a conviction upon a plea of nolo contendere tendered after the date of the enactment of this Act.

''(2) The amendment made by subsection (b) [amending this section] shall apply to failures or misconduct occurring on or after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(a)(3) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

REPEAL OF 1988 EXPANSION OF MEDICARE PART B BENEFITS

Section 201(a) of Pub. L. 101–234 provided that:

''(1) GENERAL RULE.—Except as provided in paragraph (2), sections 201 through 208 of MCCA [sections 201 to 208

of Pub. L. 100–360, enacting section 1395w–3 of this title, amending this section and sections 1320c–3, 1395h, 1395k, 1395*l*, 1395m, 1395n, 1395u, 1395w–2, 1395x, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395mm, 1396a, 1396b, and 1396n of this title, and enacting provisions set out as notes under sections 1320c–3, 1395b–1, 1395k, 1395m, 1395u, 1395x, 1395*ll*, and 1395ww of this title] are repealed and the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted.

''(2) EXCEPTION.—Paragraph (1) shall not apply to subsections (g) and (m)(4) of section 202 of MCCA [amending section 1395u of this title and enacting provisions set out as a note under section 1395u of this title.]''

STUDY AND REPORT ON INCENTIVE ARRANGEMENTS OFFERED TO PHYSICIANS

Section 9313(c)(3) of Pub. L. 99–509 directed Secretary of Health and Human Services to report to Congress, not later than Jan. 1, 1988, concerning incentive arrangements offered by health maintenance organizations and competitive medical plans to physicians.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 704, 707, 1320a–3a, 1320a–7, 1320a–8, 1320b–10, 1395i–3, 1395*l*, 1395m, 1395u, 1395w–2, 1395y, 1395cc, 13955dd, 1395mm, 1395nn, 1395ss, 1395bbb, 1396a, 1396b, 1396r, 1396r–6, 1396r–8, 1396t, 1396u, 1397d, 11131, 11137 of this title; title 5 section 8904; title 10 section 1094.

§ 1320a–7b. Criminal penalties for acts involving Medicare or State health care programs

(a) Making or causing to be made false statements or representations

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a program under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a–7(h) of this title),

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized,

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person, or

(5) presents or causes to be presented a claim for a physician's service for which payment may be made under a program under subchapter XVIII of this chapter or a State health care program and knows that the individual who furnished the service was not licensed as a physician,

shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under the program, be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or both. In addition, in any case where an individual who is otherwise eligible for assistance under a State plan approved under subchapter XIX of this chapter is convicted of an offense under the preceding provisions of this subsection, the State may at its option (notwithstanding any other provision of that subchapter or of such plan) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.

(b) Illegal remunerations

(1) Whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under subchapter XVIII of this chapter or a State health care program, or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under subchapter XVIII of this chapter or a State health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) Whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under subchapter XVIII of this chapter or a State health care program, or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under subchapter XVIII of this chapter or a State health care program,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or

imprisoned for not more than five years, or both.

(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under subchapter XVIII of this chapter or a State health care program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under subchapter XVIII of this chapter or a State health care program;

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services;

(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under subchapter XVIII of this chapter or a State health care program if—

(i) the person has a written contract, with each such individual or entity, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and

(ii) in the case of an entity that is a provider of services (as defined in section 1395x(u) of this title), the person discloses (in such form and manner as the Secretary requires) to the entity and, upon request, to the Secretary the amount received from each such vendor with respect to purchases made by or on behalf of the entity;

(D) a waiver of any coinsurance under part B of subchapter XVIII of this chapter by a Federally qualified health care center with respect to an individual who qualifies for subsidized services under a provision of the Public Health Service Act [42 U.S.C. 201 et seq.]; and

(E) any payment practice specified by the Secretary in regulations promulgated pursuant to section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987.

(c) False statements or representations with respect to condition or operation of institutions

Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution, facility, or entity in order that such institution, facility, or entity may qualify (either upon initial certification or upon recertification) as a hospital, rural primary care hospital, skilled nursing facility, nursing facility, intermediate care facility for the mentally retarded, home health agency, or other entity (including an eligible organization under section 1395mm(b) of this title) for which certification is required under subchapter XVIII of this chapter or a State health care program, or with respect to information required to be provided under section 1320a–3a of this title, shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(d) Illegal patient admittance and retention practices

Whoever knowingly and willfully—

(1) charges, for any service provided to a patient under a State plan approved under subchapter XIX of this chapter, money or other consideration at a rate in excess of the rates established by the State, or

(2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under a State plan approved under subchapter XIX of this chapter, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient)—

(A) as a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for the mentally retarded, or

(B) as a requirement for the patient's continued stay in such a facility,

when the cost of the services provided therein to the patient is paid for (in whole or in part) under the State plan,

shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(e) Violation of assignment terms

Whoever accepts assignments described in section 1395u(b)(3)(B)(ii) of this title or agrees to be a participating physician or supplier under section 1395u(h)(1) of this title and knowingly, willfully, and repeatedly violates the term of such assignments or agreement, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $2,000 or imprisoned for not more than six months, or both.

(Aug. 14, 1935, ch. 531, title XI, §1128B, formerly title XVIII, §1877(d), and title XIX, §1909, as added and amended Oct. 30, 1972, Pub. L. 92–603, title II, §§242(c), 278(b)(9), 86 Stat. 1419, 1454; Oct. 25, 1977, Pub. L. 95–142, §4(a), (b), 91 Stat. 1179, 1181; Dec. 5, 1980, Pub. L. 96–499, title IX, §917, 94 Stat. 2625; July 18, 1984, Pub. L. 98–369, div. B, title III, §2306(f)(2), 98 Stat. 1073; renumbered title XI, §1128B, and amended Aug. 18, 1987, Pub. L. 100–93, §§4(a)–(d), 14(b), 101 Stat. 688, 689, 697; Dec. 22, 1987, Pub. L. 100–203, title IV, §§4039(a), 4211(h)(7), 101 Stat. 1330–81, 1330–206; July 1, 1988, Pub. L. 100–360, title IV, §411(a)(3)(A), (B)(i), 102 Stat. 768; Dec. 19, 1989, Pub. L. 101–239, title VI, §6003(g)(3)(D)(ii), 103 Stat. 2153; Nov. 5, 1990, Pub. L. 101–508, title IV, §§4161(a)(4), 4164(b)(2), 104 Stat. 1388–94, 1388–102; Oct. 31, 1994, Pub. L. 103–432, title I, §133(a)(2), 108 Stat. 4421.)

REFERENCES IN TEXT

Part B of subchapter XVIII of this chapter, referred to in subsec. (b)(3)(D), is classified to section 1395j et seq. of this title.

The Public Health Service Act, referred to in subsec. (b)(3)(D), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§201 et seq.) of this title. For complete classification of

this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Section 14(a) of the Medicare and Medicaid Patient and Program Protection Act of 1987, referred to in subsec. (b)(3)(E), is section 14(a) of Pub. L. 100–93, which is set out below.

CODIFICATION

Prior to redesignation by Pub. L. 100–93, subsecs. (a) to (d) of this section were subsecs. (a) to (d) of section 1909 of act Aug. 14, 1935, which was classified to section 1396h of this title, and subsec. (e) of this section was subsec. (d) of section 1877 of act Aug. 14, 1935, which was classified to section 1395nn of this title.

AMENDMENTS

1994—Subsec. (b)(3)(B). Pub. L. 103–432, which directed substitution of ''1395m(j)(5)'' for ''1395m(j)(4)'' in subpar. (B) as amended by section 134(a) of Pub. L. 103–432, could not be executed because ''1395m(j)(4)'' does not appear in subpar. (B) and section 134(a) of Pub. L. 103–432 did not amend this section.

1990—Subsec. (b)(3)(D), (E). Pub. L. 101–508, § 4161(a)(4), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (c). Pub. L. 101–508, § 4164(b)(2), substituted ''health care program, or with respect to information required to be provided under section 1320a–3a of this title,'' for ''health care program''.

1989—Subsec. (c). Pub. L. 101–239 inserted ''rural primary care hospital,'' after ''hospital,''.

1988—Subsec. (c). Pub. L. 100–360 made technical correction to directory language of Pub. L. 100–203, § 4039(a), see 1987 Amendment note below.

Pub. L. 100–203, § 4211(h)(7)(A), substituted ''nursing facility, intermediate care facility for the mentally retarded'' for ''intermediate care facility''.

Subsec. (d)(2)(A). Pub. L. 100–203, § 4211(h)(7)(B), substituted ''nursing facility, or intermediate care facility for the mentally retarded'' for ''skilled nursing facility, or intermediate care facility''.

1987—Pub. L. 100–93, § 4(a)(1), substituted ''Criminal penalties for acts involving Medicare or State health care programs'' for ''Offenses and penalties'' in section catchline.

Subsec. (a). Pub. L. 100–93, § 4(a)(3), (4), in concluding provisions, substituted ''made under the program'' for ''made under this subchapter'', ''approved under subchapter XIX of this chapter'' for ''approved under this subchapter'', and ''provision of that subchapter'' for ''provision of this subchapter''.

Subsec. (a)(1). Pub. L. 100–93, § 4(a)(2), substituted ''a program under subchapter XVIII of this chapter or a State health care program (as defined in section 1320a–7(h) of this title)'' for ''a State plan approved under this subchapter''.

Subsec. (a)(5). Pub. L. 100–93, § 4(b), added par. (5).

Subsec. (b)(1)(A), (B), (2)(A), (B). Pub. L. 100–93, § 4(a)(5), substituted ''subchapter XVIII of this chapter or a State health care program'' for ''this subchapter''.

Subsec. (b)(3). Pub. L. 100–93, §§ 4(a)(5), (6), 14(b), substituted ''subchapter XVIII of this chapter or a State health care program'' for ''this subchapter'' in two places in subpar. (A) and added subpars. (C) and (D).

Subsec. (c). Pub. L. 100–203, § 4039(a), as amended by Pub. L. 100–360, substituted ''institution, facility, or entity'' for ''institution or facility'' wherever appearing and inserted ''(including an eligible organization under section 1395mm(b) of this title)'' after ''other entity''.

Pub. L. 100–93, § 4(a)(7), substituted ''home health agency, or other entity for which certification is required under subchapter XVIII of this chapter or a State health care program'' for ''or home health agency (as those terms are employed in this subchapter)''.

Subsec. (d)(1), (2). Pub. L. 100–93, § 4(a)(8), substituted ''subchapter XIX of this chapter'' for ''this subchapter''.

Subsec. (e). Pub. L. 100–93, § 4(c), redesignated subsec. (d) of section 1395nn of this title as subsec. (e) of this section.

1984—Subsec. (e). Pub. L. 98–369 inserted ''or agrees to be a participating physician or supplier under section 1395u(h)(1) of this title'' after ''section 1395u(b)(3)(B)(ii) of this title'', and substituted ''or agreement'' for ''specified in subclause (I) of such section''.

1980—Subsec. (b)(1), (2). Pub. L. 96–499 inserted ''knowingly and willfully'' after ''Whoever''.

1977—Subsec. (a). Pub. L. 95–142, § 4(b), designated existing provisions following par. (4) as cl. (ii) and, as so designated, inserted provisions relating to activities of other persons, and inserted provisions authorizing the State to limit, restrict, or suspend, the eligibility of any convicted persons for benefits, and added cl. (i). See Codification note above.

Subsec. (b). Pub. L. 95–142, § 4(b), redesignated existing provisions as par. (1), substituted provisions relating to solicitation or receiving of any remuneration in return for referring an individual to a person for the furnishing or arranging the furnishing of any item or service, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, etc., as constituting a felony punishable by a fine of not more than $25,000 and/or imprisonment for not more than five years, for provisions relating to furnishing items or services and soliciting, offering or receiving any kickback, bribe, or rebate in connection with furnishing, etc. items or services as constituting a misdemeanor punishable by a fine of not more than $10,000 and/or imprisonment for not more than one year, and added pars. (2) and (3). See Codification note above.

Subsec. (c). Pub. L. 95–142, § 4(b), substituted provisions setting forth felony nature of criminal activities with a fine of not more than $25,000, or imprisonment for not more than five years, or both, for provisions setting forth misdemeanor nature of criminal activities with a fine of not more than $2,000, or imprisonment for not more than six months, or both. See Codification note above.

Subsec. (d). Pub. L. 95–142, § 4(b), added subsec. (d). See Codification note above.

Subsec. (e). Pub. L. 95–142, § 4(a), added subsec. (e). See Codification note above.

1972—Subsec. (c). Pub. L. 92–603, § 278(b)(9), substituted ''skilled nursing facility'' for ''skilled nursing home''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 133(a)(2) of Pub. L. 103–432 applicable to items or services furnished on or after Jan. 1, 1995, see section 133(c) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4161(a)(4) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(8) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4164(b)(2) of Pub. L. 101–508 applicable with respect to items or services furnished on or after Jan. 1, 1993, in the case of items or services furnished by a provider who, on or before Nov. 5, 1990, has furnished items or services for which payment may be made under part B of subchapter XVIII of this chapter or Jan. 1, 1992, in the case of items or services furnished by any other provider, see section 4164(b)(4) of Pub. L. 101–508, set out as an Effective Date note under section 1320a–3a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Amendment by section 4211(h)(7) of Pub. L. 100–203 applicable to nursing facility services furnished on or

after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 4(d) of Pub. L. 95–142 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to acts occurring and statements or representations made on or after the date of the enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE

Section 242(d) of Pub. L. 92–603 provided that: ''The provisions of amendments made by this section [enacting this section and section 1396h of this title and amending section 1395ii of this title] shall not be applicable to any acts, statements, or representations made or committed prior to the enactment of this Act [Oct. 30, 1972].''

ANTI-KICKBACK REGULATIONS

Section 14(a) of Pub. L. 100–93 provided that: ''The Secretary of Health and Human Services, in consultation with the Attorney General, not later than 1 year after the date of the enactment of this Act [Aug. 18, 1987] shall publish proposed regulations, and not later than 2 years after the date of the enactment of this Act shall promulgate final regulations, specifying payment practices that shall not be treated as a criminal offense under section 1128B(b) of the Social Security Act [subsec. (b) of this section] and shall not serve as the basis for an exclusion under section 1128(b)(7) of such Act. Any practices specified in regulations pursuant to the preceding sentence shall be in addition to the practices described in subparagraphs (A) through (C) of section 1128B(b)(3).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a–3a, 1320a–7, 1396r–6 of this title.

§ 1320a–8. Civil monetary penalties and assessments for subchapters II and XVI

(a) False statements or representations of material fact; proceedings to exclude

(1) Any person (including an organization, agency, or other entity) who makes, or causes to be made, a statement or representation of a material fact for use in determining any initial or continuing right to or the amount of—

(A) monthly insurance benefits under subchapter II of this chapter, or

(B) benefits or payments under subchapter XVI of this chapter,

that the person knows or should know is false or misleading or knows or should know omits a material fact or makes such a statement with knowing disregard for the truth shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such statement or representation. Such person also shall be subject to an assessment, in lieu of damages sustained by the United States because of such statement or representation, of not more than twice the amount of benefits or payments paid as a result of such a statement or representation. In addition, the Commissioner of Social Security may make a determination in the same proceeding to recommend that the Secretary exclude, as provided in section 1320a–7 of this title, such a person who is a medical provider or physician from participation in the programs under subchapter XVIII of this chapter.

(2) For purposes of this section, a material fact is one which the Commissioner of Social Security may consider in evaluating whether an applicant is entitled to benefits under subchapter II of this chapter or eligible for benefits or payments under subchapter XVI of this chapter.

(b) Initiation of proceedings; hearing; sanctions

(1) The Commissioner of Social Security may initiate a proceeding to determine whether to impose a civil money penalty or assessment, or whether to recommend exclusion under subsection (a) of this section only as authorized by the Attorney General pursuant to procedures agreed upon by the Commissioner of Social Security and the Attorney General. The Commissioner of Social Security may not initiate an action under this section with respect to any violation described in subsection (a) of this section later than 6 years after the date the violation was committed. The Commissioner of Social Security may initiate an action under this section by serving notice of the action in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure.

(2) The Commissioner of Social Security shall not make a determination adverse to any person under this section until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(3) In a proceeding under this section which—

(A) is against a person who has been convicted (whether upon a verdict after trial or upon a plea of guilty or nolo contendere) of a Federal or State crime charging fraud or false statements; and

(B) involves the same transaction as in the criminal action;

the person is estopped from denying the essential elements of the criminal offense.

(4) The official conducting a hearing under this section may sanction a person, including any party or attorney, for failing to comply with an order or procedure, for failing to defend an action, or for such other misconduct as would interfere with the speedy, orderly, or fair conduct of the hearing. Such sanction shall reasonably relate to the severity and nature of the failure or misconduct. Such sanction may include—

(A) in the case of refusal to provide or permit discovery, drawing negative factual inference or treating such refusal as an admission by deeming the matter, or certain facts, to be established;

(B) prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(C) striking pleadings, in whole or in part;
(D) staying the proceedings;
(E) dismissal of the action;
(F) entering a default judgment;
(G) ordering the party or attorney to pay attorneys' fees and other costs caused by the failure or misconduct; and
(H) refusing to consider any motion or other action which is not filed in a timely manner.

(c) Amount or scope of penalties, assessments, or exclusions

In determining pursuant to subsection (a) of this section the amount or scope of any penalty or assessment, or whether to recommend an exclusion, the Commissioner of Social Security shall take into account—

(1) the nature of the statements and representations referred to in subsection (a) of this section and the circumstances under which they occurred;
(2) the degree of culpability, history of prior offenses, and financial condition of the person committing the offense; and
(3) such other matters as justice may require.

(d) Judicial review

(1) Any person adversely affected by a determination of the Commissioner of Social Security under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the statement or representation referred to in subsection (a) of this section was made, by filing in such court (within 60 days following the date the person is notified of the Commissioner's determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner of Social Security, and thereupon the Commissioner of Social Security shall file in the court the record in the proceeding as provided in section 2112 of title 28. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Commissioner of Social Security and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Commissioner of Social Security shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(2) The findings of the Commissioner of Social Security with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive in the review described in paragraph (1). If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commissioner of Social Security, the court may order such additional evidence to be taken before the Commissioner of Social Security and to be made a part of the record. The Commissioner of Social Security may modify such findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and the Commissioner of Social Security shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole shall be conclusive, and the Commissioner's recommendations, if any, for the modification or setting aside of the Commissioner's original order.

(3) Upon the filing of the record and the Commissioner's original or modified order with the court, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28.

(e) Compromise of money penalties and assessments; recovery; use of funds recovered

(1) Civil money penalties and assessments imposed under this section may be compromised by the Commissioner of Social Security and may be recovered—

(A) in a civil action in the name of the United States brought in United States district court for the district where the statement or representation referred to in subsection (a) of this section was made, or where the person resides, as determined by the Commissioner of Social Security;
(B) by means of reduction in tax refunds to which the person is entitled, based on notice to the Secretary of the Treasury as permitted under section 3720A of title 31;
(C)(i) by decrease of any payment of monthly insurance benefits under subchapter II of this chapter, notwithstanding section 407 of this title, or
(ii) by decrease of any payment under subchapter XVI of this chapter for which the person is eligible, notwithstanding section 407 of this title, as made applicable to subchapter XVI of this chapter by reason of section 1383(d)(1) of this title;
(D) by authorities provided under the Debt Collection Act of 1982, as amended, to the extent applicable to debts arising under this chapter;
(E) by deduction of the amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, from any sum then or later owing by the United States to the person against whom the penalty or assessment has been assessed; or
(F) by any combination of the foregoing.

(2) Amounts recovered under this section shall be recovered by the Commissioner of Social Security and shall be disposed of as follows:

(A) In the case of amounts recovered arising out of a determination relating to subchapter II of this chapter, the amounts shall be transferred to the Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and such

amounts shall be deposited by the Managing Trustee into such Trust Fund.

(B) In the case of amounts recovered arising out of a determination relating to subchapter XVI of this chapter, the amounts shall be deposited by the Commissioner of Social Security into the general fund of the Treasury as miscellaneous receipts.

(f) Finality of determination respecting penalty, assessment, or exclusion

A determination pursuant to subsection (a) of this section by the Commissioner of Social Security to impose a penalty or assessment, or to recommend an exclusion shall be final upon the expiration of the 60-day period referred to in subsection (d) of this section. Matters that were raised or that could have been raised in a hearing before the Commissioner of Social Security or in an appeal pursuant to subsection (d) of this section may not be raised as a defense to a civil action by the United States to collect a penalty or assessment imposed under this section.

(g) Notification of appropriate entities of finality of determination

Whenever the Commissioner's determination to impose a penalty or assessment under this section with respect to a medical provider or physician becomes final, the Commissioner shall notify the Secretary of the final determination and the reasons therefor, and the Secretary shall then notify the entities described in section 1320a–7a(h) of this title of such final determination.

(h) Injunction

Whenever the Commissioner of Social Security has reason to believe that any person has engaged, is engaging, or is about to engage in any activity which makes the person subject to a civil monetary penalty under this section, the Commissioner of Social Security may bring an action in an appropriate district court of the United States (or, if applicable, a United States court of any territory) to enjoin such activity, or to enjoin the person from concealing, removing, encumbering, or disposing of assets which may be required in order to pay a civil monetary penalty and assessment if any such penalty were to be imposed or to seek other appropriate relief.

(i) Delegation of authority

(1) The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this section to the same extent as they are applicable with respect to subchapter II of this chapter. The Commissioner of Social Security may delegate the authority granted by section 405(d) of this title (as made applicable to this section) to the Inspector General for purposes of any investigation under this section.

(2) The Commissioner of Social Security may delegate authority granted under this section to the Inspector General.

(j) "State agency" defined

For purposes of this section, the term ''State agency'' shall have the same meaning as in section 1320a–7a(i)(1) of this title.

(k) Liability of principal for acts of agents

A principal is liable for penalties and assessments under subsection (a) of this section, and for an exclusion under section 1320a–7 of this title based on a recommendation under subsection (a) of this section, for the actions of the principal's agent acting within the scope of the agency.

(*l*) Protection of ongoing criminal investigations

As soon as the Inspector General, Social Security Administration, has reason to believe that fraud was involved in the application of an individual for monthly insurance benefits under subchapter II of this chapter or for benefits under subchapter XVI of this chapter, the Inspector General shall make available to the Commissioner of Social Security information identifying the individual, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that making the information so available in a particular investigation or redetermining the eligibility of the individual for such benefits would jeopardize the criminal prosecution of any person who is a subject of the investigation from which the information is derived.

(Aug. 14, 1935, ch. 531, title XI, §1129, as added and amended Aug. 15, 1994, Pub. L. 103–296, title I, §108(b)(10)(A), title II, §206(b)(1), (e)(1), 108 Stat. 1483, 1509, 1515.)

REFERENCES IN TEXT

Rule 4 of the Federal Rules of Civil Procedure, referred to in subsec. (b)(1), is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

The Debt Collection Act of 1982, referred to in subsec. (e)(1)(D), is Pub. L. 97–365, Oct. 25, 1982, 96 Stat. 1749. For complete classification of this Act to the Code, see Short Title of 1982 Amendment note set out under section 5514 of Title 5, Government Employees and Organization, and Tables.

PRIOR PROVISIONS

A prior section 1320a–8, act Aug. 14, 1935, ch. 531, title XI, §1129, as added Dec. 5, 1980, Pub. L. 96–499, title IX, §914(a), 94 Stat. 2621; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, §2193(c)(4), 95 Stat. 827; July 18, 1984, Pub. L. 98–369, div. B, title III, §2354(a)(4), 98 Stat. 1100, related to coordinated audits, prior to repeal by Pub. L. 100–203, title IV, §4118(m)(1)(A), (2), Dec. 22, 1987, 101 Stat. 1330–157, applicable to audits conducted after Dec. 22, 1987.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–296, §108(b)(10)(A)(i), (ii), in closing provisions substituted ''Commissioner of Social Security'' for ''Secretary'', inserted ''recommend that the Secretary'' before ''exclude, as provided'', and struck out before period at end ''and to direct the appropriate State agency to exclude the person from participation in any State health care program permanently or for such period as the Secretary determines''.

Subsecs. (a)(2), (b)(1), (2), (c). Pub. L. 103–296, §108(b)(10)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 103–296, §108(b)(10)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Pub. L. 103–296, §108(b)(10)(A)(i), which directed that this section be amended by substituting ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, was also executed by substituting ''Commissioner's'' for ''Secretary's'' wherever appearing in subsec. (d), to reflect the probable intent of Congress, be-

cause Pub. L. 103–296, §108(b)(10)(A)(i), (iii)(I), substituted ''Commissioner of Social Security'' for ''Secretary'' throughout this section and in subsec. (g) substituted ''Commissioner's'' for ''Secretary's''.

Subsecs. (e), (f). Pub. L. 103–296, §108(b)(10)(A)(i), which directed amendment of this section by substituting ''Commissioner of Social Security'' for ''Secretary'' each place it appears, was executed in subsecs. (e) and (f) by making the substitution wherever appearing except where appearing before ''of the Treasury'' in subsec. (e)(1)(B) to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 103–296, §108(b)(10)(A)(iii), substituted ''Commissioner's'' for ''Secretary's'' and ''the Commissioner shall notify the Secretary of the final determination and the reasons therefor, and the Secretary shall then notify the entities described in section 1320a–7a(h) of this title of such final determination.'' for ''the provisions of section 1320a–7a(h) of this title shall apply.''

Subsecs. (h), (i). Pub. L. 103–296, §108(b)(10)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (k). Pub. L. 103–296, §108(b)(10)(A)(iv), inserted ''based on a recommendation under subsection (a) of this section'' after ''section 1320a–7 of this title''.

Subsec. (*l*). Pub. L. 103–296, §206(e)(1), added subsec. (*l*).

Pub. L. 103–296, §108(b)(10)(A)(i), (v), in subsec. (*l*) as added by Pub. L. 103–296, §206(e)(1), substituted ''Social Security Administration'' for ''Department of Health and Human Services'' and ''Commissioner of Social Security'' for ''Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(10)(A) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 206(e)(2) of Pub. L. 103–296 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1994.''

EFFECTIVE DATE

Section applicable to conduct occurring on or after Oct. 1, 1994, see section 206(b)(3) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 1320a–7 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1320a–7 of this title.

§ 1320a–9. Demonstration projects

(a) In general

The Secretary may authorize not more than 10 States to conduct demonstration projects pursuant to this section which the Secretary finds are likely to promote the objectives of part B or E of subchapter IV of this chapter.

(b) Waiver authority

The Secretary may waive compliance with any requirement of part B or E of subchapter IV of this chapter which (if applied) would prevent a State from carrying out a demonstration project under this section or prevent the State from effectively achieving the purpose of such a project, except that the Secretary may not waive—

(1) any provision of section 627 of this title (as in effect before April 1, 1996), section 622(b)(9) of this title (as in effect after such date), or section 679 of this title; or

(2) any provision of such part E, to the extent that the waiver would impair the entitlement of any qualified child or family to benefits under a State plan approved under such part E.

(c) Treatment as program expenditures

For purposes of parts B and E of subchapter IV of this chapter, the Secretary shall consider the expenditures of any State to conduct a demonstration project under this section to be expenditures under subpart 1 or 2 of such part B, or under such part E, as the State may elect.

(d) Duration of demonstration

A demonstration project under this section may be conducted for not more than 5 years.

(e) Application

Any State seeking to conduct a demonstration project under this section shall submit to the Secretary an application, in such form as the Secretary may require, which includes—

(1) a description of the proposed project, the geographic area in which the proposed project would be conducted, the children or families who would be served by the proposed project, and the services which would be provided by the proposed project (which shall provide, where appropriate, for random assignment of children and families to groups served under the project and to control groups);

(2) a statement of the period during which the proposed project would be conducted;

(3) a discussion of the benefits that are expected from the proposed project (compared to a continuation of activities under the approved plan or plans of the State);

(4) an estimate of the costs or savings of the proposed project;

(5) a statement of program requirements for which waivers would be needed to permit the proposed project to be conducted;

(6) a description of the proposed evaluation design; and

(7) such additional information as the Secretary may require.

(f) Evaluations; report

Each State authorized to conduct a demonstration project under this section shall—

(1) obtain an evaluation by an independent contractor of the effectiveness of the project, using an evaluation design approved by the Secretary which provides for—

(A) comparison of methods of service delivery under the project, and such methods under a State plan or plans, with respect to efficiency, economy, and any other appropriate measures of program management;

(B) comparison of outcomes for children and families (and groups of children and families) under the project, and such outcomes under a State plan or plans, for purposes of assessing the effectiveness of the project in achieving program goals; and

(C) any other information that the Secretary may require; and

(2) provide interim and final evaluation reports to the Secretary, at such times and in such manner as the Secretary may require.

(g) Cost neutrality

The Secretary may not authorize a State to conduct a demonstration project under this section unless the Secretary determines that the total amount of Federal funds that will be expended under (or by reason of) the project over

its approved term (or such portion thereof or other period as the Secretary may find appropriate) will not exceed the amount of such funds that would be expended by the State under the State plans approved under parts B and E of subchapter IV of this chapter if the project were not conducted.

(Aug. 14, 1935, ch. 531, title XI, § 1130, as added Oct. 31, 1994, Pub. L. 103–432, title II, § 208, 108 Stat. 4457.)

REFERENCES IN TEXT

Parts B and E of subchapter IV of this chapter, referred to in subsecs. (a) to (c) and (g), are classified to sections 620 et seq. and 670 et seq., respectively, of this title.

PRIOR PROVISIONS

A prior section 1130 of act Aug. 14, 1935, was classified to section 1320b of this title prior to repeal by Pub. L. 93–647, § 3(e)(1), Jan. 4, 1975, 88 Stat. 2349.

§ 1320a–10. Effect of failure to carry out State plan

In an action brought to enforce a provision of this chapter, such provision is not to be deemed unenforceable because of its inclusion in a section of this chapter requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S. Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability: *Provided*, *however*, That this section is not intended to alter the holding in Suter v. Artist M. that section 671(a)(15) of this title is not enforceable in a private right of action.

(Aug. 14, 1935, ch. 531, title XI, § 1130A, as added Oct. 31, 1994, Pub. L. 103–432, title II, § 211(a), 108 Stat. 4460.)

EFFECTIVE DATE

Section 211(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [enacting this section] shall apply to actions pending on the date of the enactment of this Act [Oct. 31, 1994] and to actions brought on or after such date of enactment.''

§ 1320b. Repealed. Pub. L. 93–647, § 3(e)(1), Jan. 4, 1975, 88 Stat. 2349

Section, act Aug. 14, 1935, ch. 531, title XI, § 1130, as added Oct. 20, 1972, Pub. L. 92–512, title III, § 301(a), 86 Stat. 945; amended July 9, 1973, Pub. L. 93–66, title II, § 221, 87 Stat. 159; Dec. 31, 1973, Pub. L. 93–233, § 18(j), 87 Stat. 970, set out limitations on funds for certain social services.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, see section 7(b) of Pub. L. 93–647, set out as an Effective Date of 1975 Amendment note under section 303 of this title.

SOCIAL SERVICES REGULATIONS POSTPONED

Pub. L. 93–233, § 12, Dec. 31, 1973, 87 Stat. 959, as amended by Pub. L. 93–647, § 3(g), Jan. 4, 1975, 88 Stat. 2349, provided that:

''(a) Subject to subsection (b), no regulation and no modification of any regulation, promulgated by the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter referred to as the 'Secretary') after January 1, 1973, shall be effective for any period which begins prior to October 1, 1975, if (and insofar as) such regulation or modification of a regulation pertains (directly or indirectly) to the provisions of law contained in section 3(a)(4)(A), 402(a)(19)(G), 403(a)(3)(A), 603(a)(1)(A), 1003(a)(3)(A), 1403(a)(3)(A), or 1603(a)(4)(A) of the Social Security Act [section 303(a)(4)(A), 602(a)(19)(G), 603(a)(3)(A), 803(a)(1)(A), 1203(a)(3)(A), 1353(a)(3)(A), or 1383(a)(4)(A) of this title].

''(b)(1) The provisions of subsection (a) shall not be applicable to any regulation relating to 'scope of programs', if such regulation is identical (except as provided in the succeeding sentence) to the provisions of section 221.0 of the regulations (relating to social services) proposed by the Secretary and published in the Federal Register on May 1, 1973. There shall be deleted from the first sentence of subsection (b) of such section 221.0 the phrase 'meets all the applicable requirements of this part and'.

''(2) The provisions of subsection (a) shall not be applicable to any regulation relating to 'limitations on total amount of Federal funds payable to States for services', if such regulation is identical (except as provided in the succeeding sentence) to the provisions of section 221.55 of the regulations so proposed and published on May 1, 1973. There shall be deleted from subsection (d)(1) of such section 221.55 the phrase '(as defined under day care services for children)'; and, in lieu of the sentence contained in subsection (d)(5) of such section 221.55, there shall be inserted the following: 'Services provided to a child who is under foster care in a foster family home (as defined in section 408 of the Social Security Act [section 608 of this title]) or in a childcare institution (as defined in such section [section 608 of this title]), or while awaiting placement in such a home or institution, but only if such services are needed by such child because he is under foster care.'.

''(3) The provisions of subsection (a) shall not be applicable to any regulation relating to 'rates and amounts of Federal financial participation for Puerto Rico, the Virgin Islands, and Guam', if such regulation is identical to the provisions of section 221.56 of the regulations so proposed and published on May 1, 1973.

''(4) The provisions of subsection (a) shall not be construed to preclude the Secretary from making any modification in any regulation (described in subsection (a)) if such modification is technically necessary to take account of the enactment of section 301 or 302 of the Social Security Amendments of 1972 [enacting subchapters XVI and VI of this chapter].

''(c) Notwithstanding the provisions of section 553(d) of title 5, United States Code, any regulation described in subsection (b) may become effective upon the date of its publication in the Federal Register.''

Similar provisions were contained in the following prior act: Pub. L. 93–66, title II, § 220, July 9, 1973, 87 Stat. 158.

MODIFICATION OF SOCIAL SERVICES REGULATIONS

Section 3(g) of Pub. L. 93–647 provided in part that: ''Notwithstanding the provisions of section 12(a) of Public Law 93–233 [set out as a note above], the Secretary may make any modification in any regulation described in that section if the modification is necessary to implement the provisions of this part.''

ADJUSTMENT OF ALLOTMENT TO STATE FOR FISCAL YEAR ENDING JUNE 30, 1973

Pub. L. 92–603, title IV, § 403, Oct. 30, 1972, 86 Stat. 1487, provided for the computation of the allotment of each state for the fiscal year ending June 30, 1973.

§ 1320b–1. Notification of social security claimant with respect to deferred vested benefits

(a) Whenever—

(1) the Commissioner of Social Security makes a finding of fact and a decision as to—

(A) the entitlement of any individual to monthly benefits under section 402, 423, or 428 of this title, or

(B) the entitlement of any individual to a lump-sum death payment payable under section 402(i) of this title on account of the death of any person to whom such individual is related by blood, marriage, or adoption,

(2) the Secretary makes a finding of fact and a decision as to the entitlement under section 426 of this title of any individual to hospital insurance benefits under part A of subchapter XVIII of this chapter, or

(3) the Commissioner of Social Security is requested to do so—

(A) by any individual with respect to whom the Commissioner of Social Security holds information obtained under section 6057 of title 26, or

(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 404(d) of this title,

the Commissioner of Social Security shall transmit to the individual referred to in paragraph (1) or (2) or the individual making the request under paragraph (3) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Commissioner of Social Security pursuant to such section 6057 with respect to the individual referred to in paragraph (1), (2), or (3)(A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

(b)(1) For purposes of section 401(g)(1) of this title, expenses incurred in the administration of subsection (a) of this section shall be deemed to be expenses incurred for the administration of subchapter II of this chapter.

(2) There are hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for each fiscal year (commencing with the fiscal year ending June 30, 1974) such sums as the Commissioner of Social Security deems necessary on account of additional administrative expenses resulting from the enactment of the provisions of subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1131, as added Sept. 2, 1974, Pub. L. 93–406, title II, § 1032, 88 Stat. 947; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(e)(7), 98 Stat. 1168; Aug. 15, 1994, Pub. L. 103–296, title I, § 108(b)(11), 108 Stat. 1484.)

REFERENCES IN TEXT

Part A of subchapter XVIII of this chapter, referred to in subsec. (a)(2), is classified to section 1395c et seq. of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 108(b)(11)(A), (G), in closing provisions substituted ''the Commissioner of Social Security shall transmit'' for ''he shall transmit'', ''paragraph (1) or (2)'' for ''paragraph (1)'', ''paragraph (3)'' for ''paragraph (2)'', ''Commissioner of Social Security pursuant to'' for ''Secretary pursuant to'', and ''paragraph (1), (2), or (3)(A)'' for ''paragraph (1) or (2)(A)''.

Subsec. (a)(1). Pub. L. 103–296, § 108(b)(11)(A)–(D), substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions, inserted ''or'' at end of subpar. (A), struck out ''or'' at end of subpar. (B), and struck out subpar. (C) which read as follows: ''the entitlement under section 426 of this title of any individual to hospital insurance benefits under part A of subchapter XVIII of this chapter, or''.

Subsec. (a)(2). Pub. L. 103–296, § 108(b)(11)(F), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 103–296, § 108(b)(11)(A), (E), redesignated par. (2) as (3) and substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions and in subpar. (A).

Subsec. (b)(2). Pub. L. 103–296, § 108(b)(11)(A), substituted ''Commissioner of Social Security'' for ''Secretary''.

1984—Subsec. (a). Pub. L. 98–369, § 2663(e)(7)(B), realigned margin of provisions following par. (2)(B).

Subsec. (a)(2)(B). Pub. L. 98–369, § 2663(e)(7)(A), substituted a comma for the period after ''section 404(d) of this title''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section effective Jan. 1, 1978, see section 1034 of Pub. L. 93–406, set out as a note under section 6057 of Title 26, Internal Revenue Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 6103.

§ 1320b–2. Period within which certain claims must be filed

(a) Claims

Notwithstanding any other provision of this chapter (but subject to subsection (b) of this section), any claim by a State for payment with respect to an expenditure made during any calendar quarter by the State—

(1) in carrying out a State plan approved under subchapter I, IV, X, XIV, XVI, XIX, or XX of this chapter, or

(2) under any other provision of this chapter which provides (on an entitlement basis) for Federal financial participation in expenditures made under State plans or programs,

shall be filed (in such form and manner as the Secretary shall by regulations prescribe) within the two-year period which begins on the first day of the calendar quarter immediately following such calendar quarter; and payment shall not be made under this chapter on account of any such expenditure if claim therefor is not made within such two-year period; except that this subsection shall not be applied so as to deny payment with respect to any expenditure involving court-ordered retroactive payments or audit exceptions, or adjustments to prior year costs.

(b) Waiver

The Secretary shall waive the requirement imposed under subsection (a) of this section with

respect to the filing of any claim if he determines (in accordance with regulations) that there was good cause for the failure by the State to file such claim within the period prescribed under subsection (a) of this section. Any such waiver shall be only for such additional period of time as may be necessary to provide the State with a reasonable opportunity to file such claim. A failure to file a claim within such time period which is attributable to neglect or administrative inadequacies shall be deemed not to be for good cause.

(Aug. 14, 1935, ch. 531, title XI, § 1132, as added June 17, 1980, Pub. L. 96–272, title III, § 306(a), 94 Stat. 530; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(c)(5), 95 Stat. 827.)

AMENDMENTS

1981—Subsec. (a)(1). Pub. L. 97–35 substituted ''subchapter I, IV, X'' for ''subchapter I, IV, V, X''.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE

Section 306(b), (c) of Pub. L. 96–272 provided that:

''(b)(1) The amendment made by subsection (a) [enacting this section] shall be effective only in the case of claims filed on account of expenditures made in calendar quarters commencing on or after October 1, 1979.

''(2) In the case of claims filed prior to the date of enactment of this Act [June 17, 1980] on account of expenditures described in section 1132 of the Social Security Act [this section] made in calendar quarters commencing prior to October 1, 1979, there shall be no time limit for the payment of such claims.

''(3) In the case of such expenditures made in calendar quarters commencing prior to October 1, 1979, for which no claim has been filed on or before the date of enactment of this Act, payment shall not be made under this Act on account of any such expenditure unless claim therefor is filed (in such form and manner as the Secretary shall by regulation prescribe) prior to January 1, 1981.

''(4) The provisions of this subsection shall not be applied so as to deny payment with respect to any expenditure involving adjustments to prior year costs or court-ordered retroactive payments or audit exceptions. The Secretary may waive the requirements of paragraph (3) in the same manner as under section 1132(b) of the Social Security Act [subsec. (b)(3) of this section].

''(c) Notwithstanding any other provision of law, there shall be no time limit for the filing or payment of such claims except as provided in this section, unless such other provision of law, in imposing such a time limitation, specifically exempts such filing or payment from the provisions of this section.''

§ 1320b–3. Applicants or recipients under public assistance programs not to be required to make election respecting certain veterans' benefits

(a) Supplemental Security Income program

Notwithstanding any other provision of law (but subject to subsection (b) of this section), no individual who is an applicant for or recipient of aid or assistance under a State plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, or of benefits under the Supplemental Security Income program established by subchapter XVI of this chapter shall—

(1) be required, as a condition of eligibility for (or of continuing to receive) such aid, assistance, or benefits, to make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 with respect to pension paid by the Secretary of Veterans Affairs, or

(2) by reason of failure or refusal to make such an election, be denied (or suffer a reduction in the amount of) such aid, assistance, or benefits.

(b) Period of effectiveness

The provisions of subsection (a) of this section shall be applicable only with respect to an individual, who is an applicant for or recipient of aid, assistance, or benefits described in subsection (a) of this section, during a period with respect to which there is in effect—

(1) in case such individual is an applicant for or recipient of aid or assistance under a State plan referred to in subsection (a) of this section, in the State having such plan, or

(2) in case such individual is an applicant for or recipient of benefits under the Supplemental Security Income program established by subchapter XVI of this chapter, in the State in which the individual applies for or receives such benefits,

a State plan for medical assistance, approved under subchapter XIX of this chapter, under which medical assistance is available to such individual only for periods for which such individual is a recipient of aid, assistance, or benefits described in subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1133, as added June 17, 1980, Pub. L. 96–272, title III, § 310(a)(1), 94 Stat. 532; amended June 13, 1991, Pub. L. 102–54, § 13(q)(3)(B)(iii), 105 Stat. 279.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsec. (a), is classified to section 601 et seq. of this title.

Section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978, referred to in subsec. (a)(1), is section 306 of Pub. L. 95–588, title III, Nov. 4, 1978, 92 Stat. 2508, which is set out as a note under section 1521 of Title 38, Veterans' Benefits.

AMENDMENTS

1991—Subsec. (a)(1). Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Veterans' Administration''.

EFFECTIVE DATE

Section 310(a)(2) of Pub. L. 96–272 provided that: ''The amendment made by paragraph (1) [enacting this section] shall be effective on and after January 1, 1979; except that nothing contained in such amendment shall be construed to authorize or require any payment (or increase in payment) of any aid or assistance or benefits referred to in section 1133(a) of the Social Security Act [subsec. (a) of this section] (as added by paragraph (1)) for any benefit period which begins prior to the date of enactment of this Act [June 17, 1980].''

CONTINUING MEDICAID ELIGIBILITY FOR CERTAIN RECIPIENTS OF VETERANS' ADMINISTRATION PENSIONS

Section 310(b)(2) of Pub. L. 96–272 provided that:

''(A) The Administrator shall provide to each individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) [this section] applies and who is eligible to make or has made an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38, Veterans' Benefits], a written notice, in clear and understandable language, which (i) describes the consequences to such individual (and possibly to such individual's family), in terms of a determination or possible determination of ineligibility for medical assistance under a State plan approved under title XIX of the Social Security Act [subchapter XIX of this chapter], of making an election with respect to pension under such section 306, (ii) describes the provisions of subparagraph (B) of this paragraph and subsection (a) of this section, (iii) sets forth other relevant information that would be helpful to such individual in making an informed decision concerning such an election or the disaffirmation thereof, and (iv) in the case of any individual who has made such an election, is accompanied by a form prepared for the purpose of enabling such individual to file with the Administrator a written disaffirmation of such an election.

''(B) Notwithstanding any other provision of law—

''(i) any individual to whom section 1133 of the Social Security Act (as added by subsection (a)(1) of this section) [this section] applies may, within the 90-day period beginning with the day that there is mailed to such individual (at such individual's last known mailing address) a notice referred to in subparagraph (A), disaffirm an election previously made by such individual under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38] by completing and mailing to the Administrator the form furnished such individual for such purpose by the Administrator pursuant to subparagraph (A),

''(ii) whenever any such individual files such a disaffirmation with the Administrator, the amount of pension payable to such individual shall be adjusted, beginning with the first calendar month which commences after the receipt by the Administrator of such disaffirmation, to the amount that such pension would have been if such an election by such individual had not been made,

''(iii) any individual who has filed a disaffirmation, pursuant to this subparagraph, of an election made by such individual under such section 306 may again make an election thereunder, but such subsequent election may not be disaffirmed under this subsection, and

''(iv) no indebtedness to the United States, as a result of the disaffirmation by an individual, pursuant to this subparagraph, of an election made by such individual under such section 306 shall be considered to arise from the payment of pension pursuant to such an election.

''(C) The Administrator shall promptly advise the Secretary of Health, Education, and Welfare [now Health and Human Services], and provide identification of the individuals involved and other pertinent information with respect to (i) disaffirmations of elections made by individuals pursuant to subparagraph (B), (ii) individuals who, by failing to disaffirm within the 90-day period prescribed in subparagraph (B), are deemed to have reaffirmed elections previously made, and (iii) individuals who, after having disaffirmed an election under subparagraph (B), subsequently again make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [Pub. L. 95–588, set out as a note under section 1521 of Title 38]. The Secretary, upon receipt of any such information with respect to an individual, shall promptly notify the appropriate agencies administering State plans approved under title I, X, XIV, XIX, and part A of title IV of the Social Security Act [subchapters I, X, XIV, XIX, and part A of subchapter IV of this chapter], and State agencies making supplemental payments pursuant to section 1616 of such Act [section 1382e of this title] or an agreement entered into pursuant to section 212(a) of Public Law 93–66 [set out as a note under section 1382 of this title].''

§ 1320b–4. Nonprofit hospital or rural primary care hospital philanthropy

For purposes of determining, under subchapters XVIII and XIX of this chapter, the reasonable costs of services provided by nonprofit hospitals or rural primary care hospitals, the following items shall not be deducted from the operating costs of such hospitals or rural primary care hospitals:

(1) A grant, gift, or endowment, or income therefrom, which is to or for such a hospital and which has not been designated by the donor for paying any specific operating costs.

(2) A grant or similar payment which is to such a hospital, which was made by a governmental entity, and which is not available under the terms of the grant or payment for use as operating funds.

(3) Those types of donor designated grants and gifts (including grants and similar payments which are made by a governmental entity), and income therefrom, which the Secretary determines, in the best interests of needed health care, should be encouraged.

(4) The proceeds from the sale or mortgage of any real estate or other capital asset of such a hospital, which real estate or asset the hospital acquired through gift or grant, if such proceeds are not available for use as operating funds under the terms of the gift or grant.

Paragraph (4) shall not apply to the recovery of the appropriate share of depreciation when gains or losses are realized from the disposal of depreciable assets.

(Aug. 14, 1935, ch. 531, title XI, § 1134, as added Dec. 5, 1980, Pub. L. 96–499, title IX, § 901(a), 94 Stat. 2611; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(c)(6), 95 Stat. 827; Sept. 3, 1982, Pub. L. 97–248, title I, § 137(b)(5), 96 Stat. 377; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6003(g)(3)(D)(iii), 103 Stat. 2153.)

AMENDMENTS

1989—Pub. L. 101–239 substituted ''hospitals or rural primary care hospitals'' for ''hospitals'' in two places in introductory provisions.

1982—Par. (4). Pub. L. 97–248 substituted ''sale'' for ''scale''.

1981—Pub. L. 97–35 substituted ''subchapters XVIII and'' for ''subchapters V, XVIII, and'' in provision preceding par. (1).

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE

Section 901(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [enacting this sec-

tion] shall apply to grants, gifts, and endowments, and income therefrom, made or established after the date of the enactment of this Act [Dec. 5, 1980].''

§ 1320b–5. Development of model prospective rate methodology

(a) Payment of hospitals for inpatient services

The Secretary shall develop a model system or systems for the payment of hospitals for inpatient hospital services on a prospective basis which may be applied for reimbursement of hospitals under subchapter XVIII of this chapter or under a State plan approved under subchapter XIX of this chapter.

(b) Report to Congress

The Secretary shall report to the Congress on the development of such system or systems not later than July 31, 1982.

(c) Proposals for legislation relating to reimbursement of providers

The Secretary shall develop, in consultation with the Senate Committee on Finance and the Committee on Ways and Means of the House of Representatives, proposals for legislation which would provide that hospitals, skilled nursing facilities, and, to the extent feasible, other providers, would be reimbursed under subchapter XVIII of this chapter on a prospective basis. The Secretary shall report such proposals to such committees not later than December 31, 1982.

(d) Prospective payment methodology for outpatient hospital services

(1) The Secretary shall develop a fully prospective payment system for ambulatory surgical procedures performed on patients in hospitals on an outpatient basis.

(2) The system shall, to the extent practicable, provide for an all-inclusive payment rate for ambulatory surgical procedures performed on patients in hospitals on an outpatient basis, which rate encompasses payment for facility services and all medical and other health services, other than physicians' services, commonly furnished in connection with such procedures.

(3) The system shall provide for appropriate payment rates with respect to such procedures. In establishing such rates, the Secretary shall consider whether a differential payment rate is appropriate for specialty hospitals.

(4) Such rates shall take into account at least the following considerations:

(A) The costs of hospitals providing ambulatory surgical procedures.

(B) The costs under this subchapter of payment for such procedures performed in ambulatory surgical centers.

(C) The extent to which any differences in such costs are justifiable.

(5) The Secretary shall submit to Congress—

(A) an interim report on the development of the system by April 1, 1988, and

(B) a final report on such system by April 1, 1989.

The report under subparagraph (B) shall include recommendations concerning the implementation of the payment system for ambulatory surgical procedures performed on or after October 1, 1989.

(6) Repealed. Pub. L. 103–432, title I, § 147(c)(2)(A), Oct. 31, 1994, 108 Stat. 4429.

(7) The Secretary shall solicit the views of the Prospective Payment Assessment Commission in developing the system under paragraph (1), and shall include in the Secretary's reports under this subsection any views the Commission may submit with respect to such system.

(Aug. 14, 1935, ch. 531, title XI, § 1135, as added Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2173(c), 95 Stat. 809; amended Sept. 3, 1982, Pub. L. 97–248, title I, § 101(b)(3), 96 Stat. 335; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9343(f), 100 Stat. 2041; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4068(b), 101 Stat. 1330–114; July 1, 1988, Pub. L. 100–360, title IV, § 411(g)(6), 102 Stat. 785; Oct. 31, 1994, Pub. L. 103–432, title I, § 147(c)(2), 108 Stat. 4429.)

AMENDMENTS

1994—Subsec. (d)(6). Pub. L. 103–432, § 147(c)(2)(A), struck out par. (6) which read as follows:

''(6)(A) The Secretary shall develop a model system for the payment for outpatient hospital services other than ambulatory surgery.

''(B) The Secretary shall submit to Congress a report on the model payment system under subparagraph (A) by January 1, 1991.''

Subsec. (d)(7). Pub. L. 103–432, § 147(c)(2)(B), substituted ''system'' for ''systems'' in two places and ''paragraph (1)'' for ''paragraphs (1) and (6)''.

1988—Subsec. (d)(3). Pub. L. 100–360 substituted ''specialty'' for ''speciality''.

1987—Subsec. (d)(3). Pub. L. 100–203, § 4068(b)(1), inserted provision at end directing Secretary, in establishing rates, to consider whether a differential rate is appropriate for speciality hospitals.

Subsec. (d)(7). Pub. L. 100–203, § 4068(b)(2), added par. (7).

1986—Subsec. (d). Pub. L. 99–509 added subsec. (d).

1982—Subsec. (c). Pub. L. 97–248 added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320a–3a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

DEVELOPMENT OF PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT SERVICES

Pub. L. 101–508, title IV, § 4151(b)(2), Nov. 5, 1990, 104 Stat. 1388–72, directed Secretary of Health and Human Services to develop a proposal to replace the current system under which payment is made for hospital outpatient services under subchapter XVIII of this chapter with a system under which such payments would be made on the basis of prospectively determined rates, and further provided for considerations in developing such proposal, as well as various reports to be submitted to Congress, one by the Administrator of the Health Care Financing Administration by not later than Jan. 1, 1991, containing research findings relating to prospective payments for hospital outpatient services, another by the Secretary by not later than Sept. 1, 1991, containing the proposal for prospective payment system, and another by the Prospective Payment Assessment Commission by not later than Mar. 1, 1992, containing comments on the Secretary's proposal.

§ 1320b–6. Pilot projects to demonstrate the use of integrated service delivery systems for human services programs

(a) Establishment of pilot projects by States

In order to develop and demonstrate ways of improving the delivery of services to individuals and families who need them under the various human services programs, by eliminating programmatic fragmentation and thereby assuring that an applicant for services under any one such program will be informed of and have access to all of the services which may be available to him or his family under the other human services programs being carried out in the community involved, any State having an approved plan under part A of subchapter IV of this chapter may, subject to the provisions of this section, establish and conduct one or more pilot projects to demonstrate the use of integrated service delivery systems for human services programs in that State or in one or more political subdivisions thereof.

(b) Integration of service delivery systems for human services programs

The integration of service delivery systems for human services programs in any State or locality under a pilot project established under this section shall involve or include—

(1) the development of a common set of terms for use in all of the human services programs involved;

(2) the development for each applicant of a single comprehensive family profile which is suitable for use under all of the human services programs involved;

(3) the establishment and maintenance of a single resources directory by which the citizens of the community involved may be informed of and gain access to the services which are available under all such programs;

(4) the development of a unified budget and budgeting process, and a unified accounting system, with standardized audit procedures;

(5) the implementation of unified planning, needs assessment, and evaluation;

(6) the consolidation of agency locations and related transportation services;

(7) the standardization of procedures for purchasing services from nongovernmental sources;

(8) the creation of communications linkages among agencies to permit the serving of individual and family needs across program and agency lines;

(9) the development, to the maximum extent possible, of uniform application and eligibility determination procedures; and

(10) any other methods, arrangements, and procedures which the Secretary determines are necessary or desirable for, and consistent with, the establishment and operation of an integrated service delivery system.

(c) Procedures for State establishment of pilot projects

(1) Any State which desires to establish and conduct a pilot project under this section, after having published a description of the proposed project and invited comments thereon from interested persons in the community or communities which would be affected, shall submit an application to the Secretary (in such form and containing such information as the Secretary may require) within 6 months after July 18, 1984. The proposed project may be statewide in operation or may be limited to one or more political subdivisions of the State; and the application shall in any event include or be accompanied by satisfactory assurances that the project as proposed would be permitted under applicable State and local law.

(2) The Secretary shall consider all applications and accompanying comments and materials which are submitted under paragraph (1), and, no later than 9 months after July 18, 1984, shall approve no fewer than 3 nor more than 5 of the proposed projects (including one such project to be operated on a statewide basis). In considering and approving such applications the Secretary shall take into account the size and characteristics of the population that would be served by each proposed project, the desirability of wide geographic distribution among the projects, the number and nature of the human services programs which are in active operation in the various communities involved, and such other factors as may tend to indicate whether or not a particular proposed project would provide a useful and effective demonstration of the value of an integrated service delivery system. Each project approved under this paragraph shall be deemed for purposes of this section to begin on the first day of the month following the month in which the application with respect to such project is approved.

(3) The Secretary shall approve any application for a project under this section only after determining that the conduct of such project will not lower or restrict the levels of aid, assistance, benefits, or services, or the income or resource standards, deductions, or exclusions, under any of the human services programs involved, and will not delay the provision of aid, assistance, benefits, or services under any of such programs.

(d) Requests by States for waiver of requirements

(1) Any State whose application is approved under subsection (c) of this section may submit to the Secretary a request for the waiver of any requirement which would otherwise apply with respect to the proposed project under any of the laws governing the human services programs to be included in the project; and—

(A) if the law involved is within the jurisdiction of the Secretary and authority to grant the waiver involved is otherwise available to the Secretary under this subchapter, subchapter IV of this chapter, or any other provision of law, the Secretary shall approve such request upon a determination that the waiver is necessary for the project to provide a useful and effective demonstration of the value of an integrated service delivery system; and

(B) if the law involved is within the jurisdiction of a Federal agency other than the Department of Health and Human Services and authority to grant the waiver involved is available to the head of such other agency under that law or any other provision of law,

the Secretary shall transmit such request (on behalf of the requesting State) to the head of such other agency, who shall approve such request upon a determination that the waiver is necessary for the project to provide a useful and effective demonstration of the value of an integrated service delivery system and who shall certify such approval to the Secretary.

(2) If under the law governing any of the human services programs included within a project there are provisions establishing safeguards which limit or restrict the use or disclosure of information (concerning applicants for or recipients of benefits or services) which has been obtained or developed by the agency involved in the conduct of that program, and a waiver of such provisions is granted under paragraph (1) in order to make such information available for purposes of the project—

(A) the State shall provide each applicant for and recipient of aid, assistance, benefits, or services under the proposed integrated service delivery system with a clear and readily comprehensible notice that such information may be disclosed to and used by project personnel, or exchanged with the other agencies having responsibility for human services programs included within the project;

(B) the State shall take such steps as may be necessary to ensure that the information disclosed will be used only for purposes of, and by persons directly connected with, such project; and

(C) the State's application with respect to the project under subsection (c) of this section shall contain or be accompanied by satisfactory assurances that the preceding requirements of this paragraph will be fully complied with.

(e) Payments to States by Secretary

The Secretary shall from time to time pay to each State which has an approved pilot project under this section, in such manner and according to such schedule as may be agreed upon by the Secretary and such State, amounts equal in the aggregate to—

(1) 90 percent of the costs incurred by such State and its political subdivisions in carrying out such project during the first 18 months after the date on which the project begins,

(2) 80 percent of any such costs incurred during the 12-month period beginning with the nineteenth month after such date, and

(3) 70 percent of any such costs incurred during the 12-month period beginning with the thirty-first month after such date.

(f) "Human services program" defined; consultation by Secretary with other department heads

(1) For purposes of this section, the term ''human services program'' includes the program of aid to families with dependent children under part A of subchapter IV of this chapter, the supplemental security income benefits program under subchapter XVI of this chapter, the Federal food stamp program, and any other Federal or federally assisted program (other than a program under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.]) which provides aid, assistance, or benefits based wholly or partly on need or on income-related qualifications to specified classes or types of individuals or families or which is designed to help in crisis or emergency situations by meeting the basic human needs of individuals or families whose own resources are insufficient for that purpose.

(2) In carrying out this section the Secretary shall regularly consult with the Secretary of Labor, the Secretary of Agriculture, the Secretary of Housing and Urban Development, and the head of any other Federal agency having jurisdiction over or responsibility for one or more human services programs, in order to ensure that the administrative efforts of the various agencies involved are coordinated with respect to all of the pilot projects being carried out under this section.

(g) Reports by States

The Secretary shall require each State which is carrying out a pilot project under this section to submit periodic reports on the progress of such project, giving particular attention to the cost-effectiveness of the integrated service delivery system involved and the extent to which such system is improving the delivery of services. No pilot project under this section shall be conducted for a period of longer than 42 months. The first such report shall be submitted no later than 3 months after the date on which the project begins.

(h) Report to Congress by Secretary

The Secretary shall from time to time submit to the Congress a report on the progress and current status of each of the approved pilot projects under this section. Each such report shall reflect the periodic reports theretofore submitted to the Secretary by the States involved under subsection (g) of this section, and shall contain such additional comments, findings, and recommendations with respect to the operation of the program under this section as the Secretary may determine to be appropriate.

(i) Study of program by Comptroller General

The Comptroller General shall, at such time or times as he determines to be appropriate, review and evaluate any or all of the pilot projects undertaken pursuant to this section, and shall from time to time report to the Congress on the results of such reviews and evaluations together with his findings and recommendations with respect thereto.

(j) Authorization of appropriations

There are authorized to be appropriated, for the four-fiscal-year period beginning with the fiscal year 1985, such sums, not to exceed $8,000,000 in the aggregate, as may be necessary to carry out this section.

(Aug. 14, 1935, ch. 531, title XI, §1136, as added July 18, 1984, Pub. L. 98–369, div. B, title VI, §2630, 98 Stat. 1137; amended Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1883(c)(2), 100 Stat. 2918.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsecs. (a) and (f)(1), is classified to section 601 et seq. of this title.

The Rehabilitation Act of 1973, referred to in subsec. (f)(1), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as

amended, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

AMENDMENTS

1986—Subsec. (b)(7). Pub. L. 99–514 substituted ''nongovernmental'' for ''nongovermental''.

EFFECTIVE DATE

Section effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as an Effective Date of 1984 Amendments note under section 602 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 701 of this title.

§ 1320b–7. Income and eligibility verification system

(a) Requirements of State eligibility systems

In order to meet the requirements of this section, a State must have in effect an income and eligibility verification system which meets the requirements of subsection (d) of this section and under which—

(1) the State shall require, as a condition of eligibility for benefits under any program listed in subsection (b) of this section, that each applicant for or recipient of benefits under that program furnish to the State his social security account number (or numbers, if he has more than one such number), and the State shall utilize such account numbers in the administration of that program so as to enable the association of the records pertaining to the applicant or recipient with his account number;

(2) wage information from agencies administering State unemployment compensation laws available pursuant to section 3304(a)(16) of the Internal Revenue Code of 1986, wage information reported pursuant to paragraph (3) of this subsection, and wage, income, and other information from the Social Security Administration and the Internal Revenue Service available pursuant to section 6103(*l*)(7) of such Code, shall be requested and utilized to the extent that such information may be useful in verifying eligibility for, and the amount of, benefits available under any program listed in subsection (b) of this section, as determined by the Secretary of Health and Human Services (or, in the case of the unemployment compensation program, by the Secretary of Labor, or, in the case of the food stamp program, by the Secretary of Agriculture);

(3) employers in such State are required, effective September 30, 1988, to make quarterly wage reports to a State agency (which may be the agency administering the State's unemployment compensation law) except that the Secretary of Labor (in consultation with the Secretary of Health and Human Services and the Secretary of Agriculture) may waive the provisions of this paragraph if he determines that the State has in effect an alternative system which is as effective and timely for purposes of providing employment related income and eligibility data for the purposes described in paragraph (2);

(4) the State agencies administering the programs listed in subsection (b) of this section adhere to standardized formats and procedures established by the Secretary of Health and Human Services (in consultation with the Secretary of Agriculture) under which—

(A) the agencies will exchange with each other information in their possession which may be of use in establishing or verifying eligibility or benefit amounts under any other such program;

(B) such information shall be made available to assist in the child support program under part D of subchapter IV of this chapter, and to assist the Secretary of Health and Human Services in establishing or verifying eligibility or benefit amounts under subchapters II and XVI of this chapter, but subject to the safeguards and restrictions established by the Secretary of the Treasury with respect to information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1986; and

(C) the use of such information shall be targeted to those uses which are most likely to be productive in identifying and preventing ineligibility and incorrect payments, and no State shall be required to use such information to verify the eligibility of all recipients;

(5) adequate safeguards are in effect so as to assure that—

(A) the information exchanged by the State agencies is made available only to the extent necessary to assist in the valid administrative needs of the program receiving such information, and the information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1986 is only exchanged with agencies authorized to receive such information under such section 6103(*l*); and

(B) the information is adequately protected against unauthorized disclosure for other purposes, as provided in regulations established by the Secretary of Health and Human Services, or, in the case of the unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture, or[1] in the case of information released pursuant to section 6103(*l*) of the Internal Revenue Code of 1986, the Secretary of the Treasury;

(6) all applicants for and recipients of benefits under any such program shall be notified at the time of application, and periodically thereafter, that information available through the system will be requested and utilized; and

(7) accounting systems are utilized which assure that programs providing data receive appropriate reimbursement from the programs utilizing the data for the costs incurred in providing the data.

(b) Applicable programs

The programs which must participate in the income and eligibility verification system are—

(1) the aid to families with dependent children program under part A of subchapter IV of this chapter;

[1] So in original. Probably should be followed by a comma.

(2) the medicaid program under subchapter XIX of this chapter;

(3) the unemployment compensation program under section 3304 of the Internal Revenue Code of 1986;

(4) the food stamp program under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.]; and

(5) any State program under a plan approved under subchapter I, X, XIV, or XVI of this chapter.

(c) Protection of applicants from improper use of information

(1) In order to protect applicants for and recipients of benefits under the programs identified in subsection (b) of this section, or under the supplemental security income program under subchapter XVI of this chapter, from the improper use of information obtained from the Secretary of the Treasury under section 6103(*l*)(7)(B) of the Internal Revenue Code of 1986, no Federal, State, or local agency receiving such information may terminate, deny, suspend, or reduce any benefits of an individual until such agency has taken appropriate steps to independently verify information relating to—

(A) the amount of the asset or income involved,

(B) whether such individual actually has (or had) access to such asset or income for his own use, and

(C) the period or periods when the individual actually had such asset or income.

(2) Such individual shall be informed by the agency of the findings made by the agency on the basis of such verified information, and shall be given an opportunity to contest such findings, in the same manner as applies to other information and findings relating to eligibility factors under the program.

(d) Citizenship or immigration status requirements; documentation; verification by Immigration and Naturalization Service; denial of benefits; hearing

The requirements of this subsection, with respect to an income and eligibility verification system of a State, are as follows:

(1)(A) The State shall require, as a condition of an individual's eligibility for benefits under a program listed in subsection (b) of this section, a declaration in writing, under penalty of perjury—

(i) by the individual,

(ii) in the case in which eligibility for program benefits is determined on a family or household basis, by any adult member of such individual's family or household (as applicable), or

(iii) in the case of an individual born into a family or household receiving benefits under such program, by any adult member of such family or household no later than the next redetermination of eligibility of such family or household following the birth of such individual,

stating whether the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.

(B) In this subsection—

(i) in the case of the program described in subsection (b)(1) of this section, any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's being considered a dependent child or to the individual's being treated as a caretaker relative or other person whose needs are to be taken into account in making the determination under section 602(a)(7) of this title,

(ii) in the case of the program described in subsection (b)(4) of this section—

(I) any reference to the State shall be considered a reference to the State agency, and

(II) any reference to an individual's eligibility for benefits under the program shall be considered a reference to the individual's eligibility to participate in the program as a member of a household, and

(III) the term ''satisfactory immigration status'' means an immigration status which does not make the individual ineligible for benefits under the applicable program.

(2) If such an individual is not a citizen or national of the United States, there must be presented either—

(A) alien registration documentation or other proof of immigration registration from the Immigration and Naturalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number), or

(B) such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.

(3) If the documentation described in paragraph (2)(A) is presented, the State shall utilize the individual's alien file or alien admission number to verify with the Immigration and Naturalization Service the individual's immigration status through an automated or other system (designated by the Service for use with States) that—

(A) utilizes the individual's name, file number, admission number, or other means permitting efficient verification, and

(B) protects the individual's privacy to the maximum degree possible.

(4) In the case of such an individual who is not a citizen or national of the United States, if, at the time of application for benefits, the statement described in paragraph (1) is submitted but the documentation required under paragraph (2) is not presented or if the documentation required under paragraph (2)(A) is presented but such documentation is not verified under paragraph (3)—

(A) the State—

(i) shall provide a reasonable opportunity to submit to the State evidence indicating a satisfactory immigration status, and

(ii) may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status until such

a reasonable opportunity has been provided; and

(B) if there are submitted documents which the State determines constitutes reasonable evidence indicating such status—

(i) the State shall transmit to the Immigration and Naturalization Service photostatic or other similar copies of such documents for official verification,

(ii) pending such verification, the State may not delay, deny, reduce, or terminate the individual's eligibility for benefits under the program on the basis of the individual's immigration status, and

(iii) the State shall not be liable for the consequences of any action, delay, or failure of the Service to conduct such verification.

(5) If the State determines, after complying with the requirements of paragraph (4), that such an individual is not in a satisfactory immigration status under the applicable program—

(A) the State shall deny or terminate the individual's eligibility for benefits under the program, and

(B) the applicable fair hearing process shall be made available with respect to the individual.

(e) Erroneous State citizenship or immigration status determinations; penalties not required

Each Federal agency responsible for administration of a program described in subsection (b) of this section shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to any error in the State's determination to make an individual eligible for benefits based on citizenship or immigration status—

(1) if the State has provided such eligibility based on a verification of satisfactory immigration status by the Immigration and Naturalization Service,

(2) because the State, under subsection (d)(4)(A)(ii) of this section, was required to provide a reasonable opportunity to submit documentation,

(3) because the State, under subsection (d)(4)(B)(ii) of this section, was required to wait for the response of the Immigration and Naturalization Service to the State's request for official verification of the immigration status of the individual, or

(4) because of a fair hearing process described in subsection (d)(5)(B) of this section.

(f) Medical assistance to aliens for treatment of emergency conditions

Subsections (a)(1) and (d) of this section shall not apply with respect to aliens seeking medical assistance for the treatment of an emergency medical condition under section 1396b(v)(2) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1137, as added July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2651(a), 98 Stat. 1147; amended Oct. 21, 1986, Pub. L. 99–509, title IX, § 9101, 100 Stat. 1972; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095; Nov. 6, 1986, Pub. L. 99–603, title I, § 121(a)(1), 100 Stat. 3384; July 1, 1988, Pub. L. 100–360, title IV, § 411(k)(15)(A), 102 Stat. 799; Oct. 31, 1994, Pub. L. 103–432, title II, § 231, 108 Stat. 4462.)

REFERENCES IN TEXT

Parts A and D of subchapter IV of this chapter, referred to in subsecs. (a)(4)(B) and (b)(1), are classified to sections 601 et seq. and 651 et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsecs. (a)(2), (4)(B), (5), (b)(3), and (c)(1), is classified generally to Title 26, Internal Revenue Code.

The Food Stamp Act of 1977, referred to in subsec. (b)(4), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

AMENDMENTS

1994—Subsec. (d)(1)(A). Pub. L. 103–432 amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The State shall require, as a condition of an individual's eligibility for benefits under any program listed in subsection (b) of this section, a declaration in writing by the individual (or, in the case of an individual who is a child, by another on the individual's behalf), under penalty of perjury, stating whether or not the individual is a citizen or national of the United States, and, if that individual is not a citizen or national of the United States, that the individual is in a satisfactory immigration status.''

1988—Subsec. (f). Pub. L. 100–360 added subsec. (f).

1986—Subsec. (a). Pub. L. 99–603, § 121(a)(1)(A), inserted ''which meets the requirements of subsection (d) of this section and'' after ''system'' in introductory text.

Subsec. (a)(2), (4)(B). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (a)(4)(C). Pub. L. 99–509 inserted before semicolon at end '', and no State shall be required to use such information to verify the eligibility of all recipients''.

Subsec. (a)(5). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing.

Subsec. (b). Pub. L. 99–603, § 121(a)(1)(B), substituted ''income and eligibility verification system'' for ''income verification system'' in introductory text.

Subsecs. (b)(3), (c)(1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsecs. (d), (e). Pub. L. 99–603, § 121(a)(1)(C), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 411(k)(15)(B) of Pub. L. 100–360 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply as if it were included in the enactment of section 9406 of the Omnibus Budget Reconciliation Act of 1986 [see section 9406(c) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 1396a of this title].''

EFFECTIVE DATE OF 1986 AMENDMENT; USE OF VERIFICATION SYSTEM

Section 121(c)(3), (4) of Pub. L. 99–603 provided that:

''(3) USE OF VERIFICATION SYSTEM REQUIRED IN FISCAL YEAR 1989.—Except as provided in paragraph (4), the amendments made by subsection (a) [amending this section, section 1436a of this title, and section 1091 of Title 20, Education] take effect on October 1, 1988. States have until that date to begin complying with the requirements imposed by those amendments.

''(4) USE OF VERIFICATION SYSTEM NOT REQUIRED FOR A PROGRAM IN CERTAIN CASES.—

''(A) REPORT TO RESPECTIVE CONGRESSIONAL COMMITTEES.—With respect to each covered program (as de-

fined in subparagraph (D)(i)), each appropriate Secretary shall examine and report to the appropriate Committees of the House of Representatives and of the Senate, by not later than April 1, 1988, concerning whether (and the extent to which)—

''(i) the application of the amendments made by subsection (a) to the program is cost-effective and otherwise appropriate, and

''(ii) there should be a waiver of the application of such amendments under subparagraph (B).

The amendments made by subsection (a) shall not apply with respect to a covered program described in subclause (II), (V), (VI), or (VII) of subparagraph (D)(i) until after the date of receipt of such report with respect to the program.

''(B) WAIVER IN CERTAIN CASES.—If, with respect to a covered program, the appropriate Secretary determines, on the Secretary's own initiative or upon an application by an administering entity and based on such information as the Secretary deems persuasive (which may include the results of the report required under subsection (d)(1) [set out as a note below] and information contained in such an application), that—

''(i) the appropriate Secretary or the administering entity has in effect an alternative system of immigration status verification which—

''(I) is as effective and timely as the system otherwise required under the amendments made by subsection (a) with respect to the program, and

''(II) provides for at least the hearing and appeals rights for beneficiaries that would be provided under the amendments made by subsection (a), or

''(ii) the costs of administration of the system otherwise required under such amendments exceed the estimated savings,

such Secretary may waive the application of such amendments to the covered program to the extent (by State or other geographic area or otherwise) that such determinations apply.

''(C) BASIS FOR DETERMINATION.—A determination under subparagraph (B)(ii) shall be based upon the appropriate Secretary's estimate of—

''(i) the number of aliens claiming benefits under the covered program in relation to the total number of claimants seeking benefits under the program,

''(ii) any savings in benefit expenditures reasonably expected to result from implementation of the verification program, and

''(iii) the labor and nonlabor costs of administration of the verification system,

the degree to which the Immigration and Naturalization Service is capable of providing timely and accurate information to the administering entity in order to permit a reliable determination of immigration status, and such other factors as such Secretary deems relevant.

''(D) DEFINITIONS.—In this paragraph:

''(i) The term 'covered program' means each of the following programs:

''(I) The aid to families with dependent children program under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter].

''(II) The medicaid program under title XIX of the Social Security Act [subchapter XIX of this chapter].

''(III) Any State program under a plan approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter].

''(IV) The unemployment compensation program under section 3304 of the Internal Revenue Code of 1954 [now 1986; 26 U.S.C. 3304].

''(V) The food stamp program under the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.].

''(VI) The programs of financial assistance for housing subject to section 214 of the Housing and Community Development Act of 1980 [42 U.S.C. 1436a].

''(VII) The program of grants, loans, and work assistance under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq.; 42 U.S.C. 2751 et seq.].

''(ii) The term 'appropriate Secretary' means, with respect to the covered program described in—

''(I) subclauses (I) through (III) of clause (i), the Secretary of Health and Human Services;

''(II) clause (i)(IV), the Secretary of Labor;

''(III) clause (i)(V), the Secretary of Agriculture;

''(IV) clause (i)(VI), the Secretary of Housing and Urban Development; and

''(V) clause (i)(VII), the Secretary of Education.

''(iii) The term 'administering entity' means, with respect to the covered program described in—

''(I) subclause (I), (II), (III), (IV), or (V) of clause (i), the State agency responsible for the administration of the program in a State;

''(II) clause (i)(VI), the Secretary of Housing and Urban Development, a public housing agency, or another entity that determines the eligibility of an individual for financial assistance; and

''(III) clause (i)(VII), an institution of higher education involved.''

EFFECTIVE DATE

Section 2651(*l*) of Pub. L. 98–369 provided that:

''(1) The amendments made by subsections (j) and (k) [amending section 1383 of this title and section 6103 of Title 26, Internal Revenue Code] shall become effective on the date of the enactment of this Act [July 18, 1984].

''(2) Except as otherwise specifically provided, the amendments made by subsections (a) through (i) [enacting this section, amending sections 302, 503, 602, 1202, 1352, and 1396a of this title and section 2020 of Title 7, Agriculture, repealing section 611 of this title, and amending provisions set out as a note under section 1382 of this title] shall become effective on April 1, 1985. In the case of any State which submits a plan describing a good faith effort by such State to come into compliance with the requirements of such subsections, the Secretary of Health and Human Services (or, in the case of the State unemployment compensation program, the Secretary of Labor, or, in the case of the food stamp program, the Secretary of Agriculture) may by waiver grant a delay in the effective date of such subsections, except that no such waiver may delay the effective date of section 1137(c) of the Social Security Act [subsec. (c) of this section] (as added by subsection (a) of this section), or delay the effective date of any other provision of or added by this section beyond September 30, 1986.''

IMMIGRATION AND NATURALIZATION SERVICE TO ESTABLISH VERIFICATION SYSTEM BY OCTOBER 1, 1987

Section 121(c)(1) of Pub. L. 99–603 provided that: ''The Commissioner of Immigration and Naturalization shall implement a system for the verification of immigration status under paragraphs (3) and (4)(B)(i) of section 1137(d) of the Social Security Act [subsec. (d)(3) and (4)(B)(i) of this section] (as amended by this section) so that the system is available to all the States by not later than October 1, 1987. Such system shall not be used by the Immigration and Naturalization Service for administrative (non-criminal) immigration enforcement purposes and shall be implemented in a manner that provides for verification of immigration status without regard to the sex, color, race, religion, or nationality of the individual involved.''

GENERAL ACCOUNTING OFFICE REPORTS

Section 121(d) of Pub. L. 99–603 directed Comptroller General to examine current pilot projects relating to the System for Alien Verification of Eligibility (SAVE) operated by, or through cooperative agreements with, the Immigration and Naturalization Service, and re-

port, not later than Oct. 1, 1987, to Congress and to Commissioner of Immigration and Naturalization Service concerning the effectiveness of such projects and any problems with the implementation of such projects, particularly as they may apply to implementation of the system, with Comptroller General to monitor and analyze the implementation of such system, report to Congress and to the appropriate Secretaries, by not later than Apr. 1, 1989, on such implementation, and include in such report recommendations for appropriate changes in the system.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 302, 502, 503, 602, 1202, 1352, 1383, 1396a, 1396b of this title; title 5 section 552a; title 7 sections 2020, 2025.

§ 1320b–8. Hospital protocols for organ procurement and standards for organ procurement agencies

(a)(1) The Secretary shall provide that a hospital or rural primary care hospital meeting the requirements of subchapter XVIII or XIX of this chapter may participate in the program established under such subchapter only if—

(A) the hospital or rural primary care hospital establishes written protocols for the identification of potential organ donors that—

(i) assure that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline,

(ii) encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of such families, and

(iii) require that such hospital's designated organ procurement agency (as defined in paragraph (3)(B)) is notified of potential organ donors;

(B) in the case of a hospital in which organ transplants are performed, the hospital is a member of, and abides by the rules and requirements of, the Organ Procurement and Transplantation Network established pursuant to section 274 of this title (in this section referred to as the ''Network''); and

(C) the hospital or rural primary care hospital has an agreement (as defined in paragraph (3)(A)) only with such hospital's designated organ procurement agency.

(2)(A) The Secretary shall grant a waiver of the requirements under subparagraphs (A)(iii) and (C) of paragraph (1) to a hospital or rural primary care hospital desiring to enter into an agreement with an organ procurement agency other than such hospital's designated organ procurement agency if the Secretary determines that—

(i) the waiver is expected to increase organ donation; and

(ii) the waiver will assure equitable treatment of patients referred for transplants within the service area served by such hospital's designated organ procurement agency and within the service area served by the organ procurement agency with which the hospital seeks to enter into an agreement under the waiver.

(B) In making a determination under subparagraph (A), the Secretary may consider factors that would include, but not be limited to—

(i) cost effectiveness;

(ii) improvements in quality;

(iii) whether there has been any change in a hospital's designated organ procurement agency due to a change made on or after December 28, 1992, in the definitions for metropolitan statistical areas (as established by the Office of Management and Budget); and

(iv) the length and continuity of a hospital's relationship with an organ procurement agency other than the hospital's designated organ procurement agency;

except that nothing in this subparagraph shall be construed to permit the Secretary to grant a waiver that does not meet the requirements of subparagraph (A).

(C) Any hospital or rural primary care hospital seeking a waiver under subparagraph (A) shall submit an application to the Secretary containing such information as the Secretary determines appropriate.

(D) The Secretary shall—

(i) publish a public notice of any waiver application received from a hospital or rural primary care hospital under this paragraph within 30 days of receiving such application; and

(ii) prior to making a final determination on such application under subparagraph (A), offer interested parties the opportunity to submit written comments to the Secretary during the 60-day period beginning on the date such notice is published.

(3) For purposes of this subsection—

(A) the term ''agreement'' means an agreement described in section 273(b)(3)(A) of this title;

(B) the term ''designated organ procurement agency'' means, with respect to a hospital or rural primary care hospital, the organ procurement agency designated pursuant to subsection (b) of this section for the service area in which such hospital is located; and

(C) the term ''organ'' means a human kidney, liver, heart, lung, pancreas, and any other human organ or tissue specified by the Secretary for purposes of this subsection.

(b)(1) The Secretary shall provide that payment may be made under subchapter XVIII or XIX of this chapter with respect to organ procurement costs attributable to payments made to an organ procurement agency only if the agency—

(A)(i) is a qualified organ procurement organization (as described in section 273(b) of this title) that is operating under a grant made under section 273(a) of this title, or (ii) has been certified or recertified by the Secretary within the previous two years as meeting the standards to be a qualified organ procurement organization (as so described);

(B) meets the requirements that are applicable under such subchapter for organ procurement agencies;

(C) meets performance-related standards prescribed by the Secretary;

(D) is a member of, and abides by the rules and requirements of, the Network;

(E) allocates organs, within its service area and nationally, in accordance with medical criteria and the policies of the Network; and

(F) is designated by the Secretary as an organ procurement organization payments to which may be treated as organ procurement costs for purposes of reimbursement under such subchapter.

(2) The Secretary may not designate more than one organ procurement organization for each service area (described in section 273(b)(1)(E) of this title) under paragraph (1)(F).

(Aug. 14, 1935, ch. 531, title XI, § 1138, as added Oct. 21, 1986, Pub. L. 99–509, title IX, § 9318(a), 100 Stat. 2009; amended Dec. 22, 1987, Pub. L. 100–203, title IV, § 4039(h)(2), as added July 1, 1988, Pub. L. 100–360, title IV, § 411(e)(3), 102 Stat. 775; amended Dec. 19, 1989, Pub. L. 101–239, title VI, § 6003(g)(3)(D)(iv), 103 Stat. 2153; Oct. 31, 1994, Pub. L. 103–432, title I, § 155(a)(1), 108 Stat. 4438.)

AMENDMENTS

1994—Subsec. (a)(1)(A)(iii). Pub. L. 103–432, § 155(a)(1)(A), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''require that an organ procurement agency designated by the Secretary pursuant to subsection (b)(1)(F) of this section be notified of potential organ donors; and''.

Subsec. (a)(1)(C). Pub. L. 103–432, § 155(a)(1)(B), added subpar. (C).

Subsec. (a)(2). Pub. L. 103–432, § 155(a)(1)(C)(ii), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 103–432, § 155(a)(1)(D), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of this subsection, the term 'organ' means a human kidney, liver, heart, lung, pancreas, and any other human organ or tissue specified by the Secretary for purposes of this subsection.''

Pub. L. 103–432, § 155(a)(1)(C)(i), redesignated par. (2) as (3).

1989—Subsec. (a)(1). Pub. L. 101–239 substituted ''hospital or rural primary care hospital'' for ''hospital'' in two places preceding cl. (i) of subpar. (A).

1988—Subsec. (a)(1)(B). Pub. L. 100–360 added Pub. L. 100–203, § 4039(h)(2), see 1987 Amendment note below.

1987—Subsec. (a)(1)(B). Pub. L. 100–203, § 4039(h)(2), as added by Pub. L. 100–360, substituted ''in'' for ''In'' at beginning.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 155(a)(3) of Pub. L. 103–432 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to hospitals and rural primary care hospitals participating in the programs under titles XVIII and XIX of the Social Security Act [subchapters XVIII and XIX of this chapter] beginning January 1, 1996.''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 9318(b) of Pub. L. 99–509, as amended by Pub. L. 100–119, title I, § 107(c), Sept. 29, 1987, 101 Stat. 784; Pub. L. 100–203, title IV, § 4009(g)(1), Dec. 22, 1987, 101 Stat. 1330–58, provided that:

''(1) Section 1138(a) of the Social Security Act [subsec. (a) of this section] shall apply to hospitals participating in the programs under titles XVIII and XIX of such Act [subchapters XVIII and XIX of this chapter] as of November 21, 1987.''

''(2) Section 1138(b) of such Act [subsec. (b) of this section] shall apply to costs of organs procured on or after March 31, 1988.''

[Pub. L. 100–203, title IV, § 4009(g)(2), Dec. 22, 1987, 101 Stat. 1330–58, provided that: ''The amendment made by paragraph (1) [amending this note] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].'']

EXISTING AGREEMENTS WITH ORGAN PROCUREMENT AGENCIES

Section 155(a)(2) of Pub. L. 103–432 provided that: ''Any hospital or rural primary care hospital which has an agreement (as defined in section 1138(a)(3)(A) of the Social Security Act [subsec. (a)(3)(A) of this section]) with an organ procurement agency other than such hospital's designated organ procurement agency (as defined in section 1138(a)(3)(B) of such Act) on the date of the enactment of this section [Oct. 31, 1994] shall, if such hospital desires to continue such agreement on and after the effective date of the amendments made by paragraph (1) [see Effective Date of 1994 Amendment note above], submit an application to the Secretary for a waiver under section 1138(a)(2) of such Act not later than January 1, 1996, and such agreement may continue in effect pending the Secretary's determination with respect to such application.''

§ 1320b–9. National Commission on Children

(a) Establishment

(1)[1] There is hereby established a commission to be known as the National Commission on Children (in this section referred to as the ''Commission'').

(b) Membership

(1) The Commission shall consist of—

(A) 12 members to be appointed by the President,

(B) 12 members to be appointed by the Speaker of the House of Representatives, and

(C) 12 members to be appointed by the President pro tempore of the Senate.

(2) The President, the Speaker, and the President pro tempore shall each appoint as members of the Commission—

(A) 4 individuals who—

(i) are representatives of organizations providing services to children,

(ii) are involved in activities on behalf of children, or

(iii) have engaged in academic research with respect to the problems and needs of children,

(B) 4 individuals who are elected or appointed public officials (at the Federal, State, or local level) involved in issues and programs relating to children, and

(C) 4 individuals who are parents or representatives of parents or parents' organizations.

(3) The appointments made pursuant to subparagraphs (B) and (C) of paragraph (1) shall be made in consultation with the chairmen of committees of the House of Representatives and the Senate, respectively, having jurisdiction over relevant Federal programs.

(c) Duties and functions of Commission; public hearings in different geographical areas; broad spectrum of witnesses and testimony

(1) It shall be the duty and function of the Commission to serve as a forum on behalf of the

[1] So in original. No par. (2) has been enacted.

children of the Nation and to conduct the studies and issue the report required by subsection (d) of this section.

(2) The Commission (and any committees that it may form) shall conduct public hearings in different geographic areas of the country, both urban and rural, in order to receive the views of a broad spectrum of the public on the status of the Nation's children and on ways to safeguard and enhance the physical, mental, and emotional well-being of all of the children of the Nation, including those with physical or mental disabilities, and others whose circumstances deny them a full share of the opportunities that parents of the Nation may rightfully expect for their children.

(3) The Commission shall receive testimony from individuals, and from representatives of public and private organizations and institutions with an interest in the welfare of children, including educators, health care professionals, religious leaders, providers of social services, representatives of organizations with children as members, elected and appointed public officials, and from parents and children speaking in their own behalf.

(d) Interim and final report to President and Congress; recommendations

The Commission shall submit to the President, and to the Committees on Finance and Labor and Human Resources of the Senate and the Committees on Ways and Means, Education and Labor, and Energy and Commerce of the House of Representatives, an interim report no later than March 31, 1990, and a final report no later than March 31, 1991, setting forth recommendations with respect to the following subjects:

(1) Questions relating to the health of children that the Commission shall address include—

(A) how to reduce infant mortality,

(B) how to reduce the number of low-birthweight babies,

(C) how to reduce the number of children with chronic illnesses and disabilities,

(D) how to improve the nutrition of children,

(E) how to promote the physical fitness of children,

(F) how to ensure that pregnant women receive adequate prenatal care,

(G) how to ensure that all children have access to both preventive and acute care health services, and

(H) how to improve the quality and availability of health care for children.

(2) Questions relating to social and support services for children and their parents that the Commission shall address include—

(A) how to prevent and treat child neglect and abuse,

(B) how to provide help to parents who seek assistance in meeting the problems of their children,

(C) how to provide counseling services for children,

(D) how to strengthen the family unit,

(E) how children can be assured of adequate care while their parents are working or participating in education or training programs,

(F) how to improve foster care and adoption services,

(G) how to reduce drug and alcohol abuse by children and youths, and

(H) how to reduce the incidence of teenage pregnancy.

(3) Questions relating to education that the Commission shall address include—

(A) how to encourage academic excellence for all children at all levels of education,

(B) how to use preschool experiences to enhance educational achievement,

(C) how to improve the qualifications of teachers,

(D) how schools can better prepare the Nation's youth to compete in the labor market,

(E) how parents and schools can work together to help children achieve success at each step of the academic ladder,

(F) how to encourage teenagers to complete high school and remain in school to fulfill their academic potential,

(G) how to address the problems of drug and alcohol abuse by young people,

(H) how schools might lend support to efforts aimed at reducing the incidence of teenage pregnancy, and

(I) how schools might better meet the special needs of children who have physical or mental handicaps.

(4) Questions relating to income security that the Commission shall address include—

(A) how to reduce poverty among children,

(B) how to ensure that parents support their children to the fullest extent possible through improved child support collection services, including services on behalf of children whose parents are unmarried, and

(C) how to ensure that cash assistance to needy children is adequate.

(5) Questions relating to tax policy that the Commission shall address include—

(A) how to assure the equitable tax treatment of families with children,

(B) the effect of existing tax provisions, including the dependent care tax credit, the earned income tax credit, and the targeted jobs tax credit, on children living in poverty,

(C) whether the dependent care tax credit should be refundable and the effect of such a policy,

(D) whether the earned income tax credit should be adjusted for family size and the effect of such a policy, and

(E) whether there are other tax-related policies which would reduce poverty among children.

(6) In addition to addressing the questions specified in paragraphs (1) through (5), the Commission shall—

(A) seek to identify ways in which public and private organizations and institutions can work together at the community level to identify deficiencies in existing services for families and children and to develop recommendations to ensure that the needs of families and children are met, using all

available resources, in a coordinated and comprehensive manner, and

(B) assess the existing capacities of agencies to collect and analyze data on the status of children and on relevant programs, identify gaps in the data collection system, and recommend ways to improve the collection of data and the coordination among agencies in the collection and utilization of data.

The reports required by this subsection shall be based upon the testimony received in the hearings conducted pursuant to subsection (c) of this section, and upon other data and findings developed by the Commission.

(e) Time of appointment of members; vacancies; election of Chairman; quorum; calling of meetings; number of meetings; voting; compensation and expenses

(1)(A) Members of the Commission shall first be appointed not later than 60 days after December 22, 1987, for terms ending on March 31, 1991.

(B) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the vacant position was first filled.

(2) The Commission shall elect one of its members to serve as Chairman of the Commission. The Chairman shall be a nonvoting member of the Commission.

(3) A majority of the members of the Commission shall constitute a quorum for the transaction of business.

(4)(A) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission.

(B) The Commission shall meet not less than 4 times during the period beginning with December 22, 1987, and ending with March 31, 1991.

(5) Decisions of the Commission shall be according to the vote of a simple majority of those present and voting at a properly called meeting.

(6) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as members of the Commission.

(f) Executive Director and additional personnel; appointment and compensation; consultants

(1) The Commission shall appoint an Executive Director of the Commission. In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable. Such appointments and compensation may be made without regard to the provisions of title 5 that govern appointments in the competitive services, and the provisions of chapter 51 and subchapter III of chapter 53 of such title that relate to classifications and the General Schedule pay rates.

(2) The Commission may procure such temporary and intermittent services of consultants under section 3109(b) of title 5 as the Commission determines to be necessary to carry out the duties of the Commission.

(g) Time and place of hearings and nature of testimony authorized

In carrying out its duties, the Commission, or any duly organized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters for which it has a responsibility under this section, as the Commission or committee may deem advisable.

(h) Data and information from other agencies and departments

(1) The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to carry out its responsibilities.

(2) Upon request of the Commission, any such department or agency shall furnish any such data or information.

(i) Support services by General Services Administration

The General Services Administration shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(j) Authorization of appropriations

There are authorized to be appropriated through fiscal year 1991, such sums as may be necessary to carry out this section for each of fiscal years 1989 and 1990.

(k) Donations accepted and deposited in Treasury in separate fund; expenditures; gift or bequest to or for use of United States

(1) The Commission is authorized to accept donations of money, property, or personal services. Funds received from donations shall be deposited in the Treasury in a separate fund created for this purpose. Funds appropriated for the Commission and donated funds may be expended for such purposes as official reception and representation expenses, public surveys, public service announcements, preparation of special papers, analyses, and documentaries, and for such other purposes as determined by the Commission to be in furtherance of its mission to review national issues affecting children.

(2) For purposes of Federal income, estate, and gift taxation, money and other property accepted under paragraph (1) of this subsection shall be considered as a gift or bequest to or for the use of the United States.

(3) Expenditure of appropriated and donated funds shall be subject to such rules and regulations as may be adopted by the Commission and shall not be subject to Federal procurement requirements.

(*l*) Public surveys

The Commission is authorized to conduct such public surveys as it deems necessary in support of its review of national issues affecting children and, in conducting such surveys, the Commission shall not be deemed to be an ''agency'' for the purpose of section 3502 of title 44.

(Aug. 14, 1935, ch. 531, title XI, §1139, as added Dec. 22, 1987, Pub. L. 100–203, title IX, §9136, 101 Stat. 1330–316; amended Nov. 10, 1988, Pub. L. 100–647, title VIII, §8201, 102 Stat. 3798; June 30, 1989, Pub. L. 101–45, title IV, §409, 103 Stat. 130; Dec. 19, 1989, Pub. L. 101–239, title VI, §6221, 103 Stat. 2255; Nov. 5, 1990, Pub. L. 101–508, title IV, §4207(k)(6), formerly §4027(k)(6), title V, §5057, 104 Stat. 1388–125, 1388–230; Oct. 31, 1994, Pub. L. 103–432, title I, §160(d)(4), title II, §264(d), 108 Stat. 4444, 4468.)

REFERENCES IN TEXT

The provisions of title 5 that govern appointments in the competitive services, referred to in subsec. (f)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1994—Subsec. (d). Pub. L. 103–432, § 264(d), repealed Pub. L. 101–508, § 5057. See 1990 Amendment note below.

1990—Subsec. (d). Pub. L. 101–508, § 5057, which directed amendment of subsec. (d) by substituting ''an interim report no later than September 30, 1990, and a final report no later than March 31, 1991'' for ''an interim report no later than March 31, 1991, and a final report no later than September 30, 1990'', and could not be executed, was repealed by Pub. L. 103–432, § 264(d). See Construction of 1990 Amendment note below.

Pub. L. 101–508, § 4207(k)(6), formerly § 4027(k)(6), as renumbered by Pub. L. 103–432, § 160(d)(4), substituted ''interim report no later than March 31, 1990, and a final report no later than March 31, 1991, setting forth'' for ''interim report no later than March 31, 1991, and a final report no later than September 30, 1990, setting forth''.

1989—Subsec. (d). Pub. L. 101–239, § 6221(1), which directed the substitution of ''March 31, 1990'' for ''September 30, 1988'' and ''March 31, 1991'' for ''March 31, 1990 [1989]'', could only be executed in part by substituting ''March 31, 1991'' for ''March 30, 1990'' in view of amendment by Pub. L. 100–647. See 1990 Amendment note above.

Subsec. (e)(1)(A), (4)(B). Pub. L. 101–239, § 6221(2), substituted ''March 31, 1991'' for ''September 30, 1990''.

Subsec. (f). Pub. L. 101–45 amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

''(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule under title 5.

''(2) In addition to the Executive Director, the Commission may appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5 governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.''

Subsec. (j). Pub. L. 101–239, § 6221(3), substituted ''through fiscal year 1991, such sums'' for ''such sums''.

Subsecs. (k), (*l*). Pub. L. 101–239, § 6221(4), added subsecs. (k) and (*l*).

1988—Subsec. (d). Pub. L. 100–647, § 8201(1), (2), substituted ''March 31, 1990'' for ''September 30, 1988'' and ''September 30, 1990'' for ''March 31, 1989'' in introductory provisions.

Subsec. (e)(1)(A), (4)(B). Pub. L. 100–647, § 8201(3), (4), substituted ''September 30, 1990'' for ''March 31, 1989''.

Subsec. (j). Pub. L. 100–647, § 8201(5), inserted ''for each of fiscal years 1989 and 1990'' before period at end.

CHANGE OF NAME

Committee on Education and Labor of House of Representatives changed to Committee on Economic and Educational Opportunities of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 264(d) of Pub. L. 103–432 effective as if included in the provision of Pub. L. 101–508 to which the amendment relates at the time such provision became law, see section 264(h) of Pub. L. 103–432, set out as a note under section 602 of this title.

CONSTRUCTION OF 1990 AMENDMENT

Section 264(d) of Pub. L. 103–432 provided that: ''Section 5057 of OBRA–1990 [Pub. L. 101–508, amending this section], and the amendment made by such section, are hereby repealed, and section 1139(d) of the Social Security Act [subsec. (d) of this section] shall be applied and administered as if such section 5057 had never been enacted.''

TERMINATION OF ADVISORY COMMISSIONS

Advisory commissions established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a commission established by the President or an officer of the Federal Government, such commission is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a commission established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1320b–10. Prohibition of misuse of symbols, emblems, or names in reference to Social Security or Medicare

(a) Prohibited acts

(1) No person may use, in connection with any item constituting an advertisement, solicitation, circular, book, pamphlet, or other communication, or a play, motion picture, broadcast, telecast, or other production, alone or with other words, letters, symbols, or emblems—

(A) the words ''Social Security'', ''Social Security Account'', ''Social Security System'', ''Social Security Administration'', ''Medicare'', ''Health Care Financing Administration'', ''Department of Health and Human Services'', ''Health and Human Services'', ''Supplemental Security Income Program'', or ''Medicaid'', the letters ''SSA'', ''HCFA'', ''DHHS'', ''HHS'', or ''SSI'', or any other combination or variation of such words or letters, or

(B) a symbol or emblem of the Social Security Administration, Health Care Financing Administration, or Department of Health and Human Services (including the design of, or a reasonable facsimile of the design of, the social security card issued pursuant to section 405(c)(2)(F) of this title or the Medicare card,,[1] the check used for payment of benefits under subchapter II of this chapter, or envelopes or other stationery used by the Social Security Administration, Health Care Financing Administration, or Department of Health and Human Services), or any other combination or variation of such symbols or emblems,

in a manner which such person knows or should know would convey, or in a manner which reasonably could be interpreted or construed as conveying, the false impression that such item is approved, endorsed, or authorized by the Social Security Administration, the Health Care Financing Administration, or the Department of Health and Human Services or that such person has some connection with, or authorization from, the Social Security Administration, the Health Care Financing Administration, or the Department of Health and Human Services. The preceding provisions of this subsection shall not apply with respect to the use by any agency or instrumentality of a State or political subdivi-

[1] So in original.

sion of a State of any words or letters which identify an agency or instrumentality of such State or of a political subdivision of such State or the use by any such agency or instrumentality of any symbol or emblem of an agency or instrumentality of such State or a political subdivision of such State.

(2)(A) No person may, for a fee, reproduce, reprint, or distribute any item consisting of a form, application, or other publication of the Social Security Administration unless such person has obtained specific, written authorization for such activity in accordance with regulations which the Commissioner of Social Security shall prescribe.

(B) No person may, for a fee, reproduce, reprint, or distribute any item consisting of a form, application, or other publication of the Department of Health and Human Services unless such person has obtained specific, written authorization for such activity in accordance with regulations which the Secretary shall prescribe.

(3) Any determination of whether the use of one or more words, letters, symbols, or emblems (or any combination or variation thereof) in connection with an item described in paragraph (1) or the reproduction, reprinting, or distribution of an item described in paragraph (2) is a violation of this subsection shall be made without regard to any inclusion in such item (or any so reproduced, reprinted, or distributed copy thereof) of a disclaimer of affiliation with the United States Government or any particular agency or instrumentality thereof.

(b) Civil penalties

The Commissioner or the Secretary (as applicable) may, pursuant to regulations, impose a civil money penalty not to exceed—

(1) except as provided in paragraph (2), $5,000, or

(2) in the case of a violation consisting of a broadcast or telecast, $25,000,

against any person for each violation by such person of subsection (a) of this section. In the case of any items referred to in subsection (a)(1) of this section consisting of pieces of mail, each such piece of mail which contains one or more words, letters, symbols, or emblems in violation of subsection (a) of this section shall represent a separate violation. In the case of any item referred to in subsection (a)(2) of this section, the reproduction, reprinting, or distribution of such item shall be treated as a separate violation with respect to each copy thereof so reproduced, reprinted, or distributed.

(c) Application of other law; compromise, recovery, and deposit into Treasury of civil money penalties

(1) The provisions of section 1320a–7a of this title (other than subsections (a), (b), (f), (h), and (i) and the first sentence of subsection (c)) shall apply to civil money penalties under subsection (b) of this section in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(2) Penalties imposed against a person under subsection (b) of this section may be compromised by the Commissioner or the Secretary (as applicable) and may be recovered in a civil action in the name of the United States brought in the district court of the United States for the district in which the violation occurred or where the person resides, has its principal office, or may be found, as determined by the Commissioner or the Secretary (as applicable). Amounts recovered under this section shall be paid to the Commissioner or the Secretary (as applicable) and shall be deposited as miscellaneous receipts of the Treasury of the United States, except that (A) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Social Security Administration, such amounts shall be deposited into the Federal Old-Age and Survivors Insurance Trust Fund, and (B) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Department of Health and Human Services, such amounts shall be deposited into the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund, as appropriate. The amount of such penalty when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States to the person against whom the penalty has been imposed.

(d) Enforcement

The preceding provisions of this section may be enforced through the Office of the Inspector General of the Social Security Administration or the Office of the Inspector General of the Department of Health and Human Services (as appropriate).

(Aug. 14, 1935, ch. 531, title XI, §1140, as added July 1, 1988, Pub. L. 100–360, title IV, §428(a), 102 Stat. 815; amended Oct. 13, 1988, Pub. L. 100–485, title VI, §608(d)(30)(A), 102 Stat. 2424; Aug. 15, 1994, Pub. L. 103–296, title I, §108(b)(12), title III, §§304(b), 312(a)–(j), 108 Stat. 1484, 1520, 1526, 1527.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, §312(a), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Subsec. (a)(1). Pub. L. 103–296, §312(c), (d), in closing provisions substituted ''convey, or in a manner which reasonably could be interpreted or construed as conveying,'' for ''convey'' and inserted at end ''The preceding provisions of this subsection shall not apply with respect to the use by any agency or instrumentality of a State or political subdivision of a State of any words or letters which identify an agency or instrumentality of such State or of a political subdivision of such State or the use by any such agency or instrumentality of any symbol or emblem of an agency or instrumentality of such State or a political subdivision of such State.''

Subsec. (a)(1)(A). Pub. L. 103–296, §312(b)(1), substituted ''Administration', 'Department of Health and Human Services', 'Health and Human Services', 'Supplemental Security Income Program', or 'Medicaid', the letters 'SSA', 'HCFA', 'DHHS', 'HHS', or 'SSI','' for ''Administration', the letters 'SSA' or 'HCFA',''.

Subsec. (a)(1)(B). Pub. L. 103–296, §312(b)(2), substituted ''Social Security Administration, Health Care Financing Administration, or Department of Health and Human Services'' for ''Social Security Administration'' in two places, struck out ''or of the Health Care

Financing Administration'' before '', or any other'', and inserted ''or the Medicare card,'' after ''section 405(c)(2)(F) of this title''.

Subsec. (a)(2). Pub. L. 103–296, § 304(b), substituted ''405(c)(2)(F)'' for ''405(c)(2)(E)''.

Subsec. (a)(2)(A), (B). Pub. L. 103–296, § 108(b)(12)(A), in par. (2) as added by Pub. L. 103–296, § 312(a), designated existing provisions as subpar. (A), struck out ''or of the Department of Health and Human Services'' after ''Social Security Administration'', substituted ''Commissioner of Social Security'' for ''Secretary'', and added subpar. (B).

Subsec. (a)(3). Pub. L. 103–296, § 312(e), added par. (3).

Subsec. (b). Pub. L. 103–296, § 312(g), substituted ''The'' for ''(1) Subject to paragraph (2), the'', redesignated subpars. (A) and (B) as pars. (1) and (2), respectively, and in par. (1) substituted ''paragraph (2)'' for ''subparagraph (B)'', and struck out former par. (2) which read as follows: ''The total amount of penalties which may be imposed under paragraph (1) with respect to multiple violations in any one year period consisting of substantially identical communications or productions shall not exceed $100,000.''

Subsec. (b)(1). Pub. L. 103–296, § 312(f) inserted at end ''In the case of any items referred to in subsection (a)(1) of this section consisting of pieces of mail, each such piece of mail which contains one or more words, letters, symbols, or emblems in violation of subsection (a) of this section shall represent a separate violation. In the case of any item referred to in subsection (a)(2) of this section, the reproduction, reprinting, or distribution of such item shall be treated as a separate violation with respect to each copy thereof so reproduced, reprinted, or distributed.''

Pub. L. 103–296, § 108(b)(12)(B), substituted ''the Commissioner or the Secretary (as applicable)'' for ''the Secretary'' in introductory provisions.

Subsec. (c)(1). Pub. L. 103–296, § 312(h), inserted ''and the first sentence of subsection (c)'' after ''and (i)''.

Subsec. (c)(2). Pub. L. 103–296, § 312(i), at end of second sentence substituted comma for period and inserted ''except that (A) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Social Security Administration, such amounts shall be deposited into the Federal Old-Age and Survivors Insurance Trust Fund, and (B) to the extent that such amounts are recovered under this section as penalties imposed for misuse of words, letters, symbols, or emblems relating to the Department of Health and Human Services, such amounts shall be deposited into the Federal Hospital Insurance Trust Fund or the Federal Supplementary Medical Insurance Trust Fund, as appropriate.''

Pub. L. 103–296, § 108(b)(12)(C), substituted ''the Commissioner or the Secretary (as applicable)'' for ''the Secretary'' wherever appearing.

Subsec. (d). Pub. L. 103–296, § 312(j), added subsec. (d).

Pub. L. 103–296, § 108(b)(12)(D), which in subsec. (d) as added by Pub. L. 103–296, § 312(j), directed the substitution of ''the Office of the Inspector General of the Social Security Administration or the Office of the Inspector General of the Department of Health and Human Services (as appropriate)'' for ''the Office of Inspector General of the Department of Health and Human Services'', was executed by making the substitution for ''the Office of the Inspector General of the Department of Health and Human Services'' to reflect the probable intent of Congress.

1988—Subsec. (c)(1). Pub. L. 100–485 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''Subsections (c), (d), (e), (g), (j), and (k) of section 1320a–7a of this title shall apply with respect to violations under subsection (a) of this section and penalties imposed under subsection (b) of this section in the same manner and to the same extent as such subsections apply with respect to claims in violation of section 1320a–7a of this title and penalties imposed under section 1320a–7a(a) of this title.''

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 108(b)(12) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 312(a)–(j) of Pub. L. 103–296 applicable with respect to violations occurring after Mar. 31, 1995, see section 312(m)(1) of Pub. L. 103–296, set out as an Effective Date note under section 333 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

EFFECTIVE DATE

Section 428(c) of Pub. L. 100–360 provided that: ''The amendments made by this section [enacting this section and amending section 1395ss of this title] shall take effect on the date of the enactment of this Act [July 1, 1988] and shall apply only with respect to violations occurring on or after such date.''

REPORTS ON OPERATION OF THIS SECTION

Section 312(k) of Pub. L. 103–296 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services and the Commissioner of Social Security shall each submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate 3 reports on the operation of section 1140 of the Social Security Act [this section] with respect to the Social Security Administration or the Department of Health and Human Servvices during the period covered by the report, which shall specify—

''(A) the number of complaints of violations of such section received by the Social Security Administration or the Department of Health and Human Servvices during the period,

''(B) the number of cases in which the Social Security Administration or the Department, during the period, sent a notice of violation of such section requesting that an individual cease activities in violation of such section,

''(C) the number of cases in which the Social Security Administration or the Department formally proposed a civil money penalty in a demand letter during the period,

''(D) the total amount of civil money penalties assessed by the Social Security Administration or the Department under this section during the period,

''(E) the number of requests for hearings filed during the period by the Social Security Administration or the Department pursuant to sections 1140(c)(1) [subsec. (c)(1) of this section] and 1128A(c)(2) [section 1320a–7a(c)(2) of this title] of the Social Security Act,

''(F) the disposition during the period of hearings filed pursuant to sections 1140(c)(1) and 1128A(c)(2) of the Social Security Act, and

''(G) the total amount of civil money penalties collected under this section and deposited into the Federal Old-Age and Survivors Insurance Trust Fund or the Health Insurance and Supplementary Medical Insurance Trust Funds, as applicable, during the period.

''(2) WHEN DUE.—The reports required by paragraph (1) shall be submitted not later than December 1, 1995, not later than December 1, 1997, and not later than December 1, 1999, respectively.''

CONSULTATION BY UNITED STATES POSTAL SERVICE REGARDING PREVENTION OF DECEPTIVE MAILINGS

United States Postal Service to consult and coordinate functions of Secretary of Department of Health and Human Services in administration of this section, see section 4 of Pub. L. 101–524, set out as a Coordination of Functions With Department of Health and

Human Services note under section 3001 of Title 39, Postal Service.

§ 1320b–11. Blood donor locator service

(a) In general

The Commissioner of Social Security shall establish and conduct a Blood Donor Locator Service, which shall be used to obtain and transmit to any authorized person (as defined in subsection (h)(1) of this section) the most recent mailing address of any blood donor who, as indicated by the donated blood or products derived therefrom or by the history of the subsequent use of such blood or blood products, has or may have the virus for acquired immune deficiency syndrome, in order to inform such donor of the possible need for medical care and treatment.

(b) Provision of address information

Whenever the Commissioner of Social Security receives a request, filed by an authorized person (as defined in subsection (h)(1) of this section), for the mailing address of a donor described in subsection (a) of this section and the Commissioner of Social Security is reasonably satisfied that the requirements of this section have been met with respect to such request, the Commissioner of Social Security shall promptly undertake to provide the requested address information from—

(1) the files and records maintained by the Social Security Administration, and

(2) such files and records obtained pursuant to section 6103(m)(6) of the Internal Revenue Code of 1986 as the Commissioner of Social Security considers necessary to comply with such request.

(c) Manner and form of requests

A request for address information under this section shall be filed in such manner and form as the Commissioner of Social Security shall by regulation prescribe, shall include the blood donor's social security account number, and shall be accompanied or supported by such documents as the Commissioner of Social Security may determine to be necessary.

(d) Procedures and safeguards

Any authorized person shall, as a condition for receiving address information from the Blood Donor Locator Service—

(1) establish and maintain, to the satisfaction of the Commissioner of Social Security, a system for standardizing records with respect to any request, the reason for such request, and the date of such request made by or of it and any disclosure of address information made by or to it,

(2) establish and maintain, to the satisfaction of the Commissioner of Social Security, a secure area or place in which such address information and all related blood donor records shall be stored,

(3) restrict, to the satisfaction of the Commissioner of Social Security, access to the address information and related blood donor records only to persons whose duties or responsibilities require access and to whom disclosure may be made under the provisions of this section,

(4) provide such other safeguards which the Commissioner of Social Security determines (and which the Commissioner of Social Security prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the address information and related blood donor records,

(5) furnish a report to the Commissioner of Social Security, at such time and containing such information as the Commissioner of Social Security may prescribe, which describes the procedures established and utilized by the authorized person for ensuring the confidentiality of address information and related blood donor records required under this subsection, and

(6) destroy such address information and related blood donor records, upon completion of their use in providing the notification for which the information was obtained, so as to make such information and records undisclosable.

If the Commissioner of Social Security determines that any authorized person has failed to, or does not, meet the requirements of this subsection, the Commissioner of Social Security may, after any proceedings for review established under subsection (f) of this section, take such actions as are necessary to ensure such requirements are met, including refusing to disclose address information to such authorized person until the Commissioner of Social Security determines that such requirements have been or will be met. In the case of any authorized person who discloses any address information received pursuant to this section or any related blood donor records to any agent, this subsection shall apply to such authorized person and each such agent (except that, in the case of an agent, any report to the Commissioner of Social Security or other action with respect to the Commissioner of Social Security shall be made or taken through such authorized person). The Commissioner of Social Security shall destroy all related blood donor records in the possession of the Social Security Administration upon completion of their use in transmitting mailing addresses as required under subsection (a) of this section, so as to make such records undisclosable.

(e) Arrangements with State agencies and authorized persons

The Commissioner of Social Security, in carrying out the Commissioner's duties and functions under this section, shall enter into arrangements—

(1) with State agencies to accept and to transmit to the Commissioner of Social Security requests for address information under this section and to accept and to transmit such information to authorized persons, and

(2) with State agencies and authorized persons otherwise to cooperate with the Commissioner of Social Security in carrying out the purposes of this section.

(f) Procedures for administrative review

The Commissioner of Social Security shall by regulation prescribe procedures which provide for administrative review of any determination that any authorized person has failed to meet the requirements of this section.

(g) Unauthorized disclosure of information

Paragraphs (1), (2), and (3) of section 7213(a) of the Internal Revenue Code of 1986 shall apply with respect to the unauthorized willful disclosure to any person of address information or related blood donor records acquired or maintained by or under the Commissioner of Social Security, or pursuant to this section by any authorized person, or of information derived from any such address information or related blood donor records, in the same manner and to the same extent as such paragraphs apply with respect to unauthorized disclosures of return and return information described in such paragraphs. Paragraph (4) of section 7213(a) of such Code shall apply with respect to the willful offer of any item of material value in exchange for any such address information or related blood donor record in the same manner and to the same extent as such paragraph applies with respect to offers (in exchange for any return or return information) described in such paragraph.

(h) Definitions

For purposes of this section—

(1) Authorized person

The term ''authorized person'' means—

(A) any agency of a State (or of a political subdivision of a State) which has duties or authority under State law relating to the public health or otherwise has the duty or authority under State law to regulate blood donations, and

(B) any entity engaged in the acceptance of blood donations which is licensed or registered by the Food and Drug Administration in connection with the acceptance of such blood donations, and which, in accordance with such regulations as may be prescribed by the Commissioner of Social Security, provides for—

(i) the confidentiality of any address information received pursuant to this section and related blood donor records,

(ii) blood donor notification procedures for individuals with respect to whom such information is requested and a finding has been made that they have or may have the virus for acquired immune deficiency syndrome, and

(iii) counseling services for such individuals who have been found to have such virus.

(2) Related blood donor record

The term ''related blood donor record'' means any record, list, or compilation which indicates, directly or indirectly, the identity of any individual with respect to whom a request for address information has been made pursuant to this section.

(3) State

The term ''State'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(Aug. 14, 1935, ch. 531, title XI, § 1141, as added Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8008(b)(1), 102 Stat. 3784; amended Aug. 15, 1994, Pub. L. 103–296, title I, § 108(b)(13), 108 Stat. 1484.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (b)(2) and (g), is classified generally to Title 26, Internal Revenue Code.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 108(b)(13)(A), (C), substituted ''The Commissioner of Social Security'' for ''The Secretary'' and struck out ''under the direction of the Commissioner of Social Security,'' before ''which shall be used''.

Subsec. (b), (c). Pub. L. 103–296, § 108(b)(13)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 103–296, § 108(b)(13)(D), which directed amendment of par. (6) by substituting ''Social Security Administration'' for ''Department of Health Services'', was executed by substituting ''Social Security Administration'' for ''Department of Health and Human Services'' in closing provisions to reflect the probable intent of Congress.

Pub. L. 103–296, § 108(b)(13)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (e). Pub. L. 103–296, § 108(b)(13)(A), (B), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in introductory provisions.

Subsecs. (f), (g), (h)(1)(B). Pub. L. 103–296, § 108(b)(13)(A), substituted ''Commissioner of Social Security'' for ''Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TIME LIMIT FOR ESTABLISHMENT OF BLOOD DONOR LOCATOR SERVICE

Section 8008(b)(2) of Pub. L. 100–647 provided that: ''The Secretary of Health and Human Services shall establish the Blood Donor Locator Service pursuant to section 1141 of the Social Security Act [this section] not later than 180 days after the date of the enactment of this Act [Nov. 10, 1988].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 405 of this title; title 26 section 6103.

§ 1320b–12. Research on outcomes of health care services and procedures

(a) Establishment of program

(1) In general

The Secretary, acting through the Administrator for Health Care Policy and Research, shall—

(A) conduct and support research with respect to the outcomes, effectiveness, and appropriateness of health care services and procedures in order to identify the manner in which diseases, disorders, and other health conditions can most effectively and appropriately be prevented, diagnosed, treated, and managed clinically; and

(B) assure that the needs and priorities of the program under subchapter XVIII of this chapter are appropriately reflected in the development and periodic review and updat-

ing (through the process set forth in section 299b–2 of this title) of treatment-specific or condition-specific practice guidelines for clinical treatments and conditions in forms appropriate for use in clinical practice, for use in educational programs, and for use in reviewing quality and appropriateness of medical care.

(2) Evaluations of alternative services and procedures

In carrying out paragraph (1), the Secretary shall conduct or support evaluations of the comparative effects, on health and functional capacity, of alternative services and procedures utilized in preventing, diagnosing, treating, and clinically managing diseases, disorders, and other health conditions.

(3) Initial guidelines

(A) In carrying out paragraph (1)(B) of this subsection, and section 299b–1(d) of this title, the Secretary shall, by not later than January 1, 1991, assure the development of an initial set of the guidelines specified in paragraph (1)(B) that shall include not less than 3 clinical treatments or conditions that—

(i)(I) account for a significant portion of expenditures under subchapter XVIII of this chapter; and

(II) have a significant variation in the frequency or the type of treatment provided; or

(ii) otherwise meet the needs and priorities of the program under subchapter XVIII of this chapter, as set forth under subsection (b)(3) of this section.

(B)(i) The Secretary shall provide for the use of guidelines developed under subparagrah[1] (A) to improve the quality, effectiveness, and appropriateness of care provided under subchapter XVIII of this chapter. The Secretary shall determine the impact of such use on the quality, appropriateness, effectiveness, and cost of medical care provided under such subchapter and shall report to the Congress on such determination by not later than January 1, 1993.

(ii) For the purpose of carrying out clause (i), the Secretary shall expend, from the amounts specified in clause (iii), $1,000,000 for fiscal year 1990 and $1,500,000 for each of the fiscal years 1991 and 1992.

(iii) For each fiscal year, for purposes of expenditures required in clause (ii)—

(I) 60 percent of an amount equal to the expenditure involved is appropriated from the Federal Hospital Insurance Trust Fund (established under section 1395i of this title); and

(II) 40 percent of an amount equal to the expenditure involved is appropriated from the Federal Supplementary Medical Insurance Trust Fund (established under section 1395t of this title).

(b) Priorities

(1) In general

The Secretary shall establish priorities with respect to the diseases, disorders, and other health conditions for which research and evaluations are to be conducted or supported under subsection (a) of this section. In establishing such priorities, the Secretary shall, with respect to a disease, disorder, or other health condition, consider the extent to which—

(A) improved methods of prevention, diagnosis, treatment, and clinical management can benefit a significant number of individuals;

(B) there is significant variation among physicians in the particular services and procedures utilized in making diagnoses and providing treatments or there is significant variation in the outcomes of health care services or procedures due to different patterns of diagnosis or treatment;

(C) the services and procedures utilized for diagnosis and treatment result in relatively substantial expenditures; and

(D) the data necessary for such evaluations are readily available or can readily be developed.

(2) Preliminary assessments

For the purpose of establishing priorities under paragraph (1), the Secretary may, with respect to services and procedures utilized in preventing, diagnosing, treating, and clinically managing diseases, disorders, and other health conditions, conduct or support assessments of the extent to which—

(A) rates of utilization vary among similar populations for particular diseases, disorders, and other health conditions;

(B) uncertainties exist on the effect of utilizing a particular service or procedure; or

(C) inappropriate services and procedures are provided.

(3) Relationship with medicare program

In establishing priorities under paragraph (1) for research and evaluation, and under section 299b–3(a) of this title for the agenda under such section, the Secretary shall assure that such priorities appropriately reflect the needs and priorities of the program under subchapter XVIII of this chapter, as set forth by the Administrator of the Health Care Financing Administration.

(c) Methodologies and criteria for evaluations

For the purpose of facilitating research under subsection (a) of this section, the Secretary shall—

(1) conduct and support research with respect to the improvement of methodologies and criteria utilized in conducting research with respect to outcomes of health care services and procedures;

(2) conduct and support reviews and evaluations of existing research findings with respect to such treatment or conditions;

(3) conduct and support reviews and evaluations of the existing methodologies that use large data bases in conducting such research and shall develop new research methodologies, including data-based methods of advancing knowledge and methodologies that measure clinical and functional status of patients, with respect to such research;

[1] So in original. Probably should be ''subparagraph''.

(4) provide grants and contracts to research centers, and contracts to other entities, to conduct such research on such treatment or conditions, including research on the appropriate use of prescription drugs;

(5) conduct and support research and demonstrations on the use of claims data and data on clinical and functional status of patients in determining the outcomes, effectiveness, and appropriateness of such treatment; and

(6) conduct and support supplementation of existing data bases, including the collection of new information, to enhance data bases for research purposes, and the design and development of new data bases that would be used in outcomes and effectiveness research.

(d) Standards for data bases

In carrying out this section, the Secretary shall develop—

(1) uniform definitions of data to be collected and used in describing a patient's clinical and functional status;

(2) common reporting formats and linkages for such data; and

(3) standards to assure the security, confidentiality, accuracy, and appropriate maintenance of such data.

(e) Dissemination of research findings and guidelines

(1) In general

The Secretary shall provide for the dissemination of the findings of research and the guidelines described in subsection (a) of this section, and for the education of providers and others in the application of such research findings and guidelines.

(2) Cooperative educational activities

In disseminating findings and guidelines under paragraph (1), and in providing for education under such paragraph, the Secretary shall work with professional associations, medical specialty and subspecialty organizations, and other relevant groups to identify and implement effective means to educate physicians, other providers, consumers, and others in using such findings and guidelines, including training for physician managers within provider organizations.

(f) Evaluations

The Secretary shall conduct and support evaluations of the activities carried out under this section to determine the extent to which such activities have had an effect on the practices of physicians in providing medical treatment, the delivery of health care, and the outcomes of health care services and procedures.

(g) Research with respect to dissemination

The Secretary may conduct or support research with respect to improving methods of disseminating information on the effectiveness and appropriateness of health care services and procedures.

(h) Report to Congress

Not later than February 1 of each of the years 1991 and 1992, and of each second year thereafter, the Secretary shall report to the Congress on the progress of the activities under this section during the preceding fiscal year (or preceding 2 fiscal years, as appropriate), including the impact of such activities on medical care (particularly medical care for individuals receiving benefits under subchapter XVIII of this chapter).

(i) Authorization of appropriations

(1) In general

There are authorized to be appropriated to carry out this section—

(A) $50,000,000 for fiscal year 1990;

(B) $75,000,000 for fiscal year 1991;

(C) $110,000,000 for fiscal year 1992;

(D) $148,000,000 for fiscal year 1993; and

(E) $185,000,000 for fiscal year 1994.

(2) Specifications

For the purpose of carrying out this section, for each of the fiscal years 1990 through 1992 an amount equal to two-thirds of the amounts authorized to be appropriated under paragraph (1), and for each of the fiscal years 1993 and 1994 an amount equal to 70 percent of such amounts, are to be appropriated in the following proportions from the following trust funds:

(A) 60 percent from the Federal Hospital Insurance Trust Fund (established under section 1395i of this title).

(B) 40 percent from the Federal Supplementary Medical Insurance Trust Fund (established under section 1395t of this title).

(3) Allocations

(A) For each fiscal year, of the amounts transferred or otherwise appropriated to carry out this section, the Secretary shall reserve appropriate amounts for each of the purposes specified in clauses (i) through (iv) of subparagraph (B).

(B) The purposes referred to in subparagraph (A) are—

(i) the development of guidelines, standards, performance measures, and review criteria;

(ii) research and evaluation;

(iii) data-base standards and development; and

(iv) education and information dissemination.

(Aug. 14, 1935, ch. 531, title XI, § 1142, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(b)(1), 103 Stat. 2195.)

CODIFICATION

Another section 1142 of act Aug. 14, 1935, was renumbered section 1143 by Pub. L. 101–508, title V, § 5111(a)(1), Nov. 5, 1990, 104 Stat. 1388–272, and is classified to section 1320b–13 of this title.

REPORT ON LINKAGE OF PUBLIC AND PRIVATE RESEARCH RELATED DATA

Section 6103(b)(2) of Pub. L. 101–239 provided that: ''Not later than 1 year after the date of the enactment of this Act [Dec. 19, 1989], the Secretary of Health and Human Services shall report to the Congress on the feasibility of linking research-related data described in section 1142(d) of the Social Security Act [subsec. (d) of this section] (as added by paragraph (1) of this subsection) with similar data collected or maintained by non-Federal entities and by Federal agencies other than the Department of Health and Human Services (including the Departments of Defense and Veterans Affairs and the Office of Personnel Management).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 299a, 299b–1, 299b–3, 299c, 1395y of this title.

§ 1320b–13. Social security account statements

(a) Provision upon request

(1) Beginning not later than October 1, 1990, the Secretary shall provide upon the request of an eligible individual a social security account statement (hereinafter referred to as the ''statement'').

(2) Each statement shall contain—

(A) the amount of wages paid to and self-employment income derived by the eligible individual as shown by the records of the Secretary at the date of the request;

(B) an estimate of the aggregate of the employee and self-employment contributions of the eligible individual for old-age, survivors, and disability insurance as shown by the records of the Secretary on the date of the request;

(C) a separate estimate of the aggregate of the employee and self-employment contributions of the eligible individual for hospital insurance as shown by the records of the Secretary on the date of the request; and

(D) an estimate of the potential monthly retirement, disability, survivor, and auxiliary benefits payable on the eligible individual's account together with a description of the benefits payable under the medicare program of subchapter XVIII of this chapter.

(3) For purposes of this section, the term ''eligible individual'' means an individual who—

(A) has a social security account number,

(B) has attained age 25 or over, and

(C) has wages or net earnings from self-employment.

(b) Notice to eligible individuals

The Secretary shall, to the maximum extent practicable, take such steps as are necessary to assure that eligible individuals are informed of the availability of the statement described in subsection (a) of this section.

(c) Mandatory provision of statements

(1) By not later than September 30, 1995, the Secretary shall provide a statement to each eligible individual who has attained age 60 by October 1, 1994, and who is not receiving benefits under subchapter II of this chapter and for whom a current mailing address can be determined through such methods as the Secretary determines to be appropriate. In fiscal years 1995 through 1999 the Secretary shall provide a statement to each eligible individual who attains age 60 in such fiscal years and who is not receiving benefits under subchapter II of this chapter and for whom a current mailing address can be determined through such methods as the Secretary determines to be appropriate. The Secretary shall provide with each statement to an eligible individual notice that such statement is updated annually and is available upon request.

(2) Beginning not later than October 1, 1999, the Secretary shall provide a statement on an annual basis to each eligible individual who is not receiving benefits under subchapter II of this chapter and for whom a mailing address can be determined through such methods as the Secretary determines to be appropriate. With respect to statements provided to eligible individuals who have not attained age 50, such statements need not include estimates of monthly retirement benefits. However, if such statements provided to eligible individuals who have not attained age 50 do not include estimates of retirement benefit amounts, such statements shall include a description of the benefits (including auxiliary benefits) that are available upon retirement.

(Aug. 14, 1935, ch. 531, title XI, § 1143, formerly § 1142, as added Dec. 19, 1989, Pub. L. 101–239, title X, § 10308, 103 Stat. 2485; renumbered § 1143 and amended Nov. 5, 1990, Pub. L. 101–508, title V, § 5111(a), 104 Stat. 1388–272.)

AMENDMENTS

1990—Subsec. (c)(2). Pub. L. 101–508, § 5111(a)(2), substituted ''an annual'' for ''a biennial''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 6103.

§ 1320b–14. Medicare and Medicaid Coverage Data Bank

(a) Establishment of Data Bank

The Secretary shall establish a Medicare and Medicaid Coverage Data Bank (hereafter in this section referred to as the ''Data Bank'') to—

(1) further the purposes of section 1395y(b) of this title in the identification of, and collection from, third parties responsible for payment for health care items and services furnished to medicare beneficiaries, and

(2) assist in the identification of, and the collection from, third parties responsible for the reimbursement of costs incurred by any State plan under subchapter XIX of this chapter with respect to medicaid beneficiaries, upon request by the State agency described in section 1396a(a)(5) of this title administering such plan.

(b) Information in Data Bank

(1) In general

The Data Bank shall contain information obtained pursuant to section 6103(*l*)(12) of the Internal Revenue Code of 1986 and subsection (c) of this section.

(2) Disclosure of information in Data Bank

The Secretary is authorized until September 30, 1998—

(A) (subject to the restriction in subparagraph (D)(i) of section 6103(*l*)(12) of the Internal Revenue Code of 1986) to disclose any information in the Data Bank obtained pursuant to such section solely for the purposes of such section, and

(B) (subject to the restriction in subsection (c)(7) of this section) to disclose any other information in the Data Bank to any State agency described in section 1396a(a)(5) of this title, employer, or group health plan solely for the purposes described in subsection (a) of this section.

(c) Requirement that employers report information

(1) Reporting requirement

(A) In general

Any employer described in paragraph (2) shall report to the Secretary (in such form and manner as the Secretary determines will minimize the burden of such reporting) with respect to each electing individual the information required under paragraph (5) for each calendar year beginning on or after January 1, 1994, and before January 1, 1998.

(B) Special rule

To the extent a group health plan provides information required under paragraph (5) in a form and manner specified by the Secretary (in consultation with the Secretary of Labor) on behalf of an employer in accordance with section 1021(f) of title 29, the employer has complied with the reporting requirement under subparagraph (A) with respect to the reporting of such information.

(2) Employer described

An employer is described in this paragraph if such employer has, or contributes to, a group health plan, with respect to which at least 1 employee of such employer is an electing individual.

(3) Electing individual

For purposes of this subsection, the term ''electing individual'' means an individual associated or formerly associated with the employer in a business relationship who elects coverage under the employer's group health plan.

(4) Certain individuals excluded

For purposes of this subsection, an individual providing service referred to in section 3121(a)(7)(B) of the Internal Revenue Code of 1986 shall not be considered an employee or electing individual with respect to an employer.

(5) Information required

For purposes of paragraph (1), each employer shall provide the following information:

(A) The name and TIN of the electing individual.

(B) The type of group health plan coverage (single or family) elected by the electing individual.

(C) The name, address, and identifying number of the group health plan elected by such electing individual.

(D) The name and TIN of each other individual covered under the group health plan pursuant to such election.

(E) The period during which such coverage is elected.

(F) The name, address, and TIN of the employer.

(6) Time of filing

For purposes of determining the date for filing the report under paragraph (1), such report shall be treated as a statement described in section 6051(d) of the Internal Revenue Code of 1986.

(7) Limits on disclosure of information reported

(A) In general

The disclosure of the information reported under paragraph (1) shall be restricted by the Secretary under rules similar to the rules of subsections (a) and (p) of section 6103 of the Internal Revenue Code of 1986.

(B) Penalty for unauthorized willful disclosure of information

The unauthorized disclosure of any information reported under paragraph (1) shall be subject to the penalty described in paragraph (1), (2), (3), or (4) of section 7213(a) of such Code.

(9)[1] Penalty for failure to report

In the case of the failure of an employer (other than a Federal or other governmental entity) to report under paragraph (1)(A) with respect to each electing individual, the Secretary shall impose a penalty as described in part II of subchapter B of chapter 68 of the Internal Revenue Code of 1986.

(d) Fees for Data Bank services

The Secretary shall establish fees for services provided under this section which shall remain available, without fiscal year limitation, to the Secretary to cover the administrative costs to the Data Bank of providing such services.

(f)[2] Definitions

In this section:

(1) Medicare beneficiary

The term ''medicare beneficiary'' means an individual entitled to benefits under part A, or enrolled under part B, of subchapter XVIII of this chapter, but does not include such an individual enrolled in part A of subchapter XVIII of this chapter under section 1395i–2 of this title.

(2) Medicaid beneficiary

The term ''medicaid beneficiary'' means an individual entitled to benefits under a State plan for medical assistance under subchapter XIX of this chapter (including a State plan operating under a statewide waiver under section 1315 of this title).

(3) Group health plan

The term ''group health plan'' shall have the meaning given to such term by section 5000(b)(1) of the Internal Revenue Code of 1986.

(4) TIN

The term ''TIN'' shall have the meaning given to such term by section 7701(a)(41) of such Code.

(Aug. 14, 1935, ch. 531, title XI, § 1144, as added Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13581(a), 107 Stat. 609.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (b), (c)(4), (6), (7), (9), and (f)(3), (4), is classified generally to Title 26, Internal Revenue Code.

[1] So in original. Probably should be ''(8)''.

[2] So in original. Probably should be ''(e)''.

Parts A and B of subchapter XVIII of this chapter, referred to in subsec. (f)(1), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

EFFECTIVE DATE

Section 13581(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [enacting this section and amending sections 1395y and 1396a of this title and section 552a of Title 5, Government Organization and Employees] shall take effect on January 1, 1994.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395y, 1396a of this title; title 5 section 552a; title 29 sections 1021, 1132.

PART B—PEER REVIEW OF UTILIZATION AND QUALITY OF HEALTH CARE SERVICES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1301, 1395b–1, 1395h, 1395k, 1395x, 1395u, 1395y, 1395cc, 13955dd, 1395ff, 1395mm, 1395ww, 1396a, 1396r–2 of this title; title 10 section 1079.

§ 1320c. Purpose

The purpose of this part is to establish the contracting process which the Secretary must follow pursuant to the requirements of section 1395y(g) of this title, including the definition of the utilization and quality control peer review organizations with which the Secretary shall contract, the functions such peer review organizations are to perform, the confidentiality of medical records, and related administrative matters to facilitate the carrying out of the purposes of this part.

(Aug. 14, 1935, ch. 531, title XI, §1151, as added Sept. 3, 1982, Pub. L. 97–248, title I, §143, 96 Stat. 382.)

PRIOR PROVISIONS

A prior section 1320c, act Aug. 14, 1935, ch. 531, title XI, §1151, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1429; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, §2113(a), 95 Stat. 794, set out the Congressional declaration of purpose of former part B, in the general revision of this part by Pub. L. 97–248.

EFFECTIVE DATE

Section 149 of Pub. L. 97–248, as amended by Pub. L. 98–369, div. B, title III, §2354(c)(3)(C), July 18, 1984, 98 Stat. 1102, provided that: ''The amendments made by this subtitle [subtitle C (§§141–150) of title I of Pub. L. 97–248, enacting this part, amending sections 1395b–1, 1395g, 1395k, 1395*l*, 1395x, 1395y, 1395cc, 1395pp, 1396a, and 1396b of this title, and enacting provisions set out as notes under sections 1305 and 1320c of this title] shall, subject to section 150 [section 150 of Pub. L. 97–248, set out as a note below], be effective with respect to contracts entered into or renewed on or after the date of the enactment of this Act [Sept. 3, 1982].''

COORDINATION OF PROS AND CARRIERS

Pub. L. 101–508, title IV, §4205(c), Nov. 5, 1990, 104 Stat. 1388–113, provided that:

''(1) DEVELOPMENT AND IMPLEMENTATION OF PLAN.—The Secretary of Health and Human Services shall develop and implement a plan to coordinate the physician review activities of peer review organizations and carriers. Such plan shall include—

''(A) the development of common utilization and medical review criteria;

''(B) criteria for the targetting of reviews by peer review organizations and carriers; and

''(C) improved methods for exchange of information among peer review organizations and carriers.

''(2) REPORT.—Not later than January 1, 1992, the Secretary shall submit to Congress a report on the development of the plan described under paragraph (1) and shall include in the report such recommendations for changes in legislation as may be appropriate.''

EVALUATION OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS

Pub. L. 97–448, title III, §309(d), Jan. 12, 1983, 96 Stat. 2410, provided that: ''In order to avoid unfairly discriminating against professional standards review organizations whose performance was evaluated during the first and second calendar quarters of 1982, the Secretary of Health and Human Services shall disregard the results of such evaluations and shall carry out such new evaluations of such organizations as may be necessary to select utilization and quality control peer review organizations in accordance with subtitle C of title I of the Tax Equity and Fiscal Responsibility Act of 1982 [sections 141–150 of Pub. L. 97–248] and part B of title XI of the Social Security Act [this part] as amended by such subtitle.''

MAINTENANCE OF CURRENT PROFESSIONAL STANDARDS REVIEW ORGANIZATION AGREEMENTS

Section 150 of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, §309(a)(9), Jan. 12, 1983, 96 Stat. 2408, provided that:

''(a) The Secretary of Health and Human Services shall not terminate or fail to renew any agreement in effect with a professional standards review organization under part B of title XI of the Social Security Act [this part] on the earlier of the date of the enactment of this Act [Sept. 3, 1982] or September 30, 1982 until such time as he enters into a contract with a utilization and quality control peer review organization under such part, as amended by this subtitle [subtitle C (§§141–150) of title I of Pub. L. 97–248], for the area served by such professional standards review organization. In complying with this subsection, the Secretary may renew any such agreement with a professional standards review organization for a period of less than 12 months.

''(b) The provisions of part B of title XI of the Social Security Act [this part] as in effect prior to the amendments made by this subtitle [subtitle C (§§141–150) of title I of Pub. L. 97–248] shall remain in effect with respect to agreements with professional standards review organizations in effect on the earlier of the date of the enactment of this Act [Sept. 3, 1982] or September 30, 1982, until such time as such agreement is terminated or is not renewed, in accordance with subsection (a). Any matters awaiting a determination by a Statewide Professional Standards Review Council on the date of the enactment of this Act shall be transferred to the Secretary of Health and Human Services for a determination unless such determination is made by such Council within 30 days after the date of the enactment of this Act. No payments shall be made under part B of title XI of the Social Security Act to Statewide Professional Standards Review Councils for services performed under section 1162 of such Act [section 1320c–11 of this title] after the end of such 30-day period.''

§ 1320c–1. "Utilization and quality control peer review organization" defined

The term ''utilization and quality control peer review organization'' means an entity which—

(1)(A) is composed of a substantial number of the licensed doctors of medicine and osteopathy engaged in the practice of medicine or surgery in the area and who are representative of the practicing physicians in the area, designated by the Secretary under section 1320c–2 of this title, with respect to which the entity shall perform services under this part, or (B) has available to it, by arrangement or other-

wise, the services of a sufficient number of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area to assure that adequate peer review of the services provided by the various medical specialties and subspecialties can be assured;

(2) is able, in the judgment of the Secretary, to perform review functions required under section 1320c–3 of this title in a manner consistent with the efficient and effective administration of this part and to perform reviews of the pattern of quality of care in an area of medical practice where actual performance is measured against objective criteria which define acceptable and adequate practice; and

(3) has at least one individual who is a representative of consumers on its governing body.

(Aug. 14, 1935, ch. 531, title XI, §1152, as added Sept. 3, 1982, Pub. L. 97–248, title I, §143, 96 Stat. 382; amended Oct. 21, 1986, Pub. L. 99–509, title IX, §9353(b)(1), 100 Stat. 2046.)

PRIOR PROVISIONS

A prior section 1320c–1, act Aug. 14, 1935, ch. 531, title XI, §1152, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1430; amended Dec. 31, 1975, Pub. L. 94–182, title I, §§105, 108(a), 89 Stat. 1052, 1053; Oct. 25, 1977, Pub. L. 95–142, §5(a), (d)(2)(A), (B), (*o*)(1), 91 Stat. 1183, 1185, 1191; Dec. 5, 1980, Pub. L. 96–499, title IX, §921, 94 Stat. 2627; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§2112(a)(2)(A), (B), 2113(b), (c), 95 Stat. 793, 794, related to the designation of Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1986—Par. (3). Pub. L. 99–509 added par. (3).

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9353(b)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c–2, 1320c–3, 1396a, 1396b of this title.

§ 1320c–2. Contracts with utilization and quality control peer review organizations

(a) Establishment and consolidation of geographic areas

(1) The Secretary shall establish throughout the United States geographic areas with respect to which contracts under this part will be made. In establishing such areas, the Secretary shall use the same areas as established under section 1320c–1 of this title as in effect immediately prior to September 3, 1982, but subject to the provisions of paragraph (2).

(2) As soon as practicable after September 3, 1982, the Secretary shall consolidate such geographic areas, taking into account the following criteria:

(A) Each State shall generally be designated as a geographic area for purposes of paragraph (1).

(B) The Secretary shall establish local or regional areas rather than State areas only where the volume of review activity or other relevant factors (as determined by the Secretary) warrant such an establishment, and the Secretary determines that review activity can be carried out with equal or greater efficiency by establishing such local or regional areas. In applying this subparagraph the Secretary shall take into account the number of hospital admissions within each State for which payment may be made under subchapter XVIII of this chapter or a State plan approved under subchapter XIX of this chapter, with any State having fewer than 180,000 such admissions annually being established as a single statewide area, and no local or regional area being established which has fewer than 60,000 total hospital admissions (including public and private pay patients) under review annually, unless the Secretary determines that other relevant factors warrant otherwise.

(C) No local or regional area shall be designated which is not a self-contained medical service area, having a full spectrum of services, including medical specialists' services.

(b) Organizations entitled to contract with Secretary

(1) The Secretary shall enter into a contract with a utilization and quality control peer review organization for each area established under subsection (a) of this section if a qualified organization is available in such area and such organization and the Secretary have negotiated a proposed contract which the Secretary determines will be carried out by such organization in a manner consistent with the efficient and effective administration of this part. If more than one such qualified organization meets the requirements of the preceding sentence, priority shall be given to any such organization which is described in section 1320c–1(1)(A) of this title.

(2)(A) Prior to November 15, 1984, the Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), an entity (other than a self-insured employer) which directly or indirectly makes payments to any practitioner or provider whose health care services are reviewed by such entity or would be reviewed by such entity if it entered into a contract with the Secretary under this part. For purposes of this paragraph, an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider, by reason of management, ownership, or common control, if the management, ownership, or common control consists only of members of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an ''eligible organization'' as defined in section 1395mm(b) of this title.

(B) If, after November 14, 1984, the Secretary determines that there is no other entity available for an area with which the Secretary can enter into a contract under this part, the Secretary may then enter into a contract under this part with an entity described in subparagraph (A) for such area if such entity otherwise meets the requirements of this part.

(3)(A) The Secretary shall not enter into a contract under this part with any entity which

is, or is affiliated with (through management, ownership, or common control), a health care facility, or association of such facilities, within the area served by such entity or which would be served by such entity if it entered into a contract with the Secretary under this part.

(B) For purposes of subparagraph (A), an entity shall not be considered to be affiliated with a health care facility or association of facilities by reason of management, ownership, or common control if the management, ownership, or common control consists only of not more than 20 percent of the members of the governing board of the entity being affiliated (through management, ownership, or common control) with one or more of such facilities or associations.

(c) Terms of contract

Each contract with an organization under this section shall provide that—

(1) the organization shall perform the functions set forth in section 1320c–3(a) of this section, or may subcontract for the performance of all or some of such functions (and for purposes of paragraphs (2) and (3) of subsection (b) of this section, a subcontract under this paragraph shall not constitute an affiliation with the subcontractor);

(2) the Secretary shall have the right to evaluate the quality and effectiveness of the organization in carrying out the functions specified in the contract;

(3) the contract shall be for an initial term of three years and shall be renewable on a triennial basis thereafter;

(4) if the Secretary intends not to renew a contract, he shall notify the organization of his decision at least 90 days prior to the expiration of the contract term, and shall provide the organization an opportunity to present data, interpretations of data, and other information pertinent to its performance under the contract, which shall be reviewed in a timely manner by the Secretary;

(5) the organization may terminate the contract upon 90 days notice to the Secretary;

(6) the Secretary may terminate the contract prior to the expiration of the contract term upon 90 days notice to the organization if the Secretary determines that—

(A) the organization does not substantially meet the requirements of section 1320c–1 of this title; or

(B) the organization has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of this part, but only after such organization has had an opportunity to submit data and have such data reviewed by the panel established under subsection (d) of this section;

(7) the Secretary shall include in the contract negotiated objectives against which the organization's performance will be judged, and negotiated specifications for use of regional norms, or modifications thereof based on national norms, for performing review functions under the contract; and

(8) reimbursement shall be made to the organization on a monthly basis, with payments for any month being made not later than 15 days after the close of such month.

In evaluating the performance of utilization and quality control peer review organizations under contracts under this part, the Secretary shall place emphasis on the performance of such organizations in educating providers and practitioners (particularly those in rural areas) concerning the review process and criteria being applied by the organization.

(d) Review prior to termination of contract; modification and termination; reviewing panel

(1) Prior to making any termination under subsection (c)(6)(B) of this section, the Secretary must provide the organization with an opportunity to provide data, interpretations of data, and other information pertinent to its performance under the contract. Such data and other information shall be reviewed in a timely manner by a panel appointed by the Secretary, and the panel shall submit a report of its findings to the Secretary in a timely manner. The Secretary shall make a copy of the report available to the organization.

(2) The Secretary may accept or not accept the findings of the panel. After the panel has submitted a report with respect to an organization, the Secretary may, with the concurrence of the organization, amend the contract to modify the scope of the functions to be carried out by the organization, or in any other manner. The Secretary may terminate a contract under the authority of subsection (c)(6)(B) of this section upon 90 days notice after the panel has submitted a report, or earlier if the organization so agrees.

(3) A panel appointed by the Secretary under this subsection shall consist of not more than five individuals, each of whom shall be a member of a utilization and quality control peer review organization having a contract with the Secretary under this part. While serving on such panel individuals shall be paid at a per diem rate not to exceed the current per diem equivalent at the time that service on the panel is rendered for grade GS–18 under section 5332 of title 5. Appointments shall be made without regard to title 5.

(4) During the period after the Secretary has given notice of intent to terminate a contract, and prior to the time that the Secretary enters into a contract with another utilization and quality control peer review organization, the Secretary may transfer review responsibilities of the organization under the contract being terminated to another utilization and quality control peer review organization, or to an intermediary or carrier having an agreement under section 1395h of this title or a contract under section 1395u of this title.

(e) Authority of Secretary

(1) Except as provided in paragraph (2), contracting authority of the Secretary under this section may be carried out without regard to any provision of law relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the pur-

poses of this part. The Secretary may use different contracting methods with respect to different geographical areas.

(2) If a peer review organization with a contract under this section is required to carry out a review function in addition to any function required to be carried out at the time the Secretary entered into or renewed the contract with the organization, the Secretary shall, before requiring such organization to carry out such additional function, negotiate the necessary contractual modifications, including modifications that provide for an appropriate adjustment (in light of the cost of such additional function) to the amount of reimbursement made to the organization.

(f) Termination not subject to judicial review

Any determination by the Secretary to terminate or not to renew a contract under this section shall not be subject to judicial review.

(g) Timely provision of hospital data to peer review organizations

The Secretary shall provide that fiscal intermediaries furnish to peer review organizations, each month on a timely basis, data necessary to initiate the review process under section 1320c–3(a) of this title on a timely basis. If the Secretary determines that a fiscal intermediary is unable to furnish such data on a timely basis, the Secretary shall require the hospital to do so.

(h) Publication of new policy or procedure and general criteria and standards for evaluation; performance comparison report

(1) The Secretary shall publish in the Federal Register any new policy or procedure adopted by the Secretary that affects substantially the performance of contract obligations under this section not less than 30 days before the date on which such policy or procedure is to take effect. This paragraph shall not apply to the extent it is inconsistent with a statutory deadline.

(2) The Secretary shall publish in the Federal Register the general criteria and standards used for evaluating the efficient and effective performance of contract obligations under this section and shall provide opportunity for public comment with respect to such criteria and standards.

(3) The Secretary shall regularly furnish each peer review organization with a contract under this section with a report that documents the performance of the organization in relation to the performance of other such organizations.

(i) Preference in contracting with in-State organizations

(1) Notwithstanding any other provision of this section, the Secretary shall not renew a contract with any organization that is not an in-State organization (as defined in paragraph (3)) unless the Secretary has first complied with the requirements of paragraph (2).

(2)(A) Not later than six months before the date on which a contract period ends with respect to an organization that is not an in-State organization, the Secretary shall publish in the Federal Register—

(i) the date on which such period ends; and

(ii) the period of time in which an in-State organization may submit a proposal for the contract ending on such date.

(B) If one or more qualified in-State organizations submits a proposal within the period of time specified under subparagraph (A)(ii), the Secretary shall not automatically renew the current contract on a noncompetitive basis, but shall provide for competition for the contract in the same manner as a new contract under subsection (b) of this section.

(3) For purposes of this subsection, an in-State organization is an organization that has its primary place of business in the State in which review will be conducted (or, which is owned by a parent corporation the headquarters of which is located in such State).

(Aug. 14, 1935, ch. 531, title XI, § 1153, as added Sept. 3, 1982, Pub. L. 97–248, title I, § 143, 96 Stat. 382; amended Jan. 12, 1983, Pub. L. 97–448, title III, § 309(b)(2), 96 Stat. 2408; Apr. 20, 1983, Pub. L. 98–21, title VI, § 602(a), 97 Stat. 163; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2334(a), (b), 2347(c), 98 Stat. 1090, 1097; Apr. 7, 1986, Pub. L. 99–272, title IX, §§ 9402(b), 9404(a), 9406(a), 100 Stat. 200, 201; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9352(a)(1), 100 Stat. 2044; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4091(a)(2)(A), (b)(1), (2), 4092(a), 4094(d)(1), 101 Stat. 1330–134, 1330–135, 1330–137.)

PRIOR PROVISIONS

A prior section 1320c–2, act Aug. 14, 1935, ch. 531, title XI, § 1153, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1432, related to review pending designation of a Professional Standards Review Organization in a given area, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–203, § 4094(d)(1), inserted after and below par. (8) the following: ''In evaluating the performance of utilization and quality control peer review organizations under contracts under this part, the Secretary shall place emphasis on the performance of such organizations in educating providers and practitioners (particularly those in rural areas) concerning the review process and criteria being applied by the organization.''

Subsec. (c)(3). Pub. L. 100–203, § 4091(a)(2)(A), substituted ''three'' for ''two'' and ''triennial'' for ''biennial''.

Subsec. (e). Pub. L. 100–203, § 4091(b)(2), designated existing provisions as par. (1), substituted ''Except as provided in paragraph (2), contracting'' for ''Contracting'', and added par. (2).

Subsec. (h). Pub. L. 100–203, § 4091(b)(1), added subsec. (h).

Subsec. (i). Pub. L. 100–203, § 4092(a), added subsec. (i).

1986—Subsec. (b)(2)(A). Pub. L. 99–272, § 9404(a), substituted ''consists only of members of the governing board'' for ''consists only of one individual member of the governing board''.

Subsec. (c)(8). Pub. L. 99–272, § 9402(b), amended par. (8) generally. Prior to amendment, par. (8) read as follows: ''reimbursement shall be made to the organization in accordance with the terms of the contract.''

Subsec. (d)(4). Pub. L. 99–272, § 9406(a), added par. (4).

Subsec. (g). Pub. L. 99–509 added subsec. (g).

1984—Subsec. (b)(2)(A). Pub. L. 98–369, § 2347(c)(1), substituted ''Prior to November 15, 1984'' for ''During the first twelve months in which the Secretary is entering into contracts under this section''.

Pub. L. 98–369, § 2334(b), inserted ''(other than a self-insured employer)'' and provision that for purposes of this paragraph an entity shall not be considered to be affiliated with another entity which makes payments (directly or indirectly) to any practitioner or provider,

by reason of management, ownership, or common control, if the management, ownership, or common control consists only of one individual member of the governing board being affiliated (through management, ownership, or common control) with a health maintenance organization or competitive medical plan which is an ''eligible organization'' as defined in section 1395mm(b) of this title.

Subsec. (b)(2)(B). Pub. L. 98–369, § 2347(c)(2), substituted ''after November 14, 1984'' for ''after the expiration of the twelve-month period referred to in subparagraph (A)''.

Subsec. (b)(2)(C). Pub. L. 98–369, § 2347(c)(3), struck out subpar. (C) which provided that the twelve-month period formerly referred to in subpar. (A) would be deemed to have begun not later than October 1983.

Subsec. (b)(3). Pub. L. 98–369, § 2334(a), designated existing provisions as subpar. (A) and added subpar. (B).

1983—Subsec. (b)(2)(C). Pub. L. 98–21 added subpar. (C).

Subsec. (d). Pub. L. 97–448 substituted reference to ''subsection (c)(6)(B)'' for ''subsection (c)(5)(B)'' and ''subsection (c)(5)(C)'' in pars. (1) and (2), respectively.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4091(a)(2)(B) of Pub. L. 100–203 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4091(b)(3) of Pub. L. 100–203 provided that: ''The amendment made by paragraphs (1) and (2) [amending this section] shall become effective on the date of enactment of this Act [Dec. 22, 1987].''

Section 4092(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to contracts scheduled to be renewed on or after the first day of the eighth month to begin after the date of enactment of this Act [Dec. 22, 1987].''

Section 4094(d)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts under part B of title XI of the Social Security Act [this part] as of January 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9352(c)(1) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall implement the amendment made by subsection (a) [amending this section and section 1395h of this title] not later than 6 months after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9402(c)(2) of Pub. L. 99–272 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to contracts entered into or renewed on or after the date of the enactment of this Act [Apr. 7, 1986].''

Section 9404(b) of Pub. L. 99–272 provided that: ''The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9406(b) of Pub. L. 99–272 provided that: ''The amendment made by this section [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2334(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Section 2347(d) of Pub. L. 98–369 provided that: ''The provisions of, and amendments made by, this section [amending this section and section 1395cc of this title and enacting provisions set out as a note under section 1395cc of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

EXTENSIONS OF PEER REVIEW CONTRACT PERIOD; ONE-TIME EXTENSIONS TO PERMIT STAGGERING OF EXPIRATION DATES

Section 4091(a)(1) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(j)(1), July 1, 1988, 102 Stat. 790, provided that:

''(A) IN GENERAL.—In order to permit the Secretary of Health and Human Services an adequate time to complete contract renewal negotiations with utilization and quality control peer review organizations under part B of title XI of the Social Security Act [this part] and to provide for a staggered period of contract expiration dates, notwithstanding section 1153(c) of such Act [subsec. (c) of this section], the Secretary may provide for extensions of existing contracts, but the total of such extensions may not exceed 24 months for any contract.

''(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall apply to contracts expiring on or after the date of the enactment of this Act [Dec. 22, 1987].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c–1, 1320c–3, 1320c–6 of this title.

§ 1320c–3. Functions of peer review organizations

(a) Review of professional activities; determination of payment; determination of review authority; consultation with professional health care practitioners; standards of health care; other duties

Any utilization and quality control peer review organization entering into a contract with the Secretary under this part must perform the following functions:

(1) The organization shall review some or all of the professional activities in the area, subject to the terms of the contract and subject to the requirements of subsection (d) of this section, of physicians and other health care practitioners and institutional and noninstitutional providers of health care services in the provision of health care services and items for which payment may be made (in whole or in part) under subchapter XVIII of this chapter (including where payment is made for such services to eligible organizations pursuant to contracts under section 1395mm of this title) for the purpose of determining whether—

(A) such services and items are or were reasonable and medically necessary and

whether such services and items are not allowable under subsection (a)(1) or (a)(9) of section 1395y of this title;

(B) the quality of such services meets professionally recognized standards of health care; and

(C) in case such services and items are proposed to be provided in a hospital or other health care facility on an inpatient basis, such services and items could, consistent with the provision of appropriate medical care, be effectively provided more economically on an outpatient basis or in an inpatient health care facility of a different type.

If the organization performs such reviews with respect to a type of health care practitioner other than medical doctors, the organization shall establish procedures for the involvement of health care practitioners of that type in such reviews.

(2) The organization shall determine, on the basis of the review carried out under subparagraphs (A), (B), and (C) of paragraph (1), whether payment shall be made for services under subchapter XVIII of this chapter. Such determination shall constitute the conclusive determination on those issues for purposes of payment under subchapter XVIII of this chapter, except that payment may be made if—

(A) such payment is allowed by reason of section 1395pp of this title;

(B) in the case of inpatient hospital services or extended care services, the peer review organization determines that additional time is required in order to arrange for postdischarge care, but payment may be continued under this subparagraph for not more than two days, but only in the case where the provider of such services did not know and could not reasonably have been expected to know (as determined under section 1395pp of this title) that payment would not otherwise be made for such services under subchapter XVIII of this chapter prior to notification by the organization under paragraph (3);

(C) such determination is changed as the result of any hearing or review of the determination under section 1320c–4 of this title; or

(D) such payment is authorized under section 1395x(v)(1)(G) of this title.

The organization shall identify cases for which payment should not be made by reason of paragraph (1)(B) only through the use of criteria developed pursuant to guidelines established by the Secretary.

(3)(A) Subject to subparagraphs (B) and (D), whenever the organization makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disapproved, the organization shall promptly notify such patient and the agency or organization responsible for the payment of claims under subchapter XVIII of this chapter of such determination.

(B) The notification under subparagraph (A) with respect to services or items disapproved by reason of subparagraph (A) or (C) of paragraph (1) shall not occur until 20 days after the date that the organization has—

(i) made a preliminary notification to such practitioner or provider of such proposed determination, and

(ii) provided such practitioner or provider an opportunity for discussion and review of the proposed determination.

(C) The discussion and review conducted under subparagraph (B)(ii) shall not affect the rights of a practitioner or provider to a formal reconsideration of a determination under this part (as provided under section 1320c–4 of this title).

(D) The notification under subparagraph (A) with respect to services or items disapproved by reason of paragraph (1)(B) shall not occur until after—

(i) the organization has notified the practitioner or provider involved of the determination and of the practitioner's or provider's right to a formal reconsideration of the determination under section 1320c–4 of this title, and

(ii) if the provider or practitioner requests such a reconsideration, the organization has made such a reconsideration.

If a provider or practitioner is provided a reconsideration, such reconsideration shall be in lieu of any subsequent reconsideration to which the provider or practitioner may be otherwise entitled under section 1320c–4 of this title, but shall not affect the right of a beneficiary from seeking reconsideration under such section of the organization's determination (after any reconsideration requested by the provider or physician under clause (ii)).

(E)(i) In the case of services and items provided by a physician that were disapproved by reason of paragraph (1)(B), the notice to the patient shall state the following: ''In the judgment of the peer review organization, the medical care received was not acceptable under the medicare program. The reasons for the denial have been discussed with your physician.''

(ii) In the case of services or items provided by an entity or practitioner other than a physician, the Secretary may substitute the entity or practitioner which provided the services or items for the term ''physician'' in the notice described in clause (i).

(4)(A) The organization shall, after consultation with the Secretary, determine the types and kinds of cases (whether by type of health care or diagnosis involved, or whether in terms of other relevant criteria relating to the provision of health care services) with respect to which such organization will, in order to most effectively carry out the purposes of this part, exercise review authority under the contract. The organization shall notify the Secretary periodically with respect to such determinations. Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities is made among the different cases and settings (including post-acute-care settings, ambulatory settings, and health maintenance

organizations). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.

(B) The contract of each organization shall provide for the review of services (including both inpatient and outpatient services) provided by eligible organizations pursuant to a risk-sharing contract under section 1395mm of this title (or that is subject to review under section 1395ss(t)(3) of this title) for the purpose of determining whether the quality of such services meets professionally recognized standards of health care, including whether appropriate health care services have not been provided or have been provided in inappropriate settings and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organization (as determined, in part, by a survey of individuals enrolled with the organization who have not yet used the organization to receive such services). The contract of each organization shall also provide that with respect to health care provided by a health maintenance organization or competitive medical plan under section 1395mm of this title, the organization shall maintain a beneficiary outreach program designed to apprise individuals receiving care under such section of the role of the peer review system, of the rights of the individual under such system, and of the method and purposes for contacting the organization. The previous two sentences shall not apply with respect to a contract year if another entity has been awarded a contract under subparagraph (C). Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.

(C) The Secretary may provide, by contract under competitive procurement procedures on a State-by-State basis in up to 25 States, for the review described in subparagraph (B) by an appropriate entity (which may be a peer review organization described in that subparagraph). In selecting among States in which to conduct such competitive procurement procedures, the Secretary may not select States which, as a group, have more than 50 percent of the total number of individuals enrolled with eligible organizations under section 1395mm of this title. Under a contract with an entity under this subparagraph—

(i) the entity must be, or must meet all the requirements under section 1320c–1 of this title to be, a utilization and quality control peer review organization (other than the ability to perform review functions under this section that are not described in subparagraph (B)),

(ii) the contract must meet the requirement of section 1320c–2(b)(3) of this title, and

(iii) the level of effort expended under the contract shall be, to the extent practicable, not less than the level of effort that would otherwise be required under the third sentence of subparagraph (B) if this subparagraph did not apply.

(5) The organization shall consult with nurses and other professional health care practitioners (other than physicians described in section 1395x(r)(1) of this title) and with representatives of institutional and noninstitutional providers of health care services, with respect to the organization's responsibility for the review under paragraph (1) of the professional activities of such practitioners and providers.

(6)(A) The organization shall, consistent with the provisions of its contract under this part, apply professionally developed norms of care, diagnosis, and treatment based upon typical patterns of practice within the geographic area served by the organization as principal points of evaluation and review, taking into consideration national norms where appropriate. Such norms with respect to treatment for particular illnesses or health conditions shall include—

(i) the types and extent of the health care services which, taking into account differing, but acceptable, modes of treatment and methods of organizing and delivering care, are considered within the range of appropriate diagnosis and treatment of such illness or health condition, consistent with professionally recognized and accepted patterns of care; and

(ii) the type of health care facility which is considered, consistent with such standards, to be the type in which health care services which are medically appropriate for such illness or condition can most economically be provided.

As a component of the norms described in clause (i) or (ii), the organization shall take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and other appropriate factors (such as the distance from a patient's residence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis.

(B) The organization shall—

(i) offer to provide, several times each year, for a physician representing the organization to meet (at a hospital or at a regional meeting) with medical and administrative staff of each hospital (the services of which are reviewed by the organization) respecting the organization's review of the hospital's services for which payment may be made under subchapter XVIII of this chapter, and

(ii) publish (not less often than annually) and distribute to providers and practitioners whose services are subject to review a report that describes the organization's findings with respect to the types of cases in which the organization has frequently determined that (I) inappropriate or unnecessary care has been provided, (II) services were rendered in an inappropriate setting, or (III) services did not meet professionally recognized standards of health care.

(7) The organization, to the extent necessary and appropriate to the performance of the contract, shall—

(A)(i) make arrangements to utilize the services of persons who are practitioners of, or specialists in, the various areas of medicine (including dentistry, optometry, and podiatry), or other types of health care, which persons shall, to the maximum extent practicable, be individuals engaged in the practice of their profession within the area served by such organization; and

(ii) in the case of psychiatric and physical rehabilitation services, make arrangements to ensure that (to the extent possible) initial review of such services be made by a physician who is trained in psychiatry or physical rehabilitation (as appropriate).[1]

(B) undertake such professional inquiries either before or after, or both before and after, the provision of services with respect to which such organization has a responsibility for review which in the judgment of such organization will facilitate its activities;

(C) examine the pertinent records of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under paragraph (1); and

(D) inspect the facilities in which care is rendered or services are provided (which are located in such area) of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under paragraph (1).

(8) The organization shall perform such duties and functions and assume such responsibilities and comply with such other requirements as may be required by this part or under regulations of the Secretary promulgated to carry out the provisions of this part or as may be required to carry out section 1395y(a)(15) of this title.

(9)(A) The organization shall collect such information relevant to its functions, and keep and maintain such records, in such form as the Secretary may require to carry out the purposes of this part, and shall permit access to and use of any such information and records as the Secretary may require for such purposes, subject to the provisions of section 1320c–9 of this title.

(B) If the organization finds, after reasonable notice to and opportunity for discussion with the physician or practitioner concerned, that the physician or practitioner has furnished services in violation of section 1320c–5(a) of this title and the organization determines that the physician or practitioner should enter into a corrective action plan under section 1320c–5(b)(1) of this title, the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician or practitioner of its finding and of any action taken as a result of the finding.

(10) The organization shall coordinate activities, including information exchanges, which are consistent with economical and efficient operation of programs among appropriate public and private agencies or organizations including—

(A) agencies under contract pursuant to sections 1395h and 1395u of this title;

(B) other peer review organizations having contracts under this part; and

(C) other public or private review organizations as may be appropriate.

(11) The organization shall make available its facilities and resources for contracting with private and public entities paying for health care in its area for review, as feasible and appropriate, of services reimbursed by such entities.

(12) Repealed. Pub. L. 103–432, title I, § 156(a)(2)(A)(i), Oct. 31, 1994, 108 Stat. 4440.

(13) Notwithstanding paragraph (4), the organization shall perform the review described in paragraph (1) with respect to early readmission cases to determine if the previous inpatient hospital services and the post-hospital services met professionally recognized standards of health care. Such reviews may be performed on a sample basis if the organization and the Secretary determine it to be appropriate. In this paragraph, an ''early readmission case'' is a case in which an individual, after discharge from a hospital, is readmitted to a hospital less than 31 days after the date of the most recent previous discharge.

(14) The organization shall conduct an appropriate review of all written complaints about the quality of services (for which payment may otherwise be made under subchapter XVIII of this chapter) not meeting professionally recognized standards of health care, if the complaint is filed with the organization by an individual entitled to benefits for such services under such subchapter (or a person acting on the individual's behalf). The organization shall inform the individual (or representative) of the organization's final disposition of the complaint. Before the organization concludes that the quality of services does not meet professionally recognized standards of health care, the organization must provide the practitioner or person concerned with reasonable notice and opportunity for discussion.

(15) During each year of the contract entered into under section 1320c–2(b) of this title, the organization shall perform significant on-site review activities, including on-site review in at least 20 percent of the rural hospitals in the organization's area.

(16) The organization shall provide for a review and report to the Secretary when requested by the Secretary under section

[1] So in original. The period probably should be a semicolon.

1395dd(d)(3) of this title. The organization shall provide reasonable notice of the review to the physician and hospital involved. Within the time period permitted by the Secretary, the organization shall provide a reasonable opportunity for discussion with the physician and hospital involved, and an opportunity for the physician and hospital to submit additional information, before issuing its report to the Secretary under such section.

(b) Review by physicians; physician's family defined

(1) No physician shall be permitted to review—

(A) health care services provided to a patient if he was directly responsible for providing such services; or

(B) health care services provided in or by an institution, organization, or agency, if he or any member of his family has, directly or indirectly, a significant financial interest in such institution, organization, or agency.

(2) For purposes of this subsection, a physician's family includes only his spouse (other than a spouse who is legally separated from him under a decree of divorce or separate maintenance), children (including legally adopted children), grandchildren, parents, and grandparents.

(c) Utilization of services of physicians to make final determinations of denial decisions with respect to professional conduct of other physicians

No utilization and quality control peer review organization shall utilize the services of any individual who is not a duly licensed doctor of medicine, osteopathy, dentistry, optometry, or podiatry to make final determinations of denial decisions in accordance with its duties and functions under this part with respect to the professional conduct of any other duly licensed doctor of medicine, osteopathy, dentistry, optometry, or podiatry, or any act performed by any duly licensed doctor of medicine, osteopathy, dentistry, optometry, or podiatry in the exercise of his profession.

(d) Review of ambulatory surgical procedures

Each contract under this part shall require that the utilization and quality control peer review organization's review responsibility pursuant to subsection (a)(1) of this section will include review of all ambulatory surgical procedures specified pursuant to section 1395*l*(i)(1)(A) of this title which are performed in the area, or, at the discretion of the Secretary a sample of such procedures.

(e) Review of hospital denial notices

(1) If—

(A) a hospital has determined that a patient no longer requires inpatient hospital care, and

(B) the attending physician has agreed with the hospital's determination,

the hospital may provide the patient (or the patient's representative) with a notice (meeting conditions prescribed by the Secretary under section 1395pp of this title) of the determination.

(2) If—

(A) a hospital has determined that a patient no longer requires inpatient hospital care, but

(B) the attending physician has not agreed with the hospital's determination,

the hospital may request the appropriate peer review organization to review under subsection (a) of this section the validity of the hospital's determination. If the hospital requests such a review, it shall also notify the patient that the review has been requested.

(3)(A) If a patient (or a patient's representative)—

(i) has received a notice under paragraph (1), and

(ii) requests the appropriate peer review organization to review the determination,

then, the organization shall conduct a review under subsection (a) of this section of the validity of the hospital's determination and shall provide notice (by telephone and in writing) to the patient or representative and the hospital and attending physician involved of the results of the review. Such review shall be conducted regardless of whether or not the hospital will charge for continued hospital care or whether or not the patient will be liable for payment for such continued care.

(B) If a patient (or a patient's representative) requests a review under subparagraph (A) while the patient is still an inpatient in the hospital and not later than noon of the first working day after the date the patient receives the notice under paragraph (1), then—

(i) the hospital shall provide to the appropriate peer review organization the records required to review the determination by the close of business of such first working day, and

(ii) the peer review organization must provide the notice under subparagraph (A) by not later than one full working day after the date the organization has received the request and such records.

(4) If—

(A) a request is made under paragraph (3)(A) not later than noon of the first working day after the date the patient (or patient's representative) receives the notice under paragraph (1), and

(B) the conditions described in section 1395pp(a)(2) of this title with respect to the patient or representative are met,

the hospital may not charge the patient for inpatient hospital services furnished before noon of the day after the date the patient or representative receives notice of the peer review organization's decision.

(5) In any review conducted under paragraph (2) or (3), the organization shall solicit the views of the patient involved (or the patient's representative).

(f) Identification of methods for identifying cases of substandard care

The Secretary, in consultation with appropriate experts, shall identify methods that would be available to assist peer review organizations (under subsection (a)(4) of this section) in identifying those cases which are more likely than others to be associated with a quality of services which does not meet professionally recognized standards of health care.

(Aug. 14, 1935, ch. 531, title XI, §1154, as added Sept. 3, 1982, Pub. L. 97–248, title I, §143, 96 Stat.

385; amended Jan. 12, 1983, Pub. L. 97–448, title III, § 309(b)(3), (4), 96 Stat. 2408, 2409; Apr. 7, 1986, Pub. L. 99–272, title IX, §§ 9307(b), 9401(a), 9403(a), 9405(a), 100 Stat. 193, 196, 200, 201; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9343(d), 9351(a), 9352(b), 9353(a)(1)–(3), (c)(1), 100 Stat. 2040, 2043, 2044–2047; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4039(h)(3), (4), 4093(a), 4094(a)–(c)(1)(A), (2)(A), (B), 4096(c), 101 Stat. 1330–135 to 1330–137, 1330–139, as amended July 1, 1988, Pub. L. 100–360, title IV, § 411(e)(3), (j)(3)(A), 102 Stat. 775, 791; July 1, 1988, Pub. L. 100–360, title II, § 203(d)(2), title IV, § 411(j)(2), (3)(B), (4)(C), 102 Stat. 724, 775, 791; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(25)(B), 102 Stat. 2421; Dec. 13, 1989, Pub. L. 101–234, title II, § 201(a), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6224(a)(1), (b)(1), 103 Stat. 2257; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4205(b)(1), (d)(1)(A), (g)(1)(A), (2)(A), 4207(a)(1)(B), formerly 4027(a)(1)(B), 4358(b)(3), 104 Stat. 1388–113 to 1388–115, 1388–117, 1388–137; Oct. 31, 1994, Pub. L. 103–432, title I, §§ 156(a)(2)(A), (b)(2)(A), 160(d)(4), 171(h)(2), 108 Stat. 4440, 4441, 4444, 4450.)

PRIOR PROVISIONS

A prior section 1320c–3, act Aug. 14, 1935, ch. 531, title XI, § 1154, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1432; amended Oct. 25, 1977, Pub. L. 95–142, § 5(b), (d)(2)(C), 91 Stat. 1184, 1186; Dec. 5, 1980, Pub. L. 96–499, title IX, § 924(a), 94 Stat. 2628; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2112(a)(1), (2)(B), (b), 2113(c), 2121(e), 95 Stat. 793, 794, 796, related to trial period for Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1994—Subsec. (a)(4)(B). Pub. L. 103–432, § 171(h)(2), substituted ''(or that is subject to review under section 1395ss(t)(3) of this title)'' for ''(or subject to review under section 1395ss(t) of this title)''.

Subsec. (a)(9)(B). Pub. L. 103–432, § 156(b)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''If the organization finds, after notice and hearing, that a physician has furnished services in violation of this subsection, the organization shall notify the State board or boards responsible for the licensing or disciplining of the physician of its finding and decision.''

Subsec. (a)(12). Pub. L. 103–432, § 156(a)(2)(A)(i), struck out par. (12) which read as follows: ''The organization shall perform the review, referral, and other functions required under section 1320c–13 of this title.''

Subsec. (d). Pub. L. 103–432, § 156(a)(2)(A)(ii), struck out ''(and except as provided in section 1320c–13 of this title)'' after ''discretion of the Secretary''.

1990—Subsec. (a)(2). Pub. L. 101–508, § 4205(g)(2)(A), inserted third sentence and struck out former third sentence which read as follows: ''Determinations that payment should not be made by reason of subparagraph (B) of paragraph (1) shall be made only on the basis of criteria which are consistent with guidelines established by the Secretary.''

Subsec. (a)(3)(E). Pub. L. 101–508, § 4205(g)(1)(A), designated existing provisions as cl. (i), inserted ''provided by a physician that were'' after ''items'', substituted ''physician.'' for ''physician and hospital.'', and added cl. (ii).

Subsec. (a)(4)(B). Pub. L. 101–508, § 4358(b)(3), inserted ''(or subject to review under section 1395ss(t) of this title)'' after ''section 1395mm of this title'' in first sentence.

Subsec. (a)(7)(A)(i). Pub. L. 101–508, § 4205(b)(1)(A), inserted '', optometry, and podiatry'' after ''dentistry''.

Subsec. (a)(9). Pub. L. 101–508, § 4205(d)(1)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(16). Pub. L. 101–508, § 4207(a)(1)(B), formerly § 4027(a)(1)(B), as renumbered by Pub. L. 103–432, § 160(d)(4), added par. (16).

Subsec. (c). Pub. L. 101–508, § 4205(b)(1)(B), substituted ''dentistry, optometry, or podiatry'' for ''or dentistry'' in three places.

1989—Subsec. (a)(1). Pub. L. 101–239, § 6224(a)(1), inserted at end ''If the organization performs such reviews with respect to a type of health care practitioner other than medical doctors, the organization shall establish procedures for the involvement of health care practitioners of that type in such reviews.''

Subsec. (a)(3)(A). Pub. L. 101–239, § 6224(b)(1)(A), substituted ''subparagraphs (B) and (D)'' for ''subparagraph (B)''.

Subsec. (a)(3)(B). Pub. L. 101–239, § 6224(b)(1)(B), inserted ''with respect to services or items disapproved by reason of subparagraph (A) or (C) of paragraph (1)'' after ''under subparagraph (A)''.

Subsec. (a)(3)(D), (E). Pub. L. 101–239, § 6224(b)(1)(C), added subpars. (D) and (E).

Subsec. (a)(16). Pub. L. 101–234, repealed Pub. L. 100–360, § 203(d)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a)(3)(C). Pub. L. 100–360, § 411(j)(2), designated last sentence of par. (3) as subpar. (C).

Subsec. (a)(4). Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(3), see 1987 Amendment note below.

Subsec. (a)(6). Pub. L. 100–360, § 411(j)(3)(A), made technical amendment to directory language of Pub. L. 100–203, § 4094(a), see 1987 Amendment note below.

Subsec. (a)(15). Pub. L. 100–360, § 411(j)(3)(B), substituted ''review in at least'' for ''review at at least''.

Subsec. (a)(16). Pub. L. 100–360, § 203(d)(2), added par. (16) which related to review of home intravenous drug therapy services.

Subsec. (d). Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(4), see 1987 Amendment note below.

Subsec. (e)(3)(A)(i). Pub. L. 100–360, § 411(j)(4)(C), as amended by Pub. L. 100–485, § 608(d)(25)(B), substituted ''paragraph (1)'' for ''paragraph (1) or (2)''.

Subsec. (e)(3)(B). Pub. L. 100–360, § 411(j)(4)(C), as amended by Pub. L. 100–485, § 608(d)(25)(B), substituted ''paragraph (1)'' for ''paragraph (1) or (2)'' in introductory provisions.

1987—Subsec. (a)(3). Pub. L. 100–203, § 4093(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Whenever the organization makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disapproved, the organization shall promptly notify such practitioner or provider, such patient, and the agency or organization responsible for the payment of claims under subchapter XVIII of this chapter. In the case of practitioners and providers of services, the organization shall provide an opportunity for discussion and review of the determination.''

Subsec. (a)(4). Pub. L. 100–203, § 4039(h)(3), as added by Pub. L. 100–360, § 411(e)(3), realigned margins for subpars. (B) and (C) and cls. (i) to (iii) of subpar. (C), in subpar. (B), substituted ''risk sharing contract under section 1395mm'' for ''contract under section 1395mm'', and in subpar. (C), inserted ''(other than the ability to perform review functions under this section that are not described in subparagraph (B))''.

Subsec. (a)(4)(B). Pub. L. 100–203, § 4094(c)(2)(A), inserted before period at end of first sentence ''and whether individuals enrolled with an eligible organization have adequate access to health care services provided by or through such organization (as determined, in part, by a survey of individuals enrolled with the organization who have not yet used the organization to receive such services). The contract of each organization shall also provide that with respect to health care provided by a health maintenance organization or competitive medical plan under section 1395mm of this title, the organization shall maintain a beneficiary outreach program designed to apprise individuals re-

ceiving care under such section of the role of the peer review system, of the rights of the individual under such system, and of the method and purposes for contacting the organization'' and substituted ''previous two sentences'' for ''previous sentence'' in penultimate sentence.

Subsec. (a)(6). Pub. L. 100–203, §4094(c)(1)(A), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpar. (B).

Pub. L. 100–203, §4094(a), as amended by Pub. L. 100–360, §411(j)(3)(A), inserted after and below subpar. (A) the following: ''As a component of the norms described in clause (i) or (ii), the organization shall take into account the special problems associated with delivering care in remote rural areas, the availability of service alternatives to inpatient hospitalization, and other appropriate factors (such as the distance from a patient's residence to the site of care, family support, availability of proximate alternative sites of care, and the patient's ability to carry out necessary or prescribed self-care regimens) that could adversely affect the safety or effectiveness of treatment provided on an outpatient basis.''

Subsec. (a)(7)(A). Pub. L. 100–203, §4094(c)(2)(B), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(15). Pub. L. 100–203, §4094(b), added par. (15).

Subsec. (d). Pub. L. 100–203, §4039(h)(4), as added by Pub. L. 100–360, §411(e)(3), substituted ''1320c–13 of this title'' for ''1320c–13(b)(4) of this title''.

Subsec. (e)(2). Pub. L. 100–203, §4096(c)(1), inserted provision at end requiring hospital to notify patient if it has requested a review.

Subsec. (e)(3)(A)(i), (B). Pub. L. 100–203, §4096(c)(2), inserted ''or (2)'' after ''paragraph (1)''.

1986—Subsec. (a)(1). Pub. L. 99–509, §9343(d)(1), inserted ''and subject to the requirements of subsection (d) of this section'' after ''subject to the terms of the contract'' in introductory provisions.

Pub. L. 99–272, §9405(a), inserted ''(including where payment is made for such services to eligible organizations pursuant to contracts under section 1395mm of this title)'' after ''subchapter XVIII of this chapter'' in introductory provisions.

Subsec. (a)(2). Pub. L. 99–272, §9403(a), in introductory provisions substituted ''subparagraphs (A), (B), and (C)'' for ''subparagraphs (A) and (C)'', and following subpar. (D) inserted provision that determinations that payment should not be made by reason of subpar. (B) of par. (1) shall be made only on the basis of criteria which are consistent with guidelines established by the Secretary.

Subsec. (a)(4)(A). Pub. L. 99–509, §9353(a)(1), inserted at end ''Each peer review organization shall provide that a reasonable proportion of its activities are involved with reviewing, under paragraph (1)(B), the quality of services and that a reasonable allocation of such activities is made among the different cases and settings (including post-acute-care settings, ambulatory settings, and health maintenance organizations). In establishing such allocation, the organization shall consider (i) whether there is reason to believe that there is a particular need for reviews of particular cases or settings because of previous problems regarding quality of care, (ii) the cost of such reviews and the likely yield of such reviews in terms of number and seriousness of quality of care problems likely to be discovered as a result of such reviews, and (iii) the availability and adequacy of alternative quality review and assurance mechanisms.''

Pub. L. 99–509, §9353(a)(2)(A), inserted ''(A)'' after ''(4)''.

Subsec. (a)(4)(B). Pub. L. 99–509, §9353(a)(2)(C), inserted at end ''Under the contract the level of effort expended by the organization on reviews under this subparagraph shall be equivalent, on a per enrollee basis, to the level of effort expended by the organization on utilization and quality reviews performed with respect to individuals not enrolled with an eligible organization.''

Pub. L. 99–509, §9353(a)(2)(B), added subpar. (B).

Subsec. (a)(4)(C). Pub. L. 99–509, §9353(a)(2)(D), added subpar. (C).

Subsec. (a)(8). Pub. L. 99–272, §9307(b), inserted ''or as may be required to carry out section 1395y(a)(15) of this title'' before the period at end.

Subsec. (a)(12). Pub. L. 99–272, §9401(a), added par. (12).

Subsec. (a)(13). Pub. L. 99–509, §9352(b), added par. (13).

Subsec. (a)(14). Pub. L. 99–509, §9353(c)(1), added par. (14).

Subsec. (d). Pub. L. 99–509, §9343(d)(2), added subsec. (d).

Subsec. (e). Pub. L. 99–509, §9351(a), added subsec. (e).

Subsec. (f). Pub. L. 99–509, §9353(a)(3), added subsec. (f).

1983—Subsec. (a)(1)(A). Pub. L. 97–448, §309(b)(3), substituted ''and whether such services and items are not allowable under subsection (a)(1) or (a)(9) of section 1395y of this title'' for ''or otherwise allowable under section 1395y(a)(1) of this title''.

Subsec. (a)(2)(B). Pub. L. 97–448, §309(b)(4), struck out ''posthospital'' before ''extended care services''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 156(a)(3) of Pub. L. 103–432 provided that: ''The amendments made by this subsection [amending this section and sections 1395*l*, 1395m, 1395y, and 1395cc of this title and repealing section 1320c–13 of this title] shall apply to services provided on or after the date of the enactment of this Act [Oct. 31, 1994].''

Amendment by section 171(h)(2) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 171(*l*) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4205(b)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4205(d)(1)(C) of Pub. L. 101–508 provided that: ''The amendments made by this paragraph [amending this section and section 1320c–9 of this title] shall apply to notices of proposed sanctions issued more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4205(g)(1)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconiliation [sic] Act of 1989 [Pub. L. 101–239].''

Section 4205(g)(2)(B) of Pub. L. 101–508 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Section 4207(a)(1)(C), formerly 4027(a)(1)(C), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, §160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendment made by subparagraph (A) [amending section 1395dd of this title] shall take effect on the first day of the first month beginning more than 60 days after the date of the enactment of this Act [Nov. 5, 1990]. The amendment made by subparagraph (B) [amending this section] shall apply to contracts under part B of title XI of the Social Security Act [this part] as of the first day of the first month beginning more than 60 days after the date of the enactment of this Act.''

Section 4358(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §172(a), Oct. 31, 1994, 108 Stat. 4452, provided that: ''The amendments made by this section [amending this section and section 1395ss of this title] shall only apply in 15 States (as determined by the Secretary of Health and Human Services) and only during the 3½-year period beginning with 1992.''

[Section 172(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending section

4358(c) of Pub. L. 101–508, set out above] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1990 [Pub. L. 101–508].''']

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6224(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into after the date of the enactment of this Act [Dec. 19, 1989].''

Section 6224(b)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1320c–4 of this title] shall apply to determinations by utilization and quality control peer review organizations with respect to which preliminary notifications were made under section 1154(a)(3)(B) of the Social Security Act [subsec. (a)(3)(B) of this section] more than 30 days after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 203(g) of Pub. L. 100–360, which had provided that the amendments made by section 203 of Pub. L. 100–360 (amending this section and sections 1395h, 1395k to 1395n, 1395w–2, 1395x, 1395z, and 1395aa of this title) were to apply to items and services furnished on or after January 1, 1990, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(e)(3), (j)(2), (3), (4)(C) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4093(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to determinations made on or after April 1, 1988.''

Section 4094(c)(1)(B) of Pub. L. 100–203 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to contracts under part B of title XI of the Social Security Act [42 U.S.C. 1320c et seq.] entered into or renewed more than 6 months after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4094(c)(2)(C) of Pub. L. 100–203 provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act [Dec. 22, 1987].''

Section 4096(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1395u, 1395gg, and 1395pp of this title] shall apply to services furnished on or after January 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9343(d) of Pub. L. 99–509 applicable to contracts entered into or renewed after Jan. 1, 1987, see section 9343(h)(4) of Pub. L. 99–509, as amended, set out as a note under section 1395*l* of this title.

Section 9351(b) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to denial notices furnished by hospitals to individuals on or after the first day of the first month that begins more than 30 days after the date of the enactment of this Act [Oct. 21, 1986].

''(2) Section 1154(e)(4) of the Social Security Act [subsec. (e)(4) of this section] (as added by the amendment made by subsection (a)) shall take effect on the date of the enactment of this Act [Oct. 21, 1986].''

Section 9352(c)(2) of Pub. L. 99–509 provided that: ''The amendment made by subsection (b) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987, except that in applying such amendment before January 1, 1989, the term 'post-hospital services' does not include physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.''

Section 9353(a)(6) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4039(h)(9)(A), (B), as added Pub. L. 100–360, title IV, § 411(e)(3), July 1, 1988, 102 Stat. 776, provided that:

''(A)(i) Except as provided in clause (ii), the amendments made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after January 1, 1987.

''(ii) The amendment made by paragraph (1) shall not be construed as requiring, before January 1, 1989, the review of physicians' services, other than physicians' services furnished in a hospital, other inpatient facility, ambulatory surgical center, or rural health clinic.

''(B) The amendments made by paragraphs (2)(B) and (2)(D) [amending this section] shall apply to contracts as of April 1, 1987.

''(C) The amendment made by paragraph (2)(C) [amending this section] shall apply to review activities conducted by organizations on or after January 1, 1988.

''(D) The amendment made by paragraph (3) [amending this section] becomes effective on the date of the enactment of this Act [Oct. 21, 1986].''

Section 9353(c)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to complaints received on or after the first day of the first month that begins more than 9 months after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9307(e) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and sections 1395u and 1395y of this title] shall apply to services performed on or after April 1, 1986.''

Section 9401(d) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to items and services furnished on or after January 1, 1987. The Secretary of Health and Human Services shall provide for such modification of contracts under part B of title XI of the Social Security Act [this part] that are in effect on that date as may be necessary to effect these amendments on a timely basis.''

Section 9403(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section and section 1395cc of this title] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9405(b) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, § 9353(a)(5), Oct. 21, 1986, 100 Stat. 2046, provided that: ''The amendment made by this section [amending this section] shall apply to items and services furnished on or after April 1, 1987.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

STATE REGULATORY PROGRAMS

For provisions relating to changes required to conform State regulatory programs to amendments by section 171 of Pub. L. 103–432, see section 171(m) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

REVIEW AND ANALYSIS OF VARIATIONS IN UTILIZATION OF HOSPITAL AND OTHER HEALTH CARE SERVICES

Section 9353(a)(4) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall

provide, to at least 12 utilization and quality control peer review organizations with contracts under part B of title XI of the Social Security Act [this part], data and data processing assistance to allow each of these organizations to review and analyze small-area variations, in the service area of the organization, in the utilization of hospital and other health care services for which payment is made under title XVIII of such Act [subchapter XVIII of this chapter].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c–1, 1320c–2, 1320c–4, 1320c–7, 1320c–9, 1395u, 1395cc, 1395mm, 1396b, 1396r–2 of this title.

§ 1320c–4. Right to hearing and judicial review

Any beneficiary who is entitled to benefits under subchapter XVIII of this chapter, and, subject to section 1320c–3(a)(3)(D) of this title, any practitioner or provider, who is dissatisfied with a determination made by a contracting peer review organization in conducting its review responsibilities under this part, shall be entitled to a reconsideration of such determination by the reviewing organization. Where the reconsideration is adverse to the beneficiary and where the matter in controversy is $200 or more, such beneficiary shall be entitled to a hearing by the Secretary (to the same extent as beneficiaries under subchapter II of this chapter are entitled to a hearing by the Commissioner of Social Security under section 405(b) of this title). For purposes of the preceding sentence, subsection (*l*) of section 405 of this title shall apply, except that any reference in such subsection to the Commissioner of Social Security or the Social Security Administration shall be deemed a reference to the Secretary or the Department of Health and Human Services, respectively. Where the amount in controversy is $2,000 or more, such beneficiary shall be entitled to judicial review of any final decision relating to a reconsideration described in this subsection.

(Aug. 14, 1935, ch. 531, title XI, §1155, as added Sept. 3, 1982, Pub. L. 97–248, title I, §143, 96 Stat. 388; amended Dec. 19, 1989, Pub. L. 101–239, title VI, §6224(b)(2), 103 Stat. 2257; Aug. 15, 1994, Pub. L. 103–296, title I, §108(b)(14), 108 Stat. 1485.)

PRIOR PROVISIONS

A prior section 1320c–4, act Aug. 14, 1935, ch. 531, title XI, §1155, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1433; amended Oct. 25, 1977, Pub. L. 95–142, §5(c)(1), (d)(3), (*o*)(2), (p), 91 Stat. 1184, 1188, 1191, 1192; Dec. 5, 1980, Pub. L. 96–499, title IX, §§924(b)–(d), 925–927(a), 931(g), 94 Stat. 2629, 2630, 2634; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§2111, 2113(d), 2121(f), 95 Stat. 793, 794, 796, related to functions and duties of Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1994—Pub. L. 103–296 substituted ''(to the same extent as beneficiaries under subchapter II of this chapter are entitled to a hearing by the Commissioner of Social Security under section 405(b) of this title). For purposes of the preceding sentence, subsection (*l*) of section 405 of this title shall apply, except that any reference in such subsection to the Commissioner of Social Security or the Social Security Administration shall be deemed a reference to the Secretary or the Department of Health and Human Services, respectively. Where the amount in controversy is $2,000 or more, such beneficiary shall be entitled to judicial review of any final decision relating to a reconsideration described in this subsection.'' for ''(to the same extent as is provided in section 405(b) of this title), and, where the amount in controversy is $2,000 or more, to judicial review of the Secretary's final decision.''

1989—Pub. L. 101–239 inserted '', subject to section 1320c–3(a)(3)(D) of this title,'' before ''any practitioner or provider''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to determinations by utilization and quality control peer review organizations with respect to which preliminary notifications were made under section 1320c–3(a)(3)(B) of this title more than 30 days after Dec. 19, 1989, see section 6224(b)(3) of Pub. L. 101–239, set out as a note under section 1320c–3 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1320c–3 of this title.

§ 1320c–5. Obligations of health care practitioners and providers of health care services; sanctions and penalties; hearings and review

(a) Assurances regarding services and items ordered or provided by practitioner or provider

It shall be the obligation of any health care practitioner and any other person (including a hospital or other health care facility, organization, or agency) who provides health care services for which payment may be made (in whole or in part) under this chapter, to assure, to the extent of his authority that services or items ordered or provided by such practitioner or person to beneficiaries and recipients under this chapter—

(1) will be provided economically and only when, and to the extent, medically necessary;

(2) will be of a quality which meets professionally recognized standards of health care; and

(3) will be supported by evidence of medical necessity and quality in such form and fashion and at such time as may reasonably be required by a reviewing peer review organization in the exercise of its duties and responsibilities.

(b) Sanctions and penalties; hearings and review

(1) If after reasonable notice and opportunity for discussion with the practitioner or person concerned, and, if appropriate, after the practitioner or person has been given a reasonable opportunity to enter into and complete a corrective action plan (which may include remedial education) agreed to by the organization, and has failed successfully to complete such plan, any organization having a contract with the Secretary under this part determines that such practitioner or person has—

(A) failed in a substantial number of cases substantially to comply with any obligation imposed on him under subsection (a) of this section, or

(B) grossly and flagrantly violated any such obligation in one or more instances,

such organization shall submit a report and recommendations to the Secretary. If the Secretary agrees with such determination, and determines that such practitioner or person, in providing health care services over which such organization has review responsibility and for which payment (in whole or in part) may be made under this chapter, has demonstrated an unwillingness or a lack of ability substantially to comply with such obligations, the Secretary (in addition to any other sanction provided under law) may exclude (permanently or for such period as the Secretary may prescribe) such practitioner or person from eligibility to provide services under this chapter on a reimbursable basis. In determining whether a practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with such obligations, the Secretary shall consider the practitioner's or person's willingness or lack of ability, during the period before the organization submits its report and recommendations, to enter into and successfully complete a corrective action plan. If the Secretary fails to act upon the recommendations submitted to him by such organization within 120 days after such submission, such practitioner or person shall be excluded from eligibility to provide services on a reimbursable basis until such time as the Secretary determines otherwise.

(2) A determination made by the Secretary under this subsection to exclude a practitioner or person shall be effective on the same date and in the same manner as an exclusion from participation under the programs under this chapter becomes effective under section 1320a–7(c) of this title, and shall remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(3) In lieu of the sanction authorized by paragraph (1), the Secretary may require that (as a condition to the continued eligibility of such practitioner or person to provide such health care services on a reimbursable basis) such practitioner or person pays[1] to the United States, in case such acts or conduct involved the provision or ordering by such practitioner or person of health care services which were medically improper or unnecessary, an amount not in excess of the actual or estimated cost of the medically improper or unnecessary services so provided. Such amount may be deducted from any sums owing by the United States (or any instrumentality thereof) to the practitioner or person from whom such amount is claimed.

(4) Any practitioner or person furnishing services described in paragraph (1) who is dissatisfied with a determination made by the Secretary under this subsection shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title.

(5) Before the Secretary may effect an exclusion under paragraph (2) in the case of a provider or practitioner located in a rural health professional shortage area or in a county with a population of less than 70,000, the provider or practitioner adversely affected by the determination is entitled to a hearing before an administrative law judge (described in section 405(b) of this title) respecting whether the provider or practitioner should be able to continue furnishing services to individuals entitled to benefits under this chapter, pending completion of the administrative review procedure under paragraph (4). If the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to such individuals if permitted to continue furnishing such services, the Secretary shall not effect the exclusion under paragraph (2) until the provider or practitioner has been provided reasonable notice and opportunity for an administrative hearing thereon under paragraph (4).

(6) When the Secretary effects an exclusion of a physician under paragraph (2), the Secretary shall notify the State board responsible for the licensing of the physician of the exclusion.

(c) Enlistment of support of other organizations to assure practitioner's or provider's compliance with obligations

It shall be the duty of each utilization and quality control peer review organization to use such authority or influence it may possess as a professional organization, and to enlist the support of any other professional or governmental organization having influence or authority over health care practitioners and any other person (including a hospital or other health care facility, organization, or agency) providing health care services in the area served by such review organization, in assuring that each practitioner or person (referred to in subsection (a) of this section) providing health care services in such area shall comply with all obligations imposed on him under subsection (a) of this section.

(Aug. 14, 1935, ch. 531, title XI, § 1156, as added Sept. 3, 1982, Pub. L. 97–248, title I, § 143, 96 Stat. 388; amended Aug. 18, 1987, Pub. L. 100–93, § 6, 101 Stat. 691; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4095(a), 101 Stat. 1330–138; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4039(h)(5), as added July 1, 1988, Pub. L. 100–360, title IV, § 411(e)(3), 102 Stat. 775; Nov. 5, 1990, Pub. L. 101–508, title IV, § 4205(a)(1), (d)(2)(A), 104 Stat. 1388–112, 1388–114; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(c)(1), 104 Stat. 3035; Oct. 31, 1994, Pub. L. 103–432, title I, § 156(b)(1), 108 Stat. 4441.)

PRIOR PROVISIONS

A prior section 1320c–5, act Aug. 14, 1935, ch. 531, title XI, § 1156, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1435, provided for development of norms of health care services by Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–432 substituted ''whether'' for ''whehter'' in third sentence.

1990—Subsec. (b)(1). Pub. L. 101–508, § 4205(a)(1), inserted ''and, if appropriate, after the practitioner or person has been given a reasonable opportunity to enter into and complete a corrective action plan (which may include remedial education) agreed to by the orga-

[1] So in original. Probably should be ''pay''.

nization, and has failed successfully to complete such plan,'' after ''concerned,'' in introductory provisions and inserted after second sentence ''In determining whehter [sic] a practitioner or person has demonstrated an unwillingness or lack of ability substantially to comply with such obligations, the Secretary shall consider the practitioner's or person's willingness or lack of ability, during the period before the organization submits its report and recommendations, to enter into and successfully complete a corrective action plan.''

Subsec. (b)(5). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area (HMSA)''.

Subsec. (b)(6). Pub. L. 101–508, §4205(d)(2)(A), added par. (6).

1988—Subsec. (b). Pub. L. 100–360 added Pub. L. 100–203, §4039(h)(5), see 1987 Amendment notes below.

1987—Subsec. (a). Pub. L. 100–93, §6(1), substituted ''this chapter'' for ''subchapter XVIII of this chapter'' and ''this subchapter''.

Subsec. (b)(1). Pub. L. 100–203, §4039(h)(5)(A), as added by Pub. L. 100–360, substituted ''services under this chapter'' for ''such services''.

Pub. L. 100–93, §6(2), substituted ''this chapter'' for ''subchapter XVIII of this chapter''.

Subsec. (b)(2). Pub. L. 100–203, §4039(h)(5)(B), as added by Pub. L. 100–360, substituted ''on the same date and in the same manner as an exclusion from participation under the programs under this chapter becomes effective under section 1320a–7(c) of this title'' for ''at such time and upon such reasonable notice to the public and to the practitioner or person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of institutional health care services such determination shall be effective in the manner provided in this chapter with respect to terminations of provider agreements)''.

Pub. L. 100–93, §6(2), substituted ''this chapter'' for ''subchapter XVIII of this chapter''.

Subsec. (b)(5). Pub. L. 100–203 added par. (5).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 156(b)(6)(A) of Pub. L. 103–432, set out as a note under section 1320c–9 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4205(a)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to initial determinations made by organizations on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4205(d)(2)(B) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §156(b)(3), Oct. 31, 1994, 108 Stat. 4441, provided that: ''The amendment made by this paragraph [amending this section] shall apply to sanctions effected more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4095(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to determinations made by the Secretary of Health and Human Services under section 1156(b) of the Social Security Act [subsec. (b) of this section] on or after the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

TELECOMMUNICATIONS DEMONSTRATION PROJECTS

Section 4094(e) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(j)(3)(C), as added by Pub. L. 100–485, title VI, §608(d)(25)(A), Oct. 13, 1988, 102 Stat. 2421, provided that: ''The Secretary of Health and Human Services shall enter into agreements with entities submitting applications under this subsection (in such form as the Secretary may provide) to establish demonstration projects to examine the feasibility of requiring instruction and oversight of rural physicians, in lieu of imposing sanctions, through use of video communication between rural hospitals and teaching hospitals under this title [probably means title XI of the Social Security Act which is classified to this subchapter]. Under such demonstration projects, the Secretary may provide for payments to physicians consulted via video communication systems. No funds may be expended under the demonstration projects for the acquisition of capital items including computer hardware.''

PREEXCLUSION HEARINGS; TRANSITION FOR CURRENT CASES AND REDETERMINATION IN CERTAIN CASES

Section 4095(c), (d) of Pub. L. 100–203 provided that:

''(c) TRANSITION FOR CURRENT CASES.—In the case of a practitioner or person—

''(1) for whom a notice of determination under section 1156(b) of the Social Security Act [subsec. (b) of this section] has been provided within 365 days before the date of the enactment of this Act [Dec. 22, 1987],

''(2) who has not exhausted the administrative remedies available under section 1156(b)(4) of such Act for review of the determination, and

''(3) who requests, within 90 days after the date of the enactment of this Act, a hearing established under this subsection,

the Secretary of Health and Human Services shall provide for a hearing described in section 1156(b)(5) of the Social Security Act (as amended by subsection (a) of this section).

''(d) REDETERMINATIONS IN CERTAIN CASES.—If, in hearing under subsection (c), the judge does not determine, by a preponderance of the evidence, that the provider or practitioner will pose a serious risk to individuals entitled to benefits under title XVIII of the Social Security Act [subchapter XVIII of this chapter] if permitted to continue or resume furnishing such services, the Secretary shall not effect the exclusion (or shall suspend the exclusion, if previously effected) under paragraph (2) of section 1156(b) of such Act [subsec. (b) of this section] until the provider or practitioner has been provided an administrative hearing thereon under paragraph (4) of such section, notwithstanding any failure by the provider or practitioner to request the hearing on a timely basis.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 704, 1320a–7, 1320a–7a, 1320c–3, 1320c–9, 1395y, 1396b, 1397d of this title.

§ 1320c–6. Limitation on liability

(a) Providers of information to organizations having a contract with Secretary

Notwithstanding any other provision of law, no person providing information to any organization having a contract with the Secretary under this part shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) unless—

(1) such information is unrelated to the performance of the contract of such organization; or

(2) such information is false and the person providing it knew, or had reason to believe, that such information was false.

(b) Employees and fiduciaries of organizations having contracts with Secretary

No organization having a contract with the Secretary under this part and no person who is employed by, or who has a fiduciary relationship with, any such organization or who furnishes professional services to such organization, shall be held by reason of the performance of any duty, function, or activity required or authorized pursuant to this part or to a valid contract entered into under this part, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided due care was exercised in the performance of such duty, function, or activity.

(c) Physicians and providers

No doctor of medicine or osteopathy and no provider (including directors, trustees, employees, or officials thereof) of health care services shall be civilly liable to any person under any law of the United States or of any State (or political subdivision thereof) on account of any action taken by him in compliance with or reliance upon professionally developed norms of care and treatment applied by an organization under contract pursuant to section 1320c–2 of this title operating in the area where such doctor of medicine or osteopathy or provider took such action; but only if—

(1) he takes such action in the exercise of his profession as a doctor of medicine or osteopathy or in the exercise of his functions as a provider of health care services; and

(2) he exercised due care in all professional conduct taken or directed by him and reasonably related to, and resulting from, the actions taken in compliance with or reliance upon such professionally accepted norms of care and treatment.

(d) Reimbursement by Secretary for expenses incurred in defense of legal proceedings

The Secretary shall make payment to an organization under contract with him pursuant to this part, or to any member or employee thereof, or to any person who furnishes legal counsel or services to such organization, in an amount equal to the reasonable amount of the expenses incurred, as determined by the Secretary, in connection with the defense of any suit, action, or proceeding brought against such organization, member, or employee related to the performance of any duty or function under such contract by such organization, member, or employee.

(Aug. 14, 1935, ch. 531, title XI, §1157, as added Sept. 3, 1982, Pub. L. 97–248, title I, §143, 96 Stat. 389; amended Nov. 5, 1990, Pub. L. 101–508, title IV, §4205(f), 104 Stat. 1388–114.)

PRIOR PROVISIONS

A prior section 1320c–6, act Aug. 14, 1935, ch. 531, title XI, §1157, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1437; amended Oct. 25, 1977, Pub. L. 95–142, §13(b)(4), 91 Stat. 1198, related to submission of reports by Professional Standards Review Organizations, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–508 inserted ''organization having a contract with the Secretary under this part and no'' after ''No'', struck out ''by him'' after ''the performance'', and substituted ''due care was exercised in the performance of such duty, function, or activity'' for ''he has exercised due care''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c–9, 1395rr of this title.

§ 1320c–7. Application of this part to certain State programs receiving Federal financial assistance

(a) State plan provision that functions of peer review organizations may be performed by contract with such organization

A State plan approved under subchapter XIX of this chapter may provide that the functions specified in section 1320c–3 of this title may be performed in an area by contract with a utilization and quality control peer review organization that has entered into a contract with the Secretary in accordance with the provisions of section 1395y(g) of this title.

(b) Federal share of expenditures

In the event a State enters into a contract in accordance with subsection (a) of this section, the Federal share of the expenditures made to the contracting organization for its costs in the performance of its functions under the State plan shall be 75 percent (as provided in section 1396b(a)(3)(C) of this title).

(Aug. 14, 1935, ch. 531, title XI, §1158, as added Sept. 3, 1982, Pub. L. 97–248, title I, §143, 96 Stat. 390.)

PRIOR PROVISIONS

A prior section 1320c–7, act Aug. 14, 1935, ch. 531, title XI, §1158, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1437; amended Oct. 25, 1977, Pub. L. 95–142, §§5(d)(1), 22(a), 91 Stat. 1185, 1208; Dec. 5, 1980, Pub. L. 96–499, title IX, §§902(a)(3), 931(h), 94 Stat. 2613, 2634; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§2113(e), 2121(g), 95 Stat. 794, 796, related to review approval as a condition of payment of claims, prior to the general revision of this part by Pub. L. 97–248.

§ 1320c–8. Authorization for use of certain funds to administer provisions of this part

Expenses incurred in the administration of the contracts described in section 1395y(g) of this title shall be payable from—

(1) funds in the Federal Hospital Insurance Trust Fund; and

(2) funds in the Federal Supplementary Medical Insurance Trust Fund,

in such amounts from each of such Trust Funds as the Secretary shall deem to be fair and equitable after taking into consideration the expenses attributable to the administration of this part with respect to each of such programs. The Secretary shall make such transfers of moneys between such Trust Funds as may be appro-

priate to settle accounts between them in cases where expenses properly payable from one such Trust Fund have been paid from the other such Trust Fund.

(Aug. 14, 1935, ch. 531, title XI, § 1159, as added Sept. 3, 1982, Pub. L. 97–248, title I, § 143, 96 Stat. 390.)

PRIOR PROVISIONS

A prior section 1320c–8, act Aug. 14, 1935, ch. 531, title XI, § 1159, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1437; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2113(f), 95 Stat. 795, related to reconsideration hearing and review, prior to the general revision of this part by Pub. L. 97–248.

§ 1320c–9. Prohibition against disclosure of information

(a) Freedom of Information Act inapplicable; exceptions to nondisclosure

An organization, in carrying out its functions under a contract entered into under this part, shall not be a Federal agency for purposes of the provisions of section 552 of title 5 (commonly referred to as the Freedom of Information Act). Any data or information acquired by any such organization in the exercise of its duties and functions shall be held in confidence and shall not be disclosed to any person except—

(1) to the extent that may be necessary to carry out the purposes of this part,

(2) in such cases and under such circumstances as the Secretary shall by regulations provide to assure adequate protection of the rights and interests of patients, health care practitioners, or providers of health care, or

(3) in accordance with subsection (b) of this section.

(b) Disclosure of information permitted

An organization having a contract with the Secretary under this part shall provide in accordance with procedures and safeguards established by the Secretary, data and information—

(1) which may identify specific providers or practitioners as may be necessary—

(A) to assist Federal and State agencies recognized by the Secretary as having responsibility for identifying and investigating cases or patterns of fraud or abuse, which data and information shall be provided by the peer review organization to any such agency at the request of such agency relating to a specific case or pattern;

(B) to assist appropriate Federal and State agencies recognized by the Secretary as having responsibility for identifying cases or patterns involving risks to the public health, which data and information shall be provided by the peer review organization to any such agency—

(i) at the discretion of the peer review organization, at the request of such agency relating to a specific case or pattern with respect to which such agency has made a finding, or has a reasonable belief, that there may be a substantial risk to the public health, or

(ii) upon a finding by, or the reasonable belief of, the peer review organization that there may be a substantial risk to the public health;

(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners or to assist national accreditation bodies acting pursuant to section 1395bb of this title in accrediting providers for purposes of meeting the conditions described in subchapter XVIII of this chapter, which data and information shall be provided by the peer review organization to any such agency or body at the request of such agency or body relating to a specific case or to a possible pattern of substandard care, but only to the extent that such data and information are required by the agency or body to carry out its respective function which is within the jurisdiction of the agency or body under State law or under section 1395bb of this title; and

(D) to provide notice in accordance with section 1320c–3(a)(9)(B) of this title;

(2) to assist the Secretary, and such Federal and State agencies recognized by the Secretary as having health planning or related responsibilities under Federal or State law (including health systems agencies and State health planning and development agencies), in carrying out appropriate health care planning and related activities, which data and information shall be provided in such format and manner as may be prescribed by the Secretary or agreed upon by the responsible Federal and State agencies and such organization, and shall be in the form of aggregate statistical data (without explicitly identifying any individual) on a geographic, institutional, or other basis reflecting the volume and frequency of services furnished, as well as the demographic characteristics of the population subject to review by such organization.

The penalty provided in subsection (c) of this section shall not apply to the disclosure of any information received under this subsection, except that such penalty shall apply to the disclosure (by the agency receiving such information) of any such information described in paragraph (1) unless such disclosure is made in a judicial, administrative, or other formal legal proceeding resulting from an investigation conducted by the agency receiving the information. An organization may require payment of a reasonable fee for providing information under this subsection in response to a request for such information.

(c) Penalties

It shall be unlawful for any person to disclose any such information described in subsection (a) of this section other than for the purposes provided in subsections (a) and (b) of this section, and any person violating the provisions of this section shall, upon conviction, be fined not more than $1,000, and imprisoned for not more than 6 months, or both, and shall be required to pay the costs of prosecution.

(d) Subpoena and discovery proceedings regarding patient records

No patient record in the possession of an organization having a contract with the Secretary under this part shall be subject to subpoena or

discovery proceedings in a civil action. No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1320c–3(a)(1)(B) or 1320c–5(a)(2) of this title shall be subject to subpoena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization's findings and conclusions in making the determination.

(e) Organizations with contracts

For purposes of this section and section 1320c–6 of this title, the term ''organization with a contract with the Secretary under this part'' includes an entity with a contract with the Secretary under section 1320c–3(a)(4)(C) of this title.

(Aug. 14, 1935, ch. 531, title XI, § 1160, as added Sept. 3, 1982, Pub. L. 97–248, title I, § 143, 96 Stat. 391; amended Oct. 21, 1986, Pub. L. 99–509, title IX, § 9353(d)(1), 100 Stat. 2047; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4039(h)(6), as added July 1, 1988, Pub. L. 100–360, title IV, § 411(e)(3), 102 Stat. 776; Nov. 5, 1990, Pub. L. 101–508, title IV, § 4205(d)(1)(B), (e)(1), 104 Stat. 1388–113, 1388–114; Oct. 31, 1994, Pub. L. 103–432, title I, § 156(b)(2)(B), (4), 108 Stat. 4441.)

PRIOR PROVISIONS

A prior section 1320c–9, act Aug. 14, 1935, ch. 531, title XI, § 1160, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1438; amended Oct. 25, 1977, Pub. L. 95–142, § 5(e), (*o*)(3), 91 Stat. 1189, 1191; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2113(g), 95 Stat. 795, enumerated obligations of health care practitioners and providers of health care services, prior to the general revision of this part by Pub. L. 97–248.

AMENDMENTS

1994—Subsec. (b)(1)(D). Pub. L. 103–432, § 156(b)(2)(B), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''to provide notice to the State medical board in accordance with section 1320c–3(a)(9)(B) of this title when the organization submits a report and recommendations to the Secretary under section 1320c–5(b)(1) of this title with respect to a physician whom the board is responsible for licensing;''.

Subsec. (d). Pub. L. 103–432, § 156(b)(4), which directed amendment of subsec. (d) by substituting ''subpoena'' for ''subpena'', was executed by making the substitution in two places to reflect the probable intent of Congress.

1990—Subsec. (b)(1)(D). Pub. L. 101–508, § 4205(d)(1)(B), added subpar. (D).

Subsec. (d). Pub. L. 101–508, § 4205(e)(1), inserted at end ''No document or other information produced by such an organization in connection with its deliberations in making determinations under section 1320c–3(a)(1)(B) or 1320c–5(a)(2) of this title shall be subject to subpena or discovery in any administrative or civil proceeding; except that such an organization shall provide, upon request of a practitioner or other person adversely affected by such a determination, a summary of the organization's findings and conclusions in making the determination.''

1988—Subsec. (e). Pub. L. 100–360 added Pub. L. 100–203, § 4039(h)(6), see 1987 Amendment note below.

1987—Subsec. (e). Pub. L. 100–203, § 4039(h)(6), as added by Pub. L. 100–360, added subsec. (e).

1986—Subsec. (b)(1)(C). Pub. L. 99–509 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners, which data and information shall be provided by the peer review organization to any such agency at the request of such agency relating to a specific case, but only to the extent that such data and information is required by the agency in carrying out a function which is within the jurisdiction of such agency under State law; and''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 156(b)(6) of Pub. L. 103–432 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section, sections 1320c–3 and 1320c–5 of this title, and provisions set out as notes under this section and section 1320c–5 of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].

''(B) The amendments made by paragraph (2) [amending this section and section 1320c–3 of this title] (relating to the requirement on reporting of information to State boards) shall take effect on the date of the enactment of this Act [Oct. 31, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4205(d)(1)(B) of Pub. L. 101–508 applicable to notices of proposed sanctions issued more than 60 days after Nov. 5, 1990, see section 4205(d)(1)(C) of Pub. L. 101–508, set out as a note under section 1320c–3 of this title.

Section 4205(e)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 156(b)(5), Oct. 31, 1994, 108 Stat. 4441, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to proceedings as of the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9353(d)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to requests for data and information made on and after the end of the 6-month period beginning on the date of the enactment of this Act [Oct. 21, 1986].''

FREEDOM OF INFORMATION ACT REQUEST

Pub. L. 96–499, title IX, § 928, Dec. 5, 1980, 94 Stat. 2630, provided that: ''No Professional Standards Review Organization designated (conditionally or otherwise) under part B of title XI of the Social Security Act [this part] shall be required to make available any records pursuant to a request made under section 552 of title 5, United States Code, until the later of (1) one year after the date of entry of a final court order requiring that such records be made available, or (2) the last date of the Congress during which the court order was entered.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c–3, 1395y, 1395rr of this title.

§ 1320c–10. Annual reports

The Secretary shall submit to the Congress not later than April 1 of each year, a full and complete report on the administration, impact, and cost of the program under this part during the preceding fiscal year, including data and information on—

(1) the number, status, and service areas of all utilization and quality control peer review organizations participating in the program;

(2) the number of health care institutions and practitioners whose services are subject to review by such organizations, and the number of beneficiaries and recipients who received services subject to such review during such year;

(3) the various methods of reimbursement utilized in contracts under this part, and the relative efficiency of each such method of reimbursement;

(4) the imposition of penalties and sanctions under this title for violations of law and for failure to comply with the obligations imposed by this part;

(5) the total costs incurred under subchapters XVIII and XIX of this chapter in the implementation and operation of all procedures required by such subchapters for the review of services to determine their medical necessity, appropriateness of use, and quality; and

(6) descriptions of the criteria upon which decisions are made, and the selection and relative weights of such criteria.

(Aug. 14, 1935, ch. 531, title XI, §1161, as added Sept. 3, 1982, Pub. L. 97–248, title I, §143, 96 Stat. 392.)

PRIOR PROVISIONS

A prior section 1320c–10, act Aug. 14, 1935, ch. 531, title XI, §1161, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1440, related to giving of notice to a practitioner or provider by a Professional Standards Review Organization immediately after taking certain action or making certain determinations, prior to the general revision of this part by Pub. L. 97–248.

PERFORMANCE OF PROFESSIONAL STANDARDS REVIEW ORGANIZATIONS; REPORT TO CONGRESS

Pub. L. 97–35, title XXI, §2112(a)(2)(D), Aug. 13, 1981, 95 Stat. 793, provided that the Secretary of Health and Human Services, not later than September 30, 1982, was to report to the Congress on his assessment (under former section 1320c–3(g) of this title) of the relative performance of Professional Standards Review Organizations and on any determinations made not to renew agreements with such Organizations on the basis of such performance.

§ 1320c–11. Exemptions of Christian Science sanatoriums

The provisions of this part shall not apply with respect to a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

(Aug. 14, 1935, ch. 531, title XI, §1162, as added Sept. 3, 1982, Pub. L. 97–248, title I, §143, 96 Stat. 393.)

PRIOR PROVISIONS

A prior section 1320c–11, act Aug. 14, 1935, ch. 531, title XI, §1162, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1440; amended Dec. 5, 1980, Pub. L. 96–499, title IX, §§922(a), 927(b), 94 Stat. 2628, 2630; Aug. 13, 1981, 97–35, title XXI, §2113(h), 95 Stat. 795, related to Statewide Professional Standards Review Councils, prior to the general revision of this part by Pub. L. 97–248.

§ 1320c–12. Medical officers in American Samoa, Northern Mariana Islands, and Trust Territory of Pacific Islands to be included in utilization and quality control peer review program

For purposes of applying this part to American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, individuals licensed to practice medicine in those places shall be considered to be physicians and doctors of medicine.

(Aug. 14, 1935, ch. 531, title XI, §1163, as added Sept. 3, 1982, Pub. L. 97–248, title I, §143, 96 Stat. 393.)

PRIOR PROVISIONS

A prior section 1320c–12, act Aug. 14, 1935, ch. 531, title XI, §1163, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1441; amended Oct. 25, 1977, Pub. L. 95–142, §5(f), (g), 91 Stat. 1189; Dec. 5, 1980, Pub. L. 96–499, title IX, §923(a)–(d), 94 Stat. 2628, related to establishment and membership of the National Professional Standards Review Council, prior to the general revision of this part by Pub. L. 97–248.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 1320c–13. Repealed. Pub. L. 103–432, title I, §156(a)(1), Oct. 31, 1994, 108 Stat. 4440

Section, act Aug. 14, 1935, ch. 531, title XI, §1164, as added Apr. 7, 1986, Pub. L. 99–272, title IX, §9401(b), 100 Stat. 196; amended Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1895(b)(17), 100 Stat. 2934; Dec. 19, 1989, Pub. L. 101–239, title VI, §6003(g)(3)(D)(v), 103 Stat. 2153, related to 100 percent peer review for certain surgical procedures.

EFFECTIVE DATE OF REPEAL

Repeal applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as an Effective Date of 1994 Amendment note under section 1320c–3 of this title.

§§ 1320c–14 to 1320c–19. Omitted

CODIFICATION

Sections 1320c–14 to 1320c–19 were omitted in the general revision of this part by Pub. L. 97–248, title I, §143, Sept. 3, 1982, 96 Stat. 382.

Section 1320c–14, act Aug. 14, 1935, ch. 531, title XI, §1165, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1443, related to correlation of functions between Professional Standards Review Organizations and administrative instrumentalities.

Section 1320c–15, act Aug. 14, 1935, ch. 531, title XI, §1166, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1443; amended Oct. 25, 1977, Pub. L. 95–142, §5(h), 91 Stat. 1189, related to general prohibition against disclosure of data or information and exceptions to such prohibition. See section 1320c–9 of this title.

Section 1320c–16, act Aug. 14, 1935, ch. 531, title XI, §1167, as added Oct. 30, 1972, Pub. L. 92–603, title II, §249F(b), 86 Stat. 1443; amended Oct. 25, 1977, Pub. L. 95–142, §5(i), (n), 91 Stat. 1190, 1191, related to limitation of liability of persons providing information to Professional Standards Review Organizations and Statewide Professional Standards Review Councils. See section 1320c–6 of this title.

Section 1320c–17, act Aug. 14, 1935, ch. 531, title XI, §1168, as added Oct. 30, 1972, Pub. L. 92–603, title II,

§ 249F(b), 86 Stat. 1444; amended Dec. 31, 1975, Pub. L. 94–182, title I, § 112(c), 89 Stat. 1055; Oct. 25, 1977, Pub. L. 95–142, § 5(j), 91 Stat. 1190; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2113(j), 95 Stat. 795, related to authorization for use of funds for administering professional review program, transfer of moneys between funds, and payments for Professional Standards Review Organizations. See section 1320c–8 of this title.

Section 1320c–18, act Aug. 14, 1935, ch. 531, title XI, § 1169, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1444, related to technical assistance given to organizations desiring to be designated as Professional Standards Review Organizations.

Section 1320c–19, act Aug. 14, 1935, ch. 531, title XI, § 1170, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 249F(b), 86 Stat. 1445, related to exemptions of Christian Science sanatoriums. See section 1320c–11 of this title.

§ 1320c–20. Repealed. Pub. L. 97–35, title XXI, § 2113(k), Aug. 13, 1981, 95 Stat. 795

Section, act Aug. 14, 1935, ch. 531, title XI, § 1171, as added Oct. 25, 1977, Pub. L. 95–142, § 5(d)(2)(D), 91 Stat. 1186, set forth provisions respecting Federal-State relations regarding memorandum of understanding between Organization and State agency.

EFFECTIVE DATE OF REPEAL

Repeal applicable to agreements with Professional Standards Review Organizations entered into on or after Oct. 1, 1981, see section 2113(*o*) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 1396a of this title.

§§ 1320c–21, 1320c–22. Omitted

CODIFICATION

Sections 1320c–21 and 1320c–22 were omitted in the general revision of this part by Pub. L. 97–248, title I, § 143, Sept. 3, 1982, 96 Stat. 382.

Section 1320c–21, act Aug. 14, 1935, ch. 531, title XI, § 1172, as added Oct. 25, 1977, Pub. L. 95–142, § 5(k), 91 Stat. 1190; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2113(*l*), 2193(c)(7), 95 Stat. 795, 827, related to annual reports submitted to Congress by Secretary. See section 1320c–10 of this title.

Section 1320c–22, act Aug. 14, 1935, ch. 531, title XI, § 1173, as added Oct. 25, 1977, Pub. L. 95–142, § 5(*l*)(1), 91 Stat. 1191; amended Dec. 5, 1980, Pub. L. 96–499, title IX, § 923(e), 94 Stat. 2628, provided that medical officers in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands were includable in program under former Part B. See section 1320c–12 of this title.

SUBCHAPTER XII—ADVANCES TO STATE UNEMPLOYMENT FUNDS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 503, 1103 of this title; title 2 section 906; title 26 sections 3302, 3304; title 29 section 1732.

§ 1321. Eligibility requirements for transfer of funds; reimbursement by State; application; certification; limitation

(a)(1) Advances shall be made to the States from the Federal unemployment account in the Unemployment Trust Fund as provided in this section, and shall be repayable, with interest to the extent provided in section 1322(b) of this title, in the manner provided in sections 1101(d)(1), 1103(b)(2), and 1322 of this title. An advance to a State for the payment of compensation in any 3-month period may be made if—

(A) the Governor of the State applies therefor no earlier than the first day of the month preceding the first month of such 3-month period, and

(B) he furnishes to the Secretary of Labor his estimate of the amount of an advance which will be required by the State for the payment of compensation in each month of such 3-month period.

(2) In the case of any application for an advance under this section to any State for any 3-month period, the Secretary of Labor shall—

(A) determine the amount (if any) which he finds will be required by such State for the payment of compensation in each month of such 3-month period, and

(B) certify to the Secretary of the Treasury the amount (not greater than the amount estimated by the Governor of the State) determined under subparagraph (A).

The aggregate of the amounts certified by the Secretary of Labor with respect to any 3-month period shall not exceed the amount which the Secretary of the Treasury reports to the Secretary of Labor is available in the Federal unemployment account for advances with respect to each month of such 3-month period.

(3) For purposes of this subsection—

(A) an application for an advance shall be made on such forms, and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the State unemployment compensation law, as the Secretary of Labor deems necessary or relevant to the performance of his duties under this subchapter,

(B) the amount required by any State for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the State's unemployment fund for the payment of compensation in such month, and

(C) the term ''compensation'' means cash benefits payable to individuals with respect to their unemployment, exclusive of expenses of administration.

(b) The Secretary of the Treasury shall, prior to audit or settlement by the General Accounting Office, transfer in monthly installments from the Federal unemployment account to the account of the State in the Unemployment Trust Fund the amount certified under subsection (a) of this section by the Secretary of Labor (but not exceeding that portion of the balance in the Federal unemployment account at the time of the transfer which is not restricted as to use pursuant to section 1103(b)(1) of this title). The amount of any monthly installment so transferred shall not exceed the amount estimated by the State to be required for the payment of compensation for the month with respect to which such installment is made.

(Aug. 14, 1935, ch. 531, title XII, § 1201, as added Oct. 3, 1944, ch. 480, title IV, § 402, 58 Stat. 790; amended Aug. 6, 1947, ch. 510, § 5(b), 61 Stat. 794; 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065; Aug. 28, 1950, ch. 809, title IV, § 404(a), 64 Stat. 560; Aug. 5, 1954, ch. 657, § 3, 68 Stat. 671; Sept. 13, 1960, Pub. L. 86–778, title V, § 522(a), 74 Stat. 978; Oct. 20, 1976, Pub. L. 94–566,

title II, § 213(a)–(c), 90 Stat. 2677; Aug. 13, 1981, Pub. L. 97–35, title XXIV, § 2407(b)(1), 95 Stat. 880.)

AMENDMENTS

1981—Subsec. (a)(1). Pub. L. 97–35 substituted ''with interest to the extent provided in section 1322(b) of this title'' for ''without interest''.

1976—Subsec. (a)(1). Pub. L. 94–566, § 213(a), substituted ''any 3-month period'' for ''any month'' in provisions preceding subpar. (A), ''the month preceding the first month of such 3-month period'' for ''the preceding month'' in subpar. (A), and ''each month of such 3-month period'' for ''such month'' in subpar. (B).

Subsec. (a)(2). Pub. L. 94–566, § 213(b), substituted ''any 3-month period'' for ''any month'' in provisions preceding subpar. (A) and following subpar. (B), and ''each month of such 3-month period'' for ''such month'' in subpar. (A) and provisions following subpar. (B).

Subsec. (b). Pub. L. 94–566, § 213(c), provided that the transfer of amounts by the Secretary of the Treasury from the Federal unemployment account to the account of the States in the Unemployment Trust Fund be made in monthly installments and that the amount of any monthly installment so transferred not exceed the amount estimated by the State to be required for the payment of compensation for the month with respect to which the installment is made.

1960—Subsec. (a). Pub. L. 86–778 amended subsec. (a) generally, substituting provisions relating to advances on a monthly basis upon application of the Governor and the furnishing of an estimate of amount of requisite advance and determination and certification by the Secretary of Labor of the requisite amount limited to a sum which is available in the Federal unemployment account for advances for the month for former provisions relating to advances on a quarterly basis upon application of the Governor for a specified amount not to exceed the highest total compensation paid out under the unemployment compensation law of the State during any one of the four calendar quarters preceding the quarter in which the application is made, where the balance in the unemployment fund of the State in the Unemployment Trust Fund at the close of Sept. 30, 1953, or the last day in any ensuing calendar quarter is less than the total compensation paid out under the unemployment compensation law of the State during the twelve-month period at the close of such day; incorporating former provisions of subsec. (b), relating to repayment of advances, in par. (1), inserting provision for repayment under section 1103(b)(2) of this title, and provisions formerly designated as cl. (A) and (B) in par. (3)(A) and (C); and adding par. (3)(B).

Subsec. (b). Pub. L. 86–778 amended subsec. (b) generally, striking out provision for repayment of advances which is now incorporated in subsec. (a)(1) in the reference to repayment under sections 1101(d)(1) and 1322 of this title.

1954—Act Aug. 5, 1954, amended section generally to provide that: (1) the first condition of eligibility for an advance is that the balance in the State unemployment fund at the close of a calendar quarter be less than the total of cash payments made by the State to individuals during the 12-month period which ends with such quarter; (2) the Governor of the State must apply for an advance during the quarter following the quarter specified in paragraph (1) of this section; and (3) the total amount certified for any one application may not exceed the amount paid out by the State for cash benefits in that particular quarter.

1950—Subsec. (a). Act Aug. 28, 1950, substituted ''January 1, 1952'' for ''January 1, 1950''.

1947—Subsec. (a). Act Aug. 6, 1947, substituted ''June 30, 1947'' for ''June 30, 1945'' and ''January 1, 1950'' for ''July 1, 1947''.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 213(d) of Pub. L. 94–566 provided that: '' The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 20, 1976].''

EFFECTIVE DATE OF 1950 AMENDMENT

Amendment by act Aug. 28, 1950, effective Jan. 1, 1950, see section 404(c) of act Aug. 28, 1950, set out as a note under section 1104 of this title.

TERMINATION DATE

Section 4 of act Aug. 6, 1947, provided that: ''Section 603 of the War Mobilization and Reconversion Act of 1944 [section 1651 note of Appendix to Title 50, War and National Defense] (terminating the provisions of such Act [sections 1651 to 1678 of Appendix to Title 50] on June 30, 1947) shall not be applicable in the case of the amendments made by title IV of such Act [sections 1666 and 1667 of Appendix to Title 50] to the Social Security Act [this section and section 1104 of this title].''

APPLICATIONS FOR TRANSFER OF FUNDS UNDER FORMER PROVISIONS OF SECTION 1321(a); LIMITATIONS

Section 522(b) of Pub. L. 86–778 provided that:

''(1) No amount shall be transferred on or after the date of the enactment of this Act [Sept. 13, 1960] from the Federal unemployment account to the account of any State in the Unemployment Trust Fund pursuant to any application made under section 1201(a) of the Social Security Act [subsec. (a) of this section] as in effect before such date; except that, if—

''(A) some but not all of an amount certified by the Secretary of Labor to the Secretary of the Treasury for transfer to the account of any State was transferred to such account before such date, and

''(B) the Governor of such State, after the date of the enactment of this Act [Sept. 13, 1960], requests the Secretary of the Treasury to transfer all or any part of the remainder to such account,

the Secretary of the Treasury shall, prior to audit or settlement by the General Accounting Office, transfer from the Federal unemployment account to the account of such State in the Unemployment Trust Fund the amount so requested or (if smaller) the amount available in the Federal unemployment account at the time of the transfer. No such amount shall be transferred under this paragraph after the one-year period beginning on the date of the enactment of this Act [Sept. 13, 1960].

''(2) For purposes of section 3302(c) of the Federal Unemployment Tax Act [section 3302(c) of Title 26, Internal Revenue Code] and titles IX and XII of the Social Security Act [subchapter IX and XII of this chapter], if any amount is transferred pursuant to paragraph (1) to the unemployment account of any State, such amount shall be treated as an advance made before the date of the enactment of this Act [Sept. 13, 1960].''

ADVANCES TO ALASKA

Act June 1, 1955, ch. 118, 69 Stat. 81, authorized the Governor of Alaska to obtain from the Federal Unemployment Fund such advances as the Territory of Alaska might qualify for and as might be necessary to obtain for the payment of unemployment compensation benefits to claimants entitled thereto under the Alaska employment security law and provided for the reimbursement of the general fund of the Territory of Alaska from which advances have been made for the payment of unemployment compensation benefits from advances made through the Governor of Alaska from the Federal Unemployment Fund.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1104, 1322 of this title.

§ 1322. Repayment by State; certification; transfer; interest on loan; credit of interest on loan

(a) Repayment by State; certification; transfer

The Governor of any State may at any time request that funds be transferred from the ac-

count of such State to the Federal unemployment account in repayment of part or all of that balance of advances, made to such State under section 1321 of this title, specified in the request. The Secretary of Labor shall certify to the Secretary of the Treasury the amount and balance specified in the request; and the Secretary of the Treasury shall promptly transfer such amount in reduction of such balance.

(b) Interest on loan

(1) Except as otherwise provided in this subsection, each State shall pay interest on any advance made to such State under section 1321 of this title. Interest so payable with respect to periods during any calendar year shall be at the rate determined under paragraph (4) for such calendar year.

(2) No interest shall be required to be paid under paragraph (1) with respect to any advance or advances made during any calendar year if—

(A) such advances are repaid in full before the close of September 30 of the calendar year in which the advances were made, and

(B) no other advance was made to such State under section 1321 of this title during such calendar year and after the date on which the repayment of the advances was completed.

(3)(A) Interest payable under paragraph (1) which was attributable to periods during any fiscal year shall be paid by the State to the Secretary of the Treasury prior to the first day of the following fiscal year. If interest is payable under paragraph (1) on any advance (hereinafter in this subparagraph referred to as the ''first advance'') by reason of another advance made to such State after September 30 of the calendar year in which the first advance was made, interest on such first advance attributable to periods before such September 30 shall be paid not later than the day after the date on which the other advance was made.

(B) Notwithstanding subparagraph (A), in the case of any advance made during the last 5 months of any fiscal year, interest on such advance attributable to periods during such fiscal year shall not be required to be paid before the last day of the succeeding taxable year. Any interest the time for payment of which is deferred by the preceding sentence shall bear interest in the same manner as if it were an advance made on the day on which it would have been required to be paid but for this subparagraph.

(C)(i) In the case of any State which meets the requirements of clause (ii) for any calendar year, any interest otherwise required to be paid under this subsection during such calendar year shall be paid as follows—

(I) 25 percent of the amount otherwise required to be paid on or before any day during such calendar year shall be paid on or before such day; and

(II) 25 percent of the amount otherwise required to be paid on or before such day shall be paid on or before the corresponding day in each of the 3 succeeding calendar years.

No interest shall accrue on such deferred interest.

(ii) A State meets the requirements of this clause for any calendar year if the rate of insured unemployment (as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970) under the State law of the period consisting of the first 6 months of the preceding calendar year equaled or exceeded 7.5 percent.

(4) The interest rate determined under this paragraph with respect to any calendar year is a percentage (but not in excess of 10 percent) determined by dividing—

(A) the aggregate amount credited under section 1104(e) of this title to State accounts on the last day of the last calendar quarter of the immediately preceding calendar year, by

(B) the aggregate of the average daily balances of the State accounts for such quarter as determined under section 1104(e) of this title.

(5) Interest required to be paid under paragraph (1) shall not be paid (directly or indirectly) by a State from amounts in its unemployment fund. If the Secretary of Labor determines that any State action results in the paying of such interest directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) from such unemployment fund, the Secretary of Labor shall not certify such State's unemployment compensation law under section 3304 of the Internal Revenue Code of 1986. Such noncertification shall be made in accordance with section 3304(c) of such Code.

(6)(A) For purposes of paragraph (2), any voluntary repayment shall be applied against advances made under section 1321 of this title on the last made first repaid basis. Any other repayment of such an advance shall be applied against advances on a first made first repaid basis.

(B) For purposes of this paragraph, the term ''voluntary repayment'' means any repayment made under subsection (a) of this section.

(7) This subsection shall only apply to advances made on or after April 1, 1982.

(8)(A) With respect to interest due under this section on September 30 of 1983, 1984, or 1985 (other than interest previously deferred under paragraph (3)(C)), a State may pay 80 percent of such interest in four annual installments of at least 20 percent beginning with the year after the year in which it is otherwise due, if such State meets the criteria of subparagraph (B). No interest shall accrue on such deferred interest.

(B) To meet the criteria of this subparagraph a State must—

(i) have taken no action since October 1, 1982, which would reduce its net unemployment tax effort or the net solvency of its unemployment system (as determined for purposes of section 3302(f) of the Internal Revenue Code of 1986); and

(ii)(I) have taken an action (as certified by the Secretary of Labor) after March 31, 1982, which would have increased revenue liabilities and decreased benefits under the State's unemployment compensation system (hereinafter referred to as a ''solvency effort'') by a combined total of the applicable percentage (as compared to such revenues and benefits as would have been in effect without such State action) for the calendar year for which the deferral is requested; or

(II) have had, for taxable year 1982, an average unemployment tax rate which was equal

to or greater than 2.0 percent of the total of the wages (as determined without any limitation on amount) attributable to such State subject to contribution under the State unemployment compensation law with respect to such taxable year.

In the case of the first year for which there is a deferral (over a 4-year period) of the interest otherwise payable for such year, the applicable percentage shall be 25 percent. In the case of the second such year, the applicable percentage shall be 35 percent. In the case of the third such year, the applicable percentage shall be 50 percent.

(C)(i) The base year is the first year for which deferral under this provision is requested and subsequently granted. The Secretary of Labor shall estimate the unemployment rate for the base year. To determine whether a State meets the requirements of subparagraph (B)(ii)(I), the Secretary of Labor shall determine the percentage by which the benefits and taxes in the base year with the application of the action referred to in subparagraph (B)(ii)(I) are lower or greater, as the case may be, than such benefits and taxes would have been without the application of such action. In making this determination, the Secretary shall deem the application of the action referred to in subparagraph (B)(ii)(I) to have been effective for the base year to the same extent as such action is effective for the year following the year for which the deferral is sought. Once a deferral is approved under clause (ii)(I) of subparagraph (B) a State must continue to maintain its solvency effort. Failure to do so shall result in the State being required to make immediate payment of all deferred interest.

(ii) Increases in the taxable wage base from $6,000 to $7,000 or increases after 1984 in the maximum tax rate to 5.4 percent shall not be counted for purposes of meeting the requirement of subparagraph (B).

(D) In the case of a State which produces a solvency effort of 50 percent, 80 percent, and 90 percent rather than the 25 percent, 35 percent, and 50 percent required under subparagraph (B), the interest shall be computed at an interest rate which is 1 percentage point less than the otherwise applicable interest rate.

(9) Any interest otherwise due from a State on September 30 of a calendar year after 1982 may be deferred (and no interest shall accrue on such deferred interest) for a grace period of not to exceed 9 months if, for the most recent 12-month period for which data are available before the date such interest is otherwise due, the State had an average total unemployment rate of 13.5 percent or greater.

(c) Credit of interest on loan

Interest paid by States in accordance with this section shall be credited to the Federal unemployment account established by section 1104(g) of this title in the Unemployment Trust Fund.

(Aug. 14, 1935, ch. 531, title XII, §1202, as added Aug. 5, 1954, ch. 657, §3, 68 Stat. 672; amended Sept. 13, 1960, Pub. L. 86–778, title V, §522(a), 74 Stat. 979; Aug. 13, 1981, Pub. L. 97–35, title XXIV, §2407(a), (b)(2), 95 Stat. 879, 880; Sept. 3, 1982, Pub. L. 97–248, title II, §274(a), 96 Stat. 557; Apr. 20, 1983, Pub. L. 98–21, title V, §§511, 514, 97 Stat. 144, 147; Oct. 11, 1983, Pub. L. 98–118, §5(a), 97 Stat. 804; Oct. 22, 1986, Pub. L. 99–514, §2, 100 Stat. 2095; Dec. 22, 1987, Pub. L. 100–203, title IX, §9156(a), 101 Stat. 1330–327.)

REFERENCES IN TEXT

Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (b)(3)(C)(ii), is section 203 of Pub. L. 91–373, title II, Aug. 10, 1970, 84 Stat. 709, as amended, which is set out as a note under section 3304 of Title 26, Internal Revenue Code.

The Internal Revenue Code of 1986, referred to in subsec. (b)(5), (8)(B)(i), is classified generally to Title 26.

AMENDMENTS

1987—Subsec. (c). Pub. L. 100–203 added subsec. (c).

1986—Subsec. (b)(5), (8)(B)(i). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1983—Subsec. (b)(2). Pub. L. 98–118, §5(a)(1), substituted ''advance or advances'' for ''advance'' in provisions preceding subpar. (A).

Subsec. (b)(2)(A). Pub. L. 98–118, §5(a)(2), (3), substituted ''advances are'' for ''advance is'' and ''advances were'' for ''advance was''.

Subsec. (b)(2)(B). Pub. L. 98–118, §5(a)(4), substituted ''advances was completed'' for ''advance was completed''.

Subsec. (b)(3)(A). Pub. L. 98–21, §514, which directed substitution of ''prior to'' for ''not later than'' was executed, as the probable intent of Congress, by making that substitution the first time the phrase appeared following ''Secretary of Treasury'' and not the second time that phrase appeared.

Subsec. (b)(3)(C)(i). Pub. L. 98–21, §511(c), substituted, after subcl. II, provision that no interest shall accrue on such deferred interest for provision that any interest the time for payment of which was deferred under this subparagraph would bear interest in the same manner as if it had been an advance made on the day on which it would have been required to be paid but for this subparagraph.

Subsec. (b)(7). Pub. L. 98–21, §511(b), struck out '', and before January 1, 1988'' after ''April 1, 1982''.

Subsec. (b)(8), (9). Pub. L. 98–21, §511(a), added pars. (8) and (9).

1982—Subsec. (b)(3)(C). Pub. L. 97–248 added subpar. (C).

1981—Subsec. (a). Pub. L. 97–35, §2407(b)(2), designated existing provision as subsec. (a).

Subsec. (b). Pub. L. 97–35, §2407(a), added subsec. (b).

1960—Pub. L. 86–778 amended section generally, designating provisions constituting subsec. (a) as entire section, substituting ''that balance of advances, made to such State under section 1321 of this title, specified in the request'' for ''any remaining balance of advances made to such State under section 1321 of this title'' and inserting ''in reduction of such balance'' and omitting subsecs. (b) and (c) pertaining to appropriations and repayable advances which were incorporated in sections 1101(d)(1) and 1323 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9156(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to interest paid on advances made on or after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1983 AMENDMENT

Section 5(b) of Pub. L. 98–118 provided that: ''The amendments made by this section [amending this section] shall apply to advances made on or after April 1, 1982.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 274(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this sec-

tion] shall apply to interest required to be paid after December 31, 1982.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1321 of this title; title 26 section 3302.

§ 1323. Repayable advances to Federal Unemployment Account

There are hereby authorized to be appropriated to the Federal unemployment account, as repayable advances, such sums as may be necessary to carry out the purposes of this subchapter. Amounts appropriated as repayable advances shall be repaid by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Any amount transferred as a repayment under this section shall be credited against, and shall operate to reduce, any balance of advances repayable under this section. Whenever, after the application of sections 1101(f)(3) and 1102(a) of this title with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, so much of such remainder as does not exceed the balance of advances made pursuant to this section shall be transferred to the general fund of the Treasury and shall be credited against, and shall operate to reduce, such balance of advances. Amounts appropriated as repayable advances for purposes of this subsection shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such advance, borne by all interest bearing obligations of the United States then forming part of the public debt; except that in cases in which such average rate is not a multiple of one-eighth of 1 percent, the rate of interest shall be the multiple of one-eighth of 1 percent next lower than such average rate.

(Aug. 14, 1935, ch. 531, title XII, § 1203, as added Aug. 5, 1954, ch. 657, § 3, 68 Stat. 672; amended Sept. 13, 1960, Pub. L. 86–778, title V, § 522(a), 74 Stat. 979; Aug. 10, 1970, Pub. L. 91–373, title III, § 304(c), 84 Stat. 716; Oct. 24, 1983, Pub. L. 98–135, title II, § 205(a), 97 Stat. 861; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9155(b), 101 Stat. 1330–327.)

PRIOR PROVISIONS

Provisions similar to those comprising the first sentence of this section were contained in section 1322(c), act Aug. 14, 1935, ch. 531, title XII, § 1202(c), as added Aug. 5, 1954, ch. 657, § 3, 68 Stat. 672, prior to amendment by Pub. L. 86–778.

AMENDMENTS

1987—Pub. L. 100–203 struck out ''(without interest)'' after ''account, as repayable advances'' and '', without interest,'' after ''shall be repaid'', and inserted sentence at end relating to amounts appropriated as repayable advances for purposes of this subsection.

1983—Pub. L. 98–135 inserted provision requiring that amounts appropriated as repayable advances be repaid, without interest, by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose, and that any amount transferred as a repayment under this section be credited against, and operate to reduce, any balance of advances repayable under this section.

1970—Pub. L. 91–373 inserted reference to section 1102(a) of this title.

1960—Pub. L. 86–778 amended section generally, substituting provisions relating to repayable advances to the Federal unemployment account for former provision defining ''Governor'' and now incorporated in section 1324 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to advances made on or after Dec. 22, 1987, see section 9155(d) of Pub. L. 100–203, set out as a note under section 1103 of this title.

RETRANSFER OF AMOUNTS TRANSFERRED FROM FEDERAL UNEMPLOYMENT ACCOUNT TO EMPLOYMENT SECURITY ADMINISTRATION ACCOUNT AS OF SEPTEMBER 30, 1983

Section 205(b) of Pub. L. 98–135 provided that: ''Any amounts transferred from the Federal unemployment account to the employment security administration account as of September 30, 1983, shall be transferred back to the Federal unemployment account.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1103, 1104 of this title; title 2 section 906.

§ 1324. "Governor" defined

When used in this subchapter, the term ''Governor'' includes the Mayor of the District of Columbia.

(Aug. 14, 1935, ch. 531, title XII, § 1204, as added Sept. 13, 1960, Pub. L. 86–778, title V, § 522(a), 74 Stat. 979; amended 1967 Reorg. Plan No. 3, § 401, eff. Nov. 3, 1967, 32 F.R. 11669, 81 Stat. 951; Dec. 24, 1973, Pub. L. 93–198, title IV, § 421, 87 Stat. 789.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in section 1323, act Aug. 14, 1935, ch. 531, title XII, § 1203, as added Aug. 5, 1954, ch. 657, § 3, 68 Stat. 672, prior to amendment by Pub. L. 86–778.

TRANSFER OF FUNCTIONS

Except as otherwise provided in Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967 (in part), 32 F.R. 11669, 81 Stat. 948, functions of Board of Commissioners of District of Columbia transferred to Commissioner of District of Columbia by section 401 of Reorg. Plan No. 3 of 1967. Office of Commissioner of District of Columbia, as established by Reorg. Plan No. 3 of 1967, abolished as of noon Jan. 2, 1975, by Pub. L. 93–198, title VII, § 711, Dec. 24, 1973, 87 Stat. 818, and replaced by office of Mayor of District of Columbia by section 421 of Pub. L. 93–198, classified to section 1–241 of the District of Columbia Code. Accordingly, ''Mayor'' substituted in text for ''Commissioners''.

SUBCHAPTER XIII—RECONVERSION UNEMPLOYMENT BENEFITS FOR SEAMEN

§§ 1331 to 1336. Repealed. Pub. L. 98–369, div. B, title VI, § 2663(f), July 18, 1984, 98 Stat. 1168

Section 1331, act Aug. 14, 1935, ch. 531, title XIII, § 1301, as added Aug. 10, 1946, ch. 951, title III, § 306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, § 1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, provided for administration of this chapter by Secretary of Labor.

Section 1332, act Aug. 14, 1935, ch. 531, title XIII, §1302, as added Aug. 10, 1946, ch. 951, title III, §306, 60 Stat. 982; amended July 16, 1949, ch. 342, §§1–3, 63 Stat. 445, defined ''reconversion period'', ''compensation'', ''Federal maritime service'', and ''Federal maritime wages''.

Section 1333, act Aug. 14, 1935, ch. 531, title XIII, §1303, as added Aug. 10, 1946, ch. 951, title III, §306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, §1, eff. Aug. 20, 1949, 14 F.R. 5225, 63 Stat. 1065, related to compensation for seamen, agreements with states, payments in absence of agreements, wage information, and determination of wages.

Section 1334, act Aug. 14, 1935, ch. 531, title XIII, §1304, as added Aug. 10, 1946, ch. 951, title III, §306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, §1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to review of determinations and reports.

Section 1335, act Aug. 14, 1935, ch. 531, title XIII, §1305, as added Aug. 10, 1946, ch. 951, title III, §306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, §1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to payments to States, certification of such payments by Secretary of Labor to Secretary of the Treasury, and return of unused funds.

Section 1336, act Aug. 14, 1935, ch. 531, title XIII, §1306, as added Aug. 10, 1946, ch. 951, title III, §306, 60 Stat. 982; amended 1949 Reorg. Plan No. 2, §1, eff. Aug. 19, 1949, 14 F.R. 5225, 63 Stat. 1065, related to penalties.

EFFECTIVE DATE OF REPEAL

Repeal effective July 18, 1984, but such repeal shall not be construed as changing or affecting any right, liability, status, or interpretation which existed before that date, see section 2664(b) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 401 of this title.

SUBCHAPTER XIV—GRANTS TO STATES FOR AID TO PERMANENTLY AND TOTALLY DISABLED

REPEAL OF SUBCHAPTER; INAPPLICABILITY OF REPEAL TO PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this subchapter is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 428, 602, 671, 1301, 1306a, 1308, 1309, 1311, 1315, 1316, 1318, 1319, 1320b–2, 1320b–3, 1320b–7, 1382, 1382c, 1395v, 1396a, 1396b, 1396d of this title; title 7 sections 2012, 2014; title 8 section 1255a; title 26 section 6103.

§ 1351. Authorization of appropriations

For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals eighteen years of age and older who are permanently and totally disabled, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid to the permanently and totally disabled.

(Aug. 14, 1935, ch. 531, title XIV, §1401, as added Aug. 28, 1950, ch. 809, title III, pt. 5, §351, 64 Stat. 555; amended 1953 Reorg. Plan No. 1, §§5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, §314(a), 70 Stat. 849; July 25, 1962, Pub. L. 87–543, title I, §104(c)(4), 76 Stat. 186; Aug. 13, 1981, Pub. L. 97–35, title XXI, §2184(c)(1), 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, §303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 struck out ''and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain and retain capability for self-support or self-care'' after ''and totally disabled''.

1962—Pub. L. 87–543 inserted ''to furnish rehabilitation and other services'' before ''to help such individuals'' and ''or retain capability for'' after ''attain''.

1956—Act Aug. 1, 1956, restated purpose to include assistance to individuals to attain self-support of self-care.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

§ 1352. State plans for aid to permanently and totally disabled

(a) A State plan for aid to the permanently and totally disabled must (1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the permanently and totally disabled is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to

be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title, aid to families with dependent children under the State plan approved under section 602 of this title, or aid to the blind under the State plan approved under section 1202 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the permanently and totally disabled, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (A) the State agency may disregard not more than $7.50 of any income, (B) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (C) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation; (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan; (10) provide that all individuals wishing to make application for aid to the permanently and totally disabled shall have opportunity to do so, and that aid to the permanently and totally disabled shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; (12) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and (13) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the permanently and totally disabled under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid to the permanently and totally disabled and has resided therein continuously for one year immediately preceding the application;

(2) Any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this subchapter.

(Aug. 14, 1935, ch. 531, title XIV, § 1402, as added Aug. 28, 1950, ch. 809, title III, pt. 5, § 351, 64 Stat. 555; amended 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, § 314(b), 70 Stat. 850; July 25, 1962, Pub. L. 87–543, title I, §§ 104(a)(3)(I), 106(a)(3), 76 Stat. 185, 188; July 30, 1965, Pub. L. 89–97, title IV, § 403(d) 79 Stat. 418; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 210(a)(4), 213(a)(3), 81 Stat. 896, 898; Oct. 30, 1972, Pub. L. 92–603, title IV, §§ 405(c), 406(c), 407(c), 410(c), 413(c), 86 Stat. 1488, 1489, 1491, 1492; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2651(g), 98 Stat. 1150.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1984—Subsec. (a)(13). Pub. L. 98–369 added cl. (13).

1972—Subsec. (a)(1). Pub. L. 92–603, § 410(c), inserted ''except to the extent permitted by the Secretary with respect to services'' before ''provide''.

Subsec. (a)(4). Pub. L. 92–603, § 407(c), designated existing provisions as subcl. (A) and added subcl. (B).

Subsec. (a)(9). Pub. L. 92–603, § 413(c), substituted provisions permitting the use or disclosure of information concerning applicants or recipients to public officials requiring such information in connection with their official duties and to other persons for purposes directly connected with the administration of the State plan, for provisions restricting the use or disclosure of such information to purposes directly connected with the administration of aid to the permanently and totally disabled.

Subsec. (a)(12). Pub. L. 92–603, § 405(c), inserted provision relating to the use of whatever internal organizational arrangement found appropriate.

Subsec. (b). Pub. L. 92–603, §406(c), inserted provision relating to the furnishing of manuals and other policy issuances to persons without charge and at the option of the State.

1968—Subsec. (a)(5). Pub. L. 90–248, §210(a)(4), designated existing provisions as subcl. (A) and added subcl. (B).

Subsec. (a)(8)(A). Pub. L. 90–248 §213(a)(3), increased from $5 to $7.50 limitation on amount of any income which the State may disregard in making its determination of need.

1965—Subsec. (a)(8). Pub. L. 89–97 inserted exception prohibiting disregard by State in making its determination of need of more than $5 of any income or of more than the first $20 of the first $80 per month of additional income which is earned and allowing disregard, for a period not in excess of 36 months, of such additional amounts of other income and resources as may be necessary to the fulfillment of approved plan for achieving self-support but only as to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation.

1962—Subsec. (a)(7). Pub. L. 87–543, §104(a)(3)(I), substituted ''aid to families with dependent children'' for ''aid to dependent children''.

Subsec. (a)(8). Pub. L. 87–543, §106(a)(3), inserted '', as well as any expenses reasonably attributable to the earning of any such income''.

1956—Subsec. (a)(12). Act Aug. 1, 1956, added cl. (12).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 210(a)(4) of Pub. L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub. L. 90–248, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Section 403(d) of Pub. L. 89–97 provided that the amendment made by that section is effective Oct. 1, 1965.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 106(a)(3) of Pub. L. 87–543 effective July 1, 1963, see section 202(a) of Pub. L. 87–543, set out as a note under section 302 of this title.

EFFECTIVE DATE OF 1956 AMENDMENT

Amendment by act Aug. 1, 1956, effective July 1, 1957, see section 314 [315] of act Aug. 1, 1956, set out as a note under section 302 of this title.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary under subsec. (a)(5)(A) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(D) of this title.

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

STATE PLANS IN EFFECT JULY 25, 1962: AUTOMATIC CONFORMITY TO AMENDMENTS

State plans in effect July 25, 1962 deemed to have been conformed to amendment of subsec. (a)(7) of this section by section 104(a) of Pub. L. 87–543, see section 104(b) of Pub. L. 87–543, set out as a note under section 601 of this title.

PUBLIC ACCESS TO STATE DISBURSEMENT RECORDS

Public access to State records of disbursements of funds and payments under this subchapter, see note set out under section 302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1315, 1354, 1355, 1382a, 4728 of this title; title 25 section 996.

§ 1353. Payments to States

(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the permanently and totally disabled, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) Repealed. Pub. L. 97–35, title XXI, §2184(c)(2)(A), Aug. 13, 1981, 95 Stat. 817.

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the permanently and totally disabled under the State plan, not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the permanently and totally disabled for such month; and

(3) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health and Human Services shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of subsection (a) of this section, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of permanently and totally disabled individuals in the State, and (C) such other investigation as the Secretary of Health and Human Services may find necessary.

(2) The Secretary of Health and Human Services shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health and Human Services, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than

the amount which should have been paid to the State under subsection (a) of this section for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health and Human Services, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the permanently and totally disabled furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health and Human Services for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health and Human Services, the amount so certified.

(Aug. 14, 1935, ch. 531, title XIV, § 1403, as added Aug. 28, 1950, ch. 809, title III, pt. 5, § 351, 64 Stat. 556; amended July 18, 1952, ch. 945, § 8(d), 66 Stat. 779; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, ch. 836, title III, §§ 304, 314(c), 344, 70 Stat. 847, 850, 854; Aug. 28, 1958, Pub. L. 85–840, title V, § 504, 72 Stat. 1049; June 30, 1961, Pub. L. 87–64, title III, § 303(c), 75 Stat. 143; July 25, 1962, Pub. L. 87–543, title I, §§ 101(a)(4), (b)(4), 132(c), 76 Stat. 178, 181, 195; July 30, 1965, Pub. L. 89–97, title I, § 122, title IV, § 401(e), 79 Stat. 353, 415; Jan. 2, 1968, Pub. L. 90–248, title II, § 212(c), 81 Stat. 897; Oct. 20, 1972, Pub. L. 92–512, title III, § 301(b), (d), 86 Stat. 946, 947; Jan. 4, 1975, Pub. L. 93–647, §§ 3(e)(2), 5(d), 88 Stat. 2349, 2350; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(c)(2), title XXV, § 2353(*l*), 95 Stat. 817, 873; Nov. 6, 1986, Pub. L. 99–603, title I, § 121(b)(4), 100 Stat. 3391; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13741(b), 107 Stat. 663.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1993—Subsec. (a)(3). Pub. L. 103–66 substituted ''50 percent of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.'' for ''the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and official administration of the State plan—

''(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

''(B) 100 percent of so much of such expenditures as are for the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title; plus

''(C) one-half of the remainder of such expenditures.''

1986—Subsec. (a)(3)(B), (C). Pub. L. 99–603 added subpar. (B) and redesignated former subpar. (B) as (C).

1981—Subsec. (a)(1). Pub. L. 97–35, § 2184(c)(2)(A), struck out par. (1) which provided for computation of the amount of payments in the case of any State other than Puerto Rico, the Virgin Islands, and Guam.

Subsec. (a)(2). Pub. L. 97–35, § 2184(c)(2)(B), struck out ''(including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)''.

Subsec. (a)(3). Pub. L. 97–35, § 2353(*l*)(1)(A), redesignated subpar. (A)(iv) as subpar. (A), struck out former subpars. (A)(i), which included services prescribed pursuant to subsec. (c)(1) of this section and provided to applicants for or recipients of aid to the permanently and totally disabled to help them attain self-support, (A)(ii), which included other services, specified by the Secretary as likely to prevent or reduce dependency, and (A)(iii), which included any of the services in subpars. (A)(i) and (ii) deemed appropriate for individuals likely to become applicants for or recipients of aid to the permanently and totally disabled, redesignated former subpar. (C) as (B), and struck out former subpar. (B), which included one-half of so much of the expenditures, not included in subpar. (A), as are for services for applicants for or recipients of aid to the permanently and totally disabled or individuals likely to become applicants or recipients, and subpars. (D) and (E) and provision following subpar. (E), which specified what services were includible.

Subsec. (a)(4). Pub. L. 97–35, § 2353(*l*)(1)(B), struck out par. (4), which provided payment, in the case of any State whose plan approved under section 1352 of this title did not meet the requirements of subsec. (c)(1) of this section, of an amount equal to one-half of the total of the sums expended during the quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

Subsec. (c). Pub. L. 97–35, § 2353(*l*)(2), struck out subsec. (c) which prescribed eligibility requirements for payments.

1975—Subsec. (a). Pub. L. 93–647, § 3(e)(2), struck out ''(subject to section 1320b of this title)'' after ''the Secretary of the Treasury shall''.

Subsec. (a)(3)(A)(iv). Pub. L. 93–647, § 5(d), inserted ''(including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions)'' after ''training''.

1972—Subsec. (a). Pub. L. 92–512, § 301(d), substituted ''shall (subject to section 1320b of this title) pay'' for ''shall pay'' in provisions preceding par. (1).

Subsec. (a)(3)(E). Pub. L. 92–512, § 301(b), substituted ''under conditions which shall be'' for ''subject to limitations''.

1968—Subsec. (a)(3)(D). Pub. L. 90–248 inserted, ''except to the extent specified by the Secretary'' after ''shall'' in introductory text to subpar. (D).

1965—Subsec. (a)(1). Pub. L. 89–97, §§ 122, 401(e), inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase appearing in so much of par. (1) as precedes clause (A); and substituted ''31/37'' and ''$37'' for ''29/35'' and ''$35'' in subpar. (A) and ''$75'' for ''$70'' in subpar. (B), respectively.

Subsec. (a)(2). Pub. L. 89–97, § 122, inserted ''premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other'' after ''expenditures for'' in parenthetical phrase.

1962—Subsec. (a)(1). Pub. L. 87–543, § 132(c), substituted ''29/35'' and ''$35'' for ''four-fifths'' and ''$31'', respectively, in subpar. (A) and ''$70'' for ''$66'' in subpar. (B).

Subsec. (a)(2). Pub. L. 87–543, § 132(c), substituted ''$37.50'' for ''$35.50''.

Subsec. (a)(3). Pub. L. 87–543, § 101(a)(4), (b)(4)(A), inserted in opening provisions ''whose State plan approved under section 1352 of this title meets the requirements of subsection (c)(1) of this section'' after ''any State'', and substituted provisions which increased the Federal share of expenses of administration of State public assistance plans by providing quarterly payments of the sum of 75 per centum of the quarterly expenses for certain prescribed services to help attain and retain capability for self-support or self-care, services likely to prevent or reduce dependency, and services appropriate for individuals who were or are likely to become applicants for or recipients of aid to the permanently and totally disabled and request such services, and training of State or local public assistance personnel administering such plans and one-half of other administrative expenses for other services, permitted State health or vocational rehabilitation or other appropriate State agencies to furnish such services, except vocational rehabilitation services, and required the determination of the portion of expenses covered by the 75 and 50 per centum provisions in accordance with methods and procedures permitted by the Secretary, for former provisions requiring quarterly payments of one-half of quarterly expenses of administration of State plans, including staff services of State or local public assistance agencies to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care.

Subsec. (a)(4). Pub. L. 87–543, § 101(b)(4)(B), added par. (4).

Subsec. (c). Pub. L. 87–543, § 101(b)(4)(C), added subsec. (c).

1961—Subsec. (a). Pub. L. 87–64 substituted ''$31'' for ''$30'' and ''$66'' for ''$65'' in cl. (1), and ''$35.50'' for ''$35'' in cl. (2).

1958—Subsec. (a). Pub. L. 85–840 increased the payments to the States to four-fifths of the first $30 of the average monthly payment per recipient, including assistance in the form of money payments and in the form of medical or any other type of remedial care, plus the Federal percentage of the amount by which the expenditures exceed the maximum which may be counted under cl. (A), but excluding that part of the average monthly payment per recipient in excess of $65, increased the average monthly payment to Puerto Rico and the Virgin Islands from $30 to $35, excluded Guam from the provisions which authorize an average monthly payment of $65 and included Guam within the provisions which authorize an average monthly payment of $35, and permitted the counting of individuals with respect to whom expenditures were made as old-age assistance in the form of medical or any other type of remedial care in determining the total number of recipients.

1956—Subsec. (a). Act Aug. 1, 1956, § 304, substituted ''during such quarter as aid to the permanently and totally disabled in the form of money payments under the State plan'' for ''during such quarter as aid to the permanently and totally disabled under the State plan'' in cls. (1) and (2), ''who received aid to the permanently and totally disabled in the form of money payments for each month'' for ''who received aid to the permanently and totally disabled for such month'' in par. (A) of cl. (1), and inserted cl. (4).

Act Aug. 1, 1956, § 314(c), struck out '', which shall be used exclusively as aid to the permanently and totally disabled,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), and substituted ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of such aid to help them attain self-support or self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for aid to the permanently and totally disabled or both, and for no other purpose'' in cl. (3).

Act Aug. 1, 1956, § 344, substituted ''October 1, 1956'' for ''October 1, 1952'', struck out '', which shall be used exclusively as aid to the permanently and totally disabled,'' after ''the Virgin Islands, an amount'' in cls. (1) and (2), and substituted ''$60'' for ''$55'', ''the product of ''$30'' for ''the product of $25'', ''Secretary of Health, Education, and Welfare'' for ''Secretary'', and ''including services which are provided by the staff of the State agency (or of the local agency administering the State plan in the political subdivision) to applicants for and recipients of such aid to help them attain self-support or self-care'' for ''which amount shall be used for paying the costs of administering the State plan or for aid to the permanently and totally disabled, or both, and for no other purpose''.

1952—Subsec. (a). Act July 18, 1952, increased the Federal share of the State's average monthly payment to four-fifths of the first $25 plus one-half of the remainder within individual maximums of $55, and changed formulas for computing the Federal share of public assistance for Puerto Rico and the Virgin Islands.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Apr. 1, 1994, with special rule for States whose legislature meets biennially, and does not have regular session scheduled in calendar year 1994, see section 13741(c) of Pub. L. 103–66, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as a note under section 502 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2353(*l*) of Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 3(e)(2) of Pub. L. 93–647 effective with respect to payments under sections 603 and 803 of this title for quarters commencing after Sept. 30, 1975, and amendment by section 5(d) of Pub. L. 93–647 effective with respect to payments for quarters commencing after Sept. 30, 1975, see section 7(a), (b) of Pub. L. 93–647, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendments by Pub. L. 92–512 effective July 1, 1972, and Jan. 1, 1973, respectively, see section 301(e) of Pub. L. 92–512, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 effective Jan. 1, 1968, see section 212(e) of Pub. L. 90–248, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 401(e) of Pub. L. 89–97 applicable in the case of expenditures made after December 31, 1965, under a State plan approved under subchapter I, IV, X, XIV, or XVI of this chapter, see section 401(f) of Pub. L. 89–97, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by section 101(a)(4) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan

approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Aug. 31, 1962, amendment by section 101(b)(4) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after June 30, 1963, and amendment by section 132(c) of Pub. L. 87–543 applicable in the case of expenditures, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, as the case may be, made after Sept. 30, 1962, see section 202(d), (f) of Pub. L. 87–543, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1961 AMENDMENT

Amendment by Pub. L. 87–64 applicable only in the case of expenditures made after Sept. 30, 1961, and before July 1, 1962, under a State plan approved under subchapters I, X, or XIV of this chapter, see section 303(e) of Pub. L. 87–64, set out as a note under section 303 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

For effective date of amendment by Pub. L. 85–840, see section 512 of Pub. L. 85–840, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1956 AMENDMENT

Amendment by section 304 of act Aug. 1, 1956, effective July 1, 1957, see section 305 of act Aug. 1, 1956, set out as a note under section 303 of this title.

Amendment by section 344 of act Aug. 1, 1956, effective only for period beginning Oct. 1, 1956, and ending with close of June 30, 1959, see section 345 of such act Aug. 1, 1956, set out as a note under section 303 of this title.

EFFECTIVE AND TERMINATION DATE OF 1952 AMENDMENT

Amendment by act July 18, 1952, effective for period beginning Oct. 1, 1952, and ending Sept. 30, 1956, see section 8(e) of act July 18, 1952, set out as a note set out under section 303 of this title.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and Office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

NONDUPLICATION OF PAYMENTS TO STATES: PROHIBITION OF PAYMENTS AFTER DECEMBER 31, 1969

Prohibition of payments under this subchapter to States with respect to aid or assistance in form of medical or other type of remedial care for any period for which States received payments under subchapter XIX of this chapter or for any period after Dec. 31, 1969, see section 121(b) of Pub. L. 89–97, set out as a note under section 1396b of this title.

ELECTION OF PAYMENTS UNDER COMBINED STATE PLAN RATHER THAN SEPARATE PLANS

Payments to States under combined State plan under subchapter XVI or this chapter as precluding payment under State plan conforming to this subchapter, see section 141(b) of Pub. L. 87–543, set out as a note under section 1382e of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1315, 1318, 1319 of this title.

§ 1354. Operation of State plans

In the case of any State plan for aid to the permanently and totally disabled which has been approved by the Secretary of Health and Human Services, if the Secretary after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1352(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1352(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until he is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title XIV, § 1404, as added Aug. 28, 1950, ch. 809, title III, pt. 5, § 351, 64 Stat. 557; amended 1953 Reorg. Plan No. 1, §§ 5, 8 eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Jan. 2, 1968, Pub. L. 90–248, title II, § 245, 81 Stat. 918; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1968—Pub. L. 90–248 inserted ''(or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure)'' after ''further payments will not be made to the State'' and substituted in last sentence ''further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure)'' for ''further certification to the Secretary of the Treasury with respect to such State''.

TRANSFER OF FUNCTIONS

Functions of Federal Security Administrator transferred to Secretary of Health, Education, and Welfare and all agencies of Federal Security Agency transferred to Department of Health, Education, and Welfare by section 5 of Reorg. Plan No. 1 of 1953, set out as a note under section 3501 of this title. Federal Security Agency and office of Administrator abolished by section 8 of Reorg. Plan No. 1 of 1953. Secretary and Department of Health, Education, and Welfare redesignated Secretary and Department of Health and Human Services by section 509(b) of Pub. L. 96–88 which is classified to section 3508(b) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1316 of this title.

§ 1355. Definitions

For the purposes of this subchapter, the term ''aid to the permanently and totally disabled'' means money payments to needy individuals eighteen years of age or older who are permanently and totally disabled, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1352 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the permanently and totally disabled to be paid (and in conjunction with other income and resources), meet all the need[1] of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this subchapter so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of ninety consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for thirty consecutive days in the case of such an individual who has maintained his residence in such State during such period or ninety consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.

(Aug. 14, 1935, ch. 531, title XIV, § 1405, as added Aug. 28, 1950, ch. 809, title III, pt. 5, § 351, 64 Stat. 557; amended July 25, 1962, Pub. L. 87–543, title I, § 156(d), 76 Stat. 207; July 30, 1965, Pub. L. 89–97, title II, § 221(c), title IV, § 402(d), 79 Stat. 358, 417; Oct. 30, 1972, Pub. L. 92–603, title IV, §§ 408(c), 409(c), 86 Stat. 1490, 1491; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(c)(3), 95 Stat. 817.)

REPEAL OF SECTION

Pub. L. 92–603, title III, § 303(a), (b), Oct. 30, 1972, 86 Stat. 1484, provided that this section is repealed effective Jan. 1, 1974, except with respect to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1981—Pub. L. 97–35 struck out in provision preceding par. (1) '', or (if provided on or after the third month before the month in which the recipient makes application for aid) medical care in behalf of, or any type of remedial care recognized under State law in behalf of,'' after ''money payments to''.

1972—Pub. L. 92–603 authorized the State, at its option, to include within ''aid to the permanently and totally disabled'' provisions relating to money payments to an individual absent from such State for more than 90 consecutive days, and provisions relating to rent payments made directly to a public housing agency.

1965—Pub. L. 89–97 struck out from definition of ''aid to the permanently and totally disabled'' the exclusion of payments to or medical care in behalf of any individual who has been diagnosed as having tuberculosis or psychosis and is a patient in a medical institution as a result thereof; and extended definition of ''aid to the permanently and totally disabled'' to include payments made on behalf of the needy individual to another individual who (as determined in accordance with standards determined by the Secretary) is interested in or concerned with the welfare of such needy individual and enumerated the five characteristics required of state plans under which such payments can be made, including provision for finding of inability to manage funds, payment to meet all needs of the individual, special efforts to protect welfare, periodic review, and opportunity for fair hearing, respectively.

1962—Pub. L. 87–543 inserted ''(if provided in or after the third month before the month in which the recipient makes application for aid)'' before ''medical care''.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by section 221(c) of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a State plan approved under this subchapter, see section 221(e) of Pub. L. 89–97, set out as a note under section 303 of this title.

Amendment by section 402(d) of Pub. L. 89–97 applicable in the case of expenditures made after Dec. 31, 1965, under a state plan approved under subchapter I, X, XIV, or XVI of this chapter, see section 402(e) of Pub. L. 89–97, set out as a note under section 306 of this title.

EFFECTIVE DATE OF 1962 AMENDMENT

Amendment by Pub. L. 87–543 applicable in the case of applications made after Sept. 30, 1962, under a State plan approved under subchapter I, IV, X, or XIV of this chapter, see section 156(e) of Pub. L. 87–543, set out as a note under section 306 of this title.

[1] So in original. Probably should be ''needs''.

SUBCHAPTER XV—UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES

§§ 1361 to 1364. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 658, 660, 661

Section 1361, act Aug. 14, 1935, ch. 531, title XV, § 1501, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1130; amended Aug. 28, 1958, Pub. L. 85–848, § 2, 72 Stat. 1087; July 12, 1960, Pub. L. 86–624, § 30(g), 74 Stat. 420; Sept. 13, 1960, Pub. L. 86–778, title V, §§ 531(e), 542(d), 74 Stat. 984, 986, defined terms used in this subchapter. See section 8501 of Title 5, Government Organization and Employees.

Pub. L. 90–248, title IV, § 403(f), Jan. 2, 1968, 81 Stat. 932, amended section 1361(a)(6), (9), without reference to repeal of such section by Pub. L. 89–554, § 8(a).

Section 1362, act Aug. 14, 1935, ch. 531, title XV, § 1502, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1131; amended Sept. 13, 1960, Pub. L. 86–778, title V, § 543(b)(1)(A), 74 Stat. 985, provided for compensation of Federal employees under State agreements. See section 8502 of Title 5.

Section 1363, act Aug. 14, 1935, ch. 531, title XV, § 1503, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1132; amended Sept. 13, 1960, Pub. L. 86–778, title V, § 543(b)(1)(B), (C), (c)(1), 74 Stat. 986, provided for compensation of Federal employees in absence of State agreement. See section 8503 of Title 5.

Section 1364, act Aug. 14, 1935, ch. 531, title XV, § 1504, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1133; amended Sept. 13, 1960, Pub. L. 86–778, title V, § 542(b)(2), 74 Stat. 986, related to assignment to State of Federal service and wages. See section 8504 of Title 5.

§ 1365. Repealed. Pub. L. 86–442, § 1, Apr. 22, 1960, 74 Stat. 81

Section, act Aug. 14, 1935, ch. 531, title XV, § 1505, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1133, related to status of a Federal employee who was performing Federal service at time of separation from employment by the United States.

EFFECTIVE DATE OF REPEAL

Repeal effective only with respect to benefit years which began more than thirty days after Apr. 22, 1960, see section 1 of Pub. L. 86–442.

§§ 1366 to 1371. Repealed. Pub. L. 89–554, § 8(a), Sept. 6, 1966, 80 Stat. 658, 660, 661

Section 1366, act Aug. 14, 1935, ch. 531, title XV, § 1506, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1133, provided for payments to States. See section 8505 of Title 5, Government Organization and Employees.

Section 1367, act Aug. 14, 1935, ch. 531, title XV, § 1507, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1134; amended Aug. 28, 1958, Pub. L. 85–848, § 4, 72 Stat. 1089; Sept. 13, 1960, Pub. L. 86–778, title V, § 531(f), 74 Stat. 984, provided for dissemination of information by both Federal and State agencies. See section 8506 of Title 5.

Section 1368, act Aug. 14, 1935, ch. 531, title XV, § 1508, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1135, related to penalties. See section 8507 of Title 5 and section 1919 of Title 18, Crimes and Criminal Procedure.

Section 1369, act Aug. 14, 1935, ch. 531, title XV, § 1509, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1135, related to rules and regulations. See section 8508 of Title 5.

Section 1370, act Aug. 14, 1935, ch. 531, title XV, § 1510, as added Sept. 1, 1954, ch. 1212, § 4(a), 68 Stat. 1135, related to authorization of appropriations. See section 5509 of Title 5.

Section 1371, act Aug. 14, 1935, ch. 531, title XV, § 1511, as added Aug. 28, 1958, Pub. L. 85–848, § 3, 72 Stat. 1087; amended Sept. 2, 1958, Pub. L. 85–857, § 13(i)(3), 72 Stat. 1265; Apr. 22, 1960, Pub. L. 86–442, § 2, 74 Stat. 82; Sept. 13, 1960, Pub. L. 86–778, title V, § 542(c), 74 Stat. 986, provided an ex-servicemen's unemployment compensation program. See sections 8521 to 8525 of Title 5.

SUBCHAPTER XVI—SUPPLEMENTAL SECURITY INCOME FOR AGED, BLIND, AND DISABLED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 290cc–22, 300bb–2, 300bb–6, 401, 402, 404, 405, 406, 426, 428, 602, 612, 664, 671, 673, 701, 903, 909, 1301, 1306a, 1308, 1309, 1310, 1311, 1314a, 1315, 1316, 1318, 1319, 1320a–6, 1320a–8, 1320b–2, 1320b–3, 1320b–6, 1320b–7, 1382, 1382c, 1395v, 1395z, 1395ww, 1396a, 1396b, 1396d, 1396p, 1396r, 1396t, 1766, 1997, 3012, 3013, 3058e, 3058k, 6862, 8013, 8624, 11201, 11291 of this title; title 7 sections 2012, 2014, 2015, 2017, 2026; title 8 sections 1255a, 1522; title 26 sections 51, 4980B, 6103, 6334; title 29 sections 722, 762a, 771a, 1162, 1166, 1322, 1791, 1791b, 1791e, 1791g; title 31 section 3803; title 48 section 1421q.

§ 1381. Statement of purpose; authorization of appropriations

For the purpose of establishing a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled, there are authorized to be appropriated sums sufficient to carry out this subchapter.

(Aug. 14, 1935, ch. 531, title XVI, § 1601, as added Oct. 30, 1972, Pub. L. 92–603, title III, § 301, 86 Stat. 1465.)

PRIOR PROVISIONS

A prior section 1381, act Aug. 14, 1935, ch. 531, title XVI, § 1601, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 197, authorized appropriations for grants to States for aid to aged, blind, or disabled, and for medical assistance for aged, prior to the general amendment of title XVI of the Social Security Act by Pub. L. 92–603, § 301, but is set out as a note below in view of its continued applicability to Puerto Rico, Guam, and the Virgin Islands.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

CONTINUATION OF FEDERAL FINANCIAL PARTICIPATION IN EXPERIMENTAL, PILOT, OR DEMONSTRATION PROJECTS APPROVED BEFORE OCTOBER 1973, FOR PERIOD ON-AND-AFTER DECEMBER 31, 1973, WITHOUT DENIAL OR REDUCTION ON ACCOUNT OF SUBCHAPTER XVI PROVISIONS; WAIVER OF SUBCHAPTER XVI RESTRICTIONS FOR INDIVIDUALS; FEDERAL PAYMENTS OF NON-FEDERAL SHARE AS SUPPLEMENTARY PAYMENTS

Subchapter provisions without effect on Federal Financial Participation in Experimental, Pilot or Demonstration Projects approved before Oct. 1, 1973, for period on-and-after Dec. 31, 1973, see section 11 of Pub. L. 93–233, Dec. 31, 1973, 87 Stat. 958, set out as a note under section 1315 of this title.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of section 1601 of the Social Security Act [this section] by Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1601

of the Social Security Act [this section] as it existed prior to reenactment by Pub. L. 92–603, and as amended, continues to apply and reads as follows:

§ 1381. Authorization of appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to needy individuals who are 65 years of age or over, are blind, or are 18 years of age or over and permanently and totally disabled, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Commissioner of Social Security, State plans for aid to the aged, blind, or disabled.

(Aug. 14, 1935, ch. 531, title XVI, § 1601, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 197; amended Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(d)(3), title XXIII, § 2353(m)(1), 95 Stat. 817, 873; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(1), 108 Stat. 1477.)

[Amendment by section 107(a)(1) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

PAYMENTS UNDER CHAPTER PROVISIONS IN EFFECT BEFORE JANUARY 1, 1974, FOR: ACTIVITIES CARRIED OUT THROUGH DECEMBER 31, 1973, UNDER STATE PLANS APPROVED UNDER SUBCHAPTER I, X, XIV, OR XVI PROVISIONS; AND FOR ADMINISTRATIVE ACTIVITIES AFTER JANUARY 1, 1974, CLOSING OUT SUCH ACTIVITIES

Pub. L. 93–233, § 19(b), Dec. 31, 1973, 87 Stat. 974, provided that: ''Notwithstanding the provisions of section 301 of the Social Security Amendments of 1972 [enacting this subchapter], the Secretary of Health, Education, and Welfare shall make payments to the 50 States and the District of Columbia after December 31, 1973, in accordance with the provisions of the Social Security Act [this chapter] as in effect prior to January 1, 1974, for (1) activities carried out through the close of December 31, 1973, under State plans approved under title I, X, XIV, or XVI, of such Act [subchapter I, X, XIV, or XVI of this chapter], and (2) administrative activities carried out after December 31, 1973, which such Secretary determines are necessary to bring to a close activities carried out under such State plans.''

§ 1381a. Basic entitlement to benefits

Every aged, blind, or disabled individual who is determined under part A of this subchapter to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Commissioner of Social Security.

(Aug. 14, 1935, ch. 531, title XVI, § 1602, as added Oct. 30, 1972, Pub. L. 92–603, title III, § 301, 86 Stat. 1465; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(2)(E), 98 Stat. 1170; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(1), 108 Stat. 1477.)

PRIOR PROVISIONS

A prior section 1602 of act Aug. 14, 1935, ch. 531, title XVI, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 198; amended Oct. 13, 1964, Pub. L. 88–650, § 5(b), 78 Stat. 1078; July 30, 1965, Pub. L. 89–97, title II, § 221(d)(3), title IV, § 403(e), 79 Stat. 358, 418; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 210(a)(5), 213(a)(4), 241(d), 81 Stat. 896, 898, 917, formerly classified to section 1382 of this title, set forth the required contents of State plans for aid to the aged, blind, or disabled, and for medical assistance for the aged, prior to the general amendment of title XVI of the Social Security Act by Pub. L. 92–603, § 301.

AMENDMENTS

1994—Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

1984—Pub. L. 98–369 substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

PART A—DETERMINATION OF BENEFITS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 1381a of this title.

§ 1382. Eligibility for benefits

(a) "Eligible individual" defined

(1) Each aged, blind, or disabled individual who does not have an eligible spouse and—

(A) whose income, other than income excluded pursuant to section 1382a(b) of this title, is at a rate of not more than $1,752 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974 or any calendar year thereafter, and

(B) whose resources, other than resources excluded pursuant to section 1382b(a) of this title, are not more than (i) in case such individual has a spouse with whom he is living, the applicable amount determined under paragraph (3)(A), or (ii) in case such individual has no spouse with whom he is living, the applicable amount determined under paragraph (3)(B),

shall be an eligible individual for purposes of this subchapter.

(2) Each aged, blind, or disabled individual who has an eligible spouse and—

(A) whose income (together with the income of such spouse), other than income excluded pursuant to section 1382a(b) of this title, is at a rate of not more than $2,628 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974, or any calendar year thereafter, and

(B) whose resources (together with the resources of such spouse), other than resources excluded pursuant to section 1382b(a) of this title, are not more than the applicable amount determined under paragraph (3)(A),

shall be an eligible individual for purposes of this subchapter.

(3)(A) The dollar amount referred to in clause (i) of paragraph (1)(B), and in paragraph (2)(B), shall be $2,250 prior to January 1, 1985, and shall be increased to $2,400 on January 1, 1985, to $2,550 on January 1, 1986, to $2,700 on January 1, 1987, to $2,850 on January 1, 1988, and to $3,000 on January 1, 1989.

(B) The dollar amount referred to in clause (ii) of paragraph (1)(B), shall be $1,500 prior to January 1, 1985, and shall be increased to $1,600 on January 1, 1985, to $1,700 on January 1, 1986, to $1,800 on January 1, 1987, to $1,900 on January 1, 1988, and to $2,000 on January 1, 1989.

(b) Amount of benefits

(1) The benefit under this subchapter for an individual who does not have an eligible spouse shall be payable at the rate of $1,752 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974 and any calendar year thereafter, reduced by the amount of income, not excluded pursuant to section 1382a(b) of this title, of such individual.

(2) The benefit under this subchapter for an individual who has an eligible spouse shall be payable at the rate of $2,628 (or, if greater, the amount determined under section 1382f of this title) for the calendar year 1974 and any calendar year thereafter, reduced by the amount of income, not excluded pursuant to section 1382a(b) of this title, of such individual and spouse.

(c) Period for determination of benefits

(1) An individual's eligibility for a benefit under this subchapter for a month shall be determined on the basis of the individual's (and eligible spouse's, if any) income, resources, and other relevant characteristics in such month, and, except as provided in paragraphs (2), (3), (4), (5), and (6), the amount of such benefit shall be determined for such month on the basis of income and other characteristics in the first or, if the Commissioner of Social Security so determines, second month preceding such month. Eligibility for and the amount of such benefits shall be redetermined at such time or times as may be provided by the Commissioner of Social Security.

(2) The amount of such benefit for the month in which an application for benefits becomes effective (or, if the Commissioner of Social Security so determines, for such month and the following month) and for any month immediately following a month of ineligibility for such benefits (or, if the Commissioner of Social Security so determines, for such month and the following month) shall—

(A) be determined on the basis of the income of the individual and the eligible spouse, if any, of such individual and other relevant circumstances in such month; and

(B) in the case of the month in which an application becomes effective or the first month following a period of ineligibility, if such application becomes effective, or eligibility is restored, after the first day of such month, bear the same ratio to the amount of the benefit which would have been payable to such individual if such application had become effective, or eligibility had been restored, on the first day of such month as the number of days in such month including and following the effective date of such application or restoration of eligibility bears to the total number of days in such month.

(3) For purposes of this subsection, an increase in the benefit amount payable under subchapter II of this chapter (over the amount payable in the preceding month, or, at the election of the Commissioner of Social Security, the second preceding month) to an individual receiving benefits under this subchapter shall be included in the income used to determine the benefit under this subchapter of such individual for any month which is—

(A) the first month in which the benefit amount payable to such individual under this title is increased pursuant to section 1382f of this title, or

(B) at the election of the Commissioner of Social Security, the month immediately following such month.

(4)(A) Notwithstanding paragraph (3), if the Commissioner of Social Security determines that reliable information is currently available with respect to the income and other circumstances of an individual for a month (including information with respect to a class of which such individual is a member and information with respect to scheduled cost-of-living adjustments under other benefit programs), the benefit amount of such individual under this subchapter for such month may be determined on the basis of such information.

(B) The Commissioner of Social Security shall prescribe by regulation the circumstances in which information with respect to an event may be taken into account pursuant to subparagraph (A) in determining benefit amounts under this subchapter.

(5) Notwithstanding paragraphs (1) and (2), any income which is paid to or on behalf of an individual in any month pursuant to (A) a State plan approved under part A of subchapter IV of this chapter (relating to aid to families with dependent children), (B) section 672 of this title (relating to foster care assistance), (C) section 1522(e) of title 8 (relating to assistance for refugees), (D) section 501(a) of Public Law 96-422 (relating to assistance for Cuban and Haitian entrants), or (E) section 13 of title 25 (relating to assistance furnished by the Bureau of Indian Affairs), shall be taken into account in determining the amount of the benefit under this subchapter of such individual (and his eligible spouse, if any) only for that month, and shall not be taken into account in determining the amount of the benefit for any other month.

(6) The dollar amount in effect under subsection (b) of this section as a result of any increase in benefits under this subchapter by reason of section 1382f of this title shall be used to determine the value of any in-kind support and

maintenance required to be taken into account in determining the benefit payable under this subchapter to an individual (and the eligible spouse, if any, of the individual) for the 1st 2 months for which the increase in benefits applies.

(7) For purposes of this subsection, an application of an individual for benefits under this subchapter shall be effective on the later of—

(A) the date such application is filed, or

(B) the date such individual first becomes eligible for such benefits with respect to such application.

(8) The Commissioner of Social Security may waive the limitations specified in subparagraphs (A) and (B) of subsection (e)(1) of this section on an individual's eligibility and benefit amount for a month (to the extent either such limitation is applicable by reason of such individual's presence throughout such month in a hospital, extended care facility, nursing home, or intermediate care facility) if such waiver would promote the individual's removal from such institution or facility. Upon waiver of such limitations, the Commissioner of Social Security shall apply, to the month preceding the month of removal, or, if the Commissioner of Social Security so determines, the two months preceding the month of removal, the benefit rate that is appropriate to such individual's living arrangement subsequent to his removal from such institution or facility.

(d) Limitation on amount of gross income earned; "gross income" defined

The Commissioner of Social Security may prescribe the circumstances under which, consistently with the purposes of this subchapter, the gross income from a trade or business (including farming) will be considered sufficiently large to make an individual ineligible for benefits under this subchapter. For purposes of this subsection, the term ''gross income'' has the same meaning as when used in chapter 1 of the Internal Revenue Code of 1986.

(e) Limitation on eligibility of certain individuals

(1)(A) Except as provided in subparagraphs (B), (C), (D), (E), and (G), no person shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if throughout such month he is an inmate of a public institution.

(B) In any case where an eligible individual or his eligible spouse (if any) is, throughout any month (subject to subparagraph (G)), in a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved under subchapter XIX of this chapter, or an eligible individual is a child described in section 1382c(f)(2)(B) of this title, the benefit under this subchapter for such individual for such month shall be payable (subject to subparagraph (E))—

(i) at a rate not in excess of $360 per year (reduced by the amount of any income not excluded pursuant to section 1382a(b) of this title) in the case of an individual who does not have an eligible spouse;

(ii) in the case of an individual who has an eligible spouse, if only one of them is in such a hospital, home or facility throughout such month, at a rate not in excess of the sum of—

(I) the rate of $360 per year (reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the one who is in such hospital, home, or facility), and

(II) the applicable rate specified in subsection (b)(1) of this section (reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the other); and

(iii) at a rate not in excess of $720 per year (reduced by the amount of any income not excluded pursuant to section 1382a(b) of this title) in the case of an individual who has an eligible spouse, if both of them are in such a hospital, home, or facility throughout such month.

For purposes of this subsection, a hospital, extended care facility, nursing home, or intermediate care facility which is a ''medical institution or nursing facility'' within the meaning of section 1396p(c) of this title shall be considered to be receiving payments with respect to an individual under a State plan approved under subchapter XIX of this chapter during any period of ineligibility of such individual provided for under the State plan pursuant to section 1396p(c) of this title.

(C) As used in subparagraph (A), the term ''public institution'' does not include a publicly operated community residence which serves no more than 16 residents.

(D) A person may be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month throughout which he is a resident of a public emergency shelter for the homeless (as defined in regulations which shall be prescribed by the Commissioner of Social Security); except that no person shall be an eligible individual or eligible spouse by reason of this subparagraph more than 6 months in any 9-month period.

(E) Notwithstanding subparagraphs (A) and (B), any individual who—

(i)(I) is an inmate of a public institution, the primary purpose of which is the provision of medical or psychiatric care, throughout any month as described in subparagraph (A), or

(II) is in a hospital, extended care facility, nursing home, or intermediate care facility throughout any month as described in subparagraph (B),

(ii) was eligible under section 1382h(a) or (b) of this title for the month preceding such month, and

(iii) under an agreement of the public institution or the hospital, extended care facility, nursing home, or intermediate care facility is permitted to retain any benefit payable by reason of this subparagraph,

may be an eligible individual or eligible spouse for purposes of this subchapter (and entitled to a benefit determined on the basis of the rate applicable under subsection (b) of this section) for the month referred to in subclause (I) or (II) of clause (i) and, if such subclause still applies, for the succeeding month.

(F) An individual who is an eligible individual or an eligible spouse for a month by reason of

subparagraph (E) shall not be treated as being eligible under section 1382h(a) or (b) of this title for such month for purposes of clause (ii) of such subparagraph.

(G) A person may be an eligible individual or eligible spouse for purposes of this subchapter, and subparagraphs (A) and (B) shall not apply, with respect to any particular month throughout which he or she is an inmate of a public institution the primary purpose of which is the provision of medical or psychiatric care, or which is a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved under subchapter XIX of this chapter, if it is determined in accordance with subparagraph (H) that—

(i) such person's stay in that institution or facility (or in that institution or facility and one or more other such institutions or facilities during a continuous period of institutionalization) is likely (as certified by a physician) not to exceed 3 months, and the particular month involved is one of the first 3 months throughout which such person is in such an institution or facility during a continuous period of institutionalization; and

(ii) such person needs to continue to maintain and provide for the expenses of the home or living arrangement to which he or she may return upon leaving the institution or facility.

The benefit of any person under this subchapter (including State supplementation if any) for each month to which this subparagraph applies shall be payable, without interruption of benefit payments and on the date the benefit involved is regularly due, at the rate that was applicable to such person in the month prior to the first month throughout which he or she is in the institution or facility.

(H) The Commissioner of Social Security shall establish procedures for the determinations required by clauses (i) and (ii) of subparagraph (G), and may enter into agreements for making such determinations (or for providing information or assistance in connection with the making of such determinations) with appropriate State and local public and private agencies and organizations. Such procedures and agreements shall include the provision of appropriate assistance to individuals who, because of their physical or mental condition, are limited in their ability to furnish the information needed in connection with the making of such determinations.

(2) No person shall be an eligible individual or eligible spouse for purposes of this subchapter if, after notice to such person by the Commissioner of Social Security that it is likely that such person is eligible for any payments of the type enumerated in section 1382a(a)(2)(B) of this title, such person fails within 30 days to take all appropriate steps to apply for and (if eligible) obtain any such payments.

(3)(A)(i)(I) In the case of any individual eligible for benefits under this subchapter solely by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled, the individual shall comply with the provisions of this subparagraph. In any case in which an individual is required to comply with the provisions of this subparagraph, the Commissioner of Social Security shall include in the individual's notification of such eligibility a notice informing the individual of such requirement.

(II) Notwithstanding any other provision of this subchapter, if an individual who is required under subclause (I) to comply with the requirements of this subparagraph is determined by the Commissioner of Social Security not to be in compliance with the provisions of this subparagraph, the individual's benefits under this subchapter by reason of disability shall be suspended for a period—

(aa) commencing with the first month following the month in which the individual is notified by the Commissioner of Social Security of the determination of noncompliance and that the individual's benefits will be suspended; and

(bb) ending with the month preceding the first month, after the determination of noncompliance, in which the individual demonstrates that he or she has reestablished and maintained compliance with such provisions for the applicable period specified in clause (iii).

(ii)(I) An individual described in clause (i) is in compliance with the requirements of this subparagraph for a month if in such month—

(aa) the individual undergoes substance abuse treatment, which is appropriate for the individual's condition diagnosed as alcoholism or drug addiction and for the stage of the individual's rehabilitation and which is conducted at an institution or facility approved for purposes of this subparagraph by the Commissioner of Social Security; and

(bb) the individual complies in such month with the terms, conditions, and requirements of the treatment and with requirements imposed by the Commissioner of Social Security under this paragraph.

(II) An individual described in clause (i) may be determined as failing to comply with the requirements of this subparagraph for a month only if treatment meeting the requirements of subclause (I)(aa) is available for the month, as determined pursuant to regulations of the Commissioner of Social Security.

(iii) The applicable period specified in this clause is—

(I) 2 consecutive months, in the case of a 1st determination that an individual is not in compliance with the requirements of this subparagraph;

(II) 3 consecutive months, in the case of the 2nd such determination with respect to the individual; or

(III) 6 consecutive months, in the case of the 3rd or subsequent such determination with respect to the individual.

(iv) An individual who is not in compliance with this paragraph for 12 consecutive months shall not be eligible for supplemental security income benefits under this subchapter. The preceding sentence shall not be construed to prevent the individual from reapplying and becoming eligible for such benefits.

(v)(I) In the case of any individual eligible for benefits under this subchapter by reason of disability, if—

(aa) alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled; and

(bb) as of the end of the 36-month period beginning with the 1st month for which such benefits by reason of disability are payable to the individual, the individual would not otherwise be disabled but for alcoholism or drug addiction,

the individual shall not be eligible for such benefits by reason of disability for any month following such 36-month period if, in such following month, alcoholism or drug addiction would be a contributing factor material to the Commissioner's determination that the individual is disabled, notwithstanding section 1382h(a) of this title.

(II) An individual whose entitlement to benefits under subchapter II of this chapter based on disability has been terminated by reason of section 425(c)(7) of this title shall not be eligible for benefits under this subchapter by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled, for any month after the individual's termination month (within the meaning of section 423(a)(1) of this title or subsection (d)(1)(G)(i), (e)(1), or (f)(1) of section 402 of this title, as applicable) with respect to such benefits.

(III) Any month for which a suspension is in effect for the individual under clause (i)(II) shall not be taken into account in determining whether any 36-month period referred to in this clause has elapsed.

(vi)(I) In the case of any individual who is eligible for benefits under this subchapter for any month solely by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled, payment of any benefits under this subchapter the payment of which is past due shall be made in any month only to the extent that the sum of—

(aa) the amount of the past-due benefit paid in the month; and

(bb) the amount of any benefit under this subchapter which is payable to the individual for the month,

does not exceed twice the maximum benefit payable under this subchapter to an eligible individual for the preceding month.

(II) For the first month in which an individual's past-due benefits referred to in subclause (I) are paid, the amount of the limitation provided in subclause (I) shall be increased by the amount of any debts of the individual related to housing which are outstanding as of the end of the preceding month and which are resulting in a high risk of homelessness for the individual.

(III) Upon the death of an individual to whom payment of past-due benefits has been limited under subclause (I), any amount of such past-due benefits remaining unpaid shall be treated as an underpayment for purposes of section 1383(b)(1)(A) of this title.

(IV) As used in this clause, the term ''benefits under this subchapter'' includes supplementary payments pursuant to an agreement for Federal administration under section 1382e(a) of this title, and payments pursuant to an agreement entered into under section 212(b) of Public Law 93–66.

(V) In the case of an individual who would be eligible for benefits under this subchapter by reason of disability but for termination of such benefits under clause (iv) or (v), the individual shall be eligible for payment of past-due benefits under this clause as if the individual continued to be eligible for such terminated benefits.

(VI) Subclause (I) shall not apply to payments under section 1383(g) of this title.

(B)(i) The Commissioner of Social Security shall provide for the monitoring and testing of all individuals who are receiving benefits under this subchapter and who as a condition of such benefits are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in subparagraph (A), in order to assure such compliance and to determine the extent to which the imposition of such requirement is contributing to the achievement of the purposes of this subchapter.

(ii) The Commissioner of Social Security, in consultation with drug and alcohol treatment professionals, shall issue regulations—

(I) defining appropriate treatment for alcoholics and drug addicts who are subject to required appropriate substance abuse treatment under this subparagraph; and

(II) establishing guidelines to be used to review and evaluate their compliance, including measures of the progress expected to be achieved by participants in such programs.

(iii)(I) For purposes of carrying out the requirements of clauses (i) and (ii), the Commissioner of Social Security shall provide for the establishment of 1 or more referral and monitoring agencies for each State.

(II) Each referral and monitoring agency for a State shall—

(aa) identify appropriate placements, for individuals residing in the State who are eligible for benefits under this subchapter by reason of disability and with respect to whom alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that they are disabled, where they may obtain treatment described in subparagraph (A)(ii)(I);

(bb) refer such individuals to such placements for such treatment; and

(cc) monitor compliance with the requirements of subparagraph (A) by individuals who are referred by the agency to such placements, and promptly report to the Commissioner of Social Security any failure to comply with such requirements.

(4) Repealed. Pub. L. 99–643, §4(d)(1), Nov. 10, 1986, 100 Stat. 3577.

(5) Notwithstanding anything to the contrary in the criteria being used by the Commissioner of Social Security in determining when a husband and wife are to be considered two eligible individuals for purposes of this subchapter and when they are to be considered an eligible indi-

vidual with an eligible spouse, the State agency administering or supervising the administration of a State plan under any other program under this chapter may (in the administration of such plan) treat a husband and wife living in the same hospital, home, or facility described in paragraph (1)(B) as though they were an eligible individual with his or her eligible spouse for purposes of this subchapter (rather than two eligible individuals), after they have continuously lived in the same such hospital, home, or facility for 6 months, if treating such husband and wife as two eligible individuals would prevent either of them from receiving benefits or assistance under such plan or reduce the amount thereof.

(f) Individuals outside United States; determination of status

(1) Notwithstanding any other provision of this subchapter, no individual (other than a child described in section 1382c(a)(1)(B)(ii) of this title) shall be considered an eligible individual for purposes of this subchapter for any month during all of which such individual is outside the United States (and no person shall be considered the eligible spouse of an individual for purposes of this subchapter with respect to any month during all of which such person is outside the United States). For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days.

(2) For a period of not more than 1 year, the first sentence of paragraph (1) shall not apply to any individual who—

(A) was eligible to receive a benefit under this subchapter for the month immediately preceding the first month during all of which the individual was outside the United States; and

(B) demonstrates to the satisfaction of the Commissioner of Social Security that the absence of the individual from the United States will be—

(i) for not more than 1 year; and

(ii) for the purpose of conducting studies as part of an educational program that is—

(I) designed to substantially enhance the ability of the individual to engage in gainful employment;

(II) sponsored by a school, college, or university in the United States; and

(III) not available to the individual in the United States.

(g) Individuals deemed to meet resources test

In the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under subchapter I, X, XIV, or XVI of this chapter,

(2) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(3) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or eligible spouse with respect to whom supplemental security income benefits are payable,

the resources of such individual or such individual and his spouse (as the case may be) shall be deemed not to exceed the amount specified in subsections (a)(1)(B) and (a)(2)(B) of this section during any period that the resources of such individual or such individual and his spouse (as the case may be) does not exceed the maximum amount of resources specified in the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973.

(h) Individuals deemed to meet income test

In determining eligibility for, and the amount of, benefits payable under this section in the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under subchapter X or XVI of this chapter,

(2) is blind under the definition of that term in the plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973,

(3) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(4) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or an eligible spouse with respect to whom supplemental security income benefits are payable,

there shall be disregarded an amount equal to the greater of (A) the maximum amount of any earned or unearned income which could have been disregarded under the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973, and (B) the amount which would be required to be disregarded under section 1382a of this title without application of this subsection.

(i) Application and review requirements for certain individuals

For application and review requirements affecting the eligibility of certain individuals, see section 1383(j) of this title.

(Aug. 14, 1935, ch. 531, title XVI, § 1611, as added Oct. 30, 1972, Pub. L. 92–603, title III, § 301, 86 Stat. 1466; amended July 9, 1973, Pub. L. 93–66, title II, § 210(a), (b), 87 Stat. 154; Dec. 31, 1973, Pub. L. 93–233, §§ 4(b)(1), (2), 18(d), (e), 87 Stat. 953, 968; Aug. 7, 1974, Pub. L. 93–368, § 6(a), 88 Stat. 421; Oct. 20, 1976, Pub. L. 94–566, title V, §§ 502, 505(a), 90 Stat. 2685, 2686; June 9, 1980, Pub. L. 96–265, title III, § 303(c)(2), 94 Stat. 453; Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2341(a), 95 Stat. 865; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 181(a), 183(a), 96 Stat. 404, 405; Apr. 20, 1983, Pub. L. 98–21, title IV, § 403(a), 97 Stat. 140; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2611(a)–(c), 2663(g)(1), (2), 98 Stat. 1130, 1168; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095; Nov. 10, 1986, Pub. L. 99–643, §§ 3(a), 4(c)(3), (d)(1), 9(a), 100 Stat. 3574, 3577, 3579; Dec. 22, 1987, Pub. L. 100–203, title IX, §§ 9106(a), 9107, 9113(a), 9115(a), 9119(a), 101

Stat. 1330–301, 1330–302, 1330–304, 1330–308; July 1, 1988, Pub. L. 100–360, title III, § 303(c)(2), 102 Stat. 762; Dec. 19, 1989, Pub. L. 101–239, title VIII, §§ 8009(a), 8010(b), 103 Stat. 2463, 2464; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13735(a), 107 Stat. 662; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title II, §§ 201(b)(3)(A), (B)(i), 204(a), 108 Stat. 1478, 1502, 1504, 1508.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsec. (c)(5), is classified to section 601 et seq. of this title.

Section 501(a) of Public Law 96–422, referred to in subsec. (c)(5), is section 501(a) of Pub. L. 96–422, which is set out as a note under section 1522 of Title 8, Aliens and Nationality.

The Internal Revenue Code of 1986, referred to in subsec. (d), is classified generally to Title 26, Internal Revenue Code.

Section 212(b) of Public Law 93–66, referred to in subsec. (e)(3)(A)(vi)(IV), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out below.

PRIOR PROVISIONS

A prior section 1382, act Aug. 14, 1935, ch. 531, title XVI, § 1602, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 198; amended Oct. 13, 1964, Pub. L. 88–650, § 5(b), 78 Stat. 1078; July 30, 1965, Pub. L. 89–97, title II, § 221(d)(3), title IV, § 403(e), 79 Stat. 358, 418; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 210(a)(5), 213(a)(4), 241(d), 81 Stat. 896, 898, 917; Oct. 30, 1972, Pub. L. 92–603, title IV, §§ 405(d), 406(d), 407(d), 410(d), 413(d), 86 Stat. 1488, 1489, 1491, 1492, set forth required contents of State plans for aid to aged, blind, or disabled, and for medical assistance for aged, prior to the general amendment of title XVI of the Social Security Act by Pub. L. 92–603, § 301, but is set out as a note below in view of its continued applicability to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1994—Subsecs. (c), (d), (e)(1)(D), (H), (2). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (e)(3)(A). Pub. L. 103–296, § 201(b)(3)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''No person who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1382c(a)(3) of this title) shall be an eligible individual or eligible spouse for purposes of this subchapter with respect to any month if such individual is medically determined to be a drug addict or an alcoholic unless such individual is undergoing any treatment that may be appropriate for his condition as a drug addict or alcoholic (as the case may be) at an institution or facility approved for purposes of this paragraph by the Secretary (so long as such treatment is available) and demonstrates that he is complying with the terms, conditions, and requirements of such treatment and with requirements imposed by the Secretary under subparagraph (B).''

Pub. L. 103–296, § 107(a)(4), in subpar. (A) as amended by Pub. L. 103–296, § 201(b)(3)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''Commissioner's'' for ''Secretary's'' wherever appearing.

Subsec. (e)(3)(B). Pub. L. 103–296, § 201(b)(3)(B)(i), designated existing provisions as cl. (i), struck out ''The Secretary shall annually submit to the Congress a full and complete report on his activities under this paragraph.'' after first sentence, and added cls. (ii) and (iii).

Pub. L. 103–296, § 107(a)(4), in subpar. (B) as amended by Pub. L. 103–296, § 201(b)(3)(B)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in cl. (iii)(II)(aa).

Subsec. (e)(5). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (f). Pub. L. 103–296, § 204(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (f)(2)(B). Pub. L. 103–296, § 107(a)(4), in subpar. (B) as added by Pub. L. 103–296, § 204(a), substituted ''Commissioner of Social Security'' for ''Secretary''.

1993—Subsec. (c)(1). Pub. L. 103–66, § 13735(a)(1), substituted ''(5), and (6)'' for ''and (5)''.

Subsec. (c)(6) to (8). Pub. L. 103–66, § 13735(a)(2), (3), added par. (6) and redesignated former pars. (6) and (7) as (7) and (8), respectively.

1989—Subsec. (e)(1)(B). Pub. L. 101–239, § 8010(b), inserted ''or an eligible individual is a child described in section 1382c(f)(2)(B) of this title,'' before ''the benefit under this subchapter'' in introductory provisions.

Subsec. (f). Pub. L. 101–239, § 8009(a), inserted ''(other than a child described in section 1382c(a)(1)(B)(ii) of this title)'' after ''no individual''.

1988—Subsec. (e)(1)(B). Pub. L. 100–360 inserted at end ''For purposes of this subsection, a hospital, extended care facility, nursing home, or intermediate care facility which is a 'medical institution or nursing facility' within the meaning of section 1396p(c) of this title shall be considered to be receiving payments with respect to an individual under a State plan approved under subchapter XIX of this chapter during any period of ineligibility of such individual provided for under the State plan pursuant to section 1396p(c) of this title.''

1987—Subsec. (c)(1). Pub. L. 100–203, § 9106(a)(1), substituted ''paragraphs (2), (3), (4), and (5)'' for ''paragraphs (2), (3), and (4)''.

Subsec. (c)(5) to (7). Pub. L. 100–203, § 9106(a)(2), (3), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (e)(1)(A). Pub. L. 100–203, § 9115(a)(1), substituted ''(E), and (G)'' for ''and (E)''.

Subsec. (e)(1)(B). Pub. L. 100–203, § 9115(a)(2), inserted ''(subject to subparagraph (G))'' after ''throughout any month''.

Subsec. (e)(1)(B)(i) to (iii). Pub. L. 100–203, § 9119(a), in cls. (i) and (ii)(I) substituted ''$360 per year'' for ''$300 per year'' and in cl. (iii) substituted ''$720 per year'' for ''$600 per year''.

Subsec. (e)(1)(D). Pub. L. 100–203, § 9113(a), substituted ''6 months in any 9-month period'' for ''three months in any 12-month period''.

Subsec. (e)(1)(G), (H). Pub. L. 100–203, § 9115(a)(3), added subpars. (G) and (H).

Subsec. (e)(5). Pub. L. 100–203, § 9107, substituted ''living in the same hospital, home, or facility'' for ''sharing a room or comparable accommodation in a hospital, home, or facility'' and ''lived in the same such hospital, home, or facility'' for ''shared such a room or accommodation''.

1986—Subsec. (d). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (e)(1). Pub. L. 99–643, § 3(a), in subpar. (A) substituted ''(D), and (E)'' for ''and (D)'', in subpar. (B) inserted ''(subject to subparagraph (E))'' after ''shall be payable'', and added subpars. (E) and (F).

Subsec. (e)(4). Pub. L. 99–643, § 4(d)(1), struck out par. (4) which read as follows: ''No benefit shall be payable under this subchapter, except as provided in section 1382h of this title (or section 1382e(c)(3) of this title), with respect to an eligible individual or his eligible spouse who is an aged, blind, or disabled individual solely by application of section 1382c(a)(3)(F) of this title for any month, after the third month, in which he engages in substantial gainful activity during the fifteen-month period following the end of his trial work period determined by application of section 1382c(a)(4)(D)(i) of this title.''

Subsec. (e)(5). Pub. L. 99–643, § 9(a), added par. (5).

Subsec. (i). Pub. L. 99–643, § 4(c)(3), added subsec. (i).

1984—Subsec. (a)(1)(B). Pub. L. 98–369, § 2611(a), substituted ''the applicable amount determined under paragraph (3)(A)'' for ''$2,250'' and ''the applicable amount determined under paragraph (3)(B)'' for ''$1,500''.

Subsec. (a)(2)(B). Pub. L. 98–369, § 2611(b), substituted ''the applicable amount determined under paragraph (3)(A)'' for ''$2,250''.

Subsec. (a)(3). Pub. L. 98–369, § 2611(c), added par. (3).

Subsec. (c). Pub. L. 98–369, § 2663(g)(1), amended heading.

Subsec. (g). Pub. L. 98–369, § 2663(g)(2), substituted ''or such individual'' for ''or individuals'' in provisions following par. (3).

1983—Subsec. (e)(1)(A). Pub. L. 98–21, § 403(a)(1), inserted reference to subpar. (D).

Subsec. (e)(1)(D). Pub. L. 98–21, § 403(a)(2), added subpar. (D).

1982—Subsec. (c)(1). Pub. L. 97–248, § 183(a)(1), inserted reference to pars. (3) and (4).

Subsec. (c)(2). Pub. L. 97–248, § 181(a), in par. (2) redesignated existing provisions as provisions preceding subpar. (A) and subpar. (A), and added subpar. (B).

Subsec. (c)(3) to (6). Pub. L. 97–248, §§ 181(a), 183(a)(2), (3), struck out par. (3) providing that an application shall be effective as of the first day of the month in which it is filed, added par. (3) providing that an application shall be effective on the later of the date it is filed or the date such individual first becomes eligible for such benefits with respect to such application and redesignated such par. (3) as (5), redesignated par. (4) as (6), and added pars. (3) and (4).

1981—Subsec. (c). Pub. L. 97–35 substituted provision that eligibility and benefit amount generally be determined on a one-month retrospective basis, with for the first month of eligibility, the month in which the application is filed, eligibility and benefit amount both determined on a prospective basis for provision that eligibility and benefit amount be determined on a quarterly prospective basis and inserted provision authorizing the Secretary to grant waivers.

1980—Subsec. (e)(4). Pub. L. 96–265 added par. (4).

1976—Subsec. (e)(1)(A). Pub. L. 94–566, § 505(a), inserted reference to subparagraph (C).

Subsec. (e)(1)(B)(ii). Pub. L. 94–566, § 502, inserted ''of the one who is in such hospital, home, or facility'' after ''section 1382a(b) of this title'' in parenthetical provisions that follow ''the rate of $300 per year'' and inserted ''(reduced by the amount of any income, not excluded pursuant to section 1382a(b) of this title, of the other)'' after ''the applicable rate specified in subsection (b)(1) of this section''.

Subsec. (e)(1)(C). Pub. L. 94–566, § 505(a), added subpar. (C).

1974—Pub. L. 93–368 inserted ''(or, if greater, the amount determined under section 1382f of this title)'' after ''$1,752'' in subsecs. (a)(1)(A) and (b)(1) and ''$2,628'' in subsecs. (a)(2)(A) and (b)(2).

1973—Subsec. (a)(1)(A). Pub. L. 93–233, § 4(b)(1), substituted ''$1,752'' for ''$1,680''.

Pub. L. 93–66, § 210(a), substituted ''$1,680'' for ''$1,560''.

Subsec. (a)(2)(A). Pub. L. 93–233, § 4(b)(2), substituted ''$2,628'' for ''$2,520''.

Pub. L. 93–66, § 210(b), substituted ''$2,520'' for ''$2,340''.

Subsec. (b)(1). Pub. L. 93–233, § 4(b)(1), substituted ''$1,752'' for ''$1,680''.

Pub. L. 93–66, § 210(a), substituted ''$1,680'' for ''$1,560''.

Subsec. (b)(2). Pub. L. 93–233, § 4(b)(2), substituted ''$2,628'' for ''$2,520''.

Pub. L. 93–66, § 210(b), substituted ''$2,520'' for ''$2,340''.

Subsec. (g). Pub. L. 93–233, § 18(d), incorporated existing provisions in text designated as cl. (1), added cls. (2) and (3), and substituted final December ''1973'' for ''1972''.

Subsec. (h). Pub. L. 93–233, § 18(e), incorporated existing text in provisions designated as cls. (1) and (2), added cls. (3) and (4), redesignated former cls. (1) and (2) as items (A) and (B), and in item (A) inserted ''under which he or they received such aid or assistance for December 1973''.

Effective Date of 1994 Amendment; Sunset Provision

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(b)(3)(C), (E), of Pub. L. 103–296 provided that:

''(C) Sunset of 36-month rule.—Section 1611(e)(3)(A)(v) of the Social Security Act [subsec. (e)(3)(A)(v) of this section] (added by subparagraph (A) of this paragraph) shall cease to be effective with respect to benefits for months after September 2004.

''(E) Effective date.—

''(i) In general.—Except as otherwise provided in this paragraph [amending this section and section 1383c of this title and enacting provisions set out as notes below], the amendments made by this paragraph shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act [this subchapter] by reason of disability which are otherwise payable in months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994]. The Secretary of Health and Human Services shall issue regulations necessary to carry out the amendments made by this paragraph not later than 180 days after such date of enactment.

''(ii) Referral and monitoring agencies.—The amendments made by subparagraph (B) [amending this section] shall take effect 180 days after the date of the enactment of this Act [Aug. 15, 1994].

''(iii) Termination after 36 months.—Clause (v) of section 1611(e)(3)(A) of the Social Security Act [subsec. (e)(3)(A) of this section] (added by the amendment made by subparagraph (A) of this paragraph) shall apply with respect to supplemental security income benefits under title XVI of the Social Security Act [this subchapter] by reason of disability for months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994].''

Section 204(b) of Pub. L. 103–296 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1995.''

Effective Date of 1993 Amendment

Section 13735(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to benefits paid for months after the calendar year 1994.''

Effective Date of 1989 Amendment

Section 8009(c) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1382c of this title] shall apply with respect to benefits for months after March 1990.''

Section 8010(c) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1382c of this title] shall take effect on the 1st day of the 6th calendar month beginning after the date of the enactment of this Act [Dec. 19, 1989].''

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–360 applicable to transfers occurring on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, see section 303(g)(3) of Pub. L. 100–360, set out as a note under section 1396r–5 of this title.

Effective Date of 1987 Amendment

Section 9106(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

Section 9107 of Pub. L. 100–203 provided that the amendment made by that section is effective Nov. 10, 1986.

Section 9113(b) of Pub. L. 100–203 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall become effective January 1, 1988.

''(2) In the application of section 1611(e)(1)(D) of the Social Security Act [subsec. (e)(1)(D) of this section] on and after the effective date of such amendment, months before January 1988 in which a person was an eligible individual or eligible spouse by reason of such section shall not be taken into account.''

Section 9115(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and section 1396a of this title] shall become effective July 1, 1988.''

Section 9119(c) of Pub. L. 100–203 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1382g of this title] shall become effective July 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 3(a) and 4(c)(3), (d)(1) of Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

Section 9(b) of Pub. L. 99–643 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2611(a)–(c) of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 602 of this title.

Amendment by section 2663(g)(1), (2) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 403(b) of Pub. L. 98–21 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to months after the month in which this Act is enacted [April 1983].''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 181(b) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall become effective on October 1, 1982.''

Section 183(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective October 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT AND TRANSITIONAL PROVISIONS

Section 2341(c) of Pub. L. 97–35 provided that:

''(1) The amendments made by this section [amending this section and section 1382a of this title] shall be effective with respect to months after the first calendar quarter which ends more than five months after the month in which this Act is enacted [August 1981].

''(2) The Secretary of Health and Human Services may, under conditions determined by him to be necessary and appropriate, make a transitional payment or payments during the first two months for which the amendments made by this section are effective. A transitional payment made under this section shall be deemed to be a payment of supplemental security income benefits.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, and applicable with respect to any individual whose disability has not been determined to have ceased prior to such first day, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 505(e) of Pub. L. 94–566 provided that: ''The amendments [amending this section and section 1382a of this title] and repeals [repealing section 1382e(e) of this title] made by this section, unless otherwise specified therein, shall take effect on October 1, 1976.''

EFFECTIVE DATE OF 1973 AMENDMENTS

Section 4(b) of Pub. L. 93–233 provided that the amendments made by section 4(b)(1), (2) of Pub. L. 93–233 are effective with respect to payments for months after June 1974.

Section 210(c) of Pub. L. 93–66, as amended Pub. L. 93–233, § 4(a)(1), Dec. 31, 1973, 87 Stat. 953, provided: ''The amendments made by this section [amending this section] shall apply with respect to payments for months after December 1973.''

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

REPORT TO CONGRESS ON REFERRAL, MONITORING AND TREATMENT ACTIVITIES RELATING TO ALCOHOLICS AND DRUG ADDICTS

Section 201(b)(3)(B)(ii) of Pub. L. 103–296 provided that: ''Not later than December 31, 1996, the Secretary shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a full and complete report on the Secretary's activities under section 1611(e)(3)(B) of the Social Security Act [subsec. (e)(3)(B) of this section]. The report shall include the number and percentage of individuals referred to in such paragraph who have not received regular drug testing since the effective date of the amendments made by clause (i) of this subparagraph [see section 201(b)(3)(E)(ii) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note above].''

TRANSITION RULES FOR CURRENT BENEFICIARIES

Section 201(b)(3)(F) of Pub. L. 103–296 provided that: ''In any case in which an individual is eligible for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] by reason of disability, the determination of disability was made by the Secretary of Health and Human Services during or before the 180-day period following the date of the enactment of this Act [Aug. 15, 1994], and alcoholism or drug addiction is a contributing factor material to the Secretary's determination that the individual is disabled, for purposes of section 1611(e)(3)(A)(v) of the Social Security Act [subsec. (e)(3)(A)(v) of this section] (added by the amendment made by subparagraph (A) of this paragraph)—

''(i) the first month of such eligibility beginning after 180 days after the date of the enactment of this Act shall be treated as the individual's first month of such eligibility; and

''(ii) the Secretary shall notify the individual of the requirements of the amendments made by this paragraph [amending this section and section 1383c of this title] no later than 180 days after the date of the enactment of this Act.''

COMMISSION ON CHILDHOOD DISABILITY

Section 202 of Pub. L. 103–296 provided that:

''(a) ESTABLISHMENT OF COMMISSION.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall appoint a Commission on the Evaluation of Disability in Children (in this section referred to as the 'Commission').

''(b) APPOINTMENT OF MEMBERS.—(1) The Secretary shall appoint not less than 9 but not more than 15 members to the Commission, including—

''(A) recognized experts in the field of medicine, whose work involves—

''(i) the evaluation and treatment of disability in children;

''(ii) the study of congenital, genetic, or perinatal disorders in children; or

''(iii) the measurement of developmental milestones and developmental deficits in children; and

''(B) recognized experts in the fields of—

''(i) psychology;

''(ii) education and rehabilitation;

''(iii) law;

''(iv) the administration of disability programs; and

''(v) social insurance (including health insurance); and

''(C) other fields of expertise that the Secretary determines to be appropriate.

''(2) Members shall be appointed by January 1, 1995, without regard to the provisions of title 5, United States Code, governing appointments to competitive service.

''(3) Members appointed under this subsection shall serve for a term equivalent to the duration of the Commission.

''(4) The Secretary shall designate a member of the Commission to serve as Chair of the Commission for a term equivalent to the duration of the Commission.

''(c) ADMINISTRATIVE PROVISIONS.—(1) Service as a member of the Commission by an individual who is not otherwise a Federal employee shall not be considered service in an appointive or elective position in the Federal Government for the purposes of title 5, United States Code.

''(2) Each member of the Commission who is not a full-time Federal employee shall be paid compensation at a rate equal to the daily equivalent of the rate of basic pay in effect for Level IV of the Executive Schedule for each day (including travel time) the member attends meetings or otherwise performs the duties of the Commission.

''(3) While away from their homes or regular places of business on the business of the Commission, each member who is not a full-time Federal employee may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons employed intermittently in the Government service.

''(d) ASSISTANCE TO COMMISSION.—The Commission may engage individuals skilled in medical and other aspects of childhood disability to provide such technical assistance as may be necessary to carry out the functions of the Commission. The Secretary shall make available to the Commission such secretarial, clerical, and other assistance as the Commission may require to carry out the functions of the Commission.

''(e) STUDY BY THE COMMISSION.—(1) The Commission shall conduct a study, in consultation with the National Academy of Sciences, of the effects of the definition of 'disability' under title XVI of the Social Security Act [this subchapter] (42 U.S.C. 1382 [1381] et seq.) in effect on the date of enactment of this Act [Aug. 15, 1994], as such definition applies to determining whether a child under the age of 18 is eligible to receive benefits under such title, the appropriateness of such definition, and the advantages and disadvantages of using any alternative definition of disability in determining whether a child under age 18 is eligible to receive benefits under such title.

''(2) The study described in paragraph (1) shall include issues of—

''(A) whether the need by families for assistance in meeting high costs of medical care for children with serious physical or mental impairments, whether or not they are eligible for disability benefits under title XVI of the Social Security Act [this subchapter], might appropriately be met through expansion of Federal health assistance programs;

''(B) the feasibility of providing benefits to children through noncash means, including but not limited to vouchers, debit cards, and electronic benefit transfer systems;

''(C) the extent to which the Social Security Administration can involve private organizations in an effort to increase the provision of social services, education, and vocational instruction with the aim of promoting independence and the ability to engage in substantial gainful activity;

''(D) alternative ways and providing retroactive supplemental security income benefits to disabled children, including the desirability and feasibility of conserving some portion of such benefits to promote the long-term well-being of such children;

''(E) the desirability and methods of increasing the extent to which benefits are used in the effort to assist disabled children in achieving independence and engaging in substantial gainful activity;

''(F) the effects of the supplemental security income program on disabled children and their families; and

''(G) such other issues that the Secretary determines to be appropriate.

''(f) REPORT.—Not later than November 30, 1995, the Commission shall prepare a report and submit such report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate which shall summarize the results of the study described in subsection (e) and include any recommendations that the Commission determines to be appropriate.''

DISABILITY REVIEW REQUIRED FOR SSI RECIPIENTS WHO ARE 18 YEARS OF AGE

Section 207 of Pub. L. 103–296 provided that:

''(a) DISABILITY REVIEW REQUIREMENT.—

''(1) IN GENERAL.—The applicable State agency or the Secretary of Health and Human Services (as may be appropriate) shall redetermine the eligibility of a qualified individual for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] by reason of disability, by applying the criteria used in determining eligibility for such benefits of applicants who have attained 18 years of age.

''(2) WHEN CONDUCTED.—The redetermination required by paragraph (1) with respect to a qualified individual shall be conducted during the 1-year period that begins on the date the qualified individual attains 18 years of age.

''(3) MINIMUM NUMBER OF REVIEWS.—The Secretary shall conduct redeterminations under paragraph (1) with respect to not less than ⅓ of qualified individuals in each of fiscal years 1996, 1997, and 1998.

''(4) QUALIFIED INDIVIDUAL DEFINED.—As used in this paragraph, the term 'qualified individual' means a recipient of supplemental security income benefits under title XVI of the Social Security Act by reason of disability who attains 18 years of age in or after the 9th month after the month in which this Act is enacted [August 1994].

''(5) SUBSTITUTE FOR A CONTINUING DISABILITY REVIEW.—A redetermination under paragraph (1) of this subsection shall be considered a substitute for a review required under section 1614(a)(3)(G) of the Social Security Act [section 1382c(a)(3)(G) of this title].

''(6) SUNSET.—Paragraph (1) shall have no force or effect after October 1, 1998.

''(b) REPORT TO THE CONGRESS.—Not later than October 1, 1998, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the activities conducted under subsection (a).''

CONTINUING DISABILITY REVIEWS

Section 208 of Pub. L. 103–296 provided that:

''(a) TEMPORARY ANNUAL MINIMUM NUMBER OF REVIEWS.—During each year of the 3-year period that begins on October 1, 1995, the Secretary of Health and Human Services shall apply section 221(i) of the Social Security Act [section 421(i) of this title] in making disability determinations under title XVI of such Act [this subchapter] with respect to at least 100,000 recipients of supplemental security income benefits under such title.

''(b) REPORT TO THE CONGRESS.—Not later than October 1, 1998, the Secretary of Health and Human Services shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the activities conducted under subsection (a).''

NOTIFICATION OF POSSIBLE BENEFIT AVAILABILITY TO POTENTIAL SUPPLEMENTAL SECURITY INCOME RECIPIENTS

Section 405 of Pub. L. 98–21 provided that: ''Prior to July 1, 1984, the Secretary of Health and Human Serv-

ices shall notify all elderly recipients of benefits under title II of the Social Security Act [subchapter II of this chapter] who may be eligible for supplemental security income benefits under title XVI of such Act [this subchapter] of the availability of the supplemental security income program, and shall encourage such recipients to contact the Social Security district office. Such notification shall also be made to all recipients prior to attainment of age 65, with the notification made with respect to eligibility for supplementary medical insurance.''

ASSISTANCE PAID UNDER CERTAIN HOUSING ACTS NOT CONSIDERED IN DETERMINING ELIGIBILITY FOR BENEFITS UNDER THIS SUBCHAPTER; EFFECTIVE DATE

Pub. L. 94–375, §2(h), Aug. 3, 1976, 90 Stat. 1068, provided that: ''Notwithstanding any other provision of law, the value of any assistance paid with respect to a dwelling unit under the United States Housing Act of 1937 [section 1437 et seq. of this title], the National Housing Act [section 1701 et seq. of Title 12, Banks and Banking], section 101 of the Housing and Urban Development Act of 1965 [section 1701s of Title 12 and sections 1451 and 1465 of this title], or title V of the Housing Act of 1949 [section 1471 et seq. of this title] may not be considered as income or a resource for the purpose of determining the eligibility of, or the amount of the benefits payable to, any person living in such unit for assistance under title XVI of the Social Security Act [this subchapter]. This subsection shall become effective on October 1, 1976.''

SPECIAL $50 PAYMENT UNDER TAX REDUCTION ACT OF 1975

Special payment of $50 as soon as practicable after Mar. 29, 1975, by the Secretary of the Treasury to each individual who, for the month of March, 1975, was entitled to a benefit under the supplemental security income benefits program established by this subchapter, see section 702 of Pub. L. 94–12, set out as a note under section 402 of this title.

ADJUSTMENT OF INDIVIDUAL'S MONTHLY SUPPLEMENTAL SECURITY INCOME PAYMENTS; REGULATIONS; LIMITATIONS

Pub. L. 93–335, §2(b)(2), July 8, 1974, 88 Stat. 291, authorized the Secretary of Health, Education, and Welfare to prescribe regulations for the adjustment of an individual's monthly supplemental security income payment in accordance with any increase to which such individual might be entitled under the amendment made by subsection (a) of this section [amending section 212(a)(3)(B)(i) of Pub. L. 93–66, set out below]; provided that such adjustment in monthly payment, together with the remittance of any prior unpaid increments to which such individual might be entitled under such amendment, was to be made no later than the first day of the first month beginning more than sixty days after July 8, 1974.

MEDICAID ELIGIBILITY FOR INDIVIDUALS RECEIVING MANDATORY STATE SUPPLEMENTARY PAYMENTS; EFFECTIVE DATE

Additional requirement for approval of subchapter XIX State plan for medical assistance respecting medicaid eligibility for individuals receiving mandatory State supplementary payments, see section 13(c) of Pub. L. 93–233, set out as a note under section 1396a of this title.

FEDERAL PROGRAM OF SUPPLEMENTAL SECURITY INCOME; SUPPLEMENTAL SECURITY INCOME BENEFITS FOR ESSENTIAL PERSONS; DEFINITIONS OF QUALIFIED INDIVIDUAL AND ESSENTIAL PERSON

Section 211 of Pub. L. 93–66, as amended by Pub. L. 93–233, §4(a)(2), (b)(3), Dec. 31, 1973, 87 Stat. 953, provided that:

''(a)(1) In determining (for purposes of title XVI of the Social Security Act [this subchapter], as in effect after December 1973) the eligibility for and the amount of the supplemental security income benefit payable to any qualified individual (as defined in subsection (b)), with respect to any period for which such individual has in his home an essential person (as defined in subsection (c))—

''(A) the dollar amounts specified in subsection (a)(1)(A) and (2)(A), and subsection (b)(1) and (2), of section 1611 of such Act [this section], shall each be increased by $876 for each such essential person, and

''(B) the income and resources of such individual shall (for purposes of such title XVI [this subchapter]) be deemed to include the income and resources of such essential person;

except that the provisions of this subsection shall not, in the case of any individual, be applicable for any period which begins in or after the first month that such individual—

''(C) does not but would (except for the provisions of subparagraph (B)) meet—

''(i) the criteria established with respect to income in section 1611(a) of such Act [subsec. (a) of this section], or

''(ii) the criteria established with respect to resources by such section 1611(a) [subsec. (a) of this section] (or, if applicable, by section 1611(g) of such Act [subsec. (g) of this section]).

''(2) The provisions of section 1611(g) of the Social Security Act [subsec. (g) of this section] (as in effect after December 1973) shall, in the case of any qualified individual (as defined in subsection (b)), be applied so as to include, in the resources of such individual, the resources of any person (described in subsection (b)(2)) whose needs were taken into account in determining the need of such individual for the aid or assistance referred to in subsection (b)(1).

''(b) For purposes of this section, an individual shall be a 'qualified individual' only if—

''(1) for the month of December 1973 such individual was a recipient of aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter], and

''(2) in determining the need of such individual for such aid or assistance for such month under such State plan, there were taken into account the needs of a person (other than such individual) who—

''(A) was living in the home of such individual, and

''(B) was not eligible (in his or her own right) for aid or assistance under such State plan for such month.

''(c) The term 'essential person', when used in connection with any qualified individual, means a person who—

''(1) for the month of December 1973 was a person (described in subsection (b)(2)) whose needs were taken into account in determining the need of such individual for aid or assistance under a State plan referred to in subsection (b)(1) as such State plan was in effect for June 1973,

''(2) lives in the home of such individual,

''(3) is not eligible (in his or her own right) for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] (as in effect after December 1973), and

''(4) is not the eligible spouse (as that term is used in such title XVI [this subchapter]) of such individual or any other individual.

If for any month after December 1973 any person fails to meet the criteria specified in paragraph (2), (3), or (4) of the preceding sentence, such person shall not, for such month or any month thereafter be considered to be an essential person.''

[Amendment of section 211(a)(1)(A) of Pub. L. 93–66, set out above, by Pub. L. 93–233 effective with respect

to payments for months after June 1974, see section 4(b) of Pub. L. 93–233.]

MANDATORY MINIMUM STATE SUPPLEMENTATION OF SUPPLEMENTAL SECURITY INCOME BENEFITS PROGRAM; DECEMBER 1973 INCOME; TITLE XVI BENEFIT PLUS OTHER INCOME; REDUCTION OF AMOUNT; ADMINISTRATION AGREEMENT; PAYMENTS TO SECRETARY; STATE CONSTITUTIONAL RESTRICTION

Section 212 of Pub. L. 93–66, as amended by Pub. L. 93–233, §10, Dec. 31, 1973, 87 Stat. 957; Pub. L. 93–335, §2(a), July 8, 1974, 88 Stat. 291; Pub. L. 96–265, title II, §201(b)(2), June 9, 1980, 94 Stat. 446; Pub. L. 103–66, title XIII, §13731(a)(2), Aug. 10, 1993, 107 Stat. 661, provided that:

''(a)(1) In order for any State (other than the Commonwealth of Puerto Rico, Guam, or the Virgin Islands) to be eligible for payments pursuant to title XIX [subchapter XIX of this chapter], with respect to expenditures for any quarter beginning after December 1973, such State must have in effect an agreement with the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereinafter in this section referred to as the 'Secretary') whereby the State will provide to individuals residing in the State supplementary payments as required under paragraph (2).

''(2) Any agreement entered into by a State pursuant to paragraph (1) shall provide that each individual who—

''(A) is an aged, blind, or disabled individual (within the meaning of section 1614(a) of the Social Security Act [section 1382c(a) of this title], as enacted by section 301 of the Social Security Amendments of 1972), and

''(B) for the month of December 1973 was a recipient of (and was eligible to receive) aid or assistance (in the form of money payments) under a State plan of such State (approved under title I, X, XIV, or XVI, of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter])

shall be entitled to receive, from the State, the supplementary payment described in paragraph (3) for each month, beginning with January 1974, and ending with whichever of the following first occurs:

''(C) the month in which such individual dies, or

''(D) the first month in which such individual ceases to meet the condition specified in subparagraph (A);

except that no individual shall be entitled to receive such supplementary payment for any month, if, for such month, such individual was ineligible to receive supplemental income benefits under title XVI of the Social Security Act [this chapter] by reason of the provisions of section 1611(e)(1)(A), (2), or (3) [subsec. (e)(1)(A), (2), or (3) of this section], 1611(f) [subsec. (f) of this section], or 1615(c) of such Act [section 1382d(c) of this title].

''(3)(A) The supplementary payment referred to in paragraph (2) which shall be paid for any month to any individual who is entitled thereto under an agreement entered into pursuant to this subsection shall (except as provided in subparagraphs (D) and (E)) be an amount equal to (i) the amount by which such individual's 'December 1973 income' (as determined under subparagraph (B)) exceeds the amount of such individual's 'title XVI benefit plus other income' (as determined under subparagraph (C)) for such month, or (ii) if greater, such amount as the State may specify.

''(B) For purposes of subparagraph (A), an individual's 'December 1973 income' means an amount equal to the aggregate of—

''(i) the amount of the aid or assistance (in the form of money payments) which such individual would have received (including any part of such amount which is attributable to meeting the needs of any other person whose presence in such individual's home is essential to such individual's well-being) for the month of December 1973 under a plan (approved under title I, X, XIV, or XVI, of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter]) of the State entering into an agreement under this subsection, if the terms and conditions of such plan (relating to eligibility for and amount of such aid or assistance payable thereunder) were, for the month of December 1973, the same as those in effect, under such plan, for the month of June 1973, together with the bonus value of food stamps for January 1972, as defined in section 401(b)(3) of Public Law 92–603 [set out as a note under section 1382e of this title], if, for such month, such individual resides in a State which provides State supplementary payments (I) of the type described in section 1616(a) of the Social Security Act [section 1382e(a) of this title], and (II) the level of which has been found by the Secretary pursuant to section 8 of Public Law 93–233 [set out as notes under section 1382e of this title and sections 612c, 1431 and 2012 of Title 7, Agriculture] to have been specifically increased so as to include the bonus value of food stamps, and

''(ii) the amount of the income of such individual (other than the aid or assistance described in clause (i)) received by such individual in December 1973, minus any such income which did not result, but which if properly reported would have resulted in a reduction in the amount of such aid or assistance.

''(C) For purposes of subparagraph (A), the amount of an individual's 'title XVI benefit plus other income' for any month means an amount equal to the aggregate of—

''(i) the amount (if any) of the supplemental security income benefit to which such individual is entitled for such month under title XVI of the Social Security Act [this subchapter], and

''(ii) the amount of any income of such individual for such month (other than income in the form of a benefit described in clause (i)).

''(D) If the amount determined under subparagraph (B)(i) includes, in the case of any individual, an amount which was payable to such individual solely because of—

''(i) a special need of such individual (including any special allowance for housing, or the rental value of housing furnished in kind to such individual in lieu of a rental allowance) which existed in December 1973, or

''(ii) any special circumstance (such as the recognition of the needs of a person whose presence in such individual's home, in December 1973, was essential to such individual's well-being),

and, if for any month after December 1973 there is a change with respect to such special need or circumstance which, if such change had existed in December 1973, the amount described in subparagraph (B)(i) with respect to such individual would have been reduced on account of such change, then, for such month and for each month thereafter the amount of the supplementary payment payable under the agreement entered into under this subsection to such individual shall (unless the State, at its option, otherwise specifies) be reduced by an amount equal to the amount by which the amount (described in subparagraph (B)(i)) would have been so reduced.

''(E)(i) In the case of an individual who, for December 1973 lived as a member of a family unit other members of which received aid (in the form of money payments) under a State plan of a State approved under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter], such State at its option, may (subject to clause (ii)) reduce such individual's December 1973 income (as determined under subparagraph (B)) to such extent as may be necessary to cause the supplementary payment (referred to in paragraph (2)) payable to such individual for January 1974 or any month thereafter to be reduced to a level designed to assure that the total income of such individual (and of the members of such family unit) for any month after December 1973 does not exceed the total income of such individual (and of the members of such family unit) for December 1973.

''(ii) The amount of the reduction (under clause (i)) of any individual's December 1973 income shall not be in

an amount which would cause the supplementary payment (referred to in paragraph (2)) payable to such individual to be reduced below the amount of such supplementary payment which would be payable to such individual if he had, for the month of December 1973 not lived in a family, members of which were receiving aid under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter], and had had no income for such month other than that received as aid or assistance under a State plan approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter].

''(4) Any State having an agreement with the Secretary under paragraph (1) may, at its option, include individuals receiving benefits under section 1619 of the Social Security Act [section 1382h of this title], or who would be eligible to receive such benefits but for their income, under the agreement as though they are aged, blind, or disabled individuals as specified in paragraph (2)(A).

''(b)(1) Any State having an agreement with the Secretary under subsection (a) may enter into an administration agreement with the Secretary whereby the Secretary will, on behalf of such State, make the supplementary payments required under the agreement entered into under subsection (a).

''(2) Any such administration agreement between the Secretary and a State entered into under this subsection shall provide that the State will (A) certify to the Secretary the names of each individual who, for December 1973, was a recipient of aid or assistance (in the form of money payments) under a plan of such State approved under title I, X, XIV, or XVI of the Social Security Act [subchapter I, X, XIV, or XVI of this chapter], together with the amount of such assistance payable to each such individual and the amount of such individual's December 1973 income (as defined in subsection (a)(3)(B)), and (B) provide the Secretary with such additional data at such times as the Secretary may reasonably require in order properly, economically, and efficiently to carry out such administration agreement.

''(3)(A) Any State which has entered into an administration agreement under this subsection shall, at such times and in such installments as may be agreed upon between the Secretary and the State, pay to the Secretary an amount equal to the expenditures made by the Secretary as supplementary payments to individuals entitled thereto under the agreement entered into with such State under subsection (a), plus an administration fee assessed in accordance with subparagraph (B) and any additional services fee charged in accordance with subparagraph (C).

''(B)(i) The Secretary shall assess each State an administration fee in an amount equal to—

''(I) the number of supplementary payments made by the Secretary on behalf of the State under this subsection for any month in a fiscal year; multiplied by

''(II) the applicable rate for the fiscal year.

''(ii) As used in clause (i), the term 'applicable rate' means—

''(I) for fiscal year 1994, $1.67;

''(II) for fiscal year 1995, $3.33;

''(III) for fiscal year 1996, $5.00; and

''(IV) for fiscal year 1997 and each succeeding fiscal year, $5.00, or such different rate as the Secretary determines is appropriate for the State, taking into account the complexity of administering the State's supplementary payment program.

''(iii) Upon making a determination under clause (ii)(IV), the Secretary shall promulgate the determination in regulations, which may take into account the complexity of administering the State's supplementary payment program.

''(iv) All fees assessed pursuant to this subparagraph shall be transferred to the Secretary at the same time that amounts for such supplementary payments are required to be so transferred.

''(C)(i) The Secretary may charge a State an additional services fee if, at the request of the State, the Secretary provides additional services beyond the level customarily provided, in the administration of State supplementary payments pursuant to this subsection.

''(ii) The additional services fee shall be in an amount that the Secretary determines is necessary to cover all costs (including indirect costs) incurred by the Federal Government in furnishing the additional services referred to in clause (i).

''(D) All administration fees and additional services fees collected pursuant to this paragraph shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

''(c)(1) Supplementary payments made pursuant to an agreement entered into under subsection (a) shall be excluded under section 1612(b)(6) of the Social Security Act [section 1382a(b)(6) of this title] (as in effect after December 1973) in determining income of individuals for purposes of title XVI of such Act [this subchapter] (as so in effect).

''(2) Supplementary payments made by the Secretary (pursuant to an administration agreement entered into under subsection (b)) shall, for purposes of section 401 of the Social Security Amendments of 1972 [set out as a note under section 1382e of this title], be considered to be payments made under an agreement entered into under section 1616 of the Social Security Act [section 1382e of this title] (as enacted by section 301 of the Social Security Amendments of 1972); except that nothing in this paragraph shall be construed to waive, with respect to the payments so made by the Secretary, the provisions of subsection (b) of such section 401 [set out as a note under section 1382e of this title].

''(d) For purposes of subsection (a)(1), a State shall be deemed to have entered into an agreement under subsection (a) of this section if such State has entered into an agreement with the Secretary under section 1616 of the Social Security Act [section 1382e of this title] under which—

''(1) individuals, other than individuals described in subsection (a)(2)(A) and (B), are entitled to receive supplementary payments, and

''(2) supplementary benefits are payable, to individuals described in subsection (a)(2)(A) and (B) at a level and under terms and conditions which meet the minimum requirements specified in subsection (a).

''(e) Except as the Secretary may by regulations otherwise provide, the provisions of title XVI of the Social Security Act [this subchapter] (as enacted by section 301 of the Social Security Amendments of 1972), including the provisions of part B of such title [part B of this subchapter], relating to the terms and conditions under which the benefits authorized by such title [this subchapter] are payable shall, where not inconsistent with the purposes of this section, be applicable to the payments made under an agreement under subsection (b) of this section; and the authority conferred upon the Secretary by such title [this subchapter] may, where appropriate, be exercised by him in the administration of this section.

''(f) The provisions of subsection (a)(1) shall not be applicable in the case of any State—

''(1) the Constitution of which contains provisions which make it impossible for such State to enter into and commence carrying out (on January 1, 1974) an agreement referred to in subsection (a), and

''(2) the Attorney General (or other appropriate State official) of which has, prior to July 1, 1973, made a finding that the State Constitution of such State contains limitations which prevent such State from making supplemental payments of the type described in section 1616 of the Social Security Act [section 1382e of this title].''

[For effective date of amendment to section 212 of Pub. L. 93–66, set out above, by Pub. L. 103–66, see section 13731(b) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 1382e of this title.]

[Section 2(b)(1) of Pub. L. 93–335, July 8, 1974, 88 Stat. 291, provided that the amendment of section 212 of Pub. L. 93–66, set out above, by Pub. L. 93–335 is effective Jan. 1, 1974.]

[Amendment of section 212 of Pub. L. 93–66, set out above, by Pub. L. 96–265 effective Jan. 1, 1981, see section 201(d) of Pub. L. 96–265, as amended, set out as an Effective Date note under section 1382h of this title.]

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of section 1602 of the Social Security Act [this section] by Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1602 of the Social Security Act [this section] as it existed prior to reenactment by Pub. L. 92–603, and as amended, continues to apply and reads as follows:

§ 1382. State plans for aid to aged, blind, or disabled

(a) Contents

A State plan for aid to the aged, blind, or disabled, must—

(1) except to the extent permitted by the Commissioner of Social Security with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid or assistance under the plan is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing;

(5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Commissioner of Social Security shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Commissioner of Social Security to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Commissioner of Social Security may from time to time require, and comply with such provisions as the Commissioner of Social Security may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;

(8) provide that all individuals wishing to make application for aid or assistance under the plan shall have opportunity to do so, and that such aid or assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide, if the plan includes aid or assistance to or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(10) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for or recipients of aid or assistance under the plan to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services;

(11) provide that no aid or assistance will be furnished any individual under the plan with respect to any period with respect to which he is receiving assistance under the State plan approved under subchapter I of this chapter or aid under the State plan approved under part A of subchapter IV of this chapter or under subchapter X or XIV of this chapter;

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) include reasonable standards, consistent with the objectives of this subchapter, for determining eligibility for and the extent of aid or assistance under the plan;

(14) provide that the State agency shall, in determining need for aid to the aged, blind, or disabled, take into consideration any other income and resources of an individual claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination with respect to any individual—

(A) if such individual is blind, the State agency (i) shall disregard the first $85 per month of earned income plus one-half of earned income in excess of $85 per month, and (ii) shall, for a period not in excess of 12 months, and may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan,

(B) if such individual is not blind but is permanently and totally disabled, (i) of the first $80 per month of earned income, the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (ii) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation,

(C) if such individual has attained age 65 and is neither blind nor permanently and totally disabled, of the first $80 per month of earned income the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and

(D) the State agency may, before disregarding the amounts referred to above in this paragraph (14), disregard not more than $7.50 of any income; and

(15) provide that information is requested and exchanged for purposes of income and eligibility ver-

ification in accordance with a State system which meets the requirements of section 1320b–7 of this title.

Notwithstanding paragraph (3), if on January 1, 1962, and on the date on which a State submits its plan for approval under this subchapter, the State agency which administered or supervised the administration of the plan of such State approved under subchapter X of this chapter was different from the State agency which administered or supervised the administration of the plan of such State approved under subchapter I of this chapter and the State agency which administered or supervised the administration of the plan of such State approved under subchapter XIV of this chapter, the State agency which administered or supervised the administration of such plan approved under subchapter X of this chapter may be designated to administer or supervise the administration of the portion of the State plan for aid to the aged, blind, or disabled which relates to blind individuals and a separate State agency may be established or designated to administer or supervise the administration of the rest of such plan; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter.

(b) Approval by Commissioner

The Commissioner of Social Security shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that the Commissioner shall not approve any plan which imposes, as a condition of eligibility for aid or assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for such aid and has resided therein continuously for one year immediately preceding the application; or

(3) any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Commissioner of Social Security as a condition for the approval of such plan under this subchapter. In the case of any State to which the provisions of section 344 of the Social Security Act Amendments of 1950 were applicable on January 1, 1962, and to which the sentence of section 1202(b) of this title following paragraph (2) thereof is applicable on the date on which its State plan for aid to the aged, blind, or disabled was submitted for approval under this subchapter, the Commissioner of Social Security shall approve the plan of such State for aid to the aged, blind, or disabled for purposes of this subchapter, even though it does not meet the requirements of paragraph (14) of subsection (a) of this section, if it meets all other requirements of this subchapter for an approved plan for aid to the aged, blind, or disabled; but payments under section 1383 of this title shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1383 of this title under a plan approved under this section without regard to the provisions of this sentence.

(c) Limitation on number of plans

Subject to the last sentence of subsection (a) of this section, nothing in this subchapter shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this subchapter.

(Aug. 14, 1935, ch. 531, title XVI, §1602, as added July 25, 1962, Pub. L. 87–543, title I, §141(a), 76 Stat. 198; amended Oct. 13, 1964, Pub. L. 88–650, §5(b), 78 Stat. 1078; July 30, 1965, Pub. L. 89–97, title II, §221(d)(3), title IV, §403(e), 79 Stat. 358, 418; Jan. 2, 1968, Pub. L. 90–248, title II, §§210(a)(5), 213(a)(4), 241(d), 81 Stat. 896, 898, 917; Oct. 30, 1972, Pub. L. 92–603, title IV, §§405(d), 406(d), 407(d), 410(d), 413(d), 86 Stat. 1488, 1489, 1491, 1492; Aug. 13, 1981, Pub. L. 97–35, title XXI, §2184(d)(4), 95 Stat. 817; July 18, 1984, Pub. L. 98–369, div. B, title VI, §2651(h), 98 Stat. 1150; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), 108 Stat. 1478.)

[Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1315, 1382a, 1382b, 1382c, 1382d, 1382e, 1382f, 1382g, 1382h, 1382i, 1382j, 1383, 1383c, 1385, 1396a, 1396b, 1396d, 1396r, 1396v, 4728, 8624, 11398 of this title.

§ 1382a. Income; earned and unearned income defined; exclusions from income

(a) For purposes of this subchapter, income means both earned income and unearned income; and—

(1) earned income means only—

(A) wages as determined under section 403(f)(5)(C) of this title;

(B) net earnings from self-employment, as defined in section 411 of this title (without the application of the second and third sentences following subsection (a)(11), and the last paragraph of subsection (a)), including earnings for services described in paragraphs (4), (5), and (6) of subsection (c);

(C) remuneration received for services performed in a sheltered workshop or work activities center; and

(D) any royalty earned by an individual in connection with any publication of the work of the individual, and that portion of any honorarium which is received for services rendered; and

(2) unearned income means all other income, including—

(A) support and maintenance furnished in cash or kind; except that (i) in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) as specified in subsections (a) and (b) of section 1382 of this title shall be reduced by 33⅓ percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise required by this subparagraph, (ii) in the case of any individual or his eligible spouse who resides in a nonprofit retirement home or similar nonprofit institution, support and maintenance shall not be included to the extent that it is furnished to such individual or such spouse without such institution receiving payment therefor (unless such institution has expressly undertaken an obligation to furnish full support and maintenance to such individual or spouse without any current or future payment therefor) or payment therefor is made by another nonprofit organization, and (iii) support and maintenance shall not be included and the provisions of clause (i) shall not be applica-

ble in the case of any individual (and his eligible spouse, if any) for the period which begins with the month in which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in a residential facility (including a private household) maintained by another person and ends with the close of the month in which such individual (or such individual and his eligible spouse) ceases to receive support and maintenance while living in such a residential facility (or, if earlier, with the close of the seventeenth month following the month in which such period began), if, not more than 30 days prior to the date on which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in such a residential facility, (I) such individual (or such individual and his eligible spouse) were residing in a household maintained by such individual (or by such individual and others) as his or their own home, (II) there occurred within the area in which such household is located (and while such individual, or such individual and his spouse, were residing in the household referred to in subclause (I)) a catastrophe on account of which the President declared a major disaster to exist therein for purposes of the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.], and (III) such individual declares that he (or he and his eligible spouse) ceased to continue living in the household referred to in subclause (II) because of such catastrophe;

(B) any payments received as an annuity, pension, retirement, or disability benefit, including veterans' compensation and pensions, workmen's compensation payments, old-age, survivors, and disability insurance benefits, railroad retirement annuities and pensions, and unemployment insurance benefits;

(C) prizes and awards;

(D) payments to the individual occasioned by the death of another person, to the extent that the total of such payments exceeds the amount expended by such individual for purposes of the deceased person's last illness and burial;

(E) support and alimony payments, and (subject to the provisions of subparagraph (D) excluding certain amounts expended for purposes of a last illness and burial) gifts (cash or otherwise) and inheritances; and

(F) rents, dividends, interest, and royalties not described in paragraph (1)(E).

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

(1) subject to limitations (as to amount or otherwise) prescribed by the Commissioner of Social Security, if such individual is a child who is, as determined by the Commissioner of Social Security, a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment, the earned income of such individual;

(2)(A) the first $240 per year (or proportionately smaller amounts for shorter periods) of income (whether earned or unearned) other than income which is paid on the basis of the need of the eligible individual, and

(B) monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973 (or any program established prior to such date but subsequently amended so as to conform to State or Federal constitutional standards), if (i) such payments are made by the State of which the individual receiving such payments is a resident, (ii) eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 or any other age set by the State and residency in such State by such individual, and (iii) on or before September 30, 1985, such individual (I) first becomes an eligible individual or an eligible spouse under this title, and (II) satisfies the twenty-five-year residency requirement of such program as such program was in effect prior to January 1, 1983;

(3)(A) the total unearned income of such individual (and such spouse, if any) in a month which, as determined in accordance with criteria prescribed by the Commissioner of Social Security, is received too infrequently or irregularly to be included, if such income so received does not exceed $20 in such month, and (B) the total earned income of such individual (and such spouse, if any) in a month which, as determined in accordance with such criteria, is received too infrequently or irregularly to be included, if such income so received does not exceed $10 in such month;

(4)(A) if such individual (or such spouse) is blind (and has not attained age 65, or received benefits under this subchapter (or aid under a State plan approved under section 1202 or 1382 of this title) for the month before the month in which he attained age 65), (i) the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof, (ii) an amount equal to any expenses reasonably attributable to the earning of any income, and (iii) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Commissioner of Social Security, as may be necessary for the fulfillment of such plan,

(B) if such individual (or such spouse) is disabled but not blind (and has not attained age 65, or received benefits under this subchapter (or aid under a State plan approved under section 1352 or 1382 of this title) for the month before the month in which he attained age 65), (i) the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, (ii) such additional amounts of earned income of such individual, if such individual's disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, as may be necessary to pay the costs (to such individual) of attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such

drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Commissioner of Social Security in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions, except that the amounts to be excluded shall be subject to such reasonable limits as the Commissioner of Social Security may prescribe, (iii) one-half of the amount of earned income not excluded after the application of the preceding provisions of this subparagraph, and (iv) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Commissioner of Social Security, as may be necessary for the fulfillment of such plan, or

(C) if such individual (or such spouse) has attained age 65 and is not included under subparagraph (A) or (B), the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof;

(5) any amount received from any public agency as a return or refund of taxes paid on real property or on food purchased by such individual (or such spouse);

(6) assistance, furnished to or on behalf of such individual (and spouse), which is based on need and furnished by any State or political subdivision of a State;

(7) any portion of any grant, scholarship, or fellowship received for use in paying the cost of tuition and fees at any educational (including technical or vocational education) institution;

(8) home produce of such individual (or spouse) utilized by the household for its own consumption;

(9) if such individual is a child, one-third of any payment for his support received from an absent parent;

(10) any amounts received for the foster care of a child who is not an eligible individual but who is living in the same home as such individual and was placed in such home by a public or nonprofit private child-placement or child-care agency;

(11) assistance received under the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.] or other assistance provided pursuant to a Federal statute on account of a catastrophe which is declared to be a major disaster by the President;

(12) interest income received on assistance funds referred to in paragraph (11) within the 9-month period beginning on the date such funds are received (or such longer periods as the Commissioner of Social Security shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period);

(13) any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Commissioner of Social Security by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which is (A) assistance furnished in kind by a private nonprofit agency, or (B) assistance furnished by a supplier of home heating oil or gas, by an entity providing home energy whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy;

(14) assistance paid, with respect to the dwelling unit occupied by such individual (or such individual and spouse), under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.], the National Housing Act [12 U.S.C. 1701 et seq.], section 101 of the Housing and Urban Development Act of 1965 [12 U.S.C. 1701s], title V of the Housing Act of 1949 [42 U.S.C. 1471 et seq.], or section 202(h) of the Housing Act of 1959 [12 U.S.C. 1701q(h)];

(15) the value of any commercial transportation ticket, for travel by such individual (or spouse) among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, which is received as a gift by such individual (or such spouse) and is not converted to cash;

(16) interest accrued on the value of an agreement entered into by such individual (or such spouse) representing the purchase of a burial space excluded under section 1382b(a)(2)(B) of this title, and left to accumulate;

(17) any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime;

(18) relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636];

(19) any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit); and

(20) special pay received pursuant to section 310 of title 37.

(Aug. 14, 1935, ch. 531, title XVI, §1612, as added Oct. 30, 1972, Pub. L. 92–603, title III, §301, 86 Stat. 1468; amended Oct. 26, 1974, Pub. L. 93–484, §4, 88 Stat. 1460; Jan. 2, 1976, Pub. L. 94–202, §9, 89 Stat. 1140; June 30, 1976, Pub. L. 94–331, §§2(a), 4(a), 90 Stat. 781, 782; Oct. 4, 1976, Pub. L. 94–455, title XXI, §2125, 90 Stat. 1920; Oct. 20, 1976, Pub. L. 94–566, title V, §505(b), 90 Stat. 2686; Nov. 12, 1977, Pub. L. 95–171, §8(a), 91 Stat. 1355; Apr. 1, 1980, Pub. L. 96–222, title I, §101(a)(2)(B), 94 Stat. 195; June 9, 1980, Pub. L. 96–265, title II, §202(a), title III, §302(b), 94 Stat. 449, 451; Oct. 19, 1980, Pub. L. 96–473, §6(g), 94 Stat. 2266; Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2341(b), 95 Stat. 865; Jan. 6, 1983, Pub. L. 97–424, title V, §545(a), 96

Stat. 2198; Apr. 20, 1983, Pub. L. 98–21, title IV, § 404(a), 97 Stat. 140; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2616(a), 2639(b), (c), 2663(g)(3), (4), 98 Stat. 1133, 1144, 1145, 1168; Oct. 22, 1986, Pub. L. 99–514, § 2, title XVIII, § 1883(d)(2), (3), 100 Stat. 2095, 2918; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9120(a), 101 Stat. 1330–309; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8103(a), 102 Stat. 3795; Nov. 23, 1988, Pub. L. 100–707, title I, § 109(p), 102 Stat. 4709; Dec. 19, 1989, Pub. L. 101–239, title VIII, §§ 8011(a), 8013(a), 103 Stat. 2464; Nov. 5, 1990, Pub. L. 101–508, title V, §§ 5031(a), 5033(a), 5034(a), 5035(a), title XI, § 11115(b)(1), 104 Stat. 1388–224, 1388–225, 1388–414; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13733(b), 107 Stat. 662; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478; Oct. 31, 1994, Pub. L. 103–432, title II, §§ 264(a), 267(a), 108 Stat. 4467, 4469.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (b)(19), is classified generally to Title 26, Internal Revenue Code.

The Disaster Relief and Emergency Assistance Act, referred to in subsecs. (a)(2)(A) and (b)(11), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, known as The Robert T. Stafford Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

Section 1382 of this title, referred to in subsec. (b)(4)(A), (B), is a reference to section 1382 of this title as it existed prior to the general revision of this subchapter by Pub. L. 92–603, title III, § 301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1382 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

The United States Housing Act of 1937, referred to in subsec. (b)(14), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The National Housing Act, referred to in subsec. (b)(14), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (b)(14), is section 101 of Pub. L. 89–117, title I, Aug. 10, 1965, 79 Stat. 451, as amended, which enacted section 1701s of Title 12 and amended sections 1451 and 1465 of this title.

The Housing Act of 1949, referred to in subsec. (b)(14), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Housing Act of 1949 is classified generally to subchapter III (§ 1471 et seq.) of chapter 8A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

The Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, referred to in subsec. (b)(18), is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended. Title II of the Act enacted subchapter II (§ 4621 et seq.) of chapter 61 of this title, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealed sections 1465 and 3074 of this title, section 2680 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and enacted provisions set out as notes under sections 4601 and 4621 of this title and under sections 501 to 512 of Title 23. For complete classification of title II to the Code, see Tables.

AMENDMENTS

1994—Subsec. (a)(1)(C) to (E). Pub. L. 103–432, § 267(a), redesignated subpars. (D) and (E) as (C) and (D), respectively, and struck out former subpar. (C) which read as follows: ''any refund of Federal income taxes made by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income credit) and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit);''.

Subsec. (b)(1), (3)(A), (4)(A), (B), (12), (13). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (b)(17). Pub. L. 103–432, § 264(a), made technical correction to directory language of Pub. L. 101–508, § 5035(a)(2). See 1990 Amendment note below.

1993—Subsec. (b)(20). Pub. L. 103–66 added par. (20).

1990—Subsec. (a)(1)(E). Pub. L. 101–508, § 5034(a)(1), added subpar. (E).

Subsec. (a)(2)(F). Pub. L. 101–508, § 5034(a)(2), inserted ''not described in paragraph (1)(E)'' after ''royalties''.

Subsec. (b)(4)(B)(ii). Pub. L. 101–508, § 5033(a), struck out ''(for purposes of determining the amount of his or her benefits under this subchapter and of determining his or her eligibility for such benefits for consecutive months of eligibility after the initial month of such eligibility)'' after ''income of such individual''.

Subsec. (b)(16). Pub. L. 101–508, § 5035(a)(1), struck out ''and'' at end.

Subsec. (b)(17). Pub. L. 101–508, § 5035(a)(2), as amended by Pub. L. 103–432, § 264(a), substituted ''; and'' for period at end.

Pub. L. 101–508, § 5031(a), added par. (17).

Subsec. (b)(18). Pub. L. 101–508, § 5035(a)(3), added par. (18).

Subsec. (b)(19). Pub. L. 101–508, § 11115(b)(1)(C), added par. (19).

1989—Subsec. (b)(15). Pub. L. 101–239, § 8011(a), added par. (15).

Subsec. (b)(16). Pub. L. 101–239, § 8013(a), added par. (16).

1988—Subsecs. (a)(2)(A), (b)(11). Pub. L. 100–707 substituted ''Disaster Relief and Emergency Assistance Act'' for ''Disaster Relief Act of 1974''.

Subsec. (b)(14). Pub. L. 100–647 added par. (14).

1987—Subsec. (a)(2)(D), (E). Pub. L. 100–203 amended subpars. (D) and (E) generally. Prior to amendment, subpars. (D) and (E) read as follows:

''(D) the proceeds of any life insurance policy to the extent that they exceed the amount expended by the beneficiary for purposes of the insured individual's last illness and burial or $1,500, whichever is less;

''(E) gifts (cash or otherwise), support and alimony payments, and inheritances; and''.

1986—Subsec. (a)(1)(C). Pub. L. 99–514, § 1883(d)(2), substituted ''section 32'' for ''section 43''.

Pub. L. 99–514, § 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(2). Pub. L. 99–514, § 1883(d)(3)(A), (B), substituted '', and'' for a semicolon in subpar. (A) and a semicolon for a period in subpar. (B).

Subsec. (b)(11) to (13). Pub. L. 99–514, § 1883(d)(3)(C), provided for technical corrections relating to concluding punctuation in pars. (11) to (13).

1984—Subsec. (b)(2)(B). Pub. L. 98–369, § 2663(g)(3), realigned margin of subpar. (B).

Pub. L. 98–369, § 2616(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973, if such payments are made by the State of which the individual receiving such payments is a resident, and if eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 and duration of residence in such State by such individual;''.

Subsec. (b)(9). Pub. L. 98–369, § 2663(g)(4), inserted a comma after ''child''.

Subsec. (b)(13). Pub. L. 98–369, § 2639(b), temporarily amended par. (13) generally, redesignating former cls. (i) and (ii) as (A) and (B), respectively. See Effective and Termination Dates of 1984 Amendment note below.

1983—Subsec. (b)(13). Pub. L. 98–21 temporarily substituted ''any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which'' for ''any assistance received to assist in meeting the costs of home energy, including both heating and cooling, which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) (A) is based on need for such assistance, and (B)''. See Effective and Termination Dates of 1983 Amendments note below.

Pub. L. 97–424 temporarily added par. (13). See Effective and Termination Dates of 1983 Amendments note below.

1981—Subsec. (b)(3). Pub. L. 97–35 substituted ''month'' for ''calendar quarter'' wherever appearing, ''such month'' for ''such quarter'' wherever appearing, ''$20'' for ''$60'', and ''$10'' for ''$30''.

1980—Subsec. (a)(1). Pub. L. 96–473, § 6(g)(1), (2), in subpar. (B) substituted ''(a)(11)'' for ''(a)(10)'', and redesignated subpar. (C), as added by Pub. L. 96–265, § 202(a)(2), as (D).

Pub. L. 96–265, § 202(a)(2), added subpar. (C) which was subsequently redesignated (D) by Pub. L. 96–473, § 6(g)(2).

Pub. L. 96–222, § 101(a)(2)(B)(ii), added subpar. (C).

Subsec. (b)(2)(B). Pub. L. 96–473, § 6(g)(3), substituted ''monthly'' for ''Monthly'' and substituted a semicolon for the period at end of subpar. (B).

Subsec. (b)(4)(B). Pub. L. 96–265, § 302(b), inserted provisions relating to extraordinary work expenses due to severe disability.

1977—Subsec. (b)(12). Pub. L. 95–171 added par. (12).

1976—Subsec. (a)(2)(A)(iii). Pub. L. 94–455 substituted ''seventeenth month'' for ''fifth month''.

Pub. L. 94–331, § 4(a)(2), added cl. (iii).

Subsec. (b)(2). Pub. L. 94–202 designated existing provisions as par. (A) and added par. (B).

Subsec. (b)(6). Pub. L. 94–566 substituted ''assistance, furnished to or on behalf of such individual (and spouse), which'' for ''assistance described in section 1382e(a) of this title which''.

Subsec. (b)(11). Pub. L. 94–331, § 2(a)(3), added par. (11).

1974—Subsec. (a)(2)(A). Pub. L. 93–484 designated existing provisions as cl. (i) and added cl. (ii).

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 264(a) of Pub. L. 103–432 effective as if included in the provision of Pub. L. 101–508 to which the amendment relates at the time such provision became law, see section 264(h) of Pub. L. 103–432, set out as a note under section 602 of this title.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13733(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 1382c of this title] shall take effect on the 1st day of the 2nd month that begins after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5031(d) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1382b and 1383 of this title] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

Section 5033(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to benefits payable for calendar months beginning after the date of the enactment of this Act [Nov. 5, 1990].''

Section 5034(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to benefits for months beginning on or after the first day of the 13th calendar month following the month in which this Act is enacted [November 1990].''

Section 5035(c) of Pub. L. 101–508, as amended by Pub. L. 103–66, title XIII, § 13732, Aug. 10, 1993, 107 Stat. 662, provided that: ''The amendments made by this section [amending this section and section 1382b of this title] shall apply with respect to benefits for calendar months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

Amendment by section 11115(b)(1) of Pub. L. 101–508 applicable to determinations of income or resources made for any period after Dec. 31, 1990, see section 11115(e) of Pub. L. 101–508, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 8011(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the 1st day of the 3rd calendar month beginning after the date of the enactment of this Act [Dec. 19, 1989].''

Section 8013(c) of Pub. L. 101–239 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1382b of this title] shall take effect on the 1st day of the 4th month beginning after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8103(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section and section 1382b of this title] shall be effective as though they had been included in section 162 of the Housing and Community Development Act of 1987 [Pub. L. 100–242, see Effective Date of 1988 Amendment note set out under 12 U.S.C. 1701q] at the time of its enactment [Feb. 5, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9120(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2616(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2639(b) of Pub. L. 98–369 effective with respect to months which begin after Sept. 30, 1984, see section 2639(d) of Pub. L. 98–369, as amended, set out as a note under section 602 of this title.

Amendment by section 2663(g)(3), (4) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS

Section 545(c) of Pub. L. 97–424 and section 404(c) of Pub. L. 98–21, which had provided for the effective and termination dates covering the enactment and subsequent amendment of subsec. (b)(13) of this section by section 545(a) of Pub. L. 97–424 and section 404(a) of Pub. L. 98–21, were repealed by section 2639(c), (d) of Pub. L. 98–369, effective with respect to months beginning after Sept. 30, 1984, see note set out under section 602 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective with respect to months after first calendar quarter which ends more than five months after August 1981, with provision for transitional payments, see section 2341(c) of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment and Transitional Provisions note under section 1382 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 202(b) of Pub. L. 96–265 provided that: ''The amendments made by subsection (a) [amending this section] shall apply only with respect to remuneration received in months after September 1980.''

Amendment by section 302(b) of Pub. L. 96–265 applicable with respect to expenses incurred on or after first day of sixth month which begins after June 9, 1980, see section 302(c) of Pub. L. 96–265, set out as a note under section 423 of this title.

Amendment by Pub. L. 96–222 applicable to payments for months beginning after Dec. 31, 1979, see section 101(b)(1)(B) of Pub. L. 96–222, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 8(b) of Pub. L. 95–171 provided that: ''The amendment made by this section [amending this section] shall be effective July 1, 1976, with respect to catastrophes which occurred on or after June 1, 1976, and before December 31, 1976. With respect to catastrophes which occurred on or after December 31, 1976, the amendment made by this section shall be effective the first day of the calendar quarter following enactment of this Act [Nov. 12, 1977].''

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94–566 effective Oct. 1, 1976, see section 505(e) of Pub. L. 94–566, set out as a note under section 1382 of this title.

Section 2(b) of Pub. L. 94–331, as amended by Pub. L. 95–171, § 6(a), Nov. 12, 1977, 91 Stat. 1355, effective the first day of calendar quarter following Nov. 12, 1977, provided that: ''The amendments made by this Act [amending this section and sections 815, 3402, 6153, and 6154 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 815 and 3402 of Title 26] shall be applicable only in the case of catastrophes which occur on or after June 1, 1976.''

Section 4(b) of Pub. L. 94–331, as amended by Pub. L. 95–171, § 7(a), Nov. 12, 1977, 91 Stat. 1355, effective the first day of calendar quarter following Nov. 12, 1977, provided that: ''The amendments made by this Act [see section 2(b) of Pub. L. 94–331, set out above] shall be applicable only in the case of catastrophes which occur on or after June 1, 1976.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 4 of Pub. L. 93–484 provided that the amendment made by that section is effective Jan. 1, 1974.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 612, 1382, 1382b, 1382e, 1382h, 1382j, 1383, 1396a, 1396b, 1396d, 1396p, 8624, 11398 of this title; title 7 section 2014.

§ 1382b. Resources

(a) Exclusions from resources

In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

(1) the home (including the land that appertains thereto);

(2)(A) household goods, personal effects, and an automobile, to the extent that their total value does not exceed such amount as the Commissioner of Social Security determines to be reasonable; and

(B) the value of any burial space or agreement (including any interest accumulated thereon) representing the purchase of a burial space (subject to such limits as to size or value as the Commissioner of Social Security may by regulation prescribe) held for the purpose of providing a place for the burial of the individual, his spouse, or any other member of his immediate family;

(3) other property which is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion, as determined in accordance with and subject to limitations prescribed by the Commissioner of Social Security, except that the Commissioner of Social Security shall not establish a limitation on property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is used in a trade or business or by such individual as an employee;

(4) such resources of an individual who is blind or disabled and who has a plan for achieving self-support approved by the Commissioner of Social Security, as may be necessary for the fulfillment of such plan;

(5) in the case of Natives of Alaska, shares of stock held in a Regional or a Village Corporation, during the period of twenty years in which such stock is inalienable, as provided in section 1606(h) and section 1607(c) of title 43;

(6) assistance referred to in section 1382a(b)(11) of this title for the 9-month period beginning on the date such funds are received (or for such longer period as the Commissioner of Social Security shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period); and, for purposes of this paragraph, the term ''assistance'' includes interest thereon which is excluded from income under section 1382a(b)(12) of this title;

(7) any amount received from the United States which is attributable to underpayments of benefits due for one or more prior months, under this subchapter or subchapter II of this chapter, to such individual (or spouse) or to any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this subchapter; but the application of this paragraph in the case of any such individual (and eligible spouse if any), with respect to any amount so received from the United States, shall be limited to the

first 6 months following the month in which such amount is received (or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989), and written notice of this limitation shall be given to the recipient concurrently with the payment of such amount;

(8) the value of assistance referred to in section 1382a(b)(14) of this title, paid with respect to the dwelling unit occupied by such individual (or such individual and spouse);

(9) for the 9-month period beginning after the month in which received, any amount received by such individual (or such spouse) from a fund established by a State to aid victims of crime, to the extent that such individual (or such spouse) demonstrates that such amount was paid as compensation for expenses incurred or losses suffered as a result of a crime;

(10) for the 9-month period beginning after the month in which received, relocation assistance provided by a State or local government to such individual (or such spouse), comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970 which is subject to the treatment required by section 216 of such Act [42 U.S.C. 4636]; and

(11) for the month of receipt and the following month, any refund of Federal income taxes made to such individual (or such spouse) by reason of section 32 of the Internal Revenue Code of 1986 (relating to earned income tax credit), and any payment made to such individual (or such spouse) by an employer under section 3507 of such Code (relating to advance payment of earned income credit).

In determining the resources of an individual (or eligible spouse) an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is $1,500 or less, no part of the value of any such policy shall be taken into account.

(b) Disposition of resources; grounds for exemption from disposition requirements

(1) The Commissioner of Social Security shall prescribe the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual's eligibility for benefits. Any portion of the individual's benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.

(2) Notwithstanding the provisions of paragraph (1), the Commissioner of Social Security shall not require the disposition of any real property for so long as it cannot be sold because (A) it is jointly owned (and its sale would cause undue hardship, due to loss of housing, for the other owner or owners), (B) its sale is barred by a legal impediment, or (C) as determined under regulations issued by the Commissioner of Social Security, the owner's reasonable efforts to sell it have been unsuccessful.

(c) Notification of medicaid policy restricting eligibility of institutionalized individuals for benefits based on disposal of resources for less than fair market value

(1) At the time an individual (and the individual's eligible spouse, if any) applies for benefits under this subchapter, and at the time the eligibility of an individual (and such spouse, if any) for such benefits is redetermined, the Commissioner of Social Security shall—

(A) inform such individual of the provisions of section 1396p(c) of this title providing for a period of ineligibility for benefits under subchapter XIX of this chapter for individuals who make certain dispositions of resources for less than fair market value, and inform such individual that information obtained pursuant to subparagraph (B) will be made available to the State agency administering a State plan under subchapter XIX of this chapter (as provided in paragraph (2)); and

(B) obtain from such individual information which may be used by the State agency in determining whether or not a period of ineligibility for such benefits would be required by reason of section 1396p(c) of this title if such individual (or such spouse, if any) enters a medical institution or nursing facility.

(2) The Commissioner of Social Security shall make the information obtained under paragraph (1)(B) available, on request, to any State agency administering a State plan approved under subchapter XIX of this chapter.

(d) Funds set aside for burial expenses

(1) In determining the resources of an individual, there shall be excluded an amount, not in excess of $1,500 each with respect to such individual and his spouse (if any), that is separately identifiable and has been set aside to meet the burial and related expenses of such individual or spouse.

(2) The amount of $1,500, referred to in paragraph (1), with respect to an individual shall be reduced by an amount equal to (A) the total face value of all insurance policies on his life which are owned by him or his spouse and the cash surrender value of which has been excluded in determining the resources of such individual or of such individual and his spouse, and (B) the total of any amounts in an irrevocable trust (or other irrevocable arrangement) available to meet the burial and related expenses of such individual or his spouse.

(3) If the Commissioner of Social Security finds that any part of the amount excluded under paragraph (1) was used for purposes other than those for which it was set aside in cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1382(a) of this title, the Commissioner shall reduce any future benefits payable to the eligible individual (or to such individual and his spouse) by an amount equal to such part.

(4) The Commissioner of Social Security may provide by regulations that whenever an amount

set aside to meet burial and related expenses is excluded under paragraph (1) in determining the resources of an individual, any interest earned or accrued on such amount (and left to accumulate), and any appreciation in the value of prepaid burial arrangements for which such amount was set aside, shall also be excluded (to such extent and subject to such conditions or limitations as such regulations may prescribe) in determining the resources (and the income) of such individual.

(Aug. 14, 1935, ch. 531, title XVI, § 1613, as added Oct. 30, 1972, Pub. L. 92–603, title III, § 301, 86 Stat. 1470; amended Oct. 20, 1976, Pub. L. 94–569, § 5, 90 Stat. 2700; Nov. 12, 1977, Pub. L. 95–171, § 9(a), 91 Stat. 1355; Dec. 28, 1980, Pub. L. 96–611, § 5(a), 94 Stat. 3567; Sept. 3, 1982, Pub. L. 97–248, title I, § 185(a), (b), 96 Stat. 406; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2614, 2663(g)(5), 98 Stat. 1132, 1168; Dec. 22, 1987, Pub. L. 100–203, title IX, §§ 9103(a), 9104(a), 9105(a), 9114(a), 101 Stat. 1330–301, 1330–304; July 1, 1988, Pub. L. 100–360, title III, § 303(c)(1), 102 Stat. 762; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8103(b), 102 Stat. 3795; Dec. 19, 1989, Pub. L. 101–239, title VIII, §§ 8013(b), 8014(a), 103 Stat. 2465; Nov. 5, 1990, Pub. L. 101–508, title V, §§ 5031(b), 5035(b), title XI, § 11115(b)(2), 104 Stat. 1388–224, 1388–225, 1388–414; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title III, § 321(h)(2), 108 Stat. 1478, 1544.)

References in Text

The Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, referred to in subsec. (a)(10), is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, as amended. Title II of the Act enacted subchapter II (§ 4621 et seq.) of chapter 61 of this title, amended sections 1415, 2473, and 3307 of this title and section 1606 of former Title 49, Transportation, repealed sections 1465 and 3074 of this title, section 2680 of Title 10, Armed Forces, sections 501 to 512 of Title 23, Highways, sections 1231 to 1234 of Title 43, Public Lands, and enacted provisions set out as notes under sections 4601 and 4621 of this title and under sections 501 to 512 of Title 23. For complete classification of title II to the Code, see Tables.

The Internal Revenue Code of 1986, referred to in subsec. (a)(11), is classified generally to Title 26, Internal Revenue Code.

Amendments

1994—Subsec. (a)(2) to (4), (6). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(9) to (11). Pub. L. 103–296, § 321(h)(2), struck out ''and'' at end of par. (9), substituted ''; and'' for period at end of par. (10) relating to relocation assistance, and redesignated par. (10) relating to refunds of Federal income taxes as (11).

Subsecs. (b) to (d). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner shall'' for ''he shall'' in subsec. (d)(3).

1990—Subsec. (a)(9). Pub. L. 101–508, § 5031(b), added par. (9).

Subsec. (a)(10). Pub. L. 101–508, § 11115(b)(2), added par. (10) relating to refunds of Federal income taxes.

Pub. L. 101–508, § 5053(b), added par. (10) relating to relocation assistance.

1989—Subsec. (a)(2)(B). Pub. L. 101–239, § 8013(b), inserted ''or agreement (including any interest accumulated thereon) representing the purchase of a burial space''.

Subsec. (a)(3). Pub. L. 101–239, § 8014(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''other property which, as determined in accordance with and subject to limitations prescribed by the Secretary, is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion;''.

1988—Subsec. (a)(8). Pub. L. 100–647 added par. (8).

Subsec. (c). Pub. L. 100–360 substituted ''Notification of medicaid policy restricting eligibility of institutionalized individuals for benefits based on disposal of resources for less than fair market value'' for ''Disposal of resources for less than fair market value'' in heading and amended text generally, substituting pars. (1) and (2) for former pars. (1) to (4).

1987—Subsec. (a)(7). Pub. L. 100–203, § 9114(a), inserted ''(or to the first 9 months following such month with respect to any amount so received during the period beginning October 1, 1987, and ending September 30, 1989)'' after ''such amount is received''.

Subsec. (b). Pub. L. 100–203, § 9103, designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1). Pub. L. 100–203, § 9104(a)(1), inserted '', and subject to paragraph (4) of this subsection'' after ''subsection (a) of this section''.

Subsec. (c)(4). Pub. L. 100–203, § 9104(a)(2), added par. (4).

Subsec. (d)(1). Pub. L. 100–203, § 9105(a)(1), struck out ''if the inclusion of any portion of such amount or amounts would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1382(a) of this title'' after ''individual or spouse''.

Subsec. (d)(3). Pub. L. 100–203, § 9105(a)(2), substituted ''aside in cases where the inclusion of any portion of the amount would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1382(a) of this title'' for ''aside''.

1984—Subsec. (a)(7). Pub. L. 98–369, § 2614, added par. (7).

Subsec. (c). Pub. L. 98–369, § 2663(g)(5), amended heading.

1982—Subsec. (a)(2). Pub. L. 97–248, § 185(a), redesignated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d). Pub. L. 97–248, § 185(b), added subsec. (d).

1980—Subsec. (c). Pub. L. 96–611 added subsec. (c).

1977—Subsec. (a)(6). Pub. L. 95–171 added par. (6).

1976—Subsec. (a)(1). Pub. L. 94–569 struck out '', to the extent that its value does not exceed such amount as the Secretary determines to be reasonable'' after ''the home (including the land that appertains thereto)''.

Effective Date of 1994 Amendment

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 321(h)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [amending this section and section 1383 of this title] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].''

Effective Date of 1990 Amendment

Amendment by section 5031(b) of Pub. L. 101–508 applicable with respect to benefits for months beginning on or after the first day of the 6th calendar month following November 1990, see section 5031(d) of Pub. L. 101–508, set out as a note under section 1382a of this title.

Amendment by section 5035(b) of Pub. L. 101–508 applicable with respect to benefits for calendar months beginning on or after the first day of the 6th calendar month following November 1990, see section 5035(c) of Pub. L. 101–508, as amended, set out as a note under section 1382a of this title.

Amendment by section 11115(b)(2) of Pub. L. 101–508 applicable to determinations of income or resources

made for any period after Dec. 31, 1990, see section 11115(e) of Pub. L. 101–508, set out as a note under section 602 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 8013(b) of Pub. L. 101–239 effective on 1st day of 4th month beginning after Dec. 19, 1989, see section 8013(c) of Pub. L. 101–239, set out as a note under section 1382a of this title.

Section 8014(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the 1st day of the 5th calendar month beginning after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 effective as though included in section 162 of Housing and Community Development Act of 1987, Pub. L. 100–242, at the time of its enactment, on Feb. 5, 1988, see section 8103(c) of Pub. L. 100–647, set out as a note under section 1382a of this title.

Amendment by Pub. L. 100–360 applicable to transfers occurring on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, see section 303(g)(3) of Pub. L. 100–360, set out as a note under section 1396r–5 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9103(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

Section 9104(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

Section 9105(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

Section 9114(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective January 1, 1988.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2614 of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 602 of this title.

Amendment by section 2663(g)(5) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 185(c) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall take effect on the first day of the second month after the month in which this Act is enacted [September 1982].''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 5(c) of Pub. L. 96–611 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to applications for benefits under title XVI of the Social Security Act [this subchapter] filed on or after the first day of the first month which begins at least 60 days after the date of enactment of this Act [Dec. 28, 1980].''

EFFECTIVE DATE OF 1977 AMENDMENT

Section 9(b) of Pub. L. 95–171 provided that: ''The amendment made by this section [amending this section] shall be effective July 1, 1976, with respect to catastrophes which occurred on or after June 1, 1976, and before December 31, 1976. With respect to catastrophes which occurred on or after December 1, 1976, the amendment made by this section shall be effective the first day of the calendar quarter following enactment of this Act [Nov. 12, 1977].''

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1382, 1382a, 1382j, 1396a, 1396d, 1396p, 1396r–5, 1437a of this title.

§ 1382c. Definitions

(a)(1) For purposes of this subchapter, the term ''aged, blind, or disabled individual'' means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B)(i) is a resident of the United States, and is either (I) a citizen or (II) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 1182(d)(5) of title 8), or

(ii) is a child who is a citizen of the United States, who is living with a parent of the child who is a member of the Armed Forces of the United States assigned to permanent duty ashore outside the United States, and who, for the month before the parent reported for such assignment, received a benefit under this subchapter.

(2) An individual shall be considered to be blind for purposes of this subchapter if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this subchapter if he is blind as defined under a State plan approved under subchapter X or XVI of this chapter as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) An individual shall be considered to be disabled for purposes of this subchapter if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be ex-

pected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (or, in the case of an individual under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity).

(B) For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), ''work which exists in the national economy'' means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(C) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(D) The Commissioner of Social Security shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Commissioner of Social Security in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Commissioner of Social Security may prescribe. Notwithstanding the provisions of subparagraph (B), an individual whose services or earnings meet such criteria shall be found not to be disabled. The Commissioner of Social Security shall make determinations under this subchapter with respect to substantial gainful activity, without regard to the legality of the activity.

(E) Notwithstanding the provisions of subparagraphs (A) through (D), an individual shall also be considered to be disabled for purposes of this subchapter if he is permanently and totally disabled as defined under a State plan approved under subchapter XIV or XVI of this chapter as in effect for October 1972 and received aid under such plan (on the basis of disability) for December 1973 (and for at least one month prior to July 1973), so long as he is continuously disabled as so defined.

(F) In determining whether an individual's physical or mental impairment or impairments are of a sufficient medical severity that such impairment or impairments could be the basis of eligibility under this section, the Commissioner of Social Security shall consider the combined effect of all of the individual's impairments without regard to whether any such impairment, if considered separately, would be of such severity. If the Commissioner of Social Security does find a medically severe combination of impairments, the combined impact of the impairments shall be considered throughout the disability determination process.

(G) In making determinations with respect to disability under this subchapter, the provisions of sections 421(h), 421(k), and 423(d)(5) of this title shall apply in the same manner as they apply to determinations of disability under subchapter II of this chapter.

(H) In making any determination under this subchapter with respect to the disability of an individual who has not attained the age of 18 years and to whom section 421(h) of this title does not apply, the Commissioner of Social Security shall make reasonable efforts to ensure that a qualified pediatrician or other individual who specializes in a field of medicine appropriate to the disability of the individual (as determined by the Commissioner of Social Security) evaluates the case of such individual.

(4) A recipient of benefits based on disability under this subchapter may be determined not to be entitled to such benefits on the basis of a finding that the physical or mental impairment on the basis of which such benefits are provided has ceased, does not exist, or is not disabling only if such finding is supported by—

(A) substantial evidence which demonstrates that—

(i) there has been any medical improvement in the individual's impairment or combination of impairments (other than medical improvement which is not related to the individual's ability to work), and

(ii) the individual is now able to engage in substantial gainful activity; or

(B) substantial evidence (except in the case of an individual eligible to receive benefits under section 1382h of this title) which—

(i) consists of new medical evidence and a new assessment of the individual's residual functional capacity, and demonstrates that—

(I) although the individual has not improved medically, he or she is nonetheless a beneficiary of advances in medical or vocational therapy or technology (related to the individual's ability to work), and

(II) the individual is now able to engage in substantial gainful activity, or

(ii) demonstrates that—

(I) although the individual has not improved medically, he or she has undergone vocational therapy (related to the individual's ability to work), and

(II) the individual is now able to engage in substantial gainful activity; or

(C) substantial evidence which demonstrates that, as determined on the basis of new or improved diagnostic techniques or evaluations, the individual's impairment or combination of impairments is not as disabling as it was considered to be at the time of the most recent prior decision that he or she was under a disability or continued to be under a disability, and that therefore the individual is able to engage in substantial gainful activity; or

(D) substantial evidence (which may be evidence on the record at the time any prior determination of the entitlement to benefits based on disability was made, or newly obtained evidence which relates to that determination) which demonstrates that a prior determination was in error.

Nothing in this paragraph shall be construed to require a determination that an individual receiving benefits based on disability under this subchapter is entitled to such benefits if the prior determination was fraudulently obtained or if the individual is engaged in substantial gainful activity, cannot be located, or fails, without good cause, to cooperate in a review of his or her entitlement or to follow prescribed treatment which would be expected to restore his or her ability to engage in substantial gainful activity. Any determination under this paragraph shall be made on the basis of all the evidence available in the individual's case file, including new evidence concerning the individual's prior or current condition which is presented by the individual or secured by the Commissioner of Social Security. Any determination made under this paragraph shall be made on the basis of the weight of the evidence and on a neutral basis with regard to the individual's condition, without any initial inference as to the presence or absence of disability being drawn from the fact that the individual has previously been determined to be disabled.

(b) For purposes of this subchapter, the term ''eligible spouse'' means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual, and who, in a month, is living with such aged, blind, or disabled individual on the first day of the month or, in any case in which either spouse files an application for benefits or requests restoration of eligibility under this subchapter during the month, at the time the application or request is filed. If two aged, blind, or disabled individuals are husband and wife as described in the preceding sentence, only one of them may be an ''eligible individual'' within the meaning of section 1382(a) of this title.

(c) For purposes of this subchapter, the term ''child'' means an individual who is neither married nor (as determined by the Commissioner of Social Security) the head of a household, and who is (1) under the age of eighteen, or (2) under the age of twenty-two and (as determined by the Commissioner of Social Security) a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment.

(d) In determining whether two individuals are husband and wife for purposes of this subchapter, appropriate State law shall be applied; except that—

(1) if a man and woman have been determined to be husband and wife under section 416(h)(1) of this title for purposes of subchapter II of this chapter they shall be considered (from and after the date of such determination or the date of their application for benefits under this subchapter, whichever is later) to be husband and wife for purposes of this subchapter, or

(2) if a man and woman are found to be holding themselves out to the community in which they reside as husband and wife, they shall be so considered for purposes of this subchapter notwithstanding any other provision of this section.

(e) For purposes of this subchapter, the term ''United States'', when used in a geographical sense, means the 50 States and the District of Columbia.

(f)(1) For purposes of determining eligibility for and the amount of benefits for any individual who is married and whose spouse is living with him in the same household but is not an eligible spouse, such individual's income and resources shall be deemed to include any income and resources of such spouse, whether or not available to such individual, except to the extent determined by the Commissioner of Social Security to be inequitable under the circumstances.

(2)(A) For purposes of determining eligibility for and the amount of benefits for any individual who is a child under age 18, such individual's income and resources shall be deemed to include any income and resources of a parent of such individual (or the spouse of such a parent) who is living in the same household as such individual, whether or not available to such individual, except to the extent determined by the Commissioner of Social Security to be inequitable under the circumstances.

(B) Subparagraph (A) shall not apply in the case of any child who has not attained the age of 18 years who—

(i) is disabled;

(ii) received benefits under this subchapter, pursuant to section 1382(e)(1)(B) of this title, while in an institution described in section 1382(e)(1)(B) of this title;

(iii) is eligible for medical assistance under a State home care plan approved by the Secretary under the provisions of section 1396n(c) of this title relating to waivers, or authorized under section 1396a(e)(3) of this title; and

(iv) but for this subparagraph, would not be eligible for benefits under this subchapter.

(3) For purposes of determining eligibility for and the amount of benefits for any individual who is an alien, such individual's income and resources shall be deemed to include the income and resources of his sponsor and such sponsor's spouse (if such alien has a sponsor) as provided in section 1382j of this title. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.

(4) For purposes of paragraphs (1) and (2), a spouse or parent (or spouse of such a parent) who is absent from the household in which the individual lives due solely to a duty assignment as a member of the Armed Forces on active duty

shall, in the absence of evidence to the contrary, be deemed to be living in the same household as the individual.

(Aug. 14, 1935, ch. 531, title XVI, § 1614, as added Oct. 30, 1972, Pub. L. 92–603, title III, § 301, 86 Stat. 1471; amended Dec. 31, 1973, Pub. L. 93–233, § 9, 87 Stat. 957; June 9, 1980, Pub. L. 96–265, title II, § 203(a), title III, §§ 302(a)(2), 303(c)(1), title V, § 504(a), 94 Stat. 449, 450, 453, 471; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(g)(6), (7), 98 Stat. 1168, 1169; Oct. 9, 1984, Pub. L. 98–460, §§ 2(c), 3(a)(2), 4(b), 8(b), 10(b), 98 Stat. 1796, 1799, 1800, 1804, 1805; Nov. 10, 1986, Pub. L. 99–643, § 4(d)(2), (3)(A), 100 Stat. 3577; Dec. 19, 1989, Pub. L. 101–239, title VIII, §§ 8009(b), 8010(a), 8012(a), 103 Stat. 2463, 2464; Nov. 5, 1990, Pub. L. 101–508, title V, § 5036(a), 104 Stat. 1388–225; Nov. 29, 1990, Pub. L. 101–649, title I, § 162(e)(5), 104 Stat. 5011; Aug. 10, 1993, Pub. L. 103–66, title XIII, §§ 13733(a), 13734(a), 107 Stat. 662; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title II, § 201(b)(4)(A), 108 Stat. 1478, 1505; Oct. 31, 1994, Pub. L. 103–432, title II, § 221(a), 108 Stat. 4462.)

AMENDMENTS

1994—Subsec. (a)(3)(A). Pub. L. 103–432, § 221(a)(1), substituted ''an individual'' for ''a child'' before ''under the age of 18''.

Subsec. (a)(3)(D). Pub. L. 103–296, § 201(b)(4)(A), inserted at end ''The Secretary shall make determinations under this subchapter with respect to substantial gainful activity, without regard to the legality of the activity.''

Pub. L. 103–296, § 107(a)(4), in subpar. (D) as amended by Pub. L. 103–296, § 201(b)(4)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(3)(F). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (a)(3)(H). Pub. L. 103–432, § 221(a), substituted ''an individual'' for ''a child'', ''the individual'' for ''the child'', and ''such individual'' for ''such child''.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsecs. (a)(4), (c), (f)(1), (2)(A). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1993—Subsec. (a)(1)(B)(ii). Pub. L. 103–66, § 13734(a), substituted ''and who, for the month before the parent reported for such assignment, received a benefit under this subchapter'' for ''the District of Columbia, Puerto Rico, and the territories and possessions of the United States, and who, during the month before the parent reported for such assignment, was receiving benefits under this subchapter''.

Subsec. (f)(4). Pub. L. 103–66, § 13733(a), added par. (4).

1990—Subsec. (a)(1)(B)(i). Pub. L. 101–649 struck out ''section 1153(a)(7) or'' after ''the provisions of''.

Subsec. (a)(3)(H). Pub. L. 101–508 added subpar. (H).

1989—Subsec. (a)(1)(B). Pub. L. 101–239, § 8009(b), designated existing provisions as cl. (i), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, substituted '', or'' for period at end, and added cl. (ii).

Subsec. (b). Pub. L. 101–239, § 8012(a), amended first sentence generally. Prior to amendment, first sentence read as follows: ''For purposes of this subchapter, the term 'eligible spouse' means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who has not been living apart from such other aged, blind, or disabled individual for more than six months.''

Subsec. (f)(2). Pub. L. 101–239, § 8010(a), designated existing provisions as subpar. (A) and added subpar. (B).

1986—Subsec. (a)(3)(D). Pub. L. 99–643, § 4(d)(2)(A), struck out '', except for purposes of subparagraph (F) or paragraph (4),'' after ''such criteria''.

Subsec. (a)(3)(F) to (H). Pub. L. 99–643, § 4(d)(2)(B), redesignated subpars. (G) and (H) as (F) and (G), respectively, and struck out former subpar. (F) which read as follows: ''For purposes of this subchapter, an individual whose trial work period has ended by application of paragraph (4)(D)(i) shall, subject to section 1382(e)(4) of this title, nonetheless be considered (except for purposes of section 1383(a)(5) of this title) to be disabled through the end of the month preceding the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the earlier of (i) the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (ii) the first month, after the period of 15 consecutive months following the end of such period of trial work, in which such individual engages in or is determined to be able to engage in substantial gainful activity.''

Subsec. (a)(4), (5). Pub. L. 99–643, § 4(d)(3)(A), redesignated par. (5) as (4) and struck out former par. (4) which read as follows:

''(A) For purposes of this subchapter, any services rendered during a period of trial work (as defined in subparagraph (B)) by an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection) shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. As used in this paragraph, the term 'services' means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.

''(B) The term 'period of trial work', with respect to an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection), means a period of months beginning and ending as provided in subparagraphs (C) and (D).

''(C) A period of trial work for any individual shall begin with the month in which he becomes eligible for benefits under this subchapter on the basis of his disability; but no such period may begin for an individual who is eligible for benefits under this subchapter on the basis of a disability if he has had a previous period of trial work while eligible for benefits on the basis of the same disability.

''(D) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

''(i) the ninth month, beginning on or after the first day of such period, in which the individual renders services (whether or not such nine months are consecutive); or

''(ii) the month in which his disability (as determined under paragraph (3) of this subsection) ceases (as determined after the application of subparagraph (A) of this paragraph).''

1984—Subsec. (a)(3)(E). Pub. L. 98–369, § 2663(g)(6), realigned margin of subpar. (E).

Subsec. (a)(3)(G). Pub. L. 98–460, § 4(b), added subpar. (G).

Subsec. (a)(3)(H). Pub. L. 98–460, § 8(b), added subpar. (H).

Pub. L. 98–460, § 3(a)(2), inserted reference to section 423(d)(5) of this title.

Pub. L. 98–460, § 10(b), inserted reference to section 421(k) of this title.

Subsec. (a)(5). Pub. L. 98–460, § 2(c), added par. (5).

Subsec. (d)(1). Pub. L. 98–369, § 2663(g)(7), substituted ''man and woman'' for ''man and women''.

1980—Subsec. (a)(3)(D). Pub. L. 96–265, § 302(a)(2), inserted provisions relating to extraordinary work expenses due to severe disability.

Pub. L. 96–265, § 303(c)(1)(B), substituted reference to subparagraph (F) or paragraph (4) for reference to paragraph (4).

Subsec. (a)(3)(F). Pub. L. 96–265, § 303(c)(1)(A), added subpar. (F).

Subsec. (f)(2). Pub. L. 96–265, §203(a), substituted ''under age 18'' for ''under age 21''.

Subsec. (f)(3). Pub. L. 96–265, §504(a), added par. (3).

1973—Subsec. (a)(3)(A). Pub. L. 93–233, §9(1), struck out last sentence defining a disabled individual as one permanently and totally disabled as defined under a State plan approved under subchapter XIV or XVI of this chapter as in effect for 1972 and receiving aid under such plan (on the basis of disability for December 1973, so long as the individual is continuously disabled as so defined, which provisions were covered in subsec. (a)(3)(E) of this section.

Subsec. (a)(3)(E). Pub. L. 93–233, §9(2), incorporated provisions of last sentence of subpar. (A) in provisions designated as subpar. (E) and inserted introductory text ''Notwithstanding the provisions of subparagraphs (A) through (D)'' and parenthetical phrase ''(and for at least one month prior to July 1973)'' after ''December 1973''.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 221(b) of Pub. L. 103–432 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to determinations made on or after the date of the enactment of this Act [Oct. 31, 1994].''

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(b)(4)(B) of Pub. L. 103–296 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13733(a) of Pub. L. 103–66 effective on first day of second month that begins after Aug. 10, 1993, see section 13733(c) of Pub. L. 103–66, set out as a note under section 1382a of this title.

Section 13734(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the 1st day of the 3rd month that begins after the date of the enactment of this Act [Aug. 10, 1993].''

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by Pub. L. 101–649 effective Oct. 1, 1991, and applicable beginning with fiscal year 1992, see section 161(a) of Pub. L. 101–649, set out as a note under section 1101 of Title 8, Aliens and Nationality.

Section 5036(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to determinations made 6 or more months after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 8009(b) of Pub. L. 101–239 applicable with respect to benefits for months after March 1990, see section 8009(c) of Pub. L. 101–239, set out as a note under section 1382 of this title.

Amendment by section 8010(a) of Pub. L. 101–239 effective on 1st day of 6th calendar month beginning after Dec. 19, 1989, see section 8010(c) of Pub. L. 101–239, set out as a note under section 1382 of this title.

Section 8012(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on October 1, 1990.''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 2(c) of Pub. L. 98–460 applicable to determinations made by the Secretary on or after Oct. 9, 1984, with certain enumerated exceptions and qualifications, see section 2(d) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 3(a)(2) of Pub. L. 98–460 applicable to determinations made prior to Jan. 1, 1987, see section 3(a)(3) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 4(b) of Pub. L. 98–460 applicable with respect to determinations made on or after the first day of the first month beginning after 30 days after Oct. 9, 1984, see section 4(c) of Pub. L. 98–460, set out as a note under section 423 of this title.

Amendment by section 8(b) of Pub. L. 98–460 applicable to determinations made after 60 days after Oct. 9, 1984, see section 8(c) of Pub. L. 98–460, set out as a note under section 421 of this title.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 203(b) of Pub. L. 96–265 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1980; except that the amendment made by such subsection shall not apply, in the case of any child who, in September 1980, was 18 or over and received a supplemental security income benefit for such month, during any period for which such benefit would be greater without the application of such amendment.''

Amendment by section 302(a)(2) of Pub. L. 96–265 applicable with respect to expenses incurred on or after the first day of the sixth month which begins after June 9, 1980, see section 302(c) of Pub. L. 96–265, set out as a note under section 423 of this title.

Amendment by section 303(c)(1) of Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, and applicable with respect to any individual whose disability has not been determined to have ceased prior to such first day, see section 303(d) of Pub. L. 96–265, set out as a note under section 402 of this title.

Amendment by section 504(a) of Pub. L. 96–265 effective with respect to individuals applying for supplemental security income benefits under this subchapter for the first time after Sept. 30, 1980, see section 504(c) of Pub. L. 96–265, set out as an Effective Date note under section 1382j of this title.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

REGULATIONS

For provisions requiring Secretary of Health and Human Services to prescribe regulations necessary to implement amendment to this section [adding subsec. (a)(5)] by section 2(c) of Pub. L. 98–460 not later than 180 days after Oct. 9, 1984, see section 2(g) of Pub. L. 98–460, set out as a note under section 423 of this title.

RETROACTIVE BENEFITS

For provisions relating to entitlement to retroactive benefits under section 2 of Pub. L. 98–460, which added subsec. (a)(5) of this section, see section 2(f) of Pub. L. 98–460, set out as a note under section 423 of this title.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Vir-

gin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1382, 1382j, 1383, 1383b, 1396a, 1396d, 1396p, 6862, 8624 of this title; title 8 section 1255a.

§ 1382d. Rehabilitation services for blind and disabled individuals

(a) Referral by Commissioner of eligible individuals to appropriate State agency; review by Commissioner of individual's blindness or disability and need for services

In the case of any blind or disabled individual who—

(1) has not attained age 65, and

(2) is receiving benefits (or with respect to whom benefits are paid) under this subchapter,

the Commissioner of Social Security shall make provision for referral of such individual to the appropriate State agency administering the State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.], or, in the case of any such individual who has not attained age 16, to the State agency administering the State program under subchapter V of this chapter, and (except for individuals who have not attained age 16 and except in such other cases as the Commissioner may determine) for a review not less often than quarterly of such individual's blindness or disability and his need for and utilization of the services made available to him under such plan.

(b) Repealed. Pub. L. 97–35, title XXI, § 2193(c)(8)(B), Aug. 13, 1981, 95 Stat. 828

(c) Refusal by referred individuals to accept services

Every individual age 16 or over with respect to whom the Commissioner of Social Security is required to make provision for referral under subsection (a) of this section shall accept such services as are made available to him under the State plan for vocational and rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.]; and no such individual shall be an eligible individual or eligible spouse for purposes of this subchapter if he refuses without good cause to accept services for which he is referred under subsection (a) of this section.

(d) Reimbursement by Commissioner to State agency of costs of providing services to referred individuals

The Commissioner of Social Security is authorized to reimburse the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973 [29 U.S.C. 720 et seq.] for the costs incurred under such plan in the provision of rehabilitation services to individuals who are referred for such services pursuant to subsection (a) of this section (1) in cases where the furnishing of such services results in the performance by such individuals of substantial gainful activity for a continuous period of nine months, (2) in cases where such individuals receive benefits as a result of section 1383(a)(6) of this title (except that no reimbursement under this subsection shall be made for services furnished to any individual receiving such benefits for any period after the close of such individual's ninth consecutive month of substantial gainful activity or the close of the month with which his or her entitlement to such benefits ceases, whichever first occurs), and (3) in cases where such individuals, without good cause, refuse to continue to accept vocational rehabilitation services or fail to cooperate in such a manner as to preclude their successful rehabilitation. The determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity, the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation, and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria determined by the Commissioner in the same manner as under section 422(d)(1) of this title.

(e) Reimbursement for vocational rehabilitation services furnished during certain months of nonpayment of insurance benefits

The Commissioner of Social Security may reimburse the State agency described in subsection (d) of this section for the costs described therein incurred in the provision of rehabilitation services—

(1) for any month for which an individual received—

(A) benefits under section 1382 or 1382h(a) of this title;

(B) assistance under section 1382h(b) of this title; or

(C) a federally administered State supplementary payment under section 1382e of this title or section 212(b) of Public Law 93–66; and

(2) for any month before the 13th consecutive month for which an individual, for a reason other than cessation of disability or blindness, was ineligible for—

(A) benefits under section 1382 or 1382h(a) of this title;

(B) assistance under section 1382h(b) of this title; or

(C) a federally administered State supplementary payment under section 1382e of this title or section 212(b) of Public Law 93–66.

(Aug. 14, 1935, ch. 531, title XVI, § 1615, as added Oct. 30, 1972, Pub. L. 92–603, title III, § 301, 86 Stat. 1474; amended Oct. 20, 1976, Pub. L. 94–566, title V, § 501(a), 90 Stat. 2683; June 17, 1980, Pub. L. 96–272, title III, § 304, 94 Stat. 529; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2193(a)(4), (c)(8), title XXIII, § 2344, 95 Stat. 827, 828, 867; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(g)(8), 98 Stat. 1169; Oct. 9, 1984, Pub. L. 98–460, § 11(b), 98 Stat. 1806; Nov. 5, 1990, Pub. L. 101–508, title V, § 5037(a), 104 Stat. 1388–226; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsecs. (a), (c), and (d), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended. Title I of the Rehabilitation Act of 1973 is classified generally to subchapter I (§ 720 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Section 212(b) of Public Law 93–66, referred to in subsec. (e)(1)(C), (2)(C), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296 in closing provisions substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner may'' for ''he may''.

Subsec. (c). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (d). Pub. L. 103–296 substituted ''The Commissioner of Social Security is'' for ''The Secretary is''.

Pub. L. 103–296, which directed the amendment of this subchapter by substituting ''the Commissioner'' for ''him'' where such word referred to the Secretary of Health and Human Services, was executed after ''determined by'' by substituting ''the Commissioner'' for ''him'' where referring to the Commissioner of Social Security, to reflect the probable intent of Congress.

Subsec. (e). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions.

1990—Subsec. (e). Pub. L. 101–508 added subsec. (e).

1984—Subsecs. (a), (c). Pub. L. 98–369, § 2663(g)(8), substituted ''title I of the Rehabilitation Act of 1973'' for ''the Vocational Rehabilitation Act''.

Subsec. (d). Pub. L. 98–460, § 11(b), designated existing provisions of first sentence as cl. (1), added cls. (2) and (3), and inserted requirement that the determination that the vocational rehabilitation services contributed to the successful return of an individual to substantial gainful activity and the determination that an individual, without good cause, refused to continue to accept vocational rehabilitation services or failed to cooperate in such a manner as to preclude successful rehabilitation be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 422(d)(1) of this title.

Pub. L. 98–369, § 2663(g)(8), substituted ''title I of the Rehabilitation Act of 1973'' for ''the Vocational Rehabilitation Act''.

1981—Subsec. (a). Pub. L. 97–35, § 2193(c)(8)(A), substituted ''State agency administering the State program under subchapter V of this chapter (except for individuals who have not attained age 16 and except in such other cases'' for ''appropriate State agency administering the State plan under subsection (b) of this section, and (except in such cases''.

Subsec. (b). Pub. L. 97–35, § 2193(c)(8)(B), struck out subsec. (b) which provided criteria for approval of State plans.

Subsec. (d). Pub. L. 97–35, § 2344, substituted ''is authorized to reimburse'' for ''is authorized to pay to'', ''for the costs incurred'' for ''the costs incurred'', and ''individuals who are referred for such services pursuant to subsection (a) of this section if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months'' for ''individuals referred for such services pursuant to subsection (a) of this section'' and inserted provision that determination of the amount to be reimbursed be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 422(d)(1) of this title.

Subsec. (e). Pub. L. 97–35, § 2193(c)(8)(B), struck out subsec. (e) which provided for payment by the Secretary to a State agency charged with administering a State plan under subsec. (b), of the costs incurred each fiscal year from Sept. 30, 1976, to Oct. 1, 1982, in carrying out such State plan.

Subsec. (e)(1). Pub. L. 97–35, § 2193(a)(4)(A), inserted ''and subject to section 2194(b)(3) of the Maternal and Child Health Services Block Grant Act''.

Subsec. (e)(3). Pub. L. 97–35, § 2193(a)(4)(B), substituted ''$24,070,000'' for ''$30,000,000''.

1980—Subsec. (e). Pub. L. 96–272 corrected the error under which subsec. (e) had been added as (c) by Pub. L. 94–566 and, in subsec. (e)(1) as so designated, substituted ''October 1, 1982'' for ''October 1, 1979''.

1976—Subsec. (a). Pub. L. 94–566 inserted ''or, in the case of any such individual who has not attained age 16, to the appropriate State agency administering the State plan under subsection (b) of this section,'' after ''Vocational Rehabilitation Act,'' and substituted ''need for and utilization of the services'' for ''need for and utilization of the rehabilitation services''.

Subsec. (b). Pub. L. 94–566 added subsec. (b). Former subsec. (b) was split up and its parts were redistributed into subsecs. (c) and (d), respectively, and amended.

Subsec. (c). Pub. L. 94–566 combined into subsec. (c) the existing provisions of subsec. (c) covering the refusal by referred individuals to accept services and added thereto a part of former subsec. (b) covering the required acceptance of vocational and rehabilitation services by the referred individual, and in that provision substituted ''Every individual age 16 or over'' for ''Every individual''.

Subsec. (d). Pub. L. 94–566 redesignated as subsec. (d) the part of former subsec. (b) covering the payment by the Secretary to the State agency administering a State plan and in the provisions so redesignated substituted ''administration of a State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act'' for ''administration of such State plan''.

Subsec. (e). Pub. L. 94–566 added subsec. (e). See 1980 Amendment note above.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5037(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990] and shall apply to claims for reimbursement pending on or after such date.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after November 1984, see section 11(c) of Pub. L. 98–460, set out as a note under section 422 of this title.

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE AND TERMINATION DATES OF 1981 AMENDMENT

Section 2193(a)(4)(B) of Pub. L. 97–35 provided that the amendment made by that section is effective for fiscal year 1982.

For effective date, savings, and transitional provisions relating to amendments by section 2193(a)(4)(A) and (c)(8) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

Section 2344 of Pub. L. 97–35 provided that the amendment made by that section is effective Oct. 1, 1981.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

PUBLICATION OF CRITERIA

Section 501(b) of Pub. L. 94–566 directed Secretary, within 120 days after Oct. 20, 1976, to publish criteria to be employed to determine disability (as defined in subsec. (a)(3) of this section) in the case of persons who have not attained the age of 18.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 701 of this title; title 20 section 3441; title 29 section 762a.

§ 1382e. Supplementary assistance by State or subdivision to needy individuals

(a) Exclusion of cash payments in determination of income of individuals for purposes of eligibility for benefits; agreement by Commissioner and State for Commissioner to make supplementary payments on behalf of State or subdivision

Any cash payments which are made by a State (or political subdivision thereof) on a regular basis to individuals who are receiving benefits under this subchapter or who would but for their income be eligible to receive benefits under this subchapter, as assistance based on need in supplementation of such benefits (as determined by the Commissioner of Social Security), shall be excluded under section 1382a(b)(6) of this title in determining the income of such individuals for purposes of this subchapter and the Commissioner of Social Security and such State may enter into an agreement which satisfies subsection (b) of this section under which the Commissioner of Social Security will, on behalf of such State (or subdivision) make such supplementary payments to all such individuals.

(b) Agreement between Commissioner and State; contents

Any agreement between the Commissioner of Social Security and a State entered into under subsection (a) of this section shall provide—

(1) that such payments will be made (subject to subsection (c) of this section) to all individuals residing in such State (or subdivision) who are receiving benefits under this subchapter, and

(2) such other rules with respect to eligibility for or amount of the supplementary payments, and such procedural or other general administrative provisions, as the Commissioner of Social Security finds necessary (subject to subsection (c) of this section) to achieve efficient and effective administration of both the program which the Commissioner conducts under this subchapter and the optional State supplementation.

At the option of the State (but subject to paragraph (2) of this subsection), the agreement between the Commissioner of Social Security and such State entered into under subsection (a) of this section shall be modified to provide that the Commissioner of Social Security will make supplementary payments, on and after an effective date to be specified in the agreement as so modified, to individuals receiving benefits determined under section 1382(e)(1)(B) of this title.

(c) Residence requirement by State or subdivision for supplementary payments; disregarding amounts of certain income by State or subdivision in determining eligibility for supplementary payments

(1) Any State (or political subdivision) making supplementary payments described in subsection (a) of this section may at its option impose as a condition of eligibility for such payments, and include in the State's agreement with the Commissioner of Social Security under such subsection, a residence requirement which excludes individuals who have resided in the State (or political subdivision) for less than a minimum period prior to application for such payments.

(2) Any State (or political subdivision), in determining the eligibility of any individual for supplementary payments described in subsection (a) of this section, may disregard amounts of earned and unearned income in addition to other amounts which it is required or permitted to disregard under this section in determining such eligibility, and shall include a provision specifying the amount of any such income that will be disregarded, if any.

(3) Any State (or political subdivision) making supplementary payments described in subsection (a) of this section shall have the option of making such payments to individuals who receive benefits under this subchapter under the provisions of section 1382h of this title, or who would be eligible to receive such benefits but for their income.

(d) Payment to Commissioner by State of amount equal to expenditures by Commissioner as supplementary payments; time and manner of payment by State; fees for Federal administration of State supplementary payments

(1) Any State which has entered into an agreement with the Commissioner of Social Security under this section which provides that the Commissioner of Social Security will, on behalf of the State (or political subdivision), make the supplementary payments to individuals who are receiving benefits under this subchapter (or who would but for their income be eligible to receive such benefits), shall, at such times and in such installments as may be agreed upon between the Commissioner of Social Security and such State, pay to the Commissioner of Social Security an amount equal to the expenditures made by the Commissioner of Social Security as such supplementary payments, plus an administration fee assessed in accordance with paragraph (2) and any additional services fee charged in accordance with paragraph (3).

(2)(A) The Commissioner of Social Security shall assess each State an administration fee in an amount equal to—

(i) the number of supplementary payments made by the Commissioner of Social Security on behalf of the State under this section for any month in a fiscal year; multiplied by

(ii) the applicable rate for the fiscal year.

(B) As used in subparagraph (A), the term ''applicable rate'' means—

(i) for fiscal year 1994, $1.67;

(ii) for fiscal year 1995, $3.33;

(iii) for fiscal year 1996, $5.00; and

(iv) for fiscal year 1997 and each succeeding fiscal year, $5.00, or such different rate as the Commissioner of Social Security determines is appropriate for the State.

(C) Upon making a determination under subparagraph (B)(iv), the Commissioner of Social Security shall promulgate the determination in regulations, which may take into account the complexity of administering the State's supplementary payment program.

(D) All fees assessed pursuant to this paragraph shall be transferred to the Commissioner of Social Security at the same time that amounts for such supplementary payments are required to be so transferred.

(3)(A) The Commissioner of Social Security may charge a State an additional services fee if, at the request of the State, the Commissioner of Social Security provides additional services beyond the level customarily provided, in the administration of State supplementary payments pursuant to this section.

(B) The additional services fee shall be in an amount that the Commissioner of Social Security determines is necessary to cover all costs (including indirect costs) incurred by the Federal Government in furnishing the additional services referred to in subparagraph (A).

(4) All administration fees and additional services fees collected pursuant to this subsection shall be deposited in the general fund of the Treasury of the United States as miscellaneous receipts.

(e) State standards; establishment; annual public review; annual certification; payments to individuals

(1) Each State shall establish or designate one or more State or local authorities which shall establish, maintain, and insure the enforcement of standards for any category of institutions, foster homes, or group living arrangements in which (as determined by the State) a significant number of recipients of supplemental security income benefits is residing or is likely to reside. Such standards shall be appropriate to the needs of such recipients and the character of the facilities involved, and shall govern such matters as admission policies, safety, sanitation, and protection of civil rights.

(2) Each State shall annually make available for public review a summary of the standards established pursuant to paragraph (1), and shall make available to any interested individual a copy of such standards, along with the procedures available in the State to insure the enforcement of such standards and a list of any waivers of such standards and any violations of such standards which have come to the attention of the authority responsible for their enforcement.

(3) Each State shall certify annually to the Commissioner of Social Security that it is in compliance with the requirements of this subsection.

(4) Payments made under this subchapter with respect to an individual shall be reduced by an amount equal to the amount of any supplementary payment (as described in subsection (a) of this section) or other payment made by a State (or political subdivision thereof) which is made for or on account of any medical or any other type of remedical care provided by an institution of the type described in paragraph (1) to such individual as a resident or an inpatient of such institution if such institution is not approved as meeting the standards described in such paragraph by the appropriate State or local authorities.

(Aug. 14, 1935, ch. 531, title XVI, §1616, as added Oct. 30, 1972, Pub. L. 92–603, title III, §301, 86 Stat. 1474; amended Dec. 31, 1973, Pub. L. 93–233, §14, 87 Stat. 965; Oct. 20, 1976, Pub. L. 94–566, title V, §505(c), (d), 90 Stat. 2687; June 9, 1980, Pub. L. 96–265, title II, §201(b)(1), 94 Stat. 446; Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2353(n), 95 Stat. 873; Apr. 7, 1986, Pub. L. 99–272, title XII, §12201(b), 100 Stat. 290; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13731(a)(1), 107 Stat. 660; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), 108 Stat. 1478.)

AMENDMENTS

1994—Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner conducts'' for ''he conducts'' in subsec. (b)(2).

1993—Subsec. (d). Pub. L. 103–66 designated existing provisions as par. (1), inserted before period at end '', plus an administration fee assessed in accordance with paragraph (2) and any additional services fee charged in accordance with paragraph (3)'', and added pars. (2) to (4).

1986—Subsec. (b). Pub. L. 99–272 inserted provision at end relating to modification of the agreement at the option of the State to provide for supplementary payments on and after an effective date specified in the agreement.

1981—Subsec. (e)(2). Pub. L. 97–35 struck out '', as a part of the services program planning procedures established pursuant to section 1397c of this title'' after ''available for public review''.

1980—Subsec. (c)(3). Pub. L. 96–265 added par. (3).

1976—Subsec. (e). Pub. L. 94–566, §505(d), added subsec. (e), effective Oct. 1, 1977. Pub. L. 94–566, §505(c), repealed former subsec. (e) which provided for reduction of supplemental security income payments to individuals provided institutional medical or other remedial care, State financed under Federal grants for medical assistance, effective Oct. 1, 1976. See Effective Date of 1976 Amendment note below.

1973—Subsec. (e). Pub. L. 93–233 added subsec. (e).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13731(b) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and provisions set out as a note under section 1382 of this title] shall apply to supplementary payments made pursuant to section 1616(a) of the Social Security Act [subsec. (a) of this section] or section 212(a) of Public Law 93–66 [set out as a note under section 1382 of

this title] for any calendar month beginning after September 30, 1993, and to services furnished after such date, regardless of whether regulations to implement such amendments have been promulgated by such date, or whether any agreement entered into under such section 1616(a) or such section 212(a) has been modified.''

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–265 effective Jan. 1, 1981, see section 201(d) of Pub. L. 96–265, as amended, set out as an Effective Date note under section 1382h of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 505(c) of Pub. L. 94–566 effective Oct. 1, 1976, see section 505(e) of Pub. L. 94–566, set out as a note under section 1382 of this title.

Section 505(d) of Pub. L. 94–566 provided that the amendment made by that section is effective Oct. 1, 1977.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

PERIOD WITHIN WHICH CALIFORNIA MAY MAKE CASH PAYMENTS IN LIEU OF FOOD STAMPS TO RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME BENEFITS

Pub. L. 95–458, § 5(b), Oct. 14, 1978, 92 Stat. 1261, provided that: ''No additional cash payment under title XVI of the Social Security Act [this subchapter] may be made pursuant to the third sentence of section 8(d) of Public Law 93–233 (as added by subsection (a) of this section) [amending a note under this section] for any month beginning before October 1, 1978, or ending after September 30, 1979.''

ELIGIBILITY OF SUPPLEMENTAL SECURITY INCOME RECIPIENTS FOR FOOD STAMPS

Section 8(c) of Pub. L. 93–233, as amended by Pub. L. 95–113, title XIII, § 1302(a)(3), Sept. 29, 1977, 91 Stat. 979, provided that: ''For purposes of section 6(g) of the Food Stamp Act of 1977 [section 2015(g) of Title 7, Agriculture] and subsections (b)(3) [set out as a note under section 612c of Title 7] and (f) [set out below] of this section, the level of State supplementary payment under section 1616(a) [subsec. (a) of this section] shall be found by the Secretary to have been specifically increased so as to include the bonus value of food stamps (1) only if, prior to October 1, 1973, the State has entered into an agreement with the Secretary or taken other positive steps which demonstrate its intention to provide supplementary payments under section 1616(a) [subsec. (a) of this section] at a level which is at least equal to the maximum level which can be determined under section 401(b)(1) of the Social Security Amendments of 1972 [set out as a note under this section] and which is such that the limitation on State fiscal liability under section 401 [set out as a note under this section] does result in a reduction in the amount which would otherwise be payable to the Secretary by the State, and (2) only with respect to such months as the State may, at its option, elect.''

[Section 1302(b) of Pub. L. 95–113 provided that the amendment of section 8(c) of Pub. L. 93–233 by section 1302(a)(3) of Pub. L. 95–113 is effective Oct. 1, 1977.]

Section 8(d) of Pub. L. 93–233, as added by Pub. L. 94–379, § 1(a), Aug. 10, 1976, 90 Stat. 1111, and amended by Pub. L. 95–458, § 5(a), Oct. 14, 1978, 92 Stat. 1260; Pub. L. 97–18, § 2, June 30, 1981, 95 Stat. 102; Pub. L. 97–35, title XXIII, § 2342(a), Aug. 13, 1981, 95 Stat. 866, provided that: ''Upon the request of a State, the Secretary shall find, for purposes of the provisions specified in subsection (c) [set out above], that the level of such State's supplementary payments of the type described in section 1616(a) of the Social Security Act [subsec. (a) of this section] has been specifically increased for any month so as to include the bonus value of food stamps (and that such State meets the applicable requirements of subsection (c)(1)) if—

''(1) the Secretary has found (under this subsection or subsection (c), as in effect in December 1980) that such State's supplementary payments in December 1980 were increased to include the bonus value of food stamps; and

''(2) such State continues without interruption to meet the requirements of section 1618 of such Act [section 1382g of this title] for each month after the month referred to in paragraph (1) and up to and including the month for which the Secretary is making the determination.''

[Section 2 of Pub. L. 97–18 provided that the amendment of section 8(d) of Pub. L. 93–233, set out above, by Pub. L. 97–18 is effective for the period July 1, 1981, to Aug. 31, 1981.]

[Section 2342(b) of Pub. L. 97–35 provided that the amendment of section 8(d) of Pub. L. 93–233, set out above, by section 2342(a) of Pub. L. 97–35 is effective July 1, 1981.]

ADJUSTED PAYMENT LEVEL; PAYMENT LEVEL MODIFICATION

Section 8(e), formerly § 8(d) of Pub. L. 93–233, as renumbered § 8(e) by Pub. L. 94–379, § 1(a), Aug. 10, 1976, 90 Stat. 1111, provided that: ''Section 401(b)(1) of the Social Security Amendments of 1972 [set out below] is amended by striking out everything after the word 'exceed' and inserting in lieu thereof: 'a payment level modification (as defined in paragraph (2) of this subsection) with respect to such plans'.''

Section 8(f), formerly § 8(e), of Pub. L. 93–233, as amended by Pub. L. 93–335, § 1(b), July 8, 1974, 88 Stat. 291; Pub. L. 94–44, § 3(b), June 28, 1975, 89 Stat. 235; Pub. L. 94–365, § 2(2), July 14, 1976, 90 Stat. 990, and renumbered § 8(f) and amended by Pub. L. 94–379, § 1(a), (b), Aug. 10, 1976, 90 Stat. 1111; Pub. L. 95–59, § 3(2), June 30, 1977, 91 Stat. 255; Pub. L. 95–113, title XIII, § 1302(a)(4), Sept. 29, 1977, 91 Stat. 979, provided that: ''The amendment made by subsection (e) [set out above] shall not be effective in any State which provides supplementary payments of the type described in section 1616(a) of the Social Security Act [subsec. (a) of this section] the level of which has been found by the Secretary to have been specifically increased so as to include the bonus value of food stamps.''

[Amendment of section 8(e) [now § 8(f)] of Pub. L. 93–233 by section 1(b) of Pub. L. 93–335, effective July 1, 1974, see section 1(c) of Pub. L. 93–335, set out as a note below.]

[Section 1(c) of Pub. L. 93–335, July 8, 1974, 88 Stat. 291, provided that amendments by section 1(a), (b) of Pub. L. 93–335 to section 8(a)(1), (2), (b)(1)–(3), and (e) of Pub. L. 93–233, Dec. 31, 1973, 87 Stat. 956, set out as notes under this section and sections 612c, 1431 and 2012 of Title 7, Agriculture, is effective as of July 1, 1974.]

[Section 3 of Pub. L. 95–59 provided that the amendment of section 8(f) of Pub. L. 93–233, set out above, by section 3(2) of Pub. L. 95–59 is effective July 1, 1977.]

[Section 1302(b) of Pub. L. 95–113 provided that the amendment of section 8(f) of Pub. L. 93–233, set out above, by section 1302(a)(4) of Pub. L. 95–113 is effective Oct. 1, 1977.]

COMMODITY DISTRIBUTION PROGRAM: INDIVIDUAL RECEIVING SUPPLEMENTAL SECURITY INCOME BENEFITS AS MEMBER OF HOUSEHOLD FOR ANY PURPOSE OF PROGRAM

Individual receiving supplemental security income benefits or payments as part of benefits or payments described in subsec. (a) of this section as member of a household for any purpose of the food distribution pro-

gram, see section 4(c) of Pub. L. 93–86, set out as a note under section 612c of Title 7, Agriculture.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

LIMITATION ON FISCAL LIABILITY OF STATES FOR PAYMENT TO SECRETARY OF SUPPLEMENTARY PAYMENTS MADE BY SECRETARY PURSUANT TO AGREEMENT

Section 401 of Pub. L. 92–603, as amended by Pub. L. 93–233, §18(h), Dec. 31, 1973, 87 Stat. 969; Pub. L. 94–566, title V, §504(a), Oct. 20, 1976, 90 Stat. 2686; Pub. L. 94–585 §2(b), Oct. 21, 1976, 90 Stat. 2902; Pub. L. 97–248, title I, §184(a), Sept. 3, 1982, 96 Stat. 406, provided that:

''(a)(1) The amount payable to the Secretary by a State for any fiscal year, other than fiscal year 1974, pursuant to its agreement or agreements under section 1616 of the Social Security Act [this section] shall not exceed the non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of the State approved under titles I, X, XIV, and XVI of the Social Security Act [subchapters I, X, XIV, and XVI of this chapter] (as defined in subsection (c) of this section), and the amount payable for fiscal year 1974 pursuant to such agreement or agreements shall not exceed one-half of the non-Federal share of such expenditures.

''(2) Paragraph (1) of this subsection shall only apply with respect to that portion of the supplementary payments made by the Secretary on behalf of the State under such agreements in any fiscal year which does not exceed in the case of any individual the difference between—

''(A) the adjusted payment level under the appropriate approved plan of such State as in effect for January 1972 (as defined in subsection (b) of this section), and

''(B) the benefits under title XVI of the Social Security Act [this subchapter] (subject to the second sentence of this paragraph), plus income not excluded under section 1612(b) of such Act [section 1382a(b) of this title] in determining such benefits, paid to such individual in such fiscal year,

and shall not apply with respect to supplementary payments to any individual who (i) is not required by section 1616 of such Act [this section] to be included in any such agreement administered by the Secretary and (ii) would have been ineligible (for reasons other than income) for payments under the appropriate approved State plan as in effect for January 1972. In determining the difference between the level specified in subparagraph (A) and the benefits and income described in subparagraph (B) there shall be excluded any part of any such benefit which results from (and would not be payable but for) any cost-of-living increase in such benefits under section 1617 of such Act [section 1382f of this title] (or any general increase enacted by law in the dollar amounts referred to in such section) becoming effective after June 30, 1977.

''(b)(1) For purposes of subsection (a), the term 'adjusted payment level under the appropriate approved plan of a State as in effect for January 1972' means the amount of the money payment which an individual with no other income would have received under the plan of such State approved under title I, X, XIV, or XVI of the Social Security Act [subchapters I, X, XIV, or XVI of this chapter], as may be appropriate, and in effect for January 1972; except that the State may, at its option, increase such payment level with respect to any such plan by an amount which does not exceed the sum of—

''(A) a payment level modification (as defined in paragraph (2) of this subsection) with respect to such plan, and

''(B) the bonus value of food stamps in such State for January 1972 (as defined in paragraph (3) of this subsection).

''(2) For purposes of paragraph (1), the term 'payment level modification' with respect to any State plan means that amount by which a State which for January 1972 made money payments under such plan to individuals with no other income which were less than 100 per centum of its standard of need could have increased such money payments without increasing (if it reduced its standard of need under such plan so that such increased money payments equaled 100 per centum of such standard of need) the non-Federal share of expenditures as aid or assistance for quarters in calendar year 1972 under the plans of such State approved under titles I, X, XIV, and XVI of the Social Security Act [subchapters I, X, XIV, and XVI of this chapter].

''(3) For purposes of paragraph (1), the term 'bonus value of food stamps in a State for January 1972' (with respect to an individual) means—

''(A) the face value of the coupon allotment which would have been provided to such an individual under the Food Stamp Act of 1964 [section 2011 et seq. of Title 7, Agriculture] for January 1972, reduced by

''(B) the charge which such an individual would have paid for such coupon allotment,

if the income of such individual, for purposes of determining the charge it would have paid for its coupon allotment, had been equal to the adjusted payment level under the State plan (including any payment level modification with respect to the plan adopted pursuant to paragraph (2) (but not including any amount under this paragraph)). The total face value of food stamps and the cost thereof in January 1972 shall be determined in accordance with rules prescribed by the Secretary of Agriculture in effect in such month.

''(c) For purposes of this section, the term 'non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of a State approved under titles I, X, XIV, and XVI of the Social Security Act' [subchapters I, X, XIV, and XVI of this chapter] means the difference between—

''(1) the total expenditures in such quarters under such plans for aid or assistance (excluding expenditures authorized under section 1119 of such Act [section 1319 of this title] for repairing the home of an individual who was receiving aid or assistance under one of such plans (as such section was in effect prior to the enactment of this Act)), and

''(2) the total of the amounts determined under sections 3, 1003, 1403, and 1603 of the Social Security Act [sections 303, 1203, 1353, and 1383 note of this title], under section 1118 of such Act [section 1318 of this title], and under section 9 of the Act of April 19, 1950 [section 639 of Title 25, Indians], for such State with respect to such expenditures in such quarters.

''(d) In addition to the amount which a State must pay to the Secretary for the fiscal year 1983 or the fiscal year 1984, as determined under subsection (a), the State shall also pay, for the fiscal year 1983, 60 percent of the further amount that would be payable but for the limit specified in subsection (a), and, for the fiscal year 1984, 80 percent of such further amount. For each fiscal year thereafter, the limit prescribed in subsection (a) shall be inapplicable and a State shall pay to the Secretary the full amount of any supplementary payments he makes on behalf of such State.''

[Amendment of section 401(a)(2) of Pub. L. 92–603, set out above, by Pub. L. 94–585 inserting parenthetical text in subpar. (B) and enacting last sentence, such amendments being identical to amendments by Pub. L. 94–566 less the words ''and before July 1, 1979'' following ''June 30, 1977'', effective with respect to benefits pay-

able for months after June 1977, see section 2(c) of Pub. L. 94–585, set out as a note under section 1382g of this title.]

[Amendment of section 401(a)(2) of Pub. L. 92–603, set out above, by Pub. L. 94–566 inserting parenthetical text in subpar. (B) and enacting last sentence effective under provisions of Pub. L. 94–566, title V, § 504(b), Oct. 20, 1976, 90 Stat. 2686, with respect to benefits payable for months after June 1977.]

[Amendment of section 401 of Pub. L. 92–603, set out above, by section 18(h) of Pub. L. 93–233 effective Jan. 1, 1974, see section 18(z–3)(1) of Pub. L. 93–233.]

[Section 184(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending section 401 of Pub. L. 92–603, set out above] shall become effective on the date of the enactment of this Act [Sept. 3, 1982].'']

TRANSITIONAL ADMINISTRATION OF PROGRAMS BY STATE PURSUANT TO AGREEMENT BETWEEN STATE AND SECRETARY

Section 402 of Pub. L. 92–603, as amended by Pub. L. 93–233, § 18(i), Dec. 31, 1973, 87 Stat. 970, provided that: ''In order for a State to be eligible for any payments pursuant to title IV, V, XVI, or XIX of the Social Security Act [subchapter IV, V, XVI, or XIX of this chapter] with respect to expenditures for the third and fourth quarters in the fiscal year ending June 30, 1974, and any quarter in the fiscal year ending June 30, 1975, and for the purpose of providing an orderly transition from State to Federal administration of the Supplemental Security Income Program, such State shall enter into an agreement with the Secretary of Health, Education, and Welfare under which the State agencies responsible for administering or for supervising the administration of the plans approved under titles I, X, XIV, and XVI of the Social Security Act [subchapters I, X, XIV, and XVI of this chapter] will, on behalf of the Secretary, administer all or such part or parts of the program established by section 301 of this Act [enacting this subchapter], during such portion of the third and fourth quarters of the fiscal year ending June 30, 1974, and any quarter of the fiscal year ending June 30, 1975, as may be provided in such agreement.''

ELECTION OF PAYMENTS UNDER COMBINED STATE PLAN RATHER THAN SEPARATE PLANS

Pub. L. 87–543, § 141(b), July 25, 1962, 76 Stat. 205, provided that: ''No payment may be made to a State under title I, X, or XIV of the Social Security Act [subchapter I, X, or XIV of this chapter] for any period for which such State receives any payments under title XVI of such Act or any period thereafter.''

OVERPAYMENT OR UNDERPAYMENT ADJUSTMENTS

Pub. L. 87–543, § 141(f), July 25, 1962, 76 Stat. 205, provided that: ''In the case of any State which has a State plan approved under title XVI of the Social Security Act [this subchapter], any overpayment or underpayment which the Secretary determines was made to such State under section 3, 1003, or 1403 of such Act [section 303, 1203, or 1353 of this title] with respect to a period before the approval of the plan under such title XVI, and with respect to which adjustment has not been already made under subsection (b) of such section 3, 1003, or 1403 [section 303(b), 1203, or 1353 of this title], shall, for purposes of section 1603(b) of such Act [section 1383(b) of this title prior to its omission on Oct. 30, 1972], be considered an overpayment or underpayment (as the case may be) made under section 1603 of such Act [section 1383 of this title as it existed prior to Oct. 30, 1972].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 426, 1310, 1320a–6, 1382, 1382d, 1382g, 1382i, 1383, 1383c, 1396a, 1396d, 3002 of this title; title 7 sections 2012, 2015; title 12 section 1715w; title 26 sections 51, 6103.

§ 1382f. Cost-of-living adjustments in benefits

(a) Increase of dollar amounts

Whenever benefit amounts under subchapter II of this chapter are increased by any percentage effective with any month as a result of a determination made under section 415(i) of this title—

(1) each of the dollar amounts in effect for such month under subsections (a)(1)(A), (a)(2)(A), (b)(1), and (b)(2) of section 1382 of this title, and subsection (a)(1)(A) of section 211 of Public Law 93–66, as specified in such subsections or as previously increased under this section, shall be increased by the amount (if any) by which—

(A) the amount which would have been in effect for such month under such subsection but for the rounding of such amount pursuant to paragraph (2), exceeds

(B) the amount in effect for such month under such subsection; and

(2) the amount obtained under paragraph (1) with respect to each subsection shall be further increased by the same percentage by which benefit amounts under subchapter II of this chapter are increased for such month, or, if greater (in any case where the increase under subchapter II of this chapter was determined on the basis of the wage increase percentage rather than the CPI increase percentage), the percentage by which benefit amounts under subchapter II of this chapter would be increased for such month if the increase had been determined on the basis of the CPI increase percentage, (and rounded, when not a multiple of $12, to the next lower multiple of $12), effective with respect to benefits for months after such month.

(b) Publication in Federal Register of new dollar amounts

The new dollar amounts to be in effect under section 1382 of this title and under section 211 of Public Law 93–66 by reason of subsection (a) of this section shall be published in the Federal Register together with, and at the same time as, the material required by section 415(i)(2)(D) of this title to be published therein by reason of the determination involved.

(c) Additional increases

Effective July 1, 1983—

(1) each of the dollar amounts in effect under subsections (a)(1)(A) and (b)(1) of section 1382 of this title, as previously increased under this section, shall be increased by $240 (and the dollar amount in effect under subsection (a)(1)(A) of section 211 of Public Law 93-66, as previously so increased, shall be increased by $120); and

(2) each of the dollar amounts in effect under subsections (a)(2)(A) and (b)(2) of section 1382 of this title, as previously increased under this section, shall be increased by $360.

(Aug. 14, 1935, ch. 531, title XVI, § 1617, as added Aug. 7, 1974, Pub. L. 93–368, § 6(b), 88 Stat. 421; amended Sept. 3, 1982, Pub. L. 97–248, title I, § 182(a), 96 Stat. 404; Apr. 20, 1983, Pub. L. 98–21, title IV, § 401, 97 Stat. 138.)

REFERENCES IN TEXT

Section 211 of Public Law 93–66, referred to in subsecs. (a)(1), (b), and (c)(1), is section 211 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 154, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

1983—Subsec. (a)(2). Pub. L. 98–21, §401(b), inserted provision that the amount obtained under par. (1) with respect to each subsection shall be further increased by the percentage by which benefit amounts under subchapter II of this chapter would be increased for such month if the increase had been determined on the basis of the CPI increase percentage, if greater, in any case where the increase under subchapter II of this chapter was determined on the basis of the wage increase percentage rather than the CPI increase percentage.

Subsec. (b). Pub. L. 98–21, §401(a)(2), substituted ''subsection (a) of this subsection'' for ''this section''.

Subsec. (c). Pub. L. 98–21, §401(a)(1), added subsec. (c).

1982—Pub. L. 97–248 redesignated existing provisions as subsec. (a), revised method of computation into pars. (1) and (2) and among other changes increased base for rounding-off from a multiple of $1.20 to a multiple of $12.00, and struck out provisions relating to publication of increased dollar amounts in the Federal Register, and added subsec. (b).

EFFECTIVE DATE OF 1982 AMENDMENT

Section 182(b) of Pub. L. 97–248 provided that: ''The amendment made by this section [amending this section] shall become effective on October 1, 1982.''

COST-OF-LIVING INCREASES; COST-OF-LIVING COMPUTATION QUARTER DETERMINATIONS

Payment of increased benefits under program covered in subchapter II of this chapter, see section 1 of Pub. L. 98–604, set out as a note under section 415 of this title.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1382, 1382g of this title.

§ 1382g. Payments to State for operation of supplementation program

(a) Eligibility; agreement with Commissioner

In order for any State which makes supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), on or after June 30, 1977, to be eligible for payments pursuant to subchapter XIX of this chapter with respect to expenditures for any calendar quarter which begins—

(1) after June 30, 1977, or, if later,

(2) after the calendar quarter in which it first makes such supplementary payments,

such State must have in effect an agreement with the Commissioner of Social Security whereby the State will—

(3) continue to make such supplementary payments, and

(4) maintain such supplementary payments at levels which are not lower than the levels of such payments in effect in December 1976, or, if no such payments were made in that month, the levels for the first subsequent month in which such payments were made.

(b) Levels of supplementary payments

(1) The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) of this section with respect to the levels of its supplementary payments for a particular month or months if the State's expenditures for such payments in the twelve-month period (within which such month or months fall) beginning on the effective date of any increase in the level of supplemental security income benefits pursuant to section 1382f of this title are not less than its expenditures for such payments in the preceding twelve-month period.

(2) For purposes of determining under paragraph (1) whether a State's expenditures for supplementary payments in the 12-month period beginning on the effective date of any increase in the level of supplemental security income benefits are not less than the State's expenditures for such payments in the preceding 12-month period, the Commissioner of Social Security, in computing the State's expenditures, shall disregard, pursuant to a 1-time election of the State, all expenditures by the State for retroactive supplementary payments that are required to be made in connection with the retroactive supplemental security income benefits referred to in section 5041 of the Omnibus Budget Reconciliation Act of 1990.

(c) Election to apply subsection (a)(4)

Any State which satisfies the requirements of this section solely by reason of subsection (b) of this section for a particular month or months in any 12-month period (described in such subsection) ending on or after June 30, 1982, may elect, with respect to any month in any subsequent 12-month period (so described), to apply subsection (a)(4) of this section as though the reference to December 1976 in such subsection were a reference to the month of December which occurred in the 12-month period immediately preceding such subsequent period.

(d) Determinations respecting any portion of period July 1, 1980, through June 30, 1981

The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) of this section with respect to the levels of its supplementary payments for any portion of the period July 1, 1980, through June 30, 1981, if the State's expenditures for such payments in that twelve-month period were not less than its expenditures for such payments for the period July 1, 1976, through June 30, 1977 (or, if the State made no supplementary payments in the period July 1, 1976, through June 30, 1977, the expenditures for the first twelve-month period extending from July 1 through June 30 in which the State made such payments).

(e) Meeting subsection (a)(4) requirements for any month after March 1983

(1) For any particular month after March 1983, a State which is not treated as meeting the re-

quirements imposed by paragraph (4) of subsection (a) of this section by reason of subsection (b) of this section shall be treated as meeting such requirements if and only if—

(A) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93–66, for that particular month,

is not less than—

(B) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93–66, for March 1983, increased by the amount of all cost-of-living adjustments under section 1382f of this title (and any other benefit increases under this subchapter) which have occurred after March 1983 and before that particular month.

(2) In determining the amount of any increase in the combined level involved under paragraph (1)(B) of this subsection, any portion of such amount which would otherwise be attributable to the increase under section 1382f(c) of this title shall be deemed instead to be equal to the amount of the cost-of-living adjustment which would have occurred in July 1983 (without regard to the 3-percent limitation contained in section 415(i)(1)(B) of this title) if section 111 of the Social Security Amendments of 1983 had not been enacted.

(f) Passthrough relating to optional State supplementation

The Commissioner of Social Security shall not find that a State has failed to meet the requirements imposed by subsection (a) of this section with respect to the levels of its supplementary payments for the period January 1, 1984, through December 31, 1985, if in the period January 1, 1986, through December 31, 1986, its supplementary payment levels (other than to recipients of benefits determined under section 1382(e)(1)(B) of this title) are not less than those in effect in December 1976, increased by a percentage equal to the percentage by which payments under section 1382(b) of this title and section 211(a)(1)(A) of Public Law 93–66 have been increased as a result of all adjustments under section 1382f(a) and (c) of this title which have occurred after December 1976 and before February 1986.

(g) Mandatory pass-through of increased personal needs allowance

In order for any State which makes supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66) to recipients of benefits determined under section 1382(e)(1)(B) of this title, on or after October 1, 1987, to be eligible for payments pursuant to subchapter XIX of this chapter with respect to any calendar quarter which begins—

(1) after October 1, 1987, or, if later

(2) after the calendar quarter in which it first makes such supplementary payments to recipients of benefits so determined,

such State must have in effect an agreement with the Commissioner of Social Security whereby the State will—

(3) continue to make such supplementary payments to recipients of benefits so determined, and

(4) maintain such supplementary payments to recipients of benefits so determined at levels which assure (with respect to any particular month beginning with July 1988) that—

(A) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1382(e)(1)(B) of this title for that particular month,

is not less than—

(B) the combined level of such supplementary payments and the amounts payable to or on behalf of such recipients under section 1382(e)(1)(B) of this title for October 1987 (or, if no such supplementary payments were made for that month, the combined level for the first subsequent month for which such payments were made), increased—

(i) in a case to which clause (i) of such section 1382(e)(1)(B) of this title applies or (with respect to the individual or spouse who is in the hospital, home, or facility involved) to which clause (ii) of such section applies, by $5, and

(ii) in a case to which clause (iii) of such section 1382(e)(1)(B) of this title applies, by $10.

(Aug. 14, 1935, ch. 531, title XVI, § 1618, as added Oct. 21, 1976, Pub. L. 94–585, § 2(a), 90 Stat. 2901; amended Sept. 3, 1982, Pub. L. 97–248, title I, § 186, 96 Stat. 407; Dec. 21, 1982, Pub. L. 97–377, title I, § 147, 96 Stat. 1917; Apr. 20, 1983, Pub. L. 98–21, title IV, § 402, 97 Stat. 139; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(g)(9), 98 Stat. 1169; Apr. 7, 1986, Pub. L. 99–272, title XII, § 12201(a), 100 Stat. 289; Dec. 22, 1987, Pub. L. 100–203, title IX, § 9119(b), 101 Stat. 1330–309; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title II, § 209(a), 108 Stat. 1478, 1517.)

REFERENCES IN TEXT

Sections 211(a)(1)(A) and 212(a) of Public Law 93–66, referred to in subsecs. (a), (e)(1), (f), and (g), are sections 211(a)(1)(A) and 212(a) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 154, 155, as amended, which are set out as notes under section 1382 of this title.

Section 5041 of the Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (b)(2), is section 5041 of Pub. L. 101–508, title V, Nov. 5, 1990, 104 Stat. 1388–227, which is not classified to the Code.

Section 111 of the Social Security Amendments of 1983, referred to in subsec. (e)(2), is section 111 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 72, which amended sections 402, 403, 415, and 430 of this title and enacted provisions set out as notes under sections 402 and 415 of this title and section 5123 of Title 38, Veterans' Benefits.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (b). Pub. L. 103–296, § 209(a), designated existing provisions as par. (1) and added par. (2).

Pub. L. 103–296, § 107(a)(4), in subsec. (b) as amended by Pub. L. 103–296, § 209(a), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsecs. (d), (f), (g). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

1987—Subsec. (g). Pub. L. 100–203 added subsec. (g).

1986—Subsec. (f). Pub. L. 99–272 added subsec. (f).

1984—Subsec. (d). Pub. L. 98–369, §2663(g)(9)(A), realigned margin of subsec. (d).

Pub. L. 98–369, §2663(g)(9)(B), (C), struck out the comma after ''levels of its'', and inserted a comma after ''1980'' and after ''1976'', wherever appearing.

1983—Subsecs. (c), (d). Pub. L. 98–21 redesignated subsec. (c), added by Pub. L. 97–377, as (d).

Subsec. (e). Pub. L. 98–21 added subsec. (e).

1982—Subsec. (c). Pub. L. 97–377 added subsec. (c) relating to conditions under which the Secretary shall not find that a State has failed to meet the requirements of subsec. (a)(4) of this section concerning levels of supplementary payments.

Pub. L. 97–248 added subsec. (c) relating to conditions under which a State may elect to apply subsec. (a)(4) of this section.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 209(b) of Pub. L. 103–296 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to increases in the level of supplemental security income benefits under title XVI of the Social Security Act [this subchapter] whether occurring before, on, or after the date of the enactment of this Act [Aug. 15, 1994].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective July 1, 1988, see section 9119(c) of Pub. L. 100–203, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 2(c) of Pub. L. 94–585 provided that: ''The provisions of this section [enacting this section and provisions set out as a note under section 1382e of this title] shall be effective with respect to benefits payable for months after June 1977.''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396v of this title.

§ 1382h. Benefits for individuals who perform substantial gainful activity despite severe medical impairment

(a) Eligible individuals

(1) Except as provided in section 1383(j) of this title, any individual who was determined to be an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1382 of this title (or a federally administered State supplementary payment) for a month and whose earnings in a subsequent month exceed the amount designated by the Commissioner of Social Security ordinarily to represent substantial gainful activity shall qualify for a monthly benefit under this subsection for such subsequent month (which shall be in lieu of any benefit under section 1382 of this title) equal to an amount determined under section 1382(b)(1) of this title (or, in the case of an individual who has an eligible spouse, under section 1382(b)(2) of this title), and for purposes of subchapter XIX of this chapter shall be considered to be receiving supplemental security income benefits under this subchapter, for so long as—

(A) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability; and

(B) the income of such individual, other than income excluded pursuant to section 1382a(b) of this title, is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382 of this title and such individual meets all other non-disability-related requirements for eligibility for benefits under this subchapter.

(2) The Commissioner of Social Security shall make a determination under paragraph (1)(A) with respect to an individual not later than 12 months after the first month for which the individual qualifies for a benefit under this subsection.

(b) Blind or disabled individuals receiving supplemental security income benefits

(1) Except as provided in section 1383(j) of this title, for purposes of subchapter XIX of this chapter, any individual who was determined to be a blind or disabled individual eligible to receive a benefit under section 1382 of this title or any federally administered State supplementary payment for a month and who in a subsequent month is ineligible for benefits under this subchapter (and for any federally administered State supplementary payments) because of his or her income shall, nevertheless, be considered to be receiving supplemental security income benefits for such subsequent month provided that the Commissioner of Social Security determines under regulations that—

(A) such individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, meets all non-disability-related requirements for eligibility for benefits under this subchapter;

(B) the income of such individual would not, except for his earnings and increases pursuant to section 415(i) of this title in the level of monthly insurance benefits to which the individual is entitled under subchapter II of this chapter that occur while such individual is considered to be receiving supplemental security income benefits by reason of this subsection, be equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments);

(C) the termination of eligibility for benefits under subchapter XIX of this chapter would seriously inhibit his ability to continue his employment; and

(D) such individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under this subchapter (including any federally administered State supplementary payments), benefits under subchapter XIX of this chapter, and publicly funded attendant care services (including personal care assistance), which would be available to him in the absence of such earnings.

(2)(A) Determinations made under paragraph (1)(D) shall be based on information and data updated no less frequently than annually.

(B) In determining an individual's earnings for purposes of paragraph (1)(D), there shall be excluded from such earnings an amount equal to the sum of any amounts which are or would be excluded under clauses (ii) and (iv) of section 1382a(b)(4)(B) of this title (or under clauses (ii) and (iii) of section 1382a(b)(4)(A) of this title) in determining his or her income.

(3) In the case of a State that exercises the option under section 1396a(f) of this title, any individual who—

(A)(i) qualifies for a benefit under subsection (a) of this section, or

(ii) meets the requirements of paragraph (1); and

(B) was eligible for medical assistance under the State plan approved under subchapter XIX of this chapter in the month immediately preceding the first month in which the individual qualified for a benefit under such subsection or met such requirements,

shall remain eligible for medical assistance under such plan for so long as the individual qualifies for a benefit under such subsection or meets such requirements.

(c) Continuing disability or blindness reviews; limitation

Subsection (a)(2) of this section and section 1383(j)(2)(A) of this title shall not be construed, singly or jointly, to require more than 1 determination during any 12-month period with respect to the continuing disability or blindness of an individual.

(d) Information and training programs

The Commissioner of Social Security and the Secretary of Education shall jointly develop and disseminate information, and establish training programs for staff personnel, with respect to the potential availability of benefits and services for disabled individuals under the provisions of this section. The Commissioner of Social Security shall provide such information to individuals who are applicants for and recipients of benefits based on disability under this subchapter and shall conduct such programs for the staffs of the district offices of the Social Security Administration. The Secretary of Education shall conduct such programs for the staffs of the State Vocational Rehabilitation agencies, and in cooperation with such agencies shall also provide such information to other appropriate individuals and to public and private organizations and agencies which are concerned with rehabilitation and social services or which represent the disabled.

(Aug. 14, 1935, ch. 531, title XVI, § 1619, as added June 9, 1980, Pub. L. 96–265, title II, § 201(a), 94 Stat. 445; amended Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2353(*o*), 95 Stat. 873; Oct. 9, 1984, Pub. L. 98–460, § 14(b), 98 Stat. 1808; Nov. 10, 1986, Pub. L. 99–643, §§ 4(a), (b), (c)(2), 7(a), 100 Stat. 3575, 3577, 3579; Nov. 5, 1990, Pub. L. 101–508, title V, §§ 5032(a), 5039(a), 104 Stat. 1388–224, 1388–226; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(1), (4), title II, § 205(a), 108 Stat. 1477, 1478, 1509.)

AMENDMENTS

1994—Subsecs. (a)(1), (2), (b)(1). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (b)(1)(B). Pub. L. 103–296, § 205(a), inserted ''and increases pursuant to section 415(i) of this title in the level of monthly insurance benefits to which the individual is entitled under subchapter II of this chapter that occur while such individual is considered to be receiving supplemental security income benefits by reason of this subsection'' after ''earnings''.

Subsec. (d). Pub. L. 103–296, § 107(a)(1), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

1990—Subsec. (b)(1). Pub. L. 101–508, § 5032(a), struck out ''under age 65'' after ''any individual'' in introductory provisions.

Subsecs. (c), (d). Pub. L. 101–508, § 5039(a), added subsec. (c) and redesignated former subsec. (c) as (d).

1986—Subsec. (a). Pub. L. 99–643, § 4(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: ''Any individual who is an eligible individual (or eligible spouse) by reason of being under a disability and was eligible to receive benefits under section 1382(b) of this title or under this section for the month preceding the month for which eligibility for benefits under this section is now being determined, and who would otherwise be denied benefits by reason of section 1382(e)(4) of this title or ceases to be an eligible individual (or eligible spouse) because his earnings have demonstrated a capacity to engage in substantial gainful activity, shall nevertheless qualify for a monthly benefit equal to an amount determined under section 1382(b)(1) of this title (or, in the case of an individual who has an eligible spouse, under section 1382(b)(2) of this title), and for purposes of subchapter XIX of this chapter shall be considered a disabled individual receiving supplemental security income benefits under this subchapter, for so long as the Secretary determines that—

''(1) such individual continues to have the disabling physical or mental impairment on the basis of which such individual was found to be under a disability, and continues to meet all non-disability-related requirements for eligibility for benefits under this subchapter; and

''(2) the income of such individual, other than income excluded pursuant to section 1382a(b) of this title, is not equal to or in excess of the amount which would cause him to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments).''

Subsec. (a)(1). Pub. L. 99–643, § 4(c)(2)(A), substituted ''Except as provided in section 1383(j) of this section, any individual'' for ''Any individual''.

Subsec. (b). Pub. L. 99–643, § 4(b)(1)–(4), substituted ''meets'' for ''continues to meet'' in former par. (1) and ''(including any federally administered State supplementary payments), benefits under subchapter XIX of this chapter, and publicly funded attendant care services (including personal care assistance),'' for ''and subchapter XIX of this chapter'' in former par. (4), redesignated former pars. (1) to (4) as subpars. (A) to (D), re-

spectively, of par. (1), and substituted introductory provisions of such par. (1) for former undesignated introductory provisions which read as follows: ''For purposes of subchapter XIX of this chapter, any individual under age 65 who, for the month preceding the first month in the period to which this subsection applies, received—

''(i) a payment of supplemental security income benefits under section 1382(b) of this title on the basis of blindness or disability,

''(ii) a supplementary payment under section 1382e of this title or under section 212 of Public Law 93–66 on such basis,

''(iii) a payment of monthly benefits under subsection (a) of this section, or

''(iv) a supplementary payment under section 1382e(c)(3) of this title,

shall be considered to be a blind or disabled individual receiving supplemental security income benefits for so long as the Secretary determines under regulations that—''.

Subsec. (b)(1). Pub. L. 99–643, §4(c)(2)(B), substituted ''Except as provided in section 1383(j) of this title, for purposes of'' for ''For purposes of''.

Subsec. (b)(2). Pub. L. 99–643, §4(b)(5), added par. (2).

Subsec. (b)(3). Pub. L. 99–643, §7(a), added par. (3).

1984—Subsec. (c). Pub. L. 98–460 added subsec. (c).

1981—Subsec. (a). Pub. L. 97–35, §2353(*o*)(1), substituted in provision preceding par. (1) ''subchapter XIX of this chapter'' for ''subchapters XIX and XX of this chapter''.

Subsec. (b). Pub. L. 97–35, §2353(*o*), substituted in provision preceding cl. (i) and in par. (4) ''subchapter XIX of this chapter'' for ''subchapters XIX and XX of this chapter'' and in par. (3) ''subchapter XIX of this chapter'' for ''subchapter XIX or XX of this chapter''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(1), (4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 205(b) of Pub. L. 103–296 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to eligibility determinations for months after December 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 5032(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

Section 5039(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1383 of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

EFFECTIVE DATE

Section 201(d) of Pub. L. 96–265, as amended by Pub. L. 98–460, §14(a), Oct. 9, 1984, 98 Stat. 1808; Pub. L. 99–643, §2, Nov. 10, 1986, 100 Stat. 3574, provided that: ''The amendments made by subsections (a) and (b) [enacting this section and amending section 1382e of this title and provisions set out as a note under section 1382 of this title] shall become effective on January 1, 1981.''

[Section 10(a) of Pub. L. 99–643 provided that: ''The amendment made by section 2 [amending section 201(d) of Pub. L. 96–265, set out above] shall become effective on the date of the enactment of this Act [Nov. 10, 1986].'']

SEPARATE ACCOUNTS WITH RESPECT TO BENEFITS PAYABLE; EVALUATION OF PROGRAM

Section 201(e) of Pub. L. 96–265 provided that: ''The Secretary shall provide for separate accounts with respect to the benefits payable by reason of the amendments made by subsections (a) and (b) [enacting this section and amending section 1382e of this title and provisions set out as a note under section 1382 of this title] so as to provide for evaluation of the effects of such amendments on the programs established by titles II, XVI, XIX, and XX of the Social Security Act [subchapters II, XVI, XIX, and XX of this chapter].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1382, 1382c, 1382d, 1382e, 1382i, 1383, 1396a, 1396d, 1396v of this title; title 29 section 1583.

§ 1382i. Medical and social services for certain handicapped persons

(a) Authorization of appropriations for pilot program

There are authorized to be appropriated such sums as may be necessary to establish and carry out a 3-year Federal-State pilot program to provide medical and social services for certain handicapped individuals in accordance with this section.

(b) State allotments

(1) The total sum of $18,000,000 shall be allotted to the States for such program by the Commissioner of Social Security, during the period beginning September 1, 1981, and ending September 30, 1984, as follows:

(A) The total sum of $6,000,000 shall be allotted to the States for the fiscal year ending September 30, 1982 (which for purposes of this section shall include the month of September 1981).

(B) The total sum of $6,000,000, plus any amount remaining available (after the application of paragraph (4)) from the allotment made under subparagraph (A), shall be allotted to the States for the fiscal year ending September 30, 1983.

(C) The total sum of $6,000,000, plus any amount remaining available (after the application of paragraph (4)) from the allotments made under subparagraphs (A) and (B), shall be allotted to the States for the fiscal year ending September 30, 1984.

(2) The allotment to each State from the total sum allotted under paragraph (1) for any fiscal year shall bear the same ratio to such total sum as the number of individuals in such State who are over age 17 and under age 65 and are receiving supplemental security income benefits as disabled individuals in such year (as determined by the Commissioner of Social Security on the basis of the most recent data available) bears to the total number of such individuals in all the States. For purposes of the preceding sentence, the term ''supplemental security income benefits'' includes payments made pursuant to an agreement under section 1382e(a) of this title or under section 212(b) of Public Law 93–66.

(3) At the beginning of each fiscal year in which the pilot program under this section is in

effect, each State that does not intend to use the allotment to which it is entitled for such year (or any allotment which was made to it for a prior fiscal year), or that does not intend to use the full amount of any such allotment, shall certify to the Commissioner of Social Security the amount of such allotment which it does not intend to use, and the State's allotment for the fiscal year (or years) involved shall thereupon be reduced by the amount so certified.

(4) The portion of the total amount available for allotment for any particular fiscal year under paragraph (1) which is not allotted to States for that year by reason of paragraph (3) (plus the amount of any reductions made at the beginning of such year in the allotments of States for prior fiscal years under paragraph (3)) shall be reallocated in such manner as the Commissioner of Social Security may determine to be appropriate to States which need, and will use, additional assistance in providing services to severely handicapped individuals in that particular year under their approved plans. Any amount reallocated to a State under this paragraph for use in a particular fiscal year shall be treated for purposes of this section as increasing such State's allotment for that year by an equivalent amount.

(c) Requisite features of State plans

In order to participate in the pilot program and be eligible to receive payments for any period under subsection (d) of this section, a State (during such period) must have a plan, approved by the Commissioner of Social Security as meeting the requirements of this section, which provides medical and social services for severely handicapped individuals whose earnings are above the level which ordinarily demonstrates an ability to engage in substantial gainful activity and who are not receiving benefits under section 1382 or 1382h of this title or assistance under a State plan approved under section 1396a of this title, and which—

(1) declares the intent of the State to participate in the pilot program;

(2) designates an appropriate State agency to administer or supervise the administration of the program in the State;

(3) describes the criteria to be applied by the State in determining the eligibility of any individual for assistance under the plan and in any event requires a determination by the State agency to the effect that (A) such individual's ability to continue his employment would be significantly inhibited without such assistance and (B) such individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the cash and other benefits that would be available to him under this subchapter and subchapters XIX and XX of this chapter in the absence of those earnings;

(4) describes the process by which the eligibility of individuals for such assistance is to be determined (and such process may not involve the performance of functions by any State agency or entity which is engaged in making determinations of disability for purposes of disability insurance or supplemental security income benefits except when the use of a different agency or entity to perform those functions would not be feasible);

(5) describes the medical and social services to be provided under the plan;

(6) describes the manner in which the medical and social services involved are to be provided and, if they are not to be provided through the State's medical assistance and social services programs under subchapters XIX and XX of this chapter (with the Federal payments being made under subsection (d) of this section rather than under those subchapters), specifies the particular mechanisms and procedures to be used in providing such services; and

(7) contains such other provisions as the Commissioner of Social Security may find to be necessary or appropriate to meet the requirements of this section or otherwise carry out its purpose.

(d) Payments to States; computation of payments

(1) From its allotment under subsection (b) of this section for any fiscal year (and any amounts remaining available from allotments made to it for prior fiscal years), the Commissioner of Social Security shall from time to time pay to each State which has a plan approved under subsection (c) of this section an amount equal to 75 per centum of the total sum expended under such plan (including the cost of administration of such plan) in providing medical and social services to severely handicapped individuals who are eligible for such services under the plan.

(2) The method of computing and making payments under this section shall be as follows:

(A) The Commissioner of Social Security shall, prior to each period for which a payment is to be made to a State, estimate the amount to be paid to the State for such period under the provisions of this section.

(B) From the allotment available therefor, the Commissioner of Social Security shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this subsection) by which the Commissioner finds that the Commissioner's estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such period under this section.

(e) Rules and regulations

Within nine months after June 9, 1980, the Commissioner of Social Security shall prescribe and publish such regulations as may be necessary or appropriate to carry out the pilot program and otherwise implement this section.

(f) Reports

Each State participating in the pilot program under this section shall from time to time report to the Commissioner of Social Security on the operation and results of such program in that State, with particular emphasis upon the work incentive effects of the program. On or before October 1, 1983, the Commissioner of Social Security shall submit to the Congress a report on the program, incorporating the information contained in the State reports along with the Commissioner's findings and recommendations.

(Aug. 14, 1935, ch. 531, title XVI, § 1620, as added June 9, 1980, Pub. L. 96–265, title II, § 201(c), 94 Stat. 446; amended Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2353(p), 95 Stat. 874; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478.)

REFERENCES IN TEXT

Section 212(b) of Public Law 93–66, referred to in subsec. (b)(2), is section 212(b) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

1994—Subsecs. (b) to (f). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner finds that the Commissioner's'' for ''he finds that his'' in subsec. (d)(2)(B), and ''the Commissioner's'' for ''his'' in subsec. (f).

1981—Subsec. (c). Pub. L. 97–35 struck out provision following par. (7) that the plan under this section may be developed and submitted as a separate State plan or may be submitted in the form of an amendment to the State's plan under section 1397b(d) of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Oct. 1, 1981, except as otherwise explicitly provided, see section 2354 of Pub. L. 97–35, set out as an Effective Date note under section 1397 of this title.

§ 1382j. Attribution of sponsor's income and resources to aliens

(a) Attribution as unearned income

For purposes of determining eligibility for and the amount of benefits under this subchapter for an individual who is an alien, the income and resources of any person who (as a sponsor of such individual's entry into the United States) executed an affidavit of support or similar agreement with respect to such individual, and the income and resources of the sponsor's spouse, shall be deemed to be the income and resources of such individual (in accordance with subsections (b) and (c) of this section) for a period of 5 years after the individual's entry into the United States. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.

(b) Determination of amount and resources

(1) The amount of income of a sponsor (and his spouse) which shall be deemed to be the unearned income of an alien for any year shall be determined as follows:

(A) The total yearly rate of earned and unearned income (as determined under section 1382a(a) of this title) of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined for such year.

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) the maximum amount of the Federal benefit under this subchapter for such year which would be payable to an eligible individual who has no other income and who does not have an eligible spouse (as determined under section 1382(b)(1) of this title), plus (ii) one-half of the amount determined under clause (i) multiplied by the number of individuals who are dependents of such sponsor (or such sponsor's spouse if such spouse is living with the sponsor), other than such alien and such alien's spouse.

(C) The amount of income which shall be deemed to be unearned income of such alien shall be at a yearly rate equal to the amount determined under subparagraph (B). The period for determination of such amount shall be the same as the period for determination of benefits under section 1382(c) of this title.

(2) The amount of resources of a sponsor (and his spouse) which shall be deemed to be the resources of an alien for any year shall be determined as follows:

(A) The total amount of the resources (as determined under section 1382b of this title) of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined.

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) the applicable amount determined under section 1382(a)(3)(B) of this title in the case of a sponsor who has no spouse with whom he is living, or (ii) the applicable amount determined under section 1382(a)(3)(A) of this title in the case of a sponsor who has a spouse with whom he is living.

(C) The resources of such sponsor (and spouse) as determined under subparagraphs (A) and (B) shall be deemed to be resources of such alien in addition to any resources of such alien.

(c) Support and maintenance

In determining the amount of income of an alien during the period of 5 years after such alien's entry into the United States, the reduction in dollar amounts otherwise required under section 1382a(a)(2)(A)(i) of this title shall not be applicable if such alien is living in the household of a person who is a sponsor (or such sponsor's spouse) of such alien, and is receiving support and maintenance in kind from such sponsor (or spouse), nor shall support or maintenance furnished in cash or kind to an alien by such alien's sponsor (to the extent that it reflects income or resources which were taken into account in determining the amount of income and resources to be deemed to the alien under subsection (a) or (b) of this section) be considered to be income of such alien under section 1382a(a)(2)(A) of this title.

(d) Information and documentation; agreements with Secretary of State and Attorney General

(1) Any individual who is an alien shall, during the period of 5 years after entry into the United States, in order to be an eligible individual or eligible spouse for purposes of this subchapter, be required to provide to the Commissioner of Social Security such information and documentation with respect to his sponsor as may be necessary in order for the Commissioner of Social Security to make any determination required under this section, and to obtain any cooperation from such sponsor necessary for any such determination. Such alien shall also be re-

quired to provide to the Commissioner of Social Security such information and documentation as the Commissioner of Social Security may request and which such alien or his sponsor provided in support of such alien's immigration application.

(2) The Commissioner of Social Security shall enter into agreements with the Secretary of State and the Attorney General whereby any information available to such persons and required in order to make any determination under this section will be provided by such persons to the Commissioner of Social Security, and whereby such persons shall inform any sponsor of an alien, at the time such sponsor executes an affidavit of support or similar agreement, of the requirements imposed by this section.

(e) Joint and several liability of alien and sponsor for overpayments

Any sponsor of an alien, and such alien, shall be jointly and severally liable for an amount equal to any overpayment made to such alien during the period of 5 years after such alien's entry into the United States, on account of such sponsor's failure to provide correct information under the provisions of this section, except where such sponsor was without fault, or where good cause for such failure existed. Any such overpayment which is not repaid to the Commissioner of Social Security or recovered in accordance with section 1383(b) of this title shall be withheld from any subsequent payment to which such alien or such sponsor is entitled under any provision of this chapter.

(f) Exemptions

(1) The provisions of this section shall not apply with respect to any individual who is an ''aged, blind, or disabled individual'' for purposes of this subchapter by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title), from and after the onset of the impairment, if such blindness or disability commenced after the date of such individual's admission into the United States for permanent residence.

(2) The provisions of this section shall not apply with respect to any alien who is—

(A) admitted to the United States as a result of the application, prior to April 1, 1980, of the provisions of section 1153(a)(7) of title 8;

(B) admitted to the United States as a result of the application, after March 31, 1980, of the provisions of section 1157(c)(1) of title 8;

(C) paroled into the United States as a refugee under section 1182(d)(5) of title 8; or

(D) granted political asylum by the Attorney General.

(Aug. 14, 1935, ch. 531, title XVI, § 1621, as added June 9, 1980, Pub. L. 96–265, title V, § 504(b), 94 Stat. 471; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2611(d), 2663(g)(10), 98 Stat. 1131, 1169; Nov. 24, 1993, Pub. L. 103–152, § 7(a)(1), (b)(1), 107 Stat. 1519; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478.)

AMENDMENT OF SECTION

Pub. L. 103–152, § 7(b), Nov. 24, 1993, 107 Stat. 1519, provided that, effective Oct. 1, 1996, this section is amended by striking ''5 years'' each place such term appears and inserting ''3 years''.

REFERENCES IN TEXT

Section 1153(a)(7) of title 8, referred to in subsec. (f)(2)(A), to be deemed a reference to such section as in effect prior to Apr. 1, 1980, and to sections 1157 and 1158 of Title 8, Aliens and Nationality. See section 203(h) of Pub. L. 96–212, set out as a note under section 1153 of Title 8.

AMENDMENTS

1994—Subsecs. (d), (e). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, except where appearing before ''of State'' in subsec. (d)(2).

1993—Pub. L. 103–152, § 7(a)(1), substituted ''5 years'' for ''three years'' in subsecs. (a), (c), (d)(1), and (e).

1984—Subsec. (b)(2)(B). Pub. L. 98–369, § 2611(d), substituted ''the applicable amount determined under section 1382(a)(3)(B) of this title'' for ''$1,500'' and ''the applicable amount determined under section 1382(a)(3)(A) of this title'' for ''$2,250''.

Subsec. (e). Pub. L. 98–369, § 2663(g)(10), substituted ''severally'' for ''severably''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 7(a)(2) of Pub. L. 103–152 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on January 1, 1994.''

Section 7(b)(2) of Pub. L. 103–152 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on October 1, 1996.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2611(d) of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 602 of this title.

Amendment by section 2663(g)(10) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 504(c) of Pub. L. 96–265 provided that: ''The amendments made by this section [enacting this section and amending section 1382c of this title] shall be effective with respect to individuals applying for supplemental security income benefits under title XVI of the Social Security Act [this subchapter] for the first time after September 30, 1980.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1382c of this title.

§ 1382k. Repealed. Pub. L. 97–123, § 2(h), Dec. 29, 1981, 95 Stat. 1661

Section, act Aug. 14, 1935, ch. 531, title XVI, § 1622, as added Aug. 13, 1981, Pub. L. 97–35, title XXII, § 2201(g), 95 Stat. 833, related to benefits for individuals formerly receiving minimum benefits.

EFFECTIVE DATE OF REPEAL

Repeal effective with respect to benefits for months after December 1981, see section 2(j)(2) of Pub. L. 97–123, set out as an Effective Date of 1981 Amendment note under section 415 of this title.

Pub. L. 97–35, title XXII, §2201(h), Aug. 13, 1981, 95 Stat. 834, which provided for the effective date of this section and the other enactments and amendments made by section 2201 of Pub. L. 97–35, was repealed by Pub. L. 97–123, §2(j)(1), Dec. 29, 1981, 95 Stat. 1661.

PART B—PROCEDURAL AND GENERAL PROVISIONS

§ 1383. Procedure for payment of benefits

(a) Time, manner, form, and duration of payments; representative payees; promulgation of regulations

(1) Benefits under this subchapter shall be paid at such time or times and in such installments as will best effectuate the purposes of this subchapter, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed $10).

(2)(A)(i) Payments of the benefit of any individual may be made to any such individual or to the eligible spouse (if any) of such individual or partly to each.

(ii)(I) Upon a determination by the Commissioner of Social Security that the interest of such individual would be served thereby, such payments shall be made, regardless of the legal competency or incompetency of the individual or eligible spouse, to another individual, or an organization, with respect to whom the requirements of subparagraph (B) have been met (in this paragraph referred to as such individual's ''representative payee'') for the use and benefit of the individual or eligible spouse.

(II) In the case of an individual eligible for benefits under this subchapter by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled, the payment of such benefits to a representative payee shall be deemed to serve the interest of the individual under this subchapter. In any case in which such payment is so deemed under this subclause to serve the interest of an individual, the Commissioner of Social Security shall include, in the individual's notification of such eligibility, a notice that alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled and that the Commissioner of Social Security is therefore required to pay the individual's benefits to a representative payee.

(iii) If the Commissioner of Social Security or a court of competent jurisdiction determines that the representative payee of an individual or eligible spouse has misused any benefits which have been paid to the representative payee pursuant to clause (ii) or section 405(j)(1) of this title, the Commissioner of Social Security shall promptly terminate payment of benefits to the representative payee pursuant to this subparagraph, and provide for payment of benefits to an alternative representative payee of the individual or eligible spouse or, if the interest of the individual under this subchapter would be served thereby, to the individual or eligible spouse.

(B)(i) Any determination made under subparagraph (A) for payment of benefits to the representative payee of an individual or eligible spouse shall be made on the basis of—

(I) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such payment, and shall, to the extent practicable, include a face-to-face interview with such person; and

(II) adequate evidence that such payment is in the interest of the individual or eligible spouse (as determined by the Commissioner of Social Security in regulations).

(ii) As part of the investigation referred to in clause (i)(I), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity was submitted with an application for benefits under subchapter II of this chapter or this subchapter;

(II) verify the social security account number (or employer identification number) of such person;

(III) determine whether such person has been convicted of a violation of section 408 or 1383a of this title; and

(IV) determine whether payment of benefits to such person has been terminated pursuant to subparagraph (A)(iii), and whether certification of payment of benefits to such person has been revoked pursuant to section 405(j) of this title, by reason of misuse of funds paid as benefits under subchapter II of this chapter or this subchapter.

(iii) Benefits of an individual may not be paid to any other person pursuant to subparagraph (A)(ii) if—

(I) such person has previously been convicted as described in clause (ii)(III);

(II) except as provided in clause (iv), payment of benefits to such person pursuant to subparagraph (A)(ii) has previously been terminated as described in clause (ii)(IV), or certification of payment of benefits to such person under section 405(j) of this title has previously been revoked as described in section 405(j)(2)(B)(i)(IV) of this title; or

(III) except as provided in clause (v), such person is a creditor of such individual who provides such individual with goods or services for consideration.

(iv) The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exemption from clause (iii)(II) to any person on a case-by-case basis if such exemption would be in the best interest of the individual or eligible spouse whose benefits under this subchapter would be paid to such person pursuant to subparagraph (A)(ii).

(v) Clause (iii)(III) shall not apply with respect to any person who is a creditor referred to therein if such creditor is—

(I) a relative of such individual if such relative resides in the same household as such individual;

(II) a legal guardian or legal representative of such individual;

(III) a facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State;

(IV) a person who is an administrator, owner, or employee of a facility referred to in

subclause (III) if such individual resides in such facility, and the payment of benefits under this subchapter to such facility or such person is made only after good faith efforts have been made by the local servicing office of the Social Security Administration to locate an alternative representative payee to whom the payment of such benefits would serve the best interests of such individual; or

(V) an individual who is determined by the Commissioner of Social Security, on the basis of written findings and under procedures which the Commissioner of Social Security shall prescribe by regulation, to be acceptable to serve as a representative payee.

(vi) The procedures referred to in clause (v)(V) shall require the individual who will serve as representative payee to establish, to the satisfaction of the Commissioner of Social Security, that—

(I) such individual poses no risk to the beneficiary;

(II) the financial relationship of such individual to the beneficiary poses no substantial conflict of interest; and

(III) no other more suitable representative payee can be found.

(vii) In the case of an individual eligible for benefits under this subchapter by reason of disability, if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled, when selecting such individual's representative payee, preference shall be given to—

(I) a community-based nonprofit social service agency licensed or bonded by the State;

(II) a Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(III) a State or local government agency with fiduciary responsibilities; or

(IV) a designee of an agency (other than of a Federal agency) referred to in the preceding subclauses of this clause, if the Commissioner of Social Security deems it appropriate,

unless the Commissioner of Social Security determines that selection of a family member would be appropriate.

(viii) Subject to clause (ix), if the Commissioner of Social Security makes a determination described in subparagraph (A)(ii) with respect to any individual's benefit and determines that direct payment of the benefit to the individual would cause substantial harm to the individual, the Commissioner of Social Security may defer (in the case of initial entitlement) or suspend (in the case of existing entitlement) direct payment of such benefit to the individual, until such time as the selection of a representative payee is made pursuant to this subparagraph.

(ix)(I) Except as provided in subclause (II), any deferral or suspension of direct payment of a benefit pursuant to clause (viii) shall be for a period of not more than 1 month.

(II) Subclause (I) shall not apply in any case in which the individual or eligible spouse is, as of the date of the Commissioner's determination, legally incompetent, under the age of 15 years, or (if alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled) is eligible for benefits under this subchapter by reason of disability.

(x) Payment pursuant to this subparagraph of any benefits which are deferred or suspended pending the selection of a representative payee shall be made to the individual, or to the representative payee upon such selection, as a single sum or over such period of time as the Commissioner of Social Security determines is in the best interests of the individual entitled to such benefits.

(xi) Any individual who is dissatisfied with a determination by the Commissioner of Social Security to pay such individual's benefits to a representative payee under this subchapter, or with the designation of a particular person to serve as representative payee, shall be entitled to a hearing by the Commissioner of Social Security, and to judicial review of the Commissioner's final decision, to the same extent as is provided in subsection (c) of this section.

(xii) In advance of the first payment of an individual's benefit to a representative payee under subparagraph (A)(ii), the Commissioner of Social Security shall provide written notice of the Commissioner's initial determination to make any such payment. Such notice shall be provided to such individual, except that, if such individual—

(I) is under the age of 15,

(II) is an unemancipated minor under the age of 18, or

(III) is legally incompetent,

then such notice shall be provided solely to the legal guardian or legal representative of such individual.

(xiii) Any notice described in clause (xii) shall be clearly written in language that is easily understandable to the reader, shall identify the person to be designated as such individual's representative payee, and shall explain to the reader the right under clause (xi) of such individual or of such individual's legal guardian or legal representative—

(I) to appeal a determination that a representative payee is necessary for such individual,

(II) to appeal the designation of a particular person to serve as the representative payee of such individual, and

(III) to review the evidence upon which such designation is based and submit additional evidence.

(C)(i) In any case where payment is made under this subchapter to a representative payee of an individual or spouse, the Commissioner of Social Security shall establish a system of accountability monitoring whereby such person shall report not less often than annually with respect to the use of such payments. The Commissioner of Social Security shall establish and implement statistically valid procedures for reviewing such reports in order to identify instances in which such persons are not properly using such payments.

(ii) Clause (i) shall not apply in any case where the representative payee is a State institution. In such cases, the Commissioner of Social Secu-

rity shall establish a system of accountability monitoring for institutions in each State.

(iii) Clause (i) shall not apply in any case where the individual entitled to such payment is a resident of a Federal institution and the representative payee is the institution.

(iv) Notwithstanding clauses (i), (ii), and (iii), the Commissioner of Social Security may require a report at any time from any representative payee, if the Commissioner of Social Security has reason to believe that the representative payee is misusing such payments.

(D)(i) A qualified organization may collect from an individual a monthly fee for expenses (including overhead) incurred by such organization in providing services performed as such individual's representative payee pursuant to subparagraph (A)(ii) if the fee does not exceed the lesser of—

(I) 10 percent of the monthly benefit involved, or

(II) $25.00 per month ($50.00 per month in any case in which an individual is eligible for benefits under this subchapter by reason of disability and alcoholism or drug addiction is a contributing factor material to the Commissioner's determination that the individual is disabled).

The Commissioner of Social Security shall adjust annually (after 1995) each dollar amount set forth in subclause (II) of this clause under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00. Any agreement providing for a fee in excess of the amount permitted under this clause shall be void and shall be treated as misuse by the organization of such individual's benefits.

(ii) For purposes of this subparagraph, the term ''qualified organization'' means any State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any community-based nonprofit social service agency, which—

(I) is bonded or licensed in each State in which the agency serves as a representative payee; and

(II) in accordance with any applicable regulations of the Commissioner of Social Security—

(aa) regularly provides services as a representative payee pursuant to subparagraph (A)(ii) or section 405(j)(4) of this title concurrently to 5 or more individuals; and

(bb) demonstrates to the satisfaction of the Commissioner of Social Security that such agency is not otherwise a creditor of any such individual.

The Commissioner of Social Security shall prescribe regulations under which the Commissioner of Social Security may grant an exception from subclause (II)(bb) for any individual on a case-by-case basis if such exception is in the best interests of such individual.

(iii) Any qualified organization which knowingly charges or collects, directly or indirectly, any fee in excess of the maximum fee prescribed under clause (i) or makes any agreement, directly or indirectly, to charge or collect any fee in excess of such maximum fee, shall be fined in accordance with title 18, or imprisoned not more than 6 months, or both.

(iv) In the case of an individual who is no longer eligible for benefits under this subchapter but to whom any amount of past-due benefits under this subchapter has not been paid, for purposes of clause (i), any amount of such past-due benefits payable in any month shall be treated as a monthly benefit referred to in clause (i)(I).

(E) RESTITUTION.—In cases where the negligent failure of the Commissioner of Social Security to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Commissioner of Social Security shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. The Commissioner of Social Security shall make a good faith effort to obtain restitution from the terminated representative payee.

(F) The Commissioner of Social Security shall include as a part of the annual report required under section 904[1] of this title information with respect to the implementation of the preceding provisions of this paragraph, including—

(i) the number of cases in which the representative payee was changed;

(ii) the number of cases discovered where there has been a misuse of funds;

(iii) how any such cases were dealt with by the Commissioner of Social Security;

(iv) the final disposition of such cases (including any criminal penalties imposed); and

(v) such other information as the Commissioner of Social Security determines to be appropriate.

(G) The Commissioner of Social Security shall make an initial report to each House of the Congress on the implementation of subparagraphs (B) and (C) within 270 days after October 9, 1984. The Commissioner of Social Security shall include in the annual report required under section 904[1] of this title, information with respect to the implementation of subparagraphs (B) and (C), including the same factors as are required to be included in the Commissioner's report under section 405(j)(4)(B) of this title.

(3) The Commissioner of Social Security may by regulation establish ranges of incomes within which a single amount of benefits under this subchapter shall apply.

(4) The Commissioner of Social Security—

(A) may make to any individual initially applying for benefits under this subchapter who is presumptively eligible for such benefits and who is faced with financial emergency a cash advance against such benefits, including any federally-administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility; and

[1] See References in Text note below.

(B) may pay benefits under this subchapter to an individual applying for such benefits on the basis of disability or blindness for a period not exceeding 6 months prior to the determination of such individual's disability or blindness, if such individual is presumptively disabled or blind and is determined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b) of this section solely because such individual is determined not to be disabled or blind.

(5) Payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title), and who ceases to be blind or to be under such disability, shall continue (so long as such individual is otherwise eligible) through the second month following the month in which such blindness or disability ceases.

(6) Notwithstanding any other provision of this subchapter, payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1382c(a)(2) of this title) or disability (as determined under section 1382c(a)(3) of this title) shall not be terminated or suspended because the blindness or other physical or mental impairment, on which the individual's eligibility for such benefit is based, has or may have ceased, if—

(A) such individual is participating in a program of vocational rehabilitation services approved by the Commissioner of Social Security, and

(B) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the blindness and disability benefit rolls.

(7)(A) In any case where—

(i) an individual is a recipient of benefits based on disability or blindness under this subchapter,

(ii) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

(iii) a timely request for review or for a hearing is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Commissioner of Social Security shall by regulations prescribe) to have the payment of such benefits continued for an additional period beginning with the first month beginning after October 9, 1984, for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (I) the month preceding the month in which a decision is made after such a hearing, or (II) the month preceding the month in which no such request for review or a hearing is pending.

(B)(i) If an individual elects to have the payment of his benefits continued for an additional period under subparagraph (A), and the final decision of the Commissioner of Social Security affirms the determination that he is not entitled to such benefits, any benefits paid under this subchapter pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this subchapter, except as otherwise provided in clause (ii).

(ii) If the Commissioner of Social Security determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under subparagraph (A) shall be subject to waiver consideration under the provisions of subsection (b)(1) of this section.

(C) The provisions of subparagraphs (A) and (B) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made on or after October 9, 1984, or prior to such date but only on the basis of a timely request for review or for a hearing.

(8)(A) In any case in which an administrative law judge has determined after a hearing as provided in subsection (c) of this section that an individual is entitled to benefits based on disability or blindness under this subchapter and the Commissioner of Social Security has not issued the Commissioner's final decision in such case within 110 days after the date of the administrative law judge's determination, such benefits shall be currently paid for the months during the period beginning with the month in which such 110-day period expires and ending with the month in which such final decision is issued.

(B) For purposes of subparagraph (A), in determining whether the 110-day period referred to in subparagraph (A) has elapsed, any period of time for which the action or inaction of such individual or such individual's representative without good cause results in the delay in the issuance of the Commissioner's final decision shall not be taken into account to the extent that such period of time exceeds 20 calendar days.

(C) Any benefits currently paid under this subchapter pursuant to this paragraph (for the months described in subparagraph (A)) shall not be considered overpayments for any purposes of this subchapter, unless payment of such benefits was fraudulently obtained.

(9) Benefits under this subchapter shall not be denied to any individual solely by reason of the refusal of the individual to accept an amount offered as compensation for a crime of which the individual was a victim.

(b) Overpayments and underpayments; adjustment, recovery, or payment of amounts by Commissioner

(1)(A) Whenever the Commissioner of Social Security finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from such individual or his eligible spouse (or from the estate of either) or by payment to such individual or his eligible spouse, or, if such individual is deceased, by payment—

(i) to any surviving spouse of such individual, whether or not the individual's eligible spouse, if (within the meaning of the first sentence of section 402(i) of this title) such surviving husband or wife was living in the same household with the individual at the time of his death or within the 6 months immediately preceding the month of such death, or

(ii) if such individual was a disabled or blind child who was living with his parent or parents at the time of his death or within the 6 months immediately preceding the month of such death, to such parent or parents.

(B) The Commissioner of Social Security (i) shall make such provision as the Commissioner finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this subchapter, or be against equity and good conscience, or (because of the small amount involved) impede efficient or effective administration of this subchapter, and (ii) shall in any event make the adjustment or recovery (in the case of payment of more than the correct amount of benefits), in the case of an individual or eligible spouse receiving benefit payments under this subchapter (including supplementary payments of the type described in section 1382e(a) of this title and payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), in amounts which in the aggregate do not exceed (for any month) the lesser of (I) the amount of his or their benefit under this subchapter for that month or (II) an amount equal to 10 percent of his or their income for that month (including such benefit but excluding any other income excluded pursuant to section 1382a(b) of this title), unless fraud, willful misrepresentation, or concealment of material information was involved on the part of the individual or spouse in connection with the overpayment, or unless the individual requests that such adjustment or recovery be made at a higher or lower rate and the Commissioner of Social Security determines that adjustment or recovery at such rate is justified and appropriate. The availability (in the case of an individual who has been paid more than the correct amount of benefits) of procedures for adjustment or recovery at a limited rate under clause (ii) of the preceding sentence shall not, in and of itself, prevent or restrict the provision (in such case) of more substantial relief under clause (i) of such sentence.

(2) Notwithstanding any other provision of this section, when any payment of more than the correct amount is made to or on behalf of an individual who has died, and such payment—

(A) is made by direct deposit to a financial institution;

(B) is credited by the financial institution to a joint account of the deceased individual and another person; and

(C) such other person is the surviving spouse of the deceased individual, and was eligible for a payment under this subchapter (including any State supplementation payment paid by the Commissioner of Social Security) as an eligible spouse (or as either member of an eligible couple) for the month in which the deceased individual died,

the amount of such payment in excess of the correct amount shall be treated as a payment of more than the correct amount to such other person.

(3) If any overpayment with respect to an individual (or an individual and his or her spouse) is attributable solely to the ownership or possession by such individual (and spouse if any) of resources having a value which exceeds the applicable dollar figure specified in paragraph (1)(B) or (2)(B) of section 1382(a) of this title by $50 or less, such individual (and spouse if any) shall be deemed for purposes of the second sentence of paragraph (1) to have been without fault in connection with the overpayment, and no adjustment or recovery shall be made under the first sentence of such paragraph, unless the Commissioner of Social Security finds that the failure of such individual (and spouse if any) to report such value correctly and in a timely manner was knowing and willful.

(4) For payments for which adjustments are made by reason of a retroactive payment of benefits under subchapter II of this chapter, see section 1320a–6 of this title.

(c) Hearing to determine eligibility or amount of benefits; subsequent application; time within which to request hearing; time for determinations of Commissioner pursuant to hearing; judicial review

(1)(A) The Commissioner of Social Security is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this subchapter. Any such decision by the Commissioner of Social Security which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Commissioner's determination and the reason or reasons upon which it is based. The Commissioner of Social Security shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this subchapter with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within sixty days after notice of such determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse the Commissioner's findings of fact and such decision. The Commissioner of Social Security is further authorized, on the Commissioner's own motion, to hold such hearings and to conduct such investigations and other proceedings as the Commissioner may deem necessary or proper for the administration of this subchapter. In the course of any hearing, investigation, or other proceeding, the Commissioner may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Commis-

sioner of Social Security even though inadmissible under the rules of evidence applicable to court procedure. The Commissioner of Social Security shall specifically take into account any physical, mental, educational, or linguistic limitation of such individual (including any lack of facility with the English language) in determining, with respect to the eligibility of such individual for benefits under this subchapter, whether such individual acted in good faith or was at fault, and in determining fraud, deception, or intent.

(B)(i) A failure to timely request review of an initial adverse determination with respect to an application for any payment under this subchapter or an adverse determination on reconsideration of such an initial determination shall not serve as a basis for denial of a subsequent application for any payment under this subchapter if the applicant demonstrates that the applicant, or any other individual referred to in subparagraph (A), failed to so request such a review acting in good faith reliance upon incorrect, incomplete, or misleading information, relating to the consequences of reapplying for payments in lieu of seeking review of an adverse determination, provided by any officer or employee of the Social Security Administration or any State agency acting under section 421 of this title.

(ii) In any notice of an adverse determination with respect to which a review may be requested under subparagraph (A), the Commissioner of Social Security shall describe in clear and specific language the effect on possible eligibility to receive payments under this subchapter of choosing to reapply in lieu of requesting review of the determination.

(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves a disability (within the meaning of section 1382c(a)(3) of this title), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

(3) The final determination of the Commissioner of Social Security after a hearing under paragraph (1) shall be subject to judicial review as provided in section 405(g) of this title to the same extent as the Commissioner's final determinations under section 405 of this title.

(d) Procedures applicable; prohibition on assignment of payments; representation of claimants; maximum fees; penalties for violations

(1) The provisions of section 407 of this title and subsections (a), (d), and (e) of section 405 of this title shall apply with respect to this part to the same extent as they apply in the case of subchapter II of this chapter.

(2)(A) The provisions of section 406(a) of this title (other than paragraph (4) thereof) shall apply to this part to the same extent as they apply in the case of subchapter II of this chapter, except that paragraph (2) thereof shall be applied—

(i) by substituting, in subparagraphs (A)(ii)(I) and (C)(i), the phrase ''(as determined before any applicable reduction under section 1383(g) of this title, and reduced by the amount of any reduction in benefits under this subchapter or subchapter II of this chapter made pursuant to section 1320a–6(a) of this title)'' for the parenthetical phrase contained therein; and

(ii) by substituting ''section 1383(a)(7)(A) of this title or the requirements of due process of law'' for ''subsection (g) or (h) of section 423 of this title''.

(B) The Commissioner of Social Security shall notify each claimant in writing, together with the notice to such claimant of an adverse determination, of the options for obtaining attorneys to represent individuals in presenting their cases before the Commissioner of Social Security. Such notification shall also advise the claimant of the availability to qualifying claimants of legal services organizations which provide legal services free of charge.

(e) Administrative requirements prescribed by Commissioner; criteria; reduction of benefits to individual for noncompliance with requirements; payment to homeless

(1)(A) The Commissioner of Social Security shall, subject to subparagraph (B) and subsection (j) of this section, prescribe such requirements with respect to the filing of applications, the suspension or termination of assistance, the furnishing of other data and material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this subchapter.

(B) The requirements prescribed by the Commissioner of Social Security pursuant to subparagraph (A) shall require that eligibility for benefits under this subchapter will not be determined solely on the basis of declarations by the applicant concerning eligibility factors or other relevant facts, and that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct. For this purpose and for purposes of federally administered supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), the Commissioner of Social Security shall, as may be necessary, request and utilize information available pursuant to section 6103(*l*)(7) of the Internal Revenue Code of 1986, and any information which may be available from State systems under section 1320b–7 of this title, and shall comply with the requirements applicable to States (with respect to information available pursuant to section 6103(*l*)(7)(B) of such Code) under subsections (a)(6) and (c) of such section 1320b–7 of this title.

(C) For purposes of making determinations under section 1382(e) of this title, the requirements prescribed by the Commissioner of Social Security pursuant to subparagraph (A) of this paragraph shall require each administrator of a nursing home, extended care facility, or intermediate care facility, within 2 weeks after the admission of any eligible individual or eligible spouse receiving benefits under this subchapter, to transmit to the Commissioner a report of the admission.

(2) In case of the failure by any individual to submit a report of events and changes in circumstances relevant to eligibility for or amount of benefits under this subchapter as required by the Commissioner of Social Security under paragraph (1), or delay by any individual in submitting a report as so required, the Commissioner of Social Security (in addition to taking any other action the Commissioner may consider appropriate under paragraph (1)) shall reduce any benefits which may subsequently become payable to such individual under this subchapter by—

(A) $25 in the case of the first such failure or delay,

(B) $50 in the case of the second such failure or delay, and

(C) $100 in the case of the third or a subsequent such failure or delay,

except where the individual was without fault or good cause for such failure or delay existed.

(3) The Commissioner of Social Security shall provide a method of making payments under this subchapter to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address.

(4) A translation into English by a third party of a statement made in a foreign language by an applicant for or recipient of benefits under this subchapter shall not be regarded as reliable for any purpose under this subchapter unless the third party, under penalty of perjury—

(A) certifies that the translation is accurate; and

(B) discloses the nature and scope of the relationship between the third party and the applicant or recipient, as the case may be.

(5) In any case in which it is determined to the satisfaction of the Commissioner of Social Security that an individual failed as of any date to apply for benefits under this subchapter by reason of misinformation provided to such individual by any officer or employee of the Social Security Administration relating to such individual's eligibility for benefits under this subchapter, such individual shall be deemed to have applied for such benefits on the later of—

(A) the date on which such misinformation was provided to such individual, or

(B) the date on which such individual met all requirements for entitlement to such benefits (other than application therefor).

(6)[2] In any case in which an individual visits a field office of the Social Security Administration and represents during the visit to an officer or employee of the Social Security Administration in the office that the individual's visit is occasioned by—

(A) the receipt of a notice from the Social Security Administration indicating a time limit for response by the individual, or

(B) the theft, loss, or nonreceipt of a benefit payment under this subchapter,

the Commissioner of Social Security shall ensure that the individual is granted a face-to-face interview at the office with an officer or employee of the Social Security Administration before the close of business on the day of the visit.

[2] So in original. Two pars. (6) have been enacted.

[2](6)(A)(i) The Commissioner of Social Security shall immediately redetermine the eligibility of an individual for benefits under this subchapter if there is reason to believe that fraud or similar fault was involved in the application of the individual for such benefits, unless a United States attorney, or equivalent State prosecutor, with jurisdiction over potential or actual related criminal cases, certifies, in writing, that there is a substantial risk that such action by the Commissioner of Social Security with regard to recipients in a particular investigation would jeopardize the criminal prosecution of a person involved in a suspected fraud.

(ii) When redetermining the eligibility, or making an initial determination of eligibility, of an individual for benefits under this subchapter, the Commissioner of Social Security shall disregard any evidence if there is reason to believe that fraud or similar fault was involved in the providing of such evidence.

(B) For purposes of subparagraph (A), similar fault is involved with respect to a determination if—

(i) an incorrect or incomplete statement that is material to the determination is knowingly made; or

(ii) information that is material to the determination is knowingly concealed.

(C) If, after redetermining the eligibility of an individual for benefits under this subchapter, the Commissioner of Social Security determines that there is insufficient evidence to support such eligibility, the Commissioner of Social Security may terminate such eligibility and may treat benefits paid on the basis of such insufficient evidence as overpayments.

(7)(A) The Commissioner of Social Security shall request the Immigration and Naturalization Service or the Centers for Disease Control to provide the Commissioner of Social Security with whatever medical information, identification information, and employment history either such entity has with respect to any alien who has applied for benefits under this subchapter to the extent that the information is relevant to any determination relating to eligibility for such benefits under this subchapter.

(B) Subparagraph (A) shall not be construed to prevent the Commissioner of Social Security from adjudicating the case before receiving such information.

(f) Furnishing of information by Federal agencies

The head of any Federal agency shall provide such information as the Commissioner of Social Security needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

(g) Reimbursement to States for interim assistance payments

(1) Notwithstanding subsection (d)(1) of this section and subsection (b) of this section as it relates to the payment of less than the correct amount of benefits, the Commissioner of Social Security may, upon written authorization by an individual, withhold benefits due with respect to that individual and may pay to a State (or a political subdivision thereof if agreed to by the

Commissioner of Social Security and the State) from the benefits withheld an amount sufficient to reimburse the State (or political subdivision) for interim assistance furnished on behalf of the individual by the State (or political subdivision).

(2) For purposes of this subsection, the term ''benefits'' with respect to any individual means supplemental security income benefits under this subchapter, and any State supplementary payments under section 1382e of this title or under section 212 of Public Law 93–66 which the Commissioner of Social Security makes on behalf of a State (or political subdivision thereof), that the Commissioner of Social Security has determined to be due with respect to the individual at the time the Commissioner of Social Security makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3). A cash advance made pursuant to subsection (a)(4)(A) of this section shall not be considered as the first payment of benefits for purposes of the preceding sentence.

(3) For purposes of this subsection, the term ''interim assistance'' with respect to any individual means assistance financed from State or local funds and furnished for meeting basic needs (A) during the period, beginning with the month in which the individual filed an application for benefits (as defined in paragraph (2)), for which he was eligible for such benefits, or (B) during the period beginning with the first month for which the individual's benefits (as defined in paragraph (2)) have been terminated or suspended if the individual was subsequently found to have been eligible for such benefits.

(4) In order for a State to receive reimbursement under the provisions of paragraph (1), the State shall have in effect an agreement with the Commissioner of Social Security which shall provide—

(A) that if the Commissioner of Social Security makes payment to the State (or a political subdivision of the State as provided for under the agreement) in reimbursement for interim assistance (as defined in paragraph (3)) for any individual in an amount greater than the reimbursable amount authorized by paragraph (1), the State (or political subdivision) shall pay to the individual the balance of such payment in excess of the reimbursable amount as expeditiously as possible, but in any event within ten working days or a shorter period specified in the agreement; and

(B) that the State will comply with such other rules as the Commissioner of Social Security finds necessary to achieve efficient and effective administration of this subsection and to carry out the purposes of the program established by this subchapter, including protection of hearing rights for any individual aggrieved by action taken by the State (or political subdivision) pursuant to this subsection.

(5) The provisions of subsection (c) of this section shall not be applicable to any disagreement concerning payment by the Commissioner of Social Security to a State pursuant to the preceding provisions of this subsection nor the amount retained by the State (or political subdivision).

(h) Payment of certain travel expenses

The Commissioner of Social Security shall pay travel expenses, either on an actual cost or commuted basis, to individuals for travel incident to medical examinations requested by the Commissioner of Social Security in connection with disability determinations under this subchapter, and to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 1382c(e) of this title) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this subchapter. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Commissioner of Social Security) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations. The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.

(i) Unnegotiated checks; notice to Commissioner; payment to States; notice to States; investigation of payees

(1) The Secretary of the Treasury shall, on a monthly basis, notify the Commissioner of Social Security of all benefit checks issued under this subchapter which include amounts representing State supplementary payments as described in paragraph (2) and which have not been presented for payment within one hundred and eighty days after the day on which they were issued.

(2) The Commissioner of Social Security shall from time to time determine the amount representing the total of the State supplementary payments made pursuant to agreements under section 1382e(a) of this title and under section 212(b) of Public Law 93–66 which is included in all such benefit checks not presented for payment within one hundred and eighty days after the day on which they were issued, and shall pay each State (or credit each State with) an amount equal to that State's share of all such amount. Amounts not paid to the States shall be returned to the appropriation from which they were originally paid.

(3) The Commissioner of Social Security, upon notice from the Secretary of the Treasury under paragraph (1), shall notify any State having an agreement described in paragraph (2) of all such benefit checks issued under that State's agreement which were not presented for payment within one hundred and eighty days after the day on which they were issued.

(4) The Commissioner of Social Security shall, to the maximum extent feasible, investigate the whereabouts and eligibility of the individuals whose benefit checks were not presented for payment within one hundred and eighty days after the day on which they were issued.

(j) Application and review requirements for certain individuals

(1) Notwithstanding any provision of section 1382 or 1382h of this title, any individual who—

(A) was an eligible individual (or eligible spouse) under section 1382 of this title or was eligible for benefits under or pursuant to section 1382h of this title, and

(B) who, after such eligibility, is ineligible for benefits under or pursuant to both such sections for a period of 12 consecutive months,

may not thereafter become eligible for benefits under or pursuant to either such section until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section.

(2)(A) Notwithstanding any provision of section 1382 of this title or section 1382h of this title (other than subsection (c) thereof), any individual who was eligible for benefits pursuant to section 1382h(b) of this title, and who—

(i)(I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible for benefits under section 1382 or 1382h(a) of this title for a month that follows a period during which the individual was ineligible for benefits under sections 1382 and 1382h(a) of this title, and

(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments); or

(ii)(I) on the basis of the same impairment on which his or her eligibility under such section 1382h(b) of this title was based becomes eligible under section 1382h(b) of this title for a month that follows a period during which the individual was ineligible under section 1382 of this title and section 1382h of this title, and

(II) has earned income (other than income excluded pursuant to section 1382a(b) of this title) for such month or for any month in the 12-month period preceding such month that is equal to or in excess of the amount that would cause him or her to be ineligible for payments under section 1382(b) of this title for that month (if he or she were otherwise eligible for such payments);

shall, upon becoming eligible (as described in clause (i)(I) or (ii)(I)), be subject to a prompt review of the type described in section 1382c(a)(4) of this title.

(B) If the Commissioner of Social Security determines pursuant to a review required by subparagraph (A) that the impairment upon which the eligibility of an individual is based has ceased, does not exist, or is not disabling, such individual may not thereafter become eligible for a benefit under or pursuant to section 1382 of this title or section 1382h of this title until the individual has reapplied for benefits under section 1382 of this title and been determined to be eligible for benefits under such section.

(k) Notifications to applicants and recipients

The Commissioner of Social Security shall notify an individual receiving benefits under section 1382 of this title on the basis of disability or blindness of his or her potential eligibility for benefits under or pursuant to section 1382h of this title—

(1) at the time of the initial award of benefits to the individual under section 1382 of this title (if the individual has attained the age of 18 at the time of such initial award), and

(2) at the earliest time after an initial award of benefits to an individual under section 1382 of this title that the individual's earned income for a month (other than income excluded pursuant to section 1382a(b) of this title) is $200 or more, and periodically thereafter so long as such individual has earned income (other than income so excluded) of $200 or more per month.

(*l*) Special notice to blind individuals with respect to hearings and other official actions

(1) In any case where an individual who is applying for or receiving benefits under this subchapter on the basis of blindness is entitled (under subsection (c) of this section or otherwise) to receive notice from the Commissioner of Social Security of any decision or determination made or other action taken or proposed to be taken with respect to his or her rights under this subchapter, such individual shall at his or her election be entitled either (A) to receive a supplementary notice of such decision, determination, or action, by telephone, within 5 working days after the initial notice is mailed, (B) to receive the initial notice in the form of a certified letter, or (C) to receive notification by some alternative procedure established by the Commissioner of Social Security and agreed to by the individual.

(2) The election under paragraph (1) may be made at any time; but an opportunity to make such an election shall in any event be given (A) to every individual who is an applicant for benefits under this subchapter on the basis of blindness, at the time of his or her application, and (B) to every individual who is a recipient of such benefits on the basis of blindness, at the time of each redetermination of his or her eligibility. Such an election, once made by an individual, shall apply with respect to all notices of decisions, determinations, and actions which such individual may thereafter be entitled to receive under this subchapter until such time as it is revoked or changed.

(m) Pre-release procedures for institutionalized persons

The Commissioner of Social Security shall develop a system under which an individual can apply for supplemental security income benefits under this subchapter prior to the discharge or release of the individual from a public institution.

(n) Concurrent SSI and food stamp applications by institutionalized individuals

The Commissioner of Social Security and the Secretary of Agriculture shall develop a procedure under which an individual who applies for supplemental security income benefits under this subchapter shall also be permitted to apply at the same time for participation in the food stamp program authorized under the Food Stamp Act of 1977 (7 U.S.C. 2011 et seq.).

(*o*) Notice requirements

The Commissioner of Social Security shall take such actions as are necessary to ensure that any notice to one or more individuals issued pursuant to this subchapter by the Commissioner of Social Security or by a State agency—

(1) is written in simple and clear language, and

(2) includes the address and telephone number of the local office of the Social Security Administration which serves the recipient.

In the case of any such notice which is not generated by a local servicing office, the requirements of paragraph (2) shall be treated as satisfied if such notice includes the address of the local office of the Social Security Administration which services the recipient of the notice and a telephone number through which such office can be reached.

(Aug. 14, 1935, ch. 531, title XVI, § 1631, as added Oct. 30, 1972, Pub. L. 92–603, title III, § 301, 86 Stat. 1475; amended Dec. 31, 1973, Pub. L. 93–233, § 18(g), 87 Stat. 969; Aug. 7, 1974, Pub. L. 93–368, § 5, 88 Stat. 420; Jan. 2, 1976, Pub. L. 94–202, §§ 1, 2, 89 Stat. 1135; July 14, 1976, Pub. L. 94–365, § 1, 90 Stat. 990; Oct. 20, 1976, Pub. L. 94–569, § 4(a), 90 Stat. 2700; Apr. 1, 1980, Pub. L. 96–222, title I, § 101(a)(2)(C), 94 Stat. 195; June 9, 1980, Pub. L. 96–265, title III, §§ 301(b), 305(b), 310(b), title V, § 501(c), 94 Stat. 450, 457, 459, 470; Oct. 19, 1980, Pub. L. 96–473, § 6(h), 94 Stat. 2266; Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2343(a), 95 Stat. 866; Sept. 3, 1982, Pub. L. 97–248, title I, § 187(a), 96 Stat. 407; July 18, 1984, Pub. L. 98–369, div. B, title VI, §§ 2612(a), 2613, 2651(j), 2663(g)(11), (12), 98 Stat. 1131, 1150, 1169; Oct. 9, 1984, Pub. L. 98–460, §§ 7(b), 16(b), 98 Stat. 1803, 1809; Apr. 7, 1986, Pub. L. 99–272, title XII, § 12113(b), 100 Stat. 288; Oct. 22, 1986, Pub. L. 99–514, § 2, title XVIII, § 1883(d)(1), 100 Stat. 2095, 2918; Oct. 27, 1986, Pub. L. 99–570, title XI, §§ 11005(a), 11006, 100 Stat. 3207–169; Nov. 10, 1986, Pub. L. 99–643, §§ 4(c)(1), (d)(3)(B), 5, 8(a), 100 Stat. 3576–3579; Dec. 22, 1987, Pub. L. 100–203, title IX, §§ 9109(a), 9110(a), (b), 9111(a)(1), 9112(a), 9123, 101 Stat. 1330–302 to 1330–304, 1330–313; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8001(b), 102 Stat. 3779; Dec. 19, 1989, Pub. L. 101–239, title X, §§ 10302(b)(1), 10303(b), 10305(e), 10307(a)(2), (b)(2), 103 Stat. 2482, 2483, 2485; Nov. 5, 1990, Pub. L. 101–508, title V, §§ 5031(c), 5038(a), 5039(b), 5040, 5105(a)(1)(B), (2)(A)(ii), (3)(A)(ii), (c)(2), (d)(1)(B), 5106(a)(2), (c), 5107(a)(2), 5109(a)(2), 5113(b), 104 Stat. 1388–224, 1388–226, 1388–227, 1388–255, 1388–258, 1388–261, 1388–265, 1388–266, 1388–268, 1388–269, 1388–271, 1388–273; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), title II, §§ 201(b)(1)(A), (B), (2)(A), (B), 206(a)(2), (d)(2), (f)(1), title III, § 321(f)(2)(B), (3)(A), (h)(1), 108 Stat. 1478, 1499–1501, 1509, 1514, 1515, 1541, 1544; Oct. 22, 1994, Pub. L. 103–387, § 6(a), 108 Stat. 4077; Oct. 31, 1994, Pub. L. 103–432, title II, §§ 264(b), (e)–(g), 267(b), 268, 108 Stat. 4468–4470.)

REFERENCES IN TEXT

Section 904 of this title, referred to in subsec. (a)(2)(F), (G), was amended generally by Pub. L. 103–296, title I, § 104(a), Aug. 15, 1994, 108 Stat. 1470, and, as so amended, does not require an annual report.

Section 212 of Public Law 93–66, referred to in subsecs. (b)(1), (e)(1)(B), (g)(2), and (i)(2), is section 212 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out in a note under section 1382 of this title.

The Internal Revenue Code of 1986, referred to in subsec. (e)(1)(B), is classified generally to Title 26, Internal Revenue Code.

The Food Stamp Act of 1977, referred to in subsec. (n), is Pub. L. 88–525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 1383, act Aug. 14, 1935, ch. 531, title XVI, § 1603, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 200; amended July 30, 1965, Pub. L. 89–97, title I, § 122, title II, § 221(d)(4), title IV, § 401(b), 79 Stat. 353, 359, 414; Jan. 2, 1968, Pub. L. 90–248, title II, § 212(d), 81 Stat. 898; Oct. 20, 1972, Pub. L. 92–512, title III, § 301(b), (d), (e), 86 Stat. 946, 947, related to determination of amounts payable to States, prior to the general amendment of title XVI of the Social Security Act by Pub. L. 92–603, § 301, but is set out below in view of its continued applicability to Puerto Rico, Guam, and the Virgin Islands.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–432, § 264(e), inserted par. (2) designation.

Subsec. (a)(2)(A)(ii). Pub. L. 103–296, § 201(b)(1)(A)(i), designated existing provisions as subcl. (I), struck out ''or in the case of any individual or eligible spouse referred to in section 1382(e)(3)(A) of this title,'' after ''served thereby,'', and added subcl. (II).

Pub. L. 103–296, § 107(a)(4), in cl. (ii) as amended by Pub. L. 103–296, § 201(b)(1)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in two places in subcl. (II).

Subsec. (a)(2)(A)(iii). Pub. L. 103–296, § 201(b)(1)(A)(ii), substituted ''to an alternative representative payee of the individual or eligible spouse or, if the interest of the individual under this subchapter would be served thereby, to the individual or eligible spouse'' for ''to the individual or eligible spouse or to an alternative representative payee of the individual or eligible spouse''.

Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (a)(2)(B)(i)(I), (ii), (iv) to (vi). Pub. L. 103–296, § 107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(2)(B)(vii). Pub. L. 103–296, § 201(b)(2)(A)(ii), added cl. (vii). Former cl. (vii) redesignated (viii).

Pub. L. 103–296, § 107(a)(4), in cl. (vii) as added by Pub. L. 103–296, § 201(b)(2)(A)(ii), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places and ''Commissioner's'' for ''Secretary's''.

Subsec. (a)(2)(B)(viii). Pub. L. 103–296, § 201(b)(2)(A)(i), (iii), redesignated cl. (vii) as (viii) and substituted ''clause (ix)'' for ''clause (viii)''. Former cl. (viii) redesignated (ix).

Pub. L. 103–296, § 201(b)(1)(B), in subcl. (II) substituted ''of 15 years, or (if alcoholism or drug addiction is a

contributing factor material to the Secretary's determination that the individual is disabled) is eligible for benefits under this subchapter by reason of disability.'' for ''15 years, or a drug addict or alcoholic referred to in section 1382(e)(3)(A) of this title.''

Pub. L. 103–296, §107(a)(4), in cl. (viii) as redesignated by Pub. L. 103–296, §201(b)(2)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (a)(2)(B)(ix). Pub. L. 103–296, §201(b)(2)(A)(i), (iv), redesignated cl. (viii) as (ix) and in subcl. (I) substituted ''clause (viii)'' for ''clause (vii)''. Former cl. (ix) redesignated (x).

Pub. L. 103–296, §107(a)(4), in cl. (ix) as redesignated and amended by Pub. L. 103–296, §201(b)(1)(B), (2)(A)(i), substituted ''Commissioner's'' for ''Secretary's'' in two places in subcl. (II).

Subsec. (a)(2)(B)(x) to (xii). Pub. L. 103–296, §201(b)(2)(A)(i), redesignated cls. (ix) to (xi) as (x) to (xii), respectively. Former cl. (xii) redesignated (xiii).

Pub. L. 103–296, §107(a)(4), in cls. (x) to (xii) as redesignated by Pub. L. 103–296, §201(b)(2)(A)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''Commissioner's'' for ''Secretary's'' wherever appearing.

Subsec. (a)(2)(B)(xiii). Pub. L. 103–296, §201(b)(2)(A)(i), (v), redesignated cl. (xii) as (xiii) and substituted ''clause (xii)'' for ''clause (xi)'' and ''clause (xi)'' for ''clause (x)''.

Subsec. (a)(2)(C). Pub. L. 103–296, §107(a)(4), in subpar. (C) as amended by Pub. L. 103–432, §264(f), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(2)(C)(i). Pub. L. 103–432, §264(f)(1), substituted ''to a representative payee'' for ''to representative payee''.

Subsec. (a)(2)(C)(ii). Pub. L. 103–432, §264(f)(2), (3), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: ''Clause (i) shall not apply in any case where the representative payee is a parent or spouse of the individual entitled to such payment who lives in the same household as such individual. The Secretary shall require such parent or spouse to verify on a periodic basis that such parent or spouse continues to live in the same household as such individual.''

Subsec. (a)(2)(C)(iii). Pub. L. 103–432, §264(f)(3), redesignated cl. (iv) as (iii). Former cl. (iii) redesignated (ii).

Subsec. (a)(2)(C)(iv). Pub. L. 103–432, §264(f)(4), substituted ''Notwithstanding clauses (i), (ii), and (iii)'' for ''Notwithstanding clauses (i), (ii), (iii), and (iv)''.

Pub. L. 103–432, §264(f)(3), redesignated cl. (v) as (iv). Former cl. (iv) redesignated (iii).

Subsec. (a)(2)(C)(v). Pub. L. 103–432, §264(f)(3), redesignated cl. (v) as (iv).

Subsec. (a)(2)(D)(i). Pub. L. 103–296, §201(b)(2)(B)(i)(I)(bb), inserted in closing provisions ''The Secretary shall adjust annually (after 1995) each dollar amount set forth in subclause (II) of this clause under procedures providing for adjustments in the same manner and to the same extent as adjustments are provided for under the procedures used to adjust benefit amounts under section 415(i)(2)(A) of this title, except that any amount so adjusted that is not a multiple of $1.00 shall be rounded to the nearest multiple of $1.00.''

Pub. L. 103–296, §107(a)(4), in cl. (i) as amended by Pub. L. 103–296, §201(b)(2)(B)(i)(I)(bb), substituted ''Commissioner of Social Security'' for ''Secretary'' in closing provisions.

Subsec. (a)(2)(D)(i)(II). Pub. L. 103–296, §201(b)(2)(B)(i)(I)(aa), added subcl. (II) and struck out former subcl. (II) which read as follows: ''$25.00 per month.''

Pub. L. 103–296, §104(a)(7), in subcl. (II) as added by Pub. L. 103–296, §201(b)(2)(B)(i)(I)(aa), substituted ''Commissioner's'' for ''Secretary's''.

Subsec. (a)(2)(D)(ii). Pub. L. 103–296, §201(b)(2)(B)(ii), in introductory provisions inserted ''State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities, any State or local government agency with fiduciary responsibilities, or any'' after ''means any'' and a comma after ''service agency'', at end of subcl. (I) inserted ''and'', and in subcl. (II) inserted ''and'' at end of item (aa), substituted a period for ''; and'' at end of item (bb), and struck out item (cc) which read as follows: ''was in existence on October 1, 1988.''

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(2)(D)(iv). Pub. L. 103–296, §201(b)(2)(B)(iii)(II), redesignated cl. (v) as (iv).

Pub. L. 103–296, §201(b)(2)(B)(iii)(I), struck out cl. (iv) which read as follows: ''This subparagraph shall cease to be effective on July 1, 1994.''

Subsec. (a)(2)(D)(v). Pub. L. 103–296, §201(b)(2)(B)(iii)(II), redesignated cl. (v) as (iv).

Pub. L. 103–296, §201(b)(2)(B)(i)(II), added cl. (v).

Subsec. (a)(2)(E). Pub. L. 103–296, §321(f)(2)(B)(ii), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 103–296, §107(a)(4), in subpar. (E) as added by Pub. L. 103–296, §321(f)(2)(B)(ii), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (a)(2)(F), (G). Pub. L. 103–296, §321(f)(2)(B)(i), redesignated subpars. (E) and (F) as (F) and (G), respectively.

Pub. L. 103–296, §107(a)(4), in subpars. (F) and (G) as redesignated by Pub. L. 103–296, §321(f)(2)(B)(i), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''Commissioner's'' for ''Secretary's'' in subpar. (G).

Subsec. (a)(3), (4), (6) to (8). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''the Commissioner's'' for ''his'' in par. (8)(A), and ''Commissioner's'' for ''Secretary's'' in par. (8)(B).

Subsec. (b). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner finds'' for ''he finds'' in par. (1)(B).

Subsec. (b)(3) to (5). Pub. L. 103–432, §267(b), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: ''In any case in which advance payments for a taxable year made by all employers to an individual under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income credit) exceed the amount of such individual's earned income credit allowable under section 32 of such Code for such year, so that such individual is liable under section 32(g) of such Code for a tax equal to such excess, the Secretary shall provide for an appropriate adjustment of such individual's benefit amount under this subchapter so as to provide payment to such individual of an amount equal to the amount of such benefits lost by such individual on account of such excess advance payments.''

Subsec. (c)(1)(A). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, ''Commissioner's determination'' for ''Secretary's determination'', ''the Commissioner's findings'' for ''his findings'', ''the Commissioner's own motion'' for ''his own motion'', ''the Commissioner may deem'' for ''he may deem'', and ''the Commissioner may administer'' for ''he may administer''.

Subsec. (c)(1)(B). Pub. L. 103–432, §264(g), substituted ''subparagraph (A)'' for ''paragraph (1)'' in cls. (i) and (ii).

Subsec. (c)(1)(B)(ii). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (c)(3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''Commissioner's'' for ''Secretary's''.

Subsec. (d)(2)(A)(i). Pub. L. 103–296, §321(f)(3)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''by substituting 'section 1320a–6(a) or 1383(g) of this title' for 'section 1320a–6(a) of this title'; and''.

Subsec. (d)(2)(B). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (e)(1). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsec. (e)(1)(C). Pub. L. 103–387 added subpar. (C).

Subsec. (e)(2), (3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner may'' for ''he may'' in par. (2).

Subsec. (e)(4). Pub. L. 103–296, §206(a)(2), added par. (4).

Subsec. (e)(5). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in introductory provisions.

Subsec. (e)(6). Pub. L. 103–432, §268, redesignated subpars. (1) and (2) of par. (6), relating to face-to-face interviews in field offices, as subpars. (A) and (B), respectively.

Pub. L. 103–296, §206(d)(2), added par. (6) relating to suspicion of fraud or similar fault.

Pub. L. 103–296, §107(a)(4), in par. (6), relating to suspicion of fraud or similar fault, as added by Pub. L. 103–296, §206(d)(2), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in closing provisions of par. (6) relating to face-to-face interviews in field offices.

Subsec. (e)(7). Pub. L. 103–296, §206(f)(1), added par. (7).

Pub. L. 103–296, §107(a)(4), in par. (7) as added by Pub. L. 103–296, §206(f)(1), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

Subsecs. (f) to (m). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing, except where appearing before ''of the Treasury'' in subsec. (i)(1) and (3).

Subsec. (n). Pub. L. 103–432, §264(b), which directed substitution of ''section'' for ''subsection'', could not be executed because of amendment by Pub. L. 103–296, §321(h)(1)(A), which substituted ''subchapter'' for ''subsection''. See below.

Pub. L. 103–296, §321(h)(1)(B), redesignated subsec. (n) relating to notice requirements as (*o*).

Pub. L. 103–296, §321(h)(1)(A), substituted ''subchapter'' for ''subsection'' in subsec. (n) relating to concurrent SSI and food stamp applications by institutionalized individuals.

Pub. L. 103–296, §107(a)(4), substituted ''The Commissioner of Social Security and'' for ''The Secretary and'' in subsec. (n) relating to concurrent SSI and food stamp applications by institutionalized individuals.

Subsec. (*o*). Pub. L. 103–296, §321(h)(1)(B), redesignated subsec. (n) relating to notice requirements as (*o*).

Pub. L. 103–296, §107(a)(4), in subsec. (*o*) as redesignated by Pub. L. 103–296, §321(h)(1)(B), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places in introductory provisions.

1990—Subsec. (a)(2)(A). Pub. L. 101–508, §5105(a)(1)(B)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to each, or, if the Secretary deems it appropriate to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse). Notwithstanding the provisions of the preceding sentence, in the case of any individual or eligible spouse referred to in section 1382(e)(3)(A) of this title, the Secretary shall provide for making payments of the benefit to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).''

Subsec. (a)(2)(B). Pub. L. 101–508, §5105(a)(2)(A)(ii), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Any determination made under subparagraph (A) that payment should be made to a person other than the individual or spouse entitled to such payment must be made on the basis of an investigation, carried out either prior to such determination or within forty-five days after such determination, and on the basis of adequate evidence that such determination is in the interest of the individual or spouse entitled to such payment (as determined by the Secretary in regulations). The Secretary shall ensure that such determinations are adequately reviewed.''

Subsec. (a)(2)(C)(i). Pub. L. 101–508, §5105(a)(1)(B)(ii)(I), substituted ''representative payee of an individual or spouse'' for ''a person other than the individual or spouse entitled to such payment''.

Subsec. (a)(2)(C)(ii) to (iv). Pub. L. 101–508, §5105(a)(1)(B)(ii)(II), substituted ''representative payee'' for ''other person to whom such payment is made''.

Subsec. (a)(2)(C)(v). Pub. L. 101–508, §5105(a)(1)(B)(ii)(III), substituted ''representative payee'' for ''person receiving payments on behalf of another'' and for ''person receiving such payments''.

Subsec. (a)(2)(D). Pub. L. 101–508, §5105(a)(3)(A)(ii)(III)[(II)], added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(2)(E). Pub. L. 101–508, §5105(c)(2), added subpar. (E). Former subpar. (E) redesignated (F).

Pub. L. 101–508, §5105(a)(3)(A)(ii)(I), redesignated subpar. (D) as (E).

Subsec. (a)(2)(F). Pub. L. 101–508, §5105(d)(1)(B), which directed amendment of subsec. (a)(2)(E), as redesignated by section 5105(c)(2) of Pub. L. 101–508, by redesignating it as subpar. (E) and amending it generally, was executed to subpar. (E), as added by section 5105(c)(2) of Pub. L. 101–508, as the probable intent of Congress. Prior to amendment, subpar. (E) read as follows: ''In cases where the negligent failure of the Secretary to investigate or monitor a representative payee results in misuse of benefits by the representative payee, the Secretary shall make payment to the beneficiary or the beneficiary's representative payee of an amount equal to such misused benefits. The Secretary shall make a good faith effort to obtain restitution from the terminated representative payee.''

Pub. L. 101–508, §5105(c)(2), redesignated subpar. (E) as (F).

Subsec. (a)(4)(B). Pub. L. 101–508, §5038(a), substituted ''6 months'' for ''3 months''.

Subsec. (a)(6)(A). Pub. L. 101–508, §5113(b)(1), added subpar. (A) and struck out former subpar. (A) which read as follows: ''such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and''.

Subsec. (a)(6)(B). Pub. L. 101–508, §5113(b)(2), substituted ''Secretary'' for ''Commissioner of Social Security''.

Subsec. (a)(9). Pub. L. 101–508, §5031(c), added par. (9).

Subsec. (c)(1). Pub. L. 101–508, §5107(a)(2), designated existing provision as subpar. (A) and added subpar. (B).

Subsec. (d)(2)(A). Pub. L. 101–508, §5106(a)(2), amended subpar. (A) generally, substituting cls. (i) and (ii) for former single par. which authorized Secretary to prescribe regulations relating to representation of claimants before the Secretary, representation by attorneys, suspension of representatives, and maximum fees for representation, provided penalties for deceiving claimants and exceeding maximum fees, and required Secretary to maintain in the electronic information retrieval system of the Social Security Administration the identity of representatives of claimants.

Subsec. (h). Pub. L. 101–508, §5106(c), inserted at end ''The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.''

Subsec. (j)(2)(A). Pub. L. 101–508, §5039(b), inserted ''(other than subsection (c) thereof)'' after first reference to ''section 1382h of this title''.

Subsec. (m). Pub. L. 101–508, §5040(1), struck out at end ''The Secretary and the Secretary of Agriculture

shall develop a procedure under which an individual who applies for supplemental security income benefits under this subchapter shall also be permitted to apply for participation in the food stamp program by executing a single application.''

Subsec. (n). Pub. L. 101–508, §5109(a)(2), added subsec. (n) relating to notice requirements.

Pub. L. 101–508, §5040(2), added subsec. (n) relating to concurrent SSI and food stamp applications by institutionalized individuals.

1989—Subsec. (c)(1). Pub. L. 101–239, §10305(e), inserted at end ''The Secretary shall specifically take into account any physical, mental, educational, or linguistic limitation of such individual (including any lack of facility with the English language) in determining, with respect to the eligibility of such individual for benefits under this subchapter, whether such individual acted in good faith or was at fault, and in determining fraud, deception, or intent.''

Subsec. (d)(2). Pub. L. 101–239, §10307(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 101–239, §10307(a)(2), inserted at end ''The Secretary shall maintain in the electronic information retrieval system used by the Social Security Administration a current record, with respect to any claimant before the Secretary, of the identity of any person representing such claimant in accordance with this paragraph.''

Subsec. (e)(5). Pub. L. 101–239, §10302(b)(1), added par. (5).

Subsec. (e)(6). Pub. L. 101–239, §10303(b), added par. (6).

1988—Subsec. (a)(8). Pub. L. 100–647 added par. (8).

1987—Subsec. (a)(4)(A). Pub. L. 100–203, §9109(a), substituted ''a cash advance against such benefits, including any federally-administered State supplementary payments, in an amount not exceeding the monthly amount that would be payable to an eligible individual with no other income for the first month of such presumptive eligibility'' for ''a cash advance against such benefits in an amount not exceeding $100''.

Subsec. (a)(6). Pub. L. 100–203, §9112(a), in introductory provision inserted ''blindness (as determined under section 1382c(a)(2) of this title) or'' before ''disability'' and ''blindness or other'' before ''physical'', and in subpar. (B) inserted ''blindness and'' before ''disability''.

Subsec. (g)(2). Pub. L. 100–203, §9110(a), substituted ''at the time the Secretary makes the first payment of benefits with respect to the period described in clause (A) or (B) of paragraph (3)'' for ''at the time the Secretary makes the first payment of benefits''.

Subsec. (g)(3). Pub. L. 100–203, §9110(b), inserted cl. (A) designation after ''basic needs'' and added cl. (B).

Subsec. (j). Pub. L. 100–203, §9123, redesignated subsec. (j), relating to pre-release procedures for institutionalized persons, as (m).

Subsec. (*l*). Pub. L. 100–203, §9111(a)(1), added subsec. (*l*).

Subsec. (m). Pub. L. 100–203, §9123, redesignated subsec. (j), relating to pre-release procedures for institutionalized persons, as (m) and reenacted heading without change.

1986—Subsec. (b)(1). Pub. L. 99–643, §8(a), substituted ''(A) Whenever the Secretary'' for ''Whenever the Secretary'', ''by recovery from such individual or his eligible spouse (or from the estate of either) or by payment to such individual or his eligible spouse, or, if such individual is deceased, by payment—'' for ''by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary (A) shall make'', added subpar. (A)(i) and (ii), substituted ''(B) the Secretary (i) shall make such provision'' for ''such provision'', ''and (ii) shall in any event'' for ''and (B) shall in any event'', ''(I) the amount'' for ''(i) the amount'', ''(II) an amount'' for ''(ii) an amount'', ''clause (ii)'' for ''clause (B)'', and ''clause (i)'' for ''clause (A)''.

Subsec. (b)(2). Pub. L. 99–272 added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 99–514, §2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Pub. L. 99–272 redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (b)(4), (5). Pub. L. 99–272 redesignated pars. (3) and (4) as (4) and (5), respectively.

Subsec. (e)(1)(A). Pub. L. 99–643, §4(c)(1)(A), substituted ''subparagraph (B) and subsection (j) of this section'' for ''subparagraph (B)''.

Subsec. (e)(1)(B). Pub. L. 99–514, §2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (e)(3). Pub. L. 99–570, §11005(a), added par. (3).

Subsec. (g). Pub. L. 99–514, §1883(d)(1), amended heading generally.

Subsec. (j). Pub. L. 99–570, §11006, added subsec. (j) relating to pre-release procedures for institutionalized persons.

Pub. L. 99–643, §4(c)(1)(B), added subsec. (j) relating to application and review requirements for certain individuals.

Subsec. (j)(2)(A). Pub. L. 99–643, §4(d)(3)(B), in subsec. (j) relating to application and review requirements, substituted ''section 1382c(a)(4) of this title'' for ''section 1382c(a)(5) of this title'' in closing provisions.

Subsec. (k). Pub. L. 99–643, §5, added subsec. (k).

1984—Subsec. (a)(2). Pub. L. 98–460, §16(b), redesignated existing provisions as subpar. (A) and added subpars. (B) to (D).

Subsec. (a)(7). Pub. L. 98–460, §7(b), added par. (7).

Pub. L. 98–369, §2612(a), inserted ''(A)'' before ''shall make such provision'' in second sentence, and added cl. (B).

Subsec. (b)(1). Pub. L. 98–369, §2663(g)(11)(A), substituted ''equity and good conscience'' for ''equity or good conscience''.

Subsec. (b)(2). Pub. L. 98–369, §2663(g)(11)(B), substituted ''section 32'' and ''section 32(g)'' for ''section 43'' and ''section 43(g)'', respectively.

Subsec. (b)(3), (4). Pub. L. 98–369, §2613, added par. (3) and redesignated former par. (3) as (4).

Subsec. (d)(1). Pub. L. 98–369, §2663(g)(12), substituted ''and (e)'' for ''(e), and (f)''.

Subsec. (e)(1)(B). Pub. L. 98–369, §2651(j), inserted provision that for this purpose and for purposes of federally administered supplementary payments of the type described in section 1382e(a) of this title (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93–66), the Secretary shall, as may be necessary, request and utilize information available pursuant to section 6103(*l*)(7) of the Internal Revenue Code of 1954, and any information which may be available from State systems under section 1320b–7 of this title, and shall comply with the requirements applicable to States (with respect to information available pursuant to section 6103(*l*)(7)(B) of such Code) under subsections (a)(6) and (c) of such section 1320b–7 of this title.

1982—Subsec. (i)(2). Pub. L. 97–248 substituted ''such benefit checks'' for ''checks payable to individuals entitled to benefits under this subchapter but''.

1981—Subsec. (i). Pub. L. 97–35 added subsec. (i).

1980—Subsec. (a)(6). Pub. L. 96–265, §301(b), added par. (6).

Subsec. (b). Pub. L. 96–473 redesignated par. (2) as added by Pub. L. 96–265, §501(c), as (3).

Pub. L. 96–265, §501(c), designated existing provisions as par. (1) and added par. (2), without reference to identical amendment made by Pub. L. 96–222. Such par. (2) was subsequently redesignated par. (3) by Pub. L. 96–473.

Pub. L. 96–222 designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(1). Pub. L. 96–265, §305(b), inserted provisions relating to information that must accompany a decision of Secretary.

Subsec. (h). Pub. L. 96–265, §310(b), added subsec. (h).

1976—Subsec. (a)(4)(B). Pub. L. 94–569 inserted ''or blindness'' after ''disability'' and ''or blind'' after ''disabled'' wherever appearing.

Subsec. (c)(1). Pub. L. 94–202, §1, increased authority of Secretary by permitting him to hold hearings on his

own motion, to administer oaths, examine witnesses, and receive evidence at hearings, and increased time within which a request for a hearing be made after notice of Secretary's determination is received from thirty to sixty days.

Subsec. (c)(2). Pub. L. 94–202, §1, reenacted par. (2) without change.

Subsec. (c)(3). Pub. L. 94–202, §1, struck out exception to judicial review which made factual determinations by the Secretary, after a hearing as provided by subsec. (c)(1), final and conclusive.

Subsec. (d)(2), (3). Pub. L. 94–202, §2, struck out par. (2) which related to appointment of individuals to serve as hearing examiners without meeting specific standards prescribed for hearing examiners, and redesignated par. (3) as par. (2).

Subsec. (g). Pub. L. 94–365 struck out par. (6) which provided that provisions of this subsection were to expire on June 30, 1976, at least sixty days prior to which, the Secretary was to submit to Congress a report assessing effects of actions taken pursuant to this subsection and including whatever recommendations the Secretary deemed appropriate.

1974—Subsec. (g). Pub. L. 93–368 added subsec. (g).

1973—Subsec. (a)(4)(B). Pub. L. 93–233 inserted ''solely because such individual is determined not to be disabled.''

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by section 264(b) and (e)–(g) of Pub. L. 103–432 effective as if included in the provision of Pub. L. 101–508 to which the amendment relates at the time such provision became law, see section 264(h) of Pub. L. 103–432, set out as a note under section 602 of this title.

Section 6(b) of Pub. L. 103–387 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to admissions occurring on or after October 1, 1995.''

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 201(b)(1)(C) of Pub. L. 103–296 provided that: ''The amendments made by this paragraph [amending this section] shall apply with respect to months beginning after 180 days after the date of the enactment of this Act [Aug. 15, 1994].''

Section 201(b)(2)(B)(iii)(I) of Pub. L. 103–296 provided that the amendment made by that section is effective July 1, 1994.

Section 201(b)(2)(C) of Pub. L. 103–296 provided that: ''Except as provided in subparagraph (B)(iii)(I) [amending this section and enacting provisions set out as a note above], the amendments made by this paragraph [amending this section] shall apply with respect to months beginning after 90 days after the date of the enactment of this Act [Aug. 15, 1994].''

Amendment by section 206(a)(2) of Pub. L. 103–296 applicable to translations made on or after Oct. 1, 1994, see section 206(a)(3) of Pub. L. 103–296, set out as a note under section 405 of this title.

Amendment by section 206(d)(2) of Pub. L. 103–296 effective Oct. 1, 1994, and applicable to determinations made before, on, or after such date, see section 206(d)(3) of Pub. L. 103–296, set out as a note under section 405 of this title.

Section 206(f)(2) of Pub. L. 103–296 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1994.''

Amendment by section 321(f)(2)(B), (3)(A) of Pub. L. 103–296 effective as if included in the provisions of Pub. L. 101–508 to which such amendment relates, see section 321(f)(5) of Pub. L. 103–296, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 5031(c) of Pub. L. 101–508 applicable with respect to benefits for months beginning on or after the first day of the 6th calendar month following November 1990, see section 5031(d) of Pub. L. 101–508, set out as a note under section 1382a of this title.

Section 5038(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to benefits for months beginning on or after the first day of the 6th calendar month following the month in which this Act is enacted [November 1990].''

Amendment by section 5105(a)(1)(B), (2)(A)(ii) of Pub. L. 101–508 effective July 1, 1991, and applicable only with respect to (i) certifications of payment of benefits under subchapter II of this chapter to representative payees made on or after such date; and (ii) provisions for payment of benefits under this subchapter to representative payees made on or after such date, and amendment by section 5105(a)(3)(A)(ii) of Pub. L. 101–508 effective July 1, 1991, see section 5105(a)(5) of Pub. L. 101–508 set out as a note under section 405 of this title.

Amendment by section 5105(d)(1)(B) of Pub. L. 101–508 applicable with respect to annual reports issued for years after 1991, see section 5105(d)(2) of Pub. L. 101–508, set out as a note under section 405 of this title.

Amendment by section 5106(a)(2), (c) of Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d) of Pub. L. 101–508, set out as a note under section 401 of this title.

Amendment by section 5107(a)(2) of Pub. L. 101–508 applicable with respect to adverse determinations made on or after July 1, 1991, see section 5107(b) of Pub. L. 101–508, set out as a note under section 405 of this title.

Amendment by section 5109(a)(2) of Pub. L. 101–508 applicable with respect to notices issued on or after July 1, 1991, see section 5109(b) of Pub. L. 101–508, set out as a note under section 405 of this title.

Amendment by section 5113(b) of Pub. L. 101–508 effective with respect to benefits payable for months after the eleventh month following November 1990, and applicable only with respect to individuals whose blindness or disability has or may have ceased after such eleventh month, see section 5113(c) of Pub. L. 101–508, set out as a note under section 425 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 10302(b)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to misinformation furnished on or after the date of the enactment of this Act [Dec. 19, 1989] and to benefits for months after the month in which this Act is enacted [December 1989].''

Amendment by section 10303(b) of Pub. L. 101–239 applicable to visits to field offices of Social Security Administration on or after Jan. 1, 1990, see section 10303(c) of Pub. L. 101–239, set out as a note under section 405 of this title.

Amendment by section 10305(e) of Pub. L. 101–239 applicable with respect to determinations made on or after July 1, 1990, see section 10305(f) of Pub. L. 101–239, set out as a note under section 403 of this title.

Amendment by section 10307(a)(2) of Pub. L. 101–239 effective June 1, 1991, see section 10307(a)(3) of Pub. L. 101–239, set out as a note under section 406 of this title.

Amendment by section 10307(b)(2) of Pub. L. 101–239 applicable with respect to adverse determinations made on or after Jan. 1, 1991, see section 10307(b)(3) of Pub. L. 101–239, set out as a note under section 406 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to determinations by administrative law judges of entitlement to benefits made after 180 days after Nov. 10, 1988, see section 8001(c) of Pub. L. 100–647, set out as a note under section 423 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9109(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Dec. 22, 1987].''

Section 9110(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this sec-

tion] shall become effective with the 13th month following the month in which this Act is enacted [December 1987], or, if sooner, with the first month for which the Secretary of Health and Human Services determines that it is administratively feasible.''

Section 9111(c) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective July 1, 1988.''

Section 9112(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective April 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by sections 4(c)(1), (d)(3)(B) and 5 of Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

Section 8(b) of Pub. L. 99–643 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to benefits payable for months after May 1986.''

Section 11005(c)(1) of Pub. L. 99–570 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Oct. 27, 1986].''

Amendment by Pub. L. 99–272 applicable only in the case of deaths of which the Secretary is first notified on or after Apr. 7, 1986, see section 12113(c) of Pub. L. 99–272, set out as a note under section 404 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by section 16(b) of Pub. L. 98–460 effective Oct. 9, 1984, see section 16(d) of Pub. L. 98–460, set out as a note under section 405 of this title.

Amendment by sections 2612(a) and 2613 of Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise specifically provided, see section 2646 of Pub. L. 98–369, set out as a note under section 602 of this title.

Amendment by section 2651(j) of Pub. L. 98–369 effective July 18, 1984, see section 2651(*l*)(1) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

Amendment by section 2663(g)(11), (12) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 187(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective October 1, 1982.''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2343(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective October 1, 1982.''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 301(b) of Pub. L. 96–265 effective on first day of sixth month which begins after June 9, 1980, and applicable with respect to individuals whose disability has not been determined to have ceased prior to such first day, see section 301(c) of Pub. L. 96–265, set out as a note under section 425 of this title.

Amendment by section 305(b) of Pub. L. 96–265 applicable with respect to decisions made on or after the first day of the 13th month following June, 1980, see section 305(c) of Pub. L. 96–265, set out as a note under section 405 of this title.

Amendment by section 501(c) of Pub. L. 96–265 applicable in the case of payments of monthly insurance benefits under subchapter II of this chapter, entitlement for which is determined on or after July 1, 1981, see section 501(d) of Pub. L. 96–265, set out as an Effective Date note under section 1320a–6 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Section 4(b) of Pub. L. 94–569 provided that: ''The amendments made by this section [amending this section] shall apply with respect to months after the month following the month in which this Act is enacted [October 1976].''

Amendment by sections 1 and 2 of Pub. L. 94–202 effective Jan. 2, 1976, with the amendment by section 2 of Pub. L. 94–202, to the extent that it changes the period within which a hearing must be requested, applicable to any decision or determination which is received on or after Jan. 2, 1976, see section 5 of Pub. L. 94–202, set out as a note under section 405 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective Jan. 1, 1974, see section 18(z–3)(1) of Pub. L. 93–233.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

PAYMENT OF TRAVEL EXPENSES

Pub. L. 102–394, title II, Oct. 6, 1992, 106 Stat. 1807, provided in part: ''That for fiscal year 1993 and thereafter, travel expense payments under section 1631(h) of such Act [subsec. (h) of this section] for travel to hearings may be made only when travel of more than seventy-five miles is required''.

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 102–170, title II, Nov. 26, 1991, 105 Stat. 1122.

Pub. L. 101–517, title II, Nov. 5, 1990, 104 Stat. 2204.

Pub. L. 101–166, title II, Nov. 21, 1989, 103 Stat. 1173.

Pub. L. 100–436, title II, Sept. 20, 1988, 102 Stat. 1695.

Pub. L. 100–202, §101(h) [title II], Dec. 22, 1987, 101 Stat. 1329–256, 1329–270.

Pub. L. 99–500, §101(i) [H.R. 5233, title II], Oct. 18, 1986, 100 Stat. 1783–287, and Pub. L. 99–591, §101(i) [H.R. 5233, title II], Oct. 30, 1986, 100 Stat. 3341–287.

Pub. L. 99–178, title II, Dec. 12, 1985, 99 Stat. 1116.

Pub. L. 98–619, title II, Nov. 8, 1984, 98 Stat. 3318.

Pub. L. 98–139, title II, Oct. 31, 1983, 97 Stat. 884.

Pub. L. 97–377, title I, §101(e)(1), Dec. 21, 1982, 96 Stat. 1891.

Pub. L. 97–92, §101(a) [H.R. 4560, title II], Dec. 15, 1981, 95 Stat. 1183.

DEPOSIT OF OVERPAYMENTS IN GENERAL FUND OF TREASURY

Pub. L. 102–170, title II, Nov. 26, 1991, 105 Stat. 1122, provided: ''That for fiscal year 1992 and thereafter, all collections from repayments of overpayments shall be deposited in the general fund of the Treasury.''

OPPORTUNITY FOR INDIVIDUALS RECEIVING BENEFITS TO MAKE ELECTION FOR TYPE OF NOTICE OF HEARING OR OTHER OFFICIAL ACTION

Section 9111(a)(2) of Pub. L. 100–203 directed Secretary of Health and Human Services, not later than one year after July 1, 1988, to provide every individual receiving benefits under this subchapter on the basis of blindness an opportunity to make an election under subsec. (*l*)(1) of this section.

STUDY OF DESIRABILITY AND FEASIBILITY OF SPECIAL NOTICES OF HEARINGS AND OTHER ACTIONS TO OTHER INDIVIDUALS UNABLE TO READ

Section 9111(b) of Pub. L. 100–203 directed Secretary of Health and Human Services to study desirability and feasibility of extending special or supplementary notices of the type provided to blind individuals by subsec. (*l*) of this section to other individuals who may lack the ability to read and comprehend regular written notices, and report the results of such study to Congress, along with recommendations, within 12 months after Dec. 22, 1987.

DEMONSTRATION PROGRAM TO ASSIST HOMELESS INDIVIDUALS

Section 9117 of Pub. L. 100–203 provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') is authorized to make grants to States for projects designed to demonstrate and test the feasibility of special procedures and services to ensure that homeless individuals are provided SSI and other benefits under the Social Security Act [this chapter] to which they are entitled and receive assistance in using such benefits to obtain permanent housing, food, and health care. Each project approved under this section shall meet such conditions and requirements, consistent with this section, as the Secretary shall prescribe.

''(b) SCOPE OF PROJECTS.—Projects for which grants are made under this section shall include, more specifically, procedures and services to overcome barriers which prevent homeless individuals (particularly the chronically mentally ill) from receiving and appropriately using benefits, including—

''(1) the creation of cooperative approaches between the Social Security Administration, State and local governments, shelters for the homeless, and other providers of services to the homeless;

''(2) the establishment, where appropriate, of multi-agency SSI Outreach Teams (as described in subsection (c)), to facilitate communication between the agencies and staff involved in taking and processing claims for SSI and other benefits by the homeless who use shelters;

''(3) special efforts to identify homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act [this chapter];

''(4) the provision of special assistance to the homeless in applying for benefits, including assistance in obtaining and developing evidence of disability and supporting documentation for nondisability-related eligibility requirements;

''(5) the provision of special training and assistance to public and private agency staff, including shelter employees, on disability eligibility procedures and evidentiary requirements;

''(6) the provision of ongoing assistance to formerly homeless individuals to ensure their responding to information requests related to periodic redeterminations of eligibility for SSI and other benefits;

''(7) the provision of assistance in ensuring appropriate use of benefit funds for the purpose of enabling homeless individuals to obtain permanent housing, nutrition, and physical and mental health care, including the use, where appropriate, of the disabled individual's representative payee for case management services; and

''(8) such other procedures and services as the Secretary may approve.

''(c) SSI OUTREACH TEAM PROJECTS.—(1) If a State applies for funds under this section for the purpose of establishing a multi-agency SSI Outreach Team, the membership and functions of such Team shall be as follows (except as provided in paragraph (2)):

''(A) The membership of the Team shall include a social services case worker (or case workers, if necessary); a consultative medical examiner who is qualified to provide consultative examinations for the Disability Determination Service of the State; a disability examiner, from the State Disability Determination Service; and a claims representative from an office of the Social Security Administration.

''(B) The Team shall have designated members responsible for—

''(i) identification of homeless individuals who are potentially eligible for SSI or other benefits under the Social Security Act [this chapter];

''(ii) ensuring that such individuals understand their rights under the programs;

''(iii) assisting such individuals in applying for benefits, including assistance in obtaining and developing evidence and supporting documentation relating to disability- and nondisability-related eligibility requirements;

''(iv) arranging transportation and accompanying applicants to necessary examinations, if needed; and

''(v) providing for the tracking and monitoring of all claims for benefits by individuals under the project.

''(2) If the Secretary determines that an application by a State for an SSI Outreach Team Project under this section which proposes a membership and functions for such Team different from those prescribed in paragraph (1) but which is expected to be as effective, the Secretary may waive the requirements of such paragraph.

''(d) INFORMATION AND REPORTS; EVALUATION.—(1) Each State having an approved SSI Outreach Team Project shall periodically submit to the Secretary such information (with respect to the project) as may be necessary to enable the Secretary to evaluate such project in particular and the demonstration program under this section in general.

''(2)(A) The Secretary shall from time to time (but not less often than annually) submit to the Congress a full and complete report on the program under this section, together with a detailed evaluation of such program and of the projects thereunder along with such recommendations as may be deemed appropriate. Such evaluation and such recommendations shall be designed to serve as a basis for determining whether (and to what extent) the activities and procedures included in the demonstration program under this section should be continued, expanded, or modified, or converted (with or without changes) into a regular feature of permanent law.

''(B) The criteria used by the Secretary in evaluating the program and the projects thereunder shall not be limited to those which would normally be used in evaluating programs and activities of the kind involved, but shall fully take into account the special circumstances of the homeless and their need for personalized attention and follow-through assistance, and shall emphasize the extent to which the procedures and assistance made available to applicants under such projects are recognizing those circumstances and meeting that need.

''(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated to the Secretary—

''(A) the sum of $1,250,000 for the fiscal year 1988;

''(B) the sum of $2,500,000 for the fiscal year 1989; and

''(C) such sums as may be necessary for each fiscal year thereafter.''

NOTIFICATION OF ADJUSTMENT OF BENEFITS BY SECRETARY

Section 2612(b) of Pub. L. 98–369 provided that: ''If an adjustment referred to in section 1631(b)(1) of the Social Security Act [subsec. (b)(1) of this section] is in effect with respect to an individual or eligible spouse on the effective date of this subsection [Oct. 1, 1984], and the amount of such adjustment for a month is greater than the amount described in section 1631(b)(1)(B)(ii) of such Act [subsec. (b)(1)(B)(ii) of this section], as added by subsection (a), the Secretary shall notify the individual whose benefits are being adjusted, in writing, of his or her right to have the adjustment reduced to the amount described in such section 1631(b)(1)(B)(ii).''

PAYMENT OF COSTS OF REHABILITATION SERVICES

Amendment to sections 422 and 1382d of this title by section 11(a), (b) of Pub. L. 98–460 applicable with respect to individuals who receive benefits as a result of section 425(b) or section 1383(a)(6) of this title, or who refuse to continue to accept rehabilitation services or fail to cooperate in an approved vocational rehabilitation program, in or after the first month following October 1984, see section 11(c) of Pub. L. 98–460, set out as an Effective Date of 1984 Amendment note under section 422 of this title.

HEARING EXAMINERS APPOINTED PRIOR TO JANUARY 2, 1976

Pub. L. 95–216, title III, § 371, Dec. 20, 1977, 91 Stat. 1559, provided that: ''The persons who were appointed

to serve as hearing examiners under section 1631(d)(2) of the Social Security Act [subsec. (d)(2) of this section] (as in effect prior to January 2, 1976), and who by section 3 of Public Law 94–202 [set out as a note under this section] were deemed to be appointed under section 3105 of title 5, United States Code (with such appointments terminating no later than at the close of the period ending December 31, 1978), shall be deemed appointed to career-absolute positions as hearing examiners under and in accordance with section 3105 of title 5, United States Code, with the same authority and tenure (without regard to the expiration of such period) as hearing examiners appointed directly under such section 3105, and shall receive compensation at the same rate as hearing examiners appointed by the Secretary of Health, Education, and Welfare [now Health and Human Services] directly under such section 3105. All of the provisions of title 5, United States Code and the regulations promulgated pursuant thereto, which are applicable to hearing examiners appointed under such section 3105, shall apply to the persons described in the preceding sentence.''

Section 3 of Pub. L. 94–202 provided that: ''The persons appointed under section 1631(d)(2) of the Social Security Act [subsec. (d)(2) of this section] (as in effect prior to the enactment of this Act) to serve as hearing examiners in hearings under section 1631(c) of such Act [subsec. (c) of this section] may conduct hearings under titles II, XVI, and XVIII of the Social Security Act [subchapters II, XVI, and XVIII of this chapter] if the Secretary of Health, Education, and Welfare [now Health and Human Services] finds it will promote the achievement of the objectives of such titles [subchapters], notwithstanding the fact that their appointments were made without meeting the requirements for hearing examiners appointed under section 3105 of title 5, United States Code but their appointments shall terminate not later than at the close of the period ending December 31, 1978, and during that period they shall be deemed to be hearing examiners appointed under such section 3105 and subject as such to subchapter II of chapter 5 of title 5, United States Code, to the second sentence of such section 3105, and to all of the other provisions of such title 5 which apply to hearing examiners appointed under such section 3105.''

PRESUMPTIVE DISABILITY BENEFITS; TIME EXTENSION

Pub. L. 93–256, § 1, Mar. 28, 1974, 88 Stat. 52, provided: ''That any individual who would be considered disabled under section 1614(a)(3)(E) of the Social Security Act [section 1382c(a)(3)(E) of this title] except that he did not receive aid under the appropriate State plan for at least one month prior to July 1973 may be considered to be presumptively disabled under section 1631(a)(4)(B) of that Act [subsec. (a)(4)(B) of this section] and may be paid supplemental security income benefits under title XVI of that Act [this subchapter] on the basis of such presumptive disability, and State supplementary payments under section 212 of Public Law 93–66 [set out as a note under section 1382 of this title] as though he had been determined to be disabled within the meaning of section 1614(a)(3) of the Social Security Act [section 1382c(a)(3) of this title], for any month in calendar year 1974 for which it has been determined that he is otherwise eligible for such benefits, without regard to the three-month limitation in section 1631(a)(4)(B) of that Act [subsec. (a)(4)(B) of this section] on the period for which benefits may be paid to presumptively disabled individuals, except that no such benefits may be paid on the basis of such presumptive disability for any month after the month in which the Secretary of Health, Education, and Welfare [now Health and Human Services] has made a determination as to whether such individual is disabled, as defined in section 1614(a)(3)(A) of that Act [section 1382c(a)(3)(A) of this title].''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of section 1603 of the Social Security Act [this section] by Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1603 of the Social Security Act [this section] as it existed prior to reenactment by Pub. L. 92–603, and as amended, continues to apply and reads as follows:

§ 1383. Payments to States; quarterly expenditures to exceed average of total expenditures for each quarter of fiscal year ending June 30, 1965

(a) From the sums appropriated therefor, the Commissioner of Social Security shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing October 1, 1962—

(1) Repealed. Pub. L. 97–35, title XXI, § 2184(d)(5)(A), Aug. 13, 1981, 95 Stat. 818.

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to—

(A) one-half of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan, not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month; plus

(B) one-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of $45 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month; and

(3) Repealed. Pub. L. 97–35, title XXI, § 2184(d)(5)(A), Aug. 13, 1981, 95 Stat. 818.

(4) in the case of any State, an amount equal to 50 percent of the total amounts expended during such quarter as found necessary by the Commissioner of Social Security for the proper and efficient administration of the State plan.

(b)(1) Prior to the beginning of each quarter, the Commissioner of Social Security shall estimate the amount to which a State will be entitled under subsection (a) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Commissioner of Social Security may find necessary.

(2) The Commissioner of Social Security shall then pay, in such installments as the Commissioner may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Commissioner of Social Security determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Commissioner of Social Security, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to aid or assistance furnished

under the State plan, but excluding any amount of such aid or assistance recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased, shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of any estimate by the Commissioner of Social Security under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(Aug. 14, 1935, ch. 531, title XVI, § 1603, as added July 25, 1962, Pub. L. 87–543, title I, § 141(a), 76 Stat. 200; amended July 30, 1965, Pub. L. 89–97, title I, § 122, title II, § 221(d)(4), title IV, § 401(b), 79 Stat. 353, 359, 414; Jan. 2, 1968, Pub. L. 90–248, title II, § 212(d), 81 Stat. 898; Oct. 20, 1972, Pub. L. 92–512, title III, § 301(b), (d), 86 Stat. 946, 947; Jan. 4, 1975, Pub. L. 93–647, §§ 3(e)(2), 5(e), 88 Stat. 2349, 2350; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(d)(5), title XXIII, § 2353(m)(2), (3), 95 Stat. 818, 873; Nov. 6, 1986, Pub. L. 99–603, title I, § 121(b)(4), 100 Stat. 3391; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13741(b), 107 Stat. 663; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478.)

[Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

[Amendment by Pub. L. 103–66 effective with respect to calendar quarters beginning on or after Apr. 1, 1994, with special rule for States whose legislature meets biennially, and does not have regular session scheduled in calendar year 1994, see section 13741(c) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 303 of this title.]

[Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as an Effective Date of 1986 Amendment note under section 502 of this title.]

REIMBURSEMENT FOR ERRONEOUS STATE SUPPLEMENTARY PAYMENTS; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 95–216, title IV, § 405, Dec. 20, 1977, 91 Stat. 1564, provided that:

''(a) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare [now Health and Human Services] is authorized and directed to pay to each State an amount equal to the amount expended by such State for erroneous supplementary payments to aged, blind, or disabled individuals whenever, and to the extent to which, the Secretary through an audit by the Department of Health, Education, and Welfare [now Health and Human Services] which has been reviewed and concurred in by the Inspector General of such department determines that—

''(1) such amount was paid by such State as a supplementary payment during the calendar year 1974 pursuant to an agreement between the State and the Secretary required by section 212 of the Act entitled 'An Act to extend the Renegotiation Act of 1951 for one year, and for other purposes', approved July 9, 1973, [set out as a note under section 1382 of this title], or such amount was paid by such State as an optional State supplementation, as defined in section 1616 of the Social Security Act [section 1382 of this title], during the calendar year 1974,

''(2) the erroneous payments were the result of good faith reliance by such State upon erroneous or incomplete information supplied by the Department of Health, Education, and Welfare [now Health and Human Services], through the State data exchange, or good faith reliance upon incorrect supplemental security income benefit payments made by such department, and

''(3) recovery of the erroneous payments by such State would be impossible or unreasonable.

''(b) There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 290cc–22, 405, 909, 1306a, 1318, 1319, 1320a–8, 1382, 1382d, 1382h, 1382j, 1383a, 1396a of this title.

§ 1383a. Fraudulent acts; penalties; restitution

(a) Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit under this subchapter,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit, or (B) the initial or continued right to any such benefit of any other individual in whose behalf he has applied for or is receiving such benefit, conceals or fails to disclose such event with an intent fraudulently to secure such benefit either in a greater amount or quantity than is due or when no such benefit is authorized, or

(4) having made application to receive any such benefit for the use and benefit of another and having received it, knowingly and willfully converts such benefit or any part thereof to a use other than for the use and benefit of such other person,

shall be fined under title 18, imprisoned not more than 5 years, or both.

(b)(1) If a person or entity violates subsection (a) of this section in the person's or entity's role as, or in applying to become, a representative payee under section 1383(a)(2) of this title on behalf of another individual (other than the person's eligible spouse), and the violation includes a willful misuse of funds by the person or entity, the court may also require that full or partial restitution of funds be made to such other individual.

(2) Any person or entity convicted of a violation of subsection (a) of this section or of section 408 of this title may not be certified as a representative payee under section 1383(a)(2) of this title.

(Aug. 14, 1935, ch. 531, title XVI, § 1632, as added Oct. 30, 1972, Pub. L. 92–603, title III, § 301, 86 Stat. 1478; amended Oct. 9, 1984, Pub. L. 98–460, § 16(c)(1), 98 Stat. 1810; Aug. 15, 1994, Pub. L. 103–296, title II, § 206(c)(1), (2), 108 Stat. 1513.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 206(c)(1), inserted closing provisions and struck out former closing provisions which read as follows: ''shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.''

Subsec. (b). Pub. L. 103–296, § 206(c)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(b)(1) Any person or other entity who is convicted of a violation of any of the provisions of paragraphs (1) through (4) of subsection (a) of this section, if such violation is committed by such person or entity in his role as, or in applying to become, a payee under section 1383(a)(2) of this title on behalf of another individual (other than such person's eligible spouse), in lieu of the penalty set forth in subsection (a) of this section—

''(A) upon his first such conviction, shall be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both; and

''(B) upon his second or any subsequent such conviction, shall be guilty of a felony and shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

''(2) In any case in which the court determines that a violation described in paragraph (1) includes a willful misuse of funds by such person or entity, the court may also require that full or partial restitution of such funds be made to the individual for whom such person or entity was the certified payee.

''(3) Any person or entity convicted of a felony under this section or under section 408 of this title may not be certified as a payee under section 1383(a)(2) of this title.''

1984—Pub. L. 98–460 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 206(c)(3) of Pub. L. 103–296 provided that: ''The amendments made by this subsection [amending this section] shall apply to conduct occurring on or after October 1, 1994.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–460 effective Oct. 9, 1984, and applicable with respect to violations occurring on or after such date, see section 16(d) of Pub. L. 98–460, set out as a note under section 405 of this title.

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 405, 408, 1383 of this title.

§ 1383b. Administration

(a) Authority of Commissioner

Subject to subsection (b) of this section, the Commissioner of Social Security may make such administrative and other arrangements (including arrangements for the determination of blindness and disability under section 1382c(a)(2) and (3) of this title in the same manner and subject to the same conditions as provided with respect to disability determinations under section 421 of this title) as may be necessary or appropriate to carry out the Commissioner's functions under this subchapter.

(b) Examination to determine blindness

In determining, for purposes of this subchapter, whether an individual is blind, there shall be an examination of such individual by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select.

(c) Notification of review

In any case in which the Commissioner of Social Security initiates a review under this subchapter, similar to the continuing disability reviews authorized for purposes of subchapter II of this chapter under section 421(i) of this title, the Commissioner of Social Security shall notify the individual whose case is to be reviewed in the same manner as required under section 421(i)(4) of this title.

(d) Regulations regarding completion of plans for achieving self-support

The Commissioner of Social Security shall establish by regulation criteria for time limits and other criteria related to individuals' plans for achieving self-support, that take into account—

(1) the length of time that the individual will need to achieve the individual's employment goal (within such reasonable period as the Commissioner of Social Security may establish); and

(2) other factors determined by the Commissioner of Social Security to be appropriate.

(Aug. 14, 1935, ch. 531, title XVI, §1633, as added Oct. 30, 1972, Pub. L. 92–603, title III, §301, 86 Stat. 1478; amended July 9, 1973, Pub. L. 93–66, title II, §214, 87 Stat. 158; Oct. 9, 1984, Pub. L. 98–460, §6(b), 98 Stat. 1802; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), title II, §203(a), 108 Stat. 1478, 1508.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' and ''the Commissioner's'' for ''his''.

Subsec. (c). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' in two places.

Subsec. (d). Pub. L. 103–296, §203(a), added subsec. (d).

Pub. L. 103–296, §107(a)(4), in subsec. (d) as added by Pub. L. 103–296, §203(a), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing.

1984—Subsec. (c). Pub. L. 98–460 added subsec. (c).

1973—Subsec. (a). Pub. L. 93–66, §214(1), (2), designated existing provisions as subsec. (a) and made the authority of the Secretary subject to subsec. (b) of this section.

Subsec. (b). Pub. L. 93–66, §214(3), added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Section 203(b) of Pub. L. 103–296 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1995.''

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

INSTITUTION OF NOTIFICATION SYSTEM

For provisions requiring the Secretary to institute the system of notification required by subsec. (c) of this section as soon as practicable after Oct. 9, 1984, see section 6(c) of Pub. L. 98–460, set out as a note under section 421 of this title.

FEDERAL PROGRAM OF SUPPLEMENTAL SECURITY INCOME; PREFERENCE FOR PRESENT STATE AND LOCAL EMPLOYEES

Section 213 of Pub. L. 93–66 provided that: ''The Secretary of Health, Education, and Welfare [now Health

and Human Services] in the recruitment and selection for employment of personnel whose services will be utilized in the administration of the Federal program of supplemental security income for the aged, blind, and disabled (established by title XVI of the Social Security Act [this subchapter]), shall give a preference, as among applicants whose qualifications are reasonably equal (subject to any preferences conferred by law or regulation on individuals who have been Federal employees and have been displaced from such employment), to applicants for employment who are or were employed in the administration of any State program approved under title I, X, XIV, or XVI of such Act [subchapter I, X, XIV, or XVI of this chapter] and are or were involuntarily displaced from their employment as a result of the displacement of such State program by such Federal program.''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

§ 1383c. Eligibility for medical assistance of aged, blind, or disabled individuals under State's medical assistance plan

(a) Determination by Commissioner pursuant to agreement between Commissioner and State; costs

The Commissioner of Social Security may enter into an agreement with any State which wishes to do so under which the Commissioner will determine eligibility for medical assistance in the case of aged, blind, or disabled individuals under such State's plan approved under subchapter XIX of this chapter. Any such agreement shall provide for payments by the State, for use by the Commissioner of Social Security in carrying out the agreement, of an amount equal to one-half of the cost of carrying out the agreement, but in computing such cost with respect to individuals eligible for benefits under this subchapter, the Commissioner of Social Security shall include only those costs which are additional to the costs incurred in carrying out this subchapter.

(b) Preservation of benefit status for certain disabled widows and widowers

(1) An eligible disabled widow or widower (described in paragraph (2)) who is entitled to a widow's or widower's insurance benefit based on a disability for any month under section 402(e) or (f) of this title but is not eligible for benefits under this subchapter in that month, and who applies for the protection of this subsection under paragraph (3), shall be deemed for purposes of subchapter XIX of this chapter to be an individual with respect to whom benefits under this subchapter are paid in that month if he or she—

(A) has been continuously entitled to such widow's or widower's insurance benefits from the first month for which the increase described in paragraph (2)(C) was reflected in such benefits through the month involved, and

(B) would be eligible for benefits under this subchapter in the month involved if the amount of the increase described in paragraph (2)(C) in his or her widow's or widower's insurance benefits, and any subsequent cost-of-living adjustments in such benefits under section 415(i) of this title, were disregarded.

(2) For purposes of paragraph (1), the term ''eligible disabled widow or widower'' means an individual who—

(A) was entitled to a monthly insurance benefit under subchapter II of this chapter for December 1983,

(B) was entitled to a widow's or widower's insurance benefit based on a disability under section 402(e) or (f) of this title for January 1984 and with respect to whom a benefit under this subchapter was paid in that month, and

(C) because of the increase in the amount of his or her widow's or widower's insurance benefits which resulted from the amendments made by section 134 of the Social Security Amendments of 1983 (Public Law 98–21) (eliminating the additional reduction factor for disabled widows and widowers under age 60), was ineligible for benefits under this subchapter in the first month in which such increase was paid to him or her (and in which a retroactive payment of such increase for prior months was not made).

(3) This subsection shall only apply to an individual who files a written application for protection under this subsection, in such manner and form as the Commissioner of Social Security may prescribe, no later than July 1, 1988.

(4) For purposes of this subsection, the term ''benefits under this subchapter'' includes payments of the type described in section 1382e(a) of this title or of the type described in section 212(a) of Public Law 93–66.

(c) Loss of benefits upon entitlement to child's insurance benefits based on disability

If any individual who has attained the age of 18 and is receiving benefits under this subchapter on the basis of blindness or a disability which began before he or she attained the age of 22—

(1) becomes entitled, on or after the effective date of this subsection, to child's insurance benefits which are payable under section 402(d) of this title on the basis of such disability or to an increase in the amount of the child's insurance benefits which are so payable, and

(2) ceases to be eligible for benefits under this subchapter because of such child's insurance benefits or because of the increase in such child's insurance benefits,

such individual shall be treated for purposes of subchapter XIX of this chapter as receiving benefits under this subchapter so long as he or she would be eligible for benefits under this subchapter in the absence of such child's insurance benefits or such increase.

(d) Retention of medicaid when SSI benefits are lost upon entitlement to early widow's or widower's insurance benefits

(1) This subsection applies with respect to any person who—

(A) applies for and obtains benefits under subsection (e) or (f) of section 402 of this title (or under any other subsection of section 402 of this title if such person is also eligible for benefits under such subsection (e) or (f) of this section) being then not entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter, and

(B) is determined to be ineligible (by reason of the receipt of such benefits under section 402 of this title) for supplemental security income benefits under this subchapter or for State supplementary payments of the type described in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66).

(2) For purposes of subchapter XIX of this chapter, each person with respect to whom this subsection applies—

(A) shall be deemed to be a recipient of supplemental security income benefits under this subchapter if such person received such a benefit for the month before the month in which such person began to receive a benefit described in paragraph (1)(A), and

(B) shall be deemed to be a recipient of State supplementary payments of the type referred to in section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66) if such person received such a payment for the month before the month in which such person began to receive a benefit described in paragraph (1)(A),

for so long as such person (i) would be eligible for such supplemental security income benefits, or such State supplementary payments (or payments of the type described in section 212(a) of Public Law 93–66), in the absence of benefits described in paragraph (1)(A), and (ii) is not entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter.

(e) Preservation of medicaid benefits

Each person to whom benefits under this subchapter by reason of disability are not payable for any month solely by reason of clause (i) or (v) of section 1382(e)(3)(A) of this title shall be treated, for purposes of subchapter XIX of this chapter, as receiving benefits under this subchapter for the month.

(Aug. 14, 1935, ch. 531, title XVI, §1634, as added Oct. 30, 1972, Pub. L. 92–603, title III, §301, 86 Stat. 1478; amended Apr. 7, 1986, Pub. L. 99–272, title XII, §12202(a), 100 Stat. 290; Nov. 10, 1986, Pub. L. 99–643, §6(a), 100 Stat. 3578; Dec. 22, 1987, Pub. L. 100–203, title IX, §§9108, 9116(a), 101 Stat. 1330–302, 1330–305; Nov. 5, 1990, Pub. L. 101–508, title V, §5103(c)(1), 104 Stat. 1388–251; Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), title II, §201(b)(3)(D), 108 Stat. 1478, 1504.)

REFERENCES IN TEXT

Section 134 of the Social Security Amendments of 1983 (Public Law 98–21), referred to in subsec. (b)(2)(C), is section 134 of Pub. L. 98–21, title I, Apr. 20, 1983, 97 Stat. 97, which amended section 402 of this title and enacted provisions set out as a note under section 402 of this title.

Section 212(a) of Public Law 93–66, referred to in subsecs. (b)(4) and (d)(1)(B), (2), is section 212(a) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

The effective date of this subsection, referred to in subsec. (c)(1), is July 1, 1987, except as otherwise provided. See section 10(b) of Pub. L. 99–643, set out as an Effective Date of 1986 Amendments note under section 1396a of this title.

Part A of subchapter XVIII of this chapter, referred to in subsec. (d)(2), is classified to section 1395c et seq. of this title.

AMENDMENTS

1994—Subsecs. (a), (b)(3). Pub. L. 103–296, §107(a)(4), substituted ''Commissioner of Social Security'' for ''Secretary'' wherever appearing and ''the Commissioner will'' for ''he will'' in subsec. (a).

Subsec. (e). Pub. L. 103–296, §201(b)(3)(D), added subsec. (e).

1990—Subsec. (d). Pub. L. 101–508 designated existing provisions as par. (1), substituted ''This subsection applies with respect to any person who—'' for ''If any person—'' in introductory provisions, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, in subpar. (A) substituted ''being then not entitled'' for ''as required by section 1382(e)(2) of this title, being then at least 60 years of age but not entitled'', in subpar. (B) substituted ''section 1382e(a) of this title (or payments of the type described in section 212(a) of Public Law 93–66).'' for ''section 1382e(a) of this title,'' and substituted par. (2) for former concluding provisions which read as follows: ''such person shall nevertheless be deemed to be a recipient of supplemental security income benefits under this subchapter for purposes of subchapter XIX of this chapter, so long as he or she (A) would be eligible for such supplemental security income benefits, or such State supplementary payments, in the absence of such benefits under section 402 of this title, and (B) is not entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter.''

1987—Subsec. (b)(3). Pub. L. 100–203, §9108, substituted ''no later than July 1, 1988'' for ''during the 15-month period beginning with the month in which this subsection is enacted [April 1986]''.

Subsec. (d). Pub. L. 100–203, §9116(a), added subsec. (d).

1986—Subsec. (a). Pub. L. 99–272, §12202(a)(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 99–272, §12202(a)(2), added subsec. (b).

Subsec. (c). Pub. L. 99–643 added subsec. (c).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

Amendment by section 201(b)(3)(D) of Pub. L. 103–296 applicable with respect to supplemental security income benefits under this subchapter by reason of disability which are otherwise payable in months beginning after 180 days after Aug. 15, 1994, with Secretary of Health and Human Services to issue regulations necessary to carry out such amendment not later than 180 days after Aug. 15, 1994, see section 201(b)(3)(E)(i) of Pub. L. 103–296, set out as a note under section 1382 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to medical assistance provided after December 1990, see section 5103(e) of Pub. L. 101–508, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 9108 of Pub. L. 100–203 provided that the amendment made by that section is effective July 1, 1987.

Section 9116(e) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to any individual without regard to whether the determination of his or

her ineligibility for supplemental security income benefits by reason of the receipt of benefits under section 202 of the Social Security Act [section 402 of this title] (as described in section 1634(d)(2) of such Act [subsec. (d)(2) of this section]) occurred before, on, or after the date of the enactment of this Act [Dec. 22, 1987]; but no individual shall be eligible for assistance under title XIX of such Act [subchapter XIX of this chapter] by reason of such amendments for any period before July 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

Section 12202(c) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall not have the effect of deeming an individual eligible for medical assistance for any month which begins less than two months after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE

Section 301 of Pub. L. 92–603 provided that this section is effective Jan. 1, 1974.

NOTICE OF POSSIBLE ELIGIBILITY FOR MEDICAID ASSISTANCE

Section 9116(b) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services, acting through the Social Security Administration, shall (within 3 months after the date of the enactment of this Act [Dec. 22, 1987]) issue a notice to all individuals who will have attained age 60 but not age 65 as of April 1, 1988, and who received supplemental security income benefits under title XVI of the Social Security Act [this subchapter] prior to attaining age 60 but lost those benefits by reason of the receipt of widow's or widower's insurance benefits (or other benefits as described in section 1634(d)(1) of that Act [subsec. (d)(1) of this section] as added by subsection (a) of this section) under title II of that Act [subchapter II of this chapter]. Each such notice shall set forth and explain the provisions of section 1634(d) of the Social Security Act (as so added), and shall inform the individual that he or she should contact the Secretary or the appropriate State agency concerning his or her possible eligibility for medical assistance benefits under such title XIX [subchapter XIX of this chapter].''

STATE DETERMINATIONS

Section 9116(c) of Pub. L. 100–203 provided that: ''Any determination required under section 1634(d) of the Social Security Act [subsec. (d) of this section] with respect to whether an individual would be eligible for benefits under title XVI of such Act [this subchapter] (or State supplementary payments) in the absence of benefits under section 202 [section 402 of this title] shall be made by the appropriate State agency.''

Section 6(b) of Pub. L. 99–643 provided that: ''Any determination required under section 1634(c) of the Social Security Act [subsec. (c) of this section] with respect to whether an individual would be eligible for benefits under title XVI of such Act [this subchapter] in the absence of children's benefits (or an increase thereof) shall be made by the appropriate State agency.''

IDENTIFICATION OF POTENTIAL BENEFICIARIES UNDER SUBSECTION (b) OF THIS SECTION

Section 12202(b) of Pub. L. 99–272 provided that:

''(1) As soon as possible after the date of the enactment of this Act [Apr. 7, 1986], the Secretary of Health and Human Services shall provide each State with the names of all individuals receiving widow's or widower's insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act [section 402(e) or (f) of this title] based on a disability who might qualify for medical assistance under the plan of that State approved under title XIX of such Act [subchapter XIX of this chapter] by reason of the application of section 1634(b) of the Social Security Act [subsec. (b) of this section].

''(2) Each State shall—

''(A) using the information so provided and any other information it may have, promptly notify all individuals who may qualify for medical assistance under its plan by reason of such section 1634(b) of their right to make application for such assistance,

''(B) solicit their applications for such assistance, and

''(C) make the necessary determination of such individuals' eligibility for such assistance under such section and under such title XIX.''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of provisions of Pub. L. 92–603, eff. Jan. 1, 1974, not applicable to Puerto Rico, Guam, and the Virgin Islands, see section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 1396b, 1396v of this title.

§ 1383d. Outreach program for children

(a) Establishment

The Commissioner of Social Security shall establish and conduct an ongoing program of outreach to children who are potentially eligible for benefits under this subchapter by reason of disability or blindness.

(b) Requirements

Under this program, the Commissioner of Social Security shall—

(1) aim outreach efforts at populations for whom such efforts would be most effective; and

(2) work in cooperation with other Federal, State, and private agencies, and nonprofit organizations, which serve blind or disabled individuals and have knowledge of potential recipients of supplemental security income benefits, and with agencies and organizations (including school systems and public and private social service agencies) which focus on the needs of children.

(Aug. 14, 1935, ch. 531, title XVI, § 1635, as added Dec. 19, 1989, Pub. L. 101–239, title VIII, § 8008(a), 103 Stat. 2463; amended Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478.)

AMENDMENTS

1994—Subsecs. (a), (b). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 8008(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [enacting this sec-

tion] shall take effect 3 months after the date of the enactment of this Act [Dec. 19, 1989].''

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America and Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1801 of Title 48, Territories and Insular Possessions.

§ 1384. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XVI, §1604, as added July 25, 1962, Pub. L. 87–543, title I, §141(a), 76 Stat. 204, related to operation of State plans, prior to the general revision of this subchapter by Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of subchapter XVI of the Social Security Act [this subchapter] by Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1604 of the Social Security Act [this section] as it existed prior to reenactment of this subchapter by Pub. L. 92–603 continues to apply and reads as follows:

§1384. Operation of State plans

If the Commissioner of Social Security, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this subchapter, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 1332 of this title; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Commissioner of Social Security shall notify such State agency that further payments will not be made to the State (or, in the Commissioner's discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Commissioner of Social Security is satisfied that there will no longer be any such failure to comply. Until the Commissioner is so satisfied the Commissioner shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title XVI, §1604, as added July 25, 1962, Pub. L. 87–543, title I, §141(a), 76 Stat. 204; amended Aug. 15, 1994, Pub. L. 103–296, title I, §107(a)(4), 108 Stat. 1478.)

[Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

§ 1385. Omitted

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XVI, §1605, as added July 25, 1962, Pub. L. 87–543, title I, §141(a), 76 Stat. 204; amended July 30, 1965, Pub. L. 89–97, title II, §§221(d)(1), (2), 222(b), title IV, §402(b), 79 Stat. 358, 360, 416, defined ''aid to the aged, blind, or disabled'' and ''medical assistance for the aged'', prior to the general revision of this subchapter by Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974.

PUERTO RICO, GUAM, AND VIRGIN ISLANDS

Enactment of subchapter XVI of the Social Security Act [this subchapter] by section 301 of Pub. L. 92–603, eff. Jan. 1, 1974, was not applicable to Puerto Rico, Guam, and the Virgin Islands. See section 303(b) of Pub. L. 92–603, set out as a note under section 301 of this title. Therefore, as to Puerto Rico, Guam, and the Virgin Islands, section 1605 of the Social Security Act [this section] as it existed prior to reenactment of this subchapter by Pub. L. 92–603, and as amended, continues to apply and to read as follows:

§1385. Definitions

(a) For purposes of this subchapter, the term ''aid to the aged, blind, or disabled'' means money payments to needy individuals who are 65 years of age or older, are blind, or are 18 years of age or over and permanently and totally disabled, but such term does not include—

(1) any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(2) any such payments to or care in behalf of any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Commissioner of Social Security) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1382 of this title includes provision for—

(A) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(B) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the aged, blind, or disabled to be paid (and in conjunction with other income and resources), meet all the need [sic] of the individuals with respect to whom such payments are made;

(C) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(D) periodic review by such State agency of the determination under clause (A) of this subsection to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) of this subsection for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this subchapter so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of ninety consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for thirty consecutive days in the case of such an individual who has maintained his residence in such State during such period or ninety consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.

(b) Repealed. Pub. L. 97–35, title XXI, §2184(d)(6)(B), Aug. 13, 1981, 95 Stat. 818.

(Aug. 14, 1935, ch. 531, title XVI, §1605, as added July 25, 1962, Pub. L. 87–543, title I, §141(a), 76 Stat. 204; amend-

ed July 30, 1965, Pub. L. 89–97, title II, §§ 221(d)(1), (2), 222(b), title IV, § 402(b), 79 Stat. 358, 360, 416; Oct. 30, 1972, Pub. L. 92–603, title IV, §§ 408(d), 409(d), 86 Stat. 1490, 1491; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2184(d)(6), 95 Stat. 818; Aug. 15, 1994, Pub. L. 103–296, title I, § 107(a)(4), 108 Stat. 1478.)

[Amendment by section 107(a)(4) of Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as an Effective Date of 1994 Amendment note under section 401 of this title.]

SUBCHAPTER XVII—GRANTS FOR PLANNING COMPREHENSIVE ACTION TO COMBAT MENTAL RETARDATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1320a–1 of this title.

§ 1391. Authorization of appropriations

For the purpose of assisting the States (including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa) to plan for and take other steps leading to comprehensive State and community action to combat mental retardation, there is authorized to be appropriated the sum of $2,200,000. There are also authorized to be appropriated, for assisting such States in initiating the implementation and carrying out of planning and other steps to combat mental retardation, $2,750,000 for the fiscal year ending June 30, 1966, and $2,750,000 for the fiscal year ending June 30, 1967.

(Aug. 14, 1935, ch. 531, title XVII, § 1701, as added Oct. 24, 1963, Pub. L. 88–156, § 5, 77 Stat. 275; amended July 30, 1965, Pub. L. 89–97, title II, § 211(a), 79 Stat. 356.)

AMENDMENTS

1965—Pub. L. 89–97 authorized appropriations of $2,750,000 for fiscal years ending June 30, 1966 and 1967 for implementation of mental retardation planning.

SHORT TITLE

For short title of Pub. L. 88–156, which enacted this subchapter, as the ''Maternal and Child Health and Mental Retardation Planning Amendments of 1963'', see section 1 of Pub. L. 88–156, set out as a Short Title of 1963 Amendment note under section 1305 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1392 of this title.

§ 1392. Availability of funds during certain fiscal years; limitation on amount; utilization of grant

The sums appropriated pursuant to the first sentence of section 1391 of this title shall be available for grants to States by the Secretary during the fiscal year ending June 30, 1964, and the succeeding fiscal year; and the sums appropriated pursuant to the second sentence of such section for the fiscal year ending June 30, 1966, shall be available for such grants during such year and the next two fiscal years, and sums appropriated pursuant thereto for the fiscal year ending June 30, 1967, shall be available for such grants during such year and the succeeding fiscal year. Any such grant to a State, which shall not exceed 75 per centum of the cost of the planning and related activities involved, may be used by it to determine what action is needed to combat mental retardation in the State and the resources available for this purpose, to develop public awareness of the mental retardation problem and of the need for combating it, to coordinate State and local activities relating to the various aspects of mental retardation and its prevention, treatment, or amelioration, and to plan other activities leading to comprehensive State and community action to combat mental retardation.

(Aug. 14, 1935, ch. 531, title XVII, § 1702, as added Oct. 24, 1963, Pub. L. 88–156, § 5, 77 Stat. 275; amended July 30, 1965, Pub. L. 89–97, title II, § 211(b), 79 Stat. 356.)

AMENDMENTS

1965—Pub. L. 89–97 inserted provision making appropriations for fiscal year ending June 30, 1966, available for grants during such fiscal year and the next two fiscal years and the appropriation for fiscal year ending June 30, 1967, available for grants during such fiscal year and the succeeding fiscal year.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1393 of this title.

§ 1393. Applications; single State agency designation; essential planning services; plans for expenditure; final activities report and other necessary reports; records; accounting

In order to be eligible for a grant under section 1392 of this title, a State must submit an application therefor which—

(1) designates or establishes a single State agency, which may be an interdepartmental agency, as the sole agency for carrying out the purposes of this subchapter;

(2) indicates the manner in which provision will be made to assure full consideration of all aspects of services essential to planning for comprehensive State and community action to combat mental retardation, including services in the fields of education, employment, rehabilitation, welfare, health, and the law, and services provided through community programs for and institutions for the mentally retarded;

(3) sets forth its plans for expenditure of such grant, which plans provide reasonable assurance of carrying out the purposes of this subchapter;

(4) provides for submission of a final report of the activities of the State agency in carrying out the purposes of this subchapter, and for submission of such other reports, in such form and containing such information, as the Secretary may from time to time find necessary for carrying out the purposes of this subchapter and for keeping such records and affording such access thereto as he may find necessary to assure the correctness and verification of such reports; and

(5) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the State under this subchapter.

(Aug. 14, 1935, ch. 531, title XVII, § 1703, as added Oct. 24, 1963, Pub. L. 88–156, § 5, 77 Stat. 275.)

§ 1394. Payments to States; adjustments; advances or reimbursement; installments; conditions

Payment of grants under this subchapter may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary may determine.

(Aug. 14, 1935, ch. 531, title XVII, § 1704, as added Oct. 24, 1963, Pub. L. 88–156, § 5, 77 Stat. 276.)

SUBCHAPTER XVIII—HEALTH INSURANCE FOR AGED AND DISABLED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 254b, 254c, 254e, 254h, 254t, 256b, 263a, 273, 274c, 297n, 299a, 299b–1, 299c–2, 300e–6, 300t–12, 300x–24, 300bb–2, 300bb–3, 401, 416, 417, 418, 423, 426–1, 704, 902, 904, 907a, 912, 1301, 1302, 1306, 1320a–1, 1320a–3, 1320a–3a, 1320a–5, 1320a–7, 1320a–7a, 1320a–7b, 1320a–8, 1320b–4, 1320b–5, 1320b–8, 1320b–12, 1320b–13, 1320c–2, 1320c–3, 1320c–4, 1320c–9, 1320c–10, 1395x, 1395gg, 1396a, 1396b, 1396d, 1396i, 1396*l*, 1396m, 1396r, 1396r–4, 1396t, 1397d, 1997, 3013, 3030*o*, 3035b, 3058k, 5021, 10805 of this title; title 2 section 906; title 5 section 8904; title 7 sections 2012, 3178; title 10 sections 1079, 1086, 1095; title 12 sections 1715w, 1715z–7; title 20 section 6082; title 24 section 170a; title 25 sections 1616m, 1641, 1643, 1644, 1645, 1680c; title 26 sections 420, 1402, 4980B, 6103, 9703, 9704, 9712; title 29 sections 623, 720, 1162, 1163; title 31 section 3803; title 38 sections 7423, 8153; title 45 section 231r; title 49 section 5307.

§ 1395. Prohibition against any Federal interference

Nothing in this subchapter shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided, or over the selection, tenure, or compensation of any officer or employee of any institution, agency, or person providing health services; or to exercise any supervision or control over the administration or operation of any such institution, agency, or person.

(Aug. 14, 1935, ch. 531, title XVIII, § 1801, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 291.)

SHORT TITLE

For short title of title I of Pub. L. 89–97, which enacted this subchapter as the ''Health Insurance for the Aged Act'', see section 100 of Pub. L. 89–97, set out as a Short Title of 1965 Amendment note under section 1305 of this title.

§ 1395a. Free choice by patient guaranteed

Any individual entitled to insurance benefits under this subchapter may obtain health services from any institution, agency, or person qualified to participate under this subchapter if such institution, agency, or person undertakes to provide him such services.

(Aug. 14, 1935, ch. 531, title XVIII, § 1802, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 291.)

§ 1395b. Option to individuals to obtain other health insurance protection

Nothing contained in this subchapter shall be construed to preclude any State from providing, or any individual from purchasing or otherwise securing, protection against the cost of any health services.

(Aug. 14, 1935, ch. 531, title XVIII, § 1803, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 291.)

EXCLUSION FROM WAGES AND COMPENSATION OF REFUNDS REQUIRED FROM EMPLOYERS TO COMPENSATE FOR DUPLICATION OF MEDICARE BENEFITS BY HEALTH CARE BENEFITS PROVIDED BY EMPLOYERS

Pub. L. 101–239, title X, § 10202, Dec. 19, 1989, 103 Stat. 2473, provided that:

''(a) OLD-AGE, SURVIVORS, AND DISABILITY, AND HOSPITAL INSURANCE PROGRAMS.—For purposes of title II of the Social Security Act [subchapter II of this chapter] and chapter 21 of the Internal Revenue Code of 1986 [26 U.S.C. 3101 et seq.], the term 'wages' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988 [section 421 of Pub. L. 100–360, formerly set out as a note below].

''(b) RAILROAD RETIREMENT PROGRAM.—For purposes of chapter 22 of the Internal Revenue Code of 1986 [26 U.S.C. 3201 et seq.], the term 'compensation' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

''(c) FEDERAL UNEMPLOYMENT PROGRAMS.—

''(1) FEDERAL UNEMPLOYMENT TAX.—For purposes of chapter 23 of the Internal Revenue Code of 1986 [26 U.S.C. 3301 et seq.], the term 'wages' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

''(2) RAILROAD UNEMPLOYMENT CONTRIBUTIONS.—For purposes of the Railroad Unemployment Insurance Act [45 U.S.C. 351 et seq.], the term 'compensation' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

''(3) RAILROAD UNEMPLOYMENT REPAYMENT TAX.—For purposes of chapter 23A of the Internal Revenue Code of 1986 [26 U.S.C. 3321 et seq.], the term 'rail wages' shall not include the amount of any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988.

''(d) REPORTING REQUIREMENTS.—Any refund required under section 421 of the Medicare Catastrophic Coverage Act of 1988 shall be reported to the Secretary of the Treasury or his delegate and to the person to whom such refund is made in such manner as the Secretary of the Treasury or his delegate shall prescribe.

''(e) EFFECTIVE DATE.—This section shall apply with respect to refunds provided on or after January 1, 1989.''

UNITED STATES BIPARTISAN COMMISSION ON COMPREHENSIVE HEALTH CARE

Pub. L. 100–360, title IV, subtitle A, §§ 401–408, July 1, 1988, 102 Stat. 765–768, as amended by Pub. L. 100–647, title VIII, § 8414, Nov. 10, 1988, 102 Stat. 3801; Pub. L. 101–239, title VI, § 6220, Dec. 19, 1989, 103 Stat. 2254, provided that:

''SEC. 401. ESTABLISHMENT.

''There is established a commission to be known as the United States Bipartisan Commission on Comprehensive Health Care (in this title [probably should be 'this subtitle' which enacted this note] referred to as the 'Commission') and also to be known as the 'Claude Pepper Commission' or the 'Pepper Commission'.

''SEC. 402. DUTIES.

''(a) IN GENERAL.—The Commission shall—

''(1) examine shortcomings in the current health care delivery and financing mechanisms that limit or prevent access of all individuals in the United States to comprehensive health care, and

''(2) make specific recommendations to the Congress respecting Federal programs, policies, and financing needed to assure the availability of—

''(A) comprehensive long-term care services for the elderly and disabled,

''(B) comprehensive health care services for the elderly and disabled, and

''(C) comprehensive health care services for all individuals in the United States.

''(b) CONSIDERATIONS IN RECOMMENDATIONS.—In making its recommendations, the Commission shall consider—

''(1) the amount and sources (consistent with principles of social insurance) of Federal funds to finance the needed services, including reallocations of existing Federal program funds, and

''(2) the most efficient and effective manner of administering such programs.

''(c) DEFINITIONS.—In this title [probably should be 'this subtitle' which enacted this note]:

''(1) The term 'comprehensive health care services' includes—

''(A) inpatient hospital services (including mental health services);

''(B) skilled nursing facility services, intermediate care facility services, home health services, and other long-term health care services;

''(C) physician services and other outpatient health care services (including mental health services);

''(D) periodic general physical examinations, eye examinations, hearing examinations, dental examinations, foot examinations, and other preventive health care services; and

''(E) prescription drugs, eyeglasses, hearing aids, orthopedic equipment, and dentures (both complete and partial).

''(2) The term 'comprehensive long-term care services' includes custodial and noncustodial services in facilities, as well as home and community-based services.

''SEC. 403. MEMBERSHIP.

''(a) APPOINTMENT.—The Commission shall be composed of 15 members appointed as follows:

''(1) The President shall appoint 3 members.

''(2) The President pro tempore of the Senate shall appoint, after consultation with the minority leader of the Senate, 6 members of the Senate, of whom not more than 4 may be of the same political party.

''(3) The Speaker of the House of Representatives shall appoint, after consultation with the minority leader of the House of Representatives, 6 members of the House, of whom not more than 4 may be of the same political party.

''(b) CHAIRMAN AND VICE CHAIRMEN.—The Commission shall elect a chairman and 4 vice chairmen from among its members.

''(c) VACANCIES.—Any vacancy in the membership of the Commission shall be filled in the manner in which the original appointment was made and shall not affect the power of the remaining members to execute the duties of the Commission.

''(d) QUORUM.—A quorum shall consist of 8 members of the Commission, except that 4 members may conduct a hearing under section 405(a).

''(e) MEETINGS.—The Commission shall meet at the call of its chairman or a majority of its members.

''(f) COMPENSATION AND REIMBURSEMENT OF EXPENSES.—Members of the Commission are not entitled to receive compensation for service on the Commission. Members may be reimbursed for travel, subsistence, and other necessary expenses incurred in carrying out the duties of the Commission.

''SEC. 404. STAFF AND CONSULTANTS.

''(a) STAFF.—The Commission may appoint and determine the compensation of such staff as may be necessary to carry out the duties of the Commission. Such appointments and compensation may be made without regard to the provisions of title 5, United States Code, that govern appointments in the competitive services, and the provisions of chapter 51 and subchapter III of chapter 53 of such title that relate to classifications and the General Schedule pay rates.

''(b) CONSULTANTS.—The Commission may procure such temporary and intermittent services of consultants under section 3109(b) of title 5, United States Code, as the Commission determines to be necessary to carry out the duties of the Commission.

''SEC. 405. POWERS.

''(a) HEARINGS AND OTHER ACTIVITIES.—For the purpose of carrying out its duties, the Commission may hold such hearings and undertake such other activities as the Commission determines to be necessary to carry out its duties.

''(b) STUDIES BY GENERAL ACCOUNTING OFFICE.—Upon the request of the Commission, the Comptroller General shall conduct such studies or investigations as the Commission determines to be necessary to carry out its duties.

''(c) COST ESTIMATES BY CONGRESSIONAL BUDGET OFFICE.—

''(1) Upon the request of the Commission, the Director of the Congressional Budget Office shall provide to the Commission such cost estimates as the Commission determines to be necessary to carry out its duties.

''(2) The Commission shall reimburse the Director of the Congressional Budget Office for expenses relating to the employment in the office of the Director of such additional staff as may be necessary for the Director to comply with requests by the Commission under paragraph (1).

''(d) DETAIL OF FEDERAL EMPLOYEES.—Upon the request of the Commission, the head of any Federal agency is authorized to detail, without reimbursement, any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties. Any such detail shall not interrupt or otherwise affect the civil service status or privileges of the Federal employee.

''(e) TECHNICAL ASSISTANCE.—Upon the request of the Commission, the head of a Federal agency shall provide such technical assistance to the Commission as the Commission determines to be necessary to carry out its duties.

''(f) USE OF MAILS.—The Commission may use the United States mails in the same manner and under the same conditions as Federal agencies, and shall, for purposes of the frank, be considered a commission of Congress as described in section 3215 of title 39, United States Code.

''(g) OBTAINING INFORMATION.—The Commission may secure directly from any Federal agency information necessary to enable it to carry out its duties, if the information may be disclosed under section 552 of title 5, United States Code. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

''(h) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Commission, the Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

''(i) ACCEPTANCE OF DONATIONS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

''(j) PRINTING.—For purposes of costs relating to printing and binding, including the costs of personnel detailed from the Government Printing Office, the Commission shall be deemed to be a committee of the Congress.

''SEC. 406. REPORT.

''(a) REPORT ON COMPREHENSIVE LONG-TERM CARE SERVICES FOR THE ELDERLY AND DISABLED.—The Commission shall submit to Congress a report containing its findings and recommendations regarding comprehensive long-term care services for the elderly and disabled. The report shall include detailed recommendations for appropriate legislative initiatives respecting such services.

''(b) REPORT ON COMPREHENSIVE HEALTH CARE SERVICES.—The Commission shall submit to Congress a re-

port containing its findings and recommendations regarding comprehensive health care services for the elderly and disabled and comprehensive health care services for all individuals in the United States. The report shall include detailed recommendations for appropriate legislative initiatives respecting such services.

''(c) DEADLINES.—The two reports required under this section shall be submitted concurrently by not later than November 9, 1989.

''SEC. 407. TERMINATION.

''The Commission shall terminate 30 days after the date of submission of the report required in section 406(b).

''SEC. 408. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated $1,500,000 to carry out this title [probably should be 'this subtitle' which enacted this note].''

MAINTENANCE OF EFFORT REGARDING DUPLICATIVE BENEFITS

Pub. L. 100–360, title IV, §421, July 1, 1988, 102 Stat. 808, as amended by Pub. L. 100–485, title VI, §608(a), Oct. 13, 1988, 102 Stat. 2411, which required employers who had been providing health care benefits to employees that were duplicative part A and part B benefits to provide the employees with additional benefits equal to the total actuarial value of such duplicative benefits, was repealed by Pub. L. 101–234, title III, §301(a), Dec. 13, 1989, 103 Stat. 1985. [Repeal not applicable to duplicative part A benefits for periods before Jan. 1, 1990, see section 301(e)(1) of Pub. L. 101–234, set out as an Effective Date of 1989 Amendment note under section 1395u of this title.]

TASK FORCE ON LONG-TERM HEALTH CARE POLICIES

Pub. L. 99–272, title IX, §9601, Apr. 7, 1986, 100 Stat. 221, provided that:

''(a) ESTABLISHMENT OF TASK FORCE.—(1) [sic] The Secretary of Health and Human Services (hereinafter in this section referred to as the 'Secretary') shall establish a Task Force on Long-Term Health Care Policies (hereinafter in this section referred to as the 'Task Force'). The Task Force shall be established not later than 60 days after the date of the enactment of this Act [Apr. 7, 1986] and in consultation with the National Association of Insurance Commissioners.

''(b) COMPOSITION OF TASK FORCE.—The Task Force shall be composed of 18 members, which shall include—

''(1) two members representing the National Association of Insurance Commissioners,

''(2) three members representing Federal and State agencies with responsibilities relating to health or the elderly,

''(3) three members representing private insurers,

''(4) three members from organizations representing consumers or the elderly, and

''(5) three members from organizations representing providers of long-term health care services.

The Secretary shall designate a member of the Task Force as chair.

''(c) DEVELOPMENT OF RECOMMENDATIONS.—The Task Force shall develop recommendations for long-term health care policies, including recommendations designed—

''(1) to limit marketing and agent abuse for those policies,

''(2) to assure the dissemination of such information to consumers as is necessary to permit informed choice in purchasing the policies and to reduce the purchase of unnecessary or duplicative coverage,

''(3) to assure that benefits provided under the policies are reasonable in relationship to premiums charged, and

''(4) to promote the development and availability of long-term health care policies which meet these recommendations.

''(d) REPORT.—Not later than 18 months after the date of the enactment of this Act [Apr. 7, 1986], the Task Force shall report to the Secretary, to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Labor and Human Resources of the Senate respecting—

''(1) the recommendations developed under subsection (c), including an explanation of the reasons for their selection, and

''(2) such recommendations for additional activities respecting long-term health care policies as the Task Force finds appropriate.

The Secretary, in cooperation with the National Association of Insurance Commissioners, shall provide for the dissemination of the report to each of the States.

''(e) TERMINATION OF TASK FORCE.—The Task Force shall terminate 90 days after the date of submission of the report required under subsection (d).

''(f) REPORTS OF SECRETARY.—The Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives and to the Committee on Labor and Human Resources of the Senate two reports on—

''(1) actions taken by the States to implement the recommendations developed under this section and to recommend additional action; and

''(2) recommendations for legislative and administrative action, if any, needed to respond to issues raised by the Task Force or to improve consumer protection with respect to long-term health care policies.

The first report shall be transmitted 18 months after the date the report is made under subsection (d), and the second report shall be transmitted 18 months later.

''(g) LONG-TERM HEALTH CARE POLICY DEFINED.—In this section, the term 'long-term health care policy' means an insurance policy, or similar health benefits plan, which is designed for or marketed as providing (or making payments for) health care services (such as nursing home care and home health care) or related services (which may include home and community-based services), or both, over an extended period of time.

''(h) ASSURANCE OF STATES' JURISDICTION.—Nothing in this section shall be construed as recommending Federal preemption of the States in overseeing the operation and regulation of insurance carriers in their respective jurisdictions.''

§ 1395b–1. Incentives for economy while maintaining or improving quality in provision of health services

(a) Grants and contracts to develop and engage in experiments and demonstration projects

(1) The Secretary of Health and Human Services is authorized, either directly or through grants to public or private agencies, institutions, and organizations or contracts with public or private agencies, institutions, and organizations, to develop and engage in experiments and demonstration projects for the following purposes:

(A) to determine whether, and if so which, changes in methods of payment or reimbursement (other than those dealt with in section 222(a) of the Social Security Amendments of 1972) for health care and services under health programs established by this chapter, including a change to methods based on negotiated rates, would have the effect of increasing the efficiency and economy of health services under such programs through the creation of additional incentives to these ends without adversely affecting the quality of such services;

(B) to determine whether payments for services other than those for which payment may

be made under such programs (and which are incidental to services for which payment may be made under such programs) would, in the judgment of the Secretary, result in more economical provision and more effective utilization of services for which payment may be made under such program, where such services are furnished by organizations and institutions which have the capability of providing—

(i) comprehensive health care services,

(ii) mental health care services (as defined by section 2691(c)[1] of this title),

(iii) ambulatory health care services (including surgical services provided on an outpatient basis), or

(iv) institutional services which may substitute, at lower cost, for hospital care;

(C) to determine whether the rates of payment or reimbursement for health care services, approved by a State for purposes of the administration of one or more of its laws, when utilized to determine the amount to be paid for services furnished in such State under the health programs established by this chapter, would have the effect of reducing the costs of such programs without adversely affecting the quality of such services;

(D) to determine whether payments under such programs based on a single combined rate of reimbursement or charge for the teaching activities and patient care which residents, interns, and supervising physicians render in connection with a graduate medical education program in a patient facility would result in more equitable and economical patient care arrangements without adversely affecting the quality of such care;

(E) to determine whether coverage of intermediate care facility services and homemaker services would provide suitable alternatives to posthospital benefits presently provided under this subchapter; such experiment and demonstration projects may include:

(i) counting each day of care in an intermediate care facility as one day of care in a skilled nursing facility, if such care was for a condition for which the individual was hospitalized,

(ii) covering the services of homemakers for a maximum of 21 days, if institutional services are not medically appropriate,

(iii) determining whether such coverage would reduce long-range costs by reducing the lengths of stay in hospitals and skilled nursing facilities, and

(iv) establishing alternative eligibility requirements and determining the probable cost of applying each alternative, if the project suggests that such extension of coverage would be desirable;

(F) to determine whether, and if so which type of, fixed price or performance incentive contract would have the effect of inducing to the greatest degree effective, efficient, and economical performance of agencies and organizations making payment under agreements or contracts with the Secretary for health care and services under health programs established by this chapter;

(G) to determine under what circumstances payment for services would be appropriate and the most appropriate, equitable, and noninflationary methods and amounts of reimbursement under health care programs established by this chapter for services, which are performed independently by an assistant to a physician, including a nurse practitioner (whether or not performed in the office of or at a place at which such physician is physically present), and—

(i) which such assistant is legally authorized to perform by the State or political subdivision wherein such services are performed, and

(ii) for which such physician assumes full legal and ethical responsibility as to the necessity, propriety, and quality thereof;

(H) to establish an experimental program to provide day-care services, which consist of such personal care, supervision, and services as the Secretary shall by regulation prescribe, for individuals eligible to enroll in the supplemental medical insurance program established under part B of this subchapter and subchapter XIX of this chapter, in day-care centers which meet such standards as the Secretary shall by regulation establish;

(I) to determine whether the services of clinical psychologists may be made more generally available to persons eligible for services under this subchapter and subchapter XIX of this chapter in a manner consistent with quality of care and equitable and efficient administration;

(J) to develop or demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services under the health programs established by this chapter; and

(K) to determine whether the use of competitive bidding in the awarding of contracts, or the use of other methods of reimbursement, under part B of subchapter XI of this chapter would be efficient and effective methods of furthering the purposes of that part.

For purposes of this subsection, ''health programs established by this chapter'' means the program established by this subchapter and a program established by a plan of a State approved under subchapter XIX of this chapter.

(2) Grants, payments under contracts, and other expenditures made for experiments and demonstration projects under paragraph (1) shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1395i of this title) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1395t of this title) and from funds appropriated under subchapter XIX of this chapter. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds (and from funds appropriated under such subchapter XIX

[1] See References in Text note below.

of this chapter) shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

(b) Waiver of certain payment or reimbursement requirements; advice and recommendations of specialists preceding experiments and demonstration projects

In the case of any experiment or demonstration project under subsection (a) of this section, the Secretary may waive compliance with the requirements of this subchapter and subchapter XIX of this chapter insofar as such requirements relate to reimbursement or payment on the basis of reasonable cost, or (in the case of physicians) on the basis of reasonable charge, or to reimbursement or payment only for such services or items as may be specified in the experiment; and costs incurred in such experiment or demonstration project in excess of the costs which would otherwise be reimbursed or paid under such subchapters may be reimbursed or paid to the extent that such waiver applies to them (with such excess being borne by the Secretary). No experiment or demonstration project shall be engaged in or developed under subsection (a) of this section until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment or demonstration project as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct the proposed experiment or demonstration project, and its relationship to other similar experiments and projects already completed or in process.

(Pub. L. 90–248, title IV, § 402(a), (b), Jan. 2, 1968, 81 Stat. 930, 931; Pub. L. 92–603, title II, §§ 222(b), 278(b)(2), Oct. 30, 1972, 86 Stat. 1391, 1453; Pub. L. 95–142, § 17(d), Oct. 25, 1977, 91 Stat. 1202; Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 97–35, title XXI, § 2193(d), Aug. 13, 1981, 95 Stat. 828; Pub. L. 97–248, title I, § 147, Sept. 3, 1982, 96 Stat. 394; Pub. L. 98–369, div. B, title III, § 2331(b), July 18, 1984, 98 Stat. 1088.)

REFERENCES IN TEXT

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (a)(1)(A), is section 222(a) of Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a note below.

Section 2691(c) of this title, referred to in subsec. (a)(1)(B)(ii), was repealed by Pub. L. 94–103, title III, § 302(c), Oct. 4, 1975, 89 Stat. 507.

Part B of this subchapter, referred to in subsec. (a)(1)(H), is classified to section 1395j et seq. of this title.

Part B of subchapter XI of this chapter, referred to in subsec. (a)(1)(K), is classified to section 1320c et seq. of this title.

CODIFICATION

Section is comprised of subsecs. (a) and (b) of section 402 of Pub. L. 90–248. Subsec. (c) of such section 402 amended section 1395*ll*(b) of this title.

Section was enacted as a part of the Social Security Amendments of 1967, and not as a part of the Social Security Act which comprises this chapter.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–369 substituted ''grants to public or private agencies'' for ''grants to public or nonprofit private agencies'' in provisions preceding subpar. (A).

1982—Subsec. (a)(1)(K). Pub. L. 97–248 added subpar. (K).

1981—Subsec. (a)(1). Pub. L. 97–35, § 2193(d)(1), substituted ''this subchapter and a program established by a plan of a State approved under subchapter XIX of this chapter'' for ''this subchapter, a program established by a plan of a State approved under subchapter XIX of this chapter, and a program established by a plan of a State approved under subchapter V of this chapter''.

Subsec. (a)(2). Pub. L. 97–35, § 2193(d)(2), substituted reference to subchapter XIX of this chapter for reference to subchapters V and XIX of this chapter in two places.

Subsec. (b). Pub. L. 97–35, § 2193(d)(3), substituted reference to subchapter XIX of this chapter for reference to subchapters V and XIX of this chapter.

1977—Subsec. (a)(1)(J). Pub. L. 95–142 added subpar. (J).

1972—Subsec. (a). Pub. L. 92–603, §§ 222(b)(1), 278(b)(2), substituted provisions spelling out in detail the purposes for which experiments and demonstration projects may be carried out for a general statement setting out the increase in efficiency and economy of health services as the purpose of experiments selected by the Secretary, inserted references to demonstration projects, and inserted references to the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund.

Subsec. (b). Pub. L. 92–603, § 222(b)(2), inserted references to demonstration projects and inserted '', or to reimbursement or payment only for such services or items as may be specified in the experiment''.

CHANGE OF NAME

''Secretary of Health and Human Services'' substituted for ''Secretary of Health, Education, and Welfare'' in subsec. (a)(1) pursuant to section 509(b) Pub. L. 96–88, which is classified to section 3508(b) of Title 20, Education.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, see section 2331(c) of Pub. L. 98–369, set out as a note under section 1310 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT, SAVINGS, AND TRANSITIONAL PROVISIONS

For effective date, savings, and transitional provisions relating to amendment by Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

CLARIFICATION OF SECRETARIAL WAIVER AUTHORITY FOR RURAL HOSPITAL DEMONSTRATIONS

Pub. L. 101–508, title IV, § 4008(i)(1), Nov. 5, 1990, 104 Stat. 1388–50, as amended by Pub. L. 103–66, title XIII, § 13507, Aug. 10, 1993, 107 Stat. 579, provided that: ''The Secretary of Health and Human Services is authorized to waive such provisions of title XVIII of the Social Security Act [this subchapter] as are necessary to conduct any demonstration project for limited-service rural hospitals with respect to which the Secretary has entered into an agreement before the date of the enactment of the Omnibus Budget Reconciliation Act of 1989 [Dec. 19, 1989]. The Secretary shall continue any such demonstration project until at least July 1, 1997.''

VOLUNTEER SENIOR AIDES DEMONSTRATION PROJECTS FOR BASIC MEDICAL ASSISTANCE AND SUPPORT TO FAMILIES WITH DISABLED OR ILL CHILDREN

Pub. L. 101–239, title X, § 10404, Dec. 19, 1989, 103 Stat. 2488, provided that:

''(a) NUMBER OF PROJECTS.—In order to determine whether, and if so, the extent to which, the use of volunteer senior aides to provide basic medical assistance and support to families with moderately or severely disabled or chronically ill children contributes to reducing the costs of care for such children, not more than 10 communities may conduct demonstration projects under this section.

''(b) DUTIES OF THE SECRETARY.—

''(1) CONSIDERATION OF APPLICATIONS.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall consider all applications received from communities desiring to conduct demonstration projects under this section.

''(2) APPROVAL OF CERTAIN APPLICATIONS.—The Secretary shall approve not more than 10 applications to conduct projects which appear likely to contribute significantly to the achievement of the purpose of this section.

''(3) GRANTS.—The Secretary shall make grants to each community the application of which to conduct a demonstration project under this section is approved by the Secretary to assist the community in carrying out the project.

''(c) REQUIREMENTS.—Each community receiving a grant with respect to a demonstration project under this section shall conduct the project in accordance with such requirements as the Secretary may prescribe.

''(d) LIMITATION ON AUTHORIZATION OF APPROPRIATIONS.—For grants under this section, there are authorized to be appropriated to the Secretary of Health and Human Services not to exceed—

''(1) $1,000,000 for each of the fiscal years 1990 and 1991; and

''(2) $2,000,000 for each of the fiscal years 1992, 1993, and 1994.

''(e) EFFECTIVE DATE.—This section shall take effect on October 1, 1989.''

TREATMENT OF CERTAIN NURSING EDUCATION PROGRAMS

Pub. L. 100–647, title VIII, § 8411, Nov. 10, 1988, 102 Stat. 3800, as amended by Pub. L. 101–239, title VI, § 6205(a)(1)(B), Dec. 19, 1989, 103 Stat. 2243, provided that:

''(a) DEMONSTRATION OF JOINT NURSING GRADUATE EDUCATION PROGRAMS.—

''(1) The Secretary of Health and Human Services shall provide for demonstration programs under this subsection in each of 5 hospitals for cost reporting periods beginning on or after July 1, 1989, and before July 1, 1994.

''(2) Under each demonstration project, subject to paragraph (4), the reasonable costs incurred by a hospital pursuant to a written agreement with an educational institution for the activities described in paragraph (3) conducted as part of an approved educational program that—

''(A) involves a substantial clinical component (as determined by the Secretary), and

''(B) leads to a master's or doctoral degree in nursing,

shall be allowable as reasonable costs under title XVIII of the Social Security Act [this subchapter] and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program).

''(3) The activities described in this paragraph are the activities for which the reasonable costs of conducting such activities are allowable under title XVIII of the Social Security Act if conducted under a hospital-operated approved educational program (other than an approved graduate medical education program), but only to the extent such activities are directly related to the operation of the educational program conducted pursuant to the written agreement between the hospital and the educational institution.

''(4) The amount paid under a demonstration program under this subsection to a hospital for a cost reporting period may not exceed $200,000.

''(5) The Secretary shall report to Congress, by not later than January 1, 1995, on the demonstration programs conducted under this subsection and on the supply and characteristics of nurses trained under such programs.

''(b) JOINT UNDERGRADUATE EDUCATION PROGRAM.—In the case of a hospital which (1) was paid under a waiver under section 402 of the Social Security Amendments of 1967 [section 402 of Pub. L. 90–248, enacting this section and amending section 1395*ll* of this title] and section 222 of the Social Security Amendments of 1972 [section 222 of Pub. L. 92–603, amending this section and section 1395*ll* of this title and enacting provisions set out below], which waiver expired on September 30, 1985, and (2) during its cost reporting period beginning in fiscal year 1985 and for each subsequent cost reporting period, has been and is associated with, and has incurred and incurs substantial costs with respect to, a nursing college with which it has shared and shares common directors, educational activities of the nursing college shall be considered to be educational activities operated directly by such hospital for purposes of title XVIII of the Social Security Act [this subchapter], and shall be allowable as reasonable costs under such title and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated approved educational program (other than an approved graduate medical education program), for hospital cost reporting periods beginning in fiscal years 1986 though 1991.''

RESEARCH ON LONG-TERM CARE SERVICES FOR MEDICARE BENEFICIARIES

Pub. L. 100–360, title II, § 207, July 1, 1988, 102 Stat. 732, which provided for research on issues relating to the delivery and financing of long-term care services for medicare beneficiaries, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS

For requirement that Secretary of Health and Human Services modify contracts with health maintenance organizations under subsec. (a) of this section and section 222(a) of Pub. L. 92–603, set out below, so as to apply to such organizations and contracts the requirements imposed by the amendments made by Pub. L. 100–360, see section 222 of Pub. L. 100–360, set out as a note under section 1395mm of this title.

CASE MANAGEMENT DEMONSTRATION PROJECTS

Pub. L. 101–508, title IV, § 4207(f), formerly § 4027(f), Nov. 5, 1990, 104 Stat. 1388–123, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that:

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services shall resume the 3 case management demonstration projects described in paragraph (2) and approved under section 425 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360, formerly set out below] (in this subsection referred to as 'MCCA').

''(2) PROJECT DESCRIPTIONS.—The demonstration projects referred to in paragraph (1) are—

''(A) the project proposed to be conducted by Providence Hospital for case management of the elderly at risk for acute hospitalization as described in Project No. 18–P–99379/5–01;

''(B) the project proposed to be conducted by the Iowa Foundation for Medical Care to study patients with chronic congestive conditions to reduce repeated hospitalizations of such patients as described in Project No. P–99399/4–01; and

''(C) the project proposed to be conducted by Key Care Health Resources, Inc., to examine the effects of case management on 2,500 high cost medicare beneficiaries as described in Project No. 18–P–99396/5.

''(3) TERMS AND CONDITIONS.—Except as provided in paragraph (4), the demonstration projects resumed pur-

suant to paragraph (1) shall be subject to the same terms and conditions established under section 425 of MCCA. In determining the 2-year duration period of a project resumed pursuant to paragraph (1), the Secretary may not take into account any period of time for which the project was in effect under section 425 of MCCA.

''(4) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding section 425(g) of MCCA, there are authorized to be appropriated for administrative costs in carrying out the demonstration projects resumed pursuant to paragraph (1) $2,000,000 in each of fiscal years 1991 and 1992.''

Pub. L. 100–360, title IV, §425, July 1, 1988, 102 Stat. 813, which directed Secretary of Health and Human Services to establish 4 demonstration projects under which an appropriate entity agreed to provide case management services, was repealed by Pub. L. 101–234, title III, §301(a), Dec. 13, 1989, 103 Stat. 1985.

DEMONSTRATION PROJECTS WITH RESPECT TO CHRONIC VENTILATOR-DEPENDENT UNITS IN HOSPITALS

Pub. L. 100–360, title IV, §429, July 1, 1988, 102 Stat. 817, as amended by Pub. L. 100–647, title VIII, §8404(a), Nov. 10, 1988, 102 Stat. 3800, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall provide for at least 5 demonstration projects, for at least 3 years each, to review the appropriateness of classifying chronic ventilator-dependent units in hospitals as rehabilitation units. Such projects shall be conducted in consultation with the Prospective Payment Assessment Commission.

''(b) WAIVER AUTHORITY.—In conducting demonstration projects under this section for units, the Secretary may treat such a unit as a rehabilitation unit described in section 1886(d)(1)(B) of the Social Security Act [section 1395ww(d)(1)(B) of this title] for purposes of such section.''

[Pub. L. 100–647, title VIII, §8404(b), Nov. 10, 1988, 102 Stat. 3800, provided that: ''The amendment made by subsection (a) [amending section 429 of Pub. L. 100–360, set out above] shall take effect as if included in the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].'']

RESEARCH AND DEMONSTRATION PROJECTS ON RURAL AND INNER-CITY HEALTH ISSUES

Pub. L. 100–203, title IV, §4403, Dec. 22, 1987, 1330–226, as amended by Pub. L. 100–360, title IV, §411(m)(2)(A), July 1, 1988, 102 Stat. 806, provided that:

''(a) SET ASIDES FOR ISSUES OF HEALTH CARE IN RURAL AREAS AND IN INNER-CITY AREAS.—(1) Not less than ten percent of the total amounts annually appropriated to, and expended by, the Health Care Financing Administration for the conduct of research and demonstration projects in fiscal years 1988, 1989, and 1990 shall be expended for research and demonstration projects relating exclusively or substantially to rural health issues, including (but not limited to) the impact of the payment methodology under section 1886(d) of the Social Security Act [section 1395ww(d) of this title] on the financial viability of small rural hospitals, the effect of medicare payment policies on the ability of rural areas (and rural hospitals in particular) to attract and retain physicians and other health professionals, the appropriateness of medicare conditions of participation and staffing requirements for small rural hospitals, and the impact of medicare policies on access to (and the quality of) health care in rural areas.

''(2) Not less than ten percent of the total amounts annually appropriated to, and expended by, the Health Care Financing Administration for the conduct of research and demonstration projects in fiscal years 1988, 1989, and 1990 shall be expended for research and demonstration projects relating exclusively or substantially to issues of providing health care in inner-city areas, including (but not limited to) the impact of the payment methodology under section 1886(d) of the Social Security Act on the financial viability of inner-city hospitals and the impact of medicare policies on access to (and the quality of) health care in inner-city areas.

''(b) AGENDA.—The Secretary of Health and Human Services shall establish an agenda of research and demonstration projects, relating exclusively or substantially to rural health issues or to inner-city health issues, that are in progress or have been proposed, and shall include such agenda in the annual report submitted pursuant to section 1875(b) of the Social Security Act [section 1395*ll*(b) of this title]. The agenda shall be accompanied by a statement setting forth the amounts that have been obligated and expended with respect to such projects in the current and most recently completed fiscal years.''

ALZHEIMER'S DISEASE DEMONSTRATION PROJECTS

Pub. L. 99–509, title IX, §9342, Oct. 21, 1986, 100 Stat. 2038, as amended by Pub. L. 101–508, title IV, §4164(a)(2), Nov. 5, 1990, 104 Stat. 1388–101; Pub. L. 103–66, title XIII, §13552, Aug. 10, 1993, 107 Stat. 591, provided that:

''(a) DEMONSTRATION PROJECTS.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall conduct at least 5 (and not more than 10) demonstration projects to determine the effectiveness, cost, and impact on health status and functioning of providing comprehensive services for individuals entitled to benefits under title XVIII of the Social Security Act [this subchapter] (in this section referred to as 'medicare beneficiaries') who are victims of Alzheimer's disease or related disorders.

''(b) SERVICES UNDER DEMONSTRATION PROJECTS.—The services provided under demonstration projects must be designed to meet the specific needs of Alzheimer's disease patients and may include—

''(1) case management services,

''(2) home and community-based services,

''(3) mental health services,

''(4) outpatient drug therapy,

''(5) respite care and other supportive services and counseling for family,

''(6) adult day care services, and

''(7) other in-home services.

''(c) CONDUCT OF PROJECTS.—The demonstration projects shall—

''(1) each be conducted over a period of 5 years;

''(2) provide each medicare beneficiary with a comprehensive medical and mental status evaluation upon entering the project and at discharge;

''(3) be conducted by an entity which either directly or by contract is able to provide such comprehensive evaluations and the additional services (described in subsection (b)) covered by the project;

''(4) be conducted in sites which are chosen so as to be geographically diverse and located in States with a high proportion of medicare beneficiaries and in areas readily accessible to a significant number of medicare beneficiaries; and

''(5) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in each project.

''(d) EVALUATION AND REPORTS.—The Secretary shall provide for an evaluation of the demonstration projects and shall submit to the Committees on Energy and Commerce [now Committee on Commerce] and Ways and Means of the House of Representatives and the Committee on Finance of the Senate—

''(1) a preliminary report during the fourth year of the projects, which report shall include a description of the sites at which the projects are being conducted and the services being provided at the different sites, and

''(2) a final report upon completion of the projects, which report shall include recommendations for appropriate legislative changes.

''(f) FUNDING.—Expenditures (not to exceed $58,000,000 for the projects and $5,000,000 for the evaluation of the projects) made for the demonstration projects shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the So-

cial Security Act [section 1395t of this title]). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section.

''(g) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act [this subchapter] to the extent and for the period the Secretary finds necessary for the conduct of the demonstration projects.''

SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

For treatment of hospitals in States which have had a waiver approved under this section, upon termination of waiver, see section 9202(j) of Pub. L. 99–272, as amended, set out as a note under section 1395ww of this title.

EXTENSION OF CERTAIN MEDICARE MUNICIPAL HEALTH SERVICES DEMONSTRATION PROJECTS

Pub. L. 99–272, title IX, § 9215, Apr. 7, 1986, 100 Stat. 180, as amended by Pub. L. 101–239, title VI, § 6135, Dec. 19, 1989, 103 Stat. 2222; Pub. L. 103–66, title XIII, § 13557, Aug. 10, 1993, 107 Stat. 592, provided that: ''The Secretary of Health and Human Services shall extend through December 31, 1997, approval of four municipal health services demonstration projects (located in Baltimore, Cincinnati, Milwaukee, and San Jose) authorized under section 402(a) of the Social Security Amendments of 1967 [subsec. (a) of this section]. The Secretary shall submit a report to Congress on the waiver program with respect to the quality of health care, beneficiary costs, costs to the medicaid program and other payers, access to care, outcomes, beneficiary satisfaction, utilization differences among the different populations served by the projects, and such other factors as may be appropriate.''

DEMONSTRATION PROGRAM FOR REDUCTION OF DISABILITY AND DEPENDENCY THROUGH PROVISION OF PREVENTIVE HEALTH SERVICES UNDER MEDICARE

Pub. L. 99–272, title IX, § 9314, Apr. 7, 1986, 100 Stat. 194, as amended by Pub. L. 99–509, title IX, § 9344(d), Oct. 21, 1986, 100 Stat. 2042; Pub. L. 101–508, title IV, § 4164(a)(1), Nov. 5, 1990, 104 Stat. 1388–100, provided that:

''(a) DEMONSTRATION PROGRAM.—The Secretary of Health and Human Services (hereinafter in this section referred to as the 'Secretary') shall establish a 5-year demonstration program designed to reduce disability and dependency through the provision of preventive health services to individuals entitled to benefits under title XVIII of the Social Security Act [this subchapter] (hereinafter in this section referred to as 'medicare beneficiaries').

''(b) PREVENTIVE HEALTH SERVICES UNDER DEMONSTRATION PROGRAM.—The preventive health services to be made available under the demonstration program shall include—

''(1) health screenings,

''(2) health risk appraisals,

''(3) immunizations, and

''(4) counseling on and instruction in—

''(A) diet and nutrition,

''(B) reduction of stress,

''(C) exercise and exercise programs,

''(D) sleep regulation,

''(E) injury prevention,

''(F) prevention of alcohol and drug abuse,

''(G) prevention of mental health disorders,

''(H) self-care, including use of medication, and

''(I) reduction or cessation of smoking.

''(c) CONDUCT OF PROGRAM.—The demonstration program shall—

''(1) be conducted under the direction of accredited public or private nonprofit schools of public health or preventive medicine departments accredited by the Council on Education for Public Health;

''(2) be conducted in no fewer than five sites (at least one of which shall serve a rural area), which sites shall be chosen so as to be geographically diverse and shall be readily accessible to a significant number of medicare beneficiaries;

''(3) involve community outreach efforts at each site to enroll the maximum number of medicare beneficiaries in the program; and

''(4) be designed—

''(A) to test alternative methods of payment for preventive health services, including payment on a prepayment basis as well as payment on a fee-for-service basis,

''(B) to permit a variety of appropriate health care providers to furnish preventive health services, including physicians, health educators, nurses, allied health personnel, dieticians, and clinical psychologists, and

''(C) to facilitate evaluation under subsection (d).

''(d) EVALUATION.—The Secretary shall evaluate the demonstration project in order to determine—

''(1) the short-term and long-term costs and benefits of providing preventive health services for medicare beneficiaries, including any reduction in inpatient services resulting from providing the services, and

''(2) what practical mechanisms exist to finance preventive health services under title XVIII of the Social Security Act [this subchapter].

''(e) REPORTS TO CONGRESS.—(1) Not later than three years after the date of the enactment of this Act [Apr. 7, 1986], the Secretary shall submit a preliminary report to the Committees on Ways and Means and Energy and Commerce [now Committee on Commerce] of the House of Representatives and to the Committee on Finance of the Senate on the progress made in the demonstration program, including a description of the sites at which the program is being conducted and the preventive health services being provided at the different sites.

''(2) Not later than April 1, 1993, the Secretary shall submit an interim report to those Committees on the demonstration program and shall include in the report—

''(A) the evaluation described in subsection (d), and

''(B) recommendations for appropriate legislative changes to incorporate payment for cost-effective preventive health services into the medicare program.

''(3) Not later than April 1, 1995, the Secretary shall submit a final report to those Committees on the demonstration program and shall include in the report a comprehensive evaluation of the long-term effects of the program.

''(f) FUNDING.—Expenditures made for the demonstration program shall be made from the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act [section 1395t of this title]). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. Funding for the administrative costs of the demonstration program shall not exceed $7,500,000 over the duration of the program and shall not exceed $3,000,000 for the comprehensive evaluation referred to in subsection (e)(3).

''(g) WAIVER OF MEDICARE REQUIREMENTS.—The Secretary shall waive compliance with such requirements of title XVIII of the Social Security Act [this subchapter] to the extent and for the period the Secretary finds necessary for the conduct of the demonstration program.''

[Section 9344(d) of Pub. L. 99–509 provided in part that amendment by Pub. L. 99–509 is effective as if included in section 9314 of Pub. L. 99–272 when that section was enacted.]

PAYMENT FOR COSTS OF HOSPITAL-BASED MOBILE INTENSIVE CARE UNITS

Section 2320 of Pub. L. 98–369 provided that:

''(a)(1) In the case of a project described in subsection (b), the Secretary of Health and Human Services shall provide, except as provided in paragraph (2), that the amount of payments to hospitals covered under the project during the period described in paragraph (3) shall include payments for their operation of hospital-based mobile intensive care units (as defined by State statute) if the State provides satisfactory assurances that the total amount of payments to such hospitals under titles XVIII and XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter] under the demonstration project (including any such additional amount of payment) would not exceed the total amount of payments which would have been paid under such titles if the demonstration project were not in effect.

''(2) Paragraph (1) shall not apply if the State in which the project is located notifies the Secretary, within 30 days after the date of the enactment of this section [July 18, 1984], that the State does not want paragraph (1) to apply to that project.

''(3) The period referred to in paragraph (1) begins on the date of the enactment of this section and continues so long as the Secretary continues the Statewide waiver referred to in subsection (b), but in no case ends earlier than 90 days after the date final regulations to implement section 1886(c) of the Social Security Act [section 1395ww(c) of this title] are published.

''(b) The project referred to in subsection (a) is the statewide demonstration project established in the State of New Jersey under section 402 of the Social Security Amendments of 1967, as amended by section 222(b) of the Social Security Amendments of 1972 (Public Law 92–603) [this section], which project provides for payments to hospitals in the State on a prospective basis and related to a classification of patients by diagnosis-related groups.

''(c) Payment for services described in this section shall be considered to be payments for services under part A of title XVIII of the Social Security Act [part A of this subchapter].''

CONTINUATION OF SECRETARY'S AUTHORITY REGARDING EXPERIMENTS AND DEMONSTRATION PROJECTS

Pub. L. 98–21, title VI, §603(b), Apr. 20, 1983, 97 Stat. 167, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this title [amending sections 1320a–1, 1320c–2, 1395f, 1395i–2, 1395n, 1395r, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395ww, and 1395xx of this title, enacting provisions set out as notes under this section and sections 1395r, 1395x, 1395y, 1395cc, and 1395ww of this title, and amending provisions set out as a note under section 1395x of this title] shall not affect the authority of the Secretary to develop, carry out, or continue experiments and demonstration projects.

''(2) The Secretary shall provide that, upon the request of a State which has a demonstration project, for payment of hospitals under title XVIII of the Social Security Act [this subchapter] approved under section 402(a) of the Social Security Amendments of 1967 [subsec. (a) of this section] or section 222(a) of the Social Security Amendments of 1972 [set out as a note below], which (A) is in effect as of March 1, 1983, and (B) was entered into after August 1982 (or upon the request of another party to demonstration project agreement), the terms of the demonstration agreement shall be modified so that the demonstration project is not required to maintain the rate of increase in medicare hospital costs in that State below the national rate of increase in medicare hospital costs.''

ALTERNATIVE CARE DEMONSTRATION PROJECTS IN HOSPITALS SHORT OF SKILLED NURSING FACILITIES

Pub. L. 98–21, title VI, §603(d), Apr. 20, 1983, 97 Stat. 168, provided that: ''The Secretary shall conduct demonstrations with hospitals in areas with critical shortages of skilled nursing facilities to study the feasibility of providing alternative systems of care or methods of payment.''

CONTINUATION OF HOSPICE DEMONSTRATION PROJECTS; REPORT TO CONGRESS

Section 122(i), formerly §122(h), of Pub. L. 97–248, as redesignated and amended by Pub. L. 97–448, title III, §309(a)(6), (e), Jan. 12, 1983, 96 Stat. 2408, 2410, provided that:

''(1) Notwithstanding any provision of law which has the effect of restricting the time period of a hospice demonstration project in effect on July 15, 1982, pursuant to section 402(a) of the Social Security Amendments of 1967 [subsec. (a) of this section], the Secretary of Health and Human Services, upon request of the hospice involved, shall permit continuation of the project until November 1, 1983, or, if later, the date on which payments can first be made to any hospice program under the amendments made by this section.

''(2) Prior to September 30, 1983, the Secretary shall submit to Congress a report on the effectiveness of demonstration projects referred to in paragraph (1), including an evaluation of the cost-effectiveness of hospice care, the reasonableness of the 40-percent cap amount for hospice care as provided in section 1814(i) of the Social Security Act [section 1395f(i) of this title] (as added by this section), proposed methodology for determining such cap amount, proposed standards for requiring and measuring the maintenance of effort for utilizing volunteers as required under section 1861(dd) of such Act [section 1395x(dd) of this title], an evaluation of physician reimbursement for services furnished as a part of hospice care and for services furnished to individuals receiving hospice care but which are not reimbursed as a part of the hospice care, and any proposed legislative changes in the hospice care provisions of title XVIII of such Act [this subchapter].

''(3)(A) Notwithstanding the provisions of paragraph (1), the Secretary of Health and Human Services, upon request of the hospice involved, shall permit continuation of a hospice demonstration project described in paragraph (1) until September 30, 1986, if the hospice involved in such demonstration project does not provide hospice care directly but acts as a channeling agency for the provision of hospice care.

''(B) During the period after the date on which a hospice demonstration project described in subparagraph (A) would otherwise have terminated under the provisions of paragraph (1), and prior to September 30, 1986, any such hospice demonstration project shall be subject to the same requirements as are imposed under the hospice program provided for under the amendments made by this section [amending sections 1395c to 1395f, 1395h, and 1395x to 1395cc of this title and section 231f of Title 45, Railroads, and enacting provisions set out as notes under sections 1395c and 1395f of this title] with respect to reimbursement and benefits, other than the requirement that certain benefits be provided directly by the hospice involved.''

STATE MEDICARE HOSPITAL REIMBURSEMENT DEMONSTRATION PROJECT LIMITATION

Pub. L. 96–499, title IX, §903(c), Dec. 5, 1980, 94 Stat. 2615, which provided for a maximum number of six Statewide medicare hospital reimbursement demonstration projects, was repealed by Pub. L. 97–35, title XXI, §2154, Aug. 13, 1981, 95 Stat. 802.

STUDY OF NEED FOR DUAL PARTICIPATION OF SKILLED NURSING FACILITIES

Pub. L. 96–499, title IX, §919, Dec. 5, 1980, 94 Stat. 2627, required study of need for dual participation of skilled nursing facilities and submission of a report and recommendations to Congress within one year after Dec. 5, 1980.

DEMONSTRATION PROJECTS FOR PHYSICIAN-DIRECTED CLINICS IN URBAN MEDICALLY UNDERSERVED AREAS; REPORT SUBMITTED NO LATER THAN JANUARY 1, 1981

Pub. L. 95–210, §3, Dec. 13, 1977, 91 Stat. 1489, required the Secretary to provide, through demonstration projects, reimbursement on a cost basis for services

provided by physician-directed clinics in urban medically underserved areas for which payment may be made under this subchapter and, notwithstanding any other provision of this subchapter, for services provided by a physician assistant or nurse practitioner employed by such clinics which would otherwise be covered under this subchapter if provided by a physician. The Secretary was to evaluate the relative advantages and disadvantages of reimbursement on the basis of costs and fee-for-service for physician-directed clinics employing a physician assistant or nurse practitioner, the appropriate method of determining the compensation for physician services on a cost basis for the purposes of reimbursement of services provided in such clinics, the appropriate definition for such clinics, the appropriate criteria to use for the purposes of designating urban medically underserved areas, and such other possible changes in the provisions of this subchapter as might be appropriate for the efficient and cost-effective reimbursement of services provided in such clinics. Grants, payments under contracts, and other expenditures made for demonstration projects were to be made in appropriate part from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The Secretary was to submit to the Congress, no later than Jan. 1, 1981, a complete detailed report on the demonstration projects.

SCOPE OF GRANTS FOR EXPERIMENTS AND DEMONSTRATION PROJECTS TO DETERMINE METHODS FOR PROSPECTIVE PAYMENTS TO HOSPITALS, SKILLED NURSING FACILITIES, AND OTHER PROVIDERS OF SERVICES

Pub. L. 94–182, title I, § 107, Dec. 31, 1975, 89 Stat. 1053, provided that: ''Nothing contained in section 222(a) of Public Law 92–603 [set out below] shall be construed to preclude or prohibit the Secretary of Health, Education, and Welfare [now Health and Human Services] from including in any grant otherwise authorized to be made under such section moneys which are to be used for payments, to a participant in a demonstration or experiment with respect to which the grant is made, for or on account of costs incurred or services performed by such participant for a period prior to the date that the project of such participant is placed in operation, if—

''(1) the applicant for such grant is a State or an agency thereof,

''(2) such participant is an individual practice association which has been in existence for at least 3 years prior to the date of enactment of this section [Dec. 31, 1975] and which has in effect a contract with such State (or an agency thereof), entered into prior to the date on which the grant is approved by the Secretary, under which such association will, for a period which begins before and ends after the date such grant is so approved, provide health care services for individuals entitled to care and services under the State plan of such State which is approved under title XIX of the Social Security Act [subchapter XIX of this chapter].

''(3) the purpose of the inclusion of the project of such association is to test the utility of a particular rate-setting methodology, designed to be employed in prepaid health plans, in an individual practice association operation, and

''(4) the applicant for such grant affirms that the use of moneys from such grant to make such payments to such individual practice association is necessary or useful in assuring that such association will be able to continue in operation and carry out the project described in clause (3).''

EXPERIMENTS AND DEMONSTRATION PROJECTS TO DETERMINE METHODS FOR PROSPECTIVE PAYMENTS TO HOSPITALS, SKILLED NURSING FACILITIES, AND OTHER PROVIDERS OF SERVICES FOR CARE AND SERVICES FURNISHED; SCOPE; WAIVER OF PAYMENT REQUIREMENTS; SOURCE AND MANNER OF PAYMENTS FOR GRANTS, ETC.; REPORTS TO CONGRESS

Section 222(a) of Pub. L. 92–603, as amended by Pub. L. 97–35, title XXI, § 2193(e), Aug. 13, 1981, 95 Stat. 828, provided that:

''(1) The Secretary of Health, Education, and Welfare [now Health and Human Services], directly or through contracts with, or grants to, public or private agencies or organizations, shall develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of various alternative methods of making payment on a prospective basis to hospitals, skilled nursing facilities, and other providers of services for care and services provided by them under title XVIII of the Social Security Act [this subchapter] and under State plans approved under title XIX of such Act [subchapter XIX of this chapter], including alternative methods for classifying providers, for establishing prospective rates of payment, and for implementing on a gradual, selective, or other basis the establishment of a prospective payment system, in order to stimulate such providers through positive (or negative) financial incentives to use their facilities and personnel more efficiently and thereby to reduce the total costs of the health programs involved without adversely affecting the quality of services by containing or lowering the rate of increase in provider costs that has been and is being experienced under the existing system of retroactive cost reimbursement.

''(2) The experiments and demonstration projects developed under paragraph (1) shall be of sufficient scope and shall be carried out on a wide enough scale to permit a thorough evaluation of the alternative methods of prospective payment under consideration while giving assurance that the results derived from the experiments and projects will obtain generally in the operation of the programs involved (without committing such programs to the adoption of any prospective payment system either locally or nationally).

''(3) In the case of any experiment or demonstration project under paragraph (1), the Secretary may waive compliance with the requirements of titles XVIII and XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter] insofar as such requirements relate to methods of payment for services provided; and costs incurred in such experiment or project in excess of those which would otherwise be reimbursed or paid under such titles [subchapters] may be reimbursed or paid to the extent that such waiver applies to them (with such excess being borne by the Secretary). No experiment or demonstration project shall be developed or carried out under paragraph (1) until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed experiment or project as to the soundness of its objectives, the possibilities of securing productive results, the adequacy of resources to conduct it, and its relationship to other similar experiments or projects already completed or in process; and no such experiment or project shall be actually placed in operation unless at least 30 days prior thereto a written report, prepared for purposes of notification and information only, containing a full and complete description thereof has been transmitted to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate.

''(4) Grants, payments under contracts, and other expenditures made for experiments and demonstration projects under this subsection shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security

Act [section 1395i of this title]) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act [section 1395t of this title]) and from funds appropriated under title XIX of such Act [subchapter XIX of this chapter]. Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this subsection. With respect to any such grant, payment, or other expenditure, the amount to be paid from each of such trust funds (and from funds appropriated under such title XIX) shall be determined by the Secretary, giving due regard to the purposes of the experiment or project involved.

''(5) The Secretary shall submit to the Congress no later than July 1, 1974, a full report on the experiments and demonstration projects carried out under this subsection and on the experience of other programs with respect to prospective reimbursement together with any related data and materials which he may consider appropriate. Such report shall include detailed recommendations with respect to the specific methods which could be used in the full implementation of a system of prospective payment to providers of services under the programs involved.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395cc, 1395*ll*, 1395nn, 1395ww of this title.

§ 1395b–2. Notice of medicare benefits; medicare and medigap information

(a) The Secretary shall prepare (in consultation with groups representing the elderly and with health insurers) and provide for distribution of a notice containing—

(1) a clear, simple explanation of the benefits available under this subchapter and the major categories of health care for which benefits are not available under this subchapter,

(2) the limitations on payment (including deductibles and coinsurance amounts) that are imposed under this subchapter, and

(3) a description of the limited benefits for long-term care services available under this subchapter and generally available under State plans approved under subchapter XIX of this chapter.

Such notice shall be mailed annually to individuals entitled to benefits under part A or part B of this subchapter and when an individual applies for benefits under part A of this subchapter or enrolls under part B of this subchapter.

(b) The Secretary shall provide information via a toll-free telephone number on the programs under this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, § 1804, as added July 1, 1988, Pub. L. 100–360, title II, § 223(a), 102 Stat. 747; amended Oct. 31, 1994, Pub. L. 103–432, title I, § 171(j)(1), 108 Stat. 4450.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (a), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

1994—Pub. L. 103–432 inserted ''; medicare and medigap information'' in section catchline, designated existing provisions as subsec. (a), and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 171(*l*) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

EFFECTIVE DATE

Section 223(d)(1) of Pub. L. 100–360 provided that: ''The Secretary of Health and Human Services shall first distribute the notice required by the amendment made by subsection (a) [enacting this section] not later than January 31, 1989.''

STATE REGULATORY PROGRAMS

For provisions relating to changes required to conform State regulatory programs to amendments by section 171 of Pub. L. 103–432, see section 171(m) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

DEMONSTRATION PROJECTS

Section 4361(b) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services is authorized to conduct demonstration projects in up to 5 States for the purpose of establishing statewide toll-free telephone numbers for providing information on medicare benefits, medicare supplemental policies available in the State, and benefits under the State medicaid program.''

NOTICE OF CHANGES UNDER REPEAL OF MEDICARE CATASTROPHIC COVERAGE

Pub. L. 101–234, title II, § 203(c), Dec. 13, 1989, 103 Stat. 1984, provided that: ''The Secretary of Health and Human Services shall provide, in the notice of medicare benefits provided under section 1804 of the Social Security Act [this section] for 1990, for a description of the changes in benefits under title XVIII of such Act [this subchapter] made by the amendments made by this Act [see Tables for classification].''

BENEFITS COUNSELING AND ASSISTANCE DEMONSTRATION PROJECT FOR CERTAIN MEDICARE AND MEDICAID BENEFICIARIES

Section 424 of Pub. L. 100–360, which directed Secretary of Health and Human Services to establish a demonstration project to demonstrate that its volunteers were adequately trained and competent to render effective benefits counseling and assistance to the elderly, was repealed by Pub. L. 101–234, title III, § 301(a), Dec. 13, 1989, 103 Stat. 1985.

§ 1395b–3. Health insurance advisory service for medicare beneficiaries

(a) In general

The Secretary of Health and Human Services shall establish a health insurance advisory service program (in this section referred to as the ''beneficiary assistance program'') to assist medicare-eligible individuals with the receipt of services under the medicare and medicaid programs and other health insurance programs.

(b) Outreach elements

The beneficiary assistance program shall provide assistance—

(1) through operation using local Federal offices that provide information on the medicare program,

(2) using community outreach programs, and

(3) using a toll-free telephone information service.

(c) Assistance provided

The beneficiary assistance program shall provide for information, counseling, and assistance for medicare-eligible individuals with respect to at least the following:

(1) With respect to the medicare program—
(A) eligibility,
(B) benefits (both covered and not covered),
(C) the process of payment for services,
(D) rights and process for appeals of determinations,
(E) other medicare-related entities (such as peer review organizations, fiscal intermediaries, and carriers), and
(F) recent legislative and administrative changes in the medicare program.

(2) With respect to the medicaid program—
(A) eligibility, benefits, and the application process,
(B) linkages between the medicaid and medicare programs, and
(C) referral to appropriate State and local agencies involved in the medicaid program.

(3) With respect to medicare supplemental policies—
(A) the program under section 1395ss of this title and standards required under such program,
(B) how to make informed decisions on whether to purchase such policies and on what criteria to use in evaluating different policies,
(C) appropriate Federal, State, and private agencies that provide information and assistance in obtaining benefits under such policies, and
(D) other issues deemed appropriate by the Secretary.

The beneficiary assistance program also shall provide such other services as the Secretary deems appropriate to increase beneficiary understanding of, and confidence in, the medicare program and to improve the relationship between beneficiaries and the program.

(d) Educational material

The Secretary, through the Administrator of the Health Care Financing Administration, shall develop appropriate educational materials and other appropriate techniques to assist employees in carrying out this section.

(e) Notice to beneficiaries

The Secretary shall take such steps as are necessary to assure that medicare-eligible beneficiaries and the general public are made aware of the beneficiary assistance program.

(f) Report

The Secretary shall include, in an annual report transmitted to the Congress, a report on the beneficiary assistance program and on other health insurance informational and counseling services made available to medicare-eligible individuals. The Secretary shall include in the report recommendations for such changes as may be desirable to improve the relationship between the medicare program and medicare-eligible individuals.

(Pub. L. 101–508, title IV, § 4359, Nov. 5, 1990, 104 Stat. 1388–137.)

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the Social Security Act which comprises this chapter.

QUALIFIED MEDICARE BENEFICIARY OUTREACH

Pub. L. 103–432, title I, § 154, Oct. 31, 1994, 108 Stat. 4437, provided that: ''Not later than 1 year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services shall establish and implement a method for obtaining information from newly eligible medicare beneficiaries that may be used to determine whether such beneficiaries may be eligible for medical assistance for medicare cost-sharing under State medicaid plans as qualified medicare beneficiaries, and for transmitting such information to the State in which such a beneficiary resides.''

§ 1395b–4. Health insurance information, counseling, and assistance grants

(a) Grants

The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall make grants to States, with approved State regulatory programs under section 1395ss of this title, that submit applications to the Secretary that meet the requirements of this section for the purpose of providing information, counseling, and assistance relating to the procurement of adequate and appropriate health insurance coverage to individuals who are eligible to receive benefits under this subchapter (in this section referred to as ''eligible individuals''). The Secretary shall prescribe regulations to establish a minimum level of funding for a grant issued under this section.

(b) Grant applications

(1) In submitting an application under this section, a State may consolidate and coordinate an application that consists of parts prepared by more than one agency or department of such State.

(2) As part of an application for a grant under this section, a State shall submit a plan for a State-wide health insurance information, counseling, and assistance program. Such program shall—

(A) establish or improve upon a health insurance information, counseling, and assistance program that provides counseling and assistance to eligible individuals in need of health insurance information, including—
(i) information that may assist individuals in obtaining benefits and filing claims under this subchapter and subchapter XIX of this chapter;
(ii) policy comparison information for medicare supplemental policies (as described in section 1395ss(g)(1) of this title) and information that may assist individuals in filing claims under such medicare supplemental policies;
(iii) information regarding long-term care insurance; and
(iv) information regarding other types of health insurance benefits that the Secretary determines to be appropriate;

(B) in conjunction with the health insurance information, counseling, and assistance program described in subparagraph (A), establish a system of referral to appropriate Federal or State departments or agencies for assistance with problems related to health insurance coverage (including legal problems), as determined by the Secretary;

(C) provide for a sufficient number of staff positions (including volunteer positions) necessary to provide the services of the health insurance information, counseling, and assistance program;

(D) provide assurances that staff members (including volunteer staff members) of the health insurance information, counseling, and assistance program have no conflict of interest in providing the counseling described in subparagraph (A);

(E) provide for the collection and dissemination of timely and accurate health care information to staff members;

(F) provide for training programs for staff members (including volunteer staff members);

(G) provide for the coordination of the exchange of health insurance information between the staff of departments and agencies of the State government and the staff of the health insurance information, counseling, and assistance program;

(H) make recommendations concerning consumer issues and complaints related to the provision of health care to agencies and departments of the State government and the Federal Government responsible for providing or regulating health insurance;

(I) establish an outreach program to provide the health insurance information and counseling described in subparagraph (A) and the referrals described in subparagraph (B) to eligible individuals; and

(J) demonstrate, to the satisfaction of the Secretary, an ability to provide the counseling and assistance required under this section.

(c) Special grants

(1) A State that is conducting a health insurance information, counseling, and assistance program that is substantially similar to a program described in subsection (b)(2) of this section shall, as a requirement for eligibility for a grant under this section, demonstrate, to the satisfaction of the Secretary, that such State shall maintain the activities of such program at least at the level that such activities were conducted immediately preceding the date of the issuance of any grant during the period of time covered by such grant under this section.

(2) If the Secretary determines that the existing health insurance information, counseling, and assistance program is substantially similar to a program described in subsection (b)(2) of this section, the Secretary may waive some or all of the requirements described in such subsection and issue a grant to the State for the purpose of increasing the number of services offered by the health insurance information, counseling, and assistance program, experimenting with new methods of outreach in conducting such program, or expanding such program to geographic areas of the State not previously served by the program.

(d) Criteria for issuing grants

In issuing a grant under this section, the Secretary shall consider—

(1) the commitment of the State to carrying out the health insurance information, counseling, and assistance program described in subsection (b)(2) of this section, including the level of cooperation demonstrated—

(A) by the office of the chief insurance regulator of the State, or the equivalent State entity;

(B) other officials of the State responsible for overseeing insurance plans issued by nonprofit hospital and medical service associations; and

(C) departments and agencies of such State responsible for—

(i) administering funds under subchapter XIX of this chapter, and

(ii) administering funds appropriated under the Older Americans Act [42 U.S.C. 3001 et seq.];

(2) the population of eligible individuals in such State as a percentage of the population of such State; and

(3) in order to ensure the needs of rural areas in such State, the relative costs and special problems associated with addressing the special problems of providing health care information, counseling, and assistance eligible[1] individuals residing in rural areas of such State.

(e) Annual State report

A State that receives a grant under this section shall, not later than 180 days after receiving such grant, and annually thereafter during the period of the grant, issue a report to the Secretary that includes information concerning—

(1) the number of individuals served by the health insurance information, counseling and assistance program of such State;

(2) an estimate of the amount of funds saved by the State, and by eligible individuals in the State, in the implementation of such program; and

(3) the problems that eligible individuals in such State encounter in procuring adequate and appropriate health care coverage.

(f) Report to Congress

Not later than 180 days after November 5, 1990, and annually thereafter, the Secretary shall issue a report to the Committee on Finance of the Senate, the Special Committee on Aging of the Senate, the Committee on Ways and Means of the House of Representatives, and the Committee on Energy and Commerce of the House of Representatives that—

(1) summarizes the allocation of funds authorized for grants under this section and the expenditure of such funds;

(2) outlines the problems that eligible individuals encounter in procuring adequate and appropriate health care coverage;

(3) makes recommendations that the Secretary determines to be appropriate to address the problems described in paragraph (3);[2] and

(4) in the case of the report issued 2 years after November 5, 1990, evaluates the effectiveness of counseling programs established under this program, and makes recommendations regarding continued authorization of funds for these purposes.

(g) Authorization of appropriations for grants

There are authorized to be appropriated, in equal parts from the Federal Hospital Insurance

[1] So in original. Probably should be preceded by ''to''.

[2] So in original. Probably should be paragraph ''(2)''.

Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, $10,000,000 for each of fiscal years 1991, 1992, 1993, 1994, 1995, and 1996, to fund the grant programs described in this section.

(Pub. L. 101–508, title IV, § 4360, Nov. 5, 1990, 104 Stat. 1388–138; Pub. L. 103–432, title I, § 171(i), Oct. 31, 1994, 108 Stat. 4450; Pub. L. 103–437, § 15(b), Nov. 2, 1994, 108 Stat. 4591.)

REFERENCES IN TEXT

The Older Americans Act, referred to in subsec. (d)(1)(C)(ii), probably means the Older Americans Act of 1965, which is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended, and is classified generally to chapter 35 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

CODIFICATION

Section was enacted as part of the Omnibus Budget Reconciliation Act of 1990, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1994—Subsec. (b)(2)(A)(ii). Pub. L. 103–432, § 171(i)(1), inserted closing parenthesis after ''of this title''.

Subsec. (b)(2)(D). Pub. L. 103–432, § 171(i)(2), substituted ''counseling'' for ''services'' before ''described in subparagraph (A)''.

Subsec. (b)(2)(I). Pub. L. 103–432, § 171(i)(3), substituted ''referrals'' for ''assistance''.

Subsec. (c)(1). Pub. L. 103–432, § 171(i)(4), struck out ''and that such activities will continue to be maintained at such level'' after ''covered by such grant under this section''.

Subsec. (d)(3). Pub. L. 103–432, § 171(i)(5), substituted ''eligible individuals residing in rural areas'' for ''to the rural areas''.

Subsec. (e). Pub. L. 103–432, § 171(i)(6)(A), (B), in introductory provisions, substituted ''this section'' for ''subsection (c) or (d) of this section'' and ''and annually thereafter during the period of the grant, issue a report'' for ''and annually thereafter, issue an annual report''.

Subsec. (e)(1). Pub. L. 103–432, § 171(i)(6)(C), struck out ''State-wide'' before ''health insurance information''.

Subsec. (f). Pub. L. 103–437, § 15(b)(1), in introductory provisions, substituted ''and the Committee on Energy and Commerce'' for ''the Committee on Energy and Commerce of the House of Representatives, and the Select Committee on Aging''.

Pub. L. 103–432, § 171(i)(8)(B), and Pub. L. 103–437, § 15(b)(2), made identical amendments, redesignating subsec. (f), relating to authorization of appropriations for grants, as (g).

Pub. L. 103–432, § 171(i)(8)(A), in subsec. (f), relating to authorization of appropriations for grants, substituted ''1993, 1994, 1995, and 1996'' for ''and 1993''.

Subsec. (f)(2) to (5). Pub. L. 103–432, § 171(i)(7), in subsec. (f), relating to report to Congress, redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''summarizes the scope and content of training conferences convened under this section;''.

Subsec. (g). Pub. L. 103–432, § 171(i)(8)(B), and Pub. L. 103–437, § 15(b)(2), made identical amendments, redesignating subsec. (f), relating to authorization of appropriations for grants, as (g).

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 171(*l*) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

STATE REGULATORY PROGRAMS

For provisions relating to changes required to conform State regulatory programs to amendments by section 171 of Pub. L. 103–432, see section 171(m) of Pub. L. 103–432, set out as a note under section 1395ss of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3058k of this title.

PART A—HOSPITAL INSURANCE BENEFITS FOR AGED AND DISABLED

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 254n, 300dd–3, 402, 426, 426–1, 426a, 1320a–3, 1320a–7a, 1320b–1, 1320b–14, 1383c, 1395b–2, 1395i–3, 1395*l*, 1395m, 1395*o*, 1395p, 1395q, 1395u, 1395v, 1395x, 1395y, 1395aa, 1395cc, 1395ff, 1395*ll*, 1395mm, 1395pp, 1395rr, 1395ss, 1395vv, 1395ww, 1396a, 1396b, 1396d, 1396n of this title; title 5 sections 8904, 8910; title 10 sections 1086, 1087; title 26 section 6103; title 31 section 3806; title 38 section 1713; title 45 section 231f.

§ 1395c. Description of program

The insurance program for which entitlement is established by sections 426 and 426–1 of this title provides basic protection against the costs of hospital, related post-hospital, home health services, and hospice care in accordance with this part for (1) individuals who are age 65 or over and are eligible for retirement benefits under subchapter II of this chapter (or would be eligible for such benefits if certain government employment were covered employment under such subchapter) or under the railroad retirement system, (2) individuals under age 65 who have been entitled for not less than 24 months to benefits under subchapter II of this chapter (or would have been so entitled to such benefits if certain government employment were covered employment under such subchapter) or under the railroad retirement system on the basis of a disability, and (3) certain individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease.

(Aug. 14, 1935, ch. 531, title XVIII, § 1811, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 291; amended Oct. 30, 1972, Pub. L. 92–603, title II, § 201(a)(2), 86 Stat. 1371; June 13, 1978, Pub. L. 95–292, § 4(a), 92 Stat. 315; June 9, 1980, Pub. L. 96–265, title I, § 103(a)(2), 94 Stat. 444; Oct. 19, 1980, Pub. L. 96–473, § 2(b), 94 Stat. 2263; Dec. 5, 1980, Pub. L. 96–499, title IX, § 930(a), 94 Stat. 2631; Sept. 3, 1982, Pub. L. 97–248, title I, § 122(a)(1), title II, § 278(b)(3), 96 Stat. 356, 561; Apr. 7, 1986, Pub. L. 99–272, title XIII, § 13205(b)(2)(C)(i), 100 Stat. 317; July 1, 1988, Pub. L. 100–360, title I, § 104(d)(1), 102 Stat. 688; Dec. 13, 1989, Pub. L. 101–234, title I, § 101(a), 103 Stat. 1979.)

AMENDMENTS

1989—Pub. L. 101–234 repealed Pub. L. 100–360, § 104(d)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Pub. L. 100–360 substituted ''inpatient hospital services, extended care services'' for ''hospital, related post-hospital''.

1986—Pub. L. 99–272 substituted ''government employment'' for ''Federal employment'' in cls. (1) and (2).

1982—Pub. L. 97–248, § 122(a)(1), substituted ''home health services, and hospice care'' for ''and home health services''.

Pub. L. 97–248, § 278(b)(3), inserted ''(or would be eligible for such benefits if certain Federal employment were covered employment under such subchapter)'' after ''subchapter II of this chapter'' in cl. (1), and inserted ''(or would have been so entitled to such benefits if certain Federal employment were covered employment under such subchapter)'' after ''subchapter II of this chapter'' in cl. (2).

1980—Pub. L. 96–499 substituted '', related post-hospital, and home health services'' for ''and related post-hospital services''.

Pub. L. 96–473 substituted ''are eligible for'' for ''are entitled to''.

Pub. L. 96–265 substituted ''not less than 24 months'' for ''not less than 24 consecutive months''.

1978—Pub. L. 95–292 inserted references to section 426–1 of this title and to individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease.

1972—Pub. L. 92–603 designated existing provisions as cl. (1) and added cl. (2).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 101(d) of Pub. L. 101–234 provided that: ''The provisions of this section [amending this section and sections 1395d, 1395e, 1395f, 1395k, 1395x, 1395cc, and 1395tt of this title, enacting provisions set out as notes under sections 1395e and 1395ww of this title, and amending provisions set out as notes under sections 1395e and 1395ww of this title] shall take effect January 1, 1990, except that the amendments made by subsection (c) [amending provisions set out as a note under section 1395ww of this title] shall be effective as if included in the enactment of MCCA [Pub. L. 100–360].''

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 effective after Mar. 31, 1986, with no individual to be considered under disability for any period beginning before Apr. 1, 1986, for purposes of hospital insurance benefits, see section 13205(d)(2) of Pub. L. 99–272, set out as a note under section 410 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 122(h)(1) of Pub. L. 97–248, as amended by Pub. L. 99–272, title IX, § 9123(a), Apr. 7, 1986, 100 Stat. 168, provided that: ''The amendments made by this section [amending this section and sections 1395d to 1395f, 1395h, and 1395x to 1395cc of this title and section 231f of Title 45, Railroads, and enacting provisions set out as notes under sections 1395b–1 and 1395f of this title] apply to hospice care provided on or after November 1, 1983.''

Amendment by section 278(b)(3) of Pub. L. 97–248 effective on and after Jan. 1, 1983, and applicable to remuneration (for medicare qualified Federal employment) paid after Dec. 31, 1982, see section 278(c)(2)(A) of Pub. L. 97–248, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Amendment by Pub. L. 96–473 effective after second month beginning after Oct. 19, 1980, see section 2(d) of Pub. L. 96–473, set out as a note under section 426 of this title.

Amendment by Pub. L. 96–265 applicable with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after first day of sixth month which begins after June 9, 1980, see section 103(c) of Pub. L. 96–265, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

ADVISORY COUNCIL TO STUDY COVERAGE OF DISABLED UNDER THIS SUBCHAPTER

Pub. L. 90–248, title I, § 140, Jan. 2, 1968, 81 Stat. 854, directed Secretary of Health, Education, and Welfare to appoint an Advisory Council to study need for coverage of disabled under the health insurance programs of this subchapter, directed Council to submit a report on such study to Secretary by Jan. 1, 1969, and directed Secretary in turn to transmit such report to Congress, resulting in termination of Council's existence.

REIMBURSEMENT OF CHARGES UNDER PART A FOR SERVICES TO PATIENTS ADMITTED PRIOR TO 1968 TO CERTAIN HOSPITALS

Pub. L. 90–248, title I, § 142, Jan. 2, 1968, 81 Stat. 855, provided that:

''(a) Notwithstanding any provision of title XVIII of the Social Security Act [this subchapter] an individual who is entitled to hospital insurance benefits under section 226 of such Act [section 426 of this title] may, subject to subsections (b) and (c), receive, on the basis of an itemized bill, reimbursement for charges to him for inpatient hospital services (as defined in section 1861 of such Act [section 1395x of this title], but without regard to subsection (e) of such section) furnished by, or under arrangements (as defined in section 1861(w) of such Act [section 1395x(w) of this title] with, a hospital if—

''(1) the hospital did not have an agreement in effect under section 1866 of such Act [section 1395cc of this title] but would have been eligible for payment under part A of title XVIII of such Act [this part] with respect to such services if at the time such services were furnished the hospital had such an agreement in effect;

''(2) the hospital (A) meets the requirements of paragraphs (5) and (7) of section 1861(e) of such Act [section 1395x(e) of this title], (B) is not primarily engaged in providing the services described in section 1961(j)(1)(A) of such Act [section 1395x(j)(1)(A) of this title], and (C) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of section 1861(r) of such Act [section 1395x(r) of this title], to inpatients (i) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (ii) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

''(3) the hospital did not meet the requirements that must be met to permit payment to the hospital under part A of title XVIII of such Act [this part]; and

''(4) an application is filed (submitted in such form and manner and by such person, and containing and supported by such information, as the Secretary shall by regulations prescribe) for reimbursement before January 1, 1969.

''(b) Payments under this section may not be made for inpatient hospital services (as described in subsection (a)) furnished to an individual—

''(1) prior to July 1, 1966,

''(2) after December 31, 1967, unless furnished with respect to an admission to the hospital prior to January 1, 1968, and

''(3) for more than—

''(A) 90 days in any spell of illness, but only if (i) prior to January 1, 1969, the hospital furnishing such services entered into an agreement under section 1866 of the Social Security Act [section 1395cc of this title] and (ii) the hospital's plan for utilization review, as provided for in section 1861(k) of such Act [section 1395x(k) of this title], has, in accordance with section 1814 of such Act [section 1395f of this title], been applied to the services furnished such individual, or

''(B) 20 days in any spell of illness, if the hospital did not meet the conditions of clauses (i) and (ii) of subparagraph (A).

''(c)(1) The amounts payable in accordance with subsection (a) with respect to inpatient hospital services shall, subject to paragraph (2) of this subsection, be paid from the Federal Hospital Insurance Trust Fund in amounts equal to 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the individual or in semiprivate accommodations (as defined in section 1861(v)(4) of the Social Security Act [section 1395x(v)(4) of this title]) whichever is less, plus 80 percent of the hospital's reasonable charges for ancillary services. If separate charges for routine and ancillary services are not made by the hospital, reimbursement may be based on two-thirds of the hospital's reasonable charges for the services received but not to exceed the charges which would have been made if the patient had occupied semiprivate accommodations (as so defined). For purposes of the preceding provisions of this paragraph, the term 'routine services' shall mean the regular room, dietary, and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made; the term 'ancillary services' shall mean those special services for which charges are customarily made in addition to routine services.

''(2) Before applying paragraph (1), payments made under this section shall be reduced to the extent provided for under section 1813 of the Social Security Act [section 1395e of this title] in the case of benefits payable to providers of services under part A of title XVIII of such Act [this part].

''(d) For the purposes of this section—

''(1) the 90-day period, referred to in subsection (b)(3)(A), shall be reduced by the number of days of inpatient hospital services furnished to such individual during the spell of illness, referred to therein, and with respect to which he was entitled to have payment made under part A of title XVIII of the Social Security Act [this part];

''(2) the 20-day period, referred to in subsection (b)(3)(B) shall be reduced by the number of days in excess of 70 days of inpatient hospital services furnished during the spell of illness, referred to therein, and with respect to which such individual was entitled to have payment made under such part A [this part];

''(3) the term 'spell of illness' shall have the meaning assigned to it by subsection (a) of section 1861 of such Act [section 1395x(a) of this title] except that the term 'inpatient hospital services' as it appears in such subsection shall have the meaning assigned to it by subsection (a) of this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 1729.

§ 1395d. Scope of benefits

(a) Entitlement to payment for inpatient hospital services, post-hospital extended care services, home health services, and hospice care

The benefits provided to an individual by the insurance program under this part shall consist of entitlement to have payment made on his behalf or, in the case of payments referred to in section 1395f(d)(2) of this title to him (subject to the provisions of this part) for—

(1) inpatient hospital services or inpatient rural primary care hospital services for up to 150 days during any spell of illness minus 1 day for each day of such services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2)(A) post-hospital extended care services for up to 100 days during any spell of illness, and (B) to the extent provided in subsection (f) of this section, extended care services that are not post-hospital extended care services;

(3) home health services; and

(4) in lieu of certain other benefits, hospice care with respect to the individual during up to two periods of 90 days each, a subsequent period of 30 days, and a subsequent extension period with respect to which the individual makes an election under subsection (d)(1) of this section.

(b) Services not covered

Payment under this part for services furnished an individual during a spell of illness may not (subject to subsection (c) of this section) be made for—

(1) inpatient hospital services furnished to him during such spell after such services have been furnished to him for 150 days during such spell minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2) post-hospital extended care services furnished to him during such spell after such services have been furnished to him for 100 days during such spell; or

(3) inpatient psychiatric hospital services furnished to him after such services have been furnished to him for a total of 190 days during his lifetime.

(c) Inpatients of psychiatric hospitals

If an individual is an inpatient of a psychiatric hospital on the first day of the first month for which he is entitled to benefits under this part, the days on which he was an inpatient of such a hospital in the 150-day period immediately before such first day shall be included in determining the number of days limit under subsection (b)(1) of this section insofar as such limit applies to (1) inpatient psychiatric hospital services, or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis

or treatment of mental illness (but shall not be included in determining such number of days limit insofar as it applies to other inpatient hospital services or in determining the 190-day limit under subsection (b)(3) of this section).

(d) Hospice care; election; waiver of rights; revocation; change of election

(1) Payment under this part may be made for hospice care provided with respect to an individual only during two periods of 90 days each, a subsequent period of 30 days, and a subsequent extension period during the individual's lifetime and only, with respect to each such period, if the individual makes an election under this paragraph to receive hospice care under this part provided by, or under arrangements made by, a particular hospice program instead of certain other benefits under this subchapter.

(2)(A) Except as provided in subparagraphs (B) and (C) and except in such exceptional and unusual circumstances as the Secretary may provide, if an individual makes such an election for a period with respect to a particular hospice program, the individual shall be deemed to have waived all rights to have payment made under this subchapter with respect to—

(i) hospice care provided by another hospice program (other than under arrangements made by the particular hospice program) during the period, and

(ii) services furnished during the period that are determined (in accordance with guidelines of the Secretary) to be—

(I) related to the treatment of the individual's condition with respect to which a diagnosis of terminal illness has been made or

(II) equivalent to (or duplicative of) hospice care;

except that clause (ii) shall not apply to physicians' services furnished by the individual's attending physician (if not an employee of the hospice program) or to services provided by (or under arrangements made by) the hospice program.

(B) After an individual makes such an election with respect to a 90- or 30-day period or a subsequent extension period, the individual may revoke the election during the period, in which case—

(i) the revocation shall act as a waiver of the right to have payment made under this part for any hospice care benefits for the remaining time in such period and (for purposes of subsection (a)(4) of this section and subparagraph (A)) the individual shall be deemed to have been provided such benefits during such entire period, and

(ii) the individual may at any time after the revocation execute a new election for a subsequent period, if the individual otherwise is entitled to hospice care benefits with respect to such a period.

(C) An individual may, once in each such period, change the hospice program with respect to which the election is made and such change shall not be considered a revocation of an election under subparagraph (B).

(D) For purposes of this subchapter, an individual's election with respect to a hospice program shall no longer be considered to be in effect with respect to that hospice program after the date the individual's revocation or change of election with respect to that election takes effect.

(e) Services taken into account

For purposes of subsections (b) and (c) of this section, inpatient hospital services, inpatient psychiatric hospital services, and post-hospital extended care services shall be taken into account only if payment is or would be, except for this section or the failure to comply with the request and certification requirements of or under section 1395f(a) of this title, made with respect to such services under this part.

(f) Coverage of extended care services without regard to three-day prior hospitalization requirement

(1) The Secretary shall provide for coverage, under clause (B) of subsection (a)(2) of this section, of extended care services which are not post-hospital extended care services at such time and for so long as the Secretary determines, and under such terms and conditions (described in paragraph (2)) as the Secretary finds appropriate, that the inclusion of such services will not result in any increase in the total of payments made under this subchapter and will not alter the acute care nature of the benefit described in subsection (a)(2) of this section.

(2) The Secretary may provide—

(A) for such limitations on the scope and extent of services described in subsection (a)(2)(B) of this section and on the categories of individuals who may be eligible to receive such services, and

(B) notwithstanding sections 1395f, 1395x(v), and 1395ww of this title, for such restrictions and alternatives on the amounts and methods of payment for services described in such subsection,

as may be necessary to carry out paragraph (1).

(g) "Spell of illness" defined

For definitions of ''spell of illness'', and for definitions of other terms used in this part, see section 1395x of this title.

(Aug. 14, 1935, ch. 531, title XVIII, §1812, as added July 30, 1965, Pub. L. 89–97, title I, §102(a), 79 Stat. 291; amended Jan. 2, 1968, Pub. L. 90–248, title I, §§129(c)(2), 137(a), 138(a), 143(b), 146(a), 81 Stat. 847, 853, 854, 857, 859; Dec. 5, 1980, Pub. L. 96–499, title IX, §§930(b)–(d), 931(a), 94 Stat. 2631, 2633; Aug. 13, 1981, Pub. L. 97–35, title XXI, §2121(a), 95 Stat. 796; Sept. 3, 1982, Pub. L. 97–248, title I, §§122(b), 123, 96 Stat. 356, 364; Jan. 12, 1983, Pub. L. 97–448, title III, §309(b)(5), 96 Stat. 2409; July 1, 1988, Pub. L. 100–360, title I, §101, 102 Stat. 684; Dec. 13, 1989, Pub. L. 101–234, title I, §101(a), 103 Stat. 1979; Dec. 19, 1989, Pub. L. 101–239, title VI, §6003(g)(3)(B)(i), 103 Stat. 2152; Nov. 5, 1990, Pub. L. 101–508, title IV, §4006(a), 104 Stat. 1388–43; Oct. 31, 1994, Pub. L. 103–432, title I, §102(g)(1), 108 Stat. 4404.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–432 substituted ''inpatient hospital services or inpatient rural primary care hospital services'' for ''inpatient hospital services'' be-

fore ''for up to 150 days'' and ''such services'' for ''inpatient hospital services'' before ''in excess of 90'' and struck out ''and inpatient rural primary care hospital services'' after ''such payment made)''.

1990—Subsec. (a)(4). Pub. L. 101–508, § 4006(a)(1), substituted ''90 days each, a subsequent period of 30 days, and a subsequent extension period'' for ''90 days each and one subsequent period of 30 days''.

Subsec. (d)(1). Pub. L. 101–508, § 4006(a)(2)(A), substituted ''90 days each, a subsequent period of 30 days, and a subsequent extension period during the individual's lifetime'' for ''90 days each and one subsequent period of 30 days during the individual's lifetime''.

Subsec. (d)(2)(B). Pub. L. 101–508, § 4006(a)(2)(B), substituted ''a 90- or 30-day period or a subsequent extension period'' for ''a 90- or 30-day period''.

1989—Subsec. (a). Pub. L. 101–234 repealed Pub. L. 100–360, § 101(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1). Pub. L. 101–239 inserted ''and inpatient rural primary care hospital services'' before semicolon at end.

Subsecs. (b) to (d)(1), (2)(B), (e) to (g). Pub. L. 101–234 repealed Pub. L. 100–360, § 101(2)–(6), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

1988—Subsec. (a). Pub. L. 100–360, § 101(1), struck out former pars. (1) to (4) and added new pars. (1) to (4) which read as follows:

''(1) inpatient hospital services;

''(2) extended care services for up to 150 days during any calendar year;

''(3) home health services; and

''(4) in lieu of certain other benefits, hospice care with respect to the individual during up to two periods of 90 days each, a subsequent period of 30 days, and a subsequent extension period with respect to which the individual makes an election under subsection (d)(1) of this section.''

Subsec. (b). Pub. L. 100–360, § 101(2), amended subsec. (b) generally, striking out par. (1) and renumbering and amending pars. (2) and (3) as (1) and (2), respectively.

Subsec. (c). Pub. L. 100–360, § 101(3), amended subsec. (c) generally, substituting pars. (1) to (4) limiting periods for inpatients of psychiatric hospitals for former single paragraph.

Subsec. (d)(1). Pub. L. 100–360, § 101(4)(A), substituted '', a subsequent period of 30 days, and a subsequent extension period'' for ''and one subsequent period of 30 days''.

Subsec. (d)(2)(B). Pub. L. 100–360, § 101(4)(B), inserted ''or a subsequent extension period'' after ''30-day period'' in introductory provisions.

Subsec. (e). Pub. L. 100–360, § 101(5), struck out ''post-hospital'' before ''extended care services''.

Subsec. (f). Pub. L. 100–360, § 101(6), struck out subsec. (f) which provided coverage of extended care services without regard to three-day prior hospitalization requirement.

Subsec. (g). Pub. L. 100–360, § 101(6), struck out subsec. (g) which cross-referenced section 1395x of this title for definitions of ''spell of illness'' and other terms used in this part.

1983—Subsec. (d)(2)(A). Pub. L. 97–448 substituted ''or to services'' for ''or to other than services'' after ''(if not an employee of the hospice program)''.

1982—Subsec. (a)(2). Pub. L. 97–248, § 123(a), redesignated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(4). Pub. L. 97–248, § 122(b)(1), added par. (4).

Subsec. (d). Pub. L. 97–248, § 122(b)(2), added subsec. (d).

Subsecs. (f), (g). Pub. L. 97–248, § 123(b), added subsec. (f) and redesignated former subsec. (f) as (g).

1981—Subsec. (a). Pub. L. 97–35 struck out par. (4) which related to alcohol detoxification facility services.

1980—Subsec. (a)(3). Pub. L. 96–499, § 930(b), substituted ''home health services'' for ''post-hospital home health services for up to 100 visits (during the one-year period described in section 1395x(n) of this title) after the beginning of one spell of illness and before the beginning of the next''.

Subsec. (a)(4). Pub. L. 96–499, § 931(a), added par. (4).

Subsec. (d). Pub. L. 96–499, § 930(c), struck out subsec. (d) which authorized payment for post-hospital home health services furnished an individual only during the one year period described in section 1395x(n) of this title following his most recent hospital discharge which met the requirements of such section and only for the first 100 visits in such period.

Subsec. (e). Pub. L. 96–499, § 930(d), substituted ''subsections (b) and (c)'' for ''subsections (b), (c), and (d)'' and ''and post-hospital extended care services'' for ''post-hospital extended care services, and post-hospital home health services''.

1968—Subsec. (a). Pub. L. 90–248, § 143(b), inserted ''or, in the case of payments referred to in section 1395f(d)(2) of this title to him'' after ''on his behalf'' in text preceding par. (1).

Subsec. (a)(1). Pub. L. 90–248, § 137(a)(1), increased the maximum duration of benefits from 90 to 150 days minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies that he does not desire to have such payment made).

Subsec. (a)(4). Pub. L. 90–248, § 129(c)(2), struck out par. (4) which provided for payment for outpatient hospital diagnostic services.

Subsec. (b)(1). Pub. L. 90–248, § 137(a)(2), changed the limitation on payments from 90 to 150 days minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies that he does not desire to have such payment made).

Subsec. (c). Pub. L. 90–248, § 138(a), increased the limit from 90 to 150 days so that if an individual was an inpatient of a psychiatric or tuberculosis hospital on the first day of the first month for which he is entitled to benefits, the days he was an inpatient in the 150-day period immediately before such first day are included in determining the limit under subsec. (b)(1) insofar as such limit applies to (1) inpatient psychiatric hospital services and inpatient tuberculosis hospital services, or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness or tuberculosis (but are not included in determining such limit as it applies to other inpatient hospital services or in determining the 190-day limit under subsec. (b)(3)).

Pub. L. 90–248, § 146(a), provided that the limitation of allowable days of inpatient hospital services will not apply to services provided to an inpatient of a tuberculosis hospital.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 102(i) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and sections 1395e, 1395f, 1395i–4, 1395m, 1395x, and 1395ww of this title] shall take effect on the date of the enactment of this Act [Oct. 31, 1994].''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4006(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1395f of this title] shall apply with respect to care and services furnished on or after January 1, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 104(a) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(3)(A), Oct. 13, 1988, 102 Stat. 2413, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (b), the amendments made by this subtitle [subtitle A (§§ 101–104) of title I of Pub. L. 100–360, amending this section and sections 1395c, 1395e, 1395f, 1395i–2, 1395k, 1395x, 1395cc, and 1395tt of this title] shall take effect on January 1, 1989, and shall apply—

''(A) to the inpatient hospital deductible for 1989 and succeeding years,

''(B) to care and services furnished on or after January 1, 1989,

''(C) to premiums for January 1989 and succeeding months, and

''(D) to blood or blood cells furnished on or after January 1, 1989.

''(2) ELIMINATION OF POST-HOSPITAL REQUIREMENT FOR EXTENDED CARE SERVICES.—The amendments made by this subtitle, insofar as they eliminate the requirement (under section 1812(a)(2) of the Social Security Act [subsec. (a)(2) of this section]) that extended care services are only covered under title XVIII of such Act [this subchapter] if they are post-hospital extended care services, shall only apply to extended care services furnished pursuant to an admission to a skilled nursing facility occurring on or after January 1, 1989.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(b) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2121(i) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 1320c–3, 1320c–4, 1320c–7, 1395f, and 1395x of this title] (other than by subsection (h) [repealing provisions set out as a note under section 1395*ll* of this title]) shall apply to services furnished in detoxification facilities for inpatient stays beginning on or after the tenth day after the date of the enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 930(b)–(d) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 931(e) of Pub. L. 96–499 provided that: ''The amendments made by subsections (a) through (d) of this section [amending this section and sections 1395f and 1395x of this title] shall become effective on April 1, 1981.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 129(d) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and sections 426, 1395e, 1395f, 1395k, 1395*l*, 1395n, 1395x, and 1395cc of this title and section 228s–2 of Title 45, Railroads] shall apply with respect to services furnished after March 31, 1968, except that subsection (c)(5) of such section [amending section 1395f of this title] shall become effective with respect to services furnished after the date of enactment of this Act [Jan. 2, 1968].''

Section 137(c) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395e of this title] shall apply with respect to services furnished after December 31, 1967.''

Section 138(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to payment for services furnished after December 31, 1967.''

Section 143(d) of Pub. L. 90–248 provided that: ''The provisions made by subsection (a) of this section [amending section 1395x of this title] shall become effective as of July 1, 1966, and the provisions made by subsections (b) and (c) of this section [amending this section and section 1395f of this title] shall apply to services furnished with respect to admissions occurring after December 31, 1967, and to outpatient hospital diagnostic services furnished after December 31, 1967, and before April 1, 1968.''

Section 146(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to payment for services furnished after December 31, 1967.''

REPEAL OF 1988 EXPANSION OF MEDICARE PART A BENEFITS

For provisions repealing amendment by section 101 of Pub. L. 100–360, restoring or reviving this section as if section 101 of Pub. L. 100–360 had not been enacted, and providing a transition period for medicare beneficiaries with respect to inpatient hospital services and extended care services provided on or after Jan. 1, 1990, and providing an exception to such restoration for certain hospice care, see section 101(a)–(b)(2) of Pub. L. 101–234, set out as a note under section 1395e of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395e, 1395f, 1395x, 1396b, 1396d, 1396r–8 of this title.

§ 1395e. Deductibles and coinsurance

(a) Inpatient hospital services; outpatient hospital diagnostic services; blood; post-hospital extended care services

(1) The amount payable for inpatient hospital services or inpatient rural primary care hospital services furnished an individual during any spell of illness shall be reduced by a deduction equal to the inpatient hospital deductible or, if less, the charges imposed with respect to such individual for such services, except that, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed. Such amount shall be further reduced by a coinsurance amount equal to—

(A) one-fourth of the inpatient hospital deductible for each day (before the 91st day) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 60 days during such spell; and

(B) one-half of the inpatient hospital deductible for each day (before the day following the last day for which such individual is entitled under section 1395d(a)(1) of this title to have payment made on his behalf for inpatient hospital services or inpatient rural primary care hospital services during such spell of illness) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 90 days during such spell;

except that the reduction under this sentence for any day shall not exceed the charges im-

posed for that day with respect to such individual for such services (and for this purpose, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed).

(2)(A) The amount payable to any provider of services under this part for services furnished an individual shall be further reduced by a deduction equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during each calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence.

(B) The deductible under subparagraph (A) for blood or blood cells furnished an individual in a year shall be reduced to the extent that a deductible has been imposed under section 1395*l*(b) of this title to blood or blood cells furnished the individual in the year.

(3) The amount payable for post-hospital extended care services furnished an individual during any spell of illness shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day (before the 101st day) on which he is furnished such services after such services have been furnished to him for 20 days during such spell.

(4)(A) The amount payable for hospice care shall be reduced—

(i) in the case of drugs and biologicals provided on an outpatient basis by (or under arrangements made by) the hospice program, by a coinsurance amount equal to an amount (not to exceed $5 per prescription) determined in accordance with a drug copayment schedule (established by the hospice program) which is related to, and approximates 5 percent of, the cost of the drug or biological to the program, and

(ii) in the case of respite care provided by (or under arrangements made by) the hospice program, by a coinsurance amount equal to 5 percent of the amount estimated by the hospice program (in accordance with regulations of the Secretary) to be equal to the amount of payment under section 1395f(i) of this title to that program for respite care;

except that the total of the coinsurance required under clause (ii) for an individual may not exceed for a hospice coinsurance period the inpatient hospital deductible applicable for the year in which the period began. For purposes of this subparagraph, the term ''hospice coinsurance period'' means, for an individual, a period of consecutive days beginning with the first day for which an election under section 1395d(d) of this title is in effect for the individual and ending with the close of the first period of 14 consecutive days on each of which such an election is not in effect for the individual.

(B) During the period of an election by an individual under section 1395d(d)(1) of this title, no copayments or deductibles other than those under subparagraph (A) shall apply with respect to services furnished to such individual which constitute hospice care, regardless of the setting in which such services are furnished.

(b) Inpatient hospital deductible; application

(1) The inpatient hospital deductible for 1987 shall be $520. The inpatient hospital deductible for any succeeding year shall be an amount equal to the inpatient hospital deductible for the preceding calendar year, changed by the Secretary's best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1395ww(b)(3)(B) of this title) which are applied under section 1395ww(d)(3)(A) of this title for discharges in the fiscal year that begins on October 1 of such preceding calendar year, and adjusted to reflect changes in real case mix (determined on the basis of the most recent case mix data available). Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiples of $4, to the next higher multiple of $4).

(2) The Secretary shall promulgate the inpatient hospital deductible and all coinsurance amounts under this section between September 1 and September 15 of the year preceding the year to which they will apply.

(3) The inpatient hospital deductible for a year shall apply to—

(A) the deduction under the first sentence of subsection (a)(1) of this section for the year in which the first day of inpatient hospital services or inpatient rural primary care hospital services occurs in a spell of illness, and

(B) to the coinsurance amounts under subsection (a) of this section for inpatient hospital services, inpatient rural primary care hospital services and post-hospital extended care services furnished in that year.

(Aug. 14, 1935, ch. 531, title XVIII, § 1813, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 292; amended Jan. 2, 1968, Pub. L. 90–248, title I, §§ 129(c)(3), (4), 135(a), 137(b), 81 Stat. 847, 848, 852, 854; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2131(a), 2132(a), 95 Stat. 797; Sept. 3, 1982, Pub. L. 97–248, title I, § 122(e), 96 Stat. 361; Apr. 7, 1986, Pub. L. 99–272, title IX, § 9125(a), 100 Stat. 168; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9301(a), 100 Stat. 1981; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4002(f)(3), as added July 1, 1988, Pub. L. 100–360, title IV, § 411(b)(1)(H)(ii), 102 Stat. 769; July 1, 1988, Pub. L. 100–360, title I, § 102, 102 Stat. 685; Dec. 13, 1989, Pub. L. 101–234, title I, § 101(a), 103 Stat. 1979; Oct. 31, 1994, Pub. L. 103–432, title I, § 102(g)(2), (3), 108 Stat. 4404.)

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–432, § 102(g)(2), substituted ''inpatient hospital services or inpatient rural primary care hospital services'' for ''inpatient hospital services'' in introductory provisions and in subpar. (B).

Subsec. (b)(3)(A). Pub. L. 103–432, §102(g)(2), substituted ''inpatient hospital services or inpatient rural primary care hospital services'' for ''inpatient hospital services''.

Subsec. (b)(3)(B). Pub. L. 103–432, §102(g)(3), substituted ''inpatient hospital services, inpatient rural primary care hospital services'' for ''inpatient hospital services''.

1989—Subsecs. (a)(1) to (3), (b)(3). Pub. L. 101–234 repealed Pub. L. 100–360, §102, subject to an exception for blood deduction, and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

1988—Subsec. (a)(1) to (3). Pub. L. 100–360, §102(1), amended pars. (1) to (3) generally, revising and reorganizing former pars. (1)(A), (B), (2), and (3), as par. (1), consisting of subpars. (A) to (D), and pars. (2) and (3), each consisting of subpars. (A) and (B).

Subsec. (b)(1). Pub. L. 100–360, §411(b)(1)(H)(ii), added Pub. L. 100–203, §4002(f)(3), see 1987 Amendment note below.

Subsec. (b)(3). Pub. L. 100–360, §102(2), struck out par. (3) which related to application of deductible.

1987—Subsec. (b)(1). Pub. L. 100–203, §4002(f)(3), as added by Pub. L. 100–360, §411(b)(1)(H)(ii), substituted ''Secretary's best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1395ww(b)(3)(B) of this title) which are applied'' for ''applicable percentage increase (as defined in section 1395ww(b)(3)(B) of this title) which is applied''.

1986—Subsec. (b). Pub. L. 99–509 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

''(1) The inpatient hospital deductible which shall be applicable for the purposes of subsection (a) of this section shall be $40 in the case of any spell of illness beginning before 1969.

''(2) The Secretary shall, between July 1 and September 15 of 1968, and of each year thereafter, determine and promulgate the inpatient hospital deductible which shall be applicable for the purposes of subsection (a) of this section in the case of any inpatient hospital services or post-hospital extended care services furnished during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $45 multiplied by the ratio of (A) the current average per diem rate for inpatient hospital services for the calendar year preceding the promulgation, to (B) the current average per diem rate for such services for 1966. Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiplies of $4, to the next higher multiple of $4). The current average per diem rate for any year shall be determined by the Secretary on the basis of the best information available to him (at the time the determination is made) as to the amounts paid under this part on account of inpatient hospital services furnished during such year, by hospitals which have agreements in effect under section 1395cc of this title, to individuals who are entitled to hospital insurance benefits under section 426 of this title, plus the amount which would have been so paid but for subsection (a)(1) of this section.''

Subsec. (b)(2). Pub. L. 99–272 substituted ''September 15'' for ''October 1''.

1982—Subsec. (a)(4). Pub. L. 97–248 added par. (4).

1981—Subsec. (b)(2). Pub. L. 97–35 substituted ''any inpatient hospital services or post-hospital extended care services furnished during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $45'' for ''any spell of illness beginning during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $40''.

1968—Subsec. (a)(1). Pub. L. 90–248, §137(b), designated existing provisions as subpar. (A) and added subpar. (B) and the exception provision that the reduction for any day shall not exceed the charges for that day.

Subsec. (a)(2). Pub. L. 90–248, §135(a), made the three pint deductible applicable also to equivalent quantities of packed red blood cells, as defined by the Secretary under regulations.

Subsec. (a)(2) to (4). Pub. L. 90–248, §129(c)(3), struck out par. (2) which provided for reduction of amount payable for outpatient hospital diagnostic services furnished an individual during a diagnostic study, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (b)(1), (2). Pub. L. 90–248, §129(c)(4)(A), (B), struck out diagnostic studies from application of inpatient hospital deductible.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 102 of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Section 411(b)(1)(H)(iii) of Pub. L. 100–360 provided that: ''The amendment made by clause (ii) [amending Pub. L. 100–203] shall apply to the inpatient hospital deductible for years beginning with 1989.''

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9301(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to inpatient hospital services and post-hospital extended care services furnished on or after January 1, 1987, and to the monthly premium (under part A of title XVIII of the Social Security Act [this part]) for months beginning with January 1987.''

Section 9125(b) of Pub. L. 99–272 provided that: ''The amendment made by this section [amending this section] shall apply to calendar years after 1985.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2131(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] is effective for inpatient hospital services or post-hospital extended care services furnished on or after January 1, 1982.''

Section 2132(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to inpatient hospital services and post-hospital extended care services furnished in calendar years beginning with calendar year 1982.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 129(c)(3), (4) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 135(d) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and sections 1395*l* and 1395cc of this title] shall apply with respect to payment for blood (or packed red blood cells) furnished an individual after December 31, 1967.''

Amendment by section 137(b) of Pub. L. 90–248 applicable with respect to services furnished after Dec. 31, 1967, see section 137(c) of Pub. L. 90–248, set out as a note under section 1395d of this title.

REPEAL OF 1988 EXPANSION OF MEDICARE PART A BENEFITS

Section 101(a)–(b)(2) of Pub. L. 101–234, as amended by Pub. L. 101–508, title IV, §4008(m)(1), Nov. 5, 1990, 104 Stat. 1388–53, provided that:

''(a) IN GENERAL.—

''(1) GENERAL RULE.—Except as provided in paragraph (2), sections 101, 102, and 104(d) (other than paragraph (7)) of the Medicare Catastrophic Coverage Act of 1988 (Public Law 100–360) [amending this section and sections 1395c, 1395d, 1395f, 1395k, 1395x, 1395cc, and 1395tt of this title] (in this Act referred to as 'MCCA') are repealed, and the provisions of law amended or repealed by such sections are restored or revived as if such section had not been enacted.

''(2) EXCEPTION FOR BLOOD DEDUCTION.—The repeal of section 102(1) of MCCA [amending this section] (relating to deductibles and coinsurance under part A) shall not apply, but only insofar as such section amended paragraph (2) of section 1813(a) of the Social Security Act [subsec. (a)(2) of this section] (relating to a deduction for blood).

''(b) TRANSITION PROVISIONS FOR MEDICARE BENEFICIARIES.—

''(1) INPATIENT HOSPITAL SERVICES AND POST-HOSPITAL EXTENDED CARE SERVICES.—In applying sections 1812 and 1813 of the Social Security Act [section 1395d of this title and this section], as restored by subsection (a)(1), with respect to inpatient hospital services and extended care services provided on or after January 1, 1990—

''(A) no day before January 1, 1990, shall be counted in determining the beginning (or period) of a spell of illness;

''(B) with respect to the limitation (other than the limitation under section 1812(c) of such Act [section 1395d(c) of this title]) on such services provided in a spell of illness, days of such services before January 1, 1990, shall not be counted, except that days of inpatient hospital services before January 1, 1989, which were applied with respect to an individual after receiving 90 days of services in a spell of illness (commonly known as 'lifetime reserve days') shall be counted;

''(C) the limitation of coverage of extended care services to post-hospital extended care services shall not apply to an individual receiving such services from a skilled nursing facility during a continuous period beginning before (and including) January 1, 1990, until the end of the period of 30 consecutive days in which the individual is not provided inpatient hospital services or extended care services; and

''(D) the inpatient hospital deductible under section 1813(a)(1) of such Act [subsec. (a)(1) of this section] shall not apply—

''(i) in the case of an individual who is receiving inpatient hospital services during a continuous period beginning before (and including) January 1, 1990, with respect to the spell of illness beginning on such date, if such a deductible was imposed on the individual for a period of hospitalization during 1989;

''(ii) for a spell of illness beginning during January 1990, if such a deductible was imposed on the individual for a period of hospitalization that began in December 1989; and

''(iii) in the case of a spell of illness of an individual that began before January 1, 1990.

''(2) HOSPICE CARE.—The restoration of section 1812(a)(4) of the Social Security Act [section 1395d(a)(4) of this title], effected by subsection (a)(1), shall not apply to hospice care provided during the subsequent period (described in such section as in effect on December 31, 1989) with respect to which an election has been made before January 1, 1990.''

[Section 4008(m)(1) of Pub. L. 101–508 provided that amendment by that section to section 101(b)(1)(B) of Pub. L. 101–234, set out above, is effective as if included in enactment of Medicare Catastrophic Coverage Repeal Act of 1989, Pub. L. 101–234.]

HOLD HARMLESS PROVISIONS; APPLICATION OF SUBSECTION (a)(1) AND (2)

Section 104(b) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(3)(B), Oct. 13, 1988, 102 Stat. 2413; Pub. L. 101–234, title I, § 101(b)(3), Dec. 13, 1989, 103 Stat. 1980, provided that: ''In the case of an individual for whom a spell of illness (as defined in section 1861(a) of the Social Security Act [section 1395x(a) of this title], as in effect on December 31, 1988) began before January 1, 1989, and had not yet ended as of such date—

''(1)(A) section 1813(a)(1) of such Act [subsec. (a)(1) of this section] (as amended by this subtitle [subtitle A (§§ 101–104) of title I of Pub. L. 100–360]) shall not apply to services furnished during that spell of illness during 1989, and

''(B) if that individual begins a period of hospitalization (as defined in such section) during 1989 after the end of that spell of illness, the first period of hospitalization during 1989 that begins after that spell of illness shall be considered to be (for purposes of such section) the first period of hospitalization that begins during that year; and

''(2) the amount of any deductible under section 1813(a)(2) of such Act (as amended by this subtitle) shall be reduced during that spell of illness during 1989 to the extent the deductible under such section was applied during the spell of illness.''

PROMULGATION OF NEW DEDUCTIBLE

Section 9301(c) of Pub. L. 99–509 directed Secretary of Health and Human Services to provide, within 30 days after Oct. 21, 1986, for publication of inpatient hospital deductible, coinsurance amounts for inpatient hospital services and post-hospital extended care services, and monthly part A premiums for 1987, as modified under the amendment of this section made by subsection (a).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395f, 1395*l*, 1395x, 1395cc, 1395ww, 1396d of this title; title 5 section 8904; title 38 section 1710.

§ 1395f. Conditions of and limitations on payment for services

(a) Requirement of requests and certifications

Except as provided in subsections (d) and (g) of this section and in section 1395mm of this title, payment for services furnished an individual may be made only to providers of services which are eligible therefor under section 1395cc of this title and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period of 3 calendar years following the year in which such services are furnished (deeming any services furnished in the last 3 calendar months of any calendar year to have been furnished in the succeeding calendar year) except that where the Secretary deems that efficient administration so requires, such period may be reduced to not less than 1 calendar year;

(2) a physician, or, in the case of services described in subparagraph (B), a physician, or a nurse practitioner or clinical nurse specialist who does not have a direct or indirect employment relationship with the facility but is working in collaboration with a physician, certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations, except that the first of such recertifi-

cations shall be required in each case of inpatient hospital services not later than the 20th day of such period) that—

(A) in the case of inpatient psychiatric hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the psychiatric treatment of an individual; and (i) such treatment can or could reasonably be expected to improve the condition for which such treatment is or was necessary or (ii) inpatient diagnostic study is or was medically required and such services are or were necessary for such purposes;

(B) in the case of post-hospital extended care services, such services are or were required to be given because the individual needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services, which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis, for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1395x(e) of this title) prior to transfer to the skilled nursing facility or for a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services;

(C) in the case of home health services, such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1395x(m)(7) of this title) and needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy; a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician; and such services are or were furnished while the individual was under the care of a physician; or

(D) in the case of inpatient hospital services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;

(3) with respect to inpatient hospital services (other than inpatient psychiatric hospital services) which are furnished over a period of time, a physician certifies that such services are required to be given on an inpatient basis for such individual's medical treatment, or that inpatient diagnostic study is medically required and such services are necessary for such purpose, except that (A) such certification shall be furnished only in such cases, with such frequency, and accompanied by such supporting material, appropriate to the cases involved, as may be provided by regulations, and (B) the first such certification required in accordance with clause (A) shall be furnished no later than the 20th day of such period;

(4) in the case of inpatient psychiatric hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving (A) intensive treatment services, (B) admission and related services necessary for a diagnostic study, or (C) equivalent services;

(5) with respect to inpatient hospital services furnished such individual after the 20th day of a continuous period of such services, there was not in effect, at the time of admission of such individual to the hospital, a decision under section 1395cc(d) of this title (based on a finding that utilization review of long-stay cases is not being made in such hospital);

(6) with respect to inpatient hospital services or post-hospital extended care services furnished such individual during a continuous period, a finding has not been made (by the physician members of the committee or group, as described in section 1395x(k)(4) of this title, including any finding made in the course of a sample or other review of admissions to the institution) pursuant to the system of utilization review that further inpatient hospital services or further post-hospital extended care services, as the case may be, are not medically necessary; except that, if such a finding has been made, payment may be made for such services furnished before the 4th day after the day on which the hospital or skilled nursing facility, as the case may be, received notice of such finding;

(7) in the case of hospice care provided an individual—

(A)(i) in the first 90-day period—

(I) the individual's attending physician (as defined in section 1395x(dd)(3)(B) of this title), and

(II) the medical director (or physician member of the interdisciplinary group described in section 1395x(dd)(2)(B) of this title) of the hospice program providing (or arranging for) the care,

each certify in writing, not later than 2 days after hospice care is initiated (or, if each certify verbally not later than 2 days after hospice care is initiated, not later than 8 days after such care is initiated), that the individual is terminally ill (as defined in section 1395x(dd)(3)(A) of this title),

(ii) in a subsequent 90- or 30-day period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill, and

(iii) in a subsequent extension period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;

(B) a written plan for providing hospice care with respect to such individual has been

established (before such care is provided by, or under arrangements made by, that hospice program) and is periodically reviewed by the individual's attending physician and by the medical director (and the interdisciplinary group described in section 1395x(dd)(2)(B) of this title) of the hospice program; and

(C) such care is being or was provided pursuant to such plan of care; and

(8) in the case of inpatient rural primary care hospital services, a physician certifies that the individual may reasonably be expected to be discharged or transferred to a hospital within 72 hours after admission to the rural primary care hospital.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician, nurse practitioner, or clinical nurse specialist (as the case may be) makes certification of the kind provided in subparagraph (A), (B), (C), or (D) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, such home health agency from performing such certification and from establishing or reviewing such plan, except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary). For purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency. For purposes of paragraph (2)(C), an individual shall be considered to be ''confined to his home'' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered ''confined to his home'', the condition of the individual should be such that there exists a normal inability to leave home, that leaving home requires a considerable and taxing effort by the individual, and that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment.

(b) Amount paid to provider of services

The amount paid to any provider of services (other than a hospice program providing hospice care, other than a rural primary care hospital providing inpatient rural primary care hospital services, and other than a home health agency with respect to durable medical equipment) with respect to services for which payment may be made under this part shall, subject to the provisions of sections 1395e and 1395ww of this title, be—

(1) except as provided in paragraph (3), the lesser of (A) the reasonable cost of such services, as determined under section 1395x(v) of this title and as further limited by section 1395rr(b)(2)(B) of this title, or (B) the customary charges with respect to such services;

(2) if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph), free of charge or at nominal charges to the public, the amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such reasonable cost which the Secretary finds will provide fair compensation to such provider for such services; or

(3) if some or all of the hospitals in a State have been reimbursed for services (for which payment may be made under this part) pursuant to a reimbursement system approved as a demonstration project under section 402 of the Social Security Amendments of 1967 or section 222 of the Social Security Amendments of 1972, if the rate of increase in such hospitals in their costs per hospital inpatient admission of individuals entitled to benefits under this part over the duration of such project was equal to or less than such rate of increase for admissions of such individuals with respect to all hospitals in the United States during such period, and if either the State has legislative authority to operate such system and the State elects to have reimbursement to such hospitals made in accordance with this paragraph or the system is operated through a voluntary agreement of hospitals and such hospitals elect to have reimbursement to those hospitals made in accordance with this paragraph, then the Secretary may provide for continuation of reimbursement to such hospitals under such system until the Secretary determines that—

(A) a third-party payor reimburses such a hospital on a basis other than under such system, or

(B) the aggregate rate of increase from January 1, 1981, to the most recent date for which annual data are available in such hospitals in costs per hospital inpatient admission of individuals entitled to benefits under this part is greater than such rate of increase for admissions of such individuals with respect to all hospitals in the United States for such period.

In the case of any State which has had such a demonstration project reimbursement system in

continuous operation since July 1, 1977, the Secretary shall provide under paragraph (3) for continuation of reimbursement to hospitals in the State under such system until the first day of the 37th month beginning after the date the Secretary determines and notifies the Governor of the State that either of the conditions described in subparagraph (A) or (B) of such paragraph has occurred. If, by the end of such 36-month period, the Secretary determines, based on evidence submitted by the Governor of the State, that neither of the conditions described in subparagraph (A) or (B) of paragraph (3) continues to apply, the Secretary shall continue without interruption payment to hospitals in the State under the State's system. If, by the end of such 36-month period, the Secretary determines, based on such evidence, that either of the conditions described in subparagraph (A) or (B) of such paragraph continues to apply, the Secretary shall (i) collect any net excess reimbursement to hospitals in the State during such 36-month period (basing such net excess reimbursement on the net difference, if any, in the rate of increase in costs per hospital inpatient admission under the State system compared to the rate of increase in such costs with respect to all hospitals in the United States over the 36-month period, as measured by including the cumulative savings under the State system based on the difference in the rate of increase in costs per hospital inpatient admission under the State system as compared to the rate of increase in such costs with respect to all hospitals in the United States between January 1, 1981, and the date of the Secretary's initial notice), and (ii) provide a reasonable period, not to exceed 2 years, for transition from the State system to the national payment system.

(c) No payments to Federal providers of services

Subject to section 1395qq of this title, no payment may be made under this part (except under subsection (d) or subsection (h) of this section) to any Federal provider of services, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services for any item or service which such provider is obligated by a law of, or a contract with, the United States to render at public expense.

(d) Payments for emergency hospital services

(1) Payments shall also be made to any hospital for inpatient hospital services furnished in a calendar year, by the hospital or under arrangements (as defined in section 1395x(w) of this title) with it, to an individual entitled to hospital insurance benefits under section 426 of this title even though such hospital does not have an agreement in effect under this subchapter if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has elected to claim payments for all such inpatient emergency services and for the emergency outpatient services referred to in section 1395n(b) of this title furnished during such year. Such payments shall be made only in the amounts provided under subsection (b) of this section and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1395cc(a) of this title.

(2) Payment may be made on the basis of an itemized bill to an individual entitled to hospital insurance benefits under section 426 of this title for services described in paragraph (1) which are emergency services if (A) payment cannot be made under paragraph (1) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form and manner and by such person, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement.

(3) The amounts payable under the preceding paragraph with respect to services described therein shall, subject to the provisions of section 1395e of this title, be equal to 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the individual or in semiprivate accommodations (as defined in section 1395x(v)(4) of this title), whichever is less, plus 80 percent of the hospital's reasonable charges for ancillary services. If separate charges for routine and ancillary services are not made by the hospital, reimbursement may be based on two-thirds of the hospital's reasonable charges for the services received but not to exceed the charges which would have been made if the patient had occupied semiprivate accommodations. For purposes of the preceding provisions of this paragraph, the term ''routine services'' shall mean the regular room, dietary, and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made; the term ''ancillary services'' shall mean those special services for which charges are customarily made in addition to routine services.

(e) Payment for inpatient hospital services prior to notification of noneligibility

Notwithstanding that an individual is not entitled to have payment made under this part for inpatient hospital services furnished by any hospital, payment shall be made to such hospital (unless it elects not to receive such payment or, if payment has already been made by or on behalf of such individual, fails to refund such payment within the time specified by the Secretary) for such services which are furnished to the individual prior to notification to such hospital from the Secretary of his lack of entitlement, if such payments are precluded only by reason of section 1395d of this title and if such hospital complies with the requirements of and regulations under this subchapter with respect to such payments, has acted in good faith and without knowledge of such lack of entitlement, and has acted reasonably in assuming entitlement existed. Payment under the preceding sentence may not be made for services furnished an individual pursuant to any admission after the 6th elapsed day (not including as an elapsed day Saturday, Sunday, or a legal holiday) after the day on which such admission occurred.

(f) Payment for certain inpatient hospital services furnished outside United States

(1) Payment shall be made for inpatient hospital services furnished to an individual entitled to hospital insurance benefits under section 426 of this title by a hospital located outside the United States, or under arrangements (as defined in section 1395x(w) of this title) with it, if—

(A) such individual is a resident of the United States, and

(B) such hospital was closer to, or substantially more accessible from, the residence of such individual than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.

(2) Payment may also be made for emergency inpatient hospital services furnished to an individual entitled to hospital insurance benefits under section 426 of this title by a hospital located outside the United States if—

(A) such individual was physically present—

(i) in a place within the United States; or

(ii) at a place within Canada while traveling without unreasonable delay by the most direct route (as determined by the Secretary) between Alaska and another State;

at the time the emergency which necessitated such inpatient hospital services occurred, and

(B) such hospital was closer to, or substantially more accessible from, such place than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.

(3) Payment shall be made in the amount provided under subsection (b) of this section to any hospital for the inpatient hospital services described in paragraph (1) or (2) furnished to an individual by the hospital or under arrangements (as defined in section 1395x(w) of this title) with it if (A) the Secretary would be required to make such payment if the hospital had an agreement in effect under this subchapter and otherwise met the conditions of payment hereunder, (B) such hospital elects to claim such payment, and (C) such hospital agrees to comply, with respect to such services, with the provisions of section 1395cc(a) of this title.

(4) Payment for the inpatient hospital services described in paragraph (1) or (2) furnished to an individual entitled to hospital insurance benefits under section 426 of this title may be made on the basis of an itemized bill to such individual if (A) payment for such services cannot be made under paragraph (3) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form and manner and by such person, and continuing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement. The amount payable with respect to such services shall, subject to the provisions of section 1395e of this title, be equal to the amount which would be payable under subsection (d)(3) of this section.

(g) Payments to physicians for services rendered in teaching hospitals

For purposes of services for which the reasonable cost thereof is determined under section 1395x(v)(1)(D) of this title (or would be if section 1395ww of this title did not apply), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(1) such hospital has an agreement with the Secretary under section 1395cc of this title, and

(2) the Secretary has received written assurances that (A) such payment will be used by such fund solely for the improvement of care of hospital patients or for educational or charitable purposes and (B) the individuals who were furnished such services or any other persons will not be charged for such services (or if charged, provision will be made for return of any moneys incorrectly collected).

(h) Payment for specified hospital services provided in Department of Veterans Affairs hospitals; amount of payment

(1) Payments shall also be made to any hospital operated by the Department of Veterans Affairs for inpatient hospital services furnished in a calendar year by the hospital, or under arrangements (as defined in section 1395x(w) of this title) with it, to an individual entitled to hospital benefits under section 426 of this title even though the hospital is a Federal provider of services if (A) the individual was not entitled to have the services furnished to him free of charge by the hospital, (B) the individual was admitted to the hospital in the reasonable belief on the part of the admitting authorities that the individual was a person who was entitled to have the services furnished to him free of charge, (C) the authorities of the hospital, in admitting the individual, and the individual, acted in good faith, and (D) the services were furnished during a period ending with the close of the day on which the authorities operating the hospital first became aware of the fact that the individual was not entitled to have the services furnished to him by the hospital free of charge, or (if later) ending with the first day on which it was medically feasible to remove the individual from the hospital by discharging him therefrom or transferring him to a hospital which has in effect an agreement under this subchapter.

(2) Payment for services described in paragraph (1) shall be in an amount equal to the charge imposed by the Secretary of Veterans Affairs for such services, or (if less) the amount that would be payable for such services under subsection (b) of this section and section 1395ww of this title (as estimated by the Secretary). Any such payment shall be made to the entity to which payment for the services involved would have been payable, if payment for such services had been made by the individual receiving the services involved (or by another private person acting on behalf of such individual).

(i) Payment for hospice care

(1)(A) Subject to the limitation under paragraph (2) and the provisions of section 1395e(a)(4) of this title and except as otherwise provided in this paragraph, the amount paid to a hospice program with respect to hospice care for which payment may be made under this part shall be an amount equal to the costs which are reasonable and related to the cost of providing hospice care or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations (including those authorized under section 1395x(v)(1)(A) of this title), except that no payment may be made for bereavement counseling and no reimbursement may be made for other counseling services (including nutritional and dietary counseling) as separate services.

(B) Notwithstanding subparagraph (A), for hospice care furnished on or after April 1, 1986, the daily rate of payment per day for routine home care shall be $63.17 and the daily rate of payment for other services included in hospice care shall be the daily rate of payment recognized under subparagraph (A) as of July 1, 1985, increased by $10.

(C)(i) With respect to routine home care and other services included in hospice care furnished on or after January 1, 1990, and on or before September 30, 1990, the payment rates for such care and services shall be 120 percent of such rates in effect as of September 30, 1989.

(ii) With respect to routine home care and other services included in hospice care furnished during a subsequent fiscal year, the payment rates for such care and services shall be the payment rates in effect under this subparagraph during the previous fiscal year increased by—

(I) for a fiscal year ending on or before September 30, 1993, the market basket percentage increase (as defined in section 1395ww(b)(3)(B)(iii) of this title) for the fiscal year;

(II) for fiscal year 1994, the market basket percentage increase for the fiscal year minus 2.0 percentage points;

(III) for fiscal year 1995, the market basket percentage increase for the fiscal year minus 1.5 percentage points;

(IV) for fiscal year 1996, the market basket percentage increase for the fiscal year minus 1.5 percentage points;

(V) for fiscal year 1997, the market basket percentage increase for the fiscal year minus 0.5 percentage point; and

(VI) for a subsequent fiscal year, the market basket percentage increase for the fiscal year.

(2)(A) The amount of payment made under this part for hospice care provided by (or under arrangements made by) a hospice program for an accounting year may not exceed the ''cap amount'' for the year (computed under subparagraph (B)) multiplied by the number of medicare beneficiaries in the hospice program in that year (determined under subparagraph (C)).

(B) For purposes of subparagraph (A), the ''cap amount'' for a year is $6,500, increased or decreased, for accounting years that end after October 1, 1984, by the same percentage as the percentage increase or decrease, respectively, in the medical care expenditure category of the Consumer Price Index for All Urban Consumers (United States city average), published by the Bureau of Labor Statistics, from March 1984 to the fifth month of the accounting year.

(C) For purposes of subparagraph (A), the ''number of medicare beneficiaries'' in a hospice program in an accounting year is equal to the number of individuals who have made an election under subsection (d) of this section with respect to the hospice program and have been provided hospice care by (or under arrangements made by) the hospice program under this part in the accounting year, such number reduced to reflect the proportion of hospice care that each such individual was provided in a previous or subsequent accounting year or under a plan of care established by another hospice program.

(j) Elimination of lesser-of-cost-or-charges provision

(1) The lesser-of-cost-or-charges provisions (described in paragraph (2)) will not apply in the case of services provided by a class of provider of services if the Secretary determines and certifies to Congress that the failure of such provisions to apply to the services provided by that class of providers will not result in any increase in the amount of payments made for those services under this subchapter. Such change will take effect with respect to services furnished, or cost reporting periods of providers, on or after such date as the Secretary shall provide in the certification. Such change for a class of provider shall be discontinued if the Secretary determines and notifies Congress that such change has resulted in an increase in the amount of payments made under this subchapter for services provided by that class of provider.

(2) The lesser-of-cost-or-charges provisions referred to in paragraph (1) are as follows:

(A) Clause (B) of paragraph (1) and paragraph (2) of subsection (b) of this section.

(B) Section 1395m(a)(1)(B) of this title.

(C) So much of subparagraph (A) of section 1395*l*(a)(2) of this title as provides for payment other than of the reasonable cost of such services, as determined under section 1395x(v) of this title.

(D) Subclause (II) of clause (i) and clause (ii) of section 1395*l*(a)(2)(B) of this title.

(k) Payments to home health agencies for durable medical equipment

The amount paid to any home health agency with respect to durable medical equipment for which payment may be made under this part shall be the amount described in section 1395m(a)(1) of this title.

(*l*) Payment for inpatient rural primary care hospital services

(1) The amount of payment under this part for inpatient rural primary care hospital services—

(A) in the case of the first 12-month cost reporting period for which the facility operates as such a hospital, is the reasonable costs of the facility in providing inpatient rural primary care hospital services during such period, as such costs are determined on a per diem basis, and

(B) in the case of a later reporting period, is the per diem payment amount established

under this paragraph for the preceding 12-month cost reporting period, increased by the applicable percentage increase under section 1395ww(b)(3)(B)(i) of this title for that particular cost reporting period applicable to hospitals located in a rural area.

The payment amounts otherwise determined under this paragraph shall be reduced, to the extent necessary, to avoid duplication of any payment made under section 1395i–4(a)(2) of this title (or under section 4005(e) of the Omnibus Budget Reconciliation Act of 1987) to cover the provision of inpatient rural primary care hospital services.

(2) The Secretary shall develop a prospective payment system for determining payment amounts for inpatient rural primary care hospital services under this part furnished on or after January 1, 1996.

(Aug. 14, 1935, ch. 531, title XVIII, § 1814, as added July 30, 1965, Pub. L. 89–87, title I, § 102(a), 79 Stat. 294; amended Jan. 2, 1968, Pub. L. 90–248, title I, §§ 126(a), 129(c)(5), (6)(A), 143(c), 81 Stat. 846, 848, 857; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 211(a), 226(c)(1), 227(b), 228(a), 233(a), 234(g)(1), 238(a), 247(a), 256(a), 278(a)(1)–(3), (b)(4), (17), 281(e), 86 Stat. 1382, 1404, 1405, 1407, 1411, 1413, 1416, 1425, 1447, 1453, 1454, 1456; Dec. 31, 1973, Pub. L. 93–233, § 18(k)(1), (2), 87 Stat. 970; Sept. 30, 1976, Pub. L. 94–437, title IV, § 401(a), 90 Stat. 1408; Oct. 25, 1977, Pub. L. 95–142, § 23(a), (b), 91 Stat. 1208; June 13, 1978, Pub. L. 95–292, § 4(f), 92 Stat. 315; Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 903(a), 930(e), (f), 931(b), 936(b), 941(a), (b), 94 Stat. 2614, 2631, 2633, 2640, 2641; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2121(b), 2122(a)(1), 95 Stat. 796; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 101(c)(1), 122(c)(1), (2), 96 Stat. 335, 357, 358; Jan. 12, 1983, Pub. L. 97–448, title III, § 309(b)(7), 96 Stat. 2409; Apr. 20, 1983, Pub. L. 98–21, title VI, §§ 601(d), 602(b), (c), 97 Stat. 152, 163; Aug. 29, 1983, Pub. L. 98–90, 97 Stat. 606; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2308(b)(2)(A), 2321(a), (f), 2335(a), 2336(a), (b), 2354(b)(1), (c)(1)(A), 98 Stat. 1074, 1084, 1085, 1090, 1091, 1100, 1102; Nov. 8, 1984, Pub. L. 98–617, §§ 1(a), 3(a)(3), (b)(1), 98 Stat. 3294, 3295; Apr. 7, 1986, Pub. L. 99–272, title IX, § 9123(b), 100 Stat. 168; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4008(b)(1), 4024(a), 4062(d)(1), 101 Stat. 1330–55, 1330–73, 1330–108; July 1, 1988, Pub. L. 100–360, title I, § 104(d)(2), 102 Stat. 688; Dec. 13, 1989, Pub. L. 101–234, title I, § 101(a), 103 Stat. 1979; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6003(g)(3)(B)(ii), (iii), 6005(a), (b), 6028, 103 Stat. 2152, 2160, 2161, 2168; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4006(b), 4008(i)(3), (m)(3)(A), 104 Stat. 1388–43, 1388–51, 1388–53; June 13, 1991, Pub. L. 102–54, § 13(q)(3)(A)(iii), (iv), (B)(iv), 105 Stat. 279; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13504, 107 Stat. 579; Oct. 31, 1994, Pub. L. 103–432, title I, §§ 102(a)(3), (d), 106(b)(1)(A), 110(d)(1), 108 Stat. 4402, 4403, 4405, 4408.)

REFERENCES IN TEXT

Section 402 of the Social Security Amendments of 1967, referred to in subsec. (b)(3), means section 402 of Pub. L. 90–248, which amended sections 1395b–1 and 1395*ll* of this title.

Section 222 of the Social Security Amendments of 1972, referred to in subsec. (b)(3), means section 222 of Pub. L. 92–603, which amended sections 1395b–1 and 1395*ll* of this title and enacted a provision set out as a note under section 1395b–1 of this title.

Section 4005(e) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (*l*)(1), is section 4005(e) of Pub. L. 100–203, which is set out as a note under section 1395ww of this title.

AMENDMENTS

1994—Subsec. (a)(5). Pub. L. 103–432, § 106(b)(1)(A), struck out ''and with respect to post-hospital extended care services furnished after such day of a continuous period of such services as may be prescribed in or pursuant to regulations'' after ''continuous period of such services'', ''or skilled nursing facility, as the case may be'' after ''such individual to the hospital'', and ''or facility'' after ''made in such hospital''.

Subsec. (a)(8). Pub. L. 103–432, § 102(a)(3), substituted ''the individual may reasonably be expected to be discharged or transferred to a hospital within 72 hours after admission to the rural primary care hospital.'' for ''such services were required to be immediately furnished on a temporary, inpatient basis.''

Subsec. (i)(1)(C)(i). Pub. L. 103–432, § 110(d)(1), substituted ''September 30, 1990,'' for ''September 30, 1990,,''.

Subsec. (*l*)(2). Pub. L. 103–432, § 102(d), substituted ''January 1, 1996'' for ''January 1, 1993''.

1993—Subsec. (i)(1)(C)(ii). Pub. L. 103–66 substituted ''increased by—'' and subcls. (I) to (VI) for ''increased by the market basket percentage increase (as defined in section 1395ww(b)(3)(B)(iii) of this title) otherwise applicable to discharges occurring in the fiscal year.''

1991—Subsec. (h). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration'' in heading and par. (1) and ''Secretary of Veterans Affairs'' for ''Veterans' Administration'' in par. (2).

1990—Subsec. (a)(7)(A)(iii). Pub. L. 101–508, § 4006(b), added cl. (iii).

Subsec. (b)(3). Pub. L. 101–508, § 4008(i)(3), substituted ''January 1, 1981'' for ''October 1, 1983'' in subpar. (B) substituted ''37th month'' for ''seventh month'' in sentence following subpar. (B), and inserted at end provisions setting forth procedures to be followed by Secretary at end of 36-month period.

Subsec. (i)(1)(C)(i). Pub. L. 101–508, § 4008(m)(3)(A), substituted ''on or after January 1, 1990, and on or before September 30, 1990,'' for ''during fiscal year 1990''.

1989—Subsec. (a). Pub. L. 101–239, § 6028(2), substituted ''a physician, nurse practitioner, or clinical nurse specialist (as the case may be) makes'' for ''a physician makes'' in first sentence of concluding provisions.

Subsec. (a)(2). Pub. L. 101–239, § 6028(1), substituted ''a physician, or, in the case of services described in subparagraph (B), a physician, or a nurse practitioner or clinical nurse specialist who does not have a direct or indirect employment relationship with the facility but is working in collaboration with a physician,'' for ''a physician'' after ''(2)''.

Subsec. (a)(2)(B), (6). Pub. L. 101–234 repealed Pub. L. 100–360, § 104(d)(2)(A), (B), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(7)(A)(i). Pub. L. 101–239, § 6005(b), substituted ''certify in writing, not later than 2 days after hospice care is initiated (or, if each certify verbally not later than 2 days after hospice care is initiated, not later than 8 days after such care is initiated),'' for ''certify, not later than two days after hospice care is initiated,'' in concluding provisions.

Subsec. (a)(7)(A)(iii). Pub. L. 101–234 repealed Pub. L. 100–360, § 104(d)(2)(C), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(8). Pub. L. 101–239, § 6003(g)(3)(B)(ii), added par. (8).

Subsec. (b). Pub. L. 101–239, § 6003(g)(3)(B)(iii)(I), inserted '', other than a rural primary care hospital providing inpatient rural primary care hospital services,'' after ''providing hospice care'' in introductory provisions.

Subsec. (d)(3). Pub. L. 101–234 repealed Pub. L. 100–360, §104(d)(2)(D), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (i)(1)(A). Pub. L. 101–239, §6005(a)(1), inserted ''and except as otherwise provided in this paragraph'' after ''section 1395e(a)(4) of this title''.

Subsec. (i)(1)(C). Pub. L. 101–239, §6005(a)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''With respect to care and services furnished on or after October 1, 1986, the Secretary shall, not less often than annually, review and make appropriate adjustments to the payment rate for routine home care and the payment rates for other services included in hospice care based on the costs that are reasonable and related to the costs of furnishing such care and services. The Secretary shall report to Congress on October 1 each year on such review and such adjustments and on the adequacy of the rates under this paragraph to ensure participation by an adequate number of hospice programs under this subchapter.''

Subsec. (*l*). Pub. L. 101–239, §6003(g)(3)(B)(iii)(II), added subsec. (*l*).

1988—Subsec. (a)(2)(B). Pub. L. 100–360, §104(d)(2)(A), (B), struck out ''post-hospital'' after ''in the case of'' and '', for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1395x(e) of this title) prior to transfer to the skilled nursing facility or for a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services'' before semicolon at end.

Subsec. (a)(6). Pub. L. 100–360, §104(d)(2)(A), struck out ''post-hospital'' before ''extended care services'' in two places.

Subsec. (a)(7)(A)(iii). Pub. L. 100–360, §104(d)(2)(C), added cl. (iii) which read as follows: ''in a subsequent extension period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;''.

Subsec. (d)(3). Pub. L. 100–360, §104(d)(2)(D), substituted ''equal to 100 percent'' for ''equal to 60 percent'' and ''plus 100 percent'' for ''plus 80 percent'' and struck out ''two-thirds of'' after ''based on''.

1987—Subsec. (a). Pub. L. 100–203, §4024(a), inserted two sentences at end clarifying ''confined to his home'' for purposes of par. (2)(C).

Subsec. (b)(3)(B). Pub. L. 100–203, §4008(b)(1), substituted ''aggregate rate of increase from October 1, 1983, to the most recent date for which annual data are available'' for ''rate of increase for the previous three-year period''.

Subsec. (j)(2)(B). Pub. L. 100–203, §4062(d)(1)(A), substituted ''Section 1395m(a)(1)(B) of this title'' for ''Subsection (k)(1)(B) of this section''.

Subsec. (k). Pub. L. 100–203, §4062(d)(1)(B), substituted ''the amount described in section 1395m(a)(1) of this title.'' for a dash and former pars. (1) and (2) which read as follows:

''(1) the lesser of—

''(A) the reasonable cost of such equipment, as determined under section 1395x(v) of this title, or

''(B) the customary charges with respect to such equipment,

less the amount the home health agency may charge as described in section 1395cc(a)(2)(A)(ii) of this title, but in no case may the payment for such equipment exceed 80 percent of such reasonable cost, or

''(2) if such equipment is furnished by a public home health agency, or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph), free of charge or at nominal charge to the public, 80 percent of the amount which the Secretary finds will provide fair compensation to the home health agency.''

1986—Subsec. (i)(1)(B). Pub. L. 99–272, §9123(b)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Notwithstanding subparagraph (A), the rate of payment per day for routine home care furnished during fiscal year 1985 shall be $53.17.''

Subsec. (i)(1)(C). Pub. L. 99–272, §9123(b)(2), substituted ''1986'' for ''1985''.

1984—Subsec. (a). Pub. L. 98–369, §2354(b)(1), as amended by Pub. L. 98–617, §3(a)(3), in concluding provisions, substituted ''contractual'' for ''contractural''.

Pub. L. 98–369, §2336(b), inserted before period at end of third sentence '', except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary)''.

Pub. L. 98–369, §2336(a), inserted sentence at end that for purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.

Pub. L. 98–369, §2335(a)(4), in concluding provisions, substituted ''or (D)'' for ''(D), or (E)''.

Subsec. (a)(2)(B) to (E). Pub. L. 98–369, §2335(a)(1), redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which provided that payment could be made only if a physician certified, in the case of inpatient tuberculosis hospital services, that such services were required to be given on an inpatient basis, by or under the supervision of a physician, for the treatment of an individual for tuberculosis; and that such treatment could reasonably be expected to improve the condition for which such treatment was necessary or render the condition noncommunicable.

Subsec. (a)(3). Pub. L. 98–369, §2335(a)(2), struck out ''and inpatient tuberculosis hospital services'' after ''psychiatric hospital services''.

Subsec. (a)(5) to (8). Pub. L. 98–369, §2335(a)(3), redesignated pars. (6) to (8) as (5) to (7), respectively, and struck out former par. (5) which had provided that payment would be made only if, in the case of inpatient tuberculosis hospital services, the services were those which the records of the hospital indicate were furnished to the individual during periods when he was receiving treatment which could reasonably be expected to improve his condition or render it noncommunicable.

Subsec. (b). Pub. L. 98–369, §2321(a)(1), inserted in provisions preceding par. (1) ''and other than a home health agency with respect to durable medical equipment'' after ''hospice care''.

Subsec. (b)(2). Pub. L. 98–369, §2308(b)(2)(A), inserted '', or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph),''.

Subsec. (b)(3). Pub. L. 98–369, §2354(c)(1)(A), amended directory language of Pub. L. 96–449, §903(a)(4), resulting in no change in text. See 1980 Amendment note below.

Subsec. (i)(1). Pub. L. 98–617, §1(a), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (j)(2)(B) to (D). Pub. L. 98–369, §2321(f), added subpar. (B) and redesignated former subpars. (B) and (C) as (C) and (D), respectively.

Subsec. (k). Pub. L. 98–369, §2321(a)(2), added subsec. (k).

Subsec. (k)(2). Pub. L. 98–617, §3(b)(1), inserted '', or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this paragraph),'' after ''public home health agency'' and ''80 percent of'' before ''the amount''.

1983—Subsec. (g). Pub. L. 98–21, §602(b), inserted ''(or would be if section 1395ww of this title did not apply)'' after ''section 1395x(v)(1)(D) of this title''.

Subsec. (h)(2). Pub. L. 98–21, § 602(c), substituted ''the amount that would be payable for such services under subsection (b) of this section and section 1395ww of this title'' for ''the reasonable costs for such services''.

Subsec. (i)(1). Pub. L. 97–448 inserted ''made'' before ''for bereavement counseling''.

Subsec. (i)(2)(A). Pub. L. 98–90, § 1(1), struck out ''located in a region (as defined by the Secretary)'' after ''a hospice program'' and ''for the region'' after '' 'the cap amount' ''.

Subsec. (i)(2)(B). Pub. L. 98–90, § 1(2), amended subpar. (B) generally, substituting provisions establishing a hospice reimbursement cap amount of $6,500, indexed by the medical care component of the Consumer Price Index, for provisions which had established a cap of 40% of the estimated regional average medicare expenditure per beneficiary in the regular medicare program during the six months of life for persons dying of cancer.

Subsec. (j). Pub. L. 98–21, § 601(d)(2), added subsec. (j) by transferring and redesignating provisions formerly classified to subsec. (d) of section 1395ww of this title.

Subsec. (j)(2)(A). Pub. L. 98–21, § 601(d)(1), substituted ''subsection (b) of this section'' for ''section 1395f(b) of this title''.

1982—Subsec. (a)(8). Pub. L. 97–248, § 122(c)(1), added par. (8).

Subsec. (b). Pub. L. 97–248, § 101(c)(1), substituted ''sections 1395e and 1395ww'' for ''section 1395e'' in provisions preceding par. (1), and substituted ''until the first day of the seventh month beginning after the date the Secretary determines and notifies the Governor of the State'' for ''until the Secretary determines'' in provisions following par. (3).

Pub. L. 97–248, § 122(c)(2)(A), inserted ''(other than a hospice program providing hospice care)'' after ''The amount paid to any provider of services''.

Subsec. (i). Pub. L. 97–248, § 122(c)(2)(B), added subsec. (i).

1981—Subsec. (a)(2)(D). Pub. L. 97–35, § 2122(a)(1), substituted ''needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy'' for ''needed skilled nursing care on an intermittent basis, or physical, occupational, or speech therapy''.

Subsec. (a)(2)(F). Pub. L. 97–35, § 2121(b), struck out subpar. (F) which provided that in the case of alcohol detoxification facility services, such services were required on an inpatient basis (based upon an examination by such certifying physician made prior to initiation of alcohol detoxification).

1980—Subsec. (a). Pub. L. 96–499, § 930(e), inserted provision at end of subsec. (a) authorizing the Secretary to prescribe regulations to prohibit significantly interested physicians from performing the physician certification required by par. (2) for home health services.

Subsec. (a)(2)(D). Pub. L. 96–499, § 930(f), substituted ''home health services'' for ''post-hospital home health services'' and ''physical, occupational, or speech'' for ''physical or speech'' and deleted '', for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1395x(e) of this title) or post-hospital extended care services'' after ''therapy''.

Subsec. (a)(2)(E). Pub. L. 96–499, § 936(b), inserted ''or because of the severity of the dental procedure'' and substituted ''such services'' for ''such dental services''.

Subsec. (a)(2)(F). Pub. L. 96–499, § 931(b), added subpar. (F).

Subsec. (b)(1). Pub. L. 96–499, § 903(a)(1), inserted ''except as provided in paragraph (3),''.

Subsec. (b)(3). Pub. L. 96–499, § 903(a)(4), as amended by Pub. L. 98–369, § 2354(c)(1)(A), added par. (3).

Subsec. (c). Pub. L. 96–499, § 941(b), substituted ''subsection (h)'' for ''subsection (j)''.

Subsecs. (h) to (j). Pub. L. 96–499, § 941(a), struck out subsecs. (h) and (i) and redesignated subsec. (j) as (h).

1978—Subsec. (b)(1). Pub. L. 95–292 inserted ''and as further limited by section 1395rr(b)(2)(B) of this title'' after ''section 1395x(v) of this title''.

1977—Subsec. (c). Pub. L. 95–142, § 23(a), inserted reference to subsec. (j) of this section.

Subsec. (j). Pub. L. 95–142, § 23(b), added subsec. (j).

1976—Subsec. (c). Pub. L. 94–437 substituted ''Subject to section 1395qq of this title, no payment'' for ''No payment''.

1973—Subsec. (a)(2)(E). Pub. L. 93–233, § 18(k)(1), substituted ''the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual, because of his underlying medical condition and clinical status, requires hospitalization in connection with the provision of such dental services'' for ''a dental procedure, the individual suffers from impairments of such severity as to require hospitalization''.

Subsec. (a), last sentence. Pub. L. 93–233, § 18(k)(2), inserted reference to subpar. (E) of par. (2).

1972—Subsec. (a). Pub. L. 92–603, §§ 226(c)(1), 227(b)(1), inserted reference to subsec. (g) of this section and section 1395mm of this title in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 92–603, § 281(e), placed a 3-year time limitation on the time within which a written request for payment is filed, with provision for reduction of the limit to 1 year.

Subsec. (a)(2)(C). Pub. L. 92–603, §§ 234(g)(1), 247(a), 278(a)(1), substituted ''because the individual needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services, which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis,'' for ''on an inpatient basis because the individual needs or needed skilled nursing care on a continuing basis'', ''skilled nursing facility'' for ''extended care facility'', and ''paragraphs (6) and (9) of section 1395x(e) of this title'' for ''paragraphs (6) and (8) of section 1395x(e) of this title''.

Subsec. (a)(2)(D). Pub. L. 92–603, § 234(g)(1), substituted reference to par. (9) of section 1395x(e) of this title for reference to par. (8) of section 1395x(e) of this title.

Subsec. (a)(2)(E). Pub. L. 92–603, § 256(a), added subpar. (E).

Subsec. (a)(6). Pub. L. 92–603, § 278(a)(2), substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (a)(7). Pub. L. 92–603, §§ 238(a), 278(a)(3), inserted '', including any finding made in the course of a sample or other review of admissions to the institution'' after ''as described in section 1395x(k)(4) of this title'' in the parenthetical provisions covering the finding not made by the committee or group, and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (b). Pub. L. 92–603, § 233(a), substituted pars. (1) and (2) for provisions describing the amount payable as the reasonable cost determined under section 1395x(v) of this title.

Subsec. (f). Pub. L. 92–603, § 211(a), designated existing provisions as par. (2), added pars. (1) and (3), and in par. (2) as so redesignated inserted provisions covering individuals physically present at a place within Canada while traveling without unreasonable delay by the most direct route between Alaska and another State.

Subsec. (g). Pub. L. 92–603, § 227(b)(2), added subsec. (g).

Subsec. (h). Pub. L. 92–603, §§ 228(a), 278(b)(4), (17), added subsec. (h) and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (i). Pub. L. 92–603, § 228(a), added subsec. (i).

1968—Subsec. (a). Pub. L. 90–248, §§ 126(a)(5), 129(c)(5)(B), struck out references to former subpars. (E) and (F) in last sentence.

Subsec. (a)(2)(A) to (E). Pub. L. 90–248, § 126(a)(1), (2), struck out subpar. (A) which provided that there be a physician's certification of medical necessity for admissions to hospitals other than psychiatric or tuber-

culosis institutions, and redesignated subpars. (B) to (E) as (A) to (D), respectively.

Subsec. (a)(2)(F). Pub. L. 90–248, §129(c)(5)(A), struck out subpar. (F) which provided that there be a physician's certification for services furnished to outpatients.

Subsec. (a)(3) to (7). Pub. L. 90–248, §126(a)(3), (4), added par. (3) and redesignated former pars. (3) to (6) as (4) to (7), respectively.

Subsec. (d). Pub. L. 90–248, §129(c)(6)(A), struck out reference to outpatient hospital diagnostic services from provisions requiring payment for emergency hospital services.

Subsec. (d)(1) to (3). Pub. L. 90–248, §143(c), designated existing provisions as par. (1), inserted ''in a calendar year'' after ''furnished'' in first sentence of par. (1), added subpar. (C) to par. (1), and added pars. (2) and (3).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 106(b)(1)(A) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 100–203, see section 106(b)(2) of Pub. L. 103–432, set out as a note under section 1395cc of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4006(b) of Pub. L. 101–508 applicable with respect to care and services furnished on or after Jan. 1, 1990, see section 4006(c) of Pub. L. 101–508, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6005(c) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, §4008(m)(3)(B), Nov. 5, 1990, 104 Stat. 1388–54, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall become effective with respect to care and services furnished on or after January 1, 1990.''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4008(b)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 22, 1987].''

Section 4024(c) of Pub. L. 100–203 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395n of this title] shall apply to items and services provided on or after January 1, 1988.''

Section 4062(e) of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, §4152(h), Nov. 5, 1990, 104 Stat. 1388–80, provided that: ''The amendments made by this section [enacting section 1395m of this title, amending this section and sections 1395k, 1395*l*, and 1395cc of this title, and repealing section 1395zz of this title] shall apply to covered items (other than oxygen and oxygen equipment) furnished on or after January 1, 1989 and to oxygen and oxygen equipment furnished on or after June 1, 1989.''

[Section 4152(h) of Pub. L. 101–508 provided that amendment by that section to section 4062(e) of Pub. L. 100–203, set out above, is effective as if included in enactment of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.]

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 1(b) of Pub. L. 98–617 provided that: ''The amendments made by this Act [probably means section 1 of Pub. L. 98–617, amending this section] shall apply to routine home care and other services included in hospice care furnished on or after October 1, 1984.''

Section 3(c) of Pub. L. 98–617 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395n, 1395r, 1395u, 1395x, 1395rr, 1395ww, 1396a, and 1396b of this title and amending provisions set out as notes under sections 1395h and 1395mm of this title] shall be effective as if they had been originally included in the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

Section 2321(g) of Pub. L. 98–369 provided that: ''The amendments made by this section [enacting section 1395zz of this title and amending this section and sections 1395*l*, 1395x, and 1395cc of this title] shall apply to items and services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Section 2335(g) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 1395x, 1395z, 1395cc, 1396a, and 1396d of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Section 2336(c)(1) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section and section 1395n of this title] shall apply to certifications and plans of care made or established on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(1) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2354(c)(1)(A) of Pub. L. 98–369 effective as if originally included in Pub. L. 96–499, see section 2354(e)(2) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(c)(1), (2) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2121(b) of Pub. L. 97–35 applicable to services furnished in detoxification facilities for inpatient stays beginning on or after the tenth day after Aug. 13, 1981, see section 2121(i) of Pub. L. 97–35, set out as a note under section 1395d of this title.

Section 2122(b) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 1395n of this title] shall apply to services furnished pursuant to plans of treatment implemented after the third month beginning after the date of the enactment of this Act [Aug. 13, 1981].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 930(e), (f) of Pub. L. 96–499 effective with respect to services furnished on or after

July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Amendment by section 931(b) of Pub. L. 96–499 effective Apr. 1, 1981, see section 931(e) of Pub. L. 96–499, set out as a note under section 1395d of this title.

Section 936(d) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section and sections 1395x and 1395y of this title] shall apply with respect to services provided on or after July 1, 1981.''

Section 941(c) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 23(c) of Pub. L. 95–142 provided that: ''The amendments made by this section [amending this section] shall apply to inpatient hospital services furnished on and after July 1, 1974.''

EFFECTIVE DATE OF 1973 AMENDMENT

Section 18(z–3)(2) of Pub. L. 93–233 provided that: ''The amendments made by subsection (k) [amending this section and section 1395y of this title] shall be effective with respect to admissions subject to the provisions of section 1814(a)(2) of the Social Security Act [subsec. (a)(2) of this section] which occur after December 31, 1972.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 211(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395u, 1395x, and 1395y of this title] shall apply to services furnished with respect to admissions occurring after December 31, 1972.''

Amendment by section 226(c)(1) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395mm of this title.

Amendment by section 227(b) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 228(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] and any regulations adopted pursuant to such amendment shall apply with respect to plans of care initiated on or after January 1, 1973, and with respect to admission to skilled nursing facilities and home health plans initiated on or after such date.''

Section 233(f) of Pub. L. 92–603 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395*l* of this title] shall apply to services furnished by hospitals, extended care facilities, and home health agencies in accounting periods beginning after December 31, 1972. The amendments made by subsections (c), (d), and (e) [amending sections 706, 709, and 1396b of this title] shall apply with respect to services furnished by hospitals in accounting periods beginning after December 31, 1972.'' See, also, section 16 of Pub. L. 93–233, set out below.

Amendment by section 234(g)(1) of Pub. L. 92–603 applicable with respect to providers of services for fiscal years beginning after fifth month following October 1972, see section 234(i) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 238(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services furnished after the second month following the month in which this Act is enacted [October 1972].''

Section 247(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall be effective with respect to services furnished after December 31, 1972.''

Section 256(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395x and 1395y of this title] shall apply with respect to admissions occurring after the second month following the month in which this Act is enacted [October 1972].''

Amendment by section 281(e) of Pub. L. 92–603 applicable in the case of services furnished (or deemed to have been furnished) after 1970, see section 281(g) of Pub. L. 92–603, set out as a note under section 1395gg of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 126(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and section 1395n of this title] shall apply with respect to services furnished after the date of the enactment of this Act [Jan. 2, 1968].''

Amendment by section 129(c)(5), (6)(A) of Pub. L. 90–248 applicable with respect to services furnished after Jan. 2, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Amendment by section 143(c) of Pub. L. 90–248 applicable with respect to services furnished with respect to admissions occurring after Dec. 31, 1967, and to outpatient hospital diagnostic services furnished after Dec. 31, 1967, and before Apr. 1, 1968, see section 143(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

STUDY OF METHODS TO COMPENSATE HOSPICES FOR HIGH-COST CARE

Section 6016 of Pub. L. 101–239 directed Secretary of Health and Human Services to conduct a study of high-cost hospice care provided to medicare beneficiaries under the medicare program, evaluate the ability of hospice programs participating in the medicare program to provide such high-cost care to such patients, develop methods to compensate such programs for providing such high-cost care, and submit, not later than Apr. 1, 1991, a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the study, including in the report any recommendations developed by the Secretary to compensate hospice programs for providing high-cost hospice care to medicare beneficiaries.

CONTINUATION OF BAD DEBT RECOGNITION FOR HOSPITAL SERVICES

Section 4008(c) of Pub. L. 100–203, as amended by Pub. L. 100–647, title VIII, § 8402, Nov. 10, 1987, 102 Stat. 3798; Pub. L. 101–239, title VI, § 6023(a), Dec. 19, 1989, 103 Stat. 2167, provided that: ''In making payments to hospitals under title XVIII of the Social Security Act [this subchapter], the Secretary of Health and Human Services shall not make any change in the policy in effect on August 1, 1987, with respect to payment under title XVIII of the Social Security Act to providers of service for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title (including criteria for what constitutes a reasonable collection effort, including criteria for indigency determination procedures, for record keeping, and for determining whether to refer a claim to an external collection agency). The Secretary may not require a hospital to change its bad debt col-

lection policy if a fiscal intermediary, in accordance with the rules in effect as of August 1, 1987, with respect to criteria for indigency determination procedures, record keeping, and determining whether to refer a claim to an external collection agency, has accepted such policy before that date, and the Secretary may not collect from the hospital on the basis of an expectation of a change in the hospital's collection policy.''

[Section 6023(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending section 4008(c) of Pub. L. 100–203, set out above] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].'']

[Pub. L. 100–647, title VIII, §8402, Nov. 10, 1988, 102 Stat. 3798, provided that amendment of section 4008(c) of Pub. L. 100–203, set out above, by section 8402 of Pub. L. 100–647 is effective as of date of enactment of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, which was approved Dec. 22, 1987.]

PROVIDERS OF SERVICES TO CALCULATE AND REPORT LESSER-OF-COST-OR-CHARGES DETERMINATIONS SEPARATELY WITH RESPECT TO PAYMENTS UNDER PARTS A AND B OF THIS SUBCHAPTER; ISSUANCE OF REGULATIONS

Section 2308(a) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services shall issue regulations which require, for purposes of title XVIII of the Social Security Act [this subchapter], that providers of services calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h) [section 1395*l*(h) of this title]), and that payment under such title be based upon such separate determinations. Such regulations shall apply to cost reporting periods beginning on or after October 1, 1984.''

DETERMINATION OF NOMINAL CHARGES FOR APPLYING NOMINALITY TEST

Section 2308(b)(1) of Pub. L. 98–369 provided that: ''For purposes of applying the nominality test under sections 1814(b)(2) [subsec. (b)(2) of this section] and 1833(a)(2)(B)(ii) [section 1395*l*(a)(2)(B)(ii) of this title] of the Social Security Act, the Secretary shall, in addition to those rules for establishing nominality which the Secretary determines to be appropriate, provide that charges representing 60 percent or less of costs shall be considered nominal. The charges used in making such determinations shall be the charges actually billed to charge-paying patients who are not entitled to benefits under either part of such title [sections 1395c et seq., 1395j et seq. of this title]. Such determination shall be made separately with respect to payments for services under part A and services under part B of such title (other than clinical diagnostic laboratory tests paid under section 1833(h)), or on the basis of inpatient and outpatient services, except that the determination need not be made separately for home health services if the Secretary finds that such separation is not appropriate.''

REVISION OF REGULATIONS REGARDING ACCESS TO HOME HEALTH SERVICES

Section 2336(c)(2) of Pub. L. 98–369 provided that: ''The Secretary shall provide, not later than 90 days after the date of the enactment of this Act [July 18, 1984], for such revision of regulations as may be required to reflect the amendments made by subsection (b) [amending this section and section 1395n of this title].''

PROMULGATION OF REGULATIONS

Section 122(h)(2) of Pub. L. 97–248 provided that: ''In order to provide for the timely implementation of the amendments made by this Act [probably means section 122 of Pub. L. 97–248, which amended this section and sections 1395c to 1395e, 1395h, and 1395x to 1395cc of this title and section 231f of Title 45, Railroads, and enacted provisions set out as notes under this section and sections 1395b–1 and 1395c of this title], the Secretary of Health and Human Services shall, not later than September 1, 1983, promulgate such final regulations as may be necessary to set forth—

''(A) a description of the care included in 'hospice care' and the standards for qualification of a 'hospice program', under section 1861(dd) of the Social Security Act [section 1395x(dd) of this title], and

''(B) the standards for payment for hospice care under part A of title XVIII of such Act [this part], pursuant to section 1814(i) of such Act [subsec. (i) of this section].''

STUDY AND REPORT RELATING TO THE REIMBURSEMENT METHOD AND BENEFIT STRUCTURE FOR HOSPICE CARE; SUPERVISION OF REPORT BY COMPTROLLER GENERAL

Section 122(j), formerly §122(i), of Pub. L. 97–248, redesignated §122(i), by Pub. L. 97–448, title III, §309(a)(6), Jan. 12, 1983, 96 Stat. 2408, provided that:

''(1) The Secretary of Health and Human Services shall conduct a study and, prior to January 1, 1986, report to the Congress on whether or not the reimbursement method and benefit structure (including copayments) for hospice care under title XVIII of the Social Security Act [this subchapter] are fair and equitable and promote the most efficient provision of hospice care. Such report shall include the feasibility and advisability of providing for prospective reimbursement for hospice care, an evaluation of the inclusion of payment for outpatient drugs, an evaluation of the need to alter the method of reimbursement for nutritional, dietary, and bereavement counseling as hospice care, and any recommendations for legislative changes in the hospice care reimbursement or benefit structure.

''(2) The Comptroller General shall monitor and evaluate the study and the preparation of the report under paragraph (1).''

WAIVER OF LIMITATIONS TO ALLOW PRE-EXISTING HOSPICES TO PARTICIPATE AS A HOSPICE PROGRAM

Section 122(k), formerly §122(j), of Pub. L. 97–248, as redesignated and amended by Pub. L. 97–448, title III, §309(a)(6), (7), Jan. 12, 1983, 96 Stat. 2408, provided that: ''The Secretary of Health and Human Services shall grant waivers of the limitations imposed by section 1814(i)(2) of the Social Security Act [subsec. (i)(2) of this section] (relating to the cap amount), section 1861(dd)(1)(G) of such Act [section 1395x(dd)(1)(G) of this title] (relating to the limitations on the frequency and number of respite care days), and section 1861(dd)(2)(A)(iii) of such Act [section 1395x(dd)(2)(A)(iii) of this title] (relating to the aggregate limit on the number of days of inpatient care), as may be necessary to allow any institution which commenced operations as a hospice prior to January 1, 1975, to participate until October 1, 1986, in a viable manner as a hospice program under title XVIII of the Social Security Act [this subchapter].''

MEDICARE PAYMENT BASIS FOR SERVICES PROVIDED BY AGENCIES AND PROVIDERS; EFFECTIVE DATE

Section 16 of Pub. L. 93–233 provided that: ''In the administration of titles V, XVIII, and XIX of the Social Security Act [subchapters V, XVIII, and XIX of this chapter], the amount payable under such title to any provider of services on account of services provided by such hospital, skilled nursing facility, or home health agency shall be determined (for any period with respect to which the amendments made by section 233 of Public Law 92–603 [this section and sections 706, 709, 1395*l*, and 1396b of this title] would, except for the provisions of this section, be applicable) in like manner as if the date contained in the first and second sentences of subsection (f) of such section 233 [set out as an Effective Date of 1972 Amendment note above] were December 31, 1973, rather than December 31, 1972.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 426, 1395d, 1395e, 1395g, 1395*l*, 1395n, 1395x, 1395y, 1395cc, 1395gg, 1395mm, 1395pp, 1395qq, 1395uu, 1395ww of this title; title 5 section 8904.

§ 1395g. Payments to providers of services

(a) Determination of amount

The Secretary shall periodically determine the amount which should be paid under this part to each provider of services with respect to the services furnished by it, and the provider of services shall be paid, at such time or times as the Secretary believes appropriate (but not less often than monthly) and prior to audit or settlement by the General Accounting Office, from the Federal Hospital Insurance Trust Fund, the amounts so determined, with necessary adjustments on account of previously made overpayments or underpayments; except that no such payments shall be made to any provider unless it has furnished such information as the Secretary may request in order to determine the amounts due such provider under this part for the period with respect to which the amounts are being paid or any prior period.

(b) Conditions

No payment shall be made to a provider of services which is a hospital for or with respect to services furnished by it for any period with respect to which it is deemed, under section 1395x(w)(2) of this title, to have in effect an arrangement with a quality control and peer review organization for the conduct of utilization review activities by such organization unless such hospital has paid to such organization the amount due (as determined pursuant to such section) to such organization for the review activities conducted by it pursuant to such arrangements or such hospital has provided assurances satisfactory to the Secretary that such organization will promptly be paid the amount so due to it from the proceeds of the payment claimed by the hospital. Payment under this subchapter for utilization review activities provided by a quality control and peer review organization pursuant to an arrangement or deemed arrangement with a hospital under section 1395x(w)(2) of this title shall be calculated without any requirement that the reasonable cost of such activities be apportioned among the patients of such hospital, if any, to whom such activities were not applicable.

(c) Payments under assignment or power of attorney

No payment which may be made to a provider of services under this subchapter for any service furnished to an individual shall be made to any other person under an assignment or power of attorney; but nothing in this subsection shall be construed (1) to prevent the making of such a payment in accordance with an assignment from the provider if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (2) to preclude an agent of the provider of services from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such provider under this subchapter is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.

(d) Accrual of interest on balance of excess or deficit not paid

Whenever a final determination is made that the amount of payment made under this part to a provider of services was in excess of or less than the amount of payment that is due, and payment of such excess or deficit is not made (or effected by offset) within 30 days of the date of the determination, interest shall accrue on the balance of such excess or deficit not paid or offset (to the extent that the balance is owed by or owing to the provider) at a rate determined in accordance with the regulations of the Secretary of the Treasury applicable to charges for late payments.

(e) Periodic interim payments

(1) The Secretary shall provide payment under this part for inpatient hospital services furnished by a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title, and including a distinct psychiatric or rehabilitation unit of such a hospital) and a subsection (d) Puerto Rico hospital (as defined in section 1395ww(d)(9)(A) of this title) on a periodic interim payment basis (rather than on the basis of bills actually submitted) in the following cases:

(A) Upon the request of a hospital which is paid through an agency or organization with an agreement with the Secretary under section 1395h of this title, if the agency or organization, for three consecutive calendar months, fails to meet the requirements of subsection (c)(2) of such section and if the hospital meets the requirements (in effect as of October 1, 1986) applicable to payment on such a basis, until such time as the agency or organization meets such requirements for three consecutive calendar months.

(B) In the case of[1] hospital that—

(i) has a disproportionate share adjustment percentage (as established in clause (iv) of such section) of at least 5.1 percent (as computed for purposes of establishing the average standardized amounts for discharges occurring during fiscal year 1987), and

(ii) requests payment on such basis,

but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

(C) In the case of a hospital that—

(i) is located in a rural area,

(ii) has 100 or fewer beds, and

(iii) requests payment on such basis,

but only if the hospital was being paid for inpatient hospital services on such a periodic interim payment basis as of June 30, 1987, and

[1] So in original. Probably should be followed by ''a''.

continues to meet the requirements (in effect as of October 1, 1986) applicable to payment on such a basis.

(2) The Secretary shall provide (or continue to provide) for payment on a periodic interim payment basis (under the standards established under section 405.454(j) of title 42, Code of Federal Regulations, as in effect on October 1, 1986) with respect to—

(A) inpatient hospital services of a hospital that is not a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title);

(B) a hospital which is receiving payment under a State hospital reimbursement system under section 1395f(b)(3) or 1395ww(c) of this title, if payment on a periodic interim payment basis is an integral part of such reimbursement system;

(C) extended care services;

(D) home health services; and

(E) hospice care;

if the provider of such services elects to receive, and qualifies for, such payments.

(3) In the case of a subsection (d) hospital or a subsection (d) Puerto Rico hospital (as defined for purposes of section 1395ww of this title) which has significant cash flow problems resulting from operations of its intermediary or from unusual circumstances of the hospital's operation, the Secretary may make available appropriate accelerated payments.

(4) A hospital created by the merger or consolidation of 2 or more hospitals or hospital campuses shall be eligible to receive periodic interim payment on the basis described in paragraph (1)(B) if—

(A) at least one of the hospitals or campuses received periodic interim payment on such basis prior to the merger or consolidation; and

(B) the merging or consolidating hospitals or campuses would each meet the requirement of paragraph (1)(B)(i) if such hospitals or campuses were treated as independent hospitals for purposes of this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, § 1815, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 297; amended Dec. 31, 1975, Pub. L. 94–182, title I, § 112(a)(2), 89 Stat. 1055; Oct. 25, 1977, Pub. L. 95–142, § 2(a)(2), 91 Stat. 1175; Oct. 19, 1980, Pub. L. 96–473, § 6(i), 94 Stat. 2266; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 117(a)(1), 148(b), 96 Stat. 354, 394; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9311(a)(1), 100 Stat. 1996; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6021(a), 103 Stat. 2166.)

AMENDMENTS

1989—Subsec. (e)(4). Pub. L. 101–239 added par. (4).

1986—Subsec. (e). Pub. L. 99–509 added subsec. (e).

1982—Subsec. (b). Pub. L. 97–248, § 148(b), substituted ''quality control and peer review organization'' for ''Professional Standards Review Organization'' wherever appearing.

Subsec. (d). Pub. L. 97–248, § 117(a)(1), added subsec. (d).

1980—Subsec. (c). Pub. L. 96–473 substituted ''for or in connection with'' for ''for on in connection with''.

1977—Subsec. (c). Pub. L. 95–142 added subsec. (c).

1975—Pub. L. 94–182 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6021(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payments made for discharges occurring on or after the expiration of the 30-day period that begins on the date of the enactment of this Act [Dec. 19, 1989], regardless of the date of the merger or consolidation involved.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9311(a)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to claims received on or after July 1, 1987.''

EFFECTIVE DATE OF 1982 AMENDMENT

Section 117(b) of Pub. L. 97–248 provided that: ''The amendments made by subsection (a) [amending this section and section 1395*l* of this title] apply to final determinations made on or after the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 148(b) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 2(a)(4) of Pub. L. 95–142 provided that: ''The amendments made by this subsection [amending this section and sections 1395u and 1396a of this title] shall apply with respect to care and services furnished on or after the date of the enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94–182 effective with respect to utilization review activities conducted on and after the first day of the first month which begins more than 30 days after Dec. 31, 1975, see section 112(d) of Pub. L. 94–182, set out as a note under section 1395x of this title.

TRANSITION

Section 9311(a)(3) of Pub. L. 99–509 provided that: ''Upon the request of a hospital which—

''(A) as of June 30, 1987, is receiving payments under part A of title XVIII of such Act [this part] for inpatient hospital services on a periodic interim payment basis,

''(B) requests continuation of payment on such basis, and

''(C) is paid through an agency or organization with an agreement under section 1816 of such Act [section 1395h of this title],

the Secretary of Health and Human Services shall continue payment on such a basis until not earlier than the end of the first period of three consecutive calendar months (beginning no earlier than April 1987) during all of which the agency or organization has met the requirements of section 1816(c)(2) of such Act (relating to prompt payment of claims).''

DELAY IN PERIODIC INTERIM PAYMENTS

Section 120 of Pub. L. 97–248 provided that: ''Notwithstanding section 1815(a) of the Social Security Act [subsec. (a) of this section], in the case of a hospital which is paid periodic interim payments under such section, the Secretary of Health and Human Services shall provide that—

''(1) with respect to the last 21 days for which such payments would otherwise be made during fiscal year 1983, such payments shall be deferred until fiscal year 1984; and

''(2) with respect to the last 21 days for which such payments would otherwise be made during fiscal year 1984, such payments shall be deferred until fiscal year 1985.''

Pub. L. 96–499, title IX, § 959, Dec. 5, 1980, 94 Stat. 2650, provided for deferral of interim payments to be made during last twenty-one days of fiscal year 1981 until fiscal year 1982, prior to repeal by Pub. L. 97–35, title XXI, § 2155, Aug. 13, 1981, 95 Stat. 802.

§ 1395h. Use of public or private agencies or organizations to facilitate payment to providers of services

(a) Authorization for agreement by Secretary for implementation; scope of agreement

If any group or association of providers of services wishes to have payments under this part to such providers made through a national, State, or other public or private agency or organization and nominates such agency or organization for this purpose, the Secretary is authorized to enter into an agreement with such agency or organization providing for the determination by such agency or organization (subject to the provisions of section 1395*oo* of this title and to such review by the Secretary as may be provided for by the agreement) of the amount of the payments required pursuant to this part to be made to such providers (and to providers assigned to such agency or organization under subsection (e) of this section), and for the making of such payments by such agency or organization to such providers (and to providers assigned to such agency or organization under subsection (e) of this section). Such agreement may also include provision for the agency or organization to do all or any part of the following: (1) to provide consultative services to institutions or agencies to enable them to establish and maintain fiscal records necessary for purposes of this part and otherwise to qualify as hospitals, extended care facilities, or home health agencies, and (2) with respect to the providers of services which are to receive payments through it (A) to serve as a center for, and communicate to providers, any information or instructions furnished to it by the Secretary, and serve as a channel of communication from providers to the Secretary; (B) to make such audits of the records of providers as may be necessary to insure that proper payments are made under this part; and (C) to perform such other functions as are necessary to carry out this subsection. As used in this subchapter and part B of subchapter XI of this chapter, the term ''fiscal intermediary'' means an agency or organization with a contract under this section.

(b) Prerequisites for agreement or renewal of agreement by Secretary

The Secretary shall not enter into or renew an agreement with any agency or organization under this section unless—

(1) he finds—

(A) after applying the standards, criteria, and procedures developed under subsection (f) of this section, that to do so is consistent with the effective and efficient administration of this part, and

(B) that such agency or organization is willing and able to assist the providers to which payments are made through it under this part in the application of safeguards against unnecessary utilization of services furnished by them to individuals entitled to hospital insurance benefits under section 426 of this title, and the agreement provides for such assistance; and

(2) such agency or organization agrees—

(A) to furnish to the Secretary such of the information acquired by it in carrying out its agreement under this section, and

(B) to provide the Secretary with access to all such data, information, and claims processing operations,

as the Secretary may find necessary in performing his functions under this part.

(c) Terms and conditions of agreements; prompt payment of claims

(1) An agreement with any agency or organization under this section may contain such terms and conditions as the Secretary finds necessary or appropriate, may provide for advances of funds to the agency or organization for the making of payments by it under subsection (a) of this section, and shall provide for payment of so much of the cost of administration of the agency or organization as is determined by the Secretary to be necessary and proper for carrying out the functions covered by the agreement. The Secretary shall provide that in determining the necessary and proper cost of administration, the Secretary shall, with respect to each agreement, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated agency or organization in carrying out the terms of its agreement. The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for fiscal intermediaries under this section for that fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used. The Secretary may not require, as a condition of entering into or renewing an agreement under this section or under section 1395hh of this title, that a fiscal intermediary match data obtained other than in its activities under this part with data used in the administration of this part for purposes of identifying situations in which the provisions of section 1395y(b) of this title may apply.

(2)(A) Each agreement under this section shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this subchapter—

(i) which are clean claims, and

(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph:

(i) The term ''clean claim'' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this subchapter.

(ii) The term ''applicable number of calendar days'' means—

(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days,

(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days, and [1]

(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period ending on or before September 30, 1993, 24 calendar days.[2]

(V) with respect to claims received in the 12-month period beginning October 1, 1993, and claims received in any succeeding 12-month period, 30 calendar days.

(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received from a hospital, rural primary care hospital, skilled nursing facility, home health agency, hospice program, comprehensive outpatient rehabilitation facility, or rehabilitation agency that is not receiving payments on a periodic interim payment basis with respect to such services, interest shall be paid at the rate used for purposes of section 3902(a) of title 31 (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.

(3)(A) Each agreement under this section shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this subchapter within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph, the term ''applicable number of calendar days'' means—

(i) with respect to claims submitted electronically as prescribed by the Secretary, 13 days, and

(ii) with respect to claims submitted otherwise, 26 days.

(d) Nomination of agency or organization; withdrawal

If the nomination of an agency or organization as provided in this section is made by a group or association of providers of services, it shall not be binding on members of the group or association which notify the Secretary of their election to that effect. Any provider may, upon such notice as may be specified in the agreement under this section with an agency or organization, withdraw its nomination to receive payments through such agency or organization. Any provider which has withdrawn its nomination, and any provider which has not made a nomination, may elect to receive payments from any agency or organization which has entered into an agreement with the Secretary under this section if the Secretary and such agency or organization agree to it.

(e) Assignment or reassignment of provider of services; designation of agency or organization to perform provider services and home health agency functions

(1) Notwithstanding subsections (a) and (d) of this section, the Secretary, after taking into consideration any preferences of providers of services, may assign or reassign any provider of services to any agency or organization which has entered into an agreement with him under this section, if he determines, after applying the standards, criteria, and procedures developed under subsection (f) of this section, that such assignment or reassignment would result in the more effective and efficient administration of this part.

(2) Notwithstanding subsections (a) and (d) of this section, the Secretary may (subject to the provisions of paragraph (4)) designate a national or regional agency or organization which has entered into an agreement with him under this section to perform functions under the agreement with respect to a class of providers of services in the Nation or region (as the case may be), if he determines, after applying the standards, criteria, and procedures developed under subsection (f) of this section, that such designation would result in more effective and efficient administration of this part.

(3)(A) Before the Secretary makes an assignment or reassignment under paragraph (1) of a provider of services to other than the agency or organization nominated by the provider, he shall furnish (i) the provider and such agency or organization with a full explanation of the reasons for his determination as to the efficiency and effectiveness of the agency or organization to perform the functions required under this part with respect to the provider, and (ii) such agency or organization with opportunity for a hearing, and such determination shall be subject to judicial review in accordance with chapter 7 of title 5.

(B) Before the Secretary makes a designation under paragraph (2) with respect to a class of providers of services, he shall furnish (i) such providers and the agencies and organizations adversely affected by such designation with a full explanation of the reasons for his determination as to the efficiency and effectiveness of such agencies and organizations to perform the functions required under this part with respect to such providers, and (ii) the agencies and organizations adversely affected by such designation with opportunity for a hearing, and such determination shall be subject to judicial review in accordance with chapter 7 of title 5.

(4) Notwithstanding subsections (a) and (d) of this section and paragraphs (1), (2), and (3) of this subsection, the Secretary shall designate regional agencies or organizations which have entered into an agreement with him under this section to perform functions under such agreement with respect to home health agencies (as defined in section 1395x(*o*) of this title) in the region, except that in assigning such agencies to such designated regional agencies or organizations the Secretary shall assign a home health agency which is a subdivision of a hospital (and such agency and hospital are affiliated or under common control) only if, after applying such

[1] So in original. The word ''and'' probably should not appear.

[2] So in original. The period probably should be '', and''.

criteria relating to administrative efficiency and effectiveness as he shall promulgate, he determines that such assignment would result in the more effective and efficient administration of this subchapter. By not later than July 1, 1987, the Secretary shall limit the number of such regional agencies or organizations to not more than ten.

(5) Notwithstanding any other provision of this subchapter, the Secretary shall designate the agency or organization which has entered into an agreement under this section to perform functions under such an agreement with respect to each hospice program, except that with respect to a hospice program which is a subdivision of a provider of services (and such hospice program and provider of services are under common control) due regard shall be given to the agency or organization which performs the functions under this section for the provider of services.

(f) Development of standards, criteria, and procedures by Secretary for evaluation of agency or organization performance

(1) In order to determine whether the Secretary should enter into, renew, or terminate an agreement under this section with an agency or organization, whether the Secretary should assign or reassign a provider of services to an agency or organization, and whether the Secretary should designate an agency or organization to perform services with respect to a class of providers of services, the Secretary shall develop standards, criteria, and procedures to evaluate such agency's or organization's (A) overall performance of claims processing (including the agency's or organization's success in recovering payments made under this subchapter for services for which payment has been or could be made under a primary plan (as defined in section 1395y(b)(2)(A) of this title)) and other related functions required to be performed by such an agency or organization under an agreement entered into under this section, and (B) performance of such functions with respect to specific providers of services, and the Secretary shall establish standards and criteria with respect to the efficient and effective administration of this part. No agency or organization shall be found under such standards and criteria not to be efficient or effective or to be less efficient or effective solely on the ground that the agency or organization serves only providers located in a single State.

(2) The standards and criteria established under paragraph (1) shall include—

(A) with respect to claims for services furnished under this part by any provider of services other than a hospital—

(i) whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days, and

(ii) the extent to which such agency's or organization's determinations are reversed on appeal; and

(B) with respect to applications for an exemption from or exception or adjustment to the target amount applicable under section 1395ww(b) of this title to a hospital that is not a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title)—

(i) if such agency or organization receives a completed application, whether such agency or organization is able to process such application not later than 75 days after the application is filed, and

(ii) if such agency or organization receives an incomplete application, whether such agency or organization is able to return the application with instructions on how to complete the application not later than 60 days after the application is filed.

(g) Termination of agreement; procedures applicable

An agreement with the Secretary under this section may be terminated—

(1) by the agency or organization which entered into such agreement at such time and upon such notice to the Secretary, to the public, and to the providers as may be provided in regulations, or

(2) by the Secretary at such time and upon such notice to the agency or organization, to the providers which have nominated it for purposes of this section, and to the public, as may be provided in regulations, but only if he finds, after applying the standards, criteria, and procedures developed under subsection (f) of this section and after reasonable notice and opportunity for hearing to the agency or organization, that (A) the agency or organization has failed substantially to carry out the agreement, or (B) the continuation of some or all of the functions provided for in the agreement with the agency or organization is disadvantageous or is inconsistent with the efficient administration of this part.

(h) Bonding requirement under agreement for officers and employees of agency or organization

An agreement with an agency or organization under this section may require any of its officers or employees certifying payments or disbursing funds pursuant to the agreement, or otherwise participating in carrying out the agreement, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

(i) Liability of certifying and disbursing officers designated under agreement for negligent, etc., payments

(1) No individual designated pursuant to an agreement under this section as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payments certified by him under this section.

(2) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by a certifying officer designated as provided in paragraph (1) of this subsection.

(3) No such agency or organization shall be liable to the United States for any payments referred to in paragraph (1) or (2).

(j) Denial of claim; notification and reconsideration

An agreement with an agency or organization under this section shall require that, with respect to a claim for home health services, extended care services, or post-hospital extended care services submitted by a provider to such agency or organization that is denied, such agency or organization—

(1) furnish the provider and the individual with respect to whom the claim is made with a written explanation of the denial and of the statutory or regulatory basis for the denial; and

(2) in the case of a request for reconsideration of a denial, promptly notify such individual and the provider of the disposition of such reconsideration.

(k) Annual reporting requirement on erroneous payment recovery

An agreement with an agency or organization under this section shall require that such agency or organization submit an annual report to the Secretary describing the steps taken to recover payments made for items or services for which payment has been or could be made under a primary plan (as defined in section 1395y(b)(2)(A) of this title).

(Aug. 14, 1935, ch. 531, title XVIII, §1816, as added July 30, 1965, Pub. L. 89–97, title I, §102(a), 79 Stat. 297; amended Oct. 30, 1972, Pub. L. 92–603, title II, §243(b), 86 Stat. 1422; Oct. 25, 1977, Pub. L. 95–142, §14(a), 91 Stat. 1198; Dec. 5, 1980, Pub. L. 96–499, title IX, §930(*o*), 94 Stat. 2632; Sept. 3, 1982, Pub. L. 97–248, title I, §122(c)(3), 96 Stat. 359; July 18, 1984, Pub. L. 98–369, div. B, title III, §2326(b), (c)(1), (d)(1), 98 Stat. 1087; Oct. 21, 1986, Pub. L. 99–509, title IX, §§9311(b), 9352(a)(2), 100 Stat. 1997, 2044; Dec. 22, 1987, Pub. L. 100–203, title IV, §§4031(a)(1), 4032(a), (b), 4035(a)(1), 4085(d)(1), 101 Stat. 1330–75 to 1330–78, 1330–130; July 1, 1988, Pub. L. 100–360, title II, §203(f), title IV, §411(e)(1)(B), 102 Stat. 725, 775; Dec. 13, 1989, Pub. L. 101–234, title II, §201(a), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, §§6003(g)(3)(D)(vi), 6202(d)(1), 103 Stat. 2153, 2234; Nov. 5, 1990, Pub. L. 101–508, title IV, §4005(c)(1)(A), 104 Stat. 1388–41; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13568(a), (b), 107 Stat. 608; Oct. 31, 1994, Pub. L. 103–432, title I, §§110(d)(2), 151(b)(1)(A), (2)(A), 108 Stat. 4408, 4433, 4434.)

REFERENCES IN TEXT

Part B of subchapter XI of this chapter, referred to in subsec. (a), is classified to section 1320c et seq. of this title.

AMENDMENTS

1994—Subsec. (f)(1)(A). Pub. L. 103–432, §151(b)(2)(A), inserted ''(including the agency's or organization's success in recovering payments made under this subchapter for services for which payment has been or could be made under a primary plan (as defined in section 1395y(b)(2)(A) of this title))'' after ''processing''.

Subsec. (f)(2)(A)(ii). Pub. L. 103–432, §110(d)(2), substituted ''such agency's'' for ''such agency''.

Subsec. (k). Pub. L. 103–432, §151(b)(1)(A), added subsec. (k).

1993—Subsec. (c)(2)(B)(ii)(IV), (V). Pub. L. 103–66, §13568(b), substituted ''period ending on or before September 30, 1993'' for ''period'' in subcl. (IV) and added subcl. (V).

Subsec. (c)(3)(B). Pub. L. 103–66, §13568(a), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days, and

''(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 14 days.''

1990—Subsec. (f). Pub. L. 101–508 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, struck out ''Such standards and criteria'' and all that follows, which was executed by striking out ''Such standards and criteria shall be published in the Federal Register, and opportunity shall be provided for public comment prior to implementation. Such standards and criteria shall include with respect to claims for services furnished under this part by any provider of services other than a hospital whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of the fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days and the extent to which its determinations are reversed on appeal.'', and added par. (2).

1989—Subsec. (c)(1). Pub. L. 101–239, §6202(d)(1), inserted at end ''The Secretary may not require, as a condition of entering into or renewing an agreement under this section or under section 1395hh of this title, that a fiscal intermediary match data obtained other than in its activities under this part with data used in the administration of this part for purposes of identifying situations in which the provisions of section 1395y(b) of this title may apply.''

Subsec. (c)(2)(C). Pub. L. 101–239, §6003(g)(3)(D)(vi), inserted ''rural primary care hospital,'' after ''hospital,''.

Subsec. (k). Pub. L. 101–234 repealed Pub. L. 100–360, §203(f), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (j)(2). Pub. L. 100–360, §411(e)(1)(B), inserted ''in the case of a request for reconsideration of a denial,'' and substituted ''the disposition'' for ''disposition''.

Subsec. (k). Pub. L. 100–360, §203(f), added subsec. (k) relating to use of regional intermediaries in administration of benefits.

1987—Subsec. (c)(1). Pub. L. 100–203, §4035(a)(1), inserted at end ''The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for fiscal intermediaries under this section for that fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.''

Subsec. (c)(2)(C). Pub. L. 100–203, §4085(d)(1), substituted ''hospice program, comprehensive outpatient rehabilitation facility, or rehabilitation agency'' for ''or hospice program''.

Subsec. (c)(3). Pub. L. 100–203, §4031(a)(1), added par. (3).

Subsec. (f). Pub. L. 100–203, §4023(b), inserted at end ''Such standards and criteria shall include with respect to claims for services furnished under this part by any provider of services other than a hospital whether such agency or organization is able to process 75 percent of reconsiderations within 60 days (except in the case of the fiscal year 1989, 66 percent of reconsiderations) and 90 percent of reconsiderations within 90 days and the extent to which its determinations are reversed on appeal.''

Subsec. (j). Pub. L. 100–203, §4032(a), added subsec. (j).

1986—Subsec. (a). Pub. L. 99–509, §9352(a)(2), inserted at end ''As used in this subchapter and part B of subchapter XI of this chapter, the term 'fiscal intermediary' means an agency or organization with a contract under this section.''

Subsec. (c). Pub. L. 99–509, § 9311(b), designated existing provisions as par. (1) and added par. (2).

1984—Subsec. (c). Pub. L. 98–369, § 2326(d)(1), inserted provision that the Secretary, in determining the necessary and proper cost of administration with respect to each agreement, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated agency or organization in carrying out the terms of its agreement.

Subsec. (e)(4). Pub. L. 98–369, § 2326(b), inserted provision that not later than July 1, 1987, the Secretary limit the number of regional agencies or organizations to not more than ten.

Subsec. (f). Pub. L. 98–369, § 2326(c)(1), struck out in cl. (2) '', by regulation,'' after ''Secretary shall establish'' and inserted provision that the standards and criteria be published in the Federal Register and an opportunity be provided for public comment prior to implementation.

1982—Subsec. (e)(5). Pub. L. 97–248 added par. (5).

1980—Subsec. (e)(2). Pub. L. 96–499, § 930(*o*)(1), inserted ''(subject to the provisions of paragraph (4))''.

Subsec. (e)(4). Pub. L. 96–499, § 930(*o*)(2), added par. (4).

1977—Subsec. (a). Pub. L. 95–142, § 14(a)(1), inserted provisions relating to applicability to providers assigned to the agency or organization under subsec. (e) of this section.

Subsec. (b). Pub. L. 95–142, § 14(a)(2), substituted provisions setting forth criteria for agreements by the Secretary or renewal of such agreements with agencies or organizations, for provisions setting forth criteria for agreements by the Secretary with agencies or organizations.

Subsecs. (e), (f). Pub. L. 95–142, § 14(a)(4), (5), added subsecs. (e) and (f). Former subsecs. (e) and (f) redesignated (g) and (h), respectively.

Subsec. (g). Pub. L. 95–142, § 14(a)(3), (4), redesignated former subsec. (e) as (g) and inserted provisions relating to applicability of standards, etc., developed under subsec. (f) of this section. Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 95–142, § 14(a)(4), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

1972—Subsec. (a). Pub. L. 92–603 inserted reference to provisions of section 1395*oo* of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 151(b)(4) of Pub. L. 103–432 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1395u of this title] shall apply to contracts with fiscal intermediaries and carriers under title XVIII of the Social Security Act [this subchapter] for contract years beginning with 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13568(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall apply to claims received on or after October 1, 1993.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6202(d)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1395u of this title] shall apply to agreements and contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 203(f) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(e)(1)(B) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4031(a)(3)(A) of Pub. L. 100–203 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1395u of this title] shall apply to claims received on or after July 1, 1988.''

Section 4032(c)(1) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(e)(1)(C), July 1, 1988, 102 Stat. 775, provided that:

''(A) The amendment made by subsection (a) [amending this section] shall apply with respect to claims received on or after January 1, 1988.

''(B) The amendment made by subsection (b) [amending this section] shall apply with respect to reconsiderations requested on or after October 1, 1988.''

Section 4035(a)(3) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1395u and 1395hh of this title] shall take effect on the date of the enactment of this Act [Dec. 22, 1987] and shall apply to budgets for fiscal years beginning with fiscal year 1989.''

Section 4085(d)(2) of Pub. L. 100–203 provided that:

''(A) The amendment made by paragraph (1) [amending this section] shall apply to claims received on or after the date of enactment of this Act [Dec. 22, 1987].

''(B) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 [this section], and regulations, to such extent as may be necessary to implement the amendment made by paragraph (1).''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9311(d) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsections (b) and (c) [amending this section and section 1395u of this title] shall apply to claims received on or after November 1, 1986.

''(2) Sections 1816(c)(2)(C)) [sic] and 1842(c)(2)(C) of the Social Security Act [subsec. (c)(2)(C) of this section and section 1395u(c)(2)(C) of this title], as added by such amendments, shall apply to claims received on or after April 1, 1987.

''(3) The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act [this section] and contracts under section 1842 of such Act [section 1395u of this title], and regulations, to such extent as may be necessary to implement the provisions of this Act on a timely basis.''

Amendment by section 9352(a)(2) of Pub. L. 99–509 to be implemented by Secretary of Health and Human Services not later than 6 months after Oct. 21, 1986, see section 9352(c)(1) of Pub. L. 99–509, set out as a note under section 1320c–2 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2326(d)(3) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [amending this section and section 1395u of this title] shall apply to agreements and contracts entered into or renewed after September 30, 1984.''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–499 effective Dec. 5, 1980, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 14(c), (d) of Pub. L. 95–142 provided that:

''(c) The amendment made by paragraphs (2) and (3) of subsection (a) [amending this section] to the extent that they require application of standards, criteria, and procedures developed under section 1816(f) of the Social Security Act [subsec. (f) of this section] shall apply to the entering into, renewal, or termination of agreements on and after October 1, 1978.

''(d) Except as provided in subsection (c), the amendment made by subsection (a)(2) [amending this section] shall apply to agreements entered into or renewed on or after the date of enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to cost reports of providers of services for accounting periods ending on or after June 30, 1973, see section 243(c) of Pub. L. 92–603, set out as an Effective Date note under section 1395*oo* of this title.

ADVISORY COMMITTEE ON MEDICARE HOME HEALTH CLAIMS

Section 427 of Pub. L. 100–360, which provided that the Administrator of the Health Care Financing Administration was to establish an advisory committee to be known as the Advisory Committee on Medicare Home Health Claims to study the reasons for the increase in the denial of claims for home health services during 1986 and 1987, the ramifications of such increase, and the need to reform the process involved in such denials, was repealed by Pub. L. 101–234, title III, §301(a), Dec. 13, 1989, 103 Stat. 1985.

AMENDMENTS TO AGREEMENTS AND CONTRACTS NECESSARY TO IMPLEMENT SECTION 4031(a) OF PUB. L. 100–203

Section 4031(a)(3)(B) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 of the Social Security Act [this section] and contracts under section 1842 of such Act [section 1395u of this title], and regulations, to such extent as may be necessary to implement the provisions of this subsection [amending this section and section 1395u of this title] on a timely basis.''

PROHIBITION OF POLICIES OTHER THAN AS PROVIDED BY SECTION 4031 OF PUB. L. 100–203 INTENDED TO SLOW DOWN MEDICARE PAYMENTS; BUDGET CONSIDERATIONS

Section 4031(b), (c) of Pub. L. 100–203 provided that:

''(b) PROHIBITION OF OTHER POLICIES INTENDED TO SLOW DOWN MEDICARE PAYMENTS.—Notwithstanding any other provision of law, except as specifically provided in this section [amending this section and section 1395u of this title and enacting provisions set out as notes under this section], the Secretary of Health and Human Services is not authorized to issue, after the date of the enactment of this Act [Dec. 22, 1987], and before October 1, 1990, any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under title XVIII of the Social Security Act [this subchapter].

''(c) BUDGET CONSIDERATIONS.—For purposes of section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 [2 U.S.C. 909], this section is a necessary (but secondary) result of a significant policy change.''

AMENDMENTS TO AGREEMENTS AND CONTRACTS NECESSARY TO IMPLEMENT SECTION 4032(a), (b) OF PUB. L. 100–203

Section 4032(c)(2) provided that: ''The Secretary of Health and Human Services shall provide for such timely amendments to agreements under section 1816 [this section] and contracts under section 1842 of the Social Security Act [section 1395u of this title], and regulations, to such extent as may be necessary to implement the amendments made by subsections (a) and (b) [amending this section] on a timely basis.''

REPLACEMENT OF AGENCY, ORGANIZATION, OR CARRIER PROCESSING MEDICARE CLAIMS; NUMBER OF AGREEMENTS AND CONTRACTS AUTHORIZED FOR FISCAL YEARS 1985 THROUGH 1993

Section 2326(a) of Pub. L. 98–369, as amended by Pub. L. 98–617, §3(a)(2), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99–509, title IX, §9321(b), Oct. 21, 1986, 100 Stat. 2016; Pub. L. 101–239, title VI, §6215(a), Dec. 19, 1989, 103 Stat. 2252; Pub. L. 103–432, title I, §159(a), Oct. 31, 1994, 108 Stat. 4443, provided that: ''During each fiscal year (beginning with fiscal year 1985 and ending with fiscal year 1993), the Secretary of Health and Human Services may enter into not more than two agreements under section 1816 of the Social Security Act [this section], and not more than two contracts under section 1842 of such Act [section 1395u of this title], on the basis of competitive bidding, without regard to the nominating process under section 1816(a) of such Act or cost reimbursement provisions under sections 1816(c) or 1842(c) of such Act during the term of the agreement. Such procedure may be used only for the purpose of replacing an agency or organization or carrier which over a 2-year period of time has been in the lowest 20th percentile of agencies and organizations or carriers having agreements or contracts under the respective section, as measured by the Secretary's cost and performance criteria. In addition, beginning with fiscal year 1990 and any subsequent fiscal year the Secretary may enter into such additional agreements and contracts without regard to such cost reimbursement provisions if the fiscal intermediary or carrier involved and the Secretary agree to waive such provisions, but the Secretary may not take any action that has the effect of requiring that the intermediary or carrier agree to waive such provisions, including requiring such a waiver as a condition for entering into or renewing such an agreement or contract. Any agency or organization or carrier selected on the basis of competitive bidding must perform all of the duties listed in section 1816(a) of such Act, or the duties listed in paragraphs (1) through (4) of section 1842(a) of such Act, as the case may be, and must be a health insuring organization (as determined by the Secretary).''

[Section 159(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending section 2326(a) of Pub. L. 98–369, set out above] shall apply beginning with fiscal year 1994.'']

[Section 6215(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending section 2326(a) of Pub. L. 98–369, set out above] shall apply beginning with fiscal year 1990.'']

AUDIT AND MEDICAL CLAIMS REVIEW

Section 118 of Pub. L. 97–248, as amended by Pub. L. 99–272, title IX, §9216(a), Apr. 7, 1986, 100 Stat. 180, provided that: ''In addition to any funds otherwise provided for payments to intermediaries and carriers under agreements entered into under sections 1816 and 1842 of the Social Security Act [this section and section 1395u of this title], there are transferred from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Fund in such proportions as the Secretary of Health and Human Services determines to be appropriate, an additional $45,000,000 for each of fiscal years 1983, 1984, and 1985, and $105,000,000 for each of fiscal years 1986, 1987, and 1988 for payments to such intermediaries and carriers under such agreements to be used exclusively for purposes of carrying out provider cost audits, of reviewing medical necessity, and of recovering third-party liability payments, consistent with the provisions of sections 1816 and 1842 of the Social Security Act.''

[Section 9216(b) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending section

118 of Pub. L. 97–248, set out above] shall apply to fiscal years beginning with fiscal year 1986.'']

DEVELOPMENTAL DATE FOR STANDARDS, CRITERIA, AND PROCEDURES PURSUANT TO SUBSEC. (f) OF THIS SECTION

Section 14(b) of Pub. L. 95–142 directed the Secretary of Health, Education, and Welfare to develop the standards, criteria, and procedures described in subsection (f) of section 1816 of the Social Security Act [subsec. (f) of this section] (as added by subsection (a)(5)) not later than Oct. 1, 1978.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a–3, 1320c–2, 1320c–3, 1395g, 1395u, 1395hh, 1395mm, 1395*oo*, 1395pp of this title.

§ 1395i. Federal Hospital Insurance Trust Fund

(a) Creation; deposits; transfers from Treasury

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ''Federal Hospital Insurance Trust Fund'' (hereinafter in this section referred to as the ''Trust Fund''). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and such amounts as may be deposited in, or appropriated to, such fund as provided in this part. There are hereby appropriated to the Trust Fund for the fiscal year ending June 30, 1966, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1986 with respect to wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages, which wages shall be certified by the Commissioner of Social Security on the basis of records of wages established and maintained by the Commissioner of Social Security in accordance with such reports; and

(2) the taxes imposed by section 1401(b) of the Internal Revenue Code of 1986 with respect to self-employment income reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income, which self-employment income shall be certified by the Commissioner of Social Security on the basis of records of self-employment established and maintained by the Commissioner of Social Security in accordance with such returns.

The amounts appropriated by the preceding sentence shall be transferred from time to time from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such sentence.

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the ''Board of Trustees'') composed of the Commissioner of Social Security, the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the ''Managing Trustee''). The Administrator of the Health Care Financing Administration shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years;

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be per-

sonally liable for actions taken in such capacity with respect to the Trust Fund.

(c) Investment of Trust Fund by Managing Trustee

It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Authority of Managing Trustee to sell obligations

Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) Interest on and proceeds from sale or redemption of obligations

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f) Payment of estimated taxes

(1) The Managing Trustee is directed to pay from time to time from the Trust Fund into the Treasury the amount estimated by him as taxes imposed under section 3101(b) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1986 with respect to wages paid after December 31, 1965. Such taxes shall be determined on the basis of the records of wages established and maintained by the Commissioner of Social Security in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1986, and the Commissioner of Social Security shall furnish the Managing Trustee such information as may be required by the Managing Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections.

(2) Repayments made under paragraph (1) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(g) Transfers from other Funds

There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1395gg(b) of this title. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1395gg(b) of this title.

(h) Payments from Trust Fund amounts certified by Secretary

The Managing Trustee shall also pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 401(g)(1) of this title.

(i) Payment of travel expenses for travel within United States; reconsideration interviews and proceedings before administrative law judges

There are authorized to be made available for expenditure out of the Trust Fund such amounts as are required to pay travel expenses, either on an actual cost or commuted basis, to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 410(i) of this title) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this subchapter. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Secretary) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of

travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations. The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.

(j) Loans from other Funds; interest; repayment; report to Congress

(1) If at any time prior to January 1988 the Managing Trustee determines that borrowing authorized under this subsection is appropriate in order to best meet the need for financing the benefit payments from the Federal Hospital Insurance Trust Fund, the Managing Trustee may, subject to paragraph (5), borrow such amounts as he determines to be appropriate from either the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund for transfer to and deposit in the Federal Hospital Insurance Trust Fund.

(2) In any case where a loan has been made to the Federal Hospital Insurance Trust Fund under paragraph (1), there shall be transferred on the last day of each month after such loan is made, from such Trust Fund to the lending Trust Fund, the total interest accrued to such day with respect to the unrepaid balance of such loan at a rate equal to the rate which the lending Trust Fund would earn on the amount involved if the loan were an investment under subsection (c) of this section (even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan).

(3)(A) If in any month after a loan has been made to the Federal Hospital Insurance Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B)(i) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Hospital Insurance Trust Fund, the Managing Trustee determines that the Hospital Insurance Trust Fund ratio exceeds 15 percent, he shall transfer from such Trust Fund to the lending trust fund an amount that—

(I) together with any amounts transferred to another lending trust fund under this paragraph for such year, will reduce the Hospital Insurance Trust Fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

(ii) Amounts required to be transferred under clause (i) shall be transferred on the last day of the first month of the year succeeding the year in which the determination described in clause (i) is made.

(iii) For purposes of this subparagraph, the term ''Hospital Insurance Trust Fund ratio'' means, with respect to any calendar year, the ratio of—

(I) the balance in the Federal Hospital Insurance Trust Fund, as of the last day of such calendar year; to

(II) the amount estimated by the Secretary to be the total amount to be paid from the Federal Hospital Insurance Trust Fund during the calendar year following such calendar year (other than payments of interest on, and repayments of, loans from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under paragraph (1)), and reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into such Trust Fund from the Railroad Retirement Account.

(C)(i) The full amount of all loans made under paragraph (1) (whether made before or after January 1, 1983) shall be repaid at the earliest feasible date and in any event no later than December 31, 1989.

(ii) For the period after December 31, 1987 and before January 1, 1990, the Managing Trustee shall transfer each month from the Federal Hospital Insurance Trust Fund to any Trust Fund that is owed any amount by the Federal Hospital Insurance Trust Fund on a loan made under paragraph (1), an amount not less than an amount equal to (I) the amount owed to such Trust Fund by the Federal Hospital Insurance Trust Fund at the beginning of such month (plus the interest accrued on the outstanding balance of such loan during such month), divided by (II) the number of months elapsing after the preceding month and before January 1990. The Managing Trustee may, during this period, transfer larger amounts than prescribed by the preceding sentence.

(4) The Board of Trustees shall make a timely report to the Congress of any amounts transferred (including interest payments) under this subsection.

(5)(A) No amounts may be loaned by the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund under paragraph (1) during any month if the OASDI trust fund ratio for such month is less than 10 percent.

(B) For purposes of this paragraph, the term ''OASDI trust fund ratio'' means, with respect to any month, the ratio of—

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Trust Fund from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title, as of the last day of the second month preceding such month, to

(ii) the amount obtained by multiplying by twelve the total amount which (as estimated by the Secretary) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during the month for which such ratio is to be determined for all purposes authorized by section 401 of this title (other than payments of interest on, or repayments of,

loans from the Federal Hospital Insurance Trust Fund under section 401(*l*) of this title), but excluding any transfer payments between such trust funds and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account.

(Aug. 14, 1935, ch. 531, title XVIII, § 1817, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 299; amended Jan. 2, 1968, Pub. L. 90–248, title I, § 169(a), 81 Stat. 875; Oct. 30, 1972, Pub. L. 92–603, title I, § 132(d), 86 Stat. 1361; June 13, 1978, Pub. L. 95–292, § 5, 92 Stat. 315; June 9, 1980, Pub. L. 96–265, title III, § 310(c), 94 Stat. 460; Dec. 29, 1981, Pub. L. 97–123, § 1(b), 95 Stat. 1659; Apr. 20, 1983, Pub. L. 98–21, title I, §§ 141(b), 142(b)(1), (2)(A), (3), (4), 154(b), title III, § 341(b), 97 Stat. 98, 100, 101, 107, 135; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2337(a), 2354(b)(2), title VI, § 2663(j)(2)(F)(i), 98 Stat. 1091, 1100, 1170; Apr. 7, 1986, Pub. L. 99–272, title IX, § 9213(b), 100 Stat. 180; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095; July 1, 1988, Pub. L. 100–360, title II, § 212(c)(3), 102 Stat. 741; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8005(a), 102 Stat. 3781; Dec. 13, 1989, Pub. L. 101–234, title II, § 202(a), 103 Stat. 1981; Nov. 5, 1990, Pub. L. 101–508, title V, § 5106(c), 104 Stat. 1388–268; Aug. 15, 1994, Pub. L. 103–296, title I, § 108(c)(1), 108 Stat. 1485.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(1), (2) and (f)(1), is classified generally to Title 26, Internal Revenue Code. Subtitle F of such Code appears at section 6001 et seq. of Title 26.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–296, § 108(c)(1)(A), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' wherever appearing.

Subsec. (b). Pub. L. 103–296, § 108(c)(1)(B), inserted ''the Commissioner of Social Security,'' after ''composed of'' in introductory provisions.

Subsec. (f)(1). Pub. L. 103–296, § 108(c)(1)(C), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services'' in two places.

1990—Subsec. (i). Pub. L. 101–508 inserted at end ''The amount available for payment under this subsection for travel by a representative to attend an administrative proceeding before an administrative law judge or other adjudicator shall not exceed the maximum amount allowable under this subsection for such travel originating within the geographic area of the office having jurisdiction over such proceeding.''

1989—Subsec. (b). Pub. L. 101–234 repealed Pub. L. 100–360, § 212(c)(3), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (b). Pub. L. 100–647 inserted after first sentence ''A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term.''

Pub. L. 100–360 inserted after sixth sentence ''Such report shall also identify (and treat separately) those outlays from the Trust Fund which are also outlays from the Medicare Catastrophic Coverage Account created under section 1395t–2 of this title and those outlays for which there are amounts transferred into the Federal Hospital Insurance Catastrophic Coverage Reserve Fund.''

1986—Subsec. (a)(1), (2). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b). Pub. L. 99–272 struck out provision at end of penultimate sentence that certification shall not refer to economic assumptions underlying Trustee's report.

Subsec. (f)(1). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'' wherever appearing.

1984—Subsec. (a). Pub. L. 98–369, § 2337(a), in provisions following par. (2) substituted ''from time to time'' for ''monthly on the first day of each calendar month'', ''paid to or deposited into the Treasury'' for ''to be paid to or deposited into the Treasury during such month'', and struck out provision that all amounts transferred to the Trust Fund under the preceding sentence had to be invested by the Managing Trustee in the same manner and to the same extent as the other assets of the Trust Fund, and the Trust Fund had to pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of the Trust Fund in the same month under subsec. (c).

Subsec. (a)(1), (2). Pub. L. 98–369, § 2663(j)(2)(F)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' wherever appearing.

Subsec. (c). Pub. L. 98–369, § 2354(b)(2), substituted ''under chapter 31 of title 31'' for ''under the Second Liberty Bond Act, as amended''.

Subsecs. (f)(1), (g), (h). Pub. L. 98–369, § 2663(j)(2)(F)(i), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' wherever appearing.

1983—Subsec. (a). Pub. L. 98–21, § 141(b)(1)(A), in provisions following par. (2) substituted ''monthly on the first day of each calendar month'' for ''from time to time'', substituted ''to be paid to or deposited into the Treasury during such month'' for ''paid to or deposited into the Treasury'', and inserted provision that all amounts transferred to the Trust Fund under existing provisions shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of the Trust Fund; and the Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on Jan. 1, 1983) equal to the rate earned by the investments of the Trust Fund in the same month under subsection (c).

Subsec. (b). Pub. L. 98–21, § 341(b)(1), substituted in provisions preceding par. (1) ''Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate'' for ''Secretary of Health, Education, and Welfare, all ex officio''.

Pub. L. 98–21, § 154(b), inserted at end provision that the report referred to in par. (2) shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Pub. L. 98–21, §341(b)(2), inserted at end provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

Subsec. (j)(1). Pub. L. 98–21, §142(b)(1), substituted reference to January 1988 for reference to January 1983 and inserted '', subject to paragraph (5),'' after ''may''.

Subsec. (j)(2). Pub. L. 98–21, §142(b)(2)(A), substituted ''on the last day of each month after such loan is made'' for ''from time to time'', substituted ''the total interest accrued to such day'' for ''interest'', and inserted ''(even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan)''.

Subsec. (j)(3)(A). Pub. L. 98–21, §142(b)(3), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (j)(5). Pub. L. 98–21, §142(b)(4), added par. (5).

1981—Subsec. (j). Pub. L. 97–123 added subsec. (j).

1980—Subsec. (i). Pub. L. 96–265 added subsec. (i).

1978—Subsec. (b). Pub. L. 95–292 substituted ''Administrator of the Health Care Financing Administration'' for ''Commissioner of Social Security'' in provisions preceding par. (1).

1972—Subsec. (a). Pub. L. 92–603 inserted ''such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and'' after ''consist of'' and before ''such amounts'' in provisions preceding par. (1).

1968—Subsec. (b)(2). Pub. L. 90–248 substituted ''April'' for ''March''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable with respect to determinations made on or after July 1, 1991, and to reimbursement for travel expenses incurred on or after Apr. 1, 1991, see section 5106(d) of Pub. L. 101–508, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 202(b) of Pub. L. 100–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to members of Board of Trustees of Federal Hospital Insurance Trust Fund serving on such Board as members of the public on or after Nov. 10, 1988, see section 8005(b) of Pub. L. 100–647, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2337(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the first day of the month following the month in which this Act is enacted [July 1984].''

Amendment by section 2354(b)(2) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(j)(2)(F)(i) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 141(b) of Pub. L. 98–21 effective on first day of month following April 1983, see section 141(c) of Pub. L. 98–21, set out as a note under section 401 of this title.

Section 142(b)(2)(B) of Pub. L. 98–21 provided that: ''The amendment made by this paragraph [amending this section] shall apply with respect to months beginning more than 30 days after the date of enactment of this Act [Apr. 20, 1983].''

Amendment by sections 154(b) and 341(b) of Pub. L. 98–21 effective Apr. 20, 1983, see sections 154(e) and 341(d) of Pub. L. 98–21, set out as notes under section 401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–123 effective Dec. 29, 1981, see section 1(c) of Pub. L. 97–123, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to gifts and bequests received after Oct. 30, 1972, see section 132(f) of Pub. L. 92–603, set out as a note under section 401 of this title.

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Notwithstanding subsec. (b)(2) of this section, the annual report of the Board of Trustees of the Trust Fund required for calendar year 1983 under this section may be filed at any time not later than forty-five days after Apr. 20, 1983, see section 154(d) of Pub. L. 98–21, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 417, 426a, 429, 910, 1320a–7a, 1320b–12, 1395b–1, 1395i–1, 1395gg, 1395vv, 1396m of this title.

§ 1395i–1. Authorization of appropriations

There are authorized to be appropriated to the Federal Hospital Insurance Trust Fund (established by section 1395i of this title) from time to time such sums as the Secretary deems necessary for any fiscal year, on account of—

(1) payments made or to be made during such fiscal year from such Trust Fund under this part with respect to individuals who are qualified railroad retirement beneficiaries (as defined in section 426(c) of this title) and who are not, and upon filing application for monthly insurance benefits under section 402 of this title would not be, entitled to such benefits if service as an employee (as defined in the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.]) after December 31, 1936, had been included in the term ''employment'' as defined in this chapter,

(2) the additional administrative expenses resulting or expected to result therefrom, and

(3) any loss of interest to such Trust Fund resulting from the payment of such amounts,

in order to place such Trust Fund in the same position at the end of such fiscal year in which it would have been if the individuals described in paragraph (1) had not been entitled to benefits under this part.

(Pub. L. 89–97, title I, § 111(d), July 30, 1965, 79 Stat. 343.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1937, referred to in text, is act Aug. 29, 1935, ch. 812, 49 Stat. 867, as amended generally by act June 24, 1937, ch. 382, part I, 50 Stat. 307, and which was classified principally to subchapter III (§ 228a et seq.) of chapter 9 of Title 45, Railroads. The Railroad Retirement Act of 1937 was amended generally and redesignated the Railroad Retirement Act of 1974 by Pub. L. 93–445, title I, Oct. 16, 1974, 88 Stat. 1305. The Railroad Retirement Act of 1974 is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of title 45. For complete classification of these Acts to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Social Security Amendments of 1965 and also as part of the Health Insurance for the Aged Act, and not as part of the Social Security Act which comprises this chapter.

EFFECTIVE DATE

Section 111(e) of Pub. L. 89–97 provided that:

''(1) The amendments made by the preceding provisions of this section [enacting this section and section 228s–2 of Title 45, Railroads, and amending section 1395kk of this title and sections 1401, 3101, 3111, 3201, 3211, and 3221 of Title 26, Internal Revenue Code, and section 228e of Title 45] shall apply to the calendar year 1966 or to any subsequent calendar year, but only if the requirement in paragraph (2) has been met with respect to such calendar year.

''(2) The requirement referred to in paragraph (1) shall be deemed to have been met with respect to any calendar year if, as of the October 1 immediately preceding such calendar year, the Railroad Retirement Tax Act [section 3101 et seq. of Title 26] provides that the maximum amount of monthly compensation taxable under such Act during all months of such calendar year will be an amount equal to one-twelfth of the maximum wages which the Federal Insurance Contributions Act [section 3201 et seq. of Title 26] provides may be counted for such calendar year.''

CROSS REFERENCES

Definitions relating to employment, see section 410 of this title.

§ 1395i–1a. Repealed. Pub. L. 101–234, title I, § 102(a), Dec. 13, 1989, 103 Stat. 1980

Section, act Aug. 14, 1935, ch. 531, title XVIII, § 1817A, as added July 1, 1988, Pub. L. 100–360, title I, § 112(a), 102 Stat. 698, provided for establishment and operation of Federal Hospital Insurance Catastrophic Coverage Reserve Fund.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1990, see section 102(d)(1) of Pub. L. 101–234, set out as a note under section 59B of Title 26, Internal Revenue Code.

ADJUSTMENTS FOR INTEREST LOST DUE TO DELAY OF TRANSFERS TO RESERVE FUND DURING 1989

Section 112(b) of Pub. L. 100–360, which directed Secretary of the Treasury, in July of 1990, to calculate interest lost to Federal Hospital Insurance Catastrophic Coverage Reserve Fund due to lag between outlays (attributable to amendments made by Pub. L. 100–360) from Federal Hospital Insurance Trust Fund during 1989 and transfers made to such Reserve Fund to cover such outlays, and provided that appropriations under subsection (a)(2) of this section include amount so calculated, was repealed by Pub. L. 101–234, title I, § 102(a), Dec. 13, 1989, 103 Stat. 1980.

§ 1395i–2. Hospital insurance benefits for uninsured elderly individuals not otherwise eligible

(a) Individuals eligible to enroll

Every individual who—

(1) has attained the age of 65,

(2) is enrolled under part B of this subchapter,

(3) is a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this section, and

(4) is not otherwise entitled to benefits under this part,

shall be eligible to enroll in the insurance program established by this part.

(b) Time, manner, and form of enrollment

An individual may enroll under this section only in such manner and form as may be prescribed in regulations, and only during an enrollment period prescribed in or under this section.

(c) Period of enrollment; scope of coverage

The provisions of section 1395p of this title (except subsection (f) thereof), section 1395q of this title, subsection (b) of section 1395r of this title, and subsections (f) and (h) of section 1395s of this title shall apply to persons authorized to enroll under this section except that—

(1) individuals who meet the conditions of subsection (a)(1), (3), and (4) of this section on or before the last day of the seventh month after October 1972 may enroll under this part and (if not already so enrolled) may also enroll under part B of this subchapter during an initial general enrollment period which shall begin on the first day of the second month which begins after October 30, 1972, and shall end on the last day of the tenth month after October 1972;

(2) in the case of an individual who first meets the conditions of eligibility under this section on or after the first day of the eighth month after October 1972, the initial enrollment period shall begin on the first day of the third month before the month in which he first becomes eligible and shall end 7 months later;

(3) in the case of an individual who enrolls pursuant to paragraph (1) of this subsection, entitlement to benefits shall begin on—

(A) the first day of the second month after the month in which he enrolls,

(B) July 1, 1973, or

(C) the first day of the first month in which he meets the requirements of subsection (a) of this section,

whichever is the latest;

(4) an individual's entitlement under this section shall terminate with the month before

the first month in which he becomes eligible for hospital insurance benefits under section 426 of this title or section 426a of this title; and upon such termination, such individual shall be deemed, solely for purposes of hospital insurance entitlement, to have filed in such first month the application required to establish such entitlement;

(5) termination of coverage for supplementary medical insurance shall result in simultaneous termination of hospital insurance benefits for uninsured individuals who are not otherwise entitled to benefits under this chapter;

(6) any percent increase effected under section 1395r(b) of this title in an individual's monthly premium may not exceed 10 percent and shall only apply to premiums paid during a period equal to twice the number of months in the full 12-month periods described in that section;

(7) an individual who meets the conditions of subsection (a) of this section may enroll under this part during a special enrollment period that includes any month during any part of which the individual is enrolled under section 1395mm of this title with an eligible organization and ending with the last day of the 8th consecutive month in which the individual is at no time so enrolled;

(8) in the case of an individual who enrolls during a special enrollment period under paragraph (7)—

(A) in any month of the special enrollment period in which the individual is at any time enrolled under section 1395mm of this title with an eligible organization or in the first month following such a month, the coverage period shall begin on the first day of the month in which the individual so enrolls (or, at the option of the individual, on the first day of any of the following three months), or

(B) in any other month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls; and

(9) in applying the provisions of section 1395r(b) of this title, there shall not be taken into account months for which the individual can demonstrate that the individual was enrolled under section 1395mm of this title with an eligible organization.

(d) Monthly premiums

(1) The Secretary shall, during September of each year (beginning with 1988), estimate the monthly actuarial rate for months in the succeeding year. Such actuarial rate shall be one-twelfth of the amount which the Secretary estimates (on an average, per capita basis) is equal to 100 percent of the benefits and administrative costs which will be payable from the Federal Hospital Insurance Trust Fund for services performed and related administrative costs incurred in the succeeding year with respect to individuals age 65 and over who will be entitled to benefits under this part during that year.

(2) The Secretary shall, during September of each year[1] determine and promulgate the dollar amount which shall be applicable for premiums for months occurring in the following year. Subject to paragraph (4), the amount of an individual's monthly premium under this section shall be equal to the monthly actuarial rate determined under paragraph (1) for that following year. Any amount determined under the preceding sentence which is not a multiple of $1 shall be rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not a multiple of $1, to the next higher multiple of $1).

(3) Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium under this section, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for individuals 65 and older as provided in paragraph (1).

(4)(A) In the case of an individual described in subparagraph (B), the monthly premium for a month shall be reduced by the applicable reduction percent specified in the following table:

For a month in:	The applicable reduction percent is:
1994	25 percent
1995	30 percent
1996	35 percent
1997	40 percent
1998 or subsequent year	45 percent.

(B) An individual described in this subparagraph with respect to a month is an individual who establishes to the satisfaction of the Secretary that, as of the last day of the previous month, the individual—

(i) had at least 30 quarters of coverage under subchapter II of this chapter;

(ii) was married (and had been married for the previous 1-year period) to an individual who had at least 30 quarters of coverage under such subchapter;

(iii) had been married to an individual for a period of at least 1 year (at the time of such individual's death) if at such time the individual had at least 30 quarters of coverage under such subchapter; or

(iv) is divorced from an individual and had been married to the individual for a period of at least 10 years (at the time of the divorce) if at such time the individual had at least 30 quarters of coverage under such subchapter.

(e) Contract or other arrangement for payment of monthly premiums

Payment of the monthly premiums on behalf of any individual who meets the conditions of subsection (a) of this section may be made by any public or private agency or organization under a contract or other arrangement entered into between it and the Secretary if the Secretary determines that payment of such premiums under such contract or arrangement is administratively feasible.

(f) Deposit of amounts into Treasury

Amounts paid to the Secretary for coverage under this section shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund.

[1] So in original. Probably should be followed by a comma.

(g) Buy-in under this part for qualified medicare beneficiaries

(1) The Secretary shall, at the request of a State made after 1989, enter into a modification of an agreement entered into with the State pursuant to section 1395v(a) of this title under which the agreement provides for enrollment in the program established by this part of qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title).

(2)(A) Except as provided in subparagraph (B), the provisions of subsections (c), (d), (e), and (f) of section 1395v of this title shall apply to qualified medicare beneficiaries enrolled, pursuant to such agreement, in the program established by this part in the same manner and to the same extent as they apply to qualified medicare beneficiaries enrolled, pursuant to such agreement, in part B of this subchapter.

(B) For purposes of this subsection, section 1395v(d)(1) of this title shall be applied by substituting ''section 1395i–2 of this title'' for ''section 1395r of this title'' and ''subsection (c)(6) (with reference to subsection (b) of section 1395r of this title)'' for ''subsection (b).''.[2]

(Aug. 14, 1935, ch. 531, title XVIII, §1818, as added Oct. 30, 1972, Pub. L. 92–603, title II, §202, 86 Stat. 1374; amended Apr. 20, 1983, Pub. L. 98–21, title VI, §606(a)(3)(D), (b), 97 Stat. 170, 171; July 18, 1984, Pub. L. 98–369, div. B, title III, §§2315(e), 2354(b)(3), (4), 98 Stat. 1080, 1100; Apr. 7, 1986, Pub. L. 99–272, title IX, §9124(a), 100 Stat. 168; Dec. 22, 1987, Pub. L. 100–203, title IV, §4009(j)(9), as added July 1, 1988, Pub. L. 100–360, title IV, §411(b)(8)(D), 102 Stat. 772; July 1, 1988, Pub. L. 100–360, title I, §103, 102 Stat. 687; Oct. 13, 1988, Pub. L. 100–485, title VI, §608(d)(2), 102 Stat. 2413; Dec. 19, 1989, Pub. L. 101–239, title VI, §§6012(a)(1), 6013(a), 103 Stat. 2161, 2163; Nov. 5, 1990, Pub. L. 101–508, title IV, §4008(g)(1), (m)(3)(D), 104 Stat. 1388–45, 1388–54; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13508(a), 107 Stat. 579.)

REFERENCES IN TEXT

Part B of this subchapter, referred to in subsecs. (a)(2), (c)(1), and (g)(2)(A), is classified to section 1395j et seq. of this title.

AMENDMENTS

1993—Subsec. (d)(2). Pub. L. 103–66, §13508(a)(1), substituted ''Subject to paragraph (4), the amount of an individual's monthly premium under this section'' for ''Such amount''.

Subsec. (d)(4). Pub. L. 103–66, §13508(a)(2), added par. (4).

1990—Subsec. (c)(7) to (9). Pub. L. 101–508, §4008(g)(1), added pars. (7) to (9).

Subsec. (g)(2)(B). Pub. L. 101–508, §4008(m)(3)(D), substituted '' 'subsection (c)(6)'' for '' 'subsection (c)''.

1989—Pub. L. 101–239, §6012(a)(1), inserted ''elderly'' after ''uninsured'' in section catchline.

Subsec. (g). Pub. L. 101–239, §6013(a), added subsec. (g).

1988—Subsec. (c)(4) to (7). Pub. L. 100–360, §411(b)(8)(D), added Pub. L. 100–203, §4009(j)(9), see 1987 Amendment note below.

Subsec. (d). Pub. L. 100–360, §103, amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

''(1) The monthly premium of each individual for each month in his coverage period before July 1974 shall be $33.

''(2) The Secretary shall, during the next to last calendar quarter of each year determine and promulgate the dollar amount (whether or not such dollar amount was applicable for premiums for any prior month) which shall be applicable for premiums for months occurring in the following calendar year. Such amount shall be equal to $33, multiplied by the ratio of (A) the inpatient hospital deductible for that following calendar year, as promulgated under section 1395e(b)(2) of this title, to (B) such deductible promulgated for 1973. Any amount determined under the preceding sentence which is not a multiple of $1 shall be rounded to the nearest multiple of $1, or, if a multiple of 50 cents but not a multiple of $1, to the next higher multiple of $1.''

Subsec. (d)(1). Pub. L. 100–485 substituted ''during that year'' for ''during that entire year''.

1987—Subsec. (c)(4) to (7). Pub. L. 100–203, §4009(j)(9), as added by Pub. L. 100–360, §411(b)(8)(D), redesignated pars. (5) to (7) as (4) to (6), respectively, and struck out former par. (4) which read as follows: ''termination of coverage under this section by the filing of notice that the individual no longer wishes to participate in the hospital insurance program shall take effect at the close of the month following the month in which such notice is filed;''.

1986—Subsec. (c)(7). Pub. L. 99–272 added par. (7).

1984—Subsec. (c). Pub. L. 98–369, §2315(e), substituted ''subsection (b) of section 1395r of this title'' for ''subsection (a) of section 1395r of this title''.

Subsec. (c)(1). Pub. L. 98–369, §2354(b)(3), substituted ''October 1972'' for ''the month in which this Act is enacted''.

Subsec. (d)(2). Pub. L. 98–369, §2354(b)(4), substituted '', if a multiple of 50 cents but not a multiple of $1,'' for ''if midway between multiples of $1''.

1983—Subsec. (c). Pub. L. 98–21, §606(a)(3)(D), substituted ''subsection (a) of section 1395r'' for ''subsection (c) of section 1395r''.

Subsec. (d)(2). Pub. L. 98–21, §606(b), substituted ''during the next to last calendar quarter of each year'' for ''during the last calendar quarter of each year, beginning in 1973,'', ''the following calendar year'' for ''the 12-month period commencing July 1 of the next year'', and ''for that following calendar year'' for ''for such next year''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13508(b) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to monthly premiums under section 1818 of the Social Security Act [this section] for months beginning with January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(g)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on February 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6012(a)(1) of Pub. L. 101–239 effective Dec. 19, 1989, but not applicable so as to provide coverage under this part for any month before July 1990, see section 6012(b) of Pub. L. 101–239, set out as an Effective Date note under section 1395i–2a of this title.

Section 6013(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1395v of this title] shall become effective January 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if originally included in the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 103 of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after

[2] So in original.

Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(b)(8)(D) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9124(b) of Pub. L. 99–272 provided that:

''(1) The amendment made by subsection (a)(3) [amending this section] shall apply to premiums paid for months beginning with July 1986.

''(2) In applying that amendment, months (before, during, or after April 1986) in which an individual was required to pay a premium increased under the section that was so amended shall be taken into account in determining the month in which the premium will no longer be subject to an increase under that section as so amended.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2315(e) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2315(g) of Pub. L. 98–369, set out as an Effective and Termination Dates of 1984 Amendments note under section 1395ww of this title.

Amendment by section 2354(b)(3), (4) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; TRANSITIONAL RULE

Amendment by Pub. L. 98–21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98–21, set out as a note under section 1395r of this title.

SPECIAL ENROLLMENT PROVISIONS FOR MERCHANT SEAMEN

Pub. L. 97–248, title I, § 125, Sept. 3, 1982, 96 Stat. 365, provided that:

''(a) Any individual who—

''(1) was entitled to medical, surgical, and dental treatment and hospitalization under section 322(a) of the Public Health Service Act [section 249(a) of this title] (as in effect on September 30, 1981), including such entitlement on the basis of continuing medical care under 42 C.F.R. § 32.17, at any time during the period beginning on March 10, 1981, and ending on October 1, 1981, and

''(2) as of September 30, 1981, was eligible under section 1818(a) or section 1836 of the Social Security Act [this section or section 1395*o* of this title] to enroll in the insurance program established by part A or part B, respectively, of title XVIII of that Act [this subchapter] (hereinafter in this section referred to as the 'respective program'),

may enroll (if not otherwise enrolled) in the respective program during the period beginning on the first day of the first month beginning at least 20 days after the date of the enactment of this Act [Sept. 3, 1982] and ending on December 31, 1982.

''(b)(1) The coverage period under the respective program of an individual who enrolls under subsection (a) shall begin—

''(A) on the first day of the month following the month in which the individual enrolls, or

''(B) on October 1, 1981, if the individual files a request for this subparagraph to apply and pays the monthly premiums for the months so covered.

''(2) The coverage period under the respective program of an individual described in subsection (a) who enrolled in the respective program before the enrollment period described in that subsection shall be retroactively extended to October 1, 1981, if the individual files a request before January 1, 1983, for such retroactive extension and pays the monthly premiums for the months so covered.

''(c)(1) For purposes of section 1839(d) of the Social Security Act [section 1395r(d) of this title] with respect to the monthly premium for months after September 1981, if an individual described in subsection (a) has enrolled in the insurance program under part B of title XVIII of the Social Security Act [part B of this subchapter] at any time before the end of the enrollment period described in subsection (a), any month (before the end of that enrollment period) in which he was not enrolled in that program shall not be treated as a month in which he could have been enrolled in the program.

''(2) Paragraph (1) shall not apply to an individual—

''(A) if the individual has enrolled in the insurance program before March 10, 1981, unless the enrollment was terminated solely because the individual lost eligibility to be so enrolled, or

''(B) unless the individual applies for the benefit of such paragraph before January 1, 1983.

''(d)(1) The Secretary of Health and Human Services, beginning as soon as possible but not later than 30 days after the date of the enactment of this Act [Sept. 3, 1982], shall provide for the dissemination of information—

''(A) to unions and other associations representing or assisting seamen,

''(B) to offices enrolling individuals under the respective programs, and

''(C) to such other entities and in such a manner as will effectively inform individuals eligible for benefits under this section,

concerning the special benefits provided under this section.

''(2) An individual may establish that the individual was entitled at a date to medical, surgical, and dental treatment and hospitalization under section 322(a) of the Public Health Service Act [section 249(a) of this title] (as in effect before October 1, 1981) by providing—

''(A) documentation relating to the status under which the individual was provided care in (or under arrangements with) a Public Health Service facility on that date,

''(B) the individual's seamen's papers covering that date, or

''(C) such other reasonable documentation as the Secretary may require.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320b–14, 1395i–2a, 1395p, 1395v, 1395ff, 1395gg, 1396d of this title; title 25 section 1644; title 26 section 6103.

§ 1395i–2a. Hospital insurance benefits for disabled individuals who have exhausted other entitlement

(a) Eligibility

Every individual who—

(1) has not attained the age of 65;

(2)(A) has been entitled to benefits under this part under section 426(b) of this title, and

(B)(i) continues to have the disabling physical or mental impairment on the basis of which the individual was found to be under a disability or to be a disabled qualified railroad

retirement beneficiary, or (ii) is blind (within the meaning of section 416(i)(1) of this title), but

(C) whose entitlement under section 426(b) of this title ends due solely to the individual having earnings that exceed the substantial gainful activity amount (as defined in section 423(d)(4) of this title); and

(3) is not otherwise entitled to benefits under this part,

shall be eligible to enroll in the insurance program established by this part.

(b) Enrollment

(1) An individual may enroll under this section only in such manner and form as may be prescribed in regulations, and only during an enrollment period prescribed in or under this section.

(2) The individual's initial enrollment period shall begin with the month in which the individual receives notice that the individual's entitlement to benefits under section 426(b) of this title will end due solely to the individual having earnings that exceed the substantial gainful activity amount (as defined in section 423(d)(4) of this title and shall end 7 months later.

(3) There shall be a general enrollment period during the period beginning on January 1 and ending on March 31 of each year (beginning with 1990).

(c) Coverage period

(1) The period (in this subsection referred to as a ''coverage period'') during which an individual is entitled to benefits under the insurance program under this part shall begin on whichever of the following is the latest:

(A) In the case of an individual who enrolls under subsection (b)(2) of this section before the month in which the individual first satisfies subsection (a) of this section, the first day of such month.

(B) In the case of an individual who enrolls under subsection (b)(2) of this section in the month in which the individual first satisfies subsection (a) of this section, the first day of the month following the month in which the individual so enrolls.

(C) In the case of an individual who enrolls under subsection (b)(2) of this section in the month following the month in which the individual first satisfies subsection (a) of this section, the first day of the second month following the month in which the individual so enrolls.

(D) In the case of an individual who enrolls under subsection (b)(2) of this section more than one month following the month in which the individual first satisfies subsection (a) of this section, the first day of the third month following the month in which the individual so enrolls.

(E) In the case of an individual who enrolls under subsection (b)(3) of this section, the July 1 following the month in which the individual so enrolls.

(2) An individual's coverage period under this section shall continue until the individual's enrollment is terminated as follows:

(A) As of the month following the month in which the Secretary provides notice to the individual that the individual no longer meets the condition described in subsection (a)(2)(B) of this section.

(B) As of the month following the month in which the individual files notice that the individual no longer wishes to participate in the insurance program established by this part.

(C) As of the month before the first month in which the individual becomes eligible for hospital insurance benefits under section 426(a) or 426–1 of this title.

(D) As of a date, determined under regulations of the Secretary, for nonpayment of premiums.

The regulations under subparagraph (D) may provide a grace period of not longer than 90 days, which may be extended to not to exceed 180 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 90-day period. Termination of coverage under this section shall result in simultaneous termination of any coverage affected under any other part of this subchapter.

(3) The provisions of subsections (h) and (i) of section 1395p of this title apply to enrollment and nonenrollment under this section in the same manner as they apply to enrollment and nonenrollment and special enrollment periods under section 1395i–2 of this title.

(d) Payment of premiums

(1)(A) Premiums for enrollment under this section shall be paid to the Secretary at such times, and in such manner, as the Secretary shall by regulations prescribe, and shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund.

(B)(i) Subject to clause (ii), such premiums shall be payable for the period commencing with the first month of an individual's coverage period and ending with the month in which the individual dies or, if earlier, in which the individual's coverage period terminates.

(ii) Such premiums shall not be payable for any month in which the individual is eligible for benefits under this part pursuant to section 426(b) of this title.

(2) The provisions of subsections (d) through (f) of section 1395i–2 of this title (relating to premiums) shall apply to individuals enrolled under this section in the same manner as they apply to individuals enrolled under that section.

(Aug. 14, 1935, ch. 531, title XVIII, §1818A, as added Dec. 19, 1989, Pub. L. 101–239, title VI, §6012(a)(2), 103 Stat. 2161; amended Nov. 5, 1990, Pub. L. 101–508, title IV, §4008(m)(3)(C), 104 Stat. 1388–54.)

AMENDMENTS

1990—Subsec. (d)(1)(A). Pub. L. 101–508, §4008(m)(3)(C)(i), inserted ''for enrollment under this section'' after ''Premiums''.

Subsec. (d)(1)(C). Pub. L. 101–508, §4008(m)(3)(C)(ii), struck out subpar. (C) which read as follows: ''For purposes of applying section 1395r(g) of this title and section 59B(f)(1)(B)(i) of the Internal Revenue Code of 1986, any reference to section 1395i–2 of this title shall be deemed to include a reference to this section.''

EFFECTIVE DATE

Section 6012(b) of Pub. L. 101–239 provided that: ''The amendments made by this section [enacting this sec-

tion and amending section 1395i–2 of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989], but shall not apply so as to provide for coverage under part A of title XVIII of the Social Security Act [this part] for any month before July 1990.''

§ 1395i–3. Requirements for, and assuring quality of care in, skilled nursing facilities

(a) "Skilled nursing facility" defined

In this subchapter, the term ''skilled nursing facility'' means an institution (or a distinct part of an institution) which—

(1) is primarily engaged in providing to residents—

(A) skilled nursing care and related services for residents who require medical or nursing care, or

(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons,

and is not primarily for the care and treatment of mental diseases;

(2) has in effect a transfer agreement (meeting the requirements of section 1395x(*l*) of this title) with one or more hospitals having agreements in effect under section 1395cc of this title; and

(3) meets the requirements for a skilled nursing facility described in subsections (b), (c), and (d) of this section.

(b) Requirements relating to provision of services

(1) Quality of life

(A) In general

A skilled nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

(B) Quality assessment and assurance

A skilled nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

(2) Scope of services and activities under plan of care

A skilled nursing facility must provide services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, in accordance with a written plan of care which—

(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

(3) Residents' assessment

(A) Requirement

A skilled nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, which assessment—

(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A) of this section;

(iii) uses an instrument which is specified by the State under subsection (e)(5) of this section; and

(iv) includes the identification of medical problems.

(B) Certification

(i) In general

Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

(ii) Penalty for falsification

(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

(III) The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(iii) Use of independent assessors

If a State determines, under a survey under subsection (g) of this section or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(C) Frequency

(i) In general

Such an assessment must be conducted—

(I) promptly upon (but no later than 14 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than January 1, 1991, for each resident of the facility on that date;

(II) promptly after a significant change in the resident's physical or mental condition; and

(III) in no case less often than once every 12 months.

(ii) Resident review

The skilled nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

(D) Use

The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

(E) Coordination

Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort.

(4) Provision of services and activities

(A) In general

To the extent needed to fulfill all plans of care described in paragraph (2), a skilled nursing facility must provide, directly or under arrangements (or, with respect to dental services, under agreements) with others for the provision of—

(i) nursing services and specialized rehabilitative services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident;

(vi) routine and emergency dental services to meet the needs of each resident; and

(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

The services provided or arranged by the facility must meet professional standards of quality. Nothing in clause (vi) shall be construed as requiring a facility to provide or arrange for dental services described in that clause without additional charge.

(B) Qualified persons providing services

Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

(C) Required nursing care

(i) In general

Except as provided in clause (ii), a skilled nursing facility must provide 24-hour licensed nursing service which is sufficient to meet nursing needs of its residents and must use the services of a registered professional nurse at least at least[1] 8 consecutive hours a day, 7 days a week.

(ii) Exception

To the extent that clause (i) may be deemed to require that a skilled nursing facility engage the services of a registered professional nurse for more than 40 hours a week, the Secretary is authorized to waive such requirement if the Secretary finds that—

(I) the facility is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individuals residing therein,

(II) the facility has one full-time registered professional nurse who is regularly on duty at such facility 40 hours a week,

(III) the facility either has only patients whose physicians have indicated (through physicians' orders or admission notes) that each such patient does not require the services of a registered nurse or a physician for a 48-hour period, or has made arrangements for a registered professional nurse or a physician to spend such time at such facility as may be indicated as necessary by the physician to provide necessary skilled nursing services on days when the regular full-time registered professional nurse is not on duty,

(IV) the Secretary provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965 [42 U.S.C. 3027(a)(12)]) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

(V) the facility that is granted such a waiver notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

[1] So in original.

A waiver under this subparagraph shall be subject to annual renewal.

(5) Required training of nurse aides

(A) In general

(i) Except as provided in clause (ii), a skilled nursing facility must not use on a full-time basis any individual as a nurse aide in the facility on or after October 1, 1990 for more than 4 months unless the individual—

(I) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A) of this section, and

(II) is competent to provide nursing or nursing-related services.

(ii) A skilled nursing facility must not use on a temporary, per diem, leased, or on any basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).

(B) Offering competency evaluation programs for current employees

A skilled nursing facility must provide, for individuals used as a nurse aide[2] by the facility as of January 1, 1990, for a competency evaluation program approved by the State under subsection (e)(1) of this section and such preparation as may be necessary for the individual to complete such a program by October 1, 1990.

(C) Competency

The skilled nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information concerning the individual.

(D) Re-training required

For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program or a new competency evaluation program.

(E) Regular in-service education

The skilled nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

(F) "Nurse aide" defined

In this paragraph, the term ''nurse aide'' means any individual providing nursing or nursing-related services to residents in a skilled nursing facility, but does not include an individual—

(i) who is a licensed health professional (as defined in subparagraph (G)) or a registered dietician, or

(ii) who volunteers to provide such services without monetary compensation.

(G) "Licensed health professional" defined

In this paragraph, the term ''licensed health professional'' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, licensed or certified social worker, registered respiratory therapist, or certified respiratory therapy technician.

(6) Physician supervision and clinical records

A skilled nursing facility must—

(A) require that the medical care of every resident be provided under the supervision of a physician;

(B) provide for having a physician available to furnish necessary medical care in case of emergency; and

(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)).

(7) Required social services

In the case of a skilled nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

(c) Requirements relating to residents' rights

(1) General rights

(A) Specified rights

A skilled nursing facility must protect and promote the rights of each resident, including each of the following rights:

(i) Free choice

The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

(ii) Free from restraints

The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed—

[2] So in original. Probably should be ''as nurse aides''.

(I) to ensure the physical safety of the resident or other residents, and

(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(iii) Privacy

The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

(iv) Confidentiality

The right to confidentiality of personal and clinical records and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request.

(v) Accommodation of needs

The right—

(I) to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

(II) to receive notice before the room or roommate of the resident in the facility is changed.

(vi) Grievances

The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(vii) Participation in resident and family groups

The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(viii) Participation in other activities

The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(ix) Examination of survey results

The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

(x) Refusal of certain transfers

The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is a skilled nursing facility (for purposes of this subchapter) to a portion of the facility that is not such a skilled nursing facility.

(xi) Other rights

Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room. A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to benefits under this subchapter or to medical assistance under subchapter XIX of this chapter.

(B) Notice of rights and services

A skilled nursing facility must—

(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility;

(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under section 1396r(e)(6) of this title; and

(iii) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under this subchapter or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

(C) Rights of incompetent residents

In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this subchapter shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

(D) Use of psychopharmacologic drugs

Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually, an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs. In determining whether such a consultant is qualified to conduct reviews under the preceding sentence, the Secretary shall take into account the needs of nursing facilities under this subchapter to have access to the services of such a consultant on a timely basis.

(E) Information respecting advance directives

A skilled nursing facility must comply with the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(2) Transfer and discharge rights

(A) In general

A skilled nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

(i) the transfer or discharge is necessary to meet the resident's welfare and the resident's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) the safety of individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this subchapter or subchapter XIX of this chapter on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (v), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the cases described in clauses (iii) and (iv) the documentation must be made by a physician.

(B) Pre-transfer and pre-discharge notice

(i) In general

Before effecting a transfer or discharge of a resident, a skilled nursing facility must—

(I) notify the resident (and, if known, a family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

(III) include in the notice the items described in clause (iii).

(ii) Timing of notice

The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except—

(I) in a case described in clause (iii) or (iv) of subparagraph (A);

(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

(iii) Items included in notice

Each notice under clause (i) must include—

(I) for transfers or discharges effected on or after October 1, 1990, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3) of this section; and

(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]).

(C) Orientation

A skilled nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(3) Access and visitation rights

A skilled nursing facility must—

(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman described in paragraph (2)(B)(iii)(II), or by the resident's individual physician;

(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

(4) Equal access to quality care

A skilled nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and covered services under this subchapter for all individuals regardless of source of payment.

(5) Admissions policy

(A) Admissions

With respect to admissions practices, a skilled nursing facility must—

(i)(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this subchapter or under a State plan under subchapter XIX of this chapter, (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this subchapter or such a State plan, and (III) prominently display in the facility and provide to such individuals written information about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits; and

(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility.

(B) Construction

(i) No preemption of stricter standards

Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under this subchapter with respect to admissions practices of skilled nursing facilities.

(ii) Contracts with legal representatives

Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

(6) Protection of resident funds

(A) In general

The skilled nursing facility—

(i) may not require residents to deposit their personal funds with the facility, and

(ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(B) Management of personal funds

Upon written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(i) Deposit

The facility must deposit any amount of personal funds in excess of $100 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credits[3] all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a non-interest bearing account or petty cash fund.

(ii) Accounting and records

The facility must assure a full and complete separate accounting of each such resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(iii) Conveyance upon death

Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

(C) Assurance of financial security

The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(D) Limitation on charges to personal funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this subchapter or subchapter XIX of this chapter.

(d) Requirements relating to administration and other matters

(1) Administration

(A) In general

A skilled nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical[4] mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5) of this section).

(B) Required notices

If a change occurs in—

(i) the persons with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the facility,

(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a–5(b) of this title) of the facility,

(iii) the corporation, association, or other company responsible for the management of the facility, or

(iv) the individual who is the administrator or director of nursing of the facility,

the skilled nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

(C) Skilled nursing facility administrator

The administrator of a skilled nursing facility must meet standards established by

[3] So in original. Probably should be ''credit''.

[4] So in original. Probably should be followed by a comma.

the Secretary under subsection (f)(4) of this section.

(2) Licensing and Life Safety Code

(A) Licensing

A skilled nursing facility must be licensed under applicable State and local law.

(B) Life Safety Code

A skilled nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and

(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in skilled nursing facilities.

(3) Sanitary and infection control and physical environment

A skilled nursing facility must—

(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

(4) Miscellaneous

(A) Compliance with Federal, State, and local laws and professional standards

A skilled nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a–3 of this title) and with accepted professional standards and principles which apply to professionals providing services in such a facility.

(B) Other

A skilled nursing facility must meet such other requirements relating to the health, safety, and well-being of residents or relating to the physical facilities thereof as the Secretary may find necessary.

(e) State requirements relating to skilled nursing facility requirements

The requirements, referred to in section 1395aa(d) of this title, with respect to a State are as follows:

(1) Specification and review of nurse aide training and competency evaluation programs and of nurse aide competency evaluation programs

The State must—

(A) by not later than January 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) of this section and that meet the requirements established under subsection (f)(2) of this section, and

(B) by not later than January 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii) of this section.

The failure of the Secretary to establish requirements under subsection (f)(2) of this section shall not relieve any State of its responsibility under this paragraph.

(2) Nurse aide registry

(A) In general

By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State, or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.

(B) Information in registry

The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of this section of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings, but shall not include any allegations of resident abuse or neglect or misappropriation of resident property that are not specifically documented by the State under such subsection. The State shall make available to the public information in the registry. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

(C) Prohibition against charges

A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).

(3) State appeals process for transfers and discharges

The State, for transfers and discharges from skilled nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism for hearing appeals on transfers and discharges of residents of such facilities. Such mechanism must meet the guidelines established by the Secretary under subsection (f)(3)

of this section; but the failure of the Secretary to establish such guidelines shall not relieve any State of its responsibility to provide for such a fair mechanism.

(4) Skilled nursing facility administrator standards

By not later than January 1, 1990, the State must have implemented and enforced the skilled nursing facility administrator standards developed under subsection (f)(4) of this section respecting the qualification of administrators of skilled nursing facilities.

(5) Specification of resident assessment instrument

Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii) of this section. Such instrument shall be—

(A) one of the instruments designated under subsection (f)(6)(B) of this section, or

(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A) of this section.

(f) Responsibilities of Secretary relating to skilled nursing facility requirements

(1) General responsibility

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in skilled nursing facilities under this subchapter, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

(2) Requirements for nurse aide training and competency evaluation programs and for nurse aide competency evaluation programs

(A) In general

For purposes of subsections (b)(5) and (e)(1)(A) of this section, the Secretary shall establish, by not later than September 1, 1988—

(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights) and content of the curriculum, (II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, residents' rights, and procedures for determination of competency;

(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs; and

(iv) requirements, under both such programs, that—

(I) provide procedures for determining competency that permit a nurse aide, at the nurse aide's option, to establish competency through procedures or methods other than the passing of a written examination and to have the competency evaluation conducted at the nursing facility at which the aide is (or will be) employed (unless the facility is described in subparagraph (B)(iii)(I)),

(II) prohibit the imposition on a nurse aide who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program of any charges (including any charges for textbooks and other required course materials and any charges for the competency evaluation) for either such program, and

(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata[5] basis during the period in which the nurse aide is so employed.

(B) Approval of certain programs

Such requirements—

(i) may permit approval of programs offered by or in facilities (subject to clause (iii)), as well as outside facilities (including employee organizations), and of programs in effect on December 22, 1987;

(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training and competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) of this section if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

(iii) shall prohibit approval of such a program—

(I) offered by or in a skilled nursing facility which, within the previous 2 years—

(a) has operated under a waiver under subsection (b)(4)(C)(ii)(II) of this section;

(b) has been subject to an extended (or partial extended) survey under sub-

[5] So in original. Probably should be ''pro rata''.

section (g)(2)(B)(i) of this section or section 1396r(g)(2)(B)(i) of this title, unless the survey shows that the facility is in compliance with the requirements of subsections (b), (c), and (d) of this section; or

(c) has been assessed a civil money penalty described in subsection (h)(2)(B)(ii) of this section or section 1396r(h)(2)(A)(ii) of this title of not less than $5,000, or has been subject to a remedy described in clause (i) or (iii) of subsection (h)(2)(B) of this section, subsection (h)(4) of this section, section 1396r(h)(1)(B)(i) of this title, or in clause (i), (iii), or (iv) of section 1396r(h)(2)(A) of this title, or

(II) offered by or in a skilled nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in skilled nursing facilities.

A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the skilled nursing facility.

(3) Federal guidelines for State appeals process for transfers and discharges

For purposes of subsections (c)(2)(B)(iii)(I) and (e)(3) of this section, by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) of this section must meet to provide a fair mechanism for hearing appeals on transfers and discharges of residents from skilled nursing facilities.

(4) Secretarial standards for qualification of administrators

For purposes of subsections (d)(1)(C) and (e)(4) of this section, the Secretary shall develop, by not later than March 1, 1989, standards to be applied in assuring the qualifications of administrators of skilled nursing facilities.

(5) Criteria for administration

The Secretary shall establish criteria for assessing a skilled nursing facility's compliance with the requirement of subsection (d)(1) of this section with respect to—

(A) its governing body and management,

(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other skilled nursing facilities,

(C) disaster preparedness,

(D) direction of medical care by a physician,

(E) laboratory and radiological services,

(F) clinical records, and

(G) resident and advocate participation.

(6) Specification of resident assessment data set and instruments

The Secretary shall—

(A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3) of this section, and establish guidelines for utilization of the data set; and

(B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) of this section for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii) of this section.

(7) List of items and services furnished in skilled nursing facilities not chargeable to the personal funds of a resident

(A) Regulations required

Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after December 22, 1987, that define those costs which may be charged to the personal funds of residents in skilled nursing facilities who are individuals receiving benefits under this part and those costs which are to be included in the reasonable cost (or other payment amount) under this subchapter for extended care services.

(B) Rule if failure to publish regulations

If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in such subparagraph, in the case of a resident of a skilled nursing facility who is eligible to receive benefits under this part, the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this subchapter) shall include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(g) Survey and certification process

(1) State and Federal responsibility

(A) In general

Pursuant to an agreement under section 1395aa of this title, each State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of skilled nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d) of this section. The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State skilled nursing facilities with the requirements of such subsections.

(B) Educational program

Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of skilled nursing facilities in order to present current regulations, procedures, and policies under this section.

(C) Investigation of allegations of resident neglect and abuse and misappropriation of resident property

The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after providing the individual involved with a written notice of the allegations (including a statement of the availability of a hearing for the individual to rebut the allegations) and the opportunity for a hearing on the record, make a written finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(D) Construction

The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(2) Surveys

(A) Standard survey

(i) In general

Each skilled nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a skilled nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall review each State's procedures for the scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(ii) Contents

Each standard survey shall include, for a case-mix stratified sample of residents—

(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

(II) written plans of care provided under subsection (b)(2) of this section and an audit of the residents' assessments under subsection (b)(3) of this section to determine the accuracy of such assessments and the adequacy of such plans of care, and

(III) a review of compliance with residents' rights under subsection (c) of this section.

(iii) Frequency

(I) In general

Each skilled nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The Statewide average interval between standard surveys of skilled nursing facilities under this subsection shall not exceed 12 months.

(II) Special surveys

If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a skilled nursing facility, or the director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

(B) Extended surveys

(i) In general

Each skilled nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

(ii) Timing

The extended survey shall be conducted immediately after the standard survey (or, if not practicable, not later than 2 weeks after the date of completion of the standard survey).

(iii) Contents

In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d) of this section. Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

(iv) Construction

Nothing in this paragraph shall be construed as requiring an extended or partial

extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) of this section on the basis of findings in a standard survey.

(C) Survey protocol

Standard and extended surveys shall be conducted—

(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than January 1, 1990, and

(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

(D) Consistency of surveys

Each State and the Secretary shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

(E) Survey teams

(i) In general

Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

(ii) Prohibition of conflicts of interest

A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d) of this section, or who has a personal or familial financial interest in the facility being surveyed.

(iii) Training

The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

(3) Validation surveys

(A) In general

The Secretary shall conduct onsite surveys of a representative sample of skilled nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual skilled nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

(B) Scope

With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of skilled nursing facilities surveyed by the State in the year, but in no case less than 5 skilled nursing facilities in the State.

(C) Remedies for substandard performance

If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary shall provide for an appropriate remedy, which may include the training of survey teams in the State.

(D) Special surveys of compliance

Where the Secretary has reason to question the compliance of a skilled nursing facility with any of the requirements of subsections (b), (c), and (d) of this section, the Secretary may conduct a survey of the facility and, on the basis of that survey, make independent and binding determinations concerning the extent to which the skilled nursing facility meets such requirements.

(4) Investigation of complaints and monitoring compliance

Each State shall maintain procedures and adequate staff to—

(A) investigate complaints of violations of requirements by skilled nursing facilities, and

(B) monitor, on-site, on a regular, as needed basis, a skilled nursing facility's compliance with the requirements of subsections (b), (c), and (d) of this section, if—

(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against substandard skilled nursing facilities.

(5) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public—

(i) information respecting all surveys and certifications made respecting skilled nursing facilities, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction,

(ii) copies of cost reports of such facilities filed under this subchapter or subchapter XIX of this chapter,

(iii) copies of statements of ownership under section 1320a–3 of this title, and

(iv) information disclosed under section 1320a–5 of this title.

(B) Notice to ombudsman

Each State shall notify the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]) of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d) of this section, or of any adverse action taken against a skilled nursing facility under paragraph (1), (2), or (4) of subsection (h) of this section, with respect to a skilled nursing facility in the State.

(C) Notice to physicians and skilled nursing facility administrator licensing board

If a State finds that a skilled nursing facility has provided substandard quality of care, the State shall notify—

(i) the attending physician of each resident with respect to which such finding is made, and

(ii) the State board responsible for the licensing of the skilled nursing facility administrator at the facility.

(D) Access to fraud control units

Each State shall provide its State medicaid fraud and abuse control unit (established under section 1396b(q) of this title) with access to all information of the State agency responsible for surveys and certifications under this subsection.

(h) Enforcement process

(1) In general

If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) of this section or otherwise, that a skilled nursing facility no longer meets a requirement of subsection (b), (c), or (d) of this section, and further finds that the facility's deficiencies—

(A) immediately jeopardize the health or safety of its residents, the State shall recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(i); or

(B) do not immediately jeopardize the health or safety of its residents, the State may recommend to the Secretary that the Secretary take such action as described in paragraph (2)(A)(ii).

If a State finds that a skilled nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but, as of a previous period, did not meet such requirements, the State may recommend a civil money penalty under paragraph (2)(B)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

(2) Secretarial authority

(A) In general

With respect to any skilled nursing facility in a State, if the Secretary finds, or pursuant to a recommendation of the State under paragraph (1) finds, that a skilled nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e) of this section, and further finds that the facility's deficiencies—

(i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (B)(iii), or terminate the facility's participation under this subchapter and may provide, in addition, for one or more of the other remedies described in subparagraph (B); or

(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (B).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a skilled nursing facility's deficiencies. If the Secretary finds, or pursuant to the recommendation of the State under paragraph (1) finds, that a skilled nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (B)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

(B) Specified remedies

The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

(i) Denial of payment

The Secretary may deny any further payments under this subchapter with respect to all individuals entitled to benefits under this subchapter in the facility or with respect to such individuals admitted to the facility after the effective date of the finding.

(ii) Authority with respect to civil money penalties

The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to

a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(iii) Appointment of temporary management

In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

(I) there is an orderly closure of the facility, or

(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

The temporary management under this clause shall not be terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d) of this section.

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the Secretary may provide for other specified remedies, such as directed plans of correction.

(C) Continuation of payments pending remediation

The Secretary may continue payments, over a period of not longer than 6 months after the effective date of the findings, under this subchapter with respect to a skilled nursing facility not in compliance with a requirement of subsection (b), (c), or (d) of this section, if—

(i) the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility,

(ii) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

(iii) the facility agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by States under this subparagraph.

(D) Assuring prompt compliance

If a skilled nursing facility has not complied with any of the requirements of subsections (b), (c), and (d) of this section, within 3 months after the date the facility is found to be out of compliance with such requirements, the Secretary shall impose the remedy described in subparagraph (B)(i) for all individuals who are admitted to the facility after such date.

(E) Repeated noncompliance

In the case of a skilled nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2) of this section, has been found to have provided substandard quality of care, the Secretary shall (regardless of what other remedies are provided)—

(i) impose the remedy described in subparagraph (B)(i), and

(ii) monitor the facility under subsection (g)(4)(B) of this section,

until the facility has demonstrated, to the satisfaction of the Secretary, that it is in compliance with the requirements of subsections (b), (c), and (d) of this section, and that it will remain in compliance with such requirements.

(3) Effective period of denial of payment

A finding to deny payment under this subsection shall terminate when the Secretary finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d) of this section.

(4) Immediate termination of participation for facility where Secretary finds noncompliance and immediate jeopardy

If the Secretary finds that a skilled nursing facility has not met a requirement of subsection (b), (c), or (d) of this section, and finds that the failure immediately jeopardizes the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(B)(iii), or the Secretary shall terminate the facility's participation under this subchapter. If the facility's participation under this subchapter is terminated, the State shall provide for the safe and orderly transfer of the residents eligible under this subchapter consistent with the requirements of subsection (c)(2) of this section.

(5) Construction

The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i),[6] and (iii) of paragraph (2)(B) may be imposed during the pendency of any hearing.

(6) Sharing of information

Notwithstanding any other provision of law, all information concerning skilled nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available by such facilities to Federal or

[6] So in original. The comma probably should not appear.

State employees for purposes consistent with the effective administration of programs established under this subchapter and subchapter XIX of this chapter, including investigations by State medicaid fraud control units.

(i) Construction

Where requirements or obligations under this section are identical to those provided under section 1396r of this title, the fulfillment of those requirements or obligations under section 1396r of this title shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1819, as added and amended Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4201(a)(3), 4202(a)(2), 4203(a)(2), 4206, 101 Stat. 1330–160, 1330–175, 1330–179, 1330–182; July 1, 1988, Pub. L. 100–360, title IV, § 411(*l*)(1)(A), (2)(A)–(D), (F)–(L)(i), (4), (5), (7), (11), 102 Stat. 800–805, as amended Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(27)(A), (C), (D), (I), (L), 102 Stat. 2422, 2423; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6901(b)(1), (3), (d)(4), 103 Stat. 2298, 2301; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4008(h)(1)(B)–(F)(i), (G), (2)(B)–(N), (m)(3)(F)[(E)], 4206(d)(1), 104 Stat. 1388–46 to 1388–50, 1388–54, 1388–116; Sept. 30, 1992, Pub. L. 102–375, title VII, § 708(a)(1)(A), 106 Stat. 1291; Oct. 31, 1994, Pub. L. 103–432, title I, §§ 106(c)(1)(A), (2)(A), (3)(A), (4)(A), (B), (d)(1)–(5), 110(b), 108 Stat. 4406–4408.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsecs. (c)(2)(B)(iii)(II) and (g)(5)(B), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Titles III and VII of the Act are classified generally to subchapters III (§ 3021 et seq.) and XI (§ 3058 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

Subparagraphs (B), (C), and (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239], referred to in subsec. (e)(2)(A), are set out below.

Section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, referred to in subsec. (f)(7)(A), probably means section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments, Pub. L. 95–142, which is set out as a note under section 1395x of this title.

AMENDMENTS

1994—Subsec. (b)(3)(C)(i)(I). Pub. L. 103–432, § 110(b), substituted ''but no later than 14 days'' for ''but no later than not later than 14 days''.

Subsec. (b)(5)(D). Pub. L. 103–432, § 106(d)(1), struck out comma before ''or a new competency evaluation program''.

Subsec. (b)(5)(G). Pub. L. 103–432, § 106(d)(2), substituted ''licensed or certified social worker, registered respiratory therapist, or certified respiratory therapy technician'' for ''or licensed or certified social worker''.

Subsec. (c)(1)(D). Pub. L. 103–432, § 106(c)(2)(A), inserted at end ''In determining whether such a consultant is qualified to conduct reviews under the preceding sentence, the Secretary shall take into account the needs of nursing facilities under this subchapter to have access to the services of such a consultant on a timely basis.''

Subsec. (c)(6)(B)(i). Pub. L. 103–432, § 106(c)(3)(A), substituted ''$100'' for ''$50''.

Subsec. (e)(2)(B). Pub. L. 103–432, § 106(c)(4)(A), inserted '', but shall not include any allegations of resident abuse or neglect or misappropriation of resident property that are not specifically documented by the State under such subsection'' after ''individual disputing the findings'' in first sentence.

Subsec. (f)(2)(B)(i). Pub. L. 103–432, § 106(d)(3), substituted ''facilities (subject to clause (iii)),'' for ''facilities,''.

Subsec. (f)(2)(B)(iii)(I)(b). Pub. L. 103–432, § 106(c)(1)(A), inserted before semicolon at end '', unless the survey shows that the facility is in compliance with the requirements of subsections (b), (c), and (d) of this section''.

Subsec. (f)(2)(B)(iii)(I)(c). Pub. L. 103–432, § 106(d)(4), substituted ''clause'' for ''clauses'' in two places.

Subsec. (g)(1)(C). Pub. L. 103–432, § 106(c)(4)(B), substituted second sentence for former second sentence which read as follows: ''The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations.''

Subsec. (g)(5)(B). Pub. L. 103–432, § 106(d)(5), substituted ''paragraph'' for ''paragraphs'' before ''(1), (2), or (4) of subsection (h)''.

1992—Subsecs. (c)(2)(B)(iii)(II), (g)(5)(B). Pub. L. 102–375 substituted ''title III or VII of the Older Americans Act of 1965 in accordance with section 712 of the Act'' for ''section 307(a)(12) of the Older Americans Act of 1965''.

1990—Subsec. (b)(1)(B). Pub. L. 101–508, § 4008(h)(2)(B), inserted at end ''A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.''

Subsec. (b)(3)(C)(i)(I). Pub. L. 101–508, § 4008(h)(2)(C), substituted ''not later than 14 days'' for ''4 days''.

Subsec. (b)(4)(A)(vii). Pub. L. 101–508, § 4008(h)(2)(D), added cl. (vii).

Subsec. (b)(4)(C)(ii)(IV), (V). Pub. L. 101–508, § 4008(h)(2)(E), added subcls. (IV) and (V).

Subsec. (b)(5)(A). Pub. L. 101–508, § 4008(h)(1)(B), designated existing provisions as cl. (i), in introductory provisions substituted ''Except as provided in clause (ii), a skilled nursing facility'' for ''A skilled nursing facility'' and ''on a full-time basis'' for ''(on a full-time, temporary, per diem, or other basis)'', redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (b)(5)(C). Pub. L. 101–508, § 4008(h)(1)(C), substituted ''any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information'' for ''the State registry established under subsection (e)(2)(A) of this section as to information in the registry''.

Subsec. (b)(5)(D). Pub. L. 101–508, § 4008(h)(1)(D), inserted before period at end '', or a new competency evaluation program'' after ''and competency evaluation program''.

Subsec. (b)(5)(F)(i). Pub. L. 101–508, § 4008(h)(2)(F), substituted ''(G)) or a registered dietician,'' for ''(G)),''.

Subsec. (c)(1)(A). Pub. L. 101–508, § 4008(h)(2)(G)(B)[(ii)], inserted at end ''A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to benefits under this subchapter or to medical assistance under subchapter XIX of this chapter.''

Subsec. (c)(1)(A)(iv). Pub. L. 101–508, § 4008(h)(2)(H), inserted before period at end ''and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request''.

Subsec. (c)(1)(A)(x), (xi). Pub. L. 101–508, § 4008(h)(2)(G)(i), added cl. (x) and redesignated former cl. (x) as (xi).

Subsec. (c)(1)(B)(ii). Pub. L. 101–508, § 4008(h)(2)(I), inserted ''including the notice (if any) of the State developed under section 1396r(e)(6) of this title'' after ''in such rights)''.

Subsec. (c)(1)(E). Pub. L. 101–508, § 4206(d)(1), added subpar. (E).

Subsec. (e)(1)(A). Pub. L. 101–508, § 4008(h)(2)(J), substituted ''subsection (f)(2) of this section'' for ''clause (i) or (ii) of subsection (f)(2)(A) of this section''.

Subsec. (e)(2)(A). Pub. L. 101–508, § 4008(h)(2)(K)(i), inserted before period at end '', or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989''.

Subsec. (e)(2)(C). Pub. L. 101–508, § 4008(h)(2)(K)(ii), added subpar. (C).

Subsec. (f)(2)(A)(ii). Pub. L. 101–508, § 4008(m)(3)(F)[(E)], struck out ''and'' after semicolon at end.

Subsec. (f)(2)(A)(iv). Pub. L. 101–508, § 4008(h)(1)(E), struck out ''and'' at end of subcl. (I), inserted ''who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program'' after ''nurse aide'' and substituted '', and'' for period at end of subcl. (II), and added subcl. (III).

Subsec. (f)(2)(B). Pub. L. 101–508, § 4008(h)(1)(G), inserted ''(through subcontract or otherwise)'' after ''may not delegate'' in second sentence.

Subsec. (f)(2)(B)(iii)(I). Pub. L. 101–508, § 4008(h)(1)(F)(i), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''offered by or in a skilled nursing facility which has been determined to be out of compliance with the requirements of subsection (b), (c), or (d) of this section, within the previous 2 years, or''.

Subsec. (g)(1)(C). Pub. L. 101–508, § 4008(h)(2)(L), inserted at end ''A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.''

Subsec. (g)(5)(A)(i). Pub. L. 101–508, § 4008(h)(2)(M), substituted ''deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans'' for ''deficiencies and plans''.

Subsec. (g)(5)(B). Pub. L. 101–508, § 4008(h)(2)(N), substituted ''or of any adverse action taken against a skilled nursing facility under paragraphs (1), (2), or (4) of subsection (h) of this section, with respect'' for ''with respect''.

1989—Subsec. (b)(5)(A). Pub. L. 101–239, § 6901(b)(1)(A), substituted ''October 1, 1990'' for ''January 1, 1990'' in introductory provisions.

Subsec. (b)(5)(B). Pub. L. 101–239, § 6901(b)(1)(B), substituted ''January 1, 1990'' and ''October 1, 1990'' for ''July 1, 1989'' and ''January 1, 1990'', respectively.

Subsec. (c)(1)(A)(ii)(II). Pub. L. 101–239, § 6901(d)(4)(A), substituted ''Secretary until such an order could reasonably be obtained)'' for ''Secretary) until such an order could reasonably be obtained''.

Subsec. (c)(1)(A)(v)(I). Pub. L. 101–239, § 6901(d)(4)(B), substituted ''accommodation'' for ''accommodations''.

Subsec. (f)(2)(A)(i)(I). Pub. L. 101–239, § 6901(d)(4)(C), substituted ''and content of the curriculum'' for '', content of the curriculum''.

Pub. L. 101–239, § 6901(b)(3)(A), inserted ''care of cognitively impaired residents,'' after ''social service needs,''.

Subsec. (f)(2)(A)(ii). Pub. L. 101–239, § 6901(b)(3)(B), substituted ''recognition of mental health and social service needs, care of cognitively impaired residents'' for ''cognitive, behavioral and social care''.

Subsec. (f)(2)(A)(iv). Pub. L. 101–239, § 6901(b)(3)(C), (D), added cl. (iv).

Subsec. (h)(2)(C). Pub. L. 101–239, § 6901(d)(4)(D), inserted ''after the effective date of the findings'' after ''6 months'' in introductory provisions.

1988—Subsec. (b)(3)(A)(iii). Pub. L. 100–360, § 411(*l*)(2)(B), struck out ''in the case of a resident eligible for benefits under subchapter XIX of this chapter,'' before ''uses an instrument''.

Subsec. (b)(3)(A)(iv). Pub. L. 100–360, § 411(*l*)(2)(A), as amended by Pub. L. 100–485, § 608(d)(27)(C), struck out ''in the case of a resident eligible for benefits under this part,'' before ''includes the identification''.

Subsec. (b)(3)(B)(ii)(III). Pub. L. 100–360, § 411(*l*)(2)(C), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (b)(3)(C)(i)(I). Pub. L. 100–360, § 411(*l*)(1)(A)(i), substituted ''than January 1, 1991'' for ''than October 1, 1990''.

Subsec. (b)(4)(C)(i). Pub. L. 100–360, § 411(*l*)(1)(A)(ii), substituted ''24-hour licensed nursing'' for ''24-hour nursing'', ''must use'' for ''must employ'', and ''at least 8 consecutive hours a day,'' for ''during the day tour of duty (of at least 8 hours a day)''.

Subsec. (b)(5)(A). Pub. L. 100–360, § 411(*l*)(2)(D)(i), as amended by Pub. L. 100–485, § 608(d)(27)(D), struck out '', who is not a licensed health professional (as defined in subparagraph (E)),'' after ''any individual''.

Pub. L. 100–360, § 411(*l*)(1)(A)(iii), substituted ''January 1, 1990'' for ''October 1, 1989, (or January 1, 1990, in the case of an individual used by the facility as a nurse aide before July 1, 1989)''.

Subsec. (b)(5)(A)(ii). Pub. L. 100–360, § 411(*l*)(2)(D)(ii), substituted ''nursing or nursing-related services'' for ''such services''.

Subsec. (b)(5)(G). Pub. L. 100–360, § 411(*l*)(2)(D)(iii), inserted ''physical or occupational therapy assistant,'' after ''occupational therapist,''.

Subsec. (c)(1)(D). Pub. L. 100–360, § 411(*l*)(1)(A)(iv), as added by Pub. L. 100–485, § 608(d)(27)(A), added subpar. (D).

Subsec. (c)(2)(A)(v). Pub. L. 100–360, § 411(*l*)(2)(F), substituted ''for a stay at the facility'' for ''an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with this subchapter and subchapter XIX of this chapter''.

Subsec. (c)(6). Pub. L. 100–360, § 411(*l*)(2)(G), substituted ''upon the written'' for ''once the facility accepts the written'' in subpar. (A)(ii), and ''Upon written'' for ''Upon a facility's acceptance of written'' in subpar. (B).

Subsec. (e)(1)(A). Pub. L. 100–360, § 411(*l*)(1)(A)(v), formerly § 411(*l*)(1)(A)(iv), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''January'' for ''March''.

Subsec. (e)(1)(B). Pub. L. 100–360, § 411(*l*)(1)(A)(vi), formerly § 411(*l*)(1)(A)(v), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''January'' for ''March''.

Subsec. (e)(2)(A). Pub. L. 100–360, § 411(*l*)(1)(A)(vii), formerly § 411(*l*)(1)(A)(vi), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''January'' for ''March''.

Subsec. (e)(2)(B). Pub. L. 100–360, § 411(*l*)(2)(H), inserted after first sentence ''The State shall make available to the public information in the registry.''

Subsec. (e)(3). Pub. L. 100–360, § 411(*l*)(2)(I), inserted ''and discharges'' after ''transfers'' in heading and in two places in text.

Pub. L. 100–360, § 411(*l*)(1)(A)(viii), formerly § 411(*l*)(1)(A)(vii), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''1989'' for ''1990''.

Subsec. (e)(5). Pub. L. 100–360, § 411(*l*)(1)(A)(ix), formerly § 411(*l*)(1)(A)(viii), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''1990'' for ''1989'' in introductory provisions.

Subsec. (f)(2)(A)(i)(I). Pub. L. 100–360, § 411(*l*)(2)(J), substituted ''recognition of mental health and social service needs'' for ''cognitive, behavioral and social care''.

Subsec. (f)(3). Pub. L. 100–360, § 411(*l*)(2)(I), inserted ''and discharges'' after ''transfers'' in heading and in text.

Pub. L. 100–360, § 411(*l*)(1)(A)(x), formerly § 411(*l*)(1)(A)(ix), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''1988'' for ''1989''.

Subsec. (f)(6)(A). Pub. L. 100–360, § 411(*l*)(1)(A)(xi), formerly § 411(*l*)(1)(A)(x), as redesignated by Pub. L. 100–485, § 608(d)(27)(A), substituted ''January'' for ''July''.

Subsec. (f)(6)(B). Pub. L. 100–360, §411(*l*)(1)(A)(xii), formerly §411(*l*)(1)(A)(xi), as redesignated by Pub. L. 100–485, §608(d)(27)(A), substituted ''April'' for ''October''.

Subsec. (f)(7)(A). Pub. L. 100–360, §411(*l*)(2)(K), substituted ''residents'' for ''patients''.

Subsec. (f)(7)(B). Pub. L. 100–360, §411(*l*)(2)(L)(i), substituted ''shall include'' for ''shall not include''.

Subsec. (g)(1)(C). Pub. L. 100–360, §411(*l*)(5)(A)–(C), substituted ''and timely review'' for '', review,'', inserted ''or by another individual used by the facility in providing services to such a resident'' after ''a nursing facility'', and substituted ''The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority.'' for ''If the State finds, after notice to the nurse aide involved and a reasonable opportunity for a hearing for the nurse aide to rebut allegations, that a nurse aide whose name is contained in a nurse aide registry has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding.''

Subsec. (g)(1)(D). Pub. L. 100–360, §411(*l*)(5)(D), substituted ''to issue regulations to carry out this subsection'' for ''to establish standards under subsection (f) of this section''.

Subsec. (g)(2)(A)(i). Pub. L. 100–360, §411(*l*)(5)(E), amended third sentence generally. Prior to amendment, third sentence read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (g)(2)(B)(ii). Pub. L. 100–360, §411(*l*)(5)(F), as added by Pub. L. 100–485, §608(d)(27)(I), substituted ''practicable'' for ''practical''.

Subsec. (g)(2)(C)(i). Pub. L. 100–360, §411(*l*)(4), substituted ''January'' for ''October''.

Subsec. (g)(3)(D). Pub. L. 100–360, §411(*l*)(5)(G), formerly §411(*l*)(5)(F), as redesignated by Pub. L. 100–485, §608(d)(27)(I), substituted ''on the basis of that survey'' for ''on that basis''.

Subsec. (g)(4). Pub. L. 100–360, §411(*l*)(5)(H), formerly §411(*l*)(5)(G), as redesignated by Pub. L. 100–485, §608(d)(27)(I), struck out ''chronically'' after ''enforcement actions against'' in last sentence.

Subsec. (h)(2)(B)(ii). Pub. L. 100–360, §411(*l*)(7)(A), substituted ''. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.'' for ''and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1320a–7a of this title.''

Subsec. (h)(5). Pub. L. 100–360, §411(*l*)(11), as added by Pub. L. 100–485, §608(d)(27)(L), substituted ''clauses (i), and (iii) of paragraph (2)(B)'' for ''clauses (i), (iii), and (iv) of paragraph (2)(A)''.

Subsec. (h)(6). Pub. L. 100–360, §411(*l*)(7)(B), inserted ''by such facilities'' after ''be made available''.

1987—Subsecs. (g) to (i). Pub. L. 100–203, §§4202(a)(2), 4203(a)(2), 4206, added subsecs. (g), (h), and (i), respectively.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 106(c)(1)(B) of Pub. L. 103–432 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

Section 106(c)(2)(B) of Pub. L. 103–432 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of OBRA–1987 [Pub. L. 100–203].''

Section 106(c)(3)(B) of Pub. L. 103–432 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect January 1, 1995.''

Section 106(c)(4)(C) of Pub. L. 103–432 provided that: ''The amendments made by this paragraph [amending this section] shall take effect January 1, 1995.''

Section 106(d)(7) of Pub. L. 103–432 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note below] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 905(b)(6) of Pub. L. 102–375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(h)(1)(F)(ii) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §106(d)(6), Oct. 31, 1994, 108 Stat. 4407, provided that:

''(I) The amendments made by clause (i) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203], except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a skilled nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

''(aa) had its participation terminated under title XVIII of the Social Security Act [this subchapter] or under the State plan under title XIX of such Act [subchapter XIX of this chapter];

''(bb) was subject to a denial of payment under either such title;

''(cc) was assessed a civil money penalty not less than $5,000 for deficiencies in skilled nursing facility standards;

''(dd) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

''(ee) pursuant to State action, was closed or had its residents transferred.

''(II) Notwithstanding subclause (I) and subject to section 1819(f)(2)(B)(iii)(I) of the Social Security Act [subsec. (f)(2)(B)(iii)(I) of this section] (as amended by clause (i)), a State may approve a training and competency evaluation program or a competency evaluation program offered by or in a skilled nursing facility described in subclause (I) if, during the previous 2 years, item (aa), (bb), (cc), (dd), or (ee) of subclause (I) did not apply to the facility.''

Section 4008(h)(1)(H) of Pub. L. 101–508 provided that: ''Except as provided in subparagraph (F) [amending this section and enacting provisions set out as a note above], the amendments made by this subsection [probably means this paragraph, amending this section] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Section 4008(h)(2)(P) of Pub. L. 101–508 provided that: ''The amendments made by this paragraph [amending this section and sections 1395x and 1395yy of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Section 4206(e)(1) of Pub. L. 101–508 provided that: ''The amendments made by subsections (a) and (d) [amending this section and sections 1395cc and 1395bbb of this title] shall apply with respect to services fur-

nished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6901(b)(6) of Pub. L. 101–239 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and sections 1396b and 1396r of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].

''(B) EXCEPTION.—The amendments made by paragraph (3) [amending this section and section 1396r of this title] shall apply to nurse aide training and competency evaluation programs, and nurse aide competency evaluation programs, offered on or after the end of the 90-day period beginning on the date of the enactment of this Act [Dec. 19, 1989], but shall not affect competency evaluations conducted under programs offered before the end of such period.''

Section 6901(d)(6) of Pub. L. 101–239 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and sections 1396i and 1396r of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].

''(B) EXCEPTION.—The amendment made by paragraph (1) [amending section 1396r of this title] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if originally included in the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 4204 of title IV of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(*l*)(9), July 1, 1988, 102 Stat. 805; Pub. L. 100–485, title VI, § 608(d)(27)(K), Oct. 13, 1988, 102 Stat. 2423, provided that:

''(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1819 of the Social Security Act [this section], the amendments made by sections 4201 and 4202 [enacting and amending this section and amending sections 1395x, 1395aa, 1395tt, and 1395yy of this title] (relating to skilled nursing facility requirements and survey and certification requirements) shall apply to services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date.

''(b) ENFORCEMENT.—(1) Except as otherwise specifically provided in section 1819 of the Social Security Act [this section], the amendments made by section 4203 of this Act [amending this section and section 1395aa of this title] apply January 1, 1988, without regard to whether regulations to implement such amendments are promulgated by such date.

''(2) In applying the amendments made by section 4203 of this Act for services furnished by a skilled nursing facility before October 1, 1990, any reference to a requirement of subsection (b), (c), or (d), of section 1819 of the Social Security Act is deemed a reference to the provisions of section 1861(j) of such Act [section 1395x(j) of this title].

''(c) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part [part 1 of subtitle C (§§ 4201–4206), enacting this section, amending this section and sections 1395x, 1395aa, 1395tt, and 1395yy of this title, and enacting provisions set out as notes under this section] and implementing the amendments made by this part.''

MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES

Section 4008(h)(2)(O) of Pub. L. 101–508 provided that: ''Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 [Dec. 22, 1987] with respect to services described in clauses (ii), (iv), and (v) of section 1819(b)(4)(A) of the Social Security Act [subsec. (b)(4)(A)(ii), (iv), and (v) of this section] shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.''

NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS; PUBLICATION OF PROPOSED REGULATIONS

Section 6901(b)(2) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall issue proposed regulations to establish the requirements described in sections 1819(f)(2) and 1919(f)(2) of the Social Security Act [subsec. (f)(2) of this section and section 1396r(f)(2) of this title] by not later than 90 days after the date of the enactment of this Act [Dec. 19, 1989].''

NURSE AIDE TRAINING AND COMPETENCY EVALUATION; SATISFACTION OF REQUIREMENTS; WAIVER

Section 6901(b)(4)(B)–(D) of Pub. L. 101–239 provided that:

''(B) A nurse aide shall be considered to satisfy the requirement of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act [subsec. (b)(5)(A) of this section and section 1396r(b)(5)(A) of this title] (of having completed a training and competency evaluation program approved by a State under section 1819(e)(1)(A) or 1919(e)(1)(A) of such Act [subsec. (e)(1)(A) of this section and section 1396r(e)(1)(A) of this title]), if such aide would have satisfied such requirement as of July 1, 1989, if a number of hours (not less than 60 hours) were substituted for '75 hours' in sections 1819(f)(2) and 1919(f)(2) of such Act [subsec. (f)(2) of this section and section 1396r(f)(2) of this title], respectively, and if such aide had received, before July 1, 1989, at least the difference in the number of such hours in supervised practical nurse aide training or in regular in-service nurse aide education.

''(C) A nurse aide shall be considered to satisfy the requirement of sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act (of having completed a training and competency evaluation program approved by a State under section 1819(e)(1)(A) or 1919(e)(1)(A) of such Act), if such aide was found competent (whether or not by the State), before July 1, 1989, after the completion of a course of nurse aide training of at least 100 hours duration.

''(D) With respect to the nurse aide competency evaluation requirements described in sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Social Security Act, a State may waive such requirements with respect to an individual who can demonstrate to the satisfaction of the State that such individual has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before the date of the enactment of this Act [Dec. 19, 1989].''

EVALUATION AND REPORT ON IMPLEMENTATION OF RESIDENT ASSESSMENT PROCESS

Section 4201(c) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall evaluate, and report to Congress by not later than January 1, 1992, on the implementation of the resident assess-

ment process for residents of skilled nursing facilities under the amendments made by this section [enacting this section and amending sections 1395x, 1395aa, 1395tt, and 1395yy of this title].''

ANNUAL REPORT ON STATUTORY COMPLIANCE AND ENFORCEMENT ACTIONS

Section 4205 of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall report to the Congress annually on the extent to which skilled nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1819 of the Social Security Act [subsecs. (b), (c), and (d) of this section] (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1819(h) of such Act (as added by section 4203 of this Act).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395x, 1395aa, 1395cc, 1395tt, 1396r, 3002 of this title; title 38 section 3675.

§ 1395i–4. Essential access community hospital program

(a) In general

There is hereby established a program under which the Secretary—

(1) shall make grants to not more than 7 States to carry out the activities described in subsection (d)(1) of this section;

(2) shall make grants to eligible hospitals and facilities (or consortia of hospitals and facilities) to carry out the activities described in subsection (d)(2) of this section; and

(3) shall designate (under subsection (i) of this section) hospitals and facilities located in States receiving grants under paragraph (1) as essential access community hospitals or rural primary care hospitals.

(b) Eligibility of States for grants

A State is eligible to receive a grant under subsection (a)(1) of this section only if the State submits to the Secretary, at such time and in such form as the Secretary may require, an application containing—

(1) assurances that the State—

(A) has developed, or is in the process of developing, a State rural health care plan that—

(i) provides for the creation of one or more rural health networks (as defined in subsection (g) of this section) in the State,

(ii) promotes regionalization of rural health services in the State,

(iii) improves access to hospital and other health services for rural residents of the State, and

(iv) enhances the provision of emergency and other transportation services related to health care;

(B) has developed the rural health care plan described in subparagraph (A) in consultation with the hospital association of the State and rural hospitals located in the State (or, in the case of a State in the process of developing such plan, that assures the Secretary that it will consult with its State hospital association and rural hospitals located in the State in developing such plan); and

(C) has designated, or is in the process of designating, rural non-profit or public hospitals or facilities located in the State as essential access community hospitals or rural primary care hospitals within such networks; and

(2) such other information and assurances as the Secretary may require.

(c) Eligibility of hospitals and consortia for grants

(1) In general

Except as provided in paragraph (3) or subsection (k) of this section, a hospital or facility is eligible to receive a grant under subsection (a)(2) of this section only if the hospital or facility—

(A) is located in a State receiving a grant under subsection (a)(1) of this section;

(B) is designated as an essential access community hospital or a rural primary care hospital by the State in which it is located or is a member of a rural health network (as defined in subsection (g) of this section);

(C) submits to the State in which it is located and to the Secretary, at such time and in such form as the Secretary may require, an application containing such information and assurances as the Secretary may require; and

(D) the State in which the hospital or facility is located certifies to the Secretary that—

(i) the receiving of such a grant by the hospital or facility is consistent with the State's rural health care plan (described in subsection (b)(1)(A) of this section), and

(ii) the State has approved the application submitted under subparagraph (C).

(2) Treatment of consortia

A consortium of hospitals or facilities each of which is part of the same rural health network is eligible to receive a grant under subsection (a)(2) of this section if each of its members would individually be eligible to receive such a grant.

(3) Eligibility of RPC hospitals not located in a State receiving grant

A facility designated as a rural primary care hospital by the Secretary under subsection (i)(2)(C) of this section shall be eligible to receive a grant under subsection (a)(2) of this section.

(d) Activities for which grants may be used

(1) Grants to States

A State shall use a grant received under subsection (a)(1) of this section to carry out the program established under this section in the State. Such grant may be used for engaging in activities relating to planning and implementing a rural health care plan and rural health networks, designating hospitals or facilities in the State as essential access community hospitals or rural primary care hospitals, and developing and supporting communication and emergency transportation systems.

(2) Grants to hospitals, facilities, and consortia

A hospital or facility shall use a grant received under subsection (a)(2) of this section

to finance the costs it incurs in converting itself to a rural primary care hospital or an essential access community hospital or in becoming part of a rural health network in the State in which it is located, including capital costs, costs incurred in the development of necessary communications systems, and costs incurred in the development of an emergency transportation system. A consortium shall use a grant received under subsection (a)(2) of this section to finance the costs it incurs in converting hospitals or facilities that are part of the consortium into rural primary care hospitals or in developing and implementing a rural health network consisting of its members in the State in which it is located, including capital costs, costs incurred in the development of necessary communications systems, and costs incurred in the development of an emergency transportation system.

(e) Designation by State of essential access community hospitals

A State may designate a hospital as an essential access community hospital only if the hospital—

(1)(A) except in the case of a hospital located in an urban area, is located more than 35 miles from any hospital that either (i) has been designated as an essential access community hospital or (ii) is classified by the Secretary as a rural referral center under section 1395ww(d)(5)(C) of this title, or (B) meets such other criteria relating to geographic location as the State may impose with the approval of the Secretary;

(2) has at least 75 inpatient beds or is located more than 35 miles from any other hospital;

(3) has in effect an agreement to provide emergency and medical backup services to rural primary care hospitals participating in the rural health network of which it is a member and throughout its service area;

(4) has in effect an agreement, with each rural primary care hospital participating in the rural health network of which it is a member, to accept patients transferred from such primary care hospital, to receive data from and transmit data to such primary care hospital, and to provide staff privileges to physicians providing care at such primary care hospital; and

(5) meets any other requirements imposed by the State with the approval of the Secretary.

(f) Designation by State of rural primary care hospitals

(1) Criteria for designation

A State may designate a facility as a rural primary care hospital only if the facility—

(A) is located in a rural area (as defined in section 1395ww(d)(2)(D) of this title), or is located in a county whose geographic area is substantially larger than the average geographic area for urban counties in the United States and whose hospital service area is characteristic of service areas of hospitals located in rural areas;

(B) at the time such facility applies to the State for designation as a rural primary care hospital, is a hospital (or, in the case of a facility that closed during the 12-month period that ends on the date the facility applies for such designation, at the time the facility closed),[1] with a participation agreement in effect under section 1395cc(a) of this title and had not been found, on the basis of a survey under section 1395aa of this title, to be in violation of any requirement to participate as a hospital under this subchapter;

(C) has ceased, or agrees (upon the approval of such application) to cease, providing inpatient care (except as required under subparagraph (F));

(D) in the case of a facility that is a member of a rural health network, has in effect an agreement to participate with other hospitals and facilities in the communications system of such network, including the network's system for the electronic sharing of patient data, including telemetry and medical records, if the network has in operation such a system;

(E) makes available 24-hour emergency care;

(F) subject to paragraph (4), provides not more than 6 inpatient beds (meeting such conditions as the Secretary may establish) for providing inpatient care to patients requiring stabilization before discharge or transfer to a hospital, except that the facility may not provide any inpatient hospital services—

(i) to any patient whose attending physician does not certify that the patient may reasonably be expected to be discharged or transferred to a hospital within 72 hours of admission to the facility; or

(ii) consisting of surgery or any other service requiring the use of general anesthesia (other than surgical procedures specified by the Secretary under section 1395*l*(i)(1)(A) of this title), unless the attending physician certifies that the risk associated with transferring the patient to a hospital for such services outweighs the benefits of transferring the patient to a hospital for such services.[2]

(G) meets such staffing requirements as would apply under section 1395x(e) of this title to a hospital located in a rural area, except that—

(i) the facility need not meet hospital standards relating to the number of hours during a day, or days during a week, in which the facility must be open, except insofar as the facility is required to provide emergency care on a 24-hour basis under subparagraph (E),

(ii) the facility may provide any services otherwise required to be provided by a full-time, on-site dietician, pharmacist, laboratory technician, medical technologist, and radiological technologist on a part-time, off-site basis, and

(iii) the inpatient care described in subparagraph (F) may be provided by a physician's assistant or nurse practitioner, subject to the oversight of a physician; and

[1] So in original. The comma probably should not appear.

[2] So in original. The period probably should be a semicolon.

(H) meets the requirements of subparagraphs (C) through (J) of paragraph (2) of section 1395x(aa) of this title and of clauses (ii) and (iv) of the second sentence of that paragraph, except that in determining whether a facility meets the requirements of this subparagraph, subparagraphs (E) and (F) of that paragraph shall be applied as if any reference to a ''physician'' is a reference to a physician as defined in section 1395x(r)(1) of this title.

(2) Preference given to hospitals or facilities participating in rural health network

In designating facilities as rural primary care hospitals under paragraph (1), the State shall give preference to hospitals or facilities participating in a rural health network.

(3) Permitting rural primary care hospitals to maintain swing beds

Nothing in this subsection shall be construed to prohibit a State from designating a facility as a rural primary care hospital solely because, at the time the facility applies to the State for designation as a rural primary care hospital, there is in effect an agreement between the facility and the Secretary under section 1395tt of this title under which the facility's inpatient hospital facilities are used for the furnishing of extended care services, except that the number of beds used for the furnishing of such services may not exceed the total number of licensed inpatient beds at the time the facility applies to the State for such designation (minus the number of inpatient beds used for providing inpatient care pursuant to paragraph (1)(F)). For purposes of the previous sentence, the number of beds of the facility used for the furnishing of extended care services shall not include any beds of a unit of the facility that is licensed as a distinct-part skilled nursing facility at the time the facility applies to the State for designation as a rural primary care hospital.

(4) Limitation on average length of inpatient stays

The Secretary may terminate a designation of a rural primary care hospital under paragraph (1) if the Secretary finds that the average length of stay for inpatients at the facility during the previous year in which the designation was in effect exceeded 72 hours. In determining the compliance of a facility with the requirement of the previous sentence, there shall not be taken into account periods of stay of inpatients in excess of 72 hours to the extent such periods exceed 72 hours because transfer to a hospital is precluded because of inclement weather or other emergency conditions.

(g) "Rural health network" defined

For purposes of this section, the term ''rural health network'' means, with respect to a State, an organization—

(1) consisting of—

(A) at least 1 hospital that—

(i) the State has designated or plans to designate as an essential access community hospital under subsection (b)(1)(C) of this section,

(ii) is classified by the Secretary as a regional referral center under section 1395ww(d)(5)(C) of this title, or

(iii) is located in an urban area and meets the criteria for classification as a regional referral center under such section, and

(B) at least 1 facility that the State has designated or plans to designate as a rural primary care hospital, and

(2) the members of which have entered into agreements regarding—

(A) patient referral and transfer,

(B) the development and use of communications systems, including (where feasible) telemetry systems and systems for electronic sharing of patient data, and

(C) the provision of emergency and nonemergency transportation among the members.

(h) Limit on amount of grant to hospital or facility

A grant made to a hospital or facility under subsection (a)(2) of this section may not exceed $200,000.

(i) Eligibility of hospitals or facilities for designation by Secretary

(1) Essential access community hospital

(A) The Secretary shall designate a hospital as an essential access community hospital if the hospital—

(i) is located in a State receiving a grant under subsection (a)(1) of this section (except as provided in subsection (k) of this section);

(ii) is designated as an essential access community hospital by the State in which it is located (except as provided in subparagraph (B) or subsection (k) of this section); and

(iii) meets such other criteria as the Secretary may require.

(B) In the case of a hospital that is not eligible for designation as an essential access community hospital under this paragraph solely because it is not designated as an essential access community hospital by the State in which it is located, the Secretary may designate such hospital as an essential access community hospital under this paragraph if the hospital is not so designated by the State in which it is located solely because of its failure to meet the criteria described in paragraph (2) of subsection (e) of this section.

(2) Rural primary care hospital

(A) The Secretary shall designate a facility as a rural primary care hospital if the facility—

(i) is located in a State receiving a grant under subsection (a)(1) of this section (except as provided in subsection (k) of this section);

(ii) is designated as a rural primary care hospital by the State in which it is located (except as provided in subparagraph (B) or subsection (k) of this section); and

(iii) meets such other criteria as the Secretary may require.

(B) In the case of a facility that is not eligible for designation as a rural primary care hospital under this paragraph solely because it is not designated as a rural primary care hospital by the State in which it is located, the Secretary may designate such facility as a rural primary care hospital under this paragraph if the facility is not so designated by the State in which it is located solely because of its failure to meet the criteria described in subparagraphs[3] (C), (F), or (G) of subsection (f)(1) of this section.

(C) The Secretary may designate not more than 15 facilities as rural primary care hospitals under this paragraph that do not meet the requirements of clauses (i) and (ii) of subparagraph (A) if such a facility meets the criteria described in subparagraphs (A), (B), and (E) of subsection (f)(1) of this section, except that nothing in this subparagraph shall be construed to prohibit the Secretary from designating a facility as a rural primary care hospital solely because the facility has entered into an agreement with the Secretary under section 1395tt of this title under which the facility's inpatient hospital facilities may be used for the furnishing of extended care services. In designating facilities as rural primary care hospitals under this subparagraph, the Secretary shall give preference to facilities not meeting the requirements of clause (i) of subparagraph (A) that have entered into an agreement described in subsection (g)(2) of this section with a rural health network located in a State receiving a grant under subsection (a)(1) of this section.

(j) Waiver of conflicting part A provisions

The Secretary is authorized to waive such provisions of this part and part C of this subchapter as are necessary to conduct the program established under this section.

(k) Eligibility of hospitals not located in participating States

Notwithstanding any other provision of this section—

(1) for purposes of including a hospital or facility as a member institution of a rural health network, a State may designate a hospital or facility that is not located in the State as an essential access community hospital or a rural primary care hospital if the hospital or facility is located in an adjoining State and is otherwise eligible for designation as such a hospital;

(2) the Secretary may designate a hospital or facility that is not located in a State receiving a grant under subsection (a)(1) of this section as an essential access community hospital or a rural primary care hospital if the hospital or facility is a member institution of a rural health network of a State receiving a grant under such subsection; and

(3) a hospital or facility designated pursuant to this subsection shall be eligible to receive a grant under subsection (a)(2) of this section.

[3] So in original. Probably should be ''subparagraph''.

(*l*) Authorization of appropriations

There are authorized to be appropriated from the Federal Hospital Insurance Trust Fund for each of the fiscal years 1990 through 1997—

(1) $10,000,000 for grants to States under subsection (a)(1) of this section; and

(2) $15,000,000 for grants to hospitals, facilities, and consortia under subsection (a)(2) of this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1820, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6003(g)(1)(A), 103 Stat. 2145; amended Nov. 5, 1990, Pub. L. 101–508, title IV, § 4008(d)(1)–(3), (m)(2)(B), 104 Stat. 1388–44, 1388–45, 1388–53; Oct. 31, 1994, Pub. L. 103–432, title I, § 102(a)(1), (2), (b)(1)(A), (2), (c), (f), (h), 108 Stat. 4401–4404.)

REFERENCES IN TEXT

Part C of this subchapter, referred to in subsec. (j), is classified to section 1395x et seq. of this title.

AMENDMENTS

1994—Subsec. (c)(1). Pub. L. 103–432, § 102(b)(2)(B)(i), substituted ''paragraph (3) or subsection (k) of this section'' for ''paragraph (3)''.

Subsec. (e)(1). Pub. L. 103–432, § 102(b)(1)(A)(i), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: ''is located in a rural area (as defined in section 1395ww(d)(2)(D) of this title);''.

Subsec. (e)(1)(A). Pub. L. 103–432, § 102(b)(1)(A)(ii), substituted ''except in the case of a hospital located in an urban area, is located'' for ''is located'' in introductory provisions, substituted ''or (ii)'' for '', (ii)'', and struck out ''or (iii) is located in an urban area that meets the criteria for classification as a regional referral center under such section,'' after ''section 1395ww(d)(5)(C) of this title,''.

Subsec. (e)(2) to (6). Pub. L. 103–432, § 102(b)(1)(A)(i), redesignated pars. (2) to (6) as (1) to (5), respectively.

Subsec. (f)(1)(F). Pub. L. 103–432, § 102(a)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''provides not more than 6 inpatient beds (meeting such conditions as the Secretary may establish) for providing inpatient care for a period not to exceed 72 hours (unless a longer period is required because transfer to a hospital is precluded because of inclement weather or other emergency conditions) to patients requiring stabilization before discharge or transfer to a hospital;''.

Subsec. (f)(1)(H). Pub. L. 103–432, § 102(f), inserted before period at end '', except that in determining whether a facility meets the requirements of this subparagraph, subparagraphs (E) and (F) of that paragraph shall be applied as if any reference to a 'physician' is a reference to a physician as defined in section 1395x(r)(1) of this title''.

Subsec. (f)(3). Pub. L. 103–432, § 102(c), substituted ''because, at the time the facility applies to the State for designation as a rural primary care hospital, there is in effect an agreement between the facility and the Secretary under section 1395tt of this title under which the facility's inpatient hospital facilities are used for the furnishing of extended care services, except that the number of beds used for the furnishing of such services may not exceed the total number of licensed inpatient beds at the time the facility applies to the State for such designation (minus the number of inpatient beds used for providing inpatient care pursuant to paragraph (1)(F)). For purposes of the previous sentence, the number of beds of the facility used for the furnishing of extended care services shall not include any beds of a unit of the facility that is licensed as a distinct-part skilled nursing facility at the time the facility applies to the State for designation as a rural primary care hospital.'' for ''because the facility has entered into an agreement with the Secretary under section 1395tt of this title

under which the facility's inpatient hospital facilities may be used for the furnishing of extended care services.''

Subsec. (f)(4). Pub. L. 103–432, §102(a)(2), added par. (4).

Subsec. (i)(1)(A). Pub. L. 103–432, §102(b)(2)(B)(ii), in cl. (i) inserted ''(except as provided in subsection (k) of this section)'' and in cl. (ii) inserted ''or subsection (k) of this section''.

Subsec. (i)(1)(B). Pub. L. 103–432, §102(b)(1)(A)(iii), substituted ''paragraph (2)'' for ''paragraph (3)''.

Subsec. (i)(2)(A). Pub. L. 103–432, §102(b)(2)(B)(ii), in cl. (i) inserted ''(except as provided in subsection (k) of this section)'' and in cl. (ii) inserted ''or subsection (k) of this section''.

Subsec. (k). Pub. L. 103–432, §102(b)(2)(A)(ii), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 103–432, §102(h), substituted ''1990 through 1997'' for ''1990, 1991, and 1992'' in introductory provisions.

Pub. L. 103–432, §102(b)(2)(A)(i), redesignated subsec. (k) as (*l*).

1990—Subsec. (d)(1). Pub. L. 101–508, §4008(m)(2)(B)(i), struck out ''demonstration'' before ''program''.

Subsec. (f)(1)(A). Pub. L. 101–508, §4008(d)(3), inserted before semicolon at end '', or is located in a county whose geographic area is substantially larger than the average geographic area for urban counties in the United States and whose hospital service area is characteristic of service areas of hospitals located in rural areas''.

Subsec. (f)(1)(B). Pub. L. 101–508, §4008(d)(2), which directed the substitution of ''is a hospital (or, in the case of a facility that closed during the 12-month period that ends on the date the facility applies for such designation, at the time the facility closed),'' for ''is a hospital,'' was executed by making the substitution for ''is a hospital'' to reflect the probable intent of Congress.

Subsec. (g)(1)(A)(ii). Pub. L. 101–508, §4008(m)(2)(B)(ii), substituted ''regional referral center'' for ''rural referral center''.

Subsec. (i)(2)(C). Pub. L. 101–508, §4008(d)(1), inserted at end ''In designating facilities as rural primary care hospitals under this subparagraph, the Secretary shall give preference to facilities not meeting the requirements of clause (i) of subparagraph (A) that have entered into an agreement described in subsection (g)(2) of this section with a rural health network located in a State receiving a grant under subsection (a)(1) of this section.''

Subsec. (j). Pub. L. 101–508, §4008(m)(2)(B)(iii), inserted ''and part C of this subchapter'' after ''this part''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(d)(4) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1), (2), and (3) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

GAO REPORTS

Section 102(a)(4) of Pub. L. 103–432 provided that: ''Not later than 2 years after the date of the enactment of this Act [Oct. 31, 1994], the Comptroller General shall submit reports to Congress on—

''(A) the application of the requirements under section 1820(f) of the Social Security Act [subsec. (f) of this section] (as amended by this subsection) that rural primary care hospitals provide inpatient care only to those individuals whose attending physicians certify may reasonably be expected to be discharged within 72 hours after admission and maintain an average length of inpatient stay during a year that does not exceed 72 hours; and

''(B) the extent to which such requirements have resulted in such hospitals providing inpatient care beyond their capabilities or have limited the ability of such hospitals to provide needed services.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395f, 1395x, 1395ww of this title.

PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR AGED AND DISABLED

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 254n, 254t, 300k, 426–1, 1320a–3, 1320a–3a, 1320a–7a, 1320a–7b, 1320b–14, 1395b–1, 1395b–2, 1395i–2, 1395x, 1395y, 1395cc, 1395ff, 1395*ll*, 1395mm, 1395nn, 1395pp, 1395rr, 1395ss, 1395uu, 1395xx, 1396a, 1396b, 1396d, 1396n of this title; title 2 section 906; title 5 sections 8904, 8910; title 10 section 1086; title 25 sections 1616m, 1621k; title 26 sections 213, 6103; title 31 section 3806.

§ 1395j. Establishment of supplementary medical insurance program for aged and disabled

There is hereby established a voluntary insurance program to provide medical insurance benefits in accordance with the provisions of this part for aged and disabled individuals who elect to enroll under such program, to be financed from premium payments by enrollees together with contributions from funds appropriated by the Federal Government.

(Aug. 14, 1935, ch. 531, title XVIII, §1831, as added July 30, 1965, Pub. L. 89–97, title I, §102(a), 79 Stat. 301; amended Oct. 30, 1972, Pub. L. 92–603, title II, §201(a)(3), 86 Stat. 1371.)

AMENDMENTS

1972—Pub. L. 92–603 substituted ''aged and disabled individuals'' for ''individuals 65 years of age or over''.

STUDY REGARDING COVERAGE UNDER PART B OF MEDICARE FOR NONREIMBURSABLE SERVICES PROVIDED BY OPTOMETRISTS FOR PROSTHETIC LENSES FOR PATIENTS WITH APHAKIA

Pub. L. 94–182, title I, §109, Dec. 31, 1975, 89 Stat. 1053, provided that the Secretary of Health, Education, and Welfare conduct a study on the appropriateness of reimbursement under the insurance program established by this part for services performed by optometrists with respect to the provision of prosthetic lenses for patients with aphakia and submit such study to Congress not later than 4 months after Dec. 31, 1975.

STUDY TO DETERMINE FEASIBILITY OF INCLUSION OF CERTAIN ADDITIONAL SERVICES UNDER PART B

Pub. L. 90–248, title I, §141, Jan. 2, 1968, 81 Stat. 855, directed Secretary to conduct a study relating to inclusion under the supplementary medical insurance program under this part of services of additional types of licensed practitioners performing health services in independent practice and submit such study to Congress prior to Jan. 1, 1969.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 38 section 1729.

§ 1395k. Scope of benefits; definitions

(a) The benefits provided to an individual by the insurance program established by this part shall consist of—

(1) entitlement to have payment made to him or on his behalf (subject to the provisions of this part) for medical and other health services, except those described in subparagraphs (B) and (D) of paragraph (2); and

(2) entitlement to have payment made on his behalf (subject to the provisions of this part) for—

(A) home health services (other than items described in subparagraph (G) or subparagraph (I));

(B) medical and other health services (other than items described in subparagraph (G) or subparagraph (I)) furnished by a provider of services or by others under arrangement with them made by a provider of services, excluding—

(i) physician services except where furnished by—

(I) a resident or intern of a hospital, or

(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1395x(b) of this title (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital) where the conditions specified in paragraph (7) of such section are met,

(ii) services for which payment may be made pursuant to section 1395n(b)(2) of this title,

(iii) services described by section 1395x(s)(2)(K)(i) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist; [1]

(iv) services of a nurse practitioner or clinical nurse specialist provided in a rural area (as defined in section 1395ww(d)(2)(D) of this title); and [2]

(C) outpatient physical therapy services (other than services to which the second sentence of section 1395x(p) of this title applies) and outpatient occupational therapy services (other than services to which such sentence applies through the operation of section 1395x(g) of this title);

(D)(i) rural health clinic services and (ii) Federally qualified health center services;

(E) comprehensive outpatient rehabilitation facility services;

(F) facility services furnished in connection with surgical procedures specified by the Secretary—

(i) pursuant to section 1395*l*(i)(1)(A) of this title and performed in an ambulatory surgical center (which meets health, safety, and other standards specified by the Secretary in regulations) if the center has an agreement in effect with the Secretary by which the center agrees to accept the standard overhead amount determined under section 1395*l*(i)(2)(A) of this title as full payment for such services (including intraocular lens in cases described in section 1395*l*(i)(2)(A)(iii) of this title) and to accept an assignment described in section 1395u(b)(3)(B)(ii) of this title with respect to payment for all such services (including intraocular lens in cases described in section 1395*l*(i)(2)(A)(iii) of this title) furnished by the center to individuals enrolled under this part, or

(ii) pursuant to section 1395*l*(i)(1)(B) of this title and performed by a physician, described in paragraph (1), (2), or (3) of section 1395x(r) of this title, in his office, if the Secretary has determined that—

(I) a quality control and peer review organization (having a contract with the Secretary under part B of subchapter XI of this chapter) is willing, able, and has agreed to carry out a review (on a sample or other reasonable basis) of the physician's performing such procedures in the physician's office,

(II) the particular physician involved has agreed to make available to such organization such records as the Secretary determines to be necessary to carry out the review, and

(III) the physician is authorized to perform the procedure in a hospital located in the area in which the office is located,

and if the physician agrees to accept the standard overhead amount determined under section 1395*l*(i)(2)(B) of this title as full payment for such services and to accept payment on an assignment-related basis with respect to payment for all services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1395x(s) of this title and furnished in connection with such surgical procedure to individuals enrolled under this part;

(G) covered items (described in section 1395m(a)(13) of this title) furnished by a provider of services or by others under arrangements with them made by a provider of services;

(H) outpatient rural primary care hospital services (as defined in section 1395x(mm)(3) of this title);

(I) prosthetic devices and orthotics and prosthetics (described in section 1395m(h)(4) of this title) furnished by a provider of services or by others under arrangements with them made by a provider of services; and

(J) partial hospitalization services provided by a community mental health center (as described in section 1395x(ff)(2)(B) of this title).

(b) For definitions of ''spell of illness'', ''medical and other health services'', and other terms used in this part, see section 1395x of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1832, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 302; amended Jan. 2, 1968, Pub. L. 90–248, title I, §§ 129(c)(6)(B), 133(d), 81 Stat. 848, 851; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 227(e)(1), 251(a)(4), 86 Stat. 1406, 1445; Dec. 13, 1977, Pub. L. 95–210, § 1(a), 91 Stat. 1485; Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 930(g), 933(a), 934(a), 948(a)(2), 94 Stat. 2631, 2635, 2637, 2643; Sept. 3, 1982, Pub. L. 97–248, title I, § 148(c), 96 Stat. 394; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2341(b), 2354(b)(6), 98 Stat. 1094, 1100; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9320(d), 9337(a), 9343(e)(1), 100 Stat. 2013, 2033, 2041; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4062(d)(2), 4063(e)(2), 4073(b)(1), 4077(b)(2), 4085(i)(22)(A), 101 Stat. 1330–108, 1330–118, 1330–120, as amended July 1, 1988, Pub. L. 100–360, title IV, § 411(g)(2)(E), (h)(4)(A), (7)(B), (i)(4)(C)(vi), 102 Stat. 783, 786, 787, 789; July 1, 1988, Pub. L. 100–360, title I, § 104(d)(3), title II, §§ 203(a), 205(a), 102 Stat. 689, 721, 729, 783; Dec. 13,

[1] So in original. The semicolon probably should be a comma.

[2] So in original. The word ''and'' probably should not appear.

1989, Pub. L. 101–234, title I, §101(a), title II, §201(a), 103 Stat. 1979, 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, §6116(a)(2), 103 Stat. 2219; Nov. 5, 1990, Pub. L. 101–508, title IV, §§4153(a)(2)(A), 4155(b)(1), 4157(b), 4161(a)(3)(A), 4162(b)(1), 104 Stat. 1388–83, 1388–86, 1388–89, 1388–93, 1388–96.)

REFERENCES IN TEXT

Part B of subchapter XI of this chapter, referred to in subsec. (a)(2)(F)(ii)(I), is classified to section 1320c et seq. of this title.

AMENDMENTS

1990—Subsec. (a)(2)(A), (B). Pub. L. 101–508, §4153(a)(2)(A)(i), substituted ''subparagraph (G) or subparagraph (I)'' for ''subparagraph (G)''.

Subsec. (a)(2)(B)(iii). Pub. L. 101–508, §4157(b), amended cl. (iii) generally. Prior to amendment, cl. (iii) related to services of a certified registered nurse anesthetist.

Subsec. (a)(2)(B)(iv). Pub. L. 101–508, §4155(b)(1), added cl. (iv).

Subsec. (a)(2)(D). Pub. L. 101–508, §4161(a)(3)(A), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(2)(I). Pub. L. 101–508, §4153(a)(2)(A)(ii)–(iv), added subpar. (I).

Subsec. (a)(2)(J). Pub. L. 101–508, §4162(b)(1), added subpar. (J).

1989—Subsec. (a). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §§203(a), 205(a), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(2)(H). Pub. L. 101–239 added subpar. (H).

Subsec. (b). Pub. L. 101–234, §101(a), repealed Pub. L. 100–360, §104(d)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–360, §205(a)(2), inserted sentence at end relating to in-home care provided to a chronically dependent individual on any day.

Subsec. (a)(2)(A). Pub. L. 100–360, §205(a)(1), designated existing provisions as cl. (i) and added cl. (ii) relating to in-home care for a chronically dependent individual.

Pub. L. 100–360, §203(a), inserted ''and home intravenous drug therapy services'' before semicolon at end.

Subsec. (a)(2)(B)(iv). Pub. L. 100–360, §411(h)(7)(B), struck out Pub. L. 100–203, §4077(b)(2), see 1987 Amendment note below.

Pub. L. 100–360, §411(h)(4)(A), struck out Pub. L. 100–203, §4073(b)(1), see 1987 Amendment note below.

Subsec. (a)(2)(F)(i). Pub. L. 100–360, §411(g)(2)(E), added Pub. L. 100–203, §4063(e)(2), see 1987 Amendment note below.

Subsec. (a)(2)(F)(ii). Pub. L. 100–360, §411(i)(4) (C)(vi), added Pub. L. 100–203, §4085(i)(22)(A), see 1987 Amendment note below.

Subsec. (b). Pub. L. 100–360, §104(d)(3), substituted ''definitions of 'medical and other health services' and'' for ''definitions of 'spell of illness', 'medical and other health services', and''.

1987—Subsec. (a)(2)(A). Pub. L. 100–203, §4062(d)(2)(A), inserted ''(other than items described in subparagraph (G))'' after ''services''.

Subsec. (a)(2)(B). Pub. L. 100–203, §4062(d)(2)(B), inserted ''(other than items described in subparagraph (G))'' after ''health services''.

Subsec. (a)(2)(B)(iv). Pub. L. 100–203, §4077(b)(2), which directed the addition of cl. (iv) relating to qualified psychologist services, was repealed by Pub. L. 100–360, §411(h)(7)(B).

Pub. L. 100–203, §4073(b)(1), which directed the addition of cl. (iv) relating to certified nurse-midwife services, was repealed by Pub. L. 100–360, §411(h)(4)(A).

Subsec. (a)(2)(F)(i). Pub. L. 100–203, §4063(e)(2), as added by Pub. L. 100–360, §411(g)(2)(E), inserted ''(including intraocular lens in cases described in section 1395*l*(i)(2)(A)(iii) of this title)'' after ''services'' in two places.

Subsec. (a)(2)(F)(ii). Pub. L. 100–203, §4085(i)(22)(A), as added by Pub. L. 100–360, §411(i)(4)(C)(vi), substituted ''payment on an assignment-related basis'' for ''an assignment described in section 1395u(b)(3)(B)(ii) of this title'' in concluding provisions.

Subsec. (a)(2)(G). Pub. L. 100–203, §4062(d)(2)(C), added subpar. (G).

1986—Subsec. (a)(2)(B)(iii). Pub. L. 99–509, §9320(d), added cl. (iii).

Subsec. (a)(2)(C). Pub. L. 99–509, §9337(a), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''outpatient physical therapy services, other than services to which the next to last sentence of section 1395x(p) of this title applies;''.

Subsec. (a)(2)(F). Pub. L. 99–509, §9343(e)(1), inserted ''standard overhead'' in cl. (i) and concluding provisions of cl. (ii).

1984—Subsec. (a)(2)(F)(ii). Pub. L. 98–369, §2341(b), substituted ''paragraph (1), (2), or (3) of section 1395x(r) of this title'' for ''section 1395x(r)(1) of this title''.

Subsec. (a)(2)(F)(ii)(II). Pub. L. 98–369, §2354(b)(6), substituted ''organization'' for ''Organization''.

1982—Subsec. (a)(2)(F)(ii)(I). Pub. L. 97–248 substituted ''quality control and peer review organization (having a contract with the Secretary'' for ''Professional Standards Review Organization (designated, conditionally or otherwise,''.

1980—Subsec. (a)(2)(A). Pub. L. 96–499, §930(g), struck out restriction on home health services of 100 visits during a calendar year.

Subsec. (a)(2)(B)(i)(II). Pub. L. 96–499, §948(a)(2), substituted ''where the conditions specified in paragraph (7) of such section are met'' for '', unless either clause (A) or (B) of paragraph (7) of such section is met''.

Subsec. (a)(2)(E). Pub. L. 96–499, §933(a), added subpar. (E).

Subsec. (a)(2)(F). Pub. L. 96–499, §934(a), added subpar. (F).

1977—Subsec. (a)(1). Pub. L. 95–210, §1(a)(1), substituted ''subparagraphs (B) and (D) of paragraph (2)'' for ''paragraph (2)(B)''.

Subsec. (a)(2)(D). Pub. L. 95–210, §1(a)(2), added subpar. (D).

1972—Subsec. (a)(2)(B). Pub. L. 92–603, §227(e)(1), inserted provisions relating to medical and other health services performed by a physician to a patient in a hospital which has an approved teaching program.

Subsec. (a)(2)(C). Pub. L. 92–603, §251(a)(4), inserted '', other than services to which the next to last sentence of section 1395x(p) of this title applies''.

1968—Subsec. (a)(2)(B). Pub. L. 90–248, §129(c)(6)(B), inserted ''and the services for which payment may be made pursuant to section 1395n(b)(2) of this title'' after ''hospital''.

Subsec. (a)(2)(C). Pub. L. 90–248, §133(d), added subpar. (C).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4153(a)(3) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and sections 1395*l* and 1395m of this title] shall apply to items furnished on or after January 1, 1991.''

Section 4155(e) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395u, and 1395x of this title] shall apply to services furnished on or after January 1, 1991.''

Section 4157(d) of Pub. L. 101–508 provided that: ''The amendments made by the preceding subsections [amending this section and sections 1395x, 1395y, and 1395cc of this title] apply to services furnished on or after January 1, 1991.''

Section 4161(a)(8) of Pub. L. 101–508 provided that:

''(A) Subject to subparagraphs (B) and (C), the amendments made by this section [probably means this subsection, which amended this section and sections 1320a–7b, 1395*l*, 1395x, 1395y, and 1395*oo* of this title] shall apply to services furnished on or after October 1, 1991.

''(B) In the case of a Federally qualified health care center that has elected, as of January 1, 1990, under part B of title XVIII of the Social Security Act [this part], to have the amount of payments for services under such part determined on a reasonable-charge basis, the amendment made by paragraph (3)(A) [amending this section] shall only apply on and after such date (not earlier than October 1, 1991) as the center may elect.

''(C) The amendment made by paragraph (6) [amending section 1395*oo* of this title] shall apply to cost reports for periods beginning on or after October 1, 1991.''

Section 4162(c) of Pub. L. 101–508 provided that: ''The amendments made by subsections (a) and (b) [amending this section and sections 1395x and 1395cc of this title] shall apply with respect to partial hospitalization services provided on or after October 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 101(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 104(d)(3) of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Amendment by section 203(a) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Section 205(f) of Pub. L. 100–360, which provided that the amendments made by section 205 of Pub. L. 100–360 [amending this section and sections 1395*l*, 1395n, 1395x, and 1395y of this title] were applicable to items and services furnished on or after January 1, 1990, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(g)(2)(E), (h)(4)(A), (7)(B), (i)(4)(C)(vi) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4062(d)(2) of Pub. L. 100–203 applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4062(e) of Pub. L. 100–203, as amended, set out as a note under section 1395f of this title.

Section 4073(e) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395x, and 1396d of this title] shall be effective with respect to services performed on or after July 1, 1988.''

Section 4077(b)(5), formerly § 4077(b)(6), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, § 411(h)(7)(F), July 1, 1988, 102 Stat. 787, provided that: ''The amendments made by this subsection [amending this section and sections 1395*l* and 1395x of this title] shall be effective with respect to services performed on or after July 1, 1988.''

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9320(i) of Pub. L. 99–509, as amended by Pub. L. 100–485, title VI, § 608(c)(1), Oct. 13, 1988, 102 Stat. 2412, provided that: ''Except as provided in subsection (k) [set out below], the amendments made by this section (other than subsection (a)) [amending this section and sections 1395*l*, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title] shall apply to services furnished on or after January 1, 1989.''

Section 9337(e) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395n, 1395x, and 1395cc of this title] shall apply to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2341(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395x of this title] apply to services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(6) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 930(g) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 933(h) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section and sections 1395n, 1395x, 1395z, and 1395aa of this title] shall become effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.''

Amendment by section 948(a)(2) of Pub. L. 96–499 applicable with respect to cost accounting periods beginning on or after Oct. 1, 1978, see section 948(c)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 1(j) of Pub. L. 95–210 provided that: ''The amendments made by this section [amending this section and sections 1395*l*, 1395x, 1395y, and 1395aa of this title and enacting provisions set out as notes under sections 1395*l* and 1395x of this title] shall apply to services rendered on or after the first day of the third calendar month which begins after the date of enactment of this Act [Dec. 13, 1977].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 227(e)(1) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Amendment by section 251(a)(4) of Pub. L. 92–603 applicable with respect to services furnished on or after July 1, 1973, see section 251(d)(1) of Pub. L. 92–603, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 129(c)(6)(B) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 133(g) of Pub. L. 90–248 provided that: ''The amendments made by the preceding subsections of this section [amending this section and sections 1395n,

1395x, 1395aa, and 1395cc of this title] shall apply to services furnished after June 30, 1968.''

QUALITY AND UTILIZATION OF IN-HOME CARE FOR CHRONICALLY DEPENDENT INDIVIDUALS

Section 205(e)(2) of Pub. L. 100–360, which required Secretary of Health and Human Services to take appropriate efforts to assure the quality and provide for appropriate utilization of in-home care for chronically dependent individuals under the amendments made by section 205 of Pub. L. 100–360 [amending this section and sections 1395*l*, 1395n, 1395x, and 1395y of this title], was repealed by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

STUDY OF ALTERNATIVE OUT-OF-HOME SERVICES

Section 205(g) of Pub. L. 100–360, which required Secretary of Health and Human Services to study, and report to Congress, not later than 18 months after July 1, 1988, on advisability of providing, to chronically dependent individuals eligible for in-home care under amendments made by section 205 of Pub. L. 100–360 [amending this section and sections 1395*l*, 1395n, 1395x, and 1395y of this title], out-of-home services as alternative services to in-home care, was repealed by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

CONSTRUCTION OF SECTION 9320 OF PUB. L. 99–509

Section 9320(j) of Pub. L. 99–509 provided that: ''Nothing in this section or the amendments made by this section [amending this section and sections 1395*l*, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title, enacting provisions set out as notes under this section, and amending provisions set out as a note under section 1395ww of this title] shall contravene provisions of State law relating to the practice of medicine or nursing or State law requirements or institutional requirements regarding the administration of anesthesia and its medical direction or supervision.''

CONTINUATION OF COST PASS-THROUGH FOR CERTIFIED REGISTERED NURSE ANESTHETISTS

Section 9320(k) of Pub. L. 99–509, as added by Pub. L. 100–485, title VI, §608(c)(2), Oct. 13, 1988, 102 Stat. 2412, and amended by Pub. L. 101–239, title VI, §6132(a), Dec. 19, 1989, 103 Stat. 2222, provided that:

''(1) Subject to paragraph (2), the amendments made by this section [amending this section and sections 1395*l*, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title and provisions set out as a note under section 1395ww of this title] shall not apply during a year (beginning with 1989) to a hospital located in a rural area (as defined for purposes of section 1886(d) of the Social Security Act [section 1395ww(d) of this title]) if the hospital establishes, at any time before the year[,] to the satisfaction of the Secretary of Health and Human Services that—

''(A) as of January 1, 1988, the hospital employed or contracted with a certified registered nurse anesthetist (but not more than one full-time equivalent certified registered nurse anesthetist),

''(B) in 1987 the hospital had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services that did not exceed 500 (or such higher number as the Secretary determines to be appropriate), and

''(C) each certified registered nurse anesthetist employed by, or under contract with, the hospital has agreed not to bill under part B of title XVIII of such Act [this part] for professional services furnished by the anesthetist at the hospital.

''(2) Paragraph (1) shall not apply in a year (after 1989) to a hospital unless the hospital establishes, before the beginning of the year, that the hospital has had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services in the previous year that did not exceed 500 (or such higher number as the Secretary determines to be appropriate).''

[Section 6132(b) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending section 9320(k) of Pub. L. 99–509, set out above] shall apply to services furnished on or after January 1, 1990.'']

PAYMENT FOR SERVICES OF PHYSICIANS RENDERED IN A TEACHING HOSPITAL FOR ACCOUNTING PERIODS BEGINNING AFTER JUNE 30, 1975, AND PRIOR TO OCTOBER 1, 1978; STUDIES, REPORTS, ETC.; EFFECTIVE DATES

Pub. L. 93–233, §15(a)(2), Dec. 31, 1973, 87 Stat. 966, provided that for the cost accounting periods beginning after June 30, 1975, and prior to Oct. 1, 1978, subsec. (a)(2)(B)(i) of this section will be administered as if subclause II of subsec. (a)(2)(B)(i) read as follows: ''(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1861(b) [section 1395x(b)(6) of this title] (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital), where the conditions specified in paragraph (7) of such section [section 1395x(b)(7) of this title] are met and''.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395*l*, 1395n, 1395x, 1395z, 1395aa, 1395bb, 1395gg of this title.

§ 1395*l*. Payment of benefits

(a) Amounts

Except as provided in section 1395mm of this title, and subject to the succeeding provisions of this section, there shall be paid from the Federal Supplementary Medical Insurance Trust Fund, in the case of each individual who is covered under the insurance program established by this part and incurs expenses for services with respect to which benefits are payable under this part, amounts equal to—

(1) in the case of services described in section 1395k(a)(1) of this title—80 percent of the reasonable charges for the services; except that (A) an organization which provides medical and other health services (or arranges for their availability) on a prepayment basis may elect to be paid 80 percent of the reasonable cost of services for which payment may be made under this part on behalf of individuals enrolled in such organization in lieu of 80 percent of the reasonable charges for such services if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of subsection (b) of this section, (B) with respect to items and services described in section 1395x(s)(10)(A) of this title, the amounts paid shall be 100 percent of the reasonable charges for such items and services, (C) with respect to expenses incurred for those physicians' services for which payment may be made under this part that are described in section 1395y(a)(4) of this title, the amounts paid shall be subject to such limitations as may be prescribed by regulations, (D) with respect to clinical diagnostic laboratory tests for which payment is made under this part (i) on the basis of a fee schedule under subsection (h)(1) of this section, the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on an assignment-related basis) of the lesser of the amount determined under such fee schedule, the limitation amount for that test determined under sub-

section (h)(4)(B) of this section, or the amount of the charges billed for the tests, or (ii) on the basis of a negotiated rate established under subsection (h)(6) of this section, the amount paid shall be equal to 100 percent of such negotiated rate, (E) with respect to services furnished to individuals who have been determined to have end stage renal disease, the amounts paid shall be determined subject to the provisions of section 1395rr of this title, (F) with respect to clinical social worker services under section 1395x(s)(2)(N) of this title, the amounts paid shall be 80 percent of the lesser of (i) the actual charge for the services or (ii) 75 percent of the amount determined for payment of a psychologist under clause (L), [(G) Repealed. Pub. L. 103–432, title I, § 156(a)(2)(B)(ii), Oct. 31, 1994, 108 Stat. 4440,] (H) with respect to services of a certified registered nurse anesthetist under section 1395x(s)(11) of this title, the amounts paid shall be 80 percent of the least of the actual charge, the prevailing charge that would be recognized (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1395w–4 of this title) if the services had been performed by an anesthesiologist, or the fee schedule for such services established by the Secretary in accordance with subsection (*l*) of this section, (I) with respect to covered items (described in section 1395m(a)(13) of this title), the amounts paid shall be the amounts described in section 1395m(a)(1) of this title, and[1] (J) with respect to expenses incurred for radiologist services (as defined in section 1395m(b)(6) of this title), subject to section 1395w–4 of this title, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount provided under the fee schedule established under section 1395m(b) of this title, (K) with respect to certified nurse-midwife services under section 1395x(s)(2)(L) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph (but in no event shall such fee schedule exceed 65 percent of the prevailing charge that would be allowed for the same service performed by a physician, or, for services furnished on or after January 1, 1992, 65 percent of the fee schedule amount provided under section 1395w–4 of this title for the same service performed by a physician), (L) with respect to qualified psychologist services under section 1395x(s)(2)(M) of this title, the amounts paid shall be 80 percent of the lesser of the actual charge for the services or the amount determined by a fee schedule established by the Secretary for the purposes of this subparagraph, (M) with respect to prosthetic devices and orthotics and prosthetics (as defined in section 1395m(h)(4) of this title), the amounts paid shall be the amounts described in section 1395m(h)(1) of this title, (N) with respect to expenses incurred for physicians' services (as defined in section 1395w–4(j)(3) of this title), the amounts paid shall be 80 percent of the payment basis determined under section 1395w–4(a)(1) of this title, (O) with respect to services described in section 1395x(s)(2)(K)(iii) of this title (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), the amounts paid shall be 80 percent of the lesser of the actual charge or the prevailing charge that would be recognized (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1395w–4 of this title) if the services had been performed by a physician (subject to the limitation described in subsection (r)(2) of this section), and (P) with respect to surgical dressings, the amounts paid shall be the amounts determined under section 1395m(i) of this title;

(2) in the case of services described in section 1395k(a)(2) of this title (except those services described in subparagraphs (D), (E), (F), (G), (H), and (I) of such section and unless otherwise specified in section 1395rr of this title)—

(A) with respect to home health services (other than a covered osteoporosis drug (as defined in section 1395x(kk) of this title)) and to items and services described in section 1395x(s)(10)(A) of this title, the lesser of—

(i) the reasonable cost of such services, as determined under section 1395x(v) of this title, or

(ii) the customary charges with respect to such services,

or, if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision), free of charge or at nominal charges to the public, the amount determined in accordance with section 1395f(b)(2) of this title;

(B) with respect to other items and services (except those described in subparagraph (C), (D), or (E) of this paragraph and except as may be provided in section 1395ww of this title)—

(i) the lesser of—

(I) the reasonable cost of such services, as determined under section 1395x(v) of this title, or

(II) the customary charges with respect to such services,

less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title, but in no case may the payment for such other services exceed 80 percent of such reasonable cost, or

(ii) if such services are furnished by a public provider of services, or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this clause), free of charge or at nominal charges to the public, 80 percent of the amount determined in accordance with section 1395f(b)(2) of this title, or

[1] So in original. The word ''and'' probably should not appear.

(iii) if (and for so long as) the conditions described in section 1395f(b)(3) of this title are met, the amounts determined under the reimbursement system described in such section;

(C) with respect to services described in the second sentence of section 1395x(p) of this title, 80 percent of the reasonable charges for such services;

(D) with respect to clinical diagnostic laboratory tests for which payment is made under this part (i) on the basis of a fee schedule determined under subsection (h)(1) of this section, the amount paid shall be equal to 80 percent (or 100 percent, in the case of such tests for which payment is made on an assignment-related basis or to a provider having an agreement under section 1395cc of this title) of the lesser of the amount determined under such fee schedule, the limitation amount for that test determined under subsection (h)(4)(B) of this section, or the amount of the charges billed for the tests, or (ii) on the basis of a negotiated rate established under subsection (h)(6) of this section, the amount paid shall be equal to 100 percent of such negotiated rate for such tests;

(E) with respect to—

(i) outpatient hospital radiology services (including diagnostic and therapeutic radiology, nuclear medicine and CAT scan procedures, magnetic resonance imaging, and ultrasound and other imaging services, but excluding screening mammography), and

(ii) effective for procedures performed on or after October 1, 1989, diagnostic procedures (as defined by the Secretary) described in section 1395x(s)(3) of this title (other than diagnostic x-ray tests and diagnostic laboratory tests),

the amount determined under subsection (n) of this section; and

(F) with respect to a covered osteoporosis drug (as defined in section 1395x(kk) of this title) furnished by a home health agency, 80 percent of the reasonable cost of such service, as determined under section 1395x(v) of this title;

(3) in the case of services described in subparagraphs (D) and (E) of section 1395k(a)(2) of this title, the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1395x(v)(1)(A) of this title, less the amount a provider may charge as described in clause (ii) of section 1395cc(a)(2)(A) of this title, but in no case may the payment for such services (other than for items and services described in section 1395x(s)(10)(A) of this title) exceed 80 percent of such costs;

(4) in the case of facility services described in section 1395k(a)(2)(F) of this title, and outpatient hospital facility services furnished in connection with surgical procedures specified by the Secretary pursuant to subsection (i)(1)(A) of this section, the applicable amount as determined under paragraph (2) or (3) of subsection (i) of this section;

(5) in the case of covered items (described in section 1395m(a)(13) of this title) the amounts described in section 1395m(a)(1) of this title;

(6) in the case of outpatient rural primary care hospital services, the amounts described in section 1395m(g) of this title; and

(7) in the case of prosthetic devices and orthotics and prosthetics (as described in section 1395m(h)(4) of this title), the amounts described in section 1395m(h) of this title.

(b) Deductible provision

Before applying subsection (a) of this section with respect to expenses incurred by an individual during any calendar year, the total amount of the expenses incurred by such individual during such year (which would, except for this subsection, constitute incurred expenses from which benefits payable under subsection (a) of this section are determinable) shall be reduced by a deductible of $75 for calendar years before 1991 and $100 for 1991 and subsequent years; except that (1) such total amount shall not include expenses incurred for items and services described in section 1395x(s)(10)(A) of this title, (2) such deductible shall not apply with respect to home health services (other than a covered osteoporosis drug (as defined in section 1395x(kk) of this title)), (3) such deductible shall not apply with respect to clinical diagnostic laboratory tests for which payment is made under this part (A) under subsection (a)(1)(D)(i) or (a)(2)(D)(i) of this section on an assignment-related basis, or to a provider having an agreement under section 1395cc of this title, or (B) on the basis of a negotiated rate determined under subsection (h)(6) of this section, and (4) such deductible shall not apply to Federally qualified health center services. The total amount of the expenses incurred by an individual as determined under the preceding sentence shall, after the reduction specified in such sentence, be further reduced by an amount equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during the calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence. The deductible under the previous sentence for blood or blood cells furnished an individual in a year shall be reduced to the extent that a deductible has been imposed under section 1395e(a)(2) of this title to blood or blood cells furnished the individual in the year.

(c) Mental disorders

Notwithstanding any other provision of this part, with respect to expenses incurred in any

calendar year in connection with the treatment of mental, psychoneurotic, and personality disorders of an individual who is not an inpatient of a hospital at the time such expenses are incurred, there shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section only 62½ percent of such expenses. For purposes of this subsection, the term ''treatment'' does not include brief office visits (as defined by the Secretary) for the sole purpose of monitoring or changing drug prescriptions used in the treatment of such disorders or partial hospitalization services that are not directly provided by a physician.

(d) Nonduplication of payments

No payment may be made under this part with respect to any services furnished an individual to the extent that such individual is entitled (or would be entitled except for section 1395e of this title) to have payment made with respect to such services under part A of this subchapter.

(e) Information for determination of amounts due

No payment shall be made to any provider of services or other person under this part unless there has been furnished such information as may be necessary in order to determine the amounts due such provider or other person under this part for the period with respect to which the amounts are being paid or for any prior period.

(f) Maximum rate of payment per visit for independent rural health clinics

In establishing limits under subsection (a) of this section on payment for rural health clinic services provided by independent rural health clinics, the Secretary shall establish such limit, for services provided—

(1) in 1988, after March 31, at $46, and

(2) in a subsequent year, at the limit established under this subsection for the previous year increased by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) applicable to primary care services (as defined in section 1395u(i)(4) of this title) furnished as of the first day of that year.

(g) Physical therapy services

In the case of services described in the second sentence of section 1395x(p) of this title, with respect to expenses incurred in any calendar year, no more than $900 shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section. In the case of outpatient occupational therapy services which are described in the second sentence of section 1395x(p) of this title through the operation of section 1395x(g) of this title, with respect to expenses incurred in any calendar year, no more than $900 shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.

(h) Fee schedules for clinical diagnostic laboratory tests; percentage of prevailing charge level; nominal fee for samples; adjustments; recipients of payments; negotiated payment rate

(1)(A) The Secretary shall establish fee schedules for clinical diagnostic laboratory tests for which payment is made under this part, other than such tests performed by a provider of services for an inpatient of such provider.

(B) In the case of clinical diagnostic laboratory tests performed by a physician or by a laboratory (other than tests performed by a qualified hospital laboratory (as defined in subparagraph (D)) for outpatients of such hospital), the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished on or after July 1, 1984.

(C) In the case of clinical diagnostic laboratory tests performed by a qualified hospital laboratory (as defined in subparagraph (D)) for outpatients of such hospital, the fee schedules established under subparagraph (A) shall be established on a regional, statewide, or carrier service area basis (as the Secretary may determine to be appropriate) for tests furnished on or after July 1, 1984.

(D) In this subsection, the term ''qualified hospital laboratory'' means a hospital laboratory, in a sole community hospital (as defined in section 1395ww(d)(5)(D)(iii) of this title), which provides some clinical diagnostic laboratory tests 24 hours a day in order to serve a hospital emergency room which is available to provide services 24 hours a day and 7 days a week.

(2)(A)(i) Except as provided in paragraph (4), the Secretary shall set the fee schedules at 60 percent (or, in the case of a test performed by a qualified hospital laboratory (as defined in paragraph (1)(D)) for outpatients of such hospital, 62 percent) of the prevailing charge level determined pursuant to the third and fourth sentences of section 1395u(b)(3) of this title for similar clinical diagnostic laboratory tests for the applicable region, State, or area for the 12-month period beginning July 1, 1984, adjusted annually (to become effective on January 1 of each year) by a percentage increase or decrease equal to the percentage increase or decrease in the Consumer Price Index for All Urban Consumers (United States city average), and subject to such other adjustments as the Secretary determines are justified by technological changes.

(ii) Notwithstanding clause (i)—

(I) any change in the fee schedules which would have become effective under this subsection for tests furnished on or after January 1, 1988, shall not be effective for tests furnished during the 3-month period beginning on January 1, 1988,

(II) the Secretary shall not adjust the fee schedules under clause (i) to take into account any increase in the consumer price index for 1988,

(III) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1991, 1992, and 1993 shall be 2 percent, and

(IV) the annual adjustment in the fee schedules determined under clause (i) for each of the years 1994 and 1995 shall be 0 percent.

(iii) In establishing fee schedules under clause (i) with respect to automated tests and tests (other than cytopathology tests) which before July 1, 1984, the Secretary made subject to a limit based on lowest charge levels under the sixth sentence of section 1395u(b)(3) of this title

performed after March 31, 1988, the Secretary shall reduce by 8.3 percent the fee schedules otherwise established for 1988, and such reduced fee schedules shall serve as the base for 1989 and subsequent years.

(B) The Secretary may make further adjustments or exceptions to the fee schedules to assure adequate reimbursement of (i) emergency laboratory tests needed for the provision of bona fide emergency services, and (ii) certain low volume high-cost tests where highly sophisticated equipment or extremely skilled personnel are necessary to assure quality.

(3) In addition to the amounts provided under the fee schedules, the Secretary shall provide for and establish (A) a nominal fee to cover the appropriate costs in collecting the sample on which a clinical diagnostic laboratory test was performed and for which payment is made under this part, except that not more than one such fee may be provided under this paragraph with respect to samples collected in the same encounter, and (B) a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect the sample, except that such a fee may be provided only with respect to an individual who is homebound or an inpatient in an inpatient facility (other than a hospital). In establishing a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect a sample, the Secretary shall provide a method for computing the fee based on the number of miles traveled and the personnel costs associated with the collection of each individual sample, but the Secretary shall only be required to apply such method in the case of tests furnished during the period beginning on April 1, 1989, and ending on December 31, 1990, by a laboratory that establishes to the satisfaction of the Secretary (based on data for the 12-month period ending June 30, 1988) that (i) the laboratory is dependent upon payments under this subchapter for at least 80 percent of its collected revenues for clinical diagnostic laboratory tests, (ii) at least 85 percent of its gross revenues for such tests are attributable to tests performed with respect to individuals who are homebound or who are residents in a nursing facility, and (iii) the laboratory provided such tests for residents in nursing facilities representing at least 20 percent of the number of such facilities in the State in which the laboratory is located.

(4)(A) In establishing any fee schedule under this subsection, the Secretary may provide for an adjustment to take into account, with respect to the portion of the expenses of clinical diagnostic laboratory tests attributable to wages, the relative difference between a region's or local area's wage rates and the wage rate presumed in the data on which the schedule is based.

(B) For purposes of subsections (a)(1)(D)(i) and (a)(2)(D)(i) of this section, the limitation amount for a clinical diagnostic laboratory test performed—

(i) on or after July 1, 1986, and before April 1, 1988, is equal to 115 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1),

(ii) after March 31, 1988, and before January 1, 1990, is equal to the median of all the fee schedules established for that test for that laboratory setting under paragraph (1),

(iii) after December 31, 1989, and before January 1, 1991, is equal to 93 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1),

(iv) after December 31, 1990, and before January 1, 1994, is equal to 88 percent of such median,

(v) after December 31, 1993, and before January 1, 1995, is equal to 84 percent of such median,

(vi) after December 31, 1994, and before January 1, 1996, is equal to 80 percent of such median, and

(vii) after December 31, 1995, is equal to 76 percent of such median.

(5)(A) In the case of a bill or request for payment for a clinical diagnostic laboratory test for which payment may otherwise be made under this part on an assignment-related basis or under a provider agreement under section 1395cc of this title, payment may be made only to the person or entity which performed or supervised the performance of such test; except that—

(i) if a physician performed or supervised the performance of such test, payment may be made to another physician with whom he shares his practice,

(ii) in the case of a test performed at the request of a laboratory by another laboratory, payment may be made to the referring laboratory but only if—

(I) the referring laboratory is located in, or is part of, a rural hospital,

(II) the referring laboratory is wholly owned by the entity performing such test, the referring laboratory wholly owns the entity performing such test, or both the referring laboratory and the entity performing such test are wholly-owned by a third entity, or

(III) not more than 30 percent of the clinical diagnostic laboratory tests for which such referring laboratory (but not including a laboratory described in subclause (II)),[2] receives requests for testing during the year in which the test is performed[2] are performed by another laboratory, and

(iii) in the case of a clinical diagnostic laboratory test provided under an arrangement (as defined in section 1395x(w)(1) of this title) made by a hospital or rural primary care hospital, payment shall be made to the hospital.

(B) In the case of such a bill or request for payment for a clinical diagnostic laboratory test for which payment may otherwise be made under this part, and which is not described in subparagraph (A), payment may be made to the beneficiary only on the basis of the itemized bill of the person or entity which performed or supervised the performance of the test.

(C) Payment for a clinical diagnostic laboratory test, including a test performed in a physi-

[2] So in original. The comma after ''subclause (II))'' probably should follow ''is performed''.

cian's office but excluding a test performed by a rural health clinic may only be made on an assignment-related basis or to a provider of services with an agreement in effect under section 1395cc of this title.

(D) A person may not bill for a clinical diagnostic laboratory test, including a test performed in a physician's office but excluding a test performed by a rural health clinic,,[3] other than on an assignment-related basis. If a person knowingly and willfully and on a repeated basis bills for a clinical diagnostic laboratory test in violation of the previous sentence, the Secretary may apply sanctions against the person in the same manner as the Secretary may apply sanctions against a physician in accordance with paragraph (2) of section 1395u(j) of this title in the same manner such paragraphs apply[4] with respect to a physician. Paragraph (4) of such section shall apply in this subparagraph in the same manner as such paragraph applies to such section.

(6) In the case of any diagnostic laboratory test payment for which is not made on the basis of a fee schedule under paragraph (1), the Secretary may establish a payment rate which is acceptable to the person or entity performing the test and which would be considered the full charge for such tests. Such negotiated rate shall be limited to an amount not in excess of the total payment that would have been made for the services in the absence of such rate.

(i) Outpatient surgery

(1) The Secretary shall, in consultation with appropriate medical organizations—

(A) specify those surgical procedures which are appropriately (when considered in terms of the proper utilization of hospital inpatient facilities) performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in an ambulatory surgical center (meeting the standards specified under section 1395k(a)(2)(F)(i) of this title), rural primary care hospital, or hospital outpatient department, and

(B) specify those surgical procedures which are appropriately (when considered in terms of the proper utilization of hospital inpatient facilities) performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in a physician's office.

The lists of procedures established under subparagraphs (A) and (B) shall be reviewed and updated not less often than every 2 years, in consultation with appropriate trade and professional organizations.

(2)(A) The amount of payment to be made for facility services furnished in connection with a surgical procedure specified pursuant to paragraph (1)(A) and furnished to an individual in an ambulatory surgical center described in such paragraph shall be equal to 80 percent of a standard overhead amount established by the Secretary (with respect to each such procedure) on the basis of the Secretary's estimate of a fair fee which—

(i) takes into account the costs incurred by such centers, or classes of centers, generally in providing services furnished in connection with the performance of such procedure, as determined in accordance with a survey (based upon a representative sample of procedures and facilities) taken not later than January 1, 1995, and every 5 years thereafter, of the actual audited costs incurred by such centers in providing such services,

(ii) takes such costs into account in such a manner as will assure that the performance of the procedure in such a center will result in substantially less amounts paid under this subchapter than would have been paid if the procedure had been performed on an inpatient basis in a hospital, and

(iii) in the case of insertion of an intraocular lens during or subsequent to cataract surgery includes payment which is reasonable and related to the cost of acquiring the class of lens involved.

Each amount so established shall be reviewed and updated not later than July 1, 1987, and annually thereafter to take account of varying conditions in different areas.

(B) The amount of payment to be made under this part for facility services furnished, in connection with a surgical procedure specified pursuant to paragraph (1)(B), in a physician's office shall be equal to 80 percent of a standard overhead amount established by the Secretary (with respect to each such procedure) on the basis of the Secretary's estimate of a fair fee which—

(i) takes into account additional costs, not usually included in the professional fee, incurred by physicians in securing, maintaining, and staffing the facilities and ancillary services appropriate for the performance of such procedure in the physician's office, and

(ii) takes such items into account in such a manner which will assure that the performance of such procedure in the physician's office will result in substantially less amounts paid under this subchapter than would have been paid if the services had been furnished on an inpatient basis in a hospital.

Each amount so established shall be reviewed and updated not later than July 1, 1987, and annually thereafter to take account of varying conditions in different areas.

(C) Notwithstanding the second sentence of subparagraph (A) or the second sentence of subparagraph (B), if the Secretary has not updated amounts established under such subparagraphs with respect to facility services furnished during a fiscal year (beginning with fiscal year 1996), such amounts shall be increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) as estimated by the Secretary for the 12-month period ending with the midpoint of the year involved.

(3)(A) The aggregate amount of the payments to be made under this part for outpatient hospital facility services or rural primary care hospital services furnished in connection with surgical procedures specified under paragraph (1)(A) in a cost reporting period shall be equal to the lesser of—

[3] So in original.

[4] So in original. Probably should be ''such paragraph applies''.

(i) the amount determined with respect to such services under subsection (a)(2)(B) of this section; or

(ii) the blend amount (described in subparagraph (B)).

(B)(i) The blend amount for a cost reporting period is the sum of—

(I) the cost proportion (as defined in clause (ii)(I)) of the amount described in subparagraph (A)(i), and

(II) the ASC proportion (as defined in clause (ii)(II)) of 80 percent of the standard overhead amount payable with respect to the same surgical procedure as if it were provided in an ambulatory surgical center in the same area, as determined under paragraph (2)(A).

(ii) Subject to paragraph (4), in this paragraph:

(I) The term ''cost proportion'' means 75 percent for cost reporting periods beginning in fiscal year 1988, 50 percent for portions of cost reporting periods beginning on or after October 1, 1988, and ending on or before December 31, 1990, and 42 percent for portions of cost reporting periods beginning on or after January 1, 1991.

(II) The term ''ASC proportion'' means 25 percent for cost reporting periods beginning in fiscal year 1988, 50 percent for portions of cost reporting periods beginning on or after October 1, 1988, and ending on or before December 31, 1990, and 58 percent for portions of cost reporting periods beginning on or after January 1, 1991.

(4)(A) In the case of a hospital that—

(i) makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary),

(ii) receives more than 30 percent of its total revenues from outpatient services, and

(iii) on October 1, 1987—

(I) was an eye specialty hospital or an eye and ear specialty hospital, or

(II) was operated as an eye or eye and ear unit (as defined in subparagraph (B)) of a general acute care hospital which, on the date of the application described in clause (i), operates less than 20 percent of the beds that the hospital operated on October 1, 1987, and has sold or otherwise disposed of a substantial portion of the hospital's other acute care operations,

the cost proportion and ASC proportion in effect under subclauses (I) and (II) of paragraph (3)(B)(ii) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost reporting periods beginning on or after October 1, 1988, and before January 1, 1995.

(B) For purposes of this[5] subparagraph (A)(iii)(II), the term ''eye or eye and ear unit'' means a physically separate or distinct unit containing separate surgical suites devoted solely to eye or eye and ear services.

(5)(A) The Secretary is authorized to provide by regulations that in the case of a surgical procedure, specified by the Secretary pursuant to paragraph (1)(A), performed in an ambulatory surgical center described in such paragraph, there shall be paid (in lieu of any amounts otherwise payable under this part) with respect to the facility services furnished by such center and with respect to all related services (including physicians' services, laboratory, X-ray, and diagnostic services) a single all-inclusive fee established pursuant to subparagraph (B), if all parties furnishing all such services agree to accept such fee (to be divided among the parties involved in such manner as they shall have previously agreed upon) as full payment for the services furnished.

(B) In implementing this paragraph, the Secretary shall establish with respect to each surgical procedure specified pursuant to paragraph (1)(A) the amount of the all-inclusive fee for such procedure, taking into account such factors as may be appropriate. The amount so established with respect to any surgical procedure shall be reviewed periodically and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

(6) Any person, including a facility having an agreement under section 1395k(a)(2)(F)(i) of this title, who knowingly and willfully presents, or causes to be presented, a bill or request for payment, for an intraocular lens inserted during or subsequent to cataract surgery for which payment may be made under paragraph (2)(A)(iii), is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(j) Accrual of interest on balance of excess or deficit not paid

Whenever a final determination is made that the amount of payment made under this part either to a provider of services or to another person pursuant to an assignment under section 1395u(b)(3)(B)(ii) of this title was in excess of or less than the amount of payment that is due, and payment of such excess or deficit is not made (or effected by offset) within 30 days of the date of the determination, interest shall accrue on the balance of such excess or deficit not paid or offset (to the extent that the balance is owed by or owing to the provider) at a rate determined in accordance with the regulations of the Secretary of the Treasury applicable to charges for late payments.

(k) Hepatitis B vaccine

With respect to services described in section 1395x(s)(10)(B) of this title, the Secretary may provide, instead of the amount of payment otherwise provided under this part, for payment of such an amount or amounts as reasonably reflects the general cost of efficiently providing such services.

(*l*) Fee schedule for services of certified registered nurse anesthetists

(1)(A) The Secretary shall establish a fee schedule for services of certified registered nurse anesthetists under section 1395x(s)(11) of this title.

[5] So in original. The word ''this'' probably should not appear.

(B) In establishing the fee schedule under this paragraph the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology.

(C) The provisions of this subsection shall not apply to certain services furnished in certain hospitals in rural areas under the provisions of section 9320(k) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6132 of the Omnibus Budget Reconciliation Act of 1989.

(2) Except as provided in paragraph (3), the fee schedule established under paragraph (1) shall be initially based on audited data from cost reporting periods ending in fiscal year 1985 and such other data as the Secretary determines necessary.

(3)(A) In establishing the initial fee schedule for those services, the Secretary shall adjust the fee schedule to the extent necessary to ensure that the estimated total amount which will be paid under this subchapter for those services plus applicable coinsurance in 1989 will equal the estimated total amount which would be paid under this subchapter for those services in 1989 if the services were included as inpatient hospital services and payment for such services was made under part A of this subchapter in the same manner as payment was made in fiscal year 1987, adjusted to take into account changes in prices and technology relating to the administration of anesthesia.

(B) The Secretary shall also reduce the prevailing charge of physicians for medical direction of a certified registered nurse anesthetist, or the fee schedule for services of certified registered nurse anesthetists, or both, to the extent necessary to ensure that the estimated total amount which will be paid under this subchapter plus applicable coinsurance for such medical direction and such services in 1989 and 1990 will not exceed the estimated total amount which would have been paid plus applicable coinsurance but for the enactment of the amendments made by section 9320 of the Omnibus Budget Reconciliation Act of 1986. A reduced prevailing charge under this subparagraph shall become the prevailing charge but for subsequent years for purposes of applying the economic index under the fourth sentence of section 1395u(b)(3) of this title.

(4)(A) Except as provided in subparagraphs (C) and (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, by a certified registered nurse anesthetist who is not medically directed—

(i) the conversion factor shall be—

(I) for services furnished in 1991, $15.50,

(II) for services furnished in 1992, $15.75,

(III) for services furnished in 1993, $16.00,

(IV) for services furnished in 1994, $16.25,

(V) for services furnished in 1995, $16.50,

(VI) for services furnished in 1996, $16.75, and

(VII) for services furnished in calendar years after 1996, the previous year's conversion factor increased by the update determined under section 1395w–4(d)(3) of this title for physician anesthesia services for that year;

(ii) the payment areas to be used shall be the fee schedule areas used under section 1395w–4 of this title (or, in the case of services furnished during 1991, the localities used under section 1395u(b) of this title) for purposes of computing payments for physicians' services that are anesthesia services;

(iii) the geographic adjustment factors to be applied to the conversion factor under clause (i) for services in a fee schedule area or locality is—[6]

(I) in the case of services furnished in 1991, the geographic work index value and the geographic practice cost index value specified in section 1395u(q)(1)(B) of this title for physicians' services that are anesthesia services furnished in the area or locality, and

(II) in the case of services furnished after 1991, the geographic work index value, the geographic practice cost index value, and the geographic malpractice index value used for determining payments for physicians' services that are anesthesia services under section 1395w–4 of this title,

with 70 percent of the conversion factor treated as attributable to work and 30 percent as attributable to overhead for services furnished in 1991 (and the portions attributable to work, practice expenses, and malpractice expenses in 1992 and thereafter being the same as is applied under section 1395w–4 of this title).

(B)(i) Except as provided in clause (ii) and subparagraph (D), in determining the amount paid under the fee schedule under this subsection for services furnished on or after January 1, 1991, and before January 1, 1994, by a certified registered nurse anesthetist who is medically directed, the Secretary shall apply the same methodology specified in subparagraph (A).

(ii) The conversion factor used under clause (i) shall be—

(I) for services furnished in 1991, $10.50,

(II) for services furnished in 1992, $10.75, and

(III) for services furnished in 1993, $11.00.

(iii) In the case of services of a certified registered nurse anesthetist who is medically directed or medically supervised by a physician which are furnished on or after January 1, 1994, the fee schedule amount shall be one-half of the amount described in section 1395w–4(a)(5)(B) of this title with respect to the physician.

(C) Notwithstanding subclauses (I) through (V) of subparagraph (A)(i)—

(i) in the case of a 1990 conversion factor that is greater than $16.50, the conversion factor for a calendar year after 1990 and before 1996 shall be the 1990 conversion factor reduced by the product of the last digit of the calendar year and one-fifth of the amount by which the 1990 conversion factor exceeds $16.50; and

(ii) in the case of a 1990 conversion factor that is greater than $15.49 but less than $16.51, the conversion factor for a calendar year after 1990 and before 1996 shall be the greater of—

(I) the 1990 conversion factor, or

(II) the conversion factor specified in subparagraph (A)(i) for the year involved.

(D) Notwithstanding subparagraph (C), in no case may the conversion factor used to deter-

[6] So in original. Probably should be ''are—''.

mine payment for services in a fee schedule area or locality under this subsection, as adjusted by the adjustment factors specified in subparagraphs[7] (A)(iii), exceed the conversion factor used to determine the amount paid for physicians' services that are anesthesia services in the area or locality.

(5)(A) Payment for the services of a certified registered nurse anesthetist (for which payment may otherwise be made under this part) may be made on the basis of a claim or request for payment presented by the certified registered nurse anesthetist furnishing such services, or by a hospital, rural primary care hospital, physician, group practice, or ambulatory surgical center with which the certified registered nurse anesthetist furnishing such services has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, rural primary care hospital, physician, group practice, or ambulatory surgical center.

(B) No hospital or rural primary care hospital that presents a claim or request for payment for services of a certified nurse anesthetist under this part may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital or rural primary care hospital for purposes of this subchapter.

(6) If an adjustment under paragraph (3)(B) results in a reduction in the reasonable charge for a physicians' service and a nonparticipating physician furnishes the service to an individual entitled to benefits under this part after the effective date of the reduction, the physician's actual charge is subject to a limit under section 1395u(j)(1)(D) of this title.

(m) Incentive payments for physicians' services furnished in underserved areas

In the case of physicians' services furnished to an individual, who is covered under the insurance program established by this part and who incurs expenses for such services, in an area that is designated (under section 254e(a)(1)(A) of this title) as a health professional shortage area, in addition to the amount otherwise paid under this part, there also shall be paid to the physician (or to an employer or facility in the cases described in clause (A) of section 1395u(b)(6) of this title) (on a monthly or quarterly basis) from the Federal Supplementary Medical Insurance Trust Fund an amount equal to 10 percent of the payment amount for the service under this part.

(n) Payments to hospital outpatient departments for radiology; amount; definitions

(1)(A)[8] The aggregate amount of the payments to be made for all or part of a cost reporting period for services described in subsection (a)(2)(E)(i) of this section furnished under this part on or after October 1, 1988, and for services described in subsection (a)(2)(E)(ii) of this section furnished under this part on or after October 1, 1989, shall be equal to the lesser of—

(i) the amount determined with respect to such services under subsection (a)(2)(B) of this section, or

(ii) the blend amount for radiology services and diagnostic procedures determined in accordance with subparagraph (B).

(B)(i) The blend amount for radiology services and diagnostic procedures for a cost reporting period is the sum of—

(I) the cost proportion (as defined in clause (ii)) of the amount described in subparagraph (A)(i); and

(II) the charge proportion (as defined in clause (ii)(II)) of 62 percent (for services described in subsection (a)(2)(E)(i) of this section), or (for procedures described in subsection (a)(2)(E)(ii) of this section), 42 percent or such other percent established by the Secretary (or carriers acting pursuant to guidelines issued by the Secretary) based on prevailing charges established with actual charge data, of 80 percent of the prevailing charge or (for services described in subsection (a)(2)(E)(i) of this section furnished on or after April 1, 1989 and for services described in subsection (a)(2)(E)(ii) of this section furnished on or after January 1, 1992) the fee schedule amount established for participating physicians for the same services as if they were furnished in a physician's office in the same locality as determined under section 1395u(b) of this title (or, in the case of services furnished on or after January 1, 1992, under section 1395w–4 of this title).

(ii) In this subparagraph:

(I) The term ''cost proportion'' means 50 percent, except that such term means 65 percent in the case of outpatient radiology services for portions of cost reporting periods which occur in fiscal year 1989 and in the case of diagnostic procedures described in subsection (a)(2)(E)(ii) of this section for portions of cost reporting periods which occur in fiscal year 1990, and such term means 42 percent in the case of outpatient radiology services for portions of cost reporting periods beginning on or after January 1, 1991.

(II) The term ''charge proportion'' means 100 percent minus the cost proportion.

(*o*) Limitation on benefit for payment for therapeutic shoes for individuals with severe diabetic foot disease

(1) In the case of shoes described in section 1395x(s)(12) of this title—

(A) no payment may be made under this part, with respect to any individual for any year, for the furnishing of—

(i) more than one pair of custom molded shoes (including inserts provided with such shoes) and 2 additional pairs of inserts for such shoes, or

(ii) more than one pair of extra-depth shoes (not including inserts provided with such shoes) and 3 pairs of inserts for such shoes, and

(B) with respect to expenses incurred in any calendar year, no more than the limits established under paragraph (2) shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.

Payment for shoes (or inserts) under this part shall be considered to include payment for any

[7] So in original. Probably should be ''subparagraph''.

[8] So in original. No par. (2) has been enacted.

expenses for the fitting of such shoes (or inserts).

(2)(A) Except as provided by the Secretary under subparagraphs (B) and (C), the limits established under this paragraph—

(i) for the furnishing of—

(I) one pair of custom molded shoes (including any inserts that are provided initially with the shoes) is $300, and

(II) any additional pair of inserts with respect to such shoes is $50; and

(ii) for the furnishing of extra-depth shoes and inserts is—

(I) $100 for the pair of shoes itself, and

(II) $50 for any pairs of inserts for a pair of shoes.

(B) The Secretary or a carrier may establish limits for shoes that are lower than the limits established under subparagraph (A) if the Secretary finds that shoes and inserts of an appropriate quality are readily available at or below such lower limits.

(C) For each year after 1988, each dollar amount under subparagraph (A) or (B) (as previously adjusted under this subparagraph) shall be increased by the same percentage increase as the Secretary provides with respect to durable medical equipment for that year, except that if such increase is not a multiple of $1, it shall be rounded to the nearest multiple of $1.

(D) In accordance with procedures established by the Secretary, an individual entitled to benefits with respect to shoes described in section 1395x(s)(12) of this title may substitute modification of such shoes instead of obtaining one (or more, as specified by the Secretary) pairs[9] of inserts (other than the original pair of inserts with respect to such shoes). In such case, the Secretary shall substitute, for the limits established under subparagraph (A), such limits as the Secretary estimates will assure that there is no net increase in expenditures under this subsection as a result of this subparagraph.

(3) In this subchapter, the term ''shoes'' includes, except for purposes of subparagraphs (A)(ii) and (B) of paragraph (2), inserts for extra-depth shoes.

(p) Repealed. Pub. L. 103–432, title I, § 123(b)(2)(A)(ii), Oct. 31, 1994, 108 Stat. 4411

(q) Requests for payment to include information on referring physician

(1) Each request for payment, or bill submitted, for an item or service furnished by an entity for which payment may be made under this part and for which the entity knows or has reason to believe there has been a referral by a referring physician (within the meaning of section 1395nn of this title) shall include the name and unique physician identification number for the referring physician.

(2)(A) In the case of a request for payment for an item or service furnished by an entity under this part on an assignment-related basis and for which information is required to be provided under paragraph (1) but not included, payment may be denied under this part.

(B) In the case of a request for payment for an item or service furnished by an entity under this part not submitted on an assignment-related basis and for which information is required to be provided under paragraph (1) but not included—

(i) if the entity knowingly and willfully fails to provide such information promptly upon request of the Secretary or a carrier, the entity may be subject to a civil money penalty in an amount not to exceed $2,000, and

(ii) if the entity knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection to provide the information required under paragraph (1), the entity may be subject to exclusion from participation in the programs under this chapter for a period not to exceed 5 years, in accordance with the procedures of subsections (c), (f), and (g) of section 1320a–7 of this title.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under clause (i) in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(r) Cap on prevailing charge; billing on assignment-related basis

(1) With respect to services described in section 1395x(s)(2)(K)(iii) of this title (relating to nurse practitioner or clinical nurse specialist services provided in a rural area), payment may be made on the basis of a claim or request for payment presented by the nurse practitioner or clinical nurse specialist furnishing such services, or by a hospital, rural primary care hospital, skilled nursing facility or nursing facility (as defined in section 1396r(a) of this title), physician, group practice, or ambulatory surgical center with which the nurse practitioner or clinical nurse specialist has an employment or contractual relationship that provides for payment to be made under this part for such services to such hospital, physician, group practice, or ambulatory surgical center.

(2)(A) For purposes of subsection (a)(1)(O) of this section, the prevailing charge for services described in section 1395x(s)(2)(K)(iii) of this title may not exceed the applicable percentage (as defined in subparagraph (B)) of the prevailing charge (or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1395w–4 of this title) determined for such services performed by physicians who are not specialists.

(B) In subparagraph (A), the term ''applicable percentage'' means—

(i) 75 percent in the case of services performed in a hospital, and

(ii) 85 percent in the case of other services.

(3) No hospital or rural primary care hospital that presents a claim or request for payment under this part for services described in section 1395x(s)(2)(K)(iii) of this title may treat any uncollected coinsurance amount imposed under this part with respect to such services as a bad debt of such hospital for purposes of this subchapter.

(s) Other prepaid organizations

The Secretary may not provide for payment under subsection (a)(1)(A) of this section with respect to an organization unless the organiza-

[9] So in original. Probably should be ''pair''.

tion provides assurances satisfactory to the Secretary that the organization meets the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(Aug. 14, 1935, ch. 531, title XVIII, § 1833, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 302; amended Jan. 2, 1968, Pub. L. 90–248, title I, §§ 129(c)(7), (8), 131(a), (b), 132(b), 135(c), 81 Stat. 848–850, 853; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 204(a), 211(c)(4), 226(c)(2), 233(b), 245(d), 251(a)(2), (3), 279, 299K(a), 86 Stat. 1377, 1384, 1404, 1411, 1424, 1445, 1454, 1464; Oct. 25, 1977, Pub. L. 95–142, § 16(a), 91 Stat. 1200; Dec. 13, 1977, Pub. L. 95–210, § 1(b), 91 Stat. 1485; June 13, 1978, Pub. L. 95–292, § 4(b), (c), 92 Stat. 315; Oct. 19, 1980, Pub. L. 96–473, § 6(j), 94 Stat. 2266; Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 918(a)(4), 930(h), 932(a)(1), 934(b), (d)(1), (3), 935(a), 942, 943(a), 94 Stat. 2626, 2631, 2634, 2637, 2639, 2641; Dec. 28, 1980, Pub. L. 96–611, § 1(b)(1), (2), 94 Stat. 3566; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2106(a), 2133(a), 2134(a), 95 Stat. 792, 797; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 101(c)(2), 112(a), (b), 117(a)(2), 148(d), 96 Stat. 336, 340, 355, 394; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2303(a)–(d), 2305(a)–(d), 2308(b)(2)(B), 2321(b), (d)(4)(A), 2323(b)(1), (2), (4), 2354(b)(5), (7), 98 Stat. 1064, 1069, 1070, 1074, 1084–1086, 1100; Nov. 8, 1984, Pub. L. 98–617, § 3(b)(2), (3), 98 Stat. 3295; Apr. 7, 1986, Pub. L. 99–272, title IX, §§ 9303(a)(1), (b)(1)–(3), 9401(b)–(2)(E), 100 Stat. 188, 189, 198, 199; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9320(e)(1), (2), 9337(b), 9339(a)(1), (b)(1), (2), (c)(1), 9343(a), (b), (e)(2), 100 Stat. 2014, 2033, 2036, 2039–2041; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4042(b)(2)(B), 4043(a), 4045(c)(2)(A), 4049(a)(1), 4055(a), formerly 4054(a), 4062(d)(3), 4063(b), (e)(1), 4064(a), (b)(1), (2), (c)(1), formerly (c), 4066(a), (b), 4067(a), 4068(a), 4070(a), (b)(4), 4072(b), 4073(b), formerly (b)(2), (3), 4077(b)(2), (3), formerly (b)(3), (4), 4084(a), (c)(2), 4085(b)(1), (i)(1)–(3), (21)(D)(i), (22)(B), (23), 101 Stat. 1330–85, 1330–88, 1330–90, 1330–108 to 1330–115, 1330–117, 1330–118, 1330–120, 1330–121, 1330–129 to 1330–133, as amended July 1, 1988, Pub. L. 100–360, title IV, § 411(f)(2)(D), (8)(B)(i), (12)(A), (14), (g)(2)(E), (3)(A)–(C), (E), (F), (h)(3)(B), (4)(B), (C), (7)(C), (D), (F), (i)(3), (4)(C)(i), (ii), (iv), (vi), 102 Stat. 777, 779, 781, 783, 784, 786–789; July 1, 1988, Pub. L. 100–360, title I, § 104(d)(7), title II, §§ 201(a), 202(b)(1)–(3), 203(c)(1)(A)–(E), 204(d)(1), 205(c), 212(c)(2), title IV, § 411(f)(8)(C), (g)(1)(E), (2)(D), (3)(D), (4)(C), (5), (h)(1)(A), (i)(4)(B), 102 Stat. 699, 704, 722, 729, 730, 741, 779, 782–785, 789, as amended Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(3)(G), 102 Stat. 2414; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(4), (22)(B), (D), (23)(A), 102 Stat. 2414, 2420, 2421; Nov. 10, 1988, Pub. L. 100–647, title VIII, §§ 8421(a), 8422(a), 102 Stat. 3802; Dec. 13, 1989, Pub. L. 101–234, title II, §§ 201(a), 202(a), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6003(e)(2)(A), (g)(3)(D)(vii), 6102(c)(1), (e)(1), (5), (6)(A), (7), (f)(2), 6111(a), (b)(1), 6113(b)(3), (d), 6116(b)(1), 6131(a)(1), (b), 6133(a), 6204(b), 103 Stat. 2143, 2153, 2184, 2187–2189, 2213, 2214, 2217, 2219, 2221, 2222, 2241; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4008(m)(2)(C), 4104(b)(1), 4118(f)(2)(D), 4151(c)(1), (2), 4153(a)(2)(B), (C), 4154(a), (b)(1), (c)(1), (e)(1), 4155(b)(2), (3), 4160, 4161(a)(3)(B), 4163(d)(1), 4206(b)(2), 4302, 104 Stat. 1388–53, 1388–59, 1388–70, 1388–73, 1388–83 to 1388–87, 1388–91, 1388–93, 1388–100, 1388–116, 1388–125; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(c)(2), 104 Stat. 3035; Aug. 10, 1993, Pub. L. 103–66, title XIII, §§ 13516(b), 13532(a), 13544(b)(2), 13551, 13555(a), 107 Stat. 584, 586, 590, 592; Oct. 31, 1994, Pub. L. 103–432, title I, §§ 123(b)(2)(A), (e), 141(a), (c)(1), 147(a), (d), (e)(2), (3), (f)(6)(C), (D), 156(a)(2)(B), 160(d)(1), 108 Stat. 4411, 4412, 4424, 4425, 4429, 4430, 4432, 4440, 4443.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsecs. (d) and (*l*)(3)(A), is classified to section 1395c et seq. of this title.

Section 9320(k) of the Omnibus Budget Reconciliation Act of 1986, as amended by section 6132 of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (*l*)(1)(C), is section 9320(k) of Pub. L. 99–509, as amended, which is set out as a note under section 1395k of this title.

The amendments made by section 9320 of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (*l*)(3)(B), are amendments made by section 9320 of Pub. L. 99–509, which amended sections 1395k, 1395*l*, 1395u, 1395x, 1395y, 1395aa, 1395bb, 1395cc, 1395ww, 1396a, and 1396n of this title and provisions set out as a note under section 1395ww of this title.

AMENDMENTS

1994—Subsec. (a)(1)(D)(i). Pub. L. 103–432, § 156(a)(2)(B)(i), struck out '', or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)'' after ''assignment-related basis''.

Subsec. (a)(1)(G). Pub. L. 103–432, § 156(a)(2)(B)(ii), struck out subpar. (G) which read as follows: ''with respect to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion), the amounts paid shall be 100 percent of the reasonable charges for such items and services,''.

Subsec. (a)(2)(A). Pub. L. 103–432, § 156(a)(2)(B)(iii), struck out '', to items and services (other than clinical diagnostic laboratory tests) furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),'' before ''and to items and services'' in introductory provisions.

Pub. L. 103–432, § 147(f)(6)(C)(i), substituted ''health services (other than a covered osteoporosis drug (as defined in section 1395x(kk) of this title))'' for ''health services'' in introductory provisions.

Subsec. (a)(2)(D)(i). Pub. L. 103–432, § 156(a)(2)(B)(iv), substituted ''assignment-related basis or'' for ''assignment-related basis,'' and struck out '', or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)'' after ''section 1395cc of this title''.

Subsec. (a)(2)(F). Pub. L. 103–432, § 147(f)(6)(C)(ii)–(iv), added subpar. (F).

Subsec. (a)(3). Pub. L. 103–432, § 156(a)(2)(B)(v), struck out ''and for items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title, or a third opinion, if the second opinion was in disagreement with the first opinion)'' after ''section 1395x(s)(10)(A) of this title''.

Subsec. (b)(2). Pub. L. 103–432, § 147(f)(6)(D), inserted ''(other than a covered osteoporosis drug (as defined in section 1395x(kk) of this title))'' after ''services''.

Subsec. (b)(4), (5). Pub. L. 103–432, § 156(a)(2)(B)(vi), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''such deductible shall not apply with respect to items and services furnished in connec-

tion with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),''.

Subsec. (h)(5)(D). Pub. L. 103–432, §123(e), substituted ''paragraph (2) of section 1395u(j)'' for ''paragraphs (2) and (3) of section 1395u(j)'' and inserted at end ''Paragraph (4) of such section shall apply in this subparagraph in the same manner as such paragraph applies to such section.''

Subsec. (i)(1). Pub. L. 103–432, §141(a)(3), inserted before period at end of last sentence '', in consultation with appropriate trade and professional organizations''.

Subsec. (i)(2)(A). Pub. L. 103–432, §141(a)(2)(A), struck out ''and may be adjusted by the Secretary, when appropriate,'' after ''annually thereafter'' in last sentence.

Subsec. (i)(2)(A)(i). Pub. L. 103–432, §141(a)(1), inserted before comma at end '', as determined in accordance with a survey (based upon a representative sample of procedures and facilities) taken not later than January 1, 1995, and every 5 years thereafter, of the actual audited costs incurred by such centers in providing such services''.

Subsec. (i)(2)(B). Pub. L. 103–432, §141(a)(2)(A), struck out ''and may be adjusted by the Secretary, when appropriate,'' after ''annually thereafter'' in last sentence.

Subsec. (i)(2)(C). Pub. L. 103–432, §141(a)(2)(B), added subpar. (C).

Subsec. (i)(3)(B)(ii). Pub. L. 103–432, §141(c)(1), in subcls. (I) and (II) substituted ''for portions of cost reporting periods'' for ''for reporting periods'' and ''and ending on or before December 31, 1990'' for ''and on or before December 31, 1990''.

Subsec. (*l*)(5)(B), (C). Pub. L. 103–432, §123(b)(2)(A)(i), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows:

''(B)(i) Payment for the services of a certified registered nurse anesthetist under this part may be made only on an assignment-related basis, and any such assignment agreed to by a certified registered nurse anesthetist shall be binding upon any other person presenting a claim or request for payment for such services.

''(ii) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services of a certified registered nurse anesthetist for which payment may be made under this part only on an assignment-related basis is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (n)(1)(B)(i)(II). Pub. L. 103–432, §147(d)(2), substituted ''April 1, 1989'' for ''January 1, 1989''.

Pub. L. 103–432, §147(d)(1), inserted ''and for services described in subsection (a)(2)(E)(ii) of this section furnished on or after January 1, 1992'' after ''January 1, 1989'' and ''(or, in the case of services furnished on or after January 1, 1992, under section 1395w–4 of this title)'' before period at end.

Subsec. (p). Pub. L. 103–432, §123(b)(2)(A)(ii), struck out subsec. (p) which read as follows: ''In the case of certified nurse-midwife services for which payment may be made under this part only pursuant to section 1395x(s)(2)(L) of this title, in the case of qualified psychologists services for which payment may be made under this part only pursuant to section 1395x(s)(2)(M) of this title, and in the case of clinical social worker services for which payment may be made under this part only pursuant to section 1395x(s)(2)(N) of this title, payment may only be made under this part for such services on an assignment-related basis. Except for deductible and coinsurance amounts applicable under this section, whoever knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in the previous sentence, is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (q)(1). Pub. L. 103–432, §147(a), substituted ''unique physician identification number'' for ''provider number'' and struck out ''and indicate whether or not the referring physician is an interested investor (within the meaning of section 1395nn(h)(5) of this title)'' after ''for the referring physician''.

Subsec. (r). Pub. L. 103–432, §160(d)(1), redesignated subsec. (r), relating to other prepaid organizations, as (s).

Subsec. (r)(1). Pub. L. 103–432, §147(e)(2), substituted ''or ambulatory'' for ''ambulatory'' in two places and ''center'' for ''center,'' before ''with which the nurse''.

Subsec. (r)(2)(A). Pub. L. 103–432, §147(e)(3), substituted ''subsection (a)(1)(O) of this section'' for ''subsection (a)(1)(M) of this section''.

Subsec. (r)(3), (4). Pub. L. 103–432, §123(b)(2)(A)(iii), redesignated par. (4) as (3) and struck out former par. (3) which read as follows:

''(3)(A) Payment under this part for services described in section 1395x(s)(2)(K)(iii) of this title may be made only on an assignment-related basis, and any such assignment agreed to by a nurse practitioner or clinical nurse specialist shall be binding upon any other person presenting a claim or request for payment for such services.

''(B) Except for deductible and coinsurance amounts applicable under this section, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in section 1395x(s)(2)(K)(iii) of this title in violation of subparagraph (A) is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (s). Pub. L. 103–432, §160(d)(1), redesignated subsec. (r), relating to other prepaid organizations, as (s).

1993—Subsec. (a)(1). Pub. L. 103–66, §13544(b)(2), redesignated cl. (M) relating to nurse practitioner and clinical nurse specialist services as (O), inserted comma before ''(O)'', transferred and inserted such cl. to appear before semicolon at end, struck out ''and'' before ''(N)'', and inserted '', and'' and cl. (P) following cl. (O) and before semicolon at end.

Subsec. (g). Pub. L. 103–66, §13555(a), substituted ''$900'' for ''$750'' in two places.

Subsec. (h)(2)(A)(ii)(IV). Pub. L. 103–66, §13551(a), added subcl. (IV).

Subsec. (h)(4)(B)(iv) to (vii). Pub. L. 103–66, §13551(b), added cls. (iv) to (vii), and struck out former cl. (iv) which read as follows: ''after December 31, 1990, is equal to 88 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).''

Subsec. (i)(3)(B)(ii). Pub. L. 103–66, §13532(a)(1), in introductory provisions substituted ''paragraph (4)'' for ''the last sentence of this clause'' and struck out concluding provisions which read as follows: ''In the case of a hospital that makes application to the Secretary and demonstrates that it specializes in eye services or eye and ear services (as determined by the Secretary), receives more than 30 percent of its total revenues from outpatient services and was an eye specialty hospital or an eye and ear specialty hospital on October 1, 1987, the cost proportion and ASC proportion in effect under subclauses (I) and (II) for cost reporting periods beginning in fiscal year 1988 shall remain in effect for cost

reporting periods beginning on or after October 1, 1988, and before January 1, 1995.''

Subsec. (i)(4). Pub. L. 103–66, §13532(a)(2), added par. (4).

Subsec. (*l*)(4)(B)(i). Pub. L. 103–66, §13516(b)(1), inserted ''and before January 1, 1994,'' after ''1991,''.

Subsec. (*l*)(4)(B)(ii). Pub. L. 103–66, §13516(b)(2), inserted ''and'' at end of subcl. (II), substituted a period for the comma at end of subcl. (III), and struck out subcls. (IV) to (VII) which read as follows:

''(IV) for services furnished in 1994, $11.25,

''(V) for services furnished in 1995, $11.50,

''(VI) for services furnished in 1996, $11.70, and

''(VII) for services furnished in calendar years after 1997, the previous year's conversion factor increased by the update determined under section 1395w–4(d)(3) of this title for physician anesthesia services for that year.''

Subsec. (*l*)(4)(B)(iii). Pub. L. 103–66, §13516(b)(3), added cl. (iii).

1990—Subsec. (a)(1)(H). Pub. L. 101–508, §4118(f)(2)(D), struck out '', as the case may be'' after ''section 1395w–4 of this title''.

Subsec. (a)(1)(J). Pub. L. 101–508, §4104(b)(1), struck out ''or physician pathology services'' after ''1395m(b)(6) of this title)'' and ''or section 1395m(f) of this title, respectively'' after ''1395m(b) of this title''.

Subsec. (a)(1)(K). Pub. L. 101–508, §4155(b)(2)(A), which directed amendment of cl. (K) by striking ''and'' at the end, could not be executed because of prior amendment by Pub. L. 101–508, §4153(a)(2)(B)(i), see below.

Pub. L. 101–508, §4153(a)(2)(B)(i), struck out ''and'' after ''by a physician),''.

Subsec. (a)(1)(L). Pub. L. 101–508, §4153(a)(2)(B)(ii), substituted ''subparagraph,'' for ''subparagraph and'' at end.

Subsec. (a)(1)(M). Pub. L. 101–508, §4155(b)(2)(B), added cl. (M) relating to nurse practitioner and clinical nurse specialist services.

Pub. L. 101–508, §4153(a)(2)(B)(ii), added cl. (M) relating to prosthetic devices and orthotics.

Subsec. (a)(2). Pub. L. 101–508, §4153(a)(2)(C)(i), substituted ''(H), and (I)'' for ''and (H)'' in introductory provisions.

Subsec. (a)(2)(E)(i). Pub. L. 101–508, §4163(d)(1), inserted '', but excluding screening mammography'' after ''imaging services''.

Subsec. (a)(7). Pub. L. 101–508, §4153(a)(2)(C)(ii)–(iv), added par. (7).

Subsec. (b). Pub. L. 101–508, §4302, inserted ''for calendar years before 1991 and $100 for 1991 and subsequent years'' after ''$75''.

Subsec. (b)(5). Pub. L. 101–508, §4161(a)(3)(B), added cl. (5) at end of first sentence.

Subsec. (h)(2)(A)(ii). Pub. L. 101–508, §4154(a)(1), substituted ''clause (i)'' for ''any other provision of this subsection'' in introductory provisions.

Subsec. (h)(2)(A)(ii)(III). Pub. L. 101–508, §4154(a)(2)–(4), added subcl. (III).

Subsec. (h)(4)(B). Pub. L. 101–508, §4154(b)(1)(B), struck out ''and'' at end of cl. (ii), inserted ''and before January 1, 1991,'' after ''1989,'' in cl. (iii), substituted '', and'' for period at end of cl. (iii), and added cl. (iv).

Subsec. (h)(5)(A)(ii)(II). Pub. L. 101–508, §4154(e)(1)(A), substituted ''wholly owned by'' for ''a wholly-owned subsidiary of''.

Subsec. (h)(5)(A)(ii)(III). Pub. L. 101–508, §4154(e)(1)(C), substituted ''receives requests for testing during the year in which the test is performed'' for ''submits bills or requests for payment in any year''.

Pub. L. 101–508, §4154(e)(1)(B), which directed substitution of ''laboratory (but not including a laboratory described in subclause (II)),'' for ''laboratory'', was executed by making the substitution for ''laboratory'' the second time appearing to reflect the probable intent of Congress.

Subsec. (h)(5)(A)(iii). Pub. L. 101–508, §4008(m)(2)(C), which directed technical correction to Pub. L. 101–239, §6003(g)(3)(C)(vii)(I), was executed by making technical correction to Pub. L. 101–239, §6003(g)(3)(D)(vii)(I), resulting in no change in text. See 1989 Amendment note below.

Subsec. (h)(5)(C). Pub. L. 101–508, §4154(c)(1)(A), substituted ''test, including a test performed in a physician's office but excluding a test performed by a rural health clinic'' for ''test performed by a laboratory other than a rural health clinic''.

Subsec. (h)(5)(D). Pub. L. 101–508, §4154(c)(1)(B), substituted ''test, including a test performed in a physician's office but excluding a test performed by a rural health clinic,'' for ''test performed by a laboratory, other than a rural health clinic''.

Subsec. (i)(3)(B)(ii). Pub. L. 101–508, §4151(c)(1)(B), substituted ''on or after October 1, 1988, and before January 1, 1995'' for ''in fiscal year 1989 or fiscal year 1990'' in last sentence.

Subsec. (i)(3)(B)(ii)(I). Pub. L. 101–508, §4151(c)(1)(A)(i), substituted ''50 percent for reporting periods beginning on or after October 1, 1988, and on or before December 31, 1990, and 42 percent for portions of cost reporting periods beginning on or after January 1, 1991'' for ''and 50 percent for other cost reporting periods''.

Subsec. (i)(3)(B)(ii)(II). Pub. L. 101–508, §4151(c)(1)(A)(ii), substituted ''50 percent for reporting periods beginning on or after October 1, 1988, and on or before December 31, 1990, and 58 percent for portions of cost reporting periods beginning on or after January 1, 1991'' for ''and 50 percent for other cost reporting periods''.

Subsec. (*l*)(1). Pub. L. 101–508, §4160(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (*l*)(2). Pub. L. 101–508, §4160(2), struck out at end ''The fee schedule shall be adjusted annually (to become effective on January 1 of each calendar year) by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for that year.''

Subsec. (*l*)(4). Pub. L. 101–508, §4160(3), added par. (4) and struck out former par. (4) which read as follows: ''In establishing the fee schedule under paragraph (1), the Secretary may utilize a system of time units, a system of base and time units, or any appropriate methodology. The Secretary may establish a nationwide fee schedule or adjust the fee schedule for geographic areas (as the Secretary may determine to be appropriate).''

Subsec. (m). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area''.

Subsec. (n)(1)(B)(ii)(I). Pub. L. 101–508, §4151(c)(2), inserted before period at end '', and such term means 42 percent in the case of outpatient radiology services for portions of cost reporting periods beginning on or after January 1, 1991''.

Subsec. (r). Pub. L. 101–508, §4206(b)(2), added subsec. (r) relating to other prepaid organizations.

Pub. L. 101–508, §4155(b)(3), added subsec. (r) relating to cap on prevailing charge and billing on assignment-related basis.

1989—Subsec. (a). Pub. L. 101–234, §202(a), repealed Pub. L. 100–360, §212(c)(2), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §205(c)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1)(F). Pub. L. 101–239, §6113(b)(3)(A), added cl. (F).

Subsec. (a)(1)(H). Pub. L. 101–239, §6102(e)(5), inserted ''(or, for services furnished on or after January 1, 1992, the fee schedule amount provided under section 1395w–4 of this title, as the case may be)'' after ''prevailing charge that would be recognized''.

Subsec. (a)(1)(J). Pub. L. 101–239, §6102(f)(2), inserted ''or physician pathology services'' after ''1395m(b)(6) of this title)'' and ''or section 1395m(f) of this title, respectively'' after ''1395m(b) of this title''.

Pub. L. 101–239, §6102(e)(6)(A), inserted ''subject to section 1395w–4 of this title,'' before ''the amounts''.

Subsec. (a)(1)(K). Pub. L. 101–239, § 6102(e)(7), inserted '', or, for services furnished on or after January 1, 1992, 65 percent of the fee schedule amount provided under section 1395w–4 of this title for the same service performed by a physician'' after ''for the same service performed by a physician''.

Subsec. (a)(1)(M). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 201(b)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1)(N). Pub. L. 101–239, § 6102(e)(1)(B), added cl. (N).

Subsec. (a)(2). Pub. L. 101–239, § 6116(b)(1)(A), substituted ''(G), and (H)'' for ''and (G)'' in introductory provisions.

Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 202(b)(2), 203(c)(1)(A)–(D), 204(d)(1), and 205(c)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(3). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 205(c)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(6). Pub. L. 101–239, § 6116(b)(1)(B)–(D), added par. (6).

Subsec. (b). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 202(b)(3), 203(c)(1)(E), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (c). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 201(a)(1), (4), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (d). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 201(a)(1)(D), (2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (d)(1). Pub. L. 101–239, § 6113(d), substituted ''62½ percent of such expenses.'' for ''whichever of the following amounts is the smaller:

''(A) $1375.00, or

''(B) 62½ percent of such expenses.''

Subsec. (g). Pub. L. 101–239, § 6133(a), substituted ''$750'' for ''$500'' in two places.

Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 201(a)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (h)(1)(B), (C). Pub. L. 101–239, § 6111(a)(1), substituted ''on or after July 1, 1984'' for ''during the period beginning on July 1, 1984, and ending on December 31, 1989. For such tests furnished on or after January 1, 1990, the fee schedule shall be established on a nationwide basis.''

Subsec. (h)(1)(D). Pub. L. 101–239, § 6003(e)(2)(A), substituted ''section 1395ww(d)(5)(D)(iii) of this title'' for ''the last sentence of section 1395ww(d)(5)(C)(ii) of this title''.

Subsec. (h)(4)(B)(ii). Pub. L. 101–239, § 6111(a)(3)(A), (B), substituted ''after March 31, 1988, and before January 1, 1990,'' for ''after March 31, 1988, and so long as a fee schedule for the test has not been established on a nationwide basis,''.

Subsec. (h)(4)(B)(iii). Pub. L. 101–239, § 6111(a)(2), (3)(C), (4), added cl. (iii).

Subsec. (h)(5)(A)(ii). Pub. L. 101–239, § 6111(b)(1), substituted ''referring laboratory but only if—'' for ''referring laboratory, and'' in introductory provisions, and added subcls. (I) through (III).

Subsec. (h)(5)(A)(iii). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(I), as amended by Pub. L. 101–508, § 4008(m)(2)(C), substituted ''hospital or rural primary care hospital,'' for ''hospital,''.

Subsec. (i)(1)(A). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(II), inserted '', rural primary care hospital,'' after ''section 1395k(a)(2)(F)(i) of this title)''.

Subsec. (i)(3)(A). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(III), inserted ''or rural primary care hospital services'' after ''facility services'' in introductory provisions.

Subsec. (*l*)(5)(A). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(IV), inserted ''rural primary care hospital,'' after ''hospital,'' in two places.

Subsec. (*l*)(5)(C). Pub. L. 101–239, § 6003(g)(3)(D)(vii)(V), substituted ''hospital or rural primary care hospital'' for ''hospital'' in two places.

Subsec. (m). Pub. L. 101–239, § 6102(c)(1), struck out ''class 1 or class 2'' before ''health manpower shortage area'' and substituted ''10 percent'' for ''5 percent''.

Subsec. (*o*)(1). Pub. L. 101–239, § 6131(a)(1)(C), inserted ''(or inserts)'' after ''shoes'' in two places in last sentence.

Subsec. (*o*)(1)(A). Pub. L. 101–239, § 6131(a)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''no payment may be made under this part for the furnishing of more than one pair of shoes for any individual for any calendar year, and''.

Subsec. (*o*)(1)(B), (2)(A). Pub. L. 101–239, § 6131(a)(1)(B), substituted ''limits'' for ''limit''.

Subsec. (*o*)(2)(A)(i). Pub. L. 101–239, § 6131(a)(1)(D), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''for the furnishing of one pair of custom molded shoes is $300''.

Subsec. (*o*)(2)(A)(ii)(II). Pub. L. 101–239, § 6131(a)(1)(E), inserted ''any pairs of'' after ''$50 for''.

Subsec. (*o*)(2)(D). Pub. L. 101–239, § 6131(b), added subpar. (D).

Subsec. (p). Pub. L. 101–239, § 6113(b)(3)(B), substituted ''1395x(s)(2)(L) of this title,'' for ''1395x(s)(2)(L) of this title and'' and inserted ''and in the case of clinical social worker services for which payment may be made under this part only pursuant to section 1395x(s)(2)(N) of this title,'' after ''section 1395x(s)(2)(M) of this title,''.

Subsec. (q). Pub. L. 101–239, § 6204(b), added subsec. (q).

1988—Subsec. (a). Pub. L. 100–360, § 212(c)(2), inserted ''or, as provided in section 1395t–1(c) of this title, from the Federal Catastrophic Drug Insurance Trust Fund'' after ''Fund'' in introductory provisions.

Pub. L. 100–360, § 205(c)(3), inserted provision at end relating to payment for in-home care for chronically dependent individuals.

Subsec. (a)(1)(D)(i). Pub. L. 100–360, § 411(i)(4)(C)(i), amended Pub. L. 100–203, § 4085(i)(1)(A), see 1987 Amendment note below.

Subsec. (a)(1)(F). Pub. L. 100–360, § 411(f)(12)(A), (14), added and renumbered Pub. L. 100–203, § 4055(a)(1), see 1987 Amendment note below.

Pub. L. 100–360, § 411(i)(4)(C)(iv), made technical amendment to directory language of Pub. L. 100–203, § 4085(i)(21)(D)(i), see 1987 Amendment note below.

Pub. L. 100–360, § 411(i)(4)(C)(ii), repealed Pub. L. 100–203, § 4085(i)(1)(B), see 1987 Amendment note below.

Pub. L. 100–360, § 411(h)(4)(B)(i), (ii), redesignated and amended directory language of Pub. L. 100–203, § 4073(b)(1)(A), see 1987 Amendment note below.

Subsec. (a)(1)(G). Pub. L. 100–360, § 411(h)(7)(C)(ii), repealed Pub. L. 100–203, § 4077(b)(3)(A), see 1987 Amendment note below.

Pub. L. 100–360, § 411(h)(4)(B)(iii), repealed Pub. L. 100–203, § 4073(b)(2)(B), see 1987 Amendment note below.

Subsec. (a)(1)(H). Pub. L. 100–360, § 411(h)(7)(C)(ii), repealed Pub. L. 100–203, § 4077(b)(3)(B), see 1987 Amendment note below.

Pub. L. 100–360, § 411(g)(1)(E), which directed the amendment of cl. (H) by striking ''and'' before ''(I)'' could not be executed because of the prior amendment by section 4049(a)(1) of Pub. L. 100–203, see 1987 Amendment note below.

Pub. L. 100–360, § 411(i)(3), added Pub. L. 100–203, § 4084(c)(2), see 1987 Amendment note below.

Subsec. (a)(1)(J). Pub. L. 100–360, § 411(f)(8)(B)(i), made technical amendment to directory language of Pub. L. 100–203, § 4049(a)(1), see 1987 Amendment note below.

Pub. L. 100–360, §411(f)(8)(C), substituted ''section 1395m(b)(6) of this title'' for ''section 1395m(b)(5) of this title''.

Subsec. (a)(1)(K). Pub. L. 100–360, §411(h)(7)(C)(iii), (F), redesignated and amended Pub. L. 100–203, §4077(b)(2)(A), see 1987 Amendment note below.

Pub. L. 100–360, §411(h)(4)(B)(i), (iv), (v), redesignated and amended Pub. L. 100–203, §4073(b)(1)(B), see 1987 Amendment note below.

Subsec. (a)(1)(L). Pub. L. 100–360, §411(h)(7)(C)(i), (iv), (v), (F), redesignated and amended Pub. L. 100–203, §4077(b)(2)(B), see 1987 Amendment note below.

Subsec. (a)(1)(M). Pub. L. 100–360, §202(b)(1), added cl. (M) relating to expenses incurred for covered outpatient drugs.

Subsec. (a)(2). Pub. L. 100–360, §205(c)(1), inserted ''(A)(ii),'' after ''subparagraphs'' in introductory provisions.

Pub. L. 100–360, §202(b)(2), inserted ''(other than covered outpatient drugs)'' after ''in the case of services'' in introductory provisions.

Subsec. (a)(2)(B). Pub. L. 100–360, §203(c)(1)(A), substituted ''(E), or (F)'' for ''or (E)'' in introductory provisions.

Subsec. (a)(2)(D)(i). Pub. L. 100–360, §411(i)(4)(C)(i), amended Pub. L. 100–203, §4085(i)(1)(A), see 1987 Amendment note below.

Subsec. (a)(2)(E)(i). Pub. L. 100–360, §204(d)(1), inserted '', but excluding screening mammography'' after ''imaging services''.

Subsec. (a)(2)(F). Pub. L. 100–360, §203(c)(1)(B)–(D), added cl. (F) relating to home intravenous drug therapy services.

Subsec. (a)(3). Pub. L. 100–360, §205(c)(2), substituted ''subparagraphs (A)(ii), (D),'' for ''subparagraphs (D)''.

Subsec. (b). Pub. L. 100–360, §104(d)(7), as added by Pub. L. 100–485, §608(d)(3)(G), inserted at end ''The deductible under the previous sentence for blood or blood cells furnished an individual in a year shall be reduced to the extent that a deductible has been imposed under section 1395e(a)(2) of this title to blood or blood cells furnished the individual in the year.''

Subsec. (b)(1). Pub. L. 100–360, §202(b)(3)(A), inserted ''or for covered outpatient drugs'' after ''section 1395x(s)(10)(A) of this title''.

Subsec. (b)(2). Pub. L. 100–360, §203(c)(1)(E), substituted ''services and home intravenous drug therapy services'' for ''services''.

Pub. L. 100–360, §202(b)(3)(B), inserted ''or with respect to covered outpatient drugs'' after ''home health services''.

Subsec. (b)(3) to (5). Pub. L. 100–360, §411(f)(12)(A), (14), added and renumbered Pub. L. 100–203, §4055(a)(2), see 1987 Amendment note below.

Subsec. (c). Pub. L. 100–360, §201(a)(4), added subsec. (c) relating to limitation on out-of-pocket catastrophic cost-sharing, adjustment, buy-out plans, and conditions for payments with respect to plans other than buy-out plans. Former subsec. (c) redesignated (d)(1).

Pub. L. 100–360, §411(h)(1)(A), substituted ''monitoring or changing drug prescriptions'' for ''prescribing or monitoring prescription drugs'' in last sentence.

Pub. L. 100–360, §201(a)(1)(A), as amended by Pub. L. 100–485, §608(d)(4), substituted ''subsections (a) through (c)'' for ''subsections (a) and (b)'' in introductory provisions.

Pub. L. 100–360, §201(a)(1)(B), (C), redesignated former pars. (1) and (2) as subpars. (A) and (B) and substituted ''this paragraph'' for ''this subsection'' in last sentence.

Subsec. (d)(1). Pub. L. 100–360, §201(a)(1)(D), redesignated former subsec. (c) as subsec. (d)(1). Former subsec. (d) redesignated subsec. (d)(2).

Subsec. (d)(2). Pub. L. 100–360, §201(a)(2), redesignated former subsec. (d) as subsec. (d)(2).

Subsec. (f). Pub. L. 100–360, §411(g)(5), substituted ''MEI (as defined in section 1395u(i)(3) of this title) applicable to primary care services (as defined in section 1395u(i)(4) of this title)'' for ''medicare economic index (referred to in the fourth sentence of section 1395u(b)(3) of this title) applicable to physicians' services''.

Subsec. (g). Pub. L. 100–360, §201(a)(3), substituted ''subsections (a) through (c) of this section'' for ''subsections (a) and (b) of this section'' in two places.

Subsec. (h)(1)(D). Pub. L. 100–360, §411(g)(3)(E), (F), amended and redesignated Pub. L. 100–203, §4064(c)(1), see 1987 Amendment note below.

Subsec. (h)(2)(A)(i). Pub. L. 100–360, §411(g)(3)(A), added Pub. L. 100–203, §4064(a)(1), see 1987 Amendment note below.

Subsec. (h)(2)(A)(ii). Pub. L. 100–360, §411(g)(3)(A), added Pub. L. 100–203, §4064(a)(3), see 1987 Amendment note below.

Subsec. (h)(2)(A)(iii). Pub. L. 100–360, §411(g)(3)(B), (C), amended Pub. L. 100–203, §4064(b)(1), see 1987 Amendment note below.

Subsec. (h)(2)(B). Pub. L. 100–360, §411(g)(3)(A), added Pub. L. 100–203, §4064(a)(2), see 1987 Amendment note below.

Subsec. (h)(3). Pub. L. 100–647, §8421(a), inserted at end ''In establishing a fee to cover the transportation and personnel expenses for trained personnel to travel to the location of an individual to collect a sample, the Secretary shall provide a method for computing the fee based on the number of miles traveled and the personnel costs associated with the collection of each individual sample, but the Secretary shall only be required to apply such method in the case of tests furnished during the period beginning on April 1, 1989, and ending on December 31, 1990, by a laboratory that establishes to the satisfaction of the Secretary (based on data for the 12-month period ending June 30, 1988) that (i) the laboratory is dependent upon payments under this subchapter for at least 80 percent of its collected revenues for clinical diagnostic laboratory tests, (ii) at least 85 percent of its gross revenues for such tests are attributable to tests performed with respect to individuals who are homebound or who are residents in a nursing facility, and (iii) the laboratory provided such tests for residents in nursing facilities representing at least 20 percent of the number of such facilities in the State in which the laboratory is located.''

Subsec. (h)(4)(B)(ii). Pub. L. 100–360, §411(g)(3)(D), inserted ''after'' before ''March 31, 1988''.

Subsec. (h)(5)(A). Pub. L. 100–360, §411(i)(4)(C)(vi), added Pub. L. 100–203, §4085(i)(22)(B), see 1987 Amendment note below.

Subsec. (h)(5)(C). Pub. L. 100–360, §411(i)(4)(C)(vi), added Pub. L. 100–203, §4085(i)(22)(B), see 1987 Amendment note below.

Subsec. (h)(5)(D). Pub. L. 100–360, §411(i)(4)(B), substituted ''A person may not bill for a clinical diagnostic laboratory test performed by a laboratory, other than a rural health clinic, other than on an assignment-related basis. If a person knowingly and willfully and on a repeated basis bills for a clinical diagnostic laboratory test in violation of the previous sentence'' for ''If a person knowingly and willfully and on a repeated basis bills an individual enrolled under this part for charges for a clinical diagnostic laboratory test for which payment may only be made on an assignment-related basis under subparagraph (C)'' and ''paragraphs (2) and (3) of section 1395u(j) of this title in the same manner such paragraphs apply with respect to a physician'' for ''section 1395u(j)(2) of this title''.

Subsec. (i)(2)(A)(iii). Pub. L. 100–360, §411(g)(2)(D), substituted ''insertion'' for ''implantation'' and inserted ''or subsequent to'' after ''during''.

Subsec. (i)(4). Pub. L. 100–360, §411(f)(12)(A), (14), added and renumbered Pub. L. 100–203, §4055(a)(3), see 1987 Amendment note below.

Subsec. (i)(6). Pub. L. 100–485, §608(d)(22)(B), substituted ''Any person, including'' for ''Any person, other than''.

Pub. L. 100–360, §411(g)(2)(E), added Pub. L. 100–203, §4063(e)(1), see 1987 Amendment note below.

Subsec. (*l*)(2). Pub. L. 100–360, §411(f)(2)(D), added Pub. L. 100–203, §4042(b)(2)(B), see 1987 Amendment note below.

Subsec. (*l*)(3)(B). Pub. L. 100–647, §8422(a), inserted ''plus applicable coinsurance'' after ''would have been paid''.

Subsec. (*l*)(5)(B)(ii). Pub. L. 100–360, § 411(i)(4)(C)(vi), added Pub. L. 100–203, § 4085(i)(23), see 1987 Amendment note below.

Subsec. (n)(1)(A). Pub. L. 100–360, § 411(g)(4)(C)(i), as amended by Pub. L. 100–485, § 608(d)(22)(D), substituted ''for services described in subsection (a)(2)(E)(i) of this section furnished under this part on or after October 1, 1988, and for services described in subsection (a)(2)(E)(ii) of this section furnished under this part on or after October 1, 1989,'' for ''beginning on or after October 1, 1988 under this part for services described in subsection (a)(2)(E) of this section'' in introductory provisions.

Subsec. (n)(1)(B)(i)(II). Pub. L. 100–360, § 411(g)(4)(C)(ii), inserted ''or (for services described in subsection (a)(2)(E)(i) of this section furnished on or after January 1, 1989) the fee schedule amount established'' after ''the prevailing charge''.

Subsec. (n)(1)(B)(ii). Pub. L. 100–360, § 411(g)(4)(C)(iii), amended subcls. (I) and (II) generally. Prior to amendment, subcls. (I) and (II) read as follows:

''(I) The term 'cost proportion' means 65 percent for all or any part of cost reporting periods which occur in fiscal year 1989 and 50 percent for other cost reporting periods.

''(II) The term 'charge proportion' means 35 percent for all or any parts of cost reporting periods which occur in fiscal year 1989 and 50 percent for other cost reporting periods.''

Subsec. (*o*). Pub. L. 100–360, § 411(h)(3)(B), as amended by Pub. L. 100–485, § 608(d)(23)(A), amended Pub. L. 100–203, § 4072(b), see 1987 Amendment note below.

Subsec. (p). Pub. L. 100–360, § 411(h)(7)(D), (F), redesignated and amended Pub. L. 100–203, § 4077(b)(3), see 1987 Amendment note below.

Pub. L. 100–360, § 411(h)(4)(C), redesignated and amended Pub. L. 100–203, § 4073(b)(2), see 1987 Amendment note below.

1987—Subsec. (a)(1)(D)(i). Pub. L. 100–203, § 4085(i)(1)(A), as amended by Pub. L. 100–360, § 411(i)(4)(C)(i), substituted ''on an assignment-related basis,'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title,''.

Subsec. (a)(1)(F). Pub. L. 100–203, § 4055(a)(1), formerly § 4054(a)(1), as added and renumbered by Pub. L. 100–360, § 411(f)(12)(A), (14), struck out cl. (F) which read as follows: ''with respect to expenses incurred for services described in subsection (i)(4) of this section under the conditions specified in such subsection, the amounts paid shall be the reasonable charge for such services,''.

Pub. L. 100–203, § 4085(i)(21)(D)(i), as amended by Pub. L. 100–360, § 411(i)(4)(C)(iv), amended Pub. L. 99–509, § 9343(e)(2)(A), see 1986 Amendment note below.

Pub. L. 100–203, § 4085(i)(1)(B), which directed striking out ''and'' at end, was repealed by Pub. L. 100–360, § 411(i)(4)(C)(ii).

Pub. L. 100–203, § 4073(b)(1)(A), formerly § 4073(b)(2)(A), as redesignated and amended by Pub. L. 100–360, § 411(h)(4)(B)(i), (ii), struck out ''and'' at end.

Subsec. (a)(1)(G). Pub. L. 100–203, § 4077(b)(3)(A), which directed striking out ''and'' at end, was repealed by Pub. L. 100–360, § 411(h)(7)(C)(ii).

Pub. L. 100–203, § 4073(b)(2)(B), which directed substituting ''services,'' for ''services; and'', was repealed by Pub. L. 100–360, § 411(h)(4)(B)(iii).

Pub. L. 100–203, § 4062(d)(3)(A)(i), substituted ''services,'' for ''services; and''.

Subsec. (a)(1)(H). Pub. L. 100–203, § 4077(b)(3)(B), which directed substituting ''services,'' for ''services; and'', was repealed by Pub. L. 100–360, § 411(h)(7)(C)(ii).

Pub. L. 100–203, § 4084(c)(2), as added by Pub. L. 100–360, § 411(i)(3), substituted ''least of the actual charge, the prevailing charge that would be recognized if the services had been performed by an anesthesiologist,'' for ''lesser of the actual charge''.

Pub. L. 100–203, § 4062(d)(3)(A)(ii), inserted ''and'' before the cl. (I) added by section 4062(d)(3)(A)(ii) of Pub. L. 100–203, see below.

Pub. L. 100–203, § 4049(a)(1), struck out ''and'' before the cl. (I) added by section 4062(d)(3)(A)(ii) of Pub. L. 100–203, see below.

Subsec. (a)(1)(I). Pub. L. 100–203, § 4062(d)(3)(A)(ii), added cl. (I).

Subsec. (a)(1)(J). Pub. L. 100–203, § 4049(a)(1), as amended by Pub. L. 100–360, § 411(f)(8)(B)(i), added cl. (J).

Subsec. (a)(1)(K). Pub. L. 100–203, § 4077(b)(2)(A), formerly § 4077(b)(3)(C), as redesignated and amended by Pub. L. 100–360, § 411(h)(7)(C)(iii), (F), inserted ''and'' after ''performed by a physician),''.

Pub. L. 100–203, § 4073(b)(1)(B), formerly § 4073(b)(2)(C), as redesignated and amended by Pub. L. 100–360, § 411(h)(4)(B)(i), (iv), (v), added cl. (K), formerly (I), relating to amounts paid with respect to certified nurse-midwife services under section 1395x(s)(2)(L) of this title.

Subsec. (a)(1)(L). Pub. L. 100–203, § 4077(b)(2)(B), formerly § 4077(b)(3)(D), as redesignated and amended by Pub. L. 100–360, § 411(h)(7)(C)(i), (iv), (v), (F), added cl. (L), formerly (J), relating to amounts paid with respect to qualified psychologist services under section 1395x(s)(2)(M) of this title.

Subsec. (a)(2). Pub. L. 100–203, § 4062(d)(3)(B)(i), inserted reference to subpar. (G).

Subsec. (a)(2)(A). Pub. L. 100–203, § 4062(d)(3)(B)(ii), struck out ''(other than durable medical equipment)'' after ''home health services''.

Subsec. (a)(2)(B). Pub. L. 100–203, § 4066(b), inserted reference to subpar. (E).

Subsec. (a)(2)(D)(i). Pub. L. 100–203, § 4085(i)(1)(A), as amended by Pub. L. 100–360, § 411(i)(4)(C)(i), substituted ''on an assignment-related basis,'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title,''.

Subsec. (a)(2)(E). Pub. L. 100–203, § 4066(a)(1), added subpar. (E).

Subsec. (a)(5). Pub. L. 100–203, § 4062(d)(3)(C)–(E), added par. (5).

Subsec. (b)(3). Pub. L. 100–203, § 4055(a)(2), formerly § 4054(a)(2), as added and renumbered by Pub. L. 100–360, § 411(f)(12)(A), (14), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''such total amount shall not include expenses incurred for services the amount of payment for which is determined under subsection (a)(1)(F) of this section,''.

Pub. L. 100–203, § 4085(i)(21)(D)(i), amended Pub. L. 99–509, § 9343(e)(2)(A), see 1986 Amendment note below.

Subsec. (b)(4). Pub. L. 100–203, § 4055(a)(2), formerly § 4054(a)(2), as added and renumbered by Pub. L. 100–360, § 411(f)(12)(A), (14), redesignated cl. (5) as (4). Former cl. (4) redesignated (3).

Subsec. (b)(4)(A). Pub. L. 100–203, § 4085(i)(1)(C), substituted ''on an assignment-related basis'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title''.

Subsec. (b)(5). Pub. L. 100–203, § 4055(a)(2), formerly § 4054(a)(2), as added and renumbered by Pub. L. 100–360, § 411(f)(12)(A), (14), redesignated cl. (5) as (4).

Subsec. (c). Pub. L. 100–203, § 4070(b)(4), inserted ''or partial hospitalization services that are not directly provided by a physician'' before period at end of last sentence.

Pub. L. 100–203, § 4070(a)(2), inserted sentence at end defining ''treatment''.

Subsec. (c)(1). Pub. L. 100–203, § 4070(a)(1), substituted ''$1375.00'' for ''$312.50''.

Subsec. (f). Pub. L. 100–203, § 4067(a), added subsec. (f).

Subsec. (h)(1)(C). Pub. L. 100–203, § 4085(i)(2), inserted before period at end '', and ending on December 31, 1989. For such tests furnished on or after January 1, 1990, the fee schedule shall be established on a nationwide basis''.

Subsec. (h)(1)(D). Pub. L. 100–203, § 4064(c)(1), formerly § 4064(c), as amended and redesignated by Pub. L. 100–360, § 411(g)(3)(E), (F), inserted '', in a sole community hospital (as defined in the last sentence of section 1395ww(d)(5)(C)(ii) of this title),''.

Subsec. (h)(2). Pub. L. 100–203, § 4064(c), which had directed that ''laboratory in a sole community hospital''

be substituted for ''hospital laboratory'' in subsec. (h)(2), was redesignated §4064(c)(1) by section 411(g)(3)(F) of Pub. L. 100–360 and amended by section 411(g)(3)(E) of Pub. L. 100–360 to provide for amendment of subsec. (h)(1)(D) instead of subsec. (h)(2).

Subsec. (h)(2)(A)(i). Pub. L. 100–203, §4064(a)(1), as added by Pub. L. 100–360, §411(g)(3)(A), inserted ''(A)(i)'' after ''(2)''.

Subsec. (h)(2)(A)(ii). Pub. L. 100–203, §4064(a)(3), as added by Pub. L. 100–360, §411(g)(3)(A), added cl. (ii).

Subsec. (h)(2)(A)(iii). Pub. L. 100–203, §4064(b)(1), as amended by Pub. L. 100–360, §411(g)(3)(B), (C), set out as cl. (iii) provisions formerly set out in an otherwise undesignated sentence in par. (2) relating to the rebasing of fee schedules for certain automated and similar tests for 1988 and for the continuation of such reduced fee schedules as the base for 1989 and subsequent years.

Subsec. (h)(2)(B). Pub. L. 100–203, §4064(a)(2), as added by Pub. L. 100–360, §411(g)(3)(A), inserted subpar. (B) designation preceding second sentence and redesignated former subpars. (A) and (B) of par. (2) as cls. (i) and (ii).

Subsec. (h)(4)(B)(i). Pub. L. 100–203, §4064(b)(2)(A), substituted ''April'' for ''January''.

Subsec. (h)(4)(B)(ii). Pub. L. 100–203, §4064(b)(2)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''after December 31, 1987, and so long as a fee schedule for the test has not been established on a nationwide basis, is equal to 110 percent of the median of all the fee schedules established for that test for that laboratory setting under paragraph (1).''

Subsec. (h)(5)(A). Pub. L. 100–203, §4085(i)(22)(B), as added by Pub. L. 100–360, §411(i)(4)(C)(vi), substituted ''on an assignment-related basis'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, under the procedure described in section 1395gg(f)(1) of this title,'' in introductory provisions.

Subsec. (h)(5)(A)(iii). Pub. L. 100–203, §4085(i)(3), added cl. (iii).

Subsec. (h)(5)(C). Pub. L. 100–203, §4085(i)(22)(B), as added by Pub. L. 100–360, §411(i)(4)(C)(vi), substituted ''on an assignment-related basis'' for ''on the basis of an assignment described in section 1395u(b)(3)(B)(ii) of this title, in accordance with section 1395u(b)(6)(B) of this title, under the procedure described in section 1395gg(f)(1) of this title,''.

Subsec. (h)(5)(D). Pub. L. 100–203, §4085(b)(1), added subpar. (D).

Subsec. (i)(2)(A)(iii). Pub. L. 100–203, §4063(b), added cl. (iii).

Subsec. (i)(3)(B)(ii). Pub. L. 100–203, §4068(a)(1), substituted ''Subject to the last sentence of this clause, in'' for ''In''.

Pub. L. 100–203, §4068(a)(2), inserted sentence at end relating to cost and ASC proportions in the case of an eye or eye and ear specialty hospital.

Subsec. (i)(4). Pub. L. 100–203, §4055(a)(3), formerly §4054(a)(3), as added and renumbered by Pub. L. 100–360, §411(f)(12)(A), (14), struck out par. (4) which read as follows: ''In the case of services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1395x(s) of this title and furnished in connection with surgical procedures (specified pursuant to paragraph (1) of this subsection) in a physician's office, an ambulatory surgical center described in such paragraph, or a hospital outpatient department, payment for such services shall be determined in accordance with subsection (a)(1)(F) of this section if the physician accepts an assignment described in section 1395u(b)(3)(B)(ii) of this title with respect to payment for such services.''

Subsec. (i)(6). Pub. L. 100–203, §4063(e)(1), as added by Pub. L. 100–360, §411(g)(2)(E), added par. (6).

Subsec. (*l*)(2). Pub. L. 100–203, §4084(a)(1), substituted ''1985 and such other data as the Secretary determines necessary'' for ''1985''.

Pub. L. 100–203, §4042(b)(2)(B), as added by Pub. L. 100–360, §411(f)(2)(D), substituted ''1395u(i)(3)'' for ''1395u(b)(4)(E)(ii)''.

Subsec. (*l*)(5)(A). Pub. L. 100–203, §4084(a)(2), substituted ''group practice, or ambulatory surgical center'' for ''or group practice'' in two places.

Subsec. (*l*)(5)(B)(ii). Pub. L. 100–203, §4085(i)(23), as added by Pub. L. 100–360, §411(i)(4)(C)(vi), substituted ''money penalty'' for ''monetary penalty'' and amended second sentence generally. Prior to amendment, second sentence read as follows: ''Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320a–7a of this title with respect to actions described in subsection (a) of that section.''

Subsec. (*l*)(6). Pub. L. 100–203, §4045(c)(2)(A)(i), (ii), struck out subpar. (A) designation and substituted ''after the effective date of the reduction, the physician's actual charge is subject to a limit under section 1395u(j)(1)(D) of this title.'' for ''(subject to subparagraph (D)), the physician may not charge the individual more than the limiting charge (as defined in subparagraph (B)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) ½ of the amount by which the physician's actual charges for the service for the previous 12-month period exceeds the limiting charge.''

Pub. L. 100–203, §4045(c)(2)(A)(iii), struck out subpars. (B) to (D) which read as follows:

''(B) In subparagraph (A), the term 'limiting charge' means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction referred to in subparagraph (A).

''(C) If a physician knowingly and willfully imposes charges in violation of subparagraph (A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

''(D) This paragraph shall not apply to services furnished after the earlier of (i) December 31, 1990, or (ii) one-year after the date the Secretary reports to Congress, under section 1395w–1(e)(3) of this title, on the development of the relative value scale under section 1395w–1 of this title.''

Subsec. (m). Pub. L. 100–203, §4043(a), added subsec. (m).

Subsec. (n). Pub. L. 100–203, §4066(a)(2), added subsec. (n).

Subsec. (*o*). Pub. L. 100–203, §4072(b), as amended by Pub. L. 100–360, §411(h)(3)(B), as amended by Pub. L. 100–485, §608(d)(23)(A), added subsec. (*o*) [originally added as subsec. (f)].

Subsec. (p). Pub. L. 100–203, §4077(b)(3), formerly §4077(b)(4), as redesignated and amended by Pub. L. 100–360, §411(h)(7)(D), (F), inserted ''and in the case of qualified psychologists services for which payment may be made under this part only pursuant to section 1395x(s)(2)(M) of this title''.

Pub. L. 100–203, §4073(b)(2), formerly §4073(b)(3), as redesignated and amended by Pub. L. 100–360, §411(h)(4)(C), added subsec. (p) [originally added as subsec. (m)] and inserted provision relating to monetary penalty for whoever knowingly and willfully presents, or causes to be presented, to an enrolled individual a bill or request for payment for described services.

1986—Subsec. (a)(1)(D). Pub. L. 99–272, §9401(b)(2)(B), substituted '', under the procedure described in section 1395gg(f)(1) of this title, or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)'' for ''or under the procedure described in section 1395gg(f)(1) of this title''.

Subsec. (a)(1)(D)(i). Pub. L. 99–272, §9303(b)(1), inserted '', the limitation amount for that test determined under subsection (h)(4)(B) of this section,'' after ''lesser of the amount determined under such fee schedule''.

Subsec. (a)(1)(F). Pub. L. 99–509, §9343(e)(2)(A), as amended by Pub. L. 100–203, §4085(i)(21)(D)(i), substituted ''(i)(4)'' for ''(i)(3)''.

Subsec. (a)(1)(G). Pub. L. 99–272, §9401(b)(2)(A), added cl. (G).

Subsec. (a)(1)(H). Pub. L. 99–509, §9320(e)(1), added cl. (H).

Subsec. (a)(2)(A). Pub. L. 99–272, §9401(b)(2)(C), inserted '', to items and services (other than clinical diagnostic laboratory tests) furnished in connection with

obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),'' after ''(other than durable medical equipment)''.

Subsec. (a)(2)(D). Pub. L. 99–272, §9401(b)(2)(D), substituted ''to a provider having an agreement under section 1395cc of this title, or for tests furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion)'' for ''or to a provider having an agreement under section 1395cc of this title''.

Subsec. (a)(2)(D)(i). Pub. L. 99–272, §9303(b)(1), inserted '', the limitation amount for that test determined under subsection (h)(4)(B) of this section,'' after ''lesser of the amount determined under such fee schedule''.

Subsec. (a)(3). Pub. L. 99–272, §9401(b)(2)(E), inserted ''and for items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title, or a third opinion, if the second opinion was in disagreement with the first opinion'' after ''1395x(s)(10)(A) of this title''.

Subsec. (a)(4). Pub. L. 99–509, §9343(a)(1)(A), amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''in the case of facility services described in subparagraph (F) of section 1395k(a)(2) of this title, the applicable amount described in paragraph (2) of subsection (i) of this section.''

Subsec. (b)(3). Pub. L. 99–509, §9343(e)(2)(A), as amended by Pub. L. 100–203, §4085(i)(21)(D)(i), which directed that cl. (3) be amended by striking ''or under subsection (i)(2) or (i)(4) of this section'', was executed by striking ''or under subsection (i)(2) or (i)(5) of this section'', to reflect the probable intent of Congress and an earlier amendment by Pub. L. 99–509, §9343(a)(2), see below.

Pub. L. 99–509, §9343(a)(2), substituted ''(i)(5)'' for ''(i)(4)''.

Subsec. (b)(5). Pub. L. 99–272, §9401(b)(1), added cl. (5).

Subsec. (g). Pub. L. 99–509, §9337(b), substituted ''second sentence'' for ''next to last sentence'', and inserted at end ''In the case of outpatient occupational therapy services which are described in the second sentence of section 1395x(p) of this title through the operation of section 1395x(g) of this title, with respect to expenses incurred in any calendar year, no more than $500 shall be considered as incurred expenses for purposes of subsections (a) and (b) of this section.''

Subsec. (h)(1)(B). Pub. L. 99–509, §9339(b)(1), substituted ''December 31, 1989'' and ''January 1, 1990'' for ''December 31, 1987'' and ''January 1, 1988'', respectively.

Pub. L. 99–509, §9339(a)(1)(A), substituted ''qualified hospital laboratory (as defined in subparagraph (D))'' for ''hospital laboratory''.

Pub. L. 99–272, §9303(a)(1)(A), substituted ''December 31, 1987'' for ''June 30, 1987'' and ''January 1, 1988'' for ''July 1, 1987''.

Subsec. (h)(1)(C). Pub. L. 99–509, §9339(a)(1)(B), substituted ''qualified hospital laboratory (as defined in subparagraph (D))'' for ''hospital laboratory'', struck out '', and ending on December 31, 1987'' after ''July 1, 1984'', and struck out ''For such tests furnished on or after January 1, 1988, the fee schedule under subparagraph (A) shall not apply with respect to clinical diagnostic laboratory tests performed by a hospital laboratory for outpatients of such hospital.'' which constituted second sentence.

Pub. L. 99–272, §9303(a)(1)(A), substituted ''December 31, 1987'' for ''June 30, 1987'' and ''January 1, 1988'' for ''July 1, 1987''.

Subsec. (h)(1)(D). Pub. L. 99–509, §9339(a)(1)(C), added subpar. (D).

Subsec. (h)(2). Pub. L. 99–509, §9339(b)(2), struck out ''(or, effective January 1, 1988, for the United States)'' after ''applicable region, State, or area''.

Pub. L. 99–509, §9339(a)(1)(D), substituted ''qualified hospital laboratory (as defined in paragraph (1)(D))'' for ''hospital laboratory''.

Pub. L. 99–272, §9303(a)(1), substituted ''January 1, 1988'' for ''July 1, 1987'', and inserted ''(to become effective on January 1 of each year)'' after ''adjusted annually''.

Subsec. (h)(3). Pub. L. 99–509, §9339(c)(1), inserted cl. (A) designation after ''provide for and establish'', and added cl. (B).

Subsec. (h)(4). Pub. L. 99–272, §9303(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(5)(C). Pub. L. 99–272, §9303(b)(3), substituted ''laboratory other than'' for ''laboratory which is independent of a physician's office or''.

Subsec. (i)(1). Pub. L. 99–509, §9343(b)(2), inserted at end ''The lists of procedures established under subparagraphs (A) and (B) shall be reviewed and updated not less often than every 2 years.''

Subsec. (i)(2). Pub. L. 99–509, §9343(e)(2)(B), inserted ''80 percent of'' before ''a standard overhead amount'' in introductory provisions of subpars. (A) and (B).

Pub. L. 99–509, §9343(b)(1), substituted ''shall be reviewed and updated not later than July 1, 1987, and annually thereafter'' for ''shall be reviewed periodically'' in concluding provisions of subpars. (A) and (B).

Subsec. (i)(3) to (5). Pub. L. 99–509, §9343(a)(1)(B), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (*l*). Pub. L. 99–509, §9320(e)(2), added subsec. (*l*).

1984—Subsec. (a)(1). Pub. L. 98–369, §2354(b)(7), struck out ''and'' at the end.

Subsec. (a)(1)(B). Pub. L. 98–369, §2323(b)(1), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (a)(1)(D). Pub. L. 98–369, §2303(a), amended cl. (D) generally. Prior to amendment, cl. (D) read as follows: ''with respect to diagnostic tests performed in a laboratory for which payment is made under this part to the laboratory, the amounts paid shall be equal to 100 percent of the negotiated rate for such tests (as determined pursuant to subsection (h) of this section),''.

Subsec. (a)(1)(F), (G). Pub. L. 98–369, §2305(a), redesignated cl. (G) as (F), and struck out former cl. (F) which related to payment of reasonable charges for preadmission diagnostic services furnished by a physician to individuals enrolled under this part which are furnished in the outpatient department of a hospital within seven days of such individual's admission to the same hospital or another hospital or furnished in the physician's office within seven days of such individual's admission to a hospital as an inpatient.

Subsec. (a)(2). Pub. L. 98–369, §2305(c), struck out ''and in paragraph (5) of this subsection'' after ''of such section''.

Subsec. (a)(2)(A). Pub. L. 98–617, §3(b)(2), inserted '', or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this provision),''.

Pub. L. 98–369, §2354(b)(5), realigned margin of subpar. (A).

Pub. L. 98–369, §2321(b)(1), inserted in provision preceding cl. (i) ''(other than durable medical equipment)''.

Pub. L. 98–369, §2323(b)(1), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (a)(2)(B). Pub. L. 98–369, §2354(b)(5), realigned margin of subpar. (B).

Pub. L. 98–369, §2321(b)(2), inserted in provision preceding cl. (i) ''items and'' after ''to other''.

Pub. L. 98–369, §2303(b)(1), inserted ''or (D)'' after ''subparagraph (C)''.

Subsec. (a)(2)(B)(ii). Pub. L. 98–369, §2308(b)(2)(B), inserted '', or by another provider which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low-income (and requests that payment be made under this clause),''.

Subsec. (a)(2)(D). Pub. L. 98–369, §2303(b)(2)–(4), added subpar. (D).

Subsec. (a)(3). Pub. L. 98–369, §2323(b)(1), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (a)(5). Pub. L. 98–369, §2305(b), struck out par. (5) which related to payment of reasonable costs for preadmission diagnostic services described in section 1395x(s)(2)(C) of this title furnished to an individual by the outpatient department of a hospital within seven days of such individual's admission to the same hospital as an inpatient or to another hospital.

Subsec. (b)(1). Pub. L. 98–369, §2323(b)(2), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (b)(3). Pub. L. 98–369, §2305(d), substituted ''subsection (a)(1)(F)'' for ''subsection (a)(1)(G)''.

Subsec. (b)(4). Pub. L. 98–369, §2303(c), added cl. (4).

Subsec. (f). Pub. L. 98–369, §2321(d)(4)(A), transferred subsec. (f) to part C of this subchapter and redesignated its provisions as section 1889 of the Social Security Act, which is classified to section 1395zz of this title.

Subsec. (h). Pub. L. 98–369, §2303(d), amended subsec. (h) generally, substituting provisions directing the Secretary to establish fee schedules for clinical diagnostic laboratory tests at a percentage of the prevailing charge level and nominal fees to cover costs in collecting samples and authorizing the Secretary to make adjustments in the fee schedule, setting forth the recipients of payments, and authorizing the Secretary to establish a negotiated payment rate for provision authorizing the Secretary to establish a negotiated rate of payment with the laboratory which would be considered the full charge for such tests.

Subsec. (h)(5)(C). Pub. L. 98–617, §3(b)(3), inserted a comma before ''under the procedure described in section''.

Subsec. (i)(3). Pub. L. 98–369, §2305(d), substituted ''subsection (a)(1)(F)'' for ''subsection (a)(1)(G)''.

Subsec. (k). Pub. L. 98–369, §2323(b)(4), added subsec. (k).

1982—Subsec. (a)(1)(B). Pub. L. 97–248, §112(a)(1), substituted provisions that with respect to items and services described in section 1395x(s)(10) of this title, amounts paid shall be 100 percent of reasonable charges for such items and services for provision that with respect to expenses incurred for radiological or pathological services for which payment could be made under this part, furnished to any inpatient of a hospital by a physician in field of radiology or pathology who had in effect an agreement with Secretary by which the physician agreed to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients enrolled under this part, the amounts paid would be equal to 100 percent of the reasonable charges for such services.

Subsec. (a)(1)(H). Pub. L. 97–248, §112(a)(2), (3), struck out cl. (H) which provided that, with respect to items and services described in section 1395x(s)(10) of this title, the amount of benefits paid would be 100 percent of reasonable charges for such items and services.

Subsec. (a)(2)(B). Pub. L. 97–248, §101(c)(2), inserted ''and except as may be provided in section 1395ww of this title''.

Subsec. (b)(1). Pub. L. 97–248, §112(b), struck out subcl. (A) provision that total amount of expenses shall not include expenses incurred for radiological or pathological services furnished an individual as an inpatient of a hospital by a physician in field of radiology or pathology who has an agreement with Secretary by which physician agrees to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients under this part, and redesignated subcl. (B) provisions as cl. (1).

Subsec. (i)(1). Pub. L. 97–248, §148(d), struck out requirement of consultation with National Professional Standards Review Council.

Subsec. (j). Pub. L. 97–248, §117(a)(2), added subsec. (j).

1981—Subsec. (a)(2)(A). Pub. L. 97–35, §2106(a), substituted provisions that with respect to home health services and to items and services described in section 1395x(s)(10) of this title, the lesser of reasonable cost of such services as determined under section 1395x(v) of this title or customary charges with respect to such services, or if such services are furnished by a public provider of services free of charge or at nominal charges to the public, the amount determined in accordance with section 1395f(b)(2) of this title for provisions that with respect to home health services and to items and services described in section 1395x(s)(10) of this title, the reasonable cost of such services, as determined under section 1395x(v) of this title.

Subsec. (a)(2)(B). Pub. L. 97–35, §2106(a), substituted new formula in cls. (i) to (iii) with respect to other services for provisions providing for reasonable costs of such services less the amount a provider may charge as described in section 1395cc(a)(2)(A) of this title and that in no case may payment for such other services exceed 80 percent of such costs.

Subsec. (b). Pub. L. 97–35, §§2133(a), 2134(a), redesignated cls. (2) to (4) as (1) to (3), and struck out former cl. (1), which provided that amount of deductible for such calendar year as so determined shall first be reduced by amount of any expenses incurred by such individual in last three months of preceding calendar year and applied toward such individual's deductible under this section for such preceding year.

Pub. L. 97–35, §2134(a), substituted ''by a deductible of $75'' for ''by a deductible of $60''.

1980—Subsec. (a)(1)(B). Pub. L. 96–499, §943(a), inserted ''who has in effect an agreement with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients enrolled under this part'' after ''radiology or pathology''.

Subsec. (a)(1)(D). Pub. L. 96–499, §918(a)(4), substituted ''subsection (h)'' for ''subsection (g)''.

Subsec. (a)(1)(F). Pub. L. 96–499, §932(a)(1)(B), added cl. (F).

Subsec. (a)(1)(G). Pub. L. 96–499, §934(d)(1), added cl. (G).

Subsec. (a)(1)(H). Pub. L. 96–611, §1(b)(1)(A), (B), added cl. (H).

Subsec. (a)(2). Pub. L. 96–611, §1(b)(1)(C), inserted in subpar. (A) ''and to items and services described in section 1395x(s)(10) of this title''.

Pub. L. 96–499, §942, authorized payment of reasonable cost of home health services and prescribed formulae for determining payment amounts for services other than home health services.

Subsec. (a)(3). Pub. L. 96–611, §1(b)(1)(D), inserted ''(other than for items and services described in section 1395x(s)(10) of this title)''.

Pub. L. 96–499, §942, prescribed a formula for determining payment amounts for services described in subpars. (D) and (E) of section 1395k(a)(2) of this title.

Subsec. (a)(4), (5). Pub. L. 96–499, §942, added pars. (4) and (5).

Subsec. (b)(2). Pub. L. 96–611, §1(b)(2), inserted ''(A)'' after ''expenses incurred'' and added cl. (B).

Pub. L. 96–499, §943(a), inserted ''who has in effect an agreement with the Secretary by which the physician agrees to accept an assignment (as provided for in section 1395u(b)(3)(B)(ii) of this title) for all physicians' services furnished by him to hospital inpatients enrolled under this part''.

Subsec. (b)(3). Pub. L. 96–499, §930(h)(2), added cl. (3).

Subsec. (b)(4). Pub. L. 96–499, §934(d)(3), added cl. (4).

Subsec. (g). Pub. L. 96–499, §935(a), substituted ''$500'' for ''$100''.

Subsec. (h). Pub. L. 96–473 redesignated subsec. (g) as added by section 279(b) of Pub. L. 92–603 as (h), which for purposes of codification had been editorially set out as subsec. (h), thereby requiring no change in text. See 1972 Amendment note below.

Subsec. (i). Pub. L. 96–499, §934(b), added subsec. (i).

1978—Subsec. (a)(1)(E). Pub. L. 95–292, §4(b)(2), added cl. (E).

Subsec. (a)(2). Pub. L. 95–292, §4(c), inserted ''(unless otherwise specified in section 1395rr of this title)'' after ''and with respect to other services'' in provisions preceding subpar. (A).

1977—Subsec. (a)(2). Pub. L. 95–210, §1(b)(2), inserted parenthetical provisions preceding subpar. (A) excepting those services described in subparagraph (D) of section 1395k(a)(2) of this title.

Subsec. (a)(3). Pub. L. 95–210, §1(b)(1), (3), (4), added par. (3).

Subsec. (f)(1). Pub. L. 95–142 substituted provisions relating to determinations by Secretary with respect to presumptions regarding purchase price or practicality of buying or renting durable medical equipment, for provisions relating to purchase price of durable medical equipment authorized to be paid by Secretary.

Subsec. (f)(2). Pub. L. 95–142 substituted provisions relating to waiver of coinsurance amount in purchase of used durable medical equipment, for provisions relating to reimbursement procedures established by Secretary in cases of rental of durable medical equipment.

Subsec. (f)(3), (4). Pub. L. 95–142 added pars. (3) and (4).

1972—Subsec. (a). Pub. L. 92–603, §226(c)(2), inserted reference to section 1395mm of this title in provisions preceding par. (1).

Subsec. (a)(1). Pub. L. 92–603, §§211(c)(4), 279(a), added cls. (C) and (D).

Subsec. (a)(2). Pub. L. 92–603, §§233(b), 251(a)(3), 299K(a), substituted subpars. (A) and (B) for provisions relating to the amount payable by reference to section 1395x(v) of this title, added subpar. (C), and in provisions preceding subpar. (A), inserted ''with respect to home health services, 100 percent, and with respect to other services,'' before ''80 percent''.

Subsec. (b). Pub. L. 92–603, §204(a), substituted ''$60'' for ''$50''.

Subsec. (f). Pub. L. 92–603, §245(d), designated existing provisions as par. (1)(A) and added par. (1)(B) and (2).

Subsec. (g). Pub. L. 92–603, §251(a)(2), added subsec. (g).

Subsec. (h). Pub. L. 92–603, §279(b), added subsec. (h). Subsec. was in the original (g) and was changed to accommodate subsec. (g) as added by section 251(a)(2) of Pub. L. 92–603.

1968—Subsec. (a)(1). Pub. L. 90–248, §131(a)(1), (2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b). Pub. L. 90–248, §§129(c)(7), 131(b), struck out reference in cl. (1) to expenses regarded under former cl. (2) as incurred for services furnished in last three months of preceding year, struck out former cl. (2) which provided that amount of any deduction imposed by section 1395e(a)(2)(A) of this title for outpatient hospital diagnostic services furnished in any calendar year is to be regarded as an incurred expense for such year; and added cl. (2).

Pub. L. 90–248, §135(c), inserted last sentence providing that there shall be a deductible equal to expenses incurred for first three pints of whole blood (or equivalent quantities of packed red blood cells as defined under regulations) furnished to an individual during a calendar year which deductible is to be appropriately reduced to extent that such blood has been replaced, and such blood will be deemed to have been replaced when institution or person furnishing such blood is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells) furnished individual to which three pint deductible applies.

Subsec. (d). Pub. L. 90–248, §129(c)(8), struck out reference to subsection (a)(2)(A) of section 1395e of this title.

Subsec. (f). Pub. L. 90–248, §132(b), added subsec. (f).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 123(f)(1), (2) of Pub. L. 103–432 provided that: ''(1) ENFORCEMENT; MISCELLANEOUS AND TECHNICAL AMENDMENTS.—The amendments made by subsections (a) and (e) [amending this section and section 1395w–4 of this title] shall apply to services furnished on or after the date of the enactment of this Act [Oct. 31, 1994]; except that the amendments made by subsection (a) [amending section 1395w–4 of this title] shall not apply to services of a nonparticipating supplier or other person furnished before January 1, 1995.

''(2) PRACTITIONERS.—The amendments made by subsection (b) [amending this section and section 1395u of this title] shall apply to services furnished on or after January 1, 1995.''

Section 141(c)(2) of Pub. L. 103–432 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

Amendment by section 147(a), (e)(2), (3), (f)(6)(C), (D) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320a–3a of this title.

Section 147(d)(1), (2) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 101–239.

Amendment by section 156(a)(2)(B) of Pub. L. 103–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13532(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to portions of cost reporting periods beginning on or after January 1, 1994.''

Section 13544(b)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section and section 1395m of this title] shall apply to items furnished on or after January 1, 1994.''

Section 13555(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4104(d) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1395m and 1395w–4 of this title] shall apply to services furnished on or after January 1, 1991.''

Amendment by section 4153(a)(2)(B), (C) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1, 1991, see section 4153(a)(3) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Section 4154(b)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to tests furnished on or after January 1, 1991.''

Section 4154(c)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1)(A) [amending this section] shall take effect as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272], and the amendment made by paragraph (1)(B) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Section 4154(e)(5) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §147(f)(2), Oct. 31, 1994, 108 Stat. 4431, provided that: ''The amendments made by paragraphs (1)(A), (1)(B), (2), and (4) [amending this section, section 1395w–2 of this title, and provisions set out as a note below] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239], and the amendment made by paragraph (1)(C) [amending this section] shall take effect January 1, 1991.''

Amendment by section 4155(b)(2), (3) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4155(e) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4161(a)(3)(B) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(8) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Section 4163(e) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §147(f)(5)(B), Oct. 31, 1994, 108 Stat. 4431, provided that: ''Except as provided in subsection (d)(3) [enacting provisions set out as a note under sec-

tion 1395y of this title], the amendments made by this section [amending this section and sections 1395m, 1395x, 1395y, 1395z, 1395aa, and 1395bb of this title] shall apply to screening mammography performed on or after January 1, 1991.''

Section 4206(e)(2) of Pub. L. 101–508 provided that: ''The amendments made by subsection (b) [amending this section and section 1395mm of this title] shall apply to contracts under section 1876 of the Social Security Act [section 1395mm of this title] and payments under section 1833(a)(1)(A) of such Act [subsec. (a)(1)(A) of this section] as of first day of the first month beginning more than 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6102(c)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to services furnished on or after January 1, 1991.''

Section 6102(f)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1395m of this title] shall apply to services furnished on or after January 1, 1991.''

Section 6102(g) of Pub. L. 101–239 provided that: ''Except as otherwise provided in this section, this section, and the amendments made by this section [enacting section 1395w–4 of this title, amending this section and sections 1395m, 1395u, and 1395rr of this title, and enacting provisions set out as notes under this section and sections 1395m, 1395u, and 1395w–4 of this title], shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

Section 6111(b)(2) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, §4154(e)(4), Nov. 5, 1990, 104 Stat. 1388–86, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to clinical diagnostic laboratory tests performed on or after May 1, 1990.''

Section 6113(e) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1395x of this title], and the provisions of subsection (c) [set out below], shall apply to services furnished on or after July 1, 1990, and the amendments made by subsection (d) [amending this section] shall apply to expenses incurred in a year beginning with 1990.''

Section 6131(c) of Pub. L. 101–239 provided that:

''(1) The amendments made by this section [amending this section and section 1395x of this title] shall apply with respect to therapeutic shoes and inserts furnished on or after July 1, 1989.

''(2) In applying the amendments made by this section, the increase under subparagraph (C) of section 1833(*o*)(2) of the Social Security Act [subsec. (*o*)(2)(C) of this section] shall apply to the dollar amounts specified under subparagraph (A) of such section (as amended by this section) in the same manner as the increase would have applied to the dollar amounts specified under subparagraph (A) of such section (as in effect before the date of the enactment of this Act [Dec. 19, 1989]).''

Section 6133(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1990.''

Amendment by section 6204(b) of Pub. L. 101–239 effective with respect to referrals made on or after Jan. 1, 1992, see section 6204(c) of Pub. L. 101–239, set out as a note under section 1395nn of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Amendment by section 202(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8422(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective as if included in the amendment made by section 9320(e)(2) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(b)(1)–(3) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 203(c)(1)(A)–(E) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 204(d)(1) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 205(c) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 205(f) of Pub. L. 100–360, set out as a note under section 1395k of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(f)(2)(D), (8)(B)(i), (C), (12)(A), (14), (g)(1)(E), (2)(D), (E), (3)(A)–(F), (4)(C), (5), (h)(1)(A), (3)(B), (4)(B), (C), (7)(C), (D), (F), (i)(3), (4)(B)–(C)(ii), (iv), and (vi) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4043(c) of Pub. L. 100–203 provided that: ''The amendments made by this [sic] subsection (a) [amending this section] shall apply with respect to services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Social Security Act [section 1395ww(d)(2)(D) of this title]) on or after January 1, 1989, and to other services furnished on or after January 1, 1991.''

Amendment by section 4045(c)(2)(A) of Pub. L. 100–203 applicable to items and services furnished on or after Apr. 1, 1988, see section 4045(d) of Pub. L. 100–203, set out as a note under section 1395u of this title.

Amendment by section 4049(a)(1) of Pub. L. 100–203 applicable to services performed on or after Apr. 1, 1989, see section 4049(b)(2) of Pub. L. 100–203, as amended, set out as a note under section 1395m of this title.

Section 4055(b), formerly §4054(b), of Pub. L. 100–203, as added and renumbered by Pub. L. 100–360, title IV, §411(f)(12)(A), (14), July 1, 1988, 102 Stat. 781, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1988.''

Amendment by section 4062(d)(3) of Pub. L. 100–203 applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4062(e) of Pub. L. 100–203, as amended, set out as a note under section 1395f of this title.

Section 4063(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall apply to items furnished on or after July 1, 1988.''

Section 4064(b)(3) of Pub. L. 100–203 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to services furnished on or after April 1, 1988.''

Section 4064(c)(2) of Pub. L. 100–203, as added by Pub. L. 100–360, title IV, §411(g)(3)(F), July 1, 1988, 102 Stat. 784, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to diagnostic laboratory tests furnished on or after April 1, 1988.''

Section 4066(c) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to outpatient hospital radiology services furnished on or after October 1, 1988, and other diagnostic procedures performed on or after October 1, 1989.''

Section 4067(c) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1988.''

Section 4068(c) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as if included in the amendment made by section 9343(a)(1)(B) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4070(c)(1) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply with respect to calendar years beginning with 1988; except that with respect to 1988, any reference in section 1833(c) of the Social Security Act [subsec. (c) of this section], as amended by subsection (a), to '$1375.00' is deemed a reference to '$562.50'. The amendment made by subsection (a)(2) [amending this section] shall apply to services furnished on or after January 1, 1989.''

For effective date of amendment by section 4072(b) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendment by section 4073(b) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4073(e) of Pub. L. 100–203, set out as a note under section 1395k of this title.

Amendment by section 4077(b)(2), (3) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4077(b)(5) of Pub. L. 100–203, set out as a note under section 1395k of this title.

Section 4084(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply as if included in the amendment made by section 9320(e)(2) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4084(c)(3) of Pub. L. 100–203, as added by Pub. L. 100–360, title IV, § 411(i)(3), July 1, 1988, 102 Stat. 788, provided that: ''The amendments made by this subsection [amending this section and section 1395x of this title] shall apply to services furnished after December 31, 1988.''

Section 4085(b)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to procedures performed on or after January 1, 1988.''

Section 4085(i)(21) of Pub. L. 100–203 provided that the amendment to section 9343 of Pub. L. 99–509 by section 4085(i)(21)(D) of Pub. L. 100–203, amending this section and provisions set out as an Effective Date of 1986 Amendments note below, is effective as if included in the enactment of Pub. L. 99–509.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9320(e)(1), (2) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Amendment by section 9337(b) of Pub. L. 99–509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99–509, set out as a note under section 1395k of this title.

Section 9339(a)(2) of Pub. L. 99–509 provided that: ''The amendments made by this subsection [amending this section] apply to clinical diagnostic laboratory tests performed on or after January 1, 1987.''

Section 9339(c)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to samples collected on or after January 1, 1987.''

Section 9343(h) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4085(i)(21)(D)(ii), (iii), Dec. 22, 1987, 101 Stat. 1330–134; Pub. L. 100–360, title IV, § 411(i)(4)(C)(v), July 1, 1988, 102 Stat. 789, provided that:

''(1) The amendments made by subsection (a)(1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987.

''(2) The amendments made by subsections (b)(1) and (c) [amending this section and sections 1395y and 1395cc of this title] shall apply to services furnished after June 30, 1987.

''(3) The Secretary of Health and Human Services shall first provide, under the amendment made by subsection (b)(2) [amending this section], for the review and update of procedure lists within 6 months after the date of the enactment of this Act [Oct. 21, 1986].

''(4) The amendments made by subsection (d) [amending section 1320c–3 of this title] shall apply to contracts entered into or renewed after January 1, 1987.''

Section 9303(a)(2) of Pub. L. 99–272 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to clinical laboratory diagnostic tests performed on or after July 1, 1986.''

Section 9303(b)(5)(A), (B) of Pub. L. 99–272 provided that:

''(A) The amendments made by paragraphs (1) and (2) [amending this section] shall apply to clinical diagnostic laboratory tests performed on or after July 1, 1986.

''(B) The amendment made by paragraph (3) [amending this section] shall apply to clinical diagnostic laboratory tests performed on or after January 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Section 2303(j) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and sections 1395u, 1395cc, 1396a, and 1396b of this title and enacting provisions set out as notes under this section and section 1395u of this title] shall apply to clinical diagnostic laboratory tests furnished on or after July 1, 1984.

''(2) The amendments made by subsection (g)(2) [amending section 1396b of this title] shall apply to payments for calendar quarters beginning on or after October 1, 1984.

''(3) The amendments made by this section shall not apply to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of the Social Security Amendments of 1983 [section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title]. Payment for such services shall be made under part B of title XVIII of the Social Security Act [this part] at 80 percent (or 100 percent in the case of such tests for which payment is made on the basis of an assignment described in section 1842(b)(3)(B)(ii) of the Social Security Act [section 1395u(b)(3)(B)(ii) of this title] or under the procedure described in section 1870(f)(1) of such Act [section 1395gg(f)(1) of this title]) of the reasonable charge for such service. The deductible under section 1833(b) of such Act [subsec. (b) of this section] shall not apply to such tests if payment is made on the basis of such an assignment or procedure.''

Section 2305(e) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and enacting provisions set out below] shall apply to services performed after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2321(b), (d)(4)(A) of Pub. L. 98–369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2323(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 1395x, 1395cc, and 1395rr of this title and enacting provisions set out below] apply to services furnished on or after September 1, 1984.''

Amendment by section 2354(b)(5), (7) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 112(c) of Pub. L. 97–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to items and services furnished on or after October 1, 1982.''

Amendment by section 117(a)(2) of Pub. L. 97–248 applicable to final determinations made on or after Sept. 3, 1982, see section 117(b) of Pub. L. 97–248, set out as a note under section 1395g of this title.

Amendment by section 148(d) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2106(c) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] is effective as of December 5, 1980, and the amendment made by subsection (b)(2) [amending section 1395q(b) of this title], is effective as of April 1, 1981.''

Section 2133(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] first apply to the deductible for calendar year 1982 with respect to expenses incurred on or after October 1, 1981.''

Section 2134(b) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1982, and shall apply to the deductible for calendar years beginning with 1982.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 2 of Pub. L. 96–611 provided that: ''The amendments made by this Act [probably should be the amendments made by section 1 of this Act, which amended this section and sections 1395x, 1395y, 1395aa, and 1395cc of this title] shall take effect on, and apply to services furnished on or after, July 1, 1981.''

Amendment by section 930(h) of Pub. L. 96–499, effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 935(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to expenses incurred in calendar years beginning with calendar year 1982.''

Section 943(b) of Pub. L. 96–499 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished after the sixth calendar month beginning after the date of the enactment of this Act [Dec. 5, 1980].''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95–210 applicable to services rendered on or after first day of third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95–210, set out as a note under section 1395k of this title.

Section 16(b) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to durable medical equipment purchased or rented on or after October 1, 1977.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 204(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1395n of this title] shall be effective with respect to calendar years after 1972 (except that, for purposes of applying clause (1) of the first sentence of section 1833(b) of the Social Security Act [subsec. (b) of this section], such amendments shall be deemed to have taken effect on January 1, 1972).''

Amendment by section 211(c)(4) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Amendment by section 226(c)(2) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395mm of this title.

Amendment by section 233(b) of Pub. L. 92–603 applicable to services furnished by hospitals, extended care facilities, and home health agencies in accounting periods beginning after Dec. 31, 1972, see section 233(f) of Pub. L. 92–603, set out as a note under section 1395f of this title. See, also, Pub. L. 93–233, §16, Dec. 31, 1973, 87 Stat. 967, set out as a note under section 1395f of this title.

Amendment by section 251(a)(2), (3) of Pub. L. 92–603 applicable with respect to services furnished on or after July 1, 1973, see section 251(d)(1) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 299K(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished by home health agencies in accounting periods beginning after December 31, 1972.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 129(c)(7), (8) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 131(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to services furnished after March 31, 1968.''

Section 132(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section and section 1395x of this title] shall apply only with respect to items purchased after December 31, 1967.''

Amendment by section 135(c) of Pub. L. 90–248 applicable with respect to payment for blood (or packed red blood cells) furnished an individual after Dec. 31, 1967, see section 135(d) of Pub. L. 90–248, set out as a note under section 1395e of this title.

ADJUSTMENTS TO PAYMENT AMOUNTS FOR NEW TECHNOLOGY INTRAOCULAR LENSES

Section 141(b) of Pub. L. 103–432 provided that:

''(1) ESTABLISHMENT OF PROCESS FOR REVIEW OF AMOUNTS.—Not later than 1 year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall develop and implement a process under which interested parties may request review by the Secretary of the appropriateness of the reimbursement amount provided under section 1833(i)(2)(A)(iii) of the Social Security Act [subsec. (i)(2)(A)(iii) of this section] with respect to a class of new technology intraocular lenses. For purposes of the

preceding sentence, an intraocular lens may not be treated as a new technology lens unless it has been approved by the Food and Drug Administration.

''(2) FACTORS CONSIDERED.—In determining whether to provide an adjustment of payment with respect to a particular lens under paragraph (1), the Secretary shall take into account whether use of the lens is likely to result in reduced risk of intraoperative or postoperative complication or trauma, accelerated postoperative recovery, reduced induced astigmatism, improved postoperative visual acuity, more stable postoperative vision, or other comparable clinical advantages.

''(3) NOTICE AND COMMENT.—The Secretary shall publish notice in the Federal Register from time to time (but no less often than once each year) of a list of the requests that the Secretary has received for review under this subsection, and shall provide for a 30-day comment period on the lenses that are the subjects of the requests contained in such notice. The Secretary shall publish a notice of the Secretary's determinations with respect to intraocular lenses listed in the notice within 90 days after the close of the comment period.

''(4) EFFECTIVE DATE OF ADJUSTMENT.—Any adjustment of a payment amount (or payment limit) made under this subsection shall become effective not later than 30 days after the date on which the notice with respect to the adjustment is published under paragraph (3).''

STUDY OF MEDICARE COVERAGE OF PATIENT CARE COSTS ASSOCIATED WITH CLINICAL TRIALS OF NEW CANCER THERAPIES

Section 142 of Pub. L. 103–432 provided that:

''(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of the effects of expressly covering under the medicare program the patient care costs for beneficiaries enrolled in clinical trials of new cancer therapies, where the protocol for the trial has been approved by the National Cancer Institute or meets similar scientific and ethical standards, including approval by an institutional review board. The study shall include—

''(1) an estimate of the cost of such coverage, taking into account the extent to which medicare currently pays for such patient care costs in practice;

''(2) an assessment of the extent to which such clinical trials represent the best available treatment for the patients involved and of the effects of participation in the trials on the health of such patients;

''(3) an assessment of whether progress in developing new anticancer therapies would be assisted by medicare coverage of such patient care costs; and

''(4) an evaluation of whether there should be special criteria for the admission of medicare beneficiaries (on account of their age or physical condition) to clinical trials for which medicare would pay the patient care costs.

''(b) REPORT.—Not later than 2 years after the date of the enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services shall submit a report on the study conducted under subsection (a) to the Committee on Ways and Means and the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives and the Committee on Finance of the Senate. Such report shall include recommendations as to the coverage under the medicare program of patient care costs of beneficiaries enrolled in clinical trials of new cancer therapies.''

STUDY OF ANNUAL CAP ON AMOUNT OF MEDICARE PAYMENT FOR OUTPATIENT PHYSICAL THERAPY AND OCCUPATIONAL THERAPY SERVICES

Section 143 of Pub. L. 103–432 provided that:

''(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of the appropriateness of continuing an annual limitation on the amount of payment for outpatient services of independently practicing physical and occupational therapists under the medicare program.

''(b) REPORT.—By not later than January 1, 1996, the Secretary shall submit to the Committees on Energy and Commerce [now Committee on Commerce] and Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the study conducted under subsection (a). Such report shall include such recommendations for changes in such annual limitation as the Secretary finds appropriate.''

AMBULATORY SURGICAL CENTER SERVICES; INFLATION UPDATE

Section 13531 of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services shall not provide for any inflation update in the payment amounts under subparagraphs (A) and (B) of section 1833(i)(2) of the Social Security Act [subsec. (i)(2)(A) and (B) of this section] for fiscal year 1994 or for fiscal year 1995.''

FREEZE IN ALLOWANCE FOR INTRAOCULAR LENSES

Section 13533 of Pub. L. 103–66 provided that: ''Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act [subsec. (i)(2)(A)(iii) of this section], the amount of payment determined under such section for an intraocular lens inserted subsequent to or during cataract surgery in an ambulatory surgical center on or after January 1, 1994, and before January 1, 1999, shall be equal to $150.''

Section 4151(c)(3) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §141(d), Oct. 31, 1994, 108 Stat. 4426, provided that: ''Notwithstanding section 1833(i)(2)(A)(iii) of the Social Security Act [subsec. (i)(2)(A)(iii) of this section], the amount of payment determined under such section for an intraocular lens inserted during or subsequent to cataract surgery furnished to an individual in an ambulatory surgical center on or after the date of the enactment of this Act [Nov. 5, 1990] and on or before December 31, 1992, shall be equal to $200.''

[Section 141(d) of Pub. L. 103–432 provided that the amendment made by that section to section 4151(c)(3) of Pub. L. 101–508, set out above, is effective as if included in the enactment of Pub. L. 101–508.]

REDUCTION IN PAYMENTS UNDER PART B DURING FINAL TWO MONTHS OF 1990

Section 4158 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law (including any other provision of this Act, other than subsection (b)(4)), payments under part B of title XVIII of the Social Security Act [this part] for items and services furnished during the period beginning on November 1, 1990, and ending on December 31, 1990, shall be reduced by 2 percent, in accordance with subsection (b).

''(b) SPECIAL RULES FOR APPLICATION OF REDUCTION.—

''(1) PAYMENT ON THE BASIS OF COST REPORTING PERIODS.—In the case in which payment for services of a provider of services is made under part B of such title on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, the reduction made under subsection (a) shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the period described in such subsection, but only in the same proportion as the fraction of the cost reporting period that occurs during such period.

''(2) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES.—If a reduction in payment amounts is made under subsection (a) for items or services for which payment under part B of such title is made on an assignment-related basis (as defined in section 1842(i)(1) of the Social Security Act [section 1395u(i)(1) of this title]), the person furnishing the items or services shall be considered to have accepted payment of the reasonable charge for the items or services, less any reduction in payment amount made under subsection (a), as payment in full.

''(3) TREATMENT OF PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS.—Subsection (a) shall not apply to payments under risk-sharing contracts under section 1876 of the Social Security Act [section 1395mm of this title] or under similar contracts under section 402 of the Social Security Amendments of 1967 [Pub. L. 90–248, enacting section 1395b–1 of this title and amending section 1395*ll* of this title] or section 222 of the Social Security Amendments of 1972 [Pub. L. 92–603, amending sections 1395b–1 and 1395*ll* of this title and enacting provisions set out as a note under section 1395b–1 of this title].''

EFFECT ON STATE LAW

Conscientious objections of health care provider under State law unaffected by enactment of subsecs. (a)(1)(Q) and (f) of this section, see section 4206(c) of Pub. L. 101–508, set out as a note under section 1395cc of this title.

DEVELOPMENT OF CRITERIA REGARDING CONSULTATION WITH A PHYSICIAN

Section 6113(c) of Pub. L. 101–239, as amended by Pub. L. 103–432, title I, §147(b), Oct. 31, 1994, 108 Stat. 4429, provided that: ''The Secretary of Health and Human Services shall, taking into consideration concerns for patient confidentiality, develop criteria with respect to payment for qualified psychologist services and clinical social worker services for which payment may be made directly to the psychologist or clinical social worker under part B of title XVIII of the Social Security Act [this part] under which such a psychologist or clinical social worker must agree to consult with a patient's attending physician in accordance with such criteria.''

[Section 147(b) of Pub. L. 103–432 provided that the amendment made by that section to section 6113(c) of Pub. L. 101–239, set out above, is effective with respect to services furnished on or after Jan. 1, 1991.]

STUDY OF REIMBURSEMENT FOR AMBULANCE SERVICES

Section 6136 of Pub. L. 101–239 directed Secretary of Health and Human Services to conduct a study to determine adequacy and appropriateness of payment amounts under this subchapter for ambulance services and, not later than one year after Dec. 19, 1989, submit a report to Congress on results of the study, with report to include such recommendations for changes in medicare payment policy with respect to ambulance services as may be needed to ensure access by medicare beneficiaries to quality ambulance services in metropolitan and rural areas.

PROPAC STUDY OF PAYMENTS FOR SERVICES IN HOSPITAL OUTPATIENT DEPARTMENTS

Section 6137 of Pub. L. 101–239, directed Prospective Payment Assessment Commission to conduct a study on payment under this subchapter for hospital outpatient services and, not later than July 1, 1990, and not later than Mar. 1, 1991, to submit reports to Congress on specified portions of the study, with the reports to include such recommendations as the Commission deemed appropriate, prior to repeal by Pub. L. 103–432, title I, §147(c)(1), Oct. 31, 1994, 108 Stat. 4429.

BUDGET NEUTRALITY

Section 8421(b) of Pub. L. 100–647 provided that: ''The Secretary of Health and Human Services shall adjust the fees for transportation and personnel established under section 1833(h)(3)(B) of the Social Security Act [subsec. (h)(3)(B) of this section] for tests not covered under the amendment made by subsection (a) [amending this section] in such manner that the total cost of fees under such section is the same as would have been the case without such amendment.''

ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS

For requirement that Secretary of Health and Human Services modify contracts under subsection (a)(1)(A) of this section to take into account amendments made by Pub. L. 100–360 and that such organizations make appropriate adjustments in their agreements with medicare beneficiaries to take into account such amendments, see section 222 of Pub. L. 100–360, set out as a note under section 1395mm of this title.

STUDY AND REPORT TO CONGRESS RESPECTING INCENTIVE PAYMENTS FOR PHYSICIANS' SERVICES FURNISHED IN UNDERSERVED AREAS

Section 4043(b) of Pub. L. 100–203 directed Secretary of Health and Human Services to study and report to Congress, by not later than Jan. 1, 1990, on feasibility of making additional payments described in section 1395*l*(m) of this title with respect to physician services performed in health manpower shortage areas located in urban areas, prior to repeal by Pub. L. 101–508, title IV, §4118(g)(1), Nov. 5, 1990, 104 Stat. 1388–70.

FEE SCHEDULES FOR PHYSICIAN PATHOLOGY SERVICES

Section 4050 of Pub. L. 100–203 directed Secretary of Health and Human Services to develop a relative value scale and fee schedules with updating index for payment of physician pathology services under this part, and to report to committees of Congress not later than Apr. 1, 1989, on the scale, schedules, and index, prior to repeal by Pub. L. 101–508, title IV, §4104(b)(3), Nov. 5, 1990, 104 Stat. 1388–59.

APPLYING COPAYMENT AND DEDUCTIBLE TO CERTAIN OUTPATIENT PHYSICIANS' SERVICES

Section 4054 of Pub. L. 100–203, relating to payment under part B of title XVIII of the Social Security Act (this part) for physicians' services specified in subsec. (i) of this section and furnished on or after Apr. 1, 1988, in an ambulatory surgical center or hospital outpatient department on an assignment-related basis, was negated in the amendment of section 4054 by Pub. L. 100–360, title IV, §411(f)(12)(A), July 1, 1988, 102 Stat. 781.

OTHER PHYSICIAN PAYMENT STUDIES

Section 4056(c), formerly §4055(c), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, §411(f)(14), July 1, 1988, 102 Stat. 781, provided directed Secretary to (1) conduct a study of changes in the payment system for physicians' services, under part B, that would be required for the implementation of a national fee schedule for such services furnished on or after Jan. 1, 1990, and report to Congress on such study by not later than July 1, 1989, (2) conduct a study of issues relating to the volume and intensity of physicians' services under part B and submit to Congress an interim report on such study not later than May 1, 1988, and a final report on such study not later than May 1, 1989, and (3) conduct a survey to determine distribution of (A) the liabilities and expenditures for health care services of individuals entitled to benefits under this subchapter, including liabilities for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized, and (B) the collection rates among different classes of physicians for such liabilities, including collection rates for required coinsurance and for charges (not paid on an assignment-related basis) in excess of the reasonable charge recognized, report to Congress on such study by not later than July 1, 1990.

STUDY OF PAYMENT FOR CHEMOTHERAPY IN PHYSICIANS' OFFICES

Section 4056(d), formerly §4055(d), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, §411(f)(14), July 1, 1988, 102 Stat. 781, directed Secretary to study ways of modifying part B to permit adequate payment under such part for costs associated with providing chemotherapy to cancer patients in physicians' offices, such study to be performed in consultation with physicians and other health care providers who are experts in cancer therapy and with representation of health insurers who have experience in these payment issues, with the Secretary to report to Congress on results of study by not later than Apr. 1, 1989.

CLINICAL DIAGNOSTIC LABORATORY TESTS; LIMITATION ON CHANGES IN FEE SCHEDULES

Section 4064(a) of Pub. L. 100–203 which provided 3-month freeze in fee schedules for clinical laboratory diagnostic laboratory tests under part B of title XVIII of the Social Security Act (this part) and directed the Secretary of Health and Human Services to not adjust the fee schedules established under subsec. (h) of this section to take into account any increase in the consumer price index, was negated in the amendment of section 4064(a) by Pub. L. 100–360, title IV, § 411(g)(3)(A), July 1, 1988, 102 Stat. 783.

GAO STUDY OF FEE SCHEDULES

Section 4064(b)(4) of Pub. L. 100–203 directed Comptroller General to conduct a study of level of fee schedules established for clinical diagnostic laboratory services under subsec. (h)(2) of this section to determine, based on costs of, and revenues received for, such tests the appropriateness of such schedules, with Comptroller General to report to Congress on results of such study by not later than Jan. 1, 1990, and with provision that suppliers of such tests which fail to provide Comptroller General with reasonable access to necessary records to carry out study being subject to exclusion from the medicare program under section 1320a–7(a) of this title.

AMOUNTS PAID FOR INDEPENDENT RURAL HEALTH CLINIC SERVICES

Section 4067(b) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall report to Congress, by not later than March 1, 1989, on the adequacy of the amounts paid under title XVIII of the Social Security Act [this subchapter] for rural health clinic services provided by independent rural health clinics.''

REPORT ON ESTABLISHMENT OF NATIONAL FEE SCHEDULES FOR PAYMENT OF CLINICAL DIAGNOSTIC LABORATORY TESTS

Section 9339(b)(3) of Pub. L. 99–509 directed Secretary of Health and Human Services to report to Congress, by not later than Apr. 1, 1988, on advisability and feasibility of, and methodology for, establishing national fee schedules for payment for clinical diagnostic laboratory tests under section 1395*l*(h) of this title, prior to repeal by Pub. L. 101–508, title IV, § 4154(e)(3), Nov. 5, 1990, 104 Stat. 1388–86, effective as if included in enactment of Pub. L. 99–509.

STATE STANDARDS FOR DIRECTORS OF CLINICAL LABORATORIES

Section 9339(d) of Pub. L. 99–509 provided that:

''(1) IN GENERAL.—If a State (as defined for purposes of title XVIII of the Social Security Act [this subchapter]) provides for the licensing or other standards with respect to the operation of clinical laboratories (including such laboratories in hospitals) in the State under which such a laboratory may be directed by an individual with certain qualifications, nothing in such title shall be construed as authorizing the Secretary of Health and Human Services to require such a laboratory, as a condition of payment or participation under such title, to be directed by an individual with other qualifications.

''(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on January 1, 1987.''

TRANSITIONAL PROVISIONS FOR PAYMENT OF FEES FOR CLINICAL DIAGNOSTIC LABORATORY TESTS

Section 9303(a)(3) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall provide that the annual adjustment under section 1833(h) of the Social Security Act [subsec. (h) of this section] for 1986—

''(A) shall take effect on January 1, 1987,

''(B) shall apply for the 12-month period beginning on that date, and

''(C) shall take into account the percentage increase or decrease in the Consumer Price Index for all urban consumers (United States city average) occurring over an 18-month period, rather than over a 12-month period.''

EXTENSION OF MEDICARE PHYSICIAN PAYMENT PROVISIONS

Amount of payment under this part for physicians' services furnished between Oct. 1, 1985, and Mar. 14, 1986, to be determined on the same basis as the amount of such services furnished on Sept. 30, 1985, see section 5(b) of Pub. L. 99–107, as amended, set out as a note under section 1395ww of this title.

FEE SCHEDULES FOR DIAGNOSTIC LABORATORY TESTS AND FEASIBILITY OF DIRECT PAYMENTS TO PHYSICIANS; REPORT TO CONGRESS

Section 2303(i) of Pub. L. 98–369 provided that:

''(1) The Comptroller General shall report to the Congress on—

''(A) the appropriateness of the fee schedules under section 1833(h) of the Social Security Act [subsec. (h) of this section] and their impact on the volume and quality of clinical diagnostic laboratory tests;

''(B) the potential impact of the adoption of a national fee schedule; and

''(C) the potential impact of applying a national fee schedule to clinical diagnostic laboratory tests provided by hospitals to their outpatients.

''(2) The Secretary of Health and Human Services shall report to the Congress with respect to the advisability and feasibility of a system of direct payment to any physician for all clinical diagnostic laboratory tests ordered by such physician.

''(3) The reports required by paragraphs (1) and (2) shall be submitted not later than January 1, 1987.''

PACEMAKER REIMBURSEMENT REVIEW AND REFORM

Section 2304(a) of Pub. L. 98–369 provided that:

''(1) The Secretary of Health and Human Services shall issue revisions to the current guidelines for the payment under part B of title XVIII of the Social Security Act [this part] for the transtelephonic monitoring of cardiac pacemakers. Such revised guidelines shall include provisions regarding the specifications for and frequency of transtelephonic monitoring procedures which will be found to be reasonable and necessary.

''(2)(A) Except as provided in subparagraph (B), if the guidelines required by paragraph (1) have not been issued and put into effect by October 1, 1984, and until such guidelines have been issued and put into effect, payment may not be made under part B of title XVIII of the Social Security Act for transtelephonic monitoring procedures, with respect to a single-chamber cardiac pacemaker powered by lithium batteries, conducted more frequently than—

''(i) weekly during the first month after implantation,

''(ii) once every two months during the period representing 80 percent of the estimated life of the implanted device, and

''(iii) monthly thereafter.

''(B) Subparagraph (A) shall not apply in cases where the Secretary determines that special medical factors (including possible evidence of pacemaker or lead malfunction) justify more frequent transtelephonic monitoring procedures.''

PAYMENT FOR PREADMISSION DIAGNOSTIC TESTING PERFORMED IN PHYSICIAN'S OFFICE

Section 2305(f) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and enacting provisions set out above] shall not be construed as prohibiting payment, subject to the applicable copayments, under part B of title XVIII of the Social Security Act [this part] for preadmission diagnostic testing performed in a physician's office to the

extent such testing is otherwise reimbursable under regulations of the Secretary.''

PROVIDERS OF SERVICES TO CALCULATE AND REPORT LESSER-OF-COST-OR-CHARGES DETERMINATIONS SEPARATELY WITH RESPECT TO PAYMENTS UNDER PARTS A AND B OF THIS SUBCHAPTER; ISSUANCE OF REGULATIONS

For provision directing the Secretary to issue regulations requiring providers of services to calculate and report the lesser-of-cost-or-charges determinations separately with respect to payments for services under parts A and B of this subchapter other than diagnostic tests under subsec. (h) of this section, see section 2308(a) of Pub. L. 98–369, set out as a note under section 1395f of this title.

DETERMINATION OF NOMINAL CHARGES FOR APPLYING NOMINALITY TEST

For provision directing the Secretary to provide, in addition to other rules deemed appropriate, that charges representing 60 percent or less of costs be considered nominal for purposes of applying the nominality test under subsec. (a)(2)(B)(ii) of this section, see section 2308(b)(1) of Pub. L. 98–369, set out as a note under section 1395f of this title.

STUDY OF MEDICARE PART B PAYMENTS; COMPILATION OF CENTRALIZED CHARGE DATA BASE; REPORT TO CONGRESS

Section 2309 of Pub. L. 98–369 directed Director of Office of Technology Assessment to conduct a study of physician reimbursement under the Medicare program and make a report not later than Dec. 31, 1985, covering findings and recommendations on methods by which payment amounts and other program policies under the program might be modified, and directed that Secretary of Health and Human Services compile a centralized Medicare part B charge data base to aid in the study.

MONITORING PROVISION OF HEPATITIS B VACCINE; REVIEW OF CHANGES IN MEDICAL TECHNOLOGY

Section 2323(e) of Pub. L. 98–369 provided that: ''The Secretary shall monitor the provision of hepatitis B vaccine under part B of title XVIII of the Social Security Act [this part], and shall review any changes in medical technology which may have an effect on the amounts which should be paid for such service.''

REPORT ON PREADMISSION DIAGNOSTIC TESTING EXPENSES

Section 932(b) of Pub. L. 96–499 required a report to Congress, no later than one year after Dec. 5, 1980, on the policy respecting expenses incurred for preadmission diagnostic testing furnished to an individual at a hospital within seven days of an individual's admission to another hospital.

STUDY OF FEASIBILITY AND DESIRABILITY OF IMPOSING COPAYMENT REQUIREMENT ON RURAL HEALTH CLINIC VISITS; REPORT NOT LATER THAN DECEMBER 13, 1978

Section 1(c) of Pub. L. 95–210 directed Secretary of Health, Education, and Welfare to conduct a study of the feasibility and desirability of imposing a copayment for each visit to a rural health clinic for rural health clinic services under this part and that Secretary report to appropriate committee of Congress, not later than one year after Dec. 13, 1977, on such study.

PROHIBITION AGAINST PAYMENTS IN CASES OF NONENTITLEMENT TO MONTHLY BENEFITS UNDER SUBCHAPTER II OR SUSPENSION OF BENEFITS OF ALIENS OUTSIDE THE UNITED STATES

Section 104(b)(1) of Pub. L. 89–97 provided that: ''No payments shall be made under part B of title XVIII of the Social Security Act [this part] with respect to expenses incurred by an individual during any month for which such individual may not be paid monthly benefits under title II of such Act [subchapter II of this chapter] (or for which such monthly benefits would be suspended if he were otherwise entitled thereto) by reason of section 202(t) of such Act [section 402(t) of this title] (relating to suspension of benefits of aliens who are outside the United States).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c–3, 1395e, 1395f, 1395i–4, 1395k, 1395m, 1395n, 1395u, 1395x, 1395cc, 1395mm, 1395nn, 1395rr, 1395ss, 1395uu, 1395ccc, 1396a, 1396b, 1396d of this title.

§ 1395m. Special payment rules for particular items and services

(a) Payment for durable medical equipment

(1) General rule for payment

(A) In general

With respect to a covered item (as defined in paragraph (13)) for which payment is determined under this subsection, payment shall be made in the frequency specified in paragraphs (2) through (7) and in an amount equal to 80 percent of the payment basis described in subparagraph (B).

(B) Payment basis

The payment basis described in this subparagraph is the lesser of—

(i) the actual charge for the item, or

(ii) the payment amount recognized under paragraphs (2) through (7) of this subsection for the item;

except that clause (i) shall not apply if the covered item is furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.

(C) Exclusive payment rule

This subsection shall constitute the exclusive provision of this subchapter for payment for covered items under this part or under part A of this subchapter to a home health agency.

(D) Reduction in fee schedules for certain items

With respect to a seat-lift chair or transcutaneous electrical nerve stimulator furnished on or after April 1, 1990, the Secretary shall reduce the payment amount applied under subparagraph (B)(ii) for such an item by 15 percent, and, in the case of a transcutaneous electrical nerve stimulator furnished on or after January 1, 1991, the Secretary shall further reduce such payment amount (as previously reduced) by 45 percent.

(2) Payment for inexpensive and other routinely purchased durable medical equipment

(A) In general

Payment for an item of durable medical equipment (as defined in paragraph (13))—

(i) the purchase price of which does not exceed $150,

(ii) which the Secretary determines is acquired at least 75 percent of the time by purchase, or

(iii) which is an accessory used in conjunction with a nebulizer, aspirator, or a ventilator excluded under paragraph (3)(A),

shall be made on a rental basis or in a lump-sum amount for the purchase of the item. The payment amount recognized for purchase or rental of such equipment is the amount specified in subparagraph (B) for purchase or rental, except that the total amount of payments with respect to an item may not exceed the payment amount specified in subparagraph (B) with respect to the purchase of the item.

(B) Payment amount

For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to the purchase or rental of an item furnished in a carrier service area—

(i) in 1989 and in 1990 is the average reasonable charge in the area for the purchase or rental, respectively, of the item for the 12-month period ending on June 30, 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987;

(ii) in 1991 is the sum of (I) 67 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(I) for 1991, and (II) 33 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1991;

(iii) in 1992 is the sum of (I) 33 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(II) for 1992, and (II) 67 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1992; and

(iv) in 1993 and each subsequent year is the national limited payment amount for the item or device computed under subparagraph (C)(ii) for that year.

(C) Computation of local payment amount and national limited payment amount

For purposes of subparagraph (B)—

(i) the local payment amount for an item or device for a year is equal to—

(I) for 1991, the amount specified in subparagraph (B)(i) for 1990 increased by the covered item update for 1991, and

(II) for 1992, 1993, and 1994, the amount determined under this clause for the preceding year increased by the covered item update for the year; and

(ii) the national limited payment amount for an item or device for a year is equal to—

(I) for 1991, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the weighted average of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the weighted average of all local payment amounts determined under such clause for such item,

(II) for 1992 and 1993, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year,

(III) for 1994, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the median of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the median of all local payment amounts determined under such clause for such item or device for that year, and

(IV) for each subsequent year, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year.

(3) Payment for items requiring frequent and substantial servicing

(A) In general

Payment for a covered item (such as IPPB machines and ventilators, excluding ventilators that are either continuous airway pressure devices or intermittent assist devices with continuous airway pressure devices) for which there must be frequent and substantial servicing in order to avoid risk to the patient's health shall be made on a monthly basis for the rental of the item and the amount recognized is the amount specified in subparagraph (B).

(B) Payment amount

For purposes of subparagraph (A), the amount specified in this subparagraph, with respect to an item or device furnished in a carrier service area—

(i) in 1989 and in 1990 is the average reasonable charge in the area for the rental of the item or device for the 12-month period ending with June 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987;

(ii) in 1991 is the sum of (I) 67 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(I) for 1991, and (II) 33 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1991;

(iii) in 1992 is the sum of (I) 33 percent of the local payment amount for the item or device computed under subparagraph (C)(i)(II) for 1992, and (II) 67 percent of the national limited payment amount for the item or device computed under subparagraph (C)(ii) for 1992; and

(iv) in 1993 and each subsequent year is the national limited payment amount for

the item or device computed under subparagraph (C)(ii) for that year.

(C) Computation of local payment amount and national limited payment amount

For purposes of subparagraph (B)—

(i) the local payment amount for an item or device for a year is equal to—

(I) for 1991, the amount specified in subparagraph (B)(i) for 1990 increased by the covered item update for 1991, and

(II) for 1992, 1993, and 1994, the amount determined under this clause for the preceding year increased by the covered item update for the year; and

(ii) the national limited payment amount for an item or device for a year is equal to—

(I) for 1991, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the weighted average of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the weighted average of all local payment amounts determined under such clause for such item,

(II) for 1992 and 1993, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year,

(III) for 1994, the local payment amount determined under clause (i) for such item or device for that year, except that the national limited payment amount may not exceed 100 percent of the median of all local payment amounts determined under such clause for such item for that year and may not be less than 85 percent of the median of all local payment amounts determined under such clause for such item or device for that year, and

(IV) for each subsequent year, the amount determined under this clause for the preceding year increased by the covered item update for such subsequent year.

(4) Payment for certain customized items

Payment with respect to a covered item that is uniquely constructed or substantially modified to meet the specific needs of an individual patient, and for that reason cannot be grouped with similar items for purposes of payment under this subchapter, shall be made in a lump-sum amount (A) for the purchase of the item in a payment amount based upon the carrier's individual consideration for that item, and (B) for the reasonable and necessary maintenance and servicing for parts and labor not covered by the supplier's or manufacturer's warranty, when necessary during the period of medical need, and the amount recognized for such maintenance and servicing shall be paid on a lump-sum, as needed basis based upon the carrier's individual consideration for that item.

(5) Payment for oxygen and oxygen equipment

(A) In general

Payment for oxygen and oxygen equipment shall be made on a monthly basis in the monthly payment amount recognized under paragraph (9) for oxygen and oxygen equipment (other than portable oxygen equipment), subject to subparagraphs (B), (C), and (E).

(B) Add-on for portable oxygen equipment

When portable oxygen equipment is used, but subject to subparagraph (D), the payment amount recognized under subparagraph (A) shall be increased by the monthly payment amount recognized under paragraph (9) for portable oxygen equipment.

(C) Volume adjustment

When the attending physician prescribes an oxygen flow rate—

(i) exceeding 4 liters per minute, the payment amount recognized under subparagraph (A), subject to subparagraph (D), shall be increased by 50 percent, or

(ii) of less than 1 liter per minute, the payment amount recognized under subparagraph (A) shall be decreased by 50 percent.

(D) Limit on adjustment

When portable oxygen equipment is used and the attending physician prescribes an oxygen flow rate exceeding 4 liters per minute, there shall only be an increase under either subparagraph (B) or (C), whichever increase is larger, and not under both such subparagraphs.

(E) Recertification for patients receiving home oxygen therapy

In the case of a patient receiving home oxygen therapy services who, at the time such services are initiated, has an initial arterial blood gas value at or above a partial pressure of 56 or an arterial oxygen saturation at or above 89 percent (or such other values, pressures, or criteria as the Secretary may specify) no payment may be made under this part for such services after the expiration of the 90-day period that begins on the date the patient first receives such services unless the patient's attending physician certifies that, on the basis of a follow-up test of the patient's arterial blood gas value or arterial oxygen saturation conducted during the final 30 days of such 90-day period, there is a medical need for the patient to continue to receive such services.

(6) Payment for other covered items (other than durable medical equipment)

Payment for other covered items (other than durable medical equipment and other covered items described in paragraph (3), (4), or (5)) shall be made in a lump-sum amount for the purchase of the item in the amount of the purchase price recognized under paragraph (8).

(7) Payment for other items of durable medical equipment

(A) In general

In the case of an item of durable medical equipment not described in paragraphs (2) through (6)—

(i) payment shall be made on a monthly basis for the rental of such item during the period of medical need (but payments under this clause may not extend over a period of continuous use of longer than 15 months, or, in the case of an item for which a purchase agreement has been entered into under clause (iii), a period of continuous use of longer than 13 months), and, subject to subparagraph (B), the amount recognized for each of the first 3 months of such period is 10 percent of the purchase price recognized under paragraph (8) with respect to the item, and for each of the remaining months of such period is 7.5 percent of such purchase price;

(ii) in the case of a power-driven wheelchair, at the time the supplier furnishes the item, the supplier shall offer the individual patient the option to purchase the item, and payment for such item shall be made on a lump-sum basis if the patient exercises such option;

(iii) during the 10th continuous month during which payment is made for the rental of an item under clause (i), the supplier of such item shall offer the individual patient the option to enter into a purchase agreement under which, if the patient notifies the supplier not later than 1 month after the supplier makes such offer that the patient agrees to accept such offer and exercise such option—

(I) the supplier shall transfer title to the item to the individual patient on the first day that begins after the 13th continuous month during which payment is made for the rental of the item under clause (i),

(II) after the supplier transfers title to the item under subclause (I), maintenance and servicing payments shall be made in accordance with clause (vi);

(iv) in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii), during the first 6-month period of medical need that follows the period of medical need during which payment is made under clause (i), no payment shall be made for rental or maintenance and servicing of the item;

(v) in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii), during the first month of each succeeding 6-month period of medical need, a maintenance and servicing payment may be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment) and the amount recognized for each such 6-month period is the lower of (I) a reasonable and necessary maintenance and servicing fee or fees established by the Secretary, or (II) 10 percent of the total of the purchase price recognized under paragraph (8) with respect to the item; and

(vi) in the case of an item for which a purchase agreement has been entered into under clause (ii) or clause (iii), maintenance and servicing payments may be made (for parts and labor not covered by the supplier's or manufacturer's warranty, as determined by the Secretary to be appropriate for the particular type of durable medical equipment), and such payments shall be in an amount established by the Secretary on the basis of reasonable charges in the locality for maintenance and servicing.

The Secretary shall determine the meaning of the term ''continuous'' in subparagraph (A).

(B) Range for rental amounts

(i) For 1989

For items furnished during 1989, the payment amount recognized under subparagraph (A)(i) shall not be more than 115 percent, and shall not be less than 85 percent, of the prevailing charge established for rental of the item in January 1987, increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987.

(ii) For 1990

For items furnished during 1990, clause (i) shall apply in the same manner as it applies to items furnished during 1989.

(C) Replacement of items

(i) Establishment of reasonable useful lifetime

In accordance with clause (iii), the Secretary shall determine and establish a reasonable useful lifetime for items of durable medical equipment for which payment may be made under this paragraph.

(ii) Payment for replacement items

If the reasonable lifetime of such an item, as so established, has been reached during a continuous period of medical need, or the carrier determines that the item is lost or irreparably damaged, the patient may elect to have payment for an item serving as a replacement for such item made—

(I) on a monthly basis for the rental of the replacement item in accordance with subparagraph (A); or

(II) in the case of an item for which a purchase agreement has been entered into under subparagraph (A)(ii) or (A)(iii), in a lump-sum amount for the purchase of the item.

(iii) Length of reasonable useful lifetime

The reasonable useful lifetime of an item of durable medical equipment under this subparagraph shall be equal to 5 years, ex-

cept that, if the Secretary determines that, on the basis of prior experience in making payments for such an item under this subchapter, a reasonable useful lifetime of 5 years is not appropriate with respect to a particular item, the Secretary shall establish an alternative reasonable lifetime for such item.

(8) Purchase price recognized for miscellaneous devices and items

For purposes of paragraphs (6) and (7), the amount that is recognized under this paragraph as the purchase price for a covered item is the amount described in subparagraph (C) of this paragraph, determined as follows:

(A) Computation of local purchase price

Each carrier under section 1395u of this title shall compute a base local purchase price for the item as follows:

(i) The carrier shall compute a base local purchase price, for each item described—

(I) in paragraph (6) equal to the average reasonable charge in the locality for the purchase of the item for the 12-month period ending with June 1987, or

(II) in paragraph (7) equal to the average of the purchase prices on the claims submitted on an assignment-related basis for the unused item supplied during the 6-month period ending with December 1986.

(ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item—

(I) in 1989 and 1990, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987,

(II) in 1991, equal to the local purchase price computed under this clause for the previous year, increased by the covered item update for 1991, and decreased by the percentage by which the average of the reasonable charges for claims paid for all items described in paragraph (7) is lower than the average of the purchase prices submitted for such items during the final 9 months of 1988; [1] or

(III) in 1992, 1993, and 1994, equal to the local purchase price computed under this clause for the previous year increased by the covered item update for the year.

(B) Computation of national limited purchase price

With respect to the furnishing of a particular item in a year, the Secretary shall compute a national limited purchase price—

(i) for 1991, equal to the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local purchase prices for the item computed under such subparagraph for the year;

(ii) for 1992 and 1993, the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year;

(iii) for 1994, the local purchase price computed under subparagraph (A)(ii) for the item for the year, except that such national limited purchase price may not exceed 100 percent of the median of all local purchase prices computed for the item under such subparagraph for the year and may not be less than 85 percent of the median of all local purchase prices computed under such subparagraph for the item for the year; and

(iv) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year.

(C) Purchase price recognized

For purposes of paragraphs (6) and (7), the amount that is recognized under this paragraph as the purchase price for each item furnished—

(i) in 1989 or 1990, is 100 percent of the local purchase price computed under subparagraph (A)(ii)(I);

(ii) in 1991, is the sum of (I) 67 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1991, and (II) 33 percent of the national limited purchase price computed under subparagraph (B) for 1991;

(iii) in 1992, is the sum of (I) 33 percent of the local purchase price computed under subparagraph (A)(ii)(III) for 1992, and (II) 67 percent of the national limited purchase price computed under subparagraph (B) for 1992; and

(iv) in 1993 or a subsequent year, is the national limited purchase price computed under subparagraph (B) for that year.

(9) Monthly payment amount recognized with respect to oxygen and oxygen equipment

For purposes of paragraph (5), the amount that is recognized under this paragraph for payment for oxygen and oxygen equipment is the monthly payment amount described in subparagraph (C) of this paragraph. Such amount shall be computed separately (i) for all items of oxygen and oxygen equipment (other than portable oxygen equipment) and (ii) for portable oxygen equipment (each such group referred to in this paragraph as an ''item'').

(A) Computation of local monthly payment rate

Each carrier under this section shall compute a base local payment rate for each item as follows:

(i) The carrier shall compute a base local average monthly payment rate per beneficiary as an amount equal to (I) the total

[1] So in original. The semicolon probably should be a comma.

reasonable charges for the item during the 12-month period ending with December 1986, divided by (II) the total number of months for all beneficiaries receiving the item in the area during the 12-month period for which the carrier made payment for the item under this subchapter.

(ii) The carrier shall compute a local average monthly payment rate for the item applicable—

(I) to 1989 and 1990, equal to 95 percent of the base local average monthly payment rate computed under clause (i) for the item increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 6-month period ending with December 1987, or

(II) to 1991, 1992, 1993, and 1994, equal to the local average monthly payment rate computed under this clause for the item for the previous year increased by the covered item increase for the year.

(B) Computation of national limited monthly payment rate

With respect to the furnishing of an item in a year, the Secretary shall compute a national limited monthly payment rate equal to—

(i) for 1991, the local monthly payment rate computed under subparagraph (A)(ii)(II) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year, and may not be less than 85 percent of the weighted average of all local monthly payment rates computed for the item under such subparagraph for the year;

(ii) for 1992 and 1993, the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year;

(iii) for 1994, the local monthly payment rate computed under subparagraph (A)(ii) for the item for the year, except that such national limited monthly payment rate may not exceed 100 percent of the median of all local monthly payment rates computed for the item under such subparagraph for the year and may not be less than 85 percent of the median of all local monthly payment rates computed for the item under such subparagraph for the year; and

(iv) for each subsequent year, equal to the amount determined under this subparagraph for the preceding year increased by the covered item update for such subsequent year.

(C) Monthly payment amount recognized

For purposes of paragraph (5), the amount that is recognized under this paragraph as the base monthly payment amount for each item furnished—

(i) in 1989 and in 1990, is 100 percent of the local average monthly payment rate computed under subparagraph (A)(ii) for the item;

(ii) in 1991, is the sum of (I) 67 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(II) for the item for 1991, and (II) 33 percent of the national limited monthly payment rate computed under subparagraph (B)(i) for the item for 1991;

(iii) in 1992, is the sum of (I) 33 percent of the local average monthly payment rate computed under subparagraph (A)(ii)(II) for the item for 1992, and (II) 67 percent of the national limited monthly payment rate computed under subparagraph (B)(ii) for the item for 1992; and

(iv) in a subsequent year, is the national limited monthly payment rate computed under subparagraph (B) for the item for that year.

(10) Exceptions and adjustments

(A) Areas outside continental United States

Exceptions to the amounts recognized under the previous provisions of this subsection shall be made to take into account the unique circumstances of covered items furnished in Alaska, Hawaii, or Puerto Rico.

(B) Adjustment for inherent reasonableness

For covered items furnished on or after January 1, 1991, the Secretary is authorized to apply the provisions of paragraphs (8) and (9) (other than subparagraph (D)) of section 1395u(b) of this title to covered items and suppliers of such items and payments under this subsection as such provisions would otherwise apply to physicians' services and physicians and a reasonable charge under section 1395u(b) of this title but for the application of section 1395w–4(i)(3) of this title. In applying such provisions to payments for an item under this subsection, the Secretary shall make adjustments to the payment basis for the item described in paragraph (1)(B) if the Secretary determines (in accordance with such provisions and on the basis of prices and costs applicable at the time the item is furnished) that such payment basis is not inherently reasonable.

(C) Transcutaneous electrical nerve stimulator (TENS)

In order to permit an attending physician time to determine whether the purchase of a transcutaneous electrical nerve stimulator is medically appropriate for a particular patient, the Secretary may determine an appropriate payment amount for the initial rental of such item for a period of not more than 2 months. If such item is subsequently purchased, the payment amount with respect to such purchase is the payment amount determined under paragraph (2).

(11) Improper billing and requirement of physician order

(A) Improper billing for certain rental items

Notwithstanding any other provision of this subchapter, a supplier of a covered item for which payment is made under this subsection and which is furnished on a rental basis shall continue to supply the item without charge (other than a charge provided

under this subsection for the maintenance and servicing of the item) after rental payments may no longer be made under this subsection. If a supplier knowingly and willfully violates the previous sentence, the Secretary may apply sanctions against the supplier under section 1395u(j)(2) of this title in the same manner such sanctions may apply with respect to a physician.

(B) Requirement of physician order

The Secretary is authorized to require, for specified covered items, that payment may be made under this subsection with respect to the item only if a physician has communicated to the supplier, before delivery of the item, a written order for the item.

(12) Regional carriers

The Secretary may designate, by regulation under section 1395u of this title, one carrier for one or more entire regions to process all claims within the region for covered items under this section.

(13) "Covered item" defined

In this subsection, the term ''covered item'' means durable medical equipment (as defined in section 1395x(n) of this title), including such equipment described in section 1395x(m)(5) of this title).[2]

(14) Covered item update

In this subsection, the term ''covered item update'' means, with respect to a year—

(A) for 1991 and 1992, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year reduced by 1 percentage point; and

(B) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.

(15) Advance determinations of coverage for certain items

(A) Development of lists of items by Secretary

The Secretary may develop and periodically update a list of items for which payment may be made under this subsection that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization throughout a carrier's entire service area or a portion of such area.

(B) Development of lists of suppliers by Secretary

The Secretary may develop and periodically update a list of suppliers of items for which payment may be made under this subsection with respect to whom—

(i) the Secretary has found that a substantial number of claims for payment under this part for items furnished by the supplier have been denied on the basis of the application of section 1395y(a)(1) of this title; or

(ii) the Secretary has identified a pattern of overutilization resulting from the business practice of the supplier.

(C) Determinations of coverage in advance

A carrier shall determine in advance of delivery of an item whether payment for the item may not be made because the item is not covered or because of the application of section 1395y(a)(1) of this title if—

(i) the item is included on the list developed by the Secretary under subparagraph (A);

(ii) the item is furnished by a supplier included on the list developed by the Secretary under subparagraph (B); or

(iii) the item is a customized item (other than inexpensive items specified by the Secretary) and the patient to whom the item is to be furnished or the supplier requests that such advance determination be made.

(16) Repealed. Pub. L. 103–432, title I, § 131(a)(2), Oct. 31, 1994, 108 Stat. 4419

(17) Prohibition against unsolicited telephone contacts by suppliers

(A) In general

A supplier of a covered item under this subsection may not contact an individual enrolled under this part by telephone regarding the furnishing of a covered item to the individual unless 1 of the following applies:

(i) The individual has given written permission to the supplier to make contact by telephone regarding the furnishing of a covered item.

(ii) The supplier has furnished a covered item to the individual and the supplier is contacting the individual only regarding the furnishing of such covered item.

(iii) If the contact is regarding the furnishing of a covered item other than a covered item already furnished to the individual, the supplier has furnished at least 1 covered item to the individual during the 15-month period preceding the date on which the supplier makes such contact.

(B) Prohibiting payment for items furnished subsequent to unsolicited contacts

If a supplier knowingly contacts an individual in violation of subparagraph (A), no payment may be made under this part for any item subsequently furnished to the individual by the supplier.

(C) Exclusion from program for suppliers engaging in pattern of unsolicited contacts

If a supplier knowingly contacts individuals in violation of subparagraph (A) to such an extent that the supplier's conduct establishes a pattern of contacts in violation of such subparagraph, the Secretary shall exclude the supplier from participation in the programs under this chapter, in accordance with the procedures set forth in subsections (c), (f), and (g) of section 1320a–7 of this title.

[2] So in original. The closing parenthesis probably should not appear.

(18) Refund of amounts collected for certain disallowed items

(A) In general

If a nonparticipating supplier furnishes to an individual enrolled under this part a covered item for which no payment may be made under this part by reason of paragraph (17)(B), the supplier shall refund on a timely basis to the patient (and shall be liable to the patient for) any amounts collected from the patient for the item, unless—

(i) the supplier establishes that the supplier did not know and could not reasonably have been expected to know that payment may not be made for the item by reason of paragraph (17)(B), or

(ii) before the item was furnished, the patient was informed that payment under this part may not be made for that item and the patient has agreed to pay for that item.

(B) Sanctions

If a supplier knowingly and willfully fails to make refunds in violation of subparagraph (A), the Secretary may apply sanctions against the supplier in accordance with section 1395u(j)(2) of this title.

(C) Notice

Each carrier with a contract in effect under this part with respect to suppliers of covered items shall send any notice of denial of payment for covered items by reason of paragraph (17)(B) and for which payment is not requested on an assignment-related basis to the supplier and the patient involved.

(D) Timely basis defined

A refund under subparagraph (A) is considered to be on a timely basis only if—

(i) in the case of a supplier who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the supplier receives a denial notice under subparagraph (C), or

(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the supplier receives notice of an adverse determination on reconsideration or appeal.

(b) Fee schedules for radiologist services

(1) Development

The Secretary shall develop—

(A) a relative value scale to serve as the basis for the payment for radiologist services under this part, and

(B) using such scale and appropriate conversion factors and subject to subsection (c)(1)(A) of this section, fee schedules (on a regional, statewide, locality, or carrier service area basis) for payment for radiologist services under this part, to be implemented for such services furnished during 1989.

(2) Consultation

In carrying out paragraph (1), the Secretary shall regularly consult closely with the Physician Payment Review Commission, the American College of Radiology, and other organizations representing physicians or suppliers who furnish radiologist services and shall share with them the data and data analysis being used to make the determinations under paragraph (1), including data on variations in current medicare payments by geographic area, and by service and physician specialty.

(3) Considerations

In developing the relative value scale and fee schedules under paragraph (1), the Secretary—

(A) shall take into consideration variations in the cost of furnishing such services among geographic areas and among different sites where services are furnished, and

(B) may also take into consideration such other factors respecting the manner in which physicians in different specialties furnish such services as may be appropriate to assure that payment amounts are equitable and designed to promote effective and efficient provision of radiologist services by physicians in the different specialties.

(4) Savings

(A) Budget neutral fee schedules

The Secretary shall develop preliminary fee schedules for 1989, which are designed to result in the same amount of aggregate payments (net of any coinsurance and deductibles under sections 1395*l*(a)(1)(J) and 1395*l*(b) of this title) for radiologist services furnished in 1989 as would have been made if this subsection had not been enacted.

(B) Initial savings

The fee schedules established for payment purposes under this subsection for services furnished in 1989 shall be 97 percent of the amounts permitted under the preliminary fee schedules developed under subparagraph (A).

(C) 1990 fee schedules

For radiologist services (other than portable X-ray services) furnished under this part during 1990, after March 31 of such year, the conversion factors used under this subsection shall be 96 percent of the conversion factors that applied under this subsection as of December 31, 1989.

(D) 1991 fee schedules

For radiologist services (other than portable X-ray services) furnished under this part during 1991, the conversion factors used in a locality under this subsection shall, subject to clause (vii), be reduced to the adjusted conversion factor for the locality determined as follows:

(i) National weighted average conversion factor

The Secretary shall estimate the national weighted average of the conversion factors used under this subsection for services furnished during 1990 beginning on April 1, using the best available data.

(ii) Reduced national weighted average

The national weighted average estimated under clause (i) shall be reduced by 13 percent.

(iii) Computation of 1990 locality index relative to national average

The Secretary shall establish an index which reflects, for each locality, the ratio of the conversion factor used in the locality under this subsection to the national weighted average estimated under clause (i).

(iv) Adjusted conversion factor

The adjusted conversion factor for the professional or technical component of a service in a locality is the sum of ½ of the locally-adjusted amount determined under clause (v) and ½ of the GPCI-adjusted amount determined under clauses[3] (vi).

(v) Locally-adjusted amount

For purposes of clause (iv), the locally adjusted amount determined under this clause is the product of (I) the national weighted average conversion factor computed under clause (ii), and (II) the index value established under clause (iii) for the locality.

(vi) GPCI-adjusted amount

For purposes of clause (iv), the GPCI-adjusted amount determined under this clause is the sum of—

(I) the product of (a) the portion of the reduced national weighted average conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238–36243)); and

(II) the product of (a) the remaining portion of the reduced national weighted average conversion factor computed under clause (ii), and (b) the geographic practice cost index value specified in section 1395u(b)(14)(C)(iv) of this title for the locality.

In applying this clause with respect to the professional component of a service, 80 percent of the conversion factor shall be considered to be attributable to physician work and with respect to the technical component of the service, 0 percent shall be considered to be attributable to physician work.

(vii) Limits on conversion factor

The conversion factor to be applied to a locality to the professional or technical component of a service shall not be reduced under this subparagraph by more than 9.5 percent below the conversion factor applied in the locality under subparagraph (C) to such component, but in no case shall the conversion factor be less than 60 percent of the national weighted average of the conversion factors (computed under clause (i)).

(E) Rule for certain scanning services

In the case of the technical components of magnetic resonance imaging (MRI) services and computer assisted tomography (CAT) services furnished after December 31, 1990, the amount otherwise payable shall be reduced by 10 percent.

(F) Subsequent updating

For radiologist services furnished in subsequent years, the fee schedules shall be the schedules for the previous year updated by the percentage increase in the MEI (as defined in section 1395u(i)(3) of this title) for the year.

(G) Nonparticipating physicians and suppliers

Each fee schedule so established shall provide that the payment rate recognized for nonparticipating physicians and suppliers is equal to the appropriate percent (as defined in section 1395u(b)(4)(A)(iv) of this title) of the payment rate recognized for participating physicians and suppliers.

(5) Limiting charges of nonparticipating physicians and suppliers

(A) In general

In the case of radiologist services furnished after January 1, 1989, for which payment is made under a fee schedule under this subsection, if a nonparticipating physician or supplier furnishes the service to an individual entitled to benefits under this part, the physician or supplier may not charge the individual more than the limiting charge (as defined in subparagraph (B)).

(B) "Limiting charge" defined

In subparagraph (A), the term ''limiting charge'' means, with respect to a service furnished—

(i) in 1989, 125 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1),

(ii) in 1990, 120 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1), and

(iii) after 1990, 115 percent of the amount specified for the service in the appropriate fee schedule established under paragraph (1).

(C) Enforcement

If a physician or supplier knowingly and willfully bills in violation of subparagraph (A), the Secretary may apply sanctions against such physician or supplier in accordance with section 1395u(j)(2) of this title in the same manner as such sanctions may apply to a physician.

(6) "Radiologist services" defined

For the purposes of this subsection and section 1395*l*(a)(1)(J) of this title, the term ''radiologist services'' only includes radiology services performed by, or under the direction or supervision of, a physician—

(A) who is certified, or eligible to be certified, by the American Board of Radiology, or

(B) for whom radiology services account for at least 50 percent of the total amount of charges made under this part.

[3] So in original. Probably should be ''clause''.

(c) Payments and standards for screening mammography

(1) In general

Notwithstanding any other provision of this part, with respect to expenses incurred for screening mammography (as defined in section 1395x(jj) of this title)—

(A) payment may be made only for screening mammography conducted consistent with the frequency permitted under paragraph (2);

(B) payment may be made only if the screening mammography is conducted by a facility that has a certificate (or provisional certificate) issued under section 263b of this title; and

(C) the amount of the payment under this part shall, subject to the deductible established under section 1395*l*(b) of this title, be equal to 80 percent of the least of—

(i) the actual charge for the screening,

(ii) the fee schedule established under subsection (b) of this section or the fee schedule established under section 1395w–4 of this title, whichever is applicable, with respect to both the professional and technical components of the screening mammography, or

(iii) the limit established under paragraph (3) for the screening mammography.

(2) Frequency covered

(A) In general

Subject to revision by the Secretary under subparagraph (B)—

(i) No payment may be made under this part for screening mammography performed on a woman under 35 years of age.

(ii) Payment may be made under this part for only 1 screening mammography performed on a woman over 34 years of age, but under 40 years of age.

(iii) In the case of a woman over 39 years of age, but under 50 years of age, who—

(I) is at a high risk of developing breast cancer (as determined pursuant to factors identified by the Secretary), payment may not be made under this part for a screening mammography performed within the 11 months following the month in which a previous screening mammography was performed, or

(II) is not at a high risk of developing breast cancer, payment may not be made under this part for a screening mammography performed within the 23 months following the month in which a previous screening mammography was performed.

(iv) In the case of a woman over 49 years of age, but under 65 years of age, payment may not be made under this part for screening mammography performed within 11 months following the month in which a previous screening mammography was performed.

(v) In the case of a woman over 64 years of age, payment may not be made for screening mammography performed within 23 months following the month in which a previous screening mammography was performed.

(B) Revision of frequency

(i) Review

The Secretary, in consultation with the Director of the National Cancer Institute, shall review periodically the appropriate frequency for performing screening mammography, based on age and such other factors as the Secretary believes to be pertinent.

(ii) Revision of frequency

The Secretary, taking into consideration the review made under clause (i), may revise from time to time the frequency with which screening mammography may be paid for under this subsection, but no such revision shall apply to screening mammography performed before January 1, 1992.

(3) Limit

(A) $55, indexed

Except as provided by the Secretary under subparagraph (B), the limit established under this paragraph—

(i) for screening mammography performed in 1991, is $55, and

(ii) for screening mammography performed in a subsequent year is the limit established under this paragraph for the preceding year increased by the percentage increase in the MEI for that subsequent year.

(B) Reduction of limit

The Secretary shall review from time to time the appropriateness of the amount of the limit established under this paragraph. The Secretary may, with respect to screening mammography performed in a year after 1992, reduce the amount of such limit as it applies nationally or in any area to the amount that the Secretary estimates is required to assure that screening mammography of an appropriate quality is readily and conveniently available during the year.

(C) Application of limit in hospital outpatient setting

The Secretary shall provide for an appropriate allocation of the limit established under this paragraph between professional and technical components in the case of hospital outpatient screening mammography (and comparable situations) where there is a claim for professional services separate from the claim for the radiologic procedure.

(4) Limiting charges of nonparticipating physicians

(A) In general

In the case of mammography screening performed on or after January 1, 1991, for which payment is made under this subsection, if a nonparticipating physician or supplier provides the screening to an individual entitled to benefits under this part, the physician or supplier may not charge the individual more than the limiting charge (as defined in subparagraph (B), or if less, as defined in subsection (b)(5)(B) of this section or as defined in section 1395w–4(g)(2) of this title).

(B) "Limiting charge" defined

In subparagraph (A), the term ''limiting charge'' means, with respect to screening mammography performed—

(i) in 1991, 125 percent of the limit established under paragraph (4),

(ii) in 1992, 120 percent of the limit established under paragraph (4), or

(iii) after 1992, 115 percent of the limit established under paragraph (4).

(C) Enforcement

If a physician or supplier knowing[4] and willfully imposes a charge in violation of subparagraph (A), the Secretary may apply sanctions against such physician or supplier in accordance with section 1395u(j)(2) of this title.

(d), (e) Repealed. Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981

(f) Reduction in payments for physician pathology services during 1991

(1) In general

For physician pathology services furnished under this part during 1991, the prevailing charges used in a locality under this part shall be 7 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

(2) Limitation

The prevailing charge for the technical and professional components of an[5] physician pathology service furnished by a physician through an independent laboratory shall not be reduced pursuant to paragraph (1) to the extent that such reduction would reduce such prevailing charge below 115 percent of the prevailing charge for the professional component of such service when furnished by a hospital-based physician in the same locality. For purposes of the preceding sentence, an independent laboratory is a laboratory that is independent of a hospital and separate from the attending or consulting physicians' office.

(g) Payment for outpatient rural primary care hospital services

(1) In general

The amount of payment for outpatient rural primary care hospital services provided during a year before the prospective payment system described in paragraph (2) is in effect in a rural primary care hospital under this part shall be determined by one of the 2 following methods, as elected by the rural primary care hospital:

(A) Cost-based facility fee plus professional charges

(i) Facility fee

With respect to facility services, not including any services for which payment may be made under clause (ii), there shall be paid amounts equal to the amounts described in section 1395*l*(a)(2)(B) of this title (describing amounts paid for hospital outpatient services).

(ii) Reasonable charges for professional services

In electing treatment under this subparagraph, payment for professional medical services otherwise included within outpatient rural primary care hospital services shall be made under such other provisions of this part as would apply to payment for such services if they were not included in outpatient rural primary care hospital services.

(B) All-inclusive rate

With respect to both facility services and professional medical services, there shall be paid amounts equal to the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, less the amount the hospital may charge as described in clause (i) of section 1395cc(a)(2)(A) of this title, but in no case may the payment for such services (other than for items and services described in section 1395x(s)(10)(A) of this title) exceed 80 percent of such costs.

The amount of payment shall be determined under either method without regard to the amount of the customary or other charge.

(2) Development and implementation of all inclusive, prospective payment system

Not later than January 1, 1996, the Secretary shall develop and implement a prospective payment system for determining payments under this part for outpatient rural primary care hospital services using a methodology that includes all costs in providing all such services (including related professional medical services) and that determines the payment amount for such services on a prospective basis.

(h) Payment for prosthetic devices and orthotics and prosthetics

(1) General rule for payment

(A) In general

Payment under this subsection for prosthetic devices and orthotics and prosthetics shall be made in a lump-sum amount for the purchase of the item in an amount equal to 80 percent of the payment basis described in subparagraph (B).

(B) Payment basis

Except as provided in subparagraphs (C) and (E), the payment basis described in this subparagraph is the lesser of—

(i) the actual charge for the item; or

(ii) the amount recognized under paragraph (2) as the purchase price for the item.

(C) Exception for certain public home health agencies

Subparagraph (B)(i) shall not apply to an item furnished by a public home health agency (or by another home health agency which demonstrates to the satisfaction of the Secretary that a significant portion of its patients are low income) free of charge or at nominal charges to the public.

[4] So in original. Probably should be ''knowingly''.

[5] So in original. Probably should be ''a''.

(D) Exclusive payment rule

This subsection shall constitute the exclusive provision of this subchapter for payment for prosthetic devices, orthotics, and prosthetics under this part or under part A of this subchapter to a home health agency.

(E) Exception for certain items

Payment for ostomy supplies, tracheostomy supplies, and urologicals shall be made in accordance with subparagraphs (B) and (C) of subsection (a)(2) of this section.

(2) Purchase price recognized

For purposes of paragraph (1), the amount that is recognized under this paragraph as the purchase price for prosthetic devices, orthotics, and prosthetics is the amount described in subparagraph (C) of this paragraph, determined as follows:

(A) Computation of local purchase price

Each carrier under section 1395u of this title shall compute a base local purchase price for the item as follows:

(i) The carrier shall compute a base local purchase price for each item equal to the average reasonable charge in the locality for the purchase of the item for the 12-month period ending with June 1987.

(ii) The carrier shall compute a local purchase price, with respect to the furnishing of each particular item—

(I) in 1989 and 1990, equal to the base local purchase price computed under clause (i) increased by the percentage increase in the consumer price index for all urban consumers (United States city average) for the 6-month period ending with December 1987, or

(II) in 1991, 1992 or 1993, equal to the local purchase price computed under this clause for the previous year increased by the applicable percentage increase for the year.

(B) Computation of regional purchase price

With respect to the furnishing of a particular item in each region (as defined by the Secretary), the Secretary shall compute a regional purchase price—

(i) for 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

(ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for the previous year increased by the applicable percentage increase for the year.

(C) Purchase price recognized

For purposes of paragraph (1) and subject to subparagraph (D), the amount that is recognized under this paragraph as the purchase price for each item furnished—

(i) in 1989, 1990, or 1991, is 100 percent of the local purchase price computed under subparagraph (A)(ii);

(ii) in 1992, is the sum of (I) 75 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1992, and (II) 25 percent of the regional purchase price computed under subparagraph (B) for 1992;

(iii) in 1993, is the sum of (I) 50 percent of the local purchase price computed under subparagraph (A)(ii)(II) for 1993, and (II) 50 percent of the regional purchase price computed under subparagraph (B) for 1993; and

(iv) in 1994 or a subsequent year, is the regional purchase price computed under subparagraph (B) for that year.

(D) Range on amount recognized

The amount that is recognized under subparagraph (C) as the purchase price for an item furnished—

(i) in 1992, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year; and

(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year.

(3) Applicability of certain provisions relating to durable medical equipment

Paragraphs (12), (15), and (17) and subparagraphs (A) and (B) of paragraph (10) and paragraph (11) of subsection (a) of this section shall apply to prosthetic devices, orthotics, and prosthetics in the same manner as such provisions apply to covered items under such subsection.

(4) Definitions

In this subsection—

(A) the term ''applicable percentage increase'' means—

(i) for 1991, 0 percent,

(ii) for 1992 and 1993, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;[6]

(iii) for 1994 and 1995, 0 percent, and

(iv) for a subsequent year, the percentage increase in the consumer price index for all urban consumers (United States city average) for the 12-month period ending with June of the previous year;

(B) the term ''prosthetic devices'' has the meaning given such term in section 1395x(s)(8) of this title, except that such term does not include parenteral and enteral nutrition nutrients, supplies, and equipment; and

(C) the term ''orthotics and prosthetics'' has the meaning given such term in section 1395x(s)(9) of this title, but does not include intraocular lenses or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1395x(m)(5) of this title.

[6] So in original. The semicolon probably should be a comma.

(i) Payment for surgical dressings

(1) In general

Payment under this subsection for surgical dressings (described in section 1395x(s)(5) of this title) shall be made in a lump sum amount for the purchase of the item in an amount equal to 80 percent of the lesser of—

(A) the actual charge for the item; or

(B) a payment amount determined in accordance with the methodology described in subparagraphs (B) and (C) of subsection (a)(2) of this section (except that in applying such methodology, the national limited payment amount referred to in such subparagraphs shall be initially computed based on local payment amounts using average reasonable charges for the 12-month period ending December 31, 1992, increased by the covered item updates described in such subsection for 1993 and 1994).

(2) Exceptions

Paragraph (1) shall not apply to surgical dressings that are—

(A) furnished as an incident to a physician's professional service; or

(B) furnished by a home health agency.

(j) Requirements for suppliers of medical equipment and supplies

(1) Issuance and renewal of supplier number

(A) Payment

Except as provided in subparagraph (C), no payment may be made under this part after October 31, 1994, for items furnished by a supplier of medical equipment and supplies unless such supplier obtains (and renews at such intervals as the Secretary may require) a supplier number.

(B) Standards for possessing a supplier number

A supplier may not obtain a supplier number unless—

(i) for medical equipment and supplies furnished on or after October 31, 1994, and before January 1, 1996, the supplier meets standards prescribed by the Secretary in regulations issued on June 18, 1992; and

(ii) for medical equipment and supplies furnished on or after January 1, 1996, the supplier meets revised standards prescribed by the Secretary (in consultation with representatives of suppliers of medical equipment and supplies, carriers, and consumers) that shall include requirements that the supplier—

(I) comply with all applicable State and Federal licensure and regulatory requirements;

(II) maintain a physical facility on an appropriate site;

(III) have proof of appropriate liability insurance; and

(IV) meet such other requirements as the Secretary may specify.

(C) Exception for items furnished as incident to a physician's service

Subparagraph (A) shall not apply with respect to medical equipment and supplies furnished incident to a physician's service.

(D) Prohibition against multiple supplier numbers

The Secretary may not issue more than one supplier number to any supplier of medical equipment and supplies unless the issuance of more than one number is appropriate to identify subsidiary or regional entities under the supplier's ownership or control.

(E) Prohibition against delegation of supplier determinations

The Secretary may not delegate (other than by contract under section 1395u of this title) the responsibility to determine whether suppliers meet the standards necessary to obtain a supplier number.

(2) Certificates of medical necessity

(A) Limitation on information provided by suppliers on certificates of medical necessity

(i) In general

Effective 60 days after October 31, 1994, a supplier of medical equipment and supplies may distribute to physicians, or to individuals entitled to benefits under this part, a certificate of medical necessity for commercial purposes which contains no more than the following information completed by the supplier:

(I) An identification of the supplier and the beneficiary to whom such medical equipment and supplies are furnished.

(II) A description of such medical equipment and supplies.

(III) Any product code identifying such medical equipment and supplies.

(IV) Any other administrative information (other than information relating to the beneficiary's medical condition) identified by the Secretary.

(ii) Information on payment amount and charges

If a supplier distributes a certificate of medical necessity containing any of the information permitted to be supplied under clause (i), the supplier shall also list on the certificate of medical necessity the fee schedule amount and the supplier's charge for the medical equipment or supplies being furnished prior to distribution of such certificate to the physician.

(iii) Penalty

Any supplier of medical equipment and supplies who knowingly and willfully distributes a certificate of medical necessity in violation of clause (i) or fails to provide the information required under clause (ii) is subject to a civil money penalty in an amount not to exceed $1,000 for each such certificate of medical necessity so distributed. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(B) "Certificate of medical necessity" defined

For purposes of this paragraph, the term ''certificate of medical necessity'' means a

form or other document containing information required by the carrier to be submitted to show that an item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

(3) Coverage and review criteria

The Secretary shall annually review the coverage and utilization of items of medical equipment and supplies to determine whether such items should be made subject to coverage and utilization review criteria, and if appropriate, shall develop and apply such criteria to such items.

(4) Limitation on patient liability

If a supplier of medical equipment and supplies (as defined in paragraph (5))—

(A) furnishes an item or service to a beneficiary for which no payment may be made by reason of paragraph (1);

(B) furnishes an item or service to a beneficiary for which payment is denied in advance under subsection (a)(15) of this section; or

(C) furnishes an item or service to a beneficiary for which payment is denied under section 1395y(a)(1) of this title;

any expenses incurred for items and services furnished to an individual by such a supplier not on an assigned basis shall be the responsibility of such supplier. The individual shall have no financial responsibility for such expenses and the supplier shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected from the individual for such items or services. The provisions of subsection (a)(18) of this section shall apply to refunds required under the previous sentence in the same manner as such provisions apply to refunds under such subsection.

(5) "Medical equipment and supplies" defined

The term ''medical equipment and supplies'' means—

(A) durable medical equipment (as defined in section 1395x(n) of this title);

(B) prosthetic devices (as described in section 1395x(s)(8) of this title);

(C) orthotics and prosthetics (as described in section 1395x(s)(9) of this title);

(D) surgical dressings (as described in section 1395x(s)(5) of this title);

(E) such other items as the Secretary may determine; and

(F) for purposes of paragraphs (1) and (3)—

(i) home dialysis supplies and equipment (as described in section 1395x(s)(2)(F) of this title),

(ii) immunosuppressive drugs (as described in section 1395x(s)(2)(J) of this title),

(iii) therapeutic shoes for diabetics (as described in section 1395x(s)(12) of this title),

(iv) oral drugs prescribed for use as an anticancer therapeutic agent (as described in section 1395x(s)(2)(Q) of this title), and

(v) self-administered erythropoetin (as described in section 1395x(s)(2)(P) of this title).

(Aug. 14, 1935, ch. 531, title XVIII, § 1834, as added and amended Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4049(a)(2), 4062(b), 101 Stat. 1330–91, 1330–100; July 1, 1988, Pub. L. 100–360, title II, §§ 202(b)(4), 203(c)(1)(F), 204(b), title IV, § 411(a)(3)(A), (B)(ii), (C)(ii), (f)(8)(A), (B)(ii), (D), (g)(1)(A), (B), 102 Stat. 704, 722, 726, 768, 779, 781; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(21)(C), (22)(A), 102 Stat. 2420; Dec. 13, 1989, Pub. L. 101–234, title II, § 201(a), title III, § 301(b)(1), (c)(1), 103 Stat. 1981, 1985; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6102(f)(1), 6105(a), 6112(a), (c), (d)(1), (e)(2), 6116(b)(2), 6140, 103 Stat. 2188, 2210, 2214–2216, 2220, 2224; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4102(a), (d), (f), 4104(a), 4152(a)(1), (b), (c)(1)–(4)(B)(i), (e), (f)(1), (g)(1), 4153(a)(1), (2)(D), 4163(b), 104 Stat. 1388–55, 1388–57, 1388–59, 1388–74, 1388–77 to 1388–81, 1388–83, 1388–97; Aug. 10, 1993, Pub. L. 103–66, title XIII, §§ 13542(a), 13543(a), (b), 13544(a)(1), (2), (b)(1), 13545(a), 13546, 107 Stat. 587, 589, 590; Oct. 31, 1994, Pub. L. 103–432, title I, §§ 102(e), 126(b)(1), (2), (4), (5), (g)(1), (10)(B), 131(a), 132(a), (b), 133(a)(1), 134(a)(1), 135(a)(1), (b)(1), (3), (d)(1), (e)(2)–(5), 145(a), 156(a)(2)(C), 108 Stat. 4403, 4414–4416, 4419, 4421, 4424, 4427, 4440.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsecs. (a)(1)(C) and (h)(1)(D), is classified to section 1395c et seq. of this title.

CODIFICATION

Amendment of subsec. (a)(4) by Pub. L. 101–508, § 4152(c)(4)(B)(i), did not become effective pursuant to Pub. L. 101–508, § 4152(c)(4)(B)(ii), because of action of Secretary in developing specific criteria for the treatment of wheelchairs as customized items for purposes of subsec. (a)(4). See Effective Date of 1990 Amendment note below.

PRIOR PROVISIONS

A prior section 1395m, act Aug. 14, 1935, ch. 531, title XVIII, § 1834, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 303, prescribed limitations on payments for home health services, prior to repeal by Pub. L. 96–499, title IX, § 930(i), Dec. 5, 1980, 94 Stat. 2631, effective with respect to services furnished on or after July 1, 1981.

AMENDMENTS

1994—Subsec. (a)(3)(D). Pub. L. 103–432, § 135(e)(5), struck out heading and text of subpar. (D). Text read as follows: ''If the reasonable useful lifetime of such an item, as established under paragraph (7)(C), has been reached during a continuous period of medical need, or the Secretary determines on the basis of investigation by the carrier that the item is lost or irreparably damaged, payment for an item serving as a replacement for such item shall be made on a monthly basis for the rental of the replacement item in accordance with subparagraph (A).''

Subsec. (a)(5)(E). Pub. L. 103–432, § 135(d)(1), substituted ''pressure of 56'' for ''pressure of 55''.

Subsec. (a)(7). Pub. L. 103–432, § 135(e)(2), made technical amendment to directory language of Pub. L. 101–508, § 4152(c)(2). See 1990 Amendment note below.

Subsec. (a)(7)(A)(iii)(II). Pub. L. 103–432, § 135(e)(3), substituted ''clause (vi)'' for ''clause (v)''.

Subsec. (a)(7)(C)(i). Pub. L. 103–432, § 135(e)(4), substituted ''this paragraph'' for ''this paragraph or paragraph (3)''.

Subsec. (a)(10)(B). Pub. L. 103–432, § 134(a)(1), inserted at end ''In applying such provisions to payments for an item under this subsection, the Secretary shall make adjustments to the payment basis for the item described in paragraph (1)(B) if the Secretary determines

(in accordance with such provisions and on the basis of prices and costs applicable at the time the item is furnished) that such payment basis is not inherently reasonable.''

Pub. L. 103–432, §126(g)(10)(B), substituted ''would otherwise apply to physicians' services'' for ''apply to physicians' services'' and inserted before period at end ''but for the application of section 1395w–4(i)(3) of this title''.

Subsec. (a)(14)(A). Pub. L. 103–432, §135(a)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''for 1991 and 1992, reduction of 1 percentage point; and''.

Subsec. (a)(15). Pub. L. 103–432, §135(b)(1), amended heading and text of par. (15) generally. Prior to amendment, text read as follows:

''(A) DEVELOPMENT OF LIST OF ITEMS BY SECRETARY.—The Secretary shall develop and periodically update a list of items for which payment may be made under this subsection that the Secretary determines, on the basis of prior payment experience, are frequently subject to unnecessary utilization, and shall include in such list seat-lift mechanisms, transcutaneous electrical nerve stimulators, and motorized scooters.

''(B) DETERMINATIONS OF COVERAGE IN ADVANCE.—A carrier shall determine in advance whether payment for an item included on the list developed by the Secretary under subparagraph (A) may not be made because of the application of section 1395y(a)(1) of this title.''

Subsec. (a)(16). Pub. L. 103–432, §131(a)(2), struck out heading and text of par. (16). Text read as follows:

''(A) IN GENERAL.—A supplier of a covered item under this subsection may not distribute to physicians or to individuals entitled to benefits under this part for commercial purposes any completed or partially completed forms or other documents required by the Secretary to be submitted to show that a covered item is reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member.

''(B) PENALTY.—Any supplier of a covered item who knowingly and willfully distributes a form or other document in violation of subparagraph (A) is subject to a civil money penalty in an amount not to exceed $1,000 for each such form or document so distributed. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under this subparagraph in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (a)(17), (18). Pub. L. 103–432, §132(a)(1), (2), added pars. (17) and (18).

Subsec. (b)(4)(D). Pub. L. 103–432, §126(b)(2)(A), in introductory provisions substituted ''shall, subject to clause (vii), be reduced to the adjusted conversion factor for the locality determined as follows:'' for ''shall be determined as follows:''.

Subsec. (b)(4)(D)(iv). Pub. L. 103–432, §126(b)(2)(B), substituted ''Adjusted conversion factor'' for ''Local adjustment'' in heading and ''The adjusted conversion factor for'' for ''Subject to clause (vii), the conversion factor to be applied to'' in text.

Subsec. (b)(4)(D)(vii). Pub. L. 103–432, §126(b)(2)(C), (D), struck out ''under this subparagraph'' after ''applied to a locality'' and inserted ''reduced under this subparagraph by'' before ''more than 9.5 percent''.

Subsec. (b)(4)(E). Pub. L. 103–432, §126(b)(5), inserted heading ''Rule for certain scanning services''.

Pub. L. 103–432, §126(b)(4), made technical amendment to directory language of Pub. L. 101–508, §4102(d). See 1990 Amendment note below.

Pub. L. 103–432, §126(b)(1), redesignated subpar. (E), relating to subsequent updating, as (F).

Subsec. (b)(4)(F), (G). Pub. L. 103–432, §126(b)(1), redesignated subpars. (E), relating to subsequent updating, and (F) as (F) and (G), respectively.

Subsec. (c)(1)(B). Pub. L. 103–432, §145(a)(1), substituted ''is conducted by a facility that has a certificate (or provisional certificate) issued under section 263b of this title'' for ''meets the quality standards established under paragraph (3)''.

Subsec. (c)(1)(C)(iii). Pub. L. 103–432, §145(a)(2), substituted ''paragraph (3)'' for ''paragraph (4)''.

Subsec. (c)(3) to (5). Pub. L. 103–432, §145(a)(3), (4), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which directed Secretary to establish standards to assure the safety and accuracy of screening mammography performed under this part.

Subsec. (f). Pub. L. 103–432, §126(g)(1), substituted ''during 1991'' for ''during fiscal year 1991'' in heading.

Subsec. (g)(1). Pub. L. 103–432, §102(e)(1)(A), (2), substituted in introductory provisions ''during a year before the prospective payment system described in paragraph (2) is in effect'' for ''during a year before 1993'' and inserted at end ''The amount of payment shall be determined under either method without regard to the amount of the customary or other charge.''

Subsec. (g)(1)(B). Pub. L. 103–432, §156(a)(2)(C), struck out ''and for items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title, or a third opinion, if the second opinion was in disagreement with the first opinion'' after ''section 1395x(s)(10)(A) of this title''.

Subsec. (g)(2). Pub. L. 103–432, §102(e)(1)(B), substituted ''January 1, 1996'' for ''January 1, 1993''.

Subsec. (h)(3). Pub. L. 103–432, §135(b)(3), substituted ''Paragraphs (12), (15), and (17)'' for ''Paragraphs (12) and (17)''.

Pub. L. 103–432, §132(b), substituted ''Paragraphs (12) and (17)'' for ''Paragraph (12)''.

Subsec. (j). Pub. L. 103–432, §131(a)(1), added subsec. (j).

Subsec. (j)(4), (5). Pub. L. 103–432, §133(a)(1), added par. (4) and redesignated former par. (4) as (5).

1993—Subsec. (a)(1)(D). Pub. L. 103–66, §13545(a), substituted ''45 percent'' for ''15 percent'' after ''(as previously reduced) by''.

Subsec. (a)(2)(A)(iii). Pub. L. 103–66, §13543(b), added cl. (iii).

Subsec. (a)(2)(C). Pub. L. 103–66, §13542(a)(1), in cl. (i)(II), substituted ''for 1992, 1993, and 1994'' for ''for 1992'' and ''update for the year'' for ''update for 1992'', and in cl. (ii), struck out ''and'' at end of subcl. (I), added subcls. (II) and (III), and redesignated former subcl. (II) as (IV).

Subsec. (a)(3)(A). Pub. L. 103–66, §13543(a), substituted ''IPPB machines and ventilators, excluding ventilators that are either continuous airway pressure devices or intermittent assist devices with continuous airway pressure devices'' for ''ventilators, aspirators, IPPB machines, and nebulizers''.

Subsec. (a)(3)(C). Pub. L. 103–66, §13542(a)(1), in cl. (i)(II), substituted ''for 1992, 1993, and 1994'' for ''for 1992'' and ''update for the year'' for ''update for 1992'', and in cl. (ii), struck out ''and'' at end of subcl. (I), added subcls. (II) and (III), and redesignated former subcl. (II) as (IV).

Subsec. (a)(8)(A)(ii)(III). Pub. L. 103–66, §13542(a)(2)(A), substituted ''1992, 1993, and 1994'' for ''1992''.

Subsec. (a)(8)(B)(ii) to (iv). Pub. L. 103–66, §13542(a)(2)(B), added cls. (ii) and (iii) and redesignated former cl. (ii) as (iv).

Subsec. (a)(9)(A)(ii)(II). Pub. L. 103–66, §13542(a)(3)(A), substituted ''1991, 1992, 1993, and 1994'' for ''1991 and 1992''.

Subsec. (a)(9)(B)(ii) to (iv). Pub. L. 103–66, §13542(a)(3)(B), added cls. (ii) and (iii) and redesignated former cl. (ii) as (iv).

Subsec. (h)(1)(B). Pub. L. 103–66, §13544(a)(2), substituted ''subparagraphs (C) and (E)'' for ''subparagraph (C)'' in introductory provisions.

Subsec. (h)(1)(E). Pub. L. 103–66, §13544(a)(1), added subpar. (E).

Subsec. (h)(4)(A). Pub. L. 103–66, §13546, struck out ''and'' at end of cl. (i), substituted ''1992 and 1993'' for ''a subsequent year'' in cl. (ii), and added cls. (iii) and (iv).

Subsec. (i). Pub. L. 103–66, § 13544(b)(1), added subsec. (i).

1990—Subsec. (a). Pub. L. 101–508, § 4153(a)(2)(D)(i), struck out '', prosthetic devices, orthotics, and prosthetics'' after ''medical equipment'' in heading.

Subsec. (a)(1)(D). Pub. L. 101–508, § 4152(a)(1), inserted before period at end '', and, in the case of a transcutaneous electrical nerve stimulator furnished on or after January 1, 1991, the Secretary shall further reduce such payment amount (as previously reduced) by 15 percent''.

Subsec. (a)(2)(A). Pub. L. 101–508, § 4153(a)(2)(D)(ii), substituted ''(13)'' for ''(13)(A)''.

Pub. L. 101–508, § 4152(c)(4)(A), inserted ''or'' after ''$150,'' in cl. (i), struck out ''or'' after ''purchase,'' in cl. (ii), and struck out cl. (iii) which read as follows: ''which is a power-driven wheelchair (other than a customized wheelchair that is classified as a customized item under paragraph (4) pursuant to criteria specified by the Secretary),''.

Subsec. (a)(2)(B). Pub. L. 101–508, § 4152(b)(1)(A), (B), struck out ''or'' after ''1987;'' in cl. (i), added cls. (ii) to (iv), and struck out former cl. (ii) which read as follows: ''in a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of that preceding year.''

Subsec. (a)(2)(C). Pub. L. 101–508, § 4152(b)(1)(C), added subpar. (C).

Subsec. (a)(3)(B). Pub. L. 101–508, § 4152(b)(1)(A), (B), struck out ''or'' after ''1987;'' in cl. (i), added cls. (ii) to (iv), and struck out former cl. (ii) which read as follows: ''in a subsequent year, is the amount specified in this subparagraph for the preceding year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of that preceding year.''

Subsec. (a)(3)(C). Pub. L. 101–508, § 4152(b)(1)(C), added subpar. (C).

Subsec. (a)(3)(D). Pub. L. 101–508, § 4152(c)(3), added subpar. (D).

Subsec. (a)(4). Pub. L. 101–508, § 4152(c)(4)(B)(i), directed amendment of par. (4) by inserting at end ''In the case of a wheelchair furnished on or after January 1, 1992, the wheelchair shall be treated as a customized item for purposes of this paragraph if the wheelchair has been measured, fitted, or adapted in consideration of the patient's body size, disability, period of need, or intended use, and has been assembled by a supplier or ordered from a manufacturer who makes available customized features, modifications, or components for wheelchairs that are intended for an individual patient's use in accordance with instructions from the patient's physician.'' The amendment did not become effective pursuant to Pub. L. 101–508, § 4152(c)(4)(B)(ii). See Effective Date of 1990 Amendment note below.

Subsec. (a)(5)(A). Pub. L. 101–508, § 4152(g)(1)(A), substituted ''(B), (C), and (E)'' for ''(B) and (C)''.

Subsec. (a)(5)(E). Pub. L. 101–508, § 4152(g)(1)(B), added subpar. (E).

Subsec. (a)(7)(A)(i). Pub. L. 101–508, § 4152(c)(2)(A), as amended by Pub. L. 103–432, § 135(e)(2), substituted ''15 months, or, in the case of an item for which a purchase agreement has been entered into under clause (iii), a period of continuous use of longer than 13 months'' for ''15 months''.

Pub. L. 101–508, § 4152(c)(1), substituted ''for each of the first 3 months of such period'' for ''for each such month'' and '', and for each of the remaining months of such period is 7.5 percent of such purchase price;'' for semicolon at end.

Subsec. (a)(7)(A)(ii), (iii). Pub. L. 101–508, § 4152(c)(2)(D), as amended by Pub. L. 103–432, § 135(e)(2), added cls. (ii) and (iii). Former cls. (ii) and (iii) redesignated (iv) and (v), respectively.

Subsec. (a)(7)(A)(iv). Pub. L. 101–508, § 4152(c)(2)(B), as amended by Pub. L. 103–432, § 135(e)(2), redesignated cl. (ii) as (iv), substituted ''in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii), during the first 6-month period of medical need that follows the period of medical need during which payment is made under clause (i),'' for ''during the succeeding 6-month period of medical need,'' and struck out ''and'' at end.

Subsec. (a)(7)(A)(v). Pub. L. 101–508, § 4152(c)(2)(C), as amended by Pub. L. 103–432, § 135(e)(2), redesignated cl. (iii) as (v), inserted at beginning ''in the case of an item for which a purchase agreement has not been entered into under clause (ii) or clause (iii),'', and substituted ''; and'' for period at end.

Subsec. (a)(7)(A)(vi). Pub. L. 101–508, § 4152(c)(2)(E), as amended by Pub. L. 103–432, § 135(e)(2), added cl. (vi).

Subsec. (a)(7)(C). Pub. L. 101–508, § 4152(c)(2)(F), as amended by Pub. L. 103–432, § 135(e)(2), added subpar. (C).

Subsec. (a)(8)(A)(ii). Pub. L. 101–508, § 4152(b)(2)(A), added subcl. (II), redesignated former subcl. (II) as (III), struck out ''1991 or'' before ''1992'', and substituted ''the covered item update for the year'' for ''the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year''.

Subsec. (a)(8)(B). Pub. L. 101–508, § 4152(b)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''With respect to the furnishing of a particular item in each region (as defined by the Secretary), the Secretary shall compute a regional purchase price—

''(i) for 1991 and for 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local purchase prices for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

''(ii) for each subsequent year, equal to the regional purchase price computed under this subparagraph for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.''

Subsec. (a)(8)(C). Pub. L. 101–508, § 4152(b)(2)(C)(ii), struck out ''and subject to subparagraph (D)'' after ''and (7)'' in introductory provisions.

Subsec. (a)(8)(C)(ii). Pub. L. 101–508, § 4152(b)(2)(C)(i), (iii), in subcl. (I) substituted ''67 percent'' for ''75 percent'' and in subcl. (II) substituted ''33 percent'' for ''25 percent'' and ''national limited purchase price'' for ''regional purchase price''.

Subsec. (a)(8)(C)(iii). Pub. L. 101–508, § 4152(b)(2)(C)(i), (iv), in subcl. (I) substituted ''33 percent'' for ''50 percent'' and ''subparagraph (A)(ii)(III)'' for ''subparagraph (A)(ii)(II)'' and in subcl. (II) substituted ''67 percent'' for ''50 percent'' and ''national limited purchase price'' for ''regional purchase price''.

Subsec. (a)(8)(C)(iv). Pub. L. 101–508, § 4152(b)(2)(C)(i), substituted ''national limited purchase price'' for ''regional purchase price''.

Subsec. (a)(8)(D). Pub. L. 101–508, § 4152(b)(2)(D), struck out subpar. (D) which read as follows: ''The amount that is recognized under subparagraph (C) as the purchase price for an item furnished—

''(i) in 1991, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year; and

''(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the average of the purchase prices recognized under such subparagraph for all the carrier service areas in the United States in that year.''

Subsec. (a)(9)(A)(ii)(II). Pub. L. 101–508, § 4152(b)(3)(A), substituted ''the covered item increase for the year'' for ''the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year''.

Subsec. (a)(9)(B). Pub. L. 101–508, § 4152(b)(3)(B), amended subpar. (B) generally. Prior to amendment,

subpar. (B) read as follows: ''With respect to the furnishing of an item in each region (as defined by the Secretary), the Secretary shall compute a regional monthly payment rate—

''(i) for 1991 and 1992, equal to the average (weighted by relative volume of all claims among carriers) of the local monthly payment rates for the carriers in the region computed under subparagraph (A)(ii)(II) for the year, and

''(ii) for each subsequent year, equal to the regional monthly payment rates computed under this subparagraph for the previous year increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June of the previous year.''

Subsec. (a)(9)(C)(ii). Pub. L. 101–508, §4152(b)(3)(C)(i), (ii), in subcl. (I) substituted ''67 percent'' for ''75 percent'' and in subcl. (II) substituted ''33 percent'' for ''25 percent'' and ''national limited monthly payment rate'' for ''regional monthly payment rate''.

Subsec. (a)(9)(C)(iii). Pub. L. 101–508, §4152(b)(3)(C)(i), (iii), in subcl. (I) substituted ''33 percent'' for ''50 percent'' and in subcl. (II) substituted ''67 percent'' for ''50 percent'', ''national limited monthly payment rate'' for ''regional monthly payment rate'', and ''subparagraph (B)(ii)'' for ''subparagraph (B)(i)''.

Subsec. (a)(9)(C)(iv). Pub. L. 101–508, §4152(b)(3)(C)(i), substituted ''national limited monthly payment rate'' for ''regional monthly payment rate''.

Subsec. (a)(9)(D). Pub. L. 101–508, §4152(b)(3)(D), struck out subpar. (D) which read as follows: ''The amount that is recognized under subparagraph (C) as the base monthly payment amount for an item furnished—

''(i) in 1991, may not exceed 125 percent, and may not be lower than 85 percent, of the average of the base monthly payment amounts recognized under such subparagraph for all the carrier service areas in the United States in that year; and

''(ii) in a subsequent year, may not exceed 120 percent, and may not be lower than 90 percent, of the average of the base monthly payment amounts recognized under such subparagraph for all the carrier service areas in the United States in that year.''

Subsec. (a)(12). Pub. L. 101–508, §4152(b)(5), struck out ''defined for purposes of paragraphs (8)(B) and (9)(B)'' after ''one or more entire regions''.

Subsec. (a)(13). Pub. L. 101–508, §4153(a)(2)(D)(iii), substituted ''means durable medical equipment (as defined in section 1395x(n) of this title), including such equipment described in section 1395x(m)(5) of this title).'' for ''means—

''(A) durable medical equipment (as defined in section 1395x(n) of this title), including such equipment described in section 1395x(m)(5) of this title;

''(B) prosthetic devices (described in section 1395x(s)(8) of this title), but not including parenteral and enteral nutrition nutrients, supplies, and equipment; and

''(C) orthotics and prosthetics (described in section 1395x(s)(9) of this title);

but does not include intraocular lenses or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1395x(m)(5) of this title.''

Subsec. (a)(14). Pub. L. 101–508, §4152(b)(4), added par. (14).

Subsec. (a)(15). Pub. L. 101–508, §4152(e), added par. (15).

Subsec. (a)(16). Pub. L. 101–508, §4152(f)(1), added par. (16).

Subsec. (b)(1)(B). Pub. L. 101–508, §4163(b)(1), inserted ''and subject to subsection (c)(1)(A) of this section'' after ''conversion factors''.

Pub. L. 101–508, §4102(f), inserted ''locality,'' after ''statewide,''.

Subsec. (b)(4)(D). Pub. L. 101–508, §4102(a)(2), added subpar. (D). Former subpar. (D) redesignated (E) relating to subsequent updating.

Subsec. (b)(4)(E). Pub. L. 101–508, §4102(d), as amended by Pub. L. 103–432, §126(b)(4), added subpar. (E) relating to rule for certain scanning services.

Pub. L. 101–508, §4102(a)(1), redesignated subpar. (D), relating to subsequent updating, as (E). Former subpar. (E) redesignated (F).

Subsec. (b)(4)(F). Pub. L. 101–508, §4102(a)(1), redesignated subpar. (E) as (F).

Subsec. (c). Pub. L. 101–508, §4163(b)(2), added subsec. (c).

Subsec. (f). Pub. L. 101–508, §4104(a), amended subsec. (f) generally, substituting provisions relating to reduction in payments for physician pathology services during 1991 for provisions directing Secretary to provide for application of a fee schedule with respect to such services.

Subsec. (h). Pub. L. 101–508, §4153(a)(1), added subsec. (h).

1989—Subsec. (a)(1)(D). Pub. L. 101–239, §6112(c), added subpar. (D).

Subsec. (a)(2)(A)(iii). Pub. L. 101–239, §6112(d)(1), added cl. (iii).

Subsec. (a)(2)(B)(i), (3)(B)(i). Pub. L. 101–239, §6112(a)(1), inserted ''and in 1990'' after ''1989''.

Subsec. (a)(7)(A)(i). Pub. L. 101–239, §6112(a)(4)(A), substituted ''this clause'' for ''this subparagraph''.

Subsec. (a)(7)(B)(i). Pub. L. 101–239, §6112(a)(4)(B), inserted ''in'' after ''rental of the item''.

Subsec. (a)(7)(B)(ii). Pub. L. 101–239, §6112(a)(4)(C), substituted ''clause (i) shall apply in the same manner as it applies to items furnished during 1989'' for ''the payment amount recognized under subparagraph (A)(i) shall not be more than the maximum amount established under clause (i), and shall not be less than the minimum amount established under such clause, for 1989, each such amount increased by the percentage increase in the consumer price index for all urban consumers (U.S. city average) for the 12-month period ending with June 1989''.

Subsec. (a)(8)(A)(ii)(I). Pub. L. 101–239, §6112(a)(2)(A), inserted ''and 1990'' after ''1989''.

Subsec. (a)(8)(A)(ii)(II). Pub. L. 101–239, §6112(a)(2)(B), substituted ''1991 or 1992'' for ''1990, 1991, or 1992''.

Subsec. (a)(8)(D)(i). Pub. L. 101–239, §6140(1), substituted ''1991, may not exceed 125 percent, and may not be lower than 85 percent'' for ''1991, may not exceed 130 percent, and may not be lower than 80 percent''.

Subsec. (a)(8)(D)(ii). Pub. L. 101–239, §6140(2), substituted ''120 percent, and may not be lower than 90 percent'' for ''125 percent, and may not be lower than 85 percent''.

Subsec. (a)(9)(A)(ii)(I). Pub. L. 101–239, §6112(a)(3)(A), inserted ''and 1990'' after ''1989''.

Subsec. (a)(9)(A)(ii)(II). Pub. L. 101–239, §6112(a)(3)(B), substituted ''1991 and 1992'' for ''1990, 1991, and 1992''.

Subsec. (a)(9)(D)(i). Pub. L. 101–239, §6140(1), substituted ''1991, may not exceed 125 percent, and may not be lower than 85 percent'' for ''1991, may not exceed 130 percent, and may not be lower than 80 percent''.

Subsec. (a)(9)(D)(ii). Pub. L. 101–239, §6140(2), substituted ''120 percent, and may not be lower than 90 percent'' for ''125 percent, and may not be lower than 85 percent''.

Subsec. (a)(13). Pub. L. 101–239, §6112(e)(2), inserted before period at end ''or medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care) furnished by a home health agency under section 1395x(m)(5) of this title''.

Subsec. (b)(1)(B). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §204(b)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(4)(A). Pub. L. 101–234, §301(b)(1), (c)(1), amended subpar. (A) identically, substituting ''coinsurance and deductibles under sections 1395*l*(a)(1)(J)'' for ''insurance and deductibles under section 1395n(a)(1)(I)''.

Subsec. (b)(4)(C) to (E). Pub. L. 101–239, §6105(a), added subpar. (C) and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsecs. (c) to (e). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 202(b)(4), 203(c)(1)(F), 204(b)(2), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (f). Pub. L. 101–239, § 6102(f)(1), added subsec. (f).

Subsec. (g). Pub. L. 101–239, § 6116(b)(2), added subsec. (g).

1988—Pub. L. 100–360, § 411(g)(1)(A), inserted ''items and'' in section catchline.

Subsec. (a)(1)(C). Pub. L. 100–360, § 411(g)(1)(B)(i), inserted ''or under part A of this subchapter to a home health agency'' before period at end.

Subsec. (a)(2)(A). Pub. L. 100–360, § 411(g)(1)(B)(iii), struck out ''rental'' before ''payments'' in concluding provisions.

Subsec. (a)(2)(B)(i). Pub. L. 100–360, § 411(g)(1) (B)(iii), substituted ''reasonable'' for ''allowed''.

Subsec. (a)(3)(A). Pub. L. 100–360, § 411(g)(1)(B)(iv), struck out the extra space appearing in text of original act after ''ventilators''.

Subsec. (a)(3)(B)(i). Pub. L. 100–360, § 411(g)(1) (B)(iii), substituted ''reasonable'' for ''allowable''.

Subsec. (a)(4). Pub. L. 100–360, § 411(g)(1) (B)(v)–(vii), inserted '', and for that reason cannot be grouped with similar items for purposes of payment under this subchapter,'' after ''individual patient'', inserted cl. (A) and (B) designations, and in cl. (B), substituted ''servicing'' for ''service'' in two places.

Subsec. (a)(7)(A)(ii). Pub. L. 100–360, § 411(g)(1) (B)(vii), inserted ''maintenance and'' before ''servicing''.

Subsec. (a)(7)(A)(iii). Pub. L. 100–360, § 411(g)(1) (B)(vii), (viii), substituted ''maintenance and servicing'' for ''service and maintenance'', and in subcl. (I) substituted ''fee or fees established by the Secretary'' for ''fee established by the carrier''.

Subsec. (a)(7)(B)(i). Pub. L. 100–360, § 411(a)(3)(A), (C)(ii), provided that subsec. (a)(7)(B)(i) of this section, as inserted by section 4062(b) of Pub. L. 100–203, is deemed to have a reference to ''1987'' immediately after ''December''.

Subsec. (a)(8)(A)(i)(I). Pub. L. 100–360, § 411(g)(1) (B)(iii), substituted ''reasonable'' for ''allowable''.

Subsec. (a)(8)(B). Pub. L. 100–360, § 411(g)(1)(B)(xi), as amended Pub. L. 100–485, § 608(d)(22)(A)(i), substituted ''(as defined by the Secretary)'' for ''(as defined in section 1395ww(d)(2)(D) of this title)'', and in cl. (i) struck out the comma after ''1991''.

Subsec. (a)(9)(A)(ii)(I). Pub. L. 100–360, § 411(g)(1) (B)(ix), substituted ''6-month'' for ''12-month''.

Subsec. (a)(9)(A)(ii)(II). Pub. L. 100–360, § 411(g)(1) (B)(x), substituted '', 1991, and 1992'' for ''and to 1991''.

Subsec. (a)(9)(B). Pub. L. 100–360, § 411(g)(1)(B)(xi), as amended by Pub. L. 100–485, § 608(d)(22)(A)(i), substituted ''(as defined by the Secretary)'' for ''(as defined in section 1395ww(d)(2)(D) of this title)'', and in cl. (i) struck out the comma after ''1991''.

Subsec. (a)(9)(C)(i). Pub. L. 100–360, § 411(g)(1) (B)(xii), substituted ''subparagraph (A)(ii)'' for ''subparagraph (A)(ii)(I)''.

Subsec. (a)(10)(B). Pub. L. 100–360, § 411(g)(1) (B)(xiii), inserted before period at end ''and payments under this subsection as such provisions apply to physicians' services and physicians and a reasonable charge under section 1395u(b) of this title''.

Subsec. (a)(11)(A). Pub. L. 100–360, § 411(g)(1) (B)(vii), (xiv), inserted ''maintenance and'' before ''servicing'' and substituted ''section 1395u(j)(2) of this title'' for ''subsection (j)(2) of this section''.

Subsec. (a)(12). Pub. L. 100–360, § 411(g)(1)(B)(xv), as amended by Pub. L. 100–485, § 608(d)(22)(A)(ii), substituted ''one or more entire regions defined for purposes of paragraphs (8)(B) and (9)(B)'' for ''each region (as defined in section 1395ww(d)(2)(D) of this title)''.

Subsec. (a)(14). Pub. L. 100–360, § 411(g)(1)(B)(xvi), struck out par. (14) which read as follows: ''In this subsection, any reference to the term 'carrier' includes a reference, with respect to durable medical equipment furnished by a home health agency as part of home health services, to a fiscal intermediary.''

Subsec. (b). Pub. L. 100–360, § 411(a)(3)(A), (B)(ii), (f)(8)(B)(ii), amended Pub. L. 100–203, § 4049(a)(2), see 1987 Amendment note below.

Subsec. (b)(1)(B). Pub. L. 100–360, § 204(b)(1), inserted ''and subject to subsection (e)(1)(A) of this section'' after ''conversion factors''.

Subsec. (b)(4)(C). Pub. L. 100–360, § 411(f)(8)(D)(ii), as added by Pub. L. 100–485, § 608(d)(21)(C), substituted ''For radiologist'' for ''Radiologist'' and ''1395u(i)(3) of this title'' for ''1395u(b)(4)(E)(ii) of this title''.

Subsec. (b)(4)(D), (5). Pub. L. 100–360, § 411(f)(8)(D)(i), inserted ''and suppliers'' after ''physicians'' in heading.

Subsec. (b)(5)(C). Pub. L. 100–360, § 411(f)(8)(D)(iii), (iv), formerly (ii), (iii), as redesignated by Pub. L. 100–485, § 608(d)(21)(C), substituted ''bills'' for ''imposes a charge'' and inserted ''in the same manner as such sanctions may apply to a physician'' before period at end.

Subsec. (b)(6). Pub. L. 100–360, § 411(f)(8)(D)(v), formerly (iv), as redesignated by Pub. L. 100–485, § 608(d)(21)(C), substituted ''and section 1395*l*(a)(1)(J) of this title'' for '', section 1395*l*(a)(1)(I) of this title, and section 1395u(h)(1)(B) of this title''.

Pub. L. 100–360, § 411(f)(8)(A), substituted ''radiology'' for ''radiologic''.

Subsec. (b)(6)(B). Pub. L. 100–360, § 411(f)(8)(D)(vi), formerly (v), as redesignated by Pub. L. 100–485, § 608(d)(21)(C), substituted ''the total amount of charges'' for ''billings''.

Pub. L. 100–360, § 411(f)(8)(A), substituted ''radiology'' for ''radiologic''.

Subsec. (c). Pub. L. 100–360, § 202(b)(4), added subsec. (c) relating to payment for covered outpatient drugs.

Subsec. (d). Pub. L. 100–360, § 203(c)(1)(F), added subsec. (d) relating to home intravenous drug therapy services.

Subsec. (e). Pub. L. 100–360, § 204(b)(2), added subsec. (e) relating to payments and standards for screening mammography.

1987—Subsec. (b). Pub. L. 100–203, § 4049(a)(2), as amended by Pub. L. 100–360, § 411(a)(3)(A), (B)(ii), (f)(8)(B)(ii), added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 126(i) of Pub. L. 103–432 provided that: ''Except as provided in subsection (h) [amending section 1395u of this title, enacting provisions set out as notes under sections 1395u and 1395w–4 of this title, and amending provisions set out as a note under section 1395w–4 of this title], the amendments made by this section and the provisions of this section [amending this section and sections 1395u, 1395w–1, and 1395w–4 of this title, enacting provisions set out as notes under sections 1395u and 1395w–4 of this title, and amending provisions set out as notes under this section and sections 1395u and 1395w–4 of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

Section 131(a)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective 60 days after Oct. 31, 1994.

Section 132(c) of Pub. L. 103–432 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to items furnished after the expiration of the 60-day period that begins on the date of the enactment of this Act [Oct. 31, 1994].''

Section 133(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and sections 1395m and 1395pp of this title] shall apply to items or services furnished on or after January 1, 1995.''

Section 134(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 31, 1994].''

Section 135(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective on the date of the enactment of this Act [Oct. 31, 1994].''

Section 135(b)(1) of Pub. L. 103–432 provided that the amendment made by that section is effective Oct. 31, 1994.

Section 135(b)(3) of Pub. L. 103–432 provided that the amendment made by that section is effective Oct. 31, 1994.

Section 135(d)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective on the date of the enactment of this Act [Oct. 31, 1994].''

Section 135(e)(8) of Pub. L. 103–432 provided that: ''The amendments made by this subsection [amending this section and provisions set out as notes under this section and section 1395cc of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

Section 145(d) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and sections 1395x to 1395bb of this title] shall apply to mammography furnished by a facility on and after the first date that the certificate requirements of section 354(b) of the Public Health Service Act [section 263b(b) of this title] apply to such mammography conducted by such facility.''

Amendment by section 156(a)(2)(C) of Pub. L. 103–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13542(b) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to items furnished on or after January 1, 1994.''

Section 13543(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to items furnished on or after January 1, 1994.''

Section 13544(a)(3) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending this section] shall apply to items furnished on or after January 1, 1994.''

Amendment by section 13544(b)(1) of Pub. L. 103–66 applicable to items furnished on or after Jan. 1, 1994, see section 13544(b)(3) of Pub. L. 103–66, set out as a note under section 1395*l* of this title.

Section 13545(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to items furnished on or after January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4102(i) of Pub. L. 101–508 provided that:

''(1) Except as otherwise provided, the amendments made by this section [amending this section, section 1395w–4 of this title, and provisions set out as a note below] shall apply to services furnished on or after January 1, 1991.

''(2) The amendment made by subsection (f) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Amendment by section 4104(a) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4104(d) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

Section 4152(a)(3) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §135(e)(1), Oct. 31, 1994, 108 Stat. 4424, provided that: ''The amendments made by this subsection [amending this section and section 1395x of this title] shall apply to items furnished on or after January 1, 1991.''

Section 4152(c)(4)(B)(ii) of Pub. L. 101–508 provided that: ''The amendment made by clause (i) [amending this section] shall apply to items furnished on or after January 1, 1992, unless the Secretary develops specific criteria before that date for the treatment of wheelchairs as customized items for purposes of section 1834(a)(4) of the Social Security Act [subsec. (a)(4) of this section] (in which case the amendment made by such clause shall not become effective).'' [Criteria established by Secretary Nov. 1, 1991, see 56 F.R. 65995, Dec. 20, 1991, 42 CFR §414.224.]

Section 4152(f)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to forms and documents distributed on or after January 1, 1991.''

Section 4152(g)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to patients who first receive home oxygen therapy services on or after January 1, 1991.''

Section 4152(i) of Pub. L. 101–508 provided that: ''Except as otherwise provided, the amendments made by this section [amending this section, section 1395x of this title, and provisions set out as a note under section 1395f of this title] shall apply to items furnished on or after January 1, 1991.''

Amendment by section 4153(a)(1), (2)(D) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1, 1991, see section 4153(a)(3) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4163(b) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6102(f)(1) of Pub. L. 101–239 applicable to services furnished on or after Jan. 1, 1991, see section 6102(f)(3) of Pub. L. 101–239, set out as a note under section 1395*l* of this title.

Section 6112(e)(4) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and sections 1395x and 1395cc of this title] shall apply with respect to items furnished on or after January 1, 1990.''

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Section 301(b)(1), (c)(1) of Pub. L. 101–234 provided that the amendments made by that section are effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(b)(4) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 203(c)(1)(F) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Section 204(e) of Pub. L. 100–360, which provided that the amendments made by section 204 of Pub. L. 100–360 [amending this section and sections 1395*l*, 1395x to 1395z, 1395aa, 1395bb, 1396a, and 1396n of this title] applied to screening mammography performed on or after January 1, 1990, and that subsec. (e)(5) of this section only applied until such time as the Secretary of Health and Human Services implemented the physician fee schedules based on relative value scale developed under section 1395w–1(e) of this title, was repealed by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(a)(3)(A), (B)(ii), (C)(ii), (f)(8)(A), (B)(ii), (D), (g)(1)(A) and (B) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4049(b)(2) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VI, § 6102(e)(6)(B), Dec. 19, 1989, 103 Stat. 2188; Pub. L. 101–508, title IV, § 4118(h)(2), Nov. 5, 1990, 104 Stat. 1388–70, provided that: ''The amendments made by this section [amending this section and section 1395*l* of this title] shall apply to services performed on or after April 1, 1989.''

[Section 4118(h) of Pub. L. 101–508 provided that the amendment by that section to section 4049(b)(2) of Pub. L. 100–203, set out above, is effective as if included in enactment of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.]

EFFECTIVE DATE

Subsection (a) of this section applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4062(e) of Pub. L. 100–203, as amended, set out as an Effective Date of 1987 Amendment note under section 1395f of this title.

USE OF COVERED ITEMS BY DISABLED BENEFICIARIES

Section 131(b) of Pub. L. 103–432 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services, in consultation with representatives of suppliers of durable medical equipment under part B of the medicare program [this part] and individuals entitled to benefits under such program on the basis of disability, shall conduct a study of the effects of the methodology for determining payments for items of such equipment under such part on the ability of such individuals to obtain items of such equipment, including customized items.

''(2) REPORT.—Not later than one year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary shall submit a report to Congress on the study conducted under paragraph (1), and shall include in the report such recommendations as the Secretary considers appropriate to assure that disabled medicare beneficiaries have access to items of durable medical equipment.''

CRITERIA FOR TREATMENT OF ITEMS AS PROSTHETIC DEVICES OR ORTHOTICS AND PROSTHETICS

Section 131(c) of Pub. L. 103–432 provided that: ''Not later than one year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services shall submit a report to the Committees on Ways and Means and Energy and Commerce [now Committee on Commerce] of the House of Representatives and the Committee on Finance of the Senate describing prosthetic devices or orthotics and prosthetics covered under part B of the medicare program [probably means this part] that do not require individualized or custom fitting and adjustment to be used by a patient. Such report shall include recommendations for an appropriate methodology for determining the amount of payment for such items under such program.''

ADJUSTMENT REQUIRED FOR CERTAIN ITEMS

Section 134(b) of Pub. L. 103–432 provided that:

''(1) IN GENERAL.—In accordance with section 1834(a)(10)(B) of the Social Security Act [subsec. (a)(10)(B) of this section] (as amended by subsection (a)), the Secretary of Health and Human Services shall determine whether the payment amounts for the items described in paragraph (2) are not inherently reasonable, and shall adjust such amounts in accordance with such section if the amounts are not inherently reasonable.

''(2) ITEMS DESCRIBED.—The items referred to in paragraph (1) are decubitus care equipment, transcutaneous electrical nerve stimulators, and any other items considered appropriate by the Secretary.''

LIMITATION ON PREVAILING CHARGE FOR PHYSICIANS' RADIOLOGY SERVICES FURNISHED DURING 1991; EXCEPTIONS

Section 4102(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(b)(3), Oct. 31, 1994, 108 Stat. 4415, provided that:

''(1) IN GENERAL.—In applying part B of title XVIII of the Social Security Act [this part], the prevailing charge for physicians' services, furnished during 1991, which are radiology services may not exceed the fee schedule amount established under section 1834(b) of such Act [subsec. (b) of this section] with respect to such services.

''(2) EXCEPTION.—Paragraph (1) shall not apply to nuclear medicine services.''

LIMITATION ON CARRIER ADJUSTMENTS FOR RADIOLOGIST SERVICES FURNISHED DURING 1991

Section 4102(e) of Pub. L. 101–508 provided that: ''For radiologist services furnished during 1991 for which payment is made under section 1834(b) of the Social Security Act [subsec. (b) of this section]—

''(1) a carrier may not make any adjustment, under section 1842(b)(3)(B) of such Act [section 1395u(b)(3)(B) of this title], in the payment amount for the service under section 1834(b) on the basis that the payment amount is higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier,

''(2) no payment adjustment may be made under section 1842(b)(8) of such Act, and

''(3) section 1842(b)(9) of such Act shall not apply.''

STUDY OF PAYMENTS FOR PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS

Section 4153(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 135(e)(6), Oct. 31, 1994, 108 Stat. 4424, directed Comptroller General to conduct a study of feasibility and desirability of establishing a separate fee schedule for use in determining the amount of payments for covered items under subsec. (h) of this section with respect to suppliers of prosthetic devices, orthotics, and prosthetics who provide professional services that would take into account the costs to such providers of providing such services and, not later than 1 year after Nov. 5, 1990, submit a report on the study to Committees on Energy and Commerce and Ways and Means of House of Representatives and Committee on Finance of Senate, including any recommendations regarding payments for prosthetic devices, orthotics, and prosthetics under the medicare program.

SPECIAL RULE FOR NUCLEAR MEDICINE PHYSICIANS

Section 6105(b) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4102(g)(1), Nov. 5, 1990, 104 Stat. 1388–57, provided that: ''In applying section 1834(b) of the Social Security Act [subsec. (b) of this section] with respect to nuclear medicine services furnished by a physician for whom nuclear medicine services account for at least 80 percent of the total amount of charges made under part B of title XVIII of the Social Security Act [this part] beginning April 1, 1990, and ending December 31, 1991, there shall be substituted for the fee schedule otherwise applicable a fee schedule based ⅓ on the fee schedule computed under such section (without regard to this subsection) and ⅔ on 101 percent of the 1988 prevailing charge for such services.''

SPECIAL RULE FOR INTERVENTIONAL RADIOLOGISTS; ''SPLIT BILLING''

Section 6105(c) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4102(h), Nov. 5, 1990, 104 Stat. 1388–58, provided that: ''In applying section 1834(b) of the Social Security Act [subsec. (b) of this section] to radiologist services furnished in 1990 or 1991, the excep-

tion for 'split billing' set forth at section 5262J of the Medicare Carriers Manual shall apply to services furnished in 1990 or 1991 in the same manner and to the same extent as the exception applied to services furnished in 1989.''

RENTAL PAYMENTS FOR ENTERAL AND PARENTERAL PUMPS

Section 6112(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any monthly rental payment under part B of title XVIII of the Social Security Act [this part] for an enteral or parenteral pump furnished on or after April 1, 1990, shall be determined in accordance with the methodology under which monthly rental payments for such pumps were determined during 1989.

''(2) CAP ON RENTAL PAYMENTS, SERVICING, AND REPAIRS.—In the case of an enteral or parenteral pump described in paragraph (1) that is furnished on a rental basis during a period of medical need—

''(A) monthly rental payments shall not be made under part B of title XVIII of the Social Security Act for more than 15 months during such period, and

''(B) after monthly rental payments have been made for 15 months during such period, payment under such part shall be made for maintenance and servicing of the pump in such amounts as the Secretary of Health and Human Services determines to be reasonable and necessary to ensure the proper operation of the pump.''

TREATMENT OF POWER-DRIVEN WHEELCHAIRS AS CUSTOMIZED ITEMS

Section 6112(d)(2) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall by regulation specify criteria to be used by carriers in making determinations on a case-by-case basis as whether to classify power-driven wheelchairs as a customized item (as described in section 1834(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) for purposes of reimbursement under title XVIII of such Act [this subchapter].''

STUDY OF PAYMENT FOR PORTABLE X-RAY SERVICES

Section 6134 of Pub. L. 101–239 directed Secretary of Health and Human Services to conduct a study of costs of furnishing, and payments for, portable x-ray services under part B and, not later than 1 year after Dec. 19, 1989, report to Congress on results of such study including a recommendation respecting whether payment for such services should be made in the same manner as for radiologists' services or on the basis of a separate fee schedule.

GAO STUDY OF STANDARDS FOR USE OF AND PAYMENT FOR ITEMS OF DURABLE MEDICAL EQUIPMENT

Section 6139 of Pub. L. 101–239 directed Comptroller General to conduct a study of appropriate uses of items of durable medical equipment and of appropriate criteria for making determinations of medical necessity under this subchapter for such items, with particular emphasis on items (including seat-lift chairs) that may be subject to abusive billing practices, such study to include an analysis of appropriate use of forms in making medical necessity determinations for items of durable medical equipment under such title, and procedures for identifying items of durable medical equipment that should no longer be covered under this subchapter, and to be conducted with a panel convened by the Comptroller General consisting of specialists in the disciplines of orthopedic medicine, rehabilitation, arthritis, and geriatric medicine, representatives of consumer organizations, and representatives of carriers under the medicare program, with the Comptroller General to submit not later than Apr. 1, 1991, a report to Committees on Ways and Means and Energy and Commerce of House of Representatives and Committee on Finance of Senate on the study including recommendations.

REPORTS ON MEDICARE BENEFICIARY DRUG EXPENSES

Section 202(i) of Pub. L. 100–360, directed Secretary of Health and Human Services, by not later than Apr. 1, 1989, to report to Congress on expenses incurred by medicare beneficiaries for outpatient prescription drugs, and to provide Director of Congressional Budget Office with such data from that Survey as Director might request to make required estimates, prior to repeal by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

ADDITIONAL STUDIES BY SECRETARY OR COMPTROLLER GENERAL

Section 202(k) of Pub. L. 100–360 directed Secretary of Health and Human Services to conduct a study, and make a report to Congress by Jan. 1, 1990, on possibility of including drugs which have not yet been approved under section 355 or 357 of Title 21, Food and Drugs, and biological products which have not been licensed under section 262 of this title but which are commonly used in the treatment of cancer or in immunosuppressive therapy and other experimental drugs and biological products as covered outpatient drugs under medicare program, to conduct a study, and report to Congress by Jan. 1, 1990, evaluating potential to use mail service pharmacies to reduce costs to medicare program and to medicare beneficiaries, to conduct a study, and report to Congress by Jan. 1, 1993, on methods to improve utilization review of covered outpatient drugs, and to conduct a longitudinal study, and report to Congress by Jan. 1, 1993, on use of outpatient prescription drugs by medicare beneficiaries with respect to medical necessity, potential for adverse drug interactions, cost (including whether lower cost drugs could have been used), and patient stockpiling or wastage, and which further directed Comptroller General to conduct studies, and report to Congress by not later than May 1, 1991, on comparing average wholesale prices with actual pharmacy acquisition costs by type of pharmacy, on determining the overhead costs of retail pharmacies, and on discounts given by pharmacies to other third-party insurers, prior to repeal by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

DEVELOPMENT OF STANDARD MEDICARE CLAIMS FORMS

Section 202(*l*) of Pub. L. 100–360 directed Secretary of Health and Human Services to develop, in consultation with representatives of pharmacies and other interested individuals, a standard claims form (and a standard electronic claims format) to be used in requests for payment for covered outpatient drugs under medicare program and other third-party payors, prior to repeal by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

STUDIES AND REPORTS ON SCREENING MAMMOGRAPHY

Section 204(f) of Pub. L. 100–360 directed Physician Payment Review Commission to study and report, by July 1, 1989, to Committees on Ways and Means and Energy and Commerce of the House of Representatives and Committee on Finance of the Senate concerning the cost of providing screening mammography in a variety of settings and at different volume levels, prior to repeal by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

DEADLINE FOR ESTABLISHMENT OF FEE SCHEDULES FOR RADIOLOGIST SERVICES; REPORT TO CONGRESS

Section 4049(b)(1) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(f)(8)(E), July 1, 1988, 102 Stat. 780; Pub. L. 101–508, title IV, §4118(g)(3), Nov. 5, 1990, 104 Stat. 1388–70, directed Secretary of Health and Human Services to propose the relative value scale and fee schedules for radiologist services (under subsec. (b) of this section) by not later than Aug. 1, 1988.

STUDY AND EVALUATION

Section 4062(c) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(g)(1)(C), July 1, 1988, 102 Stat. 782, provided that:

''(1) The Secretary of Health and Human Services shall monitor the impact of the amendments made by this section [enacting this section, amending sections 1395f, 1395k, 1395*l*, and 1395cc of this title, and repealing section 1395zz of this title] on the availability of covered items and shall evaluate the appropriateness of the volume adjustment for oxygen and oxygen equipment under section 1834(a)(5)(C) of the Social Security Act [subsec. (a)(5)(C) of this section] (as amended by subsection (b) of this section). The Secretary shall report to Congress, by not later than January 1, 1991, on such impact and on the evaluation and shall include in such report recommendations for changes in payment methodology for covered items under section 1834(a) of such Act.

''(2) Before January 1, 1991, the Secretary may not conduct any demonstration project respecting alternative methods of payment for covered items under title XVIII of the Social Security Act [this subchapter].

''(3) In this subsection, the term 'covered item' has the meaning given such term in section 1834(a)(13) of the Social Security Act [subsec. (a)(13) of this section] (as amended by subsection (b) of this section).

''(4) The Secretary shall, upon written request and payment of a reasonable copying fee which the Secretary may establish, provide the data and information used in determining the payment amounts for covered items under section 1834(a) of the Social Security Act [subsec. (a) of this section], but only in a form which does not permit identification of individual suppliers.

''(5) The Comptroller General shall conduct a study on the appropriateness of the level of payments allowed for covered items under the medicare program, and shall report to Congress on the results of such study (including recommendations on the transition to regional or national rates) by not later than January 1, 1991. Entities furnishing such items which fail to provide the Comptroller General with reasonable access to necessary records to carry out the study under this paragraph are subject to exclusion from the medicare program under section 1128(a) of the Social Security Act [section 1320a–7(a) of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a–7a, 1395f, 1395k, 1395*l*, 1395u, 1395w–4, 1395y, 1395cc, 1395pp of this title.

§ 1395n. Procedure for payment of claims of providers of services

(a) Conditions for payment for services described in section 1395k(a)(2) of this title

Except as provided in subsections (b), (c), and (e) of this section, payment for services described in section 1395k(a)(2) of this title furnished an individual may be made only to providers of services which are eligible therefor under section 1395cc(a) of this title, and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period of 3 calendar years following the year in which such services are furnished (deeming any services furnished in the last 3 calendar months of any calendar year to have been furnished in the succeeding calendar year) except that, where the Secretary deems that efficient administration so requires, such period may be reduced to not less than 1 calendar year; and

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations) that—

(A) in the case of home health services (i) such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1395x(m)(7) of this title) and needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy, (ii) a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(B) in the case of medical and other health services, except services described in subparagraphs (B), (C), and (D) of section 1395x(s)(2) of this title, such services are or were medically required;

(C) in the case of outpatient physical therapy services or outpatient occupational therapy services, (i) such services are or were required because the individual needed physical therapy services or occupational therapy services, respectively, (ii) a plan for furnishing such services has been established by a physician or by the qualified physical therapist or qualified occupational therapist, respectively, providing such services and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(D) in the case of outpatient speech pathology services, (i) such services are or were required because the individual needed speech pathology services, (ii) a plan for furnishing such services has been established by a physician or by the speech pathologist providing such services and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(E) in the case of comprehensive outpatient rehabilitation facility services, (i) such services are or were required because the individual needed skilled rehabilitation services, (ii) a plan for furnishing such services has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician; and

(F) in the case of partial hospitalization services, (i) the individual would require inpatient psychiatric care in the absence of such services, (ii) an individualized, written plan for furnishing such services has been established by a physician and is reviewed periodically by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician.

For purposes of this section, the term ''provider of services'' shall include a clinic, reha-

bilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes a certification of the kind provided in subparagraph (A) or (B) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractual relationship with, such home health agency from performing such certification and from establishing or reviewing such plan, except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary). For purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency. For purposes of paragraph (2)(A), an individual shall be considered to be ''confined to his home'' if the individual has a condition, due to an illness or injury, that restricts the ability of the individual to leave his or her home except with the assistance of another individual or the aid of a supportive device (such as crutches, a cane, a wheelchair, or a walker), or if the individual has a condition such that leaving his or her home is medically contraindicated. While an individual does not have to be bedridden to be considered ''confined to his home'', the condition of the individual should be such that there exists a normal inability to leave home, that leaving home requires a considerable and taxing effort by the individual, and that absences of the individual from home are infrequent or of relatively short duration, or are attributable to the need to receive medical treatment.

(b) Conditions for payment for services described in section 1395x(s) of this title

(1) Payment may also be made to any hospital for services described in section 1395x(s) of this title furnished as an outpatient service by a hospital or by others under arrangements made by it to an individual entitled to benefits under this part even though such hospital does not have an agreement in effect under this subchapter if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has made an election pursuant to section 1395f(d)(1)(C) of this title with respect to the calendar year in which such emergency services are provided. Such payments shall be made only in the amounts provided under section 1395*l*(a)(2) of this title and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1395cc(a) of this title.

(2) Payment may also be made on the basis of an itemized bill to an individual for services described in paragraph (1) of this subsection if (A) payment cannot be made under such paragraph (1) solely because the hospital does not elect, in accordance with section 1395f(d)(1)(C) of this title, to claim such payments and (B) such individual files application (submitted within such time and in such form and manner, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement. The amounts payable under this paragraph shall, subject to the provisions of section 1395*l* of this title, be equal to 80 percent of the hospital's reasonable charges for such services.

(c) Collection of charges from individuals for services specified in section 1395x(s) of this title

Notwithstanding the provisions of this section and sections 1395k, 1395*l*, and 1395cc(a)(1)(A) of this title, a hospital or a rural primary care hospital may, subject to such limitations as may be prescribed by regulations, collect from an individual the customary charges for services specified in section 1395x(s) of this title and furnished to him by such hospital as an outpatient, but only if such charges for such services do not exceed the applicable supplementary medical insurance deductible, and such customary charges shall be regarded as expenses incurred by such individual with respect to which benefits are payable in accordance with section 1395*l*(a)(1) of this title. Payments under this subchapter to hospitals which have elected to make collections from individuals in accordance with the preceding sentence shall be adjusted periodically to place the hospital in the same position it would have been had it instead been reimbursed in accordance with section 1395*l*(a)(2) of this title (or, in the case of a rural primary care hospital, in accordance with section 1395*l*(a)(6) of this title).

(d) Payment to Federal provider of services or other Federal agencies prohibited

Subject to section 1395qq of this title, no payment may be made under this part to any Federal provider of services or other Federal agency, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or

agency; and no such payment may be made to any provider of services or other person for any item or service which such provider or person is obligated by a law of, or a contract with, the United States to render at public expense.

(e) Payment to fund designated by medical staff or faculty of medical school

For purposes of services (1) which are inpatient hospital services by reason of paragraph (7) of section 1395x(b) of this title or for which entitlement exists by reason of clause (II) of section 1395k(a)(2)(B)(i) of this title, and (2) for which the reasonable cost thereof is determined under section 1395x(v)(1)(D) of this title (or would be if section 1395ww of this title did not apply), payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(A) such hospital has an agreement with the Secretary under section 1395cc of this title, and

(B) the Secretary has received written assurances that (i) such payment will be used by such fund solely for the improvement of care to patients in such hospital or for educational or charitable purposes and (ii) the individuals who were furnished such services or any other persons will not be charged for such services (or if charged provision will be made for return of any moneys incorrectly collected).

(Aug. 14, 1935, ch. 531, title XVIII, § 1835, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 303; amended Jan. 2, 1968, Pub. L. 90–248, title I, §§ 126(b), 129(c)(9)(A), (B), 130(a), (b), 133(e), 81 Stat. 846, 848, 849, 851; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 204(b), 227(e)(2), 251(b)(2), 281(f), 283(b), 86 Stat. 1377, 1406, 1445, 1456; Sept. 30, 1976, Pub. L. 94–437, title IV, § 401(a), 90 Stat. 1408; Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 930(e), (j), 933(b), 944(a), 94 Stat. 2631, 2632, 2635, 2642; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2106(b)(1), 2122(a)(1), 95 Stat. 792, 796; Apr. 20, 1983, Pub. L. 98–21, title VI, § 602(b), 97 Stat. 163; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2336(a), (b), 2342(b), 2354(b)(1), (8), (9), 98 Stat. 1091, 1094, 1100; Nov. 8, 1984, Pub. L. 98–617, § 3(a)(3), 98 Stat. 3295; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9337(c), 100 Stat. 2034; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4024(b), 4070(b)(3), 4085(i)(4), 101 Stat. 1330–74, 1330–115, 1330–132; July 1, 1988, Pub. L. 100–360, title II, §§ 203(d)(1), 205(d), 102 Stat. 724, 731; Dec. 13, 1989, Pub. L. 101–234, title II, § 201(a), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6003(g)(3)(D)(viii), 103 Stat. 2153; Nov. 5, 1990, Pub. L. 101–508, title IV, § 4008(m)(2)(D), 104 Stat. 1388–53.)

AMENDMENTS

1990—Subsec. (c). Pub. L. 101–508 substituted ''a hospital or a rural primary care hospital may'' for ''a hospital may'' in first sentence, substituted ''section 1395*l*(a)(2) of this title (or, in the case of a rural primary care hospital, in accordance with section 1395*l*(a)(6) of this title)'' for ''section 1395*l*(a)(2) of this title'' in second sentence, and struck out at end ''A rural primary care hospital shall be considered a hospital for purposes of this subsection.''

1989—Subsec. (a)(2)(G), (H). Pub. L. 101–234 repealed Pub. L. 100–360, §§ 203(d)(1), 205(d), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (c). Pub. L. 101–239 inserted at end ''A rural primary care hospital shall be considered a hospital for purposes of this subsection.''

1988—Subsec. (a)(2)(G). Pub. L. 100–360, § 203(d)(1), added subpar. (G) relating to home intravenous drug therapy services.

Subsec. (a)(2)(H). Pub. L. 100–360, § 205(d), added subpar. (H) relating to in-home care provided to chronically dependent individuals.

1987—Subsec. (a). Pub. L. 100–203, § 4024(b), inserted two sentences at end clarifying ''confined to his home'' for purposes of par. (2)(A).

Subsec. (a)(2)(C)(i). Pub. L. 100–203, § 4085(i)(4), struck out second comma at end.

Subsec. (a)(2)(F). Pub. L. 100–203, § 4070(b)(3), added subpar. (F).

1986—Subsec. (a)(2). Pub. L. 99–509, § 9337(c)(2), inserted in second sentence ''(or meets the requirements of such section through the operation of section 1395x(g) of this title)'' in two places, and ''or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services''.

Subsec. (a)(2)(C). Pub. L. 99–509, § 9337(c)(1), inserted ''or outpatient occupational therapy services'' in introductory provisions, ''or occupational therapy services, respectively,'' in cl. (i), and ''or qualified occupational therapist, respectively,'' in cl. (ii).

1984—Subsec. (a). Pub. L. 98–369, § 2354(b)(1), as amended by Pub. L. 98–617, § 3(a)(3), in concluding provisions, substituted ''contractual'' for ''contractural''.

Pub. L. 98–369, § 2336(b), inserted before period at end of fourth sentence '', except that such prohibition shall not apply with respect to a home health agency which is a sole community home health agency (as determined by the Secretary)''.

Pub. L. 98–369, § 2336(a), inserted sentence at end that for purposes of the preceding sentence, service by a physician as an uncompensated officer or director of a home health agency shall not constitute having a significant ownership interest in, or a significant financial or contractual relationship with, such agency.

Subsec. (a)(2)(B), (C). Pub. L. 98–369, § 2354(b)(8)(A), struck out ''and'' at end.

Subsec. (a)(2)(C)(ii). Pub. L. 98–369, § 2342(b), substituted ''by a physician or by the qualified physical therapist providing such services and is periodically reviewed by a physician'' for '', and is periodically reviewed, by a physician''.

Subsec. (a)(2)(D). Pub. L. 98–369, § 2354(b)(8)(B), realigned margin of subpar. (D).

Subsec. (e)(2). Pub. L. 98–369, § 2354(b)(9), designated concluding pars. (1) and (2) as (A) and (B), respectively, and in par. (B) inserted ''(i)'' after ''written assurances that'' and substituted ''(ii) the individuals who'' for ''(B) the individuals who'' and ''return of'' for ''return for''.

1983—Subsec. (e). Pub. L. 98–21 inserted ''(or would be if section 1395ww of this title did not apply)'' after ''section 1395(v)(1)(D) of this title''.

1981—Subsec. (a)(2)(A). Pub. L. 97–35, § 2122(a)(1), substituted ''needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy'' for ''needed skilled nursing care on an intermittent basis, or physical, occupational, or speech therapy''.

Subsec. (a)(2)(D). Pub. L. 97–35, § 2106(b)(1), inserted ''and'' after ''physician;''.

Subsec. (a)(2)(E). Pub. L. 97–35, § 2106(b)(1), substituted a period for ''; and'' at the end.

1980—Subsec. (a). Pub. L. 96–499, § 930(e), inserted sentence at end authorizing Secretary to prescribe regula-

tions to prohibit significantly interested physicians from performing physician certification required by par. (2) for home health services.

Subsec. (a)(2)(A). Pub. L. 96–499, §930(j), substituted ''physical, occupational, or speech'' for ''physical or speech''.

Subsec. (a)(2)(D)(ii). Pub. L. 96–499, §944(a), inserted ''by a physician or by the speech pathologist providing such services'', after ''has been established''.

Subsec. (a)(2(E). Pub. L. 96–499, §933(b), added subpar. (E).

1976—Subsec. (d). Pub. L. 94–437 substituted ''Subject to section 1395qq of this title, no payment'' for ''No payment''.

1972—Subsec. (a). Pub. L. 92–603, §227(e)(2)(A), inserted reference to subsec. (e) of this section in introductory provisions.

Subsec. (a)(1). Pub. L. 92–603, §281(f), placed a 3-year time limitation on time within which a written request for payment is filed, with provision for reduction of limit to 1 year.

Subsec. (a)(2)(C). Pub. L. 92–603, §251(b)(2), substituted ''because the individual needed physical therapy services'' for ''because the individual needed physical therapy services on an outpatient basis''.

Subsec. (a)(2)(D). Pub. L. 92–603, §283(b), added subpar. (D).

Subsec. (c). Pub. L. 92–603, §204(b), substituted ''the applicable supplementary medical insurance deductible'' for ''$50''.

Subsec. (e). Pub. L. 92–603, §227(e)(2)(B), added subsec. (e).

1968—Subsec. (a). Pub. L. 90–248, §§129(c)(9)(A), 130(a), inserted introductory exception phrase and included reference to subsec. (c).

Subsec. (a)(2). Pub. L. 90–248, §133(e)(5), inserted sentence at end defining ''provider of services''.

Subsec. (a)(2)(B). Pub. L. 90–248, §§126(b), 133(e)(4), inserted ''except services described in subparagraphs (B) and (C) of section 1395x(s)(2) of this title,'' after ''health services,'' and inserted reference to subpar. (d).

Subsec. (a)(2)(C). Pub. L. 90–248, §133(e)(1)–(3), added subpar. (C).

Subsec. (b). Pub. L. 90–248, §129(c)(9)(B), added subsec. (b). Former subsec. (b) redesignated (c), in turn redesignated (d).

Subsec. (c). Pub. L. 90–248, §130(b), added subsec. (c). Former subsec. (c), previously designated (b), redesignated (d).

Subsec. (d). Pub. L. 90–248, §§129(c)(9)(B), 130(b), redesignated former subsec. (b) as (c), in turn as (d), respectively.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by section 203(d)(1) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 205(d) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 205(f) of Pub. L. 100–360, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4024(b) of Pub. L. 100–203 applicable to items and services provided on or after Jan. 1, 1988, see section 4024(c) of Pub. L. 100–203, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99–509, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2336(a) of Pub. L. 98–369 applicable to certifications and plans of care made or established on or after July 18, 1984, see section 2336(c)(1) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2342(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395x of this title] apply to plans of care established on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(1), (8), (9) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2122(a)(1) of Pub. L. 97–35 applicable to services furnished pursuant to plans of treatment implemented after the third month beginning after Aug. 13, 1981, see section 2122(b) of Pub. L. 97–35, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 930(e), (j) of Pub. L. 96–499 effective with respect to services furnished on or after July 1, 1981, see section 930(s)(1) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Amendment by section 933(b) of Pub. L. 96–499 effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period beginning on or after July 1, 1981, see section 933(h) of Pub. L. 96–499, set out as a note under section 1395k of this title.

Section 944(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to plans for furnishing services established on or after January 1, 1981.''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 204(b) of Pub. L. 92–603 effective with respect to calendar years after 1972, see section 204(c) of Pub. L. 92–603, set out as a note under section 1395*l* of this title.

Amendment by section 227(e)(2) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Amendment by section 251(b)(2) of Pub. L. 92–603 applicable with respect to services furnished on or after Oct. 30, 1972, see section 251(d)(2) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Amendment by section 281(f) of Pub. L. 92–603 applicable in the case of services furnished (or deemed to have been furnished) after 1970, see section 281(g) of Pub. L. 92–603, set out as a note under section 1395gg of this title.

Section 283(c) of Pub. L. 92–603 provided that: ''The provisions of this section [amending this section and section 1395x of this title] shall apply with respect to services rendered after December 31, 1972.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 126(b) of Pub. L. 90–248 applicable with respect to services furnished after Jan. 2, 1968, see section 126(c) of Pub. L. 90–248, set out as a note under section 1395f of this title.

Amendment by section 129(c)(9)(A), (B) of Pub. L. 90–248 applicable with respect to services furnished after March 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 130(c) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to services furnished after March 31, 1968.''

Amendment by section 133(e) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub. L. 90–248, set out as a note under section 1395k of this title.

REGULATIONS

Secretary of Health and Human Services required to provide, not later than 90 days after July 18, 1984, for revision of regulations as may be required to reflect amendment to subsec. (a) by section 2336(b) of Pub. L. 98–369, see section 2336(c)(2) of Pub. L. 98–369, set out as a note under section 1395f of this title.

HOME HEALTH PROSPECTIVE PAYMENT DEMONSTRATION PROJECT

Section 4027 of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(d)(6), July 1, 1988, 102 Stat. 775, directed Secretary of Health and Human Services to provide for a demonstration project to develop and test alternative methods of paying home health agencies on a prospective basis for services furnished under the medicare and medicaid programs, directed that the project be designed in a manner to enable the Secretary to evaluate the effects of various methods of prospective payment (including payments on a per-visit, per-case, and per-episode basis) on program expenditures, access to, and quality of, home health care, and home health agency operations, directed Secretary to assure that services are first furnished under the project not later than Apr. 1, 1989, and, for this purpose, authorized Secretary to reinstate a previously awarded contract, or award a sole source contract, to carry out the project, provided for funding, and directed Secretary to submit to Congress, not later than one year after Dec. 22, 1987, an interim report on the demonstration project and, not later than four years after Dec. 22, 1987, a final report on results of the project.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395f, 1395k, 1395x, 1395cc, 1395pp, 1395qq of this title.

§ 1395*o*. Eligible individuals

Every individual who—

(1) is entitled to hospital insurance benefits under part A of this subchapter, or

(2) has attained age 65 and is a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this part,

is eligible to enroll in the insurance program established by this part.

(Aug. 14, 1935, ch. 531, title XVIII, § 1836, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 304; amended Oct. 30, 1972, Pub. L. 92–603, title II, § 201(c)(1), 86 Stat. 1372.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in par. (1), is classified to section 1395c et seq. of this title.

AMENDMENTS

1972—Pub. L. 92–603 designed former par. (2)(B) as par. (1), former par. (1) as introductory clause in par. (2), and former pars. (2)(A)(i) and (ii) as pars. (2)(A) and (B), and struck out ''(A)'' after ''(2)''.

PERSONS CONVICTED OF SUBVERSIVE ACTIVITIES

Section 104(b)(2) of Pub. L. 89–97 provided that: ''An individual who has been convicted of any offense under (A) chapter 37 [section 792 et seq. of Title 18, Crimes and Criminal Procedure] (relating to espionage and censorship), chapter 105 [section 2151 et seq. of Title 18] (relating to sabotage), or chapter 115 [section 2381 et seq. of Title 18] (relating to treason, sedition, and subversive activities) of title 18 of the United States Code, or (B) section 4, 112, or 113 of the Internal Security Act of 1950, as amended [section 783, 822, or 823 of Title 50, War and National Defense], may not enroll under part B of title XVIII of the Social Security Act [this part].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395p, 1395q, 1395r, 1395v of this title; title 25 section 1644.

§ 1395p. Enrollment periods

(a) Generally; regulations

An individual may enroll in the insurance program established by this part only in such manner and form as may be prescribed by regulations, and only during an enrollment period prescribed in or under this section.

(b) Repealed. Pub. L. 96–499, title IX, § 945(a), Dec. 5, 1980, 94 Stat. 2642

(c) Initial general enrollment period; eligible individuals before March 1, 1966

In the case of individuals who first satisfy paragraph (1) or (2) of section 1395*o* of this title before March 1, 1966, the initial general enrollment period shall begin on the first day of the second month which begins after July 30, 1965, and shall end on May 31, 1966. For purposes of this subsection and subsection (d) of this section, an individual who has attained age 65 and who satisfies paragraph (1) of section 1395*o* of this title but not paragraph (2) of such section shall be treated as satisfying such paragraph (1) on the first day on which he is (or on filing application would have been) entitled to hospital insurance benefits under part A of this subchapter.

(d) Eligible individuals on or after March 1, 1966

In the case of an individual who first satisfies paragraph (1) or (2) of section 1395*o* of this title on or after March 1, 1966, his initial enrollment period shall begin on the first day of the third month before the month in which he first satisfies such paragraphs and shall end seven months later. Where the Secretary finds that an individual who has attained age 65 failed to enroll under this part during his initial enrollment period (based on a determination by the Secretary of the month in which such individual attained age 65), because such individual (relying on documentary evidence) was mistaken as to his correct date of birth, the Secretary shall establish for such individual an initial enrollment period based on his attaining age 65 at the time shown in such documentary evidence (with a coverage period determined under section 1395q of this title as though he had attained such age at that time).

(e) General enrollment period

There shall be a general enrollment period during the period beginning on January 1 and ending on March 31 of each year.

(f) Individuals deemed enrolled in medical insurance program

Any individual—

(1) who is eligible under section 1395*o* of this title to enroll in the medical insurance program by reason of entitlement to hospital insurance benefits as described in paragraph (1) of such section, and

(2) whose initial enrollment period under subsection (d) of this section begins after March 31, 1973, and

(3) who is residing in the United States, exclusive of Puerto Rico,

shall be deemed to have enrolled in the medical insurance program established by this part.

(g) Commencement of enrollment period

All of the provisions of this section shall apply to individuals satisfying subsection (f) of this section, except that—

(1) in the case of an individual who satisfies subsection (f) of this section by reason of entitlement to disability insurance benefits described in section 426(b) of this title, his initial enrollment period shall begin on the first day of the later of (A) April 1973 or (B) the third month before the 25th month of such entitlement, and shall reoccur with each continuous period of eligibility (as defined in section 1395r(d) of this title) and upon attainment of age 65;

(2)(A) in the case of an individual who is entitled to monthly benefits under section 402 or 423 of this title on the first day of his initial enrollment period or becomes entitled to monthly benefits under section 402 of this title during the first 3 months of such period, his enrollment shall be deemed to have occurred in the third month of his initial enrollment period, and

(B) in the case of an individual who is not entitled to benefits under section 402 of this title on the first day of his initial enrollment period and does not become so entitled during the first 3 months of such period, his enrollment shall be deemed to have occurred in the month in which he files the application establishing his entitlement to hospital insurance benefits provided such filing occurs during the last 4 months of his initial enrollment period; and

(3) in the case of an individual who would otherwise satisfy subsection (f) of this section but does not establish his entitlement to hospital insurance benefits until after the last day of his initial enrollment period (as defined in subsection (d) of this section), his enrollment shall be deemed to have occurred on the first day of the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section).

(h) Waiver of enrollment period requirements where individual's rights were prejudiced by administrative error or inaction

In any case where the Secretary finds that an individual's enrollment or nonenrollment in the insurance program established by this part or part A of this subchapter pursuant to section 1395i–2 of this title is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Federal Government, or its instrumentalities, the Secretary may take such action (including the designation for such individual of a special initial or subsequent enrollment period, with a coverage period determined on the basis thereof and with appropriate adjustments of premiums) as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction.

(i) Special enrollment periods

(1) In the case of an individual who—

(A) at the time the individual first satisfies paragraph (1) or (2) of section 1395*o* of this title, is enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of the individual's (or the individual's spouse's) current employment status, and

(B) has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period,

there shall be a special enrollment period described in paragraph (3). In the case of an individual not described in the previous sentence who has not attained the age of 65, at the time the individual first satisfies paragraph (1) of section 1395*o* of this title, is enrolled in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual), and has elected not to enroll (or to be deemed enrolled) under this section during the individual's initial enrollment period, there shall be a special enrollment period described in paragraph (3)(B).

(2) In the case of an individual who—

(A)(i) has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period, or (ii) is an individual described in paragraph (1)(A);

(B) has enrolled in such program during any subsequent special enrollment period under this subsection during which the individual was not enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of the individual's (or individual's spouse's) current employment status; and

(C) has not terminated enrollment under this section at any time at which the individual is not enrolled in such a group health plan by reason of the individual's (or individual's spouse's) current employment status,

there shall be a special enrollment period described in paragraph (3). In the case of an individual not described in the previous sentence who has not attained the age of 65, has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period, or is an individual described in the second sentence of paragraph (1), has enrolled in such program during any subsequent special en-

rollment period under this subsection during which the individual was not enrolled in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual), and has not terminated enrollment under this section at any time at which the individual is not enrolled in such a large group health plan by reason of the individual's current employment status (or the current employment status of a family member of the individual), there shall be a special enrollment period described in paragraph (3)(B).

(3)(A) The special enrollment period referred to in the first sentences of paragraphs (1) and (2) is the period including each month during any part of which the individual is enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of current employment status ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled.

(B) The special enrollment period referred to in the second sentences of paragraphs (1) and (2) is the period including each month during any part of which the individual is enrolled in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual) ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled.

(Aug. 14, 1935, ch. 531, title XVIII, § 1837, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 304; amended Apr. 8, 1966, Pub. L. 89–384, § 3(a), (b), 80 Stat. 105; Jan. 2, 1968, Pub. L. 90–248, title I, §§ 136(a), 145(a), (b), 81 Stat. 853, 859; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 201(c)(2), 206(a), 259(a), 260, 86 Stat. 1372, 1378, 1448; June 9, 1980, Pub. L. 96–265, title I, § 103(a)(3), 94 Stat. 444; Dec. 5, 1980, Pub. L. 96–499, title IX, § 945(a), (b), 94 Stat. 2642; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2151(a)(1), (2), 95 Stat. 801; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2338(b), 2354(b)(10), 98 Stat. 1092, 1101; Apr. 7, 1986, Pub. L. 99–272, title IX, §§ 9201(c)(1), 9219(a)(2), 100 Stat. 171, 182; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9319(c)(1)–(3), 100 Stat. 2011; Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1895(b)(12), 100 Stat. 2934; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6202(b)(4)(C), (c)(1), 103 Stat. 2233; Oct. 31, 1994, Pub. L. 103–432, title I, §§ 147(f)(1)(A), 151(c)(2), 108 Stat. 4430, 4435.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsecs. (c) and (h), is classified to section 1395c et seq. of this title.

AMENDMENTS

1994—Subsec. (i)(1). Pub. L. 103–432, § 151(c)(2)(A), in closing provisions substituted ''(as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual (as those terms are defined in section 1395y(b)(1)(B)(iv) of this title)''.

Subsec. (i)(1)(A). Pub. L. 103–432, § 151(c)(2)(D), inserted ''status'' after ''current employment''.

Subsec. (i)(2). Pub. L. 103–432, § 151(c)(2)(A), (C), in closing provisions substituted ''(as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual (as those terms are defined in section 1395y(b)(1)(B)(iv) of this title)'' and ''by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual''.

Subsec. (i)(2)(B), (C). Pub. L. 103–432, § 151(c)(2)(D), inserted ''status'' after ''current employment''.

Subsec. (i)(3)(A). Pub. L. 103–432, § 151(c)(2)(D), inserted ''status'' after ''current employment''.

Pub. L. 103–432, § 147(f)(1)(A), substituted ''including each month during any part of which the individual is enrolled'' for ''beginning with the first day of the first month in which the individual is no longer enrolled'' and ''ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled'' for ''and ending seven months later''.

Subsec. (i)(3)(B). Pub. L. 103–432, § 151(c)(2)(B), substituted ''in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual in a large group health plan (as such terms are defined in section 1395y(b)(1)(B)(iv) of this title)''.

Pub. L. 103–432, § 147(f)(1)(A), substituted ''including each month during any part of which the individual is enrolled'' for ''beginning with the first day of the first month in which the individual is no longer enrolled'' and ''ending with the last day of the eighth consecutive month in which the individual is at no time so enrolled'' for ''and ending seven months later''.

1989—Subsec. (i)(1). Pub. L. 101–239, § 6202(c)(1)(A), redesignated subpars. (B) and (C) as (A) and (B), respectively, struck out former subpar. (A) which read as follows: ''has attained the age of 65,'', and inserted ''not described in the previous sentence'' after ''In the case of an individual'' in second sentence.

Pub. L. 101–239, § 6202(b)(4)(C), substituted ''section 1395y(b)(1)(A)(v)'' and ''section 1395y(b)(1)(B)(iv)'' for ''section 1395y(b)(3)(A)(iv)'' and ''section 1395y(b)(4)(B)'', respectively.

Subsec. (i)(2). Pub. L. 101–239, § 6202(c)(1)(B), substituted ''(1)(A)'' for ''(1)(B)'' in subpar. (B)(i), redesignated subpars. (B) and (C) as (A) and (B), respectively, struck out former subpar. (A) which read as follows: ''has attained the age of 65;'', and inserted ''not described in the previous sentence'' after ''In the case of an individual'' in second sentence.

Pub. L. 101–239, § 6202(b)(4)(C), substituted ''section 1395y(b)(1)(A)(v)'' and ''section 1395y(b)(1)(B)(iv)'' for ''section 1395y(b)(3)(A)(iv)'' and ''section 1395y(b)(4)(B)'', respectively.

Subsec. (i)(3). Pub. L. 101–239, § 6202(b)(4)(C), substituted ''section 1395y(b)(1)(A)(v)'' and ''section 1395y(b)(1)(B)(iv)'' for ''section 1395y(b)(3)(A)(iv)'' and ''section 1395y(b)(4)(B)'', respectively.

1986—Subsec. (i)(1). Pub. L. 99–509, § 9319(c)(1), inserted sentence at end providing for a special enrollment period described in paragraph (3)(B) for individuals not age 65, enrolled in a large health plan, and having elected not to enroll during initial enrollment period.

Subsec. (i)(1)(A). Pub. L. 99–514 realigned margins of subpar. (A).

Pub. L. 99–272, § 9219(a)(2)(A), amended subpar. (A) generally, substituting ''has attained the age of 65'' for ''meets the conditions described in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title''.

Subsec. (i)(2). Pub. L. 99–509, § 9319(c)(2), inserted sentence at end providing for a special enrollment period described in paragraph (3)(B) for individuals not age 65, enrolled or deemed enrolled in the medical insurance program established under this part, or is an individual described in the second sentence of paragraph (1), has enrolled in such program during a subsequent special enrollment period during which the individual was not enrolled in a large group health plan, and has not terminated enrollment.

Subsec. (i)(2)(A). Pub. L. 99–272, § 9219(a)(2)(B), amended subpar. (A) generally, substituting ''has attained the age of 65;'' for ''meets the conditions described in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title,''.

Subsec. (i)(2)(B). Pub. L. 99–272, § 9219(a)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''has enrolled (or has been deemed to have enrolled) in the medical insurance program established under this part during the individual's initial enrollment period and any subsequent special enrollment period under this subsection during which the individual was not enrolled in a group health plan described in section 1395y(b)(3)(A)(iv) of this title by reason of the individual's (or individual's spouse's) current employment, and''.

Subsec. (i)(2)(C), (D). Pub. L. 99–272, § 9219(a)(2)(B), added subpar. (C) and redesignated former subpar. (C) as (D).

Subsec. (i)(3). Pub. L. 99–509, § 9319(c)(3), designated existing provisions as subpar. (A), inserted ''the first sentences of'' after ''referred to in'', and added subpar. (B).

Pub. L. 99–272, § 9201(c)(1), amended par. (3) generally, striking out provision that special enrollment period could be period beginning with first day of third month before month in which the individual attains age of 70 and ending seven months later.

1984—Subsec. (g)(1). Pub. L. 98–369, § 2354(b)(10), substituted ''section 426(b) of this title'' for ''section 426(a)(2)(B) of this title'' and ''section 1395r(d) of this title'' for ''section 1395(e) of this title''.

Subsec. (i). Pub. L. 98–369, § 2338(b), added subsec. (i).

1981—Subsec. (e). Pub. L. 97–35, § 2151(a)(1), substituted ''during the period beginning on January 1 and ending on March 31 of each year'' for ''which is any period after the period described in subsection (d) of this section''.

Subsec. (g)(3). Pub. L. 97–35, § 2151(a)(2), substituted ''the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section)'' for ''the month in which the individual files an application establishing such entitlement''.

1980—Subsec. (b). Pub. L. 96–499, § 945(a), struck out subsec. (b) which provided that no individual could enroll under this part more than twice.

Subsec. (e). Pub. L. 96–499, § 945(b)(1), substituted ''which is any period after the period described in subsection (d) of this section'' for '', after the period described in subsection (c) of this section, during the period beginning on January 1 and ending on March 31 of each year beginning with 1969''.

Subsec. (g)(1). Pub. L. 96–265 substituted ''the 25th month'' for ''the 25th consecutive month''.

Subsec. (g)(3). Pub. L. 96–499, § 945(b)(2), substituted ''the month in which the individual files an application establishing such entitlement'' for ''the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section)''.

1972—Subsec. (b). Pub. L. 92–603, § 260, struck out provisions preventing enrollment under this part more than three years after first opportunity for such enrollment.

Subsec. (c). Pub. L. 92–603, § 201(c)(2)(A), (B), substituted ''paragraph (1) or (2)'' for ''paragraphs (1) and (2)'', and substituted provisions relating to the treatment of an individual who has attained age 65 and who satisfies paragraph (1) of section 1395*o* of this title but not paragraph (2) of such section, for provisions relating to the treatment of an individual who satisfies paragraph (2) of section 1395*o* of this title solely by reason of subparagraph (B) thereof.

Subsec. (d). Pub. L. 92–603, § 201(c)(2)(C), substituted ''paragraph (1) or (2)'' for ''paragraphs (1) and (2)''.

Subsecs. (f), (g). Pub. L. 92–603, § 206(a), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 92–603, § 259(a), added subsec. (h).

1968—Subsec. (b)(1). Pub. L. 90–248, § 145(a), permitted an individual enrolling in supplementary medical insurance program for first time to enroll at any time in a general enrollment period which begins within 3 years of close of his initial enrollment period.

Subsec. (d). Pub. L. 90–248, § 136(a), inserted last sentence providing that if an individual who has attained age 65 failed to enroll in program because, relying on erroneous documentary evidence, he was mistaken about his age, he may enroll using date of attainment of age 65 that he alleges under documentary evidence.

Subsec. (e). Pub. L. 90–248, § 145(b), provided for an annual general enrollment period for supplementary medical insurance program beginning January 1 and ending March 31 of each year, commencing in 1969.

1966—Subsec. (c). Pub. L. 89–384, § 3(a), delayed eligibility date from January 1, 1966, to March 1, 1966, and closing date for enrollment period from March 31, 1966, to May 31, 1966.

Subsec. (d). Pub. L. 89–384, § 3(b), substituted March 1, 1966, for January 1, 1966.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 147(f)(1)(C) of Pub. L. 103–432 provided that: ''The amendments made by subparagraphs (A) and (B) [amending this section and section 1395q of this title] shall take effect on the first day of the first month that begins after the expiration of the 120-day period that begins on the date of the enactment of this Act [Oct. 31, 1994].''

Section 151(c)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 103–66.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6202(b)(4)(C) of Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 6202(c)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and section 1395r of this title] shall apply to enrollments occurring after, and premiums for months after, the second calendar quarter beginning after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 99–509 applicable to enrollments occurring on or after Jan. 1, 1987, see section 9319(f)(2) of Pub. L. 99–509, set out as a note under section 1395y of this title.

Section 9201(d)(2) of Pub. L. 99–272 provided that: ''The amendments made by subsections (b) and (c) [amending this section, section 1395q of this title, and sections 623 and 631 of Title 29, Labor] shall become effective on May 1, 1986.''

Section 9219(a)(3)(B) of Pub. L. 99–272 provided that:

''(i) The amendments made by paragraph (2) [amending this section] shall apply to enrollments in months beginning with the first effective month (as defined in clause (ii)), except that in the case of any individual who would have a special enrollment period under section 1837(i) of the Social Security Act [subsec. (i) of this section] that would have begun after November 1984 and before the first effective month, the period shall be deemed to begin with the first day of the first effective month.

''(ii) For purposes of clause (i), the term 'first effective month' means the first month that begins more than 90 days after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2338(d)(2) of Pub. L. 98–369 provided that:

''(A) The amendments made by subsections (b) and (c) [amending this section and section 1395q of this title] shall apply to enrollments in months beginning with the first effective month, except that in the case of any individual who would have had a special enrollment period under section 1837(i) of the Social Security Act [subsec. (i) of this section] that would have begun before such first effective month, such period shall be deemed to begin with the first day of such first effective month.

''(B) For purposes of subparagraph (A), the term 'first effective month' means the first month which begins more than 90 days after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(10) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2151(b) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 1395q and 1395r of this title] shall not apply to enrollments pursuant to written requests for enrollment filed before October 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Section 945(d) of Pub. L. 96–499 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and sections 1395q and 1395r of this title] shall apply to enrollments occurring on or after April 1, 1981.''

Amendment by Pub. L. 96–265 applicable with respect to hospital insurance or supplementary medical insurance benefits for services provided on or after the first day of the sixth month which begins after June 9, 1980, see section 103(c) of Pub. L. 96–265, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 259(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as of July 1, 1966.''

EFFECTIVE DATE OF 1968 AMENDMENT

Section 136(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to individuals enrolling under part B of title XVIII [this part] in months beginning after the date of the enactment of this Act [Jan. 2, 1968].''

Section 145(e) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a), (b), and (c) [amending this section and section 1395q of this title] shall become effective April 1, 1968. Notwithstanding the provisions of section 2 of Public Law 90–97, the amendments made by subsection (d) [amending section 1395r of this title] shall become effective December 1, 1968.''

EXTENSION THROUGH MARCH 31, 1968 OF 1967 GENERAL ENROLLMENT PERIOD

Pub. L. 90–97, §1, Sept. 30, 1967, 81 Stat. 249, extended the general enrollment period under subsec. (e) of this section, beginning Oct. 1, 1967, and ending Dec. 31, 1967, for purposes of enrolling in the insurance program established under part B of title XVIII of such Act [this part] and of terminating such enrollment as provided in section 1395q(b)(1) of this title, through Mar. 31, 1968.

ENROLLMENT BEFORE OCT. 1, 1966, OF ELIGIBLE INDIVIDUALS FAILING FOR GOOD CAUSE TO ENROLL BEFORE JUNE 1, 1966; COMMENCEMENT OF COVERAGE PERIOD

Section 102(b) of Pub. L. 89–97, as amended by section 3(c) of Pub. L. 89–384, provided that: ''If—

''(1) an individual was eligible to enroll under section 1837(c) of the Social Security Act [subsec. (c) of this section] before June 1, 1966, but failed to enroll before such date, and

''(2) it is shown to the satisfaction of the Secretary of Health, Education, and Welfare [now Health and Human Services] that there was good cause for such failure to enroll before June 1, 1966,

such individual may enroll pursuant to this subsection at any time before October 1, 1966. The determination of what constitutes good cause for purposes of the preceding sentence shall be made in accordance with regulations of the Secretary. In the case of any individual who enrolls pursuant to this subsection, the coverage period (within the meaning of section 1838 of the Social Security Act [section 1395q of this title]) shall begin on the first day of the 6th month after the month in which he enrolls.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 426, 1395i–2, 1395i–2a, 1395q, 1395r, 1395v, 1395gg of this title; title 25 section 1644.

§ 1395q. Coverage period

(a) Commencement

The period during which an individual is entitled to benefits under the insurance program established by this part (hereinafter referred to as his ''coverage period'') shall begin on whichever of the following is the latest:

(1) July 1, 1966 or (in the case of a disabled individual who has not attained age 65) July 1, 1973; or

(2)(A) in the case of an individual who enrolls pursuant to subsection (d) of section 1395p of this title before the month in which he first satisfies paragraph (1) or (2) of section 1395*o* of this title, the first day of such month, or

(B) in the case of an individual who enrolls pursuant to such subsection (d) in the month in which he first satisfies such paragraph, the first day of the month following the month in which he so enrolls, or

(C) in the case of an individual who enrolls pursuant to such subsection (d) in the month following the month in which he first satisfies such paragraph, the first day of the second month following the month in which he so enrolls, or

(D) in the case of an individual who enrolls pursuant to such subsection (d) more than one month following the month in which he satisfies such paragraph, the first day of the third month following the month in which he so enrolls, or

(E) in the case of an individual who enrolls pursuant to subsection (e) of section 1395p of this title, the July 1 following the month in which he so enrolls; or

(3)(A) in the case of an individual who is deemed to have enrolled on or before the last day of the third month of his initial enrollment period, the first day of the month in which he first meets the applicable requirements of section 1395*o* of this title or July 1, 1973, whichever is later, or

(B) in the case of an individual who is deemed to have enrolled on or after the first day of the fourth month of his initial enrollment period, as prescribed under subparagraphs (B), (C), (D), and (E) of paragraph (2) of this subsection.

(b) Continuation

An individual's coverage period shall continue until his enrollment has been terminated—

(1) by the filing of notice that the individual no longer wishes to participate in the insurance program established by this part, or

(2) for nonpayment of premiums.

The termination of a coverage period under paragraph (1) shall (except as otherwise provided in section 1395v(e) of this title) take effect at the close of the month following the month in which the notice is filed. The termination of a coverage period under paragraph (2) shall take effect on a date determined under regulations, which may be determined so as to provide a grace period in which overdue premiums may be paid and coverage continued. The grace period determined under the preceding sentence shall not exceed 90 days; except that it may be extended to not to exceed 180 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 90-day period.

Where an individual who is deemed to have enrolled for medical insurance pursuant to section 1395p(f) of this title files a notice before the first day of the month in which his coverage period begins advising that he does not wish to be so enrolled, the termination of the coverage period resulting from such deemed enrollment shall take effect with the first day of the month the coverage would have been effective. Where an individual who is deemed enrolled for medical insurance benefits pursuant to section 1395p(f) of this title files a notice requesting termination of his deemed coverage in or after the month in which such coverage becomes effective, the termination of such coverage shall take effect at the close of the month following the month in which the notice is filed.

(c) Termination

In the case of an individual satisfying paragraph (1) of section 1395*o* of this title whose entitlement to hospital insurance benefits under part A of this subchapter is based on a disability rather than on his having attained the age of 65, his coverage period (and his enrollment under this part) shall be terminated as of the close of the last month for which he is entitled to hospital insurance benefits.

(d) Payment of expenses incurred during coverage period

No payments may be made under this part with respect to the expenses of an individual unless such expenses were incurred by such individual during a period which, with respect to him, is a coverage period.

(e) Commencement of coverage for special enrollment periods

Notwithstanding subsection (a) of this section, in the case of an individual who enrolls during a special enrollment period pursuant to section 1395p(i)(3) of this title—

(1) in any month of the special enrollment period in which the individual is at any time enrolled in a plan (specified in subparagraph (A) or (B), as applicable, of section 1395p(i)(3) of this title) or in the first month following such a month, the coverage period shall begin on the first day of the month in which the individual so enrolls (or, at the option of the individual, on the first day of any of the following three months), or

(2) in any other month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls.

(Aug. 14, 1935, ch. 531, title XVIII, §1838, as added July 30, 1965, Pub. L. 89–97, title I, §102(a), 79 Stat. 305; amended Jan. 2, 1968, Pub. L. 90–248, title I, §145(c), 81 Stat. 859; Oct. 30, 1972, Pub. L. 92–603, title II, §§201(c)(3), 206(b), (c), 257(a), 86 Stat. 1373, 1378, 1447; Dec. 5, 1980, Pub. L. 96–499, title IX, §§945(c)(1), 947(b), 94 Stat. 2642, 2643; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§2106(b)(2), 2151(a)(3), 95 Stat. 792, 802; July 18, 1984, Pub. L. 98–369, div. B, title III, §2338(c), 98 Stat. 1092; Apr. 7, 1986, Pub. L. 99–272, title IX, §9201(c)(2), 100 Stat. 171; Oct. 21, 1986, Pub. L. 99–509, title IX, §9344(b)(1), 100 Stat. 2042; Oct. 31, 1994, Pub. L. 103–432, title I, §147(f)(1)(B), 108 Stat. 4430.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (c), is classified to section 1395c et seq. of this title.

AMENDMENTS

1994—Subsec. (e). Pub. L. 103–432 amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) in the first month of the special enrollment period, the coverage period shall begin on the first day of that month, or

''(2) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which the individual so enrolls.''

1986—Subsec. (b). Pub. L. 99–509 substituted ''month following the month'' for ''calendar quarter following the calendar quarter'' in second and sixth sentences.

Subsec. (e). Pub. L. 99–272 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''Notwithstanding subsection (a) of this section, in the case of an individual who enrolls during a special enrollment period pursuant to—

''(1) subparagraph (A) of section 1395p(i)(3) of this title—

''(A) before the month in which he attains the age of 70, the coverage period shall begin on the first day of the month in which he has attained the age of 70, or

''(B) in or after the month in which he attains the age of 70, the coverage period shall begin on the first day of the month following the month in which he so enrolls; or

''(2) subparagraph (B) of section 1395p(i)(3) of this title—

''(A) in the first month of the special enrollment period, the coverage period shall begin on the first day of such month, or

''(B) in a month after the first month of the special enrollment period, the coverage period shall begin on the first day of the month following the month in which he so enrolls.''

1984—Subsec. (e). Pub. L. 98–369, §2338(c), added subsec. (e).

1981—Subsec. (a)(2)(E). Pub. L. 97–35, §2151(a)(3), substituted ''the July 1 following'' for ''the first day of the third month following''.

Subsec. (b). Pub. L. 97–35, §2106(b)(2), struck out provision that notice filed by an individual enrolled pursuant to section 1395p(f) of this title shall not be considered a disenrollment for purposes of section 1395p(b) of this title.

1980—Subsec. (a)(2)(E). Pub. L. 96–499, § 945(c)(1), substituted ''the first day of the third month'' for ''the July 1''.

Subsec. (b). Pub. L. 96–499, § 947(b), inserted ''(except as otherwise provided in section 1395v(e) of this title)''.

1972—Subsec. (a)(1). Pub. L. 92–603, § 201(c)(3)(A), inserted ''or (in the case of a disabled individual who has not attained age 65) July 1, 1973'' after ''July 1, 1966''.

Subsec. (a)(2). Pub. L. 92–603, § 201(c)(3)(B), substituted in subpar. (A) ''paragraph (1) or (2)'' for ''paragraphs (1) and (2)'' and in subpars. (B) to (D) ''paragraph'' for ''paragraphs''.

Subsec. (a)(3). Pub. L. 92–603, § 206(b), added par. (3).

Subsec. (b). Pub. L. 92–603, §§ 206(c), 257(a), inserted provisions relating to an individual who is deemed to have enrolled for medical insurance pursuant to section 1395p(f) of this title and an individual who is deemed enrolled for medical insurance benefits pursuant to section 1395p(f) of this title and struck out provisions limiting the allowable grace period to 90 days and inserted provision for extension of such period of up to 180 days where failure to pay premiums is due to good cause.

Subsecs. (c), (d). Pub. L. 92–603, § 202(c)(3)(C), added subsec. (c) and redesignated former subsec. (c) as (d).

1968—Subsec. (b). Pub. L. 90–248 struck out '', during a general enrollment period described in section 1395p(e) of this title,'' after ''notice'' in par. (1), and substituted in first sentence following par. (2) ''the calendar quarter following the calendar quarter'' for ''December 31 of the year''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 effective on first day of first month beginning after expiration of the 120-day period that begins on Oct. 31, 1994, see section 147(f)(1)(C) of Pub. L. 103–432, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9344(b)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to notices filed on or after July 1, 1987.''

Amendment by Pub. L. 99–272 effective May 1, 1986, see section 9201(d)(2) of Pub. L. 99–272, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

For effective date of amendment by Pub. L. 98–369, see section 2338(d)(2) of Pub. L. 98–369, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2106(b)(2) of Pub. L. 97–35 effective Apr. 1, 1981, see section 2106(c) of Pub. L. 97–35, set out as a note under section 1395*l* of this title.

Amendment by section 2151(a)(3) of Pub. L. 97–35 not applicable to enrollments pursuant to written requests for enrollment filed before Oct. 1, 1981, see section 2151(b) of Pub. L. 97–35, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 945(c)(1) of Pub. L. 96–499 applicable to enrollments occurring on or after Apr. 1, 1981, see section 945(d) of Pub. L. 96–499, set out as a note under section 1395p of this title.

Amendment by section 947(b) of Pub. L. 96–499 applicable to notices filed after third calendar month beginning after Dec. 5, 1980, see section 947(d) of Pub. L. 96–499, set out as a note under section 1395v of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 257(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to nonpayment of premiums which become due and payable on or after the date of the enactment of this Act [Oct. 30, 1972] or which became payable within the 90-day period immediately preceding such date; and for purposes of such amendments any premium which became due and payable within such 90-day period shall be considered a premium becoming due and payable on the date of the enactment of this Act.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 effective Apr. 1, 1968, see section 145(e) of Pub. L. 90–248, set out as a note under section 1395p of this title.

COVERAGE PERIOD; TERMINATION DATES

Pub. L. 90–97, § 3(a), Sept. 30, 1967, 81 Stat. 249, provided that: ''In the case of any individual who, pursuant to section 1838(b)(1) of the Social Security Act [subsec. (b)(1) of this section], terminates his enrollment in the insurance program established under part B of title XVIII of such Act [this part], his coverage period (as defined in section 1838(a) of such Act) [subsec. (a) of this section]—

''(1) shall terminate at the close of December 31, 1967, if he filed his notice of termination before January 1, 1968, or

''(2) shall terminate at the close of March 31, 1968, if he filed his notice of termination after December 31, 1967, and before April 1, 1968.

An individual whose coverage period terminated pursuant to paragraph (1) at the close of December 31, 1967, may, notwithstanding section 1837(b)(2) of such Act [section 1395p(b)(2) of this title], enroll in such program before April 1, 1968, and for purposes of sections 1838(a)(2)(E) [subsec. (a)(2)(E) of this section] and 1837(b)(2) of such Act [section 1395p(b)(2) of this title] such enrollment shall be deemed an enrollment under section 1837(e) of such Act [section 1395p(e) of this title] and a second enrollment under such part.''

EXTENSION OF 1967 GENERAL ENROLLMENT PERIOD THROUGH MARCH 31, 1968

Extension of the general enrollment period under section 1395p(e) of this title through March 31, 1968, see section 1 of Pub. L. 90–97, Sept. 30, 1967, 81 Stat. 249, set out as a note under section 1395p of this title.

COVERAGE PERIOD FOR INDIVIDUALS BECOMING ELIGIBLE IN MARCH 1966 WHO ENROLL IN MAY 1966

Pub. L. 89–384, § 3(d), Apr. 8, 1966, 80 Stat. 105, provided that: ''In the case of an individual who first satisfies paragraphs (1) and (2) of section 1836 of the Social Security Act [section 1395*o* of this title] in March, 1966, and who enrolls pursuant to subsection (d) of section 1837 of such Act [section 1395p of this title] in May 1966, his coverage period shall, notwithstanding section 1838(a)(2)(D) of such Act [subsec. (a)(2)(D) of this section], begin on July 1, 1966.''

COMMENCEMENT OF COVERAGE PERIOD OF CERTAIN ENROLLEES

Commencement of coverage period upon enrollment before Oct. 1, 1966 of eligible individuals failing for good cause to enroll before June 1, 1966, see section 102(b) of Pub. L. 89–97, set out as a note under section 1395p of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395i–2, 1395p of this title.

§ 1395r. Amount of premiums for individuals enrolled under this part

(a) Determination of monthly actuarial rates and premiums

(1) The Secretary shall, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for enrollees age 65 and over which shall be applicable for the succeeding

calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to those enrollees age 65 and older will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate, the Secretary shall include an appropriate amount for a contingency margin.

(2) The monthly premium of each individual enrolled under this part for each month after December 1983 shall, except as provided in subsections (b) and (e) of this section, be the amount determined under paragraph (3).

(3) The Secretary shall, during September of 1983 and of each year thereafter, determine and promulgate the monthly premium applicable for individuals enrolled under this part for the succeeding calendar year. The monthly premium shall (except as otherwise provided in subsection (e) of this section) be equal to the smaller of—

(A) the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1) of this subsection, for that calendar year, or

(B) the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 415(a)(1) of this title, based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on November 1 of the year before the year of the promulgation. He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals for the following November 1.

Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for enrollees age 65 and older as provided in paragraph (1) and the derivation of the dollar amounts specified in this paragraph.

(4) The Secretary shall also, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for disabled enrollees under age 65 which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to disabled enrollees under age 65 which will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate under this paragraph, the Secretary shall include an appropriate amount for a contingency margin.

(b) Increase in monthly premium

In the case of an individual whose coverage period began pursuant to an enrollment after his initial enrollment period (determined pursuant to subsection (c) or (d) of section 1395p of this title), the monthly premium determined under subsection (a) or (e) of this section shall be increased by 10 percent of the monthly premium so determined for each full 12 months (in the same continuous period of eligibility) in which he could have been but was not enrolled. For purposes of the preceding sentence, there shall be taken into account (1) the months which elapsed between the close of his initial enrollment period and the close of the enrollment period in which he enrolled, plus (in the case of an individual who reenrolls) (2) the months which elapsed between the date of termination of a previous coverage period and the close of the enrollment period in which he reenrolled, but there shall not be taken into account months for which the individual can demonstrate that the individual was enrolled in a group health plan described in section 1395y(b)(1)(A)(v) of this title by reason of the individual's (or the individual's spouse's) current employment status or months during which the individual has not attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a large group health plan (as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual). Any increase in an individual's monthly premium under the first sentence of this subsection with respect to a particular continuous period of eligibility shall not be applicable with respect to any other continuous period of eligibility which such individual may have.

(c) Premiums rounded to nearest multiple of ten cents

If any monthly premium determined under the foregoing provisions of this section is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.

(d) "Continuous period of eligibility" defined

For purposes of subsection (b) of this section (and section 1395p(g)(1) of this title), an individual's ''continuous period of eligibility'' is the period beginning with the first day on which he is eligible to enroll under section 1395*o* of this title and ending with his death; except that any period during all of which an individual satisfied paragraph (1) of section 1395*o* of this title and which terminated in or before the month preceding the month in which he attained age 65 shall be a separate ''continuous period of eligibility'' with respect to such individual (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this section).

(e) Monthly premium for individuals enrolled for each month after December 1995 and prior to January 1999

(1)(A) Notwithstanding the provisions of subsection (a) of this section, the monthly premium

for each individual enrolled under this part for each month after after[1] December 1995 and prior to January 1999 shall be an amount equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, as determined under subsection (a)(1) of this section and applicable to such month.

(B) Notwithstanding the provisions of subsection (a) of this section, the monthly premium for each individual enrolled under this part for each month in—

(i) 1991 shall be $29.90,
(ii) 1992 shall be $31.80,
(iii) 1993 shall be $36.60,
(iv) 1994 shall be $41.10, and
(v) 1995 shall be $46.10.

(2) Any increases in premium amounts taking effect prior to January 1998 by reason of paragraph (1) shall be taken into account for purposes of determining increases thereafter under subsection (a)(3) of this section.

(f) Limitation on increase in monthly premium

For any calendar year after 1988, if an individual is entitled to monthly benefits under section 402 or 423 of this title or to a monthly annuity under section 3(a), 4(a), or 4(f) of the Railroad Retirement Act of 1974 [45 U.S.C. 231b(a), 231c(a), (f)] for November and December of the preceding year, and if the monthly premium of the individual under this section for December and for January is deducted from those benefits under section 1395s(a)(1) of this title or section 1395s(b)(1) of this title, the monthly premium otherwise determined under this section for an individual for that year shall not be increased, pursuant to this subsection, to the extent that such increase would reduce the amount of benefits payable to that individual for that December below the amount of benefits payable to that individual for that November (after the deduction of the premium under this section). For purposes of this subsection, retroactive adjustments or payments and deductions on account of work shall not be taken into account in determining the monthly benefits to which an individual is entitled under section 402 or 423 of this title or under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

(g) State payment of part B late enrollment premium increases

(1) Upon the request of a State, the Secretary may enter into an agreement with the State under which the State agrees to pay on a quarterly or other periodic basis to the Secretary (to be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund) an amount equal to the amount of the part B late enrollment premium increases with respect to the premiums for eligible individuals (as defined in paragraph (3)(A)).

(2) No part B late enrollment premium increase shall apply to an eligible individual for premiums for months for which the amount of such an increase is payable under an agreement under paragraph (1).

(3) In this subsection:

(A) The term ''eligible individual'' means an individual who is enrolled under this part B and who is within a class of individuals specified in the agreement under paragraph (1).

(B) The term ''part B late enrollment premium increase'' means any increase in a premium as a result of the application of subsection (b) of this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1839, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 305; amended Jan. 2, 1968, Pub. L. 90–248, title I, § 145(d), 81 Stat. 859; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 201(c)(4), (5), 203 (a)–(d), 86 Stat. 1373, 1376, 1377; Dec. 31, 1975, Pub. L. 94–182, title I, § 104(a), 89 Stat. 1052; Dec. 20, 1977, Pub. L. 95–216, title II, § 205(e), 91 Stat. 1529; Dec. 5, 1980, Pub. L. 96–499, title IX, § 945(c)(2), 94 Stat. 2642; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2151(a)(4), 95 Stat. 802; Sept. 3, 1982, Pub. L. 97–248, title I, § 124(a), (b), 96 Stat. 364; Jan. 12, 1983, Pub. L. 97–448, title III, § 309(b)(8), 96 Stat. 2409; Apr. 20, 1983, Pub. L. 98–21, title VI, § 606(a)(1)–(3)(C), 97 Stat. 169, 170; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2302(a), (b), 2338(a), 98 Stat. 1063, 1091; Nov. 8, 1984, Pub. L. 98–617, § 3(b)(4), 98 Stat. 3295; Apr. 7, 1986, Pub. L. 99–272, title IX, §§ 9219(a)(1), 9313, 100 Stat. 182, 194; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9001(c), 9319(c)(4), 100 Stat. 1970, 2012; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4080, 101 Stat. 1330–126; July 1, 1988, Pub. L. 100–360, title II, § 211(a)–(c)(1), 102 Stat. 733, 738; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(9), 102 Stat. 2415; Dec. 13, 1989, Pub. L. 101–234, title II, § 202(a), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6202(b)(4)(C), (c)(2), 6301, 103 Stat. 2233, 2234, 2258; Nov. 5, 1990, Pub. L. 101–508, title IV, § 4301, 104 Stat. 1388–125; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13571, 107 Stat. 609; Oct. 31, 1994, Pub. L. 103–432, title I, §§ 144, 151(c)(3), 108 Stat. 4427, 4435.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (f), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–432, § 151(c)(3), in second sentence, inserted ''status'' after ''current employment'' and substituted ''(as that term is defined in section 1395y(b)(1)(B)(iv) of this title) by reason of the individual's current employment status (or the current employment status of a family member of the individual)'' for ''as an active individual (as those terms are defined in section 1395y(b)(1)(B)(iv) of this title)''.

Subsec. (g). Pub. L. 103–432, § 144, added subsec. (g).

1993—Subsec. (e)(1)(A). Pub. L. 103–66, § 13571(1), substituted ''after December 1995 and prior to January 1999 shall be an amount equal to 50 percent'' for ''December 1983 and prior to January 1991 shall be an amount equal to 50 percent''.

Subsec. (e)(2). Pub. L. 103–66, § 13571(2), substituted ''1998'' for ''1991''.

1990—Subsec. (e)(1). Pub. L. 101–508 designated existing provisions as subpar. (A) and added subpar. (B).

1989—Subsec. (a). Pub. L. 101–234 repealed Pub. L. 100–360, § 211(c)(1)(A)–(D), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment notes below.

[1] So in original.

Subsec. (b). Pub. L. 101–239, § 6202(c)(2), struck out ''during which the individual has attained the age of 65 and'' after ''into account months'' in second sentence.

Pub. L. 101–239, § 6202(b)(4)(C), substituted ''section 1395y(b)(1)(A)(v)'' and ''section 1395y(b)(1)(B)(iv)'' for ''section 1395y(b)(3)(A)(iv)'' and ''section 1395y(b)(4)(B)'', respectively.

Pub. L. 101–234 repealed Pub. L. 100–360, § 211(c)(1)(E), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (e). Pub. L. 101–239, § 6301, substituted ''1991'' for ''1990'' wherever appearing.

Subsec. (e)(1). Pub. L. 101–234 repealed Pub. L. 100–360, § 211(c)(1)(F), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (g). Pub. L. 101–234 repealed Pub. L. 100–360, § 211(a), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a)(1). Pub. L. 100–360, § 211(c)(1)(A), (B), inserted ''(other than costs relating to the amendments made by the Medicare Catastrophic Coverage Act of 1988)'' before period at end of second sentence, and '', but shall not take into account any amounts in the Trust Fund that may be attributable to receipts or outlays relating to the Medicare Catastrophic Coverage Account'' before period at end of last sentence.

Subsec. (a)(2). Pub. L. 100–360, § 211(c)(1)(C), substituted '', (e), and (g)'' for ''and (e)''.

Subsec. (a)(3). Pub. L. 100–360, § 211(c)(1)(D), substituted ''subsections (e) and (g)'' for ''subsection (e)'' in introductory provisions.

Subsec. (a)(4). Pub. L. 100–360, § 211(c)(1)(A), (B), inserted ''(other than costs relating to the amendments made by the Medicare Catastrophic Coverage Act of 1988)'' before period at end of second sentence, and '', but shall not take into account any amounts in the Trust Fund that may be attributable to receipts or outlays relating to the Medicare Catastrophic Coverage Account'' before period at end of last sentence.

Subsec. (b). Pub. L. 100–360, § 211(c)(1)(E), substituted ''otherwise determined under this section (without regard to subsections (f) and (g)(6) of this section)'' for ''determined under subsection (a) or (e) of this section''.

Subsec. (e)(1). Pub. L. 100–360, § 211(c)(1)(F), inserted ''except as provided in subsection (g) of this section,'' after ''subsection (a) of this section''.

Subsec. (f). Pub. L. 100–485, § 608(d)(8)(B), substituted ''for that December below the amount of benefits payable to that individual for that November'' for ''for that January below the amount of benefits payable to that individual for that December''.

Pub. L. 100–360, § 211(b), amended subsec. (f) generally, substituting a single paragraph for former pars. (1) and (2).

Subsec. (g). Pub. L. 100–360, § 211(a), added subsec. (g) relating to adjustment in medicare part B premium.

Subsec. (g)(1)(B)(iii)(I). Pub. L. 100–485, § 608(d)(9)(A)(i), substituted ''year, over'' for ''year, and''.

Subsec. (g)(1)(B)(iii)(II). Pub. L. 100–485, § 608(d)(9)(A)(ii), substituted ''supplemental premium rate'' for ''supplemental rate''.

Subsec. (g)(7)(A)(ii). Pub. L. 100–485, § 608(d)(9)(A)(iii), substituted ''of each such year'' for ''of such year''.

1987—Subsec. (e). Pub. L. 100–203, § 4080(1), substituted ''1990'' for ''1989'' wherever appearing.

Subsec. (f)(1). Pub. L. 100–203, § 4080(2), substituted ''1987, or 1988'' for ''or 1987''.

Subsec. (f)(2). Pub. L. 100–203, § 4080(3), substituted ''1988, or 1989'' for ''or 1988''.

1986—Subsec. (b). Pub. L. 99–509, § 9319(c)(4), inserted ''or months during which the individual has not attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a large group health plan as an active individual (as those terms are defined in section 1395y(b)(4)(B) of this title)'' at end of second sentence.

Pub. L. 99–272, § 9219(a)(1), substituted ''months during which the individual has attained the age of 65 and for which the individual can demonstrate that the individual was enrolled in a group health plan described in section 1395y(b)(3)(A)(iv) of this title'' for ''months in which the individual has met the conditions specified in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title and can demonstrate that the individual was enrolled in a group health plan described in clause (iv) of such section''.

Subsec. (e). Pub. L. 99–272, § 9313(1), substituted ''1989'' for ''1988'' wherever appearing.

Subsec. (f)(1). Pub. L. 99–272, § 9313(2), substituted '', 1986, or 1987'' for ''or 1986''.

Subsec. (f)(2). Pub. L. 99–272, § 9313(3), substituted '', 1987, or 1988'' for ''or 1987''.

Subsec. (f)(2)(A). Pub. L. 99–509, § 9001(c), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the monthly premium amount determined under subsection (a)(2) of this section for that January reduced by the amount (if any) necessary to make the monthly benefits under section 402 or 423 of this title for that December after the deduction of the monthly premium (disregarding subsection (b) of this section) for that January at least equal to the monthly benefits under section 402 or 423 of this title for the preceding November after the deduction of the premium (disregarding subsection (b) of this section) for that individual for that December, or''.

1984—Subsec. (b). Pub. L. 98–369, § 2338(a), inserted provision that there shall not be taken into account months in which the individual has met conditions specified in clauses (i) and (iii) of section 1395y(b)(3)(A) of this title and can demonstrate that the individual was enrolled in a group health plan described in clause (iv) of such section by reason of the individual's (or the individual's spouse's) current employment.

Subsec. (e). Pub. L. 98–369, § 2302(a), substituted ''1988'' for ''1986'' in pars. (1) and (2).

Subsec. (f). Pub. L. 98–369, § 2302(b), added subsec. (f).

Subsec. (f)(2)(A). Pub. L. 98–617, § 3(b)(4), substituted ''for that December after the deduction'' for ''for that January after the deduction'' and ''for that December'' for ''for that November''.

1983—Subsec. (a). Pub. L. 98–21, § 606(a)(1), added subsec. (a) and struck out former subsec. (a) which provided that monthly premium of each individual enrolled under this part for each month before 1968 would be $3.

Subsec. (b). Pub. L. 98–21, § 606(a)(3)(A), substituted ''subsection (a) or (e)'' for ''subsection (b), (c), or (g)''.

Pub. L. 98–21, § 606(a)(1), (2), redesignated subsec. (d) as (b), and struck out former subsec. (b) which provided for determination by Secretary of monthly premium for each individual enrolled under this part for each month after 1967 and before July 1, 1973.

Subsec. (c). Pub. L. 98–21, § 606(a)(1), (2), redesignated subsec. (e) as (c), and struck out former subsec. (c) which directed Secretary to determine during December of each year after 1972 the monthly actuarial rate for enrollees age 65 and over applicable to succeeding fiscal year (beginning July 1), provided for his determination of monthly premium for such period, and directed him to determine monthly actuarial rate for disabled enrollees under age 65.

Subsec. (d). Pub. L. 98–21, § 606(a)(3)(B), which directed that ''purposes of subsection (b)'' be substituted for ''purposes of subsection (c)'' was executed by substituting ''purposes of subsection (b)'' for ''purposes of subsection (d)'', as the probable intent of Congress in view of previous substitution of ''subsection (d)'' for ''subsection (c)'' by Pub. L. 92–603, § 203(d)(2).

Pub. L. 98–21, § 606(a)(2), redesignated subsec. (f) as (d). Former subsec. (d) redesignated (b).

Pub. L. 97–448 inserted reference to determination of monthly premium pursuant to subsec. (g) of this section.

Subsec. (e). Pub. L. 98–21, § 606(a)(2), redesignated subsec. (g) as (e). Former subsec. (e) redesignated (c).

Subsec. (e)(1). Pub. L. 98–21, § 606(a)(3)(C), substituted ''(a)'' for ''(c)'', ''(a)(1)'' for ''(c)(1)'', ''December 1983'' for ''June 1983'', and ''January 1986'' for ''July 1985''.

Subsec. (e)(2). Pub. L. 98–21, § 606(a)(3)(C)(i), (iii), substituted ''(a)(3)'' for ''(c)(3)'' and ''January 1986'' for ''July 1985''.

Subsecs. (f), (g). Pub. L. 98–21, § 606(a)(2), redesignated subsecs. (f) and (g) as (d) and (e), respectively.

1982—Subsec. (c)(2). Pub. L. 97–248, § 124(a)(1), substituted ''except as provided in subsections (d) and (g)'' for ''except as provided in subsection (d)''.

Subsec. (c)(3). Pub. L. 97–248, § 124(a)(2), inserted ''(except as otherwise provided in subsection (g) of this section)''.

Subsec. (g). Pub. L. 97–248, § 124(b), added subsec. (g).

1981—Subsec. (d). Pub. L. 97–35 substituted ''the close of the enrollment period in which he reenrolled'' for ''the month after the month in which he reenrolled'' in cl. (2).

1980—Subsec. (d). Pub. L. 96–499 substituted ''who reenrolls) (2) the months which elapsed between the date of termination of a previous coverage period and the month after the month in which he reenrolled'' for ''who enrolls for a second time) (2) the months which elapsed between the date of the termination of his first coverage period and the close of the enrollment period in which he enrolled for the second time''.

1977—Subsec. (c)(3)(B). Pub. L. 95–216 substituted ''the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 415(a)(1) of this title, based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on May 1 of the year of the promulgation'' for ''the monthly premium rate most recently promulgated by the Secretary under this paragraph or, in the case of the determination made in December 1971, such rate promulgated under subsection (b)(2) of this section multiplied by the ratio of (i) the amount in column IV of the table which, by reason of the law in effect at the time the promulgation is made, will be in effect as of May 1 next following such determination appears (or is deemed to appear) in section 415(a) of this title on the line which includes the figure '750' in column III of such table to (ii) the amount in column IV of the table which appeared (or was deemed to appear) in section 415(a) of this title on the line which included the figure '750' in column III as of May 1 of the year in which such determination is made'' and inserted ''He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals on the following May 1.''

1975—Subsec. (c)(3). Pub. L. 94–182 substituted ''May 1'' for ''June 1'' wherever appearing.

1972—Subsec. (b)(1). Pub. L. 92–603, § 203(a), inserted ''and before July 1, 1973'' following ''1967''.

Subsec. (b)(2). Pub. L. 92–603, § 203(b), substituted ''ending on or before December 31, 1971'' for ''thereafter''.

Subsec. (c). Pub. L. 92–603, § 203(c), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 92–603, §§ 201(c)(4), 203(c), (d)(1), redesignated former subsec. (c) as (d), inserted reference to subsec. (c) after reference to subsec. (b), inserted ''(in the same continuous period of eligibility)'' after ''for each full 12 months'', and inserted provisions relating to any increase in an individual's monthly premium under the first sentence of this subsection. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 92–603, § 203(c), redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f).

Pub. L. 92–603, § 201(c)(5), added subsec. (e).

Subsec. (f). Pub. L. 92–603, § 203(c), (d)(2), redesignated former subsec. (e) as (f) and substituted ''subsection (d)'' for ''subsection (c)''.

1968—Subsec. (b)(2). Pub. L. 90–248 required Secretary, during December of each year, beginning in 1968, to determine and announce amount (whether or not such amount was applicable for premiums for any prior month) of supplementary medical insurance premium for 12-month period beginning on July 1 of each following year, which premium is to be such that aggregate premiums will equal one-half estimated benefit and administrative expenses of supplementary medical insurance program for such 12-month period, and that at time of announcement of premium amount, Secretary must make public actuarial assumptions and bases used in deciding amount of premium.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 151(c)(3) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 103–66.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6202(b)(4)(C) of Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 6202(c)(2) of Pub. L. 101–239 applicable to enrollments occurring after, and premiums for months after, second calendar quarter beginning after Dec. 19, 1989, see section 6202(c)(3) of Pub. L. 101–239, set out as a note under section 1395p of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, and applicable to premiums for months beginning after Dec. 31, 1989, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 211(d) of Pub. L. 100–360, which provided that the amendments made by section 211 of Pub. L. 100–360 [amending this section and sections 1395w and 1395mm of this title] applied (except as otherwise specified in such amendments) to monthly premiums for months beginning with January 1989, was repealed by Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9001(c) of Pub. L. 99–509 applicable with respect to monthly premiums under this section for months after December 1986, see section 9001(d)(3) of Pub. L. 99–509, set out as a note under section 415 of this title.

Amendment by section 9319(c)(4) of Pub. L. 99–509 applicable to enrollments occurring on or after Jan. 1, 1987, see section 9319(f)(2) of Pub. L. 99–509 set out as a note under section 1395y of this title.

Section 9219(a)(3)(A) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to months beginning with January 1983 for premiums for months beginning with the first month that begins more than 30 days after the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Section 2302(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to premiums for months beginning with January 1986.''

Section 2338(d)(1) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to months beginning with Jan-

uary 1983 for premiums for months beginning with the first month which begins more than 30 days after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1983 AMENDMENTS; TRANSITIONAL RULE

Section 606(c) of Pub. L. 98–21 provided that: ''The amendments made by this section [amending this section and sections 1395i–2, 1395v, 1395w, and 1395mm of this title] shall apply to premiums for months beginning with January 1984, and for months after June 1983 and before January 1984—

''(1) the monthly premiums under part A and under part B of title XVIII of the Social Security Act [parts A and B of this subchapter] for individuals enrolled under each respective part shall be the monthly premium under that part for the month of June 1983, and

''(2) the amount of the Government contributions under section 1844(a)(1) of such Act [section 1395w(a)(1) of this title] shall be computed on the basis of the actuarially adequate rate which would have been in effect under part B of title XVIII of such Act for such months without regard to the amendments made by this section, but using the amount of the premium in effect for the month of June 1983.''

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 not applicable to enrollments pursuant to written requests for enrollment filed before Oct. 1, 1981, see section 2151(b) of Pub. L. 97–35, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–499 applicable to enrollments occurring on or after Apr. 1, 1981, see section 945(d) of Pub. L. 96–499, set out as a note under section 1395p of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective with respect to monthly benefits and lump-sum death payments for deaths occurring after December 1978, see section 206 of Pub. L. 95–216, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 104(b) of Pub. L. 94–182 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to determinations made under section 1839(c)(3) of the Social Security Act [subsec. (c)(3) of this section] after the date of the enactment of this Act [Dec. 31, 1975].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–248 effective Dec. 1, 1968, see section 145(e) of Pub. L. 90–248, set out as a note under section 1395p of this title.

DETERMINATION OF PREMIUM AMOUNTS BY SECRETARY

Pub. L. 90–97, §2, Sept. 30, 1967, 81 Stat. 249, provided that: ''Notwithstanding the provisions of section 1839(a) and (b) of the Social Security Act [subsecs. (a) and (b) of this section]—

''(1) the dollar amount applicable for premiums under part B of title XVIII of such Act [this part] for each month before April 1968 shall be $3, and

''(2) the Secretary of Health, Education, and Welfare may determine and promulgate such dollar amount for months after March 1968 and before January 1970 at any time on or before December 31, 1967.''

PERSONS ENROLLING BEFORE APRIL 1, 1968, WHO DID NOT ENROLL DURING THEIR INITIAL ENROLLMENT PERIOD

Pub. L. 90–97, §3(b), Sept. 30, 1967, 81 Stat. 250, provided that: ''In the case of any individual who did not enroll in the insurance program established under part B of title XVIII of the Social Security Act [this part] in his initial enrollment period, but does so enroll before April 1, 1968, the enrollment period in which he so enrolls shall, for purposes of section 1839(c) of such Act [subsec. (c) of this section], be deemed to have closed on December 31, 1967.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395i–2, 1395p, 1395v, 1395w of this title.

§ 1395s. Payment of premiums

(a) Deductions from section 402 or 423 monthly benefits

(1) In the case of an individual who is entitled to monthly benefits under section 402 or 423 of this title, his monthly premiums under this part shall (except as provided in subsections (b)(1) and (c) of this section) be collected by deducting the amount thereof from the amount of such monthly benefits. Such deduction shall be made in such manner and at such times as the Commissioner of Social Security shall by regulation prescribe. Such regulations shall be prescribed after consultation with the Secretary.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates from benefits under section 402 or 423 of this title which are payable from such Trust Fund. Such transfer shall be made on the basis of a certification by the Commissioner of Social Security and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(b) Deductions from railroad retirement annuities or pensions

(1) In the case of an individual who is entitled to receive for a month an annuity under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.] (whether or not such individual is also entitled for such month to a monthly insurance benefit under section 402 of this title), his monthly premiums under this part shall (except as provided in subsection (c) of this section) be collected by deducting the amount thereof from such annuity or pension. Such deduction shall be made in such manner and at such times as the Secretary shall by regulations prescribe. Such regulations shall be prescribed only after consultation with the Railroad Retirement Board.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Railroad Retirement Account to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such trans-

fers shall be made on the basis of a certification by the Railroad Retirement Board and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(c) Portion of monthly premium in excess of deducted amount

If an individual to whom subsection (a) or (b) of this section applies estimates that the amount which will be available for deduction under such subsection for any premium payment period will be less than the amount of the monthly premiums for such period, he may (under regulations) pay to the Secretary such portion of the monthly premiums for such period as he desires.

(d) Deductions from civil service retirement annuities

(1) In the case of an individual receiving an annuity under subchapter III of chapter 83 of title 5 or any other law administered by the Director of the Office of Personnel Management providing retirement or survivorship protection, to whom neither subsection (a) nor subsection (b) of this section applies, his monthly premiums under this part (and the monthly premiums of the spouse of such individual under this part if neither subsection (a) nor subsection (b) of this section applies to such spouse and if such individual agrees) shall, upon notice from the Secretary of Health and Human Services to the Director of the Office of Personnel Management, be collected by deducting the amount thereof from each installment of such annuity. Such deduction shall be made in such manner and at such times as the Director of the Office of Personnel Management may determine. The Director of the Office of Personnel Management shall furnish such information as the Secretary of Health and Human Services may reasonably request in order to carry out his functions under this part with respect to individuals to whom this subsection applies. A plan described in section 8903 or 8903a of title 5 may reimburse each annuitant enrolled in such plan an amount equal to the premiums paid by him under this part if such reimbursement is paid entirely from funds of such plan which are derived from sources other than the contributions described in section 8906 of such title.

(2) The Secretary of the Treasury shall, from time to time, but not less often than quarterly, transfer from the Civil Service Retirement and Disability Fund, or the account (if any) applicable in the case of such other law administered by the Director of the Office of Personnel Management, to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfer shall be made on the basis of a certification by the Director of the Office of Personnel Management and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(e) Manner and time of payment prescribed by Secretary

In the case of an individual who participates in the insurance program established by this part but with respect to whom none of the preceding provisions of this section applies, or with respect to whom subsection (c) of this section applies, the premiums shall be paid to the Secretary at such times, and in such manner, as the Secretary shall by regulations prescribe.

(f) Deposit of amounts in Treasury

Amounts paid to the Secretary under subsection (c) or (e) of this section shall be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund.

(g) Premium payability period

In the case of an individual who participates in the insurance program established by this part, premiums shall be payable for the period commencing with the first month of his coverage period and ending with the month in which he dies or, if earlier, in which his coverage under such program terminates.

(h) Exempted monthly benefits

In the case of an individual who is enrolled under the program established by this part as a member of a coverage group to which an agreement with a State entered into pursuant to section 1395v of this title is applicable, subsections (a), (b), (c), and (d) of this section shall not apply to his monthly premium for any month in his coverage period which is determined under section 1395v(d) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1840, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 306; amended Apr. 8, 1966, Pub. L. 89–384, § 4(c), 80 Stat. 106; Jan. 2, 1968, Pub. L. 90–248, title I, § 166, title IV, § 403(g), 81 Stat. 874, 932; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 201(c)(6), 263(a)–(d)(3), 86 Stat. 1373, 1448, 1449; Oct. 16, 1974, Pub. L. 93–445, title III, § 306, 88 Stat. 1358; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2354(b)(11), title VI, § 2663(j)(2)(F)(ii), 98 Stat. 1101, 1170; June 17, 1985, Pub. L. 99–53, § 2(g), 99 Stat. 94; July 1, 1988, Pub. L. 100–360, title II, § 212(b)(1), 102 Stat. 740; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(10)(B), 102 Stat. 2415; Dec. 13, 1989, Pub. L. 101–234, title II, § 202(a), 103 Stat. 1981; Aug. 15, 1994, Pub. L. 103–296, title I, § 108(c)(2), 108 Stat. 1485.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (b)(1), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–296, § 108(c)(2)(A), substituted ''Commissioner of Social Security'' for ''Secretary'' and inserted at end ''Such regulations shall be prescribed after consultation with the Secretary.''

Subsec. (a)(2). Pub. L. 103–296, § 108(c)(2)(B), substituted ''Commissioner of Social Security'' for ''Secretary of Health and Human Services''.

1989—Subsec. (i). Pub. L. 101–234 repealed Pub. L. 100–360, § 212(b)(1), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (i). Pub. L. 100–485 substituted ''Supplementary'' for ''Supplemental''.

Pub. L. 100–360 added subsec. (i) relating to transfer to flat prescription drug premiums to Federal Catastrophic Drug Insurance Trust Fund.

1985—Subsec. (d)(1). Pub. L. 99–53 inserted reference to section 8903a of title 5.

1984—Subsec. (a)(2). Pub. L. 98–369, §2663(j)(2)(F)(ii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d)(1). Pub. L. 98–369, §2354(b)(11), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission''.

Pub. L. 98–369, §2663(j)(2)(F)(ii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Subsec. (d)(2). Pub. L. 98–369, §2354(b)(11), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission''.

1974—Subsec. (b)(1). Pub. L. 93–445 substituted ''under the Railroad Retirement Act of 1974'' for ''or pension under the Railroad Retirement Act of 1937''.

1972—Subsec. (a)(1). Pub. L. 92–603, §§201(c)(6)(A), 263(a), substituted ''subsections (b)(1) and (c)'' for ''subsection (d)'' and inserted reference to section 423 of this title.

Subsec. (a)(2). Pub. L. 92–603, §201(c)(6)(B), inserted reference to section 423 of this title.

Subsec. (b)(1). Pub. L. 92–603, §263(b), inserted ''(whether or not such individual is also entitled for such month to a monthly insurance benefit under section 402 of this title)'' after ''1937'' and substituted ''subsection (c)'' for ''subsection (d)''.

Subsec. (c). Pub. L. 92–603, §263(c), struck out subsec. (c) covering individuals entitled both to monthly benefits under section 402 of this title and to an annuity or pension under Railroad Retirement Act of 1937 and redesignated former subsec. (d) as (c).

Subsec. (d). Pub. L. 92–603, §263(c), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 92–603, §263(c), (d)(1), redesignated subsec. (f) as (e) and substituted ''subsection (c)'' for ''subsection (d)''. Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 92–603, §263(c), (d)(2), redesignated subsec. (g) as (f) and substituted ''subsections (c) or (e)'' for ''subsections (d) or (f)''. Former subsec. (f) redesignated (e) and amended.

Subsec. (g). Pub. L. 92–603, §263(c), redesignated subsec. (h) as (g). Former subsec. (g) redesignated (f) and amended.

Subsecs. (h), (i). Pub. L. 92–603, §263(c), (d)(3), redesignated subsec. (i) as (h) and substituted ''(c) and (d)'' for ''(c), (d), and (e)''. Former subsec. (h) redesignated (g).

1968—Subsec. (e). Pub. L. 90–248 provided for reimbursement of civil service retirement annuitants for certain premium payments under supplementary medical insurance program, and substituted ''subchapter III of chapter 83 of Title 5 or any other law'' and ''such other law'' for ''the Civil Service Retirement Act, or other Act'' and ''such other Act'', in pars. (1) and (2), respectively.

1966—Subsec. (i). Pub. L. 89–384 added subsec. (i).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(b)(11) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(j)(2)(F)(ii) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 263(f) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395t and 1395u of this title] with respect to collection of premiums shall apply to premiums becoming due and payable after the fourth month following the month in which this Act is enacted [October 1972].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415, 428, 1395i–2, 1395r, 1395t of this title.

§ 1395t. Federal Supplementary Medical Insurance Trust Fund

(a) Creation; deposits; fund transfers

There is hereby created on the books of the Treasury of the United States a trust fund to be known as the ''Federal Supplementary Medical Insurance Trust Fund'' (hereinafter in this section referred to as the ''Trust Fund''). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and such amounts as may be deposited in, or appropriated to, such fund as provided in this part.

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the ''Board of Trustees'') composed of the Commissioner of Social Security, the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate. A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the ''Managing Trustee'').

The Administrator of the Health Care Financing Administration shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years;

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable. Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

(c) Investment of Trust Fund by Managing Trustee

It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under chapter 31 of title 31 are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Authority of Managing Trustee to sell obligations

Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) Interest on or proceeds from sale or redemption of obligations

The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f) Transfers to other Funds

There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1395gg(b) of this title. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health and Human Services shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1395gg(b) of this title.

(g) Payments from Trust Fund of amounts provided for by this part or with respect to administrative expenses

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 401(g)(1) of this title.

(h) Payments from Trust Fund of costs incurred by Director of Office of Personnel Management

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to pay the costs incurred by the Director of the Office of Personnel Management in making deductions pursuant to section 1395s(d) of this title. During each fiscal year, or after the close of such fiscal year, the Director

of the Office of Personnel Management shall certify to the Secretary the amount of the costs the Director incurred in making such deductions, and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

(i) Payments from Trust Fund of costs incurred by Railroad Retirement Board

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health and Human Services certifies are necessary to pay the costs incurred by the Railroad Retirement Board for services performed pursuant to section 1395s(b)(1) and section 1395u(g) of this title. During each fiscal year or after the close of such fiscal year, the Railroad Retirement Board shall certify to the Secretary the amount of the costs it incurred in performing such services and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

(Aug. 14, 1935, ch. 531, title XVIII, § 1841, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 308; amended Jan. 2, 1968, Pub. L. 90–248, title I, § 169(a), 81 Stat. 875; Oct. 30, 1972, Pub. L. 92–603, title I, § 132(e), title II, § 263(d)(4), (e), 86 Stat. 1361, 1449; June 13, 1978, Pub. L. 95–292, § 5, 92 Stat. 315; Apr. 20, 1983, Pub. L. 98–21, title I, § 154(c), title III, § 341(c), 97 Stat. 107, 135; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2354(b)(2), (11), (12), title VI, § 2663(j)(2)(F)(iii), 98 Stat. 1100, 1101, 1170; Apr. 7, 1986, Pub. L. 99–272, title IX, § 9213(b), 100 Stat. 180; July 1, 1988, Pub. L. 100–360, title II, § 212(b)(2), (c)(4), 102 Stat. 740, 741; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8005(a), 102 Stat. 3781; Dec. 13, 1989, Pub. L. 101–234, title II, § 202(a), 103 Stat. 1981; Aug. 15, 1994, Pub. L. 103–296, title I, § 108(c)(3), 108 Stat. 1485.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–296 inserted ''the Commissioner of Social Security,'' after ''composed of'' in introductory provisions.

1989—Subsecs. (a), (b). Pub. L. 101–234 repealed Pub. L. 100–360, § 212(b)(2), (c)(4), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment notes below.

1988—Subsec. (a). Pub. L. 100–360, § 212(b)(2), inserted three sentences at end providing for transfer of supplemental catastrophic coverage premiums into the Federal Supplementary Medical Insurance Trust Fund.

Subsec. (b). Pub. L. 100–647 inserted after first sentence ''A member of the Board of Trustees serving as a member of the public and nominated and confirmed to fill a vacancy occurring during a term shall be nominated and confirmed only for the remainder of such term. An individual nominated and confirmed as a member of the public may serve in such position after the expiration of such member's term until the earlier of the time at which the member's successor takes office or the time at which a report of the Board is first issued under paragraph (2) after the expiration of the member's term.''

Pub. L. 100–360, § 212(c)(4), inserted after sixth sentence ''Such report shall also identify (and treat separately) those receipts and outlays in the Trust Fund which are also receipts and outlays in the Medicare Catastrophic Coverage Account created under section 1395t–2 of this title.''

1986—Subsec. (b). Pub. L. 99–272 struck out provision at end of penultimate sentence that the certification shall not refer to economic assumptions underlying Trustee's report.

1984—Subsec. (c). Pub. L. 98–369, § 2354(b)(2), substituted ''under chapter 31 of title 31'' for ''under the Second Liberty Bond Act, as amended''.

Subsecs. (f), (g). Pub. L. 98–369, § 2663(j)(2)(F)(iii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' wherever appearing.

Subsec. (h). Pub. L. 98–369, § 2663(j)(2)(F)(iii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

Pub. L. 98–369, § 2354(b)(11), substituted ''Director of the Office of Personnel Management'' for ''Civil Service Commission'' in two places.

Pub. L. 98–369, § 2354(b)(12), substituted ''the Director'' for ''it''.

Subsec. (i). Pub. L. 98–369, § 2663(j)(2)(F)(iii), substituted ''Health and Human Services'' for ''Health, Education, and Welfare''.

1983—Subsec. (b). Pub. L. 98–21, § 341(c)(1), substituted ''Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate'' for ''Secretary of Health, Education, and Welfare, all ex officio'' in provisions preceding par. (1).

Pub. L. 98–21, § 154(c), inserted at end provision that the report referred to in par. (2) shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable, and provided further that the certification shall not refer to economic assumptions underlying the Trustee's report.

Pub. L. 98–21, § 341(c)(2), inserted at end provision that a person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.

1978—Subsec. (b). Pub. L. 95–292 substituted ''Administrator of the Health Care Financing Administration'' for ''Commissioner of Social Security'' in provisions preceding par. (1).

1972—Subsec. (a). Pub. L. 92–603, § 132(e), inserted ''such gifts and bequests as may be made as provided in section 401(i)(1) of this title, and'' after ''consist of'' and before ''such amounts''.

Subsec. (h). Pub. L. 92–603, § 263(d)(4), substituted ''1395s(d)'' for ''1395s(e)''.

Subsec. (i). Pub. L. 92–603, § 263(e), added subsec. (i).

1968—Subsec. (b)(2). Pub. L. 90–248 substituted ''April'' for ''March''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 applicable to members of Board of Trustees of Federal Supplementary Medical Insurance Trust Fund serving on such Board as members of the public on or after Nov. 10, 1988, see section 8005(b) of Pub. L. 100–647, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2354(b)(2), (11), (12) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law

involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(j)(2)(F)(iii) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by sections 154(c) and 341(c) of Pub. L. 98–21 effective Apr. 20, 1983, see sections 154(e) and 341(d) of Pub. L. 98–21, set out as notes under section 401 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 132(e) of Pub. L. 92–603 applicable with respect to gifts and bequests received after Oct. 30, 1972, see section 132(f) of Pub. L. 92–603, set out as a note under section 401 of this title.

Amendment by section 263(d)(4), (e) of Pub. L. 92–603 with respect to collection of premiums applicable to premiums becoming due and payable after the fourth month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1972, see section 263(f) of Pub. L. 92–603, set out as a note under section 1395s of this title.

DISPOSAL OF FUNDS IN FEDERAL HOSPITAL INSURANCE CATASTROPHIC COVERAGE RESERVE FUND

Section 102(c) of Pub. L. 101–234 provided that: ''Any balance in the Federal Hospital Insurance Catastrophic Coverage Reserve Fund (created under section 1817A(a) of the Social Security Act [former section 1395i–1a(a) of this title], as inserted by section 112(a) of MCCA [Pub. L. 100–360]) as of January 1, 1990, shall be transferred into the Federal Supplementary Medical Insurance Trust Fund and any amounts payable due to overpayments into such Trust Fund shall be payable from the Federal Supplementary Medical Insurance Trust Fund.''

DUE DATE FOR 1983 REPORT ON OPERATION AND STATUS OF TRUST FUND

Notwithstanding subsec. (b)(2) of this section, the annual report of the Board of Trustees of the Trust Fund required for calendar year 1983 under this section may be filed at any time not later than forty-five days after Apr. 20, 1983, see section 154(d) of Pub. L. 98–21, set out as a note under section 401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 910, 1320a–7a, 1320b–12, 1395b–1, 1395w–4, 1395gg, 1395vv, 1396m of this title.

§§ 1395t–1, 1395t–2. Repealed. Pub. L. 101–234, title II, § 202(a), Dec. 13, 1989, 103 Stat. 1981

Section 1395t–1, act Aug. 14, 1935, ch. 531, title XVIII, § 1841A, as added July 1, 1988, Pub. L. 100–360, title II, § 212(a), 102 Stat. 739; amended Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(10)(A), 102 Stat. 2415, provided for the creation of the Federal Catastrophic Drug Insurance Trust Fund.

Section 1395t–2, act Aug. 14, 1935, ch. 531, title XVIII, § 1841B, as added July 1, 1988, Pub. L. 100–360, title II, § 213, formerly § 213(a), 102 Stat. 741, as redesignated Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(11), 102 Stat. 2415, provided for the creation of the Medicare Catastrophic Coverage Account.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1990, see section 202(b) of Pub. L. 101–234, set out as an Effective Date of 1989 Amendment note under section 401 of this title.

§ 1395u. Use of carriers for administration of benefits

(a) Authority of Secretary to enter into contracts with carriers

In order to provide for the administration of the benefits under this part with maximum efficiency and convenience for individuals entitled to benefits under this part and for providers of services and other persons furnishing services to such individuals, and with a view to furthering coordination of the administration of the benefits under part A of this subchapter and under this part, the Secretary is authorized to enter into contracts with carriers, including carriers with which agreements under section 1395h of this title are in effect, which will perform some or all of the following functions (or, to the extent provided in such contracts, will secure performance thereof by other organizations); and, with respect to any of the following functions which involve payments for physicians' services on a reasonable charge basis, the Secretary shall to the extent possible enter into such contracts:

(1)(A) make determinations of the rates and amounts of payments required pursuant to this part to be made to providers of services and other persons on a reasonable cost or reasonable charge basis (as may be applicable);

(B) receive, disburse, and account for funds in making such payments; and

(C) make such audits of the records of providers of services as may be necessary to assure that proper payments are made under this part;

(2)(A) determine compliance with the requirements of section 1395x(k) of this title as to utilization review; and

(B) assist providers of services and other persons who furnish services for which payment may be made under this part in the development of procedures relating to utilization practices, make studies of the effectiveness of such procedures and methods for their improvement, assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits under this part, and provide procedures for and assist in arranging, where necessary, the establishment of groups outside hospitals (meeting the requirements of section 1395x(k)(2) of this title) to make reviews of utilization;

(3) serve as a channel of communication of information relating to the administration of this part; and

(4) otherwise assist, in such manner as the contract may provide, in discharging adminis-

trative duties necessary to carry out the purposes of this part.

(b) Applicability of competitive bidding provisions; findings as to financial responsibility, etc., of carrier; contractual duties imposed by contract

(1) Contracts with carriers under subsection (a) of this section may be entered into without regard to section 5 of title 41 or any other provision of law requiring competitive bidding.

(2)(A) No such contract shall be entered into with any carrier unless the Secretary finds that such carrier will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent. The Secretary shall publish in the Federal Register standards and criteria for the efficient and effective performance of contract obligations under this section, and opportunity shall be provided for public comment prior to implementation. In establishing such standards and criteria, the Secretary shall provide a system to measure a carrier's performance of responsibilities described in paragraph (3)(H), subsection (h) of this section, and section 1395w–1(e)(2)[1] of this title. The Secretary may not require, as a condition of entering into or renewing a contract under this section or under section 1395hh of this title, that a carrier match data obtained other than in its activities under this part with data used in the administration of this part for purposes of identifying situations in which section 1395y(b) of this title may apply.

(B) The Secretary shall establish standards for evaluating carriers' performance of reviews of initial carrier determinations and of fair hearings under paragraph (3)(C), under which a carrier is expected—

(i) to complete such reviews, within 45 days after the date of a request by an individual enrolled under this part for such a review, in 95 percent of such requests, and

(ii) to make a final determination, within 120 days after the date of receipt of a request by an individual enrolled under this part for a fair hearing under paragraph (3)(C), in 90 percent of such cases.

(C) In the case of residents of nursing facilities who receive services described in clause (i) or (ii) of section 1395x(s)(2)(K) of this title performed by a member of a team, the Secretary shall instruct carriers to develop mechanisms which permit routine payment under this part for up to 1.5 visits per month per resident. In the previous sentence, the term ''team'' refers to a physician and includes a physician assistant acting under the supervision of the physician or a nurse practitioner working in collaboration with that physician, or both.

(D) In addition to any other standards and criteria established by the Secretary for evaluating carrier performance under this paragraph relating to avoiding erroneous payments, the carrier shall be subject to standards and criteria relating to the carrier's success in recovering payments made under this part for items or services for which payment has been or could be made under a primary plan (as defined in section 1395y(b)(2)(A) of this title).

(3) Each such contract shall provide that the carrier—

(A) will take such action as may be necessary to assure that, where payment under this part for a service is on a cost basis, the cost is reasonable cost (as determined under section 1395x(v) of this title);

(B) will take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis, such charge will be reasonable and not higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier, and such payment will (except as otherwise provided in section 1395gg(f) of this title) be made—

(i) on the basis of an itemized bill; or

(ii) on the basis of an assignment under the terms of which (I) the reasonable charge is the full charge for the service, (II) the physician or other person furnishing such service agrees not to charge (and to refund amounts already collected) for services for which payment under this subchapter is denied under section 1320c–3(a)(2) of this title by reason of a determination under section 1320c–3(a)(1)(B) of this title, and (III) the physician or other person furnishing such service agrees not to charge (and to refund amounts already collected) for such service if payment may not be made therefor by reason of the provisions of paragraph (1) of section 1395y(a) of this title, and if the individual to whom such service was furnished was without fault in incurring the expenses of such service, and if the Secretary's determination that payment (pursuant to such assignment) was incorrect and was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter (except in the case of physicians' services and ambulance service furnished as described in section 1395y(a)(4) of this title, other than for purposes of section 1395gg(f) of this title);

but (in the case of bills submitted, or requests for payment made, after March 1968) only if the bill is submitted, or a written request for payment is made in such other form as may be permitted under regulations, no later than the close of the calendar year following the year in which such service is furnished (deeming any service furnished in the last 3 months of any calendar year to have been furnished in the succeeding calendar year);

(C) will establish and maintain procedures pursuant to which an individual enrolled under this part will be granted an opportunity for a fair hearing by the carrier, in any case where the amount in controversy is at least $100, but less than $500, when requests for payment under this part with respect to services furnished him are denied or are not acted upon with reasonable promptness or when the amount of such payment is in controversy;

[1] See References in Text note below.

(D) will furnish to the Secretary such timely information and reports as he may find necessary in performing his functions under this part;

(E) will maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (D) and otherwise to carry out the purposes of this part;

(F) will take such action as may be necessary to assure that where payment under this part for a service rendered is on a charge basis, such payment shall be determined on the basis of the charge that is determined in accordance with this section on the basis of customary and prevailing charge levels in effect at the time the service was rendered or, in the case of services rendered more than 12 months before the year in which the bill is submitted or request for payment is made, on the basis of such levels in effect for the 12-month period preceding such year;

(G) will, for a service that is furnished with respect to an individual enrolled under this part, that is not paid on an assignment-related basis, and that is subject to a limiting charge under section 1395w–4(g) of this title—

(i) determine, prior to making payment, whether the amount billed for such service exceeds the limiting charge applicable under section 1395w–4(g)(2) of this title;

(ii) notify the physician, supplier, or other person periodically (but not less often than once every 30 days) of determinations that amounts billed exceeded such applicable limiting charges; and

(iii) provide for prompt response to inquiries of physicians, suppliers, and other persons concerning the accuracy of such limiting charges for their services;

(H) if it makes determinations or payments with respect to physicians' services, will implement—

(i) programs to recruit and retain physicians as participating physicians in the area served by the carrier, including educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians; and

(ii) programs to familiarize beneficiaries with the participating physician program and to assist such beneficiaries in locating participating physicians;

(I) will submit annual reports to the Secretary describing the steps taken to recover payments made under this part for items or services for which payment has been or could be made under a primary plan (as defined in section 1395y(b)(2)(A) of this title); and

(J), (K) Repealed. Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981;

(L) will monitor and profile physicians' billing patterns within each area or locality and provide comparative data to physicians whose utilization patterns vary significantly from other physicians in the same payment area or locality;

and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate. In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services. No charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (i) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (ii) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the 12-month period ending on the June 30 last preceding the start of the calendar year in which the service is rendered. In the case of physicians' services the prevailing charge level determined for purposes of clause (ii) of the preceding sentence for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence may not exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1973, or (with respect to physicians' services furnished in a year after 1987) the level determined under this sentence (or under any other provision of law affecting the prevailing charge level) for the previous year except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by year-to-year economic changes. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1395x(s)(6) of this title, charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality. In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under the circumstances specified by the Secretary. The requirement in subparagraph (B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (I) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, or agent of the Department of Health and Human Services performing functions under this subchapter and acting within the scope of his or its authority, and (II) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected. Notwithstanding the provisions of the third and fourth sentences preceding this sentence, the prevailing charge level in the case of a physician service in a particular locality determined pursuant to such third and

fourth sentences for any calendar year after 1974 shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1975, and shall remain at such prevailing charge level until the prevailing charge for a year (as adjusted by economic index data) equals or exceeds such prevailing charge level. The amount of any charges for outpatient services which shall be considered reasonable shall be subject to the limitations established by regulations issued by the Secretary pursuant to section 1395x(v)(1)(K) of this title, and in determining the reasonable charge for such services, the Secretary may limit such reasonable charge to a percentage of the amount of the prevailing charge for similar services furnished in a physician's office, taking into account the extent to which overhead costs associated with such outpatient services have been included in the reasonable cost or charge of the facility.

(4)(A)(i) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(ii)(I) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning July 1, 1983.

(II) In determining the prevailing charge levels under the fourth sentence of paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall permit an additional one percentage point increase in the increase otherwise permitted under that sentence.

(iii) In determining the maximum allowable prevailing charges which may be recognized consistent with the index described in the fourth sentence of paragraph (3) for physicians' services furnished on or after January 1, 1987, by participating physicians, the Secretary shall treat the maximum allowable prevailing charges recognized as of December 31, 1986, under such sentence with respect to participating physicians as having been justified by economic changes.

(iv) The reasonable charge for physicians' services furnished on or after January 1, 1987, and before January 1, 1992, by a nonparticipating physician shall be no greater than the applicable percent of the prevailing charge levels established under the third and fourth sentences of paragraph (3) (or under any other applicable provision of law affecting the prevailing charge level). In the previous sentence, the term ''applicable percent'' means for services furnished (I) on or after January 1, 1987, and before April 1, 1988, 96 percent, (II) on or after April 1, 1988, and before January 1, 1989, 95.5 percent, and (III) on or after January 1, 1989, 95 percent.

(v) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the Secretary shall not set any level higher than the same level as was set for the 12-month period beginning January 1, 1987.

(vi) Before each year (beginning with 1989), the Secretary shall establish a prevailing charge floor for primary care services (as defined in subsection (i)(4) of this section) equal to 60 percent of the estimated average prevailing charge levels based on the best available data (determined, under the third and fourth sentences of paragraph (3) and under paragraph (4), without regard to this clause and without regard to physician specialty) for such service for all localities in the United States (weighted by the relative frequency of the service in each locality) for the year.

(vii) Beginning with 1987, the percentage increase in the MEI (as defined in subsection (i)(3) of this section) for each year shall be the same for nonparticipating physicians as for participating physicians.

(B)(i) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 15-month period beginning July 1, 1984, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning July 1, 1983.

(ii) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 8-month period beginning May 1, 1986, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services—

(I) if the physician was not a participating physician at any time during the 12-month period beginning on October 1, 1984, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning July 1, 1983, and

(II) if the physician was a participating physician at any time during the 12-month period beginning on October 1, 1984, the physician's customary charges shall be determined based upon the physician's actual charges billed during the 12-month period ending on March 31, 1985.

(iii) In determining the reasonable charge under paragraph (3) for physicians' services furnished during the 3-month period beginning January 1, 1988, the customary charges shall be the same customary charges as were recognized under this section for the 12-month period beginning January 1, 1987.

(iv) In determining the reasonable charge under paragraph (3) for physicians' services (other than primary care services, as defined in subsection (i)(4) of this section) furnished during 1991, the customary charges shall be the same customary charges as were recognized under this section for the 9-month period beginning April 1, 1990. In a case in which subparagraph (F)

applies (relating to new physicians) so as to limit the customary charges of a physician during 1990 to a percent of prevailing charges, the previous sentence shall not prevent such limit on customary charges under such subparagraph from increasing in 1991 to a higher percent of such prevailing charges.

(C) In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during periods beginning after September 30, 1985, the Secretary shall treat the level as set under subparagraph (A)(i) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A)(i).

(D)(i) In determining the customary charges for physicians' services furnished during the 8-month period beginning May 1, 1986, or the 12-month period beginning January 1, 1987, by a physician who was not a participating physician (as defined in subsection (h)(1) of this section) on September 30, 1985, the Secretary shall not recognize increases in actual charges for services furnished during the 15-month period beginning on July 1, 1984, above the level of the physician's actual charges billed in the 3-month period ending on June 30, 1984.

(ii) In determining the customary charges for physicians' services furnished during the 12-month period beginning January 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) on April 30, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 7-month period beginning on October 1, 1985, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.

(iii) In determining the customary charges for physicians' services furnished during the 12-month period beginning January 1, 1987, or January 1, 1988, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) on December 31, 1986, the Secretary shall not recognize increases in actual charges for services furnished during the 8-month period beginning on May 1, 1986, above the level of the physician's actual charges billed during the 3-month period ending on June 30, 1984.

(iv) In determining the customary charges for a physicians' service furnished on or after January 1, 1988, if a physician was a nonparticipating physician in a previous year (beginning with 1987), the Secretary shall not recognize any amount of such actual charges (for that service furnished during such previous year) that exceeds the maximum allowable actual charge for such service established under subsection (j)(1)(C) of this section.

(E)(i) For purposes of this part for physicians' services furnished in 1987, the percentage increase in the MEI is 3.2 percent.

(ii) For purposes of this part for physicians' services furnished in 1988, on or after April 1, the percentage increase in the MEI is—

(I) 3.6 percent for primary care services (as defined in subsection (i)(4) of this section), and

(II) 1 percent for other physicians' services.

(iii) For purposes of this part for physicians' services furnished in 1989, the percentage increase in the MEI is—

(I) 3.0 percent for primary care services, and

(II) 1 percent for other physicians' services.

(iv) For purposes of this part for items and services furnished in 1990, after March 31, 1990, the percentage increase in the MEI is—

(I) 0 percent for radiology services, for anesthesia services, and for other services specified in the list referred to in paragraph (14)(C)(i),

(II) 2 percent for other services (other than primary care services), and

(III) such percentage increase in the MEI (as defined in subsection (i)(3) of this section) as would be otherwise determined for primary care services (as defined in subsection (i)(4) of this section).

(v) For purposes of this part for items and services furnished in 1991, the percentage increase in the MEI is—

(I) 0 percent for services (other than primary care services), and

(II) 2 percent for primary care services (as defined in subsection (i)(4) of this section).

(5) Each contract under this section shall be for a term of at least one year, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the carrier involved as he may provide in regulations) if he finds that the carrier has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the insurance program established by this part.

(6) No payment under this part for a service provided to any individual shall (except as provided in section 1395gg of this title) be made to anyone other than such individual or (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) the physician or other person who provided the service, except that (A) payment may be made (i) to the employer of such physician or other person if such physician or other person is required as a condition of his employment to turn over his fee for such service to his employer, or (ii) (where the service was provided in a hospital, rural primary care hospital, clinic, or other facility) to the facility in which the service was provided if there is a contractual arrangement between such physician or other person and such facility under which such facility submits the bill for such service, (B) payment may be made to an entity (i) which provides coverage of the services under a health benefits plan, but only to the extent that payment is not made under this part, (ii) which has paid the person who provided the service an amount (including the amount payable under this part) which that person has accepted as payment in full for the service, and (iii) to which the individual has agreed in writing that payment may be made under this part, (C) in the case of services described in clauses[2] (i), (ii), or

[2] So in original. Probably should be ''clause''.

(iv) of section 1395x(s)(2)(K) of this title payment shall be made to the employer of the physician assistant or nurse practitioner involved, and (D) payment may be made to a physician for physicians' services (and services furnished incident to such services) furnished by a second physician to patients of the first physician if (i) the first physician is unavailable to provide the services; (ii) the services are furnished pursuant to an arrangement between the two physicians that (I) is informal and reciprocal, or (II) involves per diem or other fee-for-time compensation for such services; (iii) the services are not provided by the second physician over a continuous period of more than 60 days; and (iv) the claim form submitted to the carrier for such services includes the second physician's unique identifier (provided under the system established under subsection (r) of this section) and indicates that the claim meets the requirements of this subparagraph for payment to the first physician. No payment which under the preceding sentence may be made directly to the physician or other person providing the service involved (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) shall be made to anyone else under a reassignment or power of attorney (except to an employer or facility as described in clause (A) of such sentence); but nothing in this subsection shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the individual to whom the service was provided or a reassignment from the physician or other person providing such service if such assignment or reassignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of the physician or other person providing the service from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such physician or other person under this subchapter is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.

(7)(A) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title but which does not meet the conditions described in section 1395x(b)(7) of this title, the carrier shall not provide (except on the basis described in subparagraph (C)) for payment for such services under this part—

(i) unless—

(I) the physician renders sufficient personal and identifiable physicians' services to the patient to exercise full, personal control over the management of the portion of the case for which the payment is sought,

(II) the services are of the same character as the services the physician furnishes to patients not entitled to benefits under this subchapter, and

(III) at least 25 percent of the hospital's patients (during a representative past period, as determined by the Secretary) who were not entitled to benefits under this subchapter and who were furnished services described in subclauses (I) and (II) paid all or a substantial part of charges (other than nominal charges) imposed for such services; and

(ii) to the extent that the payment is based upon a reasonable charge for the services in excess of the customary charge as determined in accordance with subparagraph (B).

(B) The customary charge for such services in a hospital shall be determined in accordance with regulations issued by the Secretary and taking into account the following factors:

(i) In the case of a physician who is not a teaching physician (as defined by the Secretary), the carrier shall take into account the amounts the physician charges for similar services in the physician's practice outside the teaching setting.

(ii) In the case of a teaching physician, if the hospital, its physicians, or other appropriate billing entity has established one or more schedules of charges which are collected for medical and surgical services, the carrier shall base payment under this subchapter on the greatest of—

(I) the charges (other than nominal charges) which are most frequently collected in full or substantial part with respect to patients who were not entitled to benefits under this subchapter and who were furnished services described in subclauses (I) and (II) of subparagraph (A)(i),

(II) the mean of the charges (other than nominal charges) which were collected in full or substantial part with respect to such patients, or

(III) 85 percent of the prevailing charges paid for similar services in the same locality.

(iii) If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished to patients in such hospital on an assignment-related basis, the customary charge for such services shall be equal to 90 percent of the prevailing charges paid for similar services in the same locality.

(C) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title but which does not meet the conditions described in section 1395x(b)(7) of this title, if the conditions described in subclauses (I) and (II) of subparagraph (A)(i) are met and if the physician elects payment to be determined under this subparagraph, the carrier shall provide for payment for such services under this part on the basis of regulations of the Secretary governing reimbursement for the services of hospital-based physicians (and not on any other basis).

(D)(i) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1395x(b)(6) of this title but which does not meet the conditions described in section 1395x(b)(7) of this title, no payment shall be made under this

part for services of assistants at surgery with respect to a surgical procedure if such hospital has a training program relating to the medical specialty required for such surgical procedure and a qualified individual on the staff of the hospital is available to provide such services; except that payment may be made under this part for such services, to the extent that such payment is otherwise allowed under this paragraph, if such services, as determined under regulations of the Secretary—

(I) are required due to exceptional medical circumstances,

(II) are performed by team physicians needed to perform complex medical procedures, or

(III) constitute concurrent medical care relating to a medical condition which requires the presence of, and active care by, a physician of another specialty during surgery,

and under such other circumstances as the Secretary determines by regulation to be appropriate.

(ii) For purposes of this subparagraph, the term ''assistant at surgery'' means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

(iii) The Secretary shall determine appropriate methods of reimbursement of assistants at surgery where such services are reimbursable under this part.

(8)(A) The Secretary by regulation shall—

(i) describe the factors to be used in determining the cases (of particular items or services) in which the application of this subsection results in the determination of a reasonable charge that, by reason of its grossly excessive or grossly deficient amount, is not inherently reasonable, and

(ii) provide in those cases for the factors that will be considered in establishing a reasonable charge that is realistic and equitable.

(B)(i) The Secretary may provide for an increase or decrease in the reasonable charge otherwise recognized under this section with respect to a specific physicians' service only in accordance with the criteria set forth in subparagraph (A) and with the succeeding provisions of this paragraph.

(ii) The factors described pursuant to subparagraph (A)(i) with respect to payment for physicians' services shall include, but need not be limited to, the following:

(I) Prevailing charges for a service in a particular locality are significantly in excess of or below prevailing charges in other comparable localities, taking into account the relative costs of furnishing the services in the different localities.

(II) The programs established under this subchapter and subchapter XIX of this chapter are the sole or primary sources of payment for a service.

(III) The marketplace for a service is not truly competitive because of a limited number of physicians who perform that service.

(IV) There have been increases in charges for a service that cannot be explained by inflation or technology.

(V) The charges do not reflect changing technology, increased facility with that technology, or reductions in acquisition or production costs.

(VI) The prevailing charges for a service under this part are substantially higher or lower than the payments made for the service by other purchasers in the same locality.

(iii) In applying subparagraph (A), the Secretary may compare—

(I) the charges and resource costs for related procedures,

(II) charges and resource costs for the procedure over a period of time,

(III) charges for a procedure in different geographic areas, and

(IV) the charges and allowed payments for a procedure under this part and by other payors.

(iv) The factors considered under subparagraph (A)(ii) shall take into account regional differences in fees, unless there is substantial economic justification for a uniform fee or a uniform payment limit. Such substantial economic justification must be explained by the Secretary in the notice and final determination required by paragraph (9).

(v) An adjustment under clause (i) on the basis of a comparison of the prevailing charges in different localities may be made only if the Secretary determines that the prevailing charge allowed in one locality is out of line with prevailing charges allowed in other localities after accounting for differences in practice costs.

(vi) In this subparagraph, ''resource costs'' include factors such as the time required to provide a procedure (including pre-procedure evaluation and post-procedure follow-up), the complexity of the procedure, the training required to perform the procedure, and the risk involved in the procedure.

(C) In determining whether to adjust payment rates under subparagraph (B)(i), the Secretary shall consider the potential impacts on quality, access, and beneficiary liability of the adjustment, including the likely effects on assignment rates, reasonable charge reductions on unassigned claims, and participation rates of physicians.

(9)(A) In the case of any physicians' service with respect to which the Secretary—

(i) determines, after appropriate consultation with representatives of the physicians likely to be affected by any change in the reasonable charge, that the application of this subsection results in the determination of a reasonable charge that, by reason of its grossly excessive or grossly deficient amount, is not inherently reasonable, and

(ii) proposes to establish a reasonable charge that is realistic and equitable or a methodology for arriving at such a charge,

the Secretary shall publish notice of such proposal in the Federal Register.

(B) A notice required by subparagraph (A) shall—

(i) specify the charge or methodology proposed to be established with respect to a service and shall explain the factors and data that the Secretary took into account in determining the charge or methodology so specified, and

(ii) explain the potential impacts described in paragraph (8)(C).

(C) After publication of the notice required by subparagraph (A), the Secretary shall allow not less than 60 days for public comment on the proposal.

(D) In addition to carrying out its functions under section 1395w–1 of this title, the Physician Payment Review Commission (in this paragraph referred to as the ''Commission'') shall comment on any such proposal within the period of comment allowed by the Secretary pursuant to subparagraph (C).

(E)(i) Taking into consideration the comments made by the Commission and the public, the Secretary shall publish in the Federal Register a final determination with respect to the reasonable charge or methodology to be established with respect to the service.

(ii) A final determination published pursuant to clause (i) shall explain the factors and data that the Secretary took into consideration in making the final determination, and shall include and respond to the comments made by the Commission pursuant to subparagraph (D).

(10)(A)(i) In determining the reasonable charge for procedures described in subparagraph (B) and performed during the 9-month period beginning on April 1, 1988, the prevailing charge for such procedure shall be the prevailing charge otherwise recognized for such procedure for 1987—

(I) subject to clause (iii), reduced by 2.0 percent, and

(II) further reduced by the applicable percentage specified in clause (ii).

(ii) For purposes of clause (i), the applicable percentage specified in this clause is—

(I) 15 percent, in the case of a prevailing charge otherwise recognized (without regard to this paragraph and determined without regard to physician specialty) that is at least 150 percent of the weighted national average (as determined by the Secretary) of such prevailing charges for such procedure for all localities in the United States for 1987;

(II) 0 percent, in the case of a prevailing charge that does not exceed 85 percent of such weighted national average; and

(III) in the case of any other prevailing charge, a percent determined on the basis of a straight-line sliding scale, equal to 3/13 of a percentage point for each percent by which the prevailing charge exceeds 85 percent of such weighted national average.

(iii) In no case shall the reduction under clause (i) for a procedure result in a prevailing charge in a locality for 1988 which is less than 85 percent of the Secretary's estimate of the weighted national average of such prevailing charges for such procedure for all localities in the United States for 1987 (based upon the best available data and determined without regard to physician specialty) after making the reduction described in clause (i)(I).

(B) The procedures described in this subparagraph are as follows: bronchoscopy, carpal tunnel repair, cataract surgery (including subsequent insertion of an intraocular lens), coronary artery bypass surgery, diagnostic and/or therapeutic dilation and curettage, knee arthroscopy, knee arthroplasty, pacemaker implantation surgery, total hip replacement, suprapubic prostatectomy, transurethral resection of the prostate, and upper gastrointestinal endoscopy.

(C) In the case of a reduction in the reasonable charge for a physicians' service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of such reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.

(D) There shall be no administrative or judicial review under section 1395ff of this title or otherwise of any determination under subparagraph (A) or under paragraph (11)(B)(ii).

(11)(A) In providing payment for cataract eyeglasses and cataract contact lenses, and professional services relating to them, under this part, each carrier shall—

(i) provide for separate determinations of the payment amount for the eyeglasses and lenses and of the payment amount for the professional services of a physician (as defined in section 1395x(r) of this title), and

(ii) not recognize as reasonable for such eyeglasses and lenses more than such amount as the Secretary establishes in guidelines relating to the inherent reasonableness of charges for such eyeglasses and lenses.

(B)(i) In determining the reasonable charge under paragraph (3) for a cataract surgical procedure, subject to clause (ii), the prevailing charge for such procedure otherwise recognized for participating and nonparticipating physicians shall be reduced by 10 percent with respect to procedures performed in 1987.

(ii) In no case shall the reduction under clause (i) for a surgical procedure result in a prevailing charge in a locality for a year which is less than 75 percent of the weighted national average of such prevailing charges for such procedure for all the localities in the United States for 1986.

(C)(i) The prevailing charge level determined with respect to A-mode ophthalmic ultrasound procedures may not exceed 5 percent of the prevailing charge level established with respect to extracapsular cataract removal with lens insertion.

(ii) The reasonable charge for an intraocular lens inserted during or subsequent to cataract surgery in a physician's office may not exceed the actual acquisition cost for the lens (taking into account any discount) plus a handling fee (not to exceed 5 percent of such actual acquisition cost).

(D) In the case of a reduction in the reasonable charge for a physicians' service or item under subparagraph (B) or (C), if a nonparticipating physician furnishes the service or item to an individual entitled to benefits under this part after the effective date of such reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.

(12)(A) With respect to services described in clauses[3] (i), (ii), or (iv) of section 1395x(s)(2)(K) of this title (relating to a[4] physician assistants and nurse practitioners)—

(i) payment under this part may only be made on an assignment-related basis; and

[3] So in original. Probably should be ''clause''.

[4] So in original.

(ii) the prevailing charges determined under paragraph (3) shall not exceed—

(I) in the case of services performed as an assistant at surgery, 65 percent of the amount that would otherwise be recognized if performed by a physician who is serving as an assistant at surgery, or

(II) in other cases, the applicable percentage (as defined in subparagraph (B)) of the prevailing charge rate determined for such services (or, for services furnished on or after January 1, 1992, the fee schedule amount specified in section 1395w–4 of this title) performed by physicians who are not specialists.

(B) In subparagraph (A)(ii)(II), the term ''applicable percentage'' means—

(i) 75 percent in the case of services performed (other than as an assistant at surgery) in a hospital, and

(ii) 85 percent in the case of other services.

(13)(A) In determining payments under section 1395*l*(*l*) of this title and section 1395w–4 of this title for anesthesia services furnished on or after January 1, 1994, the methodology for determining the base and time units used shall be the same for services furnished by physicians, for medical direction by physicians of two, three, or four certified registered nurse anesthetists, or for services furnished by a certified registered nurse anesthetist (whether or not medically directed) and shall be based on the methodology in effect, for anesthesia services furnished by physicians, as of August 10, 1993.

(B) The Secretary shall require claims for physicians' services for medical direction of nurse anesthetists during the periods in which the provisions of subparagraph (A) apply to indicate the number of such anesthetists being medically directed concurrently at any time during the procedure, the name of each nurse anesthetist being directed, and the type of procedure for which the services are provided.

(14)(A)(i) In determining the reasonable charge for a physicians' service specified in subparagraph (C)(i) and furnished during the 9-month period beginning on April 1, 1990, the prevailing charge for such service shall be the prevailing charge otherwise recognized for such service for 1989 reduced by 15 percent or, if less, ⅓ of the percent (if any) by which the prevailing charge otherwise applied in the locality in 1989 exceeds the locally-adjusted reduced prevailing amount (as determined under subparagraph (B)(i)) for the service.

(ii) In determining the reasonable charge for a physicians' service specified in subparagraph (C)(i) and furnished during 1991, the prevailing charge for such service shall be the prevailing charge otherwise recognized for such service for the period during 1990 beginning on April 1, reduced by the same amount as the amount of the reduction effected under this paragraph (as amended by the Omnibus Budget Reconciliation Act of 1990) for such service during such period.

(B) For purposes of this paragraph:

(i) The ''locally-adjusted reduced prevailing amount'' for a locality for a physicians' service is equal to the product of—

(I) the reduced national weighted average prevailing charge for the service (specified under clause (ii)), and

(II) the adjustment factor (specified under clause (iii)) for the locality.

(ii) The ''reduced national weighted average prevailing charge'' for a physicians' service is equal to the national weighted average prevailing charge for the service (specified in subparagraph (C)(ii)) reduced by the percentage change (specified in subparagraph (C)(iii)) for the service.

(iii) The ''adjustment factor'', for a physicians' service for a locality, is the sum of—

(I) the practice expense component (percent), divided by 100, specified in appendix A (pages 187 through 194) of the Report of the Medicare and Medicaid Health Budget Reconciliation Amendments of 1989, prepared by the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives, (Committee Print 101–M, 101st Congress, 1st Session) for the service, multiplied by the geographic practice cost index value (specified in subparagraph (C)(iv)) for the locality, and

(II) 1 minus the practice expense component (percent), divided by 100.

(C) For purposes of this paragraph:

(i) The physicians' services specified in this clause are the procedures specified (by code and description) in the Overvalued Procedures List for Finance Committee, Revised September 20, 1989, prepared by the Physician Payment Review Commission which specification is of physicians' services that have been identified as overvalued by at least 10 percent based on a comparison of payments for such services under a resource-based relative value scale and of the national average prevailing charges under this part.

(ii) The ''national weighted average prevailing charge'' specified in this clause, for a physicians' service specified in clause (i), is the national weighted average prevailing charge for the service in 1989 as determined by the Secretary using the best data available.

(iii) The ''percentage change'' specified in this clause, for a physicians' service specified in clause (i), is the percent difference (but expressed as a positive number) specified for the service in the list referred to in clause (i).

(iv) The geographic practice cost index value specified in this clause for a locality is the Geographic Overhead Costs Index specified for the locality in table 1 of the September 1989 Supplement to the Geographic Medicare Economic Index: Alternative Approaches (prepared by the Urban Institute and the Center for Health Economics Research).

(D) In the case of a reduction in the prevailing charge for a physicians' service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of such reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.

(15)(A) In determining the reasonable charge for surgery, radiology, and diagnostic physicians' services which the Secretary shall designate (based on their high volume of expenditures under this part) and for which the prevail-

ing charge (but for this paragraph) differs by physician specialty, the prevailing charge for such a service may not exceed the prevailing charge or fee schedule amount for that specialty of physicians that furnish the service most frequently nationally.

(B) In the case of a reduction in the prevailing charge for a physician's service under subparagraph (A), if a nonparticipating physician furnishes the service to an individual entitled to benefits under this part, after the effective date of the reduction, the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.

(16)(A) In determining the reasonable charge for all physicians' services other than physicians' services specified in subparagraph (B) furnished during 1991, the prevailing charge for a locality shall be 6.5 percent below the prevailing charges used in the locality under this part in 1990 after March 31.

(B) For purposes of subparagraph (A), the physicians' services specified in this subparagraph are as follows:

(i) Radiology, anesthesia and physician pathology services, the technical components of diagnostic tests specified in paragraph (17) and physicians' services specified in paragraph (14)(C)(i).

(ii) Primary care services specified in subsection (i)(4) of this section, hospital inpatient medical services, consultations, other visits, preventive medicine visits, psychiatric services, emergency care facility services, and critical care services.

(iii) Partial mastectomy; tendon sheath injections and small joint arthrocentesis; femoral fracture and trochanteric fracture treatments; endotracheal intubation; thoracentesis; thoracostomy; aneurysm repair; cystourethroscopy; transurethral fulguration and resection; tympanoplasty with mastoidectomy; and ophthalmoscopy.

(17) With respect to payment under this part for the technical (as distinct from professional) component of diagnostic tests (other than clinical diagnostic laboratory tests, tests specified in paragraph (14)(C)(i), and radiology services, including portable x-ray services) which the Secretary shall designate (based on their high volume of expenditures under this part), the reasonable charge for such technical component (including the applicable portion of a global service) may not exceed the national median of such charges for all localities, as estimated by the Secretary using the best available data.

(18)(A) Payment for any service furnished by a practitioner described in subparagraph (C) and for which payment may be made under this part on a reasonable charge or fee schedule basis may only be made under this part on an assignment-related basis.

(B) A practitioner described in subparagraph (C) or other person may not bill (or collect any amount from) the individual or another person for any service described in subparagraph (A), except for deductible and coinsurance amounts applicable under this part. No person is liable for payment of any amounts billed for such a service in violation of the previous sentence. If a practitioner or other person knowingly and willfully bills (or collects an amount) for such a service in violation of such sentence, the Secretary may apply sanctions against the practitioner or other person in the same manner as the Secretary may apply sanctions against a physician in accordance with subsection (j)(2) of this section in the same manner as such section applies with respect to a physician. Paragraph (4) of subsection (j) of this section shall apply in this subparagraph in the same manner as such paragraph applies to such section.

(C) A practitioner described in this subparagraph is any of the following:

(i) A physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1395x(aa)(5) of this title).

(ii) A certified registered nurse anesthetist (as defined in section 1395x(bb)(2) of this title).

(iii) A certified nurse-midwife (as defined in section 1395x(gg)(2) of this title).

(iv) A clinical social worker (as defined in section 1395x(hh)(1) of this title).

(v) A clinical psychologist (as defined by the Secretary for purposes of section 1395x(ii) of this title).

(D) For purposes of this paragraph, a service furnished by a practitioner described in subparagraph (C) includes any services and supplies furnished as incident to the service as would otherwise be covered under this part if furnished by a physician or as incident to a physician's service.

(c) Advances of funds to carrier; prompt payment of claims

(1) Any contract entered into with a carrier under this section shall provide for advances of funds to the carrier for the making of payments by it under this part, and shall provide for payment of the cost of administration of the carrier, as determined by the Secretary to be necessary and proper for carrying out the functions covered by the contract. The Secretary shall provide that in determining a carrier's necessary and proper cost of administration, the Secretary shall, with respect to each contract, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated carrier in carrying out the terms of its contract. The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for carriers under this section for that fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.

(2)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B) of this section, shall provide that payment shall be issued, mailed, or otherwise transmitted with respect to not less than 95 percent of all claims submitted under this part—

(i) which are clean claims, and

(ii) for which payment is not made on a periodic interim payment basis,

within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph:

(i) The term ''clean claim'' means a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this part.

(ii) The term ''applicable number of calendar days'' means—

(I) with respect to claims received in the 12-month period beginning October 1, 1986, 30 calendar days,

(II) with respect to claims received in the 12-month period beginning October 1, 1987, 26 calendar days (or 19 calendar days with respect to claims submitted by participating physicians),

(III) with respect to claims received in the 12-month period beginning October 1, 1988, 25 calendar days (or 18 calendar days with respect to claims submitted by participating physicians), and [5]

(IV) with respect to claims received in the 12-month period beginning October 1, 1989, and claims received in any succeeding 12-month period ending on or before September 30, 1993, 24 calendar days (or 17 calendar days with respect to claims submitted by participating physicians).[6]

(V) with respect to claims received in the 12-month period beginning October 1, 1993, and claims received in any succeeding 12-month period, 30 calendar days.

(C) If payment is not issued, mailed, or otherwise transmitted within the applicable number of calendar days (as defined in clause (ii) of subparagraph (B)) after a clean claim (as defined in clause (i) of such subparagraph) is received, interest shall be paid at the rate used for purposes of section 3902(a) of title 31 (relating to interest penalties for failure to make prompt payments) for the period beginning on the day after the required payment date and ending on the date on which payment is made.

(3)(A) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B) of this section, shall provide that no payment shall be issued, mailed, or otherwise transmitted with respect to any claim submitted under this subchapter within the applicable number of calendar days after the date on which the claim is received.

(B) In this paragraph, the term ''applicable number of calendar days'' means—

(i) with respect to claims submitted electronically as prescribed by the Secretary, 13 days, and

(ii) with respect to claims submitted otherwise, 26 days.

(4) Neither a carrier nor the Secretary may impose a fee under this subchapter—

(A) for the filing of claims related to physicians' services,

(B) for an error in filing a claim relating to physicians' services or for such a claim which is denied,

(C) for any appeal under this subchapter with respect to physicians' services,

(D) for applying for (or obtaining) a unique identifier under subsection (r) of this section, or

(E) for responding to inquiries respecting physicians' services or for providing information with respect to medical review of such services.

(5) Each contract under this section which provides for the disbursement of funds, as described in subsection (a)(1)(B) of this section, shall require the carrier to meet criteria developed by the Secretary to measure the timeliness of carrier responses to requests for payment of items described in section 1395m(a)(15)(C) of this title.

(d) Surety bonds

Any contract with a carrier under this section may require such carrier or any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

(e) Liability of certifying or disbursing officers or carriers

(1) No individual designated pursuant to a contract under this section as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payments certified by him under this section.

(2) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by a certifying officer designated as provided in paragraph (1) of this subsection.

(3) No such carrier shall be liable to the United States for any payments referred to in paragraph (1) or (2).

(f) "Carrier" defined

For purposes of this part, the term ''carrier'' means—

(1) with respect to providers of services and other persons, a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization; and

(2) with respect to providers of services only, any agency or organization (not described in paragraph (1)) with which an agreement is in effect under section 1395h of this title.

(g) Authority of Railroad Retirement Board to enter into contracts with carriers

The Railroad Retirement Board shall, in accordance with such regulations as the Secretary may prescribe, contract with a carrier or carriers to perform the functions set out in this

[5] So in original. The word ''and'' probably should not appear.

[6] So in original. The period probably should be '', and''.

section with respect to individuals entitled to benefits as qualified railroad retirement beneficiaries pursuant to section 426(a) of this title and section 231f(d) of title 45.

(h) Participating physician or supplier; agreement with Secretary; publication of directories; availability; inclusion of program in explanation of benefits; payment of claims on assignment-related basis

(1) Any physician or supplier may voluntarily enter into an agreement with the Secretary to become a participating physician or supplier. For purposes of this section, the term ''participating physician or supplier'' means a physician or supplier (excluding any provider of services) who, before the beginning of any year beginning with 1984, enters into an agreement with the Secretary which provides that such physician or supplier will accept payment under this part on an assignment-related basis for all items and services furnished to individuals enrolled under this part during such year. In the case of a newly licensed physician or a physician who begins a practice in a new area, or in the case of a new supplier who begins a new business, or in such similar cases as the Secretary may specify, such physician or supplier may enter into such an agreement after the beginning of a year, for items and services furnished during the remainder of the year.

(2) Each carrier having an agreement with the Secretary under subsection (a) of this section shall maintain a toll-free telephone number or numbers at which individuals enrolled under this part may obtain the names, addresses, specialty, and telephone numbers of participating physicians and suppliers and may request a copy of an appropriate directory published under paragraph (4). Each such carrier shall, without charge, mail a copy of such directory upon such a request.

(3)(A) In any case in which a carrier having an agreement with the Secretary under subsection (a) of this section is able to develop a system for the electronic transmission to such carrier of bills for services, such carrier shall establish direct lines for the electronic receipt of claims from participating physicians and suppliers.

(B) The Secretary shall establish a procedure whereby an individual enrolled under this part may assign, in an appropriate manner on the form claiming a benefit under this part for an item or service furnished by a participating physician or supplier, the individual's rights of payment under a medicare supplemental policy (described in section 1395ss(g)(1) of this title) in which the individual is enrolled. In the case such an assignment is properly executed and a payment determination is made by a carrier with a contract under this section, the carrier shall transmit to the private entity issuing the medicare supplemental policy notice of such fact and shall include an explanation of benefits and any additional information that the Secretary may determine to be appropriate in order to enable the entity to decide whether (and the amount of) any payment is due under the policy. The Secretary may enter into agreements for the transmittal of such information to entities electronically. The Secretary shall impose user fees for the transmittal of information under this subparagraph by a carrier, whether electronically or otherwise, and such user fees shall be collected and retained by the carrier.

(4) At the beginning of each year the Secretary shall publish directories (for appropriate local geographic areas) containing the name, address, and specialty of all participating physicians and suppliers (as defined in paragraph (1)) for that area for that year. Each directory shall be organized to make the most useful presentation of the information (as determined by the Secretary) for individuals enrolled under this part. Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.

(5)(A) The Secretary shall promptly notify individuals enrolled under this part through an annual mailing of the participation program under this subsection and the publication and availability of the directories and shall make the appropriate area directory or directories available in each district and branch office of the Social Security Administration, in the offices of carriers, and to senior citizen organizations.

(B) The annual notice provided under subparagraph (A) shall include—

(i) a description of the participation program,

(ii) an explanation of the advantages to beneficiaries of obtaining covered services through a participating physician or supplier,

(iii) an explanation of the assistance offered by carriers in obtaining the names of participating physicians and suppliers, and

(iv) the toll-free telephone number under paragraph (2)(A) for inquiries concerning the program and for requests for free copies of appropriate directories.

(6) The Secretary shall provide that the directories shall be available for purchase by the public. The Secretary shall provide that each appropriate area directory is sent to each participating physician located in that area and that an appropriate number of copies of each such directory is sent to hospitals located in the area. Such copies shall be sent free of charge.

(7) The Secretary shall provide that each explanation of benefits provided under this part for services furnished in the United States, in conjunction with the payment of claims under section 1395*l*(a)(1) of this title (made other than on an assignment-related basis), shall include—

(A) a prominent reminder of the participating physician and supplier program established under this subsection (including the limitation on charges that may be imposed by such physicians and suppliers and a clear statement of any amounts charged for the particular items or services on the claim involved above the amount recognized under this part),

(B) the toll-free telephone number or numbers, maintained under paragraph (2), at which an individual enrolled under this part may obtain information on participating physicians and suppliers,

(C)(i) an offer of assistance to such an individual in obtaining the names of participating

physicians of appropriate specialty and (ii) an offer to provide a free copy of the appropriate participating physician directory; and

(D) in the case of services for which the billed amount exceeds the limiting charge imposed under section 1395w–4(g) of this title, information regarding such applicable limiting charge (including information concerning the right to a refund under section 1395w–4(g)(1)(A)(iv) of this title).

(i) Definitions

For purposes of this subchapter:

(1) A claim is considered to be paid on an ''assignment-related basis'' if the claim is paid on the basis of an assignment described in subsection (b)(3)(B)(ii) of this section, in accordance with subsection (b)(6)(B) of this section, or under the procedure described in section 1395gg(f)(1) of this title.

(2) The term ''participating physician'' refers, with respect to the furnishing of services, to a physician who at the time of furnishing the services is a participating physician (under subsection (h)(1) of this section); the term ''nonparticipating physician'' refers, with respect to the furnishing of services, a[7] physician who at the time of furnishing the services is not a participating physician; and the term ''nonparticipating supplier or other person'' means a supplier or other person (excluding a provider of services) that is not a participating physician or supplier (as defined in subsection (h)(1) of this section).

(3) The term ''percentage increase in the MEI'' means, with respect to physicians' services furnished in a year, the percentage increase in the medicare economic index (referred to in the fourth sentence of subsection (b)(3) of this section) applicable to such services furnished as of the first day of that year.

(4) The term ''primary care services'' means physicians' services which constitute office medical services, emergency department services, home medical services, skilled nursing, intermediate care, and long-term care medical services, or nursing home, boarding home, domiciliary, or custodial care medical services.

(j) Monitoring of charges of nonparticipating physicians; sanctions; restitution

(1)(A) In the case of a physician who is not a participating physician for items and services furnished during a portion of the 30-month period beginning July 1, 1984, the Secretary shall monitor the physician's actual charges to individuals enrolled under this part for physicians' services during that portion of that period. If such physician knowingly and willfully bills individuals enrolled under this part for actual charges in excess of such physician's actual charges for the calendar quarter beginning on April 1, 1984, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(B)(i) During any period (on or after January 1, 1987, and before the date specified in clause (ii)), during which a physician is a nonparticipating physician, the Secretary shall monitor the actual charges of each such physician for physicians' services furnished to individuals enrolled under this part. If such physician knowingly and willfully bills on a repeated basis for such a service an actual charge in excess of the maximum allowable actual charge determined under subparagraph (C) for that service, the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(ii) Clause (i) shall not apply to services furnished after December 31, 1990.

(C)(i) For a particular physicians' service furnished by a nonparticipating physician to individuals enrolled under this part during a year, for purposes of subparagraph (B), the maximum allowable actual charge is determined as follows: If the physician's maximum allowable actual charge for that service in the previous year was—

(I) less than 115 percent of the applicable percent (as defined in subsection (b)(4)(A)(iv) of this section) of the prevailing charge for the year and service involved, the maximum allowable actual charge for the year involved is the greater of the maximum allowable actual charge described in subclause (II) or the charge described in clause (ii), or

(II) equal to, or greater than, 115 percent of the applicable percent (as defined in subsection (b)(4)(A)(iv) of this section) of the prevailing charge for the year and service involved, the maximum allowable actual charge is 101 percent of the physician's maximum allowable actual charge for the service for the previous year.

(ii) For purposes of clause (i)(I), the charge described in this clause for a particular physicians' service furnished in a year is the maximum allowable actual charge for the service of the physician for the previous year plus the product of (I) the applicable fraction (as defined in clause (iii)) and (II) the amount by which 115 percent of the prevailing charge for the year involved for such service furnished by nonparticipating physicians, exceeds the physician's maximum allowable actual charge for the service for the previous year.

(iii) In clause (ii), the ''applicable fraction'' is—

(I) for 1987, ¼,
(II) for 1988, ⅓,
(III) for 1989, ½, and
(IV) for any subsequent year, 1.

(iv) For purposes of determining the maximum allowable actual charge under clauses (i) and (ii) for 1987, in the case of a physicians' service for which the physician has actual charges for the calendar quarter beginning on April 1, 1984, the ''maximum allowable actual charge'' for 1986 is the physician's actual charge for such service furnished during such quarter.

(v) For purposes of determining the maximum allowable actual charge under clauses (i) and (ii) for a year after 1986, in the case of a physicians' service for which the physician has no actual charges for the calendar quarter beginning on April 1, 1984, and for which a maximum allowable actual charge has not been previously established under this clause, the ''maximum allowable actual charge'' for the previous year

[7] So in original. Probably should be ''to a''.

shall be the 50th percentile of the customary charges for the service (weighted by frequency of the service) performed by nonparticipating physicians in the locality during the 12-month period ending June 30 of that previous year.

(vi) For purposes of this subparagraph, a ''physician's actual charge'' for a physicians' service furnished in a year or other period is the weighted average (or, at the option of the Secretary for a service furnished in the calendar quarter beginning April 1, 1984, the median) of the physician's charges for such service furnished in the year or other period.

(vii) In the case of a nonparticipating physician who was a participating physician during a previous period, for the purpose of computing the physician's maximum allowable actual charge during the physician's period of nonparticipation, the physician shall be deemed to have had a maximum allowable actual charge during the period of participation, and such deemed maximum allowable actual charge shall be determined according to clauses (i) through (vi).

(viii) Notwithstanding any other provision of this subparagraph, the maximum allowable actual charge for a particular physician's service furnished by a nonparticipating physician to individuals enrolled under this part during the 3-month period beginning on January 1, 1988, shall be the amount determined under this subparagraph for 1987. The maximum allowable actual charge for any such service otherwise determined under this subparagraph for 1988 shall take effect on April 1, 1988.

(ix) If there is a reduction under subsection (b)(13) of this section in the reasonable charge for medical direction furnished by a nonparticipating physician, the maximum allowable actual charge otherwise permitted under this subsection for such services shall be reduced in the same manner and in the same percentage as the reduction in such reasonable charge.

(D)(i) If an action described in clause (ii) results in a reduction in a reasonable charge for a physicians' service or item and a nonparticipating physician furnishes the service or item to an individual entitled to benefits under this part after the effective date of such action, the physician may not charge the individual more than 125 percent of the reduced payment allowance (as defined in clause (iii)) plus (for services or items furnished during the 12-month period (or 9-month period in the case of an action described in clause (ii)(II)) beginning on the effective date of the action) ½ of the amount by which the physician's maximum allowable actual charge for the service or item for the previous 12-month period exceeds such 125 percent level.

(ii) The first sentence of clause (i) shall apply to—

(I) an adjustment under subsection (b)(8)(B) of this section (relating to inherent reasonableness),

(II) a reduction under subsection (b)(10)(A) or (b)(14)(A) of this section (relating to certain overpriced procedures),

(III) a reduction under subsection (b)(11)(B) of this section (relating to certain cataract procedures),

(IV) a prevailing charge limit established under subsection (b)(11)(C)(i) or (b)(15)(A) of this section,

(V) a reasonable charge limit established under subsection (b)(11)(C)(ii) of this section, and

(VI) an adjustment under section 1395*l*(*l*)(3)(B) of this title (relating to physician supervision of certified registered nurse anesthetists).

(iii) In clause (i), the term ''reduced payment allowance'' means, with respect to an action—

(I) under subsection (b)(8)(B) of this section, the inherently reasonable charge established under subsection (b)(8) of this section;

(II) under subsection (b)(10)(A), (b)(11)(B), (b)(11)(C)(i), (b)(14)(A), or (b)(15)(A) of this section or under section 1395*l*(*l*)(3)(B) of this title, the prevailing charge for the service after the action; or

(III) under subsection (b)(11)(C)(ii) of this section, the payment allowance established under such subsection.

(iv) If a physician knowingly and willfully bills in violation of clause (i) (whether or not such charge violates subparagraph (B)), the Secretary may apply sanctions against such physician in accordance with paragraph (2).

(v) Clause (i) shall not apply to items and services furnished after December 31, 1990.

(2) Subject to paragraph (3), the sanctions which the Secretary may apply under this paragraph are—

(A) excluding a physician from participation in the programs under this chapter for a period not to exceed 5 years, in accordance with the procedures of subsections (c), (f), and (g) of section 1320a–7 of this title, or

(B) civil monetary penalties and assessments, in the same manner as such penalties and assessments are authorized under section 1320a–7a(a) of this title,

or both. The provisions of section 1320a–7a of this title (other than the first 2 sentences of subsection (a) and other than subsection (b)) shall apply to a civil money penalty and assessment under subparagraph (B) in the same manner as such provisions apply to a penalty, assessment, or proceeding under section 1320a–7a(a) of this title, except to the extent such provisions are inconsistent with subparagraph (A) or paragraph (3).

(3)(A) The Secretary may not exclude a physician pursuant to paragraph (2)(A) if such physician is a sole community physician or sole source of essential specialized services in a community.

(B) The Secretary shall take into account access of beneficiaries to physicians' services for which payment may be made under this part in determining whether to bar a physician from participation under paragraph (2)(A).

(4) The Secretary may, out of any civil monetary penalty or assessment collected from a physician pursuant to this subsection, make a payment to a beneficiary enrolled under this part in the nature of restitution for amounts paid by such beneficiary to such physician which was determined to be an excess charge under paragraph (1).

(k) Sanctions for billing for services of assistant at cataract operations

(1) If a physician knowingly and willfully presents or causes to be presented a claim or bills an individual enrolled under this part for charges for services as an assistant at surgery for which payment may not be made by reason of section 1395y(a)(15) of this title, the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section in the case of surgery performed on or after March 1, 1987.

(2) If a physician knowingly and willfully presents or causes to be presented a claim or bills an individual enrolled under this part for charges that includes a charge for an assistant at surgery for which payment may not be made by reason of section 1395y(a)(15) of this title, the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section in the case of surgery performed on or after March 1, 1987.

(*l*) Prohibition of unassigned billing of services determined to be medically unnecessary by carrier

(1)(A) Subject to subparagraph (C), if—

(i) a nonparticipating physician furnishes services to an individual enrolled for benefits under this part,

(ii) payment for such services is not accepted on an assignment-related basis,

(iii)(I) a carrier determines under this part or a peer review organization determines under part B of subchapter XI of this chapter that payment may not be made by reason of section 1395y(a)(1) of this title because a service otherwise covered under this subchapter is not reasonable and necessary under the standards described in that section or (II) payment under this subchapter for such services is denied under section 1320c–3(a)(2) of this title by reason of a determination under section 1320c–3(a)(1)(B) of this title, and

(iv) the physician has collected any amounts for such services,

the physician shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts so collected.

(B) A refund under subparagraph (A) is considered to be on a timely basis only if—

(i) in the case of a physician who does not request reconsideration or seek appeal on a timely basis, the refund is made within 30 days after the date the physician receives a denial notice under paragraph (2), or

(ii) in the case in which such a reconsideration or appeal is taken, the refund is made within 15 days after the date the physician receives notice of an adverse determination on reconsideration or appeal.

(C) Subparagraph (A) shall not apply to the furnishing of a service by a physician to an individual in the case described in subparagraph (A)(iii)(I) if—

(i) the physician establishes that the physician did not know and could not reasonably have been expected to know that payment may not be made for the service by reason of section 1395y(a)(1) of this title, or

(ii) before the service was provided, the individual was informed that payment under this part may not be made for the specific service and the individual has agreed to pay for that service.

(2) Each carrier with a contract in effect under this section with respect to physicians and each peer review organization with a contract under part B of subchapter XI of this chapter shall send any notice of denial of payment for physicians' services based on section 1395y(a)(1) of this title and for which payment is not requested on an assignment-related basis to the physician and the individual involved.

(3) If a physician knowingly and willfully fails to make refunds in violation of paragraph (1)(A), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(m) Disclosure of information of unassigned claims for certain physicians' services

(1) In the case of a nonparticipating physician who—

(A) performs an elective surgical procedure for an individual enrolled for benefits under this part and for which the physician's actual charge is at least $500, and

(B) does not accept payment for such procedure on an assignment-related basis,

the physician must disclose to the individual, in writing and in a form approved by the Secretary, the physician's estimated actual charge for the procedure, the estimated approved charge under this part for the procedure, the excess of the physician's actual charge over the approved charge, and the coinsurance amount applicable to the procedure. The written estimate may not be used as the basis for, or evidence in, a civil suit.

(2) A physician who fails to make a disclosure required under paragraph (1) with respect to a procedure shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected for the procedure in excess of the charges recognized and approved under this part.

(3) If a physician knowingly and willfully fails to comply with paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(4) The Secretary shall provide for such monitoring of requests for payment for physicians' services to which paragraph (1) applies as is necessary to assure compliance with paragraph (2).

(n) Elimination of markup for certain purchased services

(1) If a physician's bill or a request for payment for services billed by a physician includes a charge for a diagnostic test described in section 1395x(s)(3) of this title (other than a clinical diagnostic laboratory test) for which the bill or request for payment does not indicate that the billing physician personally performed or supervised the performance of the test or that another physician with whom the physician who shares a practice personally performed or supervised the performance of the test, the amount payable with respect to the test shall be determined as follows:

(A) If the bill or request for payment indicates that the test was performed by a supplier, identifies the supplier, and indicates the amount the supplier charged the billing physician, payment for the test (less the applicable deductible and coinsurance amounts) shall be the actual acquisition costs (net of any discounts) or, if lower, the supplier's reasonable charge (or other applicable limit) for the test.

(B) If the bill or request for payment (i) does not indicate who performed the test, or (ii) indicates that the test was performed by a supplier but does not identify the supplier or include the amount charged by the supplier, no payment shall be made under this part.

(2) A physician may not bill an individual enrolled under this part—

(A) any amount other than the payment amount specified in paragraph (1)(A) and any applicable deductible and coinsurance for a diagnostic test for which payment is made pursuant to paragraph (1)(A), or

(B) any amount for a diagnostic test for which payment may not be made pursuant to paragraph (1)(B).

(3) If a physician knowingly and willfully in repeated cases bills one or more individuals in violation of paragraph (2), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

(*o*) Repealed. Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981

(p) Requiring submission of diagnostic information

(1) Each request for payment, or bill submitted, for an item or service furnished by a physician for which payment may be made under this part shall include the appropriate diagnosis code (or codes) as established by the Secretary for such item or service.

(2) In the case of a request for payment for an item or service furnished by a physician on an assignment-related basis which does not include the code (or codes) required under paragraph (1), payment may be denied under this part.

(3) In the case of a request for payment for an item or service furnished by a physician not submitted on an assignment-related basis and which does not include the code (or codes) required under paragraph (1)—

(A) if the physician knowingly and willfully fails to provide the code (or codes) promptly upon request of the Secretary or a carrier, the physician may be subject to a civil money penalty in an amount not to exceed $2,000, and

(B) if the physician knowingly, willfully, and in repeated cases fails, after being notified by the Secretary of the obligations and requirements of this subsection, to include the code (or codes) required under paragraph (1), the physician may be subject to the sanction described in subsection (j)(2)(A) of this section.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under subparagraph (A) in the same manner as they apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(q) Anesthesia services; counting actual time units

(1)(A) The Secretary, in consultation with groups representing physicians who furnish anesthesia services, shall establish by regulation a relative value guide for use in all carrier localities in making payment for physician anesthesia services furnished under this part. Such guide shall be designed so as to result in expenditures under this subchapter for such services in an amount that would not exceed the amount of such expenditures which would otherwise occur.

(B) For physician anesthesia services furnished under this part during 1991, the prevailing charge conversion factor used in a locality under this subsection shall, subject to clause (iv), be reduced to the adjusted prevailing charge conversion factor for the locality determined as follows:

(i) The Secretary shall estimate the national weighted average of the prevailing charge conversion factors used under this subsection for services furnished during 1990 after March 31, using the best available data.

(ii) The national weighted average estimated under clause (i) shall be reduced by 7 percent.

(iii) The adjusted prevailing charge conversion factor for a locality is the sum of—

(I) the product of (a) the portion of the reduced national weighted average prevailing charge conversion factor computed under clause (ii) which is attributable to physician work and (b) the geographic work index value for the locality (specified in Addendum C to the Model Fee Schedule for Physician Services (published on September 4, 1990, 55 Federal Register pp. 36238–36243)); and

(II) the product of (a) the remaining portion of the reduced national weighted average prevailing charge conversion factor computed under clause (ii) and (b) the geographic practice cost index value specified in subsection (b)(14)(C)(iv) of this section for the locality.

In applying this clause, 70 percent of the prevailing charge conversion factor shall be considered to be attributable to physician work.

(iv) The prevailing charge conversion factor to be applied to a locality under this subparagraph shall not be reduced by more than 15 percent below the prevailing charge conversion factor applied in the locality for the period during 1990 after March 31, but in no case shall the prevailing charge conversion factor be less than 60 percent of the national weighted average of the prevailing charge conversion factors (computed under clause (i)).

(2) For purposes of payment for anesthesia services (whether furnished by physicians or by certified registered nurse anesthetists) under this part, the time units shall be counted based on actual time rather than rounded to full time units.

(r) Establishment of physician identification system

The Secretary shall establish a system which provides for a unique identifier for each physician who furnishes services for which payment may be made under this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, § 1842, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 309; amended Jan. 2, 1968, Pub. L. 90–248, title I, §§ 125(a), 154(d), 81 Stat. 845, 863; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 211(c)(3), 224(a), 227(e)(3), 236(a), 258(a), 262(a), 263(d)(5), 281(d), 86 Stat. 1384, 1395, 1407, 1414, 1447–1449, 1455; Oct. 16, 1974, Pub. L. 93–445, title III, § 307, 88 Stat. 1358; Dec. 31, 1975, Pub. L. 94–182, title I, § 101(a), 89 Stat. 1051; July 16, 1976, Pub. L. 94–368, §§ 2, 3(a), (b), 90 Stat. 997; Oct. 25, 1977, Pub. L. 95–142, § 2(a)(1), 91 Stat. 1175; Dec. 20, 1977, Pub. L. 95–216, title V, § 501(b), 91 Stat. 1565; Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 918(a)(1), 946(a), (b), 948(b), 94 Stat. 2625, 2642, 2643; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2142(b), 95 Stat. 798; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 104(a), 113(a), 128(d)(1), 96 Stat. 336, 340, 367; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2303(e), 2306(a), (b)(1), (c), 2307(a)(1), (2), 2326(c)(2), (d)(2), 2339, 2354(b)(13), (14), title VI, 2663(j)(2)(F)(iv), 98 Stat. 1066, 1070, 1071, 1073, 1087, 1088, 1093, 1101, 1170; Nov. 8, 1984, Pub. L. 98–617, § 3(a)(1), (b)(5), (6), 98 Stat. 3295, 3296; Apr. 7, 1986, Pub. L. 99–272, title IX, §§ 9219(b)(1)(A), (2)(A), 9301(b)(1), (2), (c)(2)–(4), (d)(1)–(3), 9304(a), 9306(a), 9307(c), 100 Stat. 182–188, 190, 193, 194; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9307(c)(2)(A), 9311(c), 9320(e)(3), 9331(a)(1)–(3), (b)(1)–(3), (c)(3)(A), 9332(a)(1), (b)(1), (2), (c)(1), (d)(1), 9333(a), (b), 9334(a), 9338(b), (c), 9341(a)(2), 100 Stat. 1995, 1998, 2015, 2018–2026, 2028, 2035, 2038; Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1895(b)(14)(A), (15), (16)(A), 100 Stat. 2934; Aug. 18, 1987, Pub. L. 100–93, § 8(c)(2), 101 Stat. 692; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4031(a)(2), 4035(a)(2), 4041(a)(1), (3)(A), 4042(a), (b)(1), (2)(A), (c), 4044(a), 4045(a), (c)(1), (2)(B), (D), 4046(a), 4047(a), 4048(a), (e), 4051(a), 4053(a), formerly 4052(a), 4054(a), formerly 4053(a), 4063(a), 4081(a), 4082(c), 4085(g)(1), (i)(5)–(7), (22)(C), (24)–(27), 4096(a)(1), 101 Stat. 1330–76, 1330–78, 1330–83 to 1330–89, 1330–93, 1330–97, 1330–109, 1330–126, 1330–128, 1330–131, 1330–132, 1330–139, as amended July 1, 1988, Pub. L. 100–360, title IV, § 411(f)(1)(A), (2)(C), (D), (F), (3)(A), (4)(B), (7)(B), (11)(A), (14), (g)(2)(C), (i)(2), (4)(C)(vi), (j)(4)(A), 102 Stat. 776–779, 781, 783, 788, 789, 791; July 1, 1988, Pub. L. 100–360, title II, §§ 201(c), 202(c)(1), (e)(1)–(3)(A), (C), (4)(A), (5), (g), 223(b), (c), title IV, § 411(a)(3)(A), (C)(i), (f)(1)(B), (2)(A), (B), (E), (3)(B), (4)(A), (C), (5), (6)(B), (7)(A), (9), (g)(2)(A), (B), (i)(1)(A), 102 Stat. 702, 713, 716–718, 747, 768, 776–780, 783, 787; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(5)(A)–(D), (F)–(H), (17), (21)(A), (B), (D), (24)(B), 102 Stat. 2414, 2418, 2420, 2421; Dec. 13, 1989, Pub. L. 101–234, title II, § 201(a), title III, § 301(b)(2), (6), (c)(2), (d)(3), 103 Stat. 1981, 1985, 1986; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6003(g)(3)(D)(ix), 6102(b), (e)(2)–(4), (9), 6104, 6106(a), 6107(b), 6108(a)(1), (b)(1), (2), 6114(b), (c), 6202(d)(2), 103 Stat. 2153, 2184, 2187, 2188, 2208, 2210, 2212, 2213, 2218, 2234; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4101(a), (b)(1), 4103, 4105(a)(1), (2), (b)(1), 4106(a)(1), (b)(2), 4108(a), 4110(a), 4118(a)(1), (2), (f)(2)(A)–(C), (i)(1), (j)(2), 4155(c), 104 Stat. 1388–54, 1388–58 to 1388–63, 1388–66, 1388–67, 1388–69 to 1388–71, 1388–87; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(c)(2), 104 Stat. 3035; Aug. 10, 1993, Pub. L. 103–66, title XIII, §§ 13515(a)(2), 13516(a)(2), 13517(b), 13568(a), (b), 107 Stat. 583–585, 608; Oct. 31, 1994, Pub. L. 103–432, title I, §§ 123(b)(1), (2)(B), (c), 125(a), (b)(1), 126(a)(1), (c), (e), (g)(9), (h)(2), 135(b)(2), 151(b)(1)(B), (2)(B), 108 Stat. 4411–4416, 4423, 4434.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (a), is classified to section 1395c et seq. of this title.

Section 1395w–1(e)(2) of this title, referred to in subsec. (b)(2)(A), was struck out and section 1395w–1(e)(3) was redesignated 1395w–1(e)(2) by Pub. L. 103–432, title I, § 126(g)(8), Oct. 31, 1994, 108 Stat. 4416.

The Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (b)(14)(A)(ii), is Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388. For complete classification of this Act to the Code, see Tables.

Part B of subchapter XI of this chapter, referred to in subsec. (*l*)(1)(A)(iii), (2), is classified to section 1320c et seq. of this title.

AMENDMENTS

1994—Subsec. (b)(2)(A). Pub. L. 103–432, § 126(g)(9), made technical amendment to directory language of Pub. L. 101–508, § 4118(j)(2). See 1990 Amendment note below.

Subsec. (b)(2)(D). Pub. L. 103–432, § 151(b)(2)(B), added subpar. (D).

Subsec. (b)(3)(G). Pub. L. 103–432, § 151(b)(1)(B)(i), which directed striking out ''and'' at end of subpar. (G), could not be executed because ''and'' did not appear at end of subpar. (G) subsequent to amendment by Pub. L. 103–432, § 123(c)(2). See below.

Pub. L. 103–432, § 123(c)(2), amended subpar. (G) generally. Prior to amendment, subpar. (G) read as follows: ''will provide to each nonparticipating physician, at the beginning of each year, a list of the physician's limiting charges established under section 1395w–4(g)(2) of this title for the year for the physicians' services mostly commonly furnished by that physician; and''.

Subsec. (b)(3)(H). Pub. L. 103–432, § 151(b)(1)(B)(ii), which directed striking out ''and'' at end of subpar. (H), could not be executed because ''and'' does not appear at end.

Subsec. (b)(3)(I). Pub. L. 103–432, § 151(b)(1)(B)(iii), added subpar. (I).

Subsec. (b)(6)(D). Pub. L. 103–432, § 125(b)(1), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''payment may be made to a physician who arranges for visit services (including emergency visits and related services) to be provided to an individual by a second physician on an occasional, reciprocal basis if (i) the first physician is unavailable to provide the visit services, (ii) the individual has arranged or seeks to receive the visit services from the first physician, (iii) the claim form submitted to the carrier includes the second physician's unique identifier (provided under the system established under subsection (r) of this section) and indicates that the claim is for such a 'covered visit service (and related services)', and (iv) the visit services are not provided by the second physician over a continuous period of longer than 60 days.''

Subsec. (b)(12)(C). Pub. L. 103–432, § 123(b)(2)(B), struck out subpar. (C). Prior to amendment, subpar. (C) read as follows: ''Except for deductible and coinsurance amounts applicable under section 1395*l* of this title, any person who knowingly and willfully presents, or causes to be presented, to an individual enrolled under this part a bill or request for payment for services described in clauses (i), (ii), or (iv) of section 1395x(s)(2)(K) of this title in violation of subparagraph (A)(i) is subject to a civil money penalty of not to exceed $2,000 for each such bill or request. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (b)(16)(B)(iii). Pub. L. 103–432, § 126(a)(1), struck out '', simple and subcutaneous'' after ''Partial'', substituted ''injections and small joint'' for ''in-

jections; small joint'' and ''femoral fracture and'' for ''femoral fracture treatments;'', struck out ''lobectomy;'' after ''thoracostomy;'' and ''enterectomy; colectomy; cholecystectomy;'' after ''aneurysm repair;'', substituted ''fulguration and resection'' for ''fulguration; transurerethral resection'', and struck out ''sacral laminectomy;'' before ''tympanoplasty''.

Subsec. (b)(17). Pub. L. 103–432, §126(e), redesignated par. (18), relating to payment for technical component of diagnostic tests, as (17) and inserted '', tests specified in paragraph (14)(C)(i),'' after ''diagnostic laboratory tests''.

Subsec. (b)(18). Pub. L. 103–432, §126(e), redesignated par. (18), relating to payment for technical component of diagnostic tests, as (17).

Pub. L. 103–432, §123(b)(1), added par. (18), relating to payment for service furnished by a practitioner described in subpar. (C).

Subsec. (c)(1). Pub. L. 103–432, §126(h)(2), struck out subpar. (A) designation before ''Any contract entered'' and struck out subpar. (B) which read as follows: ''Of the amounts appropriated for administrative activities to carry out this part, the Secretary shall provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under this section, to reward carriers for their success in increasing the proportion of physicians in the carrier's service area who are participating physicians or in increasing the proportion of total payments for physicians' services which are payments for such services rendered by participating physicians.''

Subsec. (c)(4). Pub. L. 103–432, §125(a), added par. (4).

Subsec. (c)(5). Pub. L. 103–432, §135(b)(2), added par. (5).

Subsec. (h)(7)(C). Pub. L. 103–432, §123(c)(1)(B), struck out ''shall include'' before cl. (i).

Subsec. (h)(7)(D). Pub. L. 103–432, §123(c)(1)(A), (C), (D), added subpar. (D).

Subsec. (q)(1). Pub. L. 103–432, §126(c)(1), made technical amendment to Pub. L. 101–508, §4103(a). See 1990 Amendment note below.

Subsec. (q)(1)(B). Pub. L. 103–432, §126(c)(2)(A), substituted ''shall, subject to clause (iv), be reduced to the adjusted prevailing charge conversion factor for the locality determined as follows:'' for ''shall be determined as follows:'' in introductory provisions.

Subsec. (q)(1)(B)(iii). Pub. L. 103–432, §126(c)(2)(B), substituted ''The adjusted prevailing charge conversion factor for'' for ''Subject to clause (iv), the prevailing charge conversion factor to be applied in''.

1993—Subsec. (b)(4)(F). Pub. L. 103–66, §13515(a)(2), struck out subpar. (F) which related to prevailing charge or fee schedule amount in case of professional services of health care practitioner (other than primary care services and other than services furnished in rural area designated as health professional shortage area) furnished during practitioner's first through fourth years of practice.

Subsec. (b)(13)(A). Pub. L. 103–66, §13516(a)(2)(A), added subpar. (A) and struck out former subpar. (A) which read as follows: ''In determining the reasonable charge under paragraph (3) of a physician for medical direction of two or more nurse anesthetists performing, on or after April 1, 1988, and before January 1, 1996, anesthesia services in whole or in part concurrently, the number of base units which may be recognized with respect to such medical direction for each concurrent procedure (other than cataract surgery or an iridectomy) shall be reduced by—

''(i) 10 percent, in the case of medical direction of 2 nurse anesthetists concurrently,

''(ii) 25 percent, in the case of medical direction of 3 nurse anesthetists concurrently, and

''(iii) 40 percent, in the case of medical direction of 4 nurse anesthetists concurrently.''

Subsec. (b)(13)(B), (C). Pub. L. 103–66, §13516(a)(2), redesignated subpar. (C) as (B), substituted ''subparagraph (A)'' for ''subparagraph (A) or (B)'', and struck out former subpar. (B) which read as follows: ''In determining the reasonable charge under paragraph (3) of a physician for medical direction of two or more nurse anesthetists performing, on or after January 1, 1989, and before January 1, 1996, anesthesia services in whole or in part concurrently, the number of base units which may be recognized with respect to such medical direction for each concurrent cataract surgery or iridectomy procedure shall be reduced by 10 percent.''

Subsec. (c)(2)(B)(ii). Pub. L. 103–66, §13568(b), substituted ''period ending on or before September 30, 1993'' for ''period'' in subcl. (IV) and added subcl. (V).

Subsec. (c)(3)(B). Pub. L. 103–66, §13568(a), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) with respect to claims received in the 3-month period beginning July 1, 1988, 10 days, and

''(ii) with respect to claims received in the 12-month period beginning October 1, 1988, 14 days.''

Subsec. (i)(2). Pub. L. 103–66, §13517(b), substituted ''; the term'' for '', and the term'' and inserted before period at end ''; and the term 'nonparticipating supplier or other person' means a supplier or other person (excluding a provider of services) that is not a participating physician or supplier (as defined in subsection (h)(1) of this section)''.

1990—Subsec. (b)(2)(A). Pub. L. 101–508, §4118(j)(2), as amended by Pub. L. 103–432, §126(g)(9), substituted ''section 1395w–1(e)(2)'' for ''section 1395w–1(f)(2)''.

Subsec. (b)(3)(G). Pub. L. 101–508, §4118(f)(2)(B), substituted ''section 1395w–4(g)(2) of this title'' for ''subsection (j)(1)(C) of this section''.

Subsec. (b)(4)(A)(vi). Pub. L. 101–508, §4105(b)(1), substituted ''60 percent'' for ''50 percent''.

Subsec. (b)(4)(B)(iv). Pub. L. 101–508, §4105(a)(2), added cl. (iv).

Subsec. (b)(4)(E)(iv)(I). Pub. L. 101–508, §4118(a)(2), substituted ''the list referred to in paragraph (14)(C)(i)'' for ''Table #2 in the Joint Explanatory Statement of the Committee of Conference submitted with the Conference Report to accompany H.R. 3299 (the 'Omnibus Budget Reconciliation Act of 1989'), 101st Congress''.

Subsec. (b)(4)(E)(v). Pub. L. 101–508, §4105(a)(1), added cl. (v).

Subsec. (b)(4)(F). Pub. L. 101–508, §4106(a)(1), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''In determining the customary charges for physicians' services furnished during a calendar year (other than primary care services and other than services furnished in a rural area (as defined in section 1395ww(d)(2)(D) of this title) that is designated, under section 254e(a)(1)(A) of this title, as a health manpower shortage area) for which adequate actual charge data are not available because a physician has not yet been in practice for a sufficient period of time, the Secretary shall set a customary charge at a level no higher than 80 percent of the prevailing charge for a service. For the first calendar year during which the preceding sentence no longer applies, the Secretary shall set the customary charge at a level no higher than 85 percent of the prevailing charge for the service.''

Subsec. (b)(4)(F)(i). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area''.

Pub. L. 101–508, §4106(b)(2)(A), (B), substituted ''professional services'' for ''physicians' services and professional services'' and ''practitioner's first'' for ''physician's or practitioner's first''.

Subsec. (b)(4)(F)(ii)(II). Pub. L. 101–508, §4106(b)(2)(C), substituted ''practitioner'' for ''physician or practitioner'' in two places.

Subsec. (b)(6)(C). Pub. L. 101–508, §4155(c), substituted ''clauses (i), (ii), or (iv) of section 1395x(s)(2)(K)'' for ''section 1395x(s)(2)(K)''.

Subsec. (b)(6)(D). Pub. L. 101–508, §4110(a), added subpar. (D).

Subsec. (b)(12)(A). Pub. L. 101–508, §4155(c), substituted ''clauses (i), (ii), or (iv) of section 1395x(s)(2)(K)'' for ''section 1395x(s)(2)(K)'' in introductory provisions.

Subsec. (b)(12)(A)(ii)(II). Pub. L. 101–508, §4118(f)(2)(C), struck out '', as the case may be'' after ''section 1395w–4 of this title''.

Pub. L. 101–508, §4118(f)(2)(A), made technical correction to Pub. L. 101–239, §6102(e)(4). See 1989 Amendment note below.

Subsec. (b)(12)(C). Pub. L. 101–508, §4155(c), substituted ''clauses (i), (ii), or (iv) of section 1395x(s)(2)(K)'' for ''section 1395x(s)(2)(K)''.

Subsec. (b)(13)(A), (B). Pub. L. 101–508, §4103(b), substituted ''1996'' for ''1991''.

Subsec. (b)(14)(A). Pub. L. 101–508, §4101(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(14)(B)(iii)(I). Pub. L. 101–508, §4118(a)(1)(A), which directed amendment of subcl. (I) by substituting ''practice expense component (percent), divided by 100, specified in appendix A (pages 187 through 194) of the Report of the Medicare and Medicaid Health Budget Reconciliation Amendments of 1989, prepared by the Subcommittee on Health and the Environment of the Committee on Energy and Commerce, House of Representatives, (Committee Print 101–M, 101st Congress, 1st Session) for the service'' for ''practice expense ratio for the service (specified in table #1 in the Joint Explanatory Statement referred to in subparagraph (C)(i))'', was executed by making the substitution for ''practice expense ratio for the service (specified in Table #1 in the Joint Explanatory Statement referred to in subparagraph (C)(i))'' to reflect the probable intent of Congress.

Subsec. (b)(14)(B)(iii)(II). Pub. L. 101–508, §4118(a)(1)(B), substituted ''practice expense component (percent), divided by 100'' for ''practice expense ratio''.

Subsec. (b)(14)(C)(i). Pub. L. 101–508, §4118(a)(1)(C), substituted ''procedures specified (by code and description) in the Overvalued Procedures List for Finance Committee, Revised September 20, 1989, prepared by the Physician Payment Review Commission'' for ''physicians' services specified in Table #2 in the Joint Explanatory Statement of the Committee of Conference submitted with the Conference Report to accompany H.R. 3299 (the 'Omnibus Budget Reconciliation Act of 1989'), 101st Congress,''.

Subsec. (b)(14)(C)(iii). Pub. L. 101–508, §4118(a)(1)(D), which directed amendment of cl. (iii) by substituting ''The 'percentage change' specified in this clause, for a physicians' service specified in clause (i), is the percent difference (but expressed as a positive number) specified for the service in the list'' for ''The 'percent change' specified in this clause, for a physicians' service specified in clause (i), is the percent change specified for the service in table #2 in the Joint Explanatory Statement'', was executed by making the substitution for ''The 'percent change' specified in this clause, for a physicians' service specified in clause (i), is the percent change specified for the service in Table #2 in the Joint Explanatory Statement'' to reflect the probable intent of Congress.

Subsec. (b)(14)(C)(iv). Pub. L. 101–508, §4118(a)(1)(E), which directed amendment of cl. (iv) by substituting ''the Geographic Overhead Costs Index specified for the locality in table 1 of the September 1989 Supplement to the Geographic Medicare Economic Index: Alternative Approaches (prepared by the Urban Institute and the Center for Health Economics Research)'' for ''such value specified for the locality in table #3 in the Joint Explanatory Statement referred to in clause (i)'', was executed by making the substitution for ''such value specified for the locality in Table #3 in the Joint Explanatory Statement referred to in clause (i)'' to reflect the probable intent of Congress.

Subsec. (b)(16). Pub. L. 101–508, §4101(b), added par. (16).

Subsec. (b)(18). Pub. L. 101–508, §4108(a), added par. (18).

Subsec. (q)(1). Pub. L. 101–508, §4103(a), as amended by Pub. L. 103–432, §126(c)(1), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (r). Pub. L. 101–508, §4118(i)(1), added subsec. (r).

1989—Subsec. (b)(2)(A). Pub. L. 101–239, §6202(d)(2), inserted at end ''The Secretary may not require, as a condition of entering into or renewing a contract under this section or under section 1395hh of this title, that a carrier match data obtained other than in its activities under this part with data used in the administration of this part for purposes of identifying situations in which section 1395y(b) of this title may apply.''

Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §202(e)(3)(C), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(2)(C). Pub. L. 101–239, §6114(c)(2), added subpar. (C).

Subsec. (b)(3)(G). Pub. L. 101–239, §6102(e)(2), substituted ''limiting charges established under subsection (j)(1)(C) of this section'' for ''maximum allowable actual charges (established under subsection (j)(1)(C) of this section)''.

Subsec. (b)(3)(I) to (K). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §§201(c), 202(e)(2), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (b)(3)(L). Pub. L. 101–239, §6102(b), added subpar. (L).

Subsec. (b)(4)(A)(iv). Pub. L. 101–239, §6102(e)(3), inserted ''and before January 1, 1992,'' after ''January 1, 1987,''.

Subsec. (b)(4)(E)(iv). Pub. L. 101–239, §6107(b), added cl. (iv).

Subsec. (b)(4)(F). Pub. L. 101–239, §6108(a)(1), inserted ''furnished during a calendar year'' after ''physicians' services'' and inserted at end ''For the first calendar year during which the preceding sentence no longer applies, the Secretary shall set the customary charge at a level no higher than 85 percent of the prevailing charge for the service.''

Subsec. (b)(6)(A)(ii). Pub. L. 101–239, §6003(g)(3)(D)(ix), inserted ''rural primary care hospital,'' after ''hospital,''.

Subsec. (b)(6)(C). Pub. L. 101–239, §6114(c)(1), inserted ''or nurse practitioner'' after ''physician assistant''.

Subsec. (b)(12)(A). Pub. L. 101–239, §6114(b), substituted ''physician assistants and nurse practitioners'' for ''physician assistant acting under the supervision of a physician'' in introductory provisions.

Subsec. (b)(12)(A)(ii)(II). Pub. L. 101–239, §6102(e)(4), as amended by Pub. L. 101–508, §4118(f)(2)(A), inserted ''(or, for services furnished on or after January 1, 1992, the fee schedule amount specified in section 1395w–4 of this title, as the case may be)'' after ''prevailing charge rate determined for such services''.

Subsec. (b)(14). Pub. L. 101–239, §6104(a), added par. (14).

Subsec. (b)(15). Pub. L. 101–239, §6108(b)(1), added par. (15).

Subsecs. (c)(1)(A), (2)(A), (3)(A), (4), (f)(3), (h)(1), (2), (4). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §202(c)(1)(A), (B), (e)(1), (3)(A), (4)(A), (5), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (j)(1)(B)(ii). Pub. L. 101–239, §6102(e)(9), substituted ''December 31, 1990.'' for ''the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1395w–1(e)(3) of this title, on the development of the relative value scale under section 1395w–1 of this title.''

Subsec. (j)(1)(C)(vii). Pub. L. 101–234, §301(b)(2), (c)(2), amended cl. (vii) identically, substituting ''according'' for ''accordingly''.

Subsec. (j)(1)(D)(ii)(II). Pub. L. 101–239, §6104(b)(1), inserted ''or (b)(14)(A)'' after ''(b)(10)(A)''.

Subsec. (j)(1)(D)(ii)(IV). Pub. L. 101–239, §6108(b)(2)(A), inserted ''or (b)(15)(A)'' after ''subsection (b)(11)(C)(i)''.

Subsec. (j)(1)(D)(iii)(II). Pub. L. 101–239, §6108(b)(2)(B), substituted ''(b)(14)(A), or (b)(15)(A)'' for ''or (b)(14)(A)''.

Pub. L. 101–239, §6104(b)(2), substituted ''(b)(11)(C)(i), or (b)(14)(A)'' for ''or (b)(11)(C)(i)''.

Subsec. (j)(1)(D)(v). Pub. L. 101–239, §6102(e)(9), substituted ''December 31, 1990.'' for ''the earlier of (I) De-

cember 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1395w–1(e)(3) of this title, on the development of the relative value scale under section 1395w–1 of this title.''

Subsec. (j)(2). Pub. L. 101–234, §301(b)(6), (d)(3), which directed identical amendments to subsec. (j)(2) by substituting ''subsections'' for ''paragraphs'' in subpar. (B) as amended by section 8(c)(2)(A) of the Medicare and Medicaid Fraud and Abuse Patient Protection Act of 1987 [probably meaning section 8(c)(2)(A) of Pub. L. 100–93, the Medicare and Medicaid Patient and Program Protection Act of 1987, which amended subpar. (A) of subsec. (j)(2), generally] could not be executed because the word ''paragraphs'' did not appear.

Subsec. (*o*). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §202(c)(1)(C), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (q). Pub. L. 101–239, §6106(a), added subsec. (q).

1988—Subsec. (b)(2). Pub. L. 100–360, §411(i)(2), amended Pub. L. 100–203, §4082(c), see 1987 Amendment note below.

Subsec. (b)(2)(A). Pub. L. 100–485, §608(d)(5)(G), inserted '', including claims processing functions'' after ''and related functions'' in last sentence.

Pub. L. 100–360, §411(f)(1)(B), inserted reference to section 1395w–1(f)(2) of this title in third sentence.

Pub. L. 100–360, §202(e)(3)(C), as amended by Pub. L. 100–485, §608(d)(5)(F), inserted at end ''With respect to activities relating to implementation and operation (and related functions) of the electronic system established under subsection (*o*)(4) of this section, the Secretary may enter into contracts with carriers under this section to perform such activities on a regional basis.''

Subsec. (b)(3). Pub. L. 100–360, §411(i)(4)(C)(vi), added Pub. L. 100–203, §4085(i)(24), see 1987 Amendment note below.

Pub. L. 100–360, §411(f)(4)(B)(ii), added Pub. L. 100–203, §4045(c)(2)(D), see 1987 Amendment note below.

Pub. L. 100–360, §411(f)(11)(A), (14), renumbered and amended Pub. L. 100–203, §4053(a), see 1987 Amendment note below.

Subsec. (b)(3)(B)(ii). Pub. L. 100–360, §411(j)(4)(A), made technical correction to directory language of Pub. L. 100–203, §4096(a)(1)(A), see 1987 Amendment note below.

Subsec. (b)(3)(I). Pub. L. 100–360, §201(c), added subpar. (I) requiring notice that an individual has reached the part B catastrophic limit on out-of-pocket cost sharing for the year.

Subsec. (b)(3)(J). Pub. L. 100–360, §202(e)(2), added subpar. (J) relating to requirements for determinations or payments with respect to covered outpatient drugs, to receive information and respond to requests by participating pharmacies.

Subsec. (b)(3)(K). Pub. L. 100–485, §608(d)(5)(C), inserted '', including claims processing functions,'' after ''and for related functions''.

Pub. L. 100–360, §202(e)(2), added subpar. (K) requiring contracts with organizations described in subsection (f)(3) of this section to implement and operate the electronic system established under subsection (*o*)(4) of this section for covered outpatient drugs.

Subsec. (b)(4)(A)(iv). Pub. L. 100–360, §411(f)(2)(F)(i), as amended by Pub. L. 100–485, §608(d)(21)(B), redesignated and amended Pub. L. 100–203, §4042(c)(1), see 1987 Amendment note below.

Subsec. (b)(4)(A)(iv)(II). Pub. L. 100–360, §411(f)(2)(E), substituted ''before January 1, 1989'' for ''before January 1, 1988''.

Subsec. (b)(4)(A)(vi). Pub. L. 100–360, §411(f)(3)(A), made technical amendment to directory language of Pub. L. 100–203, §4044(a), see 1987 Amendment note below.

Pub. L. 100–360, §411(f)(3)(B), substituted ''subsection (i)(4) of this section'' for ''subparagraph (E)(iii)'' and ''the estimated average prevailing charge levels based on the best available data'' for ''the average of the prevailing charge levels'' and struck out ''for participating physicians'' before ''under the third''.

Subsec. (b)(4)(A)(vii). Pub. L. 100–360, §411(f)(2)(D), added Pub. L. 100–203, §4042(b)(2)(A), see 1987 Amendment note below.

Pub. L. 100–360, §411(f)(3)(A), made technical amendment to directory language of Pub. L. 100–203, §4044(a), see 1987 Amendment note below.

Subsec. (b)(4)(E). Pub. L. 100–360, §411(f)(2)(C), added Pub. L. 100–203, §4042(b)(1)(C), (D), see 1987 Amendment notes below.

Subsec. (b)(4)(F). Pub. L. 100–360, §411(f)(2)(C), added Pub. L. 100–203, §4042(b)(1)(D), see 1987 Amendment note below.

Subsec. (b)(4)(F)(ii)(I). Pub. L. 100–360, §411(f)(2)(B), substituted ''subsection (i)(4) of this section'' for ''subparagraph (E)(iii)''.

Subsec. (b)(4)(F)(iii). Pub. L. 100–360, §411(f)(2)(A), substituted ''services,'' for ''services;'' in subcl. (I) and ''physicians' '' for ''physician's'' in subcl. (II).

Subsec. (b)(4)(G). Pub. L. 100–360, §411(f)(2)(C), added Pub. L. 100–203, §4042(b)(1)(D), see 1987 Amendment note below.

Pub. L. 100–360, §411(f)(6)(B), substituted ''other than primary care services'' for ''other primary care services'' and struck out ''(as determined under the third and fourth sentences of paragraph (3) and under paragraph (4))'' after ''the prevailing charge''.

Subsec. (b)(7)(B)(iii). Pub. L. 100–360, §411(i)(4)(C)(vi), added Pub. L. 100–203, §4085(i)(22)(C), see 1987 Amendment note below.

Subsec. (b)(10)(A)(i). Pub. L. 100–360, §411(f)(4)(A)(i), struck out ''under paragraph (3)'' after ''reasonable charge'', substituted ''subparagraph (B)'' for ''subparagraph (C)'', and struck out ''for participating and nonparticipating physicians'' after ''charge for such procedure''.

Subsec. (b)(10)(A)(iii). Pub. L. 100–360, §411(f)(4)(A)(ii), substituted ''clause (i)(I)'' for ''clause (i)(II)''.

Subsec. (b)(10)(B). Pub. L. 100–360, §411(f)(4)(A)(iii), inserted ''(including subsequent insertion of an intraocular lens)'' after ''cataract surgery''.

Subsec. (b)(10)(D). Pub. L. 100–360, §411(f)(4)(A)(iv), substituted ''under section 1395ff'' for ''section 1395ff''.

Subsec. (b)(11)(B)(i). Pub. L. 100–360, §411(f)(4)(B)(i), amended Pub. L. 100–203, §4045(c)(2)(B), see 1987 Amendment note below.

Subsec. (b)(11)(C)(i). Pub. L. 100–360, §411(f)(5)(A), substituted ''insertion'' for ''implantation''.

Subsec. (b)(11)(C)(ii). Pub. L. 100–360, §411(g)(2)(A), substituted ''inserted during or subsequent to'' for ''implanted during''.

Subsec. (b)(12)(C). Pub. L. 100–360, §411(i)(4)(C)(vi), added Pub. L. 100–203, §4085(i)(25), see 1987 Amendment note below.

Subsec. (b)(13), (14). Pub. L. 100–360, §411(f)(7)(A), redesignated par. (14) as (13).

Subsec. (c)(1)(A). Pub. L. 100–360, §202(e)(3)(A), designated existing provisions as cl. (i), inserted '', except as provided in clause (ii),'' after ''under this part, and'' and added cl. (ii) relating to payment for implementation and operation of the electronic system for covered outpatient drugs.

Subsec. (c)(1)(A)(ii). Pub. L. 100–485, §608(d)(5)(D), inserted '', including claims processing functions'' after ''and related functions''.

Subsec. (c)(2)(A), (3)(A). Pub. L. 100–360, §202(e)(5)(A), as amended by Pub. L. 100–485, §608(d)(5)(H), substituted ''Except as provided in paragraph (4), each'' for ''Each''.

Subsec. (c)(4). Pub. L. 100–360, §202(e)(5)(B), added par. (4) requiring contracts for the disbursement of funds with respect to claims for payment for covered outpatient drugs to provide for a payment cycle, and requiring interest if such requirements are not met.

Subsec. (f)(3). Pub. L. 100–485, §608(d)(5)(B), inserted '', including claims processing functions'' after ''and related functions''.

Pub. L. 100–360, §202(e)(1), added par. (3) which read as follows: ''with respect to implementation and operation (and related functions) of the electronic system estab-

lished under subsection (*o*)(4) of this section, a voluntary association, corporation, partnership, or other nongovernmental organization, which the Secretary determines to be qualified to conduct such activities.''

Subsec. (h)(1). Pub. L. 100–360, §202(c)(1)(A), inserted '', except that, with respect to a supplier of covered outpatient drugs, the term 'participating supplier' means a participating pharmacy (as defined in subsection (*o*)(1) of this section)'' after ''part during such year''.

Subsec. (h)(2). Pub. L. 100–360, §202(e)(4)(A), inserted ''(other than a carrier described in subsection (f)(3) of this section)'' after ''Each carrier''.

Subsec. (h)(3)(B). Pub. L. 100–360, §411(i)(1)(A), substituted ''payment determination'' for ''claims determination'', ''shall include an explanation of benefits and any additional information that the Secretary may determine to be appropriate in order'' for ''including such information as the Secretary determines is generally provided'', ''enter into agreements'' for ''enter into arrangements'', and ''under this subparagraph by a carrier'' for ''under this subparagraph'' and inserted '', and such user fees shall be collected and retained by the carrier''.

Subsec. (h)(4). Pub. L. 100–360, §202(c)(1)(B), inserted at end ''In publishing directories under this paragraph, the Secretary shall provide for separate directories (wherever appropriate) for participating pharmacies.''

Subsec. (h)(5). Pub. L. 100–360, §223(b), designated existing provisions as subpar. (A), inserted ''through an annual mailing'', struck out at end ''The Secretary shall include such notice in the mailing of appropriate benefit checks provided under subchapter II of this chapter.'', and added subpar. (B).

Subsec. (h)(7). Pub. L. 100–360, §411(f)(2)(C), added Pub. L. 100–203, §4042(b)(1)(A), see 1987 Amendment note below.

Pub. L. 100–360, §223(c), in subpar. (A) inserted ''prominent'' before ''reminder'' and substituted ''and a clear statement of any amounts charged for the particular items or services on the claim involved above the amount recognized under this part),'' for ''), and'' and added subpar. (C).

Subsec. (h)(8). Pub. L. 100–360, §411(f)(2)(C), added Pub. L. 100–203, §4042(b)(1)(B), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100–360, §411(f)(2)(C), added Pub. L. 100–203, §4042(b)(1)(B), see 1987 Amendment note below.

Subsec. (i)(2), (3). Pub. L. 100–360, §411(f)(2)(C), added Pub. L. 100–203, §4042(b)(1)(C), see 1987 Amendment note below.

Subsec. (i)(3). Pub. L. 100–485, §608(d)(21)(A), substituted ''subsection (b)(3) of this section'' for ''paragraph (3)''.

Subsec. (i)(4). Pub. L. 100–360, §411(f)(2)(C), added Pub. L. 100–203, §4042(b)(1)(E), see 1987 Amendment note below.

Subsec. (j)(1)(C)(i). Pub. L. 100–360, §411(f)(2)(F)(ii), added Pub. L. 100–203, §4042(c)(2), see 1987 Amendment note below.

Subsec. (j)(1)(C)(viii). Pub. L. 100–360, §411(f)(1)(A), amended Pub. L. 100–203, §4041(a)(1)(B), see 1987 Amendment note below.

Subsec. (j)(1)(C)(ix). Pub. L. 100–360, §411(f)(7)(B), added Pub. L. 100–203, §4048(e), see 1987 Amendment note below.

Subsec. (j)(1)(D)(ii)(IV). Pub. L. 100–360, §411(f)(5)(B), struck out ''is'' after ''limit''.

Subsec. (j)(1)(D)(ii)(V). Pub. L. 100–360, §411(g)(2)(B), redesignated subcl. (IV) as (V) and struck out ''is'' after ''limit''.

Subsec. (j)(1)(D)(iii). Pub. L. 100–360, §411(g)(2)(C), amended Pub. L. 100–203, §4063(a)(2)(B), see 1987 Amendment note below.

Subsec. (j)(1)(D)(iv). Pub. L. 100–360, §411(f)(4)(C), substituted ''bills'' for ''imposes a charge''.

Subsec. (j)(2). Pub. L. 100–360, §411(i)(4)(C)(vi), as amended by Pub. L. 100–485, §608(d)(24)(B), added Pub. L. 100–203, §4085(i)(26), see 1987 Amendment note below.

Subsec. (*l*)(1)(C)(i). Pub. L. 100–360, §411(i)(4)(C)(vi), added Pub. L. 100–203, §4085(i)(27), see 1987 Amendment note below.

Subsec. (n)(1). Pub. L. 100–360, §411(f)(9)(A), in introductory provisions, struck out ''to a patient'' after ''includes a charge'', inserted ''the bill or request for'' after ''for which'', and substituted ''shares a practice'' for ''shares his practice'' and ''supervised the performance of the test, the'' for ''supervised the test, the''.

Subsec. (n)(1)(A). Pub. L. 100–485, §608(d)(17), substituted ''the supplier's'' for ''the the supplier's''.

Pub. L. 100–360, §411(f)(9)(B), as amended by Pub. L. 100–485, §608(d)(21)(D), substituted ''(or other applicable limit)'' for ''to individuals enrolled under this part''.

Pub. L. 100–360, §411(a)(3)(A), (C)(i), clarified that illegible matter after ''or, if lower, the'' was ''the supplier's reasonable charge to individuals enrolled under this part for the test''.

Subsec. (n)(2)(A). Pub. L. 100–360, §411(f)(9)(C), inserted ''the payment amount specified in paragraph (1)(A) and'' after ''other than''.

Subsec. (n)(3). Pub. L. 100–360, §411(f)(9)(D), struck out ''or supplier'' after ''such physician''.

Subsec. (*o*). Pub. L. 100–360, §202(c)(1)(C), added subsec. (*o*) relating to ''participating pharmacies'' as entities authorized under State law to dispense covered outpatient drugs which had entered into agreements with Secretary to participate in catastrophic coverage program.

Subsec. (*o*)(1)(A)(i). Pub. L. 100–485, §608(d)(5)(A)(i), substituted ''paragraph (4)'' for ''subparagraph (D)(i)''.

Subsec. (*o*)(1)(B)(ii). Pub. L. 100–485, §608(d)(5)(A)(ii), substituted ''an eligible organization'' for ''eligible organization''.

Subsec. (p). Pub. L. 100–360, §202(g), added subsec. (p).

1987—Subsec. (b)(2). Pub. L. 100–203, §4082(c), as amended by Pub. L. 100–360, §411(i)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 100–203, §4041(a)(3)(A)(i), inserted at end ''In establishing such standards and criteria, the Secretary shall provide a system to measure a carrier's performance of responsibilities described in paragraph (3)(H) and subsection (h) of this section.''

Subsec. (b)(3). Pub. L. 100–203, §4085(i)(24), as added by Pub. L. 100–360, §411(i)(4)(C)(vi), substituted ''In the case of physicians' services'' for ''In the case of physician services'' and ''(with respect to physicians' services'' for ''(with respect to physicians services'' in fourth sentence.

Pub. L. 100–203, §4045(c)(2)(D), as added by Pub. L. 100–360, §411(f)(4)(B)(ii), inserted ''(or under any other provision of law affecting the prevailing charge level)'' in fourth sentence.

Pub. L. 100–203, §4053(a), formerly §4052(a), as renumbered and amended by Pub. L. 100–360, §411(f)(11)(A), (14), inserted '', and shall remain at such prevailing charge level until the prevailing charge for a year (as adjusted by economic index data) equals or exceeds such prevailing charge level'' before period at end of penultimate sentence.

Subsec. (b)(3)(B)(ii). Pub. L. 100–203, §4096(a)(1)(A), as amended by Pub. L. 100–360, §411(j)(4)(A), added subcl. (II), redesignated former subcl. (II) as (III), and inserted ''(and to refund amounts already collected)''.

Subsec. (b)(3)(C). Pub. L. 100–203, §4085(i)(5), substituted ''less than $500'' for ''not more than $500''.

Subsec. (b)(4)(A)(iv). Pub. L. 100–203, §4042(c)(1), formerly §4042(c), as redesignated and amended by Pub. L. 100–360, §411(f)(2)(F)(i), and by Pub. L. 100–485, §608(d)(21)(B), amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''In determining the prevailing charge level under the third and fourth sentences of paragraph (3) for a physicians' service furnished on or after January 1, 1987, by a nonparticipating physician, the Secretary shall set the level at 96 percent of the prevailing charge levels established under such sentences with respect to such service furnished by participating physicians.''

Subsec. (b)(4)(A)(v). Pub. L. 100–203, §4041(a)(1)(A)(i), added cl. (v). Former cl. (v) redesignated (vi).

Subsec. (b)(4)(A)(vi). Pub. L. 100–203, §4044(a), as amended by Pub. L. 100–360, §411(f)(3)(A), added cl. (vi). Former cl. (vi) redesignated (vii).

Pub. L. 100–203, § 4041(a)(1)(A)(i), redesignated former cl. (v) as (vi).

Subsec. (b)(4)(A)(vii). Pub. L. 100–203, § 4042(b)(2)(A), as added by Pub. L. 100–360, § 411(f)(2)(D), substituted ''subsection (i)(3) of this section'' for ''subparagraph (E)(ii)''.

Pub. L. 100–203, § 4044(a), as amended by Pub. L. 100–360, § 411(f)(3)(A), redesignated former cl. (vi) as (vii).

Subsec. (b)(4)(B)(iii). Pub. L. 100–203, § 4041(a)(1)(A)(ii), added cl. (iii).

Subsec. (b)(4)(E). Pub. L. 100–203, § 4042(b)(1)(D), as added by Pub. L. 100–360, § 411(f)(2)(C), redesignated subpar. (F) as (E). Former subpar. (E) transferred to subsec. (i).

Pub. L. 100–203, § 4042(b)(1)(C), as added by Pub. L. 100–360, § 411(f)(2)(C), struck out ''(E) In this section:'' before cl. (i), redesignated cls. (i) and (ii) as pars. (2) and (3), respectively, and transferred those pars. to subsec. (i).

Subsec. (b)(4)(F). Pub. L. 100–203, § 4042(b)(1)(D), as added by Pub. L. 100–360, § 411(f)(2)(C), redesignated subpar. (G) as (F). Former subpar. (F) redesignated (E).

Pub. L. 100–203, § 4042(a), added subpar. (F).

Subsec. (b)(4)(G). Pub. L. 100–203, § 4042(b)(1)(D), as added by Pub. L. 100–360, § 411(f)(2)(C), redesignated subpar. (G) as (F).

Pub. L. 100–203, § 4047(a), added subpar. (G).

Subsec. (b)(7)(B)(iii). Pub. L. 100–203, § 4085(i)(22)(C), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''an assignment-related basis'' for ''the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title''.

Subsec. (b)(10). Pub. L. 100–203, § 4045(a), amended par. (10) generally, revising and restating as subpars. (A) to (D) provisions of former subpars. (A) to (C).

Subsec. (b)(11)(B)(i). Pub. L. 100–203, § 4045(c)(2)(B), as amended by Pub. L. 100–360, § 411(f)(4)(B)(i), struck out ''and shall be further reduced by 2 percent with respect to procedures performed in 1988'' after ''in 1987'' and struck out second sentence which read as follows: ''A reduced prevailing charge under this subparagraph shall become the prevailing charge level for subsequent years for purposes of applying the economic index under the fourth sentence of paragraph (3).''

Subsec. (b)(11)(C). Pub. L. 100–203, § 4063(a)(1)(A), designated existing provisions as cl. (i) and added cl. (ii).

Pub. L. 100–203, § 4046(a)(1)(B), (C), added subpar. (C) and redesignated former subpar. (C) as (D).

Pub. L. 100–203, § 4045(c)(1)(A), struck out former cl. (i) designation before ''In the case of'' and substituted '', the physician's actual charge is subject to a limit under subsection (j)(1)(D) of this section.'' for ''(subject to clause (iv)), the physician may not charge the individual more than the limiting charge (as defined in clause (ii)) plus (for services furnished during the 12-month period beginning on the effective date of the reduction) ½ of the amount by which the physician's actual charges for the service for the previous 12-month period exceeds the limiting charge.'', and struck out former cls. (ii) to (iv) which read as follows:

''(ii) In clause (i), the term 'limiting charge' means, with respect to a service, 125 percent of the prevailing charge for the service after the reduction referred to in clause (i).

''(iii) If a physician knowingly and willfully imposes charges in violation of clause (i), the Secretary may apply sanctions against such physician in accordance with subsection (j)(2) of this section.

''(iv) This subparagraph shall not apply to services furnished after the earlier of (I) December 31, 1990, or (II) one-year after the date the Secretary reports to Congress, under section 1395w–1(e)(3) of this title, on the development of the relative value scale under section 1395w–1 of this title.''

Subsec. (b)(11)(D). Pub. L. 100–203, § 4063(a)(1)(B), which directed that subpar. (D) be amended by inserting ''or item'' after ''service'' or ''services'' each place either appears, was executed by inserting ''or item'' after ''service'' wherever appearing. The word ''services'' does not appear because of a prior amendment by section 4045(c)(1)(A) of Pub. L. 100–203 to subpar. (D), formerly (C), see above.

Pub. L. 100–203, § 4046(a)(1)(A), (B), redesignated former subpar. (C) as (D) and substituted ''subparagraph (B) or (C)'' for ''subparagraph (B)''.

Subsec. (b)(12)(C). Pub. L. 100–203, § 4085(i)(25), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''money penalty'' for ''monetary penalty'' and amended second sentence generally. Prior to amendment, second sentence read as follows: ''Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320a–7a of this title with respect to actions described in subsection (a) of that section.''

Subsec. (b)(14). Pub. L. 100–203, § 4048(a), added par. (14).

Subsec. (c)(1). Pub. L. 100–203, § 4041(a)(3)(A)(ii), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 100–203, § 4035(a)(2), inserted at end ''The Secretary shall cause to have published in the Federal Register, by not later than September 1 before each fiscal year, data, standards, and methodology to be used to establish budgets for carriers under this section for that fiscal year, and shall cause to be published in the Federal Register for public comment, at least 90 days before such data, standards, and methodology are published, the data, standards, and methodology proposed to be used.''

Subsec. (c)(3). Pub. L. 100–203, § 4031(a)(2), added par. (3).

Subsec. (h)(3). Pub. L. 100–203, § 4081(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (h)(5). Pub. L. 100–203, § 4085(i)(6), substituted ''the participation program'' for ''the the participation program''.

Subsec. (h)(7). Pub. L. 100–203, § 4042(b)(1)(A), as added by Pub. L. 100–360, § 411(f)(2)(C), struck out '', described in paragraph (8)'' after ''assignment-related basis'' in introductory provisions.

Subsec. (h)(8). Pub. L. 100–203, § 4042(b)(1)(B), as added by Pub. L. 100–360, § 411(f)(2)(C), substituted ''(1) A'' for ''(8) For purposes of this subchapter, a'', indented such par. 2 ems, and inserted subsec. (i) designation and ''For purposes of this subchapter:'', effectively transferring former subsec. (h)(8) to subsec. (i).

Subsec. (i). Pub. L. 100–203, § 4042(b)(1)(B), as added by Pub. L. 100–360, § 411(f)(2)(C), transferred introductory provisions and par. (1) from former subsec. (h)(8).

Subsec. (i)(2), (3). Pub. L. 100–203, § 4042(b)(1)(C), as added by Pub. L. 100–360, § 411(f)(2)(C), transferred pars. (2) and (3) from subsec. (b)(4)(E).

Subsec. (i)(4). Pub. L. 100–203, § 4042(b)(1)(E), as added by Pub. L. 100–360, § 411(f)(2)(C), added par. (4).

Subsec. (j)(1)(B)(i). Pub. L. 100–203, § 4054(a)(1), (2), formerly § 4053(a)(1), (2), as renumbered by Pub. L. 100–360, § 411(f)(14), substituted ''the actual charges of each such physician'' for ''each such physician's actual charges'' and ''on a repeated basis for such a service an actual charge'' for ''for such a service a physician's actual charge (as defined in subparagraph (C)(vi)''.

Subsec. (j)(1)(C)(i). Pub. L. 100–203, § 4085(i)(7)(A), inserted ''maximum allowable'' after ''If the physician's''.

Pub. L. 100–203, § 4042(c)(2), as added by Pub. L. 100–360, § 411(f)(2)(F)(ii), substituted ''applicable percent (as defined in subsection (b)(4)(A)(iv) of this section) of the prevailing charge for the year and service involved'' for ''prevailing charge for the year involved for such service furnished by nonparticipating physicians'' in subcls. (I) and (II).

Subsec. (j)(1)(C)(v). Pub. L. 100–203, § 4085(i)(7)(B), substituted ''1986'' for ''1987''.

Subsec. (j)(1)(C)(vi). Pub. L. 100–203, § 4054(a)(3), formerly § 4053(a)(3), as renumbered by Pub. L. 100–360, § 411(f)(14), struck out ''and subparagraph (B)'' after ''purposes of this subparagraph''.

Subsec. (j)(1)(C)(vii). Pub. L. 100–203, § 4085(i)(7)(C), added cl. (vii).

Subsec. (j)(1)(C)(viii). Pub. L. 100–203, § 4041(a)(1)(B), as amended by Pub. L. 100–360, § 411(f)(1)(A), added cl. (viii).

Subsec. (j)(1)(C)(ix). Pub. L. 100–203, § 4048(e), as added by Pub. L. 100–360, § 411(f)(7)(B), added cl. (ix).

Subsec. (j)(1)(D). Pub. L. 100–203, § 4045(c)(1)(B), added subpar. (D).

Subsec. (j)(1)(D)(ii)(IV). Pub. L. 100–203, § 4063(a)(2)(A), added subcl. (IV) relating to establishment of reasonable charge limit under subsec. (b)(11)(C)(ii) of this section.

Pub. L. 100–203, § 4046(a)(2)(A), added subcl. (IV) relating to establishment of prevailing charge limit under subsec. (b)(11)(C)(i) of this section. Former subcl. (IV) redesignated (V).

Subsec. (j)(1)(D)(ii)(V), (VI). Pub. L. 100–203, § 4063(a)(2)(A), redesignated former subcl. (V) as (VI).

Pub. L. 100–203, § 4046(a)(2)(A), redesignated former subcl. (IV) as (V).

Subsec. (j)(1)(D)(iii). Pub. L. 100–203, § 4063(a)(2)(B), as amended by Pub. L. 100–360, § 411(g)(2)(C), struck out ''or'' at end of subcl. (I), substituted ''; or'' for period at end of subcl. (II), and added subcl. (III).

Pub. L. 100–203, § 4046(a)(2)(B), substituted '', (b)(11)(B), or (b)(11)(C)(i)'' for ''or (b)(11)(B)'' in subcl. (II).

Subsec. (j)(2). Pub. L. 100–203, § 4085(i)(26), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), and amended by Pub. L. 100–485, § 608(d)(24)(B), substituted ''chapter'' for ''subchapter'' in subpar. (A), struck out ''the imposition of'' before ''civil monetary penalties'' and inserted ''and assessments'' in subpar. (B), substituted ''chapter'' for ''subchapter'' in two places in last sentence, and amended last sentence generally. Prior to amendment, last sentence read as follows: ''No payment may be made under this chapter with respect to any item or service furnished by a physician during the period when he is excluded from participation in the programs under this chapter pursuant to this subsection.''

Pub. L. 100–93, § 8(c)(2)(A), amended subpar. (A) generally and substituted ''excluded from participation in the programs'' for ''barred from participation in the program'' in last sentence. Prior to amendment, subpar. (A) read as follows: ''barring a physician from participation under the program under this subchapter for a period not to exceed 5 years, in accordance with the procedures of paragraphs (2) and (3) of section 1395y(d) of this title, or''.

Subsec. (j)(3)(A). Pub. L. 100–93, § 8(c)(2)(B), substituted ''exclude'' for ''bar''.

Subsec. (k)(1), (2). Pub. L. 100–203, § 4085(g)(1), substituted ''subsection (j)(2) of this section in the case of surgery performed on or after March 1, 1987'' for ''subsection (j)(2) of this section''.

Subsec. (*l*)(1)(A)(iii). Pub. L. 100–203, § 4096(a)(1)(B), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (*l*)(1)(C). Pub. L. 100–203, § 4096(a)(1)(C), inserted ''in the case described in subparagraph (A)(iii)(I)'' after ''to an individual'' in introductory provisions.

Subsec. (*l*)(1)(C)(i). Pub. L. 100–203, § 4085(i)(27), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), inserted ''the physician establishes that'' after ''(i)''.

Subsec. (n). Pub. L. 100–203, § 4051(a), added subsec. (n).

1986—Subsec. (b)(3). Pub. L. 99–509, § 9331(c)(3)(A), inserted ''or (with respect to physicians services furnished in a year after 1987) the level determined under this sentence for the previous year'' after ''ending June 30, 1973,'' and ''year-to-year'' before ''economic changes'' in fourth sentence.

Pub. L. 99–272, § 9301(d)(1)(B), (C), substituted ''June 30 last preceding the start of the calendar year'' for ''March 31 last preceding the start of the twelve-month period (beginning October 1 of each year)'' in third sentence, and struck out ''the twelve-month period beginning on October 1 in'' before ''any calendar year after 1974'' in eighth sentence.

Subsec. (b)(3)(C). Pub. L. 99–509, § 9341(a)(2), substituted ''at least $100, but not more than $500'' for ''$100 or more''.

Subsec. (b)(3)(F). Pub. L. 99–272, § 9301(d)(1)(A), struck out ''(ending on September 30)'' after ''before the year''.

Subsec. (b)(3)(G). Pub. L. 99–509, § 9331(b)(2), added subpar. (G).

Subsec. (b)(3)(H). Pub. L. 99–509, § 9332(a)(1), added subpar. (H).

Subsec. (b)(4)(A)(i), (ii). Pub. L. 99–272, § 9301(b)(1)(A), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(4)(A)(iii). Pub. L. 99–509, § 9331(a)(1), added cl. (iii) and struck out former cl. (iii) which read as follows: ''In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during a 12-month period beginning on or after January 1, 1987, by a physician who is not a participating physician (as defined in subsection (h)(1) of this section) at the time of furnishing the services, the Secretary shall not set any level higher than the same level as was set for services furnished during the previous calendar year (without regard to clause (ii)(II)) for physicians who were participating physicians during that year.''

Pub. L. 99–272, § 9301(b)(1)(A)(ii), added cl. (iii).

Subsec. (b)(4)(A)(iv), (v). Pub. L. 99–509, § 9331(a)(1), added cls. (iv) and (v).

Subsec. (b)(4)(B). Pub. L. 99–272, § 9301(b)(1)(B), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(4)(C). Pub. L. 99–509, § 9331(a)(2), directed amendment of subpar. (C) by striking out ''(i)'' after ''(C)'' and striking out cl. (ii), applicable to services furnished on or after Jan. 1, 1987, which is identical to amendment by Pub. L. 99–514, § 1895(b)(14)(A), as amended, effective as if included in enactment of Pub. L. 99–272.

Pub. L. 99–514, § 1895(b)(14)(A), as amended by Pub. L. 99–509, § 9307(c)(2)(A), struck out cl. (i) designation, and struck out cl. (ii) which read as follows: ''In determining the prevailing charge levels under the third and fourth sentences of paragraph (3) for physicians' services furnished during the periods beginning after December 31, 1986, by a physician who was not a participating physician on that date, the Secretary shall treat the level as set under subparagraph (A)(ii) as having fully provided for the economic changes which would have been taken into account but for the limitations contained in subparagraph (A)(ii).''

Pub. L. 99–272, § 9301(b)(1)(C), designated existing provisions as cl. (i), substituted ''subparagraph (A)(i)'' for ''subparagraph (A)'' wherever appearing, and added cl. (ii).

Subsec. (b)(4)(D)(i) to (iii). Pub. L. 99–272, § 9301(b)(1)(D), designated existing provisions as cl. (i), substituted ''In determining the customary charges for physicians' services furnished during the 8-month period beginning May 1, 1986, or the 12-month period beginning January 1, 1987, by a physician who was not a participating physician (as defined in subsection (h)(1) of this section) on September 30, 1985'' for ''In determining the customary charges for physicians' services furnished during the 12-month period beginning October 1, 1985, or October 1, 1986, by a physician who at no time for any services furnished during the 12-month period beginning October 1, 1984, was a participating physician (as defined in subsection (h)(1) of this section)'', and added cls. (ii) and (iii).

Subsec. (b)(4)(D)(iv). Pub. L. 99–509, § 9331(b)(3), added cl. (iv).

Subsec. (b)(4)(E). Pub. L. 99–509, § 9331(a)(3), added subpar. (E).

Subsec. (b)(6). Pub. L. 99–509, § 9338(c), substituted ''except that (A) payment may be made (i)'' for ''except that payment may be made (A)(i)'', substituted ''(B) payment may be made'' for ''or (B)'', and inserted before the period at end '', and (C) in the case of services described in section 1395x(s)(2)(K) of this title payment shall be made to the employer of the physician assistant involved''.

Subsec. (b)(7)(B)(ii)(III). Pub. L. 99–272, § 9219(b)(1)(A), realigned margin of subcl. (III).

Subsec. (b)(7)(B)(iii). Pub. L. 99–272, § 9219(b)(2)(A), realigned margin of cl. (iii).

Subsec. (b)(8). Pub. L. 99–509, §9333(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpars. (B) and (C).

Pub. L. 99–272, §9304(a), added par. (8).

Subsec. (b)(9). Pub. L. 99–509, §9333(b), added par. (9). Former par. (9) redesignated (11).

Pub. L. 99–272, §9306(a), added par. (9).

Subsec. (b)(10). Pub. L. 99–509, §9333(b), added par. (10).

Subsec. (b)(11). Pub. L. 99–509, §9334(a), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and added subpars. (B) and (C).

Pub. L. 99–509, §9333(b), redesignated former par. (9) as (11).

Subsec. (b)(12). Pub. L. 99–509, §9338(b), added par. (12).

Subsec. (c). Pub. L. 99–509, §9311(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (h)(1). Pub. L. 99–272, §9301(d)(2), substituted ''before the beginning of any year beginning with 1984'' for ''before October 1 of any year beginning with 1984'', ''on an assignment-related basis'' for ''on the basis of an assignment described in subsection (b)(3)(B)(ii) of this section, in accordance with subsection (b)(6)(B) of this section, or under the procedure described in section 1395gg(f)(1) of this title'', ''during such year'' for ''during the 12-month period beginning on October 1 of such year'', ''after the beginning of a year'' for ''after October 1 of a year'', and ''during the remainder of the year'' for ''during the remainder of the 12-month period beginning on such October 1''.

Subsec. (h)(2). Pub. L. 99–509, §9332(b)(1)(A), struck out period at end and substituted ''and may request a copy of an appropriate directory published under paragraph (4). Each such carrier shall, without charge, mail a copy of such directory upon such a request.''

Subsec. (h)(4). Pub. L. 99–509, §9332(b)(2), inserted at end ''Each participating physician directory for an area shall provide an alphabetical listing of all participating physicians practicing in the area and an alphabetical listing by locality and specialty of such physicians.''

Pub. L. 99–272, §9301(c)(3)(D), redesignated par. (2) of subsec. (i) as par. (4) of this subsection.

Subsec. (h)(5). Pub. L. 99–509, §9332(b)(1)(B), substituted ''the participation program under this subsection and the publication and availability of the directories'' for ''publication of the directories'' and inserted at end ''The Secretary shall include such notice in the mailing of appropriate benefit checks provided under subchapter II of this chapter.''

Pub. L. 99–514, §1895(b)(15)(A), struck out ''such'' before ''the directories'' and before ''the appropriate area directory''.

Pub. L. 99–272, §9301(c)(3)(D), redesignated par. (3) of subsec. (i) as par. (5) of this subsection.

Subsec. (h)(6). Pub. L. 99–509, §9332(b)(1)(C), inserted before period at end of second sentence ''and that an appropriate number of copies of each such directory is sent to hospitals located in the area'' and inserted at end ''Such copies shall be sent free of charge.''

Pub. L. 99–514, §1895(b)(15)(B), substituted ''the'' for ''the the'' before ''directories''.

Pub. L. 99–272, §9301(c)(3)(D), redesignated par. (4) of subsec. (i) as par. (6) of this subsection.

Subsec. (h)(7), (8). Pub. L. 99–272, §9301(c)(4), added pars. (7) and (8).

Subsec. (i)(1). Pub. L. 99–272, §9301(c)(3)(A), struck out par. (1) which required the Secretary to publish a list containing the name, address, specialty, and percent of claims submitted with respect to each physician and supplier during preceding year that were paid on the basis of an assignment described in subsec. (b)(3)(B)(ii) of this section, in accordance with subsec. (b)(6)(B) of this section, or under procedure described in section 1395gg(f)(1) of this title.

Subsec. (i)(2). Pub. L. 99–272, §9301(c)(3)(D), redesignated par. (2) of this subsection as par. (4) of subsec. (h).

Pub. L. 99–272, §9301(d)(3), substituted ''year'' for ''fiscal year'', wherever appearing.

Pub. L. 99–272, §9301(c)(2)(A), (B), (3)(B), substituted ''shall publish directories (for appropriate local geographic areas)'' for ''shall publish a directory'', inserted ''for that area'' before ''for that fiscal year'', substituted ''Each directory shall'' for ''The directory shall'', and substituted ''paragraph (1)'' for ''subsection (h)(1) of this section''.

Subsec. (i)(3). Pub. L. 99–272, §9301(c)(3)(D), redesignated par. (3) of this subsection as par. (5) of subsec. (h).

Pub. L. 99–272, §9301(c)(2)(C), (3)(C), struck out ''directory'' first place it appeared and inserted in lieu ''the directories'', struck out ''directory'' second place it appeared and inserted in lieu ''the appropriate area directory or directories'', and struck out ''list and'' wherever appearing.

Subsec. (i)(4). Pub. L. 99–272, §9301(c)(3)(D), redesignated par. (4) of this subsection as par. (6) of subsec. (h).

Pub. L. 99–272, §9301(c)(2)(D), (3)(C), struck out ''list and'' after ''The Secretary shall provide that the'' in first sentence, substituted ''the directories shall'' for ''directory shall'', and inserted provision requiring the Secretary to provide that each appropriate area directory be sent to each participating physician located in that area.

Subsec. (j)(1). Pub. L. 99–509, §9331(b)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Pub. L. 99–272, §9301(b)(2), amended first sentence generally. Prior to amendment, first sentence read as follows: ''In the case of a physician who is not a participating physician, the Secretary shall monitor each such physician's actual charges to individuals enrolled under this part for physicians' services furnished during the 15-month period beginning July 1, 1984.''

Subsec. (j)(2). Pub. L. 99–509, §9320(e)(3), substituted ''this paragraph'' for ''paragraph (1) or subsection (k) of this section'' in introductory text.

Pub. L. 99–272, §9307(c)(1), inserted reference to subsec. (k) of this section in introductory text.

Subsec. (k). Pub. L. 99–514, §1895(b)(16)(A), inserted ''presents or causes to be presented a claim or'' in pars. (1) and (2).

Pub. L. 99–272, §9307(c)(2), added subsec. (k).

Subsec. (*l*). Pub. L. 99–509, §9332(c)(1), added subsec. (*l*).

Subsec. (m). Pub. L. 99–509, §9332(d)(1), added subsec. (m).

1984—Subsec. (b)(2). Pub. L. 98–369, §2326(c)(2), inserted at end provision that the Secretary publish in the Federal Register standards and criteria for efficient and effective performance of contract obligations under this section and provide an opportunity for public comment prior to implementation.

Subsec. (b)(3). Pub. L. 98–369, §2306(b)(1)(B), (C), substituted ''during the 12-month period ending on the March 31 last preceding'' for ''during the last preceding calendar year elapsing prior to'' in third sentence and substituted ''October 1'' for ''July 1'' wherever appearing in third and eighth sentences.

Pub. L. 98–369, §2354(b)(14), substituted ''(I)'' and ''(II)'' for ''(i)'' and ''(ii)'', respectively in concluding provisions.

Pub. L. 98–369, §2663(j)(2)(F)(iv), substituted ''Health and Human Services'' for ''Health, Education, and Welfare'' in concluding provisions.

Subsec. (b)(3)(B)(ii)(II). Pub. L. 98–369, §2354(b)(13), struck out the period after ''subchapter''.

Subsec. (b)(3)(F). Pub. L. 98–369, §2306(b)(1)(A), substituted ''September 30'' for ''June 30''.

Subsec. (b)(4), (5). Pub. L. 98–369, §2306(a), added par. (4) and redesignated former pars. (4) and (5) as (5) and (6), respectively.

Subsec. (b)(6). Pub. L. 98–369, §2339, redesignated cl. (A) as cl. (A)(i) and former cl. (B) as cl. (A)(ii), added a new cl. (B), and in the provisions after cl. (B), substituted ''clause (A) of such sentence'' for ''clause (A) or (B) of such sentence''.

Pub. L. 98–369, §2306(a), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (b)(7). Pub. L. 98–369, § 2306(a), redesignated par. (6) as (7).

Subsec. (b)(7)(A). Pub. L. 98–617, § 3(b)(5)(B), struck out at end ''If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.''

Pub. L. 98–369, § 2307(a)(1), as amended by Pub. L. 98–617, § 3(a)(1), inserted ''If all the teaching physicians in a hospital agree to have payment made for all of their physicians' services under this part furnished patients in the hospital on the basis of an assignment described in paragraph (3)(B)(ii) or under the procedure described in section 1395gg(f)(1) of this title, notwithstanding clause (ii) of this subparagraph, the carrier shall provide for payment in an amount equal to 90 percent of the prevailing charges paid for similar services in the same locality.'' at the end.

Subsec. (b)(7)(A)(ii). Pub. L. 98–617, § 3(b)(5)(A), substituted ''the payment is based upon a reasonable charge for the services in excess of the customary charge as determined in accordance with subparagraph (B)'' for ''the amount of the payment exceeds the reasonable charge for the services (with the customary charge determined consistent with subparagraph (B))''.

Subsec. (b)(7)(B)(i). Pub. L. 98–369, § 2307(a)(2)(A), (B), substituted ''physician who is not a teaching physician (as defined by the Secretary)'' for ''physician who has a substantial practice outside the teaching setting'' and ''practice outside the teaching setting'' for ''outside practice''.

Subsec. (b)(7)(B)(ii). Pub. L. 98–369, § 2307(a)(2)(C), (D), substituted ''In the case of a teaching physician'' for ''In the case of a physician who does not have a practice described in clause (i)'' and ''greatest'' for ''greater''.

Subsec. (b)(7)(B)(ii)(III). Pub. L. 98–369, § 2307(a)(2)(E)–(G), added subcl. (III).

Subsec. (b)(7)(B)(iii). Pub. L. 98–617, § 3(b)(6), added cl. (iii).

Subsec. (c). Pub. L. 98–369, § 2326(d)(2), inserted provision that the Secretary, in determining a carrier's necessary and proper cost of administration with respect to each contract, take into account the amount that is reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated carrier in carrying out the terms of its contract.

Subsec. (h). Pub. L. 98–369, § 2306(c), added subsec. (h).

Pub. L. 98–369, § 2303(e), struck out subsec. (h) providing for payment for laboratory tests.

Subsecs. (i), (j). Pub. L. 98–369, § 2306(c), added subsecs. (i) and (j).

1982—Subsec. (b)(3)(B)(ii)(II). Pub. L. 97–248, § 128(d)(1), substituted ''section 1395y(a)'' for ''section 1395y''.

Subsec. (b)(3). Pub. L. 97–248, § 104(a), in provisions following subpar. (F), inserted provisions that in determining the reasonable charge for outpatient services, the Secretary may limit such reasonable charge to a percentage of the amount of the prevailing charge for similar services furnished in a physician's office, taking into account the extent to which overhead costs associated with such outpatient services have been included in the reasonable cost or charge of the facility.

Subsec. (b)(6)(D). Pub. L. 97–248, § 113(a), added subpar. (D).

1981—Subsec. (b)(3). Pub. L. 97–35 inserted provision that the amount of any charges for outpatient services which shall be considered reasonable shall be subject to the limitations established by regulations issued by the Secretary pursuant to section 1395x(v)(1)(K) of this title.

1980—Subsec. (b)(3). Pub. L. 96–499, § 946(a), in provisions following subpar. (F), substituted ''service is rendered'' for ''bill is submitted or the request for payment is made''.

Subsec. (b)(3)(F). Pub. L. 96–499, § 946(b), added subpar. (F).

Subsec. (b)(6). Pub. L. 96–499, § 948(b), added par. (6).

Subsec. (h). Pub. L. 96–499, § 918(a)(1), added subsec. (h).

1977—Subsec. (b)(3). Pub. L. 95–216 provided that, with respect to power-operated wheelchairs for which payment may be made in accordance with section 1395x(s)(6) of this title, charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality.

Subsec. (b)(5). Pub. L. 95–142 inserted provisions relating to payments under a reassignment or power of attorney in cases other than direct payments to physicians or service providers.

1976—Subsec. (b)(3). Pub. L. 94–368 substituted ''for the twelve-month period beginning on July 1 in any calendar year after 1974'' for ''for the fiscal year beginning July 1, 1975,'', ''prior to the start of the twelve-month period (beginning July 1, of each year) in which the bill is submitted or the request for payment is made'' for ''prior to the start of the fiscal year in which the bill is submitted or the request for payment is made'', and ''for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence'' for ''for any fiscal year beginning after June 30, 1973,''.

1975—Subsec. (b)(3). Pub. L. 94–182 inserted provisions relating to raising for fiscal year beginning July 1, 1975 inadequate prevailing charge levels for services of physicians in certain localities.

1974—Subsec. (g). Pub. L. 93–445 substituted ''section 231f(d) of title 45'' for ''section 228s–2(b) of title 45''.

1972—Subsec. (a). Pub. L. 92–603, § 227(e)(3), substituted ''which involve payments for physicians' services on a reasonable charge basis'' for ''which involve payments for physicians' services''.

Subsec. (b)(3). Pub. L. 92–603, §§ 244(a), 258(a), inserted provisions relating to determination of reasonableness of physician charges, medical services, supplies, and equipment and for the extension of time for filing claims for supplementary medical insurance benefits where the delay is due to administrative error, at end thereof.

Subsec. (b)(3)(B)(ii). Pub. L. 92–603, §§ 211(c)(3), 281(d), designated existing provisions as subcl. (I), added subcl. II, inserted exception in the case of services furnished as described in section 1395y(a)(4) of this title, other than for purposes of section 1395gg(f) of this title.

Subsec. (b)(3)(C). Pub. L. 92–603, § 262(a), inserted provisions setting a $100 minimum amount on claims to establish entitlement to a hearing.

Subsec. (b)(5). Pub. L. 92–603, § 236(a), added par. (5).

Subsec. (g). Pub. L. 92–603, § 263(d)(5), added subsec. (g).

1968—Subsec. (b)(3)(B). Pub. L. 90–248 provided that payment be made on the basis of an itemized bill instead of a receipted bill as formerly required, and established a time limit within which payment may be requested, and inserted ''(except as otherwise provided in section 1395gg(f) of this title)'' after ''payment will''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 123(b)(1), (2)(B) of Pub. L. 103–432 applicable to services furnished on or after Jan. 1, 1995, see section 123(f)(2) of Pub. L. 103–432, set out as a note under section 1395*l* of this title.

Section 123(f)(3), (4) of Pub. L. 103–432 provided that:

''(3) EOMBS.—The amendments made by subsection (c)(1) [amending this section] shall apply to explanations of benefits provided on or after July 1, 1995.

''(4) CARRIER DETERMINATIONS.—The amendments made by subsection (c)(2) [amending this section] shall apply to contracts as of January 1, 1995.''

Section 125(b)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act [Oct. 31, 1994].''

Amendment by section 126(a)(1), (c), (e), (g)(9) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 126(i) of Pub. L. 103–432, set out as a note under section 1395m of this title.

Section 126(h)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective for payments for fiscal years beginning with fiscal year 1994.

Section 135(b)(2) of Pub. L. 103–432 provided that the amendment made by that section is effective for standards applied for contract years beginning after Oct. 31, 1994.

Amendment by section 151(b)(1)(B), (2)(B) of Pub. L. 103–432 applicable to contracts with fiscal intermediaries and carriers under this subchapter for contract years beginning with 1995, see section 151(b)(4) of Pub. L. 103–432, set out as a note under section 1395h of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13515(d) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section and section 1395w–4 of this title] shall apply to services furnished on or after January 1, 1994.''

Amendment by section 13568(a), (b) of Pub. L. 103–66 applicable to claims received on or after Oct. 1, 1993, see section 13568(c) of Pub. L. 103–66, set out as a note under section 1395h of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4105(b)(3) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(g)(2)(A)(ii), Oct. 31, 1994, 108 Stat. 4415, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after January 1, 1991.''

Section 4106(d) of Pub. L. 101–508 provided that:

''(1) The amendments made by subsection (a) [amending this section and provisions set out below] apply to services furnished after 1990, except that—

''(A) the provisions concerning the third and fourth years of practice apply only to physicians' services furnished after 1990 and 1991, respectively, and

''(B) the provisions concerning the second, third, and fourth years of practice apply only to services of a health care practitioner furnished after 1991, 1992, and 1993, respectively.

''(2) The amendments made by subsection (b) [amending this section and section 1395w–4 of this title] shall apply to services furnished after 1991.''

Section 4108(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to tests and services furnished on or after January 1, 1991.''

Section 4110(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4118(a)(3) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] apply to services furnished after March 1990.''

Section 4118(f)(2)(A) of Pub. L. 101–508 provided that the amendment by that section is effective as if included in the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239.

Section 4118(f)(2)(B) of Pub. L. 101–508 provided that the amendment by that section is effective Jan. 1, 1991.

Amendment by section 4155(c) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4155(e) of Pub. L. 101–508, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6102(e)(3) of Pub. L. 101–239 provided that the amendment made by that section is effective for physicians' services furnished on or after Jan. 1, 1992.

Section 6106(b) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1990.''

Section 6108(a)(2) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4106(a)(2), Nov. 5, 1990, 104 Stat. 1388–61, provided that:

''(A) Subject to subparagraph (B), the amendments made by paragraph (1) [amending this section] apply to services furnished in 1990 or 1991 which were subject to the first sentence of section 1842(b)(4)(F) of the Social Security Act [subsec. (b)(4)(F) of this section] in 1989 or 1990.

''(B) The amendments made by paragraph (1) shall not apply to services furnished in 1990 before April 1, 1990. With respect to physicians' services furnished during 1990 on and after April 1, such amendments shall be applied as though any reference, in the matter inserted by such amendments, to the 'first calendar year during which the preceding sentence no longer applies' were deemed a reference to the remainder of 1990.''

Section 6108(b)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] apply to procedures performed after March 31, 1990.''

Section 6114(f) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1395x of this title] shall apply to services furnished on or after April 1, 1990.''

Amendment by section 6202(d)(2) of Pub. L. 101–239 applicable to agreements and contracts entered into or renewed on or after Dec. 19, 1989, see section 6202(d)(3) of Pub. L. 101–239, set out as a note under section 1395h of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Section 301(e) of Pub. L. 101–234 provided that: ''The provisions of this section [amending this section and sections 1395m, 1395cc, 1395*ll*, and 1395ww of this title, enacting provisions set out as notes under section 1395m of this title, and repealing provisions set out as notes under sections 1395b, 1395b–1, 1395b–2, and 1395h of this title and section 8902 of Title 5, Government Organization and Employees] (other than subsections (c) and (d) [amending this section and sections 1395m, 1395cc, 1395*ll*, and 1395ww of this title and enacting provisions set out as a note under section 1395m of this title]) shall take effect January 1, 1990, except that—

''(1) the repeal of section 421 of MCCA [Pub. L. 100–360, set out as a note under section 1395b of this title] shall not apply to duplicative part A benefits for periods before January 1, 1990, and

''(2) the amendments made by subsection (b) [amending this section and sections 1395m, 1395cc, 1395*ll*, and 1395ww of this title] shall take effect on the date of the enactment of this Act [Dec. 13, 1989].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 202(m) of Pub. L. 100–360, as amended by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981, provided that:

''(1) [Repealed. Prior to repeal by Pub. L. 101–234, par. (1) read as follows: 'IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 1395w–3 of this title and amending this section and sections 1320a–7a, 1395*l*, 1395m, 1395x, 1395y, 1395cc, 1395mm, and 1396b of this title] shall apply to items dispensed on or after January 1, 1990.']

''(2) [Repealed. Prior to repeal by Pub. L. 101–234, par. (2) read as follows: 'CARRIERS.—The amendments made by subsection (e) [amending this section] shall take effect on the date of the enactment of this Act [July 1, 1988]; except that the amendments made by subsection (e)(5) [amending this section] shall take effect on January 1, 1991, but shall not be construed as requiring payment before February 1, 1991.']

''(3) [Repealed. Prior to repeal by Pub. L. 101–234, par. (3) read as follows: 'HMO/CMP ENROLLMENTS.—The amendment made by subsection (f) [amending section 1395mm of this title] shall apply to enrollments effected on or after January 1, 1990.']

''(4) DIAGNOSTIC CODING.—The amendment made by subsection (g) [amending this section] shall apply to services furnished after March 31, 1989.

''(5) [Repealed. Prior to repeal by Pub. L. 101–234, par. (5) read as follows: 'TRANSITION.—With respect to administrative expenses (and costs of the Prescription Drug Payment Review Commission) for periods before January 1, 1990, amounts otherwise payable from the Federal Catastrophic Drug Insurance Trust Fund shall be payable from the Federal Supplementary Medical Insurance Trust Fund and shall also be treated as a debit to the Medicare Catastrophic Coverage Account.'].''

[Amendment of section 202(m) of Pub. L. 100–360, set out above, effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as an Effective Date of 1989 Amendment note under section 1320a–7a of this title.]

Section 223(d)(2), (3) of Pub. L. 100–360 provided that:

''(2) The amendments made by subsection (b) [amending this section] shall apply to annual notices beginning with 1989.

''(3) The amendments made by subsection (c) [amending this section] shall first apply to explanations of benefits provided for items and services furnished on or after January 1, 1989.''

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(a)(3)(A), (C)(i), (f)(1)(A), (B), (2)–(4)(C), (5), (6)(B), (7), (9), (11)(A), (14), (g)(2)(A)–(C), (i)(1)(A), (2), (4)(C)(vi), and (j)(4)(A) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Amendment by section 4031(a)(2) of Pub. L. 100–203 applicable to claims received on or after July 1, 1988, see section 4031(a)(3)(A) of Pub. L. 100–203, set out as a note under section 1395h of this title.

Amendment by section 4035(a)(2) of Pub. L. 100–203 effective Dec. 22, 1987, and applicable to budgets for fiscal years beginning with fiscal year 1989, see section 4035(a)(3) of Pub. L. 100–203, set out as a note under section 1395h of this title.

Section 4044(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payment for physicians' services furnished on or after January 1, 1989.''

Section 4045(d) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and sections 1395*l* and 1395w–1 of this title and amending provisions set out below] shall apply to items and services furnished on or after April 1, 1988, except the amendment made by subsection (c)(2)(B) [amending this section] shall apply to services furnished on or after January 1, 1988.''

Section 4046(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1988.''

Section 4047(b) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(f)(6)(C), July 1, 1988, 102 Stat. 779, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to physicians who first furnish services to medicare beneficiaries on or after April 1, 1988.''

Section 4051(c) of Pub. L. 100–203 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply to diagnostic tests performed on or after April 1, 1988.

''(2) The Secretary of Health and Human Services shall complete the review and make an appropriate adjustment of prevailing charge levels under subsection (b) [set out below] for items and services furnished no later than January 1, 1989.''

Section 4053(b), formerly § 4052(b), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, § 411(f)(11)(B), (14), July 1, 1988, 102 Stat. 781, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payment for services furnished on or after April 1, 1988.''

Section 4054(c), formerly § 4053(c), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, § 411(f)(14), July 1, 1988, 102 Stat. 781, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to charges imposed for services furnished on or after April 1, 1988.''

Amendment by section 4063(a) of Pub. L. 100–203 applicable to items furnished on or after July 1, 1988, see section 4063(c) of Pub. L. 100–203, set out as a note under section 1395(*l*) of this title.

Section 4081(c)(1) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to contracts with carriers for claims for items and services furnished by participating physicians and suppliers on or after January 1, 1989.''

Section 4082(e)(3) of Pub. L. 100–203 provided that: ''The amendments made by subsection (c) [amending this section] shall apply to evaluation of performance of carriers under contracts entered into or renewed on or after October 1, 1988.''

Section 4085(g)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if included in section 9307(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Section 4085(i)(7) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–509.

Amendment by section 4096(a)(1) of Pub. L. 100–203 applicable to services furnished on or after Jan. 1, 1988, see section 4096(d) of Pub. L. 100–203, set out as a note under section 1320c–3 of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(16)(B) of Pub. L. 99–514 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to claims presented after the date of the enactment of this Act [Oct. 22, 1986].''

Amendment by section 1895(b)(14)(A), (15) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 9307(c)(2) of Pub. L. 99–509 provided that the amendment made by section 9307(c)(2)(A) of Pub. L. 99–509 [amending directory language of section 1895(b)(14)(A)(ii) of Pub. L. 99–514 which amended this section] is effective as if included in the enactment of the Tax Reform Act of 1986, Pub. L. 99–514.

Amendment by section 9311(c) of Pub. L. 99–509 applicable to claims received on or after Nov. 1, 1986, with subsec. (c)(2)(C) of this section applicable to claims received on or after Apr. 1, 1987, see section 9311(d) of Pub. L. 99–509, set out as a note under section 1395h of this title.

Amendment by section 9320(e)(3) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas

which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9331(a)(4) of Pub. L. 99–509 provided that: ''The amendments made by this subsection [amending this section] shall apply to services furnished on or after January 1, 1987.''

Section 9331(b)(4) of Pub. L. 99–509 provided that: ''The amendments made by this subsection [amending this section] shall apply to services furnished on or after January 1, 1987.''

Section 9331(c)(3)(B) of Pub. L. 99–509 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to physicians' services furnished on or after January 1, 1988.''

Section 9332(a)(4)(A) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective for contracts under section 1842 of the Social Security Act [this section] as of October 1, 1987.''

Section 9332(b)(3) of Pub. L. 99–509 provided that: ''The amendments made by this paragraph [probably means 'this subsection' which amended this section] shall first apply to directories for 1987.''

Section 9332(c)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after October 1, 1987.''

Section 9332(d)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to surgical procedures performed on or after October 1, 1987.''

Section 9333(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Oct. 21, 1986].''

Section 9334(c) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after January 1, 1987.''

Amendment by section 9338(b), (c) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1987, see section 9338(f) of Pub. L. 99–509 set out as a note under section 1395x of this title.

Amendment by section 9341(a)(2) of Pub. L. 99–509 applicable to items and services furnished on or after Jan. 1, 1987, see section 9341(b) of Pub. L. 99–509, set out as a note under section 1395ff of this title.

Section 9219(b)(1)(D) of Pub. L. 99–272 provided that: ''The amendments made by this paragraph [amending this section and sections 1395x and 1395yy of this title] shall be effective as if they had been originally included in the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

Section 9219(b)(2)(B) of Pub. L. 99–272 provided that: ''The amendment made by subparagraph (A) [amending this section] shall be effective as if it had been originally included in Public Law 98–617.''

Section 9301(b)(4) of Pub. L. 99–272 provided that: ''The amendments made by this subsection [amending this section and enacting provisions set out as a note under this section] shall apply to services furnished on or after May 1, 1986.''

Section 9301(c)(5) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, §1895(b)(14)(B), Oct. 22, 1986, 100 Stat. 2934, provided that: ''Section 1842(h)(7) of the Social Security Act [subsec. (h)(7) of this section], as added by paragraph (4) of this subsection, shall apply to explanations of benefits provided on or after such date (not later than October 1, 1986) as the Secretary of Health and Human Services shall specify.''

Section 9301(d)(4) of Pub. L. 99–272 provided that: ''The amendments made by this subsection [amending this section and enacting provisions set out as a note under this section] shall apply to items and services furnished on or after October 1, 1986.''

Section 9306(b) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section] shall apply to items and services furnished on or after April 1, 1986.''

Amendment by section 9307(c) of Pub. L. 99–272 applicable to services performed on or after April 1, 1986, see section 9307(e) of Pub. L. 99–272, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2303(e) of Pub. L. 98–369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title, see section 2303(j)(1), (3) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2306(b)(2) of Pub. L. 98–369 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to items and services furnished on or after October 1, 1985.''

Section 2307(a)(3) of Pub. L. 98–369 provided that: ''The amendments made by this subsection [amending this section] shall apply to services furnished on or after July 1, 1984.''

Amendment by section 2326(d)(2) of Pub. L. 98–369 applicable to agreements and contracts entered into or renewed after Sept. 30, 1984, see section 2326(d)(3) of Pub. L. 98–369, set out as a note under section 1395h of this title.

Amendment by section 2354(b)(13), (14) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Amendment by section 2663(j)(2)(F)(iv) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 104(b) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, §309(a)(2), Jan. 12, 1983, 96 Stat. 2408, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to services furnished on or after October 1, 1982.''

Section 113(b)(1) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] is effective with respect to services performed on or after October 1, 1982.''

Amendment by section 128(d)(1) of Pub. L. 97–248 effective Sept. 3, 1982, see section 128(e)(3) of Pub. L. 97–248, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 918(a)(2) of Pub. L. 96–499 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to bills submitted and requests for payment made on or after such date (not later than April 1, 1981) as the Secretary of Health and Human Services prescribes by a notice published in the Federal Register.''

Section 946(c) of Pub. L. 96–499 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall become effective with respect to bills submitted or requests for payment made on or after July 1, 1981.''

Section 948(c)(2) of Pub. L. 96–499 provided that: ''The amendment made by subsection (b) [amending this section] shall apply with respect to cost accounting periods beginning on or after January 1, 1981.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95–216 effective in the case of items and services furnished after Dec. 20, 1977, see sec-

tion 501(c) of Pub. L. 95–216, set out as a note under section 1395x of this title.

Amendment by Pub. L. 95–142 applicable with respect to care and services furnished on or after Oct. 25, 1977, see section 2(a)(4) of Pub. L. 95–142, set out as a note under section 1395g of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 4 of Pub. L. 94–368 provided that: ''The amendments made by sections 2 and 3 of this Act [amending this section and provisions set out as a note under section 390e of Title 7, Agriculture] shall be effective with respect to periods beginning after June 30, 1976; except that, for the twelve-month period beginning July 1, 1976, the amendments made by section 3 [amending this section and provisions set out as a note under section 390e of Title 7, Agriculture] shall be applicable with respect to claims filed under part B of title XVIII of the Social Security Act [this part] (after June 30, 1976, and before July 1, 1977) with a carrier designated pursuant to section 1842 of such Act [this section], and processed by such carrier after the appropriate changes were made pursuant to such section 3 in the prevailing charge levels for such twelve-month period under the third and fourth sentences of section 1842(b)(3) of the Social Security Act [subsec. (b)(3) of this section].''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 211(c)(3) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Amendment by section 227(e)(3) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 236(c) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to bills submitted and requests for payments made after the date of the enactment of this Act [Oct. 30, 1972]. The amendments made by subsection (b) [amending section 1396a of this title] shall be effective January 1, 1973 (or earlier if the State plan so provides).''

Section 258(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to bills submitted and requests for payment made after March 1968.''

Section 262(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to hearings requested (under the procedures established under section 1842(b)(3)(C) of the Social Security Act [subsec. (b)(3)(C) of this section]) after the date of the enactment of this Act [Oct. 30, 1972].''

Amendment by section 263(d)(5) of Pub. L. 92–603 with respect to collection of premiums applicable to premiums becoming due and payable after the fourth month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1972, see section 263(f) of Pub. L. 92–603, set out as a note under section 1395s of this title.

Amendment by section 281(d) of Pub. L. 92–603 to apply in the case of notices sent to individuals after 1968, see section 281(g) of Pub. L. 92–603, set out as a note under section 1395gg of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 125(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to claims on which a final determination has not been made on or before the date of enactment of this Act [Jan. 2, 1968].''

BUDGET NEUTRALITY ADJUSTMENT

Section 13515(b) of Pub. L. 103–66 provided that: ''Notwithstanding any other provision of law, the Secretary of Health and Human Services shall reduce the following values and amounts for 1994 (to be applied for that year and subsequent years) by such uniform percentage as the Secretary determines to be required to assure that the amendments made by subsection (a) [amending this section and section 1395w–4 of this title] will not result in expenditures under part B of title XVIII of the Social Security Act [this part] in 1994 that exceed the amount of such expenditures that would have been made if such amendments had not been made:

''(1) The relative values established under section 1848(c) of such Act [section 1395w–4(c) of this title] for services (other than anesthesia services) and, in the case of anesthesia services, the conversion factor established under section 1848 of such Act for such services.

''(2) The amounts determined under section 1848(a)(2)(B)(ii)(I) of such Act.

''(3) The prevailing charges or fee schedule amounts to be applied under such part for services of a health care practitioner (as defined in section 1842(b)(4)(F)(ii)(I) of such Act [subsec. (b)(4)(F)(ii)(I) of this section], as in effect before the date of the enactment of this Act [Aug. 10, 1993]).''

PROCEDURE CODES

Section 4101(b)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(a)(2), Oct. 31, 1994, 108 Stat. 4414, provided that: ''In applying section 1842(b)(16)(B) of the Social Security Act [subsec. (b)(16)(B) of this section]:

''(A) The codes for the procedures specified in clause (ii) are as follows: Hospital inpatient medical services (HCPCS codes 90200 through 90292), consultations (HCPCS codes 90600 through 90654), other visits (HCPCS code 90699), preventive medicine visits (HCPCS codes 90750 through 90764), psychiatric services (HCPCS codes 90801 through 90862), emergency care facility services (HCPCS codes 99062 through 99065), and critical care services (HCPCS codes 99160 through 99174).

''(B) The codes for the procedures specified in clause (iii) are as follows: Partial mastectomy (HCPCS code 19160); tendon sheath injections and small joint arthrocentesis (HCPCS codes 20550, 20600, 20605, and 20610); femoral fracture and trochanteric fracture treatments (HCPCS codes 27230, 27232, 27234, 27238, 27240, 27242, 27246, and 27248); endotracheal intubation (HCPCS code 31500); thoracentesis (HCPCS code 32000); thoracostomy (HCPCS codes 32020, 32035, and 32036); aneurysm repair (HCPCS codes 35111); cystourethroscopy (HCPCS code 52340); transurethral fulguration and resection (HCPCS codes 52606 and 52620); tympanoplasty with mastoidectomy (HCPCS code 69645); and ophthalmoscopy (HCPCS codes 92250 and 92260).''

STUDY OF RELEASE OF PREPAYMENT MEDICAL REVIEW SCREEN PARAMETERS

Section 4111 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study of the effect of the release of medicare prepayment medical review screen parameters on physician billings for the services to which the parameters apply.

''(b) LIMITATIONS.—The study shall be based upon the release of the screen parameters at a minimum of six carriers.

''(c) REPORT.—The Secretary shall report the results of the study to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate not later than October 1, 1992.''

FREEZE IN CHARGES FOR PARENTERAL AND ENTERAL NUTRIENTS, SUPPLIES, AND EQUIPMENT

Section 13541 of Pub. L. 103–66 provided that: ''In determining the amount of payment under part B of title

XVIII of the Social Security Act [this part] with respect to parenteral and enteral nutrients, supplies, and equipment during 1994 and 1995, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such nutrients, supplies, and equipment during 1993.''

Section 4152(d) of Pub. L. 101–508 provided that: ''In determining the amount of payment under part B of title XVIII of the Social Security Act [this part] for enteral and parenteral nutrients, supplies, and equipment furnished during 1991, the charges determined to be reasonable with respect to such nutrients, supplies, and equipment may not exceed the charges determined to be reasonable with respect to such items for 1990.''

PROHIBITION ON REGULATIONS CHANGING COVERAGE OF CONVENTIONAL EYEWEAR

Section 4153(b)(1) of Pub. L. 101–508 provided that:

''(A) Notwithstanding any other provision of law (except as provided in subparagraph (B)) the Secretary of Health and Human Services (referred to in this subsection as the 'Secretary') may not issue any regulation that changes the coverage of conventional eyewear furnished to individuals (enrolled under part B of title XVIII of the Social Security Act [this part]) following cataract surgery with insertion of an intraocular lens.

''(B) Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing the amendments made by paragraph (2).''

DIRECTORY OF UNIQUE PHYSICIAN IDENTIFIER NUMBERS

Section 4164(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §147(f)(7)(B), Oct. 31, 1994, 108 Stat. 4432, provided that: ''Not later than March 31, 1991, the Secretary of Health and Human Services shall publish, and shall periodically update, a directory of the unique physician identification numbers of all physicians providing services for which payment may be made under part B of title XVIII of the Social Security Act [this part], and shall include in such directory the names, provider numbers, and billing addressess [sic] of all listed physicians.''

TREATMENT OF CERTAIN EYE EXAMINATION VISITS AS PRIMARY CARE SERVICES

Section 6102(e)(10) of Pub. L. 101–239 provided that: ''In applying section 1842(i)(4) of the Social Security Act [subsec. (i)(4) of this section] for services furnished on or after January 1, 1990, intermediate and comprehensive office visits for eye examinations and treatments (codes 92002 and 92004) shall be considered to be primary care services.''

DELAY IN UPDATE UNTIL APRIL 1, 1990, AND REDUCTION IN PERCENTAGE INCREASE IN MEDICARE ECONOMIC INDEX

Section 6107(a) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—Subject to the amendments made by this section [amending this section], any increase or adjustment in customary, prevailing, or reasonable charges, fee schedule amounts, maximum allowable actual charges, and other limits on actual charges with respect to physicians' services and other items and services described in paragraph (2) under part B of title XVIII of the Social Security Act [this part] which would otherwise occur as of January 1, 1990, shall be delayed so as to occur as of April 1, 1990, and, notwithstanding any other provision of law, the amount of payment under such part for such items and services which are furnished during the period beginning on January 1, 1990, and ending on March 31, 1990, shall be determined on the same basis as the amount of payment for such services furnished on December 31, 1989.

''(2) ITEMS AND SERVICES COVERED.—The items and services described in this paragraph are items and services (other than ambulance services and clinical diagnostic laboratory services) for which payment is made under part B of title XVIII of the Social Security Act on the basis of a reasonable charge or a fee schedule.

''(3) EXTENSION OF PARTICIPATION AGREEMENTS AND RELATED PROVISIONS.—Notwithstanding any other provision of law—

''(A) subject to the last sentence of this paragraph, each participation agreement in effect on December 31, 1989, under section 1842(h)(1) of the Social Security Act [subsec. (h)(1) of this section] shall remain in effect for the 3-month period beginning on January 1, 1990;

''(B) the effective period for such agreements under such section entered into for 1990 shall be the 9-month period beginning on April 1, 1990, and the Secretary of Health and Human Services shall provide an opportunity for physicians and suppliers to enroll as participating physicians and suppliers before April 1, 1990;

''(C) instead of publishing, under section 1842(h)(4) of the Social Security Act [subsec. (h)(4) of this section], at the beginning of 1990, directories of participating physicians and suppliers for 1990, the Secretary shall provide for such publication, at the beginning of the 9-month period beginning on April 1, 1990, of such directories of participating physicians and suppliers for such period; and

''(D) instead of providing to nonparticipating physicians under section 1842(b)(3)(G) of the Social Security Act [subsec. (b)(3)(G) of this section] at the beginning of 1990, a list of maximum allowable actual charges for 1990, the Secretary shall provide, at the beginning of the 9-month period beginning on April 1, 1990, such physicians such a list for such 9-month period.

An agreement with a participating physician or supplier described in subparagraph (A) in effect on December 31, 1989, under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in subparagraph (A) if the participating physician or supplier requests on or before December 31, 1989, that the agreement be terminated.''

STATE DEMONSTRATION PROJECTS ON APPLICATION OF LIMITATION ON VISITS PER MONTH PER RESIDENT ON AGGREGATE BASIS FOR A TEAM

Section 6114(e) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall provide for at least 1 demonstration project under which, in the application of section 1842(b)(2)(C) of the Social Security Act [subsec. (b)(2)(C) of this section] (as added by subsection (c)(2) of this section) in one or more States, the limitation on the number of visits per month per resident would be applied on an average basis over the aggregate total of residents receiving services from members of the team.''

APPLICATION OF DIFFERENT PERFORMANCE STANDARDS FOR ELECTRONIC SYSTEM FOR COVERED OUTPATIENT DRUGS

Section 202(e)(3)(B) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, §608(d)(5)(E), Oct. 13, 1988, 102 Stat. 2414, which required Secretary of Health and Human Services, before entering into contracts under section 1395u of this title with respect to implementation and operation of electronic system for covered outpatient drugs, to establish standards with respect to performance with respect to such activities, was repealed by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

DELAY IN APPLICATION OF COORDINATION OF BENEFITS WITH PRIVATE HEALTH INSURANCE

Section 202(e)(4)(B) of Pub. L. 100–360, which provided that the provisions of section 1395u(h)(3) of this title not apply to covered outpatient drugs (other than drugs described in section 1395x(s)(2)(J) of this title as of July 1, 1988) dispensed before January 1, 1993, was repealed by Pub. L. 101–234, title II, §201(a), Dec. 13, 1989, 103 Stat. 1981.

EXTENSION OF PHYSICIAN PARTICIPATION AGREEMENTS AND RELATED PROVISIONS

Section 4041(a)(2) of Pub. L. 100–203 provided that: ''Notwithstanding any other provision of law—

''(A) subject to the last sentence of this paragraph, each agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act [subsec. (h)(1) of this section] shall remain in effect for the 3-month period beginning on January 1, 1988;

''(B) the effective period for agreements under such section entered into for 1988 shall be the nine-month period beginning on April 1, 1988, and the Secretary shall provide an opportunity for physicians to enroll as participating physicians prior to April 1, 1988;

''(C) instead of publishing, under section 1842(h)(4) of the Social Security Act [subsec. (h)(4) of this section] at the beginning of 1988, directories of participating physicians for 1988, the Secretary shall provide for such publication, at the beginning of the 9-month period beginning on April 1, 1988, of such directories of participating physicians for such period; and

''(D) instead of providing to nonparticipating physicians, under section 1842(b)(3)(G) of the Social Security Act [subsec. (b)(3)(G) of this section] at the beginning of 1988, a list of maximum allowable actual charges for 1988, the Secretary shall provide, at the beginning of the 9-month period beginning on April 1, 1988, to such physicians such a list for such 9-month period.

An agreement with a participating physician in effect on December 31, 1987, under section 1842(h)(1) of the Social Security Act shall not remain in effect for the period described in subparagraph (A) if the participating physician requests on or before December 31, 1987, that the agreement be terminated.''

DEVELOPMENT OF UNIFORM RELATIVE VALUE GUIDE

Section 4048(b) of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, § 4118(h)(1), Nov. 5, 1990, 104 Stat. 1388–70, provided that: ''The Secretary of Health and Human Services, in consultation with groups representing physicians who furnish anesthesia services, shall establish by regulation a relative value guide for use in all carrier localities in making payment for physician anesthesia services furnished under part B of title XVIII of the Social Security Act [this part] on and after March 1, 1989. Such guide shall be designed so as to result in expenditures under such title [this subchapter] for such services in an amount that would not exceed the amount of such expenditures which would otherwise occur.''

[Section 4118(h) of Pub. L. 101–508 provided that the amendment by that section to section 4048(b) of Pub. L. 100–203, set out above, is effective as if included in enactment of Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.]

STUDY OF PREVAILING CHARGES FOR ANESTHESIA SERVICES

Section 4048(c) of Pub. L. 100–203, which required Secretary of Health and Human Services to study variations in conversion factors used by carriers under section 1395u(b) of this title to determine prevailing charge for anesthesia services and to report results of study and make recommendations for appropriate adjustments in such factors not later than Jan. 1, 1989, was repealed by Pub. L. 101–508, title IV, § 4118(g)(2), Nov. 5, 1990, 104 Stat. 1388–70.

GAO STUDIES

Section 4048(d) of Pub. L. 100–203 provided that:

''(1) The Comptroller General shall conduct a study—

''(A) to determine the average anesthesia times reported for medicare reimbursement purposes,

''(B) to verify those times from patient medical records,

''(C) to compare anesthesia times to average surgical times, and

''(D) to determine whether the current payments for physician supervision of nurse anesthetists are excessive.

The Comptroller General shall report to Congress, by not later than January 1, 1989, on such study and in the report include recommendations regarding the appropriateness of the anesthesia times recognized by medicare for reimbursement purposes and recommendations regarding adjustments of payments for physician supervision of nurse anesthetists.

''(2) The Comptroller General shall conduct a study on the impact of the amendment made by subsection (a) [amending this section], and shall report to Congress on the results of such study by April 1, 1990.''

ADJUSTMENT IN MEDICARE PREVAILING CHARGES

Section 4051(b) of Pub. L. 100–203 provided that:

''(1) REVIEW.—The Secretary of Health and Human Services shall review payment levels under part B of title XVIII of the Social Security Act [this part] for diagnostic tests (described in section 1861(s)(3) of such Act [section 1935x(s)(3) of this title], but excluding clinical diagnostic laboratory tests) which are commonly performed by independent suppliers, sold as a service to physicians, and billed by such physicians, in order to determine the reasonableness of payment amounts for such tests (and for associated professional services component of such tests). The Secretary may require physicians and suppliers to provide such information on the purchase or sale price (net of any discounts) for such tests as is necessary to complete the review and make the adjustments under this subsection. The Secretary shall also review the reasonableness of payment levels for comparable in-office diagnostic tests.

''(2) ESTABLISHMENT OF REVISED PAYMENT SCREENS.—If, as a result of such review, the Secretary determines, after notice and opportunity of at least 60 days for public comment, that the current prevailing charge levels (under the third and fourth sentences of section 1842(b) of the Social Security Act [subsec. (b) of this section]) for any such tests or associated professional services are excessive, the Secretary shall establish such charge levels at levels which, consistent with assuring that the test is widely and consistently available to medicare beneficiaries, reflect a reasonable price for the test without any markup. Alternatively, the Secretary, pursuant to guidelines published after notice and opportunity of at least 60 days for public comment, may delegate to carriers with contracts under section 1842 of the Social Security Act the establishment of new prevailing charge levels under this paragraph. When such charge levels are established, the provisions of section 1842(j)(1)(D) of such Act shall apply in the same manner as they apply to a reduction under section 1842(b)(8)(A) of such Act.''

ADJUSTMENT FOR MAXIMUM ALLOWABLE ACTUAL CHARGE

Section 4054(b), formerly § 4053(b), of Pub. L. 100–203, as renumbered by Pub. L. 100–360, title IV, § 411(f)(14), July 1, 1988, 102 Stat. 781, provided that: ''In the case of a physician who did not have actual charges under title XVIII of the Social Security Act [this subchapter] for a procedure in the calendar quarter beginning on April 1, 1984, but who establishes to the satisfaction of a carrier that he or she had actual charges (whether under such title or otherwise) for the procedure performed prior to June 30, 1984, the carrier shall compute the maximum allowable actual charge under section 1842(j) of the Social Security Act [subsec. (j) of this section] for such procedure performed by such physician in 1988 based on such physician's actual charges for the procedure.''

PHYSICIAN PAYMENT STUDIES; DEFINITIONS OF MEDICAL AND SURGICAL PROCEDURES

Section 4056(a), formerly § 4055(a), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, § 411(f)(13)(A), (14), July 1, 1988, 102 Stat. 781; Pub. L.

101–508, title IV, §4118(g)(4), Nov. 5, 1990, 104 Stat. 1388–70, provided that:

''(1) REPORT ON VARIATIONS IN CARRIER PAYMENT PRACTICE.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall conduct a study of variations in payment practices for physicians' services among the different carriers under section 1842 of the Social Security Act [this section]. Such study shall examine carrier variations in the services included in global fees and pre- and post-operative services included in payment for the operation.

''(2) UNIFORM DEFINITIONS OF PROCEDURES FOR PAYMENT PURPOSES.—The Secretary shall develop, in consultation with appropriate national medical specialty societies and by not later than July 1, 1989, uniform definitions of physicians' services (including appropriate classification scheme for procedures) which could serve as the basis for making payments for such services under part B of title XVIII of the Social Security Act [this part]. In developing such definitions, to the extent practicable—

''(A) ancillary services commonly performed in conjunction with a major procedure would be included with the major procedure;

''(B) pre- and post-procedure services would be included in the procedure; and

''(C) similar procedures would be listed together if the procedures are similar in resource requirements.''

PAYMENTS FOR DURABLE MEDICAL EQUIPMENT, PROSTHETIC DEVICES, ORTHOTICS, AND PROSTHETICS; 1-YEAR FREEZE ON CHARGE LIMITATIONS

Section 4062(a) of Pub. L. 100–203 provided that:

''(1) IN GENERAL.—In imposing limitations on allowable charges for items and services (other than physicians' services) furnished in 1988 under part B of title XVIII of such Act [this part] and for which payment is made on the basis of the reasonable charge for the item or service, the Secretary of Health and Human Services shall not impose any limitation at a level higher than the same level as was in effect in December 1987.

''(2) TRANSITION.—The provisions of section 4041(a)(2) (other than subparagraph (D) thereof) of this subtitle [set out as a note above] shall apply to suppliers of items and services described in paragraph (1), and directories of participating suppliers of such items and services, in the same manner as such section applies to physicians furnishing physicians' services, and directories of participating physicians.''

SPECIAL RULE WITH RESPECT TO PAYMENT FOR INTRAOCULAR LENSES

Section 4063(d) of Pub. L. 100–203 provided that: ''With respect to the establishment of a reasonable charge limit under section 1842(b)(11)(C)(ii) of the Social Security Act [subsec. (b)(11)(C)(ii) of this section], in applying section 1842(j)(1)(D)(i) of such Act, the matter beginning with 'plus' shall be considered to have been deleted.''

STUDY ON COST EFFECTIVENESS OF HEARING PRIOR TO HEARING BY ADMINISTRATIVE LAW JUDGE ON CARRIER DETERMINATIONS; REPORT TO CONGRESS

Section 4082(d) of Pub. L. 100–203 provided that: ''The Comptroller General shall conduct a study concerning the cost effectiveness of requiring hearings with a carrier under part B of title XVIII of the Social Security Act [this part] before having a hearing before an administrative law judge respecting carrier determinations under that part. The Comptroller General shall report to the Congress on the results of such study by not later than June 30, 1989.''

CAPACITY TO SET GEOGRAPHIC PAYMENT LIMITS

Section 4085(e) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall develop the capability to implement (for services furnished on or after January 1, 1989) geographic limits on charges and payments under part B of title XVIII of the Social Security Act [this part] for physicians' services based on statewide, regional, or national average (or percentile in a distribution) of prevailing charges or payment amounts (weighted by frequency of services). Any such limits shall take into account adjustments for geographic differences in cost of practice and cost of living.''

UTILIZATION SCREENS FOR PHYSICIAN SERVICES PROVIDED TO PATIENTS IN REHABILITATION HOSPITALS

Section 4114 of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §126(g)(4), Oct. 31, 1994, 108 Stat. 4416, provided that: ''Not later than 180 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall issue guidelines to assure a uniform level of review of physician visits to patients of a rehabilitation hospital or unit after the medical review screen parameter established under section 4085(h) of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203, set out below] has been exceeded.''

Section 4085(h) of Pub. L. 100–203 provided that:

''(1) The Secretary of Health and Human Services shall establish (in consultation with appropriate physician groups, including those representing rehabilitative medicine) a separate utilization screen for physician visits to patients in rehabilitation hospitals and rehabilitative units (and patients in long-term care hospitals receiving rehabilitation services) to be used by carriers under section 1842 of the Social Security Act [this section] in performing functions under subsection (a) of such section related to the utilization practices of physicians in such hospitals and units.

''(2) Not later than 12 months after the date of enactment of this Act [Dec. 22, 1987], the Secretary of Health and Human Services shall take appropriate steps to implement the utilization screen established under paragraph (1).''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of Title 26, Internal Revenue Code.

AMENDMENTS IN CONTRACTS AND REGULATIONS

The Secretary of Health and Human Services to provide for such timely amendments to contracts under this section, and regulations, to such extent as may be necessary to implement Pub. L. 99–509 on a timely basis, see section 9311(d)(3) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 1395h of this title.

MEDICARE ECONOMIC INDEX

Section 9331(c)(1), (2), (4)–(6) of Pub. L. 99–509 provided that:

''(1) FOR 1987.—Notwithstanding any other provision of law, for purposes of part B of title XVIII of the Social Security Act [this part] for physicians' services furnished in 1987, the percentage increase in the MEI (as defined in section 1842(b)(4)(E)(ii) of the Social Security Act [subsec. (b)(4)(E)(ii) of this section]) shall be 3.2 percent.

''(2) PROHIBITING RETROACTIVE ADJUSTMENT OF MEDICARE ECONOMIC INDEX.—The Secretary of Health and Human Services is not authorized to revise the MEI in a manner that provides, for any period before January 1, 1985, for the substitution of a rental equivalence or rental substitution factor for the housing component of the consumer price index.''

''(4) STUDY.—The Secretary shall conduct a study of the extent to which the MEI appropriately and equi-

tably reflects economic changes in the provision of the physicians' services to medicare beneficiaries. In conducting such study the Secretary shall consult with appropriate experts.

''(5) LIMITATION ON CHANGES IN MEI METHODOLOGY.—The Secretary shall not change the methodology (including the basis and elements) used in the MEI from that in effect as of October 1, 1985, until completion of the study under paragraph (4). After the completion of the study, the Secretary may not change such methodology except after providing notice in the Federal Register and opportunity for public comment.

''(6) MEI DEFINED.—In this subsection, the term 'MEI' means the economic index referred to in the fourth sentence of section 1842(b)(3) of the Social Security Act [subsec. (b)(3) of this section].''

DEVELOPMENT AND USE OF HCFA COMMON PROCEDURE CODING SYSTEM

Section 9331(d) of Pub. L. 99–509 provided that:

''(1) Not later than July 1, 1989, the Secretary of Health and Human Services (in this subsection referred to as the 'Secretary'), after public notice and opportunity for public comment and after consulation [consultation] with appropriate medical and other experts, shall group the procedure codes contained in any HCFA Common Procedure Coding System for payment purposes to minimize inappropriate increases in the intensity or volume of services provided as a result of coding distinctions which do not reflect substantial differences in the services rendered.

''(2) Not later than January 1, 1990, each carrier with which the Secretary has entered into a contract under section 1842 of the Social Security Act [this section] shall make payments under part B of title XVIII of such Act [this part] based on the grouping of procedure codes effected under paragraph (1).''

MEASURING CARRIER PERFORMANCE; CARRIER BONUSES FOR GOOD PERFORMANCE

Section 9332(a)(2), (3) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4085(i)(21)(B), Dec. 22, 1987, 101 Stat. 1330–133, which provided that the Secretary of Health and Human Services was to provide, in the standards and criteria established under section 1842(b)(2) of the Social Security Act [subsec. (b)(2) of this section] for contracts under that section, a system to measure a carrier's performance of the responsibilities described in sections 1842(b)(3)(H) and 1842(h) of such Act and that, of the amounts appropriated for administrative activities to carry out part B of title XVIII of the Social Security Act [this part], the Secretary of Health and Human Services was to provide payments, totaling 1 percent of the total payments to carriers for claims processing in any fiscal year, to carriers under section 1842 of such Act, to reward such carriers for their success in increasing the proportion of physicians in the carrier's service area who were participating physicians or in increasing the proportion of total payments for physicians' services which were payments for such services rendered by participating physicians, was repealed by Pub. L. 100–203, title IV, § 4041(a)(3)(B)(i), Dec. 22, 1987, 101 Stat. 1330–84.

Section 9332(a)(4)(B), (C) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4041(a)(3)(B)(ii), (iii), Dec. 22, 1987, 101 Stat. 1330–84; Pub. L. 100–360, title IV, § 411(f)(1)(C), July 1, 1988, 102 Stat. 776, provided that:

''(B) PERFORMANCE MEASURES.—The Secretary of Health and Human Services shall provide for the establishment of the standards and criteria required under the last sentence of section 1842(b)(2) of the Social Security Act [subsec. (b)(2) of this section] by not later than October 1, 1987, which shall apply to contracts as of October 1, 1987.

''(C) CARRIER BONUSES.—From the amounts appropriated for each fiscal year (beginning with fiscal year 1988), the Secretary of Health and Human Services shall first provide for payments of bonuses to carriers under section 1842(c)(1)(B) of the Social Security Act [subsec. (c)(1)(B) of this section] not later than September 30, 1988, to reflect performance of carriers during the enrollment period before April 1, 1988.''

REVIEW OF PROCEDURES

Section 9333(c) of Pub. L. 99–509 provided that: ''Not later than October 1, 1987, the Secretary of Health and Human Services shall review the inherent reasonableness of the reasonable charges for at least 10 of the most costly procedures with respect to which payment is made under part B of title XVIII of the Social Security Act [this part] (determined on the basis of the aggregate annual payments under such part with respect to each such procedure).''

RATIFICATION OF REGULATIONS

Section 9334(b) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4045(c)(2)(C), Dec. 22, 1987, 101 Stat. 1330–88, provided that:

''(1) IN GENERAL.—The Congress hereby ratifies the final regulation of the Secretary of Health and Human Services published on page 35693 of volume 51 of the Federal Register on October 7, 1986, relating to reasonable charge payment limits for anesthesia services under the medicare program.

''(2) PATIENT PROTECTIONS.—In the case of any reduction in the reasonable charge for physicians' services effected under the regulation described in paragraph (1), the provisions of section 1842(j)(1)(D) of the Social Security Act [subsec. (j)(1)(D) of this section] (added by the amendment made by subsection (a)(3)) shall apply in the same manner and to the same extent as they apply to a reduction in the reasonable charge for a physicians' service effected under section 1842(b)(8) of such Act.''

PAYMENT FOR PARENTERAL AND ENTERAL NUTRITION SUPPLIES AND EQUIPMENT

Section 9340 of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall apply the sixth sentence of section 1842(b)(3) of the Social Security Act [subsec. (b)(3) of this section] to payment—

''(1) for enteral nutrition nutrients, supplies, and equipment and parenteral nutrition supplies and equipment furnished on or after January 1, 1987, and

''(2) for parenteral nutrition nutrients furnished on or after October 1, 1987.''

REPORTING OF OPD SERVICES USING HCPCS

Section 9343(g) of Pub. L. 99–509 provided that: ''Not later than July 1, 1987, each fiscal intermediary which processes claims under part B of title XVIII of the Social Security Act [this part] shall require hospitals, as a condition of payment for outpatient hospital services under that part, to report claims for payment for such services under such part using a HCFA Common Procedure Coding System.''

PERIOD FOR ENTERING INTO PARTICIPATION AGREEMENTS

Section 9301(b)(3) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall provide, during the month of April 1986, that physicians and suppliers may enter into an agreement under section 1842(h)(1) of the Social Security Act [subsec. (h)(1) of this section] for the 8-month period beginning May 1, 1986, or terminate such an agreement previously entered into for fiscal year 1986. In the case of a physician or supplier who entered into such an agreement for fiscal year 1986, the physician or supplier shall be deemed to have entered into such agreement for such 8-month period and for each succeeding year unless the physician or supplier terminates such agreement before the beginning of the respective period. At the beginning of such 8-month period, the Secretary shall publish a new directory (described in section 1842(h)(4) of that Act [subsec. (h)(4) of this section], as redesignated by subsection (c)(3)(D) of this section) of participating physicians and suppliers.''

TRANSITIONAL PROVISIONS FOR MEDICARE PART B PAYMENTS

Section 9301(d)(5) of Pub. L. 99–272 provided that: ''Notwithstanding any other provision of law, for purposes of making payment under part B of title XVIII of the Social Security Act [this part], customary and prevailing charges (and the lowest charges determined under the sixth sentence of section 1842(b)(3) of such Act [subsec. (b)(3) of this section]) for items and services furnished during the period beginning on October 1, 1986, and ending on December 31, 1986, shall be determined on the same basis as for items and services furnished on September 30, 1986.''

COMPUTATION OF CUSTOMARY CHARGES FOR CERTAIN FORMER HOSPITAL-COMPENSATED PHYSICIANS

Section 9304(b) of Pub. L. 99–272 provided that:

''(1) In applying section 1842(b) of the Social Security Act [subsec. (b) of this section] to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who at anytime during the period beginning on October 31, 1982, and ending on January 31, 1985, was a hospital-compensated physician (as defined in paragraph (3)) but who, as of February 1, 1985, was no longer a hospital-compensated physician, the physician's customary charges shall—

''(A) be based upon the physician's actual charges billed during the 12-month period ending on March 31, 1985, and

''(B) in the case of a physician who was not a participating physician (as defined in section 1842(h)(1) of the Social Security Act [subsec. (h)(1) of this section]) on September 30, 1985, and who is not such a physician on May 1, 1986, be deflated (to take into account the legislative freeze on actual charges for non-participating physicians' services) by multiplying the physician's customary charges by .85.

''(2) In applying section 1842(b) of the Social Security Act [subsec. (b) of this section] to payment for physicians' services performed during the 8-month period beginning May 1, 1986, in the case of a physician who during the period beginning on February 1, 1985, and ending on December 31, 1986, changes from being a hospital-compensated physician to not being a hospital-compensated physician, the physician's customary charges shall be determined in the same manner as if the physician were considered to be a new physician.

''(3) In this subsection, the term 'hospital-compensated physician' means, with respect to services furnished to patients of a hospital, a physician who is compensated by the hospital for the furnishing of physicians' services for which payment may be made under this part.''

EXTENSION OF MEDICARE PHYSICIAN PAYMENT PROVISIONS

Period of 15 months referred to in subsec. (j)(1) of this section for monitoring the charges of nonparticipating physicians to be deemed to include the period Oct. 1, 1985, to Mar. 14, 1986, see section 5(b) of Pub. L. 99–107, set out as a note under section 1395ww of this title.

SIMPLIFICATION OF PROCEDURES WITH RESPECT TO CLAIMS AND PAYMENTS FOR CLINICAL DIAGNOSTIC LABORATORY TESTS

Section 2303(h) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services shall simplify the procedures under section 1842 of the Social Security Act [this section] with respect to claims and payments for clinical diagnostic laboratory tests so as to reduce unnecessary paperwork while assuring that sufficient information is supplied to identify instances of fraud and abuse.''

STUDY OF AMOUNTS BILLED FOR PHYSICIAN SERVICES AND PAID BY CARRIERS UNDER SUBSECTION (b)(7) OF THIS SECTION; REPORT TO CONGRESS

Section 2307(c) of Pub. L. 98–369 directed Comptroller General to conduct a study of the amounts billed for physician services and paid by carriers under subsec. (b)(7) of this section to determine whether such payments were made only where the physician satisfied the requirements of subsec. (b)(7)(A)(i) of this section, and to submit to Congress a report on results of such study not later than 18 months after July 18, 1984.

REPLACEMENT OF AGENCY, ORGANIZATION, OR CARRIER PROCESSING MEDICARE CLAIMS; NUMBER OF AGREEMENTS AND CONTRACTS AUTHORIZED FOR FISCAL YEARS 1985 THROUGH 1993

For provision authorizing two agreements under section 1395h of this title and two contracts under this section for replacement of an agency, organization, or carrier in the lowest 20th percentile, see section 2326(a) of Pub. L. 98–369, as amended, set out as a note under 1395h of this title.

RULES AND REGULATIONS

Section 113(b)(2) of Pub. L. 97–248 provided that: ''The Secretary of Health and Human Services shall first issue such final regulations (whether on an interim or other basis) before October 1, 1982, as may be necessary to implement the amendment made by subsection (a) [amending this section] on a timely basis. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than January 31, 1983.''

REPORT ON REIMBURSEMENT OF CLINICAL LABORATORIES

Section 918(a)(3) of Pub. L. 96–499 provided that not later than 24 months after an effective date (not later than Apr. 1, 1981) which was to have been prescribed by the Secretary of Health and Human Services, the Secretary was to report to the Congress (A) the proportion of bills and requests for payment submitted (during the 18-month period beginning on such effective date) under this subchapter for laboratory tests which did not identify who performed the tests, (B) the proportion of bills and requests for payment submitted during such period for laboratory tests with respect to which the amount paid under this subchapter was less than the amount that would otherwise have been payable in the absence of subsec. (h) of this section, (C) with respect to requests for payment described in subparagraph (B) which were submitted by patients, the average additional cost per laboratory test to patients resulting from reductions in payment that would otherwise have been made for such tests in the absence of such subsec. (h), and (D) with respect to bills described in subparagraph (B) which were submitted by physicians, the average reduction in payment per laboratory test to physicians resulting from the application of such subsec. (h).

PREVAILING CHARGE LEVELS FOR FISCAL YEAR BEGINNING JULY 1, 1975

Section 101(b) of Pub. L. 94–182 provided that: ''The amendment made by subsection (a) [amending subsec. (b)(3) of this section] shall be applicable with respect to claims filed under part B of title XVIII of the Social Security Act [this part] with a carrier designated pursuant to section 1842 of such Act [this section] and processed by such carrier after the appropriate changes were made in the prevailing charge levels for the fiscal year beginning July 1, 1975, on the basis of economic index data under the third and fourth sentences of section 1842(b)(3) of such Act [subsec. (b)(3) of this section]; except that (1) if less than the correct amount was paid (after the application of subsection (a) of this section) on any claim processed prior to the enactment of this section [Dec. 31, 1975], the correct amount shall be paid by such carrier at such time (not exceeding 6 months after the date of the enactment of this section) [Dec. 31, 1975] as is administratively feasible, and (2) no such

payment shall be made on any claim where the difference between the amount paid and the correct amount due is less than $1.''

REPORT BY HEALTH INSURANCE BENEFITS ADVISORY COUNCIL ON METHODS OF REIMBURSEMENT OF PHYSICIANS FOR THEIR SERVICES

Section 224(b) of Pub. L. 92–603 directed Health Insurance Benefits Advisory Council to conduct a study of methods of reimbursement for physicians' services under Medicare with respect to fees, extent of assignments accepted by physicians, and share of physician-fee costs which Medicare program does not pay and submit such study to Congress by Jan. 1, 1973.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 238m, 254n, 254t, 704, 1320a–3, 1320a–7a, 1320a–7b, 1320c–2, 1320c–3, 1395k, 1395*l*, 1395m, 1395t, 1395v, 1395w–1, 1395w–4, 1395y, 1395cc, 1395gg, 1395mm, 1395pp, 1395ss, 1395vv, 1396b, 1396m, 1397d of this title; title 2 section 906; title 5 section 8904; title 25 section 1616m.

§ 1395v. Agreements with States

(a) Duty of Secretary; enrollment of eligible individuals

The Secretary shall, at the request of a State made before January 1, 1970, or during 1981 or after 1988, enter into an agreement with such State pursuant to which all eligible individuals in either of the coverage groups described in subsection (b) of this section (as specified in the agreement) will be enrolled under the program established by this part.

(b) Coverage of groups to which applicable

An agreement entered into with any State pursuant to subsection (a) of this section may be applicable to either of the following coverage groups:

(1) individuals receiving money payments under the plan of such State approved under subchapter I of this chapter or subchapter XVI of this chapter; or

(2) individuals receiving money payments under all of the plans of such State approved under subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter.

Except as provided in subsection (g) of this section, there shall be excluded from any coverage group any individual who is entitled to monthly insurance benefits under subchapter II of this chapter or who is entitled to receive an annuity under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.]. Effective January 1, 1974, and subject to section 1396a(f) of this title, the Secretary shall, at the request of any State not eligible to participate in the State plan program established under subchapter XVI of this chapter, continue in effect the agreement entered into under this section with such State subject to such modifications as the Secretary may by regulations provide to take account of the termination of any plans of such State approved under subchapters I, X, XIV, and XVI of this chapter and the establishment of the supplemental security income program under subchapter XVI of this chapter.

(c) Eligible individuals

For purposes of this section, an individual shall be treated as an eligible individual only if he is an eligible individual (within the meaning of section 1395*o* of this title) on the date an agreement covering him is entered into under subsection (a) of this section or he becomes an eligible individual (within the meaning of such section) at any time after such date; and he shall be treated as receiving money payments described in subsection (b) of this section if he receives such payments for the month in which the agreement is entered into or any month thereafter.

(d) Monthly premiums; coverage periods

In the case of any individual enrolled pursuant to this section—

(1) the monthly premium to be paid by the State shall be determined under section 1395r of this title (without any increase under subsection (b) thereof);

(2) his coverage period shall begin on whichever of the following is the latest:

(A) July 1, 1966;

(B) the first day of the third month following the month in which the State agreement is entered into;

(C) the first day of the first month in which he is both an eligible individual and a member of a coverage group specified in the agreement under this section; or

(D) such date as may be specified in the agreement; and

(3) his coverage period attributable to the agreement with the State under this section shall end on the last day of whichever of the following first occurs:

(A) the month in which he is determined by the State agency to have become ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h) of this section) for medical assistance, or

(B) the month preceding the first month for which he becomes entitled to monthly benefits under subchapter II of this chapter or to an annuity or pension under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.].

(e) Subsection (d)(3) terminations deemed resulting in section 1395p enrollment

Any individual whose coverage period attributable to the State agreement is terminated pursuant to subsection (d)(3) of this section shall be deemed for purposes of this part (including the continuation of his coverage period under this part) to have enrolled under section 1395p of this title in the initial general enrollment period provided by section 1395p(c) of this title. The coverage period under this part of any such individual who (in the last month of his coverage period attributable to the State agreement or in any of the following six months) files notice that he no longer wishes to participate in the insurance program established by this part, shall terminate at the close of the month in which the notice is filed.

(f) "Carrier" as including State agency; provisions facilitating deductions, coinsurance, etc., and leading to economy and efficiency of operation

With respect to eligible individuals receiving money payments under the plan of a State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, or eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter, if the agreement entered into under this section so provides, the term ''carrier'' as defined in section 1395u(f) of this title also includes the State agency, specified in such agreement, which administers or supervises the administration of the plan of such State approved under subchapter I, XVI, or XIX of this chapter. The agreement shall also contain such provisions as will facilitate the financial transactions of the State and the carrier with respect to deductions, coinsurance, and otherwise, and as will lead to economy and efficiency of operation, with respect to individuals receiving money payments under plans of the State approved under subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter, and individuals eligible to receive medical assistance under the plan of the State approved under subchapter XIX of this chapter.

(g) Subsection (b) exclusions from coverage groups

(1) The Secretary shall, at the request of a State made before January 1, 1970, or during 1981 or after 1988, enter into a modification of an agreement entered into with such State pursuant to subsection (a) of this section under which the second sentence of subsection (b) of this section shall not apply with respect to such agreement.

(2) In the case of any individual who would (but for this subsection) be excluded from the applicable coverage group described in subsection (b) of this section by the second sentence of such subsection—

(A) subsections (c) and (d)(2) of this section shall be applied as if such subsections referred to the modification under this subsection (in lieu of the agreement under subsection (a) of this section), and

(B) subsection (d)(3)(B) of this section shall not apply so long as there is in effect a modification entered into by the State under this subsection.

(h) Modifications respecting subsection (b) coverage groups

(1) The Secretary shall, at the request of a State made before January 1, 1970, or during 1981 or after 1988, enter into a modification of an agreement entered into with such State pursuant to subsection (a) of this section under which the coverage group described in subsection (b) of this section and specified in such agreement is broadened to include (A) individuals who are eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter, or (B) qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title).

(2) For purposes of this section, an individual shall be treated as eligible to receive medical assistance under the plan of the State approved under subchapter XIX of this chapter if, for the month in which the modification is entered into under this subsection or for any month thereafter, he has been determined to be eligible to receive medical assistance under such plan. In the case of any individual who would (but for this subsection) be excluded from the agreement, subsections (c) and (d)(2) of this section shall be applied as if they referred to the modification under this subsection (in lieu of the agreement under subsection (a) of this section), and subsection (d)(2)(C) of this section shall be applied (except in the case of qualified medicare beneficiaries, as defined in section 1396d(p)(1) of this title) by substituting ''second month following the first month'' for ''first month''.

(3) In this subsection, the term ''qualified medicare beneficiary'' also includes an individual described in section 1396a(a)(10)(E)(iii) of this title.

(i) Enrollment of qualified medicare beneficiaries

For provisions relating to enrollment of qualified medicare beneficiaries under part A of this subchapter, see section 1395i–2(g) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1843, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 312; amended Apr. 8, 1966, Pub. L. 89–384, § 4(a), (b), 80 Stat. 105; Jan. 2, 1968, Pub. L. 90–248, title II, §§ 222(a), (b), (e), 241(e), 81 Stat. 900, 901, 917; Dec. 31, 1973, Pub. L. 93–233, § 18(*l*), 87 Stat. 970; Oct. 16, 1974, Pub. L. 93–445, title III, § 308, 88 Stat. 1358; Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 945(e), 947(a), (c), 94 Stat. 2642, 2643; Apr. 20, 1983, Pub. L. 98–21, title VI, § 606(a)(3)(E), 97 Stat. 171; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2354(b)(15), 98 Stat. 1101; July 1, 1988, Pub. L. 100–360, title III, § 301(e)(1), 102 Stat. 749; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(14)(H), 102 Stat. 2416; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6013(b), 103 Stat. 2164; Nov. 5, 1990, Pub. L. 101–508, title IV, § 4501(d), 104 Stat. 1388–165.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsecs. (b)(2) and (f), is classified to section 601 et seq. of this title.

The Railroad Retirement Act of 1974, referred to in subsec. (d)(3)(B), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

Part A of this subchapter, referred to in subsec. (i), is classified to section 1395c et seq. of this title.

AMENDMENTS

1990—Subsec. (h)(3). Pub. L. 101–508 added par. (3).

1989—Subsec. (i). Pub. L. 101–239 added subsec. (i).

1988—Subsecs. (a), (g)(1). Pub. L. 100–360, § 301(e)(1)(A), formerly § 301(e)(1), as redesignated by Pub. L. 100–485, § 608(d)(14)(H)(i), inserted ''or after 1988'' after ''during 1981''.

Subsec. (h)(1). Pub. L. 100–360, § 301(e)(1)(A), formerly § 301(e)(1), as redesignated by Pub. L. 100–485, § 608(d)(14)(H)(i), inserted ''or after 1988'' after ''during 1981''.

Pub. L. 100–360, § 301(e)(1)(B), as added by Pub. L. 100–485, § 608(d)(14)(H)(ii), inserted cl. (A) designation after ''include'' and added cl. (B).

Subsec. (h)(2). Pub. L. 100–360, § 301(e)(1)(C), as added by Pub. L. 100–485, § 608(d)(14)(H)(ii), inserted ''(except in the case of qualified medicare beneficiaries, as defined in section 1396d(p)(1) of this title)'' after ''shall be applied''.

1984—Subsec. (d)(3)(B). Pub. L. 98–369 substituted ''1974'' for ''1937''.

1983—Subsec. (d)(1). Pub. L. 98–21 substituted ''without any increase under subsection (b) thereof'' for ''without any increase under subsection (c) thereof''.

1980—Subsec. (a). Pub. L. 96–499, § 945(e), inserted ''or during 1981,'' after ''January 1, 1970,''.

Subsec. (e). Pub. L. 96–499, § 947(a), inserted provision that the coverage period under this part of any individual who filed notice that he no longer wished to participate in the insurance program established by this part was to terminate at the close of the month in which the notice was filed.

Subsec. (g)(1). Pub. L. 96–499, § 945(e), inserted ''or during 1981,'' after ''January 1, 1970,''.

Subsec. (g)(2)(C). Pub. L. 96–499, § 947(c)(3), struck out cl. (C) which authorized individuals facing exclusion from the applicable coverage group to terminate their enrollment under this part by the filing of a notice indicating he no longer wished to participate in the insurance program established by this part.

Subsec. (h)(1). Pub. L. 96–499, § 945(e), inserted ''or during 1981,'' after ''January 1, 1970,''.

1974—Subsec. (b). Pub. L. 93–445 substituted ''under the Railroad Retirement Act of 1974'' for ''or pension under the Railroad Retirement Act of 1937''.

1973—Subsec. (b). Pub. L. 93–233 provided for continuation of State agreements for coverage of certain individuals in connection with establishment of supplemental security income program.

1968—Pub. L. 90–248, § 222(b)(4), inserted ''(or are eligible for medical assistance)'' in section catchline.

Subsec. (a). Pub. L. 90–248, § 222(e)(1), substituted ''1970'' for ''1968''.

Subsec. (b)(2). Pub. L. 90–248, § 241(e)(1), struck out ''IV,'' after ''I,'' and inserted '', and part A of subchapter IV of this chapter'' after ''XVI of this chapter''.

Subsec. (c). Pub. L. 90–248, § 222(e)(2), struck out ''and before January 1, 1968'' after ''such date'' and ''before January 1968'' after ''thereafter'' just before the period.

Subsec. (d)(2)(D). Pub. L. 90–248, § 222(e)(3), struck out ''(not later than January 1, 1968)'' after ''such date''.

Subsec. (d)(3)(A). Pub. L. 90–248, § 222(b)(1), substituted ''ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h) of this section) for medical assistance'' for ''ineligible for money payments of a kind specified in the agreement''.

Subsec. (f). Pub. L. 90–248, § 222(b)(2), inserted ''or eligible to receive medical assistance under the plan of such State approved under subchapter XIX of this chapter'' and '', and individuals eligible to receive medical assistance under the plan of the State approved under subchapter XIX of this chapter'' after ''or part A of subchapter IV of this chapter'' and '', and part A of subchapter IV of this chapter'', respectively.

Pub. L. 90–248, § 241(e)(2), struck out ''IV,'' before ''X,'' in two places, and inserted ''or part A of subchapter IV of this chapter,'' after ''XVI of this chapter,'' first place it appears in first sentence and '', and part A of subchapter IV of this chapter'' after ''XVI of this chapter'' in second sentence.

Subsec. (g)(1). Pub. L. 90–248, § 222(b)(3), substituted ''1970'' for ''1968''.

Subsec. (h). Pub. L. 90–248, § 222(a), added subsec. (h).

1966—Subsec. (b). Pub. L. 89–384, § 4(a), inserted reference to subsec. (g) in exclusionary provision.

Subsec. (g). Pub. L. 89–384, § 4(b), added subsec. (g).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not regulations to implement such amendment are promulgated by such date, see section 4501(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective Jan. 1, 1990, see section 6013(c) of Pub. L. 101–239, set out as a note under section 1395i–2 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 301(e)(3) of Pub. L. 100–360 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1989, and the amendments made by paragraph (2) [amending section 1396a of this title] shall take effect on July 1, 1989.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; TRANSITIONAL RULE

Amendment by Pub. L. 98–21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98–21, set out as a note under section 1395r of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 947(d) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section and section 1395q of this title] apply to notices filed after the third calendar month beginning after the date of the enactment of this Act [Dec. 5, 1980].''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective Jan. 1, 1974, see section 18(z–3)(1) of Pub. L. 93–233.

TERMINATION PERIOD FOR CERTAIN INDIVIDUALS COVERED PURSUANT TO STATE AGREEMENTS

Section 947(e) of Pub. L. 96–499 provided that: ''The coverage period under part B of title XVIII of the Social Security Act [this part] of an individual whose coverage period attributable to a State agreement under section 1843 of such Act [this section] is terminated and who has filed notice before the end of the third calendar month beginning after the date of the enactment of this Act [Dec. 5, 1980] that he no longer wishes to participate in the insurance program established by part B of title XVIII shall terminate on the earlier of (1) the day specified in section 1838 [section 1395q of this title] without the amendments made by this section, or (2) (unless the individual files notice before the day specified in this clause that he wishes his coverage period to terminate as provided in clause (1)) the day on which his coverage period would terminate if the indi-

vidual filed notice in the fourth calendar month beginning after the date of the enactment of this Act.''

DISTRICT OF COLUMBIA; AGREEMENT OF COMMISSIONER WITH SECRETARY FOR SUPPLEMENTARY MEDICAL INSURANCE

Pub. L. 90–227, § 2, Dec. 27, 1967, 81 Stat. 745, provided that: ''The Commissioner [now Mayor of District of Columbia] may enter into an agreement (and any modifications of such agreement) with the Secretary under section 1843 of the Social Security Act [this section] pursuant to which (1) eligible individuals (as defined in section 1836 of the Social Security Act) [section 1395*o* of this title] who are eligible to receive medical assistance under the District of Columbia's plan for medical assistance approved under title XIX of the Social Security Act [subchapter XIX of this chapter] will be enrolled in the supplementary medical insurance program established under part B of title XVIII of the Social Security Act [this part], and (2) provisions will be made for payment of the monthly premiums of such individuals for such program.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395i–2, 1395q, 1395s, 1396a of this title.

§ 1395w. Appropriations to cover Government contributions and contingency reserve

(a) There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund—

(1)(A) a Government contribution equal to the aggregate premiums payable for a month for enrollees age 65 and over under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee age 65 and over as determined under section 1395r(a)(1) of this title for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1395r(a)(3) or 1395r(e) of this title, as the case may be, to

(ii) the dollar amount of the premium per enrollee for such month, plus

(B) a Government contribution equal to the aggregate premiums payable for a month for enrollees under age 65 under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee under age 65 as determined under section 1395r(a)(4) of this title for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1395r(a)(3) or 1395r(e) of this title, as the case may be, to

(ii) the dollar amount of the premium per enrollee for such month; plus

(2) such sums as the Secretary deems necessary to place the Trust Fund, at the end of any fiscal year occurring after June 30, 1967, in the same position in which it would have been at the end of such fiscal year if (A) a Government contribution representing the excess of the premiums deposited in the Trust Fund during the fiscal year ending June 30, 1967, over the Government contribution actually appropriated to the Trust Fund during such fiscal year had been appropriated to it on June 30, 1967, and (B) the Government contribution for premiums deposited in the Trust Fund after June 30, 1967, had been appropriated to it when such premiums were deposited.

(b) In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part, and to provide a contingency reserve, there is also authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, to remain available through the calendar year 1969 for repayable advances (without interest) to the Trust Fund, an amount equal to $18 multiplied by the number of individuals (as estimated by the Secretary) who could be covered in July 1966 by the insurance program established by this part if they had theretofore enrolled under this part.

(Aug. 14, 1935, ch. 531, title XVIII, § 1844, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 313; amended Jan. 2, 1968, Pub. L. 90–248, title I, § 167, 81 Stat. 874; Oct. 30, 1972, Pub. L. 92–603, title II, § 203(e), 86 Stat. 1377; Sept. 3, 1982, Pub. L. 97–248, title I, § 124(c), 96 Stat. 364; Apr. 20, 1983, Pub. L. 98–21, title VI, § 606(a)(3)(F), (G), 97 Stat. 171; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2354(b)(16), 98 Stat. 1101; July 1, 1988, Pub. L. 100–360, title II, § 211(c)(2), 102 Stat. 738; Dec. 13, 1989, Pub. L. 101–234, title II, § 202(a), 103 Stat. 1981.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–234 repealed Pub. L. 100–360, § 211(c)(2), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a). Pub. L. 100–360 inserted at end ''In computing the amount of aggregate premiums and premiums per enrollee under paragraph (1), there shall not be taken into account premiums attributable to section 1395r(g) of this title or section 59B of the Internal Revenue Code of 1986.''

1984—Subsec. (a)(1)(B)(ii). Pub. L. 98–369 substituted ''; plus'' for a period.

1983—Subsec. (a)(1)(A)(i). Pub. L. 98–21, § 606(a)(3)(F), substituted ''section 1395r(a)(1)'' for ''section 1395r(c)(1)'' and ''section 1395r(a)(3) or 1395r(e)'' for ''section 1395r(c)(3) or 1395r(g)''.

Subsec. (a)(1)(B)(i). Pub. L. 98–21, § 606(a)(3)(G), substituted ''1395r(a)(4)'' for ''1395r(c)(4)'' and ''1395r(a)(3) or 1395r(e)'' for ''1395r(c)(3) or 1395r(g)''.

1982—Subsec. (a)(1)(A)(i), (B)(i). Pub. L. 97–248 substituted ''section 1395r(c)(3) or 1395r(g) of this title, as the case may be'' for ''section 1395r(c)(3) of this title''.

1972—Subsec. (a)(1). Pub. L. 92–603 designated existing provisions as subpar. (A), substituted provisions relating to Government contributions equal to aggregate premiums payable for a month for enrollees age 65 and over under this part and deposited in Trust Fund, and multiplied by specified ratio, for provisions relating to Government contributions equal to aggregate premiums payable under this part and deposited in Trust Fund, and added subpar. (B).

1968—Subsec. (a). Pub. L. 90–248, § 167(a), designated existing provisions as par. (1), inserted provision for deposit of Government contribution in Trust Fund, and added par. (2).

Subsec. (b). Pub. L. 90–248, § 167(b), substituted ''1969'' for ''1967''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, and applicable to premiums for months beginning after Dec. 31, 1989, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–360 applicable, except as otherwise specified in such amendment, to monthly premiums for months beginning with January 1989, see section 211(d) of Pub. L. 100–360, set out as a note under section 1395r of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT; TRANSITIONAL RULE

Amendment by Pub. L. 98–21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the amount of Government contributions under subsec. (a)(1) of this section shall be computed with the actuarially adequate rate which would have been in effect but for the amendments made by this section and using the amount of the premium in effect for June 1983, see section 606(c) of Pub. L. 98–21, set out as a note under section 1395r of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 203(e) of Pub. L. 92–603 provided that the amendment made by that section is effective with respect to enrollee premiums payable for months after June 1973.

§ 1395w–1. Physician Payment Review Commission

(a) Establishment; membership; term of office

(1) The Director of the Congressional Office of Technology Assessment (hereinafter in this section referred to as the ''Director'' and the ''Office'', respectively) shall provide for the appointment of a Physician Payment Review Commission (hereinafter in this section referred to as the ''Commission''), to be composed of individuals with national recognition for their expertise in health economics, physician reimbursement, medical practice, and other related fields appointed by the Director (without regard to the provisions of title 5 governing appointments in the competitive service).

(2) The Commission shall consist of 13 individuals. Members of the Commission shall first be appointed no later than May 1, 1986, for a term of three years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than four members expire in any one year.

(3) The membership of the Commission shall include (but need not be limited to) physicians, other health professionals, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research, and representatives of consumers and the elderly.

(b) Recommendations to Congress

(1) The Commission shall make recommendations to the Congress, not later than March 31 of each year (beginning with 1987), regarding adjustments to the reasonable charge levels for physicians' services recognized under section 1395u(b) of this title and changes in the methodology for determining the rates of payment, and for making payment, for physicians' services under this subchapter and other items and services under this part.

(2) In making its recommendations, the Commission shall—

(A) assess the likely impact of different adjustments in payment rates, particularly their impact on physician participation in the participation program established under section 1395u(h) of this title and on beneficiary access to necessary physicians' services;

(B) make recommendations on ways to increase physician participation in that participation program and the acceptance of payment under this part on an assignment-related basis;

(C) identify those procedures, involving the use of assistants at surgery, for which payment for those assistants should not be made under this subchapter without prior approval;

(D) identify those procedures for which an opinion of a second physician should be required before payment is made under this subchapter;

(E) consider policies for moderating the rate of increase in expenditures under this part and the rate of increase in utilization of services under this part;

(F) make recommendations regarding major issues in the implementation of the resource-based relative value scale established under section 1395w–4(c) of this title;

(G) make recommendations regarding further development of the volume performance standards established under section 1395w–4(f) of this title, including the development of State-based programs;

(H) consider policies to provide payment incentives to increase patient access to primary care and other physician services in large urban and rural areas, including policies regarding payments to physicians pursuant to subchapter XIX of this chapter;

(I) review and consider the number and practice specialties of physicians in training and payments under this subchapter for graduate medical education costs;

(J) make recommendations regarding issues relating to utilization review and quality of care, including the effectiveness of peer review procedures and other quality assurance programs applicable to physicians and providers under this subchapter and physician certification and licensing standards and procedures;

(K) make recommendations regarding options to help constrain the costs of health insurance to employers, including incentives under this subchapter;

(L) comment on the recommendations affecting physician payment under the medicare program that are included in the budget submitted by the President pursuant to section 1105 of title 31; and

(M) make recommendations regarding medical malpractice liability reform and physician certification and licensing standards and procedures.

(c) Applicability of provisions relating to Prospective Payment Assessment Commission; collection and assessment of information

(1) The following provisions of section 1395ww(e)(6) of this title shall apply to the Commission in the same manner as they apply to the Prospective Payment Assessment Commission:

(A) Subparagraph (C) (relating to staffing and administration generally).

(B) Subparagraph (D) (relating to compensation of members).

(C) Subparagraph (F) (relating to access to information).

(D) Subparagraph (G) (relating to use of funds).

(E) Subparagraph (H) (relating to periodic GAO audits).

(F) Subparagraph (J) (relating to requests for appropriations).

(2) In order to carry out its functions, the Commission shall collect and assess information on medical and surgical procedures and services, including information on regional variations of medical practice. In collecting and assessing information, the Commission shall—

(A) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this section,

(B) carry out, or award grants or contracts for, original research and experimentation, where existing information is inadequate for the development of useful and valid guidelines by the Commission, and

(C) adopt procedures allowing any interested party to submit information with respect to physicians' services (including new practices, such as the use of new technologies and treatment modalities), which information the Commission shall consider in making reports and recommendations to the Secretary and Congress.

(d) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section. Such sums shall be payable from the Federal Supplementary Medical Insurance Trust Fund.

(e) Prompt submittal of data by Secretary

(1) Not later than December 31st of each year (beginning with 1988), the Secretary shall transmit to the Physician Payment Review Commission, to the Congressional Budget Office, and to the Congressional Research Service of the Library of Congress national data (known as the Part B Medicare Annual Data System) for the previous year respecting part B of this subchapter.

(2) The Secretary, in consultation with the Physician Payment Review Commission, the Congressional Budget Office, and the Congressional Research Service of the Library of Congress, shall establish and annually revise standards for the data reporting system described in paragraph (1).

(3) The Secretary shall also provide to the entities described in paragraph (1) additional data respecting the program under this part as may be reasonably requested by them on an agreed-upon schedule.

(4) The Secretary shall develop, in consultation with the Physician Payment Review Commission, the Congressional Budget Office, and the Congressional Research Service of the Library of Congress, a system for providing to each of such entities on a quarterly basis summary data on aggregate expenditures under this part by type of service and by type of provider. Such data shall be provided not later than 90 days after the end of each quarter (for quarters beginning with the calendar quarter ending on March 31, 1989).

(Aug. 14, 1935, ch. 531, title XVIII, § 1845, as added and amended Apr. 7, 1986, Pub. L. 99–272, title IX, § 9305, 100 Stat. 190; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9331(e), 9344(a)(1), 100 Stat. 2021, 2042; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4045(b), 4083(a)(1), (c)(1), 4085(a), (i)(8), 101 Stat. 1330–87, 1330–129, 1330–130, 1330–132; July 1, 1988, Pub. L. 100–360, title IV, § 411(i)(4)(A), 102 Stat. 788; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8425(a), 102 Stat. 3803; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4002(g)(3), 4118(j)(1), 104 Stat. 1388–37, 1388–70; Oct. 31, 1994, Pub. L. 103–432, title I, § 126(g)(8), 108 Stat. 4416.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a)(1), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1994—Subsec. (e)(2) to (5). Pub. L. 103–432 redesignated pars. (3) to (5) as (2) to (4), respectively, and struck out former par. (2) which read as follows: ''In order to ensure that the data are available for transmittal under paragraph (1) on a timely basis, the Secretary shall require, in the standards and criteria established under section 1395u(b)(2) of this title, that carriers submit data for a year under the system referred to in paragraph (1) not later than the later of (A) July 1st of the following year, or (B) 45 days after the date of a reasonable charge update.''

1990—Subsec. (a)(3). Pub. L. 101–508, § 4118(j)(1)(A), substituted ''include (but need not be limited to) physicians'' for ''include physicians''.

Subsec. (b)(2)(A). Pub. L. 101–508, § 4118(j)(1)(C)(iii), (iv), redesignated subpar. (D) as (A) and struck out former subpar. (A) which read as follows: ''consider, and make recommendations on the feasibility and desirability of reducing, the differences in payment amounts for physicians' services under this part which are based on differences in geographic location or specialty;''.

Subsec. (b)(2)(B). Pub. L. 101–508, § 4118(j)(1)(C)(iii), (iv), redesignated subpar. (E) as (B) and struck out former subpar. (B) which read as follows: ''review the input costs (including time, professional skills, and risks) associated with the provision of different physicians' services;''.

Subsec. (b)(2)(C). Pub. L. 101–508, § 4118(j)(1)(C)(iii), (iv), redesignated subpar. (G) as (C) and struck out former subpar. (C) which read as follows: ''identify those charges recognized as reasonable under section 1395u(b) of this title which are significantly out-of-line, based on the considerations of subparagraphs (A) and (B);''.

Subsec. (b)(2)(D), (E). Pub. L. 101–508, § 4118(j)(1)(C)(iv), redesignated subpars. (H) and (I) as (D) and (E), respectively. Former subpars. (D) and (E) redesignated (A) and (B), respectively.

Subsec. (b)(2)(F). Pub. L. 101–508, § 4118(j)(1)(C)(iii), (v), added subpar. (F) and struck out former subpar. (F)

which read as follows: ''make recommendations respecting the advisability and feasibility of making changes in the payment system for physicians' services under this part based on (i) the Secretary's study under section 603(b)(2) of the Social Security Amendments of 1983 (relating to payments for physicians' services furnished to hospital inpatients on the basis of diagnosis-related groups) and (ii) the Office's report under section 2309 of the Deficit Reduction Act of 1984 (relating to physician reimbursement under this part);''.

Subsec. (b)(2)(G) to (M). Pub. L. 101–508, § 4118(j)(1)(C)(v), added subpars. (G) to (M). Former subpars. (G) to (I) redesignated (C) to (E), respectively.

Subsec. (b)(3). Pub. L. 101–508, § 4118(j)(1)(B), struck out par. (3) which read as follows: ''The Commission also shall advise and make recommendations to the Secretary respecting the development of the relative value scale under subsection (e) of this section and respecting the index and the adjustment described in subsection (e)(4)(A) of this section.''

Subsec. (c)(1)(D). Pub. L. 101–508, § 4002(g)(3), struck out ''reports and'' before ''use of funds''.

Subsecs. (e), (f). Pub. L. 101–508, § 4118(j)(1)(D), redesignated subsec. (f) as (e) and struck out former subsec. (e) which required Secretary to develop a relative value scale for physicians' services and report to Congress not later than July 1, 1989.

1988—Subsec. (b)(2)(I). Pub. L. 100–647 added subpar. (I).

Subsec. (f)(1). Pub. L. 100–360, § 411(i)(4)(A)(i), substituted ''December 31st'' for ''October 1st''.

Subsec. (f)(2). Pub. L. 100–360, § 411(i)(4)(A)(ii), substituted ''the later of (A) July 1st of the following year, or (B) 45 days after the date of a reasonable charge update'' for ''July 1st of the following year''.

1987—Subsec. (a)(1). Pub. L. 100–203, § 4083(a)(1)(A), substituted ''with national recognition for their expertise in health economics, physician reimbursement, medical practice, and other related fields'' for ''with expertise in the provision and financing of physicians' services''.

Subsec. (a)(3). Pub. L. 100–203, § 4083(a)(1)(B), struck out last sentence setting forth wide range of groups from which the Director was to seek nominations.

Subsec. (b)(1). Pub. L. 100–203, § 4083(c)(1), substituted ''March 31'' for ''March 1''.

Subsec. (e)(4). Pub. L. 100–203, § 4085(i)(8), realigned margins of par. (4) and its clauses.

Subsec. (e)(4)(A)(i). Pub. L. 100–203, § 4045(b), inserted ''and costs of living''. after ''costs of practice''.

Subsec. (f). Pub. L. 100–203, § 4085(a), added subsec. (f).

1986—Subsec. (a)(2). Pub. L. 99–509, § 9344(a)(1), substituted ''13 individuals'' for ''11 individuals''.

Subsec. (b)(3). Pub. L. 99–509, § 9331(e)(2), inserted ''and respecting the index and adjustment described in subsection (e)(4)(A) of this section'' after ''subsection (e) of this section''.

Subsec. (e). Pub. L. 99–272, § 9305(b), added subsec. (e).

Subsec. (e)(3). Pub. L. 99–509, § 9331(e)(3), substituted ''July 1, 1989'' for ''July 1, 1987'', and ''after December 31, 1989'' for ''on or after January 1, 1988''.

Subsec. (e)(4). Pub. L. 99–509, § 9331(e)(1), added par. (4).

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 126(i) of Pub. L. 103–432, set out as a note under section 1395m of this title.

Effective Date of 1988 Amendments

Section 8425(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 10, 1988] and shall first apply to recommendations submitted in 1989.''

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Effective Date of 1987 Amendment

Amendment by section 4045(b) of Pub. L. 100–203 applicable to items and services furnished on or after Apr. 1, 1988, see section 4045(d) of Pub. L. 100–203, set out as a note under section 1395u of this title.

Section 4083(a)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to appointments made after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4083(c)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to reports for years after 1987.''

PHYSPRC Study of Payments for Assistants at Surgery

Pub. L. 101–239, title VI, § 6138, Dec. 19, 1989, 103 Stat. 2224, provided that:

''(a) Study; Contents.—The Physician Payment Review Commission shall conduct a study of the payments made under title XVIII of the Social Security Act [this subchapter] for assistants at surgery. Such study shall examine—

''(1) the necessity and appropriateness of using an assistant at surgery;

''(2) the use of physician and non-physician assistants at surgery;

''(3) the appropriateness of providing for payments, and the appropriate level of payment, under title XVIII of the Social Security Act for assistants at surgery; and

''(4) the effect of the amendments made by section 9338 of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509, amending sections 1395u and 1395x of this title] on the employment of registered nurses as assistants at surgery, and whether or not the reductions described in subsection (d) of such section have been implemented.

''(b) Report.—By not later than April 1, 1991, the Commission shall submit a report to Congress on the study conducted under subsection (a), and shall include in the report such recommendations as it deems appropriate.''

Expansion of Relative Value Scale (RVS) Study

Section 4056(b), formerly § 4055(b), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, § 411(f)(13)(B), (14), July 1, 1988, 102 Stat. 781; Pub. L. 101–508, title IV, § 4118(g)(5), Nov. 5, 1990, 104 Stat. 1388–70, provided that:

''(1) Additional services.—The Secretary shall expand the study being conducted, under section 1845(e) of the Social Security Act [subsec. (e) of this section], to develop a relative value scale for physicians' services to include physicians' services in the fields of cardiology, emergency medicine, gastroenterology, hematology, infectious disease, nephrology, neurology, neurosurgery, nuclear medicine, oncology, physical medicine and rehabilitation, plastic surgery, pulmonary medicine, and radiation therapy, and for physicians who specialize in osteopathic procedures.

''(2) No delay in current study.—The expansion under paragraph (1) shall not be conducted in a manner that delays the completion of the current study or the report to Congress required under section 1845(e)(3) of the Social Security Act.

''(3) Prompt submittal of study results to physician payment review commission.—The Secretary shall submit to the Physician Payment Review Commission a copy of any report submitted to the Secretary pursuant to a cooperative agreement in the fulfillment of the requirement of section 1845(e) of such Act, with all relevant supporting data (including survey data, analytic

data files, and file documentation), by no later than 30 days after the date the final report is received by the Secretary.''

APPOINTMENT OF ADDITIONAL MEMBERS

Section 9344(a)(2) of Pub. L. 99–509 provided that: ''The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Physician Payment Review Commission, as required by the amendment made by paragraph (1) [amending this section], no later than 60 days after the date of the enactment of this Act [Oct. 21, 1986], for terms of 3 years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than five members expire in any one year.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1395u of this title.

§ 1395w–2. Intermediate sanctions for providers or suppliers of clinical diagnostic laboratory tests

(a) If the Secretary determines that any provider or clinical laboratory approved for participation under this subchapter no longer substantially meets the conditions of participation or for coverage specified under this subchapter with respect to the provision of clinical diagnostic laboratory tests under this part, the Secretary may (for a period not to exceed one year) impose intermediate sanctions developed pursuant to subsection (b) of this section, in lieu of terminating immediately the provider agreement or cancelling immediately approval of the clinical laboratory.

(b)(1) The Secretary shall develop and implement—

(A) a range of intermediate sanctions to apply to providers or clinical laboratories under the conditions described in subsection (a), and

(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

(i) directed plans of correction,

(ii) civil money penalties in an amount not to exceed $10,000 for each day of substantial noncompliance,

(iii) payment for the costs of onsite monitoring by an agency responsible for conducting surveys, and

(iv) suspension of all or part of the payments to which a provider or clinical laboratory would otherwise be entitled under this subchapter with respect to clinical diagnostic laboratory tests furnished on or after the date on which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (a) of this section.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (ii) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law.

(3) The Secretary shall develop and implement specific procedures with respect to when and how each of the intermediate sanctions developed under paragraph (1) is to be applied, the amounts of any penalties, and the severity of each of these penalties. Such procedures shall be designed so as to minimize the time between identification of violations and imposition of these sanctions and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

(Aug. 14, 1935, ch. 531, title XVIII, § 1846, as added Dec. 22, 1987, Pub. L. 100–203, title IV, § 4064(d)(1), 101 Stat. 1330–111; amended July 1, 1988, Pub. L. 100–360, title II, § 203(e)(4), title IV, § 411(g)(3)(G), 102 Stat. 725, 784; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(22)(C), 102 Stat. 2421; Dec. 13, 1989, Pub. L. 101–234, title II, § 201(a), 103 Stat. 1981; Nov. 5, 1990, Pub. L. 101–508, title IV, § 4154(e)(2), 104 Stat. 1388–86.)

AMENDMENTS

1990—Pub. L. 101–508 substituted ''providers or suppliers of'' for ''providers of'' in section catchline.

1989—Pub. L. 101–234 repealed Pub. L. 100–360, § 203(e)(4), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

1988—Pub. L. 100–360, § 203(e)(4)(A), inserted ''and for qualified home intravenous drug therapy providers'' at end of section catchline.

Subsec. (a). Pub. L. 100–360, § 411(g)(3)(G)(i)(I), as amended by Pub. L. 100–485, substituted ''approved'' for ''certified''.

Pub. L. 100–360, § 411(g)(3)(G)(i)(II), inserted ''or for coverage'' after ''conditions of participation''.

Pub. L. 100–360, § 411(g)(3)(G)(i)(III), which directed amendment of subsec. (a) by substituting ''terminating immediately the provider agreement or cancelling immediately approval of the clinical laboratory'' for ''cancelling immediately the certification of the provider or clinical laboratory'', was executed by making the substitution for ''canceling immediately the certification of the provider or clinical laboratory'' to reflect the probable intent of Congress.

Pub. L. 100–360, § 203(e)(4)(B), inserted ''or that a qualified home intravenous drug therapy provider that is certified for participation under this subchapter no longer substantially meets the requirements of section 1395x(jj)(3) of this title'' after ''under this part''.

Subsec. (b)(1)(A). Pub. L. 100–360, § 411(g)(3)(G)(ii), struck out ''certified'' before ''clinical laboratories''.

Subsec. (b)(2)(A). Pub. L. 100–360, § 411(g)(3)(G)(iv), inserted at end ''The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (ii) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (b)(2)(A)(ii). Pub. L. 100–360, § 411(g)(3)(G)(iii), substituted ''civil money penalties in an amount not to exceed $10,000 for each day of substantial noncompliance'' for ''civil fines and penalties''.

Subsec. (b)(2)(A)(iii). Pub. L. 100–360, § 411(g)(3)(G)(v), struck out ''certification'' before ''surveys''.

Subsec. (b)(2)(A)(iv). Pub. L. 100–360, § 411(g)(3)(G)(ii), (vi), struck out ''certified'' before ''clinical laboratory'' and substituted ''furnished on or after the date on'' for ''provided on or after the date in''.

Pub. L. 100–360, § 203(e)(4)(C), inserted ''or home intravenous drug therapy services'' after ''clinical diagnostic laboratory tests''.

Subsec. (b)(3). Pub. L. 100–360, § 411(g)(3)(G)(vii), substituted ''any penalties'' for ''any fines'' and ''severe penalties'' for ''severe fines''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconcili-

ation Act of 1989, Pub. L. 101–239, see section 4154(e)(5) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 203(e)(4) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(g)(3)(G) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 4064(d)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [enacting this section] shall become effective on January 1, 1990.''

§ 1395w–3. Repealed. Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981

Section, act Aug. 14, 1935, ch. 531, title XVIII, § 1847, as added July 1, 1988, Pub. L. 100–360, title II, § 202(j), 102 Stat. 719; amended Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(5)(I), 102 Stat. 2414, provided for appointment of Prescription Drug Payment Review Commission by Director of Congressional Office of Technology Assessment.

EFFECTIVE DATE OF REPEAL

Repeal effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as an Effective Date of 1989 Amendment note under section 1320a–7a of this title.

§ 1395w–4. Payment for physicians' services

(a) Payment based on fee schedule

(1) In general

Effective for all physicians' services (as defined in subsection (j)(3) of this section) furnished under this part during a year (beginning with 1992) for which payment is otherwise made on the basis of a reasonable charge or on the basis of a fee schedule under section 1395m(b) of this title, payment under this part shall instead be based on the lesser of—

(A) the actual charge for the service, or

(B) subject to the succeeding provisions of this subsection, the amount determined under the fee schedule established under subsection (b) of this section for services furnished during that year (in this subsection referred to as the ''fee schedule amount'').

(2) Transition to full fee schedule

(A) Limiting reductions and increases to 15 percent in 1992

(i) Limit on increase

In the case of a service in a fee schedule area (as defined in subsection (j)(2) of this section) for which the adjusted historical payment basis (as defined in subparagraph (D)) is less than 85 percent of the fee schedule amount for services furnished in 1992, there shall be substituted for the fee schedule amount an amount equal to the adjusted historical payment basis plus 15 percent of the fee schedule amount otherwise established (without regard to this paragraph).

(ii) Limit in reduction

In the case of a service in a fee schedule area for which the adjusted historical payment basis exceeds 115 percent of the fee schedule amount for services furnished in 1992, there shall be substituted for the fee schedule amount an amount equal to the adjusted historical payment basis minus 15 percent of the fee schedule amount otherwise established (without regard to this paragraph).

(B) Special rule for 1993, 1994, and 1995

If a physicians' service in a fee schedule area is subject to the provisions of subparagraph (A) in 1992, for physicians' services furnished in the area—

(i) during 1993, there shall be substituted for the fee schedule amount an amount equal to the sum of—

(I) 75 percent of the fee schedule amount determined under subparagraph (A), adjusted by the update established under subsection (d)(3) of this section for 1993, and

(II) 25 percent of the fee schedule amount determined under paragraph (1) for 1993 without regard to this paragraph;

(ii) during 1994, there shall be substituted for the fee schedule amount an amount equal to the sum of—

(I) 67 percent of the fee schedule amount determined under clause (i), adjusted by the update established under subsection (d)(3) of this section for 1994 and as adjusted under subsection (c)(2)(F)(ii) of this section and under section 13515(b) of the Omnibus Budget Reconciliation Act of 1993, and

(II) 33 percent of the fee schedule amount determined under paragraph (1) for 1994 without regard to this paragraph; and

(iii) during 1995, there shall be substituted for the fee schedule amount an amount equal to the sum of—

(I) 50 percent of the fee schedule amount determined under clause (ii) adjusted by the update established under subsection (d)(3) of this section for 1995, and

(II) 50 percent of the fee schedule amount determined under paragraph (1) for 1995 without regard to this paragraph.

(C) Special rule for anesthesia and radiology services

With respect to physicians' services which are anesthesia services, the Secretary shall

provide for a transition in the same manner as a transition is provided for other services under subparagraph (B). With respect to radiology services, ''109 percent'' and ''9 percent'' shall be substituted for ''115 percent'' and ''15 percent'', respectively, in subparagraph (A)(ii).

(D) "Adjusted historical payment basis" defined

(i) In general

In this paragraph, the term ''adjusted historical payment basis'' means, with respect to a physicians' service furnished in a fee schedule area, the weighted average prevailing charge applied in the area for the service in 1991 (as determined by the Secretary without regard to physician specialty and as adjusted to reflect payments for services with customary charges below the prevailing charge or other payment limitations imposed by law or regulation) adjusted by the update established under subsection (d)(3) of this section for 1992.

(ii) Application to radiology services

In applying clause (i) in the case of physicians' services which are radiology services (including radiologist services, as defined in section 1395m(b)(6) of this title), but excluding nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989, there shall be substituted for the weighted average prevailing charge the amount provided under the fee schedule established for the service for the fee schedule area under section 1395m(b) of this title.

(iii) Nuclear medicine services

In applying clause (i) in the case of physicians' services which are nuclear medicine services, there shall be substituted for the weighted average prevailing charge the amount provided under section 6105(b) of the Omnibus Budget Reconciliation Act of 1989.

(3) Incentives for participating physicians and suppliers

In applying paragraph (1)(B) in the case of a nonparticipating physician or a nonparticipating supplier or other person, the fee schedule amount shall be 95 percent of such amount otherwise applied under this subsection (without regard to this paragraph). In the case of physicians' services (including services which the Secretary excludes pursuant to subsection (j)(3) of this section) of a nonparticipating physician, supplier, or other person for which payment is made under this part on a basis other than the fee schedule amount, the payment shall be based on 95 percent of the payment basis for such services furnished by a participating physician, supplier, or other person.

(4) Special rule for medical direction

(A) In general

With respect to physicians' services furnished on or after January 1, 1994, and consisting of medical direction of two, three, or four concurrent anesthesia cases, the fee schedule amount to be applied shall be equal to one-half of the amount described in subparagraph (B).

(B) Amount

The amount described in this subparagraph, for a physician's medical direction of the performance of anesthesia services, is the following percentage of the fee schedule amount otherwise applicable under this section if the anesthesia services were personally performed by the physician alone:

(i) For services furnished during 1994, 120 percent.

(ii) For services furnished during 1995, 115 percent.

(iii) For services furnished during 1996, 110 percent.

(iv) For services furnished during 1997, 105 percent.

(v) For services furnished after 1997, 100 percent.

(b) Establishment of fee schedules

(1) In general

Before January 1 of each year beginning with 1992, the Secretary shall establish, by regulation, fee schedules that establish payment amounts for all physicians' services furnished in all fee schedule areas (as defined in subsection (j)(2) of this section) for the year. Except as provided in paragraph (2), each such payment amount for a service shall be equal to the product of—

(A) the relative value for the service (as determined in subsection (c)(2) of this section),

(B) the conversion factor (established under subsection (d) of this section) for the year, and

(C) the geographic adjustment factor (established under subsection (e)(2) of this section) for the service for the fee schedule area.

(2) Treatment of radiology services and anesthesia services

(A) Radiology services

With respect to radiology services (including radiologist services, as defined in section 1395m(b)(6) of this title), the Secretary shall base the relative values on the relative value scale developed under section 1395m(b)(1)(A) of this title, with appropriate modifications of the relative values to assure that the relative values established for radiology services which are similar or related to other physicians' services are consistent with the relative values established for those similar or related services.

(B) Anesthesia services

In establishing the fee schedule for anesthesia services for which a relative value guide has been established under section 4048(b) of the Omnibus Budget Reconciliation Act of 1987, the Secretary shall use, to the extent practicable, such relative value guide, with appropriate adjustment of the conversion factor, in a manner to assure

that the fee schedule amounts for anesthesia services are consistent with the fee schedule amounts for other services determined by the Secretary to be of comparable value. In applying the previous sentence, the Secretary shall adjust the conversion factor by geographic adjustment factors in the same manner as such adjustment is made under paragraph (1)(C).

(C) Consultation

The Secretary shall consult with the Physician Payment Review Commission and organizations representing physicians or suppliers who furnish radiology services and anesthesia services in applying subparagraphs (A) and (B).

(3) Treatment of interpretation of electrocardiograms

The Secretary—

(A) shall make separate payment under this section for the interpretation of electrocardiograms performed or ordered to be performed as part of or in conjunction with a visit to or a consultation with a physician, and

(B) shall adjust the relative values established for visits and consultations under subsection (c) of this section so as not to include relative value units for interpretations of electrocardiograms in the relative value for visits and consultations.

(c) Determination of relative values for physicians' services

(1) Division of physicians' services into components

In this section, with respect to a physicians' service:

(A) "Work component" defined

The term ''work component'' means the portion of the resources used in furnishing the service that reflects physician time and intensity in furnishing the service. Such portion shall—

(i) include activities before and after direct patient contact, and

(ii) be defined, with respect to surgical procedures, to reflect a global definition including pre-operative and post-operative physicians' services.

(B) "Practice expense component" defined

The term ''practice expense component'' means the portion of the resources used in furnishing the service that reflects the general categories of expenses (such as office rent and wages of personnel, but excluding malpractice expenses) comprising practice expenses.

(C) "Malpractice component" defined

The term ''malpractice component'' means the portion of the resources used in furnishing the service that reflects malpractice expenses in furnishing the service.

(2) Determination of relative values

(A) In general

(i) Combination of units for components

The Secretary shall develop a methodology for combining the work, practice expense, and malpractice relative value units, determined under subparagraph (C), for each service in a manner to produce a single relative value for that service. Such relative values are subject to adjustment under subparagraph (F)(i) and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993.

(ii) Extrapolation

The Secretary may use extrapolation and other techniques to determine the number of relative value units for physicians' services for which specific data are not available and shall take into account recommendations of the Physician Payment Review Commission and the results of consultations with organizations representing physicians who provide such services.

(B) Periodic review and adjustments in relative values

(i) Periodic review

The Secretary, not less often than every 5 years, shall review the relative values established under this paragraph for all physicians' services.

(ii) Adjustments

(I) In general

The Secretary shall, to the extent the Secretary determines to be necessary and subject to subclause (II), adjust the number of such units to take into account changes in medical practice, coding changes, new data on relative value components, or the addition of new procedures. The Secretary shall publish an explanation of the basis for such adjustments.

(II) Limitation on annual adjustments

The adjustments under subclause (I) for a year may not cause the amount of expenditures under this part for the year to differ by more than $20,000,000 from the amount of expenditures under this part that would have been made if such adjustments had not been made.

(iii) Consultation

The Secretary, in making adjustments under clause (ii), shall consult with the Physician Payment Review Commission and organizations representing physicians.

(C) Computation of relative value units for components

For purposes of this section for each physicians' service—

(i) Work relative value units

The Secretary shall determine a number of work relative value units for the service based on the relative resources incorporating physician time and intensity required in furnishing the service.

(ii) Practice expense relative value units

The Secretary shall determine a number of practice expense relative value units for the service for years before 1998 equal to the product of—

(I) the base allowed charges (as defined in subparagraph (D)) for the service, and

(II) the practice expense percentage for the service (as determined under paragraph (3)(C)(ii)),

and for years beginning with 1998 based on the relative practice expense resources involved in furnishing the service.

(iii) Malpractice relative value units

The Secretary shall determine a number of malpractice relative value units equal to the product of—

(I) the base allowed charges (as defined in subparagraph (D)) for the service, and

(II) the malpractice percentage for the service (as determined under paragraph (3)(C)(iii)).

(D) "Base allowed charges" defined

In this paragraph, the term ''base allowed charges'' means, with respect to a physician's service, the national average allowed charges for the service under this part for services furnished during 1991, as estimated by the Secretary using the most recent data available.

(E) Reduction in practice expense relative value units for certain services

(i) In general

Subject to clause (ii), the Secretary shall reduce the practice expense relative value units applied to services described in clause (iii) furnished in—

(I) 1994, by 25 percent of the number by which the number of practice expense relative value units (determined for 1994 without regard to this subparagraph) exceeds the number of work relative value units determined for 1994,

(II) 1995, by an additional 25 percent of such excess, and

(III) 1996, by an additional 25 percent of such excess.

(ii) Floor on reductions

The practice expense relative value units for a physician's service shall not be reduced under this subparagraph to a number less than 128 percent of the number of work relative value units.

(iii) Services covered

For purposes of clause (i), the services described in this clause are physicians' services that are not described in clause (iv) and for which—

(I) there are work relative value units, and

(II) the number of practice expense relative value units (determined for 1994) exceeds 128 percent of the number of work relative value units (determined for such year).

(iv) Excluded services

For purposes of clause (iii), the services described in this clause are services which the Secretary determines at least 75 percent of which are provided under this subchapter in an office setting.

(F) Budget neutrality adjustments

The Secretary—

(i) shall reduce the relative values for all services (other than anesthesia services) established under this paragraph (and, in the case of anesthesia services, the conversion factor established by the Secretary for such services) by such percentage as the Secretary determines to be necessary so that, beginning in 1996, the amendment made by section 13514(a) of the Omnibus Budget Reconciliation Act of 1993 would not result in expenditures under this section that exceed the amount of such expenditures that would have been made if such amendment had not been made, and

(ii) shall reduce the amounts determined under subsection (a)(2)(B)(ii)(I) of this section by such percentage as the Secretary determines to be required to assure that, taking into account the reductions made under clause (i), the amendment made by section 13514(a) of the Omnibus Budget Reconciliation Act of 1993 would not result in expenditures under this section in 1994 that exceed the amount of such expenditures that would have been made if such amendment had not been made.

(3) Component percentages

For purposes of paragraph (2), the Secretary shall determine a work percentage, a practice expense percentage, and a malpractice percentage for each physician's service as follows:

(A) Division of services by specialty

For each physician's service or class of physicians' services, the Secretary shall determine the average percentage of each such service or class of services that is performed, nationwide, under this part by physicians in each of the different physician specialties (as identified by the Secretary).

(B) Division of specialty by component

The Secretary shall determine the average percentage division of resources, among the work component, the practice expense component, and the malpractice component, used by physicians in each of such specialties in furnishing physicians' services. Such percentages shall be based on national data that describe the elements of physician practice costs and revenues, by physician specialty. The Secretary may use extrapolation and other techniques to determine practice costs and revenues for specialties for which adequate data are not available.

(C) Determination of component percentages

(i) Work percentage

The work percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

(I) the average percentage division for the work component for each physician specialty (determined under subparagraph (B)), multiplied by

(II) the proportion (determined under subparagraph (A)) of such service (or services) performed by physicians in that specialty.

(ii) Practice expense percentage

For years before 1998, the practice expense percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

(I) the average percentage division for the practice expense component for each physician specialty (determined under subparagraph (B)), multiplied by

(II) the proportion (determined under subparagraph (A)) of such service (or services) performed by physicians in that specialty.

(iii) Malpractice percentage

The malpractice percentage for a service (or class of services) is equal to the sum (for all physician specialties) of—

(I) the average percentage division for the malpractice component for each physician specialty (determined under subparagraph (B)), multiplied by

(II) the proportion (determined under subparagraph (A)) of such service (or services) performed by physicians in that specialty.

(D) Periodic recomputation

The Secretary may, from time to time, provide for the recomputation of work percentages, practice expense percentages, and malpractice percentages determined under this paragraph.

(4) Ancillary policies

The Secretary may establish ancillary policies (with respect to the use of modifiers, local codes, and other matters) as may be necessary to implement this section.

(5) Coding

The Secretary shall establish a uniform procedure coding system for the coding of all physicians' services. The Secretary shall provide for an appropriate coding structure for visits and consultations. The Secretary may incorporate the use of time in the coding for visits and consultations. The Secretary, in establishing such coding system, shall consult with the Physician Payment Review Commission and other organizations representing physicians.

(6) No variation for specialists

The Secretary may not vary the conversion factor or the number of relative value units for a physicians' service based on whether the physician furnishing the service is a specialist or based on the type of specialty of the physician.

(d) Conversion factors

(1) Establishment

(A) In general

The conversion factor (or factors) for each year shall be the conversion factor (or factors) established under this subsection for the previous year (or, in the case of 1992, specified in subparagraph (B)) adjusted by the update or updates (established under paragraph (3)) for the year involved.

(B) Special provision for 1992

For purposes of subparagraph (A), the conversion factor specified in this subparagraph is a conversion factor (determined by the Secretary) which, if this section were to apply during 1991 using such conversion factor, would result in the same aggregate amount of payments under this part for physicians' services as the estimated aggregate amount of the payments under this part for such services in 1991.

(C) Publication

The Secretary shall cause to have published in the Federal Register, during the last 15 days of October of—

(i) 1991, the conversion factor which will apply to physicians' services for 1992, and the update (or updates) determined under paragraph (3) for 1992; and

(ii) each succeeding year, the conversion factor (or factors) which will apply to physicians' services for the following year and the update (or updates) determined under paragraph (3) for such year.

(2) Recommendation of update

(A) In general

Not later than April 15 of each year (beginning with 1991), the Secretary shall transmit to the Congress a report that includes a recommendation on the appropriate update (or updates) in the conversion factor (or factors) for all physicians' services (as defined in subsection (f)(5)(A) of this section) in the following year. The Secretary may recommend a uniform update or different updates for different categories or groups of services. In making the recommendation, the Secretary shall consider—

(i) the percentage change in the medicare economic index (described in the fourth sentence of section 1395u(b)(3) of this title) for that year;

(ii) the percentage by which actual expenditures for all physicians' services and for the services involved under this part for the fiscal year ending in the year preceding the year in which such recommendation is made were greater or less than actual expenditures for such services in the fiscal year ending in the second preceding year;

(iii) the relationship between the percentage determined under clause (ii) for a fiscal year and the performance standard rate of increase (established under subsection (f)(2) of this section) for that fiscal year;

(iv) changes in volume or intensity of services;

(v) access to services; and

(vi) other factors that may contribute to changes in volume or intensity of services or access to services.

For purposes of making the comparison under clause (iii), the Secretary shall adjust the performance standard rate of increase for a fiscal year to reflect changes in the actual proportion of individuals who are enrolled under this part who are HMO enrollees (as defined in subsection (f)(5)(B) of this section) in that fiscal year compared with such proportion for the previous fiscal year.

(B) Additional considerations

In making recommendations under subparagraph (A), the Secretary may also consider—

(i) unexpected changes by physicians in response to the implementation of the fee schedule;

(ii) unexpected changes in outlay projections;

(iii) changes in the quality or appropriateness of care; and

(iv) any other relevant factors not measured in the resource-based payment methodology.

(C) Special rule for 1992 update

In considering the update for 1992, the Secretary shall make a separate determination of the percentage and relationship described in clauses (ii) and (iii) of subparagraph (A) with respect to the category of surgical services (as defined by the Secretary pursuant to subsection (j)(1) of this section).

(D) Explanation of update

The Secretary shall include in each report under subparagraph (A)—

(i) the update recommended for each category of physicians' services (established by the Secretary under subsection (j)(1) of this section) and for each of the following groups of physicians' services: nonsurgical services, visits, consultations, and emergency room services;

(ii) the rationale for the recommended update (or updates) for each category and group of services described in clause (i); and

(iii) the data and analyses underlying the update (or updates) recommended.

(E) Computation of budget-neutral adjustment

(i) In general

The Secretary shall include in the report made under subparagraph (A) in a year a statement of the percentage by which (I) the actual expenditures for physicians' services under this part (during the fiscal year ending in the preceding year, as set forth in the most recent annual report made pursuant to section 1395t(b)(2) of this title), exceeded, or was less than (II) the expenditures projected for the fiscal year under clause (ii).

(ii) Projected expenditures

For purposes of clause (i), the expenditures projected under this clause for a fiscal year is the actual expenditures for physicians' services made under this part in the second preceding fiscal year—

(I) increased by the weighted average percentage increase permitted under this part for payments for physicians' services in the preceding fiscal year;

(II) adjusted to reflect the percentage change in the average number of individuals enrolled under this part (who are not enrolled with a risk-sharing contract under section 1395mm of this title) for the preceding fiscal year compared with the second preceding fiscal year;

(III) adjusted to reflect the average annual percentage growth in the volume and intensity of physicians' services under this part for the five-fiscal-year period ending with the second preceding fiscal year; and

(IV) adjusted to reflect the percentage change in expenditures for physicians' services under this part in the preceding fiscal year (compared with the second preceding fiscal year) which result from changes in law or regulations.

(F) Commission review

The Physician Payment Review Commission shall review the report submitted under subparagraph (A) in a year and shall submit to the Congress, by not later than May 15 of the year, a report including its recommendations respecting the update (or updates) in the conversion factor (or factors) for the following year.

(3) Update

(A) Based on index

(i) In general

Unless Congress otherwise provides, subject to subparagraph (B), except as provided in clauses (iii) through (v), for purposes of this section the update for a year is equal to the Secretary's estimate of the percentage increase in the appropriate update index (as defined in clause (ii)) for the year.

(ii) "Appropriate update index" defined

In clause (i), the term ''appropriate update index'' means—

(I) for services for which prevailing charges in 1989 were subject to a limit under the fourth sentence of section 1395u(b)(3) of this title, the medicare economic index (referred to in that sentence), and

(II) for other services, such index (such as the consumer price index) that was applicable under this part in 1989 to increases in the payment amounts recognized under this part with respect to such services.

(iii) Adjustment in percentage increase

In applying clause (i) for services furnished in 1992 for which the appropriate update index is the index described in clause (ii)(I), the percentage increase in the appropriate update index shall be reduced by 0.4 percentage points.

(iv) Adjustment in percentage increase for 1994

In applying clause (i) for services furnished in 1994, the percentage increase in the appropriate update index shall be reduced by—

(I) 3.6 percentage points for services included in the category of surgical services (as defined for purposes of subsection (j)(1) of this section), and

(II) 2.6 percentage points for other services.

(v) Adjustment in percentage increase for 1995

In applying clause (i) for services furnished in 1995, the percentage increase in the appropriate update index shall be reduced by 2.7 percentage points.

(vi) Exception for category of primary care services

Clauses (iv) and (v) shall not apply to services included in the category of primary care services (as defined for purposes of subsection (j)(1) of this section).

(B) Adjustment in update

(i) In general

The update for a category of physicians' services for a year provided under subparagraph (A) shall, subject to clause (ii), be increased or decreased by the same percentage by which (I) the percentage increase in the actual expenditures for services in such category in the second previous fiscal year over the third previous fiscal year, was less or greater, respectively, than (II) the performance standard rate of increase (established under subsection (f) of this section) for such category of services for the second previous fiscal year.

(ii) Restrictions on adjustment

The adjustment made under clause (i) for a year may not result in a decrease of more than—

(I) 2 percentage points for the update for 1992 or 1993,

(II) 2½ percentage points for the update for 1994, and

(III) 5 percentage points for the update for any succeeding year.

(e) Geographic adjustment factors

(1) Establishment of geographic indices

(A) In general

Subject to subparagraphs (B) and (C), the Secretary shall establish—

(i) an index which reflects the relative costs of the mix of goods and services comprising practice expenses (other than malpractice expenses) in the different fee schedule areas compared to the national average of such costs,

(ii) an index which reflects the relative costs of malpractice expenses in the different fee schedule areas compared to the national average of such costs, and

(iii) an index which reflects ¼ of the difference between the relative value of physicians' work effort in each of the different fee schedule areas and the national average of such work effort.

(B) Class-specific geographic cost-of-practice indices

The Secretary may establish more than one index under subparagraph (A)(i) in the case of classes of physicians' services, if, because of differences in the mix of goods and services comprising practice expenses for the different classes of services, the application of a single index under such clause to different classes of such services would be substantially inequitable.

(C) Periodic review and adjustments in geographic adjustment factors

The Secretary, not less often than every 3 years, shall, in consultation with appropriate representatives of physicians, review the indices established under subparagraph (A) and the geographic index values applied under this subsection for all fee schedule areas. Based on such review, the Secretary may revise such index and adjust such index values, except that, if more than 1 year has elasped[1] since the date of the last previous adjustment, the adjustment to be applied in the first year of the next adjustment shall be ½ of the adjustment that otherwise would be made.

(D) Use of recent data

In establishing indices and index values under this paragraph, the Secretary shall use the most recent data available relating to practice expenses, malpractice expenses, and physician work effort in different fee schedule areas.

(2) Computation of geographic adjustment factor

For purposes of subsection (b)(1)(C) of this section, for all physicians' services for each fee schedule area the Secretary shall establish a geographic adjustment factor equal to the sum of the geographic cost-of-practice adjustment factor (specified in paragraph (3)), the geographic malpractice adjustment factor (specified in paragraph (4)), and the geographic physician work adjustment factor (specified in paragraph (5)) for the service and the area.

(3) Geographic cost-of-practice adjustment factor

For purposes of paragraph (2), the ''geographic cost-of-practice adjustment factor'', for a service for a fee schedule area, is the product of—

(A) the proportion of the total relative value for the service that reflects the relative value units for the practice expense component, and

(B) the geographic cost-of-practice index value for the area for the service, based on the index established under paragraph (1)(A)(i) or (1)(B) (as the case may be).

(4) Geographic malpractice adjustment factor

For purposes of paragraph (2), the ''geographic malpractice adjustment factor'', for a service for a fee schedule area, is the product of—

(A) the proportion of the total relative value for the service that reflects the relative value units for the malpractice component, and

(B) the geographic malpractice index value for the area, based on the index established under paragraph (1)(A)(ii).

[1] So in original. Probably should be ''elapsed''.

(5) Geographic physician work adjustment factor

For purposes of paragraph (2), the ''geographic physician work adjustment factor'', for a service for a fee schedule area, is the product of—

(A) the proportion of the total relative value for the service that reflects the relative value units for the work component, and

(B) the geographic physician work index value for the area, based on the index established under paragraph (1)(A)(iii).

(f) Medicare volume performance standard rates of increase

(1) Process for establishing medicare volume performance standard rates of increase

(A) Secretary's recommendation

By not later than April 15 of each year (beginning with 1990), the Secretary shall transmit to the Congress a recommendation on performance standard rates of increase for all physicians' services and for each category of such services for the fiscal year beginning in such year. In making the recommendation, the Secretary shall confer with organizations representing physicians and shall consider—

(i) inflation,

(ii) changes in numbers of enrollees (other than HMO enrollees) under this part,

(iii) changes in the age composition of enrollees (other than HMO enrollees) under this part,

(iv) changes in technology,

(v) evidence of inappropriate utilization of services,

(vi) evidence of lack of access to necessary physicians' services, and

(vii) such other factors as the Secretary considers appropriate.

(B) Commission review

The Physician Payment Review Commission shall review the recommendation transmitted during a year under subparagraph (A) and shall make its recommendation to Congress, by not later than May 15 of the year, respecting the performance standard rates of increase for the fiscal year beginning in that year.

(C) Publication of performance standard rates of increase

The Secretary shall cause to have published in the Federal Register, in the last 15 days of October of each year (beginning with 1991), the performance standard rates of increase for all physicians' services and for each category of physicians' services for the fiscal year beginning in that year. The Secretary shall cause to have published in the Federal Register, by not later than January 1, 1990, the performance standard rate of increase under subparagraph (D) for fiscal year 1990.

(D) Performance standard rate of increase for fiscal year 1990

The performance standard rate of increase for fiscal year 1990 is equal to the sum of—

(i) the Secretary's estimate of the weighted average percentage increase in the reasonable charges for physicians' services (as defined in subsection (f)(5)(A) of this section) under this part for portions of calendar years included in fiscal year 1990,

(ii) the Secretary's estimate of the percentage increase or decrease in the average number of individuals enrolled under this part (other than HMO enrollees) from fiscal year 1989 to fiscal year 1990,

(iii) the Secretary's estimate of the average annual percentage growth in volume and intensity of physicians' services under this part for the 5-fiscal-year period ending with fiscal year 1989 (based upon information contained in the most recent annual report made pursuant to section 1395t(b)(2) of this title), and

(iv) the Secretary's estimate of the percentage increase or decrease in expenditures for physicians' services (as defined in subsection (f)(5)(A) of this section) in fiscal year 1990 (compared with fiscal year 1989) which will result from changes in law or regulations and which is not taken into account in the percentage increase described in clause (i),

reduced by ½ percent.

(2) Specification of performance standard rates of increase for subsequent fiscal years

(A) In general

Unless Congress otherwise provides, subject to paragraph (4), the performance standard rate of increase, for all physicians' services and for each category of physicians' services, for a fiscal year (beginning with fiscal year 1991) shall be equal to the product of—

(i) 1 plus the Secretary's estimate of the weighted average percentage increase (divided by 100) in the fees for all physicians' services or for the category of physicians' services, respectively, under this part for portions of calendar years included in the fiscal year involved,

(ii) 1 plus the Secretary's estimate of the percentage increase or decrease (divided by 100) in the average number of individuals enrolled under this part (other than HMO enrollees) from the previous fiscal year to the fiscal year involved,

(iii) 1 plus the Secretary's estimate of the average annual percentage growth (divided by 100) in volume and intensity of all physicians' services or of the category of physicians' services, respectively, under this part for the 5-fiscal-year period ending with the preceding fiscal year (based upon information contained in the most recent annual report made pursuant to section 1395t(b)(2) of this title), and

(iv) 1 plus the Secretary's estimate of the percentage increase or decrease (divided by 100) in expenditures for all physicians' services or of the category of physicians' services, respectively, in the fiscal year (compared with the preceding fiscal year) which will result from changes in

law or regulations including changes in law and regulations affecting the percentage increase described in clause (i) and which is not taken into account in the percentage increase described in clause (i),

minus 1, multiplied by 100, and reduced by the performance standard factor (specified in subparagraph (B)). In clause (i), the term ''fees'' means, with respect to 1991, reasonable charges and, with respect to any succeeding year, fee schedule amounts.

(B) Performance standard factor

For purposes of subparagraph (A), the performance standard factor—

(i) for 1991 is 1 percentage point,

(ii) for 1992 is 1½ percentage points,

(iii) for 1993 is 2 percentage points,

(iv) for 1994 is 3½ percentage points, and

(v) for each succeeding year is 4 percentage points.

(C) Performance standard rates of increase for fiscal year 1991

Notwithstanding subparagraph (A), the performance standard rate of increase for a category of physicians' services for fiscal year 1991 shall be the sum of—

(i) the Secretary's estimate of the percentage by which actual expenditures for the category of physicians' services under this part for fiscal year 1991 exceed actual expenditures for such category of services in fiscal year 1990 (determined without regard to the amendments made by the Omnibus Budget Reconciliation Act of 1990), and

(ii) the Secretary's estimate of the percentage increase or decrease in expenditures for the category of services in fiscal year 1991 (compared with fiscal year 1990) that will result from changes in law and regulations (including the Omnibus Budget Reconciliation Act of 1990), reduced by 2 percentage points.

(3) Quarterly reporting

The Secretary shall establish procedures for providing, on a quarterly basis to the Physician Payment Review Commission, the Congressional Budget Office, the Congressional Research Service, the Committees on Ways and Means and Energy and Commerce of the House of Representatives, and the Committee on Finance of the Senate, information on compliance with performance standard rates of increase established under this subsection.

(4) Separate group-specific performance standard rates of increase

(A) Implementation of plan

Subject to subparagraph (B), the Secretary shall, after completion of the study required under section 6102(e)(3) of the Omnibus Budget Reconciliation Act of 1989, but not before October 1, 1991, implement a plan under which qualified physician groups could elect annually separate performance standard rates of increase other than the performance standard rate of increase established for the year under paragraph (2) for such physicians. The Secretary shall develop criteria to determine which physician groups are eligible to elect to have applied to such groups separate performance standard rates of increase and the methods by which such group-specific performance standard rates of increase would be accomplished. The Secretary shall report to the Congress on the criteria and methods by April 15, 1991. The Physician Payment Review Commission shall review and comment on such recommendations by May 15, 1991. Before implementing group-specific performance standard rates of increase, the Secretary shall provide for notice and comment in the Federal Register and consult with organizations representing physicians.

(B) Approval

The Secretary may not implement the plan described in subparagraph (A), unless specifically approved by law.

(5) Definitions

In this subsection:

(A) Services included in physicians' services

The term ''physicians' services'' includes other items and services (such as clinical diagnostic laboratory tests and radiology services), specified by the Secretary, that are commonly performed or furnished by a physician or in a physician's office, but does not include services furnished to an HMO enrollee under a risk-sharing contract under section 1395mm of this title.

(B) HMO enrollee

The term ''HMO enrollee'' means, with respect to a fiscal year, an individual enrolled under this part who is enrolled with an entity under a risk-sharing contract under section 1395mm of this title in the fiscal year.

(g) Limitation on beneficiary liability

(1) Limitation on actual charges

(A) In general

In the case of a nonparticipating physician or nonparticipating supplier or other person (as defined in section 1395u(i)(2) of this title) who does not accept payment on an assignment-related basis for a physician's service furnished with respect to an individual enrolled under this part, the following rules apply:

(i) Application of limiting charge

No person may bill or collect an actual charge for the service in excess of the limiting charge described in paragraph (2) for such service.

(ii) No liability for excess charges

No person is liable for payment of any amounts billed for the service in excess of such limiting charge.

(iii) Correction of excess charges

If such a physician, supplier, or other person bills, but does not collect, an actual charge for a service in violation of clause (i), the physician, supplier, or other person shall reduce on a timely basis the actual charge billed for the service to an amount

not to exceed the limiting charge for the service.

(iv) Refund of excess collections

If such a physician, supplier, or other person collects an actual charge for a service in violation of clause (i), the physician, supplier, or other person shall provide on a timely basis a refund to the individual charged in the amount by which the amount collected exceeded the limiting charge for the service. The amount of such a refund shall be reduced to the extent the individual has an outstanding balance owed by the individual to the physician.

(B) Sanctions

If a physician, supplier, or other person—

(i) knowingly and willfully bills or collects for services in violation of subparagraph (A)(i) on a repeated basis, or

(ii) fails to comply with clause (iii) or (iv) of subparagraph (A) on a timely basis,

the Secretary may apply sanctions against the physician, supplier, or other person in accordance with paragraph (2) of section 1395u(j) of this title. In applying this subparagraph, paragraph (4) of such section applies in the same manner as such paragraph applies to such section and any reference in such section to a physician is deemed also to include a reference to a supplier or other person under this subparagraph.

(C) Timely basis

For purposes of this paragraph, a correction of a bill for an excess charge or refund of an amount with respect to a violation of subparagraph (A)(i) in the case of a service is considered to be provided ''on a timely basis'', if the reduction or refund is made not later than 30 days after the date the physician, supplier, or other person is notified by the carrier under this part of such violation and of the requirements of subparagraph (A).

(2) "Limiting charge" defined

(A) For 1991

For physicians' services of a physician furnished during 1991, other than radiologist services subject to section 1395m(b) of this title, the ''limiting charge'' shall be the same percentage (or, if less, 25 percent) above the recognized payment amount under this part with respect to the physician (as a nonparticipating physician) as the percentage by which—

(i) the maximum allowable actual charge (as determined under section 1395u(j)(1)(C) of this title as of December 31, 1990, or, if less, the maximum actual charge otherwise permitted for the service under this part as of such date) for the service of the physician, exceeds

(ii) the recognized payment amount for the service of the physician (as a nonparticipating physician) as of such date.

In the case of evaluation and management services (as specified in section 1395u(b)(16)(B)(ii) of this title), the preceding sentence shall be applied by substituting ''40 percent'' for ''25 percent''.

(B) For 1992

For physicians' services furnished during 1992, other than radiologist services subject to section 1395m(b) of this title, the ''limiting charge'' shall be the same percentage (or, if less, 20 percent) above the recognized payment amount under this part for nonparticipating physicians as the percentage by which—

(i) the limiting charge (as determined under subparagraph (A) as of December 31, 1991) for the service, exceeds

(ii) the recognized payment amount for the service for nonparticipating physicians as of such date.

(C) After 1992

For physicians' services furnished in a year after 1992, the ''limiting charge'' shall be 115 percent of the recognized payment amount under this part for nonparticipating physicians or for nonparticipating suppliers or other persons.

(D) Recognized payment amount

In this section, the term ''recognized payment amount'' means, for services furnished on or after January 1, 1992, the fee schedule amount determined under subsection (a) of this section (or, if payment under this part is made on a basis other than the fee schedule under this section, 95 percent of the other payment basis), and, for services furnished during 1991, the applicable percentage (as defined in section 1395u(b)(4)(A)(iv) of this title) of the prevailing charge (or fee schedule amount) for nonparticipating physicians for that year.

(3) Limitation on charges for medicare beneficiaries eligible for medicaid benefits

(A) In general

Payment for physicians' services furnished on or after April 1, 1990, to an individual who is enrolled under this part and eligible for any medical assistance (including as a qualified medicare beneficiary, as defined in section 1396d(p)(1) of this title) with respect to such services under a State plan approved under subchapter XIX of this chapter may only be made on an assignment-related basis.

(B) Penalty

A person may not bill for physicians' services subject to subparagraph (A) other than on an assignment-related basis. No person is liable for payment of any amounts billed for such a service in violation of the previous sentence. If a person knowingly and willfully bills for physicians' services in violation of the first sentence, the Secretary may apply sanctions against the person in accordance with section 1395u(j)(2) of this title.

(4) Physician submission of claims

(A) In general

For services furnished on or after September 1, 1990, within 1 year after the date of providing a service for which payment is made under this part on a reasonable charge or fee schedule basis, a physician, supplier,

or other person (or an employer or facility in the cases described in section 1395u(b)(6)(A) of this title)—

(i) shall complete and submit a claim for such service on a standard claim form specified by the Secretary to the carrier on behalf of a beneficiary, and

(ii) may not impose any charge relating to completing and submitting such a form.

(B) Penalty

(i) With respect to an assigned claim wherever a physician, provider, supplier or other person (or an employer or facility in the cases described in section 1395u(b)(6)(A) of this title) fails to submit such a claim as required in subparagraph (A), the Secretary shall reduce by 10 percent the amount that would otherwise be paid for such claim under this part.

(ii) If a physician, supplier, or other person (or an employer or facility in the cases described in section 1395u(b)(6)(A) of this title) fails to submit a claim required to be submitted under subparagraph (A) or imposes a charge in violation of such subparagraph, the Secretary shall apply the sanction with respect to such a violation in the same manner as a sanction may be imposed under section 1395u(p)(3) of this title for a violation of section 1395u(p)(1) of this title.

(5) Electronic billing; direct deposit

The Secretary shall encourage and develop a system providing for expedited payment for claims submitted electronically. The Secretary shall also encourage and provide incentives allowing for direct deposit as payments for services furnished by participating physicians. The Secretary shall provide physicians with such technical information as necessary to enable such physicians to submit claims electronically. The Secretary shall submit a plan to Congress on this paragraph by May 1, 1990.

(6) Monitoring of charges

(A) In general

The Secretary shall monitor—

(i) the actual charges of nonparticipating physicians for physicians' services furnished on or after January 1, 1991, to individuals enrolled under this part, and

(ii) changes (by specialty, type of service, and geographic area) in (I) the proportion of expenditures for physicians' services provided under this part by participating physicians, (II) the proportion of expenditures for such services for which payment is made under this part on an assignment-related basis, and (III) the amounts charged above the recognized payment amounts under this part.

(B) Report

The Secretary shall, by not later than April 15 of each year (beginning in 1992), report to the Congress information on the extent to which actual charges exceed limiting charges, the number and types of services involved, and the average amount of excess charges and information regarding the changes described in subparagraph (A)(ii).

(C) Plan

If the Secretary finds that there has been a significant decrease in the proportions described in subclauses (I) and (II) of subparagraph (A)(ii) or an increase in the amounts described in subclause (III) of that subparagraph, the Secretary shall develop a plan to address such a problem and transmit to Congress recommendations regarding the plan. The Physician Payment Review Commission shall review the Secretary's plan and recommendations and transmit to Congress its comments regarding such plan and recommendations.

(7) Monitoring of utilization and access

(A) In general

The Secretary shall monitor—

(i) changes in the utilization of and access to services furnished under this part within geographic, population, and service related categories,

(ii) possible sources of inappropriate utilization of services furnished under this part which contribute to the overall level of expenditures under this part, and

(iii) factors underlying these changes and their interrelationships.

(B) Report

The Secretary shall by not later than April 15,[2] of each year (beginning with 1991) report to the Congress on the changes described in subparagraph (A)(i) and shall include in the report an examination of the factors (including factors relating to different services and specific categories and groups of services and geographic and demographic variations in utilization) which may contribute to such changes.

(C) Recommendations

The Secretary shall include in each annual report under subparagraph (B) recommendations—

(i) addressing any identified patterns of inappropriate utilization,

(ii) on utilization review,

(iii) on physician education or patient education,

(iv) addressing any problems of beneficiary access to care made evident by the monitoring process, and

(v) on such other matters as the Secretary deems appropriate.

The Physician Payment Review Commission shall comment on the Secretary's recommendations and in developing its comments, the Commission shall convene and consult a panel of physician experts to evaluate the implications of medical utilization patterns for the quality of and access to patient care.

(h) Sending information to physicians

Before the beginning of each year (beginning with 1992), the Secretary shall send to each physician or nonparticipating supplier or other person furnishing physicians' services (as defined in subsection (j)(3) of this section) furnishing phy-

[2] So in original. The comma probably should not appear.

sicians' services under this part, for services commonly performed by the physician, supplier, or other person, information on fee schedule amounts that apply for the year in the fee schedule area for participating and non-participating physicians, and the maximum amount that may be charged consistent with subsection (g)(2) of this section. Such information shall be transmitted in conjunction with notices to physicians, suppliers, and other persons under section 1395u(h) of this title (relating to the participating physician program) for a year.

(i) Miscellaneous provisions

(1) Restriction on administrative and judicial review

There shall be no administrative or judicial review under section 1395ff of this title or otherwise of—

(A) the determination of the adjusted historical payment basis (as defined in subsection (a)(2)(D)(i) of this section),

(B) the determination of relative values and relative value units under subsection (c) of this section, including adjustments under subsection (c)(2)(F) of this section and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993,

(C) the determination of conversion factors under subsection (d) of this section,

(D) the establishment of geographic adjustment factors under subsection (e) of this section, and

(E) the establishment of the system for the coding of physicians' services under this section.

(2) Assistants-at-surgery

(A) In general

Subject to subparagraph (B), in the case of a surgical service furnished by a physician, if payment is made separately under this part for the services of a physician serving as an assistant-at-surgery, the fee schedule amount shall not exceed 16 percent of the fee schedule amount otherwise determined under this section for the global surgical service involved.

(B) Denial of payment in certain cases

If the Secretary determines, based on the most recent data available, that for a surgical procedure (or class of surgical procedures) the national average percentage of such procedure performed under this part which involve the use of a physician as an assistant at surgery is less than 5 percent, no payment may be made under this part for services of an assistant at surgery involved in the procedure.

(3) No comparability adjustment

For physicians' services for which payment under this part is determined under this section—

(A) a carrier may not make any adjustment in the payment amount under section 1395u(b)(3)(B) of this title on the basis that the payment amount is higher than the charge applicable, for a[3] comparable services and under comparable circumstances, to the policyholders and subscribers of the carrier,

(B) no payment adjustment may be made under section 1395u(b)(8) of this title, and

(C) section 1395u(b)(9) of this title shall not apply.

(j) Definitions

In this section:

(1) Category

The term ''category'' means, with respect to physicians' services, surgical services, and all physicians' services other than surgical services (as defined by the Secretary and including anesthesia services), primary care services (as defined in section 1395u(i)(4) of this title), and all other physicians' services. The Secretary shall define surgical services and publish such definition in the Federal Register no later than May 1, 1990, after consultation with organizations representing physicians.

(2) Fee schedule area

The term ''fee schedule area'' means a locality used under section 1395u(b) of this title for purposes of computing payment amounts for physicians' services.

(3) Physicians' services

The term ''physicians' services'' includes items and services described in paragraphs (1), (2)(A), (2)(D), (2)(G), (3), and (4) of section 1395x(s) of this title (other than clinical diagnostic laboratory tests and, except for purposes of subsections (a)(3), (g), and (h) of this section[4] such other items and services as the Secretary may specify).

(4) Practice expenses

The term ''practice expenses'' includes all expenses for furnishing physicians' services, excluding malpractice expenses, physician compensation, and other physician fringe benefits.

(Aug. 14, 1935, ch. 531, title XVIII, § 1848, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6102(a), 103 Stat. 2169; amended Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4102(b), (g)(2), 4104(b)(2), 4105(a)(3), (c), 4106(b)(1), 4107(a)(1), 4109(a), 4116, 4118(b)–(f)(1), (k), 104 Stat. 1388–56, 1388–57, 1388–59 to 1388–63, 1388–65, 1388–67, 1388–68, 1388–71; Aug. 10, 1993, Pub. L. 103–66, title XIII, §§ 13511(a), 13512–13514(c), 13515(a)(1), (c), 13516(a)(1), 13517(a), 13518(a), 107 Stat. 580–583, 585, 586; Oct. 31, 1994, Pub. L. 103–432, title I, §§ 121(b)(1), (2), 122(a), (b), 123(a), (d), 126(b)(6), (g)(2)(B), (5)–(7), (10)(A), 108 Stat. 4409, 4410, 4412, 4415, 4416.)

REFERENCES IN TEXT

Section 13515(b) of the Omnibus Budget Reconciliation Act of 1993, referred to in subsecs. (a)(2)(B)(ii)(I), (c)(2)(A)(i), and (i)(1)(B), is section 13515(b) of Pub. L. 103–66, which is set out as a note under section 1395u of this title.

Section 6105(b) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (a)(2)(D)(ii), (iii), is section 6105(b) of Pub. L. 101–239, which is set out as a note under section 1395m of this title.

Section 4048(b) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (b)(2)(B), is section

[3] So in original. The word ''a'' probably should not appear.

[4] So in original. Probably should be followed by a comma.

4048(b) of Pub. L. 100–203, which is set out as a note under section 1395u of this title.

Section 13514(a) of the Omnibus Budget Reconciliation Act of 1993, referred to in subsec. (c)(2)(F), is section 13514(a) of Pub. L. 103–66, which amended subsec. (b)(3) of this section. See 1993 Amendment note below.

The Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (f)(2)(C)(i), (ii), is Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388. For complete classification of this Act to the Code, see Tables.

Section 6102(e)(3) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (f)(4)(A), probably means section 6102(d)(3) of Pub. L. 101–239, which is set out below.

AMENDMENTS

1994—Subsec. (a)(2)(D)(iii). Pub. L. 103–432, § 126(b)(6), struck out ''that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989'' after ''nuclear medicine services'' and substituted ''provided under section 6105(b) of the Omnibus Budget Reconciliation Act of 1989'' for ''provided under such section''.

Subsec. (c)(2)(C)(ii). Pub. L. 103–432, § 121(b)(1), inserted ''for the service for years before 1998'' before ''equal to'' in introductory provisions, substituted comma for period at end of subcl. (II), and inserted ''and for years beginning with 1998 based on the relative practice expense resources involved in furnishing the service.'' as closing provisions.

Subsec. (c)(3)(C)(ii). Pub. L. 103–432, § 121(b)(2), substituted ''For years before 1998, the practice'' for ''The practice''.

Subsec. (c)(4). Pub. L. 103–432, § 126(g)(6), made technical amendment to directory language of Pub. L. 101–508, § 4118(f)(1)(D). See 1990 Amendment note below.

Subsec. (e)(1)(C). Pub. L. 103–432, § 126(g)(5), inserted ''date of the'' before ''last previous adjustment''.

Pub. L. 103–432, § 122(a), substituted ''shall, in consultation with appropriate representatives of physicians, review'' for ''shall review''.

Subsec. (e)(1)(D). Pub. L. 103–432, § 122(b), added subpar. (D).

Subsec. (f)(2)(A)(i). Pub. L. 103–432, § 126(g)(7), made technical amendment to directory language of Pub. L. 101–508, § 4118(f)(1)(N)(ii). See 1990 Amendment note below.

Subsec. (f)(2)(C). Pub. L. 103–432, § 126(g)(2)(B), inserted heading.

Subsec. (g)(1). Pub. L. 103–432, § 123(a)(1), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''If a nonparticipating physician or nonparticipating supplier or other person (as defined in section 1395u(i)(2) of this title) knowingly and willfully bills on a repeated basis for physicians' services (including services which the Secretary excludes pursuant to subsection (j)(3) of this section, furnished with respect to an individual enrolled under this part on or after January 1, 1991) an actual charge in excess of the limiting charge described in paragraph (2) and for which payment is not made on an assignment-related basis under this part, the Secretary may apply sanctions against such physician, supplier, or other person in accordance with section 1395u(j)(2) of this title. In applying this subparagraph, any reference in such section to a physician is deemed also to include a reference to a supplier or other person under this subparagraph.''

Subsec. (g)(3)(B). Pub. L. 103–432, § 123(a)(2), inserted after first sentence ''No person is liable for payment of any amounts billed for such a service in violation of the previous sentence.'' and in last sentence substituted ''first sentence'' for ''previous sentence''.

Subsec. (g)(6)(B). Pub. L. 103–432, § 123(d), inserted ''information on the extent to which actual charges exceed limiting charges, the number and types of services involved, and the average amount of excess charges and information'' after ''report to the Congress''.

Subsec. (i)(3). Pub. L. 103–432, § 126(g)(10)(A), struck out space before the period at end.

1993—Subsec. (a)(2)(B)(ii)(I). Pub. L. 103–66, § 13515(c)(1), inserted ''and under section 13515(b) of the Omnibus Budget Reconciliation Act of 1993'' after ''subsection (c)(2)(F)(ii) of this section''.

Pub. L. 103–66, § 13514(c)(1), inserted ''and as adjusted under subsection (c)(2)(F)(ii) of this section'' after ''for 1994''.

Subsec. (a)(3). Pub. L. 103–66, § 13517(a)(1), in heading inserted ''and suppliers'' after ''physicians'' and in text inserted ''or a nonparticipating supplier or other person'' after ''nonparticipating physician'' and inserted at end ''In the case of physicians' services (including services which the Secretary excludes pursuant to subsection (j)(3) of this section) of a nonparticipating physician, supplier, or other person for which payment is made under this part on a basis other than the fee schedule amount, the payment shall be based on 95 percent of the payment basis for such services furnished by a participating physician, supplier, or other person.''

Subsec. (a)(4). Pub. L. 103–66, § 13516(a)(1), added par. (4).

Pub. L. 103–66, § 13515(a)(1), struck out heading and text of par. (4). Text read as follows: ''In the case of physicians' services furnished by a physician before the end of the physician's first full calendar year of furnishing services for which payment may be made under this part, and during each of the 3 succeeding years, the fee schedule amount to be applied shall be 80 percent, 85 percent, 90 percent, and 95 percent, respectively, of the fee schedule amount applicable to physicians who are not subject to this paragraph. The preceding sentence shall not apply to primary care services or services furnished in a rural area (as defined in section 1395ww(d)(2) of this title) that is designated under section 249(a)(1)(A) of this title as a health manpower shortage area.''

Subsec. (b)(3). Pub. L. 103–66, § 13514(a), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''If payment is made under this part for a visit to a physician or consultation with a physician and, as part of or in conjunction with the visit or consultation there is an electrocardiogram performed or ordered to be performed, no payment may be made under this part with respect to the interpretation of the electrocardiogram and no physician may bill an individual enrolled under this part separately for such an interpretation. If a physician knowingly and willfully bills one or more individuals in violation of the previous sentence, the Secretary may apply sanctions against the physician or entity in accordance with section 1395u(j)(2) of this title.''

Subsec. (c)(2)(A)(i). Pub. L. 103–66, § 13515(c)(2), inserted before period at end ''and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993''.

Pub. L. 103–66, § 13514(c)(2), inserted at end ''Such relative values are subject to adjustment under subparagraph (F)(i).''

Subsec. (c)(2)(E). Pub. L. 103–66, § 13513, added subpar. (E).

Subsec. (c)(2)(F). Pub. L. 103–66, § 13514(b), added subpar. (F).

Subsec. (d)(3)(A)(i). Pub. L. 103–66, § 13511(a)(1)(A), substituted ''clauses (iii) through (v)'' for ''clause (iii)''.

Subsec. (d)(3)(A)(iv) to (vi). Pub. L. 103–66, § 13511(a)(1)(B), added cls. (iv) to (vi).

Subsec. (d)(3)(B)(ii). Pub. L. 103–66, § 13512(b), substituted ''1994'' for ''1994 or 1995'' in subcl. (II) and ''5'' for ''3'' in subcl. (III).

Subsec. (f)(2)(B). Pub. L. 103–66, § 13512(a), added cls. (iii) to (v) and struck out former cl. (iii) which read as follows: ''for each succeeding year is 2 percentage points.''

Subsec. (g)(1). Pub. L. 103–66, § 13517(a)(2)(C), (D), inserted '', supplier, or other person'' after ''such physician'' and inserted at end ''In applying this subparagraph, any reference in such section to a physician is deemed also to include a reference to a supplier or other person under this subparagraph.''

Pub. L. 103–66, § 13517(a)(2)(B), which directed insertion of ''including services which the Secretary excludes pursuant to subsection (j)(3) of this section,''

after ''physician's services ('', was executed by making the insertion after ''physicians' services ('' to reflect the probable intent of Congress.

Pub. L. 103–66, §13517(a)(2)(A), inserted ''or nonparticipating supplier or other person (as defined in section 1395u(i)(2) of this title)'' after ''nonparticipating physician''.

Subsec. (g)(2)(C). Pub. L. 103–66, §13517(a)(3), inserted ''or for nonparticipating suppliers or other persons'' after ''nonparticipating physicians''.

Subsec. (g)(2)(D). Pub. L. 103–66, §13517(a)(4), inserted ''(or, if payment under this part is made on a basis other than the fee schedule under this section, 95 percent of the other payment basis)'' after ''subsection (a) of this section''.

Subsec. (h). Pub. L. 103–66, §13517(a)(5), inserted ''or nonparticipating supplier or other person furnishing physicians' services (as defined in subsection (j)(3) of this section)'' after ''each physician'', inserted '', supplier, or other person'' after ''by the physician'', and inserted '', suppliers, and other persons'' after ''notices to physicians''.

Subsec. (i)(1)(B). Pub. L. 103–66, §13515(c)(3), inserted ''and section 13515(b) of the Omnibus Budget Reconciliation Act of 1993'' after ''subsection (c)(2)(F) of this section''.

Pub. L. 103–66, §13514(c)(3), inserted at end ''including adjustments under subsection (c)(2)(F) of this section,''.

Subsec. (j)(1). Pub. L. 103–66, §13511(a)(2), substituted ''Secretary and including anesthesia services), primary care services (as defined in section 1395u(i)(4) of this title),'' for ''Secretary)''.

Subsec. (j)(3). Pub. L. 103–66, §13518(a), inserted ''(2)(G),'' after ''(2)(D),''.

Pub. L. 103–66, §13517(a)(6), inserted '', except for purposes of subsections (a)(3), (g), and (h) of this section'' after ''tests and''.

1990—Subsec. (a)(1). Pub. L. 101–508, §4104(b)(2), struck out ''or 1395m(f)'' after ''section 1395m(b)'' in introductory provisions.

Subsec. (a)(2)(C). Pub. L. 101–508, §4102(b), inserted ''and radiology'' after ''Special rule for anesthesia'' in heading and inserted at end ''With respect to radiology services, '109 percent' and '9 percent' shall be substituted for '115 percent' and '15 percent', respectively, in subparagraph (A)(ii).''

Subsec. (a)(2)(D)(ii). Pub. L. 101–508, §4102(g)(2)(A), inserted '', but excluding nuclear medicine services that are subject to section 6105(b) of the Omnibus Budget Reconciliation Act of 1989'' after ''section 1395m(b)(6) of this title)''.

Subsec. (a)(2)(D)(iii). Pub. L. 101–508, §4102(g)(2)(B), added cl. (iii).

Subsec. (a)(4). Pub. L. 101–508, §4106(b)(1), added par. (4).

Subsec. (b)(3). Pub. L. 101–508, §4109(a), added par. (3).

Subsec. (c)(1)(B). Pub. L. 101–508, §4118(f)(1)(A), struck out at end ''In this subparagraph, the term 'practice expenses' includes all expenses for furnishing physicians' services, excluding malpractice expenses, physician compensation, and other physician fringe benefits.''

Subsec. (c)(3). Pub. L. 101–508, §4118(f)(1)(C), redesignated par. (3), relating to ancillary policies, as (4).

Subsec. (c)(3)(C)(ii)(II), (iii)(II). Pub. L. 101–508, §4118(f)(1)(B), struck out ''by'' before ''the proportion''.

Subsec. (c)(4). Pub. L. 101–508, §4118(f)(1)(D), as amended by Pub. L. 103–432, §126(g)(6), substituted ''section'' for ''subsection''.

Pub. L. 101–508, §4118(f)(1)(C), redesignated par. (3), relating to ancillary policies, as (4). Former par. (4) redesignated (5).

Pub. L. 101–508, §4118(d), struck out ''only for services furnished on or after January 1, 1993'' after ''visits and consultations''.

Subsec. (c)(5), (6). Pub. L. 101–508, §4118(f)(1)(C), redesignated pars. (4) and (5) as (5) and (6), respectively.

Subsec. (d)(1)(A). Pub. L. 101–508, §4118(f)(1)(E), (F)(i)(III), amended subpar. (A) identically, substituting ''paragraph (3)'' for ''subparagraph (C)''.

Pub. L. 101–508, §4118(f)(1)(F)(i)(I), (II), substituted ''conversion factor (or factors)'' for ''conversion factor'' in two places and ''update or updates'' for ''update''.

Subsec. (d)(1)(C)(i). Pub. L. 101–508, §4118(f)(1)(F)(ii)(I), substituted ''conversion factor'' for ''conversion factor (or factors)''.

Subsec. (d)(1)(C)(ii). Pub. L. 101–508, §4118(f)(1)(F)(ii)(II), inserted ''the conversion factor (or factors) which will apply to physicians' services for the following year and'' before ''the update (or updates)'' and substituted ''such year'' for ''the following year''.

Subsec. (d)(2)(A). Pub. L. 101–508, §4118(f)(1)(G), (I), substituted ''physicians' services (as defined in subsection (f)(5)(A) of this section)'' for ''physicians' services'' in first sentence and ''proportion of individuals who are enrolled under this part who are HMO enrollees'' for ''proportion of HMO enrollees'' in last sentence.

Subsec. (d)(2)(A)(ii). Pub. L. 101–508, §4118(f)(1)(H), substituted ''and for the services involved'' for ''(as defined in subsection (f)(5)(A) of this section)'' and ''such services'' for ''all such physicians' services''.

Subsec. (d)(2)(E)(i). Pub. L. 101–508, §4118(f)(1)(J), inserted ''the'' before ''most recent''.

Subsec. (d)(2)(E)(ii)(I). Pub. L. 101–508, §4118(f)(1)(K), substituted ''payments for physicians' services'' for ''physicians' services''.

Subsec. (d)(3)(A)(i). Pub. L. 101–508, §4105(a)(3)(A), inserted ''except as provided in clause (iii),'' after ''subparagraph (B),''.

Subsec. (d)(3)(A)(iii). Pub. L. 101–508, §4105(a)(3)(B), added cl. (iii).

Subsec. (d)(3)(B)(i). Pub. L. 101–508, §4118(f)(1)(L)(i)(II), which directed amendment of cl. (i) by substituting ''services in such category'' for ''physicians' services (as defined in subsection (f)(5)(A))'', was executed by making the substitution for ''physicians' services (as defined in section (f)(5)(A))'' to reflect the probable intent of Congress.

Pub. L. 101–508, §4118(f)(1)(L)(i)(I), substituted ''update for a category of physicians' services for a year'' for ''update for a year''.

Subsec. (d)(3)(B)(ii). Pub. L. 101–508, §4118(f)(1)(L)(ii), inserted ''more than'' after ''decrease of'' in introductory provisions and struck out ''more than'' before ''2 percentage points'' in subcl. (I).

Subsec. (e)(1)(A). Pub. L. 101–508, §4118(c)(1), substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)'' in introductory provisions.

Subsec. (e)(1)(C). Pub. L. 101–508, §4118(c)(2), added subpar. (C).

Subsec. (f)(1)(C). Pub. L. 101–508, §4105(c)(1), substituted ''1991'' for ''1990'' after ''beginning with''.

Subsec. (f)(1)(D)(i). Pub. L. 101–508, §4118(f)(1)(M), substituted ''portions of calendar years'' for ''calendar years''.

Subsec. (f)(2)(A). Pub. L. 101–508, §4118(b)(1), (f)(1)(N)(i), in introductory provisions, substituted ''the performance standard rate of increase, for all physicians' services and for each category of physicians' services,'' for ''each performance standard rate of increase'' and ''product'' for ''sum''.

Pub. L. 101–508, §4118(b)(6), substituted ''minus 1, multiplied by 100, and reduced'' for ''reduced'' in concluding provisions.

Subsec. (f)(2)(A)(i). Pub. L. 101–508, §4118(f)(1)(N)(ii), as amended by Pub. L. 103–432, §126(g)(7), substituted ''all physicians' services or for the category of physicians' services, respectively,'' for ''physicians' services (as defined in subsection (f)(5)(A) of this section)''.

Pub. L. 101–508, §4118(f)(1)(M), substituted ''portions of calendar years'' for ''calendar years''.

Pub. L. 101–508, §4118(b)(2), (3), substituted ''1 plus the Secretary's'' for ''the Secretary's'' and ''percentage increase (divided by 100)'' for ''percentage increase''.

Subsec. (f)(2)(A)(ii). Pub. L. 101–508, §4118(b)(2), (4), substituted ''1 plus the Secretary's'' for ''the Secretary's'' and inserted ''(divided by 100)'' after ''decrease''.

Subsec. (f)(2)(A)(iii). Pub. L. 101–508, §4118(f)(1)(N)(iii), substituted ''all physicians' services or of the category of physicians' services, respectively,'' for ''physicians' services''.

Pub. L. 101–508, § 4118(b)(2), (5), substituted ''1 plus the Secretary's'' for ''the Secretary's'' and inserted ''(divided by 100)'' after ''percentage growth''.

Subsec. (f)(2)(A)(iv). Pub. L. 101–508, § 4118(e), (f)(1)(N)(iv), substituted ''all physicians' services or of the category of physicians' services, respectively,'' for ''physicians' services (as defined in subsection (f)(5)(A) of this section)'' and inserted ''including changes in law and regulations affecting the percentage increase described in clause (i)'' after ''law or regulations''.

Pub. L. 101–508, § 4118(b)(2), (4), substituted ''1 plus the Secretary's'' for ''the Secretary's'' and ''decrease (divided by 100)'' for ''decrease''.

Subsec. (f)(2)(C). Pub. L. 101–508, § 4105(c)(2), added subpar. (C).

Subsec. (f)(4)(A). Pub. L. 101–508, § 4118(f)(1)(O), substituted ''subparagraph (B)'' for ''paragraph (B)''.

Subsec. (f)(4)(B). Pub. L. 101–508, § 4118(f)(1)(P), substituted ''specifically approved by law'' for ''Congress specifically approves the plan''.

Subsec. (g)(2)(A). Pub. L. 101–508, § 4118(f)(1)(Q), inserted ''other than radiologist services subject to section 1395m(b) of this title,'' after ''during 1991,'' in introductory provisions.

Pub. L. 101–508, § 4116, inserted at end ''In the case of evaluation and management services (as specified in section 1395u(b)(16)(B)(ii) of this title), the preceding sentence shall be applied by substituting '40 percent' for '25 percent'.''

Subsec. (g)(2)(B). Pub. L. 101–508, § 4118(f)(1)(Q), inserted ''other than radiologist services subject to section 1395m(b) of this title,'' after ''during 1992,'' in introductory provisions.

Subsec. (i)(1)(A). Pub. L. 101–508, § 4118(f)(1)(R), substituted ''adjusted historical payment basis (as defined in subsection (a)(2)(D)(i)'' for ''historical payment basis (as defined in subsection (a)(2)(C)(i)''.

Subsec. (i)(2). Pub. L. 101–508, § 4107(a)(1), added par. (2).

Subsec. (i)(3). Pub. L. 101–508, § 4118(k), added par. (3).

Subsec. (j)(1). Pub. L. 101–508, § 4118(f)(1)(S), which directed the amendment of par. (1) by substituting ''(as defined by the Secretary) and all other physicians' services'' for '', and such other'' and all that follows through the period was executed by making the substitution for '', and such other category or categories of physicians' services as the Secretary, from time to time, defines in regulation.'' to reflect the probable intent of Congress.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 123(a) of Pub. L. 103–432 applicable to services furnished on or after Oct. 31, 1994, but inapplicable to services of nonparticipating supplier or other person furnished before Jan. 1, 1995, see section 123(f)(1) of Pub. L. 103–432, set out as a note under section 1395*l* of this title.

Section 123(f)(5) of Pub. L. 103–432 provided that: ''The amendment made by subsection (d) [amending this section] shall apply to reports for years beginning with 1995.''

Amendment by section 126(b)(6), (g)(2)(B), (5)–(7), (10)(A) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 126(i) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13511(b) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after January 1, 1994; except that amendment made by subsection (a)(2) shall not apply—

''(1) to volume performance standard rates of increase established under section 1848(f) of the Social Security Act [subsec. (f) of this section] for fiscal years before fiscal year 1994, and

''(2) to adjustment in updates in the conversion factors for physicians' services under section 1848(d)(3)(B) of such Act for physicians' services to be furnished in calendar years before 1996.''

Section 13514(d) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after January 1, 1994.''

Amendment by section 13515(a)(1) of Pub. L. 103–66 applicable to services furnished on or after Jan. 1, 1994, see section 13515(d) of Pub. L. 103–66, set out as a note under section 1395u of this title.

Section 13517(c) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1994.''

Section 13518(c) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1995.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4102(b), (g)(2) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4102(i)(1) of Pub. L. 101–508, set out as a note under section 1395m of this title.

Amendment by section 4104(b)(2) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4104(d) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

Amendment by section 4106(b)(1) of Pub. L. 101–508 applicable to services furnished after 1991, see section 4106(d)(2) of Pub. L. 101–508, set out as a note under section 1395u of this title.

Section 4107(a)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(d)(2), Oct. 31, 1994, 108 Stat. 4415, provided that: ''Section 1848(i)(2) of the Social Security Act [subsec. (i)(2) of this section], as added by the amendment made by paragraph (1), shall apply to services furnished in 1991 in the same manner as it applies to services furnished after 1991. In applying the previous sentence, the prevailing charge shall be substituted for the fee schedule amount. In applying section 1848(g)(2)(D) of the Social Security Act for services of an assistant-at-surgery furnished during 1991, the recognized payment amount shall not exceed the maximum amount specified under section 1848(i)(2)(A) of such Act (as applied under this paragraph in such year).''

Section 4107(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 126(d)(1), Oct. 31, 1994, 108 Stat. 4415, provided that: ''The amendment made by subsection (a)(1) [amending this section] shall apply with respect to services furnished on or after January 1, 1992.''

Section 4109(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1992. In applying section 1848(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section] (in computing the initial budget-neutral conversion factor for 1991), the Secretary shall compute such factor assuming that section 1848(b)(3) of such Act (as added by the amendment made by subsection (a)) had applied to physicians' services furnished during 1991.''

DEVELOPMENT OF RESOURCE-BASED METHODOLOGY FOR PRACTICE EXPENSES

Section 121(a) of Pub. L. 103–432 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall develop a methodology for implementing in 1998 a resource-based system for determining practice expense relative value units for each physicians' service. The methodology utilized shall recognize the staff, equipment, and supplies used in the provision of various medical and surgical services in various settings.

''(2) REPORT.—The Secretary shall transmit a report by June 30, 1996, on the methodology developed under paragraph (1) to the Committees on Ways and Means and Energy and Commerce [Committee on Energy and Commerce now Committee on Commerce] of the House of Representatives and the Committee on Finance of the Senate. The report shall include a presentation of data utilized in developing the methodology and an explanation of the methodology.''

APPLICATION OF SUBSECTION (c)(2)(B)(ii)(II), (iii)

Section 121(b)(3) of Pub. L. 103–432 provided that: ''In implementing the amendment made by paragraph (1)(C) [amending this section], the provisions of clauses (ii)(II) and (iii) of section 1848(c)(2)(B) of the Social Security Act [subsec. (c)(2)(B)(ii)(II), (iii) of this section] shall apply in the same manner as they apply to adjustments under clause (ii)(I) of such section.''

REPORT ON REVIEW PROCESS

Section 122(c) of Pub. L. 103–432 provided that: ''Not later than 1 year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services shall study and report to the Committee on Finance of the Senate and the Committee on Ways and Means and the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives on—

''(1) the data necessary to review and revise the indices established under section 1848(e)(1)(A) of the Social Security Act [subsec. (e)(1)(A) of this section], including—

''(A) the shares allocated to physicians' work effort, practice expenses (other than malpractice expenses), and malpractice expenses;

''(B) the weights assigned to the input components of such shares; and

''(C) the index values assigned to such components;

''(2) any limitations on the availability of data necessary to review and revise such indices at least every three years;

''(3) ways of addressing such limitations, with particular attention to the development of alternative data sources for input components for which current index values are based on data collected less frequently than every three years; and

''(4) the costs of developing more accurate and timely data.''

RELATIVE VALUE FOR PEDIATRIC SERVICES

Section 124(a) of Pub. L. 103–432 provided that: ''The Secretary of Health and Human Services shall fully develop, by not later than July 1, 1995, relative values for the full range of pediatric physicians' services which are consistent with the relative values developed for other physicians' services under section 1848(c) of the Social Security Act [subsec. (c) of this section]. In developing such values, the Secretary shall conduct such refinements as may be necessary to produce appropriate estimates for such relative values.''

BUDGET NEUTRALITY ADJUSTMENT

For provisions requiring reduction of relative values established under subsec. (c) of this section and amounts determined under subsec. (a)(2)(B)(ii)(I) of this section for 1994 (to be applied for that year and subsequent years) in order to assure that the amendments to this section and section 1395u of this title by section 13515(a) of Pub. L. 103–66 will not result in expenditures under this part that exceed the amount of such expenditures that would have been made if such amendments had not been made, see section 13515(b) of Pub. L. 103–66, set out as a note under section 1395u of this title.

Section 13518(b) of Pub. L. 103–66 provided that: ''Notwithstanding any other provision of law, the Secretary of Health and Human Services shall implement the amendment made by subsection (a) [amending this section] in a manner to assure that such amendment will result in expenditures under part B of title XVIII of the Social Security Act [this part] in 1995 for services described in such amendment that shall be equal to the amount of expenditures for such services that would have been made if such amendment had not been made.''

ANCILLARY POLICIES; ADJUSTMENT FOR INDEPENDENT LABORATORIES FURNISHING PHYSICIAN PATHOLOGY SERVICES

Section 4104(c) of Pub. L. 101–508 provided: ''The Secretary of Health and Human Services, in establishing ancillary policies under section 1848(c)(3) of the Social Security Act [subsec. (c)(3) of this section], shall consider an appropriate adjustment to reflect the technical component of furnishing physician pathology services through a laboratory that is independent of a hospital and separate from an attending or consulting physician's office.''

COMPUTATION OF CONVERSION FACTOR FOR 1992

Section 4105(b)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §126(g)(2)(A)(i), Oct. 31, 1994, 108 Stat. 4415, provided that: ''In computing the conversion factor under section 1848(d)(1)(B) of the Social Security Act for 1992 [subsec. (d)(1)(B) of this section], the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B of title XVIII of such Act [this part] for physicians' services in 1991 assuming that the amendment made by this subsection [amending section 1395u of this title] did not apply.''

Section 4106(c) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §126(g)(3), Oct. 31, 1994, 108 Stat. 4416, provided that: ''In computing the conversion factor under section 1848(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section] for 1992, the Secretary of Health and Human Services shall determine the estimated aggregate amount of payments under part B [this part] for physicians' services in 1991 assuming that the amendments made by this section [amending this section, section 1395u of this title, and provisions set out as a note under section 1395u of this title] (notwithstanding subsection (d) [set out as an Effective Date of 1990 Amendment note under section 1395u of this title]) applied to all services furnished during such year.''

PUBLICATION OF PERFORMANCE STANDARD RATES

Section 4105(d) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §126(g)(2)(C), Oct. 31, 1994, 108 Stat. 4416, provided that: ''Not later than 45 days after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services, based on the most recent data available, shall estimate and publish in the Federal Register the performance standard rates of increase specified in section 1848(f)(2)(C) of the Social Security Act [subsec. (f)(2)(C) of this section] for fiscal year 1991.''

STUDY OF REGIONAL VARIATIONS IN IMPACT OF MEDICARE PHYSICIAN PAYMENT REFORM

Section 4115 of Pub. L. 101–508 provided that:

''(a) STUDY.—The Secretary of Health and Human Services shall conduct a study of—

''(1) factors that may explain geographic variations in Medicare reasonable charges for physicians' services that are not attributable to variations in physician practice costs (including the supply of physicians in an area and area variations in the mix of services furnished);

''(2) the extent to which the geographic practice cost indices applied under the fee schedule established under section 1848 of the Social Security Act [this section] accurately reflect variations in practice costs and malpractice costs (and alternative sources of information upon which to base such indices);

''(3) the impact of the transition to a national, resource-based fee schedule for physicians' services

under Medicare on access to physicians' services in areas that experience a disproportionately large reduction in payments for physicians' services under the fee schedule by reason of such variations; and

''(4) appropriate adjustments or modifications in the transition to, or manner of determining payments under, the fee schedule established under section 1848 of the Social Security Act, to compensate for such variations and ensure continued access to physicians' services for Medicare beneficiaries in such areas.

''(b) REPORT.—By not later than July 1, 1992, the Secretary shall submit to Congress a report on the study conducted under subsection (a).''

STATEWIDE FEE SCHEDULE AREAS FOR PHYSICIANS' SERVICES

Section 4117 of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §126(f), Oct. 31, 1994, 108 Stat. 4415, provided that: ''Notwithstanding section 1848(j)(2) of the Social Security Act (42 U.S.C. 1395w–4(j)(2)), in the case of the States of Nebraska and Oklahoma the Secretary of Health and Human Services (Secretary) shall treat the State as a single fee schedule area for purposes of determining—

''(1) the adjusted historical payment basis (as defined in section 1848(a)(2)(D) of such Act (42 U.S.C. 1395w–4(a)(2)(D))), and

''(2) the fee schedule amount (as referred to in section 1848(a) (42 U.S.C. 1395w–4(a)) of such Act),

for physicians' services (as defined in section 1848(j)(3) of such Act (42 U.S.C. 1395w–4(j)(3))) furnished on or after January 1, 1992.''

STUDIES

Section 6102(d) of Pub. L. 101–239, as amended by Pub. L. 103–432, title I, §126(h)(1), Oct. 31, 1994, 108 Stat. 4416, provided that:

''(1) GAO STUDY OF ALTERNATIVE PAYMENT METHODOLOGY FOR MALPRACTICE COMPONENT.—The Comptroller General shall provide for—

''(A) a study of alternative ways of paying, under section 1848 of the Social Security Act [this section], for the malpractice component for physicians' services, in a manner that would assure, to the extent practicable, payment for medicare's share of malpractice insurance premiums, and

''(B) a study to examine alternative resolution procedures for malpractice claims respecting professional services furnished under the medicare program.

The examination under subparagraph (B) shall include review of the feasibility of establishing procedures that involve no-fault payment or that involve mandatory arbitration. By not later than April 1, 1991, the Comptroller General shall submit a report to Congress on the results of the studies.

''(2) STUDY OF PAYMENTS TO RISK-CONTRACTING PLANS.—The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall conduct a study of how payments under section 1848 of the Social Security Act may affect payments to eligible organizations with risk-sharing contracts under section 1876 of such Act [section 1395mm of this title]. By not later than April 1, 1990, the Secretary shall submit a report to Congress on such study and shall include in the report such recommendations for such changes in the methodology for payment under such risk-sharing contracts as the Secretary deems appropriate.

''(3) STUDY OF VOLUME PERFORMANCE STANDARD RATES OF INCREASE BY GEOGRAPHY, SPECIALTY, AND TYPE OF SERVICE.—The Secretary shall conduct a study of the feasibility of establishing, under section 1848(f) of the Social Security Act [subsec. (f) of this section], separate performance standard rates of increase for services furnished by or within each of the following (including combinations of the following):

''(A) Geographic area (such as a region, State, or other area).

''(B) Specialty or group of specialties of physicians.

''(C) Type of services (such as primary care, services of hospital-based physicians, and other inpatient services).

Such study shall also include the scope of services included within, or excluded from, the rate of increase in expenditure system. By not later than July 1, 1990, the Secretary shall submit a report to Congress on such study and shall include in the report such recommendations respecting the feasibility of establishing separate performance standard rates of increase in expenditures as the Secretary deems appropriate.

''(4) HHS VISIT CODE MODIFICATION STUDY.—The Secretary shall conduct a study of the desirability of including time as a factor in establishing visit codes.

''(5) COMMISSION STUDY OF PAYMENT FOR PRACTICE EXPENSES.—The Physician Payment Review Commission shall conduct a study of—

''(A) the extent to which practice costs and malpractice costs vary by geographic locality (including region, State, Metropolitan Statistical Areas, or other areas and by specialty),

''(B) the extent to which available geographic practice-cost indices accurately reflect practice costs and malpractice costs in rural areas,

''(C) which geographic units would be most appropriate to use in measuring and adjusting practice costs and malpractice costs,

''(D) appropriate methods for allocating malpractice expenses to particular procedures which could be incorporated into the determination of relative values for particular procedures using a consensus panel and other appropriate methodologies,

''(E) the effect of alternative methods of allocating malpractice expenses on medicare expenditures by specialty, type of service, and by geographic area, and

''(F) the special circumstances of rural independent laboratories in determining the geographic cost-of-practice index.

By not later than July 1, 1991, the Commission shall submit a report to the Committees on Ways and Means and Energy and Commerce of the House of Representatives and the Committee on Finance of the Senate on the study and shall include in the report such recommendations as it deems appropriate.

''(6) COMMISSION STUDY OF GEOGRAPHIC PAYMENT AREAS.—The Physician Payment Review Commission shall conduct a study of the feasibility and desirability of using Metropolitan Statistical Areas or other payment areas for purposes of payment for physicians' services under part B of title XVIII of the Social Security Act [this part]. By not later than July 1, 1991, the Commission shall submit a report to Congress on such study and shall include in the report recommendations on the desirability of retaining current carrier-wide localities, changing to a system of statewide localities, or adopting Metropolitan Statistical Areas or other payment areas for purposes of payment under such part B.

''(7) COMMISSION STUDY OF PAYMENT FOR NON-PHYSICIAN PROVIDERS OF MEDICARE SERVICES.—The Physician Payment Review Commission shall conduct a study of the implications of a resource-based fee schedule for physicians' services for non-physician practitioners, such as physician assistants, clinical psychologists, nurse midwives, and other health practitioners whose services can be billed under the medicare program on a fee-for-service basis. The study shall address (A) what the proper level of payment should be for these practitioners, (B) whether or not adjustments to their payments should be subject to the medicare volume performance standard process, and (C) what update to use for services outside the medicare volume performance standard process. The Commission shall submit a report to Congress on such study by not later than July 1, 1991.

''(8) COMMISSION STUDY OF PHYSICIAN FEES UNDER MEDICAID.—The Physician Payment Review Commission shall conduct a study on physician fees under State

medicaid programs established under title XIX of the Social Security Act [subchapter XIX of this chapter]. The Commission shall specifically examine in such study the adequacy of physician reimbursement under such programs, physician participation in such programs, and access to care by medicaid beneficiaries. By no later than July 1, 1991, the Commission shall submit a report to Congress on such study and shall include such recommendations as the Commission deems appropriate.

''(9) GAO STUDY ON PHYSICIAN ANTI-TRUST ISSUES.—The Comptroller General shall conduct a study of the effect of anti-trust laws on the ability of physicians to act in groups to educate and discipline peers of such physicians in order to reduce and eliminate ineffective practice patterns and inappropriate utilization. The study shall further address anti-trust issues as they relate to the adoption of practice guidelines by third-party payers and the role that practice guidelines might play as a defense in malpractice cases. By no later than July 1, 1991, the Comptroller General shall submit a report to Congress on such study and shall make such recommendations as the Comptroller General deems appropriate.''

[Section 126(h)(1) of Pub. L. 103–432 provided that the amendment made by that section to section 6102(d) of Pub. L. 101–239, set out above, is effective Oct. 31, 1994.]

DISTRIBUTION OF MODEL FEE SCHEDULE

Section 6102(e)(11) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4118(f)(2)(E), Nov. 5, 1990, 104 Stat. 1388–70, provided that: ''By September 1, 1990, the Secretary of Health and Human Services shall develop a Model Fee Schedule, using the methodology set forth in section 1848 of the Social Security Act [this section]. The Model Fee Schedule shall include as many services as the Secretary of Health and Human Services concludes can be assigned valid relative values. The Secretary of Health and Human Services shall submit the Model Fee Schedule to the appropriate committees of Congress and make it generally available to the public.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395*l*, 1395m, 1395u, 1395w–1, 1395y, 1395rr of this title; title 5 section 8904.

PART C—MISCELLANEOUS PROVISIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 426, 1395i–4 of this title; title 45 section 231f.

§ 1395x. Definitions

For purposes of this subchapter—

(a) Spell of illness

The term ''spell of illness'' with respect to any individual means a period of consecutive days—

(1) beginning with the first day (not included in a previous spell of illness) (A) on which such individual is furnished inpatient hospital services, inpatient rural primary care hospital services or extended care services, and (B) which occurs in a month for which he is entitled to benefits under part A of this subchapter, and

(2) ending with the close of the first period of 60 consecutive days thereafter on each of which he is neither an inpatient of a hospital or rural primary care hospital nor an inpatient of a facility described in section 1396r(a)(2) of this title or subsection (y)(1) of this section.

(b) Inpatient hospital services

The term ''inpatient hospital services'' means the following items and services furnished to an inpatient of a hospital and (except as provided in paragraph (3)) by the hospital—

(1) bed and board;

(2) such nursing services and other related services, such use of hospital facilities, and such medical social services as are ordinarily furnished by the hospital for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the hospital, as are ordinarily furnished by such hospital for the care and treatment of inpatients; and

(3) such other diagnostic or therapeutic items or services, furnished by the hospital or by others under arrangements with them made by the hospital, as are ordinarily furnished to inpatients either by such hospital or by others under such arrangements;

excluding, however—

(4) medical or surgical services provided by a physician, resident, or intern, services described by clauses[1] (i) or (iii) of subsection (s)(2)(K) of this section, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist; and

(5) the services of a private-duty nurse or other private-duty attendant.

Paragraph (4) shall not apply to services provided in a hospital by—

(6) an intern or a resident-in-training under a teaching program approved by the Council on Medical Education of the American Medical Association or, in the case of an osteopathic hospital, approved by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, or, in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of dentistry, approved by the Council on Dental Education of the American Dental Association, or in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of podiatry, approved by the Council on Podiatric Medical Education of the American Podiatric Medical Association; or

(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this subchapter for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this subchapter.

(c) Inpatient psychiatric hospital services

The term ''inpatient psychiatric hospital services'' means inpatient hospital services furnished to an inpatient of a psychiatric hospital.

(d) Repealed. Pub. L. 98–369, div. B, title III, § 2335(b)(1), July 18, 1984, 98 Stat. 1090

(e) Hospital

The term ''hospital'' (except for purposes of sections 1395f(d), 1395f(f), and 1395n(b) of this

[1] So in original. Probably should be ''clause''.

title, subsection (a)(2) of this section, paragraph (7) of this subsection, and subsection (i) of this section) means an institution which—

(1) is primarily engaged in providing, by or under the supervision of physicians, to inpatients (A) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) maintains clinical records on all patients;

(3) has bylaws in effect with respect to its staff of physicians;

(4) has a requirement that every patient with respect to whom payment may be made under this subchapter must be under the care of a physician, except that a patient receiving qualified psychologist services (as defined in subsection (ii) of this section) may be under the care of a clinical psychologist with respect to such services to the extent permitted under State law;

(5) provides 24-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times; except that until January 1, 1979, the Secretary is authorized to waive the requirement of this paragraph for any one-year period with respect to any institution, insofar as such requirement relates to the provision of twenty-four-hour nursing service rendered or supervised by a registered professional nurse (except that in any event a registered professional nurse must be present on the premises to render or supervise the nursing service provided, during at least the regular daytime shift), where immediately preceding such one-year period he finds that—

(A) such institution is located in a rural area and the supply of hospital services in such area is not sufficient to meet the needs of individuals residing therein,

(B) the failure of such institution to qualify as a hospital would seriously reduce the availability of such services to such individuals, and

(C) such institution has made and continues to make a good faith effort to comply with this paragraph, but such compliance is impeded by the lack of qualified nursing personnel in such area;

(6)(A) has in effect a hospital utilization review plan which meets the requirements of subsection (k) of this section and (B) has in place a discharge planning process that meets the requirements of subsection (ee) of this section;

(7) in the case of an institution in any State in which State or applicable local law provides for the licensing of hospitals, (A) is licensed pursuant to such law or (B) is approved, by the agency of such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing;

(8) has in effect an overall plan and budget that meets the requirements of subsection (z) of this section; and

(9) meets such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution.

For purposes of subsection (a)(2) of this section, such term includes any institution which meets the requirements of paragraph (1) of this subsection. For purposes of sections 1395f(d) and 1395n(b) of this title (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections), section 1395f(f)(2) of this title, and subsection (i) of this section, such term includes any institution which (i) meets the requirements of paragraphs (5) and (7) of this subsection, (ii) is not primarily engaged in providing the services described in subsection (j)(1)(A) of this section and (iii) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of subsection (r) of this section, to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. For purposes of section 1395f(f)(1) of this title, such term includes an institution which (i) is a hospital for purposes of sections 1395f(d), 1395f(f)(2), and 1395n(b) of this title and (ii) is accredited by the Joint Commission on Accreditation of Hospitals, or is accredited by or approved by a program of the country in which such institution is located if the Secretary finds the accreditation or comparable approval standards of such program to be essentially equivalent to those of the Joint Commission on Accreditation of Hospitals. Notwithstanding the preceding provisions of this subsection, such term shall not, except for purposes of subsection (a)(2) of this section, include any institution which is primarily for the care and treatment of mental diseases unless it is a psychiatric hospital (as defined in subsection (f) of this section). The term ''hospital'' also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to items and services ordinarily furnished by such institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations. For provisions deeming certain requirements of this subsection to be met in the case of accredited institutions, see section 1395bb of this title. The term ''hospital'' also includes a facility of fifty beds or less which is located in an area determined by the Secretary to meet the definition relating to a rural area described in subparagraph (A) of paragraph (5) of this subsection and which meets the other requirements of this subsection, except that—

(A) with respect to the requirements for nursing services applicable after December 31, 1978, such requirements shall provide for temporary waiver of the requirements, for such period as the Secretary deems appropriate, where (i) the facility's failure to fully comply with the requirements is attributable to a temporary shortage of qualified nursing personnel in the area in which the facility is located, (ii) a registered professional nurse is

present on the premises to render or supervise the nursing service provided during at least the regular daytime shift, and (iii) the Secretary determines that the employment of such nursing personnel as are available to the facility during such temporary period will not adversely affect the health and safety of patients;

(B) with respect to the health and safety requirements promulgated under paragraph (9), such requirements shall be applied by the Secretary to a facility herein defined in such manner as to assure that personnel requirements take into account the availability of technical personnel and the educational opportunities for technical personnel in the area in which such facility is located, and the scope of services rendered by such facility; and the Secretary, by regulations, shall provide for the continued participation of such a facility where such personnel requirements are not fully met, for such period as the Secretary determines that (i) the facility is making good faith efforts to fully comply with the personnel requirements, (ii) the employment by the facility of such personnel as are available to the facility will not adversely affect the health and safety of patients, and (iii) if the Secretary has determined that because of the facility's waiver under this subparagraph the facility should limit its scope of services in order not to adversely affect the health and safety of the facility's patients, the facility is so limiting the scope of services it provides; and

(C) with respect to the fire and safety requirements promulgated under paragraph (9), the Secretary (i) may waive, for such period as he deems appropriate, specific provisions of such requirements which if rigidly applied would result in unreasonable hardship for such a facility and which, if not applied, would not jeopardize the health and safety of patients, and (ii) may accept a facility's compliance with all applicable State codes relating to fire and safety in lieu of compliance with the fire and safety requirements promulgated under paragraph (9), if he determines that such State has in effect fire and safety codes, imposed by State law, which adequately protect patients.

The term ''hospital'' does not include, unless the context otherwise requires, a rural primary care hospital (as defined in subsection (mm)(1) of this section).

(f) Psychiatric hospital

The term ''psychiatric hospital'' means an institution which—

(1) is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;

(2) satisfies the requirements of paragraphs (3) through (9) of subsection (e) of this section;

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals entitled to hospital insurance benefits under part A of this subchapter; and

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a ''psychiatric hospital''.

(g) Outpatient occupational therapy services

The term ''outpatient occupational therapy services'' has the meaning given the term ''outpatient physical therapy services'' in subsection (p) of this section, except that ''occupational'' shall be substituted for ''physical'' each place it appears therein.

(h) Extended care services

The term ''extended care services'' means the following items and services furnished to an inpatient of a skilled nursing facility and (except as provided in paragraphs (3) and (6)) by such skilled nursing facility—

(1) nursing care provided by or under the supervision of a registered professional nurse;

(2) bed and board in connection with the furnishing of such nursing care;

(3) physical or occupational therapy or speech-language pathology services furnished by the skilled nursing facility or by others under arrangements with them made by the facility;

(4) medical social services;

(5) such drugs, biologicals, supplies, appliances, and equipment, furnished for use in the skilled nursing facility, as are ordinarily furnished by such facility for the care and treatment of inpatients;

(6) medical services provided by an intern or resident-in-training of a hospital with which the facility has in effect a transfer agreement (meeting the requirements of subsection (*l*) of this section), under a teaching program of such hospital approved as provided in the last sentence of subsection (b) of this section, and other diagnostic or therapeutic services provided by a hospital with which the facility has such an agreement in effect; and

(7) such other services necessary to the health of the patients as are generally provided by skilled nursing facilities;

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital.

(i) Post-hospital extended care services

The term ''post-hospital extended care services'' means extended care services furnished an individual after transfer from a hospital in which he was an inpatient for not less than 3 consecutive days before his discharge from the hospital in connection with such transfer. For purposes of the preceding sentence, items and services shall be deemed to have been furnished to an individual after transfer from a hospital, and he shall be deemed to have been an inpatient in the hospital immediately before transfer therefrom, if he is admitted to the skilled nursing facility (A) within 30 days after dis-

charge from such hospital, or (B) within such time as it would be medically appropriate to begin an active course of treatment, in the case of an individual whose condition is such that skilled nursing facility care would not be medically appropriate within 30 days after discharge from a hospital; and an individual shall be deemed not to have been discharged from a skilled nursing facility if, within 30 days after discharge therefrom, he is admitted to such facility or any other skilled nursing facility.

(j) Skilled nursing facility

The term ''skilled nursing facility'' has the meaning given such term in section 1395i–3(a) of this title.

(k) Utilization review

A utilization review plan of a hospital or skilled nursing facility shall be considered sufficient if it is applicable to services furnished by the institution to individuals entitled to insurance benefits under this subchapter and if it provides—

(1) for the review, on a sample or other basis, of admissions to the institution, the duration of stays therein, and the professional services (including drugs and biologicals) furnished, (A) with respect to the medical necessity of the services, and (B) for the purpose of promoting the most efficient use of available health facilities and services;

(2) for such review to be made by either (A) a staff committee of the institution composed of two or more physicians (of which at least two must be physicians described in subsection (r)(1) of this section), with or without participation of other professional personnel, or (B) a group outside the institution which is similarly composed and (i) which is established by the local medical society and some or all of the hospitals and skilled nursing facilities in the locality, or (ii) if (and for as long as) there has not been established such a group which serves such institution, which is established in such other manner as may be approved by the Secretary;

(3) for such review, in each case of inpatient hospital services or extended care services furnished to such an individual during a continuous period of extended duration, as of such days of such period (which may differ for different classes of cases) as may be specified in regulations, with such review to be made as promptly as possible, after each day so specified, and in no event later than one week following such day; and

(4) for prompt notification to the institution, the individual, and his attending physician of any finding (made after opportunity for consultation to such attending physician) by the physician members of such committee or group that any further stay in the institution is not medically necessary.

The review committee must be composed as provided in clause (B) of paragraph (2) rather than as provided in clause (A) of such paragraph in the case of any hospital or skilled nursing facility where, because of the small size of the institution, or (in the case of a skilled nursing facility) because of lack of an organized medical staff, or for such other reason or reasons as may be included in regulations, it is impracticable for the institution to have a properly functioning staff committee for the purposes of this subsection. If the Secretary determines that the utilization review procedures established pursuant to subchapter XIX of this chapter are superior in their effectiveness to the procedures required under this section, he may, to the extent that he deems it appropriate, require for purposes of this subchapter that the procedures established pursuant to subchapter XIX of this chapter be utilized instead of the procedures required by this section.

(*l*) Agreements for transfer between skilled nursing facilities and hospitals

A hospital and a skilled nursing facility shall be considered to have a transfer agreement in effect if, by reason of a written agreement between them or (in case the two institutions are under common control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that—

(1) transfer of patients will be effected between the hospital and the skilled nursing facility whenever such transfer is medically appropriate as determined by the attending physician; and

(2) there will be interchange of medical and other information necessary or useful in the care and treatment of individuals transferred between the institutions, or in determining whether such individuals can be adequately cared for otherwise than in either of such institutions.

Any skilled nursing facility which does not have such an agreement in effect, but which is found by a State agency (of the State in which such facility is situated) with which an agreement under section 1395aa of this title is in effect (or, in the case of a State in which no such agency has an agreement under section 1395aa of this title, by the Secretary) to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between them of patients and the information referred to in paragraph (2), shall be considered to have such an agreement in effect if and for so long as such agency (or the Secretary, as the case may be) finds that to do so is in the public interest and essential to assuring extended care services for persons in the community who are eligible for payments with respect to such services under this subchapter.

(m) Home health services

The term ''home health services'' means the following items and services furnished to an individual, who is under the care of a physician, by a home health agency or by others under arrangements with them made by such agency, under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician, which items and services are, except as provided in paragraph (7), provided on a visiting basis in a place of residence used as such individual's home—

(1) part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse;

(2) physical or occupational therapy or speech-language pathology services;

(3) medical social services under the direction of a physician;

(4) to the extent permitted in regulations, part-time or intermittent services of a home health aide who has successfully completed a training program approved by the Secretary;

(5) medical supplies (including catheters, catheter supplies, ostomy bags, and supplies related to ostomy care, and a covered osteoporosis drug (as defined in subsection (kk) of this section), but excluding other drugs and biologicals) and durable medical equipment while under such a plan;

(6) in the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under a teaching program of such hospital approved as provided in the last sentence of subsection (b) of this section; and

(7) any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or skilled nursing facility, or at a rehabilitation center which meets such standards as may be prescribed in regulations, and—

(A) the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in such place of residence, or

(B) which are furnished at such facility while he is there to receive any such item or service described in clause (A),

but not including transportation of the individual in connection with any such item or service;

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital.

(n) Durable medical equipment

The term ''durable medical equipment'' includes iron lungs, oxygen tents, hospital beds, and wheelchairs (which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe) used in the patient's home (including an institution used as his home other than an institution that meets the requirements of subsection (e)(1) of this section or section 1395i–3(a)(1) of this title), whether furnished on a rental basis or purchased; except that such term does not include such equipment furnished by a supplier who has used, for the demonstration and use of specific equipment, an individual who has not met such minimum training standards as the Secretary may establish with respect to the demonstration and use of such specific equipment. With respect to a seat-lift chair, such term includes only the seat-lift mechanism and does not include the chair.

(*o*) Home health agency

The term ''home health agency'' means a public agency or private organization, or a subdivision of such an agency or organization, which—

(1) is primarily engaged in providing skilled nursing services and other therapeutic services;

(2) has policies, established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses, to govern the services (referred to in paragraph (1)) which it provides, and provides for supervision of such services by a physician or registered professional nurse;

(3) maintains clinical records on all patients;

(4) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing agencies or organizations of this nature, as meeting the standards established for such licensing;

(5) has in effect an overall plan and budget that meets the requirements of subsection (z) of this section;

(6) meets the conditions of participation specified in section 1395bbb(a) of this title and such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such agency or organization; and

(7) meets such additional requirements (including conditions relating to bonding or establishing of escrow accounts as the Secretary finds necessary for the financial security of the program) as the Secretary finds necessary for the effective and efficient operation of the program;

except that for purposes of part A of this subchapter such term shall not include any agency or organization which is primarily for the care and treatment of mental diseases.

(p) Outpatient physical therapy services

The term ''outpatient physical therapy services'' means physical therapy services furnished by a provider of services, a clinic, rehabilitation agency, or a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient—

(1) who is under the care of a physician (as defined in paragraph (1) or (3) of subsection (r) of this section), and

(2) with respect to whom a plan prescribing the type, amount, and duration of physical therapy services that are to be furnished such individual has been established by a physician (as so defined) or by a qualified physical therapist and is periodically reviewed by a physician (as so defined);

excluding, however—

(3) any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital; and

(4) any such service—

(A) if furnished by a clinic or rehabilitation agency, or by others under arrangements with such clinic or agency, unless such clinic or rehabilitation agency—

(i) provides an adequate program of physical therapy services for outpatients and has the facilities and personnel required for such program or required for the supervision of such a program, in accordance with such requirements as the Secretary may specify,

(ii) has policies, established by a group of professional personnel, including one or more physicians (associated with the clinic or rehabilitation agency) and one or more qualified physical therapists, to govern the services (referred to in clause (i)) it provides,

(iii) maintains clinical records on all patients,

(iv) if such clinic or agency is situated in a State in which State or applicable local law provides for the licensing of institutions of this nature, (I) is licensed pursuant to such law, or (II) is approved by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing; and

(v) meets such other conditions relating to the health and safety of individuals who are furnished services by such clinic or agency on an outpatient basis, as the Secretary may find necessary, or

(B) if furnished by a public health agency, unless such agency meets such other conditions relating to health and safety of individuals who are furnished services by such agency on an outpatient basis, as the Secretary may find necessary.

The term ''outpatient physical therapy services'' also includes physical therapy services furnished an individual by a physical therapist (in his office or in such individual's home) who meets licensing and other standards prescribed by the Secretary in regulations, otherwise than under an arrangement with and under the supervision of a provider of services, clinic, rehabilitation agency, or public health agency, if the furnishing of such services meets such conditions relating to health and safety as the Secretary may find necessary. In addition, such term includes physical therapy services which meet the requirements of the first sentence of this subsection except that they are furnished to an individual as an inpatient of a hospital or extended care facility. The term ''outpatient physical therapy services'' also includes speech-language pathology services furnished by a provider of services, a clinic, rehabilitation agency, or by a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient, subject to the conditions prescribed in this subsection. Nothing in this subsection shall be construed as requiring, with respect to outpatients who are not entitled to benefits under this subchapter, a physical therapist to provide outpatient physical therapy services only to outpatients who are under the care of a physician or pursuant to a plan of care established by a physician.

(q) Physicians' services

The term ''physicians' services'' means professional services performed by physicians, including surgery, consultation, and home, office, and institutional calls (but not including services described in subsection (b)(6) of this section).

(r) Physician

The term ''physician'', when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section 1301(a)(7) of this title), (2) a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions, (3) a doctor of podiatric medicine for the purposes of subsections (k), (m), (p)(1), and (s) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them, (4) a doctor of optometry, but only with respect to the provision of items or services described in subsection (s) of this section which he is legally authorized to perform as a doctor of optometry by the State in which he performs them, or (5) a chiropractor who is licensed as such by the State (or in a State which does not license chiropractors as such, is legally authorized to perform the services of a chiropractor in the jurisdiction in which he performs such services), and who meets uniform minimum standards promulgated by the Secretary, but only for the purpose of subsections (s)(1) and (s)(2)(A) of this section and only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation demonstrated by X-ray to exist) which he is legally authorized to perform by the State or jurisdiction in which such treatment is provided. For the purposes of section 1395y(a)(4) of this title and subject to the limitations and conditions provided in the previous sentence, such term includes a doctor of one of the arts, specified in such previous sentence, legally authorized to practice such art in the country in which the inpatient hospital services (referred to in such section 1395y(a)(4) of this title) are furnished.

(s) Medical and other health services

The term ''medical and other health services'' means any of the following items or services:

(1) physicians' services;

(2)(A) services and supplies (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) furnished as an incident to a physician's professional service, of kinds which are commonly furnished in physicians' offices and are commonly either rendered without charge or included in the physicians' bills;

(B) hospital services (including drugs and biologicals which cannot, as determined in ac-

cordance with regulations, be self-administered) incident to physicians' services rendered to outpatients and partial hospitalization services incident to such services;

(C) diagnostic services which are—

(i) furnished to an individual as an outpatient by a hospital or by others under arrangements with them made by a hospital, and

(ii) ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study;

(D) outpatient physical therapy services and outpatient occupational therapy services;

(E) rural health clinic services and Federally qualified health center services;

(F) home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies;

(G) antigens (subject to quantity limitations prescribed in regulations by the Secretary) prepared by a physician, as defined in subsection (r)(1) of this section, for a particular patient, including antigens so prepared which are forwarded to another qualified person (including a rural health clinic) for administration to such patient, from time to time, by or under the supervision of another such physician;

(H)(i) services furnished pursuant to a contract under section 1395mm of this title to a member of an eligible organization by a physician assistant or by a nurse practitioner (as defined in subsection (aa)(5) of this section) and such services and supplies furnished as an incident to his service to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service; and

(ii) services furnished pursuant to a risk-sharing contract under section 1395mm(g) of this title to a member of an eligible organization by a clinical psychologist (as defined by the Secretary) or by a clinical social worker (as defined in subsection (hh)(2) of this section), and such services and supplies furnished as an incident to such clinical psychologist's services or clinical social worker's services to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service;

(I) blood clotting factors, for hemophilia patients competent to use such factors to control bleeding without medical or other supervision, and items related to the administration of such factors, subject to utilization controls deemed necessary by the Secretary for the efficient use of such factors;

(J) prescription drugs used in immunosuppressive therapy furnished, to an individual who receives an organ transplant for which payment is made under this subchapter, but only in the case of drugs furnished—

(i) before 1995, within 12 months after the date of the transplant procedure,

(ii) during 1995, within 18 months after the date of the transplant procedure,

(iii) during 1996, within 24 months after the date of the transplant procedure,

(iv) during 1997, within 30 months after the date of the transplant procedure, and

(v) during any year after 1997, within 36 months after the date of the transplant procedure;

(K)(i) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a physician assistant (as defined in subsection (aa)(5) of this section) under the supervision of a physician (as so defined) (I) in a hospital, skilled nursing facility, or nursing facility (as defined in section 1396r(a) of this title), (II) as an assistant at surgery, or (III) in a rural area (as defined in section 1395ww(d)(2)(D) of this title) that is designated, under section 332(a)(1)(A) of the Public Health Service Act [42 U.S.C. 254e(a)(1)(A)], as a health professional shortage area, and which the physician assistant is legally authorized to perform by the State in which the services are performed,

(ii) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a nurse practitioner (as defined in subsection (aa)(5) of this section) working in collaboration (as defined in subsection (aa)(6) of this section) with a physician (as defined in subsection (r)(1) of this section) in a skilled nursing facility or nursing facility (as defined in section 1396r(a) of this title) which the nurse practitioner is legally authorized to perform by the State in which the services are performed,

(iii) services which would be physicians' services if furnished by a physician (as defined in subsection (r)(1) of this section) and which are performed by a nurse practitioner or clinical nurse specialist (as defined in subsection (aa)(5) of this section) working in collaboration (as defined in subsection (aa)(6) of this section) with a physician (as defined in subsection (r)(1) of this section) in a rural area (as defined in section 1395ww(d)(2)(D) of this title) which the nurse practitioner or clinical nurse specialist is authorized to perform by the State in which the services are performed, and such services and supplies furnished as an incident to such services as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service, and

(iv) such services and supplies furnished as an incident to services described in clause (i) or (ii) as would be covered under subparagraph (A) if furnished as an incident to a physician's professional service;

(L) certified nurse-midwife services;

(M) qualified psychologist services;

(N) clinical social worker services (as defined in subsection (hh)(2) of this section); and[2]

(O) erythropoietin for dialysis patients competent to use such drug without medical or other supervision with respect to the administration of such drug, subject to methods and standards established by the Secretary by regulation for the safe and effective use of such drug, and items related to the administration of such drug; and

[2] So in original. The word ''and'' probably should not appear.

(P) Redesignated (O).

(Q) an oral drug (which is approved by the Federal Food and Drug Administration) prescribed for use as an anticancer chemotherapeutic agent for a given indication, and containing an active ingredient (or ingredients), which is the same indication and active ingredient (or ingredients) as a drug which the carrier determines would be covered pursuant to subparagraph (A) or (B) if the drug could not be self-administered;

(3) diagnostic X-ray tests (including tests under the supervision of a physician, furnished in a place of residence used as the patient's home, if the performance of such tests meets such conditions relating to health and safety as the Secretary may find necessary and including diagnostic mammography if conducted by a facility that has a certificate (or provisional certificate) issued under section 354 of the Public Health Service Act [42 U.S.C. 263b]), diagnostic laboratory tests, and other diagnostic tests;

(4) X-ray, radium, and radioactive isotope therapy, including materials and services of technicians;

(5) surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations;

(6) durable medical equipment;

(7) ambulance service where the use of other methods of transportation is contraindicated by the individual's condition, but only to the extent provided in regulations;

(8) prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices, and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens;

(9) leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required because of a change in the patient's physical condition;

(10)(A) pneumococcal vaccine and its administration and, subject to section 4071(b) of the Omnibus Budget Reconciliation Act of 1987, influenza vaccine and its administration; and

(B) hepatitis B vaccine and its administration, furnished to an individual who is at high or intermediate risk of contracting hepatitis B (as determined by the Secretary under regulations);

(11) services of a certified registered nurse anesthetist (as defined in subsection (bb) of this section);

(12) subject to section 4072(e) of the Omnibus Budget Reconciliation Act of 1987, extra-depth shoes with inserts or custom molded shoes with inserts for an individual with diabetes, if—

(A) the physician who is managing the individual's diabetic condition (i) documents that the individual has peripheral neuropathy with evidence of callus formation, a history of pre-ulcerative calluses, a history of previous ulceration, foot deformity, or previous amputation, or poor circulation, and (ii) certifies that the individual needs such shoes under a comprehensive plan of care related to the individual's diabetic condition;

(B) the particular type of shoes are prescribed by a podiatrist or other qualified physician (as established by the Secretary); and

(C) the shoes are fitted and furnished by a podiatrist or other qualified individual (such as a pedorthist or orthotist, as established by the Secretary) who is not the physician described in subparagraph (A) (unless the Secretary finds that the physician is the only such qualified individual in the area); and

(13) screening mammography (as defined in subsection (jj) of this section);

(14) screening pap smear.

No diagnostic tests performed in any laboratory, including a laboratory that is part of a rural health clinic, or a hospital (which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1395f(d) of this title) shall be included within paragraph (3) unless such laboratory—

(15) if situated in any State in which State or applicable local law provides for licensing of establishments of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing establishments of this nature, as meeting the standards established for such licensing; and

(16)(A) meets the certification requirements under section 353 of the Public Health Service Act [42 U.S.C. 263a]; and

(B) meets such other conditions relating to the health and safety of individuals with respect to whom such tests are performed as the Secretary may find necessary.

There shall be excluded from the diagnostic services specified in paragraph (2)(C) any item or service (except services referred to in paragraph (1)) which would not be included under subsection (b) of this section if it were furnished to an inpatient of a hospital. None of the items and services referred to in the preceding paragraphs (other than paragraphs (1) and (2)(A)) of this subsection which are furnished to a patient of an institution which meets the definition of a hospital for purposes of section 1395f(d) of this title shall be included unless such other conditions are met as the Secretary may find necessary relating to health and safety of individuals with respect to whom such items and services are furnished.

(t) Drugs and biologicals

(1) The term ''drugs'' and the term ''biologicals'', except for purposes of subsection (m)(5) of this section and paragraph (2), include only such drugs and biologicals, respectively, as are included (or approved for inclusion) in the United States Pharmacopoeia, the National Formulary, or the United States Homeopathic Pharmacopoeia, or in New Drugs or Accepted Dental Remedies (except for any drugs and biologicals unfavorably evaluated therein), or as are approved by the pharmacy and drug therapeutics committee (or equivalent committee) of

the medical staff of the hospital furnishing such drugs and biologicals for use in such hospital.

(2)(A) For purposes of paragraph (1), the term ''drugs'' also includes any drugs or biologicals used in an anticancer chemotherapeutic regimen for a medically accepted indication (as described in subparagraph (B)).

(B) In subparagraph (A), the term ''medically accepted indication'', with respect to the use of a drug, includes any use which has been approved by the Food and Drug Administration for the drug, and includes another use of the drug if—

(i) the drug has been approved by the Food and Drug Administration; and

(ii)(I) such use is supported by one or more citations which are included (or approved for inclusion) in one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, the United States Pharmacopoeia-Drug Information, and other authoritative compendia as identified by the Secretary, unless the Secretary has determined that the use is not medically appropriate or the use is identified as not indicated in one or more such compendia, or

(II) the carrier involved determines, based upon guidance provided by the Secretary to carriers for determining accepted uses of drugs, that such use is medically accepted based on supportive clinical evidence in peer reviewed medical literature appearing in publications which have been identified for purposes of this subclause by the Secretary.

The Secretary may revise the list of compendia in clause (ii)(I) as is appropriate for identifying medically accepted indications for drugs.

(u) Provider of services

The term ''provider of services'' means a hospital, rural primary care hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, hospice program, or, for purposes of section 1395f(g) and section 1395n(e) of this title, a fund.

(v) Reasonable costs

(1)(A) The reasonable cost of any services shall be the cost actually incurred, excluding therefrom any part of incurred cost found to be unnecessary in the efficient delivery of needed health services, and shall be determined in accordance with regulations establishing the method or methods to be used, and the items to be included, in determining such costs for various types or classes of institutions, agencies, and services; except that in any case to which paragraph (2) or (3) applies, the amount of the payment determined under such paragraph with respect to the services involved shall be considered the reasonable cost of such services. In prescribing the regulations referred to in the preceding sentence, the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment, to be made by persons other than the recipients of services, to providers of services on account of services furnished to such recipients by such providers. Such regulations may provide for determination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances, may provide for the use of estimates of costs of particular items or services, may provide for the establishment of limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services to be recognized as reasonable based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this subchapter, and may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs. Such regulations shall (i) take into account both direct and indirect costs of providers of services (excluding therefrom any such costs, including standby costs, which are determined in accordance with regulations to be unnecessary in the efficient delivery of services covered by the insurance programs established under this subchapter) in order that, under the methods of determining costs, the necessary costs of efficiently delivering covered services to individuals covered by the insurance programs established by this subchapter will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs, and (ii) provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive.

(B) In the case of extended care services, the regulations under subparagraph (A) shall not include provision for specific recognition of a return on equity capital.

(C) Where a hospital has an arrangement with a medical school under which the faculty of such school provides services at such hospital, an amount not in excess of the reasonable cost of such services to the medical school shall be included in determining the reasonable cost to the hospital of furnishing services—

(i) for which payment may be made under part A of this subchapter, but only if—

(I) payment for such services as furnished under such arrangement would be made under part A of this subchapter to the hospital had such services been furnished by the hospital, and

(II) such hospital pays to the medical school at least the reasonable cost of such services to the medical school, or

(ii) for which payment may be made under part B of this subchapter, but only if such hospital pays to the medical school at least the reasonable cost of such services to the medical school.

(D) Where (i) physicians furnish services which are either inpatient hospital services (including services in conjunction with the teaching programs of such hospital) by reason of paragraph (7) of subsection (b) of this section or for which entitlement exists by reason of clause (II) of sec-

tion 1395k(a)(2)(B)(i) of this title, and (ii) such hospital (or medical school under arrangement with such hospital) incurs no actual cost in the furnishing of such services, the reasonable cost of such services shall (under regulations of the Secretary) be deemed to be the cost such hospital or medical school would have incurred had it paid a salary to such physicians rendering such services approximately equivalent to the average salary paid to all physicians employed by such hospital (or if such employment does not exist, or is minimal in such hospital, by similar hospitals in a geographic area of sufficient size to assure reasonable inclusion of sufficient physicians in development of such average salary).

(E) Such regulations may, in the case of skilled nursing facilities in any State, provide for the use of rates, developed by the State in which such facilities are located, for the payment of the cost of skilled nursing facility services furnished under the State's plan approved under subchapter XIX of this chapter (and such rates may be increased by the Secretary on a class or size of institution or on a geographical basis by a percentage factor not in excess of 10 percent to take into account determinable items or services or other requirements under this subchapter not otherwise included in the computation of such State rates), if the Secretary finds that such rates are reasonably related to (but not necessarily limited to) analyses undertaken by such State of costs of care in comparable facilities in such State. Notwithstanding the previous sentence, such regulations with respect to skilled nursing facilities shall take into account (in a manner consistent with subparagraph (A) and based on patient-days of services furnished) the costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) of such facilities complying with the requirements of subsections (b), (c), and (d) of section 1395i–3 of this title (including the costs of conducting nurse aide training and competency evaluation programs and competency evaluation programs).

(F) Such regulations shall require each provider of services (other than a fund) to make reports to the Secretary of information described in section 1320a(a) of this title in accordance with the uniform reporting system (established under such section) for that type of provider.

(G)(i) In any case in which a hospital provides inpatient services to an individual that would constitute post-hospital extended care services if provided by a skilled nursing facility and a quality control and peer review organization (or, in the absence of such a qualified organization, the Secretary or such agent as the Secretary may designate) determines that inpatient hospital services for the individual are not medically necessary but post-hospital extended care services for the individual are medically necessary and such extended care services are not otherwise available to the individual (as determined in accordance with criteria established by the Secretary) at the time of such determination, payment for such services provided to the individual shall continue to be made under this subchapter at the payment rate described in clause (ii) during the period in which—

(I) such post-hospital extended care services for the individual are medically necessary and not otherwise available to the individual (as so determined),

(II) inpatient hospital services for the individual are not medically necessary, and

(III) the individual is entitled to have payment made for post-hospital extended care services under this subchapter,

except that if the Secretary determines that there is not an excess of hospital beds in such hospital and (subject to clause (iv)) there is not an excess of hospital beds in the area of such hospital, such payment shall be made (during such period) on the basis of the amount otherwise payable under part A with respect to inpatient hospital services.

(ii)(I) Except as provided in subclause (II), the payment rate referred to in clause (i) is a rate equal to the estimated adjusted State-wide average rate per patient-day paid for services provided in skilled nursing facilities under the State plan approved under subchapter XIX of this chapter for the State in which such hospital is located, or, if the State in which the hospital is located does not have a State plan approved under subchapter XIX of this chapter, the estimated adjusted State-wide average allowable costs per patient-day for extended care services under this subchapter in that State.

(II) If a hospital has a unit which is a skilled nursing facility, the payment rate referred to in clause (i) for the hospital is a rate equal to the lesser of the rate described in subclause (I) or the allowable costs in effect under this subchapter for extended care services provided to patients of such unit.

(iii) Any day on which an individual receives inpatient services for which payment is made under this subparagraph shall, for purposes of this chapter (other than this subparagraph), be deemed to be a day on which the individual received inpatient hospital services.

(iv) In determining under clause (i), in the case of a public hospital, whether or not there is an excess of hospital beds in the area of such hospital, such determination shall be made on the basis of only the public hospitals (including the hospital) which are in the area of the hospital and which are under common ownership with that hospital.

(H) In determining such reasonable cost with respect to home health agencies, the Secretary may not include—

(i) any costs incurred in connection with bonding or establishing an escrow account by any such agency as a result of the financial security requirement described in subsection (*o*)(7) of this section;

(ii) in the case of home health agencies to which the financial security requirement described in subsection (*o*)(7) of this section applies, any costs attributed to interest charged such an agency in connection with amounts borrowed by the agency to repay overpayments made under this subchapter to the agency, except that such costs may be included in reasonable cost if the Secretary determines that the agency was acting in good faith in borrowing the amounts;

(iii) in the case of contracts entered into by a home health agency after December 5, 1980, for the purpose of having services furnished for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract which is entered into for a period exceeding five years; and

(iv) in the case of contracts entered into by a home health agency before December 5, 1980, for the purpose of having services furnished for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract, which determines the amount payable by the home health agency on the basis of a percentage of the agency's reimbursement or claim for reimbursement for services furnished by the agency, to the extent that such cost exceeds the reasonable value of the services furnished on behalf of such agency.

(I) In determining such reasonable cost, the Secretary may not include any costs incurred by a provider with respect to any services furnished in connection with matters for which payment may be made under this subchapter and furnished pursuant to a contract between the provider and any of its subcontractors which is entered into after December 5, 1980, and the value or cost of which is $10,000 or more over a twelve-month period unless the contract contains a clause to the effect that—

(i) until the expiration of four years after the furnishing of such services pursuant to such contract, the subcontractor shall make available, upon written request by the Secretary, or upon request by the Comptroller General, or any of their duly authorized representatives, the contract, and books, documents and records of such subcontractor that are necessary to certify the nature and extent of such costs, and

(ii) if the subcontractor carries out any of the duties of the contract through a subcontract, with a value or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request by the Secretary, or upon request by the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

The Secretary shall prescribe in regulation [3] criteria and procedures which the Secretary shall use in obtaining access to books, documents, and records under clauses required in contracts and subcontracts under this subparagraph.

(J) Such regulations may not provide for any inpatient routine salary cost differential as a reimbursable cost for hospitals and skilled nursing facilities.

(K)(i) The Secretary shall issue regulations that provide, to the extent feasible, for the establishment of limitations on the amount of any costs or charges that shall be considered reasonable with respect to services provided on an outpatient basis by hospitals (other than bona fide emergency services as defined in clause (ii)) or clinics (other than rural health clinics), which are reimbursed on a cost basis or on the basis of cost related charges, and by physicians utilizing such outpatient facilities. Such limitations shall be reasonably related to the charges in the same area for similar services provided in physicians' offices. Such regulations shall provide for exceptions to such limitations in cases where similar services are not generally available in physicians' offices in the area to individuals entitled to benefits under this subchapter.

(ii) For purposes of clause (i), the term ''bona fide emergency services'' means services provided in a hospital emergency room after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(I) placing the patient's health in serious jeopardy;

(II) serious impairment to bodily functions; or

(III) serious dysfunction of any bodily organ or part.

(L)(i) The Secretary, in determining the amount of the payments that may be made under this subchapter with respect to services furnished by home health agencies, may not recognize as reasonable (in the efficient delivery of such services) costs for the provision of such services by an agency to the extent these costs exceed (on the aggregate for the agency) for cost reporting periods beginning on or after—

(I) July 1, 1985, and before July 1, 1986, 120 percent,

(II) July 1, 1986, and before July 1, 1987, 115 percent, or

(III) July 1, 1987, 112 percent,

of the mean of the labor-related and nonlabor per visit costs for free standing home health agencies.

(ii) Effective for cost reporting periods beginning on or after July 1, 1986, such limitations shall be applied on an aggregate basis for the agency, rather than on a discipline specific basis. The Secretary may provide for such exemptions and exceptions to such limitation as he deems appropriate.

(iii) Not later than July 1, 1991, and annually thereafter (but not for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996), the Secretary shall establish limits under this subparagraph for cost reporting periods beginning on or after such date by utilizing the area wage index applicable under section 1395ww(d)(3)(E) of this title as of such date to hospitals located in the geographic area in which the home health agency is located (determined without regard to whether such hospitals have been reclassified to a new geographic area pursuant to section 1395ww(d)(8)(B) of this title, a decision of the Medicare Geographic Classification Review Board under section 1395ww(d)(10) of this title, or a decision of the Secretary).

[3] So in original. Probably should be ''regulations''.

(M) Such regulations shall provide that costs respecting care provided by a provider of services, pursuant to an assurance under title VI or XVI of the Public Health Service Act [42 U.S.C. 291 et seq., 300q et seq.] that the provider will make available a reasonable volume of services to persons unable to pay therefor, shall not be allowable as reasonable costs.

(N) In determining such reasonable costs, costs incurred for activities directly related to influencing employees respecting unionization may not be included.

(O)(i) In establishing an appropriate allowance for depreciation and for interest on capital indebtedness and (if applicable) a return on equity capital with respect to an asset of a hospital or skilled nursing facility which has undergone a change of ownership, such regulations shall provide, except as provided in clause (iv), that the valuation of the asset after such change of ownership shall be the lesser of the allowable acquisition cost of such asset to the owner of record as of July 18, 1984 (or, in the case of an asset not in existence as of such date, the first owner of record of the asset after such date), or the acquisition cost of such asset to the new owner.

(ii) Such regulations shall provide for recapture of depreciation in the same manner as provided under the regulations in effect on June 1, 1984.

(iii) Such regulations shall not recognize, as reasonable in the provision of health care services, costs (including legal fees, accounting and administrative costs, travel costs, and the costs of feasibility studies) attributable to the negotiation or settlement of the sale or purchase of any capital asset (by acquisition or merger) for which any payment has previously been made under this subchapter.

(iv) In the case of the transfer of a hospital from ownership by a State to ownership by a nonprofit corporation without monetary consideration, the basis for capital allowances to the new owner shall be the book value of the hospital to the State at the time of the transfer.

(P) If such regulations provide for the payment for a return on equity capital (other than with respect to costs of inpatient hospital services), the rate of return to be recognized, for determining the reasonable cost of services furnished in a cost reporting period, shall be equal to the average of the rates of interest, for each of the months any part of which is included in the period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(Q) Except as otherwise explicitly authorized, the Secretary is not authorized to limit the rate of increase on allowable costs of approved medical educational activities.

(R) In determining such reasonable cost, costs incurred by a provider of services representing a beneficiary in an unsuccessful appeal of a determination described in section 1395ff(b) of this title shall not be allowable as reasonable costs.

(S)(i) Such regulations shall not include provision for specific recognition of any return on equity capital with respect to hospital outpatient departments.

(ii)(I) Such regulations shall provide that, in determining the amount of the payments that may be made under this subchapter with respect to all the capital-related costs of outpatient hospital services, the Secretary shall reduce the amounts of such payments otherwise established under this subchapter by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1990, by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1991, and by 10 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1992 through 1998.

(II) The Secretary shall reduce the reasonable cost of outpatient hospital services (other than the capital-related costs of such services) otherwise determined pursuant to section 1395*l*(a)(2)(B)(i)(I) of this title by 5.8 percent for payments attributable to portions of cost reporting periods occurring during fiscal years 1991 through 1998.

(III) Subclauses (I) and (II) shall not apply to payments with respect to the costs of hospital outpatient services provided by any hospital that is a sole community hospital (as defined in section 1395ww(d)(5)(D)(iii) of this title[4] or a rural primary care hospital (as defined in subsection (mm)(1) of this section).

(IV) In applying subclauses (I) and (II) to services for which payment is made on the basis of a blend amount under section 1395*l*(i)(3)(A)(ii) or 1395*l*(n)(1)(A)(ii) of this title, the costs reflected in the amounts described in sections 1395*l*(i)(3)(B)(i)(I) and 1395*l*(n)(1)(B)(i)(I) of this title, respectively, shall be reduced in accordance with such subclause.[5]

(2)(A) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations more expensive than semi-private accommodations, the amount taken into account for purposes of payment under this subchapter with respect to such services may not exceed the amount that would be taken into account with respect to such services if furnished in such semi-private accommodations unless the more expensive accommodations were required for medical reasons.

(B) Where a provider of services which has an agreement in effect under this subchapter furnishes to an individual items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under part A or part B of this subchapter, as the case may be, the Secretary shall take into account for purposes of payment to such provider of services only the items or services with respect to which such payment may be made.

(3) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations other than, but not more expensive than, semi-private accommodations and the use of such other accommodations rather than semi-private accom-

[4] So in original. Probably should be followed by a closing parenthesis.

[5] So in original. Probably should be ''subclauses.''

modations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this subchapter, the amount of the payment with respect to such bed and board under part A of this subchapter shall be the amount otherwise payable under this subchapter for such bed and board furnished in semi-private accommodations minus the difference between the charge customarily made by the hospital or skilled nursing facility for bed and board in semi-private accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

(4) If a provider of services furnishes items or services to an individual which are in excess of or more expensive than the items or services determined to be necessary in the efficient delivery of needed health services and charges are imposed for such more expensive items or services under the authority granted in section 1395cc(a)(2)(B)(ii),[6] of this title, the amount of payment with respect to such items or services otherwise due such provider in any fiscal period shall be reduced to the extent that such payment plus such charges exceed the cost actually incurred for such items or services in the fiscal period in which such charges are imposed.

(5)(A) Where physical therapy services, occupational therapy services, speech therapy services, or other therapy services or services of other health-related personnel (other than physicians) are furnished under an arrangement with a provider of services or other organization, specified in the first sentence of subsection (p) of this section (including through the operation of subsection (g) of this section) the amount included in any payment to such provider or other organization under this subchapter as the reasonable cost of such services (as furnished under such arrangements) shall not exceed an amount equal to the salary which would reasonably have been paid for such services (together with any additional costs that would have been incurred by the provider or other organization) to the person performing them if they had been performed in an employment relationship with such provider or other organization (rather than under such arrangement) plus the cost of such other expenses (including a reasonable allowance for traveltime and other reasonable types of expense related to any differences in acceptable methods of organization for the provision of such therapy) incurred by such person, as the Secretary may in regulations determine to be appropriate.

(B) Notwithstanding the provisions of subparagraph (A), if a provider of services or other organization specified in the first sentence of subsection (p) of this section requires the services of a therapist on a limited part-time basis, or only to perform intermittent services, the Secretary may make payment on the basis of a reasonable rate per unit of service, even though such rate is greater per unit of time than salary related amounts, where he finds that such greater payment is, in the aggregate, less than the amount that would have been paid if such organization had employed a therapist on a full- or part-time salary basis.

(6) For purposes of this subsection, the term, ''semi-private accommodations'' means two-bed, three-bed, or four-bed accommodations.

(7)(A) For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1320a–1 of this title.

(B) For further limitations on reasonable cost and determination of payment amounts for operating costs of inpatient hospital services and waivers for certain States, see section 1395ww of this title.

(C) For provisions restricting payment for provider-based physicians' services and for payments under certain percentage arrangements, see section 1395xx of this title.

(D) For further limitations on reasonable cost and determination of payment amounts for routine service costs of skilled nursing facilities, see section 1395yy of this title.

(w) Arrangements for certain services; payments pursuant to arrangements for utilization review activities

(1) The term ''arrangements'' is limited to arrangements under which receipt of payment by the hospital, rural primary care hospital, skilled nursing facility, home health agency, or hospice program (whether in its own right or as agent), with respect to services for which an individual is entitled to have payment made under this subchapter, discharges the liability of such individual or any other person to pay for the services.

(2) Utilization review activities conducted, in accordance with the requirements of the program established under part B of subchapter XI of this chapter with respect to services furnished by a hospital or rural primary care hospital to patients insured under part A of this subchapter or entitled to have payment made for such services under part B of this subchapter or under a State plan approved under subchapter XIX of this chapter, by a quality control and peer review organization designated for the area in which such hospital or rural primary care hospital is located shall be deemed to have been conducted pursuant to arrangements between such hospital or rural primary care hospital and such organization under which such hospital or rural primary care hospital is obligated to pay to such organization, as a condition of receiving payment for hospital or rural primary care hospital services so furnished under this part or under such a State plan, such amount as is reasonably incurred and requested (as determined under regulations of the Secretary) by such organization in conducting such review activities with respect to services furnished by such hospital or rural primary care hospital to such patients.

(x) State and United States

The terms ''State'' and ''United States'' have the meaning given to them by subsections (h) and (i), respectively, of section 410 of this title.

(y) Post-hospital extended care in Christian Science skilled nursing facilities

(1) The term ''skilled nursing facility'' also includes a Christian Science sanatorium operated,

[6] See References in Text note below.

or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only (except for purposes of subsection (a)(2) of this section) with respect to items and services ordinarily furnished by such an institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations.

(2) Notwithstanding any other provision of this subchapter, payment under part A of this subchapter may not be made for services furnished an individual in a skilled nursing facility to which paragraph (1) applies unless such individual elects, in accordance with regulations, for a spell of illness to have such services treated as post-hospital extended care services for purposes of such part; and payment under part A of this subchapter may not be made for post-hospital extended care services—

(A) furnished an individual during such spell of illness in a skilled nursing facility to which paragraph (1) applies after—

(i) such services have been furnished to him in such a facility for 30 days during such spell, or

(ii) such services have been furnished to him during such spell in a skilled nursing facility to which such paragraph does not apply; or

(B) furnished an individual during such spell of illness in a skilled nursing facility to which paragraph (1) does not apply after such services have been furnished to him during such spell in a skilled nursing facility to which such paragraph applies.

(3) The amount payable under part A of this subchapter for post-hospital extended care services furnished an individual during any spell of illness in a skilled nursing facility to which paragraph (1) applies shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day before the 31st day on which he is furnished such services in such a facility during such spell (and the reduction under this paragraph shall be in lieu of any reduction under section 1395e(a)(3) of this title).

(4) For purposes of subsection (i) of this section, the determination of whether services furnished by or in an institution described in paragraph (1) constitute post-hospital extended care services shall be made in accordance with and subject to such conditions, limitations, and requirements as may be provided in regulations.

(z) Institutional planning

An overall plan and budget of a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, or home health agency shall be considered sufficient if it—

(1) provides for an annual operating budget which includes all anticipated income and expenses related to items which would, under generally accepted accounting principles, be considered income and expense items (except that nothing in this paragraph shall require that there be prepared, in connection with any budget, an item-by-item identification of the components of each type of anticipated expenditure or income);

(2)(A) provides for a capital expenditures plan for at least a 3-year period (including the year to which the operating budget described in paragraph (1) is applicable) which includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $600,000 (or such lesser amount as may be established by the State under section 1320a–1(g)(1) of this title in which the hospital is located) related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of the buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(B) provides that such plan is submitted to the agency designated under section 1320a–1(b) of this title, or if no such agency is designated, to the appropriate health planning agency in the State (but this subparagraph shall not apply in the case of a facility exempt from review under section 1320a–1 of this title by reason of section 1320a–1(j) of this title);

(3) provides for review and updating at least annually; and

(4) is prepared, under the direction of the governing body of the institution or agency, by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff (if any) of the institution or agency.

(aa) Rural health clinic services and Federally qualified health center services

(1) The term ''rural health clinic services'' means—

(A) physicians' services and such services and supplies as are covered under subsection (s)(2)(A) of this section if furnished as an incident to a physician's professional service and items and services described in subsection (s)(10) of this section,

(B) such services furnished by a physician assistant or a nurse practitioner (as defined in paragraph (5)), by a clinical psychologist (as defined by the Secretary) or by a clinical social worker (as defined in subsection (hh)(1) of this section),,[7] and such services and supplies furnished as an incident to his service as would otherwise be covered if furnished by a physician or as an incident to a physician's service, and

(C) in the case of a rural health clinic located in an area in which there exists a shortage of home health agencies, part-time or intermittent nursing care and related medical supplies (other than drugs and biologicals) furnished by a registered professional nurse or licensed practical nurse to a homebound individual under a written plan of treatment (i) established and periodically reviewed by a physician described in paragraph (2)(B), or (ii) established by a nurse practitioner or physician assistant and periodically reviewed and

[7] So in original.

approved by a physician described in paragraph (2)(B),

when furnished to an individual as an outpatient of a rural health clinic.

(2) The term ''rural health clinic'' means a facility which—

(A) is primarily engaged in furnishing to outpatients services described in subparagraphs (A) and (B) of paragraph (1);

(B) in the case of a facility which is not a physician-directed clinic, has an arrangement (consistent with the provisions of State and local law relative to the practice, performance, and delivery of health services) with one or more physicians (as defined in subsection (r)(1)) of this section under which provision is made for the periodic review by such physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such physicians of physician assistants and nurse practitioners, the preparation by such physicians of such medical orders for care and treatment of clinic patients as may be necessary, and the availability of such physicians for such referral of and consultation for patients as is necessary and for advice and assistance in the management of medical emergencies; and, in the case of a physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(C) maintains clinical records on all patients;

(D) has arrangements with one or more hospitals, having agreements in effect under section 1395cc of this title, for the referral and admission of patients requiring inpatient services or such diagnostic or other specialized services as are not available at the clinic;

(E) has written policies, which are developed with the advice of (and with provision for review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services described in paragraph (1) which it furnishes;

(F) has a physician, physician assistant, or nurse practitioner responsible for the execution of policies described in subparagraph (E) and relating to the provision of the clinic's services;

(G) directly provides routine diagnostic services, including clinical laboratory services, as prescribed in regulations by the Secretary, and has prompt access to additional diagnostic services from facilities meeting requirements under this subchapter;

(H) in compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined by the Secretary to be necessary for the treatment of emergency cases (as defined in regulations) and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(I) has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible;

(J) has a nurse practitioner, a physician assistant, or a certified nurse-midwife (as defined in subsection (gg) of this section) available to furnish patient care services not less than 50 percent of the time the clinic operates; and

(K) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

For the purposes of this subchapter, such term includes only a facility which (i) is located in an area that is not an urbanized area (as defined by the Bureau of the Census) and that is designated by the chief executive officer of the State and certified by the Secretary as an area with a shortage of personal health services, or that is designated by the Secretary either (I) as an area with a shortage of personal health services under section 330(b)(3) or 1302(7) of the Public Health Service Act [42 U.S.C. 254c(b)(3), 300e–1(7)], (II) as a health professional shortage area described in section 332(a)(1)(A) of that Act [42 U.S.C. 254e(a)(1)(A)] because of its shortage of primary medical care manpower, (III) as a high impact area described in section 329(a)(5) of that Act [42 U.S.C. 254b(a)(5)], or (IV) as an area which includes a population group which the Secretary determines has a health manpower shortage under section 332(a)(1)(B) of that Act [42 U.S.C. 254e(a)(1)(B)], (ii) has filed an agreement with the Secretary by which it agrees not to charge any individual or other person for items or services for which such individual is entitled to have payment made under this subchapter, except for the amount of any deductible or coinsurance amount imposed with respect to such items or services (not in excess of the amount customarily charged for such items and services by such clinic), pursuant to subsections (a) and (b) of section 1395*l* of this title, (iii) employs a physician assistant or nurse practitioner, and (iv) is not a rehabilitation agency or a facility which is primarily for the care and treatment of mental diseases. A facility that is in operation and qualifies as a rural health clinic under this subchapter or subchapter XIX of this chapter and that subsequently fails to satisfy the requirement of clause (i) shall be considered, for purposes of this subchapter and subchapter XIX of this chapter, as still satisfying the requirement of such clause. If a State agency has determined under section 1395aa(a) of this title that a facility is a rural health clinic and the facility has applied to the Secretary for approval as such a clinic, the Secretary shall notify the facility of the Secretary's approval or disapproval not later than 60 days after the date of the State agency determination or the application (whichever is later).

(3) The term ''Federally qualified health center services'' means—

(A) services of the type described in subparagraphs (A) through (C) of paragraph (1), and

(B) preventive primary health services that a center is required to provide under sections 329, 330, and 340 of the Public Health Service Act [42 U.S.C. 254b, 254c, 256],

when furnished to an individual as an outpatient of a Federally qualified health center and, for

this purpose, any reference to a rural health clinic or a physician described in paragraph (2)(B) is deemed a reference to a Federally qualified health center or a physician at the center, respectively.

(4) The term ''Federally qualified health center'' means an entity which—

(A)(i) is receiving a grant under section 329, 330, or 340 of the Public Health Service Act [42 U.S.C. 254b, 254c, 256], or

(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and (II) meets the requirements to receive a grant under section 329, 330, or 340 of such Act [42 U.S.C. 254b, 254c, 256];

(B) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant;

(C) was treated by the Secretary, for purposes of part B of this subchapter, as a comprehensive Federally funded health center as of January 1, 1990; or

(D) is an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.].

(5) The term ''physician assistant'', the term ''nurse practitioner'', and the term ''clinical nurse specialist'' mean, for purposes of this subchapter, a physician assistant, nurse practitioner, or clinical nurse specialist who performs such services as such individual is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided by State law), and who meets such training, education, and experience requirements (or any combination thereof) as the Secretary may prescribe in regulations.

(6) The term ''collaboration'' means a process in which a nurse practitioner works with a physician to deliver health care services within the scope of the practitioner's professional expertise, with medical direction and appropriate supervision as provided for in jointly developed guidelines or other mechanisms as defined by the law of the State in which the services are performed.

(7)(A) The Secretary shall waive for a 1-year period the requirements of paragraph (2) that a rural health clinic employ a physician assistant, nurse practitioner or certified nurse midwife or that such clinic require such providers to furnish services at least 50 percent of the time that the clinic operates for any facility that requests such waiver if the facility demonstrates that the facility has been unable, despite reasonable efforts, to hire a physician assistant, nurse practitioner, or certified nurse-midwife in the previous 90-day period.

(B) The Secretary may not grant such a waiver under subparagraph (A) to a facility if the request for the waiver is made less than 6 months after the date of the expiration of any previous such waiver for the facility.

(C) A waiver which is requested under this paragraph shall be deemed granted unless such request is denied by the Secretary within 60 days after the date such request is received.

(bb) Services of a certified registered nurse anesthetist

(1) The term ''services of a certified registered nurse anesthetist'' means anesthesia services and related care furnished by a certified registered nurse anesthetist (as defined in paragraph (2)) which the nurse anesthetist is legally authorized to perform as such by the State in which the services are furnished.

(2) The term ''certified registered nurse anesthetist'' means a certified registered nurse anesthetist licensed by the State who meets such education, training, and other requirements relating to anesthesia services and related care as the Secretary may prescribe. In prescribing such requirements the Secretary may use the same requirements as those established by a national organization for the certification of nurse anesthetists. Such term also includes, as prescribed by the Secretary, an anesthesiologist assistant.

(cc) Comprehensive outpatient rehabilitation facility services

(1) The term ''comprehensive outpatient rehabilitation facility services'' means the following items and services furnished by a physician or other qualified professional personnel (as defined in regulations by the Secretary) to an individual who is an outpatient of a comprehensive outpatient rehabilitation facility under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician—

(A) physicians' services;

(B) physical therapy, occupational therapy, speech-language pathology services, and respiratory therapy;

(C) prosthetic and orthotic devices, including testing, fitting, or training in the use of prosthetic and orthotic devices;

(D) social and psychological services;

(E) nursing care provided by or under the supervision of a registered professional nurse;

(F) drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered;

(G) supplies and durable medical equipment; and

(H) such other items and services as are medically necessary for the rehabilitation of the patient and are ordinarily furnished by comprehensive outpatient rehabilitation facilities,

excluding, however, any item or service if it would not be included under subsection (b) of this section if furnished to an inpatient of a hospital. In the case of physical therapy, occupational therapy, and speech pathology services, there shall be no requirement that the item or service be furnished at any single fixed location if the item or service is furnished pursuant to such plan and payments are not otherwise made for the item or service under this subchapter.

(2) The term ''comprehensive outpatient rehabilitation facility'' means a facility which—

(A) is primarily engaged in providing (by or under the supervision of physicians) diagnostic, therapeutic, and restorative services to

outpatients for the rehabilitation of injured, disabled, or sick persons;

(B) provides at least the following comprehensive outpatient rehabilitation services: (i) physicians' services (rendered by physicians, as defined in subsection (r)(1) of this section, who are available at the facility on a full- or part-time basis); (ii) physical therapy; and (iii) social or psychological services;

(C) maintains clinical records on all patients;

(D) has policies established by a group of professional personnel (associated with the facility), including one or more physicians defined in subsection (r)(1) of this section to govern the comprehensive outpatient rehabilitation services it furnishes, and provides for the carrying out of such policies by a full- or part-time physician referred to in subparagraph (B)(i);

(E) has a requirement that every patient must be under the care of a physician;

(F) in the case of a facility in any State in which State or applicable local law provides for the licensing of facilities of this nature (i) is licensed pursuant to such law, or (ii) is approved by the agency of such State or locality, responsible for licensing facilities of this nature, as meeting the standards established for such licensing;

(G) has in effect a utilization review plan in accordance with regulations prescribed by the Secretary;

(H) has in effect an overall plan and budget that meets the requirements of subsection (z) of this section; and

(I) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such facility, including conditions concerning qualifications of personnel in these facilities.

(dd) Hospice care; hospice program; definitions; certification; waiver by Secretary

(1) The term ''hospice care'' means the following items and services provided to a terminally ill individual by, or by others under arrangements made by, a hospice program under a written plan (for providing such care to such individual) established and periodically reviewed by the individual's attending physician and by the medical director (and by the interdisciplinary group described in paragraph (2)(B)) of the program—

(A) nursing care provided by or under the supervision of a registered professional nurse,

(B) physical or occupational therapy, or speech-language pathology services,

(C) medical social services under the direction of a physician,

(D)(i) services of a home health aide who has successfully completed a training program approved by the Secretary and (ii) homemaker services,

(E) medical supplies (including drugs and biologicals) and the use of medical appliances, while under such a plan,

(F) physicians' services,

(G) short-term inpatient care (including both respite care and procedures necessary for pain control and acute and chronic symptom management) in an inpatient facility meeting such conditions as the Secretary determines to be appropriate to provide such care, but such respite care may be provided only on an intermittent, nonroutine, and occasional basis and may not be provided consecutively over longer than five days, and

(H) counseling (including dietary counseling) with respect to care of the terminally ill individual and adjustment to his death.

The care and services described in subparagraphs (A) and (D) may be provided on a 24-hour, continuous basis only during periods of crisis (meeting criteria established by the Secretary) and only as necessary to maintain the terminally ill individual at home.

(2) The term ''hospice program'' means a public agency or private organization (or a subdivision thereof) which—

(A)(i) is primarily engaged in providing the care and services described in paragraph (1) and makes such services available (as needed) on a 24-hour basis and which also provides bereavement counseling for the immediate family of terminally ill individuals,

(ii) provides for such care and services in individuals' homes, on an outpatient basis, and on a short-term inpatient basis, directly or under arrangements made by the agency or organization, except that—

(I) the agency or organization must routinely provide directly substantially all of each of the services described in subparagraphs (A), (C), (F), and (H) of paragraph (1), except as otherwise provided in paragraph (5), and

(II) in the case of other services described in paragraph (1) which are not provided directly by the agency or organization, the agency or organization must maintain professional management responsibility for all such services furnished to an individual, regardless of the location or facility in which such services are furnished; and

(iii) provides assurances satisfactory to the Secretary that the aggregate number of days of inpatient care described in paragraph (1)(G) provided in any 12-month period to individuals who have an election in effect under section 1395d(d) of this title with respect to that agency or organization does not exceed 20 percent of the aggregate number of days during that period on which such elections for such individuals are in effect;

(B) has an interdisciplinary group of personnel which—

(i) includes at least—

(I) one physician (as defined in subsection (r)(1) of this section),

(II) one registered professional nurse, and

(III) one social worker,

employed by the agency or organization, and also includes at least one pastoral or other counselor,

(ii) provides (or supervises the provision of) the care and services described in paragraph (1), and

(iii) establishes the policies governing the provision of such care and services;

(C) maintains central clinical records on all patients;

(D) does not discontinue the hospice care it provides with respect to a patient because of the inability of the patient to pay for such care;

(E)(i) utilizes volunteers in its provision of care and services in accordance with standards set by the Secretary, which standards shall ensure a continuing level of effort to utilize such volunteers, and (ii) maintains records on the use of these volunteers and the cost savings and expansion of care and services achieved through the use of these volunteers;

(F) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, is licensed pursuant to such law; and

(G) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are provided care and services by such agency or organization.

(3)(A) An individual is considered to be ''terminally ill'' if the individual has a medical prognosis that the individual's life expectancy is 6 months or less.

(B) The term ''attending physician'' means, with respect to an individual, the physician (as defined in subsection (r)(1) of this section), who may be employed by a hospice program, whom the individual identifies as having the most significant role in the determination and delivery of medical care to the individual at the time the individual makes an election to receive hospice care.

(4)(A) An entity which is certified as a provider of services other than a hospice program shall be considered, for purposes of certification as a hospice program, to have met any requirements under paragraph (2) which are also the same requirements for certification as such other type of provider. The Secretary shall coordinate surveys for determining certification under this subchapter so as to provide, to the extent feasible, for simultaneous surveys of an entity which seeks to be certified as a hospice program and as a provider of services of another type.

(B) Any entity which is certified as a hospice program and as a provider of another type shall have separate provider agreements under section 1395cc of this title and shall file separate cost reports with respect to costs incurred in providing hospice care and in providing other services and items under this subchapter.

(5)(A) The Secretary may waive the requirements of paragraph (2)(A)(ii)(I) for an agency or organization with respect to all or part of the nursing care described in paragraph (1)(A) if such agency or organization—

(i) is located in an area which is not an urbanized area (as defined by the Bureau of the Census);

(ii) was in operation on or before January 1, 1983; and

(iii) has demonstrated a good faith effort (as determined by the Secretary) to hire a sufficient number of nurses to provide such nursing care directly.

(B) Any waiver, which is in such form and containing such information as the Secretary may require and which is requested by an agency or organization under subparagraph (A), shall be deemed to be granted unless such request is denied by the Secretary within 60 days after the date such request is received by the Secretary. The granting of a waiver under subparagraph (A) shall not preclude the granting of any subsequent waiver request should such a waiver again become necessary.

(ee) Discharge planning process

(1) A discharge planning process of a hospital shall be considered sufficient if it is applicable to services furnished by the hospital to individuals entitled to benefits under this subchapter and if it meets the guidelines and standards established by the Secretary under paragraph (2).

(2) The Secretary shall develop guidelines and standards for the discharge planning process in order to ensure a timely and smooth transition to the most appropriate type of and setting for post-hospital or rehabilitative care. The guidelines and standards shall include the following:

(A) The hospital must identify, at an early stage of hospitalization, those patients who are likely to suffer adverse health consequences upon discharge in the absence of adequate discharge planning.

(B) Hospitals must provide a discharge planning evaluation for patients identified under subparagraph (A) and for other patients upon the request of the patient, patient's representative, or patient's physician.

(C) Any discharge planning evaluation must be made on a timely basis to ensure that appropriate arrangements for post-hospital care will be made before discharge and to avoid unnecessary delays in discharge.

(D) A discharge planning evaluation must include an evaluation of a patient's likely need for appropriate post-hospital services, including hospice services, and the availability of those services.

(E) The discharge planning evaluation must be included in the patient's medical record for use in establishing an appropriate discharge plan and the results of the evaluation must be discussed with the patient (or the patient's representative).

(F) Upon the request of a patient's physician, the hospital must arrange for the development and initial implementation of a discharge plan for the patient.

(G) Any discharge planning evaluation or discharge plan required under this paragraph must be developed by, or under the supervision of, a registered professional nurse, social worker, or other appropriately qualified personnel.

(ff) Partial hospitalization services

(1) The term ''partial hospitalization services'' means the items and services described in paragraph (2) prescribed by a physician and provided under a program described in paragraph (3) under the supervision of a physician pursuant to an individualized, written plan of treatment established and periodically reviewed by a physician (in consultation with appropriate staff participating in such program), which plan sets

forth the physician's diagnosis, the type, amount, frequency, and duration of the items and services provided under the plan, and the goals for treatment under the plan.

(2) The items and services described in this paragraph are—

(A) individual and group therapy with physicians or psychologists (or other mental health professionals to the extent authorized under State law),

(B) occupational therapy requiring the skills of a qualified occupational therapist,

(C) services of social workers, trained psychiatric nurses, and other staff trained to work with psychiatric patients,

(D) drugs and biologicals furnished for therapeutic purposes (which cannot, as determined in accordance with regulations, be self-administered),

(E) individualized activity therapies that are not primarily recreational or diversionary,

(F) family counseling (the primary purpose of which is treatment of the individual's condition),

(G) patient training and education (to the extent that training and educational activities are closely and clearly related to individual's care and treatment),

(H) diagnostic services, and

(I) such other items and services as the Secretary may provide (but in no event to include meals and transportation);

that are reasonable and necessary for the diagnosis or active treatment of the individual's condition, reasonably expected to improve or maintain the individual's condition and functional level and to prevent relapse or hospitalization, and furnished pursuant to such guidelines relating to frequency and duration of services as the Secretary shall by regulation establish (taking into account accepted norms of medical practice and the reasonable expectation of patient improvement).

(3)(A) A program described in this paragraph is a program which is furnished by a hospital to its outpatients or by a community mental health center (as defined in subparagraph (B)), and which is a distinct and organized intensive ambulatory treatment service offering less than 24-hour-daily care.

(B) For purposes of subparagraph (A), the term ''community mental health center'' means an entity—

(i) providing the services described in section 1916(c)(4) of the Public Health Service Act [42 U.S.C. 300x–4(c)(4)]; and

(ii) meeting applicable licensing or certification requirements for community mental health centers in the State in which it is located.

(gg) Certified nurse-midwife services

(1) The term ''certified nurse-midwife services'' means such services furnished by a certified nurse-midwife (as defined in paragraph (2)) and such services and supplies furnished as an incident to the nurse-midwife's service which the certified nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician or as an incident to a physicians' service.

(2) The term ''certified nurse-midwife'' means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary.

(hh) Clinical social worker; clinical social worker services

(1) The term ''clinical social worker'' means an individual who—

(A) possesses a master's or doctor's degree in social work;

(B) after obtaining such degree has performed at least 2 years of supervised clinical social work; and

(C)(i) is licensed or certified as a clinical social worker by the State in which the services are performed, or

(ii) in the case of an individual in a State which does not provide for licensure or certification—

(I) has completed at least 2 years or 3,000 hours of post-master's degree supervised clinical social work practice under the supervision of a master's level social worker in an appropriate setting (as determined by the Secretary), and

(II) meets such other criteria as the Secretary establishes.

(2) The term ''clinical social worker services'' means services performed by a clinical social worker (as defined in paragraph (1)) for the diagnosis and treatment of mental illnesses (other than services furnished to an inpatient of a hospital and other than services furnished to an inpatient of a skilled nursing facility which the facility is required to provide as a requirement for participation) which the clinical social worker is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) of the State in which such services are performed as would otherwise be covered if furnished by a physician or as an incident to a physician's professional service.

(ii) Qualified psychologist services

The term ''qualified psychologist services'' means such services and such services and supplies furnished as an incident to his service furnished by a clinical psychologist (as defined by the Secretary) which the psychologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician or as an incident to a physician's service.

(jj) Screening mammography

The term ''screening mammography'' means a radiologic procedure provided to a woman for the purpose of early detection of breast cancer and includes a physician's interpretation of the results of the procedure.

(kk) Covered osteoporosis drug

The term ''covered osteoporosis drug'' means an injectable drug approved for the treatment of post-menopausal osteoporosis provided to an individual by a home health agency if, in accord-

ance with regulations promulgated by the Secretary—

(1) the individual's attending physician certifies that the individual has suffered a bone fracture related to post-menopausal osteoporosis and that the individual is unable to learn the skills needed to self-administer such drug or is otherwise physically or mentally incapable of self-administering such drug; and

(2) the individual is confined to the individual's home (except when receiving items and services referred to in subsection (m)(7) of this section).

(*ll*) Speech-language pathology services; audiology services

(1) The term ''speech-language pathology services'' means such speech, language, and related function assessment and rehabilitation services furnished by a qualified speech-language pathologist as the speech-language pathologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law) as would otherwise be covered if furnished by a physician.

(2) The term ''audiology services'' means such hearing and balance assessment services furnished by a qualified audiologist as the audiologist is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), as would otherwise be covered if furnished by a physician.

(3) In this subsection:

(A) The term ''qualified speech-language pathologist'' means an individual with a master's or doctoral degree in speech-language pathology who—

(i) is licensed as a speech-language pathologist by the State in which the individual furnishes such services, or

(ii) in the case of an individual who furnishes services in a State which does not license speech-language pathologists, has successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience), performed not less than 9 months of supervised full-time speech-language pathology services after obtaining a master's or doctoral degree in speech-language pathology or a related field, and successfully completed a national examination in speech-language pathology approved by the Secretary.

(B) The term ''qualified audiologist'' means an individual with a master's or doctoral degree in audiology who—

(i) is licensed as an audiologist by the State in which the individual furnishes such services, or

(ii) in the case of an individual who furnishes services in a State which does not license audiologists, has successfully completed 350 clock hours of supervised clinical practicum (or is in the process of accumulating such supervised clinical experience), performed not less than 9 months of supervised full-time audiology services after obtaining a master's or doctoral degree in audiology or a related field, and successfully completed a national examination in audiology approved by the Secretary.

(mm) Rural primary care hospital; rural primary care hospital services

(1) The term ''rural primary care hospital'' means a facility designated by the Secretary as a rural primary care hospital under section 1395i–4(i)(2) of this title.

(2) The term ''inpatient rural primary care hospital services'' means items and services, furnished to an inpatient of a rural primary care hospital by such a hospital, that would be inpatient hospital services if furnished to an inpatient of a hospital by a hospital.

(3) The term ''outpatient rural primary care hospital services'' means medical and other health services furnished by a rural primary care hospital.

(nn) Screening pap smear

The term ''screening pap smear'' means a diagnostic laboratory test consisting of a routine exfoliative cytology test (Papanicolaou test) provided to a woman for the purpose of early detection of cervical cancer and includes a physician's interpretation of the results of the test, if the individual involved has not had such a test during the preceding 3 years (or such shorter period as the Secretary may specify in the case of a woman who is at high risk of developing cervical cancer (as determined pursuant to factors identified by the Secretary)).

(Aug. 14, 1935, ch. 531, title XVIII, § 1861, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 313; amended Nov. 2, 1966, Pub. L. 89–713, § 7, 80 Stat. 1111; Jan. 2, 1968, Pub. L. 90–248, title I, §§ 127(a), 129(a), (b), (c)(9)(C), (10), (11), 132(a), 133(a), (b), 134(a), 143(a), 144(a)–(d), 81 Stat. 846–850, 852, 857, 858; Jan. 12, 1971, Pub. L. 91–690, 84 Stat. 2074; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 211(b), (c)(2), 221(c)(4), 223(a)–(d), (f), 227(a), (c), (d)(1), (f), 234(a)–(f), 237(c), 244(c), 246(b), 248, 249(b), 251(a)(1), (b)(1), (c), 252(a), 256(b), 264(a), 265, 267, 273(a), 276(a), 278(a) (4)–(15), (b)(6), (10), (11), (13), 283(a), 86 Stat. 1383, 1384, 1389, 1393, 1394, 1404–1407, 1412, 1413, 1416, 1423–1426, 1445–1447, 1449–1454, 1456; Dec. 31, 1975, Pub. L. 94–182, title I, §§ 102, 106(a), 112(a)(1), 89 Stat. 1051, 1052, 1055; Oct. 25, 1977, Pub. L. 95–142, §§ 3(a)(2), 5(m), 19(b)(1), 21(a), 91 Stat. 1178, 1191, 1204, 1207; Dec. 13, 1977, Pub. L. 95–210, § 1(d), (g), (h), 91 Stat. 1485, 1487, 1488; Dec. 20, 1977, Pub. L. 95–216, title V, § 501(a), 91 Stat. 1564; June 13, 1978, Pub. L. 95–292, § 4(d), 92 Stat. 315; Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 902(a)(1), 915(a), 930(k)–(n), (p), 931(c), (d), 933(c)–(e), 936(a), 937(a), 938(a), 948(a)(1), 949, 950, 951(a), (b), 952(a), formerly 952, 94 Stat. 2612, 2623, 2632, 2633, 2635, 2639, 2640, 2643, 2645, 2646; Dec. 28, 1980, Pub. L. 96–611, § 1(a)(1), (b)(3), 94 Stat. 3566; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2102(a), 2114, 2121(c), (d), 2141(a), 2142(a), 2143(a), 2144(a), 2193(c)(9), 95 Stat. 787, 796–799, 828; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 101(a)(2), (d), 102(a), 103(a), 105(a), 106(a), 107(a), 108(a)(2), 109(b), 114(b), 122(d), 127(1), 128(a)(1), (d)(2), 148(b), 96 Stat. 335–339, 350, 359, 366, 367, 394; Jan. 12, 1983, Pub. L. 97–448, title III, § 309(a)(4), 96 Stat. 2408; Apr. 20, 1983, Pub. L. 98–21, title VI, §§ 602(d), 607(b)(2), (d), 97 Stat. 163, 171, 172; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2314(a), 2318(a), (b), 2319(a), 2321(e), 2322(a), 2323(a), 2324(a), 2335(b), 2340(a), 2341(a), (c), 2342(a), 2343(a), (b), 2354(b)(18)–(29), 98 Stat. 1079,

1081, 1082, 1085, 1086, 1090, 1093, 1094, 1101; Nov. 8, 1984, Pub. L. 98–617, § 3(a)(4), (b)(7), 98 Stat. 3295, 3296; Apr. 7, 1986, Pub. L. 99–272, title IX, §§ 9107(b), 9110(a), 9202(i)(1), 9219(b)(1)(B), (3)(A), 100 Stat. 160, 162, 177, 182, 183; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9305(c)(1), (2), 9313(a)(2), 9315(a), 9320(b), (c), (f), 9335(c)(1), 9336(a), 9337(d), 9338(a), 100 Stat. 1989, 2002, 2005, 2013, 2015, 2030, 2033, 2034; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4009(e)(1), (f), 4021(a), 4026(a)(1), 4039(b), 4064(e)(1), 4065(a), 4070(b)(1), (2), 4071(a), 4072(a), 4073(a), (c), 4074(a), (b), 4075(a), 4076(a), 4077(a)(1), (b)(1), (4), formerly (5), 4078, 4084(c)(1), 4085(i)(9)–(14), 4201(a)(1), (b)(1), (d)(1), (2), (5), formerly (d), 101 Stat. 1330–57, 1330–58, 1330–67, 1330–74, 1330–81, 1330–111, 1330–112, 1330–114, 1330–116, 1330–118 to 1330–121, 1330–132, 1330–133, 1330–160, 1330–174, as amended July 1, 1988, Pub. L. 100–360, title IV, § 411(h)(4)(D), (5)–(7)(A), (E), (F), (i)(3), (4)(C)(iii), (*l*)(1)(B), (C), 102 Stat. 787–789, 801, as amended Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(27)(B), 102 Stat. 2422; July 1, 1988, Pub. L. 100–360, title I, § 104(d)(4), title II, §§ 202(a), 203(b), (e)(1), 204(a), 205(b), 206(a), title IV, § 411(d)(1)(B)(i), (5)(A), (g)(3)(H), (h)(1)(B), (2), (3)(A), 102 Stat. 689, 702, 721, 725, 730, 731, 773, 774, 785, 786; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(6)(A), (23)(B), 102 Stat. 2414, 2421; Nov. 10, 1988, Pub. L. 100–647, title VIII, §§ 8423(a), 8424(a), 102 Stat. 3803; Dec. 13, 1989, Pub. L. 101–234, title I, § 101(a), title II, § 201(a), 103 Stat. 1979, 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6003(g)(3)(A), (C)(i), (D)(x), 6110, 6112(e)(1), 6113(a)–(b)(2), 6114(a), (d), 6115(a), 6116(a)(1), 6131(a)(2), 6141(a), 6213(a)–(c), 103 Stat. 2151–2153, 2213, 2215–2219, 2221, 2225, 2250, 2251; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4008(h)(2)(A)(i), 4151(a), (b)(1), 4152(a)(2), 4153(b)(2)(A), 4155(a), (d), 4156(a), 4157(a), 4161(a)(1), (2), (5), (b)(1), (2), 4162(a), 4163(a), 4201(d)(1), 4207(d)(1), formerly 4027(d)(1), 104 Stat. 1388–48, 1388–71, 1388–72, 1388–74, 1388–84, 1388–86 to 1388–88, 1388–93 to 1388–96, 1388–104, 1388–120, renumbered Oct. 31, 1994, Pub. L. 103–432, title I, § 160(d)(4), 108 Stat. 4444; Nov. 16, 1990, Pub. L. 101–597, title IV, § 401(c)(2), 104 Stat. 3035; Aug. 10, 1993, Pub. L. 103–66, title XIII, §§ 13503(c)(1)(A), 13521, 13522, 13553(a), (b), 13554(a), 13556(a), 13564(a)(2), (b)(1), 13565, 13566(b), 107 Stat. 578, 586, 591, 592, 607; Oct. 31, 1994, Pub. L. 103–432, title I, §§ 102(g)(4), 104, 107(a), 145(b), 146(a), (b), 147(e)(1), (4), (5), (f)(3), (4)(A), (6)(A), (B), (E), 158(a)(1), 108 Stat. 4404, 4405, 4407, 4427–4432, 4442.)

AMENDMENT OF SUBSECTION (v)(1)(L)(iii)

Pub. L. 103–432, title I, § 158(a), Oct. 31, 1994, 108 Stat. 4442, provided that, applicable with respect to cost reporting periods beginning on or after July 1, 1996, subsection (v)(1)(L)(iii) of this section is amended by substituting ''and determined using the survey of the most recent available wages and wage-related costs of'' for ''as of such date to''.

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to section 1395c et seq. and section 1395j et seq., respectively, of this title.

Section 4071(b) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (s)(10)(A), is section 4071(b) of Pub. L. 100–203, which is set out as a note below.

Section 4072(e) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (s)(12), is section 4072(e) of Pub. L. 100–203, which is set out as a note below.

The Public Health Service Act, referred to in subsec. (v)(1)(M), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. Titles VI and XVI of the Public Health Service Act are classified generally to subchapters IV (§ 291 et seq.) and XIV (§ 300q et seq.), respectively, of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Section 1395cc(a)(2)(B)(ii) of this title, referred to in subsec. (v)(4), was repealed by Pub. L. 101–239, title VI, § 6017(2), Dec. 19, 1989, 103 Stat. 2165.

Part B of subchapter XI of this chapter, referred to in subsec. (w)(2), is classified to section 1320c et seq. of this title.

The Indian Self-Determination Act, referred to in subsec. (aa)(4)(D), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§ 450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (aa)(4)(D), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–432, § 102(g)(4)(A), substituted ''inpatient hospital services, inpatient rural primary care hospital services'' for ''inpatient hospital services''.

Subsec. (a)(2). Pub. L. 103–432, § 102(g)(4)(B), substituted ''hospital or rural primary care hospital'' for ''hospital''.

Subsec. (b)(3). Pub. L. 103–432, § 147(f)(3), made technical amendment to Pub. L. 101–508, § 4157(a). See 1990 Amendment note below.

Subsec. (b)(4). Pub. L. 103–432, § 147(f)(3), made technical amendment to Pub. L. 101–508, § 4157(a). See 1990 Amendment note below.

Pub. L. 103–432, § 147(e)(4), substituted ''clauses (i) or (iii) of subsection (s)(2)(K) of this section'' for ''subsection (s)(2)(K)(i) of this section''.

Subsec. (e)(4). Pub. L. 103–432, § 104, substituted ''physician, except that a patient receiving qualified psychologist services (as defined in subsection (ii) of this section) may be under the care of a clinical psychologist with respect to such services to the extent permitted under State law;'' for ''physician;''.

Subsec. (h)(3). Pub. L. 103–432, § 146(b)(1), substituted ''or occupational therapy or speech-language pathology services'' for '', occupational, or speech therapy''.

Subsec. (m)(2). Pub. L. 103–432, § 146(b)(2), substituted ''or occupational therapy or speech-language pathology services'' for '', occupational, or speech therapy''.

Subsec. (m)(5). Pub. L. 103–432, § 147(f)(6)(B)(ii), substituted ''and a covered osteoporosis drug (as defined in subsection (kk) of this section), but excluding other drugs'' for ''but excluding drugs''.

Subsec. (p). Pub. L. 103–432, § 146(b)(3), substituted ''speech-language pathology services'' for ''speech pathology services'' after ''term 'outpatient physical therapy services' also includes'' in third sentence of closing provisions.

Subsec. (s)(2)(K)(iii). Pub. L. 103–432, § 147(e)(1), made an amendment identical to that made by Pub. L. 101–508, § 4161(a)(5)(A), substituting ''subsection (aa)(5)'' for ''subsection (aa)(3)'' and ''subsection (aa)(6)'' for ''subsection (aa)(4)''.

Subsec. (s)(2)(N). Pub. L. 103–432, § 147(f)(6)(B)(iii)(I), inserted ''and'' at end.

Subsec. (s)(2)(O), (P). Pub. L. 103–432, § 147(f)(6)(B)(iii)(II), redesignated subpar. (P) as (O) and

struck out former subpar. (O) which read as follows: ''a covered osteoporosis drug and its administration (as defined in subsection (jj) of this section) furnished on or after January 1, 1991, and on or before December 31, 1995; and''.

Subsec. (s)(3). Pub. L. 103–432, § 145(b), inserted ''and including diagnostic mammography if conducted by a facility that has a certificate (or provisional certificate) issued under section 354 of the Public Health Service Act'' after ''necessary''.

Subsec. (aa)(2). Pub. L. 103–432, § 147(f)(4)(A), in last sentence of closing provisions, substituted ''approval as such a clinic'' for ''certification as such a clinic'' and ''Secretary's approval or disapproval'' for ''the Secretary's approval or disapproval of the certification''.

Subsec. (aa)(5). Pub. L. 103–432, § 147(e)(5), substituted ''this subchapter'' for ''this chapter''.

Subsec. (cc)(1)(B). Pub. L. 103–432, § 146(b)(4), substituted ''speech-language pathology services'' for ''speech pathology services''.

Subsec. (dd)(1)(B). Pub. L. 103–432, § 146(b)(5), substituted ''therapy, or speech-language pathology services'' for ''therapy or speech-language pathology''.

Subsec. (ee)(2)(D). Pub. L. 103–432, § 107(a), inserted '', including hospice services,'' after ''post-hospital services''.

Subsec. (jj). Pub. L. 103–432, § 147(f)(6)(E), redesignated subsec. (jj), defining ''covered osteoporosis drug'', as (kk).

Pub. L. 103–432, § 147(f)(6)(A), (B)(i), amended subsec. (jj), defining ''covered osteoporosis drug'', in introductory provisions, by striking out ''a bone fracture related to'' before ''post-menopausal osteoporosis'' and substituting ''individual by a home health agency if'' for ''individual if'', and in par. (1), by substituting ''individual has suffered a bone fracture related to post-menopausal osteoporosis and that the individual'' for ''patient''.

Subsec. (kk). Pub. L. 103–432, § 147(f)(6)(E), redesignated subsec. (jj), defining ''covered osteoporosis drug'', as (kk).

Subsec. (*ll*). Pub. L. 103–432, § 146(a), added subsec. (*ll*).

1993—Subsec. (s)(2)(J). Pub. L. 103–66, § 13565, substituted ''subchapter, but only in the case of drugs furnished—'' and cls. (i) to (v) for ''subchapter, within 1 year after the date of the transplant procedure;''.

Subsec. (s)(2)(P). Pub. L. 103–66, § 13566(b), substituted ''dialysis'' for ''home dialysis'' and realigned margin.

Subsec. (s)(2)(Q). Pub. L. 103–66, § 13553(a), added subpar. (Q).

Subsec. (t). Pub. L. 103–66, § 13553(b), designated existing provisions as par. (1), inserted ''and paragraph (2)'', and added par. (2).

Subsec. (v)(1)(B). Pub. L. 103–66, § 13503(c)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Such regulations in the case of extended care services furnished by proprietary facilities shall include provision for specific recognition of a reasonable return on equity capital, including necessary working capital, invested in the facility and used in the furnishing of such services, in lieu of other allowances to the extent that they reflect similar items. The rate of return recognized pursuant to the preceding sentence for determining the reasonable cost of any services furnished in any cost reporting period shall be equal to the average of the rates of interest, for each of the months any part of which is included in the period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.''

Subsec. (v)(1)(L)(ii). Pub. L. 103–66, § 13564(b)(1), struck out '', with appropriate adjustment for administrative and general costs of hospital-based agencies'' after ''discipline specific basis''.

Subsec. (v)(1)(L)(iii). Pub. L. 103–66, § 13564(a)(2), substituted ''thereafter (but not for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996)'' for ''thereafter''.

Subsec. (v)(1)(S)(ii)(I). Pub. L. 103–66, § 13521, substituted ''fiscal years 1992 through 1998'' for ''fiscal year 1992, 1993, 1994, or 1995''.

Subsec. (v)(1)(S)(ii)(II). Pub. L. 103–66, § 13522, substituted ''fiscal years 1991 through 1998'' for ''fiscal years 1991, 1992, 1993, 1994, or 1995''.

Subsec. (aa)(4)(D). Pub. L. 103–66, § 13556(a), added subpar. (D).

Subsec. (gg)(2). Pub. L. 103–66, § 13554(a), substituted a period for '', and performs services in the area of management of the care of mothers and babies throughout the maternity cycle.''

1990—Subsec. (b)(3). Pub. L. 101–508, § 4157(a)(1), as amended by Pub. L. 103–432, § 147(f)(3), struck out ''(including clinical psychologist (as defined by the Secretary))'' after ''the hospital or by others''.

Subsec. (b)(4). Pub. L. 101–508, § 4157(a)(2), as amended by Pub. L. 103–432, § 147(f)(3), substituted '', services described by subsection (s)(2)(K)(i) of this section, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist; and'' for ''and anesthesia services provided by a certified registered nurse anesthetist; and''.

Subsec. (n). Pub. L. 101–508, § 4152(a)(2), inserted at end ''With respect to a seat-lift chair, such term includes only the seat-lift mechanism and does not include the chair.''

Subsec. (s)(2)(E). Pub. L. 101–508, § 4161(a)(1), inserted ''and Federally qualified health center services'' after ''clinic services''.

Subsec. (s)(2)(H)(i). Pub. L. 101–508, § 4161(a)(5)(A), substituted ''subsection (aa)(5)'' for ''subsection (aa)(3)''.

Subsec. (s)(2)(K)(i). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area''.

Pub. L. 101–508, § 4161(a)(5)(A), substituted ''subsection (aa)(5)'' for ''subsection (aa)(3)''.

Subsec. (s)(2)(K)(ii). Pub. L. 101–508, § 4161(a)(5)(A), substituted ''subsection (aa)(5)'' for ''subsection (aa)(3)'' and ''subsection (aa)(6)'' for ''subsection (aa)(4)''.

Subsec. (s)(2)(K)(iii). Pub. L. 101–508, § 4161(a)(5)(A), substituted ''subsection (aa)(5)'' for ''subsection (aa)(3)'' and ''subsection (aa)(6)'' for ''subsection (aa)(4)''.

Pub. L. 101–508, § 4155(a)(3), added cl. (iii). Former cl. (iii) redesignated (iv).

Subsec. (s)(2)(K)(iv). Pub. L. 101–508, § 4155(a)(2), redesignated cl. (iii) as (iv).

Subsec. (s)(2)(O). Pub. L. 101–508, § 4156(a)(1), added subpar. (O).

Subsec. (s)(2)(P). Pub. L. 101–508, § 4201(d)(1), added subpar. (P).

Subsec. (s)(8). Pub. L. 101–508, § 4153(b)(2)(A), inserted '', and including one pair of conventional eyeglasses or contact lenses furnished subsequent to each cataract surgery with insertion of an intraocular lens'' after ''such devices''.

Subsec. (s)(13). Pub. L. 101–508, § 4163(a)(1), added par. (13).

Subsec. (v)(1)(E). Pub. L. 101–508, § 4008(h)(2)(A)(i), substituted ''the costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) of such facilities'' for ''the costs of such facilities'' in second sentence.

Subsec. (v)(1)(L)(iii). Pub. L. 101–508, § 4207(d)(1), formerly § 4027(d)(1), as renumbered by Pub. L. 103–432, § 160(d)(4), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''In establishing limits under this subparagraph, the Secretary shall—

''(I) utilize a wage index that is based on verified wage data obtained from home health agencies, and

''(II) base such limits on the most recent verified wage data available, which data may be for cost reporting periods beginning no earlier than July 1, 1985.

In the case of a home health agency that refuses to provide data, or deliberately provides false data, respecting wages for purposes of this clause upon the request of the Secretary, the Secretary may withhold up to 5 percent of the amount of the payments otherwise payable to the agency under this subchapter until such

date as the Secretary determines that such data has been satisfactorily provided.''

Subsec. (v)(1)(S)(ii)(I). Pub. L. 101–508, §4151(a)(1), inserted before period at end '', by 15 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1991, and by 10 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1992, 1993, 1994, or 1995''.

Subsec. (v)(1)(S)(ii)(II). Pub. L. 101–508, §4151(b)(1)(D), added subcl. (II). Former subcl. (II) redesignated (III).

Pub. L. 101–508, §4151(b)(1)(A), substituted ''Subclauses (I) and (II)'' for ''Subclause (I)'' and ''costs of hospital outpatient services provided by any hospital'' for ''capital-related costs of any hospital''.

Pub. L. 101–508, §4151(a)(2), substituted ''section 1395ww(d)(5)(D)(iii) of this title or a rural primary care hospital (as defined in subsection (mm)(1) of this section)'' for ''section 1395ww(d)(5)(D)(iii) of this title)''.

Subsec. (v)(1)(S)(ii)(III). Pub. L. 101–508, §4151(b)(1)(C), redesignated former subcl. (II) as (III). Former subcl. (III) redesignated (IV).

Pub. L. 101–508, §4151(b)(1)(B), substituted ''subclauses (I) and (II)'' for ''subclause (I)'' and ''the costs reflected'' for ''capital-related costs reflected''.

Subsec. (v)(1)(S)(ii)(IV). Pub. L. 101–508, §4151(b)(1)(C), redesignated subcl. (III) as (IV).

Subsec. (aa). Pub. L. 101–508, §4161(a)(2)(A), inserted ''and Federally qualified health center services'' after ''clinic services'' in heading.

Subsec. (aa)(1)(B). Pub. L. 101–508, §4161(a)(5)(B), substituted ''paragraph (5)'' for ''paragraph (3)''.

Subsec. (aa)(2). Pub. L. 101–597 substituted ''health professional shortage area'' for ''health manpower shortage area'' in second sentence.

Pub. L. 101–508, §4161(b)(1), inserted at end ''If a State agency has determined under section 1395aa(a) of this title that a facility is a rural health clinic and the facility has applied to the Secretary for certification as such a clinic, the Secretary shall notify the facility of the the Secretary's approval or disapproval of the certification not later than 60 days after the date of the State agency determination or the application (whichever is later).''

Subsec. (aa)(3). Pub. L. 101–508, §4161(a)(2)(C), added par. (3). Former par. (3) redesignated (5).

Pub. L. 101–508, §4161(a)(2)(B), which directed amendment of par. (3) by substituting ''the previous provisions of this subsection'' for ''paragraphs (1) and (2)'', could not be executed because the words ''paragraphs (1) and (2)'' did not appear after amendment by Pub. L. 101–508, §4155(d). See below.

Pub. L. 101–508, §4155(d), substituted ''The term 'physician assistant', the term 'nurse practitioner', and the term 'clinical nurse specialist' mean, for purposes of this chapter, a physician assistant, nurse practitioner, or clinical nurse specialist who performs'' for ''The term 'physician assistant' and the term 'nurse practitioner' mean, for the purposes of paragraphs (1) and (2), a physician assistant or nurse practitioner who performs''.

Subsec. (aa)(4) to (6). Pub. L. 101–508, §4161(a)(2)(B), (C), added par. (4) and redesignated former pars. (3) and (4) as (5) and (6), respectively.

Subsec. (aa)(7). Pub. L. 101–508, §4161(b)(2), added par. (7).

Subsec. (ff)(3). Pub. L. 101–508, §4162(a), designated existing provision as subpar. (A), substituted ''outpatients or by a community mental health center (as defined in subparagraph (B)),'' for ''outpatients'', and added subpar. (B).

Subsec. (jj). Pub. L. 101–508, §4163(a)(2), added subsec. (jj) defining ''screening mammography''.

Pub. L. 101–508, §4156(a)(2), added subsec. (jj) defining ''covered osteoporosis drug''.

1989—Subsec. (a). Pub. L. 101–234, §101(a), repealed Pub. L. 100–360, §104(d)(4)(A), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (e). Pub. L. 101–239, §6003(g)(3)(D)(x)(I), inserted at end ''The term 'hospital' does not include, unless the context otherwise requires, a rural primary care hospital (as defined in subsection (mm)(1) of this section).''

Pub. L. 101–234, §101(a), repealed Pub. L. 100–360, §104(d)(4)(B), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (i). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §104(d)(4)(C), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (m). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §206(a), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (m)(5). Pub. L. 101–239, §6112(e)(1), amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''medical supplies (other than drugs and biologicals) and durable medical equipment, while under such a plan;''.

Subsec. (s). Pub. L. 101–239, §6141(a)(1), substituted '', including a laboratory that is part of'' for ''which is independent of a physician's office, a laboratory not independent of a physician's office that has a volume of clinical diagnostic laboratory tests exceeding 5,000 per year,'' in provisions following par. (14).

Subsec. (s)(2)(H)(ii). Pub. L. 101–239, §6113(b)(2)(A), substituted ''subsection (hh)(2)'' for ''subsection (hh)''.

Subsec. (s)(2)(J). Pub. L. 101–239, §6114(a)(1), struck out ''and'' at end.

Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §202(a)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (s)(2)(K). Pub. L. 101–239, §6114(a)(2), added cl. (ii), redesignated former cl. (ii) as (iii), and substituted ''to services described in clause (i) or (ii)'' for ''to such services'' in cl. (iii).

Subsec. (s)(2)(N). Pub. L. 101–239, §6113(b)(1), added subpar. (N).

Subsec. (s)(12). Pub. L. 101–239, §6131(a)(2), inserted ''with inserts'' after ''custom molded shoes'' in introductory provisions.

Subsec. (s)(13). Pub. L. 101–234, §201(a), which repealed Pub. L. 100–360, §204(a)(1)(B)–(D), and directed that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, was executed by striking out par. (13) as added by Pub. L. 100–360, §204(a)(1)(B)–(D), but former par. (13) which was redesignated (14) was not restored in view of intervening redesignation as (15) by Pub. L. 101–239, §6115(a)(1)(C), see 1988 Amendment note below.

Subsec. (s)(14). Pub. L. 101–239, §6115(a)(1)(A), (B), (D), added par. (14). Former par. (14) redesignated (15).

Pub. L. 101–234, §201(a), which repealed Pub. L. 100–360, §204(a)(1)(A), and directed that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, was not executed in view of intervening redesignation of par. (14) as (15) by Pub. L. 101–239, §6115(a)(1)(C), see 1988 Amendment note below.

Subsec. (s)(15). Pub. L. 101–239, §6115(a)(1)(C), redesignated par. (14) as (15). Former par. (15) redesignated (16).

Pub. L. 101–234, §201(a), which repealed Pub. L. 100–360, §204(a)(1)(A), and directed that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, was not executed in view of intervening redesignation of par. (15) as (16) by Pub. L. 101–239, §6115(a)(1)(C), see 1988 Amendment note below.

Subsec. (s)(16). Pub. L. 101–239, §6141(a)(2), (3), added subpar. (A) and designated existing provisions as subpar. (B).

Pub. L. 101–239, § 6115(a)(1)(C), redesignated par. (15) as (16).

Subsec. (t). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 202(a)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (u). Pub. L. 101–239, § 6003(g)(3)(C)(i), inserted ''rural primary care hospital,'' after ''hospital,''.

Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 203(e)(1), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (v)(1)(G)(i). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(D), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (v)(1)(S). Pub. L. 101–239, § 6110, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (v)(2)(A), (3). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(D), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (w)(1). Pub. L. 101–239, § 6003(g)(3)(D) (x)(II), inserted ''rural primary care hospital,'' after ''hospital,''.

Subsec. (w)(2). Pub. L. 101–239, § 6003(g)(3)(D) (x)(III), substituted ''hospital or rural primary care hospital'' for ''hospital'' in six places.

Subsec. (y). Pub. L. 101–234, § 101(a), repealed Pub. L. 100–360, § 104(d)(4)(E), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (aa)(1)(B). Pub. L. 101–239, § 6213(b), substituted ''(as defined in paragraph (3)), by'' for ''(as defined in paragraph (3)), or by'' and inserted ''or by a clinical social worker (as defined in subsection (hh)(1) of this section),'' after ''Secretary)''.

Subsec. (aa)(2). Pub. L. 101–239, § 6213(c), in second sentence substituted ''designated by the chief executive officer of the State and certified by the Secretary as an area with a shortage of personal health services, or that is designated by the Secretary'' for ''designated by the Secretary'', ''section 330(b)(3) or 1302(7) of the Public Health Service Act,'' for ''section 1302(7) of the Public Health Service Act or'', and ''medical care manpower, (III) as a high impact area described in section 329(a)(5) of that Act, or (IV) as an area which includes a population group which the Secretary determines has a health manpower shortage under section 332(a)(1)(B) of that Act,'' for ''medical care manpower,''.

Subsec. (aa)(2)(J), (K). Pub. L. 101–239, § 6213(a), added subpar. (J) and redesignated former subpar. (J) as (K).

Subsec. (aa)(4). Pub. L. 101–239, § 6114(d), added par. (4).

Subsec. (hh). Pub. L. 101–239, § 6113(b)(2)(B), inserted ''; clinical social worker services'' after ''social worker'' in heading, redesignated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, in subpar. (C), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, in cl. (ii), redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added par. (2).

Subsec. (ii). Pub. L. 101–239, § 6113(a), struck out ''onsite at a community mental health center (as such term is used in the Public Health Service Act), and such services that are necessarily furnished off-site (other than at an off-site office of such psychologist) as part of a treatment plan because of the inability of the individual furnished such services to travel to the center by reason of physical or mental impairment, because of institutionalization, or because of similar circumstances of the individual,'' after ''as defined by the Secretary)''.

Subsecs. (jj) to (*ll*). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, §§ 203(b), 204(a)(2), 205(b), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (mm). Pub. L. 101–239, § 6003(g)(3)(A), added subsec. (mm).

Subsec. (mm)(3). Pub. L. 101–239, § 6116(a)(1), added par. (3).

Subsec. (nn). Pub. L. 101–239, § 6115(a)(2), added subsec. (nn).

1988—Subsec. (a). Pub. L. 100–360, § 104(d)(4)(A), struck out subsec. (a) which defined ''spell of illness''.

Subsec. (a)(2). Pub. L. 100–360, § 411(*l*)(1)(B)(i), (ii), redesignated and amended Pub. L. 100–203, § 4201(d)(1), see 1987 Amendment note below.

Subsec. (e). Pub. L. 100–360, § 104(d)(4)(B), substituted ''and paragraph (7) of this subsection'' for ''paragraph (7) of this subsection, and subsection (i) of this section'' in introductory provisions, struck out second sentence which read as follows: ''For purposes of subsection (a)(2) of this section, such term includes any institution which meets the requirements of paragraph (1) of this subsection.'', substituted ''and section 1395f(f)(2) of this title'' for ''section 1395f(f)(2) of this title, and subsection (i) of this section'' in third sentence, and struck out '', except for purposes of subsection (a)(2) of this section,'' after ''such term shall not'' in fifth sentence.

Subsec. (i). Pub. L. 100–360, § 104(d)(4)(C), struck out subsec. (i) which defined ''post-hospital extended care services''.

Subsec. (m). Pub. L. 100–360, § 206(a), inserted at end ''For purposes of paragraphs (1) and (4) and sections 1395f(a)(2)(C) and 1395n(a)(2)(A) of this title, nursing care and home health aide services shall be considered to be provided or needed on an 'intermittent' basis if they are provided or needed less than 7 days each week and, in the case they are provided or needed for 7 days each week, if they are provided or needed for a period of up to 38 consecutive days.''

Subsec. (n). Pub. L. 100–360, § 411(*l*)(1)(C), as added by Pub. L. 100–485, § 608(d)(27)(B), added Pub. L. 100–203, § 4201(d)(5), see 1987 Amendment note below.

Pub. L. 100–360, § 411(*l*)(1)(B)(iii), added Pub. L. 100–203, § 4201(d)(2), see 1987 Amendment note below.

Pub. L. 100–360, § 411(d)(1)(B)(i), inserted ''; except that such term does not include such equipment furnished by a supplier who has used, for the demonstration and use of specific equipment, an individual who has not met such minimum training standards as the Secretary may establish with respect to the demonstration and use of such specific equipment'' before period at end.

Subsec. (p). Pub. L. 100–647, § 8424(a), inserted at end ''Nothing in this subsection shall be construed as requiring, with respect to outpatients who are not entitled to benefits under this subchapter, a physical therapist to provide outpatient physical therapy services only to outpatients who are under the care of a physician or pursuant to a plan of care established by a physician.''

Subsec. (s). Pub. L. 100–360, § 411(g)(3)(H), inserted a comma before ''year'' in provisions immediately preceding par. (13).

Subsec. (s)(2)(H)(ii). Pub. L. 100–360, § 411(h)(5)(A), amended Pub. L. 100–203, § 4074(a), see 1987 Amendment note below.

Subsec. (s)(2)(J). Pub. L. 100–360, § 202(a)(1), amended subpar. (J) generally, substituting ''covered outpatient drugs (as defined in subsection (t) of this section); and'' for former provision which related to prescription drugs used in immunosuppressive therapy.

Subsec. (s)(2)(K)(i). Pub. L. 100–360, § 411(h)(6), amended Pub. L. 100–203, § 4076(a), see 1987 Amendment note below.

Subsec. (s)(2)(K)(i)(I). Pub. L. 100–485, § 608(d)(23)(B), substituted ''nursing facility (as defined in section 1396r(a) of this title)'' for ''intermediate care facility (as defined in section 1396d(c) of this title)''.

Subsec. (s)(2)(M). Pub. L. 100–360, § 411(h)(7)(A), made technical amendment to directory language of Pub. L. 100–203, § 4077(b)(1), see 1987 Amendment note below.

Subsec. (s)(10)(A). Pub. L. 100–360, §411(h)(2), inserted '', subject to section 4071(b) of the Omnibus Budget Reconciliation Act of 1987,'' before ''influenza vaccine''.

Subsec. (s)(12). Pub. L. 100–360, §411(h)(3)(A), inserted ''subject to section 4072(e) of the Omnibus Budget Reconciliation Act of 1987,'' in introductory provisions.

Subsec. (s)(13). Pub. L. 100–360, §204(a)(1)(B)–(D), added par. (13) relating to screening mammography (as defined in subsection (kk) of this section). Former par. (13) redesignated (14).

Subsec. (s)(14). Pub. L. 100–360, §204(a)(1)(A), redesignated par. (13) as (14). Former par. (14) redesignated (15).

Subsec. (s)(15). Pub. L. 100–360, §411(i)(4)(C)(iii), amended directory language of Pub. L. 100–203, §4085(i)(11), to correct an error, see 1987 Amendment note below.

Pub. L. 100–360, §204(a)(1)(A), redesignated par. (14) as (15).

Subsec. (s)(16). Pub. L. 100–360, §411(i)(4)(C)(iii), amended directory language of Pub. L. 100–203, §4085(i)(11), to correct an error, see 1987 Amendment note below.

Subsec. (t). Pub. L. 100–360, §202(a)(2), designated existing provisions as par. (1), inserted ''and paragraph (2)'', and added pars. (2) to (4) defining ''covered outpatient drug'' and ''covered home IV drug''.

Subsec. (u). Pub. L. 100–360, §203(e)(1), inserted ''home intravenous drug therapy provider,'' after ''hospice program,''.

Subsec. (v)(1)(G)(i). Pub. L. 100–360, §104(d)(4)(D), struck out ''post-hospital'' before ''extended care services'' in four places.

Subsec. (v)(1)(L)(iii). Pub. L. 100–360, §411(d)(5)(A), substituted ''verified'' for ''audited'' in subcls. (I) and (II) and inserted at end ''In the case of a home health agency that refuses to provide data, or deliberately provides false data, respecting wages for purposes of this clause upon the request of the Secretary, the Secretary may withhold up to 5 percent of the amount of the payments otherwise payable to the agency under this subchapter until such date as the Secretary determines that such data has been satisfactorily provided.''

Subsec. (v)(2)(A), (3). Pub. L. 100–360, §104(d)(4)(D), struck out ''post-hospital'' before ''extended care services''.

Subsec. (y). Pub. L. 100–360, §104(d)(4)(E)(i), substituted ''Extended care'' for ''Post-hospital extended care'' in heading.

Subsec. (y)(1). Pub. L. 100–360, §104(d)(4)(E)(ii), struck out ''(except for purposes of subsection (a)(2) of this section)'' after ''Massachusetts, but only''.

Subsec. (y)(2). Pub. L. 100–360, §104(d)(4)(E)(i), (iii), (iv), struck out ''post-hospital'' before ''extended care services'' in two places, substituted ''year'' for ''spell of illness'' and ''spell'' wherever each appeared, and substituted ''45 days'' for ''30 days''.

Subsec. (y)(3). Pub. L. 100–360, §104(d)(4)(E)(i), (iii), (v), struck out ''post-hospital'' before ''extended care services'' and substituted ''year'' for ''spell of illness'', ''the coinsurance amount established under section 1395e(a)(3)(C) of this title for each day before the 46th day'' for ''one-eighth of the inpatient hospital deductible for each day before the 31st day'', and ''year'' for ''spell''.

Subsec. (y)(4). Pub. L. 100–360, §104(d)(4)(E)(vi), struck out par. (4) which provided that certain determinations about services provided by an institution described in par. (1) be made under regulations.

Subsec. (bb)(2). Pub. L. 100–360, §411(i)(3), added Pub. L. 100–203, §4084(c)(1), see 1987 Amendment note below.

Subsec. (ff). Pub. L. 100–360, §411(h)(1)(B)(i), inserted heading.

Subsec. (ff)(3). Pub. L. 100–360, §411(h)(1)(B)(ii), substituted ''furnished by a hospital to its outpatients'' for ''hospital-based or hospital-affiliated (as defined by the Secretary)''.

Subsec. (gg). Pub. L. 100–360, §411(h)(4)(D), amended Pub. L. 100–203, §4073(c), see 1987 Amendment note below.

Subsec. (hh). Pub. L. 100–360, §411(h)(5)(B), amended Pub. L. 100–203, §4074(b), see 1987 Amendment note below.

Subsec. (ii). Pub. L. 100–647, §8423(a), inserted ''on-site'' before ''at a community mental health center'' and '', and such services that are necessarily furnished off-site (other than at an off-site office of such psychologist) as part of a treatment plan because of the inability of the individual furnished such services to travel to the center by reason of physical or mental impairment, because of institutionalization, or because of similar circumstances of the individual,'' after ''Public Health Service Act)''.

Pub. L. 100–360, §411(h)(7)(E), (F), redesignated and amended Pub. L. 100–203, §4077(b)(4), see 1987 Amendment note below.

Subsec. (jj). Pub. L. 100–485, §608(d)(6)(A), inserted heading.

Pub. L. 100–360, §203(b), added subsec. (jj) relating to home intravenous drug therapy services.

Subsec. (kk). Pub. L. 100–360, §204(a)(2), added subsec. (kk) relating to screening mammography.

Subsec. (*ll*). Pub. L. 100–360, §205(b), added subsec. (*ll*) relating to in-home care furnished to chronically dependent individual.

1987—Subsec. (a)(2). Pub. L. 100–203, §4201(d)(1), formerly §4201(d), as redesignated and amended by Pub. L. 100–360, §411(*l*)(1)(B)(i), (ii), substituted ''facility described in section 1396i–3(a)(1) of this title or subsection (y)(1) of this section'' for ''skilled nursing facility''.

Subsec. (b)(3). Pub. L. 100–203, §4009(e)(1), inserted ''(including clinical psychologist (as defined by the Secretary))'' before ''under arrangements''.

Subsec. (b)(4). Pub. L. 100–203, §4085(i)(9), substituted ''and anesthesia'' for '', anesthesia'' and ''certified registered nurse'' for ''certified certified registered nurse''.

Subsec. (b)(6). Pub. L. 100–203, §4039(b)(2), substituted ''Council on Podiatric Medical Education of the American Podiatric Medical Association'' for ''Council on Podiatry Education of the American Podiatry Association''.

Subsec. (e)(4). Pub. L. 100–203, §4009(f), inserted ''with respect to whom payment may be made under this subchapter'' after ''patient''.

Subsec. (g). Pub. L. 100–203, §4085(i)(10), made technical amendment to heading.

Subsec. (j). Pub. L. 100–203, §4201(a)(1), amended subsec. generally, substituting provision defining ''skilled nursing facility'' as having the meaning given such term in section 1395i–3(a) of this title for provision defining ''skilled nursing facility'' as, except for purposes of subsec. (a)(2) of this section, an institution or a distinct part of an institution which has in effect a transfer agreement, meeting the requirements of subsec. (*l*) of this section, with one or more hospitals having agreements in effect under section 1395cc of this title and which meet a specified list of criteria.

Subsec. (n). Pub. L. 100–203, §4201(d)(2), (5), as added by Pub. L. 100–360, §411(*l*)(1)(B)(iii), and Pub. L. 100–360, §411(*l*)(1)(C), as added by Pub. L. 100–485, §608(d)(27)(B), made similar amendments, resulting in the substitution of ''subsection (e)(1) of this section or section 1395i–3(a)(1) of this title'' for ''subsection (e)(1) or (j)(1) of this section'' in introductory provisions.

Subsec. (*o*)(6). Pub. L. 100–203, §4021(a), inserted ''the conditions of participation specified in section 1395bbb(a) of this title and'' after ''meets''.

Subsec. (r)(3). Pub. L. 100–203, §4039(b)(1), substituted ''subsections (k), (m), (p)(1), and (s) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title'' for ''subsection (s) of this section'', and struck out ''; and for the purposes of subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title but only if his performance of functions under subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title is consistent with the policy of the institution or agency with respect to which he performs them and with the functions which he is legally authorized to perform''.

Subsec. (s). Pub. L. 100–203, § 4085(i)(11), substituted in closing provisions ''which would not be included under subsection (b) of this section if it were furnished to an inpatient of a hospital.'' for ''which—'' before par. (15) and struck out pars. (15) and (16).

Pub. L. 100–203, § 4064(e)(1), inserted ''a laboratory not independent of a physician's office that has a volume of clinical diagnostic laboratory tests exceeding 5,000 per year'' in provisions preceding par. (13).

Subsec. (s)(2)(B). Pub. L. 100–203, § 4070(b)(1), inserted ''and partial hospitalization services incident to such services'' before semicolon.

Subsec. (s)(2)(H)(ii). Pub. L. 100–203, § 4074(a), as amended by Pub. L. 100–360, § 411(h)(5)(A), inserted ''or by a clinical social worker (as defined in subsection (hh) of this section)'' after ''clinical psychologist (as defined by the Secretary)'', and substituted ''incident to such clinical psychologist's services or clinical social worker's services'' for ''incident to his services''.

Subsec. (s)(2)(J). Pub. L. 100–203, § 4075(a), substituted ''prescription drugs used in immunosuppressive therapy'' for ''immunosuppressive drugs''.

Subsec. (s)(2)(K)(i). Pub. L. 100–203, § 4076(a), as amended by Pub. L. 100–360, § 411(h)(6), inserted ''(I)'' and substituted '', (II) as an assistant at surgery, or (III) in a rural area (as defined in section 1395ww(d)(2)(D) of this title) that is designated, under section 332(a)(1)(A) of the Public Health Service Act, as a health manpower shortage area,'' for ''or as an assistant at surgery''.

Subsec. (s)(2)(L). Pub. L. 100–203, § 4073(a), added subpar. (L).

Subsec. (s)(2)(M). Pub. L. 100–203, § 4077(b)(1), as amended by Pub. L. 100–360, § 411(h)(7)(A), added subpar. (M).

Subsec. (s)(10)(A). Pub. L. 100–203, § 4071(a), inserted ''and influenza vaccine and its administration'' before semicolon.

Subsec. (s)(12). Pub. L. 100–203, § 4072(a), added par. (12). Former par. (12) redesignated (13).

Subsec. (s)(13), (14). Pub. L. 100–203, § 4072(a)(1), redesignated pars. (12) and (13) as (13) and (14), respectively. Former par. (14) redesignated (15).

Subsec. (s)(15). Pub. L. 100–203, § 4085(i)(11), as amended by Pub. L. 100–360, § 411(i)(4)(C)(iii), struck out par. (15) which read as follows: ''would not be included under subsection (b) of this section if it were furnished to an inpatient of a hospital; or''.

Pub. L. 100–203, § 4072(a)(1), redesignated par. (14) as (15). Former par. (15) redesignated (16).

Subsec. (s)(16). Pub. L. 100–203, § 4085(i)(11), as amended by Pub. L. 100–360, § 411(i)(4)(C)(iii), struck out par. (16) which read as follows: ''is furnished under arrangements referred to in such paragraph (2)(C) unless furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its organized medical staff.''

Pub. L. 100–203, § 4072(a)(1), redesignated par. (15) as (16).

Subsec. (v)(1)(E). Pub. L. 100–203, § 4201(b)(1), inserted at end ''Notwithstanding the previous sentence, such regulations with respect to skilled nursing facilities shall take into account (in a manner consistent with subparagraph (A) and based on patient-days of services furnished) the costs of such facilities complying with the requirements of subsections (b), (c), and (d) of section 1395i–3 of this title (including the costs of conducting nurse aide training and competency evaluation programs and competency evaluation programs).''

Subsec. (v)(1)(L)(iii). Pub. L. 100–203, § 4026(a)(1), added cl. (iii).

Subsec. (v)(1)(S). Pub. L. 100–203, § 4065(a), added subpar. (S).

Subsec. (v)(5)(A). Pub. L. 100–203, § 4085(i)(12), substituted ''subsection (p)'' and ''subsection (g)'' for ''section 1861(p)'' and ''section 1861(g)'', respectively.

Subsec. (aa)(1)(B). Pub. L. 100–203, § 4077(a)(1), substituted ''physician assistant or a nurse practitioner (as defined in paragraph (3)), or by a clinical psychologist (as defined by the Secretary),'' for ''physician assistant or by a nurse practitioner''.

Subsec. (bb). Pub. L. 100–203, § 4085(i)(13), made technical amendment to heading.

Subsec. (bb)(2). Pub. L. 100–203, § 4084(c)(1), as added by Pub. L. 100–360, § 411(i)(3), inserted at end ''Such term also includes, as prescribed by the Secretary, an anesthesiologist assistant.''

Subsec. (cc)(1). Pub. L. 100–203, § 4078, inserted provision at end relating to location requirements in case of physical therapy, occupational therapy, and speech pathology services.

Subsec. (ee). Pub. L. 100–203, § 4085(i)(14), made technical amendment to heading.

Subsec. (ff). Pub. L. 100–203, § 4070(b)(2), added subsec. (ff).

Subsec. (gg). Pub. L. 100–203, § 4073(c), as amended by Pub. L. 100–360, § 411(h)(4)(D), added subsec. (gg).

Subsec. (hh). Pub. L. 100–203, § 4074(b), as amended by Pub. L. 100–360, § 411(h)(5)(B), added subsec. (hh).

Subsec. (ii). Pub. L. 100–203, § 4077(b)(4), formerly § 4077(b)(5), as redesignated and amended by Pub. L. 100–360, § 411(h)(7)(E), (F), added subsec. (ii).

1986—Subsec. (b)(4). Pub. L. 99–509, § 9320(f), inserted before the semicolon at end '', anesthesia services provided by a certified registered nurse anesthetist''.

Subsec. (e)(6). Pub. L. 99–509, § 9305(c)(1), inserted ''(A)'' after ''(6)'' and cl. (B).

Subsec. (g). Pub. L. 99–509, § 9337(d)(1), added subsec. (g).

Subsec. (n). Pub. L. 99–272, § 9219(b)(1)(B), substituted ''as his home'' for ''at his home''.

Subsec. (r)(4). Pub. L. 99–509, § 9336(a), amended cl. (4) generally. Prior to amendment, cl. (4) read as follows: ''a doctor of optometry who is legally authorized to practice optometry by the State in which he performs such function, but only with respect to services related to the condition of aphakia, or''.

Subsec. (s)(2)(D). Pub. L. 99–509, § 9337(d)(2), inserted ''and outpatient occupational therapy services''.

Subsec. (s)(2)(J). Pub. L. 99–509, § 9335(c)(1), added subpar. (J).

Subsec. (s)(2)(K). Pub. L. 99–509, § 9338(a), added subpar. (K).

Subsec. (s)(11) to (15). Pub. L. 99–509, § 9320(b), added par. (11) and redesignated former pars. (11) to (14) as (12) to (15), respectively.

Subsec. (v)(1)(B). Pub. L. 99–272, § 9107(b)(2), substituted ''any cost reporting period shall be equal to'' for ''any fiscal period shall not exceed one and one-half times'' and ''the period'' for ''such fiscal period''.

Subsec. (v)(1)(G)(i). Pub. L. 99–272, § 9219(b)(3)(A), inserted ''on the basis of'' after ''(during such period)'' in provisions following subcl. (III).

Subsec. (v)(1)(L). Pub. L. 99–509, § 9315(a), inserted ''(i)'' after ''(L)'', struck out ''the 75th percentile of such costs per visit for free standing home health agencies, or, in the judgment of the Secretary, such lower percentile or such comparable or lower limit (based on or related to the mean of the costs of such agencies or otherwise) as the Secretary may determine.'', and substituted in lieu ''for cost reporting periods beginning on or after—

''(I) July 1, 1985, and before July 1, 1986, 120 percent,

''(II) July 1, 1986, and before July 1, 1987, 115 percent, or

''(III) July 1, 1987, 112 percent,

of the mean of the labor-related and nonlabor per visit costs for free standing home health agencies.

''(ii) Effective for cost reporting periods beginning on or after July 1, 1986, such limitations shall be applied on an aggregate basis for the agency, rather than on a discipline specific basis, with appropriate adjustment for administrative and general costs of hospital-based agencies.''

Subsec. (v)(1)(O)(i). Pub. L. 99–272, § 9110(a)(1), inserted '', except as provided in clause (iv),'' after ''such regulations shall provide''.

Subsec. (v)(1)(O)(iv). Pub. L. 99–272, § 9110(a)(2), added cl. (iv).

Subsec. (v)(1)(P). Pub. L. 99–272, § 9107(b)(1), added subpar. (P).

Subsec. (v)(1)(Q). Pub. L. 99–272, § 9202(i)(1), added subpar. (Q).

Subsec. (v)(1)(R). Pub. L. 99–509, § 9313(a)(2), added subpar. (R).

Subsec. (v)(5)(A). Pub. L. 99–509, § 9337(d)(3), inserted ''(including through the operation of subsection (g) of this section)'' after ''subsection (p) of this section''.

Subsec. (bb). Pub. L. 99–509, § 9320(c), added subsec. (bb).

Subsec. (ee). Pub. L. 99–509, § 9305(c)(2), added subsec. (ee).

1984—Subsec. (d). Pub. L. 98–369, § 2335(b)(1), struck out subsec. (d) which defined ''inpatient tuberculosis hospital services'' as inpatient hospital services furnished to an inpatient of a tuberculosis hospital.

Subsec. (e). Pub. L. 98–369, § 2335(b)(2), struck out ''or tuberculosis unless it is a tuberculosis hospital (as defined in subsection (g) of this section) or'' before ''unless it is a psychiatric hospital'' in provisions following par. (9).

Subsec. (f). Pub. L. 98–369, § 2340(a), struck out par. (5) which provided that ''psychiatric hospital'' meant an institution which was accredited by the Joint Commission on Accreditation of Hospitals, and struck out ''if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary'' in concluding provisions.

Subsec. (g). Pub. L. 98–369, § 2335(b)(1), struck out subsec. (g) which defined ''tuberculosis hospital''.

Subsec. (j). Pub. L. 98–369, § 2335(b)(3), in provisions following par. (15), struck out ''or tuberculosis'' after ''treatment of mental diseases''.

Subsec. (j)(2). Pub. L. 98–369, § 2354(b)(18), substituted ''provision for'' for ''provision of''.

Subsec. (j)(13). Pub. L. 98–369, § 2354(b)(19), substituted ''an institution'' for ''a nursing home''.

Subsec. (m)(5). Pub. L. 98–369, § 2321(e)(1), which directed the substitution of ''and durable medical equipment'' for '', and the use of medical applicances'' was executed by making the substitution for '', and the use of medical appliances'' as the probable intent of Congress.

Subsec. (n). Pub. L. 98–369, § 2321(e)(3), added subsec. (n).

Subsec. (p)(1). Pub. L. 98–369, § 2341(a), substituted ''paragraph (1) or (3) of subsection (r) of this section'' for ''subsection (r)(1) of this section''.

Subsec. (p)(2). Pub. L. 98–369, § 2342(a), substituted ''by a physician as so defined) or by a qualified physical therapist and is periodically reviewed by a physician (as so defined)'' for '', and is periodically reviewed, by a physician (as so defined)''.

Subsec. (r)(3). Pub. L. 98–617, § 3(b)(7), substituted ''under subsections (k), (m), and (p)(1) of this section and sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title'' for ''under subsections (k) and (m) and sections 1395f(a) and 1395n of this title'' before ''is consistent with the policy''.

Pub. L. 98–369, § 2341(c), substituted ''for the purposes of subsections (k), (m), and (p)(1) of this section'' for ''for the purposes of subsections (k) and (m) of this section'', and substituted ''sections 1395f(a), 1395k(a)(2)(F)(ii), and 1395n of this title but only if'' for ''sections 1395f(a) and 1395n of this title but only if''.

Subsec. (s)(2)(H). Pub. L. 98–369, § 2322(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (s)(2)(I). Pub. L. 98–369, § 2324(a), added subpar. (I).

Subsec. (s)(6). Pub. L. 98–369, § 2321(e)(2), struck out provision which included iron lungs, oxygen tents, etc. with durable medical equipment. See subsec. (n) of this section.

Subsec. (s)(10). Pub. L. 98–369, § 2323(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (u). Pub. L. 98–369, § 2354(b)(20), struck out ''or'' before ''home health agency''.

Subsec. (v)(1)(B). Pub. L. 98–369, § 2354(b)(21)(A), realigned margin of subpar. (B).

Subsec. (v)(1)(C). Pub. L. 98–369, § 2354(b)(21)(B), realigned margins of subpar. (C).

Subsec. (v)(1)(C)(i). Pub. L. 98–369, § 2354(b)(22), inserted a dash after ''but only if''.

Subsec. (v)(1)(D). Pub. L. 98–369, § 2354(b)(21)(B), realigned margin of subpar. (D).

Pub. L. 98–369, § 2354(b)(21)(C), inserted a comma after ''section 1395k(a)(2)(B)(i) of this title''.

Subsec. (v)(1)(E). Pub. L. 98–369, § 2319(a)(1), struck out cl. (i) which directed that such regulations provide that any determination of reasonable cost with respect to services provided by hospital-based skilled nursing facilities be made on the basis of a single standard based on the reasonableness of costs incurred by free standing skilled nursing facilities, subject to such adjustments as deemed appropriate by the Secretary, and struck out the designation ''(ii)''.

Pub. L. 98–369, § 2354(b)(23), as amended by Pub. L. 98–617, § 3(a)(4), substituted ''use'' for ''uses''.

Subsec. (v)(1)(I)(i), (ii). Pub. L. 98–369, § 2354(b)(24), substituted ''by the Secretary, or upon request by the Comptroller General'' for ''to the Secretary, or upon request to the Comptroller General''.

Subsec. (v)(1)(K). Pub. L. 98–369, § 2318(a), (b), designated existing provisions as cl. (i), substituted therein ''as defined in clause (ii)'' for ''provided in an emergency room'', and added cl. (ii).

Subsec. (v)(1)(O). Pub. L. 98–369, § 2314(a), added subpar. (O).

Subsec. (v)(3). Pub. L. 98–369, § 2354(b)(25), substituted ''semi-private'' for ''semiprivate'' after ''furnished in''.

Subsec. (v)(7)(D). Pub. L. 98–369, § 2319(a)(2), added subpar. (D).

Subsec. (z)(2). Pub. L. 98–369, § 2354(b)(26), substituted ''paragraph (1)'' for ''subparagraph (1)''.

Subsec. (aa)(2)(I). Pub. L. 98–369, § 2354(b)(27), substituted ''utilization'' for ''ultilization''.

Subsec. (cc)(1)(F). Pub. L. 98–369, § 2354(b)(28), substituted ''self-administered'' for ''self administered''.

Subsec. (cc)(1)(G). Pub. L. 98–369, § 2321(e)(4), substituted ''and durable medical equipment'' for '', appliances, and equipment, including the purchase or rental of equipment''.

Subsec. (cc)(2)(F). Pub. L. 98–369, § 2354(b)(29), substituted ''standards established'' for ''standard establishment''.

Subsec. (dd)(2)(A)(ii)(I). Pub. L. 98–369, § 2343(a), inserted ''except as otherwise provided in paragraph (5),''.

Subsec. (dd)(5). Pub. L. 98–369, § 2343(b), added par. (5).

1983—Subsec. (v)(1)(G)(i). Pub. L. 98–21, § 602(d)(1), substituted ''the amount otherwise payable under part A with respect to'' for ''on the basis of the reasonable cost of'' in provisions following subcl. (III).

Subsec. (v)(2)(A). Pub. L. 98–21, § 602(d)(2), substituted ''the amount that would be taken into account with respect to'' for ''an amount equal to the reasonable cost of''.

Subsec. (v)(2)(B). Pub. L. 98–21, § 602(d)(3), struck out ''the equivalent of the reasonable cost of'' after ''only''.

Subsec. (v)(3). Pub. L. 98–21, § 602(d)(4), substituted ''the amount otherwise payable under this subchapter for such bed and board furnished in semiprivate accommodations'' for ''the reasonable cost of such bed and board furnished in semiprivate accommodations (determined pursuant to paragraph (1))''.

Subsec. (v)(7)(C). Pub. L. 97–448 amended directory language of Pub. L. 97–248, § 109(b)(2), to correct typographical error, and did not involve any change in text. See 1982 Amendment note below.

Subsec. (z)(2). Pub. L. 98–21, § 607(d), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 98–21, § 607(b)(2), substituted ''$600,000 (or such lesser amount as may be established by the State under section 1320a–1(g)(1) of this title in which the hospital is located)'' for ''$100,000''.

1982—Subsec. (e)(C). Pub. L. 97–248, § 128(d)(2), substituted ''(i) may'' for ''may (i),''.

Subsec. (s)(2)(H). Pub. L. 97–248, § 114(b), added subpar. (H).

Subsec. (u). Pub. L. 97–248, § 122(d)(1), inserted ''hospice program,'' after ''home health agency,''.

Subsec. (v)(1)(E). Pub. L. 97–248, § 102(a), struck out provisions that this subparagraph would not apply to any skilled nursing facility that either was a distinct part of or directly operated by a hospital or was in a close, formal satellite relationship with a participating hospital, and in the case of the latter, the reasonable cost of any services furnished by such facility as determined by the Secretary under this subsection would not exceed 150 percent of the costs determined by the application of this subparagraph, redesignated the remainder as cl. (ii), and added cl. (i).

Subsec. (v)(1)(G)(i). Pub. L. 97–248, § 148(b), substituted ''quality control and peer review organization'' for ''Professional Standards Review Organization''.

Subsec. (v)(1)(H)(iii). Pub. L. 97–248, § 109(b)(1), struck out ''(I)'' and '', or (II) which determines the amount payable by the home health agency on the basis of a percentage of the agency's reimbursement or claim for reimbursement for services furnished by the agency''.

Subsec. (v)(1)(I). Pub. L. 97–248, § 127(1), amended directory language of Pub. L. 96–499, § 952, by inserting ''(a)'' after ''952'', and did not involve any change in text. See 1980 Amendment note below.

Subsec. (v)(1)(J). Pub. L. 97–248, § 103(a), substituted provisions that cost regulations may not provide for any inpatient routine salary cost differential as a reimbursable cost for hospitals and skilled nursing facilities for provisions that such regulations would provide that an inpatient routine nursing salary cost differential would be allowable as a reimbursable cost of hospitals, at a rate not to exceed 5 percent, to be applied under the same methodology used for the nursing salary cost differential for the month of April 1981.

Subsec. (v)(1)(L). Pub. L. 97–248, § 101(a)(2), struck out cl. (i) which provided that the Secretary, in determining the amount of the payments that could be made under this subchapter with respect to routine operating costs for the provision of general inpatient hospital services, could not recognize as reasonable, routine operating costs for the provision of general inpatient hospital services by a hospital to the extent these costs exceeded 108 percent of the mean of such routine operating costs per diem for hospitals, or, in the judgment of the Secretary, such lower percentage or such comparable or lower limit as the Secretary could determine, and struck out ''(ii)''.

Pub. L. 97–248, § 105(a), inserted ''free standing'' after ''costs per visit for''.

Subsec. (v)(1)(M). Pub. L. 97–248, § 106(a), added subpar. (M).

Subsec. (v)(1)(N). Pub. L. 97–248, § 107(a), added subpar. (N).

Subsec. (v)(7). Pub. L. 97–248, § 101(d), redesignated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (v)(7)(C). Pub. L. 97–248, § 108(a)(2), added subpar. (C).

Pub. L. 97–248, § 109(b)(2), as amended by Pub. L. 97–448, § 309(a)(4), inserted ''and for payments under certain percentage arrangements''.

Subsec. (w)(1). Pub. L. 97–248, § 122(d)(2), substituted ''home health agency, or hospice program'' for ''or home health agency''.

Subsec. (w)(2). Pub. L. 97–248, § 148(b), substituted ''quality control and peer review organization'' for ''Professional Standards Review Organization''.

Subsec. (cc)(1). Pub. L. 97–248, § 128(a)(1), substituted ''inpatient'' for ''outpatient'' in provisions following subpar. (H).

Subsec. (dd). Pub. L. 97–248, § 122(d)(3), added subsec. (dd).

1981—Subsec. (u). Pub. L. 97–35, § 2121(c), struck out ''detoxification facility,'' after ''home health agency,''.

Subsec. (v)(1)(G)(i). Pub. L. 97–35, § 2102(a)(1), substituted ''there is not an excess of hospital beds in such hospital and (subject to clause (iv)) there is not an excess of hospital beds in the area of such hospital'' for ''the hospital had (during the immediately preceding calendar year) an average daily occupancy rate of 80 percent or more'' in provision following subcl. (III).

Pub. L. 97–35, § 2114, substituted ''the Secretary or such agent as the Secretary may designate'' for ''an organization or agency with review responsibility as is otherwise provided for under part A of subchapter XI of this chapter'' in provision preceding subcl. (I).

Subsec. (v)(1)(G)(iv). Pub. L. 97–35, § 2102(a)(2), substituted provisions that the determination under cl. (i) of this subparagraph, in the case of a public hospital, whether or not there is an excess of hospital beds in the area of such hospital, be made on the basis of only the public hospitals which are in the area of the hospital and which are under common ownership with that hospital for provisions that public hospitals under common ownership may elect to be treated as a single hospital, and beginning two years after the date this subparagraph is first applied with respect to a hospital, the Secretary, to the extent feasible, shall not treat as an inpatient an individual with respect to whom payment was made to the hospital only because of this subparagraph or section 1396a(h) of this title for such determination.

Subsec. (v)(1)(J). Pub. L. 97–35, § 2141(a), added subpar. (J).

Subsec. (v)(1)(K). Pub. L. 97–35, § 2142(a), added subpar. (K).

Subsec. (v)(1)(L). Pub. L. 97–35, § 2143(a), added subpar. (L).

Pub. L. 97–35, § 2144(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (w)(2). Pub. L. 97–35, § 2193(c)(9), substituted ''subchapter XIX of this chapter'' for ''subchapter V or XIX of this chapter''.

Subsec. (bb). Pub. L. 97–35, § 2121(d), struck out subsec. (bb) which defined ''alcohol detoxification facility services'' and ''detoxification facility''.

1980—Subsec. (b)(7). Pub. L. 96–499, § 948(a)(1), provided that par. (4) was not to apply to services provided in a hospital by a physician where the hospital had a teaching program approved as specified in par. (6) if the hospital elected to receive payment for reasonable costs of such services and all physicians in such hospital agreed not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this subchapter.

Subsec. (e). Pub. L. 96–499, § 930(k), substituted ''subsection (i)'' for ''subsections (i) and (n)'' in text preceding par. (1) and in text following par. (9).

Pub. L. 96–499, § 949, in text following par. (9), inserted provision defining ''hospital'' as a facility of fifty beds or less located in an area determined by the Secretary to meet definition relating to a rural area described in subpar. (A) of par. (5) and prescribing exceptions to such definition.

Subsec. (i). Pub. L. 96–499, § 950, substituted ''30 days'' for ''14 days'' in three places and struck out former cl. (B) which related to admission to skilled nursing facilities within 28 days after hospital discharge of an individual unable to be admitted to such facilities within 14 days because of a shortage of appropriate bed space, and redesignated former cl. (C) as (B).

Subsec. (j)(13). Pub. L. 96–499, § 915(a), substituted ''such edition (as is specified by the Secretary in regulations) of the Life Safety Code of the National Fire Protection Association'' for ''the Life Safety Code of the National Fire Protection Association (23rd edition, 1973)''.

Subsec. (k)(2)(A). Pub. L. 96–499, § 951(b), inserted ''(of which at least two must be physicians described in subsection (r)(1) of this section)'' after ''two or more physicians''.

Subsec. (m)(4). Pub. L. 96–499, § 930(*l*), inserted ''who has successfully completed a training program approved by the Secretary'' after ''health aide''.

Subsec. (n). Pub. L. 96–499, § 930(m), struck out subsec. (n) which defined ''post-hospital home health services''.

Subsec. (*o*). Pub. L. 96–499, § 930(n)(2), in provisions following par. (7), struck out provision that ''home health agency'' was not to include a private organization which was not a nonprofit organization exempt from Federal income taxation under section 501 of title 26 unless it were licensed pursuant to State law and met such additional standards and requirements as prescribed by regulations.

Subsec. (*o*)(7). Pub. L. 96–499, §930(n)(1), added par. (7).

Subsec. (r)(2). Pub. L. 96–499, §936(a), amended cl. (2) generally to expand definition of ''physician'' to include doctors of dental surgery or dental medicine acting within the scope of their licenses.

Subsec. (r)(3). Pub. L. 96–499, §951(a), substituted provisions relating to doctors of podiatric medicine for provisions relating to doctors of podiatry and surgical chiropody.

Subsec. (r)(4). Pub. L. 96–499, §937(a), substituted ''services related to the condition of aphakia'' for ''establishing the necessity for prosthetic lenses''.

Subsec. (s)(2)(G). Pub. L. 96–499, §938(a), added subpar. (G).

Subsec. (s)(10) to (14). Pub. L. 96–611, §1(a)(1), added par. (10) and redesignated former pars. (10) to (13) as (11) to (14), respectively.

Subsec. (u). Pub. L. 96–499, §933(c), inserted ''comprehensive outpatient rehabilitation facility,'' after ''nursing facility''.

Pub. L. 96–499, §931(c), inserted ''detoxification facility,''.

Subsec. (v)(1)(G). Pub. L. 96–499, §902(a)(1), added subpar. (G).

Subsec. (v)(1)(H). Pub. L. 96–499, §930(p), added subpar. (H).

Subsec. (v)(1)(I). Pub. L. 96–499, §952(a), formerly §952, as redesignated by Pub. L. 97–248, §127(1), added subpar. (I).

Subsec. (z). Pub. L. 96–499, §933(d), which purported to substitute ''skilled nursing facility, comprehensive outpatient rehabilitation facility,'' for ''extended care facility,'' was executed by inserting ''comprehensive outpatient rehabilitation facility,'' after ''skilled nursing facility,'' as the probable intent of Congress, in view of the substitution of ''skilled nursing facility'' for ''extended care facility'' by section 278(b)(6) of Pub. L. 92–603.

Subsec. (aa)(1)(A). Pub. L. 96–611, §1(b)(3), inserted reference to items and services described in subsection (s)(10) of this section.

Subsec. (bb). Pub. L. 96–499, §931(d), added subsec. (bb).

Subsec. (cc). Pub. L. 96–499, §933(e), added subsec. (cc).

1978—Subsec. (s)(2)(F). Pub. L. 95–292 added subpar. (F).

1977—Subsec. (j)(11). Pub. L. 95–142, §3(a)(2), substituted provisions relating to compliance with requirements of section 1320a–3 of this title, for provisions relating disclosure of ownership, corporate status, etc., information to the Secretary or his delegate.

Subsec. (j)(13). Pub. L. 95–142, §21(a), struck out ''; and'' after ''nursing facilities''.

Subsec. (j)(14). Pub. L. 95–142, §21(a), added par. (14).

Subsec. (s). Pub. L. 95–210, §1(g), (h), added subpar. (E) of par. (2) and in provisions following par. (9) inserted '', a rural health clinic,'' after ''independent of a physician's office''.

Subsec. (s)(6). Pub. L. 95–216 inserted ''(which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe)'' after ''wheelchairs''.

Subsec. (v)(1)(F). Pub. L. 95–142, §19(b)(1), added subpar. (F).

Subsec. (w)(2). Pub. L. 95–142, §5(m), inserted ''part B of this subchapter or under'' after ''or entitled to have payment made for such services under''.

Subsec. (aa). Pub. L. 95–210, §1(d), added subsec. (aa).

1975—Subsec. (e)(5). Pub. L. 94–182, §102, substituted ''January 1, 1979'' for ''January 1, 1976''.

Subsec. (j)(13). Pub. L. 94–182, §106(a), substituted ''23d edition, 1973'' for ''21st edition, 1967''.

Subsec. (w). Pub. L. 94–182, §112(a)(1), designated existing provisions as par. (1) and added par. (2).

1972—Subsec. (a)(2). Pub. L. 92–603, §278(a)(4), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

Subsec. (b)(6). Pub. L. 92–603, §§227(a), 276(a), redesignated existing second sentence of subsec. (b) as par. (6) and in subsec. (b)(6) as so designated inserted reference to services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of podiatry, approved by the Council on Podiatry Education of the American Podiatry Association.

Subsec. (b)(7). Pub. L. 92–603, §227(a), added par. (7).

Subsec. (e). Pub. L. 92–603, §211(b), inserted reference to section 1395f(f) of this title in the provisions preceding par. (1), inserted reference to sections 1395f(f)(2) of this title after ''For purposes of sections 1395f(d) and 1395n(b) of this title (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections),'', and inserted provisions for accreditation by the Joint Commission on Accreditation of Hospitals.

Subsec. (e)(8). Pub. L. 92–603, §234(a), added par. (8). Former par. (8) redesignated (9).

Subsec. (e)(9). Pub. L. 92–603, §§234(a), 244(c), redesignated former par. (8) as (9) and struck out provisions requiring that other requirements not be higher than the comparable requirements prescribed for the accreditation of hospitals by the Joint Commission on Accreditation of Hospitals.

Subsecs. (f)(2), (g)(2). Pub. L. 92–603, §234(b), (c), inserted reference to par. (9) of subsec. (e) of this section.

Subsec. (h). Pub. L. 92–603, §278(a)(5), substituted ''skilled nursing facility'' for ''extended care facility'', ''skilled nursing facilities'' for ''extended care facilities'' and ''a'' for ''an''.

Subsec. (i). Pub. L. 92–603, §§248, 278(a)(6), (b)(10), extended the class of persons qualifying to be deemed as having been an inpatient in a hospital immediately before transfer therefrom by designating as clause (A) the existing requirement that the person have been admitted to the skilled nursing facility within 14 days after discharge from such hospital and adding cls. (B) and (C) and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (j). Pub. L. 92–603, §278(a)(7), substituted ''skilled nursing facility'' for ''extended care facility'' in provisions preceding par. (1).

Subsec. (j)(10). Pub. L. 92–603, §234(d), added par. (10). Former par. (10) redesignated par. (11) by section 234(d)(2) of Pub. L. 92–603 and again redesignated par. (15) by section 246(b)(2) of Pub. L. 92–603.

Subsec. (j)(11) to (13). Pub. L. 92–603, §246(b)(3), added pars. (11) to (13).

Subsec. (j)(15). Pub. L. 92–603, §§234(d), 246(b)(2), (4), 265, 267, 278(b)(13), redesignated former par. (10) as (11), amended par. (11) as thus redesignated by inserting provisions that the Secretary shall not require as a condition of participation that medical social services be furnished in any such institution, redesignated such par. (11) as thus amended as par. (15), and inserted provision that all information concerning skilled nursing facilities required to be filed with the Secretary be made available to Federal and state employees for purposes consistent with the effective administration of programs established under subchapters XVIII and XIX and inserted provision for the waiver of the registered nurse requirement in skilled nursing facilities in rural areas.

Subsec. (k). Pub. L. 92–603, §§237(c), 278(a)(8), inserted provisions authorizing the Secretary to utilize the procedures established under subchapter XIX of this chapter if such procedures were determined to be superior in their effectiveness and substituted ''skilled nursing facility'' for ''extended care facility'', ''skilled nursing facilities'' for ''extended care facilities'', and ''a'' for ''an''.

Subsec. (*l*). Pub. L. 92–603, §278(a)(9), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

Subsec. (m)(7). Pub. L. 92–603, §278(a)(10), substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (n). Pub. L. 92–603, §278(a)(11), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

Subsec. (*o*)(5), (6). Pub. L. 92–603, § 234(e), added par. (5) and redesignated former par. (5) as (6).

Subsec. (p). Pub. L. 92–603, § 251(a)(1), (b)(1), inserted provisions covering physical therapy services of a licensed physical therapist other than under an arrangement with and under the supervision of a provider of services, clinic, rehabilitation agency, or public health agency, inserted ''In addition, such term includes physical therapy services which meet the requirements of the first sentence of this subsection except that they are furnished to an individual as an inpatient of a hospital or extended care facility'', and extended definition of ''outpatient physical therapy services'' to include outpatient speech pathology services.

Subsec. (q). Pub. L. 92–603, § 227(f), substituted ''subsection (b)(6) of this section'' for ''the last sentence of subsection (b) of this section'' in parenthetical phrase.

Subsec. (r). Pub. L. 92–603, §§ 211(c)(2), 256(b), 264(a), 273(a), inserted ''or (C) the certification required by section 1395x(a)(2)(E) of this title,'' inserted provision so as to include doctors in one of the specified arts legally authorized to practice such art in the country in which inpatient hospital services referred to in section 1395y(a)(4) are furnished, added cl. (4) covering doctors of optometry who are legally authorized to practice optometry by the State in which they perform such functions, but only with respect to establishing the necessity for prosthetic lenses, and added cl. (5) providing for the inclusion of chiropractor services.

Subsec. (s)(8). Pub. L. 92–603, § 252(a), inserted (including colostomy bags and supplies directly related to colostomy care)'' after ''organ''.

Subsec. (u). Pub. L. 92–603, §§ 227(d)(1), 278(a)(12), substituted ''skilled nursing facility, or home health agency, or, for purposes of sections 1395(g) and 1395n(e) of this title, a fund.'' for ''extended care facility, or home health agency.''.

Subsec. (v)(1). Pub. L. 92–603, §§ 223(a), (b), (c), (d), 227(c)(1), (2), (3), (4), 249(b), 278(b)(11), inserted definition of the costs of services, inserted provision that the regulation for the establishment of limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services to be recognized as reasonably based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this subchapter, inserted parenthetical provisions covering exclusion of costs, substituted ''the necessary costs of efficiently delivering covered services covered by the insurance programs'' for ''the costs with respect to individuals covered by the insurance programs'', designated existing provisions as subpars. (A) and (B), and added subpars. (C), (D), and (E), and substituted ''skilled nursing facilities'' for ''extended care facilities''.

Subsec. (v)(3). Pub. L. 92–603, § 278(a)(13), substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (v)(4). Pub. L. 92–603, § 223(f), added par. (4). Former par. (4) redesignated (6).

Subsec. (v)(5). Pub. L. 92–603, § 251(c), added par. (5).

Subsec. (v)(6). Pub. L. 92–603, §§ 223(f), 251(c), redesignated former par. (4) as (6).

Subsec. (v)(7). Pub. L. 92–603, §§ 221(c)(4), 223(b), 251(c), added par. (7).

Subsecs. (w), (y). Pub. L. 92–603, § 278(a)(14), (15), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

Subsec. (z). Pub. L. 92–603, §§ 234(b), 278(b)(6), added subsec. (z) and substituted ''skilled nursing facility'' for ''extended care facility''.

1971—Subsec. (e)(5). Pub. L. 91–690 authorized the Secretary, until January 1, 1976, to waive the requirement relating to the provision of 24 hour nursing service rendered or supervised by a registered professional nurse.

1968—Subsec. (e). Pub. L. 90–248, § 129(c)(9)(C), inserted reference to section 1395n(b) in first and third sentences and inserted ''or diagnostic services'' after ''hospital services'' in third sentence.

Pub. L. 90–248, § 143(a), in second sentence after par. (8), changed definition of hospitals for purposes of making payments for emergency hospital services by deleting provision that hospital meet requirements of pars. (1) to (4), by requiring that such hospitals have full-time nursing services, be licensed as a hospital, and be primarily engaged in providing not nursing care and related services but medical or rehabilitative care by or under the supervision of a doctor of medicine or osteopathy.

Subsec. (p). Pub. L. 90–248, §§ 129(c)(10), 133(b), struck out definition of ''outpatient hospital diagnostic services'' and inserted definition of ''outpatient physical therapy services'', respectively.

Subsec. (r)(3). Pub. L. 90–248, § 127(a), added cl. (3).

Subsec. (s). Pub. L. 90–248, § 144(a)–(c), struck out ''(unless they would otherwise constitute inpatient hospital services, extended care services, or home health services)'' after ''items or services'' in text preceding par. (1), inserted after ''hospital'' in sentence following par. (9) ''which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1395f(d) of this title)'', and inserted sentence following par. (13) providing that medical and other health services (other than physicians' services and services incident to physicians' services) furnished a patient of a facility which meets the definition of a hospital for emergency services will be covered under the medical insurance program only if such facility satisfies such health and safety requirements as are appropriate for the item or service furnished as the Secretary may determine are necessary.

Subsec. (s)(2)(A) to (C). Pub. L. 90–248, § 129(a), designated existing provisions as subpars. (A) and (B) and added subpar. (C).

Subsec. (s)(2)(D). Pub. L. 90–248, § 133(a), added subpar. (D).

Subsec. (s)(3). Pub. L. 90–248, § 134(a), included in medical and other health services diagnostic X-ray tests furnished in the patient's home under the supervision of a physician if the tests meet such health and safety conditions as the Secretary finds necessary.

Subsec. (s)(6). Pub. L. 90–248, § 132(a), provided that payments may be made with respect to expenses incurred in the purchase as well as in the rental of durable medical equipment.

Pub. L. 90–248, § 144(d), inserted ''other than in institution that meets the requirements of subsection (e)(1) or (j)(1) of this section''.

Subsec. (s)(12), (13). Pub. L. 90–248, § 129(b), added pars. (12) and (13) which excluded from the diagnostic services referred to in par. (2)(C) (other than physician's services) certain items or service.

Subsec. (y)(3). Pub. L. 90–248, § 129(c)(11), substituted ''1395e(a)(3)'' for ''1395e(a)(4)''.

1966—Subsec. (v)(1). Pub. L. 89–713 inserted provisions which required that, in the case of extended care services furnished by proprietary facilities, the regulations include provision for specific recognition of a reasonable return on equity capital and which placed a limitation on the rate of return of one and one-half times the average of the rates of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 107(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the first day of the first month beginning more than one year after the date of the enactment of this Act [Oct. 31, 1994].''

Amendment by section 145(b) of Pub. L. 103–432 applicable to mammography furnished by the facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

Section 146(c) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 1995.''

Amendment by section 147(e)(1), (4), (5), (f)(3), (4)(A), (6)(A), (B), (E) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320a–3a of this title.

Section 158(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to cost reporting periods beginning on or after July 1, 1996.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13503(c)(2) of Pub. L. 103–66 provided that: ''The amendments made by paragraph (1) [amending this section and section 1395*oo* of this title] shall take effect October 1, 1993.''

Section 13553(c) of Pub. L. 103–66 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to items furnished on or after January 1, 1994.''

Section 13554(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1994.''

Section 13556(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 4161(a)(2)(C) of OBRA–1990 [Pub. L. 101–508].''

Section 13564(b)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1993.''

Section 13566(c) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and section 1395rr of this title] shall apply to erythropoietin furnished on or after January 1, 1994.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4008(h)(2)(A)(i) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 4008(h)(2)(P) of Pub. L. 101–508, set out as a note under section 1395i–3 of this title.

Amendment by section 4152(a)(2) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1, 1991, see section 4152(a)(3) of Pub. L. 101–508, set out as a note under section 1395m of this title.

Section 4153(b)(2)(C) of Pub. L. 101–508 provided that: ''The amendments made by subparagraphs (A) and (B) [amending this section and section 1395y of this title] shall apply to items furnished on or after January 1, 1991.''

Amendment by section 4155(a), (d) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4155(e) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4157(a) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4157(d) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4161(a)(1), (2), (5) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(8) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Section 4161(b)(5) of Pub. L. 101–508 provided that: ''This subsection [amending this section and section 1395*oo* of this title and enacting provisions set out as a note below] shall take effect on October 1, 1991, except that the amendment made by paragraph (4) [amending section 1395*oo* of this title] shall apply to cost reports for periods beginning on or after October 1, 1991.''

Amendment by section 4162(a) of Pub. L. 101–508 applicable with respect to partial hospitalization services provided on or after Oct. 1, 1991, see section 4162(c) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4163(a) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

Section 4201(d)(3)[(4)] of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 1395rr of this title] shall apply to items and services furnished on or after July 1, 1991.''

Section 4207(d)(4), formerly 4027(d)(3), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, §160(d)(4), (10), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to home health agency cost reporting periods beginning on or after July 1, 1991.''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6112(e)(1) of Pub. L. 101–239 applicable with respect to items furnished on or after Jan. 1, 1990, see section 6112(e)(4) of Pub. L. 101–239, set out as a note under section 1395m of this title.

Amendment by section 6113(a)–(b)(2) of Pub. L. 101–239 applicable to services furnished on or after July 1, 1990, see section 6113(e) of Pub. L. 101–239, set out as a note under section 1395*l* of this title.

Amendment by section 6114(a), (d) of Pub. L. 101–239 applicable to services furnished on or after Apr. 1, 1990, see section 6114(f) of Pub. L. 101–239, set out as a note under section 1395u of this title.

Section 6115(d) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and sections 1395y, 1395aa, 1395bb, 1396a, and 1396n of this title] shall apply to screening pap smears performed on or after July 1, 1990.''

Amendment by section 6131(a)(2) of Pub. L. 101–239 applicable with respect to therapeutic shoes and inserts furnished on or after July 1, 1989, with additional provisions regarding applicability of the increase under section 1395*l*(*o*)(2)(C) of this title, see section 6131(c) of Pub. L. 101–239, set out as a note under section 1395*l* of this title.

Section 6141(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

Section 6213(d) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, §4207(k)(4), formerly §4027(k)(4), Nov. 5, 1990, 104 Stat. 1388–125, renumbered Pub. L. 103–432, title I, §160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by subsections (a) through (c) of this section [amending this section] shall apply to services furnished on or after October 1, 1989.''

Amendment by section 101(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8423(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to services furnished on or after January 1, 1989.''

Section 8424(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective with respect to services provided after December 31, 1988.''

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 104(d)(4) of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Amendment by section 202(a) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 203(b), (e)(1) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 204(a) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 205(b) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 205(f) of Pub. L. 100–360, set out as a note under section 1395k of this title.

Section 206(b) of Pub. L. 100–360, which provided that the amendment of this section by section 206(a) of Pub. L. 100–360 applied to services furnished in cases of initial periods of home health services beginning on or after January 1, 1990, was repealed by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(d)(5)(A), (g)(3)(H), (h)(1)(B)–(3)(A), (4)(D), (5)–(7)(A), (E), (F), (i)(3), (4)(C)(iii), (*l*)(1)(B), (C) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(d)(1)(B)(ii) of Pub. L. 100–360 provided that: ''The amendment made by clause (i) [amending this section] shall apply to equipment furnished on or after the effective date provided in section 4021(c) of OBRA [Pub. L. 100–203, set out below].''

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4009(e)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to services furnished on or after April 1, 1988.''

Section 4021(c) of Pub. L. 100–203 provided that: ''Except as otherwise provided, the amendments made by subsections (a) and (b) [enacting section 1395bbb of this title and amending this section] shall apply to home health agencies as of the first day of the 18th calendar month that begins after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4026(a)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(d)(5)(B), July 1, 1988, 102 Stat. 775, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after July 1, 1989.''

Section 4064(e)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to diagnostic tests performed on or after January 1, 1990.''

Section 4065(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section and section 1395rr of this title] shall become effective on January 1, 1988.''

Section 4070(c)(2) of Pub. L. 100–203 provided that:

''(A) The amendments made by subsection (b) [amending this section and sections 1395*l* and 1395n of this title] shall become effective on the date of enactment of this Act [Dec. 22, 1987].

''(B) The Secretary of Health and Human Services shall implement the amendments made by subsection (b) so as to ensure that there is no additional cost to the medicare program by reason of such amendments.''

Section 4071(b) of Pub. L. 100–203 provided that:

''(1) The provisions of subsection (e) of section 4072 of this subpart [section 4072(e) of Pub. L. 100–203, set out below] shall apply to this section [amending this section] in the same manner as it applies to section 4072. [Amendments became effective pursuant to final report dated Apr. 26, 1993. See Cong. Rec., vol. 139, p. H2595, Daily Issue, Ex. Comm. 1254.]

''(2) In conducting the demonstration project pursuant to paragraph (1), in order to determine the cost effectiveness of including influenza vaccine in the medicare program, the Secretary of Health and Human Services is required to conduct a demonstration of the provision of influenza vaccine as a service for medicare beneficiaries and to expend $25,000,000 each year of the demonstration project for this purpose. In conducting this demonstration, the Secretary is authorized to purchase in bulk influenza vaccine and to distribute it in a manner to make it widely available to medicare beneficiaries, to develop projects to provide vaccine in the same manner as other covered medicare services in large scale demonstration projects, including statewide projects, and to engage in other appropriate use of moneys to provide influenza vaccine to medicare beneficiaries and evaluate the cost effectiveness of its use. In determining cost effectiveness, the Secretary shall consider the direct cost of the vaccine, the utilization of vaccine which might otherwise not have occurred, the costs of illnesses and nursing home days avoided, and other relevant factors, except that extended life for beneficiaries shall not be considered to reduce the cost effectiveness of the vaccine.''

Section 4072(e) of Pub. L. 100–203 provided that:

''(1) The amendments made by this section [amending this section and sections 1395*l*, 1395y, 1395aa, 1395bb, 1396a, and 1396n of this title] shall become effective (if at all) in accordance with paragraph (2).

''(2)(A) The Secretary of Health and Human Services (in this paragraph referred to as the 'Secretary'), shall establish a demonstration project to begin on October 1, 1988, to test the cost-effectiveness of furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section to a sample group of medicare beneficiaries.

''(B)(i) The demonstration project under subparagraph (A) shall be conducted for an initial period of 24 months. Not later than October 1, 1990, the Secretary shall report to the Congress on the results of such project. If the Secretary finds, on the basis of existing data, that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is cost-effective, the Secretary shall include such finding in such report, such project shall be discontinued, and the amendments made by this section shall become effective on November 1, 1990.

''(ii) If the Secretary determines that such finding cannot be made on the basis of existing data, such project shall continue for an additional 24 months. Not later than April 1, 1993, the Secretary shall submit a final report to the Congress on the results of such project. The amendments made by this section shall become effective on the first day of the first month to begin after such report is submitted to the Congress unless the report contains a finding by the Secretary that furnishing therapeutic shoes under the medicare program to the extent provided under the amendments made by this section is not cost-effective (in which case the amendments made by this section shall not become effective).''

[Amendments by section 4072 of Pub. L. 100–203 became effective pursuant to final report dated Apr. 26, 1993. See Cong. Rec., vol. 139, p. H2595, Daily Issue, Ex. Comm. 1252.]

Amendment by section 4073(a), (c) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4073(e) of Pub. L. 100–203, set out as a note under section 1395k of this title.

Section 4074(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to services performed on or after January 1, 1988.''

Section 4075(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to drugs dispensed on or after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4076(b) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this sec-

tion] shall apply with respect to services furnished on or after January 1, 1989.''

Section 4077(a)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to services furnished on or after the date of enactment of this Act [Dec. 22, 1987].''

Amendment by section 4077(b)(1), (4) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4077(b)(5) of Pub. L. 100–203, as amended, set out as a note under section 1395k of this title.

Amendment by section 4084(c)(1) of Pub. L. 100–203 applicable to services furnished after Dec. 31, 1988, see section 4084(c)(3) of Pub. L. 100–203, as added, set out as a note under section 1395*l* of this title.

Amendments by section 4201(a)(1), (b)(1), (d)(1), (2), (5) of Pub. L. 100–203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date, except as otherwise specifically provided in section 1395i–3 of this title, see section 4204(a) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9305(c)(4) of Pub. L. 99–509 provided that: ''The amendments made by this subsection [amending this section and section 1395bb of this title] shall apply to hospitals as of one year after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9313(a)(3) of Pub. L. 99–509 provided that: ''The amendments made by this paragraph [probably means ''this subsection'' which amended this section and section 1395ff of this title] take effect on the date of the enactment of this Act [Oct. 21, 1986].''

Amendment by section 9320(b), (c), (f) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9335(c)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to immunosuppressive drugs furnished on or after January 1, 1987.''

Section 9336(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after April 1, 1987.''

Amendment by section 9337(d) of Pub. L. 99–509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99–509, set out as a note under section 1395k of this title.

Section 9338(f) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall apply to services furnished on or after January 1, 1987.''

Section 9107(c)(2) of Pub. L. 99–272 provided that: ''The amendments made by subsection (b) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1985.''

Section 9110(b) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall be applied as though they were originally included in the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

Section 9202(i)(2) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after July 1, 1985.''

Amendment by section 9219(b)(1)(B) of Pub. L. 99–272 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 9219(b)(1)(D) of Pub. L. 99–272, set out as a note under section 1395u of this title.

Section 9219(b)(3)(B) of Pub. L. 99–272 provided that: ''The amendment made by subparagraph (A) [amending this section] shall be effective as if it had been originally included in the Social Security Amendments of 1983 [Pub. L. 98–21].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Section 2314(c)(1), (2) of Pub. L. 98–369 provided that: ''(1) Clause (i) of section 1861(v)(1)(O) of the Social Security Act [subsec. (v)(1)(O)(i) of this section] shall not apply to changes of ownership of assets pursuant to an enforceable agreement entered into before the date of the enactment of this Act [July 18, 1984].

''(2) Clause (iii) of section 1861(v)(1)(O) of such Act [subsec. (v)(1)(O)(iii) of this section] shall apply to costs incurred on or after the date of the enactment of this Act.''

Section 2318(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2319(a) of Pub. L. 98–369 applicable to cost reporting periods beginning on or after July 1, 1984, see section 2319(c) of Pub. L. 98–369, set out as an Effective Date note under section 1395yy of this title.

Amendment by section 2321(e) of Pub. L. 98–369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2322(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2323(a) of Pub. L. 98–369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2324(b) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to items and services purchased on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2335(b) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2340(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2341(a), (c) of Pub. L. 98–369 applicable to services furnished on or after July 18, 1984, see section 2341(d) of Pub. L. 98–369, set out as a note under section 1395k of this title.

Amendment by section 2342(a) of Pub. L. 98–369 applicable to plans of care established on or after July 18, 1984, see section 2342(c) of Pub. L. 98–369, set out as a note under section 1395n of this title.

Section 2343(c) of Pub. L. 98–369 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(18)–(29) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 602(d) of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any

change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 309(c)(1) of Pub. L. 97–448, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 101(a)(2) of Pub. L. 97–248 applicable to cost reporting periods beginning on or after Oct. 1, 1982, see section 101(b)(1) of Pub. L. 97–248, set out as an Effective Date note under section 1395ww of this title.

Section 102(b) of Pub. L. 97–248, as amended by Pub. L. 98–21, title VI, § 605(a), Apr. 20, 1983, 97 Stat. 169, provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1983.''

Section 103(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods ending after September 30, 1982, but in the case of any cost reporting period beginning before October 1, 1982, any reduction in payments under title XVIII of the Social Security Act [this subchapter] to a hospital or skilled nursing facility resulting from such amendment shall be imposed only in proportion to the part of the period which occurs after September 30, 1982.''

Section 105(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods beginning on or after the date of the enactment of this Act [Sept. 3, 1982].''

Section 106(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to any costs incurred under title XVIII of the Social Security Act [this subchapter], except that it shall not apply to costs which have been allowed prior to the date of the enactment of this Act [Sept. 3, 1982] pursuant to the final court order affirmed by a United States Court of Appeals.''

Section 107(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to costs incurred after the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 109(b)(2) of Pub. L. 97–248 effective Sept. 3, 1982, see section 109(c)(1) of Pub. L. 97–248, set out as a note under section 1395xx of this title.

Section 109(c)(3) of Pub. L. 97–248 provided that: ''The amendment made by subsection (b)(1) [amending this section] shall not apply to contracts entered into before the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 122(d) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

Section 128(e) of Pub. L. 97–248, as amended by Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

''(1) Any amendment to the Omnibus Budget Reconciliaton [Reconciliation] Act of 1981 [Pub. L. 97–35] made by this section [amending provisions set out as notes under sections 426 and 1395x of this title] shall be effective as if it had been originally included in the provision of the Omnibus Budget Reconciliation Act of 1981 to which such amendment relates.

''(2) Except as otherwise provided in this section, any amendment to the Social Security Act [this chapter] or the Internal Revenue Code of 1986 [formerly I.R.C. 1954] [Title 26, Internal Revenue Code] made by this section (other than subsection (d)) [amending this section and sections 1395y, 1395cc, and 1395uu of this title and section 162 of Title 26] shall be effective as if it had been originally included as a part of that provision of the Social Security Act or Internal Revenue Code of 1986 to which it relates, as such provision of such Act or Code was amended by the Omnibus Budget Reconciliaton [Reconciliation] Act of 1981 [Pub. L. 97–35].

''(3) The amendments made by subsection (d) [amending this section and sections 1395u, 1395bb, 1395cc, and 1395gg of this title] shall take effect upon enactment [Sept. 3, 1982].''

Amendment by section 148(b) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2102(b)(1) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section], shall apply to services provided on or after the first day of the first month beginning after the date of the enactment of this Act [Aug. 13, 1981].''

Amendment by section 2121(c), (d) of Pub. L. 97–35 applicable to services furnished in detoxification facilities for inpatient stays beginning on or after the tenth day after Aug. 13, 1981, see section 2121(i) of Pub. L. 97–35, set out as a note under section 1395d of this title.

Section 2141(c) of Pub. L. 97–35 provided that:

''(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to cost reporting periods ending after September 30, 1981.

''(2) In the case of a cost reporting period beginning before October 1, 1981, any reduction in payments resulting from the amendment made by subsection (a) shall be imposed only in proportion to the part of the period that occurs after September 30, 1981.''

Section 2143(b) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, § 128(c)(1), Sept. 3, 1982, 96 Stat. 367, provided that:

''(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to cost reporting periods ending after September 30, 1981.

''(2) In the case of a cost reporting period beginning before October 1, 1981, any reduction in payments resulting from the amendment made by subsection (a) shall be imposed only in proportion to the part of the period that occurs after September 30, 1981.''

Section 2144(b) of Pub. L. 97–35 provided that:

''(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply to cost reporting periods ending after September 30, 1981.

''(2) In the case of a cost reporting period beginning before October 1, 1981, any reduction in payments resulting from the amendment made by subsection (a) shall be imposed only in proportion to the part of the period that occurs after September 30, 1981.''

For effective date, savings, and transitional provisions relating to amendment by section 2193(c)(9) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–611 effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395*l* of this title.

Section 902(c) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section and sections 1320c–7 and 1396a of this title] shall become effective on the date of [probably should be ''on''] which final regulations, promulgated by the Secretary to implement such amendments, are first issued; and those regulations shall be issued not later than the first day of the sixth month following the month in which this Act is enacted [December 1980].''

Section 930(s) of Pub. L. 96–499 provided that:

''(1) the amendments made by this section [amending this section, sections 426, 1395c, 1395d, 1395f, 1395h, 1395k, 1395*l*, and 1395n of this title, and section 231f of

Title 45, Railroads, and repealing section 1395m of this title] shall become effective with respect to services furnished on or after July 1, 1981, except that the amendments made by subsections (n)(1) and (*o*) [amending this section and section 1395h of this title] shall become effective on the date of the enactment of this Act [Dec. 5, 1980].

''(2) The Secretary of Health and Human Services shall take administrative action to assure that improvements, in accordance with the amendment made by subsection (n)(1) [amending this section], will be made not later than June 30, 1981.''

Amendment by section 931(c), (d) of Pub. L. 96–499 effective Apr. 1, 1981, see section 931(e) of Pub. L. 96–499, set out as a note under section 1395d of this title.

Amendment by section 933(c)–(e) of Pub. L. 96–499 effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period beginning on or after July 1, 1981, see section 933(h) of Pub. L. 96–499, set out as a note under section 1395k of this title.

Amendment by section 936(a) of Pub. L. 96–499 applicable with respect to services provided on or after July 1, 1981, see section 936(d) of Pub. L. 96–499, set out as a note under section 1395f of this title.

Section 937(c) of Pub. L. 96–499, as amended by Pub. L. 98–369, div. B, title III, § 2354(c)(1)(B), July 18, 1984, 98 Stat. 1102, provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after July 1, 1981.''

Section 938(b) of Pub. L. 96–499 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1981.''

Section 948(c)(1) of Pub. L. 96–499 provided that: ''The amendments made by subsection (a) [amending this section and section 1395k of this title] shall apply with respect to cost accounting periods beginning on or after October 1, 1978. A hospital's election under section 1861(b)(7)(A) of the Social Security Act [subsec. (b)(7)(A) of this section] (as administered in accordance with section 15 of Public Law 93–233) as of September 30, 1978, shall constitute such hospital's election under such section (as amended by subsection (a)(1)) on and after October 1, 1978, until otherwise provided by the hospital.''

Section 951(c) of Pub. L. 96–499 provided that: ''The amendments made by this section [amending this section] shall take effect on January 1, 1981.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENTS

Section 501(c) of Pub. L. 95–216 provided that: ''The amendments made by this section [amending this section and section 1395u of this title] shall be effective in the case of items and services furnished after the date of the enactment of this Act [Dec. 20, 1977].''

Amendment by Pub. L. 95–210 applicable to services rendered on or after the first day of the third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95–210, set out as a note under section 1395k of this title.

Amendment by section 3(a)(2) of Pub. L. 95–142 effective Oct. 25, 1977, see section 3(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–3 of this title.

Amendment by section 19(b)(1) of Pub. L. 95–142 effective with respect to operation of a hospital, skilled nursing facility, or intermediate care facility on and after the first day of its first fiscal year which begins after the end of the six-month period beginning on the date a uniform reporting system is established under section 1320a(a) of this title for that type of health services facility, except that for other types of facilities or organizations effective with respect to operations on and after the first day of its first fiscal year which begins after such date as the Secretary determines to be appropriate for the implementation of the reporting requirement for that type of facility or organization, see section 19(c)(2) of Pub. L. 95–142, set out as a note under section 1396a of this title.

Section 21(c)(1) of Pub. L. 95–142 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective on the first day of the first calendar quarter which begins more than six months after the date of enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 106(b) of Pub. L. 94–182 provided that: ''Subject to subsection (c) [enacting provisions set out below], the amendment made by subsection (a) [amending this section] shall be effective on the first day of the sixth month which begins after the date of enactment of this Act [Dec. 31, 1975].''

Section 112(d) of Pub. L. 94–182 provided that: ''The amendments made by this section [amending this section and sections 1320c–17 and 1395g of this title] shall be effective with respect to utilization review activities conducted on and after the first day of the first month which begins more than 30 days after the date of enactment of this Act [Dec. 31, 1975].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 211(b), (c)(2) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Section 223(h) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1395cc of this title] shall be effective with respect to accounting periods beginning after December 31, 1972.''

Section 227(g) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395f, 1395k, 1395n, 1395u, and 1395cc of this title] shall apply with respect to accounting periods beginning after June 30, 1973.''

Section 234(i) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and sections 1395f, 1395z, and 1395bb of this title] shall apply with respect to any provider of services for fiscal years (of such provider) beginning after the fifth month following the month in which this Act is enacted [October 1972].''

Section 246(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1396 of this title] shall be effective July 1, 1973.''

Section 251(d) of Pub. L. 92–603, as amended by Pub. L. 93–233, § 17(a), Dec. 31, 1973, 87 Stat. 967, provided that:

''(1) The amendments made by subsection (a) [amending this section and sections 1395*l* and 1395k of this title] shall apply with respect to services furnished on or after July 1, 1973.

''(2) The amendments made by subsection (b) [amending this section and section 1395n of this title] shall apply with respect to services furnished on or after the date of enactment of this Act [Oct. 30, 1972].

''(3) The amendments made by subsection (c) [amending this section] shall be effective with respect to accounting periods beginning after the month in which there are promulgated, by the Secretary of Health, Education, and Welfare, final regulations implementing

the provisions of section 1861(v)(5) of the Social Security Act [subsec. (v)(5) of this section].''

Section 252(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to items furnished on or after the date of the enactment of this Act [Oct. 30, 1972].''

Amendment by section 256(b) of Pub. L. 92–603 applicable with respect to admissions occurring after the second month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1972, see section 256(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Section 264(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply only with respect to services performed on or after the date of the enactment of this Act [Oct. 30, 1972].''

Section 273(b) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to services furnished after June 30, 1973.''

Section 276(b) of Pub. L. 92–603 provided that: ''The amendment made by this section [amending this section] shall apply with respect to accounting periods beginning after December 31, 1972.''

Amendment by section 283(a) of Pub. L. 92–603 to apply with respect to services rendered after Dec. 31, 1972, see section 283(c) of Pub. L. 92–603, set out as a note under section 1395n of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 127(c) of Pub. L. 90–248 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395y of this title] shall apply with respect to services furnished after December 31, 1967.''

Amendment by section 129(a), (b), (c)(9)(C), (10), (11) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Amendment by section 132(a) of Pub. L. 90–248 applicable with respect to items purchased after Dec. 31, 1967, see section 132(c) of Pub. L. 90–248, set out as a note under section 1395*l* of this title.

Amendment by section 133(a), (b) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub. L. 90–248, set out as a note under section 1395k of this title.

Section 134(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services furnished after December 31, 1967.''

Amendment by section 143(a) of Pub. L. 90–248 effective July 1, 1966, see section 143(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Section 144(e) of Pub. L. 90–248 provided that: ''The amendments made by this section [amending this section] shall apply with respect to services furnished after March 31, 1968.''

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89–713 effective Nov. 2, 1966, see section 6 of Pub. L. 89–713, set out as a note under section 6091 of Title 26, Internal Revenue Code.

REVISIONS OF COVERAGE FOR IMMUNOSUPPRESSIVE DRUG THERAPY

Section 160(c) of Pub. L. 103–432 provided that: ''The Secretary of Health and Human Services may administer section 1861(s)(2)(J) of the Social Security Act (42 U.S.C. 1395x(s)(2)(J)) in a manner such that the months of coverage of drugs described in such section are provided consecutively, so long as the total number of months of coverage provided is the same as the number of months described in such section.''

FREEZE IN PER VISIT COST LIMITS FOR HOME HEALTH SERVICES

Section 13564(a)(1) of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services shall not provide for any change in the per visit cost limits for home health services under section 1861(v)(1)(L) of such Act [subsec. (v)(1)(L) of this section] for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996, except as may be necessary to take into account the amendment made by subsection (b)(1) [amending this section]. The effect of the preceding sentence shall not be considered by the Secretary in making adjustments pursuant to section 1861(v)(1)(L)(ii) of such Act to the payment limits for such services during such cost reporting periods.''

STUDY AND REPORT ON EFFECTS OF COVERAGE OF OSTEOPOROSIS DRUGS

Section 4156(b) of Pub. L. 101–508 directed Secretary of Health and Human Services to conduct a study analyzing effects of coverage of osteoporosis drugs under part B of this subchapter on health of individuals enrolled under such part and utilization of inpatient hospital and extended care services by such individuals, and, by not later than Oct. 1, 1994, to submit a report to Congress on such study, which was to include recommendations regarding expansion of coverage under the medicare program of items and services for individuals with post-menopausal osteoporosis as the Secretary considered appropriate.

PRODUCTIVITY SCREENING GUIDELINES APPLICATION TO STAFF IN RURAL HEALTH CLINICS

Section 4161(b)(3) of Pub. L. 101–508 provided that: ''In employing any screening guideline in determining the productivity of physicians, physician assistants, nurse practitioners, and certified nurse-midwives in a rural health clinic, the Secretary of Health and Human Services shall provide that the guideline shall take into account the combined services of such staff (and not merely the service within each class of practitioner).''

DEVELOPMENT OF PROSPECTIVE PAYMENT SYSTEM FOR HOME HEALTH SERVICES

Section 4207(c), formerly 4027(c), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, § 160(d)(4), (9), Oct. 31, 1994, 108 Stat. 4444, directed Secretary of Health and Human Services to develop a proposal to modify the current system under which payment is made for home health services under this subchapter or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates, with Secretary to submit to Congress by not later than Apr. 1, 1993, the research findings upon which the proposal was to be based and by not later than Sept. 1, 1993, the proposal, and directed Prospective Payment Assessment Commission to submit to Congress by not later than Mar. 1, 1994, an analysis of and comments on the proposal.

APPLICATION OF BUDGET-NEUTRAL BASIS

Section 4207(d)(2), formerly 4027(d)(2), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''In updating the wage index for establishing limits under section 1861(v)(1)(L)(iii) of the Social Security Act [subsec. (v)(1)(L)(iii) of this section], the Secretary shall ensure that aggregate payments to home health agencies under title XVIII of such Act [this subchapter] will be no greater or lesser than such payments would have been without regard to such update.''

TRANSITION PROVISIONS FOR DETERMINING REASONABLE COSTS FOR HOME HEALTH AGENCY SERVICES

Section 4207(d)(3), formerly 4027(d)(3), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that, notwithstanding subsec. (v)(1)(L)(iii) of this section, the Secretary of Health and Human Services was to, in determining the limits of reasonable costs under this subchapter with respect to services furnished by a home health agency, utilize a wage index equal to (1)

for cost reporting periods beginning on or after July 1, 1991, and on or before June 30, 1992, a combined area wage index consisting of 67 percent of the area wage index applicable to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States, and 33 percent of the area wage index applicable to hospitals located in the geographic area in which the home health agency was located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States, and (2) for cost reporting periods beginning on or after July 1, 1992, and on or before June 30, 1993, a combined area wage index consisting of 33 percent of the area wage index applicable to such home health agency, determined using the survey of the 1982 wages and wage-related costs of hospitals in the United States, and 67 percent of the area wage index applicable to hospitals located in the geographic area in which the home health agency was located, determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States.

PERMITTING DENTIST TO SERVE AS HOSPITAL MEDICAL DIRECTOR

Section 6025 of Pub. L. 101–239 provided that: ''Notwithstanding the requirement that the responsibility for organization and conduct of the medical staff of an institution be assigned only to a doctor of medicine or osteopathy in order for the institution to participate as a hospital under the medicare program, an institution that has a doctor of dental surgery or of dental medicine serving as its medical director shall be considered to meet such requirement if the laws of the State in which the institution is located permit a doctor of dental surgery or of dental medicine to serve as the medical staff director of a hospital.''

RECOGNITION OF COSTS OF CERTAIN HOSPITAL-BASED NURSING SCHOOLS

Section 6205(a)(1)(A) of Pub. L. 101–239 provided that: ''The reasonable costs incurred by a hospital in training students of a hospital-based nursing school shall be allowable as reasonable costs under title XVIII of the Social Security Act [this subchapter] and reimbursed under such title on the same basis as if they were allowable direct costs of a hospital-operated educational program (other than an approved graduate medical education program) if, before June 15, 1989, and thereafter, the hospital demonstrates that for each year, it incurs at least 50 percent of the costs of training nursing students at such school, the nursing school and the hospital share some common board members, and all instruction is provided at the hospital or, if in another building, a building on the immediate grounds of the hospital.''

[Section 6205(a)(2) of Pub. L. 101–239 provided that: ''Paragraph (1)(A) [set out above] shall apply with respect to cost reporting periods beginning on or after the date of the enactment of this Act [Dec. 19, 1989] and on or before the date on which the Secretary issues regulations pursuant to subsection (b)(2)(A) [set out as a note under section 1395ww of this title].''']

DISSEMINATION OF RURAL HEALTH CLINIC INFORMATION

Section 6213(e) of Pub. L. 101–239 directed Secretary of Health and Human Services, not later than 60 days after Dec. 19, 1989, in consultation with the Director of the Office of Rural Health Policy, to disseminate to health care facilities and to the chief executive officer, chief health officer, and chief human services officer of each State, applications and other necessary information to enable such a facility to apply for designation as a rural health clinic for the purposes of this subchapter and subchapter XIX of this chapter.

TREATMENT OF CERTAIN FACILITIES AS RURAL HEALTH CLINICS

Section 6213(f) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall not deny certification of a facility as a rural health clinic under section 1861(aa)(2) of the Social Security Act [subsec. (aa)(2) of this section] if the facility is located on an island and would otherwise be qualified to be certified as such a facility but for the requirement that the services of a physician assistant or nurse practitioner be provided in the facility.''

CONTINUED USE OF HOME HEALTH WAGE INDEX IN EFFECT PRIOR TO JULY 1, 1989, UNTIL AFTER JULY 1, 1991

Section 6222 of Pub. L. 101–239 provided that: ''Notwithstanding the requirement of section 1861(v)(1)(L)(iii) of the Social Security Act [subsec. (v)(1)(L)(iii) of this section], the Secretary of Health and Human Services shall, in determining the limits of reasonable costs under title XVIII of the Social Security Act [this subchapter] with respect to services furnished by home health agencies, continue to utilize the wage index that was in effect for cost reporting periods beginning before July 1, 1989, until cost reporting periods beginning on or after July 1, 1991.''

PAYMENT FOR MEDICAL ESCORT OR MEDICAL ATTENDANT ON COMMERCIAL AIRLINER ALLOWED

Section 8427 of Pub. L. 100–647 provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services shall provide that in cases where (as of the date of the enactment of this Act [Nov. 10, 1988]) transportation on a commercial airliner is covered under section 1861(s)(7) of the Social Security Act [subsec. (s)(7) of this section], the Secretary shall also provide for payment for medically necessary services of a medical escort or medical attendant.

''(b) EFFECTIVE PERIOD.—Subsection (a) shall apply to payment for services furnished during the 5-year period beginning on July 1, 1989.''

SKILLED NURSING FACILITY; ACCESS AND VISITATION RIGHTS

Section 411(*l*)(2)(E) of Pub. L. 100–360 provided that: ''Effective as of the date of the enactment of this Act [July 1, 1988] and until the effective date of section 1819(c) of such Act [see Effective Date note set out under section 1395i–3 of this title], section 1861(j) of the Social Security Act [subsec. (j) of this section] is deemed to include the requirement described in section 1819(c)(3)(A) of such Act [section 1395i–3(c)(3)(A) of this title] (as added by section 4201(a)(3) of OBRA).''

MORATORIUM ON PRIOR AUTHORIZATION FOR HOME HEALTH AND POST-HOSPITAL EXTENDED CARE SERVICES

Section 4039(e) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall not implement any voluntary or mandatory program of prior authorization for home health services, extended care services, or post-hospital extended care services under part A or B of title XVIII of the Social Security Act [part A or B of this subchapter] at any time prior to six months after the date on which the Congress receives the report required under section 9305(k)(4) of the Omnibus Budget Reconciliation Act of 1986 [section 9305(k)(4) of Pub. L. 99–509, set out below].''

DELAY IN PUBLISHING REGULATIONS WITH RESPECT TO DEEMING STATUS OF ENTITIES

Section 4039(f) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall not deem any entity to be a provider of services (as defined in section 1861(u) of the Social Security Act [subsec. (u) of this section]) for purposes of title XVIII of such Act [this subchapter]—

''(1) on any date prior to 6 months after the date on which the Secretary has published a proposed rule with respect to the deeming of the entity, and

''(2) until the Secretary publishes a final rule with respect to the deeming of the entity.''

DEVELOPMENT OF UNIFORM NEEDS ASSESSMENT INSTRUMENT

Section 9305(h) of Pub. L. 99–509 provided that:

''(1) DEVELOPMENT.—The Secretary of Health and Human Services shall develop a uniform needs assessment instrument that—

''(A) evaluates—

''(i) the functional capacity of an individual,

''(ii) the nursing and other care requirements of the individual to meet health care needs and to assist with functional incapacities, and

''(iii) the social and familial resources available to the individual to meet those requirements; and

''(B) can be used by discharge planners, hospitals, nursing facilities, other health care providers, and fiscal intermediaries in evaluating an individual's need for post-hospital extended care services, home health services, and long-term care services of a health-related or supportive nature.

The Secretary may develop more than one such instrument for use in different situations.

''(2) ADVISORY PANEL.—The Secretary shall develop any instrument in consultation with an advisory panel, appointed by the Secretary, that includes experts in the delivery of post-hospital extended care services, home health services, and long-term care services and includes representatives of hospitals, of physicians, of skilled nursing facilities, of home health agencies, of long-term care providers, of fiscal intermediaries, and of medicare beneficiaries.

''(3) REPORT ON INSTRUMENT.—The Secretary shall report to Congress, not later than January 1, 1989, on the instrument or instruments developed under this section. The report shall [sic] recommendations for the appropriate use of such instrument or instruments.''

PRIOR AND CONCURRENT AUTHORIZATION DEMONSTRATION PROJECT

Section 9305(k) of Pub. L. 99–509 directed Secretary of Health and Human Services to conduct a demonstration program concerning prior and concurrent authorization for post-hospital extended care services and home health services furnished under part A or part B of this subchapter, which was to include at least four projects and was to be initiated by not later than Jan. 1, 1987, under which the Secretary was to monitor the acceptance of individuals entitled to benefits under this subchapter by providers to ensure that the placement of such individuals was not delayed until the results of prior and concurrent review were known, and further directed Secretary to evaluate the demonstration program and report to Congress on such evaluation no later than Feb. 1, 1989.

CONSIDERATIONS IN ESTABLISHING LIMITS ON PAYMENT FOR HOME HEALTH SERVICES

Section 9315(b) of Pub. L. 99–509 provided that: ''In establishing limitations under section 1861(v)(1)(L) of the Social Security Act [subsec. (v)(1)(L) of this section] on payment for home health services for cost reporting periods beginning on or after July 1, 1986, the Secretary of Health and Human Services shall—

''(1) base such limitations on the most recent data available, which data may be for cost reporting periods beginning no earlier than October 1, 1983; and

''(2) take into account the changes in costs of home health agencies for billing and verification procedures that result from the Secretary's changing the requirements for such procedures, to the extent the changes in costs are not reflected in such data.

Paragraph (2) shall apply to changes in requirements effected before, on, or after July 1, 1986.''

COMPTROLLER GENERAL STUDY AND REPORT ON COST LIMITS FOR HOME HEALTH SERVICES

Section 9315(c) of Pub. L. 99–509 directed Comptroller General to study and report to Congress, not later than Feb. 1, 1988, on appropriateness and impact on medicare beneficiaries of applying the per visit cost limits for home health services under subsec. (v)(1)(L) of this section on a discipline-specific basis, rather than on an aggregate basis, for all home health services furnished by an agency, and appropriateness of the percentage limits so established.

REDUCTION IN PAYMENT TO AVOID DUPLICATE PAYMENT FOR SERVICES OF PHYSICIAN ASSISTANTS

Section 9338(d) of Pub. L. 99–509 directed Secretary of Health and Human Services to reduce the amount of payments otherwise made to hospitals and skilled nursing facilities under this subchapter to eliminate estimated duplicate payments for historical or current costs attributable to services described in section 1395x(s)(2)(K) of this title, prior to repeal by Pub. L. 101–508, title IV, § 4002(f), Nov. 5, 1990, 104 Stat. 1388–36, effective as if included in the enactment of Pub. L. 99–509.

STUDY AND REPORT ON PAYMENTS FOR PHYSICIAN ASSISTANTS

Section 9338(e) of Pub. L. 99–509 directed Secretary to report to Congress, by Apr. 1, 1988, concerning adjustments to amount of payment made, under part B for services described in subsec. (s)(2)(K) of this section, to ensure that amount of such payments reflects approximate cost of furnishing the services, taking into account compensation costs and overhead and supervision costs attributable to physician assistants.

COST LIMITS FOR ROUTINE SERVICES FOR URBAN AND RURAL HOSPITAL-BASED SKILLED NURSING FACILITIES; COST REPORTING PERIODS BEGINNING ON OR AFTER OCTOBER 1, 1982, AND PRIOR TO JULY 1, 1984

Section 2319(d) of Pub. L. 98–369 provided that: ''Notwithstanding limits on the cost of skilled nursing facilities which may have been issued under section 1861(v) of the Social Security Act [subsec. (v) of this section] prior to the date of the enactment of this Act [July 18, 1984], in the case of cost reporting periods beginning on or after October 1, 1982, and prior to July 1, 1984, the cost limits for routine services for urban and rural hospital-based skilled nursing facilities shall be 112 percent of the mean of the respective routine costs for urban and rural hospital-based skilled nursing facilities.''

STUDY AND REPORT RELATING TO REQUIREMENTS THAT CORE SERVICES BE FURNISHED DIRECTLY BY HOSPICES

Section 2343(d) of Pub. L. 98–369 directed Secretary of Health and Human Services to conduct a study of necessity and appropriateness of requirements that certain ''core'' services be furnished directly by a hospice, as required under subsec. (dd)(2)(A)(ii)(I) of this section and report results of such study to Congress with the report required under section 122(i)(1) [122(j)(1)] of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97–248), set out as a note under section 1395f of this title.

REPORT ON EFFECT OF 1982 AMENDMENT ON HOSPITAL-BASED SKILLED NURSING FACILITIES

Section 605(b) of Pub. L. 98–21 directed Secretary of Health and Human Services, prior to Dec. 31, 1983, to complete a study and report to Congress with respect to (1) effect which implementation of section 102 of the Tax Equity and Fiscal Responsibility Act of 1982, amending this section, would have on hospital-based skilled nursing facilities, given the differences (if any) in patient populations served by such facilities and by community-based skilled nursing facilities and (2) impact on skilled nursing facilities of hospital prospective payment systems, and recommendations concerning payment of skilled nursing facilities.

Section 2319(e) of Pub. L. 98–369 directed Secretary of Health and Human Services to submit to Congress, prior to Dec. 1, 1984, the report required under section 605(b) of the Social Security Amendments of 1983 (Pub. L. 87–21), set out above.

ELIMINATION OF PRIVATE ROOM SUBSIDY

Section 111 of Pub. L. 97–248 provided that:

''(a) The Secretary of Health and Human Services shall, pursuant to section 1861(v)(2) of the Social Security Act [subsec. (v)(2) of this section], not allow as a reasonable cost the estimated amount by which the costs incurred by a hospital or skilled nursing facility for nonmedically necessary private accommodations for medicare beneficiaries exceeds the costs which would have been incurred by such hospital or facility for semiprivate accommodations.

''(b) The Secretary of Health and Human Services shall first issue such final regulations (whether on an interim or other basis) as may be necessary to implement subsection (a) by October 1, 1982. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than January 31, 1983.''

REGULATIONS REGARDING ACCESS TO BOOKS AND RECORDS

Section 952(b) of Pub. L. 96–499, as added by Pub. L. 97–248, title I, §127(2), Sept. 3, 1982, 96 Stat. 366, provided that: ''Unless the Secretary of Health and Human Services first publishes final regulations prescribing the criteria and procedures described in the last sentence of section 1861(v)(1)(I) of the Social Security Act [subsec. (v)(1)(I) of this section] by January 1, 1983, after providing a period of not less than 60 days for public comment on proposed regulations, the amendment made by subsection (a) [amending this section] shall only apply to books, documents, and records relating to services furnished (pursuant to contract or subcontract) on or after the date on which final regulations of the Secretary are first published.''

COMPLIANCE WITH THE LIFE SAFETY CODE OR STATE FIRE AND SAFETY CODE

Section 915(b) of Pub. L. 96–499 provided that: ''Any institution (or part of an institution) which complied with the requirements of section 1861(j)(13) of the Social Security Act [subsec. (j)(13) of this section] on the day before the date of the enactment of this Act [Dec. 5, 1980] shall, so long as such compliance is maintained (either by meeting the applicable provisions of the Life Safety Code (21st edition, 1967, or 23d edition, 1973), with or without waivers of specific provisions, or by meeting the applicable provisions of a fire and safety code imposed by State law as provided for in such section 1861(j)(13)), be considered (for purposes of titles XVIII or XIX of such Act [this subchapter or subchapter XIX of this chapter]) to be in compliance with the requirements of such section 1861(j)(13), as it is amended by subsection (a) of this section.''

Section 106(c) of Pub. L. 94–182 provided that: ''Any institution (or part of an institution) which complied with the requirements of section 1861(j)(13) of the Social Security Act [subsec. (j)(13) of this section] on the day preceding the first day referred to in subsection (b) [enacting provisions set out as a note under this section] shall, so long as such compliance is maintained (either by meeting the applicable provisions of the Life Safety Code (21st edition, 1967), with or without waivers of specific provisions, or by meeting the applicable provisions of a fire and safety code imposed by State law as provided for in such section 1861(j)(13)), be considered (for purposes of titles XVIII and XIX of such Act) [subchapters XVIII and XIX of this chapter] to be in compliance with the requirements of such section 1861(j)(13), as it is amended by subsection (a) of this section.''

PRIVATE, NONPROFIT HEALTH CARE CLINICS QUALIFYING, AS OF JULY 1, 1977, AS RURAL HEALTH CLINICS

Section 1(e) of Pub. L. 95–210 provided that: ''Any private, nonprofit health care clinic that—

''(1) on July 1, 1977, was operating and located in an area which on that date (A) was not an urbanized area (as defined by the Bureau of the Census) and (B) had a supply of physicians insufficient to meet the needs of the area (as determined by the Secretary), and

''(2) meets the definition of a rural health clinic under section 1861(aa)(2) [subsec. (aa)(2) of this section] or section 1905(*l*) of the Social Security Act [section 1396d(*l*) of this title], except for clause (i) of section 1861(aa)(2) [subsec. (aa)(2) of this section],

shall be considered, for the purposes of title XVIII or XIX, respectively, of the Social Security Act [this subchapter or subchapter XIX of this chapter], as satisfying the definition of a rural health clinic under such section.''

PROMULGATION OF REGULATIONS DEFINING COSTS CHARGEABLE TO PERSONAL FUNDS OF PATIENTS IN SKILLED NURSING FACILITIES; DATE OF ISSUANCE

Section 21(b) of Pub. L. 95–142 provided that: ''The Secretary of Health, Education, and Welfare [now Health and Human Services] shall, by regulation, define those costs which may be charged to the personal funds of patients in skilled nursing facilities who are individuals receiving benefits under the provisions of title XVIII [this subchapter], or under a State plan approved under the provisions of title XIX [subchapter XIX of this chapter], of the Social Security Act, and those costs which are to be included in the reasonable cost or reasonable charge for extended care services as determined under the provisions of title XVIII, or for skilled nursing and intermediate care facility services as determined under the provisions of title XIX, of such Act.''

[Section 21(c)(2) of Pub. L. 95–142 provided that: ''The Secretary of Health, Education, and Welfare shall issue the regulations required under subsection (b) [set out above] within ninety days after the date of enactment of this Act [Oct. 25, 1977].'']

HOME HEALTH SERVICES; GRANTS FOR ESTABLISHMENT, OPERATION, STAFFING, ETC., OF PUBLIC AND NONPROFIT PRIVATE AGENCIES AND ENTITIES; PROCEDURES; PAYMENTS; AUTHORIZATION OF APPROPRIATIONS

Pub. L. 94–63, title VI, §602, July 29, 1975, 89 Stat. 346, as amended by Pub. L. 94–460, title III, §302, Oct. 8, 1976, 90 Stat. 1960; Pub. L. 95–83, title III, §310, Aug. 1, 1977, 91 Stat. 397, which provided for a program of home health services and of training of professional and paraprofessional personnel, was repealed by Pub. L. 95–626, title II, §207(b), Nov. 10, 1978, 92 Stat. 3586, effective Oct. 1, 1978.

PAYMENT FOR SERVICE OF PHYSICIANS RENDERED IN A TEACHING HOSPITAL FOR ACCOUNTING PERIODS BEGINNING AFTER JUNE 30, 1975, AND PRIOR TO OCTOBER 1, 1978; STUDIES, REPORTS, ETC.; EFFECTIVE DATES

Pub. L. 93–233, §15(a)(1), (b)–(d), Dec. 31, 1973, 87 Stat. 965, as amended by Pub. L. 93–368, §7, Aug. 7, 1974, 88 Stat. 422; Pub. L. 94–368, §1, July 16, 1976, 90 Stat. 997; Pub. L. 95–292, §7, June 13, 1978, 92 Stat. 316, provided that for the cost accounting periods beginning after June 30, 1975, and prior to October 1, 1978, subsec. (b) of this section will be administered as if paragraph (7) of subsec. (b) read as follows: ''(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this title [this subchapter] for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this title [this subchapter]'', provided for studies with respect to methods of reimbursement for physicians' services under subchapters XVIII and XIX of this chapter in hospitals which have a teaching program and a determination as to how and to what extent such funds

are utilized, and provided that a final report be submitted to the Secretary of Health, Education, and Welfare, the Committee on Finance of the Senate, and the Committee on Ways and Means of the House of Representatives not later than Mar. 1, 1976.

PHYSICAL THERAPY SERVICES REQUIREMENTS; EFFECTIVE DATE POSTPONEMENT

Section 17(a) of Pub. L. 93–233 provided that: ''In the administration of title XVIII of the Social Security Act [this subchapter], the amount payable thereunder with respect to physical therapy and other services referred to in section 1861(v)(5)(A) of such Act [subsec. (v)(5)(A) of this section] (as added by section 151(c) [251(c)] of the Social Security Amendments of 1972) shall be determined (for the period with respect to which the amendment made by such section 151(c) [251(c)] would, except for the provisions of this section, be applicable) in like manner as if the 'December 31, 1972', which appears in such subsection (d)(3) of such section 151 [251(d)(3), set out as Effective Date of 1972 Amendment note above], read 'the month in which there are promulgated, by the Secretary of Health, Education, and Welfare [now Health and Human Services], final regulations implementing the provisions of section 1861(v)(5) of the Social Security Act [subsec. (v)(5) of this section]'.''

PAYMENT FOR DURABLE MEDICAL EQUIPMENT

Section 245(a)–(c) of Pub. L. 92–603 provided that:

''(a) The Secretary is authorized to conduct reimbursement experiments designed to eliminate unreasonable expenses resulting from prolonged rentals of durable medical equipment described in section 1861(s)(6) of the Social Security Act [subsec. (s)(6) of this section].

''(b) Such experiment may be conducted in one or more geographic areas, as the Secretary deems appropriate, and may, pursuant to agreements with suppliers, provide for reimbursement for such equipment on a lump-sum basis whenever it is determined (in accordance with guidelines established by the Secretary) that a lump-sum payment would be more economical than the anticipated period of rental payments. Such experiments may also provide for incentives to beneficiaries (including waiver of the 20 percent coinsurance amount applicable under section 1833 of the Social Security Act [section 1395*l* of this title]) to purchase used equipment whenever the purchase price is at least 25 percent less than the reasonable charge for new equipment.

''(c) The Secretary is authorized, at such time as he deems appropriate, to implement on a nationwide basis any such reimbursement procedures which he finds to be workable, desirable and economical and which are consistent with the purposes of this section.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254b, 254c, 255, 295p, 296k, 297n, 300t–12, 426–1, 1301, 1320a–3, 1320a–7b, 1320c–3, 1395d, 1395f, 1395g, 1395h, 1395i–3, 1395i–4, 1395k, 1395*l*, 1395m, 1395n, 1395u, 1395w–4, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395dd, 1395ee, 1395mm, 1395nn, 1395pp, 1395rr, 1395tt, 1395uu, 1395ww, 1395yy, 1395bbb, 1396a, 1396b, 1396d, 1396n, 1396r, 11151 of this title; title 10 sections 1077, 1079; title 25 sections 1621d, 1621k; title 26 sections 213, 415.

§ 1395y. Exclusions from coverage and medicare as secondary payer

(a) Items or services specifically excluded

Notwithstanding any other provision of this subchapter, no payment may be made under part A or part B of this subchapter for any expenses incurred for items or services—

(1)(A) which, except for items and services described in a succeeding subparagraph, are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member,

(B) in the case of items and services described in section 1395x(s)(10) of this title, which are not reasonable and necessary for the prevention of illness,

(C) in the case of hospice care, which are not reasonable and necessary for the palliation or management of terminal illness,

(D) in the case of clinical care items and services provided with the concurrence of the Secretary and with respect to research and experimentation conducted by, or under contract with, the Prospective Payment Assessment Commission or the Secretary, which are not reasonable and necessary to carry out the purposes of section 1395ww(e)(6) of this title,

(E) in the case of research conducted pursuant to section 1320b–12 of this title, which is not reasonable and necessary to carry out the purposes of that section, and

(F) in the case of screening mammography, which is performed more frequently than is covered under section 1395m(c)(2) of this title or which is not conducted by a facility described in section 1395m(c)(1)(B) of this title, and, in the case of screening pap smear, which is performed more frequently than is provided under section 1395x(nn) of this title;

(2) for which the individual furnished such items or services has no legal obligation to pay, and which no other person (by reason of such individual's membership in a prepayment plan or otherwise) has a legal obligation to provide or pay for, except in the case of Federally qualified health center services;

(3) which are paid for directly or indirectly by a governmental entity (other than under this chapter and other than under a health benefits or insurance plan established for employees of such an entity), except in the case of rural health clinic services, as defined in section 1395x(aa)(1) of this title,,[1] in the case of Federally qualified health center services, as defined in section 1395x(aa)(3) of this title, and in such other cases as the Secretary may specify;

(4) which are not provided within the United States (except for inpatient hospital services furnished outside the United States under the conditions described in section 1395f(f) of this title and, subject to such conditions, limitations, and requirements as are provided under or pursuant to this subchapter, physicians' services and ambulance services furnished an individual in conjunction with such inpatient hospital services but only for the period during which such inpatient hospital services were furnished);

(5) which are required as a result of war, or of an act of war, occurring after the effective date of such individual's current coverage under such part;

(6) which constitute personal comfort items (except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C));

(7) where such expenses are for routine physical checkups, eyeglasses (other than eyewear described in section 1395x(s)(8) of this title) or eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, proce-

[1] So in original.

dures performed (during the course of any eye examination) to determine the refractive state of the eyes, hearing aids or examinations therefor, or immunizations (except as otherwise allowed under section 1395x(s)(10) of this title and paragraph (1)(B) or under paragraph (1)(F));

(8) where such expenses are for orthopedic shoes or other supportive devices for the feet, other than shoes furnished pursuant to section 1395x(s)(12) of this title;

(9) where such expenses are for custodial care (except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C));

(10) where such expenses are for cosmetic surgery or are incurred in connection therewith, except as required for the prompt repair of accidental injury or for improvement of the functioning of a malformed body member;

(11) where such expenses constitute charges imposed by immediate relatives of such individual or members of his household;

(12) where such expenses are for services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, except that payment may be made under part A of this subchapter in the case of inpatient hospital services in connection with the provision of such dental services if the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;

(13) where such expenses are for—

(A) the treatment of flat foot conditions and the prescription of supportive devices therefor,

(B) the treatment of subluxations of the foot, or

(C) routine foot care (including the cutting or removal of corns or calluses, the trimming of nails, and other routine hygienic care);

(14) which are other than physicians' services (as defined in regulations promulgated specifically for purposes of this paragraph), services described by section 1395x(s)(2)(K)(i) or 1395x(s)(2)(K)(iii) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist, and which are furnished to an individual who is a patient of a hospital or rural primary care hospital by an entity other than the hospital or rural primary care hospital, unless the services are furnished under arrangements (as defined in section 1395x(w)(1) of this title) with the entity made by the hospital or rural primary care hospital; or

(15)(A) which are for services of an assistant at surgery in a cataract operation (including subsequent insertion of an intraocular lens) unless, before the surgery is performed, the appropriate utilization and quality control peer review organization (under part B of subchapter XI of this chapter) or a carrier under section 1395u of this title has approved of the use of such an assistant in the surgical procedure based on the existence of a complicating medical condition, or

(B) which are for services of an assistant at surgery to which section 1395w–4(i)(2)(B) of this title applies.

Paragraph (7) shall not apply to Federally qualified health center services described in section 1395x(aa)(3)(B) of this title.

(b) Medicare as secondary payer

(1) Requirements of group health plans

(A) Working aged under group health plans

(i) In general

A group health plan—

(I) may not take into account that an individual (or the individual's spouse) who is covered under the plan by virtue of the individual's current employment status with an employer is entitled to benefits under this subchapter under section 426(a) of this title, and

(II) shall provide that any individual age 65 or older (and the spouse age 65 or older of any individual) who has current employment status with an employer shall be entitled to the same benefits under the plan under the same conditions as any such individual (or spouse) under age 65.

(ii) Exclusion of group health plan of a small employer

Clause (i) shall not apply to a group health plan unless the plan is a plan of, or contributed to by, an employer that has 20 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year or the preceding calendar year.

(iii) Exception for small employers in multiemployer or multiple employer group health plans

Clause (i) also shall not apply with respect to individuals enrolled in a multiemployer or multiple employer group health plan if the coverage of the individuals under the plan is by virtue of current employment status with an employer that does not have 20 or more individuals in current employment status for each working day in each of 20 or more calendar weeks in the current calendar year and the preceding calendar year; except that the exception provided in this clause shall only apply if the plan elects treatment under this clause.

(iv) Exception for individuals with end stage renal disease

Subparagraph (C) shall apply instead of clause (i) to an item or service furnished in a month to an individual if for the month the individual is, or (without regard to entitlement under section 426 of this title) would upon application be, entitled to benefits under section 426–1 of this title.

(v) "Group health plan" defined

In this subparagraph, and subparagraph (C), the term ''group health plan'' has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of

1986, without regard to section 5000(d) of such Code.

(B) Disabled individuals in large group health plans

(i) In general

A large group health plan (as defined in clause (iv)) may not take into account that an individual (or a member of the individual's family) who is covered under the plan by virtue of the individual's current employment status with an employer is entitled to benefits under this subchapter under section 426(b) of this title.

(ii) Exception for individuals with end stage renal disease

Subparagraph (C) shall apply instead of clause (i) to an item or service furnished in a month to an individual if for the month the individual is, or (without regard to entitlement under section 426 of this title) would upon application be, entitled to benefits under section 426–1 of this title.

(iii) Sunset

Clause (i) shall only apply to items and services furnished on or after January 1, 1987, and before October 1, 1998.

(iv) "Large group health plan" defined

In this subparagraph, the term ''large group health plan'' has the meaning given such term in section 5000(b)(2) of the Internal Revenue Code of 1986, without regard to section 5000(d) of such Code.

(C) Individuals with end stage renal disease

A group health plan (as defined in subparagraph (A)(v))—

(i) may not take into account that an individual is entitled to or eligible for benefits under this subchapter under section 426–1 of this title during the 12-month period which begins with the first month in which the individual becomes entitled to benefits under part A of this subchapter under the provisions of section 426–1 of this title, or, if earlier, the first month in which the individual would have been entitled to benefits under such part under the provisions of section 426–1 of this title if the individual had filed an application for such benefits; and

(ii) may not differentiate in the benefits it provides between individuals having end stage renal disease and other individuals covered by such plan on the basis of the existence of end stage renal disease, the need for renal dialysis, or in any other manner;

except that clause (ii) shall not prohibit a plan from paying benefits secondary to this subchapter when an individual is entitled to or eligible for benefits under this subchapter under section 426–1 of this title after the end of the 12-month period described in clause (i). Effective for items and services furnished on or after February 1, 1991, and before October 1, 1998,[2] (with respect to periods beginning on or after February 1, 1990), this subparagraph shall be applied by substituting ''18-month'' for ''12-month'' each place it appears.

(D) Treatment of certain members of religious orders

In this subsection, an individual shall not be considered to be employed, or an employee, with respect to the performance of services as a member of a religious order which are considered employment only by virtue of an election made by the religious order under section 3121(r) of the Internal Revenue Code of 1986.

(E) General provisions

For purposes of this subsection:

(i) Aggregation rules

(I) All employers treated as a single employer under subsection (a) or (b) of section 52 of the Internal Revenue Code of 1986 shall be treated as a single employer.

(II) All employees of the members of an affiliated service group (as defined in section 414(m) of such Code) shall be treated as employed by a single employer.

(III) Leased employees (as defined in section 414(n)(2) of such Code) shall be treated as employees of the person for whom they perform services to the extent they are so treated under section 414(n) of such Code.

In applying sections of the Internal Revenue Code of 1986 under this clause, the Secretary shall rely upon regulations and decisions of the Secretary of the Treasury respecting such sections.

(ii) "Current employment status" defined

An individual has ''current employment status'' with an employer if the individual is an employee, is the employer, or is associated with the employer in a business relationship.

(iii) Treatment of self-employed persons as employers

The term ''employer'' includes a self-employed person.

(2) Medicare secondary payer

(A) In general

Payment under this subchapter may not be made, except as provided in subparagraph (B), with respect to any item or service to the extent that—

(i) payment has been made, or can reasonably be expected to be made, with respect to the item or service as required under paragraph (1), or

(ii) payment has been made, or can reasonably be expected to be made promptly (as determined in accordance with regulations) under a workmen's compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance.

[2] So in original. The comma probably should not appear.

In this subsection, the term ''primary plan'' means a group health plan or large group health plan, to the extent that clause (i) applies, and a workmen's compensation law or plan, an automobile or liability insurance policy or plan (including a self-insured plan) or no fault insurance, to the extent that clause (ii) applies.

(B) Conditional payment

(i) Repayment required

Any payment under this subchapter with respect to any item or service to which subparagraph (A) applies shall be conditioned on reimbursement to the appropriate Trust Fund established by this subchapter when notice or other information is received that payment for such item or service has been or could be made under such subparagraph. If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date such notice or other information is received, the Secretary may charge interest (beginning with the date on which the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).

(ii) Action by United States

In order to recover payment under this subchapter for such an item or service, the United States may bring an action against any entity which is required or responsible under this subsection to pay with respect to such item or service (or any portion thereof) under a primary plan (and may, in accordance with paragraph (3)(A) collect double damages against that entity), or against any other entity (including any physician or provider) that has received payment from that entity with respect to the item or service, and may join or intervene in any action related to the events that gave rise to the need for the item or service.

(iii) Subrogation rights

The United States shall be subrogated (to the extent of payment made under this subchapter for such an item or service) to any right under this subsection of an individual or any other entity to payment with respect to such item or service under a primary plan.

(iv) Waiver of rights

The Secretary may waive (in whole or in part) the provisions of this subparagraph in the case of an individual claim if the Secretary determines that the waiver is in the best interests of the program established under this subchapter.

(C) Treatment of questionnaires

The Secretary may not fail to make payment under subparagraph (A) solely on the ground that an individual failed to complete a questionnaire concerning the existence of a primary plan.

(3) Enforcement

(A) Private cause of action

There is established a private cause of action for damages (which shall be in an amount double the amount otherwise provided) in the case of a primary plan which fails to provide for primary payment (or appropriate reimbursement) in accordance with such paragraphs (1) and (2)(A).

(B) Reference to excise tax with respect to nonconforming group health plans

For provision imposing an excise tax with respect to nonconforming group health plans, see section 5000 of the Internal Revenue Code of 1986.

(C) Prohibition of financial incentives not to enroll in a group health plan or a large group health plan

It is unlawful for an employer or other entity to offer any financial or other incentive for an individual entitled to benefits under this subchapter not to enroll (or to terminate enrollment) under a group health plan or a large group health plan which would (in the case of such enrollment) be a primary plan (as defined in paragraph (2)(A)). Any entity that violates the previous sentence is subject to a civil money penalty of not to exceed $5,000 for each such violation. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(4) Coordination of benefits

Where payment for an item or service by a primary plan is less than the amount of the charge for such item or service and is not payment in full, payment may be made under this subchapter (without regard to deductibles and coinsurance under this subchapter) for the remainder of such charge, but—

(A) payment under this subchapter may not exceed an amount which would be payable under this subchapter for such item or service if paragraph (2)(A) did not apply; and

(B) payment under this subchapter, when combined with the amount payable under the primary plan, may not exceed—

(i) in the case of an item or service payment for which is determined under this subchapter on the basis of reasonable cost (or other cost-related basis) or under section 1395ww of this title, the amount which would be payable under this subchapter on such basis, and

(ii) in the case of an item or service for which payment is authorized under this subchapter on another basis—

(I) the amount which would be payable under the primary plan (without regard to deductibles and coinsurance under such plan), or

(II) the reasonable charge or other amount which would be payable under

this subchapter (without regard to deductibles and coinsurance under this subchapter),

whichever is greater.

(5) Identification of secondary payer situations

(A) Requesting matching information

(i) Commissioner of Social Security

The Commissioner of Social Security shall, not less often than annually, transmit to the Secretary of the Treasury a list of the names and TINs of medicare beneficiaries (as defined in section 6103(*l*)(12) of the Internal Revenue Code of 1986) and request that the Secretary disclose to the Commissioner the information described in subparagraph (A) of such section.

(ii) Administrator

The Administrator of the Health Care Financing Administration shall request, not less often than annually, the Commissioner of the Social Security Administration to disclose to the Administrator the information described in subparagraph (B) of section 6103(*l*)(12) of the Internal Revenue Code of 1986.

(B) Disclosure to fiscal intermediaries and carriers

In addition to any other information provided under this subchapter to fiscal intermediaries and carriers, the Administrator shall disclose to such intermediaries and carriers (or to such a single intermediary or carrier as the Secretary may designate) the information received under—

(i) subparagraph (A), and

(ii) section 1320b–14 of this title,

for purposes of carrying out this subsection.

(C) Contacting employers

(i) In general

With respect to each individual (in this subparagraph referred to as an ''employee'') who was furnished a written statement under section 6051 of the Internal Revenue Code of 1986 by a qualified employer (as defined in section 6103(*l*)(12)(E)(iii) of such Code), as disclosed under subparagraph (B)(i), the appropriate fiscal intermediary or carrier shall contact the employer in order to determine during what period the employee or employee's spouse may be (or have been) covered under a group health plan of the employer and the nature of the coverage that is or was provided under the plan (including the name, address, and identifying number of the plan).

(ii) Employer response

Within 30 days of the date of receipt of the inquiry, the employer shall notify the intermediary or carrier making the inquiry as to the determinations described in clause (i). An employer (other than a Federal or other governmental entity) who willfully or repeatedly fails to provide timely and accurate notice in accordance with the previous sentence shall be subject to a civil money penalty of not to exceed $1,000 for each individual with respect to which such an inquiry is made. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(iii) Sunset on requirement

Clause (ii) shall not apply to inquiries made after September 30, 1998.

(D) Obtaining information from beneficiaries

Before an individual applies for benefits under part A of this subchapter or enrolls under part B of this subchapter, the Administrator shall mail the individual a questionnaire to obtain information on whether the individual is covered under a primary plan and the nature of the coverage provided under the plan, including the name, address, and identifying number of the plan.

(6) Screening requirements for providers and suppliers

(A) In general

Notwithstanding any other provision of this subchapter, no payment may be made for any item or service furnished under part B of this subchapter unless the entity furnishing such item or service completes (to the best of its knowledge and on the basis of information obtained from the individual to whom the item or service is furnished) the portion of the claim form relating to the availability of other health benefit plans.

(B) Penalties

An entity that knowingly, willfully, and repeatedly fails to complete a claim form in accordance with subparagraph (A) or provides inaccurate information relating to the availability of other health benefit plans on a claim form under such subparagraph shall be subject to a civil money penalty of not to exceed $2,000 for each such incident. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(c) Drug products

No payment may be made under part B of this subchapter for any expenses incurred for—

(1) a drug product—

(A) which is described in section 107(c)(3) of the Drug Amendments of 1962,

(B) which may be dispensed only upon prescription,

(C) for which the Secretary has issued a notice of an opportunity for a hearing under subsection (e) of section 355 of title 21 on a proposed order of the Secretary to withdraw approval of an application for such drug product under such section because the Secretary has determined that the drug is less than effective for all conditions of use prescribed, recommended, or suggested in its labeling, and

(D) for which the Secretary has not determined there is a compelling justification for its medical need; and

(2) any other drug product—

(A) which is identical, related, or similar (as determined in accordance with section 310.6 of title 21 of the Code of Federal Regulations) to a drug product described in paragraph (1), and

(B) for which the Secretary has not determined there is a compelling justification for its medical need,

until such time as the Secretary withdraws such proposed order.

(d) Repealed. Pub. L. 100–93, § 8(c)(1)(A), Aug. 18, 1987, 101 Stat. 692

(e) Item or service by excluded individual or entity or at direction of excluded physician; limitation of liability of beneficiaries with respect to services furnished by excluded individuals and entities

(1) No payment may be made under this subchapter with respect to any item or service (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) furnished—

(A) by an individual or entity during the period when such individual or entity is excluded pursuant to section 1320a–7, 1320a–7a, 1320c–5 or 1395u(j)(2) of this title from participation in the program under this subchapter; or

(B) at the medical direction or on the prescription of a physician during the period when he is excluded pursuant to section 1320a–7, 1320a–7a, 1320c–5 or 1395u(j)(2) of this title from participation in the program under this subchapter and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).

(2) Where an individual eligible for benefits under this subchapter submits a claim for payment for items or services furnished by an individual or entity excluded from participation in the programs under this subchapter, pursuant to section 1320a–7, 1320a–7a, 1320c–5, 1320c–9 (as in effect on September 2, 1982), 1395u(j)(2), 1395y(d) (as in effect on August 18, 1987), or 1395cc of this title, and such beneficiary did not know or have reason to know that such individual or entity was so excluded, then, to the extent permitted by this subchapter, and notwithstanding such exclusion, payment shall be made for such items or services. In each such case the Secretary shall notify the beneficiary of the exclusion of the individual or entity furnishing the items or services. Payment shall not be made for items or services furnished by an excluded individual or entity to a beneficiary after a reasonable time (as determined by the Secretary in regulations) after the Secretary has notified the beneficiary of the exclusion of that individual or entity.

(f) Utilization guidelines for provision of home health services

The Secretary shall establish utilization guidelines for the determination of whether or not payment may be made, consistent with paragraph (1)(A) of subsection (a) of this section, under part A or part B of this subchapter for expenses incurred with respect to the provision of home health services, and shall provide for the implementation of such guidelines through a process of selective postpayment coverage review by intermediaries or otherwise.

(g) Contracts with utilization and quality control peer review organizations

The Secretary shall, in making the determinations under paragraphs (1) and (9) of subsection (a) of this section, and for the purposes of promoting the effective, efficient, and economical delivery of health care services, and of promoting the quality of services of the type for which payment may be made under this subchapter, enter into contracts with utilization and quality control peer review organizations pursuant to part B of subchapter XI of this chapter.

(h) Registry of cardiac pacemaker devices and leads; testing of devices and leads; withholding of payment

(1)(A) The Secretary shall, through the Commissioner of the Food and Drug Administration, provide for a registry of all cardiac pacemaker devices and pacemaker leads for which payment was made under this subchapter.

(B) Such registry shall include the manufacturer, model, and serial number of each such device or lead, the name of the recipient of such device or lead, the date and location of the implantation or removal of the device or lead, the name of the physician implanting or removing such device or lead, the name of the hospital or other provider billing for such procedure, any express or implied warranties associated with such device or lead under contract or State law (and any amount paid to a provider under any such warranty), and such other information as the Secretary deems to be appropriate.

(C) Each physician and provider of services performing the implantation or replacement of pacemaker devices and leads for which payment is made or requested to be made under this subchapter shall, in accordance with regulations of the Secretary, submit information respecting such implantation or replacement for the registry.

(D) Such registry shall be for the purposes of assisting the Secretary in determining when payments may properly be made under this subchapter, in tracing the performance of cardiac pacemaker devices and leads, in determining when inspection by the manufacturer of such a device or lead may be necessary under paragraph (3), in determining the amount subject to repayment under paragraph (2)(C), and in carrying out studies with respect to the use of such devices and leads. In carrying out any such study, the Secretary may not reveal any specific information which identifies any pacemaker device or lead recipient by name (or which would otherwise identify a specific recipient).

(E) Any person or organization may provide information to the registry with respect to cardiac pacemaker devices and leads other than those for which payment is made under this subchapter.

(2) The Secretary may, by regulation, require each provider of services—

(A) to return, to the manufacturer of the device or lead for testing under paragraph (3), any cardiac pacemaker device or lead which is removed from a patient and payment for the implantation or replacement of which was made or requested by such provider under this subchapter,

(B) not to charge any beneficiary for replacement of such a device or lead if the device or lead has not been returned in accordance with subparagraph (A), and

(C) to make repayment to the Secretary of amounts paid under this subchapter to the provider with respect to any cardiac pacemaker device or lead which has been replaced by the manufacturer, or for which the manufacturer has made payment to the provider, under an express or implied warranty.

(3) The Secretary may, by regulation, require the manufacturer of a cardiac pacemaker device or lead (A) to test or analyze each pacemaker device or lead for which payment is made or requested under this subchapter and which is returned to the manufacturer by a provider of services under paragraph (2), and (B) to provide the results of such test or analysis to that provider, together with information and documentation with respect to any warranties covering such device or lead. In any case where the Secretary has reason to believe, based upon information in the pacemaker registry or otherwise available to him, that replacement of a cardiac pacemaker device or lead for which payment is or may be requested under this subchapter is related to the malfunction of a device or lead, the Secretary may require that personnel of the Food and Drug Administration be present at the testing of such device by the manufacturer, to determine whether such device was functioning properly.

(4) The Secretary may deny payment under this subchapter, in whole or in part and for such period of time as the Secretary determines to be appropriate, with respect to the implantation or replacement of a pacemaker device or lead of a manufacturer performed by a physician and provider of services after the Secretary determines (in accordance with the procedures established under subsections (c), (f), and (g) of section 1320a–7 of this title) that—

(A) the physician or provider of services has failed to submit information to the registry as required under paragraph (1)(C),

(B) the provider of services has failed to return devices and leads as required under paragraph (2)(A), has improperly charged beneficiaries as prohibited under paragraph (2)(B), or has failed to make repayment to the Secretary as required under paragraph (2)(C), or

(C) the manufacturer of the device or lead has failed to perform and to report on the testing of devices and leads returned to it as required under paragraph (3).

(i) Awards and contracts for original research and experimentation of new and existing medical procedures; conditions

In order to supplement the activities of the Prospective Payment Assessment Commission under section 1395ww(e) of this title in assessing the safety, efficacy, and cost-effectiveness of new and existing medical procedures, the Secretary may carry out, or award grants or contracts for, original research and experimentation of the type described in clause (ii) of section 1395ww(e)(6)(E) of this title with respect to such a procedure if the Secretary finds that—

(1) such procedure is not of sufficient commercial value to justify research and experimentation by a commercial organization;

(2) research and experimentation with respect to such procedure is not of a type that may appropriately be carried out by an institute, division, or bureau of the National Institutes of Health; and

(3) such procedure has the potential to be more cost-effective in the treatment of a condition than procedures currently in use with respect to such condition.

(Aug. 14, 1935, ch. 531, title XVIII, § 1862, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 325; amended Jan. 2, 1968, Pub. L. 90–248, title I, §§ 127(b), 128, 81 Stat. 846, 847; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 210, 211(c)(1), 229(a), 256(c), 86 Stat. 1382, 1384, 1408, 1447; Dec. 31, 1973, Pub. L. 93–233, § 18(k)(3), 87 Stat. 970; Oct. 26, 1974, Pub. L. 93–480, § 4(a), 88 Stat. 1454; Dec. 31, 1975, Pub. L. 94–182, title I, § 103, 89 Stat. 1051; Oct. 25, 1977, Pub. L. 95–142, §§ 7(a), 13(a), (b)(1), (2), 91 Stat. 1192, 1197, 1198; Dec. 13, 1977, Pub. L. 95–210, § 1(f), 91 Stat. 1487; June 17, 1980, Pub. L. 96–272, title III, § 308(a), 94 Stat. 531; Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 913(b), 936(c), 939(a), 953, 94 Stat. 2620, 2640, 2647; Dec. 28, 1980, Pub. L. 96–611, § 1(a)(3), 94 Stat. 3566; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2103(a)(1), 2146(a), 2152(a), 95 Stat. 787, 800, 802; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 116(b), 122(f), (g)(1), 128(a)(2)–(4), 142, 148(a), 96 Stat. 353, 362, 366, 381, 394; Jan. 12, 1983, Pub. L. 97–448, title III, § 309(b)(10), 96 Stat. 2409; Apr. 20, 1983, Pub. L. 98–21, title VI, §§ 601(f), 602(e), 97 Stat. 162, 163; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2301(a), 2304(c), 2313(c), 2344(a)–(c), 2354(b)(30), (31), 98 Stat. 1063, 1068, 1078, 1095, 1101, 1102; Apr. 7, 1986, Pub. L. 99–272, title IX, §§ 9201(a), 9307(a), 9401(c)(1), 100 Stat. 170, 193, 199; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9316(b), 9319(a), (b), 9320(h)(1), 9343(c)(1), 100 Stat. 2007, 2010, 2011, 2016, 2040; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095; Aug. 18, 1987, Pub. L. 100–93, §§ 8(c)(1), (3), 10, 101 Stat. 692, 693, 696; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4009(j)(6)(C), 4034(a), 4036(a)(1), 4039(c)(1), 4072(c), 4085(i)(15), (16), 101 Stat. 1330–59, 1330–77, 1330–79, 1330–82, 1330–117, 1330–133; July 1, 1988, Pub. L. 100–360, title II, §§ 202(d), 204(d)(2), 205(e)(1), title IV, § 411(f)(4)(D)(i), (i)(4)(D), 102 Stat. 715, 729, 731, 778, 790; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(7), (24)(C), 102 Stat. 2415, 2421; Dec. 13, 1989, Pub. L. 101–234, title II, § 201(a), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6003(g)(3)(D)(xi), 6103(b)(3)(B), 6115(b), 6202(a)(2)(A), (b)(1), (e)(1), 6411(d)(2), 103 Stat. 2154, 2199, 2219, 2228, 2229, 2234, 2271; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4107(b), 4153(b)(2)(B), 4157(c)(1), 4161(a)(3)(C), 4163(d)(2), 4203(a)(1), (b), (c)(1), 4204(g)(1), 104 Stat. 1388–62, 1388–84, 1388–89, 1388–94, 1388–100, 1388–107, 1388–112; Aug. 10, 1993, Pub. L. 103–66, title XIII, §§ 13561(a)(1), (b)–(d)(1), (e)(1), 13581(b)(1), 107 Stat. 593, 594, 611; Oct. 31, 1994, Pub. L. 103–432, title I, §§ 145(c)(1), 147(e)(6), 151(a)(1)(A), (C), (2)(A), (b)(3)(A), (B), (c)(1),

(4)–(6), (9)(B), 156(a)(2)(D), 157(b)(7), 108 Stat. 4427, 4430, 4432–4436, 4441, 4442.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Part B of subchapter XI of this chapter, referred to in subsecs. (a)(15) and (g), is classified to section 1320c et seq. of this title.

The Internal Revenue Code of 1986, referred to in subsec. (b), is classified generally to Title 26, Internal Revenue Code.

Section 107(c)(3) of the Drug Amendments of 1962, referred to in subsec. (c)(1)(A), is section 107(c)(3) of Pub. L. 87–781, title I, Oct. 10, 1962, 76 Stat. 788, which is set out as an Effective Date of 1962 Amendment note under section 321 of Title 21, Food and Drugs.

AMENDMENTS

1994—Subsec. (a)(1)(F). Pub. L. 103–432, §145(c)(1), substituted ''is not conducted by a facility described in section 1395m(c)(1)(B) of this title'' for ''or which does not meet the standards established under section 1395m(c)(3) of this title''.

Subsec. (a)(14). Pub. L. 103–432, §156(a)(2)(D)(i), inserted ''or'' at end.

Pub. L. 103–432, §147(e)(6), substituted ''section 1395x(s)(2)(K)(i) or 1395x(s)(2)(K)(iii) of this title'' for ''section 1395x(s)(2)(K)(i) of this title''.

Subsec. (a)(15). Pub. L. 103–432, §156(a)(2)(D)(ii), substituted period for ''; or'' at end.

Subsec. (a)(16). Pub. L. 103–432, §156(a)(2)(D)(iii), struck out par. (16) which read as follows: ''furnished in connection with a surgical procedure for which a second opinion is required under section 1320c–13(c)(2) of this title and has not been obtained.''

Subsec. (b)(1)(A)(i)(II). Pub. L. 103–432, §151(c)(1)(A), substituted ''older (and the spouse age 65 or older of any individual) who has current employment status with an employer'' for ''over (and the individual's spouse age 65 or older) who is covered under the plan by virtue of the individual's current employment status with an employer''.

Subsec. (b)(1)(A)(ii). Pub. L. 103–432, §151(c)(1)(B), substituted ''employer that has 20 or more employees'' for ''employer or employee organization that has 20 or more individuals in current employment status''.

Subsec. (b)(1)(A)(v). Pub. L. 103–432, §151(c)(9)(B), made technical amendment to directory language of Pub. L. 103–66, §13561(e)(1)(D). See 1993 Amendment note below.

Subsec. (b)(1)(C). Pub. L. 103–432, §151(c)(5), substituted ''paying benefits secondary to this subchapter when'' for ''taking into account that'' in closing provisions.

Pub. L. 103–432, §151(c)(4), substituted ''this subparagraph'' for ''clauses (i) and (ii)'' after ''February 1, 1990),'' in last sentence.

Subsec. (b)(2)(B)(i). Pub. L. 103–432, §151(b)(3)(A), (B), substituted ''Repayment required'' for ''Primary plans'' in heading and inserted at end ''If reimbursement is not made to the appropriate Trust Fund before the expiration of the 60-day period that begins on the date such notice or other information is received, the Secretary may charge interest (beginning with the date on which the notice or other information is received) on the amount of the reimbursement until reimbursement is made (at a rate determined by the Secretary in accordance with regulations of the Secretary of the Treasury applicable to charges for late payments).''

Subsec. (b)(2)(C). Pub. L. 103–432, §151(a)(1)(C), added subpar. (C).

Subsec. (b)(3)(C). Pub. L. 103–432, §157(b)(7), substituted ''group health plan or a large group health plan'' for ''group health plan'' in heading and text, struck out '', unless such incentive is also offered to all individuals who are eligible for coverage under the plan'' after ''(as defined in paragraph (2)(A))'', and substituted ''(other than subsections (a) and (b))'' for ''(other than the first sentence of subsection (a) and other than subsection (b))''.

Subsec. (b)(5)(C)(i). Pub. L. 103–432, §151(c)(6), substituted ''section 6103(*l*)(12)(E)(iii) of such Code'' for ''section 6103(*l*)(12)(D)(iii) of such Code''.

Subsec. (b)(5)(D). Pub. L. 103–432, §151(a)(1)(A), added subpar. (D).

Subsec. (b)(6). Pub. L. 103–432, §151(a)(2)(A), added par. (6).

1993—Subsec. (b)(1)(A)(i). Pub. L. 103–66, §13561(e)(1)(A), amended subcls. (I) and (II) generally. Prior to amendment, subcls. (I) and (II) read as follows:

''(I) may not take into account, for any item or service furnished to an individual 65 years of age or older at the time the individual is covered under the plan by reason of the current employment of the individual (or the individual's spouse), that the individual is entitled to benefits under this subchapter under section 426(a) of this title, and

''(II) shall provide that any employee age 65 or older, and any employee's spouse age 65 or older, shall be entitled to the same benefits under the plan under the same conditions as any employee, and the spouse of such employee, under age 65.''

Subsec. (b)(1)(A)(ii). Pub. L. 103–66, §13561(e)(1)(B), substituted ''unless the plan is a plan of, or contributed to by, an employer or employee organization that has 20 or more individuals in current employment status'' for ''unless the plan is sponsored by or contributed to by an employer that has 20 or more employees''.

Subsec. (b)(1)(A)(iii). Pub. L. 103–66, §13561(e)(1)(C), substituted ''by virtue of current employment status with an employer that does not have 20 or more individuals in current employment status for each working day in each of 20 or more calendar weeks in the current calendar year and'' for ''by virtue of employment with an employer that does not have 20 or more employees for each working day in each of 20 or more calendar weeks in the current calendar year or''.

Subsec. (b)(1)(A)(iv). Pub. L. 103–66, §13561(c)(2), substituted ''Subparagraph (C) shall apply instead of clause (i)'' for ''Clause (i) shall not apply'' and inserted ''(without regard to entitlement under section 426 of this title)'' after ''individual is, or''.

Subsec. (b)(1)(A)(v). Pub. L. 103–66, §13561(e)(1)(D), as amended by Pub. L. 103–432, §151(c)(9)(B), inserted before period at end '', without regard to section 5000(d) of such Code''.

Subsec. (b)(1)(B). Pub. L. 103–66, §13561(e)(1)(E), substituted ''individuals'' for ''active individuals'' in heading.

Subsec. (b)(1)(B)(i). Pub. L. 103–66, §13561(e)(1)(F), substituted ''clause (iv)) may not take into account that an individual (or a member of the individual's family) who is covered under the plan by virtue of the individual's current employment status with an employer'' for ''clause (iv)(II)) may not take into account that an active individual (as defined in clause (iv)(I))''.

Subsec. (b)(1)(B)(ii). Pub. L. 103–66, §13561(c)(2), substituted ''Subparagraph (C) shall apply instead of clause (i)'' for ''Clause (i) shall not apply'' and inserted ''(without regard to entitlement under section 426 of this title)'' after ''individual is, or''.

Subsec. (b)(1)(B)(iii). Pub. L. 103–66, §13561(b), substituted ''1998'' for ''1995''.

Subsec. (b)(1)(B)(iv). Pub. L. 103–66, §13561(e)(1)(G), amended heading and text generally. Prior to amendment, text defined ''active individual'' and ''large group health plan''.

Subsec. (b)(1)(C). Pub. L. 103–66, §13561(c)(1), (3), substituted ''or eligible for benefits under this subchapter under'' for ''benefits under this subchapter solely by reason of'' in cl. (i) and concluding provisions and substituted ''before October 1, 1998'' for ''on or before January 1, 1996'' in concluding provisions.

Subsec. (b)(1)(E). Pub. L. 103–66, §13561(e)(1)(H), added cls. (ii) and (iii).

Pub. L. 103–66, §13561(d)(1), added subpar. (E).

Subsec. (b)(5)(B). Pub. L. 103–66, §13581(b)(1)(A), substituted ''under—'' for ''under subparagraph (A) for the

purposes of carrying out this subsection.'' and added cls. (i) and (ii) and concluding provisions.

Subsec. (b)(5)(C)(i). Pub. L. 103–66, § 13581(b)(1)(B), substituted ''subparagraph (B)(i)'' for ''subparagraph (B)''.

Subsec. (b)(5)(C)(iii). Pub. L. 103–66, § 13561(a)(1), substituted ''1998'' for ''1995''.

1990—Subsec. (a). Pub. L. 101–508, § 4161(a)(3)(C)(iii), inserted at end ''Paragraph (7) shall not apply to Federally qualified health center services described in section 1395x(aa)(3)(B) of this title.''

Subsec. (a)(1)(A). Pub. L. 101–508, § 4163(d)(2)(A)(i), substituted ''a succeeding subparagraph'' for ''subparagraph (B), (C), (D), or (E)''.

Subsec. (a)(1)(F). Pub. L. 101–508, § 4163(d)(2)(A)(ii)–(iv), added subpar. (F).

Subsec. (a)(2). Pub. L. 101–508, § 4161(a)(3)(C)(i), inserted before semicolon at end '', except in the case of Federally qualified health center services''.

Subsec. (a)(3). Pub. L. 101–508, § 4161(a)(3)(C)(ii), inserted '', in the case of Federally qualified health center services, as defined in section 1395x(aa)(3) of this title,'' after ''section 1395x(aa)(1) of this title,''.

Subsec. (a)(7). Pub. L. 101–508, § 4163(d)(2)(B), inserted ''or under paragraph (1)(F)'' after ''paragraph (1)(B)''.

Pub. L. 101–508, § 4153(b)(2)(B), inserted ''(other than eyewear described in section 1395x(s)(8) of this title)'' after first reference to ''eyeglasses''.

Subsec. (a)(14). Pub. L. 101–508, § 4157(c)(1), inserted '', services described by section 1395x(s)(2)(K)(i) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist,'' after ''this paragraph)'' and struck out before semicolon at end ''or are services of a certified registered nurse anesthetist''.

Subsec. (a)(15). Pub. L. 101–508, § 4107(b), designated existing provisions as par. (A), substituted '', or'' for ''; or'' at end, and added par. (B).

Subsec. (b)(1)(B)(iii). Pub. L. 101–508, § 4203(b), substituted ''October 1, 1995'' for ''January 1, 1992''.

Subsec. (b)(1)(C). Pub. L. 101–508, § 4203(c)(1)(B), inserted at end ''Effective for items and services furnished on or after February 1, 1991, and on or before January 1, 1996, (with respect to periods beginning on or after February 1, 1990), clauses (i) and (ii) shall be applied by substituting '18-month' for '12-month' each place it appears.''

Subsec. (b)(1)(C)(i). Pub. L. 101–508, § 4203(c)(1)(A), substituted ''during the 12-month period which begins with the first month in which the individual becomes entitled to benefits under part A of this subchapter under the provisions of section 426–1 of this title, or, if earlier, the first month in which the individual would have been entitled to benefits under such part under the provisions of section 426–1 of this title if the individual had filed an application for such benefits; and'' for ''during the 12-month period which begins with the earlier of—

''(I) the month in which a regular course of renal dialysis is initiated, or

''(II) in the case of an individual who receives a kidney transplant, the first month in which he would be eligible for benefits under part A of this subchapter (if he had filed an application for such benefits) under the provisions of section 426–1(b)(1)(B) of this title; and''.

Subsec. (b)(3)(C). Pub. L. 101–508, § 4204(g)(1), added subpar. (C).

Subsec. (b)(5)(C)(iii). Pub. L. 101–508, § 4203(a)(1), substituted ''September 30, 1995'' for ''September 30, 1991''.

1989—Pub. L. 101–239, § 6202(b)(1)(A), inserted ''and medicare as secondary payer'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 101–234 repealed Pub. L. 100–360, § 204(d)(2)(A)(i), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1)(E). Pub. L. 101–239, § 6103(b)(3)(B), substituted ''section 1320b–12'' for ''section 1395*ll*(c)''.

Subsec. (a)(1)(F). Pub. L. 101–239, § 6115(b), inserted before semicolon at end '', and, in the case of screening pap smear, which is performed more frequently than is provided under 1395x(nn) of this title''.

Pub. L. 101–234 repealed Pub. L. 100–360, § 204(d)(2)(A)(ii)–(iv), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (a)(1)(G), (6), (7). Pub. L. 101–234 repealed Pub. L. 100–360, §§ 204(d)(2)(B), 205(e)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(14). Pub. L. 101–239, § 6003(g)(3)(D)(xi), substituted ''hospital or rural primary care hospital'' for ''hospital'' in three places.

Subsec. (b). Pub. L. 101–239, § 6202(b)(1)(B), amended heading and text generally, substituting pars. (1) to (4) relating to medicare as secondary payer for former pars. (1) to (5) relating to items or services paid under workmen's compensation laws and end stage renal disease program.

Subsec. (b)(1)(D). Pub. L. 101–239, § 6202(e)(1), added subpar. (D).

Subsec. (b)(5). Pub. L. 101–239, § 6202(a)(2)(A), added par. (5).

Subsec. (c). Pub. L. 101–234 repealed Pub. L. 100–360, § 202(d), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (e)(1). Pub. L. 101–239, § 6411(d)(2), inserted '', not including items or services furnished in an emergency room of a hospital'' after ''(other than an emergency item or service''.

1988—Subsec. (a)(1)(A). Pub. L. 100–360, § 204(d)(2)(A)(i), substituted ''a succeeding subparagraph'' for ''subparagraph (B), (C), (D), or (E)''.

Subsec. (a)(1)(F). Pub. L. 100–360, § 204(d)(2)(A)(ii)–(iv), added subpar. (F) relating to screening mammography.

Subsec. (a)(1)(G). Pub. L. 100–360, § 205(e)(1)(A), as amended by Pub. L. 100–485, § 608(d)(7), added subpar. (G) relating to in-home care for chronically dependent individuals.

Subsec. (a)(6). Pub. L. 100–360, § 205(e)(1)(B), inserted ''and except, in the case of in-home care, as is otherwise permitted under paragraph (1)(G)'' after ''paragraph (1)(C)''.

Subsec. (a)(7). Pub. L. 100–360, § 204(d)(2)(B), inserted ''or under paragraph (1)(F)'' after ''(1)(B)''.

Subsec. (a)(15). Pub. L. 100–360, § 411(f)(4)(D)(i), inserted ''(including subsequent insertion of an intraocular lens)'' after ''operation''.

Subsec. (c). Pub. L. 100–360, § 202(d), designated existing provisions as par. (1), redesignated former par. (1) as subpar. (A), redesignated former subpars. (A) to (D) as cls. (i) to (iv), redesignated former par. (2) as subpar. (B), redesignated former subpar. (A) as cl. (i) and substituted ''subparagraph (A)'' for ''paragraph (1)'', redesignated former subpar. (B) as cl. (ii), and added par. (2) prohibiting payment for expenses incurred for a covered outpatient drug if the drug is dispensed in a quantity exceeding a supply of 30 days with an exception.

Subsec. (e)(1). Pub. L. 100–360, § 411(i)(4)(D)(i), as amended by Pub. L. 100–485, § 608(d)(24)(C)(i), designated existing provisions of subsec. (e) as par. (1), redesignated former par. (1) as subpar. (A), substituted '', 1320a–7a, 1320c–5 or 1395u(j)(2)'' for ''or section 1320a–7a'', redesignated former par. (2) as subpar. (B), and substituted '', 1320a–7a, 1320c–5 or 1395u(j)(2)'' for ''or section 1320a–7a''.

Subsec. (e)(2). Pub. L. 100–360, § 411(i)(4)(D)(ii), as amended by Pub. L. 100–485, § 608(d)(24)(C)(ii), amended former section 1395aaa of this title by striking out the catchline ''Limitation of liability of beneficiaries with respect to services furnished by excluded individuals and entities'', substituting ''(2)'' for the section designation, inserting ''1395u(j)(2),'' in text, and transferring the text to par. (2) of subsec. (e) of this section.

1987—Subsec. (a)(1)(A). Pub. L. 100–203, § 4085(i)(15), substituted ''(D), or (E)'' for ''or (D)''.

Subsec. (a)(8). Pub. L. 100–203, § 4072(c), inserted '', other than shoes furnished pursuant to section 1395x(s)(12) of this title'' before semicolon.

Subsec. (a)(14). Pub. L. 100–203, §4085(i)(16), substituted ''a patient'' for ''an patient''.

Pub. L. 100–203, §4009(j)(6)(C), made technical amendment to Pub. L. 99–509, §9320(h)(1). See 1986 Amendment note below.

Subsec. (b)(2)(A)(ii). Pub. L. 100–203, §4036(a)(1), substituted ''can reasonably be expected to be made under such a plan'' for ''the Secretary determines will be made under such a plan as promptly as would otherwise be the case if payment were made by the Secretary under this subchapter''.

Subsec. (b)(4)(B)(i). Pub. L. 100–203, §4034(a), substituted ''subsection (b) of section 5000 of the Internal Revenue Code of 1986 without regard to subsection (d) of such section'' for ''section 5000(b) of the Internal Revenue Code of 1986''.

Subsec. (d). Pub. L. 100–93, §8(c)(1)(A), struck out subsec. (d), which provided that no payment be made under this subchapter for any item or services to an individual by a person where Secretary determines such person knowingly and willfully made any false statement or representation of a material fact, submitted excessive bills or requests, or furnished excessive services or supplies, and provided a dissatisfied person with a hearing on determination of the Secretary.

Subsec. (e) [formerly §1395aaa]. Pub. L. 100–93, §10, added par. (2). See 1988 Amendment note above.

Pub. L. 100–93, §8(c)(1)(B), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: ''No payment may be made under this subchapter with respect to any item or service furnished by a physician or other individual during the period when he is barred pursuant to section 1320a–7 of this title from participation in the program under this subchapter.''

Subsec. (h)(1)(B). Pub. L. 100–203, §4039(c)(1)(A), substituted ''law (and any amount paid to a provider under any such warranty),'' for ''law,''.

Subsec. (h)(1)(D). Pub. L. 100–203, §4039(c)(1)(B), inserted ''in determining the amount subject to repayment under paragraph (2)(C),'' after ''(3),''.

Subsec. (h)(2)(C). Pub. L. 100–203, §4039(c)(1)(C), added subpar. (C).

Subsec. (h)(4). Pub. L. 100–93, §8(c)(3), substituted ''subsections (c), (f), and (g) of section 1320a–7 of this title'' for ''paragraphs (2) and (3) of subsection (d) of this section''.

Subsec. (h)(4)(B). Pub. L. 100–203, §4039(c)(1)(D), substituted '', has improperly'' for ''or has improperly'' and inserted ''or has failed to make repayment to the Secretary as required under paragraph (2)(C),'' after ''(2)(B),''.

1986—Subsec. (a)(1)(E). Pub. L. 99–509, §9316(b), added subpar. (E).

Subsec. (a)(14). Pub. L. 99–509, §9343(c)(1), substituted ''patient'' for ''inpatient''.

Pub. L. 99–509, §9320(h)(1), as amended by Pub. L. 100–203, §4009(j)(6)(C), inserted ''or are services of a certified registered nurse anesthetist'' after ''hospital'' at end.

Subsec. (a)(15). Pub. L. 99–272, §9307(a), added par. (15).

Subsec. (a)(16). Pub. L. 99–272, §9401(c)(1), added par. (16).

Subsec. (b)(2)(A). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(3)(A)(i). Pub. L. 99–272, §9201(a)(1), substituted ''(or to the spouse of such individual)'' for ''who is under 70 years of age during any part of such month (or to the spouse of such individual, if the spouse is under 70 years of age during any part of such month)''.

Subsec. (b)(3)(A)(iii). Pub. L. 99–272, §9201(a)(2), struck out ''and ending with the month before the month in which such individual attains the age of 70'' after ''section 426(a) of this title''.

Subsec. (b)(3)(A)(iv). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (b)(4). Pub. L. 99–509, §9319(a), added par. (4).

Subsec. (b)(5). Pub. L. 99–509, §9319(b), added par. (5).

1984—Subsec. (a)(12). Pub. L. 98–369, §2354(b)(30), struck out second comma after ''dental procedure''.

Subsec. (b)(1). Pub. L. 98–369, §2344(a), substituted ''to be made promptly'' for ''to be made'' and ''has been or could be made under such a law'' for ''has been made under such a law'', and inserted ''In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a law, policy, plan, or insurance, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such law, policy, plan, or insurance, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a law, policy, plan, or insurance.''

Subsec. (b)(2)(B). Pub. L. 98–369, §2344(b), substituted ''has been or could be made under a plan'' for ''has been made under a plan'', and inserted ''In order to recover payment made under this subchapter for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this subchapter for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan.''

Subsec. (b)(3)(A)(i). Pub. L. 98–369, §2301(a), struck out ''over 64 but'' before ''under 70 years'' in two places.

Subsec. (b)(3)(A)(ii). Pub. L. 98–369, §2344(c), substituted ''has been or could be made under a group health plan'' for ''has been made under a group health plan'', and inserted ''In order to recover payment made under this title for an item or service, the United States may bring an action against any entity which would be responsible for payment with respect to such item or service (or any portion thereof) under such a plan, or against any entity (including any physician or provider) which has been paid with respect to such item or service under such plan, and may join or intervene in any action related to the events that gave rise to the need for such item or service. The United States shall be subrogated (to the extent of payment made under this title for an item or service) to any right of an individual or any other entity to payment with respect to such item or service under such a plan.''

Subsec. (b)(3)(A)(iii). Pub. L. 98–369, §2354(b)(31), inserted ''before the month'' after ''ending with the month''.

Subsec. (h). Pub. L. 98–369, §2304(c), added subsec. (h).

Subsec. (i). Pub. L. 98–369, §2313(c), added subsec. (i).

1983—Subsec. (a)(1)(A). Pub. L. 98–21, §601(f)(1), inserted reference to subpar. (D).

Subsec. (a)(1)(D). Pub. L. 98–21, §601(f)(2)–(4), added subpar. (D).

Subsec. (a)(14). Pub. L. 98–21, §602(e), added par. (14).

Subsec. (b)(3)(A)(i). Pub. L. 97–448 inserted ''in any month'' after ''service furnished'', and ''during any part of such month'' after ''70 years of age'' wherever appearing.

1982—Subsec. (a)(1). Pub. L. 97–248, §122(f)(1), designated existing provisions as subpars. (A) and (B), in subpar. (A) as so designated inserted exception to provisions for items and services described in subpar. (B) or (C), substituted ''and'' for ''or'' as the connector between provisions, and added subpar. (C).

Subsec. (a)(6). Pub. L. 97–248, §122(f)(2), inserted ''(except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C))''.

Subsec. (a)(7). Pub. L. 97–248, §122(f)(3), substituted ''paragraph (1)(B)'' for ''paragraph (1)''.

Subsec. (a)(9). Pub. L. 97–248, §122(f)(4), inserted ''(except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C))''.

Subsec. (b)(1). Pub. L. 97–248, §128(a)(2), struck out ''or plan'' after ''service has been made under such a law''.

Subsec. (b)(2)(A). Pub. L. 97–248, §128(a)(3), substituted ''section 162(i)(2)'' for ''section 162(h)(2)''.

Subsec. (b)(2)(B). Pub. L. 97–248, §128(a)(4), inserted ''furnished'' before ''to an individual''.

Subsec. (b)(3). Pub. L. 97–248, §116(b), added par. (3).

Subsec. (d)(1)(C). Pub. L. 97–248, §148(a), substituted ''on the basis of information acquired by the Secretary in the administration of this subchapter'' for '', on the basis of reports transmitted to him in accordance with section 1320c–6 of this title (or, in the absence of any such report, on the basis of such data as he acquires in the administration of the program under this subchapter),''.

Subsec. (f). Pub. L. 97–248, §122(g)(1), substituted ''paragraph (1)(A)'' for ''paragraph (1)''.

Subsec. (g). Pub. L. 97–248, §142, added subsec. (g).

1981—Subsec. (b). Pub. L. 97–35, §2146(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 97–35, §2103(a)(1), added subsec. (c).

Subsec. (f). Pub. L. 97–35, §2152(a), added subsec. (f).

1980—Subsec. (a)(1). Pub. L. 96–611, §1(a)(3)(A), inserted '', or, in the case of items and services described in section 1395x(s)(10) of this title, which are not reasonable and necessary for the prevention of illness'' after ''of a malformed body member''.

Subsec. (a)(7). Pub. L. 96–611, §1(a)(3)(B), inserted ''(except as otherwise allowed under section 1395x(s)(10) of this title and paragraph (1))'' after ''immunizations''.

Subsec. (a)(12). Pub. L. 96–499, §936(c), inserted ''or because of the severity of the dental procedure,'' after ''and clinical status''.

Subsec. (a)(13)(C). Pub. L. 96–499, §939(a), struck out '', warts,'' after ''corns''.

Subsec. (b). Pub. L. 96–499, §953, inserted ''or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance'' and '', policy, plan, or insurance'' after ''or a State'' and '', policy, plan, or insurance'' after ''law or plan'' and inserted provision authorizing the Secretary to waive the provisions of this subsection in the case of an individual claim if he determined that the probability of recovery or amount involved did not warrant the pursuit of the claim.

Subsec. (d)(4). Pub. L. 96–272 added par. (4).

Subsec. (e). Pub. L. 96–499, §913(b), substituted provisions barring payment under this subchapter with respect to items or services furnished by a physician or other individual during a period when such physician or other individual was barred pursuant to section 1320a–7 of this title from participation under this subchapter for provisions authorizing the Secretary to suspend a physician or individual practitioner from participation under this subchapter upon determining that such physician or practitioner had been convicted of a criminal offense related to such physician's or practitioner's involvement in the programs under this subchapter or the program under subchapter XIX of this chapter.

1977—Subsec. (a)(3). Pub. L. 95–210 substituted ''except in the case of rural health clinic services, as defined in section 1395x(aa)(1) of this title, and in such other cases as the Secretary may specify'' for ''except in such cases as the Secretary may specify''.

Subsec. (d)(1)(B). Pub. L. 95–142, §13(b)(1), struck out requirement for concurrence of appropriate program review team for finding of Secretary under this paragraph.

Subsec. (d)(1)(C). Pub. L. 95–142, §13(b)(2), substituted provisions relating to determinations by the Secretary on the basis of reports transmitted to him in accordance with section 1320c–6 of this title or other data acquired in the administration of this subchapter, for provisions relating to determinations by the Secretary with the concurrence of appropriate review team members.

Subsec. (d)(4). Pub. L. 95–142, §13(a), struck out par. (4) which set forth provisions relating to appointment and functions of program review teams.

Subsec. (e). Pub. L. 95–142, §7(a), added subsec. (e).

1975—Subsec. (c). Pub. L. 94–182 struck out subsec. (c) prohibiting payments to Federal employees under this subchapter unless a determination and certification by the Secretary of a modification of any health benefits plan under chapter 89 of Title 5 was made which would allow a Federal employee benefits under part A or B of this subchapter.

1974—Subsec. (c). Pub. L. 93–480 substituted ''January 1, 1976'' for ''January 1, 1975''.

1973—Subsec. (a)(12). Pub. L. 93–233 substituted ''the provision of such dental services if the individual, because of his underlying medical condition and clinical status, requires hospitalization in connection with the provision of such services'' for ''a dental procedure where the individual suffers from impairments of such severity as to require hospitalization''.

1972—Subsec. (a)(4). Pub. L. 92–603, §211(c)(1), inserted reference to physicians' services and ambulance services furnished an individual in conjunction with emergency inpatient hospital services.

Subsec. (a)(12). Pub. L. 92–603, §256(c), authorized payment under part A in the case of inpatient hospital services in connection with a dental procedure where the individual suffers from impairments of such severity as to require hospitalization.

Subsec. (c). Pub. L. 92–603, §210, added subsec. (c).

Subsec. (d). Pub. L. 92–603, §229(a), added subsec. (d).

1968—Subsec. (a)(7). Pub. L. 90–248, §128, prohibited payment for procedures performed (during the course of any eye examination) to determine the refractive state of the eyes.

Subsec. (a)(13). Pub. L. 90–248, §127(b), added par. (13).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 145(c)(1) of Pub. L. 103–432 applicable to mammography furnished by a facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

Amendment by section 147(e)(6) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320a–3a of this title.

Section 151(a)(2)(B) of Pub. L. 103–432 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply with respect to items and services furnished on or after the expiration of the 120-day period beginning on the date of the enactment of this Act [Oct. 31, 1994].''

Section 151(b)(3)(C) of Pub. L. 103–432 provided that: ''The amendments made by this paragraph [amending this section] shall apply to payments for items and services furnished on or after the date of the enactment of this Act [Oct. 31, 1994].''

Section 151(c)(1), (9) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 103–66.

Section 151(c)(4) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 101–508.

Section 151(c)(5), (6) of Pub. L. 103–432 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 101–239.

Amendment by section 156(a)(2)(D) of Pub. L. 103–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as a note under section 1320c–3 of this title.

Section 157(b)(8) of Pub. L. 103–432 provided that: ''The amendments made by this subsection [amending this section, section 1395mm of this title, and provisions set out as notes under section 1395mm of this

title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 151(c)(10) of Pub. L. 103–432 provided that: ''The amendment made by section 13561(e)(1)(G) of OBRA–1993 [Pub. L. 103–66, amending this section], to the extent it relates to the definition of large group health plan, shall be effective as if included in the enactment of OBRA–1989 [Pub. L. 101–239].''

Amendment by section 13561(d)(1) of Pub. L. 103–66 effective 90 days after Aug. 10, 1993, see section 13561(d)(3) of Pub. L. 103–66, set out as a note under section 5000 of Title 26, Internal Revenue Code.

Section 13561(e)(1)(D) of Pub. L. 103–66, as amended by Pub. L. 103–432, title I, §151(c)(9)(A), Oct. 31, 1994, 108 Stat. 4436, provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 101–239.

Amendment by section 13581(b)(1) of Pub. L. 103–66 effective Jan. 1, 1994, see section 13581(d) of Pub. L. 103–66, set out as an Effective Date note under section 1320b–14 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4153(b)(2)(B) of Pub. L. 101–508 applicable to items furnished on or after Jan. 1, 1991, see section 4153(b)(2)(C) of Pub. L. 101–508, set out as a note under section 1395x of this title.

Amendment by section 4157(c)(1) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4157(d) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4161(a)(3)(C) of Pub. L. 101–508 applicable to services furnished on or after Oct. 1, 1991, see section 4161(a)(8) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4163(d)(2)(A)(i)–(iii), (B) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, as amended, set out as a note under section 1395*l* of this title.

Section 4163(d)(3) of Pub. L. 101–508, as added by Pub. L. 103–432, title I, §147(f)(5)(A), Oct. 31, 1994, 108 Stat. 4431, provided that: ''The amendment made by paragraph (2)(A)(iv) [amending this section] shall apply to screening pap smears performed on or after July 1, 1990.''

Section 4204(g)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to incentives offered on or after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6115(b) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Amendment by section 6202(b)(1) of Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 6202(e)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to items and services furnished on or after October 1, 1989.''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(d) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 204(d)(2) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 205(e)(1) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 205(f) of Pub. L. 100–360, set out as a note under section 1395k of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(i)(4)(D) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(f)(4)(D)(ii) of Pub. L. 100–360 provided that: ''The amendment made by clause (i) [amending this section] shall apply to operations performed on or after 60 days after the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4009(j)(6) of Pub. L. 100–203, provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–509.

Section 4034(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of section 9319(a) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4036(a)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to items and services furnished on or after 30 days after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4039(c)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall become effective on January 1, 1988.''

For effective date of amendment by section 4072(c) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 9319(f) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting section 5000 of Title 26, Internal Revenue Code, and amending this section and sections 1395p and 1395r of this title] shall apply to items and services furnished on or after January 1, 1987.

''(2) The amendments made by subsection (c) [amending sections 1395p and 1395r of this title] shall apply to enrollments occurring on or after January 1, 1987.''

Amendment by section 9320(h)(1) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Amendment by section 9343(c)(1) of Pub. L. 99–509 applicable to services furnished after June 30, 1987, see section 9343(h)(2) of Pub. L. 99–509, as amended, set out as a note under section 1395*l* of this title.

Section 9201(d)(1) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to items and services furnished on or after May 1, 1986.''

Amendment by section 9307(a) of Pub. L. 99–272 applicable to services performed on or after Apr. 1, 1986, see section 9307(e) of Pub. L. 99–272, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2301(c)(1) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to items and services furnished on or after January 1, 1985.''

Amendment by section 2304(c) of Pub. L. 98–369 applicable to pacemaker devices and leads implanted or removed on or after the effective date of final regulations promulgated to carry out such amendment, see section 2304(d) of Pub. L. 98–369, set out as a note below.

Section 2313(e) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and section 1395ww of this title] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Section 2344(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to items and services furnished on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(30), (31) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 601(f) of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, and amendment by section 602(e)(3) of Pub. L. 98–21 effective Oct. 1, 1983, see section 604(a)(1), (2) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 116(b) of Pub. L. 97–248 applicable with respect to items and services furnished on or after Jan. 1, 1983, see section 116(c) of Pub. L. 97–248, set out as a note under section 623 of Title 29, Labor.

Amendment by section 122(f), (g)(1) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

Amendment by section 128(a)(2)–(4) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 128(e)(2) of Pub. L. 97–248, set out as a note under section 1395x of this title.

Amendment by sections 142 and 148(a) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2103(a)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to expenses incurred on or after October 1, 1981.''

Section 2146(c)(1) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on October 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–611 effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395*l* of this title.

Amendment by section 936(c) of Pub. L. 96–499 applicable with respect to services provided on or after July 1, 1981, see section 936(d) of Pub. L. 96–499, set out as a note under section 1395f of this title.

Section 939(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to services furnished on or after July 1, 1981.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95–210 applicable to services rendered on or after first day of third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95–210, set out as a note under section 1395k of this title.

Section 13(c) of Pub. L. 95–142 provided that: ''The amendments made by this section [amending this section and sections 1320c–6 and 1395cc of this title] shall take effect on the date of the enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective with respect to admissions subject to the provisions of section 1395(a)(2) of this title which occur after Dec. 31, 1973, see section 18(z–3)(2) of Pub. L. 93–233, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 211(c)(1) of Pub. L. 92–603 applicable to services furnished with respect to admissions occurring after Dec. 31, 1972, see section 211(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Amendment by section 256(c) of Pub. L. 92–603 applicable with respect to admissions occurring after the second month following the month of enactment of Pub. L. 92–603 which was approved on Oct. 30, 1972, see section 256(d) of Pub. L. 92–603, set out as a note under section 1395f of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 127(b) of Pub. L. 90–248 applicable with respect to services furnished after Dec. 31, 1967, see section 127(c) of Pub. L. 90–248, set out as a note under section 1395x of this title.

DISTRIBUTION OF QUESTIONNAIRE BY CONTRACTOR

Section 151(a)(1)(B) of Pub. L. 103–432 provided that: ''The Secretary of Health and Human Services shall enter into an agreement with an entity not later than 60 days after the date of the enactment of the Social Security Act Amendments of 1994 [Oct. 31, 1994], to distribute the questionnaire described in section 1862(b)(5)(D) of the Social Security Act [subsec. (b)(5)(D) of this section] (as added by subparagraph (A)).''

RETROACTIVE EXEMPTION FOR CERTAIN SITUATIONS INVOLVING RELIGIOUS ORDERS

Section 13561(f) of Pub. L. 103–66 provided that: ''Section 1862(b)(1)(D) of the Social Security Act [subsec. (b)(1)(D) of this section] applies, with respect to items and services furnished before October 1, 1989, to any claims that the Secretary of Health and Human Services had not identified as of that date as subject to the provisions of section 1862(b) of such Act.''

GAO STUDY OF EXTENSION OF SECONDARY PAYER PERIOD

Section 4203(c)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 151(c)(7), Oct. 31, 1994, 108 Stat. 4436, provided that:

''(A) The Comptroller General shall conduct a study of the impact of the second sentence of section 1862(b)(1)(C) of the Social Security Act [subsec. (b)(1)(C)

of this section], and shall include in such report information relating to—

''(i) the number (and geographic distribution) of such individuals for whom medicare is secondary;

''(ii) the amount of savings to the medicare program achieved annually by reason of the application of such sentence;

''(iii) the effect on access to employment, and employment-based health insurance, for such individuals and their family members (including coverage by employment-based health insurance of cost-sharing requirements under medicare after such employment-based insurance becomes secondary);

''(iv) the effect on the amount paid for each dialysis treatment under employment-based health insurance;

''(v) the effect on cost-sharing requirements under employment-based health insurance (and on out-of-pocket expenses of such individuals) during the period for which medicare is secondary; and

''(vi) the appropriateness of applying the provisions of section 1862(b)(1)(C) of such Act [subsec. (b)(1)(C) of this section] to all group health plans, without regard to the number of employees covered by such plans.

''(B) The Comptroller General shall submit a preliminary report on the study conducted under subparagraph (A) to the Committees on Ways and Means and Energy and Commerce [Committee on Energy and Commerce now Committee on Commerce] of the House of Representatives and the Committee on Finance of the Senate not later than January 1, 1993, and a final report on such study not later than January 1, 1995.''

[Section 151(c)(7) of Pub. L. 103–432 provided that the amendment made by that section to section 4203(c)(2) of Pub. L. 101–508, set out above, is effective as if included in the enactment of Pub. L. 101–508.]

DEADLINE FOR FIRST TRANSMITTAL AND REQUEST OF MATCHING INFORMATION

Section 6202(a)(2)(B) of Pub. L. 101–239 provided that: ''The Commissioner of Social Security shall first—

''(i) transmit to the Secretary of the Treasury information under paragraph (5)(A)(i) of section 1862(b) of the Social Security Act [subsec. (b)(5)(A)(i) of this section] (as inserted by subparagraph (A)), and

''(ii) request from the Secretary disclosure of information described in section 6013(*l*)(12)(A) of the Internal Revenue Code of 1986 [26 U.S.C. 6013(*l*)(12)(A)],

by not later than 14 days after the date of the enactment of this Act [Dec. 19, 1989].''

DESIGNATION OF PEDIATRIC HOSPITALS AS MEETING CERTIFICATION AS HEART TRANSPLANT FACILITY

Section 4009(b) of Pub. L. 100–203 provided that: ''For purposes of determining whether a pediatric hospital that performs pediatric heart transplants meets the criteria established by the Secretary of Health and Human Services for facilities in which the heart transplants performed will be considered to meet the requirement of section 1862(a)(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section], the Secretary shall treat such a hospital as meeting such criteria if—

''(1) the hospital's pediatric heart transplant program is operated jointly by the hospital and another facility that meets such criteria,

''(2) the unified program shares the same transplant surgeons and quality assurance program (including oversight committee, patient protocol, and patient selection criteria), and

''(3) the hospital demonstrates to the satisfaction of the Secretary that it is able to provide the specialized facilities, services, and personnel that are required by pediatric heart transplant patients.''

APPROVAL OF SURGICAL ASSISTANTS FOR PROCEDURES PERFORMED APRIL 1, 1986, TO DECEMBER 15, 1986

Section 1895(b)(16)(C) of Pub. L. 99–514 provided that: ''For purposes of section 1862(a)(15) of the Social Security Act (42 U.S.C. 1395y(a)(15)), added by section 9307(a)(3) of COBRA, and for surgical procedures performed during the period beginning on April 1, 1986, and ending on December 15, 1986, a carrier is deemed to have approved the use of an assistant in a surgical procedure, before the surgery is performed, based on the existence of a complicating medical condition if the carrier determines after the surgery is performed that the use of the assistant in the procedure was appropriate based on the existence of a complicating medical condition before or during the surgery.''

EXTENDING WAIVER OF LIABILITY PROVISIONS TO HOSPICE PROGRAMS

Section 9305(f) of Pub. L. 99–509, as amended by Pub. L. 100–360, title IV, §426(a), July 1, 1988, 102 Stat. 814; Pub. L. 101–508, title IV, §4008(a)(2), Nov. 5, 1990, 104 Stat. 1388–44, provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall, for purposes of determining whether payments to a hospice program should be denied pursuant to section 1862(a)(1)(C) of the Social Security Act [subsec. (a)(1)(C) of this section], apply (under section 1879(a) of such Act [section 1395pp(a) of this title]) a presumption of compliance of 2.5 percent (based on the number of days of hospice care billed) in a manner substantially similar to that provided to home health agencies under policies in effect as of July 1, 1985.

''(2) EFFECTIVE DATE.—Paragraph (1) shall apply to hospice care furnished on or after the first day of the first month that begins at least 6 months after the date of the enactment of this Act [Oct. 21, 1986] and before December 31, 1995.''

[Section 4008(a)(3) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending section 9305(f) of Pub. L. 99–509, set out above, and section 9126(c) of Pub. L. 99–272, set out below] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].'']

STUDY OF IMPACT ON DISABLED BENEFICIARIES AND FAMILY OF AMENDMENTS RELATING TO LARGE GROUP HEALTH PLANS AND MEDICARE AS SECONDARY PAYER

Section 9319(e) of Pub. L. 99–509 directed Comptroller General to study and report to Congress, not later than Mar. 1, 1990, the impact of the amendments made by this section (enacting section 5000 of Title 26, Internal Revenue Code, and amending this section and sections 1395p and 1395r of this title) on access of disabled individuals and members of their family to employment and health insurance, such report to include information relating to number of disabled medicare beneficiaries for whom medicare has become secondary, either through their employment or the employment of a family member, amount of savings to the medicare program achieved annually through this provision, and effect on employment, and employment-based health coverage, of disabled individuals and family members.

REINSTATEMENT OF WAIVER OF LIABILITY PRESUMPTION

Section 9126(c) of Pub. L. 99–272, as amended by Pub. L. 100–360, title IV, §426(b), July 1, 1988, 102 Stat. 814; Pub. L. 101–508, title IV, §4008(a)(1), Nov. 5, 1990, 104 Stat. 1388–44, provided that: ''The Secretary of Health and Human Services shall, for purposes of determining whether payments to a skilled nursing facility should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section], apply the same presumption of compliance (5 percent) as in effect under regulations as of July 1, 1985. Such presumption shall apply for the period beginning with the first month beginning after the date of the enactment of this Act [Apr. 7, 1986] and ending on December 31, 1995.''

HOME HEALTH WAIVER OF LIABILITY

Section 9205 of Pub. L. 99–272, as amended by Pub. L. 100–360, title IV, §426(d), July 1, 1988, 102 Stat. 814; Pub. L. 103–432, title I, §158(b)(1), Oct. 31, 1994, 108 Stat. 4442, provided that: ''The Secretary of Health and Human

Services shall, for purposes of determining whether payments to a home health agency should be denied pursuant to section 1862(a)(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section], apply a presumption of compliance (2.5 percent) in the same manner as under the regulations in effect as of July 1, 1985. Such presumption shall apply until December 31, 1995.''

[Section 158(b)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending section 9205 of Pub. L. 99–272, set out above] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].'']

RECOMMENDATIONS AND GUIDELINES FOR ELIMINATION OF ASSISTANTS AT SURGERY; REPORT TO CONGRESS

Section 9307(d) of Pub. L. 99–272 provided that the Secretary of Health and Human Services, after consultation with the Physician Payment Review Commission, develop recommendations and guidelines respecting other surgical procedures for which an assistant at surgery was generally not medically necessary and circumstances under which use of an assistant at surgery was generally appropriate but should be subject to prior approval of an appropriate entity and that the Secretary report to Congress, not later than January 1, 1987, on these recommendations and guidelines.

PACEMAKER REIMBURSEMENT REVIEW AND REFORM; PROMULGATION OF REGULATIONS; EFFECTIVE DATE OF PACEMAKER REGISTRATION

Section 2304(d) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services shall promulgate final regulations to carry out this section and the amendment made by this section [amending this section and enacting provisions set out as a note under section 1395*l* of this title] prior to January 1, 1985, and the amendment made by subsection (c) [amending this section] shall apply to pacemaker devices and leads implanted or removed on or after the effective date of such regulations.''

PAYMENT FOR DEBRIDEMENT OF MYCOTIC TOENAILS

Section 2325 of Pub. L. 98–369 provided that: ''The Secretary shall provide, pursuant to section 1862(a) of the Social Security Act [subsec. (a) of this section], that payment will not be made under part B of title XVIII of such Act [part B of this subchapter] for a physician's debridement of mycotic toenails to the extent such debridement is performed for a patient more frequently than once every 60 days, unless the medical necessity for more frequent treatment is documented by the billing physician.''

INTERIM WAIVER IN CERTAIN CASES OF BILLING RULE FOR ITEMS AND SERVICES OTHER THAN PHYSICIANS' SERVICES

Section 602(k) of Pub. L. 98–21, as amended by Pub. L. 99–272, title IX, § 9112(a), Apr. 7, 1986, 100 Stat. 163, provided that:

''(1) The Secretary of Health and Human Services may, for any cost reporting period beginning prior to October 1, 1986, waive the requirements of sections 1862(a)(14) and 1866(a)(1)(H) of the Social Security Act [subsec. (a)(14) of this section and section 1395cc(a)(1)(H) of this title] in the case of a hospital which has followed a practice, since prior to October 1, 1982, of allowing direct billing under part B of title XVIII of such Act [part B of this subchapter] for services (other than physicians' services) so extensively, that immediate compliance with those requirements would threaten the stability of patient care. Any such waiver shall provide that such billing may continue to be made under part B of such title but that the payments to such hospital under part A of such title [part A of this subchapter] shall be reduced by the amount of the billings for such services under part B of such title. If such a waiver is granted, at the end of the waiver period the Secretary may provide for such methods of payments under part A as is appropriate, given the organizational structure of the institution.

''(2) In the case of a hospital which is receiving payments pursuant to a waiver under paragraph (1), payment of the adjustment for indirect costs of approved educational activities shall be made as if the hospital were receiving under part A of title XVIII of the Social Security Act all the payments which are made under part B of such title solely by reason of such waiver.

''(3) Any waiver granted under paragraph (1) shall provide that, with respect to those items and services billed under part B of title XVIII of the Social Security Act solely by reason of such waiver—

''(A) payment under such part shall be equal to 100 percent of the reasonable charge or other applicable payment base for the items and services; and

''(B) the entity furnishing the items and services must agree to accept the amount paid pursuant to subparagraph (A) as the full charge for the items and services.''

[Section 9112(b) of Pub. L. 99–272 provided that:

[''(1) Section 602(k)(2) of the Social Security Amendments of 1983 (as added by subsection (a)) [set out above] shall apply to cost reporting periods beginning on or after January 1, 1986.

[''(2) Section 602(k)(3) of the Social Security Amendments of 1983 (as added by subsection (a)) [set out above] shall apply to items and services furnished after the end of the 10-day period beginning on the date of the enactment of this Act [Apr. 7, 1986].'']

PROHIBITION OF PAYMENT FOR INEFFECTIVE DRUGS

Section 115(b) of Pub. L. 97–248 provided that: ''No provision of law limiting the use of funds for purposes of enforcing or implementing section 1862(c) [subsec. (c) of this section] or section 1903(i)(5) [section 1396b(i)(5) of this title] of the Social Security Act, section 2103 of the Omnibus Budget Reconciliation Act of 1981 [section 2103 of Pub. L. 97–35, amending sections 1395y and 1396b of this title and enacting provisions set out as notes under sections 1395y and 1396b of this title], or any rule or regulation issued pursuant to any such section (including any provision contained in, or incorporated by reference into, any appropriation Act or resolution making continuing appropriations) shall apply to any period after September 30, 1982, unless such provision of law is enacted after the date of the enactment of this Act [Sept. 3, 1982] and specifically states that such provision is to supersede this section.''

ESTABLISHMENT AND IMPLEMENTATION OF GUIDELINES

Section 2152(b) of Pub. L. 97–35 directed the Secretary of Health and Human Services to establish, and provide for the implementation of, the guidelines described in subsec. (f) of this section not later than Oct. 1, 1981.

REPORT TO CONGRESSIONAL COMMITTEES ON IMPLEMENTATION OF CERTIFICATION REQUIREMENTS RELATING TO MODIFICATION OF HEALTH BENEFITS PLAN OR PROGRAM; FAILURE TO SUBMIT REPORT

Section 4(b) of Pub. L. 93–480 provided that the Civil Service Commission and the Secretary of Health, Education, and Welfare submit a report on or before Mar. 1, 1975, on the steps which have been taken, and the steps which are planned, to enable the Secretary to make the determination and certification referred to in former subsec. (c) of this section and that if such report is not submitted by Mar. 1, 1975, the date specified in former subsec. (c) shall be deemed to be July 1, 1975, rather than Jan. 1, 1976.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a–7a, 1320b–14, 1320c, 1320c–3, 1320c–7, 1320c–8, 1395h, 1395*l*, 1395m, 1395p, 1395r, 1395u, 1395x, 1395cc, 1395ff, 1395gg, 1395*oo*, 1395pp, 1395ss, 1395ww, 1396b of this title; title 26 sections 5000, 6103; title 45 section 231f.

§ 1395z. Consultation with State agencies and other organizations to develop conditions of participation for providers of services

In carrying out his functions, relating to determination of conditions of participation by providers of services, under subsections (e)(9), (f)(4), (j)(15),[1] (*o*)(6), (cc)(2)(I), and[2] (dd)(2), and (mm)(1) of section 1395x of this title, or by ambulatory surgical centers under section 1395k(a)(2)(F)(i) of this title, the Secretary shall consult with appropriate State agencies and recognized national listing or accrediting bodies, and may consult with appropriate local agencies. Such conditions prescribed under any of such subsections may be varied for different areas or different classes of institutions or agencies and may, at the request of a State, provide higher requirements for such State than for other States; except that, in the case of any State or political subdivision of a State which imposes higher requirements on institutions as a condition to the purchase of services (or of certain specified services) in such institutions under a State plan approved under subchapter I, XVI, or XIX of this chapter, the Secretary shall impose like requirements as a condition to the payment for services (or for the services specified by the State or subdivision) in such institutions in such State or subdivision.

(Aug. 14, 1935, ch. 531, title XVIII, § 1863, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 325; amended Oct. 30, 1972, Pub. L. 92–603, title II, § 234(g)(2), 86 Stat. 1413; Dec. 5, 1980, Pub. L. 96–499, title IX, §§ 933(f), 934(c)(1), 94 Stat. 2636, 2639; Sept. 3, 1982, Pub. L. 97–248, title I, § 122(g)(2), 96 Stat. 362; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2335(c), 2349(b)(1), 2354(b)(32), 98 Stat. 1090, 1097, 1102; July 1, 1988, Pub. L. 100–360, title II, §§ 203(e)(2), 204(c)(1), 102 Stat. 725, 728; Dec. 13, 1989, Pub. L. 101–234, title II, § 201(a), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6003(g)(3)(C)(ii), 103 Stat. 2152; Nov. 5, 1990, Pub. L. 101–508, title IV, § 4163(c)(1), 104 Stat. 1388–99; Oct. 31, 1994, Pub. L. 103–432, title I, § 145(c)(2), 108 Stat. 4427.)

References in Text

Subsection (j) of section 1395x of this title, referred to in text, was amended generally by Pub. L. 100–203, title IV, § 4201(a)(1), Dec. 22, 1987, 101 Stat. 1330–160, and, as so amended, does not contain a par. (15).

Amendments

1994—Pub. L. 103–432 struck out ''or whether screening mammography meets the standards established under section 1395m(c)(3) of this title,'' before ''the Secretary shall consult''.

1990—Pub. L. 101–508 inserted ''or whether screening mammography meets the standards established under section 1395m(c)(3) of this title,'' after ''section 1395k(a)(2)(F)(i) of this title,''.

1989—Pub. L. 101–239 substituted ''(jj)(3), and (mm)(1)'' for ''and (jj)(3)''.

Pub. L. 101–234 repealed Pub. L. 100–360, §§ 203(e)(2), 204(c)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

1988—Pub. L. 100–360, § 204(c)(1), inserted ''or whether screening mammography meets the standards established under section 1395m(e)(3) of this title,'' after ''1395k(a)(2)(F)(i) of this title,''.

Pub. L. 100–360, § 203(e)(2), substituted ''(dd)(2), and (jj)(3)'' for ''and (dd)(2)''.

1984—Pub. L. 98–369, § 2335(c), struck out ''(g)(4),'' after ''(e)(9), (f)(4),''.

Pub. L. 98–369, § 2354(b)(32), substituted ''(j)(15)'' for ''(j)(11)''.

Pub. L. 98–369, § 2349(b)(1), substituted ''appropriate State agencies'' for ''the Health Insurance Benefits Advisory Council established by section 1395dd of this title, appropriate State agencies,''.

1982—Pub. L. 97–248 substituted ''(cc)(2)(I), and (dd)(2)'' for ''and (cc)(2)(I)''.

1980—Pub. L. 96–499, § 933(f), substituted ''(*o*)(6), and (cc)(2)(I) of section 1395x'' for ''and (*o*)(6) of section 1395x''.

Pub. L. 96–499, § 934(c)(1), inserted ''or by ambulatory surgical centers under section 1395k(a)(2)(F)(i) of this title,''.

1972—Pub. L. 92–603 substituted ''subsections (e)(9), (f)(4), (g)(4), (j)(11), and (*o*)(6) of section 1395x of this title'' for ''subsections (e)(8), (f)(4), (g)(4), (j)(10), and (*o*)(5) of section 1395x of this title''.

Effective Date of 1994 Amendment

Amendment by Pub. L. 103–432 applicable to mammography furnished by a facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

Effective Date of 1990 Amendment

Amendment by Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

Effective Date of 1989 Amendment

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Effective Date of 1988 Amendment

Amendment by section 203(e)(2) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 204(c)(1) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Effective Date of 1984 Amendment

Amendment by section 2335(c) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Amendment by section 2349(b)(1) of Pub. L. 98–369 effective July 18, 1984, see section 2349(c) of Pub. L. 98–369, set out as a note under section 907a of this title.

Amendment by section 2354(b)(32) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

Effective Date of 1982 Amendment

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

Effective Date of 1980 Amendment

Amendment by section 933(f) of Pub. L. 96–499 effective with respect to a comprehensive outpatient reha-

[1] See References in Text note below.

[2] So in original. The word ''and'' probably should not appear.

bilitation facility's first accounting period beginning on or after July 1, 1981, see section 933(h) of Pub. L. 96–499, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 applicable with respect to providers of services for fiscal years beginning after the fifth month following October 1972, see section 234(i) of Pub. L. 92–603, set out as a note under section 1395x of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1395bb of this title; title 45 section 231f.

§ 1395aa. Agreements with States

(a) Use of State agencies to determine compliance by providers of services with conditions of participation

The Secretary shall make an agreement with any State which is able and willing to do so under which the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by him for the purpose of determining whether an institution therein is a hospital or skilled nursing facility, or whether an agency therein is a home health agency, or whether an agency is a hospice program or whether a facility therein is a rural health clinic as defined in section 1395x(aa)(2) of this title, a rural primary care hospital, as defined in section 1395x(mm)(1) of this title, or a comprehensive outpatient rehabilitation facility as defined in section 1395x(cc)(2) of this title, or whether a laboratory meets the requirements of paragraphs (15) and (16) of section 1395x(s) of this title, or whether a clinic, rehabilitation agency or public health agency meets the requirements of subparagraph (A) or (B), as the case may be, of section 1395x(p)(4) of this title, or whether an ambulatory surgical center meets the standards specified under section 1395k(a)(2)(F)(i) of this title. To the extent that the Secretary finds it appropriate, an institution or agency which such a State (or local) agency certifies is a hospital, skilled nursing facility, rural health clinic, comprehensive outpatient rehabilitation facility, home health agency, or hospice program (as those terms are defined in section 1395x of this title) may be treated as such by the Secretary. Any State agency which has such an agreement may (subject to approval of the Secretary) furnish to a skilled nursing facility, after proper request by such facility, such specialized consultative services (which such agency is able and willing to furnish in a manner satisfactory to the Secretary) as such facility may need to meet one or more of the conditions specified in section 1395i–3(a) of this title. Any such services furnished by a State agency shall be deemed to have been furnished pursuant to such agreement. Within 90 days following the completion of each survey of any health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization by the appropriate State or local agency described in the first sentence of this subsection, the Secretary shall make public in readily available form and place, and require (in the case of skilled nursing facilities) the posting in a place readily accessible to patients (and patients' representatives), the pertinent findings of each such survey relating to the compliance of each such health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization with (1) the statutory conditions of participation imposed under this subchapter and (2) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility, laboratory, clinic, agency, or organization. Any agreement under this subsection shall provide for the appropriate State or local agency to maintain a toll-free hotline (1) to collect, maintain, and continually update information on home health agencies located in the State or locality that are certified to participate in the program established under this subchapter (which information shall include any significant deficiencies found with respect to patient care in the most recent certification survey conducted by a State agency or accreditation survey conducted by a private accreditation agency under section 1395bb of this title with respect to the home health agency, when that survey was completed, whether corrective actions have been taken or are planned, and the sanctions, if any, imposed under this subchapter with respect to the agency) and (2) to receive complaints (and answer questions) with respect to home health agencies in the State or locality. Any such agreement shall provide for such State or local agency to maintain a unit for investigating such complaints that possesses enforcement authority and has access to survey and certification reports, information gathered by any private accreditation agency utilized by the Secretary under section 1395bb of this title, and consumer medical records (but only with the consent of the consumer or his or her legal representative).

(b) Payment in advance or by way of reimbursement to State for performance of functions of subsection (a)

The Secretary shall pay any such State, in advance or by way of reimbursement, as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (a) of this section, and for the Federal Hospital Insurance Trust Fund's fair share of the costs attributable

to the planning and other efforts directed toward coordination of activities in carrying out its agreement and other activities related to the provision of services similar to those for which payment may be made under part A of this subchapter, or related to the facilities and personnel required for the provision of such services, or related to improving the quality of such services.

(c) Use of State or local agencies to survey hospitals

The Secretary is authorized to enter into an agreement with any State under which the appropriate State or local agency which performs the certification function described in subsection (a) of this section will survey, on a selective sample basis (or where the Secretary finds that a survey is appropriate because of substantial allegations of the existence of a significant deficiency or deficiencies which would, if found to be present, adversely affect health and safety of patients), hospitals which have an agreement with the Secretary under section 1395cc of this title and which are accredited by the Joint Commission on Accreditation of Hospitals. The Secretary shall pay for such services in the manner prescribed in subsection (b) of this section.

(d) Fulfillment of requirements by States

The Secretary may not enter an agreement under this section with a State with respect to determining whether an institution therein is a skilled nursing facility unless the State meets the requirements specified in section 1395i–3(e) of this title and section 1395i–3(g) of this title and the establishment of remedies under sections 1395i–3(h)(2)(B) and 1395i–3(h)(2)(C) of this title (relating to establishment and application of remedies).

(e) Prohibition of user fees for survey and certification

Notwithstanding any other provision of law, the Secretary may not impose, or require a State to impose, any fee on any facility or entity subject to a determination under subsection (a) of this section, or any renal dialysis facility subject to the requirements of section 1395rr(b)(1) of this title, for any such determination or any survey relating to determining the compliance of such facility or entity with any requirement of this subchapter (other than any fee relating to section 263a of this title).

(Aug. 14, 1935, ch. 531, title XVIII, §1864, as added July 30, 1965, Pub. L. 89–97, title I, §102(a), 79 Stat. 326; amended Jan. 2, 1968, Pub. L. 90–248, title I, §133(f), title II, §228(b), 81 Stat. 852, 904; Oct. 30, 1972, Pub. L. 92–603, title II, §§244(a), 277, 278(a)(16), (b)(15), 299D(a), 86 Stat. 1422, 1452–1454, 1461; Dec. 13, 1977, Pub. L. 95–210, §1(i), 91 Stat. 1488; Dec. 5, 1980, Pub. L. 96–499, title IX, §§933(g), 934(c)(2), 94 Stat. 2639; Dec. 28, 1980, Pub. L. 96–611, §1(a)(2), 94 Stat. 3566; Sept. 3, 1982, Pub. L. 97–248, title I, §122(g)(3), 96 Stat. 362; July 18, 1984, Pub. L. 98–369, div. B, title III, §2354(b)(17), 98 Stat. 1101; Oct. 21, 1986, Pub. L. 99–509, title IX, §9320(h)(3), 100 Stat. 2016; Dec. 22, 1987, Pub. L. 100–203, title IV, §§4025(a), 4072(d), 4201(a)(2), (d)(4), 4202(a)(1), (c), 4203(a)(1), 4212(b), 101 Stat. 1330–74, 1330–117, 1330–160, 1330–174, 1330–179, 1330–212, as amended July 1, 1988, Pub. L. 100–360, title IV, §411(*l*)(1)(C), (6)(B), 102 Stat. 804, as amended Oct. 13, 1988, Pub. L. 100–485, title VI, §608(d)(20)(B), (C), (27)(B), 102 Stat. 2419, 2420, 2422; July 1, 1988, Pub. L. 100–360, title II, §§203(e)(3), 204(c)(2), (d)(3), title IV, §411(d)(4)(A), 102 Stat. 725, 728, 729, 774; Dec. 13, 1989, Pub. L. 101–234, title II, §201(a), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, §§6003(g)(3)(C)(iii), 6115(c), 103 Stat. 2152, 2219; Nov. 5, 1990, Pub. L. 101–508, title IV, §§4154(d)(1), 4163(c)(2), 4207(g), formerly 4027(g), 104 Stat. 1388–85, 1388–100, 1388–123; Oct. 31, 1994, Pub. L. 103–432, title I, §§145(c)(3), 160(a)(1), (d)(4), 108 Stat. 4427, 4443, 4444.)

REFERENCES IN TEXT

Part A of this subchapter, referred to in subsec. (b), is classified to section 1395c et seq. of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–432, §160(a)(1)(B), struck out ''or (in the case of a laboratory that does not participate or seek to participate in the medicare program) the requirements of section 263a of this title'' after ''section 1395x(s) of this title'' in first sentence.

Pub. L. 103–432, §145(c)(3), struck out '', or whether screening mammography meets the standards established under section 1395m(c)(3) of this title'' after ''section 1395k(a)(2)(F)(i) of this title'' in first sentence.

Subsec. (e). Pub. L. 103–432, §160(a)(1)(A), inserted before period at end ''(other than any fee relating to section 263a of this title)''.

1990—Subsec. (a). Pub. L. 101–508, §4163(c)(2), inserted before period at end of first sentence '', or whether screening mammography meets the standards established under section 1395m(c)(3) of this title''.

Pub. L. 101–508, §4154(d)(1), substituted ''section 1395x(s) of this title or (in the case of a laboratory that does not participate or seek to participate in the medicare program) the requirements of section 263a of this title,'' for ''section 1395x(s) of this title,'' in first sentence.

Subsec. (e). Pub. L. 101–508, §4207(g), formerly §4027(g), as renumbered by Pub. L. 103–432, §160(d)(4), added subsec. (e).

1989—Subsec. (a). Pub. L. 101–239, §6115(c), substituted ''paragraphs (15) and (16)'' for ''paragraphs (14) and (15)''.

Pub. L. 101–239, §6003(g)(3)(C)(iii), inserted '', a rural primary care hospital, as defined in section 1395x(mm)(1) of this title,'' after ''1395x(aa)(2) of this title''.

Pub. L. 101–234 repealed Pub. L. 100–360, §§203(e)(3), 204(c)(2), (d)(3), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 and 1989 Amendment notes.

1988—Subsec. (a). Pub. L. 100–360, §411(*l*)(6)(B), amended Pub. L. 100–203, §4212(b), see 1987 Amendment note below.

Pub. L. 100–360, §411(*l*)(1)(C), as added by Pub. L. 100–485, §608(d)(27)(B), added Pub. L. 100–203, §4201(d)(4), see 1987 Amendment note below.

Pub. L. 100–360, §411(d)(4)(A)(i), as amended by Pub. L. 100–485, §608(d)(20)(B)(i), substituted ''most recent certification survey conducted by a State agency or accreditation survey conducted by a private accreditation agency under section 1395bb of this title with respect to the home health agency,'' for ''most recent certification survey conducted with respect to the agency,''.

Pub. L. 100–360, §411(d)(4)(A)(ii)(I), as amended by Pub. L. 100–485, §608(d)(20)(C), substituted ''such State or local agency to maintain a unit'' for ''such agency to maintain a unit''.

Pub. L. 100–360, §411(d)(4)(A)(ii)(II), as amended by Pub. L. 100–485, §608(d)(20)(B)(ii), substituted ''utilized by the Secretary under section 1395bb of this title'' for

''pursuant to an agreement with the Secretary under this section''.

Pub. L. 100–360, § 204(d)(3), substituted ''paragraphs (14) and (15)'' for ''paragraphs (13) and (14)''.

Pub. L. 100–360, § 204(c)(2), inserted '', or whether screening mammography meets the standards established under section 1395m(e)(3) of this title'' after ''section 1395k(a)(2)(F)(i) of this title''.

Pub. L. 100–360, § 203(e)(3), inserted ''or a home intravenous drug therapy provider,'' after ''hospice program'' and substituted ''hospice program, or home intravenous drug therapy provider'' for ''or hospice program''.

1987—Subsec. (a). Pub. L. 100–203, § 4212(b), which directed an amendment of subsec. (a) identical to Pub. L. 100–203, § 4202(c), was amended generally by Pub. L. 100–360, § 411(*l*)(6)(B), so that it does not amend this section but rather section 1396r of this title.

Pub. L. 100–203, § 4202(c), inserted '', and require (in the case of skilled nursing facilities) the posting in a place readily accessible to patients (and patients' representatives),'' after ''place'' in fifth sentence.

Pub. L. 100–203, § 4201(d)(4), as added by Pub. L. 100–360, § 411(*l*)(1)(C), as added by Pub. L. 100–485, § 608(d)(27)(B), substituted ''conditions specified in section 1395i–3(a) of this title'' for ''conditions specified in section 1395x(j) of this title''.

Pub. L. 100–203, § 4072(d), substituted ''paragraphs (13) and (14)'' for ''paragraphs (12) and (13)'' in first sentence.

Pub. L. 100–203, § 4025(a), inserted at end ''Any agreement under this subsection shall provide for the appropriate State or local agency to maintain a toll-free hotline (1) to collect, maintain, and continually update information on home health agencies located in the State or locality that are certified to participate in the program established under this subchapter (which information shall include any significant deficiencies found with respect to patient care in the most recent certification survey conducted with respect to the agency, when that survey was completed, whether corrective actions have been taken or are planned, and the sanctions, if any, imposed under this subchapter with respect to the agency) and (2) to receive complaints (and answer questions) with respect to home health agencies in the State or locality. Any such agreement shall provide for such agency to maintain a unit for investigating such complaints that possesses enforcement authority and has access to survey and certification reports, information gathered by any private accreditation agency pursuant to an agreement with the Secretary under this section, and consumer medical records (but only with the consent of the consumer or his or her legal representative).''

Subsec. (d). Pub. L. 100–203, § 4203(a)(1), inserted before period at end ''and the establishment of remedies under sections 1395i–3(h)(2)(B) and 1395i–3(h)(2)(C) of this title (relating to establishment and application of remedies)''.

Pub. L. 100–203, § 4202(a)(1), inserted ''and section 1395i–3(g) of this title'' before period at end.

Pub. L. 100–203, § 4201(a)(2), added subsec. (d).

1986—Subsec. (a). Pub. L. 99–509 substituted ''paragraphs (12) and (13)'' for ''paragraphs (11) and (12)''.

1984—Subsec. (c). Pub. L. 98–369 struck out ''the'' after ''Joint Commission on''.

1982—Subsec. (a). Pub. L. 97–248 inserted ''or whether an agency is a hospice program'' and substituted ''home health agency, or hospice program'' for ''or home health agency''.

1980—Subsec. (a). Pub. L. 96–611 substituted ''requirements of paragraphs (11) and (12) of section 1395x(s) of this title'' for ''requirements of paragraphs (10) and (11) of section 1395x(s) of this title''.

Pub. L. 96–499, § 933(g), inserted ''or a comprehensive outpatient rehabilitation facility as defined in section 1395x(cc)(2) of this title'' after ''section 1395x(aa)(2) of this title'' and ''comprehensive outpatient rehabilitation facility,'' after ''rural health clinic'' in four places.

Pub. L. 96–499, § 934(c)(2), inserted '', or whether an ambulatory surgical center meets the standards specified under section 1395k(a)(2)(F) of this title'' after ''section 1395x(p)(4) of this title'' and ''ambulatory surgical center,'' after ''health care facility,'' in three places.

1977—Subsec. (a). Pub. L. 95–210 expanded enumeration of institutions and agencies included under coverage of this subsection by inserting references to rural health clinics in five places.

1972—Subsec. (a). Pub. L. 92–603, §§ 277, 278(a)(16), (b)(15), 299D(a), provided for the furnishing of specialized consultative services to skilled nursing facilities, authorized the Secretary to make public the pertinent findings of each survey within 90 days following the completion of each survey of any health care facility, etc., and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (c). Pub. L. 92–603, § 244(a), added subsec. (c).

1968—Subsec. (a). Pub. L. 90–248, § 133(f), inserted clause at end of first sentence for determining whether a clinic, rehabilitation agency, or public health agency meets the requirements of section 1395x(p)(4)(A) or (B) of this title.

Pub. L. 90–248, § 228(b), struck out last sentence providing for utilization of State facilities to provide consultative services to institutions furnishing medical care, covered in section 1396a(a)(24) of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 145(c)(3) of Pub. L. 103–432 applicable to mammography furnished by a facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4154(d)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of the Clinical Laboratory Improvement Amendments of 1988 [Pub. L. 100–578].''

Amendment by section 4163(c)(2) of Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 203(e)(3) of Pub. L. 100–360 applicable to items and services furnished on or after Jan. 1, 1990, see section 203(g) of Pub. L. 100–360, set out as a note under section 1320c–3 of this title.

Amendment by section 204(c)(2), (d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(d)(4)(A), (*l*)(1)(C), (6)(B) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4025(c), formerly § 4025(b), of Pub. L. 100–203, as redesignated and amended by Pub. L. 100–360, title IV, § 411(d)(4)(B)(i), July 1, 1988, 102 Stat. 774, provided that: ''The amendment made by this section [amending this section and section 1395bb of this title] shall apply with respect to agreements entered into or renewed on or after the date of enactment of this Act [Dec. 22, 1987].''

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendments by sections 4201(a)(2), (d)(4) and 4202(a)(1), (c) of Pub. L. 100–203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date, except as otherwise specifically provided in section 1395i–3 of this title, see section 4204(a) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1395i–3 of this title.

Amendment by section 4203(a)(1) of Pub. L. 100–203 applicable Jan. 1, 1988, except as otherwise specifically provided in section 1395i–3 of this title, without regard to whether regulations to implement such amendment are promulgated by such date, and in applying amendment by section 4203(a)(1) of Pub. L. 100–203 for services furnished by a skilled nursing facility before Oct. 1, 1990, any reference to a requirement of section 1395i–3(b), (c), or (d) of this title is deemed a reference to section 1395x(j) of this title, see section 4204(b) of Pub. L. 100–203, as added by Pub. L. 100–485, set out as an Effective Date note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–611 effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395*l* of this title.

For effective date of amendment by section 933(g) of Pub. L. 96–499, see section 933(h) of Pub. L. 96–499, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–210 applicable to services rendered on or after first day of third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95–210, set out as a note under section 1395k of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 299D(c) of Pub. L. 92–603 provided that: ''The provisions of this section [amending this section and section 1396a of this title] shall be effective beginning January 1, 1973, or within 6 months following the enactment of this Act [Oct. 30, 1972], whichever is later.''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 133(f) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub. L. 90–248, set out as a note under section 1395k of this title.

Section 228(b) of Pub. L. 90–248 provided that the amendment made by such section 228(b) is effective July 1, 1969.

USE OF STATE OR LOCAL AGENCIES IN EVALUATING LABORATORIES

Section 160(a)(2) of Pub. L. 103–432 provided that: ''An agreement made by the Secretary of Health and Human Services with a State under section 1864(a) of the Social Security Act [subsec. (a) of this section] may include an agreement that the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by the Secretary for the purpose of determining whether a laboratory meets the requirements of section 353 of the Public Health Service Act [section 263a of this title].''

NURSE AID TRAINING AND COMPETENCY EVALUATION, FAILURE BY STATE TO MEET GUIDELINES

Section 4008(h)(1)(A) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services may not refuse to enter into an agreement or cancel an existing agreement with a State under section 1864 of the Social Security Act [this section] on the basis that the State failed to meet the requirement of section 1819(e)(1)(A) of such Act [section 1395i–3(e)(1)(A) of this title] before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1819(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263a–2, 1320a–7, 1320a–7a, 1395i–3, 1395i–4, 1395x, 1395bbb, 1396a of this title; title 45 section 231f.

§ 1395bb. Effect of accreditation

(a) Except as provided in subsection (b) of this section and the second sentence of section 1395z of this title, if—

(1) an institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals, and

(2)(A) such institution authorizes the Commission to release to the Secretary upon his request (or such State agency as the Secretary may designate) a copy of the most current accreditation survey of such institution made by such Commission, together with any other information directly related to the survey as the Secretary may require (including corrective action plans),[1]

(B) such Commission releases such a copy and any such information to the Secretary,

then, such institution shall be deemed to meet the requirements of the numbered paragraphs of section 1395x(e) of this title; except—

(3) paragraph (6) thereof, and

(4) any standard, promulgated by the Secretary pursuant to paragraph (9) thereof, which is higher than the requirements prescribed for accreditation by such Commission.

If such Commission, as a condition for accreditation of a hospital, requires a utilization re-

[1] So in original. Probably should be followed by ''and''.

view plan (or imposes another requirement which serves substantially the same purpose), requires a discharge planning process (or imposes another requirement which serves substantially the same purpose), or imposes a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in paragraph (4) of this subsection, the Secretary is authorized to find that all institutions so accredited by such Commission comply also with clause (A) or (B) of section 1395x(e)(6) of this title or the standard described in such paragraph (4), as the case may be. In addition, if the Secretary finds that accreditation of an entity by the American Osteopathic Association or any other national accreditation body provides reasonable assurance that any or all of the conditions of section 1395k(a)(2)(F)(i), 1395x(e), 1395x(f), 1395x(j), 1395x(*o*), 1395x(p)(4)(A) or (B), paragraphs (15) and (16) of section 1395x(s), section 1395x(aa)(2), 1395x(cc)(2), 1395x(dd)(2), or 1395x(mm)(1) of this title, as the case may be, are met, he may, to the extent he deems it appropriate, treat such entity as meeting the condition or conditions with respect to which he made such finding. The Secretary may not disclose any accreditation survey (other than a survey with respect to a home health agency) made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body, except that the Secretary may disclose such a survey and information related to such a survey to the extent such survey and information relate to an enforcement action taken by the Secretary.

(b) Notwithstanding any other provision of this subchapter, if the Secretary finds that a hospital has significant deficiencies (as defined in regulations pertaining to health and safety), the hospital shall, after the date of notice of such finding to the hospital and for such period as may be prescribed in regulations, be deemed not to meet the requirements of the numbered paragraphs of section 1395x(e) of this title.

(Aug. 14, 1935, ch. 531, title XVIII, § 1865, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 326; amended Oct. 30, 1972, Pub. L. 92–603, title II, §§ 234(h), 244(b), 86 Stat. 1413, 1423; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 122(g)(4), 128(d)(3), 96 Stat. 362, 367; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2345(a), 2346(a), 98 Stat. 1096; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9305(c)(3), 9320(h)(3), 100 Stat. 1990, 2016; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4025(b), 4072(d), 101 Stat. 1330–117, as amended July 1, 1988, Pub. L. 100–360, title IV, § 411(d)(4)(B)(ii), 102 Stat. 774; July 1, 1988, Pub. L. 100–360, title II, §§ 204(c)(3), (d)(3), 102 Stat. 728, 729; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(20)(D), 102 Stat. 2420; Dec. 13, 1989, Pub. L. 101–234, title II, § 201(a), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6003(g)(3)(C)(iv), 6019(a)–(c), 6115(c), 103 Stat. 2153, 2165, 2166, 2219; Nov. 5, 1990, Pub. L. 101–508, title IV, § 4163(c)(3), 104 Stat. 1388–100; Oct. 31, 1994, Pub. L. 103–432, title I, § 145(c)(4), 108 Stat. 4427.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–432 struck out ''1395m(c)(3),'' after ''conditions of section 1395k(a)(2)(F)(i),'' in closing provisions.

1990—Subsec. (a). Pub. L. 101–508 inserted ''1395m(c)(3),'' after ''1395k(a)(2)(F)(i),'' in second sentence.

1989—Subsec. (a). Pub. L. 101–239, § 6115(c), substituted ''paragraphs (15) and (16)'' for ''paragraphs (14) and (15)''.

Pub. L. 101–239, § 6019(b), inserted before period at end '', except that the Secretary may disclose such a survey and information related to such a survey to the extent such survey and information relate to an enforcement action taken by the Secretary''.

Pub. L. 101–239, § 6003(g)(3)(C)(iv), substituted ''1395x(dd)(2), or 1395x(mm)(1) of this title'' for ''or 1395x(dd)(2) of this title'' in third sentence.

Pub. L. 101–234 repealed Pub. L. 100–360, § 204(c)(3), (d)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 and 1989 Amendment notes.

Subsec. (a)(2). Pub. L. 101–239, § 6019(a), designated existing provisions as subpar. (A), struck out ''(if it is included within a survey described in section 1395aa(c) of this title)'' after ''such institution'', inserted '', together with any other information directly related to the survey as the Secretary may require (including corrective action plans)'' after ''by such Commission'', and added subpar. (B).

Subsec. (b). Pub. L. 101–239, § 6019(c), struck out ''following a survey made pursuant to section 1395aa(c) of this title'' after ''if the Secretary finds''.

1988—Subsec. (a). Pub. L. 100–360, § 411(d)(4)(B)(ii), as amended by Pub. L. 100–485, § 608(d)(20)(D), added Pub. L. 100–203, § 4025(b), see 1987 Amendment note below.

Pub. L. 100–360, § 204(d)(3), substituted ''paragraphs (14) and (15)'' for ''paragraphs (13) and (14)'' in third sentence.

Pub. L. 100–360, § 204(c)(3), inserted ''1395m(e)(3),'' after ''1395k(a)(2)(F)(i),'' in third sentence.

1987—Subsec. (a). Pub. L. 100–203, § 4072(d), substituted ''paragraphs (13) and (14)'' for ''paragraphs (12) and (13)'' in penultimate sentence.

Pub. L. 100–203, § 4025(b), as added by Pub. L. 100–360, § 411(d)(4)(B)(ii), as amended by Pub. L. 100–485, § 608(d)(20)(D), inserted ''(other than a survey with respect to a home health agency)'' after ''survey'' in last sentence.

1986—Subsec. (a). Pub. L. 99–509, § 9305(c)(3), inserted '', requires a discharge planning process (or imposes another requirement which serves substantially the same purpose)'' after ''the same purpose)'', and ''clause (A) or (B) of'' after ''comply also with'' in second sentence.

Pub. L. 99–509, § 9320(h)(3), substituted ''paragraphs (12) and (13)'' for ''paragraphs (11) and (12)'' in third sentence.

1984—Subsec. (a). Pub. L. 98–369, § 2346(a), in provisions following par. (4), substituted ''section 1395k(a)(2)(F)(i), 1395x(e), 1395x(f), 1395x(j), 1395x(*o*), 1395x(p)(4)(A) or (B), paragraphs (11) and (12) of section 1395x(s), section 1395x(aa)(2), 1395x(cc)(2), or 1395x(dd)(2) of this title'' for ''section 1395x(e), (j), (*o*), or (dd) of this title'', and substituted ''entity'' for ''institution or agency'' in two places.

Pub. L. 98–369, § 2345(a), struck out ''(on a confidential basis)'' after ''release to the Secretary'' in par. (2), and inserted provision that the Secretary may not disclose any accreditation survey made and released to him by the Joint Commission on Accreditation of Hospitals, the American Osteopathic Association, or any other national accreditation body, of an entity accredited by such body, in provisions following par. (4).

1982—Subsec. (a). Pub. L. 97–248, § 122(g)(4), substituted ''(*o*), or (dd)'' for ''or (*o*)''.

Subsec. (b). Pub. L. 97–248, § 128(d)(3), substituted ''a hospital'' for ''an institution'' and ''the hospital'' for ''such institution''.

1972—Pub. L. 92–603 designated existing provisions as subsec. (a), inserted reference to subsec. (b) of this section in opening provisions, redesignated existing provisions as pars. (1) and (3) and added pars. (2) and (4) and in provisions following par. (4) inserted provisions for the imposition of a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in par. (4), and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 applicable to mammography furnished by a facility on and after the first date that the certificate requirements of section 263b(b) of this title apply to such mammography conducted by such facility, see section 145(d) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by Pub. L. 101–508 applicable to screening mammography performed on or after Jan. 1, 1991, see section 4163(e) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6019(d) of Pub. L. 101–239 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].

''(2) The amendments made by subsection (a) [amending this section] shall take effect 6 months after the date of the enactment of this Act.''

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 204(c)(3), (d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(d)(4)(B)(ii) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4025(b) of Pub. L. 100–203 applicable with respect to agreements entered into or renewed on or after Dec. 22, 1987, see section 4025(c) of Pub. L. 100–203, as amended, set out as a note under section 1395aa of this title.

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 9305(c)(3) of Pub. L. 99–509 applicable to hospitals as of one year after Oct. 21, 1986, see section 9305(c)(4) of Pub. L. 99–509, set out as a note under section 1395x of this title.

Amendment by section 9320(h)(3) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2345(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984], and shall apply with respect to surveys released to the Secretary on, before, or after such date.''

Section 2346(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(g)(4) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

Amendment by section 128(d)(3) of Pub. L. 97–248 effective Sept. 3, 1982, see section 128(e)(3) of Pub. L. 97–248, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 234(h) of Pub. L. 92–603 applicable with respect to providers of services for fiscal years beginning after the fifth month following October 1972, see section 234(i) of Pub. L. 92–603, set out as a note under section 1395x of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c–9, 1395x, 1395aa of this title.

§ 1395cc. Agreements with providers of services

(a) Filing of agreements; eligibility for payment; charges with respect to items and services

(1) Any provider of services (except a fund designated for purposes of section 1395f(g) and section 1395n(e) of this title) shall be qualified to participate under this subchapter and shall be eligible for payments under this subchapter if it files with the Secretary an agreement—

(A) not to charge, except as provided in paragraph (2), any individual or any other person for items or services for which such individual is entitled to have payment made under this subchapter (or for which he would be so entitled if such provider of services had complied with the procedural and other requirements under or pursuant to this subchapter or for which such provider is paid pursuant to the provisions of section 1395f(e) of this title),

(B) not to charge any individual or any other person for items or services for which such individual is not entitled to have payment made under this subchapter because payment for expenses incurred for such items or services may not be made by reason of the provisions of paragraph (1) or (9) of section 1395y(a) of this title, but only if (i) such individual was without fault in incurring such expenses and (ii) the Secretary's determination that such payment may not be made for such items and services was made after the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter,

(C) to make adequate provision for return (or other disposition, in accordance with regulations) of any moneys incorrectly collected from such individual or other person,

(D) to promptly notify the Secretary of its employment of an individual who, at any time during the year preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity (as determined by the Secretary by regulation) by an agency or organization which serves as a fiscal intermediary or carrier (for purposes of part A or part B, or both, of this subchapter) with respect to the provider,

(E) to release data with respect to patients of such provider upon request to an organization having a contract with the Secretary under part B of subchapter XI of this chapter as may be necessary (i) to allow such organization to carry out its functions under such contract, or (ii) to allow such organization to carry out similar review functions under any contract the organization may have with a private or public agency paying for health care in the same area with respect to patients who authorize release of such data for such purposes,

(F)(i) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b), (c), or (d) of section 1395ww of this title, to maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a utilization and quality control peer review organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located, under which the organization will perform functions under that part with respect to the review of the validity of diagnostic information provided by such hospital, the completeness, adequacy, and quality of care provided, the appropriateness of admissions and discharges, and the appropriateness of care provided for which additional payments are sought under section 1395ww(d)(5) of this title, with respect to inpatient hospital services for which payment may be made under part A of this subchapter (and for purposes of payment under this subchapter, the cost of such agreement to the hospital shall be considered a cost incurred by such hospital in providing inpatient services under part A of this subchapter, and (I) shall be paid directly by the Secretary to such organization on behalf of such hospital in accordance with a rate per review established by the Secretary, (II) shall be transferred from the Federal Hospital Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and (III) shall not be less in the aggregate for a fiscal year than the aggregate amount expended in fiscal year 1988 for direct and administrative costs (adjusted for inflation and for any direct or administrative costs incurred as a result of review functions added with respect to a subsequent fiscal year) of such reviews),

(ii) in the case of hospitals, rural primary care hospitals, skilled nursing facilities, and home health agencies, to maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital, facility, or agency is located) to perform the functions described in paragraph (3)(A),

(G) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b) or (d) of section 1395ww of this title, not to charge any individual or any other person for inpatient hospital services for which such individual would be entitled to have payment made under part A of this subchapter but for a denial or reduction of payments under section 1395ww(f)(2) of this title,

(H) in the case of hospitals which provide services for which payment may be made under this subchapter and in the case of rural primary care hospitals which provide rural primary care hospital services, to have all items and services (other than physicians' services as defined in regulations for purposes of section 1395y(a)(14) of this title, and other than services described by section 1395x(s)(2)(K)(i) or 1395x(s)(2)(K)(iii) of this title, certified nurse-midwife services, qualified psychologist services, and services of a certified registered nurse anesthetist) (i) that are furnished to an individual who is a patient of the hospital, and (ii) for which the individual is entitled to have payment made under this subchapter, furnished by the hospital or otherwise under arrangements (as defined in section 1395x(w)(1) of this title) made by the hospital,

(I) in the case of a hospital or rural primary care hospital—

(i) to adopt and enforce a policy to ensure compliance with the requirements of section 1395dd of this title and to meet the requirements of such section,

(ii) to maintain medical and other records related to individuals transferred to or from the hospital for a period of five years from the date of the transfer, and

(iii) to maintain a list of physicians who are on call for duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition;[1]

(J) in the case of hospitals which provide inpatient hospital services for which payment may be made under this subchapter, to be a participating provider of medical care under any health plan contracted for under section 1079 or 1086 of title 10, or under section 1713 of title 38, in accordance with admission practices, payment methodology, and amounts as prescribed under joint regulations issued by the Secretary and by the Secretaries of Defense and Transportation, in implementation of sections 1079 and 1086 of title 10,

(K) not to charge any individual or any other person for items or services for which

[1] So in original. The semicolon probably should be a comma.

payment under this subchapter is denied under section 1320c–3(a)(2) of this title by reason of a determination under section 1320c–3(a)(1)(B) of this title,

(L) in the case of hospitals which provide inpatient hospital services for which payment may be made under this subchapter, to be a participating provider of medical care under section 1703 of title 38, in accordance with such admission practices, and such payment methodology and amounts, as are prescribed under joint regulations issued by the Secretary and by the Secretary of Veterans Affairs in implementation of such section,

(M) in the case of hospitals, to provide to each individual who is entitled to benefits under part A of this subchapter (or to a person acting on the individual's behalf), at or about the time of the individual's admission as an inpatient to the hospital, a written statement (containing such language as the Secretary prescribes consistent with this paragraph) which explains—

(i) the individual's rights to benefits for inpatient hospital services and for post-hospital services under this subchapter,

(ii) the circumstances under which such an individual will and will not be liable for charges for continued stay in the hospital,

(iii) the individual's right to appeal denials of benefits for continued inpatient hospital services, including the practical steps to initiate such an appeal, and

(iv) the individual's liability for payment for services if such a denial of benefits is upheld on appeal,

and which provides such additional information as the Secretary may specify,

(N) in the case of hospitals and rural primary care hospitals—

(i) to make available to its patients the directory or directories of participating physicians (published under section 1395u(h)(4) of this title) for the area served by the hospital or rural primary care hospital,

(ii) if hospital personnel (including staff of any emergency or outpatient department) refer a patient to a nonparticipating physician for further medical care on an outpatient basis, the personnel must inform the patient that the physician is a nonparticipating physician and, whenever practicable, must identify at least one qualified participating physician who is listed in such a directory and from whom the patient may receive the necessary services,

(iii) to post conspicuously in any emergency department a sign (in a form specified by the Secretary) specifying rights of individuals under section 1395dd of this title with respect to examination and treatment for emergency medical conditions and women in labor, and

(iv) to post conspicuously (in a form specified by the Secretary) information indicating whether or not the hospital participates in the medicaid program under a State plan approved under subchapter XIX of this chapter, and[2]

(O) in the case of hospitals and skilled nursing facilities, to accept as payment in full for inpatient hospital and extended care services that are covered under this subchapter and are furnished to any individual enrolled with an eligible organization (i) with a risk-sharing contract under section 1395mm of this title, under section 1395mm(i)(2)(A) of this title (as in effect before February 1, 1985), under section 1395b–1(a) of this title, or under section 222(a) of the Social Security Amendments of 1972, and (ii) which does not have a contract establishing payment amounts for services furnished to members of the organization the amounts (in the case of hospitals) or limits (in the case of skilled nursing facilities) that would be made as a payment in full under this subchapter if the individuals were not so enrolled;[3]

(P) in the case of home health agencies which provide home health services to individuals entitled to benefits under this subchapter who require catheters, catheter supplies, ostomy bags, and supplies related to ostomy care (described in section 1395x(m)(5) of this title), to offer to furnish such supplies to such an individual as part of their furnishing of home health services, and

(Q) in the case of hospitals, skilled nursing facilities, home health agencies, and hospice programs, to comply with the requirement of subsection (f) of this section (relating to maintaining written policies and procedures respecting advance directives).

In the case of a hospital which has an agreement in effect with an organization described in subparagraph (F), which organization's contract with the Secretary under part B of subchapter XI of this chapter is terminated on or after October 1, 1984, the hospital shall not be determined to be out of compliance with the requirement of such subparagraph during the six month period beginning on the date of the termination of that contract.

(2)(A) A provider of services may charge such individual or other person (i) the amount of any deduction or coinsurance amount imposed pursuant to section 1395e(a)(1), (a)(3), or (a)(4), section 1395*l*(b), or section 1395x(y)(3) of this title with respect to such items and services (not in excess of the amount customarily charged for such items and services by such provider), and (ii) an amount equal to 20 per centum of the reasonable charges for such items and services (not in excess of 20 per centum of the amount customarily charged for such items and services by such provider) for which payment is made under part B of this subchapter or which are durable medical equipment furnished as home health services (but in the case of items and services furnished to individuals with end-stage renal disease, an amount equal to 20 percent of the estimated amounts for such items and services calculated on the basis established by the Secretary). In the case of items and services described in section 1395*l*(c) of this title, clause (ii) of the preceding sentence shall be applied by substituting for 20 percent the proportion which

[2] So in original. The word ''and'' probably should not appear.

[3] So in original. The semicolon probably should be a comma.

is appropriate under such section. A provider of services may not impose a charge under clause (ii) of the first sentence of this subparagraph with respect to items and services described in section 1395x(s)(10)(A) of this title and with respect to clinical diagnostic laboratory tests for which payment is made under part B of this subchapter. Notwithstanding the first sentence of this subparagraph, a home health agency may charge such an individual or person, with respect to covered items subject to payment under section 1395m(a) of this title, the amount of any deduction imposed under section 1395*l*(b) of this title and 20 percent of the payment basis described in section 1395m(a)(1)(B) of this title.

(B) Where a provider of services has furnished, at the request of such individual, items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this subchapter, such provider of services may also charge such individual or other person for such more expensive items or services to the extent that the amount customarily charged by it for the items or services furnished at such request exceeds the amount customarily charged by it for the items or services with respect to which payment may be made under this subchapter.

(C) A provider of services may in accordance with its customary practice also appropriately charge any such individual for any whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished him with respect to which a deductible is imposed under section 1395e(a)(2) of this title, except that (i) any excess of such charge over the cost to such provider for the blood (or equivalent quantities of packed red blood cells, as so defined) shall be deducted from any payment to such provider under this subchapter, (ii) no such charge may be imposed for the cost of administration of such blood (or equivalent quantities of packed red blood cells, as so defined), and (iii) such charge may not be made to the extent such blood (or equivalent quantities of packed red blood cells, as so defined) has been replaced on behalf of such individual or arrangements have been made for its replacement on his behalf. For purposes of this subparagraph, whole blood (or equivalent quantities of packed red blood cells, as so defined) furnished an individual shall be deemed replaced when the provider of services is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is imposed under section 1395e(a)(2) of this title.

(D) Where a provider of services customarily furnishes items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this subchapter, such provider, notwithstanding the preceding provisions of this paragraph, may not, under the authority of subparagraph (B)(ii) of this paragraph, charge any individual or other person any amount for such items or services in excess of the amount of the payment which may otherwise be made for such items or services under this subchapter if the admitting physician has a direct or indirect financial interest in such provider.

(3)(A) Under the agreement required under paragraph (1)(F)(ii), the peer review organization must perform functions (other than those covered under an agreement under paragraph (1)(F)(i)) under the third sentence of section 1320c–3(a)(4)(A) of this title and under section 1320c–3(a)(14) of this title with respect to services, furnished by the hospital, rural primary care hospital, facility, or agency involved, for which payment may be made under this subchapter.

(B) For purposes of payment under this subchapter, the cost of such an agreement to the hospital, rural primary care hospital, facility, or agency shall be considered a cost incurred by such hospital, rural primary care hospital, facility, or agency in providing covered services under this subchapter and shall be paid directly by the Secretary to the peer review organization on behalf of such hospital, rural primary care hospital, facility, or agency in accordance with a schedule established by the Secretary.

(C) Such payments—

(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Federal Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

(ii) shall not be less in the aggregate for a fiscal year—

(I) in the case of hospitals, than the amount specified in paragraph (1)(F)(i)(III), and

(II) in the case of facilities, rural primary care hospitals, and agencies, than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such facilities, rural primary care hospitals, or agencies under part B of subchapter XI of this chapter.

(b) Termination or nonrenewal of agreements

(1) A provider of services may terminate an agreement with the Secretary under this section at such time and upon such notice to the Secretary and the public as may be provided in regulations, except that notice of more than six months shall not be required.

(2) The Secretary may refuse to enter into an agreement under this section or, upon such reasonable notice to the provider and the public as may be specified in regulations, may refuse to renew or may terminate such an agreement after the Secretary—

(A) has determined that the provider fails to comply substantially with the provisions of the agreement, with the provisions of this subchapter and regulations thereunder, or with a corrective action required under section 1395ww(f)(2)(B) of this title,

(B) has determined that the provider fails substantially to meet the applicable provisions of section 1395x of this title, or

(C) has excluded the provider from participation in a program under this subchapter pursuant to section 1320a–7 of this title or section 1320a–7a of this title.

(3) A termination of an agreement or a refusal to renew an agreement under this subsection shall become effective on the same date and in the same manner as an exclusion from participation under the programs under this subchapter becomes effective under section 1320a–7(c) of this title.

(c) Refiling after termination or nonrenewal; agreements with skilled nursing facilities

(1) Where the Secretary has terminated or has refused to renew an agreement under this subchapter with a provider of services, such provider may not file another agreement under this subchapter unless the Secretary finds that the reason for the termination or nonrenewal has been removed and that there is reasonable assurance that it will not recur.

(2) Where the Secretary has terminated or has refused to renew an agreement under this subchapter with a provider of services, the Secretary shall promptly notify each State agency which administers or supervises the administration of a State plan approved under subchapter XIX of this chapter of such termination or nonrenewal.

(d) Decision to withhold payment for failure to review long-stay cases

If the Secretary finds that there is a substantial failure to make timely review in accordance with section 1395x(k) of this title of long-stay cases in a hospital, he may, in lieu of terminating his agreement with such hospital, decide that, with respect to any individual admitted to such hospital after a subsequent date specified by him, no payment shall be made under this subchapter for inpatient hospital services (including inpatient psychiatric hospital services) after the 20th day of a continuous period of such services. Such decision may be made effective only after such notice to the hospital and to the public, as may be prescribed by regulations, and its effectiveness shall terminate when the Secretary finds that the reason therefor has been removed and that there is reasonable assurance that it will not recur. The Secretary shall not make any such decision except after reasonable notice and opportunity for hearing to the institution or agency affected thereby.

(e) "Provider of services" defined

For purposes of this section, the term ''provider of services'' shall include—

(1) a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services; and

(2) a community mental health center (as defined in section 1395x(ff)(3)(B) of this title), but only with respect to the furnishing of partial hospitalization services (as described in section 1395x(ff)(1) of this title).

(f) Maintenance of written policies and procedures

(1) For purposes of subsection (a)(1)(Q) of this section and sections 1395i–3(c)(2)(E), 1395*l*(s), 1395mm(c)(8), and 1395bbb(a)(6) of this title, the requirement of this subsection is that a provider of services or prepaid or eligible organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

(A) to provide written information to each such individual concerning—

(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

(ii) the written policies of the provider or organization respecting the implementation of such rights;

(B) to document in the individual's medical record whether or not the individual has executed an advance directive;

(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives at facilities of the provider or organization; and

(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

(2) The written information described in paragraph (1)(A) shall be provided to an adult individual—

(A) in the case of a hospital, at the time of the individual's admission as an inpatient,

(B) in the case of a skilled nursing facility, at the time of the individual's admission as a resident,

(C) in the case of a home health agency, in advance of the individual coming under the care of the agency,

(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

(E) in the case of an eligible organization (as defined in section 1395mm(b) of this title) or an organization provided payments under section 1395*l*(a)(1)(A) of this title, at the time of enrollment of the individual with the organization.

(3) In this subsection, the term ''advance directive'' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (wheth-

er statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.

(g) Penalties for improper billing

Except as permitted under subsection (a)(2) of this section, any person who knowingly and willfully presents, or causes to be presented, a bill or request for payment inconsistent with an arrangement under subsection (a)(1)(H) of this section or in violation of the requirement for such an arrangement, is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(h) Dissatisfaction with determination of Secretary; appeal by institutions or agencies; single notice and hearing

(1) Except as provided in paragraph (2), an institution or agency dissatisfied with a determination by the Secretary that it is not a provider of services or with a determination described in subsection (b)(2) of this section shall be entitled to a hearing thereon by the Secretary (after reasonable notice) to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(2) An institution or agency is not entitled to separate notice and opportunity for a hearing under both section 1320a–7 of this title and this section with respect to a determination or determinations based on the same underlying facts and issues.

(i) Intermediate sanctions for psychiatric hospitals

(1) If the Secretary determines that a psychiatric hospital which has an agreement in effect under this section no longer meets the requirements for a psychiatric hospital under this subchapter and further finds that the hospital's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the Secretary shall terminate such agreement; or

(B) do not immediately jeopardize the health and safety of its patients, the Secretary may terminate such agreement, or provide that no payment will be made under this subchapter with respect to any individual admitted to such hospital after the effective date of the finding, or both.

(2) If a psychiatric hospital, found to have deficiencies described in paragraph (1)(B), has not complied with the requirements of this subchapter—

(A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the Secretary shall provide that no payment will be made under this subchapter with respect to any individual admitted to such hospital after the end of such 3-month period, or

(B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no payment may be made under this subchapter with respect to any individual in the hospital until the Secretary finds that the hospital is in compliance with the requirements of this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, § 1866, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 327; amended Jan. 2, 1968, Pub. L. 90–248, title I, §§ 129(c)(12), 133(c), 135(b), 81 Stat. 849, 851, 852; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 223(e), (g), 227(d)(2), 229(b), 249A(b)–(d), 278(a)(17), (b)(18), 281(c), 86 Stat. 1394, 1406, 1409, 1427, 1453–1455; Oct. 25, 1977, Pub. L. 95–142, §§ 3(b), 8(b), 13(b)(3), 15(a), 91 Stat. 1178, 1194, 1195, 1198, 1200; Dec. 13, 1977, Pub. L. 95–210, § 2(e), 91 Stat. 1489; June 13, 1978, Pub. L. 95–292, § 4(e), 92 Stat. 315; June 17, 1980, Pub. L. 96–272, title III, § 308(b), 94 Stat. 531; Dec. 5, 1980, Pub. L. 96–499, title IX, § 916(a), 94 Stat. 2623; Dec. 28, 1980, Pub. L. 96–611, § 1(b)(4), 94 Stat. 3566; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2153, 95 Stat. 802; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 122(g)(5), (6), 128(a)(5), (d)(4), 144, 96 Stat. 362, 366, 367, 393; Jan. 12, 1983, Pub. L. 97–448, title III, § 309(a)(5), (b)(11), 96 Stat. 2408, 2409; Apr. 20, 1983, Pub. L. 98–21, title VI, § 602(f), (*l*), 97 Stat. 163, 166; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2303(f), 2315(d), 2321(c), 2323(b)(3), 2335(d), 2347(a), 2348(a), 2354(b)(33), (34), 98 Stat. 1066, 1080, 1084, 1086, 1090, 1096, 1097, 1102; Apr. 7, 1986, Pub. L. 99–272, title IX, §§ 9121(a), 9122(a), 9401(b)(2)(F), 9402(a), 9403(b), 100 Stat. 164, 167, 199, 200; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9305(b)(1), 9320(h)(2), 9332(e)(1), 9337(c)(2), 9343(c)(2), (3), 9353(e)(1), 100 Stat. 1989, 2016, 2025, 2034, 2040, 2047; Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1895(b)(5), 100 Stat. 2933; Oct. 28, 1986, Pub. L. 99–576, title II, § 233(a), 100 Stat. 3265; Aug. 18, 1987, Pub. L. 100–93, § 8(d), 101 Stat. 693; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4012(a), 4062(d)(4), 4085(i)(17), (28), 4097(a), (b), 4212(e)(4), 101 Stat. 1330–60, 1330–109, 1330–133, 1330–140, 1330–213, as amended July 1, 1988, Pub. L. 100–360, title IV, § 411(i)(4)(C)(vi), (j)(5), 102 Stat. 790, 791; July 1, 1988, Pub. L. 100–360, title I, § 104(d)(5), title II, §§ 201(b), (d), 202(h)(1), title IV, § 411(c)(2)(A)(i), (C), (g)(1)(D), 102 Stat. 689, 702, 718, 772, 782, as amended Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(3)(F), (19)(A), 102 Stat. 2414, 2419; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(f)(1), 102 Stat. 2424; Dec. 13, 1989, Pub. L. 101–234, title I, § 101(a), title II, § 201(a), title III, § 301(b)(4), (d)(1), 103 Stat. 1979, 1981, 1985, 1986; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6003(g)(3)(D)(xii), (xiii), 6017, 6018(a), 6020, 6112(e)(3), 103 Stat. 2154, 2165, 2166, 2216; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4008(b)(3)(B), (m)(3)(G)[(F)], 4153(d)(1), 4157(c)(2), 4162(b)(2), 4206(a), 104 Stat. 1388–44, 1388–54, 1388–84, 1388–89, 1388–96, 1388–115; June 13, 1991, Pub. L. 102–54, § 13(q)(3)(F), 105 Stat. 280; Aug. 6, 1991, Pub. L. 102–83, § 5(c)(2), 105 Stat. 406; Aug. 15, 1994, Pub. L. 103–296, title I, § 108(c)(5), 108 Stat. 1485; Oct. 31, 1994, Pub. L. 103–432, title I, §§ 106(b)(1)(B), 147(e)(7), 156(a)(2)(E), 160(d)(2), 108 Stat. 4406, 4430, 4441, 4443.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsec. (a), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Part B of subchapter XI of this chapter, referred to in subsec. (a)(1), (3)(C)(ii)(II), is classified to section 1320c et seq. of this title.

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (a)(1)(O)(i), is section 222(a) of Pub. L. 92–603, which is set out as a note under section 1395b–1 of this title.

AMENDMENTS

1994—Subsec. (a)(1)(H). Pub. L. 103–432, §147(e)(7), substituted ''section 1395x(s)(2)(K)(i) or 1395x(s)(2)(K)(iii) of this title'' for ''section 1395x(s)(2)(K)(i) of this title''.

Subsec. (a)(2)(A). Pub. L. 103–432, §156(a)(2)(E), struck out '', with respect to items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),'' after ''section 1395x(s)(10)(A) of this title''.

Subsec. (d). Pub. L. 103–432, §106(b)(1)(B), substituted ''long-stay cases in a hospital'' for ''long-stay cases in a hospital or skilled nursing facility'', ''such hospital'' for ''such hospital or facility'' in two places, ''period of such services'' for ''period of such services or for post-hospital extended care services after such day of a continuous period of such care as is prescribed in or pursuant to regulations, as the case may be'', and ''notice to the hospital'' for ''notice to the hospital, or (in the case of a skilled nursing facility) to the facility and the hospital or hospitals with which it has a transfer agreement,''.

Subsec. (f)(1). Pub. L. 103–432, §160(d)(2), substituted ''1395*l*(s)'' for ''1395*l*(r)'' in introductory provisions.

Subsec. (h)(1). Pub. L. 103–296 inserted before period at end '', except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

1991—Subsec. (a)(1)(J). Pub. L. 102–83 substituted ''section 1713 of title 38'' for ''section 613 of title 38''.

Subsec. (a)(1)(L). Pub. L. 102–83 substituted ''section 1703 of title 38'' for ''section 603 of title 38''.

Pub. L. 102–54 substituted ''Secretary of Veterans Affairs'' for ''Administrator of Veterans' Affairs''.

1990—Subsec. (a)(1)(F)(i). Pub. L. 101–508, §4008(m)(3)(G)[(F)](i), substituted '','' for comma at end.

Subsec. (a)(1)(F)(ii). Pub. L. 101–508, §4008(m)(3)(G)[(F)](ii), substituted ''paragraph (3)(A),'' for ''paragraph (4)(A);''.

Subsec. (a)(1)(H). Pub. L. 101–508, §4157(c)(2), inserted ''services described by section 1395x(s)(2)(K)(i) of this title, certified nurse-midwife services, qualified psychologist services, and'' after ''and other than''.

Subsec. (a)(1)(I)(i). Pub. L. 101–508, §4008(b)(3)(B), inserted ''and to meet the requirements of such section'' after ''section 1395dd of this title''.

Subsec. (a)(1)(P). Pub. L. 101–508, §4153(d)(1), substituted ''catheters, catheter supplies, ostomy bags, and supplies related to ostomy care'' for ''ostomy supplies''.

Subsec. (a)(1)(Q). Pub. L. 101–508, §4206(a)(1), added subpar. (Q).

Subsec. (e). Pub. L. 101–508, §4162(b)(2), substituted ''include—'' and pars. (1) and (2) for ''include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1395x(p)(4)(A) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), or if, in the case of a public health agency, such agency meets the requirements of section 1395x(p)(4)(B) of this title (or meets the requirements of such section through the operation of section 1395x(g) of this title), but only with respect to the furnishing of outpatient physical therapy services (as therein defined) or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services.''

Subsec. (f). Pub. L. 101–508, §4206(a)(2), added subsec. (f).

1989—Subsec. (a)(1)(F)(i)(III). Pub. L. 101–234, §301(b)(4), (d)(1), amended subcl. (III) identically substituting ''fiscal year)'' for ''fiscal year))'' before ''of such reviews,'' at end.

Subsec. (a)(1)(F)(ii). Pub. L. 101–239, §6003(g)(3)(D)(xii)(I), inserted ''rural primary care hospitals,'' after ''hospitals,''.

Subsec. (a)(1)(H). Pub. L. 101–239, §6003(g)(3)(D)(xii)(II), inserted ''and in the case of rural primary care hospitals which provide rural primary care hospital services'' after ''payment may be made under this subchapter''.

Subsec. (a)(1)(I). Pub. L. 101–239, §6018(a)(1), amended subpar. (I) generally. Prior to amendment, subpar. (I) read as follows: ''in the case of a hospital and in the case of a rural primary care hospital, to comply with the requirements of section 1395dd of this title to the extent applicable,''.

Pub. L. 101–239, §6003(g)(3)(D)(xii)(III), inserted ''and in the case of a rural primary care hospital'' after ''hospital''.

Subsec. (a)(1)(N). Pub. L. 101–239, §6003(g)(3)(D)(xii)(IV), substituted ''hospitals and rural primary care hospitals'' for ''hospitals'' in introductory provisions and ''hospital or rural primary care hospital,'' for ''hospital,'' in cl. (i).

Subsec. (a)(1)(N)(iii), (iv). Pub. L. 101–239, §6018(a)(2), added cls. (iii) and (iv).

Subsec. (a)(1)(P). Pub. L. 101–239, §6112(e)(3), added subpar. (P).

Subsec. (a)(2)(A). Pub. L. 101–234, §201(a), repealed Pub. L. 100–360, §§201(b), (d), 202(h)(1), and provided that the provisions of law amended or repealed by such sections are restored or revived as if such sections had not been enacted, see 1988 Amendment notes below.

Subsec. (a)(2)(B). Pub. L. 101–239, §6017, redesignated cl. (i) as subpar. (B) and struck out cl. (ii) which authorized charges for items or services more expensive than determined to be necessary and which have not been requested by the individual to the extent that such costs in the second fiscal period preceding the fiscal period in which such charges are imposed exceed necessary costs, under certain circumstances.

Subsec. (a)(3)(A), (B). Pub. L. 101–239, §6003(g)(3)(D)(xiii)(I), substituted ''hospital, rural primary care hospital,'' for ''hospital,'' wherever appearing.

Subsec. (a)(3)(C)(ii)(II). Pub. L. 101–239, §6003(g)(3)(D)(xiii)(II), substituted ''facilities, rural primary care hospitals,'' for ''facilities'' in two places.

Subsec. (d). Pub. L. 101–234, §101(a), repealed Pub. L. 100–360, §104(d)(5), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (i). Pub. L. 101–239, §6020, added subsec. (i).

1988—Subsec. (a)(1)(M). Pub. L. 100–360, §411(c)(2)(C)(i), as added by Pub. L. 100–485, §608(d)(19)(A), struck out ''and'' at end.

Subsec. (a)(1)(N). Pub. L. 100–360, §411(c)(2)(C)(ii), as added by Pub. L. 100–485, §608(d)(19)(A), substituted '', and'' for period at end.

Subsec. (a)(1)(O). Pub. L. 100–360, §411(c)(2)(A)(i), substituted cls. (i) and (ii) for ''with a risk-sharing contract under section 1395mm of this title''.

Subsec. (a)(2)(A). Pub. L. 100–360, §201(d), substituted ''section 1395*l*(d)(1) of this title'' for ''section 1395*l*(c) of this title'' in second sentence.

Pub. L. 100–360, §411(g)(1)(D), substituted ''section 1395m(a)(1)(B) of this title'' for ''section 1395m(a)(2) of this title'' in last sentence.

Pub. L. 100–360, §202(h)(1), inserted ''1395m(c),'' after ''1395*l*(b),'' and ''and in the case of covered outpatient

drugs, applicable coinsurance percent (specified in section 1395m(c)(2)(C) of this title) of the lesser of the actual charges for the drugs or the payment limit (established under section 1395m(c)(3) of this title)'' after ''established by the Secretary''.

Pub. L. 100–360, § 201(b), inserted at end ''A provider of services may not impose a charge under the first sentence of this subparagraph for services for which payment is made to the provider pursuant to section 1395*l*(c) of this title (relating to catastrophic benefits).''

Subsec. (a)(3)(C)(ii). Pub. L. 100–360, § 411(j)(5), made technical correction to directory language of Pub. L. 100–203, § 4097(b), see 1987 Amendment note below.

Subsec. (d). Pub. L. 100–360, § 104(d)(5), as amended by Pub. L. 100–485, § 608(d)(3)(F), struck out ''post-hospital'' before ''extended care services''.

Subsec. (f). Pub. L. 100–485, § 608(f)(1), struck out subsec. (f) which provided for termination or decertification and alternatives thereto.

Subsec. (g). Pub. L. 100–360, § 411(i)(4)(C)(vi), added Pub. L. 100–203, § 4085(i)(28), see 1987 Amendment note below.

1987—Subsec. (a)(1)(F)(i)(III). Pub. L. 100–203, § 4097(a), substituted ''1988'' for ''1986'' and inserted ''and for any direct or administrative costs incurred as a result of review functions added with respect to a subsequent fiscal year'' after ''inflation''.

Subsec. (a)(1)(O). Pub. L. 100–203, § 4012(a), added subpar. (O).

Subsec. (a)(2)(A). Pub. L. 100–203, § 4062(d)(4), inserted at end ''Notwithstanding the first sentence of this subparagraph, a home health agency may charge such an individual or person, with respect to covered items subject to payment under section 1395m(a) of this title, the amount of any deduction imposed under section 1395*l*(b) of this title and 20 percent of the payment basis described in section 1395m(a)(2) of this title.''

Subsec. (a)(3). Pub. L. 100–93, § 8(d)(1), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''The Secretary may refuse to enter into or renew an agreement under this section with a provider of services if any person who has a direct or indirect ownership or control interest of 5 percent or more in such provider, or who is an officer, director, agent, or managing employee (as defined in section 1320a–5(b) of this title) of such provider, is a person described in section 1320a–5(a) of this title.''

Subsec. (a)(3)(C)(ii). Pub. L. 100–203, § 4097(b), as amended by Pub. L. 100–360, § 411(j)(5), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''shall not be less in the aggregate for hospitals, facilities, and agencies for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting the activities described in subparagraph (A) with respect to such hospitals, facilities, or agencies under part B of subchapter XI of this chapter.''

Subsec. (a)(4). Pub. L. 100–93, § 8(d)(1)(B), redesignated par. (4) as (3).

Subsec. (b). Pub. L. 100–93, § 8(d)(2), amended subsec. (b) generally, substituting pars. (1) to (3) for former pars. (1) to (5).

Subsec. (c)(1). Pub. L. 100–93, § 8(d)(3), (4), substituted ''the Secretary has terminated or has refused to renew an agreement under this subchapter with a provider of services'' for ''an agreement filed under this subchapter by a provider of services has been terminated by the Secretary'' and inserted ''or nonrenewal'' after ''termination''.

Subsec. (c)(2). Pub. L. 100–203, § 4212(e)(4), redesignated par. (3) as (2) and struck out former par. (2) which read as follows: ''In the case of a skilled nursing facility participating in the programs established by this subchapter and subchapter XIX of this chapter, the Secretary may enter into an agreement under this section only if such facility has been approved pursuant to section 1396i(a) of this title, and the term of any such agreement shall be in accordance with the period of approval of eligibility specified by the Secretary pursuant to such section.''

Subsec. (c)(3). Pub. L. 100–203, § 4212(e)(4), redesignated par. (3) as (2).

Pub. L. 100–93, § 8(d)(3), (4), substituted ''the Secretary has terminated or has refused to renew an agreement under this subchapter with a provider of services'' for ''an agreement filed under this subchapter by a provider of services has been terminated by the Secretary'' and inserted ''or nonrenewal'' after ''termination''.

Subsec. (g). Pub. L. 100–203, § 4085(i)(28), as added by Pub. L. 100–360, § 411(i)(4)(C)(vi), substituted ''money penalty'' for ''monetary penalty'' in first sentence and amended second sentence generally. Prior to amendment, second sentence read as follows: ''Such a penalty shall be imposed in the same manner as civil monetary penalties are imposed under section 1320a–7a of this title with respect to actions described in subsection (a) of that section.''

Pub. L. 100–203, § 4085(i)(17), substituted ''inconsistent with an arrangement under subsection (a)(1)(H) of this section or in violation of the requirement for such an arrangement'' for ''for a hospital outpatient service for which payment may be made under part B of this subchapter and such bill or request violates an arrangement under subsection (a)(1)(H) of this section''.

Subsec. (h). Pub. L. 100–93, § 8(d)(5), added subsec. (h).

1986—Subsec. (a)(1)(F). Pub. L. 99–509, § 9353(e)(1)(A), designated existing provisions as cl. (i) and in cl. (i), as so designated, redesignated former cls. (i) to (iii) as subcls. (I) to (III), and added cl. (ii).

Pub. L. 99–272, § 9402(a), redesignated cl. (iv) as (iii) and in cl. (iii), as so redesignated, substituted ''1986'' for ''1982'', and struck out former cl. (iii) which provided that the cost of such agreement to the hospital shall not be less than amount which reflects the rates per review established in fiscal year 1982 for both direct and administrative costs (adjusted for inflation).

Subsec. (a)(1)(H). Pub. L. 99–509, § 9343(c)(2), struck out ''inpatient hospital'' after ''hospitals which provide'' and substituted ''a patient'' for ''an inpatient''.

Pub. L. 99–509, § 9320(h)(2), inserted '', and other than services of a certified registered nurse anesthetist'' after ''section 1395y(a)(14) of this title''.

Subsec. (a)(1)(I). Pub. L. 99–514 redesignated subpar. (I) relating to agreement not to charge for certain items and services as subpar. (K).

Pub. L. 99–272, § 9403(b), added subpar. (I) relating to agreement not to charge for certain items or services.

Pub. L. 99–272, § 9121(a), added subpar. (I) relating to compliance with the requirements of section 1395dd of this title.

Subsec. (a)(1)(J). Pub. L. 99–272, § 9122(a), added subpar. (J).

Subsec. (a)(1)(K). Pub. L. 99–514 redesignated subpar. (I) relating to agreement not to charge for certain items and services as subpar. (K).

Subsec. (a)(1)(L). Pub. L. 99–576 added subpar. (L).

Subsec. (a)(1)(M). Pub. L. 99–509, § 9305(b)(1), added subpar. (M).

Subsec. (a)(1)(N). Pub. L. 99–509, § 9332(e)(1), added subpar. (N).

Subsec. (a)(2)(A). Pub. L. 99–272, § 9401(b)(2)(F), inserted '', with respect to items and services furnished in connection with obtaining a second opinion required under section 1320c–13(c)(2) of this title (or a third opinion, if the second opinion was in disagreement with the first opinion),'' after ''1395x(s)(10)(A) of this title'' in last sentence.

Subsec. (a)(4). Pub. L. 99–509, § 9353(e)(1)(B), added par. (4).

Subsec. (e). Pub. L. 99–509, § 9337(c)(2), inserted in second sentence ''(or meets the requirements of such section through the operation of section 1395x(g) of this title)'' in two places, and inserted ''or (through the operation of section 1395x(g) of this title) with respect to the furnishing of outpatient occupational therapy services'' after ''(as therein defined)''.

Subsec. (g). Pub. L. 99–509, § 9343(c)(3), added subsec. (g).

1984—Subsec. (a)(1)(E). Pub. L. 98–369, § 2354(b)(33), inserted a comma at end.

Subsec. (a)(1)(F). Pub. L. 98–369, §2315(d), substituted ''(b), (c), or (d)'' for ''(c) or (d)''.

Pub. L. 98–369, §2347(a)(1), substituted ''maintain an agreement with a professional standards review organization (if there is such an organization in existence in the area in which the hospital is located) or with a utilization and quality control peer review organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located, under which the organization'' for ''maintain an agreement with a utilization and quality control peer review organization (if there is such an organization which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the hospital is located) under which the organization''.

Pub. L. 98–369, §2347(a)(2), repealed amendment made by Pub. L. 98–21, §602(*l*)(1). See 1983 Amendment note below.

Subsec. (a)(2)(A). Pub. L. 98–369, §2303(f), inserted ''and with respect to clinical diagnostic laboratory tests'' after ''section 1395x(s)(10) of this title''.

Pub. L. 98–369, §2321(c), inserted ''or which are durable medical equipment furnished as home health services'' after ''part B of this subchapter''.

Pub. L. 98–369, §2323(b)(3), substituted ''section 1395x(s)(10)(A) of this title'' for ''section 1395x(s)(10) of this title''.

Subsec. (b)(3). Pub. L. 98–369, §2335(d)(1), substituted ''(including inpatient psychiatric hospital services)'' for ''(including tuberculosis hospital services and inpatient psychiatric hospital services)''.

Pub. L. 98–369, §2354(b)(34), realigned margin of par. (3).

Subsec. (b)(4). Pub. L. 98–369, §2348(a), substituted ''more than 30 days after such effective date'' for ''after the calendar year in which such termination is effective''.

Subsec. (d). Pub. L. 98–369, §2335(d)(2), substituted ''(including inpatient psychiatric hospital services)'' for ''(including inpatient tuberculosis hospital services and inpatient psychiatric hospital services)''.

1983—Subsec. (a)(1). Pub. L. 98–21, §602(*l*)(2), inserted provision at end of par. (1) that in the case of a hospital which has an agreement in effect with an organization described in subparagraph (F), which organization's contract with the Secretary under part B of subchapter XI terminates on or after October 1, 1984, the hospital shall not be determined to be out of compliance with the requirement of such subparagraph during the six month period beginning on the date of the termination of that contract.

Subsec. (a)(1)(F). Pub. L. 98–21, §602(*l*)(1), which provided that, effective Oct. 1, 1984, subpar. (F) is amended by substituting ''(with an organization'' for ''(if there is such an organization'', was repealed by Pub. L. 98–369, §2347(a)(2), effective July 18, 1984.

Subsec. (a)(1)(F) to (H). Pub. L. 98–21, §602(f)(1), added subpars. (F) to (H).

Subsec. (a)(2)(A). Pub. L. 97–448, §309(b)(11), inserted a comma after ''1395e(a)(1)''.

Pub. L. 97–448, §309(a)(5), amended directory language of Pub. L. 97–248, §122(g)(5), to correct an error, and did not involve any change in text. See 1982 Amendment note below.

Subsec. (a)(2)(B)(ii). Pub. L. 98–21, §602(f)(2), inserted ''and except with respect to inpatient hospital costs with respect to which amounts are payable under section 1395ww(d) of this title'' after ''(except with respect to emergency services)'' in provision preceding subcl. (I).

1982—Subsec. (a)(1)(B). Pub. L. 97–248, §128(d)(4), inserted ''of section 1395y(a) of this title''.

Subsec. (a)(1)(E). Pub. L. 97–248, §144, added subpar. (E).

Subsec. (a)(2)(A). Pub. L. 97–248, §122(g)(5), as amended by Pub. L. 97–448, §309(a)(5), substituted ''(a)(3), or (a)(4)'' for ''or (a)(3)''.

Subsec. (b). Pub. L. 97–248, §128(a)(5), in provisions preceding par. (1), struck out ''(and in the case of a skilled nursing facility, prior to the end of the term specified in subsection (a)(1) of this section)'' after ''may be terminated''.

Subsec. (b)(4)(A). Pub. L. 97–248, §122(g)(6), inserted ''or hospice care'' after ''home health services''.

1981—Subsec. (a)(1). Pub. L. 97–35 struck out provision following subpar. (D) which provided that an agreement with a skilled nursing facility be for a term not exceeding 12 months with the exception that the Secretary could extend the time in specified situations.

1980—Subsec. (a)(2)(A). Pub. L. 96–611 inserted provision that a provider of services may not impose a charge under clause (ii) of the first sentence of this subparagraph with respect to items and services described in section 1395x(s)(10) of this title for which payment is made under part B of this subchapter.

Subsec. (c)(3). Pub. L. 96–272 added par. (3).

Subsec. (f). Pub. L. 96–499 added subsec. (f).

1978—Subsec. (a)(2)(A). Pub. L. 95–292 provided for computation of and charging of coinsurance amounts for items and services furnished individuals with end stage renal disease on the basis established by the Secretary.

Subsec. (a)(3). Pub. L. 95–142, §8(b)(1), added par. (3).

Subsec. (b)(2)(G). Pub. L. 95–142, §8(b)(2), added cl. (G).

1977—Subsec. (a)(1)(D). Pub. L. 95–142, §15(a), added subpar. (D).

Subsec. (b)(2)(C). Pub. L. 95–142, §3(b), designated existing provisions as subcl. (i) and added subcl. (ii).

Subsec. (b)(2)(F). Pub. L. 95–142, §13(b)(3), substituted ''of a quality which fails to meet professionally recognized standards of health care'' for ''harmful to individuals or to be of a grossly inferior quality'', and struck out provisions relating to approval by an appropriate program review team.

Subsec. (c)(2). Pub. L. 95–210 substituted ''section 1396i(a) of this title'' for ''section 1396i of this title''.

1972—Subsec. (a)(1). Pub. L. 92–603, §§227(d)(2), 249A(b), 278(a)(17), (b)(18), 281(c), substituted ''Any provider of services (except a fund designated for purposes of section 1395f(g) and section 1395n(e) of this title)'' for ''Any provider of services'', ''skilled nursing facility'' for ''extended care facility'', inserted provision that the agreement be for a term of not to exceed 12 months with an allowable extension of 2 months under specified circumstances, redesignated subpar. (B) as (C) and added subpar. (B).

Subsec. (a)(2)(B). Pub. L. 92–603, §223(e), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(2)(C). Pub. L. 92–603, §223(g)(2), substituted ''this subparagraph'' for ''clause (iii) of the preceding sentence''.

Subsec. (a)(2)(D). Pub. L. 92–603, §223(g)(1), added subpar. (D).

Subsec. (b). Pub. L. 92–603, §§229(b), 249A(c), 278(a)(17), inserted ''(and in the case of an extended care facility, prior to the end of the term specified in subsection (a)(1) of this section)'' in provision preceding par. (1), in par. (2), added cls. (D) to (F), and in par. (3), substituted ''(including tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services, with respect to services furnished after the effective date of such termination, except that payment may be made for up to thirty days with respect to inpatient institutional services furnished to any eligible individual who was admitted to such institution prior to'' for ''(including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services, with respect to such services furnished to any individual who is admitted to the hospital or extended care facility furnishing such services on or after'' and substituted ''skilled nursing facility'' for ''extended care facility''.

Subsec. (c). Pub. L. 92–603, §249A(d), designated existing provisions as par. (1) and added par. (2).

Subsec. (d). Pub. L. 92–603, §278(a)(17), substituted ''skilled nursing facility'' for ''extended care facility'' and ''a'' for ''an''.

1968—Subsec. (a)(2)(A). Pub. L. 90–248, §129(c)(12)(A)(i), (ii), substituted ''or (a)(3)'' for '', (a)(2), or (a)(4)'' in cl.

(i), and deleted ''or, in the case of outpatient hospital diagnostic services, for which payment is made under part A'' in cl. (ii).

Subsec. (a)(2)(C). Pub. L. 90–248, §129(c)(12)(B), substituted ''1395e(a)(2)'' for ''1395e(a)(3)''.

Pub. L. 90–248, §135(b), authorized a provider of services to charge for blood in accordance with its customary practices, included, in addition to whole blood for which a provider of services may charge, equivalent quantities of packed red blood cells, and provided that blood furnished an individual will be deemed replaced when the provider is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells) furnished the individual to which the three pint deductible applies.

Subsec. (e). Pub. L. 90–248, §133(c), added subsec. (e).

EFFECTIVE DATE OF 1994 AMENDMENTS

Section 106(b)(2) of Pub. L. 103–432 provided that: ''The amendments made by paragraph (1) [amending this section and section 1395f of this title] shall take effect as if included in the enactment of OBRA–1987 [Pub. L. 100–203].''

Amendment by section 147(e)(7) of Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 147(g) of Pub. L. 103–432, set out as a note under section 1320a–3a of this title.

Amendment by section 156(a)(2)(E) of Pub. L. 103–432 applicable to services provided on or after Oct. 31, 1994, see section 156(a)(3) of Pub. L. 103–432, set out as a note under section 1320c–3 of this title.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(b)(4) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section and section 1395dd of this title] shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4153(d)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §135(e)(7), Oct. 31, 1994, 108 Stat. 4424, provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

Amendment by section 4157(c)(2) of Pub. L. 101–508 applicable to services furnished on or after Jan. 1, 1991, see section 4157(d) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4162(b)(2) of Pub. L. 101–508 applicable with respect to partial hospitalization services provided on or after Oct. 1, 1991, see section 4162(c) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4206(a) of Pub. L. 101–508 applicable with respect to services furnished on or after the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4206(e)(1) of Pub. L. 101–508, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6018(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act [Dec. 19, 1989], without regard to whether regulations to carry out such amendments have been promulgated by such date.''

Amendment by section 6112(e)(3) of Pub. L. 101–239 applicable with respect to items furnished on or after Jan. 1, 1990, see section 6112(e)(4) of Pub. L. 101–239, set out as a note under section 1395m of this title.

Amendment by section 101(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 608(d)(3)(F), (19)(A) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, and amendment by section 608(f)(1) of Pub. L. 100–485 effective Oct. 13, 1988, see section 608(g)(1), (2) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 104(d)(5) of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Amendment by section 202(h)(1) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(c)(2)(C), (g)(1)(D), (i)(4)(C)(vi), (j)(5) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(c)(2)(A)(ii) of Pub. L. 100–360 provided that: ''The amendment made by clause (i) [amending this section] shall apply to admissions occurring on or after the first day of the fourth month beginning after the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENTS

Amendment by section 4012(a) of Pub. L. 100–203 applicable to admissions occurring on or after Apr. 1, 1988, or, if later, the earliest date the Secretary can provide the information required under section 4012(c) of Pub. L. 100–203 [42 U.S.C. 1395mm note] in machine readable form, see section 4012(d) of Pub. L. 100–203, set out as a note under section 1395mm of this title.

Amendment by section 4062(d)(4) of Pub. L. 100–203 applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989, see section 4062(e) of Pub. L. 100–203, as amended, set out as a note under section 1395f of this title.

Section 4085(i)(17) of Pub. L. 100–203 provided that the amendment made by such section 4085(i)(17) is effective as if included in the enactment of Pub. L. 99–509.

Section 4097(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply with respect to fiscal years beginning on or after October 1, 1988.''

Amendment by section 4212(e)(4) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 233(b) of Pub. L. 99–576 provided that: ''The amendments made by subsection (a) [amending this

section] shall apply to inpatient hospital services provided pursuant to admissions to hospitals occurring after June 30, 1987.''

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 9305(b)(2) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall first prescribe the language required under section 1866(a)(1)(M) of the Social Security Act [subsec. (a)(1)(M) of this section] not later than six months after the date of the enactment of this Act [Oct. 21, 1986]. The requirement of such section shall apply to admissions to hospitals occurring on such date (not later than 60 days after the date such language is first prescribed) as the Secretary shall provide.''

Amendment by section 9320(h)(2) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9332(e)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to agreements under section 1866(a) of the Social Security Act [subsec. (a) of this section] as of October 1, 1987.''

Amendment by section 9337(c)(2) of Pub. L. 99–509 applicable to expenses incurred for outpatient occupational therapy services furnished on or after July 1, 1987, see section 9337(e) of Pub. L. 99–509, set out as a note under section 1395k of this title.

Amendment by section 9343(c)(2), (3) of Pub. L. 99–509 applicable to services furnished after June 30, 1987, see section 9343(h)(4) of Pub. L. 99–509, as amended, set out as a note under section 1395*l* of this title.

Section 9353(e)(3)(A) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to provider agreements as of October 1, 1987.''

Amendment by section 9121(a) of Pub. L. 99–272 effective on first day of first month that begins at least 90 days after Apr. 7, 1986, see section 9121(c) of Pub. L. 99–272, set out as a note under section 1395dd of this title.

Section 9122(b) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, §1895(b)(6), Oct. 22, 1986, 100 Stat. 2933, provided that: ''The amendments made by subsection (a) [amending this section] shall apply to inpatient hospital services provided pursuant to admissions to hospitals occurring on or after January 1, 1987.''

Section 9402(c)(1) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Amendment by section 9403(b) of Pub. L. 99–272 effective Apr. 7, 1986, see section 9403(c) of Pub. L. 99–272, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2303(f) of Pub. L. 98–369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title, see section 2303(j)(1), (3) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Amendment by section 2315(d) of Pub. L. 98–369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98–21, see section 2315(g) of Pub. L. 98–369, set out as an Effective and Termination Dates of 1984 Amendment note under section 1395ww of this title.

Amendment by section 2321(c) of Pub. L. 98–369 applicable to items and services furnished on or after July 18, 1984, see section 2321(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Amendment by section 2323(b)(3) of Pub. L. 98–369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Amendment by section 2335(d) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Amendment by section 2347(a) of Pub. L. 98–369 effective July 18, 1984, see section 2347(d) of Pub. L. 98–369, set out as a note under section 1320c–2 of this title.

Section 2348(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section] shall apply to terminations issued on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(33), (34) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 602(*l*) of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title III, §2347(a)(2), July 18, 1984, 98 Stat. 1096, provided that the amendment made by that section is effective Oct. 1, 1984.

Amendment by section 602(f)(2) of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Subsec. (a)(1)(F) to (H) of this section, as added by section 602(f)(1)(C) of Pub. L. 98–21, effective Oct. 1, 1983, see section 604(a)(2) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by section 309(a)(5) of Pub. L. 97–448 effective as if originally included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 309(c)(1) of Pub. L. 97–448, set out as a note under section 426 of this title.

Amendment by section 309(b)(11) of Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 122(g)(5), (6) of Pub. L. 97–248 applicable to hospice care provided on or after Nov. 1, 1983, see section 122(h)(1) of Pub. L. 97–248, as amended, set out as a note under section 1395c of this title.

Amendment by section 128(a)(5) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 128(e)(2) of Pub. L. 97–248, set out as a note under section 1395x of this title.

Amendment by section 128(d)(4) of Pub. L. 97–248 effective Sept. 3, 1982, see section 128(e)(3) of Pub. L. 97–248, set out as a note under section 1395x of this title.

Amendment by section 144 of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–611 effective July 1, 1981, and applicable to services furnished on or after that date, see section 2 of Pub. L. 96–611, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENTS

Section 2(f) of Pub. L. 95–210 provided that:

''(1) The amendments made by this section [amending this section and sections 1396a, 1396d, and 1396i of this title] shall (except as otherwise provided in paragraph (2)) apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act [subchapter XIX of this chapter], on and after the first day of the first calendar quarter that begins more than six months after the date of enactment of this Act [Dec. 13, 1977].

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [subchapter XIX of this chapter] which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title [subchapter] solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Dec. 13, 1977].''

Amendment by section 3(b) of Pub. L. 95–142 effective Oct. 25, 1977, see section 3(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–3 of this title.

Amendment by section 8(b) of Pub. L. 95–142 [amending this section] applicable with respect to contracts, agreements, etc., made on and after first day of fourth month beginning after Oct. 25, 1977, see section 8(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–5 of this title.

Amendment by section 13(b)(3) of Pub. L. 95–142 effective Oct. 25, 1977, see section 13(c) of Pub. L. 95–142, set out as a note under section 1395y of this title.

Section 15(b) of Pub. L. 95–142 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to agreements entered into or renewed on and after the date of enactment of this Act [Oct. 25, 1977].''

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 223(e), (g) of Pub. L. 92–603 effective with respect to accounting periods beginning after Dec. 31, 1972, see section 223(h) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Amendment by section 227(d)(2) of Pub. L. 92–603 applicable with respect to accounting periods beginning after June 30, 1973, see section 227(g) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 249A(e) of Pub. L. 92–603 provided that: ''The provisions of this section [enacting section 1396 of this title and amending this section] shall be effective with respect to agreements filed with the Secretary under section 1866 of the Social Security Act [this section] by skilled nursing facilities (as defined in section 1861(j) of such Act [section 1395x(j) of this title]) before, on, or after the date of enactment of this Act [Oct. 30, 1972], but accepted by him on or after such date.''

Amendment by section 281(c) of Pub. L. 92–603 applicable in the case of notices sent to individuals after 1968, see section 281(g) of Pub. L. 92–603, set out as a note under section 1395gg of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 129(c)(12) of Pub. L. 90–248 applicable with respect to services furnished after Mar. 31, 1968, see section 129(d) of Pub. L. 90–248, set out as a note under section 1395d of this title.

Amendment by section 133(c) of Pub. L. 90–248 applicable with respect to services furnished after June 30, 1968, see section 133(g) of Pub. L. 90–248, set out as a note under section 1395k of this title.

Amendment by section 135(b) of Pub. L. 90–248 applicable with respect to payment for blood (or packed red blood cells) furnished an individual after Dec. 31, 1967, see section 135(d) of Pub. L. 90–248, set out as a note under section 1395e of this title.

EFFECT ON STATE LAW

Section 4206(c) of Pub. L. 101–508 provided that: ''Nothing in subsections (a) and (b) [amending this section and sections 1395*l* and 1395mm of this title] shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which, as a matter of conscience, cannot implement an advance directive.''

REPORTS TO CONGRESS ON NUMBER OF HOSPITALS TERMINATING OR NOT RENEWING PROVIDER AGREEMENTS

Section 233(c) of Pub. L. 99–576 provided that:

''(1) The Secretary of Health and Human Services shall periodically submit to the Congress a report on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act [this section] as a result of the additional conditions imposed under the amendments made by subsection (a) [amending this section].

''(2) Not later than October 1, 1987, the Administrator of Veterans' Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report regarding implementation of this section [amending this section]. Thereafter, the Administrator shall notify such committees if any hospital terminates or fails to renew an agreement described in paragraph (1) for the reasons described in that paragraph.''

Section 9122(d) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall report to Congress periodically on the number of hospitals that have terminated or failed to renew an agreement under section 1866 of the Social Security Act [this section] as a result of the additional conditions imposed under the amendments made by subsection (a) [amending this section].''

DELAY IN IMPLEMENTATION OF REQUIREMENT THAT HOSPITALS MAINTAIN AGREEMENTS WITH UTILIZATION AND QUALITY CONTROL PEER REVIEW ORGANIZATION

Section 2347(b) of Pub. L. 98–369 provided that: ''Notwithstanding section 604(a)(2) of the Social Security Amendments of 1983 [section 604(a)(2) of Pub. L. 98–21, set out as an Effective Date of 1983 Amendment note under section 1395ww of this title], the requirement that a hospital maintain an agreement with a utilization and quality control peer review organization, as contained in section 1866(a)(1)(F) of the Social Security Act [subsec. (a)(1)(F) of this section], shall become effective on November 15, 1984.''

INTERIM WAIVER IN CERTAIN CASES OF BILLING RULE FOR ITEMS AND SERVICES OTHER THAN PHYSICIANS' SERVICES

For authority to waive the requirements of subsec. (a)(1)(H) of this section for any cost period prior to Oct. 1, 1986, where immediate compliance would threaten the stability of patient care, see section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title.

PRIVATE SECTOR REVIEW INITIATIVE

Section 119 of Pub. L. 97–248 provided that:

''(a) The Secretary of Health and Human Services shall undertake an initiative to improve medical review by intermediaries and carriers under title XVIII of the Social Security Act [this subchapter] and to encourage similar review efforts by private insurers and other private entities. The initiative shall include the development of specific standards for measuring the performance of such intermediaries and carriers with respect to the identification and reduction of unnecessary utilization of health services.

''(b) Where such review activity results in the denial of payment to providers of services under title XVIII of the Social Security Act [this subchapter], such providers shall be prohibited, in accordance with sections 1866 and 1879 of such title [this section and section 1395pp of this title], from collecting any payments from beneficiaries unless otherwise provided under such title.''

AGREEMENTS FILED AND ACCEPTED PRIOR TO OCT. 30, 1972, DEEMED TO BE FOR SPECIFIED TERM ENDING DEC. 31, 1973

Section 249A(f) of Pub. L. 92–603 provided that: ''Notwithstanding any other provision of law, any agreement, filed by a skilled nursing facility (as defined in section 1861(j) of the Social Security Act [section 1395x(j) of this title]) with the Secretary under section 1866 of such Act [this section] and accepted by him prior to the date of enactment of this Act [Oct. 30, 1972], which was in effect on such date shall be deemed to be for a specified term ending on December 31, 1973.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a–7a, 1395f, 1395i–3, 1395i–4, 1395*l*, 1395m, 1395n, 1395x, 1395y, 1395aa, 1395dd, 1395mm, 1395tt, 1395vv, 1395ww, 1395bbb, 1395ccc, 1396a, 1396i, 1396m, 1396r of this title; title 5 section 8904.

§ 1395dd. Examination and treatment for emergency medical conditions and women in labor

(a) Medical screening requirement

In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this subchapter) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1) of this section) exists.

(b) Necessary stabilizing treatment for emergency medical conditions and labor

(1) In general

If any individual (whether or not eligible for benefits under this subchapter) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—

(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition, or

(B) for transfer of the individual to another medical facility in accordance with subsection (c) of this section.

(2) Refusal to consent to treatment

A hospital is deemed to meet the requirement of paragraph (1)(A) with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such examination and treatment, but the individual (or a person acting on the individual's behalf) refuses to consent to the examination and treatment. The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such examination and treatment.

(3) Refusal to consent to transfer

A hospital is deemed to meet the requirement of paragraph (1) with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with subsection (c) of this section and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such transfer, but the individual (or a person acting on the individual's behalf) refuses to consent to the transfer. The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such transfer.

(c) Restricting transfers until individual stabilized

(1) Rule

If an individual at a hospital has an emergency medical condition which has not been stabilized (within the meaning of subsection (e)(3)(B) of this section), the hospital may not transfer the individual unless—

(A)(i) the individual (or a legally responsible person acting on the individual's behalf) after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility,

(ii) a physician (within the meaning of section 1395x(r)(1) of this title) has signed a certification that[1] based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual and, in the case of labor, to the unborn child from effecting the transfer, or

(iii) if a physician is not physically present in the emergency department at the time an individual is transferred, a qualified medical person (as defined by the Secretary in regulations) has signed a certification described in clause (ii) after a physician (as defined in section 1395x(r)(1) of this title), in consultation with the person, has made the determination described in such clause, and subsequently countersigns the certification; and

(B) the transfer is an appropriate transfer (within the meaning of paragraph (2)) to that facility.

A certification described in clause (ii) or (iii) of subparagraph (A) shall include a summary of the risks and benefits upon which the certification is based.

[1] So in original. Probably should be followed by a comma.

(2) Appropriate transfer

An appropriate transfer to a medical facility is a transfer—

(A) in which the transferring hospital provides the medical treatment within its capacity which minimizes the risks to the individual's health and, in the case of a woman in labor, the health of the unborn child;

(B) in which the receiving facility—

(i) has available space and qualified personnel for the treatment of the individual, and

(ii) has agreed to accept transfer of the individual and to provide appropriate medical treatment;

(C) in which the transferring hospital sends to the receiving facility all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under paragraph (1)(A), and the name and address of any on-call physician (described in subsection (d)(1)(C) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment;

(D) in which the transfer is effected through qualified personnel and transportation equipment, as required including the use of necessary and medically appropriate life support measures during the transfer; and

(E) which meets such other requirements as the Secretary may find necessary in the interest of the health and safety of individuals transferred.

(d) Enforcement

(1) Civil money penalties

(A) A participating hospital that negligently violates a requirement of this section is subject to a civil money penalty of not more than $50,000 (or not more than $25,000 in the case of a hospital with less than 100 beds) for each such violation. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply with respect to a penalty or proceeding under section 1320a–7a(a) of this title.

(B) Subject to subparagraph (C), any physician who is responsible for the examination, treatment, or transfer of an individual in a participating hospital, including a physician on-call for the care of such an individual, and who negligently violates a requirement of this section, including a physician who—

(i) signs a certification under subsection (c)(1)(A) of this section that the medical benefits reasonably to be expected from a transfer to another facility outweigh the risks associated with the transfer, if the physician knew or should have known that the benefits did not outweigh the risks, or

(ii) misrepresents an individual's condition or other information, including a hospital's obligations under this section,

is subject to a civil money penalty of not more than $50,000 for each such violation and, if the violation is is[2] gross and flagrant or is repeated, to exclusion from participation in this subchapter and State health care programs. The provisions of section 1320a–7a of this title (other than the first and second sentences of subsection (a) and subsection (b)) shall apply to a civil money penalty and exclusion under this subparagraph in the same manner as such provisions apply with respect to a penalty, exclusion, or proceeding under section 1320a–7a(a) of this title.

(C) If, after an initial examination, a physician determines that the individual requires the services of a physician listed by the hospital on its list of on-call physicians (required to be maintained under section 1395cc(a)(1)(I) of this title) and notifies the on-call physician and the on-call physician fails or refuses to appear within a reasonable period of time, and the physician orders the transfer of the individual because the physician determines that without the services of the on-call physician the benefits of transfer outweigh the risks of transfer, the physician authorizing the transfer shall not be subject to a penalty under subparagraph (B). However, the previous sentence shall not apply to the hospital or to the on-call physician who failed or refused to appear.

(2) Civil enforcement

(A) Personal harm

Any individual who suffers personal harm as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for personal injury under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

(B) Financial loss to other medical facility

Any medical facility that suffers a financial loss as a direct result of a participating hospital's violation of a requirement of this section may, in a civil action against the participating hospital, obtain those damages available for financial loss, under the law of the State in which the hospital is located, and such equitable relief as is appropriate.

(C) Limitations on actions

No action may be brought under this paragraph more than two years after the date of the violation with respect to which the action is brought.

(3) Consultation with peer review organizations

In considering allegations of violations of the requirements of this section in imposing sanctions under paragraph (1), the Secretary shall request the appropriate utilization and quality control peer review organization (with a contract under part B of subchapter XI of

[2] So in original.

this chapter) to assess whether the individual involved had an emergency medical condition which had not been stabilized, and provide a report on its findings. Except in the case in which a delay would jeopardize the health or safety of individuals, the Secretary shall request such a review before effecting a sanction under paragraph (1) and shall provide a period of at least 60 days for such review.

(e) Definitions

In this section:

(1) The term ''emergency medical condition'' means—

(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,

(ii) serious impairment to bodily functions, or

(iii) serious dysfunction of any bodily organ or part; or

(B) with respect to a pregnant women[3] who is having contractions—

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery, or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(2) The term ''participating hospital'' means hospital that has entered into a provider agreement under section 1395cc of this title.

(3)(A) The term ''to stabilize'' means, with respect to an emergency medical condition described in paragraph (1)(A), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta).

(B) The term ''stabilized'' means, with respect to an emergency medical condition described in paragraph (1)(A), that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta).

(4) The term ''transfer'' means the movement (including the discharge) of an individual outside a hospital's facilities at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who (A) has been declared dead, or (B) leaves the facility without the permission of any such person.

(5) The term ''hospital'' includes a rural primary care hospital (as defined in section 1395x(mm)(1) of this title).

(f) Preemption

The provisions of this section do not preempt any State or local law requirement, except to the extent that the requirement directly conflicts with a requirement of this section.

(g) Nondiscrimination

A participating hospital that has specialized capabilities or facilities (such as burn units, shock-trauma units, neonatal intensive care units, or (with respect to rural areas) regional referral centers as identified by the Secretary in regulation) shall not refuse to accept an appropriate transfer of an individual who requires such specialized capabilities or facilities if the hospital has the capacity to treat the individual.

(h) No delay in examination or treatment

A participating hospital may not delay provision of an appropriate medical screening examination required under subsection (a) of this section or further medical examination and treatment required under subsection (b) of this section in order to inquire about the individual's method of payment or insurance status.

(i) Whistleblower protections

A participating hospital may not penalize or take adverse action against a qualified medical person described in subsection (c)(1)(A)(iii) of this section or a physician because the person or physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized or against any hospital employee because the employee reports a violation of a requirement of this section.

(Aug. 14, 1935, ch. 531, title XVIII, §1867, as added Apr. 7, 1986, Pub. L. 99–272, title IX, §9121(b), 100 Stat. 164; amended Oct. 21, 1986, Pub. L. 99–509, title IX, §9307(c)(4), 100 Stat. 1996; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1895(b)(4), 100 Stat. 2933; Dec. 22, 1987, Pub. L. 100–203, title IV, §4009(a)(1), formerly §4009(a)(1), (2), 101 Stat. 1330–56, 1330–57; July 1, 1988, Pub. L. 100–360, title IV, §411(b)(8)(A)(i), 102 Stat. 772; Oct. 13, 1988, Pub. L. 100–485, title VI, §608(d)(18)(E), 102 Stat. 2419; Dec. 19, 1989, Pub. L. 101–239, title VI, §§6003(g)(3)(D)(xiv), 6211(a)–(h), 103 Stat. 2154, 2245–2248; Nov. 5, 1990, Pub. L. 101–508, title IV, §§4008(b)(1)–(3)(A), 4207(a)(1)(A), (2), (3), (k)(3), formerly 4027(a)(1)(A), (2), (3), (k)(3), 104 Stat. 1388–44, 1388–117, 1388–124, renumbered and amended Oct. 31, 1994, Pub. L. 103–432, title I, §160(d)(4), (5)(A), 108 Stat. 4444.)

REFERENCES IN TEXT

Part B of subchapter XI of this chapter, referred to in subsec. (d)(3), is classified to section 1320c et seq. of this title.

PRIOR PROVISIONS

A prior section 1395dd, act Aug. 14, 1935, ch. 531, title XVIII, §1867, as added July 30, 1965, Pub. L. 89–97, title I, §102(a), 79 Stat. 329; amended Jan. 2, 1968, Pub. L. 90–248, title I, §164(a), 81 Stat. 873; Oct. 30, 1972, Pub. L. 92–603, title II, §288, 86 Stat. 1457, related to creation, composition, meetings, and functions of the Health Insurance Benefits Advisory Council and the appointment

[3] So in original. Probably should be ''woman''.

of a Chairman and members thereto, and qualifications, terms of office, compensation, and reimbursement of travel expenses of members, prior to repeal by Pub. L. 98–369, div. B, title III, § 2349(a), July 18, 1984, 98 Stat. 1097, eff. July 18, 1984.

AMENDMENTS

1994—Subsec. (d)(3). Pub. L. 103–432, § 160(d)(5)(A), made technical amendment to Pub. L. 101–508, § 4207(a)(1)(A). See 1990 Amendment note below.

1990—Subsec. (c)(2)(C). Pub. L. 101–508, § 4008(b)(3)(A)(iii), substituted ''subsection (d)(1)(C)'' for ''subsection (d)(2)(C)''.

Subsec. (d)(1). Pub. L. 101–508, § 4008(b)(3)(A)(i), (ii), redesignated par. (2) as (1) and struck out former par. (1) which read as follows: ''If a hospital knowingly and willfully, or negligently, fails to meet the requirements of this section, such hospital is subject to—

''(A) termination of its provider agreement under this subchapter in accordance with section 1395cc(b) of this title, or

''(B) at the option of the Secretary, suspension of such agreement for such period of time as the Secretary determines to be appropriate, upon reasonable notice to the hospital and to the public.''

Subsec. (d)(1)(B). Pub. L. 101–508, § 4207(a)(2), (3), formerly § 4027(a)(2), (3), as renumbered by Pub. L. 103–432, § 160(d)(4), which directed amendment of par. (2)(B) by substituting ''negligently'' for ''knowingly'' and ''is gross and flagrant or is repeated'' for ''knowing and willful or negligent'', was executed by making the substitutions in par. (1)(B) to reflect the probable intent of Congress and the intervening redesignation of par. (2) as (1) by Pub. L. 101–508, § 4008(b)(3)(A)(ii). See above.

Subsec. (d)(2). Pub. L. 101–508, § 4008(b)(3)(A)(ii), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (d)(2)(A). Pub. L. 101–508, § 4008(b)(1), (2), substituted ''negligently'' for ''knowingly'' and inserted ''(or not more than $25,000 in the case of a hospital with less than 100 beds)'' after ''$50,000''.

Subsec. (d)(3). Pub. L. 101–508, § 4207(a)(1)(A), formerly § 4027(a)(1)(A), as renumbered and amended by Pub. L. 103–432, § 160(d)(4), (5)(A), added par. (3). Former par. (3) redesignated (2).

Subsec. (i). Pub. L. 101–508, § 4207(k)(3), formerly § 4027(k)(3), as renumbered by Pub. L. 103–432, § 160(d)(4), amended subsec. (i) generally. Prior to amendment, subsec. (i) read as follows: ''A participating hospital may not penalize or take adverse action against a physician because the physician refuses to authorize the transfer of an individual with an emergency medical condition that has not been stabilized.''

1989—Pub. L. 101–239, § 6211(h)(2)(A), struck out ''active'' before ''labor'' in section catchline.

Subsec. (a). Pub. L. 101–239, § 6211(h)(2)(B), which directed the amendment of subsec. (a) by striking out ''or to determine if the individual is in active labor (within the meaning of section (e)(2) of this section)'' was executed by striking out ''or to determine if the individual is in active labor (within the meaning of subsection (e)(2) of this section)'' after ''exists''.

Pub. L. 101–239, § 6211(a), substituted ''hospital's emergency department, including ancillary services routinely available to the emergency department,'' for ''hospital's emergency department''.

Subsec. (b). Pub. L. 101–239, § 6211(h)(2)(C), struck out ''active'' before ''labor'' in heading.

Subsec. (b)(1). Pub. L. 101–239, § 6211(h)(2)(D)(i), struck out ''or is in active labor'' after ''emergency medical condition'' in introductory provisions.

Subsec. (b)(1)(A). Pub. L. 101–239, § 6211(h)(2)(D)(ii), struck out ''or to provide for treatment of the labor'' after ''stabilize the medical condition''.

Subsec. (b)(2). Pub. L. 101–239, § 6211(b)(1), inserted ''and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such examination and treatment,'' after ''in that paragraph'', substituted ''and treatment.'' for ''or treatment.'', and inserted at end ''The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such examination and treatment.''

Subsec. (b)(3). Pub. L. 101–239, § 6211(b)(2), inserted ''and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of such transfer,'' after ''subsection (c) of this section'' and inserted at end ''The hospital shall take all reasonable steps to secure the individual's (or person's) written informed consent to refuse such transfer.''

Subsec. (c). Pub. L. 101–239, § 6211(g)(1)(A), substituted ''individual'' for ''patient'' in heading.

Subsec. (c)(1). Pub. L. 101–239, § 6211(c)(4), (g)(1)(B), (h)(2)(E), in introductory provisions, substituted ''an individual'' for ''a patient'', ''subsection (e)(3)(B) of this section)'' for ''subsection (e)(4)(B) of this section) or is in active labor'', and ''the individual'' for ''the patient'', and inserted at end ''A certification described in clause (ii) or (iii) of subparagraph (A) shall include a summary of the risks and benefits upon which the certification is based.''

Subsec. (c)(1)(A)(i). Pub. L. 101–239, § 6211(c)(1), (g)(1)(B), substituted ''the individual'' for ''the patient'', ''the individual's behalf'' for ''the patient's behalf'', and ''after being informed of the hospital's obligations under this section and of the risk of transfer, in writing requests transfer to another medical facility'' for ''requests that the transfer be effected''.

Subsec. (c)(1)(A)(ii). Pub. L. 101–239, § 6211(c)(2)(B), (3), (g)(1)(B), substituted ''has signed a certification that based upon the information available at the time of transfer'' for '', or other qualified medical personnel when a physician is not readily available in the emergency department, has signed a certification that, based upon the reasonable risks and benefits to the patient, and based upon the information available at the time'' and ''individual and, in the case of labor, to the unborn child'' for ''individual's medical condition''.

Subsec. (c)(1)(A)(iii). Pub. L. 101–239, § 6211(c)(2)(A), (C), (D), added cl. (iii).

Subsec. (c)(2)(A). Pub. L. 101–239, § 6211(c)(5), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (c)(2)(B). Pub. L. 101–239, § 6211(c)(5)(A), (g)(1)(B), redesignated subpar. (A) as (B) and substituted ''the individual'' for ''the patient'' in cls. (i) and (ii). Former subpar. (B) redesignated (C).

Subsec. (c)(2)(C). Pub. L. 101–239, § 6211(c)(5)(A), (d), redesignated subpar. (B) as (C) and substituted ''sends to'' for ''provides'' and ''all medical records (or copies thereof), related to the emergency condition for which the individual has presented, available at the time of the transfer, including records related to the individual's emergency medical condition, observations of signs or symptoms, preliminary diagnosis, treatment provided, results of any tests and the informed written consent or certification (or copy thereof) provided under paragraph (1)(A), and the name and address of any on-call physician (described in subsection (d)(2)(C) of this section) who has refused or failed to appear within a reasonable time to provide necessary stabilizing treatment'' for ''with appropriate medical records (or copies thereof) of the examination and treatment effected at the transferring hospital''. Former subpar. (C) redesignated (D).

Subsec. (c)(2)(D). Pub. L. 101–239, § 6211(c)(5)(A), redesignated subpar. (C) as (D). Former subpar. (D) redesignated (E).

Subsec. (c)(2)(E). Pub. L. 101–239, § 6211(c)(5)(A), (g)(1)(B), redesignated subpar. (D) as (E) and substituted ''individuals'' for ''patients''.

Subsec. (d)(2)(B). Pub. L. 101–239, § 6211(e)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The responsible physician in a participating hospital with respect to the hospital's violation of a requirement of this subsection is subject to the sanctions described in section 1395u(j)(2) of this title, except that, for purposes of this subparagraph, the civil money penalty with respect to each violation may not exceed $50,000, rather than $2,000.''

Subsec. (d)(2)(C). Pub. L. 101–239, § 6211(e)(2), added subpar. (C) and struck out former subpar. (C) which

read as follows: ''As used in this paragraph, the term 'responsible physician' means, with respect to a hospital's violation of a requirement of this section, a physician who—

''(i) is employed by, or under contract with, the participating hospital, and

''(ii) acting as such an employee or under such a contract, has professional responsibility for the provision of examinations or treatments for the individual, or transfers of the individual, with respect to which the violation occurred.''

Subsec. (e)(1). Pub. L. 101–239, §6211(h)(1)(A), substituted ''means—'' and subpars. (A) and (B) for ''means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

''(A) placing the patient's health in serious jeopardy,

''(B) serious impairment to bodily functions, or

''(C) serious dysfunction of any bodily organ or part.''

Subsec. (e)(2). Pub. L. 101–239, §6211(h)(1)(B), (E), redesignated par. (3) as (2) and struck out former par. (2) which defined ''active labor''.

Subsec. (e)(3). Pub. L. 101–239, §6211(h)(1)(E), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (e)(4). Pub. L. 101–239, §6211(h)(1)(E), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (e)(4)(A). Pub. L. 101–239, §6211(h)(1)(C), substituted ''emergency medical condition described in paragraph (1)(A)'' for ''emergency medical condition'', ''likely to result from or occur during'' for ''likely to result from'', and ''from a facility, or, with respect to an emergency medical condition described in paragraph (1)(B), to deliver (including the placenta)'' for ''from a facility''.

Subsec. (e)(4)(B). Pub. L. 101–239, §6211(h)(1)(D), inserted ''described in paragraph (1)(A)'' after ''emergency medical condition'', ''or occur during'' after ''to result from'', and '', or, with respect to an emergency medical condition described in paragraph (1)(B), that the woman has delivered (including the placenta)'' after ''from a facility''.

Subsec. (e)(5). Pub. L. 101–239, §6211(h)(1)(E), redesignated par. (6) as (5). Former par. (5) redesignated (4).

Pub. L. 101–239, §6211(g)(2), substituted ''an individual'' for ''a patient'' in two places.

Subsec. (e)(6). Pub. L. 101–239, §6211(h)(1)(E), redesignated par. (6) as (5).

Pub. L. 101–239, §6003(g)(3)(D)(xiv), added par. (6).

Subsecs. (g) to (i). Pub. L. 101–239, §6211(f), added subsecs. (g) to (i).

1988—Subsec. (d)(1). Pub. L. 100–360, §411(b)(8)(A)(i), amended Pub. L. 100–203, §4009(a)(2), see 1987 Amendment note below.

Subsec. (d)(2). Pub. L. 100–360, §411(b)(8)(A)(i), as amended by Pub. L. 100–485, §608(d)(18)(E), amended Pub. L. 100–203, §4009(a)(1), see 1987 Amendment note below.

1987—Subsec. (d)(1). Pub. L. 100–203, §4009(a)(2), which directed insertion of a provision related to imposing the sanction described in section 1395u(j)(2)(A) of this title, was amended generally by Pub. L. 100–360, §411(b)(8)(A)(i), so that it does not amend par. (1).

Subsec. (d)(2). Pub. L. 100–203, §4009(a)(1), as amended by Pub. L. 100–360, §411(b)(8)(A)(i), as amended by Pub. L. 100–485, §608(d)(18)(E), substituted subpars. (A) and (B) for ''In addition to the other grounds for imposition of a civil money penalty under section 1320a–7a(a) of this title, a participating hospital that knowingly violates a requirement of this section and the responsible physician in the hospital with respect to such a violation are each subject, under that section, to a civil money penalty of not more than $25,000 for each such violation.'', designated second sentence as subpar. (C), substituted ''this paragraph'' for ''the previous sentence'', and redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (C).

1986—Subsec. (b)(2), (3). Pub. L. 99–509 struck out ''legally responsible'' after ''individual (or a''.

Subsec. (e)(3). Pub. L. 99–514 struck out ''and has, under the agreement, obligated itself to comply with the requirements of this section'' after ''section 1395cc of this title''.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4008(b)(1)–(3)(A) of Pub. L. 101–508 applicable to actions occurring on or after the first day of the sixth month beginning after Nov. 5, 1990, see section 4008(b)(4) of Pub. L. 101–508, set out as a note under section 1395cc of this title.

Amendment by section 4207(a)(1)(A) of Pub. L. 101–508 effective on the first day of the first month beginning more than 60 days after Nov. 5, 1990, see section 4207(a)(1)(C) of Pub. L. 101–508, as amended, set out as a note under section 1320c–3 of this title.

Section 4207(a)(4), formerly 4027(a)(4), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, §160(d)(4), (5)(B), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by paragraphs (2) and (3) [amending this section] shall apply to actions occurring on or after the first day of the sixth month beginning after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6211(i) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section] shall take effect on the first day of the first month that begins more than 180 days after the date of the enactment of this Act [Dec. 19, 1989], without regard to whether regulations to carry out such amendments have been promulgated by such date.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4009(a)(2), formerly §4009(a)(3), of Pub. L. 100–203, as redesignated by Pub. L. 100–360, title IV, §411(b)(8)(A)(ii), July 1, 1988, 102 Stat. 772, provided that: ''The amendments made by this subsection [amending this section] shall apply to actions occurring on or after the date of the enactment of this Act [Dec. 22, 1987].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Section 9121(c) of Pub. L. 99–272 provided that: ''The amendments made by this section [enacting this section and amending section 1395cc of this title] shall take effect on the first day of the first month that begins at least 90 days after the date of the enactment of this Act [Apr. 7, 1986].''

INSPECTOR GENERAL STUDY OF PROHIBITION ON HOSPITAL EMPLOYMENT OF PHYSICIANS

Section 4008(c) of Pub. L. 101–508 directed Secretary of Health and Human Services (acting through Inspector

General of Department of Health and Human Services) to conduct a study of the effect of State laws prohibiting the employment of physicians by hospitals on the availability and accessibility of trauma and emergency care services, and include in such study an analysis of the effect of such laws on the ability of hospitals to meet the requirements of section 1867 of the Social Security Act (this section) relating to the examination and treatment of individuals with an emergency medical condition and women in labor, with Secretary to submit a report to Congress on the study not later than 1 year after Nov. 5, 1990.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300d–13, 1320c–3, 1395cc of this title.

§ 1395ee. Practicing Physicians Advisory Council

(a) Appointment

The Secretary shall appoint, based upon nominations submitted by medical organizations representing physicians, a Practicing Physicians Advisory Council (in this section referred to as the ''Council'') to be composed of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under this subchapter in the previous year. At least 11 of the members of the Council shall be physicians described in section 1395x(r)(1) of this title and the members of the Council shall include both participating and nonparticipating physicians and physicians practicing in rural areas and underserved urban areas.

(b) Meetings

The Council shall meet once during each calendar quarter to discuss certain proposed changes in regulations and carrier manual instructions related to physician services identified by the Secretary. To the extent feasible and consistent with statutory deadlines, such consultation shall occur before the publication of such proposed changes.

(c) Reimbursement of expenses

Members of the Council shall be entitled to receive reimbursement of expenses and per diem in lieu of subsistence in the same manner as other members of advisory councils appointed by the Secretary are provided such reimbursement and per diem under this subchapter.

(Aug. 14, 1935, ch. 531, title XVIII, § 1868, as added Nov. 5, 1990, Pub. L. 101–508, title IV, § 4112, 104 Stat. 1388–64.)

PRIOR PROVISIONS

A prior section 1395ee, act Aug. 14, 1935, ch. 531, title XVIII, § 1868, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 329, provided for creation of a National Medical Review Committee, functions of such Committee, including submission of annual reports to the Secretary and Congress, employment of technical assistance, and for availability of assistance and data, prior to repeal by Pub. L. 90–248, title I, § 164(c), Jan. 2, 1968, 81 Stat. 874.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1395ff. Determinations of Secretary

(a) Entitlement to and amount of benefits

The determination of whether an individual is entitled to benefits under part A or part B of this subchapter, and the determination of the amount of benefits under part A or part B of this subchapter, and any other determination with respect to a claim for benefits under part A of this subchapter or a claim for benefits with respect to home health services under part B of this subchapter shall be made by the Secretary in accordance with regulations prescribed by him.

(b) Appeal by individuals; provider representation of beneficiaries

(1) Any individual dissatisfied with any determination under subsection (a) of this section as to—

(A) whether he meets the conditions of section 426 or section 426a of this title, or

(B) whether he is eligible to enroll and has enrolled pursuant to the provisions of part B of this subchapter or section 1395i–2 of this title,

(C) the amount of benefits under part A or part B of this subchapter (including a determination where such amount is determined to be zero), or

(D) any other denial (other than under part B of subchapter XI of this chapter) of a claim for benefits under part A of this subchapter or a claim for benefits with respect to home health services under part B of this subchapter,

shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively. Sections 406(a), 1302, and 1395hh of this title shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. Any person that furnishes services or items to an individual may not represent an individual under this subsection with respect to the issue described in section 1395pp(a)(2) of this title unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal. If a person furnishes services or items to an individual and represents the individual under this subsection, the person may not impose any financial liability on such individual in connection with such representation.

(2) Notwithstanding paragraph (1)(C) and (1)(D), in the case of a claim arising—

(A) under part A of this subchapter, a hearing shall not be available to an individual under paragraph (1)(C) and (1)(D) if the amount in controversy is less than $100 and judicial review shall not be available to the individual under that paragraph if the amount in controversy is less than $1,000; or

(B) under part B of this subchapter, a hearing shall not be available to an individual under paragraph (1)(C) and (1)(D) if the amount in controversy is less than $500 and judicial review shall not be available to the individual under that paragraph if the aggregate amount in controversy is less than $1,000.

In determining the amount in controversy, the Secretary, under regulations, shall allow two or more claims to be aggregated if the claims involve the delivery of similar or related services to the same individual or involve common issues of law and fact arising from services furnished to two or more individuals.

(3) Review of any national coverage determination under section 1395y(a)(1) of this title respecting whether or not a particular type or class of items or services is covered under this subchapter shall be subject to the following limitations:

(A) Such a determination shall not be reviewed by any administrative law judge.

(B) Such a determination shall not be held unlawful or set aside on the ground that a requirement of section 553 of title 5 or section 1395hh(b) of this title, relating to publication in the Federal Register or opportunity for public comment, was not satisfied.

(C) In any case in which a court determines that the record is incomplete or otherwise lacks adequate information to support the validity of the determination, it shall remand the matter to the Secretary for additional proceedings to supplement the record and the court may not determine that an item or service is covered except upon review of the supplemented record.

(4) A regulation or instruction which relates to a method for determining the amount of payment under part B of this subchapter and which was initially issued before January 1, 1981, shall not be subject to judicial review.

(5) In an administrative hearing pursuant to paragraph (1), where the moving party alleges that there are no material issues of fact in dispute, the administrative law judge shall make an expedited determination as to whether any such facts are in dispute and, if not, shall determine the case expeditiously.

(Aug. 14, 1935, ch. 531, title XVIII, § 1869, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 330; amended Oct. 30, 1972, Pub. L. 92–603, title II, § 299O(a), 86 Stat. 1464; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2354(b)(35), 98 Stat. 1102; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9313(a)(1), (b)(1), 9341(a)(1), 100 Stat. 2002, 2037; Aug. 18, 1987, Pub. L. 100–93, § 8(e), 101 Stat. 694; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4082(a), (b), 4085(i)(18), (19), 101 Stat. 1330–128, 1330–133; Aug. 15, 1994, Pub. L. 103–296, title I, § 108(c)(5), 108 Stat. 1485.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsecs. (a) and (b), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Part B of subchapter XI of this chapter, referred to in subsec. (b)(1)(D), is classified to section 1320c et seq. of this title.

AMENDMENTS

1994—Subsec. (b)(1). Pub. L. 103–296 inserted ‘‘, except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively’’ after ‘‘section 405(g) of this title’’ in closing provisions.

1987—Subsec. (a). Pub. L. 100–203, § 4085(i)(18), inserted ‘‘or a claim for benefits with respect to home health services under part B of this subchapter’’ before ‘‘shall’’.

Subsec. (b)(2). Pub. L. 100–203, § 4085(i)(19), inserted ‘‘and (1)(D)’’ after ‘‘paragraph (1)(C)’’ in two places.

Subsec. (b)(3)(B). Pub. L. 100–203, § 4082(a), substituted ‘‘section 553’’ for ‘‘chapter 5’’.

Subsec. (b)(5). Pub. L. 100–203, § 4082(b), added par. (5).

Subsec. (c). Pub. L. 100–93 struck out subsec. (c) which read as follows: ‘‘Any institution or agency dissatisfied with any determination by the Secretary that it is not a provider of services, or with any determination described in section 1395cc(b)(2) of this title, shall be entitled to a hearing thereon by the Secretary (after reasonable notice and opportunity for hearing) to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary’s final decision after such hearing as is provided in section 405(g) of this title.’’

1986—Subsec. (a). Pub. L. 99–509, § 9341(a)(1)(A), inserted ‘‘or part B’’ after ‘‘amount of benefits under part A’’.

Pub. L. 99–509, § 9313(b)(1)(A), inserted ‘‘and any other determination with respect to a claim for benefits under part A of this subchapter’’ before ‘‘shall’’.

Subsec. (b)(1). Pub. L. 99–509, § 9313(a)(1), in concluding provisions, inserted at end ‘‘Sections 406(a), 1302, and 1395hh of this title shall not be construed as authorizing the Secretary to prohibit an individual from being represented under this subsection by a person that furnishes or supplies the individual, directly or indirectly, with services or items solely on the basis that the person furnishes or supplies the individual with such a service or item. Any person that furnishes services or items to an individual may not represent an individual under this subsection with respect to the issue described in section 1395pp(a)(2) of this title unless the person has waived any rights for payment from the beneficiary with respect to the services or items involved in the appeal. If a person furnishes services or items to an individual and represents the individual under this subsection, the person may not impose any financial liability on such individual in connection with such representation.’’

Subsec. (b)(1)(C). Pub. L. 99–509, § 9341(a)(1)(B), inserted ‘‘or part B’’.

Subsec. (b)(1)(D). Pub. L. 99–509, § 9313(b)(1)(B), added subpar. (D).

Subsec. (b)(2). Pub. L. 99–509, § 9341(a)(1)(C), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ‘‘Notwithstanding the provisions of subparagraph (C) of paragraph (1) of this subsection, a hearing shall not be available to an individual by reason of such subparagraph (C) if the amount in controversy is less than $100; nor shall judicial review be available to an individual by reason of such subparagraph (C) if the amount in controversy is less than $1,000.’’

Subsec. (b)(3), (4). Pub. L. 99–509, § 9341(a)(1)(D), added pars. (3) and (4).

1984—Subsec. (b)(1)(B). Pub. L. 98–369 struck out the comma before ‘‘or section 1395i–2’’ and struck out ‘‘, or section 1819’’ after ‘‘section 1395i–2 of this title’’.

1972—Subsec. (b). Pub. L. 92–603 redesignated existing provisions as par. (1), generally amended conditions under which a dissatisfied individual shall be entitled to a hearing by Secretary and to judicial review of final decision of Secretary after such hearing, and added par. (2).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4082(e)(1), (2) of Pub. L. 100–203 provided that:

''(1) The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 22, 1987].

''(2) The amendment made by subsection (b) [amending this section] shall apply to requests for hearings filed after the end of the 60-day period beginning on the date of the enactment of this Act.''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9313(b)(2) of Pub. L. 99–509 provided that: ''The amendments made by this subsection [amending this section] take effect on the date of the enactment of this Act [Oct. 21, 1986].''

Section 9341(b) of Pub. L. 99–509 provided that: ''The amendments made by subsection (a) [amending this section and sections 1395u and 1395pp of this title] shall apply to items and services furnished on or after January 1, 1987.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 299O(b) of Pub. L. 92–603 provided that:

''(1) The provisions of subparagraphs (A) and (B) of section 1869(b)(1) of the Social Security Act [subsec. (b)(1)(A), (B) of this section], as amended by subsection (a) of this section, shall be effective on the date of enactment of this Act [Oct. 30, 1972].

''(2) The provisions of paragraph (2) and subparagraph (C) of paragraph (1) of section 1869(b) of the Social Security Act [subsec. (b)(1)(C) and (b)(2) of this section], as amended by subsection (a) of this section, shall be effective with respect to any claims under part A of title XVIII of such Act [part A of this subchapter], filed—

''(A) in or after the month in which this Act is enacted [Oct. 1972], or

''(B) before the month in which this Act is enacted [Oct. 1972], but only if a civil action with respect to a final decision of the Secretary of Health, Education, and Welfare on such claim has not been commenced under such section 1869(b) [subsec. (b) of this section] before such month.''

STUDY OF AGGREGATION RULE FOR CLAIMS FOR SIMILAR PHYSICIANS' SERVICES

Pub. L. 101–508, title IV, § 4113, Nov. 5, 1990, 104 Stat. 1388–64, directed Secretary of Health and Human Services to carry out a study of the effects of permitting the aggregation of claims that involve common issues of law and fact furnished in the same carrier area to two or more individuals by two or more physicians within the same 12-month period for purposes of appeals provided for under subsec. (b)(2) of this section, and to report on the results of such study and any recommendations to Congress by Dec. 31, 1992.

MEDICARE HEARINGS AND APPEALS

Section 4037 of Pub. L. 100–203 provided that:

''(a) MAINTAINING CURRENT SYSTEM FOR HEARINGS AND APPEALS.—Any hearing conducted under section 1869(b)(1) of the Social Security Act [subsec. (b)(1) of this section] prior to the earliest of the date on which the Secretary of Health and Human Services submits the report required to be submitted by the Secretary under subsection (b)(1) or September 1 shall be conducted by Administrative Law Judges of the Office of Hearings and Appeals of the Social Security Administration in the same manner as are hearings conducted under section 205(b)(1) of such Act [section 405(b)(1) of this title].

''(b) STUDY AND REPORT ON USE OF TELEPHONE HEARINGS.—

''(1) The Secretary of Health and Human Services and the Comptroller General of the United States shall each conduct a study on holding hearings under section 1869(b)(1) of the Social Security Act [subsec. (b)(1) of this section] by telephone and shall each report the results of the study not later than 6 months after the date of enactment of this Act [Dec. 22, 1987].

''(2) The studies under paragraph (1) shall focus on whether telephone hearings allow for a full and fair evidentiary hearing, in general, or with respect to any particular category of claims and shall examine the possible improvements to the hearing process (such as cost-effectiveness, convenience to the claimant, and reduction in time under the process) resulting from the use of such hearings as compared to the adoption of other changes to the process (such as expansions in staff and resources).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395u, 1395x, 1395w–4, 1395pp of this title; title 45 section 231f.

§ 1395gg. Overpayment on behalf of individuals and settlement of claims for benefits on behalf of deceased individuals

(a) Payments to providers of services or other person regarded as payment to individuals

Any payment under this subchapter to any provider of services or other person with respect to any items or services furnished any individual shall be regarded as a payment to such individual.

(b) Incorrect payments on behalf of individuals; payment adjustment

Where—

(1) more than the correct amount is paid under this subchapter to a provider of services or other person for items or services furnished an individual and the Secretary determines (A) that, within such period as he may specify, the excess over the correct amount cannot be recouped from such provider of services or other person, or (B) that such provider of services or other person was without fault with respect to the payment of such excess over the correct amount, or

(2) any payment has been made under section 1395f(e) of this title to a provider of services or other person for items or services furnished an individual,

proper adjustments shall be made, under regulations prescribed (after consultation with the Railroad Retirement Board) by the Secretary, by decreasing subsequent payments—

(3) to which such individual is entitled under subchapter II of this chapter or under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], as the case may be, or

(4) if such individual dies before such adjustment has been completed, to which any other individual is entitled under subchapter II of this chapter or under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], as the case may be, with respect to the wages and self-employment income or the compensation constituting the basis of the benefits of such deceased individual under subchapter II of this chapter.

As soon as practicable after any adjustment under paragraph (3) or (4) is determined to be necessary, the Secretary, for purposes of this section, section 1395i(g) of this title, and section 1395t(f) of this title, shall certify (to the Railroad Retirement Board if the adjustment is to be made by decreasing subsequent payments under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.]) the amount of the overpayment as to which the adjustment is to be made. For purposes of clause (B) of paragraph (1), such provider of services or such other person shall, in the absence of evidence to the contrary, be deemed to be without fault if the Secretary's determination that more than such correct amount was paid was made subsequent to the third year following the year in which notice was sent to such individual that such amount had been paid; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter.

(c) Exception to subsection (b) payment adjustment

There shall be no adjustment as provided in subsection (b) of this section (nor shall there be recovery) in any case where the incorrect payment has been made (including payments under section 1395f(e) of this title) with respect to an individual who is without fault or where the adjustment (or recovery) would be made by decreasing payments to which another person who is without fault is entitled as provided in subsection (b)(4) of this section, if such adjustment (or recovery) would defeat the purposes of subchapter II or subchapter XVIII of this chapter or would be against equity and good conscience. Adjustment or recovery of an incorrect payment (or only such part of an incorrect payment as the Secretary determines to be inconsistent with the purposes of this subchapter) against an individual who is without fault shall be deemed to be against equity and good conscience if (A) the incorrect payment was made for expenses incurred for items or services for which payment may not be made under this subchapter by reason of the provisions of paragraph (1) or (9) of section 1395y(a) of this title and (B) if the Secretary's determination that such payment was incorrect was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this subchapter.

(d) Liability of certifying or disbursing officer for failure to recoup

No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any provider of services or other person where the adjustment or recovery of such amount is waived under subsection (c) of this section or where adjustment under subsection (b) of this section is not completed prior to the death of all persons against whose benefits such adjustment is authorized.

(e) Settlement of claims for benefits under this subchapter on behalf of deceased individuals

If an individual, who received services for which payment may be made to such individual under this subchapter, dies, and payment for such services was made (other than under this subchapter), and the individual died before any payment due him under this subchapter with respect to such services was completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

(1) if the payment for such services was made (before or after such individual's death) by a person other than the deceased individual, to the person or persons determined by the Secretary under regulations to have paid for such services, or if the payment for such services was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any;

(2) if there is no person who meets the requirements of paragraph (1), to the person, if any, who is determined by the Secretary to be the surviving spouse of the deceased individual and who was either living in the same household with the deceased at the time of his death or was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(3) if there is no person who meets the requirements of paragraph (1) or (2), or if the person who meets such requirements dies before the payment due him under this subchapter is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this

subchapter is completed, to the person, if any, determined by the Secretary to be the surviving spouse of the deceased individual;

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the person or persons, if any, determined by the Secretary to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent); or

(8) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), (6), or (7), or if each person who meets such requirements dies before the payment due him under this subchapter is completed, to the legal representatives of the estate of the deceased individual, if any.

(f) Settlement of claims for section 1395k benefits on behalf of deceased individuals

If an individual who received medical and other health services for which payment may be made under section 1395k(a)(1) of this title dies, and no assignment of the right to payment for such services was made by such individual before his death, and payment for such services has not been made—

(1) if the person or persons who furnished the services agree to the terms of assignment specified in section 1395u(b)(3)(B)(ii) of this title with respect to the services, payment for such services shall be made to such person or persons, and

(2) if the person or persons who furnished the services do not agree to the terms of assignment specified in section 1395u(b)(3)(B)(ii) of this title with respect to the services, payment for such services shall be made on the basis of an itemized bill to the person who has agreed to assume the legal obligation to make payment for such services and files a request for payment (with such accompanying evidence of such legal obligation as may be required in regulations),

but only in such amount and subject to such conditions as would be applicable if the individual who received the services had not died.

(g) Refund of premiums for deceased individuals

If an individual, who is enrolled under section 1395i–2(c) of this title or under section 1395p of this title, dies, and premiums with respect to such enrollment have been received with respect to such individual for any month after the month of his death, such premiums shall be refunded to the person or persons determined by the Secretary under regulations to have paid such premiums or if payment for such premiums was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any. If there is no person who meets the requirements of the preceding sentence such premiums shall be refunded to the person or persons in the priorities specified in paragraphs (2) through (7) of subsection (e) of this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1870, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 331; amended Jan. 2, 1968, Pub. L. 90–248, title I, § 154(b), (c), 81 Stat. 862; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 261(a), 266, 281(a), (b), 86 Stat. 1448, 1450, 1454, 1455; Oct. 16, 1974, Pub. L. 93–445, title III, § 309, 88 Stat. 1358; Dec. 5, 1980, Pub. L. 96–499, title IX, § 954(a), 94 Stat. 2647; Sept. 3, 1982, Pub. L. 97–248, title I, § 128(d)(1), 96 Stat. 367; Dec, 22, 1987, Pub. L. 100–203, title IV, §§ 4039(h)(7), 4096(a)(2), 101 Stat. 1330–139, as amended July 1, 1988, Pub. L. 100–360, title IV, § 411(e)(3), 102 Stat. 776; July 1, 1988, Pub. L. 100–360, title IV, § 411(j)(4)(B), 102 Stat. 791.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (b), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

1988—Pub. L. 100–360, § 411(e)(3), added Pub. L. 100–203, § 4039(h)(7), see 1987 Amendment note below.

Subsec. (f)(1), (2). Pub. L. 100–360, § 411(j)(4)(B), substituted ''of assignment specified in'' for ''specified in subclauses (I) and (II) of''.

1987—Pub. L. 100–203, § 4039(h)(7), as added by Pub. L. 100–360, § 411(e)(3), amended section catchline generally.

Subsec. (f)(1), (2). Pub. L. 100–203, § 4096(a)(2), substituted ''to the terms specified in subclauses (I) and (II) of section 1395u(b)(3)(B)(ii) of this title with respect to the services'' for ''that the reasonable charge is the full charge for the services''.

1982—Subsec. (c). Pub. L. 97–248 substituted ''section 1395y(a)'' for ''section 1395y''.

1980—Subsec. (f). Pub. L. 96–499 amended subsec. (f) generally, inserting provision for payments to providers of medical and other health services where the person or persons furnishing the services did not agree that the reasonable charge was the full charge for such services.

1974—Subsec. (b). Pub. L. 93–445 substituted ''Railroad Retirement Act of 1974'' for ''Railroad Retirement Act of 1937'', wherever appearing.

1972—Subsec. (b). Pub. L. 92–603, § 281(a), required that provider of services or other person be without fault with respect to payment of excess over correct amount as prerequisite to adjustment or recovery of incorrect payments.

Subsec. (c). Pub. L. 92–603, §§ 261(a), 281(b), substituted ''or where the adjustment (or recovery) would be made by decreasing payments to which another person who is without fault is entitled as provided in subsection (b)(4) of this section, if'' for ''and where'', inserted reference to subchapter XVIII of this chapter, and inserted provisions covering the adjustment or recovery of incorrect payments against individuals who are without fault.

Subsec. (g). Pub. L. 92–603, § 266, added subsec. (g).

1968—Pub. L. 90–248, § 154(b), provided for settlement of claims for benefits on behalf of deceased individuals in section catchline.

Subsecs. (e), (f). Pub. L. 90–248, § 154(c), added subsecs. (e) and (f).

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates

to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4096(a)(2) of Pub. L. 100–203 applicable to services furnished on or after Jan. 1, 1988, see section 4096(d) of Pub. L. 100–203, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Sept. 3, 1982, see section 128(e)(3) of Pub. L. 97–248, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 954(b) of Pub. L. 96–499 provided that: ''The amendment made by this section [amending this section] shall apply only to claims filed on or after January 1, 1981.''

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 261(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to waiver actions considered after the date of the enactment of this Act [Oct. 30, 1972].''

Section 281(g) of Pub. L. 92–603 provided that: ''The provisions of subsection (a)(1) [amending this section] shall apply with respect to notices of payment sent to individuals after the date of enactment of this Act [Oct. 30, 1972]. The provisions of subsections (a)(2), (b), (c), and (d) [amending this section and sections 1395u and 1395cc of this title] shall apply in the case of notices sent to individuals after 1968. The provisions of subsections (e) and (f) [amending sections 1395f and 1395n of this title] shall apply in the case of services furnished (or deemed to have been furnished) after 1970.''

WAIVER OF LIABILITY LIMITING RECOUPMENT IN CERTAIN CASES

Pub. L. 101–239, title VI, § 6109, Dec. 19, 1989, 103 Stat. 2213, provided that: ''In the case where more than the correct amount may have been paid to a physician or individual under part B of title XVIII of the Social Security Act [part B of this subchapter] with respect to services furnished during the period beginning on July 1, 1985, and ending on March 31, 1986, as a result of a carrier's establishing statewide fees for certain procedure codes while the carrier was in the process of implementing the national common procedure coding system of the Health Care Financing Administration, the provisions of section 1870(c) of the Social Security Act [subsec. (c) of this section] shall apply, without the need for affirmative action by such a physician or individual, so as to prevent any recoupment, or other decrease in subsequent payments, to the physician or individual. The previous sentence shall apply to claims for items and services which were reopened by carriers on or after July 31, 1987.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395i, 1395t, 1395u of this title; title 2 section 906.

§ 1395hh. Regulations

(a) Authority to prescribe regulations; ineffectiveness of substantive rules not promulgated by regulation

(1) The Secretary shall prescribe such regulations as may be necessary to carry out the administration of the insurance programs under this subchapter. When used in this subchapter, the term ''regulations'' means, unless the context otherwise requires, regulations prescribed by the Secretary.

(2) No rule, requirement, or other statement of policy (other than a national coverage determination) that establishes or changes a substantive legal standard governing the scope of benefits, the payment for services, or the eligibility of individuals, entities, or organizations to furnish or receive services or benefits under this subchapter shall take effect unless it is promulgated by the Secretary by regulation under paragraph (1).

(b) Notice of proposed regulations; public comment

(1) Except as provided in paragraph (2), before issuing in final form any regulation under subsection (a) of this section, the Secretary shall provide for notice of the proposed regulation in the Federal Register and a period of not less than 60 days for public comment thereon.

(2) Paragraph (1) shall not apply where—

(A) a statute specifically permits a regulation to be issued in interim final form or otherwise with a shorter period for public comment,

(B) a statute establishes a specific deadline for the implementation of a provision and the deadline is less than 150 days after the date of the enactment of the statute in which the deadline is contained, or

(C) subsection (b) of section 553 of title 5 does not apply pursuant to subparagraph (B) of such subsection.

(c) Publication of certain rules; public inspection; changes in data collection and retrieval

(1) The Secretary shall publish in the Federal Register, not less frequently than every 3 months, a list of all manual instructions, interpretative rules, statements of policy, and guidelines of general applicability which—

(A) are promulgated to carry out this subchapter, but

(B) are not published pursuant to subsection (a)(1) of this section and have not been previously published in a list under this subsection.

(2) Effective June 1, 1988, each fiscal intermediary and carrier administering claims for extended care, post-hospital extended care, home health care, and durable medical equipment benefits under this subchapter shall make available to the public all interpretative materials, guidelines, and clarifications of policies which relate to payments for such benefits.

(3) The Secretary shall to the extent feasible make such changes in automated data collection and retrieval by the Secretary and fiscal intermediaries with agreements under section 1395h of this title as are necessary to make easily accessible for the Secretary and other appropriate parties a data base which fairly and accurately reflects the provision of extended care, post-hospital extended care and home health care benefits pursuant to this subchapter, including such categories as benefit denials, results of appeals, and other relevant factors, and selectable by

such categories and by fiscal intermediary, service provider, and region.

(Aug. 14, 1935, ch. 531, title XVIII, § 1871, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a) 79 Stat. 331; amended Oct. 21, 1986, Pub. L. 99–509, title IX, § 9321(e)(1), 100 Stat. 2017; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4035(b), (c), 101 Stat. 1330–78.)

AMENDMENTS

1987—Subsec. (a). Pub. L. 100–203, § 4035(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 100–203, § 4035(c), added subsec. (c).

1986—Pub. L. 99–509 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 effective Dec. 22, 1987, and applicable to budgets for fiscal years beginning with fiscal year 1989, see section 4035(a)(3) of Pub. L. 100–203, set out as a note under section 1395h of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9321(e)(3)(A) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to notices of proposed rulemaking issued after the date of the enactment of this Act [Oct. 21, 1986].''

REGULATIONS

Pub. L. 101–508, title IV, § 4207(j), formerly § 4027(j), Nov. 5, 1990, 104 Stat. 1388–124, as renumbered and amended by Pub. L. 103–432, title I, § 160(d)(4), (12), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subtitle [subtitle A (§§ 4000–4361) of title IV of Pub. L. 101–508, see Tables for classification] and the amendments made by this subtitle.''

Section 4039(g) of title IV of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subtitle and the amendments made by this subtitle [subtitle A (§§ 4001–4097) of title IV of Pub. L. 100–203, see Tables for classification].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395h, 1395u, 1395ff of this title.

§ 1395ii. Application of certain provisions of subchapter II

The provisions of sections 406 and 416(j) of this title, and of subsections (a), (d), (e), (h), (i), (j), (k), and (*l*) of section 405 of this title, shall also apply with respect to this subchapter to the same extent as they are applicable with respect to subchapter II of this chapter, except that, in applying such provisions with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(Aug. 14, 1935, ch. 531, title XVIII, § 1872, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 332; amended Oct. 30, 1972, Pub. L. 92–603, title II, § 242(a), 86 Stat. 1419; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2354(b)(36), 98 Stat. 1102; Aug. 15, 1994, Pub. L. 103–296, title I, § 108(c)(4), 108 Stat. 1485.)

AMENDMENTS

1994—Pub. L. 103–296 inserted before period at end '', except that, in applying such provisions with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

1984—Pub. L. 98–369 struck out the comma after ''406'' and struck out reference to subsec. (f) of section 405 of this title.

1972—Pub. L. 92–603 struck out reference to provisions of section 408 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92–603 not applicable to any acts, statements, or representations made or committed prior to Oct. 30, 1972, see section 242(d) of Pub. L. 92–603, set out as an Effective Date note under section 1320a–7b of this title.

§ 1395jj. Designation of organization or publication by name

Designation in this subchapter, by name, of any nongovernmental organization or publication shall not be affected by change of name of such organization or publication, and shall apply to any successor organization or publication which the Secretary finds serves the purpose for which such designation is made.

(Aug. 14, 1935, ch. 531, title XVIII, § 1873, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 332.)

§ 1395kk. Administration of insurance programs

(a) Functions of Secretary; performance directly or by contract

Except as otherwise provided in this subchapter and in the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], the insurance programs established by this subchapter shall be administered by the Secretary. The Secretary may perform any of his functions under this subchapter directly, or by contract providing for payment in advance or by way of reimbursement, and in such installments, as the Secretary may deem necessary.

(b) Contracts to secure special data, actuarial information, etc.

The Secretary may contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under this subchapter.

(c) Oaths and affirmations

In the course of any hearing, investigation, or other proceeding that he is authorized to con-

duct under this subchapter, the Secretary may administer oaths and affirmations.

(Aug. 14, 1935, ch. 531, title XVIII, § 1874, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 332; amended July 30, 1965, Pub. L. 89–97, title I, § 111(a), 79 Stat. 340; Oct. 30, 1972, Pub. L. 92–603, title II, § 289, 86 Stat. 1457; Oct. 16, 1974, Pub. L. 93–445, title III, § 310, 88 Stat. 1359.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a), is act Aug. 29, 1935, ch. 812, as amended generally by Pub. L. 93–445, title I, § 101, Oct. 16, 1974, 88 Stat. 1305, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For further details and complete classification of this Act to the Code, see Codification note set out preceding section 231 of Title 45, section 231t of Title 45, and Tables.

AMENDMENTS

1974—Subsec. (a). Pub. L. 93–445 substituted ''Railroad Retirement Act of 1974'' for ''Railroad Retirement Act of 1937''.

1972—Subsec. (c). Pub. L. 92–603 added subsec. (c).

1965—Subsec. (a). Pub. L. 89–97 inserted reference to Railroad Retirement Act of 1937 in first sentence.

EFFECTIVE DATE OF 1974 AMENDMENT

Amendment by Pub. L. 93–445 effective Jan. 1, 1975, see section 603 of Pub. L. 93–445, set out as a note under section 402 of this title.

EFFECTIVE DATE OF 1965 AMENDMENT

Amendment by Pub. L. 89–97 applicable to calendar year 1966 or to any subsequent calendar year but only if by October 1 immediately preceding such calendar year the Railroad Retirement Tax Act provides for a maximum amount of monthly compensation taxable under such Act during all months of such calendar year equal to one-twelfth of maximum wages which Federal Insurance Contributions Act provides may be counted for such calendar year, see section 111(e) of Pub. L. 89–97.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 45 section 231f.

§ 1395*ll*. Studies and recommendations

(a) Health care of the aged and disabled

The Secretary shall carry on studies and develop recommendations to be submitted from time to time to the Congress relating to health care of the aged and the disabled, including studies and recommendations concerning (1) the adequacy of existing personnel and facilities for health care for purposes of the programs under parts A and B of this subchapter; (2) methods for encouraging the further development of efficient and economical forms of health care which are a constructive alternative to inpatient hospital care; and (3) the effects of the deductibles and coinsurance provisions upon beneficiaries, persons who provide health services, and the financing of the program.

(b) Operation and administration of insurance programs

The Secretary shall make a continuing study of the operation and administration of the insurance programs under parts A and B of this subchapter (including a validation of the accreditation process of the Joint Commission on Accreditation of Hospitals, the operation and administration of health maintenance organizations authorized by section 226 of the Social Security Amendments of 1972 [42 U.S.C. 1395mm], the experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967 [42 U.S.C. 1395b–1] and the experiments and demonstration projects authorized by section 222(a) of the Social Security Amendments of 1972 [42 U.S.C. 1395b–1 note]), and shall transmit to the Congress annually a report concerning the operation of such programs.

(Aug. 14, 1935, ch. 531, title XVIII, § 1875, as added July 30, 1965, Pub. L. 89–97, title I, § 102(a), 79 Stat. 332; amended Jan. 2, 1968, Pub. L. 90–248, title IV, § 402(c), 81 Stat. 931; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 201(c)(7), 222(c), 226(d), 244(d), 86 Stat. 1373, 1393, 1404, 1423; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2354(b)(17), 98 Stat. 1101; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9316(a), 100 Stat. 2006; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4085(i)(20), 101 Stat. 1330–133; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8413, 102 Stat. 3801; Dec. 13, 1989, Pub. L. 101–234, title III, § 301(b)(5), (d)(2), 103 Stat. 1985, 1986; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6103(b)(3)(A), 103 Stat. 2199.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 226 of the Social Security Amendments of 1972, referred to in subsec. (b), is section 226 of Pub. L. 92–603, which enacted section 1395mm of this title and provisions set out as notes under that section and amended this section and sections 1395f, 1395*l*, and 1396b of this title.

Section 402 of the Social Security Amendments of 1967, referred to in subsec. (b), is section 402 of Pub. L. 90–248, which enacted section 1395b–1 of this title and amended this section.

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (b), is section 222(a) of Pub. L. 92–603, which enacted provisions set out as note under section 1395b–1 of this title.

AMENDMENTS

1989—Subsec. (c). Pub. L. 101–239 struck out subsec. (c) which related to patient outcome assessment research program.

Subsec. (c)(7). Pub. L. 101–234, § 301(b)(5), (d)(2), amended par. (7) identically, substituting ''date of the enactment of this section'' for ''date of the enactment of this Act''.

1988—Subsec. (c)(3). Pub. L. 100–647 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''For purposes of carrying out the research program, there are authorized to be appropriated—

''(A) from the Federal Hospital Insurance Trust Fund $4,000,000 for fiscal year 1987 and $5,000,000 for each of fiscal years 1988 and 1989, and

''(B) from the Federal Supplementary Medical Insurance Trust Fund $2,000,000 for fiscal year 1987 and $2,500,000 for each of fiscal years 1988 and 1989.''

1987—Subsec. (c)(3)(B). Pub. L. 100–203 substituted ''fiscal year 1987'' for ''fiscal years 1987''.

1986—Subsec. (c). Pub. L. 99–509 added subsec. (c).

1984—Subsec. (b). Pub. L. 98–369 struck out ''the'' after ''Joint Commission on''.

1972—Subsec. (a). Pub. L. 92–603, § 201(c)(7), inserted ''and the disabled'' after ''aged''.

Subsec. (b). Pub. L. 92–603, §§ 222(c), 226(d)(1), 244(d), substituted ''(including a validation of the accredita-

tion process of the Joint Commission on the Accreditation of Hospitals, the operation and administration of health maintenance organizations authorized by section 226 of the Social Security Amendments of 1972, the experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967 and the experiments and demonstration projects authorized by section 222(a) of the Social Security Amendments of 1972)'' for ''(including the experimentation authorized by section 402 of the Social Security Amendments of 1967)''. Pub. L. 92–603, § 226(d)(2), which directed the substitution of ''1972'' for ''1971'', could not be executed because ''1971'' did not appear.

1968—Subsec. (b). Pub. L. 90–248 inserted ''(including the experimentation authorized by section 402 of the Social Security Amendments of 1967'' after ''under parts A and B of this subchapter''.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6103(b)(3)(A) of Pub. L. 101–239 provided that the amendment made by that section is effective for fiscal years beginning after fiscal year 1990.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 226(d) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395mm of this title.

STUDY OF ADULT DAY CARE SERVICES

Pub. L. 100–360, title II, § 208, July 1, 1988, 102 Stat. 732, as amended by Pub. L. 100–485, title VI, § 608(d)(8), Oct. 13, 1988, 102 Stat. 2415, directed Secretary of Health and Human Services to conduct a survey of adult day care services in United States and to report to Congress, by not later than 1 year after July 1, 1988, on the information collected in the survey, prior to repeal by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

STUDY TO DEVELOP A STRATEGY FOR QUALITY REVIEW AND ASSURANCE

Section 9313(d) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4085(i)(21)(A), Dec. 22, 1987, 101 Stat. 1330–133, directed Secretary of Health and Human Services to arrange, with the National Academy of Sciences or other appropriate nonprofit private entity, for a study to design a strategy for reviewing and assuring the quality of care for which payment may be made under this subchapter, specified items to be included in the study, and directed Secretary to submit to Congress, not later than Jan. 1, 1990, a report on the study with recommendations with respect to strengthening quality assurancees and review activities for services furnished under the medicare program.

SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

For treatment of hospitals in States which have had a waiver approved under this section, upon termination of waiver, see section 9202(j) of Pub. L. 99–272, as amended, set out as a note under section 1395ww of this title.

DRUG DETOXIFICATION MEDICARE COVERAGE AND FACILITY INCENTIVES

Pub. L. 96–499, title IX, § 931(f), Dec. 5, 1980, 94 Stat. 2634, which related to a study of medicare coverage of certain additional detoxification-related services, was repealed by Pub. L. 97–35, title XXI, § 2121(h), Aug. 13, 1981, 95 Stat. 796.

LEGISLATIVE RECOMMENDATIONS REGARDING REIMBURSEMENT FOR OPTOMETRISTS' SERVICES

Pub. L. 96–499, title IX, § 937(b), Dec. 5, 1980, 94 Stat. 2640, provided that the Secretary of Health and Human Services submit to the Congress by Jan. 1, 1982, legislative recommendations with respect to reimbursement under title XVIII of the Social Security Act [this subchapter] for services furnished by optometrists in connection with cataracts and such other services which they are legally authorized to perform.

DEMONSTRATION PROJECTS, STUDIES, AND REPORTS: NUTRITIONAL THERAPY, SECOND OPINION COST-SHARING, SERVICES OF REGISTERED DIETITIANS, SERVICES OF CLINICAL SOCIAL WORKERS, ORTHOPEDIC SHOES, RESPIRATORY THERAPY SERVICES, AND FOOT CONDITIONS; GRANTS, PAYMENTS, AND EXPENDITURES

Pub. L. 96–499, title IX, § 958, Dec. 5, 1980, 94 Stat. 2648, directed Secretary of Health and Human Services to carry out certain demonstration projects and conduct certain studies as follows: (a) a demonstration project to determine extent to which nutritional therapy in early renal failure could retard the disease with resultant substantive deferment of dialysis, and aspects of making such therapy available under this subchapter, report to Congress to be submitted within twenty-four months of Dec. 5, 1980; (b) demonstration projects with respect to waiving the applicable cost sharing amounts which beneficiaries under this subchapter had to pay for obtaining a second opinion on having surgery, report to be submitted within one year after Dec. 5, 1980; (c) a study of conditions under which services of registered dietitians could be covered as a home health benefit under this subchapter, report to be submitted within twenty-four months of Dec. 5, 1980; (d) demonstration projects to determine aspects of making services of clinical social workers more generally available under this subchapter, report to be submitted within twenty-four months of Dec. 5, 1980; (e) a study of methods for providing coverage under part B of this subchapter for orthopedic shoes for individuals with disabling or deforming conditions requiring special fitting considerations, or requiring special shoes in conjunction with the use of an orthosis or foot support, report to be submitted no later than July 1, 1981; (f) a study of conditions under which services with respect to respiratory therapy could be covered as a home health benefit under this subchapter, report to be submitted within twenty-four months of Dec. 5, 1980; and (g) a study analyzing cost effects of alternative approaches to improving coverage under this subchapter for treatment of various types of foot conditions, report to be submitted within twenty-four months of Dec. 5, 1980. Payments and expenditures for such studies and projects were to be made in appropriate part from the Federal Hospital Insurance Trust Fund established by section 1395i of this title, and the Federal Supplemental Medical Insurance Trust Fund established by section 1395t of this title.

DEMONSTRATION PROJECT RELATING TO THE TERMINALLY ILL

Pub. L. 96–265, title V, § 506, June 9, 1980, 94 Stat. 475, authorized Secretary of Health and Human Services to provide for participation, by Social Security Administration, in a demonstration project relating to the terminally ill then being conducted within the Department of Health and Human Services, the purpose of such participation to be to study impact on terminally ill of provisions of disability programs administered by Social Security Administration and to determine how best to provide services needed by persons who were terminally ill through programs over which the Social Security Administration had administrative respon-

sibility, and authorized to be appropriated necessary sums not in excess of $2,000,000 for any fiscal year.

REPORT TO CONGRESS WITH RESPECT TO URBAN OR RURAL COMPREHENSIVE MENTAL HEALTH CENTERS AND CENTERS FOR TREATMENT OF ALCOHOLISM AND DRUG ABUSE; SUBMISSION NO LATER THAN JUNE 13, 1978

Pub. L. 95–210, § 4, Dec. 13, 1977, 91 Stat. 1490, directed Secretary of Health, Education, and Welfare to submit to Congress, no later than six months after Dec. 13, 1977, a report on the advantages and disadvantages of extending coverage under this subchapter to urban or rural comprehensive mental health centers and to centers for treatment of alcoholism and drug abuse.

STUDY AND REVIEW BY COMPTROLLER GENERAL OF ADMINISTRATIVE STRUCTURE FOR PROCESSING MEDICARE CLAIMS; REPORT TO CONGRESS

Pub. L. 95–142, § 12, Oct. 25, 1977, 91 Stat. 1197, directed Comptroller General to conduct a comprehensive study and review of administrative structure established for processing of claims under this subchapter for purpose of determining whether and to what extent more efficient claims administration under this subchapter could be achieved and directed Comptroller General to submit to Congress no later than July 1, 1979, a complete report with respect to such study and review.

REPORT BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE ON DELIVERY OF HOME HEALTH AND OTHER IN-HOME SERVICES; CONTENTS; CONSULTATION REQUIREMENTS; SUBMISSION TO CONGRESS

Pub. L. 95–142, § 18, Oct. 25, 1977, 91 Stat. 1202, directed Secretary of Health, Education, and Welfare, not later than one year after Oct. 25, 1977, to submit to appropriate committees of Congress a report analyzing, evaluating, and making recommendations with respect to all aspects of delivery of home health and other in–home services authorized to be provided under subchapters XVIII, XIX, and XX of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 45 section 231f.

§ 1395mm. Payments to health maintenance organizations and competitive medical plans

(a) Rates and adjustments

(1)(A) The Secretary shall annually determine, and shall announce (in a manner intended to provide notice to interested parties) not later than September 7 before the calendar year concerned—

(i) a per capita rate of payment for each class of individuals who are enrolled under this section with an eligible organization which has entered into a risk-sharing contract and who are entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, and

(ii) a per capita rate of payment for each class of individuals who are so enrolled with such an organization and who are enrolled under part B of this subchapter only.

For purposes of this section, the term ''risk-sharing contract'' means a contract entered into under subsection (g) of this section and the term ''reasonable cost reimbursement contract'' means a contract entered into under subsection (h) of this section.

(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

(C) The annual per capita rate of payment for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in paragraph (4)) for that class.

(D) In the case of an eligible organization with a risk-sharing contract, the Secretary shall make monthly payments in advance and in accordance with the rate determined under subparagraph (C) and except as provided in subsection (g)(2) of this section, to the organization for each individual enrolled with the organization under this section.

(E)(i) The amount of payment under this paragraph may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(ii)(I) Subject to subclause (II), the Secretary may make retroactive adjustments under clause (i) to take into account individuals enrolled during the period beginning on the date on which the individual enrolls with an eligible organization (which has a risk-sharing contract under this section) under a health benefit plan operated, sponsored, or contributed to by the individual's employer or former employer (or the employer or former employer of the individual's spouse) and ending on the date on which the individual is enrolled in the plan under this section, except that for purposes of making such retroactive adjustments under this clause, such period may not exceed 90 days.

(II) No adjustment may be made under subclause (I) with respect to any individual who does not certify that the organization provided the individual with the explanation described in subsection (c)(3)(E) of this section at the time the individual enrolled with the organization.

(F)(i) At least 45 days before making the announcement under subparagraph (A) for a year (beginning with the announcement for 1991), the Secretary shall provide for notice to eligible organizations of proposed changes to be made in the methodology or benefit coverage assumptions from the methodology and assumptions used in the previous announcement and shall provide such organizations an opportunity to comment on such proposed changes.

(ii) In each announcement made under subparagraph (A) for a year (beginning with the announcement for 1991), the Secretary shall include an explanation of the assumptions (including any benefit coverage assumptions) and changes in methodology used in the announcement in sufficient detail so that eligible organizations can compute per capita rates of payment for classes of individuals located in each county (or equivalent area) which is in whole or in part within the service area of such an organization.

(2) With respect to any eligible organization which has entered into a reasonable cost reimbursement contract, payments shall be made to such plan in accordance with subsection (h)(2) of this section rather than paragraph (1).

(3) Subject to subsections (c)(2)(B)(ii) and (c)(7) of this section, payments under a contract to an

eligible organization under paragraph (1) or (2) shall be instead of the amounts which (in the absence of the contract) would be otherwise payable, pursuant to sections 1395f(b) and 1395l(a) of this title, for services furnished by or through the organization to individuals enrolled with the organization under this section.

(4) For purposes of this section, the term ''adjusted average per capita cost'' means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for services covered under parts A and B of this subchapter, or part B only, and types of expenses otherwise reimbursable under parts A and B of this subchapter, or part B only (including administrative costs incurred by organizations described in sections 1395h and 1395u of this title), if the services were to be furnished by other than an eligible organization or, in the case of services covered only under section 1395x(s)(2)(H) of this title, if the services were to be furnished by a physician or as an incident to a physician's service.

(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The portion of that payment to the organization for a month to be paid by each trust fund shall be determined as follows:

(A) In regard to expenditures by eligible organizations having risk-sharing contracts, the allocation shall be determined each year by the Secretary based on the relative weight that benefits from each fund contribute to the adjusted average per capita cost.

(B) In regard to expenditures by eligible organizations operating under a reasonable cost reimbursement contract, the initial allocation shall be based on the plan's most recent budget, such allocation to be adjusted, as needed, after cost settlement to reflect the distribution of actual expenditures.

The remainder of that payment shall be paid by the former trust fund.

(6) Subject to subsections (c)(2)(B)(ii) and (c)(7) of this section, if an individual is enrolled under this section with an eligible organization having a risk-sharing contract, only the eligible organization shall be entitled to receive payments from the Secretary under this subchapter for services furnished to the individual.

(b) Definitions; requirements

For purposes of this section, the term ''eligible organization'' means a public or private entity (which may be a health maintenance organization or a competitive medical plan), organized under the laws of any State, which—

(1) is a qualified health maintenance organization (as defined in section 300e–9(d) of this title), or

(2) meets the following requirements:

(A) The entity provides to enrolled members at least the following health care services:

(i) Physicians' services performed by physicians (as defined in section 1395x(r)(1) of this title).

(ii) Inpatient hospital services.

(iii) Laboratory, X-ray, emergency, and preventive services.

(iv) Out-of-area coverage.

(B) The entity is compensated (except for deductibles, coinsurance, and copayments) for the provision of health care services to enrolled members by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided to a member.

(C) The entity provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through contracts with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(D) The entity assumes full financial risk on a prospective basis for the provision of the health care services listed in subparagraph (A), except that such entity may—

(i) obtain insurance or make other arrangements for the cost of providing to any enrolled member health care services listed in subparagraph (A) the aggregate value of which exceeds $5,000 in any year,

(ii) obtain insurance or make other arrangements for the cost of health care service listed in subparagraph (A) provided to its enrolled members other than through the entity because medical necessity required their provision before they could be secured through the entity,

(iii) obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and

(iv) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

(E) The entity has made adequate provision against the risk of insolvency, which provision is satisfactory to the Secretary.

Paragraph (2)(A)(ii) shall not apply to an entity which had contracted with a single State agency administering a State plan approved under subchapter XIX of this chapter for the provision of services (other than inpatient hospital services) to individuals eligible for such services under such State plan on a prepaid risk basis prior to 1970.

(c) Enrollment in plan; duties of organization to enrollees

(1) The Secretary may not enter into a contract under this section with an eligible organi-

zation unless it meets the requirements of this subsection and subsection (e) of this section with respect to members enrolled under this section.

(2)(A) The organization must provide to members enrolled under this section, through providers and other persons that meet the applicable requirements of this subchapter and part A of subchapter XI of this chapter—

(i) only those services covered under parts A and B of this subchapter, for those members entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or

(ii) only those services covered under part B of this subchapter, for those members enrolled only under such part,

which are available to individuals residing in the geographic area served by the organization, except that (I) the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered, and (II) in the case of an organization with a risk-sharing contract, the organization may provide such members with such additional health care services as the Secretary may approve. The Secretary shall approve any such additional health care services which the organization proposes to offer to such members, unless the Secretary determines that including such additional services will substantially discourage enrollment by covered individuals with the organization.

(B) If there is a national coverage determination made in the period beginning on the date of an announcement under subsection (a)(1)(A) of this section and ending on the date of the next announcement under such subsection that the Secretary projects will result in a signifcant[1] change in the costs to the organization of providing the benefits that are the subject of such national coverage determination and that was not incorporated in the determination of the per capita rate of payment included in the announcement made at the beginning of such period—

(i) such determination shall not apply to risk-sharing contracts under this section until the first contract year that begins after the end of such period; and

(ii) if such coverage determination provides for coverage of additional benefits or under additional circumstances, subsection (a)(3) of this section shall not apply to payment for such additional benefits or benefits provided under such additional circumstances until the first contract year that begins after the end of such period,

unless otherwise required by law.

(3)(A)(i) Each eligible organization must have an open enrollment period, for the enrollment of individuals under this section, of at least 30 days duration every year and including the period or periods specified under clause (ii), and must provide that at any time during which enrollments are accepted, the organization will accept up to the limits of its capacity (as determined by the Secretary) and without restrictions, except as may be authorized in regulations, individuals who are eligible to enroll under subsection (d) of this section in the order in which they apply for enrollment, unless to do so would result in failure to meet the requirements of subsection (f) of this section or would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the population in the geographic area served by the organization.

(ii)(I) If a risk-sharing contract under this section is not renewed or is otherwise terminated, eligible organizations with risk-sharing contracts under this section and serving a part of the same service area as under the terminated contract are required to have an open enrollment period for individuals who were enrolled under the terminated contract as of the date of notice of such termination. If a risk-sharing contract under this section is renewed in a manner that discontinues coverage for individuals residing in part of the service area, eligible organizations with risk-sharing contracts under this section and enrolling individuals residing in that part of the service area are required to have an open enrollment period for individuals residing in the part of the service area who were enrolled under the contract as of the date of notice of such discontinued coverage.

(II) The open enrollment periods required under subclause (I) shall be for 30 days and shall begin 30 days after the date that the Secretary provides notice of such requirement.

(III) Enrollment under this clause shall be effective 30 days after the end of the open enrollment period, or, if the Secretary determines that such date is not feasible, such other date as the Secretary specifies.

(B) An individual may enroll under this section with an eligible organization in such manner as may be prescribed in regulations and may terminate his enrollment with the eligible organization as of the beginning of the first calendar month following the date on which the request is made for such termination (or, in the case of financial insolvency of the organization, as may be prescribed by regulations) or, in the case of such an organization with a reasonable cost reimbursement contract, as may be prescribed by regulations. In the case of an individual's termination of enrollment, the organization shall provide the individual with a copy of the written request for termination of enrollment and a written explanation of the period (ending on the effective date of the termination) during which the individual continues to be enrolled with the organization and may not receive benefits under this subchapter other than through the organization.

(C) The Secretary may prescribe the procedures and conditions under which an eligible organization that has entered into a contract with the Secretary under this subsection may inform individuals eligible to enroll under this section with the organization about the organization, or may enroll such individuals with the organization. No brochures, application forms, or other promotional or informational material may be distributed by an organization to (or for the use of) individuals eligible to enroll with the organization under this section unless (i) at least 45

[1] So in original. Probably should be ''significant''.

days before its distribution, the organization has submitted the material to the Secretary for review and (ii) the Secretary has not disapproved the distribution of the material. The Secretary shall review all such material submitted and shall disapprove such material if the Secretary determines, in the Secretary's discretion, that the material is materially inaccurate or misleading or otherwise makes a material misrepresentation.

(D) The organization must provide assurances to the Secretary that it will not expel or refuse to re-enroll any such individual because of the individual's health status or requirements for health care services, and that it will notify each such individual of such fact at the time of the individual's enrollment.

(E) Each eligible organization shall provide each enrollee, at the time of enrollment and not less frequently than annually thereafter, an explanation of the enrollee's rights under this section, including an explanation of—

(i) the enrollee's rights to benefits from the organization,

(ii) the restrictions on payments under this subchapter for services furnished other than by or through the organization,

(iii) out-of-area coverage provided by the organization,

(iv) the organization's coverage of emergency services and urgently needed care, and

(v) appeal rights of enrollees.

(F) Each eligible organization that provides items and services pursuant to a contract under this section shall provide assurances to the Secretary that in the event the organization ceases to provide such items and services, the organization shall provide or arrange for supplemental coverage of benefits under this subchapter related to a pre-existing condition with respect to any exclusion period, to all individuals enrolled with the entity who receive benefits under this subchapter, for the lesser of six months or the duration of such period.

(G)(i) Each eligible organization having a risk-sharing contract under this section shall notify individuals eligible to enroll with the organization under this section and individuals enrolled with the organization under this section that—

(I) the organization is authorized by law to terminate or refuse to renew the contract, and

(II) termination or nonrenewal of the contract may result in termination of the enrollments of individuals enrolled with the organization under this section.

(ii) The notice required by clause (i) shall be included in—

(I) any marketing materials described in subparagraph (C) that are distributed by an eligible organization to individuals eligible to enroll under this section with the organization, and

(II) any explanation provided to enrollees by the organization pursuant to subparagraph (E).

(4) The organization must—

(A) make the services described in paragraph (2) (and such other health care services as such individuals have contracted for) (i) available and accessible to each such individual, within the area served by the organization, with reasonable promptness and in a manner which assures continuity, and (ii) when medically necessary, available and accessible twenty-four hours a day and seven days a week, and

(B) provide for reimbursement with respect to services which are described in subparagraph (A) and which are provided to such an individual other than through the organization, if (i) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition and (ii) it was not reasonable given the circumstances to obtain the services through the organization.

(5)(A) The organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or individual through which the organization provides health care services) and members enrolled with the organization under this section.

(B) A member enrolled with an eligible organization under this section who is dissatisfied by reason of his failure to receive any health service to which he believes he is entitled and at no greater charge than he believes he is required to pay is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 405(b) of this title, and in any such hearing the Secretary shall make the eligible organization a party. If the amount in controversy is $1,000 or more, the individual or eligible organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 405(g) of this title, and both the individual and the eligible organization shall be entitled to be parties to that judicial review. In applying sections 405(b) and 405(g) of this title as provided in this subparagraph, and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals, which program (A) stresses health outcomes and (B) provides review by physicians and other health care professionals of the process followed in the provision of such health care services.

(7) A risk-sharing contract under this section shall provide that in the case of an individual who is receiving inpatient hospital services from a subsection (d) hospital (as defined in section 1395ww(d)(1)(B) of this title) as of the effective date of the individual's—

(A) enrollment with an eligible organization under this section—

(i) payment for such services until the date of the individual's discharge shall be made under this subchapter as if the individual were not enrolled with the organization,

(ii) the organization shall not be financially responsible for payment for such services until the date after the date of the individual's discharge, and

(iii) the organization shall nonetheless be paid the full amount otherwise payable to the organization under this section; or

(B) termination of enrollment with an eligible organization under this section—

(i) the organization shall be financially responsible for payment for such services after such date and until the date of the individual's discharge,

(ii) payment for such services during the stay shall not be made under section 1395ww(d) of this title, and

(iii) the organization shall not receive any payment with respect to the individual under this section during the period the individual is not enrolled.

(8) A contract under this section shall provide that the eligible organization shall meet the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(d) Right to enroll with contracting organization in geographic area

Subject to the provisions of subsection (c)(3) of this section, every individual entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter or enrolled under part B of this subchapter only (other than an individual medically determined to have end-stage renal disease) shall be eligible to enroll under this section with any eligible organization with which the Secretary has entered into a contract under this section and which serves the geographic area in which the individual resides.

(e) Limitation on charges; election of coverage; "adjusted community rate" defined; workmen's compensation and insurance benefits

(1) In no case may—

(A) the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under parts A and B of this subchapter) to individuals who are enrolled under this section with the organization and who are entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or

(B) the portion of its premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under part B of this subchapter) to individuals who are enrolled under this section with the organization and enrolled under part B of this subchapter only

exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A of this subchapter and enrolled under part B of this subchapter, or enrolled under part B only, respectively, if they were not members of an eligible organization.

(2) If the eligible organization provides to its members enrolled under this section services in addition to services covered under parts A and B of this subchapter, election of coverage for such additional services (unless such services have been approved by the Secretary under subsection (c)(2) of this section) shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services.

(3) For purposes of this section, the term ''adjusted community rate'' for a service or services means, at the election of an eligible organization, either—

(A) the rate of payment for that service or services which the Secretary annually determines would apply to a member enrolled under this section with an eligible organization if the rate of payment were determined under a ''community rating system'' (as defined in section 300e–1(8) of this title, other than subparagraph (C)), or

(B) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to a member enrolled under this section with the eligible organization, as the Secretary annually estimates is attributable to that service or services,

but adjusted for differences between the utilization characteristics of the members enrolled with the eligible organization under this section and the utilization characteristics of the other members of the organization (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of members in other eligible organizations, or individuals in the area, in the State, or in the United States, eligible to enroll under this section with an eligible organization and the utilization characteristics of the rest of the population in the area, in the State, or in the United States, respectively).

(4) Notwithstanding any other provision of law, the eligible organization may (in the case of the provision of services to a member enrolled under this section for an illness or injury for which the member is entitled to benefits under a workmen's compensation law or plan of the United States or a State, under an automobile or liability insurance policy or plan, including a self-insured plan, or under no fault insurance) charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law or policy—

(A) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services, or

(B) such member to the extent that the member has been paid under such law, plan, or policy for such services.

(f) Membership requirements

(1) Each eligible organization with which the Secretary enters into a contract under this section shall have, for the duration of such contract, an enrolled membership at least one-half of which consists of individuals who are not entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter.

(2) The Secretary may modify or waive the requirement imposed by paragraph (1) only—

(A) to the extent that more than 50 percent of the population of the area served by the organization consists of individuals who are entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter, or

(B) in the case of an eligible organization that is owned and operated by a governmental entity, only with respect to a period of three years beginning on the date the organization first enters into a contract under this section, and only if the organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter.

(3) If the Secretary determines that an eligible organization has failed to comply with the requirements of this subsection, the Secretary may provide for the suspension of enrollment of individuals under this section or of payment to the organization under this section for individuals newly enrolled with the organization, after the date the Secretary notifies the organization of such noncompliance.

(g) Risk-sharing contract

(1) The Secretary may enter a risk-sharing contract with any eligible organization, as defined in subsection (b) of this section, which has at least 5,000 members, except that the Secretary may enter into such a contract with an eligible organization that has fewer members if the organization primarily serves members residing outside of urbanized areas.

(2) Each risk-sharing contract shall provide that—

(A) if the adjusted community rate, as defined in subsection (e)(3) of this section, for services under parts A and B of this subchapter (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or

(B) if the adjusted community rate for services under part B of this subchapter (as reduced for the actuarial value of the coinsurance and deductibles under that part) for members enrolled under this section with the organization and entitled to benefits under part B of this subchapter only

is less than the average of the per capita rates of payment to be made under subsection (a)(1) of this section at the beginning of an annual contract period for members enrolled under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or enrolled in part B of this subchapter only, respectively, the eligible organization shall provide to members enrolled under a risk-sharing contract under this section with the organization and entitled to benefits under part A of this subchapter and enrolled in part B of this subchapter, or enrolled in part B of this subchapter only, respectively, the additional benefits described in paragraph (3) which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced); except that this paragraph shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced) and except that an organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits be withheld and reserved by the Secretary as provided in paragraph (5). If the Secretary finds that there is insufficient enrollment experience to determine an average of the per capita rates of payment to be made under subsection (a)(1) of this section at the beginning of a contract period, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this section.

(3) The additional benefits referred to in paragraph (2) are—

(A) the reduction of the premium rate or other charges made with respect to services furnished by the organization to members enrolled under this section, or

(B) the provision of additional health benefits,

or both.

(4) Repealed. Pub. L. 100–203, title IV, § 4012(b), Dec. 22, 1987, 101 Stat. 1330–61.

(5) An organization having a risk-sharing contract under this section may (with the approval of the Secretary) provide that a part of the value of additional benefits otherwise required to be provided by reason of paragraph (2) be withheld and reserved in the Federal Hospital Insurance Trust Fund and in the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate) by the Secretary for subsequent annual contract periods, to the extent required to stabilize and prevent undue fluctuations in the additional benefits offered in those subsequent periods by the organization in accordance with paragraph (3). Any of such value of additional benefits which is not provided to members of the organization in accordance with paragraph (3) prior to the end of such period, shall revert for the use of such trust funds.

(6)(A) A risk-sharing contract under this section shall require the eligible organization to provide prompt payment (consistent with the provisions of sections 1395h(c)(2) and 1395u(c)(2) of this title) of claims submitted for services and supplies furnished to individuals pursuant to such contract, if the services or supplies are

not furnished under a contract between the organization and the provider or supplier.

(B) In the case of an eligible organization which the Secretary determines, after notice and opportunity for a hearing, has failed to make payments of amounts in compliance with subparagraph (A), the Secretary may provide for direct payment of the amounts owed to providers and suppliers for such covered services furnished to individuals enrolled under this section under the contract. If the Secretary provides for such direct payments, the Secretary shall provide for an appropriate reduction in the amount of payments otherwise made to the organization under this section to reflect the amount of the Secretary's payments (and costs incurred by the Secretary in making such payments).

(h) Reasonable cost reimbursement contract; requirements

(1) If—

(A) the Secretary is not satisfied that an eligible organization has the capacity to bear the risk of potential losses under a risk-sharing contract under this section, or

(B) the eligible organization so elects or has an insufficient number of members to be eligible to enter into a risk-sharing contract under subsection (g)(1) of this section,

the Secretary may, if he is otherwise satisfied that the eligible organization is able to perform its contractual obligations effectively and efficiently, enter into a contract with such organization pursuant to which such organization is reimbursed on the basis of its reasonable cost (as defined in section 1395x(v) of this title) in the manner prescribed in paragraph (3).

(2) A reasonable cost reimbursement contract under this subsection may, at the option of such organization, provide that the Secretary—

(A) will reimburse hospitals and skilled nursing facilities either for the reasonable cost (as determined under section 1395x(v) of this title) or for payment amounts determined in accordance with section 1395ww of this title, as applicable, of services furnished to individuals enrolled with such organization pursuant to subsection (d) of this section, and

(B) will deduct the amount of such reimbursement from payment which would otherwise be made to such organization.

If such an eligible organization pays a hospital or skilled nursing facility directly, the amount paid shall not exceed the reasonable cost of the services (as determined under section 1395x(v) of this title) or the amount determined under section 1395ww of this title, as applicable, unless such organization demonstrates to the satisfaction of the Secretary that such excess payments are justified on the basis of advantages gained by the organization.

(3) Payments made to an organization with a reasonable cost reimbursement contract shall be subject to appropriate retroactive corrective adjustment at the end of each contract year so as to assure that such organization is paid for the reasonable cost actually incurred (excluding any part of incurred cost found to be unnecessary in the efficient delivery of health services) or the amounts otherwise determined under section 1395ww of this title for the types of expenses otherwise reimbursable under this subchapter for providing services covered under this subchapter to individuals described in subsection (a)(1) of this section.

(4) Any reasonable cost reimbursement contract with an eligible organization under this subsection shall provide that the Secretary shall require, at such time following the expiration of each accounting period of the eligible organization (and in such form and in such detail) as he may prescribe—

(A) that the organization report to him in an independently certified financial statement its per capita incurred cost based on the types of components of expenses otherwise reimbursable under this subchapter for providing services described in subsection (a)(1) of this section, including therein, in accordance with accounting procedures prescribed by the Secretary, its methods of allocating costs between individuals enrolled under this section and other individuals enrolled with such organization;

(B) that failure to report such information as may be required may be deemed to constitute evidence of likely overpayment on the basis of which appropriate collection action may be taken;

(C) that in any case in which an eligible organization is related to another organization by common ownership or control, a consolidated financial statement shall be filed and that the allowable costs for such organization may not include costs for the types of expense otherwise reimbursable under this subchapter, in excess of those which would be determined to be reasonable in accordance with regulations (providing for limiting reimbursement to costs rather than charges to the eligible organization by related organizations and owners) issued by the Secretary; and

(D) that in any case in which compensation is paid by an eligible organization substantially in excess of what is normally paid for similar services by similar practitioners (regardless of method of compensation), such compensation may as appropriate be considered to constitute a distribution of profits.

(i) Duration, termination, effective date, and terms of contract; powers and duties of Secretary

(1) Each contract under this section shall be for a term of at least one year, as determined by the Secretary, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the eligible organization involved as he may provide in regulations), if he finds that the organization—

(A) has failed substantially to carry out the contract,

(B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this section, or

(C) no longer substantially meets the applicable conditions of subsections (b), (c), (e), and (f) of this section.

(2) The effective date of any contract executed pursuant to this section shall be specified in the contract.

(3) Each contract under this section—

(A) shall provide that the Secretary, or any person or organization designated by him—

(i) shall have the right to inspect or otherwise evaluate (I) the quality, appropriateness, and timeliness of services performed under the contract and (II) the facilities of the organization when there is reasonable evidence of some need for such inspection, and

(ii) shall have the right to audit and inspect any books and records of the eligible organization that pertain (I) to the ability of the organization to bear the risk of potential financial losses, or (II) to services performed or determinations of amounts payable under the contract;

(B) shall require the organization with a risk-sharing contract to provide (and pay for) written notice in advance of the contract's termination, as well as a description of alternatives for obtaining benefits under this subchapter, to each individual enrolled under this section with the organization; and

(C)(i) shall require the organization to comply with subsections (a) and (c) of section 300e–17 of this title (relating to disclosure of certain financial information) and with the requirement of section 300e(c)(8)[2] of this title (relating to liability arrangements to protect members);

(ii) shall require the organization to provide and supply information (described in section 1395cc(b)(2)(C)(ii) of this title) in the manner such information is required to be provided or supplied under that section;

(iii) shall require the organization to notify the Secretary of loans and other special financial arrangements which are made between the organization and subcontractors, affiliates, and related parties; and

(D) shall contain such other terms and conditions not inconsistent with this section (including requiring the organization to provide the Secretary with such information) as the Secretary may find necessary and appropriate.

(4) The Secretary may not enter into a risk-sharing contract with an eligible organization if a previous risk-sharing contract with that organization under this section was terminated at the request of the organization within the preceding five-year period, except in circumstances which warrant special consideration, as determined by the Secretary.

(5) The authority vested in the Secretary by this section may be performed without regard to such provisions of law or regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of this subchapter.

(6)(A) If the Secretary determines that an eligible organization with a contract under this section—

(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

(ii) imposes premiums on individuals enrolled under this section in excess of the premiums permitted;

(iii) acts to expel or to refuse to re-enroll an individual in violation of the provisions of this section;

(iv) engages in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this section) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

(v) misrepresents or falsifies information that is furnished—

(I) to the Secretary under this section, or

(II) to an individual or to any other entity under this section;

(vi) fails to comply with the requirements of subsection (g)(6)(A) of this section or paragraph (8); or

(vii) in the case of a risk-sharing contract, employs or contracts with any individual or entity that is excluded from participation under this subchapter under section 1320a–7 or 1320a–7a of this title for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services;

the Secretary may provide, in addition to any other remedies authorized by law, for any of the remedies described in subparagraph (B).

(B) The remedies described in this subparagraph are—

(i) civil money penalties of not more than $25,000 for each determination under subparagraph (A) or, with respect to a determination under clause (iv) or (v)(I) of such subparagraph, of not more than $100,000 for each such determination, plus, with respect to a determination under subparagraph (A)(ii), double the excess amount charged in violation of such subparagraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under subparagraph (A)(iv), $15,000 for each individual not enrolled as a result of the practice involved,

(ii) suspension of enrollment of individuals under this section after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur, or

(iii) suspension of payment to the organization under this section for individuals enrolled after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied

[2] See References in Text note below.

that the basis for such determination has been corrected and is not likely to recur.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as they apply to a civil money penalty or proceeding under section 1320a–7a(a) of this title.

(7)(A) Each risk-sharing contract with an eligible organization under this section shall provide that the organization will maintain an agreement with a utilization and quality control peer review organization (which has a contract with the Secretary under part B of subchapter XI of this chapter for the area in which the eligible organization is located) or with an entity selected by the Secretary under section 1320c–3(a)(4)(C) of this title under which the review organization will perform functions under section 1320c–3(a)(4)(B) of this title and section 1320c–3(a)(14) of this title (other than those performed under contracts described in section 1395cc(a)(1)(F) of this title) with respect to services, furnished by the eligible organization, for which payment may be made under this subchapter.

(B) For purposes of payment under this subchapter, the cost of such agreement to the eligible organization shall be considered a cost incurred by a provider of services in providing covered services under this subchapter and shall be paid directly by the Secretary to the review organization on behalf of such eligible organization in accordance with a schedule established by the Secretary.

(C) Such payments—

(i) shall be transferred in appropriate proportions from the Federal Hospital Insurance Trust Fund and from the Supplementary Medical Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, and

(ii) shall not be less in the aggregate for such organizations for a fiscal year than the amounts the Secretary determines to be sufficient to cover the costs of such organizations' conducting activities described in subparagraph (A) with respect to such eligible organizations under part B of subchapter XI of this chapter.

(8)(A) Each contract with an eligible organization under this section shall provide that the organization may not operate any physician incentive plan (as defined in subparagraph (B)) unless the following requirements are met:

(i) No specific payment is made directly or indirectly under the plan to a physician or physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the organization.

(ii) If the plan places a physician or physician group at substantial financial risk (as determined by the Secretary) for services not provided by the physician or physician group, the organization—

(I) provides stop-loss protection for the physician or group that is adequate and appropriate, based on standards developed by the Secretary that take into account the number of physicians placed at such substantial financial risk in the group or under the plan and the number of individuals enrolled with the organization who receive services from the physician or the physician group, and

(II) conducts periodic surveys of both individuals enrolled and individuals previously enrolled with the organization to determine the degree of access of such individuals to services provided by the organization and satisfaction with the quality of such services.

(iii) The organization provides the Secretary with descriptive information regarding the plan, sufficient to permit the Secretary to determine whether the plan is in compliance with the requirements of this subparagraph.

(B) In this paragraph, the term ''physician incentive plan'' means any compensation arrangement between an eligible organization and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the organization.

(j) Payment in full and limitation on actual charges; physicians, providers of services, or renal dialysis facilities not under contract with organization

(1)(A) In the case of physicians' services or renal dialysis services described in paragraph (2) which are furnished by a participating physician or provider of services or renal dialysis facility to an individual enrolled with an eligible organization under this section and enrolled under part B of this subchapter, the applicable participation agreement is deemed to provide that the physician or provider of services or renal dialysis facility will accept as payment in full from the eligible organization the amount that would be payable to the physician or provider of services or renal dialysis facility under part B of this subchapter and from the individual under such part, if the individual were not enrolled with an eligible organization under this section.

(B) In the case of physicians' services described in paragraph (2) which are furnished by a nonparticipating physician, the limitations on actual charges for such services otherwise applicable under part B of this subchapter (to services furnished by individuals not enrolled with an eligible organization under this section) shall apply in the same manner as such limitations apply to services furnished to individuals not enrolled with such an organization.

(2) The physicians' services or renal dialysis services described in this paragraph are physicians' services or renal dialysis services which are furnished to an enrollee of an eligible organization under this setion[3] by a physician, provider of services, or renal dialysis facility who is not under a contract with the organization.

(Aug. 14, 1935, ch. 531, title XVIII, § 1876, as added and amended Oct. 30, 1972, Pub. L. 92–603, title II, §§ 226(a), 278(b)(3), 86 Stat. 1396, 1453; Dec. 31, 1973,

[3] So in original. Probably should be ''section''.

Pub. L. 93–233, § 18(m), (n), 87 Stat. 970, 971; Oct. 8, 1976, Pub. L. 94–460, title II, § 201(a)–(d), 90 Stat. 1956, 1957; June 13, 1978, Pub. L. 95–292, § 5, 92 Stat. 315; Sept. 3, 1982, Pub. L. 97–248, title I, § 114(a), 96 Stat. 341; Jan. 12, 1983, Pub. L. 97–448, title III, § 309(b)(12), 96 Stat. 2409; Apr. 20, 1983, Pub. L. 98–21, title VI, §§ 602(g), 606(a)(3)(H), 97 Stat. 164, 171; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2350(a)(1), (b)(1), (2), (c), 2354(b)(37), (38), 98 Stat. 1097, 1098, 1102; Apr. 7, 1986, Pub. L. 99–272, title IX, § 9211(a)–(d), 100 Stat. 178, 179; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9312(b)(1), (c)(1), (2), (d)(1), (e)(1), (f), 9353(e)(2), 100 Stat. 1999–2001, 2048; Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1895(b)(11)(A), 100 Stat. 2934; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4011(a)(1), (b)(1), 4012(b), 4013(a), 4014, 4018(a), 4039(h)(8), 101 Stat. 1330–60, 1330–61, 1330–65, as amended July 1, 1988, Pub. L. 100–360, title IV, § 411(c)(3), (e)(3), 102 Stat. 773, 776; July 1, 1988, Pub. L. 100–360, title II, §§ 202(f), 211(c)(3), 224, title IV, § 411(c)(1), (4), (6), formerly (5), 102 Stat. 717, 738, 748, 772, 773, as amended Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(19)(B), (C), 102 Stat. 2419; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8412(a)(1), 102 Stat. 3801; Dec. 13, 1989, Pub. L. 101–234, title II, §§ 201(a), 202(a), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6206(a)(1), (b)(1), 6212(b)(1), (c)(2), 6411(d)(3)(A), 103 Stat. 2244, 2250, 2271; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4204(a)(1), (2), (c)(1), (2), (d)(1), (e)(1), 4206(b)(1), 104 Stat. 1388–108 to 1388–111, 1388–116; Aug. 15, 1994, Pub. L. 103–296, title I, § 108(c)(6), 108 Stat. 1486; Oct. 31, 1994, Pub. L. 103–432, title I, § 157(b)(1), (4), 108 Stat. 4442.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Parts A and B of subchapter XI of this chapter, referred to in subsecs. (c)(2) and (i)(7)(A), (B)(ii), are classified to sections 1301 et seq. and 1320c et seq., respectively, of this title.

Section 300e(c)(8) of this title, referred to in subsec. (i)(3)(C)(i), was redesignated section 300e(c)(7) of this title by Pub. L. 100–517, § 5(b), Oct. 24, 1988, 102 Stat. 2579.

AMENDMENTS

1994—Subsec. (a)(1)(E)(ii)(I). Pub. L. 103–432, § 157(b)(4), struck out comma after ''contributed to''.

Subsec. (a)(3). Pub. L. 103–432, § 157(b)(1), substituted ''subsections (c)(2)(B)(ii) and (c)(7) of this section'' for ''subsection (c)(7) of this section''.

Subsec. (c)(5)(B). Pub. L. 103–296 inserted at end ''In applying sections 405(b) and 405(g) of this title as provided in this subparagraph, and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.''

1990—Subsec. (a)(1)(E). Pub. L. 101–508, § 4204(e)(1), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(6). Pub. L. 101–508, § 4204(c)(2), substituted ''subsections (c)(2)(B)(ii) and (c)(7)'' for ''subsection (c)(7)''.

Subsec. (c)(2). Pub. L. 101–508, § 4204(c)(1), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) and former cls. (i) and (ii) as cls. (i) and (ii) and subcls. (I) and (II), respectively, and added subpar. (B).

Subsec. (c)(8). Pub. L. 101–508, § 4206(b)(1), added par. (8).

Subsec. (i)(6)(A)(vi). Pub. L. 101–508, § 4204(a)(2), inserted ''or paragraph (8)'' after ''(g)(6)(A) of this section''.

Subsec. (i)(8). Pub. L. 101–508, § 4204(a)(1), added par. (8).

Subsec. (j)(1)(A). Pub. L. 101–508, § 4204(d)(1)(A), substituted ''physicians' services or renal dialysis services'' for ''physicians' services'', ''physician or provider of services or renal dialysis facility'' for ''physician'' in three places, and ''applicable participation agreement'' for ''participation agreement under section 1395u(h)(1) of this title''.

Subsec. (j)(2). Pub. L. 101–508, § 4204(d)(1)(B), substituted ''physicians' services or renal dialysis services'' for ''physicians' services'' in two places and ''which are furnished to an enrollee of an eligible organization under this setion [sic] by a physician, provider of services, or renal dialysis facility who is not under a contract with the organization.'' for ''which—'' and subpars. (A) and (B) which read as follows:

''(A) are emergency services or out-of-area coverage (described in clauses (iii) and (iv) of subsection (b)(2)(A) of this section), and

''(B) are furnished to an enrollee of an eligible organization under this section by a person who is not under a contract with the organization.''

1989—Subsec. (a)(1)(F). Pub. L. 101–239, § 6206(a)(1), added subpar. (F).

Subsec. (a)(5). Pub. L. 101–234, § 202(a), repealed Pub. L. 100–360, § 211(c)(3)(A), and provided that the provisions of law amended or repealed by such section are restored or revised as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (c)(3)(A)(i). Pub. L. 101–239, § 6206(b)(1)(A), substituted ''period or periods'' for ''30-day period''.

Subsec. (c)(3)(A)(ii). Pub. L. 101–239, § 6206(b)(1)(B), added cl. (ii) and struck out former cl. (ii) which read as follows: ''For each area served by more than one eligible organization under this section, the Secretary (after consultation with such organizations) shall establish a single 30-day period each year during which all eligible organizations serving the area must provide for open enrollment under this section. The Secretary shall determine annual per capita rates under subsection (a)(1)(A) of this section in a manner that assures that individuals enrolling during such a 30-day period will not have premium charges increased or any additional benefits decreased for 12 months beginning on the date the individual's enrollment becomes effective. An eligible organization may provide for such other open enrollment period or periods as it deems appropriate consistent with this section.''

Subsecs. (e)(1), (g)(3)(A). Pub. L. 101–234, § 201(a), repealed Pub. L. 100–360, § 202(f), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

Subsec. (g)(5). Pub. L. 101–239, § 6212(c)(2), struck out ''and during a period of not longer than four years'' after first reference to ''Secretary''.

Subsec. (i)(6)(A)(vii). Pub. L. 101–239, § 6411(d)(3)(A), added cl. (vii).

Subsec. (j). Pub. L. 101–239, § 6212(b)(1), added subsec. (j).

1988—Subsec. (a)(5). Pub. L. 100–360, § 211(c)(3)(B), amended second sentence generally. Prior to amendment, second sentence read as follows: ''The portion of that payment to the organization for a month to be paid by the latter trust fund shall be equal to 200 percent of the sum of—

''(A) the product of (i) the number of such individuals for the month who have attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1395r(a)(1) of this title, and

''(B) the product of (i) the number of such individuals for the month who have not attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1395r(a)(4) of this title.''

Pub. L. 100–360, §211(c)(3)(A), substituted '', the Federal Supplementary Medical Insurance Trust Fund, and the Federal Catastrophic Drug Insurance Trust Fund'' for ''and the Federal Supplementary Medical Insurance Trust Fund'' in first sentence.

Subsec. (c)(3)(F). Pub. L. 100–360, §411(c)(1), realigned margin with left margin of subpar. (G).

Subsec. (e)(1). Pub. L. 100–360, §202(f)(1), inserted at end ''The preceding sentence shall be applied separately with respect to covered outpatient drugs.''

Subsec. (f)(3). Pub. L. 100–647 redesignated par. (4) as (3) and struck out former par. (3) which read as follows:

''(A) An eligible organization described in subparagraph (B) may elect, for purposes of enrollment and residency requirements under this section and for determining the compliance of a subdivision, subsidiary, or affiliate described in subparagraph (B)(iii) with the requirement of paragraph (1) for the period before October 1, 1992, to have members described in subparagraph (B)(iii) who receive services through the subdivision, subsidiary, or affiliate considered to be members of the parent organization.

''(B) An eligible organization described in this subparagraph is an eligible organization which—

''(i) is described in section 1396b(m)(2)(B)(iii) of this title;

''(ii) has members who have a collectively bargained contractual right to obtain health benefits from the organization;

''(iii) elects to provide benefits under a risk-sharing contract to individuals residing in a service area, who have a collectively bargained contractual right to obtain benefits from the organization, through a subdivision, subsidiary, or affiliate which itself is an eligible organization serving the area and which is owned or controlled by the parent eligible organization; and

''(iv) has assumed any risk of insolvency and quality assurance with respect to individuals receiving benefits through such a subdivision, subsidiary, or affiliate.''

Subsec. (f)(3)(A). Pub. L. 100–360, §411(c)(6), formerly §411(c)(5), as redesignated by Pub. L. 100–485, §608(d)(19)(C), inserted ''enrollment and residency requirements under this section and for'' after ''for purposes of'' and substituted ''described in subparagraph (B)(iii) who receives services through the subdivision'' for ''of the subdivision''.

Subsec. (f)(4). Pub. L. 100–647 redesignated par. (4) as (3).

Subsec. (g)(3)(A). Pub. L. 100–360, §202(f)(2), substituted ''rates'' for ''rate''.

Subsec. (g)(5). Pub. L. 100–360, §411(c)(3), amended Pub. L. 100–203, §4013, see 1987 Amendment note below.

Subsec. (i)(6)(A). Pub. L. 100–360, §411(c)(4)(A), inserted '', in addition to any other remedies authorized by law,'' after ''the Secretary may provide'' in concluding provisions.

Subsec. (i)(6)(B). Pub. L. 100–360, §411(c)(4)(C), formerly §411(c)(4)(B), as redesignated by Pub. L. 100–485, §608(d)(19)(B)(ii), substituted ''or proceeding under section 1320a–7a(a) of this title'' for ''under that section'' in last sentence.

Subsec. (i)(6)(B)(i). Pub. L. 100–360, §411(c)(4)(B), as added by Pub. L. 100–485, §608(d)(19)(B)(i), (iii), inserted ''of such subparagraph'' after ''(v)(I)''.

Pub. L. 100–360, §224, inserted at end ''plus, with respect to a determination under subparagraph (A)(ii), double the excess amount charged in violation of such subparagraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under subparagraph (A)(iv), $15,000 for each individual not enrolled as a result of the practice involved,''.

Subsec. (i)(7)(A). Pub. L. 100–360, §411(e)(3), added Pub. L. 100–203, §4039(h)(8)(A), (B), see 1987 Amendment note below.

Subsec. (i)(7)(B). Pub. L. 100–360, §411(e)(3), added Pub. L. 100–203, §4039(h)(8)(C), see 1987 Amendment note below.

1987—Subsec. (c)(3)(F). Pub. L. 100–203, §4011(a)(1), added subpar. (F).

Subsec. (c)(3)(G). Pub. L. 100–203, §4011(b)(1), added subpar. (G).

Subsec. (f)(3), (4). Pub. L. 100–203, §4018(a), added par. (3) and redesignated former par. (3) as (4).

Subsec. (g)(4). Pub. L. 100–203, §4012(b), struck out par. (4) which read as follows: ''A risk-sharing contract under this subsection may, at the option of an eligible organization, provide that the Secretary—

''(A) will reimburse hospitals and skilled nursing facilities either for payment amounts determined in accordance with section 1395ww of this title, or, if applicable, for the reasonable cost (as determined under section 1395x(v) of this title) or other appropriate basis for payment established under this subchapter, of inpatient services furnished to individuals enrolled with such organization pursuant to subsection (d) of this section, and

''(B) will deduct the amount of such reimbursement for payment which would otherwise be made to such organization.''

Subsec. (g)(5). Pub. L. 100–203, §4013, which directed amendment of par. (5) by substituting ''six years'' for ''four years'', was amended generally by Pub. L. 100–360, §411(c)(3), so that it does not amend this section.

Subsec. (i)(6). Pub. L. 100–203, §4014, amended par. (6) generally. Prior to amendment, par. (6) read as follows:

''(6)(A) Any eligible organization with a risk-sharing contract under this section that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $10,000 for each such failure.

''(B) The provisions of section 1320a–7a of this title (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.''

Subsec. (i)(7)(A). Pub. L. 100–203, §4039(h)(8)(A), (B), as added by Pub. L. 100–360, §411(e)(3), substituted ''Each'' for ''Except as provided under section 1320c–3(a)(4)(C) of this title, each'', inserted ''or with an entity selected by the Secretary under section 1320c–3(a)(4)(C) of this title'' after ''located)'', and substituted ''which the review organization'' for ''which the peer review organization''.

Subsec. (i)(7)(B). Pub. L. 100–203, §4039(h)(8)(C), as added by Pub. L. 100–360, §411(e)(3), substituted ''the review organization'' for ''the peer review organization''.

1986—Subsec. (a)(1)(A). Pub. L. 99–514 substituted ''announce (in a manner intended to provide notice to interested parties)'' for ''publish'' in introductory provisions.

Pub. L. 99–272, §9211(d), inserted '', and shall publish not later than September 7 before the calendar year concerned'' after ''The Secretary shall annually determine'' in introductory provisions.

Subsec. (a)(3). Pub. L. 99–272, §9211(a)(2), substituted ''Subject to subsection (c)(7) of this section, payments'' for ''Payments''.

Subsec. (a)(6). Pub. L. 99–272, §9211(a)(3), substituted ''Subject to subsection (c)(7) of this section, if'' for ''If''.

Subsec. (c)(3)(B). Pub. L. 99–272, §9211(b), substituted ''the date on which'' for ''a full calendar month after'', and inserted provision at end that in the case of an individual's termination of enrollment, the organization shall provide the individual with a copy of the written request for termination of enrollment and a written explanation of the period (ending on the effective date of the termination) during which the individual continues to be enrolled with the organization and may not receive benefits under this subchapter other than through the organization.

Subsec. (c)(3)(C). Pub. L. 99–272, §9211(c), inserted provisions at end that no brochures, application forms, or

other promotional or informational material may be distributed by an organization to (or for the use of) individuals eligible to enroll with the organization under this section unless at least 45 days before its distribution, the organization has submitted the material to the Secretary for review and the Secretary has not disapproved the distribution of the material, and that Secretary shall review all such material submitted and shall disapprove such material if the Secretary determines, in the Secretary's discretion, that the material is materially inaccurate or misleading or otherwise makes a material misrepresentation.

Subsec. (c)(7). Pub. L. 99–272, § 9211(a)(1), added par. (7).

Subsec. (c)(3)(E). Pub. L. 99–509, § 9312(b)(1), added subpar. (E).

Subsec. (f)(2). Pub. L. 99–509, § 9312(c)(1), struck out ''if the Secretary determines that'' after ''imposed by paragraph (1) only'', added new subpars. (A) and (B), and struck out former subpars. (A) and (B) which read as follows:

''(A) special circumstances warrant such modification or waiver, and

''(B) the eligible organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this subchapter or under a State plan approved under subchapter XIX of this chapter.''

Subsec. (f)(3). Pub. L. 99–509, § 9312(c)(2)(A), added par. (3).

Subsec. (g)(6). Pub. L. 99–509, § 9312(d)(1), added par. (6).

Subsec. (i)(1)(C). Pub. L. 99–509, § 9312(c)(3)(B), substituted ''(e), and (f)'' for ''and (e)''.

Subsec. (i)(3)(C). Pub. L. 99–509, § 9312(e)(1), designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (i)(6). Pub. L. 99–509, § 9312(f), added par. (6).

Subsec. (i)(7). Pub. L. 99–509, § 9353(e)(2), added par. (7).

1984—Subsec. (b)(2)(D). Pub. L. 98–369, § 2354(b)(37), substituted ''subparagraph (A)'' for ''paragraph (1)''.

Subsec. (c)(3)(A). Pub. L. 98–369, § 2350(a)(1), designated existing provisions as cl. (i), inserted ''and including the 30-day period specified under clause (ii)'' after ''30 days duration every year'', and added cl. (ii).

Subsec. (c)(4)(A)(i). Pub. L. 98–369, § 2354(b)(38), substituted ''with reasonable promptness'' for ''promptly as appropriate''.

Subsec. (g)(2). Pub. L. 98–369, § 2350(b)(1), inserted ''and except that an organization (with the approval of the Secretary) may provide that a part of the value of such additional benefits be withheld and reserved by the Secretary as provided in paragraph (5)'' at end of first sentence.

Subsec. (g)(4)(A). Pub. L. 98–369, § 2350(c), inserted ''and skilled nursing facilities'' after ''hospitals'', inserted ''or the appropriate basis for payment established under this subchapter'' after ''section 1395x(v) of this title)'', and struck out ''hospital'' before ''services furnished to individuals''.

Subsec. (g)(5). Pub. L. 98–369, § 2350(b)(2), added par. (5).

1983—Subsec. (a)(5)(A)(ii), (B)(ii). Pub. L. 98–21, § 606(a)(3)(H), substituted ''1395r(a)(1)'' for ''1395r(c)(1)''.

Subsec. (g)(1). Pub. L. 97–448 substituted ''subsection (b)'' for ''subsection (b)(1)''.

Subsec. (g)(4). Pub. L. 98–21, § 602(g), added par. (4).

1982—Pub. L. 97–248 completely revised section, expanding its coverage to permit payments to both health maintenance organizations and competitive medical plans.

1978—Subsec. (b)(2)(B). Pub. L. 95–292 substituted ''Administrator of the Health Care Financing Administration'' for ''Commissioner of Social Security''.

1976—Subsec. (b). Pub. L. 94–460, § 201(a), struck out provisions defining a health maintenance organization as a public or private organization which provides physicians' services and a sufficient number of primary care and specialty care physicians, assures its members access to qualified practitioners in specialties available in area served by such organization, demonstrates financial responsibility and means to provide comprehensive health care services, has at least half of its enrolled members under age 65, assures prompt and qualified health service, and has an open enrollment period at least every year, and revised the definition and requirements of an health maintenance organization to conform to those set forth in the Public Health Service Act, except that the services which such an organization must provide are those covered in parts A and B of this subchapter rather than the basic health services defined in the Public Health Service Act, and inserted provisions requiring Secretary to administer determinations of whether an organization is a health maintenance organization through and in the office of the Assistant Secretary for Health, to integrate the administration of such functions and duties with the administration of provisions requiring the continued regulation of health maintenance organizations under the Public Health Service Act, and to administer other provisions of this section through the Commissioner of Social Security.

Subsec. (h). Pub. L. 94–460, § 201(b), substituted provisions that each health maintenance organization with which the Secretary enters into a contract under this section have an enrolled membership at least half of which consists of individuals who have not attained age 65, with the Secretary empowered to waive that requirement for a period of not more than three years from the date a health maintenance organization first enters into an agreement with the Secretary pursuant to subsection (i) of this section for provisions that such requirement not apply with respect to any health maintenance organization for such period not to exceed three years from the date such organization enters into an agreement with the Secretary pursuant to subsection (i) of this section, as the Secretary might permit.

Subsec. (i)(6)(B). Pub. L. 94–460, § 201(c), substituted ''(other than costs with respect to out-of-area services and, in the case of an organization which has entered into a risk-sharing contract with the Secretary pursuant to paragraph (2)(A), the cost of providing any member with basic health services the aggregate value of which exceeds $5,000 in any year)'' for ''(Other than those with respect to out-of-area services)''.

Subsec. (k). Pub. L. 94–460, § 201(d), added subsec. (k).

1973—Subsec. (a)(3)(A)(ii). Pub. L. 93–233, § 18(m), struck out '', with the apportionment of savings being proportional to the losses absorbed and not yet offset'' at end.

Subsec. (g)(2). Pub. L. 93–233, § 18(n), substituted ''portion of its premium rate or other charges'' for ''portion'' and ''shall not exceed'' for ''may not exceed'', and struck out cl. (i) designation preceding ''the actuarial value'' and provisions reading ''less (ii) the actuarial value of other charges made in lieu of such deductible and coinsurance'', respectively.

1972—Subsec. (i). Pub. L. 92–603, § 278(b)(3), substituted ''skilled nursing facility'' for ''extended care facility'' and ''skilled nursing facilities'' for ''extended care facilities''.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–432 effective as if included in the enactment of Pub. L. 101–508, see section 157(b)(8) of Pub. L. 103–432, set out as a note under section 1395y of this title.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4204(a)(4) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to contract years beginning on or after January 1, 1992, and the amendments made by paragraph (3) [amending section 1320a–7a of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 4204(c)(3) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §157(b)(2), Oct. 31, 1994, 108 Stat. 4442, provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to national coverage determinations that are not incorporated in the determination of the per capita rate of payment for individuals enrolled for years beginning with 1991 with an eligible organization which has entered into a risk-sharing contract under section 1876 of the Social Security Act [this section].''

Section 4204(d)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §157(b)(3), Oct. 31, 1994, 108 Stat. 4442, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to items and services furnished on or after January 1, 1991.''

Section 4204(e)(2) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §157(b)(5), Oct. 31, 1994, 108 Stat. 4442, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to individuals enrolling with an eligible organization under a health benefit plan operated, sponsored, or contributed to, by the individual's employer or former employer (or the employer or former employer of the individual's spouse) on or after January 1, 1991.''

Amendment by section 4206(b)(1) of Pub. L. 101–508 applicable to contracts under this section and payments under section 1395*l*(a)(1)(A) of this title as of the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4206(e)(2) of Pub. L. 101–508, set out as a note under section 1395*l* of this title.

EFFECTIVE DATE OF 1989 AMENDMENTS

Section 6206(b)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect 60 days after the date of the enactment of this Act [Dec. 19, 1989].''

Section 6212(b)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after April 1, 1990.''

Section 6212(c)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and repealing provisions set out as notes below] shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

Section 6411(d)(4)(B) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (3) [amending this section and section 1396a of this title] shall apply to employment and contracts as of 90 days after the date of the enactment of this Act [Dec. 19, 1989].''

Amendment by section 201(a) of Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

Amendment by section 202(a) of Pub. L. 101–234 effective Jan. 1, 1990, and applicable to premiums for months beginning after Dec. 31, 1989, see section 202(b) of Pub. L. 101–234, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8412(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall not apply to contracts in effect on the date of the enactment of this Act [Nov. 10, 1988] or extensions (not exceeding 90 days) thereof.''

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(f) of Pub. L. 100–360 applicable to enrollments effected on or after Jan. 1, 1990, see section 202(m)(3) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Amendment by section 211(c)(3) of Pub. L. 100–360 applicable, except as specified in such amendment, to monthly premiums for months beginning with January 1989, see section 211(d) of Pub. L. 100–360, set out as a note under section 1395r of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(c)(1), (3), (4), (6), (e)(3) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4011(a)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply with respect to contracts entered into or renewed on or after the date of enactment of this Act [Dec. 22, 1987].''

Section 4011(b)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts entered into or renewed on or after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4012(d) of Pub. L. 100–203 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1395cc this title] shall apply to admissions occurring on or after April 1, 1988, or, if later, the earliest date the Secretary can provide the information required under subsection (c) [set out as a note below] in machine readable form.''

Section 4013(b) of Pub. L. 100–203, which provided the effective date for amendment made by section 4013(a) of Pub. L. 100–203, was omitted in the general amendment of section 4013 of Pub. L. 100–203 by Pub. L. 100–360, title IV, §411(c)(3), July 1, 1988, 102 Stat. 773.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(11)(B) of Pub. L. 99–514 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to determinations of per capita payment rates for 1987 and subsequent years.''

Section 9312(b)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1987, and shall apply to enrollments effected on or after such date.''

Section 9312(c)(3) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, §4018(d), Dec. 22, 1987, 101 Stat. 1330–66; Pub. L. 101–239, title VI, §6212(a), Dec. 19, 1989, 103 Stat. 2249; Pub. L. 103–66, title XIII, §13569, Aug. 10, 1993, 107 Stat. 608, provided that:

''(A) NEW RESTRICTION.—The amendment made by paragraph (1) [amending this section] shall apply to modifications and waivers granted after the date of the enactment of this Act [Oct. 21, 1986].

''(B) SANCTIONS FOR NONCOMPLIANCE.—The amendments made by paragraph (2) [amending this section] shall take effect on the date of the enactment of this Act.

''(C) TREATMENT OF CURRENT WAIVERS.—In the case of an eligible organization (or successor organization) that—

''(i) as of the date of the enactment of this Act, has been granted, under paragraph (2) of section 1876(f) of the Social Security Act [subsec. (f)(2) of this section], a modification or waiver of the requirement imposed by paragraph (1) of that section, but

''(ii) does not meet the requirement for such modification or waiver under the amendment made by paragraph (1) of this subsection,

the organization shall make, and continue to make, reasonable efforts to meet scheduled enrollment goals, consistent with a schedule of compliance approved by the Secretary of Health and Human Services. If the Secretary determines that the organization has complied, or made significant progress towards compliance, with such schedule of compliance, the Secretary may extend such waiver. If the Secretary determines that the organization has not complied with such schedule, the Secretary may provide for a sanction described in section 1876(f)(3) of the Social Security Act [subsec. (f)(3) of this section] (as amended by this section) effective with respect to individuals enrolling with the orga-

nization after the date the Secretary notifies the organization of such noncompliance.

''(D) TREATMENT OF CERTAIN WAIVERS.—In the case of an eligible organization (or successor organization) that is described in clauses (i) and (ii) of subparagraph (C) and that received a grant or grants totaling at least $3,000,000 in fiscal year 1987 under section 329(d)(1)(A) or 330(d)(1) of the Public Health Service Act [42 U.S.C. 254b(d)(1)(A), 254c(d)(1)]—

''(i) before January 1, 1996, section 1876(f) of the Social Security Act [subsec. (f) of this section] shall not apply to the organization;

''(ii) beginning on January 1, 1990, the Secretary of Health and Human Services shall conduct an annual review of the organization to determine the organization's compliance with the quality assurance requirements of section 1876(c)(6) of such Act [subsec. (c)(6) of this section]; and

''(iii) after January 1, 1990, if the organization receives an unfavorable review under clause (ii), the Secretary, after notice to the organization of the unfavorable review and an opportunity to correct any deficiencies identified during the review, may provide for the sanction described in section 1876(f)(3) of such Act [subsec. (f)(3) of this section] effective with respect to individuals enrolling with the organization after the date the Secretary notifies the organization that the organization is not in compliance with the requirements of section 1876(c)(6) of such Act.''

Section 9312(d)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to risk-sharing contracts under section 1876 of the Social Security Act [this section] with respect to services furnished on or after January 1, 1987.''

Section 9312(e)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to contracts as of January 1, 1987.''

Section 9353(e)(3)(B) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4039(h)(9)(C), as added by Pub. L. 100–360, title IV, § 411(e)(3), July 1, 1988, 102 Stat. 776, provided that: ''The amendment made by paragraph (2) [amending this section] shall apply to risk-sharing contracts with eligible organizations, under section 1876 of the Social Security Act [this section], as of April 1, 1987. The provisions of section 1876(i)(7) of the Social Security Act [subsec. (i)(7) of this section] (added by such amendment) shall apply to health maintenance organizations with contracts in effect under section 1876 of such Act (as in effect before the date of the enactment of Public Law 97–248 [Sept. 3, 1982]) in the same manner as it applies to eligible organizations with risk-sharing contracts in effect under section 1876 of such Act (as in effect on the date of the enactment of this Act [Dec. 22, 1987]).''

Section 9211(e) of Pub. L. 99–272 provided that:

''(1) FINANCIAL RESPONSIBILITY.—The amendments made by subsection (a) [amending this section] shall apply to enrollments and disenrollments that become effective on or after the date of the enactment of this Act [Apr. 7, 1986].

''(2) DISENROLLMENTS.—The amendments made by subsection (b) [amending this section] shall apply to requests for termination of enrollment submitted on or after May 1, 1986.

''(3) MATERIAL REVIEW.—(A) The amendment made by subsection (c) [amending this section] shall not apply to material which has been distributed before July 1, 1986.

''(B) Such amendment also shall not apply so as to require the submission of material which is distributed before July 1, 1986.

''(C) Such amendment shall also not apply to material which the Secretary determines has been prepared before the date of the enactment of this Act [Apr. 7, 1986] and for which a commitment for distribution has been made, if the application of such amendment would constitute a hardship for the organization involved.

''(4) PUBLICATION.—The amendment made by subsection (d) [amending this section] shall apply to determinations of per capita rates of payment for 1987 and subsequent years.

''(5) NECESSARY MODIFICATION OF CONTRACTS.—The Secretary of Health and Human Services shall provide for such changes in the risk-sharing contracts which have been entered into under section 1876 of the Social Security Act [this section] as may be necessary to conform to the requirements imposed by the amendments made by this section [amending this section] on a timely basis.''

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2350(d) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and enacting provisions set out as notes under this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(37), (38) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS; TRANSITIONAL RULE

Amendment by section 602(g) of Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

Amendment by section 606(a)(3)(H) of Pub. L. 98–21 applicable to premiums for months beginning with January 1984, but for months after June 1983 and before January 1984, the monthly premium for June 1983 shall apply to individuals enrolled under parts A and B of this subchapter, see section 606(c) of Pub. L. 98–21, set out as a note under section 1395r of this title.

Amendment by section 309(b)(12) of Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 114(c) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. B, title III, § 2354(c)(3)(A), (B), July 18, 1984, 98 Stat. 1102; Pub. L. 98–617, § 3(a)(5), Nov. 8, 1984, 98 Stat. 3295; Pub. L. 99–509, title IX, § 9312(a), Oct. 21, 1986, 100 Stat. 1999, provided that:

''(1) Subject to paragraph (2), the amendment made by subsection (a) [amending this section] shall apply with respect to services furnished on or after the initial effective date (as defined in paragraph (4)), except that such amendment shall not apply—

''(A) with respect to services furnished by an eligible organization to any individual who is enrolled with that organization under an existing cost contract (as defined in paragraph (3)(A)) and entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act [this subchapter] at the time the organization first enters into a new risk-sharing contract (as defined in paragraph (3)(D)) unless—

''(i) the individual requests at any time that the amendment apply, or

''(ii) the Secretary determines at any time that the amendment should apply to all members of the organization because of administrative costs or other administrative burdens involved and so informs in advance each affected member of the eligible organization;

''(B) with respect to services furnished by an eligible organization during the five-year period beginning on the initial effective date, if—

''(i) the organization has an existing risk-sharing contract (as defined in paragraph (3)(B)) on the initial effective date, or

''(ii) on the date of the enactment of this Act [Sept. 3, 1982] the organization was furnishing services pursuant to an existing demonstration project (as defined in paragraph (3)(C)), such demonstration project is concluded before the initial effective date, and before such initial effective date the organization enters into an existing risk-sharing contract,

unless the organization requests that the amendment apply earlier; or

''(C) with respect to services furnished by an eligible organization during the period of an existing demonstration project if on the initial effective date the organization was furnishing services pursuant to the project and if the project concludes after such date.

''(2)(A) In the case of an eligible organization which has in effect an existing cost contract (as defined in paragraph (3)(A)) on the initial effective date, the organization may receive payment under a new risk-sharing contract with respect to a current, nonrisk medicare enrollee (as defined in subparagraph (C)) only to the extent that the organization enrolls, for each such enrollee, two new medicare enrollees (as defined in subparagraph (D)). The selection of those current nonrisk medicare enrollees with respect to whom payment may be so received under a new risk-sharing contract shall be made in a nonbiased manner.

''(B) Subparagraph (A) shall not be construed to prevent an eligible organization from providing for enrollment, on a basis described in subsection (a)(6) of section 1876 of the Social Security Act [subsec. (a)(6) of this section] (as amended by this Act [Pub. L. 97–248], other than under a reasonable cost reimbursement contract), of current, nonrisk medicare enrollees and from providing such enrollees with some or all of the additional benefits described in section 1876(g)(2) of the Social Security Act [subsec. (g)(2) of this section] (as amended by this Act [Pub. L. 97–248]), but (except as provided in subparagraph (A))—

''(i) payment to the organization with respect to such enrollees shall only be made in accordance with the terms of a reasonable cost reimbursement contract, and

''(ii) no payment may be made under section 1876 of such Act [this section] with respect to such enrollees for any such additional benefits.

Individuals enrolled with the organization under this subparagraph shall be considered to be individuals enrolled with the organization for the purpose of meeting the requirement of section 1876(g)(2) of the Social Security Act [subsec. (g)(2) of this section] (as amended by this Act [Pub. L. 97–248]).

''(C) For purposes of this paragraph, the term 'current, nonrisk medicare enrollee' means, with respect to an organization, an individual who on the initial effective date—

''(i) is enrolled with that organization under an existing cost contract, and

''(ii) is entitled to benefits under part A and enrolled under part B, or enrolled in part B, of title XVIII of the Social Security Act [this subchapter].

''(D) For purposes of this paragraph, the term 'new medicare enrollee' means, with respect to an organization, an individual who—

''(i) is enrolled with the organization after the date the organization first enters into a new risk-sharing contract,

''(ii) at the time of such enrollment is entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act [this subchapter], and

''(iii) was not enrolled with the organization at the time the individual became entitled to benefits under part A, or to enroll in part B, of such title [this subchapter].

''(E) The preceding provisions of this paragraph shall not to [sic] apply to payments made for current, nonrisk medicare enrollees for months beginning with April 1987.

''(3) For purposes of this subsection:

''(A) The term 'existing cost contract' means a contract which is entered into under section 1876 of the Social Security Act [this section], as in effect before the initial effective date, or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act [section 1395*l*(a)(1)(A) of this title], and which is not an existing risk-sharing contract or an existing demonstration project.

''(B) The term 'existing risk-sharing contract' means a contract entered into under section 1876(i)(2)(A) of the Social Security Act [subsec. (i)(2)(A) of this section], as in effect before the initial effective date.

''(C) The term 'existing demonstration project' means a demonstration project under section 402(a) of the Social Security Amendments of 1967 [section 1395b–1(a) of this title] or under section 222(a) of the Social Security Amendments of 1972 [section 222(a) of Pub. L. 92–603, set out as a note under section 1395b–1 of this title], relating to the provision of services for which payment may be made under title XVIII of the Social Security Act [this subchapter].

''(D) The term 'new risk-sharing contract' means a contract entered into under section 1876(g) of the Social Security Act [subsec. (g) of this section], as amended by this Act [Pub. L. 97–248].

''(E) The term 'reasonable cost reimbursement contract' means a contract entered into under section 1876(h) of such Act [subsec. (h) of this section], as amended by this Act, or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act [section 1395*l*(a)(1)(A) of this title].

''(4) As used in this section, the term 'initial effective date' means—

''(A) the first day of the thirteenth month which begins after the date of the enactment of this Act [Sept. 3, 1982], or

''(B) the first day of the first month [Feb. 1, 1985] after the month in which the Secretary of Health and Human Services notifies the Committee on Finance of the Senate and the Committees on Ways and Means and on Energy and Commerce of the House of Representatives that he is reasonably certain that the methodology to make appropriate adjustments (referred to in section 1876(a)(4) of the Social Security Act [subsec. (a)(4) of this section], as amended by this Act [Pub. L. 97–248]) has been developed and can be implemented to assure actuarial equivalence in the estimation of adjusted average per capita costs under that section,

whichever is later.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as a note under section 426 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 201(e) of Pub. L. 94–460 provided that: ''The amendments made by this section [amending this section] shall be effective with respect to contracts entered into between the Secretary and health maintenance organizations under section 1876 of the Social Security Act [this section] on and after the first day of the first calendar month which begins more than 30 days after the date of enactment of this Act [Oct. 8, 1976].''

EFFECTIVE DATE OF 1973 AMENDMENT

Section 18(z–3)(3) of Pub. L. 93–233 provided that: ''The amendments made by subsections (m) and (n) [amending this section] shall be effective with respect to services provided after June 30, 1973.''

EFFECTIVE DATE

Section 226(f) of Pub. L. 92–603 provided that: ''The amendments made by this section [enacting this section, amending sections 1395f, 1395*l*, 1395*ll*, and 1396b of this title, and enacting provisions set out as notes under this section] shall be effective with respect to services provided on or after July 1, 1973.''

REQUIREMENTS WITH RESPECT TO ACTUARIAL EQUIVALENCE OF AAPCC

Section 4204(b) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 157(a), Oct. 31, 1994, 108 Stat. 4441, provided that:

''(1)(A) Not later than October 1, 1995, the Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall submit a proposal to the Congress that provides for revisions to the payment method to be applied in years beginning with 1997 for organizations with a risk-sharing contract under section 1876(g) of the Social Security Act [subsec. (g) of this section].

''(B) In proposing the revisions required under subparagraph (A), the Secretary shall consider—

''(i) the difference in costs associated with medicare beneficiaries with differing health status and demographic characteristics; and

''(ii) the effects of using alternative geographic classifications on the determinations of costs associated with beneficiaries residing in different areas.

''(2) Not later than 3 months after the date of submittal of the proposal under paragraph (1), the Comptroller General shall review the proposal and shall report to Congress on the appropriateness of the proposed modifications.''

STUDY OF CHIROPRACTIC SERVICES

Section 4204(f) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, § 157(b)(6), Oct. 31, 1994, 108 Stat. 4442, directed Secretary to conduct a study of the extent to which health maintenance organizations with contracts under section 1876 of the Social Security Act (this section) make available to enrollees entitled to benefits under title XVIII of such Act (this subchapter) chiropractic services that are covered under such title, such study to examine the arrangements under which such services are made available and the types of practitioners furnishing such services to such enrollees and to be based on contracts entered into or renewed on or after Jan. 1, 1991, and before Jan. 1, 1993, with Secretary to issue a report to Congress on results of the study not later than Jan. 1, 1993, including recommendations with respect to any legislative and regulatory changes determined necessary by Secretary to ensure access to such services.

EFFECT ON STATE LAW

Conscientious objections of health care provider under State law unaffected by enactment of subsec. (c)(8) of this section, see section 4206(c) of Pub. L. 101–508, set out as a note under section 1395cc of this title.

NOTICE OF METHODOLOGY USED IN MAKING ANNOUNCEMENTS UNDER SUBSECTION (a)(1)(A)

Section 6206(a)(2) of Pub. L. 101–239 provided that: ''Before July 1, 1990, the Secretary of Health and Human Services shall provide for notice to eligible organizations of the methodology used in making the announcement under section 1876(a)(1)(A) of the Social Security Act [subsec. (a)(1)(A) of this section] for 1990.''

ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS

Section 203(b) of Pub. L. 101–234 provided that: ''Notwithstanding any other provision of this Act [see Tables for classification], the amendments made by this Act (other than the repeal of sections 1833(c)(5) and 1834(c)(6) of the Social Security Act [sections 1395*l*(c)(5) and 1395m(c)(6) of this title]) shall not apply to risk-sharing contracts, for contract year 1990—

''(1) with eligible organizations under section 1876 of the Social Security Act [this section], or

''(2) with health maintenance organizations under section 1876(i)(2)(A) of such Act [subsec. (i)(2)(A) of this section] (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967 [section 1395b–1(a) of this title], or under section 222(a) of the Social Security Amendments of 1972 [Pub. L. 92–603, set out as a note under section 1395b–1 of this title].''

ADJUSTMENT OF CONTRACTS WITH PREPAID HEALTH PLANS

Section 222 of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(13), Oct. 13, 1988, 102 Stat. 2415, provided that: ''The Secretary of Health and Human Services shall—

''(1) modify contracts under section 1876 of the Social Security Act [this section], for portions of contract years occurring after December 31, 1988, to take into account the amendments made by this Act [see Short Title of 1988 Amendment note under section 1305 of this title]; and

''(2) require such organizations and organizations paid under section 1833(a)(1)(A) of such Act [section 1395*l*(a)(1)(A) of this title] to make appropriate adjustments (including adjustments in premiums and benefits) in the terms of their agreements with medicare beneficiaries to take into account such amendments.

The Secretary shall also provide for appropriate modifications of contracts with health maintenance organizations under section 1876(i)(2)(A) of the Social Security Act [subsec. (i)(2)(A) of this section] (as in effect before February 1, 1985), under section 402(a) of the Social Security Amendments of 1967 [section 1395b–1(a) of this title], or under section 222(a) of the Social Security Amendments of 1972 [42 U.S.C. 1395b–1 note], for portions of contract years occurring after December 31, 1988, so as to apply to such organizations and contracts the requirements imposed by the amendments made by this Act upon an organization with a risk-sharing contract under section 1876 of the Social Security Act.''

PROVISION OF MEDICARE DRG RATES FOR CERTAIN PAYMENTS AND DATA ON INPATIENT COST PASS-THROUGH ITEMS

Section 4012(c) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(c)(2)(B), July 1, 1988, 102 Stat. 773, provided that: ''The Secretary of Health and Human Services shall provide (in machine readable form) to eligible organizations under section 1876 of the Social Security Act [this section] medicare DRG rates for payments required by the amendment made by subsection (a) [amending section 1395cc of this title] and data on cost pass-through items for all inpatient services provided to medicare beneficiaries enrolled with such organizations.''

MEDICARE PAYMENT DEMONSTRATION PROJECTS

Section 4015 of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(c)(5), as added by Pub. L. 100–485, title VI, § 608(d)(19)(C), Oct. 13, 1988, 102 Stat. 2419, provided that:

''(a) MEDICARE INSURED GROUP DEMONSTRATION PROJECTS.—

''(1) The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') may provide for capitation demonstration projects (in this subsection referred to as 'projects') with an entity which is an eligible organization with a contract with the Secretary under section 1876 of the Social Security Act [this section] or which meets the restrictions and requirements of this subsection. The Secretary

may not approve a project unless it meets the requirements of this subsection.

''(2) The Secretary may not conduct more than 3 projects and may not expend, from funds under title XVIII of the Social Security Act [this subchapter], more than $600,000,000 in any fiscal year for all such projects.

''(3) The per capita rate of payment under a project—

''(A) may be based on the adjusted average per capita cost (as defined in section 1876(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) determined only with respect to the group of individuals involved (rather than with respect to medicare beneficiaries generally), but

''(B) the rate of payment may not exceed the lesser of—

''(i) 95 percent of the adjusted average per capita cost described in subparagraph (A), or

''(ii)(I) in the 4th year or 5th year of a project, 115 percent of the adjusted average per capita cost (as defined in section 1876(a)(4) of such Act [subsec. (a)(4) of this section]) for classes of individuals described in section 1876(a)(1)(B) of that Act [subsec. (a)(1)(B) of this section], or

''(II) in any subsequent year of a project, 95 percent of the adjusted average per capita cost (as defined in section 1876(a)(4) [subsec. (a)(4) of this section]) for such classes.

''(4) If the payment amounts made to a project are greater than the costs of the project (as determined by the Secretary or, if applicable, on the basis of adjusted community rates described in section 1876(e)(3) of the Social Security Act [subsec. (e)(3) of this section]), the project—

''(A) may retain the surplus, but not to exceed 5 percent of the average adjusted per capita cost determined in accordance with paragraph (3)(A), and

''(B) with respect to any additional surplus not retained by the project, shall apply such surplus to additional benefits for individuals served by the project or return such surplus to the Secretary.

''(5) Enrollment under the project shall be voluntary. Individuals enrolled with the project may terminate such enrollment as of the beginning of the first calendar month following the date on which the request is made for such termination. Upon such termination, such individuals shall retain the same rights to other health benefits that such individuals would have had if they had never enrolled with the project without any exclusion or waiting period for pre-existing conditions.

''(6) The requirements of—

''(A) subsection (c)(3)(C) (relating to dissemination of information),

''(B) subsection (c)(3)(E) (annual statement of rights),

''(C) subsection (c)(5) (grievance procedures),

''(D) subsection (c)(6) (on-going quality),

''(E) subsection (g)(6) (relating to prompt payment of claims),

''(F) subsection (i)(3)(A) and (B) (relating to access to information and termination notices),

''(G) subsection (i)(6) (relating to providing necessary services), and

''(H) subsection (i)(7) (relating to agreements with peer review organizations),

of section 1876 of the Social Security Act [this section] shall apply to a project in the same manner as they apply to eligible organizations with risk-sharing contracts under such section.

''(7) The benefits provided under a project must be at least actuarially equivalent to the combination of the benefits available under title XVIII of the Social Security Act [this subchapter] and the benefits available through any alternative plans in which the individual can enroll through the employer. The project shall guarantee the actuarial value of benefits available under the employer plan for the duration of the project.

''(8) A project shall comply with all applicable State laws.

''(9) The Secretary may not authorize a project unless the entity offering the project demonstrates to the satisfaction of the Secretary that it has the necessary financial reserves to pay for any liability for benefits under the project (including those liabilities for health benefits under medicare and any supplemental benefits).

''(10) The Comptroller General shall monitor projects under this subsection and shall report periodically (not less often than once every year) to the Committee on Finance of the Senate and the Committee on Energy and Commerce [now Committee on Commerce] and Committee on Ways and Means of the House of Representatives on the status of such projects and the effect on such projects of the requirements of this section and shall submit a final report to each such committee on the results of such projects.

''(b) PAYMENT METHODOLOGY REFORM DEMONSTRATIONS PROJECTS.—

''(1) The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') is specifically authorized to conduct demonstration projects under this subsection for the purpose of testing alternative payment methodologies pertaining to capitation payments under title XVIII of the Social Security Act [this subchapter], including—

''(A) computing adjustments to the average per capita cost under section 1876 of such Act [this section] on the basis of health status or prior utilization of services, and

''(B) accounting for geographic variations in cost in the adjusted average per capita costs applicable to an eligible organization under such section which differs from payments currently provided on a county-by-county basis.

''(2) No project may be conducted under this subsection—

''(A) with an entity which is not an eligible organization (as defined in section 1876(b) of the Social Security Act [subsec. (b) of this section]), and

''(B) unless the project meets all the requirements of subsections (c) and (i)(3) of section 1876 of such Act [subsecs. (c) and (i)(3) of this section].

''(3) There are authorized to be appropriated to carry out projects under this subsection $5,000,000 in each of fiscal years 1989 and 1990.

''(c) APPLICATION OF PROVISIONS.—The provisions of subsection (a)(2) and the first sentence of subsection (b) of section 402 of the Social Security Amendments of 1967 [section 1395b–1(a)(2), (b) of this title] shall apply to the demonstration projects under this section in the same manner as they apply to experiments under subsection (a)(1) of that section.''

GAO STUDY AND REPORTS ON MEDICARE CAPITATION

Section 4017 of Pub. L. 100–203 directed Comptroller General to conduct a study on medicare capitation rates that would include an analysis and assessment of the current method for computing per capita rates of payment under section 1876 of the Social Security Act (this section), including the method for determining the United States per capita cost; the method for establishing relative costs for geographic areas and the data used to establish age, sex, and other weighting factors; ways to refine the calculation of adjusted average per capita costs under section 1876 of such Act, including making adjustments for health status or prior utilization of services and improvements in the definition of geographic areas; the extent to which individuals enrolled with organizations with a risk-sharing contract with the Secretary under section 1876 of such Act differ in utilization and cost from fee-for-service beneficiaries and ways for modifying enrollment patterns through program changes or for reflecting the differences in rates through group experience rating or other means; approaches for limiting the liability of the contracting organization under section 1876 of such Act in cata-

strophic cases; ways of establishing capitation rates on a basis other than fee-for-service experience in areas with high prepaid market penetration; and methods for providing the rate levels necessary to maintain access to quality prepaid services in rural or medically underserved areas, while maintaining cost savings; and directed Comptroller General, not later than January 1 of 1989 and 1990, to submit to Congress interim reports on the progress of the study and, not later than Jan. 1, 1991, a final report on the results of such study.

DEMONSTRATION PROJECTS TO PROVIDE PAYMENT ON A PREPAID, CAPITATED BASIS FOR COMMUNITY NURSING AND AMBULATORY CARE FURNISHED TO MEDICARE BENEFICIARIES

Section 4079 of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(h)(8), July 1, 1988, 102 Stat. 787, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall enter into an agreement with not less than four eligible organizations submitting applications under this section to conduct demonstration projects to provide payment on a prepaid, capitated basis for community nursing and ambulatory care furnished to any individual entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act [part A and part B of this subchapter] (other than an individual medically determined to have end-stage renal disease) who resides in the geographic area served by the organization and enrolls with such organization (in accordance with subsection (c)(2)).

''(b) DEFINITIONS OF COMMUNITY NURSING AND AMBULATORY CARE AND ELIGIBLE ORGANIZATION.—As used in this section:

''(1) The term 'community nursing and ambulatory care' means the following services:

''(A) Part-time or intermittent nursing care furnished by or under the supervision of registered professional nurses.

''(B) Physical, occupational, or speech therapy.

''(C) Social and related services supportive of a plan of ambulatory care.

''(D) Part-time or intermittent services of a home health aide.

''(E) Medical supplies (other than drugs and biologicals) and durable medical equipment while under a plan of care.

''(F) Medical and other health services described in paragraphs (2)(H)(ii) and (5) through (9) of section 1861(s) of the Social Security Act [section 1395x(s)(2)(H)(ii), (5)–(9) of this title].

''(G) Rural health clinic services described in section 1861(aa)(1)(C) of such Act [section 1395x(aa)(1)(C) of this title].

''(H) Certain other related services listed in section 1915(c)(4)(B) of such Act [section 1396n(c)(4)(B) of this title] to the extent the Secretary finds such services are appropriate to prevent the need for institutionalization of a patient.

''(2) The term 'eligible organization' means a public or private entity, organized under the laws of any State, which meets the following requirements:

''(A) The entity (or a division or part of such entity) is primarily engaged in the direct provision of community nursing and ambulatory care.

''(B) The entity provides directly, or through arrangements with other qualified personnel, the services described in paragraph (1).

''(C) The entity provides that all nursing care (including services of home health aids) is furnished by or under the supervision of a registered nurse.

''(D) The entity provides that all services are furnished by qualified staff and are coordinated by a registered professional nurse.

''(E) The entity has policies governing the furnishing of community nursing and ambulatory care that are developed by registered professional nurses in cooperation with (as appropriate) other professionals.

''(F) The entity maintains clinical records on all patients.

''(G) The entity has protocols and procedures to assure, when appropriate, timely referral to or consultation with other health care providers or professionals.

''(H) The entity complies with applicable State and local laws governing the provision of community nursing and ambulatory care to patients.

''(I) The requirements of subparagraphs (B), (D), and (E) of section 1876(b)(2) of the Social Security Act [42 U.S.C. 1395mm(b)(2)(B), (D), (E)].

''(c) AGREEMENTS WITH ELIGIBLE ORGANIZATIONS TO CONDUCT DEMONSTRATION PROJECTS.—

''(1) The Secretary may not enter into an agreement with an eligible organization to conduct a demonstration project under this section unless the organization meets the requirements of this subsection and subsection (e) with respect to members enrolled with the organization under this section.

''(2) The organization shall have an open enrollment period for the enrollment of individuals under this section. The duration of such period of enrollment and any other requirement pertaining to enrollment or termination of enrollment shall be specified in the agreement with the organization.

''(3) The organization must provide to members enrolled with the organization under this section, through providers and other persons that meet the applicable requirements of titles XVIII and XIX of the Social Security Act [this subchapter and subchapter XIX of this chapter], community nursing and ambulatory care (as defined in subsection (b)(1)) which is generally available to individuals residing in the geographic area served by the organization, except that the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered.

''(4) The organization must make community nursing and ambulatory care (and such other health care services as such individuals have contracted for) available and accessible to each individual enrolled with the organization under this section, within the area served by the organization, with reasonable promptness and in a manner which assures continuity.

''(5) Section 1876(c)(5) of the Social Security Act [subsec. (c)(5) of this section] shall apply to organizations under this section in the same manner as it applies to organizations under section 1876 of such Act.

''(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals under the demonstration project conducted under this section, which program (A) stresses health outcomes and (B) provides review by health care professionals of the process followed in the provision of such health care services.

''(7) Under a demonstration project under this section—

''(A) the Secretary could require the organization to provide financial or other assurances (including financial risk-sharing) that minimize the inappropriate substitution of other services under title XVIII of such Act [this subchapter] for community nursing services; and

''(B) if the Secretary determines that the organization has failed to perform in accordance with the requirements of the project (including meeting financial responsibility requirements under the project, any pattern of disproportionate or inappropriate institutionalization) the Secretary shall, after notice, terminate the project.

''(d) DETERMINATION OF PER CAPITA PAYMENT RATES.—

''(1) The Secretary shall determine for each 12-month period in which a demonstration project is conducted under this section, and shall announce (in a manner intended to provide notice to interested

parties) not later than three months before the beginning of such period, with respect to each eligible organization conducting a demonstration project under this section, a per capita rate of payment for each class of individuals who are enrolled with such organization who are entitled to benefits under part A and enrolled under part B of title XVIII of the Social Security Act [part A and part B of this subchapter].

''(2)(A) Except as provided in paragraph (3), the per capita rate of payment under paragraph (1) shall be determined in accordance with this paragraph.

''(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

''(C) The per capita rate of payment under paragraph (1) for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in subparagraph (D)) for that class.

''(D) For purposes of subparagraph (C), the term 'adjusted average per capita cost' means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for those services covered under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter] and types of expenses otherwise reimbursable under such parts A and B which are described in subparagraphs (A) through (G) of subsection (b)(1) (including administrative costs incurred by organizations described in sections 1816 and 1842 of such Act [sections 1395h and 1395u of this title]), if the services were to be furnished by other than an eligible organization.

''(3) The Secretary shall, in consultation with providers, health policy experts, and consumer groups develop capitation-based reimbursement rates for such classes of individuals entitled to benefits under part A and enrolled under part B of the Social Security Act [probably means parts A and B of title XVIII of that Act, this subchapter] as the Secretary shall determine. Such rates shall be applied in determining per capita rates of payment under paragraph (1) with respect to at least one eligible organization conducting a demonstration project under this section.

''(4)(A) In the case of an eligible organization conducting a demonstration project under this section, the Secretary shall make monthly payments in advance and in accordance with the rate determined under paragraph (2) or (3), except as provided in subsection (e)(3)(B), to the organization for each individual enrolled with the organization.

''(B) The amount of payment under paragraph (2) or (3) may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

''(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A and enrolled under part B of the Social Security Act shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established under such Act [this chapter] in such proportions from each such trust fund as the Secretary deems to be fair and equitable taking into consideration benefits attributable to such parts A and B, respectively.

''(6) During any period in which an individual is enrolled with an eligible organization conducting a demonstration project under this section, only the eligible organization (and no other individual or person) shall be entitled to receive payments from the Secretary under this title [probably means title XVIII of the Social Security Act, this subchapter] for community nursing and ambulatory care (as defined in subsection (b)(1)) furnished to the individual.

''(e) RESTRICTION ON PREMIUMS, DEDUCTIBLES, COPAYMENTS, AND COINSURANCE.—

''(1) In no case may the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to community nursing and ambulatory care) to individuals who are enrolled under this section with the organization, exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A and enrolled under part B of the Social Security Act [probably means parts A and B of title XVIII of that Act, this subchapter], if they were not members of an eligible organization.

''(2) If the eligible organization provides to its members enrolled under this section services in addition to community nursing and ambulatory care, election of coverage for such additional services shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

''(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

''(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services (as defined in section 1876(e)(3) of the Social Security Act [subsec. (e)(3) of this section]).

''(3)(A) Subject to subparagraphs (B) and (C), each agreement to conduct a demonstration project under this section shall provide that if—

''(i) the adjusted community rate, referred to in paragraph (2), for community nursing and ambulatory care covered under parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter] (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization,

is less than

''(ii) the average of the per capita rates of payment to be made under subsection (d)(1) at the beginning of the 12-month period (as determined on such basis as the Secretary determines appropriate) described in such subsection for members enrolled under this section with the organization,

the eligible organization shall provide to such members the additional benefits described in section 1876(g)(3) of the Social Security Act [subsec. (g)(3) of this section] which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced).

''(B) Subparagraph (A) shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced).

''(C) An organization conducting a demonstration project under this section may provide (with the approval of the Secretary) that a part of the value of

such additional benefits under subparagraph (A) be withheld and reserved by the Secretary as provided in section 1876(g)(5) of the Social Security Act [subsec. (g)(5) of this section].

''(4) The provisions of paragraphs (3), (5), and (6) of section 1876(g) of the Social Security Act [subsec. (g)(3), (5), and (6) of this section] shall apply in the same manner to agreements under this section as they apply to risk-sharing contracts under section 1876 of such Act, and, for this purpose, any reference in such paragraphs to paragraph (2) is deemed a reference to paragraph (3) of this subsection.

''(5) Section 1876(e)(4) of the Social Security Act [subsec. (e)(4) of this section] shall apply to eligible organizations under this section in the same manner as it applies to eligible organizations under section 1876 of such Act.

''(f) COMMENCEMENT AND DURATION OF PROJECTS.—Each demonstration project under this section shall begin not later than July 1, 1989, and shall be conducted for a period of three years.

''(g) REPORT.—Not later than January 1, 1992, the Secretary shall submit to the Congress a report on the results of the demonstration projects conducted under this section.''

STUDY OF AAPCC AND ACR

Section 9312(g) of Pub. L. 99–509 directed Secretary of Health and Human Services to provide, through contract with an appropriate organization, for a study of the methods by which the adjusted average per capita cost (''AAPCC'', as defined in subsec. (a)(4) of this section) can be refined to more accurately reflect the average cost of providing care to different classes of patients, and the adjusted community rate (''ACR'', as defined in subsec. (e)(3) of this section) can be refined, with Secretary to submit to Congress, by not later than Jan. 1, 1988, specific legislative recommendations concerning methods by which the calculation of the AAPCC and the ACR could be refined.

ALLOWING MEDICARE BENEFICIARIES TO DISENROLL AT LOCAL SOCIAL SECURITY OFFICES

Section 9312(h) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall provide that individuals enrolled with an eligible organization under section 1876 of the Social Security Act [this section] may disenroll, on and after June 1, 1987, at any local office of the Social Security Administration.''

USE OF RESERVE FUNDS

Section 9312(i) of Pub. L. 99–509 provided that: ''Notwithstanding any provision of section 1876(g)(5) of the Social Security Act (42 U.S.C. 1395mm(g)(5)) to the contrary, funds reserved by an eligible organization under such section before the date of the enactment of this Act [Oct. 21, 1986] may be applied, at the organization's option, to offset the amount of any reduction in payment amounts to the organization effected under Public Law 99–177 [Dec. 12, 1985, 99 Stat. 1037, see Tables for classification] during fiscal year 1986.''

PHASE-IN OF ENROLLMENT PERIOD BY SECRETARY

Section 2350(a)(2) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services may phase in, over a period of not longer than three years, the application of the amendments made by paragraph (1) [amending this section] to all applicable areas in the United States if the Secretary determines that it is not administratively feasible to establish a single 30-day open enrollment period for all such applicable areas before the end of the period.''

STABILIZATION FUND; ESTABLISHMENT LIMITATION; USES; REPORT TO CONGRESS

Section 2350(b)(3), (4) of Pub. L. 98–369, as amended by Pub. L. 100–203, title IV, § 4013, Dec. 22, 1987, 101 Stat. 1330–61; Pub. L. 100–360, title IV, § 411(c)(3), July 1, 1988, 102 Stat. 773, prohibited Secretary of Health and Human Services from approving the establishment of a stabilization fund by an eligible organization under subsec. (g)(5) of this section for any contract period beginning later than Sept. 30, 1990, and directed Secretary to report to Congress with respect to use of stabilization funds by eligible organizations under subsec. (g)(5) of this section and to assess the need for such funds not later than 54 months after July 1984, prior to repeal by Pub. L. 101–239, title VI, § 6212(c)(1), Dec. 19, 1989, 103 Stat. 2250.

STUDY OF ADDITIONAL BENEFITS SELECTED BY ELIGIBLE ORGANIZATIONS

Section 114(d) of Pub. L. 97–248 directed Secretary of Health and Human Services to conduct a study of the additional benefits selected by eligible organizations pursuant to subsec. (g)(2) of this section, with Secretary to report to Congress within 24 months of the initial effective date (as defined in subsec. (c)(4) of section 114 of Pub. L. 97–248) with respect to the findings and conclusions made as a result of such study.

STUDY EVALUATING THE EXTENT OF, AND REASONS FOR, TERMINATION BY MEDICARE BENEFICIARIES OF MEMBERSHIP IN ORGANIZATIONS WITH CONTRACTS UNDER THIS SECTION

Section 114(e) of Pub. L. 97–248 directed Secretary of Health and Human Services to conduct a study evaluating the extent of, and reasons for, the termination by medicare beneficiaries of their memberships in organizations with contracts under section 1876 of the Social Security Act (this section), with Secretary to submit an interim report to Congress, within two years after the initial effective date (as defined in subsec. (c)(4) of section 114 of Pub. L. 97–248), and a final report within five years after such date containing the respective interim and final findings and conclusions made as a result of such study.

REIMBURSEMENT FOR SERVICES

Section 226(b) of Pub. L. 92–603 provided that:

''(1) Notwithstanding the provisions of section 1814 and section 1833 of the Social Security Act [sections 1395f and 1395*l* of this title], any health maintenance organization which has entered into a contract with the Secretary pursuant to section 1876 of such Act [this section] shall, for the duration of such contract, (except as provided in paragraph (2)) be entitled to reimbursement only as provided in section 1876 of such Act [this section] for individuals who are members of such organizations.

''(2) With respect to individuals who are members of organizations which have entered into a risk-sharing contract with the Secretary pursuant to subsection (i)(2)(A) [of this section] prior to July 1, 1973, and who, although eligible to have payment made pursuant to section 1876 of such Act [this section] for services rendered to them, chose (in accordance with regulations) not to have such payment made pursuant to such section, the Secretary shall, for a period not to exceed three years commencing on July 1, 1973, pay to such organization on the basis of an interim per capita rate, determined in accordance with the provisions of section 1876(a)(2) of such Act [subsec. (a)(2) of this section], with appropriate actuarial adjustments to reflect the difference in utilization of out-of-plan services, which would have been considered sufficiently reasonable and necessary under the rules of the health maintenance organization to be provided by that organization, between such individuals and individuals who are enrolled with such organization pursuant to section 1876 of such Act [this section]. Payments under this paragraph shall be subject to retroactive adjustment at the end of each contract year as provided in paragraph (3).

''(3) If the Secretary determines that the per capita cost of any such organization in any contract year for providing services to individuals described in paragraph (2), when combined with the cost of the Federal Hospital Insurance Trust Fund and the Federal Supple-

mentary Medical Insurance Trust Fund in such year for providing out-of-plan services to such individuals, is less than or greater than the adjusted average per capita cost (as defined in section 1876(a)(3) of such Act) [subsec. (a)(3) of this section] of providing such services, the resulting savings shall be apportioned between such organization and such Trust Funds, or the resulting losses shall be absorbed by such organization, in the manner prescribed in section 1876(a)(3) of such Act [subsec. (a)(3) of this section].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a–1, 1320a–7, 1320a–7b, 1320c–2, 1320c–3, 1395f, 1395i–2, 1395*l*, 1395u, 1395w–4, 1395x, 1395cc, 1395*ll*, 1395nn, 1395ss, 1395ww, 1395ccc, 1396a, 1396b, 1396d of this title; title 2 section 906.

§ 1395nn. Limitation on certain physician referrals

(a) Prohibition of certain referrals

(1) In general

Except as provided in subsection (b) of this section, if a physician (or an immediate family member of such physician) has a financial relationship with an entity specified in paragraph (2), then—

(A) the physician may not make a referral to the entity for the furnishing of designated health services for which payment otherwise may be made under this subchapter, and

(B) the entity may not present or cause to be presented a claim under this subchapter or bill to any individual, third party payor, or other entity for designated health services furnished pursuant to a referral prohibited under subparagraph (A).

(2) Financial relationship specified

For purposes of this section, a financial relationship of a physician (or an immediate family member of such physician) with an entity specified in this paragraph is—

(A) except as provided in subsections (c) and (d) of this section, an ownership or investment interest in the entity, or

(B) except as provided in subsection (e) of this section, a compensation arrangement (as defined in subsection (h)(1) of this section) between the physician (or an immediate family member of such physician) and the entity.

An ownership or investment interest described in subparagraph (A) may be through equity, debt, or other means and includes an interest in an entity that holds an ownership or investment interest in any entity providing the designated health service.

(b) General exceptions to both ownership and compensation arrangement prohibitions

Subsection (a)(1) of this section shall not apply in the following cases:

(1) Physicians' services

In the case of physicians' services (as defined in section 1395x(q) of this title) provided personally by (or under the personal supervision of) another physician in the same group practice (as defined in subsection (h)(4) of this section) as the referring physician.

(2) In-office ancillary services

In the case of services (other than durable medical equipment (excluding infusion pumps) and parenteral and enteral nutrients, equipment, and supplies)—

(A) that are furnished—

(i) personally by the referring physician, personally by a physician who is a member of the same group practice as the referring physician, or personally by individuals who are directly supervised by the physician or by another physician in the group practice, and

(ii)(I) in a building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of designated health services, or

(II) in the case of a referring physician who is a member of a group practice, in another building which is used by the group practice—

(aa) for the provision of some or all of the group's clinical laboratory services, or

(bb) for the centralized provision of the group's designated health services (other than clinical laboratory services),

unless the Secretary determines other terms and conditions under which the provision of such services does not present a risk of program or patient abuse, and

(B) that are billed by the physician performing or supervising the services, by a group practice of which such physician is a member under a billing number assigned to the group practice, or by an entity that is wholly owned by such physician or such group practice,

if the ownership or investment interest in such services meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(3) Prepaid plans

In the case of services furnished by an organization—

(A) with a contract under section 1395mm of this title to an individual enrolled with the organization,

(B) described in section 1395*l*(a)(1)(A) of this title to an individual enrolled with the organization,

(C) receiving payments on a prepaid basis, under a demonstration project under section 1395b–1(a) of this title or under section 222(a) of the Social Security Amendments of 1972, to an individual enrolled with the organization, or

(D) that is a qualified health maintenance organization (within the meaning of section 300e–9(d) of this title) to an individual enrolled with the organization.

(4) Other permissible exceptions

In the case of any other financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse.

(c) General exception related only to ownership or investment prohibition for ownership in publicly traded securities and mutual funds

Ownership of the following shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A) of this section:

(1) Ownership of investment securities (including shares or bonds, debentures, notes, or other debt instruments) which may be purchased on terms generally available to the public and which are—

(A)(i) securities listed on the New York Stock Exchange, the American Stock Exchange, or any regional exchange in which quotations are published on a daily basis, or foreign securities listed on a recognized foreign, national, or regional exchange in which quotations are published on a daily basis, or

(ii) traded under an automated interdealer quotation system operated by the National Association of Securities Dealers, and

(B) in a corporation that had, at the end of the corporation's most recent fiscal year, or on average during the previous 3 fiscal years, stockholder equity exceeding $75,000,000.

(2) Ownership of shares in a regulated investment company as defined in section 851(a) of the Internal Revenue Code of 1986, if such company had, at the end of the company's most recent fiscal year, or on average during the previous 3 fiscal years, total assets exceeding $75,000,000.

(d) Additional exceptions related only to ownership or investment prohibition

The following, if not otherwise excepted under subsection (b) of this section, shall not be considered to be an ownership or investment interest described in subsection (a)(2)(A) of this section:

(1) Hospitals in Puerto Rico

In the case of designated health services provided by a hospital located in Puerto Rico.

(2) Rural provider

In the case of designated health services furnished in a rural area (as defined in section 1395ww(d)(2)(D) of this title) by an entity, if substantially all of the designated health services furnished by such entity are furnished to individuals residing in such a rural area.

(3) Hospital ownership

In the case of designated health services provided by a hospital (other than a hospital described in paragraph (1)) if—

(A) the referring physician is authorized to perform services at the hospital, and

(B) the ownership or investment interest is in the hospital itself (and not merely in a subdivision of the hospital).

(e) Exceptions relating to other compensation arrangements

The following shall not be considered to be a compensation arrangement described in subsection (a)(2)(B) of this section:

(1) Rental of office space; rental of equipment

(A) Office space

Payments made by a lessee to a lessor for the use of premises if—

(i) the lease is set out in writing, signed by the parties, and specifies the premises covered by the lease,

(ii) the space rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee, except that the lessee may make payments for the use of space consisting of common areas if such payments do not exceed the lessee's pro rata share of expenses for such space based upon the ratio of the space used exclusively by the lessee to the total amount of space (other than common areas) occupied by all persons using such common areas,

(iii) the lease provides for a term of rental or lease for at least 1 year,

(iv) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(B) Equipment

Payments made by a lessee of equipment to the lessor of the equipment for the use of the equipment if—

(i) the lease is set out in writing, signed by the parties, and specifies the equipment covered by the lease,

(ii) the equipment rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee,

(iii) the lease provides for a term of rental or lease of at least 1 year,

(iv) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(2) Bona fide employment relationships

Any amount paid by an employer to a physician (or an immediate family member of such

physician) who has a bona fide employment relationship with the employer for the provision of services if—

(A) the employment is for identifiable services,

(B) the amount of the remuneration under the employment—

(i) is consistent with the fair market value of the services, and

(ii) is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician,

(C) the remuneration is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the employer, and

(D) the employment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

Subparagraph (B)(ii) shall not prohibit the payment of remuneration in the form of a productivity bonus based on services performed personally by the physician (or an immediate family member of such physician).

(3) Personal service arrangements

(A) In general

Remuneration from an entity under an arrangement (including remuneration for specific physicians' services furnished to a nonprofit blood center) if—

(i) the arrangement is set out in writing, signed by the parties, and specifies the services covered by the arrangement,

(ii) the arrangement covers all of the services to be provided by the physician (or an immediate family member of such physician) to the entity,

(iii) the aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement,

(iv) the term of the arrangement is for at least 1 year,

(v) the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and except in the case of a physician incentive plan described in subparagraph (B), is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(vi) the services to be performed under the arrangement do not involve the counseling or promotion or a business arrangement or other activity that violates any State or Federal law, and

(vii) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(B) Physician incentive plan exception

(i) In general

In the case of a physician incentive plan (as defined in clause (ii)) between a physician and an entity, the compensation may be determined in a manner (through a withhold, capitation, bonus, or otherwise) that takes into account directly or indirectly the volume or value of any referrals or other business generated between the parties, if the plan meets the following requirements:

(I) No specific payment is made directly or indirectly under the plan to a physician or a physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the entity.

(II) In the case of a plan that places a physician or a physician group at substantial financial risk as determined by the Secretary pursuant to section 1395mm(i)(8)(A)(ii) of this title, the plan complies with any requirements the Secretary may impose pursuant to such section.

(III) Upon request by the Secretary, the entity provides the Secretary with access to descriptive information regarding the plan, in order to permit the Secretary to determine whether the plan is in compliance with the requirements of this clause.

(ii) "Physician incentive plan" defined

For purposes of this subparagraph, the term ''physician incentive plan'' means any compensation arrangement between an entity and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the entity.

(4) Remuneration unrelated to the provision of designated health services

In the case of remuneration which is provided by a hospital to a physician if such remuneration does not relate to the provision of designated health services.

(5) Physician recruitment

In the case of remuneration which is provided by a hospital to a physician to induce the physician to relocate to the geographic area served by the hospital in order to be a member of the medical staff of the hospital, if—

(A) the physician is not required to refer patients to the hospital,

(B) the amount of the remuneration under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician, and

(C) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(6) Isolated transactions

In the case of an isolated financial transaction, such as a one-time sale of property or practice, if—

(A) the requirements described in subparagraphs (B) and (C) of paragraph (2) are met

with respect to the entity in the same manner as they apply to an employer, and

(B) the transaction meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(7) Certain group practice arrangements with a hospital

(A)[1] In general

An arrangement between a hospital and a group under which designated health services are provided by the group but are billed by the hospital if—

(i) with respect to services provided to an inpatient of the hospital, the arrangement is pursuant to the provision of inpatient hospital services under section 1395x(b)(3) of this title.

(ii) the arrangement began before December 19, 1989, and has continued in effect without interruption since such date,

(iii) with respect to the designated health services covered under the arrangement, substantially all of such services furnished to patients of the hospital are furnished by the group under the arrangement,

(iv) the arrangement is pursuant to an agreement that is set out in writing and that specifies the services to be provided by the parties and the compensation for services provided under the agreement,

(v) the compensation paid over the term of the agreement is consistent with fair market value and the compensation per unit of services is fixed in advance and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(vi) the compensation is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the entity, and

(vii) the arrangement between the parties meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(8) Payments by a physician for items and services

Payments made by a physician—

(A) to a laboratory in exchange for the provision of clinical laboratory services, or

(B) to an entity as compensation for other items or services if the items or services are furnished at a price that is consistent with fair market value.

(f) Reporting requirements

Each entity providing covered items or services for which payment may be made under this subchapter shall provide the Secretary with the information concerning the entity's ownership, investment, and compensation arrangements, including—

(1) the covered items and services provided by the entity, and

(2) the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in subsection (a)(2)(A) of this section), or with a compensation arrangement (as described in subsection (a)(2)(B) of this section), in the entity, or whose immediate relatives have such an ownership or investment interest or who have such a compensation relationship with the entity.

Such information shall be provided in such form, manner, and at such times as the Secretary shall specify. The requirement of this subsection shall not apply to designated health services provided outside the United States or to entities which the Secretary determines provides[2] services for which payment may be made under this subchapter very infrequently.

(g) Sanctions

(1) Denial of payment

No payment may be made under this subchapter for a designated health service which is provided in violation of subsection (a)(1) of this section.

(2) Requiring refunds for certain claims

If a person collects any amounts that were billed in violation of subsection (a)(1) of this section, the person shall be liable to the individual for, and shall refund on a timely basis to the individual, any amounts so collected.

(3) Civil money penalty and exclusion for improper claims

Any person that presents or causes to be presented a bill or a claim for a service that such person knows or should know is for a service for which payment may not be made under paragraph (1) or for which a refund has not been made under paragraph (2) shall be subject to a civil money penalty of not more than $15,000 for each such service. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(4) Civil money penalty and exclusion for circumvention schemes

Any physician or other entity that enters into an arrangement or scheme (such as a cross-referral arrangement) which the physician or entity knows or should know has a principal purpose of assuring referrals by the physician to a particular entity which, if the physician directly made referrals to such entity, would be in violation of this section, shall be subject to a civil money penalty of not more than $100,000 for each such arrangement or scheme. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty

[1] So in original. No subpar. (B) has been enacted.

[2] So in original. Probably should be ''provide''.

or proceeding under section 1320a–7a(a) of this title.

(5) Failure to report information

Any person who is required, but fails, to meet a reporting requirement of subsection (f) of this section is subject to a civil money penalty of not more than $10,000 for each day for which reporting is required to have been made. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(h) Definitions and special rules

For purposes of this section:

(1) Compensation arrangement; remuneration

(A) The term ''compensation arrangement'' means any arrangement involving any remuneration between a physician (or an immediate family member of such physician) and an entity other than an arrangement involving only remuneration described in subparagraph (C).

(B) The term ''remuneration'' includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.

(C) Remuneration described in this subparagraph is any remuneration consisting of any of the following:

(i) The forgiveness of amounts owed for inaccurate tests or procedures, mistakenly performed tests or procedures, or the correction of minor billing errors.

(ii) The provision of items, devices, or supplies that are used solely to—

(I) collect, transport, process, or store specimens for the entity providing the item, device, or supply, or

(II) order or communicate the results of tests or procedures for such entity.

(iii) A payment made by an insurer or a self-insured plan to a physician to satisfy a claim, submitted on a fee for service basis, for the furnishing of health services by that physician to an individual who is covered by a policy with the insurer or by the self-insured plan, if—

(I) the health services are not furnished, and the payment is not made, pursuant to a contract or other arrangement between the insurer or the plan and the physician,

(II) the payment is made to the physician on behalf of the covered individual and would otherwise be made directly to such individual,

(III) the amount of the payment is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account directly or indirectly the volume or value of any referrals, and

(IV) the payment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(2) Employee

An individual is considered to be ''employed by'' or an ''employee'' of an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue Code of 1986).

(3) Fair market value

The term ''fair market value'' means the value in arms length transactions, consistent with the general market value, and, with respect to rentals or leases, the value of rental property for general commercial purposes (not taking into account its intended use) and, in the case of a lease of space, not adjusted to reflect the additional value the prospective lessee or lessor would attribute to the proximity or convenience to the lessor where the lessor is a potential source of patient referrals to the lessee.

(4) Group practice

(A) Definition of group practice

The term ''group practice'' means a group of 2 or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association—

(i) in which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment and personnel,

(ii) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed under a billing number assigned to the group and amounts so received are treated as receipts of the group,

(iii) in which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined,

(iv) except as provided in subparagraph (B)(i), in which no physician who is a member of the group directly or indirectly receives compensation based on the volume or value of referrals by the physician,

(v) in which members of the group personally conduct no less than 75 percent of the physician-patient encounters of the group practice, and

(vi) which meets such other standards as the Secretary may impose by regulation.

(B) Special rules

(i) Profits and productivity bonuses

A physician in a group practice may be paid a share of overall profits of the group, or a productivity bonus based on services personally performed or services incident to such personally performed services, so long as the share or bonus is not determined in any manner which is directly related to the volume or value of referrals by such physician.

(ii) Faculty practice plans

In the case of a faculty practice plan associated with a hospital, institution of

higher education, or medical school with an approved medical residency training program in which physician members may provide a variety of different specialty services and provide professional services both within and outside the group, as well as perform other tasks such as research, subparagraph (A) shall be applied only with respect to the services provided within the faculty practice plan.

(5) Referral; referring physician

(A) Physicians' services

Except as provided in subparagraph (C), in the case of an item or service for which payment may be made under part B of this subchapter, the request by a physician for the item or service, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician), constitutes a ''referral'' by a ''referring physician''.

(B) Other items

Except as provided in subparagraph (C), the request or establishment of a plan of care by a physician which includes the provision of the designated health service constitutes a ''referral'' by a ''referring physician''.

(C) Clarification respecting certain services integral to a consultation by certain specialists

A request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, a request by a radiologist for diagnostic radiology services, and a request by a radiation oncologist for radiation therapy, if such services are furnished by (or under the supervision of) such pathologist, radiologist, or radiation oncologist pursuant to a consultation requested by another physician does not constitute a ''referral'' by a ''referring physician''.

(6) Designated health services

The term ''designated health services'' means any of the following items or services:

(A) Clinical laboratory services.

(B) Physical therapy services.

(C) Occupational therapy services.

(D) Radiology services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services.

(E) Radiation therapy services and supplies.

(F) Durable medical equipment and supplies.

(G) Parenteral and enteral nutrients, equipment, and supplies.

(H) Prosthetics, orthotics, and prosthetic devices and supplies.

(I) Home health services.

(J) Outpatient prescription drugs.

(K) Inpatient and outpatient hospital services.

(Aug. 14, 1935, ch. 531, title XVIII, § 1877, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6204(a), 103 Stat. 2236; amended Nov. 5, 1990, Pub. L. 101–508, title IV, § 4207(e)(1)–(3), (k)(2), formerly § 4027(e)(1)–(3), (k)(2), 104 Stat. 1388–121, 1388–122, 1388–124, renumbered Oct. 31, 1994, Pub. L. 103–432, title I, § 160(d)(4), 108 Stat. 4444; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13562(a), 107 Stat. 596; Oct. 31, 1994, Pub. L. 103–432, title I, § 152(a), (b), 108 Stat. 4436.)

REFERENCES IN TEXT

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (b)(3)(C), is section 222(a) of Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a note under section 1395b–1 of this title.

The Internal Revenue Code, referred to in subsecs. (c)(2) and (h)(2), is classified generally to Title 26, Internal Revenue Code.

Part B of this subchapter, referred to in subsec. (h)(5)(A), is classified to section 1395j et seq. of this title.

PRIOR PROVISIONS

A prior section 1395nn, act Aug. 14, 1935, ch. 531, title XVIII, § 1877, as added and amended Oct. 30, 1972, Pub. L. 92–603, title II, §§ 242(b), 278(b)(8), 86 Stat. 1419, 1454; Oct. 25, 1977, Pub. L. 95–142, § 4(a), 91 Stat. 1179; Dec. 5, 1980, Pub. L. 96–499, title IX, § 917, 94 Stat. 2625; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2306(f)(2), 98 Stat. 1073; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9321(a)(1), 100 Stat. 2016; Aug. 18, 1987, Pub. L. 100–93, § 4(c), 101 Stat. 689, enumerated offenses relating to the Medicare program and penalties for such offenses, prior to repeal by Pub. L. 100–93, §§ 4(e), 15(a), Aug. 18, 1987, 101 Stat. 689, 698, effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period.

AMENDMENTS

1994—Subsec. (f). Pub. L. 103–432, § 152(a)(1), (4), (5), in introductory provisions, substituted ''ownership, investment, and compensation arrangements'' for ''ownership arrangements'', and in closing provisions, substituted ''designated health services'' for ''covered items and services'' and struck out ''Such information shall first be provided not later than October 1, 1991.'' after ''shall specify.'' and ''The Secretary may waive the requirements of this subsection (and the requirements of chapter 35 of title 44 with respect to information provided under this subsection) with respect to reporting by entities in a State (except for entities providing designated health services) so long as such reporting occurs in at least 10 States, and the Secretary may waive such requirements with respect to the providers in a State required to report so long as such requirements are not waived with respect to parenteral and enteral suppliers, end stage renal disease facilities, suppliers of ambulance services, hospitals, entities providing physical therapy services, and entities providing diagnostic imaging services of any type.'' at end.

Subsec. (f)(2). Pub. L. 103–432, § 152(a)(2), (3), inserted '', or with a compensation arrangement (as described in subsection (a)(2)(B) of this section),'' after ''investment interest (as described in subsection (a)(2)(A) of this section)'' and ''interest or who have such a compensation relationship with the entity'' before period at end.

Subsec. (h)(6). Pub. L. 103–432, § 152(b), in subpar. (D), substituted ''services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services'' for ''or other diagnostic services'', and in subpars. (E), (F), and (H), inserted ''and supplies'' before period at end.

1993—Subsecs. (a) to (e). Pub. L. 103–66, § 13562(a)(1), amended headings and text of subsecs. (a) to (e) generally, substituting present provisions for provisions which related to: prohibition of certain referrals in subsec. (a), general exceptions to both ownership and compensation arrangement prohibitions in subsec. (b), general exception related only to ownership or investment prohibition for ownership in publicly-traded securities

in subsec. (c), additional exceptions related only to ownership or investment prohibition in subsec. (d), and exceptions relating to other compensation arrangements in subsec. (e).

Subsec. (f). Pub. L. 103–66, §13562(a)(3), substituted ''designated health services'' for ''clinical laboratory services'' in concluding provisions.

Subsec. (g)(1). Pub. L. 103–66, §13562(a)(4), substituted ''designated health service'' for ''clinical laboratory service''.

Subsec. (h). Pub. L. 103–66, §13562(a)(2), amended heading and text of subsec. (h) generally, substituting pars. (1) to (6) for former pars. (1) to (7) which defined ''compensation arrangement'', ''remuneration'', ''employee'', ''fair market value'', ''group practice'', ''investor'', ''interested investor'', ''disinterested investor'', ''referral'', and ''referring physician''.

1990—Subsec. (b)(4), (5). Pub. L. 101–508, §4207(e)(2), formerly §4027(e)(2), as renumbered by Pub. L. 103–432, §160(d)(4), added par. (4) and redesignated former par. (4) as (5).

Subsec. (f). Pub. L. 101–508, §4207(e)(3)(B), (C), formerly §4027(e)(3)(B), (C), as renumbered by Pub. L. 103–432, §160(d)(4), substituted ''October 1, 1991'' for ''1 year after December 19, 1989'' in second sentence and inserted at end ''The requirement of this subsection shall not apply to covered items and services provided outside the United States or to entities which the Secretary determines provides services for which payment may be made under this subchapter very infrequently. The Secretary may waive the requirements of this subsection (and the requirements of chapter 35 of title 44 with respect to information provided under this subsection) with respect to reporting by entities in a State (except for entities providing clinical laboratory services) so long as such reporting occurs in at least 10 States, and the Secretary may waive such requirements with respect to the providers in a State required to report so long as such requirements are not waived with respect to parenteral and enteral suppliers, end stage renal disease facilities, suppliers of ambulance services, hospitals, entities providing physical therapy services, and entities providing diagnostic imaging services of any type.''

Subsec. (f)(2). Pub. L. 101–508, §4207(e)(3)(A), formerly §4027(e)(3)(A), as renumbered by Pub. L. 103–432, §160(d)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''the names and all of the medicare provider numbers of the physicians who are interested investors or who are immediate relatives of interested investors.''

Subsec. (g)(5). Pub. L. 101–508, §4207(k)(2), formerly §4027(k)(2), as renumbered by Pub. L. 103–432, §160(d)(4), inserted at end ''The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Subsec. (h)(6). Pub. L. 101–508, §4207(e)(1)(C), formerly §4027(e)(1)(C), as renumbered by Pub. L. 103–432, §160(d)(4), added par. (6). Former par. (6) redesignated (7).

Pub. L. 101–508, §4207(e)(1)(A), (B), formerly §4027(e)(1)(A), (B), as renumbered by Pub. L. 103–432, §160(d)(4), substituted ''in the case of an item or service for which payment may be made under part B of this subchapter, the request by a physician for the item or service,'' for ''in the case of a clinical laboratory service which under law is required to be provided by (or under the supervision of) a physician, the request by a physician for the service,'' in subpar. (A) and struck out ''in the case of another clinical laboratory service,'' after ''subparagraph (C),'' in subpar. (B).

Subsec. (h)(7). Pub. L. 101–508, §4207(e)(1)(C), formerly §4027(e)(1)(C), as renumbered by Pub. L. 103–432, §160(d)(4), redesignated par. (6) as (7).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 152(d)(1) of Pub. L. 103–432 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to referrals made on or after January 1, 1995.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13562(b) of Pub. L. 103–66, as amended by Pub. L. 103–432, title I, §152(c), Oct. 31, 1994, 108 Stat. 4437, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to referrals—

''(A) made on or after January 1, 1992, in the case of clinical laboratory services, and

''(B) made after December 31, 1994, in the case of other designated health services.

''(2) EXCEPTIONS.—With respect to referrals made for clinical laboratory services on or before December 31, 1994—

''(A) the second sentence of subsection (a)(2), and subsections (b)(2)(B) and (d)(2), of section 1877 of the Social Security Act [subsecs. (a)(2), (b)(2)(B), and (d)(2) of this section] (as in effect on the day before the date of the enactment of this Act [Aug. 10, 1993]) shall apply instead of the corresponding provisions in section 1877 (as amended by this Act);

''(B) section 1877(b)(4) of the Social Security Act [subsec. (b)(4) of this section] (as in effect on the day before the date of the enactment of this Act) shall apply;

''(C) the requirements of section 1877(c)(2) of the Social Security Act [subsec. (c)(2) of this section] (as amended by this Act) shall not apply to any securities of a corporation that meets the requirements of section 1877(c)(2) of the Social Security Act (as in effect on the day before the date of the enactment of this Act);

''(D) section 1877(e)(3) of the Social Security Act [subsec. (e)(3) of this section] (as amended by this Act) shall apply, except that it shall not apply to any arrangement that meets the requirements of subsection (e)(2) or subsection (e)(3) of section 1877 of the Social Security Act (as in effect on the day before the date of the enactment of this Act);

''(E) the requirements of clauses (iv) and (v) of section 1877(h)(4)(A), and of clause (i) of section 1877(h)(4)(B), of the Social Security Act [subsec. (h)(4)(A)(iv), (v), (B)(i) of this section] (as amended by this Act) shall not apply; and

''(F) section 1877(h)(4)(B) of the Social Security Act [subsec. (h)(4)(B) of this section] (as in effect on the day before the date of the enactment of this Act) shall apply instead of section 1877(h)(4)(A)(ii) of such Act (as amended by this Act).''

[Section 152(d)(2) of Pub. L. 103–432 provided that: ''The amendment made by subsection (c) [amending section 13562(b) of Pub. L. 103–66, set out above] shall apply as if included in the enactment of OBRA–1993 [Pub. L. 103–66].'']

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4207(e)(5), formerly 4027(e)(5), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, §160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by this subsection [amending this section and provisions set out below] shall be effective as if included in the enactment of section 6204 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

EFFECTIVE DATE

Section 6204(c) of Pub. L. 101–239 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 1395*l* of this title] shall become effective with respect to referrals made on or after January 1, 1992.

''(2) The reporting requirement of section 1877(f) of the Social Security Act [subsec. (f) of this section] shall take effect on October 1, 1990.''

DEADLINE FOR CERTAIN REGULATIONS

Section 6204(d) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, §4207(e)(4)(B), formerly

§ 4027(e)(4)(B), Nov. 5, 1990, 104 Stat. 1388–122, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The Secretary of Health and Human Services shall publish final regulations to carry out section 1877 of the Social Security Act [this section] by not later than October 1, 1991.''

GAO STUDY OF OWNERSHIP BY REFERRING PHYSICIANS

Section 6204(e) of Pub. L. 101–239 directed Comptroller General to conduct a study of ownership of hospitals and other providers of medicare services by referring physicians and, by not later than Feb. 1, 1991, report to Congress on results of such study.

STATISTICAL SUMMARY OF COMPARATIVE UTILIZATION

Section 6204(f) of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4207(e)(4)(A), formerly § 4027(e)(4)(A), Nov. 5, 1990, 104 Stat. 1388–122, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, directed Secretary of Health and Human Services, not later than June 30, 1992, to submit to Congress a statistical profile comparing utilization of items and services by medicare beneficiaries served by entities in which the referring physician has a direct or indirect financial interest and by medicare beneficiaries served by other entities, for the States and entities specified in subsec. (f) of this section (other than entities providing clinical laboratory services).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396b of this title.

§ 1395*oo*. Provider Reimbursement Review Board

(a) Establishment

Any provider of services which has filed a required cost report within the time specified in regulations may obtain a hearing with respect to such cost report by a Provider Reimbursement Review Board (hereinafter referred to as the ''Board'') which shall be established by the Secretary in accordance with subsection (h) of this section and (except as provided in subsection (g)(2) of this section) any hospital which receives payments in amounts computed under subsection (b) or (d) of section 1395ww of this title and which has submitted such reports within such time as the Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by the Board, if—

(1) such provider—

(A)(i) is dissatisfied with a final determination of the organization serving as its fiscal intermediary pursuant to section 1395h of this title as to the amount of total program reimbursement due the provider for the items and services furnished to individuals for which payment may be made under this subchapter for the period covered by such report, or

(ii) is dissatisfied with a final determination of the Secretary as to the amount of the payment under subsection (b) or (d) of section 1395ww of this title,

(B) has not received such final determination from such intermediary on a timely basis after filing such report, where such report complied with the rules and regulations of the Secretary relating to such report, or

(C) has not received such final determination on a timely basis after filing a supplementary cost report, where such cost report did not so comply and such supplementary cost report did so comply,

(2) the amount in controversy is $10,000 or more, and

(3) such provider files a request for a hearing within 180 days after notice of the intermediary's final determination under paragraph (1)(A)(i), or with respect to appeals under paragraph (1)(A)(ii), 180 days after notice of the Secretary's final determination, or with respect to appeals pursuant to paragraph (1) (B) or (C), within 180 days after notice of such determination would have been received if such determination had been made on a timely basis.

(b) Appeals by groups

The provisions of subsection (a) of this section shall apply to any group of providers of services if each provider of services in such group would, upon the filing of an appeal (but without regard to the $10,000 limitation), be entitled to such a hearing, but only if the matters in controversy involve a common question of fact or interpretation of law or regulations and the amount in controversy is, in the aggregate, $50,000 or more.

(c) Right to counsel; rules of evidence

At such hearing, the provider of services shall have the right to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. Evidence may be received at any such hearing even though inadmissible under rules of evidence applicable to court procedure.

(d) Decisions of Board

A decision by the Board shall be based upon the record made at such hearing, which shall include the evidence considered by the intermediary and such other evidence as may be obtained or received by the Board, and shall be supported by substantial evidence when the record is viewed as a whole. The Board shall have the power to affirm, modify, or reverse a final determination of the fiscal intermediary with respect to a cost report and to make any other revisions on matters covered by such cost report (including revisions adverse to the provider of services) even though such matters were not considered by the intermediary in making such final determination.

(e) Rules and regulations

The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this subchapter or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this section. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d) and (e) of section 405 of this title with respect to subpenas shall apply to the Board to the same extent as they apply to the Secretary with respect to subchapter II of this chapter.

(f) Finality of decision; judicial review; determinations of Board authority; jurisdiction; venue; interest on amount in controversy

(1) A decision of the Board shall be final unless the Secretary, on his own motion, and within 60

days after the provider of services is notified of the Board's decision, reverses, affirms, or modifies the Board's decision. Providers shall have the right to obtain judicial review of any final decision of the Board, or of any reversal, affirmance, or modification by the Secretary, by a civil action commenced within 60 days of the date on which notice of any final decision by the Board or of any reversal, affirmance, or modification by the Secretary is received. Providers shall also have the right to obtain judicial review of any action of the fiscal intermediary which involves a question of law or regulations relevant to the matters in controversy whenever the Board determines (on its own motion or at the request of a provider of services as described in the following sentence) that it is without authority to decide the question, by a civil action commenced within sixty days of the date on which notification of such determination is received. If a provider of services may obtain a hearing under subsection (a) of this section and has filed a request for such a hearing, such provider may file a request for a determination by the Board of its authority to decide the question of law or regulations relevant to the matters in controversy (accompanied by such documents and materials as the Board shall require for purposes of rendering such determination). The Board shall render such determination in writing within thirty days after the Board receives the request and such accompanying documents and materials, and the determination shall be considered a final decision and not subject to review by the Secretary. If the Board fails to render such determination within such period, the provider may bring a civil action (within sixty days of the end of such period) with respect to the matter in controversy contained in such request for a hearing. Such action shall be brought in the district court of the United States for the judicial district in which the provider is located (or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located) or in the District Court for the District of Columbia and shall be tried pursuant to the applicable provisions under chapter 7 of title 5 notwithstanding any other provisions in section 405 of this title. Any appeal to the Board or action for judicial review by providers which are under common ownership or control or which have obtained a hearing under subsection (b) of this section must be brought by such providers as a group with respect to any matter involving an issue common to such providers.

(2) Where a provider seeks judicial review pursuant to paragraph (1), the amount in controversy shall be subject to annual interest beginning on the first day of the first month beginning after the 180-day period as determined pursuant to subsection (a)(3) of this section and equal to the rate of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund for the month in which the civil action authorized under paragraph (1) is commenced, to be awarded by the reviewing court in favor of the prevailing party.

(3) No interest awarded pursuant to paragraph (2) shall be deemed income or cost for the purposes of determining reimbursement due providers under this chapter.

(g) Certain findings not reviewable

(1) The finding of a fiscal intermediary that no payment may be made under this subchapter for any expenses incurred for items or services furnished to an individual because such items or services are listed in section 1395y of this title shall not be reviewed by the Board, or by any court pursuant to an action brought under subsection (f) of this section.

(2) The determinations and other decisions described in section 1395ww(d)(7) of this title shall not be reviewed by the Board or by any court pursuant to an action brought under subsection (f) of this section or otherwise.

(h) Composition and compensation

The Board shall be composed of five members appointed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive services. Two of such members shall be representative of providers of services. All of the members of the Board shall be persons knowledgeable in the field of payment of providers of services, and at least one of them shall be a certified public accountant. Members of the Board shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the rate specified (at the time the service involved is rendered by such members) for grade GS–18 in section 5332 of title 5. The term of office shall be three years, except that the Secretary shall appoint the initial members of the Board for shorter terms to the extent necessary to permit staggered terms of office.

(i) Technical and clerical assistance

The Board is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Board such secretarial, clerical, and other assistance as the Board may require to carry out its functions.

(j) "Provider of services" defined

In this section, the term ''provider of services'' includes a rural health clinic and a Federally qualified health center.

(Aug. 14, 1935, ch. 531, title XVIII, § 1878, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 243(a), 86 Stat. 1420; amended Oct. 26, 1974, Pub. L. 93–484, § 3(a), 88 Stat. 1459; Dec. 5, 1980, Pub. L. 96–499, title IX, § 955, 94 Stat. 2647; Apr. 20, 1983, Pub. L. 98–21, title VI, § 602(h), 97 Stat. 165; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2351(a)(1), (b)(1), 2354(b)(39), (40), 98 Stat. 1098, 1099, 1102; Nov. 5, 1990, Pub. L. 101–508, title IV, § 4161(a)(6), (b)(4), 104 Stat. 1388–94, 1388–95; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13503(c)(1)(B), 107 Stat. 579.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (h), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

AMENDMENTS

1993—Subsec. (f)(2). Pub. L. 103–66 substituted ''the rate of interest on obligations issued for purchase by the Federal Hospital Insurance Trust Fund for the month in which'' for ''the rate of return on equity capital established by regulation pursuant to section 1395x(v)(1)(B) of this title and in effect at the time''.

1990—Subsec. (j). Pub. L. 101–508, § 4161(b)(4), inserted ''a rural health clinic and'' after ''includes''.

Pub. L. 101–508, § 4161(a)(6), added subsec. (j).

1984—Subsec. (c). Pub. L. 98–369, § 2354(b)(39), substituted ''inadmissible'' for ''inadmissable''.

Subsec. (e). Pub. L. 98–369, § 2354(b)(40), substituted ''and (e)'' for '', (e), and (f)''.

Subsec. (f)(1). Pub. L. 98–369, § 2351(a)(1), substituted ''notification of such determination is received'' for ''such determination is rendered'' in third sentence.

Pub. L. 98–369, § 2351(b)(1), inserted ''or which have obtained a hearing under subsection (b) of this section'' after ''common ownership or control'' in last sentence.

1983—Subsec. (a). Pub. L. 98–21, § 602(h)(1)(A), inserted provision in introductory text that, except as provided in subsec. (g)(2) of this section, any hospital which receives payments in amounts computed under section 1395ww(b) or (d) of this title and which has submitted such reports within such time as Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by Board.

Subsec. (a)(1)(A). Pub. L. 98–21, § 602(h)(1)(B), (C), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(3). Pub. L. 98–21, § 602(h)(1)(D), substituted ''(1)(A)(i), or with respect to appeals under paragraph (1)(A)(ii), 180 days after notice of the Secretary's final determination,'' for ''(1)(A)''.

Subsec. (f)(1). Pub. L. 98–21, § 602(h)(2), inserted ''(or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located)'' after ''the judicial district in which the provider is located'', and ''Any appeal to the Board or action for judicial review by providers which are under common ownership or control must be brought by such providers as a group with respect to any matter involving an issue common to such providers.''

Subsec. (g). Pub. L. 98–21, § 602(h)(3), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 98–21, § 602(h)(4), substituted ''payment of providers of services'' for ''cost reimbursement''.

1980—Subsec. (f)(1). Pub. L. 96–499 inserted provision empowering providers of services to obtain judicial review of any action of a fiscal intermediary involving a question of law or regulations relevant to matters in controversy whenever Board determined that it was without authority to decide such matters in controversy.

1974—Subsec. (f). Pub. L. 93–484 redesignated existing provisions as par. (1), inserted provisions authorizing judicial review for providers of final decisions of Board and judicial review of any affirmance by Secretary, and added pars. (2) and (3).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 effective Oct. 1, 1993, see section 13503(c)(2) of Pub. L. 103–66, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4161(a)(6) of Pub. L. 101–508 applicable to cost reports for periods beginning on or after Oct. 1, 1991, see section 4161(a)(8)(C) of Pub. L. 101–508, set out as a note under section 1395k of this title.

Amendment by section 4161(b)(4) of Pub. L. 101–508 applicable to cost reports for periods beginning on or after Oct. 1, 1991, see section 4161(b)(5) of Pub. L. 101–508, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2351(a)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to any civil action commenced on or after the date of the enactment of this Act [July 18, 1984].''

Section 2351(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to any appeal or action brought on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(39), (40) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title. See, also, section 2351(c) of Pub. L. 98–369, set out as a note below.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 3(b) of Pub. L. 93–484 provided that: ''The amendment made by subsection (a) [amending this section] shall be applicable to cost reports of providers of services for accounting periods ending on or after June 30, 1973.''

EFFECTIVE DATE

Section 243(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [enacting this section and amending section 1395h of this title] shall apply with respect to cost reports of providers of services, as defined in title XVIII of the Social Security Act [this subchapter], for accounting periods ending on or after June 30, 1973.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

REVIEW OF PROVIDER REIMBURSEMENT REVIEW BOARD DECISIONS

Section 2351(c) of Pub. L. 98–369 provided that: ''Notwithstanding section 604 of the Social Security Amendments of 1983 (Public Law 98–21) [set out as an Effective Date of 1983 Amendments note under section 1395ww of this title]—

''(1) the amendments made by section 602(h)(2)(A) of that Act [amending this section] shall be effective with respect to any appeal or action brought on or after April 20, 1983; and

''(2) the amendments made by section 602(h)(2)(B) of that Act [amending this section] shall be effective with respect to any appeal or action brought on or after the date of the enactment of this Act [July 18, 1984].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395h, 1395rr, 1395ww of this title.

§ 1395pp. Limitation on liability where claims are disallowed

(a) Conditions prerequisite to payment for items and services notwithstanding determination of disallowance

Where—

(1) a determination is made that, by reason of section 1395y(a)(1) or (9) of this title or by

reason of a coverage denial described in subsection (g) of this section, payment may not be made under part A or part B of this subchapter for any expenses incurred for items or services furnished an individual by a provider of services or by another person pursuant to an assignment under section 1395u(b)(3)(B)(ii) of this title, and

(2) both such individual and such provider of services or such other person, as the case may be, did not know, and could not reasonably have been expected to know, that payment would not be made for such items or services under such part A or part B of this subchapter,

then to the extent permitted by this subchapter, payment shall, notwithstanding such determination, be made for such items or services (and for such period of time as the Secretary finds will carry out the objectives of this subchapter), as though section 1395y(a)(1) and section 1395y(a)(9) of this title did not apply and as though the coverage denial described in subsection (g) of this section had not occurred. In each such case the Secretary shall notify both such individual and such provider of services or such other person, as the case may be, of the conditions under which payment for such items or services was made and in the case of comparable situations arising thereafter with respect to such individual or such provider or such other person, each shall, by reason of such notice (or similar notices provided before the enactment of this section), be deemed to have knowledge that payment cannot be made for such items or services or reasonably comparable items or services. Any provider or other person furnishing items or services for which payment may not be made by reason of section 1395y(a)(1) or (9) of this title or by reason of a coverage denial described in subsection (g) of this section shall be deemed to have knowledge that payment cannot be made for such items or services if the claim relating to such items or services involves a case, provider or other person furnishing services, procedure, or test, with respect to which such provider or other person has been notified by the Secretary (including notification by a utilization and quality control peer review organization) that a pattern of inappropriate utilization has occurred in the past, and such provider or other person has been allowed a reasonable time to correct such inappropriate utilization.

(b) Knowledge of person or provider that payment could not be made; indemnification of individual

In any case in which the provisions of paragraphs (1) and (2) of subsection (a) of this section are met, except that such provider or such other person, as the case may be, knew, or could be expected to know, that payment for such services or items could not be made under such part A or part B of this subchapter, then the Secretary shall, upon proper application filed within such time as may be prescribed in regulations, indemnify the individual (referred to in such paragraphs) for any payments received from such individual by such provider or such other person, as the case may be, for such items or services. Any payments made by the Secretary as indemnification shall be deemed to have been made to such provider or such other person, as the case may be, and shall be treated as overpayments, recoverable from such provider or such other person, as the case may be, under applicable provisions of law. In each such case the Secretary shall notify such individual of the conditions under which indemnification is made and in the case of comparable situations arising thereafter with respect to such individual, he shall, by reason of such notice (or similar notices provided before the enactment of this section), be deemed to have knowledge that payment cannot be made for such items or services. No item or service for which an individual is indemnified under this subsection shall be taken into account in applying any limitation on the amount of items and services for which payment may be made to or on behalf of the individual under this subchapter.

(c) Knowledge of both provider and individual to whom items or services were furnished that payment could not be made

No payments shall be made under this subchapter in any cases in which the provisions of paragraph (1) of subsection (a) of this section are met, but both the individual to whom the items or services were furnished and the provider of service or other person, as the case may be, who furnished the items or services knew, or could reasonably have been expected to know, that payment could not be made for items or services under part A or part B of this subchapter by reason of section 1395y(a)(1) or (a)(9) of this title or by reason of a coverage denial described in subsection (g) of this section.

(d) Exercise of rights

In any case arising under subsection (b) of this section (but without regard to whether payments have been made by the individual to the provider or other person) or subsection (c) of this section, the provider or other person shall have the same rights that an individual has under sections 1395ff(b) and 1395u(b)(3)(C) of this title (as may be applicable) when the amount of benefit or payments is in controversy, except that such rights may, under prescribed regulations, be exercised by such provider or other person only after the Secretary determines that the individual will not exercise such rights under such sections.

(e) Payment where beneficiary not at fault

Where payment for inpatient hospital services or extended care services may not be made under part A of this subchapter on behalf of an individual entitled to benefits under such part solely because of an unintentional, inadvertent, or erroneous action with respect to the transfer of such individual from a hospital or skilled nursing facility that meets the requirements of section 1395x(e) or (j) of this title by such a provider of services acting in good faith in accordance with the advice of a utilization review committee, quality control and peer review organization, or fiscal intermediary, or on the basis of a clearly erroneous administrative decision by a provider of services, the Secretary shall take such action with respect to the payment of such benefits as he determines may be necessary to correct the effects of such unintentional, inadvertent, or erroneous action.

(f) Presumption with respect to coverage denial; rebuttal; requirements; "fiscal intermediary" defined

(1) A home health agency which meets the applicable requirements of paragraphs (3) and (4) shall be presumed to meet the requirement of subsection (a)(2) of this section.

(2) The presumption of paragraph (1) with respect to specific services may be rebutted by actual or imputed knowledge of the facts described in subsection (a)(2) of this section, including any of the following:

(A) Notice by the fiscal intermediary of the fact that payment may not be made under this subchapter with respect to the services.

(B) It is clear and obvious that the provider should have known at the time the services were furnished that they were excluded from coverage.

(3) The requirements of this paragraph are as follows:

(A) The agency complies with requirements of the Secretary under this subchapter respecting timely submittal of bills for payment and medical documentation.

(B) The agency program has reasonable procedures to notify promptly each patient (and the patient's physician) where it is determined that a patient is being or will be furnished items or services which are excluded from coverage under this subchapter.

(4)(A) The requirement of this paragraph is that, on the basis of bills submitted by a home health agency during the previous quarter, the rate of denial of bills for the agency by reason of a coverage denial described in subsection (g) of this section does not exceed 2.5 percent, computed based on visits for home health services billed.

(B) For purposes of determining the rate of denial of bills for a home health agency under subparagraph (A), a bill shall not be considered to be denied until the expiration of the 60-day period that begins on the date such bill is denied by the fiscal intermediary, or, with respect to such a denial for which the agency requests reconsideration, until the fiscal intermediary issues a decision denying payment for such bill.

(5) In this subsection, the term ''fiscal intermediary'' means, with respect to a home health agency, an agency or organization with an agreement under section 1395h of this title with respect to the agency.

(6) The Secretary shall monitor the proportion of denied bills submitted by home health agencies for which reconsideration is requested, and shall notify Congress if the proportion of denials reversed upon reconsideration increases significantly.

(g) Coverage denial defined

The coverage denial described in this subsection is, with respect to the provision of home health services to an individual, a failure to meet the requirements of section 1395f(a)(2)(C) of this title or section 1395n(a)(2)(A) of this title in that the individual—

(1) is or was not confined to his home, or

(2) does or did not need skilled nursing care on an intermittent basis.

(h) Supplier responsibility for items furnished on assignment basis

If a supplier of medical equipment and supplies (as defined in section 1395m(j)(5) of this title)—

(1) furnishes an item or service to a beneficiary for which no payment may be made by reason of section 1395m(j)(1) of this title;

(2) furnishes an item or service to a beneficiary for which payment is denied in advance under section 1395m(a)(15) of this title; or

(3) furnishes an item or service to a beneficiary for which no payment may be made by reason of section 1395m(a)(17)(B) of this title,

any expenses incurred for items and services furnished to an individual by such a supplier on an assignment-related basis shall be the responsibility of such supplier. The individual shall have no financial responsibility for such expenses and the supplier shall refund on a timely basis to the individual (and shall be liable to the individual for) any amounts collected from the individual for such items or services. The provisions of section 1395m(a)(18) of this title shall apply to refunds required under the previous sentence in the same manner as such provisions apply to refunds under such section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1879, as added Oct. 30, 1972, Pub. L. 92–603, title II, § 213(a), 86 Stat. 1384; amended Dec. 5, 1980, Pub. L. 96–499, title IX, § 956(a), 94 Stat. 2648; Sept. 3, 1982, Pub. L. 97–248, title I, §§ 145, 148(e), 96 Stat. 393, 394; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9305(g)(1), 9341(a)(3), 100 Stat. 1991, 2038; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4096(b), 101 Stat. 1330–139; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6214(a), (b), 103 Stat. 2252; Oct. 31, 1994, Pub. L. 103–432, title I, § 133(b), 108 Stat. 4421.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

AMENDMENTS

1994—Subsec. (h). Pub. L. 103–432 added subsec. (h).

1989—Subsec. (f)(1). Pub. L. 101–239, § 6214(a)(1), struck out ''with respect to any coverage denial described in subsection (g) of this section'' before period at end.

Subsec. (f)(4). Pub. L. 101–239, § 6214(a)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(6). Pub. L. 101–239, § 6214(b), added par. (6).

1987—Subsec. (b). Pub. L. 100–203 struck out '', subject to the deductible and coinsurance provisions of this subchapter,'' after ''(referred to in such paragraphs)'' and inserted at end ''No item or service for which an individual is indemnified under this subsection shall be taken into account in applying any limitation on the amount of items and services for which payment may be made to or on behalf of the individual under this subchapter.''

1986—Subsec. (a). Pub. L. 99–509, § 9305(g)(1)(A)– (C), (3), temporarily inserted in par. (1) ''or by reason of a coverage denial described in subsection (g) of this section'', and in concluding provisions inserted ''and as though the coverage denial described in subsection (g) of this section had not occurred'' and ''or by reason of a coverage denial described in subsection (g) of this section''. See Effective and Termination Dates of 1986 Amendment note below.

Subsec. (c). Pub. L. 99–509, § 9305(g)(1)(D), (3), temporarily inserted ''or by reason of a coverage denial described in subsection (g) of this section''. See Effective and Termination Dates of 1986 Amendment note below.

Subsec. (d). Pub. L. 99–509, § 9341(a)(3), substituted ''sections 1395ff(b) and 1395u(b)(3)(C) of this title (as may be applicable)'' for ''section 1395ff(b) of this title (when the determination is under part A) or section 1395u(b)(3)(C) of this title (when the determination is under part B)''.

Subsecs. (f), (g). Pub. L. 99–509, § 9305(g)(1)(E), (3), temporarily added subsecs. (f) and (g). See Effective and Termination Dates of 1986 Amendment note below.

1982—Subsec. (a). Pub. L. 97–248, § 145, inserted provisions relating to imputing knowledge to provider or other person furnishing items or services for which payment may not be made that payment may not be made if the provider or other person has been notified that a pattern of inappropriate utilization has occurred in the past and there has been a reasonable time for correction of such utilization.

Subsec. (e). Pub. L. 97–248, § 148(e), substituted ''quality control and peer review organization'' for ''professional standards review organization''.

1980—Subsec. (e). Pub. L. 96–499 added subsec. (e).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–432 applicable to items or services furnished on or after Jan. 1, 1995, see section 133(c) of Pub. L. 103–432, set out as a note under section 1395m of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6214(c) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to determinations for quarters beginning on or after the date of the enactment of this Act [Dec. 19, 1989].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to services furnished on or after Jan. 1, 1988, see section 4096(d) of Pub. L. 100–203, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9305(g)(3) of Pub. L. 99–509, as amended by Pub. L. 100–360, title IV, § 426(c), July 1, 1988, 102 Stat. 814; Pub. L. 101–508, title IV, § 4207(b)(3), formerly § 4027(b)(3), Nov. 5, 1990, 104 Stat. 1388–118, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to coverage denials occurring on or after July 1, 1987, and before December 31, 1995.''

Amendment by section 9341(a)(3) of Pub. L. 99–509 applicable to items and services furnished on or after Jan. 1, 1987, see section 9341(b) of Pub. L. 99–509, set out as a note under section 1395ff of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 956(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on January 1, 1981.''

EFFECTIVE DATE

Section 213(b) of Pub. L. 92–603 provided that: ''The amendments made by this section [enacting this section] shall be effective with respect to claims under part A or part B of title XVIII of the Social Security Act [part A or part B of this subchapter], filed with respect to items or services furnished after the date of the enactment of this Act [Oct. 30, 1972].''

REPORTS TO CONGRESS ON DENIALS OF BILLS FOR PAYMENT

Section 9305(g)(2) of Pub. L. 99–509 directed Secretary of Health and Human Services to report to Congress annually in March of 1987 and 1988 information on frequency and distribution (by type of provider) of denials of bills for payment under this subchapter for extended care services, home health services, and hospice care, by reason of section 1395y(a)(1) or (9) of this title, and coverage denials described in subsec. (g) of this section, and such other information as appropriate to evaluate the appropriateness of any percentage standards established for the granting of favorable presumptions with respect to such denials.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c–3, 1395h, 1395ff of this title.

§ 1395qq. Indian health service facilities

(a) Eligibility for payments; conditions and requirements

A hospital or skilled nursing facility of the Indian Health Service, whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 1603 of title 25), shall be eligible for payments under this subchapter, notwithstanding sections 1395f(c) and 1395n(d) of this title, if and for so long as it meets all of the conditions and requirements for such payments which are applicable generally to hospitals or skilled nursing facilities (as the case may be) under this subchapter.

(b) Eligibility based on submission of plan to achieve compliance with conditions and requirements; twelve-month period

Notwithstanding subsection (a) of this section, a hospital or skilled nursing facility of the Indian Health Service which does not meet all of the conditions and requirements of this subchapter which are applicable generally to hospitals or skilled nursing facilities (as the case may be), but which submits to the Secretary within six months after September 30, 1976, an acceptable plan for achieving compliance with such conditions and requirements, shall be deemed to meet such conditions and requirements (and to be eligible for payments under this subchapter), without regard to the extent of its actual compliance with such conditions and requirements, during the first 12 months after the month in which such plan is submitted.

(c) Payments into special fund for improvements to achieve compliance with conditions and requirements; certification of compliance by Secretary

Notwithstanding any other provision of this subchapter, payments to which any hospital or skilled nursing facility of the Indian Health Service is entitled by reason of this section shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the hospitals and skilled nursing facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of this subchapter. The preceding sentence shall cease to apply when the Secretary determines and certifies that substantially all of the hospitals and skilled nursing facilities of such Service in the United States are in compliance with such conditions and requirements.

(d) Report by Secretary; status of facilities in complying with conditions and requirements

The annual report of the Secretary which is required by section 1671 of title 25 shall include (along with the matters specified in section 1643 of title 25) a detailed statement of the status of the hospitals and skilled nursing facilities of the Service in terms of their compliance with the applicable conditions and requirements of this subchapter and of the progress being made by such hospitals and facilities (under plans submitted under subsection (b) of this section and otherwise) toward the achievement of such compliance.

(Aug. 14, 1935, ch. 531, title XVIII, § 1880, as added Sept. 30, 1976, Pub. L. 94–437, title IV, § 401(b), 90 Stat. 1408; amended Oct. 29, 1992, Pub. L. 102–573, title VII, § 701(d), 106 Stat. 4572.)

AMENDMENTS

1992—Subsec. (d). Pub. L. 102–573 made technical amendment to the reference to section 1671 of title 25 to reflect renumbering of corresponding section of original act.

DEMONSTRATION PROGRAM FOR DIRECT BILLING OF MEDICARE, MEDICAID, AND OTHER THIRD PARTY PAYORS

Pub. L. 94–437, title IV, § 405, as added by Pub. L. 100–713, title IV, § 402, Nov. 23, 1988, 102 Stat. 4818, formerly set out as a note under this section, was transferred and is set out as section 1645 of Title 25, Indians.

MEDICARE PAYMENTS NOT CONSIDERED IN DETERMINING APPROPRIATIONS FOR INDIAN HEALTH CARE

Section 401(c) of Pub. L. 94–437 provided that any payments received for services provided to beneficiaries under this section were not to be considered in determining appropriations for health care and services to Indians, prior to the general amendment of section 401 of Pub. L. 94–437 by Pub. L. 102–573, title IV, § 401(a), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 401(a) of Pub. L. 94–437, which is classified to section 1641(a) of Title 25, Indians.

PREFERENCE IN SERVICES FOR INDIANS WITH MEDICARE COVERAGE NOT AUTHORIZED

Section 401(d) of Pub. L. 94–437, which provided that nothing in this section authorized the Secretary to provide services to an Indian beneficiary with coverage under this subchapter, in preference to an Indian beneficiary without such coverage, was omitted in the general amendment of section 401 of Pub. L. 94–437 by Pub. L. 102–573, title IV, § 401(a), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 401(b) of Pub. L. 94–437, which is classified to section 1641(b) of Title 25, Indians.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395f, 1395n of this title; title 25 sections 1645, 1680c.

§ 1395rr. End stage renal disease program

(a) Type, duration, and scope of benefits

The benefits provided by parts A and B of this subchapter shall include benefits for individuals who have been determined to have end stage renal disease as provided in section 426–1 of this title, and benefits for kidney donors as provided in subsection (d) of this section. Notwithstanding any other provision of this subchapter, the type, duration, and scope of the benefit provided by parts A and B of this subchapter with respect to individuals who have been determined to have end stage renal disease and who are entitled to such benefits without regard to section 426–1 of this title shall in no case be less than the type, duration, and scope of the benefits so provided for individuals entitled to such benefits solely by reason of that section.

(b) Payments with respect to services; dialysis; regulations; physicians' services; target reimbursement rates; home dialysis supplies and equipment; self-care home dialysis support services; self-care dialysis units; hepatitis B vaccine

(1) Payments under this subchapter with respect to services, in addition to services for which payment would otherwise be made under this subchapter, furnished to individuals who have been determined to have end stage renal disease shall include (A) payments on behalf of such individuals to providers of services and renal dialysis facilities which meet such requirements as the Secretary shall by regulation prescribe for institutional dialysis services and supplies (including self-dialysis services in a self-care dialysis unit maintained by the provider or facility), transplantation services, self-care home dialysis support services which are furnished by the provider or facility, and routine professional services performed by a physician during a maintenance dialysis episode if payments for his other professional services furnished to an individual who has end stage renal disease are made on the basis specified in paragraph (3)(A) of this subsection, (B) payments to or on behalf of such individuals for home dialysis supplies and equipment, and (C) payments to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for self-administered erythropoietin as described in section 1395x(s)(2)(P)[1] of this title if the Secretary finds that the patient receiving such drug from such a supplier can safely and effectively administer the drug (in accordance with the applicable methods and standards established by the Secretary pursuant to such section). The requirements prescribed by the Secretary under subparagraph (A) shall include requirements for a minimum utilization rate for transplantations.

(2)(A) With respect to payments for dialysis services furnished by providers of services and renal dialysis facilities to individuals determined to have end stage renal disease for which payments may be made under part B of this subchapter, such payments (unless otherwise provided in this section) shall be equal to 80 percent of the amounts determined in accordance with subparagraph (B); and with respect to payments for services for which payments may be made under part A of this subchapter, the amounts of such payments (which amounts shall not exceed, in respect to costs in procuring organs attributable to payments made to an organ procurement agency or histocompatibility laboratory, the costs incurred by that agency or laboratory) shall be determined in accordance with section 1395x(v) of this title or section 1395ww of this title (if applicable). Payments shall be made to

[1] See References in Text note below.

a renal dialysis facility only if it agrees to accept such payments as payment in full for covered services, except for payment by the individual of 20 percent of the estimated amounts for such services calculated on the basis established by the Secretary under subparagraph (B) and the deductible amount imposed by section 1395*l*(b) of this title.

(B) The Secretary shall prescribe in regulations any methods and procedures to (i) determine the costs incurred by providers of services and renal dialysis facilities in furnishing covered services to individuals determined to have end stage renal disease, and (ii) determine, on a cost-related basis or other economical and equitable basis (including any basis authorized under section 1395x(v) of this title) and consistent with any regulations promulgated under paragraph (7), the amounts of payments to be made for part B services furnished by such providers and facilities to such individuals.

(C) Such regulations, in the case of services furnished by proprietary providers and facilities (other than hospital outpatient departments) may include, if the Secretary finds it feasible and appropriate, provision for recognition of a reasonable rate of return on equity capital, providing such rate of return does not exceed the rate of return stipulated in section 1395x(v)(1)(B) of this title.

(D) For purposes of section 1395*oo* of this title, a renal dialysis facility shall be treated as a provider of services.

(3) With respect to payments for physicians' services furnished to individuals determined to have end stage renal disease, the Secretary shall pay 80 percent of the amounts calculated for such services—

(A) on a reasonable charge basis (but may, in such case, make payment on the basis of the prevailing charges of other physicians for comparable services or, for services furnished on or after January 1, 1992, on the basis described in section 1395w–4 of this title) except that payment may not be made under this subparagraph for routine services furnished during a maintenance dialysis episode, or

(B) on a comprehensive monthly fee or other basis (which effectively encourages the efficient delivery of dialysis services and provides incentives for the increased use of home dialysis) for an aggregate of services provided over a period of time (as defined in regulations).

(4)(A) Pursuant to agreements with approved providers of services and renal dialysis facilities, the Secretary may make payments to such providers and facilities for the cost of home dialysis supplies and equipment and self-care home dialysis support services furnished to patients whose self-care home dialysis is under the direct supervision of such provider or facility, on the basis of a target reimbursement rate (as defined in paragraph (6)) or on the basis of a method established under paragraph (7).

(B) The Secretary shall make payments to a supplier of home dialysis supplies and equipment furnished to a patient whose self-care home dialysis is not under the direct supervision of an approved provider of services or renal dialysis facility only in accordance with a written agreement under which—

(i) the patient certifies that the supplier is the sole provider of such supplies and equipment to the patient,

(ii) the supplier agrees to receive payment for the cost of such supplies and equipment only on an assignment-related basis, and

(iii) the supplier certifies that it has entered into a written agreement with an approved provider of services or renal dialysis facility under which such provider or facility agrees to furnish to such patient all self-care home dialysis support services and all other necessary dialysis services and supplies, including institutional dialysis services and supplies and emergency services.

(5) An agreement under paragraph (4) shall require, in accordance with regulations prescribed by the Secretary, that the provider or facility will—

(A) assume full responsibility for directly obtaining or arranging for the provision of—

(i) such medically necessary dialysis equipment as is prescribed by the attending physician;

(ii) dialysis equipment maintenance and repair services;

(iii) the purchase and delivery of all necessary medical supplies; and

(iv) where necessary, the services of trained home dialysis aides;

(B) perform all such administrative functions and maintain such information and records as the Secretary may require to verify the transactions and arrangements described in subparagraph (A);

(C) submit such cost reports, data, and information as the Secretary may require with respect to the costs incurred for equipment, supplies, and services furnished to the facility's home dialysis patient population; and

(D) provide for full access for the Secretary to all such records, data, and information as he may require to perform his functions under this section.

(6) The Secretary shall establish, for each calendar year, commencing with January 1, 1979, a target reimbursement rate for home dialysis which shall be adjusted for regional variations in the cost of providing home dialysis. In establishing such a rate, the Secretary shall include—

(A) the Secretary's estimate of the cost of providing medically necessary home dialysis supplies and equipment;

(B) an allowance, in an amount determined by the Secretary, to cover the cost of providing personnel to aid in home dialysis; and

(C) an allowance, in an amount determined by the Secretary, to cover administrative costs and to provide an incentive for the efficient delivery of home dialysis;

but in no event (except as may be provided in regulations under paragraph (7)) shall such target rate exceed 75 percent of the national average payment, adjusted for regional variations, for maintenance dialysis services furnished in approved providers and facilities during the preceding fiscal year. Any such target rate so established shall be utilized, without renegotiation of the rate, throughout the calendar year

for which it is established. During the last quarter of each calendar year, the Secretary shall establish a home dialysis target reimbursement rate for the next calendar year based on the most recent data available to the Secretary at the time. In establishing any rate under this paragraph, the Secretary may utilize a competitive-bid procedure, a prenegotiated rate procedure, or any other procedure (including methods established under paragraph (7)) which the Secretary determines is appropriate and feasible in order to carry out this paragraph in an effective and efficient manner.

(7) The Secretary shall provide by regulation for a method (or methods) for determining prospectively the amounts of payments to be made for dialysis services furnished by providers of services and renal dialysis facilities to individuals in a facility and to such individuals at home. Such method (or methods) shall provide for the prospective determination of a rate (or rates) for each mode of care based on a single composite weighted formula (which takes into account the mix of patients who receive dialysis services at a facility or at home and the relative costs of providing such services in such settings) for hospital-based facilities and such a single composite weighted formula for other renal dialysis facilities, or based on such other method or combination of methods which differentiate between hospital-based facilities and other renal dialysis facilities and which the Secretary determines, after detailed analysis, will more effectively encourage the more efficient delivery of dialysis services and will provide greater incentives for increased use of home dialysis than through the single composite weighted formulas. The amount of a payment made under any method other than a method based on a single composite weighted formula may not exceed the amount (or, in the case of continuous cycling peritoneal dialysis, 130 percent of the amount) of the median payment that would have been made under the formula for hospital-based facilities. The Secretary shall provide for such exceptions to such methods as may be warranted by unusual circumstances (including the special circumstances of sole facilities located in isolated, rural areas and of pediatric facilities). Each application for such an exception shall be deemed to be approved unless the Secretary disapproves it by not later than 60 working days after the date the application is filed. The Secretary may provide that such method will serve in lieu of any target reimbursement rate that would otherwise be established under paragraph (6). The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the organizations (designated under subsection (c)(1)(A) of this section) for such organizations' necessary and proper administrative costs incurred in carrying out the responsibilities described in subsection (c)(2) of this section. The Secretary shall provide that amounts paid under the previous sentence shall be distributed to the organizations described in subsection (c)(1)(A) of this section to ensure equitable treatment of all such network organizations. The Secretary in distributing any such payments to network organizations shall take into account—

(A) the geographic size of the network area;

(B) the number of providers of end stage renal disease services in the network area;

(C) the number of individuals who are entitled to end stage renal disease services in the network area; and

(D) the proportion of the aggregate administrative funds collected in the network area.

(8) For purposes of this subchapter, the term ''home dialysis supplies and equipment'' means medically necessary supplies and equipment (including supportive equipment) required by an individual suffering from end stage renal disease in connection with renal dialysis carried out in his home (as defined in regulations), including obtaining, installing, and maintaining such equipment.

(9) For purposes of this subchapter, the term ''self-care home dialysis support services'', to the extent permitted in regulation, means—

(A) periodic monitoring of the patient's home adaptation, including visits by qualified provider or facility personnel (as defined in regulations), so long as this is done in accordance with a plan prepared and periodically reviewed by a professional team (as defined in regulations) including the individual's physician;

(B) installation and maintenance of dialysis equipment;

(C) testing and appropriate treatment of the water; and

(D) such additional supportive services as the Secretary finds appropriate and desirable.

(10) For purposes of this subchapter, the term ''self-care dialysis unit'' means a renal dialysis facility or a distinct part of such facility or of a provider of services, which has been approved by the Secretary to make self-dialysis services, as defined by the Secretary in regulations, available to individuals who have been trained for self-dialysis. A self-care dialysis unit must, at a minimum, furnish the services, equipment and supplies needed for self-care dialysis, have patient-staff ratios which are appropriate to self-dialysis (allowing for such appropriate lesser degree of ongoing medical supervision and assistance of ancillary personnel than is required for full care maintenance dialysis), and meet such other requirements as the Secretary may prescribe with respect to the quality and cost-effectiveness of services.

(11)(A) Hepatitis B vaccine and its administration, when provided to a patient determined to have end stage renal disease, shall not be included as dialysis services for purposes of payment under any prospective payment amount or comprehensive fee established under this section. Payment for such vaccine and its administration shall be made separately in accordance with section 1395*l* of this title.

(B) Erythropoietin, when provided to a patient determined to have end stage renal disease, shall not be included as a dialysis service for purposes of payment under any prospective payment amount or comprehensive fee established

under this section, and payment for such item shall be made separately—

(i) in the case of erythropoietin provided by a physician, in accordance with section 1395*l* of this title; and

(ii) in the case of erythropoietin provided by a provider of services, renal dialysis facility, or other supplier of home dialysis supplies and equipment—

(I) for erythropoietin provided during 1994, in an amount equal to $10 per thousand units (rounded to the nearest 100 units), and

(II) for erythropoietin provided during a subsequent year, in an amount determined to be appropriate by the Secretary, except that such amount may not exceed the amount determined under this clause for the previous year increased by the percentage increase (if any) in the implicit price deflator for gross national product (as published by the Department of Commerce) for the second quarter of the preceding year over the implicit price deflator for the second quarter of the second preceding year.

(C) The amount payable to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician for erythropoietin shall be determined in the same manner as the amount payable to a renal dialysis facility for such item.

(c) Renal disease network areas; coordinating councils, executive committees, and medical review boards; national end stage renal disease medical information system; functions of network organizations

(1)(A)(i) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall, in accordance with such criteria as he finds necessary to assure the performance of the responsibilities and functions specified in paragraph (2)—

(I) establish at least 17 end stage renal disease network areas, and

(II) for each such area, designate a network administrative organization which, in accordance with regulations of the Secretary, shall establish (aa) a network council of renal dialysis and transplant facilities located in the area and (bb) a medical review board, which has a membership including at least one patient representative and physicians, nurses, and social workers engaged in treatment relating to end stage renal disease.

The Secretary shall publish in the Federal Register a description of the geographic area that he determines, after consultation with appropriate professional and patient organizations, constitutes each network area and the criteria on the basis of which such determination is made.

(ii)(I) In order to determine whether the Secretary should enter into, continue, or terminate an agreement with a network administrative organization designated for an area established under clause (i), the Secretary shall develop and publish in the Federal Register standards, criteria, and procedures to evaluate an applicant organization's capabilities to perform (and, in the case of an organization with which such an agreement is in effect, actual performance of) the responsibilities described in paragraph (2). The Secretary shall evaluate each applicant based on quality and scope of services and may not accord more than 20 percent of the weight of the evaluation to the element of price.

(II) An agreement with a network administrative organization may be terminated by the Secretary only if he finds, after applying such standards and criteria, that the organization has failed to perform its prescribed responsibilities effectively and efficiently. If such an agreement is to be terminated, the Secretary shall select a successor to the agreement on the basis of competitive bidding and in a manner that provides an orderly transition.

(B) At least one patient representative shall serve as a member of each network council and each medical review board.

(C) The Secretary shall, in regulations, prescribe requirements with respect to membership in network organizations by individuals (and the relatives of such individuals) (i) who have an ownership or control interest in a facility or provider which furnishes services referred to in section 1395x(s)(2)(F) of this title, or (ii) who have received remuneration from any such facility or provider in excess of such amounts as constitute reasonable compensation for services (including time and effort relative to the provision of professional medical services) or goods supplied to such facility or provider; and such requirements shall provide for the definition, disclosure, and, to the maximum extent consistent with effective administration, prevention of potential or actual financial or professional conflicts of interest with respect to decisions concerning the appropriateness, nature, or site of patient care.

(2) The network organizations of each network shall be responsible, in addition to such other duties and functions as may be prescribed by the Secretary, for—

(A) encouraging, consistent with sound medical practice, the use of those treatment settings most compatible with the successful rehabilitation of the patient and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs;

(B) developing criteria and standards relating to the quality and appropriateness of patient care and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs; and network goals with respect to the placement of patients in self-care settings and undergoing or preparing for transplantation;

(C) evaluating the procedure by which facilities and providers in the network assess the appropriateness of patients for proposed treatment modalities;

(D) implementing a procedure for evaluating and resolving patient grievances;

(E) conducting on-site reviews of facilities and providers as necessary (as determined by a medical review board or the Secretary), utilizing standards of care established by the network organization to assure proper medical care;

(F) collecting, validating, and analyzing such data as are necessary to prepare the reports required by subparagraph (H) and to assure the maintenance of the registry established under paragraph (7);

(G) identifying facilities and providers that are not cooperating toward meeting network goals and assisting such facilities and providers in developing appropriate plans for correction and reporting to the Secretary on facilities and providers that are not providing appropriate medical care; and

(H) submitting an annual report to the Secretary on July 1 of each year which shall include a full statement of the network's goals, data on the network's performance in meeting its goals (including data on the comparative performance of facilities and providers with respect to the identification and placement of suitable candidates in self-care settings and transplantation and encouraging participation in vocational rehabilitation programs), identification of those facilities that have consistently failed to cooperate with network goals, and recommendations with respect to the need for additional or alternative services or facilities in the network in order to meet the network goals, including self-dialysis training, transplantation, and organ procurement facilities.

(3) Where the Secretary determines, on the basis of the data contained in the network's annual report and such other relevant data as may be available to him, that a facility or provider has consistently failed to cooperate with network plans and goals or to follow the recommendations of the medical review board, he may terminate or withhold certification of such facility or provider (for purposes of payment for services furnished to individuals with end stage renal disease) until he determines that such provider or facility is making reasonable and appropriate efforts to cooperate with the network's plans and goals. If the Secretary determines that the facility's or provider's failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.

(4) The Secretary shall, in determining whether to certify additional facilities or expansion of existing facilities within a network, take into account the network's goals and performance as reflected in the network's annual report.

(5) The Secretary, after consultation with appropriate professional and planning organizations, shall provide such guidelines with respect to the planning and delivery of renal disease services as are necessary to assist network organizations in their development of their respective networks' goals to promote the optimum use of self-dialysis and transplantation by suitable candidates for such modalities.

(6) It is the intent of the Congress that the maximum practical number of patients who are medically, socially, and psychologically suitable candidates for home dialysis or transplantation should be so treated and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment. The Secretary shall consult with appropriate professional and network organizations and consider available evidence relating to developments in research, treatment methods, and technology for home dialysis and transplantation.

(7) The Secretary shall establish a national end stage renal disease registry the purpose of which shall be to assemble and analyze the data reported by network organizations, transplant centers, and other sources on all end stage renal disease patients in a manner that will permit—

(A) the preparation of the annual report to the Congress required under subsection (g) of this section;

(B) an identification of the economic impact, cost-effectiveness, and medical efficacy of alternative modalities of treatment;

(C) an evaluation with respect to the most appropriate allocation of resources for the treatment and research into the cause of end stage renal disease;

(D) the determination of patient mortality and morbidity rates, and trends in such rates, and other indices of quality of care; and

(E) such other analyses relating to the treatment and management of end stage renal disease as will assist the Congress in evaluating the end stage renal disease program under this section.

The Secretary shall provide for such coordination of data collection activities, and such consolidation of existing end stage renal disease data systems, as is necessary to achieve the purpose of such registry, shall determine the appropriate location of the registry, and shall provide for the appointment of a professional advisory group to assist the Secretary in the formulation of policies and procedures relevant to the management of such registry.

(8) The provisions of sections 1320c–6 and 1320c–9 of this title shall apply with respect to network administrative organizations (including such organizations as medical review boards) with which the Secretary has entered into agreements under this subsection.

(d) Donors of kidney for transplant surgery

Notwithstanding any provision to the contrary in section 426 of this title any individual who donates a kidney for transplant surgery shall be entitled to benefits under parts A and B of this subchapter with respect to such donation. Reimbursement for the reasonable expenses incurred by such an individual with respect to a kidney donation shall be made (without regard to the deductible, premium, and coinsurance provisions of this subchapter), in such manner as may be prescribed by the Secretary in regulations, for all reasonable preparatory, operation, and postoperation recovery expenses associated with such donation, including but not limited to the expenses for which payment could be made if he were an eligible individual for purposes of parts A and B of this subchapter with-

out regard to this subsection. Payments for postoperation recovery expenses shall be limited to the actual period of recovery.

(e) Reimbursement of providers, facilities, and nonprofit entities for costs of artificial kidney and automated dialysis peritoneal machines for home dialysis

(1) Notwithstanding any other provision of this subchapter, the Secretary may, pursuant to agreements with approved providers of services, renal dialysis facilities, and nonprofit entities which the Secretary finds can furnish equipment economically and efficiently, reimburse such providers, facilities, and nonprofit entities (without regard to the deductible and coinsurance provisions of this subchapter) for the reasonable cost of the purchase, installation, maintenance and reconditioning for subsequent use of artificial kidney and automated dialysis peritoneal machines (including supportive equipment) which are to be used exclusively by entitled individuals dialyzing at home.

(2) An agreement under this subsection shall require that the provider, facility, or other entity will—

(A) make the equipment available for use only by entitled individuals dialyzing at home;

(B) recondition the equipment, as needed, for reuse by such individuals throughout the useful life of the equipment, including modification of the equipment consistent with advances in research and technology;

(C) provide for full access for the Secretary to all records and information relating to the purchase, maintenance, and use of the equipment; and

(D) submit such reports, data, and information as the Secretary may require with respect to the cost, management, and use of the equipment.

(3) For purposes of this section, the term ''supportive equipment'' includes blood pumps, heparin pumps, bubble detectors, other alarm systems, and such other items as the Secretary may determine are medically necessary.

(f) Experiments, studies, and pilot projects

(1) The Secretary shall initiate and carry out, at selected locations in the United States, pilot projects under which financial assistance in the purchase of new or used durable medical equipment for renal dialysis is provided to individuals suffering from end stage renal disease at the time home dialysis is begun, with provision for a trial period to assure successful adaptation to home dialysis before the actual purchase of such equipment.

(2) The Secretary shall conduct experiments to evaluate methods for reducing the costs of the end stage renal disease program. Such experiments shall include (without being limited to) reimbursement for nurses and dialysis technicians to assist with home dialysis, and reimbursement to family members assisting with home dialysis.

(3) The Secretary shall conduct experiments to evaluate methods of dietary control for reducing the costs of the end stage renal disease program, including (without being limited to) the use of protein-controlled products to delay the necessity for, or reduce the frequency of, dialysis in the treatment of end stage renal disease.

(4) The Secretary shall conduct a comprehensive study of methods for increasing public participation in kidney donation and other organ donation programs.

(5) The Secretary shall conduct a full and complete study of the reimbursement of physicians for services furnished to patients with end stage renal disease under this subchapter, giving particular attention to the range of payments to physicians for such services, the average amounts of such payments, and the number of hours devoted to furnishing such services to patients at home, in renal disease facilities, in hospitals, and elsewhere.

(6) The Secretary shall conduct a study of the number of patients with end stage renal disease who are not eligible for benefits with respect to such disease under this subchapter (by reason of this section or otherwise), and of the economic impact of such noneligibility of such individuals. Such study shall include consideration of mechanisms whereby governmental and other health plans might be instituted or modified to permit the purchase of actuarially sound coverage for the costs of end stage renal disease.

(7)(A) The Secretary shall establish protocols on standards and conditions for the reuse of dialyzer filters for those facilities and providers which voluntarily elect to reuse such filters.

(B) With respect to dialysis services furnished on or after January 1, 1988 (or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines), no dialysis facility may reuse dialysis supplies (other than dialyzer filters) unless the Secretary has established a protocol with respect to the reuse of such supplies and the facility follows the protocol so established.

(C) The Secretary shall incorporate protocols established under this paragraph, and the requirement of subparagraph (B), into the requirements for facilities prescribed under subsection (b)(1)(A) of this section and failure to follow such a protocol or requirement subjects such a facility to denial of participation in the program established under this section and to denial of payment for dialysis treatment not furnished in compliance with such a protocol or in violation of such requirement.

(8) The Secretary shall submit to the Congress no later than October 1, 1979, a full report on the experiments conducted under paragraphs (1), (2), (3), and (7), and the studies under paragraphs (4), (5), (6), and (7). Such report shall include any recommendations for legislative changes which the Secretary finds necessary or desirable as a result of such experiments and studies.

(g) Conditional approval of dialysis facilities; restriction-of-payments notice to public and facility; notice and hearing; judicial review

(1) In any case where the Secretary—

(A) finds that a renal dialysis facility is not in substantial compliance with requirements for such facilities prescribed under subsection (b)(1)(A) of this section,

(B) finds that the facility's deficiencies do not immediately jeopardize the health and safety of patients, and

(C) has given the facility a reasonable opportunity to correct its deficiencies,

the Secretary may, in lieu of terminating approval of the facility, determine that payment under this subchapter shall be made to the facility only for services furnished to individuals who were patients of the facility before the effective date of the notice.

(2) The Secretary's decision to restrict payments under this subsection shall be made effective only after such notice to the public and to the facility as may be prescribed in regulations, and shall remain in effect until (A) the Secretary finds that the facility is in substantial compliance with the requirements under subsection (b)(1)(A) of this section, or (B) the Secretary terminates the agreement under this subchapter with the facility.

(3) A facility dissatisfied with a determination by the Secretary under paragraph (1) shall be entitled to a hearing thereon by the Secretary (after reasonable notice) to the same extent as is provided in section 405(b) of this title, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(Aug. 14, 1935, ch. 531, title XVIII, § 1881, as added June 13, 1978, Pub. L. 95–292, § 2, 92 Stat. 308; amended Dec. 5, 1980, Pub. L. 96–499, title IX, § 957, 94 Stat. 2648; Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2145(a), 95 Stat. 799; Apr. 20, 1983, Pub. L. 98–21, title VI, § 602(i), 97 Stat. 165; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2323(c), 2352(a), 2354(b)(41), 98 Stat. 1086, 1099, 1102; Nov. 8, 1984, Pub. L. 98–617, § 3(b)(8), 98 Stat. 3296; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9335(a)(2), (d)(1), (e)–(i)(1), (j)(1), (k)(1), 100 Stat. 2029–2033; Aug. 18, 1987, Pub. L. 100–93, § 12, 101 Stat. 697; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4036(b), (c)(2), (d)(5), 4065(b), 101 Stat. 1330–79, 1330–80, 1330–112; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6102(e)(8), 6203(b)(1), (2), 6219(a), (b), 103 Stat. 2188, 2235, 2254; Nov. 5, 1990, Pub. L. 101–508, title IV, § 4201(c)(1), (d)(2), formerly (d)(2), (3), 104 Stat. 1388–103, 1388–104, renumbered Oct. 31, 1994, Pub. L. 103–432, title I, § 160(d)(3), 108 Stat. 4444; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13566(a), 107 Stat. 607; Aug. 15, 1994, Pub. L. 103–296, title I, § 108(c)(5), 108 Stat. 1485.)

REFERENCES IN TEXT

Section 1395x(s)(2)(P) of this title, referred to in subsec. (b)(1), was redesignated section 1395x(s)(2)(O) of this title by Pub. L. 103–432, title I, § 147(f)(6)(B)(iii)(II), Oct. 31, 1994, 108 Stat. 4432.

AMENDMENTS

1994—Subsec. (g)(3). Pub. L. 103–296 inserted before period at end ", except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively".

1993—Subsec. (b)(1)(C). Pub. L. 103–66, § 13566(a)(1), substituted "section 1395x(s)(2)(P)" for "section 1395x(s)(2)(Q)".

Subsec. (b)(11)(B)(ii)(I). Pub. L. 103–66, § 13566(a)(2), substituted "1994" for "1991" and "$10" for "$11".

1990—Subsec. (b)(1). Pub. L. 101–508, § 4201(d)(2)(A), formerly § 4201(d)(2), as renumbered by Pub. L. 103–432, § 160(d)(3), added cl. (C).

Subsec. (b)(11). Pub. L. 101–508, § 4201(d)(2)(B), formerly § 4201(d)(3), as renumbered by Pub. L. 103–432, § 160(d)(3), added subpar. (C).

Pub. L. 101–508, § 4201(c)(1), designated existing provisions as subpar. (A) and added subpar. (B).

1989—Subsec. (b)(3)(A). Pub. L. 101–239, § 6102(e)(8), inserted "or, for services furnished on or after January 1, 1992, on the basis described in section 1395w–4 of this title" after "comparable services".

Subsec. (b)(4). Pub. L. 101–239, § 6203(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (b)(7). Pub. L. 101–239, § 6219(a), substituted "organizations (designated under subsection (c)(1)(A) of this section) for such organizations' necessary and proper administrative costs incurred in carrying out the responsibilities described in subsection (c)(2) of this section. The Secretary shall provide that amounts paid under the previous sentence shall be distributed to the organizations described in subsection (c)(1)(A) of this section to ensure equitable treatment of all such network organizations. The Secretary in distributing any such payments to network organizations shall take into account—" and subpars. (A) to (D) for "network administrative organization (designated under subsection (c)(1)(A) of this section for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2) of this section." in last sentence.

Pub. L. 101–239, § 6203(b)(1), inserted after second sentence "The amount of a payment made under any method other than a method based on a single composite weighted formula may not exceed the amount (or, in the case of continuous cycling peritoneal dialysis, 130 percent of the amount) of the median payment that would have been made under the formula for hospital-based facilities."

Subsec. (c)(8). Pub. L. 101–239, § 6219(b), added par. (8).

1987—Subsec. (b)(1). Pub. L. 100–203, § 4036(b), substituted "transplantations" for "covered procedures and for self-dialysis training programs".

Subsec. (b)(2)(C). Pub. L. 100–203, § 4065(b), substituted "facilities (other than hospital outpatient departments)" for "facilities".

Subsec. (c)(2)(F). Pub. L. 100–203, § 4036(d)(5)(A), struck out "and subsection (g) of this section" after "required by subparagraph (H)".

Subsec. (c)(6). Pub. L. 100–203, § 4036(d)(5)(B), struck out at end "The Secretary shall periodically submit to the Congress such legislative recommendations as the Secretary finds warranted on the basis of such consultation and evidence to further the national objective of maximizing the use of home dialysis and transplantation consistent with good medical practice."

Subsec. (f)(7)(B). Pub. L. 100–203, § 4036(c)(2), inserted "(or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines)" after "January 1, 1988".

Subsec. (g). Pub. L. 100–203, § 4036(d)(5)(C), (D), redesignated subsec. (h) as (g) and struck out former subsec. (g) which directed the Secretary to submit to Congress on July 1, 1979, and on July 1 of each year thereafter a report on end stage renal disease program.

Subsec. (h). Pub. L. 100–203, § 4036(d)(5)(D), redesignated subsec. (h) as (g).

Pub. L. 100–93 added subsec. (h).

1986—Subsec. (b)(7). Pub. L. 99–509, § 9335(j)(1), inserted at end "The Secretary shall reduce the amount of each composite rate payment under this paragraph for each treatment by 50 cents (subject to such adjustments as may be required to reflect modes of dialysis other than hemodialysis) and provide for payment of such amount to the network administrative organization (designated under subsection (c)(1)(A) of this section for the network area in which the treatment is provided) for its necessary and proper administrative costs incurred in carrying out its responsibilities under subsection (c)(2) of this section."

Pub. L. 99–509, §9335(a)(2), inserted ''and of pediatric facilities'' after ''isolated rural areas'' in third sentence, and inserted after third sentence ''Each application for such an exception shall be deemed to be approved unless the Secretary disapproves it by not later than 60 working days after the date the application is filed.''

Subsec. (c)(1)(A). Pub. L. 99–509, §9335(d)(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall establish, in accordance with such criteria as he finds appropriate, renal disease network areas, such network organizations (including a coordinating council, an executive committee of such council, and a medical review board, for each network area) as he finds necessary to accomplish such purpose, and a national end stage renal disease medical information system. The Secretary may by regulations provide for such coordination of network planning and quality assurance activities and such exchange of data and information among agencies with responsibilities for health planning and quality assurance activities under Federal law as is consistent with the economical and efficient administration of this section and with the responsibilities established for network organizations under this section.''

Subsec. (c)(1)(B). Pub. L. 99–509, §9335(e), amended subpar. (B) generally, substituting ''network council and each medical review board'' for ''coordinating council and executive committee''.

Subsec. (c)(2)(A). Pub. L. 99–509, §9335(f)(1), inserted ''and the participation of patients, providers of services, and renal disease facilities in vocational rehabilitation programs'' before the semicolon.

Subsec. (c)(2)(B). Pub. L. 99–509, §9335(f)(2), inserted ''and with respect to working with patients, facilities, and providers in encouraging participation in vocational rehabilitation programs'' before first semicolon.

Subsec. (c)(2)(D) to (F). Pub. L. 99–509, §9335(f)(5), added subpars. (D) to (F). Former subpars. (D) and (E) redesignated (G) and (H), respectively.

Subsec. (c)(2)(G). Pub. L. 99–509, §9335(f)(3), (5), redesignated former subpar. (D) as (G) and inserted ''and reporting to the Secretary on facilities and providers that are not providing appropriate medical care'' before the semicolon.

Subsec. (c)(2)(H). Pub. L. 99–509, §9335(f)(4), (5), redesignated former subpar. (E) as (H) and inserted ''and encouraging participation in vocational rehabilitation programs'' after ''and transplantation''.

Subsec. (c)(3). Pub. L. 99–509, §9335(g), inserted ''or to follow the recommendations of the medical review board'' after ''network plans and goals''.

Subsec. (c)(6). Pub. L. 99–509, §9335(h), inserted ''and that the maximum practical number of patients who are suitable candidates for vocational rehabilitation services be given access to such services and encouraged to return to gainful employment'' at end of first sentence.

Subsec. (c)(7). Pub. L. 99–509, §9335(i)(1), added par. (7).

Subsec. (f)(7). Pub. L. 99–509, §9335(k)(1), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''The Secretary shall conduct a study of the medical appropriateness and safety of cleaning and reusing dialysis filters by home dialysis patients. In such cases in which the Secretary determines that such home cleaning and reuse of filters is a medically sound procedure, the Secretary shall conduct experiments to evaluate such home cleaning and reuse as a method of reducing the costs of the end stage renal disease program.''

1984—Subsecs. (a), (b)(1), (2)(A), (B), (3), (8). Pub. L. 98–369, §2354(b)(41), substituted ''end stage'' for ''end-stage'' wherever appearing.

Subsec. (b)(11). Pub. L. 98–617 realigned margin of par. (11).

Pub. L. 98–369, §2323(c), added par. (11).

Subsec. (c)(3). Pub. L. 98–369, §2352(a), inserted provision that if the Secretary determines that the facility's or provider's failure to cooperate with network plans and goals does not jeopardize patient health or safety or justify termination of certification, he may instead, after reasonable notice to the provider or facility and to the public, impose such other sanctions as he determines to be appropriate, which sanctions may include denial of reimbursement with respect to some or all patients admitted to the facility after the date of notice to the facility or provider, and graduated reduction in reimbursement for all patients.

1983—Subsec. (b)(2)(A). Pub. L. 98–21 inserted ''or section 1395ww of this title (if applicable)'' after ''section 1395x(v) of this title''.

1981—Subsec. (b)(2)(B). Pub. L. 97–35, §2145(a)(1), (2), substituted ''section 1395x(v) of this title) and consistent with any regulations promulgated under paragraph (7)'' for ''section 1395x(v) of this title)'' and struck out provisions that such regulations provide for the implementation of appropriate incentives for encouraging more efficient and effective delivery of services, and include a system for classifying comparable providers and facilities, and prospectively set rates or target rates with arrangements for sharing such reductions in costs as may be attributable to more efficient and effective delivery of services.

Subsec. (b)(3)(B). Pub. L. 97–35, §2145(a)(3), substituted ''or other basis (which effectively encourages the efficient delivery of dialysis services and provides incentives for the increased use of home dialysis)'' for ''or other basis''.

Subsec. (b)(4). Pub. L. 97–35, §2145(a)(4), inserted reference to alternative basis of a method established under par. (7).

Subsec. (b)(6). Pub. L. 97–35, §2145(a)(5), (6), substituted ''(except as may be provided in regulations under paragraph (7)) shall such target rate exceed 75 percent'' and ''any other procedure (including methods established under paragraph (7)) which the Secretary'' for ''shall such target rate exceed 70 percent'' and ''any other procedure which the Secretary'', respectively.

Subsec. (b)(7) to (10). Pub. L. 97–35, §2145(a)(7), (8), added par. (7) and redesignated former pars. (7) to (9) as (8) to (10), respectively.

1980—Subsec. (e)(1). Pub. L. 96–499, §957(a)(1)–(3), substituted ''services, renal dialysis facilities, and nonprofit entities which the Secretary finds can furnish equipment economically and efficiently,'' for ''services and renal dialysis facilities'' and ''such providers, facilities, and nonprofit entities'' for ''such providers and facilities''.

Subsec. (e)(2). Pub. L. 96–499, §957(a)(4), substituted '', facility, or other entity will'' for ''or facility will''.

Subsec. (g). Pub. L. 96–499, §957(b), substituted ''July'' for ''April'' in two places.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to erythropoietin furnished on or after Jan. 1, 1994, see section 13566(c) of Pub. L. 103–66, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4201(c)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to erythropoietin furnished on or after January 1, 1991.''

Amendment by section 4201(d)(2) of Pub. L. 101–508 applicable to items and services furnished on or after July 1, 1991, see section 4201(d)(3)[(4)] of Pub. L. 101–508, set out as a note under section 1395x of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6203(b)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to dialysis serv-

ices, supplies, and equipment furnished on or after February 1, 1990.''

EFFECTIVE DATE OF 1987 AMENDMENTS

Amendment by section 4065(b) of Pub. L. 100–203 effective Jan. 1, 1988, see section 4065(c) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 9335(a)(3) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (2) [amending this section] shall apply to applications filed on or after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9335(j)(2) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4085(i)(21)(C), Dec. 22, 1987, 101 Stat. 1330–133, provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to treatment furnished on or after January 1, 1987[,] except that, until network administrative organizations are established under section 1881(c)(1)(A) of the Social Security Act [subsec. (c)(1)(A) of this section] (as amended by subsection (d)(1) of this section), the distribution of payments described in the last sentence of section 1881(b)(7) of such Act shall be made based on the distribution of payments under section 1881 of such Act to network administrative organizations for fiscal year 1986.''

[Section 4085(i)(21) of Pub. L. 100–203 provided that the amendment of section 9335(j)(2) of Pub. L. 99–509, set out above, by section 4085(i)(21)(C) of Pub. L. 100–203 is effective as if included in the enactment of Pub. L. 99–509.]

Section 9335(*l*) of Pub. L. 99–509 provided that: ''The amendments made by subsections (e), (f), and (g) [amending this section] shall apply to network administrative organizations designated for network areas established under the amendment made by subsection (d)(1) [amending this section].''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2323(c) of Pub. L. 98–369 applicable to services furnished on or after Sept. 1, 1984, see section 2323(d) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2352(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [amending this section] shall apply to determinations made by the Secretary on or after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2354(b)(41) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as a note under section 1320a–1 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2145(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] apply to services furnished on or after October 1, 1981, and the Secretary of Health and Human Services shall first promulgate regulations to carry out section 1881(b)(7) of the Social Security Act [subsec. (b)(7) of this section] not later than October 1, 1981.''

EFFECTIVE DATE

Section effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95–292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

PROPAC STUDY ON ESRD COMPOSITE RATES

Section 4201(b) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—

''(A) STUDY.—The Prospective Payment Assessment Commission (in this subsection referred to as the 'Commission') shall conduct a study to determine the costs and services and profits associated with various modalities of dialysis treatments provided to end stage renal disease patients provided under title XVIII of the Social Security Act [this subchapter].

''(B) RECOMMENDATIONS.—Based on information collected for the study described in subparagraph (A), the Commission shall make recommendations to Congress regarding the method or methods and the levels at which the payments made for the facility component of dialysis services by providers of service and renal dialysis facilities under title XVIII of the Social Security Act should be established for dialysis services furnished during fiscal year 1993 and the methodology to be used to update such payments for subsequent fiscal years. In making recommendations concerning the appropriate methodology the Commission shall consider—

''(i) hemodialysis and other modalities of treatment,

''(ii) the appropriate services to be included in such payments,

''(iii) the adjustment factors to be incorporated including facility characteristics, such as hospital versus free-standing facilities, urban versus rural, size and mix of services,

''(iv) adjustments for labor and nonlabor costs,

''(v) comparative profit margins for all types of renal dialysis providers of service and renal dialysis facilities,

''(vi) adjustments for patient complexity, such as age, diagnosis, case mix, and pediatric services, and

''(vii) efficient costs related to high quality of care and positive outcomes for all treatment modalities.

''(2) REPORT.—Not later than June 1, 1992, the Commission shall submit a report to the Committee on Finance of the Senate, and the Committees on Ways and Means and Energy and Commerce [Committee on Energy and Commerce now Committee on Commerce] of the House of Representatives on the study conducted under paragraph (1)(A) and shall include in the report the recommendations described in paragraph (1)(B), taking into account the factors described in paragraph (1)(B).

''(3) ANNUAL REPORT.—The Commission, not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1993) shall report its recommendations to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce [Committee on Energy and Commerce now Committee on Commerce] of the House of Representatives on an appropriate change factor which

should be used for updating payments for services rendered in that fiscal year. The Commission in making such report to Congress shall consider conclusions and recommendations available from the Institute of Medicine.''

STAFF-ASSISTED HOME DIALYSIS DEMONSTRATION PROJECT

Section 4202 of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §160(b), Oct. 31, 1994, 108 Stat. 4443, provided that:

''(a) ESTABLISHMENT.—

''(1) IN GENERAL.—Not later than 9 months after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services shall establish and carry out a 3-year demonstration project to determine whether the services of a home dialysis staff assistant providing services to a patient during hemodialysis treatment at the patient's home may be covered under the medicare program in a cost-effective manner that ensures patient safety.

''(2) NUMBER OF PARTICIPANTS.—The total number of eligible patients receiving services under the demonstration project established under paragraph (1) may not exceed 800.

''(b) PAYMENTS TO PARTICIPATING PROVIDERS AND FACILITIES.—

''(1) SERVICES FOR WHICH PAYMENT MAY BE MADE.—

''(A) IN GENERAL.—Under the demonstration project established under subsection (a), the Secretary shall make payments for 3 years under title XVIII of the Social Security Act [this subchapter] to providers of services (other than a skilled nursing facility) or renal dialysis facilities for services of a qualified home hemodialysis staff assistant (as described in subsection (d)) provided to an individual described in subsection (c) during hemodialysis treatment at the individual's home in an amount determined under paragraph (2).

''(B) SERVICES DESCRIBED.—For purposes of subparagraph (A), the term 'services of a home hemodialysis staff assistant' means—

''(i) technical assistance with the operation of a hemodialysis machine in the patient's home and with such patient's care during in-home hemodialysis; and

''(ii) administration of medications within the patient's home to maintain the patency of the extra corporeal circuit.

''(2) AMOUNT OF PAYMENT.—

''(A) IN GENERAL.—Payment to a provider of services or renal dialysis facility participating in the demonstration project established under subsection (a) for the services described in paragraph (1) shall be prospectively determined by the Secretary, made on a per treatment basis, and shall be in an amount determined under subparagraph (B).

''(B) DETERMINATION OF PAYMENT AMOUNT.—(i) The amount of payment made under subparagraph (A) shall be the product of—

''(I) the rate determined under clause (ii) with respect to a provider of services or a renal dialysis facility; and

''(II) the factor by which the labor portion of the composite rate determined under section 1881(b)(7) of the Social Security Act [subsec. (b)(7) of this section] is adjusted for differences in area wage levels.

''(ii) The rate determined under this clause, with respect to a provider of services or renal dialysis facility, shall be equal to the difference between—

''(I) two-thirds of the labor portion of the composite rate applicable under section 1881(b)(7) of such Act to the provider or facility, and

''(II) the product of the national median hourly wage for a home hemodialysis staff assistant and the national median time expended in the provision of home hemodialysis staff assistant services (taking into account time expended in travel and predialysis patient care).

''(iii) For purposes of clause (ii)(II)—

''(I) the national median hourly wage for a home hemodialysis staff assistant and the national median average time expended for home hemodialysis staff assistant services shall be determined annually on the basis of the most recent data available, and

''(II) the national median hourly wage for a home hemodialysis staff assistant shall be the sum of 65 percent of the national median hourly wage for a licensed practical nurse and 35 percent of the national median hourly wage for a registered nurse.

''(C) PAYMENT AS ADD-ON TO COMPOSITE RATE.—The amount of payment determined under this paragraph shall be in addition to the amount of payment otherwise made to the provider of services or renal dialysis facility under section 1881(b) of such Act.

''(c) INDIVIDUALS ELIGIBLE TO RECEIVE SERVICES UNDER PROJECT.—

''(1) IN GENERAL.—An individual may receive services from a provider of services or renal dialysis facility participating in the demonstration project if—

''(A) the individual is not a resident of a nursing facility;

''(B) the individual is an end stage renal disease patient entitled to benefits under title XVIII of the Social Security Act [this subchapter];

''(C) the individual's physician certifies that the individual is confined to a bed or wheelchair and cannot transfer themselves [sic] from a bed to a chair;

''(D) the individual has a serious medical condition (as specified by the Secretary) which would be exacerbated by travel to and from a dialysis facility;

''(E) the individual is eligible for ambulance transportation to receive routine maintenance dialysis treatments, and, based on the individual's medical condition, there is reasonable expectation that such transportation will be used by the individual for a period of at least 6 consecutive months, such that the cost of ambulance transportation can reasonably be expected to meet or exceed the cost of home hemodialysis staff assistance as provided under subsection (b)(2); and

''(F) no family member or other individual is available to provide such assistance to the individual.

''(2) COVERAGE OF INDIVIDUALS CURRENTLY RECEIVING SERVICES.—Any individual who, on the date of the enactment of this Act [Nov. 5, 1990], is receiving staff assistance under the experimental authority provided under section 1881(f)(2) of the Social Security Act [subsec. (f)(2) of this section] shall be deemed to be an eligible individual for purposes of this subsection.

''(3) CONTINUATION OF COVERAGE UPON TERMINATION OF PROJECT.—Notwithstanding any provision of title XVIII of the Social Security Act, any individual receiving services under the demonstration project established under subsection (a) as of the date of the termination of the project shall continue to be eligible for home hemodialysis staff assistance after such date under such title on the same terms and conditions as applied under the demonstration project.

''(d) QUALIFICATIONS FOR HOME HEMODIALYSIS STAFF ASSISTANTS.—For purposes of subsection (b), a home dialysis aide is qualified if the aide—

''(1) meets minimum qualifications as specified by the Secretary; and

''(2) meets any applicable qualifications as specified under the law of the State in which the home hemodialysis staff assistant is providing services.

''(e) REPORTS.—

''(1) INTERIM STATUS REPORT.—Not later than December 1, 1992, the Secretary shall submit to Congress a preliminary report on the status of the demonstration project established under subsection (a).

''(2) FINAL REPORT.—Not later than December 31, 1995, the Secretary shall submit to Congress a final

report evaluating the project, and shall include in such report recommendations regarding appropriate eligibility criteria and cost-control mechanisms for medicare coverage of the services of a home dialysis aide providing medical assistance to a patient during hemodialysis treatment at the patient's home.

''(f) AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall provide for the transfer from the Federal Supplementary Medical Insurance Trust Fund (established under section 1841 of the Social Security Act [section 1395t of this title]) of not more than the following amounts to carry out the demonstration project established under subsection (a) (without regard to amounts appropriated in advance in appropriation Acts):

''(1) For fiscal year 1991, $4,000,000.

''(2) For fiscal year 1992, $4,000,000.

''(3) For fiscal year 1993, $3,000,000.

''(4) For fiscal year 1994, $2,000,000.

''(5) For fiscal year 1995, $1,000,000.''

STUDIES OF END-STAGE RENAL DISEASE PROGRAM

Section 4036(d)(1)–(4) of Pub. L. 100–203 provided that:

''(1) The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall arrange for a study of the end-stage renal disease program within the medicare program.

''(2) Among other items, the study shall address—

''(A) access to treatment by both individuals eligible for medicare benefits and those not eligible for such benefits;

''(B) the quality of care provided to end-stage renal disease beneficiaries, as measured by clinical indicators, functional status of patients, and patient satisfaction;

''(C) the effect of reimbursement on quality of treatment;

''(D) major epidemiological and demographic changes in the end-stage renal disease population that may affect access to treatment, the quality of care, or the resource requirements of the program; and

''(E) the adequacy of existing data systems to monitor these matters on a continuing basis.

''(3) The Secretary shall submit to Congress, not later than 3 years after the date of the enactment of this Act [Dec. 22, 1987], a report on the study.

''(4) The Secretary shall request the National Academy of Sciences, acting through the Institute of Medicine, to submit an application to conduct the study described in this section. If the Academy submits an acceptable application, the Secretary shall enter into an appropriate arrangement with the Academy for the conduct of the study. If the Academy does not submit an acceptable application to conduct the study, the Secretary may request one or more appropriate nonprofit private entities to submit an application to conduct the study and may enter into an appropriate arrangement for the conduct of the study by the entity which submits the best acceptable application.''

RATES FOR DIALYSIS SERVICES

Section 9335(a)(1) of Pub. L. 99–509, as amended by Pub. L. 101–239, title VI, § 6203(a)(1), Dec. 19, 1989, 103 Stat. 2235; Pub. L. 101–508, title IV, § 4201(a), Nov. 5, 1990, 104 Stat. 1388–102, provided that: ''Effective with respect to dialysis services provided on or after October 1, 1986, and before December 31, 1990, the Secretary of Health and Human Services shall establish the base rate for routine dialysis treatment in a free-standing facility and in a hospital-based facility under section 1881(b)(7) of the Social Security Act [subsec. (b)(7) of this section] at a level equal to the respective rate in effect as of May 13, 1986, reduced by $2.00. With respect to services furnished on or after January 1, 1991, such base rate shall be equal to the respective rate in effect as of September 30, 1990 (determined without regard to any reductions imposed pursuant to section 6201 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, set out as a note under section 902 of Title 2, The Congress]), increased by $1.00. No change may be made in the base rate in effect as of September 30, 1990, unless the Secretary makes such change in accordance with notice and comment requirements set forth in section 1871(b)(1) of such Act [subsec. (b)(1) of this section].''

[Section 6203(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending section 9335(a)(1) of Pub. L. 99–509, set out above] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''']

STUDY AND REPORT ON MEDICARE PAYMENT RATE REDUCTIONS FOR PATIENTS WITH END STAGE RENAL DISEASE

Section 9335(b) of Pub. L. 99–509 directed Secretary of Health and Human Services to provide for a study to evaluate the effects of reductions in the rates of payment for facility and physicians' services under the medicare program for patients with end stage renal disease on their access to care or on the quality of care, and a report to Congress on results of the study by not later than Jan. 1, 1988, with Secretary to enter into an appropriate arrangement with the National Academy of Sciences or other appropriate nonprofit private entity for the conduct of the study.

DEADLINE FOR ESTABLISHING NEW END STAGE RENAL DISEASE NETWORK AREAS; TRANSITION

Section 9335(d)(2), (3) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4009(j)(6)(E), Dec. 22, 1987, 101 Stat. 1330–59, provided that:

''(2) DEADLINE FOR ESTABLISHING NEW AREAS.—The Secretary of Health and Human Services shall establish end stage renal disease network areas, pursuant to the amendment made by paragraph (1) [amending this section], not later than May 1, 1987. The Secretary shall designate network administrative organizations for such areas by not later than July 1, 1987.

''(3) TRANSITION.—If, under the amendment made by paragraph (1), the Secretary designates a network administrative organization for an area which was not previously designated for that area, the Secretary shall offer to continue to fund the previously designated organization for that area for a period of 30 days after the first date the newly designated organization assumes the duties of a network administrative organization for that area.''

REPORT ON ESTABLISHMENT OF NATIONAL END STAGE RENAL DISEASE REGISTRY

Section 9335(i)(2) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall submit to the Congress, no later than April 1, 1987, a full report on the progress made in establishing the national end stage renal disease registry under the amendment made by paragraph (1) [amending this section] and shall establish such registry by not later than January 1, 1988.''

DEADLINE FOR ESTABLISHMENT OF PROTOCOLS ON REUSE OF DIALYZER FILTERS

Section 9335(k)(2) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4036(c)(1)(A), Dec. 22, 1987, 101 Stat. 1330–79, provided that: ''The Secretary of Health and Human Services shall establish the protocols described in section 1881(f)(7)(A) of the Social Security Act [subsec. (f)(7)(A) of this section] by not later than October 1, 1987 (or July 1, 1988, with respect to protocols that relate to the reuse of bloodlines).''

[Section 4036(c)(1)(B) of Pub. L. 100–203 provided that: ''The amendment made by subparagraph (A) [amending section 9335(k)(2) of Pub. L. 99–509, set out above] shall be effective as if included in the enactment of section 9335(k)(2) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''']

LIMITATION ON MERGER OF END STAGE RENAL DISEASE NETWORKS

Pub. L. 99–272, title IX, § 9214, Apr. 7, 1986, 100 Stat. 180, provided that: ''The Secretary of Health and Human Services shall maintain renal disease network organizations as authorized under section 1881(c) of the Social Security Act [subsec. (c) of this section], and may not merge the network organizations into other organizations or entities. The Secretary may consolidate such network organizations, but only if such consolidation does not result in fewer than 14 such organizations being permitted to exist.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 426–1, 1395f, 1395*l*, 1395aa of this title.

§ 1395ss. Certification of medicare supplemental health insurance policies

(a) Submission of policy by insurer

(1) The Secretary shall establish a procedure whereby medicare supplemental policies (as defined in subsection (g)(1) of this section) may be certified by the Secretary as meeting minimum standards and requirements set forth in subsection (c) of this section. Such procedure shall provide an opportunity for any insurer to submit any such policy, and such additional data as the Secretary finds necessary, to the Secretary for his examination and for his certification thereof as meeting the standards and requirements set forth in subsection (c) of this section. Subject to subsections (k)(3), (m), and (n) of this section, such certification shall remain in effect if the insurer files a notarized statement with the Secretary no later than June 30 of each year stating that the policy continues to meet such standards and requirements and if the insurer submits such additional data as the Secretary finds necessary to independently verify the accuracy of such notarized statement. Where the Secretary determines such a policy meets (or continues to meet) such standards and requirements, he shall authorize the insurer to have printed on such policy (but only in accordance with such requirements and conditions as the Secretary may prescribe) an emblem which the Secretary shall cause to be designed for use as an indication that a policy has received the Secretary's certification. The Secretary shall provide each State commissioner or superintendent of insurance with a list of all the policies which have received his certification.

(2) No medicare supplemental policy may be issued in a State on or after the date specified in subsection (p)(1)(C) of this section unless—

(A) the State's regulatory program under subsection (b)(1) of this section provides for the application and enforcement of the standards and requirements set forth in such subsection (including the 1991 NAIC Model Regulation or 1991 Federal Regulation (as the case may be)) by the date specified in subsection (p)(1)(C) of this section; or

(B) if the State's program does not provide for the application and enforcement of such standards and requirements, the policy has been certified by the Secretary under paragraph (1) as meeting the standards and requirements set forth in subsection (c) of this section (including such applicable standards) by such date.

Any person who issues a medicare supplemental policy, on and after the effective date specified in subsection (p)(1)(C) of this section, in violation of this paragraph is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(b) Standards and requirements; periodic review by Secretary

(1) Any medicare supplemental policy issued in any State which the Secretary determines has established under State law a regulatory program that—

(A) provides for the application and enforcement of standards with respect to such policies equal to or more stringent than the NAIC Model Standards (as defined in subsection (g)(2)(A) of this section), except as otherwise provided by subparagraph (H);

(B) includes requirements equal to or more stringent than the requirements described in paragraphs (2) through (5) of subsection (c) of this section;

(C) provides that—

(i) information with respect to the actual ratio of benefits provided to premiums collected under such policies will be reported to the State on forms conforming to those developed by the National Association of Insurance Commissioners for such purpose, or

(ii) such ratios will be monitored under the program in an alternative manner approved by the Secretary, and that a copy of each such policy, the most recent premium for each such policy, and a listing of the ratio of benefits provided to premiums collected for the most recent 3-year period for each such policy issued or sold in the State is maintained and made available to interested persons;

(D) provides for application and enforcement of the standards and requirements described in subparagraphs (A), (B), and (C) to all medicare supplemental policies (as defined in subsection (g)(1) of this section) issued in such State,

(E) provides the Secretary periodically (but at least annually) with a list containing the name and address of the issuer of each such policy and the name and number of each such policy (including an indication of policies that have been previously approved, newly approved, or withdrawn from approval since the previous list was provided),

(F) reports to the Secretary on the implementation and enforcement of standards and requirements of this paragraph at intervals established by the Secretary,

(G) provides for a process for approving or disapproving proposed premium increases with respect to such policies, and establishes a policy for the holding of public hearings prior to approval of a premium increase, and

(H) in the case of a policy that meets the standards under subparagraph (A) except that benefits under the policy are limited to items

and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), provides for the application of requirements equal to or more stringent than the requirements under subsection (t) of this section,

shall be deemed (subject to subsections (k)(3), (m), and (n) of this section, for so long as the Secretary finds that such State regulatory program continues to meet the standards and requirements of this paragraph) to meet the standards and requirements set forth in subsection (c) of this section. Each report required under subparagraph (F) shall include information on loss ratios of policies sold in the State, frequency and types of instances in which policies approved by the State fail to meet the standards and requirements of this paragraph, actions taken by the State to bring such policies into compliance, information regarding State programs implementing consumer protection provisions, and such further information as the Secretary in consultation with the National Association of Insurance Commissioners may specify.

(2) The Secretary periodically shall review State regulatory programs to determine if they continue to meet the standards and requirements specified in paragraph (1). If the Secretary finds that a State regulatory program no longer meets the standards and requirements, before making a final determination, the Secretary shall provide the State an opportunity to adopt such a plan of correction as would permit the State regulatory program to continue to meet such standards and requirements. If the Secretary makes a final determination that the State regulatory program, after such an opportunity, fails to meet such standards and requirements, the program shall no longer be considered to have in operation a program meeting such standards and requirements.

(3) Notwithstanding paragraph (1), a medicare supplemental policy offered in a State shall not be deemed to meet the standards and requirements set forth in subsection (c) of this section, with respect to an advertisement (whether through written, radio, or television medium) used (or, at a State's option, to be used) for the policy in the State, unless the entity issuing the policy provides a copy of each advertisement to the Commissioner of Insurance (or comparable officer identified by the Secretary) of that State for review or approval to the extent it may be required under State law.

(c) Requisite findings

The Secretary shall certify under this section any medicare supplemental policy, or continue certification of such a policy, only if he finds that such policy (or, with respect to paragraph (3) or the requirement described in subsection (s) of this section, the issuer of the policy)—

(1) meets or exceeds (either in a single policy or, in the case of nonprofit hospital and medical service associations, in one or more policies issued in conjunction with one another) the NAIC Model Standards (except as otherwise provided by subsection (t) of this section);

(2) meets the requirements of subsection (r) of this section;

(3)(A) accepts a notice under section 1395u(h)(3)(B) of this title as a claim form for benefits under such policy in lieu of any claim form otherwise required and agrees to make a payment determination on the basis of the information contained in such notice;

(B) where such a notice is received—

(i) provides notice to such physician or supplier and the beneficiary of the payment determination under the policy, and

(ii) provides any payment covered by such policy directly to the participating physician or supplier involved;

(C) provides each enrollee at the time of enrollment a card listing the policy name and number and a single mailing address to which notices under section 1395u(h)(3)(B) of this title respecting the policy are to be sent;

(D) agrees to pay any user fees established under section 1395u(h)(3)(B) of this title with respect to information transmitted to the issuer of the policy; and

(E) provides to the Secretary at least annually, for transmittal to carriers, a single mailing address to which notices under section 1395u(h)(3)(B) of this title respecting the policy are to be sent;

(4) may, during a period of not less than 30 days after the policy is issued, be returned for a full refund of any premiums paid (without regard to the manner in which the purchase of the policy was solicited); and

(5) meets the applicable requirements of subsections (*o*) through (t) of this section.

(d) Criminal penalties; civil penalties for certain violations

(1) Whoever knowingly and willfully makes or causes to be made or induces or seeks to induce the making of any false statement or representation of a material fact with respect to the compliance of any policy with the standards and requirements set forth in subsection (c) of this section or in regulations promulgated pursuant to such subsection, or with respect to the use of the emblem designed by the Secretary under subsection (a) of this section, shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act.

(2) Whoever falsely assumes or pretends to be acting, or misrepresents in any way that he is acting, under the authority of or in association with, the program of health insurance established by this subchapter, or any Federal agency, for the purpose of selling or attempting to sell insurance, or in such pretended character demands, or obtains money, paper, documents, or anything of value, shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act.

(3)(A)(i) It is unlawful for a person to sell or issue to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter—

(I) a health insurance policy with knowledge that the policy duplicates health benefits to

which the individual is otherwise entitled under this subchapter or subchapter XIX of this chapter,

(II) a medicare supplemental policy with knowledge that the individual is entitled to benefits under another medicare supplemental policy, or

(III) a health insurance policy (other than a medicare supplemental policy) with knowledge that the policy duplicates health benefits to which the individual is otherwise entitled, other than benefits to which the individual is entitled under a requirement of State or Federal law.

(ii) Whoever violates clause (i) shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a person other than the issuer of the policy) for each such prohibited act.

(iii) A seller (who is not the issuer of a health insurance policy) shall not be considered to violate clause (i) with respect to the sale of a medicare supplemental policy if the policy is sold in compliance with subparagraph (B).

(B)(i) It is unlawful for a person to issue or sell a medicare supplemental policy to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, whether directly, through the mail, or otherwise, unless—

(I) the person obtains from the individual, as part of the application for the issuance or purchase and on a form described in clause (ii), a written statement signed by the individual stating, to the best of the individual's knowledge, what health insurance policies the individual has, from what source, and whether the individual is entitled to any medical assistance under subchapter XIX of this chapter, whether as a qualified medicare beneficiary or otherwise, and

(II) the written statement is accompanied by a written acknowledgment, signed by the seller of the policy, of the request for and receipt of such statement.

(ii) The statement required by clause (i) shall be made on a form that—

(I) states in substance that a medicare-eligible individual does not need more than one medicare supplemental policy,

(II) states in substance that individuals may be eligible for benefits under the State medicaid program under subchapter XIX of this chapter and that such individuals who are entitled to benefits under that program usually do not need a medicare supplemental policy and that benefits and premiums under any such policy shall be suspended upon request of the policyholder during the period (of not longer than 24 months) of entitlement to benefits under such subchapter and may be reinstituted upon loss of such entitlement, and

(III) states that counseling services may be available in the State to provide advice concerning the purchase of medicare supplemental policies and enrollment under the medicaid program and may provide the telephone number for such services.

(iii)(I) Except as provided in subclauses (II) and (III), if the statement required by clause (i) is not obtained or indicates that the individual has a medicare supplemental policy or indicates that the individual is entitled to any medical assistance under subchapter XIX of this chapter, the sale of a medicare supplemental policy shall be considered to be a violation of subparagraph (A).

(II) Subclause (I) shall not apply in the case of an individual who has a medicare supplemental policy, if the individual indicates in writing, as part of the application for purchase, that the policy being purchased replaces such other policy and indicates an intent to terminate the policy being replaced when the new policy becomes effective and the issuer or seller certifies in writing that such policy will not, to the best of the issuer[1] or seller's knowledge, duplicate coverage (taking into account any such replacement).

(III) If the statement required by clause (i) is obtained and indicates that the individual is entitled to any medical assistance under subchapter XIX of this chapter, the sale of the policy is not in violation of clause (i) (insofar as such clause relates to such medical assistance), if (aa) a State medicaid plan under such subchapter pays the premiums for the policy, (bb) in the case of a qualified medicare beneficiary described in section 1396d(p)(1) of this title, the policy provides for coverage of outpatient prescription drugs, or (cc) the only medical assistance to which the individual is entitled under the State plan is medicare cost sharing described in section 1396d(p)(3)(A)(ii) of this title.

(iv) Whoever issues or sells a medicare supplemental policy in violation of this subparagraph shall be fined under title 18, or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not the issuer of a policy) for each such violation.

(C) Subparagraph (A) shall not apply with respect to (i) the sale or issuance of a group policy or plan of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations (or combination thereof), for employees or former employees (or combination thereof) or for members or former members (or combination thereof) of the labor organizations, (ii) the sale or issuance of a policy or plan described in subparagraph (A)(i)(I) (other than a medicare supplemental policy to an individual entitled to any medical assistance under subchapter XIX of this chapter) under which all the benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual but only if (for policies sold or issued more than 60 days after the date the statements are published or promulgated under subparagraph (D)) there is disclosed in a prominent manner as part of (or together with) the application the applicable statement (specified under subparagraph (D)) of the extent to which benefits payable under the policy or plan duplicate benefits under this subchapter, or

[1] So in original. Probably should be ''issuer's''.

(iii) the sale or issuance of a policy or plan described in subparagraph (A)(i)(III) under which all the benefits are fully payable directly to or on behalf of the individual without regard to other health benefit coverage of the individual.

(D)(i) If—

(I) within the 90-day period beginning on October 31, 1994, the National Association of Insurance Commissioners develops (after consultation with consumer and insurance industry representatives) and submits to the Secretary a statement for each of the types of health insurance policies (other than medicare supplemental policies and including, but not limited to, as separate types of policies, policies paying directly to the beneficiary fixed, cash benefits, and policies that limit benefit payments to specific diseases) which are sold or issued to persons entitled to health benefits under this subchapter, of the extent to which benefits payable under the policy or plan duplicate benefits under this subchapter, and

(II) the Secretary approves all the statements submitted as meeting the requirements of subclause (I),

each such statement shall be (for purposes of subparagraph (C)) the statement specified under this subparagraph for the type of policy involved. The Secretary shall review and approve (or disapprove) all the statements submitted under subclause (I) within 30 days after the date of their submittal. Upon approval of such statements, the Secretary shall publish such statements.

(ii) If the Secretary does not approve the statements under clause (i) or the statements are not submitted within the 90-day period specified in such clause, the Secretary shall promulgate (after consultation with consumer and insurance industry representatives and not later than 90 days after the date of disapproval or the end of such 90-day period (as the case may be)) a statement for each of the types of health insurance policies (other than medicare supplemental policies and including, but not limited to, as separate types of policies, policies paying directly to the beneficiary fixed, cash benefits, and policies that limit benefit payments to specific diseases) which are sold or issued to persons entitled to health benefits under this subchapter, of the extent to which benefits payable under the policy or plan duplicate benefits under this subchapter, and each such statement shall be (for purposes of subparagraph (C)) the statement specified under this subparagraph for the type of policy involved.

(4)(A) Whoever knowingly, directly or through his agent, mails or causes to be mailed any matter for a prohibited purpose (as determined under subparagraph (B)) shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act.

(B) For purposes of subparagraph (A), a prohibited purpose means the advertising, solicitation, or offer for sale of a medicare supplemental policy, or the delivery of such a policy, in or into any State in which such policy has not been approved by the State commissioner or superintendent of insurance.

(C) Subparagraph (A) shall not apply in the case of a person who mails or causes to be mailed a medicare supplemental policy into a State if such person has ascertained that the party insured under such policy to whom (or on whose behalf) such policy is mailed is located in such State on a temporary basis.

(D) Subparagraph (A) shall not apply in the case of a person who mails or causes to be mailed a duplicate copy of a medicare supplemental policy previously issued to the party to whom (or on whose behalf) such duplicate copy is mailed.

(E) Subparagraph (A) shall not apply in the case of an issuer who mails or causes to be mailed a policy, certificate, or other matter solely to comply with the requirements of subsection (q) of this section.

(5) The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to civil money penalties under paragraphs (1), (2), (3)(A), and (4)(A) in the same manner as such provisions apply to penalties and proceedings under section 1320a–7a(a) of this title.

(e) Dissemination of information

(1) The Secretary shall provide to all individuals entitled to benefits under this subchapter (and, to the extent feasible, to individuals about to become so entitled) such information as will permit such individuals to evaluate the value of medicare supplemental policies to them and the relationship of any such policies to benefits provided under this subchapter.

(2) The Secretary shall—

(A) inform all individuals entitled to benefits under this subchapter (and, to the extent feasible, individuals about to become so entitled) of—

(i) the actions and practices that are subject to sanctions under subsection (d) of this section, and

(ii) the manner in which they may report any such action or practice to an appropriate official of the Department of Health and Human Services (or to an appropriate State official), and

(B) publish the toll-free telephone number for individuals to report suspected violations of the provisions of such subsection.

(3) The Secretary shall provide individuals entitled to benefits under this subchapter (and, to the extent feasible, individuals about to become so entitled) with a listing of the addresses and telephone numbers of State and Federal agencies and offices that provide information and assistance to individuals with respect to the selection of medicare supplemental policies.

(f) Study and evaluation of comparative effectiveness of various State approaches to regulating medicare supplemental policies; report to Congress no later than January 1, 1982; periodic evaluations

(1)(A) The Secretary shall, in consultation with Federal and State regulatory agencies, the National Association of Insurance Commissioners, private insurers, and organizations representing consumers and the aged, conduct a comprehensive study and evaluation of the comparative effectiveness of various State ap-

proaches to the regulation of medicare supplemental policies in (i) limiting marketing and agent abuse, (ii) assuring the dissemination of such information to individuals entitled to benefits under this subchapter (and to other consumers) as is necessary to permit informed choice, (iii) promoting policies which provide reasonable economic benefits for such individuals, (iv) reducing the purchase of unnecessary duplicative coverage, (v) improving price competition, and (vi) establishing effective approved State regulatory programs described in subsection (b) of this section.

(B) Such study shall also address the need for standards or certification of health insurance policies, other than medicare supplemental policies, sold to individuals eligible for benefits under this subchapter.

(C) The Secretary shall, no later than January 1, 1982, submit a report to the Congress on the results of such study and evaluation, accompanied by such recommendations as the Secretary finds warranted by such results with respect to the need for legislative or administrative changes to accomplish the objectives set forth in subparagraphs (A) and (B), including the need for a mandatory Federal regulatory program to assure the marketing of appropriate types of medicare supplemental policies, and such other means as he finds may be appropriate to enhance effective State regulation of such policies.

(2) The Secretary shall submit to the Congress no later than July 1, 1982, and periodically as may be appropriate thereafter (but not less often than once every 2 years), a report evaluating the effectiveness of the certification procedure and the criminal penalties established under this section, and shall include in such reports an analysis of—

(A) the impact of such procedure and penalties on the types, market share, value, and cost to individuals entitled to benefits under this subchapter of medicare supplemental policies which have been certified by the Secretary;

(B) the need for any change in the certification procedure to improve its administration or effectiveness; and

(C) whether the certification program and criminal penalties should be continued.

(3) The Secretary shall provide information via a toll-free telephone number on medicare supplemental policies (including the relationship of State programs under subchapter XIX of this chapter to such policies).

(g) Definitions

(1) For purposes of this section, a medicare supplemental policy is a health insurance policy or other health benefit plan offered by a private entity to individuals who are entitled to have payment made under this subchapter, which provides reimbursement for expenses incurred for services and items for which payment may be made under this subchapter but which are not reimbursable by reason of the applicability of deductibles, coinsurance amounts, or other limitations imposed pursuant to this subchapter; but does not include any such policy or plan of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations (or combination thereof), for employees or former employees (or combination thereof) or for members or former members (or combination thereof) of the labor organizations and does not include a policy or plan of an eligible organization (as defined in section 1395mm(b) of this title) if the policy or plan provides benefits pursuant to a contract under section 1395mm of this title or an approved demonstration project described in section 603(c) of the Social Security Amendments of 1983, section 2355 of the Deficit Reduction Act of 1984, or section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, or, during the period beginning on the date specified in subsection (p)(1)(C) of this section and ending on December 31, 1995, a policy or plan of an organization if the policy or plan provides benefits pursuant to an agreement under section 1395*l*(a)(1)(A) of this title. For purposes of this section, the term ''policy'' includes a certificate issued under such policy.

(2) For purposes of this section:

(A) The term ''NAIC Model Standards'' means the ''NAIC Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act'', adopted by the National Association of Insurance Commissioners on June 6, 1979, as it applies to medicare supplement[2] policies.

(B) The term ''State with an approved regulatory program'' means a State for which the Secretary has made a determination under subsection (b)(1) of this section.

(C) The State in which a policy is issued means—

(i) in the case of an individual policy, the State in which the policyholder resides; and

(ii) in the case of a group policy, the State in which the holder of the master policy resides.

(h) Rules and regulations

The Secretary shall prescribe such regulations as may be necessary for the effective, efficient, and equitable administration of the certification procedure established under this section. The Secretary shall first issue final regulations to implement the certification procedure established under subsection (a) of this section not later than March 1, 1981.

(i) Commencement of certification program

(1) No medicare supplemental policy shall be certified and no such policy may be issued bearing the emblem authorized by the Secretary under subsection (a) of this section until July 1, 1982. On and after such date policies certified by the Secretary may bear such emblem, including policies which were issued prior to such date and were subsequently certified, and insurers may notify holders of such certified policies issued prior to such date using such emblem in the notification.

(2)(A) The Secretary shall not implement the certification program established under subsection (a) of this section with respect to policies issued in a State unless the Panel makes a finding that such State cannot be expected to

[2] So in original. Probably should be ''supplemental''.

have established, by July 1, 1982, an approved State regulatory program meeting the standards and requirements of subsection (b)(1) of this section. If the Panel makes such a finding, the Secretary shall implement such program under subsection (a) of this section with respect to medicare supplemental policies issued in such State, until such time as the Panel determines that such State has a program that meets the standards and requirements of subsection (b)(1) of this section.

(B) Any finding by the Panel under subparagraph (A) shall be transmitted in writing, not later than January 1, 1982, to the Committee on Finance of the Senate and to the Committee on Energy and Commerce and the Committee on Ways and Means of the House of Representatives and shall not become effective until 60 days after the date of its transmittal to the Committees of the Congress under this subparagraph. In counting such days, days on which either House is not in session because of an adjournment sine die or an adjournment of more than three days to a day certain are excluded in the computation.

(j) State regulation of policies issued in other States

Nothing in this section shall be construed so as to affect the right of any State to regulate medicare supplemental policies which, under the provisions of this section, are considered to be issued in another State.

(k) Amended NAIC Model Regulation or Federal model standards applicable; effective date; medicare supplemental policy and State regulatory program meeting applicable standards

(1)(A) If, within the 90-day period beginning on July 1, 1988, the National Association of Insurance Commissioners (in this subsection referred to as the ''Association'') amends the NAIC Model Regulation adopted on June 6, 1979 (as it relates to medicare supplemental policies), with respect to matters such as minimum benefit standards, loss ratios, disclosure requirements, and replacement requirements and provisions otherwise necessary to reflect the changes in law made by the Medicare Catastrophic Coverage Act of 1988, except as provided in subsection (m) of this section, subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the Model Regulation as amended by the Association in accordance with this paragraph (in this subsection and subsection (*l*) of this section referred to as the ''amended NAIC Model Regulation'').

(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the amended NAIC Model Regulation or 1 year after the date the Association first adopts such amended Regulation.

(2)(A) If the Association does not amend the NAIC Model Regulation within the 90-day period specified in paragraph (1)(A), the Secretary shall promulgate, not later than 60 days after the end of such period, Federal model standards (in this subsection and subsection (*l*) of this section referred to as ''Federal model standards'') for medicare supplemental policies to reflect the changes in law made by the Medicare Catastrophic Coverage Act of 1988, and subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to Federal model standards.

(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the Federal model standards or 1 year after the date the Secretary first promulgates such standards.

(3) Notwithstanding any other provision of this section (except as provided in subsections (*l*), (m), and (n) of this section)—

(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a) of this section,

(B) no certification made pursuant to subsection (a) of this section shall remain in effect, and

(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A) of this section,

unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the amended NAIC Model Regulation or the Federal model standards (as the case may be) by the date specified in paragraph (1)(B) or (2)(B) (as the case may be).

(*l*) Transitional compliance with NAIC Model Transition Regulation; "qualifying medicare supplemental policy" and "NAIC Model Transition Regulation" defined; report to Congress respecting State action in adopting equal or more stringent standards

(1) Until the date specified in paragraph (3), in the case of a qualifying medicare supplemental policy described in paragraph (2) issued—

(A) before January 1, 1989, the policy is deemed to remain in compliance with this section if the insurer issuing the policy complies with the NAIC Model Transition Regulation (including giving notices to subscribers and filing for premium adjustments with the State as described in section 5.B. of such Regulation) by January 1, 1989; or

(B) on or after January 1, 1989, the policy is deemed to be in compliance with this section if the insurer issuing the policy complies with the NAIC Model Transition Regulation before the date of the sale of the policy.

(2) In paragraph (1), the term ''qualifying medicare supplemental policy'' means a medicare supplemental policy—

(A) issued in a State which—

(i) has not adopted standards equal to or more stringent than the NAIC Model Transition Regulation by January 1, 1989, and

(ii) has not adopted standards equal to or more stringent than the amended NAIC Model Regulation (or Federal model standards) by January 1, 1989; and

(B) which has been issued in compliance with this section (as in effect on June 1, 1988).

(3)(A) The date specified in this paragraph is the earlier of—

(i) the first date a State adopts, after January 1, 1989, standards equal to or more stringent than the NAIC Model Transition Regulation or equal to or more stringent than the amended NAIC Model Regulation (or Federal model standards), as the case may be, or

(ii) the later of (I) the date specified in subsection (k)(1)(B) or (k)(2)(B) of this section (as the case may be), or (II) the date specified in subparagraph (B).

(B) In the case of a State which the Secretary identifies as—

(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet standards described in subparagraph (A)(i), but

(ii) having a legislature which is not scheduled to meet in 1989 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1989, and in which legislation described in clause (i) may be considered. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(4) In the case of a medicare supplemental policy in effect on January 1, 1989, and offered in a State which, as of such date—

(A) has adopted standards equal to or more stringent than the amended NAIC Model Regulation (or Federal model standards), but

(B) does not have in effect standards equal to or more stringent than the NAIC Model Transition Regulation (or otherwise requiring notice substantially the same as the notice required in section 5.B. of such Regulation),

the policy shall not be deemed to meet the standards in subsection (c) of this section unless each individual who is entitled to benefits under this subchapter and is a policyholder under such policy on January 1, 1989, is sent such a notice in any appropriate form by not later than January 31, 1989, that explains—

(A) the improved benefits under this subchapter contained in the Medicare Catastrophic Coverage Act of 1988, and

(B) how these improvements affect the benefits contained in the policies and the premium for the policy.

(5) In this subsection, the term ''NAIC Model Transition Regulation'' refers to the standards contained in the ''Model Regulation to Implement Transitional Requirements for the Conversion of Medicare Supplement Insurance Benefits and Premiums to Conform to Medicare Program Revisions'' (as adopted by the National Association of Insurance Commissioners in September 1987).

(6) The Secretary shall report to the Congress in March 1989 and in July 1990 on actions States have taken in adopting standards equal to or more stringent than the NAIC Model Transition Regulation or the amended NAIC Model Regulation (or Federal model standards).

(m) Revision of amended NAIC Model Regulation and amended Federal model standards; effective dates; medicare supplemental policy and State regulatory program meeting applicable standards

(1)(A) If, within the 90-day period beginning on December 13, 1989, the National Association of Insurance Commissioners (in this subsection and subsection (n) of this section referred to as the ''Association'') revises the amended NAIC Model Regulation (referred to in subsection (k)(1)(A) of this section and adopted on September 20, 1988) to improve such regulation and otherwise to reflect the changes in law made by the Medicare Catastrophic Coverage Repeal Act of 1989, subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the amended NAIC Model Regulation (referred to in subsection (k)(1)(A) of this section) as revised by the Association in accordance with this paragraph (in this subsection and subsection (n) of this section referred to as the ''revised NAIC Model Regulation'').

(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised NAIC Model Regulation or 1 year after the date the Association first adopts such revised Regulation.

(2)(A) If the Association does not revise the amended NAIC Model Regulation, within the 90-day period specified in paragraph (1)(A), the Secretary shall promulgate, not later than 60 days after the end of such period, revised Federal model standards (in this subsection and subsection (n) of this section referred to as ''revised Federal model standards'') for medicare supplemental policies to improve such standards and otherwise to reflect the changes in law made by the Medicare Catastrophic Coverage Repeal Act of 1989, subsection (g)(2)(A) of this section shall be applied in a State, effective on and after the date specified in subparagraph (B), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised Federal model standards.

(B) The date specified in this subparagraph for a State is the earlier of the date the State adopts standards equal to or more stringent than the revised Federal model standards or 1 year after the date the Secretary first promulgates such standards.

(3) Notwithstanding any other provision of this section (except as provided in subsection (n) of this section)—

(A) no medicare supplemental policy may be certified by the Secretary pursuant to subsection (a) of this section,

(B) no certification made pursuant to subsection (a) of this section shall remain in effect, and

(C) no State regulatory program shall be found to meet (or to continue to meet) the requirements of subsection (b)(1)(A) of this section,

unless such policy meets (or such program provides for the application of standards equal to or more stringent than) the standards set forth in the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) by the date specified in paragraph (1)(B) or (2)(B) (as the case may be).

(n) Transition compliance with revision of NAIC Model Regulation and Federal model standards

(1) Until the date specified in paragraph (4), in the case of a qualifying medicare supplemental policy described in paragraph (3) issued in a State—

(A) before the transition deadline, the policy is deemed to remain in compliance with the standards described in subsection (b)(1)(A) of this section only if the insurer issuing the policy complies with the transition provision described in paragraph (2), or

(B) on or after the transition deadline, the policy is deemed to be in compliance with the standards described in subsection (b)(1)(A) of this section only if the insurer issuing the policy complies with the revised NAIC Model Regulation or the revised Federal model standards (as the case may be) before the date of the sale of the policy.

In this paragraph, the term ''transition deadline'' means 1 year after the date the Association adopts the revised NAIC Model Regulation or 1 year after the date the Secretary promulgates revised Federal model standards (as the case may be).

(2) The transition provision described in this paragraph is—

(A) such transition provision as the Association provides, by not later than December 15, 1989, so as to provide for an appropriate transition (i) to restore benefit provisions which are no longer duplicative as a result of the changes in benefits under this subchapter made by the Medicare Catastrophic Coverage Repeal Act of 1989 and (ii) to eliminate the requirement of payment for the first 8 days of coinsurance for extended care services, or

(B) if the Association does not provide for a transition provision by the date described in subparagraph (A), such transition provision as the Secretary shall provide, by January 1, 1990, so as to provide for an appropriate transition described in subparagraph (A).

(3) In paragraph (1), the term ''qualifying medicare supplemental policy'' means a medicare supplemental policy which has been issued in compliance with this section as in effect on the date before December 13, 1989.

(4)(A) The date specified in this paragraph for a policy issued in a State is—

(i) the first date a State adopts, after December 13, 1989, standards equal to or more stringent than the revised NAIC Model Regulation (or revised Federal model standards), as the case may be, or

(ii) the date specified in subparagraph (B),

whichever is earlier.

(B) In the case of a State which the Secretary identifies, in consultation with the Association, as—

(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet standards described in subparagraph (A)(i), but

(ii) having a legislature which is not scheduled to meet in 1990 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1990. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(5) In the case of a medicare supplemental policy in effect on January 1, 1990, the policy shall not be deemed to meet the standards in subsection (c) of this section unless each individual who is entitled to benefits under this subchapter and is a policyholder or certificate holder under such policy on such date is sent a notice in an appropriate form by not later than January 31, 1990, that explains—

(A) the changes in benefits under this subchapter effected by the Medicare Catastrophic Coverage Repeal Act of 1989, and

(B) how these changes may affect the benefits contained in such policy and the premium for the policy.

(6)(A) Except as provided in subparagraph (B), in the case of an individual who had in effect, as of December 31, 1988, a medicare supplemental policy with an insurer (as a policyholder or, in the case of a group policy, as a certificate holder) and the individual terminated coverage under such policy before December 13, 1989, no medicare supplemental policy of the insurer shall be deemed to meet the standards in subsection (c) of this section unless the insurer—

(i) provides written notice, no earlier than December 15, 1989, and no later than January 30, 1990, to the policyholder or certificate holder (at the most recent available address) of the offer described in clause (ii), and

(ii) offers the individual, during a period of at least 60 days beginning not later than February 1, 1990, reinstitution of coverage (with coverage effective as of January 1, 1990), under the terms which (I) do not provide for any waiting period with respect to treatment of pre-existing conditions, (II) provides for coverage which is substantially equivalent to coverage in effect before the date of such termination, and (III) provides for classification of premiums on which terms are at least as favorable to the policyholder or certificate holder as the premium classification terms that would have applied to the policyholder or certificate holder had the coverage never terminated.

(B) An insurer is not required to make the offer under subparagraph (A)(ii) in the case of an individual who is a policyholder or certificate holder in another medicare supplemental policy as of December 13, 1989, if (as of January 1, 1990) the individual is not subject to a waiting period with respect to treatment of a pre-existing condition under such other policy.

(*o*) Requirements of group benefits; core group benefits; uniform outline of coverage

The requirements of this subsection are as follows:

(1) Each medicare supplemental policy shall provide for coverage of a group of benefits consistent with subsection (p) of this section.

(2) If the medicare supplemental policy provides for coverage of a group of benefits other than the core group of basic benefits described in subsection (p)(2)(B) of this section, the issuer of the policy must make available to the individual a medicare supplemental policy with only such core group of basic benefits.

(3) The issuer of the policy has provided, before the sale of the policy, an outline of coverage that uses uniform language and format (including layout and print size) that facilitates comparison among medicare supplemental policies and comparison with medicare benefits.

(p) Standards for group benefits

(1)(A) If, within 9 months after November 5, 1990, the National Association of Insurance Commissioners (in this subsection referred to as the ''Association'') changes the revised NAIC Model Regulation (described in subsection (m) of this section) to incorporate—

(i) limitations on the groups or packages of benefits that may be offered under a medicare supplemental policy consistent with paragraphs (2) and (3) of this subsection,

(ii) uniform language and definitions to be used with respect to such benefits,

(iii) uniform format to be used in the policy with respect to such benefits, and

(iv) other standards to meet the additional requirements imposed by the amendments made by the Omnibus Budget Reconciliation Act of 1990,

subsection (g)(2)(A) of this section shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised NAIC Model Regulation as changed under this subparagraph (such changed regulation referred to in this section as the ''1991 NAIC Model Regulation'').

(B) If the Association does not make the changes in the revised NAIC Model Regulation within the 9-month period specified in subparagraph (A), the Secretary shall promulgate, not later than 9 months after the end of such period, a regulation and subsection (g)(2)(A) of this section shall be applied in each State, effective for policies issued to policyholders on and after the date specified in subparagraph (C), as if the reference to the Model Regulation adopted on June 6, 1979, were a reference to the revised NAIC Model Regulation as changed by the Secretary under this subparagraph (such changed regulation referred to in this section as the ''1991 Federal Regulation'').

(C)(i) Subject to clause (ii), the date specified in this subparagraph for a State is the date the State adopts the 1991 NAIC Model Regulation or 1991 Federal Regulation or 1 year after the date the Association or the Secretary first adopts such standards, whichever is earlier.

(ii) In the case of a State which the Secretary identifies, in consultation with the Association, as—

(I) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to meet the 1991 NAIC Model Regulation or 1991 Federal Regulation, but

(II) having a legislature which is not scheduled to meet in 1992 in a legislative session in which such legislation may be considered,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1992. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

(D) In promulgating standards under this paragraph, the Association or Secretary shall consult with a working group composed of representatives of issuers of medicare supplemental policies, consumer groups, medicare beneficiaries, and other qualified individuals. Such representatives shall be selected in a manner so as to assure balanced representation among the interested groups.

(E) If benefits (including deductibles and coinsurance) under this subchapter are changed and the Secretary determines, in consultation with the Association, that changes in the 1991 NAIC Model Regulation or 1991 Federal Regulation are needed to reflect such changes, the preceding provisions of this paragraph shall apply to the modification of standards previously established in the same manner as they applied to the original establishment of such standards.

(2) The benefits under the 1991 NAIC Model Regulation or 1991 Federal Regulation shall provide—

(A) for such groups or packages of benefits as may be appropriate taking into account the considerations specified in paragraph (3) and the requirements of the succeeding subparagraphs;

(B) for identification of a core group of basic benefits common to all policies,[3] and

(C) that, subject to paragraph (4)(B), the total number of different benefit packages (counting the core group of basic benefits described in subparagraph (B) and each other combination of benefits that may be offered as a separate benefit package) that may be established in all the States and by all issuers shall not exceed 10.

(3) The benefits under paragraph (2) shall, to the extent possible—

(A) provide for benefits that offer consumers the ability to purchase the benefits that are available in the market as of November 5, 1990; and

(B) balance the objectives of (i) simplifying the market to facilitate comparisons among policies, (ii) avoiding adverse selection, (iii) providing consumer choice, (iv) providing market stability, and (v) promoting competition.

[3] So in original. The comma probably should be a semicolon.

(4)(A)(i) Except as provided in subparagraph (B) or paragraph (6), no State with a regulatory program approved under subsection (b)(1) of this section may provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy unless such grouping meets the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation.

(ii) Except as provided in subparagraph (B), the Secretary may not provide for or permit the grouping of benefits (or language or format with respect to such benefits) under a medicare supplemental policy seeking approval by the Secretary unless such grouping meets the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation.

(B) With the approval of the State (in the case of a policy issued in a State with an approved regulatory program) or the Secretary (in the case of any other policy), the issuer of a medicare supplemental policy may offer new or innovative benefits in addition to the benefits provided in a policy that otherwise complies with the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation. Any such new or innovative benefits may include benefits that are not otherwise available and are cost-effective and shall be offered in a manner which is consistent with the goal of simplification of medicare supplemental policies.

(5)(A) Except as provided in subparagraph (B), this subsection shall not be construed as preventing a State from restricting the groups of benefits that may be offered in medicare supplemental policies in the State.

(B) A State with a regulatory program approved under subsection (b)(1) of this section may not restrict under subparagraph (A) the offering of a medicare supplemental policy consisting only of the core group of benefits described in paragraph (2)(B).

(6) The Secretary may waive the application of standards described in clauses (i) through (iii) of paragraph (1)(A) in those States that on November 5, 1990, had in place an alternative simplification program.

(7) This subsection shall not be construed as preventing an issuer of a medicare supplemental policy who otherwise meets the requirements of this section from providing, through an arrangement with a vendor, for discounts from that vendor to policyholders or certificateholders for the purchase of items or services not covered under its medicare supplemental policies.

(8) Any person who sells or issues a medicare supplemental policy, on and after the effective date specified in paragraph (1)(C) (but subject to paragraph (10)), in violation of the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation insofar as such regulation relates to the requirements of subsection (*o*) or (q) of this section or clause (i), (ii), or (iii) of paragraph (1)(A) is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not an issuer of a policy) for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(9)(A) Anyone who sells a medicare supplemental policy to an individual shall make available for sale to the individual a medicare supplemental policy with only the core group of basic benefits (described in paragraph (2)(B)).

(B) Anyone who sells a medicare supplemental policy to an individual shall provide the individual, before the sale of the policy, an outline of coverage which describes the benefits under the policy. Such outline shall be on a standard form approved by the State regulatory program or the Secretary (as the case may be) consistent with the 1991 NAIC Model Regulation or 1991 Federal Regulation under this subsection.

(C) Whoever sells a medicare supplemental policy in violation of this paragraph is subject to a civil money penalty of not to exceed $25,000 (or $15,000 in the case of a seller who is not the issuer of the policy) for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(D) Subject to paragraph (10), this paragraph shall apply to sales of policies occurring on or after the effective date specified in paragraph (1)(C).

(10) No penalty may be imposed under paragraph (8) or (9) in the case of a seller who is not the issuer of a policy until the Secretary has published a list of the groups of benefit packages that may be sold or issued consistent with paragraph (1)(A)(i).

(q) Guaranteed renewal of policies; termination; suspension

The requirements of this subsection are as follows:

(1) Each medicare supplemental policy shall be guaranteed renewable and—

(A) the issuer may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(B) the issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(2) If the medicare supplemental policy is terminated by the group policyholder and is not replaced as provided under paragraph (4), the issuer shall offer certificateholders an individual medicare supplemental policy which (at the option of the certificateholder)—

(A) provides for continuation of the benefits contained in the group policy, or

(B) provides for such benefits as otherwise meets[4] the requirements of this section.

(3) If an individual is a certificateholder in a group medicare supplemental policy and the individual terminates membership in the group, the issuer shall—

(A) offer the certificateholder the conversion opportunity described in paragraph (2), or

[4] So in original. Probably should be ''meet''.

(B) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(4) If a group medicare supplemental policy is replaced by another group medicare supplemental policy purchased by the same policyholder, issuer[5] of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(5)(A) Each medicare supplemental policy shall provide that benefits and premiums under the policy shall be suspended at the request of the policyholder for the period (not to exceed 24 months) in which the policyholder has applied for and is determined to be entitled to medical assistance under subchapter XIX of this chapter, but only if the policyholder notifies the issuer of such policy within 90 days after the date the individual becomes entitled to such assistance. If such suspension occurs and if the policyholder or certificate holder loses entitlement to such medical assistance, such policy shall be automatically reinstituted (effective as of the date of termination of such entitlement) under terms described in subsection (n)(6)(A)(ii) of this section as of the termination of such entitlement if the policyholder provides notice of loss of such entitlement within 90 days after the date of such loss.

(B) Nothing in this section shall be construed as affecting the authority of a State, under subchapter XIX of this chapter, to purchase a medicare supplemental policy for an individual otherwise entitled to assistance under such subchapter.

(C) Any person who issues a medicare supplemental policy and fails to comply with the requirements of this paragraph is subject to a civil money penalty of not to exceed $25,000 for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(r) Required ratio of aggregate benefits to aggregate premiums

(1) A medicare supplemental policy may not be issued or renewed (or otherwise provide coverage after the date described in subsection (p)(1)(C) of this section) in any State unless—

(A) the policy can be expected for periods after the effective date of these provisions (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such periods and in accordance with a uniform methodology, including uniform reporting standards, developed by the National Association of Insurance Commissioners) to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 65 percent in the case of individual policies; and

(B) the issuer of the policy provides for the issuance of a proportional refund, or a credit against future premiums of a proportional amount, based on the premium paid and in accordance with paragraph (2), of the amount of premiums received necessary to assure that the ratio of aggregate benefits provided to the aggregate premiums collected (net of such refunds or credits) complies with the expectation required under subparagraph (A), treating policies of the same type as a single policy for each standard package.

For purposes of applying subparagraph (A) only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies. For the purpose of calculating the refund or credit required under paragraph (1)(B) for a policy issued before the date specified in subsection (p)(1)(C) of this section, the refund or credit calculation shall be based on the aggregate benefits provided and premiums collected under all such policies issued by an insurer in a State (separated as to individual and group policies) and shall be based only on aggregate benefits provided and premiums collected under such policies after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.

(2)(A) Paragraph (1)(B) shall be applied with respect to each type of policy by standard package. Paragraph (1)(B) shall not apply to a policy until 12 months following issue. The Comptroller General, in consultation with the National Association of Insurance Commissioners, shall submit to Congress a report containing recommendations on adjustment in the percentages under paragraph (1)(A) that may be appropriate. In the case of a policy issued before the date specified in subsection (p)(1)(C) of this section, paragraph (1)(B) shall not apply until 1 year after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.

(B) A refund or credit required under paragraph (1)(B) shall be made to each policyholder insured under the applicable policy as of the last day of the year involved.

(C) Such a refund or credit shall include interest from the end of the calendar year involved until the date of the refund or credit at a rate as specified by the Secretary for this purpose from time to time which is not less than the average rate of interest for 13-week Treasury notes.

(D) For purposes of this paragraph and paragraph (1)(B), refunds or credits against premiums due shall be made, with respect to a calendar year, not later than the third quarter of the succeeding calendar year.

(3) The provisions of this subsection do not preempt a State from requiring a higher percentage than that specified in paragraph (1)(A).

(4) The Secretary shall submit in October of each year (beginning with 1993) a report to the Committees on Energy and Commerce and Ways

[5] So in original. Probably should be preceded by ''the''.

and Means of the House of Representatives and the Committee on Finance of the Senate on loss ratios under medicare supplemental policies and the use of sanctions, such as a required rebate or credit or the disallowance of premium increases, for policies that fail to meet the requirements of this subsection (relating to loss ratios). Such report shall include a list of the policies that failed to comply with such loss ratio requirements or other requirements of this section.

(5)(A) The Comptroller General shall periodically, not less often than once every 3 years, perform audits with respect to the compliance of medicare supplemental policies with the loss ratio requirements of this subsection and shall report the results of such audits to the State involved and to the Secretary.

(B) The Secretary may independently perform such compliance audits.

(6)(A) A person who fails to provide refunds or credits as required in paragraph (1)(B) is subject to a civil money penalty of not to exceed $25,000 for each policy issued for which such failure occurred. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(B) Each issuer of a policy subject to the requirements of paragraph (1)(B) shall be liable to the policyholder or, in the case of a group policy, to the certificate holder for credits required under such paragraph.

(s) Coverage for pre-existing conditions

(1) If a medicare supplemental policy replaces another medicare supplemental policy, the issuer of the replacing policy shall waive any time periods applicable to preexisting conditions, waiting period, elimination periods and probationary periods in the new medicare supplemental policy for similar benefits to the extent such time was spent under the original policy.

(2)(A) The issuer of a medicare supplemental policy may not deny or condition the issuance or effectiveness of a medicare supplemental policy, or discriminate in the pricing of the policy, because of health status, claims experience, receipt of health care, or medical condition in the case of an individual for whom an application is submitted prior to or during the 6 month period beginning with the first month as of the first day on which the individual is 65 years of age or older and is enrolled for benefits under part B of this subchapter.

(B) Subject to subparagraph (C), subparagraph (A) shall not be construed as preventing the exclusion of benefits under a policy, during its first 6 months, based on a pre-existing condition for which the policyholder received treatment or was otherwise diagnosed during the 6 months before the policy became effective.

(C) If a medicare supplemental policy or certificate replaces another such policy or certificate which has been in effect for 6 months or longer, the replacing policy may not provide any time period applicable to pre-existing conditions, waiting periods, elimination periods, and probationary periods in the new policy or certificate for similar benefits.

(3) Any issuer of a medicare supplemental policy that fails to meet the requirements of paragraphs (1) and (2) is subject to a civil money penalty of not to exceed $5,000 for each such failure. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(t) Medicare select policies

(1) If a medicare supplemental policy meets the 1991 NAIC Model Regulation or 1991 Federal Regulation and otherwise complies with the requirements of this section except that benefits under the policy are restricted to items and services furnished by certain entities (or reduced benefits are provided when items or services are furnished by other entities), the policy shall nevertheless be treated as meeting those standards if—

(A) full benefits are provided for items and services furnished through a network of entities which have entered into contracts or agreements with the issuer of the policy;

(B) full benefits are provided for items and services furnished by other entities if the services are medically necessary and immediately required because of an unforeseen illness, injury, or condition and it is not reasonable given the circumstances to obtain the services through the network;

(C) the network offers sufficient access;

(D) the issuer of the policy has arrangements for an ongoing quality assurance program for items and services furnished through the network;

(E)(i) the issuer of the policy provides to each enrollee at the time of enrollment an explanation of (I) the restrictions on payment under the policy for services furnished other than by or through the network, (II) out of area coverage under the policy, (III) the policy's coverage of emergency services and urgently needed care, and (IV) the availability of a policy through the entity that meets the standards in the 1991 NAIC Model Regulation or 1991 Federal Regulation without reference to this subsection and the premium charged for such policy, and

(ii) each enrollee prior to enrollment acknowledges receipt of the explanation provided under clause (i); and

(F) the issuer of the policy makes available to individuals, in addition to the policy described in this subsection, any policy (otherwise offered by the issuer to individuals in the State) that meets the standards in the 1991 NAIC Model Regulation or 1991 Federal Regulation and other requirements of this section without reference to this subsection.

(2) If the Secretary determines that an issuer of a policy approved under paragraph (1)—

(A) fails substantially to provide medically necessary items and services to enrollees seeking such items and services through the issuer's network, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual,

(B) imposes premiums on enrollees in excess of the premiums approved by the State,

(C) acts to expel an enrollee for reasons other than nonpayment of premiums, or

(D) does not provide the explanation required under paragraph (1)(E)(i) or does not obtain the acknowledgment required under paragraph (1)(E)(ii),

the issuer is subject to a civil money penalty in an amount not to exceed $25,000 for each such violation. The provisions of section 1320a–7a of this title (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(3) The Secretary may enter into a contract with an entity whose policy has been certified under paragraph (1) or has been approved by a State under subsection (b)(1)(H) of this section to determine whether items and services (furnished to individuals entitled to benefits under this subchapter and under that policy) are not allowable under section 1395y(a)(1) of this title. Payments to the entity shall be in such amounts as the Secretary may determine, taking into account estimated savings under contracts with carriers and fiscal intermediaries and other factors that the Secretary finds appropriate. Paragraph (1), the first sentence of paragraph (2)(A), paragraph (2)(B), paragraph (3)(C), paragraph (3)(D), and paragraph (3)(E) of section 1395u(b) of this title shall apply to the entity.

(Aug. 14, 1935, ch. 531, title XVIII, § 1882, as added June 9, 1980, Pub. L. 96–265, title V, § 507(a), 94 Stat. 476; amended H. Res. 549, Mar. 25, 1980; Aug. 18, 1987, Pub. L. 100–93, § 13, 101 Stat. 697; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4081(b), 101 Stat. 1330–127; July 1, 1988, Pub. L. 100–360, title II, § 221(a)–(f), title IV, §§ 411(i)(1)(B), (C), 428(b), 102 Stat. 742–746, 788, 817; Dec. 13, 1989, Pub. L. 101–234, title II, § 203(a)(1), 103 Stat. 1982; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4207(k)(1), formerly 4027(k)(1), 4351, formerly 4351(a), 4352, 4353(a)–(d)(1), 4354(a), (b), 4355(a)–(c), 4356(a), 4357(a), 4358(a), (b)(1), (2), 104 Stat. 1388–124, 1388–125, 1388–129, 1388–130, 1388–132, 1388–134 to 1388–137; Oct. 31, 1994, Pub. L. 103–432, title I, §§ 160(d)(4), 171(a)–(d)(3)(B), (4), (e)(1), (2), (f)(1), (g), (h)(1), (j)(2), (k), 108 Stat. 4444–4451.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in subsecs. (d)(3)(A)(i), (B)(i) and (s)(2)(A), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 603(c) of the Social Security Amendments of 1983, referred to in subsec. (g)(1), is section 603(c) of Pub. L. 98–21, title VI, Apr. 20, 1983, 97 Stat. 168, which is not classified to the Code.

Section 2355 of the Deficit Reduction Act of 1984, referred to in subsec. (g)(1), is section 2355 of Pub. L. 98–369, div. B, title III, July 18, 1984, 98 Stat. 1103, which is not classified to the Code.

Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (g)(1), is section 9412(b) of Pub. L. 99–509, title IX, Oct. 21, 1986, 100 Stat. 2062, which is not classified to the Code.

The Medicare Catastrophic Coverage Act of 1988, referred to in subsecs. (k)(1)(A), (2)(A) and (*l*)(4)(A), is Pub. L. 100–360, July 1, 1988, 102 Stat. 683, as amended. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 1305 of this title and Tables.

The Medicare Catastrophic Coverage Repeal Act of 1989, referred to in subsecs. (m)(1)(A), (2)(A) and (n)(2)(A), (5)(A), is Pub. L. 101–234, Dec. 13, 1989, 103 Stat. 1979. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1305 of this title and Tables.

The Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (p)(1)(A)(iv), is Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388. For complete classification of this Act to the Code, see Tables.

Section 171(m)(4) of the Social Security Act Amendments of 1994, referred to in subsec. (r)(1), (2)(A), is section 171(m)(4) of Pub. L. 103–432, title I, Oct. 31, 1994, 108 Stat. 4452, which is set out as a note below.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–432, § 171(c)(1)(B), in closing provisions substituted ''on and after the effective date specified in subsection (p)(1)(C) of this section'' for ''after the effective date of the NAIC or Federal standards with respect to the policy''.

Subsec. (a)(2)(A). Pub. L. 103–432, § 171(c)(1)(A), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC standards or the Federal standards''.

Subsec. (b)(1). Pub. L. 103–432, § 171(e)(2), substituted ''subparagraph (F)'' for ''subsection (F)'' in last sentence.

Pub. L. 103–432, § 171(c)(4), substituted ''the Secretary determines'' for ''the the Secretary determines'' in introductory provisions.

Pub. L. 103–432, § 171(c)(2), in last sentence substituted ''Each report'' for ''The report'', ''fail to meet the standards and requirements'' for ''fail to meet the standards'', ''compliance, information regarding'' for ''compliance, and information regarding'', and ''Commissioners may specify'' for ''Commissioners, may specify''.

Subsecs. (b)(1)(B), (c)(5). Pub. L. 103–432, § 171(a)(1), made technical amendment to Pub. L. 101–508, § 4351. See 1990 Amendment notes below.

Subsec. (d)(3)(A). Pub. L. 103–432, § 171(d)(1)(D), struck out at end ''This subsection shall not apply to such a seller until such date as the Secretary publishes a list of the standardized benefit packages that may be offered consistent with subsection (p) of this section.''

Pub. L. 103–432, § 171(d)(1)(C), designated third sentence as cl. (iii), substituted ''clause (i) with respect to the sale of a medicare supplemental policy'' for ''the previous sentence'', and struck out ''and the statement under such subparagraph indicates on its face that the sale of the policy will not duplicate health benefits to which the individual is otherwise entitled'' after ''compliance with subparagraph (B)''.

Pub. L. 103–432, § 171(d)(1)(B), designated second sentence as cl. (ii) and substituted ''Whoever violates clause (i)'' for ''Whoever violates the previous sentence''.

Pub. L. 103–432, § 171(d)(1)(A), designated first sentence as cl. (i) and amended it generally. Prior to amendment, first sentence read as follows: ''It is unlawful for a person to sell or issue a health insurance policy to an individual entitled to benefits under part A of this subchapter or enrolled under part B of this subchapter, with knowledge that such policy duplicates health benefits to which such individual is otherwise entitled, other than benefits to which he is entitled under a requirement of State or Federal law (other than this subchapter or subchapter XIX of this chapter).''

Subsec. (d)(3)(B)(ii)(II). Pub. L. 103–432, § 171(d)(2)(A), struck out ''65 years of age or older'' before ''may be eligible''.

Subsec. (d)(3)(B)(iii)(I). Pub. L. 103–432, § 171(d)(2)(B), (C), substituted ''has a medicare supplemental policy'' for ''has another medicare supplemental policy'' and ''sale of a medicare supplemental policy'' for ''sale of such a policy''.

Subsec. (d)(3)(B)(iii)(II). Pub. L. 103–432, §171(d)(2)(D), substituted ''has a medicare supplemental policy'' for ''has another policy''.

Subsec. (d)(3)(B)(iii)(III). Pub. L. 103–432, §171(d)(2)(E), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: ''Subclause (I) also shall not apply if a State medicaid plan under subchapter XIX of this chapter pays the premiums for the policy, or pays less than an individual's (who is described in section 1396d(p)(1) of this title) full liability for medicare cost sharing as defined in section 1396d(p)(3)(A) of this title.''

Subsec. (d)(3)(C). Pub. L. 103–432, §171(d)(3)(A), substituted ''(i) the sale or issuance of a group policy'' for ''the selling of a group policy'' and added cls. (ii) and (iii).

Subsec. (d)(3)(D). Pub. L. 103–432, §171(d)(3)(B), added subpar. (D).

Subsec. (d)(4)(D). Pub. L. 103–432, §171(k)(1), struck out before period at end '', if such policy expires not more than 12 months after the date on which the duplicate copy is mailed''.

Subsec. (d)(4)(E). Pub. L. 103–432, §171(k)(2), added subpar. (E).

Subsec. (f)(3). Pub. L. 103–432, §171(j)(2), added par. (3).

Subsec. (g)(1). Pub. L. 103–432, §171(f)(1), substituted ''an eligible organization (as defined in section 1395mm(b) of this title) if the policy or plan provides benefits pursuant to a contract under section 1395mm of this title or an approved demonstration project described in section 603(c) of the Social Security Amendments of 1983, section 2355 of the Deficit Reduction Act of 1984, or section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, or, during the period beginning on the date specified in subsection (p)(1)(C) of this section and ending on December 31, 1995, a policy or plan of an organization if the policy or plan provides benefits pursuant to an agreement under section 1395*l*(a)(1)(A) of this title'' for ''a health maintenance organization or other direct service organization which offers benefits under this subchapter, including such services under a contract under under section 1395mm of this title or an agreement under section 1395*l* of this title.''

Subsec. (g)(2)(B). Pub. L. 103–432, §171(c)(3), substituted ''Secretary'' for ''Panel''.

Subsec. (*o*). Pub. L. 103–432, §171(a)(1), made technical amendment to Pub. L. 101–508, §4351. See 1990 Amendment note below.

Subsec. (p). Pub. L. 103–432, §171(a)(1), made technical amendment to Pub. L. 101–508, §4351. See 1990 Amendment note below.

Subsec. (p)(1)(A). Pub. L. 103–432, §171(a)(2)(A), in introductory provisions, substituted ''changes the revised NAIC Model Regulation (described in subsection (m) of this section) to incorporate'' for ''promulgates'', and in closing provisions, struck out ''(such limitations, language, definitions, format, and standards referred to collectively in this subsection as 'NAIC standards'),'' before ''subsection (g)(2)(A) of this section'' and substituted ''were a reference to the revised NAIC Model Regulation as changed under this subparagraph (such changed regulation referred to in this section as the '1991 NAIC Model Regulation')'' for ''included a reference to the NAIC standards''.

Subsec. (p)(1)(B). Pub. L. 103–432, §171(a)(2)(B), substituted ''make the changes in the revised NAIC Model Regulation'' for ''promulgate NAIC standards'', ''a regulation'' for ''limitations, language, definitions, format, and standards described in clauses (i) through (iv) of such subparagraph (in this subsection referred to collectively as 'Federal standards')'', and ''were a reference to the revised NAIC Model Regulation as changed by the Secretary under this subparagraph (such changed regulation referred to in this section as the '1991 Federal Regulation')'' for ''included a reference to the Federal standards''.

Subsec. (p)(1)(C)(i). Pub. L. 103–432, §171(a)(2)(C), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC standards or the Federal standards''.

Subsec. (p)(1)(C)(ii)(I), (E). Pub. L. 103–432, §171(a)(2)(D), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC or Federal standards''.

Subsec. (p)(2). Pub. L. 103–432, §171(a)(2)(D), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC or Federal standards'' in introductory provisions.

Subsec. (p)(2)(C). Pub. L. 103–432, §171(a)(2)(E), substituted ''paragraph (4)(B)'' for ''paragraph (5)(B)''.

Subsec. (p)(4). Pub. L. 103–432, §171(a)(2)(G), substituted ''applicable 1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''applicable standards'' wherever appearing.

Subsec. (p)(4)(A)(i). Pub. L. 103–432, §171(a)(2)(F), inserted ''or paragraph (6)'' after ''subparagraph (B)''.

Subsec. (p)(6). Pub. L. 103–432, §171(a)(2)(H), substituted ''described in clauses (i) through (iii) of paragraph (1)(A)'' for ''in regard to the limitation of benefits described in paragraph (4)''.

Subsec. (p)(7). Pub. L. 103–432, §171(a)(2)(I), substituted ''policyholders'' for ''policyholder''.

Subsec. (p)(8). Pub. L. 103–432, §171(a)(2)(J), substituted ''on and after the effective date specified in paragraph (1)(C) (but subject to paragraph (10)), in violation of the applicable 1991 NAIC Model Regulation or 1991 Federal Regulation insofar as such regulation relates to the requirements of subsection (*o*) or (q) of this section or clause (i), (ii), or (iii) of paragraph (1)(A)'' for ''after the effective date of the NAIC or Federal standards with respect to the policy, in violation of the previous requirements of this subsection''.

Subsec. (p)(9)(B). Pub. L. 103–432, §171(a)(2)(D), substituted ''1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC or Federal standards''.

Subsec. (p)(9)(D). Pub. L. 103–432, §171(a)(2)(K), added subpar. (D).

Subsec. (p)(10). Pub. L. 103–432, §171(a)(2)(L), substituted ''consistent with paragraph (1)(A)(i)'' for ''consistent with this subsection''.

Subsec. (q)(2). Pub. L. 103–432, §171(b)(1), substituted ''paragraph (4)'' for ''paragraph (2)''.

Subsec. (q)(4). Pub. L. 103–432, §171(b)(2), substituted ''issuer of the replacement policy'' for ''the succeeding issuer''.

Subsec. (q)(5)(A), (B). Pub. L. 103–432, §171(d)(4), made technical amendment to the reference to subchapter XIX of this chapter to correct reference to corresponding provision of original act.

Subsec. (r)(1). Pub. L. 103–432, §171(e)(1)(A), (E), in introductory provisions substituted ''or renewed (or otherwise provide coverage after the date described in subsection (p)(1)(C) of this section)'' for ''or sold'' and inserted at end of closing provisions ''For the purpose of calculating the refund or credit required under paragraph (1)(B) for a policy issued before the date specified in subsection (p)(1)(C) of this section, the refund or credit calculation shall be based on the aggregate benefits provided and premiums collected under all such policies issued by an insurer in a State (separated as to individual and group policies) and shall be based only on aggregate benefits provided and premiums collected under such policies after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.''

Subsec. (r)(1)(A). Pub. L. 103–432, §171(e)(1)(C), substituted ''Commissioners)'' for ''Commissioners,''.

Pub. L. 103–432, §171(e)(1)(B), inserted ''for periods after the effective date of these provisions'' after ''the policy can be expected''.

Subsec. (r)(1)(B). Pub. L. 103–432, §171(e)(1)(D), inserted before period at end '', treating policies of the same type as a single policy for each standard package''.

Subsec. (r)(2)(A). Pub. L. 103–432, §171(e)(1)(F)–(I), substituted ''by standard package'' for ''by policy number'' in first sentence and ''until 12 months following issue'' for ''with respect to the first 2 years in which it is in effect'' in second sentence, struck out ''in order to apply paragraph (1)(B) to the first 2 years in which poli-

cies are effective'' after ''may be appropriate'' in third sentence, and inserted at end ''In the case of a policy issued before the date specified in subsection (p)(1)(C) of this section, paragraph (1)(B) shall not apply until 1 year after the date specified in section 171(m)(4) of the Social Security Act Amendments of 1994.''

Subsec. (r)(2)(C), (D). Pub. L. 103–432, §171(e)(1)(J), substituted ''calendar year'' for ''policy year'' wherever appearing.

Subsec. (r)(4). Pub. L. 103–432, §171(e)(1)(K), substituted ''October'' for ''February'', ''disallowance'' for ''disllowance'', ''loss ratios'' for ''loss-ratios'' in two places, and ''loss ratio'' for ''loss-ratio''.

Subsec. (r)(6)(A). Pub. L. 103–432, §171(e)(1)(L), substituted ''fails to provide refunds or credits as required in paragraph (1)(B)'' for ''issues a policy in violation of the loss ratio requirements of this subsection'' and ''policy issued for which such failure occurred'' for ''such violation''.

Subsec. (r)(6)(B). Pub. L. 103–432, §171(e)(1)(M), substituted ''to the policyholder or, in the case of a group policy, to the certificate holder'' for ''to policyholders''.

Subsec. (s)(2)(A). Pub. L. 103–432, §171(g)(1), (2), substituted ''in the case of an individual for whom an application is submitted prior to or'' for ''for which an application is submitted'' and ''as of the first day on which the individual is 65 years of age or older and is enrolled for benefits under part B'' for ''in which the individual (who is 65 years of age or older) first is enrolled for benefits under part B''.

Subsec. (s)(2)(B). Pub. L. 103–432, §171(g)(3), substituted ''before the policy became effective'' for ''before it became effective''.

Subsec. (t)(1). Pub. L. 103–432, §171(h)(1)(A), (B), substituted ''If a medicare supplemental policy meets the 1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''If a policy meets the NAIC Model Standards''.

Subsec. (t)(1)(A). Pub. L. 103–432, §171(h)(1)(C), inserted ''or agreements'' after ''contracts''.

Subsec. (t)(1)(E)(i), (F). Pub. L. 103–432, §171(h)(1)(D), substituted ''standards in the 1991 NAIC Model Regulation or 1991 Federal Regulation'' for ''NAIC standards''.

Subsec. (t)(2). Pub. L. 103–432, §171(h)(1)(E), inserted ''the issuer'' before ''is subject to a civil money penalty'' in concluding provisions.

1990—Pub. L. 101–508, §4353(a)(1), struck out ''Voluntary'' at beginning of section catchline.

Subsec. (a). Pub. L. 101–508, §4353(a)(2), designated existing provisions as par. (1) and added par. (2).

Pub. L. 101–508, §4207(k)(1), formerly §4027(k)(1), as renumbered by Pub. L. 103–432, §160(d)(4), struck out ''(k)(4),'' after ''subsections (k)(3),'' in third sentence.

Subsec. (b)(1). Pub. L. 101–508, §4353(c)(5), inserted at end ''The report required under subsection (F) shall include information on loss ratios of policies sold in the State, frequency and types of instances in which policies approved by the State fail to meet the standards of this paragraph, actions taken by the State to bring such policies into compliance, and information regarding State programs implementing consumer protection provisions, and such further information as the Secretary in consultation with the National Association of Insurance Commissioners, may specify.''

Pub. L. 101–508, §4353(b)(1), (2), substituted ''the Secretary'' for ''Supplemental Health Insurance Panel (established under paragraph (2))'' in introductory provisions and for ''the Panel'' in concluding provisions.

Pub. L. 101–508, §4207(k)(1), formerly §4027(k)(1), as renumbered by Pub. L. 103–432, §160(d)(4), which directed the amendment of third sentence of par. (1) by striking out ''(k)(4),'' was executed by making the deletion after ''subsections (k)(3),'' in concluding provisions to reflect the probable intent of Congress.

Subsec. (b)(1)(A). Pub. L. 101–508, §4358(b)(2)(A), inserted before semicolon at end '', except as otherwise provided by subparagraph (H)''.

Pub. L. 101–508, §4353(b)(3), inserted ''and enforcement'' after ''application''.

Subsec. (b)(1)(B). Pub. L. 101–508, §4351(1), formerly §4351(a)(1), as renumbered and amended by Pub. L. 103–432, §171(a)(1), substituted ''through (5)'' for ''through (4)''.

Subsec. (b)(1)(C). Pub. L. 101–508, §4355(b), substituted for semicolon at end '', and that a copy of each such policy, the most recent premium for each such policy, and a listing of the ratio of benefits provided to premiums collected for the most recent 3-year period for each such policy issued or sold in the State is maintained and made available to interested persons;''.

Subsec. (b)(1)(D). Pub. L. 101–508, §4353(b)(3), inserted ''and enforcement'' after ''application''.

Subsec. (b)(1)(F). Pub. L. 101–508, §4353(c)(1)–(3), added subpar. (F).

Subsec. (b)(1)(G). Pub. L. 101–508, §4355(c), which directed amendment of par. (1) by adding at the end thereof a new subpar. (G), was executed by adding the new subpar. (G) immediately after subpar. (F) to reflect the probable intent of Congress.

Subsec. (b)(1)(H). Pub. L. 101–508, §4358(b)(2)(B)–(D), added subpar. (H).

Subsec. (b)(2). Pub. L. 101–508, §4353(b)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(A) There is hereby established a panel (hereinafter in this section referred to as the 'Panel') to be known as the Supplemental Health Insurance Panel. The Panel shall consist of the Secretary, who shall serve as the Chairman, and four State commissioners or superintendents of insurance, who shall be appointed by the Secretary and serve at his pleasure. Such members shall first be appointed not later than December 31, 1980.

''(B) A majority of the members of the Panel shall constitute a quorum, but a lesser number may conduct hearings.

''(C) The Secretary shall provide such technical, secretarial, clerical, and other assistance as the Panel may require.

''(D) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

''(E) Members of the Panel shall be allowed, while away from their homes or regular places of business in the performance of services for the Panel, travel expenses (including per diem in lieu of subsistence) in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.''

Subsec. (c). Pub. L. 101–508, §4357(a)(1), inserted ''or the requirement described in subsection (s) of this section'' after ''paragraph (3)'' in introductory provisions.

Pub. L. 101–508, §4355(a)(2), struck out at end ''For purposes of paragraph (2), policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.''

Subsec. (c)(1). Pub. L. 101–508, §4358(b)(1), inserted before semicolon at end ''(except as otherwise provided by subsection (t) of this section)''.

Subsec. (c)(2). Pub. L. 101–508, §4355(a)(1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''can be expected (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such period and in accordance with accepted actuarial principles and practices) to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 60 percent of the aggregate amount of premiums collected in the case of individual policies;''.

Subsec. (c)(5). Pub. L. 101–508, §4351(2), formerly §4351(a)(2), as renumbered and amended by Pub. L. 103–432, §171(a)(1), added par. (5).

Subsec. (d)(3)(A). Pub. L. 101–508, §4354(a)(1), substituted ''It is unlawful for a person to sell or issue'' for ''Whoever knowingly sells'', ''duplicates health bene-

fits'' for ''substantially duplicates health benefits'', ''. Whoever violates the previous sentence shall be fined'' for '', shall be fined'', ''(other than this subchapter or subchapter XIX of this chapter)'' for ''(other than this subchapter)'', and ''$25,000 (or $15,000 in the case of a person other than the issuer of the policy)'' for ''$5,000'' and inserted at end ''A seller (who is not the issuer of a health insurance policy) shall not be considered to violate the previous sentence if the policy is sold in compliance with subparagraph (B) and the statement under such subparagraph indicates on its face that the sale of the policy will not duplicate health benefits to which the individual is otherwise entitled. This subsection shall not apply to such a seller until such date as the Secretary publishes a list of the standardized benefit packages that may be offered consistent with subsection (p) of this section.''

Subsec. (d)(3)(B). Pub. L. 101–508, § 4354(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of this paragraph, benefits which are payable to or on behalf of an individual without regard to other health benefit coverage of such individual, shall not be considered as duplicative.''

Subsec. (d)(4)(B). Pub. L. 101–508, § 4353(d)(1), struck out at end ''For purposes of this paragraph, a medicare supplemental policy shall be deemed to be approved by the commissioner or superintendent of insurance of a State if—

''(i) the policy has been certified by the Secretary pursuant to subsection (c) of this section or was issued in a State with an approved regulatory program (as defined in subsection (g)(2)(B) of this section);

''(ii) the policy has been approved by the commissioners or superintendents of insurance in States in which more than 30 percent of such policies are sold; or

''(iii) the State has in effect a law which the commissioner or superintendent of insurance of the State has determined gives him the authority to review, and to approve, or effectively bar from sale in the State, such policy;

except that such a policy shall not be deemed to be approved by a State commissioner or superintendent of insurance if the State notifies the Secretary that such policy has been submitted for approval to the State and has been specifically disapproved by such State after providing appropriate notice and opportunity for hearing pursuant to the procedures (if any) of the State.''

Subsec. (g)(1). Pub. L. 101–508, § 4356(a), inserted before period at end of first sentence ''and does not include a policy or plan of a health maintenance organization or other direct service organization which offers benefits under this subchapter, including such services under a contract under under section 1395mm of this title or an agreement under section 1395*l* of this title''.

Subsecs. (*o*), (p). Pub. L. 101–508, § 4351(3), formerly § 4351(a)(3), as renumbered and amended by Pub. L. 103–432, § 171(a)(1), added subsecs. (*o*) and (p).

Subsec. (q). Pub. L. 101–508, § 4352, added subsec. (q).

Subsec. (q)(5). Pub. L. 101–508, § 4354(b), added par. (5).

Subsec. (r). Pub. L. 101–508, § 4355(a)(3), added subsec. (r).

Subsec. (s). Pub. L. 101–508, § 4357(a)(2), added subsec. (s).

Subsec. (t). Pub. L. 101–508, § 4358(a), added subsec. (t).

1989—Subsecs. (a), (b)(1). Pub. L. 101–234, § 203(a)(1)(A), substituted ''subsections (k)(3), (k)(4), (m), and (n) of this section'' for ''subsection (k)(3) of this section''.

Subsec. (k)(1)(A). Pub. L. 101–234, § 203(a)(1)(B)(i), inserted ''except as provided in subsection (m) of this section,'' before ''subsection (g)(2)(A)''.

Subsec. (k)(3). Pub. L. 101–234, § 203(a)(1)(B)(ii), substituted ''subsections (*l*), (m), and (n) of this section'' for ''subsection (*l*) of this section''.

Subsecs. (m), (n). Pub. L. 101–234, § 203(a)(1)(C), added subsecs. (m) and (n).

1988—Subsec. (a). Pub. L. 100–360, § 221(d)(1), substituted ''Subject to subsection (k)(3) of this section, such'' for ''Such''.

Subsec. (b)(1). Pub. L. 100–360, § 221(d)(2), substituted ''(subject to subsection (k)(3) of this section, for so long as'' for ''(for so long as'' in concluding provisions.

Subsec. (b)(1)(B). Pub. L. 100–360, § 221(a)(1), substituted ''through (4)'' for ''and (3)''.

Subsec. (b)(1)(C). Pub. L. 100–360, § 221(b)(2), (3), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 100–360, § 221(b)(1), substituted ''(A), (B), and (C)'' for ''(A) and (B)''.

Subsec. (b)(1)(D), (E). Pub. L. 100–360, § 221(b)(2), redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (b)(2)(A). Pub. L. 100–360, § 221(f), substituted ''appointed by the Secretary'' for ''appointed by the President''.

Subsec. (b)(3). Pub. L. 100–360, § 221(e), added par. (3).

Subsec. (c). Pub. L. 100–360, § 411(i)(1)(B), added Pub. L. 100–203, § 4081(b)(2)(A), see 1987 Amendment note below.

Subsec. (c)(3). Pub. L. 100–360, § 411(i)(1)(B), redesignated Pub. L. 100–203, § 4081(b)(2)(B)–(D), see 1987 Amendment note below.

Subsec. (c)(3)(A). Pub. L. 100–360, § 411(i)(1)(C)(i), substituted ''claim form'' for ''claims form'' in two places and ''such notice'' for ''such claims form''.

Subsec. (c)(3)(B)(i). Pub. L. 100–360, § 411(i)(1)(C)(ii), inserted ''under the policy'' after ''payment determination''.

Subsec. (c)(3)(B)(ii). Pub. L. 100–360, § 411(i)(1)(C)(iii), substituted ''payment covered by such policy'' for ''appropriate payment''.

Subsec. (c)(4). Pub. L. 100–360, § 221(a)(2), added par. (4).

Subsec. (d). Pub. L. 100–360, § 428(b)(1), substituted ''shall be fined under title 18 or imprisoned not more than 5 years, or both, and, in addition to or in lieu of such a criminal penalty, is subject to a civil money penalty of not to exceed $5,000 for each such prohibited act'' for ''shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both'' in pars. (1), (2), (3)(A), and (4)(A).

Subsec. (d)(5). Pub. L. 100–360, § 428(b)(2), added par. (5).

Subsec. (e). Pub. L. 100–360, § 221(c), designated existing provision as par. (1) and added pars. (2) and (3).

Subsecs. (k), (*l*). Pub. L. 100–360, § 221(d)(3), added subsecs. (k) and (*l*).

1987—Subsec. (b)(1)(B). Pub. L. 100–203, § 4081(b)(1)(A), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''includes a requirement equal to or more stringent than the requirement described in subsection (c)(2) of this section; and''.

Subsec. (b)(1)(D). Pub. L. 100–203, § 4081(b)(1)(B), (C), added subpar. (D).

Subsec. (c). Pub. L. 100–203, § 4081(b)(2)(A), as added by Pub. L. 100–360, § 411(i)(1)(B), inserted ''(or, with respect to paragraph (3), the issuer of the policy)'' in introductory provisions.

Subsec. (c)(3). Pub. L. 100–203, § 4081(b)(2)(B)–(D), formerly § 4081(b)(2), as redesignated by Pub. L. 100–360, § 411(i)(1)(B), added par. (3).

Subsec. (d)(1). Pub. L. 100–93 substituted ''knowingly and willfully'' for ''knowingly or willfully''.

CHANGE OF NAME

Committee on Interstate and Foreign Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 171(*l*) of Pub. L. 103–432 provided that: ''The amendments made by this section [amending this section and sections 1320c–3, 1395b–2, and 1395b–4 of this title, repealing section 1395zz of this title, and enacting and amending provisions set out as notes below] shall

be effective as if included in the enactment of OBRA–1990 [Pub. L. 101–508]; except that—

''(1) the amendments made by subsection (d)(1) [amending this section] shall take effect on the date of the enactment of this Act [Oct. 31, 1994], but no penalty shall be imposed under section 1882(d)(3)(A) of the Social Security Act [subsec. (d)(3)(A) of this section] (for an action occurring after the effective date of the amendments made by section 4354 of OBRA–1990 [see section 4354(c) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note below] and before the date of the enactment of this Act) with respect to the sale or issuance of a policy which is not unlawful under section 1882(d)(3)(A)(i)(II) of the Social Security Act [subsec. (d)(3)(A)(i)(II) of this section] (as amended by this section);

''(2) the amendments made by subsection (d)(2)(A) [amending this section] and by subparagraphs (A), (B), and (E) of subsection (e)(1) [amending this section] shall be effective on the date specified in subsection (m)(4) [set out as a note below]; and

''(3) the amendment made by subsection (g)(2) [amending this section] shall take effect on January 1, 1995, and shall apply to individuals who attain 65 years of age or older on or after the effective date of section 1882(s)(2) of the Social Security Act [subsec. (s)(2) of this section, for effective date see section 4357(b) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note below] (and, in the case of individuals who attained 65 years of age after such effective date and before January 1, 1995, and who were not covered under such section before January 1, 1995, the 6-month period specified in that section shall begin January 1, 1995).''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4353(d)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to policies mailed, or caused to be mailed, on and after July 1, 1991.''

Section 4354(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to policies issued or sold more than 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4355(d) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §171(e)(3), Oct. 31, 1994, 108 Stat. 4449, provided that: ''The amendments made by this section [amending this section] shall apply to policies issued or renewed (or otherwise providing coverage after the date described in section 1882(p)(1)(C) of the Social Security Act [subsec. (p)(1)(C) of this section]) on or after the date specified in section 1882(p)(1)(C) of the Social Security Act.''

Section 4356(b) of Pub. L. 101–508, as amended by Pub. L. 103–432, title I, §171(f)(2), Oct. 31, 1994, 108 Stat. 4449, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date specified in section 1882(p)(1)(C) of the Social Security Act [subsec. (p)(1)(C) of this section].''

Section 4357(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

Amendment by section 4358(a), (b)(1), (2) of Pub. L. 101–508 only applicable in 15 States (as determined by Secretary of Health and Human Services) and only during 3½-year period beginning with 1992, see section 4358(c) of Pub. L. 101–508, as amended, set out as a note under section 1320c–3 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Section 203(e) of Pub. L. 101–234 provided that: ''The provisions of this section [amending this section, enacting provisions set out as notes under sections 1395b–2 and 1395mm of this title, and amending provisions set out as a note under this section] shall take effect January 1, 1990, except that the amendment made by subsection (d) [amending provisions set out as an Effective Date of 1988 Amendment note under this section] shall be effective as if included in the enactment of MCCA [Pub. L. 100–360].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 221(g) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, §608(d)(12), Oct. 13, 1988, 102 Stat. 2415; Pub. L. 101–234, title II, §203(d), Dec. 13, 1989, 103 Stat. 1985, provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 1, 1988].

''(2) The amendments made by subsections (a) and (b) [amending this section] shall become effective on the date specified in subsection (k)(1)(B) or (k)(2)(B) of section 1882 of the Social Security Act [subsec. (k)(1)(B) or (k)(2)(B) of this section] (as added by subsection (d) of this section).

''(3) The amendment made by subsection (e) [amending this section] shall apply to medicare supplemental policies as of January 1, 1989, with respect to advertising used on or after such date.

''(4) The Secretary of Health and Human Services shall provide for the reappointment of members to the Supplemental Health Insurance Panel (under section 1882(b)(2) of the Social Security Act [subsec. (b)(2) of this section]) by not later than 90 days after the date of the enactment of this Act [July 1, 1988].''

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(i)(1)(B), (C) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Amendment by section 428(b) of Pub. L. 100–360 effective July 1, 1988, and applicable only with respect to violations occurring on or after such date, see section 428(c) of Pub. L. 100–360, set out as an Effective Date note under section 1320b–10 of this title.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4081(c)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(i)(1)(D), (E), July 1, 1988, 102 Stat. 788; Pub. L. 100–485, title VI, §608(d)(24)(A), Oct. 13, 1988, 102 Stat. 2421, provided that:

''(A) The amendments made by subsection (b) [amending this section] shall apply to medicare supplemental policies as of January 1, 1989 (or, if applicable, the date established under subparagraph (B)).

''(B) In the case of a State which the Secretary of Health and Human Services identifies as—

''(i) requiring State legislation (other than legislation appropriating funds) in order for medicare supplemental policies to be changed to meet the requirements of section 1882(c)(3) of the Social Security Act [subsec. (c)(3) of this section], and

''(ii) having a legislature which is not scheduled to meet in 1988 in a legislative session in which such legislation may be considered or which has not enacted such legislation before July 1, 1988,

the date specified in this subparagraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1989, and in which legislation described in clause (i) may be considered.''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE

Section 507(b) of Pub. L. 96–265 provided that: ''The amendment made by this section [enacting this section] shall become effective on the date of the enactment of this Act [June 9, 1980], except that the provi-

sions of paragraph (4) of section 1882(d) of the Social Security Act [subsec. (d)(4) of this section] (as added by this section) shall become effective on July 1, 1982.''

APPLICABILITY OF DISCLOSURE REQUIREMENT

Section 171(d)(3)(C) of Pub. L. 103–432 provided that: ''The requirement of a disclosure under section 1882(d)(3)(C)(ii) of the Social Security Act [subsec. (d)(3)(C)(ii) of this section] shall not apply to an application made for a policy or plan before 60 days after the date the Secretary of Health and Human Services publishes or promulgates all the statements under section 1882(d)(3)(D) of such Act.''

STATE REGULATORY PROGRAMS

Section 171(m) of Pub. L. 103–432 provided that:

''(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section [amending this section and sections 1320c–3, 1395b–2, and 1395b–4 of this title, repealing section 1395zz of this title, and enacting and amending provisions set out as notes under this section], the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act [this section] due solely to failure to make such change until the date specified in paragraph (4).

''(2) NAIC STANDARDS.—If, within 6 months after the date of the enactment of this Act [Oct. 31, 1994], the National Association of Insurance Commissioners (in this subsection referred to as the 'NAIC') modifies its 1991 NAIC Model Regulation (adopted in July 1991) to conform to the amendments made by this section and to delete from section 15C the exception which begins with 'unless', such revised regulation incorporating the modifications shall be considered to be the 1991 Regulation for the purposes of section 1882 of the Social Security Act.

''(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the 1991 Regulation for the purposes of section 1882 of the Social Security Act.

''(4) DATE SPECIFIED.—

''(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

''(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

''(ii) 1 year after the date the NAIC or the Secretary first makes the modifications under paragraph (2) or (3), respectively.

''(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

''(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

''(ii) having a legislature which is not scheduled to meet in 1996 in a legislative session in which such legislation may be considered,

the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after January 1, 1996. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

EVALUATION OF 1990 AMENDMENTS

Section 4358(d) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall conduct an evaluation of the amendments made by this section [amending this section and section 1320c–3 of this title] and shall report to Congress on such evaluation by not later than January 1, 1995.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c–3, 1395b–3, 1395b–4, 1395u, 3058k of this title.

§ 1395tt. Hospital providers of extended care services

(a) Hospital facility agreements; reasonable costs of services

(1) Any hospital (other than a hospital which has in effect a waiver under subparagraph (A) of the last sentence of section 1395x(e) of this title) which has an agreement under section 1395cc of this title may (subject to subsection (b) of this section) enter into an agreement with the Secretary under which its inpatient hospital facilities may be used for the furnishing of services of the type which, if furnished by a skilled nursing facility, would constitute extended care services.

(2)(A) Notwithstanding any other provision of this subchapter, payment to any hospital for services furnished under an agreement entered into under this section shall be based upon the reasonable cost of the services as determined under subparagraph (B).

(B)(i) The reasonable cost of the services consists of the reasonable cost of routine services (determined under clause (ii)) and the reasonable cost of ancillary services (determined under clause (iii)).

(ii) The reasonable cost of routine services furnished during any calendar year by a hospital under an agreement under this section is equal to the product of—

(I) the number of patient-days during the year for which the services were furnished, and

(II) the average reasonable cost per patient-day, such average reasonable cost per patient-day being the average rate per patient-day paid for routine services during the most recent year for which cost reporting data are available with respect to such services (increased in a compounded manner by the applicable increase for payments for routine service costs of skilled nursing facilities under section 1395yy of this title for subsequent cost reporting periods and up to and including such calendar year) under this subchapter to freestanding skilled nursing facilities in the region (as defined in section 1395ww(d)(2)(D) of this title) in which the facility is located.

(iii) The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

(b) Eligible facilities

The Secretary may not enter into an agreement under this section with any hospital unless—

(1) except as provided under subsection (g) of this section, the hospital is located in a rural area and has less than 100 beds, and

(2) the hospital has been granted a certificate of need for the provision of long-term care services from the State health planning

and development agency (designated under section 300m[1] of this title) for the State in which the hospital is located.

(c) Terms and conditions of facility agreements

An agreement with a hospital under this section shall, except as otherwise provided under regulations of the Secretary, be of the same duration and subject to termination on the same conditions as are agreements with skilled nursing facilities under section 1395cc of this title and shall, where not inconsistent with any provision of this section, impose the same duties, responsibilities, conditions, and limitations, as those imposed under such agreements entered into under section 1395cc of this title; except that no such agreement with any hospital shall be in effect for any period during which the hospital does not have in effect an agreement under section 1395cc of this title, or during which there is in effect for the hospital a waiver under subparagraph (A) of the last sentence of section 1395x(e) of this title. A hospital with respect to which an agreement under this section has been terminated shall not be eligible to enter into a new agreement until a two-year period has elapsed from the termination date.

(d) Post-hospital extended care services

(1) Any agreement with a hospital under this section shall provide that payment for services will be made only for services for which payment would be made as post-hospital extended care services if those services had been furnished by a skilled nursing facility under an agreement entered into under section 1395cc of this title; and any individual who is furnished services, for which payment may be made under an agreement under this section, shall, for purposes of this subchapter (other than this section), be deemed to have received post-hospital extended care services in like manner and to the same extent as if the services furnished to him had been post-hospital extended care services furnished by a skilled nursing facility under an agreement under section 1395cc of this title.

(2)(A) Any agreement under this section with a hospital with more than 49 beds shall provide that no payment may be made for extended care services which are furnished to an extended care patient after the end of the 5-day period (excluding weekends and holidays) beginning on an availability date for a skilled nursing facility, unless the patient's physician certifies, within such 5-day period, that the transfer of that patient to that facility is not medically appropriate on the availability date. The Secretary shall prescribe regulations to provide for notice by skilled nursing facilities of availability dates to hospitals which have agreements under this section and which are located within the same geographic region (as defined by the Secretary).

(B) In this paragraph:

(i) The term ''availability date'' means, with respect to an extended care patient at a hospital, any date on which a bed is available for the patient in a skilled nursing facility located within the geographic region in which the hospital is located.

(ii) The term ''extended care patient'' means an individual being furnished extended care services at a hospital pursuant to an agreement with the Secretary under this section.

(3) In the case of an agreement for a cost reporting period under this section with a hospital that has more than 49 beds, payment may not be made in the period for patient-days of extended care services that exceed 15 percent of the product of the number of days in the period and the average number of licensed beds in the hospital in the period, except that such payment shall continue to be made in the period for those patients who are receiving extended care services at the time the hospital reaches the limit specified in this paragraph.

(e) Reimbursement for routine hospital services

During a period for which a hospital has in effect an agreement under this section, in order to allocate routine costs between hospital and long-term care services for purposes of determining payment for inpatient hospital services, the total reimbursement due for routine services from all classes of long-term care patients (including this subchapter, subchapter XIX of this chapter, and private pay patients) shall be subtracted from the hospital's total routine costs before calculations are made to determine this subchapter reimbursement for routine hospital services.

(f) Conditions applicable to skilled nursing facilities

A hospital which enters into an agreement with the Secretary under this section shall be required to meet those conditions applicable to skilled nursing facilities relating to discharge planning and the social services function (and staffing requirements to satisfy it) which are promulgated by the Secretary under section 1395i–3 of this title. Services furnished by such a hospital which would otherwise constitute post-hospital extended care services if furnished by a skilled nursing facility shall be subject to the same requirements applicable to such services when furnished by a skilled nursing facility except for those requirements the Secretary determines are inappropriate in the case of these services being furnished by a hospital under this section.

(g) Agreements on demonstration basis

The Secretary may enter into an agreement under this section on a demonstration basis with any hospital which does not meet the requirement of subsection (b)(1) of this section, if the hospital otherwise meets the requirements of this section.

(Aug. 14, 1935, ch. 531, title XVIII, § 1883, as added Dec. 5, 1980, Pub. L. 96–499, title IX, § 904(a)(1), 94 Stat. 2615; amended Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4005(b)(1), (2), 4201(d)(3), 101 Stat. 1330–48, as amended July 1, 1988, Pub. L. 100–360, title IV, § 411(*l*)(1)(C), as added Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(27)(B), 102 Stat. 2422; July 1, 1988, Pub. L. 100–360, title I, § 104(d)(6), title IV, § 411(b)(4)(D), 102 Stat. 689, 770; Dec. 13, 1989, Pub. L. 101–234, title I, § 101(a), 103 Stat. 1979; Nov. 5, 1990, Pub. L. 101–508, title IV, § 4008(j)(1), 104 Stat. 1388–51.)

REFERENCES IN TEXT

Section 300m of this title, referred to in subsec. (b)(2), was in the original a reference to section 1521 of act

[1] See References in Text note below.

July 1, 1944, which was repealed effective Jan. 1, 1987, by Pub. L. 99–660, title VII, §701(a), Nov. 14, 1986, 100 Stat. 3799. Pub. L. 101–354, §2, Aug. 10, 1990, 104 Stat. 410, enacted section 1503 of act July 1, 1944, which is classified to section 300m of this title.

AMENDMENTS

1990—Subsec. (a)(2)(B)(ii)(II). Pub. L. 101–508 substituted ''the most recent year for which cost reporting data are available with respect to such services (increased in a compounded manner by the applicable increase for payments for routine service costs of skilled nursing facilities under section 1395yy of this title for subsequent cost reporting periods and up to and including such calendar year) under this subchapter to freestanding skilled nursing facilities in the region (as defined in section 1395ww(d)(2)(D) of this title) in which the facility is located.'' for ''the previous calendar year'' and all that follows through the period, which was executed by making the substitution for ''the previous calendar year under the State plan (of the State in which the hospital is located) under subchapter XIX of this chapter to skilled nursing facilities located in the State and which meet the requirements specified in section 1396a(a)(28) of this title, or, in the case of a hospital located in a State which does not have such a State plan, the average rate per patient-day paid for routine services during the previous calendar year under this subchapter to skilled nursing facilities in such State.''

1989—Subsecs. (d)(1), (f). Pub. L. 101–234 repealed Pub. L. 100–360, §104(d)(6), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment notes below.

1988—Subsec. (d)(1). Pub. L. 100–360, §104(d)(6), struck out ''post-hospital'' before ''extended care services'' wherever appearing.

Subsec. (d)(3). Pub. L. 100–360, §411(b)(4)(D), inserted before period at end '', except that such payment shall continue to be made in the period for those patients who are receiving extended care services at the time the hospital reaches the limit specified in this paragraph''.

Subsec. (f). Pub. L. 100–360, §411(*l*)(1)(C), as added by Pub. L. 100–485, §608(d)(27)(B), added Pub. L. 100–203, §4201(d)(3), see 1987 Amendment note below.

Pub. L. 100–360, §104(d)(6), struck out ''post-hospital'' before ''extended care services''.

1987—Subsec. (b)(1). Pub. L. 100–203, §4005(b)(1), substituted ''100'' for ''50''.

Subsec. (d). Pub. L. 100–203, §4005(b)(2), designated existing provisions as par. (1) and added pars. (2) and (3).

Subsec. (f). Pub. L. 100–203, §4201(d)(3), as added by Pub. L. 100–360, §411(*l*)(1)(C), and Pub. L. 100–485, §608(d)(27)(B), substituted ''section 1395i–3'' for ''section 1395x(j)(15)''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(j)(4) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to services furnished on or after October 1, 1990.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 104(d)(6) of Pub. L. 100–360 effective Jan. 1, 1989, except as otherwise provided, and applicable to inpatient hospital deductible for 1989 and succeeding years, to care and services furnished on or after Jan. 1, 1989, to premiums for January 1989 and succeeding months, and to blood or blood cells furnished on or after Jan. 1, 1989, see section 104(a) of Pub. L. 100–360, set out as a note under section 1395d of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(b)(4)(D), (*l*)(1)(C) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4005(b)(4) of Pub. L. 100–203 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply to agreements under section 1883 of the Social Security Act [this section] entered into after March 31, 1988.''

Amendment by section 4201(d)(3) of Pub. L. 100–203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations to implement such amendment are promulgated by such date, except as otherwise specifically provided in section 1395i–3 of this title, see section 4204(a) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1395i–3 of this title.

EFFECTIVE DATE

Section 904(d) of Pub. L. 96–499 provided that: ''The amendments made by this section [enacting this section and section 1396*l* of this title] shall become effective on the date on which final regulations, promulgated by the Secretary to implement such amendments, are first issued; and those regulations shall be issued not later than the first day of the sixth month following the month in which this Act is enacted [December 1980].''

HOLD HARMLESS FOR AMENDMENT BY PUB. L. 101–508

Section 4008(j)(2) of Pub. L. 101–508 provided that: ''If, as a result of the amendment made by paragraph (1) [amending this section], the reasonable cost of routine services furnished by a hospital during a calendar year (as determined under section 1883 of the Social Security Act [this section]) is less than the reasonable cost of such services determined under such section for the previous calendar year, the reasonable cost of such services furnished by the hospital during the calendar year under such section shall be equal to the reasonable cost determined under such section for the previous calendar year.''

SWING BEDS CERTIFIED PRIOR TO MAY 1, 1987

Section 4008(j)(3) of Pub. L. 101–508 provided that: ''Notwithstanding the requirement of section 1883(b)(1) of the Social Security Act [subsec. (b)(1) of this section] that the Secretary may not enter into an agreement under such section with a hospital that is not located in a rural area, any agreement entered into under such section on or before May 1, 1987, between the Secretary of Health and Human Services and a hospital located in an urban area shall remain in effect.''

REPORT OF HOSPITAL ADMISSIONS FOR EXTENDED CARE SERVICES

Section 4005(b)(3) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(b)(4)(E), as added by Pub. L. 100–485, title VI, §608(d)(18)(C), Oct. 13, 1988, 102 Stat. 2419, directed Secretary of Health and Human Services to report to Congress, not later than Feb. 1, 1989, concerning the proportion of admissions to hospitals for extended care services under this section which are denied or approved by a peer review organization, and recommendations for methods of encouraging hospitals that have a low occupancy rate, are eligible to enter (but have not entered) into an agreement under this section, and are located in areas with a need for addi-

tional providers of extended care services, to enter into such agreements.

REPORT ON HOSPITAL PROVIDERS OF EXTENDED CARE, SKILLED NURSING, AND INTERMEDIATE CARE SERVICES

Section 904(c) of Pub. L. 96–499 directed Secretary of Health and Human Services, within three years after Dec. 5, 1980, to submit to Congress a report evaluating programs established by the amendments made by this section (enacting this section and section 1396*l* of this title), including in such report an analysis of the extent and effect of the agreements under such programs on availability and effective and economical provision of long-term care services, whether such programs should be continued, the results of any demonstration projects conducted under such programs, and whether eligibility to participate in such programs should be extended to other hospitals, regardless of bed size or geographic location, where there is a shortage of long-term care beds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395i–4, 1396*l* of this title.

§ 1395uu. Payments to promote closing or conversion of underutilized hospital facilities

(a) Transitional allowances; procedures applicable

Any hospital may file an application with the Secretary (in such form and including such data and information as the Secretary may require) for establishment of a transitional allowance under this subchapter with respect to the closing or conversion of an underutilized hospital facility. The Secretary also may establish procedures, consistent with this section, by which a hospital, before undergoing an actual closure or conversion of a hospital facility, can have a determination made as to whether or not it will be eligible for a transitional allowance under this section with respect to such closure or conversion.

(b) Allowable costs as transitional allowances; findings and determinations

If the Secretary finds, after consideration of an application under subsection (a) of this section, that—

(1) the hospital's closure or conversion—

(A) is formally initiated after September 30, 1981,

(B) is expected to benefit the program under this subchapter by (i) eliminating excess bed capacity, (ii) discontinuing an underutilized service for which there are adequate alternative sources, or (iii) substituting for the underutilized service some other service which is needed in the area, and

(C) is consistent with the findings of an appropriate health planning agency and with any applicable State program for reduction in the number of hospital beds in the State, and

(2) in the case of a complete closure of a hospital—

(A) the hospital is a private nonprofit hospital or a local governmental hospital, and

(B) the closure is not for replacement of the hospital,

the Secretary may include as an allowable cost in the hospital's reasonable cost (for the purpose of making payments to the hospital under this subchapter) an amount (in this section referred to as a ''transitional allowance''), as provided in subsection (c) of this section.

(c) Factors determinative of transitional allowance

(1) Each transitional allowance established shall be reasonably related to the prior or prospective use of the facility involved under this subchapter and shall recognize—

(A) in the case of a facility conversion or closure (other than a complete closure of a hospital)—

(i) in the case of a private nonprofit or local governmental hospital, that portion of the hospital's costs attributable to capital assets of the facility which have been taken into account in determining reasonable cost for purposes of determining the amount of payment to the hospital under this subchapter, and

(ii) in the case of any hospital, transitional operating cost increases related to the conversion or closure to the extent that such operating costs exceed amounts ordinarily reimbursable under this subchapter; and

(B) in the case of complete closure of a hospital, the outstanding portion of actual debt obligations previously recognized as reasonable for purposes of reimbursement under this subchapter, less any salvage value of the hospital.

(2) A transitional allowance shall be for a period (not to exceed 20 years) specified by the Secretary, except that, in the case of a complete closure described in paragraph (1)(B), the Secretary may provide for a lump-sum allowance where the Secretary determines that such a one-time allowance is more efficient and economical.

(3) A transitional allowance shall take effect on a date established by the Secretary, but not earlier than the date of completion of the closure or conversion concerned.

(4) A transitional allowance shall not be considered in applying the limits to costs recognized as reasonable pursuant to the third sentence of subparagraph (A) and subparagraph (L)(i) of section 1395x(v)(1) of this title, or in determining whether the reasonable cost exceeds the customary charges for a service for purposes of determining the amount to be paid to a provider pursuant to sections 1395f(b) and 1395*l*(a)(2) of this title.

(d) Hearing to review determination

A hospital dissatisfied with a determination of the Secretary on its application under this section may obtain an informal or formal hearing, at the discretion of the Secretary, by filing (in such form and within such time period as the Secretary establishes) a request for such a hearing. The Secretary shall make a final determination on such application within 30 days after the last day of such hearing.

(Aug. 14, 1935, ch. 531, title XVIII, § 1884, as added Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2101(a)[(1)], 95 Stat. 785; amended Sept. 3, 1982, Pub. L. 97–248, title I, § 128(a)(6), 96 Stat. 366.)

AMENDMENTS

1982—Subsec. (d). Pub. L. 97–248 redesignated second subsec. (c), relating to hearing to review determination, as subsec. (d).

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective as if originally included as part of this section as this section was enacted by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 128(e)(2) of Pub. L. 97–248, set out as a note under section 1395x of this title.

EFFECTIVE DATE

Section 2101(c) of Pub. L. 97–35 provided that: ''The amendment made by subsection (a) [enacting this section and amending section 1396b of this title] shall apply only to services furnished by a hospital during any accounting year beginning on or after October 1, 1981.''

PAYMENTS TO PROMOTE CLOSURE AND CONVERSION OF UNDERUTILIZED HOSPITAL FACILITIES

Pub. L. 98–369, div. B, title III, § 2353, July 18, 1984, 98 Stat. 1099, directed Secretary of Health and Human Services to carry out a study and report to Congress prior to Mar. 31, 1985, on modifications required in this section in order to conform the closure and conversion program authorized in that section to the prospective payment system under section 1395ww(d) of this title, so as to provide assistance to hospitals which may have particular problems in converting facilities (or parts thereof) from acute care to less intensive care or in closing facilities (or parts thereof), such report to include recommendations as to how, and whether, implementation of this section as modified may result in reductions in total hospital inpatient costs and total expenditures under this subchapter, and prohibited from implementing this section prior to Mar. 31, 1985.

ESTABLISHMENT AND EVALUATION OF TRANSITIONAL ALLOWANCES; REPORT AND RECOMMENDATIONS TO CONGRESS

Section 2101(b) of Pub. L. 97–35 prohibited Secretary of Health and Human Services from establishing under this section transitional allowances with respect to more than 50 hospitals prior to Jan. 1, 1984, and directed Secretary to evaluate effectiveness of program of transitional allowances established under this section and, not later than Jan. 1, 1983, report to Congress on such evaluation and include in such report such recommendations for such legislative changes as deemed appropriate.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396b of this title.

§ 1395vv. Withholding payments from certain medicaid providers

(a) Adjustments by Secretary

The Secretary may adjust, in accordance with this section, payments under parts A and B to any institution which has in effect an agreement with the Secretary under section 1395cc of this title, and any person who has accepted payment on the basis of an assignment under section 1395u(b)(3)(B)(ii) of this title, where such institution or person—

(1) has (or previously had) in effect an agreement with a State agency to furnish medical care and services under a State plan approved under subchapter XIX of this chapter, and

(2) from which (or from whom) such State agency (A) has been unable to recover overpayments made under the State plan, or (B) has been unable to collect the information necessary to enable it to determine the amount (if any) of the overpayments made to such institution or person under the State plan.

(b) Implementing regulations; notice, opportunity to be heard, etc.

The Secretary shall by regulation provide procedures for implementation of this section, which procedures shall—

(1) assure that the authority under this section is exercised only on behalf of a State agency which demonstrates to the Secretary's satisfaction that it has provided adequate notice of a determination or of a need for information, and an opportunity to appeal such determination or to provide such information,

(2) determine the amount of the payment to which the institution or person would otherwise be entitled under this subchapter which shall be treated as a setoff against overpayments under subchapter XIX of this chapter, and

(3) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under subchapter XIX of this chapter and to which the institution or person would otherwise be entitled under this subchapter.

(c) Payment to States of amounts recovered

Notwithstanding any other provision of this chapter, from the trust funds established under sections 1395i and 1395t of this title, as appropriate, the Secretary shall pay to the appropriate State agency amounts recovered under this section to offset the State agency's overpayment under subchapter XIX of this chapter. Such payments shall be accounted for by the State agency as recoveries of overpayments under the State plan.

(Aug. 14, 1935, ch. 531, title XVIII, § 1885, as added Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2104, 95 Stat. 788.)

§ 1395ww. Payments to hospitals for inpatient hospital services

(a) Determination of costs for inpatient hospital services; limitations; exemptions; "operating costs of inpatient hospital services" defined

(1)(A)(i) The Secretary, in determining the amount of the payments that may be made under this subchapter with respect to operating costs of inpatient hospital services (as defined in paragraph (4)) shall not recognize as reasonable (in the efficient delivery of health services) costs for the provision of such services by a hospital for a cost reporting period to the extent such costs exceed the applicable percentage (as determined under clause (ii)) of the average of such costs for all hospitals in the same grouping as such hospital for comparable time periods.

(ii) For purposes of clause (i), the applicable percentage for hospital cost reporting periods beginning—

(I) on or after October 1, 1982, and before October 1, 1983, is 120 percent;

(II) on or after October 1, 1983, and before October 1, 1984, is 115 percent; and

(III) on or after October 1, 1984, is 110 percent.

(B)(i) For purposes of subparagraph (A) the Secretary shall establish case mix indexes for all short-term hospitals, and shall set limits for each hospital based upon the general mix of types of medical cases with respect to which such hospital provides services for which payment may be made under this subchapter.

(ii) The Secretary shall set such limits for a cost reporting period of a hospital—

(I) by updating available data for a previous period to the immediate preceding cost reporting period by the estimated average rate of change of hospital costs industry-wide, and

(II) by projecting for the cost reporting period by the applicable percentage increase (as defined in subsection (b)(3)(B) of this section).

(C) The limitation established under subparagraph (A) for any hospital shall in no event be lower than the allowable operating costs of inpatient hospital services (as defined in paragraph (4)) recognized under this subchapter for such hospital for such hospital's last cost reporting period prior to the hospital's first cost reporting period for which this section is in effect.

(D) Subparagraph (A) shall not apply to cost reporting periods beginning on or after October 1, 1983.

(2) The Secretary shall provide for such exemptions from, and exceptions and adjustments to, the limitation established under paragraph (1)(A) as he deems appropriate, including those which he deems necessary to take into account—

(A) the special needs of sole community hospitals, of new hospitals, of risk based health maintenance organizations, and of hospitals which provide atypical services or essential community services, and to take into account extraordinary circumstances beyond the hospital's control, medical and paramedical education costs, significantly fluctuating population in the service area of the hospital, and unusual labor costs,

(B) the special needs of psychiatric hospitals and of public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this subchapter, and

(C) a decrease in the inpatient hospital services that a hospital provides and that are customarily provided directly by similar hospitals which results in a significant distortion in the operating costs of inpatient hospital services.

(3) The limitation established under paragraph (1)(A) shall not apply with respect to any hospital which—

(A) is located outside of a standard metropolitan statistical area, and

(B)(i) has less than 50 beds, and

(ii) was in operation and had less than 50 beds on September 3, 1982.

(4) For purposes of this section, the term ''operating costs of inpatient hospital services'' includes all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as such costs are determined on an average per admission or per discharge basis (as determined by the Secretary), and includes the costs of all services for which payment may be made under this subchapter that are provided by the hospital (or by an entity wholly owned or operated by the hospital) to the patient during the 3 days (or, in the case of a hospital that is not a subsection (d) hospital, during the 1 day) immediately preceding the date of the patient's admission if such services are diagnostic services (including clinical diagnostic laboratory tests) or are other services related to the admission (as defined by the Secretary). Such term does not include costs of approved educational activities, a return on equity capital, or,[1] other capital-related costs (as defined by the Secretary for periods before October 1, 1987).

(b) Computation of payment; definitions; exemptions; adjustments

(1) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, if the operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) of a hospital (other than a subsection (d) hospital, as defined in subsection (d)(1)(B) of this section) for a cost reporting period subject to this paragraph—

(A) are less than or equal to the target amount (as defined in paragraph (3)) for that hospital for that period, the amount of the payment with respect to such operating costs payable under part A of this subchapter on a per discharge or per admission basis (as the case may be) shall be equal to the amount of such operating costs, plus—

(i) 50 percent of the amount by which the target amount exceeds the amount of the operating costs, or

(ii) 5 percent of the target amount,

whichever is less; or

(B) are greater than the target amount, the amount of the payment with respect to such operating costs payable under part A of this subchapter on a per discharge or per admission basis (as the case may be) shall be equal to (i) the target amount, plus (ii) in the case of cost reporting periods beginning on or after October 1, 1991, an additional amount equal to 50 percent of the amount by which the operating costs exceed the target amount (except that such additional amount may not exceed 10 percent of the target amount) after any exceptions or adjustments are made to such target amount for the cost reporting period;

except that in no case may the amount payable under this subchapter (other than on the basis of a DRG prospective payment rate determined under subsection (d) of this section) with respect to operating costs of inpatient hospital services exceed the maximum amount payable with respect to such costs pursuant to subsection (a) of this section.

(2) Repealed. Pub. L. 98–21, title VI, § 601(b)(4), Apr. 20, 1983, 97 Stat. 150.

(3)(A) Except as provided in subparagraphs (C), (D), and (E), for purposes of this subsection, the

[1] So in original. The comma probably should not appear.

term ''target amount'' means, with respect to a hospital for a particular 12-month cost reporting period—

(i) in the case of the first such reporting period for which this subsection is in effect, the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for such hospital for the preceding 12-month cost reporting period, and

(ii) in the case of a later reporting period, the target amount for the preceding 12-month cost reporting period,

increased by the applicable percentage increase under subparagraph (B) for that particular cost reporting period.

(B)(i) For purposes of subsection (d) of this section for discharges occurring during a fiscal year, the ''applicable percentage increase'' shall be—

(I) for fiscal year 1986, ½ percent,

(II) for fiscal year 1987, 1.15 percent,

(III) for fiscal year 1988, 3.0 percent for hospitals located in a rural area, 1.5 percent for hospitals located in a large urban area (as defined in subsection (d)(2)(D) of this section), and 1.0 percent for hospitals located in other urban areas,

(IV) for fiscal year 1989, the market basket percentage increase minus 1.5 percent for hospitals located in a rural area, the market basket percentage increase minus 2.0 percentage points for hospitals located in a large urban area, and the market basket percentage increase minus 2.5 percentage points for hospitals located in other urban areas,

(V) for fiscal year 1990, the market basket percentage increase plus 4.22 percentage points for hospitals located in a rural area, the market basket percentage increase plus 0.12 percentage points for hospitals located in a large urban area, and the market basket percentage increase minus 0.53 percentage points for hospitals located in other urban areas,

(VI) for fiscal year 1991, the market basket percentage increase minus 2.0 percentage points for hospitals in a large urban or other urban area, and the market basket percentage increase minus 0.7 percentage point for hospitals located in a rural area,

(VII) for fiscal year 1992, the market basket percentage increase minus 1.6 percentage points for hospitals in a large urban or other urban area, and the market basket percentage increase minus 0.6 percentage point for hospitals located in a rural area,

(VIII) for fiscal year 1993, the market basket percentage increase minus 1.55 percentage point for hospitals in a large urban or other urban area, and the market basket percentage increase minus 0.55[2] for hospitals located in a rural area,

(IX) for fiscal year 1994, the market basket percentage increase minus 2.5 percentage points for hospitals located in a large urban or other urban area, and the market basket percentage increase minus 1.0 percentage point for hospitals located in a rural area,

(X) for fiscal year 1995, the market basket percentage increase minus 2.5 percentage points for hospitals located in a large urban or other urban area, and such percentage increase for hospitals located in a rural area as will provide for the average standardized amount determined under subsection (d)(3)(A) of this section for hospitals located in a rural area being equal to such average standardized amount for hospitals located in an urban area (other than a large urban area),

(XI) for fiscal year 1996, the market basket percentage increase minus 2.0 percentage points for hospitals in all areas,

(XII) for fiscal year 1997, the market basket percentage increase minus 0.5 percentage point for hospitals in all areas, and

(XIII) for fiscal year 1998 and each subsequent fiscal year, the market basket percentage increase for hospitals in all areas.

(ii) For purposes of subparagraphs (A) and (E), the ''applicable percentage increase'' for 12-month cost reporting periods beginning during—

(I) fiscal year 1986, is 0.5 percent,

(II) fiscal year 1987, is 1.15 percent,

(III) fiscal year 1988, is the market basket percentage increase minus 2.0 percentage points,

(IV) a subsequent fiscal year ending on or before September 30, 1993, is the market basket percentage increase,

(V) fiscal years 1994 through 1997, is the market basket percentage increase minus the applicable reduction (as defined in clause (v)(II)), or in the case of a hospital for a fiscal year for which the hospital's update adjustment percentage (as defined in clause (v)(I)) is at least 10 percent, the market basket percentage increase, and

(VI) subsequent fiscal years is the market basket percentage increase.

(iii) For purposes of this subparagraph, the term ''market basket percentage increase'' means, with respect to cost reporting periods and discharges occurring in a fiscal year, the percentage, estimated by the Secretary before the beginning of the period or fiscal year, by which the cost of the mix of goods and services (including personnel costs but excluding nonoperating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for the period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year.

(iv) For purposes of subparagraphs (C) and (D), the ''applicable percentage increase'' is—

(I) for 12-month cost reporting periods beginning during fiscal years 1986 through 1993, the applicable percentage increase specified in clause (ii),

(II) for fiscal year 1994, the market basket percentage increase minus 2.3 percentage points (adjusted to exclude any portion of a cost reporting period beginning during fiscal year 1993 for which the applicable percentage

[2] So in original. Probably should be followed by ''percentage point''.

increase is determined under subparagraph (I)),

(III) for fiscal year 1995, the market basket percentage increase minus 2.2 percentage points, and

(IV) for fiscal year 1996 and each subsequent fiscal year, the applicable percentage increase under clause (i).

(v) For purposes of clause (ii)(V)—

(I) a hospital's ''update adjustment percentage'' for a fiscal year is the percentage by which the hospital's allowable operating costs of inpatient hospital services recognized under this subchapter for the cost reporting period beginning in fiscal year 1990 exceeds the hospital's target amount (as determined under subparagraph (A)) for such cost reporting period, increased for each fiscal year (beginning with fiscal year 1994) by the sum of any of the hospital's applicable reductions under subclause (V) for previous fiscal years; and

(II) the ''applicable reduction'' with respect to a hospital for a fiscal year is the lesser of 1 percentage point or the percentage point difference between 10 percent and the hospital's update adjustment percentage for the fiscal year.

(C) In the case of a hospital that is a sole community hospital (as defined in subsection (d)(5)(D)(iii) of this section), the term ''target amount'' means—

(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period (in this subparagraph referred to as the ''base cost reporting period'') preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

(II) the applicable percentage increases applied to such hospital under this paragraph for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period,

(ii) with respect to a later cost reporting period beginning before fiscal year 1994, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B)(iv) for discharges occurring in the fiscal year in which that later cost reporting period begins,

(iii) with respect to discharges occurring in fiscal year 1994, the target amount for the cost reporting period beginning in fiscal year 1993 increased by the applicable percentage increase under subparagraph (B)(iv), or

(iv) with respect to discharges occurring in fiscal year 1995 and each subsequent fiscal year, the target amount for the preceding year increased by the applicable percentage increase under subparagraph (B)(iv).

There shall be substituted for the base cost reporting period described in clause (i) a hospital's cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.

(D) For cost reporting periods ending on or before September 30, 1994, in the case of a hospital that is a medicare-dependent, small rural hospital (as defined in subsection (d)(5)(G) of this section), the term ''target amount'' means—

(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period (in this subparagraph referred to as the ''base cost reporting period'') preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

(II) the applicable percentage increases applied to such hospital under this paragraph for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period, or

(ii) with respect to a later cost reporting period beginning before fiscal year 1994, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subparagraph (B)(iv) for discharges occurring in the fiscal year in which that later cost reporting period begins, and

(iii) with respect to discharges occurring in fiscal year 1994, the target amount for the cost reporting period beginning in fiscal year 1993 increased by the applicable percentage increase under subparagraph (B)(iv).

There shall be substituted for the base cost reporting period described in clause (i) a hospital's cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.

(E) In the case of a hospital described in clause (v) of subsection (d)(1)(B) of this section, the term ''target amount'' means—

(i) with respect to the first 12-month cost reporting period in which this subparagraph is applied to the hospital—

(I) the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) recognized under this subchapter for the hospital for the 12-month cost reporting period (in this subparagraph referred to as the ''base cost reporting period'') preceding the first cost reporting period for which this subsection was in effect with respect to such hospital, increased (in a compounded manner) by—

(II) the sum of the applicable percentage increases applied to such hospital under this paragraph for cost reporting periods after the base cost reporting period and up to and including such first 12-month cost reporting period, or

(ii) with respect to a later cost reporting period, the target amount for the preceding 12-month cost reporting period, increased by the applicable percentage increase under subpara-

graph (B)(ii) for that later cost reporting period.

There shall be substituted for the base cost reporting period described in clause (i) a hospital's cost reporting period (if any) beginning during fiscal year 1987 if such substitution results in an increase in the target amount for the hospital.

(4)(A)(i) The Secretary shall provide for an exemption from, or an exception and adjustment to, the method under this subsection for determining the amount of payment to a hospital where events beyond the hospital's control or extraordinary circumstances, including changes in the case mix of such hospital, create a distortion in the increase in costs for a cost reporting period (including any distortion in the costs for the base period against which such increase is measured). The Secretary may provide for such other exemptions from, and exceptions and adjustments to, such method as the Secretary deems appropriate, including the assignment of a new base period which is more representative, as determined by the Secretary, of the reasonable and necessary cost of inpatient services and including those which he deems necessary to take into account a decrease in the inpatient hospital services that a hospital provides and that are customarily provided directly by similar hospitals which results in a significant distortion in the operating costs of inpatient hospital services. The Secretary shall announce a decision on any request for an exemption, exception, or adjustment under this paragraph not later than 180 days after receiving a completed application from the intermediary for such exemption, exception, or adjustment, and shall include in such decision a detailed explanation of the grounds on which such request was approved or denied.

(ii) The payment reductions under paragraph (3)(B)(ii)(V) shall not be considered by the Secretary in making adjustments pursuant to clause (i).

(B) In determining under subparagraph (A) whether to assign a new base period which is more representative of the reasonable and necessary cost to a hospital of providing inpatient services, the Secretary shall take into consideration—

(i) changes in applicable technologies and medical practices, or differences in the severity of illness among patients, that increase the hospital's costs;

(ii) whether increases in wages and wage-related costs for hospitals located in the geographic area in which the hospital is located exceed the average of the increases in such costs paid by hospitals in the United States; and

(iii) such other factors as the Secretary considers appropriate in determining increases in the hospital's costs of providing inpatient services.

(C) Paragraph (1) shall not apply to payment of hospitals which is otherwise determined under paragraph (3) of section 1395f(b) of this title.

(5) In the case of any hospital having any cost reporting period of other than a 12-month period, the Secretary shall determine the 12-month period which shall be used for purposes of this section.

(6) In the case of any hospital which becomes subject to the taxes under section 3111 of the Internal Revenue Code of 1986, with respect to any or all of its employees, for part or all of a cost reporting period, and was not subject to such taxes with respect to any or all of its employees for all or part of the 12-month base cost reporting period referred to in subsection (b)(3)(A)(i) of this section, the Secretary shall provide for an adjustment by increasing the base period amount described in such subsection for such hospital by an amount equal to the amount of such taxes which would have been paid or accrued by such hospital for such base period if such hospital had been subject to such taxes for all of such base period with respect to all its employees, minus the amount of any such taxes actually paid or accrued for such base period.

(c) Payment in accordance with State hospital reimbursement control system; amount of payment; discontinuance of payments

(1) The Secretary may provide, in his discretion, that payment with respect to services provided by a hospital in a State may be made in accordance with a hospital reimbursement control system in a State, rather than in accordance with the other provisions of this title, if the chief executive officer of the State requests such treatment and if—

(A) the Secretary determines that the system, if approved under this subsection, will apply (i) to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the State and (ii) to the review of at least 75 percent of all revenues or expenses in the State for inpatient hospital services and of revenues or expenses for inpatient hospital services provided under the State's plan approved under subchapter XIX of this chapter;

(B) the Secretary has been provided satisfactory assurances as to the equitable treatment under the system of all entities (including Federal and State programs) that pay hospitals for inpatient hospital services, of hospital employees, and of hospital patients;

(C) the Secretary has been provided satisfactory assurances that under the system, over 36-month periods (the first such period beginning with the first month in which this subsection applies to that system in the State), the amount of payments made under this subchapter under such system will not exceed the amount of payments which would otherwise have been made under this subchapter not using such system;

(D) the Secretary determines that the system will not preclude an eligible organization (as defined in section 1395mm(b) of this title) from negotiating directly with hospitals with respect to the organization's rate of payment for inpatient hospital services; and

(E) the Secretary determines that the system requires hospitals to meet the requirement of section 1395cc(a)(1)(G) of this title and the system provides for the exclusion of certain costs in accordance with section 1395y(a)(14) of this title (except for such waivers thereof as the Secretary provides by regulation).

The Secretary cannot deny the application of a State under this subsection on the ground that the State's hospital reimbursement control system is based on a payment methodology other than on the basis of a diagnosis-related group or on the ground that the amount of payments made under this subchapter under such system must be less than the amount of payments which would otherwise have been made under this subchapter not using such system. If the Secretary determines that the conditions described in subparagraph (C) are based on maintaining payment amounts at no more than a specified percentage increase above the payment amounts in a base period, the State has the option of applying such test (for inpatient hospital services under part A of this subchapter) on an aggregate payment basis or on the basis of the amount of payment per inpatient discharge or admission. If the Secretary determines that the conditions described in subparagraph (C) are based on maintaining aggregate payment amounts below a national average percentage increase in total payments under part A of this subchapter for inpatient hospital services, the Secretary cannot deny the application of a State under this subsection on the ground that the State's rate of increase in such payments for such services must be less than such national average rate of increase.

(2) In determining under paragraph (1)(C) the amount of payment which would otherwise have been made under this subchapter for a State, the Secretary may provide for appropriate adjustment of such amount to take into account previous reductions effected in the amount of payments made under this subchapter in the State due to the operation of the hospital reimbursement control system in the State if the system has resulted in an aggregate rate of increase in operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) under this subchapter for hospitals in the State which is less than the aggregate rate of increase in such costs under this subchapter for hospitals in the United States.

(3) The Secretary shall discontinue payments under a system described in paragraph (1) if the Secretary—

(A) determines that the system no longer meets the requirements of subparagraphs (A), (D), and (E) of paragraph (1) and, if applicable, the requirements of paragraph (5), or

(B) has reason to believe that the assurances described in subparagraph (B) or (C) of paragraph (1) (or, if applicable, in paragraph (5)) are not being (or will not be) met.

(4) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

(A) the requirements of subparagraphs (A), (B), (C), (D), and (E) of paragraph (1) have been met with respect to the system, and

(B) with respect to that system a waiver of certain requirements of this subchapter has been approved on or before (and which is in effect as of) April 20, 1983, pursuant to section 1395b–1(a) of this title or section 222(a) of the Social Security Amendments of 1972.

With respect to a State system described in this paragraph, the Secretary shall judge the effectiveness of such system on the basis of its rate of increase or inflation in inpatient hospital payments for individuals under this subchapter, as compared to the national rate of increase or inflation for such payments, with the State retaining the option to have the test applied on the basis of the aggregate payments under the State system as compared to aggregate payments which would have been made under the national system since October 1, 1984, to the most recent date for which annual data are available.

(5) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

(A) the requirements of subparagraphs (A), (B), (C), (D), and (E) of paragraph (1) have been met with respect to the system;

(B) the Secretary determines that the system—

(i) is operated directly by the State or by an entity designated pursuant to State law,

(ii) provides for payment of hospitals covered under the system under a methodology (which sets forth exceptions and adjustments, as well as any method for changes in the methodology) by which rates or amounts to be paid for hospital services during a specified period are established under the system prior to the defined rate period, and

(iii) hospitals covered under the system will make such reports (in lieu of cost and other reports, identified by the Secretary, otherwise required under this subchapter) as the Secretary may require in order to properly monitor assurances provided under this subsection;

(C) the State has provided the Secretary with satisfactory assurances that operation of the system will not result in any change in hospital admission practices which result in—

(i) a significant reduction in the proportion of patients (receiving hospital services covered under the system) who have no third-party coverage and who are unable to pay for hospital services,

(ii) a significant reduction in the proportion of individuals admitted to hospitals for inpatient hospital services for which payment is (or is likely to be) less than the anticipated charges for or costs of such services,

(iii) the refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital, or

(iv) the refusal to provide emergency services to any person who is in need of emergency services if the hospital provides such services;

(D) any change by the State in the system which has the effect of materially reducing payments to hospitals can only take effect upon 60 days notice to the Secretary and to the hospitals the payment to which is likely to be materially affected by the change; and

(E) the State has provided the Secretary with satisfactory assurances that in the development of the system the State has consulted

with local governmental officials concerning the impact of the system on public hospitals.

The Secretary shall respond to requests of States under this paragraph within 60 days of the date the request is submitted to the Secretary.

(6) If the Secretary determines that the assurances described in paragraph (1)(C) have not been met with respect to any 36-month period, the Secretary may reduce payments under this subchapter to hospitals under the system in an amount equal to the amount by which the payment under this subchapter under such system for such period exceeded the amount of payments which would otherwise have been made under this subchapter not using such system.

(7) In the case of a State which made a request under paragraph (5) before December 31, 1984, for the approval of a State hospital reimbursement control system and which request was approved—

(A) in applying paragraphs (1)(C) and (6), a reference to a ''36-month period'' is deemed a reference to a ''48-month period'', and

(B) in order to allow the State the opportunity to provide the assurances described in paragraph (1)(C) for a 48-month period, the Secretary may not discontinue payments under the system, under the authority of paragraph (3)(A) because the Secretary has reason to believe that such assurances are not being (or will not be) met, before July 1, 1986.

(d) Inpatient hospital service payments on basis of prospective rates; Medicare Geographical Classification Review Board

(1)(A) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating costs of inpatient hospital services (as defined in subsection (a)(4) of this section) of a subsection (d) hospital (as defined in subparagraph (B)) for inpatient hospital discharges in a cost reporting period or in a fiscal year—

(i) beginning on or after October 1, 1983, and before October 1, 1984, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(A) of this section, but determined without the application of subsection (a) of this section), and

(II) the DRG percentage (as defined in subparagraph (C)) of the regional adjusted DRG prospective payment rate determined under paragraph (2) for such discharges;

(ii) beginning on or after October 1, 1984, and before October 1, 1987, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(A) of this section, but determined without the application of subsection (a) of this section), and

(II) the DRG percentage (as defined in subparagraph (C)) of the applicable combined adjusted DRG prospective payment rate determined under subparagraph (D) for such discharges; or

(iii) beginning on or after April 1, 1988, is equal to—

(I) the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, or

(II) for discharges occurring during a fiscal year ending on or before September 30, 1996, the sum of 85 percent of the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges and 15 percent of the regional adjusted DRG prospective payment rate determined under such paragraph, but only if the average standardized amount (described in clause (i)(I) or clause (ii)(I) of paragraph (3)(D)) for hospitals within the region of, and in the same large urban or other area (or, for discharges occurring during a fiscal year ending on or before September 30, 1994, the same large urban or other area) as, the hospital is greater than the average standardized amount (described in the respective clause) for hospitals within the United States in that type of area for discharges occurring during such fiscal year.

(B) As used in this section, the term ''subsection (d) hospital'' means a hospital located in one of the fifty States or the District of Columbia other than—

(i) a psychiatric hospital (as defined in section 1395x(f) of this title),

(ii) a rehabilitation hospital (as defined by the Secretary),

(iii) a hospital whose inpatients are predominantly individuals under 18 years of age,

(iv) a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days, or

(v) a hospital that the Secretary has classified, at any time on or before December 31, 1990,[3] (or, in the case of a hospital that, as of December 19, 1989, is located in a State operating a demonstration project under section 1395f(b) of this title, on or before December 31, 1991) for purposes of applying exceptions and adjustments to payment amounts under this subsection, as a hospital involved extensively in treatment for or research on cancer;

and, in accordance with regulations of the Secretary, does not include a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital (as defined by the Secretary).

(C) For purposes of this subsection, for cost reporting periods beginning—

(i) on or after October 1, 1983, and before October 1, 1984, the ''target percentage'' is 75 percent and the ''DRG percentage'' is 25 percent;

(ii) on or after October 1, 1984, and before October 1, 1985, the ''target percentage'' is 50 percent and the ''DRG percentage'' is 50 percent;

(iii) on or after October 1, 1985, and before October 1, 1986, the ''target percentage'' is 45 percent and the ''DRG percentage'' is 55 percent; and

(iv) on or after October 1, 1986, and before October 1, 1987, the ''target percentage'' is 25 percent and the ''DRG percentage'' is 75 percent.

[3] So in original. The comma probably should not appear.

(D) For purposes of subparagraph (A)(ii)(II), the ''applicable combined adjusted DRG prospective payment rate'' for discharges occurring—

(i) on or after October 1, 1984, and before October 1, 1986, is a combined rate consisting of 25 percent of the national adjusted DRG prospective payment rate, and 75 percent of the regional adjusted DRG prospective payment rate, determined under paragraph (3) for such discharges; and

(ii) on or after October 1, 1986, and before October 1, 1987, is a combined rate consisting of 50 percent of the national adjusted DRG prospective payment rate, and 50 percent of the regional adjusted DRG prospective payment rate, determined under paragraph (3) for such discharges.

(2) The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1984 involving inpatient hospital services of a subsection (d) hospital in the United States, and shall determine a regional adjusted DRG prospective payment rate for such discharges in each region, for which payment may be made under part A of this subchapter. Each such rate shall be determined for hospitals located in urban or rural areas within the United States or within each such region, respectively, as follows:

(A) The Secretary shall determine the allowable operating costs per discharge of inpatient hospital services for the hospital for the most recent cost reporting period for which data are available.

(B) The Secretary shall update each amount determined under subparagraph (A) for fiscal year 1984 by—

(i) updating for fiscal year 1983 by the estimated average rate of change of hospital costs industry-wide between the cost reporting period used under such subparagraph and fiscal year 1983 and the most recent case-mix data available, and

(ii) projecting for fiscal year 1984 by the applicable percentage increase (as defined in subsection (b)(3)(B) of this section) for fiscal year 1984.

(C) The Secretary shall standardize the amount updated under subparagraph (B) for each hospital by—

(i) excluding an estimate of indirect medical education costs (taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985),

(ii) adjusting for variations among hospitals by area in the average hospital wage level,

(iii) adjusting for variations in case mix among hospitals, and

(iv) for discharges occurring on or after October 1, 1986, excluding an estimate of the additional payments to certain hospitals to be made under paragraph (5)(F), except that the Secretary shall not exclude additional payments under such paragraph made as a result of the enactment of section 6003(c) of the Omnibus Budget Reconciliation Act of 1989 or the enactment of section 4002(b) of the Omnibus Budget Reconciliation Act of 1990.

(D) The Secretary shall compute an average of the standardized amounts determined under subparagraph (C) for the United States and for each region—

(i) for all subsection (d) hospitals located in an urban area within the United States or that region, respectively, and

(ii) for all subsection (d) hospitals located in a rural area within the United States or that region, respectively.

For purposes of this subsection, the term ''region'' means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census for statistical and reporting purposes; the term ''urban area'' means an area within a Metropolitan Statistical Area (as defined by the Office of Management and Budget) or within such similar area as the Secretary has recognized under subsection (a) of this section by regulation; the term ''large urban area'' means, with respect to a fiscal year, such an urban area which the Secretary determines (in the publications described in subsection (e)(5) of this section before the fiscal year) has a population of more than 1,000,000 (as determined by the Secretary based on the most recent available population data published by the Bureau of the Census); and the term ''rural area'' means any area outside such an area or similar area. A hospital located in a Metropolitan Statistical Area shall be deemed to be located in the region in which the largest number of the hospitals in the same Metropolitan Statistical Area are located, or, at the option of the Secretary, the region in which the majority of the inpatient discharges (with respect to which payments are made under this subchapter) from hospitals in the same Metropolitan Statistical Area are made.

(E) The Secretary shall reduce each of the average standardized amounts determined under subparagraph (D) by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment rates which are additional payments described in paragraph (5)(A) (relating to outlier payments).

(F) The Secretary shall adjust each of such average standardized amounts as may be required under subsection (e)(1)(B) of this section for that fiscal year.

(G) For each discharge classified within a diagnosis-related group, the Secretary shall establish a national DRG prospective payment rate and shall establish a regional DRG prospective payment rate for each region, each of which is equal—

(i) for hospitals located in an urban area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (D), reduced under subparagraph (E), and adjusted under subparagraph (F)) for hospitals located in an urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(ii) for hospitals located in a rural area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (D), reduced under subparagraph (E), and adjusted under subparagraph (F)) for hospitals located in a rural area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(H) The Secretary shall adjust the proportion, (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the national and regional DRG prospective payment rates computed under subparagraph (G) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

(3) The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge in a fiscal year after fiscal year 1984 involving inpatient hospital services of a subsection (d) hospital in the United States, and shall determine a regional adjusted DRG prospective payment rate for such discharges in each region for which payment may be made under part A of this subchapter. Each such rate shall be determined for hospitals located in large urban, other urban, or rural areas within the United States and within each such region, respectively, as follows:

(A)(i) For discharges occurring in a fiscal year beginning before October 1, 1987, the Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area within the United States and for hospitals located in an urban area and for hospitals located in a rural area within each region, equal to the respective average standardized amount computed for the previous fiscal year under paragraph (2)(D) or under this subparagraph, increased for the fiscal year involved by the applicable percentage increase under subsection (b)(3)(B) of this section. With respect to discharges occurring on or after October 1, 1987, the Secretary shall compute urban and rural averages on the basis of discharge weighting rather than hospital weighting, making appropriate adjustments to ensure that computation on such basis does not result in total payments under this section that are greater or less than the total payments that would have been made under this section but for this sentence, and making appropriate changes in the manner of determining the reductions under subparagraph (C)(ii).

(ii) For discharges occurring in a fiscal year beginning on or after October 1, 1987, and ending on or before September 30, 1994, the Secretary shall compute an average standardized amount for hospitals located in a large urban area, for hospitals located in a rural area, and for hospitals located in other urban areas, within the United States and within each region, equal to the respective average standardized amount computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B)(i) of this section with respect to hospitals located in the respective areas for the fiscal year involved.

(iii) For discharges occurring in the fiscal year beginning on October 1, 1994, the average standardized amount for hospitals located in a rural area shall be equal to the average standardized amount for hospitals located in an other[4] urban area. For discharges occurring on or after October 1, 1994, the Secretary shall adjust the ratio of the labor portion to non-labor portion of each average standardized amount to equal such ratio for the national average of all standardized amounts.

(iv) For discharges occurring in a fiscal year beginning on or after October 1, 1995, the Secretary shall compute an average standardized amount for hospitals located in a large urban area and for hospitals located in other areas within the United States and within each region equal to the respective average standardized amount computed for the previous fiscal year under this subparagraph increased by the applicable percentage increase under subsection (b)(3)(B)(i) of this section with respect to hospitals located in the respective areas for the fiscal year involved.

(v) Average standardized amounts computed under this paragraph shall be adjusted to reflect the most recent case-mix data available.

(B) The Secretary shall reduce each of the average standardized amounts determined under subparagraph (A) by a factor equal to the proportion of payments under this subsection (as estimated by the Secretary) based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments).

(C)(i) For discharges occurring in fiscal year 1985, the Secretary shall adjust each of such average standardized amounts as may be required under subsection (e)(1)(B) of this section for that fiscal year.

(ii) For discharges occurring after September 30, 1986, the Secretary shall further reduce each of the average standardized amounts (in a proportion which takes into account the differing effects of the standardization effected under paragraph (2)(C)(i)) so as to provide for a reduction in the total of the payments (attributable to this paragraph) made for discharges occurring on or after October 1, 1986, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) that would have resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987 if the factor described in clause (ii)(II) of paragraph (5)(B) (determined without regard to amendments made by the

[4] So in original. Probably should be ''another''.

Omnibus Budget Reconciliation Act of 1990) were applied for discharges occurring on or after such date instead of the factor described in clause (ii) of that paragraph.

(D) For each discharge classified within a diagnosis-related group, the Secretary shall establish for the fiscal year a national DRG prospective payment rate and shall establish a regional DRG prospective payment rate for each region, each of which is equal—

(i) for hospitals located in a large urban area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C)) for the fiscal year for hospitals located in such a large urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(ii) for hospitals located in other areas in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted or reduced under subparagraph (C)) for the fiscal year for hospitals located in other areas in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(E) The Secretary shall adjust the proportion, (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the DRG prospective payment rates computed under subparagraph (D) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level. Not later than October 1, 1990, and October 1, 1993 (and at least every 12 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of a survey conducted by the Secretary (and updated as appropriate) of the wages and wage-related costs of subsection (d) hospitals in the United States. To the extent determined feasible by the Secretary, such survey shall measure the earnings and paid hours of employment by occupational category and shall exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services. Any adjustments or updates made under this subparagraph for a fiscal year (beginning with fiscal year 1991) shall be made in a manner that assures that the aggregate payments under this subsection in the fiscal year are not greater or less than those that would have been made in the year without such adjustment.

(4)(A) The Secretary shall establish a classification of inpatient hospital discharges by diagnosis-related groups and a methodology for classifying specific hospital discharges within these groups.

(B) For each such diagnosis-related group the Secretary shall assign an appropriate weighting factor which reflects the relative hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups.

(C)(i) The Secretary shall adjust the classifications and weighting factors established under subparagraphs (A) and (B), for discharges in fiscal year 1988 and at least annually thereafter, to reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources.

(ii) For discharges in fiscal year 1990, the Secretary shall reduce the weighting factor for each diagnosis-related group by 1.22 percent.

(iii) Any such adjustment under clause (i) for discharges in a fiscal year (beginning with fiscal year 1991) shall be made in a manner that assures that the aggregate payments under this subsection for discharges in the fiscal year are not greater or less than those that would have been made for discharges in the year without such adjustment.

(iv) The Secretary shall include recommendations with respect to adjustments to weighting factors under clause (i) in the annual report to Congress required under subsection (e)(3)(B) of this section.

(5)(A)(i) For discharges occurring during fiscal years ending on or before September 30, 1997, the Secretary shall provide for an additional payment for a subsection (d) hospital for any discharge in a diagnosis-related group, the length of stay of which exceeds the mean length of stay for discharges within that group by a fixed number of days, or exceeds such mean length of stay by some fixed number of standard deviations, whichever is the fewer number of days.

(ii) For cases which are not included in clause (i), a subsection (d) hospital may request additional payments in any case where charges, adjusted to cost, exceed a fixed multiple of the applicable DRG prospective payment rate, or exceed such other fixed dollar amount, whichever is greater, or, for discharges in fiscal years beginning on or after October 1, 1994, exceed the applicable DRG prospective payment rate plus a fixed dollar amount determined by the Secretary.

(iii) The amount of such additional payment under clauses (i) and (ii) shall be determined by the Secretary and shall (except as payments under clause (i) are required to be reduced to take into account the requirements of clause (v)) approximate the marginal cost of care beyond the cutoff point applicable under clause (i) or (ii).

(iv) The total amount of the additional payments made under this subparagraph for discharges in a fiscal year may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made based on DRG prospective payment rates for discharges in that year.

(v) The Secretary shall provide that—

(I) the day outlier percentage for fiscal year 1995 shall be 75 percent of the day outlier percentage for fiscal year 1994;

(II) the day outlier percentage for fiscal year 1996 shall be 50 percent of the day outlier percentage for fiscal year 1994; and

(III) the day outlier percentage for fiscal year 1997 shall be 25 percent of the day outlier percentage for fiscal year 1994.

(vi) For purposes of this subparagraph, the term ''day outlier percentage'' means, for a fiscal year, the percentage of the total additional payments made by the Secretary under this subparagraph for discharges in that fiscal year which are additional payments under clause (i).

(B) The Secretary shall provide for an additional payment amount for subsection (d) hospitals with indirect costs of medical education, in an amount computed in the same manner as the adjustment for such costs under regulations (in effect as of January 1, 1983) under subsection (a)(2) of this section, except as follows:

(i) The amount of such additional payment shall be determined by multiplying (I) the sum of the amount determined under paragraph (1)(A)(ii)(II) (or, if applicable, the amount determined under paragraph (1)(A)(iii)) and the amount paid to the hospital under subparagraph (A), by (II) the indirect teaching adjustment factor described in clause (ii).

(ii) For purposes of clause (i)(II), the indirect teaching adjustment factor for discharges occurring on or after October 1, 1988, is equal to $1.89 \times (((1 + r)$ to the nth power$) - 1)$, where ''r'' is the ratio of the hospital's full-time equivalent interns and residents to beds and ''n'' equals .405.

(iii) In determining such adjustment the Secretary shall not distinguish between those interns and residents who are employees of a hospital and those interns and residents who furnish services to a hospital but are not employees of such hospital.

(iv) In determining such adjustment, the Secretary shall continue to count interns and residents assigned to outpatient services of the hospital or providing services at any entity receiving a grant under section 254c of this title that is under the ownership or control of the hospital (if the hospital incurs all, or substantially all, of the costs of the services furnished by such interns and residents) as part of the calculation of the full-time-equivalent number of interns and residents.

(C)(i) The Secretary shall provide for such exceptions and adjustments to the payment amounts established under this subsection (other than under paragraph (9)) as the Secretary deems appropriate to take into account the special needs of regional and national referral centers (including those hospitals of 275 or more beds located in rural areas). A hospital which is classified as a rural hospital may appeal to the Secretary to be classified as a rural referral center under this clause on the basis of criteria (established by the Secretary) which shall allow the hospital to demonstrate that it should be so reclassified by reason of certain of its operating characteristics being similar to those of a typical urban hospital located in the same census region and which shall not require a rural osteopathic hospital to have more than 3,000 discharges in a year in order to be classified as a rural referral center. Such characteristics may include wages, scope of services, service area, and the mix of medical specialties. The Secretary shall publish the criteria not later than August 17, 1984, for implementation by October 1, 1984. An appeal allowed under this clause must be submitted to the Secretary (in such form and manner as the Secretary may prescribe) during the quarter before the first quarter of the hospital's cost reporting period (or, in the case of a cost reporting period beginning during October 1984, during the first quarter of that period), and the Secretary must make a final determination with respect to such appeal within 60 days after the date the appeal was submitted. Any payment adjustments necessitated by a reclassification based upon the appeal shall be effective at the beginning of such cost reporting period.

(ii) The Secretary shall provide, under clause (i), for the classification of a rural hospital as a regional referral center if the hospital has a case mix index equal to or greater than the median case mix index for hospitals (other than hospitals with approved teaching programs) located in an urban area in the same region (as defined in paragraph (2)(D)), has at least 5,000 discharges a year or, if less, the median number of discharges in urban hospitals in the region in which the hospital is located (or, in the case of a rural osteopathic hospital, meets the criterion established by the Secretary under clause (i) with respect to the annual number of discharges for such hospitals), and meets any other criteria established by the Secretary under clause (i).

(D)(i) For any cost reporting period beginning on or after April 1, 1990, with respect to a subsection (d) hospital which is a sole community hospital, payment under paragraph (1)(A) shall be—

(I) an amount based on 100 percent of the hospital's target amount for the cost reporting period, as defined in subsection (b)(3)(C) of this section, or

(II) the amount determined under paragraph (1)(A)(iii),

whichever results in greater payment to the hospital.

(ii) In the case of a sole community hospital that experiences, in a cost reporting period compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection (other than under paragraph (9)) as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services.

(iii) For purposes of this subchapter, the term ''sole community hospital'' means any hospital—

(I) that the Secretary determines is located more than 35 road miles from another hospital,

(II) that, by reason of factors such as the time required for an individual to travel to the nearest alternative source of appropriate inpatient care (in accordance with standards pro-

mulgated by the Secretary), location, weather conditions, travel conditions, or absence of other like hospitals (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to individuals in a geographic area who are entitled to benefits under part A of this subchapter, or

(III) that is located in a rural area and designated by the Secretary as an essential access community hospital under section 1395i–4(i)(1) of this title.

(iv) The Secretary shall promulgate a standard for determining whether a hospital meets the criteria for classification as a sole community hospital under clause (iii)(II) because of the time required for an individual to travel to the nearest alternative source of appropriate inpatient care.

(v) If the Secretary determines that, in the case of a hospital located in a rural area and designated by the Secretary as an essential access community hospital under section 1395i–4(i)(1) of this title, the hospital has incurred increases in reasonable costs during a cost reporting period as a result of becoming a member of a rural health network (as defined in section 1395i–4(g) of this title) in the State in which it is located, and in incurring such increases, the hospital will increase its costs for subsequent cost reporting periods, the Secretary shall increase the hospital's target amount under subsection (b)(3)(C) of this section to account for such incurred increases.

(E)(i) The Secretary shall estimate the amount of reimbursement made for services described in section 1395y(a)(14) of this title with respect to which payment was made under part B of this subchapter in the base reporting periods referred to in paragraph (2)(A) and with respect to which payment is no longer being made.

(ii) The Secretary shall provide for an adjustment to the payment for subsection (d) hospitals in each fiscal year so as appropriately to reflect the net amount described in clause (i).

(F)(i) For discharges occurring on or after May 1, 1986, the Secretary shall provide, in accordance with this subparagraph, for an additional payment amount for each subsection (d) hospital which—

(I) serves a significantly disproportionate number of low-income patients (as defined in clause (v)), or

(II) is located in an urban area, has 100 or more beds, and can demonstrate that its net inpatient care revenues (excluding any of such revenues attributable to this subchapter or State plans approved under subchapter XIX of this chapter), during the cost reporting period in which the discharges occur, for indigent care from State and local government sources exceed 30 percent of its total of such net inpatient care revenues during the period.

(ii) The amount of such payment for each discharge shall be determined by multiplying (I) the sum of the amount determined under paragraph (1)(A)(ii)(II) (or, if applicable, the amount determined under paragraph (1)(A)(iii)) and the amount paid to the hospital under subparagraph (A) for that discharge, by (II) the disproportionate share adjustment percentage established under clause (iii) or (iv) for the cost reporting period in which the discharge occurs.

(iii) The disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (i)(II) is equal to 35 percent.

(iv) The disproportionate share adjustment percentage for a cost reporting period for a hospital that is not described in clause (i)(II) and that—

(I) is located in an urban area and has 100 or more beds or is described in the second sentence of clause (v), is equal to the percent determined in accordance with the applicable formula described in clause (vii);

(II) is located in an urban area and has less than 100 beds, is equal to 5 percent;

(III) is located in a rural area and is not described in subclause (IV) or (V) or in the second sentence of clause (v), is equal to 4 percent;

(IV) is located in a rural area, is classified as a rural referral center under subparagraph (C), and is classified as a sole community hospital under subparagraph (D), is equal to 10 percent or, if greater, the percent determined in accordance with the applicable formula described in clause (viii);

(V) is located in a rural area, is classified as a rural referral center under subparagraph (C), and is not classified as a sole community hospital under subparagraph (D), is equal to the percent determined in accordance with the applicable formula described in clause (viii); or

(VI) is located in a rural area, is classified as a sole community hospital under subparagraph (D), and is not classified as a rural referral center under subparagraph (C), is 10 percent.

(v) In this subparagraph, a hospital ''serves a significantly disproportionate number of low income patients'' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals, or exceeds—

(I) 15 percent, if the hospital is located in an urban area and has 100 or more beds,

(II) 30 percent, if the hospital is located in a rural area and has more than 100 beds, or is located in a rural area and is classified as a sole community hospital under subparagraph (D),

(III) 40 percent, if the hospital is located in an urban area and has less than 100 beds, or

(IV) 45 percent, if the hospital is located in a rural area and is not described in subclause (II).

A hospital located in a rural area and with 500 or more beds also ''serves a significantly disproportionate number of low income patients'' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals or exceeds a percentage specified by the Secretary.

(vi) In this subparagraph, the term ''disproportionate patient percentage'' means, with respect to a cost reporting period of a hospital, the sum of—

(I) the fraction (expressed as a percentage), the numerator of which is the number of such hospital's patient days for such period which

were made up of patients who (for such days) were entitled to benefits under part A of this subchapter and were entitled to supplementary security income benefits (excluding any State supplementation) under subchapter XVI of this chapter, and the denominator of which is the number of such hospital's patient days for such fiscal year which were made up of patients who (for such days) were entitled to benefits under part A of this subchapter, and

(II) the fraction (expressed as a percentage), the numerator of which is the number of the hospital's patient days for such period which consist of patients who (for such days) were eligible for medical assistance under a State plan approved under subchapter XIX of this chapter, but who were not entitled to benefits under part A of this subchapter, and the denominator of which is the total number of the hospital's patient days for such period.

(vii) The formula used to determine the disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (iv)(I) is—

(I) in the case of such a hospital with a disproportionate patient percentage (as defined in clause (vi)) greater than 20.2—

(a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, $(P-20.2)(.65) + 5.62$,

(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, $(P-20.2)(.7) + 5.62$,

(c) for discharges occurring on or after October 1, 1993, and on or before September 30, 1994, $(P-20.2)(.8) + 5.88$, and

(d) for discharges occurring on or after October 1, 1994, $(P-20.2)(.825) + 5.88$; or

(II) in the case of any other such hospital—

(a) for discharges occurring on or after April 1, 1990, and on or before December 31, 1990, $(P-15)(.6) + 2.5$,

(b) for discharges occurring on or after January 1, 1991, and on or before September 30, 1993, $(P-15)(.6) + 2.5$,[5]

(c) for discharges occurring on or after October 1, 1993, $(P-15)(.65) + 2.5$,

where ''P'' is the hospital's disproportionate patient percentage (as defined in clause (vi)).

(viii) The formula used to determine the disproportionate share adjustment percentage for a cost reporting period for a hospital described in clause (iv)(IV) or (iv)(V) is the percentage determined in accordance with the following formula: $(P-30)(.6)+4.0$, where ''P'' is the hospital's disproportionate patient percentage (as defined in clause (vi)).

(G)(i) For any cost reporting period beginning on or after April 1, 1990, and before October 1, 1994, in the case of a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be equal to the sum of the amount determined under clause (ii) and the amount determined under paragraph (1)(A)(iii).

(ii) The amount determined under this clause is—

(I) for discharges occurring during the 36-month period beginning with the first day of the cost reporting period that begins on or after April 1, 1990, the amount by which the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(D) of this section) exceeds the amount determined under paragraph (1)(A)(iii); and

(II) for discharges occurring during any subsequent cost reporting period (or portion thereof) and before October 1, 1994, 50 percent of the amount by which the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(D) of this section) exceeds the amount determined under paragraph (1)(A)(iii).

(iii) In the case of a medicare dependent, small rural hospital that experiences, in a cost reporting period compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection (other than under paragraph (9)) as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services.

(iv) The term ''medicare-dependent, small rural hospital'' means, with respect to any cost reporting period to which clause (i) applies, any hospital—

(I) located in a rural area,

(II) that has not more than 100 beds,

(III) that is not classified as a sole community hospital under subparagraph (D), and

(IV) for which not less than 60 percent of its inpatient days or discharges during the cost reporting period beginning in fiscal year 1987 were attributable to inpatients entitled to benefits under part A of this subchapter.

(H) The Secretary may provide for such adjustments to the payment amounts under this subsection as the Secretary deems appropriate to take into account the unique circumstances of hospitals located in Alaska and Hawaii.

(I)(i) The Secretary shall provide by regulation for such other exceptions and adjustments to such payment amounts under this subsection as the Secretary deems appropriate.

(ii) In making adjustments under clause (i) for transfer cases (as defined by the Secretary) in a fiscal year, the Secretary may make adjustments to each of the average standardized amounts determined under paragraph (3) to assure that the aggregate payments made under this subsection for such fiscal year are not greater or lesser than those that would have otherwise been made in such fiscal year.

(6) The Secretary shall provide for publication in the Federal Register, on or before the September 1 before each fiscal year (beginning with fiscal year 1984), of a description of the methodology and data used in computing the adjusted DRG prospective payment rates under this subsection, including any adjustments required under subsection (e)(1)(B) of this section.

(7) There shall be no administrative or judicial review under section 1395*oo* of this title or otherwise of—

[5] So in original. Probably should be followed by ''and''.

(A) the determination of the requirement, or the proportional amount, of any adjustment effected pursuant to subsection (e)(1) of this section, and

(B) the establishment of diagnosis-related groups, of the methodology for the classification of discharges within such groups, and of the appropriate weighting factors thereof under paragraph (4).

(8)(A) In the case of any hospital which is located in an area which is, at any time after April 20, 1983, reclassified from an urban to a rural area, payments to such hospital for the first two cost reporting periods for which such reclassification is effective shall be made as follows:

(i) For the first such cost reporting period, payment shall be equal to the amount payable to such hospital for such reporting period on the basis of the rural classification, plus an amount equal to two-thirds of the amount (if any) by which—

(I) the amount which would have been payable to such hospital for such reporting period on the basis of an urban classification, exceeds

(II) the amount payable to such hospital for such reporting period on the basis of the rural classification.

(ii) For the second such cost reporting period, payment shall be equal to the amount payable to such hospital for such reporting period on the basis of the rural classification, plus an amount equal to one-third of the amount (if any) by which—

(I) the amount which would have been payable to such hospital for such reporting period on the basis of an urban classification, exceeds

(II) the amount payable to such hospital for such reporting period on the basis of the rural classification.

(B) For purposes of this subsection, the Secretary shall treat a hospital located in a rural county adjacent to one or more urban areas as being located in the urban metropolitan statistical area to which the greatest number of workers in the county commute, if the rural county would otherwise be considered part of an urban area, under the standards for designating Metropolitan Statistical Areas (and for designating New England County Metropolitan Areas) published in the Federal Register on January 3, 1980, if the commuting rates used in determining outlying counties (or, for New England, similar recognized areas) were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous Metropolitan Statistical Areas (or New England County Metropolitan Areas).

(C)(i) If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10), by treating hospitals located in a rural county or counties as being located in an urban area, or by treating hospitals located in one urban area as being located in another urban area—

(I) reduces the wage index for that urban area (as applied under this subsection) by 1 percentage point or less, the Secretary, in calculating such wage index under this subsection, shall exclude those hospitals so treated, or

(II) reduces the wage index for that urban area by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if such hospitals were located in such urban area).

(ii) If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10), by treating hospitals located in a rural county or counties as not being located in the rural area in a State, reduces the wage index for that rural area (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection as if the hospitals so treated had not been excluded from calculation of the wage index for that rural area.

(iii) The application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10) may not result in the reduction of any county's wage index to a level below the wage index for rural areas in the State in which the county is located.

(iv) The application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or of the Secretary under paragraph (10) may not result in a reduction in an urban area's wage index if—

(I) the urban area has a wage index below the wage index for rural areas in the State in which it is located; or

(II) the urban area is located in a State that is composed of a single urban area.

(v) This subparagraph shall apply with respect to discharges occurring in a fiscal year only if the Secretary uses a method for making adjustments to the DRG prospective payment rate for area differences in hospital wage levels under paragraph (3)(E) for the fiscal year that is based on the use of Metropolitan Statistical Area classifications.

(D) The Secretary shall make a proportional adjustment in the standardized amounts determined under paragraph (3) to assure that the provisions of subparagraphs (B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10) do not result in aggregate payments under this section that are greater or less than those that would otherwise be made.

(9)(A) Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title, the amount of the payment with respect to the operating costs of inpatient hospital services of a subsection (d) Puerto Rico hospital for inpatient hospital discharges in a fiscal year beginning on or after October 1, 1987, is equal to the sum of—

(i) 75 percent of the Puerto Rico adjusted DRG prospective payment rate (determined under subparagraph (B) or (C)) for such discharges, and

(ii) 25 percent of the discharge-weighted average of—

(I) the national adjusted DRG prospective payment rate (determined under paragraph (3)(D)) for hospitals located in a large urban area,

(II) such rate for hospitals located in other urban areas, and

(III) such rate for hospitals located in a rural area,

for such discharges, adjusted in the manner provided in paragraph (3)(E) for different area wage levels. As used in this section, the term ''subsection (d) Puerto Rico hospital'' means a hospital that is located in Puerto Rico and that would be a subsection (d) hospital (as defined in paragraph (1)(B)) if it were located in one of the fifty States.

(B) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this subchapter. Such rate shall be determined for such hospitals located in urban or rural areas within Puerto Rico, as follows:

(i) The Secretary shall determine the target amount (as defined in subsection (b)(3)(A) of this section) for the hospital for the cost reporting period beginning in fiscal year 1987 and increase such amount by prorating the applicable percentage increase (as defined in subsection (b)(3)(B) of this section) to update the amount to the midpoint in fiscal year 1988.

(ii) The Secretary shall standardize the amount determined under clause (i) for each hospital by—

(I) excluding an estimate of indirect medical education costs,

(II) adjusting for variations among hospitals by area in the average hospital wage level,

(III) adjusting for variations in case mix among hospitals, and

(IV) excluding an estimate of the additional payments to certain subsection (d) Puerto Rico hospitals to be made under subparagraph (D)(iii) (relating to disproportionate share payments).

(iii) The Secretary shall compute a discharge weighted average of the standardized amounts determined under clause (ii) for all hospitals located in an urban area and for all hospitals located in a rural area (as such terms are defined in paragraph (2)(D)).

(iv) The Secretary shall reduce the average standardized amount by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments).

(v) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

(I) the average standardized amount (computed under clause (iii) and reduced under clause (iv)) for hospitals located in an urban or rural area, respectively, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(vi) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (v) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rican average hospital wage level.

(C) The Secretary shall determine a Puerto Rico adjusted DRG prospective payment rate, for each inpatient hospital discharge after fiscal year 1988 involving inpatient hospital services of a subsection (d) Puerto Rico hospital for which payment may be made under part A of this subchapter. Such rate shall be determined for hospitals located in urban or rural areas within Puerto Rico as follows:

(i) The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area equal to the respective average standardized amount computed for the previous fiscal year under subparagraph (B)(iii) or under this clause, increased for fiscal year 1989 by the applicable percentage increase under subsection (b)(3)(B) of this section, and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4) of this section, and adjusted to reflect the most recent case-mix data available.

(ii) The Secretary shall reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this paragraph which are additional payments described in subparagraph (D)(i) (relating to outlier payments).

(iii) For each discharge classified within a diagnosis-related group for hospitals located in an urban or rural area, respectively, the Secretary shall establish a Puerto Rico DRG prospective payment rate equal to the product of—

(I) the average standardized amount (computed under clause (i) and reduced under clause (ii)) for hospitals located in an urban or rural area, respectively, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(iv) The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the Puerto Rico DRG prospective payment rate computed under clause (iii) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the Puerto Rico average hospital wage level. The second

and third sentences of paragraph (3)(E) shall apply to subsection (d) Puerto Rico hospitals under this clause in the same manner as they apply to subsection (d) hospitals under such paragraph and, for purposes of this clause, any reference in such paragraph to a subsection (d) hospital is deemed a reference to a subsection (d) Puerto Rico hospital.

(D) The following provisions of paragraph (5) shall apply to subsection (d) Puerto Rico hospitals receiving payment under this paragraph in the same manner and to the extent as they apply to subsection (d) hospitals receiving payment under this subsection:

(i) Subparagraph (A) (relating to outlier payments).

(ii) Subparagraph (B) (relating to payments for indirect medical education costs), except that for this purpose the sum of the amount determined under subparagraph (A) of this paragraph and the amount paid to the hospital under clause (i) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(B)(i)(I).

(iii) Subparagraph (F) (relating to disproportionate share payments), except that for this purpose the sum described in clause (ii) of this subparagraph shall be substituted for the sum referred to in paragraph (5)(F)(ii)(I).

(iv) Subparagraph (H) (relating to exceptions and adjustments).

(10)(A) There is hereby established the Medicare Geographic Classification Review Board (hereinafter in this paragraph referred to as the ''Board'').

(B)(i) The Board shall be composed of 5 members appointed by the Secretary without regard to the provisions of title 5, governing appointments in the competitive service. Two of such members shall be representative of subsection (d) hospitals located in a rural area under paragraph (2)(D). At least 1 member shall be knowledgeable in the field of analyzing costs with respect to the provision of inpatient hospital services.

(ii) The Secretary shall make initial appointments to the Board as provided in this paragraph within 180 days after December 19, 1989.

(C)(i) The Board shall consider the application of any subsection (d) hospital requesting that the Secretary change the hospital's geographic classification for purposes of determining for a fiscal year—

(I) the hospital's average standardized amount under paragraph (2)(D), or

(II) the factor used to adjust the DRG prospective payment rate for area differences in hospital wage levels that applies to such hospital under paragraph (3)(E).

(ii) A hospital requesting a change in geographic classification under clause (i) for a fiscal year shall submit its application to the Board not later than the first day of the preceding fiscal year.

(iii)(I) The Board shall render a decision on an application submitted under clause (i) not later than 180 days after the deadline referred to in clause (ii).

(II) Appeal of decisions of the Board shall be subject to the provisions of section 557b[6] of title 5. The Secretary shall issue a decision on such an appeal not later than 90 days after the date on which the appeal is filed. The decision of the Secretary shall be final and shall not be subject to judicial review.

(D)(i) The Secretary shall publish guidelines to be utilized by the Board in rendering decisions on applications submitted under this paragraph, and shall include in such guidelines the following:

(I) Guidelines for comparing wages, taking into account (to the extent the Secretary determines appropriate) occupational mix, in the area in which the hospital is classified and the area in which the hospital is applying to be classified.

(II) Guidelines for determining whether the county in which the hospital is located should be treated as being a part of a particular Metropolitan Statistical Area.

(III) Guidelines for considering information provided by an applicant with respect to the effects of the hospital's geographic classification on access to inpatient hospital services by medicare beneficiaries.

(IV) Guidelines for considering the appropriateness of the criteria used to define New England County Metropolitan Areas.

(ii) Notwithstanding clause (i), if the Secretary uses a method for making adjustments to the DRG prospective payment rate for area differences in hospital wage levels under paragraph (3)(E) that is not based on the use of Metropolitan Statistical Area classifications, the Secretary may revise the guidelines published under clause (i) to the extent such guidelines are used to determine the appropriateness of the geographic area in which the hospital is determined to be located for purposes of making such adjustments.

(iii) The Secretary shall publish the guidelines described in clause (i) by July 1, 1990.

(E)(i) The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this subchapter or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this paragraph. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d) and (e) of section 405 of this title with respect to subpenas shall apply to the Board to the same extent as such provisions apply to the Secretary with respect to subchapter II of this chapter.

(ii) The Board is authorized to engage such technical assistance and to receive such information as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Board such secretarial, clerical, and other assistance as the Board may require to carry out its functions.

(F)(i) Each member of the Board who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay pre-

[6] So in original. Probably should be section ''557(b)''.

scribed for grade GS–18 of the General Schedule under section 5332 of title 5 for each day (including travel time) during which such member is engaged in the performance of the duties of the Board. Each member of the Board who is an officer or employee of the United States shall serve without compensation in addition to that received for service as an officer or employee of the United States.

(ii) Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, while away from their homes or regular places of business in the performance of services for the Board.

(e) Proportional adjustments in applicable percentage increases; Prospective Payment Assessment Commission

(1)(A) For cost reporting periods of hospitals beginning in fiscal year 1984 or fiscal year 1985, the Secretary shall provide for such proportional adjustment in the applicable percentage increase (otherwise applicable to the periods under subsection (b)(3)(B) of this section) as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsection (d)(1)(A)(i)(I) of this section for that fiscal year for operating costs of inpatient hospital services of hospitals (excluding payments made under section 1395cc(a)(1)(F) of this title),

are not greater or less than—

(ii) the target percentage (as defined in subsection (d)(1)(C) of this section) of the payment amounts which would have been payable for such services for those same hospitals for that fiscal year under this section under the law as in effect before April 20, 1983 (excluding payments made under section 1395cc(a)(1)(F) of this title);

except that the adjustment made under this subparagraph shall apply only to subsection (d) hospitals and shall not apply for purposes of making computations under subsection (d)(2)(B)(ii) of this section or subsection (d)(3)(A) of this section.

(B) For discharges occurring in fiscal year 1984 or fiscal year 1985, the Secretary shall provide under subsections (d)(2)(F) and (d)(3)(C) of this section for such equal proportional adjustment in each of the average standardized amounts otherwise computed for that fiscal year as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsection (d)(1)(A)(i)(II) and (d)(5) of this section for that fiscal year for operating costs of inpatient hospital services of hospitals (excluding payments made under section 1395cc(a)(1)(F) of this title),

are not greater or less than—

(ii) the DRG percentage (as defined in subsection (d)(1)(C) of this section) of the payment amounts which would have been payable for such services for those same hospitals for that fiscal year under this section under the law as in effect before April 20, 1983 (excluding payments made under section 1395cc(a)(1)(F) of this title).

(C) For discharges occurring in fiscal year 1988, the Secretary shall provide for such equal proportional adjustment in each of the average standardized amounts otherwise computed under subsection (d)(3) of this section for that fiscal year as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsections (d)(1)(A)(iii), (d)(5), and (d)(9) of this section for that fiscal year for operating costs of inpatient hospital services of subsection (d) hospitals and subsection (d) Puerto Rico hospitals,

are not greater or less than—

(ii) the payment amounts that would have been payable for such services for those same hospitals for that fiscal year but for the enactment of the amendments made by section 9304 of the Omnibus Budget Reconciliation Act of 1986.

(2)(A) The Director of the Congressional Office of Technology Assessment (hereinafter in this subsection referred to as the ''Director'' and the ''Office'', respectively) shall provide for appointment of a Prospective Payment Assessment Commission (hereinafter in this subsection referred to as the ''Commission''), to be composed of independent experts appointed by the Director (without regard to the provisions of title 5 governing appointments in the competitive service). The Commission shall review the applicable percentage increase factor described in subsection (b)(3)(B) of this section and make recommendations to the Secretary on the appropriate percentage change which should be effected for hospital inpatient discharges under subsections (b) and (d) of this section for fiscal years beginning with fiscal year 1986. In making its recommendations, the Commission shall take into account changes in the hospital market-basket described in subsection (b)(3)(B) of this section, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient hospital services.

(B) In order to promote the efficient and effective delivery of high-quality health care services, the Commission shall, in addition to carrying out its functions under subparagraph (A), study and make recommendations for each fiscal year regarding changes in each existing reimbursement policy under this subchapter under which payments to an institution are based upon prospectively determined rates and the development of new institutional reimbursement policies under this subchapter, including recommendations relating to payments during such fiscal year under the prospective payment system established under this section for determining payments for the operating costs of inpatient hospital services, including changes in the number of diagnosis-related groups used to classify inpatient hospital discharges under subsection (d) of this section, adjustments to such groups to reflect severity of illness, and changes in the methods by which hospitals are reimbursed for capital-related costs, together with general recommendations on the effectiveness

and quality of health care delivery systems in the United States and the effects on such systems of institutional reimbursements under this subchapter.

(C) By not later than June 1 of each year, the Commission shall submit a report to Congress containing an examination of issues affecting health care delivery in the United States, including issues relating to—

(i) trends in health care costs;

(ii) the financial condition of hospitals and the effect of the level of payments made to hospitals under this subchapter on such condition;

(iii) trends in the use of health care services; and

(iv) new methods used by employers, insurers, and others to constrain growth in health care costs.

(3)(A) The Commission, not later than the March 1 before the beginning of each fiscal year (beginning with fiscal year 1986), shall report its recommendations to Congress on an appropriate change factor which should be used for inpatient hospital services for discharges in that fiscal year, together with its general recommendations under paragraph (2)(B) regarding the effectiveness and quality of health care delivery systems in the United States.

(B) The Secretary, not later than April 1, 1987, for fiscal year 1988 and not later than March 1 before the beginning of each fiscal year (beginning with fiscal year 1989), shall report to the Congress the Secretary's initial estimate of the percentage change that the Secretary will recommend under paragraph (4) with respect to that fiscal year.

(4)(A) Taking into consideration the recommendations of the Commission, the Secretary shall recommend for each fiscal year (beginning with fiscal year 1988) an appropriate change factor for inpatient hospital services for discharges in that fiscal year which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. The appropriate change factor may be different for all large urban subsection (d) hospitals, other urban subsection (d) hospitals, urban subsection (d) Puerto Rico hospitals, rural subsection (d) hospitals, and rural subsection (d) Puerto Rico hospitals, and all other hospitals and units not paid under subsection (d) of this section, and may vary among such other hospitals and units.

(B) In addition to the recommendation made under subparagraph (A), the Secretary shall, taking into consideration the recommendations of the Commission under paragraph (2)(B), recommend for each fiscal year (beginning with fiscal year 1992) other appropriate changes in each existing reimbursement policy under this subchapter under which payments to an institution are based upon prospectively determined rates.

(5) The Secretary shall cause to have published in the Federal Register, not later than—

(A) the May 1 before each fiscal year (beginning with fiscal year 1986), the Secretary's proposed recommendations under paragraph (4) for that fiscal year for public comment, and

(B) the September 1 before such fiscal year after such consideration of public comment on the proposal as is feasible in the time available, the Secretary's final recommendations under such paragraph for that year.

The Secretary shall include in the publication referred to in subparagraph (A) for a fiscal year the report of the Commission's recommendations submitted under paragraph (3) for that fiscal year. To the extent that the Secretary's recommendations under paragraph (4) differ from the Commission's recommendations for that fiscal year, the Secretary shall include in the publication referred to in subparagraph (A) an explanation of the Secretary's grounds for not following the Commission's recommendations.

(6)(A) The Commission shall consist of 17 individuals. Members of the Commission shall first be appointed no later than April 1, 1984, for a term of three years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than seven members expire in any one year.

(B) The membership of the Commission shall include individuals with national recognition for their expertise in health economics, health facility management, reimbursement of health facilities or other providers of services which reflect the scope of the Commission's responsibilities, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives, including physicians and registered professional nurses, employers, third party payors, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research, and individuals having expertise in the research and development of technological and scientific advances in health care.

(C) Subject to such review as the Office deems necessary to assure the efficient administration of the Commission, the Commission may—

(i) employ and fix the compensation of an Executive Director (subject to the approval of the Director of the Office) and such other personnel (not to exceed 25) as may be necessary to carry out its duties (without regard to the provisions of title 5 governing appointments in the competitive service);

(ii) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(iii) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission (without regard to section 5 of title 41);

(iv) make advance, progress, and other payments which relate to the work of the Commission;

(v) provide transportation and subsistence for persons serving without compensation; and

(vi) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of the Commission.

Section 10(a)(1) of the Federal Advisory Committee Act shall not apply to any portion of a Commission meeting if the Commission, by majority vote, determines that such portion of such meeting should be closed.

(D) While serving on the business of the Commission (including traveltime), a member of the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5; and while so serving away from home and his regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of the Commission. Physicians serving as personnel of the Commission may be provided a physician comparability allowance by the Commission in the same manner as Government physicians may be provided such an allowance by an agency under section 5948 of title 5, and for such purpose subsection (i) of such section shall apply to the Commission in the same manner as it applies to the Tennessee Valley Authority. For purposes of pay (other than pay of members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate.

(E) In order to identify medically appropriate patterns of health resources use in accordance with paragraph (2), the Commission shall collect and assess information on medical and surgical procedures and services, including information on regional variations of medical practice and lengths of hospitalization and on other patient-care data, giving special attention to treatment patterns for conditions which appear to involve excessively costly or inappropriate services not adding to the quality of care provided. In order to assess the safety, efficacy, and cost-effectiveness of new and existing medical and surgical procedures, the Commission shall, in coordination to the extent possible with the Secretary, collect and assess factual information, giving special attention to the needs of updating existing diagnosis-related groups, establishing new diagnosis-related groups, and making recommendations on relative weighting factors for such groups to reflect appropriate differences in resource consumption in delivering safe, efficacious, and cost-effective care. In collecting and assessing information, the Commission shall—

(i) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this paragraph;

(ii) carry out, or award grants or contracts for, original research and experimentation, including clinical research, where existing information is inadequate for the development of useful and valid guidelines by the Commission; and

(iii) adopt procedures allowing any interested party to submit information with respect to medical and surgical procedures and services (including new practices, such as the use of new technologies and treatment modalities), which information the Commission shall consider in making reports and recommendations to the Secretary and Congress.

(F) The Commission shall have access to such relevant information and data as may be available from appropriate Federal agencies and shall assure that its activities, especially the conduct of original research and medical studies, are coordinated with the activities of Federal agencies.

(G)(i) The Office shall have unrestricted access to all deliberations, records, and data of the Commission, immediately upon its request.

(ii) In order to carry out its duties under this paragraph, the Office is authorized to expend reasonable and neccessary[7] funds as mutually agreed upon by the Office and the Commission. The Office shall be reimbursed for such funds by the Commission from the appropriations made with respect to the Commission.

(H) The Commission shall be subject to periodic audit by the General Accounting Office.

(I)(i) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this paragraph.

(ii) Eighty-five percent of such appropriation shall be payable from the Federal Hospital Insurance Trust Fund, and 15 percent of such appropriation shall be payable from the Federal Supplementary Medical Insurance Trust Fund.

(J) The Commission shall submit requests for appropriations in the same manner as the Office submits requests for appropriations, but amounts appropriated for the Commission shall be separate from amounts appropriated for the Office.

(f) Reporting of costs of hospitals receiving payments on basis of prospective rates

(1)(A) The Secretary shall maintain a system for the reporting of costs of hospitals receiving payments computed under subsection (d) of this section.

(B)(i) Subject to clause (ii), the Secretary shall place into effect a standardized electronic cost reporting format for hospitals under this subchapter.

(ii) The Secretary may delay or waive the implementation of such format in particular instances where such implementation would result in financial hardship (in particular with respect to hospitals with a small percentage of inpatients entitled to benefits under this subchapter).

(2) If the Secretary determines, based upon information supplied by a utilization and quality control peer review organization under part B of subchapter XI of this chapter, that a hospital, in order to circumvent the payment method established under subsection (b) or (d) of this section, has taken an action that results in the admission of individuals entitled to benefits under part A unnecessarily, unnecessary multiple admissions of the same such individuals, or other inappropriate medical or other practices with respect to such individuals, the Secretary may—

(A) deny payment (in whole or in part) under part A of this subchapter with respect to inpatient hospital services provided with respect to such an unnecessary admission (or subsequent admission of the same individual), or

(B) require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

(3) The provisions of subsections (c) through (g) of section 1320a–7 of this title shall apply to determinations made under paragraph (2) in the

[7] So in original. Probably should be ''necessary''.

same manner as they apply to exclusions effected under section 1320a–7(b)(13) of this title.

(g) Prospective payment for capital-related costs; return on equity capital for hospitals

(1)(A) Notwithstanding section 1395x(v) of this title, instead of any amounts that are otherwise payable under this subchapter with respect to the reasonable costs of subsection (d) hospitals and subsection (d) Puerto Rico hospitals for capital-related costs of inpatient hospital services, the Secretary shall, for hospital cost reporting periods beginning on or after October 1, 1991, provide for payments for such costs in accordance with a prospective payment system established by the Secretary. Aggregate payments made under subsection (d) of this section and this subsection during fiscal years 1992 through 1995 shall be reduced in a manner that results in a reduction (as estimated by the Secretary) in the amount of such payments equal to a 10 percent reduction in the amount of payments attributable to capital-related costs that would otherwise have been made during such fiscal year had the amount of such payments been based on reasonable costs (as defined in section 1395x(v) of this title). For discharges occurring after September 30, 1993, the Secretary shall reduce by 7.4 percent the unadjusted standard Federal capital payment rate (as described in 42 CFR 412.308(c), as in effect on August 10, 1993) and shall (for hospital cost reporting periods beginning on or after October 1, 1993) redetermine which payment methodology is applied to the hospital under such system to take into account such reduction.

(B) Such system—

(i) shall provide for (I) a payment on a per discharge basis, and (II) an appropriate weighting of such payment amount as relates to the classification of the discharge;

(ii) may provide for an adjustment to take into account variations in the relative costs of capital and construction for the different types of facilities or areas in which they are located;

(iii) may provide for such exceptions (including appropriate exceptions to reflect capital obligations) as the Secretary determines to be appropriate, and

(iv) may provide for suitable adjustment to reflect hospital occupancy rate.

(C) In this paragraph, the term ''capital-related costs'' has the meaning given such term by the Secretary under subsection (a)(4) of this section as of September 30, 1987, and does not include a return on equity capital.

(2)(A) The Secretary shall provide that the amount which is allowable, with respect to reasonable costs of inpatient hospital services for which payment may be made under this subchapter, for a return on equity capital for hospitals shall, for cost reporting periods beginning on or after April 20, 1983, be equal to amounts otherwise allowable under regulations in effect on March 1, 1983, except that the rate of return to be recognized shall be equal to the applicable percentage (described in subparagraph (B)) of the average of the rates of interest, for each of the months any part of which is included in the reporting period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(B) In this paragraph, the ''applicable percentage'' is—

(i) 75 percent, for cost reporting periods beginning during fiscal year 1987,

(ii) 50 percent, for cost reporting periods beginning during fiscal year 1988,

(iii) 25 percent, for cost reporting periods beginning during fiscal year 1989, and

(iv) 0 percent, for cost reporting periods beginning on or after October 1, 1989.

(3)(A) Except as provided in subparagraph (B), in determining the amount of the payments that may be made under this subchapter with respect to all the capital-related costs of inpatient hospital services of a subsection (d) hospital and a subsection (d) Puerto Rico hospital, the Secretary shall reduce the amounts of such payments otherwise established under this subchapter by—

(i) 3.5 percent for payments attributable to portions of cost reporting periods occurring during fiscal year 1987,

(ii) 7 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1988 on or after October 1, 1987, and before January 1, 1988,

(iii) 12 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) in fiscal year 1988, occurring on or after January 1, 1988,

(iv) 15 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1989, and

(v) 15 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during the period beginning January 1, 1990, and ending September 30, 1991.

(B) Subparagraph (A) shall not apply to payments with respect to the capital-related costs of any hospital that is a sole community hospital (as defined in subsection (d)(5)(D)(iii) of this section[8] or a rural primary care hospital (as defined in section 1395x(mm)(1) of this title).

(h) Payments for direct graduate medical education costs

(1) Substitution of special payment rules

Notwithstanding section 1395x(v) of this title, instead of any amounts that are otherwise payable under this subchapter with respect to the reasonable costs of hospitals for direct graduate medical education costs, the Secretary shall provide for payments for such costs in accordance with paragraph (3) of this subsection. In providing for such payments, the Secretary shall provide for an allocation of such payments between part A and part B of this subchapter (and the trust funds established under the respective parts) as reasonably reflects the proportion of direct graduate medical education costs of hospitals associated with the provision of services under each respective part.

[8] So in original. Probably should be followed by a closing parenthesis.

(2) Determination of hospital-specific approved FTE resident amounts

The Secretary shall determine, for each hospital with an approved medical residency training program, an approved FTE resident amount for each cost reporting period beginning on or after July 1, 1985, as follows:

(A) Determining allowable average cost per FTE resident in a hospital's base period

The Secretary shall determine, for the hospital's cost reporting period that began during fiscal year 1984, the average amount recognized as reasonable under this subchapter for direct graduate medical education costs of the hospital for each full-time-equivalent resident.

(B) Updating to the first cost reporting period

(i) In general

The Secretary shall update each average amount determined under subparagraph (A) by the percentage increase in the consumer price index during the 12-month cost reporting period described in such subparagraph.

(ii) Exception

The Secretary shall not perform an update under clause (i) in the case of a hospital if the hospital's reporting period, described in subparagraph (A), began on or after July 1, 1984, and before October 1, 1984.

(C) Amount for first cost reporting period

For the first cost reporting period of the hospital beginning on or after July 1, 1985, the approved FTE resident amount for the hospital is equal to the amount determined under subparagraph (B) increased by 1 percent.

(D) Amount for subsequent cost reporting periods

(i) Except as provided in clause (ii), for each subsequent cost reporting period, the approved FTE resident amount for the hospital is equal to the amount determined under this paragraph for the previous cost reporting period updated, through the midpoint of the period, by projecting the estimated percentage change in the consumer price index during the 12-month period ending at that midpoint, with appropriate adjustments to reflect previous under- or overestimations under this subparagraph in the projected percentage change in the consumer price index.

(ii) For cost reporting periods beginning during fiscal year 1994 or fiscal year 1995, the approved FTE resident amount for a hospital shall not be updated under clause (i) for a resident who is not a primary care resident (as defined in paragraph (5)(H)) or a resident enrolled in an approved medical residency training program in obstetrics and gynecology.

(E) Treatment of certain hospitals

In the case of a hospital that did not have an approved medical residency training program or was not participating in the program under this subchapter for a cost reporting period beginning during fiscal year 1984, the Secretary shall, for the first such period for which it has such a residency training program and is participating under this subchapter, provide for such approved FTE resident amount as the Secretary determines to be appropriate, based on approved FTE resident amounts for comparable programs.

(3) Hospital payment amount per resident

(A) In general

The payment amount, for a hospital cost reporting period beginning on or after July 1, 1985, is equal to the product of—

(i) the aggregate approved amount (as defined in subparagraph (B)) for that period, and

(ii) the hospital's medicare patient load (as defined in subparagraph (C)) for that period.

(B) Aggregate approved amount

As used in subparagraph (A), the term ''aggregate approved amount'' means, for a hospital cost reporting period, the product of—

(i) the hospital's approved FTE resident amount (determined under paragraph (2)) for that period, and

(ii) the weighted average number of full-time-equivalent residents (as determined under paragraph (4)) in the hospital's approved medical residency training programs in that period.

(C) Medicare patient load

As used in subparagraph (A), the term ''medicare patient load'' means, with respect to a hospital's cost reporting period, the fraction of the total number of inpatient-bed-days (as established by the Secretary) during the period which are attributable to patients with respect to whom payment may be made under part A of this subchapter.

(4) Determination of full-time-equivalent residents

(A) Rules

The Secretary shall establish rules consistent with this paragraph for the computation of the number of full-time-equivalent residents in an approved medical residency training program.

(B) Adjustment for part-year or part-time residents

Such rules shall take into account individuals who serve as residents for only a portion of a period with a hospital or simultaneously with more than one hospital.

(C) Weighting factors for certain residents

Subject to subparagraph (D), such rules shall provide, in calculating the number of full-time-equivalent residents in an approved residency program—

(i) before July 1, 1986, for each resident the weighting factor is 1.00,

(ii) on or after July 1, 1986, for a resident who is in the resident's initial residency

period (as defined in paragraph (5)(F)), the weighting factor is 1.00,

(iii) on or after July 1, 1986, and before July 1, 1987, for a resident who is not in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is .75, and

(iv) on or after July 1, 1987, for a resident who is not in the resident's initial residency period (as defined in paragraph (5)(F)), the weighting factor is .50.

(D) Foreign medical graduates required to pass FMGEMS examination

(i) In general

Except as provided in clause (ii), such rules shall provide that, in the case of an individual who is a foreign medical graduate (as defined in paragraph (5)(D)), the individual shall not be counted as a resident on or after July 1, 1986, unless—

(I) the individual has passed the FMGEMS examination (as defined in paragraph (5)(E)), or

(II) the individual has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates.

(ii) Transition for current FMGS

On or after July 1, 1986, but before July 1, 1987, in the case of a foreign medical graduate who—

(I) has served as a resident before July 1, 1986, and is serving as a resident after that date, but

(II) has not passed the FMGEMS examination or a previous examination of the Educational Commission for Foreign Medical Graduates before July 1, 1986,

the individual shall be counted as a resident at a rate equal to one-half of the rate at which the individual would otherwise be counted.

(E) Counting time spent in outpatient settings

Such rules shall provide that only time spent in activities relating to patient care shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs all, or substantially all, of the costs for the training program in that setting.

(5) Definitions and special rules

As used in this subsection:

(A) Approved medical residency training program

The term ''approved medical residency training program'' means a residency or other postgraduate medical training program participation in which may be counted toward certification in a specialty or subspecialty and includes formal postgraduate training programs in geriatric medicine approved by the Secretary.

(B) Consumer price index

The term ''consumer price index'' refers to the Consumer Price Index for All Urban Consumers (United States city average), as published by the Secretary of Commerce.

(C) Direct graduate medical education costs

The term ''direct graduate medical education costs'' means direct costs of approved educational activities for approved medical residency training programs.

(D) Foreign medical graduate

The term ''foreign medical graduate'' means a resident who is not a graduate of—

(i) a school of medicine accredited by the Liaison Committee on Medical Education of the American Medical Association and the Association of American Medical Colleges (or approved by such Committee as meeting the standards necessary for such accreditation),

(ii) a school of osteopathy accredited by the American Osteopathic Association, or approved by such Association as meeting the standards necessary for such accreditation, or

(iii) a school of dentistry or podiatry which is accredited (or meets the standards for accreditation) by an organization recognized by the Secretary for such purpose.

(E) FMGEMS examination

The term ''FMGEMS examination'' means parts I and II of the Foreign Medical Graduate Examination in the Medical Sciences or any successor examination recognized by the Secretary for this purpose.

(F) Initial residency period

The term ''initial residency period'' means the period of board eligibility, except that—

(i) except as provided in clause (ii), in no case shall the initial period of residency exceed an aggregate period of formal training of more than five years for any individual, and

(ii) a period, of not more than two years, during which an individual is in a geriatric residency or fellowship program or a preventive medicine residency or fellowship program which meets such criteria as the Secretary may establish, shall be treated as part of the initial residency period, but shall not be counted against any limitation on the initial residency period.

The initial residency period shall be determined, with respect to a resident, as of the time the resident enters the residency training program.

(G) Period of board eligibility

(i) General rule

Subject to clauses (ii) and (iii), the term ''period of board eligibility'' means, for a resident, the minimum number of years of formal training necessary to satisfy the requirements for initial board eligibility in the particular specialty for which the resident is training.

(ii) Application of 1985–1986 directory

Except as provided in clause (iii), the period of board eligibility shall be such period specified in the 1985–1986 Directory of Residency Training Programs published by the Accreditation Council on Graduate Medical Education.

(iii) Changes in period of board eligibility

On or after July 1, 1989, if the Accreditation Council on Graduate Medical Education, in its Directory of Residency Training Programs—

(I) increases the minimum number of years of formal training necessary to satisfy the requirements for a specialty, above the period specified in its 1985–1986 Directory, the Secretary may increase the period of board eligibility for that specialty, but not to exceed the period of board eligibility specified in that later Directory, or

(II) decreases the minimum number of years of formal training necessary to satisfy the requirements for a specialty, below the period specified in its 1985–1986 Directory, the Secretary may decrease the period of board eligibility for that specialty, but not below the period of board eligibility specified in that later Directory.

(H) Primary care resident

The term ''primary care resident'' means a resident enrolled in an approved medical residency training program in family medicine, general internal medicine, general pediatrics, preventive medicine, geriatric medicine, or osteopathic general practice.

(I) Resident

The term ''resident'' includes an intern or other participant in an approved medical residency training program.

(J) Adjustments for certain family practice residency programs

(i) In general

In the case of an approved medical residency training program (meeting the requirements of clause (ii)) of a hospital which received funds from the United States, a State, or a political subdivision of a State or an instrumentality of such a State or political subdivision (other than payments under this subchapter or a State plan under subchapter XIX of this chapter) for the program during the cost reporting period that began during fiscal year 1984, the Secretary shall—

(I) provide for an average amount under paragraph (2)(A) that takes into account the Secretary's estimate of the amount that would have been recognized as reasonable under this subchapter if the hospital had not received such funds, and

(II) reduce the payment amount otherwise provided under this subsection in an amount equal to the proportion of such program funds received during the cost reporting period involved that is allocable to this subchapter.

(ii) Additional requirements

A hospital's approved medical residency program meets the requirements of this clause if—

(I) the program is limited to training for family and community medicine;

(II) the program is the only approved medical residency program of the hospital; and

(III) the average amount determined under paragraph (2)(A) for the hospital (as determined without regard to the increase in such amount described in clause (i)(I)) does not exceed $10,000.

(i) Avoiding duplicative payments to hospitals participating in rural demonstration programs

The Secretary shall reduce any payment amounts otherwise determined under this section to the extent necessary to avoid duplication of any payment made under section 4005(e) of the Omnibus Budget Reconciliation Act of 1987.

(Aug. 14, 1935, ch. 531, title XVIII, § 1886, as added and amended Sept. 3, 1982, Pub. L. 97–248, title I, §§ 101(a)(1), 110, 96 Stat. 331, 339; Jan. 12, 1983, Pub. L. 97–448, title III, § 309(b)(13)–(15), 96 Stat. 2409; Apr. 20, 1983, Pub. L. 98–21, title VI, § 601(a)(1), (2), (b), (c), (d)(2), (e), 97 Stat. 149, 150, 152; July 18, 1984, Pub. L. 98–369, div. B, title III, §§ 2307(b)(1), 2310(a), 2311(a)–(c), 2312(a), (b), 2313(a), (b), (d), 2315(a)–(c), 2354(b)(42)–(44), 98 Stat. 1073, 1075–1080, 1102; Nov. 8, 1984, Pub. L. 98–617, § 3(b)(9), 98 Stat. 3296; Apr. 7, 1986, Pub. L. 99–272, title IX, §§ 9101(b), (c), 9102(a)–(c), 9104(a), (b), 9105(a)–(c), 9106(a), 9107(a), 9109(a), 9111(a), 9127(a), 9202(a), 100 Stat. 153–155, 157–162, 170, 171; July 2, 1986, Pub. L. 99–349, title II, § 206, 100 Stat. 749; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9302(a)(1), (2), (b)(1), (c), (d)(1)(A), (e), 9303, 9304(a)–(c), 9306(a)–(c), 9307(c)(1), 9314(a), 9320(g), 9321(e)(2), 100 Stat. 1982–1985, 1988, 1995, 2005, 2015, 2018; Oct. 22, 1986, Pub. L. 99–514, § 2, title XVIII, § 1895(b)(1)(A)–(C), (2)(A)–(C), (3), (9), 100 Stat. 2095, 2931–2933; Aug. 18, 1987, Pub. L. 100–93, § 8(c)(4), 101 Stat. 693; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4002(a)–(f)(1), 4003(a)–(c), 4004(a), 4005(a)(1), (c)(1), (d)(1)(A), 4006(a)–(b)(2), 4007(b)(1), 4009(d)(1), (j)(1)–(6)(B), 4083(b)(1), 101 Stat. 1330–42 to 1330–44, 1330–46, 1330–47, 1330–49, 1330–52, 1330–53, 1330–57 to 1330–59, 1330–129, as amended July 1, 1988, Pub. L. 100–360, title IV, § 411(b)(1)(E), (3), (4)(C)(i), (5)(B), (6)(B), (8)(B), 102 Stat. 769, 770, 772; July 1, 1988, Pub. L. 100–360, title IV, § 411(b)(1)(A)–(D), (F)–(H)(i), (4)(A), (B), (5)(A), 102 Stat. 768–770; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(18)(A), (B), 102 Stat. 2418; Nov. 10, 1988, Pub. L. 100–647, title I, § 1018(r)(1), title VIII, §§ 8401, 8403(a), 102 Stat. 3586, 3798; Dec. 13, 1989, Pub. L. 101–234, title III, § 301(b)(3), (c)(3), 103 Stat. 1985, 1986; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6002, 6003(a)(1), (b)–(c)(3), (e)(1), (2)(B)–(E), (f), (g)(2), (4)–(h)(4), (6), 6004(a)(1), (2), (b)(1), 6011(a), 6015(a), 6022, 103 Stat. 2140–2144, 2151, 2154–2157, 2159–2161, 2164, 2167; Oct. 1, 1990, Pub. L. 101–403, title I, § 115(b)(1), 104 Stat. 870; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4001, 4002(a)(1), (b)(1)–(4), (c)(1), (2), (e)(1), (g)(1), (2), (h)(1)(A), (2)(B), 4003(a), 4005(a)(1), (c)(1)(B), (2), 4008(f)(1), (m)(2)(A), 104 Stat. 1388–31 to 1388–38,

1388–40, 1388–42, 1388–45, 1388–53; Aug. 10, 1993, Pub. L. 103–66, title XIII, §§13501(a), (b)(1), (c), (e)(1), (f), 13502, 13506, 13563(a), (b)(1), (c)(1), 107 Stat. 572, 574, 575, 577, 579, 605; Oct. 31, 1994, Pub. L. 103–432, title I, §§101(a)(1), (b), (c), 102(b)(1)(B), 105, 108–110(a), (c), 153(a), 108 Stat. 4400–4402, 4405, 4407, 4408, 4437.)

REFERENCES IN TEXT

Parts A and B of this subchapter, referred to in text, are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

The Internal Revenue Code of 1986, referred to in subsec. (b)(6), is classified generally to Title 26, Internal Revenue Code.

Section 222(a) of the Social Security Amendments of 1972, referred to in subsec. (c)(4)(B), is section 222(a) of Pub. L. 92–603, Oct. 30, 1972, 86 Stat. 1329, which is set out as a note under section 1395b–1 of this title.

Section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985, referred to in subsec. (d)(2)(C)(i), is section 9104(a) of Pub. L. 99–272, which amended subsec. (d)(5)(B) of this section.

Section 6003(c) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (d)(2)(C)(iv), is section 6003(c) of Pub. L. 101–239, which amended this section and enacted provisions set out below.

Section 4002(b) of the Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (d)(2)(C)(iv), is section 4002(b) of Pub. L. 101–508, which amended this section and enacted provisions set out below.

Section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985, referred to in subsec. (d)(3)(C)(ii), is section 9104 of Pub. L. 99–272, which amended subsec. (d)(2)(C)(i), (3)(C), (D)(i)(I), (ii)(I), and (5)(B) of this section.

Section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (d)(3)(C)(ii), is section 4003(a)(1) of Pub. L. 100–203, which amended subsec. (d)(5)(B)(ii) of this section.

The Omnibus Budget Reconciliation Act of 1990, referred to in subsec. (d)(3)(C)(ii), is Pub. L. 101–508, Nov. 5, 1990, 104 Stat. 1388. For complete classification of this Act to the Code, see Tables.

The provisions of title 5 governing appointments in the competitive service, referred to in subsecs. (d)(10)(B)(i) and (e)(2)(A), (6)(C)(i), are classified generally to section 3301 et seq. of Title 5, Government Organization and Employees.

Section 9304 of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (e)(1)(C)(ii), is section 9304 of Pub. L. 99–509, which enacted subsecs. (d)(9) and (e)(1)(C) of this section and amended subsec. (d)(5)(C)(i)(I), (ii) of this section.

Section 10(a)(1) of the Federal Advisory Committee Act, referred to in subsec. (e)(6)(C), is section 10(a)(1) of Pub. L. 92–463, which is set out in the Appendix to Title 5.

Part B of subchapter XI of this chapter, referred to in subsec. (f)(2), is classified to section 1320c et seq. of this title.

Section 4005(e) of the Omnibus Budget Reconciliation Act of 1987, referred to in subsec. (i), is section 4005(e) of Pub. L. 100–203, which is set out below.

AMENDMENTS

1994—Subsec. (a)(4). Pub. L. 103–432, §110(a), inserted ''(or, in the case of a hospital that is not a subsection (d) hospital, during the 1 day)'' after ''3 days''.

Subsec. (b)(3)(B)(iv)(II). Pub. L. 103–432, §105(b), substituted ''(adjusted to exclude any portion of a cost reporting period beginning during fiscal year 1993 for which the applicable percentage increase is determined under subparagraph (I))'' for ''(taking into account any portion of the 12-month cost reporting period beginning during fiscal year 1993 that occurred during fiscal year 1994)''.

Subsec. (b)(3)(D). Pub. L. 103–432, §105(a)(2), substituted ''September 30, 1994'' for ''March 31, 1993'' in introductory provisions.

Subsec. (d)(3)(A)(iii). Pub. L. 103–432, §101(c), inserted at end ''For discharges occurring on or after October 1, 1994, the Secretary shall adjust the ratio of the labor portion to non-labor portion of each average standardized amount to equal such ratio for the national average of all standardized amounts.''

Subsec. (d)(5)(B)(ii). Pub. L. 103–432, §110(c), substituted ''October 1, 1988'' for ''May 1, 1986''.

Subsec. (d)(5)(D)(iii)(III). Pub. L. 103–432, §102(b)(1)(B)(i), substituted ''that is located in a rural area and designated'' for ''that is designated''.

Subsec. (d)(5)(D)(v). Pub. L. 103–432, §102(b)(1)(B)(ii), substituted ''in the case of a hospital located in a rural area and designated'' for ''in the case of a hospital designated''.

Subsec. (d)(5)(G)(ii)(I). Pub. L. 103–432, §105(a)(1), substituted ''the 36-month period beginning with the first day of the cost reporting period that begins'' for ''the first 3 12-month cost reporting periods that begin''.

Subsec. (d)(5)(I). Pub. L. 103–432, §109, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (d)(8)(C)(iv). Pub. L. 103–432, §101(b)(1)(A), substituted ''paragraph (10)'' for ''paragraph (1)''.

Subsec. (d)(8)(C)(v). Pub. L. 103–432, §101(b)(1)(B), added cl. (v).

Subsec. (d)(10)(C)(i)(II). Pub. L. 103–432, §101(b)(2)(A), substituted ''the factor used to adjust the DRG prospective payment rate for area differences in hospital wage levels that applies'' for ''the area wage index applicable''.

Subsec. (d)(10)(D)(i)(I). Pub. L. 103–432, §101(a)(1), inserted ''(to the extent the Secretary determines appropriate)'' after ''taking into account''.

Subsec. (d)(10)(D)(ii), (iii). Pub. L. 103–432, §101(b)(2)(B), added cl. (ii) and redesignated former cl. (ii) as (iii).

Subsec. (e)(6)(B). Pub. L. 103–432, §108, substituted ''health facility management, reimbursement of health facilities or other providers of services which reflect the scope of the Commission's responsibilities'' for ''hospital reimbursement, hospital financial management''.

Subsec. (h)(5)(E). Pub. L. 103–432, §153(a), inserted ''or any successor examination'' after ''Medical Sciences''.

1993—Subsec. (b)(3)(B)(i)(IX). Pub. L. 103–66, §13501(a)(1)(A), substituted ''percentage increase minus 2.5 percentage points for hospitals'' for ''percentage increase for hospitals'' and ''percentage increase minus 1.0 percentage point'' for ''percentage increase plus 1.5 percentage points''.

Subsec. (b)(3)(B)(i)(X). Pub. L. 103–66, §13501(a)(1)(B), substituted ''percentage increase minus 2.5 percentage points for hospitals'' for ''percentage increase for hospitals'' and struck out ''and'' at end.

Subsec. (b)(3)(B)(i)(XI). Pub. L. 103–66, §13501(a)(1)(C), struck out ''and each subsequent fiscal year'' after ''1996'', inserted ''minus 2.0 percentage points'' after ''percentage increase'', and substituted a comma for period at end.

Subsec. (b)(3)(B)(i)(XII), (XIII). Pub. L. 103–66, §13501(a)(1)(D), added subcls. (XII) and (XIII).

Subsec. (b)(3)(B)(ii). Pub. L. 103–66, §13501(a)(2)(B)(i), struck out '', (C), (D),'' after ''subparagraphs (A)''.

Subsec. (b)(3)(B)(ii)(III) to (VI). Pub. L. 103–66, §13502(a)(1), struck out ''and'' at end of subcl. (III), in subcl. (IV), substituted ''a subsequent fiscal year ending on or before September 30, 1993,'' for ''subsequent fiscal years'' and a comma for the period at end, and added subcls. (V) and (VI).

Subsec. (b)(3)(B)(iv). Pub. L. 103–66, §13501(a)(2)(A), added cl. (iv).

Subsec. (b)(3)(B)(v). Pub. L. 103–66, §13502(a)(2), added cl. (v).

Subsec. (b)(3)(C)(i)(II). Pub. L. 103–66, §13501(a)(2)(B)(ii), struck out ''or'' at end.

Subsec. (b)(3)(C)(ii). Pub. L. 103–66, §13501(a)(2)(B)(iii), substituted ''period beginning before fiscal year 1994, the target'' for ''period, the target'', ''subparagraph (B)(iv)'' for ''subparagraph (B)(ii)'', and a comma for period at end.

Subsec. (b)(3)(C)(iii), (iv). Pub. L. 103–66, § 13501(a)(2)(B)(iv), added cls. (iii) and (iv).

Subsec. (b)(3)(D)(ii). Pub. L. 103–66, § 13501(a)(2)(B)(v), substituted ''period beginning before fiscal year 1994, the target'' for ''period, the target'', ''subparagraph (B)(iv)'' for ''subparagraph (B)(ii)'', and '', and'' for period at end.

Subsec. (b)(3)(D)(iii). Pub. L. 103–66, § 13501(a)(2)(B)(vi), added cl. (iii).

Subsec. (b)(4)(A). Pub. L. 103–66, § 13502(b), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (d)(1)(A)(iii). Pub. L. 103–66, § 13501(f), amended cl. (iii) generally. Prior to amendment, cl. (iii) read as follows: ''beginning on or after April 1, 1988, and ending on September 30, 1993,, the sum of (I) 85 percent of the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, and (II) 15 percent of the regional adjusted DRG prospective payment rate determined under such paragraph.''

Subsec. (d)(5)(A)(i). Pub. L. 103–66, § 13501(c)(1), substituted ''For discharges occurring during fiscal years ending on or before September 30, 1997, the Secretary'' for ''The Secretary''.

Subsec. (d)(5)(A)(ii). Pub. L. 103–66, § 13501(c)(2), substituted '', or, for discharges in fiscal years beginning on or after October 1, 1994, exceed the applicable DRG prospective payment rate plus a fixed dollar amount determined by the Secretary.'' for period at end.

Subsec. (d)(5)(A)(iii). Pub. L. 103–66, § 13501(c)(3), substituted ''shall (except as payments under clause (i) are required to be reduced to take into account the requirements of clause (v)) approximate'' for ''shall approximate''.

Subsec. (d)(5)(A)(v), (vi). Pub. L. 103–66, § 13501(c)(4), added cls. (v) and (vi).

Subsec. (d)(5)(B)(iv). Pub. L. 103–66, § 13506, inserted ''or providing services at any entity receiving a grant under section 254c of this title that is under the ownership or control of the hospital (if the hospital incurs all, or substantially all, of the costs of the services furnished by such interns and residents)'' after ''the hospital''.

Subsec. (d)(5)(G)(i). Pub. L. 103–66, § 13501(e)(1)(A), which directed amendment of subsec. (d)(5)(G) in clause (i) in the matter preceding subclause (I), by striking ''ending on or before March 31, 1993,'' and all that follows and inserting ''before October 1, 1994, in the case of a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be equal to the sum of the amount determined under clause (ii) and the amount determined under paragraph (1)(A)(iii).'', was executed by substituting the new language for ''ending on or before March 31, 1993, with respect to a subsection (d) hospital which is a medicare-dependent, small rural hospital, payment under paragraph (1)(A) shall be—

''(I) an amount based on 100 percent of the hospital's target amount for the cost reporting period, as defined in subsection (b)(3)(D) of this section, or

''(II) the amount determined under paragraph (1)(A)(iii),

whichever results in the greater payment to the hospital.'' to reflect the probable intent of Congress.

Subsec. (d)(5)(G)(ii) to (iv). Pub. L. 103–66, § 13501(e)(1)(B), (C), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (d)(8)(C)(iv). Pub. L. 103–66, § 13501(b)(1), added cl. (iv).

Subsec. (g)(1)(A). Pub. L. 103–66, § 13501(a)(3), inserted at end ''For discharges occurring after September 30, 1993, the Secretary shall reduce by 7.4 percent the unadjusted standard Federal capital payment rate (as described in 42 CFR 412.308(c), as in effect on August 10, 1993) and shall (for hospital cost reporting periods beginning on or after October 1, 1993) redetermine which payment methodology is applied to the hospital under such system to take into account such reduction.''

Subsec. (h)(2)(D). Pub. L. 103–66, § 13563(a)(1), designated existing provisions as cl. (i), substituted ''Except as provided in clause (ii), for each'' for ''For each'', and added cl. (ii).

Subsec. (h)(5)(F). Pub. L. 103–66, § 13563(b)(1)(A), struck out ''plus one year'' after ''board eligibility'' in introductory provisions.

Subsec. (h)(5)(F)(ii). Pub. L. 103–66, § 13563(b)(1)(B), inserted ''or a preventive medicine residency or fellowship program'' after ''fellowship program''.

Subsec. (h)(5)(H), (I). Pub. L. 103–66, § 13563(a)(2), added subpar. (H) and redesignated former subpar. (H) as (I).

Subsec. (h)(5)(J). Pub. L. 103–66, § 13563(c)(1), added subpar. (J).

1990—Subsec. (a)(4). Pub. L. 101–508, § 4003(a), struck out period at end of first sentence and inserted '', and includes the costs of all services for which payment may be made under this subchapter that are provided by the hospital (or by an entity wholly owned or operated by the hospital) to the patient during the 3 days immediately preceding the date of the patient's admission if such services are diagnostic services (including clinical diagnostic laboratory tests) or are other services related to the admission (as defined by the Secretary).''

Subsec. (b)(1)(B)(ii). Pub. L. 101–508, § 4005(a)(1), added cl. (ii) and struck out former cl. (ii) which read as follows: ''in the case of cost reporting periods beginning on or after October 1, 1982, and before October 1, 1984, 25 percent of the amount by which the amount of the operating costs exceeds the target amount;''.

Subsec. (b)(3)(B)(i)(V). Pub. L. 101–508, § 4002(a)(1)(A), struck out ''and'' after semicolon at end.

Subsec. (b)(3)(B)(i)(VI). Pub. L. 101–508, § 4002(c)(1)(A), substituted ''in a large urban or other urban area, and the market basket percentage increase minus 0.7 percentage point for hospitals located in a rural area'' for ''in all areas''.

Pub. L. 101–508, § 4002(a)(1)(C), added subcl. (VI). Former subcl. (VI) redesignated (IX).

Pub. L. 101–508, § 4002(a)(1)(B)(i), substituted ''1994'' for ''1991''.

Subsec. (b)(3)(B)(i)(VII). Pub. L. 101–508, § 4002(c)(1)(B), substituted ''in a large urban or other urban area, and the market basket percentage increase minus 0.6 percentage point for hospitals located in a rural area'' for ''in all areas''.

Pub. L. 101–508, § 4002(a)(1)(C), added subcl. (VII).

Subsec. (b)(3)(B)(i)(VIII). Pub. L. 101–508, § 4002(c)(1)(C), substituted ''in a large urban or other urban area, and the market basket percentage increase minus 0.55 for hospitals located in a rural area,'' for ''in all areas, and''.

Pub. L. 101–508, § 4002(a)(1)(C), added subcl. (VIII).

Subsec. (b)(3)(B)(i)(IX). Pub. L. 101–508, § 4002(c)(1)(E), added subcl. (IX). Former subcl. (IX) redesignated (XI).

Pub. L. 101–508, § 4002(c)(1)(D)(i), substituted ''1996'' for ''1994''.

Pub. L. 101–508, § 4002(a)(1)(B)(ii), redesignated subcl. (VI) as (IX).

Subsec. (b)(3)(B)(i)(X). Pub. L. 101–508, § 4002(c)(1)(E), added subcl. (X).

Subsec. (b)(3)(B)(i)(XI). Pub. L. 101–508, § 4002(c)(1)(D)(ii), redesignated subcl. (IX) as (XI).

Subsec. (b)(3)(B)(ii). Pub. L. 101–508, § 4002(c)(2)(A)(i), substituted ''(A), (C), (D), and (E),'' for ''(A) and (E),'' in introductory provisions.

Subsec. (b)(3)(C)(ii), (D)(ii). Pub. L. 101–508, § 4002(c)(2)(A)(ii), substituted ''subparagraph (B)(ii)'' for ''subparagraph (B)(i)''.

Subsec. (b)(4)(A). Pub. L. 101–508, § 4005(c)(1)(B), inserted at end ''The Secretary shall announce a decision on any request for an exemption, exception, or adjustment under this paragraph not later than 180 days after receiving a completed application from the intermediary for such exemption, exception, or adjustment, and shall include in such decision a detailed explanation of the grounds on which such request was approved or denied.''

Subsec. (b)(4)(B), (C). Pub. L. 101–508, § 4005(c)(2), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (c)(4). Pub. L. 101–508, § 4008(f)(1), substituted ''payments under the State system as compared to aggregate payments which would have been made under the national system since'' for ''rate of increase from'' in last sentence.

Subsec. (d)(1)(A)(iii). Pub. L. 101–508, § 4002(e)(1), substituted ''beginning on or after April 1, 1988, and ending on September 30, 1993,'' for ''beginning on or after October 1, 1987, is equal to the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, or, if the average standardized amount (described in clause (i)(I) or clause (ii)(I) of paragraph (3)(D)) for hospitals within the region of, and in the same rural, large urban, or other urban area as, the hospital is greater than the average standardized amount (described in the respective clause) for hospitals within the United States in that type of area for discharges occurring during the period beginning on April 1, 1988, and ending on October 20, 1990''.

Pub. L. 101–508, § 4002(c)(2)(B)(i), substituted ''large urban or other area'' for ''rural, large urban, or other urban area'' in text of cl. (iii)(II) as amended by Pub. L. 103–66, § 13501(f). See 1993 Amendment note above.

Pub. L. 101–403 substituted ''October 20, 1990'' for ''September 30, 1990''.

Subsec. (d)(2)(C)(iv). Pub. L. 101–508, § 4002(b)(4)(B), substituted ''1989 or the enactment of section 4002(b) of the Omnibus Budget Reconciliation Act of 1990.'' for ''1989.''

Pub. L. 101–508, § 4002(b)(4)(A), struck out period at end and inserted '', except that the Secretary shall not exclude additional payments under such paragraph made as a result of the enactment of section 6003(c) of the Omnibus Budget Reconciliation Act of 1989.''

Pub. L. 101–508, § 4002(b)(3)(A), struck out ''and before October 1, 1995,'' after ''October 1, 1986,''.

Subsec. (d)(3)(A)(ii). Pub. L. 101–508, § 4002(c)(2)(B)(ii)(I), substituted ''and ending on or before September 30, 1994, the Secretary'' for ''the Secretary''.

Subsec. (d)(3)(A)(iii) to (v). Pub. L. 101–508, § 4002(c)(2)(B)(ii)(II), (III), added cls. (iii) and (iv) and redesignated former cl. (iii) as (v).

Subsec. (d)(3)(B). Pub. L. 101–508, § 4002(c)(2)(B)(iii), substituted ''by a factor equal to the proportion of payments under this subsection (as estimated by the Secretary) based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments).'' for ''for hospitals located in an urban area and for hospitals located in a rural area by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments) for hospitals located in such respective area.''

Subsec. (d)(3)(C)(ii). Pub. L. 101–508, § 4002(b)(3)(B)(B), substituted ''occurring on or after October 1, 1986,'' through the end of cl. (ii) for ''occurring—'' and subcls. (I) and (II) which read as follows:

''(I) on or after October 1, 1986, and before October 1, 1995, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) that would have resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987 if the factor described in clause (ii)(II) of paragraph (5)(B) were applied for discharges occurring during such period instead of the factor described in clause (ii)(I) of that paragraph, and

''(II) on or after October 1, 1995, of an amount equal to the estimated reduction in the payment amounts under paragraph (5)(B) for those discharges that has resulted from the enactment of the amendments made by section 9104 of the Medicare and Medicaid Budget Reconciliation Amendments of 1985 and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987.''

Subsec. (d)(3)(D)(i). Pub. L. 101–508, § 4002(c)(2)(B)(iv)(I), which directed amendment of cl. (i) by substituting ''a large urban area'' for ''an urban area (or,'' and all that follows through ''area),'' was executed by making the substitution for ''an urban area (or, for discharges occurring on or after April 1, 1988, in a large urban area or other urban area)'' to reflect the probable intent of Congress.

Subsec. (d)(3)(D)(i)(I). Pub. L. 101–508, § 4002(c)(2)(B)(iv)(II), substituted ''a large urban area'' for ''an urban area''.

Subsec. (d)(3)(D)(ii). Pub. L. 101–508, § 4002(c)(2)(B)(v), substituted ''other areas'' for ''a rural area'' in introductory provisions and in subcl. (I).

Subsec. (d)(4)(D). Pub. L. 101–508, § 4002(g)(2)(A), struck out subpar. (D) which read as follows: ''The Commission (established under subsection (e)(2) of this section) shall consult with and make recommendations to the Secretary with respect to the need for adjustments under subparagraph (C), based upon its evaluation of scientific evidence with respect to new practices, including the use of new technologies and treatment modalities. The Commission shall report to the Congress with respect to its evaluation of any adjustments made by the Secretary under subparagraph (C).''

Subsec. (d)(5)(B)(ii). Pub. L. 101–508, § 4002(b)(3)(B)(A), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''For purposes of clause (i)(II), the indirect teaching adjustment factor for discharges occurring—

''(I) on or after May 1, 1986, and before October 1, 1995, is equal to $1.89\times((1+r)^{.405}-1)$, or

''(II) on or after October 1, 1995, is equal to $1.43\times((1+r)^{.5795}-1)$,

where 'r' is the ratio of the hospital's full-time equivalent interns and residents to beds.''

Subsec. (d)(5)(D)(iii). Pub. L. 101–508, § 4008(m)(2)(A), substituted ''For purposes of this subchapter, the term'' for ''The term'' at beginning.

Subsec. (d)(5)(F)(i). Pub. L. 101–508, § 4002(b)(3)(A), struck out ''and before October 1, 1995,'' after ''May 1, 1986,''.

Subsec. (d)(5)(F)(iii). Pub. L. 101–508, § 4002(b)(2), substituted ''35 percent'' for ''30 percent''.

Subsec. (d)(5)(F)(vii)(I). Pub. L. 101–508, § 4002(b)(1)(A), substituted ''greater than 20.2—'' and subdivs. (a) to (d) for ''greater than 20.2, $(P-20.2)(.65)+5.62$, or''.

Subsec. (d)(5)(F)(vii)(II). Pub. L. 101–508, § 4002(b)(1)(B), substituted ''hospital—'' and subdivs. (a) to (c) for ''hospital, $(P-15)(.6)+2.5$,''.

Subsec. (d)(8)(C)(i). Pub. L. 101–508, § 4002(h)(1)(A)(i), substituted ''area, or by treating hospitals located in one urban area as being located in another urban area—'' for ''area—''.

Subsec. (d)(8)(C)(i)(II). Pub. L. 101–508, § 4002(h)(1)(A)(ii), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''reduces the wage index for that urban area by more than 1 percentage point (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if each affected rural county were a separate urban area).''

Subsec. (d)(8)(C)(ii) to (iv). Pub. L. 101–508, § 4002(h)(1)(A)(iii), (iv), redesignated cls. (iii) and (iv) as (ii) and (iii), respectively, and struck out former cl. (ii) which read as follows: ''If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10), by reclassifying a county from a rural to an urban area or by reclassifying an urban county from one urban area to another urban area—

''(I) reduces the wage index for the urban area within which the county or counties is reclassified by 1 percentage point or less (as applied under this subsection), the Secretary, in calculating such wage index under this subsection, shall exclude those counties so reclassified, or

''(II) reduces the wage index for the urban area within which the county or counties is reclassified by more than 1 percentage point (as applied under this

subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so reclassified) and to hospitals located in the counties so reclassified (as if each affected county were a separate area).''

Subsec. (d)(8)(D). Pub. L. 101–508, § 4002(c)(2)(B)(vi), struck out ''for hospitals located in an urban area'' after ''determined under paragraph (3)'' and struck out at end ''The Secretary shall make such adjustment in payments under this section to hospitals located in rural areas as are necessary to assure that the aggregate of payments to rural hospitals not affected by subparagraphs (B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10) are not changed as a result of the application of subparagraphs (B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10).''

Subsec. (d)(10)(A). Pub. L. 101–508, § 4002(h)(2)(B)(i), substituted ''Geographic'' for ''Geographical''.

Subsec. (d)(10)(B)(i). Pub. L. 101–508, § 4002(h)(2)(B)(ii), substituted ''representative'' for ''representatives'' and struck out ''1 member shall be a member of the Prospective Payment Assessment Commission, and at least'' after ''At least''.

Subsec. (d)(10)(B)(ii). Pub. L. 101–508, § 4002(h)(2)(B)(iii), substituted ''initial'' for ''all''.

Subsec. (d)(10)(C)(iii)(II). Pub. L. 101–508, § 4002(h)(2)(B)(iv), substituted ''Appeal of decisions of the Board shall be subject to the provisions of section 557b of title 5'' for ''A decision of the Board shall be final unless the unsuccessful applicant appeals such decision to the Secretary by not later than 15 days after the Board renders its decision. The Secretary in considering the appeal of an applicant shall receive no new evidence but shall consider the record as a whole as such record appeared before the Board'' and substituted ''after the date on which'' for ''after''.

Subsec. (e)(2). Pub. L. 101–508, § 4002(g)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (e)(2)(A). Pub. L. 101–508, § 4002(g)(2)(B), substituted ''The Commission'' for ''In addition to carrying out its functions under subsection (d)(4)(D) of this section, the Commission''.

Subsec. (e)(3)(A). Pub. L. 101–508, § 4002(g)(2)(C), substituted ''Congress'' for ''the Secretary'' and inserted before period at end '', together with its general recommendations under paragraph (2)(B) regarding the effectiveness and quality of health care delivery systems in the United States''.

Subsec. (e)(4). Pub. L. 101–508, § 4002(g)(2)(D), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e)(5). Pub. L. 101–508, § 4002(g)(2)(E), substituted ''recommendations'' for ''recommendation'' in subpars. (A) and (B) and inserted at end ''To the extent that the Secretary's recommendations under paragraph (4) differ from the Commission's recommendations for that fiscal year, the Secretary shall include in the publication referred to in subparagraph (A) an explanation of the Secretary's grounds for not following the Commission's recommendations.''

Subsec. (e)(6)(G). Pub. L. 101–508, § 4002(g)(2)(F), redesignated cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cl. (i) which read as follows: ''The Office shall report annually to the Congress on the functioning and progress of the Commission and on the status of the assessment of medical procedures and services by the Commission.''

Subsec. (g)(1)(A). Pub. L. 101–508, § 4001(b), inserted at end ''Aggregate payments made under subsection (d) of this section and this subsection during fiscal years 1992 through 1995 shall be reduced in a manner that results in a reduction (as estimated by the Secretary) in the amount of such payments equal to a 10 percent reduction in the amount of payments attributable to capital-related costs that would otherwise have been made during such fiscal year had the amount of such payments been based on reasonable costs (as defined in section 1395x(v) of this title).''

Subsec. (g)(3)(A)(v). Pub. L. 101–508, § 4001(a), substituted ''September 30, 1991'' for ''September 30, 1990''.

Subsec. (g)(3)(B). Pub. L. 101–508, § 4001(c), substituted ''subsection (d)(5)(D)(iii) of this section or a rural primary care hospital (as defined in section 1395x(mm)(1) of this title)'' for ''subsection (d)(5)(D)(iii) of this section)''.

1989—Subsec. (a)(4). Pub. L. 101–239, § 6011(a), (d), temporarily struck out ''or,'' after ''equity capital,'' and substituted ''October 1, 1987), or costs with respect to administering blood clotting factors to individuals with hemophilia'' for ''October 1, 1987)''. See Effective and Termination Dates of 1989 Amendment note below.

Subsec. (b)(3)(A). Pub. L. 101–239, § 6004(b)(1)(A), substituted ''(C), (D), and (E)'' for ''(C) and (D)'' in introductory provisions.

Pub. L. 101–239, § 6003(f)(2)(i), substituted ''subparagraphs (C) and (D)'' for ''subparagraph (C)'' in introductory provisions.

Pub. L. 101–239, § 6003(e)(1)(B)(i), substituted ''(A) Except as provided in subparagraph (C), for purposes of this subsection'' for ''(A) For purposes of this subsection'' in introductory provisions.

Subsec. (b)(3)(B)(i)(V), (VI). Pub. L. 101–239, § 6003(a)(1), added subcl. (V), redesignated former subcl. (V) as (VI), and substituted ''fiscal year 1991'' for ''fiscal year 1990'' in subcl. (VI).

Subsec. (b)(3)(B)(ii). Pub. L. 101–239, § 6004(b)(1)(B), substituted ''For purposes of subparagraphs (A) and (E)'' for ''For purposes of subparagraph (A)'' in introductory provisions.

Subsec. (b)(3)(C). Pub. L. 101–239, § 6003(e)(1)(B)(ii), added subpar. (C).

Subsec. (b)(3)(D). Pub. L. 101–239, § 6003(f)(2)(ii), added subpar. (D).

Subsec. (b)(3)(E). Pub. L. 101–239, § 6004(b)(1)(C), added subpar. (E).

Subsec. (b)(4)(A). Pub. L. 101–239, § 6015(a), substituted ''deems appropriate, including the assignment of a new base period which is more representative, as determined by the Secretary, of the reasonable and necessary cost of inpatient services and'' for ''deems appropriate,''.

Subsec. (c)(4). Pub. L. 101–239, § 6022, substituted ''the aggregate rate of increase from October 1, 1984, to the most recent date for which annual data are available'' for ''the aggregate payment or payments per inpatient admission or discharge during the three cost reporting periods beginning on or after October 1, 1983, after which such test, at the option of the Secretary, shall no longer apply, and such State systems shall be treated in the same manner as under other waivers'' in second sentence.

Subsec. (d)(1)(B)(v). Pub. L. 101–239, § 6004(a)(1), added cl. (v).

Subsec. (d)(3)(E). Pub. L. 101–239, § 6003(h)(6), substituted ''October 1, 1990, and October 1, 1993 (and at least every 12 months thereafter)'' for ''October 1, 1990 (and at least every 36 months thereafter)'' and inserted at end ''Any adjustments or updates made under this subparagraph for a fiscal year (beginning with fiscal year 1991) shall be made in a manner that assures that the aggregate payments under this subsection in the fiscal year are not greater or less than those that would have been made in the year without such adjustment.''

Subsec. (d)(4)(C). Pub. L. 101–239, § 6003(b), designated existing provisions as cl. (i) and added cls. (ii) to (iv).

Subsec. (d)(5)(C). Pub. L. 101–239, § 6003(e)(1)(A)(i), (ii), (iv), (2)(B), redesignated former cl. (i)(I) as cl. (i), redesignated former cl. (i)(II) as cl. (ii) and substituted ''clause (i)'' for ''subclause (I)'' in three places, and redesignated former cls. (ii), (iii), and (iv) as subpars. (D), (I), and (H), respectively.

Subsec. (d)(5)(D). Pub. L. 101–239, § 6003(e)(1)(A)(iv), amended former subpar. (C)(ii) generally, redesignating it as subpar. (D) and substituting cls. (i) to (iv) relating to payments to sole community hospitals for cost re-

porting periods beginning on or after Apr. 1, 1990, for former single paragraph relating to payments to such hospitals for cost reporting periods beginning on or after Oct. 1, 1984.

Subsec. (d)(5)(D)(iii)(III). Pub. L. 101–239, §6003(g)(2)(A), added subcl. (III).

Subsec. (d)(5)(D)(v). Pub. L. 101–239, §6003(g)(2)(B), added cl. (v).

Subsec. (d)(5)(E). Pub. L. 101–239, §6003(e)(1)(A)(iii), redesignated subpar. (D) as (E).

Subsec. (d)(5)(F)(iii). Pub. L. 101–239, §6003(c)(3), substituted ''30 percent'' for ''25 percent''.

Subsec. (d)(5)(F)(iv)(I). Pub. L. 101–239, §6003(c)(1)(A), substituted ''the applicable formula described in clause (vii)'' for ''the following formula: (P−15)(.5)+2.5, where 'P' is the hospital's disproportionate patient percentage (as defined in clause (vi))''.

Subsec. (d)(5)(F)(iv)(III). Pub. L. 101–239, §6003(c)(2)(A)(ii), inserted ''in subclause (IV) or (V) or'' after ''described''.

Subsec. (d)(5)(F)(iv)(IV) to (VI). Pub. L. 101–239, §6003(c)(2)(A)(i), (iii), (iv), added subcls. (IV) to (VI).

Subsec. (d)(5)(F)(v)(II) to (IV). Pub. L. 101–239, §6003(c)(2)(B), added subcl. (II), redesignated former subcls. (II) and (III) as (III) and (IV), respectively, and substituted ''area and is not described in subclause (II)'' for ''area'' in subcl. (IV).

Subsec. (d)(5)(F)(vii). Pub. L. 101–239, §6003(c)(1)(B), added cl. (vii).

Subsec. (d)(5)(F)(viii). Pub. L. 101–239, §6003(c)(2)(C), added cl. (viii).

Subsec. (d)(5)(G). Pub. L. 101–239, §6003(f)(1), added subpar. (G).

Subsec. (d)(5)(H). Pub. L. 101–239, §6003(e)(1)(A)(i), redesignated subpar. (C)(iv) as subpar. (H).

Subsec. (d)(5)(I). Pub. L. 101–239, §6004(a)(2), struck out ''(including exceptions and adjustments that may be appropriate with respect to hospitals involved extensively in treatment for and research on cancer)'' after ''deems appropriate''.

Pub. L. 101–239, §6003(e)(1)(A)(ii), redesignated subpar. (C)(iii) as subpar. (I).

Subsec. (d)(8)(C). Pub. L. 101–239, §6003(h)(3), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows:

''(i) If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10),, [sic] by treating hospitals located in a rural county or counties as being located in an urban area, reduces the wage index for that urban area (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection separately to hospitals located in such urban area (excluding all the hospitals so treated) and to the hospitals so treated (as if each affected rural county were a separate urban area). If the application of subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10),, [sic] by treating the hospitals located in a rural county or counties as not being located in the rural area in a State, reduces the wage index for that rural area (as applied under this subsection), the Secretary shall calculate and apply such wage index under this subsection as if the hospitals so treated had not been excluded from calculation of the wage index for that rural area.

''(ii) Clause (i) shall only apply to discharges occurring on or after October 1, 1989, and before October 1, 1991.''

Subsec. (d)(8)(C)(i). Pub. L. 101–239, §6003(h)(2), substituted ''subparagraph (B) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10),'' for ''subparagraph (B)'' in two places.

Subsec. (d)(8)(C)(iv). Pub. L. 101–239, §6003(h)(4), added cl. (iv).

Subsec. (d)(8)(D). Pub. L. 101–239, §6003(h)(2)(B), substituted ''(B) and (C) or a decision of the Medicare Geographic Classification Review Board or the Secretary under paragraph (10)'' for ''(B) and (C)'' in three places.

Subsec. (d)(9)(B)(ii)(IV). Pub. L. 101–239, §6003(e)(2)(C), substituted ''subparagraph (D)(iii)'' for ''subparagraph (D)(v)''.

Subsec. (d)(9)(D)(iii). Pub. L. 101–239, §6003(e)(2)(D)(ii), redesignated cl. (v) as (iii). Former cl. (iii) redesignated (iv).

Subsec. (d)(9)(D)(iv). Pub. L. 101–239, §6003(e)(2)(D)(i), (ii), redesignated former cl. (iii) as (iv), substituted ''Subparagraph (H)'' for ''Subparagraph (C)(iii)'', and struck out former cl. (iv) which read as follows: ''Subparagraph (E) (relating to payments for costs of certified registered nurse anesthetists).''

Subsec. (d)(9)(D)(v). Pub. L. 101–239, §6003(e)(2)(D)(iii), redesignated cl. (v) as (iii).

Subsec. (d)(10). Pub. L. 101–239, §6003(h)(1), added par. (10).

Subsec. (g)(3)(A)(iv). Pub. L. 101–234, §301(b)(3), (c)(3), amended cl. (iv) identically, substituting ''(as the case may be)'' for ''(as the case may) be''.

Subsec. (g)(3)(A)(v). Pub. L. 101–239, §6002, added cl. (v).

Subsec. (g)(3)(B). Pub. L. 101–239, §6003(e)(2)(E), substituted ''subsection (d)(5)(D)(iii)'' for ''subsection (d)(5)(C)(ii)''.

Subsec. (i). Pub. L. 101–239, §6003(g)(4), added subsec. (i).

1988—Subsec. (b)(3)(B)(i)(III). Pub. L. 100–485, §608(d)(18)(A), substituted ''for hospitals'' for ''for for hospitals'' before ''located in other urban areas''.

Pub. L. 100–360, §411(b)(1)(A), substituted ''for hospitals located in other urban areas'' for ''other hospitals''.

Subsec. (b)(3)(B)(i)(IV). Pub. L. 100–485, §608(d)(18)(A), substituted ''for hospitals'' for ''for for hospitals'' before ''located in other urban areas''.

Pub. L. 100–360, §411(b)(1)(A), (B), substituted ''percentage points'' for ''percent'' in three places and ''for hospitals located in other urban areas'' for ''other hospitals''.

Subsec. (b)(3)(B)(i)(V). Pub. L. 100–360, §411(b)(1)(C), inserted ''increase'' after ''market basket percentage''.

Subsec. (d)(1)(A)(iii). Pub. L. 100–360, §411(b)(1)(G), substituted ''if the average standardized amount (described in clause (i)(I) or clause (ii)(I) of paragraph (3)(D)) for hospitals within the region of, and in the same rural, large urban, or other urban area as, the hospital is greater than the average standardized amount (described in the respective clause) for hospitals within the United States in that type of area'' for ''if greater''.

Subsec. (d)(2)(C)(i). Pub. L. 100–647, §1018(r)(1), struck out Pub. L. 99–514, §1895(b)(1), (2). Previously, Pub. L. 99–509, §9307(c)(1)(A), struck out Pub. L. 99–514, §1895(b)(1)(A). See 1986 Amendment note below.

Subsec. (d)(2)(C)(iv). Pub. L. 100–647, §8401, substituted ''1995'' for ''1990''.

Pub. L. 100–647, §1018(r)(1), struck out Pub. L. 99–514, §1895(b)(1), (2). Previously, Pub. L. 99–509, §9307(c)(1)(B)(i), as amended by Pub. L. 100–203, §4009(j)(6)(A), struck out Pub. L. 99–514, §1895(b)(2)(A). See 1986 Amendment note below.

Subsec. (d)(2)(D). Pub. L. 100–360, §411(b)(1)(D), substituted ''the publications described in subsection (e)(5) of this section'' for ''the publication described in subsection (e)(5)(B) of this section'' in second sentence.

Pub. L. 100–360, §411(b)(1)(H)(i), struck out at end ''For purposes of payment under this subsection, a hospital is considered to be located in an urban area or large urban area, respectively, if the hospital is paid under this subsection at the rate for hospitals located in such an area.''

Subsec. (d)(3)(A). Pub. L. 100–647, §1018(r)(1), struck out Pub. L. 99–514, §1895(b)(1), (2). Previously, Pub. L. 99–509, §9307(c)(1)(A), struck out Pub. L. 99–514, §1895(b)(1)(B). See 1986 Amendment note below.

Subsec. (d)(3)(A)(i). Pub. L. 100–360, §411(b)(1)(E)(i), as added by Pub. L. 100–485, §608(d)(18)(B), substituted ''occurring'' for ''occuring'' in first sentence.

Pub. L. 100–360, §411(b)(1)(E)(ii), formerly §411(b)(1)(E), as redesignated by Pub. L. 100–485,

§ 608(d)(18)(B), made technical correction to Pub. L. 100–203, § 4002(c)(1)(B)(iii), see 1987 Amendment note below.

Subsec. (d)(3)(A)(ii). Pub. L. 100–360, § 411(b)(1)(F), substituted ''in other urban areas'' for ''in urban areas''.

Subsec. (d)(3)(C)(ii). Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). Previously, Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(C). See 1986 Amendment note below.

Subsec. (d)(3)(C)(ii)(I), (II). Pub. L. 100–647, § 8401, substituted ''1995'' for ''1990''.

Subsec. (d)(3)(C)(iii). Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). Previously, Pub. L. 99–509, § 9307(c)(1)(B)(i), as amended by Pub. L. 100–203, § 4009(j)(6)(A), struck out Pub. L. 99–514, § 1895(b)(2)(B). See 1986 Amendment note below.

Subsec. (d)(5)(B)(ii)(I), (II). Pub. L. 100–647, § 8401, substituted ''1995'' for ''1990''.

Subsec. (d)(5)(F)(i). Pub. L. 100–647, § 8401, substituted ''1995'' for ''1990''.

Subsec. (d)(5)(F)(vi)(I). Pub. L. 100–647, § 1018(r)(1), struck out Pub. L. 99–514, § 1895(b)(1), (2). See 1986 Amendment note below.

Subsec. (d)(8). Pub. L. 100–360, § 411(b)(4)(C)(i), made technical correction to directory language of Pub. L. 100–203, § 4005(a)(1)(D), see 1987 Amendment note below.

Subsec. (d)(8)(B). Pub. L. 100–360, § 411(b)(4)(A)(i), substituted ''For purposes of this subsection, the Secretary'' for ''The Secretary''.

Pub. L. 100–360, § 411(b)(4)(A)(ii), substituted ''the rural county would otherwise be considered part of an urban area, under the standards for designating Metropolitan Statistical Areas (and for designating New England County Metropolitan Areas) published in the Federal Register on January 3, 1980, if the commuting rates used in determining outlying counties (or, for New England, similar recognized areas) were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous Metropolitan Statistical Areas (or New England County Metropolitan Areas).'' for ''—

> ''(i) the rural county would otherwise be considered part of an urban area but for the fact that the rural county does not meet the standard relating to the rate of commutation between the rural county and the central county or counties of any adjacent urban area; and
>
> ''(ii) either (I) the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area is equal to at least 15 percent of the number of residents of the rural county who are employed, or (II) the sum of the number of residents of the rural county who commute for employment to the central county or counties of any adjacent urban area and the number of residents of any adjacent urban area who commute for employment to the rural county is at least equal to 20 percent of the number of residents of the rural county who are employed.''

Subsec. (d)(8)(C). Pub. L. 100–647, § 8403(a)(2), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 100–360, § 411(b)(4)(B), substituted ''standardized amounts'' for ''standardized amount''.

Subsec. (d)(8)(D). Pub. L. 100–647, § 8403(a)(1), redesignated former subpar. (C) as (D) and substituted ''subparagraphs (B) and (C)'' for ''subparagraph (B)'' wherever appearing.

Subsec. (d)(9)(C)(iv). Pub. L. 100–360, § 411(b)(3), added Pub. L. 100–203, § 4004(a)(2), see 1987 Amendment note below.

Subsec. (e)(6)(B). Pub. L. 100–360, § 411(b)(8)(B), amended Pub. L. 100–203, § 4009(d)(1), see 1987 Amendment note below.

Subsec. (f)(1)(A). Pub. L. 100–360, § 411(b)(6)(B), added Pub. L. 100–203, § 4007(b)(1)(A), (B), see 1987 Amendment note below.

Subsec. (f)(1)(B). Pub. L. 100–360, § 411(b)(6)(B), added Pub. L. 100–203, § 4007(b)(1)(C), see 1987 Amendment note below.

Subsec. (g)(3)(A)(ii) to (iv). Pub. L. 100–360, § 411(b)(5)(B), made technical amendment to Pub. L. 100–203, § 4006(a), see 1987 Amendment note below.

Subsec. (g)(3)(A)(iv). Pub. L. 100–360, § 411(b)(5)(A), inserted ''for payments attributable'' after ''15 percent''.

1987—Subsec. (a)(4). Pub. L. 100–203, § 4009(j)(1), inserted a comma after ''educational activities''.

Pub. L. 100–203, § 4006(b)(2)(A), substituted ''other capital-related costs (as defined by the Secretary for periods before October 1, 1987)'' for ''with respect to costs incurred in cost reporting periods beginning prior to October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select), other capital-related costs, as defined by the Secretary''.

Subsec. (b)(3)(B)(i). Pub. L. 100–203, § 4002(e)(1), struck out ''subparagraph (A) for 12-month cost reporting periods beginning during a fiscal year and for purposes of'' after ''For purposes of''.

Subsec. (b)(3)(B)(i)(II). Pub. L. 100–203, § 4002(a), struck out ''and for fiscal year 1988, the market basket percentage increase (as defined in clause (ii)) minus 2.0 percentage points, and'' after ''1.15 percent,''.

Subsec. (b)(3)(B)(i)(III) to (V). Pub. L. 100–203, § 4002(a), added subcls. (III) to (V) and struck out former subcl. (III) which read ''for fiscal year 1989 and subsequent fiscal years, the percentage determined by the Secretary pursuant to subsection (e)(4) of this section.''

Subsec. (b)(3)(B)(ii), (iii). Pub. L. 100–203, § 4002(e)(2), (3), added cl. (ii), redesignated former cl. (ii) as (iii), and substituted ''For purposes of this subparagraph'' for ''For purposes of clause (i)''.

Subsec. (d)(1)(A)(iii). Pub. L. 100–203, § 4002(d), inserted before period at end '', or, if greater for discharges occurring during the period beginning on April 1, 1988, and ending on September 30, 1990, the sum of (I) 85 percent of the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges, and (II) 15 percent of the regional adjusted DRG prospective payment rate determined under such paragraph''.

Subsec. (d)(2)(C)(iv). Pub. L. 100–203, § 4009(j)(6)(A), made technical amendment to Pub. L. 99–509, § 9307(c)(1)(B). See 1986 Amendment note below.

Pub. L. 100–203, § 4003(c), substituted ''1990'' for ''1989''.

Subsec. (d)(2)(D). Pub. L. 100–203, § 4002(f)(1)(A), inserted sentence at end providing that hospital is considered located in urban area or large urban area, respectively, if it is paid under this subsection at rate for hospitals located in such area.

Pub. L. 100–203, § 4002(b), in second sentence inserted definition of ''large urban area''.

Subsec. (d)(3). Pub. L. 100–203, § 4002(c)(1)(A), substituted ''large urban, other urban, or rural areas'' for ''urban or rural areas'' in second sentence.

Subsec. (d)(3)(A)(i). Pub. L. 100–203, § 4002(c)(1)(B), (C), as amended by Pub. L. 100–360, § 411(b)(1)(E)(ii), designated existing provisions as cl. (i), substituted ''For discharges occuring [sic] in a fiscal year beginning before October 1, 1987, the Secretary'' for ''The Secretary'' and ''the fiscal year involved'' for ''each of fiscal years 1985, 1986, 1987, and 1988'', struck out '', and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4) of this section, and adjusted to reflect the most recent case-mix data available'', and added cls. (ii) and (iii).

Subsec. (d)(3)(C)(ii). Pub. L. 100–203, § 4003(c), substituted ''1990'' for ''1989'' in subcls. (I) and (II).

Pub. L. 100–203, § 4003(a)(2), inserted ''and by section 4003(a)(1) of the Omnibus Budget Reconciliation Act of 1987'' after ''Amendments of 1985'' in subcls. (I) and (II).

Subsec. (d)(3)(C)(iii). Pub. L. 100–203, § 4009(j)(6)(A), made technical amendment to Pub. L. 99–509, § 9307(c)(1)(B). See 1986 Amendment note below.

Subsec. (d)(3)(D)(i). Pub. L. 100–203, § 4002(c)(1)(D), inserted ''(or, for discharges occurring on or after April 1, 1988, in a large urban area or other urban area)'' after first reference to ''urban area'', and in subcl. (I) inserted ''such'' before ''an urban area''.

Subsec. (d)(3)(E). Pub. L. 100–203, § 4004(a)(1), formerly § 4004(a), as redesignated by Pub. L. 100–360, § 411(b)(3),

inserted at end ''Not later than October 1, 1990 (and at least every 36 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of a survey conducted by the Secretary (and updated as appropriate) of the wages and wage-related costs of subsection (d) hospitals in the United States. To the extent determined feasible by the Secretary, such survey shall measure the earnings and paid hours of employment by occupational category and shall exclude data with respect to the wages and wage-related costs incurred in furnishing skilled nursing facility services.''

Subsec. (d)(5)(B)(ii). Pub. L. 100–203, §4003(c), substituted ''1990'' for ''1989'' in subcls. (I) and (II).

Pub. L. 100–203, §4003(a)(1), substituted ''1.89'' for ''2'' in subcl. (I) and ''1.43'' for ''1.5'' in subcl. (II).

Subsec. (d)(5)(C)(i)(I). Pub. L. 100–203, §4005(d)(1)(A), substituted ''275'' for ''500''.

Subsec. (d)(5)(C)(i)(II). Pub. L. 100–203, §4009(j)(2), inserted ''index'' after ''case mix'' in two places.

Subsec. (d)(5)(C)(ii). Pub. L. 100–203, §4005(c)(1), substituted ''1990'' for ''1988'' in second sentence and inserted after second sentence ''A subsection (d) hospital that meets the criteria for classification as a sole community hospital and otherwise qualifies for the adjustment authorized by the preceding sentence may qualify for such an adjustment without regard to the formula by which payments are determined for the hospital under paragraph (1)(A).''

Subsec. (d)(5)(F)(i). Pub. L. 100–203, §4003(c), substituted ''1990'' for ''1989''.

Subsec. (d)(5)(F)(i)(II). Pub. L. 100–203, §4009(j)(3)(A), substituted ''such net inpatient care revenues'' for second reference to ''such revenues''.

Subsec. (d)(5)(F)(iii). Pub. L. 100–203, §4003(b)(1), substituted ''25 percent'' for ''15 percent''.

Subsec. (d)(5)(F)(iv)(I). Pub. L. 100–203, §4009(j)(3)(B), substituted ''clause (v)'' for ''subclause (III)''.

Pub. L. 100–203, §4003(b)(2), struck out ''the lesser of 15 percent, or'' after ''is equal to''.

Subsec. (d)(5)(F)(vi)(I). Pub. L. 100–203, §4009(j)(6)(A), made technical amendment to Pub. L. 99–509, §9307(c)(1)(B)(ii). See 1986 Amendment note below.

Subsec. (d)(8). Pub. L. 100–203, §4005(a)(1), as amended by Pub. L. 100–360, §411(b)(4)(C)(i), designated existing provisions as subpar. (A), redesignated former subpar. (A) and cls. (i) and (ii) as cl. (i) and subcls. (I) and (II), respectively, redesignated former subpar. (B) and cls. (i) and (ii) as cl. (ii) and subcl. (I) and (II), respectively, and added subpars. (B) and (C).

Subsec. (d)(9)(A)(ii). Pub. L. 100–203, §4002(c)(2), substituted ''a large urban area,'' for ''an urban area, and'' in subcl. (I), added subcl. (II), and redesignated former subcl. (II) as (III).

Subsec. (d)(9)(B). Pub. L. 100–203, §4009(j)(4), realigned margin of introductory provisions.

Subsec. (d)(9)(C)(iv). Pub. L. 100–203, §4004(a)(2), as added by Pub. L. 100–360, §411(b)(3), inserted at end ''The second and third sentences of paragraph (3)(E) shall apply to subsection (d) Puerto Rico hospitals under this clause in the same manner as they apply to subsection (d) hospitals under such paragraph and, for purposes of this clause, any reference in such paragraph to a subsection (d) hospital is deemed a reference to a subsection (d) Puerto Rico hospital.''

Subsec. (e)(3)(B). Pub. L. 100–203, §4002(f)(1)(B), struck out ''or determine'' after ''recommend''.

Subsec. (e)(4). Pub. L. 100–203, §4002(f)(1)(C), substituted ''for each fiscal year (beginning with fiscal year 1988)'' for ''for fiscal year 1988'', struck out ''and shall determine for each subsequent fiscal year the percentage change which will apply for purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B) of this section) for discharges in that fiscal year, and'' after ''in that fiscal year'', and amended last sentence generally. Prior to amendment, last sentence read as follows: ''The percentage change shall be the same for all subsection (d) hospitals and subsection (d) Puerto Rico hospitals, but may be different from that for other hospitals (and units not included as such hospitals) and may vary among such other hospitals and units.''

Subsec. (e)(5). Pub. L. 100–203, §4009(j)(6)(B), amended Pub. L. 99–509, §9302(a)(2)(C). See 1986 Amendment note below.

Pub. L. 100–203, §4002(f)(1)(D), struck out ''or determination'' after ''recommendation'' in subpars. (A) and (B).

Subsec. (e)(6)(B). Pub. L. 100–203, §4009(d)(1), as amended by Pub. L. 100–360, §411(b)(8)(B), substituted ''include individuals with national recognition for their expertise in health economics, hospital reimbursement, hospital financial management, and other related fields, who provide a mix of different professionals, broad geographic representation, and a balance between urban and rural representatives'' for ''provide expertise and experience in the provision and financing of health care'', and struck out last sentence which required Director to seek nominations from wide range of groups, including specified types of national organizations.

Subsec. (e)(6)(D). Pub. L. 100–203, §4083(b)(1), inserted at end ''For purposes of pay (other than pay of members of the Commission) and employment benefits, rights, and privileges, all personnel of the Commission shall be treated as if they were employees of the United States Senate.''

Subsec. (f)(1)(A). Pub. L. 100–203, §4007(b)(1)(A), (B), as added by Pub. L. 100–360, §411(b)(6)(B), inserted subpar. (A) designation and struck out '', for a period ending not earlier than September 30, 1988,'' after ''shall maintain''.

Subsec. (f)(1)(B). Pub. L. 100–203, §4007(b)(1)(C), as added by Pub. L. 100–360, §411(b)(6)(B), added subpar. (B).

Subsec. (f)(3). Pub. L. 100–93 amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''The provisions of paragraphs (2), (3), and (4) of section 1395y(d) of this title shall apply to determinations under paragraph (2) of this subsection in the same manner as they apply to determinations made under section 1395y(d)(1) of this title.''

Subsec. (g)(1). Pub. L. 100–203, §4006(b)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''If the Congress does not enact legislation, after April 20, 1983, and before October 1, 1987, respecting the payment under this subchapter for capital-related costs for inpatient hospital services, no payment may be made under this subchapter for capital-related costs of capital expenditures (as defined in section 1320a–1(g) of this title and except as provided in section 1320a–1(j) of this title) for inpatient hospital services in a State, which expenditures are obligated after September 30, 1987, unless the State has an agreement with the Secretary under section 1320a–1(b) of this title and under the agreement the State has recommended approval of the capital expenditures.''

Subsec. (g)(3)(A)(ii) to (iv). Pub. L. 100–203, §4006(a), as amended by Pub. L. 100–360, §411(b)(5)(B), substituted ''on or after October 1, 1987, and before January 1, 1988,'' for '', and'', at end of cl. (ii), added cls. (iii) and (iv), and struck out former cl. (iii) which read as follows: ''10 percent for payments attributable to portions of cost reporting periods or discharges (as the case may be) occurring during fiscal year 1989.''

Subsec. (g)(3)(C). Pub. L. 100–203, §4006(b)(2)(B), struck out subpar. (C) which read as follows: ''If the Secretary provides, under subsection (a)(4) of this section, for the inclusion of other capital-related costs in operating costs of inpatient hospital services, the Secretary shall provide—

''(i) notwithstanding any other provision of this subchapter, for the continuation of payment under the reasonable cost methodology described in section 1395x(v)(1) of this title with respect to capital-related costs of any hospital that is such a sole community hospital for cost reporting periods beginning before October 1, 1990, and

''(ii) in the design of such payment system that the aggregate payment amounts under this subchapter

for such other capital-related costs for payments attributable to portions of cost reporting periods occurring during fiscal year 1988 and fiscal year 1989 shall approximate the aggregate payment amount under this subchapter that would have been made (taking into account the provisions of subparagraphs (A) and (B)) during that fiscal year but for the inclusion of such costs by the Secretary.''

Subsec. (h)(4)(C). Pub. L. 100–203, § 4009(j)(5), substituted ''subparagraph (D)'' for ''subparagraph (E)''.

1986—Subsec. (a)(4). Pub. L. 99–509, § 9320(g)(1), struck out '', costs of anesthesia services provided by a certified registered nurse anesthetist,'' after ''approved educational activities''.

Pub. L. 99–509, § 9303(c), substituted ''October 1 of 1987 (or of such later year as the Secretary may, in his discretion, select)'' for ''October 1, 1987''.

Pub. L. 99–349 substituted ''1987'' for ''1986''.

Pub. L. 99–272, § 9107(a)(2), inserted ''a return on equity capital,'' after ''anesthetist,'' and ''other'' before ''capital-related costs''.

Subsec. (b)(3)(B). Pub. L. 99–272, § 9101(b), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''For purposes of subparagraph (A) and subsection (d) of this section and except as provided in subsection (e) of this section, the 'applicable percentage increase' for any 12-month cost reporting period or fiscal year shall be equal to one-quarter of 1 percentage point plus the percentage, estimated by the Secretary before the beginning of the period or year, by which the cost of the mix of goods and services (including personnel costs but excluding non-operating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for such cost reporting period or fiscal year will exceed the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year. In determining a percentage change under subsection (e)(4) of this section with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after October 1, 1985, and before October 1, 1986, the Secretary may not establish a percentage increase which exceeds the applicable percentage increase otherwise determined for that period or fiscal year under the preceding sentence.''

Subsec. (b)(3)(B)(i)(II). Pub. L. 99–509, § 9302(a)(1), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''for fiscal years 1987 and 1988, a percentage determined by the Secretary pursuant to subsection (e)(4) of this section, but not to exceed the market basket percentage increase (as defined in clause (ii)), and''.

Subsec. (b)(6). Pub. L. 99–514, § 2, substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

Subsec. (c)(7). Pub. L. 99–272, § 9109(a), added par. (7).

Subsec. (d)(1)(A). Pub. L. 99–272, § 9102(a), substituted ''1987'' for ''1986'' in cls. (ii) and (iii).

Subsec. (d)(1)(C). Pub. L. 99–272, § 9102(b), struck out '', or discharges occurring'' after ''periods beginning'' in introductory provision, and ''and'' after ''percent;'' in cl. (ii), added cl. (iii), redesignated former cl. (iii) as (iv), and in cl. (iv) substituted ''on or after October 1, 1986, and before October 1, 1987'' for ''on or after October 1, 1985, and before October 1, 1986''.

Subsec. (d)(1)(D). Pub. L. 99–272, § 9102(c), struck out ''cost reporting periods beginning, or'' before ''discharges occurring'' in introductory provision, in cl. (i) substituted ''1986'' for ''1985'', and in cl. (ii) substituted ''1986'' and ''1987'' for ''1985'' and ''1986'', respectively.

Subsec. (d)(2)(C)(i). Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(A), which had directed the striking out of ''(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)'' after ''medical education costs''.

Pub. L. 99–272, § 9104(b)(1), inserted ''(taking into account, for discharges occurring after September 30, 1986, the amendments made by section 9104(a) of the Medicare and Medicaid Budget Reconciliation Amendments of 1985)'' after ''medical education costs''.

Subsec. (d)(2)(C)(iv). Pub. L. 99–509, § 9306(c), substituted ''1989'' for ''1988''.

Pub. L. 99–509, § 9307(c)(1)(B)(i), as amended by Pub. L. 100–203, § 4009(j)(6)(A), struck out Pub. L. 99–514, § 1895(b)(2)(A), which had directed that cl. (iv) was to be struck out.

Pub. L. 99–272, § 9105(b), added cl. (iv).

Subsec. (d)(3)(A). Pub. L. 99–509, § 9302(a)(2)(A), (c), substituted ''1986, 1987, and 1988'' for ''and 1986'' and inserted provisions relating to the computation of urban and rural averages with respect to discharges occurring on or after October 1, 1987.

Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(B), which had directed insertion of ''If the formula under paragraph (5)(B) for determining payments for the indirect costs of medical education is changed for any fiscal year, the Secretary shall readjust the standardized amounts previously determined for each hospital to take into account the changes in that formula.''

Pub. L. 99–272, § 9101(c)(1), substituted ''for each of fiscal years 1985 and 1986'' for ''for fiscal year 1985''.

Subsec. (d)(3)(B). Pub. L. 99–509, § 9302(b)(1), inserted ''for hospitals located in an urban area and for hospitals located in a rural area'' after ''subparagraph (A)'', and inserted before the period ''for hospitals located in such respective area''.

Subsec. (d)(3)(C). Pub. L. 99–272, § 9104(b)(2), designated existing provision as cl. (i), substituted ''For discharges occurring in fiscal year 1985, the Secretary'' for ''The Secretary'', and added cl. (ii).

Subsec. (d)(3)(C)(ii). Pub. L. 99–509, § 9306(c), substituted ''1989'' for ''1988'' in subcls. (I) and (II).

Pub. L. 99–509, § 9307(c)(1)(A), struck out Pub. L. 99–514, § 1895(b)(1)(C), which had directed a general amendment of cl. (ii) to read as follows: ''The Secretary shall further reduce each of the average standardized amounts by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which is the difference between—

''(I) the sum of the additional payment amounts under paragraph (5)(B) (relating to indirect costs of medical education) if the indirect teaching adjustment factor were equal to 1.159r (as 'r' is defined in paragraph (5)(B)(ii)), and

''(II) that sum using the factor specified in paragraph (5)(B)(ii)(II).''

Subsec. (d)(3)(C)(iii). Pub. L. 99–509, § 9307(c)(1)(B)(i), as amended by Pub. L. 100–203, § 4009(j)(6)(A), struck out Pub. L. 99–514, § 1895(b)(2)(B), which had added cl. (iii) reading as follows: ''The Secretary shall further reduce each of the average standardized amounts by reducing the standardized amount for each hospital (as previously determined without regard to this clause) by a proportion equal to the proportion (established by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(F) (relating to disproportionate share payments) for subsection (d) hospitals.''

Subsec. (d)(3)(D)(i)(I), (ii)(I). Pub. L. 99–272, § 9104(b)(3), inserted ''or reduced'' after ''(B), and adjusted''.

Subsec. (d)(4)(C). Pub. L. 99–509, § 9302(e)(1), substituted ''in fiscal year 1988 and at least annually'' for ''in fiscal year 1986 and at least every four fiscal years''.

Subsec. (d)(5)(B). Pub. L. 99–272, § 9104(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''The Secretary shall provide for an additional payment amount for subsection (d) hospitals with indirect costs of medical education, in an amount computed in the same manner as the adjustment for such costs under regulations (in effect as of January 1,

1983) under subsection (a)(2) of this section, except that in the computation under this subparagraph the Secretary shall use an educational adjustment factor equal to twice the factor provided under such regulations. In determining such adjustment the Secretary shall not distinguish between those interns and residents who are employees of a hospital and those interns and residents who furnish services to a hospital but are not employees of such hospital.''

Subsec. (d)(5)(B)(ii). Pub. L. 99–509, §9306(c), substituted ''1989'' for ''1988'' in subcls. (I) and (II).

Subsec. (d)(5)(C)(i). Pub. L. 99–509, §9302(d)(1)(A), designated existing provisions as subcl. (I) and added subcl. (II).

Pub. L. 99–272, §9106(a), inserted ''and which shall not require a rural osteopathic hospital to have more than 3,000 discharges in a year in order to be classified as a rural referral center'' before the period in second sentence.

Pub. L. 99–272, §9105(c), struck out '', and of public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this subchapter'' after ''in rural areas)''.

Subsec. (d)(5)(C)(i)(I). Pub. L. 99–509, §9304(b)(1), inserted ''(other than under paragraph (9))'' after ''established under this subsection'' in first sentence.

Subsec. (d)(5)(C)(ii). Pub. L. 99–509, §9304(b)(2), inserted ''(other than under paragraph (9))'' after ''this subsection'' in second and third sentences.

Pub. L. 99–509, §9302(e)(4), substituted ''1988'' for ''1986''.

Pub. L. 99–272, §9111(a), inserted provision authorizing the Secretary to adjust amount of payments to sole community hospitals that realize a significant increase in operating costs in a cost reporting period attributable to addition of new inpatient facilities or services.

Subsec. (d)(5)(E). Pub. L. 99–509, §9320(g)(2), struck out subpar. (E) which read as follows: ''The Secretary shall provide for an additional payment amount for any subsection (d) hospital equal to the reasonable costs incurred by such hospital for anesthesia services provided by a certified registered nurse anesthetist. Payment under this subparagraph shall be the only payment made to such hospital with respect to such services.''

Subsec. (d)(5)(F). Pub. L. 99–272, §9105(a), added subpar. (F).

Subsec. (d)(5)(F)(i). Pub. L. 99–509, §9306(c), substituted ''1989'' for ''1988''.

Subsec. (d)(5)(F)(iv)(I). Pub. L. 99–509, §9306(b)(1), inserted ''or is described in the second sentence of subclause (III)'' after ''100 or more beds''.

Subsec. (d)(5)(F)(iv)(III). Pub. L. 99–509, §9306(b)(2), inserted ''and is not described in the second sentence of clause (v)'' after ''rural area''.

Subsec. (d)(5)(F)(v). Pub. L. 99–509, §9306(a), inserted at end ''A hospital located in a rural area and with 500 or more beds also 'serves a significantly disproportionate number of low income patients' for a cost reporting period if the hospital has a disproportionate patient percentage (as defined in clause (vi)) for that period which equals or exceeds a percentage specified by the Secretary.''

Subsec. (d)(5)(F)(vi)(I). Pub. L. 99–514, §1895(b)(2)(A), formerly §1895(b)(2)(C), as amended by Pub. L. 99–509, §9307(c)(1)(B)(ii), as amended by Pub. L. 100–203, §4009(j)(6)(A), which directed the substitution of ''supplemental'' for ''supplementary'' and ''period'' for ''fiscal year'', was repealed by Pub. L. 100–647, §1018(r)(1).

Subsec. (d)(9). Pub. L. 99–509, §9304(a), added par. (9).

Subsec. (e)(1)(C). Pub. L. 99–509, §9304(c), added subpar. (C).

Subsec. (e)(3). Pub. L. 99–509, §9302(e)(3), designated existing provisions as subpar. (A) and added subpar. (B).

Pub. L. 99–272, §9101(c)(2), struck out ''(instead of the applicable percentage increase described in subsection (b)(3)(B) of this section)'' after ''should be used''.

Subsec. (e)(3)(A). Pub. L. 99–509, §9321(e)(2)(A), substituted ''March'' for ''April''.

Subsec. (e)(4). Pub. L. 99–509, §9302(a)(2)(B), (e)(2), substituted ''recommend for fiscal year 1988 an appropriate change factor for inpatient hospital services for discharges in that fiscal year and shall determine for each subsequent fiscal year'' for ''determine for each fiscal year (beginning with fiscal year 1987) and inserted at end ''The percentage change shall be the same for all subsection (d) hospitals and subsection (d) Puerto Rico hospitals, but may be different from that for other hospitals (and units not included as such hospitals) and may vary among such other hospitals and units.''

Pub. L. 99–272, §9101(c)(3), substituted ''fiscal year 1987'' for ''fiscal year 1986''.

Subsec. (e)(5). Pub. L. 99–509, §9302(a)(2)(C), as amended by Pub. L. 100–203, §4009(j)(6)(B), inserted ''recommendation or'' before ''determination'' in subpars. (A) and (B).

Subsec. (e)(5)(A). Pub. L. 99–509, §9321(e)(2)(B), substituted ''May'' for ''June''.

Subsec. (e)(6)(A). Pub. L. 99–272, §9127(a), substituted ''17 individuals'' for ''15 individuals''.

Subsec. (g)(1). Pub. L. 99–349 substituted ''1987'' for ''1986'' in two places.

Subsec. (g)(2). Pub. L. 99–272, §9107(a)(1), designated existing provision as subpar. (A), inserted ''the applicable percentage (described in subparagraph (B)) of'', and added subpar. (B).

Subsec. (g)(2)(B). Pub. L. 99–514, §1895(b)(3), realigned margins of subpar. (B).

Subsec. (g)(3). Pub. L. 99–509, §9303(a), added par. (3).

Subsec. (g)(3)(A). Pub. L. 99–509, §9303(b), inserted ''and a subsection (d) Puerto Rico hospital'' after ''subsection (d) hospital''.

Subsec. (h). Pub. L. 99–272, §9202(a), added subsec. (h).

Subsec. (h)(2)(C). Pub. L. 99–514, §1895(b)(9)(A), substituted ''subparagraph (B)'' for ''paragraph (B)''.

Subsec. (h)(4)(D). Pub. L. 99–514, §1895(b)(9)(B), (C), redesignated subpar. (E) as (D) and in cl. (ii) inserted ''but before July 1, 1987,''.

Subsec. (h)(4)(E). Pub. L. 99–509, §9314(a), added subpar. (E).

Pub. L. 99–514, §1895(b)(9)(C), redesignated former subpar. (E) as (D).

Subsec. (h)(5)(B). Pub. L. 99–514, §1895(b)(9)(D), substituted ''The'' for ''As used in this paragraph, the''.

1984—Subsec. (a)(2)(B). Pub. L. 98–369, §2354(b)(42), substituted ''disproportionate'' for ''disportionate''.

Subsec. (a)(4). Pub. L. 98–369, §2312(b), temporarily inserted '', costs of anesthesia services provided by a certified registered nurse anesthetist'' after ''approved educational activities''. See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(3)(A)(ii). Pub. L. 98–369, §2354(b)(43), inserted ''of'' after ''in the case''.

Subsec. (b)(3)(B). Pub. L. 8–369, §2310(a), substituted ''one-quarter of 1 percentage point'' for ''1 percentage point'' and inserted provision that in determining the percentage change under subsec. (e) of this section with respect to discharges occurring in any cost reporting period or fiscal year beginning on or after Oct. 1, 1985, and before Oct. 1, 1986, the Secretary may not establish a percentage increase which exceeds the applicable percentage increase otherwise determined for that period or fiscal year under the preceding sentence.

Subsec. (c)(4)(A). Pub. L. 98–369, §2315(a), substituted ''(D), and (E)'' for ''and (D)''.

Subsec. (d)(2)(D). Pub. L. 98–369, §2315(b), struck out ''Standard'' before ''Metropolitan'' in provision following cl. (ii).

Pub. L. 98–369, §2311(b), inserted provision for determining the region a hospital located in a Metropolitan Statistical Area would be deemed to be located.

Subsec. (d)(3)(D)(i)(I). Pub. L. 8–369, §2354(b)(44), substituted ''(C))'' for ''(C),''.

Subsec. (d)(5)(B). Pub. L. 98–369, §2307(b)(1), inserted provision that in determining such adjustment the Secretary not distinguish between those interns and residents who are employees of a hospital and those who furnish services to a hospital but are not employees of such hospital.

Subsec. (d)(5)(C)(i). Pub. L. 98–617 substituted ''August 17, 1984'' for ''30 days after July 18, 1984'' before ''for implementation by''.

Pub. L. 98–369, § 2311(a), inserted provisions permitting a hospital classified as a rural hospital to appeal to the Secretary for reclassification as a rural referral center on the basis of criteria established and published by the Secretary and requiring the Secretary to make a final determination with respect to such appeal within 60 days after the date the appeal was submitted.

Subsec. (d)(5)(E). Pub. L. 98–369, § 2312(a), temporarily added subpar. (E). See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (d)(8). Pub. L. 8–369, § 2311(c), added par. (8).

Subsec. (e)(2). Pub. L. 98–369, § 2313(a), inserted ''(without regard to the provisions of title 5 governing appointments in the competitive service)'' after ''appointed by the Director''.

Subsec. (e)(5). Pub. L. 98–369, § 2315(c)(1), struck out ''for public comment'' after ''have published'' in provisions preceding subpar. (A).

Subsec. (e)(5)(A). Pub. L. 98–369, § 2315(c)(2), inserted ''for public comment'' after ''that fiscal year''.

Subsec. (e)(6)(C). Pub. L. 98–369, § 2313(b)(3), inserted provision that section 10(a)(1) of the Federal Advisory Committee Act not apply to any portion of a Commission meeting if the Commission, by majority vote, determines such portion of such meeting should be closed.

Subsec. (e)(6)(C)(i). Pub. L. 98–369, § 2313(b)(1), amended cl. (i) generally, substituting provision authorizing the Commission to employ and fix the compensation of an Executive Director, subject to the approval of the Director of the Office, and such other personnel, not to exceed 25, as necessary, without regard to the provisions of title 5 governing appointment in the competitive service, for provision authorizing the Commission to employ and fix the compensation of such personnel, not to exceed 25, as may be necessary to carry out its duties.

Subsec. (e)(6)(C)(iii). Pub. L. 98–369, § 2313(b)(2), inserted ''(without regard to section 5 of title 41)'' after ''Commission''.

Subsec. (e)(6)(D). Pub. L. 98–369, § 2313(b)(4), inserted provision relating to payment of physician comparability allowance in the same manner as provided under section 5948 of title 5 and providing that for such purpose subsec. (i) of such section apply to the Commission in the same manner as it applies to the Tennessee Valley Authority.

Subsec. (e)(6)(J). Pub. L. 98–369, § 2313(d), added subpar. (J).

1983—Subsec. (a)(1)(D). Pub. L. 98–21, § 601(a)(1), added subpar. (D).

Subsec. (a)(4). Pub. L. 98–21, § 601(a)(2), inserted provision that term ''operating costs of inpatient hospital services'' does not include costs of approved educational activities, or, with respect to costs incurred in cost reporting periods beginning prior to Oct. 1, 1986, capital-related costs, as defined by the Secretary.

Pub. L. 97–448, § 309(b)(13), substituted ''as such costs are determined'' for ''and such costs are determined''.

Subsec. (b)(1). Pub. L. 98–21, § 601(b)(1), (2), in provisions preceding subpar. (A), substituted ''Notwithstanding section 1395f(b) of this title but subject to the provisions of section 1395e of this title'' for ''Notwithstanding sections 1395f(b) of this title, but subject to the provisions of sections 1395e of this title'' and inserted ''(other than a subsection (d) hospital, as defined in subsection (d)(1)(B) of this section)''.

Pub. L. 98–21, § 601(b)(3), inserted ''(other than on the basis of a DRG prospective payment rate determined under subsection (d) of this section)'' in provisions following subpar. (B).

Pub. L. 97–448, § 309(b)(14), substituted ''section 1395f(b)'' for ''sections 1395f(b)'' in provisions preceding subpar. (A).

Subsec. (b)(2). Pub. L. 98–21, § 601(b)(4), struck out par. (2) which provided that par. (1) would not apply to cost reporting periods of hospitals beginning on or after Oct. 1, 1985.

Subsec. (b)(3)(B). Pub. L. 98–21, § 601(b)(5)–(8), inserted ''and subsection (d) of this section and except as provided in subsection (e) of this section'' after ''subparagraph (A)'', inserted ''or fiscal year'' after ''cost reporting period'' each place it appears, inserted ''before the beginning of the period or year'' after ''estimated by the Secretary'', and substituted ''will exceed'' for ''exceeds''.

Subsec. (b)(6). Pub. L. 98–21, § 601(b)(9), added par. (6) and repealed a prior par. (6) which directed the Secretary to provide for an adjustment under this paragraph in the amount of payment otherwise provided a hospital under this subsection in the case of a hospital which, as of Aug. 15, 1982, was subject to FICA taxes and which was not subject to such taxes for part or all of a cost reporting period beginning on or after Oct. 1, 1982, that in making such adjustment for a cost reporting period the Secretary was to estimate the amount of the operating costs of inpatient hospital services that would have resulted if the hospital was subject to the FICA taxes during that period, that in making such estimate the Secretary was to reduce the amount of such FICA taxes that would have been paid (but not below zero) by the amount of costs which the hospital demonstrated to the satisfaction of the Secretary were incurred in the period for pensions, health, and other fringe benefits for employees (and former employees and family members) comparable to, and in lieu of, the benefits provided under subchapter II of this chapter and this subchapter, that if a hospital's operating costs of inpatient hospital services estimated under subparagraph (B) was greater than the hospital's operating costs of inpatient hospital services determined without regard to this paragraph for a cost reporting period, then the Secretary was to reduce the amount otherwise paid the hospital (respecting operating costs of inpatient hospital services) under this title (taking into account any limitation under subsection (a) of this section) for the period by the amount by which (i) the amount that would have been paid the hospital if (I) the amount of the operating costs of inpatient hospital services estimated under subparagraph (B) were treated as the amount of the operating costs of inpatient hospital services and (II) subsection (a) of this section did not apply to the determination, exceeded (ii) the amount that would otherwise have been paid the hospital if subsection (a) of this section (and this paragraph) did not apply, except that, in making such determination for cost reporting periods beginning on or after Oct. 1, 1984, clause (ii) of paragraph (1)(B) was to continue to apply.

Subsec. (b)(6)(C). Pub. L. 97–448, § 309(b)(15), substituted ''under this subchapter (taking into account any limitation under subsection (a) of this section)'' for ''under this subsection'' in provisions preceding cl. (i).

Subsec. (c)(1). Pub. L. 98–21, § 601(c)(1), added subpars. (D) and (E) and provisions following subpar. (E).

Subsec. (c)(3)(A). Pub. L. 98–21, § 601(c)(2)(A), substituted ''meets the requirements of subparagraphs (A), (D), and (E) of paragraph (1) and, if applicable, the requirements of paragraph (5),'' for ''meets the requirement of paragraph (1)(A)''.

Subsec. (c)(3)(B). Pub. L. 98–21, § 601(c)(2)(B), inserted ''(or, if applicable, in paragraph (5))''.

Subsec. (c)(4) to (6). Pub. L. 98–21, § 601(c)(3), added pars. (4) to (6).

Subsec. (d). Pub. L. 98–21, § 601(d)(2), (e), added subsec. (d) and redesignated former subsec. (d), relating to the elimination of lesser-of-cost-or-charges provisions, as subsec. (j) of section 1814 of act Aug. 14, 1935, which is classified to subsec. (j) of section 1395f of this title.

Subsecs. (e) to (g). Pub. L. 98–21, § 601(e), added subsecs. (e) to (g).

1982—Subsec. (d). Pub. L. 97–248, § 110, added subsec. (d).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 101(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of OBRA–1989 [Pub. L. 101–239].''

Section 153(b) of Pub. L. 103–432 provided that: ''The amendment made by subsection (a) [amending this section] shall apply as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99–272).''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13501(b)(3) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1991.''

Section 13563(b)(2) of Pub. L. 103–66 provided that: ''The amendments made by paragraphs (1)(A) and (1)(B) [amending this section] shall take effect on July 1, 1995, and the date of the enactment of this Act [Aug. 10, 1993], respectively.''

Section 13563(c)(2) of Pub. L. 103–66 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to payments under section 1886(h) of the Social Security Act [subsec. (h) of this section] for cost reporting periods beginning on or after October 1, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4002(a)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to payments for discharges occurring on or after January 1, 1991.''

Section 4002(b)(5) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1), (3), and (4)(B) [amending this section] shall apply to discharges occurring on or after January 1, 1991, the amendment made by paragraph (2) [amending this section] shall apply to discharges occurring on or after October 1, 1991, and the amendment made by paragraph (4)(A) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

Section 4002(c)(3) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) and paragraph (2)(A) [amending this section] shall apply to payments for discharges occurring on or after January 1, 1991, and the amendments made by paragraph (2)(B) [amending this section] shall take effect October 1, 1994.''

Section 4002(e)(4)[(3)] of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1990.''

Section 4002(g)(5) of Pub. L. 101–508 provided that: ''The amendments made by this subsection [amending this section and section 1395w–1 of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 4002(h)(1)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply to discharges occurring on or after January 1, 1991.''

Section 4003(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply—

''(1) in the case of any services provided during the day immediately preceding the date of a patient's admission (without regard to whether the services are related to the admission), to services furnished on or after the date of the enactment of this Act [Nov. 5, 1990] and before October 1, 1991;

''(2) in the case of diagnostic services (including clinical diagnostic laboratory tests), to services furnished on or after January 1, 1991; and

''(3) in the case of any other services, to services furnished on or after October 1, 1991.''

Section 4005(a)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1991.''

Section 4005(c)(4) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section and section 1395h of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], and the amendments made by paragraph (2) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

Section 4008(f)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

EFFECTIVE AND TERMINATION DATES OF 1989 AMENDMENT

Section 6003(a)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to payments for discharges occurring on or after January 1, 1990.''

Section 6003(c)(4) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to discharges occurring on or after April 1, 1990.''

Section 6003(h)(7) of Pub. L. 101–239 provided that: ''The amendments made by paragraphs (3) and (4) [amending this section] shall apply to discharges occurring on or after April 1, 1990.''

Section 6004(a)(3) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section] shall apply with respect to cost reporting periods beginning on or after October 1, 1989, except that—

''(A) in the case of a hospital classified by the Secretary of Health and Human Services as a hospital involved extensively in treatment for or research on cancer under section 1886(d)(5)(I) of the Social Security Act [subsec. (d)(5)(I) of this section] (as redesignated by section 6003(e)(1)(A)) after the date of the enactment of this Act [Dec. 19, 1989], such amendments shall apply with respect to cost reporting periods beginning on or after the date of such classification,

''(B) in the case of a hospital that is not described in subparagraph (A), such amendments shall apply with respect to portions of cost reporting periods or discharges occurring during and after fiscal year 1987 for purposes of section 1886(g) of the Social Security Act [subsec. (g) of this section], and

''(C) such amendments shall take effect 30 days after the date of the enactment of this Act for purposes of determining the eligibility of a hospital to receive periodic interim payments under section 1815(e)(2) of the Social Security Act [section 1395g(e)(2) of this title].''

Section 6004(b)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply with respect to cost reporting periods beginning on or after April 1, 1989.''

Section 6011(d) of Pub. L. 101–239, as amended by Pub. L. 103–66, title XIII, §13505, Aug. 10, 1993, 107 Stat. 579, provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to items furnished 6 months after the date of enactment of this Act [Dec. 19, 1989] and shall expire September 30, 1994.''

[Section 13505 of Pub. L. 103–66 provided in part that the amendment made by that section to section 6011(d) of Pub. L. 101–239, set out above, is effective as if included in the enactment of Pub. L. 101–239.]

Section 6015(c) of Pub. L. 101–239 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective with respect to cost reporting periods beginning on or after April 1, 1990.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 1018(r)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of Title 26, Internal Revenue Code.

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4002(g) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(1)(I), July 1, 1988, 102 Stat. 769, provided that:

''(1) PPS HOSPITALS, DRG PORTION OF PAYMENT.—In the case of a subsection (d) hospital (as defined in paragraph (6))—

''(A) the amendments made by subsections (a) and (c) [amending this section] shall apply to payments made under section 1886(d)(1)(A)(iii) of the Social Security Act [subsec. (d)(1)(A)(iii) of this section] on the basis of discharges occurring on or after April 1, 1988, and

''(B) for discharges occurring on or after October 1, 1988, the applicable percentage increase (described in section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section]) for discharges occurring during fiscal year 1987 is deemed to have been such percentage increase as amended by subsection (a).

''(2) PPS SOLE COMMUNITY HOSPITALS, HOSPITAL SPECIFIC PORTION OF PAYMENT.—In the case of a subsection (d) hospital which receives payments made under section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section] because it is a sole community hospital—

''(A) the amendment made by subsections (a) and (c) [amending this section] shall apply to payments under section 1886(d)(1)(A)(ii)(I) of the Social Security Act made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting period beginning on or after October 1, 1987;

''(B) notwithstanding subparagraph (A), for cost reporting period beginning during fiscal year 1988, the applicable percentage increase (as defined in section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section]) for the—

''(i) first 51 days of the cost reporting period shall be 0 percent,

''(ii) next 132 days of such period shall be 2.7 percent, and

''(iii) remainder of such period of the cost reporting period shall be the applicable percentage increase (as so defined, as amended by subsection (a)); and

''(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the previous cost reporting period shall be deemed to have been the applicable percentage increase (as so defined, as amended by subsection (a)).

''(3) PPS-EXEMPT HOSPITALS.—In the case of a hospital that is not a subsection (d) hospital—

''(A) the amendments made by subsection (e) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987;

''(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1988, payment under title XVIII of the Social Security Act [this subchapter] shall be made as though the applicable percentage increase described in section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section] were equal to the product of 2.7 percent and the ratio of 315 to 366; and

''(C) for cost reporting periods beginning on or after October 1, 1988, the applicable percentage increase (as so defined) with respect to the cost reporting period beginning during fiscal year 1988 shall be deemed to have been 2.7 percent.

''(4) DEFINITION, REGIONAL FLOOR, AND TECHNICAL AND CONFORMING AMENDMENTS.—The amendments made by subsections (b) and (d) and paragraphs (1) and (2) of subsection (f) [amending this section and provisions set out as a note below] shall take effect on the date of the enactment of this Act [Dec. 22, 1987].

''(5) TRANSITION FOR LARGE URBAN AREA RATES.—In computing the average standardized amount for hospitals located in a large urban area or other urban area under section 1886(d)(3)(A)(ii) of the Social Security Act [subsec. (d)(3)(A)(ii) of this section] (as amended by subsection (c)) for fiscal year 1988, the reference to 'the respective average standardized amount computed for the previous fiscal year under this subparagraph' is deemed a reference to the average standardized amount computed for hospitals located in an urban area for the 51-day period beginning on October 1, 1987.

''(6) DEFINITION.—In this subsection, the term 'subsection (d) hospital' has the meaning given such term in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section].''

Section 4003(e) of Pub. L. 100–203 provided that: ''The amendments made by this section [amending this section] shall apply to payments for discharges occurring on or after October 1, 1988.''

Section 4005(a)(3) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(4)(C)(ii), July 1, 1988, 102 Stat. 770, provided that: ''This subsection [amending this section] shall apply to discharges occurring on or after October 1, 1988.''

Section 4005(c)(2)(A) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987[.]''

Section 4005(d)(1)(B) of Pub. L. 100–203 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to discharges occurring on or after April 1, 1988.''

Section 4006(b)(3) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect on October 1, 1987. The amendments made by paragraph (2) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1987.''

Section 4007(b)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(6)(B), July 1, 1988, 102 Stat. 770, provided that: ''The amendment made by paragraph (1)(C) [amending this section] shall apply to hospital cost reporting periods beginning on or after October 1, 1989.''

Section 4009(d)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to appointments made after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4009(j)(6) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–509.

Section 4083(b)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(1)(D) of Pub. L. 99–514, which provided for applicability of amendments to this section by section 1895(b)(1) of Pub. L. 99–514 to discharges occurring on or after Oct. 1, 1986, with certain exceptions, was repealed by Pub. L. 99–509, title IX, § 9307(c)(1)(A), Oct. 21, 1986, 100 Stat. 1995, and by Pub. L. 100–647, title I, § 1018(r)(1), Nov. 10, 1988, 102 Stat. 3586.

Section 1895(b)(2)(B), formerly § 1895(b)(2)(D), of Pub. L. 99–514, as amended by Pub. L. 99–509, title IX,

§ 9307(c)(1)(B)(iii), as amended by Pub. L. 100–203, title IV, § 4009(j)(6)(A), Dec. 22, 1987, 101 Stat. 1330–59, which provided for applicability of amendments to this section by section 1895(b)(2)(A) of Pub. L. 99–514 to discharges occurring on or after May 1, 1986, was repealed by Pub. L. 100–647, title I, § 1018(r)(1), Nov. 10, 1988, 102 Stat. 3586.

Amendment by section 1895(b)(3), (9) of Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Section 9302(a)(3) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1986 and, for purposes of section 1886(d) of the Social Security Act [subsec. (d) of this section], for cost reporting periods beginning and discharges occurring on or after October 1, 1986.''

Section 9302(b)(2) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to discharges occurring on or after October 1, 1986.''

Section 9302(d)(1)(B) of Pub. L. 99–509 provided that:

''(i) Subject to clause (ii), the amendments made by subparagraph (A) [amending this section] shall apply to payments for discharges occurring on or after October 1, 1986.

''(ii) An appeal for classification of a rural hospital as a regional referral center, pursuant to the amendments made by subparagraph (A), which is filed before January 1, 1987, and which is approved shall be effective with respect to discharges occurring on or after October 1, 1986.''

Section 9303(b) of Pub. L. 99–509 provided that the amendment made by such section 9303(b) is effective for cost reporting periods beginning and discharges occurring (as the case may be) on or after Oct. 1, 1987.

Section 9304(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall apply to discharges occurring on or after October 1, 1987.''

Section 9306(d) of Pub. L. 99–509 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to discharges occurring on or after October 1, 1986.''

Section 9307(c)(1) of Pub. L. 99–509 provided that the amendment made by such section 9307(c)(1) is effective as if included in the enactment of the Tax Reform Act of 1986 (Pub. L. 99–514), if H.Con.Res. 395, 99th Congress, 2d Session, is not adopted. H.Con.Res. 395 was not adopted.

Section 9314(b) of Pub. L. 99–509 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments for approved residency training programs as of July 1, 1987.''

Amendment by section 9320(g) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9321(e)(3)(B) of Pub. L. 99–509 provided that: ''The amendments made by paragraph (2) [amending this section] shall take effect beginning with fiscal year 1989.''

Section 9101(d) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending section 5(c) of Pub. L. 99–107, set out below] shall take effect on March 15, 1986, and the amendments made by subsection (c) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9101(e) of Pub. L. 99–272 provided that:

''(1) PPS HOSPITALS, DRG PORTION OF PAYMENT.—In the case of a subsection (d) hospital (as defined in paragraph (4))—

''(A) the amendment made by subsection (b) [amending this section] shall apply to payments made under section 1886(d)(1)(A) of such Act [subsec. (d)(1)(A) of this section] made on the basis of discharges occurring on or after May 1, 1986; and

''(B) for discharges occurring on or after October 1, 1986, the applicable percentage increase (described in section 1886(b)(3)(B) [subsec. (b)(3)(B) of this section]) for discharges occurring during fiscal year 1986 shall be deemed to have been ½ percent.

''(2) PPS HOSPITALS, HOSPITAL SPECIFIC PORTION OF PAYMENT.—In the case of a subsection (d) hospital—

''(A) the amendment made by subsection (b) [amending this section] shall apply to payments under section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section] made on the basis of discharges occurring during a cost reporting period of a hospital, for the hospital's cost reporting periods beginning on or after October 1, 1985;

''(B) notwithstanding subparagraph (A), for the cost reporting period beginning during fiscal year 1986, the applicable percentage increase (as defined in section 1886(b)(3)(B) of such Act [subsec. (b)(3)(B) of this section]) for the—

''(i) first 7 months of the cost reporting period shall be 0 percent, and

''(ii) for the remaining 5 months of the cost reporting period shall be ½ percent; and

''(C) for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase (as so defined) with respect to the previous cost reporting period shall be deemed to have been ½ percent.

''(3) PPS-EXEMPT HOSPITALS.—In the case of a hospital that is not a subsection (d) hospital—

''(A) the amendment made by subsection (b) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1985;

''(B) notwithstanding subparagraph (A), for the hospital's cost reporting period beginning during fiscal year 1986, payment under title XVIII of the Social Security Act [this subchapter] shall be made as though the applicable percentage increase described in section 1886(b)(3)(B) [subsec. (b)(3)(B) of this section] were equal to $^{5}/_{24}$ of 1 percent; and

''(C) for cost reporting periods beginning on or after October 1, 1986, the applicable percentage increase (as so defined) with respect to the cost reporting period beginning during fiscal year 1986 shall be deemed to have been ½ percent.

''(4) DEFINITION.—In this subsection, the term 'subsection (d) hospital' has the meaning given such term in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section].''

Section 9102(d) of Pub. L. 99–272 provided that:

''(1) DELAY IN FINAL TRANSITION.—The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986].''

''(2) CHANGE IN HOSPITAL SPECIFIC PERCENTAGE.—The amendments made by subsection (b) [amending this section] shall apply—

''(A) to cost reporting periods beginning on or after October 1, 1985, but

''(B) notwithstanding subparagraph (A), for a hospital's cost reporting period beginning during fiscal year 1986, for purposes of section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section]—

''(i) during the first 7 months of the period the 'target percentage' is 50 percent and the 'DRG percentage' is 50 percent, and

''(ii) during the remaining 5 months of the period the 'target percentage' is 45 percent and the 'DRG percentage' is 55 percent.

''(3) CHANGE IN BLENDED RATE.—The amendments made by subsection (c) [amending this section] shall apply to discharges occurring on or after May 1, 1986.

''(4) EXCEPTION.—

''(A) Notwithstanding any other provision of this subsection, the amendments made by this section [amending this section] shall not apply to payments with respect to the operating costs of inpatient hos-

pital services (as defined in section 1886(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) of a subsection (d) hospital (as defined in section 1886(d)(1)(B) of such Act [subsec. (d)(1)(B) of this section]) located in the State of Oregon.

''(B) Notwithstanding any other provision of law, for a cost reporting period beginning during fiscal year 1986 of a subsection (d) hospital to which the amendments made by this section [amending this section] do not apply, for purposes of section 1886(d)(1)(A) of of [sic] Social Security Act [subsec. (d)(1)(A) of this section]—

''(i) during the first 7 months of the period the 'target percentage' is 50 percent and the 'DRG percentage' is 50 percent, and

''(ii) during the remaining 5 months of the period the 'target percentage' is 25 percent and the 'DRG percentage' is 75 percent.

''(C) Notwithstanding any other provision of law, for purposes of section 1886(d)(1)(D) of such Act [subsec. (d)(1)(D) of this section], the applicable combined adjusted DRG prospective payment rate for a subsection (d) hospital to which the amendments made by this section [amending this section] do not apply is, for discharges occurring on or after October 1, 1985, and before May 1, 1986, a combined rate consisting of 25 percent of the national adjusted DRG prospective payment rate and 75 percent of the regional adjusted DRG prospective payment rate for such discharges.''

Section 9104(c) of Pub. L. 99–272 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to discharges occurring on or after May 1, 1986.

''(2) The amendments made by this section shall not first be applied to discharges occurring as of a date unless, for discharges occurring on that date, the amendments made by section 9105 [amending this section] are also being applied.''

Section 9105(e) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section] shall apply to discharges occurring on or after May 1, 1986.''

Section 9106(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after January 1, 1986.''

Section 9107(c)(1) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to hospital cost reporting periods beginning on or after October 1, 1986.''

Section 9109(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9111(b) of Pub. L. 99–272 provided that: ''The amendment made by this section [amending this section] shall apply to payments for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1989.''

Section 9202(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to hospital cost reporting periods beginning on or after July 1, 1985.''

Effective and Termination Dates of 1984 Amendments

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Section 2307(b)(2) of Pub. L. 98–369 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1984.''

Section 2310(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to cost reporting periods beginning in, and discharges occurring in, fiscal year 1985 and thereafter.''

Section 2311(d) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsections (b) and (c) [amending this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1983, and the amendment made by subsection (a) [amending this section] shall be effective with respect to cost reporting periods beginning on or after October 1, 1984.

''(2) The amendment made by subsection (b) [amending this section] shall not apply so as to reduce any payment under section 1886(d) of the Social Security Act [subsec. (d) of this section] to a hospital the region of which is deemed to be changed pursuant to such amendment for discharges occurring in any cost reporting period beginning before October 1, 1984.''

Section 2312(c) of Pub. L. 98–369, as amended by Pub. L. 99–509, title IX, § 9320(a), Oct. 21, 1986, 100 Stat. 2013; Pub. L. 100–360, title IV, § 411(p), July 1, 1988, as added by Pub. L. 100–485, title VI, § 608(d)(29), Oct. 13, 1988, 102 Stat. 2424, provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1984, and before January 1, 1989. In the case of a cost reporting period that begins before January 1, 1989, but ends after such date, additional payments under the amendment made by subsection (a) shall be proportionately reduced to reflect the portion of the period occurring after such date.''

Amendment by section 2313(a), (b), (d) of Pub. L. 98–369 effective July 18, 1984, see section 2313(e) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 1395y of this title.

Section 2315(g) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section and sections 1395i–2 and 1395cc of this title and enacting and amending provisions set out as notes under this section] shall be effective as though they had been included in the enactment of the Social Security Amendments of 1983 (Public Law 98–21).''

Amendment by section 2354(b)(42)–(44) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e)(1) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 1320a–1 of this title.

Effective Date of 1983 Amendments

Section 601(b)(9) of Pub. L. 98–21 provided that the repeal of subsec. (b)(6) of this section is effective with respect to cost reporting periods beginning on or after October 1, 1982, and that the enactment of a new subsec. (b)(6) of this section is effective with respect to cost reporting periods beginning on or after October 1, 1983.

Section 604 of title VI of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title III, § 2315(f)(1), July 18, 1984, 98 Stat. 1080, provided that:

''(a)(1) Except as provided in section 602(*l*) [amending section 1395cc of this title] and in paragraph (2), the amendments made by the preceding provisions of this title [amending this section and sections 1320c–2, 1395f, 1395n, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, and 1395xx of this title] apply to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983. A change in a hospital's cost reporting period that has been made after November 1982 shall be recognized for purposes of this section only if the Secretary finds good cause for that change.

''(2) Section 1866(a)(1)(F) of the Social Security Act [section 1395cc(a)(1)(F) of this title] (as added by section 602(f)(1)(C) of this title), section 1862(a)(14) [section 1395y(a)(14) of this title] (as added by section 602(e)(3) of this title) and sections 1886(a)(1)(G) and (H) of such Act [probably should be section 1866(a)(1)(G) and (H) which is classified to section 1395cc(a)(1)(G) and (H) of this title] (as added by section 602(f)(1)(C) of this title) take effect on October 1, 1983.

''(b) The Secretary shall make an appropriate reduction in the payment amount under section 1886(d) of

the Social Security Act [subsec. (d) of this section] (as amended by this title) for any discharge, if the admission has occurred before a hospital's first cost reporting period that begins after September 1983, to take into account amounts payable under title XVIII of that Act [this subchapter] (as in effect before the date of the enactment of this Act [Apr. 20, 1983]) for items and services furnished before that period.

''(c)(1) The Secretary shall cause to be published in the Federal Register a notice of the interim final DRG prospective payment rates established under subsection (d) of section 1886 of the Social Security Act [subsec. (d) of this section] (as amended by this title) no later than September 1, 1983, and allow for a period of public comment thereon. Payment on the basis of prospective rates shall become effective on October 1, 1983, without the necessity for consideration of comments received, but the Secretary shall, by notice published in the Federal Register, affirm or modify the amounts by December 31, 1983, after considering those comments.

''(2) A modification under paragraph (1) that reduces a prospective payment rate shall apply only to discharges occurring after 30 days after the date the notice of the modification is published in the Federal Register.

''(3) Rules to implement the amendments made by this title [amending this section and sections 1320a–1, 1320c–2, 1395f, 1395i–2, 1395n, 1395r, 1395v, 1395w, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, and 1395xx of this title, enacting provisions set out as notes under sections 1395r and 1395x of this title, and amending provisions set out as a note under section 1395x of this title] shall be established in accordance with the procedure described in this subsection.''

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE

Section 101(b)(1) of Pub. L. 97–248 provided that: ''The amendments made by subsection (a) [enacting this section and amending section 1395x of this title] shall apply to cost reporting periods beginning on or after October 1, 1982.''

REGULATIONS

Section 4003(c) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this section [amending this section and enacting provisions set out as a note above].''

Section 2315(f)(2) of Pub. L. 98–369 provided that: ''Notwithstanding section 604(c) of the Social Security Amendments of 1983 [section 604(c) of Pub. L. 98–21, set out above], the Secretary of Health and Human Services shall cause to be published in the Federal Register proposed regulations to carry out subsection (c) of section 1886 of the Social Security Act [subsec. (c) of this section] not later than July 1, 1984, and allow for a period of 45 days for public comment thereon. After consideration of the comments received, the Secretary shall cause to be published in the Federal Register final regulations to carry out such subsection not later than October 1, 1984.''

Section 101(b)(2)(A) of Pub. L. 97–248 provided that: ''The Secretary of Health and Human Services shall first issue such final regulations (whether on an interim or other basis) before October 1, 1982, as may be necessary to implement such amendments [amendments by section 101(a) of Pub. L. 97–248, enacting this section and amending section 1395x of this title] on a timely basis. If such regulations are promulgated on an interim final basis, the Secretary shall take such steps as may be necessary to provide opportunity for public comment, and appropriate revision based thereon, so as to provide that such regulations are not on an interim basis later than March 31, 1983.''

NO STANDARDIZED AMOUNT ADJUSTMENTS FOR FISCAL YEARS 1992 OR 1993

Section 13501(b)(2) of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services shall not revise the fiscal year 1992 or fiscal year 1993 standardized amounts pursuant to subsections (d)(3)(B) and (d)(8)(D) of section 1886 of the Social Security Act [subsec. (d)(3)(B) and (d)(8)(D) of this section] to account for the amendment made by paragraph (1) [amending this section].''

EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATIONS THROUGH FISCAL YEAR 1994; RECLASSIFICATION

Section 13501(d) of Pub. L. 103–66 provided that:

''(1) EXTENSION OF CLASSIFICATION THROUGH FISCAL YEAR 1994.—Any hospital that is classified as a regional referral center under section 1886(d)(5)(C) of the Social Security Act [subsec. (d)(5)(C) of this section] as of September 30, 1992, shall continue to be so classified for cost reporting periods beginning during fiscal year 1993 or fiscal year 1994, unless the area in which the hospital is located is redesignated as a Metropolitan Statistical Area by the Office of Management and Budget for such a fiscal year.

''(2) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—If any hospital fails to qualify as a rural referral center under section 1886(d)(5)(C) of the Social Security Act as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act to reclassify the hospital as being located in an urban area for fiscal year 1993 or fiscal year 1994, the Secretary of Health and Human Services shall—

''(A) notify such hospital of such failure to qualify,

''(B) provide an opportunity for such hospital to decline such reclassification, and

''(C) if the hospital—

''(i) declines such reclassification, administer the Social Security Act [this chapter] (other than section 1886(d)(8)(D)) for such fiscal year as if the decision by the Review Board had not occurred, or

''(ii) fails to decline such reclassification, administer the Social Security Act without regard to paragraph (1).

''(3) REQUIRING LUMP-SUM RETROACTIVE PAYMENT FOR HOSPITALS LOSING CLASSIFICATION.—

''(A) IN GENERAL.—In the case of a hospital described in paragraph (1), the Secretary of Health and Human Services shall make a lump-sum payment to the hospital equal to the difference between the aggregate payment made to the hospital under section 1886 of such Act (excluding outlier payments under subsection (d)(5)(A) of such section) during the period of applicability described in subparagraph (B) and the aggregate payment that would have been made to the hospital under such section if, during the period of applicability, the hospital was classified a regional referral center under section 1886(d)(5)(C) of such Act.

''(B) PERIOD OF APPLICABILITY.—In subparagraph (A), the 'period of applicability' is the period that begins on October 1, 1992, and ends on the date of the enactment of this Act [Aug. 10, 1993].''

HOSPITALS DECLINING URBAN AREA RECLASSIFICATIONS; RETROACTIVE PAYMENTS

Section 13501(e)(2), (3) of Pub. L. 103–66 provided that:

''(2) PERMITTING HOSPITALS TO DECLINE RECLASSIFICATION.—If any hospital fails to qualify as a medicare-dependent, small rural hospital under section 1886(d)(5)(G)(i) of the Social Security Act [subsec. (d)(5)(G)(i) of this section] as a result of a decision by the Medicare Geographic Classification Review Board under section 1886(d)(10) of such Act to reclassify the hospital as being located in an urban area for fiscal year 1993 or fiscal year 1994, the Secretary of Health and Human Services shall—

''(A) notify such hospital of such failure to qualify,

''(B) provide an opportunity for such hospital to decline such reclassification, and

''(C) if the hospital declines such reclassification, administer the Social Security Act [this chapter] (other than section 1886(d)(8)(D)) for such fiscal year as if the decision by the Review Board had not occurred.

''(3) REQUIRING LUMP-SUM RETROACTIVE PAYMENT.—

''(A) IN GENERAL.—In the case of a hospital treated as a medicare-dependent, small rural hospital under section 1886(d)(5)(G) of the Social Security Act, the Secretary of Health and Human Services shall make a lump-sum payment to the hospital equal to the difference between the aggregate payment made to the hospital under section 1886 of such Act (excluding outlier payments under subsection (d)(5)(A) of such section) during the period of applicability described in subparagraph (B) and the aggregate payment that would have been made to the hospital under such section if, during the period of applicability, section 1886(d)(5)(G) of such Act had been applied as if the amendments made by paragraph (1) [amending this section] had been in effect.

''(B) PERIOD OF APPLICABILITY.—In subparagraph (A), the 'period of applicability' is, with respect to a hospital, the period that begins on the first day of the hospital's first 12-month cost reporting period that begins after April 1, 1992, and ends on the date of the enactment of this Act [Aug. 10, 1993].''

ADJUSTMENT IN GME BASE-YEAR COSTS OF FEDERAL INSURANCE CONTRIBUTIONS ACT

Section 13563(d) of Pub. L. 103–66 provided that:

''(1) IN GENERAL.—In determining the amount of payment to be made under section 1886(h) of the Social Security Act [subsec. (h) of this section] in the case of a hospital described in paragraph (2) for cost reporting periods beginning on or after October 1, 1992, the Secretary of Health and Human Services shall redetermine the approved FTE resident amount to reflect the amount that would have been paid the hospital if, during the hospital's base cost reporting period, the hospital had been liable for FICA taxes or for contributions to the retirement system of a State, a political subdivision of a State, or an instrumentality of such a State or political subdivision with respect to interns and residents in its medical residency training program.

''(2) HOSPITALS AFFECTED.—A hospital described in this paragraph is a hospital that did not pay FICA taxes with respect to interns and residents in its medical residency training program during the hospital's base cost reporting period, but is required to pay FICA taxes or make contributions to a retirement system described in paragraph (1) with respect to such interns and residents because of the amendments made by section 11332(b) of OBRA–1990 [Pub. L. 101–508, amending section 3121 of Title 26, Internal Revenue Code].

''(3) DEFINITIONS.—In this subsection:

''(A) The 'base cost reporting period' for a hospital is the hospital's cost reporting period that began during fiscal year 1984.

''(B) The term 'FICA taxes' means, with respect to a hospital, the taxes under section 3111 of the Internal Revenue Code of 1986 [26 U.S.C. 3111].''

DETERMINATION OF AREA WAGE INDEX FOR DISCHARGES OCCURRING JANUARY 1, 1991 TO OCTOBER 1, 1993

Section 4002(d)(1) of Pub. L. 101–508 provided that:

''(A) For purposes of section 1886(d)(3)(E) of the Social Security Act [subsec. (d)(3)(E) of this section] for discharges occurring on or after January 1, 1991, and before October 1, 1993, the Secretary of Health and Human Services shall apply an area wage index determined using the survey of the 1988 wages and wage-related costs of hospitals in the United States conducted under such section.

''(B) The Secretary shall apply the wage index described in subparagraph (A) without regard to a previous survey of wages and wage-related costs.''

STUDY AND REPORT ON RELATIONSHIP BETWEEN NON-WAGE-RELATED INPUT PRICES AND ADJUSTED AVERAGE STANDARDIZED AMOUNTS

Section 4002(e)(2) of Pub. L. 101–508 directed Secretary of Health and Human Services to collect sufficient data on the input prices associated with the non-wage-related portion of the adjusted average standardized amounts established under subsec. (d)(3) of this section to identify extent to which variations in such amounts among hospitals located in different geographic areas are attributable to differences in such prices, and, not later than June 1, 1993, submit a report to Congress analyzing such data, with such report to include recommendations regarding a methodology for adjusting such average standardized amounts to reflect such variations.

DEADLINE FOR SUBMISSION OF APPLICATIONS TO GEOGRAPHIC CLASSIFICATION REVIEW BOARD

Section 4002(h)(2)(A) of Pub. L. 101–508 provided that: ''For purposes of determining whether a hospital requesting a change in geographic classification for fiscal year 1992 under section 1886(d)(10) of the Social Security Act [subsec. (d)(10) of this section] has met the deadline described in subparagraph (C)(ii) of such section, an application submitted under such subparagraph shall be considered to have been submitted by the first day of the preceding fiscal year if it is submitted within 60 days of the date of publication of the guidelines described in subparagraph (D)(i) of such section.''

PAYMENTS FOR MEDICAL EDUCATION COSTS

Section 4004 of Pub. L. 101–508 provided that:

''(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT.—

''(1) IN GENERAL.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part A of title XVIII of the Social Security Act [part A of this subchapter] due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h) [subsec. (h) of this section].

''(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

''(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect October 1, 1990.

''(b) UNIVERSITY HOSPITAL NURSING EDUCATION.—

''(1) IN GENERAL.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part A of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

''(2) CONDITIONS FOR REIMBURSEMENT.—The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

''(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

''(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs

that were attributable to the clinical training costs during the cost reporting period described in subparagraph (A);

''(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such program; and

''(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

''(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

''(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part A of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act [section 1395x(v) of this title]).

''(B) REFUND OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act [Nov. 5, 1990], the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part A of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

''(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

''(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.''

Section 4159 of Pub. L. 101–508 provided that:

''(a) HOSPITAL GRADUATE MEDICAL EDUCATION RECOUPMENT.—

''(1) IN GENERAL.—The Secretary of Health and Human Services may not, before October 1, 1991, recoup payments from a hospital because of alleged overpayments to such hospital under part B of title XVIII of the Social Security Act [part B of this subchapter] due to a determination that the amount of payments made for graduate medical education programs exceeds the amount allowable under section 1886(h) [subsec. (h) of this section].

''(2) CAP ON ANNUAL AMOUNT OF RECOUPMENT.—With respect to overpayments to a hospital described in paragraph (1), the Secretary may not recoup more than 25 percent of the amount of such overpayments from the hospital during a fiscal year.

''(3) EFFECTIVE DATE.—Paragraphs (1) and (2) shall take effect October 1, 1990.

''(b) UNIVERSITY HOSPITAL NURSING EDUCATION.—

''(1) IN GENERAL.—The reasonable costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) during a cost reporting period for clinical training (as defined by the Secretary) conducted on the premises of the hospital under approved nursing and allied health education programs that are not operated by the hospital shall be allowable as reasonable costs under part B of title XVIII of the Social Security Act and reimbursed under such part on a pass-through basis.

''(2) CONDITIONS FOR REIMBURSEMENT.—The reasonable costs incurred by a hospital during a cost reporting period shall be reimbursable pursuant to paragraph (1) only if—

''(A) the hospital claimed and was reimbursed for such costs during the most recent cost reporting period that ended on or before October 1, 1989;

''(B) the proportion of the hospital's total allowable costs that is attributable to the clinical training costs of the approved program, and allowable under (b)(1) during the cost reporting period does not exceed the proportion of total allowable costs that were attributable to clinical training costs during the cost reporting period described in subparagraph (A);

''(C) the hospital receives a benefit for the support it furnishes to such program through the provision of clinical services by nursing or allied health students participating in such program; and

''(D) the costs incurred by the hospital for such program do not exceed the costs that would be incurred by the hospital if it operated the program itself.

''(3) PROHIBITION AGAINST RECOUPMENT OF COSTS BY SECRETARY.—

''(A) IN GENERAL.—The Secretary of Health and Human Services may not recoup payments from (or otherwise reduce or adjust payments under part B of title XVIII of the Social Security Act to) a hospital because of alleged overpayments to such hospital under such title due to a determination that costs which were reported by the hospital on its medicare cost reports for cost reporting periods beginning on or after October 1, 1983, and before October 1, 1990, relating to approved nursing and allied health education programs did not meet the requirements for allowable nursing and allied health education costs (as developed by the Secretary pursuant to section 1861(v) of such Act [section 1395x(v) of this title]).

''(B) REFUND OF AMOUNTS RECOUPED.—If, prior to the date of the enactment of this Act [Nov. 5, 1990], the Secretary has recouped payments from (or otherwise reduced or adjusted payments under part B of title XVIII of the Social Security Act to) a hospital because of overpayments described in subparagraph (A), the Secretary shall refund the amount recouped, reduced, or adjusted from the hospital.

''(4) SPECIAL AUDIT TO DETERMINE COSTS.—In determining the amount of costs incurred by, claimed by, and reimbursed to, a hospital for purposes of this subsection, the Secretary shall conduct a special audit (or use such other appropriate mechanism) to ensure the accuracy of such past claims and payments.

''(5) EFFECTIVE DATE.—Except as provided in paragraph (3), the provisions of this subsection shall apply to cost reporting periods beginning on or after October 1, 1990.''

DEVELOPMENT OF NATIONAL PROSPECTIVE PAYMENT RATES FOR CURRENT NON-PPS HOSPITALS

Section 4005(b) of Pub. L. 101–508 provided that:

''(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section]) receive payment for the operating and capital-related costs of inpatient hospital services under part A [part A of this subchapter] of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of nationally-determined average standardized amounts. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

''(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program;

''(B) provide for adjustments to prospectively determined rates to account for changes in a hospital's case mix, severity of illness of patients, volume of cases, and the development of new technologies and standards of medical practice;

''(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

''(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, costs related to graduate medical education programs, differences in wages and wage-related costs among hospitals located in various geographic areas, and other factors the Secretary considers appropriate; and

''(E) provide for the appropriate allocation of operating and capital-related costs of hospitals not subject to the new prospective payment system and distinct units of such hospitals that would be paid under such system.

''(2) REPORTS.—(A) By not later than April 1, 1992, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

''(B) By not later than June 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.''

GUIDANCE TO INTERMEDIARIES AND HOSPITALS

Section 4005(c)(3) of Pub. L. 101–508 provided that: ''The Administrator of the Health Care Financing Administration shall provide guidance to agencies and organizations performing functions pursuant to section 1816 of the Social Security Act [section 1395h of this title] and to hospitals that are not subsection (d) hospitals (as defined in section 1886(d)(1)(B) of such Act [subsec. (d)(1)(B) of this section]) to assist such agencies, organizations, and hospitals in filing complete applications with the Administrator for exemptions, exceptions, and adjustments under section 1886(b)(4)(A) of such Act.''

FREEZE IN PAYMENTS UNDER PART A OF THIS SUBCHAPTER THROUGH DECEMBER 31, 1990

Section 4007 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—Notwithstanding any other provision of law, for purposes of determining the amount of payment for items or services under part A of title XVIII of the Social Security Act [part A of this subchapter] (including payments under section 1886 of such Act [this section] attributable to or allocated under such part) during the period described in subsection (b):

''(1) The market basket percentage increase (described in section 1886(b)(3)(B)(iii) of the Social Security Act) shall be deemed to be 0 for discharges occurring during such period.

''(2) The percentage increase or decrease in the medical care expenditure category of the consumer price index applicable under section 1814(i)(2)(B) of such Act [section 1395f(i)(2)(B) of this title] shall be deemed to be 0.

''(3) The area wage index applicable to a subsection (d) hospital under section 1886(d)(3)(E) of such Act shall be deemed to be the area wage index applicable to such hospital as of September 30, 1990.

''(4) The percentage change in the consumer price index applicable under section 1886(h)(2)(D) of such Act shall be deemed to be 0.

''(b) DESCRIPTION OF PERIOD.—The period referred to in subsection (a) is the period beginning on October 21, 1990, and ending on December 31, 1990.''

REVIEW OF HOSPITAL REGULATIONS WITH RESPECT TO RURAL HOSPITALS

Section 4008(*l*) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall review the requirements applicable under title XVIII of the Social Security Act [this subchapter] to determine which requirements could be made less administratively and economically burdensome (without diminishing the quality of care) for hospitals defined in section 1886(d)(1)(B) of such Act [subsec. (d)(1)(B) of this section] that are located in a rural area (as defined in section 1886(d)(2)(D) of such Act). Such review shall specifically include standards related to staffing requirements.

''(2) REPORT.—The Secretary of Health and Human Services shall report to Congress by April 1, 1992, on the results of the review conducted under subsection (a), and include conclusions on which regulations, if any, should be modified with respect to hospitals described in subsection (a).''

PROHIBITION ON COST SAVINGS POLICIES BEFORE BEGINNING OF FISCAL YEAR

Section 4207(b)(1), formerly 4027(b)(1), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, § 160(d)(4), (5)(C), Oct. 31, 1994, 108 Stat. 4444, provided that: ''Notwithstanding any other provision of law, the Secretary of Health and Human Services may not issue any proposed or final regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act [this subchapter] in a fiscal year (beginning with fiscal year 1991 and ending with fiscal year 1993, or, if later, the last fiscal year for which there is a maximum deficit amount specified under section 601(a)(1) of the Congressional Budget and Impoundment Control Act of 1974 [2 U.S.C. 665(a)(1)]) of more than $50,000,000, except as follows:

''(A) The Secretary may issue such a proposed regulation, instruction, or other policy with respect to the fiscal year before the May 15 preceding the beginning of the fiscal year.

''(B) The Secretary may issue such a final regulation, instruction, or other policy with respect to the fiscal year on or after October 15 of the fiscal year.

''(C) The Secretary may, at any time, issue such a proposed or final regulation, instruction, or other policy with respect to the fiscal year if required to implement specific provisions under statute.''

PROHIBITION OF PAYMENT CYCLE CHANGES

Section 4207(b)(2), formerly 4027(b)(2), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that: ''Notwithstanding any other provision of law, the Secretary of Health and Human Services is not authorized to issue, after the date of the enactment of this Act [Nov. 5, 1990], any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down or speeding up claims processing, or delaying payment of claims, under title XVIII of the Social Security Act [this subchapter].''

EXTENSION OF AREA WAGE INDEX

Section 115(a) of Pub. L. 101–403 provided that: ''For purposes of determining the amount of payment made to a hospital under part A of title XVIII of the Social Security Act [part A of this subchapter] for the operating costs of inpatient hospital services for discharges occurring on or after October 1, 1990, and on or before October 20, 1990, the Secretary of Health and Human Services, in adjusting such amount under section 1886(d)(3)(E) of such Act [subsec. (d)(3)(E) of this section] to reflect the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage index, shall apply the area wage index applicable to such hospital as of September 30, 1990.''

ADJUSTMENTS RESULTING FROM EXTENSIONS OF REGIONAL FLOOR ON STANDARDIZED AMOUNTS

Section 115(b)(2) of Pub. L. 101–403 provided that: ''The Secretary of Health and Human Services shall

make any adjustments resulting from the amendment made by paragraph (1) [amending this section] in the amount of the payments made to hospitals under section 1886(d) of the Social Security Act [subsec. (d) of this section] in a fiscal year for the operating costs of inpatient hospital services in a manner that ensures that the aggregate payments under such section are not greater or less than those that would have been made in the year without such adjustments.''

INDEXING OF FUTURE APPLICABLE PERCENTAGE INCREASES

Section 6003(a)(3) of Pub. L. 101–239 provided that: ''For discharges occurring on or after October 1, 1990, the applicable percentage increase (described in section 1886(b)(3)(B) of the Social Security Act [subsec. (b)(3)(B) of this section]) for discharges occurring during fiscal year 1990 is deemed to have been such percentage increase as amended by paragraph (1).''

CONTINUATION OF SOLE COMMUNITY HOSPITAL DESIGNATION FOR CURRENT SOLE COMMUNITY HOSPITALS

Section 6003(e)(3) of Pub. L. 101–239 provided that: ''Any hospital classified as a sole community hospital under section 1886(d)(5)(C)(ii) of the Social Security Act [subsec. (d)(5)(C)(ii) of this section] on the date of the enactment of this Act [Dec. 19, 1989] that will no longer be classified as a sole community hospital after such date as a result of the amendments made by paragraph (1) [amending this section] shall continue to be classified as a sole community hospital for purposes of section 1886(d)(5)(D) of such Act [subsec. (d)(5)(D) of this section].''

ADDITIONAL PAYMENT RESULTING FROM CORRECTIONS OF ERRONEOUSLY DETERMINED WAGE INDEX

Section 6003(h)(5) of Pub. L. 101–239 provided that:

''(A) IN GENERAL.—If the Secretary of Health and Human Services (hereinafter referred to as the 'Secretary') discovers an error with respect to the determination, adjustment, or computation of the area wage index described in section 1886(d)(3)(E) of the Social Security Act [subsec. (d)(3)(E) of this section] and subsequently corrects such error, the Secretary shall make an additional payment under title XVIII of such Act [this subchapter] to a hospital affected by such error for inpatient hospital discharges occurring during the period when the erroneously determined, adjusted, or computed wage index was in effect.

''(B) CONDITIONS FOR ADDITIONAL PAYMENT.—A hospital is eligible for an additional payment under subparagraph (A) only if—

''(i) the error resulted from the submission of erroneous data, except that a hospital is not eligible for such additional payment if it submitted such erroneous data;

''(ii) the error was made with respect to the survey of the 1984 wages and wage-related costs of hospitals in the United States conducted under section 1886(d)(3)(E) of the Social Security Act; and

''(iii) the correction of the error resulted in an adjustment to the area wage index of not less than 3 percentage points.

''(C) PERIOD OF APPLICABILITY.—A hospital may not receive an additional payment under subparagraph (A) for discharges occurring after October 1, 1990.''

LEGISLATIVE PROPOSAL ELIMINATING SEPARATE AVERAGE STANDARDIZED AMOUNTS

Section 6003(i) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services (hereinafter referred to as the 'Secretary') shall design a legislative proposal eliminating the system of determining separate average standardized amounts for subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act [subsec. (d)(1)(B) of this section]) classified as being located in large urban, other urban, or rural areas under section 1886(d)(2)(D) of such Act [subsec. (d)(2)(D) of this section], and shall include in such proposal the following:

''(A) A transition period beginning in fiscal year 1992 during which a single rate for determining payment to hospitals in all areas shall be phased in with such single rate to be completely in effect by fiscal year 1995.

''(B) Recommendations, where appropriate, for modifying or maintaining additional payments or adjustments made under title XVIII of the Social Security Act [this subchapter] for teaching hospitals, rural referral centers, sole community hospitals, disproportionate share hospitals, and outlier cases, and for creating additional payments or adjustments where deemed appropriate by the Secretary.

''(C) Recommendations with respect to recalculating standardized amounts to reflect information from more recent cost reporting periods.

''(D) Recommendations, where appropriate, for modifying reimbursement for hospitals that are not subsection (d) hospitals under title XVIII of such Act.

''(E) A recommendation for a methodology to reflect the severity of illness of different patients within the same diagnosis-related group (as determined in section 1886(d)(4)(B) of such Act [subsec. (d)(4)(B) of this section]).

''(2) REPORT TO CONGRESS AND PROPAC.—(A) Not later than October 1, 1990, the Secretary shall submit the proposal described in paragraph (1) and an accompanying analysis of the impact of the proposed elimination of separate average standardized amounts on various categories of hospitals to Congress and the Prospective Payment Assessment Commission.

''(B) Not later than February 1, 1991, the Prospective Payment Assessment Commission and the Director of the Congressional Budget Office shall each prepare and submit to Congress a report analyzing the legislative proposal submitted under subparagraph (A), and shall include in such report an analysis of the probable impact of such legislation on hospitals participating in the medicare program.''

DETERMINATION AND RECOMMENDATIONS OF PAYMENTS FOR COSTS OF ADMINISTERING BLOOD CLOTTING FACTORS TO INDIVIDUALS WITH HEMOPHILIA

Section 6011(b), (c) of Pub. L. 101–239 provided that:

''(b) DETERMINING PAYMENT AMOUNT.—The Secretary of Health and Human Services shall determine the amount of payment made to hospitals under part A of title XVIII of the Social Security Act [part A of this subchapter] for the costs of administering blood clotting factors to individuals with hemophilia by multiplying a predetermined price per unit of blood clotting factor (determined in consultation with the Prospective Payment Assessment Commission) by the number of units provided to the individual.

''(c) RECOMMENDATIONS ON PAYMENTS.—The Prospective Payment Assessment Commission and the Health Care Financing Administration shall develop recommendations with respect to payments to hospitals under part A of title XVIII of the Social Security Act for the costs of administering blood clotting factors to individuals with hemophilia, and shall submit such recommendations to Congress not later than 18 months after the date of enactment of this Act [Dec. 19, 1989].''

PUBLICATION OF INSTRUCTIONS RELATING TO EXCEPTIONS AND ADJUSTMENTS IN TARGET AMOUNTS

Section 6015(b) of Pub. L. 101–239 provided that: ''By not later than 180 days after the date of enactment of this Act [Dec. 19, 1989], the Secretary of Health and Human Services shall publish instructions specifying the application process to be used in providing exceptions and adjustments under section 1886(b)(4)(A) of the Social Security Act [subsec. (b)(4)(A) of this section].''

DELAY IN RECOUPMENT OF CERTAIN NURSING AND ALLIED EDUCATION COSTS

Section 6205(b) of Pub. L. 101–239 provided that:

''(1) The Secretary of Health and Human Services (in this subsection referred to as the 'Secretary') shall not,

before October 1, 1990, recoup from, or otherwise reduce or adjust payments under title XVIII of the Social Security Act [this subchapter] to, hospitals because of alleged overpayments to such hospitals under such title due to a determination that costs which were reported by a hospital on its medicare cost reports relating to approved nursing and allied health education programs were allowable costs and are included in the definition of 'operating costs of inpatient hospital services' pursuant to section 1886(a)(4) of such Act [subsec. (a)(4) of this section], so that no pass-through of such costs was permitted under that section.

''(2)(A) Before July 1, 1990, the Secretary shall issue regulations respecting payment of costs described in paragraph (1).

''(B) In issuing such regulations—

''(i) the Secretary shall allow a comment period of not less than 60 days,

''(ii) the Secretary shall consult with the Prospective Payment Assessment Commission, and

''(iii) any final rule shall not be effective prior to October 1, 1990, or 30 days after publication of the final rule in the Federal Register, whichever is later.

''(C) Such regulations shall specify—

''(i) the relationship required between an approved nursing or allied health education program and a hospital for the program's costs to be attributed to the hospital;

''(ii) the types of costs related to nursing or allied health education programs that are allowable by medicare;

''(iii) the distinction between costs of approved educational activities as recognized under section 1886(a)(3) of the Social Security Act [subsec. (a)(3) of this section] and educational costs treated as operating costs of inpatient hospital services; and

''(iv) the treatment of other funding sources for the program.''

INNER-CITY HOSPITAL TRIAGE DEMONSTRATION PROJECT

Section 6217 of Pub. L. 101–239, as amended by Pub. L. 101–508, title IV, § 4207(k)(5), formerly § 4027(k)(5), Nov. 5, 1990, 104 Stat. 1388–125, renumbered Pub. L. 103–432, title I, § 160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that:

''(a) ESTABLISHMENT.—The Secretary of Health and Human Services shall establish a demonstration project in a public hospital that is located in a large urban area and that has established a triage system, under which the Secretary shall make payments out of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund (in such proportions as the Secretary determines to be appropriate in a year) for 3 years to reimburse the hospital for the reasonable costs of operating the system, including costs—

''(1) to train hospital personnel to operate and participate in the system; and

''(2) to provide services to patients who might otherwise be denied appropriate and prompt care.

''(b) LIMITATIONS ON PAYMENT.—(1) The Secretary may not make payment under the demonstration project established under subsection (a) for costs that the Secretary determines are not reasonable.

''(2) The amount of payment made under the demonstration project during a single year may not exceed $500,000.''

TRANSITION ADJUSTMENTS TO TARGET AMOUNTS FOR INPATIENT HOSPITAL SERVICES

Section 101(c)(2)(B) of title I of Pub. L. 101–234 provided that: ''The Secretary of Health and Human Services shall make an appropriate adjustment to the target amount established under section 1886(b)(3)(A) of the Social Security Act [subsec. (b)(3)(A) of this section] in the case of inpatient hospital services provided to an inpatient whose stay began before January 1, 1990, in order to take into account the target amount that would have applied but for the amendments made by this title [see Tables for classification].''

ELECTION OF PERSONNEL POLICY FOR PROPAC EMPLOYEES

Section 8405 of Pub. L. 100–647 provided that: ''With respect to employees of the Prospective Payment Assessment Commission hired before December 22, 1987, such employees shall have the option to elect within 60 days of the date of enactment of this Act [Nov. 10, 1988] to be covered under either the personnel policy in effect with respect to such employees before December 22, 1987, or under the employees coverage provided under the last sentence of section 1886(e)(6)(D) of the Social Security Act [subsec. (e)(6)(D) of this section].''

ADJUSTMENTS IN PAYMENTS FOR INPATIENT HOSPITAL SERVICES

Section 104(c) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(3)(C)–(E), Oct. 13, 1988, 102 Stat. 2413; Pub. L. 101–234, title I, § 101(c)(1), (2)(A), Dec. 13, 1989, 103 Stat. 1980, provided that:

''(1) PPS HOSPITALS.—In adjusting DRG prospective payment rates under section 1886(d) of the Social Security Act [subsec. (d) of this section], outlier cutoff points under section 1886(d)(5)(A) of such Act, and weighting factors under section 1886(d)(4) of such Act for discharges occurring on or after October 1, 1988, and before January 1, 1990, the Secretary of Health and Human Services shall, to the extent appropriate, take into consideration the reductions in payments to hospitals by (or on behalf of) medicare beneficiaries resulting from the elimination of a day limitation on medicare inpatient hospital services (under the amendments made by section 101 [amending section 1395d of this title]).

''(2) PPS-EXEMPT HOSPITALS.—In adjusting target amounts under section 1886(b)(3) of the Social Security Act [subsec. (b)(3) of this section] for portions of cost reporting periods occurring on or after January 1, 1989, and before January 1, 1990, the Secretary shall, on a hospital-specific basis, take into consideration the reductions in payments to hospitals by (or on behalf of) medicare beneficiaries resulting from the elimination of a day limitation on medicare inpatient hospital services (under the amendments made by section 101 [amending section 1395d of this title]), without regard to whether such a hospital is paid on the basis described in subparagraph (A) or (B) of section 1886(b)(1) of such Act, without regard to whether any of such beneficiaries exhausted medicare inpatient hospital insurance benefits before January 1, 1989.''

[Amendment of section 104(c) of Pub. L. 100–360, set out above, by section 101(c)(1), (2)(A) of Pub. L. 101–234 effective as if included in enactment of Pub. L. 100–360, see section 101(d) of Pub. L. 101–234, set out as a note under section 1395c of this title].

PROPAC STUDY

Section 203(c)(2) of Pub. L. 100–360 directed Prospective Payment Assessment Commission to conduct a study, and make recommendations to Congress and Secretary of Health and Human Services by not later than Mar. 1, 1991, concerning appropriate adjustment to payment amounts provided under subsec. (d) of this section for inpatient hospital services to account for reduced costs to hospitals resulting from amendments made by section 203 of Pub. L. 100–360, amending sections 1320c–3, 1395h, 1395k to 1395n, 1395w–2, 1395x, 1395z, and 1395aa of this title, prior to repeal by Pub. L. 101–234, title II, § 201(a), Dec. 13, 1989, 103 Stat. 1981.

CLINIC HOSPITAL WAGE INDICES

Section 4004(b) of Pub. L. 100–203 provided that: ''In calculating the wage index under section 1886(d) of the Social Security Act [subsec. (d) of this section] for purposes of making payment adjustments after September 30, 1988, as required under paragraphs (2)(H) and (3)(E) of such section, in the case of any institution which received the waiver specified in section 602(k) of the Social Security Amendments of 1983 [section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of

this title], the Secretary of Health and Human Services shall include wage costs paid to related organization employees directly involved in the delivery and administration of care provided by the related organization to hospital inpatients. For purposes of the preceding sentence, the term 'wage costs' does not include costs of overhead or home office administrative salaries or any costs that are not incurred in the hospital's Metropolitan Statistical Area.''

LIMITATION ON AMOUNTS PAID IN FISCAL YEARS 1988 AND 1989

Section 4005(c)(2)(B) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall take appropriate steps to ensure that the total amount paid in a fiscal year under title XVIII of the Social Security Act [this subchapter] by reason of the amendment made by paragraph (1)(B) [amending this section] does not exceed $5,000,000 in the case of fiscal year 1988 and $10,000,000 for fiscal year 1989.''

STUDY OF CRITERIA FOR CLASSIFICATION OF HOSPITALS AS RURAL REFERRAL CENTERS; REPORT

Section 4005(d)(2) of Pub. L. 100–203 directed Secretary of Health and Human Services to provide for a study of the criteria used for the classification of hospitals as rural referral centers, and report to Congress, by not later than Mar. 1, 1989, on the study and on recommendations for the criteria that should be applied for the classification of hospitals as rural referral centers for cost reporting periods beginning on or after Oct. 1, 1989.

GRANT PROGRAM FOR RURAL HEALTH CARE TRANSITION

Section 4005(e) of Pub. L. 100–203, as amended by Pub. L. 101–239, title VI, §6003(g)(1)(B)(i), Dec. 19, 1989, 103 Stat. 2150; Pub. L. 103–432, title I, §103(a)(1), (b), (c), Oct. 31, 1994, 108 Stat. 4404, 4405, provided that:

''(1) The Administrator of the Health Care Financing Administration, in consultation with the Assistant Secretary for Health (or a designee), shall establish a program of grants to assist eligible small rural hospitals and their communities in the planning and implementation of projects to modify the type and extent of services such hospitals provide in order to adjust for one or more of the following factors:

''(A) Changes in clinical practice patterns.

''(B) Changes in service populations.

''(C) Declining demand for acute-care inpatient hospital capacity.

''(D) Declining ability to provide appropriate staffing for inpatient hospitals.

''(E) Increasing demand for ambulatory and emergency services.

''(F) Increasing demand for appropriate integration of community health services.

''(G) The need for adequate access (including appropriate transportation) to emergency care and inpatient care in areas in which a significant number of underutilized hospital beds are being eliminated.

''(H) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

Each demonstration project under this subsection shall demonstrate methods of strengthening the financial and managerial capability of the hospital involved to provide necessary services. Such methods may include programs of cooperation with other health care providers, of diversification in services furnished (including the provision of home health services), of physician recruitment, and of improved management systems. Grants under this paragraph may be used to provide instruction and consultation (and such other services as the Administrator determines appropriate) via telecommunications to physicians in such rural areas (within the meaning of section 1886(d)(2)(D) of the Social Security Act [subsec. (d)(2)(D) of this section]) as are designated either class 1 or class 2 health manpower shortage areas under section 332(a)(1)(A) of the Public Health Service Act [section 254e(a)(1)(A) of this title].

''(2) For purposes of this subsection, the term 'eligible small rural hospital' means any rural primary care hospital designated by the Secretary under section 1820(i)(2) of the Social Security Act [section 1395i–4(i)(2) of this title], or any non-Federal, short-term general acute care hospital that—

''(A) is located in a rural area (as determined in accordance with subsection (d)),

''(B) has less than 100 beds, and

''(C) is not for profit.

''(3)(A) Any eligible small rural hospital that desires to modify the type or extent of health care services that it provides in order to adjust for one or more of the factors specified in paragraph (1) may submit an application to the Administrator and a copy of such application to the Governor of the State in which it is located. The application shall specify the nature of the project proposed by the hospital, the data and information on which the project is based, and a timetable (of not more than 24 months) for completion of the project. The application shall be submitted on or before a date specified by the Administrator and shall be in such form as the Administrator may require.

''(B) The Governor shall transmit to the Administrator, within a reasonable time after receiving a copy of an application pursuant to subparagraph (A), any comments with respect to the application that the Governor deems appropriate.

''(C) The Governor of a State may designate an appropriate State agency to receive and comment on applications submitted under subparagraph (A).

''(4) A hospital shall be considered to be located in a rural area for purposes of this subsection if it is treated as being located in a rural area for purposes of section 1886(d)(3)(D) of the Social Security Act [subsec. (d)(3)(D) of this section].

''(5) In determining which hospitals making application under paragraph (3) will receive grants under this subsection, the Administrator shall take into account—

''(A) any comments received under paragraph (3)(B) with respect to a proposed project;

''(B) the effect that the project will have on—

''(i) reducing expenditures from the Federal Hospital Insurance Trust Fund,

''(ii) improving the access of medicare beneficiaries to health care of a reasonable quality;

''(C) the extent to which the proposal of the hospital, using appropriate data, demonstrates an understanding of—

''(i) the primary market or service area of the hospital, and

''(ii) the health care needs of the elderly and disabled that are not currently being met by providers in such market or area, and

''(D) the degree of coordination that may be expected between the proposed project and—

''(i) other local or regional health care providers, and

''(ii) community and government leaders,

as evidenced by the availability of support for the project (in cash or in kind) and other relevant factors.

''(6) A grant to a hospital under this subsection may not exceed $50,000 a year and may not exceed a term of 3 years.

''(7)(A) Except as provided in subparagraphs (B) and (C), a hospital receiving a grant under this subsection may use the grant for any of expenses incurred in planning and implementing the project with respect to which the grant is made.

''(B) A hospital receiving a grant under this subsection for a project may not use the grant to retire debt incurred with respect to any capital expenditure made prior to the date on which the project is initiated.

''(C) Not more than one-third of any grant made under this subsection may be expended for capital-related costs (as defined by the Secretary for purposes of

section 1886(a)(4) of the Social Security Act [subsec. (a)(4) of this section]) of the project, except that this limitation shall not apply with respect to a grant used for the purposes described in subparagraph (D).

''(D) A hospital may use a grant received under this subsection to develop a plan for converting itself to a rural primary care hospital (as described in section 1820 of the Social Security Act [section 1395i–4 of this title]) or to develop a rural health network (as defined in section 1820(g) of such Act) in the State in which it is located if the State is receiving a grant under section 1820(a)(1).

''(8)(A) A hospital receiving a grant under this section [amending this section and section 1395tt of this title and enacting provisions set out as notes under this section and section 1395tt of this title] shall furnish the Administrator with such information as the Administrator may require to evaluate the project with respect to which the grant is made and to ensure that the grant is expended for the purposes for which it was made.

''(B) The Administrator shall report to the Congress at least once every 12 months on the program of grants established under this subsection. The report shall assess the functioning and status of the program, shall evaluate the progress made toward achieving the purposes of the program, and shall include any recommendations the Secretary may deem appropriate with respect to the program. In preparing the report, the Secretary shall solicit and include the comments and recommendations of private and public entities with an interest in rural health care.

''(C) The Administrator shall submit a final report on the program to the Congress not later than 180 days after all projects receiving a grant under the program are completed.

''(9) For purposes of carrying out the program of grants under this subsection, there are authorized to be appropriated from the Federal Hospital Insurance Trust Fund $15,000,000 for fiscal year 1989, $25,000,000 for each of the fiscal years 1990, 1991, and 1992 and $30,000,000 for each of fiscal years 1993 through 1997.''

[Section 103(a)(2) of Pub. L. 103–432 provided that: ''The amendment made by paragraph (1) [amending section 4005(e)(2) of Pub. L. 100–203, set out above] shall apply to grants made on or after October 1, 1994.'']

[Pub. L. 103–432, § 103(c), which directed amendment of section 4008(e)(8)(B) of Pub. L. 100–203, was executed by amending section 4005(e)(8)(B) of Pub. L. 100–203, set out above, to reflect the probable intent of Congress.]

[Section 6003(g)(1)(B)(ii) of Pub. L. 101–239 provided that: ''The amendments made by clause (i) [amending section 4005(e) of Pub. L. 100–203, set out above] shall apply with respect to applications for grants under the Rural Health Care Transition Grant Program described in section 4005(e) of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203] submitted on or after October 1, 1989, except that the amendments made by subclauses (V) and (VII) of such clause shall take effect on the date of the enactment of this Act [Dec. 19, 1989].'']

REPORTING HOSPITAL INFORMATION

Section 4007 of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(6), July 1, 1988, 102 Stat. 770; Pub. L. 100–485, title VI, § 608(d)(18)(D), Oct. 13, 1988, 102 Stat. 2419, provided that:

''(a) DEVELOPMENT OF DATA BASE.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall develop and place into effect not later than June 1, 1989, a data base of the operating costs of inpatient hospital services with respect to all hospitals under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], which data base shall be updated at least once every quarter (and maintained for the 12-month period preceding any such update). The data base under this subsection may include data from preliminary cost reports (but the Secretary shall make available an updated analysis of the differences between preliminary and settled cost reports).

''(b) [Amended subsec. (f) of this section and enacted provisions set out as an Effective Date of 1987 Amendment note above.]

''(c) DEMONSTRATION PROJECT.—

''(1) The Secretary of Health and Human Services shall provide for a demonstration project to develop, and determine the costs and benefits of establishing a uniform system for the reporting by medicare participating hospitals of balance sheet and information described in paragraph (2). In conducting the project, the Secretary shall require hospitals in at least 2 States, one of which maintains a uniform hospital reporting system, to report such information based on standard information established by the Secretary.

''(2) The information described in this paragraph is as follows:

''(A) Hospital discharges (classified by class of primary payer).

''(B) Patient days (classified by class of primary payer).

''(C) Licensed beds, staffed beds, and occupancy.

''(D) Inpatient charges and revenues (classified by class of primary payer).

''(E) Outpatient charges and revenues (classified by class of primary payer).

''(F) Inpatient and outpatient hospital expenses (by cost-center classified for operating and capital).

''(G) Reasonable costs.

''(H) Other income.

''(I) Bad debt and charity care.

''(J) Capital acquisitions.

''(K) Capital assets.

The Secretary shall develop a definition of 'outpatient visit' for purposes of reporting hospital information.

''(3) The Secretary shall develop the system under subsection (c) in a manner so as—

''(A) to facilitate the submittal of the information in the report in an electronic form, and

''(B) to be compatible with the needs of the medicare prospective payment system.

''(4) The Secretary shall prepare and submit, to the Prospective Payment Assessment Commission, the Comptroller General, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate, by not later than 45 days after the end of each calendar quarter, data collected under the system.

''(5) In paragraph (2):

''(A) The term 'bad debt and charity care' has such meaning as the Secretary establishes.

''(B) The term 'class' means, with respect to payers at least, the programs under this title XVIII of the Social Security Act [this subchapter], a State plan approved under title XIX of such Act [subchapter XIX of this chapter], other third party-payers, and other persons (including self-paying individuals).

''(6) The Secretary shall set aside at least a total of $3,000,000 for fiscal years 1988, 1989, and 1990 from existing research funds or from operations funds to develop the format, according to paragraph (1) and for data collection and analysis, but total funds shall not exceed $15,000,000.

''(7) The Comptroller General shall analyze the adequacy of the existing system for reporting of hospital information and the costs and benefits of data reporting under the demonstration system and will recommend improvements in hospital data collection and in analysis and display of data in support of policy making.

''(d) CONSULTATION.—The Secretary shall consult representatives of the hospital industry in carrying out the provisions of this section.''

HOSPITAL OUTLIER PAYMENTS AND POLICY

Section 4008(d) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(b)(7), July 1, 1988, 102 Stat. 771, provided that:

''(1) INCREASE IN OUTLIER PAYMENTS FOR BURN CENTER DRGS.—

''(A) IN GENERAL.—For discharges classified in diagnosis-related groups relating to burn cases and occur-

ring on or after April 1, 1988, and before October 1, 1989, the marginal cost of care permitted by the Secretary of Health and Human Services under section 1886(d)(5)(A)(iii) of the Social Security Act [subsec. (d)(5)(A)(iii) of this section] shall be 90 percent of the appropriate per diem cost of care or 90 percent of the cost for cost outliers.

''(B) BUDGET NEUTRALITY.—Subparagraph (A) shall be implemented in a manner that ensures that total payments under section 1886(d) of the Social Security Act are not increased or decreased by reason of the adjustments required by such subparagraph.

''(2) LIMITATION ON CHANGES IN OUTLIER REGULATIONS.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act [Dec. 22, 1987] and before September 1, 1988, any final regulation which changes the method of payment for outlier cases under section 1886(d)(5)(A) of the Social Security Act [subsec. (d)(5)(A) of this section].

''(B) PROPAC REPORT.—The chairman of the Prospective Payment Assessment Commission shall report to the Congress and the Secretary of Health and Human Services, by not later than June 1, 1988, on the method of payment for outlier cases under such section and providing more adequate and appropriate payments with respect to burn outlier cases.

''(3) REPORT ON OUTLIER PAYMENTS.—The Secretary of Health and Human Services shall include in the annual report submitted to the Congress pursuant to section 1875(b) of the Social Security Act [section 1395*ll*(b) of this title] a comparison with respect to hospitals located in an urban area and hospitals located in a rural area in the amount of reductions under section 1886(d)(3)(B) of the Social Security Act [subsec. (d)(3)(B) of this section] and additional payments under section 1886(d)(5)(A) of such Act.''

PROPAC STUDIES AND REPORTS

Section 4009(h) of Pub. L. 100–203 provided that:

''(1) PROPAC REPORTS ON STUDY OF DRG RATES FOR HOSPITALS IN RURAL AND URBAN AREAS.—The Prospective Payment Assessment Commission shall evaluate the study conducted by the Secretary of Health and Human Services pursuant to section 603(a)(2)(C)(i) of the Social Security Amendments of 1983 [section 603(a)(2)(C)(i) of Pub. L. 98–21, set out below] (relating to the feasibility, impact, and desirability of eliminating or phasing out separate urban and rural DRG prospective payment rates) and report its conclusions and recommendations to the Congress not later than March 1, 1988.

''(2) PROPAC REPORT ON SEPARATE URBAN PAYMENT RATES.—The Prospective Payment Assessment Commission shall evaluate the desirability of maintaining separate DRG prospective payment rates for hospitals located in large urban areas (as defined in section 1886(d)(2)(D)) of the Social Security Act [subsec. (d)(2)(D) of this section]) and in other urban areas, and shall report to Congress on such evaluation not later than January 1, 1989.

''(3) REPORT ON ADJUSTMENT FOR NON-LABOR COSTS.—The Prospective Payment Assessment Commission shall perform an analysis to determine the feasibility and appropriateness of adjusting the non-wage-related portion of the adjusted average standardized amounts under section 1886(d)(3) of the Social Security Act [subsec. (d)(3) of this section] based on area differences in hospitals' costs (other than wage-related costs) and input prices. The Commission shall report to the Congress on such analysis by not later than October 1, 1989.''

SPECIAL RULE FOR URBAN AREAS IN NEW ENGLAND

Section 4009(i) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(b)(8)(C), July 1, 1988, 102 Stat. 772, provided that: ''In the case of urban areas in New England, the Secretary of Health and Human Services shall apply the second sentence of section 1886(d)(2)(D) of the Social Security Act [subsec. (d)(2)(D) of this section], as amended by section 4002(b) of this subtitle, as though 970,000 were substituted for 1,000,000.''

RURAL HEALTH MEDICAL EDUCATION DEMONSTRATION PROJECT

Section 4038 of Pub. L. 100–203, as amended by Pub. L. 101–239, title VI, §6216, Dec. 19, 1989, 103 Stat. 2253, provided that:

''(a) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall enter into agreements with 10 sponsoring hospitals submitting applications under this subsection to conduct demonstration projects to assist resident physicians in developing field clinical experience in rural areas.

''(b) NATURE OF PROJECT.—Under a demonstration project conducted under subsection (a), a sponsoring hospital entering into an agreement with the Secretary under such subsection shall enter into arrangements with a small rural hospital to provide to such rural hospital, for a period of one to three months of training, physicians (in such number as the agreement under subsection (a) may provide) who have completed one year of residency training.

''(c) SELECTION.—(1) In selecting from among applications submitted under subsection (a), the Secretary shall ensure that four small rural hospitals located in different counties participate in the demonstration project and that—

''(A) two of such hospitals are located in rural counties of more than 2,700 square miles (one of which is east of the Mississippi River and one of which is west of such river); and

''(B) two of such hospitals are located in rural counties with (as determined by the Secretary) a severe shortage of physicians (one of which is east of the Mississippi River and one of which is west of such river).

''(2) The provisions of paragraph (1) shall not apply with respect to applications submitted as a result of amendments made by section 6216 of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, amending this note].

''(d) CLARIFICATION OF PAYMENT.—For purposes of section 1886 of the Social Security Act [this section]—

''(1) with respect to subsection (d)(5)(B) of such section, any resident physician participating in the project under subsection (a) for any part of a year shall be treated as if he or she were working at the appropriate sponsoring hospital with an agreement under subsection (a) on September 1 of such year (and shall not be treated as if working at the small rural hospital); and

''(2) with respect to subsection (h) of such section, the payment amount permitted under such subsection for a sponsoring hospital with an agreement under subsection (a) shall be increased (for the duration of the project only) by an amount equal to the amount of any direct graduate medical education costs (as defined in paragraph (5) of such subsection (h)) incurred by such hospital in supervising the education and training activities under a project under subsection (a).

''(e) DURATION OF PROJECT.—Each demonstration project under subsection (a) shall be commenced not later than six months after the date of enactment of this Act [Dec. 22, 1987] (or the date of the enactment of the Omnibus Budget Reconciliation Act of 1989 [Dec. 19, 1989], in the case of a project conducted as a result of the amendments made by section 6216 of such Act [Pub. L. 101–239, amending this note]) and shall be conducted for a period of three years.

''(f) DEFINITION.—In this section, the term 'sponsoring hospital' means a hospital that receives payments

under sections 1886(d)(5)(B) and 1886(h) of the Social Security Act [subsecs. (d)(5)(B) and (h) of this section].''

PROHIBITION ON POLICY BY SECRETARY OF HEALTH AND HUMAN SERVICES TO REDUCE EXPENDITURES IN FISCAL YEARS 1989, 1990, AND 1991

Section 4039(d) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 426(e), July 1, 1988, 102 Stat. 814; Pub. L. 101–239, title VI, § 6207(b), Dec. 19, 1989, 103 Stat. 2245, provided that: ''Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after the date of the enactment of this Act [Dec. 22, 1987] and before October 15, 1990, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act [this subchapter] in fiscal year 1989 or in fiscal year 1990 or in fiscal year 1991 of more than $50,000,000.''

TEMPORARY EXTENSION OF PAYMENT POLICIES FOR INPATIENT HOSPITAL SERVICES

Pub. L. 100–119, title I, § 107(a)(1), Sept. 29, 1987, 101 Stat. 782, as amended by Pub. L. 100–203, title IV, § 4002(f)(2), Dec. 22, 1987, 101 Stat. 1330–45, provided that: ''Notwithstanding any other provision of law, with respect to payment for inpatient hospital services under section 1886 of the Social Security Act [this section]:

''(A) TEMPORARY FREEZE IN PPS HOSPITAL RATES.—For purposes of subsection (d) of such section for discharges occurring during the period beginning on October 1, 1987, and ending on November 20, 1987 (in this paragraph referred to as the 'extension period'), the applicable percentage increase under subsection (b)(3)(B) of such section with respect to fiscal year 1988 is deemed to be 0 percent.

''(B) TEMPORARY FREEZE IN PAYMENT BASIS.—

''(i) EXTENSION OF BLENDED DRG RATE.—For purposes of subsection (d)(1) of such section, the 'applicable combined adjusted DRG prospective payment rate' for discharges occurring—

''(I) during the extension period is the rate specified in subsection (d)(1)(D)(ii) of such section, or

''(II) after such period is the national adjusted prospective payment rate determined under subsection (d)(3) of such section.

''(ii) EXTENSION OF HOSPITAL-SPECIFIC PAYMENT.—For the first 51 days of a hospital cost reporting period beginning during fiscal year 1988, payment shall be made under clause (ii) (rather than clause (iii)) of subsection (d)(1)(A) of such section (subject to clause (i) of this subparagraph), the target percentage and DRG percentage shall be those specified in subsection (d)(1)(C)(iv) of such section, and the applicable percentage increase in a hospital's target amount shall be deemed to be 0 percent.

''(C) TEMPORARY FREEZE IN AMOUNTS OF PAYMENT FOR CAPITAL.—For payments attributable to portions of cost reporting periods occurring during the extension period, the percent specified in subsection (g)(3)(A)(ii) of such section is deemed to be 3.5 percent.

''(D) TEMPORARY FREEZE IN RETURN ON EQUITY REDUCTIONS.—For the first 51 days of a cost reporting period beginning during fiscal year 1988, subsection (g)(2) of such section shall be applied as though the applicable percentage were 75 percent.

''(E) TEMPORARY FREEZE IN PAYMENTS RATES FOR PPS-EXEMPT HOSPITALS.—For purposes of payment under subsection (b) of such section for cost reporting periods beginning during fiscal year 1988, with respect to the first 51 days of such a period the applicable percentage increase under paragraph (3)(B) of such subsection is deemed to be 0 percent.''

[Section 4002(f)(2) of Pub. L. 100–203 provided that the amendment of section 107(a)(1) of Pub. L. 100–119, set out above, by section 4002(f)(2) of Pub. L. 100–203 is effective as of Sept. 29, 1987.]

FREEZING CERTAIN CHANGES IN MEDICARE PAYMENT REGULATIONS AND POLICIES

Pub. L. 100–119, title I, § 107(b), Sept. 29, 1987, 101 Stat. 783, provided that:

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Health and Human Services is not authorized to issue after September 18, 1987, and before November 21, 1987—

''(A) any final regulation that changes the policy with respect to payment under title XVIII of the Social Security Act [this subchapter] to providers of service for reasonable costs relating to unrecovered costs associated with unpaid deductible and coinsurance amounts incurred under such title;

''(B) any final regulation, instruction, or other policy change which is primarily intended to have the effect of slowing down claims processing, or delaying payment of claims, under such title; or

''(C) any final regulation that changes the policy under such title with respect to payment for a return on equity capital for outpatient hospital services.

The final regulation of the Health Care Financing Administration published on September 1, 1987 (52 Federal Register 32920) and relating to changes to the return on equity capital provisions for outpatient hospital services is void and of no effect.

''(2) OTHER COST SAVINGS POLICIES.—Notwithstanding any other provision of law, except as required to implement specific provisions required under statute, the Secretary of Health and Human Services is not authorized to issue in final form, after September 18, 1987, and before November 21, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act in fiscal year 1988 of more than $50,000,000. Any regulation, instruction, or policy which is issued in violation of this paragraph is void and of no effect.

''(3) EXCEPTION.—Paragraphs (1) and (2) shall not be construed to apply to any regulation, instruction, or policy required to implement the amendment made by section 9311(a) of the Omnibus Budget Reconciliation Act of 1986 [section 9311(a) of Pub. L. 99–509, which amended section 1395g of this title] (relating to periodic interim payments).''

MAINTAINING CURRENT OUTLIER POLICY IN FISCAL YEAR 1987

Section 9302(b)(3) of Pub. L. 99–509 provided that: ''For payments made under section 1886(d) of the Social Security Act [subsec. (d) of this section] for discharges occurring in fiscal year 1987—

''(A) the proportions under paragraph (3)(B) for hospitals located in urban and rural areas shall be established at such levels as produce the same total dollar reduction under such paragraph as if this section had not been enacted; and

''(B) the thresholds and standards used for making additional payments under paragraph (5) of such section shall be the same as those in effect as of October 1, 1986.''

EXTENSION OF REGIONAL REFERRAL CENTER CLASSIFICATION

Section 6003(d) of Pub. L. 101–239 provided that: ''Any hospital that is classified as a regional referral center under section 1886(d)(5)(C) of the Social Security Act [subsec. (d)(5)(C) of this section] as of September 30, 1989, including a hospital so classified as a result of section 9302(d)(2) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509, set out below], shall continue to be classified as a regional referral center for cost reporting periods beginning on or after October 1, 1989, and before October 1, 1992.''

Section 9302(d)(2) of Pub. L. 99–509 provided that: ''Any hospital that is classified as a regional referral center under section 1886(d)(5)(C)(i) of the Social Security Act [subsec. (d)(5)(C)(i) of this section] on the date of the enactment of this Act [Oct. 21, 1986] shall con-

tinue to be classified as a regional referral center for cost reporting periods beginning on or after October 1, 1986, and before October 1, 1989.''

BUDGET-NEUTRAL IMPLEMENTATION

Section 9302(d)(3) of Pub. L. 99–509 provided that: ''Paragraph (2) [set out as a note above] and the amendment made by paragraph (1)(A) [amending this section] shall be implemented in a manner that ensures that total payments under section 1886 of the Social Security Act [this section] are not increased or decreased by reason of the classifications required by such paragraph or amendment.''

PROMULGATION OF NEW RATE

Section 9302(f) of Pub. L. 99–509 provided that: ''The Secretary of Health and Human Services shall provide, within 30 days after the date of the enactment of this Act [Oct. 21, 1986], for the publication of the payments rates that will apply under section 1886 of the Social Security Act [this section], for discharges occurring on or after October 1, 1986, taking into account the amendments made by this section [amending this section], without regard to the provisions of chapter 5 of title 5, United States Code.''

MISCELLANEOUS ACCOUNTING PROVISION

Section 9307(d) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4008(e), Dec. 22, 1987, 101 Stat. 1330–56, provided that: ''Notwithstanding any other provision of law, for purposes of section 1886(d)(1)(A) of the Social Security Act [subsec. (d)(1)(A) of this section], in the case of a hospital that—

''(1) had a cost reporting period beginning on September 28, 29, or 30 of 1985,

''(2) is located in a State in which inpatient hospital services were paid in fiscal year 1985 pursuant to a Statewide demonstration project under section 402 of the Social Security Amendments of 1967 [section 402 of Pub. L. 90–248, enacting section 1395b–1 of this title and amending section 1395*ll* of this title] and section 222 of the Social Security Amendments of 1972 [section 222 of Pub. L. 92–603, amending sections 1395b–1 and 1395*ll* of this title and enacting provisions set out as a note under section 1395b–1 of this title], and

''(3) elects, by notice to the Secretary of Health and Human Services by not later than April 1, 1988, to have this subsection apply,

during the first 7 months of such cost reporting period the 'target percentage' shall be 75 percent and the 'DRG percentage' shall be 25 percent, and during the remaining 5 months of such period the 'target percentage' and the 'DRG percentage' shall each be 50 percent.''

[Section 4008(e) of Pub. L. 100–203 provided that the amendment of section 9307(d) of Pub. L. 99–509, set out above, by section 4008(e) of Pub. L. 100–203 is effective as if included in the enactment of Pub. L. 99–509.]

TREATMENT OF CAPITAL-RELATED REGULATIONS

Section 9321(c) of Pub. L. 99–509, as amended by Pub. L. 100–119, title I, § 107(a)(2), Sept. 29, 1987, 101 Stat. 783; Pub. L. 100–203, title IV, § 4009(j)(6)(D), (F), Dec. 22, 1987, 101 Stat. 1330–59, provided that:

''(1) PROHIBITION OF ISSUANCE OF FINAL REGULATIONS ON CAPITAL-RELATED COSTS AS PART OF PAYMENT FOR OPERATING COSTS BEFORE NOVEMBER 21, 1987.—Notwithstanding any other provision of law (except as provided in paragraph (3)), the Secretary of Health and Human Services may not issue, in final form, after September 1, 1986, and before November 21, 1987, any regulation that changes the methodology for computing the amount of payment for capital-related costs (as defined in paragraph (4)) for inpatient hospital services under part A of title XVIII of the Social Security Act [part A of this subchapter]. Any regulation published in violation of the previous sentence is void and of no effect.

''(2) NOT INCLUDING CAPITAL-RELATED REGULATIONS IN BUDGET BASELINE.—Any reference in law to a regulation issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act [subsecs. (b)(3)(B), (d)(3)(A), and (e)(4) of this section] shall not include any regulation issued or proposed with respect to capital-related costs (as defined in paragraph (4)).

''(3) EXCEPTION.—Paragraph (1) shall not apply to any regulation issued for the sole purpose of implementing section 1861(v)(1)(O) and 1886(g)(2) of the Social Security Act [section 1395x(v)(1)(O) of this title and subsec. (g)(2) of this section] and section 1886(g)(3)(A) and (B) of the Social Security Act [subsec. (g)(3)(A) and (B) of this section] (as amended by section 9303(a) of this Act).

''(4) CAPITAL-RELATED COSTS DEFINED.—In this subsection, the term 'capital-related costs' means those capital-related costs that are specifically excluded, under the second sentence of section 1886(a)(4) of the Social Security Act [subsec. (a)(4) of this section], from the term 'operating costs of inpatient hospital services' (as defined in that section) for cost reporting periods beginning prior to October 1, 1987.''

LIMITATION ON AUTHORITY TO ISSUE CERTAIN FINAL REGULATIONS AND INSTRUCTIONS RELATING TO HOSPITALS OR PHYSICIANS

Section 9321(d) of Pub. L. 99–509 provided that: ''Notwithstanding any other provision of law, except as required to implement specific provisions required under statute and except as provided under subsection (c) [set out above] with respect to a regulation described in that subsection, the Secretary of Health and Human Services is not authorized to issue in final form after the date of the enactment of this Act [Oct. 21, 1986] and before September 1, 1987, any regulation, instruction, or other policy which is estimated by the Secretary to result in a net reduction in expenditures under title XVIII of the Social Security Act [this subchapter] in fiscal year 1988 of more than $50,000,000, and which relates to hospitals or physicians.''

STUDY OF METHODOLOGY FOR AREA WAGE ADJUSTMENT FOR CENTRAL CITIES; REPORT TO CONGRESS

Section 9103(b) of Pub. L. 99–272 provided that:

''(1) The Secretary of Health and Human Services, in consultation with the Prospective Payment Assessment Commission, shall collect information and shall develop one or more methodologies to permit the adjustment of the wage indices used for purposes of sections 1886(d)(2)(C)(ii), 1886(d)(2)(H), and 1886(d)(3)(E) of the Social Security Act [subsec. (d)(2)(C)(ii), (H), and (3)(E) of this section], in order to more accurately reflect hospital labor markets, by taking into account variations in wages and wage-related costs between the central city portion of urban areas and other parts of urban areas.

''(2) The Secretary shall report to Congress on the information collected and the methodologies developed under paragraph (1) not later than May 1, 1987. The report shall include a recommendation as to the feasibility and desirability of implementing such methodologies.''

CONTINUATION OF MEDICARE REIMBURSEMENT WAIVERS FOR CERTAIN HOSPITALS PARTICIPATING IN REGIONAL HOSPITAL REIMBURSEMENT DEMONSTRATIONS

Section 9108 of Pub. L. 99–272 provided that:

''(a) CONTINUATION OF WAIVERS.—A hospital reimbursement control system which, on January 1, 1985, was carrying out a demonstration under a contract which had been approved by the Secretary of Health and Human Services pursuant to section 222(a) of the Social Security Amendments of 1972 [section 222(a) of Pub. L. 92–603, set out as a note under section 1395b–1 of this title], or under section 402 of the Social Security Amendments of 1967 (as amended by section 222(b) of the Social Security Amendments of 1972) [section 1395b–1 of this title], shall be deemed to meet the requirements of section 1886(c)(1)(A) of the Social Secu-

rity Act [subsec. (c)(1)(A) of this section] if such system applies—

''(1) to substantially all non-Federal acute care hospitals (as defined by the Secretary) in the geographic area served by such system on January 1, 1985, and

''(2) to the review of at least 75 percent of—

''(A) all revenues or expenses in such geographic area for inpatient hospital services, and

''(B) revenues or expenses in such geographic area for inpatient hospital services provided under the State's plan approved under title XIX [subchapter XIX of this chapter].

''(b) APPROVAL.—In the case of a hospital cost control system described in subsection (a), the requirements of section 1886(c) of the Social Security Act [subsec. (c) of this section] which apply to States shall instead apply to such system and, for such purposes, any reference to a State is deemed a reference to such system.

''(c) EFFECTIVE DATE.—This section shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

INFORMATION ON IMPACT OF PPS PAYMENTS ON HOSPITALS

Section 9114 of Pub. L. 99–272 provided that:

''(a) DISCLOSURE OF INFORMATION.—The Secretary of Health and Human Services shall make available to the Prospective Payment Assessment Commission, the Congressional Budget Office, the Comptroller General, and the Congressional Research Service the most current information on the payments being made under section 1886 of the Social Security Act [this section] to individual hospitals. Such information shall be made available in a manner that permits examination of the impact of such section on hospitals.

''(b) CONFIDENTIALITY.—Information disclosed under subsection (a) shall be treated as confidential and shall not be subject to further disclosure in a manner that permits the identification of individual hospitals.''

SPECIAL RULES FOR IMPLEMENTATION OF HOSPITAL REIMBURSEMENT

Section 9115 of Pub. L. 99–272 provided that:

''(a) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this subpart and implementing the amendments made by this subpart [subpart A (§§ 9101–9115) of part 1 of subtitle A of title IX of Pub. L. 99–272, see Tables for classification].

''(b) USE OF INTERIM FINAL REGULATIONS.—The Secretary of Health and Human Services shall issue such regulations (on an interim or other basis) as may be necessary to implement this subpart and the amendments made by this subpart.''

APPOINTMENT OF ADDITIONAL MEMBERS TO PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Section 9127(b) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, § 1895(b)(8), Oct. 22, 1986, 100 Stat. 2933, provided that: ''The Director of the Congressional Office of Technology Assessment shall appoint the two additional members of the Prospective Payment Assessment Commission, as required by the amendment made by subsection (a) [amending this section], no later than 60 days after the date of the enactment of this Act [Apr. 7, 1986], for terms of three years, except that the Director may provide initially for such terms as will insure that (on a continuing basis) the terms of no more than eight members will expire in any one year.''

STUDIES BY SECRETARY; GAO STUDY; REPORT ON UNIFORMITY OF APPROVED FTE RESIDENT AMOUNTS; STUDY ON FOREIGN MEDICAL GRADUATES; ESTABLISHING PHYSICIAN IDENTIFIER SYSTEM; PAPERWORK REDUCTION

Section 9202(c)–(h) of Pub. L. 99–272, as amended by Pub. L. 100–203, title IV, § 4085(f), Dec. 22, 1987, 101 Stat. 1330–131; Pub. L. 101–508, title IV, § 4118(i)(2), Nov. 5, 1990, 104 Stat. 1388–70, provided that:

''(c) STUDIES BY SECRETARY.—(1) The Secretary of Health and Human Services shall conduct a study with respect to approved educational activities relating to nursing and other health professions for which reimbursement is made to hospitals under title XVIII of the Social Security Act [this subchapter]. The study shall address—

''(A) the types and numbers of such programs, and number of students supported or trained under each program;

''(B) the fiscal and administrative relationships between the hospitals involved and the schools with which the programs and students are affiliated; and

''(C) the types and amounts of expenses of such programs for which reimbursement is made, and the financial and other contributions which accrue to the hospital as a consequence of having such programs.

The Secretary shall report the results of such study to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives prior to December 31, 1987.

''(2) The Secretary shall conduct a separate study of the advisability of continuing or terminating the exception under section 1886(h)(5)(F)(ii) of the Social Security Act [subsec. (h)(5)(F)(ii) of this section] for geriatric residencies and fellowships, and of expanding such exception to cover other educational activities, particularly those which are necessary to meet the projected health care needs of Medicare beneficiaries. Such study shall also examine the adequacy of the supply of faculty in the field of geriatrics. The Secretary shall report the results of such study to the committees described in paragraph (1) prior to July 1, 1990.

''(d) GAO STUDY.—(1) The Comptroller General shall conduct a study of the variation in the amounts of payments made under title XVIII of the Social Security Act [this subchapter] with respect to patients in different teaching hospital settings and in the amounts of such payments which are made with respect to patients who are treated in teaching and nonteaching hospital settings. Such study shall identify the components of such payments (including payments with respect to inpatient hospital services, physicians' services, and capital costs, and, in the case of teaching hospital patients, payments with respect to direct and indirect teaching costs) and shall account, to the extent feasible, for any variations in the amounts of the payment components between teaching and nonteaching settings and among different teaching settings.

''(2) In carrying out such study, the Comptroller General may utilize a sample of hospital patients and any other data sources which he deems appropriate, and shall, to the extent feasible, control for differences in severity of illness levels, area wage levels, levels of physician reasonable charges for like services and procedures, and for other factors which could affect the comparability of patients and of payments between teaching and nonteaching settings and among teaching settings. The information obtained in the study shall be coordinated with the information obtained in conducting the study of teaching physicians' services under section 2307(c) of the Deficit Reduction Act of 1984 [section 2307(c) of Pub. L. 98–369, set out as a note under section 1395u of this title].

''(3) The Comptroller General shall report the results of the study to the committees described in subsection (c)(1) prior to December 31, 1987.

''(e) REPORT ON UNIFORMITY OF APPROVED FTE RESIDENT AMOUNTS.—The Secretary of Health and Human Services shall report to the committees described in subsection (c)(1), not later than December 31, 1987, on whether section 1886(h) of the Social Security Act [subsec. (h) of this section] should be revised to provide for greater uniformity in the approved FTE resident amounts established under paragraph (2) of that section, and, if so, how such revisions should be implemented.

''(f) STUDY ON FOREIGN MEDICAL GRADUATES.—The Secretary of Health and Human Services shall study, and report to the committees described in subsection (c)(1), not later than December 31, 1987, respecting the use of physicians who are foreign medical graduates (within the meaning of section 1886(h)(5)(D) of the Social Security Act [subsec. (h)(5)(D) of this section]) in the provision of health care services (particularly inpatient and outpatient hospital services) to medicare beneficiaries. Such study shall evaluate—

''(1) the types of services provided;

''(2) the cost of providing such services, relative to the cost of other physicians providing the services or other approaches to providing the services;

''(3) any deficiencies in the quality of the services provided, and methods of assuring the quality of such services; and

''(4) the impact on costs of and access to services if medicare payment for hospitals' costs of graduate medical education of foreign medical graduates were phased out.

''[(g) Repealed. Pub. L. 101–508, title IV, §4118(i)(2), Nov. 5, 1990, 104 Stat. 1388–70.]

''(h) PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this section and the amendments made by this section [amending this section and section 1395x of this title and enacting notes set out under this section and section 1395x of this title].''

SPECIAL TREATMENT OF STATES FORMERLY UNDER WAIVER

Section 9202(j) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, §1895(b)(10), Oct. 22, 1986, 100 Stat. 2933, provided that: ''In the case of a hospital in a State that has had a waiver approved under section 1886(c) of the Social Security Act [subsec. (c) of this section] or section 402 of the Social Security Amendments of 1967 [section 1395b–1 of this title], for cost reporting periods beginning on or after January 1, 1986, if the waiver is terminated—

''(1) the Secretary of Health and Human Services shall permit the hospital to change the method by which it allocates administrative and general costs to the direct medical education cost centers to the method specified in the medicare cost report;

''(2) the Secretary may make appropriate adjustments in the regional adjusted DRG prospective payment rate (for the region in which the State is located), based on the assumption that all teaching hospitals in the State use the medicare cost report; and

''(3) the Secretary shall adjust the hospital-specific portion of payment under section 1886(d) of such Act [subsec. (d) of this section] for any such hospital that actually chooses to use the medicare cost report.

The Secretary shall implement this subsection based on the best available data.''

MORATORIUM ON LABORATORY PAYMENT DEMONSTRATIONS; COOPERATION IN STUDY; REPORT TO CONGRESS

Section 9204 of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9339(e), Oct. 21, 1986, 100 Stat. 2037; Pub. L. 100–203, title IV, §4085(c), Dec. 22, 1987, 101 Stat. 1330–130; Pub. L. 100–647, title VIII, §8426, Nov. 10, 1988, 102 Stat. 3803, provided that:

''(a) MORATORIUM.—Prior to January 1, 1990, the Secretary of Health and Human Services shall not conduct any demonstration projects relating to competitive bidding as a method of purchasing laboratory services under title XVIII of the Social Security Act [this subchapter]. The Secretary may contract for the design of, and site selection for, such demonstration projects.

''(b) COOPERATION IN STUDY.—The Secretary of Health and Human Services and the Comptroller General shall assist representatives of clinical laboratories in the industry's conduct of a study to determine whether methods exist which are better than competitive bidding for purposes of utilizing competitive market forces in setting payment levels for laboratory services under title XVIII of the Social Security Act [this subchapter]. If such a study is conducted by the clinical laboratory industry, the Secretary and the Comptroller General shall comment on such study and submit such comments and the study to the Senate Committee on Finance and the House Committees on Ways and Means and Energy and Commerce.''

MEDICARE HOSPITAL AND PHYSICIAN PAYMENT PROVISIONS; EXTENSION PERIOD

Pub. L. 99–107, §5, Sept. 30, 1985, 99 Stat. 479, as amended by Pub. L. 99–155, §2(d), Nov. 14, 1985, 99 Stat. 814; Pub. L. 99–181, §4, Dec. 13, 1985, 99 Stat. 1172; Pub. L. 99–189, §4, Dec. 18, 1985, 99 Stat. 1184; Pub. L. 99–201, §2, Dec. 23, 1985, 99 Stat. 1665; Pub. L. 99–272, title IX, §§9101(a), 9301(a), Apr. 7, 1986, 100 Stat. 153, 184, provided that:

''(a) MAINTAINING EXISTING HOSPITAL PAYMENT RATES.—Notwithstanding any other provision of law, the amount of payment under section 1886 of the Social Security Act [this section] for inpatient hospital services for discharges occurring (and cost reporting periods beginning) during the extension period (as defined in subsection (c)) shall be determined on the same basis as the amount of payment for such services for a discharge occurring on (or the cost reporting period beginning immediately on or before) September 30, 1985.

''(b) MAINTAINING EXISTING PAYMENT RATES FOR PHYSICIANS' SERVICES.—Notwithstanding any other provision of law, the amount of payment under part B of title XVIII of the Social Security Act [part B of this subchapter] for physicians' services which are furnished during the extension period (as defined in subsection (c)) shall be determined on the same basis as the amount of payment for such services furnished on September 30, 1985, and the 15-month period, referred to in section 1842(j)(1) of such Act [section 1395u(j)(1) of this title], shall be deemed to include the extension period.

''(c) EXTENSION PERIOD DEFINED.—

''(1) HOSPITAL PAYMENTS.—For purposes of subsection (a), the term 'extension period' means the period beginning on October 1, 1985, and ending on April 30, 1986.

''(2) PHYSICIAN PAYMENTS.—For purposes of subsection (b), the term 'extension period' means the period beginning on October 1, 1985, and ending on April 30, 1986.''

[Amendment of section 5 of Pub. L. 99–107, set out above, by section 9101(a) of Pub. l. 99–272 effective Mar. 15, 1986, see section 9101(d) of Pub. L. 99–272, set out above.]

DEFINITION OF HOSPITAL SERVING SIGNIFICANTLY DISPROPORTIONATE NUMBER OF LOW-INCOME PATIENTS OR PATIENTS ENTITLED TO HOSPITAL INSURANCE BENEFITS FOR AGED AND DISABLED; IDENTIFICATION

Section 2315(h) of Pub. L. 98–369 provided that: ''The Secretary of Health and Human Services shall, prior to December 31, 1984—

''(1) develop and publish a definition of 'hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A' of title XVIII of the Social Security Act [part A of this subchapter] for purposes of section 1886(d)(5)(C)(i) of that Act [subsec. (d)(5)(C)(i) of this section], and

''(2) identify those hospitals which meet such definition, and make such identity available to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.''

PROSPECTIVE PAYMENT WAGE INDEX; STUDIES AND REPORTS TO CONGRESS

Section 2316 of Pub. L. 98–369, as amended by Pub. L. 99–272, title IX, §9103(a)(1), Apr. 7, 1986, 100 Stat. 156, provided that:

''(a) The Secretary of Health and Human Services, in consultation with the Secretary of Labor, shall conduct

a study to develop an appropriate index for purposes of adjusting payment amounts under section 1886(d) of the Social Security Act [subsec. (d) of this section] to reflect area differences in average hospital wage levels, as required under paragraphs (2)(H) and (3)(E) of such section [subsec. (d)(2)(H) and (3)(E) of this section], taking into account wage differences of full time and part time workers. The Secretary of Health and Human Services shall report the results of such study to the Congress not later than 30 days after the date of the enactment of this Act [July 18, 1984], including any changes which the Secretary determines to be necessary to provide for an appropriate index.

''(b) The Secretary shall adjust the payment amounts for hospitals for discharges occurring on or after May 1, 1986, to reflect the changes the Secretary has promulgated in final regulations (on September 3, 1985) relating to the hospital wage index under section 1886(d)(3)(E) of the Social Security Act [subsec. (d)(3)(E) of this section]. For discharges occurring after September 30, 1986, the Secretary shall provide for such periodic adjustments in the appropriate wage index used under that section as may be necessary, taking into account changes in the wage levels and relative proportions of full-time and part-time workers.

''(c) The Secretary shall conduct a study and report to the Congress on proposed criteria under which, in the case of a hospital that demonstrates to the Secretary in a current fiscal year that the adjustment being made under paragraph (2)(H) or (3)(E) of section 1886(d) of the Social Security Act [subsec. (d)(2)(H) or (3)(E) of this section] for that hospital's discharges in that fiscal year does not accurately reflect the wage levels in the labor market serving the hospital, the Secretary, to the extent he deems appropriate, would modify such adjustment for that hospital for discharges in the subsequent fiscal year to take into account a difference in payment amounts in that current fiscal year to the hospital that resulted from such inaccuracy.''

[Section 9103(a)(2) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this note] shall be effective as if it had been included in the Deficit Reduction Act of 1984 [Pub. L. 98–369].'']

DIFFERENT TREATMENT OF CAPITAL-PROJECTS-RELATED COSTS BEFORE AND AFTER IMPLEMENTATION OF SYSTEM FOR INCLUDING SUCH COSTS UNDER PROSPECTIVELY DETERMINED PAYMENT RATE

Section 601(a)(3) of Pub. L. 98–21 provided that: ''It is the intent of Congress that, in considering the implementation of a system for including capital-related costs under a prospectively determined payment rate for inpatient hospital services, costs related to capital projects for which expenditures are obligated on or after the effective date of the implementation of such a system, may or may not be distinguished and treated differently from costs of projects for which expenditures were obligated before such date.''

NEW ENGLAND HOSPITALS; CLASSIFICATION AS URBAN OR RURAL

Section 601(g) of Pub. L. 98–21 provided that: ''In determining whether a hospital is in an urban or rural area for purposes of section 1886(d) of the Social Security Act [subsec. (d) of this section], the Secretary of Health and Human Services shall classify any hospital located in New England as being located in an urban area if such hospital was classified as being located in an urban area under the Standard Metropolitan Statistical Area system of classification in effect in 1979.''

REPORTS, EXPERIMENTS, AND DEMONSTRATION PROJECTS RELATED TO INCLUSION IN PROSPECTIVE PAYMENT AMOUNTS OF INPATIENT HOSPITAL SERVICE CAPITAL-RELATED COSTS

Section 603(a) of title VI of Pub. L. 98–21, as amended by Pub. L. 98–369, div. B, title III, § 2317, July 18, 1984, 98 Stat. 1081; Pub. L. 99–509, title IX, § 9305(i)(1), Oct. 21, 1986, 100 Stat. 1993, provided that:

''(1) The Secretary of Health and Human Services (hereinafter in this title referred to as the 'Secretary') shall study, develop, and report to the Congress within 18 months after the date of the enactment of this Act [Apr. 20, 1983] on the method and proposals for legislation by which capital-related costs, such as return on net equity, associated with inpatient hospital services can be included within the prospective payment amounts computed under section 1886(d) of the Social Security Act [subsec. (d) of this section].

''(2)(A) The Secretary shall study and report annually to the Congress at the end of each year (beginning with 1984 and ending with 1989) on the impact, of the payment methodology under section 1886(d) of the Social Security Act [subsec. (d) of this section] during the previous year, on classes of hospitals, beneficiaries, and other payors for inpatient hospital services, and other providers, and, in particular, on the impact of computing DRG prospective payment rates by census division, rather than exclusively on a national basis. Each such report shall include such recommendations for such changes in legislation as the Secretary deems appropriate.

''(B) During fiscal year 1984, the Secretary shall begin the collection of data necessary to compute the amount of physician charges attributable, by diagnosis-related groups, to physicians' services furnished to inpatients of hospitals whose discharges are classified within those groups. The Secretary shall submit to Congress, not later than July 1, 1985, a report to Congress which includes recommendations on the advisability and feasibility of providing for determining the amount of the payments for physicians' services furnished to hospital inpatients based on the DRG type classification of the discharges of those inpatients, and legislative recommendations thereon.

''(C) In the annual report to Congress under subparagraph (A) for 1985, the Secretary shall include the results of studies on—

''(i) the feasibility and impact of eliminating or phasing out separate urban and rural DRG prospective payment rates under paragraph (3) of section 1886(d) of the Social Security Act [subsec. (d)(3) of this section];

''(ii) whether and the method under which hospitals, not paid based on amounts determined under such section, can be paid for inpatient hospital services on a prospective basis as under such section;

''(iii) the appropriateness of the factors used under paragraph (5)(A) of such section to compensate hospitals for the additional expenses of outlier cases, and the application of severity of illness, intensity of care, or other modifications to the diagnosis-related groups, and the advisability and feasibility of providing for such modifications;

''(iv) the feasibility and desirability of applying the payment methodology under such section to payment by all payors for inpatient hospital services; and

''(v) the impact of such section on hospital admissions and the feasibility of making a volume adjustment in the DRG prospective payment rates or requiring preadmission certification in order to minimize the incentive to increase admissions.

Such report shall specifically include, with respect to the item described in clause (iv), consideration of the extent of cost-shifting to non-Federal payors and the impact of such cost-shifting on health insurance costs and premiums borne by employers and employees.

''(D) In the annual report to Congress under subparagraph (A) for 1986, the Secretary shall include the results of a study examining the overall impact of State systems of hospital payment (either approved under section 1886(c) of the Social Security Act [subsec. (c) of this section] or under a waiver approved under section 402(a) of the Social Security Amendments of 1967 [section 1395b–1(a) of this title] or section 222(a) of the Social Security Amendments of 1972) [Pub. L. 92–603, set out as a note under 1395b–1 of this title], particularly assessing such systems' impact not only on the medicare program but also on the medicaid program, on

payments and premiums under private health insurance plans, and on tax expenditures.

''(E) In each annual report to Congress under subparagraph (A), the Secretary shall include—

''(i) an evaluation of the adequacy of the procedures for assuring quality of post-hospital services furnished under title XVIII of the Social Security Act [this subchapter],

''(ii) an assessment of problems that have prevented groups of medicare beneficiaries (including those eligible for medical assistance under title XIX of such Act [subchapter XIX of this chapter]) from receiving appropriate post-hospital services covered under such title, and

''(iii) information on reconsiderations and appeals taken under title XVIII of such Act [this subchapter] with respect to payment for post-hospital services.

''(3)(A) The Secretary shall complete a study and make legislative recommendations to the Congress with respect to an equitable method of reimbursing sole community hospitals which takes into account their unique vulnerability to substantial variations in occupancy.

''(B) In addition, the Secretary shall examine ways to coordinate an information transfer between parts A and B of title XVIII of the Social Security Act [parts A and B of this subchapter], particularly with respect to those cases where a denial of coverage is made under part A of such title and no adjustment is made in the reimbursement to the admitting physician or physicians.

''(C) The Secretary shall also report on the appropriate treatment of uncompensated care costs, and adjustments that might be appropriate for large teaching hospitals located in rural areas.

''(D) The Secretary shall also report on the advisability of having hospitals make available information on the cost of care to patients financed by both public programs and private payors.

''(E) The studies and reports described in this paragraph shall be completed and submitted not later than April 1, 1985.

''(4) The Secretary shall complete a study and make recommendations to the Congress, before April 1, 1984, with respect to a method for including hospitals located outside of the fifty States and the District of Columbia under a prospective payment system.''

[Section 9305(i)(2) of Pub. L. 99–509 provided that: ''The amendment made by paragraph (1)(B) [amending section 603(a) of Pub. L. 98–21, set out above] shall apply to reports for years beginning with 1986.'']

INAPPLICABILITY OF COORDINATION OF FEDERAL INFORMATION POLICY TO THE COLLECTION OF INFORMATION

Section 101(b)(2)(B) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 309(a)(1), Jan. 12, 1983, 96 Stat. 2408, provided that: ''Chapter 35 of title 44, United States Code, shall not apply, until January 1, 1984, to collection of information and information collection requests which the Secretary of Health and Human Services determines to be necessary to carry out the amendments made by this section [amendments by section 101(a) of Pub. L. 97–248, enacting this section and amending section 1395x of this title].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 256b, 1320a–7, 1320a–7a, 1395d, 1395e, 1395f, 1395*g*, 1395h, 1395i–4, 1395k, 1395*l*, 1395m, 1395n, 1395w–1, 1395x, 1395y, 1395cc, 1395mm, 1395*oo*, 1395rr, 1395tt, 1395xx, 1395yy, 1396r–4 of this title; title 5 section 8904; title 10 section 1101.

§ 1395xx. Payment of provider-based physicians and payment under certain percentage arrangements

(a) Criteria; amount of payments

(1) The Secretary shall by regulation determine criteria for distinguishing those services (including inpatient and outpatient services) rendered in hospitals or skilled nursing facilities—

(A) which constitute professional medical services, which are personally rendered for an individual patient by a physician and which contribute to the diagnosis or treatment of an individual patient, and which may be reimbursed as physicians' services under part B, and

(B) which constitute professional services which are rendered for the general benefit to patients in a hospital or skilled nursing facility and which may be reimbursed only on a reasonable cost basis or on the bases described in section 1395ww of this title.

(2)(A) For purposes of cost reimbursement, the Secretary shall recognize as a reasonable cost of a hospital or skilled nursing facility only that portion of the costs attributable to services rendered by a physician in such hospital or facility which are services described in paragraph (1)(B), apportioned on the basis of the amount of time actually spent by such physician rendering such services.

(B) In determining the amount of the payments which may be made with respect to services described in paragraph (1)(B), after apportioning costs as required by subparagraph (A), the Secretary may not recognize as reasonable (in the efficient delivery of health services) such portion of the provider's costs for such services to the extent that such costs exceed the reasonable compensation equivalent for such services. The reasonable compensation equivalent for any service shall be established by the Secretary in regulations.

(C) The Secretary may, upon a showing by a hospital or facility that it is unable to recruit or maintain an adequate number of physicians for the hospital or facility on account of the reimbursement limits established under this subsection, grant exceptions to such reimbursement limits as may be necessary to allow such provider to provide a compensation level sufficient to provide adequate physician services in such hospital or facility.

(b) Prohibition of recognition of payments under certain percentage agreements

(1) Except as provided in paragraph (2), in the case of a provider of services which is paid under this subchapter on a reasonable cost basis, or other basis related to costs that are reasonable, and which has entered into a contract for the purpose of having services furnished for or on behalf of it, the Secretary may not include any cost incurred by the provider under the contract if the amount payable under the contract by the provider for that cost is determined on the basis of a percentage (or other proportion) of the provider's charges, revenues, or claim for reimbursement.

(2) Paragraph (1) shall not apply—

(A) to services furnished by a physician and described in subsection (a)(1)(B) of this section and covered by regulations in effect under subsection (a) of this section, and

(B) under regulations established by the Secretary, where the amount involved under the percentage contract is reasonable and the contract—

(i) is a customary commercial business practice, or

(ii) provides incentives for the efficient and economical operation of the provider of services.

(Aug. 14, 1935, ch. 531, title XVIII, § 1887, as added and amended Sept. 3, 1982, Pub. L. 97–248, title I, §§ 108(a)[(1)], 109(a), 96 Stat. 337, 338; Apr. 20, 1983, Pub. L. 98–21, title VI, § 602(j), 97 Stat. 165.)

AMENDMENTS

1983—Subsec. (a)(1)(B). Pub. L. 98–21 inserted ''or on the bases described in section 1395ww of this title''.

1982—Subsec. (b). Pub. L. 97–248, § 109(a)(2), added subsec. (b).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to items and services furnished by or under arrangement with a hospital beginning with its first cost reporting period that begins on or after Oct. 1, 1983, any change in a hospital's cost reporting period made after November 1982 to be recognized for such purposes only if the Secretary finds good cause therefor, see section 604(a)(1) of Pub. L. 98–21, set out as a note under section 1395ww of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 109(c)(1), (2) of Pub. L. 97–248 provided that:

''(1) The amendments made by this section [amending this section and section 1395x of this title] shall become effective on the date of the enactment of this Act [Sept. 3, 1982], except that section 1887(b)(1) of the Social Security Act [subsec. (b)(1) of this section] shall not apply before October 1, 1982, to services furnished by a physician and described in section 1887(a)(1)(B) of such Act [subsec. (a)(1)(B) of this section].

''(2) In the case of a contract with a provider of services entered into prior to the date of the enactment of this Act [Sept. 3, 1982], the amendment made by subsection (a) [amending this section] shall apply to payments under such contract (A) 30 days after the first date (after such date of enactment) the provider of services may unilaterally terminate the contract, or (B) one year after the date of the enactment of this Act, whichever is earlier.''

EFFECTIVE DATE OF REGULATIONS

Section 108(b), formerly § 108(c), of Pub. L. 97–248, as redesignated by Pub. L. 97–448, title III, § 309(a)(3), Jan. 12, 1983, 96 Stat. 2408, provided that: ''The Secretary of Health and Human Services shall first promulgate regulations to carry out section 1887(a) of the Social Security Act [subsec. (a) of this section] not later than October 1, 1982. Such regulations shall become effective on October 1, 1982, and shall be effective with respect to cost reporting periods ending after September 30, 1982, but in the case of any cost reporting period beginning before October 1, 1982, any reduction in payments under title XVIII of the Social Security Act [this subchapter] to a hospital or skilled nursing facility resulting from such regulations shall be imposed only in proportion to the part of the period which occurs after September 30, 1982.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1395x of this title.

§ 1395yy. Payment to skilled nursing facilities for routine service costs

(a) Per diem limitations

The Secretary, in determining the amount of the payments which may be made under this subchapter with respect to routine service costs of extended care services shall not recognize as reasonable (in the efficient delivery of health services) per diem costs of such services to the extent that such per diem costs exceed the following per diem limits, except as otherwise provided in this section:

(1) With respect to freestanding skilled nursing facilities located in urban areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in urban areas.

(2) With respect to freestanding skilled nursing facilities located in rural areas, the limit shall be equal to 112 percent of the mean per diem routine service costs for freestanding skilled nursing facilities located in rural areas.

(3) With respect to hospital-based skilled nursing facilities located in urban areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in urban areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in urban areas exceeds the limit for freestanding skilled nursing facilities located in urban areas.

(4) With respect to hospital-based skilled nursing facilities located in rural areas, the limit shall be equal to the sum of the limit for freestanding skilled nursing facilities located in rural areas, plus 50 percent of the amount by which 112 percent of the mean per diem routine service costs for hospital-based skilled nursing facilities located in rural areas exceeds the limit for freestanding skilled nursing facilities located in rural areas.

In applying this subsection the Secretary shall make appropriate adjustments to the labor related portion of the costs based upon an appropriate wage index, and shall, for cost reporting periods beginning on or after October 1, 1992, on or after October 1, 1995, and every 2 years thereafter, provide for an update to the per diem cost limits described in this subsection [1]

(b) Excess overhead allocations for hospital-based facilities

With respect to a hospital-based skilled nursing facility, the Secretary may not recognize as reasonable the portion of the cost differences between hospital-based and freestanding skilled nursing facilities attributable to excess overhead allocations.

(c) Adjustments in limitations; publication of data

The Secretary may make adjustments in the limits set forth in subsection (a) of this section with respect to any skilled nursing facility to the extent the Secretary deems appropriate, based upon case mix or circumstances beyond the control of the facility. The Secretary shall publish the data and criteria to be used for purposes of this subsection on an annual basis.

(d) Access to skilled nursing facilities

(1) Any skilled nursing facility may choose to be paid under this subsection on the basis of a

[1] So in original. Probably should be followed by a period.

prospective payment for all routine service costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) and capital-related costs of extended care services provided in a cost reporting period if such facility had, in the preceding cost reporting period, fewer than 1,500 patient days with respect to which payments were made under this subchapter. Such prospective payment shall be in lieu of payments which would otherwise be made for routine service costs pursuant to section 1395x(v) of this title and subsections (a) through (c) of this section and capital-related costs pursuant to section 1395x(v) of this title. This subsection shall not apply to a facility for any cost reporting period immediately following a cost reporting period in which such facility had 1,500 or more patient days with respect to which payments were made under this subchapter, without regard to whether payments were made under this subsection during such preceding cost reporting period.

(2)(A) The amount of the payment under this section shall be determined on a per diem basis.

(B) Subject to the limitations of subparagraph (C), for skilled nursing facilities located—

(i) in an urban area, the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service and capital-related costs of extended care services for skilled nursing facilities in urban areas within the same region, determined without regard to the limitations of subsection (a) of this section and adjusted for different area wage levels, and

(ii) in a rural area the amount shall be equal to 105 percent of the mean of the per diem reasonable routine service and capital-related costs of extended care services for skilled nursing facilities in rural areas within the same region, determined without regard to the limitations of subsection (a) of this section and adjusted for different area wage levels.

(C) The per diem amounts determined under subparagraph (B) shall not exceed the limit on routine service costs determined under subsection (a) of this section with respect to the facility, adjusted to take into account average capital-related costs with respect to the type and location of the facility.

(3) For purposes of this subsection, urban and rural areas shall be determined in the same manner as for purposes of subsection (a) of this section, and the term ''region'' shall have the same meaning as under section 1395ww(d)(2)(D) of this title.

(4) The Secretary shall establish the prospective payment amounts for cost reporting periods beginning in a fiscal year at least 90 days prior to the beginning of such fiscal year, on the basis of the most recent data available for a 12-month period. A skilled nursing facility must notify the Secretary of its intention to be paid pursuant to this subsection for a cost reporting period no later than 30 days before the beginning of that period.

(5) The Secretary shall provide for a simplified cost report to be filed by facilities being paid pursuant to this subsection, which shall require only the cost information necessary for determining prospective payment amounts pursuant to paragraph (2) and reasonable costs of ancillary services.

(6) In lieu of payment on a cost basis for ancillary services provided by a facility which is being paid pursuant to this subsection, the Secretary may pay for such ancillary services on a reasonable charge basis if the Secretary determines that such payment basis will provide an equitable level of reimbursement and will ease the reporting burden of the facility.

(7) In computing the rates of payment to be made under this subsection, there shall be taken into account the costs described in the last sentence of section 1395x(v)(1)(E) of this title (relating to compliance with nursing facility requirements and of conducting nurse aide training and competency evaluation programs and competency evaluation programs).

(Aug. 14, 1935, ch. 531, title XVIII, §1888, as added July 18, 1984, Pub. L. 98–369, div. B, title III, §2319(b), 98 Stat. 1082; amended Apr. 7, 1986, Pub. L. 99–272, title IX, §§9126(a), (b), 9219(b)(1)(C), 100 Stat. 168, 170, 182; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1895(b)(7)(A), (B), 100 Stat. 2933; Dec. 22, 1987, Pub. L. 100–203, title IV, §4201(b)(2), 101 Stat. 1330–174; Nov. 5, 1990, Pub. L. 101–508, title IV, §4008(e)(2), (h)(2)(A)(ii), 104 Stat. 1388–45, 1388–48; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13503(a)(2), (3)(A), 107 Stat. 578.)

AMENDMENTS

1993—Subsec. (a). Pub. L. 103–66, §13503(a)(2), inserted '', on or after October 1, 1995,'' after ''October 1, 1992'' in concluding provisions.

Subsec. (b). Pub. L. 103–66, §13503(a)(3)(A), substituted ''Secretary may not recognize'' for ''Secretary shall recognize'' and a period for ''(as determined by the Secretary) resulting from the reimbursement principles under this subchapter, notwithstanding the limits set forth in paragraph (3) or (4) of subsection (a) of this section.''

1990—Subsec. (a). Pub. L. 101–508, §4008(e)(2), struck out period at end and inserted '', and shall, for cost reporting periods beginning on or after October 1, 1992 and every 2 years thereafter, provide for an update to the per diem cost limits described in this subsection''.

Subsec. (d)(1). Pub. L. 101–508, §4008(h)(2)(A)(ii), substituted ''(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) and capital-related costs'' for ''(and capital-related costs)''.

1987—Subsec. (d)(7). Pub. L. 100–203 added par. (7).

1986—Subsec. (b). Pub. L. 99–272, §9219(b)(1)(C), substituted ''notwithstanding'' for ''nothwithstanding''.

Subsec. (c). Pub. L. 99–272, §9126(b), inserted provision requiring the Secretary to publish data and criteria to be used for purposes of this subsection on an annual basis.

Subsec. (d). Pub. L. 99–272, §9126(a), added subsec. (d).

Subsec. (d)(1). Pub. L. 99–514, §1895(b)(7)(A), substituted ''cost reporting period'' for ''fiscal year'' in five places.

Subsec. (d)(4). Pub. L. 99–514, §1895(b)(7)(B), substituted ''cost reporting periods beginning in a fiscal year'' for ''each fiscal year'' and ''cost reporting period no later than 30 days before the beginning of that period'' for ''fiscal year within 60 days after the Secretary establishes the final prospective payment amounts for such fiscal year''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13503(a)(3)(B) of Pub. L. 103–66 provided that: ''The amendments made by subparagraph (A) [amend-

ing this section] shall apply to cost reporting periods beginning on or after October 1, 1993.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4008(e)(3) of Pub. L. 101–508 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and provisions set out as a note below] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

Amendment by section 4008(h)(2)(A)(ii) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 4008(h)(2)(P) of Pub. L. 101–508, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1395i–3 of this title, see section 4204(a) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 1895(b)(7)(D) of Pub. L. 99–514 provided that: ''The amendments made by subparagraphs (A) and (B) [amending this section] apply to cost reporting periods beginning on or after October 1, 1986.''

Amendment by section 9219(b)(1)(C) of Pub. L. 99–272 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 9219(b)(1)(D) of Pub. L. 99–272, set out as a note under section 1395u of this title.

Section 9126(d) of Pub. L. 99–272, as amended by Pub. L. 99–514, title XVIII, §1895(b)(7)(C), Oct. 22, 1986, 100 Stat. 2933, provided that:

''(1) The amendment made by subsection (a) [amending this section] shall apply to cost reporting periods beginning on or after October 1, 1986.

''(2) The amendment made by subsection (b) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

EFFECTIVE DATE

Section 2319(c) of Pub. L. 98–369 provided that: ''The amendments made by subsections (a) [amending section 1395x of this title] and (b) [enacting this section] shall apply to cost reporting periods beginning on or after July 1, 1984.''

CONSTRUCTION OF WAGE INDEX FOR SKILLED NURSING FACILITIES

Pub. L. 103–432, title I, §106(a), Oct. 31, 1994, 108 Stat. 4405, provided that: ''Not later than 1 year after the date of the enactment of this Act [Oct. 31, 1994], the Secretary of Health and Human Services shall begin to collect data on employee compensation and paid hours of employment in skilled nursing facilities for the purpose of constructing a skilled nursing facility wage index adjustment to the routine service cost limits required under section 1888(a)(4) of the Social Security Act [subsec. (a)(4) of this section].''

NO CHANGE IN LIMITS ON PER DIEM SERVICE COSTS FOR EXTENDED CARE SERVICES FOR FISCAL YEARS 1994 AND 1995

Section 13503(a)(1) of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services may not provide for any change in the limits on per diem routine service costs for extended care services under section 1888 of the Social Security Act [this section] for cost reporting periods beginning during fiscal years 1994 and 1995, except as may be necessary to take into account the amendments made by paragraph (3)(A) [amending this section]. The effect of the preceding sentence shall not be considered by the Secretary in making adjustments pursuant to section 1888(c) of such Act to the payment limits for such services during such fiscal years.''

NO CHANGE IN PROSPECTIVE PAYMENTS FOR SERVICES FURNISHED DURING FISCAL YEARS 1994 AND 1995

Section 13503(b) of Pub. L. 103–66 provided that: ''The Secretary of Health and Human Services may not change the amount of any prospective payment paid to a skilled nursing facility under section 1888(d) of the Social Security Act [subsec. (d) of this section] for services furnished during cost reporting periods beginning during fiscal years 1994 and 1995, except as may be necessary to take into account the amendment made by subsection (c)(1)(A) [amending section 1395x of this title].''

PROSPECTIVE PAYMENT SYSTEM FOR SKILLED NURSING FACILITY SERVICES

Section 4008(k) of Pub. L. 101–508 provided that:

''(1) DEVELOPMENT OF PROPOSAL.—The Secretary of Health and Human Services shall develop a proposal to modify the current system under which skilled nursing facilities receive payment for extended care services under part A [part A of this subchapter] of the medicare program or a proposal to replace such system with a system under which such payments would be made on the basis of prospectively determined rates. In developing any proposal under this paragraph to replace the current system with a prospective payment system, the Secretary shall—

''(A) take into consideration the need to provide for appropriate limits on increases in expenditures under the medicare program without jeopardizing access to extended care services for individuals unable to care for themselves;

''(B) provide for adjustments to prospectively determined rates to account for changes in a facility's case mix, volume of cases, and the development of new technologies and standards of medical practice;

''(C) take into consideration the need to increase the payment otherwise made under such system in the case of services provided to patients whose length of stay or costs of treatment greatly exceed the length of stay or cost of treatment provided for under the applicable prospectively determined payment rate;

''(D) take into consideration the need to adjust payments under the system to take into account factors such as a disproportionate share of low-income patients, differences in wages and wage-related costs among facilities located in various geographic areas, and other factors the Secretary considers appropriate; and

''(E) take into consideration the appropriateness of classifying patients and payments upon functional disability, cognitive impairment, and other patient characteristics.

''(2) REPORTS.—(A) By not later than April 1, 1991, the Secretary (acting through the Administrator of the Health Care Financing Administration) shall submit any research studies to be used in developing the proposal under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

''(B) By not later than September 1, 1991, the Secretary shall submit the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

''(C) By not later than March 1, 1992, the Prospective Payment Assessment Commission shall submit an analysis of and comments on the proposal developed under paragraph (1) to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.''

USE OF MORE RECENT DATA REGARDING ROUTINE SERVICE COSTS OF SKILLED NURSING FACILITIES

Pub. L. 101–239, title VI, §6024, Dec. 19, 1989, 103 Stat. 2167, as amended by Pub. L. 101–508, title IV, §4008(e)(1),

Nov. 5, 1990, 104 Stat. 1388–45, provided that: ''The Secretary of Health and Human Services shall determine mean per diem routine service costs for freestanding and hospital based skilled nursing facilities under section 1888(a) of the Social Security Act [subsec. (a) of this section] for cost reporting periods beginning on or after October 1, 1989, in accordance with regulations published by the Secretary that require the use of cost reports submitted by skilled nursing facilities for cost reporting periods beginning not earlier than October 1, 1985. The Secretary shall update such costs under such section for cost reporting periods beginning on or after October 1, 1989, by using cost reports submitted by skilled nursing facilities for cost reporting periods ending not earlier than January 31, 1988, and not later than December 31, 1988.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395x, 1395tt of this title.

§ 1395zz. Repealed. Pub. L. 103–432, title I, § 171(j)(3), Oct. 31, 1994, 108 Stat. 4451

Section, act Aug. 14, 1935, ch. 531, title XVIII, § 1889, as added Nov. 5, 1990, Pub. L. 101–508, title IV, § 4361(a), 104 Stat. 1388–141, related to medicare and medigap information by telephone.

A prior section 1395zz, act Aug. 14, 1935, ch. 531, title XVIII, § 1889, formerly § 1833(f), as added Jan. 2, 1968, Pub. L. 90–248, title I, § 132(b), 81 Stat. 850, and amended Oct. 30, 1972, Pub. L. 92–603, title II, § 245(d), 86 Stat. 1424; Oct. 25, 1977, Pub. L. 95–142, § 16(a), 91 Stat. 1200; renumbered § 1889 and amended July 18, 1984, Pub. L. 98–369, div. B, title III, § 2321(d), 98 Stat. 1084, provided for purchase of durable medical equipment, covering (a) lease-purchase basis or rental and determination by Secretary, (b) waiver of coinsurance amount in purchase of used equipment, (c) reimbursement procedures, and (d) encouragement of lease-purchase basis, prior to repeal by Pub. L. 100–203, title IV, § 4062(d)(5), (e), Dec. 22, 1987, 101 Stat. 1330–109, applicable to covered items (other than oxygen and oxygen equipment) furnished on or after Jan. 1, 1989, and to oxygen and oxygen equipment furnished on or after June 1, 1989.

EFFECTIVE DATE OF REPEAL

Repeal effective as if included in the enactment of Pub. L. 101–508, see section 171(*l*) of Pub. L. 103–432, set out as an Effective Date of 1994 Amendment note under section 1395ss of this title.

§ 1395aaa. Transferred

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XVIII, § 1890, as added Aug. 18, 1987, Pub. L. 100–93, § 10, 101 Stat. 696, which related to limitation of liability of beneficiaries with respect to services furnished by excluded individuals and entities, was amended and transferred to section 1862(e)(2) of act Aug. 14, 1935, by Pub. L. 100–360, title IV, § 411(i)(4)(D)(ii), July 1, 1988, 102 Stat. 790, as amended by Pub. L. 100–485, title VI, § 608(d)(24)(C)(ii), Oct. 13, 1988, 102 Stat. 2421, and is classified to section 1395y(e)(2) of this title.

§ 1395bbb. Conditions of participation for home health agencies; home health quality

(a) Conditions of participation; protection of individual rights; notification of State entities; use of home health aides; medical equipment; individual's plan of care; compliance with Federal, State, and local laws and regulations

The conditions of participation that a home health agency is required to meet under this subsection are as follows:

(1) The agency protects and promotes the rights of each individual under its care, including each of the following rights:

(A) The right to be fully informed in advance about the care and treatment to be provided by the agency, to be fully informed in advance of any changes in the care or treatment to be provided by the agency that may affect the individual's well-being, and (except with respect to an individual adjudged incompetent) to participate in planning care and treatment or changes in care or treatment.

(B) The right to voice grievances with respect to treatment or care that is (or fails to be) furnished without discrimination or reprisal for voicing grievances.

(C) The right to confidentiality of the clinical records described in section 1395x(*o*)(3) of this title.

(D) The right to have one's property treated with respect.

(E) The right to be fully informed orally and in writing (in advance of coming under the care of the agency) of—

(i) all items and services furnished by (or under arrangements with) the agency for which payment may be made under this subchapter,

(ii) the coverage available for such items and services under this subchapter, subchapter XIX of this chapter, and any other Federal program of which the agency is reasonably aware,

(iii) any charges for items and services not covered under this subchapter and any charges the individual may have to pay with respect to items and services furnished by (or under arrangements with) the agency, and

(iv) any changes in the charges or items and services described in clause (i), (ii), or (iii).

(F) The right to be fully informed in writing (in advance of coming under the care of the agency) of the individual's rights and obligations under this subchapter.

(G) The right to be informed of the availability of the State home health agency hotline established under section 1395aa(a) of this title.

(2) The agency notifies the State entity responsible for the licensing or certification of the agency of a change in—

(A) the persons with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the agency,

(B) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a–5(b) of this title) of the agency, and

(C) the corporation, association, or other company responsible for the management of the agency.

Such notice shall be given at the time of the change and shall include the identity of each new person or company described in the previous sentence.

(3)(A) The agency must not use as a home health aide (on a full-time, temporary, per

diem, or other basis), any individual to provide items or services described in section 1395x(m) of this title on or after January 1, 1990, unless the individual—

(i) has completed a training and competency evaluation program, or a competency evaluation program, that meets the minimum standards established by the Secretary under subparagraph (D), and

(ii) is competent to provide such items and services.

For purposes of clause (i), an individual is not considered to have completed a training and competency evaluation program, or a competency evaluation program if, since the individual's most recent completion of such a program, there has been a continuous period of 24 consecutive months during none of which the individual provided items and services described in section 1395x(m) of this title for compensation.

(B)(i) The agency must provide, with respect to individuals used as a home health aide by the agency as of July 1, 1989, for a competency evaluation program (as described in subparagraph (A)(i)) and such preparation as may be necessary for the individual to complete such a program by January 1, 1990.

(ii) The agency must provide such regular performance review and regular in-service education as assures that individuals used to provide items and services described in section 1395x(m) of this title are competent to provide those items and services.

(C) The agency must not permit an individual, other than in a training and competency evaluation program that meets the minimum standards established by the Secretary under subparagraph (D), to provide items or services of a type for which the individual has not demonstrated competency.

(D)(i) The Secretary shall establish minimum standards for the programs described in subparagraph (A) by not later than October 1, 1988.

(ii) Such standards shall include the content of the curriculum, minimum hours of training, qualification of instructors, and procedures for determination of competency.

(iii) Such standards may permit approval of programs offered by or in home health agencies, as well as outside agencies (including employee organizations), and of programs in effect on December 22, 1987; except that they may not provide for the approval of a program offered by or in a home health agency which, within the previous 2 years—

(I) has been determined to be out of compliance with subparagraph (A), (B), or (C);

(II) has been subject to an extended (or partial extended) survey under subsection (c)(2)(D) of this section;

(III) has been assessed a civil money penalty described in subsection (f)(2)(A)(i) of this section of not less than $5,000; or

(IV) has been subject to the remedies described in subsection (e)(1) of this section or in clauses (ii) or (iii) of subsection (f)(2)(A) of this section.

(iv) Such standards shall permit a determination that an individual who has completed (before July 1, 1989) a training and competency evaluation program or a competency evaluation program shall be deemed for purposes of subparagraph (A) to have completed a program that is approved by the Secretary under the standards established under this subparagraph if the Secretary determines that, at the time the program was offered, the program met such standards.

(E) In this paragraph, the term ''home health aide'' means any individual who provides the items and services described in section 1395x(m) of this title, but does not include an individual—

(i) who is a licensed health professional (as defined in subparagraph (F)), or

(ii) who volunteers to provide such services without monetary compensation.

(F) In this paragraph, the term ''licensed health professional'' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(4) The agency includes an individual's plan of care required under section 1395x(m) of this title as part of the clinical records described in section 1395x(*o*)(3) of this title.

(5) The agency operates and provides services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a–3 of this title) and with accepted professional standards and principles which apply to professionals providing items and services in such an agency.

(6) The agency complies with the requirement of section 1395cc(f) of this title (relating to maintaining written policies and procedures respecting advance directives).

(b) Duty of Secretary

It is the duty and responsibility of the Secretary to assure that the conditions of participation and requirements specified in or pursuant to section 1395x(*o*) of this title and subsection (a) of this section and the enforcement of such conditions and requirements are adequate to protect the health and safety of individuals under the care of a home health agency and to promote the effective and efficient use of public moneys.

(c) Surveys of home health agencies

(1) Any agreement entered into or renewed by the Secretary pursuant to section 1395aa of this title relating to home health agencies shall provide that the appropriate State or local agency shall conduct, without any prior notice, a standard survey of each home health agency. Any individual who notifies (or causes to be notified) a home health agency of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this paragraph in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a of this title. The Sec-

retary shall review each State's or local agency's procedures for scheduling and conduct of standard surveys to assure that the State or agency has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(2)(A) Except as provided in subparagraph (B), each home health agency shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this paragraph. The statewide average interval between standard surveys of any home health agency shall not exceed 12 months.

(B) If not otherwise conducted under subparagraph (A), a standard survey (or an abbreviated standard survey) of an agency—

(i) may be conducted within 2 months of any change of ownership, administration, or management of the agency to determine whether the change has resulted in any decline in the quality of care furnished by the agency, and

(ii) shall be conducted within 2 months of when a significant number of complaints have been reported with respect to the agency to the Secretary, the State, the entity responsible for the licensing of the agency, the State or local agency responsible for maintaining a toll-free hotline and investigative unit (under section 1395aa(a) of this title), or any other appropriate Federal, State, or local agency.

(C) A standard survey conducted under this paragraph with respect to a home health agency—

(i) shall include (to the extent practicable), for a case-mix stratified sample of individuals furnished items or services by the agency—

(I) visits to the homes of such individuals, but only with the consent of such individuals, for the purpose of evaluating (in accordance with a standardized reproducible assessment instrument (or instruments) approved by the Secretary under subsection (d) of this section) the extent to which the quality and scope of items and services furnished by the agency attained and maintained the highest practicable functional capacity of each such individual as reflected in such individual's written plan of care required under section 1395x(m) of this title and clinical records required under section 1395x(*o*)(3) of this title; and

(II) a survey of the quality of care and services furnished by the agency as measured by indicators of medical, nursing, and rehabilitative care;

(ii) shall be based upon a protocol that is developed, tested, and validated by the Secretary not later than January 1, 1989; and

(iii) shall be conducted by an individual—

(I) who meets minimum qualifications established by the Secretary not later than July 1, 1989,

(II) who is not serving (or has not served within the previous 2 years) as a member of the staff of, or as a consultant to, the home health agency surveyed respecting compliance with the conditions of participation specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section, and

(III) who has no personal or familial financial interest in the home health agency surveyed.

(D) Each home health agency that is found, under a standard survey, to have provided substandard care shall be subject to an extended survey to review and identify the policies and procedures which produced such substandard care and to determine whether the agency has complied with the conditions of participation specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section. Any other agency may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey). The extended survey shall be conducted immediately after the standard survey (or, if not practical, not later than 2 weeks after the date of completion of the standard survey).

(E) Nothing in this paragraph shall be construed as requiring an extended (or partial extended) survey as a prerequisite to imposing a sanction against an agency under subsection (e) of this section on the basis of the findings of a standard survey.

(d) Assessment process; reports to Congress

(1) Not later than January 1, 1989, the Secretary shall designate an assessment instrument (or instruments) for use by an agency in complying with subsection (c)(2)(C)(I)[1] of this section.

(2)(A) Not later than January 1, 1992, the Secretary shall—

(i) evaluate the assessment process,

(ii) report to Congress on the results of such evaluation, and

(iii) based on such evaluation, make such modifications in the assessment process as the Secretary determines are appropriate.

(B) The Secretary shall periodically update the evaluation conducted under subparagraph (A), report the results of such update to Congress, and, based on such update, make such modifications in the assessment process as the Secretary determines are appropriate.

(3) The Secretary shall provide for the comprehensive training of State and Federal surveyors in matters relating to the performance of standard and extended surveys under this section, including the use of any assessment instrument (or instruments) designated under paragraph (1).

(e) Enforcement

(1) If the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this subchapter is no longer in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section and determines that the deficiencies involved immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subsection (f)(2)(A)(iii) of this section or terminate the certification of the agency, and may provide, in addition, for 1 or more

[1] So in original. Probably should be subsection ''(c)(2)(C)(i)(I)''.

of the other remedies described in subsection (f)(2)(A) of this section.

(2) If the Secretary determines on the basis of a standard, extended, or partial extended survey or otherwise, that a home health agency that is certified for participation under this subchapter is no longer in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section and determines that the deficiencies involved do not immediately jeopardize the health and safety of the individuals to whom the agency furnishes items and services, the Secretary may (for a period not to exceed 6 months) impose intermediate sanctions developed pursuant to subsection (f) of this section, in lieu of terminating the certification of the agency. If, after such a period of intermediate sanctions, the agency is still no longer in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section, the Secretary shall terminate the certification of the agency.

(3) If the Secretary determines that a home health agency that is certified for participation under this subchapter is in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subsection (f)(2)(A)(i) of this section for the days in which it finds that the agency was not in compliance with such requirements.

(4) The Secretary may continue payments under this subchapter with respect to a home health agency not in compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section over a period of not longer than 6 months, if—

(A) the State or local survey agency finds that it is more appropriate to take alternative action to assure compliance of the agency with the requirements than to terminate the certification of the agency,

(B) the agency has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

(C) the agency agrees to repay to the Federal Government payments received under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by home health agencies under this subparagraph.

(f) Intermediate sanctions

(1) The Secretary shall develop and implement, by not later than April 1, 1989—

(A) a range of intermediate sanctions to apply to home health agencies under the conditions described in subsection (e) of this section, and

(B) appropriate procedures for appealing determinations relating to the imposition of such sanctions.

(2)(A) The intermediate sanctions developed under paragraph (1) shall include—

(i) civil money penalties in an amount not to exceed $10,000 for each day of noncompliance,

(ii) suspension of all or part of the payments to which a home health agency would otherwise be entitled under this subchapter with respect to items and services furnished by a home health agency on or after the date on which the Secretary determines that intermediate sanctions should be imposed pursuant to subsection (e)(2) of this section, and

(iii) the appointment of temporary management to oversee the operation of the home health agency and to protect and assure the health and safety of the individuals under the care of the agency while improvements are made in order to bring the agency into compliance with all the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The temporary management under clause (iii) shall not be terminated until the Secretary has determined that the agency has the management capability to ensure continued compliance with all the requirements referred to in that clause.

(B) The sanctions specified in subparagraph (A) are in addition to sanctions otherwise available under State or Federal law and shall not be construed as limiting other remedies, including any remedy available to an individual at common law.

(C) A finding to suspend payment under subparagraph (A)(ii) shall terminate when the Secretary finds that the home health agency is in substantial compliance with all the requirements specified in or pursuant to section 1395x(*o*) of this title and subsection (a) of this section.

(3) The Secretary shall develop and implement, by not later than April 1, 1989, specific procedures with respect to the conditions under which each of the intermediate sanctions developed under paragraph (1) is to be applied, including the amount of any fines and the severity of each of these sanctions. Such procedures shall be designed so as to minimize the time between identification of deficiencies and imposition of these sanctions and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

(Aug. 14, 1935, ch. 531, title XVIII, § 1891, as added and amended Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4021(b), 4022(a), 4023(a), 101 Stat. 1330–67, 1330–69, 1330–71; July 1, 1988, Pub. L. 100–360, title IV, § 411(d)(1)(A), (2)–(3)(B), 102 Stat. 773, 774; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(20)(A), 102 Stat. 2419; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4206(d)(2), 4207(i)(1), formerly 4027(i)(1), 104 Stat. 1388–116, 1388–123, renumbered Oct. 31, 1994, Pub. L. 103–432, title I, § 160(d)(4), 108 Stat. 4444.)

AMENDMENTS

1990—Subsec. (a)(3)(D)(iii). Pub. L. 101–508, § 4207(i)(1), formerly § 4027(i)(1), as renumbered by Pub. L. 103–432, substituted ''which, within the previous 2 years—'' and

subcls. (I) to (IV) for ''which has been determined to be out of compliance with the requirements specified in or pursuant to section 1395x(*o*) of this title or subsection (a) of this section within the previous 2 years.''

Subsec. (a)(6). Pub. L. 101–508, §4206(d)(2), added par. (6).

1988—Subsec. (a)(3)(A). Pub. L. 100–360, §411(d)(1)(A)(i), struck out ''who is not a licensed health care professional (as defined in subparagraph (F))'' after ''any individual'' in introductory provisions.

Subsec. (a)(3)(F). Pub. L. 100–360, §411(d)(1)(A)(ii), inserted ''physical or occupational therapy assistant,'' after ''occupational therapist''.

Subsec. (a)(4) to (6). Pub. L. 100–360, §411(d)(1)(A)(iii), redesignated pars. (5) and (6) as (4) and (5), respectively, and struck out former par. (4) which read as follows: ''With respect to durable medical equipment furnished to individuals for whom the agency provides items and services, suppliers of such equipment do not use (on a full-time, temporary, per diem, or other basis) any individual who does not meet minimum training standards (established by the Secretary by October 1, 1988) for the demonstration and use of any such equipment furnished to individuals with respect to whom payments may be made under this subchapter.''

Subsec. (c)(1). Pub. L. 100–360, §411(d)(2)(A), as amended by Pub. L. 100–485, §608(d)(20)(A), amended third sentence generally. Prior to amendment, third sentence read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (d)(2)(A). Pub. L. 100–360, §411(d)(2)(B), substituted ''1992'' for ''1991'' in introductory provisions.

Subsecs. (e), (f). Pub. L. 100–360, §411(d)(3)(A), made technical amendment to Pub. L. 100–203, §4023(a), see 1987 Amendment note below.

Subsec. (f)(2)(A). Pub. L. 100–360, §411(d)(3)(B)(iii), inserted before last sentence ''The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.''

Pub. L. 100–360, §411(d)(3)(B)(i), realigned the margins of cls. (i) to (iii) and concluding provisions.

Subsec. (f)(2)(A)(i). Pub. L. 100–360, §411(d)(3)(B)(ii), substituted ''in an amount not to exceed $10,000 for each day of noncompliance'' for ''for each day of noncompliance''.

1987—Subsecs. (c), (d). Pub. L. 100–203, §4022(a), added subsecs. (c) and (d).

Subsecs. (e), (f). Pub. L. 100–203, §4023(a), as amended by Pub. L. 100–360, §411(d)(3)(A), added subsecs. (e) and (f).

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4206(d)(2) of Pub. L. 101–508 applicable with respect to services furnished on or after the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4206(e)(1) of Pub. L. 101–508, set out as a note under section 1395i–3 of this title.

Section 4207(i)(1), formerly 4027(i)(1), of Pub. L. 101–508, as renumbered by Pub. L. 103–432, title I, §160(d)(4), Oct. 31, 1994, 108 Stat. 4444, provided that the amendment made by that section is effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203.

Section 4207(i)(2), formerly 4027(i)(2), of Pub. L. 101–508, as renumbered and amended by Pub. L. 103–432, title I, §160(d)(4), (11), Oct. 31, 1994, 108 Stat. 4444, provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203], except that the Secretary may not permit approval of a training and competency evaluation program or a competency evaluation program offered by or in a home health agency which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

''(i) had its participation terminated under title XVIII of the Social Security Act [this subchapter];

''(ii) was assessed a civil money penalty not less than $5,000 for deficiencies in applicable quality standards for home health agencies;

''(iii) was subject to suspension by the Secretary of all or part of the payments to which it would otherwise be entitled under such title;

''(iv) operated under a temporary management appointed to oversee the operation of the agency and to ensure the health and safety of the agency's patients; or

''(v) pursuant to State action, was closed or had its patients transferred.''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4022(b) of Pub. L. 100–203 provided that: ''Except as otherwise specifically provided in section 1891(d) of the Social Security Act [subsec. (d) of this section] (as added by subsection (a)), the amendment made by subsection (a) [amending this section] shall become effective on the first day of the 18th calendar month to begin after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4023(b) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, §411(d)(3)(C), July 1, 1988, 102 Stat. 774, provided that: ''Except as otherwise specifically provided in subsections (e) and (f) of section 1891 of the Social Security Act [subsecs. (e) and (f) of this section] (as added by subsection (a)), the amendment made by subsection (a) [amending this section] shall become effective on the first day of the 18th calendar month to begin after the date of the enactment of this Act [Dec. 22, 1987], and no intermediate sanction described in section 1891(f)(2)(A) of such Act [subsec. (f)(2)(A) of this section] shall be imposed for violations occurring before such effective date.''

EFFECTIVE DATE

Section applicable to home health agencies as of the first day of the 18th calendar month that begins after Dec. 22, 1987, except as otherwise provided, see section 4021(c) of Pub. L. 100–203, set out as an Effective Date of 1987 Amendment note under section 1395x of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395x, 1395cc of this title.

§ 1395ccc. Offset of payments to individuals to collect past-due obligations arising from breach of scholarship and loan contract

(a) In general

(1)(A) Subject to subparagraph (B), the Secretary shall enter into an agreement under this section with any individual who, by reason of a breach of a contract entered into by such individual pursuant to the National Health Service Corps Scholarship Program, the Physician Shortage Area Scholarship Program, or the Health Education Assistance Loan Program,

owes a past-due obligation to the United States (as defined in subsection (b) of this section).

(B) The Secretary shall not enter into an agreement with an individual under this section to the extent—

(i)(I) the individual has entered into a contract with the Secretary pursuant to section 204(a)(1) of the Public Health Service Amendments of 1987, and

(II) the individual has fulfilled or (as determined by the Secretary) is fulfilling the terms of such contract; or

(ii) the liability of the individual under such section 204(a)(1) has otherwise been relieved under such section; or

(iii) the individual is performing such physician's[1] service obligation under a forbearance agreement entered into with the Secretary under subpart II of part D of title III of the Public Health Service Act [42 U.S.C. 254d et seq.].

(2) The agreement under this section shall provide that—

(A) deductions shall be made from the amounts otherwise payable to the individual under this subchapter, in accordance with a formula and schedule agreed to by the Secretary and the individual, until such past-due obligation (and accrued interest) have been repaid;

(B) payment under this subchapter for services provided by such individual shall be made only on an assignment-related basis;

(C) if the individual does not provide services, for which payment would otherwise be made under this subchapter, of a sufficient quantity to maintain the offset collection according to the agreed upon formula and schedule—

(i) the Secretary shall immediately inform the Attorney General, and the Attorney General shall immediately commence an action to recover the full amount of the past-due obligation, and

(ii) subject to paragraph (4), the Secretary shall immediately exclude the individual from the program under this subchapter, until such time as the entire past-due obligation has been repaid.

(3) If the individual refuses to enter into an agreement or breaches any provision of the agreement—

(A) the Secretary shall immediately inform the Attorney General, and the Attorney General shall immediately commence an action to recover the full amount of the past-due obligation, and

(B) subject to paragraph (4), the Secretary shall immediately exclude the individual from the program under this subchapter, until such time as the entire past-due obligation has been repaid.

(4) The Secretary shall not exclude an individual pursuant to paragraph (2)(C)(ii) or paragraph (3)(B) if such individual is a sole community practitioner or sole source of essential specialized services in a community if a State requests that the individual not be excluded.

[1] So in original. Probably should be ''individual's''.

(b) Past-due obligation

For purposes of this section, a past-due obligation is any amount—

(1) owed by an individual to the United States by reason of a breach of a scholarship contract under section 338E of the Public Health Service Act [42 U.S.C. 254*o*] or under subpart III of part F of title VII of such Act (as in effect before October 1, 1976) and which has not been paid by the deadline established by the Secretary pursuant to such respective section, and has not been canceled, waived, or suspended by the Secretary pursuant to such section; or

(2) owed by an individual to the United States by reason of a loan covered by Federal loan insurance under subpart I[2] of part C of title VII of the Public Health Service Act and payment for which has not been cancelled, waived, or suspended by the Secretary under such subpart.

(c) Collection under this section shall not be exclusive

This section shall not preclude the United States from applying other provisions of law otherwise applicable to the collection of obligations owed to the United States, including (but not limited to) the use of tax refund offsets pursuant to section 3720A of title 31 and the application of other procedures provided under chapter 37 of title 31.

(d) Collection from providers and health maintenance organizations

(1) In the case of an individual who owes a past-due obligation, and who is an employee of, or affiliated by a medical services agreement with, a provider having an agreement under section 1395cc of this title or a health maintenance organization or competitive medical plan having a contract under section 1395*l* of this title or section 1395mm of this title, the Secretary shall deduct the amounts of such past-due obligation from amounts otherwise payable under this subchapter to such provider, organization, or plan.

(2) Deductions shall be in accordance with a formula and schedule agreed to by the Secretary, the individual and the provider, organization, or plan. The deductions shall be made from the amounts otherwise payable to the individual under this subchapter as long as the individual continues to be employed or affiliated by a medical services agreement.

(3) Such deduction shall not be made until 6 months after the Secretary notifies the provider, organization, or plan of the amount to be deducted and the particular physicians[3] to whom the deductions are attributable.

(4) A deduction made under this subsection shall relieve the individual of the obligation (to the extent of the amount collected) to the United States, but the provider, organization, or plan shall have a right of action to collect from such individual the amount deducted pursuant to this subsection (including accumulated interest).

(5) No deduction shall be made under this subsection if, within the 6-month period after no-

[2] See References in Text note below.

[3] So in original. Probably should be ''individuals''.

tice is given to the provider, organization, or plan, the individual pays the past-due obligation, or ceases to be employed by the provider, organization, or plan.

(6) The Secretary shall also apply the provisions of this subsection in the case of an individual who is a member of a group practice, if such group practice submits bills under this program as a group, rather than by individual physicians.[3]

(e) Transfer from trust funds

Amounts equal to the amounts deducted pursuant to this section shall be transferred from the Trust Fund from which the payment to the individual, provider, or other entity would otherwise have been made, to the general fund in the Treasury, and shall be credited as payment of the past-due obligation of the individual from whom (or with respect to whom) the deduction was made.

(Aug. 14, 1935, ch. 531, title XVIII, § 1892, as added Dec. 22, 1987, Pub. L. 100–203, title IV, § 4052(a), 101 Stat. 1330–95; amended July 1, 1988, Pub. L. 100–360, title IV, § 411(f)(10)(A), (C)(i), 102 Stat. 780; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(21)(E)–(H), 102 Stat. 2420.)

REFERENCES IN TEXT

Section 204(a)(1) of the Public Health Service Amendments of 1987, referred to in subsec. (a)(1)(B), is section 204(a)(1) of Pub. L. 100–177, title II, Dec. 1, 1987, 101 Stat. 1000, which is set out as a note under section 254*o* of this title.

The Public Health Service Act, referred to in subsecs. (a)(1)(B)(iii) and (b), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Subpart II of part D of title III of the Act is classified generally to subpart II (§ 254d et seq.) of part D of subchapter II of chapter 6A of this title. Subpart I of part C of title VII of the Act was classified generally to subpart I (§ 294 et seq.) of part C of subchapter V of chapter 6A of this title and was omitted in the general revision of subchapter V by Pub. L. 102–408, title I, § 102, Oct. 13, 1992, 106 Stat. 1994. See subpart I (§ 292 et seq.) of part A of subchapter V of chapter 6A of this title. Subpart III of part F of title VII of the Public Health Service Act (as in effect before October 1, 1976) was classified to subpart III (§ 295g–21 et seq.) of part F of subchapter V of chapter 6A of this title, prior to repeal by Pub. L. 94–484, title IV, § 409(a), Oct. 12, 1976, 90 Stat. 2290. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

1988—Pub. L. 100–360, § 411(f)(10)(C)(i)(I), substituted ''individuals'' for ''physicians'' and inserted ''and loan'' in section catchline.

Subsec. (a)(1)(A). Pub. L. 100–360, § 411(f)(10)(C)(i)(IV), as amended by Pub. L. 100–485, § 608(d)(21)(H), inserted '', the Physician Shortage Area Scholarship Program, or the Health Education Assistance Loan Program''.

Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' in two places.

Subsec. (a)(1)(B). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''an individual'' for ''a physician'' in introductory provisions and ''individual'' for ''physician'' in cls. (i)(I) and (II), (ii), and (iii).

Subsec. (a)(2)(A) to (C). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' wherever appearing.

Subsec. (a)(2)(C)(ii). Pub. L. 100–360, § 411(f)(10)(A)(i), substituted ''paragraph (4)'' for ''paragraph (3)''.

Subsec. (a)(3). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' in introductory provisions.

Subsec. (a)(3)(B). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician''.

Pub. L. 100–360, § 411(f)(10)(A)(i), substituted ''paragraph (4)'' for ''paragraph (3)''.

Subsec. (a)(4). Pub. L. 100–360, § 411(f)(10)(C)(i)(III), substituted ''community practitioner'' for ''community physician''.

Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''an individual'' for ''a physician'' and ''such individual'' for ''such physician''.

Pub. L. 100–360, § 411(f)(10)(A)(iii), as amended by Pub. L. 100–360, § 608(d)(21)(E), inserted before period at end ''if a State requests that the individual not be excluded''.

Pub. L. 100–360, § 411(f)(10)(A)(ii), substituted ''exclude'' for ''bar''.

Subsec. (b). Pub. L. 100–360, § 411(f)(10)(C)(i)(V), as amended by Pub. L. 100–485, § 608(d)(21)(F)(i), substituted ''or under subpart III of part F of title VII of such Act (as in effect before October 1, 1976) and which has not been paid by the deadline established by the Secretary pursuant to such respective section'' for '', and (2) which has not been paid by the deadline established by the Secretary pursuant to section 338E of the Public Health Service Act''.

Subsec. (b)(1). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''an individual'' for ''a physician''.

Subsec. (b)(2). Pub. L. 100–360, § 411(f)(10)(C)(i)(VI), as amended by Pub. L. 100–485, § 608(d)(21)(F)(i), added par. (2).

Subsec. (d)(1). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''an individual'' for ''a physician''.

Subsec. (d)(2). Pub. L. 100–360, § 411(f)(10)(C)(i)(VII), as added by Pub. L. 100–485, § 608(d)(21)(F), substituted ''continues'' for ''continued''.

Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' in three places.

Subsec. (d)(4) to (6). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' wherever appearing.

Subsec. (e). Pub. L. 100–360, § 411(f)(10)(C)(i)(II), as amended by Pub. L. 100–485, § 608(d)(21)(G), substituted ''individual'' for ''physician'' in two places.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(f)(10)(A) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(f)(10)(C)(iii) of Pub. L. 100–360 provided that: ''The Amendments made by this subparagraph [amending this section and former section 294f of this title] shall be effective 30 days after the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE

Section 4052(c) of Pub. L. 100–203 provided that: ''The amendments made by this section [enacting this section and amending section 254*o* of this title] shall be effective on the date of the enactment of this Act [Dec. 22, 1987].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254*o*, 292f of this title; title 25 section 1616a.

SUBCHAPTER XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 247b–1, 247b–5, 254b, 254c, 254e, 254h, 254n, 254t, 256, 256a, 256b, 263a, 280c–6, 280d, 290bb–1, 290ff, 290ff–1, 299a, 300e, 300e–6, 300*l*, 300*l*–1, 300x–3, 300x–24, 300z–5, 300aa–15, 300ff–14, 300ff–25, 300ff–42, 300ff–52, 602, 606, 652, 654, 671, 672, 673, 682, 701, 704, 705, 706, 709, 902, 904, 912, 1301, 1302, 1306, 1308, 1309, 1310, 1315, 1316, 1318, 1320a–1, 1320a–3, 1320a–5, 1320a–7, 1320a–7a, 1320a–7b, 1320b–2, 1320b–3, 1320b–4, 1320b–5, 1320b–7, 1320b–8, 1320b–14, 1320c–2, 1320c–10, 1382, 1382b, 1382g, 1382h, 1382i, 1383c, 1395b–1, 1395b–2, 1395b–4, 1395i–3, 1395u, 1395v, 1395w–1, 1395w–4, 1395x, 1395z, 1395cc, 1395mm, 1395ss, 1395tt, 1395vv, 1395ww, 1395bbb, 1397d, 1758, 1766, 1769, 1769h, 1786, 1997, 3012, 3013, 3026, 3035b, 3035*l*, 3058d, 3058e, 3058k, 6024, 8013, 8624, 10805, 11398, 11707 of this title; title 7 sections 2012, 2017, 2020, 3178; title 8 sections 1255a, 1522; title 10 sections 1079, 1095; title 12 sections 1715w, 1715z–7; title 20 sections 1413, 1481, 6082; title 24 section 170a; title 25 sections 1616m, 1642, 1643, 1644, 1645, 1680c; title 26 section 6103; title 29 sections 720, 1144, 1169, 1583, 2231; title 38 sections 1722, 1729, 5503, 7423, 8126.

§ 1396. Appropriations

For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for medical assistance.

(Aug. 14, 1935, ch. 531, title XIX, § 1901, as added July 30, 1965, Pub. L. 89–97, title I, § 121(a), 79 Stat. 343; amended Dec. 31, 1973, Pub. L. 93–233, § 13(a)(1), 87 Stat. 960; July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(j)(3)(C), 98 Stat. 1171.)

AMENDMENTS

1984—Pub. L. 98–369 struck out ''Health, Education, and Welfare'' after ''Secretary''.

1973—Pub. L. 93–233 substituted ''disabled individuals'' for ''permanently and totally disabled individuals'' in cl. (1).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by Pub. L. 93–233 effective with respect to payments under section 1396b of this title for calendar quarters commencing after Dec. 31, 1973, see section 13(d) of Pub. L. 93–233, set out as a note under section 1396a of this title.

§ 1396a. State plans for medical assistance

(a) Contents

A State plan for medical assistance must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State equal to not less than 40 per centum of the non-Federal share of the expenditures under the plan with respect to which payments under section 1396b of this title are authorized by this subchapter; and, effective July 1, 1969, provide for financial participation by the State equal to all of such non-Federal share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;

(3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness;

(4) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, and including provision for utilization of professional medical personnel in the administration and, where administered locally, supervision of administration of the plan) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency, and (C) that each State or local officer or employee who is responsible for the expenditure of substantial amounts of funds under the State plan, each individual who formerly was such an officer or employee, and each partner of such an officer or employee shall be prohibited from committing any act, in relation to any activity under the plan, the commission of which, in connection with any activity concerning the United States Government, by an officer or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18;

(5) either provide for the establishment or designation of a single State agency to administer or to supervise the administration of the

plan; or provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan, except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan approved under subchapter I or XVI of this chapter (insofar as it relates to the aged) if the State is eligible to participate in the State plan program established under subchapter XVI of this chapter, or by the agency or agencies administering the supplemental security income program established under subchapter XVI or the State plan approved under part A of subchapter IV of this chapter if the State is not eligible to participate in the State plan program established under subchapter XVI of this chapter;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan;

(8) provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide—

(A) that the State health agency, or other appropriate State medical agency (whichever is utilized by the Secretary for the purpose specified in the first sentence of section 1395aa(a) of this title), shall be responsible for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services,

(B) for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards, other than those relating to health, for such institutions, and

(C) that any laboratory services paid for under such plan must be provided by a laboratory which meets the applicable requirements of section 1395x(e)(9) of this title or paragraphs (15) and (16) of section 1395x(s) of this title, or, in the case of a laboratory which is in a rural health clinic, of section 1395x(aa)(2)(G) of this title;

(10) provide—

(A) for making medical assistance available, including at least the care and services listed in paragraphs (1) through (5), (17) and (21) of section 1396d(a) of this title, to—

(i) all individuals—

(I) who are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A or part E of subchapter IV of this chapter (including individuals eligible under this subchapter by reason of section 602(a)(37), 606(h), or 673(b) of this title, or considered by the State to be receiving such aid as authorized under section 682(e)(6) of this title),

(II) with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter or who are qualified severely impaired individuals (as defined in section 1396d(q) of this title),

(III) who are qualified pregnant women or children as defined in section 1396d(n) of this title,

(IV) who are described in subparagraph (A) or (B) of subsection (*l*)(1) of this section and whose family income does not exceed the minimum income level the State is required to establish under subsection (*l*)(2)(A) of this section for such a family;[1]

(V) who are qualified family members as defined in section 1396d(m)(1) of this title,

(VI) who are described in subparagraph (C) of subsection (*l*)(1) of this section and whose family income does not exceed the income level the State is required to establish under subsection (*l*)(2)(B) of this section for such a family, or

(VII) who are described in subparagraph (D) of subsection (*l*)(1) of this section and whose family income does not exceed the income level the State is required to establish under subsection (*l*)(2)(C) of this section for such a family;[2]

(ii) at the option of the State, to any group or groups of individuals described in section 1396d(a) of this title (or, in the case of individuals described in section 1396d(a)(i) of this title, to any reasonable categories of such individuals) who are not individuals described in clause (i) of this subparagraph but—

(I) who meet the income and resources requirements of the appropriate State plan described in clause (i) or the supplemental security income program (as the case may be),

(II) who would meet the income and resources requirements of the appropriate State plan described in clause (i) if their work-related child care costs were paid from their earnings rather than by a State agency as a service expenditure,

(III) who would be eligible to receive aid under the appropriate State plan described in clause (i) if coverage under such plan was as broad as allowed under Federal law,

(IV) with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, aid or assistance under the appropriate State plan described in clause (i), supplemental security income benefits under subchapter XVI of this chapter, or a State supplementary payment;[1]

[1] So in original. The semicolon probably should be a comma.

[2] So in original. Probably should be followed by ''and''.

(V) who are in a medical institution for a period of not less than 30 consecutive days (with eligibility by reason of this subclause beginning on the first day of such period), who meet the resource requirements of the appropriate State plan described in clause (i) or the supplemental security income program, and whose income does not exceed a separate income standard established by the State which is consistent with the limit established under section 1396b(f)(4)(C) of this title,

(VI) who would be eligible under the State plan under this subchapter if they were in a medical institution, with respect to whom there has been a determination that but for the provision of home or community-based services described in subsection (c), (d), or (e) of section 1396n of this title they would require the level of care provided in a hospital, nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan, and who will receive home or community-based services pursuant to a waiver granted by the Secretary under subsection (c), (d), or (e) of section 1396n of this title,

(VII) who would be eligible under the State plan under this subchapter if they were in a medical institution, who are terminally ill, and who will receive hospice care pursuant to a voluntary election described in section 1396d(*o*) of this title;[3]

(VIII) who is a child described in section 1396d(a)(i) of this title—

(aa) for whom there is in effect an adoption assistance agreement (other than an agreement under part E of subchapter IV of this chapter) between the State and an adoptive parent or parents,

(bb) who the State agency responsible for adoption assistance has determined cannot be placed with adoptive parents without medical assistance because such child has special needs for medical or rehabilitative care, and

(cc) who was eligible for medical assistance under the State plan prior to the adoption assistance agreement being entered into, or who would have been eligible for medical assistance at such time if the eligibility standards and methodologies of the State's foster care program under part E of subchapter IV of this chapter were applied rather than the eligibility standards and methodologies of the State's aid to families with dependent children program under part A of subchapter IV of this chapter;[3]

(IX) who are described in subsection (*l*)(1) of this section and are not described in clause (i)(IV), clause (i)(VI), or clause (i)(VII);[3]

(X) who are described in subsection (m)(1) of this section;[3]

(XI) who receive only an optional State supplementary payment based on need and paid on a regular basis, equal to the difference between the individual's countable income and the income standard used to determine eligibility for such supplementary payment (with countable income being the income remaining after deductions as established by the State pursuant to standards that may be more restrictive than the standards for supplementary security income benefits under subchapter XVI of this chapter), which are available to all individuals in the State (but which may be based on different income standards by political subdivision according to cost of living differences), and which are paid by a State that does not have an agreement with the Commissioner of Social Security under section 1382e or 1383c of this title;[3] or

(XII) who are described in subsection (z)(1) of this section (relating to certain TB-infected individuals);

(B) that the medical assistance made available to any individual described in subparagraph (A)—

(i) shall not be less in amount, duration, or scope than the medical assistance made available to any other such individual, and

(ii) shall not be less in amount, duration, or scope than the medical assistance made available to individuals not described in subparagraph (A);

(C) that if medical assistance is included for any group of individuals described in section 1396d(a) of this title who are not described in subparagraph (A) or (E), then—

(i) the plan must include a description of (I) the criteria for determining eligibility of individuals in the group for such medical assistance, (II) the amount, duration, and scope of medical assistance made available to individuals in the group, and (III) the single standard to be employed in determining income and resource eligibility for all such groups, and the methodology to be employed in determining such eligibility, which shall be no more restrictive than the methodology which would be employed under the supplemental security income program in the case of groups consisting of aged, blind, or disabled individuals in a State in which such program is in effect, and which shall be no more restrictive than the methodology which would be employed under the appropriate State plan (described in subparagraph (A)(i)) to which such group is most closely categorically related in the case of other groups;

(ii) the plan must make available medical assistance—

(I) to individuals under the age of 18 who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A)(i), and

[3] So in original. The semicolon probably should be a comma.

(II) to pregnant women, during the course of their pregnancy, who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A);

(iii) such medical assistance must include (I) with respect to children under 18 and individuals entitled to institutional services, ambulatory services, and (II) with respect to pregnant women, prenatal care and delivery services; and

(iv) if such medical assistance includes services in institutions for mental diseases or in an intermediate care facility for the mentally retarded (or both) for any such group, it also must include for all groups covered at least the care and services listed in paragraphs (1) through (5) and (17) of section 1396d(a) of this title or the care and services listed in any 7 of the paragraphs numbered (1) through (24) of such section;

(D) for the inclusion of home health services for any individual who, under the State plan, is entitled to nursing facility services;

(E)(i) for making medical assistance available for medicare cost-sharing (as defined in section 1396d(p)(3) of this title) for qualified medicare beneficiaries described in section 1396d(p)(1) of this title;

(ii) for making medical assistance available for payment of medicare cost-sharing described in section 1396d(p)(3)(A)(i) of this title for qualified disabled and working individuals described in section 1396d(s) of this title; and

(iii) for making medical assistance available for medicare cost sharing described in section 1396d(p)(3)(A)(ii) of this title subject to section 1396d(p)(4) of this title, for individuals who would be qualified medicare beneficiaries described in section 1396d(p)(1) of this title but for the fact that their income exceeds the income level established by the State under section 1396d(p)(2) of this title but is less than 110 percent in 1993 and 1994, and 120 percent in 1995 and years thereafter of the official poverty line (referred to in such section) for a family of the size involved; and

(F) at the option of a State, for making medical assistance available for COBRA premiums (as defined in subsection (u)(2) of this section) for qualified COBRA continuation beneficiaries described in subsection (u)(1) of this section;

except that (I) the making available of the services described in paragraph (4), (14), or (16) of section 1396d(a) of this title to individuals meeting the age requirements prescribed therein shall not, by reason of this paragraph (10), require the making available of any such services, or the making available of such services of the same amount, duration, and scope, to individuals of any other ages, (II) the making available of supplementary medical insurance benefits under part B of subchapter XVIII of this chapter to individuals eligible therefor (either pursuant to an agreement entered into under section 1395v of this title or by reason of the payment of premiums under such subchapter by the State agency on behalf of such individuals), or provision for meeting part or all of the cost of deductibles, cost sharing, or similar charges under part B of subchapter XVIII of this chapter for individuals eligible for benefits under such part, shall not, by reason of this paragraph (10), require the making available of any such benefits, or the making available of services of the same amount, duration, and scope, to any other individuals, (III) the making available of medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in clause (A) to any classification of individuals approved by the Secretary with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment shall not, by reason of this paragraph (10), require the making available of any such assistance, or the making available of such assistance of the same amount, duration, and scope, to any other individuals not described in clause (A), (IV) the imposition of a deductible, cost sharing, or similar charge for any item or service furnished to an individual not eligible for the exemption under section 1396*o*(a)(2) or (b)(2) of this title shall not require the imposition of a deductible, cost sharing, or similar charge for the same item or service furnished to an individual who is eligible for such exemption, (V) the making available to pregnant women covered under the plan of services relating to pregnancy (including prenatal, delivery, and postpartum services) or to any other condition which may complicate pregnancy shall not , by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any other individuals, provided such services are made available (in the same amount, duration, and scope) to all pregnant women covered under the State plan, (VI) with respect to the making available of medical assistance for hospice care to terminally ill individuals who have made a voluntary election described in section 1396d(*o*) of this title to receive hospice care instead of medical assistance for certain other services, such assistance may not be made available in an amount, duration, or scope less than that provided under subchapter XVIII of this chapter, and the making available of such assistance shall not, by reason of this paragraph (10), require the making available of medical assistance for hospice care to other individuals or the making available of medical assistance for services waived by such terminally ill individuals, (VII) the medical assistance made available to an individual described in subsection (*l*)(1)(A) of this section who is eligible for medical assistance only because of subparagraph (A)(i)(IV) or (A)(ii)(IX) shall be limited to medical assistance for services related to pregnancy (including prenatal, delivery, postpartum, and family planning services) and to other conditions which may complicate pregnancy, (VIII) the medical assistance made available to a qualified medicare beneficiary

described in section 1396d(p)(1) of this title who is only entitled to medical assistance because the individual is such a beneficiary shall be limited to medical assistance for medicare cost-sharing (described in section 1396d(p)(3) of this title), subject to the provisions of subsection (n) of this section and section 1396*o*(b) of this title, (IX) the making available of respiratory care services in accordance with subsection (e)(9) of this section shall not, by reason of this paragraph (10), require the making available of such services, or the making available of such services of the same amount, duration, and scope, to any individuals not included under subsection (e)(9)(A) of this section, provided such services are made available (in the same amount, duration, and scope) to all individuals described in such subsection, (X) if the plan provides for any fixed durational limit on medical assistance for inpatient hospital services (whether or not such a limit varies by medical condition or diagnosis), the plan must establish exceptions to such a limit for medically necessary inpatient hospital services furnished with respect to individuals under one year of age in a hospital defined under the State plan, pursuant to section 1396r–4(a)(1)(A) of this title, as a disproportionate share hospital and subparagraph (B) (relating to comparability) shall not be construed as requiring such an exception for other individuals, services, or hospitals, (XI) the making available of medical assistance to cover the costs of premiums, deductibles, coinsurance, and other cost-sharing obligations for certain individuals for private health coverage as described in section 1396e of this title shall not, by reason of paragraph (10), require the making available of any such benefits or the making available of services of the same amount, duration, and scope of such private coverage to any other individuals, (XII) the medical assistance made available to an individual described in subsection (u)(1) of this section who is eligible for medical assistance only because of subparagraph (F) shall be limited to medical assistance for COBRA continuation premiums (as defined in subsection (u)(2) of this section), and (XIII) the medical assistance made available to an individual described in subsection (z)(1) of this section who is eligible for medical assistance only because of subparagraph (A)(ii)(XII) shall be limited to medical assistance for TB-related services (described in subsection (z)(2) of this section);

(11)(A) provide for entering into cooperative arrangements with the State agencies responsible for administering or supervising the administration of health services and vocational rehabilitation services in the State looking toward maximum utilization of such services in the provision of medical assistance under the plan, (B) provide, to the extent prescribed by the Secretary, for entering into agreements, with any agency, institution, or organization receiving payments under (or through an allotment under) subchapter V of this chapter, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such subchapter or allotment and which are included in the State plan approved under this section [4] (ii) making such provision as may be appropriate for reimbursing such agency, institution, or organization for the cost of any such care and services furnished any individual for which payment would otherwise be made to the State with respect to the individual under section 1396b of this title, and (iii) providing for coordination of information and education on pediatric vaccinations and delivery of immunization services, and (C) provide for coordination of the operations under this subchapter, including the provision of information and education on pediatric vaccinations and the delivery of immunization services, with the State's operations under the special supplemental nutrition program for women, infants, and children under section 1786 of this title;

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) provide—

(A) for payment (except where the State agency is subject to an order under section 1396m of this title) of the hospital services, nursing facility services, and services in an intermediate care facility for the mentally retarded provided under the plan through the use of rates (determined in accordance with methods and standards developed by the State which, in the case of nursing facilities, take into account the costs (including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter) of complying with subsections (b) (other than paragraph (3)(F) thereof), (c), and (d) of section 1396r of this title and provide (in the case of a nursing facility with a waiver under section 1396r(b)(4)(C)(ii) of this title) for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care, and which, in the case of hospitals, take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs and provide, in the case of hospital patients receiving services at an inappropriate level of care (under conditions similar to those described in section 1395x(v)(1)(G) of this title), for lower reimbursement rates reflecting the level of care actually received (in a manner consistent with section 1395x(v)(1)(G) of this title)) which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards and to assure that individuals eligible for medical assistance have reasonable access (taking into account geographic location and reasonable

[4] So in original. Probably should be followed by a comma.

travel time) to inpatient hospital services of adequate quality; and such State makes further assurances, satisfactory to the Secretary, for the filing of uniform cost reports by each hospital, nursing facility, and intermediate care facility for the mentally retarded and periodic audits by the State of such reports;

(B) that the State shall provide assurances satisfactory to the Secretary that the payment methodology utilized by the State for payments to hospitals can reasonably be expected not to increase such payments, solely as a result of a change of ownership, in excess of the increase which would result from the application of section 1395x(v)(1)(O) of this title;

(C) that the State shall provide assurances satisfactory to the Secretary that the valuation of capital assets, for purposes of determining payment rates for nursing facilities and for intermediate care facilities for the mentally retarded, will not be increased (as measured from the date of acquisition by the seller to the date of the change of ownership), solely as a result of a change of ownership, by more than the lesser of—

(i) one-half of the percentage increase (as measured over the same period of time, or, if necessary, as extrapolated retrospectively by the Secretary) in the Dodge Construction Systems Costs for Nursing Homes, applied in the aggregate with respect to those facilities which have undergone a change of ownership during the fiscal year, or

(ii) one-half of the percentage increase (as measured over the same period of time) in the Consumer Price Index for All Urban Consumers (United States city average);

(D) for payment for hospice care in amounts no lower than the amounts, using the same methodology, used under part A of subchapter XVIII of this chapter and for payment of amounts under section 1396d(*o*)(3) of this title; except that in the case of hospice care which is furnished to an individual who is a resident of a nursing facility or intermediate care facility for the mentally retarded, and who would be eligible under the plan for nursing facility services or services in an intermediate care facility for the mentally retarded if he had not elected to receive hospice care, there shall be paid an additional amount, to take into account the room and board furnished by the facility, equal to at least 95 percent of the rate that would have been paid by the State under the plan for facility services in that facility for that individual;

(E) for payment for services described in clause (B) or (C) of section 1396d(a)(2) of this title under the plan of 100 percent of costs which are reasonable and related to the cost of furnishing such services or based on such other tests of reasonableness, as the Secretary prescribes in regulations under section 1395*l*(a)(3) of this title, or, in the case of services to which those regulations do not apply, on the same methodology used under section 1395*l*(a)(3) of this title; and

(F) for payment for home and community care (as defined in section 1396t(a) of this title and provided under such section) through rates which are reasonable and adequate to meet the costs of providing care, efficiently and economically, in conformity with applicable State and Federal laws, regulations, and quality and safety standards;

(14) provide that enrollment fees, premiums, or similar charges, and deductions, cost sharing, or similar charges, may be imposed only as provided in section 1396*o* of this title;

(15) Repealed. Pub. L. 100–360, title III, § 301(e)(2)(C), as added by Pub. L. 100–485, title VI, § 608(d)(14)(I)(iii), Oct. 13, 1988, 102 Stat. 2416;

(16) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of medical assistance under the plan to individuals who are residents of the State but are absent therefrom;

(17) except as provided in subsections (*l*)(3), (m)(3), and (m)(4) of this section, include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter, based on the variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this subchapter, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, except for income and resources, be eligible for aid or assistance in the form of money payments under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, or to have paid with respect to him supplemental security income benefits under subchapter XVI of this chapter) as would not be disregarded (or set aside for future needs) in determining his eligibility for such aid, assistance, or benefits, (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21 or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program); and provide for flexibility in

the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums, payments made to the State under section 1396b(f)(2)(B) of this title, or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof) incurred for medical care or for any other type of remedial care recognized under State law;

(18) comply with the provisions of section 1396p of this title with respect to liens, adjustments and recoveries of medical assistance correctly paid,,[5] transfers of assets, and treatment of certain trusts;

(19) provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients;

(20) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodic determination of his need for continued treatment in the institution; and

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 303(a)(4)(A)(i) and (ii)[6] or section 1383(a)(4)(A)(i) and (ii)[6] of this title which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out;

(21) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing facilities, and other alternatives to care in public institutions for mental diseases;

(22) include descriptions of (A) the kinds and numbers of professional medical personnel and supporting staff that will be used in the administration of the plan and of the responsibilities they will have, (B) the standards, for private or public institutions in which recipients of medical assistance under the plan may receive care or services, that will be utilized by the State authority or authorities responsible for establishing and maintaining such standards, (C) the cooperative arrangements with State health agencies and State vocational rehabilitation agencies entered into with a view to maximum utilization of and coordination of the provision of medical assistance with the services administered or supervised by such agencies, and (D) other standards and methods that the State will use to assure that medical or remedial care and services provided to recipients of medical assistance are of high quality;

(23) except as provided in subsection (g) of this section and in section 1396n and except in the case of Puerto Rico, the Virgin Islands, and Guam, provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services, and (B) an enrollment of an individual eligible for medical assistance in a primary care case-management system (described in section 1396n(b)(1) of this title), a health maintenance organization, or a similar entity shall not restrict the choice of the qualified person from whom the individual may receive services under section 1396d(a)(4)(C) of this title;

(24) effective July 1, 1969, provide for consultative services by health agencies and other appropriate agencies of the State to hospitals, nursing facilities, home health agencies, clinics, laboratories, and such other institutions as the Secretary may specify in order to assist them (A) to qualify for payments under this chapter, (B) to establish and maintain such fiscal records as may be necessary for the proper and efficient administration of this chapter, and (C) to provide information needed to determine payments due under this chapter on account of care and services furnished to individuals;

(25) provide—

(A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties (including health insurers, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)]), serv-

[5] So in original.

[6] See References in Text note below.

ice benefit plans, and health maintenance organizations) to pay for care and services available under the plan, including—

(i) the collection of sufficient information (including the use of information collected by the Medicare and Medicaid Coverage Data Bank under section 1320b–14 of this title and any additional measures as specified by the Secretary in regulations) to enable the State to pursue claims against such third parties, with such information being collected at the time of any determination or redetermination of eligibility for medical assistance, and

(ii) the submission to the Secretary of a plan (subject to approval by the Secretary) for pursuing claims against such third parties, which plan shall—

(I) be integrated with, and be monitored as a part of the Secretary's review of, the State's mechanized claims processing and information retrieval system under section 1396b(r) of this title, and

(II) be subject to the provisions of section 1396b(r)(4) of this title relating to reductions in Federal payments for failure to meet conditions of approval, but shall not be subject to any other financial penalty as a result of any other monitoring, quality control, or auditing requirements;

(B) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;

(C) that in the case of an individual who is entitled to medical assistance under the State plan with respect to a service for which a third party is liable for payment, the person furnishing the service may not seek to collect from the individual (or any financially responsible relative or representative of that individual) payment of an amount for that service (i) if the total of the amount of the liabilities of third parties for that service is at least equal to the amount payable for that service under the plan (disregarding section 1396*o* of this title), or (ii) in an amount which exceeds the lesser of (I) the amount which may be collected under section 1396*o* of this title, or (II) the amount by which the amount payable for that service under the plan (disregarding section 1396*o* of this title) exceeds the total of the amount of the liabilities of third parties for that service;

(D) that a person who furnishes services and is participating under the plan may not refuse to furnish services to an individual (who is entitled to have payment made under the plan for the services the person furnishes) because of a third party's potential liability for payment for the service;

(E) that in the case of prenatal or preventive pediatric care (including early and periodic screening and diagnosis services under section 1396d(a)(4)(B) of this title) covered under the State plan, the State shall—

(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to the liability of a third party for payment for such services; and

(ii) seek reimbursement from such third party in accordance with subparagraph (B);

(F) that in the case of any services covered under such plan which are provided to an individual on whose behalf child support enforcement is being carried out by the State agency under part D of subchapter IV of this chapter, the State shall—

(i) make payment for such service in accordance with the usual payment schedule under such plan for such services without regard to any third-party liability for payment for such services, if such third-party liability is derived (through insurance or otherwise) from the parent whose obligation to pay support is being enforced by such agency, if payment has not been made by such third party within 30 days after such services are furnished; and

(ii) seek reimbursement from such third party in accordance with subparagraph (B);

(G) that the State plan shall meet the requirements of section 1396e of this title (relating to enrollment of individuals under group health plans in certain cases);

(H) that the State prohibits any health insurer (including a group health plan, as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1167(1)], a service benefit plan, and a health maintenance organization), in enrolling an individual or in making any payments for benefits to the individual or on the individual's behalf, from taking into account that the individual is eligible for or is provided medical assistance under a plan under this subchapter for such State, or any other State; and

(I) that to the extent that payment has been made under the State plan for medical assistance in any case where a third party has a legal liability to make payment for such assistance, the State has in effect laws under which, to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services;

(26) if the State plan includes medical assistance for inpatient mental hospital services, provide—

(A) with respect to each patient receiving such services, for a regular program of medical review (including medical evaluation) of his need for such services, and for a written plan of care;

(B) for periodic inspections to be made in all mental institutions within the State by one or more medical review teams (com-

posed of physicians and other appropriate health and social service personnel) of the care being provided to each person receiving medical assistance, including (i) the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, (ii) the necessity and desirability of his continued placement in the institution, and (iii) the feasibility of meeting his health care needs through alternative institutional or noninstitutional services; and

(C) for full reports to the State agency by each medical review team of the findings of each inspection under subparagraph (B), together with any recommendations;

(27) provide for agreements with every person or institution providing services under the State plan under which such person or institution agrees (A) to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State plan, and (B) to furnish the State agency or the Secretary with such information, regarding any payments claimed by such person or institution for providing services under the State plan, as the State agency or the Secretary may from time to time request;

(28) provide—

(A) that any nursing facility receiving payments under such plan must satisfy all the requirements of subsections (b) through (d) of section 1396r of this title as they apply to such facilities;

(B) for including in ''nursing facility services'' at least the items and services specified (or deemed to be specified) by the Secretary under section 1396r(f)(7) of this title and making available upon request a description of the items and services so included;

(C) for procedures to make available to the public the data and methodology used in establishing payment rates for nursing facilities under this subchapter; and

(D) for compliance (by the date specified in the respective sections) with the requirements of—

(i) section 1396r(e) of this title;

(ii) section 1396r(g) of this title (relating to responsibility for survey and certification of nursing facilities); and

(iii) sections 1396r(h)(2)(B) and 1396r(h)(2)(D) of this title (relating to establishment and application of remedies);

(29) include a State program which meets the requirements set forth in section 1396g of this title, for the licensing of administrators of nursing homes;

(30)(A) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area;

(B) provide, under the program described in subparagraph (A), that—

(i) each admission to a hospital, intermediate care facility for the mentally retarded, or hospital for mental diseases is reviewed or screened in accordance with criteria established by medical and other professional personnel who are not themselves directly responsible for the care of the patient involved, and who do not have a significant financial interest in any such institution and are not, except in the case of a hospital, employed by the institution providing the care involved, and

(ii) the information developed from such review or screening, along with the data obtained from prior reviews of the necessity for admission and continued stay of patients by such professional personnel, shall be used as the basis for establishing the size and composition of the sample of admissions to be subject to review and evaluation by such personnel, and any such sample may be of any size up to 100 percent of all admissions and must be of sufficient size to serve the purpose of (I) identifying the patterns of care being provided and the changes occurring over time in such patterns so that the need for modification may be ascertained, and (II) subjecting admissions to early or more extensive review where information indicates that such consideration is warranted to a hospital, intermediate care facility for the mentally retarded, or hospital for mental diseases; and

(C) use a utilization and quality control peer review organization (under part B of subchapter XI of this chapter), an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary, or a private accreditation body to conduct (on an annual basis) an independent, external review of the quality of services furnished under each contract under section 1396b(m) of this title, with the results of such review made available to the State and, upon request, to the Secretary, the Inspector General in the Department of Health and Human Services, and the Comptroller General;

(31) with respect to services in an intermediate care facility for the mentally retarded (where the State plan includes medical assistance for such services) provide—

(A) with respect to each patient receiving such services, for a written plan of care, prior to admission to or authorization of benefits in such facility, in accordance with regulations of the Secretary, and for a regular program of independent professional review (including medical evaluation) which shall periodically review his need for such services;

(B) with respect to each intermediate care facility for the mentally retarded within the State, for periodic onsite inspections of the care being provided to each person receiving medical assistance, by one or more inde-

pendent professional review teams (composed of a physician or registered nurse and other appropriate health and social service personnel), including with respect to each such person (i) the adequacy of the services available to meet his current health needs and promote his maximum physical well-being, (ii) the necessity and desirability of his continued placement in the facility, and (iii) the feasibility of meeting his health care needs through alternative institutional or noninstitutional services; and

(C) for full reports to the State agency by each independent professional review team of the findings of each inspection under subparagraph (B), together with any recommendations;

(32) provide that no payment under the plan for any care or service provided to an individual shall be made to anyone other than such individual or the person or institution providing such care or service, under an assignment or power of attorney or otherwise; except that—

(A) in the case of any care or service provided by a physician, dentist, or other individual practitioner, such payment may be made (i) to the employer of such physician, dentist, or other practitioner if such physician, dentist, or practitioner is required as a condition of his employment to turn over his fee for such care or service to his employer, or (ii) (where the care or service was provided in a hospital, clinic, or other facility) to the facility in which the care or service was provided if there is a contractual arrangement between such physician, dentist, or practitioner and such facility under which such facility submits the bill for such care or service;

(B) nothing in this paragraph shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the person or institution providing the care or service involved if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of such person or institution from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such person or institution under the plan is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment;

(C) in the case of services furnished (during a period that does not exceed 14 continuous days in the case of an informal reciprocal arrangement or 90 continuous days (or such longer period as the Secretary may provide) in the case of an arrangement involving per diem or other fee-for-time compensation) by, or incident to the services of, one physician to the patients of another physician who submits the claim for such services, payment shall be made to the physician submitting the claim (as if the services were furnished by, or incident to, the physician's services), but only if the claim identifies (in a manner specified by the Secretary) the physician who furnished the services; and

(D) in the case of payment for a childhood vaccine administered before October 1, 1994, to individuals entitled to medical assistance under the State plan, the State plan may make payment directly to the manufacturer of the vaccine under a voluntary replacement program agreed to by the State pursuant to which the manufacturer (i) supplies doses of the vaccine to providers administering the vaccine, (ii) periodically replaces the supply of the vaccine, and (iii) charges the State the manufacturer's price to the Centers for Disease Control and Prevention for the vaccine so administered (which price includes a reasonable amount to cover shipping and the handling of returns);

(33) provide—

(A) that the State health agency, or other appropriate State medical agency, shall be responsible for establishing a plan, consistent with regulations prescribed by the Secretary, for the review by appropriate professional health personnel of the appropriateness and quality of care and services furnished to recipients of medical assistance under the plan in order to provide guidance with respect thereto in the administration of the plan to the State agency established or designated pursuant to paragraph (5) and, where applicable, to the State agency described in the second sentence of this subsection; and

(B) that, except as provided in section 1396r(g) of this title, the State or local agency utilized by the Secretary for the purpose specified in the first sentence of section 1395aa(a) of this title, or, if such agency is not the State agency which is responsible for licensing health institutions, the State agency responsible for such licensing, will perform for the State agency administering or supervising the administration of the plan approved under this subchapter the function of determining whether institutions and agencies meet the requirements for participation in the program under such plan, except that, if the Secretary has cause to question the adequacy of such determinations, the Secretary is authorized to validate State determinations and, on that basis, make independent and binding determinations concerning the extent to which individual institutions and agencies meet the requirements for participation;

(34) provide that in the case of any individual who has been determined to be eligible for medical assistance under the plan, such assistance will be made available to him for care and services included under the plan and furnished in or after the third month before the month in which he made application (or application was made on his behalf in the case of a deceased individual) for such assistance if such individual was (or upon application would have been) eligible for such assistance at the time such care and services were furnished;

(35) provide that any disclosing entity (as defined in section 1320a–3(a)(2) of this title) receiving payments under such plan complies with the requirements of section 1320a–3 of this title;

(36) provide that within 90 days following the completion of each survey of any health care facility, laboratory, agency, clinic, or organization, by the appropriate State agency described in paragraph (9), such agency shall (in accordance with regulations of the Secretary) make public in readily available form and place the pertinent findings of each such survey relating to the compliance of each such health care facility, laboratory, clinic, agency, or organization with (A) the statutory conditions of participation imposed under this subchapter, and (B) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such facility, laboratory, clinic, agency, or organization;

(37) provide for claims payment procedures which (A) ensure that 90 per centum of claims for payment (for which no further written information or substantiation is required in order to make payment) made for services covered under the plan and furnished by health care practitioners through individual or group practices or through shared health facilities are paid within 30 days of the date of receipt of such claims and that 99 per centum of such claims are paid within 90 days of the date of receipt of such claims, and (B) provide for procedures of prepayment and postpayment claims review, including review of appropriate data with respect to the recipient and provider of a service and the nature of the service for which payment is claimed, to ensure the proper and efficient payment of claims and management of the program;

(38) require that an entity (other than an individual practitioner or a group of practitioners) that furnishes, or arranges for the furnishing of, items or services under the plan, shall supply (within such period as may be specified in regulations by the Secretary or by the single State agency which administers or supervises the administration of the plan) upon request specifically addressed to such entity by the Secretary or such State agency, the information described in section 1320a–7(b)(9) of this title;

(39) provide that the State agency shall exclude any specified individual or entity from participation in the program under the State plan for the period specified by the Secretary, when required by him to do so pursuant to section 1320a–7 of this title or section 1320a–7a of this title, and provide that no payment may be made under the plan with respect to any item or service furnished by such individual or entity during such period;

(40) require each health services facility or organization which receives payments under the plan and of a type for which a uniform reporting system has been established under section 1320a(a) of this title to make reports to the Secretary of information described in such section in accordance with the uniform reporting system (established under such section) for that type of facility or organization;

(41) provide that whenever a provider of services or any other person is terminated, suspended, or otherwise sanctioned or prohibited from participating under the State plan, the State agency shall promptly notify the Secretary and, in the case of a physician and notwithstanding paragraph (7), the State medical licensing board of such action;

(42) provide that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan;

(43) provide for—

(A) informing all persons in the State who are under the age of 21 and who have been determined to be eligible for medical assistance including services described in section 1396d(a)(4)(B) of this title, of the availability of early and periodic screening, diagnostic, and treatment services as described in section 1396d(r) of this title and the need for age-appropriate immunizations against vaccine-preventable diseases,

(B) providing or arranging for the provision of such screening services in all cases where they are requested,

(C) arranging for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services, and

(D) reporting to the Secretary (in a uniform form and manner established by the Secretary, by age group and by basis of eligibility for medical assistance, and by not later than April 1 after the end of each fiscal year, beginning with fiscal year 1990) the following information relating to early and periodic screening, diagnostic, and treatment services provided under the plan during each fiscal year:

(i) the number of children provided child health screening services,

(ii) the number of children referred for corrective treatment (the need for which is disclosed by such child health screening services),

(iii) the number of children receiving dental services, and

(iv) the State's results in attaining the participation goals set for the State under section 1396d(r) of this title;

(44) in each case for which payment for inpatient hospital services, services in an intermediate care facility for the mentally retarded, or inpatient mental hospital services is made under the State plan—

(A) a physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician) certifies at the time of admission, or, if later, the time the individual applies for medical assistance under the State plan (and a physician, a physician assistant under the

supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician, recertifies, where such services are furnished over a period of time, in such cases, at least as often as required under section 1396b(g)(6) of this title (or, in the case of services that are services provided in an intermediate care facility for the mentally retarded, every year), and accompanied by such supporting material, appropriate to the case involved, as may be provided in regulations of the Secretary), that such services are or were required to be given on an inpatient basis because the individual needs or needed such services, and

(B) such services were furnished under a plan established and periodically reviewed and evaluated by a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician;

(45) provide for mandatory assignment of rights of payment for medical support and other medical care owed to recipients, in accordance with section 1396k of this title;

(46) provide that information is requested and exchanged for purposes of income and eligibility verification in accordance with a State system which meets the requirements of section 1320b–7 of this title;

(47) at the option of the State, provide for making ambulatory prenatal care available to pregnant women during a presumptive eligibility period in accordance with section 1396r–1 of this title;

(48) provide a method of making cards evidencing eligibility for medical assistance available to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address;

(49) provide that the State will provide information and access to certain information respecting sanctions taken against health care practitioners and providers by State licensing authorities in accordance with section 1396r–2 of this title;

(50) provide, in accordance with subsection (q) of this section, for a monthly personal needs allowance for certain institutionalized individuals and couples;

(51) meet the requirements of section 1396r–5 of this title (relating to protection of community spouses);

(52) meet the requirements of section 1396r–6 of this title (relating to extension of eligibility for medical assistance);

(53) provide—

(A) for notifying in a timely manner all individuals in the State who are determined to be eligible for medical assistance and who are pregnant women, breastfeeding or postpartum women (as defined in section 1786 of this title), or children below the age of 5, of the availability of benefits furnished by the special supplemental nutrition program under such section, and

(B) for referring any such individual to the State agency responsible for administering such program;

(54) in the case of a State plan that provides medical assistance for covered outpatient drugs (as defined in section 1396r–8(k) of this title), comply with the applicable requirements of section 1396r–8 of this title;

(55) provide for receipt and initial processing of applications of individuals for medical assistance under subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), or (a)(10)(A)(ii)(IX) of this section—

(A) at locations which are other than those used for the receipt and processing of applications for aid under part A of subchapter IV of this chapter and which include facilities defined as disproportionate share hospitals under section 1396r–4(a)(1)(A) of this title and Federally-qualified health centers described in section 1396d(1)(2)(B)[7] of this title, and

(B) using applications which are other than those used for applications for aid under such part;

(56) provide, in accordance with subsection (s) of this section, for adjusted payments for certain inpatient hospital services;

(57) provide that each hospital, nursing facility, provider of home health care or personal care services, hospice program, or health maintenance organization (as defined in section 1396b(m)(1)(A) of this title) receiving funds under the plan shall comply with the requirements of subsection (w) of this section;

(58) provide that the State, acting through a State agency, association, or other private nonprofit entity, develop a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives that would be distributed by providers or organizations under the requirements of subsection (w) of this section;

(59) maintain a list (updated not less often than monthly, and containing each physician's unique identifier provided under the system established under subsection (v)[8] of this section) of all physicians who are certified to participate under the State plan;

(60) provide that the State agency shall provide assurances satisfactory to the Secretary that the State has in effect the laws relating to medical child support required under section 1396g–1[9] of this title;

(61) provide that the State must demonstrate that it operates a medicaid fraud and abuse control unit described in section 1396b(q) of this title that effectively carries out the functions and requirements described in such section, as determined in accordance with standards established by the Secretary, unless the State demonstrates to the satisfaction of the Secretary that the effective operation of

[7] So in original. Probably should be section ''1396d(*l*)(2)(B)''.

[8] So in original. Probably should be subsection ''(x)''.

[9] See Codification note below.

such a unit in the State would not be cost-effective because minimal fraud exists in connection with the provision of covered services to eligible individuals under the State plan, and that beneficiaries under the plan will be protected from abuse and neglect in connection with the provision of medical assistance under the plan without the existence of such a unit; and

(62) provide for a program for the distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children in accordance with section 1396s of this title.

Notwithstanding paragraph (5), if on January 1, 1965, and on the date on which a State submits its plan for approval under this subchapter, the State agency which administered or supervised the administration of the plan of such State approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) was different from the State agency which administered or supervised the administration of the State plan approved under subchapter I of this chapter (or subchapter XVI of this chapter, insofar as it relates to the aged), the State agency which administered or supervised the administration of such plan approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) may be designated to administer or supervise the administration of the portion of the State plan for medical assistance which relates to blind individuals and a different State agency may be established or designated to administer or supervise the administration of the rest of the State plan for medical assistance; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter (except for purposes of paragraph (10)). The provisions of paragraphs (9)(A), (31), and (33) and of section 1396b(i)(4) of this title shall not apply to a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

For purposes of paragraph (10) any individual who, for the month of August 1972, was eligible for or receiving aid or assistance under a State plan approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter and who for such month was entitled to monthly insurance benefits under subchapter II of this chapter shall for purposes of this subchapter only be deemed to be eligible for financial aid or assistance for any month thereafter if such individual would have been eligible for financial aid or assistance for such month had the increase in monthly insurance benefits under subchapter II of this chapter resulting from enactment of Public Law 92–336 not been applicable to such individual.

The requirement of clause (A) of paragraph (37) with respect to a State plan may be waived by the Secretary if he finds that the State has exercised good faith in trying to meet such requirement. For purposes of this subchapter, any child who meets the requirements of paragraph (1) or (2) of section 673(b) of this title shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of subchapter IV of this chapter in the State where such child resides. Notwithstanding paragraph (10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1396b(v) of this title.

(b) Approval by Secretary

The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan—

(1) an age requirement of more than 65 years; or

(2) any residence requirement which excludes any individual who resides in the State, regardless of whether or not the residence is maintained permanently or at a fixed address; or

(3) any citizenship requirement which excludes any citizen of the United States.

(c) Lower payment levels or applying for benefits as condition of applying for, or receiving, medical assistance

Notwithstanding subsection (b) of this section, the Secretary shall not approve any State plan for medical assistance if—

(1) the State has in effect, under its plan established under part A of subchapter IV of this chapter, payment levels that are less than the payment levels in effect under such plan on May 1, 1988; or

(2) the State requires individuals described in subsection (*l*)(1) of this section to apply for benefits under such part as a condition of applying for, or receiving, medical assistance under this subchapter.

(d) Performance of medical or utilization review functions

If a State contracts with an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary, for the performance of the quality review functions described in subsection (a)(30)(C) of this section, or a utilization and quality control peer review organization having a contract with the Secretary under part B of subchapter XI of this chapter for the performance of medical or utilization review functions (including quality review functions described in subsection (a)(30)(C) of this section) required under this subchapter of a State plan with respect to specific services or providers (or services or providers in a geographic area of the State), such requirements shall be deemed to be met for those services or providers (or services or providers in that area) by delegation to such an entity or organization under the contract of the State's authority to conduct such review activities if the contract provides for the performance of activities not inconsistent with part B of subchapter XI of this chapter and provides for such assurances of satisfactory performance by such an entity or organization as the Secretary may prescribe.

(e) Continued eligibility of families determined ineligible because of income and resources or hours of work limitations of plan; individuals enrolled with health maintenance organizations; persons deemed recipients of supplemental security income or State supplemental payments; entitlement for certain newborns; postpartum eligibility for pregnant women

(1)(A) Notwithstanding any other provision of this subchapter, effective January 1, 1974, subject to subparagraph (B) each State plan approved under this subchapter must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of subchapter IV of this chapter in at least 3 of the 6 months immediately preceding the month in which such family became ineligible for such aid because of increased hours of, or increased income from, employment, shall, while a member of such family is employed, remain eligible for assistance under the plan approved under this subchapter (as though the family was receiving aid under the plan approved under part A of subchapter IV of this chapter) for 4 calendar months beginning with the month in which such family became ineligible for aid under the plan approved under part A of subchapter IV of this chapter because of income and resources or hours of work limitations contained in such plan.

(B) Subparagraph (A) shall not apply with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter during the period beginning on April 1, 1990, and ending on September 30, 1998. During such period, for provisions relating to extension of eligibility for medical assistance for certain families who have received aid pursuant to a State plan approved under part A of subchapter IV of this chapter and have earned income, see section 1396r–6 of this title.

(2)(A) In the case of an individual who is enrolled with a qualified health maintenance organization (as defined in title XIII of the Public Health Service Act [42 U.S.C. 300e et seq.]) or with an entity described in paragraph (2)(B)(iii), (2)(E), (2)(G), or (6) of section 1396b(m) of this title under a contract described in section 1396b(m)(2)(A) of this title or with an eligible organization with a contract under section 1395mm of this title and who would (but for this paragraph) lose eligibility for benefits under this subchapter before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this subchapter, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but, except for benefits furnished under section 1396d(a)(4)(C) of this title, only with respect to such benefits provided to the individual as an enrollee of such organization or entity.

(B) For purposes of subparagraph (A), the term ''minimum enrollment period'' means, with respect to an individual's enrollment with an organization or entity under a State plan, a period, established by the State, of not more than six months beginning on the date the individual's enrollment with the organization or entity becomes effective.

(3) At the option of the State, any individual who—

(A) is 18 years of age or younger and qualifies as a disabled individual under section 1382c(a) of this title;

(B) with respect to whom there has been a determination by the State that—

(i) the individual requires a level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded,

(ii) it is appropriate to provide such care for the individual outside such an institution, and

(iii) the estimated amount which would be expended for medical assistance for the individual for such care outside an institution is not greater than the estimated amount which would otherwise be expended for medical assistance for the individual within an appropriate institution; and

(C) if the individual were in a medical institution, would be eligible for medical assistance under the State plan under this subchapter,

shall be deemed, for purposes of this subchapter only, to be an individual with respect to whom a supplemental security income payment, or State supplemental payment, respectively, is being paid under subchapter XVI of this chapter.

(4) A child born to a woman eligible for and receiving medical assistance under a State plan on the date of the child's birth shall be deemed to have applied for medical assistance and to have been found eligible for such assistance under such plan on the date of such birth and to remain eligible for such assistance for a period of one year so long as the child is a member of the woman's household and the woman remains (or would remain if pregnant) eligible for such assistance. During the period in which a child is deemed under the preceding sentence to be eligible for medical assistance, the medical assistance eligibility identification number of the mother shall also serve as the identification number of the child, and all claims shall be submitted and paid under such number (unless the State issues a separate identification number for the child before such period expires).

(5) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance under the State plan, shall continue to be eligible under the plan, as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan, through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends.

(6) In the case of a pregnant woman described in subsection (a)(10) of this section who, because of a change in income of the family of which she is a member, would not otherwise continue to be described in such subsection, the woman shall be deemed to continue to be an individual described in subsection (a)(10)(A)(i)(IV) of this section and subsection (*l*)(1)(A) of this section without regard to such change of income through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends. The preceding sentence shall not apply in the case of

a woman who has been provided ambulatory prenatal care pursuant to section 1396r–1 of this title during a presumptive eligibility period and is then, in accordance with such section, determined to be ineligible for medical assistance under the State plan.

(7) In the case of an infant or child described in subparagraph (B), (C), or (D) of subsection (*l*)(1) of this section or paragraph (2) of section 1396d(n) of this title—

(A) who is receiving inpatient services for which medical assistance is provided on the date the infant or child attains the maximum age with respect to which coverage is provided under the State plan for such individuals, and

(B) who, but for attaining such age, would remain eligible for medical assistance under such subsection,

the infant or child shall continue to be treated as an individual described in such respective provision until the end of the stay for which the inpatient services are furnished.

(8) If an individual is determined to be a qualified medicare beneficiary (as defined in section 1396d(p)(1) of this title), such determination shall apply to services furnished after the end of the month in which the determination first occurs. For purposes of payment to a State under section 1396b(a) of this title, such determination shall be considered to be valid for an individual for a period of 12 months, except that a State may provide for such determinations more frequently, but not more frequently than once every 6 months for an individual.

(9)(A) At the option of the State, the plan may include as medical assistance respiratory care services for any individual who—

(i) is medically dependent on a ventilator for life support at least six hours per day;

(ii) has been so dependent for at least 30 consecutive days (or the maximum number of days authorized under the State plan, whichever is less) as an inpatient;

(iii) but for the availability of respiratory care services, would require respiratory care as an inpatient in a hospital, nursing facility, or intermediate care facility for the mentally retarded and would be eligible to have payment made for such inpatient care under the State plan;

(iv) has adequate social support services to be cared for at home; and

(v) wishes to be cared for at home.

(B) The requirements of subparagraph (A)(ii) may be satisfied by a continuous stay in one or more hospitals, nursing facilities, or intermediate care facilities for the mentally retarded.

(C) For purposes of this paragraph, respiratory care services means services provided on a part-time basis in the home of the individual by a respiratory therapist or other health care professional trained in respiratory therapy (as determined by the State), payment for which is not otherwise included within other items and services furnished to such individual as medical assistance under the plan.

(10)(A) The fact that an individual, child, or pregnant woman may be denied aid under part A of subchapter IV of this chapter pursuant to section 602(a)(43) of this title shall not be construed as denying (or permitting a State to deny) medical assistance under this subchapter to such individual, child, or woman who is eligible for assistance under this subchapter on a basis other than the receipt of aid under such part.

(B) If an individual, child, or pregnant woman is receiving aid under part A of subchapter IV of this chapter and such aid is terminated pursuant to section 602(a)(43) of this title, the State may not discontinue medical assistance under this subchapter for the individual, child, or woman until the State has determined that the individual, child, or woman is not eligible for assistance under this subchapter on a basis other than the receipt of aid under such part.

(11)(A) In the case of an individual who is enrolled with a group health plan under section 1396e of this title and who would (but for this paragraph) lose eligibility for benefits under this subchapter before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this subchapter, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but only with respect to such benefits provided to the individual as an enrollee of such plan.

(B) For purposes of subparagraph (A), the term ''minimum enrollment period'' means, with respect to an individual's enrollment with a group health plan, a period established by the State, of not more than 6 months beginning on the date the individual's enrollment under the plan becomes effective.

(f) Effective date of State plan as determinative of duty of State to provide medical assistance to aged, blind, or disabled individuals

Notwithstanding any other provision of this subchapter, except as provided in subsection (e) of this section and section 1382h(b)(3) of this title and section 1396r–5 of this title, except with respect to qualified disabled and working individuals (described in section 1396d(s) of this title), and except with respect to qualified medicare beneficiaries, qualified severely impaired individuals, and individuals described in subsection (m)(1) of this subsection, no State not eligible to participate in the State plan program established under subchapter XVI of this chapter shall be required to provide medical assistance to any aged, blind, or disabled individual (within the meaning of subchapter XVI of this chapter) for any month unless such State would be (or would have been) required to provide medical assistance to such individual for such month had its plan for medical assistance approved under this subchapter and in effect on January 1, 1972, been in effect in such month, except that for this purpose any such individual shall be deemed eligible for medical assistance under such State plan if (in addition to meeting such other requirements as are or may be imposed under the State plan) the income of any such individual as determined in accordance with section 1396b(f) of this title (after deducting any supplemental security income payment and State supplementary payment made with respect to such individual, and incurred expenses for medical care as recognized under

State law regardless of whether such expenses are reimbursed under another public program of the State or political subdivision thereof) is not in excess of the standard for medical assistance established under the State plan as in effect on January 1, 1972. In States which provide medical assistance to individuals pursuant to paragraph (10)(C) of subsection (a) of this section, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under paragraph (10)(A) of that subsection if that individual is, or is eligible to be (1) an individual with respect to whom there is payable a State supplementary payment on the basis of which similarly situated individuals are eligible to receive medical assistance equal in amount, duration, and scope to that provided to individuals eligible under paragraph (10)(A), or (2) an eligible individual or eligible spouse, as defined in subchapter XVI of this chapter, with respect to whom supplemental security income benefits are payable; otherwise that individual shall be considered to be an individual eligible for medical assistance under paragraph (10)(C) of that subsection. In States which do not provide medical assistance to individuals pursuant to paragraph (10)(C) of that subsection, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under paragraph (10)(A) of that subsection.

(g) Reduction of aid or assistance to providers of services attempting to collect from beneficiary in violation of third-party provisions

In addition to any other sanction available to a State, a State may provide for a reduction of any payment amount otherwise due with respect to a person who furnishes services under the plan in an amount equal to up to three times the amount of any payment sought to be collected by that person in violation of subsection (a)(25)(C) of this section.

(h) Payments for hospitals serving disproportionate number of low-income patients and for home and community care

Nothing in this subchapter (including subsections (a)(13) and (a)(30) of this section) shall be construed as authorizing the Secretary to limit the amount of payment that may be made under a plan under this subchapter for home and community care.

(i) Termination of certification for participation of and suspension of State payments to intermediate care facilities for the mentally retarded

(1) In addition to any other authority under State law, where a State determines that a[10] intermediate care facility for the mentally retarded which is certified for participation under its plan no longer substantially meets the requirements for such a facility under this subchapter and further determines that the facility's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the State shall provide for the termination of the facility's certification for participation under the plan and may provide, or

(B) do not immediately jeopardize the health and safety of its patients, the State may, in lieu of providing for terminating the facility's certification for participation under the plan, provide

that no payment will be made under the State plan with respect to any individual admitted to such facility after a date specified by the State.

(2) The State shall not make such a decision with respect to a facility until the facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the requirements for such a facility under this subchapter, to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

(3) The State's decision to deny payment may be made effective only after such notice to the public and to the facility as may be provided for by the State, and its effectiveness shall terminate (A) when the State finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the requirements for such a facility under this subchapter, or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of the respective section on the date specified in such clause, the State shall terminate such facility's certification for participation under the plan effective with the first day of the first month following the month specified in such clause.

(j) Waiver or modification of subchapter requirements with respect to medical assistance program in American Samoa

Notwithstanding any other requirement of this subchapter, the Secretary may waive or modify any requirement of this subchapter with respect to the medical assistance program in American Samoa and the Northern Mariana Islands, other than a waiver of the Federal medical assistance percentage, the limitation in section 1308(c) of this title, or the requirement that payment may be made for medical assistance only with respect to amounts expended by American Samoa or the Northern Mariana Islands for care and services described in paragraphs (1) through (25) of section 1396d(a) of this title.

(k) Repealed. Pub. L. 103–66, title XIII, § 13611(d)(1)(C), Aug. 10, 1993, 107 Stat. 627

(*l*) Description of group

(1) Individuals described in this paragraph are—

(A) women during pregnancy (and during the 60-day period beginning on the last day of the pregnancy),

[10] So in original. Probably should be ''an''.

(B) infants under one year of age,

(C) children children[11] who have attained one year of age but have not attained 6 years of age, and

(D) children born after September 30, 1983, who have attained 6 years of age but have not attained 19 years of age,

who are not described in any of subclauses (I) through (III) of subsection (a)(10)(A)(i) of this section and whose family income does not exceed the income level established by the State under paragraph (2) for a family size equal to the size of the family, including the woman, infant, or child.

(2)(A)(i) For purposes of paragraph (1) with respect to individuals described in subparagraph (A) or (B) of that paragraph, the State shall establish an income level which is a percentage (not less than the percentage provided under clause (ii) and not more than 185 percent) of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(ii) The percentage provided under this clause, with respect to eligibility for medical assistance on or after—

(I) July 1, 1989, is 75 percent, or, if greater, the percentage provided under clause (iii), and

(II) April 1, 1990, 133 percent, or, if greater, the percentage provided under clause (iv).

(iii) In the case of a State which, as of July 1, 1988, has elected to provide, and provides, medical assistance to individuals described in this subsection or has enacted legislation authorizing, or appropriating funds, to provide such assistance to such individuals before July 1, 1989, the percentage provided under clause (ii)(I) shall not be less than—

(I) the percentage specified by the State in an amendment to its State plan (whether approved or not) as of July 1, 1988, or

(II) if no such percentage is specified as of July 1, 1988, the percentage established under the State's authorizing legislation or provided for under the State's appropriations;

but in no case shall this clause require the percentage provided under clause (ii)(I) to exceed 100 percent.

(iv) In the case of a State which, as of December 19, 1989, has established under clause (i), or has enacted legislation authorizing, or appropriating funds, to provide for, a percentage (of the income official poverty line) that is greater than 133 percent, the percentage provided under clause (ii) for medical assistance on or after April 1, 1990, shall not be less than—

(I) the percentage specified by the State in an amendment to its State plan (whether approved or not) as of December 19, 1989, or

(II) if no such percentage is specified as of December 19, 1989, the percentage established under the State's authorizing legislation or provided for under the State's appropriations.

(B) For purposes of paragraph (1) with respect to individuals described in subparagraph (C) of such paragraph, the State shall establish an income level which is equal to 133 percent of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.

(C) For purposes of paragraph (1) with respect to individuals described in subparagraph (D) of that paragraph, the State shall establish an income level which is equal to 100 percent of the income official poverty line described in subparagraph (A) applicable to a family of the size involved.

(3) Notwithstanding subsection (a)(17) of this section, for individuals who are eligible for medical assistance because of subsection (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII),,[12] or (a)(10)(A)(ii)(IX) of this section—

(A) application of a resource standard shall be at the option of the State;

(B) any resource standard or methodology that is applied with respect to an individual described in subparagraph (A) of paragraph (1) may not be more restrictive than the resource standard or methodology that is applied under subchapter XVI of this chapter;

(C) any resource standard or methodology that is applied with respect to an individual described in subparagraph (B), (C), or (D) of paragraph (1) may not be more restrictive than the corresponding methodology that is applied under the State plan under part A of subchapter IV of this chapter;

(D) the income standard to be applied is the appropriate income standard established under paragraph (2); and

(E) family income shall be determined in accordance with the methodology employed under the State plan under part A or E of subchapter IV of this chapter (except to the extent such methodology is inconsistent with clause (D) of subsection (a)(17) of this section), and costs incurred for medical care or for any other type of remedial care shall not be taken into account.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(4)(A) In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to provide medical assistance for pregnant women and infants under age 1 described in subsection (a)(10)(A)(i)(IV) of this section and for children described in subsection (a)(10)(A)(i)(VI) of this section or subsection (a)(10)(A)(i)(VII) of this section in the same manner as the State would be required to provide such assistance for such individuals if the State had in effect a plan approved under this subchapter.

(B) In the case of a State which is not one of the 50 States or the District of Columbia, the State need not meet the requirement of subsection (a)(10)(A)(i)(IV)[13] (a)(10)(A)(i)(VI), or (a)(10)(A)(i)(VII) of this section and, for purposes

[11] So in original.

[12] So in original.

[13] So in original. Probably should be followed by a comma.

of paragraph (2)(A), the State may substitute for the percentage provided under clause (ii) of such paragraph any percentage.

(m) Description of individuals

(1) Individuals described in this paragraph are individuals—

(A) who are 65 years of age or older or are disabled individuals (as determined under section 1382c(a)(3) of this title),

(B) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program, except as provided in paragraph (2)(C)) does not exceed an income level established by the State consistent with paragraph (2)(A), and

(C) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed (except as provided in paragraph (2)(B)) the maximum amount of resources that an individual may have and obtain benefits under that program.

(2)(A) The income level established under paragraph (1)(B) may not exceed a percentage (not more than 100 percent) of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(B) In the case of a State that provides medical assistance to individuals not described in subsection (a)(10)(A) of this section and at the State's option, the State may use under paragraph (1)(C) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in subsection (a)(10)(A) of this section.

(C) The provisions of section 1396d(p)(2)(D) of this title shall apply to determinations of income under this subsection in the same manner as they apply to determinations of income under section 1396d(p) of this title.

(3) Notwithstanding subsection (a)(17) of this section, for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(X) of this section—

(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

(B) except as provided in section 1382a(b)(4)(B)(ii) of this title, costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(4) Notwithstanding subsection (a)(17) of this section, for qualified medicare beneficiaries described in section 1396d(p)(1) of this title—

(A) the income standard to be applied is the income standard described in section 1396d(p)(1)(B) of this title, and

(B) except as provided in section 1382a(b)(4)(B)(ii) of this title, costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(17) of this section, require or permit such treatment for other individuals.

(n) Payment amounts

In the case of medical assistance furnished under this subchapter for medicare cost-sharing respecting the furnishing of a service or item to a qualified medicare beneficiary, the State plan may provide payment in an amount with respect to the service or item that results in the sum of such payment amount and any amount of payment made under subchapter XVIII of this chapter with respect to the service or item exceeding the amount that is otherwise payable under the State plan for the item or service for eligible individuals who are not qualified medicare beneficiaries.

(*o*) Certain benefits disregarded for purposes of determining post-eligibility contributions

Notwithstanding any provision of subsection (a) of this section to the contrary, a State plan under this subchapter shall provide that any supplemental security income benefits paid by reason of subparagraph (E) or (G) of section 1382(e)(1) of this title to an individual who—

(1) is eligible for medical assistance under the plan, and

(2) is in a hospital, skilled nursing facility, or intermediate care facility at the time such benefits are paid,

will be disregarded for purposes of determining the amount of any post-eligibility contribution by the individual to the cost of the care and services provided by the hospital, skilled nursing facility, or intermediate care facility.

(p) Exclusion power of State; exclusion as prerequisite for medical assistance payments; "exclude" defined

(1) In addition to any other authority, a State may exclude any individual or entity for purposes of participating under the State plan under this subchapter for any reason for which the Secretary could exclude the individual or entity from participation in a program under subchapter XVIII of this chapter under section 1320a–7, 1320a–7a, or 1395cc(b)(2) of this title.

(2) In order for a State to receive payments for medical assistance under section 1396b(a) of this title, with respect to payments the State makes to a health maintenance organization (as defined in section 1396b(m) of this title) or to an entity furnishing services under a waiver approved under section 1396n(b)(1) of this title, the State must provide that it will exclude from participation, as such an organization or entity, any organization or entity that—

(A) could be excluded under section 1320a–7(b)(8) of this title (relating to owners and managing employees who have been convicted of certain crimes or received other sanctions),

(B) has, directly or indirectly, a substantial contractual relationship (as defined by the

Secretary) with an individual or entity that is described in section 1320a–7(b)(8)(B) of this title, or

(C) employs or contracts with any individual or entity that is excluded from participation under this subchapter under section 1320a–7 or 1320a–7a of this title for the provision of health care, utilization review, medical social work, or administrative services or employs or contracts with any entity for the provision (directly or indirectly) through such an excluded individual or entity of such services.

(3) As used in this subsection, the term ''exclude'' includes the refusal to enter into or renew a participation agreement or the termination of such an agreement.

(q) Minimum monthly personal needs allowance deduction; "institutionalized individual or couple" defined

(1)(A) In order to meet the requirement of subsection (a)(50) of this section, the State plan must provide that, in the case of an institutionalized individual or couple described in subparagraph (B), in determining the amount of the individual's or couple's income to be applied monthly to payment for the cost of care in an institution, there shall be deducted from the monthly income (in addition to other allowances otherwise provided under the State plan) a monthly personal needs allowance—

(i) which is reasonable in amount for clothing and other personal needs of the individual (or couple) while in an institution, and

(ii) which is not less (and may be greater) than the minimum monthly personal needs allowance described in paragraph (2).

(B) In this subsection, the term ''institutionalized individual or couple'' means an individual or married couple—

(i) who is an inpatient (or who are inpatients) in a medical institution or nursing facility for which payments are made under this subchapter throughout a month, and

(ii) who is or are determined to be eligible for medical assistance under the State plan.

(2) The minimum monthly personal needs allowance described in this paragraph[14] is $30 for an institutionalized individual and $60 for an institutionalized couple (if both are aged, blind, or disabled, and their incomes are considered available to each other in determining eligibility).

(r) Disregarding payments for certain medical expenses by institutionalized individuals

(1) For purposes of sections 1396a(a)(17) and 1396r–5(d)(1)(D) of this title and for purposes of a waiver under section 1396n of this title, with respect to the post-eligibility treatment of income of individuals who are institutionalized or receiving home or community-based services under such a waiver[15] there shall be disregarded reparation payments made by the Federal Republic of Germany and,[16] there shall be taken into account amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) medicare and other health insurance premiums, deductibles, or coinsurance, and

(ii) necessary medical or remedial care recognized under State law but not covered under the State plan under this subchapter, subject to reasonable limits the State may establish on the amount of these expenses.

(2)(A) The methodology to be employed in determining income and resource eligibility for individuals under subsection (a)(10)(A)(i)(III), (a)(10)(A)(i)(IV), (a)(10)(A)(i)(VI), (a)(10)(A)(i)(VII), (a)(10)(A)(ii), (a)(10)(C)(i)(III), or (f) of this section or under section 1396d(p) of this title may be less restrictive, and shall be no more restrictive, than the methodology—

(i) in the case of groups consisting of aged, blind, or disabled individuals, under the supplemental security income program under subchapter XVI of this chapter, or

(ii) in the case of other groups, under the State plan most closely categorically related.

(B) For purposes of this subsection and subsection (a)(10) of this section, methodology is considered to be ''no more restrictive'' if, using the methodology, additional individuals may be eligible for medical assistance and no individuals who are otherwise eligible are made ineligible for such assistance.

(s) Adjustment in payment for hospital services furnished to low-income children under age of 6 years

In order to meet the requirements of subsection (a)(55)[17] of this section, the State plan must provide that payments to hospitals under the plan for inpatient hospital services furnished to infants who have not attained the age of 1 year, and to children who have not attained the age of 6 years and who receive such services in a disproportionate share hospital described in section 1396r–4(b)(1) of this title, shall—

(1) if made on a prospective basis (whether per diem, per case, or otherwise) provide for an outlier adjustment in payment amounts for medically necessary inpatient hospital services involving exceptionally high costs or exceptionally long lengths of stay,

(2) not be limited by the imposition of day limits with respect to the delivery of such services to such individuals, and

(3) not be limited by the imposition of dollar limits (other than such limits resulting from prospective payments as adjusted pursuant to paragraph (1)) with respect to the delivery of such services to any such individual who has not attained their first birthday (or in the case of such an individual who is an inpatient on his first birthday until such individual is discharged).

(t) Limitation on payments to States for expenditures attributable to taxes

Nothing in this subchapter (including sections 1396b(a) and 1396d(a) of this title) shall be construed as authorizing the Secretary to deny or limit payments to a State for expenditures, for medical assistance for items or services, attrib-

[14] So in original. Probably should be ''this subsection''.

[15] So in original. Probably should be followed by a comma.

[16] So in original. The comma probably should not appear.

[17] So in original. Probably should be subsection ''(a)(56)''.

utable to taxes of general applicability imposed with respect to the provision of such items or services.

(u) Qualified COBRA continuation beneficiaries

(1) Individuals described in this paragraph are individuals—

(A) who are entitled to elect COBRA continuation coverage (as defined in paragraph (3)),

(B) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program) does not exceed 100 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved,

(C) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program, and

(D) with respect to whose enrollment for COBRA continuation coverage the State has determined that the savings in expenditures under this subchapter resulting from such enrollment is likely to exceed the amount of payments for COBRA premiums made.

(2) For purposes of subsection (a)(10)(F) of this section and this subsection, the term ''COBRA premiums'' means the applicable premium imposed with respect to COBRA continuation coverage.

(3) In this subsection, the term ''COBRA continuation coverage'' means coverage under a group health plan provided by an employer with 75 or more employees provided pursuant to title XXII of the Public Health Service Act [42 U.S.C. 300bb–1 et seq.], section 4980B of the Internal Revenue Code of 1986, or title VI[18] of the Employee Retirement Income Security Act of 1974.

(4) Notwithstanding subsection (a)(17) of this section, for individuals described in paragraph (1) who are covered under the State plan by virtue of subsection (a)(10)(A)(ii)(XI) of this section—

(A) the income standard to be applied is the income standard described in paragraph (1)(B), and

(B) except as provided in section 1382a(b)(4)(B)(ii) of this title, costs incurred for medical care or for any other type of remedial care shall not be taken into account in determining income.

Any different treatment provided under this paragraph for such individuals shall not, because of subsection (a)(10)(B) or (a)(17) of this section, require or permit such treatment for other individuals.

(v) State agency disability and blindness determinations for medical assistance eligibility

(1)[19] A State plan may provide for the making of determinations of disability or blindness for the purpose of determining eligibility for medical assistance under the State plan by the single State agency or its designee, and make medical assistance available to individuals whom it finds to be blind or disabled and who are determined otherwise eligible for such assistance during the period of time prior to which a final determination of disability or blindness is made by the Social Security Administration with respect to such an individual. In making such determinations, the State must apply the definitions of disability and blindness found in section 1382c(a) of this title.

(w) Maintenance of written policies and procedures respecting advance directives

(1) For purposes of subsection (a)(57) of this section and sections 1396b(m)(1)(A) and 1396r(c)(2)(E) of this title, the requirement of this subsection is that a provider or organization (as the case may be) maintain written policies and procedures with respect to all adult individuals receiving medical care by or through the provider or organization—

(A) to provide written information to each such individual concerning—

(i) an individual's rights under State law (whether statutory or as recognized by the courts of the State) to make decisions concerning such medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives (as defined in paragraph (3)), and

(ii) the provider's or organization's written policies respecting the implementation of such rights;

(B) to document in the individual's medical record whether or not the individual has executed an advance directive;

(C) not to condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive;

(D) to ensure compliance with requirements of State law (whether statutory or as recognized by the courts of the State) respecting advance directives; and

(E) to provide (individually or with others) for education for staff and the community on issues concerning advance directives.

Subparagraph (C) shall not be construed as requiring the provision of care which conflicts with an advance directive.

(2) The written information described in paragraph (1)(A) shall be provided to an adult individual—

(A) in the case of a hospital, at the time of the individual's admission as an inpatient,

(B) in the case of a nursing facility, at the time of the individual's admission as a resident,

(C) in the case of a provider of home health care or personal care services, in advance of the individual coming under the care of the provider,

(D) in the case of a hospice program, at the time of initial receipt of hospice care by the individual from the program, and

(E) in the case of a health maintenance organization, at the time of enrollment of the individual with the organization.

[18] See References in Text note below.

[19] So in original. No par. (2) has been enacted.

(3) Nothing in this section shall be construed to prohibit the application of a State law which allows for an objection on the basis of conscience for any health care provider or any agent of such provider which as a matter of conscience cannot implement an advance directive.

(4) In this subsection, the term ''advance directive'' means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law (whether statutory or as recognized by the courts of the State) and relating to the provision of such care when the individual is incapacitated.

(x) Physician identifier system; establishment

The Secretary shall establish a system, for implementation by not later than July 1, 1991, which provides for a unique identifier for each physician who furnishes services for which payment may be made under a State plan approved under this subchapter.

(y) Intermediate sanctions for psychiatric hospitals

(1) In addition to any other authority under State law, where a State determines that a psychiatric hospital which is certified for participation under its plan no longer meets the requirements for a psychiatric hospital (referred to in section 1396d(h) of this title) and further finds that the hospital's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the State shall terminate the hospital's participation under the State plan; or

(B) do not immediately jeopardize the health and safety of its patients, the State may terminate the hospital's participation under the State plan, or provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the effective date of the finding, or both.

(2) Except as provided in paragraph (3), if a psychiatric hospital described in paragraph (1)(B) has not complied with the requirements for a psychiatric hospital under this subchapter—

(A) within 3 months after the date the hospital is found to be out of compliance with such requirements, the State shall provide that no payment will be made under the State plan with respect to any individual admitted to such hospital after the end of such 3-month period, or

(B) within 6 months after the date the hospital is found to be out of compliance with such requirements, no Federal financial participation shall be provided under section 1396b(a) of this title with respect to further services provided in the hospital until the State finds that the hospital is in compliance with the requirements of this subchapter.

(3) The Secretary may continue payments, over a period of not longer than 6 months from the date the hospital is found to be out of compliance with such requirements, if—

(A) the State finds that it is more appropriate to take alternative action to assure compliance of the hospital with the requirements than to terminate the certification of the hospital,

(B) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

(C) the State agrees to repay to the Federal Government payments received under this paragraph if the corrective action is not taken in accordance with the approved plan and timetable.

(z) Optional coverage of TB-related services

(1) Individuals described in this paragraph are individuals not described in subsection (a)(10)(A)(i) of this section—

(A) who are infected with tuberculosis;

(B) whose income (as determined under the State plan under this subchapter with respect to disabled individuals) does not exceed the maximum amount of income a disabled individual described in subsection (a)(10)(A)(i) of this section may have and obtain medical assistance under the plan; and

(C) whose resources (as determined under the State plan under this subchapter with respect to disabled individuals) do not exceed the maximum amount of resources a disabled individual described in subsection (a)(10)(A)(i) of this section may have and obtain medical assistance under the plan.

(2) For purposes of subsection (a)(10) of this section, the term ''TB-related services'' means each of the following services relating to treatment of infection with tuberculosis:

(A) Prescribed drugs.

(B) Physicians' services and services described in section 1396d(a)(2) of this title.

(C) Laboratory and X-ray services (including services to confirm the presence of infection).

(D) Clinic services and Federally-qualified health center services.

(E) Case management services (as defined in section 1396n(g)(2) of this title).

(F) Services (other than room and board) designed to encourage completion of regimens of prescribed drugs by outpatients, including services to observe directly the intake of prescribed drugs.

(Aug. 14, 1935, ch. 531, title XIX, § 1902, as added July 30, 1965, Pub. L. 89–97, title I, § 121(a), 79 Stat. 344; amended Jan. 2, 1968, Pub. L. 90–248, title II, §§ 210(a)(6), 223(a), 224(a), (c)(1), 227(a), 228(a), 229(a), 231, 234(a), 235(a), 236(a), 237, 238, 241(f)(1)–(4), title III, § 302(b), 81 Stat. 896, 901–906, 908, 911, 917, 929; Aug. 9, 1969, Pub. L. 91–56, § 2(c), (d), 83 Stat. 99; Dec. 28, 1971, Pub. L. 92–223, § 4(b), 85 Stat. 809; Oct. 30, 1972, Pub. L. 92–603, title II, §§ 208(a), 209(a), (b)(1), 221(c)(5), 231, 232(a), 236(b), 237(a)(2), 239(a), (b), 240, 246(a), 249(a), 255(a), 268(a), 274(a), 278(a)(18)–(20), (b)(14), 298, 299A, 299D(b), 86 Stat. 1381, 1389, 1410, 1415–1418, 1424, 1426, 1446, 1450, 1452–1454, 1460, 1462; Dec. 31, 1973, Pub. L. 93–233, §§ 13(a)(2)–(10), 18(*o*)–(q), (x)(1)–(4), 87 Stat. 960–962, 971, 972; Aug. 7, 1974, Pub. L. 93–368, § 9(a), 88 Stat. 422; July 1, 1975, Pub. L. 94–48, §§ 1, 2, 89 Stat. 247; Dec. 31, 1975, Pub. L. 94–182, title I, § 111(a), 89 Stat. 1054; Oct. 18, 1976, Pub. L. 94–552, § 1, 90 Stat. 2540; Oct. 25, 1977, Pub. L. 95–142, §§ 2(a)(3), (b)(1), 3(c)(1), 7(b), (c), 9, 19(b)(2), 20(b), 91 Stat. 1176, 1178, 1193, 1195, 1204, 1207; Dec. 13, 1977, Pub. L. 95–210, § 2(c), 91 Stat.

1488; Nov. 1, 1978, Pub. L. 95–559, §14(a)(1), 92 Stat. 2140; June 17, 1980, Pub. L. 96–272, title III, §308(c), 94 Stat. 531; Dec. 5, 1980, Pub. L. 96–499, title IX, §§902(b), 903(b), 905(a), 912(b), 913(c), (d), 914(b)(1), 916(b)(1), 918(b)(1), 962(a), 965(b), 94 Stat. 2613, 2615, 2618–2621, 2624, 2626, 2650, 2652; Dec. 28, 1980, Pub. L. 96–611, §5(b), 94 Stat. 3568; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§2105(c), 2113(m), 2171(a), (b), 2172(a), 2173(a), (b)(1), 2174(a), 2175(a), (d)(1), 2178(b), 2181(a)(2), 2182, 2193(c)(9), 95 Stat. 792, 795, 807–809, 811, 814–816, 828; Sept. 3, 1982, Pub. L. 97–248, title I, §§131(a), (c), formerly (b), 132(a), (c), 134(a), 136(d), 137(a)(3), (b)(7)–(10), (e), 146(a), 96 Stat. 367, 369, 370, 373, 375–378, 381, 394; Jan. 12, 1983, Pub. L. 97–448, title III, §309(a)(8), 96 Stat. 2408; July 18, 1984, Pub. L. 98–369, div. B, title III, §§2303(g)(1), 2314(b), 2335(e), 2361(a), 2362(a), 2363(a)(1), 2367(a), 2368(a), (b), 2373(b)(1)–(10), title VI, §2651(c), 98 Stat. 1066, 1079, 1091, 1104, 1105, 1108, 1109, 1111, 1149; Aug. 16, 1984, Pub. L. 98–378, §20(c), 98 Stat. 1322; Nov. 8, 1984, Pub. L. 98–617, §3(a)(7), (b)(10), 98 Stat. 3295, 3296; Apr. 7, 1986, Pub. L. 99–272, title IX, §§9501(b), (c), 9503(a), 9505(b), (c)(1), (d), 9506(a), 9509(a), 9510(a), 9517(b), 9529(a)(1), (b)(1), title XII, §12305(b)(3), 100 Stat. 201, 202, 205, 208–212, 216, 220, 293; Oct. 21, 1986, Pub. L. 99–509, title IX, §§9320(h)(3), 9401(a)–(e)(1), 9402(a), (b), 9403(a), (c), (e)–(g)(1), (4)(A), 9404(a), 9405, 9406(b), 9407(a), 9408(a), (b), (c)(2), (3), 9431(a), (b)(1), 9433(a), 9435(b)(1), 100 Stat. 2016, 2050–2058, 2060, 2061, 2066, 2068, 2069; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1895(c)(1), (3)(B), (C), (7), 100 Stat. 2935, 2936; Oct. 27, 1986, Pub. L. 99–570, title XI, §11005(b), 100 Stat. 3207–169; Nov. 10, 1986, Pub. L. 99–643, §§3(b), 7(b), 100 Stat. 3575, 3579; Aug. 18, 1987, Pub. L. 100–93, §§5(a), 7, 8(f), 101 Stat. 689, 691, 694; Dec. 22, 1987, Pub. L. 100–203, title IV, §§4072(d), 4101(a)(1), (2), (b)(1)–(2)(B), (c)(2), (e)(1)–(5), 4102(b)(1), 4104, 4113(a)(2), (b)(1), (2), (c)(1), (2), (d)(2), 4116, 4118(c)(1), (h)(1), (2), (m)(1)(B), (p)(1)–(4), (6)–(8), 4211(b)(1), (h)(1)–(5), 4212(d)(2), (3), (e)(1), 4213(b)(1), 4218(a), title IX, §§9115(b), 9119(d)(1), 101 Stat. 1330–117, 1330–140 to 1330–143, 1330–146, 1330–147, 1330–151, 1330–152, 1330–154 to 1330–157, 1330–159, 1330–203, 1330–205, 1330–213, 1330–219, 1330–220, 1330–305, as amended July 1, 1988, Pub. L. 100–360, title IV, §411(k)(5)(A), (7)(B)–(D), (10)(G)(ii), (iv), (*l*)(3)(H), (J), (8)(C), (n)(2), (4), formerly (3), 102 Stat. 791, 794, 796, 803, 805, 807, as amended Oct. 13, 1988, Pub. L. 100–485, title VI, §608(d)(14)(I), (15)(A), (27)(F)–(H), (28), 102 Stat. 2416, 2423; July 1, 1988, Pub. L. 100–360, title II, §204(d)(3), title III, §§301(a)(1), (e)(2), 302(a), (b)(1), (c)(1), (2), (d)–(e)(3), 303(d), (e), title IV, §411(k)(5)(B), (17)(B), (*l*)(3)(E), (6)(C), (D), 102 Stat. 729, 748–753, 762, 763, 792, 800, 803, 804; Oct. 13, 1988, Pub. L. 100–485, title II, §202(c)(4), title III, §303(a)(2), (b)(1), (d), title IV, §401(d)(1), title VI, §608(d)(15)(B), (16)(C), 102 Stat. 2378, 2391, 2392, 2396, 2416, 2418; Nov. 10, 1988, Pub. L. 100–647, title VIII, §8434(b)(1), (2), 102 Stat. 3805; Dec. 13, 1989, Pub. L. 101–234, title II, §201(a), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, §§6115(c), 6401(a), 6402(a), (c)(2), 6403(b), (d)(1), 6404(c), 6405(b), 6406(a), 6408(c)(1), (d)(1), (4)(C), 6411(a)(1), (d)(3)(B), (e)(2), 103 Stat. 2219, 2258, 2260, 2261, 2263–2265, 2268–2271; Nov. 5, 1990, Pub. L. 101–508, title IV, §§4401(a)(2), 4402(a)(1), (c), (d)(1), 4501(b), (e)(2), 4601(a)(1), 4602(a), 4603(a), 4604(a), (b), 4701(b)(1), 4704(a), (e)(1), 4708(a), 4711(c)(1), (d), 4713(a), 4715(a), 4723(b), 4724(a), 4732(b)(1), 4751(a), 4752(a)(1)(A), (c)(1), 4754(a), 4755(a)(2), (c)(1), 4801(e)(1)(A), (11)(A), 104 Stat. 1388–143, 1388–161, 1388–163 to 1388–173, 1388–186, 1388–187, 1388–190, 1388–192, 1388–194, 1388–195, 1388–204, 1388–206, 1388–208 to 1388–210, 1388–215, 1388–217; Dec. 12, 1991, Pub. L. 102–234, §§2(b)(1), 3(a), 105 Stat. 1799; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13581(b)(2), 13601(b), 13602(c), 13603(a)–(c), 13611(d)(1), 13622(a)(1), (b), (c), 13623(a), 13625(a), 13631(a), (e)(1), (f)(1), 107 Stat. 611, 613, 619, 620, 626, 632, 633, 636, 643, 644; Aug. 15, 1994, Pub. L. 103–296, title I, §108(d)(1), 108 Stat. 1486; Nov. 2, 1994, Pub. L. 103–448, title II, §204(w)(2)(E), 108 Stat. 4746.)

AMENDMENT OF SECTION

Pub. L. 101–508, title IV, §4801(e)(11), Nov. 5, 1990, 104 Stat. 1388–217, provided that, effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1396r(f)(4) of this title, subsection (a)(29) of this section is repealed.

REFERENCES IN TEXT

Parts A, D, and E of subchapter IV of this chapter, referred to in subsecs. (a), (c)(1), (e)(1), (10), and (*l*)(3), are classified to sections 601 et seq., 651 et seq., and 670 et seq., respectively, of this title.

Parts A and B of subchapter XVIII of this chapter, referred to in subsec. (a)(10), (13)(D), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 303(a)(4)(A) of this title, referred to in subsec. (a)(20)(C), was amended generally by Pub. L. 97–35, title XXIII, §2353(a)(1)(A), Aug. 13, 1981, 95 Stat. 871, and, as so amended, no longer contained cls. (i) and (ii). Section 303(a)(4) was amended by Pub. L. 103–66, title XIII, §13741(b), Aug. 10, 1993, 107 Stat. 663, and, as so amended, no longer contains subparagraphs.

Section 1383(a)(4)(A)(i) and (ii) of this title, referred to in subsec. (a)(20)(C), is a reference to section 1383(a)(4)(A)(i) and (ii) existing prior to the general revision of subchapter XVI of this chapter by Pub. L. 92–603, title III, §301, Oct. 30, 1972, 86 Stat. 1465, eff. Jan. 1, 1974. The prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands. Subsec. (a)(4) of the prior section was amended generally by Pub. L. 97–35, title XXIII, §2353(m)(2)(B), Aug. 13, 1981, 95 Stat. 973, and, as so amended, no longer contained clauses in subpar. (A). Subsec. (a)(4) of the prior section was also amended by Pub. L. 103–66, title XIII, §13741(b), Aug. 10, 1993, 107 Stat. 663, and, as so amended, no longer contains subparagraphs.

Part B of subchapter XI of this chapter, referred to in subsecs. (a)(30)(C) and (d), is classified to section 1320c et seq. of this title.

Public Law 92–336, referred to in provisions following subsec. (a)(52), is Pub. L. 92–336, July 1, 1972, 86 Stat. 406, which amended sections 401, 403, 409, 411, 415, 427, 428, and 430 of this title and sections 165, 1401, 1402, 3101, 3111, 3121, 3122, 3125, 6413, and 6654 of Title 26, Internal Revenue Code, and enacted provisions set out as notes under sections 403, 409, 415, and 428 of this title and sections 165 and 1401 of Title 26.

The Public Health Service Act, referred to in subsecs. (e)(2)(A) and (u)(3), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Titles XIII and XXII of the Act are classified generally to subchapters XI (§300e et seq.) and XX (§300bb–1 et seq.), respectively, of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (u)(3), is classified generally to Title 26.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (u)(3), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title VI of the Act probably means part 6 of subtitle B of title I of the Act which is classified generally to part 6 (§ 1161 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor, because the Act has no title VI. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

CODIFICATION

Section 1396g–1 of this title, referred to in subsec. (a)(60), was in the original ''section 1908'' which has been translated as meaning the section 1908 of act Aug. 14, 1935, which relates to required laws relating to medical child support to reflect the probable intent of Congress. Another section 1908 of act Aug. 14, 1935, which relates to State programs for licensing of administrators of nursing homes, is classified to section 1396g of this title.

AMENDMENTS

1994—Subsec. (a)(10)(A)(ii)(XI). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

Subsec. (a)(11)(C), (53)(A). Pub. L. 103–448 substituted ''special supplemental nutrition program'' for ''special supplemental food program''.

1993—Subsec. (a)(10). Pub. L. 103–66, § 13603(c), in concluding provisions, substituted ''services, or hospitals, (XI)'' for ''services, or hospitals; and (XI)'' and ''other individuals, (XII)'' for ''other individuals, and (XI)'', and inserted '', and'' and subdiv. (XIII) before semicolon at end.

Subsec. (a)(10)(A)(ii)(XII). Pub. L. 103–66, § 13603(a), added subcl. (XII).

Subsec. (a)(1)(C)(iv). Pub. L. 103–66, § 13601(b)(1), substituted ''paragraphs numbered (1) through (24)'' for ''paragraphs numbered (1) through (21)''.

Subsec. (a)(11). Pub. L. 103–66, § 13631(f)(1)(A), (B), in subpar. (B), struck out ''effective July 1, 1969,'' after ''(B)'' and ''and'' before ''(ii)'' and substituted ''to the individual under section 1396b of this title, and (iii) providing for coordination of information and education on pediatric vaccinations and delivery of immunization services'' for ''to him under section 1396b of this title'', and in subpar. (C), inserted '', including the provision of information and education on pediatric vaccinations and the delivery of immunization services,'' after ''operations under this subchapter''.

Subsec. (a)(18). Pub. L. 103–66, § 13611(d)(1)(A), substituted '', transfers of assets, and treatment of certain trusts'' for ''and transfers of assets''.

Subsec. (a)(25)(A). Pub. L. 103–66, § 13622(a), substituted ''insurers, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, and health maintenance organizations)'' for ''insurers)'' in introductory provisions.

Subsec. (a)(25)(A)(i). Pub. L. 103–66, § 13581(b)(2), substituted ''(including the use of information collected by the Medicare and Medicaid Coverage Data Bank under section 1320b–14 of this title and any additional measures as specified'' for ''(as specified''.

Subsec. (a)(25)(H). Pub. L. 103–66, § 13622(b), added subpar. (H).

Subsec. (a)(25)(I). Pub. L. 103–66, § 13622(c), added subpar. (I).

Subsec. (a)(32)(D). Pub. L. 103–66, § 13631(e)(1), added subpar. (D).

Subsec. (a)(43)(A). Pub. L. 103–66, § 13631(f)(1)(C), inserted before comma at end ''and the need for age-appropriate immunizations against vaccine-preventable diseases''.

Subsec. (a)(51). Pub. L. 103–66, § 13611(d)(1)(B), struck out ''(A)'' before ''meet the requirements'' and '', and (B) meet the requirement of section 1396p(c) of this title (relating to transfer of assets)'' after ''community spouses)''.

Subsec. (a)(54). Pub. L. 103–66, § 13623(a)(1), which directed amendment of par. (54) by striking ''and'' at end, could not be executed because ''and'' did not appear at end subsequent to amendment by Pub. L. 103–66, § 13602(c). See below.

Pub. L. 103–66, § 13602(c), amended par. (54) generally. Prior to amendment, par. (54) read as follows:

''(A) provide that, any formulary or similar restriction (except as provided in section 1396r–8(d) of this title) on the coverage of covered outpatient drugs under the plan shall permit the coverage of covered outpatient drugs of any manufacturer which has entered into and complies with an agreement under section 1396r–8(a) of this title, which are prescribed for a medically accepted indication (as defined in subsection 1396r–8(k)(6) of this title), and

''(B) comply with the reporting requirements of section 1396r–8(b)(2)(A) of this title and the requirements of subsections (d) and (g) of section 1396r–8 of this title; and''.

Subsec. (a)(55). Pub. L. 103–66, § 13623(a)(3), redesignated par. (55) relating to providing for adjusted payments as (56).

Pub. L. 103–66, § 13623(a)(2), amended par. (55) relating to providing for receipt and initial processing of applications by substituting semicolon for period at end of subpar. (B).

Subsec. (a)(56). Pub. L. 103–66, § 13623(a)(3), redesignated par. (55) relating to providing for adjusted payments as (56), transferred such par. to appear after par. (55) relating to providing for receipt and initial processing of applications, and substituted semicolon for period at end.

Subsec. (a)(57). Pub. L. 103–66, § 13623(a)(4), transferred par. (57) to appear after par. (56) as redesignated by Pub. L. 103–66, § 13623(a)(3). See above.

Subsec. (a)(58). Pub. L. 103–66, § 13623(a)(6), redesignated par. (58) relating to maintaining a list as (59).

Pub. L. 103–66, § 13623(a)(5), amended par. (58) relating to providing that a State develop a written description of advance directive laws by substituting a semicolon for period at end.

Pub. L. 103–66, § 13623(a)(4), transferred par. (58) relating to providing that a State develop a written description of advance directive laws to follow par. (57) which was transferred by Pub. L. 103–66, § 13623(a)(4), to appear after par. (56), as redesignated by Pub. L. 103–66, § 13623(a)(3). See above.

Subsec. (a)(59). Pub. L. 103–66, § 13625(a)(1), struck out ''and'' at end.

Pub. L. 103–66, § 13623(a)(6), redesignated par. (58), relating to maintaining a list, as (59), transferred such par. to appear after par. (58) relating to providing that a State develop a written description of advance directive laws, and substituted ''; and'' for period at end.

Subsec. (a)(60). Pub. L. 103–66, § 13623(a)(7), added par. (60).

Subsec. (a)(61). Pub. L. 103–66, § 13625(a), added par. (61).

Subsec. (a)(62). Pub. L. 103–66, § 13631(a), added par. (62).

Subsec. (j). Pub. L. 103–66, § 13601(b)(2), substituted ''paragraphs (1) through (25)'' for ''paragraphs (1) through (22)''.

Subsec. (k). Pub. L. 103–66, § 13611(d)(1)(C), struck out subsec. (k) which read as follows:

''(k)(1) In the case of a medicaid qualifying trust (described in paragraph (2)), the amounts from the trust deemed available to a grantor, for purposes of subsection (a)(17) of this section, is the maximum amount of payments that may be permitted under the terms of the trust to be distributed to the grantor, assuming the full exercise of discretion by the trustee or trustees for the distribution of the maximum amount to the grantor. For purposes of the previous sentence, the term 'grantor' means the individual referred to in paragraph (2).

''(2) For purposes of this subsection, a 'medicaid qualifying trust' is a trust, or similar legal device, established (other than by will) by an individual (or an

individual's spouse) under which the individual may be the beneficiary of all or part of the payments from the trust and the distribution of such payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the individual.

''(3) This subsection shall apply without regard to—

''(A) whether or not the medicaid qualifying trust is irrevocable or is established for purposes other than to enable a grantor to qualify for medical assistance under this subchapter; or

''(B) whether or not the discretion described in paragraph (2) is actually exercised.

''(4) The State may waive the application of this subsection with respect to an individual where the State determines that such application would work an undue hardship.''

Subsec. (z). Pub. L. 103–66, §13603(b), added subsec. (z).

1991—Subsec. (h). Pub. L. 102–234, §3(a), struck out ''to limit the amount of payment adjustments that may be made under a plan under this subchapter with respect to hospitals that serve a disproportionate number of low-income patients with special needs or'' after ''Secretary''.

Subsec. (t). Pub. L. 102–234, §2(b)(1), substituted ''Nothing'' for ''Except as provided in section 1396b(i) of this title, nothing'' and ''taxes of general applicability'' for ''taxes (whether or not of general applicability)''.

1990—Subsec. (a)(10). Pub. L. 101–508, §4713(a)(1)(D), which directed amendment of par. (10) by adding subdiv. (XI), relating to medical assistance available to an individual described in subsection (u)(1), in the matter following subparagraph (E), was executed in the matter following subpar. (F) to reflect the probable intent of Congress and the intervening amendment by Pub. L. 101–508, §4713(a)(1)(A)–(C), which added subpar. (F). See below. Direction by section 4713(a)(1)(D) to strike ''and'' before ''(X)'' could not be executed because ''and'' did not appear after amendment by Pub. L. 101–508, §4402(d)(1). See below.

Pub. L. 101–508, §4402(d)(1), in closing provisions, struck out ''and'' at end of subdiv. (IX), inserted ''and'' at end of subdiv. (X), and added subdiv. (XI) relating to medical assistance to cover costs of premiums, etc.

Subsec. (a)(10)(A)(i)(VII). Pub. L. 101–508, §4601(a)(1)(A), added subcl. (VII).

Subsec. (a)(10)(A)(ii)(IX). Pub. L. 101–508, §4601(a)(1)(B), substituted '', clause (i)(VI), or clause (i)(VII)'' for ''or clause (i)(VI)''.

Subsec. (a)(10)(C)(iv). Pub. L. 101–508, §§4711(d)(2), 4755(c)(1)(A), amended cl. (iv) identically, substituting ''through (21)'' for ''through (20)''.

Subsec. (a)(10)(E)(iii). Pub. L. 101–508, §4501(b), added cl. (iii).

Subsec. (a)(10)(F). Pub. L. 101–508, §4713(a)(1)(A)–(C), added subpar. (F).

Subsec. (a)(13)(A). Pub. L. 101–508, §4801(e)(1)(A), inserted ''(including the costs of services required to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident eligible for benefits under this subchapter)'' after ''take into account the costs''.

Subsec. (a)(13)(E). Pub. L. 101–508, §4704(e)(1), repealed Pub. L. 101–239, §6402(c)(2). See 1989 Amendment note below.

Pub. L. 101–508, §4704(a), substituted ''prescribes'' for ''may prescribe'' and ''on the same methodology used under section 1395*l*(a)(3) of this title'' for ''on such tests of reasonableness as the Secretary may prescribe in regulations under this subparagraph''.

Subsec. (a)(13)(F). Pub. L. 101–508, §4711(c)(1)(A), added subpar. (F).

Subsec. (a)(17). Pub. L. 101–508, §4723(b), inserted '', payments made to the State under section 1396b(f)(2)(B) of this title,'' after ''insurance premiums''.

Subsec. (a)(25)(G). Pub. L. 101–508, §4402(a)(1), added subpar. (G).

Subsec. (a)(32)(C). Pub. L. 101–508, §4708(a), added subpar. (C).

Subsec. (a)(41). Pub. L. 101–508, §4754(a), substituted ''shall promptly notify the Secretary and, in the case of a physician and notwithstanding paragraph (7), the State medical licensing board'' for ''shall promptly notify the Secretary''.

Subsec. (a)(54). Pub. L. 101–508, §4401(a)(2), added par. (54).

Subsec. (a)(55). Pub. L. 101–508, §4604(b), added par. (55) relating to providing for adjusted payments.

Pub. L. 101–508, §4602(a), added par. (55) relating to providing for receipt and initial processing of applications.

Subsec. (a)(57). Pub. L. 101–508, §4751(a)(1), added par. (57).

Subsec. (a)(58). Pub. L. 101–508, §4752(c), added par. (58) relating to maintaining a list.

Pub. L. 101–508, §4751(a)(1), added par. (58) relating to providing that a State develop a written description of advance directive laws.

Subsec. (e)(2)(A). Pub. L. 101–508, §4732(b)(1), inserted ''or with an eligible organization with a contract under section 1395mm of this title'' after ''section 1396b(m)(2)(A) of this title''.

Subsec. (e)(4). Pub. L. 101–508, §4603(a)(1), inserted ''(or would remain if pregnant)'' after ''remains''.

Subsec. (e)(6). Pub. L. 101–508, §4603(a)(2), substituted ''In'' for ''At the option of a State, in'', substituted ''the woman shall be deemed to continue to be'' for ''the State plan may nonetheless treat the woman as being'', and inserted at end ''The preceding sentence shall not apply in the case of a woman who has been provided ambulatory prenatal care pursuant to section 1396r–1 of this title during a presumptive eligibility period and is then, in accordance with such section, determined to be ineligible for medical assistance under the State plan.''

Subsec. (e)(11). Pub. L. 101–508, §4402(c), added par. (11).

Subsec. (h). Pub. L. 101–508, §4711(c)(1)(B), inserted before period at end ''or to limit the amount of payment that may be made under a plan under this subchapter for home and community care''.

Subsec. (j). Pub. L. 101–508, §§4711(d)(1), 4755(c)(1)(B), amended subsec. (j) identically substituting ''through (22)'' for ''through (21)''.

Subsec. (*l*)(1)(C). Pub. L. 101–508, §4601(a)(1)(C)(i), inserted ''children'' after ''(C)''.

Subsec. (*l*)(1)(D). Pub. L. 101–508, §4601(a)(1)(C)(ii), added subpar. (D) and struck out former subpar. (D) which read as follows: ''at the option of the State, children born after September 30, 1983, who have attained 6 years of age but have not attained 7 or 8 years of age (as selected by the State),''.

Subsec. (*l*)(2)(C). Pub. L. 101–508, §4601(a)(1)(C)(iii), added subpar. (C) and struck out former subpar. (C) which read as follows: ''If a State elects, under subsection (a)(10)(A)(ii)(IX) of this section, to cover individuals not described in subparagraph (A) or (B) of paragraph (1), for purposes of that paragraph and with respect to individuals not described in such subparagraphs the State shall establish an income level which is a percentage (not more than 100 percent) of the income official poverty line described in subparagraph (A).''

Subsec. (*l*)(3). Pub. L. 101–508, §4601(a)(1)(C)(iv), inserted '', (a)(10)(A)(i)(VII),'' after ''(a)(10)(A)(i)(VI)''.

Subsec. (*l*)(4)(A). Pub. L. 101–508, §4601(a)(1)(C)(v), inserted ''or subsection (a)(10)(A)(i)(VII) of this section'' after ''(a)(10)(A)(i)(VI) of this section''.

Subsec. (*l*)(4)(B). Pub. L. 101–508, §4601(a)(1)(C)(vi), substituted ''(a)(10)(A)(i)(VI), or (a)(10)(A)(i)(VII)'' for ''or (a)(10)(A)(i)(VI)''.

Subsec. (m)(1)(B). Pub. L. 101–508, §4501(e)(2)(A), inserted '', except as provided in paragraph (2)(C)'' after ''program''.

Subsec. (m)(2)(C). Pub. L. 101–508, §4501(e)(2)(B), added subpar. (C).

Subsec. (r)(1). Pub. L. 101–508, §4715(a), inserted ''there shall be disregarded reparation payments made by the Federal Republic of Germany and'' after ''under such a waiver''.

Subsec. (r)(2)(A). Pub. L. 101–508, §4601(a)(1)(D), inserted ''(a)(10)(A)(i)(VII),'' after ''(a)(10)(A)(i)(VI),''.

Subsec. (s). Pub. L. 101–508, §4604(a), added subsec. (s).

Subsec. (t). Pub. L. 101–508, §4701(b)(1), added subsec. (t).

Subsec. (u). Pub. L. 101–508, §4713(a)(2), added subsec. (u).

Subsec. (v). Pub. L. 101–508, §4724(a), added subsec. (v).

Subsec. (w). Pub. L. 101–508, §4751(a)(2), added subsec. (w).

Subsec. (x). Pub. L. 101–508, §4752(a)(1)(A), added subsec. (x).

Subsec. (y). Pub. L. 101–508, §4755(a)(2), added subsec. (y).

1989—Subsec. (a)(9)(C). Pub. L. 101–239, §6115(c), substituted ''paragraphs (15) and (16)'' for ''paragraphs (14) and (15)''.

Pub. L. 101–234 repealed Pub. L. 100–360, §204(d)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec.(a)(10)(A). Pub. L. 101–239, §6405(b), substituted ''(1) through (5), (17) and (21)'' for ''(1) through (5) and (17)'' in introductory provisions.

Subsec. (a)(10)(A)(i)(VI). Pub. L. 101–239, §6401(a)(1), added subcl. (VI).

Subsec. (a)(10)(A)(ii)(IX). Pub. L. 101–239, §6401(a)(2), inserted ''or clause (i)(VI)'' after ''clause (i)(IV)''.

Subsec. (a)(10)(E). Pub. L. 101–239, §6408(d)(1), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(11)(C). Pub. L. 101–239, §6406(a)(1), added subpar. (C).

Subsec. (a)(13)(D). Pub. L. 101–239, §6408(c)(1), substituted ''in amounts no lower than the amounts, using the same methodology, used'' for ''in the same amounts, and using the same methodology, as used'', ''in the case of'' for ''a separate rate may be paid for'', and ''there shall be paid an additional amount, to take into account the room and board furnished by the facility, equal to at least 95 percent of the rate that would have been paid by the State under the plan for facility services in that facility for that individual'' for ''to take into account the room and board furnished by such facility''.

Subsec. (a)(13)(E). Pub. L. 101–239, §6404(c), substituted ''clause (B) or (C) of section 1396d(a)(2) of this title'' for ''section 1396d(a)(2)(B) of this title provided by a rural health clinic''.

Pub. L. 101–239, §6402(c)(2), which directed insertion of '', and for payment for services described in section 1396d(a)(2)(C) of this title under the plan,'' after ''provided by a rural health clinic under the plan'', was repealed by Pub. L. 101–508, §4704(e)(1).

Subsec. (a)(30)(A). Pub. L. 101–239, §6402(a), inserted before semicolon at end ''and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area''.

Subsec. (a)(43)(A). Pub. L. 101–239, §6403(d)(1), substituted ''section 1396d(r)'' for ''section 1396d(a)(4)(B)''.

Subsec. (a)(43)(D). Pub. L. 101–239, §6403(b), added subpar. (D).

Subsec. (a)(53). Pub. L. 101–239, §6406(a)(2)–(4), added par. (53).

Subsec. (e)(7). Pub. L. 101–239, §6401(a)(8), substituted '', (C), or (D)'' for ''or (C)'' in introductory provisions.

Subsec. (f). Pub. L. 101–239, §6411(e)(2), inserted ''and section 1396r–5 of this title'' after ''section 1382h(b)(3) of this title''.

Pub. L. 101–239, §6411(a)(1), inserted ''and except with respect to qualified medicare beneficiaries, qualified severely impaired individuals, and individuals described in subsection (m)(1) of this subsection'' before '', no State''.

Pub. L. 101–239, §6408(d)(4)(C), inserted '', except with respect to qualified disabled and working individuals (described in section 1396d(s) of this title),'' after ''section 1382h(b)(3) of this title''.

Subsec. (*l*)(1)(C), (D). Pub. L. 101–239, §6401(a)(3), added subpars. (C) and (D) and struck out former subpar. (C) which read as follows: ''at the option of the State, children born after September 30, 1983, who have attained one year of age but have not attained 2, 3, 4, 5, 6, 7, or 8 years of age (as selected by the State),''.

Subsec. (*l*)(2)(A)(ii)(II). Pub. L. 101–239, §6401(a)(4)(A), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''July 1, 1990, is 100 percent.''

Subsec. (*l*)(2)(A)(iv). Pub. L. 101–239, §6401(a)(4)(B), added cl. (iv).

Subsec. (*l*)(2)(B), (C). Pub. L. 101–239, §6401(a)(5), (6), added subpar. (B), struck out '', or, if less, the percentage established under subparagraph (A)'' after ''not more than 100 percent'' in former subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (*l*)(3). Pub. L. 101–239, §6401(a)(6)(A), inserted '', (a)(10)(A)(i)(VI),'' after ''(a)(10)(A)(i)(IV)'' in introductory provisions.

Subsec. (*l*)(3)(C). Pub. L. 101–239, §6401(a)(6)(B), substituted ''(C), or (D)'' for ''or (C)''.

Subsec. (*l*)(4)(A). Pub. L. 101–239, §6401(a)(7)(A), inserted ''and for children described in subsection (a)(10)(A)(i)(VI) of this section'' after ''(a)(10)(A)(i)(IV) of this section''.

Subsec. (*l*)(4)(B). Pub. L. 101–239, §6401(a)(7)(B), inserted ''or (a)(10)(A)(i)(VI)'' after ''(a)(10)(A)(i)(IV)''.

Subsec. (p)(2)(C). Pub. L. 101–239, §6411(d)(3)(B), added subpar. (C).

Subsec. (r)(2)(A). Pub. L. 101–239, §6401(a)(9), inserted ''(a)(10)(A)(i)(VI),'' after ''(a)(10)(A)(i)(IV),'' in introductory provisions.

1988—Subsec. (a)(9)(C). Pub. L. 100–360, §204(d)(3), substituted ''paragraphs (14) and (15)'' for ''paragraphs (13) and (14)''.

Subsec. (a)(10). Pub. L. 100–647, §8434(b)(1), inserted ''who is only entitled to medical assistance because the individual is such a beneficiary'' after ''section 1396d(p)(1) of this title'' in subdiv. (VIII) of closing provisions.

Pub. L. 100–360, §302(a)(1)(C), inserted ''(A)(i)(IV) or'' before ''(A)(ii)(X)'' in subdiv. (VII) of closing provisions.

Pub. L. 100–360, §302(b)(1), added subdiv. (X) in closing provisions.

Subsec. (a)(10)(A)(i)(I). Pub. L. 100–485, §202(c)(4), substituted ''section 682(e)(6) of this title'' for ''section 614(g) of this title''.

Subsec. (a)(10)(A)(i)(IV). Pub. L. 100–360, §302(a)(1)(A), added subcl. (IV).

Subsec. (a)(10)(A)(i)(V). Pub. L. 100–485, §401(d)(1), added subcl. (V).

Subsec. (a)(10)(A)(ii)(VI). Pub. L. 100–360, §411(k)(17)(B), substituted ''(c), (d), or (e)'' for ''(c) or (d)'' in two places.

Subsec. (a)(10)(A)(ii)(IX). Pub. L. 100–360, §302(a)(1)(B), amended subcl. (IX) generally. Prior to amendment, subcl. (IX) read as follows: ''subject to subsection (*l*)(4) of this section, who are described in subsection (*l*)(1) of this section;''.

Subsec. (a)(10)(A)(ii)(X). Pub. L. 100–360, §301(e)(2)(A), struck out ''subject to subsection (m)(3) of this section,'' before ''who are described''.

Subsec. (a)(10)(A)(ii)(XI). Pub. L. 100–360, §411(k)(5)(B), substituted ''may be more restrictive'' for ''are more restrictive'' and a semicolon for the period at end.

Pub. L. 100–360, §411(k)(5)(A), amended Pub. L. 100–203, §4104, see 1987 Amendment note below.

Subsec. (a)(10)(C)(i)(III). Pub. L. 100–360, §303(e)(1), substituted ''no more restrictive than the methodology'' for ''the same methodology'' in two places.

Subsec. (a)(10)(E). Pub. L. 100–360, §301(e)(2)(B), struck out ''subject to subsection (m)(3) of this section,'' before ''for making medical''.

Pub. L. 100–360, §301(a)(1), struck out ''at the option of a State, but'' after ''(E)''.

Subsec. (a)(13)(A). Pub. L. 100–360, §411(*l*)(3)(J), as added by Pub. L. 100–485, §608(d)(27)(H), amended Pub. L. 100–203, §4211(h)(2)(B), see 1987 Amendment note below.

Subsec. (a)(13)(C). Pub. L. 100–360, §411(*l*)(3)(H)(i), as amended by Pub. L. 100–485, §608(d)(27)(F), amended Pub. L. 100–203, §4211(h)(2)(C), see 1987 Amendment note below.

Subsec. (a)(13)(D). Pub. L. 100–360, §411(*l*)(3)(H)(ii), (iii), as amended by Pub. L. 100–485, §608(d)(27)(G), amended Pub. L. 100–203, §4211(h)(2)(D), see 1987 Amendment note below.

Subsec. (a)(15). Pub. L. 100–360, §301(e)(2)(C), as added by Pub. L. 100–485, §608(d)(14)(I)(iii), struck out par. (15) which read as follows: ''in the case of eligible individuals 65 years of age or older who are not qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title) but are covered by either or both of the insurance programs established by subchapter XVIII of this chapter, provide where, under the plan, all of any deductible, cost sharing, or similar charge imposed with respect to such individual under the insurance program established by such subchapter is not met, the portion thereof which is met shall be determined on a basis reasonably related (as determined in accordance with standards approved by the Secretary and included in the plan) to such individual's income or his income and resources;''.

Subsec. (a)(17). Pub. L. 100–360, §411(k)(10)(G)(ii), amended directory language of Pub. L. 100–203, §4118(h)(1), see 1987 Amendment note below.

Pub. L. 100–360, §301(e)(2)(D), formerly §301(e)(2)(C), as redesignated and amended by Pub. L. 100–485, §608(d)(14)(I)(i), substituted ''(m)(3), and (m)(4)'' for ''(m)(4), and (m)(5)''.

Subsec. (a)(28)(D)(i). Pub. L. 100–360, §411(*l*)(3)(E), substituted ''section 1396r(e) of this title'' for ''section 1396r(f) of this title (relating to implementation of nursing facility requirements, including paragraph (6)(B), relating to specification of resident assessment instrument)''.

Subsec. (a)(33)(B). Pub. L. 100–360, §411(*l*)(6)(C), substituted ''section 1396r(g) of this title'' for ''section 1396r(d) of this title''.

Subsec. (a)(44)(A). Pub. L. 100–360, §411(*l*)(6)(D), amended Pub. L. 100–203, §4212(e)(1)(B), see 1987 Amendment note below.

Subsec. (a)(50). Pub. L. 100–360, §411(n)(4), formerly §411(n)(3), as redesignated by Pub. L. 100–485, §608(d)(28), added Pub. L. 100–203, §9119(d)(1)(A), see 1987 Amendment note below.

Subsec. (a)(51). Pub. L. 100–360, §303(e)(2)–(4), added par. (51).

Subsec. (a)(52). Pub. L. 100–485, §303(a)(2), added par. (52).

Subsec. (c). Pub. L. 100–360, §302(c)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''Notwithstanding subsection (b) of this section, the Secretary shall not approve any State plan for medical assistance if he determines that the approval and operation of the plan will result in a reduction in aid or assistance in the form of money payments (other than so much, if any, of the aid or assistance in such form as was, immediately prior to the effective date of the State plan under this subchapter, attributable to medical needs) provided for eligible individuals under a plan of such State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter.''

Subsec. (d). Pub. L. 100–360, §411(k)(7)(C), amended Pub. L. 100–203, §4113(b)(2)(ii), see 1987 Amendment note below.

Subsec. (e)(1). Pub. L. 100–485, §303(b)(1), designated existing provisions as subpar. (A), inserted ''subject to subparagraph (B)'' after ''January 1, 1974,'', and added subpar. (B).

Subsec. (e)(2)(A). Pub. L. 100–360, §411(k)(7)(D), repealed Pub. L. 100–203, §4113(d)(2), see 1987 Amendment note below.

Pub. L. 100–360, §411(k)(7)(B), amended Pub. L. 100–203, §4113(a)(2), see 1987 Amendment note below.

Subsec. (e)(6). Pub. L. 100–360, §302(e)(1), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''At the option of a State, if a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX) of this section, the plan may provide that any woman described in such subsection and subsection (*l*)(1)(A) of this section shall continue to be treated as an individual described in subsection (a)(10)(A)(ii)(IX) of this section without regard to any change in income of the family of which she is a member until the end of the 60-day period beginning on the last day of her pregnancy.''

Subsec. (e)(7). Pub. L. 100–360, §302(e)(2), in introductory provisions, substituted ''In the case'' for ''If a State plan provides medical assistance for individuals under subsection (a)(10)(A)(ii)(IX) of this section, in the case'' and inserted ''or paragraph (2) of section 1396d(n) of this title'', and, in concluding provisions, substituted ''such respective provision'' for ''subsection (a)(10)(A)(ii)(IX) of this section and subsection (*l*)(1) of this section''.

Subsec. (e)(10). Pub. L. 100–485, §303(d), added par. (10).

Subsec. (f). Pub. L. 100–360, §411(k)(10)(G)(iv), added Pub. L. 100–203, §4118(h)(2), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100–360, §411(*l*)(8)(C), amended Pub. L. 100–203, §4213(b)(1), see 1987 Amendment note below.

Subsec. (*l*)(1). Pub. L. 100–360, §302(e)(3)(A), inserted ''any of subclauses (I) through (III) of'' after ''described in'' in concluding provisions.

Subsec. (*l*)(1)(C). Pub. L. 100–360, §302(a)(2)(A), inserted ''at the option of the State,'' after ''(C)'' and struck out ''and'' after ''1983,''.

Subsec. (*l*)(2)(A). Pub. L. 100–360, §302(a)(2)(B), as amended by Pub. L. 100–485, §608(d)(15)(A), designated existing provisions as cl. (i), substituted ''(not less than the percentage provided under clause (ii) and not more than 185 percent)'' for ''(not more than 185 percent)'', and added cls. (ii) and (iii).

Subsec. (*l*)(2)(A)(ii). Pub. L. 100–485, §608(d)(15)(B)(i), in introductory provisions, substituted ''The'' for ''Subject to clause (iii), the'', and in subcl. (I), inserted ''or, if greater, the percentage provided under clause (iii),''.

Subsec. (*l*)(2)(A)(iii). Pub. L. 100–485, §608(d)(15)(B)(ii), substituted ''clause (ii)(I)'' for ''clause (ii)'' in introductory provisions and concluding provisions.

Subsec. (*l*)(3). Pub. L. 100–360, §302(e)(3)(B), inserted ''(a)(10)(A)(i)((IV) or'' after ''of subsection'' in introductory provisions.

Subsec. (*l*)(4). Pub. L. 100–360, §302(c)(2), (d), added par. (4) and struck out former par. (4) which read as follows:

''(A) A State plan may not elect the option of furnishing medical assistance to individuals described in subsection (a)(10)(A)(ii)(IX) of this section unless the State has in effect, under its plan established under part A of subchapter IV of this chapter, payment levels that are not less than the payment levels in effect under its plan on July 1, 1987.

''(B)(i) A State may not elect, under subsection (a)(10)(A)(ii)(IX) of this section, to cover only individuals described in paragraph (1)(A) or to cover only individuals described in paragraph (1)(B).

''(ii) A State may not elect, under subsection (a)(10)(A)(ii)(IX) of this section, to cover individuals described in subparagraph (C) of paragraph (1) unless the State has elected, under such subsection, to cover individuals described in the preceding subparagraphs of such paragraph.

''(C) A State plan may not provide, in its election of the option of furnishing medical assistance to individuals described in paragraph (1), that such individuals must apply for benefits under part A of subchapter IV of this chapter as a condition of applying for, or receiving, medical assistance under this subchapter.''

Subsec. (m)(3). Pub. L. 100–360, §301(e)(2)(E), formerly §301(e)(2)(D), as redesignated and amended by Pub. L. 100–485, §608(d)(14)(I)(ii), redesignated par. (4) as (3) and struck out former par. (3) which read as follows: ''A State plan may not provide coverage for individuals under subsection (a)(10)(A)(ii)(X) of this section or coverage under subsection (a)(10)(E) of this section, unless the plan provides coverage of some or all of the individuals described in subsection (*l*)(1) of this section.''

Subsec. (m)(4). Pub. L. 100–360, § 301(e)(2)(E), formerly § 301(e)(2)(D), as redesignated and amended by Pub. L. 100–485, § 608(d)(14)(I)(ii), redesignated par. (5) as (4). Former par. (4) redesignated (3).

Subsec. (m)(4)(A). Pub. L. 100–647, § 8434(b)(2), substituted ''section 1396d(p)(1)(B)'' for ''section 1396d(p)(1)(C)''.

Subsec. (m)(5). Pub. L. 100–360, § 301(e)(2)(E), formerly § 301(e)(2)(D), as redesignated and amended by Pub. L. 100–485, § 608(d)(14)(I)(ii), redesignated par. (5) as (4).

Subsec. (*o*). Pub. L. 100–360, § 411(n)(2), made technical correction to directory language of Pub. L. 100–203, § 9115(b), see 1987 Amendment note below.

Subsec. (q). Pub. L. 100–360, § 411(n)(4), formerly § 411(n)(3), as redesignated by Pub. L. 100–485, § 608(d)(28), added Pub. L. 100–203, § 9119(d)(1)(B), see 1987 Amendment note below.

Subsec. (r). Pub. L. 100–360, § 303(e)(5), designated existing provisions as par. (1), redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, and added par. (2).

Pub. L. 100–360, § 303(d), added subsec. (r).

Subsec. (r)(2)(A). Pub. L. 100–485, § 608(d)(16)(C), substituted '', or (f) of this section or under section 1396d(p) of this title'' for ''of this section, or under subsection (f) of this section'' in introductory provisions.

1987—Subsec. (a)(9)(C). Pub. L. 100–203, § 4072(d), substituted ''paragraphs (13) and (14)'' for ''paragraphs (12) and (13)''.

Subsec. (a)(10). Pub. L. 100–203, § 4101(e)(1), substituted ''postpartum, and family planning services'' for ''and postpartum services'' in subdiv. (VII) of closing provisions.

Subsec. (a)(10)(A)(ii)(VI). Pub. L. 100–203, § 4211(h)(1)(A), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility''.

Pub. L. 100–203, § 4102(b)(1), substituted ''subsection (c) or (d) of section 1396n of this title'' for ''section 1396n(c) of this title'' in two places.

Subsec. (a)(10)(A)(ii)(IX), (X). Pub. L. 100–203, § 4118(p)(1), (2), realigned margin of subcls. (IX) and (X).

Subsec. (a)(10)(A)(ii)(XI). Pub. L. 100–203, § 4104, as amended by Pub. L. 100–360, § 411(k)(5)(A), added subcl. (XI).

Subsec. (a)(10)(C)(iv). Pub. L. 100–203, § 4211(h)(1)(B), substituted ''in an intermediate care facility'' for ''intermediate care facility services''.

Subsec. (a)(10)(D). Pub. L. 100–203, § 4211(h)(1)(C), struck out ''skilled'' before ''nursing''.

Subsec. (a)(13)(A). Pub. L. 100–203, § 4211(h)(2)(B), as amended by Pub. L. 100–360, § 411(*l*)(3)(J), as added by Pub. L. 100–485, § 608(d)(27)(H), substituted '', nursing facility, and intermediate care facility for the mentally retarded and'' for '', skilled nursing facility, and intermediate care facility and''.

Pub. L. 100–203, § 4211(h)(2)(A), substituted ''services, nursing facility services, and services in an intermediate care facility for the mentally retarded'' for '', skilled nursing facility, and intermediate care facility services''.

Pub. L. 100–203, § 4211(b)(1)(A), inserted ''which, in the case of nursing facilities, take into account the costs of complying with subsections (b) (other than paragraph (3)(F) thereof), (c), and (d) of section 1396r of this title and provide (in the case of a nursing facility with a waiver under section 1396r(b)(4)(C)(ii) of this title) for an appropriate reduction to take into account the lower costs (if any) of the facility for nursing care,'' after second reference to ''State''.

Subsec. (a)(13)(C). Pub. L. 100–203, § 4211(h)(2)(C), as amended by Pub. L. 100–360, § 411(*l*)(3)(H)(i), as amended by Pub. L. 100–485, § 608(d)(27)(F), substituted ''nursing facilities and for intermediate care facilities for the mentally retarded'' for ''skilled nursing facilities and intermediate care facilities'' in introductory provisions.

Subsec. (a)(13)(D). Pub. L. 100–203, § 4211(h)(2)(D), as amended by Pub. L. 100–360, § 411(*l*)(3)(H)(ii), (iii), as amended by Pub. L. 100–485, § 608(d)(27)(G), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility'' and ''nursing facility services or services in an intermediate care facility for the mentally retarded'' for ''skilled nursing facility services or intermediate care facility services''.

Subsec. (a)(17). Pub. L. 100–203, § 4118(p)(3), substituted ''subsections (*l*)(3), (m)(4), and (m)(5) of this section'' for ''subsection (*l*)(3) of this section''.

Pub. L. 100–203, § 4118(h)(1), as amended by Pub. L. 100–360, § 411(k)(10)(G)(ii), substituted ''(whether in the form of insurance premiums or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof)'' for ''(whether in the form of insurance premiums or otherwise)''.

Subsec. (a)(23). Pub. L. 100–203, § 4113(c)(1), designated provision relating to the obtaining of medical assistance by an eligible individual as cl. (A) and added cl. (B).

Pub. L. 100–93, § 8(f)(1), inserted ''subsection (g) of this section and in'' after ''as provided in''.

Subsec. (a)(28). Pub. L. 100–203, § 4211(b)(1)(B), amended par. (28) generally. Prior to amendment, par. (28) read as follows: ''provide that any skilled nursing facility receiving payments under such plan must satisfy all of the requirements contained in section 1395x(j) of this title, except that the exclusion contained therein with respect to institutions which are primarily for the care and treatment of mental diseases shall not apply for purposes of this subchapter;''.

Subsec. (a)(30)(B)(i), (ii). Pub. L. 100–203, § 4211(h)(3), substituted ''intermediate care facility for the mentally retarded'' for ''skilled nursing facility, intermediate care facility''.

Subsec. (a)(30)(C). Pub. L. 100–203, § 4118(p)(4), substituted ''use'' for ''provide''.

Pub. L. 100–203, § 4113(b)(1), inserted '', an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary,'' before ''or a private accreditation body''.

Subsec. (a)(31). Pub. L. 100–203, § 4212(d)(2), in introductory provision substituted ''services in an intermediate care facility for the mentally retarded (where'' for ''skilled nursing facility services (and with respect to intermediate care facility services where'' and in subpar. (B) substituted ''intermediate care facility for the mentally retarded'' for ''skilled nursing or intermediate care facility''.

Subsec. (a)(33)(B). Pub. L. 100–203, § 4212(d)(3), inserted '', except as provided in section 1396r(d) of this title,'' after ''(B) that''.

Subsec. (a)(38). Pub. L. 100–93, § 8(f)(2), substituted ''the information described in section 1320a–7(b)(9) of this title'' for ''respectively, (A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom such entity has had, during the previous twelve months, business transactions in an aggregate amount in excess of $25,000, and (B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between such entity and any wholly owned supplier or between such entity and any subcontractor''.

Subsec. (a)(39). Pub. L. 100–93, § 8(f)(3), substituted ''exclude'' for ''bar'', ''individual or entity'' for ''person'' in two places, and inserted reference to section 1320a–7a of this title.

Subsec. (a)(42). Pub. L. 100–203, § 4118(m)(1)(B), struck out ''(A)'' after ''provide'', the comma after ''under the plan'', and cls. (B) and (C) which read as follows: ''(B) that such audits, for such entities also providing services under subchapter XVIII of this chapter, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such subchapter, and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1320a–8(a) of this title''.

Subsec. (a)(44). Pub. L. 100–203, §4212(e)(1)(A), substituted ''services in an intermediate care facility for the mentally retarded'' for ''skilled nursing facility services, intermediate care facility services''.

Subsec. (a)(44)(A). Pub. L. 100–203, §4218(a)(1), substituted ''physician (or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician) certifies'' for ''physician certifies'' and ''a physician, a physician assistant under the supervision of a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician,'' for ''the physician, or a physician assistant or nurse practitioner under the supervision of a physician,''.

Pub. L. 100–203, §4212(e)(1)(B), as amended by Pub. L. 100–360, §411(*l*)(6)(D), substituted ''that are services provided in an intermediate care facility for the mentally retarded'' for ''that are intermediate care facility services provided in an institution for the mentally retarded''.

Subsec. (a)(44)(B). Pub. L. 100–203, §4218(a)(2), substituted ''a physician, or, in the case of skilled nursing facility services or intermediate care facility services, a physician, or a nurse practitioner or clinical nurse specialist who is not an employee of the facility but is working in collaboration with a physician;'' for ''a physician;''.

Subsec. (a)(46). Pub. L. 100–93, §5(a)(1), struck out ''and'' after ''title;''.

Subsec. (a)(47). Pub. L. 100–93, §5(a)(2), (3), substituted semicolon for period at end of par. (47), relating to ambulatory prenatal care and redesignated par. (47), relating to cards evidencing eligibility, as (48).

Subsec. (a)(48). Pub. L. 100–93, §5(a)(3), redesignated par. (47), relating to cards evidencing eligibility for medical assistance, as (48), and substituted ''address; and'' for ''address.''

Subsec. (a)(49). Pub. L. 100–93, §5(a)(4), added par. (49).

Subsec. (a)(50). Pub. L. 100–203, §9119(d)(1)(A), as added by Pub. L. 100–360, §411(n)(4), formerly §411(n)(3), as redesignated by Pub. L. 100–485, §608(d)(28), added par. (50).

Subsec. (d). Pub. L. 100–203, §4113(b)(2)(i), inserted ''an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary, for the performance of the quality review functions described in subsection (a)(30)(C) of this section, or'' after ''contracts with''.

Pub. L. 100–203, §4113(b)(2)(ii), as amended by Pub. L. 100–360, §411(k)(7)(C), substituted ''an entity or organization'' for ''organization (or organizations)'' in two places.

Subsec. (e)(2)(A). Pub. L. 100–203, §4113(d)(2), which directed substitution of ''subparagraph (B)(iii), (E), or (G) of section 1396b(m)(2) of this title'' for ''section 1396a(m)(2)(G) of this title'', was repealed by Pub. L. 100–360, §411(k)(7)(D).

Pub. L. 100–203, §4113(a)(2), as amended by Pub. L. 100–360, §411(k)(7)(B), substituted ''paragraph (2)(B)(iii), (2)(E), (2)(G), or (6) of section 1396b(m) of this title'' for ''section 1396b(m)(2)(G) of this title''.

Pub. L. 100–203, §4113(c)(2), substituted ''but, except for benefits furnished under section 1396d(a)(4)(C) of this title, only'' for ''but only''.

Subsec. (e)(3)(B)(i). Pub. L. 100–203, §4211(h)(4), substituted ''nursing facility, or intermediate care facility for the mentally retarded'' for ''skilled nursing facility, or intermediate care facility''.

Subsec. (e)(3)(C). Pub. L. 100–203, §4118(c)(1), substituted ''for medical assistance under the State plan under this subchapter'' for ''to have a supplemental security income (or State supplemental) payment made with respect to him under subchapter XVI of this chapter''.

Subsec. (e)(4). Pub. L. 100–203, §4101(a)(2), inserted sentence at end relating to child's medical assistance eligibility identification number and submission and payment of claims under such number during period in which a child is eligible for assistance.

Subsec. (e)(5). Pub. L. 100–203, §4101(e)(2), substituted ''through the end of the month in which the 60-day period (beginning on the last day of her pregnancy) ends'' for ''until the end of the 60-day period beginning on the last day of her pregnancy''.

Subsec. (e)(7). Pub. L. 100–203, §4101(b)(2)(B), substituted ''subparagraph (B) or (C)'' for ''subparagraph (B), (C), (D), (E), or (F)''.

Subsec. (e)(9). Pub. L. 100–203, §4118(p)(6), realigned margins of par. (9).

Subsec. (e)(9)(A)(iii). Pub. L. 100–203, §4211(h)(5)(A), substituted ''nursing facility, or intermediate care facility for the mentally retarded'' for ''skilled nursing facility, or intermediate care facility,''.

Subsec. (e)(9)(B). Pub. L. 100–203, §4211(h)(5)(B), substituted ''nursing facilities, or intermediate care facilities for the mentally retarded'' for ''skilled nursing facilities, or intermediate care facilities''.

Subsec. (f). Pub. L. 100–203, §4118(h)(2), as added by Pub. L. 100–360, §411(k)(10)(G)(iv), inserted ''regardless of whether such expenses are reimbursed under another public program of the State or political subdivision thereof'' after ''State law'' in first sentence.

Subsec. (i). Pub. L. 100–203, §4213(b)(1), as amended by Pub. L. 100–360, §411(*l*)(8)(C), in par. (1), substituted ''intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility'' and ''the requirements for such a facility under this subchapter'' for ''the provisions of section 1395x(j) of this title or section 1396d(c) of this title, respectively,'', and in pars. (2) and (3), substituted ''the requirements for such a facility under this subchapter'' for ''the provisions of section 1395x(j) of this title or section 1396d(c) of this title (as the case may be)''.

Subsec. (j). Pub. L. 100–203, §4116, inserted reference to Northern Mariana Islands in two places.

Subsec. (*l*). Pub. L. 100–93, §7, redesignated subsec. (*l*), relating to disregarding certain benefits for purposes of determining post-eligibility contributions, as (*o*).

Subsec. (*l*)(1). Pub. L. 100–203, §4118(p)(7), made technical corrections in introductory provisions and substituted ''and whose'' for '', whose'' in closing provisions.

Subsec. (*l*)(1)(C). Pub. L. 100–203, §4101(c)(2), substituted ''5, 6, 7, or 8 years of age'' for ''or 5 years of age''.

Pub. L. 100–203, §4101(b)(1), added subpar. (C). Former subpar. (C), which related to children who have attained one year of age but have not attained two years of age, was struck out.

Subsec. (*l*)(1)(D) to (F). Pub. L. 100–203, §4101(b)(1)(B), struck out subpars. (D) to (F) which related to children who have attained two years of age but have not attained three years of age, children who have attained three years of age but have not attained four years of age, and children who have attained four years of age but have not attained five years of age, respectively.

Subsec. (*l*)(2). Pub. L. 100–203, §4118(p)(8), struck out ''nonfarm'' after second reference to ''income'' in subpar. (A).

Pub. L. 100–203, §4101(a)(1)(A), designated existing provisions as subpar. (A), inserted ''with respect to individuals described in subparagraph (A) or (B) of that paragraph'', substituted ''185 percent'' for ''100 percent'', and added subpar. (B).

Subsec. (*l*)(3)(C). Pub. L. 100–203, §4101(b)(2)(A)(i), substituted ''subparagraph (B) or (C)'' for ''subparagraph (B), (C), (D), (E), or (F)''.

Subsec. (*l*)(3)(D). Pub. L. 100–203, §4101(a)(1)(B), inserted ''appropriate'' after ''applied is the''.

Subsec. (*l*)(3)(E). Pub. L. 100–203, §4101(e)(3), inserted ''(except to the extent such methodology is inconsistent with clause (D) of subsection (a)(17) of this section)'' after ''subchapter IV of this chapter''.

Subsec. (*l*)(4)(A). Pub. L. 100–203, §4101(e)(4), substituted ''July 1, 1987'' for ''April 17, 1986''.

Subsec. (*l*)(4)(B)(ii). Pub. L. 100–203, §4101(b)(2)(A)(ii), substituted ''subparagraph (C)'' for ''subparagraph (C), (D), (E), or (F)''.

Subsec. (*l*)(4)(C). Pub. L. 100–203, §4101(e)(5), added subpar. (C).

Subsec. (m)(2)(A). Pub. L. 100–203, §4118(p)(8), struck out ''nonfarm'' before ''official''.

Subsec. (*o*). Pub. L. 100–203, §9115(b), as amended by Pub. L. 100–360, §411(n)(2), substituted ''subparagraph (E) or (G) of section 1382(e)(1) of this title'' for ''section 1382(e)(1)(E) of this title''.

Pub. L. 100–93, §7, redesignated subsec. (*l*), relating to disregarding certain benefits for purposes of determining post-eligibility contributions, as (*o*).

Subsec. (p). Pub. L. 100–93, §7, added subsec. (p).

Subsec. (q). Pub. L. 100–203, §9119(d)(1)(B), as added by Pub. L. 100–360, §411(n)(4), formerly §411(n)(3), as redesignated by Pub. L. 100–485, §608(d)(28), added subsec. (q).

1986—Subsec. (a). Pub. L. 99–509, §9406(b), inserted at end ''Notwithstanding paragraph (10)(B) or any other provision of this subsection, a State plan shall provide medical assistance with respect to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law only in accordance with section 1396b(v) of this title.''

Pub. L. 99–272, §9529(a)(1), inserted at end ''For purposes of this subchapter, any child who meets the requirements of paragraph (1) or (2) of section 673(b) of this title shall be deemed to be a dependent child as defined in section 606 of this title and shall be deemed to be a recipient of aid to families with dependent children under part A of subchapter IV of this chapter in the State where such child resides.''

Subsec. (a)(9)(C). Pub. L. 99–509, §9320(h)(3), substituted ''paragraphs (12) and (13)'' for ''paragraphs (11) and (12)''.

Subsec. (a)(10). Pub. L. 99–509, §9408(b), added cl. (IX) at end.

Pub. L. 99–509, §9403(c), added cl. (VIII) at end.

Pub. L. 99–509, §9401(c), added cl. (VII) at end.

Pub. L. 99–272, §9505(b)(1), added cl. (VI) at end.

Pub. L. 99–272, §9501(b), added cl. (V) at end.

Subsec. (a)(10)(A)(i)(I). Pub. L. 99–272, §12305(b)(3), substituted '', 606(h), or 673(b) of this title'' for ''or 606(h) of this title''.

Subsec. (a)(10)(A)(i)(II). Pub. L. 99–509, §9404(a), inserted ''or who are qualified severely impaired individuals (as defined in section 1396d(q) of this title)'' after ''subchapter XVI of this chapter''.

Subsec. (a)(10)(A)(ii)(V). Pub. L. 99–272, §9510(a), inserted ''for a period of not less than 30 consecutive days (with eligibility by reason of this subclause beginning on the first day of such period)'' after ''are in a medical institution''.

Subsec. (a)(10)(A)(ii)(VII). Pub. L. 99–514, §1895(c)(7)(A), realigned margin of subcl. (VII).

Pub. L. 99–272, §9505(b)(2), added subcl. (VII).

Subsec. (a)(10)(A)(ii)(VIII). Pub. L. 99–514, §1895(c)(7)(B), realigned margins of subcl. (VIII).

Pub. L. 99–272, §9529(b)(1), added subcl. (VIII).

Subsec. (a)(10)(A)(ii)(IX). Pub. L. 99–509, §9401(a), added subcl. (IX).

Subsec. (a)(10)(A)(ii)(X). Pub. L. 99–509, §9402(a)(1), added subcl. (X).

Subsec. (a)(10)(C). Pub. L. 99–509, §9403(g)(1), inserted ''or (E)'' after ''subparagraph (A)'' in introductory text.

Subsec. (a)(10)(C)(iv). Pub. L. 99–509, §9408(c)(3), substituted ''through (20)'' for ''through (19)''.

Pub. L. 99–514, §1895(c)(3)(C), substituted ''through (19)'' for ''through (18)''.

Pub. L. 99–272, §9505(d)(2), substituted ''through (18)'' for ''through (17)''.

Subsec. (a)(10)(E). Pub. L. 99–509, §9403(a), added subpar. (E).

Subsec. (a)(13)(B). Pub. L. 99–272, §9509(a)(1), substituted ''hospitals'' for ''hospitals, skilled nursing facilities, and intermediate care facilities''.

Subsec. (a)(13)(C). Pub. L. 99–272, §9509(a)(4), added subpar. (C). Former subpar. (C) redesignated (D).

Pub. L. 99–272, §9505(c)(1), added subpar. (C). Former subpar. (C) redesignated (D).

Subsec. (a)(13)(D). Pub. L. 99–514, §1895(c)(1), inserted ''and'' after ''facility;''.

Pub. L. 99–509, §9435(b)(1), inserted ''and for payment of amounts under section 1396d(*o*)(3) of this title'' before first semicolon.

Pub. L. 99–272, §9509(a)(2), (3), redesignated former subpar. (C) as (D), and struck out ''and'' at the end thereof. Former subpar. (D) redesignated (E).

Pub. L. 99–272, §9505(c)(1)(B), redesignated former subpar. (C) as (D).

Subsec. (a)(13)(E). Pub. L. 99–272, §9509(a)(3), redesignated former subpar. (D) as (E).

Subsec. (a)(15). Pub. L. 99–509, §9403(g)(4)(A), inserted ''are not qualified medicare beneficiaries (as defined in section 1396d(p)(1) of this title) but'' after ''older who''.

Subsec. (a)(17). Pub. L. 99–509, §9401(e)(1), inserted ''except as provided in subsection (*l*)(3) of this section'' after ''(17)''.

Subsec. (a)(25). Pub. L. 99–272, §9503(a)(1), amended par. (25) generally. Prior to amendment, par. (25) read as follows: ''provide (A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties to pay for care and services (available under the plan) arising out of injury, disease, or disability, (B) that where the State or local agency knows that a third party has such a legal liability such agency will treat such legal liability as a resource of the individual on whose behalf the care and services are made available for purposes of paragraph (17)(B), and (C) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;''.

Subsec. (a)(30)(C). Pub. L. 99–509, §9431(a), added subpar. (C).

Subsec. (a)(47). Pub. L. 99–570 added par. (47) relating to cards evidencing eligibility for medical assistance.

Pub. L. 99–509, §9407(a), added par. (47) relating to ambulatory prenatal care.

Subsec. (b)(2). Pub. L. 99–509, §9405, inserted before semicolon '', regardless of whether or not the residence is maintained permanently or at a fixed address''.

Subsec. (d). Pub. L. 99–509, §9431(b)(1), inserted ''(including quality review functions described in subsection (a)(30)(C) of this section)'' after ''medical or utilization review functions''.

Subsec. (e)(2)(A). Pub. L. 99–272, §9517(b)(1), inserted reference to an entity described in section 1396b(m)(2)(G) of this title, and substituted ''such organization or entity'' for ''such organization''.

Subsec. (e)(2)(B). Pub. L. 99–272, §9517(b)(2), substituted ''an organization or entity'' for ''a health maintenance organization'' and ''the organization or entity'' for ''the organization''.

Subsec. (e)(5). Pub. L. 99–272, §9501(c), added par. (5).

Subsec. (e)(6), (7). Pub. L. 99–509, §9401(d), added pars. (6) and (7).

Subsec. (e)(8). Pub. L. 99–509, §9403(f)(2), added par. (8).

Subsec. (e)(9). Pub. L. 99–509, §9408(a), added par. (9).

Subsec. (f). Pub. L. 99–643, §7(b), substituted ''subsection (e) of this section and section 1382h(b)(3) of this title'' for ''subsection (e) of this section''.

Subsec. (g). Pub. L. 99–272, §9503(a)(2), added subsec. (g).

Subsec. (h). Pub. L. 99–509, §9433(a), added subsec. (d) to section 2173 of Pub. L. 97–35 in turn which added subsec. (h) of this section. See 1981 Amendment note below.

Subsec. (j). Pub. L. 99–509, §9408(c)(2), substituted ''(21)'' for ''(20)''.

Pub. L. 99–514, §1895(c)(3)(B), substituted ''(20)'' for ''(19)''.

Pub. L. 99–272, §9505(d)(1), substituted ''(19)'' for ''(18)''.

Subsec. (k). Pub. L. 99–272, §9506(a), added subsec. (k).

Subsec. (*l*). Pub. L. 99–643, §3(b), added subsec. (*l*) relating to disregarding of certain benefits for purposes of determining post-eligibility contributions.

Pub. L. 99–509, §9401(b), added subsec. (*l*) relating to description of group.

Subsec. (m). Pub. L. 99–509, §9402(a)(2), (b), added subsec. (m).

Subsec. (m)(3). Pub. L. 99–509, §9403(f)(1)(A), which directed insertion of ''or coverage under subsection (a)(10)(E) of this section'' after ''subsection (a)(10)(A)(ii)(IX) of this section'', was executed by making the insertion after ''subsection (a)(10)(A)(ii)(X) of this section'' as the probable intent of Congress.

Subsec. (m)(5). Pub. L. 99–509, §9403(f)(1)(B), added par. (5).

Subsec. (n). Pub. L. 99–509, §9403(e), added subsec. (n).

1984—Subsec. (a)(9)(C). Pub. L. 98–369, §2373(b)(1), realigned margin of subpar. (C).

Subsec. (a)(10)(A). Pub. L. 98–369, §2373(b)(2), realigned margins of subpar. (A).

Subsec. (a)(10)(A)(i). Pub. L. 98–369, §2361(a), amended cl. (i) generally. Prior to the amendment cl. (i) read as follows: ''all individuals receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A or part E of subchapter IV of this chapter (including pregnant women deemed by the State to be receiving such aid as authorized in section 606(g) of this title and individuals considered by the State to be receiving such aid as authorized under section 614(g) of this title), or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter; and''.

Subsec. (a)(10(A)(i)(I). Pub. L. 98–378, §20(c), substituted ''section 602(a)(37) or 606(h) of this title'' for ''section 602(a)(37) of this title''.

Subsec. (a)(13)(A). Pub. L. 98–369, §2373(b)(3), made clarifying amendment by striking out ''(A)'' and all that follows through ''hospital'' the first place it appears and inserting in lieu thereof ''(A) for payment (except where the State agency is subject to an order under section 1396m of this title) of the hospital'', resulting in no change in text.

Subsec. (a)(13)(B), (C). Pub. L. 98–369, §2314(b), added subpar. (B) and redesignated former subpar. (B) as (C).

Subsec. (a)(20)(B). Pub. L. 98–369, §2373(b)(4), substituted ''periodic'' for ''periodical''.

Subsec. (a)(20)(C). Pub. L. 98–369, §2373(b)(5), struck out reference to section 803(a)(1)(A)(i) and (ii) of this title.

Subsec. (a)(26). Pub. L. 98–369, §2368(b), in amending par. (26) generally, revised existing provisions to continue their application to review of inpatient mental hospital service programs, and to sever provisions relating to review of skilled nursing programs. See par. (31) of this section.

Subsec. (a)(26)(B)(ii). Pub. L. 98–617, §3(a)(7), repealed the amendment made by Pub. L. 98–369, §2373(b)(6). See below.

Pub. L. 98–369, §2373(b)(6), provided that cl. (ii) is amended by substituting ''facilities'' for ''homes''.

Subsec. (a)(26)(C). Pub. L. 98–617, §3(b)(10), realigned margin of subpar. (C).

Subsec. (a)(28). Pub. L. 98–369, §2335(e), struck out ''and tuberculosis'' after ''mental diseases''.

Subsec. (a)(30). Pub. L. 98–369, §2363(a)(1)(A), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(31). Pub. L. 98–369, §2368(a), in amending par. (31) generally, revised existing provisions to cover review of skilled nursing facilities.

Subsec. (a)(33)(A). Pub. L. 98–369, §2373(b)(7), substituted ''second sentence'' for ''penultimate sentence''.

Subsec. (a)(42). Pub. L. 98–369, §2373(b)(8), substituted ''subchapter'' for ''part'' after ''audits conducted for purposes of such''.

Subsec. (a)(43). Pub. L. 98–369, §2303(g)(1), redesignated par. (44) as (43), and struck out former par. (43) which provided that if the State plan makes provision for payment to a physician for laboratory services the performance of which such physician, or other physician with whom he shares his practice, did not personally perform or supervise, the plan include provision to insure that payment for such services not exceed the payment authorized by section 1395u(h) of this title.

Subsec. (a)(44). Pub. L. 98–369, §2363(a)(1)(B), added par. (44).

Pub. L. 98–369, §2303(g)(1)(C), redesignated former par. (44) as (43).

Subsec. (a)(45). Pub. L. 98–369, §2367(a), added par. (45).

Subsec. (a)(46). Pub. L. 98–369, §2651(c), added par. (46).

Subsec. (a), foll. par. (46). Pub. L. 98–369, §2373(b)(9), substituted ''The provisions of paragraph (9)(A), (31), and (33) and of section 1396b(i)(4) of this title shall not apply to'' for ''For purposes of paragraph (9)(A), (26), (31), and (33), and of section 1396b(i)(4) of this title, the term 'skilled nursing facility' and 'nursing home' do not include''.

Subsec. (e)(4). Pub. L. 98–369, §2362(a), added par. (4).

Subsec. (f). Pub. L. 98–369, §2373(b)(10), substituted ''paragraph (10)(A)'' and ''paragraph (10)(C)'' for ''clause (10)(A)'' and ''clause (10)(C)'', respectively, wherever appearing.

1982—Subsec. (a)(10)(A). Pub. L. 97–248, §137(b)(7), redesignated existing provisions as provisions preceding cl. (i) and cl. (i), and added cl. (ii).

Subsec. (a)(10)(C), (D). Pub. L. 97–248, §137(a)(3), amended directory language of Pub. L. 97–35, §2171(a)(3), to correct an error, and did not involve any change in text. See 1981 Amendment note below.

Subsec. (a)(10)(C)(i). Pub. L. 97–248, §137(b)(8), substituted '', (II)'' for ''and (II)'', and added subcl. (III).

Subsec. (a)(10)(C)(ii)(I). Pub. L. 97–248, §137(b)(9), substituted ''under the age of 18 who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A)(i)'' for ''described in section 1396d(a)(i) of this title''.

Subsec. (a)(10). Pub. L. 97–248, §131(c), formerly §131(b), as redesignated by Pub. L. 97–448, §309(a)(8), in provisions following subpar. (D) added cl. (IV).

Subsec. (a)(14). Pub. L. 97–248, §131(a), substituted provisions that a State plan for medical assistance must provide that enrollment fees, premiums, or similar charges, and deductions, cost sharing, or similar charges, may be imposed only as provided in section 1396*o* of this title for provisions that such plan must provide that, with respect to individuals receiving assistance, no enrollment fee, premium, or similar charge, and no deduction, cost sharing, or similar charge with respect to the care and services listed in pars. (1) through (5), (7), and (17) of section 1396d(a) of this title, would be imposed under the plan, and any deduction, cost sharing, or similar charge imposed under the plan with respect to other care and services would be nominal in amount (as determined in accordance with standards approved by the Secretary and included in the plan), and with respect to individuals not receiving assistance, there could be imposed an enrollment fee, premium, or similar charge (as determined in accordance with standards prescribed by the Secretary) related to the individual's income, and any deductible, cost-sharing, or similar charge imposed under the plan would be nominal.

Subsec. (a)(18). Pub. L. 97–248, §132(a), substituted provisions that a State plan for medical assistance must comply with the provisions of section 1396p of this title with respect to liens, adjustments and recoveries of medical assistance correctly paid, and transfers of assets for provisions that such plan must provide that no lien could be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there would be no adjustment or recovery (except, in the case of an individual who was 65 years of age or older when he received such assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he had no surviving child who was under age 21 or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), was blind or permanently and totally disabled, or was blind or disabled as defined in section 1382c of this title with respect to States which were not eligible to

participate in such program) of any medical assistance correctly paid on behalf of such individual under the plan.

Subsec. (a). Pub. L. 97–248, §137(e), inserted ", (26)" after "(9)(A)" in provisions following par. (44).

Subsec. (b)(2) to (4). Pub. L. 97–248, §137(b)(10), struck out par. (2) which provided that the Secretary would not approve any plan which imposed any age requirement which excluded any individual who had not attained the age of 19 and was a dependent child under part A of subchapter IV of this chapter, and redesignated pars. (3) and (4) as (2) and (3), respectively.

Subsec. (d). Pub. L. 97–248, §146(a), substituted references to utilization and quality control peer review organizations having a contract with the Secretary, for references to conditionally or otherwise designated Professional Standards Review Organizations, wherever appearing.

Subsec. (e)(3). Pub. L. 97–248, §134(a), added par. (3).

Subsec. (j). Pub. L. 97–248, §§132(c), 136(d), struck out subsec. (j) which related to the denial of medical assistance under a State plan because of an individual's disposal of resources for less than fair market value, the period of ineligibility, and the eligibility of certain individuals for medical assistance under a State plan who would otherwise be ineligible because of the provisions of section 1382b(c) of this title, and added a new subsec. (j) relating to waiver or modification of requirements with respect to American Samoa medical assistance program.

1981—Subsec. (a)(9)(C). Pub. L. 97–35, §2175(d)(1)(C), added subpar. (C).

Subsec. (a)(10)(A). Pub. L. 97–35, §2171(a)(1), substituted "including at least the care and services listed in paragraphs (1) through (5) and (17) of section 1396d(a) of this title, to all individuals receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A or part E of subchapter IV of this chapter (including pregnant women deemed by the State to be receiving such aid as authorized by section 606(g) of this title and individuals considered by the State to be receiving such aid as authorized under section 614(g) of this title)" for "to all individuals receiving aid or assistance under any plan of the State approved under subchapters I, X, XIV, or XVI, or part A of subchapter IV of this chapter".

Subsec. (a)(10)(B). Pub. L. 97–35, §2171(a)(2), substituted reference to subparagraph for reference to clause in two places.

Subsec. (a)(10)(C). Pub. L. 97–35, §2171(a)(3), as amended by Pub. L. 97–248, §137(a)(3), substituted provisions relating to plans for medical assistance included for any group of individuals described in section 1396d(a) of this title who are not described in subpar. (A) for provisions relating to medical assistance for any group of individuals not described in subpar. (A) and who do not meet the income and resources requirements of the appropriate State plan, or the supplementary security income program under subchapter XVI of this chapter, as the case may be, as determined in accordance with standards prescribed by the Secretary.

Subsec. (a)(10)(D). Pub. L. 97–35, §2171(a)(3), as amended by Pub. L. 97–248, §137(a)(3), added subpar. (D).

Subsec. (a)(11). Pub. L. 97–35, §2193(c)(9), substituted "under or through an allotment under) subchapter V of this chapter, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such subchapter or allotment" for "for part or all of the cost of plans or projects under subchapter V of this chapter, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such plan or project under subchapter V of this chapter".

Subsec. (a)(13)(A). Pub. L. 97–35, §§2171(b), 2173(a)(1)(B), (C), struck out subpar. (A) which provided that a State plan must provide for the inclusion of some institutional and some noninstitutional care and services and for the inclusion of home health services for any individual who is entitled to skilled nursing facility services, redesignated subpar. (E) as (A), and in subpar. (A), as so redesignated, made the subsection applicable to hospital facilities, inserted reference to rates which take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs and provide, in the case of hospital patients receiving services at an inappropriate level of care under conditions similar to those described in section 1395x(v)(1)(G) of this title, for lower reimbursement rates reflecting the level of care actually received in a manner consistent with such section, and substituted "safety standards and to assure that individuals eligible for medical assistance have reasonable access (taking into account geographic location and reasonable travel time) to inpatient hospital services of adequate quality" for "safety standards".

Subsec. (a)(13)(B). Pub. L. 97–35, §§2171(b), 2173(a)(1)(C), struck out subpar. (B) which provided that a State plan must provide in the case of individuals receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, for the inclusion of at least the care and services listed in paragraphs (1) through (5) and (17) of section 1396d(a) of this title, and redesignated subpar. (F) as (B).

Subsec. (a)(13)(C). Pub. L. 97–35, §2171(b), struck out subpar. (C) which provided for care and services of individuals not included in former subpar. (B).

Subsec. (a)(13)(D). Pub. L. 97–35, §2173(a)(1)(A), struck out subpar. (D) which provided for payment of reasonable cost of inpatient hospital services provided under the plan with provisions for determination of such costs with certain maximum limitations and for payment of reasonable cost of inappropriate inpatient services described in subsec. (h)(1) of this section.

Subsec. (a)(13)(E), (F). Pub. L. 97–35, §2173(a)(1)(C), redesignated subpars. (E) and (F) as (A) and (B), respectively.

Subsec. (a)(20)(D). Pub. L. 97–35, §2173(a)(2), struck out subpar. (D) which required provision for methods of determining reasonable cost of institutional care of such patients.

Subsec. (a)(23). Pub. L. 97–35, §2175(a), substituted "except as provided in section 1396n and except in the case of" for "except in the case of", and struck out provision that a State plan shall not be deemed to be out of compliance with the requirements of this paragraph or pars. (1) and (10) of this subsection solely by reason of the fact that the State or any political subdivision thereof has entered into a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic.

Subsec. (a)(25)(C). Pub. L. 97–35, §2182, substituted "of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State" for "of the individual, the State".

Subsec. (a)(30). Pub. L. 97–35, §2174(a), substituted "that payments are consistent" for "that payments (including payments for any drugs provided under the plan) are not in excess of reasonable charges consistent".

Subsec. (a)(39). Pub. L. 97–35, §2105(c), substituted "person" for "individual" in two places.

Subsec. (a)(44). Pub. L. 97–35, §2181(a)(2)(C), added par. (44).

Subsec. (b)(2). Pub. L. 97–35, §2172(a), substituted "any age requirement which excludes any individual who has not attained the age of 19 and is a dependent child under part A of subchapter IV of this chapter;" for "effective July 1, 1967, any age requirement which excludes any individual who has not attained the age of

21 and is or would, except for the provisions of section 606(a)(2) of this title, be a dependent child under part A of subchapter IV of this chapter; or''.

Subsec. (d). Pub. L. 97–35, §2113(m), added subsec. (d).

Subsec. (e). Pub. L. 97–35, §2178(b), designated existing provisions as par. (1) and added par. (2).

Subsec. (h). Pub. L. 97–35, §2173(b)(1), (d), as amended by Pub. L. 99–509, §9433(a), added a new subsec. (h) and repealed former subsec. (h) which related to skilled nursing and intermediate care facility services.

1980—Subsec. (a)(13)(B). Pub. L. 96–499, §965(b)(1), substituted ''paragraphs (1) through (5) and (17)'' for ''clauses (1) through (5)''.

Subsec. (a)(13)(C)(i). Pub. L. 96–499, §965(b)(2), substituted ''paragraphs (1) through (5) and (17)'' for ''clauses (1) through (5)''.

Subsec. (a)(13)(C)(ii). Pub. L. 96–499, §965(b)(3), substituted ''paragraphs numbered (1) through (17)'' for ''clauses numbered (1) through (16)''.

Subsec. (a)(13)(D). Pub. L. 96–499, §902(b)(1), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(13)(D)(i). Pub. L. 96–499, §§903(b), 905(a), inserted ''(except where the State agency is subject to an order under section 1396m of this title)'' after ''payment'' and '', except that in the case of hospitals reimbursed for services under part A of subchapter XVIII of this chapter in accordance with section 1395f(b)(3) of this title, the plan must provide for payment of inpatient hospital services provided in such hospitals under the plan in accordance with the reimbursement system used under such section'' after ''subchapter XVIII of this chapter''.

Subsec. (a)(13)(E). Pub. L. 96–499, §905(a), inserted ''(except where the State agency is subject to an order under section 1396m of this title)''.

Pub. L. 96–499, §962(a), substituted provisions which required a State plan for medical assistance to provide for payment of skilled nursing facility and intermediate care facility services provided under such plan through the use of rates determined in accordance with methods and standards developed by the State rather than on a reasonable cost related basis, required the filing of uniform cost reports by each facility, and required periodic audits of such reports by the State.

Subsec. (a)(14)(A)(i). Pub. L. 96–499, §965(b)(4), substituted ''paragraphs (1) through (5), (7), and (17)'' for ''clauses (1) through (5) and (7)''.

Subsec. (a)(33)(B). Pub. L. 96–499, §916(b)(1)(B), inserted exception authorizing the Secretary where there was cause to question the adequacy of participation determinations to make independent determinations concerning the extent to which individual institutions and agencies met the requirements for participation.

Subsec. (a)(35). Pub. L. 96–499, §912(b), substituted ''disclosing entity (as defined in section 1320a–3(a)(2) of this title)'' for ''intermediate care facility''.

Subsec. (a)(39). Pub. L. 96–499, §913(c), substituted provisions requiring that State plans for medical assistance authorize the State agency to bar specified individuals from participation in the program under the State plan when required by the Secretary to do so pursuant to section 1320a–7 of this title for provisions requiring that State plans for medical assistance provide for the suspension of physicians or other individuals from participation in the State plan upon notification by the Secretary that such physician or other individual had been suspended from participation in the plan under subchapter XVIII of this chapter.

Subsec. (a)(41). Pub. L. 96–272 added par. (41).

Subsec. (a)(42). Pub. L. 96–499, §914(b)(1), added par. (42).

Subsec. (a)(43). Pub. L. 96–499, §918(b)(1)(C), added par. (43).

Subsec. (g). Pub. L. 96–499, §913(d), struck out subsec. (g) which related to waiver of suspension of payments to physicians or practitioners suspended from participation in approved State plans.

Subsec. (h). Pub. L. 96–499, §902(b)(2), added subsec. (h).

Subsec. (i). Pub. L. 96–499, §916(b)(1)(A), added subsec. (i).

Subsec. (j). Pub. L. 96–611 added subsec. (j).

1978—Subsec. (a)(4)(C). Pub. L. 95–559 added cl. (C).

1977—Subsec. (a)(13)(F). Pub. L. 95–210, §2(c)(1), added subpar. (F).

Subsec. (a)(23). Pub. L. 95–210, §2(c)(2), inserted '', or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic'' after ''who elect to obtain such care and services from such organization''.

Subsec. (a)(26). Pub. L. 95–142, §20(b), inserted provision relating to staff of skilled nursing facilities.

Subsec. (a)(27)(B). Pub. L. 95–142, §9, inserted ''or the Secretary'' after ''State agency'' wherever appearing.

Subsec. (a)(32). Pub. L. 95–142, §2(a)(3), substituted provisions relating to terms, conditions, etc., for payments under an assignment or power of attorney, for provisions relating to terms, conditions, etc., for payments to anyone other than the individual receiving any care or service provided by a physician, dentist, or other individual practitioner, or such physician, dentist, or practitioner.

Subsec. (a)(35). Pub. L. 95–142, §3(c)(1)(A), substituted provisions relating to requirements for intermediate care facilities to comply with section 1320a–3 of this title for provisions relating to disclosure requirements, effective Jan. 1, 1973, applicable to intermediate care facilities with respect to ownership, corporate, status, etc.

Subsec. (a)(37). Pub. L. 95–142, §§2(b)(1)(C), 3(c)(1)(C), 7(b)(1), added subsec. (a)(37) and made and struck out minor changes in phraseology, necessitating no changes in text.

Subsec. (a)(38). Pub. L. 95–142, §§3(c)(1)(D), 7(b)(2), 19(b)(2)(A), added par. (38) and made and struck out minor changes in phraseology necessitating no changes in text.

Subsec. (a)(39). Pub. L. 95–142, §§7(b)(3), 19(b)(2)(B), added par. (39).

Subsec. (a)(40). Pub. L. 95–142, §19(b)(2)(C), added par. (40).

Subsec. (a), foll. par. (40). Pub. L. 95–142, §2(b)(1)(D), added paragraph relating to waiver of requirement of cl. (A) of par. (37).

Subsec. (g). Pub. L. 95–142, §7(c), added subsec. (g).

1976—Subsec. (g). Pub. L. 94–552 struck out provisions for consent to suit and waiver of immunity by State.

1975—Subsec. (a). Pub. L. 94–48, §1, added undesignated paragraph at end of subsec. (a) relating to eligibility under this subchapter of any individual who was eligible for the month of August 1972, under a State plan approved under subchapters I, X, XIV, XVI, or part A of subchapter IV of this chapter if such individual would have been eligible for such month had the increase in monthly insurance benefits under subchapter II of this chapter resulting from enactment of Pub. L. 92–336 not been applicable to such individual.

Subsec. (a)(23). Pub. L. 94–48, §2, inserted ''except in the case of Puerto Rico, the Virgin Islands, and Guam,''.

Subsec. (g). Pub. L. 94–182 added subsec. (g).

1974—Subsec. (a)(14)(B)(i). Pub. L. 93–368 substituted ''may'' for ''shall''.

1973—Subsec. (a)(5). Pub. L. 93–233, §13(a)(2)(A), (B), substituted ''to administer or to supervise the administration of the plan'' for ''to administer the plan'' and ''to supervise the administration of the plan'' in that order and inserted after the parenthetical phrase the conditional provision ''if the State is eligible to participate in the State plan program established under subchapter XVI of this chapter, or by the agency or agencies administering the supplemental security income program established under subchapter XVI of this chapter or the State plan approved under part A of subchapter IV of this chapter if the State is not eligible to participate in the State plan program established under subchapter XVI of this chapter''.

Subsec. (a)(10). Pub. L. 93–233, §13(a)(3), incorporated existing text in provisions designated as cl. (A), providing therein for medical assistance to individuals with

respect to whom supplemental security income benefits are paid; incorporated existing par. (A) in provisions designated as cl. (B); incorporated existing par. (B) in provisions designated as cl. (C), providing therein for individuals not meeting income and resources requirements of the supplemental security income program; substituted in cls. (B)(ii), (C), (C)(i)(ii) and ''medical assistance'' for ''medical or remedial care and services'' appearing in predecessor provisions and in cl. (C)(i) ''except for income and resources'' for ''if needy'' appearing in predecessor provision; and in the exception provisions included reference to par. (16) of section 1396(a) of this title in item (I), substituted ''deductibles'' for ''the deductibles'' in item (II), and added item (III).

Subsec. (a)(13)(B). Pub. L. 93–233, §13(a)(4), substituted ''any plan of the State approved'' for ''the State's plan approved'' and inserted after ''part A of subchapter IV of this chapter'' text reading '', or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter''.

Subsec. (a)(13)(C)(ii)(I). Pub. L. 93–233, §18(x)(1), substituted reference to cl. ''16'' for ''14''.

Subsec. (a)(14)(A). Pub. L. 93–233, §13(a)(5), substituted ''any plan of the State approved'' for ''a State plan approved'' and ''with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or who meet the income and resources requirements of the appropriate State plan, or the supplemental security income program under subchapter XVI of this chapter, as the case may be, and individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in paragraph (10)(A)'' for ''who meet the income and resources requirements of the one of such State plans which is appropriate''.

Subsec. (a)(14)(B). Pub. L. 93–233, §13(a)(6)(A)–(D), inserted after ''with respect to individuals'' the parenthetical provision ''(other than individuals with respect to whom there is being paid, or who are eligible or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in paragraph (10)(A))''; inserted after ''any such State plan'' the clause ''and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter''; substituted ''the appropriate State plan, or the supplemental security income program under subchapter XVI of this chapter, as the case may be,'' for ''the one of such State plans which is appropriate''; and struck out ''or who, after December 31, 1973, are included under the State plan for medical assistance pursuant to subsection (a)(10)(B) of this section approved under this subchapter'' preceding the hyphen and cl. (i), respectively.

Subsec. (a)(17). Pub. L. 93–233, §13(a)(7)(A)–(D), (8), substituted: ''any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter'' for ''the State's plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter''; ''except for income and resources'' for ''if he met the requirements as to need''; ''any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, or to have paid with respect to him supplemental security income benefits under subchapter XVI of this chapter'' for ''a State plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter''; ''such aid, assistance, or benefits'' for ''and amount of such aid or assistance under such plan''; and ''(with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program)'' for ''is blind or permanently and totally disabled''.

Subsec. (a)(18). Pub. L. 93–233, §13(a)(8), substituted ''(with respect to States eligible to participate in the State program established under subchapter XVI of this chapter), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1382c of this title (with respect to States which are not eligible to participate in such program)'' for ''is blind or permanently and totally disabled''.

Subsec. (a)(20)(C). Pub. L. 93–233, §13(a)(9), inserted reference to section 803(a)(1)(A)(i) and (ii) of this title.

Subsec. (a)(21), (24). Pub. L. 93–233, §18(x)(4), provided for substitution of ''nursing facilities'' for ''nursing homes''.

Subsec. (a)(26)(B). Pub. L. 93–233, §18(x)(4), provided for substitution of ''nursing facility'' and ''nursing facilities'' for ''nursing home'' and ''nursing homes'', changes already executed under 1972 Amendment by Pub. L. 92–603, §278(a)(19).

Subsec. (a)(33)(A). Pub. L. 93–233, §18(x)(2), substituted ''penultimate sentence'' for ''last sentence''.

Subsec. (a)(34). Pub. L. 93–233, §18(*o*), inserted ''(or application was made on his behalf in the case of a deceased individual)'' after ''he made application''.

Subsec. (a)(35)(A). Pub. L. 93–233, §18(p), required the intermediate care facility to supply full and complete information respecting the person who is the owner (in whole or in part) of any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the intermediate care facility or any of the property or assets of the intermediate care facility.

Subsec. (a)(35) to (37). Pub. L. 93–233, §18(x)(3)(A), (B), substituted ''; and'' for ''.'' at end of par. (35); and corrected numerical sequence of paragraphs, redesignating par. (37) as (36), the original subsec. (a) having been enacted without a par. (36).

Subsec. (e). Pub. L. 93–233, §18(q), substituted ''each family which was receiving aid pursuant to a plan of the State approved under part A'' for ''each family which was eligible for assistance pursuant to part A'', ''for such aid because of increased hours of, or increased income from, employment'' for ''for such assistance because of increased income from employment'', and ''remain eligible for assistance under the plan approved under this subchapter (as though the family was receiving aid under the plan approved under part A of subchapter IV of this chapter) for 4 calendar months beginning with the month in which such family became ineligible for aid under the plan approved under part A of subchapter IV of this chapter because of income and resources or hours of work limitations'' for ''remain eligible for such assistance for 4 calendar months following the month in which such family would otherwise be determined to be ineligible for such assistance because of the income and resources limitations''.

Subsec. (f). Pub. L. 93–233, §13(a)(10)(A)–(D) substituted: ''no State not eligible to participate in the State plan program established under subchapter XVI of this chapter'' for ''no State'' and ''any supplemental security income payment and State supplementary payment made with respect to such individual'' for ''such individual's payment under subchapter XVI of this chapter'' and ''as recognized under State law'' for ''as defined in section 213 of Title 26'' in parenthetical text; and inserted two end sentences for consideration of certain individuals as eligible for medical assistance under cl. (10)(A) or (C) of subsec. (a) of this section or as eligible for such assistance under cl. (10)(A) in States not providing such assistance under cl. (10)(C), respectively.

1972—Subsec. (a). Pub. L. 92–603, §§268(a), 278(b)(14), inserted provisions exempting Christian Science sanatoriums from certain nursing facility and nursing home requirements.

Subsec. (a)(9). Pub. L. 92–603, §239(a), inserted provisions to utilize State health agency for establishing

and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services.

Subsec. (a)(13)(A)(ii), (C). Pub. L. 92–603, §278(a)(18), (b)(14), substituted ''skilled nursing facility'' for ''skilled nursing home''.

Subsec. (a)(13)(D). Pub. L. 92–603, §§221(c)(5), 232(a), inserted provisions that the reasonable cost of inpatient hospital services shall not exceed the amount determined under section 1395x(v) of this title and inserted reference to the consistency of methods and standards with section 1320a–1 of this title for determining the reasonable cost of inpatient hospital services.

Subsec. (a)(13)(E). Pub. L. 92–603, §249(a), added subpar. (E).

Subsec. (a)(14). Pub. L. 92–603, §208(a), substituted a nominal amount for an amount reasonably related to the recipient's income as the amount of the deduction, cost sharing, or similar charge imposed under the plan and inserted provisions covering individuals who are not receiving aid or assistance under any state plan and who do not meet the income and resources requirements and covering individuals who are included under the state plan for medical assistance pursuant to subsec. (a)(10)(B) of this section approved under this subchapter.

Subsec. (a)(23). Pub. L. 92–603, §240, inserted provisions allowing States to adopt comprehensive health care programs while still complying with medicaid requirements.

Subsec. (a)(26). Pub. L. 92–603, §§274(a), 278(a)(19), (b)(14), substituted ''evaluation)'' for ''evaluation'' and ''care'' for ''care)'' and substituted ''skilled nursing facility'' and ''skilled nursing facilities'' for ''skilled nursing home'' and ''skilled nursing homes''.

Subsec. (a)(28). Pub. L. 92–603, §§246(a), 278(a)(20), substituted ''skilled nursing facility'' for ''skilled nursing home'' and substituted a simple reference to the requirements contained in section 1395x(j) of this title with a specified exception for provisions spelling out in detail the requirements for skilled nursing homes receiving payments.

Subsec. (a)(30). Pub. L. 92–603, §237(a)(2), substituted ''under the plan (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title)'' for ''under the plan''.

Subsec. (a)(31)(A). Pub. L. 92–603, §298, struck out ''which provides more than a minimum level of health care services'' after ''intermediate care facility''.

Subsec. (a)(32). Pub. L. 92–603, §236(b)(3), added par. (32).

Subsec. (a)(33). Pub. L. 92–603, §239(b)(3), added par. (33).

Subsec. (a)(34). Pub. L. 92–603, §255(a)(3), added par. (34).

Subsec. (a)(35). Pub. L. 92–603, §299A(3), added par. (35).

Subsec. (a)(37). Pub. L. 92–603, §299D(b)(3), added par. (37).

Subsec. (d). Pub. L. 92–603, §231, repealed subsec. (d) which related to modification of state plans for medical assistance under certain circumstances.

Subsec. (e). Pub. L. 92–603, §209(a), added subsec. (e).

Subsec. (f). Pub. L. 92–603, §209(b)(1), added subsec. (f).

1971—Subsec. (a)(31). Pub. L. 92–223 added par. (31).

1969—Subsec. (c). Pub. L. 91–56, §2(c), substituted ''aid or assistance in the form of money payments (other than so much, if any, of the aid or assistance in such form as was, immediately prior to the effective date of the State plan under this subchapter, attributable to medical needs)'' for ''aid or assistance (other than so much of the aid or assistance as is provided for under the plan of the State approved under this subchapter)''.

Subsec. (d). Pub. L. 91–56, §2(d), added subsec. (d).

1968—Subsec. (a)(2). Pub. L. 90–248, §231, changed the date on which State plans must meet certain financial participation requirements by substituting ''July 1, 1969'' for ''July 1, 1970''.

Subsec. (a)(4). Pub. L. 90–248, §210(a)(6), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10). Pub. L. 90–248, §§223(a), 241(f)(1), struck out ''IV,'' after ''I,'' and inserted '', and part A of subchapter IV of this chapter'' after ''XVI of this chapter'', and designated existing provisions as item I and added item II.

Subsec. (a)(11). Pub. L. 90–248, §302(b), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(13). Pub. L. 90–248, §224(a), designated existing provisions as subpar. (A), incorporated existing cl. (A) in provisions designated as subpars. (B) and (C)(i), making subpar. (B) and (C) applicable to individuals receiving aid or assistance under an approved State plan and to individuals not covered under subpar. (B), respectively, added cl. (ii) of subpar. (C), redesignated former cl. (B) as subpar. (D), and deleted effective date of July 1, 1967, for former cls. (A) and (B).

Subsec. (a)(13)(A). Pub. L. 90–248, §224(c)(1), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (a)(14)(A). Pub. L. 90–248, §235(a)(1), inserted ''in the case of individuals receiving aid or assistance under State plans approved under subchapters I, X, XIV, XVI, and part A of subchapter IV of this chapter,''.

Subsec. (a)(14)(B). Pub. L. 90–248, §235(a)(2), inserted ''inpatient hospital services or'' after ''respect to'' and substituted ''to an individual'' for ''him''.

Subsec. (a)(15). Pub. L. 90–248, §235(a)(3), struck out subpar. (B) provision for meeting the full cost of any deductible imposed with respect to any such individual under the insurance program established by part A of such subchapter, deleted subpar. (B) designation preceding ''where, under the plan'', and substituted therein ''established by such subchapter'' for ''established by part B of such subchapter''.

Subsec. (a)(17). Pub. L. 90–248, §238, inserted in parenthetical expression ''and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, based on the variations between shelter costs in urban areas and in rural areas'' after ''all groups''.

Pub. L. 90–248, §241(f)(2), in cl. (B) struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter'' after ''XVI of this chapter''.

Subsec. (a)(23) to (30). Pub. L. 90–248, §§227(a), 228(a), 229(a), 234(a), 236(a), 237, added pars. (23), (24), (25), (26) to (28), (29), (30), respectively.

Subsec. (b)(2). Pub. L. 90–248, §241(f)(3), inserted ''part A of'' before ''subchapter IV''.

Subsec. (c). Pub. L. 90–248, §241(f)(4), struck out ''IV,'' after ''I,'' and inserted '', or part A of subchapter IV of this chapter'' after ''XVI of this chapter''.

EFFECTIVE DATE OF 1994 AMENDMENTS

Amendment by Pub. L. 103–448 effective Oct. 1, 1994, see section 401 of Pub. L. 103–448, set out as a note under section 1755 of this title.

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13581(b)(2) of Pub. L. 103–66 effective Jan. 1, 1994, see section 13581(d) of Pub. L. 103–66, set out as an Effective Date note under section 1320b–14 of this title.

Section 13601(c) of Pub. L. 103–66 provided that: ''The amendments made by subsections (a) and (b) [amending this section and section 1396d of this title] shall take effect as if included in the enactment of section 4721(a) of OBRA–1990 [Pub. L. 101–508].''

Amendment by section 13602(c) of Pub. L. 103–66 applicable to calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not regulations to carry out the amendments by section 13602(a)(1) and (c) of Pub. L. 103–66 have been promulgated by such date,

see section 13602(d)(2) of Pub. L. 103–66, set out as a note under section 1396r–8 of this title.

Section 13603(f) of Pub. L. 103–66 provided that: ''The amendments made by this section [amending this section and sections 1396d and 1396n of this title] shall apply to medical assistance furnished on or after January 1, 1994, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Amendment by section 13611(d)(1) of Pub. L. 103–66 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not final regulations to carry out the amendments by section 13611 of Pub. L. 103–66 have been promulgated by such date, see section 13611(e) of Pub. L. 103–66, set out as a note under section 1396p of this title.

Section 13622(d) of Pub. L. 103–66 provided that:

''(1) Except as provided in paragraph (2), the amendments made by subsections (a)(1), (b), and (c) [amending this section] shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsections (a) and (b) [amending this section and section 1396b of this title], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

''(3) The amendment made by subsection (a)(2) [amending section 1396b of this title] shall apply to items and services furnished on or after October 1, 1993.''

Amendment by section 13623(a) of Pub. L. 103–66 applicable, except as otherwise provided, to calendar quarters beginning on or after Apr. 1, 1994, without regard to whether or not final regulations to carry out the amendments by section 13623 of Pub. L. 103–66 have been promulgated by such date, see section 13623(c) of Pub. L. 103–66, set out as an Effective Date note under section 1396g–1 of this title.

Section 13625(b) of Pub. L. 103–66 provided that: ''Section 1902(a)(61) of the Social Security Act [subsec. (a)(61) of this section] (as added by subsection (a)) shall take effect January 1, 1995, and the standards referred to in such section shall be established not later than March 31, 1994.''

Section 13631(e)(2) of Pub. L. 103–66 provided that: ''The amendments made by paragraph (1) [amending this section] shall take effect on the date of the enactment of this Act [Aug. 10, 1993].''

Section 13631(f)(3) of Pub. L. 103–66 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section and section 1396d of this title] shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 13631(i) of Pub. L. 103–66 provided that: ''Except as otherwise provided in this section, the amendments made by this section [enacting section 1396s of this title, transferring former section 1396s of this title to section 1396v of this title, and amending this section and sections 1396b and 1396d of this title] shall apply to payments under State plans approved under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1994.''

EFFECTIVE DATE OF 1991 AMENDMENT

Section 2(c)(1) of Pub. L. 102–234 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall take effect January 1, 1992, without regard to whether or not regulations have been promulgated to carry out such amendments by such date.''

Section 3(e)(1) of Pub. L. 102–234 provided that: ''The amendments made by this section [amending this section and sections 1396b and 1396r–4 of this title] shall take effect January 1, 1992.''

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4402(e) of Pub. L. 101–508 provided that:

''(1) The amendments made by this section [enacting section 1396e of this title and amending this section and sections 1396b and 1396d of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by subsection (a) [enacting section 1396e of this title and amending this section], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 5, 1990]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 4501(f) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1395v and 1396d of this title] shall apply to calendar quarters beginning on or after January 1, 1991, without regard to whether or not regulations to implement such amendments are promulgated by such date; except that the amendments made by subsection (e) [amending this section and section 1396d of this title] shall apply to determinations of income for months beginning with January 1991.''

Section 4601(b) of Pub. L. 101–508 provided that:

''(1) The amendments made by this subsection [probably should be ''section'', which amended this section and sections 1396b, 1396d, and 1396r–6 of this title] apply (except as otherwise provided in this subsection) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or

after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection [section], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 5, 1990]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 4602(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] apply to payments under title XIX of the Social Security Act [this subchapter] for calenar [sic] quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 4603(b) of Pub. L. 101–508 provided that:

''(1) INFANTS.—The amendment made by subsection (a)(1) [amending this section] shall apply to individuals born on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

''(2) PREGNANT WOMEN.—The amendments made by subsection (a)(2) [amending this section] shall apply with respect to determinations to terminate the eligibility of women, based on change of income, made on or after January 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 4604(d) of Pub. L. 101–508 provided that:

''(1) The amendments made by this subsection [probably should be ''section'', which amended this section and section 1396n of this title] shall become effective with respect to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation authorizing or appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection [section], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 5, 1990]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Amendment by section 4701(b)(1) of Pub. L. 101–508 effective Jan. 1, 1991, see section 4701(c) of Pub. L. 101–508, set out as a note under section 1396b of this title.

Section 4704(f) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1396b, 1396d, and 1396n of this title] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239].''

Section 4708(b) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4711(e) of Pub. L. 101–508 provided that:

''(1) Except as provided in this subsection, the amendments made by this section [enacting section 1396t of this title and amending this section and sections 1396b and 1396d of this title] shall apply to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2)(A) The amendments made by subsection (c)(1) [amending this section] shall apply to home and community care furnished on or after July 1, 1991, or, if later, 30 days after the date of publication of interim regulations under section 1929(k)(1) [section 1396t(k)(1) of this title].

''(B) The amendment made by subsection (c)(2) [amending section 1396b of this title] shall apply to civil money penalties imposed after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4713(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall apply to medical assistance furnished on or after January 1, 1991.''

Section 4715(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to treatment of income for months beginning more than 30 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4732(e) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 4751(c) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section and sections 1396b and 1396r of this title] shall apply with respect to services furnished on or after the first day of the first month beginning more than 1 year after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4752(c)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to medical assistance for calendar quarters beginning more than 60 days after the date of establishment of the physician identifier system under section 1902(x) of the Social Security Act [subsec. (x) of this section].''

Section 4754(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to sanctions effected more than 60 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4755(c)(1) of Pub. L. 101–508 provided that the amendment made by that section is effective July 1, 1990.

Section 4801(e)(11) of Pub. L. 101–508 provided that the amendment made by that section is effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1396r(f)(4) of this title.

Section 4801(e)(19) of Pub. L. 101–508 provided that: ''Except as provided in paragraphs (7), (11), and (16), the amendments made by this subsection [amending this section and sections 1396b and 1396r of this title, repealing section 1396g of this title, and amending provisions set out as a note under this section] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Section 6401(c) of Pub. L. 101–239 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396b of this title] shall apply to payments under title XIX of the Social Security Act [this sub-

chapter] for calendar quarters beginning on or after April 1, 1990, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Dec. 19, 1989]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 6402(c), formerly § 6402(d), of Pub. L. 101–239, as renumbered and amended by Pub. L. 101–508, title IV, § 4704(e)(2), Nov. 5, 1990, 104 Stat. 1388–172, provided that: ''The amendments made by this section [enacting section 1396r–7 of this title and amending this section] (except as otherwise provided in such amendments) shall take effect on the date of the enactment of this Act [Dec. 19, 1989].''

Section 6403(e) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall take effect on April 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 6404(d) of Pub. L. 101–239 provided that:

''(1) The amendments made by this section [amending this section and section 1396d of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after April 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Dec. 19, 1989]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 6405(c) of Pub. L. 101–239 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall become effective with respect to services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner on or after July 1, 1990.''

Section 6406(b) of Pub. L. 101–239 provided that: ''The amendments made by subsection (a) [amending this section] shall take effect on July 1, 1990, without regard to whether regulations to carry out such amendments have been promulgated by such date.''

Section 6408(c)(2) of Pub. L. 101–239 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to services furnished on or after April 1, 1990, without regard to whether or not final regulations have been promulgated by such date to implement such amendments.''

Section 6408(d)(5) of Pub. L. 101–239 provided that:

''(A) The amendments made by this subsection [amending this section and sections 1396d and 1396*o* of this title] apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this subsection, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Dec. 19, 1989]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 6411(a)(2) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if it had been included in the enactment of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].''

Amendment by section 6411(d)(3)(B) of Pub. L. 101–239 applicable to employment and contracts as of 90 days after Dec. 19, 1989, see section 6411(d)(4)(B) of Pub. L. 101–239, set out as a note under section 1395mm of this title.

Section 6411(e)(4) of Pub. L. 101–239 provided that:

''(A) SPOUSAL TRANSFERS.—The amendments made by paragraph (1) [amending section 1396p of this title] shall apply to transfers occurring after the date of the enactment of this Act [Dec. 19, 1989].

''(B) OTHER AMENDMENTS.—Except as provided in subparagraph (A), the amendments made by this subsection [amending this section and sections 1396p and 1396r–5 of this title] shall apply as if included in the enactment of section 303 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8434(c) of Pub. L. 100–647 provided that: ''The amendment made by this section [amending this section and section 1396d of this title] shall be effective as if included in the enactment of section 301 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].''

Amendment by section 202(c)(4) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485 at such earlier effective dates, see section 204(a), (b)(1)(A) of Pub. L. 100–485, set out as a note under section 681 of this title.

Amendments by section 303(a)(2), (b)(1) of Pub. L. 100–485 applicable to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990 (or, in the case of the Commonwealth of Kentucky, Oct. 1, 1990) (without regard to whether regulations to implement such amendments are promulgated by that date), with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter on or after that date, see section 303(f)(1) of Pub. L. 100–485, set out as an Effective and Termination Dates of 1988 Amendment note under section 602 of this title.

Amendment by section 303(d) of Pub. L. 100–485 effective on first day of first calendar quarter to begin one year or more after Oct. 13, 1988, see sections 303(f)(3)

and 403(b) of Pub. L. 100–485, set out as Effective and Termination Dates of 1988 Amendment notes under section 602 of this title.

Amendment by section 401(d)(1) of Pub. L. 100–485, effective Oct. 1, 1990, except as provided in section 1396d(m)(2) of this title and not effective for Puerto Rico, Guam, American Samoa, and the Virgin Islands, until the date of repeal of limitations contained in section 1308(a) of this title on payments to such jurisdictions for purposes of making maintenance payments under parts A and E of subchapter IV of this chapter, see section 401(g) of Pub. L. 100–485, as amended, set out as an Effective and Termination Dates of 1988 Amendment note under section 602 of this title.

Amendment by section 608(d)(14)(I), (15)(A), (B), (16)(C), (27)(F)–(H), (28) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 204(d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Amendment by section 301(e)(2) of Pub. L. 100–360 effective July 1, 1989, see section 301(e)(3) of Pub. L. 100–360, set out as a note under section 1395v of this title.

Section 301(h) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(14)(K), Oct. 13, 1988, 102 Stat. 2416, provided that:

''(1) The amendments made by this section [amending this section and sections 1395v, 1396b, and 1396d of this title] apply (except as provided in subsections (e) and (f) [set out as notes under section 1395v and 1396b of this title] and under paragraph (2)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after January 1, 1989, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, with respect to medical assistance for—

''(A) monthly premiums under title XVIII of such Act [subchapter XVIII of this chapter] for months beginning with January 1989, and

''(B) items and services furnished on and after January 1, 1989.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first session of the State legislature that begins after the date of the enactment of this Act [July 1, 1988]. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 302(f) of Pub. L. 100–360 provided that:

''(1) IN GENERAL.—The amendments made by this section [amending this section and sections 1396b and 1396r–4 of this title] apply (except as provided in this subsection) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1989, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) PAYMENT ADJUSTMENT.—The amendments made by subsection (b)(2) [amending section 1396r–4 of this title] shall take effect on the date of the enactment of this Act [July 1, 1988].

''(3) DELAY FOR STATE LEGISLATION.—In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section (other than subsection (b)(2)), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a regular legislative session of 2 years, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Amendment by section 303(d) of Pub. L. 100–360 effective on and after Apr. 8, 1988, with additional provision for supersedure of certain administrative regulations, see section 303(g)(4) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Amendment by section 303(e)(1), (5) of Pub. L. 100–360 applicable to medical assistance furnished on or after Oct. 1, 1982, see section 303(g)(6) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Subsec. (a)(51)(A), as enacted by section 303(e)(2)–(4) of Pub. L. 100–360, applicable to payments under this subchapter for calendar quarters beginning on or after Sept. 30, 1989, without regard to whether or not final regulations to carry out that paragraph have been promulgated by that date, see section 303(g)(1)(A) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Subsec. (a)(51)(B), as enacted by section 303(e)(2)–(4) of Pub. L. 100–360, applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1988 (except in certain situations requiring State legislative action), without regard to whether or not final regulations to carry out that paragraph have been promulgated by that date, with an exception for resources disposed of before July 1, 1988, see section 303(g)(2)(A), (C), (5) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(k)(5), (7)(B)–(D), (10)(G)(ii), (iv), (17)(B), (*l*)(3)(E), (H), (J), (6)(C), (D), (8)(C), and (n)(2), (4) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Section 4101(a)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section] shall apply to medical assistance furnished on or after July 1, 1988.''

Section 4101(b)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section and provisions set out below] shall apply with respect to medical assistance furnished on or after July 1, 1988.''

Amendment by section 4101(c)(2) of Pub. L. 100–203 applicable to medical assistance furnished on or after Oct. 1, 1988, see section 4101(c)(3) of Pub. L. 100–203, set out as a note under section 1396d of this title.

Section 4101(e)(6) of Pub. L. 100–203 provided that:

''(A) The amendment made by paragraph (1) [amending this section] shall become effective on the date of enactment of this Act [Dec. 22, 1987].

''(B) The amendments made by paragraphs (2) and (3) [amending this section] shall be effective as if they had been included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].

''(C) The amendment made by paragraph (4) [amending this section] shall apply to elections made on or after the enactment of this Act.

''(D) The amendment made by paragraph (5) [amending this section] shall apply as if included in the enactment of section 9401 of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4113(c)(3) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section] shall apply to services furnished on and after July 1, 1988.''

Section 4118(c)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if it were included in section 134 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97–248].''

Section 4118(h)(3), formerly § 4118(h)(2), of Pub. L. 100–203, as renumbered and amended by Pub. L. 100–360, title IV, § 411(k)(10)(G)(iii), July 1, 1988, 102 Stat. 796, provided that: ''The amendments made by this subsection [amending this section and section 1396b of this title] shall apply to costs incurred after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4118(m)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section and repealing section 1320a–8 of this title] shall apply to audits conducted after the date of the enactment of this Act [Dec. 22, 1987].''

Amendments by sections 4211(b)(1), (h)(1)–(5), 4212(d)(2), (3), (e)(1) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, and except that subsec. (a)(28)(B) of this section as amended by section 4211(b) of Pub. L. 100–203 applicable to calendar quarters beginning more than 6 months after Dec. 22, 1987, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Section 4212(d)(4) of Pub. L. 100–203 provided that: ''The amendments made by this subsection [amending this section and section 1396b of this title] shall not apply to a State until such date (not earlier than October 1, 1990) as of which the Secretary determines that—

''(A) the State has specified the resident assessment instrument under section 1919(e)(5) of the Social Security Act [section 1396r(e)(5) of this title], and

''(B) the State has begun conducting surveys under section 1919(g)(2) of such Act.''

Amendment by section 4213(b)(1) of Pub. L. 100–203 applicable to payments under this subchapter for calendar quarters beginning on or after Dec. 22, 1987, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(b) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Section 4218(b) of Pub. L. 100–203 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to certifications or recertifications during the period beginning on July 1, 1988, and ending on October 1, 1990.''

Amendment by section 9115(b) of Pub. L. 100–203 effective July 1, 1988, see section 9115(c) of Pub. L. 100–203, set out as a note under section 1382 of this title.

Section 9119(d)(2) of Pub. L. 100–203, as added by Pub. L. 100–360, title IV, § 411(n)(4), formerly § 411(n)(3), July 1, 1988, 102 Stat. 807, and renumbered by Pub. L. 100–485, title VI, § 608(d)(28), Oct. 13, 1988, 102 Stat. 2423, provided that: ''The amendments made by paragraph (1) [amending this section] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Amendment by sections 5(a) and 8(f) of Pub. L. 100–93, applicable, with certain exception, to payments under subchapter XIX of this chapter for calendar quarters beginning more than thirty days after Aug. 18, 1987, without regard to whether or not final regulations to carry out such amendments have been published by such date, see section 15(c) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

Amendment by section 7 of Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 10(b) of Pub. L. 99–643 provided that:

''(1) Except as provided in paragraph (2), the amendments made by sections 3, 4, 5, 6, and 7 [amending this section and sections 1382, 1382c, 1382h, 1383, and 1396s of this title] shall become effective on July 1, 1987.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the requirements imposed by the amendments made by section 3(b) [amending this section] and section 7 of this Act [amending this section and section 1382h of this title], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such additional requirements until 60 days after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 10, 1986].''

Section 11005(c)(2) of Pub. L. 99–570 provided that: ''The amendments made by subsection (b) [amending this section] shall become effective on January 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 9320(h)(3) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9401(f) of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4101(b)(2)(C), Dec. 22, 1987, 101 Stat. 1330–141, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396b of this title] shall apply to medical assistance furnished in calendar quarters beginning on or after April 1, 1987.

''(2) Subparagraph (C) of section 1902(*l*)(1) of the Social Security Act [subsec. (*l*)(1)(C) of this section], as added by subsection (b) of this section, shall apply to medical assistance furnished in calendar quarters beginning on or after October 1, 1987.

''(3) An amendment made by this section shall become effective as provided in paragraph (1) or (2) without regard to whether or not final regulations to carry out such amendment have been promulgated by the applicable date.''

Section 9402(c) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall apply to payments to States for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 9403(h) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and sections 1396b, 1396d, and 1396*o* of this title]

apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 9404(c) of Pub. L. 99–509 provided that:

''(1) The amendments made by this section [amending this section and section 1396d of this title] apply (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1987, without regard to whether regulations to implement such amendments are promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9406(c) of Pub. L. 99–509 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396b of this title] shall apply to medical assistance furnished to aliens on or after January 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made in subsection (b) [amending this section], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet such additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9407(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [enacting section 1396r–1 of this title and amending this section and sections 1396b and 1396s of this title] shall apply to ambulatory prenatal care furnished in calendar quarters beginning on or after April 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 9408(d) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall apply to services furnished on or after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9431(c) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

Section 9433(b) of Pub. L. 99–509 provided that: ''The amendment made by subsection (a) [amending section 2173 of Pub. L. 97–35, which amended this section] shall apply as though it was included in the enactment of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35).''

Section 9435(f) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section and section 1396d of this title and provisions set out as notes under this section and sections 1396d and 1396n of this title] shall be effective as if included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Section 9501(d)(2), (3) of Pub. L. 99–272 provided that:

''(2) OPTIONAL SERVICES.—The amendments made by subsection (b) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].

''(3) CONTINUED COVERAGE.—The amendment made by subsection (c) [amending this section] shall apply to medical assistance furnished to a woman on or after the date of the enactment of this Act.''

Section 9503(g) of Pub. L. 99–272 provided that:

''(1) Except as otherwise provided, the amendments made by this section [amending this section and sections 1396b and 1396k of this title and section 1144 of Title 29, Labor, and enacting provisions set out as notes under this section and section 1144 of Title 29] shall apply to calendar quarters beginning on or after the date of the enactment of this Act [Apr. 7, 1986].

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

''(3) No penalty may be applied against any State for a violation of section 1902(a)(25) of the Social Security Act [subsec. (a)(25) of this section] occurring prior to the effective date of the amendments made by this section.

''(4) The amendment made by subsection (c) [enacting provisions set out below] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9505(e) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(d)(1), Oct. 21, 1986, 100 Stat. 2070, provided that: ''The amendments made by this section [amending this section and sections 1396d and 1396*o* of this title] shall apply to medical assistance provided for hospice care furnished on or after the date of the enactment of this Act [Apr. 7, 1986], without regard to whether or not regulations to carry out the amendments have been promulgated by that date.''

Section 9506(b), (c) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(c), Oct. 21, 1986, 100 Stat. 2070, provided that:

''(b) EFFECTIVE DATE.—The amendment made by subsection (a) [amending this section] shall apply to medical assistance furnished on or after the first day of the second month beginning after the date of the enactment of this Act [Apr. 7, 1986].

''(c) EXCEPTION.—The amendment made by subsection (a) [amending this section] shall not apply to any trust or initial trust decree established prior to April 7, 1986, solely for the benefit of a mentally retarded individual who resides in an intermediate care facility for the mentally retarded.''

Section 9509(b) of Pub. L. 99–272 provided that:

''(1) Except as provided in paragraphs (2) and (3), the amendments made by this section [amending this section and enacting provisions set out below] shall apply to medical assistance furnished on or after October 1, 1985, but only with respect to changes of ownership occurring on or after such date.

''(2) The amendments made by this section shall not apply with respect to a change of ownership pursuant to an enforceable agreement entered into prior to October 1, 1985.

''(3) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other

than legislation appropriating funds) in order for the plan to meet the requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet the requirements imposed by the amendments made by this section before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Apr. 7, 1986].''

Section 9510(b) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(d)(2), Oct. 21, 1986, 100 Stat. 2070, provided that: ''The amendment made by this section [amending this section] shall apply with respect to payment for services furnished on or after October 1, 1985, without regard to whether or not regulations to carry out the amendment have been promulgated by that date.''

Section 9529(a)(2) of Pub. L. 99–272 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to medical assistance furnished on or after the first calendar quarter that begins more than 90 days after the date of the enactment of this Act [Apr. 7, 1986].''

Section 9529(b)(3) of Pub. L. 99–272 provided that: ''This subsection, and the amendments made by this subsection [amending this section and enacting provisions set out below], shall apply to adoption assistance agreements entered into before, on, or after the date of the enactment of this Act [Apr. 7, 1986].''

Amendment by section 12305(b)(3) of Pub. L. 99–272 applicable to medical assistance furnished in or after first calendar quarter beginning more than 90 days after Apr. 7, 1986, see section 12305(c) of Pub. L. 99–272, set out as a note under section 673 of this title.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2303(g)(1) of Pub. L. 98–369 applicable to clinical diagnostic laboratory tests furnished on or after July 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title, see section 2303(j)(1) and (3) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2314(c)(3) of Pub. L. 98–369 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by subsection (b) [amending this section] shall apply to medical assistance furnished on or after October 1, 1984.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendments made by this section [amending this section and section 1395x of this title and enacting provisions set out as a note under section 1395x of this title], the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2335(e) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Section 2361(d) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 606 and 1396d of this title] shall apply to calendar quarters beginning on or after October 1, 1984, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [July 18, 1984].''

Section 2362(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to children born on or after October 1, 1984.''

Amendment by section 2363(a)(1) of Pub. L. 98–369 applicable to calendar quarters beginning on or after July 18, 1984, except that, in the case of individuals admitted to skilled nursing facilities before that date, the amendment shall not require recertifications sooner or more frequently than were required under the law in effect before that date, see section 2363(c) of Pub. L. 98–369, set out as a note under section 1396b of this title.

Section 2367(c) of Pub. L. 98–369 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396k of this title] shall become effective on October 1, 1984.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [July 18, 1984].''

Section 2368(c) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

Amendment by section 2651(c) of Pub. L. 98–369 effective Apr. 1, 1985, except as otherwise provided, see section 2651(*l*)(2) of Pub. L. 98–369, set out as an Effective Date note under section 1320b–7 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 131(a), (c) of Pub. L. 97–248 effective Oct. 1, 1982, see section 131(d) of Pub. L. 97–248, formerly §131(c), redesignated Pub. L. 97–448, title III, §309(a)(8), Jan. 12, 1983, 96 Stat. 2408, set out as an Effective Date note under section 1396*o* of this title.

Amendment by section 132(a), (c) of Pub. L. 97–248 effective Sept. 3, 1982, see section 132(d) of Pub. L. 97–248, set out as an Effective Date note under section 1396p of this title.

Section 134(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1982.''

Amendment by section 136(d) of Pub. L. 97–248 effective Oct. 1, 1982, see section 136(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

Section 137(d) of Pub. L. 97–248 provided that:

''(1) Except as otherwise provided in this section, any amendment to the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35] made by this section [amending this section and sections 1320a–1 and 1396b of this title and provisions set out as a note under section 603 of this title] shall be effective as if it had been originally included in the provision of the Omnibus Budget Reconciliation Act of 1981 to which such amendment relates.

''(2) Except as otherwise provided in this section, any amendment to the Social Security Act [this chapter]

made by the preceding provisions of this section [amending this section and sections 701, 705, 1320a–7a, 1320b–4, 1396b, 1396d, and 1396n of this title] shall be effective as if it had been originally included as a part of that provision of the Social Security Act to which it relates, as such provision of the Social Security Act was amended by the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35].''

Amendment by section 146(a) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2113(*o*) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and sections 1320c, 1320c–1, 1320c–3, 1320c–4, 1320c–7, 1320c–8, 1320c–9, 1320c–11, 1320c–17, 1320c–21, and 1396b of this title and repealing sections 1320c–13 and 1320c–20 of this title] apply to agreements with Professional Standards Review Organizations entered into on or after October 1, 1981.''

Section 2171(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section] shall become effective on the date of the enactment of this Act [Aug. 13, 1981].''

Section 2172(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 1396d of this title] shall become effective on the date of the enactment of this Act [Aug. 13, 1981].''

Section 2173(b)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall not apply with respect to services furnished before the date the Secretary of Health and Human Services first promulgates and has in effect final regulations (on an interim or other basis) to carry out section 1902(a)(13)(A) of the Social Security Act [subsec. (a)(13)(A) of this section] (as amended by this subtitle).''

Section 2174(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall apply to services furnished on or after October 1, 1981.''

Section 2175(d)(2) of Pub. L. 97–35 provided that:

''(A) The amendments made by paragraph (1) [amending this section] shall (except as provided under subparagraph (B)) be effective with respect to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1981.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendment made by paragraph (1)(C), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar year beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 13, 1981].''

Section 2178(c) of Pub. L. 97–35 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall apply with respect to services furnished, under a State plan approved under title XIX of the Social Security Act [this subchapter], on or after October 1, 1981; except that such amendments shall not apply with respect to services furnished by a health maintenance organization under a contract with a State entered into under such title before October 1, 1981 unless the organization requests that such amendments apply and the Secretary of Health and Human Services and the single State agency (administering or supervising the administration of the State plan under such title) agree to such request.''

Amendment by section 2181(a)(2) of Pub. L. 97–35 effective Oct. 1, 1981, see section 2181(b) of Pub. L. 97–35, set out as a note under section 603 of this title.

For effective date, savings, and transitional provisions relating to amendment by section 2193(c)(9) of Pub. L. 97–35, see section 2194 of Pub. L. 97–35, set out as a note under section 701 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by section 902(b) of Pub. L. 96–499 effective on date on which final regulations to implement the amendment are first issued, see section 902(c) of Pub. L. 96–499, set out as a note under section 1395x of this title.

Section 914(b)(2) of Pub. L. 96–499, as amended by Pub. L. 97–248, title I, §137(c)(1), Sept. 3, 1982, 96 Stat. 381, provided that:

''(A) The amendments made by paragraph (1) [amending this section] shall (except as provided under subparagraph (B)) apply to cost reporting periods, beginning on or after April 1, 1981, of an entity providing services under a State plan approved under title XIX of the Social Security Act [this subchapter].''

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (1), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.''

Section 918(b)(2) of Pub. L. 96–499 provided that:

''(A) The amendments made by paragraph (1) [enacting this section] shall (except as otherwise provided in subparagraph (B)) apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act [this subchapter], on and after the first day of the first calendar quarter that begins more than six months after the date of the enactment of this Act [Dec. 5, 1980].

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by paragraph (1), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.''

Section 962(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on October 1, 1980.''

Section 965(c) of Pub. L. 96–499 provided that:

''(1) The amendments made by this section [amending this section and section 1396d of this title] shall (except as provided under paragraph (2)) be effective with respect to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning more than one hundred and twenty days after the date of the enactment of this Act [Dec. 5, 1980].

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1978 AMENDMENT

Section 14(a)(2) of Pub. L. 95–559 provided that:

''(A) Except as provided in subparagraph (B), the amendments made by paragraph (1) [amending this section] shall take effect one hundred and eighty days after the date of the enactment of this Act [Nov. 1, 1978].

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary determines requires State legislation in order for the plan to meet the requirement added by the amendments made by paragraph (1), such amendments shall not apply with respect to such State plan before ninety days after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95–210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after the first day of the first calendar quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95–210, set out as a note under section 1395cc of this title.

Amendment by section 2(a)(3) of Pub. L. 95–142 applicable with respect to care and services furnished on or after Oct. 25, 1977, see section 2(a)(4) of Pub. L. 95–142, set out as a note under section 1395g of this title.

Section 2(b)(2) of Pub. L. 95–142 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to calendar quarters beginning on and after July 1, 1978, with respect to State plans approved under title XIX of the Social Security Act [this subchapter].''

Amendment by section 3(c)(1) of Pub. L. 95–142 effective Jan. 1, 1978, see section 3(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–3 of this title.

Section 7(e)(2) of Pub. L. 95–142 provided that: ''The amendment made by subsection (b) [amending this section] shall become effective on January 1, 1978.''

Section 19(c)(2) of Pub. L. 95–142 provided that:

''(A) The amendments made by subsection (b) [amending this section and section 1395x of this title] shall apply with respect to operations of a hospital, skilled nursing facility, or intermediate care facility, on and after the first day of its first fiscal year which begins after the end of the six-month period beginning on the date a uniform reporting system is established (under section 1121(a) of the Social Security Act) [section 1320a(a) of this title] for that type of health services facility.

''(B) The amendments made by subsection (b) [amending this section and section 1395x of this title] shall apply, with respect to the operation of a health services facility or organization which is neither a hospital, a skilled nursing facility, nor an intermediate care facility, on and after the first day of its first fiscal year which begins after such date as the Secretary of Health, Education, and Welfare [now Health and Human Services] determines to be appropriate for the implementation of the reporting requirement for that type of facility or organization.

''(C) Except as provided in subparagraphs (A) and (B), the amendments made by subsection (b)(2) [amending this section] shall apply, with respect to State plans approved under title XIX of the Social Security Act [this subchapter], on and after October 1, 1977.''

Amendment by section 20(b) of Pub. L. 95–142 effective Oct. 1, 1977, and the Secretary to adjust payments made to States under section 1396b of this title to reflect such amendment, see section 20(c) of Pub. L. 95–142, set out as a note under section 1396b of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2 of Pub. L. 94–552 provided that: ''The amendments made by the first section [amending this section and section 1396b of this title] shall take effect as of January 1, 1976.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 111(c) of Pub. L. 94–182 provided that: ''The amendments made by this section [amending this section and section 1396b of this title] shall (except as otherwise provided for therein) become effective January 1, 1976.''

EFFECTIVE DATE OF 1974 AMENDMENT

Section 9(b) of Pub. L. 93–368 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective January 1, 1973.''

EFFECTIVE DATE OF 1973 AMENDMENT

Section 13(d) of Pub. L. 93–233 provided that: ''The amendments made by subsection (a) [amending this section and sections 1396, 1396b, and 1396d of this title] shall be effective with respect to payments under section 1903 of the Social Security Act [section 1396b of this title] for calendar quarters commencing after December 31, 1973.''

Section 18(z–3)(4) of Pub. L. 93–233 provided that: ''The amendments made by subsections (*o*) and (u) [amending this section and section 1396b of this title] shall be effective July 1, 1973''.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 208(b) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective January 1, 1973 (or earlier if the State plan so provided).''

Section 209(b)(2) of Pub. L. 92–603 provided that: ''The amendment made by this subsection [amending this section] shall become effective on January 1, 1974.''

Section 232(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 705 of this title] shall be effective July 1, 1972 (or earlier if the State plan so provides).''

Amendment by section 236(b) of Pub. L. 92–603 effective Jan. 1, 1973, or earlier if the State plan so provides, see section 236(c) of Pub. L. 92–603, set out as a note under section 1395u of this title.

Section 237(d)(2) of Pub. L. 92–603 provided that: ''The amendment made by subsection (a)(2) [amending this section] shall be effective July 1, 1973.''

Section 239(d) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 705 of this title] shall be effective January 1, 1973 (or earlier if the State plan so provides).''

Amendment by section 246(a) of Pub. L. 92–603 to be effective July 1, 1973, see section 246(c) of Pub. L. 92–603, set out as a note under section 1395x of this title.

Section 255(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective July 1, 1973.''

Section 268(c) of Pub. L. 92–603 provided that: ''The amendments made by this section [amending this section and section 1396g of this title] shall be effective on the date of the enactment of this Act [Oct. 30, 1972].''

Amendment by section 299D(b) of Pub. L. 92–603 effective beginning Jan. 1, 1973, or within 6 months following Oct. 30, 1972, whichever is later, see section 299D(c) of Pub. L. 92–603, set out as a note under section 1395aa of this title.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 4(d) of Pub. L. 92–223, as amended by section 292 of Pub. L. 92–603, provided that: ''The amendments made by this section [amending this section and section 1396d of this title and repealing section 1320a of this title] shall become effective January 1, 1972; except that the repeal made by subsection (c) [repealing section 1320a of this title], shall not become effective in the case of any State, which on January 1, 1972 did not have in effect a State plan approved under title XIX of the Social Security Act [this subchapter], until the first day of the first month (occurring after such date) that such State does have in effect a State plan approved under such title [this subchapter].''

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by section 210(a)(6) of Pub. L. 90–248 effective July 1, 1969, or, if earlier (with respect to a State's plan approved under this subchapter) on the date as of which the modification of the State plan to comply with such amendment is approved, see section 210(b) of Pub. L. 90–248, set out as a note under section 302 of this title.

Section 223(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1967.''

Section 224(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after December 31, 1967.''

Section 224(c)(2) of Pub. L. 90–248 provided that: ''The amendment made by paragraph (1) of this subsection [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1970.''

Section 227(b) of Pub. L. 90–248, as amended by section 271A of Pub. L. 92–603, effective from and after July 1, 1972, provided that: ''The amendments made by this section [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1969; except that such amendments shall apply in the case of Puerto Rico, the Virgin Islands, and Guam only with respect to calendar quarters beginning after June 30, 1975.''

Section 229(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to legal liabilities of third parties arising after March 31, 1968.''

Section 234(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) of this section [amending this section] (unless otherwise specified in the body of such amendments) shall take effect on January 1, 1969.''

Section 235(b) of Pub. L. 90–248 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective in the case of calendar quarters beginning after December 31, 1967.''

Enactment by section 236(a) of Pub. L. 90–248 effective July 1, 1970, except as otherwise specified in the text thereof, see section 236(c) of Pub. L. 90–248, set out as an Effective Date note under section 1396g of this title.

Section 237 of Pub. L. 90–248 provided that the amendment made by that section is effective Apr. 1, 1968.

Section 238 of Pub. L. 90–248 provided that the amendment made by that section is effective July 1, 1969.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Secretary of Health and Human Services under subsec. (a)(4)(A) of this section, insofar as relates to the prescription of personnel standards on a merit basis, transferred to Office of Personnel Management, see section 4728(a)(3)(D) of this title.

DEMONSTRATION PROJECTS TO STUDY EFFECT OF ALLOWING STATES TO EXTEND MEDICAID COVERAGE TO CERTAIN LOW-INCOME FAMILIES NOT OTHERWISE QUALIFIED TO RECEIVE MEDICAID BENEFITS

Section 4745 of Pub. L. 101–508, as amended by Pub. L. 103–66, title XIII, §13643(a), Aug. 10, 1993, 107 Stat. 647, provided that:

''(a) DEMONSTRATION PROJECTS.—

''(1) IN GENERAL.—(A) The Secretary of Health and Human Services (hereafter in this section referred to as the 'Secretary') shall enter into agreements with 3 and no more than 4 States submitting applications under this section for the purpose of conducting demonstration projects to study the effect on access to, and costs of, health care of eliminating the categorical eligibility requirement for medicaid benefits for certain low-income individuals.

''(B) In entering into agreements with States under this section the Secretary shall provide that at least 1 and no more than 2 of the projects are conducted on a substate basis.

''(2) REQUIREMENTS.—(A) The Secretary may not enter into an agreement with a State to conduct a project unless the Secretary determines that—

''(i) the project can reasonably be expected to improve access to health insurance coverage for the uninsured;

''(ii) with respect to projects for which the statewideness requirement has not been waived, the State provides, under its plan under title XIX of the Social Security Act [this subchapter], for eligibility for medical assistance for all individuals described in subparagraphs (A), (B), (C), and (D) of paragraph (1) of section 1902(*l*) of such Act [subsec. (*l*)(1)(A), (B), (C), (D) of this section] (based on the State's election of certain eligibility options the highest income standards and, based on the State's waiver of the application of any resource standard);

''(iii) eligibility for benefits under the project is limited to individuals in families with income below 150 percent of the income official poverty line and who are not individuals receiving benefits under title XIX of the Social Security Act;

''(iv) if the Secretary determines that it is cost-effective for the project to utilize employer coverage (as described in section 1925(b)(4)(D) of the Social Security Act [section 1396r–6(b)(4)(D) of this title]), the project must require an employer contribution and benefits under the State plan under title XIX of such Act will continue to be made available to the extent they are not available under the employer coverage;

''(v) the project provides for coverage of benefits consistent with subsection (b); and

''(vi) the project only imposes premiums, coinsurance, and other cost-sharing consistent with subsection (c).

''(B) The Secretary may waive the requirements of clause (ii) of this paragraph [probably means subparagraph (A)] with respect to those projects described in subparagraph (B) of paragraph (1).

''(3) PERMISSIBLE RESTRICTIONS.—A project may limit eligibility to individuals whose assets are valued below a level specified by the State. For this purpose, any evaluation of such assets shall be made in a manner consistent with the standards for valuation of assets under the State plan under title XIX of the Social Security Act for individuals entitled to assistance under part A of title IV of such Act [part A of subchapter IV of this chapter]. Nothing in this section shall be construed as requiring a State to provide for eligibility for individuals for months before the month in which such eligibility is first established.

''(4) EXTENSION OF ELIGIBILITY.—A project may provide for extension of eligibility for medical assistance for individuals covered under the project in a manner similar to that provided under section 1925 of the Social Security Act to certain families receiving aid pursuant to a plan of the State approved under part A of title IV of such Act.

''(5) WAIVER OF REQUIREMENTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), the Secretary may waive such requirements of title XIX of the Social Security Act (except section 1903(m) of the Social Security Act [section 1396b(m) of this title]) as may be required to provide for additional coverage of individuals under projects under this section.

''(B) NONWAIVABLE PROVISIONS.—Except with respect to those projects described in subparagraph (B) of paragraph (1), the Secretary may not waive, under subparagraph (A), the statewideness requirement of section 1902(a)(1) of the Social Security Act [subsec. (a)(1) of this section] or the Federal medical assistance percentage specified in section 1905(b) of such Act [section 1396d(b) of this title].

''(b) BENEFITS.—

''(1) IN GENERAL.—Except as provided in this subsection, the amount, duration, and scope of medical assistance made available under a project shall be the

same as the amount, duration, and scope of such assistance made available to individuals entitled to medical assistance under the State plan under section 1902(a)(10)(A)(i) of the Social Security Act [subsec. (a)(10)(A)(i) of this section].

''(2) LIMITS ON BENEFITS.—

''(A) REQUIRED.—Except with respect to those projects described in subparagraph (B) of paragraph (1), no medical assistance shall be made available under a project for nursing facility services or community-based long-term care services (as defined by the Secretary) or for pregnancy-related services. No medical assistance shall be made available under a project to individuals confined to a State correctional facility, county jail, local or county detention center, or other State institution.

''(B) PERMISSIBLE.—A State, with the approval of the Secretary, may limit or otherwise deny eligibility for medical assistance under the project and may limit coverage of items and services under the project, other than early and periodic screening, diagnostic, and treatment services for children under 18 years of age.

''(3) USE OF UTILIZATION CONTROLS.—Nothing in this subsection shall be construed as limiting a State's authority to impose controls over utilization of services, including preadmission requirements, managed care provisions, use of preferred providers, and use of second opinions before surgical procedures.

''(c) PREMIUMS AND COST-SHARING.—

''(1) NONE FOR THOSE WITH INCOME BELOW THE POVERTY LINE.—Under a project, there shall be no premiums, coinsurance, or other cost-sharing for individuals whose family income level does not exceed 100 percent of the income official poverty line (as defined in subsection (g)(1)) applicable to a family of the size involved.

''(2) LIMIT FOR THOSE WITH INCOME ABOVE THE POVERTY LINE.—Under a project, for individuals whose family income level exceeds 100 percent, but is less than 150 percent, of the income official poverty line applicable to a family of the size involved, the monthly average amount of premiums, coinsurance, and other cost-sharing for covered items and services shall not exceed 3 percent of the family's average gross monthly earnings.

''(3) INCOME DETERMINATION.—Each project shall provide for determinations of income in a manner consistent with the methodology used for determinations of income under title XIX of the Social Security Act [this subchapter] for individuals entitled to benefits under part A of title IV of such Act [part A of subchapter IV of this chapter].

''(d) DURATION.—Each project under this section shall commence not later than July 1, 1991 and shall be conducted for a 3-year period; except that the Secretary may terminate such a project if the Secretary determines that the project is not in substantial compliance with the requirements of this section.

''(e) LIMITS ON EXPENDITURES AND FUNDING.—

''(1) IN GENERAL.—(A) The Secretary in conducting projects shall limit the total amount of the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act [this subchapter] to no more than $40,000,000.

''(B) Of the amounts appropriated under subparagraph (A), the Secretary shall provide that no more than one-third of such amounts shall be used to carry out the projects described in paragraph (1)(B) of subsection (a) (for which the statewideness requirement has been waived).

''(2) NO FUNDING OF CURRENT BENEFICIARIES.—No funding shall be available under a project with respect to medical assistance provided to individuals who are otherwise eligible for medical assistance under the plan without regard to the project.

''(3) NO INCREASE IN FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—Payments to a State under a project with respect to expenditures made for medical assistance made available under the project may not exceed the Federal medical assistance percentage (as defined in section 1905(b) of the Social Security Act [section 1396d(b) of this title]) of such expenditures.

''(f) EVALUATION AND REPORT.—

''(1) EVALUATIONS.—For each project the Secretary shall provide for an evaluation to determine the effect of the project with respect to—

''(A) access to, and costs of, health care,

''(B) private health care insurance coverage, and

''(C) premiums and cost-sharing.

''(2) REPORTS.—The Secretary shall prepare and submit to Congress an interim report on the status of the projects not later than January 1, 1993, and a final report containing such summary together with such further recommendations as the Secretary may determine appropriate not later than one year after the termination of the projects.

''(g) DEFINITIONS.—In this section:

''(1) The term 'income official poverty line' means such line as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [section 9902(2) of this title].

''(2) The term 'project' refers to a demonstration project under subsection (a).''

[Section 13643(a) of Pub. L. 103–66 provided in part that the amendment made by that section to section 4745 of Pub. L. 101–508, set out above, is effective as if included in enactment of Pub. L. 101–508.]

DEMONSTRATION PROJECT TO PROVIDE MEDICAID COVERAGE FOR HIV-POSITIVE INDIVIDUALS

Section 4747 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—Not later than 3 months after the date of the enactment of this Act [Nov. 5, 1990], the Secretary of Health and Human Services (hereafter in this section referred to as the 'Secretary') shall provide for 2 demonstration projects to be administered by States that submit an application under this section, through programs administered by the States under title XIX of the Social Security Act [this subchapter]. Such demonstration projects shall provide coverage for the services described in subsection (c) to individuals whose income and resources do not exceed the maximum allowable amount for eligibility for any individual in any category of disability under the State plan under section 1902 of the Social Security Act [this section], and who have tested positive for the presence of HIV virus (without regard to the presence of any symptoms of AIDS or opportunistic diseases related to AIDS).

''(b) SERVICES AVAILABLE UNDER A DEMONSTRATION PROJECT.—(1) The medical assistance made available to individuals described in section 1902(a)(10)(A) of the Social Security Act [subsec. (a)(10)(A) of this section] shall be made available to individuals described in subsection (a) who receive services under a demonstration project under such paragraph.

''(2) A demonstration project under subsection (a) shall provide services in addition to the services described in paragraph (1) which shall be limited only on the basis of medical necessity or the appropriateness of such services. To the extent not provided as described in paragraph (1), such additional services shall include—

''(A) general and preventative medical care services (including inpatient, outpatient, residential care, physician visits, clinic visits, and hospice care);

''(B) prescription drugs, including drugs for the purposes of preventative health care services;

''(C) counseling and social services;

''(D) substance abuse treatment services (including services for multiple substances abusers);

''(E) home care services (including assistance in carrying out activities of daily living);

''(F) case management;

''(G) health education services;

''(H) respite care for caregivers;

''(I) dental services; and

''(J) diagnostic and laboratory services[.]

''(c) AGREEMENTS WITH STATES.—(1) Each State conducting a demonstration project under subsection (a) shall enter into an agreement with a hospital and at least one other nonprofit organization submitting applications to the State. The State shall require that such hospital and other entity have a demonstrated record of case management of patients who have tested positive for the presence of HIV virus and have access to a control group of such type of patients who are not receiving State or Federal payments for medical services (or other payments from private insurance coverage) before developing symptoms of AIDS. Under such agreement, the State shall agree to pay each such entity for the services provided under subsection (b) and not later than 12 months after the commencement of a demonstration project, institute a system of monthly payment to each such entity based on the average per capita cost of the services described in subsection (c) provided to individuals described in paragraphs (1) and (2) of subsection (a).

''(2) A demonstration project described in subsection (a) shall be limited to an enrollment of not more than 200 individuals.

''(3) A demonstration project conducted under subsection (a) shall commence not later than 9 months after the date of the enactment of this Act [Nov. 5, 1990] and shall terminate on the date that is 3 years after the date of commencement.

''(4)(A) The Secretary shall provide for an evaluation of the comparative costs of providing services to individuals who have tested positive for the presence of HIV virus at an early stage after detection of such virus and those that are treated at a later stage after such detection.

''(B) The Secretary shall report to Congress on the results of the evaluation conducted under subparagraph (A) no later than 6 months after the date of termination of the demonstration projects described in this section.

''(d) FEDERAL SHARE OF COSTS.—The Federal share of the cost of services described in paragraph (3) furnished under a demonstration project conducted under paragraph (1) shall be determined by the otherwise applicable Federal matching assistance percentage pursuant to section 1905(b) of the Social Security Act [section 1396d(b) of this title].

''(e) WAIVER OF REQUIREMENTS OF THE SOCIAL SECURITY ACT.—The Secretary may waive such requirements of the Social Security Act [this chapter] as the Secretary determines to be necessary to carry out the purposes of this section.

''(f) LIMITATION ON AMOUNT OF EXPENDITURES.—The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be $5,000,000 for fiscal year 1991, $12,000,000 for fiscal year 1992, and $13,000,000 for fiscal year 1993.''

PUBLIC EDUCATION CAMPAIGN

Section 4751(d) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The Secretary, no later than 6 months after the date of enactment of this section [Nov. 5, 1990], shall develop and implement a national campaign to inform the public of the option to execute advance directives and of a patient's right to participate and direct health care decisions.

''(2) DEVELOPMENT AND DISTRIBUTION OF INFORMATION.—The Secretary shall develop or approve nationwide informational materials that would be distributed by providers under the requirements of this section [amending this section and sections 1396b and 1396r of this title and enacting provisions set out above], to inform the public and the medical and legal profession of each person's right to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment, and the existence of advance directives.

''(3) PROVIDING ASSISTANCE TO STATES.—The Secretary shall assist appropriate State agencies, associations, or other private entities in developing the State-specific documents that would be distributed by providers under the requirements of this section. The Secretary shall further assist appropriate State agencies, associations, or other private entities in ensuring that providers are provided a copy of the documents that are to be distributed under the requirements of the section.

''(4) DUTIES OF SECRETARY.—The Secretary shall mail information to Social Security recipients, [and] add a page to the medicare handbook with respect to the provisions of this section.''

PHYSICIAN IDENTIFIER SYSTEM; DEADLINE AND CONSIDERATIONS

Section 4752(a)(1)(B) of Pub. L. 101–508 provided that: ''The system established under the amendment made by subparagraph (A) [amending this section] may be the same as, or different from, the system established under section 9202(g) of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272, formerly set out in a note under section 1395ww of this title].''

FOREIGN MEDICAL GRADUATE CERTIFICATION

Section 4752(d) of Pub. L. 101–508 provided that:

''(1) PASSAGE OF FMGEMS EXAMINATION IN ORDER TO OBTAIN IDENTIFIER.—The Secretary of Health and Human Service[s] shall provide, in the identifier system established under section 1902(x) of the Social Security Act [subsec. (x) of this section], that no foreign medical graduate (as defined in section 1886(h)(5)(D) of such Act [section 1395ww(h)(5)(D) of this title]) shall be issued an identifier under such system unless the individual—

''(A) has passed the FMGEMS examination (as defined in section 1886(h)(5)(E) of such Act);

''(B) has previously received certification from, or has previously passed the examination of, the Educational Commission for Foreign Medical Graduates; or

''(C) has held a license from 1 or more States continuously since 1958.

''(2) EFFECTIVE DATE.—Paragraph (1) shall apply with respect to issuance of an identifier applicable to services furnished on or after January 1, 1992.''

EXCLUSIONS IN DETERMINATION OF INCOME AND RESOURCES UNDER THIS SUBCHAPTER

Section 11115(c) of Pub. L. 101–508 provided that: ''Pursuant to section 1902(a)(17) of the Social Security Act (42 U.S.C. 1396a(a)(17)), the Secretary of Health and Human Services shall promulgate regulations to exempt from any determination of income and resources (for the month of receipt and the following month) under title XIX of the Social Security Act [this subchapter] any refund of Federal income taxes made to an individual by reason of section 32 of the Internal Revenue Code of 1986 [26 U.S.C. 32] (relating to earned income tax credit), and any payment made to an individual by an employer under section 3507 of such Code [26 U.S.C. 3507] (relating to advance payment of earned income credit).''

DEVELOPMENT OF MODEL APPLICATIONS FOR MEDICAID PROGRAM

Section 6506(b) of Pub. L. 101–239 provided that:

''(1) IN GENERAL.—The Secretary of Health and Human Services shall, by not later than 1 year after the date of the enactment of this Act [Dec. 19, 1989], develop a model application form for use in applying for benefits under title XIX of the Social Security Act [this subchapter] for individuals who are not receiving cash assistance under part A of title IV of the Social Security Act [part A of subchapter IV of this chapter], and who are not institutionalized. In developing such model application form, the Secretary is not authorized to require that such form be adopted by States as part of their State medicaid plan.

''(2) DISSEMINATION OF MODEL FORM.—The Secretary shall provide for publication in the Federal Register of the model application form developed under paragraph (1), and shall send a copy of such form to each State

agency responsible for administering a State medicaid plan.''

CLARIFICATION OF FEDERAL FINANCIAL PARTICIPATION FOR CASE-MANAGEMENT SERVICES

Section 8435 of Pub. L. 100–647 provided that: ''The Secretary of Health and Human Services may not fail or refuse to approve an amendment to a State plan under title XIX of the Social Security Act [this subchapter] that provides for coverage of case-management services described in section 1915(g)(2) of such Act [section 1396n(g)(2) of this title], or to deny payment to a State for such services under section 1903(a)(1) of such Act [section 1396b(a)(1) of this title] on the basis that a State is required to provide such services under State law or on the basis that the State had paid or is paying for such services from non-Federal funds before or after April 7, 1986. Nothing in this section shall be construed as requiring the Secretary to make payment to a State under section 1903(a)(1) of such Act for such case-management services which are provided without charge to the users of such services.''

TREATMENT OF STATES OPERATING UNDER DEMONSTRATION PROJECTS

Section 301(g)(1) of Pub. L. 100–360 provided that: ''In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1115(a) of the Social Security Act [section 1315(a) of this title], the Secretary of Health and Human Services shall require the State to meet the requirement of section 1902(a)(10)(E) of the Social Security Act [subsec. (a)(10)(E) of this section] in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under title XIX of such Act [this subchapter].''

ADJUSTMENT IN MEDICAID PAYMENT FOR INPATIENT HOSPITAL SERVICES FURNISHED BY DISPROPORTIONATE SHARE HOSPITALS

Pub. L. 100–203, title IV, § 4112, Dec. 22, 1987, 101 Stat. 1330–148, which related to adjustment in medicaid payment for inpatient hospital services furnished by disproportionate share hospitals was amended by Pub. L. 100–360, title IV, § 411(k)(6)(A)–(B)(i), July 1, 1988, 102 Stat. 792, 793, and so amended, § 4112 enacts the provisions of former section 4112 as section 1396r–4 of this title and amends sections 1396b and 1396s of this title.

AMENDMENT TO STATE PLAN TO PROVIDE ADJUSTMENT FOR SERVICES FURNISHED DURING FISCAL YEAR 1990

Section 4211(b)(2) of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, § 4801(e)(1)(B), Nov. 5, 1990, 104 Stat. 1388–215, provided that: ''A plan of a State under title XIX of the Social Security Act [this subchapter] shall not be considered to have met the requirement of section 1902(a)(13)(A) of the Social Security Act [subsec. (a)(13)(A) of this section] (as amended by paragraph (1)(A) of this subsection), as of the first day of a Federal fiscal year (beginning on or after October 1, 1990), unless the State has submitted to the Secretary of Health and Human Services, as of April 1 before the fiscal year, an amendment to such State plan to provide for an appropriate adjustment in payment amounts for nursing facility services furnished during the Federal fiscal year. Each such amendment shall include a detailed description of the specific methodology to be used in determining the appropriate adjustment in payment amounts for nursing facility services. The Secretary shall, not later than September 30 before the fiscal year concerned, review each such plan amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement. The absence of approval of such a plan amendment does not relieve the State or any nursing facility of any obligation or requirement under title XIX of the Social Security Act (as amended by this Act).''

TECHNICAL ASSISTANCE WITH RESPECT TO FACILITIES THAT TAKE INTO ACCOUNT CASE MIX OF RESIDENTS

Section 4211(j) of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall, upon request by a State, furnish technical assistance with respect to the development and implementation of reimbursement methods for nursing facilities that take into account the case mix of residents in the different facilities.''

STATE UTILIZATION REVIEW SYSTEMS

Section 9432 of Pub. L. 99–509, as amended by Pub. L. 100–203, title IV, § 4118(p)(11), as added by Pub. L. 100–360, title IV, § 411(k)(10)(M), July 1, 1988, 102 Stat. 797; Pub. L. 101–508, title IV, § 4755(b), Nov. 5, 1990, 104 Stat. 1388–210, provided that:

''(a) IN GENERAL.—(1) The Secretary of Health and Human Services (in this section referred to as the 'Secretary') may not publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act [this subchapter] to include a program requiring second surgical opinions or a program of inpatient hospital preadmission review.

''(2) The Secretary may not, during the period beginning on the date of the enactment of the Omnibus Budget Reconciliation Act of 1990 [Nov. 5, 1990] and ending on the date that is 180 days after the date on which the report required by subsection (d) is submitted to the Congress, publish final or interim final regulations requiring a State plan approved under title XIX of the Social Security Act [this subchapter] to include a program for ambulatory surgery, preadmission testing, or same-day surgery.

''(b) REPORT.—

''(1) The Secretary shall report to Congress, by not later than October 1, 1988, for each State in a representative sample of States—

''(A) the identity of those procedures which are high volume or high cost procedures among patients who are covered under the State medicaid plan,

''(B) the payment rates under those plans for such procedures, and the aggregate annual payment amounts made under such plans for such procedures (including the Federal share of such payment amounts),

''(C) the rate at which each such procedure is performed on medicaid patients and (to the extent that data are available) comparisons to the rate at which such procedure is performed on patients of comparable age who are not medicaid patients,

''(D) with respect to each such procedure—

''(i) the number of board certified or board eligible physicians in the State who provide care and services to medicaid patients and who perform the procedure, and

''(ii) in the case of a State with a mandatory second surgical opinion program in operation, the number of physicians described in clause (i) who provide second opinions (of the type described in section 1164 of the Social Security Act [section 1320c–13 of this title]) for the procedure at prevailing payment rates under the State medicaid plan, and

''(E) in the case of a State with a mandatory second surgical opinion program or a program of inpatient hospital preadmission review in operation, a description of—

''(i) the extent to which such program impedes access to necessary care and services, and

''(ii) the measures that the State has taken to address such impediments, particularly in rural areas.

''(2) Such report shall also include a list of those surgical procedures which the Secretary believes meet the following criteria and for which a mandatory second opinion program under medicaid plans may be appropriate:

''(A) The procedure is one which generally can be postponed without undue risk to the patient.

''(B) The procedure is a high volume procedure among patients who are covered under State medicaid plans or is a high cost procedure.

''(C) The procedure has a comparatively high rate of nonconfirmation upon examination by another qualified physician, there is substantial geographic variation in the rates of performance of the procedure, or there are other reasons why requiring second opinions for 100 percent of such procedures would be cost effective.

''(3) The representative sample of States required to be included in the report shall include States with mandatory second surgical opinion programs in operation, States with programs of inpatient hospital preadmission review in operation, and States with neither such program in operation.

''(4) In this subsection and subsection (d), the term 'medicaid plan' means a State plan approved under title XIX of the Social Security Act [this subchapter].

''(c) STUDY.—

''(1) The Secretary shall conduct a study of the utilization of selected medical treatments and surgical procedures by medicaid beneficiaries in order to assess the appropriateness, necessity, and effectiveness of such treatments and procedures.

''(2) The study shall analyze the extent to which there is significant variation in the rate of utilization by medicaid beneficiaries of selected treatments and procedures for different geographic areas within States and among States.

''(3) The study shall also identify underutilized, medically necessary treatments and procedures for which—

''(A) a failure to furnish could have an adverse effect on health status, and

''(B) the rate of utilization by medicaid beneficiaries is significantly less than the rate for comparable, age-adjusted populations.

''(4) The study shall be coordinated, to the extent practicable, with the research program established pursuant to section 1875(c) of the Social Security Act [section 1395*ll*(c) of this title], with particular regard to the relationship of the variations described in paragraph (2) to patient outcomes.

''(5) The Secretary shall submit an interim report on the results of the study, including an analysis of the geographic variations under paragraph (2), to the Congress not later than January 1, 1990, and shall report the final results of the study to the Congress not later than January 1, 1992.

''(d) REPORT.—The Secretary shall report to Congress, by not later than January 1, 1993, for each State in a representative sample of States—

''(1) an analysis of the procedures for which programs for ambulatory surgery, preadmission testing, and same-day surgery are appropriate for patients who are covered under the State medicaid plan, and

''(2) the effects of such programs on access of such patients to necessary care, quality of care, and costs of care.

In selecting such a sample of States, the Secretary shall include some States with medicaid plans that include such programs.''

PROMULGATION OF REGULATIONS

Section 9503(c) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall promulgate final regulations necessary to carry out sections 1902(a)(25) and 1903(r)(6)(J) of the Social Security Act [subsec. (a)(25) of this section and section 1396b(r)(6)(J) of this title] within 6 months after the date of the enactment of this Act [Apr. 7, 1986].''

STUDY BY COMPTROLLER GENERAL OF EFFECT OF AMENDMENT TO SUBSECTION (a)(13)

Section 9509(c) of Pub. L. 99–272 directed Comptroller General to conduct a study of effects of the amendments made by this section and report results of such study to Congress two years after Apr. 7, 1986.

TASK FORCE ON TECHNOLOGY-DEPENDENT CHILDREN

Section 9520 of Pub. L. 99–272 directed Secretary of Health and Human Services, within six months after Apr. 7, 1986, to establish a task force concerning alternatives to institutional care for technology-dependent children, such task force to (1) include representatives of Federal and State agencies with responsibilities relating to child health, health insurers, large employers (including those that self-insure for health care costs), providers of health care to technology-dependent children, and parents of technology-dependent children, (2) identify barriers that prevent the provision of appropriate care in a home or community setting to meet special needs of technology-dependent children, (3) recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public-private initiatives) so as to provide home and community-based alternatives to the institutionalization of technology-dependent children, and (4) make a final report to Secretary and to Congress on its activities not later than two years after Apr. 7, 1986.

MEDICAID COVERAGE RELATING TO ADOPTION ASSISTANCE AGREEMENTS ENTERED INTO BEFORE APRIL 7, 1986

Section 9529(b)(2) of Pub. L. 99–272 provided that: ''In the case of an adoption assistance agreement (other than an agreement under part E of title IV of the Social Security Act [part E of subchapter IV of this chapter]) entered into before the date of the enactment of this Act [Apr. 7, 1986]—

''(A) the requirements of subdivisions (aa) and (bb) of section 1902(a)(10)(A)(ii)(VIII) of the Social Security Act [subsec. (a)(10)(A)(ii)(VIII)(aa), (bb) of this section] shall be deemed to be met if the State agency responsible for adoption assistance agreements determines that—

''(i) at the time of adoptive placement the child had special needs for medical or rehabilitative care that made the child difficult to place; and

''(ii) there is in effect with respect to such child an adoption assistance agreement between the State and an adoptive parent or parents; and

''(B) the requirement of subdivision (cc) of such section shall be deemed to be met if the child was found by the State to be eligible for medical assistance prior to such agreement being entered into.''

PAYMENT FOR PSYCHIATRIC HOSPITAL SERVICES

Section 2366 of Pub. L. 98–369 provided that: ''The provisions of section 1902(a)(13) of the Social Security Act [subsec. (a)(13) of this section], in so far as they require a reduction of the amount of payment otherwise to be made to a public psychiatric hospital due to the level of care received in such hospital, shall not apply to payments to hospitals before July 1, 1985, and such a reduction made for payments during the 12-month period ending June 30, 1986, and during the 12-month period ending June 30, 1987, shall be one-third and two-thirds, respectively, of the amount of the reduction which would have been made without regard to this section.''

MORATORIUM ON REGULATORY ACTIONS BY SECRETARY

Section 2373(c) of Pub. L. 98–369, as amended by Pub. L. 100–93, § 9, Aug. 18, 1987, 101 Stat. 695, provided that:

''(1) The Secretary of Health and Human Services shall not take any compliance, disallowance, penalty, or other regulatory action against a State with respect to the moratorium period described in paragraph (2) by reason of such State's plan described in paragraph (5) under title XIX of the Social Security Act [this subchapter] (including any part of the plan operating pursuant to section 1902(f) of such Act [subsec. (f) of this section]), or the operation thereunder, being determined to be in violation of clause (IV), (V), or (VI) of section 1902(a)(10)(A)(ii) or section 1902(a)(10)(C)(i)(III) of such Act on account of such plan's (or its operation) having a standard or methodology which the Secretary

interprets as being less restrictive than the standard or methodology required under such section, provided that such plan (or its operation) does not make ineligible any individual who would be eligible but for the provisions of this subsection.

''(2) The moratorium period is the period beginning on October 1, 1981, and ending 18 months after the date on which the Secretary submits the report required under paragraph (3).

''(3) The Secretary shall report to the Congress within 12 months after the date of the enactment of this Act [July 18, 1984] with respect to the appropriateness, and impact on States and recipients of medical assistance, of applying standards and methodologies utilized in cash assistance programs to those recipients of medical assistance who do not receive cash assistance, and any recommendations for changes in such requirements.

''(4) No provision of law shall repeal or suspend the moratorium imposed by this subsection unless such provision specifically amends or repeals this subsection.

''(5) In this subsection, a State plan is considered to include—

''(A) any amendment or other change in the plan which is submitted by a State, or

''(B) any policy or guideline delineated in the Medicaid operation or program manuals of the State which are submitted by the State to the Secretary,

whether before or after the date of enactment of this Act [July 18, 1984] and whether or not the amendment or change, or the operating or program manual was approved, disapproved, acted upon, or not acted upon by the Secretary.

''(6) During the moratorium period, the Secretary shall implement (and shall not change by any administrative action) the policy in effect at the beginning of such moratorium period with respect to—

''(A) the point in time at which an institutionalized individual must sell his home (in order that it not be counted as a resource); and

''(B) the time period allowed for sale of a home of any such individual,

who is an applicant for or recipient of medical assistance under the State plan as a medically needy individual (described in section 1902(a)(10)(C) of the Social Security Act [subsec. (a)(10)(C) of this section]) or as an optional categorically needy individual (described in section 1902(a)(10)(A)(ii) of such Act).''

[Amendment of section 2373(c) of Pub. L. 98–369, set out above, by section 9 of Pub. L. 100–93 applicable as though originally included in Pub. L. 98–369, § 2373(c), see section 15(e) of Pub. L. 100–93, set out as an Effective Date of 1987 Amendment note under section 1320a–7 of this title.]

EVALUATION AND STUDY OF REASONS FOR TERMINATION BY MEDICAID BENEFICIARIES OF MEMBERSHIP IN HEALTH MAINTENANCE ORGANIZATIONS

Section 2178(d) of Pub. L. 97–35 directed Secretary of Health and Human Services to conduct a study evaluating extent of, and reasons for, termination by medicaid beneficiaries of their memberships in health maintenance organizations, placing special emphasis on quantity and quality of medical care provided in health maintenance organizations and quality of such care when provided on a fee-for-service basis, with Secretary to submit an interim report to Congress, within two years after Aug. 13, 1981, and a final report within five years from such date containing, respectively, the interim and final findings and conclusions made as a result of such study.

CONTINUING MEDICAID ELIGIBILITY FOR CERTAIN RECIPIENTS OF VETERANS' ADMINISTRATION PENSIONS

Section 310(b)(1) of Pub. L. 96–272 provided that:

''(A) For purposes of section 1902(a)(10)(A) of the Social Security Act [subsec. (a)(10)(A) of this section], any individual who, prior to the date of enactment of this Act [June 17, 1980] and for the month of December 1978, was eligible for and received aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV of such Act [subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter], or was eligible for and received supplemental security income benefits under title XVI of such Act [subchapter XVI of this chapter] (or a supplementary payment described in section 13(c) of Public Law 93–233) [set out as a note under this section], and was also in receipt of (or was a dependent, for purposes of chapter 15 of title 38, United States Code, as in effect on December 31, 1978, of an individual in receipt of) pension from the Veterans' Administration for the month of December 1978 shall (subject to subparagraph (B)) be deemed to have been receiving such aid, assistance, supplemental security income, or supplementary payment, for each calendar month thereafter (prior to the month in which the provisions of this subparagraph cease to be effective with respect to him as determined under subparagraph (B)), if such individual would have been eligible therefor in December 1978 and in the month in which the provisions of this subparagraph cease to be effective with respect to him as determined under subparagraph (B) had the increase in income of such individual (or of the family of which such individual is a member), attributable to an election (made by such individual or another member of such individual's family) under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [section 306 of Pub. L. 95–588, set out as a note under section 521 of Title 38, Veterans' Benefits], not occurred.

''(B)(i) The provisions of subparagraph (A) shall take effect on January 1, 1979, and shall cease to be effective, in the case of any individual, for and after the first calendar month beginning more than 10 days after an 'informed election' (as defined in subdivision (ii) of this subparagraph) has been made by such individual (or, if such individual is not eligible to make such an election, by a member of such individual's family who is eligible to make such an election which affects such individual's eligibility for aid, assistance, or benefits under a plan or program referred to in subparagraph (A)).

''(ii) The term 'informed election' means an election made under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978 [section 306 of Pub. L. 95–588, set out as a note under section 521 of Title 38] (or a reaffirmation of such an election which previously was made under such section 306) after the date of compliance by the Administrator of Veterans' Affairs (hereinafter in this section referred to as the 'Administrator') with the provisions of paragraph (2)(A) with respect to the individual concerned. An individual who fails, within the time limits prescribed in paragraph (2)(B), to disaffirm an election previously made by such individual under such section 306 shall be deemed, for purposes of this section and such section 306, to have reaffirmed such election.''

PRESERVATION OF MEDICAID ELIGIBILITY FOR INDIVIDUALS WHO CEASE TO BE ELIGIBLE FOR SUPPLEMENTAL SECURITY INCOME BENEFITS ON ACCOUNT OF COST-OF-LIVING INCREASES IN SOCIAL SECURITY BENEFITS

Pub. L. 94–566, title V, § 503, Oct. 20, 1976, 90 Stat. 2685, provided that: ''In addition to other requirements imposed by law as a condition for the approval of any State plan under title XIX of the Social Security Act [this subchapter], there is hereby imposed the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual, for any month after June 1977 for which such individual is entitled to a monthly insurance benefit under title II of such Act [subchapter II of this chapter] but is not eligible for benefits under title XVI of such Act [subchapter XVI of this chapter], in like manner and subject to the same terms and conditions as are applicable under such State plan in the case of individuals who are eligible for and receiving benefits under such title XVI [subchapter XVI of this

chapter] for such month, if for such month such individual would be (or could become) eligible for benefits under such title XVI [subchapter XVI of this chapter] except for amounts of income received by such individual and his spouse (if any) which are attributable to increases in the level of monthly insurance benefits payable under title II of such Act [subchapter II of this chapter] which have occurred pursuant to section 215(i) of such Act [section 415(i) of this title], in the case of such individual, since the last month after April 1977 for which such individual was both eligible for (and received) benefits under such title XVI [subchapter XVI of this chapter] and was entitled to a monthly insurance benefit under such title II [subchapter II of this chapter], and, in the case of such individual's spouse (if any), since the last such month for which such spouse was both eligible for (and received) benefits under such title XVI [subchapter XVI of this chapter] and was entitled to a monthly insurance benefit under such title II [subchapter II of this chapter]. Solely for purposes of this section, payments of the type described in section 1616(a) of the Social Security Act [section 1382e(a) of this title] or of the type described in section 212(a) of Public Law 93–66 [set out as note under section 1382 of this title] shall be deemed to be benefits under title XVI of the Social Security Act [subchapter XVI of this chapter].''

MEDICAID ELIGIBILITY FOR INDIVIDUALS RECEIVING MANDATORY STATE SUPPLEMENTARY PAYMENTS; EFFECTIVE DATE

Section 13(c) of Pub. L. 93–233 provided that: ''In addition to other requirements imposed by law as conditions for the approval of any State plan under title XIX of the Social Security Act [this subchapter], there is hereby imposed (effective January 1, 1974) the requirement (and each such State plan shall be deemed to require) that medical assistance under such plan shall be provided to any individual—

''(1) for any month for which there (A) is payable with respect to such individual a supplementary payment pursuant to an agreement entered into between the State and the Secretary of Health, Education, and Welfare [now Health and Human Services] under section 212(a) of Public Law 93–66 [set out as note under section 1382 of this title], and (B) would be payable with respect to such individual such a supplementary payment, if the amount of the supplementary payments payable pursuant to such agreement were established without regard to paragraph (3)(A)(ii) of such section 212(a) [set out as note under section 1382 of this title], and

''(2) in like manner, and subject to the same terms and conditions, as medical assistance is provided under such plan to individuals with respect to whom benefits are payable for such month under the supplementary security income program established by title XVI of the Social Security Act [subchapter XVI of this chapter].

Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals who are eligible for such assistance under this subsection.''

COVERAGE OF ESSENTIAL PERSONS UNDER MEDICAID

Section 230 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 159, provided that: ''In the case of any State plan (approved under title XIX of the Social Security Act [this subchapter]) which for December 1973 provided medical assistance to persons described in section 1905(a)(vi) of such Act [section 1396d(a)(vi) of this title], there is hereby imposed the requirement (and such State plan shall be deemed to require) that medical assistance under such plan be provided to each such person (who for December 1973 was eligible for medical assistance under such plan) for each month (after December 1973) that—

''(1) the individual (referred to in the last sentence of section 1905(a) of such Act [section 1396d(a) of this title]) with whom such person is living continues to meet the criteria (as in effect for December 1973) for aid or assistance under a State plan (referred to in such sentence), and

''(2) such person continues to have the relationship with such individual described in such sentence and meets the other criteria (referred to in such sentence) with respect to a State plan (so referred to) as such plan was in effect for December 1973.

Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.''

PERSONS IN MEDICAL INSTITUTIONS

Section 231 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 159, as amended by Pub. L. 93–233, §13(b)(1), Dec. 31, 1973, 87 Stat. 964, provided that: ''For purposes of section 1902(a)(10) of the Social Security Act [subsec. (a)(10) of this section], any individual who, for all (or any part of) the month of December 1973—

''(1) was an inpatient in an institution qualified for reimbursement under title XIX of the Social Security Act [this subchapter], and

''(2)(A) received or would (except for his being an inpatient in such institution) have been eligible to receive aid or assistance under a State plan approved under title I, X, XIV, or XVI of such Act [subchapter I, X, XIV, or XVI of this chapter], and

''(B), [sic] on the basis of his status as described in subparagraph (A), was included as an individual eligible for medical assistance under a State plan approved under title XIX of such Act [this subchapter] (whether or not such individual actually received aid or assistance under a State plan referred to in subparagraph (A)),

shall be deemed to be receiving such aid or assistance for such month and for each succeeding month in a continuous period of months if, for each month in such period—

''(3) such individual continues to be (for all of such month) an inpatient in such an institution and would (except for his being an inpatient in such institution) continue to meet the conditions of eligibility to receive aid or assistance under such plan (as such plan was in effect for December 1973), and

''(4) such individual is determined (under the utilization review and other professional audit procedures applicable to State plans approved under title XIX of the Social Security Act [this subchapter]) to be in need of care in such an institution.

Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.''

BLIND AND DISABLED MEDICALLY INDIGENT PERSONS

Section 232 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 160, as amended by Pub. L. 93–233, §13(b)(2), Dec. 31, 1973, 87 Stat. 964, provided that: ''For purposes of section 1902(a)(10) of the Social Security Act [subsec. (a)(10) of this section], any individual who, for the month of December 1973 was eligible [subsec. (a)(10) of this section] for medical assistance by reason of his having been determined to meet the criteria for blindness or disability (established by a State plan approved under title I, X, XIV, or XVI of such Act [subchapter I, X, XIV, or XVI of this chapter]), shall be deemed for purposes of title XIX [this subchapter] to be an individual who is blind or disabled within the meaning of section 1614(a) of the Social Security Act [section 1382c(a) of this title] for each month in a continuous period of months (beginning with the month of January 1974), if, for each month in such period, such individual continues to meet the criteria for blindness or disability so established by such a State plan (as it was in effect for December 1973), and the other conditions of eligibility contained in the plan of the State approved under title XIX [this subchapter] (as it was in effect in December

1973). Federal matching under title XIX of the Social Security Act [this subchapter] shall be available for the medical assistance furnished to individuals eligible for such assistance under this section.''

IMPACT OF 1972 SOCIAL SECURITY BENEFITS INCREASE UNDER PUB. L. 92–336 UPON ELIGIBILITY FOR ASSISTANCE UNDER THIS SUBCHAPTER

Section 249E of Pub. L. 92–603, as amended by section 233 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 160, provided that: ''For purposes of section 1902(a)(10) of the Social Security Act [subsec. (a)(10) of this section] any individual who, for the month of August 1972, was eligible for or receiving aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV of such Act [subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter] and who for such month was entitled to monthly insurance benefits under title II of such Act [subchapter II of this chapter] shall be deemed to be eligible for such aid or assistance for any month thereafter prior to July 1975 if such individual would have been eligible for such aid or assistance for such month had the increase in monthly insurance benefits under title II of such Act [subchapter II of this chapter] resulting from enactment of Pub. L. 92–336 [see Tables] not been applicable to such individual.''

NURSING HOMES ELIGIBLE FOR MATCHING FUNDS FOR HOME SERVICES WHEN MEETING STATE LICENSURE REQUIREMENTS AFTER JUNE 30, 1968

Section 234(c) of Pub. L. 90–248 provided that: ''Notwithstanding any other provision of law, after June 30, 1968, no Federal funds shall be paid to any State as Federal matching under title I, X, XIV, XVI, or XIX of the Social Security Act [subchapter I, X, XIV, XVI, or XIX of this chapter] for payments made to any nursing home for or on account of any nursing home services provided by such nursing home for any period during which such nursing home is determined not to meet fully all requirements of the State for licensure as a nursing home, except that the Secretary may prescribe a reasonable period or periods of time during which a nursing home which has formerly met such requirements will be eligible for payments which include Federal participation if during such period or periods such home promptly takes all necessary steps to again meet such requirements.''

DISTRICT OF COLUMBIA; PLAN FOR MEDICAL ASSISTANCE

Pub. L. 90–227, §1, Dec. 27, 1967, 81 Stat. 744, provided: ''That (a) the Commissioner of the District of Columbia [now Mayor] (hereafter in this Act [enacting this note and provisions set out as a note under section 1395v of this title] referred to as the 'Commissioner') may submit under title XIX of the Social Security Act [this subchapter] to the Secretary of Health, Education, and Welfare [now Health and Human Services] (hereafter in this Act referred to as the 'Secretary') a plan for medical assistance (and any modifications of such plan) to enable the District of Columbia to receive Federal financial assistance under such title for a medical assistance program established by the Commissioner under such plan.

''(b)(1) Notwithstanding any other provision of law, the Commissioner may take such action as may be necessary to submit such plan to the Secretary and to establish and carry out such medical assistance program, except that in prescribing the standards for determining eligibility for and the extent of medical assistance under the District of Columbia's plan for medical assistance, the Commissioner may not (except to the extent required by title XIX of the Social Security Act [this subchapter])—

''(A) prescribe maximum income levels for recipients of medical assistance under such plan which exceed (i) the title XIX maximum income levels if such levels are in effect, or (ii) the Commissioner's maximum income levels for the local medical assistance program if there are no title XIX maximum income levels in effect; or

''(B) prescribe criteria which would permit an individual or family to be eligible for such assistance if such individual or family would be ineligible, solely by reason of his or its resources, for medical assistance both under the plan of the State of Maryland approved under title XIX of the Social Security Act [this subchapter] and under the plan of the State of Virginia approved under such title.

''(2) For purposes of subparagraph (A) of paragraph (1) of this subsection—

''(A) the term 'title XIX maximum income levels' means any maximum income levels which may be specified by title XIX of the Social Security Act [this subchapter] for recipients of medical assistance under State plans approved under that title;

''(B) the term 'the Commissioner's maximum income levels for the local medical assistance program' means the maximum income levels prescribed for recipients of medical assistance under the District of Columbia's medical assistance program in effect in the fiscal year ending June 30, 1967; and

''(C) during any of the first four calendar quarters in which medical assistance is provided under such plan there shall be deemed to be no title XIX maximum income levels in effect if the title XIX maximum income levels in effect during such quarter are higher than the Commissioner's maximum income levels for the local medical assistance program.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 256b, 300e–17, 705, 1315, 1320a–7, 1320a–7a, 1320b–14, 1382c, 1382h, 1382i, 1395v, 1396b, 1396c, 1396d, 1396e, 1396*g*, 1396g–1, 1396i, 1396k, 1396*l*, 1396n, 1396*o*, 1396p, 1396r, 1396r–1, 1396r–2, 1396r–4, 1396r–5, 1396r–6, 1396r–7, 1396r–8, 1396s, 1396t, 4728, 6006, 6022, 6042 of this title; title 8 section 1255a; title 38 section 5503.

§ 1396b. Payment to States

(a) Computation of amount

From the sums appropriated therefor, the Secretary (except as otherwise provided in this section) shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing January 1, 1966—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1396d(b) of this title, subject to subsections (g) and (j) of this section and section 1396r–4(f) of this title) of the total amount expended during such quarter as medical assistance under the State plan; plus

(2)(A) an amount equal to 75 per centum of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to compensation or training of skilled professional medical personnel, and staff directly supporting such personnel, of the State agency or any other public agency; plus

(B) notwithstanding paragraph (1) or subparagraph (A), with respect to amounts expended for nursing aide training and competency evaluation programs, and competency evaluation programs, described in section 1396r(e)(1) of this title (including the costs for nurse aides to complete such competency evaluation programs), regardless of whether the programs are provided in or outside nursing facilities or of the skill of the personnel in-

volved in such programs, an amount equal to 50 percent (or, for calendar quarters beginning on or after July 1, 1988, and before October 1, 1990, the lesser of 90 percent or the Federal medical assistance percentage plus 25 percentage points) of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to such programs; plus

(C) an amount equal to 75 percent of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to preadmission screening and resident review activities conducted by the State under section 1396r(e)(7) of this title; plus

(D) for each calendar quarter during—

(i) fiscal year 1991, an amount equal to 90 percent,

(ii) fiscal year 1992, an amount equal to 85 percent,

(iii) fiscal year 1993, an amount equal to 80 percent, and

(iv) fiscal year 1994 and thereafter, an amount equal to 75 percent,

of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to State activities under section 1396r(g) of this title; plus

(3) an amount equal to—

(A)(i) 90 per centum of so much of the sums expended during such quarter as are attributable to the design, development, or installation of such mechanized claims processing and information retrieval systems as the Secretary determines are likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of subchapter XVIII of this chapter, including the State's share of the cost of installing such a system to be used jointly in the administration of such State's plan and the plan of any other State approved under this chapter, and

(ii) 90 per centum of so much of the sums expended during any such quarter in the fiscal year ending June 30, 1972, or the fiscal year ending June 30, 1973, as are attributable to the design, development, or installation of cost determination systems for State-owned general hospitals (except that the total amount paid to all States under this clause for either such fiscal year shall not exceed $150,000), and

(B) 75 per centum of so much of the sums expended during such quarter as are attributable to the operation of systems (whether such systems are operated directly by the State or by another person under a contract with the State) of the type described in subparagraph (A)(i) (whether or not designed, developed, or installed with assistance under such subparagraph) which are approved by the Secretary and which include provision for prompt written notice to each individual who is furnished services covered by the plan, or to each individual in a sample group of individuals who are furnished such services, of the specific services (other than confidential services) so covered, the name of the person or persons furnishing the services, the date or dates on which the services were furnished, and the amount of the payment or payments made under the plan on account of the services; and

(C) 75 per centum of the sums expended with respect to costs incurred during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to the performance of medical and utilization review or quality review by a utilization and quality control peer review organization or by an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary, under a contract entered into under section 1396a(d) of this title; and

(D) 75 percent of so much of the sums expended by the State plan during a quarter in 1991, 1992, or 1993, as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of section 1396r–8(g) of this title; plus

(4) an amount equal to 100 percent of the sums expended during the quarter which are attributable to the costs of the implementation and operation of the immigration status verification system described in section 1320b–7(d) of this title; plus

(5) an amount equal to 90 per centum of the sums expended during such quarter which are attributable to the offering, arranging, and furnishing (directly or on a contract basis) of family planning services and supplies;

(6) subject to subsection (b)(3) of this section, an amount equal to—

(A) 90 per centum of the sums expended during such a quarter within the twelve-quarter period beginning with the first quarter in which a payment is made to the State pursuant to this paragraph, and

(B) 75 per centum of the sums expended during each succeeding calendar quarter,

with respect to costs incurred during such quarter (as found necessary by the Secretary for the elimination of fraud in the provision and administration of medical assistance provided under the State plan) which are attributable to the establishment and operation of (including the training of personnel employed by) a State medicaid fraud control unit (described in subsection (q) of this section); plus

(7) subject to section 1396r(g)(3)(B) of this title, an amount equal to 50 per centum of the remainder of the amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) Quarterly expenditures beginning after December 31, 1969

(1) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) of this section for any State for any quarter beginning after December 31, 1969,

shall not take into account any amounts expended as medical assistance with respect to individuals aged 65 or over and disabled individuals entitled to hospital insurance benefits under subchapter XVIII of this chapter which would not have been so expended if the individuals involved had been enrolled in the insurance program established by part B of subchapter XVIII of this chapter, other than amounts expended under provisions of the plan of such State required by section 1396a(a)(34) of this title.

(2) For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1320a–1 of this title.

(3) The amount of funds which the Secretary is otherwise obligated to pay a State during a quarter under subsection (a)(6) of this section may not exceed the higher of—

(A) $125,000, or

(B) one-quarter of 1 per centum of the sums expended by the Federal, State, and local governments during the previous quarter in carrying out the State's plan under this subchapter.

(c) Treatment of educationally-related services

Nothing in this subchapter shall be construed as prohibiting or restricting, or authorizing the Secretary to prohibit or restrict, payment under subsection (a) of this section for medical assistance for covered services furnished to a child with a disability because such services are included in the child's individualized education program established pursuant to part B of the Individuals with Disabilities Education Act [20 U.S.C. 1411 et seq.] or furnished to an infant or toddler with a disability because such services are included in the child's individualized family service plan adopted pursuant to part H of such Act [20 U.S.C. 1471 et seq.].

(d) Estimates of State entitlement; installments; adjustments to reflect overpayments or underpayments; time for recovery or adjustment; uncollectable or discharged debts; obligated appropriations; disputed claims

(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsections (a) and (b) of this section for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2)(A) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(B) Expenditures for which payments were made to the State under subsection (a) of this section shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1396a(a)(25) of this title.

(C) For purposes of this subsection, when an overpayment is discovered, which was made by a State to a person or other entity, the State shall have a period of 60 days in which to recover or attempt to recover such overpayment before adjustment is made in the Federal payment to such State on account of such overpayment. Except as otherwise provided in subparagraph (D), the adjustment in the Federal payment shall be made at the end of the 60 days, whether or not recovery was made.

(D) In any case where the State is unable to recover a debt which represents an overpayment (or any portion thereof) made to a person or other entity on account of such debt having been discharged in bankruptcy or otherwise being uncollectable, no adjustment shall be made in the Federal payment to such State on account of such overpayment (or portion thereof).

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(5) In any case in which the Secretary estimates that there has been an overpayment under this section to a State on the basis of a claim by such State that has been disallowed by the Secretary under section 1316(d) of this title, and such State disputes such disallowance, the amount of the Federal payment in controversy shall, at the option of the State, be retained by such State or recovered by the Secretary pending a final determination with respect to such payment amount. If such final determination is to the effect that any amount was properly disallowed, and the State chose to retain payment of the amount in controversy, the Secretary shall offset, from any subsequent payments made to such State under this subchapter, an amount equal to the proper amount of the disallowance plus interest on such amount disallowed for the period beginning on the date such amount was disallowed and ending on the date of such final determination at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day treasury bill auction rates during such period.

(6)(A) Each State (as defined in subsection (w)(7)(D) of this section) shall include, in the first report submitted under paragraph (1) after the end of each fiscal year, information related to—

(i) provider-related donations made to the State or units of local government during such fiscal year, and

(ii) health care related taxes collected by the State or such units during such fiscal year.

(B) Each State shall include, in the first report submitted under paragraph (1) after the end of each fiscal year, information related to the total amount of payment adjustments made, and the amount of payment adjustments made to individual providers (by provider), under section 1396r–4(c) of this title during such fiscal year.

(e) Transition costs of closures or conversions permitted

A State plan approved under this subchapter may include, as a cost with respect to hospital services under the plan under this subchapter, periodic expenditures made to reflect transitional allowances established with respect to a hospital closure or conversion under section 1395uu of this title.

(f) Limitation on Federal participation in medical assistance

(1)(A) Except as provided in paragraph (4), payment under the preceding provisions of this section shall not be made with respect to any amount expended as medical assistance in a calendar quarter, in any State, for any member of a family the annual income of which exceeds the applicable income limitation determined under this paragraph.

(B)(i) Except as provided in clause (ii) of this subparagraph, the applicable income limitation with respect to any family is the amount determined, in accordance with standards prescribed by the Secretary, to be equivalent to 133⅓ percent of the highest amount which would ordinarily be paid to a family of the same size without any income or resources, in the form of money payments, under the plan of the State approved under part A of subchapter IV of this chapter.

(ii) If the Secretary finds that the operation of a uniform maximum limits payments to families of more than one size, he may adjust the amount otherwise determined under clause (i) to take account of families of different sizes.

(C) The total amount of any applicable income limitation determined under subparagraph (B) shall, if it is not a multiple of $100 or such other amount as the Secretary may prescribe, be rounded to the next higher multiple of $100 or such other amount, as the case may be.

(2)(A) In computing a family's income for purposes of paragraph (1), there shall be excluded any costs (whether in the form of insurance premiums or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof) incurred by such family for medical care or for any other type of remedial care recognized under State law or, (B) notwithstanding section 1396*o* of this title at State option, an amount paid by such family, at the family's option, to the State, provided that the amount, when combined with costs incurred in prior months, is sufficient when excluded from the family's income to reduce such family's income below the applicable income limitation described in paragraph (1). The amount of State expenditures for which medical assistance is available under subsection (a)(1) of this section will be reduced by amounts paid to the State pursuant to this subparagraph..[1]

(3) For purposes of paragraph (1)(B), in the case of a family consisting of only one individual, the ''highest amount which would ordinarily be paid'' to such family under the State's plan approved under part A of subchapter IV of this chapter shall be the amount determined by the State agency (on the basis of reasonable relationship to the amounts payable under such plan to families consisting of two or more persons) to be the amount of the aid which would ordinarily be payable under such plan to a family (without any income or resources) consisting of one person if such plan provided for aid to such a family.

(4) The limitations on payment imposed by the preceding provisions of this subsection shall not apply with respect to any amount expended by a State as medical assistance for any individual described in section 1396a(a)(10)(A)(i)(III), 1396a(a)(10)(A)(i)(IV), 1396a(a)(10)(A)(i)(V), 1396a(a)(10)(A)(i)(VI), 1396a(a)(10)(A)(i)(VII), 1396a(a)(10)(A)(ii)(IX), 1396a(a)(10)(A)(ii)(X), or 1396d(p)(1) of this title or for any individual—

(A) who is receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV or XVI, or part A of subchapter IV, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or

(B) who is not receiving such aid or assistance, and with respect to whom such benefits are not being paid, but (i) is eligible to receive such aid or assistance, or to have such benefits paid with respect to him, or (ii) would be eligible to receive such aid or assistance, or to have such benefits paid with respect to him if he were not in a medical institution, or

(C) with respect to whom there is being paid, or who is eligible, or would be eligible if he were not in a medical institution, to have paid with respect to him, a State supplementary payment and is eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title, but only if the income of such individual (as determined under section 1382a of this title, but without regard to subsection (b) thereof) does not exceed 300 percent of the supplemental security income benefit rate established by section 1382(b)(1) of this title,

at the time of the provision of the medical assistance giving rise to such expenditure.

(g) Decrease in Federal medical assistance percentage of amounts paid for services furnished under State plan after June 30, 1973

(1) Subject to paragraph (3), with respect to amounts paid for the following services furnished under the State plan after June 30, 1973 (other than services furnished pursuant to a contract with a health maintenance organization as defined in section 1395mm of this title or which

[1] So in original.

is a qualified health maintenance organization (as defined in section 300e–9(d) of this title)), the Federal medical assistance percentage shall be decreased as follows: After an individual has received inpatient hospital services or services in an intermediate care facility for the mentally retarded for 60 days or inpatient mental hospital services for 90 days (whether or not such days are consecutive), during any fiscal year, the Federal medical assistance percentage with respect to amounts paid for any such care furnished thereafter to such individual shall be decreased by a per centum thereof (determined under paragraph (5)) unless the State agency responsible for the administration of the plan makes a showing satisfactory to the Secretary that, with respect to each calendar quarter for which the State submits a request for payment at the full Federal medical assistance percentage for amounts paid for inpatient hospital services or services in an intermediate care facility for the mentally retarded furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), such State has an effective program of medical review of the care of patients in mental hospitals and intermediate care facilities for the mentally retarded pursuant to paragraphs (26) and (31) of section 1396a(a) of this title whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams. In determining the number of days on which an individual has received services described in this subsection, there shall not be counted any days with respect to which such individual is entitled to have payments made (in whole or in part) on his behalf under section 1395d of this title.

(2) The Secretary shall, as part of his validation procedures under this subsection, conduct timely sample onsite surveys of private and public institutions in which recipients of medical assistance may receive care and services under a State plan approved under this subchapter, and his findings with respect to such surveys (as well as the showings of the State agency required under this subsection) shall be made available for public inspection.

(3)(A) No reduction in the Federal medical assistance percentage of a State otherwise required to be imposed under this subsection shall take effect—

(i) if such reduction is due to the State's unsatisfactory or invalid showing made with respect to a calendar quarter beginning before January 1, 1977;

(ii) before January 1, 1978;

(iii) unless a notice of such reduction has been provided to the State at least 30 days before the date such reduction takes effect; or

(iv) due to the State's unsatisfactory or invalid showing made with respect to a calendar quarter beginning after September 30, 1977, unless notice of such reduction has been provided to the State no later than the first day of the fourth calendar quarter following the calendar quarter with respect to which such showing was made.

(B) The Secretary shall waive application of any reduction in the Federal medical assistance percentage of a State otherwise required to be imposed under paragraph (1) because a showing by the State, made under such paragraph with respect to a calendar quarter ending after January 1, 1977, and before January 1, 1978, is determined to be either unsatisfactory under such paragraph or invalid under paragraph (2), if the Secretary determines that the State's showing made under paragraph (1) with respect to any calendar quarter ending on or before December 31, 1978, is satisfactory under such paragraph and is valid under paragraph (2).

(4)(A) The Secretary may not find the showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory if the showing is submitted to the Secretary later than the 30th day after the last day of the calendar quarter, unless the State demonstrates to the satisfaction of the Secretary good cause for not meeting such deadline.

(B) The Secretary shall find a showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory under such paragraph with respect to the requirement that the State conduct annual onsite inspections in mental hospitals and intermediate care facilities for the mentally retarded under paragraphs (26) and (31) of section 1396a(a) of this title, if the showing demonstrates that the State has conducted such an onsite inspection during the 12-month period ending on the last date of the calendar quarter—

(i) in each of not less than 98 per centum of the number of such hospitals and facilities requiring such inspection, and

(ii) in every such hospital or facility which has 200 or more beds,

and that, with respect to such hospitals and facilities not inspected within such period, the State has exercised good faith and due diligence in attempting to conduct such inspection, or if the State demonstrates to the satisfaction of the Secretary that it would have made such a showing but for failings of a technical nature only.

(5) In the case of a State's unsatisfactory or invalid showing made with respect to a type of facility or institutional services in a calendar quarter, the per centum amount of the reduction of the State's Federal medical assistance percentage for that type of services under paragraph (1) is equal to 33⅓ per centum multiplied by a fraction, the denominator of which is equal to the total number of patients receiving that type of services in that quarter under the State plan in facilities or institutions for which a showing was required to be made under this subsection, and the numerator of which is equal to the number of such patients receiving such type of services in that quarter in those facilities or institutions for which a satisfactory and valid showing was not made for that calendar quarter.

(6)(A) Recertifications required under section 1396a(a)(44) of this title shall be conducted at least every 60 days in the case of inpatient hospital services.

(B) Such recertifications in the case of services in an intermediate care facility for the mentally retarded shall be conducted at least—

(i) 60 days after the date of the initial certification,

(ii) 180 days after the date of the initial certification,

(iii) 12 months after the date of the initial certification,

(iv) 18 months after the date of the initial certification,

(v) 24 months after the date of the initial certification, and

(vi) every 12 months thereafter.

(C) For purposes of determining compliance with the schedule established by this paragraph, a recertification shall be considered to have been done on a timely basis if it was performed not later than 10 days after the date the recertification was otherwise required and the State establishes good cause why the physician or other person making such recertification did not meet such schedule.

(h) Repealed. Pub. L. 100–203, title IV, § 4211(g)(1), Dec. 22, 1987, 101 Stat. 1330–205

(i) Payment for organ transplants; item or service furnished by excluded individual, entity, or physician; other restrictions

Payment under the preceding provisions of this section shall not be made—

(1) for organ transplant procedures unless the State plan provides for written standards respecting the coverage of such procedures and unless such standards provide that—

(A) similarly situated individuals are treated alike; and

(B) any restriction, on the facilities or practitioners which may provide such procedures, is consistent with the accessibility of high quality care to individuals eligible for the procedures under the State plan; or

(2) with respect to any amount expended for an item or service (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) furnished—

(A) under the plan by any individual or entity during any period when the individual or entity is excluded from participation under subchapter V, XVIII, or XX of this chapter or under this subchapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title, or

(B) at the medical direction or on the prescription of a physician, during the period when such physician is excluded from participation under subchapter V, XVIII, or XX of this chapter or under this subchapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).[2]

(3) with respect to any amount expended for inpatient hospital services furnished under the plan (other than amounts attributable to the special situation of a hospital which serves a disproportionate number of low income patients with special needs) to the extent that such amount exceeds the hospital's customary charges with respect to such services or (if such services are furnished under the plan by a public institution free of charge or at nominal charges to the public) exceeds an amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such payment which the Secretary finds will provide fair compensation to such institution for such services; or

(4) with respect to any amount expended for care or services furnished under the plan by a hospital unless such hospital has in effect a utilization review plan which meets the requirements imposed by section 1395x(k) of this title for purposes of subchapter XVIII of this chapter; and if such hospital has in effect such a utilization review plan for purposes of subchapter XVIII of this chapter, such plan shall serve as the plan required by this subsection (with the same standards and procedures and the same review committee or group) as a condition of payment under this subchapter; the Secretary is authorized to waive the requirements of this paragraph if the State agency demonstrates to his satisfaction that it has in operation utilization review procedures which are superior in their effectiveness to the procedures required under section 1395x(k) of this title; or

(5) with respect to any amount expended for any drug product for which payment may not be made under part B of subchapter XVIII of this chapter because of section 1395y(c) of this title; or

(6) with respect to any amount expended for inpatient hospital tests (other than in emergency situations) not specifically ordered by the attending physician or other responsible practitioner; or

(7) with respect to any amount expended for clinical diagnostic laboratory tests performed by a physician, independent laboratory, or hospital, to the extent such amount exceeds the amount that would be recognized under section 1395*l*(h) of this title for such tests performed for an individual enrolled under part B of subchapter XVIII of this chapter; or

(8) with respect to any amount expended for medical assistance (A) for nursing facility services to reimburse (or otherwise compensate) a nursing facility for payment of a civil money penalty imposed under section 1396r(h) of this title or (B) for home and community care to reimburse (or otherwise compensate) a provider of such care for payment of a civil money penalty imposed under this subchapter or subchapter XI of this chapter or for legal expenses in defense of an exclusion or civil money penalty under this subchapter or subchapter XI of this chapter if there is no reasonable legal ground for the provider's case; or

(9) with respect to any amount of medical assistance for pregnant women and children described in section 1396a(a)(10)(A)(ii)(IX) of this title, if the State has in effect, under its plan established under part A of subchapter IV of this chapter, payment levels that are less than the payment levels in effect under such plan on July 1, 1987;[3]

[2] So in original. Probably should end with ''; or''.

[3] So in original. Probably should end with ''; or''.

(10)(A) with respect to covered outpatient drugs unless there is a rebate agreement in effect under section 1396r–8 of this title with respect to such drugs or unless section 1396r–8(a)(3) of this title applies, and

(B) with respect to any amount expended for an innovator multiple source drug (as defined in section 1396r–8(k) of this title) dispensed on or after July 1, 1991, if, under applicable State law, a less expensive multiple source drug could have been dispensed, but only to the extent that such amount exceeds the upper payment limit for such multiple source drug;[3]

(11) with respect to any amount expended for physicians' services furnished on or after the first day of the first quarter beginning more than 60 days after the date of establishment of the physician identifier system under section 1396a(x) of this title, unless the claim for the services includes the unique physician identifier provided under such system;[3]

(12) with respect to any amount expended for physicians' services furnished by a physician on or after January 1, 1992, to—

(A) a child under 21 years of age, unless the physician—

(i) is certified in family practice or pediatrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or pediatrics,

(ii) is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1396d(*l*)(2)(B) of this title),

(iii) holds admitting privileges at a hospital participating in a State plan approved under this subchapter,

(iv) is a member of the National Health Service Corps,

(v) documents a current, formal, consultation and referral arrangement with a pediatrician or family practitioner who has the certification described in clause (i) for purposes of specialized treatment and admission to a hospital, or

(vi) has been certified by the Secretary as qualified to provide physicians' services to a child under 21 years of age; or

(B) to a pregnant woman (or during the 60 day period beginning on the date of termination of the pregnancy) unless the physician—

(i) is certified in family practice or obstetrics by the medical specialty board recognized by the American Board of Medical Specialties for family practice or obstetrics,

(ii) is employed by, or affiliated with, a Federally-qualified health center (as defined in section 1396d(*l*)(2)(B) of this title),

(iii) holds admitting privileges at a hospital participating in a State plan approved under this subchapter,

(iv) is a member of the National Health Service Corps,

(v) documents a current, formal, consultation and referral arrangement with an obstetrician or family practitioner who has the certification described in clause (i) for purposes of specialized treatment and admission to a hospital, or

(vi) has been certified by the Secretary as qualified to provide physicians' services to pregnant women.[4]

(13) with respect to any amount expended to reimburse (or otherwise compensate) a nursing facility for payment of legal expenses associated with any action initiated by the facility that is dismissed on the basis that no reasonable legal ground existed for the institution of such action;[4]

(14) with respect to any amount expended on administrative costs to carry out the program under section 1396s of this title; or

(15) with respect to any amount expended for a single-antigen vaccine and its administration in any case in which the administration of a combined-antigen vaccine was medically appropriate (as determined by the Secretary).

Nothing in paragraph (1) shall be construed as permitting a State to provide services under its plan under this subchapter that are not reasonable in amount, duration, and scope to achieve their purpose.

(j) Adjustment of amount

Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) of this section for any State for any quarter shall be adjusted in accordance with section 1396m of this title.

(k) Technical assistance to States

The Secretary is authorized to provide at the request of any State (and without cost to such State) such technical and actuarial assistance as may be necessary to assist such State to contract with any health maintenance organization which meets the requirements of subsection (m) of this section for the purpose of providing medical care and services to individuals who are entitled to medical assistance under this subchapter.

(*l*) Repealed. Pub. L. 94–552, § 1, Oct. 18, 1976, 90 Stat. 2540

(m) "Health maintenance organization" defined; duties and functions of Secretary; payments to States; reporting requirements; remedies

(1)(A) The term ''health maintenance organization'' means a public or private organization, organized under the laws of any State, which meets the requirement of section 1396a(w) of this title is a qualified health maintenance organization (as defined in section 300e–9(d) of this title) or which meets the requirement of section 1396a(a) of this title and—

(i) makes services it provides to individuals eligible for benefits under this subchapter accessible to such individuals, within the area served by the organization, to the same extent as such services are made accessible to individuals (eligible for medical assistance under the State plan) not enrolled with the organization, and

(ii) has made adequate provision against the risk of insolvency, which provision is satisfactory to the State and which assures that individuals eligible for benefits under this sub-

[4] So in original. Probably should end with ''; or''.

chapter are in no case held liable for debts of the organization in case of the organization's insolvency.

(B) The duties and functions of the Secretary, insofar as they involve making determinations as to whether an organization is a health maintenance organization within the meaning of subparagraph (A), shall be integrated with the administration of section 300e–11(a) and (b) of this title.

(2)(A) Except as provided in subparagraphs (B), (C), and (G), no payment shall be made under this subchapter to a State with respect to expenditures incurred by it for payment (determined under a prepaid capitation basis or under any other risk basis) for services provided by any entity (including a health insuring organization) which is responsible for the provision (directly or through arrangements with providers of services) of inpatient hospital services and any other service described in paragraph (2), (3), (4), (5), or (7) of section 1396d(a) of this title or for the provision of any three or more of the services described in such paragraphs unless—

(i) the Secretary has determined that the entity is a health maintenance organization as defined in paragraph (1);

(ii) less than 75 percent of the membership of the entity which is enrolled on a prepaid basis consists of individuals who (I) are insured for benefits under part B of subchapter XVIII of this chapter or for benefits under both parts A and B of such subchapter, or (II) are eligible to receive benefits under this subchapter;

(iii) such services are provided for the benefit of individuals eligible for benefits under this subchapter in accordance with a contract between the State and the entity under which prepaid payments to the entity are made on an actuarially sound basis and under which the Secretary must provide prior approval for contracts providing for expenditures in excess of $100,000;

(iv) such contract provides that the Secretary and the State (or any person or organization designated by either) shall have the right to audit and inspect any books and records of the entity (and of any subcontractor) that pertain (I) to the ability of the entity to bear the risk of potential financial losses, or (II) to services performed or determinations of amounts payable under the contract;

(v) such contract provides that in the entity's enrollment, reenrollment, or disenrollment of individuals who are eligible for benefits under this subchapter and eligible to enroll, reenroll, or disenroll with the entity pursuant to the contract, the entity will not discriminate among such individuals on the basis of their health status or requirements for health care services;

(vi) such contract (I) except as provided under subparagraph (F), permits individuals who have elected under the plan to enroll with the entity for provision of such benefits to terminate such enrollment without cause as of the beginning of the first calendar month following a full calendar month after the request is made for such termination, and (II) provides for notification of each such individual, at the time of the individual's enrollment, of such right to terminate such enrollment;

(vii) such contract provides that, in the case of medically necessary services which were provided (I) to an individual enrolled with the entity under the contract and entitled to benefits with respect to such services under the State's plan and (II) other than through the organization because the services were immediately required due to an unforeseen illness, injury, or condition, either the entity or the State provides for reimbursement with respect to those services,[5]

(viii) such contract provides for disclosure of information in accordance with section 1320a–3 of this title and paragraph (4) of this subsection;

(ix) such contract provides, in the case of an entity that has entered into a contract for the provision of services of such center with a federally qualified health center, that (I) rates of prepayment from the State are adjusted to reflect fully the rates of payment specified in section 1396a(a)(13)(E) of this title, and (II) at the election of such center payments made by the entity to such a center for services described in 1396d(a)(2)(C) of this title are made at the rates of payment specified in section 1396a(a)(13)(E) of this title;

(x) any physician incentive plan that it operates meets the requirements described in section 1395mm(i)(8) of this title; and

(xi) such contract provides for maintenance of sufficient patient encounter data to identify the physician who delivers services to patients.

(B) Subparagraph (A)[6] except with respect to clause (ix) of subparagraph (A), does not apply with respect to payments under this subchapter to a State with respect to expenditures incurred by it for payment for services provided by an entity which—

(i)(I) received a grant of at least $100,000 in the fiscal year ending June 30, 1976, under section 254b(d)(1)(A) or 254c(d)(1) of this title, and for the period beginning July 1, 1976, and ending on the expiration of the period for which payments are to be made under this subchapter has been the recipient of a grant under either such section; and

(II) provides to its enrollees, on a prepaid capitation risk basis or on any other risk basis, all of the services and benefits described in paragraphs (1), (2), (3), (4)(C), and (5) of section 1396d(a) of this title and, to the extent required by section 1396a(a)(10)(D) of this title to be provided under a State plan for medical assistance, the services and benefits described in paragraph (7) of section 1396d(a) of this title; or

(ii) is a nonprofit primary health care entity located in a rural area (as defined by the Appalachian Regional Commission)—

(I) which received in the fiscal year ending June 30, 1976, at least $100,000 (by grant, subgrant, or subcontract) under the Appalachian Regional Development Act of 1965, and

(II) for the period beginning July 1, 1976, and ending on the expiration of the period

[5] So in original. The comma probably should be a semicolon.

[6] So in original. Probably should be followed by a comma.

for which payments are to be made under this subchapter either has been the recipient of a grant, subgrant, or subcontract under such Act or has provided services under a contract (initially entered into during a year in which the entity was the recipient of such a grant, subgrant, or subcontract) with a State agency under this subchapter on a prepaid capitation risk basis or on any other risk basis; or

(iii) which has contracted with the single State agency for the provision of services (but not including inpatient hospital services) to persons eligible under this subchapter on a prepaid risk basis prior to 1970.

(C) Subparagraph (A)(ii) shall not apply with respect to payments under this subchapter to a State with respect to expenditures incurred by it for payment for services by an entity during the three-year period beginning on October 8, 1976, or beginning on the date the entity qualifies as a health maintenance organization (as determined by the Secretary), whichever occurs later, but only if the entity demonstrates to the satisfaction of the Secretary by the submission of plans for each year of such three-year period that it is making continuous efforts and progress toward achieving compliance with subparagraph (A)(ii).

(D) In the case of a health maintenance organization that is a public entity, the Secretary may modify or waive the requirement described in subparagraph (A)(ii) but only if the Secretary determines that the organization has taken and is taking reasonable efforts to enroll individuals who are not entitled to benefits under the State plan approved under this subchapter or under subchapter XVIII of this chapter.

(E) In the case of a health maintenance organization that—

(i) is a nonprofit organization with at least 25,000 members,

(ii) is and has been a qualified health maintenance organization (as defined in section 300e–9(d) of this title) for a period of at least four years,

(iii) provides basic health services through members of the staff of the organization,

(iv) is located in an area designated as medically underserved under section 300e–1(7) of this title, and

(v) previously received a waiver of the requirement described in subparagraph (A)(ii) under section 1315 of this title,

the Secretary may modify or waive the requirement described in subparagraph (A)(ii) but only if the Secretary determines that special circumstances warrant such modification or waiver and that the organization has taken and is taking reasonable efforts to enroll individuals who are not entitled to benefits under the State plan approved under this subchapter or under subchapter XVIII of this chapter.

(F) In the case of—

(i) a contract with an entity described in subparagraph (E) or (G), with a qualified health maintenance organization (as defined in section 300e–9(d) of this title) which meets the requirement of subparagraph (A)(ii), or or[7] with an eligible organization with a contract under section 1395mm of this title which meets the requirement of subparagraph (A)(ii), or

(ii) a program pursuant to an undertaking described in paragraph (6) in which at least 25 percent of the membership enrolled on a prepaid basis are individuals who (I) are not insured for benefits under part B of subchapter XVIII of this chapter or eligible for benefits under this subchapter, and (II) (in the case of such individuals whose prepayments are made in whole or in part by any government entity) had the opportunity at the time of enrollment in the program to elect other coverage of health care costs that would have been paid in whole or in part by any governmental entity,

a State plan may restrict the period in which requests for termination of enrollment without cause under subparagraph (A)(vi)(I) are permitted to the first month of each period of enrollment, each such period of enrollment not to exceed six months in duration, but only if the State provides notification, at least twice per year, to individuals enrolled with such entity or organization of the right to terminate such enrollment and the restriction on the exercise of this right. Such restriction shall not apply to requests for termination of enrollment for cause.

(G) In the case of an entity which is receiving (and has received during the previous two years) a grant of at least $100,000 under section 254b(d)(1)(A) or 254c(d)(1) of this title or is receiving (and has received during the previous two years) at least $100,000 (by grant, subgrant, or subcontract) under the Appalachian Regional Development Act of 1965, clauses (i) and (ii) of subparagraph (A) shall not apply.

(H) In the case of an individual who—

(i) in a month is eligible for benefits under this subchapter and enrolled with a health maintenance organization with a contract under this paragraph,

(ii) in the next month (or in the next 2 months) is not eligible for such benefits, but

(iii) in the succeeding month is again eligible for such benefits,

the State plan, subject to subparagraph (A)(vi), may enroll the individual for that succeeding month with the health maintenance organization described in clause (i) if the organization continues to have a contract under this paragraph with the State.

(3) Repealed. Pub. L. 101–508, title IV, § 4732(d)(2), Nov. 5, 1990, 104 Stat. 1388–196.

(4)(A) Each health maintenance organization which is not a qualified health maintenance organization (as defined in section 300e–9(d) of this title) must report to the State and, upon request, to the Secretary, the Inspector General of the Department of Health and Human Services, and the Comptroller General a description of transactions between the organization and a party in interest (as defined in section 300e–17(b) of this title), including the following transactions:

(i) Any sale or exchange, or leasing of any property between the organization and such a party.

(ii) Any furnishing for consideration of goods, services (including management serv-

[7] So in original.

ices), or facilities between the organization and such a party, but not including salaries paid to employees for services provided in the normal course of their employment.

(iii) Any lending of money or other extension of credit between the organization and such a party.

The State or Secretary may require that information reported respecting an organization which controls, or is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(B) Each organization shall make the information reported pursuant to subparagraph (A) available to its enrollees upon reasonable request.

(5)(A) If the Secretary determines that an entity with a contract under this subsection—

(i) fails substantially to provide medically necessary items and services that are required (under law or under the contract) to be provided to an individual covered under the contract, if the failure has adversely affected (or has substantial likelihood of adversely affecting) the individual;

(ii) imposes premiums on individuals enrolled under this subsection in excess of the premiums permitted under this subchapter;

(iii) acts to discriminate among individuals in violation of the provision of paragraph (2)(A)(v), including expulsion or refusal to reenroll an individual or engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment (except as permitted by this subsection) by eligible individuals with the organization whose medical condition or history indicates a need for substantial future medical services;

(iv) misrepresents or falsifies information that is furnished—

(I) to the Secretary or the State under this subsection, or

(II) to an individual or to any other entity under this subsection,[8] or

(v) fails to comply with the requirements of section 1395mm(i)(8) of this title,

the Secretary may provide, in addition to any other remedies available under law, for any of the remedies described in subparagraph (B).

(B) The remedies described in this subparagraph are—

(i) civil money penalties of not more than $25,000 for each determination under subparagraph (A), or, with respect to a determination under clause (iii) or (iv)(I) of such subparagraph, of not more than $100,000 for each such determination, plus, with respect to a determination under subparagraph (A)(ii), double the excess amount charged in violation of such subparagraph (and the excess amount charged shall be deducted from the penalty and returned to the individual concerned), and plus, with respect to a determination under subparagraph (A)(iii), $15,000 for each individual not enrolled as a result of a practice described in such subparagraph, or

(ii) denial of payment to the State for medical assistance furnished under the contract under this subsection for individuals enrolled after the date the Secretary notifies the organization of a determination under subparagraph (A) and until the Secretary is satisfied that the basis for such determination has been corrected and is not likely to recur.

The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under clause (i) in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(6)(A) For purposes of this subsection and section 1396a(e)(2)(A) of this title, in the case of the State of New Jersey, the term ''contract'' shall be deemed to include an undertaking by the State agency, in the State plan under this subchapter, to operate a program meeting all requirements of this subsection.

(B) The undertaking described in subparagraph (A) must provide—

(i) for the establishment of a separate entity responsible for the operation of a program meeting the requirements of this subsection, which entity may be a subdivision of the State agency administering the State plan under this subchapter;

(ii) for separate accounting for the funds used to operate such program;

(iii) for setting the capitation rates and any other payment rates for services provided in accordance with this subsection using a methodology satisfactory to the Secretary designed to ensure that total Federal matching payments under this subchapter for such services will be lower than the matching payments that would be made for the same services, if provided under the State plan on a fee for service basis to an actuarially equivalent population; and

(iv) that the State agency will contract, for purposes of meeting the requirement under section 1396a(a)(30)(C) of this title, with an organization or entity that under section 1320c–3 of this title reviews services provided by an eligible organization pursuant to a contract under section 1395mm of this title for the purpose of determining whether the quality of services meets professionally recognized standards of health care.

(C) The undertaking described in subparagraph (A) shall be subject to approval (and annual reapproval) by the Secretary in the same manner as a contract under this subsection.

(D) The undertaking described in subparagraph (A) shall not be eligible for a waiver under section 1396n(b) of this title.

(n) Repealed. Pub. L. 100–93, § 8(h)(1), Aug. 18, 1987, 101 Stat. 694

(*o*) Restrictions on authorized payments to States

Notwithstanding the preceding provisions of this section, no payment shall be made to a State under the preceding provisions of this section for expenditures for medical assistance provided for an individual under its State plan approved under this subchapter to the extent that a private insurer (as defined by the Secretary by regulation and including a group health plan (as

[8] So in original. The comma probably should be a semicolon.

defined in section 1167(1) of title 29), a service benefit plan, and a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided medical assistance under the plan.

(p) Assignment of rights of payment; incentive payments for enforcement and collection

(1) When a political subdivision of a State makes, for the State of which it is a political subdivision, or one State makes, for another State, the enforcement and collection of rights of support or payment assigned under section 1396k of this title, pursuant to a cooperative arrangement under such section (either within or outside of such State), there shall be paid to such political subdivision or such other State from amounts which would otherwise represent the Federal share of payments for medical assistance provided to the eligible individuals on whose behalf such enforcement and collection was made, an amount equal to 15 percent of any amount collected which is attributable to such rights of support or payment.

(2) Where more than one jurisdiction is involved in such enforcement or collection, the amount of the incentive payment determined under paragraph (1) shall be allocated among the jurisdictions in a manner to be prescribed by the Secretary.

(q) "State medicaid fraud control unit" defined

For the purposes of this section, the term ''State medicaid fraud control unit'' means a single identifiable entity of the State government which the Secretary certifies (and annually recertifies) as meeting the following requirements:

(1) The entity (A) is a unit of the office of the State Attorney General or of another department of State government which possesses statewide authority to prosecute individuals for criminal violations, (B) is in a State the constitution of which does not provide for the criminal prosecution of individuals by a statewide authority and has formal procedures, approved by the Secretary, that (i) assure its referral of suspected criminal violations relating to the program under this subchapter to the appropriate authority or authorities in the State for prosecution and (ii) assure its assistance of, and coordination with, such authority or authorities in such prosecutions, or (C) has a formal working relationship with the office of the State Attorney General and has formal procedures (including procedures for its referral of suspected criminal violations to such office) which are approved by the Secretary and which provide effective coordination of activities between the entity and such office with respect to the detection, investigation, and prosecution of suspected criminal violations relating to the program under this subchapter.

(2) The entity is separate and distinct from the single State agency that administers or supervises the administration of the State plan under this subchapter.

(3) The entity's function is conducting a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud in connection with any aspect of the provision of medical assistance and the activities of providers of such assistance under the State plan under this subchapter.

(4) The entity has procedures for reviewing complaints of the abuse and neglect of patients of health care facilities which receive payments under the State plan under this subchapter, and, where appropriate, for acting upon such complaints under the criminal laws of the State or for referring them to other State agencies for action.

(5) The entity provides for the collection, or referral for collection to a single State agency, of overpayments that are made under the State plan to health care facilities and that are discovered by the entity in carrying out its activities.

(6) The entity employs such auditors, attorneys, investigators, and other necessary personnel and is organized in such a manner as is necessary to promote the effective and efficient conduct of the entity's activities.

(7) The entity submits to the Secretary an application and annual reports containing such information as the Secretary determines, by regulation, to be necessary to determine whether the entity meets the other requirements of this subsection.

(r) Mechanized claims processing and information retrieval systems; operational, etc., requirements

(1)(A) In order to receive payments under paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) of this section and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B).

(B) The deadline for operation of such systems for a State is September 30, 1985.

(C) If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section with respect to that State shall each be reduced by 5 percentage points for the first two quarters beginning on or after such deadline, and shall be further reduced by an additional 5 percentage points after each period consisting of two quarters during which the Secretary determines the State fails to meet the requirements of subparagraph (A); except that—

(i) neither such per centum may be reduced by more than 25 percentage points by reason of this paragraph; and

(ii) no reduction shall be made under this paragraph for any quarter following the quarter during which such State meets the requirements of subparagraph (A).

(2)(A) In order to receive payments under paragraphs (2)(A) and (7) of subsection (a) of this section without being subject to the per centum reductions set forth in subparagraph (C) of this

paragraph, a State must have its mechanized claims processing and information retrieval systems, of the type required to be operational under paragraph (1), initially approved by the Secretary in accordance with paragraph (5)(A) on or before the deadline established under subparagraph (B).

(B) The deadline for approval of such systems for a State is the last day of the fourth quarter that begins after the date on which the Secretary determines that such systems became operational as required under paragraph (1).

(C) If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2)(A) and (7) of subsection (a) of this section with respect to that State shall each be reduced by 5 percentage points for the first two quarters beginning after such deadline, and shall be further reduced by an additional 5 percentage points at the end of each period consisting of two quarters during which the State fails to meet the requirements of subparagraph (A); except that—

(i) neither such per centum may be reduced by more than 25 percentage points by reason of this paragraph, and

(ii) no reduction shall be made under this paragraph for any quarter following the quarter during which such State's systems are approved by the Secretary as provided in subparagraph (A).

(D) Any State's systems which are approved by the Secretary for purposes of subsection (a)(3)(B) of this section on or before October 7, 1980, shall be deemed to be initially approved for purposes of this subsection.

(3)(A) When a State's systems are initially approved, the 75 per centum Federal matching provided in subsection (a)(3)(B) of this section shall become effective with respect to such systems, retroactive to the first quarter beginning after the date on which such systems became operational as required under paragraph (1), except as provided in subparagraph (B).

(B) In the case of any State which was subject to a per centum reduction under paragraph (2), the per centum specified in subsection (a)(3)(B) of this section shall be reduced by 5 percentage points for the first two quarters beginning after the deadline established under paragraph (2)(B), and shall be further reduced by an additional 5 percentage points at the end of each period consisting of two quarters beginning after such deadline and before the date on which such systems are initially approved, except that no reduction shall be made under this paragraph for any quarter following the quarter during which the State's systems are initially approved by the Secretary.

(4)(A) The Secretary shall review all approved systems not less often than once every three years, and shall reapprove or disapprove any such systems. Systems which fail to meet the current performance standards, system requirements, and any other conditions for approval developed by the Secretary under paragraph (6) shall be disapproved. Any State having systems which are so disapproved shall be subject to a per centum reduction under subparagraph (B). The Secretary shall make the determination of reapproval or disapproval and so notify the States not later than the end of the first quarter following the review period. Reviews may, at the Secretary's discretion, constitute reviews of the entire system or of only those standards, systems requirements, and other conditions which have demonstrated weakness in previous reviews.

(B) If the Secretary disapproves a State's systems under subparagraph (A), the Secretary shall, with respect to such State for quarters beginning after the determination of disapproval and before the first quarter beginning after such systems are reapproved, reduce the per centum specified in subsection (a)(3)(B) of this section to a per centum of not less than 50 per centum and not more than 70 per centum as the Secretary determines to be appropriate and commensurate with the nature of noncompliance by such State; except that such per centum may not be reduced by more than 10 percentage points in any 4-quarter period by reason of this subparagraph. No State shall be subject to a per centum reduction under this paragraph (i) before the fifth quarter beginning after such State's systems were initially approved, or (ii) on the basis of a review conducted before October 1, 1981.

(C) The Secretary may retroactively waive a per centum reduction imposed under subparagraph (B), if the Secretary determines that the State's systems meet all current performance standards and other requirements for reapproval and that such action would improve the administration of the State's plan under this subchapter, except that no such waiver may extend beyond the four quarters immediately prior to the quarter in which the State's systems are reapproved.

(5)(A) In order to be initially approved by the Secretary, mechanized claims processing and information retrieval systems must be of the type described in subsection (a)(3)(B) of this section and must meet the following requirements:

(i) The systems must be capable of developing provider, physician, and patient profiles which are sufficient to provide specific information as to the use of covered types of services and items, including prescribed drugs.

(ii) The State must provide that information on probable fraud or abuse which is obtained from, or developed by, the systems, is made available to the State's medicaid fraud control unit (if any) certified under subsection (q) of this section.

(iii) The systems must meet all performance standards and other requirements for initial approval developed by the Secretary under paragraph (6).

(B) In order to be reapproved by the Secretary, mechanized claims processing and information retrieval systems must meet the requirements of subparagraphs (A)(i) and (A)(ii) and performance standards and other requirements for reapproval developed by the Secretary under paragraph (6).

(6) The Secretary, with respect to State systems, shall—

(A) develop performance standards, system requirements, and other conditions for approval for use in initially approving such State systems, and shall further develop written approval procedures for conducting re-

views for initial approval, including specific criteria for assessing systems in operation to insure that all such performance standards and other requirements are met;

(B) by not later than October 1, 1980, develop an initial set of performance standards, system requirements, and other conditions for reapproval for use in reapproving or disapproving State systems, and shall further develop written reapproval procedures for conducting reviews for reapproval, including specific criteria for reassessing systems operations over a period of at least six months during each fiscal year to insure that all such performance standards and other requirements are met on a continuous basis;

(C) provide that reviews for reapproval, conducted before October 1, 1981, shall be for the purpose of developing a systems performance data base and assisting States to improve their systems, and that no per centum reduction shall be made under paragraph (4) on the basis of such a review;

(D) insure that review procedures, performance standards, and other requirements developed under subparagraph (B) are sufficiently flexible to allow for differing administrative needs among the States, and that such procedures, standards, and requirements are of a nature which will permit their use by the States for self-evaluation;

(E) notify all States of proposed procedures, standards, and other requirements at least one quarter prior to the fiscal year in which such procedures, standards, and other requirements will be used for conducting reviews for reapproval;

(F) periodically update the systems performance standards, system requirements, review criteria, objectives, regulations, and guides as the Secretary shall from time to time deem appropriate;

(G) provide technical assistance to States in the development and improvement of the systems so as to continually improve the capacity of such systems to effectively detect cases of fraud or abuse;

(H) for the purpose of insuring compatibility between the State systems and the systems utilized in the administration of subchapter XVIII of this chapter—

(i) develop a uniform identification coding system (to the extent feasible) for providers, other persons receiving payments under the State plans (approved under this subchapter) or under subchapter XVIII of this chapter, and beneficiaries of medical services under such plans or subchapter;

(ii) provide liaison between States and carriers and intermediaries having agreements under subchapter XVIII of this chapter to facilitate timely exchange of appropriate data; and

(iii) improve the exchange of data between the States and the Secretary with respect to providers and other persons who have been terminated, suspended, or otherwise sanctioned under a State plan (approved under this subchapter) or under subchapter XVIII of this chapter;

(I) develop and disseminate clear definitions of those types of reasonable costs relating to State systems which are reimbursable under the provisions of subsection (a)(3) of this section; and

(J) develop and disseminate performance standards for assessing the State's third party collection efforts in accordance with section 1396a(a)(25)(A)(ii) of this title.

(7)(A) The Secretary shall waive the provisions of this subsection with respect to initial operation and approval of mechanized claims processing and information retrieval systems with respect to any State which—

(i) had a 1976 population (as reported by the Bureau of the Census) of less than 1,000,000 and which made total expenditures (including Federal reimbursement) for which Federal financial participation is authorized under this subchapter of less than $100,000,000 in fiscal year 1976 (as reported by such State for such year), or

(ii) is a Commonwealth, or territory or possession, of the United States,

if such State reasonably demonstrates, and the Secretary does not formally disagree, that the application of such provisions would not significantly improve the efficiency of the administration of such State's plan under this subchapter.

(B) If the Secretary determines that the application of the provisions described in subparagraph (A) to a State would significantly improve the efficiency of the administration of the State's plan under this subchapter, the Secretary may withdraw the State's waiver under subparagraph (A) and, in such case, the Secretary shall impose a timetable for such State with respect to compliance with the provisions of this subsection and the imposition of per centum reductions. Such timetable shall be comparable to the timetable established under this subsection as to the amount of time allowed such State to comply and the timing of per centum reductions.

(8)(A) The per centum reductions provided for under this subsection shall not apply to a State for any quarter with respect to which the Secretary determines that such State is unable to comply with the relevant requirements of this subsection—

(i) for good cause (but such a waiver may not be for a period in excess of 2 quarters), or

(ii) due to circumstances beyond the control of such State.

(B) If the Secretary determines under subparagraph (A) that such a reduction will not apply to a State, the Secretary shall report to the Congress on the basis for each such determination and on the modification of all time limitations and deadlines as described in subparagraph (C).

(C) For purposes of determining all time limitations and deadlines imposed under this subsection, any time period during which a State was found under subparagraph (A)(ii) to be unable to comply with requirements of this subsection due to circumstances beyond its control shall not be taken into account, and the Secretary shall modify all such time limitations and deadlines with respect to such State accordingly.

(s) Limitations on certain physician referrals

Notwithstanding the preceding provisions of this section, no payment shall be made to a

State under this section for expenditures for medical assistance under the State plan consisting of a designated health service (as defined in subsection (h)(6) of section 1395nn of this title) furnished to an individual on the basis of a referral that would result in the denial of payment for the service under subchapter XVIII of this chapter if such subchapter provided for coverage of such service to the same extent and under the same terms and conditions as under the State plan, and subsections (f) and (g)(5) of such section shall apply to a provider of such a designated health service for which payment may be made under this subchapter in the same manner as such subsections apply to a provider of such a service for which payment may be made under such subchapter.

(t) Repealed. Pub. L. 97–35, title XXI, § 2161(c)(2), Aug. 13, 1981, 95 Stat. 805, as amended by Pub. L. 97–248, title I, § 137(a)(2), Sept. 3, 1982, 96 Stat. 376

(u) Limitation of Federal financial participation in erroneous medical assistance expenditures

(1)(A) Notwithstanding subsection (a)(1) of this section, if the ratio of a State's erroneous excess payments for medical assistance (as defined in subparagraph (D)) to its total expenditures for medical assistance under the State plan approved under this subchapter exceeds 0.03, for the period consisting of the third and fourth quarters of fiscal year 1983, or for any full fiscal year thereafter, then the Secretary shall make no payment for such period or fiscal year with respect to so much of such erroneous excess payments as exceeds such allowable error rate of 0.03.

(B) The Secretary may waive, in certain limited cases, all or part of the reduction required under subparagraph (A) with respect to any State if such State is unable to reach the allowable error rate for a period or fiscal year despite a good faith effort by such State.

(C) In estimating the amount to be paid to a State under subsection (d) of this section, the Secretary shall take into consideration the limitation on Federal financial participation imposed by subparagraph (A) and shall reduce the estimate he makes under subsection (d)(1) of this section, for purposes of payment to the State under subsection (d)(3) of this section, in light of any expected erroneous excess payments for medical assistance (estimated in accordance with such criteria, including sampling procedures, as he may prescribe and subject to subsequent adjustment, if necessary, under subsection (d)(2) of this section).

(D)(i) For purposes of this subsection, the term ''erroneous excess payments for medical assistance'' means the total of—

(I) payments under the State plan with respect to ineligible individuals and families, and

(II) overpayments on behalf of eligible individuals and families by reason of error in determining the amount of expenditures for medical care required of an individual or family as a condition of eligibility.

(ii) In determining the amount of erroneous excess payments for medical assistance to an ineligible individual or family under clause (i)(I), if such ineligibility is the result of an error in determining the amount of the resources of such individual or family, the amount of the erroneous excess payment shall be the smaller of (I) the amount of the payment with respect to such individual or family, or (II) the difference between the actual amount of such resources and the allowable resource level established under the State plan.

(iii) In determining the amount of erroneous excess payments for medical assistance to an individual or family under clause (i)(II), the amount of the erroneous excess payment shall be the smaller of (I) the amount of the payment on behalf of the individual or family, or (II) the difference between the actual amount incurred for medical care by the individual or family and the amount which should have been incurred in order to establish eligibility for medical assistance.

(iv) In determining the amount of erroneous excess payments, there shall not be included any error resulting from a failure of an individual to cooperate or give correct information with respect to third-party liability as required under section 1396k(a)(1)(C) or 602(a)(26)(C) of this title or with respect to payments made in violation of section 1396e of this title.

(v) In determining the amount of erroneous excess payments, there shall not be included any erroneous payments made for ambulatory prenatal care provided during a presumptive eligibility period (as defined in section 1396r–1(b)(1) of this title).

(E) For purposes of subparagraph (D), there shall be excluded, in determining both erroneous excess payments for medical assistance and total expenditures for medical assistance—

(i) payments with respect to any individual whose eligibility therefor was determined exclusively by the Secretary under an agreement pursuant to section 1383c of this title and such other classes of individuals as the Secretary may by regulation prescribe whose eligibility was determined in part under such an agreement; and

(ii) payments made as the result of a technical error.

(2) The State agency administering the plan approved under this subchapter shall, at such times and in such form as the Secretary may specify, provide information on the rates of erroneous excess payments made (or expected, with respect to future periods specified by the Secretary) in connection with its administration of such plan, together with any other data he requests that are reasonably necessary for him to carry out the provisions of this subsection.

(3)(A) If a State fails to cooperate with the Secretary in providing information necessary to carry out this subsection, the Secretary, directly or through contractual or such other arrangements as he may find appropriate, shall establish the error rates for that State on the basis of the best data reasonably available to him and in accordance with such techniques for sampling and estimating as he finds appropriate.

(B) In any case in which it is necessary for the Secretary to exercise his authority under sub-

paragraph (A) to determine a State's error rates for a fiscal year, the amount that would otherwise be payable to such State under this subchapter for quarters in such year shall be reduced by the costs incurred by the Secretary in making (directly or otherwise) such determination.

(4) This subsection shall not apply with respect to Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, or American Samoa.

(v) Medical assistance to aliens not lawfully admitted for permanent residence

(1) Notwithstanding the preceding provisions of this section, except as provided in paragraph (2), no payment may be made to a State under this section for medical assistance furnished to an alien who is not lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law.

(2) Payment shall be made under this section for care and services that are furnished to an alien described in paragraph (1) only if—

(A) such care and services are necessary for the treatment of an emergency medical condition of the alien,

(B) such alien otherwise meets the eligibility requirements for medical assistance under the State plan approved under this subchapter (other than the requirement of the receipt of aid or assistance under subchapter IV of this chapter, supplemental security income benefits under subchapter XVI of this chapter, or a State supplementary payment), and

(C) such care and services are not related to an organ transplant procedure.

(3) For purposes of this subsection, the term ''emergency medical condition'' means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(A) placing the patient's health in serious jeopardy,

(B) serious impairment to bodily functions, or

(C) serious dysfunction of any bodily organ or part.

(w) Prohibition on use of voluntary contributions, and limitation on use of provider-specific taxes to obtain Federal financial participation under medicaid

(1)(A) Notwithstanding the previous provisions of this section, for purposes of determining the amount to be paid to a State (as defined in paragraph (7)(D)) under subsection (a)(1) of this section for quarters in any fiscal year, the total amount expended during such fiscal year as medical assistance under the State plan (as determined without regard to this subsection) shall be reduced by the sum of any revenues received by the State (or by a unit of local government in the State) during the fiscal year—

(i) from provider-related donations (as defined in paragraph (2)(A)), other than—

(I) bona fide provider-related donations (as defined in paragraph (2)(B)), and

(II) donations described in paragraph (2)(C);

(ii) from health care related taxes (as defined in paragraph (3)(A)), other than broad-based health care related taxes (as defined in paragraph (3)(B));

(iii) from a broad-based health care related tax, if there is in effect a hold harmless provision (described in paragraph (4)) with respect to the tax; or

(iv) only with respect to State fiscal years (or portions thereof) occurring on or after January 1, 1992, and before October 1, 1995, from broad-based health care related taxes to the extent the amount of such taxes collected exceeds the limit established under paragraph (5).

(B) Notwithstanding the previous provisions of this section, for puroses[9] of determining the amount to be paid to a State under subsection (a)(7) of this section for all quarters in a Federal fiscal year (beginning with fiscal year 1993), the total amount expended during the fiscal year for administrative expenditures under the State plan (as determined without regard to this subsection) shall be reduced by the sum of any revenues received by the State (or by a unit of local government in the State) during such quarters from donations described in paragraph (2)(C), to the extent the amount of such donations exceeds 10 percent of the amounts expended under the State plan under this subchapter during the fiscal year for purposes described in paragraphs (2), (3), (4), (6), and (7) of subsection (a) of this section.

(C)(i) Except as otherwise provided in clause (ii), subparagraph (A)(i) shall apply to donations received on or after January 1, 1992.

(ii) Subject to the limits described in clause (iii) and subparagraph (E), subparagraph (A)(i) shall not apply to donations received before the effective date specified in subparagraph (F) if such donations are received under programs in effect or as described in State plan amendments or related documents submitted to the Secretary by September 30, 1991, and applicable to State fiscal year 1992, as demonstrated by State plan amendments, written agreements, State budget documentation, or other documentary evidence in existence on that date.

(iii) In applying clause (ii) in the case of donations received in State fiscal year 1993, the maximum amount of such donations to which such clause may be applied may not exceed the total amount of such donations received in the corresponding period in State fiscal year 1992 (or not later than 5 days after the last day of the corresponding period).

(D)(i) Except as otherwise provided in clause (ii), subparagraphs (A)(ii) and (A)(iii) shall apply to taxes received on or after January 1, 1992.

(ii) Subparagraphs (A)(ii) and (A)(iii) shall not apply to impermissible taxes (as defined in clause (iii)) received before the effective date specified in subparagraph (F) to the extent the taxes (including the tax rate or base) were in effect, or the legislation or regulations imposing such taxes were enacted or adopted, as of November 22, 1991.

---

[9] So in original. Probably should be ''purposes''.

(iii) In this subparagraph and subparagraph (E), the term ''impermissible tax'' means a health care related tax for which a reduction may be made under clause (ii) or (iii) of subparagraph (A).

(E)(i) In no case may the total amount of donations and taxes permitted under the exception provided in subparagraphs (C)(ii) and (D)(ii) for the portion of State fiscal year 1992 occurring during calendar year 1992 exceed the limit under paragraph (5) minus the total amount of broad-based health care related taxes received in the portion of that fiscal year.

(ii) In no case may the total amount of donations and taxes permitted under the exception provided in subparagraphs (C)(ii) and (D)(ii) for State fiscal year 1993 exceed the limit under paragraph (5) minus the total amount of broad-based health care related taxes received in that fiscal year.

(F) In this paragraph in the case of a State—

(i) except as provided in clause (iii), with a State fiscal year beginning on or before July 1, the effective date is October 1, 1992,

(ii) except as provided in clause (iii), with a State fiscal year that begins after July 1, the effective date is January 1, 1993, or

(iii) with a State legislature which is not scheduled to have a regular legislative session in 1992, with a State legislature which is not scheduled to have a regular legislative session in 1993, or with a provider-specific tax enacted on November 4, 1991, the effective date is July 1, 1993.

(2)(A) In this subsection (except as provided in paragraph (6)), the term ''provider-related donation'' means any donation or other voluntary payment (whether in cash or in kind) made (directly or indirectly) to a State or unit of local government by—

(i) a health care provider (as defined in paragraph (7)(B)),

(ii) an entity related to a health care provider (as defined in paragraph (7)(C)), or

(iii) an entity providing goods or services under the State plan for which payment is made to the State under paragraph (2), (3), (4), (6), or (7) of subsection (a) of this section.

(B) For purposes of paragraph (1)(A)(i)(I), the term ''bona fide provider-related donation'' means a provider-related donation that has no direct or indirect relationship (as determined by the Secretary) to payments made under this subchapter to that provider, to providers furnishing the same class of items and services as that provider, or to any related entity, as established by the State to the satisfaction of the Secretary. The Secretary may by regulation specify types of provider-related donations described in the previous sentence that will be considered to be bona fide provider-related donations.

(C) For purposes of paragraph (1)(A)(i)(II), donations described in this subparagraph are funds expended by a hospital, clinic, or similar entity for the direct cost (including costs of training and of preparing and distributing outreach materials) of State or local agency personnel who are stationed at the hospital, clinic, or entity to determine the eligibility of individuals for medical assistance under this subchapter and to provide outreach services to eligible or potentially eligible individuals.

(3)(A) In this subsection (except as provided in paragraph (6)), the term ''health care related tax'' means a tax (as defined in paragraph (7)(F)) that—

(i) is related to health care items or services, or to the provision of, the authority to provide, or payment for, such items or services, or

(ii) is not limited to such items or services but provides for treatment of individuals or entities that are providing or paying for such items or services that is different from the treatment provided to other individuals or entities.

In applying clause (i), a tax is considered to relate to health care items or services if at least 85 percent of the burden of such tax falls on health care providers.

(B) In this subsection, the term ''broad-based health care related tax'' means a health care related tax which is imposed with respect to a class of health care items or services (as described in paragraph (7)(A)) or with respect to providers of such items or services and which, except as provided in subparagraphs (D) and (E)—

(i) is imposed at least with respect to all items or services in the class furnished by all non-Federal, nonpublic providers in the State (or, in the case of a tax imposed by a unit of local government, the area over which the unit has jurisdiction) or is imposed with respect to all non-Federal, nonpublic providers in the class; and

(ii) is imposed uniformly (in accordance with subparagraph (C)).

(C)(i) Subject to clause (ii), for purposes of subparagraph (B)(ii), a tax is considered to be imposed uniformly if—

(I) in the case of a tax consisting of a licensing fee or similar tax on a class of health care items or services (or providers of such items or services), the amount of the tax imposed is the same for every provider providing items or services within the class;

(II) in the case of a tax consisting of a licensing fee or similar tax imposed on a class of health care items or services (or providers of such services) on the basis of the number of beds (licensed or otherwise) of the provider, the amount of the tax is the same for each bed of each provider of such items or services in the class;

(III) in the case of a tax based on revenues or receipts with respect to a class of items or services (or providers of items or services) the tax is imposed at a uniform rate for all items and services (or providers of such items or services) in the class on all the gross revenues or receipts, or net operating revenues, relating to the provision of all such items or services (or all such providers) in the State (or, in the case of a tax imposed by a unit of local government within the State, in the area over which the unit has jurisdiction); or

(IV) in the case of any other tax, the State establishes to the satisfaction of the Secretary that the tax is imposed uniformly.

(ii) Subject to subparagraphs (D) and (E), a tax imposed with respect to a class of health care items and services is not considered to be imposed uniformly if the tax provides for any credits, exclusions, or deductions which have as their purpose or effect the return to providers of all or a portion of the tax paid in a manner that is inconsistent with subclauses (I) and (II) of subparagraph (E)(ii) or provides for a hold harmless provision described in paragraph (4).

(D) A tax imposed with respect to a class of health care items and services is considered to be imposed uniformly—

(i) notwithstanding that the tax is not imposed with respect to items or services (or the providers thereof) for which payment is made under a State plan under this subchapter or subchapter XVIII of this chapter, or

(ii) in the case of a tax described in subparagraph (C)(i)(III), notwithstanding that the tax provides for exclusion (in whole or in part) of revenues or receipts from a State plan under this subchapter or subchapter XVIII of this chapter.

(E)(i) A State may submit an application to the Secretary requesting that the Secretary treat a tax as a broad-based health care related tax, notwithstanding that the tax does not apply to all health care items or services in class (or all providers of such items and services), provides for a credit, deduction, or exclusion, is not applied uniformly, or otherwise does not meet the requirements of subparagraph (B) or (C). Permissible waivers may include exemptions for rural or sole-community providers.

(ii) The Secretary shall approve such an application if the State establishes to the satisfaction of the Secretary that—

(I) the net impact of the tax and associated expenditures under this subchapter as proposed by the State is generally redistributive in nature, and

(II) the amount of the tax is not directly correlated to payments under this subchapter for items or services with respect to which the tax is imposed.

The Secretary shall by regulation specify types of credits, exclusions, and deductions that will be considered to meet the requirements of this subparagraph.

(4) For purposes of paragraph (1)(A)(iii), there is in effect a hold harmless provision with respect to a broad-based health care related tax imposed with respect to a class of items or services if the Secretary determines that any of the following applies:

(A) The State or other unit of government imposing the tax provides (directly or indirectly) for a payment (other than under this subchapter) to taxpayers and the amount of such payment is positively correlated either to the amount of such tax or to the difference between the amount of the tax and the amount of payment under the State plan.

(B) All or any portion of the payment made under this subchapter to the taxpayer varies based only upon the amount of the total tax paid.

(C) The State or other unit of government imposing the tax provides (directly or indirectly) for any payment, offset, or waiver that guarantees to hold taxpayers harmless for any portion of the costs of the tax.

The provisions of this paragraph shall not prevent use of the tax to reimburse health care providers in a class for expenditures under this subchapter nor preclude States from relying on such reimbursement to justify or explain the tax in the legislative process.

(5)(A) For purposes of this subsection, the limit under this subparagraph with respect to a State is an amount equal to 25 percent (or, if greater, the State base percentage, as defined in subparagraph (B)) of the non-Federal share of the total amount expended under the State plan during a State fiscal year (or portion thereof), as it would be determined pursuant to paragraph (1)(A) without regard to paragraph (1)(A)(iv).

(B)(i) In subparagraph (A), the term ''State base percentage'' means, with respect to a State, an amount (expressed as a percentage) equal to—

(I) the total of the amount of health care related taxes (whether or not broad-based) and the amount of provider-related donations (whether or not bona fide) projected to be collected (in accordance with clause (ii)) during State fiscal year 1992, divided by

(II) the non-Federal share of the total amount estimated to be expended under the State plan during such State fiscal year.

(ii) For purposes of clause (i)(I), in the case of a tax that is not in effect throughout State fiscal year 1992 or the rate (or base) of which is increased during such fiscal year, the Secretary shall project the amount to be collected during such fiscal year as if the tax (or increase) were in effect during the entire State fiscal year.

(C)(i) The total amount of health care related taxes under subparagraph (B)(i)(I) shall be determined by the Secretary based on only those taxes (including the tax rate or base) which were in effect, or for which legislation or regulations imposing such taxes were enacted or adopted, as of November 22, 1991.

(ii) The amount of provider-related donations under subparagraph (B)(i)(I) shall be determined by the Secretary based on programs in effect on September 30, 1991, and applicable to State fiscal year 1992, as demonstrated by State plan amendments, written agreements, State budget documentation, or other documentary evidence in existence on that date.

(iii) The amount of expenditures described in subparagraph (B)(i)(II) shall be determined by the Secretary based on the best data available as of December 12, 1991.

(6)(A) Notwithstanding the provisions of this subsection, the Secretary may not restrict States' use of funds where such funds are derived from State or local taxes (or funds appropriated to State university teaching hospitals) transferred from or certified by units of government within a State as the non-Federal share of expenditures under this subchapter, regardless of whether the unit of government is also a health care provider, except as provided in section 1396a(a)(2) of this title, unless the transferred funds are derived by the unit of government from donations or taxes that would not other-

wise be recognized as the non-Federal share under this section.

(B) For purposes of this subsection, funds the use of which the Secretary may not restrict under subparagraph (A) shall not be considered to be a provider-related donation or a health care related tax.

(7) For purposes of this subsection:

(A) Each of the following shall be considered a separate class of health care items and services:

(i) Inpatient hospital services.

(ii) Outpatient hospital services.

(iii) Nursing facility services (other than services of intermediate care facilities for the mentally retarded).

(iv) Services of intermediate care facilities for the mentally retarded.

(v) Physicians' services.

(vi) Home health care services.

(vii) Outpatient prescription drugs.

(viii) Services of health maintenance organizations (and other organizations with contracts under subsection (m) of this section).

(ix) Such other classification of health care items and services consistent with this subparagraph as the Secretary may establish by regulation.

(B) The term ''health care provider'' means an individual or person that receives payments for the provision of health care items or services.

(C) An entity is considered to be ''related'' to a health care provider if the entity—

(i) is an organization, association, corporation or partnership formed by or on behalf of health care providers;

(ii) is a person with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the provider;

(iii) is the employee, spouse, parent, child, or sibling of the provider (or of a person described in clause (ii)); or

(iv) has a similar, close relationship (as defined in regulations) to the provider.

(D) The term ''State'' means only the 50 States and the District of Columbia but does not include any State whose entire program under this subchapter is operated under a waiver granted under section 1315 of this title.

(E) The ''State fiscal year'' means, with respect to a specified year, a State fiscal year ending in that specified year.

(F) The term ''tax'' includes any licensing fee, assessment, or other mandatory payment, but does not include payment of a criminal or civil fine or penalty (other than a fine or penalty imposed in lieu of or instead of a fee, assessment, or other mandatory payment).

(G) The term ''unit of local government'' means, with respect to a State, a city, county, special purpose district, or other governmental unit in the State.

(Aug. 14, 1935, ch. 531, title XIX, §1903, as added July 30, 1965, Pub. L. 89–97, title I, §121(a), 79 Stat. 349; amended Jan. 2, 1968, Pub. L. 90–248, title II, §§220(a), 222(c), (d), 225(a), 229(c), 241(f)(5), 81 Stat. 898, 901, 902, 904, 917; June 28, 1968, Pub. L. 90–364, title III, §303(a)(1), 82 Stat. 274; Aug. 9, 1969, Pub. L. 91–56, §2(a), 83 Stat. 99; Oct. 30, 1972, Pub. L. 92–603, title II, §§207(a), 221(c)(6), 224(c), 225, 226(e), 229(c), 230, 233(c), 235(a), 237(a)(1), 249B, 278(b)(1), (5), (7), (16), 290, 295, 299E(a), 86 Stat. 1379, 1389, 1395, 1396, 1404, 1410, 1411, 1414, 1415, 1428, 1453, 1454, 1457, 1459, 1462; July 9, 1973, Pub. L. 93–66, title II, §234(a), 87 Stat. 160; Dec. 31, 1973, Pub. L. 93–233, §§13(a)(11), (12), 18(r)–(v), (x)(5), (6), (y)(1), 87 Stat. 963, 971–973; Dec. 31, 1975, Pub. L. 94–182, title I, §§110(a), 111(b), 89 Stat. 1054; Oct. 8, 1976, Pub. L. 94–460, title II, §202(a), 90 Stat. 1957; Oct. 18, 1976, Pub. L. 94–552, §1, 90 Stat. 2540; Aug. 1, 1977, Pub. L. 95–83, title I, §105(a)(1), (2), 91 Stat. 384; Oct. 25, 1977, Pub. L. 95–142, §§3(c)(2), 8(c), 10(a), 11(a), 17(a)–(c), 20(a), 91 Stat. 1179, 1195, 1196, 1201, 1205; Nov. 1, 1978, Pub. L. 95–559, §14(c), 92 Stat. 2141; Nov. 10, 1978, Pub. L. 95–626, title I, §102(b)(3), 92 Stat. 3551; Oct. 4, 1979, Pub. L. 96–79, title I, §128, 93 Stat. 629; Oct. 7, 1980, Pub. L. 96–398, title IX, §901, 94 Stat. 1609; Dec. 5, 1980, Pub. L. 96–499, title IX, §§905(b), (c), 961(a), 963, 964, 94 Stat. 2618, 2650, 2651; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§2101(a)(2), 2103(b)(1), 2106(b)(3), 2113(n), 2161, 2163, 2164(a), 2174(b), 2178(a), 2183(a), 95 Stat. 786, 788, 792, 795, 803–806, 809, 813, 816; Sept. 3, 1982, Pub. L. 97–248, title I, §§133(a), 137(a)(1), (2), (b)(11)–(16), (27), (g), 146(b), 96 Stat. 373, 376, 378, 379, 381, 394; Jan. 12, 1983, Pub. L. 97–448, title III, §309(b)(16), 96 Stat. 2409; July 18, 1984, Pub. L. 98–369, div. B, title III, §§2303(g)(2), 2363(a)(2), (4), (b), 2364, 2373(b)(11)–(14), 98 Stat. 1066, 1106, 1107, 1111, 1112; Nov. 8, 1984, Pub. L. 98–617, §3(a)(6), 98 Stat. 3295; Apr. 7, 1986, Pub. L. 99–272, title IX, §§9503(b), (f), 9507(a), 9512(a), 9517(a), (c)(1), 9518(a), 100 Stat. 206, 207, 210, 212, 215, 216; Oct. 21, 1986, Pub. L. 99–509, title IX, §§9401(e)(2), 9403(g)(2), 9406(a), 9407(c), 9431(b)(2), 9434(a)(1), (2), (b), 100 Stat. 2052, 2055, 2057, 2060, 2066, 2068, 2069; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1895(c)(2), 100 Stat. 2935; Nov. 6, 1986, Pub. L. 99–603, title I, §121(b)(2), 100 Stat. 3390; Aug. 18, 1987, Pub. L. 100–93, §8(g), (h)(1), 101 Stat. 694; Dec. 22, 1987, Pub. L. 100–203, title IV, §§4112(b), 4113(a)(1), (b)(3), (d)(1), 4118(d)(1), (e)(11), (h)(1), (p)(5), 4211(d)(1), (g), (i), 4212(c)(1), (2), (d)(1), (e)(2), 4213(b)(2), 101 Stat. 1330–149, 1330–150, 1330–152, 1330–155, 1330–159, 1330–204, 1330–205, 1330–207, 1330–212, 1330–213, 1330–219, as amended July 1, 1988, Pub. L. 100–360, title IV, §411(a)(3)(A), (B)(iii), (k)(6)(B)(x), (7)(A), (D), (10)(D), (G)(ii), 102 Stat. 768, 794, 796; July 1, 1988, Pub. L. 100–360, title II, §202(h)(2), title III, §§301(f), 302(c)(3), (e)(4), title IV, §411(k)(12)(A), (13)(A), 102 Stat. 718, 750, 752, 753, 797, 798; Oct. 13, 1988, Pub. L. 100–485, title VI, §608(d)(26)(K)(ii), (f)(4), 102 Stat. 2422, 2424; Dec. 13, 1989, Pub. L. 101–234, title II, §201(a), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, §§6401(b), 6411(d)(2), 6901(b)(5)(A), 103 Stat. 2259, 2271, 2299; Nov. 5, 1990, Pub. L. 101–508, title IV, §§4401(a)(1), (b)(1), 4402(b), (d)(3), 4601(a)(3)(A), 4701(b)(2), 4704(b)(1), (2), 4711(c)(2), 4723(a), 4731(a), (b)(2), 4732(a), (b)(2), (c), (d), 4751(b)(1), 4752(a)(2), (b)(1), (e), 4801(a)(8), (e)(16)(A), 104 Stat. 1388–143, 1388–159, 1388–163, 1388–164, 1388–166, 1388–170, 1388–172, 1388–187, 1388–194 to 1388–196, 1388–205 to 1388–207, 1388–212, 1388–218; Oct. 7, 1991, Pub. L. 102–119, §26(i)(1), 105 Stat. 607; Dec. 12, 1991, Pub. L. 102–234, §§2(a), (b)(2), 3(b)(2)(B), 4(a), 105 Stat. 1793, 1799, 1803, 1804; Aug. 10, 1993, Pub. L. 103–66, title XIII, §§13602(b), 13604(a), 13622(a)(2), 13624(a), 13631(c), (h)(1), 107 Stat. 619, 621, 632, 636, 643, 645.)

REFERENCES IN TEXT

Parts A and B of subchapter XVIII of this chapter, referred to in subsecs. (b), (i), and (m), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

The Individuals with Disabilities Education Act, referred to in subsec. (c), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended. Parts B and H of the Act are classified generally to subchapters II (§ 1411 et seq.) and VIII (§ 1471 et seq.), respectively, of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

Part A of subchapter IV of this chapter, referred to in subsecs. (f) and (i)(9), is classified to section 601 et seq. of this title.

The Appalachian Regional Development Act of 1965, referred to in subsec. (m)(2)(B)(ii), (G), is Pub. L. 89–4, Mar. 9, 1965, 79 Stat. 5, as amended, which is set out in the Appendix to Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1993—Subsec. (i)(10). Pub. L. 103–66, § 13631(c)(1), which directed the amendment of par. (10) by striking all that follows ''1396r–8(g) of this title'' and inserting a semicolon, could not be executed because ''1396r–8(g) of this title'' did not appear subsequent to the general amendment of par. (10) by Pub. L. 103–66, § 13602(b). See below.

Pub. L. 103–66, § 13602(b), amended par. (10) generally. Prior to amendment, par. (10) read as follows: ''with respect to covered outpatient drugs of a manufacturer dispensed in any State unless, (A) except as provided in section 1396r–8(a)(3) of this title, the manufacturer complies with the rebate requirements of section 1396r–8(a) of this title with respect to the drugs so dispensed in all States, and (B) effective January 1, 1993, the State provides for drug use review in accordance with section 1396r–8(g) of this title; or''.

Subsec. (i)(11). Pub. L. 103–66, § 13631(c)(2), redesignated par. (12) as (11), transferred such par. to appear after par. (10), and substituted semicolon for period at end. Former par. (11) redesignated (13).

Subsec. (i)(12). Pub. L. 103–66, § 13631(c)(3), redesignated par. (14) as (12), transferred such par. to appear after par. (11), as redesignated by Pub. L. 103–66, § 13631(c)(2), and substituted semicolon for period at end. Former par. (12) redesignated (11).

Subsec. (i)(13). Pub. L. 103–66, § 13631(c)(4), redesignated par. (11) as (13), transferred such par. to appear after par. (12), as redesignated by Pub. L. 103–66, § 13631(c)(3), and directed substitution of ''; or'' for period at end.

Subsec. (i)(14). Pub. L. 103–66, § 13631(c)(5), added par. (14).

Subsec. (i)(15). Pub. L. 103–66, § 13631(h)(1), added par. (15).

Subsec. (*o*). Pub. L. 103–66, § 13622(a)(2), substituted ''regulation and including a group health plan (as defined in section 1167(1) of title 29), a service benefit plan, and a health maintenance organization)'' for ''regulation)''.

Subsec. (s). Pub. L. 103–66, § 13624(a), added subsec. (s).

Subsec. (v)(2)(C). Pub. L. 103–66, § 13604(a), added subpar. (C).

1991—Subsec. (a)(1). Pub. L. 102–234, § 3(b)(2)(B), inserted ''and section 1396r–4(f) of this title'' after ''of this section''.

Subsec. (c). Pub. L. 102–119 substituted ''child with a disability'' for ''handicapped child'', ''Individuals with Disabilities Education Act'' for ''Education of the Handicapped Act'', and ''an infant or toddler with a disability'' for ''a handicapped infant or toddler''.

Subsec. (d)(6). Pub. L. 102–234, § 4(a), added par. (6).

Subsec. (i)(10). Pub. L. 102–234, § 2(b)(2), struck out par. (10) added by Pub. L. 101–508, § 4701(b)(2)(B), which read as follows: ''with respect to any amount expended for medical assistance for care or services furnished by a hospital, nursing facility, or intermediate care facility for the mentally retarded to reimburse the hospital or facility for the costs attributable to taxes imposed by the State soley [sic] with respect to hospitals or facilities.''

Subsec. (w). Pub. L. 102–234, § 2(a), added subsec. (w).

1990—Subsec. (a)(1). Pub. L. 101–508, § 4402(d)(3), struck out before semicolon ''(including expenditures for medicare cost-sharing and including expenditures for premiums under part B of subchapter XVIII of this chapter, for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title, and, except in the case of individuals sixty-five years of age or older and disabled individuals entitled to hospital insurance benefits under subchapter XVIII of this chapter who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums for medical or any other type of remedial care or the cost thereof)''.

Subsec. (a)(2)(B). Pub. L. 101–508, § 4801(a)(8), substituted ''October 1, 1990'' for ''July 1, 1990''.

Subsec. (a)(3)(C), (D). Pub. L. 101–508, § 4401(b)(1), substituted ''and'' for ''plus'' at end of subpar. (C) and added subpar. (D).

Subsec. (f)(2). Pub. L. 101–508, § 4723(a), inserted ''(A)'' after ''(2)'' and added cl. (B).

Subsec. (f)(4). Pub. L. 101–508, § 4601(a)(3)(A), substituted ''1396a(a)(10)(A)(i)(III), 1396a(a)(10)(A)(i)(IV), 1396a(a)(10)(A)(i)(V), 1396a(a)(10)(A)(i)(VI), 1396a(a)(10)(A)(i)(VII)'' for ''1396a(a)(10)(A)(i)(IV), 1396a(a)(10)(A)(i)(VI)''.

Subsec. (i)(8). Pub. L. 101–508, § 4711(c)(2), inserted ''(A)'' after ''medical assistance'' and added cl. (B).

Subsec. (i)(10). Pub. L. 101–508, § 4701(b)(2), added par. (10) relating to any amount expended for medical assistance for care or services.

Pub. L. 101–508, § 4401(a)(1), added par. (10) relating to covered outpatient drugs.

Subsec. (i)(11). Pub. L. 101–508, § 4801(e)(16)(A), added par. (11).

Subsec. (i)(12). Pub. L. 101–508, § 4752(a)(2), added par. (12).

Subsec. (i)(14). Pub. L. 101–508, § 4752(e), added par. (14).

Subsec. (m)(1)(A). Pub. L. 101–508, § 4751(b)(1), inserted ''meets the requirement of section 1396a(w) of this title'' after ''State, which'' and ''meets the requirement of section 1396a(a) of this title and'' after ''or which''.

Subsec. (m)(2)(A)(i). Pub. L. 101–508, § 4732(d)(1), struck out ''(or the State as authorized by paragraph (3))'' after ''the Secretary''.

Subsec. (m)(2)(A)(ix). Pub. L. 101–508, § 4704(b)(1), added cl. (ix).

Subsec. (m)(2)(A)(x). Pub. L. 101–508, § 4731(a), added cl. (x).

Subsec. (m)(2)(A)(xi). Pub. L. 101–508, § 4752(b)(1), added cl. (xi).

Subsec. (m)(2)(B). Pub. L. 101–508, § 4704(b)(2), inserted ''except with respect to clause (ix) of subparagraph (A),'' after ''Subparagraph (A)''.

Subsec. (m)(2)(D). Pub. L. 101–508, § 4732(a), struck out ''(i) special circumstances warrant such modification or waiver, and (ii)'' after ''the Secretary determines that''.

Subsec. (m)(2)(F)(i). Pub. L. 101–508, § 4732(b)(2), substituted ''(G),'' for ''(G) or'' and inserted at end ''or with an eligible organization with a contract under section 1395mm of this title which meets the requirement of subparagraph (A)(ii), or''.

Subsec. (m)(2)(H). Pub. L. 101–508, § 4732(c), added subpar. (H).

Subsec. (m)(3). Pub. L. 101–508, §4732(d)(2), struck out par. (3) which read as follows: ''A State may, in the case of an entity which has submitted an application to the Secretary for determination that it is a health maintenance organization within the meaning of paragraph (1) and for which no such determination has been made within 90 days of the submission of the application, make a provisional determination for the purposes of this subchapter that such entity is such a health maintenance organization. Such provisional determination shall remain in force until such time as the Secretary makes a determination regarding the entity's qualification under paragraph (1).''

Subsec. (m)(5)(A)(v). Pub. L. 101–508, §4731(b)(2), added cl. (v).

Subsec. (u)(1)(D)(iv). Pub. L. 101–508, §4402(b), which directed amendment of subpar. (C)(iv) by inserting before period at end ''or with respect to payments made in violation of section 1396e of this title'', was executed to subpar. (D)(iv) to reflect the probable intent of Congress because subpar. (C) does not have a cl. (iv).

1989—Subsec. (a)(2)(B). Pub. L. 101–239, §6901(b)(5)(A), inserted ''(including the costs for nurse aides to complete such competency evaluation programs)'' after ''1396r(e)(1) of this title'' and ''(or, for calendar quarters beginning on or after July 1, 1988, and before July 1, 1990, the lesser of 90 percent or the Federal medical assistance percentage plus 25 percentage points)'' after ''50 percent''.

Subsec. (f)(4). Pub. L. 101–239, §6401(b), inserted ''1396a(a)(10)(A)(i)(VI),'' after ''1396a(a)(10)(A) (i)(IV),''.

Subsec. (i)(2). Pub. L. 101–239, §6411(d)(2), inserted '', not including items or services furnished in an emergency room of a hospital'' after ''emergency item or service''.

Subsec. (i)(5). Pub. L. 101–234 repealed Pub. L. 100–360, §202(h)(2), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

1988—Subsec. (a)(1). Pub. L. 100–360, §301(f), amended Pub. L. 99–509, §9403(g)(2), see 1986 Amendment note below.

Subsec. (c). Pub. L. 100–360, §411(k)(13)(A), added subsec. (c).

Subsec. (f)(2). Pub. L. 100–360, §411(k)(10)(G)(ii), amended Pub. L. 100–203, §4118(h)(1), see 1987 Amendment note below.

Subsec. (f)(4). Pub. L. 100–360, §302(e)(4), inserted ''1396a(a)(10)(A)(i)(IV),'' before ''1396a(a)(10)(A)(ii)(IX)'' in introductory provisions.

Subsec. (i)(2)(A). Pub. L. 100–360, §411(k)(10)(D), as amended by Pub. L. 100–485, §608(d)(26)(K)(ii), added Pub. L. 100–203, §4118(e)(11)(A), see 1987 Amendment note below.

Subsec. (i)(2)(B). Pub. L. 100–360, §411(k)(10)(D), as amended by Pub. L. 100–485, §608(d)(26)(K)(ii), added Pub. L. 100–203, §4118(e)(11)(B), see 1987 Amendment note below.

Subsec. (i)(3). Pub. L. 100–360, §411(k)(6)(B)(x), added Pub. L. 100–203, §4112(b), see 1987 Amendment note below.

Subsec. (i)(5). Pub. L. 100–360, §202(h)(2), substituted ''section 1395y(c)(1)'' for ''section 1395y(c)''.

Subsec. (i)(9). Pub. L. 100–360, §302(c)(3), added par. (9).

Subsec. (m)(2)(B)(i)(II). Pub. L. 100–485, §608(f)(4), substituted ''1396a(a)(10)(D) of this title'' for ''1396a(a)(13)(A)(ii) of this title''.

Subsec. (m)(2)(F). Pub. L. 100–360, §411(k)(7)(D), repealed Pub. L. 100–203, §4113(d)(1), see 1987 Amendment note below.

Pub. L. 100–360, §411(a)(3)(A), (B)(iii), (k)(7)(A), amended Pub. L. 100–203, §4113(a)(1)(B), see 1987 Amendment note below.

Subsec. (m)(5). Pub. L. 100–360, §411(k)(12)(A), amended par. (5) generally. Prior to amendment, par. (5) read as follows:

''(A) Any entity with a contract under this subsection that fails substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under such contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals, is subject to a civil money penalty of not more than $10,000 for each such failure.

''(B) The provisions of section 1320a–7a of this title (other than subsection (a)) shall apply to a civil money penalty under subparagraph (A) in the same manner as they apply to a civil money penalty under that section.''

1987—Subsec. (a)(1). Pub. L. 100–203, §4211(g)(2), substituted ''and (j)'' for '', (h), and (j)''.

Subsec. (a)(2)(A) to (C). Pub. L. 100–203, §4211(d)(1), designated existing provisions as subpar. (A) and added subpars. (B) and (C).

Subsec. (a)(2)(D). Pub. L. 100–203, §4212(c)(1), added subpar. (D).

Subsec. (a)(3)(C). Pub. L. 100–203, §4113(b)(3), inserted ''or by an entity which meets the requirements of section 1320c–1 of this title, as determined by the Secretary,'' after ''organization''.

Subsec. (a)(7). Pub. L. 100–203, §4212(e)(2), inserted ''subject to section 1396r(g)(3)(B) of this title,'' after ''(7)''.

Subsec. (f)(2). Pub. L. 100–203, §4118(h)(1), as amended by Pub. L. 100–360, §411(k)(10)(G)(ii), substituted ''(whether in the form of insurance premiums or otherwise and regardless of whether such costs are reimbursed under another public program of the State or political subdivision thereof)'' for ''(whether in the form of insurance premiums or otherwise)''.

Subsec. (f)(4). Pub. L. 100–203, §4118(p)(5), inserted '', 1396a(a)(10)(A)(ii)(X), or 1396d(p)(1)'' after ''1396a(a)(10)(A)(ii)(IX)''.

Subsec. (g)(1). Pub. L. 100–203, §4212(d)(1)(A), substituted ''or services in an intermediate care facility for the mentally retarded'' for first reference to ''or intermediate care facility services'', struck out '', skilled nursing facility services for 30 days,'' after first reference to ''60 days'', substituted ''or services in an intermediate care facility for the mentally retarded'' for '', skilled nursing facility services, or intermediate care facility services'', and substituted ''and intermediate care facilities for the mentally retarded'' for '', skilled nursing facilities, and intermediate care facilities''.

Subsec. (g)(4)(B). Pub. L. 100–203, §4212(d)(1)(B), substituted ''and intermediate care facilities for the mentally retarded'' for '', skilled nursing facilities, and intermediate care facilities''.

Subsec. (g)(6)(B) to (D). Pub. L. 100–203, §4212(d)(1)(C), redesignated subpar. (C) as (B) and substituted ''services in an intermediate care facility for the mentally retarded'' for ''intermediate care facility services'', redesignated subpar. (D) as (C), and struck out former subpar. (B) which read as follows: ''Such recertifications in the case of skilled nursing facility services shall be conducted at least—

''(i) 30 days after the date of the initial certification,

''(ii) 60 days after the date of the initial certification,

''(iii) 90 days after the date of the initial certification, and

''(iv) every 60 days thereafter.''

Subsec. (g)(7). Pub. L. 100–203, §4212(d)(1)(D), struck out par. (7) which read as follows: ''It is the duty and responsibility of the Secretary to assure that standards which govern the provision of care in skilled nursing facilities and intermediate care facilities under plans approved under this subchapter, and the enforcement of such standards, are adequate to protect the health and safety of residents and to promote the effective and efficient use of public moneys.''

Subsec. (h). Pub. L. 100–203, §4211(g)(1), struck out subsec. (h) which related to reduction by Secretary of amount otherwise considered as expenditures under State plan where reasonable cost differential between statewide average cost of skilled nursing facility services and statewide average cost of intermediate care fa-

cility services does not exist for any calendar quarter beginning after June 30, 1973.

Subsec. (i). Pub. L. 100–203, § 4118(d)(1)(B), inserted sentence at end that nothing in par. (1) be construed as permitting a State to provide services under its plan under this subchapter that are not reasonable in amount, duration, and scope to achieve their purpose.

Subsec. (i)(1). Pub. L. 100–203, § 4118(d)(1)(A), substituted ''; or'' for period at end.

Subsec. (i)(2). Pub. L. 100–93, § 8(g), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''with respect to any amount paid for services furnished under the plan after December 31, 1972, by a provider or other person during any period of time, if payment may not be made under subchapter XVIII of this chapter with respect to services furnished by such provider or person during such period of time solely by reason of a determination by the Secretary under section 1395y(d)(1) of this title or under clause (D), (E), or (F) of section 1395cc(b)(2) of this title, or by reason of noncompliance with a request made by the Secretary under clause (C)(ii) of such section 1395cc(b)(2) or under section 1396a(a)(38) of this title; or''.

Subsec. (i)(2)(A). Pub. L. 100–203, § 4118(e)(11)(A), as added by Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(ii), substituted ''under subchapter V, XVIII, or XX of this chapter or under this subchapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title'' for ''in the State plan under this subchapter pursuant to section 1320a–7 of this title or section 1320a–7a of this title''.

Subsec. (i)(2)(B). Pub. L. 100–203, § 4118(e)(11)(B), as added by Pub. L. 100–360, § 411(k)(10)(D), as amended by Pub. L. 100–485, § 608(d)(26)(K)(ii), substituted ''from participation under subchapter V, XVIII, or XX of this chapter or under this subchapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title'' for ''pursuant to section 1320a–7 of this title or section 1320a–7a of this title from participation in the program under this subchapter''.

Subsec. (i)(3). Pub. L. 100–203, § 4112(b), as added by Pub. L. 100–360, § 411(k)(6)(B)(x), inserted ''(other than amounts attributable to the special situation of a hospital which serves a disproportionate number of low income patients with special needs)'' before ''to the extent''.

Subsec. (i)(4). Pub. L. 100–203, § 4211(i), struck out ''or skilled nursing facility'' after ''hospital'' in three places.

Subsec. (i)(8). Pub. L. 100–203, § 4213(b)(2), added par. (8).

Subsec. (m)(2)(F). Pub. L. 100–203, § 4113(d)(1), which directed the substitution of ''subparagraphs (E) or (G)'' for ''subparagraph (G)'', was repealed by Pub. L. 100–360, § 411(k)(7)(D).

Pub. L. 100–203, § 4113(a)(1)(B), as amended by Pub. L. 100–360, § 411(a)(3)(A), (B)(iii), (k)(7)(A), substituted ''(F) In the case of—'' and cls. (i) and (ii) for ''(F) In the case of a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 300e–9(d) of this title) which meets the requirement of subparagraph (A)(ii),''.

Subsec. (m)(6). Pub. L. 100–203, § 4113(a)(1)(A), added par. (6).

Subsec. (n). Pub. L. 100–93, § 8(h)(1), struck out subsec. (n) which related to State agency action upon disclosure or failure to disclose required information by institution, organization, etc.

Subsec. (r). Pub. L. 100–203, § 4212(c)(2), substituted ''paragraphs (2)(A)'' for ''paragraphs (2)'' in pars. (1)(A), (C) and (2)(A), (C).

1986—Subsec. (a)(1). Pub. L. 99–509, § 9403(g)(2), as amended by Pub. L. 100–360, § 301(f), inserted ''including expenditures for medicare cost-sharing and'' before ''including expenditures''.

Subsec. (a)(3)(C). Pub. L. 99–509, § 9431(b)(2), inserted ''or quality review'' after ''medical and utilization review''.

Subsec. (a)(4). Pub. L. 99–603 added par. (4).

Subsec. (d)(2). Pub. L. 99–272, § 9512(a), designated first sentence as subpar. (A), designated second sentence as subpar. (B), properly indented and aligned below subpar. (A), and added subpars. (C) and (D).

Subsec. (f)(4). Pub. L. 99–509, § 9401(e)(2), inserted ''for any individual described in section 1396a(a)(10)(A)(ii)(IX) of this title or'' after ''as medical assistance''.

Subsec. (i)(1). Pub. L. 99–272, § 9507(a), added par. (1).

Subsec. (m)(2)(A). Pub. L. 99–272, § 9517(a)(1), substituted ''subparagraphs (B), (C), and (G)'' for ''subparagraphs (B) and (C)'' in introductory text.

Pub. L. 99–272, § 9517(c)(1), inserted ''(including a health insuring organization)'' after ''any entity'' and ''(directly or through arrangements with providers of services)'' after ''responsible for the provision'' in introductory text.

Subsec. (m)(2)(A)(iii). Pub. L. 99–509, § 9434(a)(2), inserted before the semicolon ''and under which the Secretary must provide prior approval for contracts providing for expenditures in excess of $100,000''.

Subsec. (m)(2)(A)(viii). Pub. L. 99–509, § 9434(a)(1)(A), added cl. (viii).

Subsec. (m)(2)(F). Pub. L. 99–514, § 1895(c)(2), substituted ''In the case'' for ''in the case''.

Pub. L. 99–272, § 9517(a)(2), struck out designation ''(i)'' at beginning of subpar. (F), substituted ''in the case of a contract with an entity described in subparagraph (G) or with a qualified health maintenance organization (as defined in section 300e–9(d) of this title) which meets the requirement of subparagraph (A)(ii)'' for ''In the case of a contract with a health maintenance organization described in clause (ii)'', substituted ''such entity or organization'' for ''such organization'', and struck out cl. (ii) which defined a health maintenance organization.

Subsec. (m)(2)(G). Pub. L. 99–272, § 9517(a)(3), added subpar. (G).

Subsec. (m)(4). Pub. L. 99–509, § 9434(a)(1)(B), added par. (4).

Subsec. (m)(5). Pub. L. 99–509, § 9434(b), added par. (5).

Subsec. (r)(1)(B). Pub. L. 99–272, § 9518(a), substituted ''September 30, 1985'' for ''the earlier of (i) September 30, 1982, or (ii) the last day of the sixth month following the date specified for operation of such systems in the State's most recently approved advance planning document submitted before October 7, 1980''.

Subsec. (r)(4)(A). Pub. L. 99–272, § 9503(b)(2), substituted ''once every three years'' for ''once each fiscal year'' and inserted at end ''Reviews may, at the Secretary's discretion, constitute reviews of the entire system or of only those standards, systems requirements, and other conditions which have demonstrated weakness in previous reviews.''

Subsec. (r)(6)(J). Pub. L. 99–272, § 9503(b)(1), amended subpar. (J) generally. Prior to amendment, subsec. (J) read as follows: ''report on or before October 1, 1981, to the Congress on the extent to which States have developed and operated effective mechanized claims processing and information retrieval systems.''

Subsec. (u)(1)(D)(iv). Pub. L. 99–272, § 9503(f), added cl. (iv).

Subsec. (u)(1)(D)(v). Pub. L. 99–509, § 9407(c), added cl. (v).

Subsec. (v). Pub. L. 99–509, § 9406(a), added subsec. (v).

1984—Subsec. (g)(1). Pub. L. 98–369, § 2363(a)(2)(A), (B), in provision preceding subpar. (A), substituted ''inpatient hospital services or intermediate care facility services for 60 days, skilled nursing facility services for 30 days, or inpatient mental hospital services for'' for ''care as an inpatient in a hospital (including an institution for tuberculosis), skilled nursing facility or intermediate care facility on 60 days, or in a hospital for mental diseases on'', and struck out ''which for purposes of this section means the four calendar quarters ending with June 30,'' before ''the Federal medical assistance percentage'', and struck out ''in the same fiscal year'' before ''shall be decreased by a per centum thereof''.

Pub. L. 98–369, § 2363(a)(2)(C), substituted '', skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental

hospital services furnished beyond 90 days), such State has an effective program of medical review of the care of patients in mental hospitals, skilled nursing facilities, and intermediate care facilities pursuant to paragraphs (26) and (31) of section 1396a(a) of this title whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams'' for ''(including tuberculosis hospitals), skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), there is in operation in the State an effective program of control over utilization of such services; such a showing must include evidence that—'' and former subpars. (A) through (D) requirement for evidence concerning an effective program of utilization of certain medical services.

Subsec. (g)(4)(B). Pub. L. 98–369, §2373(b)(11), substituted ''paragraphs (26)'' for ''paragraph (26)'' and ''diligence'' for ''deligence''.

Subsec. (g)(6). Pub. L. 98–369, §2363(a)(4), in amending par. (6) generally, substituted provisions relating to recertifications for provisions relating to reports to Congress concerning Secretary's determination and review of showing respecting any decrease of Federal medical assistance percentage of amounts paid for services.

Subsec. (g)(7). Pub. L. 98–369, §2363(b), as amended by Pub. L. 98–617, §3(a)(6), added par. (7).

Subsec. (i)(7). Pub. L. 98–369, §2303(g)(2), added par. (7).

Subsec. (m)(2)(A)(vi). Pub. L. 98–369, §2364(1), inserted ''except as provided under subparagraph (F),'' after ''(I)''.

Subsec. (m)(2)(B)(i)(I). Pub. L. 98–369, §2373(b)(12)(A), (C), struck out ''(II)'' before ''for the period'' and substituted ''period'' for ''peroid''.

Subsec. (m)(2)(B)(i)(II). Pub. L. 98–369, §2373(b)(12)(B), substituted ''of section 1396d(a) of this title'' for ''of such section''.

Subsec. (m)(2)(C). Pub. L. 98–369, §2373(b)(13), realigned margin of subpar. (C).

Subsec. (m)(2)(E), (F). Pub. L. 98–369, §2364(2), added subpars. (E) and (F).

Subsec. (s)(3)(B). Pub. L. 98–369, §2373(b)(14), substituted ''non-Federal'' for ''nonfederal''.

1983—Subsec. (t)(3). Pub. L. 97–448 substituted ''purposes'' for ''purpose'' and ''the lower of the Federal medical assistance percentage for the State in effect for fiscal year 1981, or the Federal medical assistance percentage for the State in effect for fiscal year 1982'' for ''the Federal medical assistance percentage for States in effect for fiscal year 1981, disregarding any change in such percentage after fiscal year 1981''.

1982—Subsec. (a)(3)(C). Pub. L. 97–248, §146(b), substituted ''utilization and quality control peer review organization'' for ''Professional Standards Review Organization''.

Subsec. (f)(3). Pub. L. 97–248, §137(g), struck out ''(without regard to section 608 of this title)'' after ''consisting of one person if such plan''.

Subsec. (g)(1). Pub. L. 97–248, §137(b)(11), inserted ''or which is a qualified health maintenance organization (as defined in section 300e–9(d) of this title)''.

Subsec. (g)(1)(A). Pub. L. 97–248, §137(b)(12), substituted ''provided in an institution for the mentally retarded'' for ''described in section 1396d(d) of this title''.

Subsec. (k). Pub. L. 97–248, §137(b)(13), substituted ''subsection (m) of this section'' for ''section 1395mm of this title''.

Subsec. (m)(2)(A). Pub. L. 97–248, §137(b)(14), substituted ''or'' for ''and'' before ''(II)'' in cl. (iv), and substituted ''unforeseen'' for ''unforseen'' in cl. (vii)(II).

Subsec. (s). Pub. L. 97–248, §137(a)(2), amended directory language of Pub. L. 97–35, §2161(c)(1), to correct an error, and did not involve any change in text. See 1981 Amendment note below.

Subsec. (s)(1)(A). Pub. L. 97–248, §137(b)(15)(A), (B), in provisions following cl. (iii), substituted ''fiscal year 1982'' for ''fiscal year 1981'', and ''subsections (a)(6) and (t) of this section, without regard to payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service,'' for ''subsection (t) of this section''.

Subsec. (s)(1)(C). Pub. L. 97–248, §137(b)(15)(C), inserted ''a program in operation under'', before ''a plan approved''.

Subsec. (s)(3)(D). Pub. L. 97–248, §137(b)(15)(D), substituted ''must determine that'' for ''determines that'', ''most recent year (which shall consist of a 12-month period determined by the Secretary for this purpose)'' for ''most recent calendar year'', and ''2- or 3-year period'' for ''2 or 3 calendar year period'', and struck out ''calendar'' wherever appearing.

Subsec. (s)(4)(B). Pub. L. 97–248, §137(b)(15)(E), inserted ''and paragraph (3)(D)''.

Subsec. (s)(5)(A)(i). Pub. L. 97–248, §137(b)(15)(F), inserted ''(including amounts saved, to the extent such amounts can be documented to the satisfaction of the Secretary, by reason of the suspension or termination of a provider or other person for fraud or abuse, but only during the period of such suspension or termination or, if shorter, the 1-year period beginning on the date of such termination or suspension)'' after ''recovered or diverted''.

Subsec. (s)(5)(B). Pub. L. 97–248, §137(b)(27), inserted ''or quarters'' after ''carried forward to the following quarter''.

Subsec. (t). Pub. L. 97–248, §137(a)(1), (2), amended directory language of Pub. L. 97–35, §2161(b), (c)(2), to correct an error, and did not involve any change in text. See 1981 Amendment note below.

Subsec. (t)(1)(A). Pub. L. 97–248, §137(b)(16)(A), substituted ''payments under subsection (a)(6) of this section, interest paid under subsection (d)(5) of this section, and payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service'' for ''interest paid under subsection (d)(5) of this section''.

Subsec. (t)(1)(B). Pub. L. 97–248, §137(b)(16)(B), (D), substituted ''Consumer Price Index for all urban consumers (U.S. city average) published by the Bureau of Labor Statistics'' for ''consumer price index for all urban consumers (published by the Bureau of Labor Statistics)'' and ''for the 12-month period ending on September 30, 1983'' for ''between September 1982 and September 1983''.

Subsec. (t)(1)(C). Pub. L. 97–248, §137(b)(16)(C), (D), substituted ''Consumer Price Index for all urban consumers (U.S. city average) published by the Bureau of Labor Statistics'' for ''consumer price index for all urban consumers (published by the Bureau of Labor Statistics)'' and ''for the 24-month period ending on September 30, 1984'' for ''between September 1982 and September 1984''.

Subsec. (t)(2)(A). Pub. L. 97–248, §137(b)(16)(A), substituted ''payments under subsection (a)(6) of this section, interest paid under subsection (d)(5) of this section, and payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service'' for ''interest paid under subsection (d)(5) of this section''.

Subsec. (t)(3). Pub. L. 97–248, §137(b)(16)(E), substituted ''for fiscal years 1982, 1983, and 1984'' for ''for fiscal year 1984'' wherever appearing, ''years 1983, 1984, and 1985, respectively'' for ''year 1985'', ''in effect for fiscal year 1981'' for ''in effect for fiscal year 1983'', and ''after fiscal year 1981'' for ''between fiscal year 1983 and fiscal year 1984''.

Subsec. (u). Pub. L. 97–248, §133(a), added subsec. (u).

1981—Subsec. (a)(3)(B). Pub. L. 97–35, §2113(n), substituted ''and'' for ''plus'' at the end of subpar. (B) and added subpar. (C).

Subsec. (d)(5). Pub. L. 97–35, §2163, substituted ''determination at a rate'' for ''determination (but not to exceed a period of twelve months with respect to disallowances made prior to October 1, 1981, or six months with respect to disallowances made thereafter) at a rate''.

Subsec. (e). Pub. L. 97–35, § 2101(a)(2), added subsec. (e).

Subsec. (g)(1)(A). Pub. L. 97–35, § 2183(a), inserted ''and the physician, or a physician assistant or nurse practitioner under the supervision of a physician'' and ''or, in the case of services that are intermediate care facility services described in section 1396d(d) of this title, every year'' in parenthetical text.

Subsec. (i)(1). Pub. L. 97–35, § 2174(b), struck out par. (1) which provided that payments shall not be made with respect to any amount paid for items or services furnished under the plan after Dec. 31, 1972, to the extent that such amount exceeds the charge which would be determined to be reasonable for such items or services under fourth and fifth sentences of section 1395u(b)(3) of this title.

Subsec. (i)(5). Pub. L. 97–35, § 2103(b)(1), added par. (5).

Subsec. (i)(6). Pub. L. 97–35, § 2164(a), added par. (6).

Subsec. (m)(1)(A). Pub. L. 97–35, § 2178(a)(1), redefined ''Health Maintenance Organization'' substantially, and substituted reference to public and private organizations making services to individuals eligible for benefits under this subchapter and which makes adequate provision against the risk of insolvency for reference to a legal entity which provides health services to individuals enrolled in such organization and providing services and benefits to individuals eligible for benefits under specified provisions of this subchapter.

Subsec. (m)(2)(A). Pub. L. 97–35, § 2178(a)(2), in cl. (ii), substituted ''75 percent of the membership of the entity which is enrolled on a prepaid basis'' for ''one-half of the membership of the entity'', and added cls. (iii) to (vii).

Subsec. (m)(2)(D). Pub. L. 97–35, § 2178(a)(3), added subpar. (D).

Subsec. (n). Pub. L. 97–35, § 2106(b)(3), struck out ''of this section'' after ''section 1395cc of this title'' thereby perfecting the amendment made by Pub. L. 96–499, § 905(c)(2).

Subsec. (s). Pub. L. 97–35, § 2161(c)(1), as amended by Pub. L. 97–248, § 137(a)(2), repealed subsec. (s) which provided for reduction in medicaid payments to States, limitations on reductions, States included, and percentage reductions reduced under certain circumstances. See Effective Date of 1981 Amendment note below.

Pub. L. 97–35, § 2161(a), added subsec. (s).

Subsec. (t). Pub. L. 97–35, § 2161(c)(2), as amended by Pub. L. 97–248, § 137(a)(2), repealed subsec. (t) which provided for offset for meeting Federal medicaid expenditure targets, and computation for meeting expenditure targets. See Effective Date of 1981 Amendment note below.

Pub. L. 97–35, § 2161(b), as amended by Pub. L. 97–248, § 137(a)(1), added subsec. (t).

1980—Subsec. (a)(1). Pub. L. 96–499, § 905(b), inserted reference to subsection (j) of this section.

Subsec. (a)(6). Pub. L. 96–499, § 963, substituted ''such a quarter within the twelve-quarter period beginning with the first quarter in which a payment is made to the State pursuant to this paragraph, and (B) 75 per centum of the sums expended during each succeeding calendar quarter'' for ''each quarter beginning on or after October 1, 1977, and ending before October 1, 1980''.

Subsec. (d)(5). Pub. L. 96–499, § 961(a), added par. (5).

Subsec. (g)(3)(B). Pub. L. 96–499, § 964, substituted ''January 1, 1978'' for ''October 1, 1977'' and ''any calendar quarter ending on or before December 31, 1978'' for ''the calendar quarter ending on December 31, 1977''.

Subsec. (j). Pub. L. 96–499, § 905(c)(1), substituted provisions relating to the adjustment of amounts determined under subsec. (a)(1) of this section in accordance with section 1396m of this title for provisions relating to orders for suspension of payment.

Subsec. (n). Pub. L. 96–499, § 905(c)(2), struck out ''or is subject to a suspension of payment order issued under subsection (j)'' after ''section 1395cc of this title''.

Subsec. (r). Pub. L. 96–398 added subsec. (r).

1979—Subsec. (m)(2)(C). Pub. L. 96–79 substituted ''the date the entity qualifies as a health maintenance organization (as determined by the Secretary)'' for ''the date the entity enters into a contract with the State under this subchapter for the provision of health services on a prepaid risk basis''.

1978—Subsec. (m)(1)(B). Pub. L. 95–559 struck out ''shall be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions'' after ''subparagraph (A),''.

Subsec. (m)(2)(B)(i)(I). Pub. L. 95–626 substituted ''section 254b(d)(1)(A)'' for ''section 247d(d)(1)(A)''.

1977—Subsec. (a)(3)(B). Pub. L. 95–142, § 10(a), inserted provisions relating to notice to individuals in a sample group and provisions exempting notice respecting confidential services from notice requirements.

Subsec. (a)(6), (7). Pub. L. 95–142, § 17(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (b)(3). Pub. L. 95–142, § 17(b), added par. (3).

Subsec. (g). Pub. L. 95–142, § 20(a), in par. (1) substituted ''Subject to paragraph (3), with respect to'' for ''With respect to'' and ''by a per centum thereof (determined under paragraph (5))'' for ''by 33⅓ per centum thereof'', in par. (2) inserted ''timely'' before ''sample onsite surveys'', and added pars. (3) to (6).

Subsec. (i)(2). Pub. L. 95–142, § 3(c)(2), inserted provisions relating to noncompliance under sections 1395cc(b)(2) and 1396a(a)(38) of this title.

Subsec. (m)(2)(A). Pub. L. 95–83, § 105(a)(1), in revising text, incorporated former cl. (i) (I) and (II) provisions in introductory text relating to responsibility for providing inpatient hospital services and other described services, substituting ''capitation basis'' for ''capitation risk basis'' and inserting ''unless''; redesignated as cl. (i) former cl. (ii), substituting ''has determined that the entity is a health maintenance organization'' for ''has not determined to be a health maintenance organization''; and redesignated as cl. (ii) former cl. (iii), substituting ''less than one-half of the membership of the entity consists of individuals who (I) are insured for benefits under part B of subchapter XVIII of this chapter or for benefits under both parts A and B of such subchapter, or (II) are eligible to receive benefits under this subchapter'' for ''more than one-half of the membership of which consists of individuals who are insured under parts A and B of subchapter XVIII of this chapter or recipients of benefits under this subchapter.''

Subsec. (m)(2)(C). Pub. L. 95–83, § 105(a)(2), substituted reference to subpar. ''(A)(ii)'' for ''(A)(iii)'' wherever appearing.

Subsec. (n). Pub. L. 95–142, § 8(c), added subsec. (n).

Subsecs. (*o*), (p). Pub. L. 95–142, § 11(a), added subsecs. (*o*) and (p).

Subsec. (q). Pub. L. 95–142, § 17(c), added subsec. (q).

1976—Subsec. (*l*). Pub. L. 94–552 repealed subsec. (*l*) which provided for reduction of amount of payments to States found not to be in compliance with section 1396a(g) of this title.

Subsec. (m). Pub. L. 94–460 added subsec. (m).

1975—Subsec. (g)(1)(C). Pub. L. 94–182, § 110(a), inserted provisions specifying the method by which the size and composition of the sample of admissions subject to review is to be established.

Subsec. (*l*). Pub. L. 94–182, § 111(b), added subsec. (*l*).

1973—Subsec. (a). Pub. L. 93–233, § 18(x)(5), struck out reference to section 1317 of this title in introductory parenthetical phrase.

Subsec. (a)(1). Pub. L. 93–233, §§ 13(a)(11), 18(r)(1), substituted ''individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title'' for ''individuals who are recipients of money payments under a State plan approved under

subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter'' and inserted ''and disabled individuals entitled to hospital insurance benefits under subchapter XVIII of this chapter,'' after ''individuals sixty-five years of age or older''.

Subsec. (a)(4). Pub. L. 93–233, §18(s), substituted ''sums expended with respect to costs incurred'' for ''sums expended''.

Subsec. (a)(5). Pub. L. 93–233, §18(t), struck out ''(as found necessary by the Secretary for the proper and efficient administration of the plan)'' after ''such quarter''.

Subsec. (b). Pub. L. 93–233, §§18(r)(2), (u), (x)(6), inserted in par. (2) after ''individuals sixty-five years of age or older'' text reading ''and disabled individuals entitled to hospital insurance benefits under subchapter XVIII of this chapter'' and end text reading '', other than amounts expended under provisions of the plan of such State required by section 1396a(a)(34) of this title,'' and redesignated pars. (2) and (3) as (1) and (2), respectively.

Subsec. (c). Pub. L. 93–233, §18(y)(1)(A), struck out subsec. (c) which provided for Federal medical assistance percentage and Federal share of State medical expenses during fiscal year ending June 30, 1965.

Subsec. (d)(1). Pub. L. 93–233, §18(y)(1)(B), struck out reference to subsec. (c) of this section.

Subsec. (f)(4). Pub. L. 93–233, §13(a)(12), in subpar. (A), made payment limitations inapplicable to individual with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter; in subpar. (B), made payment limitations inapplicable to individual with respect to whom such benefits are not being paid, and in cls. (i) and (ii) inserted ''to have such benefits paid with respect to him'', and added subpar. (C).

Subsec. (g)(1)(C). Pub. L. 93–233, §18(v), substituted ''directly responsible for the care of the patient or financially interested in any such institution or, except in the case of hospitals, employed by the institution'' for ''directly responsible for the care of the patient and who are not employed by or financially interested in any such institution''.

Subsec. (j). Pub. L. 93–66 struck out provisions respecting skilled nursing facility services and intermediate care facility services.

1972—Subsec. (a)(1). Pub. L. 92–603, §207(a)(2), inserted reference to subsecs. (g) and (h) and of this section.

Subsec. (a)(3). Pub. L. 92–603, §235(a), added par. (3). Former par. (3) redesignated (4).

Subsec. (a)(4). Pub. L. 92–603, §249B, temporarily added par. (4) which provided for payments to States of 100 per centum of sums expended for costs incurred during a quarter attributable to compensation or training of personnel responsible for inspecting public or private institutions providing long-term care to recipients of medical assistance to determine compliance with health or safety standards. Former par. 4 redesignated (5). See Effective Date of 1972 Amendment note below.

Pub. L. 92–603, §235(a), redesignated former par. (3) as (4).

Subsec. (a)(5). Pub. L. 92–603, §299E(a), added par. (5). Former par. (5) redesignated (6).

Pub. L. 92–603, §249B, redesignated former par. (4) as (5).

Subsec. (a)(6). Pub. L. 92–603, §299E, redesignated former par. (5) as (6).

Subsec. (b)(1). Pub. L. 92–603, §295, struck out par. (1) which related to amount of quarterly expenditures exceeding average of total expenditures for each quarter of fiscal year ending June 30, 1965.

Subsec. (b)(3). Pub. L. 92–603, §221(c)(6), added par. (3).

Subsec. (e). Pub. L. 92–603, §230, repealed subsec. (e) which related to furnishing for comprehensive care and services by July 1, 1977.

Subsec. (g). Pub. L. 92–603, §§207(a)(1), 278(b)(1), added subsec. (g) and substituted ''skilled nursing facility'' for ''skilled nursing home'' and ''skilled nursing facilities'' for ''skilled nursing homes'' wherever appearing.

Subsec. (h). Pub. L. 92–603, §§207(a)(1), 278(b)(1)(5), added subsec. (h) and substituted ''skilled nursing facility'' for ''skilled nursing home'' wherever appearing.

Subsec. (i). Pub. L. 92–603, §§224(c), 229(c), 233(c), 237(a)(1), 278(b)(7), added subsec. (i) and substituted ''skilled nursing facility'' for ''skilled nursing home'' wherever appearing.

Subsec. (j). Pub. L. 92–603, §290, added subsec. (j) relating to orders for suspension of payment.

Pub. L. 92–603, §§225, 278(b)(16), added subsec. (j) relating to skilled nursing facilities services, and substituted ''skilled nursing facility for ''skilled nursing home'' wherever appearing.

Subsec. (k). Pub. L. 92–603, §226(e), added subsec. (k).

1969—Subsec. (e). Pub. L. 91–56 extended from July 1, 1975, to July 1, 1977, the date by which comprehensive care and services for eligible individuals must be made available for a State to be eligible for payments.

1968—Subsec. (a)(1). Pub. L. 90–248, §222(d), substituted ''and, except in the case of individuals sixty-five years of age or older who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums'' for ''and other insurance premiums''.

Pub. L. 90–248, §241(f)(5), struck out ''IV,'' after ''I,'' and inserted ''or part A of subchapter IV of this chapter,'' after ''XVI of this chapter,''.

Subsec. (a)(2). Pub. L. 90–248, §225(a), substituted ''of the State agency or any other public agency'' for ''of the State agency (or of the local agency administering the State plan in the political subdivision)''.

Subsec. (b). Pub. L. 90–248, §222(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(2). Pub. L. 90–364 substituted ''1969'' for ''1967''.

Subsec. (d)(2). Pub. L. 90–248, §229(c), provided for treatment of expenditures for which payments were made to the State under subsec. (a) as an overpayment to the extent that the State or local agency administering the plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1396a(a)(25) of this title.

Subsec. (f). Pub. L. 90–248, §220(a), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13602(b) of Pub. L. 103–66 effective as if included in enactment of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, see section 13602(d)(1) of Pub. L. 103–66, set out as a note under section 1396r–8 of this title.

Section 13604(b) of Pub. L. 103–66 provided that:

''(1) Subject to paragraph (2), the amendments made by subsection (a) [amending this section] shall apply as if included in the enactment of OBRA–1986 [Pub. L. 99–509].

''(2) The Secretary of Health and Human Services shall not disallow expenditures made for the care and services described in section 1903(v)(2)(C) of the Social Security Act [subsec. (v)(2)(C) of this section], as added by subsection (a), furnished before the date of the enactment of this Act [Aug. 10, 1993].''

Amendment by section 13622(a)(2) of Pub. L. 103–66 applicable to items and services furnished on or after Oct. 1, 1993, see section 13622(d)(3) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Section 13624(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to referrals made on or after December 31, 1994.''

Section 13631(h)(2) of Pub. L. 103–66 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to amounts expended for vaccines administered on or after October 1, 1993.''

Amendment by section 13631(c) of Pub. L. 103–66 applicable to payments under State plans approved under this subchapter for calendar quarters beginning on or after Oct. 1, 1994, see section 13631(i) of Pub. L. 103–66, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1991 AMENDMENT

Amendments by section 2(a), (b)(2) of Pub. L. 102–234 effective Jan. 1, 1992, without regard to whether or not

regulations have been promulgated to carry out such amendments by such date, see section 2(c)(1) of Pub. L. 102–234, set out as a note under section 1396a of this title.

Amendment by section 3(b)(2)(B) of Pub. L. 102–234 effective Jan. 1, 1992, see section 3(e)(1) of Pub. L. 102–234, set out as a note under section 1396a of this title.

Section 4(b) of Pub. L. 102–234 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to fiscal years ending after the date of the enactment of this Act [Dec. 12, 1991].''

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by section 4402(b), (d)(3) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4402 of Pub. L. 101–508 have been promulgated by such date, see section 4402(e) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4601(a)(3)(A) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4601 of Pub. L. 101–508 have been promulgated by such date, see section 4601(b) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4701(c) of Pub. L. 101–508 provided that: ''The amendment made by subsection (b) [amending this section and section 1396a of this title] shall take effect on January 1, 1991.''

Amendment by section 4704(b)(1), (2) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, see section 4704(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4711(c)(2) of Pub. L. 101–508 applicable to civil money penalties imposed after Nov. 5, 1990, see section 4711(e)(2)(B) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4731(c) of Pub. L. 101–508 provided that: ''The amendments made by subsections (a) and (b)(2) [amending this section] shall apply with respect to contract years beginning on or after January 1, 1992, and the amendments made by subsection (b)(1) [amending section 1320a–7a of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Amendment by section 4751(b)(1) of Pub. L. 101–508 applicable with respect to services furnished on or after first day of first month beginning more than 1 year after Nov. 5, 1990, see section 4751(c) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4752(b)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to contract years beginning after the date of the establishment of the system described in section 1902(x) of the Social Security Act [section 1396a(x) of this title].''

Section 4801(a)(9) of Pub. L. 101–508 provided that: ''Except as provided in paragraph (6), the amendments made by this subsection [amending this section and section 1396r of this title] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Section 4801(e)(16)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall apply with respect to actions initiated on or after the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6401(b) of Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990, with respect to eligibility for medical assistance on or after such date, without regard to whether or not final regulations to carry out the amendments by section 6401 of Pub. L. 101–239 have been promulgated by such date, see section 6401(c) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6901(b)(5)(A) of Pub. L. 101–239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 6901(b)(6) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 608(d)(26)(K)(ii) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 608(f)(4) of Pub. L. 100–485 effective Oct. 13, 1988, see section 608(g)(2) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 202(h)(2) of Pub. L. 100–360 applicable to items dispensed on or after Jan. 1, 1990, see section 202(m)(1) of Pub. L. 100–360, set out as a note under section 1395u of this title.

Section 301(f) of Pub. L. 100–360 provided that the amendment made by that section is effective as though included in the enactment of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509.

Amendment by section 302(c)(3) of Pub. L. 100–360 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1989, with respect to eligibility for medical assistance on or after that date, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, see section 302(f) of Pub. L. 100–360, set out as a note under section 1396a of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(a)(3)(A), (B)(iii), (k)(6)(B)(x), (7)(A), (D), (10)(D), (G)(ii) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(k)(12)(B) of Pub. L. 100–360 provided that: ''The amendment made by subparagraph (A) [amending this section] shall apply to actions occurring on or after the date of the enactment of this Act [July 1, 1988].''

Section 411(k)(13)(B) of Pub. L. 100–360 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 4118(d)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall be effective as if included in the enactment of section 9507 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Amendment by section 4118(h)(1) of Pub. L. 100–203 applicable to costs incurred after Dec. 22, 1987, see section 4118(h)(3) of Pub. L. 100–203, as amended, set out as a note under section 1396a of this title.

Amendments by sections 4211(d)(1), (g), (i), 4212(c)(1), (2), (d)(1), (e)(2) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by section 4212(d)(1) of Pub. L. 100–203 not applicable until such date as of which the State has

specified the resident assessment instrument under section 1396r(e)(5) of this title, and the State has begun conducting surveys under section 1396r(g)(2) of this title, see section 4212(d)(4) of Pub. L. 100–203, set out as a note under section 1396a of this title.

Amendment by section 4213(b)(2) of Pub. L. 100–203 applicable to payments under this subchapter for calendar quarters beginning on or after Dec. 22, 1987, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, see section 4214(b)(1) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–603 effective Oct. 1, 1987, see section 121(c)(2) of Pub. L. 99–603, set out as a note under section 502 of this title.

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 9401(e)(2) of Pub. L. 99–509 applicable to medical assistance furnished in calendar quarters beginning on or after Apr. 1, 1987, without regard to whether of not final regulations to carry out such amendment have been promulgated by such date, see section 9401(f) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9403(g)(2) of Pub. 1. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9403(h) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9406(a) of Pub. L. 99–509 applicable, except as otherwise provided, to medical assistance furnished to aliens on or after Jan. 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9406(c) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9407(c) of Pub. L. 99–509 applicable to ambulatory prenatal care furnished in calendar quarters beginning on or after Apr. 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9407(d) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9431(b)(2) of Pub. L. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9431(c) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Section 9434(a)(3) of Pub. L. 99–509 provided that:

''(A) The amendments made by paragraph (1) [amending this section] shall take effect 6 months after the date of the enactment of this Act [Oct. 21, 1986].

''(B) The amendment made by paragraph (2) [amending this section] shall take effect on the date of the enactment of this Act and shall apply to contracts entered into, renewed, or extended after the end of the 30-day period beginning on the date of the enactment of this Act.''

Amendment by section 9503(b), (f) of Pub. L. 99–272 applicable to calendar quarters beginning on or after Apr. 7, 1986, except as otherwise provided, see section 9503(g)(1), (2) of Pub. L. 99–272, set out as a note under section 1396a of this title.

Section 9507(b) of Pub. L. 99–272 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to medical assistance furnished on or after January 1, 1987.''

Section 9512(b) of Pub. L. 99–272 provided that: ''The amendments made by this section [amending this section] shall apply to overpayments identified for quarters beginning on or after October 1, 1985.''

Section 9517(c)(2), (3) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(e), Oct. 21, 1986, 100 Stat. 2070; Pub. L. 99–514, title XVIII, §1895(c)(4), Oct. 22, 1986, 100 Stat. 2935; Pub. L. 101–508, title IV, §4734, Nov. 5, 1990, 104 Stat. 1388–196, provided that:

''(2)(A) Except as provided in subparagraph (B) and in paragraph (3), the amendments made by paragraph (1) [amending this section] shall apply to expenditures incurred for health insuring organizations which first become operational on or after January 1, 1986. For purposes of this paragraph, a health insuring organization is not considered to be operational until the date on which it first enrolls patients.

''(B) In the case of a health insuring organization—

''(i) which first becomes operational on or after January 1, 1986, but

''(ii) for which the Secretary of Health and Human Services has waived, under section 1915(b) of the Social Security Act [section 1396n(b) of this title] and before such date, certain requirements of section 1902 of such Act [section 1396a of this title],

clauses (ii) and (vi) of section 1903(m)(2)(A) of such Act [subsec. (m)(2)(A)(ii) and (vi) of this section] shall not apply during the period for which such waiver is effective.

''(C) In the case of the Hartford Health Network, Inc., clauses (ii) and (vi) of section 1903(m)(2)(A) of the Social Security Act shall not apply during the period for which a waiver by the Secretary of Health and Human Services, under section 1915(b) of such Act, of certain requirements of section 1902 of such Act is in effect (pursuant to a request for a waiver under section 1915(b) of such Act submitted before January 1, 1986).

''(D) Nothing in section 1903(m)(1)(A) of the Social Security Act shall be construed as requiring a health-insuring organization to be organized under the health maintenance organization laws of a State.

''(3)(A) Subject to subparagraph (C), in the case of up to 3 health insuring organizations which are described in subparagraph (B), which first become operational on or after January 1, 1986, and which are designated by the Governor, and approved by the Legislature, of California, the amendments made by paragraph (1) shall not apply.

''(B) A health insuring organization described in this subparagraph is one that—

''(i) is operated directly by a public entity established by a county government in the State of California under a State enabling statute;

''(ii) enrolls all medicaid beneficiaries residing in the county in which it operates;

''(iii) meets the requirements for health maintenance organizations under the Knox-Keene Act (Cal. Health and Safety Code, section 1340 et seq.) and the Waxman-Duffy Act (Cal. Welfare and Institutions Code, section 14450 et seq.);

''(iv) assures a reasonable choice of providers, which includes providers that have historically served medicaid beneficiaries and which does not impose any restriction which substantially impairs access to covered services of adequate quality where medically necessary;

''(v) provides for a payment adjustment for a disproportionate share hospital (as defined under State law consistent with section 1923 of the Social Security Act [section 1396r–4 of this title]) in a manner consistent with the requirements of such section; and

''(vi) provides for payment, in the case of childrens' hospital services provided to medicaid beneficiaries who are under 21 years of age, who are children with special health care needs under title V of the Social Security Act [subchapter V of this chapter], and who

are receiving care coordination services under such title, at rates determined by the California Medical Assistance Commission.

''(C) Subparagraph (A) shall not apply with respect to any period for which the Secretary of Health and Human Services determines that the number of medicaid beneficiaries enrolled with health insuring organizations described in subparagraph (B) exceeds 10 percent of the number of such beneficiaries in the State of California.

''(D) In this paragraph, the term 'medicaid beneficiary' means an individual who is entitled to medical assistance under the State plan under title XIX of the Social Security Act [this subchapter], other than a qualified medicare beneficiary who is only entitled to such assistance because of section 1902(a)(10)(E) of such title [section 1396a(a)(10)(E) of this title].''

Section 9518(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to payment under section 1903(a) of the Social Security Act [subsec. (a) of this section] for calendar quarters beginning on or after October 1, 1982.''

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98–617 effective as if originally included in the Deficit Reduction Act of 1984, Pub. L. 98–369, see section 3(c) of Pub. L. 98–617, set out as a note under section 1395f of this title.

Amendment by section 2303(g)(2) of Pub. L. 98–369 applicable to payments for calendar quarters beginning on or after Oct. 1, 1984, but not applicable to clinical diagnostic laboratory tests furnished to inpatients of a provider operating under a waiver granted pursuant to section 602(k) of Pub. L. 98–21, set out as a note under section 1395y of this title, see section 2303(j)(2) and (3) of Pub. L. 98–369, set out as a note under section 1395*l* of this title.

Section 2363(c) of Pub. L. 98–369 provided that: ''The amendments made by subsection (a) [amending this section and section 1396a of this title] apply to calendar quarters beginning on or after the date of the enactment of this Act [July 18, 1984], except that, in the case of individuals admitted to skilled nursing facilities before such date, the amendments made by such subsection shall not require recertifications sooner or more frequently than were required under the law in effect before such date.''

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 133(b) of Pub. L. 97–248 provided that: ''The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Sept. 3, 1982].''

Amendment by section 137(a)(1), (2) of Pub. L. 97–248 effective as if originally included in the provision of the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, to which such amendment relates, see section 137(d)(1) of Pub. L. 97–248, set out as a note under section 1396a of this title.

Amendment by section 137(b)(11)–(16), (27) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

Section 137(g) of Pub. L. 97–248 provided that the amendment made by that section is effective Oct. 1, 1982.

Amendment by section 146(b) of Pub. L. 97–248 effective with respect to contracts entered into or renewed on or after Sept. 3, 1982, see section 149 of Pub. L. 97–248, set out as an Effective Date note under section 1320c of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2101(a)(2) of Pub. L. 97–35 applicable only to services furnished by a hospital during any accounting year beginning on or after Oct. 1, 1981, see section 2101(c) of Pub. L. 97–35, set out as an Effective Date note under section 1395uu of this title.

Section 2103(b)(2) of Pub. L. 97–35 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to amounts expended on or after October 1, 1981.''

Amendment by section 2113(n) of Pub. L. 97–35 applicable to agreements with Professional Standards Review Organizations entered into on or after Oct. 1, 1981, see section 2113(*o*) of Pub. L. 97–35, set out as a note under section 1396a of this title.

Section 2161(c)(1) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, §137(a)(2), Sept. 3, 1982, 96 Stat. 376, provided that the amendment made by such section 2161(c)(1) is effective for calendar quarters beginning on or after Oct. 1, 1984.

Section 2161(c)(2) of Pub. L. 97–35, as amended by Pub. L. 97–248, title I, §137(a)(2), Sept. 3, 1982, 96 Stat. 376, provided that the amendment made by such section 2161(c)(2) is effective after payments for the first quarter of fiscal year 1985.

Section 2164(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to tests occurring on or after October 1, 1981.''

Amendment by section 2174(b) of Pub. L. 97–35 applicable to services furnished on or after Oct. 1, 1981, see section 2174(c) of Pub. L. 97–35, set out as a note under section 1396a of this title.

Amendment by section 2178(a) of Pub. L. 97–35 applicable with respect to services furnished, under a State plan approved under this subchapter, on or before Oct. 1, 1981, except that such amendments not applicable with respect to services furnished by a health maintenance organization under a contract with a State entered into under this subchapter before Oct. 1, 1981, unless the organization requests that such amendments apply and the Secretary and the State agency agree to such request, see section 2178(c) of Pub. L. 97–35, set out as a note under section 1396a of this title.

Section 2183(b) of Pub. L. 97–35 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to payments made to States for calendar quarters beginning on or after October 1, 1981.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 961(b) of Pub. L. 96–499 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective with respect to expenditures for services furnished on or after October 1, 1980.''

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by section 3(c)(2) of Pub. L. 95–142 effective Jan. 1, 1978, see section 3(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–3 of this title.

Amendment by section 8(c) of Pub. L. 95–142 effective with respect to contracts, agreements, etc., made on and after the first day of the fourth month beginning after Oct. 25, 1977, see section 8(e) of Pub. L. 95–142, set out as an Effective Date note under section 1320a–5 of this title.

Section 10(b) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after the date of the enactment of this Act [Oct. 25, 1977].''

Section 11(c) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to medical assistance

provided, under a State plan approved under title XIX of the Social Security Act [this subchapter], on and after January 1, 1978.''

Section 17(e)(1) of Pub. L. 95–142 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after September 30, 1977.''

Section 20(c) of Pub. L. 95–142, as amended by Pub. L. 95–292, §8(e), June 13, 1978, 92 Stat. 316, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1396a of this title] shall be effective on October 1, 1977, and the Secretary of Health, Education, and Welfare shall promptly adjust payments made to States under section 1903 of the Social Security Act [this section] to reflect the changes made by such amendments.

''(2) The amount of any reduction in the Federal medical assistance percentage of a State, otherwise required to be imposed under section 1903(g)(1) of the Social Security Act [subsec. (g)(1) of this section] because of an unsatisfactory or invalid showing made by the State with respect to a calendar quarter beginning on or after January 1, 1977, shall be determined under such section as amended by this section. Subparagraph (B) of paragraph (4) of section 1903(g) of such Act [subsec. (g)(4)(B) of this section], as added by this section, shall apply to any showing made by a State under such section with respect to a calendar quarter beginning on or after January 1, 1977.''

Section 105(a)(3) of Pub. L. 95–83 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to payments under title XIX of the Social Security Act [this subchapter] to States for services provided—

''(A) after October 8, 1976, under contracts under such title [this subchapter] entered into or renegotiated after such date, or

''(B) after the expiration of the one-year period beginning on such date,

whichever occurs first.''

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94–552 effective Jan. 1, 1976, see section 2 of Pub. L. 94–552, set out as a note under section 1396a of this title.

Section 202(b) of Pub. L. 94–460 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to payments under title XIX of the Social Security Act [this subchapter] to States for services provided—

''(1) after the date of enactment of subsection (a) [Oct. 8, 1976] under contracts under such title entered into or renegotiated after such date, or

''(2) after the expiration of the 1-year period beginning on such date of enactment,

whichever occurs first.''

EFFECTIVE DATE OF 1975 AMENDMENT

Section 110(b) of Pub. L. 94–182 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the first day of the first calendar month which begins not less than 90 days after the date of enactment of this Act [Dec. 31, 1975].''

Amendment by section 111(b) of Pub. L. 94–182 effective January 1, 1976, except as otherwise provided therein, see section 111(c) of Pub. L. 94–182, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1973 AMENDMENTS

Amendment by section 13(a)(11), (12) of Pub. L. 93–233 effective with respect to payments under this section for calendar quarters commencing after Dec. 31, 1973, see section 13(d) of Pub. L. 93–233, set out as a note under section 1396a of this title.

Amendment by section 18(u) of Pub. L. 93–233 effective July 1, 1973, see section 18(z–3)(4) of Pub. L. 93–233, set out as a note under section 1396a of this title.

Section 234(b) of Pub. L. 93–66 provided that: ''The amendment made by subsection (a) [amending this section] shall be applicable in the case of expenditures for skilled nursing services and for intermediate care facility services furnished in calendar quarters which begin after December 31, 1972.''

EFFECTIVE DATE OF 1972 AMENDMENT

Section 207(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall, except as otherwise provided therein, be effective July 1, 1973.''

Amendment by section 226(e) of Pub. L. 92–603 effective with respect to services provided on or after July 1, 1973, see section 226(f) of Pub. L. 92–603, set out as an Effective Date note under section 1395mm of this title.

Amendment by section 233(c) of Pub. L. 92–603 applicable with respect to services furnished by hospitals in accounting periods beginning after Dec. 31, 1972, see section 233(f) of Pub. L. 92–603, set out as a note under section 1395f of this title. See, also, section 16 of Pub. L. 93–233, set out as an Effective Date note under section 1395f of this title.

Section 235(b) of Pub. L. 92–603 provided that: ''The amendments made by subsection (a) [amending this section] shall apply with respect to expenditures under State plans approved under title XIX of the Social Security Act [this subchapter], made after June 30, 1971.''

Section 237(d)(1) of Pub. L. 92–603 provided that: ''The amendments made by subsections (a)(1) and (b) [amending this section and section 706 of this title] shall apply with respect to services furnished in calendar quarters beginning after June 30, 1973.''

Section 249B of Pub. L. 92–603, as amended by Pub. L. 93–368, §8, Aug. 7, 1974, 88 Stat. 422; Pub. L. 95–83, title III, §309(b), Aug. 1, 1977, 91 Stat. 396, provided that the amendment made by that section is effective for period beginning Oct. 1, 1972, and ending Sept. 30, 1980.

EFFECTIVE DATE OF 1968 AMENDMENTS

Section 220(b) of Pub. L. 90–248 provided that:

''(b)(1) In the case of any State whose plan under title XIX of the Social Security Act [this subchapter] is approved by the Secretary of Health, Education, and Welfare under section 1902 [section 1396a of this title] after July 25, 1967, the amendment made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after the date of enactment of this Act [Jan. 2, 1968].

''(2) In the case of any State whose plan under title XIX of the Social Security Act [this subchapter] was approved by the Secretary of Health, Education, and Welfare under section 1902 of the Social Security Act [section 1396a of this title] prior to July 26, 1967, amendments made by subsection (a) [amending this section] shall apply with respect to calendar quarters beginning after June 30, 1968, except that—

''(A) with respect to the third and fourth calendar quarters of 1968, such subsection shall be applied by substituting in subsection (f) of section 1903 of the Social Security Act [subsec. (f) of this section] 150 percent for 133½ percent each time such latter figure appears in such subsection (f), and

''(B) with respect to all calendar quarters during 1969, such subsection shall be applied by substituting in subsection (f) of section 1903 of such Act [subsec. (f) of this section] 140 percent for 133½ percent each time such latter figure appears in such subsection (f).''

Section 222(d) of Pub. L. 90–248, as amended by section 303(a)(2) of Pub. L. 90–364, provided that the amendment made by such section 222(d) is effective with respect to calendar quarters beginning after December 31, 1969.

Section 225(b) of Pub. L. 90–248 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to expenditures made after December 31, 1967.''

Section 303(b) of Pub. L. 90–364 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective with respect to calendar quarters beginning after December 31, 1967.''

REGULATIONS

Section 5 of Pub. L. 102–234 provided that:

''(a) IN GENERAL.—Subject to subsection (b), the Secretary of Health and Human Services shall issue such regulations (on an interim final or other basis) as may be necessary to implement this Act [see Short Title of 1991 Amendment note set out under section 1305 of this title] and the amendments made by this Act.

''(b) REGULATIONS CHANGING TREATMENT OF INTERGOVERNMENTAL TRANSFERS.—The Secretary may not issue any interim final regulation that changes the treatment (specified in section 433.45(a) of title 42, Code of Federal Regulations) of public funds as a source of State share of financial participation under title XIX of the Social Security Act [this subchapter], except as may be necessary to permit the Secretary to deny Federal financial participation for public funds described in section 1903(w)(6)(A) of such Act [subsection (w)(6)(A) of this section] (as added by section 2(a) of this Act) that are derived from donations or taxes that would not otherwise be recognized as the non-Federal share under section 1903(w) of such Act.

''(c) CONSULTATION WITH STATES.—The Secretary shall consult with the States before issuing any regulations under this Act.''

Secretary of Health and Human Services to promulgate final regulations necessary to carry out subsec. (r)(6)(j) of this section within 6 months after Apr. 7, 1986, see section 9503(c) of Pub. L. 99–272, set out as a note under section 1396a of this title.

TREATMENT OF DONATION OR TAX PROCEEDS PRIOR TO EFFECTIVE DATE OF SUBSECTION (w)

Section 2(c)(2) of Pub. L. 102–234 provided that: ''Except as specifically provided in section 1903(w) of the Social Security Act [subsec. (w) of this section] and notwithstanding any other provision of such Act [this chapter], the Secretary of Health and Human Services shall not, with respect to expenditures prior to the effective date specified in section 1903(w)(1)(F) of such Act, disallow any claim submitted by a State for, or otherwise withhold Federal financial participation with respect to, amounts expended for medical assistance under title XIX of the Social Security Act [this subchapter] by reason of the fact that the source of the funds used to constitute the non-Federal share of such expenditures is a tax imposed on, or a donation received from, a health care provider, or on the ground that the amount of any donation or tax proceeds must be credited against the amount of the expenditure.''

TEMPORARY INCREASE IN FEDERAL MATCH FOR ADMINISTRATIVE COSTS

Section 4401(b)(2) of Pub. L. 101–508 provided that: ''The per centum to be applied under section 1903(a)(7) of the Social Security Act [subsec. (a)(7) of this section] for amounts expended during calendar quarters in fiscal year 1991 which are attributable to administrative activities necessary to carry out section 1927 (other than subsection (g)) of such Act [section 1396r–8 of this title] shall be 75 percent, rather than 50 percent; after fiscal year 1991, the match shall revert back to 50 percent.''

REPORT ON ERRORS IN ELIGIBILITY DETERMINATIONS; ERROR RATE TRANSITION RULES

Section 4607 of Pub. L. 101–508 directed Secretary of Health and Human Services to report to Congress, by not later than July 1, 1991, on error rates by States in determining eligibility of individuals described in subparagraph (A) or (B) of section 1396a(*l*)(1) of this title for medical assistance under plans approved under this subchapter, and directed that there should not be taken into account, for purposes of subsec. (u) of this section, payments and expenditures for medical assistance attributable to medical assistance for individuals described in such subparagraph (A) or (B), and made on or after July 1, 1989, and before the first calendar quarter that begins more than 12 months after the date of submission of the Secretary's report.

MEDICALLY NEEDY INCOME LEVELS FOR CERTAIN 1-MEMBER FAMILIES

Section 4718 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—For purposes of section 1903(f)(1)(B) [probably means subsec. (f)(1)(B) of this section], for payments made before, on, or after the date of the enactment of this Act [Nov. 5, 1990], a State described in subparagraph (B) may use, in determining the 'highest amount which would ordinarily be paid to a family of the same size' (under the State's plan approved under part A of title IV of such Act [probably means part A of subchapter IV of this chapter]) in the case of a family consisting only of one individual and without regard to whether or not such plan provides for aid to families consisting only of one individual, an amount reasonably related to the highest money payment which would ordinarily be made under such a plan to a family of two without income or resources.

''(b) STATES COVERED.—Subsection (a) shall only apply to a State the State plan of which (under title XIX of the Social Security Act [this subchapter]) as of June 1, 1989, provided for the policy described in such paragraph. For purposes of the previous sentence, a State plan includes all the matter included in a State plan under section 2373(c)(5) of the Deficit Reduction Act of 1984 [Pub. L. 98–369, set out as a note under section 1396a of this title] (as amended by section 9 of the Medicare and Medicaid Patient and Program Protection Act of 1987 [Pub. L. 100–93]).''

DAY HABILITATION AND RELATED SERVICES

Section 6411(g) of Pub. L. 101–239 provided that:

''(1) PROHIBITION OF DISALLOWANCE PENDING ISSUANCE OF REGULATIONS.—Except as specifically permitted under paragraph (3), the Secretary of Health and Human Services may not—

''(A) withhold, suspend, disallow, or deny Federal financial participation under section 1903(a) of the Social Security Act [subsec. (a) of this section] for day habilitation and related services under paragraph (9) or (13) of section 1905(a) of such Act [section 1396d(a)(9), (13) of this title] on behalf of persons with mental retardation or with related conditions pursuant to a provision of its State plan as approved on or before June 30, 1989, or

''(B) withdraw Federal approval of any such State plan provision.

''(2) REQUIREMENTS FOR REGULATION.—A final regulation described in this paragraph is a regulation, promulgated after a notice of proposed rule-making and a period of at least 60 days for public comment, that—

''(A) specifies the types of day habilitation and related services that a State may cover under paragraph (9) or (13) of section 1905(a) of the Social Security Act on behalf of persons with mental retardation or with related conditions, and

''(B) any requirements respecting such coverage.

''(3) PROSPECTIVE APPLICATION OF REGULATION.—If the Secretary promulgates a final regulation described in paragraph (2) and the Secretary determines that a State plan under title XIX of the Social Security Act [this subchapter] does not comply with such regulation, the Secretary shall notify the State of the determination and its basis, and such determination shall not apply to day habilitation and related services furnished before the first day of the first calendar quarter beginning after the date of the notice to the State.''

NURSE AIDE TRAINING AND EVALUATION PROGRAMS; ALLOCATION OF COSTS BEFORE OCTOBER 1, 1990

Section 6901(b)(5)(B) of Pub. L. 101–239 provided that: ''In making payments under section 1903(a)(2)(B) of the Social Security Act [subsec. (a)(2)(B) of this section] for amounts expended for nurse aide training and competency evaluation programs, and competency evaluation programs, described in section 1919(e)(1) of such Act [section 1396r(e)(1) of this title], in the case of activities conducted before October 1, 1990, the Secretary of Health and Human Services shall not take into ac-

count, or allocate amounts on the basis of, the proportion of residents of nursing facilities that is entitled to benefits under title XVIII or XIX of such Act [this subchapter and subchapter XVIII of this chapter].''

CLARIFICATION OF FEDERAL MATCHING RATE FOR SURVEY AND CERTIFICATION ACTIVITIES

Section 6901(d)(2) of Pub. L. 101–239 provided that: ''During the period before October 1, 1990, the Federal percentage matching payment rate under section 1903(a) of the Social Security Act [subsec. (a) of this section] for so much of the sums expended under a State plan under title XIX of such Act [this subchapter] as are attributable to compensation or training of personnel responsible for inspecting public or private skilled nursing or intermediate care facilities to individuals receiving medical assistance to determine compliance with health or safety standards shall be 75 percent.''

QUALITY CONTROL TRANSITION PROVISIONS

Section 608(h) of Pub. L. 100–485 provided that: ''There shall not be taken into account, for purposes of section 1903(u) of the Social Security Act [subsec. (u) of this section], payments and expenditures for medical assistance which are made on or after January 1, 1989, and before July 1, 1989, and which are attributable to medicare-cost [sic] sharing for qualified medicare beneficiaries (as defined in section 1905(p) of such Act [section 1396d(p) of this title]).''

DELAY QUALITY CONTROL SANCTIONS FOR MEDICAID

Section 4117 of Pub. L. 100–203 provided that: ''The Secretary of Health and Human Services shall not, prior to July 1, 1988, implement any reductions in payments to States pursuant to section 1903(u) of the Social Security Act [subsec. (u) of this section] (or any provision of law described in subsection (c) of section 133 of the Tax Equity and Fiscal Responsibility Act of 1982 [section 133(c) of Pub. L. 97–248, set out below]).''

TEMPORARY TECHNICAL ERROR DEFINITION

Section 4118(n) of Pub. L. 100–203 provided that: ''For purposes of section 1903(u)(1)(E)(ii) of the Social Security Act [subsec. (u)(1)(E)(ii) of this section], effective for the period beginning on the date of enactment of this Act [Dec. 22, 1987] and ending December 31, 1988, a 'technical error' is an error in eligibility condition (such as assignment of social security numbers and assignment of rights to third-party benefits as a condition of eligibility) that, if corrected, would not result in a difference in the amount of medical assistance paid.''

ENHANCED FUNDING FOR NURSE AIDE TRAINING

Section 4211(d)(2) of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(*l*)(3)(F), July 1, 1988, 102 Stat. 803, provided that: ''For the 8 calendar quarters (beginning with the calendar quarter that begins on July 1, 1988), with respect to payment under section 1903(a)(2)(B) of the Social Security Act [subsec. (a)(2)(B) of this section] to a State for additional amounts expended by the State under its plan approved under title XIX of such Act [this subchapter] for nursing aide training and competency evaluation programs, and competency evaluation programs, described in section 1919(e)(1) of such title [section 1396r(e)(1) of this title], any reference to '50 percent' is deemed a reference to the sum of the Federal medical assistance percentage (determined under section 1905(b) of such Act [section 1396d(b) of this title]) plus 25 percentage points, but not to exceed 90 percent.''

EXPENSES INCURRED FOR REVIEW OF CARE PROVIDED TO RESIDENTS OF NURSING FACILITIES

Section 4212(c)(3) of Pub. L. 100–203 provided that: ''For purposes of section 1903(a) of the Social Security Act [subsec. (a) of this section], proper expenses incurred by a State for medical review by independent professionals of the care provided to residents of nursing facilities who are entitled to medical assistance under title XIX of such Act [this subchapter] shall be reimbursable as expenses necessary for the proper and efficient administration of the State plan under that title.''

EFFECTIVENESS OF LAWS LIMITING FEDERAL FINANCIAL PARTICIPATION WITH RESPECT TO ERRONEOUS PAYMENTS MADE BY STATES UNDER A STATE PLAN APPROVED UNDER THIS SUBCHAPTER

Section 133(c) of Pub. L. 97–248 provided that: ''No provision of law limiting Federal financial participation with respect to erroneous payments made by States under a State plan approved under title XIX of the Social Security Act [this subchapter] (including any provision contained in, or incorporated by reference into, any appropriation Act or resolution making continuing appropriations), other than the limitations contained in section 1903 of such Act [this section], shall be effective with respect to payments to States under such section 1903 for quarters beginning on or after October 1, 1982, unless such provision of law is enacted after the date of the date of the enactment of this Act [Sept. 3, 1982] and expressly provides that such limitation is in addition to or in lieu of the limitations contained in section 1903 of the Social Security Act.''

MEDICAID PAYMENTS FOR INDIAN HEALTH SERVICE FACILITIES TO BE PAID ENTIRELY BY FEDERAL FUNDS; EXCLUSION OF PAYMENTS TO STATES IN COMPUTATION OF TARGET AMOUNT OF FEDERAL MEDICAID EXPENDITURES

Pub. L. 97–92, §§ 102, 118, Dec. 15, 1981, 95 Stat. 1193, 1197, as amended by Pub. L. 97–161, Mar. 31, 1982, 96 Stat. 22, provided, for the period Dec. 15, 1981, to not later than Sept. 30, 1982, that: ''Notwithstanding section 1903(s) of the Social Security Act [subsec. (s) of this section], all medicaid payments to the States for Indian health service facilities as defined by section 1911 of the Social Security Act [section 1396j of this title] shall be paid entirely by Federal funds, and notwithstanding section 1903(t) of the Social Security Act [subsec. (t) of this section], all medicaid payments to the States for Indian health service facilities shall not be included in the computation of the target amount of Federal medicaid expenditures.''

PROMULGATION OF REGULATIONS FOR IMPLEMENTATION OF AMENDMENTS BY SECTION 17 OF PUB. L. 95–142

Section 17(e)(2) of Pub. L. 95–142 required Secretary of Health, Education, and Welfare to establish regulations, not later than 90 days after Oct. 25, 1977, to carry out amendments made by section 17 (amending sections 1395b–1 and 1396b of this title). See section 1302 of this title.

DEFERRAL OF IMPLEMENTATION OF DECREASES IN MATCHING FUNDS

Section 6 of Pub. L. 95–59, June 30, 1977, 91 Stat. 255, provided that: ''Notwithstanding the provisions of subsection (g) of section 1903 of the Social Security Act [subsec. (g) of this section], the amount payable to any State for the calendar quarters during the period commencing April 1, 1977, and ending September 30, 1977, on account of expenditures made under a State plan approved under title XIX of such Act [this subchapter], shall not be decreased by reason of the application of the provisions of such subsection with respect to any period for which such State plan was in operation prior to April 1, 1977.''

COMPREHENSIVE CARE AND SERVICES FOR ELIGIBLE INDIVIDUALS BY JULY 1, 1977; REQUIREMENT INAPPLICABLE FOR ANY PERIOD PRIOR TO JULY 1, 1971; REGULATIONS; ADVICE TO STATES

Section 2(b) of Pub. L. 91–56, which provided that subsection (e) of this section was inapplicable to the period

prior to July 1, 1971, and which authorized the Secretary to issue regulations, was repealed by Pub. L. 92–603, title II, § 230, Oct. 30, 1972, 86 Stat. 1410.

EXEMPTION OF PUERTO RICO, THE VIRGIN ISLANDS, AND GUAM FROM LIMITATIONS ON FEDERAL PAYMENTS FOR MEDICAL ASSISTANCE

Section 248(d) of Pub. L. 90–248 provided that: ''The amendment made by section 220(a) of this Act [amending this section] shall not apply in the case of Puerto Rico, the Virgin Islands, or Guam.''

NONDUPLICATION OF PAYMENTS TO STATES; LIMITATION ON INSTITUTIONAL CARE

Section 121(b) of Pub. L. 89–97, as amended by section 249D of Pub. L. 92–603, provided that: ''No payment may be made to any State under title I, IV, X, XIV, or XVI of the Social Security Act [subchapter I, IV, X, XIV, or XVI of this chapter] with respect to aid or assistance in the form of medical or any other type of remedial care for any period for which such State receives payments under title XIX of such Act [this subchapter], or for any period after December 31, 1969. After the date of enactment of the Social Security Amendments of 1972 [Oct. 30, 1972], Federal matching shall not be available for any portion of any payment by any State under title I, X, XIV, or XVI, or part A of title IV, of the Social Security Act [subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter] for or on account of any medical or any other type of remedial care provided by an institution to any individual as an inpatient thereof, in the case of any State which has a plan approved under title XIX of such Act [this subchapter], if such care is (or could be) provided under a State plan approved under title XIX of such Act [this subchapter] by an institution certified under such title XIX [this subchapter].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1315, 1320a–7, 1320b–7, 1320c–7, 1395i–3, 1396a, 1396e, 1396n, 1396*o*, 1396r, 1396r–1, 1396r–2, 1396r–4, 1396r–6, 1396r–7, 1396r–8, 1396t, 1786, 3058i of this title.

§ 1396c. Operation of State plans

If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this subchapter, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 1396a of this title; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(Aug. 14, 1935, ch. 531, title XIX, § 1904, as added July 30, 1965, Pub. L. 89–97, title I, § 121(a), 79 Stat. 351.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1316 of this title.

§ 1396d. Definitions

For purposes of this subchapter—

(a) Medical assistance

The term ''medical assistance'' means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance or, in the case of medicare cost-sharing with respect to a qualified medicare beneficiary described in subsection (p)(1) of this section, if provided after the month in which the individual becomes such a beneficiary) for individuals, and, with respect to physicians' or dentists' services, at the option of the State, to individuals (other than individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title) not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter, who are—

(i) under the age of 21, or, at the option of the State, under the age of 20, 19, or 18 as the State may choose,

(ii) relatives specified in section 606(b)(1) of this title with whom a child is living if such child is (or would, if needy, be) a dependent child under part A of subchapter IV of this chapter,

(iii) 65 years of age or older,

(iv) blind, with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,

(v) 18 years of age or older and permanently and totally disabled, with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,

(vi) persons essential (as described in the second sentence of this subsection) to individuals receiving aid or assistance under State plans approved under subchapter I, X, XIV, or XVI of this chapter,

(vii) blind or disabled as defined in section 1382c of this title, with respect to States not eligible to participate in the State plan program established under subchapter XVI of this chapter,

(viii) pregnant women,

(ix) individuals provided extended benefits under section 1396r–6 of this title,

(x) individuals described in section 1396a(u)(1) of this title, or

(xi) individuals described in section 1396a(z)(1) of this title,

but whose income and resources are insufficient to meet all of such cost—

(1) inpatient hospital services (other than services in an institution for mental diseases);

(2)(A) outpatient hospital services, (B) consistent with State law permitting such services, rural health clinic services (as defined in subsection (*l*)(1) of this section) and any other

ambulatory services which are offered by a rural health clinic (as defined in subsection (*l*)(1) of this section) and which are otherwise included in the plan, and (C) Federally-qualified health center services (as defined in subsection (*l*)(2) of this section) and any other ambulatory services offered by a Federally-qualified health center and which are otherwise included in the plan;

(3) other laboratory and X-ray services;

(4)(A) nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older; (B) early and periodic screening, diagnostic, and treatment services (as defined in subsection (r) of this section) for individuals who are eligible under the plan and are under the age of 21; and (C) family planning services and supplies furnished (directly or under arrangements with others) to individuals of child-bearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies;

(5)(A) physicians' services furnished by a physician (as defined in section 1395x(r)(1) of this title), whether furnished in the office, the patient's home, a hospital, or a nursing facility, or elsewhere, and (B) medical and surgical services furnished by a dentist (described in section 1395x(r)(2) of this title) to the extent such services may be performed under State law either by a doctor of medicine or by a doctor of dental surgery or dental medicine and would be described in clause (A) if furnished by a physician (as defined in section 1395x(r)(1) of this title);

(6) medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law;

(7) home health care services;

(8) private duty nursing services;

(9) clinic services furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician, including such services furnished outside the clinic by clinic personnel to an eligible individual who does not reside in a permanent dwelling or does not have a fixed home or mailing address;

(10) dental services;

(11) physical therapy and related services;

(12) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(13) other diagnostic, screening, preventive, and rehabilitative services, including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level;

(14) inpatient hospital services and nursing facility services for individuals 65 years of age or over in an institution for mental diseases;

(15) services in an intermediate care facility for the mentally retarded (other than in an institution for mental diseases) for individuals who are determined, in accordance with section 1396a(a)(31)(A) of this title, to be in need of such care;

(16) effective January 1, 1973, inpatient psychiatric hospital services for individuals under age 21, as defined in subsection (h) of this section;

(17) services furnished by a nurse-midwife (as defined in section 1395x(gg) of this title) which the nurse-midwife is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the nurse-midwife is under the supervision of, or associated with, a physician or other health care provider, and without regard to whether or not the services are performed in the area of management of the care of mothers and babies throughout the maternity cycle;

(18) hospice care (as defined in subsection (*o*) of this section);

(19) case management services (as defined in section 1396n(g)(2) of this title) and TB-related services described in section 1396a(z)(2)(F) of this title;

(20) respiratory care services (as defined in section 1396a(e)(9)(C) of this title);

(21) services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner (as defined by the Secretary) which the certified pediatric nurse practitioner or certified family nurse practitioner is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not the certified pediatric nurse practitioner or certified family nurse practitioner is under the supervision of, or associated with, a physician or other health care provider;

(22) home and community care (to the extent allowed and as defined in section 1396t of this title) for functionally disabled elderly individuals;

(23) community supported living arrangements services (to the extent allowed and as defined in section 1396u of this title);

(24) personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are (A) authorized for the individual by a physician in accordance with a plan of treatment or (at the option of the State) otherwise authorized for the individual in accordance with a service plan approved by the State, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, and (C) furnished in a home or other location; and

(25) any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary.[1]

except as otherwise provided in paragraph (16), such term does not include—

(A) any such payments with respect to care or services for any individual who is an inmate

[1] So in original. The period probably should be a semicolon.

of a public institution (except as a patient in a medical institution); or

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for mental diseases.

For purposes of clause (vi) of the preceding sentence, a person shall be considered essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under subchapter I, X, XIV, or XVI of this chapter), and such person is determined, under such a State plan, to be essential to the well-being of such individual. The payment described in the first sentence may include expenditures for medicare cost-sharing and for premiums under part B of subchapter XVIII of this chapter for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title, and, except in the case of individuals 65 years of age or older and disabled individuals entitled to health insurance benefits under subchapter XVIII of this chapter who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums for medical or any other type of remedial care or the cost thereof. No service (including counseling) shall be excluded from the definition of ''medical assistance'' solely because it is provided as a treatment service for alcoholism or drug dependency.

(b) Federal medical assistance percentage; State percentage; Indian health care percentage

The term ''Federal medical assistance percentage'' for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, and (2) the Federal medical assistance percentage for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 50 per centum. The Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of section 1301(a)(8)(B) of this title. Notwithstanding the first sentence of this section, the Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 1603 of title 25).

(c) Nursing facility

For definition of the term ''nursing facility'', see section 1396r(a) of this title.

(d) Intermediate care facility for mentally retarded

The term ''intermediate care facility for the mentally retarded'' means an institution (or distinct part thereof) for the mentally retarded or persons with related conditions if—

(1) the primary purpose of such institution (or distinct part thereof) is to provide health or rehabilitative services for mentally retarded individuals and the institution meets such standards as may be prescribed by the Secretary;

(2) the mentally retarded individual with respect to whom a request for payment is made under a plan approved under this subchapter is receiving active treatment under such a program; and

(3) in the case of a public institution, the State or political subdivision responsible for the operation of such institution has agreed that the non-Federal expenditures in any calendar quarter prior to January 1, 1975, with respect to services furnished to patients in such institution (or distinct part thereof) in the State will not, because of payments made under this subchapter, be reduced below the average amount expended for such services in such institution in the four quarters immediately preceding the quarter in which the State in which such institution is located elected to make such services available under its plan approved under this subchapter.

(e) Physicians' services

In the case of any State the State plan of which (as approved under this subchapter)—

(1) does not provide for the payment of services (other than services covered under section 1396a(a)(12) of this title) provided by an optometrist; but

(2) at a prior period did provide for the payment of services referred to in paragraph (1);

the term ''physicians' services'' (as used in subsection (a)(5) of this section) shall include services of the type which an optometrist is legally authorized to perform where the State plan specifically provides that the term ''physicians' services'', as employed in such plan, includes services of the type which an optometrist is legally authorized to perform, and shall be reimbursed whether furnished by a physician or an optometrist.

(f) Nursing facility services

For purposes of this subchapter, the term ''nursing facility services'' means services which are or were required to be given an individual who needs or needed on a daily basis nursing care (provided directly by or requiring the supervision of nursing personnel) or other rehabilitation services which as a practical matter can only be provided in a nursing facility on an inpatient basis.

(g) Chiropractors' services

If the State plan includes provision of chiropractors' services, such services include only—

(1) services provided by a chiropractor (A) who is licensed as such by the State and (B) who meets uniform minimum standards promulgated by the Secretary under section 1395x(r)(5) of this title; and

(2) services which consist of treatment by means of manual manipulation of the spine which the chiropractor is legally authorized to perform by the State.

(h) Inpatient psychiatric hospital services for individuals under age 21

(1) For purposes of paragraph (16) of subsection (a) of this section, the term ''inpatient psychiatric hospital services for individuals under age 21'' includes only—

(A) inpatient services which are provided in an institution (or distinct part thereof) which is a psychiatric hospital as defined in section 1395x(f) of this title or in another inpatient setting that the Secretary has specified in regulations;

(B) inpatient services which, in the case of any individual (i) involve active treatment which meets such standards as may be prescribed in regulations by the Secretary, and (ii) a team, consisting of physicians and other personnel qualified to make determinations with respect to mental health conditions and the treatment thereof, has determined are necessary on an inpatient basis and can reasonably be expected to improve the condition, by reason of which such services are necessary, to the extent that eventually such services will no longer be necessary; and

(C) inpatient services which, in the case of any individual, are provided prior to (i) the date such individual attains age 21, or (ii) in the case of an individual who was receiving such services in the period immediately preceding the date on which he attained age 21, (I) the date such individual no longer requires such services, or (II) if earlier, the date such individual attains age 22;

(2) Such term does not include services provided during any calendar quarter under the State plan of any State if the total amount of the funds expended, during such quarter, by the State (and the political subdivisions thereof) from non-Federal funds for inpatient services included under paragraph (1), and for active psychiatric care and treatment provided on an outpatient basis for eligible mentally ill children, is less than the average quarterly amount of the funds expended, during the 4-quarter period ending December 31, 1971, by the State (and the political subdivisions thereof) from non-Federal funds for such services.

(i) Institution for mental diseases

The term ''institution for mental diseases'' means a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services.

(j) State supplementary payment

The term ''State supplementary payment'' means any cash payment made by a State on a regular basis to an individual who is receiving supplemental security income benefits under subchapter XVI of this chapter or who would but for his income be eligible to receive such benefits, as assistance based on need in supplementation of such benefits (as determined by the Commissioner of Social Security), but only to the extent that such payments are made with respect to an individual with respect to whom supplemental security income benefits are payable under subchapter XVI of this chapter, or would but for his income be payable under that subchapter.

(k) Supplemental security income benefits

Increased supplemental security income benefits payable pursuant to section 211 of Public Law 93–66 shall not be considered supplemental security income benefits payable under subchapter XVI of this chapter.

(*l*) Rural health clinics

(1) The terms ''rural health clinic services'' and ''rural health clinic'' have the meanings given such terms in section 1395x(aa) of this title, except that (A) clause (ii) of section 1395x(aa)(2) of this title shall not apply to such terms, and (B) the physician arrangement required under section 1395x(aa)(2)(B) of this title shall only apply with respect to rural health clinic services and, with respect to other ambulatory care services, the physician arrangement required shall be only such as may be required under the State plan for those services.

(2)(A) The term ''Federally-qualified health center services'' means services of the type described in subparagraphs (A) through (C) of section 1395x(aa)(1) of this title when furnished to an individual as an[2] patient of a Federally-qualified health center and, for this purpose, any reference to a rural health clinic or a physician described in section 1395x(aa)(2)(B) of this title is deemed a reference to a Federally-qualified health center or a physician at the center, respectively.

(B) The term ''Federally-qualified health center'' means a[3] entity which—

(i) is receiving a grant under section 254b, 254c, 256, or 256a of this title,

(ii)(I) is receiving funding from such a grant under a contract with the recipient of such a grant, and

(II) meets the requirements to receive a grant under section 254b, 254c, 256, or 256a of this title,

(iii) based on the recommendation of the Health Resources and Services Administration within the Public Health Service, is determined by the Secretary to meet the requirements for receiving such a grant, or

(iv) was treated by the Secretary, for purposes of part B of subchapter XVIII of this chapter, as a comprehensive Federally funded health center as of January 1, 1990;

and includes an outpatient health program or facility operated by a tribe or tribal organiza-

[2] So in original. Probably should be ''a''.

[3] So in original. Probably should be ''an''.

tion under the Indian Self-Determination Act (Public Law 93–638) [25 U.S.C. 450f et seq.] or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.] for the provision of primary health services. In applying clause (ii),[4] the Secretary may waive any requirement referred to in such clause for up to 2 years for good cause shown.

(m) Qualified family member

(1) Subject to paragraph (2), the term ''qualified family member'' means an individual (other than a qualified pregnant woman or child, as defined in subsection (n) of this section) who is a member of a family that would be receiving aid under the State plan under part A of subchapter IV of this chapter pursuant to section 607 of this title if the State had not exercised the option under section 607(b)(2)(B)(i) of this title.

(2) No individual shall be a qualified family member for any period after September 30, 1998.

(n) "Qualified pregnant woman or child" defined

The term ''qualified pregnant woman or child'' means—

(1) a pregnant woman who—

(A) would be eligible for aid to families with dependent children under part A of subchapter IV of this chapter (or would be eligible for such aid if coverage under the State plan under part A of subchapter IV of this chapter included aid to families with dependent children of unemployed parents pursuant to section 607 of this title) if her child had been born and was living with her in the month such aid would be paid, and such pregnancy has been medically verified;

(B) is a member of a family which would be eligible for aid under the State plan under part A of subchapter IV of this chapter pursuant to section 607 of this title if the plan required the payment of aid pursuant to such section; or

(C) otherwise meets the income and resources requirements of a State plan under part A of subchapter IV of this chapter; and

(2) a child who has not attained the age of 19, who was born after September 30, 1983 (or such earlier date as the State may designate), and who meets the income and resources requirements of the State plan under part A of subchapter IV of this chapter.

(*o*) Optional hospice benefits

(1)(A) Subject to subparagraph (B), the term ''hospice care'' means the care described in section 1395x(dd)(1) of this title furnished by a hospice program (as defined in section 1395x(dd)(2) of this title) to a terminally ill individual who has voluntarily elected (in accordance with paragraph (2)) to have payment made for hospice care instead of having payment made for certain benefits described in section 1395d(d)(2)(A) of this title and for which payment may otherwise be made under subchapter XVIII of this chapter and intermediate care facility services under the plan. For purposes of such election, hospice care may be provided to an individual while such individual is a resident of a skilled nursing facility or intermediate care facility, but the only payment made under the State plan shall be for the hospice care.

(B) For purposes of this subchapter, with respect to the definition of hospice program under section 1395x(dd)(2) of this title, the Secretary may allow an agency or organization to make the assurance under subparagraph (A)(iii) of such section without taking into account any individual who is afflicted with acquired immune deficiency syndrome (AIDS).

(2) An individual's voluntary election under this subsection—

(A) shall be made in accordance with procedures that are established by the State and that are consistent with the procedures established under section 1395d(d)(2) of this title;

(B) shall be for such a period or periods (which need not be the same periods described in section 1395d(d)(1) of this title) as the State may establish; and

(C) may be revoked at any time without a showing of cause and may be modified so as to change the hospice program with respect to which a previous election was made.

(3) In the case of an individual—

(A) who is residing in a nursing facility or intermediate care facility for the mentally retarded and is receiving medical assistance for services in such facility under the plan,

(B) who is entitled to benefits under part A of subchapter XVIII of this chapter and has elected, under section 1395d(d) of this title, to receive hospice care under such part, and

(C) with respect to whom the hospice program under such subchapter and the nursing facility or intermediate care facility for the mentally retarded have entered into a written agreement under which the program takes full responsibility for the professional management of the individual's hospice care and the facility agrees to provide room and board to the individual,

instead of any payment otherwise made under the plan with respect to the facility's services, the State shall provide for payment to the hospice program of an amount equal to the additional amount described in section 1396a(a)(13)(D) of this title and, if the individual is an individual described in section 1396a(a)(10)(A) of this title, shall provide for payment of any coinsurance amounts imposed under section 1395e(a)(4) of this title.

(p) Qualified medicare beneficiary; medicare cost-sharing

(1) The term ''qualified medicare beneficiary'' means an individual—

(A) who is entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter (including an individual entitled to such benefits pursuant to an enrollment under section 1395i–2 of this title, but not including an individual entitled to such benefits only pursuant to an enrollment under section 1395i–2a of this title),

(B) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program, except as

[4] So in original. Probably should be clause ''(iii),''. See References in Text note below.

provided in paragraph (2)(D)) does not exceed an income level established by the State consistent with paragraph (2), and

(C) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual may have and obtain benefits under that program.

(2)(A) The income level established under paragraph (1)(B) shall be at least the percent provided under subparagraph (B) (but not more than 100 percent) of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(B) Except as provided in subparagraph (C), the percent provided under this clause, with respect to eligibility for medical assistance on or after—

(i) January 1, 1989, is 85 percent,

(ii) January 1, 1990, is 90 percent, and

(iii) January 1, 1991, is 100 percent.

(C) In the case of a State which has elected treatment under section 1396a(f) of this title and which, as of January 1, 1987, used an income standard for individuals age 65 or older which was more restrictive than the income standard established under the supplemental security income program under subchapter XVI of this chapter, the percent provided under subparagraph (B), with respect to eligibility for medical assistance on or after—

(i) January 1, 1989, is 80 percent,

(ii) January 1, 1990, is 85 percent,

(iii) January 1, 1991, is 95 percent, and

(iv) January 1, 1992, is 100 percent.

(D)(i) In determining under this subsection the income of an individual who is entitled to monthly insurance benefits under subchapter II of this chapter for a transition month (as defined in clause (ii)) in a year, such income shall not include any amounts attributable to an increase in the level of monthly insurance benefits payable under such subchapter which have occurred pursuant to section 415(i) of this title for benefits payable for months beginning with December of the previous year.

(ii) For purposes of clause (i), the term ''transition month'' means each month in a year through the month following the month in which the annual revision of the official poverty line, referred to in subparagraph (A), is published.

(3) The term ''medicare cost-sharing'' means the following costs incurred with respect to a qualified medicare beneficiary, without regard to whether the costs incurred were for items and services for which medical assistance is otherwise available under the plan:

(A)(i) premiums under section 1395i–2 or 1395i–2a of this title, and

(ii) premiums under section 1395r of this title,[5]

(B) Coinsurance under subchapter XVIII of this chapter (including coinsurance described in section 1395e of this title).

(C) Deductibles established under subchapter XVIII of this chapter (including those described in section 1395e of this title and section 1395*l*(b) of this title).

(D) The difference between the amount that is paid under section 1395*l*(a) of this title and the amount that would be paid under such section if any reference to ''80 percent'' therein were deemed a reference to ''100 percent''.

Such term also may include, at the option of a State, premiums for enrollment of a qualified medicare beneficiary with an eligible organization under section 1395mm of this title.

(4) Notwithstanding any other provision of this subchapter, in the case of a State (other than the 50 States and the District of Columbia)—

(A) the requirement stated in section 1396a(a)(10)(E) of this title shall be optional, and

(B) for purposes of paragraph (2), the State may substitute for the percent provided under subparagraph (B)[6] or[7] 1396a(a)(10)(E)(iii) of this title of such paragraph[6] any percent.

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirement of section 1396a(a)(10)(E) of this title in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(q) Qualified severely impaired individual

The term ''qualified severely impaired individual'' means an individual under age 65—

(1) who for the month preceding the first month to which this subsection applies to such individual—

(A) received (i) a payment of supplemental security income benefits under section 1382(b) of this title on the basis of blindness or disability, (ii) a supplementary payment under section 1382e of this title or under section 212 of Public Law 93–66 on such basis, (iii) a payment of monthly benefits under section 1382h(a) of this title, or (iv) a supplementary payment under section 1382e(c)(3), and

(B) was eligible for medical assistance under the State plan approved under this subchapter; and

(2) with respect to whom the Commissioner of Social Security determines that—

(A) the individual continues to be blind or continues to have the disabling physical or mental impairment on the basis of which he was found to be under a disability and, except for his earnings, continues to meet all non-disability-related requirements for eligibility for benefits under subchapter XVI of this chapter,

(B) the income of such individual would not, except for his earnings, be equal to or in excess of the amount which would cause him

[5] So in original. The comma probably should be a period.

[6] So in original. The words ''of such paragraph'' probably should follow ''subparagraph (B)''.

[7] So in original. Probably should be ''or section''.

to be ineligible for payments under section 1382(b) of this title (if he were otherwise eligible for such payments),

(C) the lack of eligibility for benefits under this subchapter would seriously inhibit his ability to continue or obtain employment, and

(D) the individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the benefits under subchapter XVI of this chapter (including any federally administered State supplementary payments), this subchapter, and publicly funded attendant care services (including personal care assistance) that would be available to him in the absence of such earnings.

In the case of an individual who is eligible for medical assistance pursuant to section 1382h(b) of this title in June, 1987, the individual shall be a qualified severely impaired individual for so long as such individual meets the requirements of paragraph (2).

(r) Early and periodic screening, diagnostic, and treatment services

The term ''early and periodic screening, diagnostic, and treatment services'' means the following items and services:

(1) Screening services—

(A) which are provided—

(i) at intervals which meet reasonable standards of medical and dental practice, as determined by the State after consultation with recognized medical and dental organizations involved in child health care and, with respect to immunizations under subparagraph (B)(iii), in accordance with the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of certain physical or mental illnesses or conditions; and

(B) which shall at a minimum include—

(i) a comprehensive health and developmental history (including assessment of both physical and mental health development),

(ii) a comprehensive unclothed physical exam,

(iii) appropriate immunizations (according to the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines) according to age and health history,

(iv) laboratory tests (including lead blood level assessment appropriate for age and risk factors), and

(v) health education (including anticipatory guidance).

(2) Vision services—

(A) which are provided—

(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include diagnosis and treatment for defects in vision, including eyeglasses.

(3) Dental services—

(A) which are provided—

(i) at intervals which meet reasonable standards of dental practice, as determined by the State after consultation with recognized dental organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include relief of pain and infections, restoration of teeth, and maintenance of dental health.

(4) Hearing services—

(A) which are provided—

(i) at intervals which meet reasonable standards of medical practice, as determined by the State after consultation with recognized medical organizations involved in child health care, and

(ii) at such other intervals, indicated as medically necessary, to determine the existence of a suspected illness or condition; and

(B) which shall at a minimum include diagnosis and treatment for defects in hearing, including hearing aids.

(5) Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan.

Nothing in this subchapter shall be construed as limiting providers of early and periodic screening, diagnostic, and treatment services to providers who are qualified to provide all of the items and services described in the previous sentence or as preventing a provider that is qualified under the plan to furnish one or more (but not all) of such items or services from being qualified to provide such items and services as part of early and periodic screening, diagnostic, and treatment services. The Secretary shall, not later than July 1, 1990, and every 12 months thereafter, develop and set annual participation goals for each State for participation of individuals who are covered under the State plan under this subchapter in early and periodic screening, diagnostic, and treatment services.

(s) Qualified disabled and working individual

The term ''qualified disabled and working individual'' means an individual—

(1) who is entitled to enroll for hospital insurance benefits under part A of subchapter XVIII of this chapter under section 1395i–2a of this title;

(2) whose income (as determined under section 1382a of this title for purposes of the supplemental security income program) does not

exceed 200 percent of the official poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved;

(3) whose resources (as determined under section 1382b of this title for purposes of the supplemental security income program) do not exceed twice the maximum amount of resources that an individual or a couple (in the case of an individual with a spouse) may have and obtain benefits for supplemental security income benefits under subchapter XVI of this chapter; and

(4) who is not otherwise eligible for medical assistance under this subchapter.

(Aug. 14, 1935, ch. 531, title XIX, §1905, as added July 30, 1965, Pub. L. 89–97, title I, §121(a), 79 Stat. 351; amended Jan. 2, 1968, Pub. L. 90–248, title II, §§230, 233, 241(f)(6), 248(e), title III, §302(a), 81 Stat. 905, 917, 919, 929; Dec. 28, 1971, Pub. L. 92–223, §4(a), 85 Stat. 809; Oct. 30, 1972, Pub. L. 92–603, title II, §§212(a), 247(b), 275(a), 278(a)(21)–(23), 280, 297(a), 299, 299B, 299E(b), 299L, 86 Stat. 1384, 1425, 1452–1454, 1459–1462, 1464; Dec. 31, 1973, Pub. L. 93–233, §§13(a)(13)–(88), 18(w), (x)(7)–(10), (y)(2), 87 Stat. 963, 964, 972, 973; Sept. 30, 1976, Pub. L. 94–437, title IV, §402(e), 90 Stat. 1410; Dec. 13, 1977, Pub. L. 95–210, §2(a), (b), 91 Stat. 1488; June 13, 1978, Pub. L. 95–292, §8(a), (b), 92 Stat. 316; Oct. 19, 1980, Pub. L. 96–473, §6(k), 94 Stat. 2266; Dec. 5, 1980, Pub. L. 96–499, title IX, §965(a), 94 Stat. 2651; Aug. 13, 1981, Pub. L. 97–35, title XXI, §§2162(a)(2), 2172(b), 95 Stat. 806, 808; Sept. 3, 1982, Pub. L. 97–248, title I, §§136(c), 137(b)(17), (18), (f), 96 Stat. 376, 379, 381; July 18, 1984, Pub. L. 98–369, div. B, title III, §§2335(f), 2340(b), 2361(b), 2371(a), 2373(b)(15)–(20), 98 Stat. 1091, 1093, 1104, 1110, 1112; Apr. 7, 1986, Pub. L. 99–272, title IX, §§9501(a), 9505(a), 9511(a), 100 Stat. 201, 208, 212; Oct. 21, 1986, Pub. L. 99–509, title IX, §§9403(b), (d), (g)(3), 9404(b), 9408(c)(1), 9435(b)(2), 100 Stat. 2053, 2054, 2056, 2061, 2070; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1895(c)(3)(A), 100 Stat. 2935; Dec. 22, 1987, Pub. L. 100–203, title IV, §§4073(d), 4101(c)(1), 4103(a), 4105(a), 4114, 4118(p)(8), 4211(e), (f), (h)(6), 101 Stat. 1330–119, 1330–141, 1330–146, 1330–147, 1330–152, 1330–159, 1330–204 to 1330–206; July 1, 1988, Pub. L. 100–360, title III, §301(a)(2)–(d), (g)(2), title IV, §411(h)(4)(E), (k)(4), (8), (14)(A), 102 Stat. 748–750, 787, 791, 794, 798; Oct. 13, 1988, Pub. L. 100–485, title III, §303(b)(2), title IV, §401(d)(2), title VI, §608(d)(14)(A)–(G), (J), (f)(3), 102 Stat. 2392, 2396, 2415, 2416, 2424; Nov. 10, 1988, Pub. L. 100–647, title VIII, §8434(a), (b)(3), (4), 102 Stat. 3805; Dec. 13, 1989, Pub. L. 101–234, title II, §201(b), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, §§6402(c)(1), 6403(a), (c), (d)(2), 6404(a), (b), 6405(a), 6408(d)(2), (4)(A), (B), 103 Stat. 2261–2265, 2268, 2269; Nov. 5, 1990, Pub. L. 101–508, title IV, §§4402(d)(2), 4501(a), (c), (e)(1), 4601(a)(2), 4704(c), (d), (e)(1), 4705(a), 4711(a), 4712(a), 4713(b), 4717, 4719(a), 4721(a), 4722, 4755(a)(1)(A), 104 Stat. 1388–163 to 1388–166, 1388–172, 1388–174, 1388–187, 1388–191, 1388–193, 1388–194, 1388–209; Aug. 10, 1993, Pub. L. 103–66, title XIII, §§13601(a), 13603(e), 13605(a), 13606(a), 13631(f)(2), (g)(1), 107 Stat. 612, 620, 621, 644, 645; Aug. 15, 1994, Pub. L. 103–296, title I, §108(d)(2), (3), 108 Stat. 1486.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in subsecs. (a), (m)(1), and (n), is classified to section 601 et seq. of this title.

Parts A and B of subchapter XVIII of this chapter, referred to in subsecs. (a), (*l*)(2)(B)(iv), (*o*)(3)(B), (p)(1)(A), and (s)(1), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Section 211 of Pub. L. 93–66, referred to in subsec. (k), is section 211 of Pub. L. 93–66, July 9, 1973, 87 Stat. 152, as amended, which is set out as a note under section 1382 of this title.

The Indian Self-Determination Act, referred to in subsec. (*l*)(2)(B), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (*l*)(2)(B), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§1651 et seq.) of chapter 18 of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

Clause (ii), referred to in subsec. (*l*)(2)(B), was redesignated as cl. (iii) by Pub. L. 101–508, title IV, §4704(c)(3), Nov. 5, 1990, 104 Stat. 1388–172.

Section 212 of Public Law 93–66, referred to in subsec. (q)(1)(A), is section 212 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

AMENDMENTS

1994—Subsecs. (j), (q)(2). Pub. L. 103–296 substituted ''Commissioner of Social Security'' for ''Secretary''.

1993—Subsec. (a)(xi). Pub. L. 103–66, §13603(e)(1)–(3), added cl. (xi).

Subsec. (a)(7). Pub. L. 103–66, §13601(a)(1), struck out ''including personal care services (A) prescribed by a physician for an individual in accordance with a plan of treatment, (B) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, (C) supervised by a registered nurse, and (D) furnished in a home or other location; but not including such services furnished to an inpatient or resident of a nursing facility'' after ''services''.

Subsec. (a)(17). Pub. L. 103–66, §13605(a), inserted before semicolon at end '', and without regard to whether or not the services are performed in the area of management of the care of mothers and babies throughout the maternity cycle''.

Subsec. (a)(19). Pub. L. 103–66, §13603(e)(4), amended par. (19) generally, inserting reference to TB-related services described in section 1396a(z)(2)(F) of this title.

Subsec. (a)(21). Pub. L. 103–66, §13601(a)(2), struck out ''and'' at end.

Subsec. (a)(22). Pub. L. 103–66, §13601(a)(4), redesignated par. (23) as (22). Former par. (22) redesignated (25).

Subsec. (a)(23). Pub. L. 103–66, §13601(a)(4), redesignated par. (24) as (23). Former par. (23) redesignated (22).

Subsec. (a)(24). Pub. L. 103–66, §13601(a)(5), added par. (24). Former par. (24) redesignated (23).

Pub. L. 103–66, §13601(a)(3), which directed amendment of par. (24) by substituting semicolon for comma at end, was executed by substituting semicolon for period at end to reflect the probable intent of Congress.

Subsec. (a)(25). Pub. L. 103–66, §13601(a)(4), redesignated par. (22) as (25), transferred such par. to appear after par. (23), and substituted period for semicolon at end.

Subsec. (*l*)(2)(B). Pub. L. 103–66, §13631(f)(2)(B), in concluding provisions, inserted ''or by an urban Indian organization receiving funds under title V of the Indian Health Care Improvement Act for the provision of primary health services'' before ''. In applying clause''.

Subsec. (*l*)(2)(B)(i). Pub. L. 103–66, § 13631(f)(2)(A), substituted ''256, or 256a'' for ''or 256''.

Pub. L. 103–66, § 13606(a)(1), struck out ''or'' at end.

Subsec. (*l*)(2)(B)(ii). Pub. L. 103–66, § 13631(f)(2)(A), substituted ''256, or 256a'' for ''or 256'' in subcl. (II).

Pub. L. 103–66, § 13606(a)(2), (3), realigned margin and substituted a comma for semicolon at end.

Subsec. (*l*)(2)(B)(iv). Pub. L. 103–66, § 13606(a)(4), (5), added cl. (iv).

Subsec. (r)(1)(A)(i). Pub. L. 103–66, § 13631(g)(1)(A), inserted ''and, with respect to immunizations under subparagraph (B)(iii), in accordance with the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines'' after ''child health care''.

Subsec. (r)(1)(B)(iii). Pub. L. 103–66, § 13631(g)(1)(B), inserted ''(according to the schedule referred to in section 1396s(c)(2)(B)(i) of this title for pediatric vaccines)'' after ''appropriate immunizations''.

1990—Subsec. (a). Pub. L. 101–508, § 4722, inserted at end ''No service (including counseling) shall be excluded from the definition of 'medical assistance' solely because it is provided as a treatment service for alcoholism or drug dependency.''

Pub. L. 101–508, § 4402(d)(2), inserted at end ''The payment described in the first sentence may include expenditures for medicare cost-sharing and for premiums under part B of subchapter XVIII of this chapter for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI of this chapter, or part A of subchapter IV of this chapter, or with respect to whom supplemental security income benefits are being paid under subchapter XVI of this chapter, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title, and, except in the case of individuals 65 years of age or older and disabled individuals entitled to health insurance benefits under subchapter XVIII of this chapter who are not enrolled under part B of subchapter XVIII of this chapter, other insurance premiums for medical or any other type of remedial care or the cost thereof.''

Subsec. (a)(x). Pub. L. 101–508, § 4713(b), added cl. (x).

Subsec. (a)(2)(C). Pub. L. 101–508, § 4704(e)(1), repealed Pub. L. 101–239, § 6402(c)(1). See 1989 Amendment note below.

Subsec. (a)(7). Pub. L. 101–508, § 4721(a), substituted ''services including personal care services'' for ''services'' and added subpars. (A) to (D).

Subsec. (a)(13). Pub. L. 101–508, § 4719(a), inserted before semicolon at end '', including any medical or remedial services (provided in a facility, a home, or other setting) recommended by a physician or other licensed practitioner of the healing arts within the scope of their practice under State law, for the maximum reduction of physical or mental disability and restoration of an individual to the best possible functional level''.

Subsec. (a)(22). Pub. L. 101–508, § 4711(a)(1), which directed amendment of par. (22) by striking ''and'' at end, could not be executed because the word did not appear.

Subsec. (a)(23). Pub. L. 101–508, § 4712(a)(1), inserted ''and'' after semicolon at end.

Pub. L. 101–508, § 4711(a)(2), (3), which directed amendment of subsec. (a) by redesignating par. (23) as (24) and adding a new par. (23), was executed by adding the new par. (23), there being no former par. (23).

Subsec. (a)(24). Pub. L. 101–508, § 4712(a)(2), (3), which directed amendment of subsec. (a) by redesignating par. (24) as (25) and adding a new par. (24), was executed by adding the new par. (24), there being no former par. (24).

Subsec. (h)(1)(A). Pub. L. 101–508, § 4755(a)(1)(A), inserted ''or in another inpatient setting that the Secretary has specified in regulations'' after ''section 1395x(f) of this title''.

Subsec. (*l*)(2)(A). Pub. L. 101–508, § 4704(c)(1), substituted ''patient'' for ''outpatient''.

Subsec. (*l*)(2)(B). Pub. L. 101–508, § 4704(d)(2), which directed amendment of subpar. (B) by inserting ''and includes an outpatient health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93–638).'' after and below cl. (ii), was executed by inserting the new language after cl. (iii) to reflect the probable intent of Congress and the intervening redesignation of former cl. (ii) as (iii) by Pub. L. 101–508, § 4704(c)(3). See below.

Pub. L. 101–508, § 4704(c)(2), substituted ''entity'' for ''facility'' in introductory provisions.

Subsec. (*l*)(2)(B)(ii), (iii). Pub. L. 101–508, § 4704(c)(3), (d)(1), added cl. (ii), redesignated former cl. (ii) as (iii), and substituted comma for period at end of cl. (iii).

Subsec. (n)(2). Pub. L. 101–508, § 4601(a)(2), substituted ''age of 19'' for ''age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)''.

Subsec. (*o*)(1)(A). Pub. L. 101–508, § 4717, inserted ''and for which payment may otherwise be made under subchapter XVIII of this chapter'' after ''section 1395d(d)(2)(A) of this title''.

Subsec. (*o*)(3). Pub. L. 101–508, § 4705(a)(1), struck out ''a State which elects not to provide medical assistance for hospice care, but provides medical assistance for skilled nursing or intermediate care facility services with respect to'' after ''In the case of'' in introductory provisions.

Pub. L. 101–508, § 4705(a)(3), (4), in concluding provisions, substituted ''the additional amount described in section 1396a(a)(13)(D) of this title'' for ''the amounts allocated under the plan for room and board in the facility, in accordance with the rates established under section 1396a(a)(13) of this title,'' and struck out at end ''For purposes of this paragraph and section 1396a(a)(13)(D) of this title, the term 'room and board' includes performance of personal care services, including assistance in activities of daily living, in socializing activities, administration of medication, maintaining the cleanliness of a resident's room, and supervising and assisting in the use of durable medical equipment and prescribed therapies.''

Subsec. (*o*)(3)(A), (C). Pub. L. 101–508, § 4705(a)(2), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''skilled nursing or intermediate care facility''.

Subsec. (p)(1)(B). Pub. L. 101–508, § 4501(e)(1)(A), which directed amendment of subpar. (B) by inserting '', except as provided in paragraph (2)(D)'' after ''supplementary social security income program'', was executed by inserting the new language after ''supplemental security income program'' to reflect the probable intent of Congress.

Subsec. (p)(2)(B). Pub. L. 101–508, § 4501(a)(1), inserted ''and'' at end of cl. (ii), substituted ''100 percent.'' for ''95 percent, and'' in cl. (iii), and struck out cl. (iv) which read as follows: ''January 1, 1992, is 100 percent.''

Subsec. (p)(2)(C). Pub. L. 101–508, § 4501(a)(2), substituted ''95 percent, and'' for ''90 percent,'' in cl. (iii) and ''100 percent.'' for ''95 percent, and'' in cl. (iv) and struck out cl. (v) which read as follows: ''January 1, 1993, is 100 percent.''

Subsec. (p)(2)(D). Pub. L. 101–508, § 4501(e)(1)(B), added subpar. (D).

Subsec. (p)(4). Pub. L. 101–508, § 4501(c)(2), inserted at end ''In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirement of section 1396a(a)(10)(E) of this title in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.''

Subsec. (p)(4)(B). Pub. L. 101–508, § 4501(c)(1), inserted ''or 1396a(a)(10)(E)(iii) of this title'' after ''subparagraph (B)''.

1989—Subsec. (a)(2)(B). Pub. L. 101–239, § 6404(a)(2), substituted ''subsection (*l*)(1)'' for ''subsection (*l*)'' in two places.

Subsec. (a)(2)(C). Pub. L. 101–239, § 6404(a)(3), added cl. (C) relating to Federally-qualified health center services.

Pub. L. 101–239, § 6402(c)(1), which directed addition of cl. (C) relating to ambulatory services, was repealed by Pub. L. 101–508, § 4704(e)(1).

Subsec. (a)(4)(B). Pub. L. 101–239, § 6403(d)(2), amended cl. (B) generally. Prior to amendment, cl. (B) read as follows: ''effective July 1, 1969, such early and periodic screening and diagnosis of individuals who are eligible under the plan and are under the age of 21 to ascertain their physical or mental defects, and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary; and''.

Subsec. (a)(21), (22). Pub. L. 101–239, § 6405(a), added par. (21) and redesignated former par. (21) as (22).

Subsec. (*l*). Pub. L. 101–239, § 6404(b), designated existing provisions as par. (1), redesignated former cls. (1) and (2) as (A) and (B), respectively, and added par. (2).

Subsec. (p)(1)(A). Pub. L. 101–239, § 6408(d)(4)(B), inserted '', but not including an individual entitled to such benefits only pursuant to an enrollment under section 1395i–2a of this title'' after ''section 1395i–2 of this title''.

Subsec. (p)(3)(A). Pub. L. 101–239, § 6408(d)(4)(A)(i), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''Premiums under subchapter XVIII of this chapter (including under part B and, if applicable, under section 1395i–2 of this title).''

Subsec. (p)(3)(A)(i). Pub. L. 101–239, § 6408(d)(4)(A)(ii), substituted ''section 1395i–2 or 1395i–2a'' for ''section 1395i–2''.

Subsec. (p)(3)(C). Pub. L. 101–234, § 201(b)(1), substituted ''Deductibles'' for ''Subject to paragraph (4), deductibles'' and ''section 1395e of this title and section 1395*l*(b) of this title)'' for ''section 1395e of this title, section 1395*l*(b) of this title, and section 1395m(c)(1) of this title''.

Subsec. (p)(4), (5). Pub. L. 101–234, § 201(b)(2), redesignated par. (5) as (4) and struck out former par. (4) which read as follows: ''In a State which provides medical assistance for prescribed drugs under subsection (a)(12) of this section, instead of providing to qualified medicare beneficiaries, under paragraph (3)(C), medicare cost-sharing with respect to the annual deductible for covered outpatient drugs under section 1395m(c)(1) of this title, the State may provide to such beneficiaries, before charges for covered outpatient drugs for a year reach such deductible amount, benefits for prescribed drugs in the same amount, duration, and scope as the benefits made available under the State plan for individuals described in section 1396a(a)(10)(A)(i) of this title.''

Subsec. (r). Pub. L. 101–239, § 6403(c), inserted at end ''The Secretary shall, not later than July 1, 1990, and every 12 months thereafter, develop and set annual participation goals for each State for participation of individuals who are covered under the State plan under this subchapter in early and periodic screening, diagnostic, and treatment services.''

Pub. L. 101–239, § 6403(a), added subsec. (r).

Subsec. (s). Pub. L. 101–239, § 6408(d)(2), added subsec. (s).

1988—Subsec. (a). Pub. L. 100–647, § 8434(b)(3), substituted ''in the case of medicare cost-sharing with respect to a qualified medicare beneficiary'' for ''in the case of a qualified medicare beneficiary'' in introductory provisions.

Subsec. (a)(ix). Pub. L. 100–485, § 303(b)(2), added cl. (ix).

Subsec. (a)(5)(B). Pub. L. 100–360, § 411(k)(4), substituted ''described in clause (A) if'' for ''described in subparagraph (A) if''.

Subsec. (a)(17). Pub. L. 100–360, § 411(h)(4)(E), amended Pub. L. 100–203, § 4073(d)(1), see 1987 Amendment note below.

Subsec. (i). Pub. L. 100–360, § 411(k)(14)(A), added subsec. (i).

Subsec. (m). Pub. L. 100–485, § 401(d)(2), added subsec. (m).

Subsec. (*o*)(1). Pub. L. 100–360, § 411(k)(8)(A), made clarifying amendment to directory language of Pub. L. 100–203, § 4114, see 1987 Amendment note below.

Subsec. (*o*)(1)(B). Pub. L. 100–360, § 411(k)(8)(B), struck out ''only'' after ''For purposes of this subchapter'' and substituted ''immune deficiency syndrome (AIDS)'' for ''immunodeficiency syndrome''.

Subsec. (*o*)(3). Pub. L. 100–485, § 608(f)(3), realigned the margin of par. (3).

Subsec. (p)(1). Pub. L. 100–647, § 8434(a), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out former subpar. (B) which read: ''who, but for section 1396a(a)(10)(E) of this title, is not eligible for medical assistance under the plan,''.

Subsec. (p)(1)(B). Pub. L. 100–360, § 301(a)(2), struck out ''and the election of the State'' after ''1396a(a)(10)(E) of this title''.

Subsec. (p)(1)(C). Pub. L. 100–360, § 301(c)(1), as amended by Pub. L. 100–485, § 608(d)(14)(E)(i), substituted ''paragraph (2)'' for ''paragraph (2)(A)''.

Subsec. (p)(1)(D). Pub. L. 100–360, § 301(c)(2), as amended by Pub. L. 100–485, § 608(d)(14)(E)(ii), substituted ''twice'' for ''(except as provided in paragraph (2)(B))''.

Subsec. (p)(2)(A). Pub. L. 100–647, § 8434(b)(4), substituted ''paragraph (1)(B)'' for ''paragraph (1)(C)''.

Pub. L. 100–360, § 301(b)(1), as amended by Pub. L. 100–485, § 608(d)(14)(A), substituted ''shall be at least the percent provided under subparagraph (B) (but not more than 100 percent)'' for ''may not exceed a percentage (not more than 100 percent)''.

Pub. L. 100–360, § 301(c)(3)(A), which directed amendment of subpar. (A) by striking ''(2)(A)'' and inserting ''(2)'', was repealed by Pub. L. 100–485, § 608(d)(14)(E)(iii).

Pub. L. 100–360, § 301(b)(2), which directed amendment of subpar. (A) by inserting ''(i)'' after ''(2)(A)'', was repealed by Pub. L. 100–485, § 608(d)(14)(B).

Subsec. (p)(2)(B). Pub. L. 100–360, § 301(b)(2), formerly § 301(b)(3), as renumbered and amended by Pub. L. 100–485, § 608(d)(14)(B)–(D)(ii), added subpar. (B) and struck out former subpar. (B) which read as follows: ''In the case of a State that provides medical assistance to individuals not described in section 1396a(a)(10)(A) of this title and at the State's option, the State may use under paragraph (1)(D) such resource level (which is higher than the level described in that paragraph) as may be applicable with respect to individuals described in paragraph (1)(A) who are not described in section 1396a(a)(10)(A) of this title.''

Pub. L. 100–360, § 301(c)(3)(B), which directed amendment of par. (2) by striking subpar. (B), was repealed by Pub. L. 100–485, § 608(d)(14)(E)(iii).

Subsec. (p)(2)(C). Pub. L. 100–360, § 301(b)(2), formerly § 301(b)(3), as renumbered and amended by Pub. L. 100–485, § 608(d)(14)(B), (C), (D)(i), (iii), added subpar. (C).

Subsec. (p)(3). Pub. L. 100–360, § 301(d)(1), as added by Pub. L. 100–485, § 608(d)(14)(G)(ii), inserted ''without regard to whether the costs incurred were for items and services for which medical assistance is otherwise available under the plan'' after ''qualified medicare beneficiary'' in introductory provisions.

Subsec. (p)(3)(A). Pub. L. 100–360, § 301(d)(2), formerly § 301(d)(1), as renumbered by Pub. L. 100–485, § 608(d)(14)(G)(i), substituted ''under subchapter XVIII of this chapter (including under part B and, if applicable, under section 1395i–2 of this title)'' for ''under part B and (if applicable) under section 1395i–2 of this title''.

Subsec. (p)(3)(B). Pub. L. 100–360, § 301(d)(3), formerly § 301(d)(2), as renumbered by Pub. L. 100–485, § 608(d)(14)(G)(i), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Deductibles and coinsurance described in section 1395e of this title.''

Subsec. (p)(3)(C). Pub. L. 100–360, § 301(d)(3), formerly § 301(d)(2), as renumbered and amended by Pub. L. 100–485, § 608(d)(14)(F), (G)(i), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''The annual deductible described in section 1395*l*(b) of this title.''

Subsec. (p)(4). Pub. L. 100–360, § 301(d)(4), formerly § 301(d)(3), as renumbered by Pub. L. 100–485, § 618(d)(14)(G)(i), added par. (4).

Subsec. (p)(5). Pub. L. 100–360, § 301(g)(2), as amended by Pub. L. 100–485, § 608(d)(14)(J), added par. (5).

1987—Subsec. (a)(4)(A). Pub. L. 100–203, § 4211(f), struck out ''skilled'' before ''nursing''.

Subsec. (a)(5). Pub. L. 100–203, § 4211(h)(6)(A), struck out ''skilled'' before ''nursing'' in cl. (A).

Pub. L. 100–203, § 4103(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (a)(9). Pub. L. 100–203, § 4105(a), inserted provision including services furnished to an eligible individual who does not reside in a permanent dwelling or have a fixed home or mailing address.

Subsec. (a)(14). Pub. L. 100–203, § 4211(h)(6)(B), substituted ''and nursing facility services'' for '', skilled nursing facility services, and intermediate care facility services''.

Subsec. (a)(15). Pub. L. 100–203, § 4211(h)(6)(C), substituted ''services in an intermediate care facility for the mentally retarded (other than'' for ''intermediate care facility services (other than such services''.

Subsec. (a)(17). Pub. L. 100–203, § 4073(d)(1), as amended by Pub. L. 100–360, § 411(h)(4)(E), substituted ''(as defined in section 1395x(gg) of this title)'' for ''(as defined in subsection (m) of this section)''.

Subsec. (c). Pub. L. 100–203, § 4211(e)(1), amended subsec. (c) generally. Prior to amendment, subsec. (c) defined ''intermediate care facility''.

Subsec. (d). Pub. L. 100–203, § 4211(e)(2), substituted ''intermediate care facility for the mentally retarded'' for ''intermediate care facility'' and ''means an'' for ''may include services in a public'', and in par. (3) inserted ''in the case of a public institution'' after ''(3)''.

Subsec. (f). Pub. L. 100–203, § 4211(e)(3), struck out ''skilled'' before ''nursing'' in four places and before ''rehabilitation''.

Subsec. (i). Pub. L. 100–203, § 4211(e)(4), struck out subsec. (i) which provided that for purposes of this subchapter ''skilled nursing facility'' also includes any institution which is located in a State on an Indian reservation and is certified by the Secretary as being a qualified skilled nursing facility by meeting the requirements of section 1395x(j) of this title.

Subsec. (m). Pub. L. 100–203, § 4073(d)(2), struck out subsec. (m) which defined ''nurse-midwife''. See section 1395x(gg) of this title.

Subsec. (n)(2). Pub. L. 100–203, § 4101(c)(1), substituted ''has not attained the age of 7 (or any age designated by the State that exceeds 7 but does not exceed 8)'' for ''is under 5 years of age''.

Subsec. (*o*)(1). Pub. L. 100–203, § 4114, as amended by Pub. L. 100–360, § 411(k)(8)(A), designated existing provisions as subpar. (A), substituted ''Subject to subparagraph (B), the'' for ''The'', and added subpar. (B).

Subsec. (p)(2)(A). Pub. L. 100–203, § 4118(p)(8), struck out ''nonfarm'' before ''official''.

1986—Subsec. (a). Pub. L. 99–509, § 9403(g)(3), inserted ''or, in the case of a qualified medicare beneficiary described in subsection (p)(1) of this section, if provided after the month in which the individual becomes such a beneficiary'' after ''makes application for assistance''.

Subsec. (a)(18). Pub. L. 99–272, § 9505(a)(1), added par. (18). Former par. (18) redesignated (19).

Subsec. (a)(19). Pub. L. 99–514, § 1895(c)(3)(A), added par. (19). Former par. (19) redesignated (20).

Pub. L. 99–272, § 9505(a)(1)(B), redesignated former par. (18) as (19).

Subsec. (a)(20). Pub. L. 99–509, § 9408(c)(1), added par. (20). Former par. (20) redesignated (21).

Pub. L. 99–514, § 1895(c)(3)(A)(ii), redesignated former par. (19) as (20).

Subsec. (a)(21). Pub. L. 99–509, § 9408(c)(1)(B), redesignated former par. (20) as (21).

Subsec. (n)(1)(C). Pub. L. 99–272, § 9501(a), added subpar. (C).

Subsec. (n)(2). Pub. L. 99–272, § 9511(a), inserted ''(or such earlier date as the State may designate)'' after ''September 30, 1983''.

Subsec. (*o*). Pub. L. 99–272, § 9505(a)(2), added subsec. (*o*).

Subsec. (*o*)(3). Pub. L. 99–509, § 9435(b)(2), added par. (3).

Subsec. (p). Pub. L. 99–509, § 9403(b), (d), added subsec. (p).

Subsec. (q). Pub. L. 99–509, § 9404(b), added subsec. (q).

1984—Subsec. (a). Pub. L. 98–369, § 2335(f), substituted ''mental diseases'' for ''tuberculosis or mental diseases'' in subd. (B) following par. (18).

Pub. L. 98–369, § 2373(b)(17), substituted ''clause (vi)'' for ''clauses (vi)'' and ''well-being'' for ''well being'' in last sentence.

Subsec. (a)(1). Pub. L. 98–369, § 2335(f), substituted ''mental diseases'' for ''tuberculosis or mental diseases''.

Subsec. (a)(4). Pub. L. 98–369, § 2335(f), substituted ''mental diseases'' for ''tuberculosis or mental diseases''.

Pub. L. 98–369, § 2373(b)(15), inserted a semicolon before ''(B)''.

Subsec. (a)(9). Pub. L. 98–369, § 2371(a), amended par. (9) generally, inserting ''furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician''.

Subsec. (a)(14), (15). Pub. L. 98–369, § 2335(f), substituted ''mental diseases'' for ''tuberculosis or mental diseases''.

Subsec. (a)(17). Pub. L. 98–369, § 2373(b)(16), substituted ''the nurse-midwife'' for ''he'' in two places.

Subsec. (b). Pub. L. 98–369, § 2373(b)(18), substituted ''section 1301(a)(8)(B) of this title'' for ''subparagraph (B) of section 1301(a)(8) of this title''.

Subsec. (d)(1). Pub. L. 98–369, § 2373(b)(19), substituted ''the institution meets'' for ''which meet''.

Subsec. (h)(1)(A). Pub. L. 98–369, § 2340(b), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''inpatient services which are provided in an institution which is accredited as a psychiatric hospital by the Joint Commission on Accreditation of Hospitals;''.

Subsec. (m). Pub. L. 98–369, § 2373(b)(20), substituted ''the nurse'' for ''he'' in two places.

Subsec. (n). Pub. L. 98–369, § 2361(b), added subsec. (n).

1982—Subsec. (a)(i). Pub. L. 97–248, § 137(b)(17), struck out ''or any reasonable category of such individuals,'' after ''as the State may choose,''.

Subsec. (a)(viii). Pub. L. 97–248, § 137(b)(18), added cl. (viii).

Subsec. (b)(2). Pub. L. 97–248, § 136(c), substituted ''the Northern Mariana Islands, and American Samoa'' for ''and the Northern Mariana Islands''.

Subsec. (h)(1)(C). Pub. L. 97–248, § 137(f), redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, and redesignated cls. (A) and (B) as cls. (i) and (ii), respectively.

1981—Subsec. (a). Pub. L. 97–35, § 2172(b), in cl. (i), inserted ''or, at the option of the State, under the age of 20, 19, or 18 as the State may choose, or any reasonable category of such individuals,'' and in cl. (ii), struck out reference to section 606(a)(2) of this title.

Subsec. (b). Pub. L. 97–35, § 2162(a)(2), inserted reference to Northern Mariana Islands.

1980—Subsec. (a)(17), (18). Pub. L. 96–499, § 965(a)(1)(B), (C), added par. (17) and redesignated former par. (17) as (18).

Subsec. (c). Pub. L. 96–473 substituted ''clause (1)'' for ''clauses (1)''.

Subsec. (m). Pub. L. 96–499, § 965(a)(2), added subsec. (m).

1978—Subsec. (c). Pub. L. 95–292 added cl. (4) to first sentence relating to a requirement that intermediate care facilities meet section 1395x(j)(14) of this title with respect to protection of patients' personal funds, and inserted reference to that cl. (4) in provisions covering intermediate care facilities on Indian reservations.

1977—Subsec. (a)(2). Pub. L. 95–210, § 2(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (*l*). Pub. L. 95–210, § 2(b), added subsec. (*l*).

1976—Subsec. (b). Pub. L. 94–437 inserted provision requiring that the Federal medical assistance percentage be 100 per centum for services received through an Indian Health Service facility.

1973—Subsec. (a). Pub. L. 93–233, § 13(a)(13), substituted in introductory text ''individuals (other than individuals with respect to whom there is being paid, or

who are eligible or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title) not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter'' for ''individuals not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV of this chapter''.

Subsec. (a)(iv). Pub. L. 93–233, §13(a)(14), inserted ''with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,'' after ''blind,''.

Subsec. (a)(v). Pub. L. 93–233, §13(a)(15), substituted ''with respect to States eligible to participate in the State plan program established under subchapter XVI of this chapter,'' for ''or''.

Subsec. (a)(vi). Pub. L. 93–233, §13(a)(16), inserted ''or'' at end of text.

Subsec. (a)(vii). Pub. L. 93–233, §13(a)(17), added cl. (vii).

Subsec. (a)(16). Pub. L. 93–233, §18(x)(7), substituted ''under age 21, as defined in subsection (h) of this section; and'' for ''under 21, as defined in subsection (e) of this section;''.

Subsec. (b). Pub. L. 93–233, §18(y)(2), struck out ''; except that the Secretary shall promulgate such percentage as soon as possible after July 30, 1965, which promulgation shall be conclusive for each of the six quarters in the period beginning January 1, 1966, and ending with the close of June 30, 1966'' after ''section 1301(a)(8) of this title''.

Subsec. (c). Pub. L. 93–233, §18(x)(8), substituted ''skilled nursing facility'' for ''skilled nursing home'' wherever appearing.

Subsec. (h)(1)(B). Pub. L. 93–233, §18(w), substituted ''(i) involve active treatment'' for '', involves active treatment (i)''; struck out ''pursuant to subchapter XVIII of this chapter'' after ''may be prescribed''; and substituted ''(ii)'' for ''(ii) which'', respectively.

Subsec. (h)(2). Pub. L. 93–233, §18(x)(10), substituted ''paragraph (1)'' for ''paragraph (e)(1)''.

Subsec. (i). Pub. L. 93–233, §18(x)(9), redesignated subsec. (h) as added by Pub. L. 92–603, §299L(b), as subsec. (i).

Subsecs. (j), (k). Pub. L. 93–233, §13(a)(18), added subsecs. (j) and (k).

1972—Subsec. (a). Pub. L. 92–603, §299B(c), in text following redesignated subsec. (a)(17) substituted ''as otherwise provided in paragraph (16),'' for ''that''.

Subsec. (a)(4). Pub. L. 92–603, §§278(a)(21), 299E(b), substituted ''skilled nursing facility'' for ''skilled nursing home'' and added cl. (C).

Subsec. (a)(5). Pub. L. 92–603, §§278(a)(22), 280, substituted ''skilled nursing facility'' for ''skilled nursing home'' and inserted ''furnished by a physician (as defined in section 1395x(r)(1) of this title) after ''physicians' services''.

Subsec. (a)(14). Pub. L. 92–603, §§278(a)(23), 297(a), substituted ''skilled nursing facility'' for ''skilled nursing home'' and inserted reference to intermediate care facility services.

Subsec. (a)(15) to (17). Pub. L. 92–603, §299B(a), added par. (16) and redesignated existing pars. (15) and (16) as (17) and (15), respectively.

Subsec. (c). Pub. L. 92–603, §299L(a), inserted provision defining ''intermediate care facility'' with respect to any institution located in a State on an Indian reservation.

Subsec. (d)(3). Pub. L. 92–603, §299, inserted provisions relating to reduction of non-Federal expenditures in any calendar quarter prior to January 1, 1975.

Subsec. (e). Pub. L. 92–603, §212(a), added subsec. (e).

Subsec. (f). Pub. L. 92–603, §247(b), added subsec. (f).

Subsec. (g). Pub. L. 92–603, §275(a), added subsec. (g).

Subsec. (h). Pub. L. 92–603, §299B(b), added subsec. (h).

Subsec. (i). Pub. L. 92–603, §299L(b), added subsec. (i),

1971—Subsec. (a)(16). Pub. L. 92–223, §4(a)(1)(C), added cl. (16).

Subsecs. (c), (d). Pub. L. 92–223, §4(a)(2), added subsecs. (c) and (d).

1968—Subsec. (a). Pub. L. 90–248, §230, inserted '', and with respect to physicians' or dentists' services, at the option of the State, to individuals not receiving aid or assistance under the State's plan approved under subchapter I, X, XIV, XVI of this chapter, or part A of subchapter IV of this chapter'' after ''for individuals'' in text preceding cl. (i).

Pub. L. 90–248, §233(b), inserted provision deeming, for purposes of cl. (vi) of the preceding sentence, a person as essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under subchapter I, X, XIV, or XV of this chapter, and such person is determined, under such a State plan, to be essential to the well being of such individual.

Subsec. (a)(ii). Pub. L. 90–248, §241(f)(6), inserted ''part A of'' before ''subchapter IV''.

Subsec. (a)(vi). Pub. L. 90–248, §233(a), added cl. (vi).

Subsec. (a)(4). Pub. L. 90–248, §302(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (b). Pub. L. 90–248, §248(e), substituted in cl. (2) of first sentence ''50'' for ''55''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13601(a) of Pub. L. 103–66 effective as if included in enactment of section 4721(a) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101–508, see section 13601(c) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Amendment by section 13603(e) of Pub. L. 103–66 applicable to medical assistance furnished on or after Jan. 1, 1994, without regard to whether or not final regulations to carry out the amendments by section 13603 of Pub. L. 103–66 have been promulgated by such date, see section 13603(f) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Section 13605(b) of Pub. L. 103–66 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after October 1, 1993.''

Section 13606(b) of Pub. L. 103–66 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to calendar quarters beginning on or after July 1, 1993.''

Amendment by section 13631(f)(2) of Pub. L. 103–66 applicable, except as otherwise provided, to calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not final regulations to carry out the amendments by section 13631(f) of Pub. L. 103–66 have been promulgated by such date, see section 13631(f)(3) of Pub. L. 103–66, set out as a note under section 1396a of this title.

Section 13631(g)(2) of Pub. L. 103–66 provided that: ''The amendments made by subparagraphs (A) and (B) of paragraph (1) [amending this section] shall first apply 90 days after the date the schedule referred to in subparagraphs (A)(i) and subparagraph (B)(iii) of section 1905(r)(1) of the Social Security Act [subsec. (r)(1)(B)(iii) of this section] (as amended by such respective subparagraphs) is first established.''

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4402(d)(2) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning

on or after Jan. 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4402 of Pub. L. 101–508 have been promulgated by such date, see section 4402(e) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4501(a), (c), (e)(1) of Pub. L. 101–508 applicable to calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not regulations to implement the amendments by section 4501 of Pub. L. 101–508 are promulgated by such date, except that amendment by section 4501(e)(1) of Pub. L. 101–508 is applicable to determinations of income for months beginning with January 1991, see section 4501(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4601(a)(2) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4601 of Pub. L. 101–508 have been promulgated by such date, see section 4601(b) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4704(c), (d), (e)(1) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, see section 4704(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4705(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as if included in the amendments made by section 6408(c)(1) of the Omnibus Budget Reconciliation Act of 1989 [Pub. L. 101–239, amending section 1396a of this title].''

Amendment by section 4711(a) of Pub. L. 101–508 applicable to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4711 of Pub. L. 101–508 have been promulgated by such date, see section 4711(e) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4712(a) of Pub. L. 101–508 applicable to community supported living arrangements services furnished on or after the later of July 1, 1991, or 30 days after the publication of regulations setting forth interim requirements under section 1396u(h) of this title without regard to whether or not final regulations to carry out the amendments by section 4712 of Pub. L. 101–508 have been promulgated by such date, see section 4712(c) of Pub. L. 101–508, set out as an Effective Date note under section 1396u of this title.

Amendment by section 4713(b) of Pub. L. 101–508 applicable to medical assistance furnished on or after Jan. 1, 1991, see section 4713(c) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4719(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

Section 4721(b) of Pub. L. 101–508 provided that: ''The amendment made by this section [amending this section] shall become effective with respect to personal care services provided on or after October 1, 1994.''

Section 4755(a)(1)(B) of Pub. L. 101–508 provided that: ''The amendment made by subparagraph (A) [amending this section] shall be effective as if included in the enactment of the Deficit Reduction Act of 1984 [Pub. L. 98–369].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6403(a), (c), (d)(2) of Pub. L. 101–239 effective Apr. 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6403 of Pub. L. 101–239 have been promulgated by such date, see section 6403(e) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6404(a), (b) of Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6404 of Pub. L. 101–239 have been promulgated by such date, see section 6404(d) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6405(a) of Pub. L. 101–239 effective with respect to services furnished by a certified pediatric nurse practitioner or certified family nurse practitioner on or after July 1, 1990, see section 6405(c) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by section 6408(d)(2), (4)(A), (B) of Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations to carry out the amendments by section 6408(d) of Pub. L. 101–239 have been promulgated by such date, see section 6408(d)(5) of Pub. L. 101–239, set out as a note under section 1396a of this title.

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–647 effective as if included in the enactment of section 301 of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 8434(c) of Pub. L. 100–647, set out as a note under section 1396a of this title.

Amendment by section 303(b)(2) of Pub. L. 100–485 applicable to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990 (or, in the case of the Commonwealth of Kentucky, Oct. 1, 1990) (without regard to whether regulations to implement such amendment are promulgated by such date), with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter on or after that date, see section 303(f)(1) of Pub. L. 100–485, set out as an Effective and Termination Dates of 1988 Amendment note under section 602 of this title.

Amendment by section 401(d)(2) of Pub. L. 100–485 effective Oct. 1, 1990, except as provided in subsec. (m)(2) of this section and not effective for Puerto Rico, Guam, American Samoa, and the Virgin Islands, until the date of repeal of limitations contained in section 1308(a) of this title on payments to such jurisdictions for purposes of making maintenance payments under this part and part E of this subchapter, see section 401(g) of Pub. L. 100–485, as amended, set out as an Effective and Termination Dates of 1988 Amendment note under section 602 of this title.

Amendment by section 608(d)(14)(A)–(G), (J) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 608(f)(3) of Pub. L. 100–485 effective Oct. 13, 1988, see section 608(g)(2) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 301(a)(2)–(d) of Pub. L. 100–360 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1989, without regard to whether or not final regulations to carry out such amendment have been promulgated by that date, with respect to medical assistance for monthly premiums under subchapter XVIII of this chapter for months beginning with January 1989, and items and services furnished on and after Jan. 1, 1989, see section 301(h) of Pub. L. 100–360, set out as a note under section 1396a of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(h)(4)(E), (k)(4), (8) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

Section 411(k)(14)(B) of Pub. L. 100–360 provided that: ''The amendment made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [July 1, 1988].''

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 4073(d) of Pub. L. 100–203 effective with respect to services performed on or after July 1, 1988, see section 4073(e) of Pub. L. 100–203, set out as a note under section 1395k of this title.

Section 4101(c)(3) of Pub. L. 100–203 provided that:

''(A) The amendments made by this subsection [amending this section and section 1396a of this title] shall apply to medical assistance furnished on or after October 1, 1988.

''(B) For purposes of section 1905(n)(2) of the Social Security Act [section 1396d(n)(2) of this title] (as amended by subsection (a) [probably means ''subsection (c)'']) for medical assistance furnished during fiscal year 1989, any reference to 'age of 7' is deemed to be a reference to 'age of 6'.''

Section 4103(b) of Pub. L. 100–203 provided that:

''(1) The amendment made by subsection (a) [amending this section] applies (except as provided under paragraph (2)) to payments under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for calendar quarters beginning on or after January 1, 1988, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Dec. 22, 1987].''

Section 4105(b) of Pub. L. 100–203 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after January 1, 1988, without regard to whether regulations to implement such amendment are promulgated by such date.''

Amendments by section 4211(e), (f), (h)(6) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendments are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

Amendment by section 9403(b), (d), (g)(3) of Pub. L. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9403(h) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9404(b) of Pub. L. 99–509 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether regulations to implement such amendments are promulgated by such date, see section 9404(c) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by section 9408(c)(1) of Pub. L. 99–509 applicable to services furnished on or after Oct. 21, 1986, see section 9408(d) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Section 9501(d)(1) of Pub. L. 99–272 provided that:

''(A) The amendments made by subsection (a) [amending this section] apply (except as provided under subparagraph (B)) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after the [sic] July 1, 1986, without regard to whether or not final regulations to carry out the amendments have been promulgated by that date.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirement imposed by the amendments made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Apr. 7, 1986].''

Amendment by section 9505(a) of Pub. L. 99–272 applicable to medical assistance provided for hospice care furnished on or after Apr. 7, 1986, see section 9505(e) of Pub. L. 99–272, set out as a note under section 1396a of this title.

Section 9511(b) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(d)(2), Oct. 21, 1986, 100 Stat. 2070, provided that: ''The amendment made by this section [amending this section] shall apply to services furnished on or after April 1, 1986, without regard to whether or not regulations to carry out the amendment have been promulgated by that date.''

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2335(f) of Pub. L. 98–369 effective July 18, 1984, see section 2335(g) of Pub. L. 98–369, set out as a note under section 1395f of this title.

Amendment by section 2340(b) of Pub. L. 98–369 effective July 18, 1984, see section 2340(c) of Pub. L. 98–369, set out as a note under section 1395x of this title.

Amendment by section 2361(b) of Pub. L. 98–369 applicable to calendar quarters beginning on or after Oct. 1, 1984, without regard to whether or not final regulations to carry out the amendment have been promulgated by such date, except as otherwise provided, see section 2361(d) of Pub. L. 98–369, set out as a note under section 1396a of this title.

Section 2371(b) of Pub. L. 98–369 provided that: ''The amendment made by subsection (a) [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 136(c) of Pub. L. 97–248 effective Oct. 1, 1982, see section 136(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

Amendment by section 137(b)(17), (18) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 2172(b) of Pub. L. 97–35 effective Aug. 13, 1981, see section 2172(c) of Pub. L. 97–35, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

For effective date of amendment by Pub. L. 96–499, see section 965(c) of Pub. L. 96–499, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 8(d)(1) of Pub. L. 95–292 provided that: ''The amendments made by subsections (a) and (b) [amending this section] shall become effective on July 1, 1978.''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after the first day of the first calender quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95–210, set out as a note under section 1395cc of this title.

EFFECTIVE DATE OF 1973 AMENDMENT

Amendment by section 13(a)(13)–(18) of Pub. L. 93–233 effective with respect to payments under section 1396b of this title for calendar quarters commencing after Dec. 31, 1973, see section 13(d) of Pub. L. 93–233, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 212(b) of Pub. L. 92–603 provided that: ''The provisions of subsection (e) of section 1905 of the Social Security Act [subsec. (e) of this section] (as added by subsection (a) of this section) shall be applicable in the case of services performed on or after the date of enactment of this Act [Oct. 30, 1972].''

Amendment by section 247(b) of Pub. L. 92–603 effective with respect to services furnished after Dec. 31, 1972, see section 247(c) of Pub. L. 92–603, set out as a note under section 1395f of this title.

Section 275(b) of Pub. L. 92–603 provided that: ''The amendment made by this section [amending this section] shall be effective with respect to services furnished after June 30, 1973.''

Section 297(b) of Pub. L. 92–603 provided that: ''The amendment made by this section [amending this section] shall apply with respect to services furnished after December 31, 1972.''

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92–223 effective Jan. 1, 1972, see section 4(d) of Pub. L. 92–223, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 248(e) of Pub. L. 90–248 provided that the amendment made by that section is effective with respect to quarters after 1967.

LIMITATION ON DISALLOWANCES OR DEFERRAL OF FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN INPATIENT PSYCHIATRIC HOSPITAL SERVICES FOR INDIVIDUALS UNDER AGE 21

Section 4706 of Pub. L. 101–508 provided that:

''(a) IN GENERAL.—(1) If the Secretary of Health and Human Services makes a determination that a psychiatric facility has failed to comply with certification of need requirements for inpatient psychiatric hospital services for individuals under age 21 pursuant to section 1905(h) of the Social Security Act [subsec. (h) of this section], and such determination has not been subject to a final judicial decision, any disallowance or deferral of Federal financial participation under such Act [this chapter] based on such determination shall only apply to the period of time beginning with the first day of noncompliance and ending with the date by which the psychiatric facility develops documentation (using plan of care or utilization review procedures) of the need for inpatient care with respect to such individuals.

''(2) Any disallowance of Federal financial participation under title XIX of the Social Security Act [this subchapter] relating to the failure of a psychiatric facility to comply with certification of need requirements—

''(A) shall not exceed 25 percent of the amount of Federal financial participation for the period described in paragraph (1); and

''(B) shall not apply to any fiscal year before the fiscal year that is 3 years before the fiscal year in which the determination of noncompliance described in paragraph (1) is made.

''(b) EFFECTIVE DATE.—Subsection (a) shall apply to disallowance actions and deferrals of Federal financial participation with respect to services provided before the date of enactment of this Act [Nov. 5, 1990].''

INTERMEDIATE CARE FACILITY; ACCESS AND VISITATION RIGHTS

Section 411(*l*)(3)(C)(i), formerly § 411(*l*)(3)(C), of Pub. L. 100–360, as redesignated by Pub. L. 100–485, title VI, § 608(d)(27)(E), Oct. 13, 1988, 102 Stat. 2423, provided that: ''Effective as of the date of the enactment of this Act [July 1, 1988] and until the effective date of section 1919(c) of such Act [section 1396r(c) of this title, see Effective Date note set out under section 1396r of this title], section 1905(c) of the Social Security Act [subsec. (c) of this section] is deemed to include the requirement described in section 1919(c)(3)(A) of such Act (as inserted by section 4211(a)(3) of OBRA).''

REGULATIONS FOR INTERMEDIATE CARE FACILITIES FOR MENTALLY RETARDED

Section 9514 of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall promulgate proposed regulations revising standards for intermediate care facilities for the mentally retarded under title XIX of the Social Security Act [this subchapter] within 60 days after the date of the enactment of this Act [Apr. 7, 1986].''

LIFE SAFETY CODE RECOGNITION

Section 9515 of Pub. L. 99–272 provided that: ''For purposes of section 1905(c) of the Social Security Act [subsec. (c) of this section], an intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act) which meets the requirements of the relevant sections of the 1985 edition of the Life Safety Code of the National Fire Protection Association shall be deemed to meet the fire safety requirements for intermediate care facilities for the mentally retarded until such time as the Secretary specifies a later edition of the Life Safety Code for purposes of such section, or the Secretary determines that more stringent standards are necessary to protect the safety of residents of such facilities.''

STUDY OF FEDERAL MEDICAL ASSISTANCE PERCENTAGE FORMULA AND OF ADJUSTMENTS OF TARGET AMOUNTS FOR FEDERAL MEDICAID EXPENDITURES; REPORT TO CONGRESS

Section 2165 of Pub. L. 97–35 directed the Comptroller General, in consultation with the Advisory Committee for Intergovernmental Relations, to study the Federal medical assistance percentage formula as applicable to distribution of Federal funds to States, with a view to revising the medicaid matching formula so as to take into account factors which might result in a more equitable distribution of Federal funds to States under this chapter, and to report to Congress on such study not later than Oct. 1, 1982.

COSTS CHARGED TO PERSONAL FUNDS OF PATIENTS IN INTERMEDIATE CARE FACILITIES; COSTS INCLUDED IN CHARGES FOR SERVICES; REGULATIONS

Section 8(c), (d)(2) of Pub. L. 95–292 required the Secretary of Health, Education, and Welfare to issue regulations, within 90 days after enactment of Pub. L. 95–292 but not later than July 1, 1978, defining those costs that may be charged to the personal funds of patients in intermediate care facilities who are individuals receiving medical assistance under a State plan approved under title XIX of the Social Security Act, and those costs that are to be included in the reasonable cost or rea-

sonable charge for intermediate care facility services. See section 1302 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 256b, 280c–6, 290bb–1, 300ff–52, 602, 603, 674, 705, 1318, 1395i–2, 1395v, 1395w–4, 1395ss, 1396a, 1396b, 1396i, 1396n, 1396*o*, 1396p, 1396r, 1396r–1, 1396r–6, 1396r–8, 1396s, 1396t, 3058k, 11398 of this title; title 25 section 1645.

§ 1396e. Enrollment of individuals under group health plans

(a) Requirements of each State plan; guidelines

For purposes of section 1396a(a)(25)(G) of this title and subject to subsection (d) of this section, each State plan—

(1) shall implement guidelines established by the Secretary, consistent with subsection (b) of this section, to identify those cases in which enrollment of an individual otherwise entitled to medical assistance under this subchapter in a group health plan (in which the individual is otherwise eligible to be enrolled) is cost-effective (as defined in subsection (e)(2) of this section);

(2) shall require, in case of an individual so identified and as a condition of the individual being or remaining eligible for medical assistance under this subchapter and subject to subsection (b)(2) of this section, notwithstanding any other provision of this subchapter, that the individual (or in the case of a child, the child's parent) apply for enrollment in the group health plan; and

(3) in the case of such enrollment (except as provided in subsection (c)(1)(B) of this section), shall provide for payment of all enrollee premiums for such enrollment and all deductibles, coinsurance, and other cost-sharing obligations for items and services otherwise covered under the State plan under this subchapter (exceeding the amount otherwise permitted under section 1396*o* of this title), and shall treat coverage under the group health plan as a third party liability (under section 1396a(a)(25) of this title).

(b) Timing of enrollment; failure to enroll

(1) In establishing guidelines under subsection (a)(1) of this section, the Secretary shall take into account that an individual may only be eligible to enroll in group health plans at limited times and only if other individuals (not entitled to medical assistance under the plan) are also enrolled in the plan simultaneously.

(2) If a parent of a child fails to enroll the child in a group health plan in accordance with subsection (a)(2) of this section, such failure shall not affect the child's eligibility for benefits under this subchapter.

(c) Premiums considered payments for medical assistance; eligibility

(1)(A) In the case of payments of premiums, deductibles, coinsurance, and other cost-sharing obligations under this section shall be considered, for purposes of section 1396b(a) of this title, to be payments for medical assistance.

(B) If all members of a family are not eligible for medical assistance under this subchapter and enrollment of the members so eligible in a group health plan is not possible without also enrolling members not so eligible—

(i) payment of premiums for enrollment of such other members shall be treated as payments for medical assistance for eligible individuals, if it would be cost-effective (taking into account payment of all such premiums), but

(ii) payment of deductibles, coinsurance, and other cost-sharing obligations for such other members shall not be treated as payments for medical assistance for eligible individuals.

(2) The fact that an individual is enrolled in a group health plan under this section shall not change the individual's eligibility for benefits under the State plan, except insofar as section 1396a(a)(25) of this title provides that payment for such benefits shall first be made by such plan.

(d) Applicability of section to medical assistance granted under waiver of State plan

(1) In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(2) This section, and section 1396a(a)(25)(G) of this title, shall only apply to a State that is one of the 50 States or the District of Columbia.

(e) Definitions

In this section:

(1) The term ''group health plan'' has the meaning given such term in section 5000(b)(1) of the Internal Revenue Code of 1986, and includes the provision of continuation coverage by such a plan pursuant to title XXII of the Public Health Service Act [42 U.S.C. 300bb–1 et seq.], section 4980B of the Internal Revenue Code of 1986, or title VI[1] of the Employee Retirement Income Security Act of 1974.

(2) The term ''cost-effective'' means, as established by the Secretary, that the reduction in expenditures under this subchapter with respect to an individual who is enrolled in a group health plan is likely to be greater than the additional expenditures for premiums and cost-sharing required under this section with respect to such enrollment.

(Aug. 14, 1935, ch. 531, title XIX, §1906, as added Nov. 5, 1990, Pub. L. 101–508, title IV, §4402(a)(2), 104 Stat. 1388–161.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsec. (e)(1), is classified generally to Title 26, Internal Revenue Code.

The Public Health Service Act, referred to in subsec. (e)(1), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title XXII of the Act is classified generally to subchapter XX (§300bb–1 et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (e)(1), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended. Title VI of the Act probably means part 6 of subtitle B of title I of the Act

[1] See References in Text note below.

which is classified generally to part 6 (§ 1161 et seq.) of subtitle B of subchapter I of chapter 18 of Title 29, Labor, because the Act has no title VI. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 1396e, act Aug. 14, 1935, ch. 531, title XIX, § 1906, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 226, 81 Stat. 903, created Advisory Council on Medical Assistance, set forth composition of Council, term of membership of members, and purposes of Council, and provided for compensation of members, prior to repeal by Pub. L. 92–603, title II, § 287, Oct. 30, 1972, 86 Stat. 1457, effective on the first day of the third calendar month following Oct. 30, 1972.

EFFECTIVE DATE

Section applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Jan. 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4402 of Pub. L. 101–508 have been promulgated by such date, see section 4402(e) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 1396a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 1396b of this title.

§ 1396f. Observance of religious beliefs

Nothing in this subchapter shall be construed to require any State which has a plan approved under this subchapter to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services provided under such plan for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health), if such person objects (or, in case such person is a child, his parent or guardian objects) thereto on religious grounds.

(Aug. 14, 1935, ch. 531, title XIX, § 1907, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 232, 81 Stat. 905.)

§ 1396g. State programs for licensing of administrators of nursing homes

(a) Nature of State program

For purposes of section 1396a(a)(29) of this title, a ''State program for the licensing of administrators of nursing homes'' is a program which provides that no nursing home within the State may operate except under the supervision of an administrator licensed in the manner provided in this section.

(b) Licensing by State agency or board representative of concerned professions and institutions

Licensing of nursing home administrators shall be carried out by the agency of the State responsible for licensing under the healing arts licensing act of the State, or, in the absence of such act or such an agency, a board representative of the professions and institutions concerned with care of chronically ill and infirm aged patients and established to carry out the purposes of this section.

(c) Functions and duties of State agency or board

It shall be the function and duty of such agency or board to—

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards; and

(6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.

(d) Waiver of standards other than good character or suitability standards

No State shall be considered to have failed to comply with the provisions of section 1396a(a)(29) of this title because the agency or board of such State (established pursuant to subsection (b) of this section) shall have granted any waiver, with respect to any individual who, during all of the three calendar years immediately preceding the calendar year in which the requirements prescribed in section 1396a(a)(29) of this title are first met by the State, has served as a nursing home administrator, of any of the standards developed, imposed, and enforced by such agency or board pursuant to subsection (c) of this section.

(e) "Nursing home" and "nursing home administrator" defined

As used in this section, the term—

(1) ''nursing home'' means any institution or facility defined as such for licensing purposes under State law, or, if State law does not employ the term nursing home, the equivalent

term or terms as determined by the Secretary, but does not include a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts; and

(2) ''nursing home administrator'' means any individual who is charged with the general administration of a nursing home whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more other individuals.

(Aug. 14, 1935, ch. 531, title XIX, § 1908, as added Jan. 2, 1968, Pub. L. 90–248, title II, § 236(b), 81 Stat. 908; amended Oct. 30, 1972, Pub. L. 92–603, title II, §§ 268(b), 269, 274(b), 86 Stat. 1451, 1452; Dec. 31, 1973, Pub. L. 93–233, § 18(y)(3), 87 Stat. 973.)

REPEAL OF SECTION

Pub. L. 101–508, title IV, § 4801(e)(11), Nov. 5, 1990, 104 Stat. 1388–217, provided that, effective on the date on which the Secretary promulgates standards regarding the qualifications of nursing facility administrators under section 1396r(f)(4) of this title, this section is repealed.

CODIFICATION

Another section 1908 of act Aug. 14, 1935, is classified to section 1396g–1 of this title.

AMENDMENTS

1973—Subsec. (d). Pub. L. 93–233 struck out second sentence reading substantially the same as the first sentence but containing the following additional text reading ''other than such standards as relate to good character or suitability if—

''(1) such waiver is for a period which ends after being in effect for two years or on June 30, 1972, whichever is earlier, and

''(2) there is provided in the State (during all of the period for which waiver is in effect), a program of training and instruction designed to enable all individuals with respect to whom any such waiver is granted, to attain the qualifications necessary in order to meet such standards'' and also ''calendar year'' instead of ''three calendar years'' and reference to ''subsection (c)(1) of this section'' instead of ''subsection (c) of this section''.

Subsec. (e). Pub. L. 93–233 redesignated subsec. (g) as (e), and repealed prior subsec. (e) relating to authorization of appropriations for fiscal years 1968 through 1972 and to limitation of grants.

Subsec. (f). Pub. L. 93–233 repealed subsec. (f) providing for creation of National Advisory Council on Nursing Home Administration and for its composition, appointment of members, the Chairman, representation of interests, functions and duties, compensation and travel expenses, technical assistance, availability of assistance and data, and termination date of Dec. 31, 1971.

Subsec. (g). Pub. L. 93–233, redesignated subsec. (g) as (e).

1972—Subsec. (d). Pub. L. 92–603, §§ 269, 274(b), inserted references to the grant of waivers to individuals who, during all of the three calendar years immediately preceding the calendar year in which the requirements prescribed in section 1396a(a)(29) of this title are first met by the State, have served as nursing home administrators and substituted ''subsection (c)(1)'' for ''subsection (b)(1)''.

Subsec. (g)(1). Pub. L. 92–603, § 268(b), inserted '', but does not include a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts'' after ''Secretary''.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by section 268(b) of Pub. L. 92–603 effective Oct. 30, 1972, see section 268(c) of Pub. L. 92–603, set out as a note under section 1396a of this title.

EFFECTIVE DATE

Section 236(c) of Pub. L. 90–248 provided that: ''Except as otherwise specified in the text thereof, the amendments made by this section [enacting this section and amending section 1396a of this title] shall take effect on July 1, 1970.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396a of this title; title 29 section 1169.

§ 1396g–1. Required laws relating to medical child support

(a) In general

The laws relating to medical child support, which a State is required to have in effect under section 1396a(a)(60) of this title, are as follows:

(1) A law that prohibits an insurer from denying enrollment of a child under the health coverage of the child's parent on the ground that—

(A) the child was born out of wedlock,

(B) the child is not claimed as a dependent on the parent's Federal income tax return, or

(C) the child does not reside with the parent or in the insurer's service area.

(2) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an insurer, a law that requires such insurer—

(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this subchapter or part D of subchapter IV of this chapter; and

(C) not to disenroll (or eliminate coverage of) such a child unless the insurer is provided satisfactory written evidence that—

(i) such court or administrative order is no longer in effect, or

(ii) the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of such disenrollment.

(3) In any case in which a parent is required by a court or administrative order to provide health coverage for a child and the parent is eligible for family health coverage through an employer doing business in the State, a law that requires such employer—

(A) to permit such parent to enroll under such family coverage any such child who is otherwise eligible for such coverage (without regard to any enrollment season restrictions);

(B) if such a parent is enrolled but fails to make application to obtain coverage of such child, to enroll such child under such family coverage upon application by the child's other parent or by the State agency administering the program under this subchapter or part D of subchapter IV of this chapter; and

(C) not to disenroll (or eliminate coverage of) any such child unless—

(i) the employer is provided satisfactory written evidence that—

(I) such court or administrative order is no longer in effect, or

(II) the child is or will be enrolled in comparable health coverage which will take effect not later than the effective date of such disenrollment, or

(ii) the employer has eliminated family health coverage for all of its employees; and

(D) to withhold from such employee's compensation the employee's share (if any) of premiums for health coverage (except that the amount so withheld may not exceed the maximum amount permitted to be withheld under section 1673(b) of title 15), and to pay such share of premiums to the insurer, except that the Secretary may provide by regulation for appropriate circumstances under which an employer may withhold less than such employee's share of such premiums.

(4) A law that prohibits an insurer from imposing requirements on a State agency, which has been assigned the rights of an individual eligible for medical assistance under this subchapter and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual so covered.

(5) A law that requires an insurer, in any case in which a child has health coverage through the insurer of a noncustodial parent—

(A) to provide such information to the custodial parent as may be necessary for the child to obtain benefits through such coverage;

(B) to permit the custodial parent (or provider, with the custodial parent's approval) to submit claims for covered services without the approval of the noncustodial parent; and

(C) to make payment on claims submitted in accordance with subparagraph (B) directly to such custodial parent, the provider, or the State agency.

(6) A law that permits the State agency under this subchapter to garnish the wages, salary, or other employment income of, and requires withholding amounts from State tax refunds to, any person who—

(A) is required by court or administrative order to provide coverage of the costs of health services to a child who is eligible for medical assistance under this subchapter,

(B) has received payment from a third party for the costs of such services to such child, but

(C) has not used such payments to reimburse, as appropriate, either the other parent or guardian of such child or the provider of such services,

to the extent necessary to reimburse the State agency for expenditures for such costs under its plan under this subchapter, but any claims for current or past-due child support shall take priority over any such claims for the costs of such services.

(b) "Insurer" defined

For purposes of this section, the term ''insurer'' includes a group health plan, as defined in section 1167(1) of title 29, a health maintenance organization, and an entity offering a service benefit plan.

(Aug. 14, 1935, ch. 531, title XIX, § 1908, as added Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13623(b), 107 Stat. 633.)

REFERENCES IN TEXT

Part D of subchapter IV of this chapter, referred to in subsec. (a)(2)(B), (3)(B), is classified to section 651 et seq. of this title.

CODIFICATION

Another section 1908 of act Aug. 14, 1935, is classified to section 1396g of this title.

EFFECTIVE DATE

Section 13623(c) of Pub. L. 103–66 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 1396a of this title] apply to calendar quarters beginning on or after April 1, 1994, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) In the case of a State plan under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396a of this title.

§ 1396h. Transferred

CODIFICATION

Section, act Aug. 14, 1935, ch. 531, title XIX, § 1909, as added and amended Oct. 30, 1972, Pub. L. 92–603, title II, §§ 242(c), 278(b)(9), 86 Stat. 1419, 1454; Oct. 25, 1977, Pub. L. 95–142, § 4(b), 91 Stat. 1181; Dec. 5, 1980, Pub. L. 96–499, title IX, § 917, 94 Stat. 2625; Aug. 18, 1987, Pub. L. 100–93, § 4(a)–(c), 101 Stat. 688, 689, which related to criminal penalties for acts involving Medicare and State health care programs, was renumbered section 1128B of title XI of act Aug. 14, 1935, by section 4(d) of Pub. L. 100–93 and transferred to section 1320a–7b of this title.

§ 1396i. Certification and approval of rural health clinics and intermediate care facilities for mentally retarded

(a)(1) Whenever the Secretary certifies a facility in a State to be qualified as a rural health

clinic under subchapter XVIII of this chapter, such facility shall be deemed to meet the standards for certification as a rural health clinic for purposes of providing rural health clinic services under this title.

(2) The Secretary shall notify the State agency administering the medical assistance plan of his approval or disapproval of any facility in that State which has applied for certification by him as a qualified rural health clinic.

(b)(1) The Secretary may cancel approval of any intermediate care facility for the mentally retarded at any time if he finds on the basis of a determination made by him as provided in section 1396a(a)(33)(B) of this title that a facility fails to meet the requirements contained in section 1396a(a)(31) of this title or section 1396d(d) of this title, or if he finds grounds for termination of his agreement with the facility pursuant to section 1395cc(b) of this title. In that event the Secretary shall notify the State agency and the intermediate care facility for the mentally retarded that approval of eligibility of the facility to participate in the programs established by this subchapter and subchapter XVIII of this chapter shall be terminated at a time specified by the Secretary. The approval of eligibility of any such facility to participate in such programs may not be reinstated unless the Secretary finds that the reason for termination has been removed and there is reasonable assurance that it will not recur.

(2) Any intermediate care facility for the mentally retarded which is dissatisfied with a determination by the Secretary that it no longer qualifies as a[1] intermediate care facility for the mentally retarded for purposes of this subchapter, shall be entitled to a hearing by the Secretary to the same extent as is provided in section 405(b) of this title and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title, except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively. Any agreement between such facility and the State agency shall remain in effect until the period for filing a request for a hearing has expired or, if a request has been filed, until a decision has been made by the Secretary; except that the agreement shall not be extended if the Secretary makes a written determination, specifying the reasons therefor, that the continuation of provider status constitutes an immediate and serious threat to the health and safety of patients, and the Secretary certifies that the facility has been notified of its deficiencies and has failed to correct them.

(Aug. 14, 1935, ch. 531, title XIX, §1910, as added and amended Oct. 30, 1972, Pub. L. 92–603, title II, §§249A(a), 278(b)(12), 86 Stat. 1426, 1454; Dec. 13, 1977, Pub. L. 95–210, §2(d), 91 Stat. 1489; Dec. 5, 1980, Pub. L. 96–499, title IX, §916(b)(2), 94 Stat. 2624; Dec. 22, 1987, Pub. L. 100–203, title IV, §4212(e)(3), 101 Stat. 1330–213; July 1, 1988, Pub. L. 100–360, title IV, §411(*l*)(6)(F), as added Oct. 13, 1988, Pub. L. 100–485, title VI, §608(d)(27)(J), 102 Stat. 2423; Dec. 19, 1989, Pub. L. 101–239, title VI, §6901(d)(5), 103 Stat. 2301; Aug. 15, 1994, Pub. L. 103–296, title I, §108(d)(4), 108 Stat. 1486.)

[1] So in original. Probably should be ''an''.

AMENDMENTS

1994—Subsec. (b)(2). Pub. L. 103–296 inserted before period at end of first sentence '', except that, in so applying such sections and in applying section 405(*l*) of this title thereto, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

1989—Pub. L. 101–239, §6901(d)(5)(A), substituted ''rural health clinics and intermediate care facilities for the mentally retarded'' for ''rural health clinics'' in section catchline.

Subsec. (b)(1). Pub. L. 101–239, §6901(d)(5)(B)–(D), substituted ''any intermediate care facility for the mentally retarded'' for ''any skilled nursing or intermediate care facility'', ''section 1396a(a)(31) of this title or section 1396d(d) of this title'' for ''section 1396a(a)(28) of this title or section 1396r of this title or section 1396d(c) of this title'', and ''the intermediate care facility for the mentally retarded'' for ''the skilled nursing facility or intermediate care facility''.

Subsec. (b)(2). Pub. L. 101–239, §6901(d)(5)(D), substituted ''intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility'' in two places.

1988—Subsec. (b)(1). Pub. L. 100–360, §411(*l*)(6)(F), as added by Pub. L. 100–485, §608(d)(27)(J), inserted ''or section 1396r of this title'' after ''1396a(a)(28) of this title''.

1987—Pub. L. 100–203 struck out ''skilled nursing facilities and'' before ''of rural'' in section catchline, redesignated subsecs. (b) and (c) as (a) and (b), respectively, and struck out former subsec. (a) which related to certification and approval of skilled nursing facilities.

1980—Subsec. (c). Pub. L. 96–499 added subsec. (c).

1977—Pub. L. 95–210 redesignated existing subsecs. (a) and (b) as (a)(1) and (2), respectively, and added subsec. (b).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 6901(d)(6) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as

otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after first day of first calendar quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95–210, set out as a note under section 1395cc of this title.

EFFECTIVE DATE

Section effective with respect to agreements filed with Secretary under section 1395cc of this title by skilled nursing facilities before, on, or after Oct. 30, 1972, but accepted by him on or after such date, see section 249A(e) of Pub. L. 92–603, set out as an Effective Date of 1972 Amendment note under section 1395cc of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396r–3 of this title.

§ 1396j. Indian health service facilities

(a) Eligibility for reimbursement for medical assistance

A facility of the Indian Health Service (including a hospital, nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan), whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 1603 of title 25), shall be eligible for reimbursement for medical assistance provided under a State plan if and for so long as it meets all of the conditions and requirements which are applicable generally to such facilities under this subchapter.

(b) Facilities deemed to meet requirements upon submission of acceptable plan for achieving compliance

Notwithstanding subsection (a) of this section, a facility of the Indian Health Service (including a hospital, nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan) which does not meet all of the conditions and requirements of this title which are applicable generally to such facility, but which submits to the Secretary within six months after September 30, 1976, an acceptable plan for achieving compliance with such conditions and requirements, shall be deemed to meet such conditions and requirements (and to be eligible for reimbursement under this subchapter), without regard to the extent of its actual compliance with such conditions and requirements, during the first twelve months after the month in which such plan is submitted.

(c) Agreement to reimburse State agency for providing care and services

The Secretary is authorized to enter into agreements with the State agency for the purpose of reimbursing such agency for health care and services provided in Indian Health Service facilities to Indians who are eligible for medical assistance under the State plan.

(Aug. 14, 1935, ch. 531, title XIX, § 1911, as added Sept. 30, 1976, Pub. L. 94–437, title IV, § 402(a), 90 Stat. 1409, and amended Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4118(f)(1), 4211(h)(8), 101 Stat. 1330–155, 1330–206; July 1, 1988, Pub. L. 100–360, title IV, § 411(k)(10)(E), 102 Stat. 796.)

AMENDMENTS

1988—Subsecs. (a), (b). Pub. L. 100–360, § 411(k)(10)(E), made technical correction to directory language of Pub. L. 100–203, § 4118(f)(1)(A), see 1987 Amendment note below.

1987—Subsecs. (a), (b). Pub. L. 100–203, § 4118(f)(1)(A), as amended by Pub. L. 100–360, § 411(k)(10)(E), substituted '', nursing facility, or any other type of facility which provides services of a type otherwise covered under the State plan'' for ''or nursing facility''.

Pub. L. 100–203, § 4211(h)(8), substituted ''or nursing facility'' for '', intermediate care facility, or skilled nursing facility'' wherever appearing.

Subsec. (c). Pub. L. 100–203, § 4118(f)(1)(B), added subsec. (c).

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4118(f)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to health care services performed on or after the date of the enactment of this Act [Dec. 22, 1987].''

Amendment by section 4211(h)(8) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

AGREEMENTS TO REIMBURSE STATE AGENCY FOR HEALTH CARE AND SERVICES PROVIDED BY AGENCY TO INDIANS

Pub. L. 94–437, title IV, § 402(b), Sept. 30, 1976, 90 Stat. 1409, which authorized Secretary to enter into agreements to reimburse State agencies for health care and services provided in Service facilities to Indians eligible for medical assistance under this subchapter, was repealed by Pub. L. 100–713, title IV, § 401(b), Nov. 23, 1988, 102 Stat. 4818, applicable to services performed on or after the Nov. 23, 1988.

PAYMENTS INTO SPECIAL FUND TO IMPROVE INDIAN HEALTH SERVICE FACILITIES TO ACHIEVE COMPLIANCE WITH CONDITIONS AND REQUIREMENTS; CERTIFICATION OF COMPLIANCE BY SECRETARY

Section 402(c) of Pub. L. 94–437, as amended by Pub. L. 100–713, title IV, § 401(a), Nov. 23, 1988, 102 Stat. 4818, provided that payments to which any Indian Health Service facility was entitled by reason of this section were to be placed in a special fund of the Secretary for improvements of facilities of the Service to comply with requirements of this subchapter, required minimum funding for each service unit making collections for such facilities, and provided for section 402(c) of Pub. L. 94–437 to cease to apply when Secretary determined that substantially all such facilities complied with requirements of this subchapter, prior to the general amendment of section 402 of Pub. L. 94–437 by Pub.

L. 102–573, title IV, §401(b)(1), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 402(a) of Pub. L. 94–437 which is classified to section 1642(a) of Title 25, Indians.

MEDICAID PAYMENTS NOT CONSIDERED IN DETERMINING APPROPRIATIONS FOR INDIAN HEALTH CARE

Section 402(d) of Pub. L. 94–437 provided that any payments received for services provided recipients under this section were not to be considered in determining appropriations for the provision of health care and services to Indians, prior to the general amendment of section 402 of Pub. L. 94–437 by Pub. L. 102–573, title IV, §401(b)(1), Oct. 29, 1992, 106 Stat. 4565. Similar provisions are contained in section 402(b) of Pub. L. 94–437 which is classified to section 1642(b) of Title 25, Indians.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290ff of this title; title 25 sections 1642, 1645.

§ 1396k. Assignment, enforcement, and collection of rights of payments for medical care; establishment of procedures pursuant to State plan; amounts retained by State

(a) For the purpose of assisting in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the State plan approved under this subchapter, a State plan for medical assistance shall—

(1) provide that, as a condition of eligibility for medical assistance under the State plan to an individual who has the legal capacity to execute an assignment for himself, the individual is required—

(A) to assign the State any rights, of the individual or of any other person who is eligible for medical assistance under this subchapter and on whose behalf the individual has the legal authority to execute an assignment of such rights, to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party;

(B) to cooperate with the State (i) in establishing the paternity of such person (referred to in subparagraph (A)) if the person is a child born out of wedlock, and (ii) in obtaining support and payments (described in subparagraph (A)) for himself and for such person, unless (in either case) the individual is described in section 1396a(*l*)(1)(A) of this title or the individual is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and

(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan, unless such individual has good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and

(2) provide for entering into cooperative arrangements (including financial arrangements), with any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, with a State's agency established or designated under section 654(3) of this title) and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the State plan with respect to (A) the enforcement and collection of rights to support or payment assigned under this section and (B) any other matters of common concern.

(b) Such part of any amount collected by the State under an assignment made under the provisions of this section shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing of such medical assistance), and the remainder of such amount collected shall be paid to such individual.

(Aug. 14, 1935, ch. 531, title XIX, §1912, as added Oct. 25, 1977, Pub. L. 95–142, §11(b), 91 Stat. 1196; amended July 18, 1984, Pub. L. 98–369, div. B, title III, §2367(b), 98 Stat. 1109; Apr. 7, 1986, Pub. L. 99–272, title IX, §9503(e), 100 Stat. 207; Nov. 5, 1990, Pub. L. 101–508, title IV, §4606(a), 104 Stat. 1388–170.)

AMENDMENTS

1990—Subsec. (a)(1)(B). Pub. L. 101–508 inserted ''the individual is described in section 1396a(*l*)(1)(A) of this title or'' after ''unless (in either case)''.

1986—Subsec. (a)(1)(C). Pub. L. 99–272 added subpar. (C).

1984—Subsec. (a). Pub. L. 98–369 substituted ''State plan for medical assistance shall'' for ''State plan for medical assistance may''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4606(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–272 applicable to calendar quarters beginning on or after Apr. 7, 1986, except as otherwise provided, see section 9503(g)(1), (2) of Pub. L. 99–272, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective Oct. 1, 1984, except as otherwise provided, see section 2367(c) of Pub. L. 98–369, set out as a note under section 1396a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 654, 1396a, 1396b of this title; title 29 section 1169.

§ 1396*l*. Hospital providers of nursing facility services

(a) Notwithstanding any other provision of this subchapter, payment may be made, in accordance with this section, under a State plan approved under this subchapter for nursing facility services furnished by a hospital which has in effect an agreement under section 1395tt of this title and which, with respect to the provi-

sion of such services, meets the requirements of subsections (b) through (d) of section 1396r of this title.

(b)(1) Except as provided in paragraph (3), payment to any such hospital, for any nursing facility services furnished pursuant to subsection (a) of this section, shall be at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under the State plan to nursing facilities, respectively,[1] located in the State in which the hospital is located. The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

(2) With respect to any period for which a hospital has an agreement under section 1395tt of this title, in order to allocate routine costs between hospital and long-term care services, the total reimbursement for routine services due from all classes of long-term care patients (including subchapter XVIII of this chapter, this subchapter, and private pay patients) shall be subtracted from the hospital total routine costs before calculations are made to determine reimbursement for routine hospital services under the State plan.

(3) Payment to all such hospitals, for any nursing facility services furnished pursuant to subsection (a) of this section, may be made at a payment rate established by the State in accordance with the requirements of section 1396a(a)(13)(A) of this title.

(Aug. 14, 1935, ch. 531, title XIX, § 1913, as added Dec. 5, 1980, Pub. L. 96–499, title IX, § 904(b), 94 Stat. 2617; amended July 18, 1984, Pub. L. 98–369, div. B, title III, § 2369(a), 98 Stat. 1110; Dec. 22, 1987, Pub. L. 100–203, title IV, § 4211(h)(9), 101 Stat. 1330–206.)

AMENDMENTS

1987—Pub. L. 100–203, § 4211(h)(9)(A), substituted ''nursing facility services'' for ''skilled nursing and intermediate care services'' in section catchline.

Subsec. (a). Pub. L. 100–203, § 4211(h)(9)(B), substituted ''nursing facility services'' for ''skilled nursing facility services and intermediate care facility services'' and inserted ''and which, with respect to the provision of such services, meets the requirements of subsections (b) through (d) of section 1396r of this title'' before period at end.

Subsec. (b)(1). Pub. L. 100–203, § 4211(h)(9)(C), substituted ''nursing facility services'' for ''skilled nursing or intermediate care facility services'' and ''nursing facilities'' for ''skilled nursing and intermediate care facilities''.

Subsec. (b)(3). Pub. L. 100–203, § 4211(h)(9)(D), substituted ''nursing facility services'' for ''skilled nursing or intermediate care facility services''.

1984—Subsec. (b)(1). Pub. L. 98–369, § 2369(a)(1), substituted ''Except as provided in paragraph (3), payment'' for ''Payment''.

Subsec. (b)(3). Pub. L. 98–369, § 2369(a)(2), added par. (3).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2369(b) of Pub. L. 98–369 provided that: ''The amendments made by this section [amending this section] shall apply to payments for services furnished after the date of the enactment of this Act [July 18, 1984].''

EFFECTIVE DATE

Section effective on date on which final regulations to implement the section are first issued, see section 904(d) of Pub. L. 96–499, set out as an Effective Date note under section 1395tt of this title.

§ 1396m. Withholding of Federal share of payments for certain medicare providers

(a) Adjustment of Federal matching payments

The Secretary may adjust, in accordance with this section, the Federal matching payment to a State with respect to expenditures for medical assistance for care or services furnished in any quarter by—

(1) an institution (A) which has or previously had in effect an agreement with the Secretary under section 1395cc of this title; and (B)(i) from which the Secretary has been unable to recover overpayments made under subchapter XVIII of this chapter, or (ii) from which the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such institution under subchapter XVIII of this chapter; and

(2) any person (A) who (i) has previously accepted payment on the basis of an assignment under section 1395u(b)(3)(B)(ii) of this title, and (ii) during the annual period immediately preceding such quarter submitted no claims for payment under subchapter XVIII of this chapter, or submitted claims for payment under subchapter XVIII of this chapter which aggregated less than the amount of overpayments made to him, and (B)(i) from whom the Secretary has been unable to recover overpayments received in violation of the terms of such assignment, or (ii) from whom the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such person under subchapter XVIII of this chapter.

(b) Reductions in payments to and by States

The Secretary may (subject to the remaining provisions of this section) reduce payment to a State under this subchapter for any quarter by an amount equal to the lesser of the Federal matching share of payments to any institution or person specified in subsection (a) of this section, or the total overpayments to such institution or person under subchapter XVIII of this chapter, and may require the State to reduce its payment to such institution or person by such amount.

(c) Notice

The Secretary shall not make any adjustment in the payment to a State, nor require any adjustment in the payment to an institution or person, pursuant to subsection (b) of this section

[1] So in original, '', respectively,'' probably should not appear.

until after he has provided adequate notice (which shall be not less than 60 days) to the State agency and the institution or person.

(d) Regulations

The Secretary shall by regulation provide procedures for implementation of this section, which procedures shall (1) determine the amount of the Federal payment to which the institution or person would otherwise be entitled under this section which shall be treated as a setoff against overpayments under subchapter XVIII of this chapter, and (2) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under subchapter XVIII of this chapter and to which the institution or person would otherwise be entitled under this subchapter.

(e) Restoration to trust funds of recovered amounts

The Secretary shall restore to the trust funds established under sections 1395i and 1395t of this title, as appropriate, amounts recovered under this section as setoffs against overpayments under subchapter XVIII of this chapter.

(f) Liability of States for withheld payments

Notwithstanding any other provision of this subchapter, an institution or person shall not be entitled to recover from any State any amount in payment for medical care and services under this subchapter which is withheld by the State agency pursuant to an order by the Secretary under subsection (b) of this section.

(Aug. 14, 1935, ch. 531, title XIX, §1914, as added Dec. 5, 1980, Pub. L. 96–499, title IX, §905(d), 94 Stat. 2618.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 1396b of this title.

§ 1396n. Compliance with State plan and payment provisions

(a) Activities deemed as compliance

A State shall not be deemed to be out of compliance with the requirements of paragraphs (1), (10), or (23) of section 1396a(a) of this title solely by reason of the fact that the State (or any political subdivision thereof)—

(1) has entered into—

(A) a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic; or

(B) arrangements through a competitive bidding process or otherwise for the purchase of laboratory services referred to in section 1396d(a)(3) of this title or medical devices if the Secretary has found that—

(i) adequate services or devices will be available under such arrangements, and

(ii) any such laboratory services will be provided only through laboratories—

(I) which meet the applicable requirements of section 1395x(e)(9) of this title or paragraphs (15) and (16) of section 1395x(s) of this title, and such additional requirements as the Secretary may require, and

(II) no more than 75 percent of whose charges for such services are for services provided to individuals who are entitled to benefits under this subchapter or under part A or part B of subchapter XVIII of this chapter; or

(2) restricts for a reasonable period of time the provider or providers from which an individual (eligible for medical assistance for items or services under the State plan) can receive such items or services, if—

(A) the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the individual has utilized such items or services at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), and

(B) under such restriction, individuals eligible for medical assistance for such services have reasonable access (taking into account geographic location and reasonable travel time) to such services of adequate quality.

(b) Waivers to promote cost-effectiveness and efficiency

The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this subchapter, may waive such requirements of section 1396a of this title (other than subsection (s)) (other than sections 1396a(a)(13)(E) and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title) as may be necessary for a State—

(1) to implement a primary care case-management system or a specialty physician services arrangement which restricts the provider from (or through) whom an individual (eligible for medical assistance under this subchapter) can obtain medical care services (other than in emergency circumstances), if such restriction does not substantially impair access to such services of adequate quality where medically necessary,

(2) to allow a locality to act as a central broker in assisting individuals (eligible for medical assistance under this subchapter) in selecting among competing health care plans, if such restriction does not substantially impair access to services of adequate quality where medically necessary,

(3) to share (through provision of additional services) with recipients of medical assistance under the State plan cost savings resulting from use by the recipient of more cost-effective medical care, and

(4) to restrict the provider from (or through) whom an individual (eligible for medical assistance under this subchapter) can obtain services (other than in emergency circumstances) to providers or practitioners who un-

dertake to provide such services and who meet, accept, and comply with the reimbursement, quality, and utilization standards under the State plan, which standards shall be consistent with the requirements of section 1396r–4 of this title and are consistent with access, quality, and efficient and economic provision of covered care and services, if such restriction does not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing those services and if providers under such restriction are paid on a timely basis in the same manner as health care practitioners must be paid under section 1396a(a)(37)(A) of this title.

No waiver under this subsection may restrict the choice of the individual in receiving services under section 1396d(a)(4)(C) of this title.

(c) Waiver respecting medical assistance requirement in State plan; scope, etc.; "habilitation services" defined; imposition of certain regulatory limits prohibited; computation of expenditures for certain disabled patients; coordinated services; substitution of participants

(1) The Secretary may by waiver provide that a State plan approved under this subchapter may include as ''medical assistance'' under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or a nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan. For purposes of this subsection, the term ''room and board'' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

(B) the State will provide, with respect to individuals who—

(i) are entitled to medical assistance for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded under the State plan,

(ii) may require such services, and

(iii) may be eligible for such home or community-based care under such waiver,

for an evaluation of the need for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded;

(C) such individuals who are determined to be likely to require the level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded are informed of the feasible alternatives, if available under the waiver, at the choice of such individuals, to the provision of inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded;

(D) under such waiver the average per capita expenditure estimated by the State in any fiscal year for medical assistance provided with respect to such individuals does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such individuals if the waiver had not been granted; and

(E) the State will provide to the Secretary annually, consistent with a data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1396a(a)(1) of this title (relating to statewideness), section 1396a(a)(10)(B) of this title (relating to comparability), and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community). A waiver under this subsection shall be for an initial term of three years and, upon the request of a State, shall be extended for additional five-year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met. A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under that waiver, that the maximum amount of the individual's income which may be disregarded for any month for the maintenance needs of the individual may be an amount greater than the maximum allowed for that purpose under regulations in effect on July 1, 1985.

(4) A waiver granted under this subsection may, consistent with paragraph (2)—

(A) limit the individuals provided benefits under such waiver to individuals with respect to whom the State has determined that there is a reasonable expectation that the amount of medical assistance provided with respect to the individual under such waiver will not exceed the amount of such medical assistance provided for such individual if the waiver did not apply, and

(B) provide medical assistance to individuals (to the extent consistent with written plans of care, which are subject to the approval of the State) for case management services, homemaker/home health aide services and personal care services, adult day health services, habilitation services, respite care, and such other services requested by the State as the Sec-

retary may approve and for day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness.

Except as provided under paragraph (2)(D), the Secretary may not restrict the number of hours or days of respite care in any period which a State may provide under a waiver under this subsection.

(5) For purposes of paragraph (4)(B), the term ''habilitation services'', with respect to individuals who receive such services after discharge from a nursing facility or intermediate care facility for the mentally retarded—

(A) means services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community based settings; and

(B) includes (except as provided in subparagraph (C)) prevocational, educational, and supported employment services; but

(C) does not include—

(i) special education and related services (as defined in paragraphs (16) and (17) of section 1401(a) of title 20) which otherwise are available to the individual through a local educational agency; and

(ii) vocational rehabilitation services which otherwise are available to the individual through a program funded under section 730 of title 29.

(6) The Secretary may not require, as a condition of approval of a waiver under this section under paragraph (2)(D), that the actual total expenditures for home and community-based services under the waiver (and a claim for Federal financial participation in expenditures for the services) cannot exceed the approved estimates for these services. The Secretary may not deny Federal financial payment with respect to services under such a waiver on the ground that, in order to comply with paragraph (2)(D), a State has failed to comply with such a requirement.

(7)(A) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with a particular illness or condition who are inpatients in, or who would require the level of care provided in, hospitals, nursing facilities, or intermediate care facilities for the mentally retarded, the State may determine the average per capita expenditure that would have been made in a fiscal year for those individuals under the State plan separately from the expenditures for other individuals who are inpatients in, or who would require the level of care provided in, those respective facilities.

(B) In making estimates under paragraph (2)(D) in the case of a waiver that applies only to individuals with developmental disabilities who are inpatients in a nursing facility and whom the State has determined, on the basis of an evaluation under paragraph (2)(B), to need the level of services provided by an intermediate care facility for the mentally retarded, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals under the State plan on the basis of the average per capita expenditures under the State plan for services to individuals who are inpatients in an intermediate care facility for the mentally retarded, without regard to the availability of beds for such inpatients.

(C) In making estimates under paragraph (2)(D) in the case of a waiver to the extent that it applies to individuals with mental retardation or a related condition who are resident in an intermediate care facility for the mentally retarded the participation of which under the State plan is terminated, the State may determine the average per capita expenditures that would have been made in a fiscal year for those individuals without regard to any such termination.

(8) The State agency administering the plan under this subchapter may, whenever appropriate, enter into cooperative arrangements with the State agency responsible for administering the program for children with special health care needs under subchapter V of this chapter in order to assure improved access to coordinated services to meet the needs of such children.

(9) In the case of any waiver under this subsection which contains a limit on the number of individuals who shall receive home or community-based services, the State may substitute additional individuals to receive such services to replace any individuals who die or become ineligible for services under the State plan.

(10) The Secretary shall not limit to fewer than 200 the number of individuals in the State who may receive home and community-based services under a waiver under this subsection.

(d) Home and community-based services for elderly

(1) Subject to paragraph (2), the Secretary shall grant a waiver to provide that a State plan approved under this subchapter shall include as ''medical assistance'' under such plan payment for part or all of the cost of home or community-based services (other than room and board) which are provided pursuant to a written plan of care to individuals 65 years of age or older with respect to whom there has been a determination that but for the provision of such services the individuals would be likely to require the level of care provided in a skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan. For purposes of this subsection, the term ''room and board'' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability

for funds expended with respect to such services;

(B) with respect to individuals 65 years of age or older who—

(i) are entitled to medical assistance for skilled nursing or intermediate care facility services under the State plan,

(ii) may require such services, and

(iii) may be eligible for such home or community-based services under such waiver,

the State will provide for an evaluation of the need for such skilled nursing facility or intermediate care facility services; and

(C) such individuals who are determined to be likely to require the level of care provided in a skilled nursing facility or intermediate care facility are informed of the feasible alternatives to the provision of skilled nursing facility or intermediate care facility services, which such individuals may choose if available under the waiver.

Each State with a waiver under this subsection shall provide to the Secretary annually, consistent with a reasonable data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1396a(a)(1) of this title (relating to statewideness), section 1396a(a)(10)(B) of this title (relating to comparability), and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community). Subject to a termination by the State (with notice to the Secretary) at any time, a waiver under this subsection shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional 5-year periods unless the Secretary determines that for the previous waiver period the assurances provided under paragraph (2) have not been met. A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under the waiver, that the maximum amount of the individual's income which may be disregarded for any month is equal to the amount that may be allowed for that purpose under a waiver under subsection (c) of this section.

(4) A waiver under this subsection may, consistent with paragraph (2), provide medical assistance to individuals for case management services, homemaker/home health aide services and personal care services, adult day health services, respite care, and other medical and social services that can contribute to the health and well-being of individuals and their ability to reside in a community-based care setting.

(5)(A) In the case of a State having a waiver approved under this subsection, notwithstanding any other provision of section 1396b of this title to the contrary, the total amount expended by the State for medical assistance with respect to skilled nursing facility services, intermediate care facility services, and home and community-based services under the State plan for individuals 65 years of age or older during a waiver year under this subsection may not exceed the projected amount determined under subparagraph (B).

(B) For purposes of subparagraph (A), the projected amount under this subparagraph is the sum of the following:

(i) The aggregate amount of the State's medical assistance under this subchapter for skilled nursing facility services and intermediate care facility services furnished to individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year involved or the sum of—

(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the beginning of the base year and the beginning of the waiver year involved, plus

(II) the percentage increase between the beginning of the base year and the beginning of the waiver year involved in the number of residents in the State who have attained the age of 65, plus

(III) 2 percent for each year (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year.

(ii) The aggregate amount of the State's medical assistance under this subchapter for home and community-based services for individuals who have attained the age of 65 for the base year increased by a percentage which is equal to the lesser of 7 percent times the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year involved or the sum of—

(I) the percentage increase (based on an appropriate market-basket index representing the costs of elements of such services) between the beginning of the base year and the beginning of the waiver year involved, plus

(II) the percentage increase between the beginning of the base year and the beginning of the waiver year involved in the number of residents in the State who have attained the age of 65, plus

(III) 2 percent for each year (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year.

(iii) The Secretary shall develop and promulgate by regulation (by not later than October 1, 1989)—

(I) a method, based on an index of appropriately weighted indicators of changes in the wages and prices of the mix of goods and services which comprise both skilled nursing facility services and intermediate care facility services (regardless of the source of payment for such services), for projecting the percentage increase for purposes of clause (i)(I);

(II) a method, based on an index of appropriately weighted indicators of changes in

the wages and prices of the mix of goods and services which comprise home and community-based services (regardless of the source of payment for such services), for projecting the percentage increase for purposes of clause (ii)(I); and

(III) a method for projecting, on a State specific basis, the percentage increase in the number of residents in each State who are over 65 years of age for any period.

The Secretary shall develop (by not later than October 1, 1989) a method for projecting, on a State-specific basis, the percentage increase in the number of residents in each State who are over 75 years of age for any period. Effective on and after the date the Secretary promulgates the regulation under clause (iii), any reference in this subparagraph to the ''lesser of 7 percent'' shall be deemed to be a reference to the ''greater of 7 percent''.

(iv) If there is enacted after December 22, 1987, an Act which amends this subchapter whose provisions become effective on or after such date and which results in an increase in the aggregate amount of medical assistance under this subchapter for nursing facility services and home and community-based services for individuals who have attained the age of 65 years, the Secretary, at the request of a State with a waiver under this subsection for a waiver year or years and in close consultation with the State, shall adjust the projected amount computed under this subparagraph for the waiver year or years to take into account such increase.

(C) In this paragraph:

(i) The term ''home and community-based services'' includes services described in sections 1396d(a)(7) and 1396d(a)(8) of this title, services described in subsection (c)(4)(B) of this section, services described in paragraph (4), and personal care services.

(ii)(I) Subject to subclause (II), the term ''base year'' means the most recent year (ending before December 22, 1987) for which actual final expenditures under this subchapter have been reported to, and accepted by, the Secretary.

(II) For purposes of subparagraph (C), in the case of a State that does not report expenditures on the basis of the age categories described in such subparagraph for a year ending before December 22, 1987, the term ''base year'' means fiscal year 1989.

(iii) The term ''intermediate care facility services'' does not include services furnished in an institution certified in accordance with section 1396d(d) of this title.

(6)(A) A determination by the Secretary to deny a request for a waiver (or extension of waiver) under this subsection shall be subject to review to the extent provided under section 1316(b) of this title.

(B) Notwithstanding any other provision of this chapter, if the Secretary denies a request of the State for an extension of a waiver under this subsection, any waiver under this subsection in effect on the date such request is made shall remain in effect for a period of not less than 90 days after the date on which the Secretary denies such request (or, if the State seeks review of such determination in accordance with subparagraph (A), the date on which a final determination is made with respect to such review).

(e) Waiver for children infected with AIDS or drug dependent at birth

(1)(A) Subject to paragraph (2), the Secretary shall grant a waiver to provide that a State plan approved under this subchapter shall include as ''medical assistance'' under such plan payment for part or all of the cost of nursing care, respite care, physicians' services, prescribed drugs, medical devices and supplies, transportation services, and such other services requested by the State as the Secretary may approve which are provided pursuant to a written plan of care to a child described in subparagraph (B) with respect to whom there has been a determination that but for the provision of such services the infants would be likely to require the level of care provided in a hospital or nursing facility the cost of which could be reimbursed under the State plan.

(B) Children described in this subparagraph are individuals under 5 years of age who—

(i) at the time of birth were infected with (or tested positively for) the etiologic agent for acquired immune deficiency syndrome (AIDS),

(ii) have such syndrome, or

(iii) at the time of birth were dependent on heroin, cocaine, or phencyclidine,

and with respect to whom adoption or foster care assistance is (or will be) made available under part E of subchapter IV of this chapter.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

(B) under such waiver the average per capita expenditure estimated by the State in any fiscal year for medical assistance provided with respect to such individuals does not exceed 100 percent of the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such individuals if the waiver had not been granted; and

(C) the State will provide to the Secretary annually, consistent with a data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1396a(a)(1) of this title (relating to statewideness) and section 1396a(a)(10)(B) of this title (relating to comparability). A waiver under this subsection shall be for an initial term of 3 years and, upon the request of a State, shall be extended for additional five-year periods unless the Secretary determines that for the previous

waiver period the assurances provided under paragraph (2) have not been met.

(4) The provisions of paragraph (6) of subsection (d) of this section shall apply to this subsection in the same manner as it applies to subsection (d) of this section.

(f) Monitor of implementation of waivers; termination of waiver for noncompliance; time limitation for action on requests for plan approval, amendments, or waivers

(1) The Secretary shall monitor the implementation of waivers granted under this section to assure that the requirements for such waiver are being met and shall, after notice and opportunity for a hearing, terminate any such waiver where he finds noncompliance has occurred.

(2) A request to the Secretary from a State for approval of a proposed State plan or plan amendment or a waiver of a requirement of this subchapter submitted by the State pursuant to a provision of this subchapter shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 days of such date, denies such request.

(g) Optional targeted case management services

(1) A State may provide, as medical assistance, case management services under the plan without regard to the requirements of section 1396a(a)(1) of this title and section 1396a(a)(10)(B) of this title. The provision of case management services under this subsection shall not restrict the choice of the individual to receive medical assistance in violation of section 1396a(a)(23) of this title. A State may limit the provision of case management services under this subsection to individuals with acquired immune deficiency syndrome (AIDS), or with AIDS-related conditions, or with either, or to individuals described in section 1396a(z)(1)(A) of this title and a State may limit the provision of case management services under this subsection to individuals with chronic mental illness. The State may limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or with chronic mental illness in order to ensure that the case managers for such individuals are capable of ensuring that such individuals receive needed services.

(2) For purposes of this subsection, the term ''case management services'' means services which will assist individuals eligible under the plan in gaining access to needed medical, social, educational, and other services.

(h) Period of waivers; continuations

No waiver under this section (other than a waiver under subsection (c), (d), or (e) of this section) may extend over a period of longer than two years unless the State requests continuation of such waiver, and such request shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 day[1] of such date, denies such request.

(Aug. 14, 1935, ch. 531, title XIX, § 1915, as added Aug. 13, 1981, Pub. L. 97–35, title XXI, § 2175(b), 95 Stat. 809; amended Aug. 13, 1981, Pub. L. 97–35, title XXI, §§ 2176, 2177(a), 95 Stat. 812, 813; Sept. 3, 1982, Pub. L. 97–248, title I, § 137(b)(19)(A), (20)–(25), 96 Stat. 380; Jan. 12, 1983, Pub. L. 97–448, title III, § 309(b)(17), 96 Stat. 2409; July 18, 1984, Pub. L. 98–369, div. B, title III, § 2373(b)(21), 98 Stat. 1112; Apr. 7, 1986, Pub. L. 99–272, title IX, §§ 9502(a)–(e), (g)–(i), 9508(a), 100 Stat. 202–204, 210; Oct. 21, 1986, Pub. L. 99–509, title IX, §§ 9320(h)(3), 9411(a)–(d), 100 Stat. 2016, 2061, 2062; Aug. 18, 1987, Pub. L. 100–93, § 8(h)(2), 101 Stat. 694; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4072(d), 4102(a)(1), (b)(2), 4118(a)(1), (b), (i)(1), (k), (*l*)(1), (p)(10), 4211(h)(10), 101 Stat. 1330–117, 1330–143, 1330–146, 1330–154 to 1330–157, 1330–160, 1330–206; July 1, 1988, Pub. L. 100–360, title II, § 204(d)(3), title IV, § 411(k)(3), (10)(A), (H), (I), (17)(A), (*l*)(3)(G), 102 Stat. 729, 791, 794, 796, 799, 803; Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(26)(M), (f)(2), 102 Stat. 2422, 2424; Nov. 10, 1988, Pub. L. 100–647, title VIII, §§ 8432(a), (b), 8437(a), 102 Stat. 3804, 3806; Dec. 13, 1989, Pub. L. 101–234, title II, § 201(a), 103 Stat. 1981; Dec. 19, 1989, Pub. L. 101–239, title VI, §§ 6115(c), 6411(c)(2), 103 Stat. 2219, 2270; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4604(c), 4704(b)(3), 4741, 4742(a), (c)(1), (d)(1), 104 Stat. 1388–169, 1388–172, 1388–197, 1388–198; Oct. 7, 1991, Pub. L. 102–119, § 26(i)(2), 105 Stat. 607; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13603(d), 107 Stat. 620.)

REFERENCES IN TEXT

Parts A and B of subchapter XVIII of this chapter, referred to in subsec. (a)(1)(B)(ii)(II), are classified to sections 1395c et seq. and 1395j et seq., respectively, of this title.

Part E of subchapter IV of this chapter, referred to in subsec. (e)(1)(B), is classified to section 670 et seq. of this title.

AMENDMENTS

1993—Subsec. (g)(1). Pub. L. 103–66 inserted ''or to individuals described in section 1396a(z)(1)(A) of this title'' after ''or with either,''.

1991—Subsec. (c)(5)(C)(i). Pub. L. 102–119 substituted ''(as defined in paragraphs (16) and (17) of section 1401(a) of title 20)'' for ''(as defined in section 1401(16) and (17) of title 20)''. The reference to section 1401 of title 20 includes the substitution of ''Individuals with Disabilities Education Act'' for ''Education of the Handicapped Act'' in the original.

1990—Subsec. (b). Pub. L. 101–508, § 4704(b)(3), inserted ''(other than sections 1396a(a)(13)(E) and 1396a(a)(10)(A) of this title insofar as it requires provision of the care and services described in section 1396d(a)(2)(C) of this title)'' after ''section 1396a of this title'' in introductory provisions.

Pub. L. 101–508, § 4604(c), which directed amendment of subsec. (b) by inserting ''(other than subsection (s))'' after ''Section 1396a of this title'', was executed by in-

[1] So in original. Probably should be ''days''.

serting the new language after ''section 1396a of this title'' to reflect the probable intent of Congress.

Subsec. (b)(4). Pub. L. 101–508, §4742(a), inserted before period at end ''and if providers under such restriction are paid on a timely basis in the same manner as health care practitioners must be paid under section 1396a(a)(37)(A) of this title''.

Subsec. (c)(1). Pub. L. 101–508, §4741(a), inserted at end ''For purposes of this subsection, the term 'room and board' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.''

Subsec. (c)(4). Pub. L. 101–508, §4742(d)(1), inserted at end ''Except as provided under paragraph (2)(D), the Secretary may not restrict the number of hours or days of respite care in any period which a State may provide under a waiver under this subsection.''

Subsec. (c)(7)(C). Pub. L. 101–508, §4742(c)(1), added subpar. (C).

Subsec. (d)(1). Pub. L. 101–508, §4741(a), inserted at end ''For purposes of this subsection, the term 'room and board' shall not include an amount established under a method determined by the State to reflect the portion of costs of rent and food attributable to an unrelated personal caregiver who is residing in the same household with an individual who, but for the assistance of such caregiver, would require admission to a hospital, nursing facility, or intermediate care facility for the mentally retarded.''

Subsec. (d)(5)(B)(iv). Pub. L. 101–508, §4741(b), substituted ''this subchapter whose provisions become effective on or after such date'' for first reference to ''this subchapter''.

1989—Subsec. (a)(1)(B)(ii)(I). Pub. L. 101–239, §6115(c), substituted ''paragraphs (15) and (16)'' for ''paragraphs (14) and (15)''.

Pub. L. 101–234 repealed Pub. L. 100–360, §204(d)(3), and provided that the provisions of law amended or repealed by such section are restored or revived as if such section had not been enacted, see 1988 Amendment note below.

Subsec. (b)(4). Pub. L. 101–239, §6411(c)(2), inserted ''shall be consistent with the requirements of section 1396r–4 of this title and'' after ''which standards''.

1988—Subsec. (a)(1)(B)(ii)(I). Pub. L. 100–360, §204(d)(3), substituted ''paragraphs (14) and (15)'' for ''paragraphs (13) and (14)''.

Subsec. (a)(2). Pub. L. 100–485, §608(f)(2), substituted ''restricts'' for ''Restricts'' in introductory provisions.

Subsec. (c)(7). Pub. L. 100–360, §411(*l*)(3)(G), amended Pub. L. 100–203, §4211(h)(10)(G), see 1987 Amendment note below.

Subsec. (c)(7)(A). Pub. L. 100–647, §8437(a), substituted ''who are inpatients in, or who would require the level of care provided in, hospitals,'' for ''who are inpatients in hospitals,'' and ''who are inpatients in, or who would require the level of care provided in, those respective facilities'' for ''who are inpatients of those respective facilities''.

Subsec. (c)(7)(B). Pub. L. 100–360, §411(k)(10)(H), inserted '', without regard to the availability of beds for such inpatients'' before period at end.

Subsec. (c)(10). Pub. L. 100–360, §411(k)(10)(A), substituted ''The Secretary shall not limit to fewer than 200'' for ''No waiver under this subsection shall limit by an amount less than 200'' and ''under a waiver under this subsection'' for ''under such waiver''.

Subsec. (d)(5)(B)(i), (ii). Pub. L. 100–647, §8432(b), in introductory provisions, substituted ''the number of years (rounded to the nearest quarter of a year) beginning after the base year and ending at the end of the waiver year'' for ''the number of years beginning after the base year and ending before the waiver year'', in subcls. (I) and (II), substituted ''between the beginning of the base year and the beginning of the waiver year'' for ''between the base year and the waiver year'', and in subcl. (III), inserted ''(rounded to the nearest quarter of a year)'' after ''for each year'' and substituted ''at the end of the waiver year'' for ''before the waiver year''.

Subsec. (d)(5)(B)(iii). Pub. L. 100–360, §411(k)(3)(A)(ii), inserted before last sentence ''The Secretary shall develop (by not later than October 1, 1989) a method for projecting, on a State-specific basis, the percentage increase in the number of residents in each State who are over 75 years of age for any period.''

Subsec. (d)(5)(B)(iii)(III). Pub. L. 100–360, §411(k)(3)(A)(i), substituted ''65'' for ''75''.

Subsec. (d)(5)(B)(iv). Pub. L. 100–647, §8432(a), added cl. (iv).

Subsec. (d)(5)(C)(i). Pub. L. 100–360, §411(k)(3)(B), substituted ''paragraph (4), and personal care services'' for ''paragraph (4)(B), personal care services, and services furnished pursuant to a waiver under subsection (c) of this section''.

Subsec. (e). Pub. L. 100–360, §411(k)(17)(A)(ii), (iii), added subsec. (e), redesignated former subsec. (e)(1) as (f)(1), and struck out former subsec. (e)(2) which read as follows: ''The Secretary shall report, not later than September 30, 1984, to Congress on waivers granted under this section.''

Subsec. (f)(1). Pub. L. 100–360, §411(k)(17)(A)(ii), redesignated former subsec. (e)(1) as (f)(1).

Subsec. (f)(2). Pub. L. 100–360, §411(k)(17)(A)(i), redesignated former subsec. (f) as subsec. (f)(2).

Subsec. (h). Pub. L. 100–360, §411(k)(10)(I), made technical amendment to directory language of Pub. L. 100–203, §4118(*l*)(1), see 1987 Amendment note below.

Pub. L. 100–360, §411(k)(17)(A)(iv), as amended by Pub. L. 100–485, §608(d)(26)(M), substituted '', (d), or (e)'' for ''or (d)''.

1987—Subsec. (a)(1)(B)(ii)(I). Pub. L. 100–203, §4072(d), substituted ''paragraphs (13) and (14)'' for ''paragraphs (12) and (13)''.

Subsec. (a)(2). Pub. L. 100–93 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''restricts—

''(A) for a reasonable period of time the provider or providers from which an individual (eligible for medical assistance for items or services under the State plan) can receive such items or services, if the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the individual has utilized such items or services at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), or

''(B) (through suspension or otherwise) for a reasonable period of time the participation of a provider of items or services under the State plan, if the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the provider has (in a significant number or proportion of cases) provided such items or services either (i) at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), or (ii) of a quality which does not meet professionally recognized standards of health care,

if, under such restriction, individuals eligible for medical assistance for such services have reasonable access (taking into account geographic location and reasonable travel time) to such services of adequate quality.''

Subsec. (c)(1). Pub. L. 100–203, §4211(h)(10)(A), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility''.

Subsec. (c)(2)(B). Pub. L. 100–203, §4211(h)(10)(C), in closing provisions, substituted ''need for inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded'' for ''need for such inpatient hospital, skilled nursing facility or intermediate care facility services''.

Pub. L. 100–203, §4118(p)(10), in closing provisions inserted ''such'' after ''need for''.

Subsec. (c)(2)(B)(i). Pub. L. 100–203, § 4211(h)(10)(B), substituted ''services, nursing facility services, or services in an intermediate care facility for the mentally retarded'' for '', skilled nursing facility, or intermediate care facility services''.

Subsec. (c)(2)(C). Pub. L. 100–203, § 4211(h)(10)(D), (E), substituted '', nursing facility, or intermediate care facility for the mentally retarded'' for ''or skilled nursing facility or intermediate care facility'' and '', nursing facility services, or services in an intermediate care facility for the mentally retarded'' for ''or skilled nursing facility or intermediate care facility services''.

Subsec. (c)(3). Pub. L. 100–203, § 4118(a)(1), substituted '', section 1396a(a)(10)(B) of this title (relating to comparability), and section 1396a(a)(10)(C)(i)(III) of this title (relating to income and resource rules applicable in the community)'' for ''and section 1396a(a)(10)(B) of this title (relating to comparability)''.

Subsec. (c)(5). Pub. L. 100–203, § 4211(h)(10)(F), substituted ''nursing facility or intermediate care facility for the mentally retarded'' for ''skilled nursing facility or intermediate care facility''.

Subsec. (c)(7). Pub. L. 100–203, § 4211(h)(10)(G), as amended by Pub. L. 100–360, § 411(*l*)(3)(G), substituted '', nursing facilities, or intermediate care facilities for the mentally retarded'' for ''or in skilled nursing or intermediate care facilities'' in subpar. (A) and ''nursing facility'' for ''skilled nursing facility or intermediate care facility'' in subpar. (B).

Pub. L. 100–203, § 4118(k), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(10). Pub. L. 100–203, § 4118(b), added par. (10).

Subsec. (d). Pub. L. 100–203, § 4102(a)(1), added subsec. (d). Former subsec. (d) redesignated (h).

Subsec. (g)(1). Pub. L. 100–203, § 4118(i)(1), inserted at end ''The State may limit the case managers available with respect to case management services for eligible individuals with developmental disabilities or with chronic mental illness in order to ensure that the case managers for such individuals are capable of ensuring that such individuals receive needed services.''

Subsec. (h). Pub. L. 100–203, § 4118(*l*)(1), as amended by Pub. L. 100–360, § 411(k)(10)(I), substituted '', within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 day of such date, denies such request.'' for ''denies such request in writing within 90 days after the date of its submission to the Secretary.''

Pub. L. 100–203, § 4102(b)(2), substituted ''subsection (c) or (d) of this section'' for ''subsection (c) of this section''.

Pub. L. 100–203, § 4102(a)(1)(A), redesignated former subsec. (d) as (h).

1986—Subsec. (a)(1)(B)(ii)(I). Pub. L. 99–509, § 9320(h)(3), substituted ''paragraphs (12) and (13)'' for ''paragraphs (11) and (12)''.

Subsec. (b). Pub. L. 99–272, § 9508(a)(2), inserted provision, following par. (4), that no waiver under this subsection may restrict the choice of the individual in receiving services under section 1396d(a)(4)(C) of this title.

Subsec. (c)(1). Pub. L. 99–509, § 9411(a)(1), inserted ''a hospital or'' after ''level of care provided in'', and struck out provision added by Pub. L. 99–272, § 9502(b)(1).

Pub. L. 99–272, § 9502(b)(1), inserted provision relating to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would continue to receive inpatient hospital services, skilled nursing facility services, or intermediate care facility services because they are dependent on ventilator support the cost of which is reimbursed under the State plan.

Subsec. (c)(2)(B). Pub. L. 99–509, § 9411(a)(2), substituted ''inpatient hospital, skilled nursing facility, or'' for ''skilled nursing facility or'' in cl. (i) and inserted ''inpatient hospital,'' after ''need for'' in concluding provision following cl. (iii).

Subsec. (c)(2)(C). Pub. L. 99–272, § 9502(b)(2), inserted ''hospital or'' after ''provided in a'', and ''inpatient hospital services or'' after ''the provision of''.

Subsec. (c)(2)(D). Pub. L. 99–272, § 9502(c)(1), inserted ''100 percent of'' after ''does not exceed''.

Subsec. (c)(3). Pub. L. 99–509, § 9411(c), substituted ''and section 1396a(a)(10)(B) of this title (relating to comparability)'' for ''and section 1396a(a)(10) of this title''.

Pub. L. 99–272, § 9502(g), substituted ''additional five-year periods'' for ''additional three-year periods'', and ''previous waiver period'' for ''previous three-year period''.

Pub. L. 99–272, § 9502(e), inserted at end ''A waiver may provide, with respect to post-eligibility treatment of income of all individuals receiving services under that waiver, that the maximum amount of the individual's income which may be disregarded for any month for the maintenance needs of the individual may be an amount greater than the maximum allowed for that purpose under regulations in effect on July 1, 1985.''

Subsec. (c)(4)(B). Pub. L. 99–509, § 9411(d), inserted before the period ''and for day treatment or other partial hospitalization services, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness''.

Subsec. (c)(5). Pub. L. 99–272, § 9502(a), added par. (5).

Subsec. (c)(6). Pub. L. 99–272, § 9502(c)(2), added par. (6).

Subsec. (c)(7). Pub. L. 99–509, § 9411(a)(3), amended par. (7) generally. Prior to amendment, par. (7) read as follows: ''In making estimates under paragraph (2)(D) in the case of a waiver which applies only to physically disabled individuals who are inpatients in skilled nursing or intermediate care facilities, the State may determine the average per capita expenditure which would have been made in a fiscal year for those individuals under the State plan separately from the expenditure for other individuals who are inpatients of those facilities.''

Pub. L. 99–272, § 9502(d), added par. (7).

Subsec. (c)(8). Pub. L. 99–272, § 9502(h), added par. (8).

Subsec. (c)(9). Pub. L. 99–272, § 9502(i), added par. (9).

Subsec. (g). Pub. L. 99–272, § 9508(a)(1), added subsec. (g).

Subsec. (g)(1). Pub. L. 99–509, § 9411(b), inserted provision at end allowing a State to limit case management services to AIDS victims or to individuals with chronic mental illness.

1984—Subsec. (c)(1). Pub. L. 98–369 substituted ''under this subchapter'' for ''under this part''.

1983—Subsec. (c)(2)(B). Pub. L. 97–448 substituted ''need for such skilled nursing facility or intermediate care facility services'' for ''need for such services'' in provisions following cl. (iii).

1982—Subsec. (b). Pub. L. 97–248, § 137(b)(19)(A), struck out ''and section 1396b(m) of this title'' after ''section 1396a of this title''.

Subsec. (b)(1). Pub. L. 97–248, § 137(b)(20), inserted ''primary care'' before ''case-management system'', and substituted ''medical care services'' for ''primary care services''.

Subsec. (c)(1). Pub. L. 97–248, § 137(b)(21), inserted ''payment for part or all of the cost of'' after ''may include as 'medical assistance' under such plan''.

Subsec. (c)(2)(B). Pub. L. 97–248, § 137(b)(22), redesignated existing provisions as cls. (i) and (ii) and added cl. (iii).

Subsec. (c)(3). Pub. L. 97–248, § 137(b)(23), substituted ''section 1396a(a)(1) of this title'' for ''subsection (a)(1) of this section'' and ''section 1396a(a)(10) of this title'' for ''subsection (a)(10) of section 1396a of this title''.

Subsec. (c)(4). Pub. L. 97–248, § 137(b)(24), substituted ''this subsection'' for ''this section''.

Subsec. (f). Pub. L. 97–248, § 137(b)(25), inserted ''approval of'' before ''a proposed State plan''.

1981—Subsecs. (c) to (e). Pub. L. 97–35, § 2176, added subsec. (c), redesignated former subsec. (c) as (d) and inserted ''(other than a waiver under subsection (c) of this section)'', and redesignated former subsec. (d) as (e).

Subsec. (f). Pub. L. 97–35, § 2177(a), added subsec. (f).

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103–66 applicable to medical assistance furnished on or after Jan. 1, 1994, without regard to whether or not final regulations to carry out the amendments by section 13603 of Pub. L. 103–66 have been promulgated by such date, see section 13603(f) of Pub. L. 103–66, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1990 AMENDMENTS

Amendment by section 4604(c) of Pub. L. 101–508 effective with respect to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4604 of Pub. L. 101–508 have been promulgated by such date, see section 4604(d) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Amendment by section 4704(b)(3) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, see section 4704(f) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4742(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as of the first calendar quarter beginning more than 30 days after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4742(c)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35], but shall only apply to facilities the participation of which under a State plan under title XIX of the Social Security Act [this subchapter] is terminated on or after the date of the enactment of this Act [Nov. 5, 1990].''

Section 4742(d)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply as if included in the enactment of the Omnibus Budget Reconciliation Act of 1981 [Pub. L. 97–35].''

EFFECTIVE DATE OF 1989 AMENDMENTS

Amendment by section 6115(c) of Pub. L. 101–239 applicable to screening pap smears performed on or after July 1, 1990, see section 6115(d) of Pub. L. 101–239, set out as a note under section 1395x of this title.

Section 6411(c)(4) of Pub. L. 101–239 provided that: ''The amendment made by paragraph (2) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].''

Amendment by Pub. L. 101–234 effective Jan. 1, 1990, see section 201(c) of Pub. L. 101–234, set out as a note under section 1320a–7a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8432(c) of Pub. L. 100–647 provided that: ''The amendments made by this section [amending this section] shall apply to waiver years beginning during or after fiscal year 1989.''

Section 8437(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall apply with respect to waiver applications submitted before, on, or after the date of the enactment of this Act [Nov. 10, 1988].''

Amendment by section 608(d)(26)(M) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 608(f)(2) of Pub. L. 100–485 effective Oct. 13, 1988, see section 608(g)(2) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 204(d)(3) of Pub. L. 100–360 applicable to screening mammography performed on or after Jan. 1, 1990, see section 204(e) of Pub. L. 100–360, set out as a note under section 1395m of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(k)(3), (10)(A), (H), (I), (17)(A), (*l*)(3)(G) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENTS

For effective date of amendment by section 4072(d) of Pub. L. 100–203, see section 4072(e) of Pub. L. 100–203, set out as a note under section 1395x of this title.

Section 4102(a)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall become effective on January 1, 1988.''

Section 4118(a)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

Section 4118(i)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall take effect as though it were included in the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99–272].''

Section 4118(*l*)(2) of Pub. L. 100–203 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to requests for continuation of waivers received after the date of the enactment of this Act [Dec. 22, 1987].''

Section 4118(p)(10) of Pub. L. 100–203 provided that the amendment made by that section is effective as if included in the enactment of Pub. L. 99–509.

Amendment by section 4211(h)(10) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by section 9320(h)(3) of Pub. L. 99–509 applicable to services furnished on or after Jan. 1, 1989, with exceptions for hospitals located in rural areas which meet certain requirements related to certified registered nurse anesthetists, see section 9320(i), (k) of Pub. L. 99–509, as amended, set out as notes under section 1395k of this title.

Section 9411(e) of Pub. L. 99–509 provided that: ''The amendments made by this section [amending this section] shall apply to applications for waivers (or renewals thereof) approved on or after the date of the enactment of this Act [Oct. 21, 1986].''

Section 9502(j) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, § 9435(a), Oct. 21, 1986, 100 Stat. 2069; Pub. L. 100–203, title IV, § 4118(j), Dec. 22, 1987, 101 Stat. 1330–156, provided that:

''(1) HABILITATION SERVICES.—The amendment made by subsection (a) [amending this section] shall be effective for services furnished on or after the date of the enactment of this Act [Apr. 7, 1986] to individuals eligible for services under a waiver granted under section

1915(c) of the Social Security Act [subsec. (c) of this section], without regard to whether such individuals were receiving institutional services before their participation in the waiver.

''(2) HOSPITALIZED PATIENTS.—The amendments made by subsection (b) [amending this section] shall be effective for services furnished on or after October 1, 1985.

''(3) PROHIBITION OF REGULATORY LIMITS AND TREATMENT OF CERTAIN PHYSICALLY DISABLED INDIVIDUALS.—The amendments made by subsections (c) and (d) [amending this section] shall apply to applications for waivers (or renewals thereof) filed before, on, or after, the date of the enactment of this Act [Apr. 7, 1986] and for services furnished on or after August 13, 1981.

''(4) INCOME STANDARDS.—The amendment made by subsection (e) [amending this section] shall apply to waivers (or renewals thereof) approved before, on, or after the date of the enactment of this Act [Apr. 7, 1986].

''(5) WAIVER EXTENSIONS.—Subsection (f) [enacting provisions set out below] shall apply to waivers expiring on or after September 30, 1985, and before September 30, 1986.

''(6) WAIVER RENEWALS.—The amendments made by subsection (g) [amending this section] shall become effective on September 30, 1986.

''(7) COORDINATED SERVICES AND SUBSTITUTION OF PARTICIPANTS.—The amendments made by subsections (h) and (i) [amending this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].''

Section 9508(b) of Pub. L. 99–272, as amended by Pub. L. 99–509, title IX, §9435(d)(1), Oct. 21, 1986, 100 Stat. 2070, provided that: ''The amendments made by this section [amending this section] shall apply to services furnished on or after the date of the enactment of this Act [Apr. 7, 1986], without regard to whether or not regulations to carry out the amendments have been promulgated by that date.''

[Section 4118(j) of Pub. L. 100–203 provided that the amendment made by that section to section 9502(j)(1) of Pub. L. 99–272, set out above, is effective as if included in the enactment of section 9502 of Pub. L. 99–272.]

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was amended by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 137(b)(19)(B) of Pub. L. 97–248 provided that: ''The amendment made by subparagraph (A) [amending this section] shall not apply with respect to any waiver if such waiver was granted, and the arrangement covered by the waiver was in place, prior to August 10, 1982.''

Amendment by section 137(b)(20)–(25) of Pub. L. 97–248 effective as if originally included as part of this section as this section was amended by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, see section 137(d)(2) of Pub. L. 97–248, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2177(b) of Pub. L. 97–35 provided that: ''The amendment made by this section [amending this section] shall become effective 90 days after the date of the enactment of this Act [Aug. 13, 1981]''.

PERMITTING ADJUSTMENT IN ESTIMATES TO TAKE INTO ACCOUNT PREADMISSION SCREENING REQUIREMENT

Section 4742(e) of Pub. L. 101–508 provided that: ''In the case of a waiver under section 1915(c) of the Social Security Act [subsec. (c) of this section] for individuals with mental retardation or a related condition in a State, the Secretary of Health and Human Services shall permit the State to adjust the estimate of average per capita expenditures submitted under paragraph (2)(D) of such section, with respect to such expenditures made on or after January 1, 1989, to take into account increases in expenditures for, or utilization of, intermediate care facilities for the mentally retarded resulting from implementation of section 1919(e)(7)(A) of such Act [section 1396r(e)(7)(A) of this title].''

EXTENSIONS OF WAIVERS UNDER SUBSECTION (c)

Section 4102(c) of Pub. L. 100–203 provided that: ''In the case of a State which, as of December 1, 1987, has a waiver approved with respect to elderly individuals under section 1915(c) of the Social Security Act [subsec. (c) of this section], which waiver is scheduled to expire before July 1, 1988, if the State notifies the Secretary of Health and Human Services of the State's intention to file an application for a waiver under section 1915(d) of such Act (as amended by subsection (a) of this section), the Secretary shall extend approval of the State's waiver, under section 1915(c) of such Act, on the same terms and conditions through September 30, 1988.''

Section 9502(f) of Pub. L. 99–272 provided that: ''The Secretary of Health and Human Services shall extend, upon request of the State, any waiver under section 1915(c) of the Social Security Act [subsec. (c) of this section] which expires on or after September 30, 1985, and before September 30, 1986. Such extension shall be for a period of not less than one year nor more than five years, subject to section 1915(e)(1) of such Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a–7, 1382c, 1396a, 1396b, 1396d, 1396p, 1396r–4, 1396s, 1396t, 1786 of this title.

§ 1396o. Use of enrollment fees, premiums, deductions, cost sharing, and similar charges

(a) Imposition of certain charges under plan in case of individuals described in section 1396a(a)(10)(A) or (E)

The State plan shall provide that in the case of individuals described in subparagraph (A) or (E)(i) of section 1396a(a)(10) of this title who are eligible under the plan—

(1) no enrollment fee, premium, or similar charge will be imposed under the plan (except for a premium imposed under subsection (c) of this section);

(2) no deduction, cost sharing or similar charge will be imposed under the plan with respect to—

(A) services furnished to individuals under 18 years of age (and, at the option of the State, individuals under 21, 20, or 19 years of age, or any reasonable category of individuals 18 years of age or over),

(B) services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy (or, at the option of the State, any services furnished to pregnant women),

(C) services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs,

(D) emergency services (as defined by the Secretary), family planning services and

supplies described in section 1396d(a)(4)(C) of this title, or services furnished to such an individual by a health maintenance organization (as defined in section 1396b(m) of this title) in which he is enrolled, or

(E) services furnished to an individual who is receiving hospice care (as defined in section 1396d(*o*) of this title); and

(3) any deduction, cost sharing, or similar charge imposed under the plan with respect to other such individuals or other care and services will be nominal in amount (as determined by the Secretary in regulations which shall, if the definition of ''nominal'' under the regulations in effect on July 1, 1982 is changed, take into account the level of cash assistance provided in such State and such other criteria as the Secretary determines to be appropriate); except that a deduction, cost-sharing, or similar charge of up to twice the nominal amount established for outpatient services may be imposed by a State under a waiver granted by the Secretary for services received at a hospital emergency room if the services are not emergency services (referred to in paragraph (2)(D)) and the State has established to the satisfaction of the Secretary that individuals eligible for services under the plan have actually available and accessible to them alternative sources of nonemergency, outpatient services.

(b) Imposition of certain charges under plan in case of individuals other than those described in section 1396a(a)(10)(A) or (E)

The State plan shall provide that in the case of individuals other than those described in subparagraph (A) or (E) of section 1396a(a)(10) of this title who are eligible under the plan—

(1) there may be imposed an enrollment fee, premium, or similar charge, which (as determined in accordance with standards prescribed by the Secretary) is related to the individual's income,

(2) no deduction, cost sharing, or similar charge will be imposed under the plan with respect to—

(A) services furnished to individuals under 18 years of age (and, at the option of the State, individuals under 21, 20, or 19 years of age, or any reasonable category of individuals 18 years of age or over),

(B) services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy (or, at the option of the State, any services furnished to pregnant women),

(C) services furnished to any individual who is an inpatient in a hospital, nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs,

(D) emergency services (as defined by the Secretary), family planning services and supplies described in section 1396d(a)(4)(C) of this title, or (at the option of the State) services furnished to such an individual by a health maintenance organization (as defined in section 1396b(m) of this title) in which he is enrolled, or

(E) services furnished to an individual who is receiving hospice care (as defined in section 1396d(*o*) of this title); and

(3) any deduction, cost sharing, or similar charge imposed under the plan with respect to other such individuals or other care and services will be nominal in amount (as determined by the Secretary in regulations which shall, if the definition of ''nominal'' under the regulations in effect on July 1, 1982 is changed, take into account the level of cash assistance provided in such State and such other criteria as the Secretary determines to be appropriate); except that a deduction, cost-sharing, or similar charge of up to twice the nominal amount established for outpatient services may be imposed by a State under a waiver granted by the Secretary for services received at a hospital emergency room if the services are not emergency services (referred to in paragraph (2)(D)) and the State has established to the satisfaction of the Secretary that individuals eligible for services under the plan have actually available and accessible to them alternative sources of nonemergency, outpatient services.

(c) Imposition of monthly premium; persons affected; amount; prepayment; failure to pay; use of funds from other programs

(1) The State plan of a State may at the option of the State provide for imposing a monthly premium (in an amount that does not exceed the limit established under paragraph (2)) with respect to an individual described in subparagraph (A) or (B) of section 1396a(*l*)(1) of this title who is receiving medical assistance on the basis of section 1396a(a)(10)(A)(ii)(IX) of this title and whose family income (as determined in accordance with the methodology specified in section 1396a(*l*)(3) of this title) equals or exceeds 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(2) In no case may the amount of any premium imposed under paragraph (1) exceed 10 percent of the amount by which the family income (less expenses for the care of a dependent child) of an individual exceeds 150 percent of the line described in paragraph (1).

(3) A State shall not require prepayment of a premium imposed pursuant to paragraph (1) and shall not terminate eligibility of an individual for medical assistance under this subchapter on the basis of failure to pay any such premium until such failure continues for a period of not less than 60 days. The State may waive payment of any such premium in any case where the State determines that requiring such payment would create an undue hardship.

(4) A State may permit State or local funds available under other programs to be used for payment of a premium imposed under paragraph (1). Payment of a premium with such funds shall not be counted as income to the individual with respect to whom such payment is made.

(d) Premiums for qualified disabled and working individuals described in section 1396d(s)

With respect to a qualified disabled and working individual described in section 1396d(s) of this title whose income (as determined under paragraph (3) of that section) exceeds 150 percent of the official poverty line referred to in that paragraph, the State plan of a State may provide for the charging of a premium (expressed as a percentage of the medicare cost-sharing described in section 1396d(p)(3)(A)(i) of this title provided with respect to the individual) according to a sliding scale under which such percentage increases from 0 percent to 100 percent, in reasonable increments (as determined by the Secretary), as the individual's income increases from 150 percent of such poverty line to 200 percent of such poverty line.

(e) Prohibition of denial of services on basis of individual's inability to pay certain charges

The State plan shall require that no provider participating under the State plan may deny care or services to an individual eligible for such care or services under the plan on account of such individual's inability to pay a deduction, cost sharing, or similar charge. The requirements of this subsection shall not extinguish the liability of the individual to whom the care or services were furnished for payment of the deduction, cost sharing, or similar charge.

(f) Charges imposed under waiver authority of Secretary

No deduction, cost sharing, or similar charge may be imposed under any waiver authority of the Secretary, except as provided in subsections (a)(3) and (b)(3) of this section, unless such waiver is for a demonstration project which the Secretary finds after public notice and opportunity for comment—

(1) will test a unique and previously untested use of copayments,

(2) is limited to a period of not more than two years,

(3) will provide benefits to recipients of medical assistance which can reasonably be expected to be equivalent to the risks to the recipients,

(4) is based on a reasonable hypothesis which the demonstration is designed to test in a methodologically sound manner, including the use of control groups of similar recipients of medical assistance in the area, and

(5) is voluntary, or makes provision for assumption of liability for preventable damage to the health of recipients of medical assistance resulting from involuntary participation.

(Aug. 14, 1935, ch. 531, title XIX, § 1916, as added Sept. 3, 1982, Pub. L. 97–248, title I, § 131(b), 96 Stat. 367; amended Jan. 12, 1983, Pub. L. 97–448, title III, § 309(b)(18)–(20), 96 Stat. 2409, 2410; Apr. 7, 1986, Pub. L. 99–272, title IX, § 9505(c)(2), 100 Stat. 209; Oct. 21, 1986, Pub. L. 99–509, title IX, § 9403(g)(4)(B), 100 Stat. 2056; Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4101(d)(1), 4211(h)(11), 101 Stat. 1330–142, 1330–207; July 1, 1988, Pub. L. 100–360, title IV, § 411(k)(2), 102 Stat. 791; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6408(d)(3), 103 Stat. 2269.)

AMENDMENTS

1989—Subsec. (a). Pub. L. 101–239, § 6408(d)(3)(A), substituted ''subparagraph (A) or (E)(i)'' for ''subparagraph (A) or (E)'' in introductory provisions.

Subsecs. (d) to (f). Pub. L. 101–239, § 6408(d)(3)(B), (C), added subsec. (d) and redesignated former subsecs. (d) and (e) as (e) and (f), respectively.

1988—Subsec. (c)(1). Pub. L. 100–360 struck out ''nonfarm'' after ''150 percent of the''.

1987—Subsec. (a)(1). Pub. L. 100–203, § 4101(d)(1)(A), inserted ''(except for a premium imposed under subsection (c) of this section)'' after ''plan''.

Subsecs. (a)(2)(C), (b)(2)(C). Pub. L. 100–203, § 4211(h)(11), substituted ''nursing facility, intermediate care facility for the mentally retarded'' for ''skilled nursing facility, intermediate care facility''.

Subsecs. (c) to (e). Pub. L. 100–203, § 4101(d)(1)(B), (C), added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

1986—Subsec. (a). Pub. L. 99–509 substituted ''subparagraph (A) or (E) of section 1396a(a)(10) of this title'' for ''section 1396a(a)(10)(A) of this title''.

Subsec. (a)(2)(E). Pub. L. 99–272 added subpar. (E).

Subsec. (b). Pub. L. 99–509 substituted ''subparagraph (A) or (E) of section 1396a(a)(10) of this title'' for ''section 1396a(a)(10)(A) of this title''.

Subsec. (b)(2)(E). Pub. L. 99–272 added subpar. (E).

1983—Subsec. (c). Pub. L. 97–448, § 309(b)(18), substituted ''subsection'' for ''subparagraph''.

Subsec. (d). Pub. L. 97–448, § 309(b)(19), (20), substituted in introductory text '', except as provided in subsections (a)(3) and (b)(3) of this section'' for ''unless authorized under this section'', and in cl. (5) substituted ''is voluntary, or makes provision'' for ''in which participation is voluntary, or in which provision is made''.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1990, without regard to whether or not final regulations have been promulgated by such date, see section 6408(d)(5) of Pub. L. 101–239, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 4101(d)(2) of Pub. L. 100–203 provided that: ''The amendments made by paragraph (1) [amending this section] shall become effective on July 1, 1988.''

Amendment by section 4211(h)(11) of Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–509 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1987, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date, see section 9403(h) of Pub. L. 99–509, set out as a note under section 1396a of this title.

Amendment by Pub. L. 99–272 applicable to medical assistance provided for hospice care furnished on or after Apr. 7, 1986, see section 9505(e) of Pub. L. 99–272, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE

Section 131(d), formerly §131(c), of Pub. L. 97–248, redesignated by section 309(a)(8) of Pub. L. 97–448, provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending section 1396a of this title] shall become effective on October 1, 1982.

''(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Sept. 3, 1982].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 1396b, 1396e, 1396r, 1396r–6 of this title; title 8 section 1255a.

§ 1396p. Liens, adjustments and recoveries, and transfers of assets

(a) Imposition of lien against property of an individual on account of medical assistance rendered to him under a State plan

(1) No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan, except—

(A) pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual, or

(B) in the case of the real property of an individual—

(i) who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs, and

(ii) with respect to whom the State determines, after notice and opportunity for a hearing (in accordance with procedures established by the State), that he cannot reasonably be expected to be discharged from the medical institution and to return home,

except as provided in paragraph (2).

(2) No lien may be imposed under paragraph (1)(B) on such individual's home if—

(A) the spouse of such individual,

(B) such individual's child who is under age 21, or (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title, or

(C) a sibling of such individual (who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution),

is lawfully residing in such home.

(3) Any lien imposed with respect to an individual pursuant to paragraph (1)(B) shall dissolve upon that individual's discharge from the medical institution and return home.

(b) Adjustment or recovery of medical assistance correctly paid under a State plan

(1) No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:

(A) In the case of an individual described in subsection (a)(1)(B) of this section, the State shall seek adjustment or recovery from the individual's estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of the individual.

(B) In the case of an individual who was 55 years of age or older when the individual received such medical assistance, the State shall seek adjustment or recovery from the individual's estate, but only for medical assistance consisting of—

(i) nursing facility services, home and community-based services, and related hospital and prescription drug services, or

(ii) at the option of the State, any items or services under the State plan.

(C)(i) In the case of an individual who has received (or is entitled to receive) benefits under a long-term care insurance policy in connection with which assets or resources are disregarded in the manner described in clause (ii), except as provided in such clause, the State shall seek adjustment or recovery from the individual's estate on account of medical assistance paid on behalf of the individual for nursing facility and other long-term care services.

(ii) Clause (i) shall not apply in the case of an individual who received medical assistance under a State plan of a State which had a State plan amendment approved as of May 14, 1993, which provided for the disregard of any assets or resources—

(I) to the extent that payments are made under a long-term care insurance policy; or

(II) because an individual has received (or is entitled to receive) benefits under a long-term care insurance policy.

(2) Any adjustment or recovery under paragraph (1) may be made only after the death of the individual's surviving spouse, if any, and only at a time—

(A) when he has no surviving child who is under age 21, or (with respect to States eligi-

ble to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title; and

(B) in the case of a lien on an individual's home under subsection (a)(1)(B) of this section, when—

(i) no sibling of the individual (who was residing in the individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution), and

(ii) no son or daughter of the individual (who was residing in the individual's home for a period of at least two years immediately before the date of the individual's admission to the medical institution, and who establishes to the satisfaction of the State that he or she provided care to such individual which permitted such individual to reside at home rather than in an institution),

is lawfully residing in such home who has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution.

(3) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency shall waive the application of this subsection (other than paragraph (1)(C)) if such application would work an undue hardship as determined on the basis of criteria established by the Secretary.

(4) For purposes of this subsection, the term ''estate'', with respect to a deceased individual—

(A) shall include all real and personal property and other assets included within the individual's estate, as defined for purposes of State probate law; and

(B) may include, at the option of the State (and shall include, in the case of an individual to whom paragraph (1)(C)(i) applies), any other real and personal property and other assets in which the individual had any legal title or interest at the time of death (to the extent of such interest), including such assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

(c) Taking into account certain transfers of assets

(1)(A) In order to meet the requirements of this subsection for purposes of section 1396a(a)(18) of this title, the State plan must provide that if an institutionalized individual or the spouse of such an individual (or, at the option of a State, a noninstitutionalized individual or the spouse of such an individual) disposes of assets for less than fair market value on or after the look-back date specified in subparagraph (B)(i), the individual is ineligible for medical assistance for services described in subparagraph (C)(i) (or, in the case of a noninstitutionalized individual, for the services described in subparagraph (C)(ii)) during the period beginning on the date specified in subparagraph (D) and equal to the number of months specified in subparagraph (E).

(B)(i) The look-back date specified in this subparagraph is a date that is 36 months (or, in the case of payments from a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to paragraph (3)(A)(iii) or (3)(B)(ii) of subsection (d) of this section, 60 months) before the date specified in clause (ii).

(ii) The date specified in this clause, with respect to—

(I) an institutionalized individual is the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State plan, or

(II) a noninstitutionalized individual is the date on which the individual applies for medical assistance under the State plan or, if later, the date on which the individual disposes of assets for less than fair market value.

(C)(i) The services described in this subparagraph with respect to an institutionalized individual are the following:

(I) Nursing facility services.

(II) A level of care in any institution equivalent to that of nursing facility services.

(III) Home or community-based services furnished under a waiver granted under subsection (c) or (d) of section 1396n of this title.

(ii) The services described in this subparagraph with respect to a noninstitutionalized individual are services (not including any services described in clause (i)) that are described in paragraph (7), (22), or (24) of section 1396d(a) of this title, and, at the option of a State, other long-term care services for which medical assistance is otherwise available under the State plan to individuals requiring long-term care.

(D) The date specified in this subparagraph is the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this subsection.

(E)(i) With respect to an institutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall be equal to—

(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

(II) the average monthly cost to a private patient of nursing facility services in the State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

(ii) With respect to a noninstitutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall not be greater than a number equal to—

(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i), divided by

(II) the average monthly cost to a private patient of nursing facility services in the

State (or, at the option of the State, in the community in which the individual is institutionalized) at the time of application.

(iii) The number of months of ineligibility otherwise determined under clause (i) or (ii) with respect to the disposal of an asset shall be reduced—

(I) in the case of periods of ineligibility determined under clause (i), by the number of months of ineligibility applicable to the individual under clause (ii) as a result of such disposal, and

(II) in the case of periods of ineligibility determined under clause (ii), by the number of months of ineligibility applicable to the individual under clause (i) as a result of such disposal.

(2) An individual shall not be ineligible for medical assistance by reason of paragraph (1) to the extent that—

(A) the assets transferred were a home and title to the home was transferred to—

(i) the spouse of such individual;

(ii) a child of such individual who (I) is under age 21, or (II) (with respect to States eligible to participate in the State program established under subchapter XVI of this chapter) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1382c of this title;

(iii) a sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(iv) a son or daughter of such individual (other than a child described in clause (ii)) who was residing in such individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who (as determined by the State) provided care to such individual which permitted such individual to reside at home rather than in such an institution or facility;

(B) the assets—

(i) were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse,

(ii) were transferred from the individual's spouse to another for the sole benefit of the individual's spouse,

(iii) were transferred to, or to a trust (including a trust described in subsection (d)(4) of this section) established solely for the benefit of, the individual's child described in subparagraph (A)(ii)(II), or

(iv) were transferred to a trust (including a trust described in subsection (d)(4) of this section) established solely for the benefit of an individual under 65 years of age who is disabled (as defined in section 1382c(a)(3) of this title);

(C) a satisfactory showing is made to the State (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual; or

(D) the State determines, under procedures established by the State (in accordance with standards specified by the Secretary), that the denial of eligibility would work an undue hardship as determined on the basis of criteria established by the Secretary;[1]

(3) For purposes of this subsection, in the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

(4) A State (including a State which has elected treatment under section 1396a(f) of this title) may not provide for any period of ineligibility for an individual due to transfer of resources for less than fair market value except in accordance with this subsection. In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State plan.

(5) In this subsection, the term ''resources'' has the meaning given such term in section 1382b of this title, without regard to the exclusion described in subsection (a)(1) thereof.

(d) Treatment of trust amounts

(1) For purposes of determining an individual's eligibility for, or amount of, benefits under a State plan under this subchapter, subject to paragraph (4), the rules specified in paragraph (3) shall apply to a trust established by such individual.

(2)(A) For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the corpus of the trust and if any of the following individuals established such trust other than by will:

(i) The individual.

(ii) The individual's spouse.

(iii) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse.

(iv) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(B) In the case of a trust the corpus of which includes assets of an individual (as determined

[1] So in original. The semicolon probably should be a period.

under subparagraph (A)) and assets of any other person or persons, the provisions of this subsection shall apply to the portion of the trust attributable to the assets of the individual.

(C) Subject to paragraph (4), this subsection shall apply without regard to—

(i) the purposes for which a trust is established,

(ii) whether the trustees have or exercise any discretion under the trust,

(iii) any restrictions on when or whether distributions may be made from the trust, or

(iv) any restrictions on the use of distributions from the trust.

(3)(A) In the case of a revocable trust—

(i) the corpus of the trust shall be considered resources available to the individual,

(ii) payments from the trust to or for the benefit of the individual shall be considered income of the individual, and

(iii) any other payments from the trust shall be considered assets disposed of by the individual for purposes of subsection (c) of this section.

(B) In the case of an irrevocable trust—

(i) if there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered resources available to the individual, and payments from that portion of the corpus or income—

(I) to or for the benefit of the individual, shall be considered income of the individual, and

(II) for any other purpose, shall be considered a transfer of assets by the individual subject to subsection (c) of this section; and

(ii) any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed by the individual for purposes of subsection (c) of this section, and the value of the trust shall be determined for purposes of such subsection by including the amount of any payments made from such portion of the trust after such date.

(4) This subsection shall not apply to any of the following trusts:

(A) A trust containing the assets of an individual under age 65 who is disabled (as defined in section 1382c(a)(3) of this title) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter.

(B) A trust established in a State for the benefit of an individual if—

(i) the trust is composed only of pension, Social Security, and other income to the individual (and accumulated income in the trust),

(ii) the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this subchapter; and

(iii) the State makes medical assistance available to individuals described in section 1396a(a)(10)(A)(ii)(V) of this title, but does not make such assistance available to individuals for nursing facility services under section 1396a(a)(10)(C) of this title.

(C) A trust containing the assets of an individual who is disabled (as defined in section 1382c(a)(3) of this title) that meets the following conditions:

(i) The trust is established and managed by a non-profit association.

(ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(iii) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in section 1382c(a)(3) of this title) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court.

(iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this subchapter.

(5) The State agency shall establish procedures (in accordance with standards specified by the Secretary) under which the agency waives the application of this subsection with respect to an individual if the individual establishes that such application would work an undue hardship on the individual as determined on the basis of criteria established by the Secretary.

(6) The term ''trust'' includes any legal instrument or device that is similar to a trust but includes an annuity only to such extent and in such manner as the Secretary specifies.

(e) Definitions

In this section, the following definitions shall apply:

(1) The term ''assets'', with respect to an individual, includes all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action—

(A) by the individual or such individual's spouse,

(B) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse, or

(C) by any person, including any court or administrative body, acting at the direction

or upon the request of the individual or such individual's spouse.

(2) The term ''income'' has the meaning given such term in section 1382a of this title.

(3) The term ''institutionalized individual'' means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) of this title.

(4) The term ''noninstitutionalized individual'' means an individual receiving any of the services specified in subsection (c)(1)(C)(ii) of this section.

(5) The term ''resources'' has the meaning given such term in section 1382b of this title, without regard (in the case of an institutionalized individual) to the exclusion described in subsection (a)(1) of such section.

(Aug. 14, 1935, ch. 531, title XIX, §1917, as added Sept. 3, 1982, Pub. L. 97–248, title I, §132(b), 96 Stat. 370; amended Jan. 12, 1983, Pub. L. 97–448, title III, §309(b)(21), (22), 96 Stat. 2410; Dec. 22, 1987, Pub. L. 100–203, title IV, §4211(h)(12), 101 Stat. 1330–207; July 1, 1988, Pub. L. 100–360, title III, §303(b), title IV, §411(*l*)(3)(I), 102 Stat. 760, 803; Oct. 13, 1988, Pub. L. 100–485, title VI, §608(d)(16)(B), 102 Stat. 2417; Dec. 19, 1989, Pub. L. 101–239, title VI, §6411(e)(1), 103 Stat. 2271; Aug. 10, 1993, Pub. L. 103–66, title XIII, §§13611(a)–(c), 13612(a)–(c), 107 Stat. 622–628.)

AMENDMENTS

1993—Subsec. (b)(1). Pub. L. 103–66, §13612(a), substituted ''except that the State shall seek adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan in the case of the following individuals:'' and subpars. (A) to (C) for ''except—'' and former subpars. (A) and (B) which read as follows:

''(A) in the case of an individual described in subsection (a)(1)(B) of this section, from his estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of such individual, and

''(B) in the case of any other individual who was 65 years of age or older when he received such assistance, from his estate.''

Subsec. (b)(3). Pub. L. 103–66, §13612(b), added par. (3).

Subsec. (b)(4). Pub. L. 103–66, §13612(c), added par. (4).

Subsec. (c)(1). Pub. L. 103–66, §13611(a)(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''In order to meet the requirements of this subsection (for purposes of section 1396a(a)(51)(B) of this title), the State plan must provide for a period of ineligibility for nursing facility services and for a level of care in a medical institution equivalent to that of nursing facility services and for services under section 1396n(c) of this title in the case of an institutionalized individual (as defined in paragraph (3)) who, or whose spouse, at any time during or after the 30-month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the State plan on such date) or, if the individual is not so entitled, the date the individual applies for such assistance while an institutionalized individual, disposed of resources for less than fair market value. The period of ineligibility shall begin with the month in which such resources were transferred and the number of months in such period shall be equal to the lesser of—

''(A) 30 months, or

''(B)(i) the total uncompensated value of the resources so transferred, divided by (ii) the average cost, to a private patient at the time of the application, of nursing facility services in the State or, at State option, in the community in which the individual is institutionalized.''

Subsec. (c)(2)(A). Pub. L. 103–66, §13611(a)(2)(A), substituted ''assets'' for ''resources'' in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 103–66, §13611(a)(2)(B), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the resources were transferred (i) to or from (or to another for the sole benefit of) the individual's spouse, or (ii) to the individual's child described in subparagraph (A)(ii)(II);''.

Subsec. (c)(2)(C). Pub. L. 103–66, §13611(a)(2)(C), in introductory provisions, substituted ''with regulations'' for ''with any regulations'', in cl. (i), substituted ''assets'' for ''resources'' and struck out ''or'' at end, in cl. (ii), substituted ''assets'' for ''resources'' and '', or'' for ''; or'', and added cl. (iii).

Subsec. (c)(2)(D). Pub. L. 103–66, §13611(a)(2)(D), amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: ''the State determines that denial of eligibility would work an undue hardship.''

Subsec. (c)(3). Pub. L. 103–66, §13611(a)(2)(E), added par. (3) and struck out former par. (3) which read as follows: ''In this subsection, the term 'institutionalized individual' means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) of this title.''

Subsec. (c)(4). Pub. L. 103–66, §13611(a)(2)(F), inserted at end ''In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance under a State plan for such individual, a State shall, using a reasonable methodology (as specified by the Secretary), apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the State plan.''

Subsec. (d). Pub. L. 103–66, §13611(b), added subsec. (d).

Subsec. (e). Pub. L. 103–66, §13611(c), added subsec. (e).

1989—Subsec. (c)(1). Pub. L. 101–239, §6411(e)(1)(A), inserted ''or whose spouse,'' after ''an institutionalized individual (as defined in paragraph (3)) who,''.

Subsec. (c)(2)(B)(i). Pub. L. 101–239, §6411(e)(1)(B)(i), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''to (or to another for the sole benefit of) the community spouse, as defined in section 1396r–5(h)(2) of this title,,''.

Subsec. (c)(2)(B)(ii), (iii). Pub. L. 101–239, §6411(e)(1)(B)(ii), struck out '', or'' after ''subparagraph (A)(ii)(II)'' in cl. (ii) and struck out cl. (iii) which read as follows: ''to (or to another for the sole benefit of) the individual's spouse if such spouse does not transfer such resources to another person other than the spouse for less than fair market value''.

1988—Subsec. (c). Pub. L. 100–360, §303(b), amended subsec. (c) generally, substituting pars. (1) to (4) relating to taking into account certain transfers of assets, for former pars. (1) to (3) relating to denial of medical assistance, period of eligibility, and exceptions.

Subsec. (c)(1). Pub. L. 100–485, §608(d)(16)(B)(i), substituted ''period of ineligibility for nursing facility services and for a level of care in a medical institution equivalent to that of nursing facility services and for services under section 1396n(c) of this title in the case of an institutionalized individual (as defined in paragraph (3)) who, at any time during or after the 30-month period immediately before the date the individual becomes an institutionalized individual (if the individual is entitled to medical assistance under the State plan on such date) or, if the individual is not so entitled, the date the individual applies for such assistance while an institutionalized individual'' for ''period of ineligibility in the case of an institutionalized individual (as defined in paragraph (3)) who, at any time during the 30-month period immediately before the individ-

ual's application for medical assistance under the State plan''.

Subsec. (c)(2)(A)(ii). Pub. L. 100–485, § 608(d)(16)(B)(ii), inserted subcl. (I) and (II) designations.

Subsec. (c)(2)(A)(iii). Pub. L. 100–485, § 608(d)(16)(B)(iii), substituted ''the individual becomes an institutionalized individual'' for ''of the individual's admission to the medical institution or nursing facility''.

Subsec. (c)(2)(A)(iv). Pub. L. 100–485, § 608(d)(16)(B)(iv), substituted ''the individual becomes an institutionalized individual'' for ''of such individual's admission to the medical institution or nursing facility''.

Subsec. (c)(2)(B). Pub. L. 100–485, § 608(d)(16)(B)(v), inserted cl. (i) designation, substituted ''section 1396r–5(h)(2) of this title,,'' for ''section 1396r–5(h)(2) of this title, or the individual's child who is blind or permanently and totally disabled'', and added cl. (ii).

Subsec. (c)(2)(B)(ii). Pub. L. 100–360, § 411(*l*)(3)(I), amended Pub. L. 100–203, § 4211(h)(12)(B), see 1987 Amendment note below.

Subsec. (c)(3). Pub. L. 100–485, § 608(d)(16)(B)(vi), substituted ''in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility, or who is described in section 1396a(a)(10)(A)(ii)(VI) of this title'' for ''in a medical institution or nursing facility''.

Subsec. (c)(5). Pub. L. 100–485, § 608(d)(16)(B)(vii), added par. (5).

1987—Subsecs. (a)(1)(B)(i), (c)(2)(B)(i). Pub. L. 100–203, § 4211(h)(12)(A), substituted ''nursing facility, intermediate care facility for the mentally retarded'' for ''skilled nursing facility, intermediate care facility''.

Subsec. (c)(2)(B)(ii). Pub. L. 100–203, § 4211(h)(12)(B), as amended by Pub. L. 100–360, § 411(*l*)(3)(I), substituted ''a nursing facility'' for ''a skilled nursing facility'' in two places each in subcls. (I) and (II).

1983—Subsec. (b)(2)(B). Pub. L. 97–448, § 309(b)(21), substituted ''who'' for ''and'' before ''has lawfully resided''.

Subsec. (c)(2)(B)(iii). Pub. L. 97–448, § 309(b)(22), substituted in subcl. (I) ''can'' for ''cannot'' and struck out from subcl. (IV) the introductory word ''if''.

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13611(e) of Pub. L. 103–66 provided that:

''(1) The amendments made by this section [amending this section and sections 1396a and 1396r–5 of this title] shall apply, except as provided in this subsection, to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) The amendments made by this section shall not apply—

''(A) to medical assistance provided for services furnished before October 1, 1993,

''(B) with respect to assets disposed of on or before the date of the enactment of this Act [Aug. 10, 1993], or

''(C) with respect to trusts established on or before the date of the enactment of this Act.

''(3) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendment made by subsection (b) [amending this section], the State plan shall not be regarded as failing to comply with the requirements imposed by such amendment solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.''

Section 13612(d) of Pub. L. 103–66 provided that:

''(1)(A) Except as provided in subparagraph (B), the amendments made by this section [amending this section] shall apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after October 1, 1993, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements imposed by such amendments solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Aug. 10, 1993]. For purposes of the preceding sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

''(2) The amendments made by this section shall not apply to individuals who died before October 1, 1993.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable to transfers occurring after Dec. 19, 1989, see section 6411(e)(4) of Pub. L. 101–239, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 303(b) of Pub. L. 100–360 applicable to payments under this subchapter for calendar quarters beginning on or after July 1, 1988 (except in certain situations requiring State legislative action), without regard to whether or not final regulations to carry out such amendment have been promulgated by such date, and subsection (c) of this section, as amended by section 303(b) of Pub. L. 100–360, applicable to resources disposed of on or after July 1, 1988, but not applicable with respect to inter-spousal transfers occurring before Oct. 1, 1989, see section 303(g)(2), (5) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(*l*)(3)(I) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–203 applicable to nursing facility services furnished on or after Oct. 1, 1990, without regard to whether regulations implementing such amendment are promulgated by such date, except as otherwise specifically provided in section 1396r of this title, with transitional rule, see section 4214(a), (b)(2) of Pub. L. 100–203, as amended, set out as an Effective Date note under section 1396r of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97–448 effective as if originally included as a part of this section as this section was added by the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, see section 309(c)(2) of Pub. L. 97–448, set out as a note under section 426–1 of this title.

EFFECTIVE DATE

Section 132(d) of Pub. L. 97–248 provided that: ''The amendments made by this section [enacting this section and amending section 1396a of this title] shall become effective on the date of the enactment of this Act [Sept. 3, 1982], but the provisions of section 1917(c)(2)(B) of the Social Security Act [subsec. (c)(2)(B) of this section] shall not apply with respect to a transfer of assets which took place prior to such date of enactment.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1382, 1382b, 1396a, 1396r–5 of this title.

§ 1396q. Application of provisions of subchapter II relating to subpoenas

The provisions of subsections (d) and (e) of section 405 of this title shall apply with respect to this subchapter to the same extent as they are applicable with respect to subchapter II of this chapter, except that, in so applying such subsections, and in applying section 405(*l*) of this title thereto, with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(Aug. 14, 1935, ch. 531, title XIX, § 1918, as added July 18, 1984, Pub. L. 98–369, div. B, title III, § 2370(a), 98 Stat. 1110; amended Aug. 15, 1994, Pub. L. 103–296, title I, § 108(d)(5), 108 Stat. 1486.)

AMENDMENTS

1994—Pub. L. 103–296 inserted before period at end '', except that, in so applying such subsections, and in applying section 405(*l*) of this title thereto, with respect to this subchapter, any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–296 effective Mar. 31, 1995, see section 110(a) of Pub. L. 103–296, set out as a note under section 401 of this title.

EFFECTIVE DATE

Section 2370(b) of Pub. L. 98–369 provided that: ''The amendment made by this section [enacting this section] shall become effective on the date of the enactment of this Act [July 18, 1984].''

§ 1396r. Requirements for nursing facilities

(a) "Nursing facility" defined

In this subchapter, the term ''nursing facility'' means an institution (or a distinct part of an institution) which—

(1) is primarily engaged in providing to residents—

(A) skilled nursing care and related services for residents who require medical or nursing care,

(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

(C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and is not primarily for the care and treatment of mental diseases;

(2) has in effect a transfer agreement (meeting the requirements of section 1395x(*l*) of this title) with one or more hospitals having agreements in effect under section 1395cc of this title; and

(3) meets the requirements for a nursing facility described in subsections (b), (c), and (d) of this section.

Such term also includes any facility which is located in a State on an Indian reservation and is certified by the Secretary as meeting the requirements of paragraph (1) and subsections (b), (c), and (d) of this section.

(b) Requirements relating to provision of services

(1) Quality of life

(A) In general

A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident.

(B) Quality assessment and assurance

A nursing facility must maintain a quality assessment and assurance committee, consisting of the director of nursing services, a physician designated by the facility, and at least 3 other members of the facility's staff, which (i) meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary and (ii) develops and implements appropriate plans of action to correct identified quality deficiencies. A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.

(2) Scope of services and activities under plan of care

A nursing facility must provide services and activities to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident in accordance with a written plan of care which—

(A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;

(B) is initially prepared, with the participation to the extent practicable of the resident or the resident's family or legal representative, by a team which includes the resident's attending physician and a registered professional nurse with responsibility for the resident; and

(C) is periodically reviewed and revised by such team after each assessment under paragraph (3).

(3) Residents' assessment

(A) Requirement

A nursing facility must conduct a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity, which assessment—

(i) describes the resident's capability to perform daily life functions and significant impairments in functional capacity;

(ii) is based on a uniform minimum data set specified by the Secretary under subsection (f)(6)(A) of this section;

(iii) uses an instrument which is specified by the State under subsection (e)(5) of this section; and

(iv) includes the identification of medical problems.

(B) Certification

(i) In general

Each such assessment must be conducted or coordinated (with the appropriate participation of health professionals) by a registered professional nurse who signs and certifies the completion of the assessment. Each individual who completes a portion of such an assessment shall sign and certify as to the accuracy of that portion of the assessment.

(ii) Penalty for falsification

(I) An individual who willfully and knowingly certifies under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $1,000 with respect to each assessment.

(II) An individual who willfully and knowingly causes another individual to certify under clause (i) a material and false statement in a resident assessment is subject to a civil money penalty of not more than $5,000 with respect to each assessment.

(III) The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this clause in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(iii) Use of independent assessors

If a State determines, under a survey under subsection (g) of this section or otherwise, that there has been a knowing and willful certification of false assessments under this paragraph, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(C) Frequency

(i) In general

Such an assessment must be conducted—

(I) promptly upon (but no later than[1] not later than 14 days after the date of) admission for each individual admitted on or after October 1, 1990, and by not later than October 1, 1991, for each resident of the facility on that date;

(II) promptly after a significant change in the resident's physical or mental condition; and

(III) in no case less often than once every 12 months.

(ii) Resident review

The nursing facility must examine each resident no less frequently than once every 3 months and, as appropriate, revise the resident's assessment to assure the continuing accuracy of the assessment.

(D) Use

The results of such an assessment shall be used in developing, reviewing, and revising the resident's plan of care under paragraph (2).

(E) Coordination

Such assessments shall be coordinated with any State-required preadmission screening program to the maximum extent practicable in order to avoid duplicative testing and effort.

(F) Requirements relating to preadmission screening for mentally ill and mentally retarded individuals

Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A) of this section, a nursing facility must not admit, on or after January 1, 1989, any new resident who—

(i) is mentally ill (as defined in subsection (e)(7)(G)(i) of this section) unless the State mental health authority has determined (based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority) prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental illness, or

(ii) is mentally retarded (as defined in subsection (e)(7)(G)(ii) of this section) unless the State mental retardation or developmental disability authority has determined prior to admission that, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility, and, if the individual requires such level of services, whether the individual requires specialized services for mental retardation.

A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(4) Provision of services and activities

(A) In general

To the extent needed to fulfill all plans of care described in paragraph (2), a nursing facility must provide (or arrange for the provision of)—

(i) nursing and related services and specialized rehabilitative services to attain or

[1] So in original. The words ''no later than'' probably should not appear.

maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(ii) medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

(iii) pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident;

(iv) dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident;

(v) an on-going program, directed by a qualified professional, of activities designed to meet the interests and the physical, mental, and psychosocial well-being of each resident;

(vi) routine dental services (to the extent covered under the State plan) and emergency dental services to meet the needs of each resident; and

(vii) treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State.

The services provided or arranged by the facility must meet professional standards of quality.

(B) Qualified persons providing services

Services described in clauses (i), (ii), (iii), (iv), and (vi) of subparagraph (A) must be provided by qualified persons in accordance with each resident's written plan of care.

(C) Required nursing care; facility waivers

(i) General requirements

With respect to nursing facility services provided on or after October 1, 1990, a nursing facility—

(I) except as provided in clause (ii), must provide 24-hour licensed nursing services which are sufficient to meet the nursing needs of its residents, and

(II) except as provided in clause (ii), must use the services of a registered professional nurse for at least 8 consecutive hours a day, 7 days a week.

(ii) Waiver by State

To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if—

(I) the facility demonstrates to the satisfaction of the State that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel,

(II) the State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility,

(III) the State finds that, for any such periods in which licensed nursing services are not available, a registered professional nurse or a physician is obligated to respond immediately to telephone calls from the facility,

(IV) the State agency granting a waiver of such requirements provides notice of the waiver to the State long-term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965 [42 U.S.C. 3027(a)(12)]) and the protection and advocacy system in the State for the mentally ill and the mentally retarded, and

(V) the nursing facility that is granted such a waiver by a State notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

A waiver under this clause shall be subject to annual review and to the review of the Secretary and subject to clause (iii) shall be accepted by the Secretary for purposes of this subchapter to the same extent as is the State's certification of the facility. In granting or renewing a waiver, a State may require the facility to use other qualified, licensed personnel.

(iii) Assumption of waiver authority by Secretary

If the Secretary determines that a State has shown a clear pattern and practice of allowing waivers in the absence of diligent efforts by facilities to meet the staffing requirements, the Secretary shall assume and exercise the authority of the State to grant waivers.

(5) Required training of nurse aides

(A) In general

(i) Except as provided in clause (ii), a nursing facility must not use on a full-time basis any individual as a nurse aide in the facility on or after October 1, 1990, for more than 4 months unless the individual—

(I) has completed a training and competency evaluation program, or a competency evaluation program, approved by the State under subsection (e)(1)(A) of this section, and

(II) is competent to provide nursing or nursing-related services.

(ii) A nursing facility must not use on a temporary, per diem, leased, or on any other basis other than as a permanent employee any individual as a nurse aide in the facility on or after January 1, 1991, unless the individual meets the requirements described in clause (i).

(B) Offering competency evaluation programs for current employees

A nursing facility must provide, for individuals used as a nurse aide by the facility as of January 1, 1990, for a competency evaluation program approved by the State under subsection (e)(1) of this section and such preparation as may be necessary for the individual to complete such a program by October 1, 1990.

(C) Competency

The nursing facility must not permit an individual, other than in a training and competency evaluation program approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency and must not use such an individual as a nurse aide unless the facility has inquired of any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information concerning the individual.

(D) Re-training required

For purposes of subparagraph (A), if, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual performed nursing or nursing-related services for monetary compensation, such individual shall complete a new training and competency evaluation program, or a new competency evaluation program.

(E) Regular in-service education

The nursing facility must provide such regular performance review and regular in-service education as assures that individuals used as nurse aides are competent to perform services as nurse aides, including training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

(F) "Nurse aide" defined

In this paragraph, the term ''nurse aide'' means any individual providing nursing or nursing-related services to residents in a nursing facility, but does not include an individual—

(i) who is a licensed health professional (as defined in subparagraph (G)) or a registered dietician, or

(ii) who volunteers to provide such services without monetary compensation.

(G) Licensed health professional defined

In this paragraph, the term ''licensed health professional'' means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

(6) Physician supervision and clinical records

A nursing facility must—

(A) require that the health care of every resident be provided under the supervision of a physician (or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician);

(B) provide for having a physician available to furnish necessary medical care in case of emergency; and

(C) maintain clinical records on all residents, which records include the plans of care (described in paragraph (2)) and the residents' assessments (described in paragraph (3)), as well as the results of any preadmission screening conducted under subsection (e)(7) of this section.

(7) Required social services

In the case of a nursing facility with more than 120 beds, the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the provision of social services.

(c) Requirements relating to residents' rights

(1) General rights

(A) Specified rights

A nursing facility must protect and promote the rights of each resident, including each of the following rights:

(i) Free choice

The right to choose a personal attending physician, to be fully informed in advance about care and treatment, to be fully informed in advance of any changes in care or treatment that may affect the resident's well-being, and (except with respect to a resident adjudged incompetent) to participate in planning care and treatment or changes in care and treatment.

(ii) Free from restraints

The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms. Restraints may only be imposed—

(I) to ensure the physical safety of the resident or other residents, and

(II) only upon the written order of a physician that specifies the duration and circumstances under which the restraints are to be used (except in emergency circumstances specified by the Secretary until such an order could reasonably be obtained).

(iii) Privacy

The right to privacy with regard to accommodations, medical treatment, written and telephonic communications, visits, and meetings of family and of resident groups.

(iv) Confidentiality

The right to confidentiality of personal and clinical records and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request.

(v) Accommodation of needs

The right—

(I) to reside and receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered, and

(II) to receive notice before the room or roommate of the resident in the facility is changed.

(vi) Grievances

The right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(vii) Participation in resident and family groups

The right of the resident to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility.

(viii) Participation in other activities

The right of the resident to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(ix) Examination of survey results

The right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Secretary or a State with respect to the facility and any plan of correction in effect with respect to the facility.

(x) Refusal of certain transfers

The right to refuse a transfer to another room within the facility, if a purpose of the transfer is to relocate the resident from a portion of the facility that is not a skilled nursing facility (for purposes of subchapter XVIII of this chapter) to a portion of the facility that is such a skilled nursing facility.

(xi) Other rights

Any other right established by the Secretary.

Clause (iii) shall not be construed as requiring the provision of a private room. A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to medical assistance under this subchapter or a State's entitlement to Federal medical assistance under this subchapter with respect to services furnished to such a resident.

(B) Notice of rights

A nursing facility must—

(i) inform each resident, orally and in writing at the time of admission to the facility, of the resident's legal rights during the stay at the facility and of the requirements and procedures for establishing eligibility for medical assistance under this subchapter, including the right to request an assessment under section 1396r–5(c)(1)(B) of this title;

(ii) make available to each resident, upon reasonable request, a written statement of such rights (which statement is updated upon changes in such rights) including the notice (if any) of the State developed under subsection (e)(6) of this section;

(iii) inform each resident who is entitled to medical assistance under this subchapter—

(I) at the time of admission to the facility or, if later, at the time the resident becomes eligible for such assistance, of the items and services (including those specified under section 1396a(a)(28)(B) of this title) that are included in nursing facility services under the State plan and for which the resident may not be charged (except as permitted in section 1396*o* of this title), and of those other items and services that the facility offers and for which the resident may be charged and the amount of the charges for such items and services, and

(II) of changes in the items and services described in subclause (I) and of changes in the charges imposed for items and services described in that subclause; and

(iv) inform each other resident, in writing before or at the time of admission and periodically during the resident's stay, of services available in the facility and of related charges for such services, including any charges for services not covered under subchapter XVIII of this chapter or by the facility's basic per diem charge.

The written description of legal rights under this subparagraph shall include a description of the protection of personal funds under paragraph (6) and a statement that a resident may file a complaint with a State survey and certification agency respecting resident abuse and neglect and misappropriation of resident property in the facility.

(C) Rights of incompetent residents

In the case of a resident adjudged incompetent under the laws of a State, the rights of the resident under this subchapter shall devolve upon, and, to the extent judged necessary by a court of competent jurisdiction, be exercised by, the person appointed under State law to act on the resident's behalf.

(D) Use of psychopharmacologic drugs

Psychopharmacologic drugs may be administered only on the orders of a physician and only as part of a plan (included in the written plan of care described in paragraph (2)) designed to eliminate or modify the symptoms for which the drugs are prescribed and only if, at least annually an independent, external consultant reviews the appropriateness of the drug plan of each resident receiving such drugs.

(2) Transfer and discharge rights

(A) In general

A nursing facility must permit each resident to remain in the facility and must not transfer or discharge the resident from the facility unless—

(i) the transfer or discharge is necessary to meet the resident's welfare and the resi-

dent's welfare cannot be met in the facility;

(ii) the transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) the safety of individuals in the facility is endangered;

(iv) the health of individuals in the facility would otherwise be endangered;

(v) the resident has failed, after reasonable and appropriate notice, to pay (or to have paid under this subchapter or subchapter XVIII of this chapter on the resident's behalf) for a stay at the facility; or

(vi) the facility ceases to operate.

In each of the cases described in clauses (i) through (iv), the basis for the transfer or discharge must be documented in the resident's clinical record. In the cases described in clauses (i) and (ii), the documentation must be made by the resident's physician, and in the case described in clause (iv) the documentation must be made by a physician. For purposes of clause (v), in the case of a resident who becomes eligible for assistance under this subchapter after admission to the facility, only charges which may be imposed under this subchapter shall be considered to be allowable.

(B) Pre-transfer and pre-discharge notice

(i) In general

Before effecting a transfer or discharge of a resident, a nursing facility must—

(I) notify the resident (and, if known, an immediate family member of the resident or legal representative) of the transfer or discharge and the reasons therefor,

(II) record the reasons in the resident's clinical record (including any documentation required under subparagraph (A)), and

(III) include in the notice the items described in clause (iii).

(ii) Timing of notice

The notice under clause (i)(I) must be made at least 30 days in advance of the resident's transfer or discharge except—

(I) in a case described in clause (iii) or (iv) of subparagraph (A);

(II) in a case described in clause (ii) of subparagraph (A), where the resident's health improves sufficiently to allow a more immediate transfer or discharge;

(III) in a case described in clause (i) of subparagraph (A), where a more immediate transfer or discharge is necessitated by the resident's urgent medical needs; or

(IV) in a case where a resident has not resided in the facility for 30 days.

In the case of such exceptions, notice must be given as many days before the date of the transfer or discharge as is practicable.

(iii) Items included in notice

Each notice under clause (i) must include—

(I) for transfers or discharges effected on or after October 1, 1989, notice of the resident's right to appeal the transfer or discharge under the State process established under subsection (e)(3) of this section;

(II) the name, mailing address, and telephone number of the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]);

(III) in the case of residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy system for developmentally disabled individuals established under part C of the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. 6041 et seq.]; and

(IV) in the case of mentally ill residents (as defined in subsection (e)(7)(G)(i) of this section), the mailing address and telephone number of the agency responsible for the protection and advocacy system for mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act [42 U.S.C. 10801 et seq.].

(C) Orientation

A nursing facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(D) Notice on bed-hold policy and readmission

(i) Notice before transfer

Before a resident of a nursing facility is transferred for hospitalization or therapeutic leave, a nursing facility must provide written information to the resident and an immediate family member or legal representative concerning—

(I) the provisions of the State plan under this subchapter regarding the period (if any) during which the resident will be permitted under the State plan to return and resume residence in the facility, and

(II) the policies of the facility regarding such a period, which policies must be consistent with clause (iii).

(ii) Notice upon transfer

At the time of transfer of a resident to a hospital or for therapeutic leave, a nursing facility must provide written notice to the resident and an immediate family member or legal representative of the duration of any period described in clause (i).

(iii) Permitting resident to return

A nursing facility must establish and follow a written policy under which a resident—

(I) who is eligible for medical assistance for nursing facility services under a State plan,

(II) who is transferred from the facility for hospitalization or therapeutic leave, and

(III) whose hospitalization or therapeutic leave exceeds a period paid for under the State plan for the holding of a bed in the facility for the resident,

will be permitted to be readmitted to the facility immediately upon the first availability of a bed in a semiprivate room in the facility if, at the time of readmission, the resident requires the services provided by the facility.

(E) Information respecting advance directives

A nursing facility must comply with the requirement of section 1396a(w) of this title (relating to maintaining written policies and procedures respecting advance directives).

(3) Access and visitation rights

A nursing facility must—

(A) permit immediate access to any resident by any representative of the Secretary, by any representative of the State, by an ombudsman or agency described in subclause (II), (III), or (IV) of paragraph (2)(B)(iii), or by the resident's individual physician;

(B) permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(C) permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident;

(D) permit reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time; and

(E) permit representatives of the State ombudsman (described in paragraph (2)(B)(iii)(II)), with the permission of the resident (or the resident's legal representative) and consistent with State law, to examine a resident's clinical records.

(4) Equal access to quality care

(A) In general

A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services required under the State plan for all individuals regardless of source of payment.

(B) Construction

(i) Nothing prohibiting any charges for non-medicaid patients

Subparagraph (A) shall not be construed as prohibiting a nursing facility from charging any amount for services furnished, consistent with the notice in paragraph (1)(B) describing such charges.

(ii) No additional services required

Subparagraph (A) shall not be construed as requiring a State to offer additional services on behalf of a resident than are otherwise provided under the State plan.

(5) Admissions policy

(A) Admissions

With respect to admissions practices, a nursing facility must—

(i)(I) not require individuals applying to reside or residing in the facility to waive their rights to benefits under this subchapter or subchapter XVIII of this chapter, (II) not require oral or written assurance that such individuals are not eligible for, or will not apply for, benefits under this subchapter or subchapter XVIII of this chapter, and (III) prominently display in the facility written information, and provide to such individuals oral and written information, about how to apply for and use such benefits and how to receive refunds for previous payments covered by such benefits;

(ii) not require a third party guarantee of payment to the facility as a condition of admission (or expedited admission) to, or continued stay in, the facility; and

(iii) in the case of an individual who is entitled to medical assistance for nursing facility services, not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan under this subchapter, any gift, money, donation, or other consideration as a precondition of admitting (or expediting the admission of) the individual to the facility or as a requirement for the individual's continued stay in the facility.

(B) Construction

(i) No preemption of stricter standards

Subparagraph (A) shall not be construed as preventing States or political subdivisions therein from prohibiting, under State or local law, the discrimination against individuals who are entitled to medical assistance under the State plan with respect to admissions practices of nursing facilities.

(ii) Contracts with legal representatives

Subparagraph (A)(ii) shall not be construed as preventing a facility from requiring an individual, who has legal access to a resident's income or resources available to pay for care in the facility, to sign a contract (without incurring personal financial liability) to provide payment from the resident's income or resources for such care.

(iii) Charges for additional services requested

Subparagraph (A)(iii) shall not be construed as preventing a facility from charging a resident, eligible for medical assistance under the State plan, for items or services the resident has requested and received and that are not specified in the State plan as included in the term ''nursing facility services''.

(iv) Bona fide contributions

Subparagraph (A)(iii) shall not be construed as prohibiting a nursing facility

from soliciting, accepting, or receiving a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the resident (or potential resident), but only to the extent that such contribution is not a condition of admission, expediting admission, or continued stay in the facility.

(6) Protection of resident funds

(A) In general

The nursing facility—

(i) may not require residents to deposit their personal funds with the facility, and

(ii) upon the written authorization of the resident, must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph.

(B) Management of personal funds

Upon written authorization of a resident under subparagraph (A)(ii), the facility must manage and account for the personal funds of the resident deposited with the facility as follows:

(i) Deposit

The facility must deposit any amount of personal funds in excess of $50 with respect to a resident in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credits all interest earned on such separate account to such account. With respect to any other personal funds, the facility must maintain such funds in a noninterest bearing account or petty cash fund.

(ii) Accounting and records

The facility must assure a full and complete separate accounting of each such resident's personal funds, maintain a written record of all financial transactions involving the personal funds of a resident deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record.

(iii) Notice of certain balances

The facility must notify each resident receiving medical assistance under the State plan under this subchapter when the amount in the resident's account reaches $200 less than the dollar amount determined under section 1382(a)(3)(B) of this title and the fact that if the amount in the account (in addition to the value of the resident's other nonexempt resources) reaches the amount determined under such section the resident may lose eligibility for such medical assistance or for benefits under subchapter XVI of this chapter.

(iv) Conveyance upon death

Upon the death of a resident with such an account, the facility must convey promptly the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate.

(C) Assurance of financial security

The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(D) Limitation on charges to personal funds

The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under this subchapter or subchapter XVIII of this chapter.

(7) Limitation on charges in case of medicaid-eligible individuals

(A) In general

A nursing facility may not impose charges, for certain medicaid-eligible individuals for nursing facility services covered by the State under its plan under this subchapter, that exceed the payment amounts established by the State for such services under this subchapter.

(B) "Certain medicaid-eligible individual" defined

In subparagraph (A), the term ''certain medicaid-eligible individual'' means an individual who is entitled to medical assistance for nursing facility services in the facility under this subchapter but with respect to whom such benefits are not being paid because, in determining the amount of the individual's income to be applied monthly to payment for the costs of such services, the amount of such income exceeds the payment amounts established by the State for such services under this subchapter.

(8) Posting of survey results

A nursing facility must post in a place readily accessible to residents, and family members and legal representatives of residents, the results of the most recent survey of the facility conducted under subsection (g) of this section.

(d) Requirements relating to administration and other matters

(1) Administration

(A) In general

A nursing facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident (consistent with requirements established under subsection (f)(5) of this section).

(B) Required notices

If a change occurs in—

(i) the persons with an ownership or control interest (as defined in section 1320a–3(a)(3) of this title) in the facility,

(ii) the persons who are officers, directors, agents, or managing employees (as defined in section 1320a–5(b) of this title) of the facility,

(iii) the corporation, association, or other company responsible for the management of the facility, or

(iv) the individual who is the administrator or director of nursing of the facility,

the nursing facility must provide notice to the State agency responsible for the licensing of the facility, at the time of the change, of the change and of the identity of each new person, company, or individual described in the respective clause.

(C) Nursing facility administrator

The administrator of a nursing facility must meet standards established by the Secretary under subsection (f)(4) of this section.

(2) Licensing and Life Safety Code

(A) Licensing

A nursing facility must be licensed under applicable State and local law.

(B) Life Safety Code

A nursing facility must meet such provisions of such edition (as specified by the Secretary in regulation) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that—

(i) the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a facility, but only if such waiver would not adversely affect the health and safety of residents or personnel, and

(ii) the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects residents of and personnel in nursing facilities.

(3) Sanitary and infection control and physical environment

A nursing facility must—

(A) establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment in which residents reside and to help prevent the development and transmission of disease and infection, and

(B) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents, personnel, and the general public.

(4) Miscellaneous

(A) Compliance with Federal, State, and local laws and professional standards

A nursing facility must operate and provide services in compliance with all applicable Federal, State, and local laws and regulations (including the requirements of section 1320a–3 of this title[2] and with accepted professional standards and principles which apply to professionals providing services in such a facility.

(B) Other

A nursing facility must meet such other requirements relating to the health and safety of residents or relating to the physical facilities thereof as the Secretary may find necessary.

(e) State requirements relating to nursing facility requirements

As a condition of approval of its plan under this subchapter, a State must provide for the following:

(1) Specification and review of nurse aide training and competency evaluation programs and of nurse aide competency evaluation programs

The State must—

(A) by not later than January 1, 1989, specify those training and competency evaluation programs, and those competency evaluation programs, that the State approves for purposes of subsection (b)(5) of this section and that meet the requirements established under subsection (f)(2) of this section, and

(B) by not later than January 1, 1990, provide for the review and reapproval of such programs, at a frequency and using a methodology consistent with the requirements established under subsection (f)(2)(A)(iii) of this section.

The failure of the Secretary to establish requirements under subsection (f)(2) of this section shall not relieve any State of its responsibility under this paragraph.

(2) Nurse aide registry

(A) In general

By not later than January 1, 1989, the State shall establish and maintain a registry of all individuals who have satisfactorily completed a nurse aide training and competency evaluation program, or a nurse aide competency evaluation program, approved under paragraph (1) in the State, or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989.

(B) Information in registry

The registry under subparagraph (A) shall provide (in accordance with regulations of the Secretary) for the inclusion of specific documented findings by a State under subsection (g)(1)(C) of this section of resident neglect or abuse or misappropriation of resident property involving an individual listed in the registry, as well as any brief statement of the individual disputing the findings. The State shall make available to the public information in the registry. In the case of inquiries to the registry concerning an individual listed in the registry, any information disclosed concerning such a finding shall also include disclosure of any such statement in the registry relating to the finding or a clear and accurate summary of such a statement.

(C) Prohibition against charges

A State may not impose any charges on a nurse aide relating to the registry established and maintained under subparagraph (A).

[2] So in original. Probably should be followed by a closing parenthesis.

(3) State appeals process for transfers and discharges

The State, for transfers and discharges from nursing facilities effected on or after October 1, 1989, must provide for a fair mechanism, meeting the guidelines established under subsection (f)(3) of this section, for hearing appeals on transfers and discharges of residents of such facilities; but the failure of the Secretary to establish such guidelines under such subsection shall not relieve any State of its responsibility under this paragraph.

(4) Nursing facility administrator standards

By not later than July 1, 1989, the State must have implemented and enforced the nursing facility administrator standards developed under subsection (f)(4) of this section respecting the qualification of administrators of nursing facilities.

(5) Specification of resident assessment instrument

Effective July 1, 1990, the State shall specify the instrument to be used by nursing facilities in the State in complying with the requirement of subsection (b)(3)(A)(iii) of this section. Such instrument shall be—

(A) one of the instruments designated under subsection (f)(6)(B) of this section, or

(B) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary under subsection (f)(6)(A) of this section.

(6) Notice of medicaid rights

Each State, as a condition of approval of its plan under this subchapter, effective April 1, 1988, must develop (and periodically update) a written notice of the rights and obligations of residents of nursing facilities (and spouses of such residents) under this subchapter.

(7) State requirements for preadmission screening and resident review

(A) Preadmission screening

(i) In general

Effective January 1, 1989, the State must have in effect a preadmission screening program, for making determinations (using any criteria developed under subsection (f)(8) of this section) described in subsection (b)(3)(F) of this section for mentally ill and mentally retarded individuals (as defined in subparagraph (G)) who are admitted to nursing facilities on or after January 1, 1989. The failure of the Secretary to develop minimum criteria under subsection (f)(8) of this section shall not relieve any State of its responsibility to have a preadmission screening program under this subparagraph or to perform resident reviews under subparagraph (B).

(ii) Clarification with respect to certain readmissions

The preadmission screening program under clause (i) need not provide for determinations in the case of the readmission to a nursing facility of an individual who, after being admitted to the nursing facility, was transferred for care in a hospital.

(iii) Exception for certain hospital discharges

The preadmission screening program under clause (i) shall not apply to the admission to a nursing facility of an individual—

(I) who is admitted to the facility directly from a hospital after receiving acute inpatient care at the hospital,

(II) who requires nursing facility services for the condition for which the individual received care in the hospital, and

(III) whose attending physician has certified, before admission to the facility, that the individual is likely to require less than 30 days of nursing facility services.

(B) State requirement for annual resident review

(i) For mentally ill residents

As of April 1, 1990, in the case of each resident of a nursing facility who is mentally ill, the State mental health authority must review and determine (using any criteria developed under subsection (f)(8) of this section and based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority)—

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an inpatient psychiatric hospital for individuals under age 21 (as described in section 1396d(h) of this title) or of an institution for mental diseases providing medical assistance to individuals 65 years of age or older; and

(II) whether or not the resident requires specialized services for mental illness.

(ii) For mentally retarded residents

As of April 1, 1990, in the case of each resident of a nursing facility who is mentally retarded, the State mental retardation or developmental disability authority must review and determine (using any criteria developed under subsection (f)(8) of this section)—

(I) whether or not the resident, because of the resident's physical and mental condition, requires the level of services provided by a nursing facility or requires the level of services of an intermediate care facility described under section 1396d(d) of this title; and

(II) whether or not the resident requires specialized services for mental retardation.

(iii) Frequency of reviews

(I) Annual

Except as provided in subclauses (II) and (III), the reviews and determinations under clauses (i) and (ii) must be conducted with respect to each mentally ill

or mentally retarded resident not less often than annually.

(II) Preadmission review cases

In the case of a resident subject to a preadmission review under subsection (b)(3)(F) of this section, the review and determination under clause (i) or (ii) need not be done until the resident has resided in the nursing facility for 1 year.

(III) Initial review

The reviews and determinations under clauses (i) and (ii) must first be conducted (for each resident not subject to preadmission review under subsection (b)(3)(F) of this section) by not later than April 1, 1990.

(iv) Prohibition of delegation

A State mental health authority, a State mental retardation or developmental disability authority, and a State may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).

(C) Response to preadmission screening and resident review

As of April 1, 1990, the State must meet the following requirements:

(i) Long-term residents not requiring nursing facility services, but requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services for mental illness or mental retardation, and who has continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

(I) inform the resident of the institutional and noninstitutional alternatives covered under the State plan for the resident,

(II) offer the resident the choice of remaining in the facility or of receiving covered services in an alternative appropriate institutional or noninstitutional setting,

(III) clarify the effect on eligibility for services under the State plan if the resident chooses to leave the facility (including its effect on readmission to the facility), and

(IV) regardless of the resident's choice, provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

A State shall not be denied payment under this subchapter for nursing facility services for a resident described in this clause because the resident does not require the level of services provided by such a facility, if the resident chooses to remain in such a facility.

(ii) Other residents not requiring nursing facility services, but requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility, but to require specialized services for mental illness or mental retardation, and who has not continuously resided in a nursing facility for at least 30 months before the date of the determination, the State must, in consultation with the resident's family or legal representative and care-givers—

(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2) of this section,

(II) prepare and orient the resident for such discharge, and

(III) provide for (or arrange for the provision of) such specialized services for the mental illness or mental retardation.

(iii) Residents not requiring nursing facility services and not requiring specialized services

In the case of a resident who is determined, under subparagraph (B), not to require the level of services provided by a nursing facility and not to require specialized services for mental illness or mental retardation, the State must—

(I) arrange for the safe and orderly discharge of the resident from the facility, consistent with the requirements of subsection (c)(2) of this section, and

(II) prepare and orient the resident for such discharge.

(iv) Annual report

Each State shall report to the Secretary annually concerning the number and disposition of residents described in each of clauses (ii) and (iii).

(D) Denial of payment

(i) For failure to conduct preadmission screening or annual review

No payment may be made under section 1396b(a) of this title with respect to nursing facility services furnished to an individual for whom a determination is required under subsection (b)(3)(F) of this section or subparagraph (B) but for whom the determination is not made.

(ii) For certain residents not requiring nursing facility level of services

No payment may be made under section 1396b(a) of this title with respect to nursing facility services furnished to an individual (other than an individual described in subparagraph (C)(i)) who does not require the level of services provided by a nursing facility.

(E) Permitting alternative disposition plans

With respect to residents of a nursing facility who are mentally retarded or mentally ill and who are determined under subparagraph (B) not to require the level of

services of such a facility, but who require specialized services for mental illness or mental retardation, a State and the nursing facility shall be considered to be in compliance with the requirements of subparagraphs (A) through (C) of this paragraph if, before April 1, 1989, the State and the Secretary have entered into an agreement relating to the disposition of such residents of the facility and the State is in compliance with such agreement. Such an agreement may provide for the disposition of the residents after the date specified in subparagraph (C). The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.

(F) Appeals procedures

Each State, as a condition of approval of its plan under this subchapter, effective January 1, 1989, must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (A) or (B).

(G) Definitions

In this paragraph and in subsection (b)(3)(F) of this section:

(i) An individual is considered to be ''mentally ill'' if the individual has a serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health) and does not have a primary diagnosis of dementia (including Alzheimer's disease or a related disorder) or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness.

(ii) An individual is considered to be ''mentally retarded'' if the individual is mentally retarded or a person with a related condition (as described in section 1396d(d) of this title).

(iii) The term ''specialized services'' has the meaning given such term by the Secretary in regulations, but does not include, in the case of a resident of a nursing facility, services within the scope of services which the facility must provide or arrange for its residents under subsection (b)(4) of this section.

(f) Responsibilities of Secretary relating to nursing facility requirements

(1) General responsibility

It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in nursing facilities under State plans approved under this subchapter, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

(2) Requirements for nurse aide training and competency evaluation programs and for nurse aide competency evaluation programs

(A) In general

For purposes of subsections (b)(5) and (e)(1)(A) of this section, the Secretary shall establish, by not later than September 1, 1988—

(i) requirements for the approval of nurse aide training and competency evaluation programs, including requirements relating to (I) the areas to be covered in such a program (including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights) and content of the curriculum, (II) minimum hours of initial and ongoing training and retraining (including not less than 75 hours in the case of initial training), (III) qualifications of instructors, and (IV) procedures for determination of competency;

(ii) requirements for the approval of nurse aide competency evaluation programs, including requirement relating to the areas to be covered in such a program, including at least basic nursing skills, personal care skills, recognition of mental health and social service needs, care of cognitively impaired residents, basic restorative services, and residents' rights, and procedures for determination of competency;

(iii) requirements respecting the minimum frequency and methodology to be used by a State in reviewing such programs' compliance with the requirements for such programs; and

(iv) requirements, under both such programs, that—

(I) provide procedures for determining competency that permit a nurse aide, at the nurse aide's option, to establish competency through procedures or methods other than the passing of a written examination and to have the competency evaluation conducted at the nursing facility at which the aide is (or will be) employed (unless the facility is described in subparagraph (B)(iii)(I)),

(II) prohibit the imposition on a nurse aide who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program of any charges (including any charges for textbooks and other required course materials and any charges for the competency evaluation) for either such program, and

(III) in the case of a nurse aide not described in subclause (II) who is employed by (or who has received an offer of employment from) a facility not later than 12 months after completing either such program, the State shall provide for the reimbursement of costs incurred in completing such program on a prorata basis

during the period in which the nurse aide is so employed.

(B) Approval of certain programs

Such requirements—

(i) may permit approval of programs offered by or in facilities, as well as outside facilities (including employee organizations), and of programs in effect on December 22, 1987;

(ii) shall permit a State to find that an individual who has completed (before July 1, 1989) a nurse aide training and competency evaluation program shall be deemed to have completed such a program approved under subsection (b)(5) of this section if the State determines that, at the time the program was offered, the program met the requirements for approval under such paragraph; and

(iii) shall prohibit approval of such a program—

(I) offered by or in a nursing facility which, within the previous 2 years—

(a) has operated under a waiver under subsection (b)(4)(C)(ii) of this section that was granted on the basis of a demonstration that the facility is unable to provide the nursing care required under subsection (b)(4)(C)(i) of this section for a period in excess of 48 hours during a week;

(b) has been subject to an extended (or partial extended) survey under section 1395i–3(g)(2)(B)(i) of this title or subsection (g)(2)(B)(i) of this section; or

(c) has been assessed a civil money penalty described in section 1395i–3(h)(2)(B)(ii) of this title or subsection (h)(2)(A)(ii) of this section of not less than $5,000, or has been subject to a remedy described in subsection (h)(1)(B)(i) of this section, clauses[3] (i), (iii), or (iv) of subsection (h)(2)(A) of this section, clauses[3] (i) or (iii) of section 1395i–3(h)(2)(B) of this title, or section 1395i–3(h)(4) of this title, or

(II) offered by or in a nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in nursing facilities.

A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the nursing facility.

(3) Federal guidelines for State appeals process for transfers and discharges

For purposes of subsections (c)(2)(B)(iii) and (e)(3) of this section, by not later than October 1, 1988, the Secretary shall establish guidelines for minimum standards which State appeals processes under subsection (e)(3) of this section must meet to provide a fair mechanism for hearing appeals on transfers and discharges of residents from nursing facilities.

[3] So in original. Probably should be ''clause''.

(4) Secretarial standards qualification of administrators

For purposes of subsections (d)(1)(C) and (e)(4) of this section, the Secretary shall develop, by not later than March 1, 1988, standards to be applied in assuring the qualifications of administrators of nursing facilities.

(5) Criteria for administration

The Secretary shall establish criteria for assessing a nursing facility's compliance with the requirement of subsection (d)(1) of this section with respect to—

(A) its governing body and management,

(B) agreements with hospitals regarding transfers of residents to and from the hospitals and to and from other nursing facilities,

(C) disaster preparedness,

(D) direction of medical care by a physician,

(E) laboratory and radiological services,

(F) clinical records, and

(G) resident and advocate participation.

(6) Specification of resident assessment data set and instruments

The Secretary shall—

(A) not later than January 1, 1989, specify a minimum data set of core elements and common definitions for use by nursing facilities in conducting the assessments required under subsection (b)(3) of this section, and establish guidelines for utilization of the data set; and

(B) by not later than April 1, 1990, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subsection (e)(5)(A) of this section for use by nursing facilities in complying with the requirements of subsection (b)(3)(A)(iii) of this section.

(7) List of items and services furnished in nursing facilities not chargeable to the personal funds of a resident

(A) Regulations required

Pursuant to the requirement of section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, the Secretary shall issue regulations, on or before the first day of the seventh month to begin after December 22, 1987, that define those costs which may be charged to the personal funds of residents in nursing facilities who are individuals receiving medical assistance with respect to nursing facility services under this subchapter and those costs which are to be included in the payment amount under this subchapter for nursing facility services.

(B) Rule if failure to publish regulations

If the Secretary does not issue the regulations under subparagraph (A) on or before the date required in that subparagraph, in the case of a resident of a nursing facility who is eligible to receive benefits for nursing facility services under this subchapter, for purposes of section 1396a(a)(28)(B) of this title, the Secretary shall be deemed to have

promulgated regulations under this paragraph which provide that the costs which may not be charged to the personal funds of such resident (and for which payment is considered to be made under this subchapter) include, at a minimum, the costs for routine personal hygiene items and services furnished by the facility.

(8) Federal minimum criteria and monitoring for preadmission screening and resident review

(A) Minimum criteria

The Secretary shall develop, by not later than October 1, 1988, minimum criteria for States to use in making determinations under subsections (b)(3)(F) and (e)(7)(B) of this section and in permitting individuals adversely affected to appeal such determinations, and shall notify the States of such criteria.

(B) Monitoring compliance

The Secretary shall review, in a sufficient number of cases to allow reasonable inferences, each State's compliance with the requirements of subsection (e)(7)(C)(ii) of this section (relating to discharge and placement for active treatment of certain residents).

(9) Criteria for monitoring State waivers

The Secretary shall develop, by not later than October 1, 1988, criteria and procedures for monitoring State performances in granting waivers pursuant to subsection (b)(4)(C)(ii) of this section.

(g) Survey and certification process

(1) State and Federal responsibility

(A) In general

Under each State plan under this subchapter, the State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d) of this section. The Secretary shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of State nursing facilities with the requirements of such subsections.

(B) Educational program

Each State shall conduct periodic educational programs for the staff and residents (and their representatives) of nursing facilities in order to present current regulations, procedures, and policies under this section.

(C) Investigation of allegations of resident neglect and abuse and misappropriation of resident property

The State shall provide, through the agency responsible for surveys and certification of nursing facilities under this subsection, for a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a resident in a nursing facility or by another individual used by the facility in providing services to such a resident. The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority. A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(D) Construction

The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(2) Surveys

(A) Annual standard survey

(i) In general

Each nursing facility shall be subject to a standard survey, to be conducted without any prior notice to the facility. Any individual who notifies (or causes to be notified) a nursing facility of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall review each State's procedures for scheduling and conduct of standard surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(ii) Contents

Each standard survey shall include, for a case-mix stratified sample of residents—

(I) a survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment,

(II) written plans of care provided under subsection (b)(2) of this section and an audit of the residents' assessments under subsection (b)(3) of this section to determine the accuracy of such assessments and the adequacy of such plans of care, and

(III) a review of compliance with residents' rights under subsection (c) of this section.

(iii) Frequency

(I) In general

Each nursing facility shall be subject to a standard survey not later than 15 months after the date of the previous standard survey conducted under this subparagraph. The statewide average interval between standard surveys of a nursing facility shall not exceed 12 months.

(II) Special surveys

If not otherwise conducted under subclause (I), a standard survey (or an abbreviated standard survey) may be conducted within 2 months of any change of ownership, administration, management of a nursing facility, or director of nursing in order to determine whether the change has resulted in any decline in the quality of care furnished in the facility.

(B) Extended surveys

(i) In general

Each nursing facility which is found, under a standard survey, to have provided substandard quality of care shall be subject to an extended survey. Any other facility may, at the Secretary's or State's discretion, be subject to such an extended survey (or a partial extended survey).

(ii) Timing

The extended survey shall be conducted immediately after the standard survey (or, if not practicable, not later than 2 weeks after the date of completion of the standard survey).

(iii) Contents

In such an extended survey, the survey team shall review and identify the policies and procedures which produced such substandard quality of care and shall determine whether the facility has complied with all the requirements described in subsections (b), (c), and (d) of this section. Such review shall include an expansion of the size of the sample of residents' assessments reviewed and a review of the staffing, of in-service training, and, if appropriate, of contracts with consultants.

(iv) Construction

Nothing in this paragraph shall be construed as requiring an extended or partial extended survey as a prerequisite to imposing a sanction against a facility under subsection (h) of this section on the basis of findings in a standard survey.

(C) Survey protocol

Standard and extended surveys shall be conducted—

(i) based upon a protocol which the Secretary has developed, tested, and validated by not later than January 1, 1990, and

(ii) by individuals, of a survey team, who meet such minimum qualifications as the Secretary establishes by not later than such date.

The failure of the Secretary to develop, test, or validate such protocols or to establish such minimum qualifications shall not relieve any State of its responsibility (or the Secretary of the Secretary's responsibility) to conduct surveys under this subsection.

(D) Consistency of surveys

Each State shall implement programs to measure and reduce inconsistency in the application of survey results among surveyors.

(E) Survey teams

(i) In general

Surveys under this subsection shall be conducted by a multidisciplinary team of professionals (including a registered professional nurse).

(ii) Prohibition of conflicts of interest

A State may not use as a member of a survey team under this subsection an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the facility surveyed respecting compliance with the requirements of subsections (b), (c), and (d) of this section, or who has a personal or familial financial interest in the facility being surveyed.

(iii) Training

The Secretary shall provide for the comprehensive training of State and Federal surveyors in the conduct of standard and extended surveys under this subsection, including the auditing of resident assessments and plans of care. No individual shall serve as a member of a survey team unless the individual has successfully completed a training and testing program in survey and certification techniques that has been approved by the Secretary.

(3) Validation surveys

(A) In general

The Secretary shall conduct onsite surveys of a representative sample of nursing facilities in each State, within 2 months of the date of surveys conducted under paragraph (2) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under paragraph (2). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under paragraph (2). If the State has determined that an individual nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but the Secretary determines that the facility does not meet such requirements, the Secretary's determination as to the facility's noncompliance with such requirements is binding and supersedes that of the State survey.

(B) Scope

With respect to each State, the Secretary shall conduct surveys under subparagraph (A) each year with respect to at least 5 percent of the number of nursing facilities surveyed by the State in the year, but in no case less than 5 nursing facilities in the State.

(C) Reduction in administrative costs for substandard performance

If the Secretary finds, on the basis of such surveys, that a State has failed to perform surveys as required under paragraph (2) or that a State's survey and certification performance otherwise is not adequate, the Secretary may provide for the training of survey teams in the State and shall provide for a reduction of the payment otherwise made to the State under section 1396b(a)(2)(D) of this title with respect to a quarter equal to 33 percent multiplied by a fraction, the denominator of which is equal to the total number of residents in nursing facilities surveyed by the Secretary that quarter and the numerator of which is equal to the total number of residents in nursing facilities which were found pursuant to such surveys to be not in compliance with any of the requirements of subsections (b), (c), and (d) of this section. A State that is dissatisfied with the Secretary's findings under this subparagraph may obtain reconsideration and review of the findings under section 1316 of this title in the same manner as a State may seek reconsideration and review under that section of the Secretary's determination under section 1316(a)(1) of this title.

(D) Special surveys of compliance

Where the Secretary has reason to question the compliance of a nursing facility with any of the requirements of subsections (b), (c), and (d) of this section, the Secretary may conduct a survey of the facility and, on the basis of that survey, make independent and binding determinations concerning the extent to which the nursing facility meets such requirements.

(4) Investigation of complaints and monitoring nursing facility compliance

Each State shall maintain procedures and adequate staff to—

(A) investigate complaints of violations of requirements by nursing facilities, and

(B) monitor, on-site, on a regular, as needed basis, a nursing facility's compliance with the requirements of subsections (b), (c), and (d) of this section, if—

(i) the facility has been found not to be in compliance with such requirements and is in the process of correcting deficiencies to achieve such compliance;

(ii) the facility was previously found not to be in compliance with such requirements, has corrected deficiencies to achieve such compliance, and verification of continued compliance is indicated; or

(iii) the State has reason to question the compliance of the facility with such requirements.

A State may maintain and utilize a specialized team (including an attorney, an auditor, and appropriate health care professionals) for the purpose of identifying, surveying, gathering and preserving evidence, and carrying out appropriate enforcement actions against substandard nursing facilities.

(5) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public—

(i) information respecting all surveys and certifications made respecting nursing facilities, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction,

(ii) copies of cost reports of such facilities filed under this subchapter or under subchapter XVIII of this chapter,

(iii) copies of statements of ownership under section 1320a–3 of this title, and

(iv) information disclosed under section 1320a–5 of this title.

(B) Notice to ombudsman

Each State shall notify the State long-term care ombudsman (established under title III or VII of the Older Americans Act of 1965 [42 U.S.C. 3021 et seq., 3058 et seq.] in accordance with section 712 of the Act [42 U.S.C. 3058g]) of the State's findings of noncompliance with any of the requirements of subsections (b), (c), and (d) of this section, or of any adverse action taken against a nursing facility under paragraphs[4] (1), (2), or (3) of subsection (h) of this section, with respect to a nursing facility in the State.

(C) Notice to physicians and nursing facility administrator licensing board

If a State finds that a nursing facility has provided substandard quality of care, the State shall notify—

(i) the attending physician of each resident with respect to which such finding is made, and

(ii) any State board responsible for the licensing of the nursing facility administrator of the facility.

(D) Access to fraud control units

Each State shall provide its State medicaid fraud and abuse control unit (established under section 1396b(q) of this title) with access to all information of the State agency responsible for surveys and certifications under this subsection.

(h) Enforcement process

(1) In general

If a State finds, on the basis of a standard, extended, or partial extended survey under subsection (g)(2) of this section or otherwise, that a nursing facility no longer meets a requirement of subsection (b), (c), or (d) of this section, and further finds that the facility's deficiencies—

(A) immediately jeopardize the health or safety of its residents, the State shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii), or terminate the facility's participation under the State plan and may provide, in addition,

[4] So in original. Probably should be ''paragraph''.

for one or more of the other remedies described in paragraph (2); or

(B) do not immediately jeopardize the health or safety of its residents, the State may—

(i) terminate the facility's participation under the State plan,

(ii) provide for one or more of the remedies described in paragraph (2), or

(iii) do both.

Nothing in this paragraph shall be construed as restricting the remedies available to a State to remedy a nursing facility's deficiencies. If a State finds that a nursing facility meets the requirements of subsections (b), (c), and (d) of this section, but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A)(ii) for the days in which it finds that the facility was not in compliance with such requirements.

(2) Specified remedies

(A) Listing

Except as provided in subparagraph (B)(ii), each State shall establish by law (whether statute or regulation) at least the following remedies:

(i) Denial of payment under the State plan with respect to any individual admitted to the nursing facility involved after such notice to the public and to the facility as may be provided for by the State.

(ii) A civil money penalty assessed and collected, with interest, for each day in which the facility is or was out of compliance with a requirement of subsection (b), (c), or (d) of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty for activities described in subsections (b)(3)(B)(ii)(I), (b)(3)(B)(ii)(II), or (g)(2)(A)(i) of this section) shall be applied to the protection of the health or property of residents of nursing facilities that the State or the Secretary finds deficient, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(iii) The appointment of temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

(I) there is an orderly closure of the facility, or

(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

The temporary management under this clause shall not be terminated under subclause (II) until the State has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d) of this section.

(iv) The authority, in the case of an emergency, to close the facility, to transfer residents in that facility to other facilities, or both.

The State also shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the State may provide for other specified remedies, such as directed plans of correction.

(B) Deadline and guidance

(i) Except as provided in clause (ii), as a condition for approval of a State plan for calendar quarters beginning on or after October 1, 1989, each State shall establish the remedies described in clauses (i) through (iv) of subparagraph (A) by not later than October 1, 1989. The Secretary shall provide, through regulations by not later than October 1, 1988, guidance to States in establishing such remedies; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedies.

(ii) A State may establish alternative remedies (other than termination of participation) other than those described in clauses (i) through (iv) of subparagraph (A), if the State demonstrates to the Secretary's satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as those described in subparagraph (A).

(C) Assuring prompt compliance

If a nursing facility has not complied with any of the requirements of subsections (b), (c), and (d) of this section, within 3 months after the date the facility is found to be out of compliance with such requirements, the State shall impose the remedy described in subparagraph (A)(i) for all individuals who are admitted to the facility after such date.

(D) Repeated noncompliance

In the case of a nursing facility which, on 3 consecutive standard surveys conducted under subsection (g)(2) of this section, has been found to have provided substandard quality of care, the State shall (regardless of what other remedies are provided)—

(i) impose the remedy described in subparagraph (A)(i), and

(ii) monitor the facility under subsection (g)(4)(B) of this section,

until the facility has demonstrated, to the satisfaction of the State, that it is in compliance with the requirements of subsections (b), (c), and (d) of this section, and that it will remain in compliance with such requirements.

(E) Funding

The reasonable expenditures of a State to provide for temporary management and

other expenses associated with implementing the remedies described in clauses (iii) and (iv) of subparagraph (A) shall be considered, for purposes of section 1396b(a)(7) of this title, to be necessary for the proper and efficient administration of the State plan.

(F) Incentives for high quality care

In addition to the remedies specified in this paragraph, a State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to residents who are entitled to medical assistance under this subchapter. For purposes of section 1396b(a)(7) of this title, proper expenses incurred by a State in carrying out such a program shall be considered to be expenses necessary for the proper and efficient administration of the State plan under this subchapter.

(3) Secretarial authority

(A) For State nursing facilities

With respect to a State nursing facility, the Secretary shall have the authority and duties of a State under this subsection, including the authority to impose remedies described in clauses (i), (ii), and (iii) of paragraph (2)(A).

(B) Other nursing facilities

With respect to any other nursing facility in a State, if the Secretary finds that a nursing facility no longer meets a requirement of subsection (b), (c), (d), or (e) of this section, and further finds that the facility's deficiencies—

(i) immediately jeopardize the health or safety of its residents, the Secretary shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in subparagraph (C)(iii), or terminate the facility's participation under the State plan and may provide, in addition, for one or more of the other remedies described in subparagraph (C); or

(ii) do not immediately jeopardize the health or safety of its residents, the Secretary may impose any of the remedies described in subparagraph (C).

Nothing in this subparagraph shall be construed as restricting the remedies available to the Secretary to remedy a nursing facility's deficiencies. If the Secretary finds that a nursing facility meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C)(ii) for the days on which he finds that the facility was not in compliance with such requirements.

(C) Specified remedies

The Secretary may take the following actions with respect to a finding that a facility has not met an applicable requirement:

(i) Denial of payment

The Secretary may deny any further payments to the State for medical assistance furnished by the facility to all individuals in the facility or to individuals admitted to the facility after the effective date of the finding.

(ii) Authority with respect to civil money penalties

The Secretary may impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(iii) Appointment of temporary management

In consultation with the State, the Secretary may appoint temporary management to oversee the operation of the facility and to assure the health and safety of the facility's residents, where there is a need for temporary management while—

(I) there is an orderly closure of the facility, or

(II) improvements are made in order to bring the facility into compliance with all the requirements of subsections (b), (c), and (d) of this section.

The temporary management under this clause shall not be terminated under subclause (II) until the Secretary has determined that the facility has the management capability to ensure continued compliance with all the requirements of subsections (b), (c), and (d) of this section.

The Secretary shall specify criteria, as to when and how each of such remedies is to be applied, the amounts of any fines, and the severity of each of these remedies, to be used in the imposition of such remedies. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the remedies and shall provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. In addition, the Secretary may provide for other specified remedies, such as directed plans of correction.

(D) Continuation of payments pending remediation

The Secretary may continue payments, over a period of not longer than 6 months after the effective date of the findings, under this subchapter with respect to a nursing facility not in compliance with a requirement of subsection (b), (c), or (d) of this section, if—

(i) the State survey agency finds that it is more appropriate to take alternative action to assure compliance of the facility with the requirements than to terminate the certification of the facility,

(ii) the State has submitted a plan and timetable for corrective action to the Secretary for approval and the Secretary approves the plan of corrective action, and

(iii) the State agrees to repay to the Federal Government payments received

under this subparagraph if the corrective action is not taken in accordance with the approved plan and timetable.

The Secretary shall establish guidelines for approval of corrective actions requested by States under this subparagraph.

(4) Effective period of denial of payment

A finding to deny payment under this subsection shall terminate when the State or Secretary (or both, as the case may be) finds that the facility is in substantial compliance with all the requirements of subsections (b), (c), and (d) of this section.

(5) Immediate termination of participation for facility where State or Secretary finds noncompliance and immediate jeopardy

If either the State or the Secretary finds that a nursing facility has not met a requirement of subsection (b), (c), or (d) of this section, and finds that the failure immediately jeopardizes the health or safety of its residents, the State or the Secretary, respectively[5] shall notify the other of such finding, and the State or the Secretary, respectively, shall take immediate action to remove the jeopardy and correct the deficiencies through the remedy specified in paragraph (2)(A)(iii) or (3)(C)(iii), or terminate the facility's participation under the State plan. If the facility's participation in the State plan is terminated by either the State or the Secretary, the State shall provide for the safe and orderly transfer of the residents eligible under the State plan consistent with the requirements of subsection (c)(2) of this section.

(6) Special rules where State and Secretary do not agree on finding of noncompliance

(A) State finding of noncompliance and no Secretarial finding of noncompliance

If the Secretary finds that a nursing facility has met all the requirements of subsections (b), (c), and (d) of this section, but a State finds that the facility has not met such requirements and the failure does not immediately jeopardize the health or safety of its residents, the State's findings shall control and the remedies imposed by the State shall be applied.

(B) Secretarial finding of noncompliance and no State finding of noncompliance

If the Secretary finds that a nursing facility has not met all the requirements of subsections (b), (c), and (d) of this section, and that the failure does not immediately jeopardize the health or safety of its residents, but the State has not made such a finding, the Secretary—

(i) may impose any remedies specified in paragraph (3)(C) with respect to the facility, and

(ii) shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D).

(7) Special rules for timing of termination of participation where remedies overlap

If both the Secretary and the State find that a nursing facility has not met all the requirements of subsections (b), (c), and (d) of this section, and neither finds that the failure immediately jeopardizes the health or safety of its residents—

(A)(i) if both find that the facility's participation under the State plan should be terminated, the State's timing of any termination shall control so long as the termination date does not occur later than 6 months after the date of the finding to terminate;

(ii) if the Secretary, but not the State, finds that the facility's participation under the State plan should be terminated, the Secretary shall (pending any termination by the Secretary) permit continuation of payments in accordance with paragraph (3)(D); or

(iii) if the State, but not the Secretary, finds that the facility's participation under the State plan should be terminated, the State's decision to terminate, and timing of such termination, shall control; and

(B)(i) if the Secretary or the State, but not both, establishes one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan, such additional or alternative remedies shall also be applied, or

(ii) if both the Secretary and the State establish one or more remedies which are additional or alternative to the remedy of terminating the facility's participation under the State plan, only the additional or alternative remedies of the Secretary shall apply.

(8) Construction

The remedies provided under this subsection are in addition to those otherwise available under State or Federal law and shall not be construed as limiting such other remedies, including any remedy available to an individual at common law. The remedies described in clauses (i), (iii), and (iv) of paragraph (2)(A) may be imposed during the pendency of any hearing. The provisions of this subsection shall apply to a nursing facility (or portion thereof) notwithstanding that the facility (or portion thereof) also is a skilled nursing facility for purposes of subchapter XVIII of this chapter.

(9) Sharing of information

Notwithstanding any other provision of law, all information concerning nursing facilities required by this section to be filed with the Secretary or a State agency shall be made available by such facilities to Federal or State employees for purposes consistent with the effective administration of programs established under this subchapter and subchapter XVIII of this chapter, including investigations by State medicaid fraud control units.

(i) Construction

Where requirements or obligations under this section are identical to those provided under section 1395i–3 of this title, the fulfillment of those requirements or obligations under section 1395i–3 of this title shall be considered to be the fulfillment of the corresponding requirements or obligations under this section.

[5] So in original. Probably should be followed by a comma.

(Aug. 14, 1935, ch. 531, title XIX, § 1919, as added and amended Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4211(a)(3), (c), 4212(a), (b), 4213(a), 4216, 101 Stat. 1330–182, 1330–196, 1330–207, 1330–213, 1330–220, as amended July 1, 1988, Pub. L. 100–360, title IV, § 411(*l*)(3)(C)(ii), (6)(B), (8)(A), 102 Stat. 803–805; July 1, 1988, Pub. L. 100–360, title III, § 303(a)(2), title IV, § 411(*l*)(2)(A)–(D), (F)–(K), (L)(ii), (3)(A), (B), (C)(iii), (D), (5), (6)(A), (7), (8)(B), 102 Stat. 760, 801–805, as amended Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(27)(C)–(E), (I), 102 Stat. 2423; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6901(b)(1), (3), (4)(A), (d)(1), (4), 103 Stat. 2298–2301; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4751(b)(2), 4801(a)(2)–(6)(A), (7), (b)(2)–(5)(A), (6)–(8), (d)(1), (e)(2)–(7)(A), (8)–(10), (12)–(15), (18), 104 Stat. 1388–205, 1388–211 to 1388–219; Sept. 30, 1992, Pub. L. 102–375, title VII, § 708(a)(1)(B), 106 Stat. 1292.)

References in Text

The Older Americans Act of 1965, referred to in subsecs. (c)(2)(B)(iii)(II) and (g)(5)(B), is Pub. L. 89–73, July 14, 1965, 79 Stat. 218, as amended. Titles III and VII of the Act are classified generally to subchapters III (§ 3021 et seq.) and XI (§ 3058 et seq.), respectively, of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsec. (c)(2)(B)(iii)(III), is title I of Pub. L. 88–164, as added by Pub. L. 98–527, § 2, Oct. 19, 1984, 98 Stat. 2662, as amended. Part C of the Developmental Disabilities Assistance and Bill of Rights Act is classified generally to subchapter III (§ 6041 et seq.) of chapter 75 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

The Protection and Advocacy for Mentally Ill Individuals Act, referred to in subsec. (c)(2)(B)(iii)(IV), probably means the Protection and Advocacy for Mentally Ill Individuals Act of 1986, Pub. L. 99–319, May 23, 1986, 100 Stat. 478, as amended, which is classified generally to chapter 114 (§ 10801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10801 of this title and Tables.

Section 6901(b)(4)(B)–(D) of the Omnibus Budget Reconciliation Act of 1989, referred to in subsec. (e)(2)(A), is section 6901(b)(4)(B)–(D) of Pub. L. 101–239, which is set out as a note under section 1395i–3 of this title.

Section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, referred to in subsec. (f)(7)(A), probably means section 21(b) of the Medicare-Medicaid Anti-Fraud and Abuse Amendments, Pub. L. 95–142, which is set out as a note under section 1395x of this title.

Prior Provisions

A prior section 1919 of act Aug. 14, 1935, was renumbered section 1922 and is classified to section 1396r–3 of this title.

Amendments

1992—Subsecs. (c)(2)(B)(iii)(II), (g)(5)(B). Pub. L. 102–375 substituted ''title III or VII of the Older Americans Act of 1965 in accordance with section 712 of the Act'' for ''section 307(a)(12) of the Older Americans Act of 1965''.

1990—Subsec. (b)(1)(B). Pub. L. 101–508, § 4801(e)(2), inserted at end ''A State or the Secretary may not require disclosure of the records of such committee except insofar as such disclosure is related to the compliance of such committee with the requirements of this subparagraph.''

Subsec. (b)(3)(C)(i)(I). Pub. L. 101–508, § 4801(e)(3), substituted ''not later than 14 days'' for ''4 days''.

Subsec. (b)(3)(F). Pub. L. 101–508, § 4801(b)(8), substituted ''specialized services'' for ''active treatment'' in cls. (i) and (ii).

Pub. L. 101–508, § 4801(b)(4)(A), inserted at end ''A State mental health authority and a State mental retardation or developmental disability authority may not delegate (by subcontract or otherwise) their responsibilities under this subparagraph to a nursing facility (or to an entity that has a direct or indirect affiliation or relationship with such a facility).''

Pub. L. 101–508, § 4801(b)(2)(A), substituted ''Except as provided in clauses (ii) and (iii) of subsection (e)(7)(A) of this section, a nursing facility'' for ''A nursing facility'' in introductory provisions.

Subsec. (b)(4)(A)(vii). Pub. L. 101–508, § 4801(e)(4), added cl. (vii).

Subsec. (b)(4)(C)(ii). Pub. L. 101–508, § 4801(e)(5)(A), substituted ''To the extent that a facility is unable to meet the requirements of clause (i), a State may waive such requirements with respect to the facility if'' for ''A State may waive the requirement of subclause (I) or (II) of clause (i) with respect to a facility if'' in introductory provisions.

Subsec. (b)(4)(C)(ii)(IV), (V). Pub. L. 101–508, § 4801(e)(5)(B)–(D), which directed amendment of cl. (ii) by adding subcls. (IV) and (V) at the end, was executed by adding subcls. (IV) and (V) after subcl. (III) and before concluding provisions to reflect the probable intent of Congress.

Subsec. (b)(5)(A). Pub. L. 101–508, § 4801(a)(2), designated existing provision as cl. (i), substituted ''Except as provided in clause (ii), a nursing facility'' for ''A nursing facility'' and ''on a full-time basis'' for ''(on a full-time, temporary, per diem, or other basis)'', redesignated former cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (b)(5)(C). Pub. L. 101–508, § 4801(a)(3), substituted ''any State registry established under subsection (e)(2)(A) of this section that the facility believes will include information'' for ''the State registry established under subsection (e)(2)(A) of this section as to information in the registry''.

Subsec. (b)(5)(D). Pub. L. 101–508, § 4801(a)(4), inserted before period at end '', or a new competency evaluation program''.

Subsec. (b)(5)(F)(i). Pub. L. 101–508, § 4801(e)(6), substituted ''(G)) or a registered dietician'' for ''(G))''.

Subsec. (b)(6)(A). Pub. L. 101–508, § 4801(d)(1), inserted before semicolon at end ''(or, at the option of a State, under the supervision of a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician)''.

Subsec. (c)(1)(A). Pub. L. 101–508, § 4801(e)(8)(B), inserted at end ''A resident's exercise of a right to refuse transfer under clause (x) shall not affect the resident's eligibility or entitlement to medical assistance under this subchapter or a State's entitlement to Federal medical assistance under this subchapter with respect to services furnished to such a resident.''

Subsec. (c)(1)(A)(iv). Pub. L. 101–508, § 4801(e)(9), inserted before period at end ''and to access to current clinical records of the resident upon request by the resident or the resident's legal representative, within 24 hours (excluding hours occurring during a weekend or holiday) after making such a request''.

Subsec. (c)(1)(A)(x), (xi). Pub. L. 101–508, § 4801(e)(8)(A), added cl. (x) and redesignated former cl. (x) as (xi).

Subsec. (c)(1)(B)(ii). Pub. L. 101–508, § 4801(e)(10), inserted ''including the notice (if any) of the State developed under subsection (e)(6) of this section'' after ''in such rights)''.

Subsec. (c)(2)(E). Pub. L. 101–508, § 4751(b)(2), added subpar. (E).

Subsec. (c)(7), (8). Pub. L. 101–508, § 4801(e)(7)(A), added par. (7) and redesignated former par. (7) as (8).

Subsec. (e)(1)(A). Pub. L. 101–508, § 4801(e)(18), substituted ''under subsection (f)(2) of this section'' for ''under clause (i) or (ii) of subsection (f)(2)(A) of this section''.

Subsec. (e)(2)(A). Pub. L. 101–508, §4801(e)(12)(A), inserted '', or any individual described in subsection (f)(2)(B)(ii) of this section or in subparagraph (B), (C), or (D) of section 6901(b)(4) of the Omnibus Budget Reconciliation Act of 1989'' after ''in the State''.

Subsec. (e)(2)(C). Pub. L. 101–508, §4801(e)(12)(B), added subpar. (C).

Subsec. (e)(7)(A). Pub. L. 101–508, §4801(b)(2)(B), designated existing provision as cl. (i), inserted cl. (i) heading, and added cls. (ii) and (iii).

Subsec. (e)(7)(B)(i)(II), (ii)(II). Pub. L. 101–508, §4801(b)(8), substituted ''specialized services'' for ''active treatment''.

Subsec. (e)(7)(B)(iv). Pub. L. 101–508, §4801(b)(4)(B), added cl. (iv).

Subsec. (e)(7)(C)(i) to (iii). Pub. L. 101–508, §4801(b)(8), substituted ''specialized services'' for ''active treatment'' wherever appearing.

Subsec. (e)(7)(C)(iv). Pub. L. 101–508, §4801(b)(5)(A), added cl. (iv).

Subsec. (e)(7)(D). Pub. L. 101–508, §4801(b)(3)(A), struck out ''where failure to conduct preadmission screening'' after ''Denial of payment'' in heading, designated existing provisions as cl. (i), inserted cl. (i) heading, and added cl. (ii).

Subsec. (e)(7)(E). Pub. L. 101–508, §4801(b)(8), substituted ''specialized services'' for ''active treatment''.

Pub. L. 101–508, §4801(b)(6), inserted at end ''The State may revise such an agreement, subject to the approval of the Secretary, before October 1, 1991, but only if, under the revised agreement, all residents subject to the agreement who do not require the level of services of such a facility are discharged from the facility by not later than April 1, 1994.''

Pub. L. 101–508, §4801(b)(3)(B), substituted ''the requirements of subparagraphs (A) through (C) of this paragraph'' for ''the requirement of this paragraph''.

Subsec. (e)(7)(G)(i). Pub. L. 101–508, §4801(b)(7), substituted ''serious mental illness (as defined by the Secretary in consultation with the National Institute of Mental Health)'' for ''primary or secondary diagnosis of mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, 3rd edition)'' and inserted before period at end ''or a diagnosis (other than a primary diagnosis) of dementia and a primary diagnosis that is not a serious mental illness''.

Subsec. (e)(7)(G)(iii). Pub. L. 101–508, §4801(b)(8), substituted ''specialized services'' for ''active treatment''.

Subsec. (f)(2)(A)(iv)(II). Pub. L. 101–508, §4801(a)(5)(B), inserted ''who is employed by (or who has received an offer of employment from) a facility on the date on which the aide begins either such program'' after ''nurse aide''.

Subsec. (f)(2)(A)(iv)(III). Pub. L. 101–508, §4801(a)(5)(A), (C), (D), added subcl. (III).

Subsec. (f)(2)(B). Pub. L. 101–508, §4801(a)(7), inserted ''(through subcontract or otherwise)'' after ''may not delegate'' in last sentence.

Subsec. (f)(2)(B)(iii)(I). Pub. L. 101–508, §4801(a)(6)(A), amended subcl. (I) generally. Prior to amendment, subcl. (I) read as follows: ''offered by or in a nursing facility which has been determined to be out of compliance with the requirements of subsection (b), (c), or (d) of this section, within the previous 2 years, or''.

Subsec. (g)(1)(C). Pub. L. 101–508, §4801(e)(13), inserted at end ''A State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.''

Subsec. (g)(5)(A)(i). Pub. L. 101–508, §4801(e)(14), substituted ''deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans'' for ''deficiencies and plans''.

Subsec. (g)(5)(B). Pub. L. 101–508, §4801(e)(15), substituted ''or of any adverse action taken against a nursing facility under paragraphs (1), (2), or (3) of subsection (h) of this section, with respect'' for ''with respect''.

1989—Subsec. (b)(5)(A). Pub. L. 101–239, §6901(b)(1)(A), substituted ''October 1, 1990'' for ''January 1, 1990'' in introductory provisions.

Subsec. (b)(5)(B). Pub. L. 101–239, §6901(b)(1)(B), substituted ''January 1, 1990'' and ''October 1, 1990'' for ''July 1, 1989'' and ''January 1, 1990'', respectively.

Subsec. (c)(1)(A)(ii)(II). Pub. L. 101–239, §6901(d)(4)(A), substituted ''Secretary until such an order could reasonably be obtained)'' for ''Secretary) until such an order could reasonably be obtained''.

Subsec. (c)(1)(A)(v)(I). Pub. L. 101–239, §6901(d)(4)(B), substituted ''accommodation'' for ''accommodations''.

Subsec. (f)(2)(A)(i)(I). Pub. L. 101–239, §6901(d)(4)(C), substituted ''and content of the curriculum'' for '', content of the curriculum''.

Pub. L. 101–239, §6901(b)(3)(A), inserted ''care of cognitively impaired residents,'' after ''social service needs,''.

Subsec. (f)(2)(A)(ii). Pub. L. 101–239, §6901(b)(3)(B), substituted ''recognition of mental health and social service needs, care of cognitively impaired residents'' for ''cognitive, behavioral and social care''.

Subsec. (f)(2)(A)(iv). Pub. L. 101–239, §6901(b)(3)(C), (D), added cl. (iv).

Subsec. (f)(2)(B)(ii). Pub. L. 101–239, §6901(b)(4)(A), substituted ''July 1, 1989'' for ''January 1, 1989''.

Subsec. (h)(3)(D). Pub. L. 101–239, §6901(d)(4)(D), substituted ''not longer than 6 months after the effective date of the findings'' for ''not longer than 6 months''.

Subsec. (h)(8). Pub. L. 101–239, §6901(d)(1), inserted at end ''The provisions of this subsection shall apply to a nursing facility (or portion thereof) notwithstanding that the facility (or portion thereof) also is a skilled nursing facility for purposes of subchapter XVIII of this chapter.''

1988—Subsec. (b)(3)(A)(iii). Pub. L. 100–360, §411(*l*)(2)(B), struck out ''in the case of a resident eligible for benefits under this subchapter,'' before ''uses an instrument''.

Subsec. (b)(3)(A)(iv). Pub. L. 100–360, §411(*l*)(2)(A), as amended by Pub. L. 100–485, §608(d)(27)(C), struck out ''in the case of a resident eligible for benefits under part A of subchapter XVIII of this chapter,'' before ''includes the identification of medical problems''.

Subsec. (b)(3)(B)(ii)(III). Pub. L. 100–360, §411(*l*)(2)(C), amended subcl. (III) generally. Prior to amendment, subcl. (III) read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (b)(4)(C)(i)(II). Pub. L. 100–360, §411(*l*)(3)(A)(i), inserted ''professional'' after ''registered''.

Subsec. (b)(4)(C)(ii). Pub. L. 100–360, §411(*l*)(3)(A)(i)–(iv), in heading, substituted ''(ii) Waiver'' for ''(ii) Facility waivers.—(i) Waiver'', in subcl. (III), inserted ''professional'' after ''registered'', and in concluding provisions, substituted ''clause (iii)'' for ''clause (ii)'' and ''use'' for ''employ''.

Subsec. (b)(4)(C)(iii). Pub. L. 100–360, §411(*l*)(3)(A)(v), (vi), substituted ''(iii) Assumption'' for ''(ii) Assumption'' in heading and ''exercise'' for ''excercise'' in text.

Subsec. (b)(5)(A). Pub. L. 100–360, §411(*l*)(3)(B), which directed amendment of subpar. (A) by striking ''subparagraph (E)'' and inserting ''subparagraph (F)'', could not be executed because of prior amendment by Pub. L. 100–360, §411(*l*)(2)(D)(i), see Amendment note below.

Pub. L. 100–360, §411(*l*)(2)(D)(i), as amended by Pub. L. 100–485, §608(d)(27)(D), struck out '', who is not a licensed health professional (as defined in subparagraph (E)),'' after ''any individual'' in introductory provisions.

Subsec. (b)(5)(A)(ii). Pub. L. 100–360, §411(*l*)(2)(D)(ii), substituted ''nursing or nursing-related services'' for ''such services''.

Subsec. (b)(5)(G). Pub. L. 100–360, §411(*l*)(2)(D)(iii), inserted ''physical or occupational therapy assistant,'' after ''occupational therapist,''.

Subsec. (c)(1)(B)(i). Pub. L. 100–360, §303(a)(2), inserted before semicolon at end ''and of the requirements and procedures for establishing eligibility for medical assistance under this subchapter, including the right to request an assessment under section 1396r–5(c)(1)(B) of this title''.

Subsec. (c)(2)(A)(v). Pub. L. 100–360, § 411(*l*)(2)(F), substituted ''for a stay at the facility'' for ''an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with this subchapter and subchapter XVIII of this chapter''.

Subsec. (c)(2)(B)(iii)(III). Pub. L. 100–360, § 411(*l*)(3)(C)(iii), as added by Pub. L. 100–485, § 608(d)(27)(E), substituted ''responsible'' for ''responsibile''.

Subsec. (c)(6). Pub. L. 100–360, § 411(*l*)(2)(G), substituted ''upon the written'' for ''once the facility accepts the written'' in subpar. (A)(ii) and ''Upon written'' for ''Upon a facility's acceptance of written'' in subpar. (B).

Subsec. (c)(7). Pub. L. 100–360, § 411(*l*)(6)(B), amended Pub. L. 100–203, § 4212(b), see 1987 Amendment note below.

Subsec. (e). Pub. L. 100–360, § 411(*l*)(3)(C)(ii), as added by Pub. L. 100–485, § 608(d)(27)(E), amended Pub. L. 100–203, § 4211, see 1987 Amendment note below.

Subsec. (e)(1). Pub. L. 100–360, § 411(*l*)(3)(D)(i), (ii), substituted ''January 1, 1989'' for ''September 1, 1988'' in subpar. (A) and ''January'' for ''September'' in subpar. (B).

Subsec. (e)(2)(B). Pub. L. 100–360, § 411(*l*)(2)(H), inserted after first sentence ''The State shall make available to the public information in the registry.''

Subsec. (e)(3). Pub. L. 100–360, § 411(*l*)(2)(I), inserted ''and discharges'' after ''transfers'' in heading and two places in text.

Subsec. (e)(7)(E). Pub. L. 100–360, § 411(*l*)(3)(D)(iii), substituted ''April 1, 1989'' for ''October 1, 1988''.

Subsec. (f). Pub. L. 100–360, § 411(*l*)(3)(C)(ii), as added by Pub. L. 100–485, § 608(d)(27)(E), amended Pub. L. 100–203, § 4211, see 1987 Amendment note below.

Subsec. (f)(2)(A). Pub. L. 100–360, § 411(*l*)(3)(D)(iv), substituted ''September'' for ''July'' in introductory provisions.

Subsec. (f)(2)(A)(i)(I). Pub. L. 100–360, § 411(*l*)(2)(J), substituted ''recognition of mental health and social service needs'' for ''cognitive, behavioral and social care''.

Subsec. (f)(3). Pub. L. 100–360, § 411(*l*)(2)(I), inserted ''and discharges'' after ''transfers'' in heading and in text.

Subsec. (f)(7)(A). Pub. L. 100–360, § 411(*l*)(2)(K), substituted ''residents'' for ''patients''.

Subsec. (f)(7)(B). Pub. L. 100–360, § 411(*l*)(2)(L)(ii), substituted ''include'' for ''do not include''.

Subsec. (g)(1)(C). Pub. L. 100–360, § 411(*l*)(5)(A)–(C), substituted ''and timely review'' for '', review,'', inserted ''or by another individual used by the facility in providing services to such a resident'' after ''a nursing facility'', and substituted ''The State shall, after notice to the individual involved and a reasonable opportunity for a hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that a nurse aide has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding. If the State finds that any other individual used by the facility has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the appropriate licensure authority'' for ''If the State finds, after notice to the nurse aide involved and a reasonable opportunity for a hearing for the nurse aide to rebut allegations, that a nurse aide whose name is contained in a nurse aide registry has neglected or abused a resident or misappropriated resident property in a facility, the State shall notify the nurse aide and the registry of such finding''.

Subsec. (g)(1)(D). Pub. L. 100–360, § 411(*l*)(5)(D), substituted ''to issue regulations to carry out this subsection'' for ''to establish standards under subsection (f) of this section''.

Subsec. (g)(2)(A)(i). Pub. L. 100–360, § 411(*l*)(5)(E), amended third sentence generally. Prior to amendment, third sentence read as follows: ''The Secretary shall provide for imposition of civil money penalties under this clause in a manner similar to that for the imposition of civil money penalties under section 1320a–7a of this title.''

Subsec. (g)(2)(B)(ii). Pub. L. 100–360, § 411(*l*)(5)(F), as added by Pub. L. 100–485, § 608(d)(27)(I), substituted ''practicable'' for ''practical''.

Subsec. (g)(3)(C). Pub. L. 100–360, § 411(*l*)(6)(A), redesignated subpar. (C), relating to special surveys of compliance, as (D).

Subsec. (g)(3)(D). Pub. L. 100–360, § 411(*l*)(5)(G), formerly § 411(*l*)(5)(F), as redesignated by Pub. L. 100–485, § 608(d)(27)(I), substituted ''on the basis of that survey'' for ''on that basis''.

Subsec. (g)(4). Pub. L. 100–360, § 411(*l*)(5)(H), formerly § 411(*l*)(5)(G), as redesignated by Pub. L. 100–485, § 608(d)(27)(I), struck out ''chronically'' after ''enforcement actions against'' in last sentence.

Subsec. (h). Pub. L. 100–360, § 411(*l*)(8)(A), made technical correction to directory language of Pub. L. 100–203, § 4213(a), see 1987 Amendment note below.

Subsec. (h)(1). Pub. L. 100–360, § 411(*l*)(8)(B)(i), substituted ''paragraph (2)(A)(ii)''for ''paragraph (2)(A)(i)'' in last sentence.

Subsec. (h)(2)(B)(i). Pub. L. 100–360, § 411(*l*)(8)(B)(ii), struck out ''or otherwise'' after ''regulations''.

Subsec. (h)(3)(C)(ii). Pub. L. 100–360, § 411(*l*)(7)(A), substituted ''. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title'' for ''and the Secretary shall impose and collect such a penalty in the same manner as civil money penalties are imposed and collected under section 1320a–7a of this title''.

Subsec. (h)(5). Pub. L. 100–360, § 411(*l*)(8)(B)(iii), substituted ''State or the Secretary, respectively'' for ''State and the Secretary''.

Subsec. (h)(9). Pub. L. 100–360, § 411(*l*)(7)(B), inserted ''by such facilities'' after ''be made available''.

1987—Subsec. (c)(7). Pub. L. 100–203, § 4212(b), as amended by Pub. L. 100–360, § 411(*l*)(6)(B), added par. (7).

Subsecs. (e), (f). Pub. L. 100–203, § 4211, which contained two subsecs. (c), the first of which amended this section and the second of which enacted provisions set out as a note below, was amended by Pub. L. 100–360, § 411(*l*)(3)(C)(ii), to delete the designation, heading, and directory language of the first subsec. (c), resulting in subsecs. (e) and (f) being added by section 4211(a)(3) of Pub. L. 100–203, which enacted subsecs. (a) to (d) of this section.

Subsec. (g). Pub. L. 100–203, § 4212(a), added subsec. (g).

Subsec. (h). Pub. L. 100–203, § 4213(a), as amended by Pub. L. 100–360, § 411(*l*)(8)(A), added subsec. (h).

Subsec. (i). Pub. L. 100–203, § 4216, added subsec. (i).

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102–375 inapplicable with respect to fiscal year 1993, see section 4(b) of Pub. L. 103–171, set out as a note under section 3001 of this title.

Amendment by Pub. L. 102–375 inapplicable with respect to fiscal year 1992, see section 905(b)(6) of Pub. L. 102–375, set out as a note under section 3001 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4751(b)(2) of Pub. L. 101–508 applicable with respect to services furnished on or after the first day of the first month beginning more than 1 year after Nov. 5, 1990, see section 4751(c) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4801(a)(6)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203], except that a State may not approve a training and competency evaluation program or a competency evaluation program offered by or in a

nursing facility which, pursuant to any Federal or State law within the 2-year period beginning on October 1, 1988—

''(i) had its participation terminated under title XVIII of the Social Security Act [subchapter XVIII of this chapter] or under the State plan under title XIX of such Act [this subchapter];

''(ii) was subject to a denial of payment under either such title;

''(iii) was assessed a civil money penalty not less than $5,000 for deficiencies in nursing facility standards;

''(iv) operated under a temporary management appointed to oversee the operation of the facility and to ensure the health and safety of the facility's residents; or

''(v) pursuant to State action, was closed or had its residents transferred.''

Amendment by section 4801(a)(2)–(5), (7) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 4801(a)(9) of Pub. L. 101–508, set out as a note under section 1396b of this title.

Section 4801(b)(9) of Pub. L. 101–508 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall take effect as if they were included in the enactment of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203].

''(B) EXCEPTION.—The amendments made by paragraphs (4), (6), and (8) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], without regard to whether or not regulations to implement such amendments have been promulgated.''

Section 4801(d)(2) of Pub. L. 101–508 provided that: ''The amendment made by paragraph (1) [amending this section] applies with respect to nursing facility services furnished on or after October 1, 1990, without regard to whether or not final regulations to carry out such amendment have been promulgated by such date.''

Section 4801(e)(7)(B) of Pub. L. 101–508 provided that: ''The amendments made by subparagraph (A) [amending this section] shall take effect on the date of the enactment of this Act [Nov. 5, 1990], without regard to whether or not regulations to implement such amendments have been promulgated.''

Amendment by section 4801(e)(2)–(6), (8)–(10), (12)–(15), and (18) of Pub. L. 101–508 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 4801(e)(19) of Pub. L. 101–508, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 6901(b)(1), (4)(A) of Pub. L. 101–239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, and amendment by section 6901(b)(3) of Pub. L. 101–239 applicable to nurse aide training and competency evaluation programs, and nurse aide competency evaluation programs, offered on or after end of 90-day period beginning on Dec. 19, 1989, but not to affect competency evaluations conducted under programs offered before end of that period, see section 6901(b)(6) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

Amendment by section 6901(d)(1) of Pub. L. 101–239 effective Dec. 19, 1989, and amendment by section 6901(d)(4) of Pub. L. 101–239 effective as if included in the enactment of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, see section 6901(d)(6) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 303(a)(2) of Pub. L. 100–360 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Sept. 30, 1989, without regard to whether or not final regulations to carry out such amendment has been promulgated by such date, see section 303(g)(1)(A), (5) of Pub. L. 100–360, set out as an Effective Date note under section 1396r–5 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(*l*)(2)(A)–(D), (F)–(K), (L)(ii), (3)(A), (B), (C)(ii), (iii), (D), (5), (6)(A), (B), (7), and (8)(A), (B) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 4214 of title IV of Pub. L. 100–203, as amended by Pub. L. 100–360, title IV, § 411(*l*)(10), July 1, 1988, 102 Stat. 806, provided that:

''(a) NEW REQUIREMENTS AND SURVEY AND CERTIFICATION PROCESS.—Except as otherwise specifically provided in section 1919 of the Social Security Act [this section], the amendments made by sections 4211 [enacting this section, amending sections 1320a–7b, 1396a, 1396b, 1396d, 1396j, 1396*l*, 1396n, 1396*o*, 1396p, 1396r, and 1396s of this title, redesignating section 1396r of this title as section 1396r–3 of this title, and amending provisions set out as a note under section 1396r–3 of this title] and 4212 [amending sections 1395cc, 1396a, 1396b, 1396i, and 1396r of this title] (relating to nursing facility requirements and survey and certification requirements) shall apply to nursing facility services furnished on or after October 1, 1990, without regard to whether regulations to implement such amendments are promulgated by such date; except that section 1902(a)(28)(B) of the Social Security Act [section 1396a(a)(28)(B) of this title] (as amended by section 4211(b) of this Act), relating to requiring State medical assistance plans to specify the services included in nursing facility services, shall apply to calendar quarters beginning more than 6 months after the date of the enactment of this Act [Dec. 22, 1987], without regard to whether regulations to implement such section are promulgated by such date.

''(b) ENFORCEMENT.—(1) Except as otherwise specifically provided in section 1919 of the Social Security Act [this section], the amendments made by section 4213 of this Act [amending this section and sections 1396a and 1396b of this title] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after the date of the enactment of this Act [Dec. 22, 1987], without regard to whether regulations to implement such amendments are promulgated by such date.

''(2) In applying the amendments made by this part [part 2 of subtitle C (§§ 4211–4218) of title IV of Pub. L. 100–203, see Tables for classification] for services furnished before October 1, 1990—

''(A) any reference to a nursing facility is deemed a reference to a skilled nursing facility or intermediate care facility (other than an intermediate care facility for the mentally retarded), and

''(B) with respect to such a skilled nursing facility or intermediate care facility, any reference to a requirement of subsection (b), (c), or (d) of section 1919 of the Social Security Act [subsec. (b), (c), or (d) of this section], is deemed a reference to the provisions of section 1861(j) or section 1905(c), respectively, of the Social Security Act [section 1395x(j) or 1396d(c) of this title].

''(c) WAIVER OF PAPERWORK REDUCTION.—Chapter 35 of title 44, United States Code, shall not apply to information required for purposes of carrying out this part and implementing the amendments made by this part.''

NURSE AIDE TRAINING AND COMPETENCY EVALUATION; COMPLIANCE ACTIONS

Section 4801(a)(1) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act [section 1396c of this title] on the basis of the State's failure to meet the requirement of section 1919(e)(1)(A) of such Act [subsec. (e)(1)(A) of this section] before the effective date of guidelines, issued by the Secretary, establishing requirements under section 1919(f)(2)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.''

PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW; COMPLIANCE ACTIONS

Section 4801(b)(1) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 or section 1919(e)(7)(D) of the Social Security Act [section 1396c of this title and subsec. (e)(7)(D) of this section] on the basis of the State's failure to meet the requirement of section 1919(e)(7)(A) of such Act before the effective date of guidelines, issued by the Secretary, establishing minimum criteria under section 1919(f)(8)(A) of such Act, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirement before such effective date.''

RESTRICTION ON ENFORCEMENT PROCESS

Section 4801(c) of Pub. L. 101–508 provided that: ''The Secretary of Health and Human Services shall not take (and shall not continue) any action against a State under section 1904 of the Social Security Act [section 1396c of this title] on the basis of the State's failure to meet the requirements of section 1919(h)(2) of such Act [subsec. (h)(2) of this section] before the effective date of guidelines, issued by the Secretary, regarding the establishment of remedies by the State under such section, if the State demonstrates to the satisfaction of the Secretary that it has made a good faith effort to meet such requirements before such effective date.''

STAFFING REQUIREMENTS

Section 4801(e)(17) of Pub. L. 101–508 provided that:

''(A) MAINTAINING REGULATORY STANDARDS FOR CERTAIN SERVICES.—Any regulations promulgated and applied by the Secretary of Health and Human Services after the date of the enactment of the Omnibus Budget Reconciliation Act of 1987 [Dec. 22, 1987] with respect to services described in clauses (ii), (iv), and (v) of section 1919(b)(4)(A) of the Social Security Act [subsec. (b)(4)(A)(ii), (iv), (v) of this section] shall include requirements for providers of such services that are at least as strict as the requirements applicable to providers of such services prior to the enactment of the Omnibus Budget Reconciliation Act of 1987.

''(B) STUDY ON STAFFING REQUIREMENTS IN NURSING FACILITIES.—The Secretary shall conduct a study and report to Congress no later than January 1, 1992, on the appropriateness of establishing minimum caregiver to resident ratios and minimum supervisor to caregiver ratios for skilled nursing facilities serving as providers of services under title XVIII of the Social Security Act [subchapter XVIII of this chapter] and nursing facilities receiving payments under a State plan under title XIX of the Social Security Act [this subchapter], and shall include in such study recommendations regarding appropriate minimum ratios.''

NURSE AIDE TRAINING AND COMPETENCY EVALUATION; SATISFACTION OF REQUIREMENTS; WAIVER

For satisfaction of training and competency evaluation requirements of subsec. (b)(5)(A) of this section and section 1395i–3(b)(5)(A) of this title and authorization for a State to waive such competency evaluation requirements, see section 6901(b)(4)(B)–(D) of Pub. L. 101–239, set out as a note under section 1395i–3 of this title.

PUBLICATION OF PROPOSED REGULATIONS RESPECTING PREADMISSION SCREENING AND ANNUAL RESIDENT REVIEW

Section 6901(c) of Pub. L. 101–239 provided that: ''The Secretary of Health and Human Services shall issue proposed regulations to establish the criteria described in section 1919(f)(8)(A) of the Social Security Act [subsec. (f)(8)(A) of this section] by not later than 90 days after the date of the enactment of this Act [Dec. 19, 1989].''

EVALUATION AND REPORT ON IMPLEMENTATION OF RESIDENT ASSESSMENT PROCESS

Section 4211(c) of Pub. L. 100–203 directed Secretary of Health and Human Services to evaluate and report to Congress by not later than Jan. 1, 1993, on implementation of resident assessment process for residents of nursing facilities under amendments made by section 4211(c).

REPORT ON STAFFING REQUIREMENTS

Section 4211(k) of Pub. L. 100–203 directed Secretary of Health and Human Services to report to Congress, by not later than Jan. 1, 1993, on progress made in implementing the nursing facility staffing requirements of 42 U.S.C. 1396r(b)(4)(C), including the number and types of waivers approved under subparagraph (C)(ii) of such section and the number of facilities which received waivers.

ANNUAL REPORT ON STATUTORY COMPLIANCE AND ENFORCEMENT ACTIONS

Section 4215 of Pub. L. 100–203, as amended by Pub. L. 101–508, title IV, § 4801(b)(5)(B), Nov. 5, 1990, 104 Stat. 1388–214, provided that: ''The Secretary of Health and Human Services shall report to the Congress annually on the extent to which nursing facilities are complying with the requirements of subsections (b), (c), and (d) of section 1919 of the Social Security Act [subsecs. (b), (c), and (d) of this section] (as added by the amendments made by this part) and the number and type of enforcement actions taken by States and the Secretary under section 1919(h) of such Act (as added by section 4213 of this Act). Each such report shall also include a summary of the information reported by States under section 1919(e)(7)(C)(iv) of such Act.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 296k, 1395i–3, 1395*l*, 1395x, 1396a, 1396b, 1396d, 1396*l*, 1396n, 1396r–8, 1396t, 3002 of this title; title 25 section 1680*l*; title 38 sections 3675, 5503.

§ 1396r–1. Presumptive eligibility for pregnant women

(a) Ambulatory prenatal care

A State plan approved under section 1396a of this title may provide for making ambulatory prenatal care available to a pregnant woman during a presumptive eligibility period.

(b) Definitions

For purposes of this section—

(1) the term ''presumptive eligibility period'' means, with respect to a pregnant woman, the period that—

(A) begins with the date on which a qualified provider determines, on the basis of preliminary information, that the family income of the woman does not exceed the applicable income level of eligibility under the State plan, and

(B) ends with (and includes) the earlier of—

(i) the day on which a determination is made with respect to the eligibility of the woman for medical assistance under the State plan, or

(ii) in the case of a woman who does not file an application by the last day of the month following the month during which the provider makes the determination referred to in subparagraph (A), such last day; and

(2) the term ''qualified provider'' means any provider that—

(A) is eligible for payments under a State plan approved under this subchapter,

(B) provides services of the type described in subparagraph (A) or (B) of section 1396d(a)(2) of this title or in section 1396d(a)(9) of this title,

(C) is determined by the State agency to be capable of making determinations of the type described in paragraph (1)(A), and

(D)(i) receives funds under—

(I) section 254b, 254c, or 256 of this title,

(II) subchapter V of this chapter, or

(III) title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.];

(ii) participates in a program established under—

(I) section 1786 of this title, or

(II) section 4(a) of the Agriculture and Consumer Protection Act of 1973;

(iii) participates in a State perinatal program; or

(iv) is the Indian Health Service or is a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act (Public Law 93–638) [25 U.S.C. 450f et seq.].

(c) Duties of State agency, qualified providers, and presumptively eligible pregnant women

(1) The State agency shall provide qualified providers with—

(A) such forms as are necessary for a pregnant woman to make application for medical assistance under the State plan, and

(B) information on how to assist such women in completing and filing such forms.

(2) A qualified provider that determines under subsection (b)(1)(A) of this section that a pregnant woman is presumptively eligible for medical assistance under a State plan shall—

(A) notify the State agency of the determination within 5 working days after the date on which determination is made, and

(B) inform the woman at the time the determination is made that she is required to make application for medical assistance under the State plan by not later than the last day of the month following the month during which the determination is made.

(3) A pregnant woman who is determined by a qualified provider to be presumptively eligible for medical assistance under a State plan shall make application for medical assistance under such plan by not later than the last day of the month following the month during which the determination is made, which application may be the application used for the receipt of medical assistance by individuals described in section 1396a(*l*)(1)(A) of this title.

(d) Ambulatory prenatal care as medical assistance

Notwithstanding any other provision of this subchapter, ambulatory prenatal care that—

(1) is furnished to a pregnant woman—

(A) during a presumptive eligibility period,

(B) by a provider that is eligible for payments under the State plan; and

(2) is included in the care and services covered by a State plan;

shall be treated as medical assistance provided by such plan for purposes of section 1396b of this title.

(Aug. 14, 1935, ch. 531, title XIX, §1920, as added Oct. 21, 1986, Pub. L. 99–509, title IX, §9407(b), 100 Stat. 2058; amended July 1, 1988, Pub. L. 100–360, title IV, §411(k)(16)(A), (B), 102 Stat. 799; Oct. 13, 1988, Pub. L. 100–485, title VI, §608(d)(26)(L), 102 Stat. 2422; Nov. 5, 1990, Pub. L. 101–508, title IV, §4605(a), (b), 104 Stat. 1388–169.)

REFERENCES IN TEXT

The Indian Health Care Improvement Act, referred to in subsec. (b)(2)(D)(i)(III), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Indian Health Care Improvement Act is classified generally to subchapter IV (§1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

Section 4(a) of the Agriculture and Consumer Protection Act of 1973, referred to in subsec. (b)(2)(D)(ii)(II), is section 4(a) of Pub. L. 93–86, Aug. 10, 1973, 87 Stat. 249, as amended, which is set out as a note under section 612c of Title 7, Agriculture.

The Indian Self-Determination Act (Public Law 93–638), referred to in subsec. (b)(2)(D)(iv), is title I of Pub. L. 93–638, Jan. 4, 1975, 88 Stat. 2206, as amended, which is classified principally to part A (§450f et seq.) of subchapter II of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

PRIOR PROVISIONS

A prior section 1920 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

1990—Subsec. (b)(1)(B). Pub. L. 101–508, §4605(a)(1), inserted ''or'' at end of cl. (i), redesignated cl. (iii) as (ii) and amended it generally, and struck out former cl. (ii). Prior to amendment, cls. (ii) and (iii) read as follows:

''(ii) the day that is 45 days after the date on which the provider makes the determination referred to in subparagraph (A), or

''(iii) in the case of a woman who does not file an application for medical assistance within 14 calendar days after the date on which the provider makes the determination referred to in subparagraph (A), the fourteenth calendar day after such determination is made; and''.

Subsec. (c)(2)(B). Pub. L. 101–508, §4605(a)(2), substituted ''by not later than the last day of the month following the month during which'' for ''within 14 calendar days after the date on which''.

Subsec. (c)(3). Pub. L. 101–508, §4605(b), inserted before period at end '', which application may be the applica-

tion used for the receipt of medical assistance by individuals described in section 1396a(*l*)(1)(A) of this title''.

Pub. L. 101–508, § 4605(a)(2), substituted ''by not later than the last day of the month following the month during which'' for ''within 14 calendar days after the date on which''.

1988—Subsec. (b)(2)(D)(i). Pub. L. 100–360, § 411(k)(16)(B)(i), substituted ''section 254b, 254c, or 256 of this title,'' for ''section 254b of this title or section 254c of this title, or'' in subcl. (I), substituted ''chapter, or'' for ''chapter;'' in subcl. (II), and added subcl. (III).

Subsec. (b)(2)(D)(ii)(II). Pub. L. 100–360, § 411(k)(16)(B)(ii), as amended by Pub. L. 100–485, § 608(d)(26)(L)(i), struck out ''or'' after ''1973;''.

Subsec. (b)(2)(D)(iii). Pub. L. 100–360, § 411(k)(16)(B)(iii), as added by Pub. L. 100–485, § 608(d)(26)(L)(iii), substituted ''program; or'' for ''program.''

Subsec. (b)(2)(D)(iv). Pub. L. 100–360, § 411(k)(16)(B)(iv), formerly § 411(k)(16)(B)(iii), as redesignated by Pub. L. 100–485, § 608(d)(26)(L)(ii), added cl. (iv).

Subsec. (d)(1)(B). Pub. L. 100–360, § 411(k)(16)(A), substituted ''by a provider that is eligible for payments under the State plan'' for ''by a qualified provider''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4605(c) of Pub. L. 101–508 provided that:

''(1) The amendments made by subsection (a) [amending this section] apply to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) The amendment made by subsection (b) [amending this section] shall be effective as if included in the enactment of section 9407(b) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509, enacting this section].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Section 411(k)(16)(C) of Pub. L. 100–360 provided that: ''The amendments made by this paragraph [amending this section] shall be effective as if they were included in section 9407(b) of the Omnibus Budget Reconciliation Act of 1986 [Pub. L. 99–509].''

EFFECTIVE DATE

Section applicable to ambulatory prenatal care furnished in calendar quarters beginning on or after Apr. 1, 1987, without regard to whether or not final regulations to carry out such section have been promulgated, see section 9407(d) of Pub. L. 99–509, set out as an Effective Date of 1986 Amendment note under section 1396a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 1396b of this title.

§ 1396r–2. Information concerning sanctions taken by State licensing authorities against health care practitioners and providers

(a) Information reporting requirement

The requirement referred to in section 1396a(a)(49) of this title is that the State must provide for the following:

(1) Information reporting system

The State must have in effect a system of reporting the following information with respect to formal proceedings (as defined by the Secretary in regulations) concluded against a health care practitioner or entity by any authority of the State (or of a political subdivision thereof) responsible for the licensing of health care practitioners (or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners) or entities:

(A) Any adverse action taken by such licensing authority as a result of the proceeding, including any revocation or suspension of a license (and the length of any such suspension), reprimand, censure, or probation.

(B) Any dismissal or closure of the proceedings by reason of the practitioner or entity surrendering the license or leaving the State or jurisdiction.

(C) Any other loss of the license of the practitioner or entity, whether by operation of law, voluntary surrender, or otherwise.

(D) Any negative action or finding by such authority, organization, or entity regarding the practitioner or entity.

(2) Access to documents

The State must provide the Secretary (or an entity designated by the Secretary) with access to such documents of the authority described in paragraph (1) as may be necessary for the Secretary to determine the facts and circumstances concerning the actions and determinations described in such paragraph for the purpose of carrying out this chapter.

(b) Form of information

The information described in subsection (a)(1) of this section shall be provided to the Secretary (or to an appropriate private or public agency, under suitable arrangements made by the Secretary with respect to receipt, storage, protection of confidentiality, and dissemination of information) in such a form and manner as the Secretary determines to be appropriate in order to provide for activities of the Secretary under this chapter and in order to provide, directly or through suitable arrangements made by the Secretary, information—

(1) to agencies administering Federal health care programs, including private entities administering such programs under contract,

(2) to licensing authorities described in subsection (a)(1) of this section,

(3) to State agencies administering or supervising the administration of State health care programs (as defined in section 1320a–7(h) of this title),

(4) to utilization and quality control peer review organizations described in part B of subchapter XI of this chapter and to appropriate entities with contracts under section 1320c–3(a)(4)(C) of this title with respect to eligible organizations reviewed under the contracts,

(5) to State medicaid fraud control units (as defined in section 1396b(q) of this title),

(6) to hospitals and other health care entities (as defined in section 431 of the Health Care Quality Improvement Act of 1986 [42 U.S.C. 11151]), with respect to physicians or other licensed health care practitioners that have entered (or may be entering) into an employment or affiliation relationship with, or have applied for clinical privileges or appoint-

ments to the medical staff of, such hospitals or other health care entities (and such information shall be deemed to be disclosed pursuant to section 427 [42 U.S.C. 11137] of, and be subject to the provisions of, that Act [42 U.S.C. 11101 et seq.]),

(7) to the Attorney General and such other law enforcement officials as the Secretary deems appropriate, and

(8) upon request, to the Comptroller General,

in order for such authorities to determine the fitness of individuals to provide health care services, to protect the health and safety of individuals receiving health care through such programs, and to protect the fiscal integrity of such programs.

(c) Confidentiality of information provided

The Secretary shall provide for suitable safeguards for the confidentiality of the information furnished under subsection (a) of this section. Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure.

(d) Appropriate coordination

The Secretary shall provide for the maximum appropriate coordination in the implementation of subsection (a) of this section and section 422 of the Health Care Quality Improvement Act of 1986 [42 U.S.C. 11132].

(Aug. 14, 1935, ch. 531, title XIX, § 1921, as added Aug. 18, 1987, Pub. L. 100–93, § 5(b), 101 Stat. 690; amended Nov. 5, 1990, Pub. L. 101–508, title IV, § 4752(f)(1), 104 Stat. 1388–208.)

REFERENCES IN TEXT

Part B of subchapter XI of this chapter, referred to in subsec. (b)(4), is classified to section 1320c et seq. of this title.

That Act, referred to in subsec. (b)(6), is title IV of Pub. L. 99–660, Nov. 14, 1986, 100 Stat. 3784, as amended, known as the Health Care Quality Improvement Act of 1986, which is classified generally to chapter 117 (§ 11101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11101 of this title and Tables.

PRIOR PROVISIONS

A prior section 1921 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–508, § 4752(f)(1)(A), inserted ''(or any peer review organization or private accreditation entity reviewing the services provided by health care practitioners)'' after ''health care practitioners'' in introductory provisions.

Subsec. (a)(1)(D). Pub. L. 101–508, § 4752(f)(1)(B), added subpar. (D).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4752(f)(2) of Pub. L. 101–508 provided that: ''The amendments made by paragraph (1) [amending this section] shall apply to State information reporting systems as of January 1, 1992, without regard to whether or not the Secretary of Health and Human Services has promulgated any regulations to carry out such amendments by such date.''

EFFECTIVE DATE

Section applicable, with certain exceptions, to payments under subchapter XIX of this chapter for calendar quarters beginning more than thirty days after Aug. 18, 1987, without regard to whether or not final regulations to carry out this section have been published by that date, see section 15(c)(1), (2) of Pub. L. 100–93 set out as an Effective Date of 1987 Amendment note under section 1320a–7 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396a of this title.

§ 1396r–3. Correction and reduction plans for intermediate care facilities for mentally retarded

(a) Written plans to remedy substantial deficiencies; time for submission

If the Secretary finds that an intermediate care facility for the mentally retarded has substantial deficiencies which do not pose an immediate threat to the health and safety of residents (including failure to provide active treatment), the State may elect, subject to the limitations in this section, to—

(1) submit, within the number of days specified by the Secretary in regulations which apply to submission of compliance plans with respect to deficiencies of such type, a written plan of correction which details the extent of the facility's current compliance with the standards promulgated by the Secretary, including all deficiencies identified during a validation survey, and which provides for a timetable for completion of necessary steps to correct all staffing deficiencies within 6 months, and a timetable for rectifying all physical plant deficiencies within 6 months; or

(2) submit, within a time period consisting of the number of days specified for submissions under paragraph (1) plus 35 days, a written plan for permanently reducing the number of certified beds, within a maximum of 36 months, in order to permit any noncomplying buildings (or distinct parts thereof) to be vacated and any staffing deficiencies to be corrected (hereinafter in this section referred to as a ''reduction plan'').

(b) Conditions for approval of reduction plans

As conditions of approval of any reduction plan submitted pursuant to subsection (a)(2) of this section, the State must—

(1) provide for a hearing to be held at the affected facility at least 35 days prior to submission of the reduction plan, with reasonable notice thereof to the staff and residents of the facility, responsible members of the residents' families, and the general public;

(2) demonstrate that the State has successfully provided home and community services similar to the services proposed to be provided under the reduction plan for similar individuals eligible for medical assistance; and

(3) provide assurances that the requirements of subsection (c) of this section shall be met with respect to the reduction plan.

(c) Contents of reduction plan

The reduction plan must—

(1) identify the number and service needs of existing facility residents to be provided home or community services and the timetable for providing such services, in 6 month intervals, within the 36-month period;

(2) describe the methods to be used to select such residents for home and community services and to develop the alternative home and community services to meet their needs effectively;

(3) describe the necessary safeguards that will be applied to protect the health and welfare of the former residents of the facility who are to receive home or community services, including adequate standards for consumer and provider participation and assurances that applicable State licensure and applicable State and Federal certification requirements will be met in providing such home or community services;

(4) provide that residents of the affected facility who are eligible for medical assistance while in the facility shall, at their option, be placed in another setting (or another part of the affected facility) so as to retain their eligibility for medical assistance;

(5) specify the actions which will be taken to protect the health and safety of, and to provide active treatment for, the residents who remain in the affected facility while the reduction plan is in effect;

(6) provide that the ratio of qualified staff to residents at the affected facility (or the part thereof) which is subject to the reduction plan will be the higher of—

(A) the ratio which the Secretary determines is necessary in order to assure the health and safety of the residents of such facility (or part thereof); or

(B) the ratio which was in effect at the time that the finding of substantial deficiencies (referred to in subsection (a) of this section) was made; and

(7) provide for the protection of the interests of employees affected by actions under the reduction plan, including—

(A) arrangements to preserve employee rights and benefits;

(B) training and retraining of such employees where necessary;

(C) redeployment of such employees to community settings under the reduction plan; and

(D) making maximum efforts to guarantee the employment of such employees (but this requirement shall not be construed to guarantee the employment of any employee).

(d) Notice and comment; approval of more than 15 reduction plans in any fiscal year; corrections costing $2,000,000 or more

(1) The Secretary must provide for a period of not less than 30 days after the submission of a reduction plan by a State, during which comments on such reduction plan may be submitted to the Secretary, before the Secretary approves or disapproves such reduction plan.

(2) If the Secretary approves more than 15 reduction plans under this section in any fiscal year, any reduction plans approved in addition to the first 15 such plans approved, must be for a facility (or part thereof) for which the costs of correcting the substantial deficiencies (referred to in subsection (a) of this section) are $2,000,000 or greater (as demonstrated by the State to the satisfaction of the Secretary).

(e) Termination of provider agreements; disallowance of percentage amounts for purposes of Federal financial participation

(1) If the Secretary, at the conclusion of the 6-month plan of correction described in subsection (a)(1) of this section, determines that the State has substantially failed to correct the deficiencies described in subsection (a) of this section, the Secretary may terminate the facility's provider agreement in accordance with the provisions of section 1396i(b) of this title.

(2) In the case of a reduction plan described in subsection (a)(2) of this section, if the Secretary determines, at the conclusion of the initial 6-month period or any 6-month interval thereafter, that the State has substantially failed to meet the requirements of subsection (c) of this section, the Secretary shall—

(A) terminate the facility's provider agreement in accordance with the provisions of section 1396i(b) of this title; or

(B) if the State has failed to meet such requirements despite good faith efforts, disallow, for purposes of Federal financial participation, an amount equal to 5 percent of the cost of care for all eligible individuals in the facility for each month for which the State fails to meet such requirements.

(f) Applicability of section limited to plans approved by January 1, 1990

The provisions of this section shall apply only to plans of correction and reduction plans approved by the Secretary by January 1, 1990.

(Aug. 14, 1935, ch. 531, title XIX, § 1922, formerly § 1919, as added Apr. 7, 1986, Pub. L. 99–272, title IX, § 9516(a), 100 Stat. 213; renumbered § 1922 and amended Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4211(a)(2), 4212(e)(5), 101 Stat. 1330–182; amended July 1, 1988, Pub. L. 100–360, title IV, § 411(*l*)(6)(E), 102 Stat. 804; Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8433(a), 102 Stat. 3804.)

PRIOR PROVISIONS

A prior section 1922 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–647, § 8433(a)(1), inserted ''(including failure to provide active treatment)'' after ''residents'' in introductory provisions.

Subsec. (c)(5). Pub. L. 100–647, § 8433(a)(2), inserted '', and to provide active treatment for,'' after ''safety of''.

Subsec. (e)(1), (2)(A). Pub. L. 100–360, § 411(*l*)(6)(E), substituted ''1396i(b)'' for ''1396i(c)''.

Subsec. (f). Pub. L. 100–647, § 8433(a)(3), substituted ''by January 1, 1990'' for ''within 3 years after the effective date of final regulations implementing this section''.

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 8433(b) of Pub. L. 100–647 provided that: ''The amendments made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Nov. 10, 1988], and shall apply to any proceeding where there has not yet been a final determination by the Secretary (as defined for purposes of judicial review) as of the date of the enactment of this Act.''

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates

to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE

Section 9516(b) of Pub. L. 99–272 provided that:

''(1) The amendment made by this section [enacting this section] shall become effective on the date of the enactment of this Act [Apr. 7, 1986].

''(2) The Secretary of Health and Human Services shall issue a notice of proposed rulemaking with respect to section 1919 of the Social Security Act [this section] within 60 days after the date of the enactment of this Act, and shall allow a period of 30 days for comment thereon prior to promulgating final regulations implementing such section.''

REGULATIONS

Section 4217 of Pub. L. 100–203 provided that:

''(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act [Dec. 22, 1987], the Secretary of Health and Human Services shall promulgate final regulations to implement the amendments made by section 9516 of the Consolidated Omnibus Budget Reconciliation Act of 1985 [enacting this section].

''(b) The regulations promulgated under paragraph (1) shall be effective as if promulgated on the date of enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985 [Apr. 7, 1986].''

REPORT TO CONGRESS ON IMPLEMENTATION AND RESULTS OF THIS SECTION

Section 9516(c) of Pub. L. 99–272, as amended by Pub. L. 100–203, title IV, § 4211(*l*), Dec. 22, 1987, 101 Stat. 1330–207, directed Secretary of Health and Human Services to submit a report to Congress on implementation and results of this section, such report to be submitted not later than 30 months after the effective date of final regulations promulgated to implement this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6006 of this title.

§ 1396r–4. Adjustment in payment for inpatient hospital services furnished by disproportionate share hospitals

(a) Implementation of requirement

(1) A State plan under this subchapter shall not be considered to meet the requirement of section 1396a(a)(13)(A) of this title (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs), as of July 1, 1988, unless the State has submitted to the Secretary, by not later than such date, an amendment to such plan that—

(A) specifically defines the hospitals so described (and includes in such definition any disproportionate share hospital described in subsection (b)(1) of this section which meets the requirements of subsection (d) of this section), and

(B) provides, effective for inpatient hospital services provided not later than July 1, 1988, for an appropriate increase in the rate or amount of payment for such services provided by such hospitals, consistent with subsection (c) of this section.

(2)(A) In order to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1989, the State must submit to the Secretary by not later than April 1, 1989, the State plan amendment described in paragraph (1), consistent with subsection (c) of this section, effective for inpatient hospital services provided on or after July 1, 1989.

(B) In order to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1990, the State must submit to the Secretary by not later than April 1, 1990, the State plan amendment described in paragraph (1), consistent with subsections (c) and (f) of this section, effective for inpatient hospital services provided on or after July 1, 1990.

(C) If a State plan under this subchapter provides for payments for inpatient hospital services on a prospective basis (whether per diem, per case, or otherwise), in order for the plan to be considered to have met such requirement of section 1396a(a)(13)(A) of this title as of July 1, 1989, the State must submit to the Secretary by not later than April 1, 1989, a State plan amendment that provides, in the case of hospitals defined by the State as disproportionate share hospitals under paragraph (1)(A), for an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1989, involving exceptionally high costs or exceptionally long lengths of stay for individuals under one year of age.

(3) The Secretary shall, not later than 90 days after the date a State submits an amendment under this subsection, review each such amendment for compliance with such requirement and by such date shall approve or disapprove each such amendment. If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement.

(4) The requirement of this subsection may not be waived under section 1396n(b)(4) of this title.

(b) Hospitals deemed disproportionate share

(1) For purposes of subsection (a)(1) of this section, a hospital which meets the requirements of subsection (d) of this section is deemed to be a disproportionate share hospital if—

(A) the hospital's medicaid inpatient utilization rate (as defined in paragraph (2)) is at least one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State; or

(B) the hospital's low-income utilization rate (as defined in paragraph (3)) exceeds 25 percent.

(2) For purposes of paragraph (1)(A), the term ''medicaid inpatient utilization rate'' means, for a hospital, a fraction (expressed as a percentage), the numerator of which is the hospital's number of inpatient days attributable to patients who (for such days) were eligible for medical assistance under a State plan approved under this subchapter in a period, and the denominator of which is the total number of the hospital's inpatient days in that period. In this paragraph, the term ''inpatient day'' includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward

and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.

(3) For purposes of paragraph (1)(B), the term ''low-income utilization rate'' means, for a hospital, the sum of—

(A) the fraction (expressed as a percentage)—

(i) the numerator of which is the sum (for a period) of (I) the total revenues paid the hospital for patient services under a State plan under this subchapter and (II) the amount of the cash subsidies for patient services received directly from State and local governments, and

(ii) the denominator of which is the total amount of revenues of the hospital for patient services (including the amount of such cash subsidies) in the period; and

(B) a fraction (expressed as a percentage)—

(i) the numerator of which is the total amount of the hospital's charges for inpatient hospital services which are attributable to charity care in a period, less the portion of any cash subsidies described in clause (i)(II) of subparagraph (A) in the period reasonably attributable to inpatient hospital services, and

(ii) the denominator of which is the total amount of the hospital's charges for inpatient hospital services in the hospital in the period.

The numerator under subparagraph (B)(i) shall not include contractual allowances and discounts (other than for indigent patients not eligible for medical assistance under a State plan approved under this subchapter).

(4) The Secretary may not restrict a State's authority to designate hospitals as disproportionate share hospitals under this section. The previous sentence shall not be construed to affect the authority of the Secretary to reduce payments pursuant to section 1396b(w)(1)(A)(iii) of this title if the Secretary determines that, as a result of such designations, there is in effect a hold harmless provision described in section 1396b(w)(4) of this title.

(c) Payment adjustment

Subject to subsections (f) and (g) of this section, in order to be consistent with this subsection, a payment adjustment for a disproportionate share hospital must either—

(1) be in an amount equal to at least the product of (A) the amount paid under the State plan to the hospital for operating costs for inpatient hospital services (of the kind described in section 1395ww(a)(4) of this title), and (B) the hospital's disproportionate share adjustment percentage (established under section 1395ww(d)(5)(F)(iv) of this title);

(2) provide for a minimum specified additional payment amount (or increased percentage payment) and (without regard to whether the hospital is described in subparagraph (A) or (B) of subsection (b)(1) of this section) for an increase in such a payment amount (or percentage payment) in proportion to the percentage by which the hospital's medicaid utilization rate (as defined in subsection (b)(2) of this section) exceeds one standard deviation above the mean medicaid inpatient utilization rate for hospitals receiving medicaid payments in the State or the hospital's low-income utilization rate (as defined in paragraph [1] (b)(3) of this section); or

(3) provide for a minimum specified additional payment amount (or increased percentage payment) that varies according to type of hospital under a methodology that—

(A) applies equally to all hospitals of each type; and

(B) results in an adjustment for each type of hospital that is reasonably related to the costs, volume, or proportion of services provided to patients eligible for medical assistance under a State plan approved under this subchapter or to low-income patients.[2]

except that, for purposes of paragraphs (1)(B) and (2)(A) of subsection (a) of this section, the payment adjustment for a disproportionate share hospital is consistent with this subsection if the appropriate increase in the rate or amount of payment is equal to at least one-third of the increase otherwise applicable under this subsection (in the case of such paragraph (1)(B)) and at least two-thirds of such increase (in the case of paragraph (2)(A)). In the case of a hospital described in subsection (d)(2)(A)(i) of this section (relating to children's hospitals), in computing the hospital's disproportionate share adjustment percentage for purposes of paragraph (1)(B) of this subsection, the disproportionate patient percentage (defined in section 1395ww(d)(5)(F)(vi) of this title) shall be computed by substituting for the fraction described in subclause (I) of such section the fraction described in subclause (II) of that section. If a State elects in a State plan amendment under subsection (a) of this section to provide the payment adjustment described in paragraph (2), the State must include in the amendment a detailed description of the specific methodology to be used in determining the specified additional payment amount (or increased percentage payment) to be made to each hospital qualifying for such a payment adjustment and must publish at least annually the name of each hospital qualifying for such a payment adjustment and the amount of such payment adjustment made for each such hospital.

(d) Requirements to qualify as disproportionate share hospital

(1) Except as provided in paragraph (2), no hospital may be defined or deemed as a disproportionate share hospital under a State plan under this subchapter or under subsection (b) of this section unless the hospital has at least 2 obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to individuals who are entitled to medical assistance for such services under such State plan.

(2)(A) Paragraph (1) shall not apply to a hospital—

(i) the inpatients of which are predominantly individuals under 18 years of age; or

[1] So in original. Probably should be ''subsection''.

[2] So in original. The period probably should be a semicolon.

(ii) which does not offer nonemergency obstetric services to the general population as of December 22, 1987.

(B) In the case of a hospital located in a rural area (as defined for purposes of section 1395ww of this title), in paragraph (1) the term ''obstetrician'' includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(3) No hospital may be defined or deemed as a disproportionate share hospital under a State plan under this subchapter or under subsection (b) or (e) of this section unless the hospital has a medicaid inpatient utilization rate (as defined in subsection (b)(2) of this section) of not less than 1 percent.

(e) Special rule

(1) A State plan shall be considered to meet the requirement of section 1396a(a)(13)(A) of this title (insofar as it requires payments to hospitals to take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs) without regard to the requirement of subsection (a) of this section if (A)(i) the plan provided for payment adjustments based on a pooling arrangement involving a majority of the hospitals participating under the plan for disproportionate share hospitals as of January 1, 1984, or (ii) the plan as of January 1, 1987, provided for payment adjustments based on a statewide pooling arrangement involving all acute care hospitals and the arrangement provides for reimbursement of the total amount of uncompensated care provided by each participating hospital, (B) the aggregate amount of the payment adjustments under the plan for such hospitals is not less than the aggregate amount of such adjustments otherwise required to be made under such subsection, and (C) the plan meets the requirement of subsection (d)(3) of this section and such payment adjustments are made consistent with the last sentence of subsection (c) of this section.

(2) In the case of a State that used a health insuring organization before January 1, 1986, to administer a portion of its plan on a statewide basis, beginning on July 1, 1988—

(A) the requirements of subsections (b) and (c) of this section (other than the last sentence of subsection (c) of this section) shall not apply if the aggregate amount of the payment adjustments under the plan for disproportionate share hospitals (as defined under the State plan) is not less than the aggregate amount of payment adjustments otherwise required to be made if such subsections applied,

(B) subsection (d)(2)(B) of this section shall apply to hospitals located in urban areas, as well as in rural areas,

(C) subsection (d)(3) of this section shall apply, and

(D) subsection (g) of this section shall apply.

(f) Denial of Federal financial participation for payments in excess of certain limits

(1) In general

(A) Application of State-specific limits

Except as provided in subparagraph (D), payment under section 1396b(a) of this title shall not be made with respect to any payment adjustment made under this section for hospitals in a State (as defined in paragraph (4)(B)) for quarters—

(i) in fiscal year 1992 (beginning on or after January 1, 1992), unless—

(I) the payment adjustments are made—

(a) in accordance with the State plan in effect or amendments submitted to the Secretary by September 30, 1991,

(b) in accordance with the State plan in effect or amendments submitted to the Secretary by November 26, 1991, or modification thereof, if the amendment designates only disproportionate share hospitals with a medicaid or low-income utilization percentage at or above the Statewide[3] arithmetic mean, or

(c) in accordance with a payment methodology which was established and in effect as of September 30, 1991, or in accordance with legislation or regulations enacted or adopted as of such date; or

(II) the payment adjustments are the minimum adjustments required in order to meet the requirements of subsection (c)(1) of this section; or

(ii) in a subsequent fiscal year, to the extent that the total of such payment adjustments exceeds the State disproportionate share hospital (in this subsection referred to as ''DSH'') allotment for the year (as specified in paragraph (2)).

(B) National DSH payment limit

The national DSH payment limit for a fiscal year is equal to 12 percent of the total amount of expenditures under State plans under this subchapter for medical assistance during the fiscal year.

(C) Publication of State DSH allotments and national DSH payment limit

Before the beginning of each fiscal year (beginning with fiscal year 1993), the Secretary shall, consistent with section 1396b(d) of this title, estimate and publish—

(i) the national DSH payment limit for the fiscal year, and

(ii) the State DSH allotment for each State for the year.

(D) Conditional exception for certain States

Subject to subparagraph (E), beginning with payments for quarters beginning on or after January 1, 1996, and at the option of a State, subparagraph (A) shall not apply in the case of a State which defines a hospital as a disproportionate share hospital under subsection (a)(1) of this section only if the hospital meets any of the following requirements:

(i) The hospital's medicaid inpatient utilization rate (as defined in subsection (b)(2) of this section) is at or above the mean medicaid inpatient utilization rate for all hospitals in the State.

[3] So in original. Probably should not be capitalized.

(ii) The hospital's low-income utilization rate (as defined in subsection (b)(3) of this section) is at or above the mean low-income utilization rate for all hospitals in the State.

(iii) The number of inpatient days of the hospital attributable to patients who (for such days) were eligible for medical assistance under the State plan is equal to at least 1 percent of the total number of such days for all hospitals in the State.

(iv) The hospital meets such alternative requirements as the Secretary may establish by regulation, taking into account the special circumstances of children's hospitals, hospitals located in rural areas, and sole community hospitals.

(E) Condition for option

The option specified in subparagraph (D) shall not apply for payments for a quarter beginning before the date of enactment of legislation establishing a limit on payment adjustments under this section which would apply in the case of a state[4] exercising such option.

(2) Determination of State DSH allotments

(A) In general

Subject to subparagraph (B), the State DSH allotment for a fiscal year is equal to the State DSH allotment for the previous fiscal year (or, for fiscal year 1993, the State base allotment as defined in paragraph (4)(C)), increased by—

(i) the State growth factor (as defined in paragraph (4)(E)) for the fiscal year, and

(ii) the State supplemental amount for the fiscal year (as determined under paragraph (3)).

(B) Exceptions

(i) Limit to 12 percent or base allotment

A State DSH allotment under subparagraph (A) for a fiscal year shall not exceed 12 percent of the total amount of expenditures under the State plan for medical assistance during the fiscal year, except that, in the case of a high DSH State (as defined in paragraph (4)(A)), the State DSH allotment shall equal the State based allotment.

(ii) Exception for minimum required adjustment

No State DSH allotment shall be less than the minimum amount of payment adjustments the State is required to make in the fiscal year to meet the requirements of subsection (c)(1) of this section.

(3) State supplemental amounts

The Secretary shall determine a supplemental amount for each State that is not a high DSH State for a fiscal year as follows:

(A) Determination of redistribution pool

The Secretary shall subtract from the national DSH payment limit (specified in paragraph (1)(B)) for the fiscal year the following:

(i) the total of the State base allotments for high DSH States;

(ii) the total of State DSH allotments for the previous fiscal year (or, in the case of fiscal year 1993, the total of State base allotments) for all States other than high DSH States;

(iii) the total of the State growth amounts for all States other than high DSH States for the fiscal year; and

(iv) the total additions to State DSH allotments the Secretary estimates will be attributable to paragraph (2)(B)(ii).

(B) Distribution of pool based on total medicaid expenditures for medical assistance

The supplemental amount for a State for a fiscal year is equal to the lesser of—

(i) the product of the amount determined under subparagraph (A) and the ratio of—

(I) the total amount of expenditures made under the State plan under this subchapter for medical assistance during the fiscal year, to

(II) the total amount of expenditures made under the State plans under this subchapter for medical assistance during the fiscal year for all States which are not high DSH States in the fiscal year, or

(ii) the amount that would raise the State DSH allotment to the maximum permitted under paragraph (2)(B).

(4) Definitions

In this subsection:

(A) High DSH State

The term ''high DSH State'' means, for a fiscal year, a State for which the State base allotment exceeds 12 percent of the total amount of expenditures made under the State plan under this subchapter for medical assistance during the fiscal year.

(B) State

The term ''State'' means only the 50 States and the District of Columbia but does not include any State whose entire program under this subchapter is operated under a waiver granted under section 1315 of this title.

(C) State base allotment

The term ''State base allotment'' means, with respect to a State, the greater of—

(i) the total amount of payment adjustments made under subsection (c) of this section under the State plan during fiscal year 1992 (excluding any such payment adjustments for which a reduction may be made under paragraph (1)(A)(i)), or

(ii) $1,000,000.

The amount under clause (i) shall be determined by the Secretary and shall include only payment adjustments described in paragraph (1)(A)(i)(I).

(D) State growth amount

The term ''State growth amount'' means, with respect to a State for a fiscal year, the lesser of—

[4] So in original. Probably should be capitalized.

(i) the product of the State growth factor and the State DSH payment limit for the previous fiscal year, or

(ii) the amount by which 12 percent of the total amount of expenditures made under the State plan under this subchapter for medical assistance during the fiscal year exceeds the State DSH allotment for the previous fiscal year.

(E) State growth factor

The term ''State growth factor'' means, for a State for a fiscal year, the percentage by which the expenditures described in section 1396b(a) of this title in the State in the fiscal year exceed such expenditures in the previous fiscal year.

(g) Limit on amount of payment to hospital

(1) Amount of adjustment subject to uncompensated costs

(A) In general

A payment adjustment during a fiscal year shall not be considered to be consistent with subsection (c) of this section with respect to a hospital if the payment adjustment exceeds the costs incurred during the year of furnishing hospital services (as determined by the Secretary and net of payments under this subchapter, other than under this section, and by uninsured patients) by the hospital to individuals who either are eligible for medical assistance under the State plan or have no health insurance (or other source of third party coverage) for services provided during the year. For purposes of the preceding sentence, payments made to a hospital for services provided to indigent patients made by a State or a unit of local government within a State shall not be considered to be a source of third party payment.

(B) Limit to public hospitals during transition period

With respect to payment adjustments during a State fiscal year that begins before January 1, 1995, subparagraph (A) shall apply only to hospitals owned or operated by a State (or by an instrumentality or a unit of government within a State).

(C) Modifications for private hospitals

With respect to hospitals that are not owned or operated by a State (or by an instrumentality or a unit of government within a State), the Secretary may make such modifications to the manner in which the limitation on payment adjustments is applied to such hospitals as the Secretary considers appropriate.

(2) Additional amount during transition period for certain hospitals with high disproportionate share

(A) In general

In the case of a hospital with high disproportionate share (as defined in subparagraph (B)), a payment adjustment during a State fiscal year that begins before January 1, 1995, shall be considered consistent with subsection (c) of this section if the payment adjustment does not exceed 200 percent of the costs of furnishing hospital services described in paragraph (1)(A) during the year, but only if the Governor of the State certifies to the satisfaction of the Secretary that the hospital's applicable minimum amount is used for health services during the year. In determining the amount that is used for such services during a year, there shall be excluded any amounts received under the Public Health Service Act [42 U.S.C. 201 et seq.], subchapter V of this chapter, subchapter XVIII of this chapter, or from third party payors (not including the State plan under this subchapter) that are used for providing such services during the year.

(B) "Hospital with high disproportionate share" defined

In subparagraph (A), a hospital is a ''hospital with high disproportionate share'' if—

(i) the hospital is owned or operated by a State (or by an instrumentality or a unit of government within a State); and

(ii) the hospital—

(I) meets the requirement described in subsection (b)(1)(A) of this section, or

(II) has the largest number of inpatient days attributable to individuals entitled to benefits under the State plan of any hospital in such State for the previous State fiscal year.

(C) "Applicable minimum amount" defined

In subparagraph (A), the ''applicable minimum amount'' for a hospital for a fiscal year is equal to the difference between the amount of the hospital's payment adjustment for the fiscal year and the costs to the hospital of furnishing hospital services described in paragraph (1)(A) during the fiscal year.

(Aug. 14, 1935, ch. 531, title XIX, §1923, formerly Pub. L. 100–203, title IV, §4112, Dec. 22, 1987, 101 Stat. 1330–148; renumbered §1923 of act Aug. 14, 1935, and amended July 1, 1988, Pub. L. 100–360, title III, §302(b)(2), title IV, §411(k)(6)(A)–(B)(ix), 102 Stat. 752, 792–794; Oct. 13, 1988, Pub. L. 100–485, title VI, §608(d)(15)(C), (26)(A)–(F), 102 Stat. 2417, 2421, 2422; Dec. 19, 1989, Pub. L. 101–239, title VI, §6411(c)(1), 103 Stat. 2270; Nov. 5, 1990, Pub. L. 101–508, title IV, §§4702(a), 4703(a)–(c), 104 Stat. 1388–171; Dec. 12, 1991, Pub. L. 102–234, §§3(b)(1), (2)(A), (c), 105 Stat. 1799, 1802, 1803; Aug. 10, 1993, Pub. L. 103–66, title XIII, §13621(a)(1), (b)(1), (2), 107 Stat. 629–631.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (g)(2)(A), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Prior to redesignation by Pub. L. 100–360, section 4112 of Pub. L. 100–203, cited in the credits to this section, was classified as a note under section 1396a of this title.

PRIOR PROVISIONS

A prior section 1923 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

1993—Subsec. (a)(1)(A). Pub. L. 103–66, § 13621(a)(1)(A), substituted ''requirements'' for ''requirement''.

Subsec. (b)(1). Pub. L. 103–66, § 13621(a)(1)(B), substituted ''requirements'' for ''requirement'' in introductory provisions.

Subsec. (c). Pub. L. 103–66, § 13621(b)(2)(A), substituted ''subsections (f) and (g)'' for ''subsection (f)'' in introductory provisions.

Subsec. (d). Pub. L. 103–66, § 13621(a)(1)(C), substituted ''Requirements'' for ''Requirement'' in heading.

Subsec. (d)(3). Pub. L. 103–66, § 13621(a)(1)(D), added par. (3).

Subsec. (e)(1)(C). Pub. L. 103–66, § 13621(a)(1)(E), added cl. (C).

Subsec. (e)(2)(A). Pub. L. 103–66, § 13621(a)(1)(F)(i), inserted ''(other than the last sentence of subsection (c) of this section)'' before ''shall not apply''.

Subsec. (e)(2)(C). Pub. L. 103–66, § 13621(a)(1)(F)(ii)–(iv), added subpar. (C).

Subsec. (e)(2)(D). Pub. L. 103–66, § 13621(b)(2)(B), added subpar. (D).

Subsec. (g). Pub. L. 103–66, § 13621(b)(1), added subsec. (g).

1991—Subsec. (a)(2)(B). Pub. L. 102–234, § 3(b)(2)(A)(i), substituted ''subsections (c) and (f)'' for ''subsection (c)''.

Subsec. (b)(4). Pub. L. 102–234, § 3(c), added par. (4).

Subsec. (c). Pub. L. 102–234, § 3(b)(2)(A)(ii), substituted ''Subject to subsection (f) of this section, in order'' for ''In order''.

Subsec. (f). Pub. L. 102–234, § 3(b)(1), added subsec. (f).

1990—Subsec. (b)(2). Pub. L. 101–508, § 4702(a), inserted at end ''In this paragraph, the term 'inpatient day' includes each day in which an individual (including a newborn) is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere.''

Subsec. (c)(2). Pub. L. 101–508, § 4703(c), inserted before semicolon at end ''or the hospital's low-income utilization rate (as defined in paragraph (b)(3) of this section)''.

Subsec. (c)(3). Pub. L. 101–508, § 4703(a), added par. (3).

Subsec. (e)(2). Pub. L. 101–508, § 4703(b), struck out ''during the 3-year period'' before ''beginning on''.

1989—Subsec. (e)(1). Pub. L. 101–239 designated portion of existing provisions as cls. (A) and (B), and in cl. (A) designated existing provisions as subcl. (i) and added subcl. (ii).

1988—Pub. L. 100–360, § 411(k)(6)(A)–(B)(ix), as amended by Pub. L. 100–485, § 608(d)(26)(F), amended Pub. L. 100–203, § 4112, so as to redesignate section 4112 of Pub. L. 100–203 as this section.

Subsec. (a). Pub. L. 100–360, § 411(k)(6)(B)(iv), struck out ''of Health and Human Services'' after ''to the Secretary'' wherever appearing in pars. (1) and (2).

Subsec. (a)(1). Pub. L. 100–360, § 411(k)(6)(B)(ii), (iii), substituted ''A State plan under this subchapter'' for ''A State's plan under title XIX of the Social Security Act'', and made technical amendment to reference to section 1396a(a)(13)(A) of this title involving underlying provisions of original act.

Subsec. (a)(2)(A). Pub. L. 100–360, § 411(k)(6)(A)(i), substituted ''April 1, 1989'' for ''such date'' and inserted before period at end '', effective for inpatient hospital services provided on or after July 1, 1989''.

Subsec. (a)(2)(B). Pub. L. 100–360, § 411(k)(6)(A)(ii), substituted ''April 1, 1990'' for ''such date'' and inserted before period at end '', effective for inpatient hospital services provided on or after July 1, 1990''.

Subsec. (a)(2)(C). Pub. L. 100–485, § 608(d)(15)(C), realigned the margin of subpar. (C).

Pub. L. 100–360, § 302(b)(2), added subpar. (C).

Subsec. (a)(3). Pub. L. 100–360, § 411(k)(6)(A)(iii), inserted par. (3) designation and substituted ''90 days after the date a State submits an amendment'' for ''June 30 of each year in which the State is required to submit an amendment''.

Subsec. (a)(4). Pub. L. 100–360, § 411(k)(6)(A)(iii)(II), (III), (B)(v), inserted par. (4) designation and made technical amendment to reference to section 1396n(b)(4) of this title involving underlying provisions of original act.

Subsec. (b)(2). Pub. L. 100–360, § 411(k)(6)(A)(iv), substituted ''a State plan'' for ''the State plan''.

Pub. L. 100–360, § 411(k)(6)(B)(vi), as amended by Pub. L. 100–485, § 608(d)(26)(F), substituted ''under this subchapter'' for ''under subchapter XIX of this chapter''.

Subsec. (b)(3). Pub. L. 100–360, § 411(k)(6)(B)(vi), as amended by Pub. L. 100–485, § 608(d)(26)(F), substituted ''under this subchapter'' for ''under subchapter XIX of this chapter'' in last sentence.

Subsec. (b)(3)(A)(i). Pub. L. 100–360, § 411(k)(6)(B)(vi), as amended by Pub. L. 100–485, § 608(d)(26)(F), substituted ''under this subchapter'' for ''under subchapter XIX of this chapter''.

Subsec. (b)(3)(B)(i). Pub. L. 100–485, § 608(d)(26)(D), inserted ''of subparagraph (A)'' after ''clause (i)(II)''.

Pub. L. 100–360, § 411(k)(6)(A)(v), inserted '', less the portion of any cash subsidies described in clause (i)(II) in the period reasonably attributable to inpatient hospital services'' after ''charity care in a period''.

Subsec. (c). Pub. L. 100–485, § 608(d)(26)(E), substituted ''this subsection'' for ''subsection (c)'' in concluding provisions.

Pub. L. 100–360, § 411(k)(6)(A)(vi)(I), (II), (V), in concluding provisions, substituted ''paragraphs (1)(B) and (2)(A) of subsection (a) of this section'' for ''paragraphs (2)(A) and (2)(B)'', ''such paragraph (1)(B)'' for ''paragraph (2)(A)'', and ''such paragraph (2)(A)'' for ''paragraph (2)(B)'' and inserted ''at least'' before ''one-third'' and ''two-thirds''.

Pub. L. 100–360, § 411(k)(6)(A)(vi)(VI), inserted at end ''In the case of a hospital described in subsection (d)(2)(A)(i) of this section (relating to children's hospitals), in computing the hospital's disproportionate share adjustment percentage for purposes of paragraph (1)(B) of this subsection, the disproportionate patient percentage (defined in section 1395ww(d)(5)(F)(vi) of this title) shall be computed by substituting for the fraction described in subclause (I) of such section the fraction described in subclause (II) of that section. If a State elects in a State plan amendment under subsection (a) of this section to provide the payment adjustment described in paragraph (2), the State must include in the amendment a detailed description of the specific methodology to be used in determining the specified additional payment amount (or increased percentage payment) to be made to each hospital qualifying for such a payment adjustment and must publish at least annually the name of each hospital qualifying for such a payment adjustment and the amount of such payment adjustment made for each such hospital.''

Subsec. (c)(1). Pub. L. 100–360, § 411(k)(6)(A)(vi)(III), inserted ''at least'' after ''equal to''.

Subsec. (c)(2). Pub. L. 100–360, § 411(k)(6)(A)(vi)(IV), as amended by Pub. L. 100–485, § 608(d)(26)(A), inserted ''(without regard to whether the hospital is described in subparagraph (A) or (B) of subsection (b)(1) of this section)'' after ''payment) and''.

Subsec. (d)(1). Pub. L. 100–360, § 411(k)(6)(B)(vi), as amended by Pub. L. 100–485, § 608(d)(26)(F), substituted ''under this subchapter'' for ''under subchapter XIX of this chapter''.

Subsec. (d)(2)(B). Pub. L. 100–360, § 411(k)(6)(B)(vii), made technical amendment to reference to section 1395ww of this title involving underlying provisions of original Act.

Subsec. (e). Pub. L. 100–360, § 411(k)(6)(A)(vii), as amended by Pub. L. 100–485, § 608(d)(26)(B), (C), designated existing provisions as par. (1), inserted ''based on a pooling arrangement involving a majority of the hospitals participating under the plan'' after first reference to ''payment adjustments'', added par. (2) and substituted ''statewide'' for ''Statewide'' in par. (2).

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13621(a)(2) of Pub. L. 103–66 provided that: ''The amendments made by this subsection [amending

this section] shall apply to payments to States under section 1903(a) of the Social Security Act [section 1396b(a) of this title] for payments to hospitals made under State plans after—

''(A) the end of the State fiscal year that ends during 1994, or

''(B) in the case of a State with a State legislature which is not scheduled to have a regular legislative session in 1994, the end of the State fiscal year that ends during 1995;

without regard to whether or not final regulations to carry out such amendments have been promulgated by either such date.''

Section 13621(b)(3) of Pub. L. 103–66 provided that:

''(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this subsection [amending this section] shall apply to payments to States under section 1903(a) of the Social Security Act [section 1396b(a) of this title] for payments to hospitals made under State plans after—

''(i) the end of the State fiscal year that ends during 1994, or

''(ii) in the case of a State with a State legislature which is not scheduled to have a regular legislative session in 1994, the end of the State fiscal year that ends during 1995;

without regard to whether or not final regulations to carry out such amendments have been promulgated by either such date.

''(B) DELAY IN IMPLEMENTATION FOR PRIVATE HOSPITALS.—With respect to a hospital that is not owned or operated by a State (or by an instrumentality or a unit of government within a State), the amendments made by this subsection shall apply to payments to States under section 1903(a) for payments to hospitals made under State plans for State fiscal years that begin during or after 1995, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.''

EFFECTIVE DATE OF 1991 AMENDMENT

Amendments by Pub. L. 102–234 effective Jan. 1, 1992, see section 3(e)(1) of Pub. L. 102–234, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4702(b) of Pub. L. 101–508 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on July 1, 1990.''

Section 4703(d) of Pub. L. 101–508 provided that: ''The amendments made by this section [amending this section] shall take effect as if included in the enactment of section 412(a)(2)[4112(a)(2)] of the Omnibus Budget Reconciliation Act of 1987 [Pub. L. 100–203, enacting this section].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Amendment by section 302(b)(2) of Pub. L. 100–360 effective July 1, 1988, see section 302(f)(2) of Pub. L. 100–360, set out as a note under section 1396a of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(k)(6)(A)–(B)(ix) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

STUDY OF DSH PAYMENT ADJUSTMENTS

Section 3(d) of Pub. L. 102–234 directed Prospective Payment Assessment Commission to conduct a study concerning feasibility and desirability of establishing maximum and minimum payment adjustments under subsec. (c) of this section for hospitals deemed disproportionate share hospitals under State medicaid plans, and criteria (other than criteria described in clause (i) or (ii) of subsec. (f)(1)(D)) that are appropriate for the designation of disproportionate share hospitals under this section, specified items to be included in study, and directed that, not later than Jan. 1, 1994, Commission submit a report on the study to Committee on Finance of Senate and Committee on Energy and Commerce of House of Representatives, such report to include such recommendations respecting designation of disproportionate share hospitals and the establishment of maximum and minimum payment adjustments for such hospitals under this section as may be appropriate.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 1396b, 1396n of this title.

§ 1396r–5. Treatment of income and resources for certain institutionalized spouses

(a) Special treatment for institutionalized spouses

(1) Supersedes other provisions

In determining the eligibility for medical assistance of an institutionalized spouse (as defined in subsection (h)(1) of this section), the provisions of this section supersede any other provision of this subchapter (including sections 1396a(a)(17) and 1396a(f) of this title) which is inconsistent with them.

(2) No comparable treatment required

Any different treatment provided under this section for institutionalized spouses shall not, by reason of paragraph (10) or (17) of section 1396a(a) of this title, require such treatment for other individuals.

(3) Does not affect certain determinations

Except as this section specifically provides, this section does not apply to—

(A) the determination of what constitutes income or resources, or

(B) the methodology and standards for determining and evaluating income and resources.

(4) Application in certain States and territories

(A) Application in States operating under demonstration projects

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315 of this title, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(B) No application in commonwealths and territories

This section shall only apply to a State that is one of the 50 States or the District of Columbia.

(5) Application to individuals receiving services from organizations receiving certain waivers

This section applies to individuals receiving institutional or noninstitutional services from

any organization receiving a frail elderly demonstration project waiver under section 9412(b) of the Omnibus Budget Reconciliation Act of 1986 or a waiver under section 603(c) of the Social Security Amendments of 1983.

(b) Rules for treatment of income

(1) Separate treatment of income

During any month in which an institutionalized spouse is in the institution, except as provided in paragraph (2), no income of the community spouse shall be deemed available to the institutionalized spouse.

(2) Attribution of income

In determining the income of an institutionalized spouse or community spouse for purposes of the post-eligibility income determination described in subsection (d) of this section, except as otherwise provided in this section and regardless of any State laws relating to community property or the division of marital property, the following rules apply:

(A) Non-trust property

Subject to subparagraphs (C) and (D), in the case of income not from a trust, unless the instrument providing the income otherwise specifically provides—

(i) if payment of income is made solely in the name of the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

(ii) if payment of income is made in the names of the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

(iii) if payment of income is made in the names of the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

(B) Trust property

In the case of a trust—

(i) except as provided in clause (ii), income shall be attributed in accordance with the provisions of this subchapter (including sections 1396a(a)(17) and 1396p(d) of this title), and

(ii) income shall be considered available to each spouse as provided in the trust, or, in the absence of a specific provision in the trust—

(I) if payment of income is made solely to the institutionalized spouse or the community spouse, the income shall be considered available only to that respective spouse;

(II) if payment of income is made to both the institutionalized spouse and the community spouse, one-half of the income shall be considered available to each of them; and

(III) if payment of income is made to the institutionalized spouse or the community spouse, or both, and to another person or persons, the income shall be considered available to each spouse in proportion to the spouse's interest (or, if payment is made with respect to both spouses and no such interest is specified, one-half of the joint interest shall be considered available to each spouse).

(C) Property with no instrument

In the case of income not from a trust in which there is no instrument establishing ownership, subject to subparagraph (D), one-half of the income shall be considered to be available to the institutionalized spouse and one-half to the community spouse.

(D) Rebutting ownership

The rules of subparagraphs (A) and (C) are superseded to the extent that an institutionalized spouse can establish, by a preponderance of the evidence, that the ownership interests in income are other than as provided under such subparagraphs.

(c) Rules for treatment of resources

(1) Computation of spousal share at time of institutionalization

(A) Total joint resources

There shall be computed (as of the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse)—

(i) the total value of the resources to the extent either the institutionalized spouse or the community spouse has an ownership interest, and

(ii) a spousal share which is equal to ½ of such total value.

(B) Assessment

At the request of an institutionalized spouse or community spouse, at the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse and upon the receipt of relevant documentation of resources, the State shall promptly assess and document the total value described in subparagraph (A)(i) and shall provide a copy of such assessment and documentation to each spouse and shall retain a copy of the assessment for use under this section. If the request is not part of an application for medical assistance under this subchapter, the State may, at its option as a condition of providing the assessment, require payment of a fee not exceeding the reasonable expenses of providing and documenting the assessment. At the time of providing the copy of the assessment, the State shall include a notice indicating that the spouse will have a right to a fair hearing under subsection (e)(2) of this section.

(2) Attribution of resources at time of initial eligibility determination

In determining the resources of an institutionalized spouse at the time of application for benefits under this subchapter, regardless of any State laws relating to community property or the division of marital property—

(A) except as provided in subparagraph (B), all the resources held by either the institutionalized spouse, community spouse, or both, shall be considered to be available to the institutionalized spouse, and

(B) resources shall be considered to be available to an institutionalized spouse, but only to the extent that the amount of such resources exceeds the amount computed under subsection (f)(2)(A) of this section (as of the time of application for benefits).

(3) Assignment of support rights

The institutionalized spouse shall not be ineligible by reason of resources determined under paragraph (2) to be available for the cost of care where—

(A) the institutionalized spouse has assigned to the State any rights to support from the community spouse;

(B) the institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment but the State has the right to bring a support proceeding against a community spouse without such assignment; or

(C) the State determines that denial of eligibility would work an undue hardship.

(4) Separate treatment of resources after eligibility for benefits established

During the continuous period in which an institutionalized spouse is in an institution and after the month in which an institutionalized spouse is determined to be eligible for benefits under this subchapter, no resources of the community spouse shall be deemed available to the institutionalized spouse.

(5) Resources defined

In this section, the term ''resources'' does not include—

(A) resources excluded under subsection (a) or (d) of section 1382b of this title, and

(B) resources that would be excluded under section 1382b(a)(2)(A) of this title but for the limitation on total value described in such section.

(d) Protecting income for community spouse

(1) Allowances to be offset from income of institutionalized spouse

After an institutionalized spouse is determined or redetermined to be eligible for medical assistance, in determining the amount of the spouse's income that is to be applied monthly to payment for the costs of care in the institution, there shall be deducted from the spouse's monthly income the following amounts in the following order:

(A) A personal needs allowance (described in section 1396a(q)(1) of this title), in an amount not less than the amount specified in section 1396a(q)(2) of this title.

(B) A community spouse monthly income allowance (as defined in paragraph (2)), but only to the extent income of the institutionalized spouse is made available to (or for the benefit of) the community spouse.

(C) A family allowance, for each family member, equal to at least ⅓ of the amount by which the amount described in paragraph (3)(A)(i) exceeds the amount of the monthly income of that family member.

(D) Amounts for incurred expenses for medical or remedial care for the institutionalized spouse (as provided under section 1396a(r) of this title).

In subparagraph (C), the term ''family member'' only includes minor or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse.

(2) Community spouse monthly income allowance defined

In this section (except as provided in paragraph (5)), the ''community spouse monthly income allowance'' for a community spouse is an amount by which—

(A) except as provided in subsection (e) of this section, the minimum monthly maintenance needs allowance (established under and in accordance with paragraph (3)) for the spouse, exceeds

(B) the amount of monthly income otherwise available to the community spouse (determined without regard to such an allowance).

(3) Establishment of minimum monthly maintenance needs allowance

(A) In general

Each State shall establish a minimum monthly maintenance needs allowance for each community spouse which, subject to subparagraph (C), is equal to or exceeds—

(i) the applicable percent (described in subparagraph (B)) of 1/12 of the income official poverty line (defined by the Office of Management and Budget and revised annually in accordance with section 9902(2) of this title) for a family unit of 2 members; plus

(ii) an excess shelter allowance (as defined in paragraph (4)).

A revision of the official poverty line referred to in clause (i) shall apply to medical assistance furnished during and after the second calendar quarter that begins after the date of publication of the revision.

(B) Applicable percent

For purposes of subparagraph (A)(i), the ''applicable percent'' described in this paragraph, effective as of—

(i) September 30, 1989, is 122 percent,

(ii) July 1, 1991, is 133 percent, and

(iii) July 1, 1992, is 150 percent.

(C) Cap on minimum monthly maintenance needs allowance

The minimum monthly maintenance needs allowance established under subparagraph (A) may not exceed $1,500 (subject to adjustment under subsections (e) and (g) of this section).

(4) Excess shelter allowance defined

In paragraph (3)(A)(ii), the term ''excess shelter allowance'' means, for a community spouse, the amount by which the sum of—

(A) the spouse's expenses for rent or mortgage payment (including principal and inter-

est), taxes and insurance and, in the case of a condominium or cooperative, required maintenance charge, for the community spouse's principal residence, and

(B) the standard utility allowance (used by the State under section 2014(e) of title 7) or, if the State does not use such an allowance, the spouse's actual utility expenses,

exceeds 30 percent of the amount described in paragraph (3)(A)(i), except that, in the case of a condominium or cooperative, for which a maintenance charge is included under subparagraph (A), any allowance under subparagraph (B) shall be reduced to the extent the maintenance charge includes utility expenses.

(5) Court ordered support

If a court has entered an order against an institutionalized spouse for monthly income for the support of the community spouse, the community spouse monthly income allowance for the spouse shall be not less than the amount of the monthly income so ordered.

(e) Notice and fair hearing

(1) Notice

Upon—

(A) a determination of eligibility for medical assistance of an institutionalized spouse, or

(B) a request by either the institutionalized spouse, or the community spouse, or a representative acting on behalf of either spouse,

each State shall notify both spouses (in the case described in subparagraph (A)) or the spouse making the request (in the case described in subparagraph (B)) of the amount of the community spouse monthly income allowance (described in subsection (d)(1)(B) of this section), of the amount of any family allowances (described in subsection (d)(1)(C) of this section), of the method for computing the amount of the community spouse resources allowance permitted under subsection (f) of this section, and of the spouse's right to a fair hearing under this subsection respecting ownership or availability of income or resources, and the determination of the community spouse monthly income or resource allowance.

(2) Fair hearing

(A) In general

If either the institutionalized spouse or the community spouse is dissatisfied with a determination of—

(i) the community spouse monthly income allowance;

(ii) the amount of monthly income otherwise available to the community spouse (as applied under subsection (d)(2)(B) of this section);

(iii) the computation of the spousal share of resources under subsection (c)(1) of this section;

(iv) the attribution of resources under subsection (c)(2) of this section; or

(v) the determination of the community spouse resource allowance (as defined in subsection (f)(2) of this section);

such spouse is entitled to a fair hearing described in section 1396a(a)(3) of this title with respect to such determination if an application for benefits under this subchapter has been made on behalf of the institutionalized spouse. Any such hearing respecting the determination of the community spouse resource allowance shall be held within 30 days of the date of the request for the hearing.

(B) Revision of minimum monthly maintenance needs allowance

If either such spouse establishes that the community spouse needs income, above the level otherwise provided by the minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, there shall be substituted, for the minimum monthly maintenance needs allowance in subsection (d)(2)(A) of this section, an amount adequate to provide such additional income as is necessary.

(C) Revision of community spouse resource allowance

If either such spouse establishes that the community spouse resource allowance (in relation to the amount of income generated by such an allowance) is inadequate to raise the community spouse's income to the minimum monthly maintenance needs allowance, there shall be substituted, for the community spouse resource allowance under subsection (f)(2) of this section, an amount adequate to provide such a minimum monthly maintenance needs allowance.

(f) Permitting transfer of resources to community spouse

(1) In general

An institutionalized spouse may, without regard to section 1396p(c)(1) of this title, transfer an amount equal to the community spouse resource allowance (as defined in paragraph (2)), but only to the extent the resources of the institutionalized spouse are transferred to (or for the sole benefit of) the community spouse. The transfer under the preceding sentence shall be made as soon as practicable after the date of the initial determination of eligibility, taking into account such time as may be necessary to obtain a court order under paragraph (3).

(2) Community spouse resource allowance defined

In paragraph (1), the ''community spouse resource allowance'' for a community spouse is an amount (if any) by which—

(A) the greatest of—

(i) $12,000 (subject to adjustment under subsection (g) of this section), or, if greater (but not to exceed the amount specified in clause (ii)(II)) an amount specified under the State plan,

(ii) the lesser of (I) the spousal share computed under subsection (c)(1) of this section, or (II) $60,000 (subject to adjustment under subsection (g) of this section),

(iii) the amount established under subsection (e)(2) of this section; or

(iv) the amount transferred under a court order under paragraph (3);

exceeds

(B) the amount of the resources otherwise available to the community spouse (determined without regard to such an allowance).

(3) Transfers under court orders

If a court has entered an order against an institutionalized spouse for the support of the community spouse, section 1396p of this title shall not apply to amounts of resources transferred pursuant to such order for the support of the spouse or a family member (as defined in subsection (d)(1) of this section).

(g) Indexing dollar amounts

For services furnished during a calendar year after 1989, the dollar amounts specified in subsections (d)(3)(C), (f)(2)(A)(i), and (f)(2)(A)(ii)(II) of this section shall be increased by the same percentage as the percentage increase in the consumer price index for all urban consumers (all items; U.S. city average) between September 1988 and the September before the calendar year involved.

(h) Definitions

In this section:

(1) The term ''institutionalized spouse'' means an individual who—

(A) is in a medical institution or nursing facility or who (at the option of the State) is described in section 1396a(a)(10)(A)(ii)(VI) of this title, and

(B) is married to a spouse who is not in a medical institution or nursing facility;

but does not include any such individual who is not likely to meet the requirements of subparagraph (A) for at least 30 consecutive days.

(2) The term ''community spouse'' means the spouse of an institutionalized spouse.

(Aug. 14, 1935, ch. 531, title XIX, §1924, as added July 1, 1988, Pub. L. 100–360, title III, §303(a)(1)(B), 102 Stat. 754; amended Oct. 13, 1988, Pub. L. 100–485, title VI, §608(d)(16)(A), 102 Stat. 2417; Dec. 19, 1989, Pub. L. 101–239, title VI, §6411(e)(3), 103 Stat. 2271; Nov. 5, 1990, Pub. L. 101–508, title IV, §§4714(a)–(c), 4744(b)(1), 104 Stat. 1388–192, 1388–198; Aug. 10, 1993, Pub. L. 103–66, title XIII, §§13611(d)(2), 13643(c)(1), 107 Stat. 627, 647; May 18, 1994, Pub. L. 103–252, title I, §125(b), 108 Stat. 650.)

REFERENCES IN TEXT

Section 9412(b) of the Omnibus Budget Reconciliation Act of 1986, referred to in subsec. (a)(5), is section 9412(b) of Pub. L. 99–509, title IX, Oct. 21, 1986, 100 Stat. 2062, which is not classified to the Code.

Section 603(c) of the Social Security Amendments of 1983, referred to in subsec. (a)(5), is section 603(c) of Pub. L. 98–21, title VI, Apr. 20, 1983, 97 Stat. 168, which is not classified to the Code.

PRIOR PROVISIONS

A prior section 1924 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

1994—Subsec. (d)(3)(A)(i). Pub. L. 103–252 substituted ''section 9902(2)'' for ''sections 9847 and 9902(2)''.

1993—Subsec. (a)(5). Pub. L. 103–66, §13643(c)(1), substituted ''1986 or a waiver under section 603(c) of the Social Security Amendments of 1983'' for ''1986''.

Subsec. (b)(2)(B)(i). Pub. L. 103–66, §13611(d)(2), substituted ''1396p(d) of this title'' for ''1396a(k) of this title''.

1990—Subsec. (a)(5). Pub. L. 101–508, §4744(b)(1), added par. (5).

Subsec. (b)(2). Pub. L. 101–508, §4714(a), substituted ''for purposes of the post-eligibility income determination described in subsection (d) of this section'' for '', after the institutionalized spouse has been determined or redetermined to be eligible for medical assistance''.

Subsec. (c)(1). Pub. L. 101–508, §4714(c), substituted ''the beginning of the first continuous period of institutionalization (beginning on or after September 30, 1989) of the institutionalized spouse'' for ''the beginning of a continuous period of institutionalization of the institutionalized spouse'' in subpars. (A) and (B).

Subsec. (f)(1). Pub. L. 101–508, §4714(b), substituted ''section 1396p(c)(1)'' for ''section 1396p''.

1989—Subsecs. (b)(2), (d)(1). Pub. L. 101–239 inserted ''or redetermined'' after ''determined''.

1988—Subsec. (c)(1)(B). Pub. L. 100–485, §608(d)(16)(A)(i), substituted ''will have a right to a fair hearing under subsection (e)(2) of this section'' for ''has right to a fair hearing under subsection (e)(2)(E) of this section with respect to the determination of the community spouse resource allowance, to provide for an allowance adequate to raise the spouse's income to the minimum monthly maintenance needs allowance''.

Subsec. (c)(2)(B). Pub. L. 100–485, §608(d)(16)(A)(ii), substituted ''resources shall be considered to be available to an institutionalized spouse, but only to the extent that the amount of such resources exceeds'' for ''resources shall not be considered to be available to an institutionalized spouse, to the extent that the amount of such resources does not exceed''.

Subsec. (d)(3)(A)(i). Pub. L. 100–485, §608(d)(16)(A)(iii), struck out ''nonfarm'' before ''official poverty line''.

Subsec. (d)(4). Pub. L. 100–485, §608(d)(16)(A)(iv), substituted ''subparagraph (B)'' for ''subparagraph (C)'' in concluding provisions.

Subsec. (e)(2)(A). Pub. L. 100–485, §608(d)(16)(A)(v), inserted ''if an application for benefits under this subchapter has been made on behalf of the institutionalized spouse'' after ''with respect to such determination'' before period at end of first sentence.

Subsec. (f)(1). Pub. L. 100–485, §608(d)(16)(A)(vi), substituted ''transfer an amount'' for ''transfer to the community spouse (or to another for the sole benefit of the community spouse) an amount'' and ''as soon as practicable'' for ''as soon as practicable''.

Subsec. (f)(3). Pub. L. 100–485, §608(d)(16)(A)(vii), substituted ''spouse or a family member'' for ''spouse of a family member''.

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103–252 effective May 18, 1994, but not applicable to Head Start agencies and other recipients of financial assistance under the Head Start Act (42 U.S.C. 9831 et seq.) until Oct. 1, 1994, see section 127 of Pub. L. 103–252, set out as a note under section 9832 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 13611(d)(2) of Pub. L. 103–66 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after Oct. 1, 1993, without regard to whether or not final regulations to carry out the amendments by section 13611 of Pub. L. 103–66 have been promulgated by such date, see section 13611(e) of Pub. L. 103–66, set out as a note under section 1396p of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 4714(d) of Pub. L. 101–508 provided that: ''The amendments made [by] this section [amending this sec-

tion] shall take effect as if included in the enactment of section 303 of the Medicare Catastrophic Coverage Act of 1988 [Pub. L. 100–360].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 applicable as if included in the enactment of section 303 of Pub. L. 100–360, see section 6411(e)(4)(B) of Pub. L. 101–239, set out as a note under section 1396a of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

EFFECTIVE DATE

Section 303(g) of Pub. L. 100–360, as amended by Pub. L. 100–485, title VI, § 608(d)(16)(D), Oct. 13, 1988, 102 Stat. 2418, provided that:

''(1)(A) The amendments made by this section [enacting this section and amending sections 1382, 1382b, 1396a, 1396p, 1396r, and 1396s of this title] apply (except as provided in this subsection) to payments under title XIX of the Social Security Act [this subchapter] for calendar quarters beginning on or after September 30, 1989, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) Section 1924 of the Social Security Act [this section] (as inserted by subsection (a)) shall only apply to institutionalized individuals who begin continuous periods of institutionalization on or after September 30, 1989, except that subsections (b) and (d) of such section (and so much of subsection (e) of such section as relates to such other subsections) shall apply as of such date to individuals institutionalized on or after such date.

''(2)(A) The amendment made by subsection (b) [amending section 1396p of this title] and section 1902(a)(51)(B) of the Social Security Act [section 1396a(a)(51)(B) of this title], apply (except as provided in paragraph (5)) to payments under title XIX of the Social Security Act for calendar quarters beginning on or after July 1, 1988, or the date of the enactment of this Act [July 1, 1988], without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(B) Section 1917(c) of the Social Security Act [section 1396p(c) of this title], as amended by subsection (b) of this section, shall apply to resources disposed of on or after July 1, 1988, except that such section shall not apply with respect to inter-spousal transfers occurring before October 1, 1989.

''(C) Notwithstanding subparagraphs (A) and (B), a State may continue to apply the policies contained in the State plan as of June 30, 1988, with respect to resources disposed of before July 1, 1988, and the laws and policies established by the State as of June 30, 1988, or provided for before July 1, 1988, shall continue to apply through September 30, 1989, (and may, at a State's option continue after such date) to inter-spousal transfers occurring before October 1, 1989.

''(3) The amendments made by subsection (c) [amending sections 1382 and 1382b of this title] shall apply to transfers occurring on or after July 1, 1988, without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(4) The amendment made by subsection (d) [amending section 1396a of this title] is effective on and after April 8, 1988. The final rule of the Health Care Financing Administration published on February 8, 1988 (53 Federal Register 3586) is superseded to the extent inconsistent with the amendment made by subsection (d).

''(5) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation (other than legislation appropriating funds) in order for the plan to meet the additional requirements imposed by the amendments made by this section (other than paragraphs (1) and (5) of subsection (e) [amending section 1396a of this title]), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

''(6) The amendments made by paragraphs (1) and (5) of subsection (e) [amending section 1396a of this title] shall apply to medical assistance furnished on or after October 1, 1982.''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 1396p, 1396r of this title.

§ 1396r–6. Extension of eligibility for medical assistance

(a) Initial 6-month extension

(1) Requirement

Notwithstanding any other provision of this subchapter, each State plan approved under this subchapter must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of subchapter IV of this chapter in at least 3 of the 6 months immediately preceding the month in which such family becomes ineligible for such aid, because of hours of, or income from, employment of the caretaker relative (as defined in subsection (e) of this section) or because of section 602(a)(8)(B)(ii)(II) of this title (providing for a time-limited earned income disregard), shall, subject to paragraph (3) and without any reapplication for benefits under the plan, remain eligible for assistance under the plan approved under this subchapter during the immediately succeeding 6-month period in accordance with this subsection.

(2) Notice of benefits

Each State, in the notice of termination of aid under part A of subchapter IV of this chapter sent to a family meeting the requirements of paragraph (1)—

(A) shall notify the family of its right to extended medical assistance under this subsection and include in the notice a description of the reporting requirement of subsection (b)(2)(B)(i) of this section and of the circumstances (described in paragraph (3)) under which such extension may be terminated; and

(B) shall include a card or other evidence of the family's entitlement to assistance under this subchapter for the period provided in this subsection.

(3) Termination of extension

(A) No dependent child

Subject to subparagraphs (B) and (C), extension of assistance during the 6-month period described in paragraph (1) to a family shall terminate (during such period) at the close of the first month in which the family ceases to include a child, whether or not the

child is (or would if needy be) a dependent child under part A of subchapter IV of this chapter.

(B) Notice before termination

No termination of assistance shall become effective under subparagraph (A) until the State has provided the family with notice of the grounds for the termination.

(C) Continuation in certain cases until redetermination

With respect to a child who would cease to receive medical assistance because of subparagraph (A) but who may be eligible for assistance under the State plan because the child is described in clause (i) of section 1396d(a) of this title or clause (i)(IV), (i)(VI)(i)(VII),,[1] or (ii)(IX) of section 1396a(a)(10)(A) of this title, the State may not discontinue such assistance under such subparagraph until the State has determined that the child is not eligible for assistance under the plan.

(4) Scope of coverage

(A) In general

Subject to subparagraph (B), during the 6-month extension period under this subsection, the amount, duration, and scope of medical assistance made available with respect to a family shall be the same as if the family were still receiving aid under the plan approved under part A of subchapter IV of this chapter.

(B) State medicaid "wrap-around" option

A State, at its option, may pay a family's expenses for premiums, deductibles, coinsurance, and similar costs for health insurance or other health coverage offered by an employer of the caretaker relative or by an employer of the absent parent of a dependent child. In the case of such coverage offered by an employer of the caretaker relative—

(i) the State may require the caretaker relative, as a condition of extension of coverage under this subsection for the caretaker and the caretaker's family, to make application for such employer coverage, but only if—

(I) the caretaker relative is not required to make financial contributions for such coverage (whether through payroll deduction, payment of deductibles, coinsurance, or similar costs, or otherwise), and

(II) the State provides, directly or otherwise, for payment of any of the premium amount, deductible, coinsurance, or similar expense that the employee is otherwise required to pay; and

(ii) the State shall treat the coverage under such an employer plan as a third party liability (under section 1396a(a)(25) of this title).

Payments for premiums, deductibles, coinsurance, and similar expenses under this subparagraph shall be considered, for purposes of section 1396b(a) of this title, to be payments for medical assistance.

(b) Additional 6-month extension

(1) Requirement

Notwithstanding any other provision of this subchapter, each State plan approved under this subchapter shall provide that the State shall offer to each family, which has received assistance during the entire 6-month period under subsection (a) of this section and which meets the requirement of paragraph (2)(B)(i), in the last month of the period the option of extending coverage under this subsection for the succeeding 6-month period, subject to paragraph (3).

(2) Notice and reporting requirements

(A) Notices

(i) Notice during initial extension period of option and requirements

Each State, during the 3rd and 6th month of any extended assistance furnished to a family under subsection (a) of this section, shall notify the family of the family's option for additional extended assistance under this subsection. Each such notice shall include (I) in the 3rd month notice, a statement of the reporting requirement under subparagraph (B)(i), and, in the 6th month notice, a statement of the reporting requirement under subparagraph (B)(ii), (II) a statement as to whether any premiums are required for such additional extended assistance, and (III) a description of other out-of-pocket expenses, benefits, reporting and payment procedures, and any pre-existing condition limitations, waiting periods, or other coverage limitations imposed under any alternative coverage options offered under paragraph (4)(D). The 6th month notice under this subparagraph shall describe the amount of any premium required of a particular family for each of the first 3 months of additional extended assistance under this subsection.

(ii) Notice during additional extension period of reporting requirements and premiums

Each State, during the 3rd month of any additional extended assistance furnished to a family under this subsection, shall notify the family of the reporting requirement under subparagraph (B)(ii) and a statement of the amount of any premium required for such extended assistance for the succeeding 3 months.

(B) Reporting requirements

(i) During initial extension period

Each State shall require (as a condition for additional extended assistance under this subsection) that a family receiving extended assistance under subsection (a) of this section report to the State, not later than the 21st day of the 4th month in the period of extended assistance under subsection (a) of this section, on the family's gross monthly earnings and on the fami-

[1] So in original. Probably should be ''(i)(VI), (i)(VII),''.

ly's costs for such child care as is necessary for the employment of the caretaker relative in each of the first 3 months of that period. A State may permit such additional extended assistance under this subsection notwithstanding a failure to report under this clause if the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis.

(ii) During additional extension period

Each State shall require that a family receiving extended assistance under this subsection report to the State, not later than the 21st day of the 1st month and of the 4th month in the period of additional extended assistance under this subsection, on the family's gross monthly earnings and on the family's costs for such child care as is necessary for the employment of the caretaker relative in each of the 3 preceding months.

(iii) Clarification on frequency of reporting

A State may not require that a family receiving extended assistance under this subsection or subsection (a) of this section report more frequently than as required under clause (i) or (ii).

(3) Termination of extension

(A) In general

Subject to subparagraphs (B) and (C), extension of assistance during the 6-month period described in paragraph (1) to a family shall terminate (during the period) as follows:

(i) No dependent child

The extension shall terminate at the close of the first month in which the family ceases to include a child, whether or not the child is (or would if needy be) a dependent child under part A of subchapter IV of this chapter.

(ii) Failure to pay any premium

If the family fails to pay any premium for a month under paragraph (5) by the 21st day of the following month, the extension shall terminate at the close of that following month, unless the family has established, to the satisfaction of the State, good cause for the failure to pay such premium on a timely basis.

(iii) Quarterly income reporting and test

The extension under this subsection shall terminate at the close of the 1st or 4th month of the 6-month period if—

(I) the family fails to report to the State, by the 21st day of such month, the information required under paragraph (2)(B)(ii), unless the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis;

(II) the caretaker relative had no earnings in one or more of the previous 3 months, unless such lack of any earnings was due to an involuntary loss of employment, illness, or other good cause, established to the satisfaction of the State; or

(III) the State determines that the family's average gross monthly earnings (less such costs for such child care as is necessary for the employment of the caretaker relative) during the immediately preceding 3-month period exceed 185 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

Information described in clause (iii)(I) shall be subject to the restrictions on use and disclosure of information provided under section 602(a)(9) of this title. Instead of terminating a family's extension under clause (iii)(I), a State, at its option, may provide for suspension of the extension until the month after the month in which the family reports information required under paragraph (2)(B)(ii), but only if the family's extension has not otherwise been terminated under subclause (II) or (III) of clause (iii). The State shall make determinations under clause (iii)(III) for a family each time a report under paragraph (2)(B)(ii) for the family is received.

(B) Notice before termination

No termination of assistance shall become effective under subparagraph (A) until the State has provided the family with notice of the grounds for the termination, which notice shall include (in the case of termination under subparagraph (A)(iii)(II), relating to no continued earnings) a description of how the family may reestablish eligibility for medical assistance under the State plan. No such termination shall be effective earlier than 10 days after the date of mailing of such notice.

(C) Continuation in certain cases until redetermination

(i) Dependent children

With respect to a child who would cease to receive medical assistance because of subparagraph (A)(i) but who may be eligible for assistance under the State plan because the child is described in clause (i) of section 1396d(a) of this title or clause (i)(IV), (i)(VI)(i)(VII),,[2] or (ii)(IX) of section 1396a(a)(10)(A) of this title, the State may not discontinue such assistance under such subparagraph until the State has determined that the child is not eligible for assistance under the plan.

(ii) Medically needy

With respect to an individual who would cease to receive medical assistance because of clause (ii) or (iii) of subparagraph (A) but who may be eligible for assistance under the State plan because the individual is within a category of person for which medical assistance under the State

[2] So in original. Probably should be ''(i)(VI), (i)(VII),''.

plan is available under section 1396a(a)(10)(C) of this title (relating to medically needy individuals), the State may not discontinue such assistance under such subparagraph until the State has determined that the individual is not eligible for assistance under the plan.

(4) Coverage

(A) In general

During the extension period under this subsection—

(i) the State plan shall offer to each family medical assistance which (subject to subparagraphs (B) and (C)) is the same amount, duration, and scope as would be made available to the family if it were still receiving aid under the plan approved under part A of subchapter IV of this chapter; and

(ii) the State plan may offer alternative coverage described in subparagraph (D).

(B) Elimination of most non-acute care benefits

At a State's option and notwithstanding any other provision of this subchapter, a State may choose not to provide medical assistance under this subsection with respect to any (or all) of the items and services described in paragraphs (4)(A), (6), (7), (8), (11), (13), (14), (15), (16), (18), (20), and (21)[3] of section 1396d(a) of this title.

(C) State medicaid "wrap-around" option

At a State's option, the State may elect to apply the option described in subsection (a)(4)(B) of this section (relating to ''wrap-around'' coverage) for families electing medical assistance under this subsection in the same manner as such option applies to families provided extended eligibility for medical assistance under subsection (a) of this section.

(D) Alternative assistance

At a State's option, the State may offer families a choice of health care coverage under one or more of the following, instead of the medical assistance otherwise made available under this subsection:

(i) Enrollment in family option of employer plan

Enrollment of the caretaker relative and dependent children in a family option of the group health plan offered to the caretaker relative.

(ii) Enrollment in family option of State employee plan

Enrollment of the caretaker relative and dependent children in a family option within the options of the group health plan or plans offered by the State to State employees.

(iii) Enrollment in State uninsured plan

Enrollment of the caretaker relative and dependent children in a basic State health plan offered by the State to individuals in the State (or areas of the State) otherwise unable to obtain health insurance coverage.

(iv) Enrollment in HMO

Enrollment of the caretaker relative and dependent children in a health maintenance organization (as defined in section 1396b(m)(1)(A) of this title) less than 50 percent of the membership (enrolled on a prepaid basis) of which consists of individuals who are eligible to receive benefits under this subchapter (other than because of the option offered under this clause). The option of enrollment under this clause is in addition to, and not in lieu of, any enrollment option that the State might offer under subparagraph (A)(i) with respect to receiving services through a health maintenance organization in accordance with section 1396b(m) of this title.

If a State elects to offer an option to enroll a family under this subparagraph, the State shall pay any premiums and other costs for such enrollment imposed on the family and may pay deductibles and coinsurance imposed on the family. A State's payment of premiums for the enrollment of families under this subparagraph (not including any premiums otherwise payable by an employer and less the amount of premiums collected from such families under paragraph (5)) and payment of any deductibles and coinsurance shall be considered, for purposes of section 1396b(a)(1) of this title, to be payments for medical assistance.

(E) Prohibition on cost-sharing for maternity and preventive pediatric care

(i) In general

If a State offers any alternative option under subparagraph (D) for families, under each such option the State must assure that care described in clause (ii) is available without charge to the families through—

(I) payment of any deductibles, coinsurance, and other cost-sharing respecting such care, or

(II) providing coverage under the State plan for such care without any cost-sharing,

or any combination of such mechanisms.

(ii) Care described

The care described in this clause consists of—

(I) services related to pregnancy (including prenatal, delivery, and post partum services), and

(II) ambulatory preventive pediatric care (including ambulatory early and periodic screening, diagnosis, and treatment services under section 1396d(a)(4)(B) of this title) for each child who meets the age and date of birth requirements to be a qualified child under section 1396d(n)(2) of this title.

(5) Premium

(A) Permitted

Notwithstanding any other provision of this subchapter (including section 1396*o* of

[3] See References in Text note below.

this title), a State may impose a premium for a family for additional extended coverage under this subsection for a premium payment period (as defined in subparagraph (D)(i)), but only if the family's average gross monthly earnings (less the average monthly costs for such child care as is necessary for the employment of the caretaker relative) for the premium base period exceed 100 percent of the official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 9902(2) of this title) applicable to a family of the size involved.

(B) Level may vary by option offered

The level of such premium may vary, for the same family, for each option offered by a State under paragraph (4)(D).

(C) Limit on premium

In no case may the amount of any premium under this paragraph for a family for a month in either of the premium payment periods described in subparagraph (D)(i) exceed 3 percent of the family's average gross monthly earnings (less the average monthly costs for such child care as is necessary for the employment of the caretaker relative) during the premium base period (as defined in subparagraph (D)(ii)).

(D) Definitions

In this paragraph:

(i) A ''premium payment period'' described in this clause is a 3-month period beginning with the 1st or 4th month of the 6-month additional extension period provided under this subsection.

(ii) The term ''premium base period'' means, with respect to a particular premium payment period, the period of 3 consecutive months the last of which is 4 months before the beginning of that premium payment period.

(c) Applicability in States and territories

(1) States operating under demonstration projects

In the case of any State which is providing medical assistance to its residents under a waiver granted under section 1315(a) of this title, the Secretary shall require the State to meet the requirements of this section in the same manner as the State would be required to meet such requirement if the State had in effect a plan approved under this subchapter.

(2) Inapplicability in commonwealths and territories

The provisions of this section shall only apply to the 50 States and the District of Columbia.

(d) General disqualification for fraud

(1) Ineligibility for aid

This section shall not apply to an individual who is a member of a family which has received aid under part A of subchapter IV of this chapter if the State makes a finding that, at any time during the last 6 months in which the family was receiving such aid before otherwise being provided extended eligibility under this section, the individual was ineligible for such aid because of fraud.

(2) General disqualifications

For additional provisions relating to fraud and program abuse, see sections 1320a–7, 1320a–7a, and 1320a–7b of this title.

(e) "Caretaker relative" defined

In this section, the term ''caretaker relative'' has the meaning of such term as used in part A of subchapter IV of this chapter.

(f) Sunset

This section shall not apply with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter after September 30, 1998.

(Aug. 14, 1935, ch. 531, title XIX, § 1925, as added Oct. 13, 1988, Pub. L. 100–485, title III, § 303(a)(1), 102 Stat. 2385; amended Nov. 10, 1988, Pub. L. 100–647, title VIII, § 8436(a), 102 Stat. 3805; Dec. 19, 1989, Pub. L. 101–239, title VI, § 6411(i)(1), (3), 103 Stat. 2273; Nov. 5, 1990, Pub. L. 101–508, title IV, §§ 4601(a)(3)(B), 4716(a), 104 Stat. 1388–167, 1388–192.)

REFERENCES IN TEXT

Part A of subchapter IV of this chapter, referred to in text, is classified to section 601 et seq. of this title.

Paragraph (21) of section 1396d(a) of this title, referred to in subsec. (b)(4)(B), was redesignated paragraph (22) by Pub. L. 101–239, title VI, § 6405(a)(2), Dec. 19, 1989, 103 Stat. 2265.

PRIOR PROVISIONS

A prior section 1925 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

1990—Subsec. (a)(3)(C). Pub. L. 101–508, § 4601(a)(3)(B), inserted ''(i)(VII),'' after ''(i)(VI)''.

Subsec. (b)(2)(B)(i). Pub. L. 101–508, § 4716(a)(1), which directed amendment of subsection (f) of this section in subsection (b)(2)(B)(i) by inserting at the end ''A State may permit such additional extended assistance under this subsection notwithstanding a failure to report under this clause if the family has established, to the satisfaction of the State, good cause for the failure to report on a timely basis.'', was executed by making the insertion at the end of subsec. (b)(2)(B)(i) to reflect the probable intent of Congress.

Subsec. (b)(2)(B)(iii). Pub. L. 101–508, § 4716(a)(2), which directed amendment of subsection (f) of this section in subsection (b)(2)(B) by adding cl. (iii) at the end, was executed by adding cl. (iii) at the end of subsec. (b)(2)(B) to reflect the probable intent of Congress.

Subsec. (b)(3)(B). Pub. L. 101–508, § 4716(a)(3), which directed amendment of subsection (f) of this section in subsection (b)(3)(B) by inserting at the end ''No such termination shall be effective earlier than 10 days after the date of mailing of such notice.'', was executed by making the insertion at the end of subsec. (b)(3)(B) to reflect the probable intent of Congress.

Subsec. (b)(3)(C)(i). Pub. L. 101–508, § 4601(a)(3)(B), inserted ''(i)(VII),'' after ''(i)(VI)''.

1989—Subsec. (a)(3)(A). Pub. L. 101–239, § 6411(i)(1), substituted ''a child, whether or not the child is'' for ''a child who is''.

Subsec. (a)(3)(C). Pub. L. 101–239, § 6411(i)(3), substituted ''of section 1396d(a) of this title or clause (i)(IV), (i)(VI), or (ii)(IX) of section 1396a(a)(10)(A) of this title'' for ''or (v) of section 1396d(a) of this title''.

Subsec. (b)(3)(A)(i). Pub. L. 101–239, § 6411(i)(1), substituted ''a child, whether or not the child is'' for ''a child who is''.

Subsec. (b)(3)(C)(i). Pub. L. 101–239, § 6411(i)(3), substituted ''of section 1396d(a) of this title or clause (i)(IV), (i)(VI), or (ii)(IX) of section 1396a(a)(10)(A) of this title'' for ''or (v) of section 1396d(a) of this title''.

1988—Subsec. (b)(5)(C). Pub. L. 100–647, which directed the amendment of subsec. (d)(5)(C) by inserting ''(less the average monthly costs for such child care as is necessary for the employment of the caretaker relative)'' after ''gross monthly earnings'', was executed to subsec. (b)(5)(C) to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 4601(a)(3)(B) of Pub. L. 101–508 applicable, except as otherwise provided, to payments under this subchapter for calendar quarters beginning on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments by section 4601 of Pub. L. 101–508 have been promulgated by such date, see section 4601(b) of Pub. L. 101–508, set out as a note under section 1396a of this title.

Section 4716(b) of Pub. L. 101–508 provided that: ''The amendments made by subsection (a) [amending this section] shall be effective as if included in the enactment of the Family Support Act of 1988 [Pub. L. 100–485].''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 6411(i)(4) of Pub. L. 101–239 provided that: ''The amendments made by this subsection [amending this section and provisions set out as a note under section 602 of this title] shall be effective as if included in the enactment of the Family Support Act of 1988 [Pub. L. 100–485].''

EFFECTIVE DATE OF 1988 AMENDMENT

Section 8436(b) of Pub. L. 100–647 provided that: ''The amendment made by subsection (a) [amending this section] shall be effective as if included in the enactment of the Family Support Act of 1988 [Pub. L. 100–485].''

EFFECTIVE DATE

Section applicable to payments under this subchapter for calendar quarters beginning on or after Apr. 1, 1990 (or, in the case of the Commonwealth of Kentucky, Oct. 1, 1990) (without regard to whether implementing regulations are promulgated by that date), with respect to families that cease to be eligible for aid under part A of subchapter IV of this chapter on or after that date, see section 303(f)(1) of Pub. L. 100–485, set out as an Effective and Termination Dates of 1988 Amendment note under section 602 of this title.

STUDY AND REPORT TO CONGRESS ON IMPACT OF MEDICAID EXTENSION PROVISIONS

Section 303(c) of Pub. L. 100–485 directed Secretary of Health and Human Services to conduct a study of impact of medicaid extension provisions under this section, with particular focus on costs of such provisions and impact on welfare dependency, and report to Congress on results of such study not later than Apr. 1, 1993.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 602, 1396a, 1396d of this title.

§ 1396r–7. Assuring adequate payment levels for obstetrical and pediatric services

(a) Amendments and revised amendments to State plans specifying payment rates for obstetrical and pediatric services; "obstetrical services and pediatric services" defined

(1) A State plan under this subchapter shall not be considered to meet the requirement of section 1396a(a)(30)(A) of this title with respect to obstetrical services (as defined in paragraph (4)(A)), as of July 1 of each year (beginning with 1990), unless, by not later than April 1 of such year, the State submits to the Secretary an amendment to the plan that specifies the payment rates to be used for such services under the plan in the succeeding period and includes in such submission such additional data as will assist the Secretary in evaluating the State's compliance with such requirement, including data relating to how rates established for payments to health maintenance organizations under section 1396b(m) of this title take into account such payment rates.

(2) A State plan under this subchapter shall not be considered to meet the requirement of section 1396a(a)(30)(A) of this title with respect to pediatric services (as defined in paragraph (4)(B)), as of July 1 of each year (beginning with 1990), unless, by not later than April 1 of such year, the State submits to the Secretary an amendment to the plan that specifies, by pediatric procedure, the payment rates to be used for such services under the plan in the succeeding period and includes in such submission such additional data as will assist the Secretary in evaluating the State's compliance with such requirement, including data relating to how rates established for payments to health maintenance organizations under section 1396b(m) of this title take into account such payment rates.

(3) The Secretary, by not later than 90 days after the date of submission of a plan amendment under paragraph (1) or (2), shall—

(A) review each such amendment for compliance with the requirement of section 1396a(a)(30)(A) of this title, and

(B) approve or disapprove each such amendment.

If the Secretary disapproves such an amendment, the State shall immediately submit a revised amendment which meets such requirement.

(4) In this section:

(A) The term ''obstetrical services'' means services relating to pregnancy covered under the State plan provided by an obstetrician, obstetrician-gynecologist, family practitioner, certified nurse midwife, or certified family nurse practitioner and does not include inpatient or outpatient hospital services or other institutional services.

(B) The term ''pediatric services'' means services covered under the State plan provided by a pediatrician, family practitioner, or certified pediatric nurse practitioner to children under 18 years of age and does not include inpatient or outpatient hospital services or other institutional services.

(b) Data respecting statewide average payment rates for obstetrical services furnished by various classes of providers

For amendments submitted under subsection (a)(1) of this section in 1992 and thereafter, the data submitted under such subsection must include, for the second previous year, at least the statewide average payment rates under the State plan for obstetrical services furnished by obstetricians, obstetrician-gynecologists, family practitioners, certified family nurse practitioners, and certified nurse midwives, by procedure.

Such information shall be provided separately for providers located in each metropolitan statistical area (or similar area) in the State and in the remainder of the State.

(c) Data respecting statewide average payment rates for pediatric services furnished by various classes of providers

For amendments submitted under subsection (a)(2) of this section in 1992 and thereafter, the data submitted under such subsection must include, for the second previous year, at least the statewide average payment rates under the State plan for pediatric services furnished by pediatricians, family practitioners, and certified pediatric nurse practitioners[1] by procedure. Such information shall be provided separately for providers located in each metropolitan statistical area (or similar area) in the State and in the remainder of the State.

(d) Higher payment levels in rural areas than in metropolitan statistical areas

Nothing in this subchapter (including section 1396a(a)(30)(A) of this title) shall be construed as preventing a State from establishing payment levels for obstetrical or pediatric services that are higher for those services furnished in rural areas than those furnished in metropolitan statistical areas.

(Aug. 14, 1935, ch. 531, title XIX, § 1926, as added Dec. 19, 1989, Pub. L. 101–239, title VI, § 6402(b), 103 Stat. 2260.)

PRIOR PROVISIONS

A prior section 1926 of act Aug. 14, 1935, was renumbered section 1928, and is classified to section 1396s of this title.

DEMONSTRATION PROJECTS TO STUDY EFFECT OF ALLOWING STATES TO EXTEND MEDICAID TO PREGNANT WOMEN AND CHILDREN NOT OTHERWISE QUALIFIED TO RECEIVE MEDICAID BENEFITS

Section 6407 of Pub. L. 101–239, as amended by Pub. L. 103–66, title XIII, § 13643(b), Aug. 10, 1993, 107 Stat. 647, provided that:

''(a) IN GENERAL.—In order to allow States to develop and carry out innovative programs to extend health insurance coverage to pregnant women and children under age 20 who lack insurance and to encourage workers to obtain health insurance for themselves and their children, the Secretary of Health and Human Services (in this section referred to as the 'Secretary') shall enter into agreements with several States submitting applications in accordance with subsection (b) for the purpose of conducting demonstration projects to study the effect on access to health care, private insurance coverage, and costs of health care when such States are allowed to extend benefits under title XIX of the Social Security Act [this subchapter], either directly, in the same manner, or otherwise as alternative assistance authorized in section 1925(b)(4)(D) of such Act [section 1396r–6(b)(4)(D) of this title], to pregnant women and children under 20 years of age who are not otherwise qualified to receive benefits under such section.

''(b) PROJECT REQUIREMENTS.—(1) Each State applying to participate in the demonstration project under subsection (a) shall assure the Secretary that eligibility shall be limited to pregnant women and children who have not attained 20 years of age who are in families with income below 185 percent of the income official poverty line (referred to in subsection (c)(1)).

''(2) The Secretary shall further provide in conducting demonstration projects under this section that, if one or more of such demonstration projects utilizes employer coverage as allowed under section 1925(b)(4)(D) of the Social Security Act [section 1396r–6(b)(4)(D) of this title], such project shall require an employer contribution.

''(c) PREMIUMS.—In the case of pregnant women and children eligible to participate in such demonstration projects whose family income level is—

''(1) below 100 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [section 9902(2) of this title]) applicable to a family of the size involved, there shall be no premium charged; and

''(2) between 100 and 185 percent of such income official poverty line, there shall be a premium equal to—

''(A) an amount based on a sliding scale relating to income, or

''(B) 3 percent of the family's average gross monthly earnings,

whichever is less.

''(d) DURATION.—Each demonstration project under this section shall be conducted for a period not to exceed 3 years.

''(e) WAIVER.—The Secretary where he deems appropriate may waive the statewideness requirement described in section 1902(a)(1) of the Social Security Act [section 1396a(a)(1) of this title].

''(f) LIMIT ON EXPENDITURES.—The Secretary in conducting the demonstration projects described in this section shall limit the amount of the Federal share of benefits paid and expenses incurred under title XIX of the Social Security Act [this subchapter] to $30,000,000.

''(g) EVALUATION AND REPORT.—(1) For each demonstration project conducted under this section, the Secretary shall assure that an evaluation is conducted on the effect of the project with respect to—

''(A) access to health care;

''(B) private health care insurance coverage;

''(C) costs with respect to health care; and

''(D) developing feasible premium and cost-sharing policies.

''(2) The Secretary shall submit to Congress an interim report containing a summary of the evaluations conducted under paragraph (1) not later than January 1, 1992, and a final report containing such summary together with such further recommendations as the Secretary may determine appropriate not later than one year after the termination of the demonstration projects.''

[Section 13643(b) of Pub. L. 103–66 provided in part that the amendment made by that section to section 6407 of Pub. L. 101–239, set out above, is effective as if included in enactment of Pub. L. 101–239.]

§ 1396r–8. Payment for covered outpatient drugs

(a) Requirement for rebate agreement

(1) In general

In order for payment to be available under section 1396b(a) of this title for covered outpatient drugs of a manufacturer, the manufacturer must have entered into and have in effect a rebate agreement described in subsection (b) of this section with the Secretary, on behalf of States (except that, the Secretary may authorize a State to enter directly into agreements with a manufacturer), and must meet the requirements of paragraph (5) (with respect to drugs purchased by a covered entity on or after the first day of the first month that begins after November 4, 1992) and paragraph (6). Any agreement between a State and a manufacturer prior to April 1, 1991, shall be

[1] So in original. Probably should be followed by a comma.

deemed to have been entered into on January 1, 1991, and payment to such manufacturer shall be retroactively calculated as if the agreement between the manufacturer and the State had been entered into on January 1, 1991. If a manufacturer has not entered into such an agreement before March 1, 1991, such an agreement, subsequently entered into, shall not be effective until the first day of the calendar quarter that begins more than 60 days after the date the agreement is entered into.

(2) Effective date

Paragraph (1) shall first apply to drugs dispensed under this subchapter on or after January 1, 1991.

(3) Authorizing payment for drugs not covered under rebate agreements

Paragraph (1), and section 1396b(i)(10)(A) of this title, shall not apply to the dispensing of a single source drug or innovator multiple source drug if (A)(i) the State has made a determination that the availability of the drug is essential to the health of beneficiaries under the State plan for medical assistance; (ii) such drug has been given a rating of 1–A by the Food and Drug Administration; and (iii)(I) the physician has obtained approval for use of the drug in advance of its dispensing in accordance with a prior authorization program described in subsection (d) of this section, or (II) the Secretary has reviewed and approved the State's determination under subparagraph (A); or (B) the Secretary determines that in the first calendar quarter of 1991, there were extenuating circumstances.

(4) Effect on existing agreements

In the case of a rebate agreement in effect between a State and a manufacturer on November 5, 1990, such agreement, for the initial agreement period specified therein, shall be considered to be a rebate agreement in compliance with this section with respect to that State, if the State agrees to report to the Secretary any rebates paid pursuant to the agreement and such agreement provides for a minimum aggregate rebate of 10 percent of the State's total expenditures under the State plan for coverage of the manufacturer's drugs under this subchapter. If, after the initial agreement period, the State establishes to the satisfaction of the Secretary that an agreement in effect on November 5, 1990, provides for rebates that are at least as large as the rebates otherwise required under this section, and the State agrees to report any rebates under the agreement to the Secretary, the agreement shall be considered to be a rebate agreement in compliance with the section for the renewal periods of such agreement.

(5) Limitation on prices of drugs purchased by covered entities

(A) Agreement with Secretary

A manufacturer meets the requirements of this paragraph if the manufacturer has entered into an agreement with the Secretary that meets the requirements of section 256b of this title with respect to covered outpatient drugs purchased by a covered entity on or after the first day of the first month that begins after November 4, 1992.

(B) "Covered entity" defined

In this subsection, the term ''covered entity'' means an entity described in section 256b(a)(4) of this title.

(C) Establishment of alternative mechanism to ensure against duplicate discounts or rebates

If the Secretary does not establish a mechanism under section 256b(a)(5)(A) of this title within 12 months of November 4, 1992, the following requirements shall apply:

(i) Entities

Each covered entity shall inform the single State agency under section 1396a(a)(5) of this title when it is seeking reimbursement from the State plan for medical assistance described in section 1396d(a)(12) of this title with respect to a unit of any covered outpatient drug which is subject to an agreement under section 256b(a) of this title.

(ii) State agency

Each such single State agency shall provide a means by which a covered entity shall indicate on any drug reimbursement claims form (or format, where electronic claims management is used) that a unit of the drug that is the subject of the form is subject to an agreement under section 256b of this title, and not submit to any manufacturer a claim for a rebate payment under subsection (b) of this section with respect to such a drug.

(D) Effect of subsequent amendments

In determining whether an agreement under subparagraph (A) meets the requirements of section 256b of this title, the Secretary shall not take into account any amendments to such section that are enacted after November 4, 1992.

(E) Determination of compliance

A manufacturer is deemed to meet the requirements of this paragraph if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of section 256b of this title (as in effect immediately after November 4, 1992) and would have entered into an agreement under such section (as such section was in effect at such time), but for a legislative change in such section after November 4, 1992.

(6) Requirements relating to master agreements for drugs procured by Department of Veterans Affairs and certain other Federal agencies

(A) In general

A manufacturer meets the requirements of this paragraph if the manufacturer complies with the provisions of section 8126 of title 38, including the requirement of entering into a master agreement with the Secretary of Veterans Affairs under such section.

(B) Effect of subsequent amendments

In determining whether a master agreement described in subparagraph (A) meets

the requirements of section 8126 of title 38, the Secretary shall not take into account any amendments to such section that are enacted after November 4, 1992.

(C) Determination of compliance

A manufacturer is deemed to meet the requirements of this paragraph if the manufacturer establishes to the satisfaction of the Secretary that the manufacturer would comply (and has offered to comply) with the provisions of section 8126 of title 38, (as in effect immediately after November 4, 1992) and would have entered into an agreement under such section (as such section was in effect at such time), but for a legislative change in such section after November 4, 1992.

(b) Terms of rebate agreement

(1) Periodic rebates

(A) In general

A rebate agreement under this subsection shall require the manufacturer to provide, to each State plan approved under this subchapter, a rebate for a rebate period in an amount specified in subsection (c) of this section for covered outpatient drugs of the manufacturer dispensed after December 31, 1990, for which payment was made under the State plan for such period. Such rebate shall be paid by the manufacturer not later than 30 days after the date of receipt of the information described in paragraph (2) for the period involved.

(B) Offset against medical assistance

Amounts received by a State under this section (or under an agreement authorized by the Secretary under subsection (a)(1) of this section or an agreement described in subsection (a)(4) of this section) in any quarter shall be considered to be a reduction in the amount expended under the State plan in the quarter for medical assistance for purposes of section 1396b(a)(1) of this title.

(2) State provision of information

(A) State responsibility

Each State agency under this subchapter shall report to each manufacturer not later than 60 days after the end of each rebate period and in a form consistent with a standard reporting format established by the Secretary, information on the total number of units of each dosage form and strength and package size of each covered outpatient drug dispensed after December 31, 1990, for which payment was made under the plan during the period, and shall promptly transmit a copy of such report to the Secretary.

(B) Audits

A manufacturer may audit the information provided (or required to be provided) under subparagraph (A). Adjustments to rebates shall be made to the extent that information indicates that utilization was greater or less than the amount previously specified.

(3) Manufacturer provision of price information

(A) In general

Each manufacturer with an agreement in effect under this section shall report to the Secretary—

(i) not later than 30 days after the last day of each rebate period under the agreement (beginning on or after January 1, 1991), on the average manufacturer price (as defined in subsection (k)(1) of this section) and, (for single source drugs and innovator multiple source drugs), the manufacturer's best price (as defined in subsection (c)(2)(B) of this section) for covered outpatient drugs for the rebate period under the agreement, and

(ii) not later than 30 days after the date of entering into an agreement under this section on the average manufacturer price (as defined in subsection (k)(1) of this section) as of October 1, 1990[1] for each of the manufacturer's covered outpatient drugs.

(B) Verification surveys of average manufacturer price

The Secretary may survey wholesalers and manufacturers that directly distribute their covered outpatient drugs, when necessary, to verify manufacturer prices reported under subparagraph (A). The Secretary may impose a civil monetary penalty in an amount not to exceed $100,000 on a wholesaler, manufacturer, or direct seller, if the wholesaler, manufacturer, or direct seller of a covered outpatient drug refuses a request for information about charges or prices by the Secretary in connection with a survey under this subparagraph or knowingly provides false information. The provisions of section 1320a–7a of this title (other than subsections (a) (with respect to amounts of penalties or additional assessments) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(C) Penalties

(i) Failure to provide timely information

In the case of a manufacturer with an agreement under this section that fails to provide information required under subparagraph (A) on a timely basis, the amount of the penalty shall be increased by $10,000 for each day in which such information has not been provided and such amount shall be paid to the Treasury, and, if such information is not reported within 90 days of the deadline imposed, the agreement shall be suspended for services furnished after the end of such 90-day period and until the date such information is reported (but in no case shall such suspension be for a period of less than 30 days).

(ii) False information

Any manufacturer with an agreement under this section that knowingly provides

[1] So in original. Probably should be followed by a comma.

false information is subject to a civil money penalty in an amount not to exceed $100,000 for each item of false information. Such civil money penalties are in addition to other penalties as may be prescribed by law. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under this subparagraph in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(D) Confidentiality of information

Notwithstanding any other provision of law, information disclosed by manufacturers or wholesalers under this paragraph or under an agreement with the Secretary of Veterans Affairs described in subsection (a)(6)(A)(ii) of this section is confidential and shall not be disclosed by the Secretary or the Secretary of Veterans Affairs or a State agency (or contractor therewith) in a form which discloses the identity of a specific manufacturer or wholesaler, prices charged for drugs by such manufacturer or wholesaler, except—

(i) as the Secretary determines to be necessary to carry out this section,

(ii) to permit the Comptroller General to review the information provided, and

(iii) to permit the Director of the Congressional Budget Office to review the information provided.

(4) Length of agreement

(A) In general

A rebate agreement shall be effective for an initial period of not less than 1 year and shall be automatically renewed for a period of not less than one year unless terminated under subparagraph (B).

(B) Termination

(i) By the Secretary

The Secretary may provide for termination of a rebate agreement for violation of the requirements of the agreement or other good cause shown. Such termination shall not be effective earlier than 60 days after the date of notice of such termination. The Secretary shall provide, upon request, a manufacturer with a hearing concerning such a termination, but such hearing shall not delay the effective date of the termination.

(ii) By a manufacturer

A manufacturer may terminate a rebate agreement under this section for any reason. Any such termination shall not be effective until the calendar quarter beginning at least 60 days after the date the manufacturer provides notice to the Secretary.

(iii) Effectiveness of termination

Any termination under this subparagraph shall not affect rebates due under the agreement before the effective date of its termination.

(iv) Notice to States

In the case of a termination under this subparagraph, the Secretary shall provide notice of such termination to the States within not less than 30 days before the effective date of such termination.

(v) Application to terminations of other agreements

The provisions of this subparagraph shall apply to the terminations of agreements described in section 256b(a)(1) of this title and master agreements described in section 8126(a) of title 38.

(C) Delay before reentry

In the case of any rebate agreement with a manufacturer under this section which is terminated, another such agreement with the manufacturer (or a successor manufacturer) may not be entered into until a period of 1 calendar quarter has elapsed since the date of the termination, unless the Secretary finds good cause for an earlier reinstatement of such an agreement.

(c) Determination of amount of rebate

(1) Basic rebate for single source drugs and innovator multiple source drugs

(A) In general

Except as provided in paragraph (2), the amount of the rebate specified in this subsection for a rebate period (as defined in subsection (k)(8) of this section) with respect to each dosage form and strength of a single source drug or an innovator multiple source drug shall be equal to the product of—

(i) the total number of units of each dosage form and strength paid for under the State plan in the rebate period (as reported by the State); and

(ii) subject to subparagraph (B)(ii), the greater of—

(I) the difference between the average manufacturer price and the best price (as defined in subparagraph (C)) for the dosage form and strength of the drug, or

(II) the minimum rebate percentage (specified in subparagraph (B)(i)) of such average manufacturer price,

for the rebate period.

(B) Range of rebates required

(i) Minimum rebate percentage

For purposes of subparagraph (A)(ii)(II), the ''minimum rebate percentage'' for rebate periods beginning—

(I) after December 31, 1990, and before October 1, 1992, is 12.5 percent;

(II) after September 30, 1992, and before January 1, 1994, is 15.7 percent;

(III) after December 31, 1993, and before January 1, 1995, is 15.4 percent;

(IV) after December 31, 1994, and before January 1, 1996, is 15.2 percent; and

(V) after December 31, 1995, is 15.1 percent.

(ii) Temporary limitation on maximum rebate amount

In no case shall the amount applied under subparagraph (A)(ii) for a rebate period beginning—

(I) before January 1, 1992, exceed 25 percent of the average manufacturer price; or

(II) after December 31, 1991, and before January 1, 1993, exceed 50 percent of the average manufacturer price.

(C) "Best price" defined

For purposes of this section—

(i) In general

The term ''best price'' means, with respect to a single source drug or innovator multiple source drug of a manufacturer, the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, health maintenance organization, nonprofit entity, or governmental entity within the United States, excluding—

(I) any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, the Department of Defense, the Public Health Service, or a covered entity described in subsection (a)(5)(B) of this section;

(II) any prices charged under the Federal Supply Schedule of the General Services Administration;

(III) any prices used under a State pharmaceutical assistance program; and

(IV) any depot prices and single award contract prices, as defined by the Secretary, of any agency of the Federal Government.

(ii) Special rules

The term ''best price''—

(I) shall be inclusive of cash discounts, free goods that are contingent on any purchase requirement, volume discounts, and rebates (other than rebates under this section);

(II) shall be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package; and

(III) shall not take into account prices that are merely nominal in amount.

(2) Additional rebate for single source and innovator multiple source drugs

(A) In general

The amount of the rebate specified in this subsection for a rebate period, with respect to each dosage form and strength of a single source drug or an innovator multiple source drug, shall be increased by an amount equal to the product of—

(i) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the State plan for the rebate period; and

(ii) the amount (if any) by which—

(I) the average manufacturer price for the dosage form and strength of the drug for the period, exceeds

(II) the average manufacturer price for such dosage form and strength for the calendar quarter beginning July 1, 1990 (without regard to whether or not the drug has been sold or transferred to an entity, including a division or subsidiary of the manufacturer, after the first day of such quarter), increased by the percentage by which the consumer price index for all urban consumers (United States city average) for the month before the month in which the rebate period begins exceeds such index for September 1990.

(B) Treatment of subsequently approved drugs

In the case of a covered outpatient drug approved by the Food and Drug Administration after October 1, 1990, clause (ii)(II) of subparagraph (A) shall be applied by substituting ''the first full calendar quarter after the day on which the drug was first marketed'' for ''the calendar quarter beginning July 1, 1990'' and ''the month prior to the first month of the first full calendar quarter after the day on which the drug was first marketed'' for ''September 1990''.

(3) Rebate for other drugs

(A) In general

The amount of the rebate paid to a State for a rebate period with respect to each dosage form and strength of covered outpatient drugs (other than single source drugs and innovator multiple source drugs) shall be equal to the product of—

(i) the applicable percentage (as described in subparagraph (B)) of the average manufacturer price for the dosage form and strength for the rebate period, and

(ii) the total number of units of such dosage form and strength dispensed after December 31, 1990, for which payment was made under the State plan for the rebate period.

(B) "Applicable percentage" defined

For purposes of subparagraph (A)(i), the ''applicable percentage'' for rebate periods beginning—

(i) before January 1, 1994, is 10 percent, and

(ii) after December 31, 1993, is 11 percent.

(d) Limitations on coverage of drugs

(1) Permissible restrictions

(A) A State may subject to prior authorization any covered outpatient drug. Any such prior authorization program shall comply with the requirements of paragraph (5).

(B) A State may exclude or otherwise restrict coverage of a covered outpatient drug if—

(i) the prescribed use is not for a medically accepted indication (as defined in subsection (k)(6) of this section);

(ii) the drug is contained in the list referred to in paragraph (2);

(iii) the drug is subject to such restrictions pursuant to an agreement between a manufacturer and a State authorized by the Secretary under subsection (a)(1) of this section or in effect pursuant to subsection (a)(4) of this section; or

(iv) the State has excluded coverage of the drug from its formulary established in accordance with paragraph (4).

(2) List of drugs subject to restriction

The following drugs or classes of drugs, or their medical uses, may be excluded from coverage or otherwise restricted:

(A) Agents when used for anorexia, weight loss, or weight gain.

(B) Agents when used to promote fertility.

(C) Agents when used for cosmetic purposes or hair growth.

(D) Agents when used for the symptomatic relief of cough and colds.

(E) Agents when used to promote smoking cessation.

(F) Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.

(G) Nonprescription drugs.

(H) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee.

(I) Barbiturates.

(J) Benzodiazepines.

(3) Update of drug listings

The Secretary shall, by regulation, periodically update the list of drugs or classes of drugs described in paragraph (2) or their medical uses, which the Secretary has determined, based on data collected by surveillance and utilization review programs of State medical assistance programs, to be subject to clinical abuse or inappropriate use.

(4) Requirements for formularies

A State may establish a formulary if the formulary meets the following requirements:

(A) The formulary is developed by a committee consisting of physicians, pharmacists, and other appropriate individuals appointed by the Governor of the State (or, at the option of the State, the State's drug use review board established under subsection (g)(3) of this section).

(B) Except as provided in subparagraph (C), the formulary includes the covered outpatient drugs of any manufacturer which has entered into and complies with an agreement under subsection (a) of this section (other than any drug excluded from coverage or otherwise restricted under paragraph (2)).

(C) A covered outpatient drug may be excluded with respect to the treatment of a specific disease or condition for an identified population (if any) only if, based on the drug's labeling (or, in the case of a drug the prescribed use of which is not approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] but is a medically accepted indication, based on information from the appropriate compendia described in subsection (k)(6) of this section), the excluded drug does not have a significant, clinically meaningful therapeutic advantage in terms of safety, effectiveness, or clinical outcome of such treatment for such population over other drugs included in the formulary and there is a written explanation (available to the public) of the basis for the exclusion.

(D) The State plan permits coverage of a drug excluded from the formulary (other than any drug excluded from coverage or otherwise restricted under paragraph (2)) pursuant to a prior authorization program that is consistent with paragraph (5).

(E) The formulary meets such other requirements as the Secretary may impose in order to achieve program savings consistent with protecting the health of program beneficiaries.

A prior authorization program established by a State under paragraph (5) is not a formulary subject to the requirements of this paragraph.

(5) Requirements of prior authorization programs

A State plan under this subchapter may require, as a condition of coverage or payment for a covered outpatient drug for which Federal financial participation is available in accordance with this section, with respect to drugs dispensed on or after July 1, 1991, the approval of the drug before its dispensing for any medically accepted indication (as defined in subsection (k)(6) of this section) only if the system providing for such approval—

(A) provides response by telephone or other telecommunication device within 24 hours of a request for prior authorization; and

(B) except with respect to the drugs on the list referred to in paragraph (2), provides for the dispensing of at least 72-hour supply of a covered outpatient prescription drug in an emergency situation (as defined by the Secretary).

(6) Other permissible restrictions

A State may impose limitations, with respect to all such drugs in a therapeutic class, on the minimum or maximum quantities per prescription or on the number of refills, if such limitations are necessary to discourage waste, and may address instances of fraud or abuse by individuals in any manner authorized under this chapter.

(e) Treatment of pharmacy reimbursement limits

(1) In general

During the period beginning on January 1, 1991, and ending on December 31, 1994—

(A) a State may not reduce the payment limits established by regulation under this subchapter or any limitation described in paragraph (3) with respect to the ingredient cost of a covered outpatient drug or the dispensing fee for such a drug below the limits in effect as of January 1, 1991, and

(B) except as provided in paragraph (2), the Secretary may not modify by regulation the formula established under sections 447.331 through 447.334 of title 42, Code of Federal Regulations, in effect on November 5, 1990, to reduce the limits described in subparagraph (A).

(2) Special rule

If a State is not in compliance with the regulations described in paragraph (1)(B), paragraph (1)(A) shall not apply to such State until such State is in compliance with such regulations.

(3) Effect on State maximum allowable cost limitations

This section shall not supersede or affect provisions in effect prior to January 1, 1991, or after December 31, 1994, relating to any maximum allowable cost limitation established by a State for payment by the State for covered outpatient drugs, and rebates shall be made under this section without regard to whether or not payment by the State for such drugs is subject to such a limitation or the amount of such a limitation.

[(4)][2] Establishment of upper payment limits

HCFA shall establish a Federal upper reimbursement limit for each multiple source drug for which the FDA has rated three or more products therapeutically and pharmaceutically equivalent, regardless of whether all such additional formulations are rated as such and shall use only such formulations when determining any such upper limit.

(f) Repealed and redesignated

(1) Repealed. Pub. L. 103–66, title XIII, § 13602(a)(1), Aug. 10, 1993, 107 Stat. 613

(2) Redesignated (e)[(4)]

(g) Drug use review

(1) In general

(A) In order to meet the requirement of section 1396b(i)(10)(B) of this title, a State shall provide, by not later than January 1, 1993, for a drug use review program described in paragraph (2) for covered outpatient drugs in order to assure that prescriptions (i) are appropriate, (ii) are medically necessary, and (iii) are not likely to result in adverse medical results. The program shall be designed to educate physicians and pharmacists to identify and reduce the frequency of patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists, and patients, or associated with specific drugs or groups of drugs, as well as potential and actual severe adverse reactions to drugs including education on therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse.

(B) The program shall assess data on drug use against predetermined standards, consistent with the following:

(i) compendia which shall consist of the following:

(I) American Hospital Formulary Service Drug Information;

(II) United States Pharmacopeia-Drug Information; and

(III) American Medical Association Drug Evaluations; and

(ii) the peer-reviewed medical literature.

(C) The Secretary, under the procedures established in section 1396b of this title, shall pay to each State an amount equal to 75 per centum of so much of the sums expended by the State plan during calendar years 1991 through 1993 as the Secretary determines is attributable to the statewide adoption of a drug use review program which conforms to the requirements of this subsection.

(D) States shall not be required to perform additional drug use reviews with respect to drugs dispensed to residents of nursing facilities which are in compliance with the drug regimen review procedures prescribed by the Secretary for such facilities in regulations implementing section 1396r of this title, currently at section 483.60 of title 42, Code of Federal Regulations.

(2) Description of program

Each drug use review program shall meet the following requirements for covered outpatient drugs:

(A) Prospective drug review

(i) The State plan shall provide for a review of drug therapy before each prescription is filled or delivered to an individual receiving benefits under this subchapter, typically at the point-of-sale or point of distribution. The review shall include screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs), incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse. Each State shall use the compendia and literature referred to in paragraph (1)(B) as its source of standards for such review.

(ii) As part of the State's prospective drug use review program under this subparagraph applicable State law shall establish standards for counseling of individuals receiving benefits under this subchapter by pharmacists which includes at least the following:

(I) The pharmacist must offer to discuss with each individual receiving benefits under this subchapter or caregiver of such individual (in person, whenever practicable, or through access to a telephone service which is toll-free for long-distance calls) who presents a prescription, matters which in the exercise of the pharmacist's professional judgment (consistent with State law respecting the provision of such information), the pharmacist deems significant including the following:

(aa) The name and description of the medication.

(bb) The route, dosage form, dosage, route of administration, and duration of drug therapy.

(cc) Special directions and precautions for preparation, administration and use by the patient.

(dd) Common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur.

[2] See 1993 Amendment note below.

(ee) Techniques for self-monitoring drug therapy.

(ff) Proper storage.

(gg) Prescription refill information.

(hh) Action to be taken in the event of a missed dose.

(II) A reasonable effort must be made by the pharmacist to obtain, record, and maintain at least the following information regarding individuals receiving benefits under this subchapter:

(aa) Name, address, telephone number, date of birth (or age) and gender.

(bb) Individual history where significant, including disease state or states, known allergies and drug reactions, and a comprehensive list of medications and relevant devices.

(cc) Pharmacist comments relevant to the individuals[3] drug therapy.

Nothing in this clause shall be construed as requiring a pharmacist to provide consultation when an individual receiving benefits under this subchapter or caregiver of such individual refuses such consultation.

(B) Retrospective drug use review

The program shall provide, through its mechanized drug claims processing and information retrieval systems (approved by the Secretary under section 1396b(r) of this title) or otherwise, for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists and individuals receiving benefits under this subchapter, or associated with specific drugs or groups of drugs.

(C) Application of standards

The program shall, on an ongoing basis, assess data on drug use against explicit predetermined standards (using the compendia and literature referred to in subsection[4] (1)(B) as the source of standards for such assessment) including but not limited to monitoring for therapeutic appropriateness, overutilization and underutilization, appropriate use of generic products, therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, and clinical abuse/misuse and, as necessary, introduce remedial strategies, in order to improve the quality of care and to conserve program funds or personal expenditures.

(D) Educational program

The program shall, through its State drug use review board established under paragraph (3), either directly or through contracts with accredited health care educational institutions, State medical societies or State pharmacists associations/societies or other organizations as specified by the State, and using data provided by the State drug use review board on common drug therapy problems, provide for active and ongoing educational outreach programs (including the activities described in paragraph (3)(C)(iii) of this subsection) to educate practitioners on common drug therapy problems with the aim of improving prescribing or dispensing practices.

(3) State drug use review board

(A) Establishment

Each State shall provide for the establishment of a drug use review board (hereinafter referred to as the ''DUR Board'') either directly or through a contract with a private organization.

(B) Membership

The membership of the DUR Board shall include health care professionals who have recognized knowledge and expertise in one or more of the following:

(i) The clinically appropriate prescribing of covered outpatient drugs.

(ii) The clinically appropriate dispensing and monitoring of covered outpatient drugs.

(iii) Drug use review, evaluation, and intervention.

(iv) Medical quality assurance.

The membership of the DUR Board shall be made up at least ⅓ but no more than 51 percent licensed and actively practicing physicians and at least ⅓ * * *[5] licensed and actively practicing pharmacists.

(C) Activities

The activities of the DUR Board shall include but not be limited to the following:

(i) Retrospective DUR as defined in section[6] (2)(B).

(ii) Application of standards as defined in section[6] (2)(C).

(iii) Ongoing interventions for physicians and pharmacists, targeted toward therapy problems or individuals identified in the course of retrospective drug use reviews performed under this subsection. Intervention programs shall include, in appropriate instances, at least:

(I) information dissemination sufficient to ensure the ready availability to physicians and pharmacists in the State of information concerning its duties, powers, and basis for its standards;

(II) written, oral, or electronic reminders containing patient-specific or drug-specific (or both) information and suggested changes in prescribing or dispensing practices, communicated in a manner designed to ensure the privacy of patient-related information;

(III) use of face-to-face discussions between health care professionals who are experts in rational drug therapy and selected prescribers and pharmacists who have been targeted for educational intervention, including discussion of optimal prescribing, dispensing, or pharmacy

[3] So in original. Probably should be ''individual's''.

[4] So in original. Probably should be ''paragraph''.

[5] So in original.

[6] So in original. Probably should be ''paragraph''.

care practices, and follow-up face-to-face discussions; and

(IV) intensified review or monitoring of selected prescribers or dispensers.

The Board shall re-evaluate interventions after an appropriate period of time to determine if the intervention improved the quality of drug therapy, to evaluate the success of the interventions and make modifications as necessary.

(D) Annual report

Each State shall require the DUR Board to prepare a report on an annual basis. The State shall submit a report on an annual basis to the Secretary which shall include a description of the activities of the Board, including the nature and scope of the prospective and retrospective drug use review programs, a summary of the interventions used, an assessment of the impact of these educational interventions on quality of care, and an estimate of the cost savings generated as a result of such program. The Secretary shall utilize such report in evaluating the effectiveness of each State's drug use review program.

(h) Electronic claims management

(1) In general

In accordance with chapter 35 of title 44 (relating to coordination of Federal information policy), the Secretary shall encourage each State agency to establish, as its principal means of processing claims for covered outpatient drugs under this subchapter, a point-of-sale electronic claims management system, for the purpose of performing on-line, real time eligibility verifications, claims data capture, adjudication of claims, and assisting pharmacists (and other authorized persons) in applying for and receiving payment.

(2) Encouragement

In order to carry out paragraph (1)—

(A) for calendar quarters during fiscal years 1991 and 1992, expenditures under the State plan attributable to development of a system described in paragraph (1) shall receive Federal financial participation under section 1396b(a)(3)(A)(i) of this title (at a matching rate of 90 percent) if the State acquires, through applicable competitive procurement process in the State, the most cost-effective telecommunications network and automatic data processing services and equipment; and

(B) the Secretary may permit, in the procurement described in subparagraph (A) in the application of part 433 of title 42, Code of Federal Regulations, and parts 95, 205, and 307 of title 45, Code of Federal Regulations, the substitution of the State's request for proposal in competitive procurement for advance planning and implementation documents otherwise required.

(i) Annual report

(1) In general

Not later than May 1 of each year the Secretary shall transmit to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives a report on the the[7] operation of this section in the preceding fiscal year.

(2) Details

Each report shall include information on—

(A) ingredient costs paid under this subchapter for single source drugs, multiple source drugs, and nonprescription covered outpatient drugs;

(B) the total value of rebates received and number of manufacturers providing such rebates;

(C) how the size of such rebates compare with the size or[8] rebates offered to other purchasers of covered outpatient drugs;

(D) the effect of inflation on the value of rebates required under this section;

(E) trends in prices paid under this subchapter for covered outpatient drugs; and

(F) Federal and State administrative costs associated with compliance with the provisions of this subchapter.

(j) Exemption of organized health care settings

(1) Covered outpatient drugs dispensed by * * *[7] Health Maintenance Organizations, including those organizations that contract under section 1396b(m) of this title, are not subject to the requirements of this section.

(2) The State plan shall provide that a hospital (providing medical assistance under such plan) that dispenses covered outpatient drugs using drug formulary systems, and bills the plan no more than the hospital's purchasing costs for covered outpatient drugs (as determined under the State plan) shall not be subject to the requirements of this section.

(3) Nothing in this subsection shall be construed as providing that amounts for covered outpatient drugs paid by the institutions described in this subsection should not be taken into account for purposes of determining the best price as described in subsection (c) of this section.

(k) Definitions

In this section—

(1) Average manufacturer price

The term ''average manufacturer price'' means, with respect to a covered outpatient drug of a manufacturer for a rebate period, the average price paid to the manufacturer for the drug in the United States by wholesalers for drugs distributed to the retail pharmacy class of trade, after deducting customary prompt pay discounts.

(2) Covered outpatient drug

Subject to the exceptions in paragraph (3), the term ''covered outpatient drug'' means—

(A) of those drugs which are treated as prescribed drugs for purposes of section 1396d(a)(12) of this title, a drug which may be dispensed only upon prescription (except as provided in paragraph (5)), and—

[7] So in original.

[8] So in original. Probably should be ''of''.

(i) which is approved for safety and effectiveness as a prescription drug under section 505 or 507 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355, 357] or which is approved under section 505(j) of such Act [21 U.S.C. 355(j)];

(ii)(I) which was commercially used or sold in the United States before October 10, 1962, or which is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) which has not been the subject of a final determination by the Secretary that it is a ''new drug'' (within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 321(p)]) or an action brought by the Secretary under section 301, 302(a), or 304(a) of such Act [21 U.S.C. 331, 332(a), 334(a)] to enforce section 502(f) or 505(a) of such Act [21 U.S.C. 352(f), 355(a)]; or

(iii)(I) which is described in section 107(c)(3) of the Drug Amendments of 1962 and for which the Secretary has determined there is a compelling justification for its medical need, or is identical, similar, or related (within the meaning of section 310.6(b)(1) of title 21 of the Code of Federal Regulations) to such a drug, and (II) for which the Secretary has not issued a notice of an opportunity for a hearing under section 505(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355(e)] on a proposed order of the Secretary to withdraw approval of an application for such drug under such section because the Secretary has determined that the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling; and

(B) a biological product, other than a vaccine which—

(i) may only be dispensed upon prescription,

(ii) is licensed under section 262 of this title, and

(iii) is produced at an establishment licensed under such section to produce such product; and

(C) insulin certified under section 506 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 356].

(3) Limiting definition

The term ''covered outpatient drug'' does not include any drug, biological product, or insulin provided as part of, or as incident to and in the same setting as, any of the following (and for which payment may be made under this subchapter as part of payment for the following and not as direct reimbursement for the drug):

(A) Inpatient hospital services.

(B) Hospice services.

(C) Dental services, except that drugs for which the State plan authorizes direct reimbursement to the dispensing dentist are covered outpatient drugs.

(D) Physicians' services.

(E) Outpatient hospital services.

(F) Nursing facility services and services provided by an intermediate care facility for the mentally retarded.

(G) Other laboratory and x-ray services.

(H) Renal dialysis.

Such term also does not include any such drug or product for which a National Drug Code number is not required by the Food and Drug Administration or a drug or biological[9] used for a medical indication which is not a medically accepted indication. Any drug, biological product, or insulin excluded from the definition of such term as a result of this paragraph shall be treated as a covered outpatient drug for purposes of determining the best price (as defined in subsection (c)(1)(C) of this section) for such drug, biological product, or insulin.

(4) Nonprescription drugs

If a State plan for medical assistance under this subchapter includes coverage of prescribed drugs as described in section 1396d(a)(12) of this title and permits coverage of drugs which may be sold without a prescription (commonly referred to as ''over-the-counter'' drugs), if they are prescribed by a physician (or other person authorized to prescribe under State law), such a drug shall be regarded as a covered outpatient drug.

(5) Manufacturer

The term ''manufacturer'' means any entity which is engaged in—

(A) the production, preparation, propagation, compounding, conversion, or processing of prescription drug products, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or

(B) in the packaging, repackaging, labeling, relabeling, or distribution of prescription drug products.

Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

(6) Medically accepted indication

The term ''medically accepted indication'' means any use for a covered outpatient drug which is approved under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] or the use of which is supported by one or more citations included or approved for inclusion in any of the compendia described in subsection (g)(1)(B)(i) of this section.

(7) Multiple source drug; innovator multiple source drug; noninnovator multiple source drug; single source drug

(A) Defined

(i) Multiple source drug

The term ''multiple source drug'' means, with respect to a rebate period, a covered outpatient drug (not including any drug described in paragraph (5)) for which there are 2 or more drug products which—

[9] So in original. Probably should be ''biological product''.

(I) are rated as therapeutically equivalent (under the Food and Drug Administration's most recent publication of ''Approved Drug Products with Therapeutic Equivalence Evaluations''),

(II) except as provided in subparagraph (B), are pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C) and as determined by the Food and Drug Administration, and

(III) are sold or marketed in the State during the period.

(ii) Innovator multiple source drug

The term ''innovator multiple source drug'' means a multiple source drug that was originally marketed under an original new drug application approved by the Food and Drug Administration.

(iii) Noninnovator multiple source drug

The term ''noninnovator multiple source drug'' means a multiple source drug that is not an innovator multiple source drug.

(iv) Single source drug

The term ''single source drug'' means a covered outpatient drug which is produced or distributed under an original new drug application approved by the Food and Drug Administration, including a drug product marketed by any cross-licensed producers or distributers[10] operating under the new drug application.

(B) Exception

Subparagraph (A)(i)(II) shall not apply if the Food and Drug Administration changes by regulation the requirement that, for purposes of the publication described in subparagraph (A)(i)(I), in order for drug products to be rated as therapeutically equivalent, they must be pharmaceutically equivalent and bioequivalent, as defined in subparagraph (C).

(C) Definitions

For purposes of this paragraph—

(i) drug products are pharmaceuutically[11] equivalent if the products contain identical amounts of the same active drug ingredient in the same dosage form and meet compendial or other applicable standards of strength, quality, purity, and identity;

(ii) drugs are bioequivalent if they do not present a known or potential bioequivalence problem, or, if they do present such a problem, they are shown to meet an appropriate standard of bioequivalence; and

(iii) a drug product is considered to be sold or marketed in a State if it appears in a published national listing of average wholesale prices selected by the Secretary, provided that the listed product is generally available to the public through retail pharmacies in that State.

(8) Rebate period

The term ''rebate period'' means, with respect to an agreement under subsection (a) of this section, a calendar quarter or other period specified by the Secretary with respect to the payment of rebates under such agreement.

(9) State agency

The term ''State agency'' means the agency designated under section 1396a(a)(5) of this title to administer or supervise the administration of the State plan for medical assistance.

(Aug. 14, 1935, ch. 531, title XIX, § 1927, as added Nov. 5, 1990, Pub. L. 101–508, title IV, § 4401(a)(3), 104 Stat. 1388–143; amended Nov. 4, 1992, Pub. L. 102–585, title VI, § 601(a)–(c), 106 Stat. 4962–4964; Apr. 12, 1993, Pub. L. 103–18, § 2(a), 107 Stat. 54; Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13602(a), 107 Stat. 613.)

REFERENCES IN TEXT

Section 107(c)(3) of the Drug Amendments of 1962, referred to in subsec. (k)(2)(A)(iii)(I), is section 107(c)(3) of Pub. L. 87–781 which is set out in an Effective Date of 1962 Amendment note under section 321 of Title 21, Food and Drugs.

The Federal Food, Drug, and Cosmetic Act, referred to in subsecs. (d)(4)(C) and (k)(6), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

PRIOR PROVISIONS

A prior section 1927 of act Aug. 14, 1935, was renumbered section 1928 and is classified to section 1396s of this title.

AMENDMENTS

1993—Subsec. (b)(1)(A). Pub. L. 103–66, § 13602(a)(2)(A)(i)(II), which directed amendment of subpar. (A) by substituting ''dispensed after December 31, 1990, for which payment was made under the State plan for such period'' for ''dispensed under the plan during the quarter (or other period as the Secretary may specify)'', was executed by making the substitution for ''dispensed under the plan during the quarter (or such other period as the Secretary may specify)'' to reflect the probable intent of Congress.

Pub. L. 103–66, § 13602(a)(2)(A)(i)(I), substituted ''for a rebate period'' for ''each calendar quarter (or periodically in accordance with a schedule specified by the Secretary)''.

Subsec. (b)(2)(A). Pub. L. 103–66, § 13602(a)(2)(A)(ii), substituted ''each rebate period'' for ''each calendar quarter'' and ''units of each dosage form and strength and package size'' for ''dosage units'', inserted ''after December 31, 1990, for which payment was made'' after ''dispensed'', and substituted ''during the period'' for ''during the quarter''.

Subsec. (b)(3)(A)(i). Pub. L. 103–66, § 13602(a)(2)(A)(iii), substituted ''rebate period under the agreement'' for ''quarter'' in two places.

Subsec. (c). Pub. L. 103–66, § 13602(a)(1), added subsec. (c) and struck out former subsec. (c) which related to determination of amount of rebate for certain drugs.

Pub. L. 103–18 substituted ''such drug, except that for the calendar quarter beginning after September 30, 1992, and before January 1, 1993, the amount of the rebate may not exceed 50 percent of such average manufacturer price;'' for ''such drug;'' in par. (1)(B)(ii)(II).

Subsecs. (d) to (f). Pub. L. 103–66, § 13602(a)(1), added subsecs. (d) and (e), struck out former subsecs. (d) consisting of pars. (1) to (8) relating to limitations on coverage of drugs, (e) relating to denial of Federal financial participation in certain cases, and (f)(1) relating to reductions in pharmacy reimbursement limits, and struck out par. designation for former par. (2) of subsec. (f) without supplying a new designation. The text

[10] So in original. Probably should be ''distributors''.

[11] So in original. Probably should be ''pharmaceutically''.

of former subsec. (f)(2) is now the last par. of subsec. (e).

Subsec. (k)(1). Pub. L. 103–66, §13602(a)(2)(B)(i), substituted ''rebate period'' for ''calendar quarter'' and inserted before period at end '', after deducting customary prompt pay discounts''.

Subsec. (k)(3). Pub. L. 103–66, §13602(a)(2)(B)(ii)(III), in concluding provisions, substituted ''for which a National Drug Code number is not required by the Food and Drug Administration or a drug or biological used'' for ''which is used'' and inserted at end ''Any drug, biological product, or insulin excluded from the definition of such term as a result of this paragraph shall be treated as a covered outpatient drug for purposes of determining the best price (as defined in subsection (c)(1)(C) of this section) for such drug, biological product, or insulin.''

Subsec. (k)(3)(E). Pub. L. 103–66, §13602(a)(2)(B)(ii)(I), struck out ''* * * *emergency room visits'' after ''services''.

Subsec. (k)(3)(F). Pub. L. 103–66, §13602(a)(2)(B)(ii)(II), which directed amendment of subpar. (F) by substituting ''services and services provided by an intermediate care facility for the mentally retarded'' for ''services'', was executed by making the substitution for ''sevices'' to reflect the probable intent of Congress because the word ''services'' did not appear.

Subsec. (k)(6). Pub. L. 103–66, §13602(a)(2)(B)(iii), substituted ''or the use of which is supported by one or more citations included or approved for inclusion in any of the compendia described in subsection (g)(1)(B)(i) of this section.'' for '', which appears in peer-reviewed medical literature or which is accepted by one or more of the following compendia: the American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluations, and the United States Pharmacopeia-Drug Information.''

Subsec. (k)(7)(A)(i). Pub. L. 103–66, §13602(a)(2)(B)(iv), substituted ''rebate period'' for ''calendar quarter'' in introductory provisions.

Subsec. (k)(8), (9). Pub. L. 103–66, §13602(a)(2)(B)(v), added par. (8) and redesignated former par. (8) as (9).

1992—Subsec. (a)(1). Pub. L. 102–585, §601(b)(1), substituted ''manufacturer), and must meet the requirements of paragraph (5) (with respect to drugs purchased by a covered entity on or after the first day of the first month that begins after November 4, 1992) and paragraph (6)'' for ''manufacturer)''.

Subsec. (a)(5), (6). Pub. L. 102–585, §601(b)(2), added pars. (5) and (6).

Subsec. (b)(3)(D). Pub. L. 102–585, §601(b)(3), substituted ''this paragraph or under an agreement with the Secretary of Veterans Affairs described in subsection (a)(6)(A)(ii) of this section'' for ''this paragraph'', ''Secretary or the Secretary of Veterans Affairs'' for ''Secretary'', and ''except—'' and cls. (i) to (iii) for ''except as the Secretary determines to be necessary to carry out this section and to permit the Comptroller General to review the information provided.''

Subsec. (b)(4)(B)(ii). Pub. L. 102–585, §601(b)(4)(i), (ii), substituted ''the calendar quarter beginning at least 60 days'' for ''such period'' and ''the manufacturer provides notice to the Secretary.'' for ''of the notice as the Secretary may provide (but not beyond the term of the agreement).''

Subsec. (b)(4)(B)(iv), (v). Pub. L. 102–585, §601(b)(4)(iii), added cls. (iv) and (v).

Subsec. (c)(1)(B)(i). Pub. L. 102–585, §601(c)(1), which directed the substitution of ''October 1, 1992,'' for ''January 1, 1993,'', was executed by making the substitution in introductory provisions and in subcl. (II), to reflect the probable intent of Congress.

Subsec. (c)(1)(B)(ii) to (v). Pub. L. 102–585, §601(c)(2), (3), added cls. (ii) to (v) and struck out former cl. (ii) which read as follows: ''for quarters (or other periods) beginning after December 31, 1992, the greater of—

''(I) the difference between the average manufacturer price for a drug and 85 percent of such price, or

''(II) the difference between the average manufacturer price for a drug and the best price (as defined in paragraph (2)(B)) for such quarter (or period) for such drug.''

Subsec. (c)(1)(C). Pub. L. 102–585, §601(a), substituted ''(excluding any prices charged on or after October 1, 1992, to the Indian Health Service, the Department of Veterans Affairs, a State home receiving funds under section 1741 of title 38, the Department of Defense, the Public Health Service, or a covered entity described in subsection (a)(5)(B) of this section, any prices charged under the Federal Supply Schedule of the General Services Administration, or any prices used under a State pharmaceutical assistance program, and excluding'' for ''(excluding''.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives changed to Committee on Commerce of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Committees on Aging of the Senate and House of Representatives probably mean the Special Committee on Aging of the Senate and the Select Committee on Aging of the House of Representatives which was abolished on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

EFFECTIVE DATE OF 1993 AMENDMENTS

Section 13602(d) of Pub. L. 103–66 provided that:

''(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 1396a and 1396b of this title] shall take effect as if included in the enactment of OBRA–1990 [Pub. L. 101–508].

''(2) The amendment made by subsection (a)(1) [amending this section] (insofar as such subsection amends section 1927(d) of the Social Security Act [subsec. (d) of this section]) and the amendment made by subsection (c) [amending section 1396a of this title] shall apply to calendar quarters beginning on or after October 1, 1993, without regard to whether or not regulations to carry out such amendments have been promulgated by such date.''

Section 2(b) of Pub. L. 103–18 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect as if included in the enactment of section 601(c) of the Veterans Health Care Act of 1992 [Pub. L. 102–585].''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 601(e) of Pub. L. 102–585 provided that: ''The amendments made by this section [amending this section] shall apply with respect to payments to State plans under title XIX of the Social Security Act [this subchapter] for calendar quarters (or periods) beginning on or after January 1, 1993 (without regard to whether or not regulations to carry out such amendments have been promulgated by such date).''

REPORTS ON BEST PRICE CHANGES AND PAYMENT OF REBATES

Section 601(d) of Pub. L. 102–585 provided that:

''(1) IN GENERAL.—Not later than 90 days after the expiration of each calendar quarter that begins on or after October 1, 1992, and ends on or before December 31, 1995, the Secretary of Health and Human Services shall submit a report to Congress that contains the following information relating to prescription drugs dispensed in the quarter (subject to paragraph (2)):

''(A) With respect to single source drugs and innovator multiple source drugs (as such terms are defined in section 1927(k)(7) of the Social Security Act [subsec. (k)(7) of this section])—

''(i) the percentage of such drugs whose best price (as reported to the Secretary under section 1927(b) of the Social Security Act [subsec. (b) of this section]) increased compared to the best price during the previous calendar quarter, and the amount of expenditures under State plans under title XIX of such Act [this subchapter] attributable to such drugs;

''(ii) the percentage of such drugs whose best price (as so reported) decreased compared to the best price during the previous calendar quarter, and the amount of expenditures under State plans under title XIX of such Act attributable to such drugs;

''(iii) the percentage of such drugs whose best price (as so reported) was the same as the best price during the previous calendar quarter, and the amount of expenditures under State plans under title XIX of such Act attributable to such drugs;

''(iv) the median and mean percentage increase (or decrease) in the best price of such single source drugs (as so reported) compared to the best price during the previous calendar quarter, unweighted and weighted (in the case of the mean percentage increase or decrease) by the dollar volume of drugs dispensed;

''(v) the median and mean percentage increase (or decrease) in the best price of such innovator multiple source drugs (as so reported) compared to the best price during the previous calendar quarter, unweighted and weighted (in the case of the mean percentage increase or decrease) by the dollar volume of drugs dispensed; and

''(vi) the median and mean percentage increase (or decrease) in the best price of all such drugs (as so reported) compared to the best price during the previous calendar quarter, unweighted and weighted (in the case of the mean percentage increase or decrease) by the dollar volume of drugs dispensed.

''(B) With respect to all drugs for which manufacturers are required to pay rebates under section 1927(c) of the Social Security Act [subsec. (c) of this section], the Secretary's estimate, on a State-by-State and a national aggregate basis, of—

''(i) the total amount of all rebates paid under such section during the quarter, broken down by the portions of such total amount attributable to rebates described in paragraphs (1), (2), and (3) of such section;

''(ii) the percentages of such total amount attributable to rebates described in paragraphs (1), (2), and (3) of such section; and

''(iii) the amount of the portion of such total amount attributable to the rebate described in paragraph (1) of such section that is solely attributable to the application of subclause (II) of clause (i), (ii), (iii), (iv), or (v) of such paragraph.

''(2) LIMITATION ON DRUGS SUBJECT TO REPORT.—No report submitted under paragraph (1) shall include any information relating to any prescription drug unless the Secretary finds that expenditures for the drug are significant expenditures under the medicaid program. In the previous sentence, expenditures for a drug are 'significant' if the drug was one of the 1,000 drugs for which the greatest amount of the Federal financial assistance attributable to prescription drugs was paid under section 1903(a) of the Social Security Act [section 1396b(a) of this title] during calendar year 1991.

''(3) SPECIAL RULE FOR INITIAL REPORT.—For purposes of the first report required to be submitted under paragraph (1)—

''(A) the Secretary shall submit the report not later than May 1, 1993; and

''(B) the information contained in the report shall include information on prescription drugs dispensed during each calendar quarter that began on or after January 1, 1991, and ended on or before December 31, 1992.''

DEMONSTRATION PROJECTS TO EVALUATE EFFICIENCY AND COST-EFFECTIVENESS OF PROSPECTIVE DRUG UTILIZATION REVIEW

Section 4401(c) of title IV of Pub. L. 101–508 directed Secretary of Health and Human Services to establish statewide demonstration projects to evaluate efficiency and cost-effectiveness of prospective drug utilization review and to evaluate impact on quality of care and cost-effectiveness of paying pharmacists under this subchapter whether or not drugs were dispensed for drug use review services, with two reports to be submitted to Congress, the first not later than Jan. 1, 1994, and the second not later than Jan. 1, 1995.

STUDY OF DRUG PURCHASING AND BILLING PRACTICES IN HEALTH CARE INDUSTRY; REPORT

Section 4401(d) of title IV of Pub. L. 101–508 provided that:

''(1) STUDY OF DRUG PURCHASING AND BILLING ACTIVITIES OF VARIOUS HEALTH CARE SYSTEMS.—

''(A) The Comptroller General shall conduct a study of the drug purchasing and billing practices of hospitals, other institutional facilities, and managed care plans which provide covered outpatient drugs in the medicaid program. The study shall compare the ingredient costs of drugs for medicaid prescriptions to these facilities and plans and the charges billed to medical assistance programs by these facilities and plans compared to retail pharmacies.

''(B) The study conducted under this subsection shall include an assessment of—

''(i) the prices paid by these institutions for covered outpatient drugs compared to prices that would be paid under this section [enacting this section, amending sections 1396a, 1396b, and 1396s of this title, and enacting provisions set out above and under section 1396b of this title],

''(ii) the quality of outpatient drug use review provided by these institutions as compared to drug use review required under this section, and

''(iii) the efficiency of mechanisms used by these institutions for billing and receiving payment for covered outpatient drugs dispensed under this title [see Tables for classification].

''(C) By not later than May 1, 1991, the Comptroller General shall report to the Secretary of Health and Human Services (hereafter in this section referred to as the 'Secretary'), the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the study conducted under subparagraph (A).

''(2) REPORT ON DRUG PRICING.—By not later than May 1 of each year, the Comptroller General shall submit to the Secretary, the Committee on Finance of the Senate, the Committee on Energy and Commerce [now Committee on Commerce] of the House of Representatives, and the Committees on Aging of the Senate and House of Representatives [see Change of Name note above] an annual report on changes in prices charged by manufacturers for prescription drugs to the Department of Veterans Affairs, other Federal programs, retail and hospital pharmacies, and other purchasing groups and managed care plans.

''(3) STUDY ON PRIOR APPROVAL PROCEDURES.—

''(A) The Secretary, acting in consultation with the Comptroller General, shall study prior approval procedures utilized by State medical assistance programs conducted under title XIX of the Social Security Act [this subchapter], including—

''(i) the appeals provisions under such programs; and

''(ii) the effects of such procedures on beneficiary and provider access to medications covered under such programs.

''(B) By not later than December 31, 1991, the Secretary and the Comptroller General shall report to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the results of the study conducted under subparagraph (A) and shall make recommendations with respect to which procedures are appropriate or inappropriate to be utilized by State plans for medical assistance.

''(4) STUDY ON REIMBURSEMENT RATES TO PHARMACISTS.—

''(A) The Secretary shall conduct a study on (i) the adequacy of current reimbursement rates to phar-

macists under each State medical assistance programs conducted under title XIX of the Social Security Act; and (ii) the extent to which reimbursement rates under such programs have an effect on beneficiary access to medications covered and pharmacy services under such programs.

''(B) By not later than December 31, 1991, the Secretary shall report to the Committee on Finance of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committees on Aging of the Senate and the House of Representatives on the results of the study conducted under subparagraph (A).

''(5) STUDY OF PAYMENTS FOR VACCINES.—The Secretary of Health and Human Services shall undertake a study of the relationship between State medical assistance plans and Federal and State acquisition and reimbursement policies for vaccines and the accessibility of vaccinations and immunization to children provided under this title. The Secretary shall report to the Congress on the Study not later than one year after the date of the enactment of this Act [Nov. 5, 1990].

''(6) STUDY ON APPLICATION OF DISCOUNTING OF DRUGS UNDER MEDICARE.—The Comptroller General shall conduct a study examining methods to encourage providers of items and services under title XVIII of the Social Security Act [subchapter XVIII of this chapter] to negotiate discounts with suppliers of prescription drugs to such providers. The Comptroller General shall submit to Congress a report on such study no later than 1 year after the date of enactment of this subsection [Nov. 5, 1990].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 256b, 1396a, 1396b of this title; title 38 section 8126.

§ 1396s. Program for distribution of pediatric vaccines

(a) Establishment of program

(1) In general

In order to meet the requirement of section 1396a(a)(62) of this title, each State shall establish a pediatric vaccine distribution program (which may be administered by the State department of health), consistent with the requirements of this section, under which—

(A) each vaccine-eligible child (as defined in subsection (b) of this section), in receiving an immunization with a qualified pediatric vaccine (as defined in subsection (h)(8) of this section) from a program-registered provider (as defined in subsection (c) of this section) on or after October 1, 1994, is entitled to receive the immunization without charge for the cost of such vaccine; and

(B)(i) each program-registered provider who administers such a pediatric vaccine to a vaccine-eligible child on or after such date is entitled to receive such vaccine under the program without charge either for the vaccine or its delivery to the provider, and (ii) no vaccine is distributed under the program to a provider unless the provider is a program-registered provider.

(2) Delivery of sufficient quantities of pediatric vaccines to immunize federally vaccine-eligible children

(A) In general

The Secretary shall provide under subsection (d) of this section for the purchase and delivery on behalf of each State meeting the requirement of section 1396a(a)(62) of this title (or, with respect to vaccines administered by an Indian tribe or tribal organization to Indian children, directly to the tribe or organization), without charge to the State, of such quantities of qualified pediatric vaccines as may be necessary for the administration of such vaccines to all federally vaccine-eligible children in the State on or after October 1, 1994. This paragraph constitutes budget authority in advance of appropriations Acts, and represents the obligation of the Federal Government to provide for the purchase and delivery to States of the vaccines (or payment under subparagraph (C)) in accordance with this paragraph.

(B) Special rules where vaccine is unavailable

To the extent that a sufficient quantity of a vaccine is not available for purchase or delivery under subsection (d) of this section, the Secretary shall provide for the purchase and delivery of the available vaccine in accordance with priorities established by the Secretary, with priority given to federally vaccine-eligible children unless the Secretary finds there are other public health considerations.

(C) Special rules where State is a manufacturer

(i) Payments in lieu of vaccines

In the case of a State that manufactures a pediatric vaccine the Secretary, instead of providing the vaccine on behalf of a State under subparagraph (A), shall provide to the State an amount equal to the value of the quantity of such vaccine that otherwise would have been delivered on behalf of the State under such subparagraph, but only if the State agrees that such payments will only be used for purposes relating to pediatric immunizations.

(ii) Determination of value

In determining the amount to pay a State under clause (i) with respect to a pediatric vaccine, the value of the quantity of vaccine shall be determined on the basis of the price in effect for the qualified pediatric vaccine under contracts under subsection (d) of this section. If more than 1 such contract is in effect, the Secretary shall determine such value on the basis of the average of the prices under the contracts, after weighting each such price in relation to the quantity of vaccine under the contract involved.

(b) Vaccine-eligible children

For purposes of this section:

(1) In general

The term ''vaccine-eligible child'' means a child who is a federally vaccine-eligible child (as defined in paragraph (2)) or a State vaccine-eligible child (as defined in paragraph (3)).

(2) Federally vaccine-eligible child

(A) In general

The term ''federally vaccine-eligible child'' means any of the following children:

(i) A medicaid-eligible child.

(ii) A child who is not insured.

(iii) A child who (I) is administered a qualified pediatric vaccine by a federally-qualified health center (as defined in section 1396d(*l*)(2)(B) of this title) or a rural health clinic (as defined in section 1396d(*l*)(1) of this title), and (II) is not insured with respect to the vaccine.

(iv) A child who is an Indian (as defined in subsection (h)(3) of this section).

(B) Definitions

In subparagraph (A):

(i) The term ''medicaid-eligible'' means, with respect to a child, a child who is entitled to medical assistance under a state[1] plan approved under this subchapter.

(ii) The term ''insured'' means, with respect to a child—

(I) for purposes of subparagraph (A)(ii), that the child is enrolled under, and entitled to benefits under, a health insurance policy or plan, including a group health plan, a prepaid health plan, or an employee welfare benefit plan under the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.]; and

(II) for purposes of subparagraph (A)(iii)(II) with respect to a pediatric vaccine, that the child is entitled to benefits under such a health insurance policy or plan, but such benefits are not available with respect to the cost of the pediatric vaccine.

(3) State vaccine-eligible child

The term ''State vaccine-eligible child'' means, with respect to a State and a qualified pediatric vaccine, a child who is within a class of children for which the State is purchasing the vaccine pursuant to subsection (d)(4)(B) of this section.

(c) Program-registered providers

(1) Defined

In this section, except as otherwise provided, the term ''program-registered provider'' means, with respect to a State, any health care provider that—

(A) is licensed or otherwise authorized for administration of pediatric vaccines under the law of the State in which the administration occurs (subject to section 254f(e) of this title), without regard to whether or not the provider participates in the plan under this subchapter;

(B) submits to the State an executed provider agreement described in paragraph (2); and

(C) has not been found, by the Secretary or the State, to have violated such agreement or other applicable requirements established by the Secretary or the State consistent with this section.

(2) Provider agreement

A provider agreement for a provider under this paragraph is an agreement (in such form and manner as the Secretary may require) that the provider agrees as follows:

(A)(i) Before administering a qualified pediatric vaccine to a child, the provider will ask a parent of the child such questions as are necessary to determine whether the child is a vaccine-eligible child, but the provider need not independently verify the answers to such questions.

(ii) The provider will, for a period of time specified by the Secretary, maintain records of responses made to the questions.

(iii) The provider will, upon request, make such records available to the State and to the Secretary, subject to section 1396a(a)(7) of this title.

(B)(i) Subject to clause (ii), the provider will comply with the schedule, regarding the appropriate periodicity, dosage, and contraindications applicable to pediatric vaccines, that is established and periodically reviewed and, as appropriate, revised by the advisory committee referred to in subsection (e) of this section, except in such cases as, in the provider's medical judgment subject to accepted medical practice, such compliance is medically inappropriate.

(ii) The provider will provide pediatric vaccines in compliance with applicable State law, including any such law relating to any religious or other exemption.

(C)(i) In administering a qualified pediatric vaccine to a vaccine-eligible child, the provider will not impose a charge for the cost of the vaccine. A program-registered provider is not required under this section to administer such a vaccine to each child for whom an immunization with the vaccine is sought from the provider.

(ii) The provider may impose a fee for the administration of a qualified pediatric vaccine so long as the fee in the case of a federally vaccine-eligible child does not exceed the costs of such administration (as determined by the Secretary based on actual regional costs for such administration).

(iii) The provider will not deny administration of a qualified pediatric vaccine to a vaccine-eligible child due to the inability of the child's parent to pay an administration fee.

(3) Encouraging involvement of providers

Each program under this section shall provide, in accordance with criteria established by the Secretary—

(A) for encouraging the following to become program-registered providers: private health care providers, the Indian Health Service, health care providers that receive funds under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.], and health programs or facilities operated by Indian tribes or tribal organizations; and

(B) for identifying, with respect to any population of vaccine-eligible children a substantial portion of whose parents have a limited ability to speak the English language, those program-registered providers who are able to communicate with the population involved in the language and cultural context that is most appropriate.

[1] So in original. Probably should be capitalized.

(4) State requirements

Except as the Secretary may permit in order to prevent fraud and abuse and for related purposes, a State may not impose additional qualifications or conditions, in addition to the requirements of paragraph (1), in order that a provider qualify as a program-registered provider under this section. This subsection does not limit the exercise of State authority under section 1396n(b) of this title.

(d) Negotiation of contracts with manufacturers

(1) In general

For the purpose of meeting obligations under this section, the Secretary shall negotiate and enter into contracts with manufacturers of pediatric vaccines consistent with the requirements of this subsection and, to the maximum extent practicable, consolidate such contracting with any other contracting activities conducted by the Secretary to purchase vaccines. The Secretary may enter into such contracts under which the Federal Government is obligated to make outlays, the budget authority for which is not provided for in advance in appropriations Acts, for the purchase and delivery of pediatric vaccines under subsection (a)(2)(A) of this section.

(2) Authority to decline contracts

The Secretary may decline to enter into such contracts and may modify or extend such contracts.

(3) Contract price

(A) In general

The Secretary, in negotiating the prices at which pediatric vaccines will be purchased and delivered from a manufacturer under this subsection, shall take into account quantities of vaccines to be purchased by States under the option under paragraph (4)(B).

(B) Negotiation of discounted price for current vaccines

With respect to contracts entered into under this subsection for a pediatric vaccine for which the Centers for Disease Control and Prevention has a contract in effect under section 247b(j)(1) of this title as of May 1, 1993, no price for the purchase of such vaccine for vaccine-eligible children shall be agreed to by the Secretary under this subsection if the price per dose of such vaccine (including delivery costs and any applicable excise tax established under section 4131 of the Internal Revenue Code of 1986) exceeds the price per dose for the vaccine in effect under such a contract as of such date increased by the percentage increase in the consumer price index for all urban consumers (all items; United States city average) from May 1993 to the month before the month in which such contract is entered into.

(C) Negotiation of discounted price for new vaccines

With respect to contracts entered into for a pediatric vaccine not described in subparagraph (B), the price for the purchase of such vaccine shall be a discounted price negotiated by the Secretary that may be established without regard to such subparagraph.

(4) Quantities and terms of delivery

Under such contracts—

(A) the Secretary shall provide, consistent with paragraph (6), for the purchase and delivery on behalf of States (and tribes and tribal organizations) of quantities of pediatric vaccines for federally vaccine-eligible children; and

(B) each State, at the option of the State, shall be permitted to obtain additional quantities of pediatric vaccines (subject to amounts specified to the Secretary by the State in advance of negotiations) through purchasing the vaccines from the manufacturers at the applicable price negotiated by the Secretary consistent with paragraph (3), if (i) the State agrees that the vaccines will be used to provide immunizations only for children who are not federally vaccine-eligible children and (ii) the State provides to the Secretary such information (at a time and manner specified by the Secretary, including in advance of negotiations under paragraph (1)) as the Secretary determines to be necessary, to provide for quantities of pediatric vaccines for the State to purchase pursuant to this subsection and to determine annually the percentage of the vaccine market that is purchased pursuant to this section and this subparagraph.

The Secretary shall enter into the initial negotiations under the preceding sentence not later than 180 days after August 10, 1993.

(5) Charges for shipping and handling

The Secretary may enter into a contract referred to in paragraph (1) only if the manufacturer involved agrees to submit to the Secretary such reports as the Secretary determines to be appropriate to assure compliance with the contract and if, with respect to a State program under this section that does not provide for the direct delivery of qualified pediatric vaccines, the manufacturer involved agrees that the manufacturer will provide for the delivery of the vaccines on behalf of the State in accordance with such program and will not impose any charges for the costs of such delivery (except to the extent such costs are provided for in the price established under paragraph (3)).

(6) Assuring adequate supply of vaccines

The Secretary, in negotiations under paragraph (1), shall negotiate for quantities of pediatric vaccines such that an adequate supply of such vaccines will be maintained to meet unanticipated needs for the vaccines. For purposes of the preceding sentence, the Secretary shall negotiate for a 6-month supply of vaccines in addition to the quantity that the Secretary otherwise would provide for in such negotiations. In carrying out this paragraph, the Secretary shall consider the potential for outbreaks of the diseases with respect to which the vaccines have been developed.

(7) Multiple suppliers

In the case of the pediatric vaccine involved, the Secretary shall, as appropriate, enter into

a contract referred to in paragraph (1) with each manufacturer of the vaccine that meets the terms and conditions of the Secretary for an award of such a contract (including terms and conditions regarding safety and quality). With respect to multiple contracts entered into pursuant to this paragraph, the Secretary may have in effect different prices under each of such contracts and, with respect to a purchase by States pursuant to paragraph (4)(B), the Secretary shall determine which of such contracts will be applicable to the purchase.

(e) Use of pediatric vaccines list

The Secretary shall use, for the purpose of the purchase, delivery, and administration of pediatric vaccines under this section, the list established (and periodically reviewed and as appropriate revised) by the Advisory Committee on Immunization Practices (an advisory committee established by the Secretary, acting through the Director of the Centers for Disease Control and Prevention).

(f) Requirement of State maintenance of immunization laws

In the case of a State that had in effect as of May 1, 1993, a law that requires some or all health insurance policies or plans to provide some coverage with respect to a pediatric vaccine, a State program under this section does not comply with the requirements of this section unless the State certifies to the Secretary that the State has not modified or repealed such law in a manner that reduces the amount of coverage so required.

(g) Termination

This section, and the requirement of section 1396a(a)(62) of this title, shall cease to be in effect beginning on such date as may be prescribed in Federal law providing for immunization services for all children as part of a broad-based reform of the national health care system.

(h) Definitions

For purposes of this section:

(1) The term ''child'' means an individual 18 years of age or younger.

(2) The term ''immunization'' means an immunization against a vaccine-preventable disease.

(3) The terms ''Indian'', ''Indian tribe'' and ''tribal organization'' have the meanings given such terms in section 4 of the Indian Health Care Improvement Act [25 U.S.C. 1603].

(4) The term ''manufacturer'' means any corporation, organization, or institution, whether public or private (including Federal, State, and local departments, agencies, and instrumentalities), which manufactures, imports, processes, or distributes under its label any pediatric vaccine. The term ''manufacture'' means to manufacture, import, process, or distribute a vaccine.

(5) The term ''parent'' includes, with respect to a child, an individual who qualifies as a legal guardian under State law.

(6) The term ''pediatric vaccine'' means a vaccine included on the list under subsection (e) of this section.

(7) The term ''program-registered provider'' has the meaning given such term in subsection (c) of this section.

(8) The term ''qualified pediatric vaccine'' means a pediatric vaccine with respect to which a contract is in effect under subsection (d) of this section.

(9) The terms ''vaccine-eligible child'', ''federally vaccine-eligible child'', and ''State vaccine-eligible child'' have the meaning given such terms in subsection (b) of this section.

(Aug. 14, 1935, ch. 531, title XIX, § 1928, as added Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13631(b)(2), 107 Stat. 637.)

REFERENCES IN TEXT

The Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(2)(B)(ii)(I), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 832, as amended, which is classified principally to chapter 18 (§ 1001 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The Indian Health Care Improvement Act, referred to in subsec. (c)(3)(A), is Pub. L. 94–437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

The Internal Revenue Code of 1986, referred to in subsec. (d)(3)(B), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 1396s, act Aug. 14, 1935, ch. 531, title XIX, § 1928, formerly § 1920, as added Apr. 7, 1986, Pub. L. 99–272, title IX, § 9526, 100 Stat. 218, and renumbered and amended, which related to references to laws directly affecting medicaid program, was renumbered section 1931 of act Aug. 14, 1935, by Pub. L. 103–66, title XIII, § 13631(b)(1), Aug. 10, 1993, 107 Stat. 637, and transferred to section 1396v of this title.

EFFECTIVE DATE

Section applicable to payments under State plans approved under this subchapter for calendar quarters beginning on or after Oct. 1, 1994, see section 13631(i) of Pub. L. 103–66, set out as an Effective Date of 1993 Amendment note under section 1396a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 1396b, 1396d of this title; title 29 section 1169.

§ 1396t. Home and community care for functionally disabled elderly individuals

(a) "Home and community care" defined

In this subchapter, the term ''home and community care'' means one or more of the following services furnished to an individual who has been determined, after an assessment under subsection (c) of this section, to be a functionally disabled elderly individual, furnished in accordance with an individual community care plan (established and periodically reviewed and revised by a qualified community care case manager under subsection (d) of this section):

(1) Homemaker/home health aide services.

(2) Chore services.

(3) Personal care services.

(4) Nursing care services provided by, or under the supervision of, a registered nurse.

(5) Respite care.

(6) Training for family members in managing the individual.

(7) Adult day care.

(8) In the case of an individual with chronic mental illness, day treatment or other partial hospitalization, psychosocial rehabilitation services, and clinic services (whether or not furnished in a facility).

(9) Such other home and community-based services (other than room and board) as the Secretary may approve.

(b) "Functionally disabled elderly individual" defined

(1) In general

In this subchapter, the term ''functionally disabled elderly individual'' means an individual who—

(A) is 65 years of age or older,

(B) is determined to be a functionally disabled individual under subsection (c) of this section, and

(C) subject to section 1396a(f) of this title (as applied consistent with section 1396a(r)(2) of this title), is receiving supplemental security income benefits under subchapter XVI of this chapter (or under a State plan approved under subchapter XVI of this chapter) or, at the option of the State, is described in section 1396a(a)(10)(C) of this title.

(2) Treatment of certain individuals previously covered under a waiver

(A) In the case of a State which—

(i) at the time of its election to provide coverage for home and community care under this section has a waiver approved under section 1396n(c) or 1396n(d) of this title with respect to individuals 65 years of age or older, and

(ii) subsequently discontinues such waiver, individuals who were eligible for benefits under the waiver as of the date of its discontinuance and who would, but for income or resources, be eligible for medical assistance for home and community care under the plan shall, notwithstanding any other provision of this subchapter, be deemed a functionally disabled elderly individual for so long as the individual would have remained eligible for medical assistance under such waiver.

(B) In the case of a State which used a health insuring organization before January 1, 1986, and which, as of December 31, 1990, had in effect a waiver under section 1315 of this title that provides under the State plan under this subchapter for personal care services for functionally disabled individuals, the term ''functionally disabled elderly individual'' may include, at the option of the State, an individual who—

(i) is 65 years of age or older or is disabled (as determined under the supplemental security income program under subchapter XVI of this chapter);

(ii) is determined to meet the test of functional disability applied under the waiver as of such date; and

(iii) meets the resource requirement and income standard that apply in the State to individuals described in section 1396a(a)(10)(A)(ii)(V) of this title.

(3) Use of projected income

In applying section 1396b(f)(1) of this title in determining the eligibility of an individual (described in section 1396a(a)(10)(C) of this title) for medical assistance for home and community care, a State may, at its option, provide for the determination of the individual's anticipated medical expenses (to be deducted from income) over a period of up to 6 months.

(c) Determinations of functional disability

(1) In general

In this section, an individual is ''functionally disabled'' if the individual—

(A) is unable to perform without substantial assistance from another individual at least 2 of the following 3 activities of daily living: toileting, transferring, and eating; or

(B) has a primary or secondary diagnosis of Alzheimer's disease and is (i) unable to perform without substantial human assistance (including verbal reminding or physical cueing) or supervision at least 2 of the following 5 activities of daily living: bathing, dressing, toileting, transferring, and eating; or (ii) cognitively impaired so as to require substantial supervision from another individual because he or she engages in inappropriate behaviors that pose serious health or safety hazards to himself or herself or others.

(2) Assessments of functional disability

(A) Requests for assessments

If a State has elected to provide home and community care under this section, upon the request of an individual who is 65 years of age or older and who meets the requirements of subsection (b)(1)(C) of this section (or another person on such individual's behalf), the State shall provide for a comprehensive functional assessment under this subparagraph which—

(i) is used to determine whether or not the individual is functionally disabled,

(ii) is based on a uniform minimum data set specified by the Secretary under subparagraph (C)(i), and

(iii) uses an instrument which has been specified by the State under subparagraph (B).

No fee may be charged for such an assessment.

(B) Specification of assessment instrument

The State shall specify the instrument to be used in the State in complying with the requirement of subparagraph (A)(iii) which instrument shall be—

(i) one of the instruments designated under subparagraph (C)(ii); or

(ii) an instrument which the Secretary has approved as being consistent with the minimum data set of core elements, common definitions, and utilization guidelines specified by the Secretary in subparagraph (C)(i).

(C) Specification of assessment data set and instruments

The Secretary shall—

(i) not later than July 1, 1991—

(I) specify a minimum data set of core elements and common definitions for use in conducting the assessments required under subparagraph (A); and

(II) establish guidelines for use of the data set; and

(ii) by not later than July 1, 1991, designate one or more instruments which are consistent with the specification made under subparagraph (A) and which a State may specify under subparagraph (B) for use in complying with the requirements of subparagraph (A).

(D) Periodic review

Each individual who qualifies as a functionally disabled elderly individual shall have the individual's assessment periodically reviewed and revised not less often than once every 12 months.

(E) Conduct of assessment by interdisciplinary teams

An assessment under subparagraph (A) and a review under subparagraph (D) must be conducted by an interdisciplinary team designated by the State. The Secretary shall permit a State to provide for assessments and reviews through teams under contracts—

(i) with public organizations; or

(ii) with nonpublic organizations which do not provide home and community care or nursing facility services and do not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, community care or nursing facility services.

(F) Contents of assessment

The interdisciplinary team must—

(i) identify in each such assessment or review each individual's functional disabilities and need for home and community care, including information about the individual's health status, home and community environment, and informal support system; and

(ii) based on such assessment or review, determine whether the individual is (or continues to be) functionally disabled.

The results of such an assessment or review shall be used in establishing, reviewing, and revising the individual's ICCP under subsection (d)(1) of this section.

(G) Appeal procedures

Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals adversely affected by determinations under subparagraph (F).

(d) Individual community care plan (ICCP)

(1) "Individual community care plan" defined

In this section, the terms ''individual community care plan'' and ''ICCP'' mean, with respect to a functionally disabled elderly individual, a written plan which—

(A) is established, and is periodically reviewed and revised, by a qualified case manager after a face-to-face interview with the individual or primary caregiver and based upon the most recent comprehensive functional assessment of such individual conducted under subsection (c)(2) of this section;

(B) specifies, within any amount, duration, and scope limitations imposed on home and community care provided under the State plan, the home and community care to be provided to such individual under the plan, and indicates the individual's preferences for the types and providers of services; and

(C) may specify other services required by such individual.

An ICCP may also designate the specific providers (qualified to provide home and community care under the State plan) which will provide the home and community care described in subparagraph (B). Nothing in this section shall be construed as authorizing an ICCP or the State to restrict the specific persons or individuals (who are competent to provide home and community care under the State plan) who will provide the home and community care described in subparagraph (B).

(2) "Qualified community care case manager" defined

In this section, the term ''qualified community care case manager'' means a nonprofit or public agency or organization which—

(A) has experience or has been trained in establishing, and in periodically reviewing and revising, individual community care plans and in the provision of case management services to the elderly;

(B) is responsible for (i) assuring that home and community care covered under the State plan and specified in the ICCP is being provided, (ii) visiting each individual's home or community setting where care is being provided not less often than once every 90 days, and (iii) informing the elderly individual or primary caregiver on how to contact the case manager if service providers fail to properly provide services or other similar problems occur;

(C) in the case of a nonpublic agency, does not provide home and community care or nursing facility services and does not have a direct or indirect ownership or control interest in, or direct or indirect affiliation or relationship with, an entity that provides, home and community care or nursing facility services;

(D) has procedures for assuring the quality of case management services that includes a peer review process;

(E) completes the ICCP in a timely manner and reviews and discusses new and revised ICCPs with elderly individuals or primary caregivers; and

(F) meets such other standards, established by the Secretary, as to assure that—

(i) such a manager is competent to perform case management functions;

(ii) individuals whose home and community care they manage are not at risk of fi-

nancial exploitation due to such a manager; and

(iii) meets such other standards as the State may establish.

The Secretary may waive the requirement of subparagraph (C) in the case of a nonprofit agency located in a rural area.

(3) Appeals process

Each State which elects to provide home and community care under this section must have in effect an appeals process for individuals who disagree with the ICCP established.

(e) Ceiling on payment amounts and maintenance of effort

(1) Ceiling on payment amounts

Payments may not be made under section 1396b(a) of this title to a State for home and community care provided under this section in a quarter to the extent that the medical assistance for such care in the quarter exceeds 50 percent of the product of—

(A) the average number of individuals in the quarter receiving such care under this section;

(B) the average per diem rate of payment which the Secretary has determined (before the beginning of the quarter) will be payable under subchapter XVIII of this chapter (without regard to coinsurance) for extended care services to be provided in the State during such quarter; and

(C) the number of days in such quarter.

(2) Maintenance of effort

(A) Annual reports

As a condition for the receipt of payment under section 1396b(a) of this title with respect to medical assistance provided by a State for home and community care (other than a waiver under section 1396n(c) of this title and other than home health care services described in section 1396d(a)(7) of this title and personal care services specified under regulations under section 1396d(a)(23) of this title), the State shall report to the Secretary, with respect to each Federal fiscal year (beginning with fiscal year 1990) and in a format developed or approved by the Secretary, the amount of funds obligated by the State with respect to the provision of home and community care to the functionally disabled elderly in that fiscal year.

(B) Reduction in payment if failure to maintain effort

If the amount reported under subparagraph (A) by a State with respect to a fiscal year is less than the amount reported under subparagraph (A) with respect to fiscal year 1989, the Secretary shall provide for a reduction in payments to the State under section 1396b(a) of this title in an amount equal to the difference between the amounts so reported.

(f) Minimum requirements for home and community care

(1) Requirements

Home and Community[1] care provided under this section must meet such requirements for individuals' rights and quality as are published or developed by the Secretary under subsection (k) of this section. Such requirements shall include—

(A) the requirement that individuals providing care are competent to provide such care; and

(B) the rights specified in paragraph (2).

(2) Specified rights

The rights specified in this paragraph are as follows:

(A) The right to be fully informed in advance, orally and in writing, of the care to be provided, to be fully informed in advance of any changes in care to be provided, and (except with respect to an individual determined incompetent) to participate in planning care or changes in care.

(B) The right to voice grievances with respect to services that are (or fail to be) furnished without discrimination or reprisal for voicing grievances, and to be told how to complain to State and local authorities.

(C) The right to confidentiality of personal and clinical records.

(D) The right to privacy and to have one's property treated with respect.

(E) The right to refuse all or part of any care and to be informed of the likely consequences of such refusal.

(F) The right to education or training for oneself and for members of one's family or household on the management of care.

(G) The right to be free from physical or mental abuse, corporal punishment, and any physical or chemical restraints imposed for purposes of discipline or convenience and not included in an individual's ICCP.

(H) The right to be fully informed orally and in writing of the individual's rights.

(I) Guidelines for such minimum compensation for individuals providing such care as will assure the availability and continuity of competent individuals to provide such care for functionally disabled individuals who have functional disabilities of varying levels of severity.

(J) Any other rights established by the Secretary.

(g) Minimum requirements for small community care settings

(1) "Small community care setting" defined

In this section, the term ''small community care setting'' means—

(A) a nonresidential setting that serves more than 2 and less than 8 individuals; or

(B) a residential setting in which more than 2 and less than 8 unrelated adults reside and in which personal services (other than merely board) are provided in conjunction with residing in the setting.

(2) Minimum requirements

A small community care setting in which community care is provided under this section must—

(A) meet such requirements as are published or developed by the Secretary under subsection (k) of this section;

(B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section

[1] So in original. Probably should not be capitalized.

1396r(c) of this title, to the extent applicable to such a setting;

(C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives community care in the setting, of the individual's legal rights with respect to such a setting and the care provided in the setting;

(D) meet any applicable State or local requirements regarding certification or licensure;

(E) meet any applicable State and local zoning, building, and housing codes, and State and local fire and safety regulations; and

(F) be designed, constructed, equipped, and maintained in a manner to protect the health and safety of residents.

(h) Minimum requirements for large community care settings

(1) "Large community care setting" defined

In this section, the term ''large community care setting'' means—

(A) a nonresidential setting in which more than 8 individuals are served; or

(B) a residential setting in which more than 8 unrelated adults reside and in which personal services are provided in conjunction with residing in the setting in which home and community care under this section is provided.

(2) Minimum requirements

A large community care setting in which community care is provided under this section must—

(A) meet such requirements as are published or developed by the Secretary under subsection (k) of this section;

(B) meet the requirements of paragraphs (1)(A), (1)(C), (1)(D), (3), and (6) of section 1396r(c) of this title, to the extent applicable to such a setting;

(C) inform each individual receiving community care under this section in the setting, orally and in writing at the time the individual first receives home and community care in the setting, of the individual's legal rights with respect to such a setting and the care provided in the setting; and

(D) meet the requirements of paragraphs (2) and (3) of section 1396r(d) of this title (relating to administration and other matters) in the same manner as such requirements apply to nursing facilities under such section; except that, in applying the requirement of section 1396r(d)(2) of this title (relating to life safety code), the Secretary shall provide for the application of such life safety requirements (if any) that are appropriate to the setting.

(3) Disclosure of ownership and control interests and exclusion of repeated violators

A community care setting—

(A) must disclose persons with an ownership or control interest (including such persons as defined in section 1320a–3(a)(3) of this title) in the setting; and

(B) may not have, as a person with an ownership or control interest in the setting, any individual or person who has been excluded from participation in the program under this subchapter or who has had such an ownership or control interest in one or more community care settings which have been found repeatedly to be substandard or to have failed to meet the requirements of paragraph (2).

(i) Survey and certification process

(1) Certifications

(A) Responsibilities of the State

Under each State plan under this subchapter, the State shall be responsible for certifying the compliance of providers of home and community care and community care settings with the applicable requirements of subsections (f), (g) and (h) of this section. The failure of the Secretary to issue regulations to carry out this subsection shall not relieve a State of its responsibility under this subsection.

(B) Responsibilities of the Secretary

The Secretary shall be responsible for certifying the compliance of State providers of home and community care, and of State community care settings in which such care is provided, with the requirements of subsections (f), (g) and (h) of this section.

(C) Frequency of certifications

Certification of providers and settings under this subsection shall occur no less frequently than once every 12 months.

(2) Reviews of providers

(A) In general

The certification under this subsection with respect to a provider of home or community care must be based on a periodic review of the provider's performance in providing the care required under ICCP's in accordance with the requirements of subsection (f) of this section.

(B) Special reviews of compliance

Where the Secretary has reason to question the compliance of a provider of home or community care with any of the requirements of subsection (f) of this section, the Secretary may conduct a review of the provider and, on the basis of that review, make independent and binding determinations concerning the extent to which the provider meets such requirements.

(3) Surveys of community care settings

(A) In general

The certification under this subsection with respect to community care settings must be based on a survey. Such survey for such a setting must be conducted without prior notice to the setting. Any individual who notifies (or causes to be notified) a community care setting of the time or date on which such a survey is scheduled to be conducted is subject to a civil money penalty of not to exceed $2,000. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence

in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall review each State's procedures for scheduling and conducting such surveys to assure that the State has taken all reasonable steps to avoid giving notice of such a survey through the scheduling procedures and the conduct of the surveys themselves.

(B) Survey protocol

Surveys under this paragraph shall be conducted based upon a protocol which the Secretary has provided for under subsection (k) of this section.

(C) Prohibition of conflict of interest in survey team membership

A State and the Secretary may not use as a member of a survey team under this paragraph an individual who is serving (or has served within the previous 2 years) as a member of the staff of, or as a consultant to, the community care setting being surveyed (or the person responsible for such setting) respecting compliance with the requirements of subsection (g) or (h) of this section or who has a personal or familial financial interest in the setting being surveyed.

(D) Validation surveys of community care settings

The Secretary shall conduct onsite surveys of a representative sample of community care settings in each State, within 2 months of the date of surveys conducted under subparagraph (A) by the State, in a sufficient number to allow inferences about the adequacies of each State's surveys conducted under subparagraph (A). In conducting such surveys, the Secretary shall use the same survey protocols as the State is required to use under subparagraph (B). If the State has determined that an individual setting meets the requirements of subsection (g) of this section, but the Secretary determines that the setting does not meet such requirements, the Secretary's determination as to the setting's noncompliance with such requirements is binding and supersedes that of the State survey.

(E) Special surveys of compliance

Where the Secretary has reason to question the compliance of a community care setting with any of the requirements of subsection (g) or (h) of this section, the Secretary may conduct a survey of the setting and, on the basis of that survey, make independent and binding determinations concerning the extent to which the setting meets such requirements.

(4) Investigation of complaints and monitoring of providers and settings

Each State and the Secretary shall maintain procedures and adequate staff to investigate complaints of violations of applicable requirements imposed on providers of community care or on community care settings under subsections (f), (g) and (h) of this section.

(5) Investigation of allegations of individual neglect and abuse and misappropriation of individual property

The State shall provide, through the agency responsible for surveys and certification of providers of home or community care and community care settings under this subsection, for a process for the receipt, review, and investigation of allegations of individual neglect and abuse (including injuries of unknown source) by individuals providing such care or in such setting and of misappropriation of individual property by such individuals. The State shall, after notice to the individual involved and a reasonable opportunity for hearing for the individual to rebut allegations, make a finding as to the accuracy of the allegations. If the State finds that an individual has neglected or abused an individual receiving community care or misappropriated such individual's property, the State shall notify the individual against whom the finding is made. A State shall not make a finding that a person has neglected an individual receiving community care if the person demonstrates that such neglect was caused by factors beyond the control of the person. The State shall provide for public disclosure of findings under this paragraph upon request and for inclusion, in any such disclosure of such findings, of any brief statement (or of a clear and accurate summary thereof) of the individual disputing such findings.

(6) Disclosure of results of inspections and activities

(A) Public information

Each State, and the Secretary, shall make available to the public—

(i) information respecting all surveys, reviews, and certifications made under this subsection respecting providers of home or community care and community care settings, including statements of deficiencies,

(ii) copies of cost reports (if any) of such providers and settings filed under this subchapter,

(iii) copies of statements of ownership under section 1320a–3 of this title, and

(iv) information disclosed under section 1320a–5 of this title.

(B) Notices of substandard care

If a State finds that—

(i) a provider of home or community care has provided care of substandard quality with respect to an individual, the State shall make a reasonable effort to notify promptly (I) an immediate family member of each such individual and (II) individuals receiving home or community care from that provider under this subchapter, or

(ii) a community care setting is substandard, the State shall make a reasonable effort to notify promptly (I) individuals receiving community care in that setting, and (II) immediate family members of such individuals.

(C) Access to fraud control units

Each State shall provide its State medicaid fraud and abuse control unit (established

under section 1396b(q) of this title) with access to all information of the State agency responsible for surveys, reviews, and certifications under this subsection.

(j) Enforcement process for providers of community care

(1) State authority

(A) In general

If a State finds, on the basis of a review under subsection (i)(2) of this section or otherwise, that a provider of home or community care no longer meets the requirements of this section, the State may terminate the provider's participation under the State plan and may provide in addition for a civil money penalty. Nothing in this subparagraph shall be construed as restricting the remedies available to a State to remedy a provider's deficiencies. If the State finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the State may provide for a civil money penalty under paragraph (2)(A) for the period during which it finds that the provider was not in compliance with such requirements.

(B) Civil money penalty

(i) In general

Each State shall establish by law (whether statute or regulation) at least the following remedy: A civil money penalty assessed and collected, with interest, for each day in which the provider is or was out of compliance with a requirement of this section. Funds collected by a State as a result of imposition of such a penalty (or as a result of the imposition by the State of a civil money penalty under subsection (i)(3)(A) of this section) may be applied to reimbursement of individuals for personal funds lost due to a failure of home or community care providers to meet the requirements of this section. The State also shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

(ii) Deadline and guidance

Each State which elects to provide home and community care under this section must establish the civil money penalty remedy described in clause (i) applicable to all providers of community care covered under this section. The Secretary shall provide, through regulations or otherwise by not later than July 1, 1990, guidance to States in establishing such remedy; but the failure of the Secretary to provide such guidance shall not relieve a State of the responsibility for establishing such remedy.

(2) Secretarial authority

(A) For State providers

With respect to a State provider of home or community care, the Secretary shall have the authority and duties of a State under this subsection, except that the civil money penalty remedy described in subparagraph (C) shall be substituted for the civil money remedy described in paragraph (1)(B)(i).

(B) Other providers

With respect to any other provider of home or community care in a State, if the Secretary finds that a provider no longer meets a requirement of this section, the Secretary may terminate the provider's participation under the State plan and may provide, in addition, for a civil money penalty under subparagraph (C). If the Secretary finds that a provider meets such requirements but, as of a previous period, did not meet such requirements, the Secretary may provide for a civil money penalty under subparagraph (C) for the period during which the Secretary finds that the provider was not in compliance with such requirements.

(C) Civil money penalty

If the Secretary finds on the basis of a review under subsection (i)(2) of this section or otherwise that a home or community care provider no longer meets the requirements of this section, the Secretary shall impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title. The Secretary shall specify criteria, as to when and how this remedy is to be applied and the amounts of any penalties. Such criteria shall be designed so as to minimize the time between the identification of violations and final imposition of the penalties and shall provide for the imposition of incrementally more severe penalties for repeated or uncorrected deficiencies.

(k) Secretarial responsibilities

(1) Publication of interim requirements

(A) In general

The Secretary shall publish, by December 1, 1991, a proposed regulation that sets forth interim requirements, consistent with subparagraph (B), for the provision of home and community care and for community care settings, including—

(i) the requirements of subsection (c)(2) of this section (relating to comprehensive functional assessments, including the use of assessment instruments), of subsection (d)(2)(E) of this section (relating to qualifications for qualified case managers), of subsection (f) of this section (relating to minimum requirements for home and community care), of subsection (g) of this section (relating to minimum requirements for small community care settings), and of

subsection (h) of this section (relating to minimum requirements for large community care settings,[2] and

(ii) survey protocols (for use under subsection (i)(3)(A) of this section) which relate to such requirements.

(B) Minimum protections

Interim requirements under subparagraph (A) and final requirements under paragraph (2) shall assure, through methods other than reliance on State licensure processes, that individuals receiving home and community care are protected from neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, and the provision of health care services by unqualified personnel in community care settings.

(2) Development of final requirements

The Secretary shall develop, by not later than October 1, 1992—

(A) final requirements, consistent with paragraph (1)(B), respecting the provision of appropriate, quality home and community care and respecting community care settings under this section, and including at least the requirements referred to in paragraph (1)(A)(i), and

(B) survey protocols and methods for evaluating and assuring the quality of community care settings.

The Secretary may, from time to time, revise such requirements, protocols, and methods.

(3) No delegation to States

The Secretary's authority under this subsection shall not be delegated to States.

(4) No prevention of more stringent requirements by States

Nothing in this section shall be construed as preventing States from imposing requirements that are more stringent than the requirements published or developed by the Secretary under this subsection.

(*l*) Waiver of statewideness

States may waive the requirement of section 1396a(a)(1) of this title (related to State wideness)[3] for a program of home and community care under this section.

(m) Limitation on amount of expenditures as medical assistance

(1) Limitation on amount

The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, $40,000,000, for fiscal year 1992, $70,000,000, for fiscal year 1993, $130,000,000, for fiscal year 1994, $160,000,000, and for fiscal year 1995, $180,000,000.

(2) Assurance of entitlement to service

A State which receives Federal medical assistance for expenditures for home and community care under this section must provide home and community care specified under the Individual Community Care Plan under subsection (d) of this section to individuals described in subsection (b) of this section for the duration of the election period, without regard to the amount of funds available to the State under paragraph (1). For purposes of this paragraph, an election period is the period of 4 or more calendar quarters elected by the State, and approved by the Secretary, for the provision of home and community care under this section.

(3) Limitation on eligibility

The State may limit eligibility for home and community care under this section during an election period under paragraph (2) to reasonable classifications (based on age, degree of functional disability, and need for services).

(4) Allocation of medical assistance

The Secretary shall establish a limitation on the amount of Federal medical assistance available to any State during the State's election period under paragraph (2). The limitation under this paragraph shall take into account the limitation under paragraph (1) and the number of elderly individuals age 65 or over residing in such State in relation to the number of such elderly individuals in the United States during 1990. For purposes of the previous sentence, elderly individuals shall, to the maximum extent practicable, be low-income elderly individuals.

(Aug. 14, 1935, ch. 531, title XIX, §1929, as added Nov. 5, 1990, Pub. L. 101–508, title IV, §4711(b), 104 Stat. 1388–174.)

CODIFICATION

Pub. L. 101–508, title IV, §4711(b)(1), Nov. 5, 1990, 104 Stat. 1388–174, which directed renumbering of section 1929 of the Social Security Act, act Aug. 14, 1935, as section 1930, could not be executed because there was no section 1929.

EFFECTIVE DATE

Section applicable to home and community care furnished on or after July 1, 1991, without regard to whether or not final regulations to carry out the amendments made by section 4711 of Pub. L. 101–508 have been promulgated by such date, see section 4711(e) of Pub. L. 101–508, set out as an Effective Date of 1990 Amendment note under section 1396a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 1396d of this title.

§ 1396u. Community supported living arrangements services

(a) Community supported living arrangements services

In this subchapter, the term ''community supported living arrangements services'' means one or more of the following services meeting the requirements of subsection (h) of this section provided in a State eligible to provide services under this section (as defined in subsection (d) of this section) to assist a developmentally disabled individual (as defined in subsection (b) of this section) in activities of daily living necessary to permit such individual to live in the individual's own home, apartment, family home, or rental unit furnished in a community supported living arrangement setting:

[2] So in original. Probably should be ''settings),''.

[3] So in original. Probably should be ''statewideness)''.

(1) Personal assistance.

(2) Training and habilitation services (necessary to assist the individual in achieving increased integration, independence and productivity).

(3) 24-hour emergency assistance (as defined by the Secretary).

(4) Assistive technology.

(5) Adaptive equipment.

(6) Other services (as approved by the Secretary, except those services described in subsection (g) of this section).

(7) Support services necessary to aid an individual to participate in community activities.

(b) "Developmentally disabled individual" defined

In this subchapter the term,[1] ''developmentally disabled individual'' means an individual who as defined by the Secretary is described within the term ''mental retardation and related conditions'' as defined in regulations as in effect on July 1, 1990, and who is residing with the individual's family or legal guardian in such individual's own home in which no more than 3 other recipients of services under this section are residing and without regard to whether or not such individual is at risk of institutionalization (as defined by the Secretary).

(c) Criteria for selection of participating States

The Secretary shall develop criteria to review the applications of States submitted under this section to provide community supported living arrangement services. The Secretary shall provide in such criteria that during the first 5 years of the provision of services under this section that no less than 2 and no more than 8 States shall be allowed to receive Federal financial participation for providing the services described in this section.

(d) Quality assurance

A State selected by the Secretary to provide services under this section shall in order to continue to receive Federal financial participation for providing services under this section be required to establish and maintain a quality assurance program, that provides that—

(1) the State will certify and survey providers of services under this section (such surveys to be unannounced and average at least 1 a year);

(2) the State will adopt standards for survey and certification that include—

(A) minimum qualifications and training requirements for provider staff;

(B) financial operating standards; and

(C) a consumer grievance process;

(3) the State will provide a system that allows for monitoring boards consisting of providers, family members, consumers, and neighbors;

(4) the State will establish reporting procedures to make available information to the public;

(5) the State will provide ongoing monitoring of the health and well-being of each recipient;

(6) the State will provide the services defined in subsection (a) of this section in accordance with an individual support plan (as defined by the Secretary in regulations); and

(7) the State plan amendment under this section shall be reviewed by the State Planning Council established under section 6024 of this title, and the Protection and Advocacy System established under section 6042 of this title.

The Secretary shall not approve a quality assurance plan under this subsection and allow a State to continue to receive Federal financial participation under this section unless the State provides for public hearings on the plan prior to adoption and implementation of its plan under this subsection.

(e) Maintenance of effort

States selected by the Secretary to receive Federal financial participation to provide services under this section shall maintain current levels of spending for such services in order to be eligible to continue to receive Federal financial participation for the provision of such services under this section.

(f) Excluded services

No Federal financial participation shall be allowed for the provision of the following services under this section:

(1) Room and board.

(2) Cost of prevocational, vocational and supported employment.

(g) Waiver of requirements

The Secretary may waive such provisions of this subchapter as necessary to carry out the provisions of this section including the following requirements of this subchapter—

(1) comparability of amount, duration, and scope of services; and

(2) statewideness.

(h) Minimum protections

(1) Publication of interim and final requirements

(A) In general

The Secretary shall publish, by July 1, 1991, a regulation (that shall be effective on an interim basis pending the promulgation of final regulations), and by October 1, 1992, a final regulation, that sets forth interim and final requirements, respectively, consistent with subparagraph (B), to protect the health, safety, and welfare of individuals receiving community supported living arrangements services.

(B) Minimum protections

Interim and final requirements under subparagraph (A) shall assure, through methods other than reliance on State licensure processes or the State quality assurance programs under subsection (d) of this section, that—

(i) individuals receiving community supported living arrangements services are protected from neglect, physical and sexual abuse, and financial exploitation;

(ii) a provider of community supported living arrangements services may not use

[1] So in original. The comma probably should precede ''the term''.

individuals who have been convicted of child or client abuse, neglect, or mistreatment or of a felony involving physical harm to an individual and shall take all reasonable steps to determine whether applicants for employment by the provider have histories indicating involvement in child or client abuse, neglect, or mistreatment or a criminal record involving physical harm to an individual;

(iii) individuals or entities delivering such services are not unjustly enriched as a result of abusive financial arrangements (such as owner lease-backs); and

(iv) individuals or entities delivering such services to clients, or relatives of such individuals, are prohibited from being named beneficiaries of life insurance policies purchased by (or on behalf of) such clients.

(2) Specified remedies

If the Secretary finds that a provider has not met an applicable requirement under subsection (h) of this section, the Secretary shall impose a civil money penalty in an amount not to exceed $10,000 for each day of noncompliance. The provisions of section 1320a–7a of this title (other than subsections (a) and (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1320a–7a(a) of this title.

(i) Treatment of funds

Any funds expended under this section for medical assistance shall be in addition to funds expended for any existing services covered under the State plan, including any waiver services for which an individual receiving services under this program is already eligible.

(j) Limitation on amounts of expenditures as medical assistance

The amount of funds that may be expended as medical assistance to carry out the purposes of this section shall be for fiscal year 1991, $5,000,000, for fiscal year 1992, $10,000,000, for fiscal year 1993, $20,000,000, for fiscal year 1994, $30,000,000, for fiscal year 1995, $35,000,000, and for fiscal years thereafter such sums as provided by Congress.

(Aug. 14, 1935, ch. 531, title XIX, § 1930, as added Nov. 5, 1990, Pub. L. 101–508, title IV, § 4712(b), 104 Stat. 1388–187.)

CODIFICATION

Pub. L. 101–508, title IV, § 4712(b)(1), Nov. 5, 1990, 104 Stat. 1388–187, which directed renumbering of section 1930 of the Social Security Act, act Aug. 14, 1935, as section 1931, could not be executed because there was no section 1930.

EFFECTIVE DATE

Section 4712(c) of Pub. L. 101–508 provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section and amending section 1396d of this title] shall apply to community supported living arrangements services furnished on or after the later of July 1, 1991, or 30 days after the publication of regulations setting forth interim requirements under subsection (h) [probably means subsec. (h) of this section] without regard to whether or not final regulations to carry out such amendments have been promulgated by such date.

''(2) APPLICATION PROCESS.—The Secretary of Health and Human Services shall provide that the applications required to be submitted by States under this section shall be received and approved prior to the effective date specified in paragraph (1).''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396d of this title.

§ 1396v. References to laws directly affecting medicaid program

(a) Authority or requirements to cover additional individuals

For provisions of law which make additional individuals eligible for medical assistance under this subchapter, see the following:

(1) AFDC

(A) Section 602(a)(32) of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made).

(B) Section 602(a)(37) of this title (relating to individuals who lose AFDC eligibility due to increased earnings).

(C) Section 606(h) of this title (relating to individuals who lose AFDC eligibility due to increased collection of child or spousal support).

(D) Section 682(e)(6) of this title (relating to certain individuals participating in work supplementation programs).

(2) SSI

(A) Section 1382(e) of this title (relating to treatment of couples sharing an accommodation in a facility).

(B) Section 1382h of this title (relating to benefits for individuals who perform substantial gainful activity despite severe medical impairment).

(C) Section 1383c(b) of this title (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).

(D) Section 1383c(c) of this title (relating to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits under section 402(d) of this title).

(E) Section 1383c(d) of this title (relating to individuals who lose eligibility for SSI benefits due to entitlement to early widow's or widower's insurance benefits under section 602(e) or (f) of this title).

(3) Foster care and adoption assistance

Sections 672(h) and 673(b) of this title (relating to medical assistance for children in foster care and for adopted children).

(4) Refugee assistance

Section 1522(e)(5) of title 8 (relating to medical assistance for certain refugees).

(5) Miscellaneous

(A) Section 230 of Public Law 93–66 (relating to deeming eligible for medical assistance certain essential persons).

(B) Section 231 of Public Law 93–66 (relating to deeming eligible for medical assistance certain persons in medical institutions).

(C) Section 232 of Public Law 93–66 (relating to deeming eligible for medical assistance certain blind and disabled medically indigent persons).

(D) Section 13(c) of Public Law 93–233 (relating to deeming eligible for medical assistance certain individuals receiving mandatory State supplementary payments).

(E) Section 503 of Public Law 94–566 (relating to deeming eligible for medical assistance certain individuals who would be eligible for supplemental security income benefits but for cost-of-living increases in social security benefits).

(F) Section 310(b)(1) of Public Law 96–272 (relating to continuing medicaid eligibility for certain recipients of Department of Veterans Affairs pensions).

(b) Additional State plan requirements

For other provisions of law that establish additional requirements for State plans to be approved under this subchapter, see the following:

(1) Section 1382g of this title (relating to requirement for operation of certain State supplementation programs).

(2) Section 212(a) of Public Law 93–66 (relating to requiring mandatory minimum State supplementation of SSI benefits program).

(Aug. 14, 1935, ch. 531, title XIX, § 1931, formerly § 1920, as added Apr. 7, 1986, Pub. L. 99–272, title IX, § 9526, 100 Stat. 218; renumbered § 1921, Oct. 21, 1986, Pub. L. 99–509, title IX, § 9407(b), 100 Stat. 2058; amended Oct. 22, 1986, Pub. L. 99–514, title XVIII, § 1895(c)(5), 100 Stat. 2936; Nov. 10, 1986, Pub. L. 99–643, § 6(c), 100 Stat. 3578; renumbered § 1922, Aug. 18, 1987, Pub. L. 100–93, § 5(b), 101 Stat. 690; renumbered § 1923 and § 1924 and amended Dec. 22, 1987, Pub. L. 100–203, title IV, §§ 4112(a)(1), 4118(p)(9), 4211(a)(1), title IX, § 9116(d), 101 Stat. 1330–148, 1330–159, 1330–182, 1330–306, as amended July 1, 1988, Pub. L. 100–360, title IV, § 411(k)(6)(B)(i), (10)(L), (n)(3), 102 Stat. 793, 797, as amended Oct. 13, 1988, Pub. L. 100–485, title VI, § 608(d)(28), 102 Stat. 2423; renumbered § 1925, July 1, 1988, Pub. L. 100–360, title III, § 303(a)(1)(A), 102 Stat. 754; renumbered § 1926 and amended Oct. 13, 1988, Pub. L. 100–485, title II, § 202(c)(5), title III, § 303(a)(1), 102 Stat. 2378, 2385; renumbered § 1927, Dec. 19, 1989, Pub. L. 101–239, title VI, § 6402(b), 103 Stat. 2260; renumbered § 1928, Nov. 5, 1990, Pub. L. 101–508, title IV, § 4401(a)(3), 104 Stat. 1388–143; June 13, 1991, Pub. L. 102–54, § 13(q)(3)(A)(v), 105 Stat. 279; renumbered § 1931, Aug. 10, 1993, Pub. L. 103–66, title XIII, § 13631(b)(1), 107 Stat. 637.)

REFERENCES IN TEXT

Sections 230, 231, and 232 of Public Law 93–66, referred to in subsec. (a)(5)(A) to (C), are sections 230, 231, and 232 of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 159, 160, as amended, which are set out as notes under section 1396a of this title.

Section 13(c) of Public Law 93–233, referred to in subsec. (a)(5)(D), is section 13(c) of Pub. L. 93–233, Dec. 31, 1973, 87 Stat. 965, which is set out as a note under section 1396a of this title.

Section 503 of Public Law 94–566, referred to in subsec. (a)(5)(E), is section 503 of Pub. L. 94–566, title V, Oct. 20, 1976, 90 Stat. 2685, which is set out as a note under section 1396a of this title.

Section 310(b)(1) of Public Law 96–272, referred to in subsec. (a)(5)(F), is section 310(b)(1) of Pub. L. 96–272, title III, June 17, 1980, 94 Stat. 533, which is set out as a note under section 1396a of this title.

Section 212(a) of Public Law 93–66, referred to in subsec. (b)(2), is section 212(a) of Pub. L. 93–66, title II, July 9, 1973, 87 Stat. 155, as amended, which is set out as a note under section 1382 of this title.

CODIFICATION

Section was formerly classified to section 1396s of this title prior to renumbering by Pub. L. 103–66.

AMENDMENTS

1991—Subsec. (a)(5)(F). Pub. L. 102–54 substituted ''Department of Veterans Affairs'' for ''Veterans' Administration''.

1988—Subsec. (a)(1). Pub. L. 100–360, § 411(k)(10)(L), made technical correction to directory language of Pub. L. 100–203, § 4118(p)(9), see 1987 Amendment note below.

Subsec. (a)(1)(D). Pub. L. 100–485, § 202(c)(5), substituted ''section 682(e)(6) of this title'' for ''section 614(g) of this title''.

Subsec. (a)(2). Pub. L. 100–360, § 411(k)(10)(L), made technical correction to directory language of Pub. L. 100–203, § 4118(p)(9), see 1987 Amendment note below.

Subsec. (a)(2)(E). Pub. L. 100–360, § 411(n)(3), as added by Pub. L. 100–485, § 608(d)(28), amended Pub. L. 100–203, § 9116(d), see 1987 Amendment note below.

1987—Subsec. (a)(1). Pub. L. 100–203, § 4118(p)(9), as amended by Pub. L. 100–360, § 411(k)(10)(L), amended par. (1) generally. Prior to amendment, par. (1) read as follows:

''(1) AFDC.—(A) Section 602(a)(32) of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made). Section 602(a)(37) of this title (relating to individuals who lose AFDC eligibility due to increased earnings).

''(C) Section 606(h) of this title (relating to individuals who lose AFDC eligibility due to increased collection of child or spousal support).

''(D) Section 614(g) of this title (relating to certain individuals participating in work supplementation programs).''

Subsec. (a)(2). Pub. L. 100–203, § 4118(p)(9), as amended by Pub. L. 100–360, § 411(k)(10)(L), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

''(2) SSI.—(A) Section 1382h of this title (relating to benefits for individuals who perform substantial gainful activity despite severe medical impairment).

''(B) Section 1383c(b) of this title (relating to preservation of benefit status for disabled widows and widowers who lost SSI benefits because of 1983 changes in actuarial reduction formula).

''(B)[(C)] Section 1383c of this title (relating to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits under section 402(d) of this title).''

Subsec. (a)(2)(E). Pub. L. 100–203, § 9116(d), as amended generally by Pub. L. 100–360, § 411(n)(3), as added by Pub. L. 100–485, § 608(d)(28), added subpar. (E).

1986—Subsec. (a)(1). Pub. L. 99–514, § 1895(c)(5)(A), redesignated subpars. (B) and (C) as (C) and (D), respectively, and inserted at beginning of subpar. (A) ''Section 602(a)(32) of this title (relating to individuals who are deemed recipients of aid but for whom a payment is not made).''

Subsec. (a)(2). Pub. L. 99–643, which directed amendment of section 1920(a)(2) of the Social Security Act by designating existing provisions as subpar. (A) and adding subpar. (B) relating to section 1383c of this title as it relates to individuals who lose eligibility for SSI benefits due to entitlement to child's insurance benefits, was executed to this section, section 1921 of the Social Security Act, to reflect the probable intent of Congress and the redesignation of section 1920 of the Social Security Act as section 1921 by Pub. L. 99–509.

Pub. L. 99–514, § 1895(c)(5)(B), designated existing provisions as subpar. (A) and added subpar. (B) relating to section 1383c(b) of this title as it relates to preservation

of benefit status for certain disabled widows and widowers.

Subsec. (a)(3). Pub. L. 99–514, §1895(c)(5)(C), substituted ''Sections 672(h) and 673(b) of this title'' for ''Section 673(b) of this title''.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 202(c)(5) of Pub. L. 100–485 effective Oct. 1, 1990, with provision for earlier effective dates in case of States making certain changes in their State plans and formally notifying the Secretary of Health and Human Services of their desire to become subject to the amendments by title II of Pub. L. 100–485, at such earlier effective dates, see section 204 of Pub. L. 100–485, set out as an Effective Date note under section 681 of this title.

Amendment by section 608(d)(28) of Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by section 411(k)(6)(B)(i), (10)(L), (n)(3) of Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1986 AMENDMENTS

Amendment by Pub. L. 99–643 effective July 1, 1987, except as otherwise provided, see section 10(b) of Pub. L. 99–643, set out as a note under section 1396a of this title.

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, see section 1895(e) of Pub. L. 99–514, set out as a note under section 162 of Title 26, Internal Revenue Code.

SUBCHAPTER XX—BLOCK GRANTS TO STATES FOR SOCIAL SERVICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 300z–5, 602, 622, 671, 672, 673, 704, 1301, 1308, 1320a–7, 1320a–7a, 1320b–2, 1382i, 1396b, 1766, 3013, 3020d, 3026, 3035b, 3035*l*, 8623, 8624, 10901 of this title; title 8 section 1255a; title 25 section 1931; title 31 section 3803; title 40 App. section 202.

§ 1397. Purposes; authorization of appropriations

For the purposes of consolidating Federal assistance to States for social services into a single grant, increasing State flexibility in using social service grants, and encouraging each State, as far as practicable under the conditions in that State, to furnish services directed at the goals of—

(1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

(3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families;

(4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and

(5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions,

there are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of this subchapter.

(Aug. 14, 1935, ch. 531, title XX, §2001, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2352(a), 95 Stat. 867.)

PRIOR PROVISIONS

A prior section 1397, act Aug. 14, 1935, ch. 531, title XX, §2001, as added Jan. 4, 1975, Pub. L. 93–647, §2, 88 Stat. 2337; amended June 17, 1980, Pub. L. 96–272, title II, §207(b), 94 Stat. 526, authorized appropriations to carry out former provisions of this subchapter, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

EFFECTIVE DATE

Section 2354 of Pub. L. 97–35 provided that: ''Except as otherwise explicitly provided, the provisions of this subtitle [subtitle C (§§2351–2355) of title XXIII of Pub. L. 97–35, see Short Title of 1981 Amendment note set out under section 1305 of this title] and the repeals and amendments made by this subtitle, shall become effective on October 1, 1981.''

STUDY OF STATE SOCIAL SERVICE PROGRAMS; REPORT TO CONGRESS

Section 2355 of Pub. L. 97–35 required Secretary of Health and Human Services to conduct a study to identify criteria and mechanisms which may be useful for States in assessing effectiveness and efficiency of State social service programs carried out with funds made available under this subchapter, such study to include consideration of Federal incentive payments as an option in rewarding States having high performance social service programs, and to report results of such study to Congress within one year after Aug. 13, 1981.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1397a, 1397f of this title.

§ 1397a. Payments to States

(a) Amount; covered services

(1) Each State shall be entitled to payment under this subchapter for each fiscal year in an amount equal to its allotment for such fiscal year, to be used by such State for services directed at the goals set forth in section 1397 of this title, subject to the requirements of this subchapter.

(2) For purposes of paragraph (1)—

(A) services which are directed at the goals set forth in section 1397 of this title include, but are not limited to, child care services, protective services for children and adults, services for children and adults in foster care, services related to the management and maintenance of the home, day care services for adults, transportation services, family planning services, training and related services, employment services, information, referral, and counseling services, the preparation and delivery of meals, health support services and appropriate combinations of services designed to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, the physically handicapped, and alcoholics and drug addicts; and

(B) expenditures for such services may include expenditures for—

(i) administration (including planning and evaluation);

(ii) personnel training and retraining directly related to the provision of those services (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions); and

(iii) conferences or workshops, and training or retraining through grants to nonprofit organizations within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986 or to individuals with social services expertise, or through financial assistance to individuals participating in such conferences, workshops, and training or retraining (and this clause shall apply with respect to all persons involved in the delivery of such services).

(b) Funding requirements

The Secretary shall make payments in accordance with section 6503 of title 31 to each State from its allotment for use under this subchapter.

(c) Expenditure of funds

Payments to a State from its allotment for any fiscal year must be expended by the State in such fiscal year or in the succeeding fiscal year.

(d) Transfers of funds

A State may transfer up to 10 percent of its allotment under section 1397b of this title for any fiscal year for its use for that year under other provisions of Federal law providing block grants for support of health services, health promotion and disease prevention activities, or low-income home energy assistance (or any combination of those activities). Amounts allotted to a State under any provisions of Federal law referred to in the preceding sentence and transferred by a State for use in carrying out the purposes of this subchapter shall be treated as if they were paid to the State under this subchapter but shall not affect the computation of the State's allotment under this subchapter. The State shall inform the Secretary of any such transfer of funds.

(e) Use of portion of funds

A State may use a portion of the amounts described in subsection (a) of this section for the purpose of purchasing technical assistance from public or private entities if the State determines that such assistance is required in developing, implementing, or administering programs funded under this subchapter.

(Aug. 14, 1935, ch. 531, title XX, § 2002, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2352(a), 95 Stat. 867; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(h)(1), 98 Stat. 1169; Oct. 22, 1986, Pub. L. 99–514, § 2, 100 Stat. 2095.)

REFERENCES IN TEXT

Section 501 of the Internal Revenue Code of 1986, referred to in subsec. (a)(2)(B)(iii), is classified to section 501 of Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 1397a, acts Aug. 14, 1935, ch. 531, title XX, § 2002, as added Jan. 4, 1975, Pub. L. 93–647, § 2, 88 Stat. 2337; amended Oct. 21, 1975, Pub. L. 94–120, § 4(b), 89 Stat. 609; Sept. 7, 1976, Pub. L. 94–401, §§ 1(a)–(c), 5(a), 90 Stat. 1215, 1218; June 30, 1977, Pub. L. 95–59, § 5, 91 Stat. 255; Oct. 25, 1977, Pub. L. 95–142, §§ 3(d)(2), 8(d), 91 Stat. 1179, 1195; Nov. 6, 1978, Pub. L. 95–600, title VIII, § 801(a), 92 Stat. 2944; Oct. 17, 1979, Pub. L. 96–88, title V, § 509(b), 93 Stat. 695; Jan. 2, 1980, Pub. L. 96–178, § 4(a), (c), 93 Stat. 1296, 1297; June 17, 1980, Pub. L. 96–272, title I, § 103(e), title II, §§ 201–204(a), 205(a), 206(e), 207(a), 94 Stat. 521–525; Dec. 5, 1980, Pub. L. 96–499, title X, § 1001(a), 94 Stat. 2655, related to payments to States and computation of amounts, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

AMENDMENTS

1986—Subsec. (a)(2)(B)(iii). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954''.

1984—Subsec. (b). Pub. L. 98–369 substituted ''section 6503 of title 31'' for ''section 203 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4213)''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

TEMPORARY SUSPENSION OF CHILD DAY CARE SERVICES REQUIREMENTS

Pub. L. 96–499, title X, § 1001(b), Dec. 5, 1980, 94 Stat. 2655, provided that the provisions of Pub. L. 93–647, § 3(f), Jan. 4, 1975, 88 Stat. 2349, set out as a note below, not apply with respect to child day care services provided after June 30, 1980, and prior to July 1, 1981, which met applicable standards of State and local law.

REIMBURSEMENT OF EXPENDITURES FOR SOCIAL SERVICES PROVIDED BY STATES PRIOR TO OCTOBER 1, 1975; AUTHORIZATION OF APPROPRIATIONS; PROCEDURES APPLICABLE TO PAYMENT OF UNPAID CLAIMS OF STATES

Pub. L. 95–291, June 12, 1978, 92 Stat. 304, authorized appropriations for payments to States in settlement of unpaid claims of States against the United States for reimbursement of expenditures made by States prior to Oct. 1, 1975, for services and administrative costs under a State plan pursuant to specific subchapters of this chapter, provided schedules for payment of a claim asserted prior to the ninety-first day after June 12, 1978, depending on when the claim was asserted, barred other claims and certain claims of the United States for recovery, provided for review of determinations, barred judicial review, and provided for allotment of appropriations for claims.

PAYMENTS TO STATES FOR FISCAL PERIOD BEGINNING JULY 1, 1976, AND ENDING SEPTEMBER 30, 1976, AND FISCAL YEARS ENDING SEPTEMBER 30, 1977, 1978, AND 1979, COMPUTATION AMOUNTS, LIMITATIONS, ETC.

Pub. L. 94–401, § 3, Sept. 7, 1976, 90 Stat. 1215, as amended by Pub. L. 95–171, § 1(a), Nov. 12, 1977, 91 Stat. 1353; Pub. L. 95–600, title VIII, § 801(b), Nov. 6, 1978, 92 Stat. 2944; Pub. L. 96–178, § 3(b)–(f), Jan. 2, 1980, 93 Stat. 1296, provided for computation of amounts of payments to States under this subchapter for the fiscal period beginning July 1, 1976, and ending Sept. 30, 1976, and fiscal years ending Sept. 30, 1977, 1978, and 1979, limitations on such amounts, and a limit on the total amount of Federal payments made to States in any such fiscal year under this subchapter.

REQUIREMENTS OF CHILD DAY CARE SERVICES

Pub. L. 93–647, § 3(f), Jan. 4, 1975, 88 Stat. 2349, which provided for requirements of child day care services, was repealed by Pub. L. 97–35, title XXIII, § 2353(s), Aug. 13, 1981, 97 Stat. 874.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 1397b, 1397c, 1397f, 8622 of this title.

§ 1397b. Allotments

(a) Computation of amounts for jurisdictions of Puerto Rico, Guam, etc.

The allotment for any fiscal year to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands shall be an amount which bears the same ratio to the amount specified in subsection (c) of this section as the amount which was specified for allocation to the particular jurisdiction involved for the fiscal year 1981 under section 1397a(a)(2)(C) of this title (as in effect prior to Aug. 13, 1981) bore to $2,900,000,000. The allotment for fiscal year 1989 and each succeeding fiscal year to American Samoa shall be an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands for that fiscal year as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(b) Computation of amounts for each State other than jurisdictions of Puerto Rico, Guam, etc.

The allotment for any fiscal year for each State other than the jurisdictions of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands shall be an amount which bears the same ratio to—

(1) the amount specified in subsection (c) of this section, reduced by

(2) the total amount allotted to those jurisdictions for that fiscal year under subsection (a) of this section,

as the population of that State bears to the population of all the States (other than Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands) as determined by the Secretary (on the basis of the most recent data available from the Department of Commerce) and promulgated prior to the first day of the third month of the preceding fiscal year.

(c) Appropriations

The amount specified for purposes of subsections (a) and (b) of this section shall be—

(1) $2,400,000,000 for the fiscal year 1982;

(2) $2,450,000,000 for the fiscal year 1983;

(3) $2,700,000,000 for the fiscal years 1984, 1985, 1986, 1987, and 1989;

(4) $2,750,000,000 for the fiscal year 1988; and

(5) $2,800,000,000 for each fiscal year after fiscal year 1989.

(Aug. 14, 1935, ch. 531, title XX, §2003, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2352(a), 95 Stat. 868; amended Sept. 3, 1982, Pub. L. 97–248, title I, §160(b), 96 Stat. 400; Oct. 24, 1983, Pub. L. 98–135, title II, §204, 97 Stat. 861; Oct. 22, 1986, Pub. L. 99–514, title XVIII, §1883(e)(1), 100 Stat. 2919; Dec. 22, 1987, Pub. L. 100–203, title IX, §§9134(a), 9135(a)(2), 101 Stat. 1330–315; Dec. 19, 1989, Pub. L. 101–239, title VIII, §8016, 103 Stat. 2470.)

PRIOR PROVISIONS

A prior section 1397b, act Aug. 14, 1935, ch. 531, title XX, §2003, as added Jan. 4, 1975, Pub. L. 93–647, §2, 88 Stat. 2343; amended Oct. 21, 1975, Pub. L. 94–120, §4(a), 89 Stat. 609; Oct. 25, 1977, Pub. L. 95–142, §3(d)(1), 91 Stat. 1179; June 9, 1980, Pub. L. 96–265, title IV, §403(b), 94 Stat. 462; June 17, 1980, Pub. L. 96–272, title II, §206(c), (d), 94 Stat. 525; Oct. 19, 1980, Pub. L. 96–473, §6(*l*), 94 Stat. 2266; Dec. 5, 1980, Pub. L. 96–499, title IX, §913(e), 94 Stat. 2620, related to State programs for social services assistance, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

AMENDMENTS

1989—Subsec. (c)(3). Pub. L. 101–239, §8016(1), substituted ''1987, and 1989;'' for ''and 1987, and for each succeeding fiscal year other than the fiscal year 1988; and''.

Subsec. (c)(5). Pub. L. 101–239, §8016(2), (3), added par. (5).

1987—Subsec. (a). Pub. L. 100–203, §9135(a)(2)(A), inserted at end ''The allotment for fiscal year 1989 and each succeeding fiscal year to American Samoa shall be an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands for that fiscal year as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.''

Subsec. (b). Pub. L. 100–203, §9135(a)(2)(B), inserted ''American Samoa,'' after ''the Virgin Islands,'' in two places.

Subsec. (c)(2). Pub. L. 100–203, §9134(a)(A), struck out ''and'' after ''1983;''.

Subsec. (c)(3). Pub. L. 100–203, §9134(a)(B), substituted ''years 1984, 1985, 1986, and 1987, and for each succeeding fiscal year other than the fiscal year 1988; and'' for ''year 1984 and each succeeding fiscal year.''

Subsec. (c)(4). Pub. L. 100–203, §9134(a)(C), added par. (4).

1986—Subsec. (b). Pub. L. 99–514, §1883(e)(1)(B), struck out ''(subject to subsection (d) of this section)'' after ''promulgated''.

Subsec. (d). Pub. L. 99–514, §1883(e)(1)(A), struck out subsec. (d) which read as follows: ''The determination and promulgation required by subsection (b) of this section with respect to the fiscal year 1982 shall be made as soon as possible after August 13, 1981.''

1983—Subsec. (c)(3). Pub. L. 98–135 substituted ''$2,700,000,000 for the fiscal year 1984 and each succeeding fiscal year.'' for ''$2,500,000,000 for the fiscal year 1984;''.

Subsec. (c)(4), (5). Pub. L. 98–135 struck out pars. (4) and (5) which provided, respectively, for an amount of $2,600,000,000 for fiscal year 1985 and $2,700,000,000 for fiscal year 1986 and succeeding fiscal years.

1982—Subsec. (b). Pub. L. 97–248 inserted ''(other than Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands)'' in provisions following cl. (2).

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 9135(a)(2) of Pub. L. 100–203 applicable with respect to fiscal years beginning on or after Oct. 1, 1988, see section 9135(c) of Pub. L. 100–203, set out as a note under section 621 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 effective Oct. 1, 1981, see section 160(e) of Pub. L. 97–248, set out as a note under section 1301 of this title.

REQUIREMENT THAT ADDITIONAL FUNDS SUPPLEMENT AND NOT SUPPLANT FUNDS AVAILABLE FROM OTHER SOURCES

Section 9134(b) of Pub. L. 100–203 provided that: ''The additional $50,000,000 made available to the States for the fiscal year 1988 pursuant to the amendments made by subsection (a) [amending this section] shall—

''(A) be used only for the purpose of providing additional services under title XX of the Social Security Act [this subchapter]; and

''(B) be expended only to supplement the level of any funds that would, in the absence of the additional

funds appropriated pursuant to such amendments, be available from other sources (including any amounts available under title XX of the Social Security Act without regard to such amendments) for services in accordance with such title, and shall in no case supplant such funds from other sources or reduce the level thereof.''

APPROPRIATIONS

Pub. L. 98–473, title IV, § 401, Oct. 12, 1984, 98 Stat. 2195, provided that:

''(a)(1) Notwithstanding any provision of title XX of the Social Security Act [this subchapter], the amount applicable under section 2003(c)(3) of such Act [subsec. (c)(3) of this section] shall be $2,725,000,000 for fiscal year 1985. Of such amount, $25,000,000 shall be allotted and used in accordance with this section.

''(2) In addition to any other amounts appropriated under this resolution [Pub. L. 98–473] or any Act, there are hereby appropriated $25,000,000 for fiscal year 1985, for carrying out title XX of the Social Security Act, to be used in accordance with the provisions of this section.

''(3) Amounts appropriated under this section shall remain available until September 30, 1985, without regard to section 102 of this resolution.

''(4) Except as otherwise provided in this section, each State's allotment of the additional amounts authorized and appropriated under this section shall be the same proportion of $25,000,000 as such State's proportional allotment of other title XX funds for fiscal year 1985, as determined under section 2003 of the Social Security Act [this section].

''(b) The additional $25,000,000 made available to the States for fiscal year 1985 pursuant to subsection (a) shall—

''(1) be used only for the purpose of providing training and retraining (including training in the prevention of child abuse in child care settings) to providers of licensed or registered child care services, operators and staffs (including those receiving in-service training) of facilities where licensed or registered child care services are provided, State licensing and enforcement officials, and parents;

''(2) be expended only to supplement the level of any funds that would, in the absence of the additional funds appropriated under this section, be available from other sources (including any amounts available under title XX of the Social Security Act [this subchapter] without regard to this section) for the purpose specified in paragraph (1), and shall in no case supplant such funds from other sources or reduce the level thereof; and

''(3) be separately accounted for in the reports and audits provided for in section 2006 of the Social Security Act [section 1397e of this title].

''(c)(1) In order to provide guidance and assistance to the States in utilizing funds allocated pursuant to title XX of the Social Security Act [this subchapter], not later than 3 months after the date of enactment of this section [Oct. 12, 1984], the Secretary shall draft and distribute to the States for their consideration, a Model Child Care Standards Act containing—

''(A) minimum licensing or registration standards for day care centers, group homes, and family day care homes regarding matters including—

''(i) the training, development, supervision, and evaluation of staff;

''(ii) staff qualification requirements, by job classification;

''(iii) staff-child ratios;

''(iv) probation periods for new staff;

''(v) employment history checks for staff; and

''(vi) parent visitation; and

''(2)(A) Any State receiving an allotment under such title from the funds made available as a result of subsection (a) shall have in effect, not later than September 30, 1985—

''(i) procedures, established by State law or regulation, to provide for employment history and background checks; and

''(ii) provisions of State law, enacted in accordance with the provisions of Public Law 92–544 (86 Stat. 115) [86 Stat. 1115, 28 U.S.C. 534 note] requiring nationwide criminal record checks

for all operators, staff or employees, or prospective operators, staff or employees of child care facilities (including any facility or program having primary custody of children for 20 hours or more per week), juvenile detention, correction or treatment facilities, with the objective of protecting the children involved and promoting such children's safety and welfare while receiving service through such facilities or programs.

''(B) In the case of any State not meeting the requirements of subparagraph (A) by September 30, 1985, such State's allotment for fiscal year 1986 or 1987 shall be reduced in the aggregate by an amount equal to one-half of the amount by which such State's allotment under such title was increased for fiscal year 1985 as a result of subsection (a).

''(d) The determination and promulgation required by section 2003(b) of the Social Security Act [subsec. (b) of this section] with respect to the fiscal year 1985 (to take into account the preceding provisions of this section) shall be made as soon as possible after the date of the enactment of this Act [Oct. 12, 1984].''

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1397a, 1397f of this title.

§ 1397c. State reporting requirements

Prior to expenditure by a State of payments made to it under section 1397a of this title for any fiscal year, the State shall report on the intended use of the payments the State is to receive under this subchapter, including information on the types of activities to be supported and the categories or characteristics of individuals to be served. The report shall be transmitted to the Secretary and made public within the State in such manner as to facilitate comment by any person (including any Federal or other public agency) during development of the report and after its completion. The report shall be revised throughout the year as may be necessary to reflect substantial changes in the activities assisted under this subchapter, and any revision shall be subject to the requirements of the previous sentence.

(Aug. 14, 1935, ch. 531, title XX, § 2004, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2352(a), 95 Stat. 869.)

PRIOR PROVISIONS

A prior section 1397c, act Aug. 14, 1935, ch. 531, title XX, § 2004, as added Jan. 4, 1975, Pub. L. 93–647, § 2, 88 Stat. 2346; amended June 17, 1980, Pub. L. 96–272, title II, § 206(a), (b), 94 Stat. 525, related to services program planning, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1397e of this title.

§ 1397d. Limitation on use of grants; waiver

(a) Except as provided in subsection (b) of this section, grants made under this subchapter may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this subchapter—

(1) for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility;

(2) for the provision of cash payments for costs of subsistence or for the provision of room and board (other than costs of subsistence during rehabilitation, room and board provided for a short term as an integral but subordinate part of a social service, or temporary emergency shelter provided as a protective service);

(3) for payment of the wages of any individual as a social service (other than payment of the wages of welfare recipients employed in the provision of child day care services);

(4) for the provision of medical care (other than family planning services, rehabilitation services, or initial detoxification of an alcoholic or drug dependent individual) unless it is an integral but subordinate part of a social service for which grants may be used under this subchapter;

(5) for social services (except services to an alcoholic or drug dependent individual or rehabilitation services) provided in and by employees of any hospital, skilled nursing facility, intermediate care facility, or prison, to any individual living in such institution;

(6) for the provision of any educational service which the State makes generally available to its residents without cost and without regard to their income;

(7) for any child day care services unless such services meet applicable standards of State and local law;

(8) for the provision of cash payments as a service (except as otherwise provided in this section); or

(9) for payment for any item or service (other than an emergency item or service) furnished—

(A) by an individual or entity during the period when such individual or entity is excluded under this subchapter or subchapter V, XVIII, or XIX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title, or

(B) at the medical direction or on the prescription of a physician during the period when the physician is excluded under this subchapter or subchapter V, XVIII, or XIX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title and when the person furnishing such item or service knew or had reason to know of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).

(b) The Secretary may waive the limitation contained in subsection (a)(1) and (4) of this section upon the State's request for such a waiver if he finds that the request describes extraordinary circumstances to justify the waiver and that permitting the waiver will contribute to the State's ability to carry out the purposes of this subchapter.

(Aug. 14, 1935, ch. 531, title XX, §2005, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2352(a), 95 Stat. 869; amended Aug. 18, 1987, Pub. L. 100–93, §8(i), 101 Stat. 695; Dec. 22, 1987, Pub. L. 100–203, title IV, §4118(e)(13), as added July 1, 1988, Pub. L. 100–360, title IV, §411(k)(10)(D), 102 Stat. 796; Oct. 13, 1988, Pub. L. 100–485, title VI, §608(d)(26)(K)(ii), 102 Stat. 2422.)

PRIOR PROVISIONS

A prior section 1397d, act Aug. 14, 1935, ch. 531, title XX, §2005, as added Jan. 4, 1975, Pub. L. 93–647, §2, 88 Stat. 2347; amended June 17, 1980, Pub. L. 96–272, title II, §206(d), 94 Stat. 525, related to effective date of implementing regulations, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

AMENDMENTS

1988—Subsec. (a)(9)(A), (B). Pub. L. 100–360, §411(k)(10)(D), as amended by Pub. L. 100–485, §608(d)(26)(K)(ii), added Pub. L. 100–203, §4118(e)(13), see 1987 Amendment note below.

1987—Subsec. (a)(9). Pub. L. 100–93 added par. (9).

Subsec. (a)(9)(A), (B). Pub. L. 100–203, §4118(e)(13), as added by Pub. L. 100–360, §411(k)(10)(D), as amended by Pub. L. 100–485, §608(d)(26)(K)(ii), substituted ''under this subchapter or subchapter V, XVIII, or XIX of this chapter pursuant to section 1320a–7, 1320a–7a, 1320c–5, or 1395u(j)(2) of this title'' for ''pursuant to section 1320a–7 of this title or section 1320a–7a of this title from participation in the program under this subchapter''.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by Pub. L. 100–485 effective as if included in the enactment of the Medicare Catastrophic Coverage Act of 1988, Pub. L. 100–360, see section 608(g)(1) of Pub. L. 100–485, set out as a note under section 704 of this title.

Except as specifically provided in section 411 of Pub. L. 100–360, amendment by Pub. L. 100–360, as it relates to a provision in the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, effective as if included in the enactment of that provision in Pub. L. 100–203, see section 411(a) of Pub. L. 100–360, set out as a Reference to OBRA; Effective Date note under section 106 of Title 1, General Provisions.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–93 effective at end of fourteen-day period beginning Aug. 18, 1987, and inapplicable to administrative proceedings commenced before end of such period, see section 15(a) of Pub. L. 100–93, set out as a note under section 1320a–7 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1397f of this title.

§ 1397e. Administrative and fiscal accountability

(a) Reporting requirements; form, contents, etc.

Each State shall prepare reports on its activities carried out with funds made available (or transferred for use) under this subchapter. Reports shall be prepared annually, covering the most recently completed fiscal year, and shall be in such form and contain such information (including but not limited to the information specified in subsection (c) of this section) as the State finds necessary to provide an accurate description of such activities, to secure a complete record of the purposes for which funds were spent, and to determine the extent to which funds were spent in a manner consistent with the reports required by section 1397c of this title. The State shall make copies of the reports required by this section available for public inspection within the State and shall transmit a copy to the Secretary. Copies shall also be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(b) Audits; implementation, etc.

Each State shall, not less often than every two years, audit its expenditures from amounts re-

ceived (or transferred for use) under this subchapter. Such State audits shall be conducted by an entity independent of any agency administering activities funded under this subchapter, in accordance with generally accepted auditing principles. Within 30 days following the completion of each audit, the State shall submit a copy of that audit to the legislature of the State and to the Secretary. Each State shall repay to the United States amounts ultimately found not to have been expended in accordance with this subchapter, or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this subchapter.

(c) State reports on expenditure and use of social services funds

Each report prepared and transmitted by a State under subsection (a) of this section shall set forth (with respect to the fiscal year covered by the report)—

(1) the number of individuals who received services paid for in whole or in part with funds made available under this subchapter, showing separately the number of children and the number of adults who received such services, and broken down in each case to reflect the types of services and circumstances involved;

(2) the amount spent in providing each such type of service, showing separately for each type of service the amount spent per child recipient and the amount spent per adult recipient;

(3) the criteria applied in determining eligibility for services (such as income eligibility guidelines, sliding fee scales, the effect of public assistance benefits, and any requirements for enrollment in school or training programs); and

(4) the methods by which services were provided, showing separately the services provided by public agencies and those provided by private agencies, and broken down in each case to reflect the types of services and circumstances involved.

The Secretary shall establish uniform definitions of services for use by the States in preparing the information required by this subsection, and make such other provision as may be necessary or appropriate to assure that compliance with the requirements of this subsection will not be unduly burdensome on the States.

(d) Additional accounting requirements

For other provisions requiring States to account for Federal grants, see section 6503 of title 31.

(Aug. 14, 1935, ch. 531, title XX, § 2006, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, § 2352(a), 95 Stat. 870; amended July 18, 1984, Pub. L. 98–369, div. B, title VI, § 2663(h)(2), 98 Stat. 1169; Oct. 13, 1988, Pub. L. 100–485, title VI, § 607, 102 Stat. 2410.)

PRIOR PROVISIONS

A prior section 1397e, act Aug. 14, 1935, ch. 531, title XX, § 2006, as added Jan. 4, 1975, Pub. L. 93–647, § 2, 88 Stat. 2347, related to program evaluation and assistance, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

A prior section 1397e–1, act Aug. 14, 1935, ch. 531, title XX, § 2007, as added Jan. 2, 1980, Pub. L. 96–178, § 4(b), 93 Stat. 1296, related to child day care services, prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35. See section 1397f of this title.

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–485, § 607(1), substituted ''Reports shall be prepared annually, covering the most recently completed fiscal year, and shall be in such form and contain such information (including but not limited to the information specified in subsection (c) of this section)'' for ''Reports shall be in such form, contain such information, and be of such frequency (but not less often than every two years)'' in second sentence.

Subsecs. (c), (d). Pub. L. 100–485, § 607(3), added subsec. (c) and redesignated former subsec. (c) as (d).

1984—Subsec. (c). Pub. L. 98–369 substituted ''section 6503 of title 31'' for ''section 202 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4212)''.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of this title.

§ 1397f. Additional grants

(a) Entitlement

(1) In general

In addition to any payment under section 1397a of this title, each State shall be entitled to—

(A) 2 grants under this section for each qualified empowerment zone in the State; and

(B) 1 grant under this section for each qualified enterprise community in the State.

(2) Amount of grants

(A) Empowerment grants

The amount of each grant to a State under this section for a qualified empowerment zone shall be—

(i) if the zone is designated in an urban area, $50,000,000, multiplied by that proportion of the population of the zone that resides in the State; or

(ii) if the zone is designated in a rural area, $20,000,000, multiplied by such proportion.

(B) Enterprise grants

The amount of the grant to a State under this section for a qualified enterprise community shall be 1/95 of $280,000,000, multiplied by that proportion of the population of the community that resides in the State.

(C) Population determinations

The Secretary shall make population determinations for purposes of this paragraph based on the most recent decennial census data available.

(3) Timing of grants

(A) Qualified empowerment zones

With respect to each qualified empowerment zone, the Secretary shall make—

(i) 1 grant under this section to each State in which the zone lies, on the date of

the designation of the zone under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986; and

(ii) 1 grant under this section to each such State, on the 1st day of the 1st fiscal year that begins after the date of the designation.

(B) Qualified enterprise communities

With respect to each qualified enterprise community, the Secretary shall make 1 grant under this section to each State in which the community lies, on the date of the designation of the community under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986.

(4) Funding

$1,000,000,000 shall be made available to the Secretary for grants under this section.

(b) Program options

Notwithstanding section 1397d(a) of this title:

(1) In order to prevent and remedy the neglect and abuse of children, a State may use amounts paid under this section to make grants to, or enter into contracts with, entities to provide residential or nonresidential drug and alcohol prevention and treatment programs that offer comprehensive services for pregnant women and mothers, and their children.

(2) In order to assist disadvantaged adults and youths in achieving and maintaining self-sufficiency, a State may use amounts paid under this section to make grants to, or enter into contracts with—

(A) organizations operated for profit or not for profit, for the purpose of training and employing disadvantaged adults and youths in construction, rehabilitation, or improvement of affordable housing, public infrastructure, and community facilities; and

(B) nonprofit organizations and community or junior colleges, for the purpose of enabling such entities to provide short-term training courses in entrepreneurism and self-employment, and other training that will promote individual self-sufficiency and the interests of the community.

(3) A State may use amounts paid under this section to make grants to, or enter into contracts with, nonprofit community-based organizations to enable such organizations to provide activities designed to promote and protect the interests of children and families, outside of school hours, including keeping schools open during evenings and weekends for mentoring and study.

(4) In order to assist disadvantaged adults and youths in achieving and maintaining economic self-support, a State may use amounts paid under this section to—

(A) fund services designed to promote community and economic development in qualified empowerment zones and qualified enterprise communities, such as skills training, job counseling, transportation services, housing counseling, financial management, and business counseling;

(B) assist in emergency and transitional shelter for disadvantaged families and individuals; or

(C) support programs that promote home ownership, education, or other routes to economic independence for low-income families and individuals.

(c) Use of grants

(1) In general

Subject to subsection (d) of this section, each State that receives a grant under this section with respect to an area shall use the grant—

(A) for services directed only at the goals set forth in paragraphs (1), (2), and (3) of section 1397 of this title;

(B) in accordance with the strategic plan for the area; and

(C) for activities that benefit residents of the area for which the grant is made.

(2) Technical assistance

A State may use a portion of any grant made under this section in the manner described in section 1397a(e) of this title.

(d) Remittance of certain amounts

(1) Portion of grant upon termination of designation

Each State to which an amount is paid under this subsection during a fiscal year with respect to an area the designation of which under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986 ends before the end of the fiscal year shall remit to the Secretary an amount equal to the total of the amounts so paid with respect to the area, multiplied by that proportion of the fiscal year remaining after the designation ends.

(2) Amounts paid to the States and not obligated within 2 years

Each State shall remit to the Secretary any amount paid to the State under this section that is not obligated by the end of the 2-year period that begins with the date of the payment.

(e) Reallocation of remaining funds

(1) Remitted amounts

The amount specified in section 1397b(c) of this title for any fiscal year is hereby increased by the total of the amounts remitted during the fiscal year pursuant to subsection (d) of this section.

(2) Amounts not paid to the States

The amount specified in section 1397b(c) of this title for fiscal year 1998 is hereby increased by the amount made available for grants under this section that has not been paid to any State by the end of fiscal year 1997.

(f) Definitions

As used in this section:

(1) Qualified empowerment zone

The term ''qualified empowerment zone'' means, with respect to a State, an area—

(A) which has been designated (other than by the Secretary of the Interior) as an empowerment zone under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986;

(B) with respect to which the designation is in effect;

(C) the strategic plan for which is a qualified plan; and

(D) part or all of which is in the State.

(2) Qualified enterprise community

The term ''qualified enterprise community'' means, with respect to a State, an area—

(A) which has been designated (other than by the Secretary of the Interior) as an enterprise community under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986;

(B) with respect to which the designation is in effect;

(C) the strategic plan for which is a qualified plan; and

(D) part or all of which is in the State.

(3) Strategic plan

The term ''strategic plan'' means, with respect to an area, the plan contained in the application for designation of the area under part I of subchapter U of chapter 1 of the Internal Revenue Code of 1986.

(4) Qualified plan

The term ''qualified plan'' means, with respect to an area, a plan that—

(A) includes a detailed description of the activities proposed for the area that are to be funded with amounts provided under this section;

(B) contains a commitment that the amounts provided under this section to any State for the area will not be used to supplant Federal or non-Federal funds for services and activities which promote the purposes of this section;

(C) was developed in cooperation with the local government or governments with jurisdiction over the area; and

(D) to the extent that any State will not use the amounts provided under this section for the area in the manner described in subsection (b) of this section, explains the reasons why not.

(5) Rural area

The term ''rural area'' has the meaning given such term in section 1393(a)(2) of the Internal Revenue Code of 1986.

(6) Urban area

The term ''urban area'' has the meaning given such term in section 1393(a)(3) of the Internal Revenue Code of 1986.

(Aug. 14, 1935, ch. 531, title XX, §2007, as added Aug. 10, 1993, Pub. L. 103–66, title XIII, §13761, 107 Stat. 664; amended Oct. 31, 1994, Pub. L. 103–432, title II, §263, 108 Stat. 4467.)

REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (a)(3), (d)(1), and (f), is classified generally to Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 1397f, act Aug. 14, 1935, ch. 531, title XX, §2007, as added Aug. 13, 1981, Pub. L. 97–35, title XXIII, §2352(a), 95 Stat. 871, related to child day care services, prior to repeal by Pub. L. 99–514, title XVIII, §1883(e)(2), Oct. 22, 1986, 100 Stat. 2919.

Another prior section 1397f, act Aug. 14, 1935, ch. 531, title XX, §2008, formerly §2007, as added Jan. 4, 1975, Pub. L. 93–647, §2, 88 Stat. 2348; renumbered §2008, Jan. 2, 1980, Pub. L. 96–178, §4(b), 93 Stat. 1296, defined ''State supplementary payment'' and ''State'', prior to the general revision of this subchapter by section 2352(a) of Pub. L. 97–35.

AMENDMENTS

1994—Subsecs. (e), (f). Pub. L. 103–432 added subsec. (e) and redesignated former subsec. (e) as (f).

CHAPTER 7A—TEMPORARY UNEMPLOYMENT COMPENSATION PROGRAM

§§ 1400 to 1400v. Omitted

Section 1400, Pub. L. 85–441, title I, §101, June 4, 1958, 72 Stat. 171; Pub. L. 86–7, Mar. 31, 1959, 73 Stat. 14, authorized payment of temporary unemployment compensation under sections 1400 to 1400k of this title to persons who exhausted their rights under other unemployment compensation laws.

Section 1400a, Pub. L. 85–441, title I, §102, June 4, 1958, 72 Stat. 172, authorized Secretary to enter into agreements with States for payment of temporary unemployment compensation provided for in sections 1400 to 1400k of this title.

Section 1400b, Pub. L. 85–441, title I, §103, June 4, 1958, 72 Stat. 173, made special provision for veterans and Federal employees and for fair hearing and review in denial of such benefits.

Section 1400c, Pub. L. 85–441, title I, §104, June 4, 1958, 72 Stat. 173; Pub. L. 86–778, title V, §524(b), Sept. 13, 1960, 74 Stat. 982; Pub. L. 88–173, §2, Nov. 7, 1963, 77 Stat. 306, provided for repayment of amounts of any temporary unemployment compensation benefits, except benefits paid to veterans and Federal employees, paid under sections 1400 to 1400k of this title through device of reduction of credits allowed under section 3302 of Title 26, Internal Revenue Code.

Section 1400d, Pub. L. 85–441, title II, §201, June 4, 1958, 72 Stat. 174, defined ''Secretary'', ''State'', and ''first claim'' as used in sections 1400 to 1400k of this title.

Section 1400e, Pub. L. 85–441, title II, §202, June 4, 1958, 72 Stat. 174, provided for review by appropriate State agency with respect to determinations of entitlement to temporary unemployment compensation under sections 1400 to 1400k of this title.

Section 1400f, Pub. L. 85–441, title II, §203, June 4, 1958, 72 Stat. 174, set out penalties for false statements or representations in connection with payments under sections 1400 to 1400k of this title and provided for recovery of overpayments.

Section 1400g, Pub. L. 85–441, title II, §204, June 4, 1958, 72 Stat. 175, required each State to provide Secretary with whatever information he might require in administering sections 1400 to 1400k of this title.

Section 1400h, Pub. L. 85–441, title II, §205, June 4, 1958, 72 Stat. 175, provided for payments to States of funds for benefits under sections 1400 to 1400k of this title, posting of requisite bonds in connection therewith, and liability of certifying and disbursing officers.

Section 1400i, Pub. L. 85–441, title II, §206, June 4, 1958, 72 Stat. 176, provided for denial of benefits under sections 1400 to 1400k of this title to aliens employed by Communist governments or organizations.

Section 1400j, Pub. L. 85–441, title II, §207, June 4, 1958, 72 Stat. 176, authorized promulgation of rules and regulations by Secretary to carry out provisions of sections 1400 to 1400k of this title.

Section 1400k, Pub. L. 85–441, title II, §208, June 4, 1958, 72 Stat. 176, authorized appropriation of funds necessary to carry out sections 1400 to 1400k of this title.

Section 1400*l*, Pub. L. 87–6, §2, Mar. 24, 1961, 75 Stat. 8, defined ''compensation period'', ''first claim'', ''State unemployment compensation'', ''Secretary'', ''State'', ''State agency'', ''State law'', ''temporary extended unemployment compensation'', ''title XV'', and ''week'' as used in sections 1400*l* to 1400v of this title.